UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2:18-CV-14282-ROSENBERG/MAYNARD

EFTX, LLC, *a Florida Limited Liability Company*,

Plaintiff,

v.

ST. LUCIE COUNTY, *a political subdivision of the State of Florida*,

Defendant.
_____/

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendant St. Lucie County's Motion for Summary Judgement (the "Motion"). Mot., DE 90. Defendant also filed a Statement of Undisputed Facts in Support of its Motion ("Defendant's SOF"). Def. SOF., DE 91. The Motion is fully briefed: Plaintiff EFTX, LLC responded to the Motion and to the Defendant's SOF. Pl. Resp., DE 94; Pl. SOF, DE 96. Defendant replied to both the Response and to the Plaintiff's SOF. Def. Reply 99; Def. Add'l SOF, 100. The Court also held a hearing on the Motion on July 3, 2019. For the reasons set forth below, the Motion for Summary Judgment is **GRANTED**.

I. BACKGROUND[1]

Plaintiff EFTX, LLC, filed this lawsuit on July 20, 2018, alleging a Section 1983 claim for violation of the Equal Protection Clause of the Fourteenth Amendment. Compl., DE 1. Plaintiff is entirely owned by Mr. Robert Eustace and Mrs. Elsa Eustace, who live in Jensen Beach, Florida.

[1] The facts stated herein are derived from Plaintiff's Amended Complaint, DE 18, Defendant's Statement of Facts, DE 91, and Plaintiff's Statement of Facts in Opposition to Defendant's Statement of Facts and Additional Facts, DE 96, and all of the exhibits cited therein. Where the parties' facts diverge, their different accounts of the facts giving rise to this lawsuit are noted.

Def. SOF., DE 91, ¶¶ 1-2. At the center of this dispute is an "unpaved and undeveloped grass parking area" (the "Property") owned by Plaintiff. *See* Am. Compl., DE 18, ¶ 13. The Property is across the street from a second property, the "Beachfront Property" that also belongs to Plaintiff and is currently occupied by Kyle G's Prime Seafood & Steaks. *Id.* ¶ 25. Plaintiff claims that the Property has been used for employee and valet parking for various restaurants that have occupied the Beachfront Property since 1989. *See id.* ¶ 24. According to Plaintiff, "The [Property] has traditionally been used as restaurant employee parking and the valet parking of customer vehicles in conjunction with the operation of a beachfront restaurant site, which is located across the street." Pl. SOF, DE 96, ¶ 65.

The County's Comprehensive Plan ("Comp Plan") indicates the Plaintiff's Property is designated as Commercial. Def. SOF., DE 91, ¶ 43. In addition, the County's Land Development Code ("LDC") requires that any development activity must be authorized by Planning & Development Services. *See id.* ¶ 39; *see also* LDC §§ 11.01.00-11.02.00, DE 91-5, 59-72. Finally, the LDC requires that parking lots be constructed from all-weather "impervious" materials, specifically "concrete, asphalt, brick pavers, stamped concrete, or paving block." *See* Mot., DE 90, 16; *see also* Def. SOF, DE 91, ¶ 49; LDC § 7.06.02.B.3(a), DE 91-5, 50;

Beginning in January 1989, the Property was subject to an administrative site plan (the "1989 Site Plan"), which, according to Defendant, only permitted "temporary employee parking" on the Property. *See* Def. SOF, DE 91, ¶ 9. "On November 6, 2015, the 1989 Site Plan was amended by Planning & Development Services ("PDS") Order 15-034 (the "PDS Order") to permit use of the 'stabilized parking area' on the Vacant Lot (as identified on the attached site plan) *solely for the employees* of Pietro's" (the predecessor restaurant to Kyle G's). *Id.* ¶ 13

(emphasis in Def. SOF); *see also* PDS Order § A3, DE 91-6, 4-6. The PDS Order was the result of settlement discussions between Defendant and Plaintiff, represented by counsel, following a Notice of Violation for using the Property for parking. *See* Def. SOF, DE 91, ¶¶ 28-81. *See also* Am. Compl., DE 18, ¶¶ 33-40.

In November 2017, Defendant "issued a Notice to Appear for a public hearing before the Code Enforcement Board" based on an alleged code violation for allowing customer parking on the unpaved Property. Am. Compl., DE 18, ¶ 44. The Notice was, at least in part, a result of Plaintiff's neighbor, Mrs. Long's repeated complaints to Defendant about the use of the Property for customer parking. *See* Def. SOF, DE 91, ¶¶ 20-24, 34. A hearing was held on the matter in December, and the Code Enforcement Board issued Findings of Fact, Conclusions of Law, and an Order. *See id.*, ¶ 35; *see also* Am. Compl., DE 18, ¶¶ 44-47. As a result of the violation, Defendant "sought to impose fines and penalties upon the Property, including a fine not to exceed $250.00 per day." Am. Compl., DE 18, ¶ 47. Plaintiff did not seek rehearing on this determination. Def. SOF., DE 91, ¶ 36. This action was filed the following summer, on July 20, 2018. Compl., DE 1.

By Defendant's account, this is a case about *paving a parking lot*, a dispute which should be left to the local government to resolve with its resident. *See* Mot., DE 90; *see also* Mot. Hr'g Tr. By Plaintiff's account, it has been steamrolled by an unfair and prejudicial process and is being forced to "pave[] paradise and put up a parking lot".[2] *See* Pl. Resp., DE 94.

II. SUMMARY JUDGMENT STANDARD

Under Rule 56(c), the summary judgment movant must demonstrate that "there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a

[2] Joni Mitchell, Big Yellow Taxi (Reprise Records 1970).

matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The existence of a factual dispute is not by itself sufficient grounds to defeat a motion for summary judgment; rather, "the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). A dispute is genuine if "a reasonable trier of fact could return judgment for the non-moving party." *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (citing *Anderson*, 477 U.S. at 247–48). A fact is material if "it would affect the outcome of the suit under the governing law." *Id.* (citing *Anderson*, 477 U.S. at 247–48).

In deciding a summary judgment motion, the Court views the facts in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor. *See Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006). The Court does not weigh conflicting evidence. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1140 (11th Cir. 2007). Thus, upon discovering a genuine dispute of material fact, the Court must deny summary judgment. *See id.*

The moving party bears the initial burden of showing the absence of a genuine dispute of material fact. *See Shiver v. Chertoff*, 549 F.3d 1342, 1343 (11th Cir. 2008). However, once the moving party satisfies this burden, "the nonmoving party 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *Ray v. Equifax Info. Servs., LLC*, 327 F. App'x 819, 825 (11th Cir. 2009) (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Instead, "[t]he non-moving party must make a sufficient showing on each essential element of the case for which he has the burden of proof." *Id.* (citing *Celotex*, 477 U.S. at 322). Accordingly, the non-moving party must produce evidence, going

beyond the pleadings, to show that a reasonable jury could find in favor of that party. *See Shiver*, 549 F.3d at 1343.

III. DISCUSSION

Plaintiff's one-count Amended Complaint alleges a violation of the Equal Protection Clause of the Fourteenth Amendment based on a "class of one" theory. The Equal Protection Clause prohibits the several states from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. "The Equal Protection Clause requires government entities to treat similarly situated people alike." *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1313 (11th Cir. 2006). The Supreme Court has recognized "successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). To prevail on such a class-of-one claim, a plaintiff "must show (1) that [the plaintiff was] treated differently from other similarly situated individuals, and (2) that Defendant unequally applied a facially neutral ordinance for the purpose of discriminating against Plaintiffs." *Campbell*, 434 F.3d at 1314; *see also VTS Transport., Inc. v. Palm Beach Cty.*, 239 F. Supp. 3d 1350, 1354 (S.D. Fla. 2017) ("To prevail on a class of one equal protection claim, Plaintiffs must show that they were treated differently from other similarly situated individuals absent a rational basis for the differential treatment.").

With regard to the first step of the analysis, to be "similarly situated," the comparator entities must be "prima facie identical in all relevant respects." *Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1204 (11th Cir. 2007) (citing *Campbell*, 434 F.3d 1306). "Adjudging equality necessarily requires comparison, and 'class of one' plaintiffs may (just like other plaintiffs) fairly

be required to show that their professed comparison is sufficiently apt." *Id.* at 1205. A broader definition of "similarly situated" could "subject nearly all state regulatory decisions to constitutional review in federal court and deny state regulators the critical discretion they need to effectively perform their duties." *Id.* at 1203. Importantly, "[t]he 'similarly situated' requirement must be enforced with particular rigor in the land-use context because zoning decisions 'will often, perhaps almost always, treat one landowner differently from another.'" *Cordi-Allen v. Conlon*, 494 F.3d 245, 251 (1st Cir. 2007) (citing *Olech*, 528 U.S. at 565 (Breyer, J., concurring)). Otherwise, the First Circuit has warned that "the federal court would be transmogrified into a supercharged version of a local zoning board—a zoning board on steroids, as it were." *Id.* at 252.

Regarding the second step of the analysis, a "[m]ere error or mistake of judgment when applying a facially neutral statute does not violate the equal protection clause. There must be *intentional discrimination*." *Etherton v. City of Rainsville*, 662 F. App'x 656, 661 (11th Cir. 2016) (citing *E & T Realty v. Strickland*, 830 F.2d 1107, 1114 (11th Cir. 1987)) (emphasis added).

Here, Plaintiff has proffered two properties – Windmill Village by the Sea (the "Windmill Property") and Robert Rigel's property (the "Rigel Property") – as comparator properties (collectively, the "Comparator Properties") that have allegedly received more favorable treatment from Defendant than the Plaintiff's Property. Am. Comp., DE 18, 11-15. Defendant argues in its Motion that summary judgment is appropriate because Plaintiff's proffered Comparator Properties are not sufficiently similar to sustain Plaintiff's equal protection claim. Specifically, Defendant argues the Comparator Properties are distinguishable, because of the three properties' different:

> (a) land use designation on the City's adopted Comprehensive Plan ("Comp Plan"); (b) zoning district classification within the County's Land Development Code ("LDC"); (c) governmental approval and entitlement history over an extended period of time; (d) impact on abutting residential neighbors; (e) code enforcement

> and complaint history; (f) intensity of the parking use; (g) platting; (h) size; and (i) nonconformity status. Notably, the County's enforcement actions in this case: (j) predate Plaintiff's ownership of the subject property (by several years); and (k) indisputably arise in direct response to the constitutionally protected petitioning activity of a County resident – Mrs. Joyce Long – who lives in a residential duplex contiguous to Plaintiff's property and whose complaints revealed bona fide code violations.

Mot., DE 90, 2-3. Defendant therefore concludes:

> Given (a)-(k), Plaintiff cannot demonstrate: (1) that the comparator properties are prima facie identical in all respects; (2) the lack of rational basis for the County's action; (3) and; that the County's conduct is the product of "illegitimate animus" or a "spiteful effort to get him." *See Griffin,* 496 F.3d at 1204; *cf. Campbell*, 434 F.3d at 1314 n. 6.

Mot., DE 90, 3.

Plaintiff is unable to respond to these identified distinguishing features with more than a conclusory assertion that there "is a genuine issue of material fact as to whether the [Property] and the Comparator Properties are similarly situated because there are many relevant similarities between the Vacant Lot and the Comparator Properties, including the location, characteristics, land use and impact on the community." Pl. Resp., DE 94, 7. This is not enough to resist summary judgment. As stated above, "the nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts." *Ray v. Equifax Info. Servs., LLC*, 327 F. App'x 819, 825 (11th Cir. 2009) (internal quotations omitted). Instead, "[t]he non-moving party must make a sufficient showing on each essential element of the case for which he has the burden of proof." *Id.* (citing *Celotex*, 477 U.S. at 322). Plaintiff has not done so here.

Plaintiff is correct that there are some similarities among the Property and the Comparator Properties. Like the Plaintiff's Property, the Comparator Properties contain "an undeveloped and unpaved area that is used for parking." Pl. SOF, DE 96, ¶ 95. They are also located in a similar

area – Jensen Beach, Florida, on Florida's scenic byway, A1A. *See id.* at ¶ 96. Because they are located in the same County, they are also naturally subject to the same decision-making processes by Defendant and PDS. *See id.* ¶ 97.

But, this is where their similarities end. Indeed, Defendant identifies no less than eleven distinguishing features of the Properties. *See* Mot., DE 90, 2-3. The County's enforcement decision "must be evaluated in light of the full variety of factors that an objectively reasonable governmental decisionmaker would have found relevant in making the challenged decision." *Griffin*, 496 F.3d at 1203. It is undisputed that the Properties are "differently designated by the [County's] Comp[rehensive] Plan." Def. SOF., DE 91, ¶ 42; *see also* Exhibit E, Olson Aff., DE 91-5, 7 ("[The Comp Plan] indicates the County's prior legislative decision that the Vacant Lot, the Rigel Property, and the Windmill Property are subject to different regulatory controls for planning and development purposes."). It is also undisputed that the Plaintiff's Property is designated as Commercial; the Rigel Property is designated as Residential Urban; and the Windmill Property is designated as Residential Medium. Def. SOF, DE 91, ¶ 43. Beyond these different initial designations, the Properties are also zoned differently. *Id.* ¶¶ 44-45. The Plaintiff's Property is zoned for Commercial General use; the Comparator Properties are zoned as part of the Hutchinson Island Residential District. *Id.*

Additionally, unlike the Plaintiff's Property, the Windmill Property is subject to a building permit issued in 1970, prior to the County's requirement that "dedicated parking areas [be] constructed with an all weather surface." *Id.* ¶ 49. As a result, parking on the unpaved Windmill Property constitutes a *legal* nonconformity. *Id.* As to the Rigel Property, it is governed by a 1999 Certificate of Zoning Compliance and Business Tax Receipt for "commercial parking and vehicle

storage." *Id.* ¶ 48. Notably, the Rigel Property's Certificate was issued fifteen years before the 2017 code enforcement case against EFTX. *See* Mot., DE 90, 11. *Cf. Cordi-Allen v. Conlon*, 494 F.3d at 253 ("In the land-use context, timing is critical and, thus, can supply an important basis for differential treatment. Since zoning bylaws, environmental standards, and licensing criteria may change over time, courts must be sensitive to the possibility that differential treatment—especially differential treatment following a time lag—may indicate a change in policy rather than an intent to discriminate.").

Furthermore, the impact of each Property's parking on neighboring properties and the community is different. It is undisputed that neither of the Comparator Properties runs contiguous with a single-story residential duplex, as the Plaintiff's Property does. *See* Def. SOF, DE 91, ¶ 51; *see also* Exhibit E, Olson Aff., DE 91-5, ¶ 116 ("Unlike the surrounding condition of the Vacant Lot, the Rigel Property does not abut low rise single-family or duplex residential development. Rather, it is surrounded by publicly owned conservation lands and a mobile home park, which is not considered a one- or two-family residential use under the LDC.").

Moreover, the relevant parking areas are not the same size, and there are material differences in the intensity of parking on each of the properties. *See id.* ¶¶ 51, 56. The Windmill Property is not open to the public and is not used for commercial parking. *Id.* ¶ 59. Finally, the history of code violations against each of the three Properties is different. *See id.* ¶¶ 54-55. Notably, a Notice of Violation *was* issued against the Rigel Property in 2006, but it was dismissed upon discovery of the Certificate of Zoning Compliance. *See id.* ¶ 54. This fact suggests that the County in fact intended to apply the County Code uniformly.

Finally, it is undisputed that there is a long and well documented history of complaints against the Plaintiff's Property by a resident of the County and neighbor to the Plaintiff's Property, Mrs. Long. *See* Def. SOF, DE 91, ¶¶ 21, 23, 53.[3]

The combination of these differences makes it clear that the Comparator Properties are not "similar in all relevant respects" to the Plaintiff's Property. As the Eleventh Circuit articulated in *Griffin*, to be prima facie identical in all relevant respects, proposed building projects would need to be "essentially the same size, have an equivalent impact on the community, and require the same zoning variances," among other similarities. *Griffin*, 496 F.3d at 1204. Here, in the context of the enforcement of the County Code, the Comparator Properties are not similar in any of these respects – they are not the same size, they do not have equivalent impacts on the community, and they are in different zones, among other differences as outlined above.

In addition, the Court agrees with the County that the Code enforcement action here involved multi-dimensional land use decision-making, which makes the similarly situated requirement "more difficult to establish." *See* Mot., DE 90, 6; *Griffin*, 496 F.3d at 1204. Courts are able "to analyze the 'similarly situated' requirement succinctly and as a high order of abstraction…[when] the challenged governmental decisions [are] ultimately *one-dimensional*." *Griffin*, 496 F.3d at 1203 (emphasis added). Indeed, in the Supreme Court's seminal class-of-one case, *Olech*, 528 U.S. 562, the "only relevant factor was the size of the easement required in return for connection to the municipal water supply." *Griffin*, 496 F.3d at 1203. There, the plaintiff had asked her town to connect her property to the municipal water supply. *Olech*, 528 U.S. at 563. She

[3] The Court acknowledges Plaintiff's objections to Defendant's SOF ¶ 21. However, Plaintiff did not dispute in its responsive SOF that there was a long history of complaints against the Property; rather, Plaintiff disputed the ownership of the Property during the time period in which the complaints were made by Mrs. Long. *Compare* Def. SOF, 91, ¶ 21 *with* Pl. SOF, DE 96, ¶ 21.

sued, after the town conditioned the water connection on her granting the town a thirty-three-foot easement, when other residents had only been required to grant fifteen-foot easements. *Id.* The town in *Olech* therefore made a one-dimensional decision, considering only the size of the easement demanded from each property-holder. But, here, as in *Griffin*, the "government's regulatory action [is] undeniably multi-dimensional, involving varied decisionmaking criteria." *Griffin*, 496 F.3d at 1203. Therefore, Defendant's decisionmaking "must be evaluated in light of the full variety of factors that an objectively reasonable governmental decisionmaker would have found relevant in making the challenged decision." *Id.* Here, Defendant was entitled to consider many factors – the Property's designation in the Comp Plan, the Property's zoning district, the intensity of the parking activity, and the impact on neighboring properties – in finding the Plaintiff's Property in violation of the County Code.

As a final matter, the Court notes that none of the case law that Plaintiff cites for the proposition that the Windmill and Rigel Properties are similarly situated to its own Property is persuasive, let alone controlling. *See* Pl. Resp., DE 94, 7. First, *Lexra, Inc. v. City of Deerfield Beach*, is distinguishable on both its facts and procedural posture. 593 F. App'x 860 (11th Cir. 2014). There, the Eleventh Circuit reviewed the district court's grant of a motion to dismiss. *Id.* at 862. The standard of review for a motion to dismiss is plainly different from the standard of review for a motion for summary judgment. As a factual matter, *Lexra* concerned a City ordinance which "prohibited the sale of alcoholic beverages after 2 a.m. for six days of the week." *Id.* at 861. The defendant city however had a "side agreement" with one bar that allowed that bar to serve alcoholic drinks until 4 a.m. *Id.* The plaintiff-appellants, other bars in the city, brought suit to challenge the apparent favoritism towards the one bar allowed to serve alcohol until 4 a.m. The Eleventh

Circuit's analysis focused on the circumstances of the side agreement, and specifically, the defendant city's argument that the agreement was part of a deal to encourage the bar to consent to annexation by the City, from unincorporated parts of the County. *Id.* at 864-866. This analysis, *at the motion to dismiss stage*, does not provide the Court with guidance on how to apply the "similarly situated" standard to a case where, as here, the municipality has chosen to *apply* its ordinances and regulations against an entity, as opposed to *exempting* one entity from a municipality's ordinances and regulations.

Plaintiff's reliance on *Lighthouse Institute for Evangelism v. Long Branch*, is also misplaced. *Lighthouse*, a Third Circuit case that is not binding on this Court, considered the legality of zoning restrictions placed on a religious organization's property. 510 F.3d 253 (3d Cir. 2007); *see* Pl. Resp., DE 94, 7. But, the *Lighthouse* opinion analyzed the Equal Terms provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq*, and the Free Exercise Clause of the First Amendment, not the Equal Protection Clause of the Fourteenth Amendment. *Id.* Rather than analyzing whether the plaintiffs had produced comparators that are "similar in all relevant respects," the majority determined that the appropriate analysis for RLUIPA Equal Terms clause cases required a determination of whether an ordinance "treats the religious assembly on less than equal terms with…a nonreligious assembly or institution…that causes no lesser harm to the interests the regulation seeks to advance." *Id.* at 270. Furthermore, Judge Jorden wrote separately to explain that the "similarly situated requirement of Equal Protection jurisprudence should *not* be grafted on to RLUIPA actions." *See id.* at 292-293 (Jordan, J. concurring in part and dissenting in part) (citing *Vision Church*, 468 F.3d 975, 1002-1003 (7th Cir. 2006)*; Konikov v. Orange Cty.*, 410 F.3d 1317, 1324 (11th Cir. 2005)). Indeed, in

Konikov, a binding decision on this Court, the Eleventh Circuit held: "For purposes of a RLUIPA equal terms challenge, the standard for determining whether it is proper to compare a religious group to a nonreligious group is *not* whether one is 'similarly situated' to the other, as in our familiar equal protection jurisprudence." 410 F.3d at 1324 (emphasis added). Thus, the *Lighthouse* opinion has no bearing on this Court's consideration of a class-of-one equal protection claim.

Similarly, *Third Church of Christ v. New York City*, a case from the Second Circuit and not binding on this Court, reviewed a permanent injunction entered against the Defendant City based on RLUIPA and is therefore unpersuasive in an equal protection case. *See Third Church*, 626 F.3d 667 (2d Cir. 2010); *see* Pl. Resp., DE 94, 7.

The final case Plaintiff cites in the "Similarly Situated" portion of its brief, *Cornerstone Bible Church v. City of Hastings*, *see* Pl. Resp., DE 94, 6-8, is likewise not binding on this Court and does not provide helpful guidance to the Court about how to apply the similarly situated standard of equal protection analysis. 948 F.2d 464 (8th Cir. 1991). Unlike the prior two cases, *Lighthouse* and *Third Church*, the *Cornerstone* court did review an Equal Protection Clause claim, in addition to the plaintiffs' Free Exercise and RLUIPA claims. There, the court reversed the grant of summary judgment for the defendant city on the plaintiff's equal protection claim, because the district court had failed to consider whether the "City has a rational basis for treating the Church differently from the permitted entities." *Id.* at 472. The Eighth Circuit stated that differences between the plaintiff's church and the proffered comparator properties must be "*relevant to the objectives the city is attempting to achieve through its ordinance*." *Id.* at 471. The city there had prohibited the church from opening in a commercial district, but had allowed other associational organizations such as the American Legion and Alcoholics Anonymous to operate in the

commercial district. *Id.* The city explained that the approval of the American Legion was necessary, because the Legion wished to be able to serve alcohol to its members, which was only permissible in certain zones of the city. *Id.* The Eighth Circuit reasoned that this explanation did not hold up, because other organizations, like Alcoholics Anonymous, which explicitly prohibit the provision of alcohol, were also allowed to function in the same commercial district where the church was prohibited from operating. *Id.* Accordingly, the comparator organizations were similarly situated to the extent that their similarity – the fact that they did not serve alcoholic beverages – was relevant to the city's purported regulatory interest.

Here, the Comparator Properties are not similarly situated with regard to the County's regulatory interests in maintaining fidelity to the LDC's requirement that new developments require authorization from Planning & Development Services, *see* LDC §§ 11.01.00-11.02.00, DE 91-5, 59-72, and the requirement that parking areas be paved with some kind of all-weather surface, *see* LDC § 7.06.00, DE 91-5, 48-50.

For all of the foregoing reasons, the Court finds that the Comparator Properties are not similarly situated in all relevant respects to Plaintiff's Property. The Court further concludes that the Defendant had a rational basis to enforce its Code requirements against Plaintiff, specifically, to respond to Mrs. Long's petitioning activity and to maintain fidelity to the LDC. *See* Mot., DE 90, 15.

IV. CONCLUSIONS

Having concluded that the Plaintiff has not met its burden with regard to the similarly-situated prong of the Court's equal protection analysis and that Defendant has demonstrated that it acted rationally in enforcing the County's Code, the County is entitled to summary judgment in

its favor. As such, the Court does not consider the County's remaining arguments regarding whether Plaintiff showed that Defendant held "illegitimate animus" against Plaintiff. *See* Mot., DE 90, 17. However, the Court does find that the case, and the Motion, are ripe for review. *See id.* at 20. Additionally, the Court declines to abstain from deciding this case based on the abstention doctrines outlined by Defendant. *See id.* at 18-19.

It is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Motion for Summary Judgment [DE 90] is hereby **GRANTED** insofar as the Comparator Properties are not similarly situated and Defendant had a rational basis for its decisionmaking process.

2. The Clerk of the Court is directed to **CLOSE** this case.

3. All pending motions are hereby **DENIED AS MOOT**.

4. Defendant is **ORDERED** to file and email to the Court (Rosenberg@flsd.uscourts.gov) a proposed Final Judgment Order within three business days of the rendition of this Order, copying opposing counsel.

DONE AND ORDERED in Chambers, West Palm Beach, Florida, this 24th day of July, 2019.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to Counsel of Record