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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

TRINITY EVANGELICAL LUTHERAN CHURCH,	)	
Plaintiff,	)	
v.	)	Case No. 07-cv-1029
CITY OF PEORIA, ILLINOIS	)	
Defendant.	)	

O R D E R

Before the Court are the Motions for Summary Judgment filed by Defendant [Doc. 21] and Plaintiff [Doc. 22]. For the reasons set forth below, the Motion by Defendant is GRANTED and the Motion for Plaintiff is DENIED.

Background

In 1989, Plaintiff, Trinity Evangelical Lutheran Church (hereinafter "Church") bought a building located at 1319 North Hamilton Boulevard, Peoria, Illinois, which is adjacent to Church property, for the purposes of expansion. From 1986 to 2003, the Church operated the building as an apartment building. During that time period, on August 15, 2000, the building was declared a city landmark by City Ordinance No. 14,981, over the Church's objection. After 2003, the building became vacant.

The Church now wishes to demolish the apartment building in order to build a "Family Life Center." The Church filed for a "certificate of appropriateness" with the Historic Preservation Commission in 2006 to demolish the building and

provided a rendering or concept of the new religious life center. The Church indicates that it cannot merely "renovate" the apartment building for Church purposes because of the arrangement of interior structural elements and because the building is too small to accommodate its needs. Moreover, it would be significantly more expensive to renovate the building rather than tear it down (a $1,1,000,000 difference). The certificate of appropriateness was denied. The Church's further request to the City Council to withdraw the landmark designation also was denied in 2006.

The regulations at issues are attached as Exhibit 1 to Plaintiff's Motion for Summary Judgment [Doc. 23] and are located in Section 16 of the City's ordinances. This Section provides for the designation of areas and buildings as landmarks or historical districts by City ordinance. The ordinance sets up the Historic Preservation Commission (§ 16-36) with the power to recommend to the city council the designation of landmarks within the city and the power to "issue, modify or deny certificates of appropriateness," among other things. Id. § 16-37. A "certificate of appropriateness" allows the alteration or demolition of a landmark. Id. at § 16-3. With respect to landmarks, the ordinance provides: "No alterations, interior construction which affects structural members, exterior construction, removal of significant landscaping . . . or exterior demolition may be perform on property and improvements which have been designated . . . as landmarks except as shall be approved by a certificate of appropriateness." Id. at § 16-61. The procedures for applying for a certificate of appropriateness and an appeals process are also spelled out. Id. at § 16-63.

It is the subsequent limitations on the tearing down of the building because it is a landmark this the subject of the Church's Complaint. Plaintiff alleges that the ordinance, on its face, unreasonably limits religious assemblies and institutions and it places a substantial burden on religious exercise. Plaintiff further alleges that the ordinance as applied also unreasonably limits religious assemblies and substantially burdens religious exercise.

STANDARD

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the responsibility of informing the Court as to portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The movant may meet this burden by demonstrating "that there is an absence of evidence to support the nonmoving party's case." Id. at 325.

Once the movant has met its burden, to survive summary judgment the "nonmovant must show through specific evidence that a triable issue of fact remains on issues on which [s]he bears the burden of proof at trial." Warsco v. Preferred Tech. Group, 258 F.3d 557, 563 (7th Cir. 2001); See also Celotex Corp., 477 U.S. at 322-24. "The nonmovant may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits; it must go beyond the pleadings and

support its contentions with proper documentary evidence." Chemsource, Inc. v. Hub Group, Inc., 106 F.3d 1358, 1361 (7th Cir. 1997).

This Court must nonetheless "view the record and all inferences drawn from it in the light most favorable to the [non-moving party]." Holland v. Jefferson Nat. Life Ins. Co., 883 F.2d 1307, 1312 (7th Cir. 1989). In doing so, this Court is not "required to draw every conceivable inference from the record -- only those inferences that are reasonable." Bank Leumi Le-Isreal, B.M. v. Lee, 928 F.2d 232, 236 (7th Cir. 1991). Therefore, if the record before the court "could not lead a rational trier of fact to find for the non-moving party," then no genuine issue of material fact exists and, the moving party is entitled to judgment as a matter of law. McClendon v. Indiana Sugars, Inc., 108 F.3d 789, 796 (7th Cir. 1997) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). However, in ruling on a motion for summary judgment, the court may not weigh the evidence or resolve issues of fact; disputed facts must be left for resolution at trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986).

ANALYSIS

The Religious Land Use and Institutionalized Persons Act (RLUIPA) provides:

> 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, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. §2000cc(1).

The Act further provides that it applies in cases in which "the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses of the property involved." Id. at § 2000cc(a)(2)(C). Plaintiff has the burden of showing that the ordinance places a "substantial burden on religious exercise." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003); Vision Church v. Village of Long Grove, 468 F.3d 975, 997 (7th Cir. 2006). A "substantial burden" is "one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise – including the use of real property for the purpose thereof within the regulated jurisdiction generally – effectively impracticable." Id. at 761. Once Plaintiff establishes a substantial burden, Defendant must come forth with a compelling reason justifying the burden. Petra Presbyterian Church v. Village of Northbrook, 489 F.3d 846, 847 (7th Cir. 2007).

The Plaintiff argues that the landmark status and resulting limitations on its ability to tear down the apartment building substantially limits the exercise of religion. The Plaintiff notes, and Defendant does not dispute, that it is not viable to convert the apartment building into a usable space (in compliance with the ordinance) because the internal support structure of the building prevents the expansion of the existing rooms within the building (i.e. they cannot add more square footage or make the rooms larger). In addition, the Church indicates, and

the City does not dispute, that even if it were to renovate the building, it would cost in excess of $1 million more than if it were to tear down the building and build a new structure.[1] The City argues that the Church has the option of building the facility it wants in a 50 foot by 80 foot land that sits between the church building and the apartment building. While there is evidence that such a building is feasible (provided that the necessary permits are made available), the Church argues that such a building would not meet the needs of the Church. The City also argues that the Church, which acknowledges that it is a "central city church" is limited in space because of the location, within a city.

This Court cannot find that the landmark status of the apartment building and the concomitant limitations on the renovation or teardown of the apartment building constitutes a substantial burden on religious exercise of the Church. The ordinance effects only one building and one location on the Church campus. It is no way prevents the Church from continuing its religious ministries. Rather, the ordinance burdens the Church by limiting the uses of the apartment building and the manner in which it can be renovated. While this burden would add a financial cost to the church (if it elects to renovate the building) and limits the options that the Church has for expansion, the ordinance does not place a substantial burden on the Church's activities. That is, the ordinance does not "bear[] [a] direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively

[1] The Church received three estimate for the renovation or tear-down of the apartment building. There is no dispute that these estimate provide that it would cost $134 to $220 per square feet to renovate the apartment building; and between $118 and $140 per square foot to construct a new building. There is also no dispute that it would not be economically feasible to move the building.

impracticable." The Church is free to exercise its religion, it is just limited in its ability to convert the apartment building into a more convenient forum for a handful of services it wishes to offer.

In Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895 (7th Cir. 2005), which Plaintiff relies on, the Seventh Circuit considered whether a city's denial of permission to rezone a residential track into an institutional zone in order for a church the church to build its church violated the RLUIPA. In that case, the Greek Orthodox Church bought a 40 acre parcel of land in a residentially zoned area and wanted to use 14 acres of the parcel to build a church. The city expressed concern that if the church was unable to secure funding, a variance of the zoning laws would allow and non-religious organization to build other types of facilities. To allay this fear, the church modified its request such that the land would be limited to church related purposes via a city ordinance. Despite this solution to the city's objection, the city nonetheless denied the permit. As the Court put it: "[plaintiff] complaint instead about having either to sell the land that it bought in New Berlin and fine a suitable alternative parcel or be subjected to unreasonable delay by have to restart the permit process to satisfy the Plaintiff Commission *about a contingency for which the Church has already provided complete satisfaction*." Id. at 900 (emphasis added). The Court held that "[i]f a land-use decision, in this case the denial of a zoning variance, imposes a substantial burden on religious exercise . . . , and the decision maker cannot justify it, the inference arises that hostility to religion, or more likely to a particular sect, influenced the decision." The Court went on to find that the burden on the church

was substantial because it was left with the choice of searching out other land to use a site for its church or go through the timely, costly, and uncertain permitting process again. Id. at 901.

City of New Berlin is clearly distinguishable from this case. Here, the City's ordinance is not preventing the Church from building its primary religious building – it is merely preventing the Church from tearing down a nearby existing building that has been labeled a landmark in order to offer additional services. While there is a burden on the Church, it cannot do exactly what it wants with the building, the ordinance does not render its religious exercise "effectively impracticable." Moreover, there is no evidence that the City's action represent an effort to discriminate against the Church or that the City is applying its ordinance with respect to the Church in a inconsistent manner. As such, City of New Berlin is inapplicable to the case at hand.[2]

[2] Plaintiff also cites to a Second Circuit case, Westchester Day School v. Village of Mamaroneck, 504 F.3d 338 (2nd Cir. 2007). This case also is distinguishable. At issue in Westchester, was the school's (a Jewish private schools) ability to expand and renovate 2 of 4 existing buildings and its ability to build another building. Id. at 345. The schools activities were "significantly hindered" but deficiencies in the current buildings and those facilities were found to be "deficient" to "providing the education Orthodox Judaism mandates." The village zoning board, however, effectively denied an application for a special permit to proceed with the renovations by required a "full Environmental Impact Statement." In finding that the zoning board violated the RLUIPA, Court found that it had failed to comply with New York state law and approved the district court's finding that the zoning board's denial was "arbitrary and capricious." There is no showing in this case that the ordinance is applied in an arbitrary and capricious manner or that it violates Illinois law. In any event, this Second Circuit case is not controlling precedent.

CONCLUSION

For the foregoing reasons, the Motions for Summary Judgment filed by Defendant [Doc. 21] is GRANTED and the Motion for Summary Judgment filed by Plaintiff [Doc. 22] is DENIED.

Entered this 31st day of March, 2009

s/ Joe B. McDade
JOE BILLY MCDADE
United States District Judge