

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
COUNTY OF HENRICO, VIRGINIA,)
)
Defendant.)
_____)

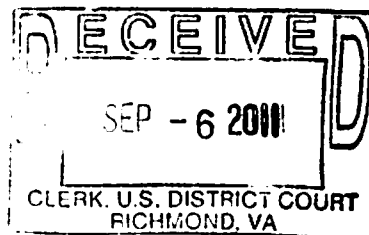
Civil Action No. *3:11-cv-583-HEH*

CONSENT ORDER

I. INTRODUCTION

A. Background

1. This Consent Order (“Order”) is entered between the United States of America (“the United States”) and Defendant County of Henrico, Virginia (“the County” or “Defendant”).
2. This action is brought by the United States to enforce provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc. et seq.
3. Defendant County of Henrico (“County” or “Defendant”) is a county located in the Commonwealth of Virginia. The County has the authority to regulate and restrict the use of land and structures within its borders, including granting and denying requests for rezoning.
4. 1241 Associates, LLC (“1241” or “Mosque”) is an organization formed in 2007 for the purpose of identifying a place to construct a mosque for members of its Sunni Muslim community.



5. In 2008, 1241 purchased 5.2 acres of undeveloped land (the “property” or “land”) zoned O-3C located at 7705 Impala Drive in Henrico County. Under the County’s zoning code, a house of worship is not a permitted use in O-3C zoned land.
6. In June 2008, 1241 applied to have 3.6 acres of the 5.2-acre parcel rezoned from O-3C Office District to R-2AC One Family Residential for the purpose of building a mosque and community center. Under the County’s zoning code, a house of worship is a permitted use in R-2AC zoned land.
7. On August 14, 2008, the Planning Commission held a public hearing on the Mosque’s rezoning request and voted to recommend denial of the rezoning request.
8. On November 12, 2008, the Board of Supervisors considered the Mosque’s rezoning request and denied it by a vote of 3-2.
9. On December 9, 2008, the Mosque filed a lawsuit in Henrico County Circuit Court claiming that the denial of the rezoning request was arbitrary, capricious, and unreasonable, in derogation of Virginia Code §§ 15.2-2285, et seq., and seeking that the Board of Supervisors be enjoined from interfering with the use of the 3.6 acre parcel at issue for the construction and operation of a house of worship and related activities.
10. On March 10, 2010, the United States Department of Justice (“Department”), while the Mosque’s state action was pending, sent a letter to the County informing it that the Department had initiated an investigation of the County’s zoning and land use practices under RLUIPA concerning the denial of the Mosque’s rezoning application and requested that the County provide the Department with relevant documents and materials.
11. In August 2010, the Department met with County officials pursuant to its investigation.

12. On May 2-6, 2011, and on May 20, 2011, the Department interviewed County officials pursuant to its investigation, including members of the Board of Supervisors, members of the Planning Commission, and Planning Department staff.
13. On June 15, 2011, the County Attorney informed the Department that he met with the Board of Supervisors, County management, and planning staff on the evening of June 14, and that the County had decided to invite the Mosque to submit a new rezoning application.
14. The Mosque submitted a new rezoning application on June 15, 2011. The Planning Department prepared staff reports on the application and recommended approval of the request. The staff report stated that consideration of the case must include the requirements of RLUIPA, and the staff reports included an explanation of the RLUIPA requirements related to places of worship.
15. On July 14, 2011, the Planning Department recommended approval of the rezoning request during the Planning Commission's public hearing on the request. The staff's oral presentation specifically referred to the applicable requirements of RLUIPA as a basis for its recommendation. Despite citizen opposition to the request, the Planning Commission voted 4-0 to recommend approval of the rezoning application to the Board of Supervisors.
16. On August 4, 2011, the United States informed the County that it was authorized to commence a lawsuit against the County for violations of RLUIPA.

17. On August 9, 2011, the County Board of Supervisors held a public hearing on the Mosque's application. At the hearing, the Director of Planning presented the staff's report on the case and recommended approval.
18. As part of his presentation, the Director of Planning specifically referred to the requirements of RLUIPA applicable to houses of worship and presented a summary of RLUIPA on projection screens visible to the Board of Supervisors, County staff, and the general public present in the Board Room for the hearing. In addition, the Director of Planning announced during his oral presentation that paper copies of a more detailed explanation of RLUIPA's requirements were available on the sign-in table for the public hearing. That explanation was copied from the United States Department of Justice website at: <http://www.justice.gov/crt/about/rluipaexplain.php>. At the hearing, the Board approved the Mosque's application by a vote of 5-0.
19. On August 11, 2011, the County and 1241 Associates submitted a Final Order endorsed by both parties to the Henrico County Circuit Court for entry in the 1241 suit referenced in paragraph 9, above, seeking dismissal of the state lawsuit. The Circuit Court entered the Final Order on August 15, 2011.
20. The County's Planning Department website now includes a link discussing RLUIPA under *A Citizen's Guide to Participating in Planning Commission Public Hearings*.
21. On August 24, 2011, the Board of Supervisors initiated the process to amend the zoning ordinance to increase the number of zoning districts in which places of worship would be permitted as a matter of right. If the ordinance amendments are adopted after completion

of the required public hearings, places of worship would not require rezoning in all of the County.

22. The Mosque will still need to submit a plan of development and obtain additional County approvals and permits to build the mosque.
23. The United States' Complaint claims that the County's treatment and denial of the Mosque's 2008 application for rezoning constitutes the imposition or implementation of a land use regulation that imposes a substantial burden on the Mosque's religious exercise, 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 Section 2(a) of RLUIPA, 42 U.S.C. § 2000cc(a). The United States' claim is based upon allegations that the Mosque's members, as a result of the treatment and denial of its application, are limited in their ability to exercise their religion because of the lack of adequate facilities, including the inability to worship together as families because of lack of space, and the inability to hire an imam because they have no permanent place of worship.
24. The United States' Complaint claims that the County discriminated against the Mosque on the basis of religion or religious denomination in violation of Section 2(b)(1) of RLUIPA, 42 U.S.C. § 2000cc(b)(1). The United States' claim is based upon allegations that the County was motivated to deny the Mosque's application because of religion or religious denomination and that the County has treated applications for rezoning by non-Muslim religious groups better than it treated the Mosque's application, inasmuch as several Christian churches were able to obtain rezoning of properties in similar situations.

25. The United States and the County (together “the Parties”) agree that for purposes of RLUIPA the County’s denial of an application for rezoning constitutes the “application” of a “land use regulation” that “limits or restricts a claimant’s use or development of land.” 42 U.S.C. § 2000cc-5(5).
26. The Parties agree that for purposes of RLUIPA, the County constitutes a “government.” 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).
27. The Parties agree that for purposes of RLUIPA, the Mosque’s use and proposed use of property on 7705 Impala Drive constitutes “religious exercise.” 42 U.S.C. §§ 2000cc-5(7)(A)-(B).
28. The Parties agree that for purposes of RLUIPA, the Mosque is a religious “assembly or institution.” 42 U.S.C. §§ 2000cc(a)(1), (b)(2).
29. Without admitting any violation of law, the County represents to the Court that it is fully aware of RLUIPA’s provisions. The Parties, having the mutual goal of ensuring that the County complies with RLUIPA, and desiring to settle this action to avoid protracted and expensive litigation, agree to the entry of this Consent Order to resolve all issues that were raised by the United States in its Complaint.

B. Consent of the Parties to Entry of This Order

30. The Parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 2000cc-2. The Parties further agree that the controversy should be resolved without further proceedings or an evidentiary hearing.
31. As indicated by the signatures below, the Parties agree to the entry of this Order.
Therefore, it is hereby **ORDERED, ADJUDGED** and **DECREED**:

II. GENERAL INJUNCTION

32. For the term of this Order, Defendant shall not:
- a. Impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a religious assembly or institution, which burden is not in furtherance of a compelling governmental interest and/or is not the least restrictive means of furthering such interest;
 - b. Impose or implement a land use regulation in a manner that discriminates against any assembly or institution on the basis of religion or religious denomination;
 - c. Otherwise engage in any conduct that violates RLUIPA; or
 - d. Coerce, intimidate, threaten, interfere with or retaliate against any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by RLUIPA.

III. APPLICATION OF MOSQUE

33. The County, in conformity with all local, state and federal laws, shall permit the Mosque to build a house of worship and accessory uses on the land at 7705 Impala Drive.
34. The County, in conformity with all local, state and federal laws, shall process any application by the Mosque to build a house of worship and accessory uses on the land at 7705 Impala Drive upon submission of such applications to the appropriate County entity. The County shall not improperly interfere with or otherwise delay the processing or issuing of any necessary permits and will use its best efforts to promptly schedule any required meetings and/or public hearings.

35. The County shall not amend its zoning ordinance in any way that would prevent 1241 from building a religious house of worship and accessory uses.

IV. NOTICE TO PUBLIC AND COMPLAINT PROCEDURES

36. Within 60 days after the date of entry of this Order, the County shall implement the following procedures to ensure notice to the public of this Order and its requirements:

- a. *Internet Posting.* Within 30 days after the date of entry, the Department of Planning shall post and maintain on the first page of its Internet home page for no fewer than 90 days a notice stating the following in type equivalent in size to the majority of other type on the page, in capital letters: “Consistent with the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, the County of Henrico does not discriminate on the basis of religion in the application of its laws, policies, or procedures, including the application of its land use regulations and zoning laws. Additional information is available here.” The words “available here” shall contain a link that connects interested persons to a full text of a notice that shall conform with Appendix A.
- b. *Notice to Future Religious Use Applicants.* Upon receipt of an application or inquiry about rezoning, special exemption, variance, or other individualized land use determination related to religious land use, the Department of Planning shall provide to the applicant or the person inquiring about the application process a document that describes the application process. The Planning Department shall provide to the applicant or the person inquiring a form describing an applicant’s rights under RLUIPA. The language of the form shall conform to Appendix A.

V. TRAINING AND EDUCATION OF COUNTY PERSONNEL

37. Within 90 days after the date of entry of this Order, the County Attorney shall provide training on the requirements of RLUIPA to all members of the Board of Supervisors, all members of the Planning Commission, and all employees of the Planning Department and Legal Department, excluding clerical staff, involved in land use matters. The training shall include a presentation on RLUIPA lasting at least 45 minutes by an outside expert approved by the United States. During the training, a copy of the Order shall be provided to attendees.

VI. REPORTING, RECORD-KEEPING, AND MONITORING

38. Within 180 days after the date of entry of this Order, and every 6 months thereafter, the County shall send a report evidencing its compliance with this Order to counsel for the United States, except that the last report shall be filed 60 days prior to the second anniversary of the Order.¹ This report shall consist of the following:
- a. Appropriate documentary evidence, including but not limited to the text of all new policies or procedures implemented as a result of this Order, demonstrating the County's compliance with Sections II–VI of this Order;
 - b. Written certification of each employee's attendance at the RLUIPA training described in paragraph 37, together with a copy of sign-in sheets and all training materials, including but not limited to a course syllabus, if any;

¹ For purposes of this Order, all submissions to the United States or its counsel should be submitted to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: DJ# 210-79-12, Fax: 202-514-1116, or as otherwise directed by the United States.

- c. Copies of all religious land use applications described in paragraph 40 of this Order; and
 - d. Copies of all complaints received by the County and responses to all complaints by the County described in paragraph 41 of this Order.
39. The County shall notify the United States in writing within 15 days of all amendments to the County's zoning code that have been approved by the County and that affect religious land use. The notification shall include copies of all such approved amendments, which copies shall be maintained by the County.
40. The County shall maintain copies of all written applications that seek the County's consideration or approval of any land use for religious purpose. Such applications include, without limitation, applications for rezoning, special use permits, variances, building permits, special permits, conditional use permits, renewals of permits, special exemptions, or zoning text amendments. The County shall advise the United States in writing within 15 days after the disposition of any such application. Upon request, with reasonable notice, the United States shall be permitted access to these records for review, inspection, and copying.
41. The County shall maintain copies of all written complaints it receives concerning any alleged restriction or prohibition by the County of, or interference with, the use of land in Henrico County for religious purposes. If the complaint is oral, the County shall prepare a written summary of it, including appropriate information identifying the complainant (unless the complainant is anonymous) and the substance of the complaint. The County shall advise the United States within 15 days after receipt of any such written or oral

complaint. The County shall also notify the United States in writing within 15 days after the County's response to any such complaint. Upon request, with reasonable notice, the United States shall be permitted access to these records for review, inspection, and copying.

VII. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

42. This Order shall remain in effect for five (5) years after the date of its entry or upon the County's issuance of a certificate of occupancy for the mosque that 1241 wishes to construct at 7705 Impala Drive, whichever is earlier, with the exception of paragraphs 36-41, which shall remain in effect for two (2) years after the date of its entry.
43. The Court shall retain jurisdiction for the duration of this Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Order if it believes Defendant has violated one or more provisions of the Order.
44. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Order prior to bringing such matters to the Court for resolution.

VIII. TIME FOR PERFORMANCE

45. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the Parties.

IX. COSTS OF LITIGATION

46. Each party to this litigation shall bear its own costs and attorneys' fees associated with this litigation.

ENTERED THIS 12 day of Sept, 2011.

H

/s/

UNITED STATES DISTRICT JUDGE

The undersigned apply for and consent to the entry of this Order:

FOR THE UNITED STATES:

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Eastern District of Virginia

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Civil Rights Division

STEVEN H. ROSENBAUM
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Dated: Sept. 6, 2011

FOR THE COUNTY OF HENRICO:


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Attorney for Henrico County
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Henrico, VA 23228

Dated September 6, 2011

APPENDIX A

NOTICE

CONSISTENT WITH THE UNITED STATES CONSTITUTION AND THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000, THE COUNTY OF HENRICO DOES NOT DISCRIMINATE ON THE BASIS OF RELIGION IN THE APPLICATION OF ITS LAWS, POLICIES, OR PROCEDURES, INCLUDING THE APPLICATION OF ITS LAND USE REGULATIONS AND ZONING LAWS.

Under RLUIPA, no government, including the County of Henrico, may apply its zoning or land use laws in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution. RLUIPA also provides that no government, including the County of Henrico, may apply a land use regulation in a manner that treats a religious assembly or institution (a church, for example) on less than equal terms than a nonreligious institution or assembly (a day care center or movie theater). Finally, RLUIPA provides that no government, including the County of Henrico, may impose or implement a land use regulation in a manner that discriminates against a religious assembly or institution.

If you believe that the County of Henrico, or any other local government or municipality, has discriminated against you in the implementation of its zoning or land use laws, please contact the United States Department of Justice at:

(202) 514-4713

You may also write to:

***United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave. N.W. -G St.
Washington, DC 20530***