06-1329

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETRA PRESBYTERIAN CHURCH	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
VILLAGE OF NORTHBROOK,	)
	)
Defendant-Appellee	)

Appeal from the Unites States District Court
for the Northern District of Illinois, Eastern Division
No. 03 C 1936 (Honorable Blanche Manning)

BRIEF OF DEFENDANT-APPELLEE

Steven M. Elrod
Donald G. Mulack
Adam M. Kingsley
Holland & Knight LLP
131 S. Dearborn Str, 30th Floor
Chicago, Illinois 60603
(312) 263-3600

Attorneys for Defendant-Appellee

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 06-1329

Short Caption: Petra Presbyterian Church v. Village of Northbrook

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Village of Northbrook

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Holland & Knight LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: _____ Date: 08/07/06

Attorney's Printed Name: Adam M. Kingsley

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** _____ **No** _____

Address: 131 S. Dearborn, 30th Floor, Chicago, Illinois, 60603

Phone Number: 312-928-6027 Fax Number: 312-578-6666

E-Mail Address: adam.kingsley@hklaw.com

rev. 11/01 AK

REFRESH

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases **Page**

Statutes

Jurisdictional Statement

Plaintiff-Appellant's Jurisdictional Statement is complete and correct. This Court has jurisdiction based upon 28 U.S.C. §1291, as the District Court's January 11, 2006 Order, which granted the Defendant-Appellee's motion for summary judgment on all federal claims and declined supplemental jurisdiction over state law claims, was a final decision that fully terminated the litigation.

Statement of the Issues

1. Whether the District Court correctly concluded that a provision of the Village's Zoning Code that treats religious and non-religious assembly uses equally by excluding them both from industrial districts, but makes more than 70% of the land within the Village available to religious assembly uses, does not violate the United States Constitution or the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").

2. Whether the District Court correctly concluded that Petra's request for injunctive relief, which is premised upon a facial challenge to a now-repealed provision of the Village's Zoning Code, is moot.

3. Whether the District Court correctly concluded that Petra's claim for money damages, which is premised upon a facial challenge to a now-repealed provision of the Village's Zoning Code, is barred by the two-year statute of limitations.

4. Whether the District Court correctly concluded that Petra's as-applied challenge to the Village's consideration of Petra's application for zoning relief is not ripe because Petra withdrew its application before the Village took any final action on the application.

Statement of the Case

Petra has accurately stated the procedural history of this case. However, Petra has mischaracterized the nature of the case.

This case involves Petra's challenges to an amended section of the Village's Zoning Code (the "2003 Ordinance") and a now-repealed section of the Village's Zoning Code (the "1988 Ordinance").[1] These sections concern the regulation of religious assembly uses in the Village, and specifically preclude the operation of religious assembly uses in Industrial zoning districts. Under both the repealed and the amended sections of the Zoning Code, Petra is prohibited from operating its church on property it owns in an industrial park.

In October 2001, knowing full well that it lacked zoning authorization for a church use, Petra purchased a warehouse property (the "Property") in the Sky Harbor Industrial Park ("Sky Harbor"). The Property, and Sky Harbor as a whole, were, at all times, zoned I-1 (Restricted Industrial District). Eighteen months later, in May 2003, while still lacking zoning authorization, Petra began to operate a church on the Property in violation of both the Village's zoning and building codes. In the present lawsuit, Petra sought injunctive relief that would allow it to operate its church despite the lack of zoning authorization, but the District Court denied Petra's motion for a preliminary injunction. The District Court ultimately granted

1 The Village's Zoning Code was re-codified in its entirety in 1988 and has been amended from time to time since then. The terms "1988 Ordinance" and the "2003 Ordinance" refer to the those sections of the Zoning Code at issue in this case, *i.e.*, the sections that regulate religious and non-religious assembly uses, not to the Zoning Code as a whole.

summary judgment to the Village on Petra's federal claims and declined to exercise supplemental jurisdiction over Petra's state-law claims.

Petra asserts that the 2003 Ordinance, which prohibits all assembly uses in industrial districts, but which allows religious assembly uses to locate in more than 70% of the Village, violates the United States Constitution and RLUIPA. Petra also asserts that the 1988 Ordinance, which is no longer in effect, was unconstitutional. Petra seeks both injunctive relief and money damages based upon that assertion.

Statement of Facts

The Village's Current Zoning Treatment of Religious Assembly Uses.

The Village is comprised of 17 square miles, Doc. No. 117 (Statement of Agreed Facts) ¶ 25, and according to the 2000 census, has a population of 33,435. In relation to its size, the Village has numerous and diverse religious uses. There are currently at least 20 sites in the Village dedicated to religious assembly and worship. *Id.* ¶ 25. Such uses include synagogues, churches of various denominations, and an Islamic cultural center. *Id.* ¶ 25; Doc. No. 118 (Village's Individual Statement of Facts) ¶ 1.

The Village's Zoning Code establishes the basic framework for the locations within the Village that various types of land uses -- including religious assembly uses (classified as "Religious Organizations") and secular "assembly uses" (classified as "Membership Organization") -- may locate. Doc. No. 117, ¶¶ 12, 113, 116, 117. The Zoning Code's provisions regarding the location of these assembly uses was last amended in April 2003 (the "April 2003 Amendment"). *Id.* ¶¶ 113, 117. The April

2003 Amendment was the result of a legislative process that began in 2001 and ended with the adoption of the 2003 Ordinance. *Id.* ¶¶ 103, 113.

Under the 2003 Ordinance, Religious Organizations are allowed as permitted uses in two residential zoning districts (R1 and R2), and as special permit uses in 16 additional zoning districts. *Id.* ¶ 116.[2] However, neither Religious Organizations, nor secular Membership Organizations, may locate in either of the Village's two industrial zoning districts (I-1 and I-2). *Id.* ¶ 117, 127.[3]

Under the 2003 Ordinance, more than 70% of the land in the Village is located within zoning districts that allow Religious Organizations either as permitted or special permit uses. *Id.* ¶ 119. Petra, however, chose to purchase property located in an I-1 Industrial zoning district, an area of the Village that was never contemplated for use by Religious Organizations, and in which Religious Organizations are not permitted. *Id.* ¶ 117.

---

2 Under the Zoning Code, the Village Board of Trustees ("Village Board") is the body charged with approving or denying requests for re-zonings and special permits. Doc. No. 117, ¶ 21. This provision of the Zoning Code was unaffected by the April 2003 Amendment. On July 14, 2006, the Governor of Illinois signed into law Public Act 94-1027, which provides that municipal decisions regarding Special Use Permits are, like decisions regarding re-zonings, legislative acts, subject to *de novo* court review.

3 Despite the exclusion of Religious Organizations and Membership Organizations from Industrial zoning districts, a Religious Organization or Membership Organization that desires to operate an assembly use on property currently zoned I-1 Industrial can seek to re-zone its property to a classification that allows such a use. *Id.* ¶ 128. In addition, if a Membership Organization was legally located in an I-1 Industrial district prior to the April 2003 Amendments, the Membership Organization may continue to operate on the site as a legal non-conforming use. *Id.* ¶ 129.

The Village's Zoning Treatment of Religious Assembly Uses Prior to April 2003.

Prior to the April 2003 Amendment, the Village regulated Religious Organizations by requiring that they be located only in an Institutional Building (IB) zoning district, and then only upon approval as a special permit use. *Id.* ¶ 21. Thus, under the 1988 Ordinance, a Religious Organization that desired to operate a religious use on property outside of an existing IB district had to apply for both a zoning map amendment and a special permit. *Id.* ¶ 21. Unlike Religious Organizations, secular Membership Organizations, such as union halls, were allowed to locate in I-1 and I-2 zoning districts as permitted uses. This differential treatment was based on the then-prevailing land planning assumption that Membership Organizations would complement the industrial uses allowed in industrial districts and thus should be allowed in the same areas. *Id.* ¶ 14.

Despite the need for a zoning map amendment and special permit approval, between the adoption of the 1988 ordinance and the enactment of the April 2003 Amendment, eleven Religious Organizations applied for re-zoning to IB and a special permit. *Id.* ¶¶ 24, 66. Ten of those organizations successfully obtained the requested zoning map amendment and special permit. *Id.* ¶ 24. The eleventh was Petra who, in May 2001, withdrew its application before final action could be taken by the Village Board. *Id.* ¶¶ 66, 81-83.

Although the required zoning relief sought by Religious Organizations was consistently granted by the Village under the 1988 Ordinance, *id.* ¶ 24, the Village initiated, in 2001, a legislative process that ultimately produced the April 2003

Amendment. *Id.* ¶¶ 101-03. The Village began this process in response to obligations imposed by RLUIPA, specifically RLUIPA section 2(b) (codified as 42 U.S.C. §2000cc(b)), which, the Village believed, required the Village to eliminate facial zoning distinctions between Religious Organizations and secular Membership Organizations. *Id.* ¶¶ 101-03; Doc. No. 118, ¶ 2.

Petra's Identification of the Sky Harbor Property.

Since 1997 or 1998, Petra has conducted worship services at Holy Trinity Lutheran Church in the neighboring Village of Glenview, Illinois. Doc. No. 117, ¶ 30. Sometime before 2000, Petra formed a committee to search for a building that Petra could purchase and operate as a church, and retained an experienced real estate broker to assist in the search. *Id.* ¶ 35.

In February or April 2000, Petra identified the Property as a potential site for its church. *Id.* The Property was (and is) located within Sky Harbor, a T-shaped area of land in the Village, bordered on the north by the Edens Highway Spur / Interstate 94. *Id.* ¶ 38. Sky Harbor is a "24 hour-a-day, 7 day-a-week industrial park" with constant truck traffic. *Id.* ¶ 39. Because of the industrial nature of the uses located in Sky Harbor, the industrial park generates an unusually large number of emergency 9-1-1- calls. *Id.* ¶ 40; Doc No. 118, ¶ 3. The buildings in Sky Harbor surrounding the Property house industrial uses, including a grinding polishing and stamping business, a tool and dye company, a heating and air conditioning company, an electrical contractor, a plumbing company, and a laboratory. Doc No. 117, ¶ 41.

Petra's Contingent Contract to Purchase Property and its Aborted Zoning Efforts.

On October 10, 2000, at Petra's request, the Village's Board conducted a "preliminary review" of Petra's application to: (1) re-zone the Property to IB, and (2) issue a special permit for a Religious Organization use. *Id.* ¶ 62. At the "preliminary review," the Village Board provided Petra with informal and non-binding feedback. *Id.*

In accordance with the Zoning Code, the "preliminary review" is the first step of a multi-step process that the Village undertakes when considering an application for zoning relief. *Id.* Subsequent to review by the Village's planning staff and preliminary review by the Village Board, an applicant seeking zoning relief must submit a formal application. Doc. No. 131 (Appendix of Exhibits to Statement of Agreed Facts), Ex. 1, pp. 306-08, 388-91. The application is then reviewed by the Village's Plan Commission, an advisory body. *Id.* The Plan Commission is responsible for conducting a public hearing and making a non-binding recommendation concerning the application to the Village Board. *Id.* The Village Board has ultimate and exclusive authority to grant or deny the application. *Id.* The Village Board acts on the application only by formally voting to grant or deny the application at a regular or special public meeting. *Id.*

On December 8, 2000, Petra entered into a contract to purchase the Property for $2.9 million. *Id.* ¶ 63. At the time it signed the contract, Petra knew that, to lawfully operate a church on the Property, it would need zoning relief from the Village. *Id.* ¶ 64. Thus, to protect itself, Petra included in its purchase contract a

"zoning contingency" clause that allowed Petra to terminate the contract if it did not obtain the necessary zoning relief. *Id.* ¶ 65.

On December 26, 2000, with the legal assistance of an experienced Illinois land use law firm, then known as Piper Rudnick (and now known as DLA Piper Rudnick Gray Cary), Petra, as the contract purchaser, submitted a formal application to the Village seeking zoning relief for the Property in the nature of a re-zoning/zoning map amendment from the I-1 Industrial district to the IB Institutional Building district, and a special permit for a Religious Organization use. *Id.* ¶ 66. On February 20, 2001 and April 3, 2001, the Plan Commission held public hearings on Petra's application. *Id.* ¶¶ 73, 75. At the April 3, 2001 public hearing, various surrounding property owners in Sky Harbor expressed concern that a religious assembly use near their properties would lead to land use conflicts, including safety problems, and could impair the operation of their businesses. *Id.* ¶ 76. At its April 17, 2001 meeting, the Plan Commission recommended to the Village Board that Petra's application be denied. *Id.* ¶ 78.

On May 8, 2001, the Village Board held a meeting at which it reviewed Petra's application and the Plan Commission's recommendation. *Id.* ¶ 79; Doc No. 131, Ex. 25. At that meeting, the Village Board asked Village staff to prepare, for the Village Board's review and consideration at a future meeting, documents that would be consistent with denial of Petra's application. *Id.* ¶ 81; *Id.* Ex. 25. Significantly, the Village Board did not, at that May 8, 2001 meeting, formally vote, or take final action, on Petra's application. *Id.* ¶ 81.

Subsequent to the May 8, 2001 meeting and prior to any other meeting of the Village Board, Petra's attorney sent the Village a letter dated May 17, 2001, a copy of which has been reproduced as Exhibit A to this Brief, advising the Village that Petra was formally withdrawing its application for zoning relief. *Id.* ¶ 83; Doc. No. 131, Ex. 26 [4]. Because Petra voluntarily withdrew its application, the Village Board was never afforded the opportunity to formally act on Petra's application, and never did vote on the application. *Id.* ¶ 83.

Petra's Purchase of the Property.

After withdrawing its application, Petra terminated its contingent contract for the purchase of the Property. Doc. No. 117, ¶ 84; Doc. No. 118, ¶ 4. But shortly thereafter, Petra negotiated a new contract and purchased the Property in October 2001 without any assurance of Village zoning approval. *Id.* Under the re-negotiated contract terms, the "zoning contingency" clause was eliminated and the price of the Property was reduced by $300,000 to $2.6 million. Doc. No. 117, ¶¶ 84-85. Subsequent to its purchase of the Property in October 2001, Petra never submitted a new or revised application to the Village for zoning relief. *Id.* ¶ 86. [5]

4 Exhibit 26 in the parties' Appendix of Exhibits to Statement of Agreed Facts, Richard Klawiter's May 17, 2001 letter is attached hereto as Exhibit A.

5 It is not true, as Petra asserts, *see* Petra's Brief at 12, that had Petra's re-zoning and special use application been formally denied by the Village, Petra would have been "forever barred" from seeking zoning relief. Doc. No. 119 (Village's Response to Petra's Individual Statement of Facts), ¶ 45.

The State Court Injunction.

In May 2003, the Village first received information that Petra was operating a Religious Organization use on the Property contrary to the Village Zoning Code, and might be in violation of other Village zoning and building regulations. Doc. No. 118, ¶ 5. On May 21, 2003, the Village filed a Complaint and Motion for Temporary Restraining Order in the Circuit Court of Cook County (No. 03 CH 8779). Doc. No. 117, ¶ 94. The Village's Complaint alleged that Petra was in violation of the Village's Building Code due to non-compliance with health/safety regulations, and the Village sought a temporary restraining order that would prohibit Petra from using the Property in violation of its codes. *Id.*

On May 28, 2003, the Circuit Court of Cook County issued a temporary restraining order that limited Petra's use of the Property. *Id.* ¶ 97. On June 18, 2003, the Circuit Court entered a preliminary injunction order that enjoined Petra and its attendees "from occupying the indoor premises of the [Property] in numbers exceeding 60 persons total at one time limited to general business purposes for meetings, classes, choir practice, office and business use, and washroom use." *Id.* ¶ 98. On April 28, 2004, the Circuit Court entered an Agreed Permanent Injunction Order, which made the preliminary injunction permanent. Petra never appealed any of these three orders. *Id.* ¶ 99.

Summary of the Argument

The Village's 2003 Ordinance does not violate the United States Constitution or RLUIPA. With respect to the ability to locate in Sky Harbor, the 2003 Ordinance

treats religious and non-religious assembly uses in the same manner -- neither may locate in Sky Harbor -- and the exclusion of all assembly uses from industrial districts is justified by sound planning principles. Further, more than 70% of land within the Village is available for religious assembly use, and Petra never demonstrated that it is unable find a site in a zoning district where religious assembly uses are allowed.

Given that the 2003 Ordinance complies with federal law, Petra's claim for injunctive relief based upon the 1988 Ordinance is moot. Petra asserts that its alleged "reliance" on the 1988 Ordinance (*i.e.*, its belief that the 1988 Ordinance was unconstitutional) gives it a "vested right" to zoning approval under Illinois law (and, therefore, allows it injunctive relief). Issues related to Petra's claim of vested rights are not, however, for this Court to decide, as vested rights is a state-law claim that was dismissed by the District Court. But in the event that this Court determines that it has jurisdiction over Petra's state-law vested rights claim, the Court should conclude that, under Illinois law, Petra did not have a vested right.

Petra's claim for money damages based upon the alleged facial unconstitutionality of the 1988 Ordinance is barred by the applicable statute of limitations.

Finally, Petra's attempt to challenge a May 2001 Village "decision" on Petra's re-zoning application fares no better. That claim simply is not ripe. There was no Village decision on Petra's re-zoning application because Petra withdrew its application before a final vote by the Village Board could take place.

ARGUMENT

I. The Village's 2003 Zoning Ordinance Does Not Violate RLUIPA's "Substantial Burden" Provision.

Because it is the only claim raised by Petra on appeal that is indisputably ripe, the Village begins with Petra's assertion that the 2003 Ordinance violates the "substantial burden" provision of RLUIPA codified as 42 U.S.C. §§2000cc(a)(1). *See* Petra's Brief at 24-28.

The Village agrees with Petra that the Property is located in the I-1 Industrial zoning district and that, under the 2003 Ordinance, assembly uses, including religious assembly uses, are not allowed in the Village's I-1 and I-2 Industrial districts. Doc. No. 117, ¶ 117. However, as this Court made clear in *Civil Liberties for Urban Believers ("CLUB") v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003), a church's inability to operate at its preferred location is not a "substantial burden" under RLUIPA.

In *CLUB*, the plaintiffs argued that the City of Chicago's decision to exclude churches from manufacturing districts and to require special use permits in business and commercial districts was a "substantial burden" on the exercise of their religion. This Court rejected the plaintiffs' argument and held that even if some of the plaintiffs could not operate at their preferred sites, there was no violation of RLUIPA because there was ample opportunity to locate in other parts of the city. *CLUB*, 342 F.3d at 760-62.[6] *See also Midrash Sephardi, Inc. v. Town of*

6 Thus, Petra's suggestion that "Northbrook, by forcing Petra to search around for a different property . . . has imposed a substantial burden on Petra's exercise of religion in violation of RLUIPA," *see* Petra's Brief at 27, posits an interpretation of "substantial

Surfside, 366 F.3d 1214, 1228-28 (11th Cir. 2004) (inability to locate synagogue in a particular zoning district close to worshipers' homes was not a substantial burden under RLUIPA).

As a factual matter, the District Court found that Petra *does* have the opportunity to locate elsewhere in the Village. *See Petra Presbyterian Church v. Village of Northbrook*, 409 F.Supp.2d 1001, 1007 (N.D. Ill. 2006) ("Petra's argument fails to account for other areas of Northbrook where churches are allowed. For instance, Petra points to no evidence about the availability of land in the non-residential districts, including commercial districts where churches are allowed with a permit."). On appeal, Petra argues that it is "practically impossible for Petra to locate its church elsewhere in Northbrook," *see* Petra's Brief at 25, but despite the District Court's conclusion to the contrary, Petra fails to provide a single record cite to support this critical argument. *See* Petra's Brief at 25-26.[7]

Petra cites *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005), for the proposition that "by forcing Petra to search for a different property . . . the Village has imposed a substantial burden on Petra's exercise of religion in violation of RLUIPA." Petra's Brief at 27. In *New Berlin*, this Court found a RLUIPA "substantial burden" violation when a city refused to grant a religious institution's requested zoning change (*i.e.*, rezoning

---

burden" that the Court *specifically rejected* in *CLUB*.

7 Petra's Statement of Facts mentions Petra's alleged inability to locate in the Village, *see* Petra's Brief at 15-16, but this limited discussion of land in the Village's R-1 and R-2 residential districts is precisely what the District Court found to be *insufficient* to prove that no other sites were available.

from residential to institutional) *and* the city offered no legitimate reason for its refusal. *New Berlin*, 396 F.3d at 899-900.

New Berlin is distinguishable on several grounds. Significantly, the plaintiff in *New Berlin* made an as-applied challenge to the city's denial of its site-specific re-zoning application. Here, Petra is not challenging the denial of a specific re-zoning request (indeed, Petra has made no effort to seek a re-zoning subsequent to the adoption of the 2003 Amendment). Instead, Petra is challenging a provision that bans *all* assembly uses from Industrial districts.

Now it is true that the April 2003 Amendment was designed to further restrict assembly uses in Industrial districts, Doc. No. 117, ¶ 118, and while Petra has not sought a re-zoning since the Amendment was enacted, denial of such a request would be consistent with the Village's planning principles. But even if the Court were to assume that the 2003 Ordinance totally forecloses any re-zoning of the Property to religious assembly use, this would not create a substantial burden under *CLUB* or *New Berlin.*

New Berlin's specific holding is that when a religious organization submits a re-zoning application and *there is no rational reason* to deny the application, there may be a substantial burden. *Id.*, 396 F.3d at 899-900 (it was not rational and, therefore, a substantial burden for the city to deny zoning relief where the applicant provided "complete satisfaction" for the contingency that purportedly concerned the city). It is not possible for this Court to evaluate the Village's reasons for "denial" when no zoning application has been submitted, let alone denied. However, as to

the Village's *overall* zoning framework, it is undisputed that the 2003 Ordinance, which equally excludes both religious and secular assembly uses from Industrial districts, serves rational health, safety and planning purposes. Doc. No. 117, ¶ 118; Doc. No. 118, ¶¶ 17-18. *See also Petra Presbyterian,* 409 F.Supp.2d at 1007-08. Therefore, because the Village's exclusion of Religious Organizations from Industrial zoning districts *is* justified by rational planning, Petra, unlike the church in *New Berlin,* cannot provide "complete satisfaction" to satisfy the Village's legitimate planning concerns regarding the operation of a Religious Organization in an Industrial zone.

Because the Village makes ample land available for Religious Organizations in non-industrial areas of the Village, and because its exclusion of all assembly uses from industrial zones is rational, the District Court was correct to conclude there is no substantial burden or violation of RLUIPA under either the *CLUB* or *New Berlin* framework.

II. The Village is Entitled to Summary Judgment on Petra's Challenges to the 1988 Ordinance.

The bulk of Petra's brief is devoted not to the current version of the Village's Zoning Code, but rather to a prior version that contained the now repealed 1988 Ordinance.

Petra commenced this litigation in March 2003, well after the Village had initiated the process to amend the 1988 Ordinance. In April 2003, the Village completed the amendment process, adopted the April 2003 Amendment, and cured any arguable *de jure* difference in its treatment of religious and non-religious

assembly uses in its Industrial districts.[8] Yet Petra has persisted in its lawsuit and insists that the District Court should have ruled, and that this Court should now rule, on the constitutionality of the 1988 Ordinance. But, Petra's insistence does not entitle it to such a ruling because its claims regarding the 1988 Ordinance are either moot or not ripe.

With respect to its request for injunctive relief based upon the alleged infirmities in the 1988 Ordinance, this claim is mooted by the April 2003 Amendment. Petra asserts that the alleged unconstitutionality of the 1988 Ordinance somehow gives it a vested right to zoning approval. Petra's vested rights theory is, however, ultimately premised upon *state law*. In dismissing Petra's state-law claims, the District Court necessarily passed on to the state court both the underlying claim of vested rights and, to the extent necessary to decide the state law claim, subsidiary questions regarding the 1988 Ordinance. All issues associated with Petra's vested rights theory are, therefore, for the state court to decide.[9]

If, however, this Court accepts Petra's invitation to rule on its state law vested rights claim, this Court should find that, under Illinois law, Petra lacks a vested right *regardless* of whether or not the 1988 Ordinance was unconstitutional.

---

8 Interestingly, despite the prior codified difference in the treatment of religious and secular assembly uses, during the 15 year period of time between the adoption of the 1988 Ordinance and the adoption of the 2003 Ordinance, numerous religious institutions in the Village applied for and successfully obtained the necessary zoning relief to allow for operation in areas formerly zoned industrial. Doc. No. 117, ¶ 24.

9 Petra, in fact, has filed a state court law suit in which it has brought its vested rights and other state-law claims. *See Petra Presbyterian Church v. Village of Northbrook*, 06 L 050132 (Circuit Court of Cook County). This suit is pending in the Circuit Court of Cook County, Illinois.

With respect to money damages, Petra's injury, *i.e.*, its alleged inability under the 1988 Ordinance to locate in industrial districts on the same terms as secular assembly uses, was known to Petra long before it commenced this lawsuit. Petra knew of this alleged zoning disparity, *at the very latest*, when Petra voluntarily filed its re-zoning application in December 2000, nearly three years before it filed this lawsuit. Its claim for money damages based upon a facial challenge to the 1988 Ordinance is, therefore, time-barred by the applicable two-year statute of limitations.

With respect to Petra's as-applied challenge to the Village's alleged "denial" of Petra's December 2000 application for zoning relief, that claim simply is not ripe because Petra withdrew its application before the Village ever voted on it.

In sum, the District Court did not need to address issues relating to constitutionality of the 1988 Ordinance. Nor does this Court.

A. The April 2003 Amendment Moots Petra's Request for Injunctive Relief Based Upon the Alleged Flaws in the 1988 Ordinance.

There is no dispute that the provisions of the 1988 Ordinance that treated religious assembly uses in a manner different than secular assembly uses were eliminated by the April 2003 Amendment. Doc. 117, ¶¶ 113-15, 117. Because Petra's claim for injunctive relief is based entirely upon alleged constitutional infirmities in the 1988 Ordinance, the April 2003 Amendment moots Petra's claim for injunctive relief.

As this Court has said, "we along with all the circuits to address this issue, have interpreted Supreme Court precedent to support the rule that repeal of a contested

ordinance moots a plaintiff's injunction request, absent evidence that the City plans to or already has reenacted the challenged law or one substantially similar." *Federation of Advertising Industry Representative Inc. ("FAIR") v. City of Chicago*, 326 F.3d 924, 930 (7th Cir. 2003). *See also* CLUB, 342 F.3d at 762 (RLUIPA specifically provides that a municipality may amend a challenged provision to avoid injunctive relief and such an amendment moots RLUIPA claims). Further, whether the Village amended the 1988 Ordinance in an attempt to comply with RLUIPA, or to avoid the risk of losing litigation, is irrelevant. *See FAIR*, 326 F.3d at 931. Simply stated, given the Village's enactment of the April 2003 Amendment, Petra's allegations regarding the repealed 1988 Ordinance, even if true, would not entitle Petra to injunctive relief. Therefore, there is no reason for this Court to opine on the constitutionality of the 1988 Ordinance.

B. Petra's "Vested Rights" Theory Does Not Provide a Reason for the Court to Address the 1988 Ordinance.

1. Petra's Allegations Regarding the 1988 Ordinance Are Part of its Supplemental State-Law "Vested Rights" Claim, Which the District Court Properly Dismissed.

With little analysis, Petra asserts that adjudication of its state-law vested rights claim required the District Court to address the legality of the 1988 Ordinance. *See* Petra's Brief at 20-21. As best the Village can comprehend, Petra's argument goes something like this: (i) at some point in time, Petra "knew" that the 1988 Ordinance was unconstitutional and/or violated RLUIPA (although Petra chose not to challenge it); (ii) because the 1988 Ordinance was unconstitutional and/or violated RLUIPA, the 1988 Ordinance could not prohibit Petra from locating in the I-1

Industrial district; and (iii) under Illinois law, Petra has a vested right to zoning approval that would allow it to locate in the I-1 Industrial district, which right cannot be taken away by the April 2003 Amendment, even if the 2003 Ordinance validly prohibits religious assembly in that zoning district. *Id.*

Each of Petra's legal leaps (including its assertions regarding the 1988 Ordinance) is misguided. But the overriding problem with Petra's theory is its mistaken assumption that the District Court was required to decide the constitutionality of the 1988 Ordinance in the course of adjudicating Petra's state-law vested rights claim (and the corollary argument that this Court should now decide this issue).

As Petra itself alleges, its vested rights claim is based upon *state law*. *See* Petra's Brief at 24 ("Petra's complaint establishes that its right to relief *under Illinois law of vested rights* . . . requires resolution of questions of federal law.") (emphasis added). The Village agrees that a claim of mandamus based upon an alleged "vested right" to zoning approval or a building permit is a recognized cause of action under Illinois law. *See generally 1350 Lake Shore Associates v. Casalino*, 842 N.E.2d 274 (Ill. App. Ct. 2005) (discussing the elements of "vested rights" claim under Illinois law) *appeal allowed*, ___ N.E.2d ___, 218 Ill.2d 558 (Ill. 2006). But Petra does not explain why the *District Court* was obligated to entertain its state law theory.

After ruling for the Village on Petra's federal claims, the District Court declined jurisdiction over Petra's supplemental state-law claims, including the vested rights

claim. *See Petra Presbyterian*, 409 F.Supp.2d at 1008. Petra never challenged that decision at the District Court level. Now, however, Petra suggests that because its state-law vested rights claim depends, in part, on a successful challenge to the 1988 Ordinance (*i.e.*, proving the 1988 Ordinance unconstitutional is an element of Petra's state-law claim) the District Court had *original jurisdiction* over the claim, lacked the authority to relinquish such jurisdiction, and must decide this claim. *See* Petra's Brief at 23-24.

Curiously, Petra never mentions 28 U.S.C. § 1367(c)(3), upon which the District Court relied in declining supplemental jurisdiction after it dismissed all of Petra's federal claims. Instead, Petra cites *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983), and *Seinfeld v. Austen*, 39 F.3d 761 (7th Cir. 1994), for the proposition that Petra's state-law vested rights claim "requires resolution of questions of federal law" and, therefore, triggers original jurisdiction. *See* Petra's Brief at 23-24.

Franchise Tax Bd. interprets the "well-pleaded complaint" rule and provides that "where state law creates the plaintiff's cause of action, there is no federal question jurisdiction unless 'some substantial disputed question of federal law is a necessary element of the well-pleaded state claim' or the 'claim is really one of federal law.'" *In the Matter of the Application of County Collector of the County of Winnebago*, 96 F.3d 890, 895 (7th Cir. 1996) (*quoting Franchise Tax Bd.,* 463 U.S. at 13). That is, when the plaintiff's complaint presents a state law cause of action, the party asserting federal jurisdiction must demonstrate that the "right to relief

necessarily depends on a resolution of a substantial question of federal law." *Id.* at 895-96 (*quoting Franchise Tax Bd.*, 463 U.S. at 27-28). *See generally Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 124 S.Ct. 2363, 2366-68 (2005) (discussing standard for determining federal jurisdiction when federal issues are "embedded" in state-law claims).

At a minimum this means that "the [state] claim will be supported if the federal law is given one construction or effect and defeated if it is given another." *See Dunlap v. G & L Holding Group, Inc.,* 381 F.3d 1285, 1290 (11th Cir. 2004). But, even if "proof of a violation of federal law [or the Constitution] is an element of a plaintiff's state-law cause of action," there is no original jurisdiction unless the federal issue is "substantial." *Id.* at 1291-93. *See also Hays v. Bryan Cave LLP,* 446 F.3d 712, 714 (7th Cir. 2006) (removal of state court suit based upon assertion that the state court would be required to decide issues of federal law was improper, and federal court lacked jurisdiction, as there is "nothing unusual about a court having to decide issues that arise under the law of other jurisdiction."); *Jaskolski v. Daniels*, 427 F.3d 456, 459 (7th Cir. 2005) ("Section 1331 does not permit a defendant in state court litigation to obtain a federal court's resolution of each federal point that may crop up.")

While Petra's state-law "vested rights" claim depends, in part, on its assertions regarding the 1988 Ordinance, Petra's claim also depends on an interpretation of Illinois law. To be sure, for Petra to prevail on its vested rights claim, Petra must prove that the 1988 Ordinance was unconstitutional. But that alone is not enough.

Petra must also establish that, under Illinois law, a property owner who is subject to an unconstitutional zoning ordinance has a "vested right" to use his property in any manner he sees fit (as though the property was not zoned at all), notwithstanding that a valid zoning ordinance is subsequently enacted. If Petra cannot establish this proposition as a matter of Illinois law, then the question of constitutional law (*i.e.*, whether the 1988 Ordinance was unconstitutional is irrelevant).

As discussed in Section II.B.2. below, this formulation of vested rights has never been followed in Illinois, and, indeed has been specifically rejected by Illinois courts. For now, however, it is enough to note that the District Court was authorized to decline supplemental jurisdiction, per §1367(c)(3), and leave *all* issues associated with Petra's vested rights claim to the Illinois courts. Because Petra's success on its state-law vested right claims depends upon *much more* than a resolution of federal law, the District Court was correct not to treat Petra's vested rights claim as a federal claim (*i.e.*, one that would confer original jurisdiction had it been brought alone), and was within its discretion to decline to exercise supplement jurisdiction over this state-law claim.[10]

10 The Village acknowledges that in one of the cases cited by Petra at page 24 of its Brief, *Crown Media, LLC v. Gwinnett County*, 380 F.3d 1317 (11th Cir. 2004), the Eleventh Circuit held that the District Court *should* determine the constitutionality of a repealed ordinance because a ruling on that issue would ultimately help define the plaintiff's rights under Georgia law. *Id.* at 1330. However, in *Crown Media*, the District Court did not specifically decline to exercise supplemental jurisdiction over the state law "vested rights" claim. Rather, it chose to *decide* the state law claim itself. *Id.* at 1323 ("The district court further determined that Crown Media did not possess any vested property rights . . .").

2. If the District Court Had Original Jurisdiction Over Petra's "Vested Rights" Claim, This Court Can Affirm Dismissal, on the Merits, Without Any Analysis of the 1988 Ordinance.

In the alternative, if Petra is correct in its argument that the District Court had original (not supplemental) jurisdiction over the vested rights claim, this Court should affirm dismissal of the state-law vested rights claim on the merits, and it can do so without any constitutional analysis of the 1988 Ordinance.

As the Village argued in the District Court, Petra's state-law vested rights claim fails *regardless* of whether the 1988 Ordinance was constitutional. *See* Doc. No. 114 (Village's Memorandum in Support of its Motion for Summary Judgment) at 13-14; Doc. No. 115 (Village's Combined Response to Plaintiff's Motions for Summary Judgment) at 6-8; Doc. No. 116 (Village's Reply Memorandum in Support of Summary Judgment) at 7-9. There is, therefore, no need to reach constitutional questions regarding the repealed 1988 Ordinance.

Under Illinois law, a "vested right" is a court-recognized right to zoning approval and/or a building permit, notwithstanding a change in the law (*e.g.*, a re-zoning of the property) that makes the proposed project unacceptable under the new law. *See 1350 Lake Shore Associates v. Mazur-Berg*, 791 N.E.2d 60, 73 (Ill. App. Ct. 2003) ("A property owner is entitled to a "vested right" to a prior zoning classification only when it has made substantial expenditures in good faith reliance upon the probability that zoning approval from a municipality is forthcoming.")

To obtain a vested right, the proposed project must be in complete conformity with the existing pre-amendment zoning classification. If the proposed project

requires any discretionary approval (including, significantly, a "special permit," "special use permit" or "conditional use permit"), the developer/applicant is not entitled to a vested right. *Northern Trust Co. v. County of Lake*, 818 N.E.2d 389, 397-99 (Ill. App. Ct. 2004) (where conditional approval is required, it is not "probable" that the project will be approved and there can be no vested right).

Under the 1988 Zoning Code, Petra was required to obtain *both* a re zoning amendment and a special permit. Under these circumstances, any expenditures made by Petra (including its purchase of the Property) were not made in good faith reliance on the probability of zoning approval and, therefore, could not create a vested right to develop the property as a religious assembly use. *Id.* at 398-99.

Petra asserts that its purchase of the Property *was* a substantial expenditure in good faith reliance on the probability that it would receive zoning approval because it "relied" on its assumption that the 1988 Ordinance was unconstitutional. Petra's Brief at 20-21. As characterized by Magistrate Judge Nolan, Petra's argument "is that the 1988 Code's prohibition of religious uses in the I-1 district was 'null and void' and [therefore] that Petra 'was authorized to use its property as a church.'" *Petra Presbyterian Church v. Village of Northbrook*, 2003 U.S. Dist. LEXIS 15105, *41-*44 (N.D. Ill. August 23, 2003) (characterizing Petra's argument but rejecting it as a basis for a preliminary injunction because Petra did "not cite a single case in support of this assertion"). *See also Petra Presbyterian Church v. Village of Northbrook*, 2004 U.S. Dist. LEXIS 3910, *8-*11 (N.D. Ill. March 4, 2004) (District

Court overruled Petra's objections to Magistrate Judge Nolan's Report and Recommendation).

Petra's vested rights theory has no support in Illinois law, and was specifically rejected in *National Advertising Company v. Village of Downers Grove*, 561 N.E.2d 1300 (Ill. App. Ct. 1990). In *Village of Downers Grove*, National alleged that a 1983 version of Downers Grove's sign ordinance was unconstitutional and that National's application to erect a sign must be approved. In 1987, while litigation concerning the 1983 ordinance was pending, Downers Grove amended its sign ordinance, and the trial court found that the new ordinance met all constitutional and statutory standards. *Id.* at 1303-04.

On appeal, National asserted that the trial court erred in applying the 1987 amended version of the ordinance. *Id.* at 1304 ("in a twist of logic, National argues that the 1983 ordinance must apply rather than the 1987 amended ordinance that corrects the asserted unconstitutional regulation."). The Illinois Appellate Court squarely rejected this argument. Indeed, the Illinois Appellate Court specifically rejected National's vested rights theory, which mirrors Petra's theory, including National's contention that "it obtained a vested right to erect its signs in 1983 when its permit applications were denied because the ordinance at that time violated the first amendment." *Id.* at 1304. The Illinois Appellate Court called this argument "illogical." *Id.* It noted that under the 1983 ordinance National never had the right to locate the billboard on the site, and, therefore, the 1987 amended ordinance did not take away any property rights. *Id.* at 1304-05 ("National has not lost a right it

would have had but for the amended ordinance. The amended ordinance did not take away a property right").

National, like Petra, would have preferred to engage in litigation against a repealed zoning ordinance, especially when it recognized that the amended ordinance was perfectly constitutional. But, as *Village of Downers Grove* demonstrates, under Illinois law, the fact that a now-repealed ordinance may have been susceptible to a constitutional challenge does not give a land owner a vested right to challenge the repealed ordinance. Moreover, it does not give the land owner a vested right to avail itself of *any* zoning use under the theory that, because the repealed ordinance was unconstitutional, the property was "un-zoned."

The federal appellate cases that Petra cites, *see* Petra's Brief at 24, do not hold otherwise. Those cases analyze vested rights arguments in the context of a particular state's law. *See*, *e.g.*, *Crown Media*, 380 F.3d at 1325 (holding that "whether a plaintiff had obtained a vested property right on a sign or permit is a question of state law" and examining Georgia law). At the preliminary injunction stage, Magistrate Judge Nolan rejected Petra's vested rights argument because Petra failed to "cite a single case" in support of its vested rights theory. The same thing is true on appeal. Petra not only ignores *Village of Downers Grove,* it fails to cite *any* Illinois cases in support of its theory. Because Illinois courts have rejected Petra's vested rights theory, Petra's vested rights claim should be dismissed on the merits regardless of whether the 1988 Ordinance was unconstitutional.

C. Petra's Facial Challenge to the 1988 Ordinance is Time Barred.

Petra's facial challenge to the 1988 Ordinance is based upon the theory that Petra should have been able to locate in the I-1 District without applying for zoning relief in the same manner as secular Membership Organization uses. Petra filed its complaint in March 2003, several years after it became aware of the fact that, unlike secular Membership Organizations, it could not locate in an Industrial district without first obtaining zoning relief.

In considering a statute of limitation defense to a §1983 claim, it is first necessary to ascertain the nature of the alleged injury and then determine the date on which the plaintiff could have sued for that injury. *See Behavioral Institute of Indiana, LLC v. Hobart City Council*, 406 F.3d 926, 929 (7th Cir. 2005).

In this case, Petra's alleged injury occurred when it first knew about the treatment of religious uses under the 1988 Ordinance. While it may be assumed that Petra knew about the provisions of the 1988 Ordinance when it first began its search for property in the Village in February or April of 2000, it is a certainty that Petra knew of the 1988 Ordinance in December, 2000, at the very latest. That is when Petra filed with the Village its application for zoning relief pursuant to the 1988 Ordinance. Doc. No. 117, ¶ 66. However, Petra did not file its complaint in this action until March, 2003. Therefore, the District Court was correct to dismiss Petra's damage claims as barred by the applicable two-year statute of limitations. *See Petra Presbyterian,* 409 F.Supp.2d at 1005-06 *(citing Hoagland v. Town of Clear Lake, Ind.*, 415 F.3d 693 (7th Cir. 2005)).

Petra argues that the Court must decide the constitutionality of the 1988 Ordinance because Petra has damage claims stemming from the alleged constitutional violation. *See* Petra's Brief at 28-33. The Village acknowledges that a challenge to a repealed ordinance is not moot when the plaintiff has a *live* claim for money damages. Here, however, Petra has no such claim. It is barred by the statute of limitations.

Petra contends that "the district court did not explain how . . . the 1988 Zoning Code actually did cause injury to Petra in December 2000." *See* Petra Brief at 32. This is absurd. Throughout the litigation it was Petra who consistently and adamantly alleged that it was injured by the 1988 Ordinance because, under the 1988 Ordinance, it was *required to seek* zoning relief, while secular Membership Organizations did not have to do so. *See*, *e.g.*, Doc. No. 54 (Second Amended Complaint), ¶¶ 24-26 (Count I), 28 (Count II), 36 & 43 (Count IV), and 44-45 (Count V). In these counts, Petra complained that, under Equal Protection and other constitutional theories, it was entitled to the same zoning rights as secular Membership Organizations, and that it should not have been required to seek zoning relief. *Id.*

As evidenced by its decision to file an application for zoning relief in December 2000, Petra was, by then, well aware that the 1988 Ordinance treated its proposed use in a different manner than secular Membership Organizations. This *need* for zoning relief is, by Petra's own account, the source of its alleged injury and the trigger for the statute of limitations. *See Hoagland*, 415 F.3d at 696 & 700 (where

plaintiff challenged an ordinance that amended the town's zoning code so as to make an aircraft landing strips a "special use" requiring town approval, limitations period began to run when the challenged ordinance was "last substantively amended" because, as of that time, the plaintiff should have known that the ordinance prevented him from using his property as desired).

In its Brief, Petra also argues that "the district court misunderstood Petra's §1983 claims" and that "Petra has alleged that it was first injured in May 2001 when Northbrook refused to grant it rezoning and a special use permit." Petra's Brief at 30-31. Here, however, Petra is talking about its "as applied" claim, not its facial invalidity claim (the defects in Petra's as-applied claim are discussed in Section II.D. below). Petra should not pretend that it never asserted a facial challenge nor should it falsely charge the District Court with confusion.

D. Petra's As-Applied Challenge to the 1988 Ordinance Is Not Ripe.

In Count IX of its Second Amended Complaint, Petra alleged that the Village's "refusal to rezone" its Property in May 2001 violated the Free Exercise Clause. *See* Doc. No. 54, Count IX, ¶ 61. Petra's argument mischaracterizes the facts in the record. The Village never refused to re-zone Petra's Property. Indeed, the Village took no formal or final action with respect to Petra's zoning application at all. That is because Petra did not give the Village the opportunity to do so. On May 17, 2001, Petra's law firm, Piper Rudnick, delivered to the Village a letter withdrawing Petra's zoning application. See Exhibit A (Doc. No. 131, Ex. 26). Therefore, at Petra's request, the Village's Board (the only final governing authority in the

Village) never rendered a final decision with respect to Petra's zoning application. Doc. No. 117, ¶¶ 81, 83.

Based on these facts, the District Court dismissed Petra's as-applied claim, *see Petra Presbyterian*, 409 F.Supp.2d at 1003 ("before the Board's next meeting, Petra withdrew its application and the Board never voted on it"). In doing so, the District Court distinguished this unripe as-applied claim from Petra's facial challenge to the 1988 Ordinance's treatment of religious assembly uses. *Id.* at 1006 (the application that Petra withdrew in May 2001 "was Petra's request that its property be *rezoned to IB*, not that it be allowed to conduct religious assemblies *within the I-1 zone.*") (emphasis in original).

In this regard, the District Court was factually and legally correct. Factually, the District Court was correct that Petra itself voluntarily withdrew its application for a re-zoning and special permit before the Village formally acted on the application. Legally, the District Court correctly recognized the significant consequence of Petra's decision to withdraw its application. Because the Village never acted on Petra's application, the Court cannot presume how the Village would have voted, nor can the Court evaluate the Village's prospective conduct. *See generally Wisconsin Right to Life, Inc. v. Paradise*, 138 F.3d 1183, 1187 (7th Cir. 1998) ("A court is not permitted to prescribe how a state must deal with disputes that have never arisen and may never do so . . . such a foray is the paradigm of an advisory opinion.").

In the specific context of zoning, a challenge to a zoning "decision" is not ripe

until the municipality actually votes on the proposed application or re-zoning. *See, e.g., Covington Court, Ltd. v. Village of Oak Brook,* 77 F.3d 177, 179 (7th Cir. 1996) ("whether a vote of the Oak Brook Board of Trustees *would have* rejected Covington's initial plans is of no consequence. A plaintiff must demonstrate a final decision on a development plan submitted, considered and rejected by the government entity.") (emphasis in original); *Unity Ventures v. County of Lake,* 841 F.2d 770, 775-76 (7th Cir. 1988) ("informal denial" by the mayor was insufficient to make developer's claims ripe; to make claims ripe, developer was required to obtain a formal decision from the village board on developer's proposed plan); *Vashi v. Charter Township of West Bloomfield, Michigan,* 159 F.Supp.2d 608 (E.D. Mich. 2001) (civil rights complaint which challenged township's "decision" on plaintiffs' special use application was not ripe when plaintiffs withdrew their application after an unfavorable plan commission recommendation, but before a vote by the township board), *aff'd* 74 Fed. Appx. 575 (6th Cir. 2003); *Bank of Lyons v. Cook County*, 150 N.E.2d 97, 99 (Ill. 1958) (under Illinois law, statement by the secretary of county zoning board that rezoning would not be approved was not an act of the county board and was insufficient to make challenge to zoning ordinance ripe; plaintiff was required to obtain actual decision from the county board).[11]

Because Petra never received a decision from the Village on its re-zoning application, any challenge to an alleged "denial" is not ripe. For these same reasons,

11 *Cf. Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 2006 U.S. App. Lexis 19297 (9th Cir.) (where county formally denied plaintiff's conditional use permit application, plaintiffs could proceed with RLUIPA "substantial burden" challenge).

Petra cannot challenge, under the Establishment Clause, alleged conditions that the Village supposedly imposed on Petra's use of the Property. *See* Petra's Brief at 33-36. These "conditions" were, in reality, modifications that *Petra made to its own application* for zoning relief in the course of its hearing on the application. Doc. 117, ¶ 77. Petra cannot challenge these conditions because they were never actually imposed. Petra's withdrawal of its application precluded any imposition of conditions. Because the conditions were never imposed by the Village, Petra's challenge to them simply is not ripe.[12]

12 We note, however, that *if* these proposed conditions had actually been accepted and imposed by the Village, Petra would be estopped from challenging them because Petra was willing to voluntarily "bargain some property interests away in order to enhance its ability to develop" the property and "having reaped the benefit of its bargain, [it] [could not] turn to the Constitution to escape its contractual obligations." *Covington Court*, 77 F.3d at 180.

CONCLUSION

The Village's current Zoning Code is constitutional and does not violate RLUIPA. Further, there is no reason for the Court to evaluate the predecessor, now-repealed, section of the Village's Zoning Code. The District Court was correct to grant summary judgment to the Village on all of Petra's federal claims, and it had discretion to decline jurisdiction over Petra's supplemental state-law claims, including Petra's vested right claim. The District Court's ruling should, therefore, be affirmed.

Dated: August 7, 2006

VILLAGE OF NORTHBROOK,
Defendant-Appellee,

By: _____
One Of Its Attorneys

Steven M. Elrod
Donald G. Mulack
Adam M. Kingsley
Holland & Knight LLP
131 S. Dearborn Str, 30th Floor
Chicago, Illinois 60603
(312) 263-3600

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

This brief contains 8,723 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii),

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word XP in 12 point font in Century.

(s)_____

Attorney for Defendant-Appellee –
Village of Northbrook

Dated:_____

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendant-Appellee, Village of Northbrook, hereby certifies that on August 7, 2006, two copies of Defendant-Appellee's Brief and a digital version of same were served on Plaintiff-Appellant's counsel listed below:

VIA MESSENGER:

Richard Bell
Mauck & Baker
One North LaSalle Str., Suite 2001
Chicago, IL 60602

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

_____
Adam Kingsley

Executed on: August 7, 2006

3902013_v2

EXHIBIT

A

PIPER MARBURY RUDNICK & WOLFE

203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601-1293
www.piperrudnick.com

PHONE (312) 368-4000
FAX (312) 236-7516

WRITER'S INFORMATION

richard.klawiter@piperrudnick.com
PHONE 312.368.7243
FAX 312.236.7516

May 17, 2001

BY FAX (847/272-9760) AND OVERNIGHT DELIVERY

Thomas Poupard
Village of Northbrook
1225 Cedar Lane
Northbrook, IL 60062-4582

Re: Petra Presbyterian Church/Docket No. 01-02
Application for Re-Zoning and Special Use
3005 MacArthur Boulevard

Dear Tom:

I am writing to confirm my discussions with you and with Steve Elrod pursuant to which my client, Petra Presbyterian Church, has elected and hereby does elect to withdraw the above-referenced application from consideration by the Village Board of Trustees.

Very truly yours,

PIPER MARBURY RUDNICK & WOLFE

Richard F. Klawiter

RFK/kae/mm

cc: Steven Elrod, Esq.
David Lee
Patricia Baldwin

V 0135