

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 3:16CV00083
)
 COUNTY OF CULPEPER, VA,)
)
 Defendant.)

COMPLAINT

The United States of America, by its undersigned attorneys, files this complaint and alleges:

Introduction

1. This is a civil action brought by the United States of America under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc–2000cc-5, based on the County of Culpeper’s (the “County” or “Defendant”) discriminatory denial of a sewage permit to an Islamic congregation that has prevented it from building a mosque on land it has purchased in the County.

Parties, Jurisdiction, and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 2000cc-2(f).

3. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in the Western District of Virginia.

4. Defendant County of Culpeper (the “County” or “Defendant”) is a county located in the Commonwealth of Virginia.

5. The County is governed by and acts through an elected seven member Board of Supervisors (the “Board”).

6. One member represents each district and each serves a four-year term of office.

7. The members of the Board are Brad C. Rosenberger, Jefferson District; C. Jack Frazier, Vice Chairman, Cedar Mountain District; Sue D. Hansohn, Catalpa District; Alexa V. Fritz, Chairwoman, Salem District; Steven L. Walker, East Fairfax District; Gary M. Deal, West Fairfax District; and, William C. Chase, Jr., Stevensburg District.

8. The Board appoints the County Administrator, who occupies the highest level management office of the County government. The County Administrator directs and supervises the day-to-day operations of all County departments and agencies, which are under the direct control of the Board.

9. John Egertson is the County Administrator. He became the County Administrator in April 2016. Prior to occupying this position, County Administrator Egertson was the County’s Planning Director for about 25 years.

10. The County has the authority to regulate and restrict the use of land and structures within its borders, including by granting or denying requests for sewer approval.

11. For purposes of RLUIPA, the County constitutes a “government.” 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).

Facts

Land Use in Culpeper County

12. Land development in the County is regulated by its Zoning Ordinance and the official zoning map. The map identifies the location of various zoning districts which are regulated through the text of the Zoning Ordinance.

13. There are currently fifteen different zoning districts in Culpeper County: two agricultural, six residential, three commercial, two industrial and the Planned Unit Development District and Planned Business District for mixed-use development.

14. The R-1 Residential zoning district permits places of worship by right.

15. Pump and haul permits are regulated by the state of Virginia.

16. In Virginia, a pump and haul permit regulates situations where, due to the unavailability of municipal sewers or the inability of soil to handle a septic system, sewage is held in a tank on the site and periodically pumped out and hauled by truck to a treatment facility.

17. Pursuant to the Virginia Administrative Code, a special permit that is issued by the Commissioner for the Virginia Department of Health is required for the operation of all pump and haul services. The operation of pump and haul services on a “permanent” basis, which refers to the use of a pump and haul operation for more than one year, must be done under the auspices and supervision of a government entity.

18. The County holds the only permanent pump and haul permit issued by the Virginia Department of Health in Culpeper County.

19. In order to conduct a pump and haul operation for a period of more than one year in the County, an individual or entity must receive approval from the Board to be added to the County’s general pump and haul permit.

20. Approval of permanent pump and haul services in the County is at the complete discretion of the Board.

21. Since 1992, other than the request from the ICC, the County has considered a total of 26 pump and haul requests for commercial or religious use, including nine for churches. Every one of those pump and haul requests has been granted.

The Islamic Center of Culpeper

22. The Islamic Center of Culpeper (the “ICC”) is a non-profit, Muslim organization incorporated and existing under Virginia law. The ICC is a “religious assembly or institution,” as defined by RLUIPA. 42 U.S.C. § 2000cc(2)(b)(1).

23. According to the religious beliefs and practices of the ICC, members are required to pray five times per day and attend a Friday afternoon prayer service, which includes a sermon. Before praying, ICC congregants perform ablution, or “wudu,” a sacred ritual that requires the washing of hands and feet.

24. ICC members believe that Islam does not permit borrowing money at interest, and they believe it is especially important that the financing of a religious building not be tainted by interest financing. For this reason, they cannot take out a mortgage to finance the purchase of land and construction of a mosque.

25. Since its inception, the ICC has been without a mosque. There is no mosque in the County. The closest mosque is approximately forty-five minutes away by car, which is too far for most ICC members to drive for daily prayers.

26. Without a mosque, the ICC currently worships at a small house on the site of a used car dealership on Brandy Road in Culpeper.

27. The house does not adequately serve the ICC’s religious needs. The house has a single room, and it is too small to host events that attract additional worshippers, such as the celebrations of the holidays of Eid al-Fitr and Eid-ul-Adha. Another limitation of the house is that women do not have a separate area for worship, which the ICC feels is important to have for Muslims who believe there should be separate areas for male and female congregants to pray. In addition, the house does not contain a dedicated space for Qur’an or Arabic language studies and, as a result, these classes are often disrupted by other activities that take place in the house. Also,

the house has an inadequate washing facility. Consequently, most congregants wash their hands and feet before they come to the house for prayer.

28. In 2011, the ICC initiated an effort to find a permanent facility to conduct its worship services. The ICC performed a five-year search for a suitable property, but had difficulty finding a property that was centrally located in the County and affordable.

29. On January 19, 2016, the ICC entered into a purchase contract to buy one acre at 14434 Rixeyville Road (the "Subject Property"), which is located in the R-1 zoning district of the County where religious land use is permitted by right.

30. The ICC purchased the Subject Property on April 14, 2016 for \$15,000.

31. The Subject Property contains a dilapidated structure that the ICC intends to demolish and replace with a small mosque that could serve the religious needs for up to one hundred congregants over the next decade.

The ICC's Request for a Pump and Haul Permit

32. In January 2016, Mohammad Nawabe, the ICC's Director, contacted the County's Planning and Zoning Department seeking information to effectuate the ICC's envisioned mosque at the Subject Property. Mr. Nawabe spoke to Sam McLearen, who was the County's Zoning Administrator and Acting Planning Director at the time.

33. As a first step, Planning Director McLearen recommended that Mr. Nawabe contact the local health department to learn more about the Subject Property's soil conditions.

34. At Planning Director McLearen's behest, Mr. Nawabe contacted the County's health department, which informed Mr. Nawabe that the Subject Property's soil would not support a traditional septic tank and drain field, and that the ICC would need to apply for a

permanent pump and haul permit with the County. The health department provided Mr. Nawabe with two letters that evidenced the Subject Property's poor soil conditions.

35. On or about February 8, 2016, Mr. Nawabe paid a \$250 processing fee and submitted a completed pump and haul application package to the County on behalf of the ICC. The application package included the application, a signed pump and haul agreement, the ICC's contract to purchase the Subject Property, and the two letters from the health department.

36. On the application, the ICC indicated that the Subject Property would be used for "praying and meetings" and that the ICC was presented with a hardship because "the soil is bad and cannot support a traditional septic system."

37. The County scheduled the application to be considered at the Board's March 1, 2016 meeting.

38. On February 28, 2016 at 8:24 p.m., Kurt Christensen, a well-known civic leader sent an email to County Administrator Egerston, select members of the Board, and media outlets voicing concern about the ICC's application. The email read in relevant part: "I understand the Islamic Center of Culpeper wishes to rehabilitate the existing home and use it on a weekly basis as a place of prayer.Hmmmmmmmmm..." Christensen asked the Board to "please pull this item from the March meeting agenda and give citizens a detailed briefing pronto."

39. Upon reading the email the following morning, County Administrator Egerston sent the County Attorney an email stating "we should discuss this today. Thanks."

40. In a break from prior practice, and in response to Christenson's email, at the March 1, 2016 Board meeting the County Attorney stated she needed time to review the ICC's contract. As a result, the Board pulled the application from the March 1, 2016 meeting agenda.

41. The County Attorney however, did not require such a review for previous applicants' pump and haul contracts.

42. After the March 1, 2016 meeting, Planning Director McLearen contacted Mr. Nawabe and asked that he meet him at his office to discuss the ICC's pump and haul request.

43. Later that day, Mr. Nawabe met with Planning Director McLearen, who was joined by County Administrator Egerston and Board Chairwoman Fritz.

44. During the meeting, Planning Director McLearen informed Mr. Nawabe that he had given him an outdated pump and haul agreement to complete. Planning Director McLearen provided him with the correct form. County Administrator Egerston and Chairwoman Fritz assured Mr. Nawabe that pump and haul applications were routine matters and that the ICC's application would be approved.

45. On or about March 3, 2016, Mr. Nawabe resubmitted the ICC's pump and haul application package, using the correct pump and haul agreement, to the County.

46. The County scheduled the application to be considered at the Board's April 5, 2016 meeting.

47. Between the March 1 and April 5, 2016 Board meetings, the County received numerous emails and phone calls from constituents opposing ICC's pump and haul application. Much of the opposition contained comments that disparaged Muslims and made references to terrorism and the 9/11 attacks.

48. On April 2, 2016, Chairwoman Fritz emailed County Administrator about the barrage of emails and phone calls she received concerning the ICC's request for a pump and haul permit. County Administrator Egerston responded: "It just keeps coming back to the same question – why is this request subject to more scrutiny and tighter interpretation of the policy

than all the past requests?” He informed Chairwoman Fritz that he would be prepared to cover the questions raised by the community at the April 5 Board hearing.

49. In a subsequent email from Chairwoman Fritz to County Administrator Egertson on the same day, Chairwoman Fritz agreed that “the scrutiny is unfair,” and that she hoped “that if all questions are answered prior to any board discussion it will keep the grandstanding to a minimum.” She also warned County Administrator Egertson that “Board members are being drilled by these folks and taken to lunch I hear so these are the questions and/or comments [Board members] will be making in order to answer to those folks.”

50. On April 5, 2016, the Board considered the ICC’s application for a pump and haul permit. Prior to the Board’s discussion on the application, County Administrator Egerston read a prepared statement that noted the following:

- The County had reviewed the ICC’s application package and the ICC was deemed an eligible applicant under applicable state law.
- The subject property is “within reasonable distance from public utilities, it has the potential that those utilities could become available over the next few years, if not in the immediate future.”
- The Board had the authority to approve requests for pump and haul permits “which are expected to be in use for periods longer than one year” and that pump and haul permits had been approved in the past that were considered “long term.”
- County staff researched pump and haul permits issued since 1995 and the Board had approved all but one application.
- The County’s practice has “generally required the applicant to show proof [from] the health department that no other viable alternatives exist” and that the ICC

provided letters from the health department “saying that the soil just wouldn’t support what they would consider a traditional type of drain field, and no other alternative was identified by the health department and the soil consultants that could work here.”

51. After a discussion from the supervisors on the ICC’s application, Supervisor Chase made a motion to deny the ICC’s request, which received cheers from the audience.

52. Supervisor Chase’s motion to deny the ICC’s request passed 4 to 3 with Chairwoman Fritz and Supervisors Sue Hansohn and Brad Rosenberger voting in the minority. Voting with Supervisor Chase were Supervisors Gary Deal, Jack Frazier and Steve Walker.

53. Prior to the vote, Supervisors Chase, Deal and Frazier stated that they opposed the ICC’s pump and haul application because the ICC did not show hardship. In particular, Supervisor Chase stated that pump and haul services are used “for emergencies. . . . [The ICC’s request] is [n]ot for a commercial or church use, a purpose like that. That’s the reason I can’t support it.”

54. According to Supervisors Chase, Deal, Frazier, and Walker, the ICC was not presented with a hardship since it did not own the Subject Property at the time of the application, and because the property did not contain an existing structure. However, the Board previously approved requests for pump and haul operations where the applicant presented circumstances that were similar, if not identical, to the ICC’s, including circumstances where an applicant did not yet own the property and in which there was not an existing structure. The Board considered 26 applications and never denied a pump and haul permit to a commercial or religious use prior to the ICC.

55. Because the County did not approve the ICC's pump and haul request, the ICC cannot construct a mosque, and therefore its members cannot engage in their religious practices to the degree and in the way they believe they are compelled to do.

56. There is currently no other land in the County that is available for purchase that is suitably located for the ICC's worship community and is affordable.

57. In denying the ICC's application, the County has used its pump and haul application review process as a means for allowing land uses that it desires and excluding a use that it does not want in the County.

58. For purposes of RLUIPA, the County's denial of the ICC's pump and haul request constitutes the "application" of a "land use regulation" that "limits or restricts a claimant's use or development of land (including a structure affixed to land)." 42 U.S.C. § 2000cc-5(5).

COUNT I

RLUIPA – Substantial Burden

59. The allegations above are hereby incorporated by reference.

60. Defendant's treatment and denial of the ICC's pump and haul permit has imposed a substantial burden on the ICC's religious exercise in violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

COUNT II

RLUIPA – Discrimination

61. The allegations above are hereby incorporated by reference.

62. Defendant treated the ICC and its application for a pump and haul permit differently from other applicants on the basis of religion or religious denomination, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

WHEREFORE, the United States prays that this Court enter an order that:

1. Declare that the Defendant's actions, as alleged herein, violate RLUIPA;
2. Enjoin the Defendant, its officers, employees, agents, successors and all other persons in concert or participation with it, from—
 - a. Imposing a substantial burden on the religious exercise of the ICC and its members that is not narrowly tailored to further a compelling governmental interest; or
 - b. Discriminating against the ICC and its members on the basis of religion or religious denomination.
3. Require the Defendant, its officers, employees, agents, successors, and all other persons in concert or participation with it, to:
 - a. Take such actions as may be necessary to restore, as nearly as practicable, the ICC and its members to the position they would have been in but for the Defendant's unlawful conduct, including but not limited to granting such approvals as are necessary to allow the ICC to use the Subject Property as a place of worship; and
 - b. Take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to, providing RLUIPA training to its personnel, establishing procedures to address complaints of RLUIPA violations, and maintaining records and submitting reports relating to RLUIPA compliance; and
4. Awards such additional relief as the interests of justice may require, together with the United States' costs and disbursements in this action.

Respectfully submitted,

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