

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KAMAL ANWIYA YOUKHANNA,  
JOSEPHINE SORO, WAFI CATCHO,  
MAREY JABBO, DEBI RRASI, JEFFREY  
NORGROVE AND MEGAN MCHUGH

Plaintiffs,

Case No. 2:17-cv-10787

v.

Judge Gershwin A. Drain

CITY OF STERLING HEIGHTS,

Defendant.

**STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA**

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to submit such filings to further the interests of the United States in any case pending in federal court. *See Gross v. German Found. Indus. Initiative*, 456 F.3d 363, 384 (3rd Cir. 2006) (“The United States Executive has the authority, in any case in which it is interested, to file a statement of interest[.]”); *see also Hunton & Williams v. United States DOJ*, 590 F.3d 272, 291 (4th Cir. 2010) (“A statement of interest, which is authorized by 28 U.S.C. § 517, is designed to explain to a court the interests of the United States in litigation between private parties.”)). The United States has a direct interest in this case because its Consent Order in *United States v. Sterling Heights*, 2:16-cv-14366 (E.D. Mich.), references the Consent Judgment that the Plaintiffs seek to

invalidate. The United States also has an interest in promoting voluntary settlements of Religious Land Use and Institutionalized Persons Act (“RLUIPA”) cases, 42 U.S.C. §§ 2000cc – 2000cc-5.

## BACKGROUND

The City’s zoning ordinance provides that a place of worship is permitted in a residential zone with Special Approval Land Use (“SALU”) from the City Planning Commission. *United States v. Sterling Heights*, 2:16-cv-14366, Dkt. 1, Compl. ¶ 20 [hereinafter Compl.]. The Zoning Ordinance outlines specific standards for places of worship in residential zones, along with general standards for SALU applications. *Id.* ¶¶ 23-25. The specific standards relate to height and setback requirements, a requirement that places of worship be on a major or secondary road, parking requirements, and requirements for auxiliary uses. *Id.* ¶ 24. The general standards include factors such as harmony with the neighborhood, safe traffic flow, and impact on the development or use of neighboring properties. *Id.* ¶ 25. Since 2006, the City Planning Commission has approved five SALU applications for places of worship; it has not denied any applications since 2006, with the exception of the application at issue in this case by the American Islamic Community Center, Inc. (“AICC”). *Id.* ¶ 26.

In 2012, the AICC began searching for suitable property in the City where it could relocate its place of worship. *Id.* ¶ 14. It discussed its search with the City,

which advised the AICC to look for property in a residential area, rather than an industrial one. *Id.* ¶ 15. In 2014, the AICC found a suitable residential property in the City and began working with the City Planning Office and City Planner to develop a mutually acceptable site plan. *Id.* ¶ 27. After working with the City Planner for over a year, the AICC submitted its SALU application to build a mosque in a residential zone (“Application”) on July 8, 2015. *Id.* ¶¶ 27, 29.

The City Planning Commission reviewed the Application at its August 13, 2015, meeting. *Id.* ¶¶ 34-44. Prior to the meeting, the City Planner issued a report stating that the Application met the requirements in the City’s Zoning Ordinance and recommending that the City Planning Commission approve the Application. *Id.* ¶¶ 32-33. At the meeting, the City Planner explained that the proposed mosque would cover only 11% of the lot, within the 30% maximum in the Zoning Ordinance, and have 130 parking spaces, greater than the 109 spaces required by the Zoning Ordinance. *Id.* ¶¶ 35, 37. The City Planner also noted that, although the proposed mosque’s dome and spires exceeded the 30-foot height limit in a residential zone, the Application contained the requisite setback from the street to offset the additional height, as required by the Zoning Ordinance. *Id.* ¶ 36. In fact, the City Planner noted that a church in the City had a 75-foot tall steeple, which was taller than the proposed mosque’s 58-foot dome and 66-foot spires. *Id.* ¶ 40.

Fifty people spoke against the Application at the public meeting, held on August 13, 2015. *Id.* ¶ 38. Many of the comments were directed at the AICC’s religion including a plea to “Remember 9/11,” statements that Christians would not be allowed to build a church in Iraq, and statements that property values would drop if a mosque were built in the neighborhood. *Id.* ¶ 39. Ultimately, the City Planning Commission postponed its vote on the Application, over the objection of Planning Commissioner Stefano Militello, who stated that “if this was a Catholic church . . . we wouldn’t be doing this.” *Id.* ¶¶ 43-44.

Following the City Planning Commission meeting, public opposition against the Application, based on religion, continued to mount. *Id.* ¶¶ 46-53. At a City Council meeting on August 18, 2015, a resident raised a picture of a woman wearing a garment covering her head and stated that he did not want to “be near people like this.” *Id.* ¶ 47. Another resident objected that the mosque might be used as a facility to store weapons, while another argued that Homeland Security should screen the AICC because “they’re cutting people’s heads off, they kill our soldiers . . . .” *Id.* ¶ 48.

The City’s mayor initially favored the Application, telling a resident a few days after the City Planning Commission meeting that the Application “fits in the zoning there, the parcel is large enough to accommodate the building without any variance, and 15 Mile R[oa]d has lower traffic counts than most other major

thoroughfares in the city.” *Id.* ¶ 45. As opposition continued, however, the Mayor announced he opposed the Application. *Id.* ¶¶ 51-53. Planning Commissioner, now Plaintiff, Norgrove was also present at a protest against the Application and had, two months before the City Planning Commission reviewed the Application, posted anti-Muslim comments on his Facebook page. *Id.* ¶ 54.

After the August 13, 2015, City Planning Commission meeting, the City Planner contacted the AICC’s architect and suggested the AICC revise the plans in its Application in an effort to address some of the Planning Commissioners’ concerns. *Id.* ¶ 55. The AICC revised its plans, including a reduction in the height of the two spires, and sent the revisions to the City Planner. *Id.* ¶ 56. The AICC then asked the City Planner whether he had received the Application and whether the City Planner had any feedback. *Id.* ¶ 58. The City Planner discussed the matter with the City Manager and decided not to return the AICC’s call. *Id.* Instead, the City Planner spoke to all but one of the Planning Commissioners about the Application and learned that at least two of the Planning Commissioners would vote to deny the Application and that Planning Commissioner Norgrove wanted to make the motion to deny the Application. *Id.* ¶ 57. The City Planner then issued a report recommending that the City Planning Commission deny the Application for reasons that the City Planner had previously stated were consistent with the Zoning

Ordinance, including the building's height, square footage, and number of parking spaces. *Id.* ¶ 59.

At the second City Planning Commission meeting, held on September 10, 2015, following public comment, the City Planning Commission denied the Application without further discussion or debate. *Id.* ¶ 65. In other applications for places of worship since 2006, the City provided specific instructions for revisions or postponed considering an application to allow a petitioner to amend its application. *Id.* ¶ 67. The City did not give the AICC the same opportunities to revise its application at the September 10, 2015, meeting, despite the AICC's stated willingness to work with the City. *Id.* ¶¶ 63, 65.

On December 15, 2016, the United States filed suit against the City of Sterling Heights, *United States v. Sterling Heights*, 2:16-cv-14366 (E.D. Mich.), alleging that the City imposed a substantial burden on the AICC's exercise of religion that was not narrowly tailored to further a compelling governmental interest and discriminated against the AICC based on religion or religious denomination, in violation of RLUIPA. 42 U.S.C. §§ 2000cc(a)(1); 2000cc(b)(2). The AICC had previously filed suit alleging that the City violated RLUIPA, the Constitution, and state laws. *AICC v. Sterling Heights*, 2:16-cv-12920 (E.D. Mich.).

The City, AICC, and United States reached a settlement, embodied in a Consent Judgment entered by the Court on March 10, 2017, and a Consent Order entered by the Court on March 1, 2017. *Id.*, Dkt. 20; *United States v. Sterling Heights*, 2:16-cv-14366, Dkt. 7. As noted above, the United States' Consent Order references the Consent Judgment in *AICC v. Sterling Heights* with respect to building a mosque for the AICC. In relevant part, the United States' Consent Order states:

The City agrees to abide by the terms of the Consent Judgment filed in the case titled *American Islamic Community Center, Inc. v. Sterling Heights*, 2:16-cv-12920 (E.D. Mich.), which includes the right of the AICC to build a place of worship on the Property subject to the terms of that Consent Judgment.

*Id.* ¶ 21.

On March 13, 2017, the Plaintiffs filed the present lawsuit against the City, seeking to declare the Consent Judgment reached in *AICC v. Sterling Heights* invalid and unenforceable. For the reasons stated below, the United States believes these arguments lack merit.

On March 17, 2017, the Plaintiffs filed a motion for preliminary injunction seeking an order enjoining the City from enforcing its Consent Judgment with the AICC.

## ARGUMENT

The thrust of the Plaintiffs' argument is that the City's Consent Judgment with the AICC is invalid because it does not meet the requirements of the City's Zoning Ordinance and the City lacked authority to waive its zoning laws absent a finding or admission of a violation of federal law. *See generally* Pls.' Mot. for Prelim. Inj. & Br. in Supp., Dkt. 9, pg. ID 68-70.<sup>1</sup>

The Plaintiffs assert "[t]he City's Planning Commission 'is the final decision maker' for the City as to whether the application meets the standards set forth in the Zoning Ordinance." *Id.*, pg. ID 56. The Plaintiffs further allege that the City lacked authority to approve a settlement overriding the City Planning Commission's previous denial, absent a court finding that the denial violated federal law or the City admitting to such a violation. *See id.*, pg. ID 68-69. These arguments lack merit.

It is undisputed that the Zoning Ordinance expressly permits the City Council to approve a SALU application pursuant to a consent judgment. *See id.*,

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<sup>1</sup> The Plaintiffs also challenge the process by which the City approved the settlement. Specifically, they allege procedural due process violations regarding what they claim is a lack of notice for the City Council meeting and a violation of the Open Meetings Act because the Mayor cleared the City Hall chambers for the City Council's vote on the settlement. Pls.' Mot. for Prelim. Inj. & Br. in Supp., Dkt. 9, pg. ID 70-71, 73. These alleged procedural deficiencies are addressed by the City, Def. City's Br. in Opp'n to Pls.' Mot. for Prelim. Inj., Dkt. 14, pg. ID 524-31, and the United States takes no position on the merits of these claims.



pg. ID 70 (citing Zoning Ordinance, § 25.01); Def. City's Br. in Opp'n to Pls.' Mot. for Prelim. Inj., Dkt. 14, pg. ID 519-20 (citing Zoning Ordinance, § 25.01(A)(4)). In that event, the Zoning Ordinance states that the City Council "shall consider the same standards as the Planning Commission[.]" Zoning Ordinance, § 25.01(C); *see also* Pls.' Mot. for Prelim. Inj. & Br. in Supp., Dkt. 9, pg. ID 70; Def. City's Br. in Opp'n to Pls.' Mot. for Prelim. Inj., Dkt. 14, pg. ID 520. The Zoning Ordinance does not, however, dictate that the City Council reach the same conclusion as the City Planning Commission based on those standards, which require the exercise of discretion and judgment, including criteria such as harmony with the neighborhood. *See* Zoning Ordinance, §§ 25.01(C); 25.02.

As the United States and AICC alleged, the City Planner concluded that the Application met all of the requirements of the Zoning Ordinance, including requirements related to square footage, the number of parking spaces, and the setback needed to compensate for structures in residential zones exceeding 30 feet. Compl. ¶¶ 33, 35-37; *AICC v. Sterling Heights*, 2:16-cv-12920, Dkt. 1, ¶ 31. In addition, as the United States alleged in its complaint, the City had previously approved places of worship of similar size and configuration to the Application. Compl. ¶¶ 67-76.

The United States further alleged that the City Planning Commission denied the Application for pretextual reasons. *See generally id.* While the City Planning

Commission justified its denial by asserting that the height, square footage, and number of parking spaces did not adhere to the general standards in the Zoning Ordinance and that the Application was not in harmony with the neighborhood, the Application did, in fact, meet the City Planning Commission's prior application of the Zoning Ordinance. *See generally id.* As initially outlined by the City Planner, the Application met the standards in the Zoning Ordinance. *Id.* ¶¶ 32-33, 35-37.

The Mayor also initially stated he supported the Application. *Id.* ¶ 45. The Mayor and the City Planner, however, changed their position after extensive public opposition that was explicitly based on the AICC's religion. *See generally id.*

¶¶ 46-54. In addition, the departures from the City Planning Commission's normal procedure and interpretation of the Zoning Ordinance, presented circumstantial evidence of anti-Muslim bias in the City Planning Commission's decision to deny the Application. *See id.*; *see also id.* ¶¶ 57-60, 67-76; *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence . . . might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant . . ."). Even if the City Planning Commission's reasons to deny the Application had been valid, the City Planning Commission's denial imposed a substantial burden on the AICC that was not in furtherance of a compelling governmental interest and/or the least restrictive

means of furthering such interest, in violation of RLUIPA. Compl. ¶ 82 (citing 42 U.S.C. § 2000cc(a)).

In summary, the United States alleged that the City Planning Commission exercised its discretion in a manner that violated RLUIPA and was inconsistent with its prior land use and zoning practices with respect to places of worship, making it appropriate for the City to resolve those allegations by agreeing to exercise its discretion to approve the AICC's mosque. Therefore, when the City Council reviewed the settlement under the same standards as the City Planning Commission, the City Council was not required to reach the same result as the City Planning Commission and reject the settlement. In fact, as noted above, the United States alleged that the Zoning Ordinance supports approving the Application and, ultimately, the settlement. The City was free to approve the settlement, despite the fact that the City Planning Commission had rejected the Application, because the City Planning Commission's decision was inconsistent with its prior land decisions, erroneous in its application of certain objective criteria such as parking and square footage, based on discretionary judgments such as harmony with the neighborhood, and appears to have been influenced by anti-Muslim bias. The City Council was free under the Zoning Ordinance to view these factors differently and reach a different conclusion.

Contrary to the Plaintiffs' contention, *see* Pls.' Mot. for Prelim. Inj. & Br. in Supp., Dkt. 9, pg. ID 68, there is no requirement that a court make a finding that there had been a violation of federal law or that a party admit to a violation of federal law before a court can properly approve a settlement. "The criteria to be applied when a district court decides whether to approve and enter a proposed consent decree, are whether the decree is 'fair, adequate, and reasonable, as well as consistent with the public interest.'" *United States v. Lexington-Fayette Urban Cty. Gov't*, 591 F.3d 484, 489 (6th Cir. 2010) (quoting *United States v. County of Muskegon*, 298 F.3d 569, 580-81 (6th Cir. 2002)); *accord United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991) (stating that the court should consider "the standard of fairness, reasonableness and consistency with the statute" in determining whether to approve a consent decree).

There is no requirement that the settlement include an admission or finding of liability. *See Lexington-Fayette*, 591 F.3d at 489 (holding that the lower court failed to provide adequate justification for rejecting a consent decree, even though the defendant "ha[d] not admitted liability as to any of [the United States'] claims."). Furthermore, "public policy generally supports 'a presumption in favor of voluntary settlement' of litigation." *Id.* at 490 (quoting *Akzo Coatings*, 949 F.2d at 1436).

This Court properly found that the Consent Judgment between the City and the AICC – like the Consent Order between the United States and the City – was fair, adequate, reasonable, and consistent with the public interest. As the City notes, the agreement allows the AICC to build a mosque and “positively addressed most of the discretionary concerns that were raised by the Planning Commission[.]” Def. City’s Br. in Opp’n to Pls.’ Mot. for Prelim. Inj., Dkt. 14, pg. ID 515-16.

In addition, the Consent Judgment was in the public interest because it represented a voluntary resolution to what could have been lengthy, acrimonious litigation between the City, AICC, and United States. Therefore, the Court had the authority to approve the Consent Judgment and properly entered the Consent Judgment because it met the standard in the Sixth Circuit.

### **CONCLUSION**

For the reasons stated here, the United States respectfully requests consideration of this Statement of Interest in this litigation.

Respectfully submitted, this 13th day of April, 2017.

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