



**CITY OF JACKSONVILLE BEACH
FLORIDA**

MEMORANDUM TO:

The Honorable Mayor and
Members of the City Council
City of Jacksonville Beach, Florida

Council Members:

The following Agenda of Business has been prepared for consideration and action at the Regular Meeting of the City Council on **October 5, 2015, at 7:00 P.M. in the Council Chambers, 11 North Third Street, Jacksonville Beach, Florida.**

**Opening Ceremonies: Invocation
Salute to the Flag**

Roll Call

1. **APPROVAL OF MINUTES:**

- Regular City Council Meeting held September 21, 2015

2. **ANNOUNCEMENTS:**

3. **COURTESY OF THE FLOOR TO VISITORS:**

4. **MAYOR AND CITY COUNCIL:**

- (a) Proclamation Presentation – International Archaeology Day

5. **CITY CLERK:**

6. **CITY MANAGER:**

- (a) Approve the Negotiated Settlement and Access License Agreement Between the City of Jacksonville Beach and the Church of Our Savior

7. **RESOLUTIONS:**

8. **ORDINANCES:**

ADJOURNMENT

Respectfully submitted,

/s/George D. Forbes
CITY MANAGER

GDF:ls
10/01/15

If a person decides to appeal any decision made by the City Council with respect to any matter considered at any meeting, such person may need a record of the proceedings and, for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The public is encouraged to speak on issues on this Agenda that concern them. Anyone who wishes to speak should submit the request to the City Clerk prior to the beginning of the meeting. These forms are available at the entrance of the City Council Chambers for your convenience.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299, ext. 10, no later than 12:00 PM, Friday, October 2, 2015.

**Minutes of Regular City Council Meeting
held Monday, September 21, 2015, at 7:00 P.M.
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida.**



CALL TO ORDER:

Mayor Charlie Latham called the meeting to order at 7:00 P.M.

OPENING CEREMONIES:

The invocation was given by Council Member Vogelsang; followed by the Salute to the Flag.

ROLL CALL:

Mayor: William C. Latham

Council Members: Lee Buck (absent) Keith Doherty Christine Hoffman
Bruce Thomason Phil Vogelsang Jeanell Wilson

Also present were City Manager George Forbes, and City Clerk Laurie Scott.

APPROVAL OF MINUTES

It was moved by Ms. Wilson, seconded by Ms. Hoffman and passed unanimously, to approve the following minutes as presented:

- Special City Council Meeting held September 3, 2015
- Regular City Council Meeting held September 8, 2015
- Special City Council Meeting held September 14, 2015

ANNOUNCEMENTS

Council Member Hoffman

- Ms. Hoffman announced the Beaches Art Fest would be held on October 3, 2015, at the Beaches Museum and History Park.

Council Member Doherty

- Mr. Doherty reported he would be a guest judge at the Strut Your Mutt charity event on September 26, 2015.

Council Member Wilson

- Ms. Wilson discussed her recent trip in which she was flown from the Mayport Naval Station to aboard the USS Harry S. Truman aircraft carrier.

Council Member Thomason

- Mr. Thomason expressed his appreciation to the Jacksonville Beach Police Department officers, civilian employees, Citizen on Patrol and members of the Citizen Police Academy Alumni Association for doing an excellent job.

Mayor Latham

- Mayor Latham reported the Council finalized the FY 2015-16 Budget on Monday, September 14, 2015. He expressed his gratitude and appreciation to City Manager George Forbes, Chief Financial Officer Karen Nelson and all Department and Division Heads for all their hard work on the budgeting process.
- He congratulated the Native Sun, Jacksonville Beach location, for its grand opening on September 19, 2015.

COURTESY OF THE FLOOR TO VISITORS:

MAYOR AND CITY COUNCIL:

(a) Presentation of the Certificate of Achievement for Excellence in Financial Reporting

Mayor Latham presented a Certificate of Achievement for Excellence in Financial Reporting to Chief Financial Officer Karen Nelson and Assistant Finance/Budget Officer Ashlie Gossett. He reported that the City has received the award 22 consecutive years.

(b) Proclamation Presentation - International Thank a Police Officer Day

Mayor Latham presented a Proclamation for International Thank a Police Officer Day to the Jacksonville Beach Police Department, civilian employees, members of the Citizen on Patrol and the Citizen Police Academy Alumni Association.

CITY CLERK:

CITY MANAGER:

(a) Accept the Monthly Financial Reports for the Month of August 2015

Motion: It was moved by Ms. Wilson, seconded by Ms. Hoffman, to accept the Monthly Financial Reports for the Month of August 2015 as submitted by the Chief Financial Officer.

Roll call vote: Ayes – Doherty, Hoffman, Thomason, Vogelsang, Wilson, and Mayor Latham. The motion carried.

(b) Approve the Sea & Sky Spectacular Air Show Special Event Permit

Motion: It was moved by Ms. Wilson, seconded by Ms. Hoffman, to approve the Sea & Sky Spectacular Air Show Special Event Permit as described in the Memorandum by the Chief of Police dated September 15, 2015.

Mr. Forbes reported that representatives from the U.S. Navy and the City of Jacksonville were in attendance.

Police Chief Pat Dooley, discussed the plans for the Sea & Sky Spectacular Air Show event [slides on file]. He discussed the logistics, safety and security, staging areas, transportation, food/beverage/alcohol vendor locations, event production and hours, road closures, publicity, manpower and pedestrian safety. He reported that bicycles and skateboards would not be permitted in the event area. He advised that Public Works would be setting up wire cables at several locations for people to secure their bikes. He further reported there will be a public meeting on October 7th, 2015, at 2:00 P.M. at City Hall to inform the public of street closures and times. Also, the Police Department would be conducting several Reverse 911 calls to residents in the area of the event, notifying them of the street closures.

Council Member Thomason asked how the City was publicizing the Sea & Sky Spectacular Air Show to make the residents and businesses aware of what to expect during this event. Mr. Forbes responded they would be using the local media and possibly using the City's automated citizen notification system.

Commander Scott Campbell, Air Operations Officer, Naval Station Mayport, introduced himself and discussed his role in the Sea & Sky Spectacular Air Show event.

City of Jacksonville Special Events Coordinator Brent Fine introduced himself and expressed his gratitude to the City for their assistance with the Sea & Sky Spectacular Air Show event.

Roll call vote: Ayes – Hoffman, Thomason, Vogelsang, Wilson, Doherty, and Mayor Latham. The motion carried.

(c) Approve a Two-Year Contract Extension with Jax Beach Festivals, Inc., for the Springing the Blues Festival

Motion: It was moved by Ms. Wilson, seconded by Ms. Hoffman, to authorize a two-year contract extension with Jax Beach Festivals, Inc., for the Springing the Blues Festival and authorize the City Manager and Mayor to execute the contract.

Mr. Forbes reported that Mr. Sam Veal has organized the Springing the Blues Festival for over twenty years. Mr. Veal has requested a two-year extension to his current contract with the City, which expires on December 31, 2015. If the Council approves this request, the term of the contract will be from January 1, 2016, to December 31, 2017. The City would contribute \$8,000 per year to this event. No facility rental fees are charged for this event except event fencing. The facility's rental value is \$10,500.

Ms. Wilson acknowledged the success of the event over many years. She recognized Mr. Veal and expressed her gratitude for his efforts in organizing the Springing the Blues event. However, she asked that the \$8,000 contribution be removed from consideration, since the City would be contributing the \$10,500 value of the facility rental.

A substitute motion was proposed by Ms. Wilson to approve the two-year contract extension but remove the \$8,000 contribution from the City towards the event. The motion failed for lack of a second.

Further discussion ensued with Mr. Veal about the additional sources of funding of the Springing the Blues event, the advertising strategy, focus groups, and the benefits this event has brought to the Jacksonville Beach community.

Roll call vote: Ayes – Thomason, Vogelsang, Wilson, Doherty, Hoffman, and Mayor Latham. The motion carried.

RESOLUTIONS:

(a) Resolution No. 1953-2015

Mayor Latham requested that the City Clerk read Resolution No. 1953-2015, by title only; whereupon Ms. Scott read the following:

**A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA
RELEASING, VACATING, AND ABANDONING A FIVE (5) FOOT WIDE NON-
ACCESS EASEMENT RUNNING IN A NORTHERLY AND SOUTHERLY
DIRECTION ALONG THE WESTERLY BOUNDARY LINE OF LOT 15, GATES
OF PONTE VEDRA UNIT 2 SUBDIVISION, AS RECORDED IN PLAT BOOK 44,
PAGE 9A OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY,
FLORIDA.**

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve Resolution No. 1953-2015, abandoning a 5-foot wide non-access easement running along the westerly boundary line of Lot 15 in *The Gates of Ponte Vedra Unit 2 Subdivision*

Mr. Forbes stated the non-access easement was originally required along 2nd Street South as a condition of plat approval for the Gates of Ponte Vedra Unit 2 subdivision. The easement was placed on various lots to prevent individual owners from using the then undeveloped 2nd Street right-of-way adjacent to their lots for vehicular access. 2nd Street South is now a paved road.

Council discussed at length the structure of the lot, access onto Ponte Vedra Boulevard, access onto 2nd Street, site plans for the property, enclosing property along Ponte Vedra Boulevard, possibly setting a precedent by approving the easement, and whether the City may have plans for use of the 5-foot easement.

Mr. Forbes explained this is a non-access easement that prohibits the property owner from having access onto 2nd Street from his property. The easement is on the owner's property. The easement is not City property. He also stated that he would have no objection to vacating this easement for another property owner that had a reasonable reason for access to 2nd Street.

Roll call vote: Ayes – Vogelsang, Doherty, Hoffman, Thomason and Mayor Latham
Nay - Wilson
The motion carried.

(b) RESOLUTION NO. 1952-2015

Mayor Latham requested that the City Clerk read Resolution No. 1952-2015, by title only; whereupon Ms. Scott read the following:

A RESOLUTION AMENDING THE OPERATING BUDGET OF THE CITY OF JACKSONVILLE BEACH, FLORIDA FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2015.

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Resolution No. 1952-2015 authorizing the year-end budget adjustment.

Mr. Forbes discussed the year-end budget adjustments and explained the funding for the City's business software applications.

Roll call vote: Ayes – Wilson, Doherty, Hoffman, Thomason, Vogelsang, and Mayor Latham. The motion carried.

ORDINANCES:

ADJOURNMENT:

There being no further business, the meeting adjourned at 8:03 P.M.

Submitted by: Laurie Scott
City Clerk

Approval:

William C. Latham, MAYOR

October 5, 2015
Date

Proclamation

International Archaeology Day

Whereas, the City of Jacksonville Beach has an interesting history and archaeological record; and

Whereas, the Beaches Museum & History Park is dedicated to preserving and promoting the history of the area; and

Whereas, the Archaeological Institute of America – Jacksonville Society's mission is to promote public understanding of archaeology and to provide opportunities for people to participate in hands-on archaeological activities; and

Whereas, International Archaeology Day began in 2011 and the first Jacksonville Beach celebration in 2014 was one of over 450 such events throughout the country; and

Whereas, A1A – Jacksonville and the Beaches Museum & History Park are planning a family-friendly archaeological fair at the museum and a lecture by an archaeologist in the 1887 chapel to celebrate International Archaeology Day on October 17, 2015; and

Whereas, the City of Jacksonville Beach enthusiastically endorses programs and activities to make International Archaeology Day 2015 the most beneficial and educational event of its kind to date.

Now, Therefore, I, William C. Latham, Mayor of the City of Jacksonville Beach, by virtue of the authority vested in me, do hereby proclaim Saturday, October 17, 2015, as

International Archaeology Day

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Jacksonville Beach to be affixed this 5th Day of October, 2015.



Charlie Latham, MAYOR

Memorandum

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6268

Fax: 904.247.6276

www.jacksonvillebeach.org

To: George D. Forbes, City Manager

From: Susan Erdelyi, City Attorney

Date: September 25, 2015

Re: Settlement of Lawsuit

Action Requested:

Approve the attached negotiated settlement and an access license agreement between the City of Jacksonville Beach and the Church of Our Savior.

Background:

In 2013, a church sued the City of Jacksonville Beach in the U.S. District Court, Middle District of Florida, in a case titled *Church of Our Savior v. City of Jacksonville Beach*, case no. 3:13-cv-01346. The lawsuit was filed after the City's Planning Commission denied the church's application for a conditional use permit to build a church on land zoned for residential, single family (RS-1) use.

The property at issue is located near Adventure Landing off of Beach Boulevard and Hopson Road. (*See attached, Access License Agreement*). The church had an option to purchase the land.

Most of the Hopson Road residents opposed the Church's application for a conditional use permit, citing concerns about traffic, noise, density, parking overflow and negative changes to the character of their neighborhood.

Under the City's Land Development Code religious organizations may operate as a matter of right in two commercial zones, C-1 and C-2. The church applied twice for a conditional use permit to allow such development in RS-1. Although the planning department recommended approval of the applications, the planning commission ultimately denied both applications after holding two quasi-judicial hearings and after considering evidence from interested parties and neighboring residents.

The church did not appeal the planning commission's decision to the state circuit court via a petition for writ of certiorari, but instead sued the city in federal court.

In its federal lawsuit, the church asserted eight claims against the city including claims under the Religious Land Use and Institutionalized Persons Act



(RLUIPA). Before trial, the court dismissed, and the church otherwise abandoned, several of the claims that it initially asserted against the city. Four claims remained for trial.

After a bench trial, the court found in favor of the church as to one claim and in favor of the city on the remaining three claims. The court agreed that the city did not discriminate against the church based on religion but instead found that the city planning commission had violated RLUIPA's "equal terms" provision when it denied the church's application for a conditional use permit. The court found that the city violated RLUIPA's equal terms provision because it treated a "similarly situated" secular application differently than the church's application. The "comparator" conditional use application was made by the Discovery Montessori School in 1994. The city's planning commission approved an expansion of the school's 1994 conditional use permit in 2014.

The result of the trial court's finding in favor of the church was that the city was ordered by the court to approve the church's conditional use application PC#9-13 with certain conditions. Those conditions are documented in the conditional use approval attached. The planning commission, in compliance with the court order, has issued this conditional use permit.

Additionally, the city was ordered to pay the attorney's fees incurred by the church on matters on which it prevailed. The church sought to recover \$851,352.59. The trial court ordered the City to pay to the church \$305,147.76 in both attorney's fees and litigation costs.

The city's outside counsel has advised that the trial court's sole ruling for the church as to its equal terms / as-applied claim under RLUIPA, was in error, and the city has initiated an appeal before the Eleventh Circuit Court of Appeal. That appeal remains pending.

In the process of the appeal, the city and church were ordered to mediation by the appellate court and in this process, ultimately negotiated the proposed attached Settlement Agreement and Access License Agreement. The negotiated settlement reduces the amount that the city would have to pay from \$305,147.76 to \$290,000.00 and it provides full closure of the pending appeal. Funds for the settlement will come from the General Liability Insurance Fund.

Recommendation:

Approve and authorize the Mayor and City Manager to sign the attached Settlement Agreement and Access License Agreement and to pay the settlement from the General Liability Insurance Fund.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is executed by the City of Jacksonville Beach, Florida (CITY) and Church of Our Savior (CHURCH).

RECITALS

A. In 2013, the CHURCH sued the CITY in the U.S. District Court, Middle District of Florida, via a case titled *Church of Our Savior v. City of Jacksonville Beach*, case no. 3:13-cv-01346. The CHURCH asserted numerous claims against the CITY.

B. The City believes the trial court’s ruling for the CHURCH as to its equal terms / as-applied claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA), was in error, and the CITY has initiated an appeal before the Eleventh Circuit Court of Appeal. That appeal remains pending.

C. After the trial, the CHURCH filed motions to recover attorney’s fees and costs. The CHURCH sought to recover \$851,352.59. The trial court awarded \$305,147.76. The CHURCH and the CITY thereafter initiated cross-appeals before the Eleventh Circuit Court of Appeal as to this fee and cost award. Those appeals remain pending.

D. The CITY unequivocally denies that it violated the CHURCH’s rights as may be protected by federal or state law, denies the claims and allegations set forth in the above lawsuit by the CHURCH, and denies any other claims or causes of action which could have arisen, or could arise, with regard to the claims asserted in the above lawsuit. The CHURCH maintains that the CITY violated RLUIPA as alleged in the above lawsuit. However, to avoid further litigation and attendant costs, the parties desire to compromise and settle the claims asserted in the above lawsuit, and any potential, related claims.

E. The purpose of this Agreement is to memorialize the settlement reached in principle by the CITY and the CHURCH, and to provide for the general release of any claims the CHURCH had, has, or may have against the CITY which relate directly or indirectly to the above lawsuit.

TERMS AND CONDITIONS

1. Terms and definitions

A. As used herein, “RELEASORS” refers to and includes the CHURCH, and its former, current, and future agents, employees, officers, representatives, members, congregants, vestry members, petitioners, and attorneys.

- B. As used herein, "RELEASEES" refers to and includes the CITY, its former, current, and future agents, employees, officers, representatives, council members, staff members, members of any boards, commissions, or other bodies of the CITY, and its attorneys, and the CITY's past, present, and future insurers, including but not limited to Preferred Governmental Insurance Trust and Summit Risk Services.

2. Release and discharge

- A. RELEASORS, upon receipt of the consideration described below, fully and unequivocally waive, release, acquit, and forever discharge RELEASEES of and from any manner of action, causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims for attorney's fees, interest, or costs, executions, claims and demands, in law or in equity, of any nature, which RELEASORS had, have, or may have in the future, against RELEASEES, by reason of any matter, cause, or thing which occurred before the date on which this Agreement is approved by the City Council as contemplated in paragraph 13, including but not limited to those claims or demands stated in the above lawsuit including claims that could have been raised in the above lawsuit, and claims or charges: under RLUIPA, the U.S. Constitution and any amendment thereto, the Florida Constitution, the Florida Religious Freedom Restoration Act, or the Florida Civil Rights Act; which related to or concern Conditional Use Permit Application nos. 9-13 and 25-13, as submitted by the CHURCH to the CITY; which relate to or concern the CITY's Land Development Code or its Comprehensive Plan; which assert the CITY has in any way violated the CHURCH's ability or right to practice religion; which involve participation in any class action; based upon any federal or state statute concerning religion, speech, or assembly; based upon discrimination; for the violation of any federal, state, or local constitution, statute, rule, regulation, charter, ordinance, or law; or for the violation of Chapters 119 or 286 of the Florida statutes.
- B. RELEASORS acknowledge and agree that they waive the right to file any lawsuit, administrative proceeding, or any other action or proceeding of any kind against RELEASEES related to any matter, cause, or thing, which occurred before the date of this Agreement, including but not limited to those claims or demands stated in the above lawsuit and that could have been raised in the above lawsuit, and otherwise referenced in paragraph 2A. Should they do so,

RELEASEES shall be entitled to recover attorney's fees and costs arising from the defense of any such claims. RELEASORS acknowledge and agree that the waiver stated herein shall be a summary basis upon which the subsequent lawsuit, administrative proceeding, or other action or proceeding may be dismissed.

3. Assumption of risk

RELEASORS and RELEASEES assume the risk of and waive any claims, in law or in equity, which exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to execute this Agreement. RELEASORS further agree to accept the payment specified herein as a complete compromise of matters involving disputed issues of law and fact.

4. No admission of liability

The parties understand and agree that this Agreement is a compromise of litigated and disputed claims, and neither this Agreement, nor any consideration to be paid, shall be construed as an admission, implied or otherwise, by RELEASORS of any unlawful, tortuous, improper, or wrongful acts. RELEASORS specifically disclaim any liability as to the CHURCH, or the propriety of any factual or legal averments as to the above lawsuit.

5. Consideration

The CITY, or an individual or entity authorized to act on its behalf, shall present the settlement check to Dalton & Tomich PLC, located at 719 Griswold Street, Suite 270, Detroit, Michigan 48226, the settlement check of TWO HUNDRED AND NINETY THOUSAND DOLLARS AND ZERO CENTS (\$290,000.00), within fifteen (15) days from the date on which this Agreement is approved by the City Council as contemplated in paragraph 13. The check shall be made payable to the law firm of Dalton & Tomich PLC. . RELEASORS acknowledge and agree that the amount paid represents a complete satisfaction of all claims which RELEASORS had, have, or may have against RELEASEES, including all attorney's fees and costs associated with the above lawsuit.

6. Severability

If any clause or provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from the remaining provisions and clauses, which shall remain in full force and effect.

7. Governing Law

Florida law shall govern this Agreement in the event that any action must be instituted related to this Agreement.

8. Venue

The venue for any dispute related to any violation of this Agreement shall be the U.S. District Court, Middle District of Florida. Should such court decline jurisdiction, venue for any dispute shall be the circuit court in and for Duval County, Florida.

9. Entire agreement

This Agreement, together with the License Access Agreement referenced above and a copy of which is attached hereto, constitutes the entire settlement between the parties, and no other promises or agreements shall be binding unless signed by all parties. The parties expressly disclaim all prior representations regarding any settlement.

10. Non-disparagement

RELEASORS agree to refrain from making derogatory or disparaging statements to the media or press about RELEASEES, or about any current or former policy or practice of RELEASEES, as related to any matter, cause, or thing, which occurred before the date of this Agreement, including but not limited to those claims or demands stated in the above lawsuit, and referenced in paragraph 2A.

11. Additional documents

The parties agree to take such further action, and execute and deliver such further documents, as may be reasonably needed and/or requested by the other party to carry out the provisions and purpose of this Agreement. The CHURCH agrees, upon receipt of the consideration described above, to file and serve a Notice of Satisfaction of Judgment in Full with the trial court, and a Notice of Dismissal with Prejudice of its appeal pending before the Eleventh Circuit Court of Appeals. After the filing and service of such documents by the CHURCH, the CITY shall file and serve a Notice of Dismissal with Prejudice of its pending appeals.

12. Miscellaneous

The CHURCH and the CITY acknowledge they have carefully read and fully understand this Agreement, and are executing it of their free will and with the advice of legal counsel. The CHURCH and the CITY acknowledge that they are entering

into this Agreement with the intent to be bound by its terms, and have not been coerced or induced to enter into this Agreement.

13. City Council action required to finalize settlement

The CHURCH acknowledges and agrees that this Agreement shall be deemed executed and enforceable upon execution by the City Manager and Mayor. The CHURCH acknowledges and agrees that this Agreement shall be presented promptly to the City Council for consideration only after it is executed by the CHURCH, via the signing of this Agreement by a duly authorized representative of the CHURCH. Upon receipt thereof, the Agreement shall be presented to the City Council in a timely manner. The CHURCH acknowledges and agrees that the City Council retains full and final authority as to whether the CITY shall enter into this Agreement, and that no statements made by any representatives of the CITY, or its attorneys, shall be construed as any promise or guarantee of City Council approval.

*****BY SIGNING BELOW, THE PARTIES AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT*****

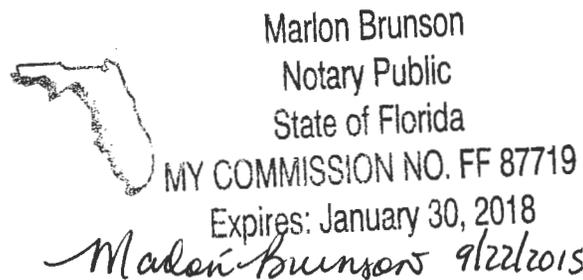
Signing on behalf of
CHURCH OF OUR SAVIOR:

W. White (signature)

Date: 9/22, 2015

William @ White (print name)

SENIOR WARDEN (office/title)


Marlon Brunson
Notary Public
State of Florida
MY COMMISSION NO. FF 87719
Expires: January 30, 2018
Marlon Brunson 9/22/2015

Signing on behalf of
CITY OF JACKSONVILLE BEACH:

Charlie Latham, Mayor (signature)

Date: _____, 2015

George Forbes, City Manager (signature)

Date: _____, 2015

Laurie Scott, City Clerk (attest)

ACCESS LICENSE AGREEMENT

This ACCESS LICENSE AGREEMENT is made between the CITY OF JACKSONVILLE BEACH, FLORIDA, a municipal corporation located in Duval County, Florida (the "City"), whose address is 11 North Third Street, Jacksonville Beach, Florida 32250, and the CHURCH OF OUR SAVIOR (the "Grantee"), whose address is 511 Pablo Avenue, Jacksonville Beach, Florida 32250.

RECITALS

WHEREAS, The City is the grantor of this license to use its property ("the License"), and is the owner of land located in Duval County within the City of Jacksonville Beach, Florida, as described and depicted in "Exhibit A" ("the Lift Station Property"), which is attached and incorporated into this License. The Lift Station Property is non-paved property that provides vehicular and other access to a City sewer lift station for City workers.

WHEREAS, The Grantee presently owns two parcels of real property located within the City of Jacksonville Beach, parcel nos. 177295 0000 and 177279 0020, on which Grantee intends to operate a church. Grantee intends to purchase part of parcel no. 177279 0010 ("the Benefited Property"), which is presently owned by a third party. The Lift Station Property lies between parcel nos. 177295 0000 and 177279 0020, and the Benefited Property. These parcels are described and depicted in composite "Exhibit B," which is attached and incorporated into this License.

WHEREAS, The Grantee has requested a pedestrian access license for the purpose of ingress and egress over, across and through the Lift Station Property so that it may access the Benefited Property for use as a park. It is the intent of the City and the Grantee that if this proposed use of the Benefited Property ceases, this License shall cease and become null and void.

WHEREAS, The City wishes to outline the terms of its grant of this License to Grantee.

NOW THEREFORE, in consideration of the statements in this document and the sum of Ten Dollars (\$10.00) paid by the Grantee to the City, the receipt and sufficiency of which are acknowledged, the City and Grantee agree as follows:

1. Recitals

The above recitals are true and correct and are incorporated into and made a part of this License.

2. License

- a) Grant. The City grants to Grantee a non-exclusive 20-foot-wide License for pedestrian-only access over the City owned Lift Station Property as described and depicted in "Exhibit C" of this document. The 20-foot-wide area depicted in Exhibit C shall be

referred to as “the Pedestrian Access Area.” The Pedestrian Access Area shall be no closer than 20 feet to any of the City’s existing above ground improvements on the Lift Station Property. Within thirty (30) days following the City’s approval of Grantee’s site plan for any development on parcel nos. 177295 0000 and 177279 0020, Grantee may request an amendment to Exhibit C and the location of the Pedestrian Access Area depicted therein. Should the Public Works Director agree in writing to any such requested amendment, the amended Exhibit C shall become part of this agreement.

- b) Purpose. This License is granted solely for the purpose of establishing pedestrian-only access as shown in Exhibit C. This License also allows Grantee to install and maintain a potable and/or irrigation water line, storm water line, and an electrical service line across the Pedestrian Access Area to the Benefited Property. The locations of any lines must be approved in writing by the Public Works Director before installation, must comply with all applicable codes and laws, and may not interfere with the City’s use of the Lift Station Property. Vehicular access across the Lift Station Property to the Benefited Property shall be limited to vehicles required to construct any improvements proposed for the Benefited Property, as may be approved by the City in accordance with the City’s Land Development Code and Comprehensive Plan, for an initial 36 month period after the effective date of this License, and for the maintenance of the park and any improvements thereafter. No parking whatsoever of vehicles associated with Grantee (vehicles of employees, members, visitors, contractors, maintenance workers, etc.) shall be permitted on the Lift Station Property. Any such vehicles parked on the Lift Station Property shall be towed at the expense of Grantee.
- c) Non-impediment. This License shall only be utilized in a manner that will not impede 24-hour a day, seven day a week access by the City to its sewer lift station and associated utilities located within the Lift Station Property.
- d) Additional use. Any use of the Lift Station Property by the Grantee other than as described in this document shall be at the sole discretion of the City, and must be approved by the Public Works Director before engaging in such use, which approval shall be on a revocable basis.
- e) Non-exclusive. The rights of the Grantee to use the Lift Station Property for access shall be non-exclusive.
- f) City’s rights. The City reserves the right to use the Lift Station Property for any uses which do not interfere with any rights granted in this License. Grantee acknowledges that the Lift Station Property is the property of the City, and disclaims any claim or right of ownership, or other interest, in the Lift Station Property, beyond the rights conveyed herein.
- g) Non-interference. The Grantee shall take no action whatsoever that interferes with the City’s right or the right of any other permitted user to use the Lift Station Property.

- h) Maintenance. The City shall be responsible for the routine maintenance of the Lift Station Property. However, Grantee shall be responsible for any damages caused by its use of the Lift Station Property.
- i) Tree Maintenance. Grantee shall be responsible for the maintenance of the existing trees along the northerly boundary of the Benefited Property in a manner so as to ensure required clearance for the telemetry communication system of the City's Sewer Lift Station on the adjacent property to the north. Upon receipt of notice from the Public Works Director that Grantee's trees are causing interference with the Lift Station telemetry system, Grantee shall correct such conditions and perform the necessary maintenance on its trees to eliminate interference with the Lift Station telemetry system. Upon completion of the work, Grantee shall notify the Public Works Director to re-test the telemetry system to verify its proper function.
- j) Correction of unsafe conditions. Because the City requires emergency access to the Lift Station Property, in case of the substantial destruction or unsafe or hazardous conditions of the Lift Station Property caused by Grantee, Grantee shall serve City with written notice of Grantee's election whether or not to restore the Lift Station Property to a good, clean, safe and traversable condition. If Grantee elects not to restore these conditions within thirty (30) days, or if Grantee does not begin to do so within ten (10) days, the City may elect to do so and the total cost of the satisfactory restoration of the Lift Station Property shall be billed as a special assessment to the Grantee. Any actions taken by Grantee to restore the Lift Station Property to a good, clean, safe and traversable condition, must be approved in writing by the Public Works Director.

3. Term

The term of this License begins with the date on which both the City and Grantee have signed this License and expires according to the provisions contained in paragraph five below. Furthermore, if the Grantee fails to exercise its access rights over the Lift Station Property within three (3) years of the execution date of this License, this License shall cease and become null and void.

4. Insurance

Grantee shall provide the City with the certificate of insurance evidencing that the City is an additional insured in the amount of \$1,000,000 per incident with respect to Grantee's use of the Lift Station Property on Grantee's liability insurance policies before beginning use of the Lift Station Property. Furthermore, Grantee shall maintain that certificate in full force, and provide evidence on an annual basis or as requested by the City, for the duration of the License. Grantee shall maintain these policies for so long as it continues to use the Lift Station Property. The Insurance policy shall provide that Grantee shall indemnify, defend, and hold harmless the City, as to any and all claims for damages which are caused by or suffered by Grantee's employees, staff, congregants, guests, visitors, members, contractors, or maintenance workers while on the Lift Station Property, including but not limited to bodily injury and damage to City property and improvements.

5. Non-compliance by Grantee

In case of Grantee's noncompliance with any of the specific conditions and restrictions contained in this License, Grantee, upon receipt of City's written notice and demand for compliance, shall provide City with evidence of Grantee's compliance within five (5) days of receipt of the notice and demand. In the event Grantee fails to submit such evidence of compliance to City within the time allowed, the License shall cease and terminate without further notice.

6. Succession of License and non-assignment

Any rights derived by Grantee pursuant to this License shall be solely for Grantee. Grantee has no right to assign this License, and this License shall not pass to any successor of Grantee, without prior written approval by the City.

7. Indemnification and Hold Harmless

The Grantee shall indemnify and hold the City harmless from and against all claims, liability, expense, damages, or actions arising from or relating to the Grantee's use of the Lift Station Property, provided however that the Grantee shall not indemnify the City for the negligent or willful acts or omissions of the City's agents, employees or contractors.

8. Controlling Law

The terms and conditions of this License shall be governed under the laws of the State of Florida.

9. Notices

All communications and notices required in this document shall be made in writing and mailed by certified mail, return receipt requested, or by commercial carrier regularly performing such services so as to provide documentary proof of delivery thereof. Unless changed, all communications and notices shall be delivered as follows:

As to Grantee: William C. White, Senior Warden
511 Pablo Avenue
Jacksonville Beach, FL 32250
Telephone: 904-821-8558

As to City: City Manager or designee
City of Jacksonville Beach, Florida
11 North 3rd Street
Jacksonville Beach, FL 32250
Telephone: 904-270-1651

IN WITNESS, the undersigned has executed this Access License Agreement for the purpose of being legally bound, as of the day and year first written above.

WITNESSES:

CHURCH:

Marlon Brunson
Print Name: Marlon Brunson

Kent Steed
Print Name: Kent Steed

W.C. White

By: William C. White
Its: SENIOR WARDEN

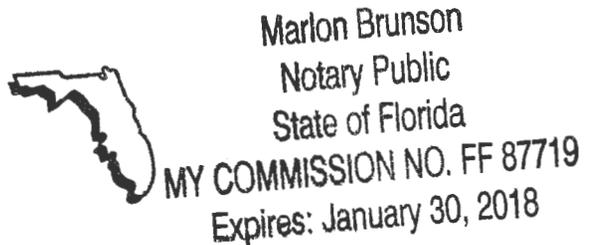
STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 22 day of September, 2015, by William C. White, the SENIOR WARDEN of Church of Our Savior, who did not take an oath and who is personally known OR X who produced FLORIDA DRIVER LICENSE as identification.

Marlon Brunson
Notary Public, State of Florida

My Commission Expires:
JANUARY 30, 2018

Commission No.: FF87719

 Marlon Brunson
Notary Public
State of Florida
MY COMMISSION NO. FF 87719
Expires: January 30, 2018

WITNESSES:

CITY OF JACKSONVILLE BEACH:

Print Name: _____

By: _____
Its: Mayor

Print Name: _____

Print Name: _____

By: _____
Its: City Manager

Print Name: _____

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Charlie Latham, the Mayor of the City of Jacksonville Beach, and George Forbes, the City Manager of the City of Jacksonville Beach, who did not take an oath and ____ who are personally known OR ____ who produced _____ as identification.

Notary Public, State of Florida

My Commission Expires:

Commission No.: _____

1190045

JAXGIS Property Information



EXHIBIT A

RE #	Name	Address	Transaction Price	Acres	Book-Page	Map Panel	Legal Descriptions	Flood Zone	Ash Site	JEDC Zone	Evacuation Zone	CPAC	Noise Zone	APZ	Civ HH Zone	MI HH Zone	Civ School Reg	MI School Reg	Lighting Reg	Civ Notice Zone	MI Notice Zone	
177289 0000	CITY OF JACKSONVILLE BEACH	11 HOPSON RD JACKSONVILLE BEACH 32250	0	0.54	0298000483	9432	32-25-29E .574 PT UNSURVEYED RECD O/R 2980-483 BEING PARCELS 1, 2	AE	Not In Ash Site Zone	Not In Enterprise Zone	ZONE A	N/A / Planning Dist:	NA	NA	Craig Height (500')	NA	NA	NA	NA	NA	NA	NA

JAXGIS Property Information



EXHIBIT B

RE #	Name	Address	Transaction Price	Acres	Book-Page	Map Panel	Legal Descriptions	Flood Zone	AshSite	JEDC Zone	Evacuation Zone	CPAC	Noise Zone	APZ/HH Zone	MI/HH Zone	Civ School Reg	MI School Reg	Lighting Reg	Civ Notice Zone	MI Notice Zone	
177295 0000	CHURCH OF OUR SAVIOR ANGLICAN INC	0 BEACH BV SERVICE RD JACKSONVILLE BEACH 32250	200000	0.35	1708700094	9432	32-2S-29E .34 PT UNSURVEYED SEC 32 RECD AE O/R 17087-94	Not in AshSite Zone	Not in Enterprise Zone	ZONE A	N/A / Planning Dist	NA	NA	Craig Height (500')	NA	NA	NA	NA	NA	NA	NA

JAXGIS Property Information

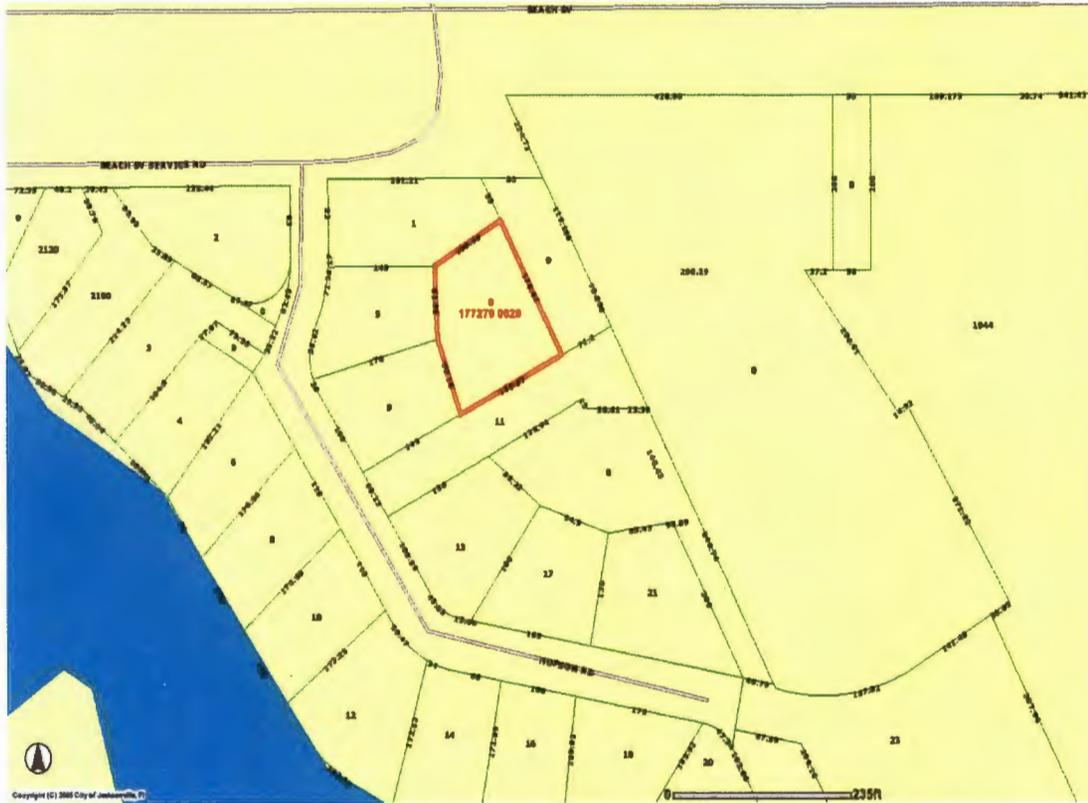


EXHIBIT B

RE #	Name	Address	Transaction Price	Acres	Book-Page	Map Panel	Legal Descriptions	Flood Zone	AshSite	JEDC Zone	Evacuation Zone	CPAC	Noise Zone	APZ	Civ HH Zone	MI HH Zone	Civ School Reg	MI School Reg	Lighting Reg	Civ Notice Zone	MI Notice Zone	
177279 0020	CHURCH OUR SAVIOR ANGLICAN INC	0 HOPSON RD JACKSONVILLE BEACH 32250	165000	0.51	1705000337	9432	32-2S-29E .51 UNSURVEYED SEC 32 PT RECD O/R 17050- 337	AE	Not In AshSite Zone	Not in Enterprise Zone	ZONE A	N/A / Planning Dist	NA	NA	Craig Height (500')	NA	NA	NA	NA	NA	NA	NA

JAXGIS Property Information



EXHIBIT B

RE #	Name	Address	Transaction Price	Acres	Book-Page	Map Panel	Legal Descriptions	Flood Zone	Ash Site Zone	JEDC Zone	Evacuation Zone	CPAC	Noise Zone	APZ	Civ HH Zone	MI HH Zone	Civ School Reg	MI School Reg	Lighting Reg	Civ Notice Zone	MI Notice Zone	
177279 0010	GOODSON WILLIAM H ET AL	0 HOPSON RD JACKSONVILLE BEACH 32250	100	44.15	1707700854	9432	32-25-29E 43.57 UNSURVEYED SEC'S 31,32 PT RECD O/R 17077- 854(EX PT RECD	0.2 PCT ANNUAL CHANCE FLOOD HAZARD, AE	Not in Ash Site Zone	Not in Enterprise Zone	ZONE A	N/A / Planning Dist	NA	NA	Craig Height (500')	NA	NA	NA	NA	NA	NA	NA

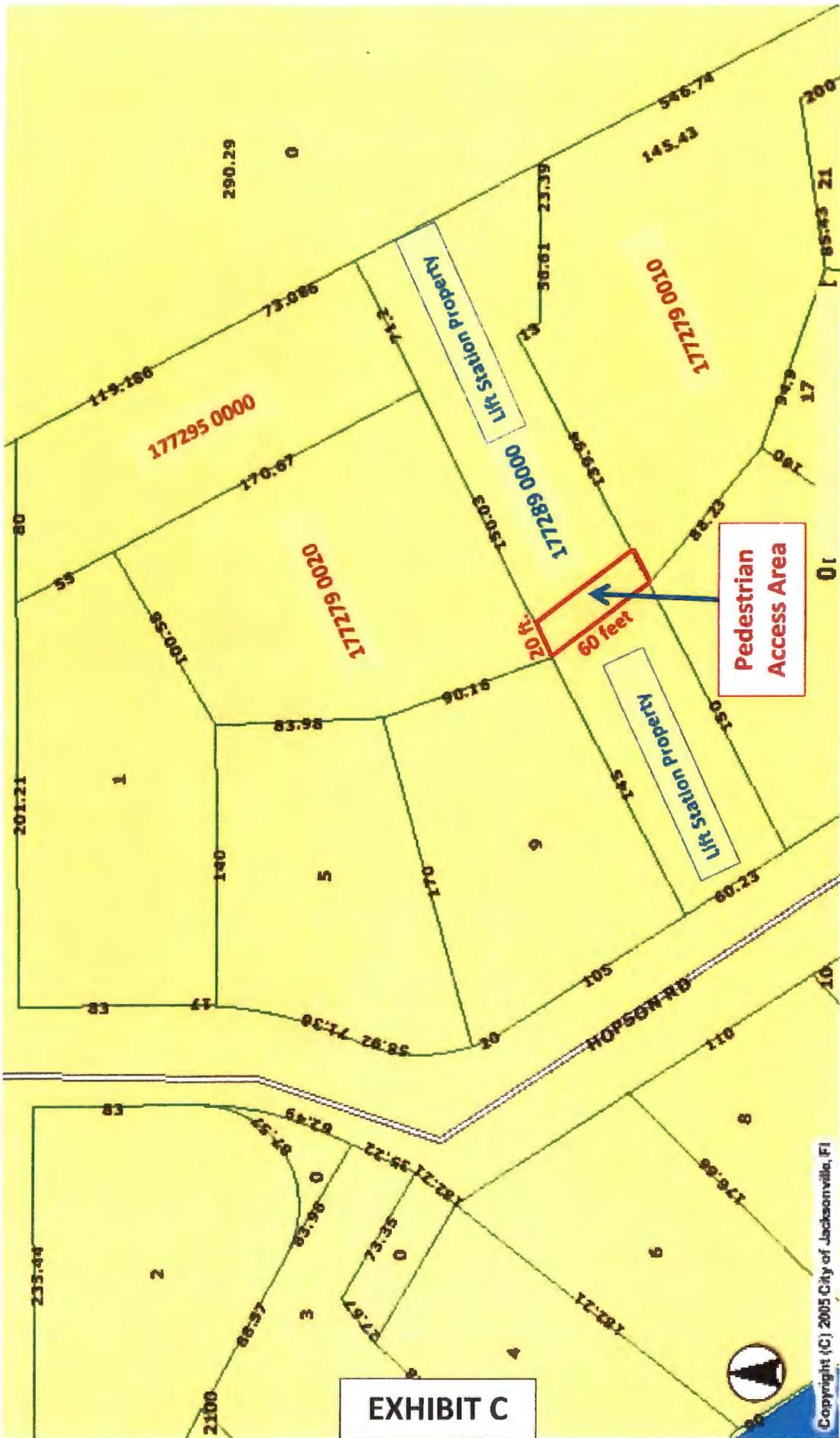


EXHIBIT C

CERTIFIED MAIL RECEIPT# 7012 2210 0002 4634 6033

March 18, 2015

Atwill, LLC
c/o Fred Atwill, Jr.
9001 Forest Acres Lane
Jacksonville, FL 32234

RE: Planning Commission Case PC#9-13 - 2092 Beach Boulevard
Conditional Use Approval for a proposed religious organization located
in a RS-1 zoning district

Dear Mr. Atwill,

The City of Jacksonville Beach Planning Commission met on Monday, March 9, 2015, to consider the Church of Our Savior's conditional use application for a proposed religious organization located in a *Residential, single family: RS-1* zoning district, pursuant to Section 34-336(d)(2) of the Jacksonville Beach Land Development Code. The properties are located on the south side of Beach Boulevard, approximately 200 feet east of Hopson Road. Application PC#9-13 was approved unanimously with the following conditions:¹

1. The applicant shall develop the subject property in conformance with applicable Land Development Code standards, including but not limited to Residential, single-family: RS-1 zoning district regulations, without exception and without seeking a variance in any respect, including but not limited to lot coverage. No City-owned property may be used by the applicant to meet such standards.
2. The applicant shall provide a seven-foot wide buffer between the subject property and any adjacent residential uses, in conformance with LDC Sec 34-425(b)(2) standards, and including a continuous six-foot high opaque screen or barrier.
3. The applicant shall pay to have installed, a six-foot high opaque fence with 24-foot wide vehicular access gate across the City-owned property known as 11 Hopson Road, between the easterly corner of the property known as #9 Hopson Road and the northerly corner of the property known as #13 Hopson Road. This access to the City's property shall be for exclusive use by City employees.

¹ As stated on the record during the meeting, the issuance of this conditional use permit by the Commission has occurred under compulsion of federal court order and under protest, explicitly without waiving the City of Jacksonville Beach's right to appeal or further challenge the trial court rulings in the case titled *Church of Our Savior v. City of Jacksonville Beach*, case no. 3:13-cv-01346-TJC-JBT, which is pending before the U.S. District Court for the Middle District of Florida.

City of
Jacksonville Beach
City Hall
11 North Third Street
Jacksonville Beach
FL 32250
Phone: 904.247.6231
Fax: 904.247.6107
Planning@jaxbchfl.net

www.jacksonvillebeach.org



4. The City shall prepare a pedestrian-only access easement agreement to the benefit of church staff and congregants across the portion of the City-owned property at #11 Hopson Road lying adjacent to and between the applicant's two parcels. Such agreement shall include a liability insurance policy with coverage of \$1,000,000.00 per incident, and shall list the City as an additional insured. The Church shall maintain these policies for so long as it continues to use the City-owned property at #11 Hopson Road for access to the southern parcel. The Church shall submit proof of coverage to the City on an annual basis. The agreement shall otherwise provide that the Church shall indemnify, defend, and hold harmless the City, as to any and all claims for damages which are caused by or suffered by Church staff, congregants, guests, or members while upon the City-owned property at #11 Hopson Road, including but not limited to bodily injury and damage to City property and improvements.
5. The applicant shall secure Development Plan approval for the development of its proposed facilities within twelve months of issuance of the conditional use permit by the planning commission granting the applicant's conditional use request, or the conditional use approval shall be rendered null and void.
6. The applicant shall be responsible for payment of applicable water and sewer tap fees, storm water and mobility fees, any related work required to extend existing public utilities to the subject property, and any other development and permit fees associated with its proposed development. However, pursuant to Section 7-21 of the Code of Ordinances, no fees shall be charged to the applicant for permits and inspections for the construction of the applicant's religious facilities, provided the applicant files the required documentation described in Section 7-21 whenever such permit application is filed with the City.

Please remove the public notice posted on the property. Please submit a copy of this approval letter when applying for any future development or building permit applications. Should you have any questions please feel free to contact our office at (904) 247-6231.

Sincerely,



Chandra M. Tolman
Senior Permit Specialist

cc: Church of Our Savior, 511 Pablo Avenue, Jacksonville Beach, FL 32250
Charles Stambaugh, 841 Prudential Drive, Jacksonville, FL 32207