

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

TABERNACLE COMMUNITY)
BAPTIST CHURCH and)
PASTOR NATHANIEL SMILEY)

Plaintiffs,)

v.)

Civ. Act. No. _____

CITY OF EAST POINT, GEORGIA; the)
CITY COUNCIL OF THE CITY OF EAST)
POINT; CITY OF EAST POINT)
PLANNING & ZONING COMMISSION;)
JOE MACON, in his official capacity as)
Mayor of East Point and as member of the)
East Point Planning & Zoning Commission;)
FRANCINE JONES, THOMAS HARPER,)
STEVE BENNETT, PAM PATTERSON,)
MYRON COOK, JACQUES JONES,)
LINDA SHELDON, and SHEAN ATKINS)
in their official capacities as members of)
the East Point Planning & Zoning)
Commission)

Defendants.)

VERIFIED COMPLAINT

Plaintiffs, TABERNACLE COMMUNITY BAPTIST CHURCH (the
“Church”) and PASTOR NATHANIEL SMILEY (collectively “Plaintiffs”) file

this Verified Complaint against Defendants, CITY OF EAST POINT, GEORGIA (the “City”); CITY COUNCIL OF THE CITY OF EAST POINT; CITY OF EAST POINT PLANNING & ZONING COMMISSION (the “Commission”); JOE MACON, in his official capacity as Mayor of the City and as a member of the Commission; and FRANCINE JONES, THOMAS HARPER, STEVE BENNETT, PAM PATTERSON, MYRON COOK, JACQUES JONES, LINDA SHEDLON, and SHEAN ATKINS, in their official capacities as members of the Commission, and in support hereof, respectfully show the Court the following:

PARTIES

1. Plaintiff, TABERNACLE COMMUNITY BAPTIST CHURCH, is a non-profit corporation organized and existing under the laws of the state of Georgia with its principal place of business in East Point, Georgia.
2. Plaintiff PASTOR NATHANIEL SMILEY is the Pastor and President of the Board of Trustees of the Church and is a resident of East Point, Georgia.
3. Defendant CITY OF EAST POINT 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 empowered by the State of Georgia to regulate and restrict the use of land and structures within the City's borders.

4. Defendant CITY COUNCIL OF THE CITY OF EAST POINT is the body, together with the Mayor, that enacted East Point City Code § 10-2056(h).

5. Defendant CITY OF EAST POINT PLANNING & ZONING COMMISSION is delegated the power to approve variances, rezoning, and special use permits under the City of East Point Code.

6. Defendant JOE MACON is Mayor of the City of East Point and a member of the East Point Planning & Zoning Commission.

7. Defendant FRANCINE JONES is a member of the East Point Planning & Zoning Commission.

8. Defendant THOMAS HARPER is a member of the East Point Planning & Zoning Commission.

9. Defendant STEVE BENNETT is a member of the East Point Planning & Zoning Commission.

10. Defendant PAM PATTERSON is a member of the East Point Planning & Zoning Commission.

11. Defendant MYRON COOK is a member of the East Point Planning & Zoning Commission.

12. Defendant JACQUE JONES is a member of the East Point Planning & Zoning Commission.

13. Defendant LINDA SHELDON is a member of the East Point Planning & Zoning Commission.

14. Defendant SHEAN ATKINS is a member of the East Point Planning & Zoning Commission.

JURISDICTION

15. The Court has federal question jurisdiction over the Plaintiffs' claims regarding 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.

16. The Court has federal question jurisdiction, pursuant to 28 U.S.C. § 1343(a)(3), over the Plaintiffs' 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.

17. The court has supplemental jurisdiction over the Plaintiffs' state law claims, pursuant to 28 U.S.C. § 1367.

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

19. Plaintiffs seek permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1343.

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

NATURE OF THE ACTION

21. The City of East Point has unlawfully discriminated against the Tabernacle Community Baptist Church on the basis of the Church's religious nature. The Commission has refused zoning permission for the Church, a Christian ministry serving the East Point community, to use a property located at 1702 West Cleveland Avenue, City of East Point, Georgia 30344 (the "Property") as a place of worship. The Commission based this refusal on City Code § 10-2056(h), which specifically bars churches and other places of worship from

occupying a structure that had previously been used for commercial purposes. Indeed, this provision of the Code specifically singles out churches and religious organizations for discriminatory treatment. This provision and the actions taken pursuant to it are unconstitutional on their face. Moreover, this provision and the actions taken pursuant to it have substantially burdened the Plaintiffs' religious exercise, expression, and association.

22. This suit seeks relief from the clear and purposeful deprivation of Plaintiffs' constitutionally and statutorily protected rights. The City's zoning laws, both on their face and as applied, violate the United States Constitution, the Constitution of the State of Georgia, and RLUIPA by discriminating against places of worship and by depriving Plaintiffs of the ability to secure a proper and adequate place to assemble for religious worship and other religious activities. Plaintiffs seek injunctive, declaratory, and compensatory relief for injuries suffered as a result of the City's unlawful conduct. Plaintiffs also seek costs and attorneys' fees under 42 U.S.C. § 1988.

FACTS

23. The Tabernacle Community Baptist Church serves a local body of approximately 40 members who are associated by covenant in the faith and

fellowship of the Gospel of Jesus Christ. The Church is an organization composed of professing believers, instituted for the purpose of fellowship, worship, and service.

24. The unity and cohesion of the entire Church community is a central value within the system of beliefs of the members of the Church. A house of worship is a central element to the beliefs of the Church's members. Members believe that they must have access to a house of worship to share in its faith and fellowship.

25. The Church is currently without a permanent house of worship. For the past two years, the members and Pastor Nathaniel Smiley meet for Sunday worship services at the Wellesley Inn, a motel, located at 1377 Virginia Avenue in the City of East Point. When the facilities are available, services are held in the Inn's conference room, which can hold only sixty people. The Church is forced to use the employee break room for its Sunday school classes.

26. The Church's ability to grow is unduly and substantially limited without a permanent house of worship with adequate space for ministry, education, and fellowship. Plaintiffs' inability to find an adequate permanent home has resulted in the loss of at least two members.

27. In 2004, in response to the Church's need for a permanent home in East Point, where most of the Church's members live, Pastor Smiley began searching for property in which the Church could make a permanent home.

28. In August 2004, Pastor Smiley located a property at 2666 Stone Road in East Point for the Church's relocation. Before buying the property, Pastor Smiley met with Chris Montesinos, Acting Director of the Commission, to determine whether he could purchase the property and use it for religious activities under the City's zoning ordinances. Mr. Montesinos told Pastor Smiley that he would need a variance for the Church's intended use, because the area was zoned residential, and the building on the property was not at least fifty feet from the adjoining property. Pastor Smiley appeared before the Commission's Board on August 19, 2004, where members of the community voiced opposition to the requested variance. Out of courtesy to those individuals and a belief that the Church could find a more suitable place for worship, Pastor Smiley ended the Church's pursuit of this property.

29. In April 2005, Pastor Smiley found the Property, owned by John Ford and located at 1702 West Cleveland Avenue in downtown East Point. Pastor Smiley chose this property because of its availability, price, and central location in

the heart of East Point. Mr. Ford offered Pastor Smiley the option of owner financing. The property is situated between two existing churches, and the members of one of the churches park in the Property's parking lot.

30. After discussing with Mr. Ford the possibility of purchasing the property as a site for the Church, Pastor Smiley again met with Mr. Montesinos to explain the Church's interest in establishing a permanent home in a pre-existing building on the Property. On April 21, 2005 Mr. Montesinos, after researching the Property and applicable zoning ordinances, told Pastor Smiley that the Property was zoned for Commercial Redevelopment ("CR"). Mr. Montesinos assured Pastor Smiley that a building in a CR zoned area could be used for a church without the need for a variance.

31. After receiving this assurance, on May 3, 2005, Pastor Smiley entered into a written Purchase and Sale Agreement with John Ford for the purchase of the Property. *See* Purchase and Sale Agreement, attached as Exhibit A.

32. On June 12, 2005, at a cost of \$1000, Pastor Smiley hired LandAmerica Valuation Corporation to appraise the Property. *See* checks from Pastor Smiley to LandAmerica, attached as Exhibit B. LandAmerica issued its

Narrative Report on July 6, 2005, estimating the Property to be worth \$275,000.

See LandAmerica Narrative Report, attached as Exhibit C.

33. Around this same time, Pastor Smiley and Mr. Ford had remodeling plans drawn for the design of a 100 person church. *See* remodeling plans, attached as Exhibit D. They also met with the Fire Marshall to ensure that the Church's architectural plans were within fire code guidelines and applied for and received a demolition permit needed for the remodeling.

34. Unbeknownst to Pastor Smiley, a citizen noticed a crew working on the Property without posting a work permit and called the Commission office to complain. Skip Barlow, Chief Building Inspector, went to the Property to investigate and found that the workers did have a demolition permit. However, Skip Barlow informed the Property owner, John Ford, that the City Code did not permit a church in a CR zoned area without a variance.

35. On July 27, 2005, Pastor Smiley took the remodeling plans to the East Point Department of Planning and Zoning and paid the necessary fees. Two hours later, Pastor Smiley received a phone call from Brenda Curtis, Permit Coordinator, saying that she possessed an internal memorandum saying that she was not to issue

a church a building permit for the Property. She instructed Pastor Smiley to come back and retrieve his check and plans.

36. Confused, Pastor Smiley again met with Mr. Montesinos. Mr. Montesinos told Pastor Smiley that City Code 10-2056(h) prohibited construction of a church on the property. Section 10-2056(h) states:

Restrictions on Establishment of churches and other places of worship in existing commercial structures. Churches and other places of worship seeking to occupy a structure not originally constructed for their express use may not do so if that structure had been used previously for commercial purposes or is a unit affixed to a larger structure that houses other units presently or previously used for commercial purposes. This restriction shall not apply to churches or other places of worship presently existing in such nonpermitted structures. This restriction shall apply to such presently existing churches and other places of worship, which choose to relocate to nonpermitted structures.

See § 10-2056, attached as Exhibit E. No similar restriction exists for non-religious entities.

37. On July 27, 2005, Pastor Smiley appealed the summary denial of the Church's request to the Commission.

38. On August 1, 2005, Pastor Smiley met with Beth McMillan, Director of Planning and Zoning, then-Mayor Patsy Jo Hilliard, and John Ford, the Property's owner, to discuss using the Property for the Church. At that meeting,

Pastor Smiley was told that the Church could not use the Property for a house of worship. At a meeting later that afternoon with Ms. McMillan, Mr. Montesinos revealed that he had previously told Pastor Smiley that construction of a church on the property was permissible under the Code.

39. An August 18, 2005 memo from Shay Nichols, the Commission's Senior Planner, recommended denial of the Church's appeal, based on the Ordinance's prohibition on churches occupying structures that had previously been used for commercial purposes.

40. On August 18, 2005 Pastor Smiley and five church members attended the Commission's meeting at which the Church's administrative appeal was to be heard. At that meeting, but prior to the Church's appeal, the Commission heard several other appeals for variances and allowed the other appellees to address the Commission in support of their appeals. When it was time to hear the Church's appeal, the Commission asked Shay Nichols to present her recommendation that the Commission deny the Church's request. The Commission's Chairman denied Pastor Smiley's request to address the Commission. The Commission then rejected the Church's appeal.

41. Following the denial of this appeal, the Church's agreement with Mr. Ford to purchase the Property could not be completed. Plaintiffs still hope to purchase the Property.

42. The Property remains on the market for sale. The Property remains a uniquely good location for the Church. Plaintiffs still hope to purchase the Property for use as a house of worship.

43. Because of Defendants' actions, Plaintiffs have no reasonable alternative than to continue holding their worship services at the Wellesley Inn on Virginia Avenue. Section 10-2056(h)'s provision places a substantial and unnecessary burden upon Plaintiffs in their quest to find a permanent house of worship.

COUNT I: Violation of the United States Constitution
Free Exercise of Religion: First and Fourteenth Amendments (42 U.S.C. §
1983)

44. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.

45. The City, acting by and through the Commission, has deprived and continues to deprive Plaintiffs of their rights 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 Plaintiffs because of the Church's religious character and by inhibiting Plaintiffs right to freely exercise their religious faith.

46. Section 10-2056(h) of the East Point Code of Ordinances expressly prohibits the establishment of places of worship in existing commercial structures. Its restrictions apply only to churches or other places of worship. Other persons, entities, and organizations face no such restriction.

47. Because of this provision of the City Code, Plaintiffs have been prevented from purchasing, remodeling, and using the Property in East Point for worship and other related religious activity. Plaintiffs have been left with no feasible alternative but to continue conducting worship services in the aforementioned East Point hotel.

48. Without a centrally located and permanent home with adequate space for ministry, education, and fellowship, the Church's ability to grow is seriously limited. The ability to grow and expand its religious activity are fundamental to the Church's mission.

49. Section 10-2056(h) unlawfully discriminates against the free exercise of religion both on its face and as applied.

COUNT II: Violation of the Constitution of Georgia
Freedom of Conscience: Art. I, § I, ¶ IV

50. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

51. Defendants have deprived and continue to deprive Plaintiffs of their rights to freedom of conscience as secured by Article I, Section I, Paragraph III of the Constitution of Georgia by unlawfully discriminating against the Church because of its religious character and by inhibiting its right to freely exercise its religious faith.

COUNT III: Violation of the United States Constitution
Freedom of Speech: First and Fourteenth Amendments (42 U.S.C. § 1983)

52. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

53. Defendants have deprived and continue to deprive Plaintiffs of their rights 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 the Plaintiffs based on the religious nature of their expression and by inhibiting their right to freely and fully express their religious faith to the church members and the community.

54. Section 10-2056(h) of the East Point Code of Ordinances prohibits the establishment of places of worship in existing commercial structures. This Ordinance has prevented the Church from purchasing, remodeling, and using the building at the Property for worship and other related religious activity.

55. Without a properly located and permanent home, with adequate space for ministry, education and fellowship, the Church's ability to grow and communicate their messages of faith and fellowship in the Gospel of Jesus Christ has been unduly limited. The ability of the Church to grow and expand its religious activity and to spread the Gospel are fundamental to the Church's mission.

56. Section 10-2056(h) unlawfully discriminates against freedom of speech both on its face and as applied.

COUNT IV: Violation of the Constitution of the State of Georgia
Freedom of Speech: Art. I, § I, ¶ V

57. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

58. Defendants have deprived and continue to deprive Plaintiffs of their right to speak on matters of religion as secured by Article I, Section I, Paragraph V

of the Constitution of Georgia by unlawfully discriminating against the Church based on the religious nature of its expression and by inhibiting the Church's right to freely express its religious faith to its members and the community.

COUNT V: Violation of the United States Constitution
Freedom of Association: First and Fourteenth Amendments (42 U.S.C. §1983)

59. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

60. Defendants have deprived and continue to deprive Plaintiffs of their right to freely associate as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by prohibiting the Church's members from freely associating for purposes of religious exercise.

61. Section 10-2056(h) of the East Point Code of Ordinances prohibits the establishment of places of worship in existing commercial structures. This ordinance has prevented the Church from purchasing, remodeling, and using the Property for worship and other related religious activity. As a result, the Church has been conducting worship services in a hotel in East Point for two years.

62. Without a properly located and permanent home, with adequate space for ministry, education and fellowship, the members' ability to associate has been greatly burdened. Instead of moving, constructing, and worshiping in a church designed for 100 members, the Church is confined to the space it has in the hotel.

63. Section 10-2056(h) unlawfully discriminates against the freedom of association both on its face and as applied.

COUNT VI: Violation of the Constitution of Georgia
Right to Association: Art. I, § 1, ¶ IX

64. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

65. Defendants have deprived and continue to deprive Plaintiffs of their right to freely associate as secured by Article I, Section I, Paragraph V of the Constitution of Georgia by prohibiting the Church's members from freely associating for purposes of religious exercise.

COUNT VII: Violation of the United States Constitution
Freedom of Assembly: First and Fourteenth Amendments (42 U.S.C. §1983)

66. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

67. Defendants have deprived and continue to deprive Plaintiffs of their right to freely assemble for religious purposes and/or worship as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, by prohibiting the Church's members from assembling in a church for the purposes of religious exercise.

68. Section 10-2056(h) of the East Point Code of Ordinances prohibits the establishment of places of worship in existing commercial structures. This prevented the Church from purchasing, remodeling, and using the property at the Property for worship and other related religious activity. As a result, the Church has been conducting worship services in a hotel in East Point for two years.

69. Without a properly located and permanent home, with adequate space for ministry, education and fellowship, the members' ability to assembly has been greatly burdened. Instead of moving, constructing, and worshiping in a church designed for 100 members, the Church is confined to the space it has in the hotel.

70. Section 10-2056(h) unlawfully discriminates against the freedom of assembly both on its face and as applied.

COUNT VIII: Violation of the Constitution of Georgia
Right to Assembly: Art. I, § 1, ¶ IX

71. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

72. Defendants have deprived and continue to deprive Plaintiffs of their right to freely assemble for religious purposes and/or worship as secured by Article I, Section I, Paragraph IX of Constitution of Georgia by unlawfully prohibiting the Church's members from assembling in a church for the purposes of religious exercise.

COUNT IX: Violation of the United States Constitution
Equal Protection: Fourteenth Amendment (42 U.S.C. §1983)

73. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

74. Defendants have deprived and continue to deprive Plaintiffs of their 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 Plaintiffs' exercise of their fundamental rights to freedom of religion, speech, and assembly.

COUNT X: Violation of the Constitution of Georgia
Equal Protection: Art. I, § 1, ¶ II

75. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

76. Defendants have deprived and continue to deprive Plaintiffs of their right to equal protection of the laws as secured by Article I, Section I, Paragraph II of the Constitution of Georgia 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 their fundamental rights to freedom of religion, speech, and assembly.

COUNT XI: Violation of the United States Constitution
Due Process: Fourteenth Amendment (42 U.S.C. §1983)

77. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

78. Defendants have deprived and continue to deprive Plaintiffs of due process of law as secured by the Fourteenth Amendment to the United States Constitution by unlawfully enacting an ordinance that violates Plaintiffs' fundamental rights to freedom of religion, speech, and assembly, absent a

compelling state interest and through an ordinance not narrowly tailored to that interest.

79. Defendants have deprived and continue to deprive Plaintiffs of due process of law as secured by the Fourteenth Amendment to the United States Constitution by unlawfully failing to give Pastor Smiley an opportunity to be heard and to make a statement before the Commission at its August 18, 2005 meeting.

COUNT XII: Violation of the Constitution of Georgia
Due Process: Art. I, § I, ¶ I

80. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

81. Defendants have deprived and continue to deprive Plaintiffs of due process of law as secured by Article I, Section I, Paragraph I of the Constitution of Georgia by unlawfully enacting an ordinance that violates Plaintiffs' fundamental rights to freedom of religion, speech, and assembly.

82. Defendants have deprived and continue to deprive Plaintiffs of due process of law as secured by Article I, Section I, Paragraph I of the Constitution of Georgia by unlawfully failing to give Pastor Smiley an opportunity to be heard and to make a statement before the Commission at its August 18, 2005 meeting.

**COUNT XIII: Violation of the Religious Land Use and Institutionalized
Persons Act- Substantial Burden on
Religious Exercise (42 U.S.C. § 2000cc(a) et seq.)**

83. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

84. The City has deprived and continues to deprive Plaintiffs of their 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 imposes a substantial burden on the Church's religious exercise.

85. Section 10-2056(h) of the East Point Code of Ordinances prohibits the establishment of places of worship in existing commercial structures. This prevented the Church from purchasing, remodeling, and using the Property for worship and other related religious activity.

86. Without a properly located and permanent home, with adequate space for ministry, education and fellowship, the Church's ability to grow has been unduly limited. The ability of the Church to grow and expand its religious activity and to communicate the Gospel are fundamental to the Church's mission and

essential for its long-term viability. The application of Section 10-2056(h) has substantially burdened the religious exercise of the Church and its members.

Count XIV: Violation of the Religious Land Use and Institutionalized Persons Act- Equal Terms (42 U.S.C. § 2000cc(b)(1) et seq.)

87. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

88. The City has deprived and continues to deprive Plaintiffs of their right to the free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(b)(1) *et. seq.* by imposing and implementing a land use regulation in a manner treating a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

89. Section 10-2056(h) of the East Point Code of Ordinances violates the Equal Terms provision of RLUIPA by singling out religious use for special prohibition, while leaving non-religious entities free from such restrictions.

COUNT XV: Violation of the Religious Land Use and Institutionalized Persons Act- Discrimination on the Basis of Religion (42 U.S.C. § 2000cc(b)(2) et seq.)

90. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

91. The City has deprived and continues to deprive Plaintiffs of their 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 imposing and implementing a land use regulation that discriminates on the basis of religion.

92. Section 10-2056(h) of the East Point Code of Ordinances prohibits the establishment of places of worship in existing commercial structures, while not prohibiting the establishment of places of non-worship in existing commercial structures.

COUNT XVI: Violation of the Religious Land Use and Institutionalized Persons Act- Limitations and Exclusions (42 U.S.C. § 2000cc(b)(3) et seq.)

93. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

94. The City has deprived and continues to deprive Plaintiffs of their right to the free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(b)(3) *et. seq.* by imposing and implementing a land use regulation that unreasonably limits religious assemblies within the City of East Point.

95. Section 10-2056(h) of the East Point Code of Ordinances prohibits the establishment of places of worship in existing commercial structures. This Ordinance effectively prevents any new church from locating within the downtown commercial area in East Point. Specifically, it prevented the Church from purchasing, remodeling, and using the property at the Property for worship and other related religious activity.

96. By preventing houses of worship from purchasing existing commercial structures, the City Ordinance limits the growth and development of religion in East Point. Without centrally located houses of worship with adequate space for ministry, education and fellowship, all churches' ability to grow is unduly limited. The ability of churches to grow and expand religious activity is fundamental to many churches' missions and essential for their long-term viability.

COUNT XVII: COSTS OF LITIGATION

97. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if set forth fully herein.

98. Plaintiffs are 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.

RELIEF

99. This action has been necessitated by the Defendants' actions in denying the Church's request for a permit and by the Defendants' failure to comply with the Georgia and United States Constitutions and the federal Religious Land Use and Institutionalized Persons Act of 2000. Accordingly, Plaintiffs are entitled to recovery of their attorney's fees and costs, pursuant to 42 U.S.C. § 1988.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, TABERNACLE COMMUNITY BAPTIST CHURCH and PASTOR NATHANIEL SMILEY, respectfully requests that Defendants, CITY OF EAST POINT, GEORGIA (the "City"); CITY COUNCIL OF THE CITY OF EAST PONT; CITY OF EAST POINT PLANNING & ZONING COMMISSION (the "Commission"); JOE MACON, in his official capacity as Mayor of the City and as a member of the Commission; and FRANCINE JONES, THOMAS HARPER, STEVE BENNETT, PAM PATTERSON, MYRON COOK, JACQUES JONES, LINDA SHELDON, and SHEAN ATKINS, in their official capacities as members of the Commission, be compelled to appear and answer herein and that, upon final hearing hereof, the Court:

(1) declare and find that East Point Code of Ordinances § 10-2056(h) is invalid as it violates the United States Constitution, the Georgia Constitution, and the federal Religious Land Use and Institutionalized Persons Act of 2000;

(2) declare and find that the denial of the Church's applications for a permit violated the Church's constitutional rights of substantive due process, procedural due process, and freedom of religion, speech, and association;

(3) declare and find that the Church's applications for a permit should have been granted and that the Church is entitled to develop and use the subject property as requested;

(4) grant injunctive and mandamus relief, permitting use within East Point's CR District such that Plaintiffs may establish a place of worship on the Property;

(5) award actual damages in the amount to which the Church shows itself entitled;

(6) such other and further relief as this Court may deem just and appropriate.

JURY DEMAND

Plaintiffs respectfully request that this action be tried to a jury.

This 18th day of April, 2006.

Respectfully Submitted,

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