UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

SAILAK, LCC and SUMALTHA SATOOR,	)	Civil Action No. 2:17-cv-00052-RWS
Plaintiffs,	)	
v.	)	
FORSYTH COUNTY, GEORGIA,	)	
Defendant.	)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

I. Introduction

This action involves allegations by Plaintiffs Sailak, LLC and Sumaltha Satoor (collectively "Plaintiffs") that Defendant Forsyth County (the "County") violated the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc-(a)(1) and (b)(1)-(2).

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, which provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending

in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." The Department of Justice has authority to enforce RLUIPA and to intervene in proceedings involving RLUIPA. 42 U.S.C. § 2000cc-2(f). Because this litigation implicates the proper interpretation and application of RLUIPA, the United States has a strong interest in the issues raised by the County's motion for summary judgment and believes that its participation will aid the Court.

The scope of the United States' Statement of Interest is limited to the issue of whether Plaintiffs have standing to bring their RLUIPA claims. The United States contends that Plaintiffs' RLUIPA claims are redressable by the Court and that Plaintiffs therefore have standing to assert them. The United States takes no position in this Statement of Interest on whether the County has violated RLUIPA.

II. Background

On March 16, 2017, Plaintiffs filed a complaint against Forsyth County alleging that the County discriminated against them and substantially burdened their religious exercise when it denied them a conditional use permit ("CUP") to develop a house of worship on their property, in violation of RLUIPA. (*See* Compl., Dkt. No. 1). In their Complaint, Plaintiffs allege that County's denial of the CUP was done for reasons that were "incorrect as a matter of law" (*id*. at ¶ 31),

including to "mollify County residents who were hostile to the proposed Hindu temple," (*id*. at ¶ 26) and which were "not in furtherance of a compelling interest." (*Id*. at ¶ 41). Plaintiffs also allege that the County, against the advice of its own counsel, denied Plaintiffs' application for a CUP to develop a house of worship based on the existence of private restrictive covenants, which, according to the County, prohibited the construction of a house of worship. (*See* Compl. at ¶¶ 31-33).

Shortly after the Complaint was filed, the County brought a motion for summary judgment, arguing that the restrictive covenants were valid, applicable to the subject property and enforceable. (Dkt. No. 17-2). The County further argued that the restrictive covenants meant that Plaintiffs lacked standing to assert their RLUIPA substantial burden claim because "it is not Defendant's applicable zoning ordinance or the conditional use decision that caused Plaintiffs' alleged injury, and a finding that either the zoning ordinance (facially or as applied) or the denial of the CUP application violated the provisions of RLUIPA would not redress Plaintiffs' injury." (*Id*. at 16).

On June 19, 2018, the Court issued a memorandum opinion, finding that the restrictive covenants were "applicable" and "would preclude construction of Plaintiffs' proposed facility." (Dkt. No. 27 at 14). However, the Court denied the

County's summary judgment motion on Plaintiffs' substantial burden claim. (*See* Dkt. No. 27 at 9, n.1). The Court did not find that County acted lawfully when it based its CUP denial on the restrictive covenants, as challenged by Plaintiffs in their Complaint, nor did the Court rule that the restrictive covenants were enforceable or that the County was the appropriate party to enforce them. To the contrary, in its subsequent September 28, 2018 Scheduling Order, the Court left unresolved the question of "whether any property owners and/or the pertinent HOA, if applicable, need to be joined in the litigation." (*See* Dkt. No. 32).

Following the Court's June 19, 2018 memorandum opinion, the Court granted Plaintiffs leave to take limited discovery related to the restrictive covenants. (*See* Dkt. No. 32). Plaintiffs pursued discovery on that issue, collecting documents and taking the depositions of residents who own property in the same neighborhood as Plaintiffs and therefore are purportedly covered by the alleged restrictive covenants. (*See, e.g.*, Dkt. Nos. 33-62; 64-90; 101-106).

On December 6, 2019, the County filed a second motion for summary judgment, essentially renewing its claim that, because of the restrictive covenants, this Court cannot "redress" Plaintiffs' alleged injury, and that Plaintiffs therefore lack standing. (*See* Defs.' MSJ, Dkt. No. 134-12). For the reasons discussed below, the Court should deny the County's motion.

III. Plaintiffs Have Standing To Bring Their RLUIPA Claims

A. RLUIPA's Provisions

RLUIPA makes it unlawful for a "government" to "impose or implement a land use regulation in a manner that": (1) "imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering a governmental interest"; (2) "treats a religious assembly or institution on less than equal terms with nonreligious assemblies or institutions"; and/or (3) "discriminates against religious entities on the basis of religion or religious denomination." 42 U.S.C. §§ 2000cc(a)-(b). A "government" under RLUIPA includes a "State, county, municipality, or other governmental entity created under the authority of a State." 42 U.S.C. § 2000-5(4). A "land use regulation" under RLUIPA "means a zoning or landmarking law, or the application of such law, that limits or restricts a claimant's use or development of land . . . if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest." 42 U.S.C. § 2000cc-5(5). In enacting RLUIPA, Congress mandated that the statute "be construed in favor of a

broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc(g).

B. Standing Under RLUIPA

Standing to assert RLUIPA claims is "governed by the general rules of standing under article III of the Constitution." 42 U.S.C. § 2000cc-2(a). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1223 (11th Cir. 2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). "A party seeking to invoke federal jurisdiction must demonstrate: 1) an injury in fact or an invasion of a legally protected interest; 2) a direct causal relationship between the injury and the challenged action; and 3) a likelihood of redressability." *Midrash Sephardi, Inc.*, 366 F.3d at 1223 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). Redressability asks "whether a decision in a plaintiff's favor would significant[ly] increase . . . the likelihood that she would obtain relief that directly redresses the injury that she claims to have suffered." *Lewis v. Governor of Alabama*, __F.3d.__, 2019 WL 6794813, at *8 (11th Cir. Dec. 13, 2019) (internal quotations omitted). "When the suit is one challenging the legality of government action or inaction" and "the plaintiff is himself an object of the action . . . at issue . . . . there is ordinarily little

question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561–62.

Courts, including the Eleventh Circuit, have in various contexts found that a plaintiff suing a municipality based on the denial of a permitting decision had standing to bring a RLUIPA claim because the alleged injury was redressable. *See Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cty.*, 450 F.3d 1295, 1304 (11th Cir. 2006) (finding that plaintiff had standing because "the injury would be redressed by a ruling in Primera's favor: the church would be free to use the Property for religious services."); *see also Williams Island Synagogue, Inc. v. City of Aventura*, Case No. 0420257, 2004 WL 1059798, at *3 (S.D. Fla. May 6, 2004) (holding that, in a case where the plaintiff challenged the denial of a conditional use permit, "the Court, for purposes of the third factor identified in *Midrash Sephardi*, [366 F.3d at 1223 (11th Cir. 2004)]. . . concludes that the injunctive relief sought by Plaintiff is within the remedies available under RLUIPA, 42 U.S.C. § 2000cc-2(a) . . . and, if granted, would redress the injury identified by Plaintiff.").

Here, Plaintiffs have standing to raise their RLUIPA claims in this Court. Plaintiffs have alleged an injury in fact of their legally protected interests under RLUIPA—that the County, a "government" for purposes of RLUIPA, violated

RLUIPA when it denied a CUP and imposed a substantial burden on their religious exercise without a compelling governmental interest pursued in the least restrictive means, treated them on less than equal terms with nonreligious assemblies and institutions, and discriminated against them on the basis of religion. (*See* Compl. at ¶¶ 24-43). Plaintiffs also allege there is a direct causal relationship between their injury and the alleged RLUIPA violations: they were injured by the County's denial of a CUP because the County's zoning ordinance, the Unified Development Code ("UDC"), requires them to obtain a CUP before developing a house of worship on their land. (*Id*. at ¶¶ 17-18).

Finally, the Court can redress Plaintiffs' alleged injury by issuing a decision that declares the County's denial of the CUP to be in violation of RLUIPA. Plaintiffs have alleged that, pursuant to the UDC, their proposed house of worship "is permitted on the Property upon the issuance of a CUP," (Compl. at ¶17) but that the County violated RLUIPA when it unlawfully denied the CUP. The alleged injury is the denial of the CUP, without which Plaintiffs cannot build their house of worship. Should this Court rule in Plaintiffs' favor and determine that the CUP denial violated RLUIPA, the Court could, as in other RLUIPA cases, require the County to issue the permit, and Plaintiffs "would be free to use the Property for

religious services." *Primera Iglesia Bautista Hispana of Boca Raton, Inc.*, 450 F.3d at 1304; *see also Williams Island Synagogue, Inc.*, 2004 WL 1059798, at *3.

C. The County's Challenges to Plaintiffs' Standing Lack Merit

The County asserts that Plaintiffs lack standing because the restrictive covenants independently prevent Plaintiffs from using their land, or alternatively, may be enforced by a third party to hinder the use of the land in the future. (Defs.' Br. at 15-18, Dkt. No. 134-12). To redress Plaintiffs' alleged injury inflicted by the County—the denial of the CUP—the Court does not need to guarantee Plaintiffs' ultimate desire to construct a house of worship. *See Nat'l Parks Conservation Ass'n v. U.S. Dep't of Interior*, 46 F. Supp. 3d 1254, 1272 (M.D. Fla. 2014), *aff'd sub nom. Nat'l Parks Conservation Ass'n v. U.S. Dep't of the Interior*, 835 F.3d 1377 (11th Cir. 2016) ("While such relief would not necessarily result in Plaintiffs ultimately receiving the wilderness designation they desire, redressability does not require complete victory or full relief.") (citing *Massachusetts v. EPA*, 549 U.S. 497, 525-26 (2007)). Thus, while the Court has found that there are restrictive covenants that, as written, "would preclude" a house of worship on Plaintiffs' land, as discussed further below, the restrictive covenants are not self-enforcing, and whether a third party not before this Court can, will, or even wants

to enforce the alleged restrictive covenants is a speculative issue that should not be considered as part of the standing inquiry.

Moreover, the prospect that the restrictive covenants may be enforced by the neighborhood residents has been called into question. Plaintiffs have presented evidence to the Court that the alleged restrictive covenants have been openly ignored by the neighborhood residents for decades and, despite numerous violations, have never been enforced. (*See* Plts.' Opp. to MSJ, Dkt. No. 139). Plaintiffs' neighbors have not brought private lawsuits seeking to enforce the alleged restrictive covenants. But, even if one does, Plaintiffs would be entitled to raise defenses to those claims or even settle them in a manner that allows them to develop their house of worship.[1] There is no way for the Court to determine that

[1] The lack of any private actions to enforce the alleged restrictive covenants may be for good reason. Restrictive covenants are private contracts. *Mitchell v. Cambridge Prop. Owners Ass'n, Inc*., 276 Ga. App. 326, 327 (2005). Whether private landowners have the interest or desire to enforce the alleged private contracts is, contrary to the County's assertions, far from a foregone conclusion, as indicated by the history of non-enforcement catalogued by Plaintiffs. (*See* Plts.' Opp. to MSJ at 1-9). Moreover, whether any particular resident has standing to enforce the covenant against Plaintiffs, in light of the history of acquiescence to open violations and non-enforcement, also appears to be an open question, unresolvable in this litigation. *See* 20 Am. Jur. 2d Covenants, Etc. § 228 ("Abandonment of a restrictive covenant may be found where there has been substantial and general noncompliance with the covenant."); 20 Am. Jur. 2d Covenants, Etc. § 229 ("The right to enforce a restrictive covenant may be lost by waiver or acquiescence, and waiver is a long-recognized defense to the equitable

potential future enforcement of the restrictive covenants would be successful at preventing Plaintiffs from developing the house of worship. And yet that is precisely what the County's standing argument, if accepted, requires this Court to do. The County's argument—that Plaintiffs must not only prove that its CUP denial violated RLUIPA, but also that third parties will not pursue private litigation to enforce the restrictive covenants—turns the standing requirement on its head, and asks this Court to dismiss Plaintiffs' claims based on speculation about what parties not before this Court might do and whether those hypothetical efforts will be successful at preventing Plaintiffs from developing their house of worship.

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enforcement of restrictive covenants."); *see also Matter of Willingboro Country Club, Inc*., 69 B.R. 414, 418 (Bankr. D.N.J. 1987) ("[A] restrictive covenant may be considered abandoned where there has been acquiescence in its violation. When there is such acquiescence ... and the scheme is totally or partially destroyed or impaired, the accompanying burden undergoes a corresponding modification.") (citation omitted); *Havensight Hills Estates Prop. Owners Ass'n, Inc. v. Brown*, 1999 WL 317124, at *4 (Terr. V.I. Feb. 23, 1999) ("[T]he doctrine of waiver by acquiescence is applicable in the present case, because plaintiff has permitted widespread violations of the same restrictive covenant and zoning law by neighboring property owners in the same subdivision."); *Kajowski v. Null*, 405 Pa. 589, 177 A.2d 101, 106 (1962) (acquiescence in breach of a restrictive covenant by others, or an abandonment of the restriction may result in discharge of a restrictive covenant); *see also Cent. of Georgia Ry. Co. v. Woolfolk Chem. Works, Ltd.*, 122 Ga. App. 789, 800 (1970) (finding that issue of whether contract term was enforceable because of history of acquiescence of breach of provision was "peculiarly a jury question.").

The County cannot claim that its process for deciding CUPs, the Unified Development Code, depends on private restrictive covenants. Restrictive covenants are not self-enforcing. Under Georgia law "[t]o maintain an action to enforce restrictive covenants, an individual must be the owner of, or have a direct interest in, the premises." *Stuttering Found., Inc. v. Glynn Cty.*, 801 S.E.2d 793, 803 (Ga. 2017) (quotation omitted). The restrictive covenants themselves state that in case of a violation or attempted violation, "it shall be lawful for any other person or persons *owning any real property situated in said tract*" to seek enforcement. (*See* Dkt. No. 134-1 at 28) (emphasis added). The County does not contend that it can or will enforce the covenants, and the UDC does not preclude granting a CUP on land with a private restrictive covenant.

Further, the County has not cited, during the CUP process or before this Court, its authority to consider private restrictive covenants during a CUP proceeding and use them as a basis for denial. Indeed, Plaintiffs alleged that the "Assistant County Attorney in attendance at the Planning Commission hearing stated on the record of the proceedings . . . that it was not appropriate for the County to weigh deed covenants as a factor for consideration of a CUP." (Compl. at ¶ 33; *see also* Plts.' SOF at 12-13, Dkt. No. 139-1 ("The County Attorney then

told the Planning Commission it could not consider the alleged covenants because covenants were a matter of private contract.")).[2]

[2] Virtually every court to consider the issue has found that a zoning body does *not* have the jurisdiction to do so. *See Chambers v. Old Stone Hill Rd. Assocs.*, 1 N.Y.3d 424, 432 (Ct. App. 2004) ("The use that may be made of land under a zoning ordinance and the use of the same land under an easement or restrictive covenant are, as a general rule, separate and distinct matters, the ordinance being a legislative enactment and the easement or covenant a matter of private agreement . . . . the issuance of a permit for a use allowed by a zoning ordinance may not be denied because the proposed use would be in violation of a restrictive covenant.") (quotations omitted); *Sills v. Walworth Cty. Land Mgmt. Comm'n*, 648 N.W.2d 878, 887 (Wis. Ct. App. 2002) ("If a property owner is otherwise entitled to a variance or special exemption, it should be granted, notwithstanding private covenants which would prohibit the proposed use."); *Moscowitz v. Planning & Zoning Comm'n*, 547 A.2d 569, 573 (Conn. App. Ct. 1988) ("The responsibility of enforcing restrictive covenants in deeds is allocated to neighboring landowners, not to a municipal commission."); *Martel v. Vancouver (Washington) Bd. of Adjustment*, 666 P.2d 916, 921 (Wash. Ct. App. 1983) ("Although a private covenant may provide grounds for a separate action to enjoin a proposed usage of land, the general rule is that such a covenant is not grounds for denial of a zoning variance."); *Lorland Civic Assos. v. Dimatteo*, 157 N.W.2d 1, 8 (Mich. Ct. App. 1968) ("The existence of a valid restriction would not be a reason for denying a use variance to which the defendant would otherwise be entitled."); *Whiting v. Seavey*, 188 A.2d 276, 279 (Me. 1963) ("The law is well established that restrictive covenants in a deed as to use of property are distinct and separate from the provisions of a zoning law and have no influence or part in the administration of a zoning law."); *State ex rel. Sims v. Eckhardt*, 322 S.W.2d 903, 909 (Mo. 1959) ("The Board of Adjustment had no legal authority to revoke appellant's building permit on the basis it authorized the construction of a building in violation of the restrictive covenant . . ."); *Perry v. Cty. Bd. of Appeals*, 127 A.2d 507, 509 (Md. 1956) ("The validity of the zoning ordinance, the grant of a variance or 'exception' should be considered independently of its effect upon covenants and restrictions in deeds."); *Michener Appeal*, 115 A.2d 367, 370 (Pa. 1955) ("Any consideration of building restrictions placed upon the property by private contract has no place in proceedings under the zoning laws for a building permit or a variance."); *Gulf*

At bottom, RLUIPA does not require a plaintiff who presents a *prima facie* case to also prove that third parties will not later seek to stop it from developing a house of worship. Such a requirement would invite zoning boards to deny permits not based on the requirements of the zoning laws, but on speculation about other roadblocks the applicant may face down the road. The purpose of standing was to ensure that the plaintiff's "injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *See KH Outdoor, L.L.C. v. City of Trussville*, 458 F.3d 1261, 1266 (11th Cir. 2006). Paradoxically, the County is invoking the hypothetical "independent action of some third party not before the court" not to show that Plaintiffs' alleged injury is speculative, but to argue that the County cannot be held liable under RLUIPA for the CUP denial because a third party *may*

Refining Co. v. Dallas, 10 S.W.2d 151, 162 (Tex. Civ. App. 1928) ("The ordinance is further invalid, in that it vests the city authorities with unlimited and arbitrary power to revoke a permit when in their judgment it violates the restrictions contained in a deed. Such restrictions and covenants in a deed are not properly within the province of the police power of the city, being strictly private matters between private individuals, and their probable violation is a matter of no concern to the city . . . .") writ dismissed w.o.j. (Feb. 13, 1929); *Pumo v. Ft. Lee*, 134 A. 122, 122 (N.J. 1926) (per curiam) ("Whether the erection of this building would be a violation of neighborhood restrictions is a matter of no concern to the municipality."); *see also* 5 Rathkopf's The Law of Zoning and Planning § 82:3 (4th ed.) ("[I]f a property owner is otherwise entitled to a variance or special exception, it should be granted, notwithstanding private covenants that would prohibit the proposed use.").

decide at some future point to file suit to block Plaintiffs' efforts to develop their house of worship. Standing principles are intended to avoid speculation, not invite it.

In further support of its argument, the County cites to *KH Outdoor, L.L.C. v. Clay Cty., Fla.*, 482 F.3d 1299 (11th Cir. 2007). However, this case does not support its position. In *Clay County*, the court found that plaintiff's claims challenging the constitutionality of Clay County's denial of its application to construct seven commercial billboards were not "redressable" because it was "uncontroverted" that "the application packages failed to comply with applicable provisions of the Florida Building Code and Florida statutes, which KH Outdoor did not challenge . . . . The sign permit applications and accompanying documents submitted to Clay County plainly lacked the required drawings showing every existing structure on the subject sites. . . . Clay County could block the proposed signs by enforcing other state statutes and regulations not challenged." *Id*. at 1304. In other words, even if the part of the zoning ordinance that the plaintiff had challenged were stricken—and it was by the county after suit was filed—the plaintiff had still failed to comply with other critical regulatory and statutory requirements, enforced by the defendant Clay County, for the issuance of the permits. Thus, the court could not issue the permits sought by the plaintiffs. *Id*.;

see also Maverick Media Grp., Inc. v. Hillsborough Cty., Fla., 528 F.3d 817, 821 (11th Cir. 2008) ("Thus, the *KH Outdoor* redressability analysis is applicable to the case where a county could deny a plaintiff's sign permit applications *under an alternative provision of its ordinance that the plaintiff's complaint does not challenge*. This is such a case.") (emphasis added).[3]

That is not the case here. Plaintiffs are challenging the County's denial of their CUP application, the approval they need in order to use the property for religious purposes. (*See* Compl. at ¶¶ 26-28; 31; 33; 37; 41). The County is not arguing that Plaintiffs lack standing to assert their RLUIPA claims because the

[3] The County also cites *I.L. v. Alabama*, 739 F.3d 1273 (11th Cir. 2014), in support of its argument that Plaintiffs' RLUIPA claims are not redressable. There, the plaintiffs, "black and white children attending public schools in Sumter and Lawrence Counties," challenged the state's system of *ad valorem* property taxation, arguing that the system was unconstitutional because it "inhibit[ed] adequate funding of public education" where predominantly African-American children attended. *Id*. at 1276-77, 80. The court found that the plaintiffs' claims as to a portion of the tax laws were not redressable because, in part, "it is undisputed *that further legislation* is necessary to achieve higher millage rates, and the contingency of [legislative] action makes the redress of plaintiffs' injury. . . speculative." *Id*. at 1280 (internal quotations and citations omitted). In other words, even if the court were to have struck down the millage caps, as sought by the plaintiffs, further "speculative" legislative action by the state of Alabama would have been necessary to redress the alleged injury—insufficient funding to schools. But here, other than the CUP, which as discussed above, the Court has the power to redress, Plaintiffs do not require any other discretionary acts from the County or any other legislative body to develop their house of worship. The "contingency" that the neighbors might try to enforce the covenants is, as discussed above, speculative at best and therefore not an obstacle to standing.

County could have denied the CUP application for zoning reasons that Plaintiffs are not challenging, *e.g.*, traffic concerns, failure to timely file their application, or some other statutory or regulatory infirmity. Rather, the County is arguing that Plaintiffs lack standing based on events that have not and may never occur *and for which the County has no control*—the potential, but by no means certain, filing of private restrictive covenant enforcement actions by third parties.[4] In fact, the County acknowledges that it has no control over the restrictive covenants when it argues that the burden falls on Plaintiffs to show "that they could construct a Temple on the Subject Property without the residents of the Bald Ridge subdivision exercising *their independent rights* under the covenants to bar the construction." (Defs.' Br. at 19) (emphasis added); (*see also* Defs.' Reply Br. at 5

[4] In its reply brief, the County, for the first time, characterizes the private restrictive covenants as "legal enactments." (*See* Defs.' Reply Br. at 4-5 ("[N]either *Midrash* nor *Primera* addressed constitutional standing where an unchallenged *legal enactment* independently barred the construction of a religious facility. In the Eleventh Circuit, a plaintiff cannot show a redressable injury – and, therefore, standing – when other, unchallenged *enactments* bar the desired activity.") (emphasis added). The County's characterization of the private restrictive covenants as "legal enactments" is not accurate. To enact means to "make into law by authoritative act; to pass" and an enactment is therefore akin to "a statute." *See* Black's Legal Dictionary (2d Pock. Ed., 2001). The restrictive covenants in this case were not made or passed into law by a legislative act—the County acknowledges they are a matter of private contract enforcement—and are therefore not the type of "unchallenged" *law* that divested the court of standing in *KH Outdoor L.L.C.*, *Maverick Media*, and the other cases cited by the County.

("Plaintiffs would need to sue the approximately 65 individual property owners subject to – and *personally capable of enforcing* – the covenants.") (emphasis added).[5] As discussed above, however, the redressability inquiry looks only at whether the Court can remedy the alleged injury inflicted by the County, not whether there may be additional speculative obstacles outside the control of the County. *Primera Iglesia Bautista Hispana of Boca Raton, Inc*, 450 F.3d at 1304.

The County also cites to a Pennsylvania district court decision, *Adhi Parasakthi Charitable, Med., Edu. And Cultural Soc'y v. Twp. Of West Pikeland*, 721 F. Supp. 2d 361 (E.D. Pa. 2010), a case that is readily distinguishable, because it involved restrictive covenants which were created as a condition of approval of a subdivision plan by West Pikeland Township, which had the authority to enforce them. *See id*. at 370; *see also Doylestown Twp. v. Teeling*, 160 Pa. Cmwlth. 397,

[5] The County claims that the "private market" has unilaterally barred Plaintiffs from using the property as a house of worship. (*See, e.g.*, Defs.' Reply Br. at 2, Dkt. No. 140). The County's repeated acknowledgment that the restrictive covenants are a matter of private—and not public—concern belie its invocation of them to defeat Plaintiffs' standing. The *County's CUP denial* barred Plaintiffs from developing the property as a house of worship; the "private market" has not prevented Plaintiffs from doing anything. As discussed above, restrictive covenants are not self-enforcing, and, as acknowledged by the County, require enforcement by a property owner with standing, the existence of which Plaintiffs have called into question. In short, it is far from clear what the "private market" will and will not allow in this matter, and there is no way to know at this juncture. The County's standing argument thus invites this Court to impermissibly speculate about what the "private market" might do in the future.

403–05, 635 A.2d 657, 660 (1993) ("[A] Township may enforce the conditions attached to the subdivision plan as part of the subdivision approval process."). As a result, any substantial burden from the Township's actions arose from its enforcement of the covenants, which the court assumed were not "land use regulations" under RLUIPA, rather than from the Township's zoning ordinance or its denial of a conditional use permit. *See id.* at 383. In contrast, here it is entirely speculative whether the restrictive covenants will ever be enforced. The Plaintiffs' alleged RLUIPA injury flows directly from the County's action in denying the CUP.

IV. Conclusion

The core of Plaintiffs' RLUIPA claims—that the County unlawfully based the denial of their CUP Application on the alleged restrictive covenants—remains unresolved and therefore fully redressable by the Court. If Plaintiffs are successful in their RLUIPA claims, the Court could fashion relief addressing Plaintiffs' injuries. That is all that is required to show redressability for standing purposes. Speculation about what neighborhood residents might do in the future is not a valid basis upon which to deny standing. Accordingly, the Court should deny the County's motion for summary judgment.

Dated: January 27, 2020

Respectfully submitted,

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Certificate of Compliance

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing brief has been prepared using Times New Roman, 14 point font.

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Certificate of Service

The United States Attorney's Office served this document today by filing it using the Court's CM/ECF system, which automatically notifies all parties and counsel of record.

January 27, 2020

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