

PREET BHARARA
United States Attorney for the
Southern District of New York
By: SAMUEL DOLINGER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2677
Fax: (212) 637-2702
E-mail: samuel.dolinger@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PORT JERVIS,

Defendant.

No. 16 Civ. 9026

COMPLAINT

Plaintiff the United States of America (the “United States”), upon information and belief, alleges for its complaint as follows:

NATURE OF THE CASE

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

JURISDICTION AND VENUE

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

3. Pursuant to 42 U.S.C. § 2000cc-2(f), the United States is authorized to commence suit against a local government for injunctive or declaratory relief to enforce compliance with RLUIPA.

4. Venue is proper in this district under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to the claims in this action occurred in this district.

PARTIES

5. Plaintiff is the United States of America.

6. Defendant, the City of Port Jervis (“Port Jervis” or the “City”), is a “government” within the meaning of 42 U.S.C. § 2000cc-5(4)(A).

BACKGROUND

7. The Goodwill Evangelical Presbyterian Church (“Goodwill Church” or “the Church”) is a religious entity with locations in Orange and Ulster Counties, New York.

8. In mid-2015, the Church began looking into purchasing property located at 51-55 Front Street (the “Property”) in Port Jervis’s Central Business District (“CBD”).

9. In May 2015, a pastor of the Church received confirmation from David Rivera, a Port Jervis building official, that this parcel could be used as a place of worship. The Church submitted an offer for the Property in June 2015, and a contract was finalized in August 2015.

10. During approximately the same period in mid-2015, two entrepreneurs were investigating the purchase of a nearby City-owned property located at 46-48 Front Street in Port Jervis. The entrepreneurs’ ultimate goal is to open a microbrewery and/or gastropub called Fox N Hare Brewing Co. at the location. According to news accounts, the Mayor of Port Jervis has supported Fox N Hare’s development of this property as a microbrewery and/or gastropub.

11. In September 2015, the Mayor of Port Jervis expressed concerns to a pastor of the Church about the Church’s use of the Property as a place of worship. He objected that a church in the downtown area could inhibit growth in the area by restricting businesses that served alcohol under New York State’s Alcoholic Beverage Control laws. *See, e.g.,* N.Y. Alco. Bev.

Cont. Law § 64(7)(a) (providing that no license for on-premises liquor consumption will be granted for premises “on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship”).

12. In response to the Mayor’s concerns, the Code Committee of the Port Jervis Common Council began to consider a local law that would prohibit places of worship and related facilities in the CBD and Service Commercial District (“SCD”) of Port Jervis.

13. Despite these developments, on November 23, 2015, Port Jervis building official David Rivera confirmed in a letter to the Church that the Property was in the City’s Central Business District, and that “[p]laces of worship and their related facilities is [sic] an allowed use in this zoning district.” Rivera confirmed that the Church was “in the process of applying for a building permit for renovations and upon completion and compliance will be issued a Certificate of Occupancy for a place of worship.”

14. A proposed law banning places of worship from the CBD and SCD under the City’s zoning laws was introduced at a meeting of the Port Jervis Common Council in late November 2015.

15. In December 2015, Port Jervis adopted Local Law No. 7 of 2015 (“Local Law No. 7”). Local Law No. 7 provides that “places of worship and related facilities shall not be permitted uses within the Central Business Zoning District and Service Commercial Zoning District of the City of Port Jervis.”

16. Prior to the passage of Local Law No. 7, Port Jervis permitted as of right the use of land in the CBD and SCD for places of worship.

17. Local Law No. 7 states in a section titled “Legislative Findings and Intent” that “places of worship may have a detrimental effect on business, commercial[,] and community

development” in these districts, and asserts that due to “the restrictions set forth for liquor licenses for restaurants, breweries, micro-breweries, micro-distilleries, pubs and other eating and drinking establishments commonly located within the Central Business Zoning District and Service Commercial Zoning District of the City, as set forth in the Alcoholic Beverage Control legislation of the State of New York, places of worship and related facilities may deter and prohibit the location and expansion of business and commercial uses within the Central Business Zoning District and Service Commercial Zoning District in the City.”

18. Local Law No. 7 also cites “the need for parking” as a motivation for the law.

19. In February 2016, the City passed Local Law No. 3 of 2016, which permitted the use of property for microbreweries, brew pubs, breweries, microdistilleries, distilleries, wineries, and tasting rooms in the CBD and SCD. Prior to the passage of Local Law No. 3, these uses had not been listed among the uses permitted in the CBD and SCD, and bars were specifically prohibited in the CBD.

20. The City permits, either conditionally or as of right, the use of property in the CBD and SCD for clubs and fraternal organizations and nonprofit membership clubs, as well as libraries, gyms, art galleries, museums, preschools, day-care centers, and nursery schools.

21. Upon information and belief, uses by nonreligious assemblies or institutions that continue to be permitted (either conditionally or as of right) in the CBD and SCD are likely to have a similar effect on parking, commercial development, and liquor licensing as use for places of worship or other uses by religious assemblies or institutions.

22. The passage of Local Law No. 7 prevented the Church from using the Property as a place of worship, in spite of its reasonable expectation that it would be able to do so, and has led to the rescission of the Church’s contract to purchase the Property. Local Law No. 7 has

also caused the Church to suffer delay, uncertainty, and expense with regard to its intended establishment of a permanent place of worship in Port Jervis.

FIRST CLAIM FOR RELIEF
Equal Terms Claim: Violation of 42 U.S.C. § 2000cc(b)(1)

23. Paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. Local Law No. 7 is a land use regulation within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(5).

25. Local Law No. 7 facially discriminates against religious assemblies.

26. Through the passage of Local Law No. 7, Port Jervis has banned places of worship from the SCD and CBD under the City's zoning laws, while continuing to permit (either conditionally or as of right) similar nonreligious assemblies to locate in the same area, including clubs and fraternal organizations, nonprofit membership clubs, libraries, gyms, art galleries, museums, preschools, day-care centers, and nursery schools.

27. Due to the passage of Local Law No. 7, Port Jervis's zoning laws treat religious assemblies on less than equal terms with comparable nonreligious assemblies.

28. Therefore, Port Jervis has imposed and implemented a land use regulation in a manner that treats religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

SECOND CLAIM FOR RELIEF
Substantial Burden Claim: Violation of 42 U.S.C. § 2000cc(a)(1)

29. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

30. The Goodwill Church entered a contract to purchase the Property with the reasonable expectation that it could be used for religious purposes.

31. The Church's use or conversion of property for the purpose of religious exercise is considered religious exercise under RLUIPA, 42 U.S.C. § 2000cc-5(7)(B).

32. At the time that the Church entered into the purchase contract, use of the Property in the CBD as a place of worship was permitted as of right under the Port Jervis zoning laws.

33. A City representative confirmed in November 2015 that the Church's use of the Property as a place of worship was permitted under the Port Jervis zoning laws, and that a Certificate of Occupancy for such use would be issued after the completion of renovations.

34. The passage of Local Law No. 7 thwarted the Church's reasonable expectation that it could use the Property as a place of worship, and caused the Church to suffer delay, uncertainty, and expense with regard to its intended use of the Property.

35. For the foregoing reasons, Local Law No. 7 substantially burdens the Church's religious exercise.

36. Local Law No. 7 affects commerce within the meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(2).

37. Local Law No. 7 does not further a compelling governmental interest, or even if it does, it is not the least restrictive means of furthering any compelling governmental interest.

38. Therefore, Port Jervis has imposed and implemented a land use regulation in a manner that imposes a substantial burden on the religious exercise of the Goodwill Church without furthering a compelling governmental interest through the least restrictive means, in violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

RELIEF REQUESTED

WHEREFORE, Plaintiff the United States of America respectfully requests that the Court enter judgment that:

(a) declares that the City of Port Jervis's imposition and implementation of Local Law No. 7 of 2015 violates RLUIPA;

(b) enjoins the City of Port Jervis, its officers, employees, agents, successors, and all other persons in concert or participation with them, from imposing or implementing a land use regulation in a manner that treats religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions;

(c) enjoins the City of Port Jervis, its officers, employees, agents, successors, and all other persons in concert or participation with them, from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of the Goodwill Church or any other person;

(d) enjoins the City of Port Jervis, its officers, employees, agents, successors, and all other persons in concert or participation with them, from adopting or enforcing any zoning law, ordinance, code, or restriction in a manner that violates RLUIPA; and

(e) grants such other and further relief as the Court may deem just, together with the United States of America's costs and disbursements in this action.

Dated: November 21, 2016
New York, New York

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By:


SAMUEL DOLINGER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2677
Fax: (212) 637-2702
E-mail: samuel.dolinger@usdoj.gov