

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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

Plaintiff,)

v.)

CIVIL ACTION
FILE NO.: 1:10-cv-0082

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.)

DEFENDANTS' INITIAL DISCLOSURES

COME NOW Defendants and, pursuant to L.R. 26.1, N.D.Ga., make these
Initial Disclosures:

(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response:

All Defendants have been properly identified.

(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide reasons for defendant's contention:

None at this time.

(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading:

First Defense: Plaintiff's official capacity claims against elected officials are redundant as the City is a named party and are thus subject to dismissal. *This defense is self-explanatory.*

Second Defense: The Defendants sued in their official capacities are entitled to sovereign immunity. *This defense is self-explanatory.*

Third Defense: To the extent Plaintiff is seeking relief against any Defendants in an individual capacity, Defendants are entitled to qualified and/or official immunity. *All actions taken by Defendants were taken in the scope of employment and in their roles as elected officials. Individual Defendants have taken no actions outside their official duties and all official duties were performed*

without malice. The individual elected official defendants reached a decision on a zoning matter in accordance with the established procedure and standards in effect for the City. The individual elected official defendants were required to take action on the zoning matter presented and their decision was based on valid and lawful zoning criteria adopted in accordance with state law; no decision was made on the basis of religion or other unlawful basis.

Fourth Defense: Plaintiff cannot demonstrate the existence of an unlawful policy, custom, or practice necessary to support its claims pursued under 42 U.S.C. § 1983. *There is no unlawful policy, custom, or practice on the part of the City related to this matter.*

Fifth Defense: Plaintiff cannot demonstrate that it was deprived of some right, privilege, or immunity protected by the Constitution or laws of the United States as required under 42 U.S.C. § 1983. *Plaintiff was not deprived of any right, privilege, or immunity protected by the Constitution or laws of the United States. Defendants' decision on Plaintiff's rezoning and variance applications was based on valid and lawful zoning criteria; no decision was made on the basis of religion or other unlawful basis. Plaintiff can continue to operate at its current location in the City of Dunwoody and its members can continue to practice their religious faith. In the alternative, Plaintiff can relocate to the proposed building, at the*

32,053 square footage limitation and with the conditions approved by the City Council, or Plaintiff can provide the adequate number of parking spaces needed for the proposed building.

Sixth Defense: Plaintiff has not been deprived of the substantial value of its property nor has it otherwise suffered a significant detriment. *Plaintiff can continue to operate at its current location or move to the new location in accordance with zoning standards, and its members can continue to practice their religious faith. Plaintiff has an available state law remedy for its claim of inverse condemnation. In order for Plaintiff's federal claim to ripen, Plaintiff must show it has been deprived of a state law remedy for its inverse condemnation claim.*

Seventh Defense: The zoning attached to Plaintiff's property is consistent with the overall development pattern of the surrounding area and in compliance with all legal requirements. *Plaintiff's three-story office building located in the City is currently zoned O-I (Office-Institutional) Conditional limiting the property to office use. The building is surrounded by condominiums and office and retail space. The bottom level of the building is utilized as an underground parking deck. The surface parking lot has 50 parking spaces and an easement from the abutting post office provides an additional 31 spaces. There is no surrounding street parking. Plaintiff seeks rezoning to O-I in order to convert the building into a*

place of worship, including removing the underground parking deck to convert to worship space. Without the underground parking, the parking does not meet City parking standards and there is a 67 parking space deficit. Section 28.1 of the City's Zoning Ordinance states that in approving any zoning district change and/or use permit, the City Council shall impose conditions of approval as deemed necessary and appropriate to mitigate potentially adverse influences or otherwise promote the public health, safety, or general welfare. Section 18.2.1 of the City's Zoning Ordinance indicates parking requirements for uses with large public assemblies relative to the remainder of the building are based upon the largest public assembly building. Normally, parking requirements would be analyzed relative to the size of a church's sanctuary. Plaintiff's proposed development is unique in that it will have a sanctuary that comprises less than 5% of the total 43,916 square foot proposed building. Based on the authority found in the City's Zoning Ordinance, staff found it necessary to develop an alternative parking standard. The alternative parking standard developed is consistent with the parking requirements for places of worship within the City while also taking into account the unique use characteristics Plaintiff indicated including the fact that the majority of Plaintiff's attendees will come to the location for classroom based study, not for sanctuary purposes.

Eighth Defense: Defendants have at all times acted in accordance with and in good faith compliance with applicable law. They have neither intentionally nor willfully violated Plaintiff's rights in any manner or acted maliciously or negligently with respect to Plaintiff and at no time have Defendants acted with any intent to injure Plaintiff or with any malice or reckless indifference to Plaintiff or any rights it may possess. *Defendants' decision was based on the applicable standards of review provided in the City's Zoning Ordinance and pursuant to the Zoning Procedures Law. Defendants made their decision after considering the evidence and relevant zoning criteria, and after hearing both the arguments presented in support and in opposition to the applications.*

Ninth Defense: The City's decision in no way interferes with Plaintiff's members' abilities to practice their religious faith. *Plaintiff can continue to operate at its current location and its members can continue to practice their religious faith. In the alternative, Plaintiff can relocate to the proposed building, at the 32,053 square footage limitation and with the conditions approved by the City Council, or Plaintiff can provide the adequate number of parking spaces needed for the proposed building.*

Tenth Defense: The power to plan and zone has been delegated by the people of Georgia through the Constitution directly to municipalities, including the

City of Sandy Springs. The actions the City has taken in its legislative capacity in connection with the property at issue are proper in all respects, form an appropriate legislative determination as to the appropriate use of the property at issue, and are entitled to deference by this Court. *This defense is self-explanatory.*

Eleventh Defense: To the extent Plaintiff has failed to seek just compensation by means of available state procedure, Plaintiff's inverse condemnation claim is not ripe. *This defense is self-explanatory.*

Twelfth Defense: Plaintiff lacks a clear legal right to issuance of mandamus. *Zoning is a discretionary function within the balancing standards established by the courts and the City. The City's exercise of that zoning function was solidly within its authority and was valid and proper in all respects.*

(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendant contends are applicable to this action:

Presently, Defendants contend that the following statutes, codes, regulations, legal principles, standards and customs and usages, and illustrative case law are applicable to this action:

(a) Statutes, etc.

O.C.G.A. § 9-4-1; O.C.G.A. § 9-6-20.

Ga. Const. 1983, Art. 9, § 2, Para. 4.

U.S. Const. Amend. I; U.S. Const. Amend. V; U.S. Const. Amend. XIV.

42 U.S.C. §§ 2000cc et seq.

42 U.S.C. § 1983.

(b) Case law

Baker v. Macon-Bibb Cnty. Planning & Zoning Comm. et al., 118 Ga. App. 686 (1968).

Cambodian Buddhist Society of Conn. et al. v. Planning and Zoning Commission of the Town of Newton, 941 A.2d 868 (Conn. 2008).

Chabad of Nova, Inc. v. City of Cooper City, 575 F.Supp.2d 1280 (S.D. Fla. 2008).

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993).

City of Boerne v. P.F. Flores, 521 U.S. 507 (1997).

City of Roswell et al. v. Fellowship Christian School, Inc., 281 Ga. 767 (2007).

Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752 (7th Cir. 2003).

Employment Div. Dept. of Human Resources of Oregon, et al. v. Smith et al., 494 U.S. 872 (1990).

Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal et al., 546 U.S. 418 (2006).

Hale v. Tallapoosa Cnty et al., 50 F.3d 1579 (11th Cir. 1995).

Hale O Kaula Church et al. v. The Maui Planning Commission et al.,

229 F.Supp.2d. 1056 (Hawaii D.C. 2002).

Hollywood Community Synagogue v. City of Hollywood, 430 F.Supp.2d 1296 (S.D. Fla. 2006).

Konikov v. Orange County, 410 F.3d 1317 (11th Cir. 2005).

Lemon v. Kurtzman, 403 U.S. 602 (1971).

Living Water Church of God v. Charter Tp. of Meridian, 258 Fed.Appx. 729 (6th Cir. 2007).

McCreary County, Ky. v. American Civil Liberties Union of Ky., 545 U.S. 844 (2005).

Men of Destiny Ministries, Inc. v. Osceola County, 2006 WL 3219321 (M.D. Fla. 2006).

Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004).

Moeller v. Schrenko et al., 251 Ga. App. 151 (2001).

Olley Valley Estates Inc., et al. v. Fussell et al., 232 Ga. 779 (1974).

Petra Presbyterian Church v. Village of Northbrook, 489 F.3d. 846 (7th Cir. 2007).

Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d. 1295 (11th Cir. 2006).

Quatay Christian Fellowship v. County of San Diego, 2008 WL 4949895 (S.D. Cal. 2008).

Reaching Hearts International Inc. v. Prince George's County et al., 584 F.Supp.2d 766 (Md. Dist. Ct. 2008).

Tanner Adv. Group, LLC v. Fayette Co., 451 F.3d 777 (11th Cir. 2006).

Vision Church v. Village of Long Grove, 468 F.3d 975 (7th Cir. 2006).

Westchester Day School v. Village of Mamaroneck, 504 F.3d 338 (2nd. Cir. 2007).

Williams Island Synagogue v. City of Aventura, 358 F.Supp.2d. 1207 (S.D. Fla. 2005).

(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Responses to Initial Disclosures as Attachment A.)

See Attachment A.

(6) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Responses to Initial Disclosures as Attachment B.)

Presently, Defendants have not identified any expert witnesses. Defendants reserve the right to identify and use expert witnesses pursuant to the Federal Rules of Civil Procedure.

(7) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession,

custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Responses to Initial Disclosures as Attachment C.)

See Attachment C.

(8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Responses to Initial Disclosures as Attachment D.)

Presently, Defendants are not claiming damages.

(9) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.

Presently, Defendants do not contend that any other person or legal entity is liable to Plaintiffs or any Defendant in this matter.

(10) Attach for inspection and copying under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Responses to Initial Disclosures as Attachment E.)

No insurance company has liability insurance coverage relating to the matter alleged in the Complaint. However, Defendant City is a member of the Georgia Interlocal Risk Management Agency (GIRMA) which is an interlocal risk management agency formed pursuant to O.C.G.A. Title 36, Chapter 85. As such Defendant City is jointly self-insured with other municipalities in Georgia and has a coverage document (not an insurance policy) which governs the payment of certain claims for the self-insured members of GIRMA. This claim is being defended under reservation of rights.

Respectfully submitted this 22nd day of March, 2010.

/s/ Laurel E. Henderson
Laurel E. Henderson, Esq.
State Bar No. 346051

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Individually in Their Official)
Capacities as Members of the CITY)
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2010 I electronically filed the foregoing **DEFENDANTS' INITIAL DISCLOSURES** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Andrea Cantrell Jones, Esq.
Lauren M. Hansford, Esq.

/s/ Laurel E. Henderson
Laurel E. Henderson, Esq.
State Bar No. 346051

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Attachment A

Defendants have not completed discovery and/or investigation of the underlying facts of this lawsuit, nor have Defendants completed their preparation of this case for trial. However, at this time Defendants believe that the following individuals may have discoverable information that Defendants may use to support their claims or defenses:

1. Deborah Q. Danos, President, Church of Scientology Georgia.
2. City Staff: Nancy Leathers, Patrice Ruffin, Chris Miller, Linda Abaray, Cesar Geraldo, Mark Moore, Terry Robinson, Jocelyn Stephens, and Doug Trettin. Staff members are familiar with Plaintiff's applications and were present at relevant planning commission meetings. The City of Sandy Springs, 7840 Roswell Road, Building 500, Sandy Springs, GA 30350. (770) 730-5600.
3. City Manager, John McDonough, and Mayor and City Council. These individuals have knowledge regarding Plaintiff's applications. The City of Sandy Springs, 7840 Roswell Road, Building 500, Sandy Springs, GA 30350. (770) 730-5600.
4. Planning Commission members: Lee Duncan, Wayne Thatcher, Don Boyken, Susan Maziar, David Rubenstein, Roger Rupnow, and Al Pond.

Members are familiar with Plaintiff's applications as presented at relevant planning commission meetings.

5. Public citizens that expressed either support or opposition to the City at the relevant planning commission meetings: Bob Adams, Bob Williams, Nancy Davis, Ray Lancem, Daniel Hubbell, Jane Kelley, Patty Burns, Robin Beechey, Sheila O'Shea, Nancy Broudy, J. Anthony Paredes, Fred Allen, Manuel Elkoune, Susan Yeosock, Anne Crichton, Nancy Earlly, Jeff Lebow, Albert Eruewsfelder, Helen Weing, Matt Ewing, Betty Bull, Howard Gruensfelder, Frank Bull, Martha Patterson, and Mary Lynn Wright. These individuals have knowledge of the discussion that took place during the relevant planning commission meetings.
6. Kimley-Horn and Associates, Inc., 817 West Peachtree St. NW, Suite 915, Atlanta, Georgia 30308. Conducted the parking study and prepared site plans for the Plaintiff's rezoning and variance applications.
7. Crystal Williams, Interim Director, Fulton County Emergency Services Department, 130 Peachtree St. SW, Suite 3147, Atlanta, GA 30303. Ms. Williams wrote the department's comment letter in response to Plaintiff's applications.

8. Doug Smith, City of Atlanta, 651 Fourteenth Street, Atlanta GA 30318. Mr. Smith wrote the Bureau of Drinking Water's comment letter in response to Plaintiff's applications.
9. James Buchan, GDOT, One Georgia Center, 600 West Peachtree Street NW, Atlanta GA 30308. Mr. Buchan wrote the department's comment letter in response to Plaintiff's applications.
10. Monica Robinson, Fulton County Environmental Health Services, 99 Jesse Hill Jr. Drive, Suite 101, Atlanta, Georgia 30303. Ms. Robinson wrote the Department's comment letter in response to Plaintiff's applications.

Attachment C

Defendants have not completed discovery and/or investigation of the underlying facts of this lawsuit, nor have Defendants completed their preparation of this case for trial. However, at this time Defendants believe that the following documents may be used to support their claims or defenses:

1. Plaintiff's rezoning and variance applications and supporting documentation including but not limited to the following:
 - a. Letter of Intent;
 - b. Site Plans;
 - c. First Amendment to applications;
 - d. Public participation plan report;
 - e. Parking evaluation by Kimley-Horn and Associates, Inc.; and
 - f. Parking evaluation addendum.
2. Public notice of rezoning matter;
3. Environmental Health Services comment letter;
4. Fulton County Emergency Services Department comment letter;
5. Georgia Dept. of Transportation comment letter;
6. City of Atlanta Water Availability comment letter;
7. Correspondence between Plaintiff and Defendants;

8. Petitions and other correspondence received from public citizens;
9. Use schedule per architect plans for building;
10. Staff reports and recommendations on Plaintiff's applications;
11. National Household Travel Survey;
12. Fire Department input;
13. City Traffic Analysis;
14. City Mgr. Recommendation and Staff Report;
15. Tree Survey;
16. Campaign Disclosure Statement;
17. Photos, plans, and maps;
18. City Zoning Map;
19. City Zoning Ordinance;
20. City Comprehensive Plan;
21. City Council meeting December 15, 2009 transcript;
22. City Council minutes; and
23. Planning Commission minutes.