

COMPLAINT

1. The City of Horn Lake in DeSoto County, Mississippi, has thirteen churches but no mosque to serve local Muslim families. In fact, there is no mosque in all of DeSoto County, the third largest county in Mississippi by population, forcing families to travel to Tennessee for communal worship. Hoping to provide a dedicated and accessible spiritual home for these residents, long-time Mississippi citizens Plaintiffs Riyadh Elkhayyat¹ and Maher Abuirshaid set out to build a mosque—the Abraham House of God—on a piece of Horn Lake property that is zoned “as of right” for houses of worship (the “Property”). A site plan for the proposed mosque “met or exceeded” all requirements, according to staff employed by the City’s Planning Commission. But the Commission nevertheless denied approval, and the City’s Board of Aldermen affirmed that decision.

2. With no evidence, study, or analysis, the Board of Aldermen claimed that the proposed mosque would create traffic and violate local noise ordinances. In addition, even though numerous structures in Horn Lake far larger than the planned mosque already use the City’s water supply, the Board asserted—also without evidence, study, or analysis—that the City’s water mains were inadequate to support a fire sprinkler system for the building.

3. Despite the pretextual excuses for their decision, Board members did not work very hard to hide the true reason they denied approval for the project—anti-Muslim prejudice. As then-Alderman John E. Jones Jr. told the local newspaper: “I don’t care what they say, their religion says they can lie or do anything to the Jews or gentiles because we’re not Muslims.” In making his motion to reject the mosque’s proposed site plan, Jones ominously warned his fellow Board

¹ Mr. Elkhayyat also uses the shortened name “Ray Elk” and is often referred to as such.

members, “[I]f you let them build it, they will come. So I think we need to stop it before it gets here.”

4. Community members have expressed similar anti-Muslim sentiment in connection with Plaintiffs’ plans. In a Facebook group dedicated to opposing the proposed mosque, one local resident wrote, “This is wrong on so many levels. They are supposed to assimilate to our country, not us to theirs,” to which another local resident responded, “they will never assimilate. Their religion is to take over and kill the infidel. That’s us.” At least one Horn Lake Alderman was a member of the group. And before the Planning Commission voted on a permit for a religious cemetery that Mr. Elkhayyat and Mr. Abuirshaid had intended to locate next to the proposed mosque, one community member cautioned that it would be the “first step to an Islamic compound.” Shortly after the Planning Commission voted to deny the application for the cemetery, another community member offered to buy the land from Mr. Elkhayyat and Mr. Abuirshaid, making it clear that he did not want a mosque built on the property. When Mr. Elkhayyat and Mr. Abuirshaid refused the offer, another person told them they would only be able to build a mosque “over our dead bodies.” At the Board of Aldermen hearing for the site plan application, one speaker declared that “they are not subject to our laws, they’re subject to their laws.” And an email sent before the hearing by a community member to the Mayor read in part: “We do not want our community fostered into a muslim community and that is what will happen.” The Mayor’s response: “Thank you for your very informative email concerning the development on Church Road.”

5. In sum, what should have been an uncomplicated approval of the site plan for the Abraham House of God foundered in a storm of anti-Muslim bias. Indeed, during the Planning Commission meeting at which the permit for the mosque was denied, the Commission Chair—

facing a crowd of dozens of area residents who opposed the mosque—stated that the Commission understood that “majority rules.” No weight was given to the right of religious liberty to which all people, regardless of their faith, are entitled. Although the property for the proposed mosque was zoned for a church as of right, and the site plan met or exceeded all zoning requirements, the Planning Commission and the Horn Lake Board of Aldermen gave into the anti-Muslim animus held by their own members and community residents. As Alderman Charlie Roberts admitted, expressing regret after the fact for his vote against the site plan, “We stepped over the line of violating not only discriminatory rights because they’re Muslims, and also their freedom of religion.”

6. Alderman Roberts’s assessment was correct: Defendants have discriminated against Plaintiffs on the basis of religion and have violated their rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000c *et seq.* (“RLUIPA”), which provides heightened legal protections for individuals and groups facing discrimination in land-use decisions, as well as under the First Amendment of the United States Constitution. Plaintiffs seek declaratory and injunctive relief to redress this unlawful conduct, attorneys’ fees, and costs.

JURISDICTION AND VENUE

7. Plaintiffs’ claims arise pursuant to 42 U.S.C. § 2000cc and 42 U.S.C. § 1983.

8. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343 (civil rights jurisdiction).

9. Venue is properly set in this District pursuant to 28 U.S.C. § 1391(b), as the events or omissions giving rise to this action occurred in this District and the property that is the subject of the action is situated in this District.

THE PARTIES

Plaintiffs

10. Plaintiff Riyadh Elkhayyat has resided in DeSoto County, Mississippi, for over twenty years. He is a co-founder and president of the Abraham House of God mosque, and he is a 50% member of MR Property, LLC. Mr. Elkhayyat, his wife, and their six children practice Islam. Like other Muslims in DeSoto County, the family must travel to Tennessee to worship communally at a mosque because there is no mosque in DeSoto County or otherwise nearby in Northern Mississippi. Feeling a religious duty to address this problem and give back to his community, Mr. Elkhayyat, along with his friend and fellow Muslim, Mr. Abuirshaid, formed a limited liability company and purchased property in Horn Lake to build a mosque where local Muslim families may gather in spiritual fellowship and worship.

11. Plaintiff Maher Abuirshaid has been a resident of DeSoto County for more than five years and a resident of Mississippi since 2005. He is a co-founder and vice .90 (r.90 ()-29.90 (Mi)-4.90 (s

STATEMENT OF FACTS

A. Muslims in De Soto County Have No Local House of Worship

18. Horn Lake's website lists thirteen properties used principally for religious worship in the City. All are Christian churches. The map below shows the location of the thirteen churches in Horn Lake.³ There are 132 churches in DeSoto County.

19. Mr. Elkhayyat lives within walking distance of at least five Christian churches. Mr. Abuirshaid can walk to at least two Christian churches from his home.

20. There is no mosque in Horn Lake, however. Nor is there a mosque in neighboring Southaven, where Mr. Elkhayyat and Mr. Abuirshaid and their families live, or in all of DeSoto

that Plaintiffs need in a religious community is in Memphis, Tennessee, a 35- to 40-minute drive away for each family.⁴

21. Although there is no mosque in DeSoto County, the County is home to a thriving community of approximately 15 to 20 Muslim families, many with young children. Other Muslims live throughout Northern Mi

25. In the absence of a local mosque, Mr. Elkhayyat has sent his children to attend nearby Christian churches from the age of three so that they could participate in local communal activities with their peers and learn about other faiths. Observing his children's experiences

28. The lack of a local mosque also impedes the ability of Mr. Elkhayyat, Mr. Abuirshaid, their families, and other local Muslim families to gather together in celebration and observance of Islamic holidays. The absence of a local mosque is particularly challenging during the holy month of Ramadan. Ramadan is a month of prayer, reflection, community, and fasting

41. “Church” is defined under Horn Lake’s Code of Ordinances as “[a] building used principally for religious worship, but the word church shall not include or mean an undertaker’s chapel, funeral building, a religious educational institution or parochial school or day care center.”⁶

42. Because the property was larger than necessary for the planned religious cemetery and mosque, Mr. Elkhayyat and Mr. Abuirshaid decided that they would seek to subdivide the land so that they could also install residential homes on it. Inspired by Islamic communities they had heard about elsewhere in the country, Mr. Elkhayyat and Mr. Abuirshaid hoped that some members of the mosque community would choose to live in the subdivision so they could walk to daily prayer services, just as many Christian community members live in walking distance of their Christian churches.

43. To go forward with their planned development, Mr. Elkhayyat and Mr. Abuirshaid were aware that they would need certain approvals from the City. They would need to seek approval to subdivide the Property for (1) the proposed residential use and (2) the mosque and cemetery. In addition, while a church is permitted in an AR District by right, a cemetery is not. Thus, they would need to seek a conditional-use permit for the proposed cemetery. And finally, they would need to obtain approval of a site plan for the mosque and any other building on the Property, with the exception of single-family detached dwellings.⁷

44. Before purchasing the Property, Mr. Elkhayyat had asked a friend who knew Mayor Latimer personally to help arrange a meeting with the Mayor to discuss the project. Mr. Elkhayyat,

that “[p]er current Horn Lake zoning regulations, ‘Church’ is a use permitted by right in AR zoning.”

⁶ See Code of Ord. App. A, Art. II, B.

⁷ See Code of Ord. § 25-54.

Mr. Abuirshaid, and Mr. Elkhayyat's friend met with Mayor Latimer at the end of 2019 and showed him a sketch of the plans, which included the proposed residential subdivision, the mosque, and the cemetery. Mayor Latimer informed Mr. Elkhayyat and Mr. Abuirshaid that, as long as the plans satisfied local zoning requirements, there would not be any issues and they would be able to proceed.

45. After speaking with Mayor Latimer and purchasing the Property, Mr. Elkhayyat hired Civil Link, an engineering consulting firm to develop and draft a site plan, architectural plans, and related documents for submission to the City.

C. Mr. Elkhayyat's Application for Subdivision of the Property

46. Under the City's Code of Ordinances, the Planning Commission reviews all subdivision plans and makes a recommendation to the Governing Authority (the Mayor and the Board of Aldermen).⁸

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Commission is required to provide the Governing Authority with written findings concerning the proposed application.¹⁷

56. In a July 23, 2020, letter to Planning Director Greene, Civil Link engineer Nicholas Kreunen addressed these factors, explaining:

This conditional use will not substantially increase traffic hazards or congestions for the area. Traffic increase will be very marginal. This Cemetery will not increase fire hazards to the area in anyway. This cemetery and memorial park will not adversely affect the character of the neighborhood. . . . This use will not overtax utilities in any way. The cemetery/Memorial Park will not increase the usage of any streets, schools, or public utilities.

61. Although the requested permit did not pertain to the proposed mosque, those in attendance made their opposition to a mosque known. One local resident declared that the cemetery was the “first step to an Islamic compound.” A married couple argued that “calls to prayer would be heard for miles several times a day, often early in the morning.”

62. The anti-Muslim comments made during the August 31 Planning Commission meeting echoed sentiments posted in a Facebook Group called “Turkey Creek Development,” which was formed to oppose the mosque. In one comment, a local resident wrote that the “cost [of the mosque] doesn’t matter. They get funding from overseas.” Another commenter wrote, “Its called [a] takeover . . . thats hat they do. Look at Minnesota. Look at congress.” The same resident later commented on his own post, writing, “This is wrong on so many levels. They are supposed to assimilate to our country, not us to theirs,” to which another local resident responded, “[T]hey will never assimilate. Their religion is to take over and kill the infidel. That’s us.” “Bingo,” another user responded.

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79. On February 22, 2021, the Planning Commission considered the Site Plan Review Application.¹⁹ Douglas Thornton, the architect who designed the mosque, provided an overview of the design plans to the Commission, noting that the plans met or exceeded all legal requirements and that there would be no loudspeakers installed or used.

80. As with the Planning Commission meeting on August 31, 2020, the February 22 meeting included an unusually large audience of approximately sixty residents and devolved into a litany of veiled and explicit anti-Muslim complaints.

81. One resident claimed that “they [the Muslim applicants] are not subject to our laws, they’re subject to their laws.”

82. An adjacent property owner, emphasized that “this is being referred to as a church, which it is not. It’s a mosque. So we need to be clear about that.”

83. Multiple residents raised concerns about noise generated by outdoor loudspeakers projecting the call to prayer throughout the day, despite the fact that the site plan did not feature any outdoor loudspeakers and that Mr. Thornton repeatedly assured those in attendance that there would be no outdoor loudspeakers on the Property. One resident stated that “it is not against the law in the United States for a mosque to have loudspeakers, and all you have to do is Google and there are so many lawsuits in the United States against sound.” The resident claimed that loudspeakers on the Property would broadcast the call to prayer as early as 3:30 a.m. and as late as 10:30 p.m. Referring to a nearby public school, another local resident stated that he would “hate to see our students over there having to hear these speakers blaring down.”

¹⁹ A partial video recording of the Planning Commission meeting is available on the City’s Facebook page. See City of Horn Lake, MS, *Planning Meeting 2-22-21*, Facebook (Feb. 22, 2021), <https://fb.watch/91ccGJe65j/> (last visited Nov. 2, 2021).

84.

those instances, the Commission identified any shortcomings or concerns with the plan and granted approval subject to certain conditions being met.

89. For example, at its August 26, 2019, meeting, the Commission considered Case No. 1920 for site-plan approval of an automobile repair shop to be located on a vacant property that had previously been occupied by a church. The property was zoned for “Agricultural Residential” and is located less than five miles from the Property for the proposed mosque. The repair shop site-plan application failed to include plans for drainage and stormwater. In addition, the dimensions of the parking spaces included in the plans did not comply with city standards. Nevertheless, the Planning Commission voted to approve the proposed site plan, subject to three conditions: (1) “Drainage and Stormwater [must be] addressed before a grading permit is issued”; (2) “[A] Conditional Use permit must be obtained if there is to be outside storage”; and (3) “Parking dimensions are [to be] corrected to comply with the Zoning Ordinance standards.”

90. At its July 29, 2019, meeting the Commission granted site-plan approval for an Adult Independent Living Facility to be located about five miles away from the Property for the proposed mosque. The proposed facility included two four-story buildings, with 100 units each, for a total of 200 units. Although Horn Lake law requires 400 parking spaces to be allocated for a project of this size, the site plan noted that only 356 spaces would be available. Nevertheless, the Commission voted in favor of the site plan, subject to two conditions—that, before approval of “Construction Drawings,” the applicant apply for variances “for deficiency in parking” and “Building Height.”

91. At its January 27, 2020, meeting the Commission approved a proposed site plan for an industrial warehouse, despite significant, well-documented traffic concerns at the location. After a Commissioner asked “if it would be doable to add a deceleration lane between the two

entrances” for the warehouse, the applicant agreed to do so. The Commission then voted unanimously to approve the site plan, as long as “[a] deceleration lane, between the two entrances on Nail Rd., is added to the site plan and will be subject to City Engineer approval.”

92. Like its denial of a conditional-use permit for the religious cemetery, the Planning Commission’s decision to outright deny approval for the mosque site plan was not motivated by any compelling, or even legitimate, concerns. Instead, it was based on anti-Muslim animus.

G. Appealing the Planning Commission’s Decision to the Board of Aldermen

93. Planning Commission decisions regarding site-plan applications are final unless appealed to the Governing Authority within ten days of the decision. The Governing Authority has “final authority with regard to all matters involving the Zoning Ordinance,” including hearing and deciding appeals from Planning Commission actions.

94. Following the Planning Commission’s denial of approval for the site plan, the Abraham House of God and Mr. Elkhayyat appealed the decision to the Board of Aldermen.

95. Some residents communicated with the Mayor in advance of the meeting to express their opposition. For example, on March 1, 2021, a resident sent an email to the Mayor stating: “I hope that all members of the Horn Lake Board understand that this is a Muslim Mosque. It is not a Church by any definition and it will be used by Muslims. I am not trying to tread on the freedom of religion or discriminate because of any one religion, however this project will not benefit Horn Lake or the majority of its citizens.” That same email, purporting to rely on the teachings of the prophet Mohammad, added: “[T]he Christian must be aware that a Muslim can practice lying to advance Islam.” In an earlier email in the chain, dated February 26, 2021, the same resident declared: “We do not want our community fostered into a [M]uslim community and that is what will happen.” Mayor Latimer responded to the email by thanking the resident and describing the email as “informative.”

96. The Board heard the appeal at its meeting on April 20, 2021.²⁰ Approximately 80 residents attended the meeting—far more than usual.

97. At the meeting, Barry Bridgforth, an attorney retained by Mr. Elkhayat, MR Property, and the Abraham House of God, emphasized that a church, as defined by the City Code of Ordinances, is a permitted use by right on an AR-zoned property. Mr. Bridgforth also reminded the Aldermen that the February 22 Planning Commission Staff Report had concluded that the mosque site plan met all Horn Lake requirements for parking, travel, setbacks, and zoning.

98. As he did at the Planning Commission, Mr. Thornton then provided an overview of the design plans for the mosque. In response to questions from Mayor Latimer and others regarding traffic, he pointed to the acceleration and deceleration lanes featured in the site plan. The design matched a similar measure that the Bonne Terre Inn, the event and wedding venue across the street from the Property on Church Road, had taken to alleviate any traffic concerns.

99. During Mr. Thornton's presentation, Alderman John E. Jones, who has since stepped down from the Board, asked about fire sprinklers and declared, out of the blue (the subject had not come up previously), that the "water there is not sufficient to sprinkle that building." He offered no evidence to support this claim, and neither the Planning Commission staff nor the Planning Commission had raised any concerns about the City water main's ability to sufficiently

100. Mr. Thornton responded that the building would “get water from the mains” and that the builders would “look at bringing in the proper main” — a standard way of bringing water to a property. But Alderman Jones again dismissively insisted, with no evidence, that “[t]he water mains that are there are not sufficient to support that building there, period.” Alderman Jones also

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Violation of RLUIPA, 42 U.S.C. § 2000cc(a)
(Substantial Burdens)**

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123. Plaintiffs are entitled to declaratory and injunctive relief under this section of RLUIPA.

SECOND CAUSE OF ACTION

**Violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2)
(Nondiscrimination)**

124. Paragraphs 1 through 123 are incorporated by reference as if set forth fully herein.

125. Under Section 2000cc(b)(2) of RLUIPA, “[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.”

126. Defendants have violated this section of RLUIPA by imposing and implementing a land use regulation that intentionally discriminates against Plaintiffs on the basis of religion.

127. Defendants’ denial of site-plan approval for the mosque was based on anti-Muslim animus.

128. Plaintiffs are entitled to declaratory and injunctive relief under this section of RLUIPA.

THIRD CAUSE OF ACTION

**Violation of RLUIPA, 42 U.S.C. § 2000cc(b)(3)(B)
(Unreasonable Limitation)**

129. Paragraphs 1 through 128 are incorporated by reference as if set forth fully herein.

130. Under Section 2000cc(b)(3)(B) of RLUIPA, the government may not impose or implement a land use regulation in a manner that “unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”

131. Defendants have violated this section of RLUIPA by implementing a land use regulation that unreasonably limits a religious structure—the proposed mosque—in a zone where churches are permitted by right.

undertaken for religious reasons.” See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

140. In committing the acts alleged above, the City, Board of Aldermen, Mayor, and Planning Commission were acting under color of state law.

141. Defendants’ denial of site-plan approval for the mosque was based on anti-Muslim animus. Defendants discriminated against Plaintiffs because the proposed building at issue is associated with the Islamic faith and Islamic religious practice.

142. Defendants’ denial of site-plan approval does not meet strict scrutiny: It does not further a compelling interest, and it is not narrowly tailored to achieving a compelling interest.

143. Plaintiffs have suffered injury as a result of the improper and unconstitutional actions of the City, Board of Aldermen, Mayor, and Planning Commission.

144. Plaintiffs are entitled to declaratory and injunctive relief in accordance with Section 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and the following relief:

- A. An order finding and declaring that Defendants’ denial of approval of the February 8, 2021, Site Plan Review Application for the Abraham House of God mosque violates RLUIPA and is, therefore, null and void;
- B. An order finding and declaring that Defendants’ denial of approval of the February 8, 2021, Site Plan Review Application for the Abraham House of God mosque is unconstitutional under the First Amendment and Fourteenth Amendment to the U.S. Constitution and is, therefore, null and void;
- C. A permanent injunction ordering Defendants to grant, forthwith and no more than 10 days from the date of the Court’s Order, approval for the February 8, 2021, Site Plan Review Application for the Abraham House of God;
- D. An award of attorneys’ fees and costs of suit pursuant C /P <</MCdndmf1-1.8

E.