

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Suffa Dawat Center, Inc., a non-profit
corporation

Plaintiff,

v.

City of Kennesaw, Georgia, a Municipal
Corporation of the State of Georgia

Defendant.

CIVIL ACTION

FILE NO.

COMPLAINT

COMES NOW Suffa Dawat Center, Inc., and files this Complaint showing
the Court as follows:

1.

This is an action for declaratory and injunctive relief arising under the First,
Fifth, and Fourteenth Amendment to the Constitution of the United States, the
Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42
U.S.C. § 2000cc, 42 U.S.C. § 1983, and applicable laws of the State of Georgia.
Plaintiff also seeks costs and attorney’s fees under 42 U.S.C. §1988.

2.

The City of Kennesaw unlawfully implemented a land use regulation that imposes a substantial burden upon the rights of Plaintiff and its members to the free exercise of religion that are not the least restrictive means available to the City to protect its asserted governmental interest. Requiring churches and religious institutions to file a special use permit violates the equal terms provision of RLUIPA. In so doing, the City imposed land use regulations that unreasonably limit religious assemblies, institutions and structures within the City and has discriminated against Plaintiff on the basis of its religious denomination.

Parties, Jurisdiction and Venue

3.

Plaintiff, Suffa Dawat Center, Inc. (the “Center”) is a Georgia non-profit corporation with its principal office within the municipal limits of the City of Kennesaw, Georgia.

4.

The City of Kennesaw, Georgia, is a Georgia municipality located within Cobb County, Georgia, with its principal office (City Hall) located at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144. It is subject to the jurisdiction

and venue of this Court and may be served by delivery of summons and complaint to Mayor Mark Matthews at City Hall.

5.

Venue lies in this district pursuant to 28 U.S.C. §1391. All parties are located within this district. All events giving rise to this action occurred in this district.

6.

This Court has original federal question jurisdiction over the Center's claims of violations of RLUIPA, pursuant to 28 U.S.C. § 1331 and the claims regarding the deprivation under color of State law of rights secured by the First and Fourteenth Amendments to the Constitution of the United States pursuant to 28 U.S.C. § 1343.

7.

This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

Factual Allegations

8.

The Center is comprised of a small group of people who desire to have a place of religious worship at property located at 2750 Jiles Road, Suite #109, Kennesaw, Georgia (“Property”).

9.

The Center selected this location, in large part, due to the location of its members and the lack of a worship center in the general proximity.

10.

The Property is approximately 2,200 square feet of unoccupied space within a shopping center.

11.

The Property is currently zoned Highway General Business (HGB).

12.

For a permanent location of “churches, chapels, temples, synagogues, and other places of worship” in the HGB zoning, a special exception must be obtained.

13.

The HGB zoning district permits “clubs and lodges (noncommercial),” “assembly halls,” and “cultural facilities (private)” in the HGB zoning district as a matter of right, without requiring a special exception.

14.

The City allows churches, chapels, temples, synagogues, and other places of worship to temporarily use certain property for religious worship while searching for a permanent place of worship.

15.

The temporary use is authorized through application and approval of a land use permit.

16.

The land use permit for a temporary worship location is generally limited to two years in duration.

17.

In the last two years, the City approved land use permits for at least three religious worship locations in Kennesaw.

18.

The Center submitted a land use permit application to the City requesting a permit to allow members to worship at the Property, LU2014-04 (the “Application”).

19.

The City’s Unified Development Code has twelve (12) criteria that are used to evaluate a land use permit application, including:

- Safety, health, welfare, and moral concerns involving the surrounding neighborhoods.
- Parking and traffic considerations.
- Number of non-related employees.
- Number of commercial and business deliveries.
- The City’s general presumption that residential neighborhoods should not allow non-compatible business uses.
- Compatibility of the business use to the neighborhood.
- Hours of operation.
- Existing business uses in the vicinity.
- Effect on property value of surrounding property.

- Circumstances surrounding neighborhood complaints.
- Intensity of the proposed business use.
- Location of use within the neighborhood.

20.

The City's Planning and Zoning Administrator, Darryl Simmons, evaluated the Center's requested land use permit under the twelve (12) requisite criteria.

21.

Mr. Simmons recommended approval of the Permit for twenty-four (24) months with the stipulation that the property owner "address any current safety issues such as lighting and allocated parking for existing tenants with city staff prior to the issuance of CO's or permits for any suite improvements."

22.

On November 5, 2014, the City's Planning Commission held a public hearing on the Application.

23.

The Planning Commission voted to approve the Application.

24.

At the Planning Commission, there was opposition to the Application.

25.

The people opposing the Application focused their opposition around the religion of Islam.

26.

On November 17, 2014, the City Council held a public hearing on the Application.

27.

Again, the opposition to the Application targeted their opposition toward the religion of Islam, not the land use criteria.

28.

After the public hearing was closed, City Council voted to defer the Application to the December 1, 2014 City Council meeting.

29.

The City Council requested the Center's representatives meet with residents opposing the Application.

30.

On November 24, 2014, a public meeting took place.

31.

On December 1, 2014, the City Council considered the Application at the regularly scheduled City Council meeting.

32.

The City Council voted 4-1 to deny the Application.

33.

At the City Council December 15th meeting, the four members of City Council who voted to deny the Application each moved for unanimous consent of the City Council to change their votes from a denial to approval of the Application without conditions.

34.

The Center exhausted all administrative remedies available as a result of the City's imposition of a land use regulation that, as applied to the Center, unreasonably limits religious assemblies, institutions and structures within the City of Kennesaw.

35.

As a result of the City's actions, the Center has been damaged irreparably and does not have an adequate remedy at law.

36.

As a result of the City's action, the Center has been forced to engage the services of the undersigned attorneys to represent its interests.

COUNT I
VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT
42 U.S.C. § 2000cc(a)(Substantial Burdens)

37.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

38.

The City deprived and continues to deprive the Center of its right to the free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (a), by imposing and implementing a land use regulation that substantially burdens the Center's religious exercise.

39.

The City arbitrarily and unfairly applied the City's Unified Development Code to prohibit the Center from using the Property to meet the religious needs of its congregation.

40.

Without a location for religious practice, prayer, education, and fellowship, the Center's ability to practice its religion has been unduly limited.

41.

The denial of the Application constitutes an individualized assessment by the City of the proposed use of the Property.

42.

Denial of the Application imposes a burden, which is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any governmental interest, compelling or otherwise.

43.

The Center is entitled to a declaration that denial of the Application is a substantial burden to the free exercise of the Center's religion, is not justified by a compelling government interest, and is in violation of the RLUIPA.

44.

The Center is entitled to issuance of a preliminary and permanent injunction enjoining the City from enforcing any limitation upon the Center's use of the Property for religious uses and requiring the City to take whatever actions necessary to permit the Center to undertake such use.

COUNT II
VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT
42 U.S.C. 5 2000cc(b) (Equal Terms and Discrimination)

45.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

46.

The Unified Development Code, as applied to the Center, treats this religious organization and institution on less than equal terms with non-religious assemblies and institutions in the City in violation of 42 U.S.C. 2000cc(b)(1).

47.

Defendant's conduct was prompted or substantially caused by the Center's religious exercise in attempting to open a place of worship at the Property and was clearly influenced by the level of sectarian opposition to the Center in Kennesaw.

48.

Defendant deprived and continues to deprive Plaintiff of its right to be free from religious discrimination as secured by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (b)(2) by implementing a land use regulation in a manner that discriminates on the basis of religion.

49.

Plaintiff is entitled to a declaration that the denial of the Application constitutes discrimination against the Center on the basis of religion.

50.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's expansion for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT III
VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT
42 U.S.C. § 2000cc(b)(3) (Limitations and Exclusions)

51.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

52.

Defendant deprived and continues to deprive Plaintiff of its free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (b)(3) by imposing and implementing a land use regulation that unreasonably limits religious assemblies, institutions and structures within the City of Kennesaw.

53.

Defendant had no constitutionally reasonable basis for their refusal to approve the Application as requested.

54.

The imposition of a land use regulation that unreasonably limits religious assemblies within the City of Kennesaw constitutes an arbitrary and capricious act with no rational basis therefor.

55.

Plaintiff is entitled to a declaration that denial of the Application, as requested, unconstitutionally limits and excludes Plaintiff's free exercise of religion.

56.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT IV
VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Free Exercise of Religion)

57.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

58.

The First Amendment to the United States Constitution provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. CONST. Amend. 1.

59.

The City, acting by and through the Council, has deprived and continues to deprive the Center of its right to free exercise of religion as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiff because of the Center's religious character and by substantially burdening the Center's right to freely exercise its religious faith.

60.

Without a location for religious practice, ministry, education, and fellowship, the Center's ability to practice its religion is seriously limited. The ability to provide religious activity is fundamental to the Center's mission.

61.

Defendant made an individualized assessment of the proposed use for the Property involved when they denied Plaintiff's Application.

62.

Denial of the Application constitutes a burden on Plaintiff's religious exercise that is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any governmental interest, compelling or otherwise.

63.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT V
VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Establishment Clause)

64.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

65.

Defendant's application of the Unified Development Code to the Center treats this religious organization and institution on less than equal terms with other religious and non-religious assemblies and institutions in the City, thereby creating a denominational preference against the religion of Islam.

66.

Defendant's conduct was prompted or substantially caused by Plaintiff's religious exercise and was clearly influenced by the level of opposition to the proposal based upon sectarian opposition to the presence of the Center in the City of Kennesaw.

67.

Defendant deprived and continues to deprive Plaintiff of its right to be free from religious discrimination in violation of the Establishment Clause to the First

Amendment of the United States Constitution by implementing a land use regulation in a manner whose purpose and effect is to discriminate on the basis of religion.

68.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT VI
VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Freedom of Speech)

69.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

70.

Defendant deprived and continues to deprive Plaintiff of its right to speak on matters of religion as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiff based on the religious nature of its expression and by inhibiting its right to freely and fully express its religious faith to its Muslim members and the community.

71.

Without a properly located facility with adequate space for religious practice, ministry, education and fellowship, the Center's ability to practice its Islamic religion and communicate its messages of faith and fellowship has been unduly limited.

72.

Plaintiff is entitled to a declaration that denial of the Application is a violation of its First Amendment right to free speech.

COUNT VII
VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Freedom of Assembly)

73.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

74.

Defendant deprived and continues to deprive Plaintiff of its right to freely assemble for religious purposes as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by prohibiting the Center members from assembling in an adequate place for the purposes of religious exercise.

75.

Without a properly located facility with adequate space for religious practice, ministry, education, and fellowship, the members' ability to assemble has been greatly burdened. The Center is unable to provide to its members the space to properly assemble and practice their religion as a result of Defendant's refusal to approve the Application as requested.

76.

Plaintiff is entitled to a declaration that the denial of the Application by the City is a violation of its First Amendment right to freedom of assembly.

77.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT VIII
VIOLATION OF FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Equal Protection)

78.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

79.

Defendant deprived and continues to deprive Plaintiff of its right to equal protection of the laws as secured by the Fourteenth Amendment to the United States Constitution by unlawfully discriminating against the Center in the application of the City Code on the basis of religious status and on the basis of Plaintiff's exercise of its fundamental rights to freedom of religion, speech, and assembly.

80.

Denial of the Application is unconstitutional in that it imposes a substantial burden on the religious exercise of the Plaintiff. Defendant has not demonstrated that imposition of that burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

81.

Plaintiff is entitled to a declaration that the denial of the Application by the City is a violation of the Plaintiff's Fourteenth Amendment right to equal protection of the laws.

82.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the

Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT IX
VIOLATION OF FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Substantive and Procedural Due Process)

83.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

84.

Defendant deprived and continues to deprive Plaintiff of its right to due process of the laws as secured by the Fourteenth Amendment to the United States Constitution by unlawfully depriving Plaintiff of its right under the City's Unified Development Code to a use permit.

85.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT X
**VIOLATION OF FIFTH AMENDMENT
TO UNITED STATES CONSTITUTION**

86.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

87.

Defendant's denial of the Application as requested constitutes a taking by the City of the Center's private rights without payment of just compensation in violation of the Fifth Amendment to the United States Constitution by unlawfully discriminating against the Center in the application of the City Code on the basis of religious status and on the basis of Plaintiff's exercise of its fundamental rights to freedom of religion, speech, and assembly.

88.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT XI
STATE LAW CLAIMS

89.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

90.

Plaintiff is entitled to a declaration that the denial of the Application limitations by the City is unreasonable and void and bears no substantial relation to the public health, safety, morality, or general welfare.

91.

Plaintiff is entitled to a declaration that Defendant had no objective factual basis to deny the Application and, as such, Defendant violated Plaintiff's due process rights, which are protected by the Georgia Constitution Article I, § I, ¶ 1.

92.

Plaintiff is entitled to a declaration that the denial of the Application by the City discriminates between the Center and other similarly situated individuals and institutions in violation of Plaintiff's right to equal protection under the Georgia Constitution Article I, § I, ¶ 2.

93.

Plaintiff is entitled to a declaration that the denial of the Application imposed on the Center by the City interferes with Plaintiff's right to exercise its religion in accordance with Plaintiff's freedom of conscience as secured by Article I, § I, ¶ 3 of the Georgia Constitution.

94.

Plaintiff is entitled to a declaration that the denial of the Application by the City interferes with Plaintiff's right to freedom of religion as secured by Article I, § I, ¶ 4 of the Georgia Constitution.

95.

Plaintiff is entitled to a declaration that the denial of the Application by the City interferes with Plaintiff's right to freedom of speech as secured by Article I, § I, ¶ 5 of the Georgia Constitution.

96.

Plaintiff is entitled to a declaration that the denial of the Application by the City interferes with Plaintiff's right to assemble as secured by Article I, § I, ¶ 9 of the Georgia Constitution.

97.

Plaintiff is entitled to a declaration that the denial of the Application by the City interferes with and damages Plaintiff's property rights without just and adequate compensation first being paid, as provided by Article I, § 3, ¶ 1 of the Georgia Constitution.

COUNT XII
MANDAMUS

98.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

99.

A defect of legal justice would ensue if mandamus is not issued ordering Defendants to approve Plaintiff's Application.

100.

A defect of legal justice would ensue if mandamus is not issued and Plaintiff has no other specific legal remedy.

COUNT XIII
INJUNCTION

101.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 36 above.

102.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendant from enforcing any limitation upon Plaintiff's use of the Property for religious uses, and requiring Defendant to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT XIV
ATTORNEY'S FEES AND COSTS OF LITIGATION

103.

Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 102 above.

104.

Plaintiff is entitled to its attorney's fees and costs herein as secured by 42 U.S.C. § 2000cc-2(a) and 42 U.S.C. § 1988.

RELIEF

105.

This action has been necessitated by Defendants' denial of the Application and by Defendants' failure to comply with the Georgia and United States Constitutions and the Federal Religious Land Use and Institutionalized Persons Act of 2000. Accordingly, Plaintiff is entitled to recovery of its attorney's fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. 2000cc-2(a).

WHEREFORE, Plaintiff prays as follows:

(a) That this Court find the Defendant's action constitute a violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc; the United States Constitution; and the Georgia Constitution;

(b) That this Court declare and find that the denial of the Application violates the Center's constitutional rights of substantive due process, procedural due process, and freedom of religion, speech and association;

(c) That this Court declare and find that the Application should have been granted and that the Center is entitled to use the Property as requested;

(d) That this Court declare that Plaintiff has a clear legal right to approval of the Application as requested;

(e) That a writ of mandamus issue ordering Defendant to approve the application as requested;

(f) That Plaintiff recover attorney's fees and expenses incurred in this matter; and

(g) That Plaintiff has any and all further relief as this Court deems just and proper under the circumstances and evidence presented.

Submitted this 30th day of December 2014.

WEISSMAN, NOWACK, CURRY & WILCO, P.C.

/s/ Julie L. Sellers

G. Douglas Dillard

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