

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

UNITED STATES OF AMERICA,

Plaintiff,

Case No.

v.

Honorable
Mag. Judge

PITTSFIELD CHARTER TOWNSHIP,

Defendant.

_____ /

COMPLAINT

Plaintiff, the United States of America, alleges:

JURISDICTION AND VENUE

1. This action is brought by the United States to enforce the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, *et seq.* (“RLUIPA”).

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

3. Venue is proper under 28 U.S.C. § 1391(b) because the claims alleged herein arose in the Eastern District of Michigan.

BACKGROUND

4. Defendant Pittsfield Charter Township (“Pittsfield,” “Pittsfield Township,” or “the Township”) is governed by a seven-person Board of Trustees

(“Board”) consisting of a Supervisor, a Township Clerk, the Township Treasurer, and four trustees.

5. The Board votes on all land use decisions after receiving recommendations from the Township’s Planning Commission (“Planning Commission”).

6. Pittsfield Township is a “government” within the meaning of 42 U.S.C. § 2000cc-5(4)(A).

7. The Muslim Community Association of Ann Arbor (“MCA”) is a community organization dedicated to practicing and preserving Islam and Islamic heritage, and to serving the religious, social, cultural, and educational needs of Muslims. MCA runs a private religious school in Ann Arbor, Michigan, called Michigan Islamic Academy (“MIA”).

8. MCA and MIA are religious institutions under RLUIPA, 42 U.S.C. §2000cc(a)-(b).

9. Because MCA believes it has a religious duty to provide young Muslims with excellence in traditional secular education, as well as religious studies and the nurturing of Muslim character, MIA’s curriculum is designed to provide standard academic instruction integrated with Islamic religious education and Islamic values. MIA serves 190 students in grades pre-K to 12, and is a religious institution within the meaning of 42 U.S.C. § 2000cc-(a)(1).

10. MIA's operation as a religious school constitutes "religious exercise" under RLUIPA, 42 U.S.C. § 2000cc-5(7)(A)-(B).

11. MIA currently operates out of a building that it shares with the MCA community center and mosque on a 2.7 acre property in Ann Arbor. In 2008, the school's portion of the building was approximately 8,000 square feet. By that time, due to the growing Muslim community in the area, the shared facility had become inadequate for the multi-dimensional integrated curriculum that is the core mission of MIA.

12. MIA requires additional space for religious and secular purposes. MIA's classrooms were, and remain congested, and the current facility does not have space for a cafeteria, computer or science labs, private space for guidance counseling, a gymnasium, locker rooms, auditorium, library, kitchen, or adequate administrative office space. These spaces are necessary for MIA to provide an adequate education, as well as hold noon and afternoon prayer sessions, meetings, and religious events such as theater programs and interfaith dialogues with other religious schools and communities.

13. To compensate for a lack of space in the main shared building, MIA utilized trailers to provide four additional classrooms, but the trailers had a recurring mold infestation problem and no reliable heat.

14. Due to the space constraints in the shared facility, MIA had to limit both its secular and religious curriculum and turn away students who wanted to enroll at the school. MIA could not, and cannot, meet its religious needs by simply reallocating space within its existing buildings. As a result, MIA could not, and cannot, carry out its religious mission as mandated by its faith.

A. Purchase of Property in Pittsfield Township

15. In 2008, MIA began exploring options to improve and expand its school. Initially, MIA commissioned plans to expand its existing building; those plans were approved by the City of Ann Arbor in May 2010. However, MIA realized that due to the size of the property and the needs of the MCA community center and mosque, with which the school must share the space, the planned expansion was insufficient to accommodate MIA's needs. Accordingly, MIA began searching for suitable property on which to build a new school facility that would allow MIA sufficient space to offer the high quality religious and academic programs it seeks to provide students, and to expand its student body.

16. MIA considered several different properties, but none were suitable for construction of a school. Taking into account size, price, and location, the only suitable property was a 26.7-acre tract of undeveloped land adjacent to a single-family house subdivision in Pittsfield Township, which was zoned as part of a residential planned unit development ("PUD"), known as Silverleaf ("the

Property’’). The location of the Property was particularly desirable to MIA because it was only 8 miles from MIA’s current location, and approximately 60% of MIA’s student body live in or near Pittsfield Township.

17. The Silverleaf PUD had been approved in the mid-1990s as a mixed housing project consisting of single family lot subdivisions and single-family detached condominiums. At the time that the Silverleaf PUD was originally approved, the developer was in discussions with public school officials to facilitate construction of an elementary school on part of the property.

18. Under the original Silverleaf PUD plans, the subject 26.7 acres were to be developed as 51 individual condominiums, but this never occurred and the land remained vacant.

19. The Township’s 2010 Master Plan, in effect at the time MIA’s application was considered and which remains in effect, designated the Silverleaf site and surrounding properties as Suburban Residential/Urban Residential. The 2010 Master Plan sets forth schools as an appropriate use for Suburban Residential/Urban Residential areas, along with single family and multifamily housing, parks, community centers, places of worship, home offices that attract limited customer activity, and compatible municipal and civic uses. The 2003 Master Plan, which was in effect when MIA first submitted its application,

likewise contemplated schools as an appropriate use in the area, though it used the term “small scale schools”.

20. The neighboring uses of the Property are zoned Single-Family Residential and Moderate Density Multi-Family. According to Pittsfield’s Zoning Ordinance, both of these zoning categories allow primary and secondary schools as conditional uses. There are other schools located in residential areas of Pittsfield Township, including Carpenter School with approximately 300 students, and the Eastern Washtenaw Multicultural Academy with approximately 200 students. In 2002, the Township approved a plan for the creation of a 73,000 square-foot private religious school, Washtenaw Christian Academy, on a 31.55 acre site.

21. Since the Silverleaf PUD did not include schools as a permitted use, prior to purchasing the Property, MIA representatives Tarek Nahlawi and Said Issa met with Pittsfield Township representatives and informed them of their intention to purchase the Property to build an Islamic school. These representatives assured them that as long as MIA followed the proper procedures, rezoning the Property to allow a school would not be a problem.

22. Said Issa purchased the Property on September 8, 2010, for over \$250,000 at a foreclosure auction, intending it as the future site of MIA. Issa subsequently sold the property to North American Investment Properties, LLC for \$1, which in turn sold the property to the Hidayah Muslim Community Association

for \$1. On May 30, 2015, the Hidayah Muslim Community conveyed the property to MIA for \$1 with some restrictions, allowing MIA access to 5 acres of the property to build a new school.

B. MIA's Rezoning Petition

23. On December 6, 2010, MIA submitted a petition (RZ 10-04) to the Township to amend/rezone the existing residential PUD to allow construction of a one-story school building in the southeast corner of the Property. The petition included drawings that noted space for possible future construction of a building containing a combined community center and prayer hall, approval for which MIA acknowledged it would have to apply separately.

24. Pursuant to the Township Zoning Ordinance, amending/rezoning a PUD requires a determination by the Planning Commission that the proposed project meets eleven specific standards ("PUD Standards") set forth in Township Zoning Ordinance § 52.07.C. The Planning Commission's determinations relating to these eleven standards are provided to the Board as part of its recommendation on the petition.

25. Any rezoning also requires that the Planning Commission make specific findings of fact ("Rezoning Findings"), pursuant to Zoning Ordinance § 59.05, which are also provided to the Board as part of its recommendation on the petition.

26. Throughout the course of the petition process, MIA at all times worked cooperatively with the Township Planning Department to come to a mutually acceptable design, and expressed a willingness to address every concern raised by the Township and neighbors.

27. To assist the Planning Commission in evaluating MIA's petition, Pittsfield retained an outside consultant, Richard Carlisle.

28. On January 5, 2011, Carlisle expressed concerns to MIA about lighting, parking, landscaping, and pedestrian access. He also recommended moving the school building closer to Ellsworth Road.

29. At the Planning Commission meeting on January 13, 2011, MIA proposed modifications and conditions to address Carlisle's concerns, including barring students from driving or biking to school, not holding activities at the school after 5 pm, and redirecting lighting away from residences. MIA also reported that it had commissioned a traffic study by a traffic engineering firm.

30. At the next meeting of the Planning Commission, on February 17, 2011, MIA informed the Commission that its architect was working on a new plan that would move the location of the building as recommended by Carlisle, add a second traffic entry point as recommended by the fire marshal, and that MIA was willing to construct a wall between the school and neighboring residences to prevent school children from cutting through the subdivision. MIA also informed

the Commission that an MIA representative had attended a Silverleaf Homeowner's Association meeting to discuss concerns about the project.

31. On March 28, 2011, MIA submitted to Carlisle a new plan with the school moved to the center of the site, leaving space for a future community center along Ellsworth Road.

32. On April 11, 2011, MIA received the results of the traffic impact study, showing no significant impact on traffic. It provided these to Carlisle, the Planning Commission, and the Washtenaw County Road Commission.

33. On April 18, 2011, the Washtenaw County Road Commission approved MIA's preliminary driveway plans and traffic impact study.

34. On May 24, MIA submitted a revised plan to the Planning Commission, with the school moved toward the front of the property near Ellsworth Road, pursuant to Carlisle's recommendation, and which eliminated all references to a community center.

35. Carlisle's final Area Plan review, dated June 8, 2011, stated that the plan was significantly improved, and that remaining issues concerning preservation of open spaces and internal traffic circulation could be "addressed at the next stage of site plan review."

36. On June 16, 2011, the Planning Commission held a heavily attended public meeting, with 37 people speaking in favor of MIA's rezoning proposal and 41 opposing it.

37. At that same meeting, Planning Commissioner Longcore urged her fellow Planning Commissioners to "put their subjective hats on," arguing that the "PUD allow[ed] [the Planning Commissioners] to be a little bit subjective" and did not require them to limit their review to whether MIA's proposal objectively met the criteria for rezoning. Longcore was one of the three members of the Planning Commission who ultimately voted to recommend that the Board of Trustees deny MIA's application.

38. Planning Commission member Deborah Williams lived in the neighborhood next to the Property and actively organized residents to oppose MIA's petition, including by instructing them regarding what objections to raise.

C. Denial of MIA's Rezoning Petition

39. On August 4, 2011, after a hearing with public comments lasting until 1:30 a.m., the Planning Commission formally voted to recommend to the Board of Trustees that it deny MIA's rezoning petition. The Planning Commission determined that out of the eleven PUD Standards required for rezoning, MIA's project failed to meet three: (1) it was not a "small-scale school" so it did not

conform to the Master Plan; (2) traffic would be disruptive; and (3) noise and light generated from outdoor activities would be disruptive.

40. The stated failure to meet the three PUD criteria was without factual basis. First, the “small-scale” modifier for “school” had been deleted from the 2010 Master Plan then in effect, which simply contemplates “schools” being permitted in Suburban Residential/Urban Residential areas of the Township. Moreover the Township’s consultant, Carlisle, determined that MIA’s plan was in fact a small-scale school. Second, the Township’s consultant determined that internal traffic circulation issues could be addressed at the next stage of review, and the Traffic Impact Study showed no significant adverse impact on traffic in the area. And third, the Township’s consultant found that the plan minimized the light and noise affecting neighbors.

41. With respect to the five Rezoning Findings, the Planning Commission made four findings of fact that it said weighed against granting MIA’s petition: (1) since passage of the original Silverleaf PUD, the Planning Commission found the area had “continued to be developed for residential,” not educational, uses; (2) the Commission was concerned with the precedent it would be setting if the MIA petition were approved—i.e., that other residential developments that had not been fully developed might “look to amend area plans or site plans to include educational or other nonresidential use;” (3) the Commission was concerned with

the school's effect on property owners in adjacent neighborhoods; and (4) the Commission found the rezoning inconsistent with Township policies, due to "the existi[ng] character, potential traffic impacts, [and] issues of noise and visual screening."

42. These Rezoning Findings were not justified by the facts. The Planning Commission's Rezoning Findings regarding the impact of noise, traffic, and visual intrusion were without factual basis and contradicted by the Township's consultant. The Planning Commission's statements that development in the Silverleaf PUD had been residential rather than educational and the concern for precedent were contrary to the fact that the Silverleaf development had originally contemplated educational usage, that the Township had previously expressed approval to have an elementary school built on the site, and that the Master Plan contemplates schools in the area. The Planning Commission's second and third Rezoning Findings are contrary to the fact that the Property is of appropriate size and location for a school or institutional use, when compared to other schools and institutions that have been approved by the Township since 2000, including the Washtenaw Christian Academy and the Ypsilanti Free Methodist Church, and that the properties adjoining the Property are in zones in which schools are permitted as conditional uses. The Planning Commission's fourth rezoning finding is

contradicted by the Traffic Impact Study and the conclusions of the Township's consultant.

43. Although MIA had expressly abandoned plans for a community center and prayer hall in response to opposition by the Planning Commission, and had submitted additional revised drawings to the Planning Commission without the community center and prayer hall included, Planning Commission members based their concerns on problems that might arise from a community center in the future. One individual, Michael Yi, served on both the Planning Commission and the Board of Trustees during the relevant time period and in both positions, voted to deny MIA's petition. Mr. Yi opposed allowing the school project to go forward because it might lead to a community center and prayer hall in the future, and he might not be on the Board then to stop it.

44. On October 26, 2011, the Board of Trustees, without any discussion, voted unanimously to adopt the Planning Commission's recommendation and denied MIA's rezoning petition.

45. The Board's denial of MIA's rezoning petition 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)" in which MIA has a property interest or a contract to acquire such an interest, within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(5).

46. MIA seeks to construct a school on the Property for the purpose of religious exercise, within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(7).

47. The Township made an “individualized assessment” of MIA’s petition to build on the Property when it considered and denied MIA’s rezoning petition, within the meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(2)(C).

48. The Township’s denial of MIA’s plans to construct a school “affects interstate commerce,” within the meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(2)(A).

49. Following the Township’s denial of MIA’s application for rezoning, MIA resurrected its prior expansion plans for its current Ann Arbor property in order to keep the school in operation.

50. The expansion principally consists of an addition of 8 classrooms to replace the trailers that were attached to the main school building and a gymnasium, resulting in a net gain of 4 classrooms for the school. Once completed, these renovations will still be inadequate for MIA’s needs, as the school will still lack, among other things, a cafeteria, an auditorium, a library, a computer room, a science lab, a private guidance counseling area, and adequate administrative offices. The land on which the current shared facility is built is too small for any further expansion.

51. Accordingly, MIA cannot not meet its religious needs by simply reallocating space within its existing buildings. As a result, MIA cannot carry out its religious mission as mandated by its faith.

VIOLATION OF RLUIPA

52. Paragraphs 1-51 are re-alleged and incorporated into this paragraph by reference.

53. Pittsfield's denial of MIA's rezoning petitions constitute the imposition or implementation of land use regulations that impose a substantial burden on the religious exercise of MIA and its members, which burden is not in furtherance of a compelling governmental interest and/or is not the least restrictive means of furthering such interest, in violation of RLUIPA, 42 U.S.C. § 2000cc(a).

RELIEF REQUESTED

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

A. Declares that Pittsfield's policies and practices, as alleged herein, violate RLUIPA;

B. Enjoins Pittsfield, its officers, employees, agents, successors and all other persons in concert or participation with it, from imposing a substantial burden on the religious exercise of MIA and its members that is not narrowly tailored to a compelling governmental interest;

C. Enjoins Pittsfield, its officers, employees, agents, successors and all other persons in concert or participation with it, from adopting or enforcing any zoning restriction, or from applying their laws in a manner that violates RLUIPA;

D. Requires Pittsfield, its officers, employees, agents, successors, and all other persons in concert or participation with it, to:

- i) Take such actions as may be necessary to restore, as nearly as practicable, MIA and its members to the position they would have been in but for Pittsfield's unlawful conduct; and
- ii) 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 Pittsfield's personnel, establishing procedures to address complaints of RLUIPA violations, and maintaining records and submitting reports relating to RLUIPA compliance; and

E. 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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Dated: October 26, 2015

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2015, I electronically filed the foregoing paper with the Clerk of the District Court using the ECF system, which will send notification of such filing to all electronic parties of record:

I further certify that I have mailed by certified mail the foregoing paper to the following non-CM/ECF participants:

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