

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

GREAT LAKES SOCIETY,
a Michigan Ecclesiastical Non-Profit Corporation

Plaintiff/Appellant

Case #: 03-4599-AA

-v-

Hon.

GEORGETOWN CHARTER TOWNSHIP;
MANNETTE MINIER, in her official capacity as
Zoning Administrator of Georgetown Township;
JAMES JANSMA, WILLIAM KOTSIFAS,
JAMES HOLTVLUWER, RICHARD LOTTERMAN,
DONALD UPP, in their official capacities as members
of the Georgetown Township Zoning Board of Appeals,

Defendants/Appellees

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**APPEAL OF RIGHT FROM TOWNSHIP’S REJECTION OF SPECIAL
USE PERMIT APPLICATION, DENIAL OF ADMINISTRATIVE RELIEF,
SUBSTANTIVE AND PROCEDURAL LAW VIOLATIONS, AND OTHER
ACTIONS AND DETERMINATIONS OF DEFENDANTS/APPELLEES
GEORGETOWN CHARTER TOWNSHIP, AND ITS BOARDS AND
OFFICERS, AND COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE, AND OTHER RELIEF**

Plaintiff/Appellant Great Lakes Society (hereinafter “Plaintiff/Appellant” and “the Society”) by and through its attorneys MCNEIL KARAFA BATY & SAUNDERS LLP and THE BECKETT FUND FOR RELIGIOUS LIBERTY hereby file its claim of appeal from a rejection/denial of an application for special use permit, the denial to Plaintiff/Appellant Society’s right to a hearing before Township Planning Commission, the right of appeal to the Zoning Board of Appeals, and other substantive and procedural law violations on the part of Defendants/Appellees Georgetown Charter Township (hereinafter “Defendant/Appellee Township”), and other Defendants named herein, and further states its Complaint and request for relief against Defendant/Appellee Township and other Defendants named herein as follows:

1. This Appeal and Complaint seeks relief from the Township’s repeated and continuing pattern of hostility toward the Society through the imposition and implementation of its land use laws. Not only has the Township violated its own Georgetown Charter Township Zoning Ordinance (the “Ordinance”) and the laws of the State, but also numerous federal statutory and constitutional provisions that protect religious exercise. First, the Township arbitrarily decided that the Society is not a church. Then it refused to accept a supplemental application. Then it changed its laws to gerrymander the Society out of Georgetown Township. And all along the way, the Township has exhibited hostility towards the Society through its words and other actions. The Township’s denial

of the Society's land use approval was not only arbitrary and capricious, but also discriminatory and unconstitutionally burdensome on the Society's religious exercise. The Township's laws and actions operate to purposefully deprive Plaintiff's rights to freedom of religion, freedom of speech, freedom of assembly, due process and equal protection of the laws, as protected by the Michigan and United States Constitutions and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc.

2. Plaintiff/Appellant Society is a religious society and organized under and pursuant to the laws of the State of Michigan as an ecclesiastical non-profit corporation, principally located in Georgetown Township, Ottawa County, Michigan.
3. That Defendant/Appellee Township is a Government entity existing by and under the laws of the State of Michigan and is empowered to act, with limitations, through its governing body, administrative officials, and official bodies.
4. Defendant Mannelle Minier is the Zoning Administrator of Georgetown Township, and she is sued in her official capacity only.
5. Defendant James Jansma is a chairman of the Georgetown Township Zoning Board of Appeals, and he is sued in his official capacity only.
6. Defendant William Kotsifas is a vice chairman of the Georgetown Township Zoning Board of Appeals, and he is sued in his official capacity only.
7. Defendant James Holtvluwer is a Township board representative on the Zoning Board of Appeals, and he is sued in his official capacity only.
8. Defendant Richard Lotterman is a member of the Zoning Board of Appeals, and he is sued in his official capacity only.
9. Defendant Donald Upp is a member of the Georgetown Township Zoning Board of

Appeals, and he is sued in his official capacity only.

10. That Defendant/Appellee Township is authorized to regulate land development and use through the adoption of zoning ordinances pursuant to the Township Zoning Enabling Act, MCL 125.271 et seq., and its powers and authority is limited thereby, as well as by federal and state statutory, constitutional, and common law.
11. Defendant/Appellee Township's Planning Commission is made up of township residents and meets at designated times for purposes of reviewing applications for construction, site plans, special use permits, and other matters submitted to the Township for consideration under its Ordinance.
12. That Defendant/Appellee Township employs as an administrative officer a Zoning Administrator, with authority delegated by the Township to interpret the zoning ordinances, applications submitted for special use permits, and related matters.
13. That Defendant/Appellee Township has established a Township Board of Appeals (ZBA), whose function under the township ordinances is, among other things, to consider matters on appeal taken by any person aggrieved by the ruling of the Zoning Administrator concerning the enforcement and/or interpretation of the Georgetown Township Ordinance. Ord. Sec. 28.11.
14. The Society makes this claim of appeal by right, pursuant to MCR 7.101 (B)(1).
15. That this Court has jurisdiction of this petition for review on appeal, and for other legal and equitable relief pursuant to MCR 7.101, MCL 125.293 (a), MCL 125.585 (11), MCL 125.590.
16. That both parties are located within the County of Ottawa, and the subject matter of this proceeding pertains to real property and property interests situated within the County of

Ottawa, State of Michigan, and venue is proper in this court.

FACTUAL AVERMENTS

17. The Society is a Michigan ecclesiastical corporation existing pursuant to the laws of the State of Michigan since in or about April, 1974, and its mission and primary purposes are, among other things, to research prophecies and doctrines as revealed in the Holy Scriptures, to teach all people the gospel of Jesus Christ, to assist in the foundation of local congregations, to promote an educational and social environment conducive to growth in Christianity, to teach, minister and serve congregational members, to ordain members who are called of God and qualified according to Holy Scriptures as ministers of the gospel, to teach and practice the health and nutrition principles as revealed in the Holy Scriptures. (Exhibit A, record below incorporated herein by reference in its entirety, Mission Statement of Great Lakes Society for Biblical Research, December, 1975; Exhibit 6, Mission Statement).
18. That, in fulfilling its mission, the Society provides a specialized environment permitting chemically sensitive and disabled people a place to worship in their faith.
19. That there are currently prospective members of the Society with chemical sensitivities that are anticipating the use of the proposed facility, and cannot currently attend services without a chemically filtered environment. To the Society's knowledge, there are no other facilities which can accommodate these prospective members in the Township or in the surrounding areas. The denial of the Society's land use application works to prevent these people from engaging in group religious exercise, or from engaging in group

religious exercise without great physical distress.

20. That the Society is currently operating out of inadequate facilities without the physical space necessary for its ministry.
21. That the Society is presently holding weekly services in facilities at St. Cecilia Music Society in Grand Rapids that are very inadequate for the Society's needs.
22. That the Society owns property located at 7277 40th Avenue in Georgetown Township, and plans to develop it as a church—facilities that would include a sanctuary, prayer rooms, meditation rooms, restrooms, library, publishing facilities, dining lounge, and garage—in order to facilitate its members' religious exercise.
23. That this proposed use occupies the same role in the Society's religious beliefs and practices as any church, temple, or mosque does to other religious organizations.
24. That on January 14, 2002, Defendant/Appellee's Zoning Administrator, Mannette Minier ("Zoning Administrator") stated Township zoning requirements for a special use permit for a church, to wit a (1) minimum lot width of 200 feet; and, (2) a minimum lot area of two acres, plus an additional 15,000 square feet for each 100 seating capacity or fraction thereof in excess of 100; and, (3) that the property location shall be such that at least one property line abuts and has access to a collector, major arterial, or minor arterial street.
(Exhibit 1 — January 14, 2002 letter)
25. That the Zoning Administrator's January 14, 2002 correspondence addressing zoning requirements stated that a special use permit for a church at this location would be approved if a public street were to be constructed on this parcel and for the church to have 200 feet of frontage on this public street (standard one), and that the church must retain a property line on 40th Avenue (standard two). (Exhibit 1 - Zoning Administrator's

January 14, 2002 letter)

26. That on April 17, 2002, Plaintiff/Appellant the Society filed with Defendant/Appellee Township its application for a special use permit to construct a church building on its property located at 7277 40th Avenue in Georgetown Township, more particularly described as P.P.#70-14-18-400-043 (The “Property”).
27. The Property is located within a zoned low density residential district.
28. That pursuant to Township Ordinance, Sections 8.3 (A), 20.1, 20.2, 20.3 (A)(1) - (4), 20.4 E)(1) - (3), “Churches” are permitted as a special land use in the low density residential district within which the Society’s property is located.
29. That upon the Society’s application for special use permit a work session of Defendant/Appellee’s Planning Commission was scheduled on May 1, 2002.
30. That at the May 1, 2002 Planning Commission work session, Todd Stuve of Exxel Engineering represented Plaintiff/Appellant with regard to its proposed plans and explained the design in compliance with the applicable ordinance sections (Exhibit 2- Planning Commission Minutes).
31. That at the May 1, 2002, Planning Commission work session, it was noted that the Fire Chief had reviewed the site plan and had no comments about the project (Exhibit 2- Planning Commission Minutes).
32. That the Township Planning Consultant, Todd Mowery, called the Society’s plan “straight forward and very well prepared”, and further observed with regard to the plan that it doesn’t look as if it’s going to be a cheap project by any stretch of the imagination. (Exhibit 3- Newspaper article 6/27/02 Grand Rapids Press)
33. That the site plan submitted by and on behalf of Plaintiff/Appellant was in compliance

with the Georgetown Township Zoning Ordinance regulating land use in a low residential

district.

34. That the Planning Commission's initial response to the Society's application was favorable because, among other things, it was in compliance and "well prepared."
35. That shortly thereafter, in a letter dated May 8, 2002 Defendant/Appellee's Zoning Administrator, acknowledged the special use permit application filed on behalf of Plaintiff/Appellant the Society and unilaterally pulled the matter from a public hearing before the Georgetown Township Planning Commission.
36. That the Zoning Administrator unilaterally removed the matter from the Planning Commission on the stated basis that "I am making the determination that the proposal as submitted for this site is not, in fact, a church for purposes of the Georgetown Township Zoning Ordinance..." (Exhibit 1 - May 8, 2002 letter of Zoning Administrator)
37. That the Zoning Administrator further stated in her May 8, 2002 letter that no public hearing before the Planning Commission would be held on May 15, 2002 on the Society's special use permit application (Exhibit 1- May 8, 2002 letter).
38. That the Zoning Administrator made the personal determination that the proposed building by the Society did not meet the definition of a "church" based on her "experience and common sense due to the materials submitted for this application, which includes a site plan showing a two story 80 x 60 square foot building with three garages and 21 parking places." (Exhibit 1- May 8, 2002 letter)
39. That the Zoning Administrator specifically stated to the Society in her May 8, 2002 letter that "therefore, the application for a special use permit for a church for this property is

not in order and is hereby rejected...no public hearing will be held on May 15, 2002.”

(Exhibit 1 — May, 2002 letter)

40. That notwithstanding the Zoning Administrator’s specific statement to Plaintiff/Appellant that the special use permit was rejected based on her determination that the proposed site plan was “not in fact, a church” based on her “experience and common sense,” the Planning Commission proceeded to open the floor to public comments since the request had been advertised and notices sent (Exhibit 2 - Planning Commission Minutes, May 15, 2002).
41. That Plaintiff/Appellant made timely application on May 10, 2002 to the Zoning Board of Appeals for review of the Zoning Administrator’s May 8, 2002 “determination that the proposal as submitted for this site, is not, in fact, a church...” (Exhibit 2- Planning Commission Minutes, June 5, 2002)
42. That Plaintiff/Appellant’s application for special use permit was supported with documentary evidence of a site plan in compliance with the applicable zoning ordinances.
43. That the Society’s application for special use permit was supported by evidence of its engineer, Todd Stuve of Exxel Engineering.
44. That the Society was deprived of its right under law to present its special use permit application for complete Planning Commission review and consideration.
45. That the Zoning Administrator’s unilateral action in pulling the matter from public hearing while under consideration by the Planning Commission was arbitrary, capricious, and contrary to law.
46. That Georgetown Township Zoning Ordinance does not define or otherwise set forth any

- criteria defining the term “Churches” as that term is used within the ordinance sections.
47. That the Zoning Administrator admittedly used her own “common sense” in deciding to deprive the Society of its right to have its special use permit application reviewed and considered for compliance by the Georgetown Township Planning Commission. (Exhibit 1 - Zoning Administrator May 8, 2002 letter)
 48. That after timely making appeal to the Zoning Board of Appeals, a hearing was scheduled on May 22, 2002, and public comments were taken at the hearing.
 49. That at the hearing before the ZBA on May 22, 2002, engineer Todd Stuve of Exxel Engineering explained, among other things, that the site was 6.1 acres, that it had 66 - foot access to 40th Avenue, and that it would be serviced by water and sewer, and that a cul de sac as shown on the site plan, was approved by the Ottawa County Road Commission. (Exh. (4)- Zoning Board of Appeals – “ZBA” - Minutes)
 50. That engineer Todd Stuve of Exxel Engineering further explained on behalf of Plaintiff/Appellant that the proposed church building would have, among other things, a sanctuary with a 60 person seating capacity. (Exhibit 4 – “ZBA” - Minutes)
 51. That engineer Todd Stuve of Exxel Engineering further explained on May 22, 2002, that the church ministry is a specialized one, that the site is a wooded lot and that the Society is making every effort to minimize the removal of trees to benefit both the proposed church and the surrounding neighbors. (Exhibit 4 – “ZBA” Minutes)
 52. That the Society’s representative counsel explained that the approval of the site plan could be made contingent on the completion of the cul de sac already approved in its design by the Ottawa County Road Commission. (Exhibit 4 – “ZBA” Minutes)
 53. That the ZBA received additional information from members of the congregation,

including Attorney David Anderson, who explained in a sworn written statement his membership in attendance with Great Lakes Society for approximately ten (10) years, his Christianity, his Christian minister father, the Society's theological Christianity and its mission practices (Exhibit 5 - May 17, 2002 letter from David Anderson).

54. That at the ZBA hearing on May 22, 2002, the Zoning Administrator acknowledged that Plaintiff/Appellant is a church organization. (Exhibit 4 - ZBA Minutes)
55. That the Zoning Administrator further stated that her "determination was based solely on the fact that from the information obtained and as presented on the site plan the building as proposed did not have the primary use as a place for public worship and was, therefore, not considered to be a church for zoning purposes only." (Exhibit 4 - ZBA Minutes)
56. That the Zoning Board of Appeals took the matter under advisement in order to review the information received on May 22, 2002 until the Next Zoning Board of Appeals meeting.
57. That the ZBA received several additional items of correspondence on behalf of the Society's membership including an item from Sharon Vanderboon, a registered nurse, explaining, among other things, how "Great Lakes Society has been a vital ministry" for those with chemical sensitivities. (Exhibit 5 - letters from Plaintiff/Appellant congregation members and supporters)
58. That several other congregation members presented similar information with regard to the Christian Ministry of Plaintiff/Appellant the Society and its accommodation for those chemically sensitive individuals who otherwise would be disenfranchised from worship due to nausea, headaches, and other physical and emotional symptoms arising from

chemical sensitivities, (*i.e.*, exposure to common place perfumes, body lotions, hair sprays, smoke, etc.) (Exhibit 5 - letters from congregation members and supporters)

59 On May 24, 2002 the Zoning Administrator sent Plaintiff/Appellant a letter revising her determination on the cul de sac issue stating, in part, that if the “Zoning Board of Appeals ultimately determines that your proposal is a church for purposes of the zoning ordinance and the matter proceeds to the Planning Commission for consideration of the special use permit request, any approval by the Planning Commission may be contingent upon you installing the cul de sac or providing financial security for the same...of course, if the Zoning Board of Appeals upholds my determination that your proposed building/use is not a church for purposes of the zoning ordinance, the cul de sac issue would be moot.” (Exhibit 1 - Zoning Administrator correspondence)

60. That in a May 13, 2002 Memorandum to ZBA members, the Zoning Administrator further revealed her personal opposition to the proposed site plan of Plaintiff/Appellant the Society by acknowledging the plan’s compliance with the special use standards in the ordinance relative to the church’s access to 40th Avenue, but questioned whether the additional standard of having “200 feet of width” is met since it was a standard which Plaintiff Applicant the Society had “proposed to meet by extending Royal Oak Court as shown in the attached site plan. “

61. That Defendant/Appellee Georgetown Township, through its Planning Commission or otherwise, could approve a site plan based on certain conditions, such as Plaintiff/Appellant’s follow-through on its proposal to extend Royal Oak Court to the extent necessary.

62. That Defendant/Appellee Georgetown Township often places conditions on proposed site

plans which, if met, will be approved.

63. That the Zoning Administrator's sole basis for rejecting the special use permit application was her "determination... that the proposal is NOT A CHURCH" (Exhibit 1 - Zoning Administrator May 13, 2002 Memorandum to ZBA members).
64. That the Zoning Administrator stated in her May 22, 2002 subsequent Memorandum to ZBA members that she did not question that "Great Lakes Society is a church," but only questioned that "the building as proposed on the site plan is a church," applying her own definitions of the term "church" not otherwise defined in the Zoning Ordinance.
65. That Plaintiff/Appellant the Society is a "church" for purposes of the Georgetown Township Zoning Ordinance.
66. That Plaintiff/Appellant the Society's proposed site plan as submitted to Defendant/Appellee was for the construction of a church building.
67. That the proposed church building is smaller than many other "traditional" church congregation buildings because, in part, it addresses and ministers to the needs of chemical sensitive people who have limited access to public buildings, an admittedly smaller group by percentage and numbers in the general population and worshipping community.
68. That the Society's proposed sanctuary building was designed in part with interests in avoiding destruction of woods, buffer zone from traffic and fumes, a building air filtration for the sanctuary, being energy efficient, low traffic, avoidance of any unnecessary through roads, soundproofing, and other objectives consistent with the Zoning Ordinance requirements for churches in a low residential district.
69. That Defendant/Appellee, through its Zoning Administrator's personal determination of

what constitutes a “church” for purposes of the Zoning Ordinance, questioned such items as the garage space proposed as part of the site plan for Plaintiff/Appellant’s facility, even though many existing and larger churches in and about the community have church buildings and supporting structures to house church vehicles, landscape, snow, and garden maintenance equipment, church maintenance equipment, and related materials for storage within a garage, consistent with objectives of the Zoning Ordinance in a low residential district.

70. That many “churches” in and about the boundaries of Defendant/Appellee Georgetown Township have various facilities in their church buildings beyond a worship sanctuary including such matters as coffee shops, book stores, nurseries, day care centers, food pantries, offices, teaching rooms, classrooms, theaters, concert auditoriums, recreation rooms with pool table and gymnasiums.
71. That Plaintiff/Appellant the Society has designed very carefully a proposed church building in compliance with Georgetown Township Ordinances which meets its objectives of ministering to its congregation members in an adequate and suitable building to accommodate its church services, its members, and the worship and educational objectives of the congregation.
72. That the June 5, 2002 Planning Commission Minutes noted that Plaintiff/Appellant the Society was appealing the Zoning Administrator’s decision, and that no new information was available for it to consider (Exhibit 2 - June 5, 2002 Planning Commission Minutes)
73. That again on June 19, 2002 the Planning Commission noted that Plaintiff/Appellant’s request for permission to build a church under Section 8.3(A) on its property “has been tabled and the applicant is appealing the Zoning Administrator’s decision that the plan is

not a church for zoning purposes.” (Exhibit 2 - Planning Commission Minutes)

74. That in a June 6, 2002 Memorandum to the ZBA regarding the planned June 26, 2002 ZBA appeal meeting, the Zoning Administrator attempted to clarify her position on some points previously expressed, including the fact that the cul de sac on Royal Oak Court is no longer an issue and the issue is only “the Zoning Administrator’s decision that the proposed building on the site is not a church for zoning purposes.” (Exhibit 1 - June 6, 2002 Zoning Administrator Memorandum to ZBA)
75. That the Zoning Administrator stated in her June 6, 2002 Memorandum to the ZBA that she had “determined that the proposed building, as shown on the site plan dated April 16, 2002, is not a church for zoning purposes (and) As the ZBA, your ONLY task in this case is to decide if that determination is correct.” (Exhibit 1 - June 6, 2002 Memorandum to ZBA)
76. That the entire main floor of the proposed building provides a sanctuary for the regular and predominant use of the building as a place for public worship, prayer, study, and meditation.
77. That the remainder of the proposed church building as contained in the site plan and architectural drawings provide additional and necessary space for conducting church related services and ministries including a youth ministry, education, counseling and publishing, typical services provided by churches traditionally.
78. That the Society teaches a perspective on Christ’s life, health and nutrition, and this health ministry is an essential part of its Mission Statement.
79. That Plaintiff/Appellant the Society’s health ministry found support in an IRS 501(c)(3) exemption letter which included by specific reference “your programs on health and

nutrition.” (Exhibit 6 - documents submitted on behalf of Plaintiff/Appellant the Society on October 1, 2002 in its amended application)

80. That the Society’s health ministry includes a very small amount of shelving covering approximately 5% or less of floor space holding various goods for the membership such as supplements, canned goods, pure fruit juices, organic vegetables, fragrance free paper products, soaps and cleaning supplies, and carbon masks that are distributed to Society members. The health ministry is supported by voluntary member donations and is not operated for or at a profit. The general public does not participate in this health ministry.
81. That on June 26, 2002 a hearing was held before the Zoning Board of Appeals reviewing the Zoning Administrator’s determination that the Society’s church building as proposed is not a “church for zoning purposes.” (Exhibit 4 - ZBA Minutes)
82. That information was received by the ZBA from representatives and others on behalf of Plaintiff/Appellant in support of its appeal.
83. That it was moved by a member of the ZBA and seconded by another, to concur with the Zoning Administrator’s decision that the proposal submitted by Plaintiff/Appellant the Society “is not a church for zoning purposes, based on the following: (1) the content of the information supplied with the application at the time the application was made; (2) that an architect’s plan, as well as the supplemental information provided at the ZBA meeting should have been supplied at that time;” (Exhibit 4 - ZBA Minutes).
84. That at the June 26, 2002 ZBA hearing Township Supervisor/ZBA member Jim Holtzluwer challenged Minister John Cheetham on whether he had a degree to counsel people in his congregation, and Minister Cheetham advised directly that he did counseling and was allowed to do so as a minister.

85. That Township Supervisor/ZBA member Jim Holtzluwer further challenged Minister John Cheetham on whether he “charged for the counseling” because he (Holtzluwer) “had evidence that John Cheetham did, in fact, charge for counseling”, though he presented nothing further in support of this statement, even if it may have been meaningful or relevant to the zoning consideration at issue.
86. That Township Supervisor/ZBA member Jim Holtzluwer further challenged or implied that Plaintiff/Appellant the Society charged money to its members for such things as food and/or clothing rather than providing it freely to the needy as other churches did, without any evidence on the record relating to such comments even if they may have been meaningful in some way to the zoning issue at hand.
87. That the ZBA tentatively concurred with the Zoning Administrator’s decision that the proposal as submitted from the Society was not a “church for zoning purposes, based on ...that an architect’s plan, as well as the supplemental information provided at the ZBA meeting should have been supplied at that time...” (Exhibit 4 - ZBA Minutes).
88. That on July 24, 2002 Defendant/Appellee though its ZBA adopted a Resolution with findings of fact “upholding the interpretation/determination of the Township Zoning Administrator that the facility proposed by the Great Lakes Society is not a church for the definitional purposes of the Township’s Zoning Ordinance.” (Exhibit 7 - Transcript of ZBA adoption of Resolution - the “Resolution”)
89. That the ZBA’s Resolution complained in part that while information was submitted with the zoning application “no floor plan was submitted.” (Exhibit 7 - Resolution, page 3)
90. That the Resolution of the ZBA further noted that if Plaintiff/Appellant the Society’s proposal is a church, it can be approved in the LDR zone district as a special land use by

the Township Board upon recommendation of the Planning Commission.” (Exhibit 7 - Resolution page 5)

91. That the Resolution further noted that “if it is not a church, but rather a club, fraternal organization, social facility, commercial enterprise...the facility will not be allowed...” (Exhibit 7 - Resolution)
92. The Resolution further noted that the Planning Commission did not hold a public hearing on the proposed facility “based on the information which has been - - which had been provided by the applicant...” (Exhibit 7 - Resolution)
93. That the Resolution of the ZBA upheld the interpretation/determination of the Zoning Administrator that the Society’s facility “is not a church for purposes of the definitional section of the Zoning Ordinance” (Exhibit 7 - Resolution)
94. That the Resolution of the ZBA acknowledged that the Society is a religion and a church in respect to an organization. (Exhibit 7 - Resolution)
95. That the Resolution of the ZBA, among other things, noted that “the Zoning Ordinance does not define the word church.” (Exhibit 7 - Resolution at page 7)
96. That the Resolution of the ZBA surmised that “to be a church in the customary sense of the term, it must be primarily a place of public worship with a significant sanctuary or common gathering area for worship.” (Exhibit 7 - Resolution)
97. That the Resolution of the ZBA further stated, among other things, that “in order to be a church, the building involved should be regularly and predominantly used as a place for public worship.” (Exhibit 7 - Resolution)
98. That the Resolution of the ZBA further attempted to support its conclusion supporting the

Zoning Administrator's decision that the proposed building is not a church for purposes of the definitional provisions of the Zoning Ordinance by making reference to such purported, unlikely and astonishingly irrelevant comparisons and analogies such as "a large housing facility for the homeless with only a small chapel in back..." and the opening by "Roman Catholic Nuns (of) a bakery store which sells baked goods and religious items and yet has a small chapel in the back..." (Exhibit 7 - Resolution)

99. That notwithstanding substantial evidence supporting Plaintiff/Appellant the Society's proposed construction of a church building for its church services and church congregational membership, and the absence of any evidence supporting the "concerns" and expressed suspicions of Defendant/Appellee Township, the ZBA concluded in its Resolution that it was left with a distinct impression that the proposed use is predominantly commercial health related and/or fraternal in nature." (Exhibit 7 - ZBA Resolution PP 9-10)
100. That further, the ZBA resolved that "the Society is not precluded from re-submitting a modified application with more information which supports its assertion that its proposed facility is a church-a place regularly and predominantly used for public religious worship..and, furthermore, the one year re-submission prohibition would not apply." (Exhibit 7 - ZBA Resolution Page 10)
101. That all of the members of the ZBA supported the motion by ZBA member Upp to support "the interpretation/determination of the Zoning Township Administrator that the facility proposed by the GLS, which is not a church for denominational purposes or zoning purposes." (Exhibit 7 - ZBA Resolution PP 10-11)
102. That lastly, after the motion carried ZBA member Jansma stated again to Society Pastor

John Cheetham at the meeting “as the Resolution stated, you are not precluded from making application-further application and the normal one year re-submission prohibition does not apply. So if you feel that you would want to come back to our next meeting to the Planning Commission or the Zoning Board of Appeals, you are free to do so.” (Exhibit 7 B Resolution)

103. That the Zoning Ordinance does not require that an application for a special land use permit be accompanied by architectural drawings.
104. That notwithstanding the absence of such a requirement, Defendant/Appellee Georgetown Township complained about the absence of floor plans and architectural drawings at various times, partly in support of its decisions and resolutions.
105. That ZBA member Donald Upp stated partly in explanation of the ZBA’s determination that “basically, they did not provide the Zoning Administrator with enough information when they made the application” (Exhibit 3 - copy of news article)
106. That ZBA member Donald Upp reaffirmed the ZBA’s Resolution in his statement that “the society can reapply for a special use permit with sufficient information, including an architect’s plan...”, and reminded that the Zoning Administrator will decide if it should be forwarded to the Planning Commission.
107. That based on the specific invitation of Defendant/Appellee’s ZBA in its July 24, 2002 Resolution for the Society to submit additional information including architectural plans, Plaintiff/Appellant did not appeal the ZBA Resolution but pursued its administrative remedies by expending substantial additional funds for preparation of architectural plans.
108. That Plaintiff/Appellant further expended additional, substantial sums in pursuing a wetlands permit from the State of Michigan, which it subsequently received.

109. That in the interim, Plaintiff/Appellant did attempt to submit additional information on October 1, 2002, at which time the Zoning Administrator in rejecting the submission, suggested that the Society relocate outside of Georgetown Township (Exhibit 8 - Affidavit of paralegal Felicia Kooienga)
110. That on February 18, 2003, Plaintiff/Appellant the Society presented for filing to Defendant/Appellee Township its supplemental application for special land use approval/site plan review with statement of standards to be met in accordance with Section 20.3(A), a site plan prepared by Exxel Engineering, Inc., an architectural floor plan prepared by The Architectural Group, Inc., setting forth the elevations, upper level, and main level floor plans of the Great Lakes Society sanctuary, and a Michigan Department of Environmental Quality permit #02-70-0222-P issued February 4, 2003 to Plaintiff/Appellant. (Exhibit 11 - Supplemental application documents)
111. That when the information was submitted to the Zoning Administrator on February 18, 2003 on behalf of Plaintiff/Appellant pursuant to the earlier invitations of Defendant/Appellee through its Zoning Board of Appeals, the Zoning Administrator stated that the last time it was determined that the application submitted was a business and not a church, and that if the application has not changed, the Township could not accept it. (Exhibit 9 - Affidavit of Timothy Dale De Young)
112. That subsequently, in a letter dated March 11, 2003, the Zoning Administrator sent a 3 page letter to the Society acknowledging receipt of “the revised plans for your application” and further stated, in part, “...it is my interpretation, determination that your current application and proposal is substantially the same as your prior application and proposal from 2002 which was determined not to constitute a “church” for purposes of

the Georgetown Township Zoning Ordinance (the Zoning Ordinance”). (Exhibit 9 - Affidavit of Timothy Dale DeYoung)

113. That, in her March 11, 2003 letter rejecting the additional information and application submitted on behalf of the Society, the Zoning Administrator enumerated six purported reasons, none of which are supported by substantial, competent, and material evidence. (Exhibit 1 - March 11, 2003 letter)
114. That the Zoning Administrator’s determination/interpretation is contrary to law, and contrary to the facts, and in all respects arbitrary, capricious, and contrary to the rights of the Society to proper consideration of its special land use permit, application and plans.
115. That additionally, the Zoning Administrator identified another obstacle in her mind to the Society’s application, being a revision implemented by Defendant/Appellee Township on February 24, 2003 to Section 20.4 (E).
116. That the revision implemented by Defendant/Appellee on or about February 24, 2003 to the standards set forth in Section 20.4 E of the Zoning Ordinance governing churches in residential districts, was referred to by Township Supervisor/ZBA member James Holtvluwer on March 14, 2003 as a new absolute bar to Plaintiff/Appellant’s plan for a church in Georgetown Township. (Exhibit 9 - Affidavit of Timothy Dale De Young)
117. That the implementation of the revision in Section 20.4 (E) of the Ordinance on or about February 24, 2003, demonstrates Defendant/Appellee Township’s discriminatory and unlawful motives, interpretations, and actions.
118. That the revised Section 20.4 (E) of Georgetown Township’s Ordinance, implemented on or about February 24, 2003, is unconstitutional on its face and/or as applied by Defendant/Appellee Township, its boards and officers against Plaintiff/Appellant

Society.

119. That the revision implemented by Defendant/Appellee on or about February 24, 2003 to the standards set forth in Section 20.4 E of the Zoning Ordinance states as a requirement that at least one property line with a minimum lot width of 200 feet, abuts and has access to a collector, major arterial, or minor arterial street.” (Ordinance, Section 20.4 E of paragraph 104. (Exhibit 12 - March 14, 2003 Appeal Documentation)
120. That Plaintiff/Appellant prepared its claim of appeal to the Georgetown Township Zoning Board of Appeals dated March 14, 2003 and presented it directly to the Zoning Administrator on that date.
121. That Plaintiff/Appellant’s appeal from the Zoning Administrator’s March 11, 2003 adverse interpretation/determination was timely. (Exhibit 12 - March 14, 2003 Appeal Documentation)
122. That at the time the appeal was being presented to the Zoning Administrator for filing the Township Supervisor/ZBA member Jim Hultzluwer approached and joined the Zoning Administrator in verbally rejecting the attempted appeal of the March 11, 2003 interpretation/determination”. (Exhibit 9 - Affidavit of Timothy Dale DeYoung)
123. That the Zoning Administrator stated that At the Zoning Board of Appeals already made a decision on this, you cannot appeal an appeal and Township Supervisor/ZBA member Hultzluwer added “it’s all over.”
124. That further, Township Supervisor/ZBA member Hultzluwer stated again, “it’s all over, you cannot reapply because of the new ordinance.” (Exhibit 9 - Affidavit of Timothy Dale DeYoung.

125. That the Township has discriminated against the Society on the basis of its religious status and character in the imposition and implementation of its land use laws.
126. That, upon information and belief, the Township has not required firm architectural elevations and plans of other, similarly situated applicants.
127. That, upon information and belief, the Township has treated other religious institutions more favorably than the Society in the implementation of its land use laws.
128. That neighbor opposition to the Society's application targeted the Society's religious beliefs and practices and motivated the Township's various decisions and actions, and that ZBA members expressed vocal agreement with such neighbor hostility, but such agreement was not recorded in the ZBA minutes.
129. That one ZBA member, Carl DeVree intimidated and embarrassed one of the Society's supported members by questioning her motives for signing a petition in favor of the Society.
130. That the Township has repeatedly described the Society's health ministry as "commercial" even there is no commercial intent or activity taking place.
131. That, upon information and belief, the Township has denigrated the Society to other land use professionals involved in the Society's application.
132. That the Township questioned Mr. Cheetham's Divinity degree.
133. That the Township suggested that the Society relocate outside of Georgetown Township.
134. That, in addition to the spiritual harm cause to the Society's members, the Township's actions have caused a decline in the Society's membership and donations.
135. That rejection of the Society's application substantially burdens its religious exercise by denying it the ability to operate adequate facilities for its ministry in order to engage in

religious expression, exercise and association.

COUNT I

(Violation of Township Zoning Act)

136. Plaintiff/Appellant incorporates the allegations contained in paragraphs one (1) through one hundred thirty-five (135) as if fully stated herein.
137. Pursuant to the Township Zoning Act a site plan shall be approved by a township if it contains information required by the Zoning Ordinance and is in compliance with the Zoning Ordinance and reasonable conditions imposed by the Township, Planning documents, and other applicable ordinances, as well as state and federal statutes. MCL 125.284, .286 b, .286 d, .286 e.
138. That pursuant to MCL 125.290, the Township Board of Appeals shall hear and decide questions and appeals from any order, ...decision, or determination made by an administrative official...charged with enforcement of an ordinance adopted pursuant to this act.
139. Pursuant to MCL 125.290 appeals may be taken to the Zoning Board of Appeals from decisions made by officials relating to special land use when provided for in the governing ordinance.
140. That Defendant/Appellee Zoning Ordinance, Section 28.10 states in part that “any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance may be made to the Board of Appeals within five (5) days after the date of the Zoning Administrator’s decision which is the basis of the appeal...” (Exhibit 10 -Zoning Ordinance Georgetown Township).

141. That Plaintiff/Appellant the Society complied with Ordinance Section 28.10 when it filed its appeal on March 14, 2003 from the March 11, 2003 “interpretation/determination” of the Zoning Administrator adversely responding to Plaintiff/Appellant the Society’s supplemental application submitted in response to the ZBA’s July 24, 2002 Resolution and findings.
142. That the Zoning Administrator refused to transmit the appeal to the Zoning Board of Appeals, or to schedule a hearing, all of which was contrary to law and demonstrative of invidious, arbitrary, and capricious decision making on the part of Defendant/Appellee and its officers.
143. That pursuant to MCL 125.293 the Township ZBA was required to fix a reasonable time for the hearing of the appeal from the March 11, 2003 interpretation/determination of the Zoning Administrator that the proposed site plan is not a “church” for purposes of the definitional provisions of the Zoning Ordinance; that the additional information provided, including a wetlands permit and architectural drawings was not supplemental information invited by the Resolution of the Georgetown Township ZBA on July 24, 2002, and other matters contained in the Zoning Administrator’s March 11, 2003 adverse determination.
144. That pursuant to MCL 125.293 (a), the decision of the Zoning Administrator in conjunction with the concurrence of Defendant/Appellee Township Supervisor/ZBA member Hultzluwer on March 14, 2003 demonstrates the finality of Defendant/Appellee Township’s decision through its officers and board’s adverse to Plaintiff/Appellant the Society’s property rights and interests entitling Plaintiff/Appellant the Society to its remedy on appeal in Circuit Court.
145. That the decisions of Defendant/Appellee’s ZBA and Zoning Administrator are

erroneous, subject to reversal and/or remand for the following reasons, among others:

- (a) The decisions violate the Constitution and laws of the State;
- (b) The decisions and procedural history demonstrate an improper and unlawful procedure;
- (c) The decisions, determinations/interpretations of Defendant/Appellee Township are not supported by competent, material, and substantial evidence on the record; and
- (d) The decisions, interpretations/determinations of Defendant/Appellee Township through its officers and boards arise from arbitrary standards and caprice, and do not represent the exercise of reasonable discretion granted by law to Defendant/Appellee Township, its boards and officers.
- (e) That the Ordinance Section 20.4 (E), as revised on or about February 24, 2003, is unconstitutional on its face and/or is unconstitutional and unlawful as applied against Plaintiff/Appellant Society.

146. That Plaintiff/Appellant is entitled to a determination reversing the decisions, interpretations/determinations of Defendant/Appellee Township, a declaration that Plaintiff/Appellant the Society's proposed facility is a "church" for all purposes permitted by Defendant/Appellee's Zoning Ordinance, and remanding this matter to the Defendant/Appellee Planning Commission for review of the site plan and other appropriate action, or alternatively upon the Court's finding that the record of the Board of Appeals is inadequate to make the review required according to law, that the matter be remanded for additional evidence to be taken upon further proceedings before the Township offices and boards on any conditions which this Honorable Court deems

proper, and further require that the supplementary record and decision be filed forthwith with the Circuit Court for a review, and further opportunity for the Society to be heard.

COUNT II

Violation of the Religious Land Use and Institutionalized Persons Act of 2000

Discrimination on the Basis of Religion (42 U.S.C. § 2000cc et seq.)

147. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
148. Defendant/Appellee has deprived and continues to deprive Plaintiff/Appellant of its right to be free from religious discrimination, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that discriminates against them on the basis of religion.

COUNT II

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
Equal Terms
(42 U.S.C. § 2000cc et seq.)**

149. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
150. Defendant/Appellee has deprived and continues to deprive Plaintiff/Appellant Society of its right to be free from religious discrimination, as secured by the Religious Land Use and Institutionalized Persons Act, by treating them on less than equal terms as a nonreligious assembly or institution.

COUNT III

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

151. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
152. Defendant/Appellee has deprived and continues to deprive Plaintiff/Appellant of its right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that places a substantial burden on Plaintiffs' religious exercise.

COUNT IV

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
Unreasonable Limitation
(42 U.S.C. § 2000cc et seq.)**

153. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
154. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that unreasonably limits religious assemblies within a jurisdiction.

COUNT V

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

155. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
156. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiffs because of their religious character and by substantially burdening their ability freely to exercise their religious faith.

COUNT VI

**Violation of the Michigan Constitution
Free Exercise of Religion: Art. I, § 4**

157. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
158. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right to freedom of religion, as secured by Article I, Section 4 of the Michigan Constitution, by discriminating against Plaintiff's because of their religious character and by substantially burdening their ability freely to exercise their religious faith.

COUNT VII

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

159. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
160. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right to speak on matters of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiffs based on the religious viewpoint of their expression, by inhibiting their right to freely express their faith to their congregants and to the community, and by applying vague statutes, ordinances and regulations against them.

COUNT VIII

**Violation of the Michigan Constitution
Freedom of Speech: Art. I, § 5**

161. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
162. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant

Society of its right to speak on matters of religion, as secured by Article I, Section 5 of the Michigan Constitution, by discriminating against Plaintiffs based on the religious viewpoint of their expression, by inhibiting their right to freely express their faith to their congregants and to the community, and by applying vague statutes, ordinances and regulations against them.

COUNT IX

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

163. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
164. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right freely to assemble for the purposes of worship, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by prohibiting Plaintiffs from worshipping in a location where similar, but nonreligious, groups would be permitted to assemble.

COUNT X

**Violation of the Michigan Constitution
Freedom of Assembly: Art. I, § 5**

165. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
166. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right freely to assemble for the purpose of worship, as secured by Article I, Section 5 of the Michigan Constitution, by prohibiting Plaintiffs from worshipping in a location where similar, but nonreligious, groups would be permitted to assemble.

COUNT XI

Violation of the United States Constitution

**Equal Protection: Fourteenth Amendment
(42 U.S.C. § 1983)**

167. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
168. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against Plaintiffs in their application of the laws of the State of Michigan and its State and County Codes and Ordinances.

COUNT XII

**Violation of the Michigan Constitution
Equal Protection: Art. I, §§ 2**

169. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
170. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of its right to equal protection of the laws, as secured by Article I, Section 2 of the Michigan Constitution, by discriminating against Plaintiffs in their application of the laws of the State of Michigan and its State and County Codes and Ordinances.

COUNT XIII

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

171. Each of the preceding paragraphs is incorporated by reference as if set forth fully herein.
172. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of due process of law, as secured by the Fourteenth Amendment to the United States Constitution, by denying Plaintiff/Appellant Society use of their property based on an irrational and discriminatory motivation.

COUNT XIV

**Violation of Due Process Rights Under
Michigan Constitution and Laws**

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

174. Defendant/Appellee Township has deprived and continues to deprive Plaintiff/Appellant Society of due process of law, secured by the Michigan Constitution, and its laws, codes, and ordinances governing the ownership and use of property, and protecting Plaintiff/Appellant Society against irrational and discriminatory motivations.

COUNT XV

Superintending Control

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

This Court has jurisdiction to direct a Superintending Control Order to a Municipal Zoning Authority. MCR 3.302

That in conjunction with or as an alternative to Plaintiff/Appellant Society's substantial claim on appeal, control Order directed to Defendant/Appellee Township, its Zoning Administrator, and Zoning Board of Appeals to issue Plaintiff/Appellant Society a permit for the construction of its church facility or alternatively, directing Defendant/Appellee Township, its Zoning Administrator, and Zoning Board of Appeals to take proper administrative action in processing the application for special use permit, scheduling and giving notice of the necessary hearings and public notices, making a record thereof, and fulfilling all of its obligations and requirements under the Georgetown Township Ordinance, and all of the constitutional and statutory laws of the state and federal government.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff/Appellant Great Lakes Society respectfully requests that this Honorable Court grant the following relief under law, and in equity, and any other relief to which it is found to be entitled:

- a. A determination by this Court on review of the record that:
 - The decisions, determinations, and interpretations of Defendant/Appellee Georgetown Township are violative of the Constitution and laws of this State, and of the Federal Government; and/or
 - The decisions and procedural history of Defendant/Appellee Township demonstrate an improper and unlawful procedure entitling Plaintiff/Appellant Society to relief; and/or
 - That the decisions, determinations, and interpretations of Defendant/Appellee Township and its boards and officers are not supported by competent, material, and substantial evidence on the record; and/or
 - The decisions, interpretations, and determinations of Defendant/Appellee Township, its officers and boards, are arbitrary and capricious, and do not represent the exercise of reasonable discretion granted by law to the Township, its boards and officers;
- b. A preliminary and permanent injunction restraining Defendants, their officers, agents, employees, and attorneys from enforcing or endeavoring to enforce the Georgetown Township Ordinance in violation of the procedural and substantive laws of the State and Federal Government, to the detriment of Plaintiff/Appellant Great Lakes Society's right to seek a special use permit for the development and use of its property as a church;
- c. A declaration that Great Lakes Society is a "church" for purposes of the Georgetown Township Ordinance and that the intended church facility as depicted and presented to Georgetown Township, its boards and officials, in site plans and architectural drawings, is in compliance with the Georgetown Township Ordinance governing special land use permits;
- d. An award of compensatory damages and fees against Defendant/Appellee Georgetown Township in favor of Plaintiff/Appellant Great Lakes Society as the Court deems just for the violations of constitutional, statutory, and other law provisions guaranteeing the free exercise of religion, freedom of speech, freedom of assembly, the right to equal protection and due process under the laws, and other expenses incurred by and on behalf of Plaintiff Great Lakes Society as a

result of the Township's Zoning Ordinance or the Township's application and interpretation of same; any and all other relief that this Court may deem just and appropriate under law and in equity.

- e. An Order of Superintending Control directed to Georgetown Township, its Administrative bodies and officials, requiring that prompt action be taken to issue the necessary permits and authorizations to Great Lakes Society as applied for or, directing the Township and its officials to schedule and publicly notice Planning Commission and/or Zoning Board of Appeals hearings in compliance with Plaintiff/Appellant Society's rights under the applicable Ordinance, and federal and state constitutional and statutory laws.

DEMAND FOR JURY

Plaintiff Great Lakes Society hereby demands a trial by jury in this action of all issues so triable.

Respectfully submitted,

MCNEIL KARAFA BATY & SAUNDERS LLP

(s/ John M. Karafa)

4-1-03

DATE

JOHN M. KARAFA (P36007)
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