

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-AT
CITY OF SANDY SPRINGS, GEORGIA,	)	
et. al.	)	
	)	
Defendants.	)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION**

COME NOW the City of Sandy Springs, Georgia, and its named elected officials, Defendants in the above-styled action, and file this their Response to Plaintiff's Motion for Reconsideration. Plaintiff's motion should be denied.

**I. STANDARDS APPLICABLE TO MOTIONS FOR RECONSIDERATION**

A motion for reconsideration "shall not be filed as a matter of routine practice" and should be reserved for only those cases where it is "absolutely necessary." L.R. 7.2(E), N.D.Ga. Such absolute necessity exists only where there is (1) newly discovered evidence, (2) an intervening development or change in the controlling law, or (3) a need to correct a clear error of law or fact. See Kight v. IPD Printing and Distributing et. al., 427 Fed. Appx. 754, 754 (11th Cir. 2011); Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps. of Engineers et. al., 916 F. Supp. 1557, 1560 (N.D. Ga. 1995).

Merely disagreeing with a court's decision is not a basis for relief. Wilson v. BB&T Mortgage, Civil Action File No. 1:10-CV-1234-RWS, 2011 U.S. Dist. LEXIS 41212 (N.D. Ga., filed Apr. 15, 2011), at \*3 (copy attached as Ex. A). "[A] motion for reconsideration is not an opportunity for the moving party ... to instruct the court on how the court 'could have done it better' the first time." Preserve Endangered Areas of Cobb's History, Inc., 916 F. Supp at 1560. Nor is it a vehicle for the plaintiff "to present new arguments or evidence that should have been raised earlier, introduce novel legal theories, or repackage familiar arguments to test whether the Court will change its mind." Brogdon v. National Healthcare Corporation, 103 F. Supp. 2d. 1322, 1338 (N.D. Ga. 2000); see also Kight, 427 Fed. Appx. at 754.

## **II. ARGUMENT AND CITATION OF AUTHORITIES**

Plaintiff's motion does not rest on newly discovered evidence or an intervening development or change in controlling law. Plaintiff argues that the Court committed clear errors of law and fact. However, Plaintiff fails to demonstrate a single error of law or fact, much less one *requiring* correction.<sup>1</sup> Plaintiff's blatant repackaging of its summary judgment

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<sup>1</sup> The fact that Plaintiff still has several remaining claims that are capable of providing it complete relief undermines any argument that reconsideration is "absolutely necessary" in this case. Order, p. 46-48 & n.24; see also L.R. 7.2(E), N.D. Ga.

arguments cannot support its motion for reconsideration. See Brogdon, 103 F., Supp. 2d. at 1338. The Court duly considered and properly rejected Plaintiff's arguments the first time around. None of Plaintiff's alleged "errors" necessitate reconsideration of that decision.

- 1. This Court did not factually err in finding that the parking requirement applied to Plaintiff's application under Section 18.2.1 was calculated using a multi-use formula.**

Plaintiff's repeated insistence that the City "abandoned" the multi-use formula is factually inaccurate. Staff clearly calculated the parking requirement under Section 18.2.1 using the multi-use formula. Order, p. 13, 15; Leathers Dep. Exh 20, p. 8; Leathers Dep. Exh. 21, p. 8; Leathers Decl. ¶ 10. Plaintiff objected to this calculation, and at Plaintiff's request the City allowed Plaintiff to submit a parking study demonstrating the parking needs for its proposed expanded use. Order p. 15; Leathers Decl ¶ 11. Plaintiff chose to submit an incomplete parking study that did not reflect the anticipated parking demand for its facility operating at full capacity. Order p. 15-16, n. 9 & 34; Leathers Decl. ¶¶ 12-13. Nonetheless, Staff used the information Plaintiff provided as best it could, which resulted in a reduction of the amount of required parking for Plaintiff's proposed expanded use. Order p. 16; Leathers Dep. Exh 21, p. 8; Leathers Decl. ¶ 14.

Staff's eventual refinement of the parking requirement at Plaintiff's behest based on specific parking data that Plaintiff chose to submit does not establish "abandonment" of the multi-use formula under Section 18.2.1. The City never abandoned the multi-use formula under Section 18.2.1; it only reevaluated and revised its parking calculation based on specific data voluntarily provided by Plaintiff. The Court's decision on this matter was not clearly in error. Plaintiff's argument ignores the broader context of Staff's parking analysis, mischaracterizes the facts, and therefore was properly rejected by the Court on summary judgment. Absent clear error, Plaintiff's mere disagreement with the Court is not a basis for reconsideration. See, Kight 427 Fed. Appx. at 754.

**2. No error requiring correction is presented by the Court's analysis of Lutheran Church of the Apostles.**

Rejection of the Lutheran Church of the Apostles as a similarly situated comparator was not in error. Contrary to Plaintiff's assertions, the uncontroverted testimony of Director Nancy Leathers establishes that the same multi-use formula applied to Plaintiff was applied to calculate the amount of required parking for Lutheran Church of the Apostles's proposed sanctuary and daycare facility. Order, p. 62; Leathers Dep. 184-185, 188. The Court also considered and rejected as mischaracterization of the evidence Plaintiff's argument of

favorable treatment grounded in the City's alleged misapplication of the "fixed seat" standard. Order. p. 63, n. 31. No other arguments were advanced by Plaintiff on summary judgment and the evidence offered by Plaintiff does not alter the Court's conclusions. See Doc. 37-1, p. 19-20.

Additionally, Plaintiff's nondiscrimination claim was not dismissed for want of a similarly-situated comparator. Order, p. 64-65 & n. 32. Plaintiff's nondiscrimination claim was dismissed because Plaintiff failed to present any evidence of intentional or purposeful religious discrimination by the City. Order, p. 65-68 & n. 32. Evidence that Plaintiff purports establishes another similarly-situated comparator does not cure Plaintiff's failure to provide evidence of intentional discrimination. As such, reconsideration of this issue provides Plaintiff with no relief and is not absolutely necessary. L.R. 7.2(E), N.D. Ga.

**3. The Court did not err in concluding that Plaintiff's proposed use did not meet the definition of a "Church or Other Place of Worship" under the Zoning Ordinance.**

Plaintiff continues to "quibble" over the definition of a "church" in the Zoning Ordinance, repeating its arguments from summary judgment almost verbatim. Order, p. 56, n. 27; Doc. 89. p. 7-9; Doc. 69 p. 8-9. The Court clearly resolved this issue in its Order. Order, p. 56, n. 27. By its own admissions, Plaintiff's proposed use is not a "church" use as contemplated

by the Zoning Ordinance. Order, p. 14, 56-57. The Court's ruling on this issue was not clearly in error.

A "Church or Other Place of Worship" under the Zoning Ordinance is defined as an assembly-type use as reflected by the plain language of the definition and the parking requirement, which calculates required parking for church uses based on the square footage of the largest assembly area. Order, p. 56 & n. 32; Leathers Decl. ¶ 7. Plaintiff admitted that its proposed use was "not like a congregational style church like you may be accustomed to that everybody turns out as the same time every week for one particular hour or a series of several hours. They don't typically do that ... the general use of the building will be the offices, for counseling and classroom study." Order, p. 14; see also Leathers Decl. ¶ 8. Plaintiff's primary use of the facility is not of the kind contemplated by the definition of a "church" in the Zoning Ordinance - that is assembly for religious ceremonies in the largest area of assembly. The rules of statutory construction in Georgia do not dictate or require any other conclusion. See Ga. Pub. Serv. Commission v. Alltel Ga. Comm. Corp., 227 Ga. App. 332, 384-385 (1997) ("The cardinal rule of statutory construction is to glean the intent of the legislature. Construction of a statute must square with common sense and reasoning.").

**4. The Court's dismissal of Plaintiff's nondiscrimination claim for failure to prove intentional discrimination was entirely proper.**

No error of law or fact on this issue is presented in Plaintiff's motion for reconsideration. Plaintiff admits that the Court applied the correct legal standard to its claim by requiring proof of intentional discrimination by the City on the basis of Plaintiff's religion. See Doc. 89, p. 2-3. The Court recognized that intentional discrimination could be proven by either direct evidence or circumstantial evidence allowing for an inference of discrimination. Order, p. 66. The Court, however, found that there was no evidence - direct or circumstantial - that permitted even an inference of discrimination on the part of the City. Id. at 67. Plaintiff's reiteration of its arguments from summary judgment do not support its motion for reconsideration.

Plaintiff's claim that its application received higher scrutiny or less favorable treatment is not supported by the record. Plaintiff was treated the same as other multi-use religious facilities. Order, p. 57-58, 68; Doc. 41, p. 8-14. Further, the City's rezoning decision was not based on Plaintiff's religion or religious beliefs; it was based on one thing and one thing only - the lack of adequate parking. Order, p. 67-68; Leathers Dep. p. 205; Doc. 48-1, 23-24.

No hostile or discriminatory animus towards Plaintiff's religion lurks in the shadows of the City's decision. The City approved Plaintiff's use of the Subject Property as a church. See Doc. 48-1, 23-24. Plaintiff's attempts to impute a hostility into the quoted line questioning from Councilmember Paul at the December 15, 2011 hearing only demonstrate Plaintiff's extreme paranoia. None of Councilmember Paul's questions exhibit hostility, covert or overt, towards Plaintiff's religion, religious beliefs, or religious practices. Councilmember Paul in fact voted to approve Plaintiff's use of the Subject Property as a church. See Doc. 48-1, p. 24. Further, there is no evidence suggesting that any of the alleged implied "hostility" purportedly expressed by Councilmember Paul was shared by the City Council as a whole so as to establish discriminatory intent.

### **III. CONCLUSION**

Plaintiff fails to articulate any reason why reconsideration is "absolutely necessary" in this case. No new evidence, change in controlling law, or clear error of law or fact in need of correction is presented. Plaintiff still has viable claims that are capable of providing it with complete relief. Reconsideration is unwarranted and Plaintiff's motion should be denied.

Respectfully submitted this 9th day of November, 2011.

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**ADDENDUM TO DEFENDANTS' RESPONSE TO PLAINTIFF'S**  
**MOTION FOR RECONSIDERATION**

Pursuant to Local Rule 7.1, N.D. Ga. the undersigned counsel certifies that the brief filed with the court was prepared with Courier New (12 point), one of the font and point selections approved by the Court in Local rule 5.1B, N.D. Ga.

This 9th day of November, 2011.

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