

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

PALM BEACH GARDENS BAPTIST)
CHURCH, INC., and RICHARD K.)
PARKER,)
)
Plaintiffs,)
)
v.)
)
CITY OF PORT SAINT LUCIE,)
FLORIDA,)
)
Defendant.)

Case No. _____

Oral Argument Requested

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

COME NOW Plaintiffs, Palm Beach Gardens Baptist Church, Inc. (“Church”), and Richard K. Parker, by and through counsel, and pursuant to Rule 65 of the Federal Rules of Civil Procedure, move this Court for a Preliminary Injunction enjoining the Defendant City of Port Saint Lucie, Florida (“City”) from enforcing those portions of the Port St. Lucie Zoning Code (“Zoning Code”) that interfere with the Church’s ministry and otherwise discriminate against places of worship. As grounds for this Motion, Plaintiffs rely upon the Verified Complaint and Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Injunction filed contemporaneously herewith.

Those pleadings demonstrate that the City’s Zoning Code unlawfully discriminates against the Church by prohibiting it from locating in the Southport Shopping Center, but allowing private clubs and lodges and day care centers to locate there. The Southport Shopping Center is located in the Neighborhood Convenience Commercial zoning district.

In sum, the Zoning Code discriminates against churches and other places of worship by:

1. Excluding churches from the Neighborhood Convenience Commercial (“CN”) District but allowing day care centers as a matter of right. Sec. 158.120.¹
2. Excluding churches from the CN District but allowing Private Clubs and Lodges as a special exception. Sec. 158.120.
3. Excluding churches from the General Commercial District, but allowing Private Clubs and Lodges, as well as Civic and Cultural facilities as a matter of right. Sec. 158.124.
4. Excluding churches from the Highway Commercial (Sec. 158.125), Multiple Family Residential (“RM”)-15 (Sec. 158.080), and Mobile Home Residential Districts (Sec. 158.081), but allowing Civic and Cultural facilities as a matter of right, and Private Clubs and Lodges in the RM-15 District as a special exception.
5. Allowing Civic and Cultural facilities as a matter of right in the RM-5 (Sec. 158.077), RM-8 (Sec. 158.078), and RM-11 (Sec. 158.079) Districts as a matter of right, but permitting churches only as a special exception.
6. Excluding churches from the Estate Residential (Sec. 158.071), Single Family Residential (“RS”)-1 (Sec. 158.072), RS-2 (Sec. 158.073), and RS-3 (Sec. 158.076) Districts, but allowing Civic and Cultural facilities as a special exception.

¹ The Zoning Code is a public document and the City’s website refers users to a link containing it in full: <http://library.municode.com/index.aspx?clientId=13414&stateId=9&stateName=Florida>. The Zoning Code can be accessed by following this link, clicking on “Land Usage” and then “Zoning Code.” All references herein to “Sec. 158.____” refer to the Zoning Code, which is incorporated by reference, and can be accessed at the above link.

7. Allowing Civic and Cultural facilities in the Professional District (Sec. 158.122) as a special exception with no time limit, but only permitting churches in this district as a special exception for a maximum of two (2) years.

This discriminatory treatment of churches and other places of worship is a prototypical violation of the Religious Land and Institutionalized Persons Act (“RLUIPA”), violates the First and Fourteenth Amendments to the United States Constitution, and also runs afoul of Florida’s Religious Freedom Restoration Act.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order preliminarily (1) enjoining the City from acting under its Zoning Code to prevent or to attempt to prevent Plaintiffs from using 2731 & 2733 Morningside Drive, Port Saint Lucie, Florida, located in the Southport Shopping Center as a church; (2) enjoining the City, its agents, and its employees from enforcing those portions of the Zoning Code listed above that discriminate against churches and other places of worship; and (3) granting any other relief appropriate in these circumstances.

Respectfully submitted this 19th day of January, 2011.

s/ Kevin H. Theriot

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served, via process server, upon defendants with the Verified Complaint and Summons.

s/ Kevin H. Theriot
Kevin H. Theriot