

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

CARLINVILLE SOUTHERN BAPTIST
CHURCH, an Illinois Religious
Corporation,
Plaintiff,

v.

Hon. Jeanne E. Scott
Magistrate Judge Charles H. Evans
Case No. [3:08-cv-3074](#)

CITY OF CARLINVILLE, ILLINOIS, a
municipal corporation, and the CITY OF
CARLINVILLE PLANNING/ZONING
COMMISSION, a municipal body,
Defendants.

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Release and Settlement Agreement

Upon stipulation and consent of the parties, by and through their respective attorneys, the parties to the above captioned case freely and voluntarily enter into this Release & Settlement Agreement (“Agreement”) as follows:

1. Plaintiff, Carlinville Southern Baptist Church, an Illinois ecclesiastical corporation (“Church”), is the owner of a parcel of land (“subject property”) more particularly described in *Exhibit 1* attached hereto and made a part hereof.

2. Defendant, City of Carlinville (“City”) is a municipal corporation, organized and existing under the laws of the State of Illinois, and Defendant, Carlinville Planning and Zoning Commission (“Planning Commission”), is a commission established pursuant to the laws of the State of Illinois (“Zoning Act”).

3. The parties now wish to settle this lawsuit in accordance with the terms and conditions of this Agreement, in order to avoid further costs and expenses and the uncertainty of a trial and to resolve this dispute without any admission of liability. The parties agree that the operative provisions of this Agreement are promises made by each of them to the extent that these provisions are applicable to their respective actions.

NOW, THEREFORE, this Agreement being presented to the Court pursuant to stipulation of the parties, and the Court having determined that this proposed Agreement is reasonable and just and being otherwise fully advised in the premises, **IT IS HEREBY STIPULATED, ORDERED AND AGREED THAT:**

Section 1 – Approvals

1.1 Special Use Ordinance: The subject property has been and continues to be zoned and classified in the C-1 Commercial District Zoning Classification. By way of “An Ordinance Granting A Special Use Permit to the Carlinville Baptist Church to Construct and Operate a Church on the Property Commonly Referred to as the Old Wal-Mart Property,” the Church is hereby granted a Special Use Permit to develop, construct,

maintain, and use the subject property as a church, a playground and related uses on the Property in accordance with the terms of this Agreement. The special use permit is attached as *Exhibit 2* to this agreement. The special use permit is only valid when used in conjunction with the construction and development of the subject property in accordance with the Approved Plans Referenced as *Exhibit 1* herein.

1.2 Other Permits. The City will issue all permits necessary to enable the Church to construct the improvements shown on the Approved Plans. The City is not responsible for any permits required by Macoupin County, the State of Illinois or the Federal Government. The construction can begin immediately. A certificate of insurance is necessary for any work to be done near or adjacent to any public property listing the city as an additional insured. The city will be held harmless and is to be indemnified for any claims of property damage or bodily injury related to this work.

1.3 Applicable Laws.

(a) Irrespective of the zoning designation of the subject property (which will not be changed from its present commercial designation), the subject property may be used in accordance with the terms of this Agreement, and the subject property and the structures thereon may continue to be used in perpetuity as a religious institution, subject to, and in accordance with, the terms of this Agreement.

(b) No amendments to or modifications of the text or map of the City Zoning Ordinance or any applicable regulatory ordinances made or adopted after the date hereof:

(i) shall prevent the subject property from being used in accordance with the terms of this Agreement; or

(ii) shall prevent the construction of any structures or other improvements shown in *Exhibit 1* and in accordance with this Agreement.

(c) If the Church ceases to operate or exists at the subject property location as a religious institution (the term “ceases to exist” does not include a merger, change of name or change of denomination or substantive damage to the facility such as fire, tornado, or other acts of God) within the next ten (10) years (any time prior to June 1, 2018), then the special use shall no longer apply to the subject property, and the special use ordinance and permit are null and void. However, if the Church ceases to exist (as denoted above) after ten (10) years (after June 1, 2018), the religious use shall be permitted for a subsequent purchaser of the property. If at any time in the future, the subject property is sold to a non-church or non-religious entity, then the special use ordinance and permit are immediately null and void.

(d) In reviewing the Approved Plans (if not already approved as of the date hereof) and any applications for permits for the construction or use of any building or other improvements covered in the Approved Plans shown on the Site Plan, the City shall apply and consider only the requirements of the Zoning Ordinance, regulatory ordinances, engineering standards, and the approved special use permit approved for this use which are in effect and applicable as of the date hereof.

1.4 Damages and Attorney Fee’s. The City of Carlinville’s insurers shall pay the Church One Hundred and Seventy Five Thousand Dollars, (\$175,000.00) comprising the total amount of damages, cost and attorney fee’s.

Section 2 – Conditions

2.1 Applicability. The conditions listed in this Agreement shall apply to the approval of the special use permit and to the Approved Plans. In the event of conflict between the Approved Plans and this Agreement, the terms of this Agreement shall control.

2.2 Parking Areas. Parking shall only be permitted to occur within the parking spaces designated on the approved site plan attached as *Exhibit 1*. The Church will comply with City's abandoned vehicle ordinance, which is Ordinance ____, attached as *Exhibit 3*. This ordinance, however, does not apply to any Church owned or operated vehicles including, but not limited to the Church bus.

2.3 Press Release. At the request of the City, the parties shall agree to a press release attached as *Exhibit 4* hereto.

2.4 Right of First Refusal. Should the Church desire to sell the subject property, and receives an offer from a party other than the City, the Church shall notify the City of the offer and grant it the right of first refusal to purchase the subject property. If the Church receives an offer to purchase more than half of the presently existing paved parking lot (defined as the paved areas from the front of the building to the grass areas as depicted on *Exhibit 1*), then this right of first refusal shall be triggered and the Church will offer the entire parcel to the City. This right of first refusal shall be limited to forty five (45) days (for the City to match the purchase offer that the Church receives) from the delivery of this offer by the Church to the City and may be extended by agreement of the parties. The forty-five (45) day time period is the time period for the City to match the offer to purchase the property, and is exclusive of any time period necessary to arrange

financing or closing on the sale of the property. The closing shall take place no longer than 100 days after the Church presents the City with the third party offer. Such offer from the City to purchase the subject property may be based on meeting the offered price, or upon the agreement of the parties. The Church is not obligated to sell the property to the City if it meets the right of first refusal. If the City does contract to purchase the subject property at an agreed upon price, the City has the absolute right to assign the sales contract to any individual or entity of its own choosing. This right of first refusal paragraph becomes null and void if not used within five (5) years of the execution of this settlement agreement.

2.5 Fire Inspection. The Church will comply with the fire inspection ordinance, 6-4-2 Supp No. &, 02-01-02, attached as *Exhibit 5* herein.

2.6 Handicap Compliance. The Church will comply with all federal and state rules and regulations regarding handicapped and disabled persons including, but not limited to, parking spaces and wheel chair ramps.

2.7 Sign Ordinances. The Church shall comply with the City sign ordinance number ____, attached as *Exhibit 6* herein.

2.8 Right of Way. At the Church's sole discretion, it may allow other businesses and individuals to use the driveway entrance and parking lot located at the southwest corner of the subject property. It further agrees to provide a fifty foot (50) easement, from Route 108 West at the presently existing southwest entrance of the subject Property to a subsequent purchaser of property (provided that it is not the City) near the southwest corner of the subject property (the strip of land immediately to the west of the subject

property and the strip of land immediately to the south of the subject property), if the same is developed within five (5) years of the entry of this Settlement Agreement.

2.9 Future Expansion. This Agreement does not prohibit future expansion by the Church including a new façade as depicted in *Exhibit 7*. Should the Church desire to expand on properties adjacent to it that it currently does not own, or in any way expand the current physical structure of the building currently located on the subject property, or construct any new buildings on the subject property, the Church will comply with all relevant and applicable ordinance requirements and the special use permit currently in place, or enacted subsequent to the date of this Agreement, regarding the same. The Church is not precluded from seeking a variance. In reviewing plans for any physical expansion of the church, the City shall apply and consider the zoning, engineering and applicable construction standards in effect at the time of the review for the future plans. The City agrees that it will cooperate with the Church in good faith and not take any action that is contrary to or interferes with the spirit of this Agreement, nor omit any action that is necessary or consistent with the spirit and intent of this Agreement.

2.10 Taxes. If the Church opens a coffee shop, book store, radio station, or any type of business on the Church Property and claims that such a business is related to the Church's religious operations, then to the extent permitted under state law, sales tax revenue from this business operation will be charged by any and all applicable governmental agencies.

2.11 Contact Person. At the request of the City, the Church designates its secretary as the contact person with respect to any questions that arise under the terms of this Settlement Agreement.

2.12 State Court action. The City will dismiss the pending state court action with prejudice and without cost to either party.

2.13 Property Tax exemption. The City shall withdraw its protest with respect to the property tax exemption and permit the property tax exemption for the Church since its purchase date.

Section 3 – Mutual Release

The Church and the City, each for itself and its respective successors and assigns, releases and forever discharges the other and its respective affiliates, successors, predecessors, assigns, officers, directors, trustees, transferees, employees, independent contractors, insurers and attorneys of and from any and all claims, demands, actions, causes of action, suits, debts, judgments, executions, damages and rights of whatever nature in law, equity or otherwise which exist from the date of filing the lawsuit until the date this agreement is signed by reason of any acts, events or facts existing on the date of this Settlement Agreement, whether known or unknown on that date, including by way of illustration but without limitation any matter arising out of or relating to the Lawsuit, the Church's application for a rezoning of the subject property, and/or any claims or causes of action arising under the Federal and State Constitutions or any federal or state statutes, rules or regulations. This Mutual Release shall not bar claims brought to enforce, interpret or otherwise obtain legal or equitable relief under or pursuant to this Settlement Agreement.

Section 4 – Additional Provisions

4.1 Good Faith. The parties and their respective successors and assigns shall treat and cooperate with one another in good faith and shall neither take any action which

is contrary to or interferes with the spirit of this Settlement Agreement, nor omit any action which is necessary or convenient to or consistent with the spirit and intent of this Settlement Agreement.

4.2 Additional Documents. The parties shall execute any and all documents and/or enter into such agreements as are necessary or convenient to carry out the intent of this Settlement Agreement.

4.3 Amendments. The terms of this Settlement Agreement may be amended, changed or modified but only by written agreement executed by the parties hereto and approved and ordered by this Court.

4.4 Authority. By their execution of this Agreement, the Church and the City each warrant that they have the authority to execute this Agreement and bind their respective entities to its terms and conditions. Subject to the terms of this Agreement mentioned above, this Agreement shall be binding upon and inure to the benefit of the Church and the City and their respective successors and assigns, including without limitation successors in interest in the subject property and subsequent purchases of the subject property.

4.5 Jurisdiction. The parties hereby agree that this case has been settled and that all issues and controversies have been resolved to their mutual satisfaction. The parties request the Court to retain jurisdiction to enforce the terms of their Settlement Agreement under the authority of *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 381-82 (1994). By consent of the parties, this Court retains jurisdiction to assure compliance with the terms of this Agreement and to grant whatever legal and/or equitable relief or remedies that the Court deems appropriate. The parties

expressly waive their rights under Federal Rule of Civil Procedure 65(d) to the extent Rule 65(d) requires this order to be specific in terms or to describe in reasonable detail and without reference to the Agreement, the act or acts to be restrained. This case is dismissed without prejudice with leave to reinstate on or before May 28, 2012 for the purpose of enforcing the settlement. This Agreed Order of Dismissal is entered without prejudice in order to allow the Court to enforce the Settlement Agreement. The parties are barred from relitigating any claims raised in this litigation or any claims released by means of the Settlement Agreement. In the event a motion to reinstate or motion to enforce settlement is not filed on or before May 28, 2012, the Court shall relinquish jurisdiction and the case shall be deemed dismissed with prejudice without further order of the Court. Each party shall bear its own attorney's fees and costs.

4.6 Agreement. This Agreement constitutes the entire agreement between Plaintiff and Defendants.

4.7 Counterparts. This Agreement may be executed via facsimile in one or more counterparts, all of which together shall constitute the agreement of the parties.

4.8 Check. The Defendant shall provide the settlement check to Plaintiff on or before June 9, 2008.

4.9 Dual Drafting. The parties to this Agreement confirm that it was drafted jointly.

U.S. DISTRICT COURT JUDGE

THE UNDERSIGNED REPRESENT THAT THEY HAVE READ AND THEY UNDERSTAND THE TERMS OF THIS SETTLEMENT AGREEMENT, AND THAT THEY HAVE VOLUNTARILY EXECUTED THE SAME.

In witness whereof, we have hereto set our hands to this Agreement.

Carlinville Southern Baptist Church

City of Carlinville

/S/ _____

By: Timothy Rhodus

Its: Senior Pastor

/S/ _____

By: Robert Schwab

Its: Mayor

/S/ _____

By: Daniel P. Dalton

Its: Attorney for Plaintiff

/S/ _____

By: Elisha S. Rosenblum

Its: Attorney for Defendants