

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

CEDAR RAPIDS ZEN CENTER, INC.
and ZUIKO REDDING,

Plaintiffs,

vs.

CITY OF CEDAR RAPIDS, IOWA,

Defendant.

No. C02-115 LRR

**ORDER REGARDING MOTION FOR
SUMMARY JUDGMENT**

The matter before the court is Plaintiffs' Motion for Summary Judgment (docket no. 11). The court held a hearing on the motion on January 27, 2004. Counsel of record participated by telephone conference call.

Plaintiffs filed this suit on July 25, 2002, alleging violations of 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act of 2000 (the "RLUIPA"), the First Amendment of the United States Constitution, and Article I, § 3 of the Iowa Constitution. Plaintiffs seek injunctive and declaratory relief against the efforts of Defendant the City of Cedar Rapids, Iowa (the "City") to enforce its zoning and building laws to prohibit operation of the Cedar Rapids Zen Center, Inc. (the "Zen Center"), at its present location or within any other habitable non-commercial building or district within the City.

In their Motion for Summary Judgment, Plaintiffs ask the court to declare that: (1) the Zen Center's activities and use of the property at 1618 Bever Avenue in Cedar Rapids, Iowa are protected by the free exercise clause of the First Amendment of the United States Constitution, by the free exercise clause of Article I, § 3 of the Iowa Constitution, and by

the RLUIPA; (2) the City has substantially interfered with Plaintiffs' free exercise rights; (3) the City cannot meet its legal burden of showing that its attempts to regulate Plaintiffs' activities are the least restrictive means of achieving a compelling governmental interest; and (4) the City's affirmative defenses are legally irrelevant, unsupported by fact, or have been abandoned. In response, the City contends that Plaintiffs' claims are not ripe because the City has taken no adverse action against Plaintiffs resulting in any cognizable injury.

I. STANDARD OF REVIEW

Summary judgment is appropriate only when the record, viewed in the light most favorable to the nonmoving party, shows there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Carter v. Ford Motor Co.*, 121 F.3d 1146, 1148 (8th Cir. 1997) (citing *Yowell v. Combs*, 89 F.3d 542, 544 (8th Cir. 1996)). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). A fact is material when it "might affect the outcome of the suit under the governing law." *Rouse v. Benson*, 193 F.3d 936, 939 (8th Cir. 1999). In considering a motion for summary judgment, a court must view all facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus.*, 475 U.S. at 587. Further, the court must give such party the benefit of all reasonable inferences that can be drawn from the facts. *Id.*

The moving party bears "the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel*, 953 F.2d at 394 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the moving party has successfully carried its burden under Rule 56(c), the nonmoving party has an affirmative burden to go beyond the pleadings and by depositions, affidavits or otherwise, designate "specific facts showing that there is a

genuine issue for trial.” Fed.R.Civ.P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The nonmoving party must offer proof “such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248.

II. UNDISPUTED FACTS

The following facts are undisputed. Plaintiff Zuiko Redding (“Redding”) opened the Zen Center in March of 2000 at Redding’s rented residence at 1618 Bever Avenue in Cedar Rapids, Iowa. The Zen Center is an incorporated business entity that is devoted to the practice and teaching of Zen, including zazen (Zen meditation), dharma talks (homilies), sesshins (silent retreats), and kinhin (walking meditation). Most of the Zen Center’s activities are conducted within Redding’s private residence. The Zen Center offers courses, instructions, and religious services to a small number of adherents and practitioners. Redding is the Zen Center’s resident teacher. In any given week, less than one dozen persons utilize the Zen Center for religious instruction and practice. There are not likely to be more than six people involved in any activity conducted at the Zen Center. Activities at the Zen Center typically are scheduled for mornings and evenings on several days of the week. Financial support for the Zen Center comes from donations, lecture fees, an annual yard sale, and pledges by its members. Purchase of a commercial building is beyond the means and present needs of the Zen Center. Redding’s neighbors are aware of Redding’s establishment and operation of the Zen Center and they have not voiced concerns or objections.

In the spring of 2001, Redding explored the possibility of purchasing her residence. Redding intended to use the residence after the purchase in the same manner as she used the residence while she rented it, that is, as her residence and as the Zen Center. Redding did not intend to modify or change the structure of the residence. Redding contacted the City’s Building, Zoning and Housing Department in order to inform the City of her plans

for the Zen Center and to determine if any special regulations would apply.

In August of 2001, Redding met with City officials, including Building Plans Examiner Jeff Junker and Cedar Rapids Zoning Inspector Ruth Fuessley. At the August 2001 meeting, Inspector Fuessley informed Redding that the Zen Center was a religious organization and could not be located in a “single family neighborhood” or in a “single family dwelling.” Redding asked Inspector Fuessley if Redding could invite people to sit with her in her home and Inspector Fuessley told Redding that this was not allowed in the zoning ordinance. Inspector Fuessley took a copy of the floor plan and the Zen Center brochure and informed Redding that the Department would “make a decision” and “get back” to Redding. Redding subsequently provided additional information about the Zen Center to Junker and Inspector Fuessley. Several days later, Inspector Fuessley called Redding and informed her that the Zen Center’s activities were not allowed and that the Zen Center should cease activities immediately. The City was concerned about the current and prospective use of Redding’s residence as the Zen Center.

Redding received a letter from Junker dated August 21, 2001 formally informing Redding of some of the modifications that would be necessary to convert her private residence into a “commercial use” in order to operate it as the Zen Center. Examples of modifications demanded include paved off-street parking, separate men’s and women’s employee restrooms, a handicapped-accessible public restroom, and commercial grade conduit wiring. Such modifications would require major expenditures and restructuring that would be impractical and economically impossible given the size and nature of the Zen Center and its operations.

Redding contacted the head of the Zoning Division, Pat Engle, who advised Redding that she had not been part of the decision-making process and that she could not help Redding. Redding then contacted her neighborhood association for advice. The

association told Redding that it was pleased to have the Zen Center and it hoped to keep the Zen Center in the area.

Redding received a letter from Inspector Fuessley dated September 5, 2001. Inspector Fuessley's letter explained that Redding's intended use of her residence as "a place of religious worship or instruction" did not comply with the City's Zoning and Building Code and that her operation of the Zen Center at her residence "must cease."¹ On the advice of another Zen teacher in Pennsylvania who also experienced zoning problems, Redding contacted an attorney active with the local ACLU Chapter. On October 4, 2001, that attorney, Rick Zimmermann, wrote a letter to Inspector Fuessley requesting that the City provide "specific practical reasons" why the activities of the Zen Center, and particularly the practice of inviting a small group to meditate, would be problematic. The letter further requested the City's justification for any ordinance that would prohibit such activities on the scale conducted by the Zen Center. The City did not respond to or acknowledge Mr. Zimmerman's letter. On February 4, 2002, Redding wrote to Inspector Fuessley seeking clarification. The City did not respond to Redding's letter.

The City has enacted a zoning code that regulates land use within the city limits. The Zen Center is located in a R-3 single family residence district. The Cedar Rapids Municipal Code permits religious facilities in R-3 districts. *See Cedar Rapids Municipal Code § 32.07(d)*. The City has enacted the 2000 edition of the International Building

¹Between September 5, 2001 (the date of the cease and desist letter) and July 25, 2002 (the date this lawsuit was commenced), the City made no attempt to enforce its zoning and building laws against Redding and the Zen Center. After this lawsuit was commenced, counsel for the Zen Center suggested that no action should be taken until resolution of the suit. The City did not object to such proposition and to date, the City has not taken any enforcement action.

Code.² Section 105.1 of the International Building Code requires an application for a building permit when a change in the occupancy of a building is intended.³ The City claims the Code applies because Redding changed the use of the rental property from a residence to a residence and the Zen Center. The Zen Center never has filed an application for a change of use and never has filed an application for a building permit. The Cedar Rapids Board of Adjustment is authorized to hear appeals from adverse zoning decisions. The Zen Center has not appealed the decision of Inspector Fuessley to the Board of Adjustment. The Zen Center also has not applied for a variance from the terms of the ordinance.

III. ANALYSIS

The City contends Plaintiffs' claims are not ripe because the City has taken no adverse action against Plaintiffs resulting in any cognizable injury. The City argues that

²Cedar Rapids Municipal Code § 33.01, "International Building Code Adopted," provides:

. . . there is hereby adopted as the Building Code of the City . . . the International Building Code, 2000 Edition. . . . The provisions of said building code shall be controlling in the construction of buildings and other structures and in all matters covered by said Building Code within the corporate limits of the City of Cedar Rapids, Iowa, and shall be known as the Cedar Rapids Building Code. . . .

³International Building Code § 105.1, "Required," provides:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or *change the occupancy* of a building or structure, . . . shall first make application to the building official and obtain the required permit.

(emphasis added).

Plaintiffs engaged in “preliminary discussions” with City building inspectors regarding the use of Redding’s residence for religious activities. The City further argues that the inspectors gave “preliminary and tentative conclusions” as to what might be required by way of structural changes to the dwelling and that Plaintiffs did not apply for a permit or pursue an appeals process prior to bringing suit. In response, Plaintiffs argue that the September 5, 2001 letter from Inspector Fuessley constitutes an enforcement action by the City sufficient to render the dispute ripe for judicial action.

A cardinal principle of federal law requires a real and present controversy for a question to be ripe for decision. *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351 (1986). The ripeness doctrine reflects the need to protect agency actions “from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967). The court need not wait for an actual injury, *see Nebraska Pub. Power Dist. v. MidAmerican Energy Co.*, 234 F.3d 1032, 1038 (8th Cir. 2000) (holding that a party need not wait for actual harm to occur for a claim to be ripe); however, the injury must be “certainly impending.” *Paraquad, Inc. v. St. Louis Hous. Auth.*, 259 F.3d 956, 958-59 (8th Cir. 2001) (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)). “Abstract injury is not enough. It must be alleged that the plaintiff has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged statute or official conduct.” *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974). The Eighth Circuit Court of Appeals has repeatedly held that a case is not ripe if the plaintiff makes no showing that the injury is “direct, immediate, or certain to occur.” *Public Water Supply Dist. No. 10 of Cass County v. City of Peculiar*, 345 F.3d 570, 573 (8th Cir. 2003). *See also South Dakota Mining Ass’n, Inc. v. Lawrence County*, 155 F.3d 1005, 1008 (8th Cir. 1998) (stating that a plaintiff must “‘demonstrate a realistic danger

of sustaining a direct injury’”) (quoting *Babbitt*, 442 U.S. at 298); *Employers Ass’n v. United Steelworkers AFL- CIO-CLC*, 32 F.3d 1297, 1299 (8th Cir. 1994) (“Ripeness is demonstrated by a showing that a live controversy exists such that the plaintiffs will sustain immediate injury. . . .”); *Marine Equip. Mgmt. Co. v. United States*, 4 F.3d 643, 647 (8th Cir. 1993) (refusing to declare the rights of the plaintiff against future litigants when there was not a substantial probability that any such claims would ever be made).

The September 5, 2001 letter stated that “. . . the Zen Center, as proposed, does not meet Zoning and Building code requirements and must cease from 1618 Bever Avenue SE (Single Family Residence District).” The Cedar Rapids Municipal Code authorizes the City to issue such cease and desist letters.⁴ Additionally, Section 32.19 of the Cedar Rapids Municipal Code provides for criminal penalties for violation of the Cedar Rapids Municipal Code:

(a) Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance shall, upon conviction, be fined not more than \$100, or be

⁴Section 32.16(d) requires the CR Zoning Administrator to notify in writing the person responsible for any violation of a CR ordinance:

The Zoning Administrator shall, upon determination of any violation of this ordinance, notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it; and specifically shall order the discontinuance of any illegal use. . . .; or take any other action authorized by this ordinance to insure compliance with, or to prevent violation of its provisions, and in particular shall, where necessary or appropriate, recommend to the City Attorney the institution of legal or equitable actions that may be required for the enforcement of this ordinance.

imprisoned for not more than 30 days, for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(b) In case any building . . . is . . . used in violation of this ordinance, the City Council, . . . may institute any proper action or proceeding, including an action to enjoin such . . . violations, to prevent the occupancy of said building, . . . , or to prevent any illegal act, conduct, business or use in or about said premises.

In this case, the City has not taken any action to enforce the September 5, 2001 letter. The City has not referred the matter to the City Attorney for enforcement action and it is not clear that the City will ever take action to enforce its zoning and building laws against Plaintiffs. The court therefore finds that Plaintiffs' injury is speculative. *See Public Water Supply Dist. No. 10 of Cass County*, 345 F.3d at 573 (finding injury speculative where there was no indication whether petition would ever be filed). Furthermore, Plaintiffs do not contend that they are suffering an injury now. The only possible injury to Plaintiffs would be the City's denial of a variance or if the City files a petition in state court for enforcement of its zoning and building laws. If and when such injury occurs, Plaintiffs can raise their RLUIPA and constitutional claims at that time. In conclusion, the court finds that Plaintiffs have presented no evidence to suggest that enforcement is "certainly impending." *Paraquad*, 259 F.3d at 959. The court thus holds that this case is not ripe for adjudication. The court shall therefore dismiss this case without prejudice.

IV. CONCLUSION

IT IS HEREBY ORDERED that:

1. Plaintiffs Cedar Rapids Zen Center, Inc. and Zuiko Redding's Motion for Summary Judgment (docket no. 11) is DENIED.

2. Plaintiffs' Complaint is DISMISSED without prejudice.
3. All court costs are assessed against Plaintiffs Cedar Rapids Zen Center, Inc. and Zuiko Redding.

SO ORDERED this 23rd day of April, 2004.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA