property, selling it, into a religious exercise protected by RLUIPA. In this regard RLUIPA's legislative history is enlightening:

> The right to assemble for worship is at the very core of the free exercise of religion. Churches and synagogues cannot function without physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.[102]

The right to sell, lease, or otherwise dispose of space which is no longer needed or used for religious exercises is not at the core of the free exercise of religion; it not even on its periphery. Disposition of unneeded property is common commercial secular activity without any religious significance. RLIUPA does not protect such secular activities even when they are conducted by religious institutions. Creation of the OLOH Historic District does not give rise to a colorable RLUIPA claim. Springfield has done nothing to substantially burden plaintiff's religious exercise. Since plaintiff has not applied for approval of the Springfield Historical Commission to alter the exterior features of the OLOH Historic District, it is premature to speculate that such an application would be rejected in a manner without "leaving open the possibility of approval of a resubmission with modifications designed to address" any problems with the application; under these circumstances it is even "less likely to constitute a 'substantial burden' than definitive rejection of the same plan, ruling out the possibility of approval of a modified proposal."[103]

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[102] *Cathedral Church of the Intercessor v. Inc. Vill. of Malverne*, 353 F. Supp. 2d 375, 390 (D.N.Y. 2005).

[103] *Westchester Day Sch. v. Village of Mamaroneck*, 386 F.3d 183, 188 (2d Cir. N.Y. 2004); *see also San Jose Christian College v. City of Morgan Hill*, 2004 U.S. App. LEXIS 4325, 32-33 (9th Cir. 2004) (concluding "that the City's zoning requirements are general laws of neutral application that do not violate the Free Exercise Clause of the

Springfield is entitled to summary judgment under RLUIPA because the plaintiff ceased using the OLOH site for "religious exercise" and, apparently has no intention of reviving religious exercises at the site. Assuming, *arguendo*, plaintiff does revive its religious exercises at the OLOH site, nothing in the OLOH Historic District restricts, limits or in any way interferes with such religious exercises.

3. No Substantial Burden on Religion

RLUIPA does not define "substantial burden" and the circuits are split upon its meaning.[104] The First Circuit has yet to weigh in on the issue[105] but when it does it may

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First Amendment" and "that neither the zoning laws nor CEQA impose a substantial burden on College's free exercise of religion and that, accordingly, the strict scrutiny requirement of RLUIPA is not triggered. The City reasonably determined that College had failed to meet the requirements of its zoning ordinance and CEQA. Because College failed to raise a genuine issue of material fact regarding its claims, entry of summary judgment in favor of the City was appropriate.") (citation omitted).

[104] *Adkins v. Kaspar*, 2004 U.S. App. LEXIS 25186, 20-22 (5th Cir. 2004) (stating that what "constitutes a 'substantial burden; under the RLUIPA is a question of first impression in this circuit. The RLUIPA does not contain a definition of 'substantial burden,' and the courts that have assayed it are not in agreement. Despite the RLUIPA's eschewing the requirement of centrality in the definition of religious exercise, the Eighth Circuit adopted the same definition that it had employed in RFRA cases, requiring the burdensome practice to affect a 'central tenet' or fundamental aspect of the religious belief. The Seventh Circuit, in contrast, abandoned the definition of 'substantial burden' that it had used in RFRA cases, holding instead that, 'in the context of RLUIPA's broad definition of religious exercise, a…regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise…effectively impracticable.' Neither did the Ninth Circuit retain the definition of 'substantial burden' that it had employed in RFRA cases, which required interference with a central religious tenet or belief. Turning to Black's Law Dictionary and Merriam-Webster's Collegiate Dictionary, the Ninth Circuit defined a 'substantial burden' as one that imposes 'a significantly great restriction or onus upon such exercise.' The most recent appellate interpretation of the term under the RLUIPA is that of the Eleventh Circuit, which declined to adopt the Seventh Circuit's definition, holding instead that a 'substantial burden' is one that results 'from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct.'") (citations and footnotes omitted).

find the reasoning of the Ninth Circuit convincing.[106] In this case there is no evidence that Springfield substantially burdened plaintiff's exercise of religion. Plaintiff's

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[105] *Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33, 38 (1st Cir. 2007) (stating that [w]e have not yet had the opportunity to define what constitutes a "substantial burden under RLUIPA. The district court decided that a substantial burden is one that put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs") (citations and internal quotation marks omitted); *see also Marchant v. Murphy*, 2010 U.S. Dist. LEXIS 10971, 5-6 n.2 (D. Mass. 2010) (noting that the "First Circuit (and by extension the Supreme Court) has yet to offer a conclusive definition of a 'substantial burden.'").

[106] *San Jose Christian College v. City of Morgan Hill*, 2004 U.S. App. LEXIS 4325, 24-26 (9th Cir. 2004) (stating that "RLUIPA does not define substantial burden. As always, however, our duty, in matters of statutory construction, is to give effect to the intent of Congress. To this end, it is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain ... the sole function of the courts is to enforce it according to its terms. When a statute does not define a term, a court should construe that term in accordance with its ordinary, contemporary, common meaning. Only if an ambiguity exists in the statute, or when an absurd construction results, does this court refer to the statute's legislative history. The task, therefore, is to construe substantial burden in accordance with its plain meaning, referring back to the legislative history only if an absurd construction results. To determine the plain meaning of a term undefined by a statute, resort to a dictionary is permissible. A burden is something that is oppressive. Substantial, in turn, is defined as considerable in quantity or significantly great. Thus, for a land use regulation to impose a substantial burden, it must be oppressive to a significantly great extent. That is, a substantial burden on religious exercise must impose a significantly great restriction or onus upon such exercise. Fusing the provisions of 42 U.S.C. § 2000cc(a)(1)(A)-(B), the statutory definition of religious exercise set forth in 42 U.S.C. § 2000cc-5(7)(A), and the plain meaning of substantial burden results in the following rule: the government is prohibited from imposing or implementing a land use regulation in a manner that imposes a significantly great restriction or onus on any exercise of religion, whether or not compelled by, or central to, a system of religious belief of a person, including a religious assembly or institution, unless the government can demonstrate that imposition of the burden on that person, assembly, or institution is: (1) in furtherance of a compelling governmental interest, and (2) the least restrictive means of furthering that compelling governmental interest.") (citations and internal quotation marks omitted); *see also Episcopal Student Found. v. City of Ann Arbor*, 341 F. Supp. 2d 691, 701-02 (E.D. Mich. 2004) (observing that "cases addressing alleged infringements of one's free exercise of religion may be loosely, but usefully, categorized into two camps. On the one hand, courts routinely find substantial burdens where compliance with the statute itself violates the individual's religious beliefs and noncompliance may subject him to criminal sanctions or the loss of a significant government privilege or benefit. On the other hand,

successful operation of the OLOH property for many years, at or near its current site, containing the very exterior architectural features which are now protected by the OLOH Historic District Ordinance, raises at least an inference that a reasonable jury could find that Springfield's creation of the OLOH Historic District to protect those existing exterior architectural features did not impose a significantly great restriction or onus upon plaintiff's religious exercise.

Plaintiff complains that the mere enactment of the Historic District Ordinance creates an inability to make changes to the exterior of the building without seeking a certificate of appropriateness, hardship or non-applicability and, asserts that this process constitutes a "substantial burden" under RLUIPA. Contrary to the plaintiff's contentions, the Ordinance is not a substantial burden on plaintiff's exercise of religion. The creation of the OLOH Historic District did not impose a significantly great restriction or onus on any exercise of plaintiff's religion. It did not force plaintiff to choose between following the precepts of the Catholic religion and ownership of the OLOH property. It did not force plaintiff to abandon the precepts of the Catholic religion or forfeit title to the OLOH property. Creation of the OLOH Historic District did not put pressure on plaintiff to modify his religious behavior or violate his religious beliefs. The Ordinance merely submits the plaintiff to the same restrictions that any other landowner in a local historic district must face. The plaintiff is not entitled to special government treatment that would violate the Establishment Clause.

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courts have been far more reluctant to find a violation where compliance with the challenged regulation makes the practice of one's religion more difficult or expensive, but the regulation is not inherently inconsistent with the litigant's beliefs.") (citations omitted).

Plaintiff speculates that, at some time in the future, it could face "delay, expense and uncertainty" from the mere filing for a certificate with the Springfield Historic Commission.[107] This minor responsibility is a normal incident of property ownership in a historic district; it is not substantial under RLUIPA. "In sum, even accepting as true the burdens alleged ... and viewing them in a light most favorable to it, those burdens do not substantially burden [p]laintiff's free exercise."[108] Moreover, should plaintiff comply with the filing requirements, it is not at all apparent that its application will be denied. Under the facts of this case, the OLOH Historic District Ordinance does not rise to the level of a substantial burden under RLUIPA. Depending on what action is sought, there could be no hardship in filing for a certificate. As the Ninth Circuit has observed:

> it appears that College is simply adverse to complying with the PUD ordinance's requirements. The City's ordinance imposes no restriction whatsoever on College's religious exercise; it merely requires College to submit a complete application, as is required of all applicants. Should College comply with this request, it is not at all apparent that its re-zoning application will be denied.[109]
>
> Our holding is entirely consistent with the Seventh Circuit's recent ruling in *Civil Liberties for Urban Believers v. City of Chicago*. At issue in *Civil Liberties* was the application of the Chicago Zoning Ordinance ("CZO") to several local churches attempting to establish new sites within the city. Churches were required to obtain "Special Use" approval in order to locate within business and commercial zones, as were clubs, lodges, meeting halls, recreation buildings, and community centers. "Special Use approval [was] expressly conditioned upon the design, location, and operation of the proposed use consistent with the protection of public health, safety, and welfare, and the proposed use [could] not substantially injure the value of neighboring property." The local churches repeatedly applied for -- and were denied -- special use permits. The churches

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[107] Pl's Mem. 30.

[108] *Episcopal Student Found. v. City of Ann Arbor*, 341 F. Supp. 2d 691, 709 (E.D. Mich. 2004).

[109] *San Jose Christian College v. City of Morgan Hill*, 2004 U.S. App. LEXIS 4325, 26-27 (9th Cir. 2004).

> then sued the city, claiming, in relevant part, that the CZO violated RLUIPA, as well as their rights under the Free Exercise clause. They maintained that their Free Exercise claim involved "hybrid rights of free exercise, freedom of speech, freedom of assembly, and equal protection, such that Chicago had to justify the CZO's incidental burdens on church location with a compelling state interest."
>
> The Seventh Circuit rejected each claim. Specifically, Plaintiffs' RLUIPA claim failed because "the costs, procedural requirements, and inherent political aspects" of the permit approval process were "incidental to any high-density urban land use" and thus "[did] not amount to a substantial burden on religious exercise." "While they may contribute to the ordinary difficulties associated with location (by any person or entity, religious or nonreligious) in a large city, they do not render impracticable the use of real property in Chicago for religious exercise, much less discourage churches from locating or attempting to locate in Chicago."
>
> As in the *Civil Liberties* case, the City's regulations in this case do not render religious exercise effectively impracticable. As noted above, while the PUD ordinance may have rendered College unable to provide education and/or worship at the Property, there is no evidence in the record demonstrating that College was precluded from using other sites within the city. Nor is there any evidence that the City would not impose the same requirements on any other entity seeking to build something other than a hospital on the Property. Accordingly, we AFFIRM the district court's entry of summary judgment in favor of the City on College's RLUIPA claim.[110]

In other municipalities the plaintiff has not objected to filing for certificates under local Historical Commission Ordinances pursuant to the Historic Districts Act.[111] For example, when the City of Northampton Historical Commission voted to invoke its demolition delay ordinance regarding plaintiff's 1830 era building the plaintiff submitted to the jurisdiction of the Northampton Historical Commission.[112]

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[110] *San Jose Christian College v. City of Morgan Hill*, 2004 U.S. App. LEXIS 4325, 28-29 (9th Cir. 2004) (citations omitted).

[111] *See* Exhibit A McCarroll Aff. ¶ 37, and Ex. 7.

[112] The rectory is one of three buildings near the former Sacred Heart Church on King Street in Northampton that the diocese wants to demolish as it revamps the property to make it conducive to a new parish called St. Elizabeth Ann Seton. That parish is serving the combined congregations of Sacred Heart, St. John Cantius Church on Hawley Street and Blessed Sacrament and St. Mary's of the Assumption on Elm Street. The diocese

Based on the above, the OLOH Historic District Ordinance does not prevent the plaintiff from "engaging in conduct ... that is central to [its] religious doctrine," and the application of the ordinance is nothing "more than an inconvenience" to the plaintiff. There is nothing in the present record that indicates the plaintiff would in any way be prevented form utilizing the property for any exercise of religion. Plaintiff's brief cites that the provision of fines from $10 to $500 dollars under section thirteen of the Historic District Act as evidence of a "substantial burden". However, there is nothing in the Historic Ordinance or state statute that singles out anyone for special burdens on the basis of religious callings. It appears that plaintiff is simply averse to complying with the ordinance's requirements. The OLOH ordinance imposes no restriction whatsoever on plaintiff's religious exercise; it merely requires plaintiff to submit a complete application, as is required of all applicants. This conduct related neutral law of general applicability does not constitute a substantial burden upon plaintiff's religious exercise under RLIUPA. In this case plaintiff has not submitted evidence that the burden, if any, on his religious exercise is sufficiently substantial that the Court would conclude that plaintiff is entitled to judgment as a matter of law; hence plaintiff's summary judgment motion must be denied.

4. Least Restrictive Means to Satisfy Compelling Governmental Interest

Assuming, *arguendo*, that the OLOH Historic District Ordinance in some, currently unknown and undefined, manner imposes a substantial burden on plaintiff's religious exercise, that would not be a RLUIPA violation because, as discussed above,

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decided last year to close St. John Cantius, Blessed Sacrament and St. Mary's as part of a diocese-wide move to consolidate parishes which the Plaintiff is invoking in this case as grounds for its claims. *See* Ex. 7 attached to Exhibit A McCarroll Aff. ¶ 37.

historic preservation is a compelling governmental interest.[113] The government's mechanisms to meet the least restrictive means test in order to achieve the governmental interest in historic preservation are limited. There are two main options available to Massachusetts municipalities[114]: creation and regulation of a local historic district under the Historic Districts Act or acquiring ownership of the property by eminent domain. Designation of the exterior architectural features of a historically significant site is a much less restrictive means of achieving the government's compelling interest in historic preservation than taking title to the property by eminent domain.

> the majority of historic buildings in the United States are protected through ownership by private individuals or corporations, who consider themselves stewards of these resources for this generation. Communities continue to have the right to choose to protect these older and historic buildings, neighborhoods and downtowns, or to choose not to protect these irreplaceable resources. Fortunately, an increasing number of communities recognize that historic places provide a sense of community and stability critical to the well-being of our citizens. Historic preservation — whether achieved through or in spite of eminent domain—continues to be one of the most effective ways that communities can achieve revitalization and economic stability.[115]

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[113] Springfield's obligation to abide by the Historic Districts Act pertaining to the OLOH Historic District constitutes a compelling interest. Preservation of the exterior architectural features of property located within a historic district is the least restrictive means of satisfying the compelling governmental interest in Historic Preservation.

[114] Other options are available in communities throughout the country. "Historic preservation tools such as historic districting, property assessment rollbacks, and rehabilitation tax incentives support the use, reuse, occupancy, conservation and stability of our older and historic neighborhoods and commercial corridors. A community's use of these tools can promote economic revitalization, precluding the need for more invasive forms of redevelopment and the use of eminent domain." Paul Edmondson, Vice President & General Counsel, NATIONAL TRUST FOR HISTORIC PRESERVATION, *Some thoughts about the Kelo decision for members of the historic preservation community*" p. 5 (2005). A copy of this memorandum is attached hereto and incorporated herein by reference as Exhibit C.

[115] *Id.*

5. OLOH Ordinance Provides Equal Treatment

Plaintiff, conflating two separate provisions in RLUIPA[116], argues that the "equal terms and nondiscrimination mandates of RLUIPA are also violated by the Ordinance."[117] These two separate RLUIPA provisions will be discussed separately herein. RLIUPA's equal terms provision[118] provides:

> No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

The equal terms provision in RLUIPA ensures that, with respect to governmental land use regulations, religious institutions and assemblies are treated on equal terms with secular institutions or assemblies. RUPLIA does not, and under the Establishment Clause could not constitutionally[119], confer upon religious institutions and assemblies more

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[116] 42 USCS § 2000cc (b) (1) (pertaining to equal terms) and 42 USCS § 2000cc (b) (2) (pertaining to nondiscrimination.).

[117] Pl's Mem. 32-33 #6.

[118] 42 USCS § 2000cc (b) (1).

[119] A reading of RLUIPA that immunizes the plaintiff from even filing an application with the Springfield Historical Commission would cross the line established by the Establishment Clause. Plaintiff's facial challenge seeks to immunize the diocese from even filing an application for a certificate of appropriateness, hardship or non-applicability. "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.... In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" *Everson v. Board of Educ.*, 330 U.S. 1, 15-16 (1947) (citations omitted). For the Court to judicially legislate an exemption of plaintiff from the provisions of the Historic District Act would be the type of "unyielding weighting in favor of" religious "observers over all other interests" which "contravenes a fundamental principle of the Religion Clauses, so well articulated by Judge Learned Hand: 'The First Amendment ... gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities.' As such, the statute goes beyond having an incidental or remote effect of

favorable or beneficial terms with respect to governmental land use regulations than those imposed upon secular institutions or assemblies. There is not a general consensus of authority among the circuits on the exact elements of a RULIPA Equal Terms violation[120] or whether strict scrutiny, which does not expressly appear in the Equal Terms provision, should apply in the legal analysis.[121] In this case these jurisprudential differences don't make a difference.

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advancing religion. The statute has a primary effect that impermissibly advances a particular religious practice." *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985) (citations omitted). Construing RLUPIA as plaintiff desires would give it a primary effect that impermissibly advances a particular religious practice. "Neutrality is what is required. The State must confine itself to secular objectives, and neither advance nor impede religious activity." *Roemer v. Bd. of Public Works*, 426 U.S. 736, 747 (1976). As indicated by the listing of other Roman Catholic and other places of worship within other historic districts throughout the City as well as the rest of the Commonwealth, a ruling from this court granting summary judgment for the Bishop would immunize places of worship from application of the provisions of the Historic District Act. Springfield's Local Historic Districts ("LHD") include a number of religious institutions within their boundaries. See Exhibit A, McCarroll Aff., ¶¶ 10-24.

[120] *Compare Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 270 (3d Cir. N.J. 2007) (stating that we "have construed the RLUIPA Equal Terms section to include neither a substantial burden nor a strict scrutiny requirement. What the Equal Terms section does require is that the plaintiff show that it was treated less well than a nonreligious comparator that had an equivalent negative impact on the aims of the land-use regulation. In sum, a plaintiff asserting a claim under the RLUIPA Equal Terms provision must show (1) it is a religious assembly or institution, (2) subject to a land use regulation, which regulation (3) treats the religious assembly on less than equal terms with (4) a nonreligious assembly or institution (5) that causes no lesser harm to the interests the regulation seeks to advance") (citation omitted) *with Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1307 (11th Cir. 2006) (stating that there "are four elements of an Equal Terms violation: (1) the plaintiff must be a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the religious assembly on less than equal terms, with (4) a nonreligious assembly or institution.") (citations and footnote omitted).

[121] *Compare Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232 (11th Cir. 2004) (reasoning that "a violation of § (b)'s equal treatment provision, consistent with the analysis ... must undergo strict scrutiny.") (citations omitted) *with Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 269 (3d Cir. 2007) (declining "to

Assuming, *arguendo*, that plaintiff is "a religious assembly or institution"; and further assuming, *arguendo*, that the OLOH Historic District Ordinance is "a land use regulation" under RLUIPA, plaintiff has, as a matter of law, failed to establish that he has a legally viable RLUIPA equal terms challenge to the OLOH Historic District Ordinance. Plaintiff has not presented any evidence that a similarly situated religion or religious assembly received better treatment under either the OLOH Historic District Ordinance or the Historic District Act. Since plaintiff has presented no evidence of less than equal treatment plaintiff has failed to meet his burden of proof. Nothing in the OLOH Historic District Ordinance's objectives treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to the regulatory purpose.[122] Although the OLOH Historic District Ordinance contains only RCB owned

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follow the Eleventh Circuit's reasoning" and holding "instead that, if a land-use regulation treats religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions that are no less harmful to the governmental objectives in enacting the regulation, that regulation -- without more -- fails under RLUIPA.") (footnote omitted).

[122] *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1311 (11th Cir. 2006) (pointing out that "a neutral statute's application may violate the Equal Terms provision if it differentially treats similarly situated religious and nonreligious assemblies. A plaintiff bringing an as-applied Equal Terms challenge must present evidence that a similarly situated nonreligious comparator received differential treatment under the challenged regulation. If a plaintiff offers no similarly situated comparator, then there can be no cognizable evidence of less than equal treatment, and the plaintiff has failed to meet its initial burden of proof.") (citations omitted); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 266 (3d Cir. 2007) (construing RUPLIA's Equal Terms provision to conform to the contours of Free Exercise jurisprudence and reasoning that "the relevant comparison for purposes of a Free Exercise challenge to a regulation is between its treatment of certain religious conduct and the analogous secular conduct that has a similar impact on the regulation's aims. In each case, a regulation's preferential treatment of secular behavior that did not affect the regulation's purpose in the same way as the prohibited religious behavior did not raise Free Exercise concerns. Heightened scrutiny was warranted only when a principled distinction could not be made between the prohibited religious behavior and its

property, that fact alone is not enough to prove a violation of RLUIPA's Equal Terms provision. Plaintiff has not identified any better-treated secular comparator that is similarly situated in regard to the objectives of the Historic District Act or the OLOH Ordinance. The objective of the OLOH Ordinance, "[t]o protect the architectural integrity of Our Lady of Hope Church"[123] and it reflects the fundamental purpose of the Historic Districts Act:

> to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.[124]

Plaintiff's failure to identify any property which is similarly situated to the OLOH site and better-treated, in regard to the objectives of the OLOH Ordinance and the purposes of the Historic Districts Act, is fatal to plaintiff's RLUIPA claims.

6. OLOH Ordinance does not discriminatorily target plaintiff

Plaintiff argues that the OLOH Ordinance violates the RLUIPA because it "targeted the Our Lady of Hope Church", "is but a single-parcel" and "improperly 'targets' only church property owned by the RCB."[125] As previously discussed plaintiff

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secular comparator in terms of their effects on the regulatory objectives. Thus, the District Court was correct in holding that the relevant analysis under the Equal Terms provision of RLUIPA must take into account the challenged regulation's objectives: a regulation will violate the Equal Terms provision only if it treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to the regulatory purpose.") (citation omitted).

123 FINAL REPORT, at 2.

124 M.G.L. c. 40C, § 2.

125 Pl's Mem. 32.

closed the OLOH church, ceased religious exercises on the OLOH site and relocated the Parish to a different part of Springfield. The creation of the OLOH Historic District followed a statutorily prescribed process aimed at preserving the significant architectural features existing on the OLOH site which seemed to be potentially threatened with destruction by the plaintiff. "The last church to be closed in Springfield was St. Joseph's Church located on East Columbus Avenue. Although listed on the National Register of Historic Places, it was sold to a developer and demolished for a strip commercial complex. This proposed local historic district is being proposed to avoid the same possible fate for Our Lady of Hope."[126] There is no evidence in the record before the Court that Springfield targeted any religious conduct for distinctive treatment; indeed, there are no longer any religious exercises on the OLOH site. The creation of local historic districts is aimed at preserving exterior architectural features of significant historic properties located within the commonwealth. The preservation of such properties does not have any religious motivation whatsoever. RLUIPA's nondiscrimination provision provides:

> No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.[127]

Since there is no evidence in the record from which it may be reasonably inferred that Springfield established the OLOH Historic District in order to discriminate against the Catholic religion plaintiff's RUPLIA discrimination claims fails as a matter of law.

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[126] Final Report, 3.

[127] 42 USCS § 2000cc (b) (2).

7. RLIUPA's exclusions and limits provisions inapplicable.

Plaintiff argues that RLUIPA's exclusions and limits provisions[128] "are not limited to cases of total exclusion of a religious practice from a jurisdiction. They may exist where a city acts arbitrarily or discriminatorily or where it simply deprives churches of reasonable opportunities to practice their religion."[129] That proposition has no application in this case. First, it is undisputed that the OLOH Historic District Ordinance does not totally exclude the Catholic religion from Springfield. It was the plaintiff, not Springfield, which closed the OLOH church and transferred its assets elsewhere. Second, the exclusions and limits provisions in RULIPA do not expressly address religious practices. It deals specifically with land use regulations which unreasonably limit "religions assemblies, institutions, or structures within a jurisdiction."[130] In this case there is absolutely no evidence of any kind that the OLOH Ordinance unreasonably limits any religion or religious assemblies, institutions, or structures within Springfield. Indeed the undisputed facts of this case are that after plaintiff closed the "Our Lady of Hope Church ... the Parish was merged with St. Mary's Parish, East Springfield, under a new name, St. Mary Mother of Hope Parish."[131] Thus, the OLOH Historic District Ordinance

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[128] 42 USCS § 2000cc (b) (3) Exclusions and limits[.] No government shall impose or implement a land use regulation that-

A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religions assemblies, institutions, or structures within a jurisdiction.

[129] Pl's Mem. 32 #5.

[130] 42 USCS § 2000cc (b) (3) (b).

[131] Pl's Facts #23.

did not limit plaintiff in his decision to relocate and merge the OLOH Parish with St. Mary's Parish which is also located in Springfield. Consequently, the unreasonable exclusions and limits provisions in RLUIPA do not apply in this case.

III. CONCLUSION.

For the reasons set forth herein, Springfield submits that it is entitled to summary judgment on all counts, and respectfully requests the court to declare the OLOH Historic District Ordinance valid under the Federal and State constitutions and RLUIPA. In addition Springfield requests the court to mandate that plaintiff file a timely application with the Springfield Historical Commission before attempting to alter or demolish any of the exterior architectural features of the OLOH site.

Respectfully submitted,

DEFENDANTS: CITY OF SPRINGFIELD ET AL

Edward M. Pikula, Esq. Digitally signed by Edward M. Pikula, Esq. DN: cn=Edward M. Pikula, Esq., c=US, o=Law Department, ou=City of Springfield, email=epikula@springfieldcityhall.com Date: 2010.08.16 08:49:24 -04'00'

By,

Harry P. Carroll, Esq. Digitally signed by Harry P. Carroll, Esq. DN: cn=Harry P. Carroll, Esq., c=US, o=Law Department, ou=City of Springfield, email=hcarroll@springfieldcityhall.com Date: 2010.08.16 08:49:08 -04'00'

/s_Edward M. Pikula
Edward M. Pikula, Esq
BBO#399770
City Solicitor

/s___Harry P. Carroll, Esq.
Harry P. Carroll, Esq.
BBO #076060
Senior Legal Counsel

Friday, August 13, 2010

CITY OF SPRINGFIELD, LAW DEPARTMENT
36 Court Street
Springfield, MA 01103
Phone 413-787-6085
Fax 413-787-6173

CERTIFICATE OF SERVICE

I, Harry P. Carroll, hereby certify that this document(s), filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) as follows:

Harry P. Carroll, Esq.

Digitally signed by Harry P. Carroll, Esq.
DN: cn=Harry P. Carroll, Esq., c=US, o=Law Department, ou=City of Springfield, email=hcarroll@springfieldcityhall.com
Date: 2010.08.16 08:49:42 -04'00'

/s/ Harry P. Carroll, Esq.

Harry P. Carroll, Esq.,
BBO # 076060
Senior Legal Counsel
City of Springfield, Law Department
36 Court Street
Springfield, MA 01103
Phone 413-787-6085