IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

FRATERNITÉ NOTRE DAME, INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Case No. 15 CV 50312
COUNTY OF McHENRY,	)	
a body politic and corporate,	)	
	)	Magistrate Judge Johnston
Defendant.	)	

CONSENT DECREE

The Court makes the following findings of fact and conclusions of law, based upon the record, including the parties' stipulations, the pleadings, exhibits, information provided during settlement discussions and statements made at the public hearing.

The Plaintiff Fraternité Notre Dame, Inc. ("Plaintiff" or "Fraternité") is a Catholic religious order that was founded in 1971 and takes the Most Blessed Virgin Mary as its Model and Protectress. As stipulated, "[i]t is an essential part of the Fraternité Notre Dame's faith and mission to help persons who are suffering in their heart or in their body and are in need," and "Fraternité Notre Dame does so without any distinction of race, class, gender or creed, as the Christ has requested in His Gospel and as the religious orders have always done along the centuries." Dkt. 117

Plaintiff is the owner of record of approximately 95 acres of real property in McHenry County, Illinois, having a common address of 10002 Harmony Hill Road, Marengo, Illinois (the "Property").

In 2005, Plaintiff was granted a conditional use permit to construct on the Property a place of worship, including a monastery, a church, a seminary, convent, retreat center, a bakery, a printing press, and a cemetery.

In 2014, Plaintiff applied for an amendment to the 2005 conditional use permit to add approximately 30 acres of property, to allow for the building of a barn-like structure for winemaking, beer brewing, and a commercial kitchen, and to allow for the building and operation of a boarding school, a nursing home with hospice services, and a gift shop ("Petition").

Plaintiff subsequently amended the Petition to request height variations for the boarding school and nursing home.

The McHenry County Zoning Board of Appeals voted in favor of the Petition.

The McHenry County Board voted to deny the Petition.

On December 16, 2015, Plaintiff commenced an action against the County of McHenry ("Defendant" or "McHenry County"), captioned *Fraternité Notre Dame, Inc. v. County of McHenry*, No. 15 CV 50312, in the United States District Court for the Northern District of Illinois, Western Division (the "Action").

The Action alleges that the McHenry County Board's denial of Plaintiff's Petition violated Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution, violated the equal terms and substantial burden provisions of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and violated the Illinois Religious Freedom Restoration Act.

The Parties have submitted a Stipulation setting forth the basis for finding that the McHenry County Board's denial of Plaintiff's Petition violated RLUIPA's substantial burden provision as alleged in Count IV of Plaintiff's Complaint. Dkt. 117.

Among other agreements, the Stipulation contains the following: (1) the McHenry County Board's denial of the Petition imposed a substantial burden on Plaintiff's religious exercise by preventing Plaintiff's members from performing the charitable works for which God calls upon them to perform and thereby preventing Plaintiff from fulfilling its core

religious mission; (2) the McHenry County Board's denial of the Petition was not the least restrictive means of furthering any compelling government interest within the meaning of 42 U.S.C. § 2000cc(a); (3) the interests articulated by the McHenry County Board could have been served by an action less restrictive than wholesale denial of the Petition; and (4) the McHenry County Board's denial of the Petition, therefore, violated the substantial burden provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(a). *Id*.

RLUIPA contains a specific provision relating to land use as a religious exercise. The statute provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest. 42 U.S.C. § 2000cc. When there has been a denial of a religious institution's building application, courts appropriately speak of government action that directly coerces the religious institution to change its behavior. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F. 3d 338, 349 (2d Cir. 2007). A land use regulation imposes a substantial burden on religious exercise if it necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property—effectively impractical. *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 997 (7th Cir. 2006). But a burden need not be insuperable to be substantial. *Saints Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005). Under this provision, when municipalities claim they have compelling interests to enforce zoning regulations and ensure residents' safety through traffic regulations, they must show a compelling interest as to the particular location at issue, not a general interest. *Westchester Day Sch.*, 504 F.3d at 353.

Judicial admissions trump evidence. *Murrey v. United States*, 73 F. 3d 1448, 1455 (7th Cir. 1996). And a stipulation is a judicial admission. *Soo Line R.R. v. St. Louis S.W. Ry.,* 125 F.3d 481, 483 (7th Cir. 1997) ("Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them.")

After the Parties had reached a tentative settlement agreement, the Court held a public hearing on October 21, 2019, to allow interested people and entities to express their views regarding the propriety of the settlement agreement. Notice of the hearing was provided in various ways, including the manner required by the Illinois Open Meetings Act. 5 ILCS 120/1 *et seq*.; Dkts. 113-14. As a result of the notice, the Court received many letters before the hearing. *See* Dkts. 119-27. At the hearing, more than two dozen individuals spoke. The Court also received many letters after the hearing. *See* Dkts. 130-33, 135-55. This Court listened to and considered the concerns raised at the hearing as well as read all the correspondence submitted to the Court.

Nothing shows the full spectrum of a community like a properly noticed public hearing. The entire community is on display: the good, the bad, and the ugly. The public hearing in this case was no different. Some good people of McHenry County, even those that voiced concerns about the settlement agreement, made their views known. The Court thanks them for sharing their views. Some speakers bordered on being NIMBYers. And at least one speaker was just plain offensive.

The historical religious bigotry Plaintiff has been subjected to provides a painful backdrop to this case. Plaintiff, its members, and the Property have been subjected to repeated acts of religious bigotry. The Property has been vandalized and desecrated in the most vile ways. Plaintiff's members have been threatened with lynching. And they have been placed in peril. For example, Plaintiff's vehicles have been vandalized in ways that affected the operation of the vehicles, including the loosening of lug nuts and the severing of

brake fluid lines. Because of these criminal acts, Plaintiff installed fencing and cameras to protect its members and the Property.

Stunningly, a community member then staked out Plaintiff's property for hours upon hours, taking photographs of the fencing and cameras, all to prove his point that Plaintiff and its members were not "inviting." Installing security measures because of threats, vandalism, desecration, and potential physical harm is reasonable, not something that should be mocked.

Lots of people were willing to share their opinions regarding how Plaintiff should use its Property. But none of those opinions considered the legal requirements of RLUIPA.

Several speakers noted the various good works that Plaintiff and its members have accomplished in other locations in Northern Illinois. As to the Property, several neighbors voiced opposition and several voiced support. Some speakers spoke about their concerns regarding the Consent Decree's provision that would allow the consumption of alcohol made on-site at the Property, but these speakers failed to address that just down the road, the clubhouse at the local golf course serves alcohol from its fully-stocked bar, and now had video gambling. A related concern was that the location of the school on the same site as a brewery and winery would apparently tempt the children to imbibe. But if parents' liquor cabinets can be locked, Plaintiff can certainly find reasonable ways to secure the alcohol on the Property. Regardless, this concern is not a legitimate basis to infringe on Plaintiff's rights. Experience tells us that children and fire are a bad combination. But no reasonable local government would enact a fire code prohibiting menorahs in homes with children. One speaker, who had previously submitted two letters to the Court before the hearing, generally attacked the Catholic Church and anything related to it. Claims were made that the entire United States Supreme Court was comprised of Catholics—a claim that may surprise Justices Ginsberg, Breyer, and Kagan. Strangely, Plaintiff was whipsawed when some

opposed to the settlement agreement complained that Plaintiff was not officially affiliated with the Catholic Church—so it was not "Catholic enough"—while others opposed complained that the Catholic Church itself, and therefore Plaintiff, was corrupt, thereby making Plaintiff "too Catholic." One speaker said she had never seen Plaintiff's members perform any charitable works in the community, only to be immediately rebutted by the next speaker who gave a specific example of Plaintiff's charitable community works. One speaker planned on moving to the area but was now reluctant because of the conflict between the neighbors.

This Order should not be viewed as a sweeping disparagement against all of McHenry County or even all those opposed to the Consent Decree and the development of the Property. Without doubt, not all those opposed to the settlement agreement possessed religious animus. Instead, it appeared that many of these people were simply concerned about various aspects of the development on Plaintiff's Property. But often their voiced concerns were specifically addressed by provisions in the settlement agreement. For example, individuals spoke about concerns as to retaining open space, but the Consent Decree requires Plaintiff to keep sixty percent (60%) of the property as undeveloped open space. Likewise, there was concern about an increase in traffic from the Property, but the Consent Decree requires Plaintiff to limit the outgoing traffic related to the production on the Property to four box trucks per day. Moreover, there was concern regarding the height of the barn, but the Consent Decree contains a provision requiring a landscape buffer. Further, setting aside the fact that the school will look like a barn in an area surrounded by farms, the barn will be built in a location of low elevation on the Property. Strangely, there were many complaints that operating a winery and brewery would not be consistent with the agricultural nature of the area. Of course, to operate the winery and brewery, Plaintiff would be planting and growing crops for those operations, which is inherently agricultural.

Some of the complaints were inconsistent. For example, compare the complaint that the roads in the area were quiet and not heavily traveled with the alleged concern for the children's safety of having a school near a road. If the roads are quiet and not heavily traveled, then the children's safety should not be of great concern.

But more fundamentally, many speakers were simply mistaken about the facts of the case and the consequence of the parties' Stipulation, as well as the legal framework the parties and the Court applied. The parties' Stipulation provides the basis for the Consent Decree. And the Stipulation specifically provides that the County's denial of Plaintiff's permit violated RLUIPA, particularly the "least restrictive means" provision of that statute. And having shepherded this case for nearly five years, the Court finds that plenty of evidence exists to support the Stipulation. To be blunt, the Stipulation, especially the provision finding a violation of federal law, is essentially all that is needed to support the Consent Decree in this case.

Two representatives from school districts spoke about the districts' concerns relating to the school and the possible effects on the district. The concerns were not unreasonable, and, unlike other speakers, these representatives had clearly reviewed the proposed consent order. Notably, they were aware of the Consent Decree's provision that "Plaintiff agree[d] that neither it nor its agents [would] at any time seek or assist any student, parent, or guardian of any student seeking monetary resources, services, educational assistance, or extracurricular activity involvement for or on behalf of any student attending Plaintiff's school from McHenry County or any public school district in McHenry County." But the concerns raised by the school district representatives are not ripe. The Consent Decree allows Plaintiff to build and run the school, but that has not happened yet and there is no certainty that the concerns raised will ever occur. But, in the future, if issues arise, the Consent Decree requires the parties to informally resolve any differences regarding interpretation of or

compliance with the Consent Decree, and the Court retains jurisdiction to enforce the terms of the Consent Decree if those efforts fail.

At the public hearing, a member of the McHenry County Board spoke in opposition to the settlement agreement. She spoke against the settlement agreement for a variety of reasons, some only slightly better than others. For example, she claimed that the school should not be built because Plaintiff has a pond on the Property and that this would be unsafe. Setting aside the fact that this Court was shown nothing in the county code prohibiting a school on the same real property as a pond, an outright denial under these facts is not the least restrictive means that would support this claimed compelling government interest. Furthermore, the untold number of swimming pools, ponds, rivers, lakes, and myriad of other bodies of water in and around parks and schools where children play shows the speciousness of this argument. Certainly, streets can be dangerous too. But no reasonable person would argue that a school should not be built near a road. Critically, this board member admitted that despite being informed of the proposed settlement agreement and the impending public hearing, the McHenry County Board never placed the settlement agreement on the county's agenda to discuss and vote on at a board meeting, thereby shirking a fundamental duty. Any board member opposed to the settlement agreement could have attempted to place the item on a county board meeting agenda to discuss. That never happened.

This board member also submitted a letter in which she unfairly castigated the McHenry County State's Attorney, claiming that he "plac[ed] his own self interests (sic) and religious convictions front and center as the basis for pursuing this Consent Decree." Dkt. 133 at 3. At least one letter to the Court echoed this assertion. But this assertion, unsupported by any evidence, is troubling for at least two reasons. First, the board member is baldly stating that a public official was placing his own religious beliefs over his duties as

a public official. According to this board member, because the State's Attorney is apparently Catholic, he abdicated his duties as State's Attorney to support Catholic nuns. This assertion speaks volumes as to the religious animus festering in this case. Second, based upon this Court's experience, the allegations against the State's Attorney and his staff are not only unfair, they are untrue. Throughout the years of litigation, including multiple settlement conferences in which the State's Attorney personally attended and negotiated, the Court saw no evidence of this claim. Instead, throughout this litigation, the State's Attorney and his Assistant State's Attorneys vigorously represented the interests of McHenry County. During the settlement conferences, each side to this litigation made concessions. Notably, Plaintiff waived its right to seek attorneys' fees, which reasonably exceed well over $250,000. Had this matter proceeded to a fully litigated final judgment, the taxpayers of McHenry County likely would have been liable for over $1 million. Additionally, the State's Attorney negotiated for and obtained the open space provision in the Consent Decree. That the State's Attorney ultimately and reasonably determined, after years of litigation and negotiation, that the settlement agreement was in the best interest of the County is not a legitimate reason to attack his motives or integrity. The Court finds that a reasonable person would find that the McHenry County Board ducked this litigation, leaving it to the State's Attorney alone to resolve and then at least one member castigated him for settling a case when it, as a body, refused to even discuss the settlement agreement in open session, let alone vote on the settlement agreement in open session before the public.

In resolution of this action, and with the agreement of the Parties, it is hereby ordered, adjudged, and decreed as follows:

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1367(a).

2. The Parties have fully consented to the exercise of jurisdiction by Magistrate Judge Iain D. Johnston.

3. The Court finds that the McHenry County Board's denial of Plaintiff's Petition imposed a substantial burden on Plaintiff's religious exercise. (Stipulation at ¶¶ 10-14.)

4. The Court finds that the McHenry County Board's denial of Plaintiff's Petition was not the least restrictive means of furthering any compelling governmental interest. (*Id.*, ¶¶ 15-16.)

5. The Court, therefore, finds that the McHenry County Board's denial of Plaintiff's Petition violated RLUIPA's substantial burden provision. 42 U.S.C. § 2000cc(a).

6. The Court finds that the remedy necessary to rectify the above violation of federal law is an order directing Defendant to grant the approvals requested in Plaintiff's Petition, subject to certain conditions which have been agreed to by the Parties. *See Perkins v. City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995). This remedy affects McHenry County's sovereignty as minimally as possible.

7. The Court finds that the settlement agreement is fair, adequate, reasonable, and appropriate under the facts, and the Court further finds that there has been valid consent to the settlement agreement by the concerned parties.

8. The McHenry County State's Attorney has the authority to enter into the settlement agreement embodied in this Consent Decree. *See President & Trustees of Petersburg v. Mappin*, 14 Ill. 193, 194-95 (1852); 1997 Ill. Att'y Gen. Op. 1; 1972 Ill. Att'y Gen. Op. 157.

9. No person or entity has successfully intervened in this case.

10. Accordingly, the Court orders and the Parties agree as follows:

Canning, Brewery, and Winery Production Barn: Defendant is ordered to approve the construction of, and agrees that Plaintiff is approved to construct, a one-story

building, stylized as a barn, for canning, and for the production of beer and wine, with a maximum of 15,000 square feet.

Plaintiff agrees that outgoing production traffic from the barn shall be limited to four vehicles, which shall be under Plaintiff's control. Vehicles used for outbound production shall be limited in size to a 26 foot box truck or smaller.

Gift Shop: Defendant is ordered to approve the construction of, and agrees that Plaintiff is approved to construct, a building with a maximum footprint of 5,000 square feet for the sale of pastries, religious and inspirational articles, and on-premise produced wine or beer. Tasting of any on-premise produced beer or wine may occur at the gift shop only after obtaining any requisite local and state liquor licenses for sale and service of alcoholic liquor.

Boarding School: Defendant is ordered to approve the construction of, and agrees that Plaintiff is approved to construct, a building to be used as a K-12 boarding school with a maximum enrollment of 80 students. The building shall be approved to be 3 stories, a maximum of 50 feet high, with a total footprint not to exceed 28,000 square feet.

Plaintiff agrees that there shall be a physical division of dorms for male and female students. Only students, school staff, and Fraternité members or employees may stay overnight in the school and dormitory building. Plaintiff agrees that any school-age person, defined as 18 years of age or younger, living at the boarding school will be enrolled as a full-time student at the school.

Plaintiff agrees that neither it nor its agents will at any time seek or assist any student, parent, or guardian of any student in seeking monetary resources, services, educational assistance, or extracurricular activity involvement for or on behalf of any student attending Plaintiff's school from McHenry County or any public school district in McHenry County. Defendant acknowledges and agrees that Plaintiff will not interfere with the rights of any person to seek any public benefits to which he or she may be entitled.

Registration/Recognition: Plaintiff agrees to make a good-faith effort to seek "registration" status from the Illinois State Board of Education (ISBE) within one year of opening the boarding school. Plaintiff agrees to make a good-faith effort to seek "recognition" status from the ISBE after one school year of operation as a "registered" school, in the event that registration status is granted by the ISBE. Plaintiff agrees, in good faith, to take the ordinary and customary steps to maintain "recognition" status from the ISBE, in the event that recognition status is granted by the ISBE.

Nothing in this Consent Decree is contingent upon the ISBE granting registration or recognition status to the boarding school. In the event the ISBE denies registration status and/or recognition status, Plaintiff shall promptly notify Defendant of such denial. Plaintiff shall not be required to re-apply for registration or recognition in the event of such denial by the ISBE. Nothing in the preceding paragraph requires Plaintiff to take any action or to make any statement that would be in conflict with their religious beliefs or would otherwise infringe on their right to the free exercise of religion. Nothing in the preceding paragraph waives any right, privilege, or exemption to which Plaintiff may be entitled under the United States or Illinois Constitutions, or United States or Illinois law.

Conservation/Open Space/Constructed Buildings: Plaintiff agrees that sixty percent (60%) of the Property shall remain undeveloped open space to run with the land. No impermeable surface shall be considered open space. Notwithstanding the foregoing, the existing internal roads, driveways, and parking lots on the Property, as well as any additional internal roads, driveways, and parking lots shown on the Petition or materials submitted with the Petition, will be considered open space.

No time limit will apply to the conditional uses approved in this Consent Decree with respect to any buildings (*i.e.*, barn, gift shop, and/or boarding school) actually constructed by Plaintiff pursuant to this Consent Decree.

Site Access: Plaintiff agrees that no new site access roads shall be constructed on the Property pursuant to this Consent Decree. The current paved access road shall remain the main access point to the Property including any production related traffic. For access to the boarding school, the unpaved gravel access point off Harmony Hill Road may be paved in place and improved in accordance with any applicable building, transportation, or life and safety regulations, but no further expansion shall be allowed.

Compliance with Applicable Law: All structures, uses, and site development contemplated in this Consent Decree shall meet applicable commercial building codes, development standards, and any other applicable local, state, and federal regulations. Plaintiff shall obtain all required permits for the construction, occupancy, or use of structures, except for agriculturally exempt structures, and all required licenses for the uses contained herein. Plaintiff shall comply with the McHenry County Liquor Control Ordinance.

Site Plan Review: Plaintiff agrees to undergo the same site plan review as any other entity with an approved conditional use. Should a dispute arise which the parties are unable to resolve, the matter will be referred to the Court.

LEED Certification: Plaintiff agrees to make a good-faith effort to obtain gold level LEED certification on any buildings constructed pursuant to this Consent Decree.

Landscape Buffer: Plaintiff agrees to provide landscape screening along the southern Property line, starting 50 feet west of the westernmost building and continuing to 50 feet east of the easternmost building, consisting of evergreens at least 4 feet tall or deciduous trees at least 1.5 inch caliper at the time of installation, with each tree no more than 35 linear feet between it and the next tree. Said screening shall comply with Section 17.3 Selection, Installation, and Maintenance of Plant Materials of the McHenry County Unified Development Ordinance. Landscape screening shall be installed prior to receiving a certificate of occupancy for the school.

Development Timeline: Plaintiff is not required to commence construction of the barn, gift shop, or boarding school within any specific time period. Provided, however, that once Plaintiff commences construction of any of the above structures, Plaintiff agrees to complete construction of that structure within 5 years. Commencement of construction shall be the date upon which a building permit is issued.

Parcel Consolidation: The Property described herein shall be consolidated into one new property identification number (PIN). Plaintiff agrees to take whatever administrative steps are necessary to achieve such consolidation. Defendant agrees that it does not object or know of any hindrances to such consolidation.

Nursing Home: Plaintiff agrees that it will not request permission to construct or operate a nursing home on the Property for a period of three years from the date of entry of this Consent Decree.

Release of Claims: Plaintiff agrees that, upon the dismissal of this action, it releases all claims arising out of the denial of its Petition and asserted in its Complaint, including but not limited to claims for attorney's fees and costs.

11. The Parties agree to waive any right to appeal the terms and provisions of this Consent Decree.

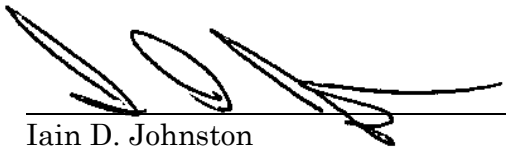
12. The Court shall retain jurisdiction over this action for the purpose of enforcing the terms and provisions of this Consent Decree.

13. The Parties agree to use their best efforts to resolve informally any differences regarding interpretation of or compliance with this Consent Decree prior to bringing such matters to the Court for resolution.

14. Upon entry of this Consent Decree, the Court shall enter an order dismissing this action with prejudice and without costs.

15. The Parties agree to defend this Consent Decree against any third-party legal challenges.

SO ORDERED.
ENTERED THIS 2nd DAY OF MARCH, 2020.



Iain D. Johnston
United States Magistrate Judge
Northern District of Illinois