

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO:
)	JUDGE
RUTHERFORD COUNTY, TENNESSEE,)	
)	
Defendant.)	

**PROPOSED TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

The Court, having considered the United States’ application for a temporary restraining order and motion for a preliminary injunction and memorandum of law in support thereof, the declarations and exhibits submitted with that motion, and testimony at the hearing held thereon, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Defendant, Rutherford County, regulates and restricts the use of land within its borders, at least in part, through the actions of a Regional Planning Commission and Board of Zoning Appeals. Land use in those areas of Rutherford County that are located outside the planning jurisdictions of local municipalities is governed by the Rutherford County Zoning Resolution (2011) (hereafter the “Zoning Resolution”). Section 1.04 of the Zoning Resolution provides that churches and religious assemblies are uses-by-right within residential districts.

2. Article 5 of the Zoning Resolution provides that the Planning Commission has the authority to grant approval for site plans for certain permitted and conditional uses, including but not limited to churches and other religious structures in excess of 3,000 square feet. Once a site plan is approved, the applicant is then free to seek any other required permits, including a building permit. Zoning Resolution § 5.07
3. Section 22.01 of the Zoning Resolution establishes the office of the Building Commissioner, who is, among other things, responsible for the enforcement of the Zoning Resolution and inspections of buildings and premises.
4. Section 22.02 of the Zoning Resolution governs the issuance of building permits and provides, among other things, that it shall be unlawful to commence the excavation or construction of any building until the Building Commissioner issues a permit. Under Section 22.02, an applicant for a building permit is required to submit a plan indicating the proposed building(s), state their intended use, and supply such other information as the Building Commission shall require.
5. The Islamic Center of Murfreesboro (hereafter the “Islamic Center”) is a public-benefit corporation organized and existing under the laws of Tennessee. Its principal office is located in Murfreesboro, Tennessee. The Islamic Center has been operating in Murfreesboro since 1982 and was originally called Masjed Al-Imman.
6. The Islamic Center serves approximately 250-300 Muslim families in the Murfreesboro area, as well as Muslim students attending Middle Tennessee State University. Among other things, the Islamic Center hosts prayer services,

celebrations of religious holidays, and various religious educational activities, and it engages in and coordinates religious charitable activities and interfaith and civic events.

7. The Islamic Center currently operates in a 2,100 square-foot facility that is grossly inadequate to serve the needs of its congregation. Due to insufficient space in the prayer hall, members pray in corridors and spill out into the parking lot during services. There is no room for child-care facilities, and children play outside in the parking lot, often distracting worshippers and creating an unsafe condition. Many members of the Muslim community, especially the elderly and families with young children, have stopped attending prayer services as a result of these conditions. Far fewer people are able to attend services than wish to, especially during times of peak religious observance such as religious holidays.
8. There are inadequate facilities at the current site to perform the ritual washing required before prayer. The current facility lacks space for a proper religious library and religious programs for youth. In addition, the current facility is inadequate for funeral rituals and celebration of religious holidays.
9. In 2009, the Islamic Center expressed an interest in constructing a mosque and religious center on approximately 15 acres of real property located on Veals Road in Rutherford County, a property located in a residential zoning district. As noted above, places of worship are allowed as of right in this zone. On or about May 2010, the Islamic Center applied to Rutherford County for site-plan approval for the construction of a religious center, phase one of which is a 12,000 square-foot mosque on its Veals Road property. The new center would have adequate space

and facilities for more than 500 members to worship, and for ritual washing, youth activities, funeral rituals, and holiday celebrations.

10. From the time that it announced plans to construct a mosque in Rutherford County, the Islamic Center has been the subject of intense and sometimes violent community opposition; opponents held a rally against the mosque, its property was vandalized, a large construction vehicle was set on fire, and the Islamic Center was the victim of a bomb threat.
11. The Regional Planning Commission held a regularly scheduled meeting and reviewed, among other things, a site plan submitted by the Islamic Center. With the exception of neglecting to post notice of the meeting on the County's internet web page, the County provided notice of the May 24, 2010 meeting in the same manner it provides notice for other land-use applications. This included advertising in the Murfreesboro Post, both in print and on the newspaper's website.
12. Doug Demosi, the Rutherford County Planning Director, testified in September 2010 in the state court action brought against the County by opponents of the mosque that he treated the Islamic Center's site-plan application no differently than he treated site-plan applications from other religious and secular organizations.
13. At the May 24, 2010 meeting, the Planning Commission approved the Islamic Center's site plan by a vote of 10 to 0. Following that vote, the Islamic Center sought and obtained a building permit from Rutherford County authorizing the construction of a religious facility and mosque on the Veals Road property.

14. In August 2010, site work for the construction of the mosque began. For the last year, the Islamic Center has intended to open its new mosque in time to observe the Islamic Holy month of Ramadan. During Ramadan, Muslims fast during the day and pray in congregation in the evenings. Ramadan will begin the evening of July 19, 2012, in accordance with the Islamic lunar calendar.
15. The ability to take occupancy of the new Islamic Center by the start of Ramadan is critically important to the members of the Islamic Center. The new facility will accommodate at least 500 worshippers, provide adequate space for men and women, and have adequate facilities for ritual washing, funerals and holiday celebrations. Without the new mosque, many members of the Islamic Center will not be able to attend prayer services due to insufficient space at the existing facility. In addition, the Islamic Center will not be able to provide for funeral rituals and holiday celebrations.
16. On September 16, 2010, four Rutherford County residents filed an action in Rutherford County Chancery Court (*Estes, et al. v. Rutherford County, et al.*, No. 10-cv-1443) against, among others, the Planning Commission, the Rutherford County Board of Commissioners, the Office of the County Mayor, and the Chief Executive Officer for Rutherford County. The suit alleged that the County violated various provisions of Tennessee law, including the Tennessee Open Meetings Act, when it approved the Islamic Center's site plan.
17. On June 1, 2012, the Chancery Court ruled that the Planning Commission had not provided adequate notice as required by the Tennessee Open Meetings Act of its May 24, 2010 meeting. It then held that the Planning Commission's actions

approving the Islamic Center's site plan were void. *Estes, et al. v. Rutherford County Regional Planning Commission, et al.*, No. 10-cv-1443 (Chancery County, June 1, 2012).

18. The Chancery Court's June 1, 2012 order imposed a heightened notice requirement for public meetings dealing with controversial, or significant, religious land-use matters. The record reflects that the controversy was not based on any legitimate concerns about the Islamic Center's project itself, and was instead based on the fact that it was a mosque.
19. On June 6, 2012, plaintiffs filed a Petition for Writ of Mandamus in *Fisher, et al. v. Rutherford County, et al.*, No. 12-cv-853 (Chancery Court, June 6, 2012), asking the Chancery Court to enjoin the County from permitting further construction of the Islamic Center on its Veals Road property. On June 13, 2012, at a hearing held on the petition, the Chancery Court enjoined the County from issuing a certificate of occupancy for the Islamic Center Mosque on Veals Road or engaging in "further process" based on the Chancery Court's May 29, 2012 order.
20. On June 21, 2012, the County filed a notice appealing the Chancery Court's June 1, 2012 order and filed a motion to stay the order. On July 2, 2012, the Chancery Court held a hearing on the County's motion to stay its June 1, 2012 order pending appeal. At the hearing, the Chancery Court declined to stay its order.
21. On July 13, 2012, the Islamic Center's contractor applied to the County for an inspection and for a certificate of occupancy. By letter dated July 17, 2012, the County informed the Islamic Center's contractor that as a result of the Chancery

Court's order, it will not perform an inspection or issue a certificate of occupancy to the Islamic Center.

CONCLUSIONS OF LAW

1. Rutherford County is a “government” within the meaning of the Religious Land Use and Institutionalized persons Act (RLUIPA), 42 U.S.C. § 2000cc-5(4)(A)(i), (ii). Rutherford County is a government subdivision capable of being sued under Tenn. Code. Ann. § 5-1-105 (1972). The County has the authority to regulate and restrict the use of land within its borders. See Tenn. Code Ann. § 5-1-118 (2003).
2. Land-use permits, inspection of property, and issuance of a certificate of occupancy are land-use regulations within the meaning of RLUIPA. 42 U.S.C. § 2000CC-5(5). See *Layman Lessons, Inc. v. City of Millersville*, 636 F. Supp. 2d 620, 646 (M.D. Tenn. 2008) (holding that city official informing church that that its certificate of occupancy application would be denied because of a proposed ordinance then before the City Commission was a “land use regulation” under RLUIPA); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729 (6th Cir. 2007); *DiLaura v. Ann Arbor Charter Twp.*, 112 F. App'x 445 (6th Cir. 2004).
3. The Islamic Center and its members' ability to carry out their religious duties and otherwise engage in free religious exercise during the Islamic holy month of Ramadan absent the use of the Veals Road mosque will be severely limited. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Vietnamese Buddhism Study Temple In America v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1172 (C.D. Cal. 2006).

4. The County's refusal to inspect for and issue a certificate of occupancy to the Islamic Center is a substantial burden on religious exercise in violation of RLUIPA Section 2(a). 42 U.S.C. § 2000CC(a); *DiLaura v. Ann Arbor Charter Twp.*, 112 F. App'x 445 (6th Cir. 2004) (unpublished); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729 (6th Cir. 2007) (unpublished).
5. The County's compliance with the Chancery Court's June 1, 2012, and June 13, 2012, orders does not constitute a compelling governmental interest. The Chancery Court's orders were not based on religion-neutral criteria. 42 U.S.C. § 2000CC—2(b). The Chancery Court imposed a heightened notice requirement on the mosque because its application was "controversial." But the Islamic Center is not controversial because of its size (which is modest for a place of worship), its location (in a zone that permits places of worship as of right), or any other neutral factor. As is evident from the facts in this case, it is controversial simply because it is a mosque. See, e.g., *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (neighbors' fear of residents of home for mentally retarded invalid ground for city to treat home differently); *Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1360 (6th Cir. 1992) (applying *Cleburne* to uphold district court's invalidation of city zoning regulations that "impose[d] differing requirements" on group homes for former inmates compared to other group homes); *Lighthouse Community Church v. City of Southfield*, 2007 WL 30280 at *12 (E.D. Mich. 2007) (denying summary judgment on Equal Protection claim where church presented evidence that it was treated differently than two other churches and that

it was treated differently from entities that “did not need to go through the same administrative procedures as Plaintiff in order to receive a certificate of occupancy or site plan approval.”); *Islamic Center of Mississippi v. City of Starkville*, 840 F.2d 293, 302 (5th Cir. 1988) (relying on *Cleburne* to hold, under the Free Exercise Clause, that “neighbors’ negative attitudes or fears, unsubstantiated by factors properly cognizable in a zoning proceeding” were improper grounds to deny approval to mosque).

6. The United States is likely to succeed on the merits of its claim under Section 2(a) of RLUIPA because the County’s denial of a certificate of occupancy substantially burdens the Islamic Center’s religious exercise without a compelling governmental interest that is achieved using the least restrictive means.
7. The Islamic Center faces irreparable harm if it cannot use its Veals Road mosque during Ramadan. See *Bays v. City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012) (finding a presumptive irreparable harm arises from the denial of free exercise of religion). Denial of religious practice to an entire congregation is a denial of “the First Amendment rights of freedom of speech, freedom of association, and free exercise of religion.” *Vietnamese Buddhism Study Temple In America v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1172 (C.D. Cal. 2006) (finding a city’s denial of permits to a Buddhist temple creates irreparable harm).
8. The balance of hardships favors the issuance of an injunction. The Islamic Center faces the threat of irreparable harm absent a preliminary injunction. On the other hand, the County faces no harm in accepting the application for a certificate of occupancy, as the County still may grant or deny it based on legitimate non-

discriminatory criteria. Cf. *Vietnamese Buddhism Study Temple In America*, 460 F. Supp. 2d at 1173 (finding that a preliminary injunction involving one parcel of land has little harm to a city). In light of the serious harm to the Islamic Center should it be unable to use its new mosque, and the absence of, or minimal harm to, the County that would arise from an injunction in this case, the balance of harms clearly tips in favor of enjoining the County.

9. An injunction protecting the Islamic Center's free-exercise and RLUIPA rights is in the public interest. Enforcement of RLUIPA is plainly in the public interest. See *Cottonwood Christian Center*, 218 F. Supp. 2d at 1230-31 (C.D. Cal. 2002). Issuance of an injunction will not violate the Anti-Injunction Act, 28 U.S.C. § 2283, which prohibits federal courts from issuing injunctions against state court proceedings, and does not apply to suits brought by the United States. *Leiter Minerals v. United States*, 352 U.S. 220, 287 (1957); see also *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971). An injunction against the state court in order to preserve the civil rights of the mosque is appropriate here. See, e.g., *United States v. State of Washington*, 459 F. Supp. 1020, 1031 (W.D. Wash. 1978) (in case involving treaty rights of Native Americans, holding that "this court is not only satisfied that it has jurisdiction to enjoin the state court proceedings referred to, within the express exceptions to the anti-injunction statute, but also believes it has an urgent duty to take such action to the extent shown necessary in order to effectuate its judgment and protect the federal treaty rights declared therein."); *Bush v. Orleans Parish Sch. Bd.*, 187 F. Supp. 42, 43 (E.D. La. 1960) (enjoining state court injunction where "state court injunction,

and [challenged] statutes, directly or indirectly, require or promote segregation . . . in violation of the equal protection and due process clause of the Fourteenth Amendment”); see also *Great Earth Cos., Inc. v. Simons*, 288 F.3d 878 (6th Cir. 2002) (upholding district court’s enjoining of defendants from pursuing state court action where case fell within exception to the Anti-Injunction Act); *In re Columbia/HCA Healthcare Corp. Billing Practices Litigation*, 93 F. Supp. 2d 876 (M.D. Tenn. 2000) (granting injunction against state court barring it from ruling on motion to compel under exception to Act allowing federal court to preserve orderly resolution of federal proceedings.)

ORDER

Based on the above findings of fact and conclusions of law, the Court hereby ENJOINS Rutherford County, Tennessee, its officers, employees, agents, successors and others acting in concert and participation with it (collectively “Rutherford County”), to undertake the following actions, notwithstanding the orders of the Chancery Court of Tennessee Sixteenth Judicial District at Murfreesboro, of June 1, 2012 (*Estes, et al. v. Rutherford County Regional Planning Commission, et al.*, No. 10-cv-1443 (Chancery Court, June 1, 2012)), and June 13, 2012 (*Fisher, et al. v. Rutherford County, et al.*, No. 12-cv-853 (Chancery Court, June 13, 2012)), and it is hereby ORDERED as follows:

1. The County shall process the Islamic Center of Murfreesboro’s request for a certificate of occupancy for the mosque on Veals Road by performing forthwith a final building inspection; and

2. If the building complies with applicable codes and regulations, the County shall issue, on or before July 19, 2012, the certificate of occupancy for the mosque on Veals Road; if the

County determines that the building does not comply with applicable codes and regulations, then the County shall immediately notify the Islamic Center of the specific deficiencies and shall promptly re-inspect the building after the Islamic Center informs the County that it has corrected the deficiencies.

IT IS SO ORDERED.

This ____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE