05-4144 & 05-4234 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

VISION CHURCH, UNITED METHODIST	**)**
	)
Plaintiff-Appellant,	**)**
	)
v.	**)**
	)
VILLAGE OF LONG GROVE,	**)**
	)
Defendant-Appellee	**)**

Appeal from the Unites States District Court
for the Northern District of Illinois, Eastern Division
No. 03 C 5761 (Honorable Charles Norgle)

BRIEF OF DEFENDANT-APPELLEE

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Appellate Court No: 05-4144, 05-4254

Short Caption: Vision Church v. Village of Long Grove

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The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Village of Long Grove

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Jurisdictional Statement

Plaintiff-Appellant's Jurisdictional Statement is complete and correct. The Court has jurisdiction based upon 28 U.S.C. § 1291, as the District Court's October 17, 2005 Order was a final decision that fully terminated the litigation.

Statement of the Issues

Whether the District Court correctly concluded that the Village's decisions regarding: (i) denial of Vision's 2000-2001 annexation application; (ii) the October 2001 annexation of Vision's 27-acre parcel; (iii) the April 2002 enactment of the neutral and generally applicable Public Assembly Ordinance (the "Ordinance"); and (iv) denial of Vision's 2002 Special Use application pursuant to the Ordinance, were well-founded annexation and land use decisions that did not violate the U.S. Constitution, the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") or Illinois law.

Statement of the Case

Vision has accurately stated the procedural history of this case. Vision has, however, mischaracterized the nature of the case. This case involves the Village's legislative actions regarding the annexation of property, the passage of neutral and generally applicable land use legislation, and the denial of a Special Use permit based upon that legislation. The cumulative effect of the Village's action prevented Vision from constructing its proposed 99,000 square-foot church facility on its property, but would have allowed development of a 55,000 square-foot facility on the property. Instead of complying with the Village's applicable land use regulations and moving forward with development of a permitted facility, Vision filed suit and claims that the Village's decision to limit development to 55,000 square feet is a violation of the First Amendment, RLUIPA and Illinois law.

Statement of Facts

The Village of Long Grove and its Long Standing Planning Philosophy

The Village of Long Grove is an 18-square mile community located in Lake County, Illinois. According to the 2000 census, the Village's population is 6,735. *See* Doc. No. 86 (Village's March 9, 2005 Local Rule 56.1(a)(3) Statement of Facts -- contained in Vol. 3 of the Record on Appeal) ¶ 5, and Doc. No. 98 (Village's March 9, 2005 Appendix to its Local Rule 56.1(a)(3) Statement of Facts -- Vol. 1 of Loose Pleadings).[1]

The Village has adopted and updated (most recently in 1999) its Comprehensive Plan, which sets forth the Village's fundamental goals and policies with respect to land use. Doc. No. 86, ¶ 6. As stated in the Comprehensive Plan, "Long Grove's unique community character sets it apart from adjoining communities. The most critical of the Village's goals are the provision of a quiet countryside, with an unhurried and unstructured environment where families can live and enjoy the open space, and the preservation of community character through Long Grove's consistent and longstanding efforts to maintain the qualities of such lifestyle." Doc. No. 86, ¶ 7. Other sections of the Comprehensive Plan echo this "semi-rural" planning philosophy. *Id*., ¶ 7. The Village has used the Comprehensive Plan as a guideline in drafting and re-drafting its Zoning Code, and in making planning and zoning decisions, such as the approval of proposed annexations and planned unit developments. *Id*., ¶ 8.

Long Grove's Treatment of Religious Institutions

As of today, there are at least seven places for religious worship in the Village, including a Korean church that shares space with a Lutheran church. Doc. No. 86, ¶ 83.

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1 In this appellate Statement of Facts, the Village has, most often, cited to paragraphs in its Local Rule 56.1(a)(3) Statement of Facts (Doc. No. 86). The Rule 56.1(a)(3) Statement, in turn, references exhibits that are contained in the Village's Rule 56.1(a)(3) Appendix of Exhibits (Doc. No. 98) which is also identified as Volume 1 of the Loose Pleadings.

The Village's Zoning Code establishes the basic requirements for where in the Village religious institutions may locate. As of June 2000, when Vision first applied to the Village for annexation, the Zoning Code divided the land in Long Grove into the following zoning districts: Residential (R1, R2, R3), Historic Business District (B1), Suburban Business (B2), Office & Research (O&R), Office (O) and Open Space (OS-N, OS-P and OS-R). Doc. No. 86, ¶ 9. In addition, within the various residential districts, the Zoning Code authorized Planned Unit Developments ("PUDs") as special uses. *Id*., ¶ 9. In 2000, the vast majority of land in the Village was zoned Residential or zoned as an approved PUD. The same is true today. *Id.*, ¶ 10.

In June 2000, "churches" were considered a "Special Use" in the R1, R2 and R3 Residential districts. Doc. No. 86, ¶ 11. At that time, to obtain a "Special Use Permit," an applicant had to: (i) be in a zoning district where the use was allowed as a Special Use (*e.g.*, a church in an R1, R2 or R3 district); and (ii) meet the standards set forth in §5-11-6(D) of the Zoning Code. *Id*., ¶ 12. These Special Use standards did not specify the maximum square footage or cubic footage of the building or buildings that would comprise the Special Use. *Id*., ¶ 12.

Vision's Decision to Purchase the Property in September 2000

In 1999, Vision (then known as Good Shepherd) was located in Park Ridge, Illinois, Doc. No. 86, ¶ 16, and had approximately 220 members. *Id*., ¶ 78. When Vision began its search for a new site for its church complex it initially sought a parcel of land in the range of 10 acres. *Id*., ¶ 17. Unable to find a 10-acre parcel, in July 1999, Vision entered into a contract with the owner of a 27.4 acre unimproved vacant parcel of land (the "Vision Property") located in unincorporated Lake County (the "County"). *Id*., ¶ 18. The contract contained a "zoning contingency clause," which allowed Vision to terminate the contract if it did not obtain zoning approval from the County within 180 days (*i.e.*, by January 2000). *Id.*, ¶ 18. At Vision's request,

the zoning contingency clause was later amended to allow for approval by the Village (instead of the County) and the date for approval was extended to May 31, 2000. *Id*.,¶ 19.

Vision closed on the purchase of the Vision Property in September 2000. Doc. No. 86, ¶ 20. It did so despite the fact that neither of the approvals called for in the contract's zoning contingency clause -- approval by the County or the Village -- had occurred. *Id*., ¶ 21. As of September 2000, Vision had not even applied to the County for approval of its church complex and its application for Village annexation had not been approved. *Id*., ¶ 21.

Vision's 2000/2001 Application for Annexation

Although the County zoning ordinance allowed religious uses on the Vision Property without the need for any type of re-zoning, special use or variance, Doc. No. 86, ¶ 23, Vision desired to be within the Village. *Id*., ¶ 24. However, as the Vision Property was in unincorporated territory within the County, the Village lacked jurisdiction to zone the Property, or approve any proposal to develop the Property under the Village's Zoning Code. *Id*., ¶ 22.

Therefore, in June 2000, even before its purchase was complete, Vision filed an application (the "June 2000 Application") with the Village asking the Village to annex the Vision Property into the Village's corporate limits pursuant to the annexation section of the Illinois Municipal Code. Doc No. 86, ¶ 25; see also 65 ILCS 5/7-1-8. Vision's request that the Property be annexed into the Village was subject to two basic conditions: that the Village: (i) zone the Property R2; and (ii) grant Vision a Special Use Permit that would allow it to develop a church complex on the Property. *Id*., ¶ 26.

In its June 2000 Application, Vision requested annexation of the Property and Special Use approval for a 99,000 square-foot complex consisting of five main buildings, including a 1,000 seat sanctuary, and several smaller buildings. Doc. No. 86, ¶ 27. From that point forward, the Village and Vision engaged in discussions regarding the terms of a proposed annexation agreement, under which the Village would annex the Vision Property into the Village and approve the terms under which the Vision Property would be developed. *See generally* 65 ILCS 5/11-15.1-1 *et seq*. (giving municipalities the authority, pre-annexation, to enter into binding annexation agreements with landowners).

In March 2001, after a period of negotiation, Vision presented a revised proposal (the "March 2001 Plan") calling for a 59,000 square-foot complex consisting of three main buildings

(a 600 seat sanctuary, an Administration/Fellowship building and a Sunday School building). Doc. No. 86, ¶ 28.

At an April 3, 2001 meeting of the Village's Plan Commission (the "Plan Commission"),[2] Vision responded to the Plan Commissioners' concerns regarding Vision's March 2001 Plan and answered questions about its willingness to comply with a list of development conditions that had been compiled by Village Manager, Cal Doughty ("Manager Doughty"), based upon concerns and suggestions offered by the Commissioners. Doc. No. 86, ¶ 29. Vision orally agreed to some of the development conditions suggested by the Commissioners and Manager Doughty, and at the close of the April 3rd meeting the Commissioners asked that Vision submit a revised set of drawings to reflect revisions consistent with Vision's oral commitments and to provide more detail on its proposal. *Id.*, ¶ 30. Vision never provided the Plan Commission with the requested materials. *Id.*, ¶ 31.

Although Vision's proposal was to be discussed at the May 2001 and June 2001 Plan Commission meetings, Vision requested continuances. Doc. No. 86, ¶ 32. On July 6, 2001, Vision's attorney informed the Village that Vision elected to "stand on its application as presently submitted" and requested a vote on its pending application for annexation. *Id.*, ¶ 33.

In accordance with Vision's request, the Plan Commission scheduled a vote for August 7, 2001. Doc No. 86, ¶ 34. Prior to the August 7, 2001 meeting, Manager Doughty attempted to confirm the specifics of Vision's "final" plan. To that end, on July 10, 2001 Manager Doughty sent a letter to Vision's attorney asking Vision to clarify which of the suggested conditions Vision would accept. *Id.*, ¶ 34.

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2 The Plan Commission is an advisory body that issues recommendations to the Village Board of Trustees (the "Board") on land use issues, such as changes to the Village zoning code and applications for Special Use Permits and Planned Unit Developments. The final decision on annexation agreements, code amendments and applications for Special Use Permits rests with the Board. Doc. No. 86, ¶¶ 13-14.

On August 6, 2001, the day before the scheduled vote, Vision's attorney sent a letter in which he rejected several of the proposed conditions, including the Village's request that, if the 59,000 square-foot plan were approved, Vision would promise that it would not seek to expand the building complex in the future. Doc No. 86, ¶ 35. In the context of a negotiated annexation agreement, the Village's request for assurances that Vision would not seek to modify the approved site plan was an accepted planning practice, and Vision's refusal to agree to this proposed condition raised legitimate land use concerns. Doc. No. 128 (Village's June 8, 2005 Supplemental Appendix – Vol. 4 of Loose Pleadings), Ex. B, p. 3.

The next day, at its August 7, 2001 meeting, the Plan Commission voted to recommend denial of Vision's application for annexation and a Special Use Permit. Doc. No. 86, ¶ 36. On August 14, 2001, the Long Grove Board of Trustees (the "Board") voted to accept the Plan Commission's recommendation, and the Board formally declined to annex the Vision Property or approve an annexation agreement that contained the terms offered by Vision. *Id*., ¶ 37.

Consideration of the Valenti Planned Unit Development and
Annexation of the Valenti Property, May 2001 – September 2001

In May, 2001, prior to any decision on Vision's application for annexation, Joseph Valenti, a developer who owned land adjacent to the Vision Property, filed an application to have his 120-acre parcel (the "Valenti Property") annexed into the Village and approved as a residential PUD. Doc No. 86, ¶ 38; *see also* Doc. No. 98, Ex. 4, §5-9-1 *et seq.* (setting forth Village's procedure for PUD, preliminary plat, and final plat approval).

The Valenti application was referred to the Plan Commission, which first heard a presentation by Mr. Valenti at it June 5, 2001 meeting. Doc No. 86, ¶ 39. At its August 7, 2001 meeting, the Plan Commission conducted a public hearing on the proposed Valenti PUD and preliminary plat, and at its September 4, 2001 meeting, the Plan Commission voted to

recommend the Valenti PUD and preliminary plat *Id*., ¶ 40. At its September 25, 2001 meeting, the Board voted 4-3 to approve the Valenti PUD and preliminary plat, subject to annexation of the Valenti Property. *Id*. ¶ 40. At its October 9, 2001 meeting, the Board voted 4-1 to approve the annexation of the Valenti Property, thereby incorporating it into the Village. *Id*. ¶ 41.

The Village's Involuntary Annexation of the Vision Property in October 2001

Both the Valenti Property and the Vision Property were within the boundaries of the Village's long-term expansion and annexation plans. Doc. No. 86, ¶ 44. As a result of the Valenti Property annexation in October 2001, the Vision Property was, for the first time, completely surrounded by land located within the corporate boundaries of the Village. *Id.*, ¶ 45. Thus, the Valenti Property annexation gave the Village the right, under the Illinois Municipal Code, to "involuntarily" annex the Vision Property into the Village, i*d.*, ¶ 45, *see also* 65 ILCS 5/7-1-13, and to do so without regard to Vision's proposed conditions of annexation. Doc. No. 86, ¶ 46.

On October 23, 2001, after proper notice, the Village passed an ordinance involuntarily annexing the Vision Property. Doc. No. 86, ¶ 50. The annexation of the Vision Property was specifically authorized under 65 ILCS 5/7-1-13, *id*., and was consistent with the Village's long-term annexation goals as set forth in the Comprehensive Plan. *Id*. ¶¶ 43-46. Further, involuntary annexation under § 7-1-13 is a recognized planning tool that has been used in recent years by many Lake County municipalities, including the Village. Doc. No. 86, ¶¶ 51-52; Doc. No. 128 (Loose Pleading Vol. 4) Ex. B, p. 3. Upon annexing the Vision Property, the Village gave it a zoning classification of "R2, residential," which was the exact zoning classification that Vision had requested in its June 2000 Application, and which allowed Vision to seek a Special Use Permit to develop a church complex. *Id*., ¶ 50.

The Village's desire to regulate development of the Vision Property, consistent with the Village's Comprehensive Plan and overall zoning goals, was an important reason for the decision to involuntarily annex the Property. Doc. No. 86, ¶¶ 47-49. Further, there is no dispute that the Village: (i) objected to the 99,000 square-foot site plan Vision submitted to the County (discussed below); and (ii) viewed involuntary annexation as a way to gain control over the future development of the Vision Property.

Vision's Efforts to Obtain a Building Permit from Lake County
November 2000 - October 2001

Although the original version of Vision's real estate contract was contingent on development approval from Lake County, Vision was initially interested in pursuing an annexation agreement with the Village. Thus, Vision did not apply to the County for a building permit until November 2000, and it did not diligently pursue its application with the County until May 2001. Doc. No. 177-1 (Supplemental Record - Pl's Summary Judgment Exhibit Book III), Tab 65 (Deposition of Carl Kupfer), pp. 26-36. Only when negotiations between the Village and Vision for a voluntary annexation appeared to be faltering did Vision show renewed interest in obtaining a permit from the County rather than pursuing annexation to the Village. *Id*. at 45.

Because of Vision's decision to make voluntary annexation with the Village its primary goal, Vision delayed its submissions to the County. Doc. No. 177-1, Tab 65, pp. 35-36, 41-44. Therefore, the County did not hold its mandatory public information meeting on Vision's permit application until August 2001. *Id*., Tab 64 (Deposition of Philip Rovang), pp. 15-17, 34-35.

After the public information meeting, on September 11, 2001, the County sent a letter to Vision's consultant advising of the need for additional materials and analysis from Vision. Doc. No. 177-1, Tab 65, pp. 77-78; *id.*, Tab 64, pp. 21, 25-26 and Rovang Ex. 5. There is no indication in the record as to whether Vision ever responded to the County's request for

additional information. And, at the time of involuntary annexation in October 2001, there was no certainty as to when -- if at all -- Vision would obtain County approval. *Id*., Tab 64 at 16-26, 32-33. As a consequence of the Village's October 2001 annexation of the Vision Property, the County terminated the building permit review process, as the County no longer had zoning and building jurisdiction over the Property.

Consideration and Enactment of the Public Assembly Ordinance,
November 2001-April 2002

In November 2001, Manager Doughty recommended to the Board that it consider a comprehensive amendment to the Zoning Code with respect to the location of, and threshold standards for, "Public Assembly Uses," including religious institutions, private schools and similar uses (such as meeting halls and private clubs). Doc No. 86, ¶ 53. On November 12, 2001, Manager Doughty presented an initial draft of the proposed Public Assembly Ordinance (the "Ordinance") to the Village President and the Board for their consideration. *Id*., ¶ 54.

As proposed (and as ultimately passed) the Ordinance applied equally to all public assembly uses regardless of the religious or secular nature of the use, and regardless of the speech to be conducted within the assembly buildings. Doc. No. 86, ¶ 55. Per standard Village practice, the Ordinance was referred to the Plan Commission for a public hearing and recommendation. *Id*., ¶ 56. On March 5, 2002, the Plan Commission held a public hearing on the proposed Ordinance and recommended passage. *Id*., ¶ 56.

Lane Kendig, the Village's land planner, participated in the initial drafting of the Ordinance and attended the Plan Commission meetings at which the proposed Ordinance was discussed. Doc. No. 177-1, Tab 61 (Deposition of Lane Kendig), pp. 65-67. Kendig testified about the Plan Commission's decision to recommend a reduction in the allowable square footage for "Community Facilities" from 75,000 square feet (the amount set forth in the initial draft of the

Ordinance) to 55,000 square feet, the number which the Plan Commission ultimately recommended to the Board. *Id*. at 133-34, 140-41.

Kendig said that when considering the proposed Ordinance in February and March of 2002 the members of the Plan Commission were aware of both Vision's then-pending 99,000 square-foot proposal (discussed below) and Vision's March 2001 Plan. Doc. No. 177-1, Tab 61, pp. 142-149. Kendig testified that the Plan Commission's selection of the 55,000 square foot figure was made with the knowledge that Vision's 99,000 square-foot proposal would not meet that standard and was selected, in part, in an effort to influence the size of the complex Vision was proposing, but not with the intent to prevent the complex from being built. *Id*. at 142-49. It was Kendig's professional opinion that Vision could easily meet the 55,000 square foot standard as that figure was only 1,200 square feet less than Vision's March 2001 Plan.[3] *Id*., at 131-33.

On April 9, 2002, the Board voted to enact the Ordinance. It is now codified as §5-11-6-1 of the Zoning Code. Doc No. 86, ¶ 57. The Ordinance, as enacted, regulates, *inter alia*, the maximum square footage of public assembly buildings, and the maximum total volume of such buildings. *Id*., ¶ 58. The allowable square footage and volume is dependent upon the size of the land (in acres) on which the project is to be built and the type of roadway that fronts the project. For example, if a proposed project is located on *15 or more acres* and fronts a *county highway*, it is considered a "Community Facility" and is subject to a 55,000 square-foot maximum and a 1,472,000 cubic area limit.[4] *Id*., ¶ 59.

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3 Vision's final March 2001 Plan was described, alternatively, as a 59,000 square-foot proposal and as a 56,200 square-foot proposal. Kendig was making reference to the 56,200 square-foot figure. Doc. No. 177-1, Tab 61 at 88-89; *id.*, Tab 72 (Kendig's March 4, 2002 memorandum).

4 Under the Ordinance, if the proposed project is 20 acres or more and fronts a state highway, then it is considered a "Regional Facility" and has higher maximums for square footage and volume.

Under the Ordinance, all new proposed public assembly uses must comply with the performance standards set forth in the Ordinance, as well as the Village's pre-existing qualitative standards for special uses set forth in §5-11-6(D) of the Zoning Code. Doc No. 86, ¶ 61.

The Village's Denial of Vision's 2002 Application for a Special Use Permit

On January 23, 2002, two months *after* the proposed Ordinance was introduced, and while the Village was in the process of considering the proposed Ordinance, Vision applied for a Special Use Permit that would allow it to construct its church complex on the Property ("Vision's 2002 Application"). Doc No. 86, ¶ 63. Retreating from its March 2001 Plan, which contained 59,000 square feet of building space, Vision's 2002 Application mirrored its County plan and requested approval of a church complex with five buildings occupying 99,000 square feet (a 78,000 square-foot "Phase I" and a 21,000 square-foot "expansion"). *Id*., ¶ 64.

On May 7, 2002, a month after the Ordinance was passed, the Plan Commission held a public hearing on Vision's 2002 Application. Doc No. 86, ¶ 66. On June 18, 2002, Vision presented an approximately 80,000 square-foot "compromise" plan but asked the Plan Commission to vote on the 99,000 square-foot proposal instead. *Id*., ¶ 67. As the plan set forth in the Vision's 2002 Application did not come close to the 55,000 square-foot limit contained in the Ordinance, the Plan Commission voted to recommend denial of the 2002 Application. *Id*. On July 9, 2002 the Board accepted the Plan Commission's recommendation and formally voted to deny the 2002 Application. *Id*., ¶ 68.

As set forth in Vision's 2002 Application, the proposed church complex did not meet the threshold criteria of the Ordinance, which limited Vision to a 55,000 square-foot complex. Doc No. 86, ¶ 69. Nor did Vision make any effort to meet that standard. *Id*. Even Vision's informal compromise proposal (which it did not ask the Plan Commission to vote on) was in excess of

both the 55,000 square-foot standard contained in the Ordinance and Vision's March 2001 Plan, which called for a building complex totaling 59,000 square feet. *Id*., ¶¶ 67, 70.

Vision's True Needs for Assembly Space

A 55,000 square-foot complex (only 4,000 square feet less than Vision's March 2001 Plan, assuming that Vision would have agreed to no further expansion) would have been more than sufficient to meet the realistic foreseeable needs of Vision's congregation of 140 adults and 80 youths and children. Doc No. 86, ¶¶ 73-75, 78-81. Indeed, Vision's own consultant, an architect who specializes in church planning and design, performed an analysis which showed that a congregation with an average worship attendance of 500 and a Sunday School attendance of 375 would reasonably need only about 40,000 square feet of space. *Id*., ¶ 75. In contrast, the complex Vision requested in its 2002 Application -- a complex of 80,000 to 100,000 square feet -- would be appropriate for a congregation of at least 1,000 people. *Id*., ¶ 76. A congregation of 1,000 members was more than four times Vision's size in 2001 (140 adults and 80 children) and could not be realistically achieved in the foreseeable future. *Id*., ¶¶ 78-81.

Summary of the Argument

As the District Court found, and as the facts demonstrate, the Village did not prevent Vision from operating a religious facility at Vision's preferred site in the Village. After annexation of the Vision Property and passage of the Ordinance, Vision could have qualified for a Special Use Permit had it submitted a plan that complied with the Ordinance's 55,000 square-foot limit.

Vision's own church-building consultant testified that a complex of this size would provide more than enough room for worship, education, and fellowship activities for a congregation of Vision's size, both for now and for the foreseeable future. Inexplicably, Vision refused to modify its plans and insisted that the Village vote on its 99,000 square-foot proposal, which was almost

double the size of the facility allowed under the Ordinance. Given these circumstances, the Village had no choice but to deny Vision's 2002 Application for a Special Use Permit.

Whether taken individually or cumulatively, the Village's annexation and land-use decisions did not deny Vision the opportunity to develop its property in the Village and did not impose a "substantial burden" on Vision or otherwise violate the Constitution, RLUIPA, or state law. While the Village was admittedly concerned about development of the 27-acre site, its legislative actions did not target Vision *because of* Vision's religion or religious practices. Rather, the Village's legislative actions were neutral toward religion and simply focused on ensuring that the site was developed in a manner consistent with the Village's long-standing planning philosophy.

The Village's rationale for wanting to regulate the Property had nothing to do with the religious nature of Vision, nor the specifics of Vision's religious tenets. Rather, the concerns were related to the development of the site and its potential impact on the Village. The Village would have had the same concerns had a private school or a secular assembly hall been interested in developing the site. For this basic reason, the District Court properly granted summary judgment to the Village on Vision's federal claims.

Finally, Vision's supplemental state law claims fail for the reasons discussed in the District's Court's opinion, and because Vision's claims are dependent upon an unwarranted extension of Illinois' "vested rights" doctrine beyond that recognized by the Illinois Supreme Court. For all these reasons, the District Court's grant of summary judgment should be affirmed.

ARGUMENT

I. Vision's Statement of Facts and Argument Sections Contains Numerous Falsehoods Unsupported by the Record.

Vision's misrepresentations of the Record are numerous and material. At this time, the Village does not wish to identify all the errors, but notes the most serious falsehoods:

A. Vision's Misrepresentations Regarding the Village's Deliberations on Vision's 2000/2001 Application for Annexation.

Vision misrepresents the circumstances surrounding its petition for voluntary annexation. *See* Vision's Brief, pp. 4-8, 23-24. Vision initially filed its June 2000 Application and later modified its annexation proposal with its March 2001 Plan. In August 2001, the village ultimately rejected Vision's voluntary annexation proposal.

Annexation of territory in Illinois is strictly controlled by statute. See 65 ILCS 5/7-1-1 *et seq*. "Voluntary" annexation is a procedure by which a landowner in unincorporated territory can seek to be annexed into a contiguous municipality. *See* 65 ILCS 5/7-1-8. In a voluntary annexation, Illinois law permits the municipality and the property owner to enter into a voluntary and negotiated annexation agreement prior to annexation. *See* 65 ILCS 5/11-15.1-1 *et seq*.

An annexation agreement is a contractual document that governs future development of the annexed property for up to 20 years. § 11-15.1-1; *see also Gaylor v. Village of Ringwood*, ___ N.E. 2d ___, 2006 WL 242506, *5 (Ill. App. Ct. 2006) (describing an annexation agreement as a contract); *Cummings v. City of Waterloo*, 683 N.E.2d 1222, 1230 (Ill. App. Ct. 1997) (same). Topics in an annexation agreement may include the zoning and future development of the property to be annexed. § 11-15.1-2; *see also Gaylor*, 2006 WL 242506 at *1 (describing the terms of an annexation agreement); *Langendorf v. City of Urbana*, 754 N.E.2d 320, 323-24 (Ill. 2001) (discussing statutory authority for creation of annexation agreements).

Vision misrepresents the process of voluntary annexation and the parties' negotiations regarding the proposed annexation agreement when it states that ". . . there was no contention that Vision failed to comply with any Long Grove Zoning Ordinance or SUP requirements, and there were no other objective standards in the Long Grove ordinances by which to disqualify Vision's proposal . . ." *see* Vision's Brief, pp. 4-5,[5] and when it insists that the Plan Commission "demanded" changes to Vision's proposed plan. *Id*. at 5-6.

At the time of these negotiations, the Vision Property was in the County, not in the Village. Vision had no absolute right to be in the Village, nor did the Village have an obligation to annex the Vision Property. *See Groenings v. City of St. Charles*, 574 N.E.2d 1316, 1324 (Ill. App. Ct. 1991). Rather, Vision, for its own reasons, sought to be annexed into the Village. During these negotiations, the Village could not, and did not, apply its "Zoning Ordinance or SUP requirements" because the Village could not, and did not, regulate property outside its corporate limits. Instead, the Plan Commission and Vision were *negotiating* the terms of an *annexation agreement* which, *if finalized*, would bring the Vision Property into the Village and allow the Village to assert zoning authority.

Vision was, of course, free to reject any of the Plan Commissioners' suggestions and drop its request for annexation, but it chose to modify its plans in an effort to gain support from the Commissioners. Indeed, in April 2001, Vision appeared amenable to many of the suggestions

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5 As support, Vision cites to S..A. (Short Appendix) p. 76, but page 76 of the Short Appendix provides no support. To the extent that Vision meant to cite to *Tab* 76 of its summary judgment materials (Declaration of Reverend Soon-Chang Jang), the Jang declaration does not support this statement.

offered by the Plan Commission, *see* Doc. No. 86, ¶ 29, but Vision refused to submit new drawings documenting the changes to its site plan that it had orally agreed to. *Id*., ¶¶ 30, 31.

More importantly, Vision rejected a key term suggested by the Plan Commission: that, if its 59,000 square-foot plan were approved, Vision would commit to no further expansion of the facility. Doc. No. 86, ¶ 35 (citing the deposition of Vision's attorney Kenneth Shepro). This commitment was a material part of the annexation negotiations and was especially important given Vision's looming 99,000 square-foot master plan. *See* Doc. No. 98 (Loose Pleadings Vol. 1), Deposition of Anthony Dean, pp. 72-74; Doc. No. 128 (Loose Pleadings Vol. 4) Ex. B, p. 3. Further, this "condition" of annexation was most definitely *not*, as Vision has characterized it, a request that Vision "cede Long Grove control over Vision's religious exercise." Vision's Brief, p. 24. It was, rather, a common subject for negotiation in the context of a proposed annexation agreement.

B. Vision's Misrepresentations Regarding the Valenti Annexation.

Although ultimately of minimal legal significance, Vision makes several misrepresentations regarding the annexation of the Valenti property as well. *See* Vision's Brief, pp. 10, 26. These misrepresentations demonstrate Vision's lack of understanding regarding the Village's zoning and planning procedures.

Contrary to Vision's statement, there were no "significant unresolved issues" regarding the Valenti Property at the time of annexation. On September 4, 2001, the Plan Commission recommended approval of the annexation of the Valenti Property and of Valenti's residential development plan, which called for the subdivision "to be served by sanitary sewer." See Doc No. 100 (Loose Pleadings Vol. 3) Tab 29. On September 25, 2001, the Village Board conditionally approved Valenti's Planned Unit Development and his *Preliminary* Plat of Development. Doc. No. 86, ¶ 40; Doc. No. 98, Ex. 4, § 5-9-3-3 (Approval of Preliminary Plat). And on October 9, 2001, the Board approved the annexation of the Valenti Property. Doc. No. 86, ¶ 41.

Vision suggests that certain issues regarding the Valenti Property were unresolved in 2002 and cites Plan Commission minutes from August 6, 2002. See Doc. No. 100, Tab 40. But in August 2002, Valenti was seeking approval for his *final* plat of development under the Village Zoning Code, which distinguishes between preliminary and final plat approval. Doc. No. 98, Ex. 4, § 5-9-3-4 (Approval of Final Plat). Further, contrary to Vision's statements, there is no suggestion in the August 2002 minutes that issues related to the service of the development by sanitary sewer (previously settled in 2001) were open or unresolved in August 2002.[6]

C. Vision's Misrepresentations Regarding the Annexation of the School District 96's Property.

Vision also misrepresents the facts surrounding the annexation of property (the "School Property") owned by Community School District No. 96 (the "District"). *See* Vision's Brief, pp. 14-16, 23 ("Vision applied for the identical relief Long Grove granted to the schools in 1999-2000: annexation, R-2 zoning and a SUP"), and 39 (same argument).

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6 These facts illustrate another of Vision's fallacies: that the Village "demand[ed] restrictions on the Valenti property [*i.e.*, the use of septic fields] that could later be used against Vision." Vision's Brief, p. 27. Not true. Rather, the Village approved the Valenti project *with* a sewer connection.

What Vision neglects to mention is that, at the time of the 1999 annexation, two public schools were already fully built on the 70-acre School Property; the School Property was, in turn, located in unincorporated Lake County, as the District chose to build the schools outside the Village. Doc. No. 98, Kendig Deposition, pp. 83-84; Doc. No. 128, Ex. C (Deposition of Cal Doughty), pp. 59-61.

Only *after* the two public schools were constructed did the District petition the Village for annexation. Doc. No. 100, Tab 41. Indeed, as the School Property was 70 acres, the Village could not invoke the involuntary annexation procedures set forth in 65 ILCS 5/7-1-13, which limits involuntary annexations to parcels 60 acres or less. Therefore, the Village could annex the School Property *only* through a District-initiated petition for voluntary annexation.

As a condition of the annexation, the District agreed to seek a formal Special Use Permit for the already-constructed public schools. Doc. No. 100, Tab 41. Further, the District agreed to another one of the Village's primary conditions: that the District give the Village zoning control over the remainder of the School Property to the extent that the School Property would be used for non-school activities. *Id.*; Doc. No. 128, Ex. B, p. 2.

As will be discussed, Vision's attempt to equate itself with the District fails for both factual and legal reasons. For now it is sufficient to note that Vision's assertion that it and the District "applied for [ ] identical relief" is simply false.

II. The Trial Court Was Correct in Granting Summary Judgment to the Village on Vision's Federal Claims.

A. Vision's "Exclusion" Claims.

1. First Amendment – Free Speech.

Vision begins its brief by defending its "exclusion claims under the First Amendment and RLUIPA [section (b)(3)(A)-(B)]." Vision's Brief, p. 18. According to Vision, its constitutional "exclusion" claim is based upon the Free Speech clause of the Constitution as interpreted in *Schad v. Borough of Mount Ephram*, 452 U.S. 61 (1981), which struck down a borough ordinance that banned all "live entertainment" in the borough. *Id*. at 65-66 and 73 n. 14 (the only exception to the prohibition was for existing, nonconforming, live entertainment uses). *Schad* is a case about true "total exclusion" of live entertainment, *i.e.*, the borough completely banned live entertainment, not only as a permitted use, *but also as a special or conditional use*. *Id.*

Simply put, *Schad* is inapplicable. Far from banning religious exercise, the Village recognizes religious assembly institutions as legitimate Special Uses in the Village's R zoning districts and thereby allows new religious uses, subject to the provisions of the Ordinance. And even before the enactment of the Ordinance, religious institutions were successful in obtaining Special Use approval. Doc. No. 86, ¶ 83.

Vision grossly misreads *Schad* when it asserts that *Schad* requires every municipality to establish at least one zoning district in which religious assembly uses can locate "as of right," *i.e.*, without the need for a Special Use Permit or other approval. *See* Vision's Brief, p. 19. To the contrary, neither *Schad*, nor any other case discussing uses protected by the First Amendment, whether religious or otherwise, so holds. Indeed, at least with respect to adult uses, this court has held to the contrary. *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441, 443 n.1 (7th Cir. 1996) (upholding City of Chicago adult use ordinance that provided no "as of right" land for adult uses and required adult uses to obtain special use approval in those zoning districts where they are conditionally allowed).

Entertainment Concepts, III v. Maciejewski, 631 F.2d 497 (7th Cir. 1980), cited in Vision's Brief at page 20, does not hold otherwise. In that case, the Court struck down a village ordinance that required movie theaters that wished to screen "adult" films to first submit the films to the village's Movie Review Committee. The ordinance was flawed on multiple grounds, including the fact that the ordinance was content-based. *Id*. at 503-04. Further, the Court did not invalidate the ordinance on the grounds that movie theaters must be allowed in some zoning district as of right. Rather, the Court recognized the village's right to "designate some uses as special uses," *id*. at 504, but held that the ordinance was unconstitutionally vague because it "gives no standards for its application by those who administer it." *Id*. at 502-03. Here, the Ordinance is neither content-based, nor standardless. In fact, Vision's 2002 Application was rejected because it failed to meet the specific 55,000 square-foot standard contained in the Ordinance.

2. RLUIPA Sections (b)(3)(A) and (b)(3)(B).

To support its RLUIPA §(b)(3) claim, *see* 42 U.S.C. §2000cc(b)(3), Vision asserts that *Schad* "has been codified in RLUIPA §(b)(3)." Vision's Brief, p. 19. If true, then summary judgment is proper on this claim for the same reason as discussed above. However, the interpretation of

§(b)(3) begins with its text, not Vision's representation that §(b)(3) codified *Schad*. In any event, based upon the text of §(b)(3), the Village did not violate RLUIPA.

RLUIPA §(b)(3)(A) provides that a municipality may not "totally exclude religious assemblies from a jurisdiction." Religious assembly uses are not excluded from the Village, either on paper or in fact. The Village is home to a diverse array of religious organizations, see Doc. No. 86, ¶ 83, and the Zoning Code specifically allows religious assembly uses as Special Uses in R districts. Indeed, Vision itself could qualify for Special Use approval if it chose to meet the square-footage and other standards set forth in the Ordinance. The Village did not violate the RLUIPA "total exclusion" provision and summary judgment on this claim was proper.

RLUIPA §(b)(3)(B) provides that a municipality may not "unreasonably limit religious assemblies, institutions, or structures within a jurisdiction." The existence of seven religious institutions within the Village demonstrates that the Village has, historically, not "unreasonably limit[ed]" religious assembly use within the Village. Again, a large section of the Village is zoned R, a zoning classification that allows religious assembly uses as Special Uses, subject to the reasonable square-foot limitations contained in the Ordinance. The predominance of R zoning gives new religious assembly uses ample opportunity to locate in the Village on a going-forward basis.

B. Vision's Free Exercise Claims.

After discussing its "exclusion claims," Vision turns to its First Amendment Free Exercise theory and its RLUIPA "substantial burden" claims. Vision's Brief, pp. 21-29. Because the standards for these two sets of claims differ, we address Vision's Free Exercise claim separate from its statutory RLUIPA claim.

In its Free Exercise argument, Vision freely mixes the various legislative acts taken by the village in 2001 and 2002 without specifying which act it challenges. In the end, Vision's 2002 Application was denied because it did not comply with 55,000 square-foot standard contained in the Ordinance. Doc. No. 86, ¶¶ 69-70. We will, therefore, begin our discussion with the Ordinance and then address Vision's alternative assertion that the Village's prior annexation decisions violated the Free Exercise Clause.

1. The Public Assembly Ordinance is Neutral, Generally Applicable, and Rational.

On its face, the Ordinance applies to all potential public assembly uses, not just churches, and not just Vision among churches. Doc. No. 86, ¶¶ 61-62. As such, the Ordinance is both neutral and generally applicable, which means that the Ordinance, both on its face and as applied to Vision's 2002 Application, should be evaluated under the rational basis test. *Employment Division Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) (establishing the general rule that a neutral and generally applicable ordinance is subject to rational basis scrutiny regardless of any incidental effect it may have on religious exercise); *Civil Liberties for Urban Believers ("C.L.U.B.") v. City of Chicago*, 342 F.3d 752, 763 (7th Cir. 2003) (in challenge to city's zoning scheme, "no Free Exercise violation results where a burden on religious exercise is the incidental effect of a neutral, generally applicable, and otherwise valid regulation, in which case such regulation need not be justified by a compelling governmental interest."); *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1031 (9th Cir.

2004) ("If the zoning law is of general application and not targeted at religion, it is subject only to rational basis scrutiny, even though it may have an incidental effect of burdening religion").

Under the rational basis test, there is no question that the square-foot limits contained in the Ordinance are related to legitimate governmental interests, including the size, intensity, and impacts of new development, and, therefore, should be upheld. Concerns about aesthetics and the preservation of community character are recognized zoning goals, *see 1350 Lake Shore Associates v. Casalino*, 816 N.E.2d 675, 690-91 (Ill. App. Ct. 2004), *Wakeland v. City of Urbana*, 776 N.E.2d 1194, 1203-04 (Ill. App. Ct. 2002), *Northern Trust Bank/Lake Forest v. County of Lake*, 723 N.E.2d 1269, 1276-77 (Ill. App. Ct. 2000), and limitations on density, including maximum building size, are legitimate means to achieve those goals. *See County of Lake*, 723 N.E.2d at 1276-77 (upholding less dense "countryside" zoning classification as opposed to developer's proposed "suburban" zoning classification); 2 Young *Anderson's American Law of Zoning 4th Ed.*, § 9.71 ("Many communities include in their zoning ordinance provisions which regulate the amount of floorspace which must or may be maintained in dwellings, and even in business buildings. The maximum floorspace requirements are clearly related to the density of land use.").

Vision's attack on the Ordinance appears at pages 27-29 of its Brief. In that section, Vision asserts that "the Assembly Ordinance was not neutral or of general application" and, therefore, is subject to strict scrutiny. Vision Brief at 27. In support of this statement, Vision first cites Lane Kendig's testimony (discussed *supra* at 11-12) that members of the Plan Commission took Vision's various plans into account when drafting the Ordinance. *Id*. at 27-28. Vision then argues that the Ordinance "targeted" Vision because the Ordinance placed the Vision Property, which fronts a County highway, in the "Community Facility" category, thereby limiting development to 55,000 square feet. *Id*. at 28-29.[7]

Vision cites *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), for the proposition that, although facially neutral, the Ordinance is subject to strict scrutiny. In *Lukumi*, the Supreme Court held that a plaintiff could overcome the facial neutrality of an ordinance by demonstrating that "the object of a law is to infringe upon or restrict practices *because of their religious motivation*." *Lukumi*, 508 U.S. at 533 (emphasis added); *see also id*. at 534 ("Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality"). This standard was recently restated in *Locke v. Davey*, 540 U.S. 712, 720, 724-25 (2004), where the Supreme Court found that, even if an ordinance is *not* facially neutral, a plaintiff must establish "animus toward religion" by reference to the "history," "text," or "operation" of the ordinance.

Here, unlike in *Lukumi*, Vision cannot demonstrate that the *object* of the Ordinance was to *restrict practices because of their religious motivation*. First, unlike the law at issue in *Lukumi*, the Ordinance does not restrict any *practices* associated with Vision's religion. The Ordinance merely regulates the location and size of proposed public assembly uses, including church complexes, not the religious or secular practices that take place inside. *See, e.g., C.L.U.B.*, 342 F.3d at 765 (requirement that churches obtain a special use permit "is motivated not by any disagreement that Chicago might have with the message conveyed by church speech or

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7 Vision neglects to mention that at the time the Plan Commission was considering the Ordinance, Vision was seeking approval of a 99,000 square-foot facility, which was in excess of the square foot limitation in the Kendig's initial draft of the Ordinance (75,000 square feet).

assembly, but rather by such legitimate, practical considerations as the promotion of harmonious and efficient land use.")

Second, with respect to location and size of assembly uses, the Ordinance does not prohibit assembly uses, including churches, in R2 districts; it merely limits their total allowable square footage. Doc. No. 86, ¶¶ 58-59. No court has held that restrictions on the *size* of a worship complex is a violation of the Free Exercise Clause. Further, with respect to this specific church, Vision's own consultant determined that the size and scale of the complex allowed by the Ordinance was more than adequate for Vision's purposes. Doc. No. 86, ¶¶ 73-81.

That Vision's proposed project may have been a catalyst for moving forward with the Ordinance is not a reason to presume anti-religious animus or to impose heightened scrutiny. *See Pro-Eco, Inc. v. Board of Commissioners of Jay County, Indiana*, 57 F.3d 505, 514-15 (7th Cir. 1995) ("legislatures may enact generally applicable legislation as a prophylactic to the danger posed by one particular actor so long as the end of the legislation is legitimate . . . The Board's action here, even if unabashedly directed at a threat only Pro-Eco posed, was legitimate"). So even if the Ordinance was enacted with Vision "in mind," (*i.e.*, the Village knew that the Ordinance would impact the size of Plaintiff's proposed worship complex), the "history," "text," and "operation" of the Ordinance demonstrate that the Village did not target religious land uses in general, or Vision specifically, *because of* their theistic nature.

Finally, the decision to link allowable square-footage to the type of roadway upon which an assembly use has access originated with Kendig, the Village's professional planner, and is a well supported by traffic and planning principles. Doc. 177-1, Tab 61 (Kendig Dep.), pp. 121, 151-55; Doc. No. 128 (Loose Pleading, Vol 4) Ex. A, pp. 6-7.

Taken together, the materials surrounding the adoption of the Ordinance demonstrate that the Village's object was to limit the size of new assembly buildings consistent with carrying out *traditional municipal goals*, such as controlling size and density of new projects, preserving community character, and limiting traffic impacts, not because of any anti-religious animus. *See* Doc. No. 86, ¶¶ 6-8, 53, 59, 60, 72; Doc. No. 128, Ex. A, pp. 4-7. Under these facts, there is no doubt that the Village's unique goals and objectives regarding growth and development (which were in place long before the church became interested in building its complex, *see* Doc. No. 86, ¶¶ 6-8), and the Village's pursuit of these goals in the context of the proposed development of the Vision Property, had nothing to do with the religious nature of Vision's proposed use. *Id.*, ¶ 72

2. Taken Together, the Village's Legislative Acts Did Not Target Vision *Because* of its Religion.

Going beyond the Ordinance, Vision suggests that the Court should not simply examine the Ordinance, but should "consider together" the Village's legislative acts starting with the Village's August 2001 decision not to annex the Property. *See* Vision's Brief, pp. 22-26.

The Village questions whether the Court may aggregate the Village's separate legislative decisions. The Village also questions whether annexation decisions can, absent extreme circumstances, be challenged as violative of a right conferred by the Constitution. As the Supreme Court long ago ruled, matters of annexation and the change of municipal boundaries "rest[] in the absolute discretion of the state," *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), "unrestrained by any provision of the Constitution of the United States." *Id.* at 179. The nub of the Supreme Court's *Hunter* decision is that no person has a constitutional right to be within or without any municipality.[8] *See also Indiana Land Company, LLC v. City of Greenwood*, 378 F.3d 705, 711 (7th Cir. 2004) (legislative decisions regarding annexation were subject to, at most, rational basis scrutiny under a substantive due process theory).

But even if the Court examines the Village's several legislative acts, Vision cannot establish that the "history," "text," or "operation" of the Village's legislative acts shows an "animus toward religion." *Locke*, 540 U.S. at 720 & 724-25.

In the specific context of zoning disputes between churches and municipalities, this Court (along with other Circuits) has held that municipal zoning actions that limit a church's operations at a given location or even prevent a church from operating at its preferred location -- something the Village did not do here -- is *not* a violation of the Free Exercise clause. For example, in *C.L.U.B.*, the Court held that requiring churches to obtain a special use permit to locate in "Business" and "Commercial" districts did not violate the free exercise clause because, *inter alia*, the "object and purpose" of the Chicago Zoning Ordinance were to regulate land use in the City, not to discriminate on the basis of religion. *Id.*, 342 F.3d at 763. *See also Christ Universal Mission Church v. City of Chicago*, 362 F.3d 423 (7th Cir. 2004) (upholding Chicago's "M" (Manufacturing) classification, which does not allow for religious assembly uses in any circumstances); *City of Morgan Hill*, 360 F.3d at 1031-32 (refusal to allow Christian college to locate on its preferred site did not violate free exercise clause as there was no evidence that decision was motivated by anti-religious animus); *Prater v. City of Burnside, Kentucky*, 289 F.3d 417, 427-30 (6th Cir. 2002) (no discriminatory animus could be inferred by city's decision to dedicate a roadway even though dedication aided a Masonic Lodge but burdened a Baptist church).

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8 The rule regarding review of annexation decisions has found exception in only one circumstance. In *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), the Supreme Court found that a racially-based annexation decision could violate the Equal Protection provision of the Fourteenth Amendment. In that case, the City of Tuskegee altered its boundaries to exclude nearly all African-American voters. In this case, there was no exclusion of Vision -- its Property was annexed and subject to the same Zoning Code as every other property in the village. Thus, *Gomillion* has no bearing on this dispute. *Cf. Baldwin v. City of Winston-Salem, N.C.*, 710 F.2d 132 (4th Cir. 1983) (recognizing *Hunter*, noting the limited exception recognized by *Gomillion*, and rejecting a non-race-based challenge to the city's annexation decision).

Here, the "object and purpose" of the Village's conduct, including its initial decision not to annex the Vision Property and subsequent decision to "involuntarily" annex it, were to reasonably control development on a 27-acre site. The Village made these decisions *not* because Vision was a religious institution, but because development of Vision's proposed building complex conflicted with the Village's planning goals, especially when Vision provided no assurances regarding the ultimate development of its Property in the future. Doc No. 86, ¶¶ 29-37, 43-50, 69-72.

Vision has offered no real evidence to the contrary, and what facts its cobbles together do not create any material issue of fact as to the Village's intent. First, Vision asserts that it was treated less favorably than the District because the School Property was voluntarily annexed but the Vision Property was not. *See* Vision's Brief, p. 23. Setting aside the fact that this "evidence" goes more toward an Equal Protection claim than a Free Exercise claim, the Village has already explained why the District's and Vision's requests for voluntary annexation were wholly dissimilar. *See supra*. at 20-21.

Second, Vision asserts that as part of the negotiations over the proposed annexation agreement, the Village demanded that Vision "cede control of its religious activities." *See* Vision's Brief, pp. 23-24. Vision ignores the Village's overriding reason for denying Vision's annexation proposal, *i.e.*, Vision's refusal to commit to no further expansion of its church complex, s*ee supra* at 7, and focuses instead on Items 6 and 7 which were suggested by Manager Doughty in his July 10, 2001 letter. Vision's Brief, pp. 23-24. There is no evidence that the suggestions regarding the need for Village approval for certain events were make-or-break conditions from the Village's perspective. Rather, they were topics of negotiation in the context of an annexation agreement. Even if, however, they were important to some Village decision-makers, they were *not* directed at the content of Vision's activities, but at secular concerns for public health, safety and welfare, such as the generation of traffic that would accompany major events at the complex. *See, e.g.*, *MacDonald v. City of Chicago*, 243 F.3d 1021, 1031-32 (7th Cir. 2001) (permit scheme for large events is constitutional so long as government's discretion is based on content-neutral criteria such as traffic and manpower concerns).

Finally, Vision focuses on the Village's legislative decision to involuntary annex the Vision Property. *See* Vision's Brief, pp. 24-26. Under Illinois law, municipalities have a recognized interest in controlling development on or near their borders. *City of Urbana v. County of Champaign*, 398 N.E.2d 1185, 1187-88 (Ill. 1979); *People ex rel. Village of Lake Bluff v. City of North Chicago*, 586 N.E.2d 802, 807 (Ill. App. Ct. 1992). The annexation provisions of the Illinois Municipal Code, including "involuntary" annexation, *see* 65 ILCS 7-1-13, are legislatively authorized tools that allow municipalities to carry out their legitimate interest in regulating the development of land near their borders. *See Village of South Elgin v. City of Elgin*, 561 N.E.2d 295, 300 (Ill. App. Ct. 1990); Doc. No. 128, Ex B, pp. 2-3.

The Village's decision to involuntarily annex the Vision Property undoubtedly reflected the Village's desire to gain zoning authority over the Property and to have a say in the future development of the Property. It is also true that the Village opposed the 99,000 square-foot complex that was separately being considered by the County in the Fall of 2001, and annexation was a way to bring an end to that plan. However, Vision presents *no evidence* that the Village's concern regarding development on its borders was *motivated by anti-religious animus*, as opposed to the traditional and well-recognized concerns that most municipalities have regarding growth and development on their borders. Without a showing of such animus, Vision's Free Exercise claim fails.

C. Vision's "Substantial Burden" RLUIPA Claim.

In the same section of the Brief devoted to its Free Exercise claim, Vision also discusses its "substantial burden" theory. *See* Vision's Brief, pp. 21-29. Section 2(a)(1) of RLUIPA, 42 U.S.C. § 2000cc(a)(1), prohibits a municipality from imposing or implementing a "land use regulation" in a manner that imposes a "substantial burden" on "religious exercise."

1. RLUIPA Does Not Apply to Annexation Decisions.

To begin with, several of the Village's legislative acts were not "land use regulations" and cannot form the predicate for a RLUIPA challenge. Specifically, the Village's legislative decisions regarding annexation (*i.e.*, to initially decline to annex the Vision Property, to annex the Valenti Property, and to "involuntarily" annex the Vision Property) are matter of territorial jurisdiction and not "land use regulations" under RLUIPA. *See, e.g.*, *City of Burnside*, 289 F.3d at 433-34 (RLUIPA, by definition is limited to "zoning or landmarking" laws; city's decision to develop previously dedicated roadway was not a "zoning or landmarking" law even though it impacted a church's ability to operate and expand).

Moreover, the Village's initial decision not to annex the Vision Property emerged from failed negotiations relating to a proposed contractual annexation agreement. The contractual nature of annexation agreements demonstrates that decisions to annex (or not to annex) property are not "zoning or landmarking" laws and are not covered by RLUIPA.

2. The Village's Actions Did Not Create a Substantial Burden.

Admittedly, RLUIPA is applicable to: (i) the Village's adoption of the Ordinance and (ii) its denial of Vision's 2002 Application. However, the Ordinance did not "substantially burden" Vision as it did not prevent Vision from constructing a church complex on the Property.

Unlike the facts in some church zoning cases, *see, e.g., Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226-28 (11th Cir. 2004) (inability to locate synagogue in particular zoning district was not a "substantial burden"), the Village did not say "no" to Vision's preferred site; it said "no" to the *size* of Vision's proposed complex. This type of limitation does not impose a substantial burden under RLUIPA.

Under the Ordinance, Vision had the opportunity to construct a 55,000 square-foot complex on the site. Doc. No. 86, ¶ 59. Vision, however, refused to submit an application consistent with the Ordinance's standards. *Id*., ¶ 69. Instead, Vision demanded that the Plan Commission and Board vote on its 99,000 square-foot site plan. *Id.*, ¶ 67.

As the Second Circuit has held, a "substantial burden" is unlikely to exist when a municipality has merely rejected a church's specific proposal, which failed to address questions posed by the reviewing body, but has left open the possibility that it "might be amenable to the resubmission of a modified application, addressing the problems the Board cited." *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183, 187-88 (2nd Cir. 2004) (reversing summary judgment in favor of church and remanding with clarification as to what conduct might constitute a "substantial burden"); *see also City of Morgan Hill*, 360 F.3d at 1035 (no substantial burden where Christian college was "simply adverse to complying with the PUD ordinance's requirements" and the city might well grant re-zoning application if properly resubmitted; but even if application was ultimately turned down, there was no evidence "that the City would not impose the same requirements on any other entity seeking to build something other than a hospital on the Property").

Further, if Vision is alleging that that it would suffer a "substantial burden" *even if the Village approved a 55,000 square-foot complex*, its claim fails miserably. As discussed above, RLUIPA's "substantial burden" provision does not prohibit a municipality from *wholly* preventing development at a church's preferred site, and it certainly does not guarantee that a church can construct whatever it desires on property it owns. Put simply, because limiting development of a church complex does not "substantially burden" religious exercise, *see Westchester Day School*, 386 F.3d at 189-90 (limit on development of church accessory facilities is not a "substantial burden"), an ordinance that allows a 55,000 square-foot facility cannot form the basis of a RLUIPA violation.

This general idea is confirmed by the specifics here. By any reasonable measure, a 55,000 square-foot complex with a 500-600 person sanctuary, educational spaces and a fellowship building would have been more than enough space for Vision's 120 members to freely exercise their religion. Doc. No. 86, ¶¶ 73-81. Instead of complying with these reasonable requirements, Vision has, for its own reasons, stubbornly insisted on a complex that was (and is) much larger than necessary, both with respect to Vision's existing congregation and any reasonable projection regarding its future membership. *Id*.

3. The Seventh Circuit's *New Berlin* Decision Is Not To The Contrary.

In support of its argument regarding "substantial burden" under Section 2(a) of RLUIPA, Plaintiff relies heavily on the Court's decision in *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005), a case in which the Court found a RLUIPA "substantial burden" violation. However, the facts in *New Berlin* differ from our case in several important respects, and *New Berlin* does not suggest a RLUIPA violation here.

a. The Facts and Holding of *New Berlin*.

In *New Berlin*, the plaintiff church purchased property in an area already home to religious uses. "The tract it bought was bordered on one side by a Protestant church and on the other side by a parcel of land, belonging to another Protestant denomination, that the City has agreed to rezone to allow a church to be built on it." 396 F.3d at 898. The plaintiff sought re-zoning from residential to institutional so as to allow the construction of a church. Ultimately, the city denied the re-zoning application. *Id*. The city never indicated that it disapproved of the site for the proposed project. Rather, the city's articulated reason for denying the re-zoning application was its concern that the property might ultimately be used for a *non-religious institutional use*. *Id*. at 898-99. The city's reasons for denying the application were criticized by this Court as being wholly unfounded. The mayor, the Court said, was either "deeply confused about the law" or disingenuous about the city's rationale and ultimate plans, *i.e.*, "playing a delaying game." *Id*. at 899.

This Court found that New Berlin's stated reasons for denying the application -- concern about a development by someone other than the church -- were "a contingency for which the Church has already provided complete satisfaction." 396 F.3d at 900. In other words, the articulated concerns were objectively *unreasonable*. Given the lack of valid concerns, the Court found that the alternative route suggested by the mayor, which would cause "unreasonable delay" but *provide no real benefit to the city*, was a "substantial burden." *Id*.

The Court squared RLUIPA with the Free Exercise Clause (which RLUIPA is said to enforce) by noting that Section 2(a) of RLUIPA "backstops" the explicit prohibition on religious discrimination found in the Constitution. In this context, The Court summarized its holding as follows:

> If a land-use decision, in this case the denial of a zoning variance, imposes a substantial burden on religious exercise . . . *and the decision maker cannot justify it*, the inference arises that hostility to religion, or more likely to a particular sect, influenced the decision. *Id*. at 900 (emphasis added).

In other words, the Court's ultimate determination regarding "substantial burden" flowed from a finding that New Berlin's stated reasons for rejecting the plaintiff's plan were irrational.

b. <u>The Village is Not New Berlin</u>.

The above examination of the *New Berlin* opinion should illuminate the material differences between New Berlin's conduct and the Village's conduct here. To summarize:

- **New Berlin** professed to be in favor of the proposed development, but expressed concerns about a phantom contingency. **The Village** continually expressed reservations about Plaintiff's proposed development based upon traditional planning principles such as density, character and certainty regarding future development. See Doc. No. 86, ¶¶ 29-30, 35-36, 48-49, 65 and 72

- **New Berlin's** stated concerns were either disingenuous or irrational. **The Village's** stated concerns were steeped in a long-standing planning philosophy and have been recognized as legitimate planning concerns. See Doc. No. 86, ¶¶ 6-8; *supra* at 29-32.

- **New Berlin** sought to force the applicant to follow an alternative process that, because of the *city's irrational concerns*, would have produced *no real benefit* for the city. In contrast, **the Village** set a clear, *meaningful*, quantitative square-foot standard (55,000 square feet). See Doc. No. 86, ¶¶ 59-60; Doc. No. 128, Ex. A, pp. 4-7. Vision could have met this standard, but instead of adjusting its plans to meet this standard, Vision ignored the Ordinance and pushed ahead with a 99,000 square-foot plan. See Doc. No. 86, ¶¶ 73-81.

- **New Berlin's** rejection of the church's application effectively denied the church the site in question. Here, **the Village**, in zoning the Property R2 and in enacting the Ordinance, recognized that the *site* was *appropriate* for an assembly use, see Doc. No. 86, ¶¶ 11-12, 50, but disagreed with the *size* of Vision's proposed 99,000 square-foot complex. See Doc. No. 86, ¶¶ 53-59, 69-72.

- **New Berlin** imposed a "substantial burden" by forcing the church to go through a *useless process* at the same time the city professed to be in agreement with the church's plans. In contrast, **the Village's** requirement that Vision meet the 55,000 square foot limit contained in the Ordinance did not create a "substantial burden" because: (1) from a planning perspective, there were *meaningful* differences between Vision's proposed 99,000 square-foot plan and the standards set forth in the Ordinance, and (2) Vision never explained or demonstrated why it could not meet the 55,000 square-foot requirement.

In addition, *New Berlin* **does not** hold that **any and all** denials of a zoning application constitute a "substantial burden." Such a ruling would overrule *C.L.U.B.*, which *New Berlin* was careful to distinguish and did not overturn. See *id.*, 396 F.3d at 899-90. Rather, the decision in *New Berlin* was limited to its facts, which demonstrated an irrational justification for denial, and which, in the Court's opinion, could be seen as a smokescreen for religious animus.

D. Equal Protection and RLUIPA's "Equal Terms" Provision.

1. Equal Protection Under the Fourteenth Amendment.

At pages 41-44 of its Brief, Vision sets forth its Equal Protection claim. Vision's theory is that Vision and the District were "similarly situated" but treated differently in that the Village granted the District's petition for annexation, but denied Vision's "virtually identical" petition. *Id*. at 43. This claim is both factually and legally flawed.

In *Locke v. Davey*, the Supreme Court affirmed the principle that when a challenge to municipal conduct fails under the Free Exercise Clause, an Equal Protection challenge to that same conduct should be evaluated under the "rational basis" test. *Id.*, 540 U.S. at 720, fn 3. Even if an annexation decision may be challenged under an Equal Protection theory, *see supra* at 30, the Village's reasons for denying Vision's annexation petition, including Vision's failure to commit to its long term plans, meet the rational basis test. *See supra* at 6-7,

Locke aside, Vision's Equal Protection claim is a dead end. Vision does not challenge a zoning *classification*, such as the zoning ordinance at issue in *C.L.U.B.* which distinguished between religious assembly uses and community centers. *See also Congregation Kol Ami v. Abington Township*, 309 F.3d 120 (3rd Cir. 2002) (analyzing the plaintiff's Equal Protection claim that township zoning code treated religious assembly uses in an inferior manner compared to similar secular uses). Instead, Vision challenges the Village's decisions regarding annexation of property and Special Use approval.

These types of individualized decisions do not turn on a legislative distinction between religious assembly uses and other, allegedly similar, uses. Rather, these decisions are property-specific determinations. Therefore, Vision's allegations that the District received preferred treatment in terms of annexation and Special Use approval falls more neatly into the "class of one" theory than the classification theory. *See Indiana Land Co.*, 378 F.3d at 712; *Bell v. Duperrault*, 367 F.3d 703 (7th Cir. 2004).

To prevail on a "class of one" theory, a plaintiff must either show "that he was treated differently from identically situated persons for no rational reason, or that he was treated worse than less deserving individuals for no rational reason." *Duperrault*, 367 F.3d at 707. The Village previously discussed some of the differences in the circumstances surrounding the respective annexations of Vision's and the District's properties, including the timing of the annexations in relation to construction of improvements on these respective properties. *See supra* at 20-21. These distinctions demonstrate that Vision and the District were not similarly situated, let alone "identically situated" as Vision contends. *See, e.g., Bell*, 367 F.3d at 707-08 (other allegedly similar applicants for permit, were not, in fact, similarly situated to the plaintiff).

There are additional distinctions not previously mentioned. First and foremost, the School Property was used for *public* schools, Vision's property for a *private* endeavor. Thus, no matter the other physical similarities between the sites, the buildings would have different functions, which could easily justify any difference in treatment. *See, e.g., Congregation Kol Ami*, 309 F.3d at 142 ("Municipal complexes" are functionally different than religious assembly uses and

should not be considered similarly situated). Indeed, it would be perfectly rational for the Village to be more deferential to the District, a fellow governmental body that provides open educational opportunities to Village residents without regard to religious belief.

2. RLUIPA "Equal Terms" Provision.

For these same reasons, and others, Vision's claim that the Village treated Vision on "less than equal terms with a nonreligious assembly or institution," also fails. *See* Vision's Brief, pp. 39-41; 42 U.S.C. §§2000cc(b)(1).

To begin with, a public school is not a "nonreligious assembly or institution." Unlike a VFW hall, an Elks Lodge, or a union hall, school children do not freely choose to assemble and determine the content of the assembly program. There is no indication that RLUIPA was designed to compel complete and unwavering zoning equality between private religious institutions and public schools, and there would be serious constitutional problems if the statute were interpreted in that manner.

Second, Vision cannot demonstrate that it was treated on "less than equal terms" as compared to the District. In general the District and Vision were both afforded the opportunity to negotiate an annexation agreement with the Village. The District agreed to the Village's terms, Vision did not. Further, because the nature of the properties (public school v. private assembly) and the state of development at the time of the respective annexation applications (fully developed v. undeveloped) were vastly different, it is impossible for Vision to demonstrate that the terms offered to the District and Vision were not "equal."

E. Establishment Clause.

Vision's final federal claim is that the Village violated the Establishment Clause when it applied the Ordinance to Vision, but not to other religious institutions that located in the Village prior to passage of the Ordinance in 2002. Vision's Brief, pp. 44-46. Essentially, Vision asserts that any change to the manner by which the Village previously regulated the siting of religious uses automatically favors all existing religious assemblies over new religious assemblies and, therefore, violates the Establishment Clause. *Id.*

Vision's theory would prohibit municipalities from ever changing the way they regulate the zoning of religious assembly uses because such a change would, according to Vision, favor existing religious uses over potential new uses. But the Establishment Clause's concern about government "neutrality" towards and among religions, *see, e.g., Freedom from Religion Foundation v. Bugher*, 249 F.3d 606, 610 (7th Cir. 2001), does not prohibit an amendment to a municipal zoning code simply because the amendment impacts the ability of new religious institutions to locate in the municipality, or makes it more difficult for a new institution to locate in the municipality.

As the District Court correctly held, the Ordinance "is generally applicable to all religious and nonreligious entities [and] effects all groups regardless of religious or political affiliation." *Vision Church v. Village of Long Grove*, 397 F. Supp. 2d 917, 927 (N.D. Ill. 2005). It is true that existing uses need not comply with the provisions of the Ordinance, but that is a common feature of zoning laws that typically feature "grandfather" or "preexisting nonconforming use" provisions. *See, e.g., LaGrange State Bank v. Village of Glen Ellyn*, 591 N.E.2d 480, 484 (Ill. App. Ct. 1992). Here, because the Ordinance has the primary secular purpose of regulating new assembly uses in the Village and it neither advances nor inhibits religious uses as compared to

secular uses (or promotes one religion over another), the Ordinance does not violate the Establishment Clause. *Id*. at 926-27.

III. The District Court Properly Granted Summary Judgment in Favor of the Village on Vision's State Law Claims.

When briefing its motion for summary judgment, the Village alerted the District Court that, per 28 U.S.C. §1367(c)(3), the District Court had the authority to grant summary judgment as to Vision's federal claims and dismiss Vision's state law claims. The District Court, however, exercised its discretion, chose to rule on the Village's motion regarding Vision's state law claims, and correctly granted the Village's motion on those claims.

A. "Vested Rights."

Vision's first state law claim is a claim for mandamus, *i.e.*, to require the Village to approve the 99,000 square-foot plan that Vision submitted to the County. Vision's claim is based upon the theory that Vision had a "vested right" to have its *County* plan approved by the Village because, but for the Village's involuntary annexation in October 2001, the County would have approved Vision's site plan. See Vision's Brief, pp. 30-35.

In Illinois, no property owner has a vested right in the continuation of a zoning ordinance. However, under *limited* circumstances, Illinois law allows a party to obtain a vested right in the use of a property regardless of subsequent zoning amendments or changes in zoning classifications. *See generally 1350 Lake Shore Associates v. Casalino*, ___ N.E. ___, 2005 WL 3543930, *5-*6 (Ill. App. Ct. 2005). In order to obtain such a vested right, a property owner must prove that: (i) the owner made substantial expenditures in reliance on a building permit or upon the probability that a building permit would be issued; (ii) the reliance was justifiable; and (iii) the reliance was made in good faith. *Id*.

1. In Illinois, the "Vested Rights" Doctrine Has Not Been Applied Against a Municipality That Acquires Zoning Authority Via Annexation.

Vision seeks to impose the County's zoning code on the Village through a "vested rights" theory, but Vision has failed to cite a single Illinois case in which a court has found a "vested right" to zoning or building approval based upon action taken by the owner when the property was ultimately subject to the laws of *different* municipal jurisdiction. Vision did not cite such a case because no such case exists.

Indeed, in every Illinois case where a vested right was recognized, the case was brought against the local government whose zoning regulations induced the reliance expenditures. That is, in no Illinois case did the property owner obtain a vested right against municipality "B" (here, the Village) by based upon expenditures made in reliance on the laws of municipality "A" (here,

the County).

In fact, Illinois courts have found that it is in cases where a municipality actively encourages a landowner to incur reliance expenses that a finding of vested rights "is particularly appropriate." *Village of Palatine v. LaSalle National Bank,* 445 N.E.2d 1277, 1283 (Ill. App. Ct. 1983). And when there has been no active encouragement, Illinois courts have based their vested rights decisions on the tacit encouragement provided by a zoning classification that unequivocally allows the project in question at the time expenditures were made. *See, e.g.*, *Furniture L.L.C. v. City of Chicago,* 818 N.E.2d 839 (Ill. App. Ct. 2004). But here, Vision never had a right to approval of a 99,000 square-foot complex (let alone a right to have its Property annexed) under any version of the Village's ordinances. Further, the Village, by failing to annex the Vision Property on Vision's terms, signaled its strong objections to a complex as intense as the one Vision presented to the County. Thus, granting Vision a vested right would turn existing Illinois law on its head.[9]

This Court should be reluctant to expand Illinois' "vested rights" doctrine beyond its settled parameters. *See J.S. Sweet Co., Inc. v. Sika Chemical Corp.*, 400 F.3d 1028, 1034 (7th Cir. 2005) (discussing Court's reluctance to "expand state law"); *Holtz v. J.J.B. Hilliard W.L. Lyons, Inc.*, 185 F.3d 732, 750 (7th Cir. 1999) ("As a federal court, we are reluctant to expand the law of a state in a manner that, while perhaps logical, is not clearly in line with the state's existing

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While Vision cannot cite a single Illinois case in support of its proposed expansion of Illinois law, it does cite one Iowa case, *Nemmers v. City of Dubuque, Iowa*, 716 F.2d 1194 (8th Cir. 1983), which, Vision claims, is directly on point. Aside from the fact that Iowa law is not controlling, *Nemmers* is both distinguishable from the facts in this case and consistent with the principle in Illinois that a vested right will only lie against a municipality that encourages reliance expenditures. In *Nemmers*, the defendant city supported the county zoning change on which the plaintiff relied and even helped construct improvements in furtherance of the development. Unlike in *Nemmers*, the Village itself never told or encouraged Vision that the Village would approve the proposed 99,000 square- foot facility. In fact, from the moment Vision proposed such a facility, the Village continually expressed serious reservations about the propriety of such an intensive development on the Property.

thinking on the subject").

This is especially true where the "vested rights" claim involves annexation of property. Illinois specifically allows the type of "involuntary annexation" that took place in this case, *see* 65 ILCS 5/7-1-13. Vision's suggestion that the "vested rights" doctrine be expanded to allow prospective compliance with county zoning to trump municipal zoning would undercut the annexation statute by taking away powers granted through a statutorily authorized planning tool.

Finally, Vision never sought a writ of mandamus, which is the proper mechanism to enforce a vested rights claim, therefore Vision cannot obtain the only relief it would be entitled to seeks. But even if Vision sought this relief, mandamus is available only where there is "a clear duty of the respondent to act, and a clear authority in the respondent to comply with the writ." *City of Highwood v. Obenberger*, 605 N.E.2d 1079, 1085 (Ill. App. Ct. 1992). Here, Vision asserts a vested right to a building permit from the *County*, but Vision never obtained a building permit from the County, and Village has no duty or authority to issue a County building permit.

2. Even if Vision Could Have a "Vested Right" to County Approval, Vision Did Not Established That Approval From Lake County Was Probable Prior to Annexation.

To obtain a vested right under Illinois law, the plaintiff must first demonstrate that it was "probable" that it would have received the necessary approvals prior to the zoning change in question. If there is any discretion in the issuance of the permit or approval in question, then there is no "vested right" to that approval. *See Northern Trust Co. v. County of Lake*, 818 N.E.2d 389, 399 (Ill. App. Ct. 2004); *see also Monat v. County of Cook*, 750 N.E.2d 260, 266-67 (Ill. App. Ct. 2001) (to obtain mandamus relief based upon a claim of vested right, the plaintiff must be in "strict and complete compliance with all necessary and applicable provisions" of the code or ordinance in question.

In July 1999, Vision entered into the contract to purchase the Property (the "Purchase

Contract"). *See* Doc No. 98, ¶ 18. At that time, Vision realized that its ability to obtain the necessary development approvals to build its church complex, either in the Village or the County, was uncertain. Accordingly, the Purchase Contract contained a "zoning contingency clause." Although Vision failed to obtain the necessary approvals, from either the County or the Village, it did not elect to terminate the Purchase Contract but, instead, chose to close on the purchase in September 2000. *Id*., ¶ 20. Thus, it is undisputed that at the time it closed on the Property (September 2000), the issuance of a building from the County was not "probable."

Vision did not apply to the County for a permit until November 2000 and did not diligently pursue its application until the summer of 2001. (Indeed, until the Village Board's vote on August 2001, Vision was pursuing zoning approval from the *Village*, not the County.) The County did not hold its mandatory public meeting until August 2001, s*ee* Doc. No. 177-1, Tab 64, Rovang Dep., pp. 15-17, 34-35, and as of September 11, 2001, the County was seeking additional information from Vision. Doc. No. 177-1, Tab 65,pp. 77-78; *id.*, Tab 64, pp. 21, 25-26 and Rovang Ex. 5. Therefore, under Illinois law, the issuance of a County permit at this time was not "probable" and Vision had no "vested right" to approval.

Vision asserts that the County's approval of the building permit became "probable" some time in August or September of 2001, prior to the Village's annexation of the Property. This assertion is based on the testimony of Phil Rovang, the Director of Lake County's Department of Planning, Building, and Development (the "Building Department"). Vision Brief, pp. 31-32. Vision, however, conveniently omits Rovang's testimony that, because of various outstanding issues, he was not certain when, *if ever*, a building permit would be granted for Vision's proposal. Doc. No. 177-1, Tab 64, pp. 16-26, 32-33. Under these circumstances, it cannot be said that the issuance of a County building permit was probable prior to annexation or that Vision

was in "strict and complete compliance with all necessary and applicable provisions" of the County code.

B. "Arbitrary and Capricious" Zoning.

Vision's final argument is that the Village's decision to reject its 2002 Application was arbitrary and capricious under Illinois law. *See* Vision's Brief, p. 39. Under Illinois law, the Village's annexation decisions are limited only by compliance with annexation statute, *see Spaulding School District No. 58 v. City of Waukegan*, 165 N.E.2d 283, 285 (Ill. 1960) ("Our only duty is to construe the ordinance and the applicable statutes to determine whether the city has complied with the annexation procedure established by the legislature."); *People ex rel. Village of Lake Bluff v. City of North Chicago*, 586 N.E.2d 802, 806 (Ill. App. Ct. 1992) ("Although the legislature has seen fit to give certain property owners the right to petition a municipality for the annexation of their land, it has not granted those property owners the rights to have that land annexed"), and there is no allegation that the Village failed to comply with the statute. Therefore, any state law attack on the initial decision not to annex or the subsequent involuntary annexation of Vision's Property fails.[10]

Further, there is no doubt that the 2002 Application failed to comply with the terms of the Ordinance, so the only possible state law claim would be an attack on the Ordinance itself. Under Illinois law, a generic land use and zoning ordinance that does not allow for exceptions to its standards should be evaluated under the rational basis test. *See Beverly Bank v. Illinois Department of Transportation*, 579 N.E.2d 815, 820-21 (Ill. 1991) (challenge to state statute that

10 Likewise, Vision's argument that there were no Village standards for the issuance of a Special Use Permit in 2001, such that Village officials had unbridled discretion in such matters is without merit. Vision's Brief, pp. 36-37. Once Vision's application for voluntary annexation was denied in 2001, there was no reason for the Village to address Vision's application for a Special Use Permit. Therefore, the validity of the Village pre-Ordinance Special Use standards, *see* Village Code § 5-11-6(D), is not at issue.

prevented landowner from building house in 100-year floodway would be evaluated under rational basis). Here, the Ordinance established a firm 55,000 square-foot maximum for proposed public assembly uses that front a county highway. Per *Beverly Bank*, any challenge to this Ordinance is governed by the rational basis test.

For reasons already discussed, the Village's decision to adopt the Ordinance, its decision to use contiguous accessible roadways as a basis for establishing square-foot limits, and its choice of square-foot limits were all rational. Further, even if Vision could separately challenge the application of the Ordinance to its proposal, the record establishes that Vision itself was not harmed by a 55,000 square-foot limit imposed by the ordinance and could construct a perfectly acceptable church complex under that limit.

CONCLUSION

For the foregoing reasons, as a matter of law, the Village exercised its legislative discretion in enacting the neutral and generally applicable Public Assembly Ordinance, and the Village properly applied the Ordinance to Vision's 2002 Application for a Special Use Permit. Neither enactment of the Ordinance, nor any of the other legislative acts complained of, violated Vision's federal constitutional, statutory, or state law rights. There are no material issues of fact that could lead to a contrary decision. In sum, the District Court properly granted summary judgment to the Village and its ruling should be affirmed.

Dated: February 21, 2006

VILLAGE OF LONG GROVE,

Defendant - Appellee

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Attorney for Defendant-Appellee –
Village of Long Grove

Dated:_____

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendant-Appellee, Village of Long Grove, hereby certifies that on February 21, 2006, two copies of Defendant-Appellee's Brief and a digital version of same were served on Plaintiff-Appellant's counsel listed below:

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I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

_____
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Executed on: February 21, 2006

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