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

Civil Action No. 3:11-cv-2397-JAP-LHG

AL FALAH CENTER, TAREK ABDELKADER, YASSER ABDELKADER, ZAHID CHUGHTAI, BABAR FAROOQI, NABEELA FAROOQI, AYESHA KHAN, OMAR MOHAMMEDI, AMINA MOHAMMEDI and SARA WALLIS, Plaintiffs

v.

TOWNSHIP OF BRIDGEWATER, TOWNSHIP OF BRIDGEWATER PLANNING BOARD, PATRICIA FLANNERY, IN HER CAPACITY AS MAYOR OF THE TOWNSHIP OF BRIDGEWATER, ALAN FROSS, STEPHEN RODZINAK, BARBAR KANE, JOANNE KANE, N. JANINE DICKEY, ROBERT ALBANO and GLENN PETILLO IN THEIR CAPACITY AS MEMBERS OF THE TOWNSHIP OF BRIDGEWATER PLANNING BOARD; THE TOWN COUNCIL OF THE TOWNSHIP OF BRIDGEWATER, AND HOWARD NORGALIS, DAN HAYES, ALLEN KURDYLA, MATTHEW MOENCH, AND CHRISTINE HENDERSON ROSE, IN THEIR CAPACITY AS MEMBERS OF THE TOWN COUNCIL OF THE TOWNSHIP OF BRIDGEWATER,

Defendants.

BRIEF OF DEFENDANTS IN SUPPORT OF CROSS-MOTION TO DISMISS THE FIRST AMENDED COMPLAINT AND IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF

RETURNABLE JUNE 20, 2011

PARKER McCAY P.A.
1009 Lenox Drive
Building Four East
Suite 102B
Lawrenceville, New Jersey 08648-2321
(609) 896-4222
(609) 896-0490 (fax)
Attorneys for Defendants, Township of
Bridgewater, Township Council of the
Township of Bridgewater, and all parties
named in their capacity as members of
Town Council of the Township of Bridgewater
and the Mayor in her official capacity.

On the Brief:

Howard D. Cohen, Esq./hcohen@parkermccay.com Michael E. Sullivan, Esq./msullivan@parkermccay.com VOGEL, CHAIT, COLLINS & SCHNEIDER
Attorneys for Defendants Planning
Board of the Township of Bridgewater
and all parties named in their official capacities as members of the Township Planning Board

On the Brief:

Thomas F. Collins, Jr., Esq./tcollins@vccslaw.com David H. Soloway, Esq./dsoloway@vccslaw.com

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PRELIMINARY STATEMENT

The matter before this Court arises from Plaintiff Al Falah Center's (Plaintiff) 1 plan to construct a mosque and other facilities on property located in a residential area of the Township of Bridgewater (Township). Pursuant to Township Ordinance 11-03 (11-03 or the Ordinance). Plaintiff and other affected uses are required to apply to the Township Zoning Board of Adjustment (Zoning Board) for a variance in accordance with the New Jersey Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-70d(3). The Zoning Board has offered a total of nine dates on which to hear and consider Plaintiff's application for variance relief.² Plaintiff has failed and refused to avail itself of this process, instead filing the present federal action and moving for preliminary injunctive relief seeking to declare 11-03 invalid on its face and to force Plaintiff's site plan application to be heard by the Township Planning Board (Planning Board).

Plaintiff does not, because it cannot, represent to this Court that it has received a final decision from the Township as to how it can use its property. This

As the numerous individually named Plaintiffs are all members of Al Falah, all Plaintiffs are intended to be subsumed within the term "Plaintiff" herein.

The offered dates were, and are, May 24, 2011; July 16, 26, 2011; August 3, 16, 23 and 30, 2011; and September 20, 27, 2011.

fact is fatal to Plaintiff's First Amended Complaint and its Motion for Preliminary Injunctive Relief.

Plaintiff is the beneficiary of an assignment of rights from the Chughtai Foundation (Chughtai) to purchase property located at 1475 Mountain Top Road, Township of Bridgewater, New Jersey, ("Township") also known as Lots 36 and 37. Block 653 on the Township Tax Map (the "Property"). The Property is the site of the former Redwood Inn, a catering facility which was a preexisting nonconforming use, that ceased operation in 2008. The entire property constitutes 7.64. acres. Country clubs, open air clubs, schools and houses of worship are conditional uses in all residential zoning districts in the Township including the R-50 District in which the Property is located. 11-03 requires that all such uses have principal access to a state highway, county roadway or one of four municipal arterial roadways that connect to state highways or county roadways. Properties on which such facilities are contemplated that do not have such principal access must apply to the Zoning Board for a variance pursuant to N.J.S.A. 40:55D-70d. (See Declaration of Thomas J. Forsythe, P.E. and Location Map submitted herewith.)

Plaintiff has not attached to the Complaint or First Amended Complaint (Complaint), nor supplied to the Township, the underlying contract for purchase of the Property.

In deciding a motion to dismiss, this Court may consider matters of public record. Lum v. Bank of Am., 361 F.3d 217, 222 (3d Cir. 2004)

The controversy in this case stems from Plaintiff's assertion that it has been denied the opportunity to construct a house of worship on the Property by virtue of 11-03 which, in addition to requiring that the principal site access be from state highways, county roadways and designated municipal arterial roadways for all country clubs, open air clubs, houses of worship and schools, also contains off-street parking requirements applicable to all such uses. In fact, all that 11-03 means is that Plaintiff must apply for a variance from the Zoning Board for its intended use of the Property. Notwithstanding the Zoning Board has provided nine dates to hear Plaintiff if it files an application, Plaintiff has refused or failed to apply for the required variance relief.

This refusal or failure is fatal to Plaintiff's claims as there is no final decision by the Zoning Board as to Plaintiff's proposed use of the Property. Plaintiff's claims are thus not ripe for federal jurisdiction. Defendants oppose Plaintiff's application for preliminary injunctive relief for lack of ripeness and cross-move for dismissal of the Complaint for lack of ripeness and lack of subject matter jurisdiction.

The individual Defendants also cross-move for dismissal as against them, as there are no claims made against them other than in their official capacities.

STATEMENT OF FACTS⁵

Plaintiff's Complaint alleges jurisdiction arising under the United States Constitution pursuant to 28 U.S.C. §§ 1331 and 1343 (federal question and civil rights) and 28 U.S.C. § 1367(a) (supplemental jurisdiction for state law claims). (Exhibit A at p. 5 para. 9).

In October 2010 the Chughtai Foundation (Chughtai or Applicant) signed a contract to purchase the property known as the Redwood Inn. (Exhibit A at pp. 9-10 paras. 28-29).

Plaintiff alleges that Chughtai assigned its right to purchase the Property to Plaintiff. (Exhibit A at p. 9 para. 28).

On January 6, 2011 Chughtai submitted a preliminary site plan application to the Township Planning Board (Planning Board). (Exhibit A at p. 10 para. 31). The application indicated that Chughtai intended to use the Property as a house of worship for daily and weekly prayers, holiday services, a pre-kindergarten through 8th grade school, a day care center and to provide weekend religious education classes and community services and activities. (Exhibit A at p. 10 para. 31).

The Statement of Facts is based upon the allegations in the Complaint and upon matters of public record.

All Exhibits referenced herein are annexed to the Affidavit of Howard D. Cohen submitted herewith.

Plaintiff alleges that sometime before the Planning Board meeting scheduled for January 24, 2011 an un-named organization issued a press release urging members to attend the January 24, 2011 Planning Board meeting at which Plaintiff's site plan application would be considered. (Exhibit A at p. 12 para 37). There are no allegations that any municipal official or entity engaged in any such conduct or has any association with the un-named organization.

On January 24, 2011 the Planning Board met in public session to hear Chughtai's site plan application. The hearing had to be adjourned because the hearing location at the Township municipal building could not accommodate the large number of people who attended the hearing and because issues were raised by an objector's attorney regarding the insufficiency of notice given by the Applicant. (Exhibit A at p. 12 para. 38; Exhibit B at T5:3-9:7).

On January 24, 2011 the Planning Board, pursuant to motion made and seconded, requested that the Township Planner prepare a Reexamination Report regarding schools, country clubs, open air clubs and houses of worship. (Exhibit C at T3:14-5:18).

The MLUL, N.J.S.A. 40:55D-1 et seq. requires that a Reexamination Report contain the following:

a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.

- b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
- c. The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation....
- d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

N.J.S.A. 40:55D-89.

Pursuant to the request of the Planning Board, the Township Planner, Scarlett Doyle, prepared the Reexamination Report in accordance with the requirements of the MLUL. (Exhibit D).

The Reexamination Report recognized that there had been "significant changes in assumptions/policies" since the last Reexamination Report, specifically regarding "[a]ssembly uses such as open air clubs, schools, country clubs and houses of worship [which] may attract a significant number of persons which could affect the character of a residential neighborhood." The Reexamination Report acknowledged further that the Township remained "committed to continue to permit schools, country clubs and open air clubs in certain residential areas, and houses of worship as a permitted or conditional use in all zones", and that "it is necessary to introduce ordinance requirements to assure that the participants will

have convenient travel to their point of assemblage without unduly affecting the abutting and nearby residential neighborhoods." (Id. at pp. 6-7).

The Reexamination Report recommended that schools, country clubs, outdoor recreation facilities and houses of worship within residential zones be required to have principal access from a state highway, a country roadway, or from four specified roadways within the Township. (<u>Id</u>. at pp. 7-8).

On February 8, 2011 the Planning Board considered the Reexamination Report. Although not required under the MLUL prior to voting upon adoption of a Reexamination Report, the Planning Board opened the meeting to public comment and heard public statements, including statements by the Plaintiff and its legal representative. (Exhibit E). The Reexamination Report, dated February 8, 2011 was adopted by Resolution of same date (Exhibit E at p. 5).

The Reexamination Report recommended in pertinent part:

The residential zones are currently permitted, with conditions for the conditional uses, to be pierced by assembly uses such as schools, country clubs, open air clubs, and houses of worship. It is appropriate to continue to permit these uses, but with the application of greater controls in order to assure preservation and maintenance of a strong residential neighborhood character.

Specifically it was recommended that:

...where schools, country clubs, open air clubs and houses of worship are to be located in residential zones, these uses should be required to have the principal access from a state highway, a county roadway, or from [four specified roadways] in the

township, ...

(Exhibit D at p. 7 para. D).

Plaintiff alleges that after adoption of the Reexamination Report and before introduction by the Township Council (Council) of Ordinance 11-03, there was negative press and other negative reaction regarding the proposed use of the Property. (Exhibit A at p. 19 para. 61). There are no allegations that any municipal official or entity engaged in any such conduct.

Pursuant to N.J.S.A. 40:55D-62, on February 17, 2011 the Council introduced 11-03. The Ordinance, incorporating the recommendations made by the Township Planner in the Reexamination Report, provided, among other things, that country clubs, open air clubs, houses of worship and schools shall be conditional permitted uses in residential zones only if they are located on sites having principal access on roads consistent with the February 8, 2011 Reexamination Report. (Exhibit F).

Plaintiff alleges that between February 17, 2011 and February 28, 2011 there was additional negative press regarding the proposed use of the Property. (Exhibit A at p. 20 para. 66). There are no allegations that any municipal official or entity engaged in any such conduct.

On February 28, 2011 the Council, pursuant to the requirements of N.J.S.A. 40:55D-26a and 64, referred 11-03 to the Planning Board which, although not

required to do so by the MLUL, opened the meeting to public comment, and again heard arguments from counsel for Chughtai and interested parties and heard statements from numerous members of the public. The Planning Board determined that 11-03 was consistent with the Reexamination Report; and, albeit inconsistent with the Master Plan because the Master Plan did not explicitly address the details of the Ordinance, was nevertheless consistent with the general purposes, objectives and intent of the Master Plan. On motion adopted by the Planning Board, the proposed Ordinance (11-03) was referred back to the Council with a recommendation that it be adopted. (Exhibit G at T6:1-64:4; Exhibit H).

Also on February 28, 2011 the Planning Board continued the public hearing on Chughtai's site plan application. Plaintiff alleges that some 650 people attended the hearing. (Exhibit A at p. 20 para. 67). Jurisdictional issues were raised by counsel for objectors (i.e., whether the Planning Board could hear the application) and addressed, and counsel for Chughtai requested that the hearing proceed with testimony and evidence regarding the site plan application, with the full understanding that testimony would not be completed that evening and that if the Council adopted 11-03 on March 14, 2011, it would divest the Planning Board of jurisdiction and, under the MLUL, N.J.S.A. 40:55D-69, 70d, vest jurisdiction in the Zoning Board, and require Chughtai to amend its application to add a "d" (N.J.S.A. 40:55D-70d) variance request and pursue that application before the

Zoning Board. (Exhibit G at T64:17-80:13). Counsel for Chughtai stated that if Ordinance 11-03 was adopted, "we will have to refile with the Board of Adjustment, and we will do so." (Exhibit G at T73:1-7). At the February 28, 2011 hearing, Counsel for Chughtai presented lengthy testimony from an Imam. (Exhibit G at T90:3-177:10). At the end of his testimony the hearing was adjourned and given a continuation date of March 28, 2011 in the event the matter remained within the jurisdiction of the Planning Board. (Exhibit G at T176:25-177:10).

On March 2, 2011 the Township Planner sent a memorandum to the Council discussing reports contributing to planning goals of the February 8, 2011 Reexamination Report. (Exhibit I).

On March 14, 2011 the Council held a public hearing on proposed Ordinance 11-03. (Exhibit J). The hearing commenced at approximately 7:30 p.m. and concluded at approximately 11:05 p.m. After extensive public comment regarding the proposed Ordinance (Exhibit J at T10:21-155:10), it was adopted by unanimous vote of the Council. (Exhibit J at T172:1-172:22).

Pursuant to N.J.S.A. 40:55D-62a, the Council adopted a Resolution setting forth the reasons for adopting 11-03. (Exhibit K). 11-03 became effective April 5, 2011, twenty days after its adoption and execution by the Mayor.

On April 12, 2011 Plaintiff's site plan application was dismissed by the Planning Board for lack of jurisdiction and the Applicant was advised that if the

application was amended to request a "d" variance it could be transferred to the Zoning Board. The dismissal was memorialized in a Resolution adopted by the Planning Board on May 10, 2011. (Exhibit L).

On March 23, 2011, counsel for Chughtai, Lloyd Tubman, Esq., wrote to the Planning Board and confirmed that the Planning Board no longer had jurisdiction over the application and that only the Zoning Board had jurisdiction to hear a variance application under N.J.S.A. 40:55D-70d. (Exhibit M).

On April 26, 2011 Plaintiff filed its initial Complaint.

On or about May 9, 2011, Ms. Tubman wrote to the Planning Board filing additional sets of the previously submitted revised site plans, conditional use plans and preliminary site plan, requesting that the Planning Board hear the renewed application. The letter did not cite any legal authority under which the Planning Board could hear the renewed application. (Exhibit N).

On May 10, 2011 the Planning Board adopted a Memorializing Resolution dismissing Plaintiff's original site plan application, indicating that the "Planning Department of the Township of Bridgewater arranged for a Special Meeting of the Zoning Board of Adjustment of the Township of Bridgewater for May 24, 2011 at the High School to hear the Chughtai Foundation application if it is amended to add the 'd' variance;..." (Exhibit L at p. 2).

Chughtai refused to proceed before the Zoning Board. Instead Plaintiff filed its Complaint and the pending motion for preliminary injunctive relief seeking to void 03-11 and to require that Chughtai's site plan application be heard by the Planning Board.

On May 18, 2011, Plaintiff filed its First Amended Complaint. (Exhibit A).

On May 23, 2011 the Planning Board adopted a Resolution dismissing for lack of jurisdiction Chughtai's refiled site plan application. (Exhibit O).

On May 25, 2011, counsel for defendants herein provided to Peter Zimroth, Esq., and all counsel for Plaintiff, eight dates that the Zoning Board set aside to hear Plaintiff's application for a variance if one was filed. Those dates are July 16 and 26; August 3, 16, 23, and 30; September 20, and 27, 2011. The venue for the hearings is Bridgewater-Raritan High School. (Exhibit P).

STANDARD OF REVIEW ON MOTION TO DISMISS

On a motion to dismiss pursuant to <u>Fed. R. Civ. P.</u> 12(b)(6), "the Court must take all factual allegations and reasonable inferences as true and view them in the light most favorable to the Plaintiff." <u>See, e.g., Dobrek v. Phelan, No.</u> 04-3391, U.S. App. LEXIS 17369, at *8 (3d. Cir. Aug. 17, 2005); <u>Ward v. Arm & Hammer,</u> 341 <u>F. Supp 2d</u> 499, 500 (D.N.J. 2004). "If, after viewing the allegations in the complaint in the light most favorable to the plaintiff, it appears beyond doubt that no relief could be granted 'under any set of facts which could prove consistent with

the allegations,' a court shall dismiss a complaint for failure to state a claim." Ward, 341 F. Supp. 2d at 501 (citing Hishon v. King & Spalding, 467 U.S. 69, 73, 81 L.Ed. 2d 59, 104 S. Ct. 2229 (1984)); Zynn v. O'Donnell, 688 F. 2d 940, 941 (3d Cir. 1982)). The Court, however, need not accept as true, legal conclusions or unwarranted inferences. Morse v. Lower Merion Sch. Dist., 132 F. 3d 902, 906 (3d Cir. 1997); Ward, 341 F. Supp. 2d at 500-01.

In addition to the Complaint, the Court may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F. 3d 1380, 1384 n.2 (3d Cir. 1994); Ward, 341 F. Supp 2d at 500-01.

LEGAL ARGUMENT

POINT I

THIS COURT LACKS JURISDICTION OVER PLAINTIFF'S FEDERAL CLAIMS AS THEY ARE NOT RIPE

Plaintiff has raced into federal court well before the controversy is ripe for federal adjudication, and Defendants respectfully submit that this Court must dismiss all federal claims for lack of jurisdiction. See Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 186 (1985) (takings claim "not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations

to the property at issue"); Artway v. Attorney Gen. of the State of N.J., 81 F.3d 1235, 1246-47 (3d Cir. 1996) ("The basic rationale of the ripeness requirement is 'to prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements.") (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967)). The presumption is against ripeness, and, therefore, jurisdiction does not lie unless the local authority's final decision on land use "appears affirmatively from the record." Renne v. Geary, 501 U.S. 312, 316 (1991) (internal quotation marks omitted). Murphy v. New Milford Zoning Comm'n., 402 F. 3d 342, 347 (2d Cir. 2005). (See also, Congregation Anshei Roosevelt v. Planning and Zoning Board of Borough of Roosevelt, 338 Fed. Appx. 214, 218-19 (3d Cir 2009), affg. No. 07-4109, 2008 U.S. Dist. Lexis 63994 (D.N.J. August 21, 2008) finding that the congregation's federal and state law claims were not ripe where a planning board had determined that the congregation's use of its facilities as a residential school (a yeshiva) violated the borough's zoning ordinances and the congregation did not apply for a variance before filing a claim in federal court).

Plaintiffs must sustain a "high burden" of showing that there is a "final, definitive position from a local authority to assess precisely how they can use their property." Murphy v. New Milford Zoning Comm'n, 402 F.3d 342, 347 (2d Cir. 2005) (citing Hoehne v. County of San Benito, 870 F.2d 529, 533 (9th Cir. 1989));

see also Acierno v. Mitchell, 6 F.3d 970, 975 (3d Cir. 1993); Congregation Anshei Roosevelt v. Planning and Zoning Board of Borough of Roosevelt, 338 Fed. Appx. 214, 218-19 (3d Cir 2009).

Plaintiff invokes the First and Fourteenth Amendments of the Constitution and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §2000cc et seq., to argue that they must be permitted to establish a house of worship as a conditionally permitted use on the Property. They have invoked federal court jurisdiction well before following standard land use procedures. The Zoning Board has no application for a variance before it and, therefore, has not rendered any ruling that is ripe for such review. Nothing in the Complaint, or the public record, indicates Plaintiff has ever filed a variance application, let alone received a final land use decision with respect to its intent to construct and operate a house of worship use on the Property. Murphy, 402 F.3d at 347 (stating that for zoning dispute claim to be ripe for review, plaintiff must "prove that we can look to a final, definitive position from a local authority to assess precisely how they can use their property.").

The facts of this case mandate dismissal on ripeness grounds because Plaintiff has not availed itself of the process that would result in its receipt of a final determination from the government regarding the use of its property for a house of worship in the residential district. See Murphy, 402 F.3d at 347;

Congregation Anshei Roosevelt v. Planning and Zoning Board of Borough of Roosevelt, 338 Fed. Appx. 214, 218-19 (3d Cir 2009), House of Fire Christian Church v. Zoning Bd. of Adjustment of Clifton, 379 N.J. Super. 526, 547 (App. Div. 2005), 879 A. 2d 1212, ("Because the Church's application must be reconsidered by the Board, it is not possible, at this stage of the proceedings, to conclude that requiring the church to comply with the conditional use ordinance (or to successfully seek variance relief therefrom) is anything more than an inconvenience to the church."); see also Rosendale v. LeJeune, No. 06-2258-cv, 2007 U.S. App. LEXIS 11500, at *2-3 (2d Cir. May 16, 2007); Lost Trail, LLC v. Town of Weston, 485 F. Supp. 2d 59, 63-64 (D. Conn. 2007); Sterngass v. Town of Woodbury, 433 F. Supp. 2d 351, 356 (S.D.N.Y. 2006).

The only determination made regarding Plaintiff's site plan application is that the Planning Board does not have jurisdiction over the matter. (Exhibits L and O). That is not a final determination on the merits under the federal ripeness doctrine. Although acknowledging that the Zoning Board has jurisdiction to hear an application for a variance, and stating that it intended to make application to that Board, Plaintiff did not file for variance relief before going federal court. See Murphy, 402 F.3d at 353 ("[F]ailure to pursue a variance prevents a federal challenge to a local land use decision from becoming ripe.") (citing Williamson County, supra 473 U.S. at 190); see also, Congregation Anshei Roosevelt v.

Planning and Zoning Board of Borough of Roosevelt, 338 Fed. Appx. 214, 218-19 (3d Cir 2009).

RLUIPA also disfavors federal court intervention in religious land use cases before the religious landowner has fulfilled the requirements of the local government's process. The legislative history states that RLUIPA was not intended to "relieve religious institutions from applying for variances, special permits or exceptions, where available without discrimination or unfair delay." See 146 Cong. Rec. S7774-01, S7776 (daily ed. July 27, 2000) (Joint Statement of Sen. Orrin Hatch and Sen. Edward Kennedy). Plaintiff's failure to file a variance application and take advantage of the dates that the Zoning Board has made available for review of any such application makes the First Amended Complaint unripe for federal judicial review.

Courts have followed Congress' intent on this point, and required parties to go through the land use process and to wait for local government final determinations. See, e.g., Taylor Inv., Ltd. v. Upper Darby Twp., 983 F.2d 1285, 1291 (3d Cir. 1993) (recognizing that "local . . . bodies are better able than federal courts" to address such disputes) (citation omitted); San Jose Christian Coll. v. City of Morgan Hill, 360 F.3d 1024, 1036-37 (9th Cir. 2004); cf. Eide v. Sarasota County, 908 F.2d 716, 726 n.17 (11th Cir. 1990) ("[Z]oning is a delicate area where a county's power should not be usurped without giving the county an

opportunity to consider concrete facts on the merits prior to a court suit.").

Simply put, Plaintiff has failed to present this Court with any final determination by the Zoning Board as to how the Property may be utilized. For this reason all of Plaintiff's federal claims must be dismissed.

1. Plaintiff's First Amended Complaint Does Not Allege Facts That Would Justify Federal Court Involvement Before the Local Authority Has Had Any Opportunity to Consider an Application for the Proposed Use.

To avoid dismissal of the First Amended Complaint for want of ripeness, Plaintiff must demonstrate either intentional discrimination or that pursuing local processes would prove futile. See Murphy, 402 F.3d at 351.

There are no facts in the First Amended Complaint or in the application for preliminary injunctive relief that support a claim of intentional discrimination on the part of the Township, the Planning Board, the Council or any of their members, or the Mayor acting in their official capacities.

Plaintiff's First Amended Complaint, albeit replete with allegations of religious discrimination does not set forth one fact evidencing discriminatory intent by any Defendant, and this Court may not attribute the views of private individuals (i.e., statements by the public) to the government. ("[U]nconstitutional actions cannot be diffusely attributed to a municipality as an abstract entity." "[M]unicipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, 'that is, acts which the municipality has

officially sanctioned or ordered." <u>Simmons</u> at 1062, fn. 15 <u>citing City of St. Louis</u> v. <u>Praprotnik</u>, 108 <u>S. Ct</u>. 915, 923). No such evidence exists here.

The Complaint and the motion for preliminary injunctive relief also utterly fail to show that the Township has done anything to indicate that an application for a variance for house of worship use is futile. To the contrary, the Township made available a special meeting of the Zoning Board on May 24, 2011 to hear Plaintiff's application for a variance, if filed, and related conditional use and preliminary site plan application, as well as eight additional dates to hear such application. (See fn. 2 supra). The Zoning Board is a separate municipal quasi-judicial agency organized pursuant to N.J.S.A. 40:55D-69. No members of the Zoning Board are also members of the Planning Board, the Council or the Mayor. Plaintiff has failed or refused to take advantage of the dates offered by the Zoning Board, much less file the required application for variance relief under N.J.S.A. 40:55D-70d(3). Simply stated, Plaintiff has failed or refused to seek and obtain a final decision by the Zoning Board.

The Township's document production (provided as an accommodation to Plaintiff) shows not one shred of evidence of religious bias, discrimination or animus on the part of any of the Defendants.

POINT II

PLAINTIFF'S STATE LAW CLAIMS MUST BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION

The Complaint also contains state law claims brought before this Court on the basis of supplemental jurisdiction.

28 U.S.C. § 1367(a)(b)(3) provides in part:

I. Except as provided in subsections (b) and (c) or as expressly provided otherwise by the Federal statute, in any civil action of which the district courts have jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution ... (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if ... (3) the district court has dismissed all claims over which it has original jurisdiction,...

(Emphasis added).

The discretion to dismiss claims based upon state law can be exercised under the above statute if the Court grants Defendants' dismissal motion and dismisses the claims that arise under federal law. When such federal claims are disposed of, it is appropriate for the pendent jurisdiction state law claims to be dismissed as well. Mark v. Borough of Hatboro, 856 F. Supp. 966 (E.D. Pa. 1994) aff'd. 51 F. 3d 1137 (3d Cir. 1994), certif. denied, 516 U.S. 858 (1995). Whether or not to

exercise jurisdiction is left to the sound discretion of the district court. <u>Gary v. Long</u>, 59 <u>F. 3d</u> 1391 (D.C. Cir. 1995), <u>certif. denied</u>, 516 <u>U.S.</u> 1011 (1995); <u>see also Johnson v. Cullen</u>, 925 <u>F. Supp</u>. 244 (D. Del. 1996). Pendent state law claims should be dismissed to avoid needless decisions of state law. <u>United Mine Workers v. Gibbs</u>, 383 <u>U.S.</u> 715, 726 (1966).

Thus when this Court grants the motion to dismiss the federal claims, the state law claims that have been brought asserting jurisdiction pursuant to 28 U.S.C. § 1367 should also be dismissed.

POINT III

THE INDIVIDUAL DEFENDANTS NAMED IN THEIR OFFICIAL CAPACITIES SHOULD BE DISMISSED

Plaintiff names as Defendants, each member of the Planning Board, each member of the Township Council and the Mayor, each in, and only in, their official capacity.

"Official capacity suits...'generally represent only another way of pleading an action against an entity of which an officer is an agent.' As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.

Bass v. Attardi, 868 F. 2d 45, 51 (3d. Cir. 1989), quoting Kentucky v. Graham, 473 U.S. 159, 165-66, 87 L. Ed. 2d 114, 105 S. Ct. 3099 (1985); "It is not a suit against

the official personally, for the real party in interest is the entity. ... A plaintiff seeking to recover on a damages judgment in an official capacity suit must look to the government entity itself." Kentucky v. Graham, at 166 (emphasis in original), and, "[t]here is no longer a need to bring official-capacity actions against local government officials ... for local government units can be sued directly for damages and injunctive or declaratory relief." Id. at 167, citing Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690, n. 55 (1978).

Here, the Township, the Planning Board, the Council and the Mayor have all been named as Defendants and served in their official capacities. There are no allegations against any of the individual Defendants in their personal capacities. Under Bass, Kentucky v. Graham and Monell, supra, there is neither the need nor the basis to sue the individual defendants in their official capacities and the claims against them should be dismissed with prejudice.

OPPOSITION TO PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF

POINT I

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF IS NOT RIPE FOR FEDERAL JURISDICTION

The lack of ripeness of Plaintiff's claims is also fatal to its motion for preliminary injunctive relief. "The ripeness doctrine, like other justiciability doctrines, derives ultimately from the requirement in Article III of the United States Constitution that federal courts are only empowered to decide cases and controversies. 'Even when the constitutional minimum has been met, however, prudential considerations may still counsel judicial restraint.'" Nextel Communications v. City of Margate, 305 F.3d 188, 192 (3d Cir. 2002) (citations omitted). "Ripeness is an issue that we must raise sua sponte if the parties do not raise it ... and is applicable to cases involving motions for preliminary injunction..."

In <u>Nextel</u>, the plaintiff challenged an action by a local zoning board that charged the plaintiff with non-compliance with a building permit during the construction of a rooftop equipment cabinet. (At 190-191). Testimony before the zoning board on behalf of plaintiff during the application process indicated that the

equipment cabinet would be five and one-half feet by fourteen feet. Plans submitted by plaintiff had indicated the cabinet would be eight feet by fourteen feet. The zoning board approved the application and noted in a resolution that the cabinet would be eight feet by fourteen feet. When Nextel constructed the cabinet a neighbor complained to the zoning board that the cabinet was not in compliance with the approvals obtained from the zoning board. The zoning board issued a Notice of Violation and Order to Terminate. Nextel provided proof that the cabinet was constructed in conformance with the zoning board's resolution, but the zoning board did not withdraw the Notice of Violation. (Id.)

The zoning board sought a rehearing to address the situation. Nextel asserted that the zoning board had no authority to conduct a rehearing, and, after trying unsuccessfully to persuade the zoning board to withdraw the matter, filed suit in the District Court, claiming discrimination among other things and seeking a preliminary injunction. (At 191-192). The District Court denied Nextel's application and Nextel appealed. The Court of Appeals, acknowledging Nextel's claims "that allowing the rehearing to go forward exposes it to hardship in the form of time and expense, as well as the possibility of further litigation" determined first that "the process Nextel challenges is not final." (At 193). The Court of Appeals determined further that even though the zoning board had already refused to approve the as-built plans "the possibility remains that the Zoning Board will

approve the equipment cabinet as built following the rehearing." (Id.). The Court also held, that should the zoning board "interfere with the operation of Nextel's previously approved telecommunications facility, Nextel may well have claims arising under the Telecommunications Act of 1996 and perhaps incur significant damages. However, this can only be determined after the Zoning Board reaches its ultimate decision." (At 194). The Nextel Court cited Ohio Forestry Ass'n Inc. v. Sierra Club, 523 U.S. 726, 735, 140 L. Ed. 2d 921, 118 S.Ct. 1665 (1998) for the proposition that "[t]he ripeness doctrine reflects a judgment that the disadvantages of a premature review that may prove too abstract or unnecessary ordinarily outweigh the additional costs of--even repetitive--post-implementation litigation." (See also Joint Statement of Sen. Orrin Hatch and Sen. Edward Kennedy. RLUIPA was not intended to "relieve religious institutions from applying for variances, special permits or exceptions, where available without discrimination or unfair delay." 146 Cong. Rec. S7774-01, S7776 (daily ed. July 27, 2000)); (House of Fire Christian Church, supra, "mere inconvenience" of applying for a variance does not constitute violation of RLUIPA.)

In <u>Acierno v. Mitchell</u>, 6 <u>F. 3d</u> 970 (3d Cir. 1993), a landowner who had received approval for a development plan was then twice denied a building permit to construct a commercial building on his property. (At 971-973). The landowner brought suit under 42 U.S.C. § 1983 alleging that the local zoning department and

zoning official had violated his constitutional rights. (At 973). The Trial Court denied the defendants' motion for summary judgment and granted the landowner a preliminary injunction, directing the zoning department and zoning official to review his application for a building permit. (<u>Id</u>.). Even though the issue of ripeness was not raised for the first time until the matter was appealed to the Third Circuit, the Court of Appeals, recognizing that "considerations of ripeness are sufficiently important that we are required to raise the issue <u>sua sponte</u> even though the parties do not," (<u>citing Felmeister v. Office of Attorney Ethics</u>, 856 <u>F. 2d</u> 529, 535 (3d Cir (1988), vacated the district court's judgment and remanded with instructions to dismiss the complaint without prejudice as it determined the matter was not ripe for federal adjudication. (<u>Acierno</u> at 978).

The Court of Appeals in Acierno referenced its own opinion in Taylor Inv., Ltd. v. Upper Darby Tp., 983 F. 2d 1285 (3d Cir 1993) wherein the Court held that "a constitutional challenge to a land use decision is not ripe unless 'state authorities [are] given an opportunity to "arrive at a final, definitive position regarding how [they] will apply the regulations at issue to the particular land in question.'" Taylor at 1291. See also Pace Resources, Inc., v. Shrewsbury Tp., 808 F. 2d 1023, 1029 (3d Cir.) ("mature constitutional claim based on land-use regulation requires that intended use of property was 'conclusively barred.'"), cert. denied, 482 U.S. 906, 96 L.Ed. 2d 375, 107 S. Ct. 2482 (1997).

The Court of Appeals also held that it required finality "because 'land-use regulation generally affects a broad spectrum of persons and social interests, and ... local political bodies are better able than federal courts to assess the benefits and burdens of such legislation." Acierno at 974, citing Taylor at 1291. "Moreover, 'local agencies charged with administering regulations governing property development are singularly flexible institutions; what they take with one hand they may give back with the other.;" Acierno at 975, citations omitted. "Accordingly ... the property owner ... has a high burden of proving that a final decision has been reached by the agency before it may seek compensatory or injunctive relief in federal court on federal constitutional grounds." Acierno at 975. (Citations omitted; emphasis added.).

Because Plaintiff cannot meet its burden of demonstrating that a final decision has been reached by the Township as to how the Property may be utilized, its application for injunctive relief is not ripe for consideration by this Court and must be denied.

POINT II

PLAINTIFF FAILS TO MEET THE TEST FOR PRELIMINARY INJUNCTIVE RELIEF

The four-factor test for the grant of a preliminary injunction is as follows:

1) the likelihood that the plaintiff will prevail on the merits at the final hearing; 2) the extent to which the plaintiff is

being irreparably harmed by the conduct complained of; 3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is issued; and 4) the public interest.

New Jersey Hospital Ass'n v. Waldman, 73 F.3d 509, 512 (3d Cir. 1995).

"The injunction shall issue <u>only if the plaintiff produces evidence sufficient</u> to convince the district court that all four factors favor preliminary relief." <u>Id</u>. at 513. "[A] plaintiff's failure to establish <u>any element</u> in its favor renders a preliminary injunction inappropriate." <u>NutraSweet Co. v. Vit-Mar Enterprises, Inc.</u>, 176 <u>F. 3d</u> 151, 153 (3d Cir. 1999). (Emphasis added).

When the above factors are applied herein, it is clear, for the reasons stated below, that Plaintiff cannot meet the test for injunctive relief.

There is No Likelihood of Success on the Merits

Plaintiff contends that it is likely to prevail on the merits of the case because it can demonstrate inferentially the discriminatory character of the ordinance by pointing to "its timing, its effect and its spurious justification." (P. Br. at 16)⁸. This contention merely emphasizes and confirms that Plaintiff has no evidence that any Defendant engaged in any conduct evidencing discrimination or religious bias or animus. The cases upon which Plaintiff relies in support of its position are inapposite as none of those cases were positioned in a manner in which ripeness of

⁸ "P. Br. at " herein refers to Plaintiff's moving Brief.

the plaintiffs' claims was an issue. (P. Br. at pp. 15-19). Plaintiff admits in its brief that "[t]he Ordinance on its face applies to dozens if not hundreds of properties within the Township's residential zones. This lawsuit is about just one." (P. Br. at p. 27). Indeed that is true, - it is a lawsuit brought seeking invalidation of 11-03, which potentially applies to "dozens if not hundreds of properties" brought by just one potentially affected property owner, Plaintiff, before there has been a final determination by the Township as to how the local zoning ordinances will be applied to Plaintiff's property.

Although the adoption by the Council of 11-03 is contemporaneous with the site plan application of Plaintiff, the Declaration of Scarlett Doyle, the Township's Professional Planner demonstrates clearly that the February 8, 2011 Reexamination Report and 11-03 address not only houses of worship, but many types of large assembly uses within the Township, and "are designed to protect, preserve and maintain strong single family residential neighborhood character in the areas where the conditional uses will be allowed." (Doyle Declaration at para. 12 and Exhibit D at pp. 4-8).

Plaintiff cites no case where a municipal ordinance, procedurally sound, has been invalidated or enjoined on an application for injunctive relief. This is to be expected especially where, as here, there has been no final determination as to how the Ordinance here will be applied to Plaintiff's property. Plaintiff does not, in its First Amended Complaint, allege any procedural infirmity in adoption of Ordinance 11-03.9

Plaintiff, in order to prevail, will need to overcome several additional hurdles. "Zoning ordinances and their amendments, adopted pursuant to N.J.S.A. 40:55D-62(a), are presumptively valid, and the presumption can only be overcome by sufficient proof that the ordinance is arbitrary, capricious or unreasonable." House of Fire Christian Church v. Zoning Board of Adjustment of the City of Clifton, 379 N.J. Super. 526, 541 (App. Div. 2005), 879 A. 2d 1212. "That a municipality may change its zoning ordinance during the pendency of a site plan application is beyond question. This is so even if the ordinance is amended in direct response to a particular application". Id., citing Manalapan Realty, L.P. v. Tp. of Manalapan, 140 N.J. 366, 378-79, 658 A.2d 1230 (1995). "Because the enactment of, or amendment to, a zoning ordinance is a legislative act, [a municipality] is permitted to enact an amendment in response to objections to a

The Reexamination Report (Exhibit D) was prepared and adopted on February 8, 2011 pursuant to N.J.S.A. 40:55D-89; 11-03 (Exhibit F) was introduced on February 23, 2011 pursuant to N.J.S.A. 40:49-2a; 11-03 was referred to the Planning Board pursuant to N.J.S.A. 40:55D-64; the Planning Board issued its referral report on March 1, 2011 (Exhibit H); a public hearing on 11-03 was held on March 14, 2011 pursuant to N.J.S.A. 40:49-2b, c; 11-03 was adopted by the Township Council on March 14, 2011 and a reasons resolution was contemporaneously adopted pursuant to N.J.S.A. 40:55D-62a (Exhibit K). 11-03 became effective April 5, 2011.

proposed use of land as long as the amendment is consistent with the [MLUL].' ... Such action shall, 'in the absence of a showing to the contrary, be presumed to have been made in good faith and for the public interest and deemed lawfully controlling on the application." House of Fire at 541-42. (Citations omitted. Bracketed material in original). Thus Plaintiff must overcome the presumption of validity and that the timing of adoption of 11-03 has no legal significance. Further, "Federal judicial interference with a state zoning board's quasi-legislative decisions, like invalidation of legislation for 'irrationality' or 'arbitrariness,' is proper only if the governmental body could have had no legitimate reason for its decision." Phillips v. Borough of Keyport, 107 F.3d 164, 186 (3d Cir. 1997) (Alito, J., concurring and dissenting) (quoting Pace Resources, Inc., v. Shrewsbury Twp., 808 F.2d 1023, 1034 (3d Cir. 1987)) (emphasis added in Pace.) That is not the case here.

As to the effect of 11-03, Plaintiff has the initial burden of demonstrating that 11-03 "actually imposes a 'substantial burden' on religious exercise." <u>Civil Liberties for Urban Believers v. City of Chicago</u>, 342 F.3d 752, 760 (7th Cir. 2003), <u>cert. denied</u>, 541 <u>U.S.</u> 1096, 124 <u>S. Ct.</u> 2186, 159 <u>L.Ed.</u> 2d 262 (2004). The only fact that Plaintiff alleges to meet this burden is that it is required to apply to

the Zoning Board for a variance pursuant to N.J.S.A. 40:55D-70d. As is made clear from the legislative history of RLUIPA cited above, having to apply for a variance does not constitute a substantial burden. Any delay that Plaintiff might experience as a result of that requirement is now self-imposed as it has failed and refused to avail itself of the opportunity to present its application at meetings of the Zoning Board (Exhibit P), and begin prosecution of its application for a variance and has instead filed suit. Nor do the costs associated with such an application constitute such a burden. See e.g., Ohio Forestry Ass'n, supra. at 735.

Indeed Plaintiff concedes that 11-03 would only be subject to RLUIPA in the event that it "'limits or restricts a claimant's use or development of land

¹⁰ The requirements for obtaining a "d" variance for a house of worship under the MLUL and applicable case law were summarized by the court in House of Fire Christian Church, supra. To obtain a conditional use variance, an applicant must satisfy both the so-called positive and negative criteria. Because a house of worship is deemed to be an inherently beneficial use under New Jersey law, the use is considered to serve the general welfare and in and of itself satisfies the positive criteria. With regard to the negative criteria, the reviewing board is to engage in a four part balancing test in which it 1) identifies the public interest at stake; 2) identifies any detrimental effects that will ensue from the granting of the variance; 3) considers whether any reasonable conditions may be imposed to reduce any detrimental effect; and 4) weighs the positive criteria against the negative and determines on balance whether the grant of the requested variance would cause a substantial detriment to the public good. 379 N.J. Super. at 534-36 (citations omitted). Requiring Plaintiff to apply to the Zoning Board is not a substantial burden; it is nothing more than an inconvenience. Id., at 547.

(including a structure affixed to land' in which the claimant (Al Falah) has a property interest.") (P. Br. at 15 citing 42 U.S.C. § 2000cc-5(5). The following statement contained in Plaintiff's Brief in support of its motion for preliminary injunctive relief underscores the tenuousness of its position both in the underlying lawsuit and in its application for preliminary injunctive relief: "Al Falah's proposed mosque was the only existing or proposed house of worship that would have been precluded from operation by the proposed change in zoning." (P. Br. at 10), (emphasis added). Whether the proposed mosque would be precluded from operation cannot be known because Plaintiff has failed and refused to prosecute an application for a variance before the Zoning Board. Plaintiff's claim of substantial burden is pure conjecture and does not constitute a basis for preliminary injunctive relief, nor can it prevent dismissal of Plaintiff's claims for want of ripeness.¹¹

Finally Plaintiff lists 11-03's "spurious justification" as circumstantially evidential of its discriminatory purpose. (P. Br. at p. 16). Plaintiff conveniently and completely ignores the history behind 11-03 as set forth in the 2011 Reexamination Report (Exhibit D) and the fact that it applies to four classes of uses involving

Plaintiff's arguments regarding substantial burden, strict-scrutiny analysis, and individualized assessment, are irrelevant to the ripeness analyses in which this Court must engage. Defendants do not concede the merits of Plaintiff's arguments in those regards. Rather Defendants assert, again, that Plaintiff's claims are premature as no final Zoning Board determination has been made as to Plaintiff's use of the Property.

large assemblages: country clubs, open air clubs, schools and houses of worship. (Exhibit E; Exhibit F). The Township was clearly concerned with the quality of life within its residential areas and has adopted regulations designed to address such issues involving large assemblages while still allowing for them in residential zones. Traffic, noise, safety and interference with the quiet enjoyment of residential neighborhoods were and are legitimate concerns for the Township in its land use planning, even where it may affect a house of worship. See Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) ("A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs."). "Nothing in the RLUIPA entitles [a religious land developer] to establish a church anywhere it wants." Petra Presbyterian Church v. Vill. of Northbrook, 409 F. Supp. 2d 1001, 1007 (N.D. Ill. 2006). The Third Circuit has held that in enacting RLUIPA, it was not Congress' intent "to force local governments to give any and all religious entities a free pass to locate wherever any secular institution or assembly is allowed." Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F. 3d 253, 268 (3d Cir. 2007). See also Vision Church v. Vill. of Long Grove, 468 F. 3d 975, 991 (7th Cir. 2006) (holding that special use designations are "instruments of municipal planning that allow city officials to retain review power over land uses that, although presumptively allowed, may pose special problems," and that conditioning an

intense use on obtaining a special use permit, which is analogous to obtaining a variance, is "justified by legitimate, non-discriminatory municipal planning goals.")

Plaintiff's Claims of Irreparable Harm

Plaintiff claims irreparable harm based upon a "loss of First Amendment Freedom" and an assertion that Plaintiff "will be prevented from putting [its] property to its intended use ..." (P. Br. at pp. 26-27).

Plaintiff states that the Redwood Inn closed in 2008 (Exhibit A at para. 2). Thus, Plaintiffs cannot have practiced their religious activities on the Property for at least that long. They are thus in no different position today than they have been for the last two-plus years in terms of their ability to exercise their rights. Thus no current exercise of their right to practice their religion is infringed. As stated throughout this brief, it is well-established that the requirements of going through the land use process do not constitute a burden on religion; much less do those requirements constitute irreparable injury.

Plaintiff's second claim is, again, purely speculative - and highlights what makes this matter unripe for federal jurisdiction. Plaintiff cannot know whether or to what extent it will be able to utilize the Property for religious purposes until it prosecutes its application before the Zoning Board.

Plaintiff also claims that it will suffer irreparable harm absent preliminary injunctive relief, because the Property is unique. ("If Ordinance 11-03 is enforced, Plaintiff[] will be prevented from putting [its] property to its intended use ..." (Id.). But "[n]othing in the RLUIPA entitles [a religious land developer] to establish a church anywhere it wants." (Petra, supra at 1007). Again, however, Plaintiff cannot know whether or to what extent it will be able to utilize the Property for religious purposes until it prosecutes its application before the Zoning Board.

Plaintiff's assertion of irreparable harm is completely speculative and highlights the fact that this matter is not ripe for federal jurisdiction. Plaintiff's assertion cannot serve as a basis for exercise of federal jurisdiction or as a basis for preliminary injunctive relief.

Balancing of Hardships and the Public Interest

In balancing the hardships, Plaintiff again points to its allegation of "immediate irreparable harm to their free exercise right." (P. Br. at p. 27). The Redwood Inn has been closed since 2008. Plaintiff has not held religious services or functions there of any type for at least two years. Thus they are in no different position in that regard now than they have been for the last two years. There can be no "immediate irreparable harm."

Additionally, it is well established in the legislative history of RLUIPA and the cases cited herein that religious land owners are not intended to be and are not

exempt from local land use regulations or procedures; that requiring a religious land owner to apply for a variance is not a substantial burden on the exercise of religion; and that the costs associated with land use procedures, including litigation costs, do not justify imposition of preliminary injunctive relief in the face of a case not ripe for federal jurisdiction.

Finally Plaintiff asserts that the public interest is served by prompt relief. (Id.). The public interest is served by Plaintiff proceeding before the Zoning Board for a final decision. Plaintiff seeks to avoid the required local land use process. Plaintiff wants this Court to invalidate a procedurally sound, presumptively valid, legislative act by the Township's elected officials and be immune from first obtaining a final determination by the Zoning Board. Such a demand flies in the face of settled law governing the local land use approval process and federal jurisprudence governing ripeness.

Plaintiff's State Law Claims

In support of its motion for preliminary injunctive relief Plaintiff brings allegations of violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12.5; the New Jersey Constitution, art. 1 § 3; and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (P. Br. at pp. 20-26).

Plaintiff's state law claims cannot serve as a basis for invoking federal jurisdiction and cannot overcome the lack of ripeness of Plaintiff's claims. As the

state law claims should be dismissed for lack of subject matter jurisdiction, so too should they be dismissed as support for Plaintiff's application for preliminary injunctive relief.

CONCLUSION

For all of the above reasons, Defendants respectfully request this Court deny Plaintiff's motion for injunctive relief and grant Defendants' motion to dismiss.

Respectfully submitted,

PARKER McCAY, P.A.

Attorneys for Defendants, Township of Bridgewater, Township Council of the Township of Bridgewater, and all parties named in their official capacity as members of Township Council of the Township of Bridgewater and the Mayor in her official capacity.

By: S/ HOWARD D. COHEN HOWARD D. COHEN

By: <u>S/MICHAEL E. SULLIVAN</u> MICHAEL E. SULLIVAN

VOGEL, CHAIT, COLLINS & SCHNEIDER

Attorneys for Defendants Planning Board of the Township of Bridgewater and all parties named in their official capacities as members of the Township Planning Board

BY: <u>/S/THOMAS F. COLLINS, JR.</u> THOMAS F. COLLINS, JR.

BY: <u>/S/DAVID H. SOLOWAY</u> DAVID H. SOLOWAY

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