UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Church of Our Savior, formally known as Resurrection Anglican Church, Inc., a Florida Non for Profit Corporation,

Plaintiff,

v.

The City of Jacksonville Beach, the City of Jacksonville Beach Planning Commission, a Florida Municipal Corporation,

Defendant.

HON.
Case No.

DALTON & TOMICH plc
Daniel P. Dalton (P 44056)
Lead Attorney for Plaintiff
Pro Hac Vice - pending
41000 Woodward Ave. Ste 345 East
Bloomfield Hills MI 48304
Tel. (248) 971-2400
Fax (248) 971-1906
ddalton@daltontomich.com

Stambaugh & Associates, P.A.
Charles L. Stambaugh
Attorney for Plaintiff
Florida Bar No. 35032
841 Prudential Drive, 12th Floor
Jacksonville, FL 32207
(904) 371-1945
stambaughlaw@att.net

PLAINTIFF CHURCH OF OUR SAVIOR'S BRIEF IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Other Sources

QUESTIONS PRESENTED

1. Whether this Court should issue a preliminary injunction in the form proposed by Plaintiff?

   Plaintiff's answer: Yes

2. Whether Plaintiff has a likelihood of success on the merits of its claims?

   Plaintiff's answer: Yes

3. Whether Plaintiff will suffer irreparable harm if a preliminary injunction does not issue?

   Plaintiff's answer: Yes

4. Whether Defendant can demonstrate any harm to itself or others if a preliminary injunction issues?

   Plaintiff's answer: No

5. Whether the preliminary injunction will be serve the public's best interest?

   Plaintiff's answer: Yes

INTRODUCTION

Plaintiff Church of Our Savior ("Plaintiff" or "Church") is a religious organization whose main purpose is to assemble weekly to worship God and engage in additional religious activities customarily associated with churches. The Church presently meets at several locations around the City of Jacksonville Beach, Florida ("Defendant" or "City") for a variety of events, including religious worship services and Bible study programs. The logistical limitations imposed on the Church's congregation by having to transport themselves and their supplies to various places around the City for different events are obvious. To remedy these constraints, the Church decided to look for a property to serve as a central location for all of the Church's activities.

In early 2013, Church leaders learned of a property in the City that was available for purchase that appeared to fit all of its needs. The property is located in a zone that only permits religious assembly use upon approval of the Planning Commission. When the Church submitted an application for conditional approval to the City's Planning and Development Department, the Department found the Church's proposal fit within the neighborhood and recommended the Planning Commission approve the application. However, the Planning Commission disregarded this recommendation and instead unanimously voted to deny the application. The Church then made some minor changes and resubmitted its application. Again, the Planning and Development Department recommended the Planning Commission approve the proposal. Inexplicably, the Planning Commission again unanimously denied the project.

The City's Land Development Code provides no means of appealing a decision of the Planning Commission, thus rendering the Planning Commission's decision final. Through this Motion, the Church asks this Court to grant it preliminary injunctive relief by ordering the City to approve its application and to allow it to use the Property for religious assembly purposes.

FACTUAL BACKGROUND

Church of Our Savior

Plaintiff Church of Our Savior was founded in 2006. ***Exhibit 1, Church of Our Savior Mission Statement***. The Church's religious mission is to revel in and share the grace that God has shown them. ***Id***. To fulfill this mission, the Church encourages members of the community to attend the Church's religious services. ***Id.*** As a result, in the seven years since its founding, the Church's congregation has grown rapidly and now consists of approximately 100 members. ***Id.*** This newfound growth has led Church elders to add a number of religious services, including Bible study groups for men and women. ***Exhibit 2, Affidavit of Kent Steen***. The Church has also established ministries of feeding the homeless at the City's Mission House and supporting the teachers and staff at a nearby public elementary school. ***Id***. The service to the City has also contributed to the growth in the Church's membership. ***Id***.

Currently, the Church does not have a full-time religious facility of its own. Rather, because of the congregation's recent rapid growth, the Church is forced to host its weekly worship services at five (5) separate locations, four of which are located within the City. ***Id***. Currently, the Church hosts two worship services on Sunday mornings at Beaches Museum Chapel. ***Exhibit 3, Church of Our Savior Schedule***. Beaches Museum Chapel, located at 505 Beach Boulevard in the City, is an historic wooden chapel that has been moved to several locations over the years. ***Exhibit 4, Beaches Museum Chapel***. The Church currently rents the chapel from the City in order to have space at which it can hold Sunday services. ***Ex. 2***. Because the Church rents the chapel, it cannot schedule services as it wishes, make repairs, or alter the chapel so as to tailor the facility to the Church's needs. ***Ex. 2***. Because of the space and time constraints and conflicts the Church faces, it currently hosts its men's Bible study program every

Tuesday night at Colonel Mustard's, a popular Jacksonville Beach restaurant. ***Ex. 3***. The Church also hosts a weekly women's Bible study, weekly choir rehearsals, and other educational activities at Malone Hall, a public facility also located in the City. ***Id***.

The Church's Need for One Central Facility

The Church suffers an increasingly substantial burden on its religious exercise due to the need to transport its congregation and religious materials to several locations around the City on multiple days each week. ***Ex. 2***. These logistical constraints to which the Church is subjected have hindered the Church's ability to attract more members, an integral part of the Church's religious mission, ***Id***. Church leaders eventually determined that locating the vast majority of the Church's religious worship activities at one centralized house of worship would ease the substantial time and financial burdens that weigh on the shoulders of Church elders and parishioners due to the constant changing of meeting locations the Church and its members have had to endure for several years. ***Id***. Thus, Church leaders spent the latter part of 2012 and the first several months of 2013 looking for a suitable property that could serve as the one ideal location for all of the Church's religious activities. ***Id***.

The Church Locates a Suitable Property in the City

In early 2013, the Church located the property at 2092 Beach Boulevard ("Property") in Jacksonville Beach that was for sale. ***Id***. The Property consists of two distinct parcels that are separated by a small piece of property. ***Exhibit 5, Map***. The Property is located just east of Hopson Road and the Intracoastal Waterway and on the west side of Adventure Landing, an amusement park that offers water attractions, miniature golf and laser tag. ***Ex. 2, 5***. The Church hoped to construct a 7,400 square foot, one-story sanctuary with space for 200 worshipers on one of the parcels at the Property. ***Id***. The Church also hoped to use the southern portion of the

Property for other Church activities, including a children's play area or park. ***Id***. By centralizing its operations at one location, Church leaders anticipated that its membership would grow and the substantial burden on its current members, who are forced to travel from one location to another for various activities, would be lessened. ***Ex. 2***.

The Church Purchases an Option to Buy the Property

The Property is the only one of its kind available in the City that can adequately house both the worship facility and accompanying recreational area that the Church needs. ***Ex. 2***. As a result, the Church purchased an option to buy the Property from its owner, Mr. Goodloe and one form the Duval Land Trust. ***Exhibit 6, Option agreement***. The Property is zoned "RS-1," single-family residential, under the Jacksonville Beach Land Development Code ("LDC"). ***Exhibit 7, Jacksonville Beach Zoning Map; Ex. 2***. The LDC does not permit church assembly use in the RS-1 zone, and instead requires religious assemblies such as Plaintiff to apply for special dispensation from the City in the form of a Conditional Use Permit ("CUP"). ***Exhibit 8, LDC at § 34-336(b)***. In contrast, the LDC permits similar secular assemblies such as private and public parks as a matter of right in the RS-1 district, meaning such secular institutions are not required to apply for and receive a CUP from the City in order to operate. ***Ex. 8 at § 34-336***. In fact, the LDC does not allow religious organizations as a matter of right in eleven (11) of its thirteen (13) zoning districts. *See* ***id. at §§ 34-336-34-348***. Consequently, in order for churches and other religious institutions to operate in these eleven districts, they must apply for – and be granted – special dispensation in the form of a Conditional Use Permit ("CUP") from the City. *See* ***id***. While the LDC prohibits religious organizations as of right in both the Commercial Service ("CS") and Central Business ("CBD") zoning districts and thus requires religious institutions to apply for and receive a CUP from the City, the LDC allows similar secular institutions, such as

civic, social and fraternal organizations, movie theaters, and membership sports and recreation clubs to operate as a matter of right in the CS and CBD districts. ***Id. at §§ 34-344, 34-345***.

The Church Applies for a CUP with the City

On or about March 8, 2013, the Church submitted an application to the City for a CUP to build its planned church facility on the Property. ***Exhibit 9, Undated First CUP Application***. The application indicated that the Church sought a CUP to operate a 200-250 seat church in the RS-1 zoning district. ***Id***. The City's Department of Planning and Development affirmed the receipt of the Church's CUP application and recommended approving the Church's application after finding it met the standards for conditional use approval under LDC Section 34-336(e). ***Exhibit 10, April 1, 2013, Letter from Department of Planning & Development; Exhibit 11, Standards Applicable to All Conditional Uses, Land Development Code § 34-231***. In particular, the Church's plan conformed with the RS-1 setback requirements, included the required landscape and fence buffer adjacent to single-family uses, and the City's Public Works Department was aware of the Church's plans and found that it would not interfere with works department maintenance. ***Ex. 10***. Based on these findings, the Planning and Development Department recommended that the Planning Commission ***approve*** the CUP to the Church. ***Id***. The Planning and Development Department found that the church use "represents a reasonable low intensity use of the undeveloped parcels…and would serve as transition between the soon to be developed commercial parking facilities to the east, and the Hopson Road neighborhood to the west and south." ***Id***.

On April 8, 2013, the City's Planning Commission heard the Church's CUP request at a public hearing. ***Exhibit 12, April 8 Planning Commission Agenda; Exhibit 13, Minutes of April 8, 2013, Planning Commission Meeting***. Although the findings clearly indicated that the

Church's proposal would comply with height restrictions and setback and lot coverage requirements, a handful of neighbors objected to the CUP. ***Ex. 13***. In addition, Commissioner DeLoach expressed his belief that the Church's proposal was not consistent with the character of the neighborhood. ***Id***. The Planning Commission then voted unanimously to deny the request despite the recommendation of the Planning and Development Department. ***Id***. The denial surprised the Church because the City's Planning and Development Department officials – experts trained in evaluating CUP applications and zoning districts – had determined that the CUP should be approved. ***Ex. 2; Ex. 10***.

The Church Submits a Second CUP Application to the City

After the Planning Commission's denial, the Church contemplated its option for moving forward with its planned use of the Property. ***Ex. 2***. The Church and the City attempted to reach a mutual compromise that would allow it to proceed with its plans for the Property. However, the parties ultimately failed to come to a mutual resolution, and the City then encouraged the Church to submit a second CUP application in September 2013. ***Ex. 2***. Based on this suggestion, the Church submitted a ***second*** CUP application to the Planning and Development Department. ***Exhibit 14, Second CUP Application***. The second application clarified that the first CUP application had mistakenly labeled the recreational area in the southern part of the Property to be a children's area when the Church actually planned to make it a park open to neighborhood children, as permitted in the RS-1 zoning district. ***Ex. 14; Ex. 8 at 34-336***.

Again, the City's Planning and Development Department determined that the church met all of the standards in the LDC for conditional use approval and recommended that the Planning Commission ***approve*** the Church's CUP application. ***Exhibit 15, September 1, 2013, Department of Planning & Development Letter***. The Planning Commission discussed the

application at its meeting on September 9, 2013. ***Exhibit 16, September 9, 2013, Planning Commission Agenda***. On September 23, 2013, the Planning Commission once again disregarded the recommendation of the Department of Planning and Development and again unanimously voted to deny the CUP application. ***Ex. 2***. In its Findings of Fact, the Planning Commission indicated it denied the CUP "based on public testimony from the Hopson Road neighborhood residents" that the use of the Property for a religious use was inconsistent with the character of the surrounding properties. ***Exhibit 17, Findings of Fact***. The Planning Commission also found that the Church's planned use of the Property "is not consistent with RS-1 zoning district maximum lot coverage standards." ***Id***. This determination was made in spite of the However, the Planning and Development Department's earlier finding that the church use "represents a reasonable low intensity use of the undeveloped parcels…and would serve as transition between the soon to be developed commercial parking facilities to the east, and the Hopson Road neighborhood to the west and south," and that the Church's "requested use of the subject properties is contemplated in RS-1 zoning, so it is not inconsistent with their Comprehensive Plan *Residential – Low Density* designation." ***Ex. 10***. The Planning Commission's denial of the CUP and its Findings of Fact are completely contradicted by the City's Planning and Development Department, which ***twice*** determined that Plaintiff's CUP application should have been granted. ***Ex. 10, 15***.

The City Has Approved CUPs for Similar Institutions in the Past

Clearly, the Planning Commission's denial again stunned the Church, especially since the Planning Commission approved a CUP application submitted by another church in the RS-1 zoning district in 2010. ***Exhibit 18, August 13, 2010 Bethlehem Lutheran Church CUP Approval***. The City also granted a CUP to a functionally similar secular assembly, a private

school, in the RS-1 District in 1994. ***Exhibit 19, July 26, 1994, CUP Approval of Leah Hudson***. The City also granted a CUP for a public secondary school seeking to locate in the RS-1 zoning district. ***Exhibit 20, August 31, 1995, Letter to Eisman & Russo***. Also, the Planning Commission granted a CUP to Epic Surf Ministries in 2008 to operate a religious use in a residential district of the City. ***Exhibit 21, Minutes of Dec. 22, 2008, Planning Commission meeting***.

Based on a review of the Planning Commission's actions over the past nine (9) years, it appears almost unheard of for the Planning Commission to ignore or otherwise go against the recommendation of the Planning and Development Department on CUPs. ***Ex. 2***. Furthermore, the Church has no ready alternatives since there are no other parcels of property available in the City's C-1 and C-2 zoning districts, which are the only two zoning districts in the City that permit religious organizations as a matter of right. ***Ex. 2; Ex. 8 at 34-342, 34-343***. The Church has utilized and exhausted all of its administrative remedies as set forth in the LDC without success since the Planning Commission's decision is not appealable, thus effectively rendering the Planning Commission's decision final. ***Ex. 2***. As a result of its denial of the Church's CUP application, the Planning Commission has in effect denied the Church the right to use the Property for religious assembly purposes, which is a blatant interference with the Church's free exercise rights. Consequently, the Church is being forced to continue holding its religious services and events at a rented chapel owned by the City and the back of a restaurant.

STANDARD OF REVIEW

A preliminary injunction is appropriate when the moving party establishes four requirements: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction [is] not granted; (3) that the threatened injury to the plaintiff[s]

outweighs the harm an injunction may cause the defendant[s]; and (4) that granting the injunction would not disserve the public interest." *Teper v. Miller,* 82 F.3d 989, 992 93 n.3 (11th Cir. 1996); *see Haitian Refugee Center, Inc. v. Baker,* 949 F.2d 1109, 1110 (11th Cir. 1991).

The decision to grant a preliminary injunction is "within the sound discretion of the district court." *Sierra Club v. Georgia Power Co.*, 180 F.3d 1309, 1310 (11th Cir. 1999). The Plaintiff must establish the burden of persuasion as to each of the four elements. *Café 207 v. St. Johns County*, 989 F.2d 1136, 1137 (11th Cir. 1993). A showing of irreparable injury is "the sine qua non of injunctive relief." *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville,* 896 F.2d 1283, 1285 (11th Cir. 1990). "[T]he asserted irreparable injury must be neither remote nor speculative, but actual and imminent." *Siegel v. LePore*, 234 F.3d 1163, 1176-77 (11th Cir. 2000) (citations omitted).

LEGAL ARGUMENTS

I. Likelihood of Success of the Merits

Plaintiff's Complaint asserts eight (8) causes of action, although this motion is confined to the Substantial Burden, Equal Terms, and Unreasonable Limitations provisions claims under RLUIPA. RLUIPA is a federal statute enacted, among other reasons, to protect churches and other religious organizations against the effects of improper land use decisions. "RLUIPA is Congress's latest effort to protect the free exercise of religion guaranteed by the First Amendment from governmental regulation." *Guru Nanak Sikh Soc'y v. County of Sutter*, 456 F.3d 978, 985 (9th Cir. 2006). In their joint statement to the Senate regarding the purpose of RLUIPA, co-sponsors Senators Orrin Hatch and Edward Kennedy observed that:

> The right to assemble for worship is at the very core of the free exercise of religion. Churches and synagogues cannot function without ***a physical space adequate to their needs and consistent with their theological requirements. The***

> ***right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.***

146 Cong. Rec. S7774 (July 27, 2000) (emphasis added). The need for legislation, the senators explained, was demonstrated by the "massive evidence that this right is frequently violated." *Id*. Concerned that "[c]hurches in general and new, small, or unfamiliar churches in particular, are frequently discriminated against . . . in the highly individualized and discretionary processes of land use regulation," the senators described evidence that some "[zoning] codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." *Id*. The senators further described evidence that:

> [s]ometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church. . . . ***More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.'***

Id. (emphasis added). RLUIPA aims to free religious institutions from discrimination and other government-imposed burdens by subjecting to strict judicial scrutiny governmental land use decisions that make "individualized assessments of the property uses for the property involved," or in regulations that affect commerce. 42 U.S.C. § 2000cc(a)(2)(B), (C).

As Plaintiff explains below, there is a strong likelihood that the Church will succeed on its Substantial Burden, Equal Terms, and Unreasonable Limitations claims under RLUIPA.

a. The City Has Violated RLUIPA's Substantial Burden Clause

Lighthouse also has a likelihood of success on the merits of its RLUIPA claim.

Under RLUIPA's Substantial Burden clause, no government "shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution." 42 U.S.C. § 2000cc-1. RLUIPA makes clear that "the use, building, or conversion of real property for the purpose of religious exercise,"

is explicitly "considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." 42 U.S.C. § 2000cc-5(7)(B). Plaintiff has the initial burden on demonstrating that RLUIPA is applicable and that the government has implemented a land use regulation that imposes a substantial burden on plaintiff's religious exercise. 42 U.S.C. § 2000cc-2(b). Once this is proven, the burden shifts to the government to prove that its imposition of such a burden is in furtherance of a compelling government interest and also constitutes the least restrictive means of furthering that interest. *Id.*

According to the Eleventh Circuit, "a 'substantial burden' must place more than an inconvenience on religious exercise; a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004).

In this situation, the City's repeated refusal to approve the Church's CUP application, despite the Planning and Development Department's findings that the Church's proposed use was consistent with the RS-1 zoning district, has effectively banned the Church from engaging in conduct motivated by its sincerely held religious beliefs. *See* ***Ex. 10; Ex. 15***. The Church has demonstrated that having one centralized location to house its worship facility and other related events is imperative both to ease the burden on its current congregation members as well as to attract future congregants. ***Ex. 2***. The Church has also demonstrated that the Property is the only available space within the City that can fit the Church's needs. Under Eleventh Circuit precedent, the logistical constraints imposed by the City have directly coerced the Church to conform its

religious exercise. *See Midrash Sephardi*, 366 F.3d at 1227. Thus it is clear the City's refusal to approve the Church's CUP constitutes a violation of RLUIPA's substantial burden provision.

Further, the City cannot show that it imposed a substantial burden on the Church's religious exercise in a manner that was narrowly tailored to serve a compelling governmental interest. 42 U.S. C. § 2000cc. Compelling state interests are "interests of the highest order." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 546 (1993). The government must "show a compelling interest…in the particular case at hand, not a compelling interest in general." *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007). "A law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547. The City cannot offer any compelling reason for the Planning Commission's refusal to approve the Church's CUP application, especially since the Planning and Development Department – comprised of experts specifically trained in the area of evaluating CUP applications - twice recommended approval of the Church's proposal. ***Ex. 10; Ex. 15***. Even if the City asserts that the Church's proposal failst o comply with the LDC, it is well established that adherence to zoning ordinances is not an "interest of the highest order," *Westchester Day Sch*., 504 F.3d at 353. Thus, the substantial burden is not motivated by a compelling governmental interest.

Therefore, the Church has a strong likelihood of success on the merits of its RLUIPA substantial burden claim.

b. The City Has Violated RLUIPA's Equal Terms Clause

Plaintiff has a strong likelihood of success on the merits of its claim that the City has violated the Equal Terms Clause of RLUIPA.

The Equal Terms Clause provides that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). In essence, the provision "requir[es] equal treatment of secular and religious assemblies [and] allows courts to determine whether a particular system of classifications adopted by a city *subtly or covertly departs from requirements of neutrality and general applicability.*" *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232 (11th Cir. 2004).

A plaintiff alleging an equal terms violation must demonstrate four elements: "(1) the plaintiff must be a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the religious assembly on less than equal terms, with (4) a nonreligious assembly or institution." *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty*, 450 F.3d 1295, 1307 (11th Cir. 2006) (citing 42 U.S.C. § 2000cc(b)(1)). The plaintiff bears the initial burden of "produc[ing] prima facie evidence to support a[n equal terms] claim." 42 U.S.C. § 2000cc–2(b). If this burden is met, "the government...bear[s] the burden of persuasion on any element of the claim." *Id.* Further, the Eleventh Circuit has held that an equal terms violation is subject to strict scrutiny, meaning the government's conduct will be upheld only if the defendant can establish that its conduct was narrowly tailored in order to achieve a compelling governmental interest. *Midrash Sephardi*, 366 F.3d at 1232 (citing *Lukumi*, 508 U.S. at 546).

The Eleventh Circuit recognizes three separate potential equal terms violations: "(1) a statute that facially differentiates between religious and nonreligious assemblies or institutions; (2) a facially neutral statute that is nevertheless "gerrymandered" to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions; or (3) a truly neutral statute that

is selectively enforced against religious, as opposed to nonreligious assemblies or institutions." *Primera Iglesia*, 450 F.3d at 1308. Here, the third type of violation is at issue.

With respect to the third type of violation, there must be a discriminatory *application* of an otherwise facially neutral, generally applicable provision. *Id.* at 1310. In order to meet this standard, the application must treat a religious assembly differently than a *similarly situated* secular assembly. *Konikov v. Orange Cnty*, 410 F.3d 1317, 1327-29 (11th Cir. 2005). In turn, the plaintiff asserting an as applied equal terms challenge must provide evidence demonstrating that a similarly situated secular comparator has received differential treatment under the same challenged land use regulation. *Primera Iglesia*, 450 F.3d at 1311.

Here, there is no question that the Church is a religious assembly that is subject to the City's LDC. Thus, the first two requirements of an equal terms violation are satisfied. *See id.* at 1307. The facts are also clear that the City has treated the Church on less than equal terms when compared to similarly situated secular institutions. In *Midrash Sephardi*, the Eleventh Circuit determined that private clubs and lodges, along with churches and synagogues, are considered "assemblies" or "institutions" for purposes of RLUIPA. 366 F.3d at 1231. The Court used the dictionary definitions of the terms "assembly" and "institutions" to make this determination. *Id.* at 1230-31.[1] As a result, private secular institutions like private clubs and lodges are considered "similarly situated" to their religious counterparts—churches and synagogues. *Id.* Following this line of reasoning, it follows that schools are also similarly situated secular comparators to

[1] "An 'assembly' is 'a company of persons collected together in one place [usually] and usually for some common purpose (as deliberation and legislation, worship, or social entertainment),' WEBSTER'S 3D NEW INT'L UNABRIDGED DICTIONARY 131 (1993); or '[a] group of persons organized and united for some common purpose.' BLACK'S LAW DICTIONARY 111 (7th ed.1999). An institution is 'an established society or corporation: an establishment or foundation esp. of a public character,' WEBSTER'S 3D NEW INT'L UNABRIDGED DICTIONARY 1171 (1993); or '[a]n established organization, esp. one of a public character....' BLACK'S LAW DICTIONARY 801 (7th ed.1999)." *Midrash Sephardi*, 366 F.3d at 1230-31.

churches for purposes of RLUIPA, as the persons at schools are certainly collected together for a common purpose and considered established societies.

The Church has already provided evidence of at least two similarly situated secular institutions for which the City approved CUP applications to operate in the RS-1 zoning district. In 1994 the City approved a CUP application submitted by Leah Hudson to operate a private secular elementary school in the City's RS-1 zoning district. ***Ex. 19***. Likewise in 1995, the City approved a CUP for a public secondary school in the RS-1 district. ***Ex. 20***. Thus by approving these secular institution's CUP applications in the same zoning district as the Church, but refusing to approve the Church's application, the City has treated the Church on less than equal terms as compared with similarly situated secular assemblies. *See Konikov*, 410 F.3d at 1327. Consequently, the City has violated RLUIPA's Equal Terms provision by making a discriminatory application of its LDC.

Thus, the City's conduct and differential treatment indicate that the Church has a strong likelihood of succeeding on the merits of its Equal Terms claim.

c. The City Has Violated RLUIPA's Unreasonable Limitations Clause

Plaintiff can also demonstrate a strong likelihood that it will succeed on the merits of its claim under RLUIPA's Unreasonable Limitations provision.

The Unreasonable Limitations provision states that "[n]o government shall impose or implement a land use regulation that . . . unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3). Unlike RLUIPA's Substantial Burden and Equal Terms clauses, the case law interpreting the unreasonable limitations provision is relatively sparse. Nevertheless, an analysis of the available case law demonstrates clearly that the

City's actions and decisions have imposed an unreasonable limitation on the Church's religious exercise.

In *Konikov v. Orange County,* the Middle District of Florida noted that "[the exclusion and limitations] provision suggests that Congress contemplated that religious assemblies could be *reasonably* limited within a jurisdiction…." 302 F. Supp. 2d 1328, 1346 (M.D. Fla. 2004) (emphasis added). In quoting RLUIPA's legislative history, the court noted that RLUIPA does not "provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, *where available without discrimination* or unfair delay." *Id.* at 1345-56 (emphasis added).

Unlike the situation in *Konikov*, the City's actions here cannot be considered a *reasonable* limitation on the Church. As the Church has demonstrated, the Property is the only parcel available within the City that is able to accommodate the Church's needs. Further, the City's LDC is incredibly restrictive on religious assemblies, requiring them to apply for special dispensation in order to operate in eleven of the City's thirteen zoning districts while at the same time permitting other similar secular assemblies to operate as a matter of right. Thus it is apparent that the City's land use regulations are *not* available to the Church without discrimination, as *Konikov* requires. Therefore, the reasoning in *Konikov* strongly supports the Church's claim that the City has unreasonably limited its religious exercise.

Another decision from the Southern District of Florida is also instructive. In the case, an orthodox Jewish outreach center sued Cooper City because it was unable to rent space and purchase property within the City. *Chabad of Nova v. City of Cooper City*, 575 F. Supp. 2d 1280, 1285 (S.D. Fla. 2008). The Chabad based its argument on the manner in which the Southern

District of Florida should determine the meaning of "reasonableness" on RLUIPA's legislative history. *Id.* at 1289-90. The City's land use ordinance prohibited religious assemblies from locating in commercial areas. *Id.* at 1283. Based on this prohibition, the Chabad presented evidence that it would need to buy, on average, five properties in order to meet the City's frontage requirements in a residential zone. *Id.* at 1290. To do so would cost anywhere from $880,000 to more than $2.5 million. This added cost effectively rendered the Chabad, and other religious assemblies, unequal market participants in comparison with secular land users. *Id.*

The Court found that the City's ordinance violated the unreasonable limitations provision because of the limited availability of property that would allow for religious assemblies to locate in the City, the inflated costs for religious entities to locate, and the more rigorous requirements imposed on religious assemblies as compared to other similar, secular uses. *Id.* The Court further explained that, "[w]hile it is true that religious assemblies cannot complain when they are subject to the same marketplace for property as are all land users…religious assemblies are not participating in the same marketplace when they are required to aggregate anywhere from 2–7 times the number of properties as the average land user and required to obtain more frontage than any other non-residential uses in the same district." *Id.*

The *Chabad of Nova* decision seems to indicate that if a religious institution is treated unreasonably in its attempt to locate within a particular municipality, and the municipality does not provide the institution with reasonable alternatives, then the municipality likely has imposed an unreasonable limitation in violation of RLUIPA. Here, the Jacksonville Beach LDC contains thirteen distinct zoning districts, eleven of which prohibit religious assemblies as of right and instead require religious assemblies to obtain conditional use permits to operate. *See* ***Ex. 8 at 34-336 – 34-348***. At the same time, several of these districts in which religious assembly requires

special permission allow similar secular assemblies to operate as of right. *See* ***id***. The LDC's blatant differential treatment of religious assemblies provides concrete evidence that the City has imposed an unreasonable limitation on the Church in violation of RLUIPA.

Another relevant case is *Vision Church, United Methodist v. Village of Long Grove,* 468 F.3d 975, 990 (7th Cir. 2006). In *Vision Church*, the Church found that the Village's requirement that a church obtain a special use permit, variance, or other exception did not violate RLUIPA's unreasonable limitations provision unless similar requirements were not imposed on secular institutions. *Id.* at 991. Here, the City's LDC does, in fact, facially treat religious institutions differently than secular institutions by singling out religious institutions and requiring them, but not similar secular entities, to obtain special use permission in order to operate in eleven of the City's thirteen districts.

Thus, Plaintiff has a strong likelihood of success on the merits of its Unreasonable Limitations claim under RLUIPA.

II. Plaintiff Will Suffer Irreparable Injury if an Injunction does not Issue

As set forth in this Brief, Plaintiff will suffer irreparable injury if the preliminary injunction does not issue.

"[T]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Further, where an infringement on First Amendment rights is demonstrated, the Eleventh Circuit also recognizes that an irreparable injury is presumed. *See Cate v. Oldham*, 707 F.2d 1176, 1189

(11th Cir. 1983). It follows from *Elrod* and *Cate* that violations of RLUIPA constitute irreparable harm, as RLUIPA is broadly construed to protect First Amendment freedoms and religious exercise. *See* 42 U.S.C. § 2000cc-3(g) ("This chapter shall 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."); *see also Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F. Supp. 2d 766, 795 (D. Md. 2008) ("[T]he infringement of one's rights under RLUIPA constitute[s] irreparable injury.").[2]

In this case, the Church is suffering irreparable harm that will continue so long as an injunction does not issue. As a direct result of the City's violations of RLUIPA, the Church is unable to exercise its First Amendment right to the free exercise of its religion. The City's RLUIPA violations have directly deprived Plaintiff of its First Amendment right to the free exercise of its religion, a deprivation that cannot be adequately compensated through monetary damages after trial. So long as the Church is unable to use the Property for religious assembly purposes, it is effectively prevented from carrying out its religious mission. Notably, neither the City nor the courts are permitted to second-guess the wisdom of Lighthouse's religious activities. *Hobbie v. Unemployment Appeals Comm'n,* 480 U.S. 136, 144 n. 9 (1987) ("In applying the Free Exercise Clause, courts may not inquire into the truth, validity, or reasonableness of a claimant's religious beliefs."). An injunction that enables Plaintiff to proceed with the development of the Property for religious purposes will prevent the temporary or permanent loss Plaintiff will surely suffer if injunctive relief were denied.

Thus, Plaintiff has shown it is suffering irreparable harm.

III. The Balancing of Hardships Tips in Plaintiff's Favor.

[2] Similarly, federal courts held violations of RLUIPA's predecessor statute, the Religious Freedom and Restoration Act, to constitute irreparable harm. *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) ("[C]ourts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA.").

In weighing the balance of hardships between the Church and the City, it is apparent that the Church will face the greater hardship if an injunction does not issue. As the Supreme Court has long held, "private religious speech...is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). As outlined above, if an injunction issues, the City will simply be forced to make an exception to its LDC and allow the Church to operate a religious assembly at the Property, the only property available within the City that can accommodate the Church's logistical needs and thus allow it to fulfill its religious mission. In contrast, if an injunction does not issue, the City will interfere with, inhibit and suppress the Church's ability to freely exercise its religious viewpoint, a fundamental right that is fiercely protected by the First Amendment.

Accordingly, balance of hardships tips in favor of issuing the permanent injunction.

IV. A Preliminary Injunction Will Serve the Public Interest.

The public interest is served whenever First Amendment and related constitutional rights are protected as the result of a preliminary injunction being issued. "As noted, even a temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance. For similar reasons, the injunction plainly is not adverse to the public interest. The public has no interest in enforcing an unconstitutional ordinance." *KH Outdoor, LLC v. City of Trussville,* 458 F.3d 1261, 1272 (11th Cir. 2006). As noted above, the City's RLUIPA violations that Plaintiff seeks to enjoin through this motion directly impact the Church's First Amendment right to the free exercise of its religion. Therefore, the issuance of the requested preliminary injunction will serve the public interest as a matter of law. The preliminary injunction Plaintiff seeks from this Court would also serve the public interest in that it would ensure, during the pendency of the preliminary

injunction, that the City interpret its LDC in a manner that treats churches and other religious assemblies equally when compared with similar secular assemblies. It would also ensure that Defendant will not be able to deny Plaintiff and any other similarly situated churches and landowners their constitutional rights.

Accordingly, the Court should issue the injunction, as it will serve the public interest.

CONCLUSION

The evidence herein shows that Plaintiff Church of Our Savior has met all four elements necessary for this Court to issue a Preliminary Injunction to halt the City from enforcing its discriminatory LDC and to command the City process and issue all permits necessary in order to allow Plaintiff to operate its church at the Property. Most importantly, the evidence shows that Plaintiff has a strong likelihood of success on the merits of its Substantial Burden, Equal Terms, and Unreasonable Limitations claims under RLUIPA based on the City's refusal to allow Plaintiff to use the Property for religious assembly purposes and the blatant differential treatment that religious assemblies are subject to under the LDC when compared to similar secular institutions. An injunction will act to save Plaintiff from further irreparable injury. Additionally, a preliminary injunction in the nature that Plaintiff seeks will not cause damage to the City and is in the best interest of the public.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court GRANT its Motion for Preliminary Injunction and issue an Order that enjoins Defendant City of Jacksonville Beach from denying Plaintiff the right to use its Property for religious assembly and enforcing its LDC in a manner that prevents Plaintiff from using the Property as a Church with religious assembly. Additionally, Plaintiff seeks an injunction that commands the City to process and issue all permits that are necessary to allow Plaintiff to use the Property as a "Church" for religious

assembly. Plaintiff also requests this Court grant the attorney fees and costs incurred in maintaining this claim, and grant such other equitable relief the Court deems appropriate.

Respectfully Submitted,

DALTON & TOMICH, plc

/s/ Daniel P. Dalton
Daniel P. Dalton
Lead Attorney for Plaintiff – *Pro Hac Vice -pending*
41000 Woodward Ave. Suite 345 East
Bloomfield Hills, MI 48304
(248) 971-2400
(248) 971-1906 (Fax)
ddalton@daltontomich.com

and

Stambaugh & Associates, P.A.
Charles L. Stambaugh
Attorney for Plaintiff
Florida Bar No. 35032
841 Prudential Drive, 12th Floor
Jacksonville, FL 32207
(904) 371-1945
stambaughlaw@att.net

Dated: October 15, 2013

Certificate of Service

I HEREBY CERTIFY that I have on this 15th day of October, 2013, served a copy of the foregoing on counsel for all parties to this proceeding by operation of the Court's CM/ECF system.

/s/ Charles Stambaugh
Attorney for Plaintiff