



MEMORANDUM

Office of the City Attorney

070481
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: September 24, 2007

FROM: City Attorney


SUBJECT: Fire of God Ministries, Inc. v. City of Gainesville
Case No.: 1:06-CV-188-SPM-AK – U.S. District Court

Recommendation: The City Commission 1) approve the terms of the settlement agreement; 2) authorize the City Attorney and/or outside counsel to settle the claim of Fire of God Ministries, Inc. on behalf of the City.

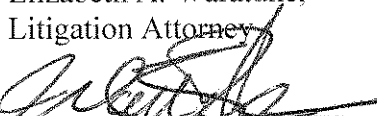
In September 26, 2006, the Mayor was served with a Summons and Complaint by Fire of God Ministries, Inc., alleging that the City applied its land development code in an unequal and discriminatory manner by requiring Plaintiff to apply for a Special Use Permit. The Plaintiff asked the Court to enjoin the City from requiring it to obtain a special use permit and to declare the City in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment and Equal Protection laws. The Plaintiff later added counts requesting damages.

The City and Fire of God attended a court ordered mediation. After the City issued a zoning compliance permit so as to comply with RLUIPA, the parties negotiated a settlement whereby Fire of God Ministries, Inc. agreed to conditions associated with its use of the property, the same type of conditions that Fire of God Ministries, Inc. would have to comply with had they obtained a special use permit. The City agreed to pay Fire of God Ministries, Inc. certain attorney fees and costs in the case in the amount of \$30,000.00 and to waive and/or reimburse other costs in the amount of approximately \$560.00. It is the recommendation of the City Manager, outside counsel, and the City Attorney's Office that the case be settled as described above.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

FIRE OF GOD MINISTRIES, INC.,

Plaintiff,

v.

Case No: 1:06cv188-SPM-AK

CITY OF GAINESVILLE,

Defendant.

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement is made and entered into at Court-ordered mediation by and between the CITY OF GAINESVILLE, FLORIDA (CITY) and FIRE OF GOD MINISTRIES, INC. (FIRE OF GOD) this 13th day of September, 2007.

WHEREAS, FIRE OF GOD filed a lawsuit against the CITY on the 26th day of September 2006, Case No. 1:06cv188-SPM-AK in the United States District Court, Northern District Court of Florida; and

WHEREAS, the CITY disputes the allegations of FIRE OF GOD's lawsuit; and

WHEREAS, FIRE OF GOD and the CITY wish to avoid the expense, delay, and uncertainty of litigation and to attempt to resolve the claims asserted in FIRE OF GOD's lawsuit, and agree it is in their respective mutual best interests to do so; and

WHEREAS, FIRE OF GOD and the CITY have agreed to enter into this Stipulated Settlement Agreement at Court-ordered mediation,

NOW, THEREFORE, in consideration of the mutual covenants and promises herein below, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

FIRST: CITY acknowledges that FIRE OF GOD is entitled to use the property and improvements located at 1414 NE 23rd Avenue, Gainesville, Florida (the "Property") for purposes of religious assembly, and has issued a zoning compliance permit to FIRE OF GOD for the use of the Property as a place of religious assembly. FIRE OF GOD's use of the Property does and will continue to conform to the conditions set forth in Exhibit A. The parties may amend the conditions set forth on Exhibit A by mutual agreement. CITY acknowledges that nonconforming uses are allowed to make certain types of alterations and improvements either with or without a special use permit, as provided in the City Code. CITY will allow FIRE OF GOD to make alterations and improvements to the same extent and under the same conditions that would apply to any other nonconforming use provided that the alterations and improvements otherwise comply with all applicable laws, including but not limited to building, fire, and other codes. Where any other nonconforming use would not be required to obtain a Special Use Permit, CITY will not require FIRE OF GOD to obtain a Special Use Permit in order to make such alterations and improvements.

SECOND: CITY will pay \$30,000.00 in settlement of FIRE OF GOD's claims, including claims for costs and attorneys' fees in this action, within 15 days after this Stipulated Settlement Agreement is approved by the City Commission. In addition, CITY will file an affidavit of compliance in connection with Code Enforcement Board Case No.

CEB 2006-180, and cause those proceedings to be dismissed with no fines being imposed on any party. CITY will request that costs previously assessed in those proceedings in the amount of \$227.97 be waived, and will reimburse FIRE OF GOD for the payment of those costs in the event CITY is unable to cause those costs to be waived. In addition, CITY will reimburse FIRE OF GOD for the \$330.75 fee paid by FIRE OF GOD in connection with FIRE OF GOD's appeal to the Board of Adjustment, Petition No. 84APP06-BA.

THIRD: CITY will pay all costs and fees of Carter & Drylie, P.A., for mediation of this matter.

FOURTH: Upon payment of the amounts contemplated above, FIRE OF GOD will release and hold harmless the CITY OF GAINESVILLE, City Commissioners, individually, their representatives and agents, officers and employees, against all claims, disputes, allegations, and/or cause of action, that FIRE OF GOD may have against the CITY OF GAINESVILLE, City Commissioners, individually, their representatives and agents, officers and employees, for deprivation of their civil rights or any cause of action whatsoever from the beginning of time to the present day. FIRE OF GOD will execute a standard form general release to the effect of the foregoing.

FIFTH: Nothing in this Stipulated Settlement Agreement shall be deemed to affect the rights of any person not a party to this Stipulated Settlement Agreement. This Stipulated Settlement Agreement is not intended to benefit any third party.

SIXTH: By executing this Stipulated Settlement Agreement, neither party admits to the truth of any allegations made against it in the dispute between the parties.

SEVENTH: This Stipulated Settlement Agreement shall not be offered or received in evidence for any other purposes other than the purpose and use in effectuating the agreement by the parties.

EIGHTH: The parties mutually agree that this Stipulated Settlement Agreement contains the entire agreement between the parties and neither they nor their agents shall be bound by any terms, conditions, statements, warranties, or representations, oral or written, not herein contained.

NINTH: This Stipulated Settlement Agreement is subject to the approval of the City Commission, and shall not be effective until so approved. CITY will seek such approval at the City Commission meeting scheduled for September 24, 2007. Upon such approval, the parties will file this Stipulated Settlement Agreement with the Court.

TENTH: FIRE OF GOD and CITY hereby jointly stipulate to entry of an Order in the form attached hereto as Exhibit 1 approving this Stipulated Settlement Agreement, dismissing this action with prejudice, and providing that the Court retains jurisdiction to interpret and enforce the terms of this Stipulated Settlement Agreement.

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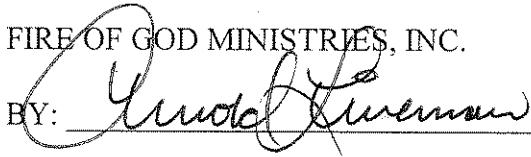
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

Signed, sealed and delivered in the presence of:

FIRE OF GOD MINISTRIES, INC.

CITY OF GAINESVILLE

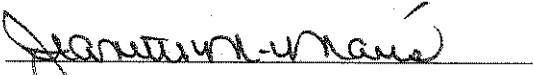

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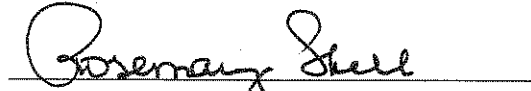

BY:



ATTEST:

ATTEST:

APPROVED AS TO FORM AND CONTENT:


Attorneys for Plaintiff
FIRE OF GOD MINISTRIES, INC.

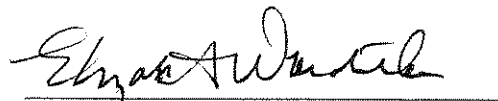

Attorneys for Defendant
CITY OF GAINESVILLE

EXHIBIT A: CONDITIONS ON USE AND OPERATION

Efforts to Minimize Impacts. The place of religious assembly will make all reasonable efforts to minimize impacts, including noise, on neighboring properties. Nothing herein permits the operation of a “residence for destitute persons” or a “food distribution center for the needy” as those terms are defined in the City of Gainesville Code.

Dispute Resolution. To assist in resolving any issues or concerns regarding impacts on any neighboring properties, representatives of the place of religious assembly will meet collectively with neighbors and representatives of City Code Enforcement and/or GPD, as often as reasonably requested.

Normal Hours of Operation. Normally, hours of operation for the place of religious assembly will not begin before 7:30 a.m.

Service of Meals. Normally, service of meals will occur inside the building and will conclude no later than 8:30 pm. However, outdoor barbeques and other special events may also be scheduled which depart from these conditions.

Transportation. When transportation to the facility is provided by the place of religious assembly for meals or services, return transportation will also be provided following the meal, or following the service subsequent to the meal.

Dropoff and Pickup. Transportation will be directly to and from the front entrance, with dropoff and pickup at the building front entrance doorway area to minimize impacts on adjacent properties.

Litter Pickup. The place of religious assembly staff will make best efforts to keep the property clean and free of litter.

Non-sacramental Use of Alcohol Prohibited. The place of religious assembly will prohibit the illicit use of drugs and the non-sacramental use of alcohol on the property.

Outdoor Camping. Except as may be authorized by city, state or federal law, the place of religious assembly will prohibit any overnight camping outside on the property.

Rights Preserved. Nothing herein shall prevent the place of religious assembly from participating in programs, offering services, or engaging in religious activities as authorized by city, state, or federal law for places of religious assembly generally.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

FIRE OF GOD MINISTRIES, INC.,

Plaintiff,

v.

Case No. 1:06cv188-SPM-AK

CITY OF GAINESVILLE,

Defendant.

ORDER RATIFYING AND ADOPTING SETTLEMENT AGREEMENT

This cause came before the Court on the parties' Stipulated Settlement Agreement, reached at mediation on _____, 2007, and approved by the City Commission of the City of Gainesville on _____, 2007, and the Court having been advised in the premises, does hereby ORDER AND ADJUDGE:

1. That the Stipulated Settlement Agreement be and the same is hereby adopted and ratified by the Court, and incorporated by reference herein as an order of the Court, and the parties are ordered to comply with it.
2. The above-styled case is hereby dismissed, with prejudice, and the Court shall retain jurisdiction solely to interpret and enforce the terms of the Stipulated Settlement Agreement.

DONE AND ORDERED this ___ day of _____, 2007.

STEPHAN P. MICKLE
UNITED STATES DISTRICT JUDGE