

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ISLAMIC CENTER OF MURFREESBORO
and
DR. OSSAMA BAHLOUL

Plaintiffs,

v.

RUTHERFORD COUNTY, TENNESSEE

Defendant.

Civil No. _____

VERIFIED COMPLAINT

Jury Demanded

VERIFIED COMPLAINT

Plaintiffs Islamic Center of Murfreesboro (“ICM”) and Dr. Ossama Bahloul for a cause of action state as follows:

NATURE OF THE ACTION

1. This is a challenge to Defendant Rutherford County’s refusal to permit the Plaintiffs to use their new building for purposes of religious worship.

2. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief requested in this complaint. Unless enjoined by this Court, the County’s refusal to permit ICM to use its property for religious worship will continue to violate Plaintiffs’ rights under the Equal Protection Clause of the United States Constitution, the Free Exercise Clause of the United States Constitution, and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq.*

JURISDICTION AND VENUE

3. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has original jurisdiction over Plaintiffs' causes of action brought under the Constitution of the United States, 42 U.S.C. § 1983, and 42 U.S.C. §§ 2000cc *et seq.* Declaratory and injunctive relief are authorized by 28 U.S.C. § 2201 and § 2202 and 42 U.S.C. § 2000cc-2.

4. Venue lies in this district pursuant to 28 U.S.C. § 1391(b). ICM and Rutherford County are both located in this district.

IDENTIFICATION OF PARTIES

5. Plaintiff The Islamic Center of Murfreesboro is a 501(c)(3) non-profit corporation organized as a public benefit corporation under Tennessee law. It is located in Rutherford County, Tennessee.

6. Plaintiff Dr. Ossama Bahloul is a resident of Rutherford County, is a member of ICM, and serves as the imam of ICM.

7. Defendant Rutherford County is a political subdivision of the State of Tennessee and is responsible for issuing site plans, building permits, and certificates of occupancy for buildings within unincorporated Rutherford County. At all relevant times and for all relevant acts alleged in this Complaint, the County and its Planning Commission, its officials, and employees acted under color of state law.

STATEMENTS OF FACT

I. ICM outgrows its facility.

8. ICM is a Muslim religious organization that has been serving Rutherford County since 1982. ICM holds religious services, provides Muslim religious education, and engages in community service.

9. ICM currently serves 250 to 300 families (averaging four members per family), plus 400 to 500 Muslim students attending Middle Tennessee State University.

10. For the last few years, ICM has held religious services in an approximately 2,100 square-foot mosque. That mosque is far too small to accommodate the number of congregants who wish to worship there.

11. Each week, hundreds of men attempt to fit into a 1,200 square-foot room. The room lacks sufficient ventilation or air-conditioning for the number of congregants in attendance. Due to the lack of space, women attending ICM use a small, converted garage and view the Imam on closed circuit television.

12. As a result of the lack of space, many congregants have been forced to pray (which in Islam requires prostration) in the corridors, and some have had to stand in the parking lot for services, despite the fact that no sound is projected into the parking lot.

13. The mosque also lacks facilities for child care, space for a library or after-school programs, facilities for ritual washing (ablutions) required before prayers, and space for funeral rituals or larger celebrations such as religious holidays.

14. Due to the cramped conditions, a number of families have stopped attending services. Elderly members have avoided coming to prayers because of the crowding.

15. Because the current location also has no facilities for child care, many families with young children have stopped attending ICM.

II. ICM gains permission to build a new facility.

16. In order to resolve the overcrowding problems, ICM began to search for a new facility in March of 2009.

17. In November of 2009, ICM purchased property in a residential district in an unincorporated portion of Rutherford County, Tennessee, on Veals Road (“the Veals Road Property”).

18. In December of 2009, ICM formed a planning committee to oversee plans to construct a facility, including a new building on the property.

19. On or about April 2010, ICM applied to Rutherford County for site-plan approval for the construction of a 52,000 square-foot facility at the Veals Road Property, the first phase of which would consist of a 12,000 square-foot building. The facility was designed to serve as a mosque for worship, a space for religious education, counseling, and other religious activities, and a center for interfaith and community activities.

20. On May 24, 2010, the Regional Planning Commission held a regularly scheduled meeting, at which it reviewed, among other things, a site plan submitted by ICM.

21. The Planning Commission advertised the meeting in the same way it advertises its other meetings: by publishing a notice in both the print and online versions of the *Murfreesboro Post*.

22. At the May 24 meeting, the Planning Commission approved ICM's site plan by a vote of 10 to 0.

23. Following the vote, ICM sought and obtained a building permit from Rutherford County authorizing the construction of the new building.

24. As of July 16, 2012, construction on the new building was substantially complete. On the same day, ICM requested a final inspection and certificate of occupancy from the County.

III. ICM faces hostility.

25. During planning and construction, ICM has been confronted with numerous acts of anti-Muslim animus.

26. For example, shortly after purchasing the Veals Road Property, ICM posted a sign at the property stating "Future Site of the Islamic Center of Murfreesboro." In January 2010, however, the sign was vandalized and the words "Not Welcome" were painted on it.

27. After ICM replaced the vandalized sign, on or about June 23, 2010, the second sign was also vandalized and broken in half.

28. On July 14, 2010, several hundred opponents of the mosque held a rally in the public square in Murfreesboro. At least one protestor carried a sign that bore words to the effect of, "Mosque Leaders Support Killing Converts."

29. Construction at the Veals Road Property began in August 2010. But on August 28, 2010, during the Muslim holy month of Ramadan, a large construction vehicle at the Veals Road construction site was intentionally set on fire.

30. The Federal Bureau of Investigation has offered a \$20,000 reward in connection with an investigation into the arson, and an investigation remains open, but the case remains unsolved.

31. Since 2010, the Mosque has received a number of offensive phone messages.

32. For example, one offensive message said, "You need to leave American Soil. You are not wanted here." Another said, "Your 'religion' is a sham My God says you will be crushed in the end . . ." Another said, "The beginning of the end of Islam in America has begun."

33. On September 5, 2011, ICM received a threatening, expletive-ridden phone call stating that a bomb would be placed at ICM on September 11, 2011. ICM cancelled activities for that weekend, and many members were deterred from showing up for weekly prayer services.

34. Because of the public opposition to the Veals Road project, ICM had significant difficulty obtaining construction services.

35. Several construction contractors declined to work on the project because of the public opposition.

36. Another general contractor initially agreed to work on the project, but was later forced to withdraw when he could not locate or contract with subcontractors willing to work on the project.

37. Because of the problems in obtaining construction services, ICM paid much more for the project than it had planned to.

38. Upon information and belief, ICM would have saved a significant amount of money had it not had a problem obtaining construction services.

39. ICM has been forced to pay a security guard to protect its Veals Road Property during hours that construction is not underway. ICM has installed a security system in its building, and members are now worried about their ability to worship safely.

IV. ICM is subjected to a different and worse legal standard.

40. In September 2010, residents of Rutherford County sued the County in state Chancery Court, seeking to stop construction of the new mosque building at the Veals Road Property. A true and correct copy of the residents' First Amended Complaint is attached to this Verified Complaint as Exhibit D.

41. The opposing residents argued that the County had violated their rights under the Due Process Clause of the United States and Tennessee Constitutions when the County allegedly failed to determine whether Islam is a religion and whether ICM is a religious organization entitled to protection under the First Amendment.

42. Lawyers for the opposing residents repeatedly compared ICM to Osama bin Laden, argued that Islam is not a religion, and maintained that Muslims are not entitled to protection under the First Amendment. These arguments were hurtful to ICM's members, who consider Islam to be a religion and themselves to be religious people. A true and correct copy of the transcript of proceedings in the Chancery Court on September 27, 2010, is attached to this Verified Complaint as Exhibit E.

43. The local residents also argued that the County violated the provisions of the Tennessee Open Meetings law by allegedly failing to provide adequate public notice of the

meeting at which the Rutherford County Regional Planning Commission approved ICM's site plan.

44. On May 29, 2012, the Chancery Court issued a Memorandum Opinion concluding that the County had violated the Tennessee Open Meetings Act. A true and correct copy of that opinion, together with the Chancery Court's related Order of June 1, 2012, is attached to this Verified Complaint as Exhibit A ("Chancery Op." or "Chancery Order").

45. The Chancery Court stated that even though the County followed its normal practices in publishing notice of its regularly scheduled Planning Commission meetings, ICM's plan to build a new mosque was subject to a heightened standard of notice because it was "an issue of major importance to citizens." Exhibit A (Chancery Op.) at 6. The Chancery Court therefore ruled that ICM's site plan was "void, *ab initio*." Exhibit A (Chancery Order) at 1.

46. This conclusion was very hurtful to ICM and its members because it treated them as subjects of special suspicion and worse treatment than every other house of worship in Rutherford County.

47. Other houses of worship received better treatment. Upon information and belief, from 2000 to 2007, the County received twenty other site plans from religious organizations that were similarly situated to ICM. Upon information and belief, all twenty site plans were approved at Planning Commission meetings using the same public notice procedure, and all twenty site plans were for Christian churches. The only site plan rendered void for lack of adequate public notice was ICM's. The County's approval of these site plans is detailed in the Interrogatory Responses of Elizabeth Emslie, Assistant Planning Director for the Rutherford County Planning Commission. A true and correct copy of those Interrogatory Responses is attached to this Verified Complaint as Exhibit F.

48. Next door to ICM's Veals Road Property is Grace Baptist Church. Upon information and belief, the neighboring Baptist church signed the deed to their property in January 2009, broke ground in September 2009, and held their first service in July 2010. The Baptist Church was not subject to the heightened notice standard imposed on ICM.

49. Five days after the Chancery Court issued its order, on June 6, 2012, the opposing residents brought another action in Chancery Court seeking to force the County to stop construction of the new mosque building.

50. On June 13, 2012, the Chancery Court declined to order the County to stop construction, but ordered the County not to issue a certificate of occupancy for the completed mosque building. A true and correct copy of the transcript of proceedings in the Chancery Court on June 13, 2012, is attached to this Verified Complaint as Exhibit C.

51. On July 16, 2012, construction on the new mosque was substantially complete.

52. On that date, ICM's contractor requested a final building inspection and issuance of a certificate of occupancy.

53. However, by letter dated July 17, 2012, the County, citing the Chancery Court order, declined to inspect the building or issue the certificate of occupancy. A true and correct copy of that letter is attached to this Verified Complaint as Exhibit B.

CLAIMS

COUNT I

Violation of the Fourteenth Amendment to the United States Constitution Equal Protection Clause 42 U.S.C. § 1983

54. Plaintiffs incorporate by reference all preceding paragraphs.

55. Islam is a religion that should enjoy the same protection other religions enjoy under the Constitution.

56. Free exercise of religion is a fundamental right.

57. Plaintiffs' fundamental right to engage in religious exercise has been burdened by the County's refusal to issue a certificate of occupancy for the Veals Road Property.

58. The County has subjected Plaintiffs to different legal treatment based on the hostility of neighbors.

59. The County has furthered no compelling governmental interest by refusing to issue a certificate of occupancy for the Veals Road Property.

60. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not the least restrictive means available of furthering its interests.

61. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not rationally related to legitimate government interest.

62. Plaintiffs have suffered and will continue to suffer irreparable injury absent relief from this Court.

COUNT II

Violation of the First Amendment to the United States Constitution Free Exercise Clause—Lack of General Applicability 42 U.S.C. § 1983

63. Plaintiffs incorporate by reference all preceding paragraphs.

64. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not based on a rule of general applicability.

65. The County's refusal to issue a certificate of occupancy for the Veals Road Property discriminates upon the basis of religion.

66. The County's refusal to issue a certificate of occupancy for the Veals Road Property is the result of an individualized assessment.

67. Plaintiffs' free exercise of religion is burdened by the County's refusal to issue a certificate of occupancy for the Veals Road Property.

68. The County has furthered no compelling governmental interest by refusing to issue a certificate of occupancy for the Veals Road Property.

69. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not the least restrictive means available of furthering its interests.

70. Plaintiffs have suffered and will continue to suffer irreparable injury absent relief from this Court.

COUNT III

Violation of the First Amendment to the United States Constitution Free Exercise Clause—Lack of Neutrality 42 U.S.C. § 1983

71. Plaintiffs incorporate by reference all preceding paragraphs.

72. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not based on a neutral rule.

73. The County's refusal to issue a certificate of occupancy for the Veals Road Property discriminates upon the basis of religion.

74. The County's refusal to issue a certificate of occupancy for the Veals Road Property is the result of an individualized assessment.

75. Plaintiffs' free exercise of religion is burdened by the County's refusal to issue a certificate of occupancy for the Veals Road Property.

76. The County has furthered no compelling governmental interest by refusing to issue a certificate of occupancy for the Veals Road Property.

77. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not the least restrictive means available of furthering its interests.

78. Plaintiffs have suffered and will continue to suffer irreparable injury absent relief from this Court.

COUNT IV

Violation of RLUIPA – Discrimination 42 U.S.C. § 2000cc(b)(2)

79. Plaintiffs incorporate by reference all preceding paragraphs.

80. The County's refusal to issue a certificate of occupancy for the Veals Road Property is the implementation of a land use regulation.

81. The County's refusal to issue a certificate of occupancy for the Veals Road Property discriminates against Plaintiffs on the basis of religion.

82. Plaintiffs have suffered and will continue to suffer irreparable injury absent relief from this Court.

COUNT V

Violation of RLUIPA – Substantial Burden 42 U.S.C. § 2000cc(a)(1)

83. Plaintiffs incorporate by reference all preceding paragraphs.

84. The County's refusal to issue a certificate of occupancy for the Veals Road Property is the implementation of a land use regulation.

85. The County's refusal to issue a certificate of occupancy for the Veals Road Property substantially burdens Plaintiffs' religious exercise.

86. The County has furthered no compelling governmental interest by refusing to issue a certificate of occupancy for the Veals Road Property.

87. The County's refusal to issue a certificate of occupancy for the Veals Road Property is not the least restrictive means available of furthering its interests.

88. The County's imposition of a substantial burden on Plaintiffs' religious exercise affects interstate commerce.

89. Plaintiffs have suffered and will continue to suffer irreparable injury absent relief from this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

- a. Issue a temporary restraining order or preliminary injunction prohibiting Defendants from refusing to inspect the Veals Road Property or to issue a certificate of occupancy;
- b. Issue other appropriate injunctive relief prohibiting Defendants from denying ICM the use of the Veals Road Property;
- c. Declare that the County has violated ICM's rights by prohibiting ICM from using its property for worship;
- d. Award Plaintiffs damages for the injuries they have suffered;
- e. Award Plaintiffs the costs of this action and reasonable attorney's fees; and
- f. Award such other and further relief as it deems equitable and just.

ATTORNEYS' FEES AND COSTS

Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

JURY DEMAND

Plaintiffs request a trial by jury on all issues so triable.

Dated: July 18, 2012

Respectfully submitted,

/s/ George E. Barrett
George E. Barrett #2672
Barrett Johnston, LLC
217 Second Avenue North
Nashville, TN 37201
Tel: (615) 244-2202
Fax: (615) 252-3798

Luke W. Goodrich
(pro hac vice application forthcoming)
Eric C. Rassbach
(pro hac vice application forthcoming)
The Becket Fund for Religious Liberty
3000 K St. NW, Ste. 220
Washington, DC 20007
Tel: (202) 955-0095
Fax: (202) 955-0090

*Counsel for Plaintiffs Islamic Center of Murfreesboro and
Dr. Ossama Bahloul*

VERIFICATION

I, **Dr. Ossama Bahloul**, am a resident of Tennessee and a plaintiff in the above-captioned action. I verify that I have read the foregoing Complaint and declare under penalty of perjury of the laws of the United States of America that the applicable foregoing facts stated in the foregoing Complaint are true and correct to the best of my knowledge.



DR. OSSAMA BAHLOUL



GEORGE BARRETT

Counsel for Plaintiffs