Affordable Recovery Housing, v. City of Blue Island,The et al

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

EASTERN DIVISION AFFORDABLE RECOVERY HOUSING,) an Illinois not-for-profit corporation,) Plaintiff,) Case No. 12-cv-4241 v.) Judge Robert M. Dow, Jr. THE CITY OF BLUE ISLAND, a municipal) corporation, and TERRY VRSHEK in his) official capacity as Blue Island Fire Chief,) Defendants.)

MEMORANDUM OPINION AND ORDER ON CONSIDERATION OR AMEND JUDGMENT Plaintiff Affordable Recovery Housing operates a recovery home in Blue Island, Illinois, using faith-based methods to assist those struggling with drug and alcohol abuse. In May of 2012, Blue Island Fire Chief Terry Vrshek issued Affordable Recovery Housing an eviction fire sprinklers in buildings that house overnight guests. Affordable Recovery Housing appealed (unsuccessfully), and then sued. On November 17, 2014, the Court effectively mooted the issue, concluding that because Affordable Recovery Housing is a state-licensed Recovery Home, it is governed by the , under which it is not required to install a sprinkler system. , Affordable Recovery Housing has resumed operations. Nonetheless, it ations.

Before the Court are -motions for summary judgment [99, 100]. For the] is denied granted. As an administrative matter, a reply brief [111] is granted.

I. Background 1 Since the mid-1950s, the Mantellate Sisters of Mary have owned a group of five buildings in the city of Blue Island, Illinois, located about 15 miles south of Chicago. One of the buildings on the property has continually functioned as a convent for the Mantellate Sisters. Until the mid-1980s, the remaining buildings served as the Mother of Sorrows High School (the property), and a few years after the school closed, the Mantellate Sisters leased the property to a local school district where it again functioned as a high school for another 20 years or so, up until 2009. In late 2010, John and Mary Jo Dunleavy began discussions with Blue Island Mayor Don Peloquin about converting the Mother of Sorrows property into a faith-based recovery home (called Affordable Recovery Housing) for adult men recovering from drug and/or alcohol addiction. The Dunleavys pitched Affordable Recovery Housing as a 24-hour, full-service rehabilitation program that would combine recovery support services, overnight lodging, meals and recreation, job training, medical and dental referrals, religious outreach, and myriad other services. The Mayor liked the idea, and things progressed rapidly. By early 2011, the Dunleavys had struck up deals with the Mantellate Sisters to rent the Mother of Sorrows property and with [99-4, at 2 3], and in

property. and to come up with a plan for the development of must install an automatic sprinkler system in the building before any additional residents could

-3, at 112.] On February 28, 2011, Mayor Peloquin wrote Affordable Recovery

1 the light most favorable to the nonmoving party.

Housing a letter, insi -4, at

5.] At this time, Plaintiff had yet to file for or obtain any zoning permits for its intended use of the property. Sometime in March 2011, Affordable Recovery Housing submitted to the City a five- year, four-phase plan for its development of the Mother of Sorrows property. Relevant here, Affordable Recovery Housing represented that in Phase A (which spanned the first 18 months of its plan), it would provide drawings, apply for all necessary permits and licenses, and install code upgrades (including sprinklers) in the school and banquet room. And in Phase B (which spanned the second 18 months of the plan) Affordable Recovery Housing would provide drawings, apply for all necessary permits and licenses, and installing all code upgrades (including sprinklers) for the old convent building. [99-4, at 9 17.] Not long after Plaintiff submitted its five-year plan to Blue Island, John Dunleavy allegedly had a conversation with Blue Island Building Commissioner Dave Mindeman in which, according to Plaintiff, Mr. Minde-year plan by instructing Plaintiff to prioritize the installation of a state-of-the-art fire alarm system, and to leave the installation of the fire sprinklers for another day. Plaintiff concedes that this in its five-year plan was not documented or otherwise memorialized. Following this

conversation, the Mantellate Sisters advanced Plaintiff $130,000 for the installation of the fire alarm system, which was completed sometime in June 2011. Plaintiff claims that shortly thereafter, Commissioner Mindeman gave Plaintiff permission to move 40 men into the recovery house, although there is no documented evidence of this approval, and Commissioner Mindeman avers that he did not give any such approval, written or verbal. [27, at 21.] Likewise, Mayor

Peloquin says al to increase the number of people residing at Affordable [Recovery Housing -3, at 111.] The next major development occurred in early 2012, when the Mantellate Sisters of Mary (on behalf of Affordable Recovery Housing) submitted a special use permit to the City of Blue Island, seeking permission to use the Mother of Sorrows site as a -5, at 17 33.] The Mother of Sorrows property is zoned R-1 (Single Family Residential), ordinance, R-1 properties can

type of special use, buildings designed to be maintained and operated as a unit in single or multiple ownership or

control and which has certain facilities in common, such as yards and open spaces, recreation -10, at 31.] Affordable Recovery Housing first presented its proposal for a special use permit Commission on

May 9, 2012, where it was resolved that Plaintiff would submit a revised application at a second meeting with the Plan Commission on July 11, 2012. While that process was ongoing, Blue Island Fire Chief (and Defendant in this action) Terry Vrshek conducted a safety inspection of the Mother of Sorrows property. Defendant Vrshek documented his findings in a letter dated May 24, 2012, stating that Affordable Recovery Housing was not following the terms of its five-year plan, and noting that 2

[99-5, at 35 36.] Defendant Vrshek * * until the facility meets the current codes and provide[s]

the proper licenses, giving Plaintiff until June 1, 2012 to comply. [99-5, at 35 36.] The letter 2 In a second later dated June 4, 2012, Fire Chief Vrshek clarified that because the property now had more an approved sprinkler system. [99-6, at 2 3.]

concluded by informing Plaintiff that it had the right to appeal the eviction notice to the Mayor or to the City Council. [99-5, at 35 36.] At that time, there were 73 men living at the recovery home. According to Plaintiff, after hearing of the eviction notice, these 73 men left the property of their own accord, and Affordable Recovery Housing has since lost contact with most of them.

There is no evidence that Fire Chief Vrshek was aware of -pending special use application with the Plan Commission when he conducted his inspection of the property. And by all accounts, Plaintiff did not raise the sprinkler issue in its special use application or its discussions with the Plan Commission at the May 9, 2012 meeting. For example, there is no mention of sprinklers in either special use application [99-5, at 17 33] or in the minutes from the May 9, 2012 meeting [99-9, at 36 38]. And in a May 10, 2012 email from Blue Island Special Projects Manager Jason Berry to the Mother of Sorrows Property Manager providing detailed advice on how best to revise the special use application in light of what was discussed at the May 9 meeting, Mr. Berry does not mention the sprinkler system either. [99-5, at 9 10.] Regardless, on May 28, 2012, Affordable Recovery Housing appealed Fire Chief eviction notice to the Blue Island City Council, requesting a three-year accommodation to install the sprinkler system and permission for the residents to continuing living at the property during that time. [See 99-6, at 118 19; 99-7, at 2 5.] (Three days later, Plaintiff filed this lawsuit.) On June 12, 2012, the City Council held a hearing on . [99-7, at 7 14.] Mayor Peloquin spoke out against Affordable Recovery Housing at the hearing,

emphasizing that the only issue for debate was whether eviction was appropriate in light of ng discussions with the Plan Commission and the Zoning Board were not relevant to the discussion.

[99-7, at 8 9.] After those involved debated the issue, the City Council approved decision by a vote of nine to two, with one absent and two abstentions. [99-7, at 14.]

Shifting back to the special use permit, Affordable Recovery Housing made its second presentation to the Plan Commission on July 11, 2012 as planned, presenting its -9, at 40 41.] The minutes from

this meeting reflect -pending federal lawsuit and the related sprinkler issue, and one commissioner commented become. [99-9, at 41.] The Plan Commission tabled the decision until the next regularly

minary injunction was awaiting resolution in this Court. The Court denied Plaintif Affordable Recovery Housing then made a third presentation to the Plan Commission on September 5, 2012. [99-9, at 43; 108-3, at 23 26.] The Plan Commission unanimously approved application, which purportedly included a three-year accommodation to install the sprinkler system and allowed Affordable Recovery Housing to offer overnight accommodations to its residents during that three-year period (assuming other extensive fire-safety protocols were in place). 3

[See 99-10, at 2 4.] Later that same evening, however, Affordable Recovery Housing presented this same proposal to the Blue Island Zoning Board of Appeals. The Board voted in proposed use of the Mother of Sorrows property, but it rejected the requested accommodations regarding the sprinkler system. [See 99-10, at 3.] Approximately one year later, on September 11, 2013, the Illinois DHS licensed Aff 3

nded the -10, at 2.] The minutes from that hearing do not mention the sprinkler system or the three-year accommodation [see 108-3, at 23 26], but Defendants do not appear to object to Mr. ¶ 28.]

Recovery Housing filed a motion for partial summary judgment in this Court, arguing that as a state-licensed recovery house, it was governed by the Illinois DHS safety regulations for recovery homes (which do not require sprinkler systems), not (which do). In an

Illinois DHS safety regulations preefire sprinkler regulations. With the sprinkler dispute resolved, Affordable Recovery Housing began moving men back into the facility the very next month. [106, ¶ 11.] Regarding zoning, it is unclear where the parties stand wit development of the property.

II. Legal Standard

sclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to Fed. R. Civ. P. 56(c); see also Sallenger v. City of Springfield, Ill., 630 F. 3d 499, 503 (7th Cir. 2010) (citing Fed. R. Civ. P. 56(c)(2) and noting that summary the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entit In determining whether summary judgment is appropriate, the court should construe all facts and reasonable inferences in the light most favorable to the non-moving party. See Carter v. City of Milwaukee, 743 F. 3d 540, 543 (7th Cir. 2014). adequate time for discovery and upon motion, against any party who fails to make a showing

sufficient to establish the existence of an element essent case, and on which that party would bear the burden of Celotex Corp. v. Catrett, 477 U.S. 317, 322

(1986)). Put another way, the moving party may meet its burden by pointing out to the court that evidence to support the nonmoving Id. at 325. To avoid summary judgment, the opposing party then must go beyond the pleadings and Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986) (internal quotation marks and citation omitted). For this reason, the Seventh Circuit has called summary judgment the lawsuit evidence it has that would convince a trier of fact to

See Koszola v. Bd. of Educ. of City of Chicago, 385 F. 3d 1104, 1111 (7th Cir. 2004). the [non- there must be evidence on which the jury could

reasonably find for the [non- Anderson, 477 U.S. at 252. III. Analysis Plaintiff has moved for summary judgment on three of the eight counts in its second amendment complaint (Counts IV, V, and VIII), and Defendants have moved for summary judgment on all counts. Because the Court already granted a partial motion for summary s favor [89], it is important at the outset to determine which claims are still in dispute and which claims have been resolved, mooted, and/or abandoned. In its November 27, 2014 order [89], the Court effectively mooted the central component of the dispute by concluding that that the Illinois DHS regulations governing recovery homes preempt Blue Affordable Recovery Housing is (as of September 9, 2013) a state-licensed recovery house, it is

now subject to the Illinois DHS safety regulations governing recovery homes, under which Plaintiff is not required to install sprinkler systems in its buildings. But determination may have i.e.,

Plaintiff does not have to install sprinklers), this does not absolve Defendants of liability for any harm that may have occurred previously. The focus of the litigation at this point, then, is (a) insistence that Plaintiff install a sprinkler system violated any laws, and (b) whether Plaintiff is entitled to any damages for those violations. motion for summary judgment (which, unlike its last motion for summary judgment [72], is not advertised as a motion, despite seeking only partial relief) reflects this change in focus, as Plaintiff has narrowed its focus to three of its original eight claims: its substantial burden claim under both the Religious Land Use and Institutionalized Persons Act RLUIPA IRFRA its failure-to- accommodate claim under . Plaintiff has also revised its damages claim, and now seeks only the following forms of relief:

in

exercise under RLUIPA and IRFRA and unlawful discrimination in violation of the FHAA; Affordable Recovery Housing a

reasonable accommodation by allowing it three years to complete the installation of a Code-approved sprinkler system constituted a substantial burden on Affordable Recovery unlawful discrimination in violation of the FHAA; and Monetary damages for these violations, to be determined by a jury. [99, at 1 2.] Plaintiff did not move for summary judgment on any of its constitutional claims (Counts I, II, and III) or on its alternative theories of liability under RLUIPA (Counts VI, VII). By contrast,

Defendants have s claims as enumerated in its second amended complaint [63]. However, in opposing motion, Plaintiff did not respond motion as to any of the constitutional claims

only briefly

VII). [See 106.] Although a failure to respond to a motion for summary judgment does not

automatically entitle the movant to summary judgment in its favor, it does result in the nonmovant waiving its right to raise any argument on appeal that it did not raise in the district court. D.S. v. East Porter Cnty. Sch. Corp., 799 F.3d 793, 800 (7th Cir. 2015); Bonte v. U.S. Bank, N.A., 624 F.3d 461, 466 (7th Cir. 2010) (same); see also Domka v. Portage Cty., Wisc., -settled rule that a party opposing a summary judgment motion must inform the trial judge of the reasons, legal or factual, why summary judgment should not be entered. If it does not do so, and loses the motion, it cannot raise such . A. RLUIPA and IRFRA Plaintiff claims that actions in imposing and/or enforcing its safety and zoning regulations constituted substantial burdens on its religious exercise in violation of RLUIPA and IRFRA. Section 2(a)(1) of RLUIPA, which embodies the protections afforded in the First

impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution

(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. § 2000cc(a)(1) (emphasis added). zoning or landmarking

use or development of land (including a structure affixed to the land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a 2000cc(5). In other words, a mant may develop or use property in

Vision Church v. Vill. of Long Grove, 468 F.3d 975, 998 (7th Cir. 2006) (citation omitted). The plaintiff bears the initial burden of proving that the restriction implicates the religious exercise of a person, and that the regulation in question substantially burdens that exercise of religion. Holt v. Hobbs, 135 S. Ct. 853, 862 (2015). The burden then shifts to the defendant, who must demonstrate that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest (i.e., the burden is subject to strict scrutiny). See Vision Church, 468 F.3d at 996; World Outreach Conference Ctr. v. City of Chicago, 591 F.3d 531, 533 (7th Cir. 2009).

religious exercise * * * effectively e.g., Eagle Cove Camp & Conference Ctr., Inc. v. Woodboro, 734 F.3d 673, 680 (7th Cir. 2013); Vision Church, 468 F.3d at 996. However, in Schlemm v. Wall, 784 F.3d 362 (7th Cir. 2015), the Seventh Circuit recently revisited that standard, noting that sions of the Supreme Court * * * articulate a Schlemm, 784 F.3d at 364 (quoting Holt v. Hobbs, 135 S. Ct. 853

(2015)); Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014)). The court explained that the relevant inquiry

Id. also prohibits the government from substantially burdening a (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compel This standard mirrors the RLUIPA standard, and thus courts often address RLUIPA and IRFRA arguments concurrently. See Diggs v. Snyder, 775 N.E.2d 40, 44 45 (Ill. 2002); World Outreach, 591 F.3d at 533. One relevant difference, however, is that while RLUIPA prohibits the government from imposing or implementing land use regulations that substantially burden religious exercise, IRFRA prohibits ults from a rule of 4 Here, Plaintiff describes three that allegedly resulted from zoning laws. 5

4 The Illinois legislature passed IRFRA in 1998 after the Supreme Court invalidated the identically- St. John of Christ v. City of Chicago, 502 F.3d 616, 631 (7th Cir. 2007) (citing City of Boerne v. Flores, 521 U.S. 507 (1997) (holding that RFRA, as it applied to the states and their subdivisions, exceeded Congress's remedial powers under the Fourteenth Amendment)). 5 Generally speaking, interpreting exactly which arguments the parties are advancing has proved challenging. -motions for summary judgment (where the parties simultaneously advance their own arguments while presaging those of their opponent), years of substantive briefing s, the number of factually and legally similar claims at issue, etc. The result of all of this is that, in addition to briefs. For example, in its praye men amounted to a substantial burden, but Plaintiff does not present a detailed argument in support of this

theory application as the basis for its substantial burden claim. [99, at 1 2.] arguments presented in their summary judgment briefs, regardless of the level of development.

First ts 73 residents substantially burdened its ability to exercise its religion by effectively rendering religious exercise impracticable. its fire safety code, not its zoning ordinance. Because Blue Island was not impos[ing] or implement[ing] a land use regulation (i.e., the City was not acting pursuant to a zoning or landmarking law), this action falls outside of the regulatory scope of RLUIPA. See, e.g., , 502 F.3d at 641 42 (beyond the scope of RLUIPA); Vision Church, 468 F.3d at 997 [A]n annexation statute is

regulation and its application therefore does not constitute ; Second Baptist Church of Leechburg v. Gilpin Twp., Pa. RLUIPA because it was not enacted pursuant to a zoning or landmarking law).

Regarding IRFRA exercise of religion generally, not only with respect to land-use restrictions Plaintiff says that

the eviction was a substantial burden on its free exercise of religion because once the residents lost their overnight lodging privileges, program attendance plummeted, effectively putting an end to operations. Defendants raise two objections. First, Defendants argue that despite the restriction on

overnight lodging, Affordable Recovery Housing was still entitled to carry on with the other aspects of its recovery program such as recovery support services, meals and recreation, job training, medical and dental referrals, and religious outreach. While this is true on paper, in reality, Blue Island effectively pulled the plug on these daytime recovery programs by prohibiting overnight lodging. As the Seventh Circuit recently noted, Case: 1:12-cv-04241 Document #: 133 Filed: 09/21/16 Page 13 of 40 PageID #:5038 imagine a vaguer criter standard, preventing an organization from using its facility to serve the religious objectives of the

e World Outreach Conference Ctr. v. City of Chicago, 787 F.3d 839, 843 (7th Cir. 2015). Defendants also argue that their action was not the cause of the substantial burden that is, that burden was self-imposed because Plaintiff prematurely moved residents onto the property without first obtaining the necessary permits and approvals. See Family Life Church v. City Of Elgin Family Life was self-imposed by its premature opening of the shelter before seeking a Permit and its then having to close down the shelter during the pendency of the Permit application. Homeless shelters cannot be created overnight, and the cogs of local land use approval require time to turn. As the argument goes, if Plaintiff had not moved residents onto the property resulted in eviction, and thus would not have presented a substantial burden.

The question here is really one of timing. That is, the government action at issue is the nd (as explained in more detail below liability under IRFRA), had Blue Island strictly enforced its fire sprinkler regulation from the outset by denying Affordable Recovery Housing the right to occupy the property until it was brought up to code, that action would not have constituted a substantial burden under IRFRA. To hold otherwise would mean that a religious organization in the market for a facility could point to any number of condemned buildings and argue that the cost of bringing the building up to code presents a

substantial burden. 6

The question, then, substantial burden at one point in time might impose a substantial burden at a later time. Without

answering that question generally, Defendants answer no as to the facts of this case, arguing i.e., the 73 overnight residents were evicted, as opposed to denied overnight-lodging rights from the outset), The Court agrees. the Blue Island authorized Affordable Recovery Housing to move 40 overnight residents onto the property before choosing to enforce the sprinkler requirement, telling Plaintiff that they would address the sprinkler issue at a later time. See Petra expecting to New Berlin, 396 F.3d at 900)). But while the parties dispute whether Blue Island actually authorized Plaintiff to move 40 overnight residents onto the property, they do not dispute that, at the time of eviction, Plaintiff had 73 residents living at the facility. At that point, Plaintiff which also had fallen behind on many of its representations regarding code compliance as presented in its five-year plan, including all representations regarding the installation of fire sprinklers had nearly double the number of

(allegedly) approved men residing at its property without having any written e the plaintiff in 6 See, e.g., Petra Presbyterian Church v. Vill. of Northbrook, 489 F.3d 846, 850 51 (7th Cir. 2007) (a ban where would be a prima facie violation of Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895, 900 (7th Cir. 2005) (placing religious institutions in too favorable a position in relation to other land users r * * to Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. While [the restrictions] 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

Family Life Church v. City of Elgin, Affordable Recovery Housing put the cart before the horse,

Even the City extended Affordable Recovery Housing some sort of accommodation by allowing it to inhabit the building in violation of the fire code (provided that it complied with the terms of its five-year plan and kept the number of overnight residents to a maximum of 40), because Affordable Recovery Housing violated the terms of that agreement, it would be enforcement of its fire code. To hold otherwise would incentivize organizations such as put progress before safety, which not only jeopardizes the security of property and those within, but also places the government in the difficult position of having to slow the progress of these organizations in order to protect them. s IRFRA claim must fail. In any event establishing that they acted in furtherance of a compelling governmental interest and that their

action was the least restrictive means of furthering that interest. 775 ILCS 35/15. compelling governmental interests Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 546 (1993). sprinkler regulations are part of its Life Safety Code, which mirrors the nationally recognized and widely adopted National Fire Protection Association Life Safety Code, published by the National Fire Protection Association. interest is that of reducing fires and protecting life and property in the City, including the lives and property of Plaintiff and its clients. [See 18-1, 2012 National Fire Protection Association

Life Safety Code Ch. 32 nforcement of its

sprinkler regulations were in furtherance of a compelling governmental interest. adopting and enforcing a nationally recognized fire safety code is strong evidence that a city is exercising the least restrictive means of ensuring fire safety. The relevant question here is whether Blue Island could have achieved, to the same degree, its compelling interest in reducing fires and protecting life and property by omitting altogether the fire sprinkler requirement in the Life Safety Code a code that minimum requirements [to] provide a reasonable degree of safety from fire in Hadix v. Johnson, 367 F.3d 513, 520 n.9 (6th Cir. 2004) (emphasis added). While Affordable Recovery Housing surely could achieve some level of safety without a sprinkler system, it is unreasonable to say that it could achieve the same level without a major component of what the Code requires as its minimum. See 2006

National Fire Protection Association Life Safety Code Ch. 1.2 The purpose of this Code is to provide minimum requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures for safety to life from fire. Its provisions will also aid life safety in .

Plaintiff suggests that it devised a viable alternative to a sprinkler system in what it calls its , in which it planned to employ on-duty floor managers, execute regular fire drills, and install evacuation signage as a means of ensuring adequate fire safety for the building and its residents. 7

Plaintiff points to testimony from Blue Island fire

7 December 5, 2012. [See 99, ¶ 52;99-8, at 19 24.] Plaintiff has not submitted any evidence that this

inspector Robert Copp, who testified t lan 27.] But that is not enough to create a triable issue of fact as to whether Plaintiff a less restrictive fire sprinkler requirement. Life Safety Code mirrored a widely adopted standard for fire safety. It is unreasonable to say that Blue Island should have deviated from this nationally- recognized safety standard for an indefinite period of time based on a make-shift proposal (one that s fire chief deemed, at best, a , especially considering that, at the time of the eviction, Plaintiff was non-compliant with its five-year plan for the development of the property and was housing overnight guests in numbers that far exceeded approval by any measure. attempt to do so is unavailing, and does not dissuade the Court from its conclusion that Blue

protocol was an adequate substitute to the Life Safety Code for reducing fires and protecting life and

property. The scant support in the record for this theory comes from the declaration of architect Edward -5, at 2.] Mr. Yung concluded that the required fire sprinkler system was not necessary because the construction of the building, coupled with its alarm system, were sufficient to address fire safety. He also suggested several upgrades, including a night watchman (preferably a retired fireman), hard-wire smoke detectors with battery backups outside here for several reasons. First, he failed to engage in any substantive comparison between the requirements of Affordable letter, not res or the protection of property. For example, he says

dangers of a fire faster than a sprinkler head can and they can notify all of the people in the building of the tool for fire suppression, not fire detection. By limiting his focus to life safety, Mr. Yung ignores Blue not disclosed Mr. Yung as an expert on these matters, and thus his tangentially-related opinions are of

reducing fires and protecting life and property. 8

This provides an alternate reason as to why

Second, Plaintiff argues that Defendants substantially burdened its religious exercise by denying its

accommodation requests, 9

which included requests for (a) a three-year extension of time to complete the installation of an approved sprinkler system, and (b) permission for the residents to stay on site pending completion of the sprinkler-system installation. But again, although Plaintiff did present its request for accommodation to the zoning board (in conjunction with its application for a special use permit), pursuant to a zoning or landmarking law; the regulation at issue is still that Affordable Recovery Housing install a fire sprinkler system. A party cannot convert a latory action into a zoning action simply by raising the issue with a zoning committee. in denying ry scope of RLUIPA. Regarding IRFRA, accommodation

came after the eviction (taking the added burden of the eviction process off the table), and so the practical effect of the refusal to accommodate was that Plaintiff was denied the right to house overnight guests in a building that lacked a code-approved fire sprinkler system i.e., the same burden Affordable Recovery Housing would have faced had Blue Island denied them access to 8 Plaintiff mentions th and 41 residents were evacuated within three minutes. [99, ¶ 49.] Plaintiff does not tie this fact to any particular legal argument, but to the extent that it is meant to show that there are less restrictive means of reducing fires and protecting life and property, it is unavailing. 9 This argument only applies to the special use permits filed (or argued) after the eviction notice. Prior to the eviction notice, Plaintiff sprinkler regulations.

the building from day one. But again, this cannot constitute a substantial burden; otherwise a religious organization in the market for a facility could point to any number of condemned buildings and argue that the cost of bringing the building up to code presents a substantial burden. See, e.g., Petra Presbyterian Church v. Vill. of Northbrook, 489 F.3d 846, 850 51 (7th Cir. 2007). Plaintiff disag delay, uncertainty, and expense are enough to create a substantial burden. Plaintiff relies on an out-of-context application of the

New Berlin. In that case, a religious organization owned a large parcel of land and they petitioned the city to rezone a portion of the land from residential to institutional to allow them to build a church on the property. Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895, 899 900 (7th Cir. 2005). The city expressed a use. To al -unit-development overlay

ordinance that would limit the parcel to church-related uses. Despite being presented with a such that the or (b) to continue filing applications with the city to find an agreeable work-around to the issue.

Id. at 900. In that instance, the Seventh

rezoning application constituted a substantial burden. Id. at 901. Plaintiff tries to liken its case to the plaintiff in New Berlin, noting that it had already rented and invested in the Mother of Sorrows

property, and that once the City of Blue Island

were either (a) to find a new property to rent, or (b) to continue filing revised permit applications in search of a workable arrangement with the City. Plaintiff further compares its situation to that of the New Berlin plaintiff by arguing that the City of Blue use permit was its concern over the sprinkler system (as evidenced by the results of the Zoning

Board of Appeals vote on September 5, 2012), and that, at some point thereafter,

Plaintiff nonetheless rejected the idea. But in New Berlin, the court was able to conclude, as a matter of

was a viable solution t i.e., the proposed planned-unit-development overlay ordinance unarguably remedied the issue, such that the presenting a substantial burden. Id. at 899. Here, there is no

regarding the safety of the building and its residents and, indeed, developing a workaround to a

zoning concern is leagues apart from developing a workaround to a national fire safety code and so New Berlin Recovery Housing faced is the same that any organization, religious or otherwise, would have

faced had it wanted to inhabit a building that was not up to code. But again, even if the C burden on its free exercise of religion, for the reasons explained above, t

its fire safety code was the least restrictive means of reducing fires and protecting life and property.

Third, Plaintiff argues that it was substantially burdene and demand that it apply for a special use permit. Specifically, Plaintiff argues that (1) planned unit development permits are only for new developments, (2) zone R-1 does not allow for transitional homes or recovery homes as special uses, and thus any attempt to gain approval for such a use is , and (3) Affordable Recovery Housing is a legal non-conforming use and thus need not apply for a special use permit. While these arguments do invoke actions pursuant to a zoning ordinance (and thus fall within the scope of regulated activity under RLUIPA), they do not constitute substantial burdens under RLUIPA or IRFRA. Generally speaking, RLUIPA does not provide religious institutions with immunity from land use regulations, nor does it relieve religious institutions from applying for variations, special permits, or exceptions to land use regulations. See Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 762 (7th Cir. 2003) (denying claim that zoning regulation prohibiting herwise, the compliance with RLUPIA would require municipal governments not merely to treat religious land uses on an equal footing with nonreligious land uses, but rather to favor them in the form of an outright exemption from land-use regulations. Unfortunately for [the churches], no such free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious

In support of its first and second arguments, Plaintiff relies on an exception to this general rule articulated by the Seventh Circuit in World Outreach, where the City of Chicago so that it could operate as a community center in a particular district, but then rezoning the district to a category where community centers are not allowed, thereby making it impossible for the plaintiff to

obtain the necessary permit. World Outreach, 591 F.3d at 536 37. The Seventh Circuit held that constituted a substantial burden. requirements to those imposed by the City of Chicago in World Outreach, arguing that it was (and is) impossible for it to comply with zoning ordinance. The Court disagrees. This case is a far cry from the facts of World Outreach. Plaintiff relies solely on emails to support its proposition that planned unit developments are reserved only for new developments (rather than remodels) without providing any textual support within the zoning ordinance itself. And upon review, the Court cannot find any textual support for this assertion either. But regardless of what the zoning ordinance says, Blue Island endorsed Plan Commission and the Zoning Board of Appeals approved special use proposal. demonstrated willingness to allow Plaintiff to proceed as a planned unit development distinguishes this case from World Outreach. World Outreach exception. Even though ordinance any particular zoning district -1 district [see 99-

10, at 41 42] that does not mean that such a use is incompatible with the zoning ordinance. Indeed, the zoning ordinance because of their -10, at 88; 107, ¶ i.e., a group of two or more principal buildings designed to be maintained and

operated as a unit is one of the special uses permitted in R-1 zones, and Affordable Recovery definition. [See 107, ¶ 65.] And again, Blue Island has both endorsed and approved operation of a recovery home as a planned unit development, further distancing this case from

World Outreach. t regarding non-conforming uses also is unavailing. Plaintiff properly notes that Blue Island exempts pre-existing, non-conforming structures and land uses from complying with certain new and amended code regulations, assuming that the structure or land use existed lawfully when the new regulations were adopted. But the Blue Island zoning ordinance also says -conforming use shall be changed to another non-conforming -10, at 74.] For decades, the Mother of Sorrows property was used primarily for educational purposes, where the only overnight residents were the Mantellate Sisters who occupied (and continue to occupy) a building on the Mother of Sorrows property that is not at namely, its introduction of a sizeable transient population of overnight residents in previously non-residential buildings presents a use, which is the reason the City requested that Plaintiff

submit a special use permit in the first place. Because Plaintiff d uses of the Mother of Sorrows property exceeded the prior uses of that property, Plaintiff cannot benefit from the -conforming-use policy. 10

See also Affordable Recovery Housing v. City of Blue Island, 2012 WL 2885638, at *6 8 (N.D. Ill. July

13, 2012) (addressing this issue at length at the preliminary injunction phase).

10 Defendants also argued that the Mantellate Sisters abandoned any non-conforming uses of the property because the property discontinued these uses for a period exceeding six months. [See 99-10, at 74.] -1], which the Court has read and considered. Ultimately, however, the Court need not address this argument, having concluded that Plain -conforming-use doctrine.

IRFRA claims.

B. First Amendment

Plaintiff also argues that safety codes infringe upon its First Amendment rights to the free exercise of religion and the freedom of association. Defendants motion for summary judgment as to either claim [see 106 (no mention of First Amendment)],

and thus has waived all arguments in opposition. See l Union of N. Am. v. Caruso, 197 F.3d 1195, 1197 (7th Cir. 1999). As an initial matter, the Court notes that because RLUIPA is interpreted broadly to the 2000cc-3(g), federal courts often are able to avoid addressing constitutional claims that mirror claims brought pursuant to RLUIPA. Indeed, do what they can to avoid making constitutional decisions, and strive doubly to avoid making unnecessary constitutional Kroger v. Bryan, 523 F.3d 789, 801 (7th Cir. 2008) (declining to consider constitutional claims that were paired with a RLUIPA claim, noting that RLUIPA offers heightened protections) (quoting , 256 F.3d 548, 552 (7th Cir. 2001) (same)); see also World Outreach, 591 F.3d at 534 [W]e cannot see any s pitching a religious discrimination claim on any provision of the Constitution, rather than just on the [RLUIPA] statute); cf. Vision Church, 468 F.3d at 996 (collapsing its analysis of RLUIPA and First Amendment claims). Based on this constitutional

avoidance doctrine, the Court need not revisit -eligible claims in assessing First Amendment claims. E.g., Nelson v. Miller, 570 F.3d 868, 877 (7th Cir. 2009). However, as discussed ot involve a zoning or landmarking law (i.e. fire sprinkler requirements), and claims as to those arguments.

1. Free Exercise the Free Exercise Clause of the First Amendment of the United States Constitution, made applicable to state and local governments by the Fourteenth Amendment, no law may prohibit the free exercise of religion Vision Church, 468 F.3d at 996 (quoting Civil Liberties for Urban Believers, 342 F.3d at 762 63). Courts assessing a Free Exercise claim must determine al and of general applicability, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993), and the general rule is that City of Boerne v. Flores, 521 U.S. 507, 514

(1997). Indeed, t results where a burden on religious exercise is the incidental effect of a neutral, generally

applicable, and otherwise valid regulation, in which case such regulation need not be justified by Vision Church, 468 F.3d at 998 (emphasis added) (quoting Civil Liberties for Urban Believers, 342 F.3d at 763). Such is the case here. The fire sprinkler regulation at issue comes from ife Safety Code, which mirrors the widely adopted National Fire Protection Association Life Safety Code. Life Safety Code is neutral and applies generally to all properties in Blue

Island, whether used for religious purposes or not. The alleg Housing was not allowed to board overnight guests at its property (although it was entitled to

continue all other aspects of its operation). This burden to religious exercise was only incidental to

its safety provisions. Sprinkler regulations do not directly impact the exercise of religion or otherwise target religious activity; they directly impact the safety and habitability of a property. indirectly (or consequently) exercise of religion does not make this claim

actionable under the Free Exercise Clause. Additionally, the burden on Plaintiff was not a substantial one. Within the First Vision Church, 468

F.3d at 997 (quoting Hobb n of Fla., 480 U.S. 136, 141 (1987)). its safety regulations did not require Plaintiff to violate its religious beliefs; it merely required Plaintiff to install a sprinkler system. Again, any effect on religious exercise was merely incidental to the enforcement of a facially neutral, generally applicable safety regulation. See Vision Church, 468 F.3d at 998 (citing Midrash Sephardi, Inc. v. Town of Surfside requires something more than an incidental effect on religious

For these reasons, of its sprinkler regulations did not violate . Defendants are entitled to summary judgment on this claim.

2. Freedom of Association The Laborers Local 236, AFL-CIO v. Walker, 749 F.3d 628, 638 (7th Cir. 2014); Rumsfeld v. Forum

for Academic & Institutional Rights, Inc., 547 U.S. 47, 68 (2006) The reason we have extended First Amendment protection in this way is clear: The right to speak is often exercised mo The constitutionally protected right to freedom of association consis certain intimate human relations, such as marriage s children, and s relatives and (2) the right to associate to engage in activities protected by the First Amendment, such as speech, assembly, petition for redress of grievances, and exercise Marshall v. Allen, 984 F.2d 787, 799 (7th Cir. 1993); Goodpaster v. City of Indianapolis, 736 F.3d 1060, 1072 (7th Cir. 2013). The rights at issue here fall into the latter exercise claim. s that its free exercise claim fails. sprinkler regulations are facially neutral and do not prevent religious organizations from forming or meeting. While sprinkler requirement might make it more difficult to engage in certain religious activities, these are incidental burdens on Plaintiff s right of freedom of association, not direct and substantial ones. See Civil Liberties for Urban Believers, 342 F.3d at 765;

Laborers Local 236 not require the state to maintain policies that allow cer); Johnson v. City of Kankakee 26 (7th Cir. 2008) (affirming a grant of summary ; Hameetman v. City of Chicago, 776 F.2d 636, 643

regulations are not unconstitutional deprivations of the right of family association unless they regulate the family directly * * . indirectly regulate the freedom to associate, such regulation is motivated not by any

disagreement that Blue Island might have with recovery homes or other religious organizations, but rather by such legitimate, practical concerns as fire safety. See Civil Liberties for Urban Believers, 342 F.3d at 765. Additionally prevented Plaintiff from housing overnight guests; all program participants were still entitled to

associate and exercise their religious beliefs so long as those acts did not involve overnight lodging. This is further evidence that prinkler regulation does not infringe upon . Defendants are entitled to summary judgment on this claim. C. Fourteenth Amendment Procedural Due Process Plaintiff alleges that Defendants have violated its due process rights under the Fourteenth Amendment by (1) imposing a sprinkler requirement that does not exist in the Life Safety Code, (2) authorizing the Fire Chief or any other Blue Island administrator to evict Plaintiff under the circumstances, (3) authorizing the Fire Chief or any other Blue Island administrator to summarily s under the circumstances, and (4) requiring Plaintiff to obtain a special land use permit and/or to submit to a planned unit development. Defendants have moved for summary judgment on this claim, and Plaintiff did not offer any arguments in response. As the Seventh Circuit has said on multiple occasions Federal courts are not boards of zonin in zoning cases are minimal. Civil Liberties for Urban Believers, 342 F.3d at 767 (quoting River Park v. City of Highland Park, 23 F.3d 164 (7th Cir. 1994)). As Plaintiff well knows, Blue Island provides mechanisms for objecting to and/or appealing all decisions related to its zoning and safety regulations. Plaintiff availed itself of these

mechanisms on repeated occasions, presenting its zoning proposals and accommodation requests to both the Plan Commission and the Zoning Board of Appeals. Similarly, as explained in the eviction letter, Plain Council, which Plaintiff did. There is no evidence that the City failed to provide adequate review

evidence that Plaintiff was denied the opportunity to a full and fair hearing in each instance. See

Matthews v. Eldridge The fundamental requirement of due process at a meaningful time and in a meaningful manner. (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965))). Plaintiff has not provided any evidence to the contrary, and has waived all arguments in opposition. It is unclear what process or procedure Plaintiff feels it was denied; of its protestations, not the procedures by which those results came to pass. Based on the undisputed facts, the Court concludes that Defendants provided Plaintiff with adequate due ing and safety regulations. Defendants are entitled to summary

judgment on this claim.

D. RLUIPA: Equal Terms and Unlawful Exclusion alleges that provisions of RLUIPA. Defendants have moved for summary judgment on both claims. Plaintiff provided a short

1. Equal Terms use regulation in a manner that treats a religious assembly or institution on less than equal terms

with a nonreligious assemb 2000cc(b)(1). According to the Seventh Circuit, erms provision of RLUIPA only if it treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to the accepted zoning criteria. River of Life Kingdom Ministries v. Vill. of Hazel Crest, Ill., 611 F.3d 367 (7th Cir. 2010) (en banc). To prevail on an equal terms claim, Plaintiff must show that religious and secular land uses have not been treated the same from the standpoint of an accepted zoning criterion. See Truth Foundation Ministries, NFP v. Vill. of Romeoville, 2016 WL 757982, at *14 (N.D. Ill. Feb. 26, 2016) (citing Irshad Learning Ctr. v. County of DuPage, 937 F. Supp. 2d 910, 936 (N.D. Ill. 2013)). (1) a statute that facially differentiates between religious and nonreligious assemblies or

institutions; (2) a facially neutral statut solely on religious, as opposed to nonreligious, assemblies or institutions; or (3) a truly neutral

statue that is selectively enforced against religious, as opposed to nonreligious assemblies or ins Irshad, 937 F.Supp.2d at 932 (citing Vision Church, 468 F.3d at 1003).

the Court cannot readily discern intiff believes occurred here. Nevertheless, b

As to the third category, Defendants argue that Blue Island does not selectively enforce its zoning laws against religious institutions. Because RLUIPA is only concerned with municipal action taken pursuant to a zoning or landmarking law, the only relevant iff obtain zoning approval for its use of the Mother of

Sorrows property, which Blue Island suggested would best be accomplished by obtaining a special use permit as a planned unit development. In support of their argument, Defendants point to the fact that another individual (Debra Hunter) sought to use the Mother of Sorrows property for non-religious purposes (i.e. and services operation) just before Plaintiff moved onto the property. In response to

Ms. Blue Island advised Ms. Hunter to proceed with her project as a planned unit development i.e., the same advice it offered to Plaintiff. [See 107, ¶¶ 47 49.] In other words, Blue Island applied its zoning laws equally in two contemporaneous instances involving one religious and one non-religious organization. The record also reflects numerous other instances where Blue Island required

non-religious institutions to obtain special use permits in various zoning districts, including R-1. [See 107, ¶¶ 9 12.] Based on these undisputed facts, Plaintiff cannot show that Blue Island imposed a land use regulation in a manner that treated it, as a religious organization, on less than equal terms with a non-religious organization. 11

Defendants are entitled to summary judgment on this claim. 2. Unlawful Exclusion § 2000cc(b)(3) of RLUIPA, a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a juris 2000cc(b)(3)(A) (B). As to the latter prong hat is reasonable must be determined in light of all the facts, including Vision Church, 468

11 Plaintiff alleges that it was treated differently than another recovery program in Blue Island (called Guildhaus), because the City gave the Guildhaus three years to install a sprinkler system. [99, at 12.] laws), it falls beyond the scope of RLUIPA, and thus cannot form the basis of an equal terms claim.

F.3d at 990. But the Court need not address reasonableness here, as Plaintiff invokes only the first prong, arguing no zone or district uses are permitted, and thereby totally excludes and unreasonably limits A [63, at 23 24 (emphasis added).] Defendant has moved for summary judgment on this claim.

As explained in detail above, Blue Island has authorized Affordable Recovery Housing to operate a recovery home at the Mother of Sorrows property, which is zoned R-1, by obtaining a special use permit as a planned unit development. T not expressly has endorsed classification a planned unit development, and both the Plan Commission and the Zoning Board of Appeals have approved though the Zoning Board of Appeals ultimately refused to grant Affordable Recovery Housing

its requested accommodation regarding the sprinkler system, which has nothing to do with the propriety of its zoning request). § 2000cc(b)(3)(B). And as further proof that Blue Island does not exclude recovery homes,

Plaintiff concedes that a lot of living sober

¶ 22 (emphasis added).]

And even if the Court were to construe Plaintiff to advance an argument under § 2000cc(b)(3)(A), there is nothing unreasonably limiting about requiring Affordable Recovery Housing to obtain a special use permit. Again, RLUIPA does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variations, special permits, or exceptions to land use regulations. See Civil Liberties for Urban Believers, 342 F.3d at 762.

Based on these facts, the Court concludes that Blue completely or unreasonably exclude recovery

homes from its districts. Defendants are entitled to

summary judgment on this claim as well. E. Fair Housing Amendments Act Plaintiff alleges that for an accommodation allowing it three years to install an approved fire sprinkler system (and its

related request to allow its residents to remain living on site during that three-year period) constituted unlawful discrimination in violation of the FHAA. The FHAA makes it make unavailable or deny, a dwelling to any buyer or renter because of a handicap § 3604(f)(1). Enacted in 1988, the FHAA extended the scope of the statute to cover persons with

disabilities. See Wisc. Cmty. Servs., Inc. v. City of Milwaukee, 465 F.3d 737, 748 (7th Cir. 2006). The types of discrimination proscribed by the statute include refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. § 3604(f)(3)(B); see also Good Shepherd Manor Foundation, Inc. v. City of Momence, 323 F.3d

require[s] a public entity to reasonably accommodate a disabled person by making changes in rules, policies, practices or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled. To prevail on a failure-to-accommodate claim, a plaintiff must show (1) that the ameliorate the effec -

disabled in the housing market. Wisc. Cmty. Servs., 465 F.3d at 749.

Whether a requested accommodation is reasonable-specific inquiry and requires bal Wisc. Cmty. Servs., 465 F.3d at

749 (quoting Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775, 784 (7th Cir. 2002)).

T and a plaintiff Wisc. Cmty. Servs., 465 F.3d at 749. In other words,

handicapped people by reason of their handicap, rather than * * * by virtue of what they have in common with other people, such as a limited amount of money to spend on housing Id (emphasis added). For example, in Good Shepherd

Good Shepherd, 323 F.3d at 562; see also Wisc. Cmty. Servs., 465 F.3d at 749 ([in Good Shepherd] failed because the disability suffered by the

.

Plaintiff spends considerable space arguing about the reasonableness of its accommodation requests,

explaining how it has devised a comprehensive fire safety protocol that could ensure adequate fire safety until Plaintiff is able to install the sprinkler system. But the accommodation requests are reasonable because Blue fire sprinkler requirement does not hurt handicapped people by reason of their handicap. The Seventh Circuit came to the same conclusion in a factually-similar case, holding that a

municipality did not have to adjust its zoning and/or safety regulations for purposes of the FHAA where the requested accommodation sought to ameliorate the financial burden of a regulation where the regulation imposed similar costs on all groups. Hemisphere Bldg. Co., Inc. v. Vill. Of Richton Park, 171 F.3d 437, 440 41 (7th Cir. 1999). As the Seventh Circuit observed, nything that makes housing more expensive hurts handicapped people; but it would be absurd to think that the FHAA overrides all local regulation of home construction. Id. thus disapprove the district court cases in this circuit which have held that a city must, if

requested by a handicapped person, waive its requirements for the installation of sprinklers because the requirements make homes more expensive for the handicapped

Here, Plaintiff requested a three-year accommodation to install a code-approved sprinkler system due to the cost of compliance. 12

Plaintiff had recently borrowed $130,000 from the Mantellate Sisters to install a fire alarm system, and the cost of a fire sprinkler system was estimated to be an additional $120,000 $170,000 (Plaintiff received an estimate for the installation, but could not afford to pay an engineer to draw up plans). [109, ¶ 43.] Plaintiff requested up to three years to raise the money to install the fire sprinkler system, and requested permission to house residents during that time so that it could earn the money in the interim. [See 99, ¶ Because

12 its attempt sprinkler system, and that it needed the requested accommodations to allow it to raise those funds. [See,

e.g., 99, ¶ would not have been an issue implying that money is the issue added).] But if Plaintiff had done that, then this likely would be a lawsuit about fire alarms, not fire sprinkler sland allegedly made would not change the fact that by reason of their handicap, as -accommodation provision.

obligations on all groups equally (i.e., the financial burden of compliance does not affect Affordable Recovery Housing by reason of its handicap), the FHAA does not require Blue Island to grant accommodations to Plaintiff because it cannot afford to comply with those codes. Hemisphere Bldg. Co., 171 F.3d at 440 (asking whether the rule in question, if left unmodified, by reason of their handicap, rather than * * * by virtue of what they have in common with other people, such as a limited amount of money to); cf. Love Church v. City of Evanston, difficulties [plaintiff] claims to have encountered, they are the same ones that face all [land

users], not merely churches. The harsh reality of the marketplace sometimes dictates that certain . Defendants are entitled to summary judgment on this claim as well.

F. Other Arguments Before closing the door on this case, the Court addresses Pl -made arguments that Blue Island violated its rights by (a) telling Plaintiff to prioritize the fire alarm system over the sprinkler system, effectively amending -year plan, and (b) granting Plaintiff approval to move 40 men onto the property and then reversing course and evicting those (and other) suffered by relying on certain verbal assurances granting safety regulations.

As an initial matter, these are disputed facts (Defendants allege that no such assurances were given) that would, at most, tee-up a credibility determination for the jury. But because these legal

prioritize the installation of the fire alarm system over the fire sprinkler system, the very concept

of prioritization means that one task is less important than another, not that one task is irrelevant. In addition, Commissioner Mindeman allegedly made this statement in March 2011, and the eviction occurred in May 2012. As Fire Chief Vrshek pointed out in his eviction notice, Plaintiff had fallen behind on many of the representations in its five-year plan by that time, including all of its representations relating to fire sprinkler systems. Plaintiff says repeatedly that its procedures for obtaining approval for regulatory non-compliance. Indeed, in that 14-month

interval , Plaintiff did not take any steps towards installing a fire sprinkler system, towards memorializing

system, or towards obtaining written approval from the City allowing it to operate in violation of

As Plaintiff to move 40 men onto the Mother of Sorrows property in March 2011, when the eviction occurred 14 months later, Plaintiff had 73 program participants residing at the property. At that point, Plaintiff which, again, had fallen behind on many of its representations regarding code compliance as presented in its five-year plan had nearly double the number of (allegedly) approved men residing at its property without having any w knowledge or approval of its actions.

Plaintiff presents them as the factual foundation for nearly all of its legal claims. But P

arguments are hyperbolized. Plaintiff fails to acknowledge the change in circumstances in the 14- during this period Plaintiff focused more on the growth of its organization and less on its compliance with regulations. Another problem is that Plaintiff fails to connect its arguments to any legal principles. While it is likely improper for a municipality to make a decision in favor of one of its residents and then to punish that resident for following that decision, 13

it is incumbent upon the plaintiff to tie that wrong to an appropriate cause of action. -peg its

arguments into the round holes of the many claims it asserts in this lawsuit lacks the requisite connective tissue (i.e., supportive case law) to create a triable issue of fact.

13 There is a reliance-based theory of liability in the RLUIPA context, where a plaintiff can establish that it suffered a substantial burden if it took action in reliance on a representation from a municipality regarding a zoning regulation, and then they municipality reneged on its representation. See Petra Presbyterian Church v. Vill. of Northbrook, 489 F.3d 846, 850 organization has bought property reasonably expecting to obtain a permit, the denial of the permit may inflict a hards , putting this beyond the scope of

RLUIPA), the undisputed facts of this case do not support a reliance argument. Plaintiff cannot rely on an informal statement about the prioritization of safety-related tasks to ignore an applicable safety regulation indefinitely.

IV. Conclusion For the foregoing reasons, denied and judgment [100] is granted. brief [111] is granted. Judgment will be entered against Plaintiff and in favor of Defendants.

Dated: September 21, 2016 _____ Robert M. Dow, Jr. United States District Judge