

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

OPULENT LIFE CHURCH AND TELSA DEBERRY

PLAINTIFFS

V.

CASE NO. 3:12-CV-0004

**CITY OF HOLLY SPRINGS, MISSISSIPPI;
BOARD OF ALDERMEN OF THE CITY OF
HOLLY SPRINGS, MISSISSIPPI; CITY
PLANNING COMMISSION OF THE CITY
OF HOLLY SPRINGS, MISSISSIPPI**

DEFENDANTS

ORDER

This cause comes before the court on Plaintiffs Opulent Life Church (“Opulent”) and Telsa DeBerry’s Renewed Motion for Temporary Restraining Order and Preliminary Injunction. The Fifth Circuit Court of Appeals reversed this court’s initial denial of the motion. Upon due consideration of the appellate opinion in this matter, an evidentiary hearing held on October 18, 2012, and the parties’ memoranda, the court is prepared to rule.

The Fifth Circuit held that a Holly Springs (“City”) ordinance placing additional requirements on religious institutions seeking permits to operate on the town square violated the Equal Terms Clause of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). 42 U.S.C. § 2000cc. On the eve of oral argument before the Fifth Circuit, the City repealed the ordinance. This amended ordinance prohibits “churches, temples, synagogues, mosques, and other religious facilities,” among several other nonreligious entities, from occupying the “Business Courthouse Square” (“square”). The Court determined that Opulent had shown a substantial threat of irreparable harm under the amended ordinance and remanded for further proceedings on the remaining elements of injunctive relief, namely, whether the plaintiff had a

substantial likelihood of success on the merits and whether the threatened injury outweighs any damage that the injunction might cause the defendant. The parties agree that this court's inquiry at this juncture is limited to the ordinance as amended.

The Equal Terms Clause of the RLUIPA provides: "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." 42 U.S.C. § 2000cc(b)(1). "If a plaintiff produces prima facie evidence to support a claim alleging a violation of the [Equal Terms Clause], the government shall bear the burden of persuasion on any element of the claim." 42 U.S.C. § 2000cc-2. The Fifth Circuit stated that because "the ordinance[s] expressly distinguish between religious and nonreligious land uses, Opulent Life has established a prima facie case, so Holly Springs has the burden of persuasion on each element of the Equal Terms Clause claim." (Citing *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1171 (9th Cir. 2011)). "To bear its burden, Holly Springs must first identify the regulatory purpose or zoning criterion that explains the religious facilities ban, as stated explicitly in the text of the ordinance, and then show that it has treated religious facilities on equivalent terms as all nonreligious institutions that are similarly situated with respect to that stated purpose or criterion."

Turning now to the stated purpose, the amended ordinance contains the following language:

"[The] purpose of The Business Courthouse Square District... is to designate the area fronting on the Marshall County Courthouse Square for certain retail, office and service uses which will complement the historic nature and traditional functions of the court square area as the heart of the community life."

The Fifth Circuit made certain findings regarding this stated purpose. First, the Court held that “insofar as this language can be read as purporting to create a commercial district, that justification fails because other noncommercial, non tax-generating uses are permitted in the district....” Second, “to the extent that the stated purpose for the district could be read to suggest that the heart of community life in Holly Springs is consistent with a variety of nonreligious civic uses, but not religious uses, that inherently discriminatory regulatory purpose would likewise fail to justify the ban.”

This court does not consider the stated purpose to be limited to commercial and “heart of the community” purposes. Rather, these purposes are wedded to the stated interest in historic preservation and traditional functions. However, the City has failed to develop the meaning of historic preservation and traditional functions in Holly Springs. In light of this failure, the court is unable to conclude that the stated purpose of the square is anything more than a commercial district. As discussed, *supra*, “that justification fails because other noncommercial, non tax-generating uses are permitted in the district.” Therefore, Opulent has demonstrated a substantial likelihood of success on the merits because the City has failed to meet its burden.

Turning now to the third preliminary injunction element, whether Opulent’s threatened injury outweighs any harm Holly Springs will suffer as a result of the injunction, the Fifth Circuit held that, “We have just concluded that Opulent Life’s harm is irreparable; hence, Holly Springs would need to present powerful evidence of harm to its interests to prevent Opulent Life from meeting this requirement.”

Rather than present powerful evidence of harm to its interests, the City hardly made any showing at all. During a hearing held on October 18, 2012, the extent of the City’s proof was to produce the ordinance itself and to call Pastor Telsa DeBerry as an adverse witness. Testimony

from an adverse witness and entry of the ordinance as an exhibit does not even address what harm to the City's interests might occur should this court grant a preliminary injunction. Therefore, the City has failed to meet its rigid burdens in this matter, and Opulent has satisfied the elements of preliminary relief in light of the Fifth Circuit's findings.

Plaintiffs' Renewed Motion for Temporary Restraining Order and Preliminary Injunction [32] is GRANTED. The court hereby orders the City of Holly Springs to cease enforcement of its prohibition against religious organizations on the square. Specifically, the City is prohibited from enforcing the segment of its ordinance that reads, "Churches, temples, synagogues, mosques, and other religious facilities" in "Section 5 – Table of Uses", pg. 18 of its amended ordinance. Nothing in this order, however, shall be construed as excusing plaintiffs from complying with whatever other neutral prerequisites may apply in obtaining the proper permissions to occupy its building on the square. The expiration, if any, of this preliminary relief will be determined upon a full trial on the merits, presently set to occur on April 8, 2013.

SO ORDERED, this the 1st day of November, 2012.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI