

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

JAN 13 2010

JAMES N. HATTEN, CLERK
By: *JWH* Deputy Clerk

CHURCH OF SCIENTOLOGY OF GEORGIA,)
INC., a Georgia Corporation,)

Plaintiff,)

v.)

CITY OF SANDY SPRINGS, GEORGIA,)
a Municipal Corporation of the)
State of Georgia; the CITY COUNCIL)
of the CITY OF SANDY SPRINGS,)
GEORGIA; EVA GALAMBOS, Mayor of)
the City of Sandy Springs, Georgia;)
and JOHN PAULSON, DIANNE FRIES,)
WILLIAM COPPEDGE COLLINS, JR.,)
ASHLEY JENKINS, TIBERIO DeJULIO)
and KAREN MEINZEN McENERNY,)
Individually in Their Official)
Capacities as Members of the CITY)
COUNCIL of the CITY OF SANDY)
SPRINGS, GEORGIA)

Defendants.)

CIVIL ACTION
FILE NO.

CAP

1 10-CV-0082

VERIFIED COMPLAINT

COMES NOW Plaintiff CHURCH OF SCIENTOLOGY OF GEORGIA, INC., a Georgia corporation the ("Plaintiff" or the "Church") and, by and through its counsel of record, files this Verified Complaint against Defendants City of Sandy Springs, Georgia; the City Council of the City of Sandy Springs, Georgia; Eva Galambos,

Mayor of the City of Sandy Springs, Georgia; and John Paulson, Dianne Fries, William Coppedge Collins, Jr., Ashley Jenkins, Tiberio DeJulio, and Karen Meinzen McEnerny, individually in their official capacities as members of the City Council of the City of Sandy Springs, Georgia (collectively, "Defendants") as follows:

PARTIES

1.

Plaintiff is a church of the Scientology religion, organized and existing under the laws of the State of Georgia, with its principal place of business, located at 4480 North Shallowford Road, Dunwoody, Georgia. Plaintiff is recognized by the United States Revenue Service as a "church" within the meaning of 26 U.S.C. § 170 (b), exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

2.

Defendant City of Sandy Springs, Georgia (the "City") is a municipality created and existing by virtue of the laws of the State of Georgia and is empowered to act through its governing body, its officials, employees, and official bodies. The City is subject to the jurisdiction of this Court.

3.

Defendant City Council of Sandy Springs, Georgia (the "City Council") is the body, together with the Mayor, which enacted the City of Sandy Springs Zoning Ordinance (the "Zoning Ordinance"). The City Council is subject to the jurisdiction of this Court.

4.

Defendant Eva Galambos is the Mayor of the City of Sandy Springs, Georgia and is subject to the jurisdiction of this Court.

5.

Defendants John Paulson, Dianne Fries, William Coppedge Collins, Jr., Ashley Jenkins, Tiberio DeJulio and Karen Meinzen McEnerny are members of the Sandy Springs City Council, and are subject to the jurisdiction of this Court.

JURISDICTION AND VENUE

6.

This Court has original federal question jurisdiction over Plaintiff's claims of violations of the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc et seq., pursuant to 28 U.S.C. § 1331.

7.

This Court has federal question jurisdiction, pursuant to 28 U.S.C. § 1343, over Plaintiff's claims regarding the deprivation under color of State law of rights secured by the First and Fourteenth Amendments to the Constitution of the United States and the laws of the United States.

8.

This Court has supplemental jurisdiction over Plaintiff's State law claims, pursuant to 28 U.S.C. § 1367.

9.

Plaintiff's claims for declaratory relief are sought under 28 U.S.C. §§ 2201 and 2202.

10.

Plaintiff seeks permanent injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1343.

11.

Plaintiff's claims for attorney's fees and costs are predicated upon 42 U.S.C. §§ 1988 and 2000cc-2(d), which authorize the award of attorneys' fees and costs to prevailing parties, pursuant to 42 U.S.C. § 1983 and RLUIPA.

12.

Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure and by the general, legal, and equitable powers of this Court.

13.

Venue is proper under 42 U.S.C. § 1391 as to all Defendants because the proposed site is located within this District, all Defendants are residents of this District, and the acts described herein occurred within this District.

NATURE OF THE ACTION

14.

This is an action for declaratory and injunctive relief arising under the First and Fourteenth Amendment to the Constitution of the United States, the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 1983, and applicable law of the State of Georgia. Plaintiff seeks costs and attorneys fees under 42 U.S.C. § 1988.

15.

The City of Sandy Springs has unlawfully imposed and implemented a land use regulation that imposes a substantial burden upon the rights of the Church and its parishioners to the free exercise of religion by means that City officials,

themselves recognize are not the least restrictive means available to the City to protect its asserted governmental interest. In so doing, the City has imposed land use regulations that unreasonably limit religious assemblies, institutions and structures within the City, and has discriminated against Plaintiff, the Church of Scientology, on the basis of religious denomination.

16.

The City has denied and refused a rezoning, which would permit the Church to convert an existing office building it owns, located at 5395 Roswell Road, Sandy Springs, Georgia (the "Property"), including the building's basement that was formerly used for parking, into space to be used for the Church's religious activities. The City approved a rezoning to allow 32,053 square feet of the building for Church use, but refused to approve the Church's application (the "Application") for approval of 43,916 square feet of space, which includes use of the basement for the Church's chapel, executive offices, and other uses. The City based its refusal of the Church's requested density on a perceived lack of sufficient parking for the facility, despite a finding by the City's own professional staff (the "Staff"), that with the conditions negotiated between the City Attorney, the Staff, and the Church, the Church's proposed

parking plan for converted use of the Church building would be sufficient to meet any governmental interests, needs and requirements of the City. The City's action was also contrary to uncontroverted findings of parking studies submitted by the Church at the City's request, which show that the proposed parking greatly exceeds the Church's needs. Plaintiff shows that the City has singled out the Church for discriminatory treatment and has not applied such a stringent parking requirement or any requirement other than the City's own parking ordinance relating to "Churches and other places of worship" to any other church or place of worship in the City's jurisdictional boundaries. The actions of the City are unconstitutional, discriminatory and have substantially burdened Plaintiff's religious exercise, expression, and association and caused a significant detriment to the Church.

FACTS

17.

The Church of Scientology serves a local congregation with approximately 600 members on its rolls of which approximately 100 are active members. The congregation is in the fellowship of the Scientology religion. The Church is an organization composed of professing believers, and is instituted for the purpose of

spiritual salvation, advancement, education, fellowship, and service.

18.

Scientology religious services are provided at the Church's facilities, and are essential to the practice of the Scientology religion. Members believe that they must have access to a church to share in its faith, ideology, and fellowship.

19.

The Church currently operates a church in the City of Dunwoody, Georgia which is too small for its current and future needs. It intends to relocate to the Sandy Springs Property.

20.

The Church acquired the Property in 2005 to comply with Scientology doctrine and for future growth, which it is unable to accommodate at the Dunwoody location.

21.

The physical space needs of the Church are dictated by the nature of Scientology religious beliefs and practices, as described hereinbelow.

22.

The Scientology religion is based upon the research, writings and recorded lectures of its Founder L. Ron Hubbard, which collectively constitute its Scriptures. The Scriptures are

the sources of the beliefs, practices, rituals, and policies of the religion. They encompass more than 300 books and other writings, thousands of written bulletins and policy letters about the religion, over 3,000 recorded lectures and numerous religious instruction films.

23.

Scientology posits that spiritual renewal and progress can be achieved by participation in Scientology religious practices. The core religious services of Scientology are "Training" and "Auditing." Scientologists believe that ultimate salvation is dependent on increasing one's awareness of one's true spiritual identity, which one learns by participating in both Auditing and Training.

24.

The services of Scientology are designed to advance one's spiritual existence on a gradient. Spiritual advancement occurs a step at a time by participation in the practices of Auditing and Training. This path in Scientology is known as The Bridge to Total Freedom ("The Bridge"). Moving up the Bridge means completing the levels of Scientology Training and Auditing and obtaining higher levels of spiritual benefits from such Training and Auditing. Each local Scientology Church, such as Plaintiff,

must have sufficient facilities to provide the essential Training and Auditing for each gradient level on the Bridge.

25.

Scientology Training is provided through Scientology religious courses provided at Scientology Churches. Scientology posits that through Scientology Training one obtains the wisdom to understand who and what he or she is, where he or she comes from and his or her relationship to the Universe. According to Scientology Scripture, one half of the spiritual gains in Scientology come from Scientology Training.

26.

Scientology Training must be provided in specially outfitted "course rooms" that meet the needs of the subject matter at hand. For example, a theory course room for a specific course needs to be next to the practical course room for that same course, and a film room needs to be near course rooms so that the students can easily see religious instructional films. Thus, it is very important, pursuant to Church Scriptures, that the inside of the Church be properly set up with sufficient space to provide Spiritual Training as well as all Church services as briefly summarized herein.

27.

Scientology Auditing is a unique form of spiritual counseling. Scientology Auditing is ministered at Scientology Churches in confidential one-on-one sessions between a parishioner and a specially trained individual called an auditor. Auditing uses many different "processes" or exact sets of questions asked or directions given by an auditor which, according to Scientology, help a person locate areas of spiritual distress.

28.

Auditing must be provided in quiet and confidential surroundings, away from other activities that may be going on in the Church.

29.

Auditing is supervised by a trained "Case Supervisor," who must first be trained as an auditor. The Case Supervisor's role is to see that the Auditing is ministered in a correct orthodox manner.

30.

Scientology Churches also hold congregational services on Sundays, religious holidays, and certain other occasions.

31.

Scientologists believe that the expansion and dissemination of the religion is necessary to the protection and advancement of human civilization. Only when the population at large has made substantial spiritual advancement can mankind reach the ultimate goal, which is man's ascension to greater spiritual heights.

32.

Accordingly, all Scientology Churches have a religious obligation to reach out to their community to spread the word of Scientology so that new members may pursue the path to spiritual enlightenment. Scientology Churches, therefore, are mandated to include large Public Display areas, including audio-visual presentations on the religion and its social betterment campaigns such as for human rights, drug and alcohol addiction prevention, literacy, and scholastic improvement.

33.

In order to provide Scientology Training Auditing and Case Supervision, church services, Scientology dissemination materials and displays, and Church administration, Scientology Churches must meet space requirements to house these activities.

34.

The Church of Scientology International ("CSI"), which is the senior ecclesiastical management Church in the Scientology

religion, has undertaken considerable study, consistent with Church Scriptures, of the necessary facilities for a local Scientology Church, such as Plaintiff, to develop a standard of spaces and facilities that are essential for a local Church of Scientology. CSI determined that, in order to leave no step of the Bridge omitted, a minimum of approximately 40,000 square feet is required to provide the necessary religious services. The ideal size is around 65,000 square feet. While one can organize the facilities in a given building in many ways, it has been found from space planning nearly a hundred Churches of Scientology that a building of substantially less than 40,000 square feet will not adequately provide for the essential services and activities of Scientology.

35.

CSI mandates that in order for a building to be considered for Church use, it must be able to accommodate all essential religious services and activities in a manner that is consistent with Scientology Scriptures.

36.

The Church's ability to provide Scientology religious services to its members and prospective members, to engage in its religiously mandated dissemination and outreach activities, and to grow is unduly and substantially burdened and limited without

a permanent facility with adequate space for ministry, education, and fellowship.

37.

In 2005 the Church purchased the Property, which comprises approximately 1.78 acres of real property located in the northeast quadrant of the intersection of Glenridge Drive and Roswell Road, in Land Lots 91 and 92 of the 17th District of the City of Sandy Springs, Fulton County, Georgia. The Property is benefitted by a perpetual easement for ingress and egress and parking over, upon and across 0.6 acres of land (the "Easement"), located immediately adjacent to the Property.

38.

The Property is currently developed with a 43,916 square foot building. The building has four (4) floors, including an 11,193 square foot basement, which was previously used for parking by the prior office use.

39.

The Church chose the Property because of its visibility, access, and central location in the heart of Sandy Springs.

40.

Prior to purchasing the Property, the Church confirmed that a church was a permitted use in the Property's O-I zoning designation and that parking for the Property was adequate and

conforming for the Church's proposed expansion and use under the City's Code.

41.

Although a church is a permitted use in the O-I zoning classification under the Zoning Ordinance, the Property's O-I zoning was conditioned on its use for office and accessory uses, thus preventing use as a church without rezoning to modify and amend the existing zoning.

42.

In order to accommodate its growing needs and to provide an adequate facility in which to exercise its religious precepts, the Church developed plans to redesign the existing building on the Property and to convert the 11,193 square foot basement to religious uses, including a proposed 1,300 square foot chapel, among other uses, in the area formerly used for parking.

43.

On or about March 9, 2009, the Church submitted a rezoning application and requests for variances to the City (the "Application"), requesting that the City approve use of the Property as a church and approve the expansion of the building from 32,053 square feet to 43,916 square feet by conversion of the basement area to religious uses.

44.

The interior layout proposed for the building on the Property includes numerous course rooms, which vary in size from 200 square feet to 800 square feet. These proposed course rooms have both tables and chairs. Many course rooms relate to one another. As many as five (5) course rooms may be utilized by the students of one (1) class, who migrate from room to room at their own pace during a study period; thus, not all course rooms will be used at any one (1) time, and all course rooms will not be at full capacity within any one (1) time period. Several rooms will be devoted to seminars and videos, which primarily have non-fixed seating.

45.

The proposed Church includes a religious bookstore, library, and other facilities, designed to cater to the members of the Church.

46.

Plaintiff's Application was accepted as complete by the City and met or exceeded all of the requirements of the Zoning Ordinance for rezoning.

47.

The Application shows that the largest assembly area for the Church is the proposed 1,300 square foot chapel, located within the basement area of the existing facility.

48.

The Zoning Ordinance provisions relevant to "Churches and other places of worship" requires one (1) parking space for every thirty (30) square feet of floor area in the largest assembly area without fixed seats or one (1) parking space for every 3.5 seats in the largest assembly area with fixed seats. Zoning Ordinance § 18.2.1. Based on the Zoning Ordinance, the Church would be required to provide forty-six (46) parking spaces. The Property currently has fifty-one (51) parking spaces on-site and has a perpetual easement for thirty (30) additional spaces, located immediately to the east of the Property. The Church has offered and plans to reconfigure the available parking areas to increase the available number of parking spaces to 111 spaces, which would amount to 2.4 times the City Code.

49.

On May 14, 2009, the City's Planning Staff issued a report (the "Staff Report"), which recommended approval of the Application to permit the Church to operate a church at the Property, but recommended denial of the request to permit use of

the entire 43,916 square foot building for religious uses. The Staff Report stated that because the Church was not a "traditional" church, the Staff would not utilize the formula set forth in Zoning Ordinance § 18.2.1 for "Churches and other places of worship." Instead, the Staff Report applied a multi-use formula in which it added the total number of spaces required by Code for the proposed chapel, classrooms and Church offices, as if each were a separate and distinct principal use. The Staff concluded that if the Church were permitted to utilize the entire 43,916 square foot building for these uses, it would require 148 spaces, but would only have 81 spaces available after the conversion.

50.

In recommending departure from the standard applicable to "Churches and other places of worship" and making its alternative calculations, the Staff ignored its own Code and the fact that all of the uses within the building are Church uses. The Staff also assumed that all course rooms, offices, and the assembly area would be utilized to their capacity simultaneously.

51.

The Staff Report further stated that the entire 43,916 square foot building could be "recommended for approval by staff if the applicant can demonstrate that the on-site parking will be

sufficient to meet the full use of the proposed building including the expansion through either a parking study or shared parking analysis."

52.

After meeting with City Staff to discuss the parameters for a parking study, on June 26, 2009, the Church submitted a parking study (the "Parking Study"), prepared by the national engineering firm of Kimley-Horn and Associates ("Kimley-Horn"). The Parking Study initially compared the needs of the proposed Sandy Springs Church to a similar Church of Scientology in Nashville, Tennessee and to the existing Church in Dunwoody. Kimley-Horn found the Nashville Scientology Church more closely resembled the size and operations of the proposed Sandy Springs Church. Therefore, based on the Nashville parking demand per square foot of building, the Parking Study showed that the maximum number of parking spaces required at the Property, utilizing the entire 43,916 square foot building for religious uses, would be 52 parking spaces, far lower than the 81 available after the proposed conversion, let alone the 111 spaces available under the subsequently proposed number of the surface parking spaces.

53.

On July 8, 2009, the Staff issued a revised Staff Report that ignored and arbitrarily mischaracterized the facts found by

the Parking Study. Making no reference to the Parking Study's methodology, analysis or conclusions, the Staff Report simply recited that the Nashville Church has 114 parking spaces for a 38,000 foot facility, derived a ratio, and then applied that ratio to the Sandy Springs Property as justification for finding that the Sandy Springs Property requires 130 parking spaces. The revised Staff Report made no mention of the findings set forth in the Study that the peak usage of parking spaces at the Nashville Church was only 41 of the 114 available spaces. Nor did the revised Staff Report recognize that the only reason the Nashville Church had 114 spaces was that the 114 spaces preexisted the purchase of the property for church usage. The Staff Report then used its finding that 130 spaces were necessary as justification for again recommending that the Church's use be limited to 32,053 square feet.

54.

On July 15, 2009, Kimley-Horn supplemented the Parking Study with a parking study for a long established Church of Scientology in Buffalo, New York. Applying the number of parking spaces actually used by the Buffalo Church during peak parking demand of one (1) space per 1,812 square feet of building space, Kimley-Horn determined that the proposed Church of Scientology site in Sandy Springs would need approximately 29 spaces (with a 10%

seasonal adjustment and an additional 10% surplus adjustment). The Staff ignored the supplemental information and conclusions found by Kimley-Horn regarding the Buffalo parking ratio.

55.

On July 16, 2009 the Planning Commission recommended approval of an O-I zoning of the Property in accordance with the Staff's recommendation limiting the use to 32,053 square feet.

56.

Following the issuance of the revised Staff Report and the recommendation of the Planning Commission, the Director of Community Development Department, the City Attorney and Plaintiff's counsel met to discuss concerns raised by the Staff and City Attorney, as reflected in the revised Staff Report. The meeting resulted in the development of a list of alternative conditions (the "Alternative Conditions") that the City Attorney and the Staff could support, which allowed the Church to convert the basement to religious use, yielding a total of 43,916 square feet. The Alternative Conditions included an occupancy limitation of 283 persons on the premises, based on the 81 parking spaces provided, along with a number of other provisions, which were crafted to address the Staff's and the City Attorney's concerns.

57.

The Alternative Conditions were committed to writing and the Planning Staff issued a re-revised Staff Report in which it recommended approval of either the original recommendation for 32,053 square feet with conditions (the "Recommended Conditions") or the requested 43,916 square feet with the Alternative Conditions.

58.

On August 18, 2009, the City Council deferred the Application to allow the Planning Commission the opportunity to review and make a recommendation in light of the Alternative Conditions.

59.

Despite the re-revised Staff Report supporting the negotiated Alternative Conditions compromise, on September 17, 2009, the Planning Commission reversed its prior position and voted 3-2 to recommend denial of the Church's entire Application. The Planning Commission insisted that it did not believe that 81 parking spaces were adequate to serve the needs of a 43,916 square foot Church even with an occupancy limitation of 283 persons.

60.

On September 30, 2009, after further discussions with City officials, the Church submitted a Second Amendment to its Zoning Application, reducing the occupancy limitation from 283 to 170 persons and proposed changes to the site, which increased the proposed parking from 81 spaces to 111 parking spaces, or 1.5 persons per parking space for the proposed 43,916 square foot Church.

61.

The Planning Staff then issued an additional Staff Report on the Application, which having previously found that 81 spaces was adequate to serve the needs of a 43,916 square foot church with an occupancy limitation of 283 persons, specifically found that:

the proposed request of 43,916 square feet would meet the level of parking necessary to support the proposed use at an occupancy of one hundred seventy (170) persons. Therefore, staff concludes that there would be an adequate amount of parking for the proposed 43,916 square feet with the occupancy limited to one hundred seventy (170).

The Staff recommended approval of either the Application with the Recommended Conditions or the Application with the negotiated Alternative Conditions.

62.

On October 20, 2009 the Council again deferred hearing on the Application, as amended, in order for the Planning Commission to consider the conditions set out in the Second Amendment to the Zoning Application and the revised recommendations made by the Staff.

63.

On November 19, 2009, the Planning Commission approved the Application, pursuant to the Recommended Conditions; but, despite the Staff's finding that "there would be an adequate amount of parking for the proposed 43,916 square feet with the occupancy limited to one hundred seventy (170)," and in spite of the findings of the Parking Study, the Planning Commission cited the lack of parking as the basis for its decision not to recommend approval of the Church's request for a density of 43,916 square feet.

64.

On December 15, 2009, the City Council approved the Application, pursuant to the Planning Commission's recommendation for the use of the building as a church. Like the Planning Commission, the City Council cited the lack of parking as the principal reason for its decision to limit the size of the building to 32,053 square feet, despite the Staff's

recommendation that "there would be an adequate amount of parking for the proposed 43,916 square feet with the occupancy limited to one hundred seventy (170)."

65.

The City's decision to approve less square footage than requested would force the Church to operate in inadequate facilities, thereby impeding the Church's religious exercise. In addition, the existing building is not designed to accommodate a large assembly area on any floor other than the basement. The City's decision not to allow the improvement of the basement would force the Church to redesign and re-engineer the building to allow a chapel to be built on another floor, displacing the needed use of that space. The square footage limitations imposed by the City would seriously and substantially burden and impair the Church from practicing its religion.

66.

Plaintiff has exhausted any and all administrative remedies available as a result of Defendants' imposition of a land use regulation that, as uniquely applied to Plaintiff and no other church in the jurisdiction, unreasonably limits religious assemblies, institutions and structures within the City of Sandy Springs.

67.

As a result of Defendants' actions, Plaintiff has been damaged irreparably and does not have an adequate remedy at law.

68.

As a result of Defendants' actions, Plaintiff has been forced to engage the services of the undersigned attorneys to represent its interests herein.

COUNT I

VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT
(Religious Exercise)

69.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

70.

Defendants have deprived and continue to deprive Plaintiff of its right to the free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (a) et seq., by imposing and implementing a land use regulation that substantially burdens Plaintiff's religious exercise.

71.

Defendants have arbitrarily and unfairly applied the Zoning Ordinance to prohibit Plaintiff from establishing a church of an adequate size to carry out the religious activities of the Church.

72.

Without a properly located and permanent home with adequate space for religious practice, ministry, education, and fellowship, the Church's ability to practice its religion has been unduly limited. The ability of the Church to practice its religion and to communicate the precepts of its beliefs is fundamental to the Church's mission and essential for its long-term viability. The limitations imposed on the Church by the City have substantially burdened the religious exercise of the Church and its members.

73.

By the imposition and implementation of a land use regulation that imposes a substantial burden on the Church's exercise of the Scientology religion within the City of Sandy Springs, Defendants made an individualized assessment of the proposed uses for the property involved.

74.

Imposition of such a burden is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any governmental interest, compelling or otherwise.

75.

Plaintiff is entitled to a declaration that denial of the Application is a substantial burden to the free exercise of Plaintiff's religion, is not justified by a compelling government interest, and is in violation of the RLUIPA.

76.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT II

VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT
(Discrimination on the Basis of Religion)

77.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

78.

The Zoning Ordinance, as applied to the Church, treats this religious organization and institution on less than equal terms with other religious and non-religious assemblies and institutions in the City.

79.

Defendants' conduct was prompted or substantially caused by Plaintiff's religious exercise in attempting to establish a Scientology Church on the Property and was clearly influenced by the level of sectarian opposition to the presence of a Church of the Scientology religion in Sandy Springs.

80.

Defendants have deprived and continue to deprive Plaintiff of its right to be free from religious discrimination as secured by the Religious Land Use and Institutionalized Persons Act

of 2000, 42 U.S.C. § 2000cc (b)(2) et seq. by implementing a land use regulation in a manner that discriminates on the basis of religion.

81.

Defendants have imposed parking requirements on the Church that have not been imposed on any other religious institution within the City of Sandy Springs.

82.

Plaintiff is entitled to a declaration that the imposition of any parking code other than the plain language of the Zoning Ordinance and the City's refusal to permit the Church to have needed religious facilities based on the imposition of the additional parking requirements not imposed on other churches constitutes discrimination against the Church on the basis of religion.

83.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT III

VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT
(Limitations and Exclusions)

84.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

85.

Defendants have deprived and continue to deprive Plaintiff of its free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (b) (3) et seq. by imposing and implementing a land use regulation that unreasonably limits religious assemblies, institutions and structures within the City of Sandy Springs.

86.

A church is a permitted use in the City of Sandy Springs in the O-I zoning district. By refusing to allow Plaintiff to use its building as requested, Defendants have limited the ability of the Church to practice its religion in the City of Sandy Springs in accordance with the doctrine of Scientology.

87.

Defendants had no constitutionally reasonable basis for their refusal to approve the Application as requested.

88.

Defendants had no constitutionally reasonable basis for their refusal to apply Section 18.2.1 of the Zoning Ordinance, as it pertains to parking requirements for "Churches and other places of worship," to the Church as it had done for all other churches in the past.

89.

The imposition of a land use regulation that unreasonably limits religious assemblies within the City of Sandy Springs constitutes an arbitrary and capricious act with no rational basis therefor.

90.

Plaintiff is entitled to a declaration that denial of the Application, as requested unconstitutionally limits and excludes Plaintiff's free exercise of religion.

91.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT IV

COSTS OF LITIGATION

92.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

93.

Plaintiff is entitled to its attorneys' fees and costs herein as secured by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-2(d) and 42 U.S.C. § 1988.

COUNT V

VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Free Exercise of Religion)

94.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

95.

The First Amendment to the United States Constitution provides that

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or

the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. 1.

96.

The City, acting by and through the Council, has deprived and continues to deprive the Church of its right to free exercise of religion as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiff because of the Church's religious character and by substantially burdening the Church's right to freely exercise its religious faith. The Church cannot fully and properly use the Property for its religious exercise if it can not modify the building as requested.

97.

Without an adequately sized space for religious practice, ministry, education, and fellowship, the Church's ability to practice its religion and to grow is seriously limited. The ability to grow and expand its religious activity is fundamental to the Church's mission.

98.

By the imposition and implementation of a land use regulation that imposes a substantial burden on the Church's

exercise of the Scientology religion within the City of Sandy Springs, Defendants made an individualized assessment of the proposed uses for the property involved.

99.

Imposition of such a burden is not in furtherance of a compelling governmental interest and, as recognized by the City Staff, is not the least restrictive means of furthering any governmental interest, compelling or otherwise.

100.

Plaintiff is entitled to a declaration that denial of the Application as requested and recommended for approval by the City Staff pursuant to the Staff's Alternative Conditions are a violation of its First Amendment right to its free exercise of religion.

101.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT VI

VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Establishment Clause)

102.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

103.

Defendants' unique application of the Zoning Ordinance to the Church treats this religious organization and institution on less than equal terms with other religious and non-religious assemblies and institutions in the City, thereby creating a denominational preference against the Scientology religion.

104.

Defendants' conduct was prompted or substantially caused by Plaintiff's religious exercise in attempting to establish a Scientology Church on the Property and was clearly influenced by the level of opposition to the proposal based upon sectarian opposition to the presence of a Scientology Church in the City of Sandy Springs.

105.

Defendants have deprived and continue to deprive Plaintiff of its right to be free from religious discrimination in

violation of the Establishment Clause to the First Amendment of the United States Constitution by implementing a land use regulation in a manner whose purpose and effect is to discriminate on the basis of religion.

106.

Plaintiff is entitled to a declaration that the imposition of any parking code other than the plain language of the Zoning Ordinance and the City's refusal to permit the Church to use of the entire 43,916 square foot building for religious uses, constitutes discrimination against the Church on the basis of religion in violation of the Establishment Clause to the First Amendment to the Constitution of the United States.

107.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT VII

VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Freedom of Speech)

108.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

109.

Defendants have deprived and continue to deprive Plaintiff of its right to speak on matters of religion as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiff based on the religious nature of its expression and by inhibiting its right to freely and fully express its religious faith to the Church members and the community.

110.

Defendants' imposition of a more stringent parking requirement on the Church than required by the Zoning Ordinance prevents the Church from remodeling and using its Property as other churches have been allowed in the City of Sandy Springs.

111.

Without a properly located and permanent home with adequate space for religious practice, ministry, education and fellowship, the Church's ability to practice its religion and communicate its messages of faith and fellowship in the doctrine of the Church of Scientology has been unduly limited. The ability of the Church to practice its religion and expand its religious activity and to spread the precepts of the Church is fundamental to the Church's mission.

112.

Plaintiff is entitled to a declaration that denial of the Application is a violation of its First Amendment right to free speech.

113.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT VIII

VIOLATION OF FIRST AND FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Freedom of Assembly)

114.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

115.

Defendants have deprived and continue to deprive Plaintiff of its right to freely assemble for religious purposes as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by prohibiting Church members from assembling in an adequate church for the purposes of religious exercise.

116.

Defendants' imposition of a more stringent parking requirement than imposed by the Zoning Ordinance prevents the Church from remodeling and using the entire building at the Property for religious use.

117.

Without a properly located and permanent home with adequate space for religious practice, ministry, education, and fellowship, the members' ability to assemble has been greatly

burdened. The Church is unable to provide to its members the space necessary within the confines of the Church to properly assemble and practice their religion as a result of Defendants' refusal to approve the Application as requested.

118.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City are a violation of its First Amendment right to freedom of assembly.

119.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT IX

VIOLATION OF FOURTEENTH AMENDMENT
TO UNITED STATES CONSTITUTION
(Equal Protection)

120.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

121.

Defendants have deprived and continue to deprive Plaintiff of its right to equal protection of the laws as secured by the Fourteenth Amendment to the United States Constitution by unlawfully discriminating against the Church in the application of the City Code on the basis of religious status and on the basis of Plaintiff's exercise of its fundamental rights to freedom of religion, speech, and assembly.

122.

Denial of the Application is unconstitutional in that it imposes a substantial burden on the religious exercise of the Plaintiff. Defendants have not demonstrated that imposition of that burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

123.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City are a violation of the Plaintiff's Fourteenth Amendment right to equal protection of the laws.

124.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any

limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT X

VIOLATION OF FIFTH AMENDMENT
TO UNITED STATES CONSTITUTION

125.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

126.

Defendants' denial of the Application as requested constitutes a taking by the City of the Church's private rights without payment of just compensation in violation of the Fifth Amendment to the United States Constitution by unlawfully discriminating against the Church in the application of the City Code on the basis of religious status and on the basis of Plaintiff's exercise of its fundamental rights to freedom of religion, speech, and assembly.

127.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City are a violation of the Fifth Amendment to the United States Constitution.

128.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

COUNT XI

STATE LAW CLAIMS

129.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

130.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City are unreasonable and void and bear no substantial relation to the public health, safety, morality, or general welfare.

131.

Plaintiff is entitled to a declaration that Defendants had no objective factual basis to support the limitations imposed on the Church by the City; and, as such, Defendants have violated Plaintiff's due process rights, which are protected by the Georgia Constitution Article I, § I, ¶ 1.

132.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City discriminate between the Church and other similarly situated individuals and institutions in violation of Plaintiff's right to equal protection under the Georgia Constitution Article I, § I, ¶ 2.

133.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City interfere with Plaintiff's right to exercise its religion in accordance with Plaintiff's freedom of conscience as secured by Article I, § I, ¶ 3 of the Georgia Constitution.

134.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City interfere with Plaintiff's right to freedom of religion as secured by Article I, § I, ¶ 4 of the Georgia Constitution.

135.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City interfere with Plaintiff's right to freedom of speech as secured by Article I, § I, ¶ 5 of the Georgia Constitution.

136.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City interfere with Plaintiff's right to assemble as secured by Article I, § I, ¶ 9 of the Georgia Constitution.

137.

Plaintiff is entitled to a declaration that the limitations imposed on the Church by the City interfere with and damage Plaintiff's property rights for public purposes without just and adequate compensation first being paid, as provided by Article I, § 3, ¶ 1 of the Georgia Constitution.

COUNT XII

INVERSE CONDEMNATION

138.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

139.

The actions of Defendants constitute an inverse condemnation of the Property for which compensation is required by law.

COUNT XIII

MANDAMUS

140.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

141.

The Church has a clear legal right under the Sandy Springs Zoning Ordinance to have the parking standard set forth in Section 18.2.1 for "Churches and other places of worship" applied to its Application for rezoning the Property for use of the building as a Church.

142.

The record contains no credible evidence that the use of the entire 43,916 square foot building would create a parking issue.

143.

A defect of legal justice would ensue if mandamus is not issued ordering Defendants to utilize Section 18.2.1 to determine the number of parking spaces required for the 43,916 square foot building on the Property and to rezone the Property accordingly.

COUNT XIV

INJUNCTION

144.

Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

145.

Plaintiff is entitled to issuance of a preliminary and permanent injunction enjoining Defendants from enforcing any limitation upon Plaintiff's use of the entire 43,916 square foot building for religious uses, and requiring Defendants to take whatever actions necessary to permit Plaintiff to undertake such use.

RELIEF

146.

This action has been necessitated by Defendants' imposition of limitations on the Church's requested use of the Property as a church and by Defendants' failure to comply with the Georgia and United States Constitutions and the Federal Religious Land Use and Institutionalized Persons Act of 2000. Accordingly, Plaintiff is entitled to recovery of its attorney's fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff prays as follows:

(a) That this Court declare that the actions of Defendants constitute a violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc; the United States Constitution; and the Georgia Constitution;

(b) That this Court declare and find that the limitations imposed on the Church by the City violate the Church's constitutional rights of substantive due process, procedural due process and freedom of religion, speech, and association;

(c) That this Court declare and find that the Church's Application should have been granted and that the Church is entitled to develop and use the Property as requested;

(d) That this Court grant injunctive and mandamus relief, permitting the requested use within the City's O-I district, such that Plaintiff may establish a 43,916 square foot church on the Property as requested and;

(e) That this Court declare and find that the existing Sandy Springs Zoning Ordinance is unconstitutional, arbitrary, capricious and unreasonable, illegal, null and void as applied to the Property, and results in a taking of the Plaintiff's Property without just compensation;

(f) That this Court declare that the existing zoning classification, limiting the use of the building to 32,053 square

feet for religious purposes is unconstitutional under the Federal and State Constitutions and causes a significant detriment to Plaintiff.

(g) That this Court declare that the limitations imposed on the Church by the City are unreasonable, and bear no rational relationship to the public health, safety, morals and welfare;

(h) That this Court declare the actions of Defendants to have resulted in an inverse condemnation of Plaintiff's Property;

(i) That this Court declare that Plaintiff has a clear legal right to approval of the Application as requested;

(j) That a writ of mandamus issue ordering Defendants to approve the Application as requested;

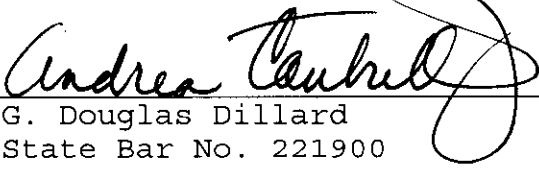
(k) That Plaintiff recover attorneys fees and expenses incurred in this matter; and

(l) That Plaintiff have any and all further and other relief as this Court may deem just and proper under the circumstances and evidence presented.

Respectfully submitted,

DILLARD & GALLOWAY, LLC

By:



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State Bar No. 221900
Andrea Cantrell Jones
State Bar No. 398440
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VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before the undersigned notary public duly authorized in the State of Georgia to administer oaths, DEBORAH Q. DANOS, after being duly sworn, deposes and states that the facts contained in the attached **VERIFIED COMPLAINT** are true and correct.

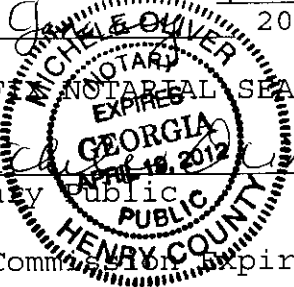
This 13th day of January 2010.

CHURCH OF SCIENTOLOGY OF GEORGIA, INC.

By: *Deborah Q. Danos*
DEBORAH Q. DANOS, President

SWORN TO AND SUBSCRIBED
Before Me This 13th Day
of January 2010.

(AFFIX NOTARIAL SEAL)
Michelle Oliver
Notary Public
My Commission Expires:



April 19, 2012

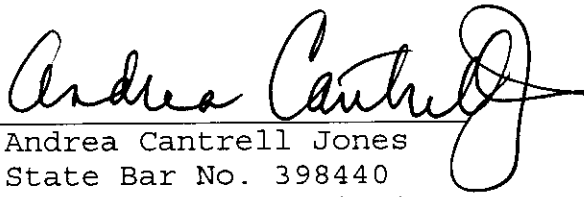
CERTIFICATE OF COMPLIANCE WITH L.R.5.1B

I certify pursuant to L.R. 7.1D that the above-titled document complies with L.R. 5.1B and was prepared using a 12 point Courier font.

Respectfully submitted,

DILLARD & GALLOWAY, LLC

By: _____


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