

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ST. VINCENT DE PAUL PLACE,
NORWICH, INC. and THE ST. JOSEPH'S
POLISH ROMAN CATHOLIC
CONGREGATION

Plaintiffs,

V.

CITY OF NORWICH, CITY OF NORWICH
ZONING BOARD OF APPEALS, TIANNE
PHOENIX CURTIS, in her official capacity as
City of Norwich Zoning Enforcement Officer

Defendants.

CIVIL NO. 3:13-cv-00624-JBA

JULY 19, 2013

SECOND AMENDED COMPLAINT

Plaintiffs St. Vincent de Paul Place, Norwich, Inc. ("St. Vincent") and The St. Joseph's Polish Roman Catholic Congregation (the "Church"), by their undersigned attorneys for their Complaint against City of Norwich (the "City"), City of Norwich Zoning Board of Appeals (the "Board"), and Tianne Phoenix Curtis, in her official capacity as City of Norwich Zoning Enforcement Officer (the "ZEO") (collectively, the "Defendants"), allege as follows:

NATURE OF THE ACTION

1. This action is brought by Plaintiffs to redress violations of their civil rights, as protected by the United States Constitution and 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA") caused by Defendants' substantially burdensome, retaliatory, and unlawful conduct that has immediately, severely, and irreparably prohibited Plaintiffs from the free exercise of their religion.

2. Plaintiffs allege that the Notices of Violation issued to Plaintiffs by the City, acting through the ZEO, condemning as illegal the use of certain property, located at 120 Cliff Street a/k/a/ 1 Clairmont Avenue, Norwich, Connecticut (the “Property”), was taken in retaliation of Plaintiffs’ federal lawsuit filed on January 4, 2013 against the City, City of Norwich Commission on the City Plan (the “Commission”), James Troeger, in his official capacity as Building-Housing Code Enforcement Official (“Troeger”), and James Roberts, in his official capacity as Captain of the Fire Marshal’s Office (“Roberts”), in connection with the Commission’s discriminatory and unlawful actions in denying St. Vincent’s application for a special permit to operate at the Property. The City’s retaliatory conduct, acting through the ZEO, seeks to harass, oppress, and silence Plaintiffs’ rights to free speech as guaranteed by the First Amendment of the United States Constitution.

3. Plaintiffs further allege that Defendants’ actions have substantially burdened their free exercise of religion by illegally forcing them to modify their religious behavior. In addition, Defendants have treated Plaintiffs arbitrarily and unequally as compared to similarly situated religious institutions that engage in the same service of providing free food to the poor and homeless through soup kitchens and/or food pantries as St. Vincent.

4. Plaintiffs also allege that the Board’s decision to uphold the Notices of Violation in the appeal brought by Plaintiffs is the product of a tainted proceeding involving: (1) at least one member of the Board who had an illegal conflict of interest by virtue of his interest in a personal sense and by his conduct towards St. Vincent, the Church, and its supporters in violation of § 8-11 of the Connecticut General Statutes; (2) at least two members of the Board (one of whom is the same member who had an illegal conflict of interest) who predetermined

their decisions regardless of the evidence and testimony provided by St. Vincent and the Church; and (3) the illegal consideration of *ex parte* evidence. In addition, the Board's decision is arbitrary, capricious, contrary to law, and not supported by substantial evidence in the record.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action is brought under 42 U.S.C. § 2000cc *et seq.* and 42 U.S.C. § 1983. This Court also has supplemental jurisdiction of Count III under 28 U.S.C. § 1367(a) for claims brought under Connecticut statutes.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the underlying events occurred in this district, and Defendants are subject to personal jurisdiction in this district as of the commencement of this action.

PARTIES

7. Plaintiff St. Vincent is a non-profit corporation existing under the laws of the State of Connecticut. St. Vincent is a ministry of the Roman Catholic Diocese of the City of Norwich (the "Diocese"). It was established in 1979 and incorporated in 1989.

8. Plaintiff Church is a non-profit corporation, incorporated in 1904, existing under the laws of the State of Connecticut, with its principal place of business at 120 Cliff Street, Norwich, Connecticut. It is a parish of the Diocese.

9. Defendant City is a municipality located in the State of Connecticut established pursuant to Special Act 1951, No. 573, which act constituted the Norwich city charter (the "City Charter"). At all times relevant hereto, the City was and is responsible for the establishment, enforcement, and implementation of land use and zoning regulations in the City.

10. Defendant Board is a zoning board of appeals authorized by Chapter XV, Sec. 9 of the City Charter. The Board consists of five regular members and three alternates appointed by the City Council.

11. Defendant ZEO is the City official charged with administering and enforcing the City of Norwich Code of Zoning Ordinances (the “Zoning Ordinances”). She is sued herein in her official capacity.

FACTUAL ALLEGATIONS

12. The Church has been located at 120 Cliff Street since 1904.

13. In 1908, the Diocese established St. Joseph School (the “School”), a religious elementary school dedicated to providing a religious education to its students.

14. By 1925, the Diocese constructed a building to be used by the School, located at 120 Cliff St. a/k/a 1 Clairmont Avenue in a building separate from but adjacent to the Church building (the “Property”). Between the school building and Church building is a forty-six (46) car parking lot.

15. The School closed in 2010, but the former school building has since been used by the Diocese, St. Vincent, and the Church in connection with their religious practices, including the preparing and serving of meals to parishioners and others.

16. The Church building and school building are located in the Multifamily District MF (the “MF District”) established under the Zoning Ordinances.

17. For decades, the Church has aided the homeless and poor in Norwich. In 1979, the City adopted a resolution to honor the Church for its then 75 years of providing an “effective

force in enriching community life through its religious, cultural, educational, and social programs.”

18. In 1979, to continue its tradition of serving the homeless and poor, the Diocese established St. Vincent as a ministry of the Diocese to offer a variety of services to the homeless, poor, and others in need of assistance in Norwich.

19. As a ministry of the Diocese, the services and programs offered by St. Vincent to serve the poor and homeless are forms of religious exercise that are central to the Roman Catholic faith of St. Vincent, the Church, and the Diocese.

20. St. Vincent is a welcoming community that strives to provide food, companionship, and advocacy for anyone in need, regardless of race or religion. St. Vincent serves anyone who walks through its doors. Patrons include the unemployed, working poor, underemployed, disabled, homeless, veterans, children, senior citizens, persons newly released from institutions, and residents of recovery houses.

21. Many of St. Vincent’s patrons are residents of the Cliff Street area and its surrounding neighborhoods.

22. The majority of St. Vincent’s patrons do not have access to automobiles or other forms of transportation and thus walk to St. Vincent to receive its services. For this reason, it is critically important that St. Vincent remain within walking distance of the downtown Norwich area so that its patrons can continue to have access to its services and programs.

23. Members of St. Vincent practice their religious ministry to the poor by volunteering in the soup kitchen and food pantry and providing other support for the patrons.

24. St. Vincent serves breakfast and lunch to its patrons through its soup kitchen Monday through Saturday. Breakfast is served at 8:00 a.m. and is available until 10:00 a.m. Lunch is served at 11:30 a.m. and is available until 1:00 p.m. Members of the clergy and others lead prayer each day before meals. Over the past five years, St. Vincent, on average, has served 79,362 meals each year.

25. St. Vincent, through its food pantry program, distributes food bags to residents to take to their homes for consumption three days per week: Monday, Wednesday, and Saturday. The food pantry is open on Monday and Wednesday from 1:30 p.m. until 3:30 p.m. and on Saturday from 9:00 a.m. until 11:00 a.m. Patrons may pick up food items from the food pantry once per week. Over the past five years, St. Vincent, on average, has had 7,104 visits to its food pantry each year. On average, during the past five years, 1,148 children under the age of eighteen years are members of the households visiting the food pantry.

26. St. Vincent receives some of the food it serves through its soup kitchen and food pantry programs from the United States Department of Agriculture and the Federal Emergency Management Agency.

27. In addition to feeding the homeless and poor, St. Vincent provides shower services to its patrons on Monday through Saturday from 8:00 a.m. until 11:00 a.m. Approximately eight to twelve patrons use the shower facilities each day. This shower is the only publicly available shower in the City.

28. St. Vincent has a case worker on-staff to provide patrons with information concerning job openings, apartment rentals, and community events, among other things.

29. St. Vincent is closed on Sunday.

30. From approximately 2000 until 2012, St. Vincent leased a building in downtown Norwich, located at 10 Railroad Place, where it served the poor and homeless in accordance with Plaintiffs' religious beliefs.

31. In 2009, because 10 Railroad Place could no longer adequately accommodate its needs, and with rising costs, St. Vincent began to search for an alternative property to purchase or lease that could accommodate it. Despite these efforts, St. Vincent was unable to find a property that would provide a ready and feasible alternative for it to locate and continue to serve the needy. The Zoning Ordinances prohibit the use of some properties for religious and eleemosynary uses that St. Vincent examined. Beyond the Zoning Ordinances, exorbitant costs, the need for extensive, time-consuming, and expensive repairs and renovations, and environmental and contamination issues have precluded each of these properties from being ready and feasible alternatives.

32. Some properties are not ready and feasible alternatives because they are too far from the downtown Norwich area, where the majority of St. Vincent's patrons live, most of whom do not have access to automobiles or other forms of transportation.

33. On July 5, 2012, St. Vincent's landlord informed it of serious structural issues with the building at 10 Railroad Place. The landlord informed St. Vincent that the building would need to undergo extensive renovations to address these problems.

34. Because of the safety concerns related to the structural issues of the building at 10 Railroad Place leased by St. Vincent, St. Vincent was constructively evicted from its lease of the building and forced to vacate 10 Railroad Place on July 7, 2012.

35. St. Vincent is unable to return to 10 Railroad Place, as renovations to repair the serious structural issues with the building have not been completed. There is no timetable for completion of the renovations, and the landlord has not informed St. Vincent when the building will be ready for occupancy.

36. With no other options and hundreds of poor and homeless to serve, St. Vincent sought to relocate to the building formerly operated by the Diocese as a religious school at the Property.

37. The Property is approximately 0.37 miles from the building at 10 Railroad Place that was previously leased by St. Vincent.

38. Moving to the former religious school building was the only ready and feasible option to allow St. Vincent to continue its religious practice of serving the poor and homeless.

39. Because the majority of St. Vincent's patrons do not have access to automobiles and thus walk to St. Vincent, the proximity of the school building to the 10 Railroad Place building was necessary for the success of any such move.

40. Because many of St. Vincent's patrons live on Cliff Street and other surrounding neighborhoods, the school building location provides them with ready access to St. Vincent's services. Similarly, St. Vincent's religious mission is facilitated by this location's proximity to the poor and needy.

41. On July 9, 2012, St. Vincent received a temporary zoning permit from the City, signed by Peter Davis, City of Norwich Director of Planning and Neighborhood Services, authorizing St. Vincent to use the Property for six-months. The temporary permit stated that St. Vincent could remain at the Property beyond six months if it obtained a special permit.

42. On July 13, 2012, St. Vincent received a temporary certificate of occupancy from the City's Department of Planning & Development Building Inspection Division, signed by Troeger, allowing it to occupy the building at the Property for six-months. The temporary certificate of occupancy restricts St. Vincent's use of the four-floor building to the basement and two rooms on the first floor. St. Vincent's soup kitchen operates from the basement. Its food pantry operates in two rooms on the first floor.

43. The temporary certificate of occupancy noted the need for a handicapped accessibility modification, specifically requiring the installation of handicapped accessibility to the first floor food pantry area to comply with the State of Connecticut Building Code (the "Building Code"). Troeger's letter references an August 6, 2012 letter from Daniel Tierney, Deputy State Building Inspector, to approve an accessibility exemption for St. Vincent through the expiration of the temporary permits.

44. Since its move to the Property, St. Vincent has continued to explore alternative properties from where it could operate. The Zoning Ordinances prohibit the use of other available properties for religious and eleemosynary uses. Beyond the Zoning Ordinances, exorbitant costs, the need for extensive, time-consuming, and expensive repairs and renovations, environmental and contamination issues, and the distance from the downtown Norwich area have precluded each of these properties from being ready and feasible alternatives.

45. On September 14, 2012, with no other options, Jillian Corbin, Executive Director of St. Vincent, submitted an application with the Commission on behalf of St. Vincent for a special permit to locate permanently as a religious and eleemosynary use at the Property pursuant to § 8.1.2(b) (SP # 12-03) (the "Application"), as directed by the City and its agents.

46. St. Vincent sought to install an elevator to provide handicapped accessibility, as required by the Building Code to continue to occupy the Property and serve disabled patrons, which would cost approximately \$125,000 to purchase and install.

47. The public hearing on St. Vincent's Application took place over multiple evenings, opening October 16, 2012 and concluding on November 20, 2012.

48. During the multiple sessions of the public hearing on the Application, St. Vincent provided testimony and evidence that for more than three years it had searched for alternative properties to continue its religious mission, but found no ready and feasible alternative.

49. St. Vincent also provided testimony and evidence that it would be forced to close and terminate its operations altogether if the Commission denied the Application, because it had nowhere else to go.

50. On December 18, 2012, one week before the Christmas holiday, the Commission opened its regularly scheduled meeting.

51. On January 4, 2013, St. Vincent and the Church filed a lawsuit against the City, the Commission, Troeger, and Roberts, in the District of Connecticut (Docket No. cv-13-00017 (WWE)) to redress violations of their civil rights, as protected by the United States Constitution and 42 U.S.C. § 1983, RLUIPA, 42 U.S.C. § 2000cc *et seq.*, the Connecticut Constitution, and Connecticut's Religious Freedom Act, § 52-571b, caused by Defendants' substantially burdensome, discriminatory, and unreasonable land use regulations and intentional conduct prohibiting St. Vincent and the Church from exercising freely their religious beliefs (the "First Lawsuit").

52. On January 7, 2013, three days after St. Vincent and the Church filed the First Lawsuit, Troeger stated publicly that he would issue a notice of violation to St. Vincent, condemn the facility as an illegal use, and order it to vacate the Property when its temporary certificate of occupancy expired on January 12, 2013.

53. On January 14, 2013, the Court (Eginton, J.) issued an order preventing Defendants from halting St. Vincent's operations until the conclusion of a scheduled hearing to consider Plaintiffs' Emergency Motion for a Temporary Restraining Order and Preliminary Injunction.

54. The same day that the Court issued its Order, and ten days after St. Vincent and the Church brought the First Lawsuit, Troeger issued a Notice of Violation to St. Vincent for its alleged violation of the Building Code, deeming as illegal its occupancy of the former religious school building.

55. The same day, the City, acting through the ZEO, issued a Notice of Violation to St. Vincent for its alleged violation of the Zoning Ordinances, deeming as illegal its occupancy of the Property.

56. The next day, January 15, 2013, the City, acting through the ZEO, issued an identical Notice of Violation to the Church for its alleged violation of the Zoning Ordinances, deeming as illegal its occupancy of the Property.

57. The City, acting through the ZEO, mailed a third identical Notice of Violation, dated January 15, 2013, to the Diocese.

58. The Notices of Violation allege that St. Vincent is in violation of § 8.2.1 of the Zoning Ordinances, which applies to the Residence R-20 zoning district. The Property, however, is located in the MF District.

59. As a result of the Notices of Violation, St. Vincent and the Church, pursuant to § 18.4 of the Zoning Ordinances, may become liable for civil penalties from the date of issuance of the notices and may also be subject to criminal penalties, if enforcement is pursued further.

60. The City, acting through the ZEO, issued the Notices of Violation in retaliation of Plaintiffs' First Lawsuit.

61. On January 29, 2013, Plaintiffs appealed the Notices of Violation to the Board (Board Docket A#13-01). On February 1, 2013, Plaintiffs also petitioned the Board for a use variance allowing it to operate the soup kitchen and food pantry at the Property (Board Docket V#13-03), as is customary and generally expected in connection with an appeal of a zoning order, so that the Board could consider it at the same time as the appeal of the Notices of Violation. *See* NORWICH CITY CHARTER, Chapter XV, § 10; CONN. GEN. STAT. § 8-6a.

62. On February 6, 2013, after St. Vincent and the Church appealed the Notices of Violation to the Board, the City, acting through the ZEO, issued yet another order to St. Vincent; a "Supplemental Notice of Violations" which it characterizes as "intended to supplement and to clarify any ambiguities" in the previous Notice of Violation issued to St. Vincent. This "supplemental" order included an error in the citation of the applicable section of the Zoning Ordinance.

63. On February 11, 2013, Defendants moved to dismiss the First Lawsuit alleging that the First Lawsuit was not ripe because, on February 1, 2013, St. Vincent and the Church submitted an application for a use variance.

64. The City, acting through the ZEO, issued the Notices of Violation in retaliation of St. Vincent and the Church bringing the Lawsuit in an attempt to dismiss the Lawsuit for lack of ripeness; that is to say, by requiring Plaintiffs to file an appeal of the Notices of Violation accompanied by an application for a use variance, as contemplated by the City Charter and § 8-6a of the Connecticut General Statutes.

65. Upon information and belief, other religious institutions in the City, some of which are located in the same zoning district as St. Vincent (the MF District), as set forth in the Official Zoning Map of the City of Norwich, serve free food to the poor and homeless for consumption on-site through soup kitchens and/or for consumption off-site through food pantries.

66. Central Baptist Church (“Central Baptist”), located at 2 Union Street in the MF District, the same district as St. Vincent, serves dinner to the homeless and poor every Friday night from 5:30 p.m. to 6:30 p.m. It also serves breakfast to patrons each Sunday morning from 8:30 a.m. to 10:00 a.m. During Lent, Central Baptist hosts Friday lunches, with the food prepared by St. Vincent. Central Baptist provides a food pantry through its Norwich Clergy Association from which individuals can pick up food items for consumption at their homes once per month. The food pantry operates on Thursday from 9:00 a.m. to 12:00 p.m.

67. St. Mark Lutheran Church, located at 248 Broadway in the MF District, the same

district as St. Vincent, provides lunch to the homeless and poor on the first and third Sundays of each month.

68. United Congregational Church, located at 87 Broadway in Norwich's Chelsea Central District (the "CC District"), provides meals to the homeless and poor on the fifth Sunday of each month.

69. The Salvation Army, located at 262 Main Street in the CC District, serves meals to the homeless and poor on the second Sunday of each month. It also operates a food pantry from which individuals can pick up food items once per month. The food pantry operates on Tuesday from 10:00 a.m. to 11:45 a.m. and 1:00 p.m. to 1:45 p.m., Wednesday from 1:00 p.m. to 1:45 p.m., and Thursday from 10:00 a.m. to 11:45 a.m. and 1:00 p.m. to 1:45 p.m.

70. Lee Memorial United Methodist Church, located at 294 Washington Street in Norwich's R-40 Residence District (the "R-40 District") serves lunch on the fourth Sunday of each month to the homeless and poor.

71. First Haitian Baptist Church, located at 356 Central Ave. in the MF District, the same district as St. Vincent, operates a food pantry from which families with children can pick up food items once per week. The food pantry operates on Friday from 12:00 p.m. to 1:30 p.m.

72. St. Peter and Paul Church, located at 181 Elizabeth St. in the MF District, the same district as St. Vincent, operates a food pantry from which individuals referred from a social service agency can pick up food items. The food pantry operates on Thursday from 9:00 a.m. to 11:00 a.m.

73. Tabernacle of Deliverance and Praise Ministries, located at 230 Hunters Road in the R-40 District, operates a food pantry from which individuals may pick up food items. The

food pantry operates on the second and fourth Thursdays of each month from 10:00 a.m. to 1:00 p.m. and on the third Saturday of each month from 10:00 a.m. to 1:00 p.m. This food pantry is temporarily closed.

74. Catholic Charities, Diocese of Norwich, Inc., located at 331 Main St. in the CC District, operates a food pantry for families with children to pick up food items once per month. The food pantry operates on Monday from 9:30 a.m. to 11:30 a.m., Wednesday from 4:30 p.m. to 6:30 p.m., Thursday from 1:30 p.m. to 4:30 p.m., and Friday from 9:30 a.m. to 11:30 a.m.

75. Family Church of God, located at 63 Church St. in the CC District, operates a food pantry from which families with children can pick up food items once per week. The food pantry operates on Wednesday from 10:00 a.m. to 12:00 p.m.

76. Madonna Place, located at 240 Main St. in the CC District, operates a food pantry from which families with children to pick up food items, depending on need and supply. The food pantry operates from Monday through Friday from 9:00 a.m. to 9:30 a.m.

77. Upon information and belief, neither the City nor its agents have required these other religious institutions to obtain zoning approval to operate a soup kitchen or food pantry.

78. Upon information and belief, the City, acting through the ZEO, has not issued these other religious institutions notices of violation or other orders alleging that they are in violation of the Zoning Ordinances for failure to obtain zoning approval to operate a soup kitchen or food pantry.

79. Issuance of the Notices of Violation deeming as illegal Plaintiffs' use of the Property has created a sense of apprehension among St. Vincent's patrons, many of whom rely on its services for survival. These patrons fear that without the previously denied special permit

and issuance of the Notices of Violation, St. Vincent will be forced to terminate its operations, leaving them without food.

80. Issuance of the Notices of Violation deeming as illegal Plaintiffs' use of the Property has created a sense of apprehension among St. Vincent's staff. St. Vincent's staff fears that with the previously denied special permit and the issuance of the Notices of Violation, they will no longer be able to serve the homeless and poor in accordance with their religious beliefs.

81. As a nonprofit organization with a limited budget, St. Vincent relies on grants from other charitable organizations to maintain its services to serve the poor and homeless to fulfill Plaintiffs' religious beliefs.

82. Without the support of its grantors, St. Vincent cannot perform its religious mission of providing food and assistance to the impoverished.

83. In 2012, the grant money that St. Vincent received from other charitable organizations accounted for nearly one-quarter of its entire budget.

84. St. Vincent continuously seeks grants from a number of funders since nearly one-quarter of its revenue depends on their awards.

85. The issuance of the Notices of Violation has severely hindered St. Vincent's ability to raise the funds on which it relies to feed the poor and homeless.

86. Organizations offering grant money generally require applicants to be in good standing to receive grants.

87. Issuance of the Notices of Violation by the City, through the ZEO, labeling as illegal St. Vincent and the Church's use and occupancy of the Property has adversely affected St. Vincent's ability to obtain, let alone apply for, grant money.

88. Certain charitable organizations which regularly grant money to St. Vincent, including the Liberty Bank Foundation, the R.S. Gernon Trust, and the Edward and Mary Lord Foundation, require applicants to provide information about where and when activities will take place.

89. The issuance of the Notices of Violation, on top of the Commission's denial of the special permit application, has clouded St. Vincent's future; it does not know if it will be able to continue to operate at the Property or be forced to close and terminate its operations, as it has nowhere else to go.

90. Some charitable organizations have informed St. Vincent that it either (1) must first resolve its alleged noncompliance with the Zoning Ordinances to receive funding or (2) will receive less funding, if any, as a result of its alleged noncompliance with the Zoning Ordinances.

91. Without funding, St. Vincent is unable to move forward with much needed facility renovations, including the installation of an elevator to accommodate disabled patrons, as required by the Building Code.

92. Because St. Vincent is unable to obtain the necessary funding to purchase and install an elevator, some of St. Vincent's disabled patrons have already stopped coming to St. Vincent altogether due to the lack of handicapped accessibility. Likewise, the absence of such access prevents St. Vincent from attracting and serving new patrons who are disabled and require handicapped accessibility.

93. St. Vincent is therefore unable to fulfill its religious mission (and Plaintiffs' religious belief) "to provide food, companionship, and advocacy to anyone in need, regardless of race or religion," such as the disabled requiring handicapped accessibility.

94. St. Vincent's inability to obtain necessary funding has prevented it from moving forward with other needed renovations to the former religious school building so that it can adequately serve its patrons.

95. St. Vincent must install a commercial dishwasher that can handle the demand of its services, and which costs \$10,000 to \$15,000, but is unable to do so without funding.

96. Because St. Vincent does not have a commercial dishwasher to handle the demand of its services, it cannot adequately accommodate its patrons and must resort to using paper goods at a cost of approximately \$800 per month, an expense that would disappear with a commercial dishwasher.

97. St. Vincent has two clothes washing machines and two clothes dryers, but is unable to use them in the limited space in the former religious school building where it is confined (the basement and two rooms on the first floor). St. Vincent previously offered its patrons clothes washing and clothes drying services at 10 Railroad Place.

98. St. Vincent needs to move forward with other renovations for a commercial kitchen capable of adequately serving its patrons, but is unable to do so without funding.

99. The Board scheduled the public hearing on St. Vincent and the Church's appeals of the Notices of Violation (A#13-01) for March 12, 2013.

100. St. Vincent and the Church presented evidence and testimony that the Notices of Violation issued to St. Vincent and the Church cited the wrong section of the Zoning Ordinances, referring to the incorrect zoning district, and were therefore invalid.

101. Special Counsel for the Board stated on the record that he agreed that at least two of the Notices of Violation cited the wrong section of the Zoning Ordinances.

102. St. Vincent and the Church presented evidence and testimony that the “Supplemental Notice of Violations,” which was issued after St. Vincent brought its appeal, also cited the wrong section of the Zoning Ordinances.

103. Ms. Corbin testified that the Notices of Violation have immediately and severely affected St. Vincent’s service to the poor and homeless by inhibiting its ability to receive grant funding and move forward with much needed renovations.

104. St. Vincent and the Church presented evidence and testimony that the City, acting through the ZEO, completely disregarded RLUIPA and any effect the statute would have on St. Vincent and the Church’s abilities to exercise freely their religious beliefs by issuing the Notices of Violation.

105. Special counsel for the Board advised the Board that the ZEO could not properly consider RLUIPA when issuing the Notices of Violation.

106. RLUIPA, 42 U.S.C. § 2000cc-3(e), provides in relevant part:

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden the religious exercise, or by any other means that eliminates the substantial burden.

107. RLUIPA, 42 U.S.C. § 2000cc-3(e), defines “government” as “(i) a State, county, municipality, or other governmental entity created under the authority of the State; (ii) any branch department, agency, instrumentality, or official of an entity listed in clause (i).”

108. The Board closed the public hearing as to the appeal of the Notices of Violation, but tabled its deliberation and vote until its next regularly scheduled meeting to be held the following month (April 9, 2013).

109. The Board then opened the public hearing to consider St. Vincent and the Church's application for a use variance (#V13-03). The Board continued the hearing until its next regularly scheduled meeting to allow St. Vincent and the Church to continue their presentation.

110. On April 9, 2013, moments prior to the Board's opening of its regularly scheduled meeting to deliberate and vote on St. Vincent and the Church's appeal of the Notices of Violation (A#13-01), two members of the Board, Raymond Dussault ("Dussault") and Paul Kramarewicz ("Kramarewicz"), upon information and belief, stated in public in City Hall that they would not support St. Vincent and the Church's application for a use variance, to be heard later that evening.

111. Counsel for St. Vincent and the Church were not made aware of Kramarewicz and Dussault's statements until after the next day.

112. The Board opened the meeting and commenced its deliberations on the appeal of the Notices of Violation, with Dussault and Kramarewicz participating as voting members of the Board.

113. During deliberations, Dussault stated that he had done independent research regarding RLUIPA and concluded that RLUIPA does not require that any special accommodation be made for religious institutions.

114. Upon information and belief, there is no evidence in the record to demonstrate that Dussault is an RLUIPA expert, has experience in considering zoning applications involving RLUIPA, or possesses any other knowledge that would make him qualified to speak to the requirements of RLUIPA.

115. Because the public hearing was closed, St. Vincent and the Church were unable to respond to Dussault's comments.

116. As deliberations continued regarding the appeal of the Notices of Violation (A#13-01), Dussault and Kramarewicz improperly began to discuss the merits of St. Vincent and the Church's application for a use variance (#V13-03).

117. Dussault and Kramarewicz stated that they did not believe that St. Vincent and the Church had adequately demonstrated a hardship warranting a use variance.

118. The public hearing on St. Vincent and the Church's use variance application, however, was scheduled to resume later that evening so that St. Vincent and the Church could present additional evidence and testimony, including that about hardship. In fact, St. Vincent and the Church had not even begun their presentation about hardship at the first public hearing session.

119. The Board unanimously voted to uphold the Notices of Violation issued to St. Vincent and the Church on the ground that the ZEO, *inter alia*, "was just doing her job."

120. Later that evening, the Board opened the second session of the public hearing on the use variance application (#V13-03).

121. During an intermission of the public hearing on the use variance application, counsel for St. Vincent and the Church was informed by Deacon Thomas Casey ("Deacon

Casey”), who was appointed by the Bishop of the Diocese to help found St. Vincent in 1979, of a confrontation he had with Kramarewicz moments prior to the start of the meeting.

122. In particular, upon information and belief, moments prior to the opening of the April 9, 2013 public hearing, Kramarewicz confronted Deacon Casey and accused him of firing his wife, and called him obscenities.

123. Upon information and belief, Kramarewicz took his seat with his fellow Board members and told other members of the Board that Deacon Casey fired his wife and was an obscenity.

124. After the intermission, and as the second session of the public hearing on the use variance application continued, upon a request of the applicants made by the applicants’ counsel to the Board’s attorney, Kramarewicz recused himself and left the room.

125. St. Vincent and the Church continued their presentation in support of the use variance application and then the Board allowed members of the public to speak in support of or against the application.

126. Deacon Casey spoke in support of St. Vincent and the Church’s use variance application.

127. The Board closed the public hearing, but tabled its deliberations on the use variance application until its next regularly scheduled meeting to be held the following month.

128. Upon information and belief, as Deacon Casey, and others from St. Vincent, and Dussault, exited the meeting room, Kramarewicz confronted Deacon Casey on the staircase.

129. Upon information and belief, Kramarewicz in front of a number of witnesses screamed vulgarities at Deacon Casey, made discriminatory statements about his being a Catholic Deacon, confronted him in a challenging manner, and made threatening remarks.

FIRST CAUSE OF ACTION
42 U.S.C. § 1983
United States Constitution – First Amendment Retaliation
(Against Defendants City and ZEO)

130. Paragraphs 1 through 129 are incorporated by reference as if set forth fully herein.

131. The First Lawsuit brought by Plaintiffs on January 4, 2013 is an activity protected by the First Amendment of the United States Constitution.

132. As alleged, Plaintiffs have suffered retaliation at the hands of the City and the ZEO in response to Plaintiffs' First Lawsuit brought on January 4, 2013, against the City, the Commission, Troeger, and James Roberts.

133. The City, acting through the ZEO, issued the legally defective Notices of Violation and related orders in retaliation of Plaintiffs' seeking judicial relief to redress violations of their civil rights by bringing the First Lawsuit.

134. The District Court's Order, dated January 14, 2013 in the First Lawsuit, which prohibited Defendants from halting St. Vincent's operation but allowing Defendants to issue notices of violation for Plaintiffs' alleged non-compliance with the Zoning Ordinances, did not preclude Plaintiffs from appealing to the Board seeking administrative or judicial relief of the legally defective Notices of Violation.

135. The issuance of the legally defective Notices of Violation left Plaintiffs with no choice but to appeal them to the Board to protect their rights and interests.

136. The City and the ZEO issued the legally defective Notices of Violation in an attempt to “unripen” the First Lawsuit.

137. Only after Plaintiffs appealed the legally defective Notices of Violation to the Board and applied for a use variance did defendants from the First Lawsuit move to dismiss the First Lawsuit for lack of ripeness due to the Plaintiffs’ filing of the use variance application.

138. As a direct, legal, and proximate result of this ongoing unlawful and retaliatory conduct, Plaintiffs have suffered, and will continue to suffer, retaliation, harassment, oppression, and silencing as a result of exercising their respective rights to free speech.

139. The retaliatory acts of Defendants as described above were intentional, willful, and were motivated on the basis of St. Vincent and the Church’s protected activity in filing the First Lawsuit.

140. In addition, and as described above, Defendants’ ongoing unlawful conduct has severely and irreparably impeded St. Vincent’s ability to serve the poor and homeless in accordance with Plaintiffs’ religious beliefs, and has caused St. Vincent to suffer, and will continue to cause it to suffer, economic harm that prevents it from fulfilling Plaintiffs’ religious mission.

Prayer for Relief

141. By virtue of the foregoing conduct, Defendants City and ZEO have violated Plaintiffs’ First Amendment rights under the United States Constitution, and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that issuance of the Notices of Violation and related conduct are

unconstitutional acts of retaliation, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

SECOND CAUSE OF ACTION
42 U.S.C. § 2000cc(a)
RLUIPA'S Substantial Burden Provision
(Against All Defendants)

142. Paragraphs 1 through 129 are incorporated by reference as if set forth fully herein.

143. Congress requires that the Court construe RLUIPA "in favor of broad protection of religious exercise, to the maximum extent permitted by the terms of [RLUIPA] and the Constitution." 42 U.S.C. § 2000cc3(g).

144. As described above, issuance of the Notices of Violation and the Board's decision to uphold the Notices of Violation have immediately, severely, and irreparably substantially burdened St. Vincent and the Church's religious exercise by inhibiting St. Vincent's ability to obtain funding on which it relies to serve the poor and homeless in accordance with its religious beliefs.

145. By imposing and implementing the City's land use and zoning laws in this manner, and by the conduct described above, Defendants have imposed and will continue to impose a substantial burden on the religious exercise of St. Vincent and the Church in violation of 42 U.S.C. § 2000cc(a)(1).

146. The imposition of this substantial burden of the religious exercise of Plaintiffs by Defendants is not in furtherance of a compelling governmental interest, nor is it the least restrictive means of furthering a compelling governmental interest, as required by 42 U.S.C. § 2000cc(a)(1).

147. This substantial burden on the religious exercise of Plaintiffs is imposed by Defendants in the implementation of a system of land use regulations under which Defendants make, and have in place formal and informal procedures or practices that permit them to make individualized assessments of land uses, as contemplated by 42 U.S.C. § 2000cc(a)(2)(C).

148. The substantial burden on the religious exercise of Plaintiffs will affect commerce among the several states, as contemplated by 42 U.S.C. § 2000cc(a)(2)(B).

149. The substantial burden on the religious exercise of Plaintiffs is imposed on a program or activity that receives Federal financial assistance, as contemplated by 42 U.S.C. § 2000(a)(2)(A).

Prayer for Relief

150. By virtue of the foregoing conduct, Defendants have violated Plaintiffs' rights under 42 U.S.C. § 2000cc(a), and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that the Notices of Violation are void, invalid, and unconstitutional, an order that the Board allow Plaintiffs to use the Property as a soup kitchen and food pantry, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on Defendants' actions, compensatory damages, and attorneys' fees and costs, pursuant to 42. U.S.C. § 1988.

THIRD CAUSE OF ACTION 42 U.S.C. § 2000cc(b)(2) RLUIPA's Nondiscrimination Provision (Against all Defendants)

151. Paragraphs 1 through 129 are incorporated by reference as if set forth fully

herein.

152. By imposing and implementing the City's land use and zoning laws and regulations in the manner described above, and by the conduct described above, Defendants are treating St. Vincent and the Church on less than equal terms with comparable and similarly situated religious institutions, which institutions Defendants freely permit to engage in the similar practice of providing free food and other services to the poor and homeless. Such conduct has deprived and will continue to deprive Plaintiffs of their right to the free exercise of religion.

153. The Board was motivated by illegal and improper animus, hostility, and impermissible considerations, including, but not limited to religion, and intent to inhibit constitutionally protected rights.

154. The Board's differential treatment lacks any rational basis, much less a compelling governmental interest.

Prayer for Relief

155. By virtue of the foregoing conduct, Defendants have violated Plaintiffs' rights under 42 U.S.C. § 2000cc(b)(2), and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that the Notices of Violation are void, invalid, and unconstitutional, an order that the Board allow Plaintiffs to use the Property as a soup kitchen and food pantry, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there

based on Defendants' actions, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

**FOURTH CAUSE OF ACTION
42 U.S.C. § 1983
United States Constitution – Fourteenth Amendment
Equal Protection
(Against all Defendants)**

156. Paragraphs 1 through 129 and 151-154 are incorporated by reference as if set forth fully herein.

157. Plaintiffs are a "class of one" and are protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

158. Defendants have arbitrarily and selectively interpreted and enforced the Zoning Ordinances and land use laws, and have singled out Plaintiffs for arbitrary and selective enforcement by issuing to Plaintiffs Notices of Violation based on their use of the Property as a soup kitchen and food pantry and providing services and programs substantially similar to those that the City permits other similarly situated religious institutions to conduct without receiving zoning approval.

159. Defendants lack any rational basis in their differential treatment.

160. Further, this differential treatment was based on impermissible considerations, including, but not limited to religion, and intent to inhibit constitutionally protected rights.

161. By singling out Plaintiffs for unequal and adverse treatment, Defendants have deprived, and continue to deprive, Plaintiffs of their rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including,

without limitation, the right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Prayer for Relief

162. By virtue of the foregoing conduct, Defendants have violated Plaintiffs' rights under 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that the Notices of Violation void, invalid, and unconstitutional, an order that the Board allow Plaintiffs to use the Property as a soup kitchen and food pantry, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on Defendants' actions, compensatory damages, and attorneys' fees and costs, pursuant to 42. U.S.C. § 1988.

**FIFTH CAUSE OF ACTION
Connecticut General Statutes § 8-8
(Against Defendants Board and ZEO)**

163. Paragraphs 1 through 129 are incorporated by reference as if set forth fully herein.

164. Legal Notice of the Board's decision to uphold the Notices of Violation was published in *Norwich Bulletin* on April 15, 2013.

165. As the property owner, the Church, and the operator, St. Vincent, and both the Church and St. Vincent as applicants, Plaintiffs are statutorily and classically aggrieved by the Board's decision for purposes of taking this appeal because they have specific, personal, and legal interests in the decision and their interests are specially and injuriously affected by the

decision. For example, St. Vincent and the Church's ability to freely exercise their religious beliefs has been immediately, severely, and irreparably harmed, as discussed above.

166. The Board's action in upholding the Notices of Violation was illegal, unlawful, arbitrary, capricious, contrary to the substantial evidence in the record, and in abuse of the powers vested in the Board under the statutes of the State of Connecticut, the City Charter, and the Zoning Ordinances for one or more of the following reasons:

- a. The Board upheld the Notices of Violation despite the fact that they cite to the wrong section of the Zoning Ordinances;
- b. The ZEO cannot "correct" a deficient notice of violation through a "supplemental" order; the ZEO must issue a new notice of violation;
- c. At least one member of the Board, Kramarewicz, had an illegal conflict of interest, in violation of § 8-11 of the General Statutes, demonstrated by his conduct before and after his vote;
- d. At least two members of the Board, Kramarewicz and Dussault, illegally predetermined their decision regardless of the evidence and testimony presented by St. Vincent and the Church;
- e. The Board improperly relied on illegal *ex parte* evidence in violation of the principles of fundamental fairness and natural justice in the form of Dussault's independent research concerning RLUIPA to which St. Vincent and the Church did not have the opportunity to respond;
- f. The Board improperly failed to consider and comply with RLUIPA or find that the ZEO should have considered and complied with RLUIPA; and

- g. The Board's decision is not supported by substantial evidence in the record.

Relief Requested

167. Plaintiffs pray that the Court:

- h. Sustain the appeal and render judgment in favor of Plaintiffs;
- i. Based upon the law and the administrative record, reverse the Decision and direct the Board to overturn the Notices of Violation;
- j. In the alternative, vacate the decision to uphold the Notices of Violation and remand to the Board for further proceedings to address the defects set forth above;
- k. Award costs as provided by Section 8-8(l) of the General Statutes; and
- l. Grant such other relief as in law or equity may apply.

PLAINTIFFS,
ST. VINCENT DE PAUL PLACE,
NORWICH, INC. AND THE ST.
JOSEPH'S POLISH ROMAN
CATHOLIC CONGREGATION

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2013, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Brian R. Smith
Brian R. Smith