UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 09-1618

MILES CHRISTI RELIGIOUS ORDER;
CESAR BERTOLACCI, Father;
FRANCISCO CONTE-GRAND, Brother,

Plaintiffs/Appellants,

-vs-

TOWNSHIP OF NORTHVILLE; CHIP SNIDER, in his Official Capacity as Northville Township Manager; JENNIFER FREY, in her Official Capacity as Director of Community Development for Northville Township; JOSEPH BAUER, in his Official Capacity as Ordinance Enforcement Officer for Northville Township,

Defendants/Appellees.

On appeal from the United States District Court for the Eastern District of Michigan, Southern Division, District Court No. 07-14003, Hon. Paul D. Borman

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DEFENDANTS/APPELLEES' BRIEF ON APPEAL

* **ORAL ARGUMENT REQUESTED** *

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to 6th Cir. R. 26.1(a), Defendants/Appellees, a municipal corporation and individual employees thereof, are exempt from the requirement of filing a corporate affiliate/financial interest disclosure statement.

s/Marcelyn A. Stepanski (P44302)

Dated: November 9, 2009

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STATEMENT REGARDING ORAL ARGUMENT

Defendants/Appellees submit that the facts and legal arguments are fully presented in the briefs and record, which warrant that the lower court be affirmed. If the Court finds that oral argument will be of assistance in rendering a decision, or if oral argument is extended to Plaintiffs, Defendants/Appellees request that oral argument be granted.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

I. ***Subject Matter Jurisdiction***: On September 21, 2007, Plaintiffs filed a Complaint in the United States District Court for the Eastern District of Michigan against Northville Township, the Township Manager, the Community Planning Director, and an Ordinance Enforcement Officer. (R.1, Complaint.) However, before serving that Complaint on Defendants, Plaintiffs filed an Amended Complaint containing nine claims. Count I alleged that compliance with neutral site plan review procedures imposed a substantial burden on their religious exercise in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 USC §2000cc et seq (RLUIPA). (R.3, Amended Complaint.) Count I also purported violations of the "equal terms," "nondiscrimination," and "unreasonable restriction" provisions of RLUIPA. Counts II, III, and IV alleged First Amendment violations of the rights to free exercise, free speech, and free expressive association, respectively. Count V claimed discriminatory application of the Township's Zoning Ordinance based upon an exercise of religious rights in violation of equal protection. Count VI asserted that Plaintiffs were denied the rightful use of their property in violation of due process rights. Counts VII, VIII, and IX alleged that Plaintiffs' rights to equal protection, expressive assembly and association, and free exercise of religion under the Michigan Constitution were violated. Plaintiffs' federal claims were brought pursuant to 42 USC §1983.

(R.13, Amended Complaint.) Subject matter jurisdiction was vested in the district court based upon 28 USC §1331, governing federal questions, and supplemental jurisdiction over the pendent state claims was proper pursuant to 28 USC §1367.

II. ***Appellate Jurisdiction***: On April 30, 2009, the district court entered an Order granting Defendants' Motion to Dismiss without prejudice for lack of subject matter jurisdiction based on the ripeness doctrine. (R.50, Order.) A corresponding Judgment was entered. (R.51, Judgment.) Plaintiffs filed a Notice of Appeal on May 7, 2009. (R.52, Notice of Appeal.) With respect to the ripeness issue, appellate jurisdiction is vested in this Honorable Court pursuant to 28 USC §§1291 and 1294. However, it appears that Plaintiffs have sought to interject other arguments which were not raised in conjunction with the briefing on the ripeness issue and were not decided by the lower court. As to those arguments, appellate jurisdiction is lacking.

COUNTER-STATEMENT OF ISSUE FOR REVIEW

I. DID THE DISTRICT COURT PROPERLY HOLD THAT PLAINTIFFS' CLAIMS ARE NOT RIPE FOR ADJUDICATION WHERE THEY FAILED TO OBTAIN A FINAL DECISION FROM THE TOWNSHIP AS TO THE APPLICATION OF THE ZONING ORDINANCE TO THEIR PROPERTY?

Defendants/Appellees answer: Yes
Plaintiffs/Appellants answer: No
The District Court answered: Yes

COUNTER-STATEMENT OF THE CASE

I. *Nature of the Case*

This lawsuit arose out of Plaintiffs' refusal to utilize Defendant Township's site plan review, variance, or ZBA procedures in response to complaints and evidence that Plaintiffs had changed the use of their property from residential to a more intensive non-residential use resembling a small church or place of worship, given the frequency and volume of vehicles parked on, and entering and exiting, the property. Township Defendants met with Plaintiffs to discuss the parking issue, possible ways to accommodate the volume of parking, landscaping to buffer the parking from surrounding residences, and zoning procedures to pursue to resolve the parking dilemma. Township Defendants advised Plaintiffs to file a site plan depicting the necessary parking and landscaping, and granted them additional time within which to do so. Plaintiffs flatly refused to participate in the zoning process, taking the position that because they are engaged in religious activities in a residence, they are exempt from zoning regulations. After the time designated for filing a site plan expired, and Plaintiffs failed or refused to take action to resolve the parking problem, the Township issued a civil infraction ticket. While that matter was pending in the state district court, Plaintiffs filed this federal action.

II. *Course of Proceedings*

Plaintiffs filed their original Complaint on September 21, 2007 and their

Amended Complaint on December 3, 2007, alleging various claims against Northville Township, the Township Manager, the Community Planning Director, and an Ordinance Enforcement Officer, as previously detailed. (R.1, Complaint; R.3, Amended Complaint.)

On October 7, 2008, Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction based on the Ripeness Doctrine. (R.31, Motion to Dismiss.) Defendants argued that Plaintiffs' claims challenging the Township's land use decisions are subject to the ripeness requirements, specifically including the requirement that Plaintiffs obtain a final definitive decision from the Township regarding how its zoning ordinances pertaining to changes in use, site plan review, off-street parking, landscaping, and setbacks applied to Plaintiffs' Property. (Id.) Plaintiffs responded, and Defendants replied. (R.38, Response; R.39, Reply.)

On January 5, 2009, the parties to the state district court matter entered into a stipulated order staying that proceeding pending the resolution of Plaintiffs' federal action, including the completion of appeals. A copy of that stipulated order was filed with the federal district court on January 28, 2009, the same date that a hearing was held on Defendants' Motion to Dismiss. (R.47, Notice of Stipulation and Order of Stay; R.54, transcript of motion hearing.)

III. *Disposition in the Court Below*

On April 30, 2009, the federal district court, the Honorable Paul D. Borman,

granted Defendants' motion and dismissed Plaintiffs' claims *without prejudice*. (R.50, Order.) The court held that Plaintiffs' claims were subject to the ripeness doctrine and that Plaintiffs had failed to obtain a final decision from the Township as to how its zoning provisions would apply to Plaintiffs' Property. (Id., pp. 9-16.) A corresponding Judgment was entered, and Plaintiffs appealed. (R.51, Judgment; R.52, Notice of Appeal.)

COUNTER-STATEMENT OF FACTS

Introduction

The district court correctly held that Plaintiffs failed to obtain a decision from the Township as to how it would apply its Zoning Ordinance to the subject property. The district court properly dismissed Plaintiffs' action without prejudice on ripeness grounds, and its decision should be affirmed.

Factual Background

The Property which is the subject of this lawsuit is an approximate one-acre parcel located at 49744 Seven Mile Road in Northville Township (the "Property"). The Property is zoned R-2, One Family Residential, under the Township's Zoning Ordinance, and contains a two-story house. (R.31, Defendants' Motion to Dismiss, Exhibit A, Survey; Exhibit B, Zoning Map.) All surrounding parcels are zoned residential and are used for single-family residential purposes. (Id., Zoning Map.) Gerald and Gail LeVan (the "LeVans") own the property surrounding the Plaintiffs' Property. (R.31, Exhibit C, location map; Exhibit T, Gail LeVan, Tr Vol 1, p. 109.)[1]

Miles Christi is an international Catholic order composed of priests and brothers who devote themselves to the spiritual growth of people through retreats

[1] Transcripts of a formal hearing held in the 35th state district court on September 12 and 24, 2007 are cited as: "[Witness name], Tr Vol __, p. __." The transcript of the September 12 proceeding is noted as Volume 1, and the transcript of the September 24 proceeding is Volume 2.

and conferences and which is incorporated under the laws of Michigan and designated as a 501(c)(3) organization by the IRS. (R.3, First Amended Complaint, ¶6.) According to Plaintiffs, they received the Property in 2002 when the Daughters of Our Lady of Providence donated the Property to them. (Id., ¶¶7-8.) On August 8, 2002, the Archdiocese of Detroit authorized "the establishment of an oratory of Miles Christi Institute located at 49744 W. Seven Mile Road, Northville, Michigan, [the Property] now to be know [sic] as the official address of the Miles Christi in the Archdiocese of Detroit." (Id., ¶25; R.31, Exhibit D, Cardinal Maida letter 8/8/02.) The Archdiocese further authorized the limited celebration of the Holy Eucharist and the Sacrament of Penance in the chapel of the same oratory. (Id.)

Starting as early as February 24, 2003, the LeVans and other neighboring residents inquired about the use of the Property and whether Plaintiffs had permits for work being performed, and they complained about damage done by construction equipment and the number of vehicles parked on the Property. (R.31, Exhibit E, resident complaint letters; but see, Exhibit X, Gerald LeVan Dep, p. 224.) Although the Township investigated and no problems were initially noted, the neighbors continued to complain about activities on the Property, and in response to these complaints the Township's Ordinance Enforcement Official, Joseph Bauer, occasionally observed the Property when driving by in the

performance of his other duties. (R.3, Amended Complaint, ¶¶40-51; R.31, Exhibit S2, Bauer, Tr Vol 1, pp 60-65, 85-86; R.31, Exhibit F, field notes.)

On March 10, 2003, Plaintiff Father Cesar Bertolacci, Miles Christi Superior, wrote a letter to the Township Clerk introducing the Miles Christi Religious Order and describing its activities. (R.31, Exhibit G, Miles Christi letter dated 3/10/03.) Father Bertolacci stated that the Property was meant to be the private residence for the Priests and Brothers of Miles Christi and that the house was not to function as a parish, but that Mass would be held daily in the chapel which could seat 10 people and that only family and close friends would attend. (R.31, Exhibit G.) He also informed the Township that occasionally there would be other small unspecified activities held at the Property for 3 to 10 friends and supporters of Miles Christi but that such events were not open to the public and were not posted in any bulletin or public place. (Id.) Following receipt of this introduction letter, the Township advised neighboring residents that Miles Christi's use of the Property as a private residence was permitted under the Zoning Ordinance. (Id., Exhibit H, Township letter to residents dated 3/18/03; Exhibit CC, Osiecki dep., pp. 11-15, 98, 108-109, 113-116.)

Throughout the latter part of 2006 and January 2007, the LeVans renewed their complaints about the number of cars parked at the Property and the amount and frequency of vehicles entering and leaving the Property and claimed that

outwardly visible activity at the Property had intensified. (Id., Exhibit T, Gail LeVan, Tr Vol 1, pp. 112-113, 130-136; Exhibit X, Gerald LeVan dep., pp. 117-125, 224-239, 251-254 and deposition exhibits 7 and 32; see also, Exhibit X, photographs of vehicles attached as deposition exhibits.)[2] The LeVans complained of 25 vehicles being parked on the Property with regularity and children being dropped off at the Property at various times throughout the day, and they also questioned whether the Property was still being used as a residence. (R.31, Exhibit T, Gail LeVan, Tr Vol 1, pp. 114-115, 135; Exhibit X, Gerald LeVan dep., pp. 224-239, 251-254; Exhibit AA, Bauer dep., p. 246 and deposition exhibits 19-20.) The LeVans complained that the Priests were no longer living at the Property and that the Property was being used only during the day. (Id.)

On February 7, 2007, Joe Bauer went to the Property and met with representatives of Miles Christi, including Father Bertolacci and Brother Conte-Grand. (R.3, Amended Complaint, ¶54; R.31, Exhibit Y, Conte-Grand dep., pp. 43-47.) He advised them of the neighbors' complaints regarding the number of vehicles parked at the Property, the frequency of traffic entering and leaving the Property, and the hours of operation. (R.31, Exhibit Y, Conte-Grand dep., pp. 43-

[2]Plaintiffs contend that noise and "public safety" have not been an issue. However, given the number of vehicles depicted in the photographs referenced above, navigating an emergency vehicle through the stacked rows of cars would be a challenge.

47; Exhibit AA, Bauer dep., pp. 254-260, 266-267.) While in the house, he picked up fliers announcing regularly scheduled boys' and girls' Bible study groups at the Property. (R.31, Exhibits S1 and S2, Bauer, Tr Vol 1, pp. 18-25, 39-40, 76; Exhibit AA, Bauer dep., pp. 138, 255-260, 311-316; Exhibit I, Bible Study Fliers.) Plaintiffs admit that the Township's investigation was intended to prove or disprove neighbors' complaints, which would appear to be the responsible thing to do prior to taking any action. (Appeal Brief, p. 15.) Plaintiffs complain that the investigation refuted the complaints. However, Bauer testified that vehicles were present on a continuous basis, that he personally observed as many as 15 at a given time, and that often after receiving a complaint of a high number of vehicles on the Property he was unable to proceed there until much later, sometimes days later. (R.38, Plaintiffs' Response, Exhibit B, pp. 241-242.)

On February 27, 2007, Mr. Bauer wrote a letter to Father Bertolacci, confirming his February 7th visit which stated, in part:

> The Planning Department was advised of my findings and recommended monitoring the parking situation to determine if compliance with the Parking Ordinance during Sunday Mass and other events was sufficient to comply with the Ordinance.
>
> Follow-up observations of the parking conditions revealed during Sunday Mass vehicles were parked on grassy areas in violation of the Ordinance that regulates this matter.
>
> Therefore, I am requesting from you a letter that

> describes the measurements of the St. Ignatius Chapel (room size, pew measurements and seating capacity). Additionally, an operations plan describing activities is needed to determine if the present amount of parking is sufficient so vehicles do not park on grassy areas. (R.31, Exhibit J, Bauer letter dated 2/27/07.)

Father Bertolacci responded with correspondence dated March 1, 2007, in which he advised that the chapel was 20 feet by 15 feet, with six pews each, at 36 inches in length, and had a capacity of 18 people. (R.31, Exhibit K, Bertolacci letter dated 3/1/07; see also, R.3, Amended Complaint, ¶58.) He stated that faith-based groups met regularly during the week, that volunteer opportunities also took place during the week, and that "generally" there were no more than 10 people at the house at one time with the volunteer activities, including the members of Miles Christi. (Id., Exhibit K.) The information Father Bertolacci provided regarding the uses, activities, and number of people involved in the religious activities was inconsistent with the information previously provided to the Township (e.g., increase in the capacity of the chapel from 10 people to 18 people between 2003 and 2007), and the new information indicated a change to a more intensive non-residential use. (R.31, compare Exhibit G, Miles Christi letter of 3/10/03 with Exhibit K, Father Bertolacci letter of 3/1/07.)

On March 23, 2007, the three individually named Defendants, Township Manager Chip Snider, Community Planning Director Jennifer Frey, and Ordinance Enforcement Official Joseph Bauer, met with Father Bertolacci and Brother Conte-

Grand to discuss the situation including the neighbors' complaints, potential ordinance violations, and possible resolutions. (R.3, Amended Complaint, ¶¶59-62.) During this meeting, the Township advised Plaintiffs that the uses of the Property as described in Father Bertolacci's letter resembled a small church or place of worship as defined in the Township's Zoning Ordinance and that those religious activities were permitted uses under the Property's zoning. (R.31, Exhibit V2, Frey, Tr Vol 2, p. 54; Exhibit BB, Frey dep., pp. 152-176 and deposition exhibits 19-21; Exhibit Y, Conte-Grand dep., pp. 7-10; Exhibit L, Frey Memo/Meeting Minutes; Exhibit HH, Zoning Ordinance §170-33.2 and 33.3.) Father Bertolacci disagreed with Ms. Frey's characterization that the use of the Property resembled a church or place of worship despite his acknowledgement that the house contained a chapel, Plaintiffs used the Property for celebrating Mass daily, and Plaintiffs hosted six (6) regularly scheduled Bible study groups each week, Monday through Thursday, as well as volunteer activities to benefit the Miles Christi Religious Order. (R.31, Frey dep., p. 167; Exhibit Z, Father Bertolacci dep., pp. 30-43; Exhibit JJ, Zoning Ordinance Art 44 - definition of church, temple or other place of worship; Exhibit R.)

Notwithstanding the disagreement over the characterization of Plaintiffs' use of the Property, the parties discussed the size of the chapel, the type and frequency of activities occurring on the Property, and the number of people involved in the

activities at the Property. (R.31, Exhibit Z, Father Bertolacci dep., pp. 30-43; Exhibit L, Frey Memo/Meeting Minutes.) Father Bertolacci indicated that there could be up to 20-22 people at the house, but on a less frequent basis. (Id., Exhibit L.) Father Bertolacci's representations demonstrate a continual increase in the intensity of the use on the property from 3 to 10 guests at the house as represented in his March 10, 2003 letter, to the chapel seating 18 people as represented in his March 1, 2007 letter, to 20-22 guests at the Property as represented by Father Bertolacci during the March 23, 2007 meeting. (R.31, Exhibit G, 3/10/03 letter; Exhibit K, 3/1/07 letter; Exhibit L, memo.)

Ms. Frey advised that she believed the use of the Property had changed from a purely residential use to a more intensive non-residential use resembling a small church or place of worship and that Plaintiffs would have to comply with the Zoning Ordinance and provide enough parking spaces to accommodate the peak demand on the Property. (R.31, Exhibit L, Frey Memo; Exhibit N, Frey Affidavit, ¶¶7-8; Exhibit BB, Frey dep., pp. 152-176.) Ms. Frey advised that the Zoning Ordinance required parking for a "church, temple or other place of worship" to be located in the rear yard, except that the Planning Commission could allow up to 25% of the parking to be located in the front yard under certain conditions. However, front yard parking is limited to seniors, handicapped persons, and drop off activities. (R.31, Exhibit N, Frey Affidavit, ¶9; Exhibit BB, Frey dep., pp. 152-

176; Exhibit L, memo; Exhibit DD, Zoning Ordinance §170-6.2(J).)

When Father Bertolacci stated that this was not feasible because a septic field for the house was located in the rear yard, Ms. Frey advised that Miles Christi could request a variance from the rear yard parking requirement from the Zoning Board of Appeals (ZBA). (R.31, Exhibit L, memo; Exhibit N, Affidavit, ¶9; Exhibit BB, Frey dep, pp. 152-176.) Ms. Frey also noted that a landscape buffer was required to screen the parking area from adjacent residential uses pursuant to Sections 170-26.3(J) and 170-24.6. (Id., Exhibit L, memo; Exhibit N, Frey Affidavit, ¶10; Exhibit BB, Frey dep., pp. 152-176; Exhibit FF, Zoning Ordinance Art 24; Exhibit GG, Zoning Ordinance Art 26.)

Because the use of the Property had changed to a more intensive non-residential use, Plaintiffs were required to submit a site plan depicting the parking and landscaping in compliance with the Zoning Ordinance. (Id., Exhibit N, Affidavit, ¶¶7, 11; R.3, Amended Complaint, ¶¶60-66.) Father Bertolacci objected to incurring the expense related to a site plan and/or variance application. (R.3, ¶60; R.31, Exhibit N, Affidavit, ¶12; Exhibit Z, Bertolacci dep., pp. 34-43.) He also expressed concern that if a site plan was submitted, the Township would require compliance with building codes and compel modifications to the interior of the house, costs for which Miles Christi did not want to incur. (R.3, Amended Complaint, ¶¶60-66; R.31, Exhibit N, Affidavit, ¶13; Exhibit Z, Father Bertolacci

dep., pp. 34-43.) Ms. Frey indicated that she was only concerned with exterior site plan issues and that building code issues were handled by a different department. (R.31, Exhibit N, ¶13; Exhibit BB, Frey dep., pp. 152-176; Exhibit Z, Father Bertolacci dep., pp. 34-43.)

At the conclusion of the meeting, Father Bertolacci stated that Miles Christi would retain a planning consultant and review its options. (Id., Exhibit N, Affidavit ¶14.) Ms. Frey asked Father Bertolacci to advise Joe Bauer within 30 days how they intended to proceed. (Id., Affidavit ¶14; Frey dep., pp. 152-176; Bertolacci dep., p. 38.) She also advised Father Bertolacci that Miles Christi would need to file a ZBA application or a site plan within 60 days, which provided Miles Christi with a grace period on the upcoming submission deadlines to allow their planner some additional time to prepare and submit a ZBA application and/or a site plan. (R.31, Exhibit V2, Frey Tr Vol 2, p. 59; Exhibit N, Affidavit ¶14; Exhibit BB, Frey dep., pp. 152-176; Bertolacci dep., pp. 30-43.)

Following the March 23, 2007 meeting, Miles Christi's planning consultant, Chris Doozan of McKenna & Associates, came to the Planning Department, purchased a copy of the Zoning Ordinance, and spoke with Ms. Frey. (Id., Exhibit N, Affidavit, ¶15; Exhibit MM, McKenna documents; Bertolacci dep., pp. 39-41; Conte-Grand dep., pp. 5-7, 12-14.) He advised that he was working on an application for Miles Christi, and they discussed the applicability and interpretation

of various zoning provisions (e.g., offstreet parking, landscape buffering, and setbacks), as well as the relevant ZBA and Planning Commission submission deadlines. (R.31, Exhibit N, Affidavit, ¶15; Exhibit BB, Frey dep., pp. 182-185.) Although Plaintiffs did not submit a ZBA application or a site plan by the first submission deadline following the March 23rd meeting, Jennifer Frey believed they were working toward submitting something by the next set of deadlines for the following month's meetings. (Id., Exhibit N, Affidavit, ¶¶15-16.)

On June 5, 2007, after being advised that Miles Christi had not submitted a site plan or variance application as requested, Joe Bauer issued a civil infraction ticket to Miles Christi for failure to follow the site plan procedures in violation of Zoning Ordinance Section 170-33.3. (Id., Exhibit HH, §170-33.3; Exhibit M, civil infraction ticket; Exhibit S1, Bauer, Tr Vol 1, pp. 13-15.) The ticket commenced legal proceedings to enforce the Township's site plan review procedures based on the conclusion that, under §170-33.2, Miles Christi had changed the use of the Property from a mere residence to a more intensive non-residential use resembling a small church or place of worship. The change in use under §170-33.2 was based on the information obtained during the Township's investigation in response to complaints about the number of cars parked on the Property on a regular basis, the increased frequency and volume of vehicles entering, leaving, and parking on the Property, as well as information disclosed in Father Bertolacci's letter dated March

1, 2007 and during the March 23, 2007 meeting. (Id., Exhibit N, Affidavit, ¶¶4-5.)

On September 12 and 24, 2007, the Honorable Judge Michael J. Gerou of the 35th District Court conducted a formal hearing on the civil infraction ticket and heard testimony from Joe Bauer, Gail LeVan, Gerald LeVan, and Jennifer Frey. At the conclusion of the proofs on September 24th, Judge Gerou dismissed the ticket holding that the Township failed to carry its burden of proof and that §170-33.2 was unconstitutionally vague. (Id., Exhibit W, Tr Vol 2, pp. 99-105.) The Township filed a Motion for Reconsideration which the court denied. (Id., Exhibit O, Opinion 10/18/07.)

The Township then filed an application for leave to file a delayed appeal to the Wayne County Circuit Court which was heard on May 9, 2008. On August 11, 2008, the Honorable Wendy Baxter issued an Opinion and Order reversing Judge Gerou's directed verdict and remanding the case to the 35th district court. (Id., Exhibit P, Judge Baxter Opinion dated 8/11/08.) The court held, *inter alia*, that Section 170-33.2 of the Township's Zoning Ordinance was not unconstitutionally vague and that "there was ample evidence presented to establish a change in use of the property from residential to a more intensive use similar to that of a public assembly or church." (Id., Exhibit P, Opinion, pp. 4-5, 6.) On January 5, 2009, after the case returned to the state district court, the matter was stayed pursuant to a stipulation by the parties. Plaintiffs had filed the within federal civil matter and the

parties stipulated to stay the state district court proceedings pending resolution of this matter through completion of appeals. (R.47, Notice of Stipulation and Order of Stay.)

Plaintiffs filed this action on September 21, 2007, during the pendency of the formal hearing in the state district court matter, against Northville Township, the Township Manager, the Community Planning Director, and an Ordinance Enforcement Officer. (R.1, Complaint.) Before serving their Complaint, Plaintiffs filed a First Amended Complaint containing nine separate claims. Count I alleged that compliance with neutral site plan review procedures imposed a substantial burden on their religious exercise in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 USC §2000cc et seq (RLUIPA). (R.3, Amended Complaint.) Count I also purported violations of the "equal terms," "nondiscrimination," and "unreasonable restriction" provisions of RLUIPA. Counts II, III, and IV alleged First Amendment violations of the rights to free exercise, free speech, and free expressive association, respectively. Count V claimed discriminatory application of the Township's Zoning Ordinance based upon an exercise of religious rights in violation of equal protection. Count VI asserted that Plaintiffs were denied the rightful use of their property in violation of due process rights. Counts VII, VIII, and IX alleged that Plaintiffs' rights to equal protection, expressive assembly and association, and free exercise of religion under

the Michigan Constitution were violated. Plaintiffs sought declaratory and injunctive relief, precluding the Township from applying its zoning laws to Plaintiffs as long as Plaintiffs continue to use the Property for religious and residential purposes. Plaintiffs also sought nominal and compensatory damages, as well as costs and attorney fees. (Id.)

On October 7, 2008, Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction based on the Ripeness Doctrine. (R.31, Motion.) On October 28, 2008, Plaintiffs filed a Response, and on November 4, 2008, Defendants filed a Reply. (R.38, Response; R.39, Reply.) On January 28, 2009, a hearing on the motion was held before the Honorable Paul D. Borman. (R.54, transcript of motion hearing.) On April 30, 2009, the court issued its decision which reflected that the court had given thoughtful consideration to the parties' arguments and the prevailing case law. The court granted the motion, holding that Plaintiffs had failed to obtain a decision from the Township as to how it would apply its Zoning Ordinance to the Property and, therefore, Plaintiffs' claims were unripe for adjudication. (R.50, Order.) The court dismissed Plaintiffs' action without prejudice so they could avail themselves of the Township's zoning process and obtain a determination as to how the zoning regulations would be applied. (Id.) A corresponding Judgment was entered, and Plaintiffs appealed. (R.51, Judgment; R.52, Notice of Appeal.) The district court's decision was proper and it

should be affirmed.

SUMMARY OF ARGUMENT

Plaintiffs' statement on page 25 of their Appeal Brief underscores the problem in this case. Plaintiffs do not intend to submit "any" application to the Township so as to ripen their claims.

Despite their disagreement with Jennifer Frey's determination that the use of their Property changed from a residential use to a more intensive non-residential use resembling a small church or place of worship as demonstrated by complaints and evidence of an increased need for parking, an increase in vehicle traffic at the Property, noise and other similar impacts, Plaintiffs have never submitted the requested site plan or appealed Ms. Frey's decision to the Township's Zoning Board of Appeals. A ZBA appeal is a non-constitutional avenue for resolving this dispute which Plaintiffs have refused to utilize. Though Plaintiffs complain about the costs associated with submitting a full site plan, they failed to seek permission to submit something less than a full site plan for review, nor have they applied for a variance from the parking requirements.

Plaintiffs are not exempt or immune from having to follow the Township's procedures or from having to obtain necessary variances. Plaintiffs have not yet suffered a sufficiently concrete injury to ripen their claims. Their use of the Property is permitted under the Township's Zoning Ordinances, and Plaintiffs continue to celebrate Mass daily with up to 18 friends and to host six weekly Bible

study groups at the Property. Plaintiffs are required to follow the available Township procedures to establish a concrete injury and ripen their claims by obtaining a final definitive decision from the Township regarding the nature and extent of the regulation on the Property which will determine what, if any, modifications must be made to the Property.

The district court properly held that Plaintiffs failed to ripen their claims by obtaining a final decision from the Township and, thus, properly dismissed Plaintiffs' claims without prejudice. The district court's decision should be affirmed.

STANDARD OF REVIEW

An order of dismissal is reviewed *de novo* on appeal. **Saltsman v United States**, 104 F3d 787 (6th Cir. 1997); **Fraser v Lintas: Campbell-Ewald**, 56 F3d 722 (6th Cir. 1995).

ARGUMENT

I. THE DISTRICT COURT PROPERLY HELD THAT PLAINTIFFS' CLAIMS ARE NOT RIPE FOR ADJUDICATION WHERE THEY FAILED TO OBTAIN A FINAL DECISION FROM THE TOWNSHIP AS TO THE APPLICATION OF THE ZONING ORDINANCE TO THEIR PROPERTY.

Plaintiffs spend a great deal of time in their Appeal Brief discussing various protected activities. Defendants do not dispute that Plaintiffs enjoy the rights to freedom of speech, expressive association, and exercise of religion. Nor are Defendants precluding Plaintiffs from exercising their rights in their home. Rather, if Plaintiffs are using the home for something other than purely residential, such as operating a place of worship where others attend, Plaintiffs need to comply with the Township's procedures and provide the necessary parking. Plaintiffs have not provided any authority which would allow them to establish a church wherever they desire in utter disregard of all else, such as local zoning laws. Plaintiffs do not dispute that even the most protected activities are subject to reasonable time, place, and manner restrictions. "The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." **M.A.L. ex rel. M.L. v Kinsland**, 543 F3d 841, 846 (6th Cir. 2008).

Here, the Township seeks to regulate the parking on Plaintiffs' property, not the content of their speech or the exercise of their religious beliefs. Plaintiffs do not contend that parking is a protected activity. Further, Plaintiffs' suggestion that regulation here is based upon the "content" of protected speech is repugnant to the record, there being no support for such an assertion whatsoever. Plaintiffs also cannot realistically compare the frequency and intensity of its use to anything similar - and if they could, it would be regulated.[3]

The sole issue on appeal is whether the district court properly dismissed Plaintiffs' claims without prejudice for lack of ripeness. In the precedent-setting case of **Williamson County Regional Planning Commission v Hamilton Bank of Johnson City**, 473 US 172; 105 S Ct 3108; 87 L Ed 2d 126 (1985), the United States Supreme Court held that constitutional claims predicated upon the application of an ordinance to property are not ripe for adjudication until the municipality charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. Id., at 186. "Ripeness is a matter of justiciability, implicating 'prudential reasons for refusing to exercise jurisdiction.'" **Grace Community Church v Lenox**

[3]Plaintiffs' prior restraint argument was not raised below in conjunction with briefing on the ripeness issue. This Court lacks jurisdiction over Plaintiffs' attempts to interject arguments addressing whether their claims have any substantive merit, which were not raised in conjunction with the briefing on the ripeness issue and were not decided by the lower court.

Township, 544 F3d 609, 615 (6th Cir. 2008), quoting in part **Insomnia, Inc. v City of Memphis, Tenn.**, 278 Fed Appx 609, 612 (6th Cir. 2008), unpublished opinion (R.31, Exhibit KK) and **Kentucky Press Ass'n, Inc. v Kentucky**, 454 F3d 505, 509 (6th Cir. 2006). The doctrine is designed to prevent courts, through premature adjudication, from "entangling themselves in abstract disagreements." **Grace**, supra. Federal courts have stressed that they "do not sit as zoning boards of review and should be most circumspect in determining that constitutional rights are violated in quarrels over zoning decisions." **Murphy v New Milford Zoning Comm'n**, 402 F3d 342, 348-349 (2nd Cir. 2005) and cases cited therein. See also, **Pearson v City of Grand Blanc**, 961 F3d 1211, 1222 (6th Cir. 1992) (federal juries do not sit as local boards of zoning appeals).

Here, the district court observed that when deciding whether a claim is ripe for adjudication, our Courts consider three factors:

> 1) the likelihood that the harm alleged by the plaintiff will ever be inflicted; 2) whether the factual record is sufficiently developed to facilitate a fair adjudication of the claims' merits; and 3) the hardship to the parties if the court denies judicial relief at this stage of the proceedings. *Adult Video Ass'n v. United States Dept. of Justice*, 71 F.3d 563, 568 (6th Cir. 1995) (internal citations omitted). (R.50, Order, p. 8.)

The district court further observed that the United States Supreme Court in **Williamson** articulated a more specific test for determining ripeness in a land use or takings context: "1) the governmental entity must have reached a final decision

regarding the application of the regulations to the property; and 2) the plaintiff must have sought compensation using the procedures implemented by the state." (R.50, Order, p. 9, citing **Williamson**, supra at 186.) In the present case, the district court's dismissal was premised upon the first prong, the "finality" requirement.

A. PLAINTIFFS' CLAIMS ARE SUBJECT TO THE RIPENESS REQUIREMENTS.

The district court properly recognized that the first prong of the ripeness test articulated in **Williamson** has been extended to other claims involving land use disputes and that it applies to Plaintiffs' claims. (R.50, Order, p. 9.) Obtaining a final decision from the local governmental agency has been deemed to be a threshold condition for federal jurisdiction, and the ripeness requirement applies to land use challenges based on a taking or other constitutional theory. See, **Bigelow v Michigan Department of Natural Resources**, 970 F2d 154 (6th Cir. 1992) (finality requirement applies to takings, due process, and equal protection claims). By parity of reasoning, the finality requirement applies to RLUIPA and First Amendment claims based on local regulation of property. See **Grace**, supra; **Insomnia**, supra.

In **Insomnia**, the plaintiff property owners alleged that the city illegally denied their request to subdivide their property out of hostility toward one of the owners' involvement in the adult entertainment industry. The plaintiffs filed an

application and preliminary plan to subdivide two plots of land into three, in order to facilitate the construction of a restaurant, nightclub, and billboard on each subdivided lot. The Office of Planning and Development recommended approval of the subdivision, but the plaintiffs were also required to obtain approval from the Land Use Control Board (LUCB). At the conclusion of a hearing before the latter, the LUCB denied the proposal as requested and required the plaintiffs to resubmit their application as a planned development, rather than as a subdivision, which would allow for closer regulation of the property's uses. Rather than resubmitting the application as requested, the plaintiffs appealed the denial of its initial application to the city council, who rejected it. The plaintiffs then filed their lawsuit. The district court dismissed the action as unripe where the plaintiffs had yet to receive a final decision as to whether or how they could proceed with their development plans.

On appeal, the plaintiffs argued that they suffered injury when the defendants denied their application allegedly out of hostility to the adult entertainment industry and that the finality requirement was inapplicable. This Court considered a number of cases, including those from other circuits, and concluded that the plaintiffs' First and Fourteenth Amendment claims were subject to the ripeness requirement. **Insomnia**, supra at 612-615. Relying on the Second Circuit's analysis in **Murphy**, supra at 349-351, this Court held that the plaintiffs

had failed to obtain a final decision from the city. **Insomnia**, supra at 615-616; **Taylor Inv., Ltd. v Upper Darby Twp.**, 983 F2d 1285, 1292-1293 (3rd Cir. 1993) (imposing finality requirement on plaintiff's claim premised upon zoning hearing officer's revocation of land use permit where zoning hearing board represented township's final interpretation or application of zoning ordinance). To determine whether the plaintiffs were subject to the finality requirement, the Court in **Insomnia** noted that the Second Circuit considered: (1) whether the plaintiffs experienced an immediate injury as a result of the defendant's actions and (2) whether requiring the plaintiffs to pursue additional administrative remedies would further define their alleged injuries. Id., at 615. In applying those considerations to the case before it, the Court held that the plaintiffs had not suffered an immediate injury as a result of the defendant's actions:

> If Plaintiffs file a renewed plan as a proposed development, as the LUCB ordered, there is a chance that their proposal will be approved; under such circumstances, Plaintiffs will be entitled to proceed with the subdivision of their land and even conduct adult entertainment on the premises if they so choose. Such an outcome would discharge any claims of First Amendment retaliation and obviate the need for federal review. If, however, Plaintiffs' renewed plan as a proposed development is rejected, this outcome will further define the contours of Plaintiffs' claim of First Amendment retaliation. Taken together, these two prongs indicate that the district court acted properly in dismissing Plaintiffs' claim as premature. **Insomnia**, at 615-616.

The Court in **Murphy** outlined the following four policy considerations advanced by extending the finality requirement to constitutional claims arising in land disputes:

> First ... requiring a claimant to obtain a final decision from a local land use authority aids in the development of a full record....
>
> Second, and relatedly, only if a property owner has exhausted the variance process will a court know precisely how a regulation will be applied to a particular parcel....
>
> Third, a variance might provide the relief the property owner seeks without requiring judicial entanglement in constitutional disputes. Thus, requiring a meaningful variance application as a prerequisite to federal litigation enforces the long-standing principle that disputes should be decided on non-constitutional grounds whenever possible....
>
> Finally, since *Williamson County,* courts have recognized that federalism principles also buttress the finality requirement. Requiring a property owner to obtain a final, definitive position from zoning authorities evinces the judiciary's appreciation that land use disputes are uniquely matters of local concern more aptly suited for local resolution. **Murphy**, supra at 348.

This Court held that applying the ripeness doctrine to the plaintiffs' claims in **Insomnia**, supra, promoted three of the four policy considerations outlined in **Murphy**: waiting until the plaintiffs filed a plan for a proposed development before undertaking federal review would ensure development of a full record, approval of a revised plan would provide relief without requiring judicial

entanglement in constitutional disputes, and requiring a final, definitive decision from the zoning authorities evidenced a recognition that land use disputes are uniquely matters of local concern more aptly suited for local resolution. **Insomnia**, at 616.

This Court's reliance on **Murphy** is instructive because the facts there are analogous to the facts in the present case. In **Murphy**, the Town of New Milford received complaints about the plaintiffs' prayer meetings at their residence from neighbors, particularly about the large number of cars parked at and entering and leaving the plaintiffs' property. The town's zoning enforcement officer investigated and reported to the zoning commission which then concluded that the "weekly, sizable prayer meetings were not a customary accessory use in a single-family residential area." Id., at 345. The town advised the plaintiffs that their prayer meetings violated the zoning ordinance, and in response the plaintiffs filed a federal lawsuit. The town then issued plaintiffs a formal cease and desist order for violating its zoning regulations. The plaintiffs did not appeal the cease and desist order. Instead, they amended their federal claims to allege violations of the First Amendment rights to freedom of assembly and religious exercise as well as violations of RLUIPA and other state law claims. **Murphy**, supra at 345-346.

Ultimately, the Second Circuit in **Murphy** found that the plaintiffs' First Amendment and RLUIPA challenges to the town's land use or zoning decisions

were subject to and failed to satisfy the **Williamson** prong-one finality requirement. **Murphy**, at 350-353. The Court held that it need not distinguish between First Amendment and RLUIPA claims for purposes of its ripeness analysis citing to RLUIPA's legislative history which arguably attempted to codify pre-existing Free Exercise jurisprudence. Id., at 350. The Second Circuit also cited to the Joint Statement of Senators Hatch and Kennedy, which stated that RLUIPA was not intended to "relieve religious institutions from applying for variances, special permits or exceptions" which appears consistent with the prong-one ripeness finality requirement. Id. (R.31, Exhibit Q, 146 Cong Rec S7774, S7776 (daily ed July 27, 2000). The same rationale underlying application of the ripeness doctrine and the finality requirement to constitutional claims supports it application to RLUIPA claims. See, **Murphy**, supra; **Insomnia**, supra. Such challenges are not ripe until the plaintiff obtains a final authoritative decision from the local government. Id.; see also, **Grace**, supra at 615-618.

In **Grace**, the plaintiff church sued the defendant township claiming that revocation of a special land use permit to operate a residential facility for religious instruction and spiritual counseling violated the church's RLUIPA and equal protection rights. The district court dismissed the case on ripeness grounds, and this Court affirmed. Unlike the *DiLaura* case cited by the plaintiff there, the church in **Grace** had not sought relief from the zoning board of appeals and had

"made no effort to resolve the dispute locally before filing this action in federal court." Id., at 616. As here, the township's zoning board of appeals in **Grace** had express authority to reverse, modify or affirm the planning commission's revocation of the church's special use permit. By failing to appeal the revocation decision, the church, in effect, denied itself a ruling on its position that the planning commission relied on erroneous information, and denied itself a final decision on the propriety of the revocation.

The above cases demonstrate the fallacy of Plaintiffs' claim in the present case that the decision to require them to follow the Township's site plan review procedure violates their constitutional rights. Plaintiffs' claim is directly contrary to federal case law holding that a federal court lacks subject matter jurisdiction over a First Amendment as applied challenge to a local land use procedure until the plaintiff utilizes the challenged procedure and obtains a final decision thereby ripening its claims. (In this case, the Township's site plan review procedure is not a substantive land use regulation. It is not until the site plan review process is completed that a substantive decision is reached. Site plan review is simply the procedural means of obtaining a final decision from the planning commission on whether the land use complies with the Township's Zoning Ordinances.) In other words, for purposes of ripeness in the context of a First Amendment challenge to a land use regulation, the challenged procedure cannot be separated from the

substantive result of the procedure. Plaintiffs are required to obtain a final definitive decision from the Township as to the application of the Zoning Ordinance to their property before their constitutional claims are ripe for review. "Those who have not followed available routes of appeal cannot claim to have obtained a 'final' decision, particularly if they have foregone an opportunity to bring their proposal before a decisionmaking body with broad authority to grant different forms of relief or to make policy decisions which might abate the alleged taking." **Grace Comm'y Church v Lenox Township**, WL 2533884 (ED Mich, August 31, 2007), unpublished opinion attached at R.31, Exhibit LL, p. 6, quoting **Comm'y Treatment Centers v City of Westland**, 970 F Supp 1197, 1210 (ED Mich, 1997). Plaintiffs cannot circumvent obtaining a final decision from the Township through available site plan review, variance, or ZBA appeal procedures as they are attempting to do with this lawsuit.

To avoid obtaining a final decision, Plaintiffs advance an inapposite hypothetical. Plaintiffs argue that if the Township applied its zoning ordinance to allow Caucasian residents to invite an unlimited number of guests to engage in social activities, but required African American residents to submit a request for approval before doing so and permitted Township officials to approve or disapprove the request based on subjective criteria, the latter residents would have a ripe claim. (Appeal Brief, p. 3.) Plaintiffs' proposed hypothetical is inapplicable

for multiple reasons. There is no identification of discrimination based on protected status in this case. (In fact, Plaintiffs admit that construction performed on the house was permitted and approved by the Township without incident. Appeal Brief, p. 13.) Further, the racial composition or religious affiliation of the participants is not at issue here. In fact, the use, or the type of activity involved here, is only an issue insofar as parking requirements would need to be assessed because of an increase in the intensity of the use. What triggered the Township's involvement was not the protected status of the activity or the participants, but the external visible problem created by the parking deluge and corresponding complaints from residents. The issue here is not the religious *nature* of the use, but the parking predicament created by the increased and consistent *intensity* of the use, which the district court aptly recognized. (R.54, transcript, pp. 37-38.)

Plaintiffs generally assert that other residents hosting social gatherings, such as football parties or poker nights, would not be subject to site plan review. However, Plaintiffs have offered no evidence of any other consistent and intense use, such as theirs, which created literally layers and rows of parking and prompted complaints by surrounding residents. (R.31, Motion, Exhibit X, photographs of vehicles.) Further, the record belies Plaintiffs' assertions. When the parking on Plaintiffs' Property was not as dense in years past, the Township took no action. However, the evidence demonstrates that the use of the Property continually

increased resulting in greater numbers of vehicles with more frequency.

Plaintiffs next purport that they should be excused from the zoning process because of costs associated with participating in it. As discussed more *infra*, Plaintiffs could have pursued a number of avenues to reduce costs, such as requesting permission to submit something less than a full site plan. They failed to even attempt to do so *and, instead, engaged in costly litigation*. As such, Plaintiffs' alleged concern appears to be disingenuous.

Plaintiffs posit that they are not required to follow the neutral and generally applicable zoning ordinances pertaining to changes in use of land, site plan review, variances, and ZBA appeals (which every other resident is required to follow) simply because they disagree with the Township's decision or on the basis that Plaintiffs are exercising their religious beliefs. Plaintiffs are improperly attempting to use their religious beliefs as both a sword and a shield. Granting Plaintiffs their requested relief would be to grant every religious institution immunity from local zoning laws. Plaintiffs essentially are demanding to be completely excused from the process and to have *carte blanche* to create whatever kind of parking and traffic quandary on residential property that they choose without any restrictions whatsoever. Plaintiffs must be required to ripen their claims like every other plaintiff by establishing a concrete injury recognizable under Article III and by obtaining a final definitive decision from the Township regarding the nature and

extent of the regulation on the Property and defining what, if anything, Plaintiffs must do to bring the Property into compliance with the Township's Zoning Ordinances. In the absence of a final decision, the district court properly held that Plaintiffs' claims are not ripe and that it lacked subject matter jurisdiction.

B. PLAINTIFFS HAVE NOT OBTAINED A FINAL DECISION FROM THE TOWNSHIP.

The district court properly held that Plaintiffs have not satisfied the first prong in **Williamson** because they have not obtained a final decision from the Township regarding the nature and extent of the regulation on the Property. (R.50, Order, pp. 9-16.) Because Plaintiffs refused to go through the site plan process, the Township never had the opportunity to determine if the use of the Property had changed, the number of parking spaces required, where those parking spaces could be located, the type and extent of landscape buffering required, and whether the Property complied with setback requirements.[4] In evaluating ripeness, both the district court in the within matter, and this Court in **Grace**, recognized the following general factors:

> 1) the likelihood that the harm alleged by the plaintiffs will ever come to pass; 2) whether the factual record is sufficiently developed to produce a fair adjudication of

[4]Ironically, in early 2006, Miles Christi voluntarily submitted without objection a request for site plan review and special land use approval for its $8.2 million chapel and family center to Lyon Township and paid all required review fees. (R.31, Exhibit Z, Father Bertolacci dep., pp. 15-30, 84-86, and deposition exhibit 6, letter to Lyon Twp Clerk dated 4/19/06.)

> the merits of the parties' respective claims; and 3) the hardship to the parties if judicial relief is denied at this stage in the proceedings. Id., at 615. (See also, R.50, Order, pp. 8, 11.)

In **Insomnia**, supra, the Court referred to the **Murphy** case and collapsed those into two considerations: a) whether the plaintiff suffered an immediate injury; and b) whether requiring further local land use proceedings would help define the plaintiffs' alleged injuries suffered. **Insomnia**, at 615-616; **Murphy**, at 351.

1. The district court properly held that Plaintiffs have suffered no immediate injury nor have they shown a likelihood that they will be denied their rights to exercise their religion.

Here, after reviewing applicable cases and their factual context, the district court held:

> First, because Plaintiffs did not appeal the Director of Community Development's decision that a change in use had occurred at the property to the zoning board of appeals, the township's final determination is unknown. Second, Plaintiffs did not suffer an immediate injury as a result of Defendants' actions, and the factual record is not sufficiently developed to produce a fair adjudication of the parties' claims.
>
> As in *Murphy*, 402 F3d at 351, had Plaintiffs appealed Ms. Frey's, the Northville Township Director of Community Development, decision that a change in land use had occurred at the property, the appeal would have stayed any action. (Defs.' Br. Ex. II, Northville Township Zoning Ordinance Article 41, §170.41.4). Therefore, Plaintiffs would not have been required to submit to the site plan review process, and they could not have been ticketed for failing to submit a site plan.

> Furthermore, Plaintiffs have not suffered an immediate injury attributable to Defendants' actions. Plaintiffs' decision to cancel a Bible Study group on one occasion and limit the number of visitors to the property is not an immediate injury suffered as a result of Defendants' action; Defendants did not require, or even suggest that Plaintiffs limit the number of guests to the property. Plaintiffs were not subject to a cease and desist order. That Plaintiffs limited the number of people at the property on their own initiative was not mandated by Defendants. Further, Plaintiffs' response did not, and could not, cure the infraction for which the ticket was issued: failing to submit a site plan. The actions Plaintiffs took are not, therefore, attributable to a governmental "chilling" of speech. In addition, the Court reiterates that presently scheduled Bible classes and religious services are ongoing at the residence.
>
> Similar to the plaintiffs in *Murphy*, 402 F3d at 350, and *Insomnia*, 278 Fed. Appx. at 615-616, if Ms. Frey's decision is overturned by the zoning board of appeals, Plaintiffs' constitutional claims will likely be moot. If however, Ms. Frey's decision is upheld, "this outcome will further define the contours of Plaintiffs' claim[s]." *Insomnia*, 278 Fed. Appx. at 615-616.
>
> This case is distinguishable from *Murphy*, 402 F.3d at 350, and *Insomnia*, 278 Fed. Appx. at 609, by one fact. In this case, Plaintiffs challenged the ticket the township issued to them for failing to submit a site plan in state district court. However, the state district court has not rendered a decision, and the state district court proceedings have been stayed by the parties. Therefore, the stayed district court litigation does not affect the ripeness analysis. (R.50, Order, pp. 11-12.)

In this case, Plaintiffs did not suffer an immediate injury. According to the rationale in **Murphy**, the civil infraction ticket issued to Miles Christi Religious Order did not constitute an immediate injury. Those proceedings have been stayed

by the parties. (R.47, Notice of Stay.) Further, like the Murphys' right to appeal the cease and desist order, Plaintiffs could have (and could still) appeal Jennifer Frey's decision which would stay the civil infraction proceeding; thus, Plaintiffs have not suffered an immediate injury. (R.31, Exhibit II, Zoning Ord., §170-41.4(A)(1), "An appeal shall stay all proceedings …") Had the civil infraction proceeding never been initiated by the Township, Plaintiffs could have continued to disregard the Township's noted concerns. If Plaintiffs' position was adopted, they potentially could have parked 200 cars on the property and, when ticketed, run to the federal court without ever ripening their claims. The ticket for failure to submit a site plan finally brought Plaintiffs into the process which may ultimately provide them with relief they desire, i.e., parking accommodations for their guests. Like **Murphy**, Plaintiffs have not suffered the imposition of any fines nor were they subject to any criminal sanctions.

Plaintiffs claim that the only way to avoid submitting a site plan was to eliminate their religious activities, referring to Jennifer Frey's testimony. (Appeal Brief, p. 20.) However, Ms. Frey's testimony clearly addresses eliminating the *parking* problem associated with the activities. (R.38, Response, Exhibit M, Frey dep., pp. 134-135.) (For example, Plaintiffs could have potentially shuttled in their guests.) Ms. Frey was not empowered to grant other relief. Those decisions rested with the Planning Commission and/or the ZBA. However, Plaintiffs' "use" of the

Property for religious activities was never a bone of contention and they will not be harmed if required to go through the site plan review process where their religious activities are permitted.

Plaintiffs argue that the ripeness requirement is relaxed for First Amendment claims. The district court addressed this argument, holding:

> Plaintiffs primarily rely on a recent Sixth Circuit opinion. *Warshak v. United States*, 532 F3d 521, 533 (6th Cir. 2008), in support of their proposition.
>
> In *Warshak*, the plaintiff was a suspect in a criminal investigation, during which the government obtained his emails without a warrant. *Id*. at 524. Warshak, after discovery[sic] the government's actions, filed a declaratory judgment action alleging violations of the Fourth Amendment and Stored Communications Act. *Id.* at 523.
>
> The Sixth Circuit held that Warshak's constitutional claim was not ripe. *Id*. at 523. The Sixth Circuit explained that a controversy no longer existed because "we have no idea whether the government will conduct an *ex parte* search of Warshak's email in the further and plenty of reason to doubt that it will . . ." *Id*. at 526. The Sixth Circuit further held that there was no meaningful risk of hardship to Warshak if the court did not consider his claim. *Id*. at 531. The Sixth Circuit explained that hardship occurs when a claimant faces a choice between immediately complying with a burdensome law or risking serious criminal and civil penalties. *Id*. at 531. The Court noted that in a First Amendment claim the ripeness requirements might be relaxed but Warshak had not alleged a First Amendment violation. *Id*. at 533.
>
> In certain First Amendment cases, it may be appropriate to relax the ripeness requirement. This is not such a case. As discussed above, there is no meaningful risk of

> hardship to Plaintiffs if this Court does not consider their claims. Plaintiffs are not faced with a choice to immediately comply with a burdensome law, or risk serious criminal and civil penalties. Plaintiffs could have avoided the civil infraction ticket, and can still forestall the enforcement of the Defendants' initial determination of more intense use which requires an examination of the land use, by appealing to the Zoning Board of Appeals, which stays enforcement. Appealing the initial determination of the official will either resolve the case in favor of Plaintiffs or will further develop the factual record and refine Plaintiffs' constitutional claims. Either way, Plaintiffs must fully avail themselves of the zoning board of appeals process, or otherwise show that a final determination has been made, before pursing their claims in federal court. Significantly, Plaintiffs are continuing to pursue their religious activities at the residence. (R.50, Order, pp. 13-15.)

Plaintiffs do not claim that the ZBA appeal process will "chill" or restrict their constitutional rights. (R.38, Plaintiffs' Response, pp. 1-2, 15 at fn 21.) See also, **Living Water Church of God v Meridian Twp**, 258 Fed Appx 729 (6th Cir. 2007), unpublished (R.39, Defendants' Reply Brief, Exhibit VV) (regulations making the practice of religion more expensive or inconvenient do not substantially burden religious exercise). There is no evidence that any Defendant required Plaintiffs to stop or restrict their activities. Indeed, as the district court observed, Plaintiffs continue to hold Mass, classes, and other activities on the Property, and they continue to advertise their services on the internet. Plaintiffs cancelled only one Bible study group on one occasion. Any alleged "chill" on their constitutional rights is due to Plaintiffs' voluntary choice to restrict their own

religious activities based on their subjective perception that to do otherwise would be used against them. (R.39, Exhibit PP, Castro-Huergo dep., pp. 20-21, 30; Exhibit QQ, Bertolacci dep., pp. 55-80, 101-113, 125-126, 135-147; Exhibit RR, Ray dep., pp. 10-11; Exhibit SS, Wainwright dep., pp. 47-49, 67; Exhibit TT, Latiff dep., pp. 64-69; Exhibit UU, Conte-Grand dep., pp. 51-55.) Plaintiffs cannot ripen their claims by relying exclusively on a subjective chill on their activities. **Morrison v Bd of Educ of Boyd County**, 521 F3d 602, 608-610 (6th Cir. 2008) (claim of subjective chill without more is insufficient to establish injury-in-fact). Plaintiffs' choice to chill their own activities was an effort to maintain the existing level of activity and avoid having the Zoning Ordinance enforced against them. (R. 39, Reply, Exhibit PP, Castro-Huergo dep., p. 30.) Plaintiffs do not allege that they reduced their level of religious activity, but instead assert that they voluntarily chose not to invite additional people to participate in the religious activities at the Property which implies that they will expand their activities in the future. Plaintiffs' attempt to manufacture a "chill" on their religious activities is unavailing because being required to go through the site plan review process has not forced Plaintiffs to cease or alter their religious activities. Plaintiffs cannot establish actual harm or a likelihood of harm.

2. The district court properly held that the factual record has not been adequately developed to allow for a fair adjudication of the merits, particularly where further local land use

proceedings will define the parties' positions.

Second, requiring Plaintiffs to obtain a final decision from the Township will define the nature and scope of regulation on the Property, determine how many parking spaces are required, and evaluate the landscaping and other site plan requirements. Contrary to Plaintiffs' assertions, the factual record has not been adequately developed where none of this has occurred before the governing Township bodies.

There can be no doubt that Plaintiffs have failed to obtain a final decision from the Township. Plaintiffs could have appealed Jennifer Frey's determination of a change in use to the ZBA. Section 170-41.4 provides:

> An appeal may be taken to the Zoning Board of Appeals by any person, firm or corporation, or by any officer, department, board or bureau **affected by a decision of the** Chief Building Official, **Director of Community Development**, Zoning Administrator, **Zoning Enforcement Officer**, **Planning Commission** or other administrative body authorized by this chapter. (R.31, Motion, Exhibit II, emphasis added.)

Plaintiffs also could have appealed the Township's request that Miles Christi submit a "full" site plan for review to the ZBA. The ZBA has the discretion to decide an appeal of any of these issues in a way that could have averted the entire dispute, but Plaintiffs never utilized the ZBA appeal process provided for in Article 41. (R.31, Exhibits HH and II.) Plaintiffs claim that the Township engaged in "gamesmanship" with respect to an appeal to the ZBA. However, Plaintiffs twist

history to make that assertion. First, Plaintiffs argue that they had requested permission to appeal the requirement to submit a "full" site plan and that such a request was denied, referring to Ms. Frey's testimony. (Appeal Brief, p. 23.) That testimony, however, focuses on how Plaintiffs could avoid site plan review altogether. It does not discuss whether Plaintiffs could have appealed to the ZBA and sought permission to submit something less than a "full" site plan, such as a "sketch" plan or something in between. (R.31, Exhibit HH.) Plaintiffs also miss the mark in arguing that the Township declined to declare the house "a church" and thereby somehow precluded their ability to appeal. (Appeal Brief, pp. 23-24.) Ms. Frey had indicated that Plaintiffs had changed the use of their property from residential to a more intensive non-residential use resembling a small church or place of worship. When a change of use occurs, a site plan is required. (R.31, Exhibit HH, p. 33-3.) Plaintiffs could have appealed Ms. Frey's determination that a change in use occurred without the property being declared "a church." (Id., Exhibit II, p. 3.)

Plaintiffs complain that the site plan review process can be costly and, therefore, they should not have to comply with it. As explained at the motion hearing, a $5,000 deposit is required to pay the Township's administrative costs associated with review by a planning consultant. The remaining deposit is then refunded to the applicant. (R.54, transcript, pp. 17-18.) There is no dispute as to

that. Plaintiffs then complain that preparing the necessary site plan also can be costly. However, as the lower court recognized, Plaintiffs never sought permission from the ZBA to submit something less than a full site plan. (Id., p. 18; R. 31, Motion, Exhibits HH, II.) See **Insomnia**, supra (plaintiffs required to submit renewed plan as requested and obtain decision before claim could be ripe for adjudication).

Further, Plaintiffs could have submitted an application for a variance from the parking requirements. In **Murphy**, the court identified alternative parking restrictions as a specific example of an issue that, if fully explored through the zoning proceedings, would assist in defining the alleged injury and thus must be completed before a claim can be ripened. Id., at 352. In this case, the number of parking spaces, their location, and configuration are particularly central to the dispute. The Planning Commission has authority to grant some relief with respect to parking, pursuant to §170-6.2(J). (R.31, Exhibit DD, Zoning Ord. §6.2(J)(5).) Similarly, Plaintiffs could present evidence that the driveway can accommodate all their friends' cars and that the religious activities at the Property do not usually occur simultaneously which could reduce the number of required parking spaces. Notwithstanding, a great degree of flexibility is built into the ZBA process, with the ZBA having discretion to grant variances from parking requirements. (Id., Exhibit II.) The opportunity exists for Plaintiffs to develop a factual record before

the Township which, if considered during the site plan review and variance process, may allow the Township to minimize the regulation on the Property. However, without going through the process, no one (including Plaintiffs, the Township, and this Court) knows the full extent of how the ordinances will be applied to Plaintiffs' Property and whether Plaintiffs have been injured or to what degree. **Murphy**, supra at 352 ("Bypassing the Zoning Board of Appeals and its hearing processes, which were statutorily designed for exploration and development of these sorts of issues, leaves the Murphys' alleged injuries ill-defined"). It is beyond question that a factual record has not been developed before the Township so as to facilitate a fair adjudication of the merits and the contours of Plaintiffs' claimed injuries.

Plaintiffs complain that they engaged in ten months of discovery in this case and, thus, the record should be adequately developed. Plaintiffs misunderstand the pertinent record. Plaintiffs have failed to submit any information to the Township defining the use of their Property so as to enable an assessment of how many parking spaces are required and where they can be located. Plaintiffs have failed to obtain a final decision from the Township as to how its regulations will be applied to the Property to even allow for a proper review by the court. In the ten months Plaintiffs engaged in discovery, they instead could have submitted the requested information to the Township and proceeded through the process.

Plaintiffs' allegations regarding potential future injuries highlight how and why their claims are unripe. For instance, Plaintiffs surmise that the Township may require them to modify the Property if they submit a site plan for review. Those allegations are nothing more than unsupported conjecture and further confirm that a concrete case and controversy does not exist here. The Constitution prohibits a court from providing a remedy for injuries that never occurred. US Const, art III, §2, cl 1.

Plaintiffs contend that because Frey and Bauer were testifying on behalf of the Township pursuant to Fed. R. Civ. P. 30(b)(6), the Township "has spoken on the matter." (Appeal Brief, p. 19, fn 64.) Plaintiffs' contention misconstrues the entire ripeness doctrine and is wholly erroneous. First, Frey and Bauer do not constitute the Planning Commission or the ZBA. Though their input is no doubt valuable, they do not make final decisions of the Township as the process is understood under the ripeness doctrine. Plaintiffs failed to present the necessary information to the Planning Commission and/or the ZBA and no decision was ever rendered by either of those bodies. Further, allowing subsequent factual development during litigation to supplant the local record and decision making would undermine the ripeness doctrine and essentially appoint federal courts as super-zoning boards of appeal for local land use decisions. A plaintiff could simply side-step local procedures and develop the factual record after running to

the federal courthouse. The Township must be allowed to develop a factual record so that it can make an informed final decision prior to litigation. To hold otherwise would render the ripeness doctrine and finality requirement void.

3. The district properly held that withholding judicial relief at this stage of the proceedings would not impose undue hardship on the parties.

As to the third factor, withholding judicial relief and requiring further proceedings before the Township will not result in a hardship on either party. See e.g., **Grace**, supra, "Not only does this record of administrative proceedings demonstrate the importance of adequate factual development in achieving finality, it also refutes the Church's argument that pursuit of administrative relief would have been futile, and illustrates how unnecessary entanglement of the judiciary in litigation over constitutional issues can and should be avoided in favor of local and efficient resolution of land use disputes. The record further demonstrates that, far from visiting hardship on the Church, the withholding of judicial consideration actually facilitated resolution of the dispute." Id., at 617. In **Grace**, revocation of the special use permit was insufficient to inflict undue hardship on the plaintiff. In the present case, Plaintiffs continue to conduct their religious activities on the Property and the civil infraction matter has been stayed. No hardship whatsoever will inure to Plaintiffs if judicial intervention is withheld or deferred until they avail themselves of the Township's processes and obtain a final decision as to how

the Zoning Ordinance will be applied to their Property.

In the context of hardship, Plaintiffs argue that even a momentary loss of First Amendment rights constitutes irreparable harm. (Appeal Brief, p. 50.) The district court held that no such irreparable harm looms here:

> Plaintiffs cite to *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and *Newsom v. Norris,* 888 F2d 371, 378 (6th Cir. 1989), in support of their argument.
>
> In *Elrod*, Cook County Sheriff's Office employees sued for violations of the First and Fourteenth Amendments after they were fired or threatened with dismissal for not being affiliated with the political party of the sheriff. 427 U.S. at 347. The Supreme Court held that firing or threatening dismissal for partisan purposes violates the First Amendment. *Id*. at 359-60. The Supreme Court also upheld an injunction entered by the lower court preventing further action by the sheriff's office because the plaintiffs' First Amendment rights were either threatened or in fact impaired when the injunction was sought. *Id.* at 373.
>
> In *Newsom*, a group of inmate advisors filed suit after a prison warden refused to reappoint the inmate advisors when their respective terms expired. 888 F.2d at 372. The inmate advisors alleged that the warden refused to reappoint in retaliation for a complaint they had filed with the warden regarding the performance of the chairman of the disciplinary board. *Id*. at 373.
>
> The Sixth Circuit affirmed the district court's decision that the inmate advisors suffered irreparable injury from the infringement of their First Amendment rights, and that injury continued even after termination. *Id*. at 378. To reach its conclusion, the Sixth Circuit relied on the Supreme Court's statement in *Elrod v. Burns*, 427 U.S. at 373, that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes

> irreparable injury." *Id*. at 378.
>
> Unlike in *Elrod*, 427 U.S. at 373, and *Newsom*, 888 F.2d at 372, Plaintiffs' First Amendment rights have not been threatened or impaired by the township's actions. Plaintiffs, on their own initiative, canceled one Bible Study group; they continue to hold multiple weekly Bible Study groups on the property, scheduled on their internet website. The township's decision to require a site plan is not an impairment of Plaintiffs' First Amendment rights. Plaintiffs' more intensive use of the residual property is what triggered the township's decision to require a site plan. In *Elrod* and *Newsom*, the plaintiffs all suffered First Amendment injuries when a government actor deprived them of employment due to their decision either to speak or not speak. Plaintiffs have not shown that a similar deprivation or injury has occurred at the hands of the township. (R.50, Order, pp. 15-16.)

Further, the district court's dismissal without prejudice of Plaintiffs' claims for lack of subject matter jurisdiction based on ripeness will advance the policy considerations identified by the court in **Murphy** and reiterated by this Circuit in **Insomnia** and **Grace**. The ripeness doctrine is designed to prevent precisely the situation involved in this case where a plaintiff runs prematurely to the federal court without first availing himself of available remedies and without affording the local government any opportunity to grant other relief that might resolve the dispute. Allowing Plaintiffs to proceed while refusing to follow the Township's procedures would result in the federal court usurping the Township's zoning authority and sitting as a super-zoning board of appeals.

4. Plaintiffs' exhaustion argument fails to advance

their claim.

Plaintiffs quote from a passage in **Williamson**, supra, in an attempt to argue that they obtained a final decision from the Township and they are not required to exhaust administrative remedies before filing their federal claims. However, Plaintiffs misconstrue the quoted passage and fail to cite the very next paragraph from **Williamson**.

The Court in **Williamson** discussed finality and exhaustion:

> The question whether administrative remedies must be exhausted is conceptually distinct, however, from the question whether an administrative action must be final before it is judicially reviewable. … While the policies underlying the two concepts often overlap, the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury; the exhaustion requirement generally refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate. *Patsy* concerned the latter, not the former.
>
> The difference is best illustrated by comparing the procedure for seeking a variance with the procedures that, under *Patsy,* respondent would not be required to exhaust. While it appears that the State provides procedures by which an aggrieved property owner may seek a declaratory judgment regarding the validity of zoning and planning actions taken by county authorities, … respondent would not be required to resort to those procedures before bringing its §1983 action, because those procedures clearly are remedial. Similarly, respondent would not be required to appeal the Commission's rejection of the preliminary plat to the

> Board of Zoning Appeals, because the Board was empowered, at most, to review that rejection, not to participate in the Commission's decisionmaking.
>
> Resort to those procedures would result in a judgment whether the Commission's actions violated any of respondent's rights. In contrast, resort to the procedure for obtaining variances would result in a conclusive determination by the Commission whether it would allow respondent to develop the subdivision in the manner respondent proposed. The Commission's refusal to approve the preliminary plat does not determine that issue; it prevents respondent from developing its subdivision without obtaining the necessary variances, but leaves open the possibility that respondent *194 may develop the subdivision according to its plat after obtaining the variances. In short, the Commission's denial of approval does not conclusively determine whether respondent will be denied all reasonable beneficial use of its property, and therefore is not a final, reviewable decision. **Williamson**, at 192-194, citations omitted.[5]

Contrary to Plaintiffs' arguments, Director Frey's conclusion that Plaintiffs' use of the Property had changed from residential to a more intensive non-residential use resembling a small church or place of worship is not the type of final decision contemplated by **Williamson** because she only determined the next procedural step Plaintiffs were required to follow *to obtain a decision* as to what

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[5]**Patsy v Board of Regents of State of Fla.** 457 US 496 (1982) dealt with an applicant for employment with a state university who brought suit under the Civil Rights Act of 1871 alleging that the employer had denied her employment opportunities solely on the basis of her race and sex. The Supreme Court held that exhaustion of state administrative remedies was not a prerequisite to an action under that Act.

would be allowed on the Property. Her decision did not restrict Plaintiffs' use of the Property. Further, the Planning Commission and the ZBA have authority to grant Plaintiffs relief from the allegedly "onerous zoning procedures," and there is no evidence that appealing to the ZBA would be futile or that the Township has "dug in its heels." The ZBA has the authority to not only reverse or affirm here, but to modify actions as well. (R.31, Exhibit II.)

In **Grace**, supra, this Court considered the church's exhaustion argument and stated:

> Exhaustion and finality are two distinct concerns, although they sometimes overlap. The fact that a claimant may, under certain circumstances, seek redress in court for infringement of his rights without having to first exhaust administrative or other available remedies does not mean that his grievance is necessarily the product of ***official action bearing sufficient indicia of finality to render his claim "ripe" or justiciable in federal court***. Id., at 614, emphasis added.

This Court went on to note that:

> the record is devoid of any efforts by the Church to complete the factual record, to more fully explain its position to the Commission, to seek reconsideration, or to appeal the revocation decision to the Zoning Board of Appeals. Instead, it is undisputed that the Church made no effort to resolve the dispute locally before filing this action in federal court some ten months later. Under these circumstances, it is clear that all three of the lack-of-finality reasons cited in *Insomnia* are equally present in this case. Id., at 616, emphasis added.

Ms. Frey's decision here did not bear sufficient indicia of finality to render

Plaintiffs' claim ripe. Moreover, any assertion that an appeal of Director Frey's conclusions regarding the change in use and the type of site plan review required would be "remedial" and thus not required for ripeness purposes is unavailing. **Williamson** holds that "resort to the procedure for obtaining variances would result in a conclusive determination by the Commission." As the district court here correctly concluded, Plaintiffs must seek a variance in order to obtain a final decision and ripen its federal claims.

Plaintiffs failed to ripen their claims by obtaining a final decision from the Township as to how its regulations would be applied to the Plaintiffs' Property. The district court properly dismissed Plaintiffs' claims without prejudice and its decision should be affirmed.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for all of the foregoing reasons, Defendants/Appellees respectfully request that the district court's decision be affirmed.

Respectfully submitted,

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Dated: November 9, 2009

CERTIFICATE OF CONFORMITY

Pursuant to FRAP 32(a)(7)(C), the undersigned counsel hereby certifies that this brief complies with the type-volume limitation found at FRAP 32(a)(7)(B). It contains 12,439 words and has been prepared in Microsoft Word, using a proportionally spaced face, Times New Roman, and a 14-point font size.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 10, 2009, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Marcelyn A. Stepanski

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 09-1618

MILES CHRISTI RELIGIOUS ORDER;
CESAR BERTOLACCI, Father;
FRANCISCO CONTE-GRAND, Brother,

Plaintiffs/Appellants,

-vs-

TOWNSHIP OF NORTHVILLE; CHIP SNIDER, in his Official Capacity as Northville Township Manager; JENNIFER FREY, in her Official Capacity as Director of Community Development for Northville Township; JOSEPH BAUER, in his Official Capacity as Ordinance Enforcement Officer for Northville Township,

Defendants/Appellees.

On appeal from the United States District Court for the Eastern District of Michigan, Southern Division, District Court No. 07-14003, Hon. PAUL D. BORMAN

ADDENDUM
DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS OF DEFENDANTS/APPELLEES

Pursuant to 6 Cir R 30(b), Defendants/Appellants hereby designate the following filings in the district court's electronic record to be relevant documents for purposes of this appeal:

DESCRIPTION OF ENTRY	DATE FILED	RECORD ENTRY NO.
Complaint	09/21/07	1
Amended Complaint	12/03/07	3
Motion to Dismiss for Lack of Subject Jurisdiction Based on the Ripeness Doctrine	10/07/08	31
Survey of Miles Christi Property	10/07/08	31, Exhibit A
Northville Twp Zoning Map	10/07/08	31, Exhibit B
Locational Map	10/07/08	31, Exhibit C
Adam Cardinal Maida Letter	10/07/08	31, Exhibit D
Resident Complaint Letters	10/07/08	31, Exhibit E
Field Notes, Photos, and Complaint Forms	10/07/08	31, Exhibit F
Miles Christi Letter to Twp Clerk 3/10/03	10/07/08	31, Exhibit G
Township Letter to Residents 3/18/03	10/07/08	31, Exhibit H
Bible Study Fliers	10/07/08	31, Exhibit I
Bauer Letter to Fr. Bertolacci 2/27/07	10/07/08	31, Exhibit J
Fr. Bertolacci Letter to J. Bauer 3/1/07	10/07/08	31, Exhibit K
Frey Memo re: 3/23/07 Meeting	10/07/08	31, Exhibit L
Civil Infraction Ticket	10/07/08	31, Exhibit M
Affidavit of Jennifer Frey	10/07/08	31, Exhibit N

Opinion Denying Twp Mo for Reconsideration	10/07/08	31, Exhibit O
WCCC Judge Baxter Opinion and Order	10/07/08	31, Exhibit P
Hatch-Kennedy Joint Statement, 146 Cong Rec	10/07/08	31, Exhibit Q
Miles Christi website pages re: Bible Study/Formation Groups	10/07/08	31, Exhibit R
J. Bauer Testimony, Formal Hearing, Part 1	10/07/08	31, Exhibit S1
J. Bauer Testimony, Formal Hearing, Part 2	10/07/08	31, Exhibit S2
Gail LeVan Testimony, Formal Hearing	10/07/08	31, Exhibit T
Gerald LeVan Testimony, Formal Hearing	10/07/08	31, Exhibit U
J. Frey Testimony, Formal Hearing, Part 1	10/07/08	31, Exhibit V1
J. Frey Testimony, Formal Hearing, Part 2	10/07/08	31, Exhibit V2
35th District Court Ruling from Bench, Formal Hearing Transcript	10/07/08	31, Exhibit W
Gerald LeVan Deposition Excerpts	10/07/08	31, Exhibit X
Brother Francisco Conte-Grand Deposition Excerpts	10/07/08	31, Exhibit Y
Fr. Cesar Bertolacci Deposition Excerpts	10/07/08	31, Exhibit Z

J. Bauer Deposition Excerpts	10/07/08	31, Exhibit AA
J. Frey Deposition Excerpts	10/07/08	31, Exhibit BB
Maureen Osiecki Deposition Excerpts	10/07/08	31, Exhibit CC
Article 6, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit DD
Article 18, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit EE
Article 24, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit FF
Article 26, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit GG
Article 33, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit HH
Article 41, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit II
Article 44, Northville Twp. Zoning Ordinance	10/07/08	31, Exhibit JJ
Insomnia, Inc. v City of Memphis (Unpublished)	10/07/08	31, Exhibit KK
Grace Community Church v Lenox Twp. (Unpublished)	10/07/08	31, Exhibit LL
McKenna & Assoc., Inc. Documents pertaining to Miles Christi	10/07/08	31, Exhibit MM
Miles Christi Site Plan Review Application, Lyon Twp.	10/07/08	31, Exhibit NN
Response to Motion to Dismiss for	10/28/08	38

Lack of Subject Matter Jurisdiction Based on the Ripeness Doctrine		
Transcript Excerpts of Hearings	10/28/08	38, Exhibit A
Bauer Deposition Excerpts	10/28/08	38, Exhibit B
Snider Deposition Exhibit 4	10/28/08	38, Exhibit C
M.C. Responses to Admissions	10/28/08	38, Exhibit D
Frey Deposition Exhibit 31	10/28/08	38, Exhibit E
Declaration of Fr. Bertolacci - Part 1 of 2	10/28/08	38, Exhibit F
Declaration of Fr. Bertolacci - Part 2 of 2	10/28/08	38, Exhibit F
Declaration of Fr. Bertolacci	10/28/08	38, Exhibit G
Township Zoning Ordinance - Definitions	10/28/08	38, Exhibit H
Snider Deposition Excerpts	10/28/08	38, Exhibit I
Osiecki Deposition Excerpts	10/28/08	38, Exhibit J
Fr. Bertolacci's Responses to Interrogatories	10/28/08	38, Exhibit K
Township Ordinance -- Business Regulation	10/28/08	38, Exhibit L
Frey Deposition Excerpts	10/28/08	38, Exhibit M
Canon Law Excerpts	10/28/08	38, Exhibit N
Frey Deposition Exhibit 6	10/28/08	38, Exhibit O
Werth Deposition Excerpts	10/28/08	38, Exhibit P
Gaitley Deposition Excerpts	10/28/08	38, Exhibit Q

LeVan Deposition Excerpts	10/28/08	38, Exhibit R
Bauer Deposition Exhibit 12	10/28/08	38, Exhibit S
Frey Deposition Exhibit 7	10/28/08	38, Exhibit T
Bauer Deposition Exhibits 3, 6, 8, 17-24	10/28/08	38, Exhibit U
Bauer Deposition Exhibit 4	10/28/08	38, Exhibit V
Frey Deposition Exhibit 24	10/28/08	38, Exhibit W
Fr. Bertolacci's Responses to Admissions	10/28/08	38, Exhibit X
M.C.'s Responses to Interrogatories	10/28/08	38, Exhibit Y
Br. Conte-Grand Deposition Excerpts	10/28/08	38, Exhibit Z
Frey Deposition Exhibit 30	10/28/08	38, Exhibit AA
Township Zoning Ordinance - Site Plan Review	10/28/08	38, Exhibit BB
Doozan Declaration	10/28/08	38, Exhibit CC
Frey Deposition Exhibit 21	10/28/08	38, Exhibit DD
Frey Deposition Exhibit 3	10/28/08	38, Exhibit EE
Fr. Castro-Huergo Deposition Excerpts	10/28/08	38, Exhibit FF
Reply to Response re: Motion to Dismiss for Lack of Subject Matter Jurisdiction Based on the Ripeness Doctrine	11/04/08	39
Grace Community Church v Lenox Twp (Slip copy)	11/04/8	39, Exhibit OO

Fr. Richard Castro-Huergo Deposition Excerpts	11/04/08	38, Exhibit PP
Fr. Cesar Bertolacci Deposition Excerpts	11/04/08	38, Exhibit QQ
Fr. Xavier Ray Deposition Excerpts	11/04/08	38, Exhibit RR
Fr. Patrick Wainwright Deposition Excepts	11/04/08	38, Exhibit SS
Fr. Martin Latiff Deposition Excerpts	11/04/08	38, Exhibit TT
Br. Francisco Conte-Grand Deposition Excerpts	11/04/08	38, Exhibit UU
Livin Water Church of God v Charter Twp of Meridian	11/04/08	38, Exhibit VV
Notice of Stipulation and Order of Stay Entered by the Hon. Michael J Gerou, 35th District Court Judge, in Northville v Miles Christi, 35th District Court Case NO. 08-107367-AV	01/28/09	47
Stipulation and Order of Stay Entered by Hon. M. Gerou	01/28/09	47, Exhibit A
Order Granting Motion to Dismiss	04/30/09	50
Judgment in Favor of Defendants Against Plaintiffs	04/30/09	51
Notice of Appeal	05/07/09	52
Transcript of Motion to Dismiss Held on 1/28/09	05/22/09	54