

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ST. VINCENT DE PAUL PLACE,	:	
NORWICH, INC. and THE ST. JOSEPH'S	:	
POLISH ROMAN CATHOLIC	:	
CONGREGATION	:	CIVIL NO. 3:13-cv-00017-WWE
	:	
Plaintiffs,	:	
V.	:	
	:	
THE CITY OF NORWICH, THE CITY OF	:	
NORWICH COMMISSION ON THE CITY	:	
PLAN, JAMES TROEGER, in his official	:	
capacity as Building-Housing Code	:	
Enforcement Official, and JAMES ROBERTS,	:	
in his official capacity as Captain of the Fire	:	
Marshal's Office	:	
	:	FEBRUARY 12, 2016
Defendants.	:	

**STIPULATED JUDGMENT**

The parties in the above-captioned matter, which has been consolidated with Docket Nos. 3:13-cv-00624 (WWE) and 3:13-cv-00781(WWE), hereby agree that judgment may enter in accordance with the Stipulation for Settlement attached hereto and made a part hereof.

DATED: FEBRUARY 12, 2016

Respectfully submitted,

DEFENDANTS

PLAINTIFFS

THE CITY OF NORWICH, THE CITY OF NORWICH COMMISSION ON THE CITY PLAN, THE CITY OF NORWICH ZONING BOARD OF APPEALS, TIANNE PHOENIX CURTIS, in her official capacity as Zoning Enforcement Officer, JAMES TROEGER, in his official capacity as Building- Housing Code Enforcement Official, and JAMES ROBERTS, in his official capacity as Captain of the Fire Marshal's Office

ST. VINCENT de PAUL PLACE, NORWICH, INC. AND THE ST. JOSEPH'S POLISH ROMAN CATHOLIC CONGREGATION

By /s/ Joseph B. Schwartz

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2016, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Evan J. Seeman

Evan J. Seeman

**STIPULATION FOR SETTLEMENT**

Whereas, the Plaintiff St. Vincent de Paul Place, Norwich, Inc. (“St. Vincent”), a ministry of the Roman Catholic Diocese of Norwich, Connecticut since 1979, provides free food, hospitality and other services to the homeless and impoverished in Norwich, Connecticut; and

Whereas, beginning in 2000, St. Vincent provided these services from a leased building at 10 Railroad Place, Norwich, Connecticut; and

Whereas, in 2012, St. Vincent vacated 10 Railroad Place due to structural deficiencies in the building; and

Whereas the Zoning Enforcement Officer of the Defendant City of Norwich (“City”) on July 13, 2012, issued a six-month zoning permit allowing St. Vincent to operate from property located at 120 Cliff Street, Norwich, Connecticut, owned by the Plaintiff The St. Joseph’s Polish Roman Catholic Congregation (the “Church”), also a part of the ministry of the Roman Catholic Diocese of Norwich, Connecticut, said property containing a building formerly used as a parochial school and for other Church purposes; and

Whereas, St. Vincent seeks permanent occupancy of 120 Cliff Street for the purposes of conducting the same uses and special events previously carried on at 10 Railroad Place; and

Whereas, the City represented to St. Vincent that the City’s Zoning Ordinance required St. Vincent to secure a special permit from the City of Norwich Commission on the City Plan (the “Commission”) to do so; and

Whereas, St. Vincent applied for said permit in part based on the contention that it was entitled to the permit because the proposed uses – the soup kitchen, food pantry and related services for the benefit of the poor and homeless – constituted religious uses by a religious institution and therefore were entitled to accommodation and permitting pursuant to the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. (“RLUIPA”) and the United States Constitution; and

Whereas, the Commission denied the special permit on December 18, 2012, primarily on the grounds that the proposed uses were too intensive for the residential neighborhood, that decision having been based in part on complaints received from local property owners and residents that patrons of the St. Vincent facility had been loitering, trespassing, and engaging in confrontations with such owners and residents, causing the latter to have concerns for their safety and property; and

Whereas, in a case entitled, *St. Vincent de Paul Place, Norwich, Inc., et al. v. City of Norwich, et al.* (Docket No. 3:13-cv-0017 (WWE)), now pending in the United States District Court for the District of Connecticut (hereinafter referred to as the “Main Case”), St. Vincent challenged the denial of the special permit on the grounds that the Commission’s denial of its application violated RLUIPA, the federal and state constitutions, and state law, primarily in that the Commission’s denial substantially burdened St. Vincent’s free exercise of its religion; and

Whereas, St. Vincent subsequently filed two other lawsuits in the United States District Court for the District of Connecticut, (1) *St. Vincent de Paul Place, Norwich, Inc., et al. v. City of Norwich, et al.* (Docket No. 3:13-cv-00624), challenging the issuance of certain notices of violation by the City of Norwich Zoning Enforcement Officer and the upholding of those notices by the City of Norwich Zoning Board of Appeals (the “ZBA”), and (2) *The St. Joseph’s Polish Roman Catholic Congregation, et al. v. City of Norwich Zoning Board of Appeals, et al.* (Docket No. 3:13-cv-00781), challenging the denial of a use variance by the ZBA (hereinafter collectively referred to as the “Related Cases”); and

Whereas, the Defendants have submitted responses in each of the three cases, maintaining that the actions of the Defendants were consistent with their powers and duties under federal and state law and constitutional principles and involved a proper application of the City’s Zoning Ordinance; and

Whereas, the parties wish to resolve their differences so that St. Vincent will provide at 120 Cliff Street the services it provided at 10 Railroad Place, which services the Plaintiffs maintain are a part of their religious practices and beliefs, while at the same time, protecting the interests of the City of Norwich, its residents and property owners.

Now therefore, the parties do agree and stipulate as follows:

1. Judgment will enter in the Main Case in accordance with the terms and conditions of this Proposed Stipulation of Settlement, as set forth below, without costs or fees awarded to any party, and without any determination by the Court of issues of fact or questions of law. Upon entry of judgment in said case and upon the City’s building official and zoning enforcement officer withdrawing their outstanding notices of violation against St. Vincent, the Plaintiffs will simultaneously withdraw the Related Cases.
2. Special Permit: St. Vincent and the Church have applied for a special permit for a religious and eleemosynary use to operate a soup kitchen and a food pantry at 120 Cliff Street, Norwich, Connecticut, and also to provide showers, case worker consultation, and hospitality at that location, and other uses described in Paragraph Nos. 2 and 3, subject to the times of operation set forth, below, in Paragraph Nos. 2 and 3. The Commission shall issue a special permit to St. Vincent and the Church for these uses.
  - a. Soup Kitchen: Monday – Saturday weekly. Doors will be open during normal business hours, from 6:00 a.m. to 4:00 p.m. (“Normal Business Hours”) to patrons. Breakfast will be served from 8:00 a.m. to 10:00 a.m. Lunch will be served from 11:30 a.m. to 1:00 p.m. Individual emergencies occurring outside of mealtimes will be accommodated during the normal operating hours of the facility. In the event the City of Norwich re-opens its overflow no-freeze shelter, and it becomes necessary to do so, St. Vincent will prepare and deliver evening meals to the shelter after normal operating hours. St. Vincent will be open during its normal

- operating hours on Easter Sunday and Christmas, including when it falls on a Sunday.
- b. Food pantry: Monday, Wednesday, and Friday, weekly; open to the public from 12:00 p.m. to 3:30 p.m.; Saturday, open to the public from 9:00 a.m. to 1:00 p.m. Individual emergencies occurring outside of pantry hours will be accommodated during the normal operating hours of the facility.
  - c. Showers: Monday through Saturday from 8:00 a.m. until 1:00 p.m.
  - d. Case worker consultation: Monday through Saturday from 7:30 a.m. to 4:00 p.m. Individuals already being assisted at normal closing time will be allowed to complete their consultation with the case worker.
  - e. Prayer, spiritual counseling, reading material, hospitality, and warmth: Monday through Saturday during Normal Business Hours.
  - f. Access on-site to the William W. Backus Hospital/Generations Family Health Care Center medical van and provision of medical services, such as flu shots.
3. Ancillary Uses: In addition to the uses stated in Paragraph No. 2 above, the Plaintiffs will conduct certain ancillary uses. The days and hours of said uses shall be Monday through Saturday weekly from 7:30 a.m. to 4:00 p.m. and shall include:
- a. Classes to assist patrons of the soup kitchen and food pantry in such life skills as budgeting, hygiene, family care, housing, etc.
  - b. Provision of items of essential needs including but not limited to clothing and home wares.
  - c. Mail delivery for patrons of the soup kitchen.
  - d. Laundry services.
4. Enforcement: If the zoning enforcement officer finds, on the basis of personal observation, documented police reports or other credible documentation, that the uses described in the preceding sections have resulted in undue traffic congestion, excessive noise, vandalism, trespassing, physical confrontations, or similar risks to public safety or welfare in the neighborhood (hereinafter referred to as "Public Concerns"), the zoning enforcement officer shall so inform the Plaintiffs, and the Plaintiffs and the Defendants shall work together to establish protocols or changes in modes of operation to seek to eliminate such Public Concerns ("Neighborhood" shall consist of those properties located within a radius of 450 feet of the subject 120 Cliff Street property, excluding the Oak Street Cemetery). If, despite implementation of such protocols and changes, the Public Concerns are found by the zoning enforcement officer to be continuing, or if the parties cannot agree on

such protocols or changes, the zoning enforcement officer may issue an order to cease only as to ancillary uses described in Paragraph No. 3 or to limit or modify the uses found to be causing the Public Concerns, except as otherwise provided herein. Any such order shall be subject to the limitations and procedures set forth below.

- a. The zoning enforcement officer may issue an order to limit or modify any Ancillary Use found to be causing Public Concerns. An order to cease a use may be issued solely for the Ancillary Uses described in Paragraph No. 3 above and not for any of the uses described in Paragraph No. 2, above. A cease and desist order may be issued only following good-faith attempts to first limit or modify the relevant Ancillary Use or Uses and only after a finding by the zoning enforcement officer that the Public Concerns have not been remediated. The Plaintiffs shall have the right to appeal the order of the zoning enforcement officer to the ZBA in accordance with Conn. Gen. Stat. § 8-6. Following the public hearing required by said statute, the ZBA shall make a finding whether such Public Concerns have been caused by the Plaintiffs' uses, and may, accordingly, uphold, modify, or vacate such order. The parties may appeal any such decision to the United States District Court for the District of Connecticut pursuant to this agreement. Any uses that are the subject of an appeal to said court will continue uninterrupted and in the same manner throughout the pendency of the appeal.
- b. In the event of a finding that any of the Public Concerns have been caused by any of the uses described in Paragraph No. 2, the zoning enforcement officer may refer such matter to the Commission for a public hearing on the Public Concerns. Written notice of the date and time of any such hearing shall be provided to St. Vincent no later than thirty days before such hearing. Following such hearing, the Commission shall make a finding whether such Public Concerns have been caused by the Plaintiffs' uses, and may, accordingly, allow such uses to continue unchanged or issue an order to change the mode of operation or other aspects of the use or uses in order to remedy the Public Concerns, provided nothing herein will eliminate the uses in Paragraph No. 2 or reduce their hours of operation. Such order shall not be appealable to the ZBA, but the parties may appeal any such decision to the United States District Court for the District of Connecticut pursuant to this agreement.
- c. The United States District Court will maintain continuing jurisdiction in the Main Case over the matters that are the subject of this Stipulation for two years following the entry of judgment and shall hear and decide any appeals brought pursuant to this agreement. To the extent that she is available and willing to do so, Judge Joan Glazer Margolis, U.S. Magistrate Judge, shall hear and decide said appeals and all other matters relating to the enforcement of this agreement. The United States District Court may affirm, vacate or modify the decision and order of the zoning



enforcement officer, the ZBA, or the Commission, as the case may be, in accordance with applicable law.

- d. If, after three months from the entry of judgment herein, an Ancillary Use described in Paragraph No. 3 above has not been eliminated or is not subject to an order by the zoning enforcement officer, the ZBA, or the Commission, it will be deemed a permanent accessory use, and the Commission will issue a special permit for any such uses. If, prior to the expiration of three months, the City wishes to extend the probationary period for a use or uses, it may petition the United States District Court in the Main Case for such a modification, and if the Court grants the order, the Court shall also extend, by a similar length of time, its continuing jurisdiction.
5. Additional Uses: No new uses may be added by St. Vincent under the special permit described in Paragraph Nos. 2 and 3, above, other than those enumerated above, unless the zoning enforcement officer determines them to be customary accessory uses to the already permitted uses or, in the absence of approval by the zoning enforcement officer, the Commission amends the special permit to allow the new use or uses. During the time that the District Court retains continuing jurisdiction, the Plaintiffs may appeal a denial of a new use within the time required for appeal from the Commission under Connecticut law to this Court in the Main Case, which may reverse, modify or affirm the decision in accordance with applicable law. Nothing in this Stipulation shall be deemed to affect, apply to, or relate to any previous uses permitted or legally nonconforming that may have been conducted by the Church at 120 Cliff Street or prevent either the Church or St. Vincent from applying for new permits as of right, new special permits, variances, other forms of zoning relief, or as allowed by law.
6. Use of Remainder of Premises: The City agrees that the entire basement and first floor of 120 Cliff Street may be devoted to the uses described in Paragraph Nos. 2 and 3, but in dedicating that space for these, the Plaintiffs do not intend to abandon any rights they may have to continue or reestablish the historic school use for the remainder of the space in 120 Cliff Street.
7. There shall be quarterly neighborhood liaison meetings for the first year following approval by the United States District Court for the District of Connecticut of this Stipulation for Settlement. The meetings shall be held at Otis Library or another community facility. The City of Norwich Community Policing Unit shall attend and facilitate the meetings.

The City may install a video camera at the subject 120 Cliff Street property, upon mutual agreement as to location of the video camera with the Church and St. Vincent, at the City's own cost and expense to be used by the City of Norwich Police Department. The video camera shall monitor the neighborhood; the video camera shall not monitor the 120 Cliff Street property.




8. Permit Modifications: In the event there is a problem of disruptive conduct or substantial negative impact on the surrounding community, the City shall inform St. Vincent of its concerns and, if these concerns are not addressed by St. Vincent to the satisfaction of the City, the City will have the right to seek a modification of the special permit from the Commission, requiring appropriate remedial actions – which actions shall not include eliminating or changing the hours of operation of the uses enumerated in Paragraph No. 2 – as a modification or additional condition of the permit. The Plaintiffs reserve the right to oppose any such request for modification, and during the time that the Court retains continuing jurisdiction over this matter, the Plaintiffs may appeal any such modification or condition within the time required for appeal of decisions of the Commission under Connecticut law to the United States District Court for the District of Connecticut for review in the Main Case. The Court shall have the authority to affirm, vacate or modify the condition. Thereafter, any appeal of a modification or condition may be made in any manner permissible under applicable law.
9. Handicapped Access: The City acknowledges that the provision of handicapped access to comply with these requirements might require a variance from the ZBA, and while the City cannot grant a variance without reviewing a specific plan, it acknowledges that, based on information on hand at this time, the inability to provide the required access within the current set-back requirements appears to constitute a hardship for purposes of seeking a variance. In the event St. Vincent cannot comply with the Code's requirements for handicapped access and is, thereby, forced to vacate some of the premises, the City agrees to work with the Plaintiffs to afford a reasonable time to relocate some services to an alternative location.
10. Until and unless this Proposed Stipulation for Settlement is approved pursuant to Section 8-8(n) of the Connecticut General Statutes and Section 14-7B of the Connecticut Practice Book and by the Court, none of the parties waive their claims, counterclaims, defenses, or any form of relief sought.
11. Mutual Releases: The execution of this agreement by the parties is intended to compromise and resolve all claims in an expeditious manner and to minimize the cost, time and other burdens of litigation. This agreement does not constitute, and shall not be deemed to be, an admission or acknowledgment by any party regarding the truth or merits of any allegation made or any legal position taken by any party in the Main Case or Related Cases. Upon execution of this agreement and entry of its terms as an order of the Court, the parties agree to release each other from any and all claims that could have been, or were, asserted in the Main Case and the Related Cases, including any and all claims for monetary damages, attorneys' fees or costs related to those actions, reserving only the rights and obligations contained in this Agreement. The foregoing notwithstanding, either party shall have the right to request fees and costs in any action seeking enforcement of the terms of this Agreement.

12. **Approval of Settlement:** This settlement is subject to final approval by the United States District Court for the District of Connecticut in accordance with the requirements of Section 8-8(n) of the Connecticut General Statutes and Section 14-7B of the Connecticut Practice Book.

DATE: FEBRUARY 11, 2016

DEFENDANTS


THE CITY OF NORWICH, THE CITY OF NORWICH COMMISSION ON THE CITY PLAN, THE CITY OF NORWICH ZONING BOARD OF APPEALS, TIANNE PHOENIX CURTIS, in her official capacity as Zoning Enforcement Officer, JAMES TROEGER, in his official capacity as Building- Housing Code Enforcement Official, and JAMES ROBERTS, in his official capacity as Captain of the Fire Marshal's Office.

By   
Michael A. Zizka  
Their Attorney, duly authorized

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PLAINTIFFS

ST. VINCENT de PAUL PLACE, NORWICH, INC. AND THE ST. JOSEPH'S POLISH ROMAN CATHOLIC CONGREGATION

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