IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AL FALAH CENTER, et al., Plaintiffs, vs. TOWNSHIP OF BRIDGEWATER, et al., Defendants.	Civil Action No. 3:11-cv-02397 MAS LHG ELECTRONICALLY FILED

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION FOR STAY PENDING APPEAL

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PRELIMINARY STATEMENT

Nearly three years ago the predecessor in interest of Plaintiff Al Falah Center ("Al Falah") applied to the Defendant Township of Bridgewater's Planning Board for permission to renovate the Redwood Inn for use as a mosque. Bridgewater's then-existing zoning law required the Planning Board to approve that application, because a house of worship was a conditionally permitted use at that site and Al Falah's proposal complied with the applicable conditions. Had the Planning Board granted approval routinely as existing law required, Al Falah would have carried out the necessary renovations and would now have a mosque.

The Township prevented Al Falah from establishing its mosque by enacting Ordinance 11-03. The Ordinance changed the rules so that houses of worship would be conditionally permitted uses in residential zones only when located on properties with principal access from specified roads rather than throughout residential zones as had previously been permitted. The specified roads did not include Mountain Top Road, where the Redwood Inn is located. This ordinance was enacted with extraordinary haste for the purpose of precluding the Planning Board from acting on Al Falah's application.

This Court has now found, based on an extensive evidentiary record, that (1) the enactment of Ordinance 11-03 irreparably injured Plaintiffs, (2) Plaintiffs' claim that the enactment of Ordinance 11-03 violated the Religious

Land Use and Institutionalized Persons Act ("RLUIPA") will likely succeed on the merits, (3) the balance of hardships favors Plaintiffs, given that the Township "failed to identify any specific harm that would follow from permitting Plaintiff's application to proceed," and (4) the public interest favors an injunction. 9/30 Memorandum Opinion at 41, 44-45 (Dkt. #95). The Court's corresponding order ("9/30 Order") (Dkt. #94) states, "Pending the final disposition of this action, Defendant is hereby directed to resume consideration of Plaintiff's January 6, 2011 Site Plan Application (as amended) without consideration of Ordinance 11-03."

Having obstructed Plaintiffs' legitimate desire to use their property for religious exercise for over two years, Defendants now want to stall some more by staying the Court's injunction. Their arguments for such a stay are without merit and should be rejected, for the reasons stated below.

STATEMENT OF FACTS

Defendants' motion rests entirely on arguments of counsel, offering no new affidavits and generally ignoring the factual record the Court relied on in granting Plaintiffs' motion. The following points from that record are pertinent to this motion.[1]

[1] Declarations and accompanying exhibits, including the declarations that were originally submitted in support of Plaintiffs' motion when first filed in May 2011, are cited as "[Name] Dec." Deposition testimony is cited as "[Name] Tr. [page and line reference];" deposition exhibits are cited as "PX__" for documents marked in depositions taken by Plaintiffs and "DX __" for documents marked in depositions taken by Defendants; and all cited deposition exhibits and deposition transcript excerpts are attached to the Declaration of Andrea Greenblatt-Harrison.

- Al Falah's application to the Planning Board does not seek permission to build a new building. The Redwood Inn is an existing building, a banquet hall and parking lot located on 7.64 acres. PX39, at 115 of 123. Al Falah seeks permission only to renovate the building with virtually no change in its footprint or height, and then to use it as a mosque. Indeed, Al Falah's proposal would reduce the size of the parking lot from 230 cars to 169. *Compare* Tubman Dec. ¶ 4 (Dkt. #7-7) *with* PX39, 50 and 89 of 123.
- The Al Falah Preliminary Site Plan Application (the "Application") was submitted to the Planning Board on January 6, 2011. Tubman Tr. 63:13-64:4; PX39, 36 of 123. Bridgewater's zoning ordinance then provided that houses of worship were conditionally permitted uses in residential zones, including the R-50 zone in which the Redwood Inn was located. PX111; Tubman Dec. Ex. M (Dkt. #7-9). Al Falah's application showed how the Redwood Inn would be adapted for use as a mosque in full compliance with all conditions prescribed by Bridgewater's existing zoning ordinance. The Township's Planner and Engineer reviewed the Application and submitted reports to the Board, and both acknowledged that the Application met the conditional use requirements. PX4; PX38.
- The first Planning Board meeting on Al Falah's application was scheduled for January 24, 2011. Even before that meeting occurred, the

Township officials had begun secretly drafting a new ordinance providing that a house of worship would no longer be a conditionally permitted use of the Redwood Inn property. *See* PI Mem. at 12-17 (Dkt. #79-1).

- Events at the January 24, 2011 Planning Board Meeting showed that there was vocal public opposition to Al Falah's proposed use of the Redwood Inn as a mosque. As a result of press and internet publicity, more people attended this meeting than any prior Planning Board meeting. Walsh Dec. ¶¶ 6, 13 (Dkt. #16); Doyle Tr. 38:19-39:19. Before any testimony was heard on the Application, the hearing was adjourned to be rescheduled for a larger hall because the attendance exceeded fire code occupancy limits. Tubman Dec. Ex. I at 8:3-24 (Dkt. #7-8); PX27.
- Township officials proceeded to carry out with record speed everything necessary to enact Ordinance 11-03, including writing a Reexamination Report and convening multiple votes of the Planning Board and Township Council at several public meetings. They acted with such haste because they had to get their new ordinance enacted before May 11, 2011, when New Jersey's previously enacted "time of application" law would take effect. That law requires planning boards in New Jersey to consider applications under the law in effect when they were filed without regard to later amendments—precisely what the Court's

preliminary injunction now requires the Bridgewater Planning Board to do with respect to Al Falah's application.

- The purported justifications for the new ordinance presented in the Township Planner's Reexamination Report and later memoranda from her and the Township Engineer were patently pretextual and without substance. The Township's own witnesses acknowledged that the supposed changes in the use patterns of houses of worship described as a reason for the proposed new ordinance in the Reexamination Report were nothing new. Flannery Tr. 106:3-108:4.
- The proposed Ordinance 11-03 was enacted at a March 14, 2011 public hearing before the Township Council at which members of the public were permitted to comment and Council members made statements explaining their decisions to vote in favor of it. Even though the March 14 hearing was about enactment of a purportedly Township-wide revision of the zoning law that applied to places of assembly in addition to houses of worship, the transcript shows that the meeting was really about whether to permit use of the Redwood Inn as a mosque. PX78; Hirsch Dec. ¶ 10 (Dkt. #15). The majority of those who spoke in favor of the proposed Ordinance made specific comments about the proposed mosque at the Redwood Inn. PX78. The Township officials understood the need to conceal that this Ordinance was really about Al Falah's

Application. So they put in the record clearly false statements that the change effected by Ordinance 11-03 had been under consideration for a long time—"it was in [the] work[s] since 2008, 2009." PX78 at 157:6-14. This was but one of a series of statements intended to suggest that the enactment of a zoning change that no one in the Township had suggested before Al Falah's application was filed had some purpose other than to prevent the conversion of the Redwood Inn to a mosque. Hirsch Dec. ¶ 11 (Dkt. #15). Indeed, the Township's dissimulation has extended to this litigation, where it has continued to make the incredible claim that what was labeled a "draft" ordinance days before January 24, 2011 was not in fact a "draft." *See* PI Mem. at 12-17 (Dkt. #79-1); Chow Dec. Ex. C (Dkt. #79-8); Doyle Tr. 264:7-17.

- Based on the passage of Ordinance 11-03, the Planning Board disclaimed jurisdiction to approve the Application and voted to dismiss it on April 12, 2011. Tubman Dec. ¶ 66 (Dkt. #7-7); Chow Dec. Ex. K (Dkt. #79-9).

The Court's Memorandum Opinion first reviewed the evidence in the context of considering Defendants' motion for summary judgment. It said, "In analyzing the circumstantial evidence, the animus held by the residents of the Defendant's community, in addition to the expedited nature of the implementation of the Ordinance, at a minimum, creates a genuine issue of material fact such that summary judgment would be inappropriate at this juncture." 9/30 Memorandum

Opinion at 19 (Dkt. #95). The Court on similar grounds found genuine issues of material fact precluding summary judgment as to *all* of Plaintiffs' claims except their claims under the New Jersey Law Against Discrimination, as to which the Court found federal subject matter jurisdiction to be lacking.

The Court then considered Plaintiffs' motion for a preliminary injunction. That relief requires more than merely a genuine issue of material fact. It requires a finding that the movant has a probability of success on the merits—*i.e.*, that the issues of fact are likely to be resolved in the movant's favor in a way that will support injunctive relief. The Court addressed that issue here with respect to only one claim, the Plaintiffs' claim under the "substantial burden" prong of RLUIPA. As to that claim, it found probability of success. 9/30 Memorandum Opinion at 41-43 (Dkt. #95). The Court did not consider Plaintiffs' likelihood of success on their claims under the other prongs of RLUIPA and the federal and state constitutions, because it did not have to do so to decide the motion. Plaintiffs sought the same preliminary injunctive relief with respect to all of their claims, and a determination that any one of them was likely to succeed on the merits was enough to support entry of a preliminary injunction.

ARGUMENT

Defendant's Motion For A Stay Should Be Denied

The standard for staying a preliminary injunction pending appeal mirrors the standard for granting one. The movant seeking a stay must demonstrate each of

four elements: "'(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the [stay] is denied; (3) that granting [a stay] will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief.'" *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, No. 13-1144, 2013 WL 1277419, at*1 (3d Cir. Feb. 8, 2013) ("*Conestoga Wood I*") (quoting *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004)); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). The movant must prove all four elements. *Nken*, 556 U.S. at 438. The movant cannot excuse failure to prove one element by pointing to the strength of its showing on another.[2] *Conestoga Wood I*, at *1-2.

As demonstrated below, Defendants have failed to prove any of the four elements, and their motion for a stay therefore should be denied.

A. Defendants Will Sustain No Irreparable Injury If the Injunction Is Not Stayed and Is Later Reversed

A defendant seeking a stay of a preliminary injunction pending appeal must show that it will suffer irreparable harm if the injunction is not stayed and is later reversed. *See Conestoga Wood I*, at *1. In this case Defendants assert that they

[2] Judge Jordan's dissents in both *Conestoga Wood I* and in the Court's final disposition of the case, *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 393-94 (3d Cir. 2013) (Jordan, J. dissenting), *petition for cert. filed*, 82 USLW 3139 (Sept. 19, 2013), suggest disagreement among judges of the Third Circuit about whether its decisions approve a "sliding scale standard" under which a movant's strong showing on one factor may be found to lessen its burden with respect to another. Whether such analysis is permitted need not be considered here, because, as demonstrated in the text, Defendants have failed to establish any of the required elements.

will be irreparably injured in the absence of a stay because "[b]y the time the merits of the appeal are resolved, the mosque may well be constructed based on a Planning Board approval that would be invalid as a matter of law if the Third Circuit were to reverse this Court's order." Def. 10/28/13 Mem. at 13 (Dkt. #98). They say that this would be a problem for them because "Courts will not typically order completed or near completed buildings to be demolished or substantially modified." Def. 10/28/13 Mem. at 12 (Dkt. #98). This argument is without merit for several reasons.

First, Defendants' assertion that the Planning Board proceedings may result in Al Falah gaining "the ability to construct its mosque" (Def. 10/28/13 Mem. at 12) (Dkt. #98) misstates the facts. The building is already constructed. All that Al Falah has proposed to do is to renovate it for an assembly use slightly different from its prior use as a banquet hall.

Second, the Court should not credit Defendants' lament that once the building is completed Defendants will be unable to cause its demolition because that would be "waste" abhorrent to a court of equity. They cite for this proposition two trial court decisions from jurisdictions outside New Jersey that are not on point because they were not land use cases and did not address the lawfulness of the continued use of property. These decisions involved lawsuits by design professionals—an architectural firm that had designed a building in *Palmetto Builders & Designers, Inc. v. UniReal, Inc.*, 342 F. Supp. 2d 468 (D.S.C. 2004),

and a surveyor who had created a site plan in *Sparaco v. Lawler, Matusky, Skelly Engineers, LLP*, 60 F. Supp. 2d 247 (S.D.N.Y. 1999)—alleging that the construction of buildings using their designs infringed their copyrights. The courts expressed reluctance to order the demolition of the buildings as a remedy for copyright infringement, although in *Palmetto Builders* a partially completed building was required to be modified so that its design would no longer infringe. In neither case was there any issue about whether the use of the buildings was permitted under applicable land use law. The cases, therefore, are inapposite.

If the Plaintiffs begin to refurbish the Redwood Inn, and if the Court of Appeals vacates the preliminary injunction or otherwise nullifies the Planning Board approval, Plaintiffs will face the argument that they must abandon their investment. The injury here, if any, would be to Plaintiffs, not Defendants.

Finally, Defendants' assertion of irreparable harm should be rejected as an afterthought. A motion for a stay is not the first stage in the preliminary injunction process at which the defendant should tell the court that an injunction may cause it harm. In deciding whether to enter the injunction in the first place, the trial court was required to consider the balance of hardships that entry of the injunction would impose on the parties. If the Defendants genuinely believed, as they now contend, that the injunction, unless stayed, would expose them to irreparable harm, it was incumbent upon them to advise the Court of this possible harm. They had many opportunities to do so, but they did not. None of their briefs mentioned this or any

other possible hardship to the Defendants that would follow from entry of the requested preliminary injunction. That is why the Court resolved the balance-of-hardships issue in favor of Plaintiffs, stating that "Defendant has failed to identify any specific harm that would follow from permitting Plaintiff's application to proceed." 9/30 Memorandum Opinion at 45 (Dkt. #95). It is also why the Court declined to require a bond, stating that "Defendant will not be harmed by entry of this preliminary injunction." 9/30 Order at ¶ 3c (Dkt. #94).

Defendants' present assertion of irreparable harm is a makeweight claim that should be rejected. And once it is rejected, their motion can be denied without further analysis, because irreparable harm is an independent requirement for obtaining a stay.

B. Defendants' Ripeness Argument Is Not Likely To Succeed on Appeal

Defendants' attempt to demonstrate probability of success on the merits rests entirely on the argument that this case does not present a ripe controversy for adjudication because Al Falah has not sought a variance from the Zoning Board of Adjustment ("ZBA"). Defendants assert that until a variance is sought and denied "the nature and extent that Ordinance 11-03 limits development on Al Falah's property is not known because an application for a (d)(3) conditional use variance for Al Falah's mosque, which as a matter of law is an inherently beneficial use, has never been submitted." Def. 10/28/13 Mem. at 8 (Dkt. #98).

The Court has rejected this argument *three times*. It first did so on the face of the pleadings. Judge Pisano denied a motion to dismiss for alleged lack of ripeness. He found that under *County Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 166-67 (3d Cir. 2006), Plaintiffs were not required to pursue a variance in order to ripen their claims for consideration by a federal court because they were pursuing a facial challenge to Ordinance 11-03 based on allegations that it had been enacted with the specific intention to preclude their proposed use of their property.

Following reassignment of the case, Defendants again presented their ripeness argument twice more, only now with an extensive factual record rather than on the pleadings alone. Their motion for summary judgment again asserted that Plaintiffs' claims should be dismissed on ripeness grounds, largely ignoring *County Concrete* and Judge Pisano's decision finding it controlling in this case. The Court denied that motion, stating that it would adhere to Judge Pisano's decision:

> In *County Concrete Corporation v. Town of Roxbury*, the Third Circuit found that a final decision is not required prior to bringing a court challenge when a landowner makes a facial challenge to an ordinance. 442 F.3d 159, 164 (3d Cir. 2006). Therein, the plaintiffs alleged that *the enactment* of an ordinance was discriminatory, arbitrary, capricious, unreasonable, malicious and sought to deprive the plaintiffs of the use of their property, whereas similarly situated properties were not rezoned in the same manner in violation of Equal Protection. *Id.* at 167. The Third Circuit determined that these allegations

> constituted a facial challenge and were ripe. To the extent Defendant's reliance upon *Brown v. City of Pittsburgh*, 586 F.3d 263 (3d Cir. 2009), urges otherwise, the Court is not persuaded and adheres to the decision rendered by Judge Pisano regarding ripeness.

9/30/13 Memorandum Opinion 10-11 (emphasis in original; footnote omitted) (Dkt. #95).

The Court for the third time rejected Defendants' ripeness argument in deciding Plaintiffs' motion for a preliminary injunction. Defendants there argued that Ordinance 11-03 should not be found to impose a "substantial burden" in Plaintiffs' religious land use in violation of RLUIPA because relief from Ordinance 11-03 might be available in the form of a variance from the ZBA. The Court rejected that argument by considering the procedural steps Al Falah would have had to follow in order to obtain and keep a variance. Analysis of those steps shows, and the Court found, that any attempt by Al Falah to turn the Redwood Inn into a mosque by means of a variance would have been futile.

Under the New Jersey statute governing variances, Al Falah would first have had to persuade the ZBA that its proposed variance would not impair the intent of the zoning ordinance from which a variance was sought. N.J. Stat. Ann. 40:55D-70. As the Court found, any attempt by Al Falah to meet this statutory requirement would have been futile. Ordinance 11-03 was not enacted to prevent the establishment of some hypothetical house of worship on some hypothetical street. Had that been so, a future applicant for a variance might hope to persuade the ZBA

that its particular proposed use at a particular site was not what the Township Council had in mind when enacting Ordinance11-03. But that is not this case. Abundant evidence demonstrates that Al Falah's proposed use of the Redwood Inn site, as documented in a specific site plan application, was precisely the use the Township Council sought to prevent when it enacted Ordinance 11-03. As the Court found, "Al Falah argues that it therefore would likely be unable to establish that its proposed mosque would not upset the purpose of the Ordinance. The Court agrees." 9/30/13 Memorandum Decision at 43 n.10 (Dkt. #95).

The Court's finding in this case echoes the Third Circuit's analysis in *County Concrete*, which controls here. In that case, as in this one, the challenged ordinance had been enacted with the plaintiff's specific proposed use in the governing body's crosshairs. That circumstance would deprive the zoning board of any discretion to grant a variance, so that seeking one would be futile. As the Third Circuit stated in terms that apply to this case:

> This is not a case where a municipality has enacted a general ordinance and a homeowner objects to the application of the ordinance to his or her property. Here, the Township knew exactly how appellants intended to use their land and passed the Ordinance specifically tailored to prevent that use. *Williamson*'s finality rule "responds to the high degree of discretion characteristically possessed by land-use boards in softening the strictures of the general regulations they administer." [citation omitted]. It has no application where, as here, there is "no question ... about how the 'regulations at issue [apply] to the particular land in question.' " [citations omitted]. It would be an exercise

> in futility to require appellants to seek a variance from an ordinance specifically directed at their properties. Accordingly, their facial challenge is ripe.

County Concrete, 442 F.3d at 167.

But the futility of any attempt by Al Falah to seek a variance for its proposed mosque would not end at the ZBA. Under New Jersey law, any variance granted by the ZBA is subject to review by the Township Council, which speaks the final word for the Township. There can be no doubt how the Township Council would exercise its power. The Council had already enacted Ordinance 11-03 for the purpose of preventing Al Falah from turning the Redwood Inn into a mosque. And its conduct in this litigation suggests no change of heart. The Council has financed the preparation of an elaborate and expensive report by a land use consultant, Mr. Banisch, which it presented to this Court as evidence for the propositions that the Redwood Inn is not an appropriate site for a mosque, that establishing one there would impair the Township's "quality of life," and that Ordinance 11-03's prohibition of a house of worship on the site is "good zoning."

The same Council that spent substantial taxpayer dollars on this advocacy has also argued repeatedly, through its attorneys, that Al Falah should be deprived of any remedy from this Court and sent to pursue a variance that the Council would have the right to veto. They are doing this not because, as Defendants' most recent memorandum asserts, there is some doubt about how a variance application will be decided. They are doing it because they know exactly how it will be decided, but

only after Al Falah has squandered much time and money in a futile pursuit. As the Court found, "The substantial burden suffered by Plaintiff is not undermined by the fact that Al Falah has not sought a variance because the ultimate decision makers on appeal are the council against whom allegations of discrimination are the subject of this action." 9/30/13 Memorandum Decision at 43 (Dkt. #95).

C. Defendants Will Suffer No Hardship If the Preliminary Injunction Is Not Stayed

A trial court deciding whether to issue a preliminary injunction is required to balance the hardship that will be imposed on the plaintiffs if relief is withheld against the hardship that may be imposed on the defendants if it is granted. Here, the Court found that a preliminary injunction would impose no hardship on the Defendants at all, while in its absence Plaintiffs will suffer a continuing irreparable injury to their right to practice their religion. 9/30/13 Memorandum Decision at 45 (Dkt. #95). As explained above, Defendants' late-blooming claim that they will suffer irreparable harm if the injunction is not stayed lacks merit. Thus, the same balance-of-hardships calculation that supported entering the preliminary injunction supports a refusal to stay it.

Defendants try to manufacture an argument on balance of hardships by citing inapposite case law on ripeness. They cite at page 14 of their memorandum a statement from the analysis of ripeness in *Abbott Laboratories. v. Gardner*, 387 U.S. 136, 149 (1967), a decision about whether regulations of the Food and Drug

Administration were ripe for judicial review when the FDA had not yet sought to enforce them. They quote the statement in *Abbott Laboratories* that the ripeness determination required the Supreme Court "to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." They then cite, at pages 15-17 of their memorandum, assorted cases, not all of them land use cases, in which plaintiffs' claims were found unripe and dismissed. These authorities are irrelevant to the present motion. In this case the ripeness determination analogous to that discussed by *Abbott Laboratories* has already been made: the Court has found Al Falah's claims ripe for adjudication. *Abbott Laboratories* speaks only of the possible hardship of *withholding* court consideration and does not suggest that granting such consideration is to be considered a hardship. In any event, by finding this case ripe for adjudication the Court implicitly rejected any argument by the Defendants that the Court's exercise of jurisdiction over Plaintiffs' claims would impose a hardship on Defendants. None of the cited authorities suggests that once a federal court decides to exercise its jurisdiction it must, in deciding a motion for a preliminary injunction, weigh the defendant's desire not to be in federal court as a "hardship" to be balanced against the hardships the plaintiff will incur if a preliminary injunction is withheld.

Defendants also ask the Court to follow the Seventh Circuit's decision in *River of Life Kingdom Ministries v. Village of Hazel Crest*, 585 F.3d 364 (7th Cir. 2009), *aff'd on reh'g en banc*, 611 F.3d 367 (7th Cir. 2010), in which the court

found that the balance of equities favored the municipality in an RLUIPA case. But *River of Life* involved materially different facts. The plaintiff was trying to build a church on property it had purchased in the middle of a previously established special zoning district in which the municipality had made a substantial investment to develop a "transit-oriented commercial area." The Seventh Circuit found that the church's insertion into an already established special zoning district would present "a significant but unquantifiable threat to the Village's redevelopment plan." 585 F.3d at 376.

The present case presents no comparable facts. Al Falah was not proposing to insert itself into a zoning district where its mosque would be incompatible with the uses already permitted in that zone. To the contrary, it was proposing a site plan fully conforming to all zoning requirements. It was the Township, not Al Falah, that upset this state of affairs by precipitously changing the long-standing zoning requirements so that Al Falah could not meet them at the site it owns. In fact, Bridgewater had no long-term plan of any sort to limit the siting of houses of worship within any residential zones, including the zone in which the Redwood Inn is located. Not a hint of such a plan can be discerned in any of its zoning ordinances going back to the 1970s or in any of its planning documents written before Al Falah filed its application with the Planning Board. It was only Al Falah's application that caused the Township to create and approve, in record time, what the Town Planner herself characterized as a "quickie" Reexamination Plan,

Doyle Tr. 59:16-60:3, 90:14-17, and the Township Council to engage in what one of its members characterized as an "ping pong" game with the Planning Board to complete the process of passing the Ordinance with unprecedented speed before it was too late to block the mosque, Norgalis Tr. 35:19-36:3, 40:21-41:4; 66:22-67:23, 75:2-4, 232:12-20.

D. The Injunction Furthers the Public Interest

The Court found that the public interest favors a preliminary injunction because "Plaintiff's allegations fall squarely within the harm Congress sought to address in enacting RLUIPA." 9/30/13 Memorandum Decision at 45 (Dkt. #95). Defendants cite no decision in which a preliminary injunction entered in a RLUIPA case has been stayed pending appeal. They instead offer platitudes about the importance of local control of zoning and assert that the interests of Bridgewater and its citizens in preserving such local control counsel against federal interference. But Congress decided to limit local control over zoning when it enacted RLUIPA. The Court has found from an extensive record that Plaintiffs suffered irreparable harm due to the enactment of Ordinance 11-03 and that they are likely to succeed on the merits in establishing an RLUIPA violation.

CONCLUSION

Defendants' motion for a stay of the preliminary injunction pending appeal should be denied.

Dated: November 18, 2013

Respectfully submitted,

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