

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

HARVEST COVENANT CHURCH, )  
a Wisconsin church, individually )  
and in its capacity as representative )  
of certain individual members, )  
and PASTOR DARNELL D. )  
ROBINSON, )

Plaintiffs, )

v. )

CITY OF MILWAUKEE, )  
WISCONSIN, and MICHAEL J. )  
MURPHY, in his individual capacity, )  
Defendants. )

CASE NO. \_\_\_\_\_

JURY TRIAL DEMANDED

---

COMPLAINT FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT AND DAMAGES

---

Plaintiffs HARVEST COVENANT CHURCH (“**Harvest**” or “**the Church**”), individually and in its capacity as representative of certain individual members, and Pastor Darnell D. Robinson (“**Pastor Robinson**”), complain against the Defendants CITY OF MILWAUKEE (“**City**”) and MICHAEL J. MURPHY (“**Murphy**”) as follows:

**INTRODUCTION**

1. When government forbids where people may worship it must have a strong and overriding reason for doing so. *See Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531-532 (1993); *see Hosanna-Tabor Evangelical*

*Lutheran Church & Sch. v. EEOC*, 2012 U.S. LEXIS 578, \*31 (Decided Jan. 11, 2012); see also Religious Land Use and Institutionalized Persons Act, 42 USC §2000cc, et seq. (“RLUIPA”).

2. If government provides for exemptions from otherwise applicable rules, it must have a compelling reason for denying an exemption for religious exercise. *Lukumi*, 508 U.S. at 537.

3. Further, it is unlawful for municipalities to regulate land uses “in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution” or “that discriminates against any assembly or institution on the basis of religion or religious denomination.” See RLUIPA, 42 USC §2000cc. (b)(1); see also *River of Life Kingdom Ministries v. Vill. Of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010).

4. In *River of Life*, the Seventh Circuit *en banc* interpreted the equal terms provision of RLUIPA as providing that religious and secular land uses may not be treated differently from the standpoint of an accepted zoning criterion. The court stated that “should a municipality create what purports to be a pure commercial district and then allow other uses, a church would have an **easy** victory if the municipality kept it out.” 611 F.3d 367 at 374 (emphasis added).

5. For nearly two years now, the City of Milwaukee, without a compelling interest, has denied the Church and its members the ability to use their property at 7127 W. Lisbon Avenue (referred to hereafter as “the Church Property” and pictured below) as a church for religious assembly and worship services while

allowing similarly situated comparators to locate in the same district as of right.



6. In the present case, the City of Milwaukee has created commercial districts, entitled “Local Business Districts” in its Zoning Code, where non-commercial uses such as theaters, cultural institutions, monasteries, convents, rectories, colleges, libraries, parks and playgrounds are allowed **as of right** but churches are required to obtain special use permits through an extensive and highly discretionary process.<sup>1</sup>

---

<sup>1</sup> The City of Milwaukee’s zoning ordinance can be read in full at: <http://www.mkedcd.org/czo/>

7. The City of Milwaukee's Zoning Code also allows non-religious assembly uses, including day care centers, indoor recreational facilities, theaters and certain non-commercial assemblies *as of right* but again require churches to obtain special use permits. See Exhibit A, Chart of Uses Allowed as of Right by Milwaukee's Zoning Code in LB2 Districts.

8. Such disparate treatment of similarly situated non-religious comparators (specifically theaters, day care centers, and indoor recreational facilities) is not lawful under RLUIPA. See *Chabad of Nova v. City of Cooper City*, 533 F.Supp.2d 1220, 1222-23 (S.D.Fla. 2008)(Court held that a city's ordinance violated RLUIPA's equal terms provision by prohibiting religious assemblies in business districts while permitting nonreligious assemblies such as "day care centers," "indoor recreational facilities" and "theaters" within the same district).

9. Further, on its face Milwaukee's "Comprehensive Plan for the West Side," which includes the Church Property, expressly discriminates against churches under the "Appropriate Types/Mix for Commercial Use Policies," p. 58 which provides that the City seeks to (emphasis supplied):

***Strongly discourage*** non-contributing or incompatible uses in former storefronts, i.e. uses that do not support the commercial focus of the business district or commercial corridor. For example: social service providers, ***storefront churches***, etc.<sup>2</sup>

10. Because the Church Property is zoned as part of a Local Business District (LB2) and is located in what appears to be a former storefront, the City

---

<sup>2</sup> The City of Milwaukee's Comprehensive Plan for the West Side can be read in full at: <http://city.milwaukee.gov/Plansandstudies/West.htm>

required to the Church to apply for a special use permit to use the property for religious assembly and worship services in 2010—only to deny the Church’s application on or about June 23, 2010 in furtherance of its Comprehensive Plan.

11. The City’s Zoning of the Church Property and denial of the Church’s special use application violate Plaintiffs’ rights under the United States Constitution; the Religious Land Use and Institutionalized Person’s Act (RLUIPA), 42 U.S.C. § 2000cc-1, *et seq.*; Wisconsin land use law, and Article 1 Section 18 of the Wisconsin Constitution.

12. Through its zoning restrictions, the Defendant City expressly discriminates against churches generally and specifically discriminated against Plaintiffs in a way that has caused and threatens further irreparable harm to their constitutional and statutory rights.

13. To vindicate the Plaintiffs’ rights, compensate for the damage that has been done, and avoid further irreparable harm, Plaintiffs seek declaratory and injunctive relief for violation of their constitutional and statutory rights, as well as compensatory and nominal damages.

14. The City’s Zoning Code threatens the continued existence of Harvest, interferes with the Church’s religious mission and growth and continues to put a major financial strain on the Church.

15. Harvest accordingly challenges, both facially and as-applied to its religious speech and activities, the City’s zoning provisions found in the Zoning Code of the City of Milwaukee, Wisconsin, Chapter 29, *et seq.*

## IDENTIFICATION OF THE PARTIES

16. Plaintiff Harvest Covenant Church is a Wisconsin church and a nonprofit organization under the laws of Wisconsin. Exhibit B, Robinson Dec. ¶ 7.

17. The Church's congregation, while multi-ethnic and multi-cultural, is predominantly African-American. *Id.* at ¶ 19.

18. The mission of Harvest is to bring inner city families into the Kingdom of God: "We mission to love, disciple, and nurture the families in a way of life as they learn to walk with Christ. Finally, we mission to facilitate training to help boys and girls, men and women to go forth into the world 'making disciples of all men.' Mark 16:15-18." *Id.* at ¶ 11.

19. The founder and senior pastor for Harvest is Pastor Darnell Robinson who possesses the authority to speak and act on behalf of Harvest and its members. *Id.* at ¶ 1.

20. Defendant City of Milwaukee is a municipal corporation organized and existing under the statutes and constitution of the State of Wisconsin that may sue and be sued.

21. The City, through its Mayor, City Council, and Zoning Board of Appeals, is responsible for the enactment and enforcement of the ordinance challenged herein, including its enforcement against Plaintiffs.

22. Defendant Michael Murphy is a resident of Milwaukee who serves as the Alderman of the 10<sup>th</sup> District and resides, upon information and belief, in Milwaukee, WI. Mr. Murphy is sued in his individual capacity and upon

information and belief for acting violating Plaintiffs' clearly established rights while acting under color of state law by going outside the scope of his governmental duties or misusing his governmental authority to actively oppose Plaintiffs' efforts to secure additional parking at Sentry Foods in order to use 7127 W. Lisbon Ave. for religious assembly and conspiring with the City of Milwaukee and/or officials thereof to deprive Plaintiffs of their clearly established First Amendment (as applicable through the Fourteenth Amendment) rights.

### **DESCRIPTION OF THE LOCATION**

23. The Church property is an approximately 7,554 square foot building located at 7127 W. Lisbon Ave. in Milwaukee.

24. The front part of the building, totaling approximately 1080 square feet, is used for Harvest Child Development Center (See photo 1 below). The back part of the building totals approximately 6472 square feet, part of which is currently used as a social services center and part of which is the intended worship space for Harvest (See photo 2 below). *Id.* at ¶ 10.





Photo 1- Partial view of the inside of the day care center.

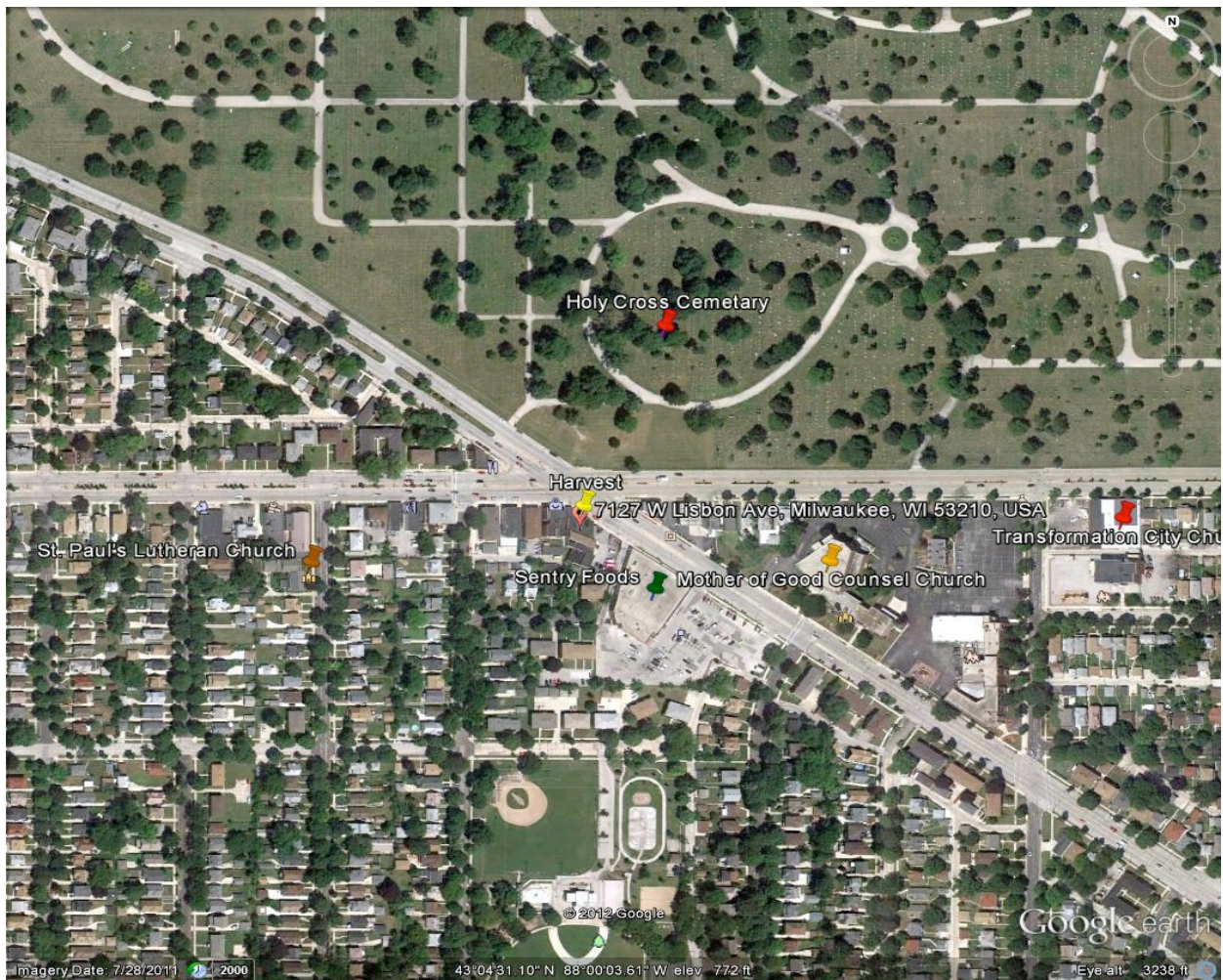


Photo. 2- Partial view of the inside of the intended worship center.



25. The building sits at the intersection of W. Lisbon Ave. and W. Burleigh Street and is in an area where there are no less than *three* other churches currently operating within just one or two blocks to the East or West of the intersection. *Id.*

26. St. Paul Lutheran Church lies two blocks west of the property on the south side of Burleigh. Mother of Good Counsel Church lies within a couple hundred feet immediately across the street (W. Lisbon Ave.) from the property on the East, and Transformation City Church is just on the other side of Mother of Good Counsel at the intersection of Burleigh and N. 68<sup>th</sup> Street. *Id.* (See labeled aerial Google Earth™ photograph below)



## THE MILWAUKEE ZONING CODE

27. The City has zoned the Church Property into an LB2 zoning district.

28. Section 295-603 of the City of Milwaukee Zoning Code (“Zoning Code”) prohibits religious assemblies from locating in areas zoned “Local Business Districts” (“LB2”) unless approved by the Zoning Board for a special use permit.

29. A religious assembly is defined by section 295-201 of the zoning code as “a facility where people regularly assemble for religious worship and any incidental religious education, which is maintained and controlled by a religious body organized to sustain public worship. This term does not include an elementary or secondary school, a specialty/personal instruction school or a college.”

30. Local business districts (LB1 and LB2) are described as follows:

These districts provide a wide range of goods and services to a large consumer population coming from an extensive area. Within these districts, motor-vehicle-related activities are of major significance. Good access by motor vehicle or public transit is important to local business districts, which are often located adjacent to intersections of major thoroughfares and in close proximity to bus transfer locations. The LB1 district is characterized by a more suburban development pattern, with larger lots and deeper setbacks, while the development pattern in the LB2 district tends to be more urban, with smaller lots and smaller setbacks.

31. Section 295-603 of the Zoning Code allows other uses such as theaters, funeral homes, cultural institutions, libraries, monasteries, convents, rectories, colleges, artist studios, taverns, nursing homes, bed and breakfasts, hotels, restaurants, parks, playgrounds, indoor recreational facilities and health clubs **as a matter of right.**

32. Likewise Section 295-403 of the Zoning Code requires one parking space for every six seats in the assembly hall of religious assemblies while having no parking requirement for schools, colleges, specialty or personal instruction schools, libraries or cultural institutions.

33. Harvest has gone through the highly discretionary and extensive special use permit application process, including the application, a statement explaining, inter alia, how the proposed use is consistent with the Comprehensive Plan and a \$275.00 application fee, only to be denied permission to meet.

34. As a result of the denial, which was recorded on June 24, 2010, the Church cannot move for reconsideration until June 24, 2013 under section 8 of the Zoning Board's Rules of Procedure.

35. Under the City of Milwaukee Zoning Code, similarly situated comparators in LB2 districts are exempt from this process.

36. The Seventh Circuit has held this differential treatment to be impermissible. In *River of Life*, the court said the following: "But should a municipality create what purports to be a pure commercial district and then allow other uses, a church would have an **easy** victory if the municipality kept it out." 611 F.3d 367 at 374 (emphasis added).

#### **FURTHER STATEMENT OF FACTS**

37. Harvest Covenant Church was strategically positioned by Pastor Robinson in Milwaukee to spread the gospel of Jesus the Messiah to those in the

surrounding community as a church plant of the Evangelical Covenant Church (“ECC”). *Id.* at ¶ 11.

38. The ECC, founded in 1885, is a rapidly growing multi-ethnic denomination in the United States and Canada with ministries on five continents. *Id.* at ¶ 12.

39. Harvest is in partnership with a sister church that supports Harvest’s mission, Evangelical Covenant Church, in Wauwatosa. *Id.* at ¶ 17.

40. The Church property is leased under a lease-purchase agreement from Joye Peterson for \$4,500.00/month- \$2,000.00/month for the back part of the building that was planned to be used for religious worship services and \$2,500.00/month for the front part of the building that houses the child care center. The current lease expires on March 15, 2013, at which time Harvest will have the first right of refusal to purchase the property for \$375,000, with \$18,000 in lease payments going toward the purchase. *Id.* at ¶ 10.

41. Pastor Robinson currently operates Harvest Child Development Center and Harvest Covenant, Inc. (Harvest Ministries) at the subject property, located at 7127 W. Lisbon Avenue in Milwaukee. *Id.*

42. Harvest Child Development Center is a for-profit corporation that began offering child care services at the subject property in 2008. It is a licensed group child care center that serves up to 49 children ages 4 to 12. *Id.* at ¶ 8.

43. Harvest Covenant, Inc. is a non-stock corporation that has served the Milwaukee community for ten years and has provided the following services (*Id.* at ¶ 9):

- a. Sidewalk Sunday School- a children and youth summer outreach program;
- b. Urban Camp for twenty to thirty youth, in partnership with Heart Love Organization;
- c. A bicycle ministry that has donated over two hundred bicycles to urban children;
- d. Thanksgiving Outreach, which has fed over one hundred families in the past 5 years in partnership with Here's Life Inner City Outreach;
- e. Christmas Outreach, which provides more than two hundred fifty gifts to the urban poor every year in partnership with Oakwood Evangelical Free Church;
- f. Participated in the Earn and Learn program, which provided employment for six youth;
- g. Partnered with the Parklawn Assembly of God and New Testament for the growth and development of their Children and Youth Ministry;
- h. Was honored as the Outstanding Neighborhood Childcare by the Sherman Park Neighborhood Association;
- i. Partnered with Child Evangelism Fellowship to start Good News Clubs in the Milwaukee Public Schools;



- j. Partnered with B.A.S.I.C.S. (Brothers and Sisters in Christ Serving Together) for Miller Park Prayer and peace rallies;
  - k. Honored by Second Harvest Food Pantry for its efforts during their eight year membership; and
  - l. Three years of participation in the Angel Tree Outreach program in partnership with City on a Hill.
44. Harvest has 9 parking spaces in the Church Property's enclosed lot, 2 additional spaces in front of the building, and a written agreement with neighboring Sentry Foods for 5 additional spaces. The 16 spaces more than satisfy the Zoning Code's requirement of 15 spaces (1 for every 5 seats) to accommodate the 75 seats requested in the special use permit application for the worship area of the Church Property. *Id.* at ¶ 25.
45. Pastor Robinson is a proud veteran of the United States Air Force and served during Operation Desert Storm. *Id.* at ¶ 4.
46. Pastor Robinson was the lead pastor for the University of Wisconsin-Milwaukee "Impact" College Campus Ministry from 2009-2011. *Id.* at ¶ 5.

#### **EFFORTS MADE TO WORSHIP AT THE CHURCH PROPERTY**

47. Pastor Robinson applied for a special use permit to use the Church Property as a religious assembly on October 23, 2009. *Id.* at ¶ 20.
48. Pastor Robinson submitted 28 letters of support for his application from various community members and business owners. *Id.*



49. Pastor Robinson received a letter from the Zoning Board on November 11, 2009 requesting information and documents to supplement the application.

Pastor Robinson promptly complied with the requests on January 11, 2010. *Id.*

50. A hearing was originally scheduled for February 11, 2010 for consideration of the application, but the item was adjourned at the request of 10<sup>th</sup> District Alderman Michael Murphy. *Id.* at ¶ 27.

51. The Enderis Park Neighborhood, which is adjacent to the Church Property, is, upon information and belief, a predominantly Caucasian neighborhood. *Id.* at ¶ 23.

52. The Enderis Park Neighborhood experienced racial tensions in 2010 when the Enderis Park Neighborhood Association, which represents the neighborhood, voted to remove a basketball court that was used in large part by African-Americans living in apartments at the edges of Enderis Park.<sup>3</sup>

53. The Enderis Park Neighborhood Association discussed Harvest's application during its February 23, 2010 meeting. *Id.* at ¶ 23.

54. A hearing was again scheduled for April 15, 2010 for consideration of the application, but the item was again adjourned at the request of Alderman Murphy. *Id.* at ¶ 27.

55. In a letter to Alderman Murphy in support of Harvest's application for a special use permit, Pastor Robinson stated that Harvest would contribute the following to the district encompassing the subject property (*Id.* at ¶ 21):

---

<sup>3</sup>See *Sentinel* article by Tom Tolan, [www.jsonline.com/news/milwaukee/111708289.html](http://www.jsonline.com/news/milwaukee/111708289.html).

- a. A safe place for the children and youth;
- b. An anti-drug, anti-gang atmosphere;
- c. Enhanced education through tutoring and mentoring;
- d. Spiritual guidance and assistance for families of all religious backgrounds;
- e. Spiritual advocacy and prayer for local families;
- f. Community partnership and networking with a variety of community organizations;
- g. Assistance to Milwaukee Public School teacher through counseling and mentoring;
- h. Volunteers for the Communities Comprehension Plan;
- i. Youth involvement in community development;
- j. A multi-cultural, multi-ethnic, intergenerational fellowship; and
- k. A place for community meetings and social gatherings.

56. Harvest has sought to conduct the following ministries at the subject property, which are in furtherance of the sincerely religious beliefs of the Church and of its members (*Id.* at ¶ 22):

- a. Weekly assembly of the congregation to worship (Hebrews 10:25);
- b. Weekly preaching, including speech relating to personal morality, God, social, cultural, and political issues (2 Timothy 4:2);
- c. Pastoral counseling for the sick, disturbed, lonely, and bereaved;
- d. Prayer meetings (Acts 1:13-14);

- e. Singing and musical performances (Psalms 81:1-2);
- f. Baptisms, confirmations, weddings, funerals, and communion  
(Matthew 28:19; Luke 22:19);
- g. Bible studies;
- h. Nurseries or crib rooms for infants and toddlers;
- i. Youth activities, including religious instruction, games, and sports;
- j. Social gatherings such as church dinners;
- k. Service projects for members of the congregation, the poor, and the  
general community, such as gatherings for college students (James  
1:27);
- l. Expression of their faith through the architecture of the house of  
worship, signs, crosses, paintings, windows, banners, or decorations;
- m. Evangelism-sharing the Christian message and encouraging others to  
believe in Jesus the Messiah, particularly those who visit their church  
meetings;
- n. Financial giving and special offerings to support salaries, building  
costs, the poor, and ministries for members of the congregation;
- o. Clothing ministry; and
- p. Food pantry.

57. A meeting was held by Alderman Murphy on or about April 26, 2010 at the Capital Library in Milwaukee seeking community input on Harvest's

application for a special permit to use the subject property as a religious assembly hall. *Id.* at ¶ 23.

58. Pastor Robinson subsequently sent a letter to Alderman Murphy seeking to alleviate the concerns over whether granting the permit would be consistent with the Comprehensive West Side Plan, which included the following Commercial Land Use Policies: (1) Strongly discourage non-contributing or incompatible uses in former storefronts, i.e., uses that do not support the commercial focus of the business district or commercial corridor, for example: social service providers, storefront churches, etc.; and (2) Where non-profit and non-commercial uses are already located on commercial corridors, such as storefront churches and day care facilities, seek to restore open and transparent storefront windows at street level where businesses rely on pedestrian traffic and a succession of storefronts to attract businesses. In his letter, he supplied the following as evidence that the permit would be consistent therewith (*Id.* at ¶ 24):

- a. The proposed use of worship services would not displace the child care services, as the worship services would be in addition to and not in place of the child care services;
- b. The proposed use of worship services would not displace an existing commercial enterprise, nor occupy a vacant location that might otherwise be used for some other commercial enterprise;
- c. Denial of the permit would not make space available for what some might consider a more attractive business;

- d. The addition of worship services on Sundays and in the evenings will neither significantly alter the appearance of the premises to passing vehicular or pedestrian traffic nor change the nature of the intersection;
- e. Unlike some “storefront churches,” Harvest operates under the auspices of the ECC, from which it will receive financial and other support; and
- f. Harvest has a written agreement with Sentry Food, a neighboring business, to provide sufficient parking.

59. Upon information and belief, Defendant Murphy, possibly in association with Enderis Park residents, discouraged officials at Sentry Foods from granting use of parking spaces to Harvest. In doing so, Defendant Murphy acted beyond the scope of his official duties in acting to prevent Harvest from securing sufficient parking as part of Harvest’s efforts to obtain a special use permit to use the Church Property as a religious assembly.

60. There are three churches, Transformation City Church, St. Paul Lutheran Church and Mother of Good Counsel Church, in the immediate vicinity of the subject property. Transformation City Church is located at 6725 W. Burleigh St., approximately 0.47 miles away from the subject property. St. Paul Lutheran Church is located at **3059 N 73rd St., approximately 0.39 miles away from the Church property.** Mother of Good Counsel is located at 6924 W. Lisbon Ave., approximately 0.16 miles away from the subject property. St. Paul Lutheran is

located in an LB2 district. The congregations of all three churches are, upon information and belief, predominantly Caucasian. *Id.* at ¶ 26.

61. Pastor Robinson was, for the third time, scheduled to testify in support of his application in front of the Zoning Board on May 20, 2010, but the item was adjourned by the Zoning Board staff for unspecified, administrative purposes. *Id.* at ¶ 27.

62. Alderman Murphy sent a letter to his constituents on June 8, 2010 explaining that the hearing was rescheduled for June 17, 2010. In the letter, Murphy explained that **he would remain opposed to Pastor Robinson's application** due to the overwhelmingly negative response that he had received. See Exhibit C, Letter from Alderman Michael Murphy to his constituents in the 10<sup>th</sup> District.

63. Although the Zoning Board found that “the use can be operated in a manner which will not have a significant adverse impact on traffic circulation, parking or any use of the public right of way,” Pastor Robinson was denied a special use permit to use the subject property as a religious assembly hall by the zoning board on June 17, 2010 for the following reason:

The West Side Comprehensive plan strongly discourages non-contributing or incompatible uses in former storefronts such as storefront churches that do not support the commercial focus of the business district or commercial corridor. The plan also discourages location of tax-exempt or noncommercial uses in buildings previously occupied by taxable or commercial uses. DCD therefore finds that the request to add a religious assembly hall to the premises is not consistent with the comprehensive plan. See Exhibit D, Board of Zoning Appeals Hearing Summary.

64. According to the Milwaukee Board of Zoning Appeals' online records and minutes from June 17, 2010, four other churches that had applied for special



use permits for religious assembly use in LB2 districts had their applications heard on June 17, 2010 and all four were granted. Harvest received the lone denial.<sup>4</sup> See also Exhibit E, copies of the referenced records and minutes.

### **IRREPARABLE HARM TO HARVEST**

65. Between the anticipated launch date of April 4, 2010 and October of 2010, when Harvest secured an alternate worship space, the Church lost approximately 25-50 members and/or attendees and has lost additional new weekly members. Exhibit B at ¶¶ 30.

66. Because Harvest cannot meet at the subject property, it is subjected to meeting at an alternate location, located at 7727 W Center St. in Milwaukee, which significantly impairs church operation. Additionally, Harvest pays \$150.00/month in rent to Milwaukee Evangelical Covenant Church for the use of the property. *Id.* at ¶¶ 31.

67. By having to meet at the alternate location, the Church specifically experiences the following limitations on its religious ministries (*Id.* at ¶¶ 32):

- a. Harvest can only meet at the alternate location from 1:00 p.m. until 3:00 p.m. on Sunday afternoons and from 5:30 p.m. until 8:30 p.m. on Wednesday afternoons. A normal Sunday worship service at the subject property would be from 9:00 a.m. to 2:00 p.m., which would include Prayer, Sunday School, Morning Worship, and fellowship after the service; and then at 6:30 p.m. – 9:00 p.m. for evening Prayer and

---

<sup>4</sup> The Zoning Board of Appeals' minutes are public records and can be found online at <http://city.milwaukee.gov/Minutes.htm>

Worship service. This schedule would allow for a multitude of adult and children's programs and events to be coupled with worship services. The purpose of having two services on Sunday was to draw visitors. That purpose has been limited by having to meet at the alternate location.

- b. Certain people do not come to the service at the alternate location because of transportation issues and because of the relocation generally . The subject property is very close to public transportation and is more accessible to Harvest's current members, as well as new potential members who have expressed interest in joining the Church. Some of Harvest's members who can walk to the subject property are unable to walk to the alternate location. Harvest has lost tithe income as a result of the decreased membership and attendance.
- c. Having to meet at the alternate location at 1:00 p.m. on Sunday is an extreme aggravation and inconvenience for those members that continue to attend.
- d. Harvest cannot conduct its Sunday service in the same manner as it would at the subject property because of the space time limitations.
- e. Harvest cannot have after-hours or before-hours prayer or Sunday School because of the limited time at the alternate location.
- f. Harvest is unable to have praise team rehearsals at the alternate location.

- g. Harvest is unable to carry out expressions of faith through decoration because it cannot place items on the walls at the alternate location, and does not have access to storage.
- h. Harvest has had to purchase additional equipment to be used for the services held at the alternate location.
- i. Harvest has not been able to perform certain events, such as weddings, feeding ministry, Thanksgiving and Christmas outreach events, concerts, praise team practice, family gatherings, community meetings, large group counseling and training and multi-church fellowships at the alternate location due to the time and space constraints.
- j. Harvest has lost significant ministry opportunities to those citizens in the neighborhood surrounding the subject property.
- k. Since Harvest's anticipated launch date of April 4, 2010, it has paid \$2,000/month for the space at the Church property that would have been used to house religious worship services, for a total of \$52,000.00 for a space that Harvest has not been able to put to its intended use.
- l. Since Harvest's anticipated launch date of April 4, 2010, it has paid \$150.00/month in rent to Milwaukee Evangelical Covenant Church for the use of the property, for a total of \$3,000.00 in rent for an alternate location.

- m. Since Harvest's anticipated launch date of April 4, 2010, it has paid approximately \$10,000.00 for transportation costs to transport members and attendees to the alternate location.
  - n. Harvest has added approximately \$20,000.00 in value to the Church Property through renovation work to prepare the property to house worship services and said value will be lost if the space is not able to be used as a church.
68. Many of Harvest's ministry opportunities are being lost forever every day Harvest is not able to use the subject property as a religious assembly. *Id.* at ¶¶ 33.
69. The City of Milwaukee, through its Zoning Code and the actions of the Zoning Board, is interfering with Harvest's religious mission and growth and threatens the continued existence of the church. *Id.* at ¶¶ 34.
70. The reputations of the Church, its members and Pastor Robinson have been harmed as a result of these events. *Id.* at ¶¶ 35.
71. The Church members and Pastor Robinson have been humiliated and have endured mental anguish and suffering as a result of these events. *Id.* at 36.
72. Harvest requests a jury trial.

### **JURISDICTION AND VENUE**

- 73. The Defendant's Ordinance creates a substantial burden on Harvest.
- 74. The burden and removal of it affects interstate commerce.

75. Harvest's worship activities involve interstate commerce through, among other things, the purchase of goods and services and ministry activities crossing state lines.

76. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; federal statutory law, particularly 42 U.S.C. §§ 1983 and 1988 and RLUIPA, 42 U.S.C. § 2000cc-1, *et seq.*; Wisconsin land use law and Article 1 Section 18 of the Wisconsin Constitution.

77. This Court has original jurisdiction over Plaintiffs' federal claims by operation of 28 U.S.C. §§ 1331, 1343 and 1367, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims arising under Wisconsin law.

78. This Court is vested with authority to grant the requested declaratory relief by operation of 28 U.S.C. § 2201, *et seq.*

79. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).

80. This Court has authority to issue the requested damages under 28 U.S.C. § 1343(3).

81. This Court is authorized to award costs and attorneys' fees under 42 U.S.C. § 1988 and Wis. Stat. § 814.01.

82. This Court is authorized to grant the "appropriate relief" that Harvest requests under RLUIPA, 42 U.S.C. § 2000cc-2.

83. Venue is proper under 28 U.S.C. § 1391 in the Eastern District because this claim arose in the district, Defendant resides in the District, the material

events occurred in the district, the subject property is located in the district, and because the law alleged to be facially illegal is being enforced in Milwaukee, WI.

### **ALLEGATIONS OF LAW**

84. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the ordinances, codes, regulations, customs, policies and usages of the City.

85. The Defendant has enforced the challenged Ordinance against the Plaintiffs.

86. Unless and until enforcement of the provisions of the Zoning Code discriminating against churches – such as prohibiting churches in the LB2 Zoning District except by special use permit – are enjoined, the Plaintiffs will suffer and continue to suffer irreparable injury to their federal and state rights.

87. Harvest's religious worship, religious expression, and religious assembly are fully protected by the First and Fourteenth Amendments to the United States Constitution.

88. Concomitantly, the use of an illegal zoning ordinance to deny Harvest access to its property to engage in protected religious worship, religious expression, and religious assembly is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution, RLUIPA, Wisconsin land use law, and Section 1 Article 18 of the Wisconsin Constitution.



89. The decision to deny Harvest a special use permit to use the subject property as a church is a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by Defendant.

90. Unless and until the Defendant's interference of Harvest's ministries is enjoined, Harvest will suffer and continues to suffer irreparable harm to its federal constitutional and statutory rights and damages.

91. Harvest has no adequate or speedy remedy at law to correct or redress the deprivations of their constitutional and civil rights.

92. The Defendant will suffer no harm if the injunctive relief is granted to Harvest.

93. The harm to Harvest far outweighs any harm to the Defendant. The public interest is benefited when constitutional and civil rights are protected.

**FIRST CAUSE OF ACTION – FACIAL VIOLATION OF RLUIPA EQUAL TERMS PROVISION**

94. The allegations contained in all preceding paragraphs are incorporated here by reference.

95. Section 2(b)(1) of RLUIPA prohibits Defendant from treating a religious assembly use less favorably than a non-religious assembly use:

(1) Equal Terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

96. In *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010), the Seventh Circuit interpreted the equal terms provision of RLUIPA as providing that religious and secular land uses may not be treated differently from the standpoint of an accepted zoning criterion. The court stated that “should a municipality create what purports to be a pure commercial district and then allow other uses, a church would have an **easy** victory if the municipality kept it out.” *Id.* at 374 (emphasis added).

97. “If a church and a community center, though different in many respects, do not differ with respect to any accepted zoning criterion, then an ordinance that allows one and forbids the other denies equality and violates the equal-terms provision.” *Id.* at 371.

98. Defendant’s Ordinance prohibits Harvest from using the subject property as a church unless it receives special permission from the City even though the Ordinance freely permits non-religious, non-commercial assembly uses, such as theaters,<sup>5</sup> colleges, schools, libraries and cultural institutions to use property in the same LB2 district.

99. Defendant’s Ordinance permits its officials to make individualized assessments of the proposed uses of property within the City, including the subject property. Section 295-311(a)(1) of the Zoning Code states:

There is created a board of zoning appeals which shall have the powers granted by state statutes and the authority to interpret this chapter, to approve, conditionally approve or deny variances and **special use permits**, to

---

<sup>5</sup> Theaters can be commercial or non-commercial according to the Zoning Code, which defines theaters as follows: “Theater means an establishment or facility for presenting motion pictures or live performances for observation by patrons. This term includes an outdoor stage, bandshell or amphitheater.”

resolve disputes concerning floodplain district boundaries and to hear and decide appeals of administrative decisions of the commissioner of city development or the commissioner of neighborhood services that may arise under this chapter, except as provided in subdiv. 3, or state statutes.

100. Defendant's Ordinance requires one parking space for every six seats in the assembly hall of religious assemblies while having no parking requirement for schools, colleges, libraries or cultural institutions.

101. Further, Defendant's Comprehensive Plan, which was cited as the reason for the denial of Harvest's special use permit application, expressly discourages storefront churches.

102. Defendant's Zoning Code and Comprehensive Plan are land use regulations that treat Harvest on less than equal terms with non-religious assemblies, which, accordingly, facially violate RLUIPA § 2(b)(1).

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**SECOND CAUSE OF ACTION – AS APPLIED VIOLATION OF RLUIPA EQUAL TERMS PROVISION**

103. The allegations contained in all preceding paragraphs are incorporated here by reference.

104. The City of Milwaukee, in enforcing its Zoning Code against Harvest, has violated the Equal Terms provision of RLUIPA.

105. Through its arbitrary zoning of Harvest into an LB2 zoning district when there are three other churches in the immediate vicinity, the City has applied

its Zoning Code in such a way as to treat Harvest on less than equal terms than non-religious assemblies.

106. By requiring Harvest to complete an extensive and highly discretionary special use permit application process and then denying the application, the City has applied its Zoning Code to Harvest in violation of RLUIPA's Equal Terms provision.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**THIRD CAUSE OF ACTION – FACIAL VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

107. The allegations contained in all preceding paragraphs are incorporated here by reference.

108. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that the government treat similarly situated assembly uses equally.

109. Pursuant to the Ordinance, the Defendant explicitly and freely allows similarly situated assembly uses, such as family shelter care facilities, colleges, libraries, cultural institutions, artist studios, nursing homes, funeral homes, bed and breakfasts, hotels, taverns, restaurants, parks, playgrounds, indoor recreational facilities, health clubs and theaters, in the LB2 district without a special use permit.

110. The Defendant's Ordinance excludes religious assembly uses such as churches, including Harvest, from the LB2 district, unless they get special

permission from the Zoning Board in the form of a special use permit, which treats them differently than similarly situated assembly uses.

111. For purposes of land use regulation, a wide variety of non-religious assembly uses are similarly situated and not distinguishable from religious assembly uses.

112. Members of non-religious organizations assemble for group activities that are similar or identical to the activities of a religious congregation (e.g., singing, socializing, recreation, education, dining).

113. The only reason religious activities, particularly Harvest's group activities, are being treated differently is the religious content of its expression.

114. There is neither a compelling governmental interest nor rational basis for the Milwaukee code to permit non-religious assembly uses in the LB2 district, but forbid religious assembly uses without special permission from the Zoning Board.

115. The Defendant's Ordinance and enforcement of it against Harvest violates various fundamental rights of Harvest, including free exercise of religion.

116. The Defendant's Ordinance therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**FOURTH CAUSE OF ACTION – AS-APPLIED VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

117. The allegations contained in all preceding paragraphs are incorporated here by reference.

118. The United States District Court for the Eastern District of Wisconsin has held that enforcement of a zoning ordinance violates the equal protection clause if

"(1) the decision of the particular zoning body is arbitrary; or (2) if the ordinance is applied or enforced with a discriminatory intent or purpose." *Scudder v. Town of Greendale, Indiana*, 704 F.2d 999, 1002 (7th Cir. 1983) (citation omitted). "A particular decision or action is 'arbitrary' if it is reached 'without adequate determining principle or was unreasoned.'" *Id.* (citation omitted). A reasoned application of a municipal ordinance is therefore not arbitrary. *Id.* at 1002.

*Calvary Temple Assembly of God v. City of Marinette*, 2008 U.S. Dist. LEXIS 55500 (E.D. Wis. July 18, 2008).

119. Defendant's Ordinance has an arbitrarily drawn district in which Harvest, though surrounded by churches on three sides, is zoned into a local business district.

120. Defendant's Ordinance has been applied in such a way as to allow non-religious assembly uses as of right in LB2 zones while requiring Harvest to complete a special use permit application and then denying the application.

121. Harvest's group activities are being treated differently because of the the religious content of its expression.



122. There is neither a compelling governmental interest nor rational basis for the Milwaukee code to allow non-religious assembly uses as of right in the LB2 district while denying a special use permit to Harvest.

123. Defendant's Ordinance has been applied in such a way as to allow three churches to meet in the immediate vicinity of Harvest, one of which is in the same zoning district, while denying a special permit to Harvest. All three churches, St. Paul Lutheran Church, Mother of Good Counsel and Transformation City Church, are predominantly Caucasian in make-up while Harvest is multi-ethnic but predominantly African-American. As such, Defendant, through the creation of zoning districts and implementation of its Zoning Code, has treated Harvest differently than similarly situated comparators on the basis of race.

124. There is neither a compelling governmental interest nor rational basis for the Milwaukee code to allow religious assembly uses in the LB2 district by predominantly Caucasian churches while denying a special use permit to a predominantly African-American church.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**FIFTH CAUSE OF ACTION – FACIAL VIOLATION OF RLUIPA  
NONDISCRIMINATION PROVISION**

125. Section 2(b)(2) of RLUIPA prohibits Defendant from treating a religious assembly use less favorably than religious assemblies of different denominations:

- (1) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

126. Defendant's Ordinance permits religious assemblies of different denominations, such as convents, rectories and monasteries, to use property in the same LB2 district without first obtaining a special use permit.

127. Defendant's Ordinance discriminates on the basis of religious denomination as it requires religious assemblies of certain denominations or faith expressions to obtain special use permits to locate in LB2 districts but allows convents, rectories and monasteries to locate in LB2 districts as a matter of right.

128. Defendant imposed and implemented a land use regulation that discriminates against Harvest on the basis of religious denomination, and in doing so violated RLUIPA § 2(b)(2).

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**SIXTH CAUSE OF ACTION – AS-APPLIED VIOLATION OF RLUIPA  
NONDISCRIMINATION PROVISION**

129. The allegations contained in all preceding paragraphs are incorporated here by reference.

130. Defendant's Ordinance has been applied in such a way as to allow three churches of different denominations to meet in the immediate vicinity of Harvest, one of which is in the same zoning district, while denying a special permit to Harvest. The three churches are St. Paul Lutheran Church, a Lutheran church,

Mother of Good Counsel, a Catholic church and Transformation City Church, a Wesleyan church.

131. Further, according to the minutes and public records of the Zoning Board, on June 17, 2010, the date that Harvest's special use permit application was heard and decided, four other churches were granted special use permits by the Zoning Board to operate as religious assemblies in either LB1 or LB2 zones: Transformation Temple, Inc., denomination unknown, Immanuel House of Prayer, Inc., denomination unknown, House of Sacrifice Church, Inc., non-denominational, and The Church of Jesus Christ of Latter-Day Saints. Upon information and belief, none of the above churches are members of the Evangelical Covenant Church denomination.<sup>6</sup>

132. Harvest was the lone church from the Evangelical Covenant Church denomination seeking a special use permit on June 17, 2010 and was the only church to be denied a special use permit on that date.

133. As such, Defendant has applied its Ordinance in such a way as to discriminate against Harvest on the basis of religious denomination.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**SEVENTH CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION UNDER THE UNITED STATES CONSTITUTION**

134. The allegations contained in all preceding paragraphs are incorporated here by reference.

---

<sup>6</sup> The Zoning Board of Appeals' minutes are public records and can be found online at <http://city.milwaukee.gov/Minutes.htm>

135. While general laws of neutral applicability are typically subject to rational basis review, “where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.” *Employment Div. v. Smith*, 494 U.S. 872, 884 (1990); see also *Lukumi*, 508 U.S. 520 at 537.

136. Defendant made an individual assessment of Harvest’s special use permit application and denied the same without a compelling reason, thereby violating Plaintiffs’ rights to free exercise of religion.

137. Harvest and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.

138. The Defendant’s Ordinance excludes religious assembly uses such as churches, including Harvest, from the LB2 district, unless they get special permission from the Zoning Board in the form of a special use permit, while freely allowing other nonreligious assembly uses such as taverns, indoor recreational facilities, and theaters.

139. Defendant’s Ordinance requiring religious assembly uses, like Harvest, to go through the highly discretionary special use permit application process selectively imposes a substantial burden on Harvest that is not imposed on other non-religious assembly uses.

140. Defendant's enforcement of the Ordinance against Harvest imposes a substantial burden because it has forced Harvest to completely forego conducting religious exercises and practices at its desired church location.

141. Defendant's zoning and enforcement of its zoning code against Harvest infringe upon Harvest's hybrid rights under the First Amendment to the free exercise of religion, free speech, freedom of association and assembly.

142. Harvest could not make any changes to its permit application that would increase the chances of the permit being approved.

143. The Defendant's denial of Harvest's permit is not conditional. Harvest was not informed of any modifications it could make to have the permit approved.

144. Defendant lacks a rational or compelling reason that would justify their denial of Harvest's special use permit to use the subject property as a church.

145. Defendant's Ordinance therefore violates the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**EIGHTH CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREE SPEECH UNDER THE UNITED STATES CONSTITUTION**

146. The allegations contained in all preceding paragraphs are incorporated here by reference.

147. Harvest's religious activities and speech are fully protected under the Free Speech Clause of the First Amendment.

148. In limiting, through its zoning law, the location of religious organizations like Harvest, the Defendant restricts speech.

149. Defendant's ban of religious assembly uses without special permit is a content-based restriction on speech because it restricts religious speech by regulating where churches are allowed, conditionally allowed, and prohibited.

150. Nonreligious organizations such as "taverns," "indoor recreational facilities," and "theaters" can have discussions or show movies or have plays concerning whatever issues they choose and still be permitted to locate as a matter of right in the LB2 district, while Harvest, because of its religious nature, cannot.

151. The suppression of Harvest's speech is not only content-based, but also viewpoint-based, as evidenced by the fact that similar subjects can be discussed from secular points of view without exclusion by the Defendant's through their Ordinance.

152. Defendant's Ordinance is also underinclusive because it fails to regulate similar speech that does not incorporate religious activities.

153. Defendant's Ordinance is overbroad because it sweeps within its ambit protected First Amendment religious speech.

154. Defendant's Ordinance operates as an impermissible prior restraint on speech, granting broad and virtually standardless discretion to decision-making officials to decide whether to exclude religious uses.

155. Defendant's Ordinance and actions that prohibit Harvest from locating as of right in LB2 districts in the City do not leave open ample alternative channels of communication.

156. Harvest has a right to conduct its First Amendment activities in the LB2 district where similar secular organizations are permitted to locate by right.

157. Defendant's Ordinance and actions chill Harvest's constitutional and statutory rights.

158. The Defendant lacks a compelling interest to justify its Ordinance and actions.

159. Defendant's Ordinance and actions are not narrowly tailored to achieve a compelling interest.

160. The Defendant may not suppress protected speech absent a showing of a clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order.

161. Harvest's religious use in the LB2 district (or in any other zoning district in the City) does not implicate any threat to public safety, peace, or order, thereby illustrating the Ordinance's lack of narrow tailoring.

162. Defendant's Ordinance and actions are not the least restrictive means of achieving a compelling interest.

163. Defendant's Ordinance accordingly violates the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**NINTH CAUSE OF ACTION – VIOLATION OF RLUIPA  
SUBSTANTIAL BURDEN PROVISION**

164. The allegations contained in all preceding paragraphs are incorporated here by reference.

165. Section 2000cc (a)(1) of RLUIPA provides:

(1) General rule.

No government shall impose or implement a land use regulation 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.

166. The Seventh Circuit has held that, in the context of RLUIPA, “a land use regulation imposes a ‘substantial burden’ on religious exercise if it ‘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.’” *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 997 (7<sup>th</sup> Cir. 2006), quoting *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762-63 (7<sup>th</sup> Cir. 2003).

167. Defendant’s Ordinance, facially and applied in denying Harvest’s special use application, bears direct responsibility for rendering Harvest’s religious exercise at the Church Property impracticable.



168. Harvest and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.

169. The Defendant's Ordinance excludes religious assembly uses such as churches, including Harvest, from the LB2 district, unless they get special permission from the Zoning Board in the form of a special use permit, while freely allowing other nonreligious assembly uses such as theaters, indoor recreational facilities, cultural institutions and taverns.

170. Defendant's Ordinance requiring religious assembly uses, like Harvest, to go through the discretionary and arbitrary special use permit application process selectively imposes a burden on Harvest that is not imposed on other non-religious assembly uses.

171. By forcing Harvest to go through the discretionary and arbitrary special use permit application process and have to wait an unspecified amount of time to learn whether the permit application would be approved or denied by a discretionary board of decision makers, the Defendant precludes Harvest and its members from preaching the Gospel of Jesus the Messiah, worshipping, ministering to others, and sharing their faith with others at the subject property, and thereby substantially burdens their sincerely held religious beliefs.

172. Defendant's Ordinance and actions have also caused Harvest delay in securing worship space, rental expenses at the alternate location and for the unusable worship space at the Church Property, and have caused uncertainty as to

whether or not Harvest will purchase the Church Property at the end of the lease period.

173. Such delay, uncertainty and expense was found to be a substantial burden in the RLUIPA context by the Seventh Circuit.

The burden here was substantial. The Church could have searched around for other parcels of land (though a lot more effort would have been involved in such a search than, as the City would have it, calling up some real estate agents), or it could have continued filing applications with the City, but in either case there would have been delay, uncertainty, and expense. That the burden would not be insuperable would not make it insubstantial.

*Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005).

174. Defendant lacks a rational or compelling reason that would justify their denial of Harvest's special use permit to use the subject property as a church. Traffic, parking and/or commercial concerns do not serve as compelling interests.

The primary concerns raised in the City Planning Commission's denial of the Temple's applications were increased traffic, increased on-street parking, and loss of revenue. These three concerns simply do not justify facially unequal treatment between a church and a private club. *Vietnamese Buddhism Study Temple in America v. City of Garden Grove*, 460 F.Supp.2d 1165, 1174-75 (C.D. Cal. 2006)

175. Defendant will be unable to demonstrate that preventing the use of the subject property as a church by Harvest will be the narrowest alternative to achieving any governmental interest, let alone a compelling interest.

176. Defendant's Ordinance permits its officials to make individualized assessments of the proposed uses of property within the City, including the subject property.

177. Defendant's Ordinance, facially and as applied in denying Harvest's special use permit application, therefore violates the substantial burden provision of RLUIPA.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**TENTH CAUSE OF ACTION – VIOLATION OF RLUIPA  
UNREASONABLE LIMITATION PROVISION**

178. The allegations contained in all preceding paragraphs are incorporated here by reference.

179. Section 2000cc (b)(3)(B) of RLUIPA provides:

(3) Exclusions and limits.

No government shall impose or implement a land use regulation that ...

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

180. Defendant's Comprehensive Plan includes the following language:

Strongly discourage non-contributing or incompatible uses in former storefronts, i.e. uses that do not support the commercial focus of the business district or commercial corridor. For example: social service providers, *storefront churches*, etc.<sup>7</sup>

181. The Comprehensive Plan's discouragement of storefront churches was the only explanation given for the denial of Harvest's special use permit application.

182. Such explanation is unreasonable given the fact that there are three other churches, including a storefront church, in the immediate vicinity of Harvest.

---

<sup>7</sup> The City of Milwaukee's Comprehensive Plan for the West Side can be read in full at: <http://city.milwaukee.gov/Plansandstudies/West.htm>

183. Defendant lacks a rational or compelling reason that would justify the discouragement of storefront churches and the resulting denial of Harvest's special use permit to use the subject property as a church.

184. Defendant will be unable to demonstrate that preventing the use of the subject property as a church by Harvest will be the narrowest alternative to achieving any governmental interest, let alone a compelling interest.

185. The language from the Comprehensive Plan, both facially and as applied in denying Harvest's special use permit application, is an unreasonable limitation on churches, including Harvest.

186. Defendant's Ordinance therefore violates the unreasonable limitation provision of RLUIPA.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**ELEVENTH CAUSE OF ACTION – DEFENDANTS ARBITRARILY DRAWN ZONING DISTRICT AND ARBITRARY DENIAL OF HARVEST'S SPECIAL USE PERMIT APPLICATION VIOLATE THE LAW OF WISCONSIN**

187. The Supreme Court of Wisconsin has held that a zoning ordinance "is arbitrary and unreasonable" if "it does not bear a substantial relation to public health, safety, morals or general welfare" and is therefore unconstitutional on its face. *Town of Rhine v. Bizzell*, 2008 WI 76, 62-65 (2008).

188. The court stated that "the routine employment of special uses, especially without (or with few) standards or criteria, opens up both individual zoning decisions and the zoning ordinance provision itself to constitutional

challenges as being arbitrary and capricious.” *Id.* at 52, quoting John B. Bredin, *Common Problems with Zoning Ordinances*, American Planning Association Zoning News, Nov. 2002, at 2.

189. The City has arbitrarily drawn the Church Property into a Local Business District when there are three other churches in the immediate vicinity.

190. The zoning district does not bear a substantial relation to public health, safety, morals or general welfare.

191. The Zoning Board provided no explanation for the denial of Harvest’s special use permit application other than the Comprehensive Plan’s discouragement of storefront churches.

192. The explanation was without merit as there is a storefront business, Harvest Child Development Center, currently operating at the Church Property that would be displaced or disrupted by the use of the property as a religious assembly.

193. The denial of Harvest’s special use application therefore had no substantial relation to public health, safety, morals or general welfare and was therefore arbitrary and capricious in violation of Wisconsin law.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

#### **TWELFTH CAUSE OF ACTION – VIOLATION OF WISCONSIN CONSTITUTION**

194. The allegations contained in all preceding paragraphs are incorporated here by reference.

195. Article 1 Section 18 of the Wisconsin Constitution provides:

Section 18. Freedom of worship; liberty of conscience; state religion; public funds. [As amended Nov. 1982]

The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

196. The government must have a compelling interest that cannot be served by a less restrictive alternative in order to enact or enforce an ordinance that places a burden on sincerely held religious beliefs under Wisconsin's Freedom of Worship Clause. *Coulee Catholic Sch. v. Labor & Indus. Review Comm'n*, 2009 WI 88, P60-P61 (2009).

197. Harvest and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.

198. The Defendant's Ordinance excludes religious assembly uses such as churches, including Harvest, from the LB2 district, unless they get special permission from the Zoning Board in the form of a special use permit, while freely allowing other nonreligious assembly uses such as private clubs, labor unions, and fraternal organizations.

199. Defendant's Ordinance requiring religious assembly uses, like Harvest, to go through the arbitrary and discretionary special use permit application process

selectively imposes a substantial burden on Harvest that is not imposed on other non-religious assembly uses.

200. Defendant's enforcement of the Ordinance against Harvest imposes a substantial burden because it has forced Harvest to completely forego conducting religious exercises and practices at its desired church location.

201. Harvest could not make any changes to its permit application that would increase the chances of the permit being approved.

202. The Defendant's denial of Harvest's permit is not conditional. Harvest was not informed of any modifications it could make to have the permit approved.

203. Defendant lacks a rational or compelling reason that would justify their denial of Harvest's special use permit to use the subject property as a church.

204. Defendant will be unable to demonstrate that preventing the use of the subject property as a church by Harvest will be the narrowest alternative to achieving any governmental interest, let alone a compelling interest.

205. Defendant's Ordinance therefore violates Article 1, Section 18 (Freedom of Worship, Protection of Conscience) of the Wisconsin Constitution.

**WHEREFORE**, Harvest respectfully prays that the Court grant the relief set forth in the prayer for relief.

**THIRTEENTH CAUSE OF ACTION – DEFENDANT MICHAEL J. MURPHY'S  
VIOLATION OF THE CHURCH'S RIGHT TO FREE EXERCISE UNDER THE  
UNITED STATES CONSTITUTION**

206. The allegations contained in all preceding paragraphs are incorporated here by reference.

207. Defendant Murphy acted under color of state law in such a manner that violated Harvest and its congregation's clearly established rights to free exercise of religion.

208. Defendants Murphy's actions violated the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

209. Defendant Murphy, upon information and belief, violated Plaintiffs' clearly established rights by acting outside the scope of his governmental duties and/or misusing his governmental authority to actively oppose Plaintiffs' efforts to secure additional parking at Sentry Foods and conspired with the City of Milwaukee and/or officials thereof to deprive Plaintiffs of their First Amendment (as applicable through the Fourteenth Amendment) Free Exercise rights.

210. Upon information and belief, Defendant Murphy, possibly in association with Enderis Park Neighborhood Association and/or other residents, expressly discouraged officials at Sentry Foods from providing additional parking to Harvest to use on Sunday mornings for worship services.

211. In so doing, Defendant Murphy actively opposed the Church's efforts to obtain a special use permit to use the Church Property as a religious assembly.

212. Defendant Murphy is a municipal official who, acting under color of state law, caused the deprivation of the Church's clearly established federal rights or conspired to cause such deprivation. He is sued regarding the "as applied" challenges of this Complaint and not the facial challenges to the Zoning Ordinance.



213. Defendant Murphy has conspired with the municipality to violate the civil rights of the Church under RLUIPA and the United States Constitution by treating the Church in a discriminatory fashion and by creating undue burdens, expenses, delay, interference and/or uncertainty in the Church's efforts to use the Property for religious assembly and exercise.

214. Defendant Murphy, upon information and belief, improperly used his influence as 10<sup>th</sup> District Alderman in an attempt to scuttle the Church's efforts to obtain off-site parking.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request relief as follows:

- A. A preliminary and permanent injunction precluding the City from further impeding or interfering with the Church's right to use its property at 7127 W. Lisbon Avenue, Milwaukee, Wisconsin, as a church;
- B. A preliminary and permanent injunction, enjoining the City, its officers, agents, employees, attorneys and all other persons acting in active concert with it, from enforcing its Zoning Ordinance to prevent or attempt to prevent Harvest from using its property at 7127 W. Lisbon Avenue, Milwaukee, Wisconsin, as a church;
- C. Enter a Declaratory Judgment declaring that Defendant's requirement that churches obtain a special use permit in the LB2 district is void and unconstitutional both on its face and as applied to Harvest;
- D. Award damages for violation of Plaintiffs' constitutional rights;

