

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 VLADAN MILOSAVLEJEVIC and  
8 ANGEL MICHAEL AND GABRIEL, LLC,

9 Plaintiffs/Petitioners,

10 v.

11 CITY OF BRIER,

12 Defendant/Respondent.  
13

Case No. C16-1414RSM

ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING PETITIONER'S  
MOTIONS FOR LEAVE TO FILE  
SURREPLY AND TO CONTINUE  
TRIAL AND AMEND CASE SCHEDULE

14 **I. INTRODUCTION**

15 This matter comes before the Court on Respondent's Motion for Summary Judgment.  
16 Dkt. #32. Petitioner's claims arise from Respondent's denial of his request for a height variance  
17 necessary to build a personal chapel. Petitioner's proposed personal chapel would exceed  
18 Respondent's 30-foot residential land-use zone's height-cap.<sup>1</sup> Dkt. #20 at 2. Respondent asks  
19 the Court to dismiss Petitioner's claims on the basis that (1) Petitioner does not meet the elements  
20 necessary to establish a violation of the Religious Land Use and Institutionalized Persons Act's  
21 ("RLUIPA"), 42 U.S.C. § 2000ee, substantial burden provision; (2) Petitioner does not meet the  
22 elements necessary to establish a violation of RLUIPA's equal terms provision; (3) Petitioner's  
23 Civil Rights Act, 42 U.S.C. § 1983 ("Section 1983"), claims are without legal or factual basis;  
24  
25  
26

27  
28 <sup>1</sup> The Court notes that Petitioner previously applied for a building permit, but later abandoned  
the application. AR 5 and Dkt. #32-1 at 2. Therefore, even if the Court were to find in  
Petitioner's favor, Petitioner could not yet build his chapel.

1 and (4) delay damages are not available in any event. Dkt. #32. Petitioner opposes the Motion,  
2 arguing that genuine disputes exist as to material facts, and therefore respondent is not entitled  
3 to summary judgment. Dkt. #33. Additionally, Petitioner has filed a Motion for Leave to File a  
4 Surreply and a Motion to Continue Trial Date and Amend Case Schedule. Dkts. #37 and #38.  
5 For the reasons discussed below, the Court now GRANTS Respondent's Motion for Summary  
6 Judgment and DENIES Petitioner's Motions For Leave To File Surreply and To Continue Trial  
7 and Amend Case Schedule.  
8

## 9 II. BACKGROUND

10 Petitioner Vladan Milosavljevic seeks to build a personal Serbian Orthodox chapel on  
11 property owned by his company, Angel Michail and Gabriel, LLC., in the City of Brier,  
12 Washington ("City").<sup>2</sup> Dkts. #1-1 at ¶ 2 and #33-1 at ¶¶ 22-22. To comply with religious  
13 standards, Petitioner asserts that his chapel must meet specific architectural dimensions,  
14 including two domes, each spanning 40-feet five and one-half inches from the interior floor to  
15 the exterior height. Dkt. #17 at 6. Petitioner's property is located in a residential land-use zone.  
16  
17 *Id.* Prior to seeking to build a chapel, Petitioner worshipped in his home, and attended Serbian  
18 Orthodox church services in King and Snohomish Counties. Dkts. #32 at 7 and #34 at 3.  
19

20 Under Brier Municipal Code ("BMC") 17.28.010(E), buildings in single-family  
21 residential zones may not exceed a maximum height of 30 feet. Individuals planning to erect  
22 structures exceeding 30 feet must apply and be approved for height variances in addition to  
23 building permits. Dkt. #34 at 12. To obtain a variance, applicants must meet eight criteria.  
24 Administrative Record ("AR") at 72. The procedure for processing variance applications is set  
25 forth in BMC 17.36.050(E).  
26

---

27  
28 <sup>2</sup> For ease of reference, Mr. Milosavljevic and Angel Michail and Gabriel LLC will be referred to as a singular Petitioner.

1 On May 19, 2015, Petitioner applied for a height variance to construct his chapel. AR 2-  
2 3. As proposed, Petitioner's chapel would exceed the City's single-family residential height limit  
3 by ten feet, five and one-half inches. Petitioner asserts that his proposed chapel domes are  
4 "vehicle[s] for . . . prayers to be sent to the heavens." *Id.* at 25. Petitioner states that while his  
5 chapel height specifications originate from his grandfather's wishes, the 40-foot dome  
6 measurement originates from the Serbian Orthodox belief that 40 is a holy number. *Id.* at 56;  
7 Dkt. #32-1 at 7. According to an architectural report obtained by City Planner Lauren Balisky,  
8 under communism, Serbians were prohibited from developing traditional Serbian Orthodox  
9 churches in the Byzantine style of architecture. AR 120 (*Ex. K*). Since then, "Serbs in exile,  
10 especially in the United States, [are] in a better position to develop previously built church  
11 building traditions than indigenous communities." *Id.* The architectural report notes that Serbian  
12 Orthodox churches are "not supposed to look like a house, as their functions are completely and  
13 fundamentally different. Thus, heights should not be constrained to residential heights." *Id.* at  
14 120-22. The Serbian Orthodox U.S. and Canada's Western American Diocese note that a  
15 church's height must be proportional to its footprint in length and width. *Id.* at 123 (*Ex. A*).

19 On March 30th, the Commission voted unanimously to recommend denying Petitioner's  
20 variance application, and directed staff to prepare a report and recommendation to the City  
21 Council for consideration at its April 20, 2016 meeting. *Id.* at 344. On April 20th, the  
22 Commission reviewed the proposed Report and Recommendation, and voted to postpone action  
23 until May 18, 2016, due to Petitioner's allegations that denying his application would constitute  
24 a religious rights violation. *Id.* The Commission also authorized its Chair to re-open the hearing  
25 on the application if recommended by the City Attorney, which he did on May 2, 2016. *Id.* On  
26 May 18th, the Commission held the hearing, received a Final Revised Staff Report with  
27  
28

1 attachments, and again heard from Petitioner, three members of the public, and City staff. AR  
2 346-468. The Commission then passed a motion to approve a report to the City Council,  
3 recommending Petitioner's variance be denied. *Id.* at 343-45. The Commission's report noted  
4 that Petitioner met only two of eight mandatory criteria for granting variances. *Id.* at 344 and  
5 349-57. On July 19, 2016, the City Council denied Petitioner's application. Dkt. #17 at 21.  
6

7 Petitioner then filed a Complaint in Snohomish County Superior Court, alleging that the  
8 variance procedure violated Washington's Land Use Petition Act ("LUPA"), RCW 36.70C, *et*  
9 *seq.*, and that the denial of the variance burdens his right to due process, free exercise of religion,  
10 and equal protection of the law. *Id.* at ¶ 31. Additionally, Petitioner alleged he suffered  
11 discrimination by the City because staff had personal vendettas against him. *Id.* at ¶ ¶ 29-30.  
12 Petitioner believes the City's Mayor, Bob Colinas, is of Croatian heritage and acted vengefully  
13 against Petitioner who identifies as Serbian. Dkt. # 35-1 at 35-36.  
14

15 On September 9, 2016, the case was removed to this Court. Dkt. #1 at 1. On March 10,  
16 2017, the Court denied Petitioner's LUPA claim. Dkt. #24. The Court now addresses  
17 Petitioner's remaining RLUIPA and Section 1983 claims.  
18

### 19 III. DISCUSSION

#### 20 A. Standard of Review for Motions of Summary Judgment

21 Summary judgment is appropriate where "the movant shows that there is no genuine  
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.  
23 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In ruling on summary  
24 judgment, courts do not weigh evidence to determine the truth of the matter, but "only  
25 determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d 547, 549  
26 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O'Melveny & Meyers*, 969 F.2d 744, 747  
27  
28

1 (9th Cir. 1992)). Material facts are those which might affect the outcome of the suit under  
2 governing law. *Anderson*, 477 U.S. at 248.

3 Courts must draw all reasonable inferences in favor of the non-moving party. *See*  
4 *O'Melveny & Meyers*, 969 F.2d at 747 (rev'd on other grounds). However, to survive summary  
5 judgment, the nonmoving party must make a "sufficient showing on an essential element of her  
6 case with respect to which she has the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317,  
7 323 (1986). Further, "[t]he mere existence of a scintilla of evidence in support of the petitioner's  
8 position will be insufficient; there must be evidence on which the jury could reasonably find for  
9 the petitioners." *Anderson*, 477 U.S. at 251.

#### 11 **B. RLUIPA Claim**

12  
13 RLUIPA was established to protect the "free exercise of religion from government  
14 regulations." *Anselmo v. County of Shasta, Cal.*, 878 F. Supp. 2d 1247, 1254 (E.D. Cal. 2012)  
15 (citing *Guru Nanak Sikh Soc. Of Yuba City v. County of Sutter*, 456 F.3d 978, 985 (9th Cir.  
16 2006)). RLUIPA contains several provisions limiting government regulation of land use,  
17 referred to as: (1) the substantial burden provision, (2) the equal terms provision, (3) the  
18 nondiscrimination provision, and (4) the exclusions and limits provision. *See* 42 U.S.C. § 2000cc;  
19 *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1169 & n.24 (9th Cir.  
20 2011); *see also Holy Ghost Revival Ministries v. City of Marysville*, 98 F. Supp. 3d 1153, 1170-  
21 71 (W.D. Wash. 2015). Petitioner asserts claims under RLUIPIA's first and second provisions.  
22  
23 Dkt. # 1-1 at ¶¶ 22 and 24.

24  
25 Under RLUIPA's substantial burden provision, a "government land-use regulation 'that  
26 imposes a substantial burden on the religious exercise of a [person, including a] religious  
27 assembly or institution' is unlawful 'unless the government demonstrates that imposition of the  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.