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Lisa Bailey
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Georgia Way

ZBA-21-29

To: City of Pueblo Zoning Board of Appeals
From: Scott Hobson, Land Use Administrative Official
Date: 11/23/2021
Request: **An Appeal of an Order to remove a Recreation Vehicle from 1906 N Hudson Avenue**
Location: 1906 North Hudson Avenue
Applicant: Reverend Paul Elder
Property Owner: Christian Growth Center Inc.
Legal Description: LOT 2 N HUDSON AVENUE SUBDIVISION
Zone District: B-3 Highway and Arterial Business District
Parcel ID: 430109020
Lot Size: 85,471 SF

BACKGROUND

On May 18, 2021, the Property Owner, Christian Growth Center, Inc. was issued a Notice of Violation and Order to Correct ("Violation Notice") by the City of Pueblo Code Enforcement Unit, 200 South Main Street Pueblo, CO 81003 for the parking, storage and use of major recreation equipment per Section 17-4-27 of the Pueblo Municipal Code. The Violation Notice ordered the Property Owner to bring the violation into compliance by June 16, 2021. The Notice and Order as provided in Section 17-5-22 of the Pueblo Municipal Code may be appealed to the Zoning Board of Appeals. An application appealing the Violation Notice was filed with the Planning and Community Development Department on September 30, 2021.

The Property Owner is appealing the Violation Notice based on their assertion that the Religious Land Use and Institutionalized Persons Act ("RLUIPA") provides the authority under federal law for the Christian Growth Center, Inc. to regularly provide a recreational vehicle pad and utilities hookup in the church parking lot for ministry guests.

ANALYSIS

The section of the Pueblo Municipal Code that pertains to the parking, storage or use of major recreational equipment is listed below:

Sec. 17-4-27. - Parking, storage or use of major recreational equipment.

For purposes of these regulations, *major recreational equipment* is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No major recreational equipment shall be parked or stored on any street or street right-of-way for any period of time other than for the loading or unloading thereof. No such equipment shall be stored on any lot in a residential district in such a manner as to impede visibility of pedestrian or vehicular traffic. No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

(1957 Code, App. A, §6(7); Ord. No. 5771, 9-14-92)

The sections of the Pueblo Municipal Code pertaining to permitted use of land and buildings are listed below:

Sec. 17-4-51. - Permitted use of land and buildings.

Any use of land or structure not authorized herein as a use by right, conditional use, or use by review upon issuance of a Special Use Permit in a designated Zone District is unlawful. Except as otherwise provided, no building permit or certificate of zoning compliance shall be issued for a use not specifically mentioned or described in this Section.

Sec. 17-4-51. (b) - Permitted Uses Table Legend.

- (1) This Section indicates which uses are permitted in each of the zone districts. The Permitted Uses Table contained in Section 17-4-51(c) identifies those uses that are permitted by right, conditionally permitted, use by review and not permitted.
- (2) In terms of any land use defined by these standards, the following shall apply:
 - a. Any use not specifically listed in the Table of Permitted Uses is not allowed unless it is determined by the Administrative Official, upon written application, to be similar to a specific use that is permitted by the Table of Permitted Uses, based on similar situations and relative impacts.

Under the provisions of Title XVII of the Pueblo Municipal Code recreational vehicles used for living, sleeping or housekeeping purposes or only allowed to be used for such purposes within a Recreation Park. The property is within a B-3 Zone District and a Recreation Park is not permitted by right, conditionally permitted, or a use by review.

Sec. 17-5-34. – Variances; conditions governing applications; procedures.

The Zoning Board of Appeals shall have power to authorize upon appeal in specific cases such variance from the terms of this Title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Title would result in unnecessary hardship. A variance from the terms of this Title shall not be granted by the Zoning Board of Appeals unless and until:

. . . .

- (6) Under no circumstances shall the Zoning Board of Appeals grant a variance to allow a use not permissible under the terms of this Title in the district involved, or any use expressly or by implication prohibited by the terms of this Title in said district.

The basis for this appeal is not requesting an interpretation that changes the land uses allowed within the B-3 Highway and Arterial Business District. It is based on their assertion that the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) provides the authority under federal law for the Christian Growth Center, Inc. to regularly provide a recreational vehicle pad and utilities hookup in the church parking lot for ministry guests.

ZONING DISTRICT AND LAND USE

Zone:		Developed with:
North	Central Business (B-4) Zone District	Belmont Retail Center, and other commercial businesses
East	Multiple Residential and Office (R-5) Zone District	Multifamily residential apartment complex
South	Highway and Arterial Business (B-3) Zone District/ Multi Residential and Commercial R-6 Zone District	Auto parts and restaurant commercial businesses
West	Multi Residential and Commercial R-6 Zone District	Hotel

PUBLIC NOTICE

The property was publicly noticed in accordance with Title 17 Section 17-5-33(2) of the City of Pueblo Municipal Code. Specifically, the hearing was published in the Pueblo Chieftain, surrounding property owners within 100 feet of the property were notified by mail, and a sign was placed on the site (See Attachment D). These notices occurred at least 10 days prior to the hearing.

ATTACHMENTS

- A. Site/Aerial Map
- B. Zoning Map
- C. Public Notice Photo
- D. Site Photographs
- E. Application
- F. Applicant Attachments

Exhibit A. Site/Aerial Map



Exhibit B. Zoning Map

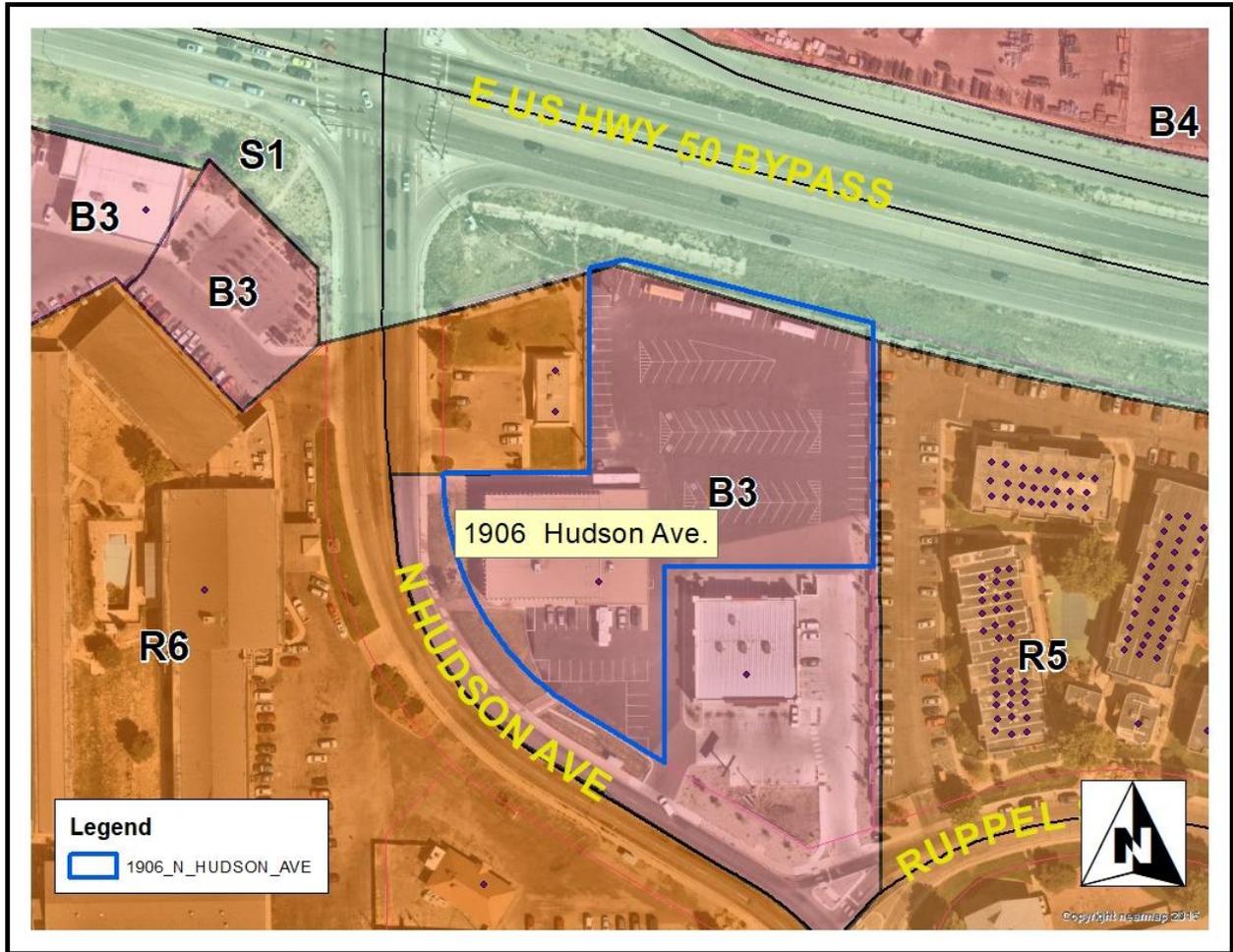


Exhibit C. Public Notice



Exhibit D. Site Photos



Looking Northeast from Hudson Avenue



Looking Northwest from adjacent auto parts store

Exhibit E. Application



city of
PUEBLO
colorado

Planning & Community Development

211 East D Street | Pueblo, Colorado 81003 | Tel 719-553-2259 | Fax 719-553-2359 | TTY 719-553-2611 | www.pueblo.us

Zoning Board of Appeals Application

Please type or print clearly. Illegible applications will not be accepted. Case #:

	Property Owner:	Applicant (If different from property owner):
Contact Info	Name: Christian Growth Center	Name: Reverend Paul Elder
	Address: 1906 North Hudson Avenue	Company: Christian Growth Center
	City, State & Zip: Pueblo, CO 81001	Address: 1906 North Hudson Avenue
	Phone: () 719-924-5155	City, State & Zip: Pueblo, CO 81001
	Email: N/A	Phone: (719) 428-2386 Cell: ()
	Email: andrew@nussbaumspeir.com	
	<i>The applicant will be the primary contact unless otherwise noted.</i>	
Property Info		
	Project Location: 1906 Hudson North Hudson Avenue	
	Legal Description: LOT 2 N HUDSON AVENUE SUBDIVISION FORMERLY #04-301-09-009	
	Parcel No: 430109020	Existing Zone: B-3
	Property Size: 1.96 Acres	
General Information		
	Provide a short description of the proposed request:	
	As described in further detail in the	
	addendum attached to this application, the Chirstian Growth Center has for more than 30 years offered	
	a set of RV hook-ups on its property as part of its hospitality ministry. The City is seeking to enforce a	
	zoning ordinance prohibiting the Church's ministry, which is a clear violation of RLUIPA, a federal law.	
	What is the general use of the property: <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial	
	<input type="checkbox"/> Multi-Family <input checked="" type="checkbox"/> Other Church	
Project Information		
	Scope of work: <input type="checkbox"/> Special Use Permit (Limited Use Permit):	
	<input type="radio"/> Use by Review <input type="radio"/> Home Daycare <input type="radio"/> Home Occupation (Total # of children: _____) <input type="radio"/> Other: _____	
	Variance:	
	<input type="radio"/> Setback <input type="radio"/> Parking <input type="radio"/> Landscape <input type="radio"/> Lighting <input type="radio"/> Height <input type="radio"/> Signs <input type="radio"/> Other: _____	
	<input checked="" type="checkbox"/> Appeal:	
	<input type="radio"/> ZBA Decision (Case Number: ZBA-____-_____) <input checked="" type="checkbox"/> Administrative Official Determination <input type="radio"/> Other: _____	
	<input type="checkbox"/> Other: _____	

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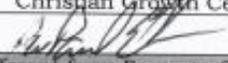
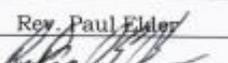
Attachments	Attachment Checklist:	
	<p>The following list of attachments are required to accompany all applications:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> A. Detailed explanation of the request as listed above. Be specific. <input checked="" type="checkbox"/> B. Justification of facts required for the request. Be specific N/A <input type="checkbox"/> C. Site plan, if variance. Must depict requested variance on plan. N/A <input type="checkbox"/> D. Applicable application (i.e. business license, Home Occupation Questionnaire). <input checked="" type="checkbox"/> E. Photographs. <input checked="" type="checkbox"/> F. Additional information that you believe justifies the request. <input checked="" type="checkbox"/> G. Copy of determination letter, if appealing Administrative Official Determination. <input checked="" type="checkbox"/> H. Pueblo County Assessor's Property Information print out www.co.pueblo.co.us 	
Terms	<p>By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:</p>	
	<ol style="list-style-type: none"> 1. Authorized personnel from the City of Pueblo, are hereby granted the right to enter the subject property for the purposes of reviewing and processing the application. 2. There are no known hazards or vicious animals present on the subject property. 3. All requisite fees have been paid to the City of Pueblo. 4. All information in this application, and all attachments, are true and accurate to the best of my knowledge. 5. The City of Pueblo is under no obligation to approve the request contained in this application. No promises of approval are conveyed with the acceptance of this application. 6. It is highly recommended that a licensed surveyor complete a property survey before any construction takes place. The property owner is responsible for any construction that takes place within the boundaries of their property. The city may require any construction built outside of the property legal boundaries or within any setbacks (by intent or error), to be removed at the owners' expense. 	
Signatures	Property Owner	
	Print Name:	Christian Growth Center
	Signature:	 Date: 09/30/2021
	Applicant, if different from Property Owner	
Print Name:	Rev. Paul Elder	
Signature:	 Date: 9/30/2021	

Exhibit F. Applicant Attachments



City of Pueblo Code Enforcement Unit

200 South Main Street, Pueblo, CO 81003



Pueblo Police Department / 200 S. Main Street / Pueblo, CO 81003 / Tel 719-553-2592 / www.Pueblo.us

ZONING NOTICE OF VIOLATION AND ORDER TO CORRECT

CHRISTIAN GROWTH CENTER INC
1908 N HUDSON AVE
PUEBLO, CO 81001-2531

Violation Address: 1906 NORTH HUDSON AVENUE(Parcel 0430109020)

Notice of Violation and Order: Violation of Chapter 17, Zoning regulations, Pueblo Municipal Code, at **1906 NORTH HUDSON AVENUE**, an B-3 Highway and Arterial Business.

Pueblo Municipal Code, Title 17 Zoning
§ 17-4, *Zone Districts; Regulations, Use Index;*
§ 17-5, *Administration;* and,
§ 17-7, *Violations and Penalties.*

NOTICE IS HEREBY GIVEN that the Zoning Official pursuant to the Pueblo Municipal Code has found that property located at the above described address is in violation due to the following:

CONDITIONS AND VIOLATIONS

17-4-27 Parking and Storage of Certain Vehicles RV

Sec. 17-4-27. - Parking, storage or use of major recreational equipment.

For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No major recreational equipment shall be parked or stored on any street or street right-of-way for any period of time other than for the loading or unloading thereof. No such equipment shall be stored on any lot in a residential district in such a manner as to impede visibility of pedestrian or vehicular traffic. **No such equipment shall be used for living, sleeping or housekeeping purposes when parked** or stored on a residential lot, **or in any location not approved for such use.**

17-7-3 Violations and Penalties

Sec. 17-7-3. - Violations and penalties.

(a)Wherever by the provisions of this Title the performance of any act is required, or the performance of any act is prohibited or wherever any regulation, dimension or limitation is imposed on the use or change of use of or upon any land or on the erection or alteration of any structure or the use or change of use of such structure or the uses within such structure, a failure to comply with the provisions of this Title shall constitute a violation of this Title. Every day on which a violation exists shall constitute a separate violation and a separate offense.

(b)It shall be unlawful and shall be deemed a strict liability offense for any owner, lessee, occupant or agent of an owner, lessee or occupant to commit, participate in, assist in, maintain or allow or permit to exist, or to otherwise let happen a violation of this Title on the land or in the structure to which the owner, lessee, occupant or agent has legal or equitable title or right of possession.

(c)Any person violating any provision of this Title shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment.

(d)In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of any provision of this Title, the City or any proper person may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. The remedies herein provided are cumulative and the imposition of any penalty under Subsection (c) above shall not preclude the City or any proper person from instituting any appropriate action or proceeding to require compliance with the provisions of this Title and with administrative orders and determinations made hereunder.

(e)It shall be unlawful and a municipal offense for any person served with an order issued by the Administrative Official pursuant to Section 17-5-1(b) to fail to comply with the order within the time specified in the order. Failure to comply with an order of the Administrative Official as herein provided constitutes a separate and independent violation in addition to and not in substitution of any other violation of the provisions of this Title. It shall be an affirmative defense to a violation of this Subsection (e) that the order has been duly and timely appealed to the Zoning Board of Appeals, and the Zoning Board of Appeals has reversed or modified the order after notice and hearing.

(f)In addition to the penalties provided herein, any person convicted of violating Section 17-4-21, 17-4-27 or 17-4-28 of this Chapter shall be assessed a surcharge for each count of such conviction, to be known as the Keep Pueblo Beautiful Surcharge, in the amount of twenty five dollars (\$25). In the case of an unemancipated minor, the parents or guardians of the minor shall be jointly and severally liable for this surcharge and shall be ordered to pay the same. This surcharge may only be waived by the Court upon a bona fide finding that the defendant is indigent, or in the case of a minor, that the minor's parents or guardians are indigent. This surcharge shall be collected by the Municipal Court and paid into the City's general fund.

You are hereby ordered to bring the violation(s) into compliance by: 06/16/2021. No additional notices concerning this violation will be given. Failure to comply will result in the issuance of a summons to Municipal Court where up to a one thousand dollar (\$1000) fine, and/or one (1) year imprisonment for each day the violation continues may be imposed.

This Notice and Order may be appealed to the Zoning Board of Appeals as provided in Section 17-5-22, of the Pueblo Municipal Code. Such appeal must be filed within thirty (30) days from the date of this Notice and Order and must be accompanied by the required appeal fee of \$1000.00. The appeal fee and completed application must be filed within thirty (30) days of the date of the notice the City's Department of Planning and Community Development, 211 East "D" Street, Pueblo.

Nussbaum Speir Gleason
PLLC
2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80903
www.nussbaumspeir.com



Martin Nussbaum
Main: (719) 428-1919
martin@nussbaumspeir.com

July 29, 2021

Officer Karen Willson (via email: willson@pueblo.us)
Code Enforcement Manager
Pueblo Police Department
200 South Main St.
Pueblo, CO 81003

Re: Christian Growth Center
Notice of Violation (Parcel 0430109020)

Dear Officer Willson:

Our law firm represents the Christian Growth Center located at 1906 North Hudson Avenue and pastored by Rev. Paul Elder. We represent churches and other religious institutions nationwide on a daily basis and, through those representations, are aware of the various laws that protect or accommodate their religious exercise.

We have received a copy of the City's May 18, 2021 Notice of Violation and Order to Correct ("Notice") citing a violation of Pueblo Municipal Code §17-4-27 regarding Parking and Storage RVs.

For over 20 years, Christian Growth Center has provided a ministry of hospitality, especially for evangelists, preachers and other pastors--at the church's present location and its previous location at 2901 Oneal Ave. The church's hospitality for these ministers has regularly included providing an RV pad and utilities hookup in the church parking lot for these minister-guests.

The church's assistance for these ministers is undertaken in accordance with Christian Growth Center's attached policy entitled "Ministry of Hospitality." That policy emphasizes the biblical basis for this ministry, including Timothy 3:2, Titus 1:8, Philemon 1:22, and Luke 10:33. Each of those texts refer to a Christian duty to provide housing, food, and aid to those in need. The policy states, "We reserve the biblical right to supply hospitality, housing, meals, and honorariums to members of the clergy [...] this may take the form of providing rooms, *RV hook-ups*, and any other option that may be available" (emphasis added).

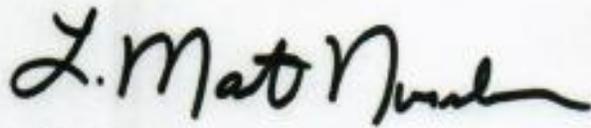
I am writing to request that the City consider the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.* and the cases I reference below and thereafter withdraw its Notice. RLUIPA's purpose is to ensure that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution." *Id.* at § 2000cc(a)(1); *see also Town of Foxfield v. Archdiocese of Denver*, 148 P.3d 339 (Colo. App. 2006) (applying RLUIPA against town's parking ordinance). Enforcement of the Notice and Order against the Christian Growth Center would violate RLUIPA because:

- Such would burden the church's religious exercise of hospitality without a compelling governmental interest advanced by the least restrictive means, 42 U.S.C. § 2000cc(a)(1);
- Such would burden the church's religious exercise based on individualized assessment, *id.* at § 2000cc(a)(2)(C); *Town of Foxfield*, 148 P.3d at 344-45;
- Such would violate RLUIPA's equal terms provision because the City is not enforcing it ordinance with many secular property owners, *id.* at § 2000cc(b)(1);
- Such would constitute discrimination against a religious assembly because the City is not evenly enforcing this ordinance against others, *id.* at § 2000cc(b)(2); and
- Such would unreasonably limit the church's long-standing hospitality ministry, § 2000cc(b)(3).

In addition, enforcement of this ordinance is based on the individualized complaint of a citizen thereafter adopted by the City. The recent unanimous decision of the United States Supreme Court in *Fulton v. City of Philadelphia*, 141 S.Ct. 1868 (June 17, 2021) makes clear that enforcement on the basis of individualized assessment violates the Free Exercise Clause of the First Amendment to the United States Constitution. *Fulton* held that "a law burdening religious exercise must satisfy strict scrutiny if it gives government officials discretion to grant individualized exemptions." *Id.* at 1883.

In making our request that the City, as required by RLUIPA and the Free Exercise Clause, withdraw its Notice, please know that Pastor Paul Elder has great respect for the Pueblo Police Department, that he seeks to conduct the church's business in accordance with the law, and that he teaches his congregation to respect government authority.

Sincerely,



L. Martin Nussbaum
Nussbaum Speir Gleason PLLC

Cc: Rev. Paul Elder (via email: elders2560@gmail.com)
Pastor
Christian Growth Center

Mr. Scott Hobson (via email: shobson@pueblo.us)
City of Pueblo Acting Director of Planning and Community Development
1 City Hall Place
Pueblo, CO 81003

Ministry of Hospitality

Christian Growth Center
2901 Oneal Ave
Pueblo, CO 81005

Let it be resolved, and let the appropriate by-laws reflect (Article Three) that Christian Growth Center Incorporated believes in the biblical doctrine of hospitality and support of the ministry. Timothy 3:2 reads, "A Bishop then must be blameless, the husband of one wife, vigilant, sober, of good behaviour, given to hospitality, apt to teach." Also, Titus 1:8 reads, "But a lover of hospitality, a lover of good men, sober, just, holy, temperate." In Philemon 1:22, the Apostle Paul request that lodgings be provided for him in his journey. Jesus also instructed his disciples on how to provide for these needs in Luke 10:33. We reserve the biblical right to supply hospitality, housing, meals, and honorariums to members of the clergy at the discretion of the Pastor/President. In keeping with American church tradition, this may take the form of providing rooms, RV hook-ups, and any other option that may be available at a given time.

Let the by-laws reflect in Article Three, that section 9 read as written above. Let Section 9 Code of Discipline be change to read "Section 10 Code of Discipline."



ONE CITY HALL PLACE, THIRD FLOOR
PUEBLO, COLORADO 81003

DEPARTMENT OF LAW

TELEPHONE: (719)562-3899

FAX NO. (719)562-3889

August 11, 2021

L. Martin Nussbaum
Nussbaum Speir Gleason PLLC
2 N. Cascade Avenue, Suite 1430
Colorado Springs, Colorado 80903

Re: Christian Growth Center - Notice of Violation (Parcel 0430109020)

Mr. Nussbaum,

Thank you for your letter to Officer Karen Wilson dated July 29, 2021, requesting the City of Pueblo ("City") withdraw the Notice of Violation and Order to Correct ("Notice") dated May 18, 2021. The City must respectfully decline.

Substantial Burden

Your first argument is that enforcement of the Notice would burden the Christian Growth Center's ("CGC") religious exercise of hospitality. The general rule of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") set out in 42 U.S.C.A. § 2000cc(a)(1) is:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

Your argument fails to consider that a "substantial burden" is required prior to a violation of RLUIPA. Any land-use regulation that a church would like not to have to comply with imposes a "burden" on it, and so the adjective "substantial" must be taken seriously lest RLUIPA be interpreted to grant churches a blanket immunity from land-use regulation. *World Outreach Conf. Ctr. v. City of Chicago*, 591 F.3d 531, 539 (7th Cir. 2009). A substantial burden must place more than an inconvenience on religious exercise and for a land use regulation to impose a substantial burden on religious exercise, it must be oppressive to a significantly great extent. *Anselmo v. County of Shasta, Cal.*, 873 F. Supp. 2d 1247, 1258 (E.D. Cal. 2012) (internal citations omitted). That is, a substantial burden on religious exercise must impose a significantly great restriction or onus upon such exercise. *Id.*

Here, although there may be a burden on CGC, it is incidental and does not rise to the level of “substantial.” Pueblo Municipal Code (“PMC”) § 17-4-27 (the “Ordinance”) provides in pertinent part that: “[n]o such [major recreational] equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.” In accordance with PMC §§ 8-8-1 et seq., persons may only live in such vehicles within permitted mobile home parks. A simple internet search shows there are ten to twenty easily accessible mobile home parks in the Pueblo area with reasonable rates. The CGC has ample alternatives in the area that would not violate the Ordinance.

In addition, you note CGC’s policy entitled “Ministry of Hospitality” (“Policy”), which states in part:

We reserve the biblical right to supply hospitality, housing, meals, and honorariums to members of the clergy at the discretion of the Pastor/President. In keeping with American church tradition, this may take the form of providing rooms, RV hook-ups, and any other option that may be available at a given time.

CGC’s Policy notes that one form of hospitality is RV hook-ups. The Ordinance does not prohibit temporary hook-ups of RVs, such as electrical hook-ups to recharge batteries. Instead, the code prohibits living, sleeping, or housekeeping when the vehicle is parked or stored in a non-approved location. The Pueblo Municipal Code does not conflict with CGC’s written policy and does not impose a substantial burden.

The Ordinance also serves the compelling governmental interests of public health and safety, including the prevention and avoidance of crime and the provision of proper sanitation and adequate water. These are best provided by a mobile home park and so the code provisions are also the least restrictive means of furthering the City’s compelling governmental interest.

Individualized Assessment

You next argue that the burden on CGC’s religious exercise is based on individualized assessment. This is not the case.

The individualized assessment element comes in under the scope of RLUIPA. Pursuant to 42 U.S.C.A. § 2000cc(a)(2), the general rule of 42 U.S.C.A. § 2000cc(a)(1) applies in any case in which the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved. Individualized assessment requires a case-by-case evaluation of the proposed activity of religious organizations where officials may use their authority to individually evaluate and either approve or disapprove of churches and synagogues in potentially discriminatory ways. *Town of Foxfield v. Archdiocese of Denver*, 148 P.3d 339, 345 (Colo. App. 2006) (citations omitted). An action constitutes an individualized assessment when the decision is based upon a subjective determination. *Id.*

There is no substantial burden being placed on CGC, and so this issue is outside the scope of 42 U.S.C.A. § 2000cc(a)(1). However, to address the question of individualized assessment, Officer Wilson had no discretion here in whether to issue a citation and the citation is not based on a subjective determination. The Ordinance is one of neutrality and general applicability. It is an evenly applied prohibition, preventing persons from living in major recreational equipment in non-approved locations, which only relies upon objective elements to determine its applicability. The Ordinance applies regardless of whether an organization is secular or non-secular in nature, affords officers no discretion in its enforcement, and does not rely upon subjective determinations. Variances are also not allowed per PMC § 17-5-34(6), eliminating other avenues of discretion.

At the time the Notice was written, the City had already issued 47 citations for the same violation in the preceding months. These 47 citations were all issued to private businesses and individuals and were not in any way discriminately issued against religious organizations. Unlike with CGC's Policy, which allows the pastor to decide to whom he or she will provide hospitality, no such subjective discretion exists for the City and no individualized assessment has occurred.

Equal Terms

Third, you advance the idea that the imposition of PMC § 17-4-27 violates 42 U.S.C.A. § 2000cc(b)(1), which states: [n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. However, as discussed above, this section of the Pueblo Municipal Code is neutral and of general applicability, being cited to 47 times in the months prior to the Notice. CGC is not being targeted in any way and issuance of the Notice is incidental to general enforcement of the Ordinance.

Discrimination

Next, you maintain that the Notice is a violation of 42 U.S.C.A. § 2000cc(b)(2) because of uneven enforcement. This rule reads: "No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." However, as noted multiple times above, enforcement has been widespread and even. The City has not imposed or implemented a regulation that discriminates against any assembly or institution on the basis of religion or religious denomination. Pueblo Municipal Code § 17-4-27 is content and viewpoint-neutral and does not in any way mention religion or a religious denomination.

Unreasonable Limitation

Your final argument that the City's Ordinance unreasonably limits CGC's hospitality ministry in violation of 42 U.S.C.A. § 2000cc(b)(3) also fails. This section of the federal code states that:

No government shall impose or implement a land use regulation that--
(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

The Ordinance only applies to the parking of major recreational vehicles. It in no way totally excludes religious assemblies within the City's jurisdiction. Also, as noted above, the municipal code provision does not conflict with CGC's Policy because both allow temporary RV hook-ups. The City's code only prohibits persons from living in RVs in non-approved locations. There is nothing preventing CGC from performing its hospitality ministry. It may still house guests in the pastor's house or the houses of the congregation, temporarily allow RV hook-ups in line with the Policy and Ordinance, rent space for visitors at a mobile home park, or exercise hospitality through many other available avenues. The Ordinance does not create an unreasonable limitation on religious assembly.

Conclusion

In short, the RLUIPA is not applicable to the present situation. If it were, by asking the City to exercise discretion and dismiss the Notice, you are asking it to make a prohibited individualized assessment. Either way, the City must decline your request and continue enforcement of the Notice. Thank you for your time.

Sincerely,



Trevor D. Gloss
Assistant City Attorney
City of Pueblo Department of Law
One City Hall Place
Pueblo, Colorado 81003
Telephone: (719) 562-3892
TGloss@Pueblo.us

From: [Andrew Nussbaum](#)
To: [Trevor Gloss](#)
Subject: RE: 00041006.000.MSG - [External] Christian Growth Center
Date: Saturday, September 25, 2021 3:37:00 PM

Trevor,

Thank you for letting me know the City's final decision. We'll be in touch about next steps.

Best regards,

Andrew

From: Trevor Gloss <TGloss@pueblo.us>
Sent: Friday, September 24, 2021 1:34 PM
To: Andrew Nussbaum <andrew@Nussbaumspeir.com>
Subject: RE: 00041006.000.MSG - [External] Christian Growth Center

Mr. Nussbaum,

The Christian Growth Center failed to timely appeal the Notice and Order and to exhaust its administrative remedies. The City must follow and enforce its ordinances and cannot show favoritism, allowing one party additional time to appeal when it does not do so for others and in contravention of ordinance. Your request for additional time to appeal the Notice and Order is denied.

When the Christian Growth Center failed to appeal the Notice and Order or rectify the code violation, a Summons and Complaint to Municipal Court was served on the Center. This Summons and Complaint was provided in accordance with law. The Center has made no efforts to rectify the code violation, giving no grounds for dismissal of the Summons and Complaint. The City will not dismiss said Complaint at this time.

Sincerely,

-

Trevor D. Gloss

TREVOR D. GLOSS
Assistant City Attorney
City of Pueblo Department of Law
One City Hall Place
Pueblo, CO 81003

Telephone: 719.562.3892

Fax: 719.544.1007

TGloss@Pueblo.us

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From: Andrew Nussbaum <andrew@Nussbaumspeir.com>

Sent: Monday, September 20, 2021 2:03 PM

To: Trevor Gloss <TGloss@pueblo.us>

Subject: 00041006.000.MSG - [External] Christian Growth Center

External email. Please use caution.

Trevor,

Thanks for chatting with me just now. As I said on the call, Reverend Elder and the Christian Growth Center strongly desire to resolve without litigation the City's concerns regarding the part of the CGC's hospitality ministry that allows folks in difficult times to temporarily park an RV on the church's property. Our sincere hope is we can address the City's concerns about health and safety while allowing the ministry to continue as it has for more than three decades without incident. We would be happy to meet with you and any other City decisionmakers to work toward a solution without involving the courts.

I also asked you to voluntarily dismiss without prejudice the municipal court action you have commenced against the Christian Growth Center while we (1) try to resolve this issue with the City informally and (2) at the same time pursue an appeal to the zoning board of appeals. You asked me to provide you the code provision that permits us to appeal to the zoning board. The notice of citation from Officer Willson states, "This Notice and Order may be appealed to the Zoning Board of Appeals as provided in Section 17-5-22, of the Pueblo Municipal Code." Section 17-5-22(a), in turn, says, "[a]ppeals ... concerning interpretation or administration of this Title may be taken by any person aggrieved or by an officer or bureau of the governing body of the City affected by any decision of the Administrative Official. Such appeal shall be taken within a reasonable time, not to exceed thirty (30) days, by filing with the Administrative Official and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof." You mentioned that more than 30 days have expired since Officer Willson sent us the notice, and I explained that it was our understanding that our negotiations with you and the City were ongoing and thus the City had not made a final appealable decision that would trigger the thirty-day time period.

You said you'd let us know **no later than Wednesday 9/22/21** if the City (1) will voluntarily dismiss without prejudice the municipal-court action while we engage in informal discussions to address the City's concerns and (2) agree to give us thirty days from today (9/20/2021) to decide whether to file

an appeal with the zoning board. We look forward to hearing from you soon.

Best regards,

Andrew

Andrew Nussbaum

Nussbaum Speir Gleason PLLC

O: 719.428.2386

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

<https://nussbaumspeir.com>

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Pueblo County Assessor's Real Property Search

Pueblo County Assessor's Real Property Search

430109020

1906 N HUDSON AVE, PUEBLO, CO 81001-2531

Total Value
\$0

OVERVIEW

KEY INFORMATION

Owner	CHRISTIAN GROWTH CENTER INC		
Mailing Address	1906 N HUDSON AVE 81001-2531 PUEBLO CO		
Legal	LOT 2 N HUDSON AVENUE SUBDIVISION FORMERLY #04-301-09-009		
Neighborhood	7012 - COM-Belmont BD	Class	-
Township	-	Range	-
Section	-	Subdivision	COM-Belmont BD
Tax District	60B		
Analysis Area	0.00		

VALUE INFORMATION

	VALUE	ASSESSED
COM	\$678,929	\$196,890
LAND	\$179,489	\$52,050

IMPROVEMENTS

LAND DETAILS

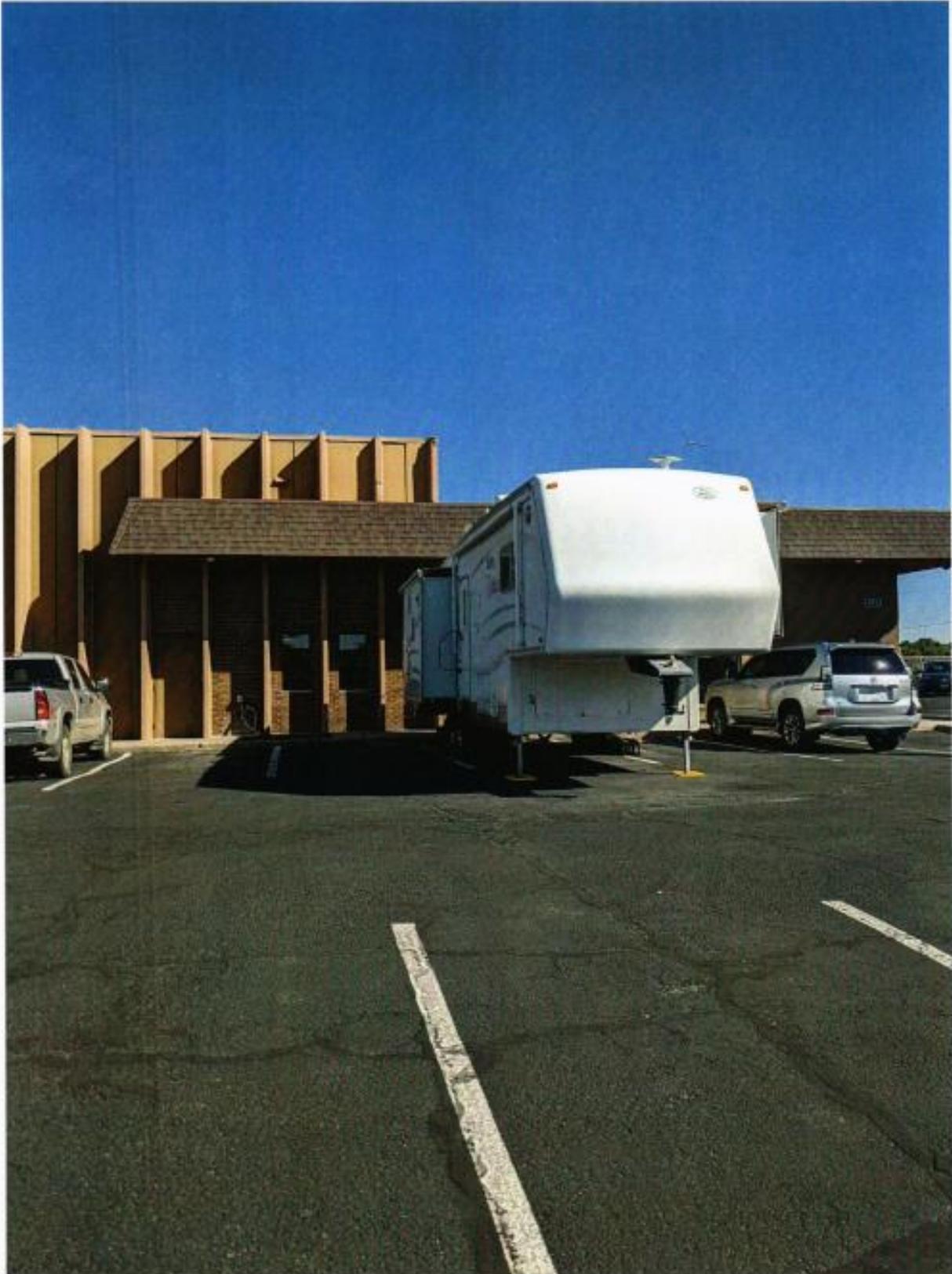
#	AREA	DEPTH	UNIT	ACREAGE	SQUARE FOOTAGE	CLASS	VALUE
1	0	0.00	1.00	1.96	85471.00	Exempt	\$179,489

TRANSFER HISTORY

NAMES ARE NOT NECESSARILY LISTED AS TITLE IS HELD, SOME MAY BE SHORTENED OR ABBREVIATED.
PLEASE CONTACT THE ASSESSOR'S OFFICE AT (719)583-6603 FOR CORRECT OWNERSHIP.

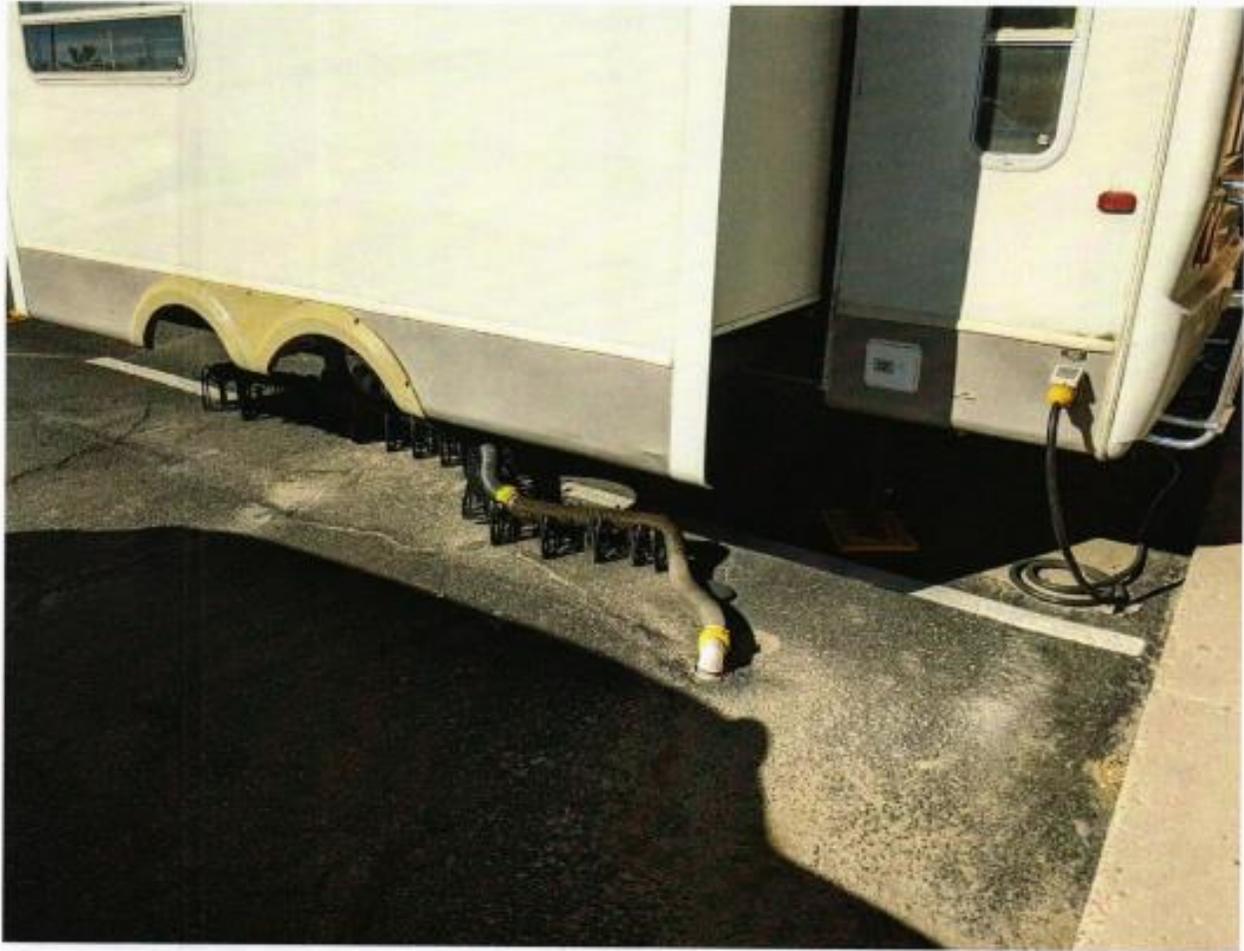
SALE DATE	AMT	RECEPTION	TYPE	GRANTEES	GRANTORS	BOOK / PAGE
11/06/2019	\$0	2158354	UNKNOW DEED TYPE(UNK-DEED)	-	CHRISTIAN GROWTH CENTER INC	-
05/27/2009	\$500,000	1807024	SPECIAL WARRANTY DEED(SWD)	CHRISTIAN GROWTH CENTER INC	BONNYVILLE CONSTRUCTION CO	-







Code compliant electrical hook-up (September 16, 2021)



Code compliant water hook-up (September 16, 2021)

Nussbaum Speir Gleason PLLC
2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80903
www.nussbaumspeir.com



Nussbaum Speir Gleason

Andrew Nussbaum
Main: (719) 428-4937
Direct: (719) 428-2386
andrew@nussbaumspeir.com

September 30, 2021

By Hand Delivery, Fax, and Email

Pueblo Zoning Board of Appeals
211 East D Street
Pueblo, CO 81003

Re: Christian Growth Center's appeal of the City of Pueblo's decision to enforce Pueblo Municipal Code § 17-4-27 against the Christian Growth Center's RV hospitality ministry in violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, et seq. and the Constitution

Messrs. Lujan-Slak, Castellucci, and Way:

The Christian Growth Center (the "Church") is a bible-based Pentecostal church in east Pueblo. The Church and its pastor Reverend Paul Elder have been ministering to the people of Pueblo for decades. As part of its hospitality ministry, the Church provides a set of RV hook-ups free-of-charge to traveling evangelists, missionaries, and ministers who have fallen on hard times. On September 13, 2021, the City of Pueblo began a municipal-court enforcement action against Reverend Elder and the Church's hospitality ministry for violation of Pueblo Municipal Code § 17-4-27. That provision prohibits RV's from being "used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use."

Enforcement of § 17-4-27 against the Church violates the Religious Land Use and Institutionalized Persons Act ("RLUIPA" or the "Act") and the United States Constitution. RLUIPA prohibits enforcement of land-use regulations, like § 17-4-27, that impose a substantial burden on a church's ministry, such as the hospitality ministry of the Christian Growth Center. The Zoning Board is dutybound under Article VI of the Constitution to comply with RLUIPA, regardless of any local ordinances to the contrary. Failure to comply with RLUIPA will expose the City to substantial liability for attorneys' fees and costs. The Church thus timely appeals the City's interpretation and enforcement of § 17-4-27, requests the Board grant the Church an exemption under RLUIPA, and requests a hearing before the Board as is its right under the City Code.

1. Christian Growth Center's hospitality ministry

For more than thirty years, the Christian Growth Center and its pastor Reverend Paul Elder have ministered to the people of Pueblo through its hospitality and other ministries at its current location on North Hudson Avenue and at its previous location on 2901 O'Neal Avenue. As part of its hospitality ministry, the Church feeds the homeless of Pueblo, houses Pueblo's homeless in hotels throughout the City, and offers

portable showers to the homeless in the Church's parking lot. The Church believes this ministry of hospitality is central to its living, bible-based faith.

Another part of its hospitality ministry is housing, feeding, and otherwise helping traveling preachers, evangelists, and missionaries. To that end, the Church has adopted a policy on hospitality to clergy. The policy memorializes the church's "biblical right to supply hospitality, housing, meals, and honorariums to members of the clergy," which "may take the form of providing rooms, RV hook-ups, and any other option that may be available."

The aspect of its hospitality ministry to provide RV hook-ups is the crux of the zoning dispute between the Church and the City of Pueblo. The Church offers, free-of-charge, a single set of RV hook-ups in its parking lot to traveling ministers, missionaries, and others. The Church has offered this ministry for the last thirty years—first at the O'Neal Avenue location and then for the last eleven years at its North Hudson Avenue location. Not once in the thirty years preceding May 18, 2021 had the City noticed a violation of its zoning ordinance, Pueblo Municipal Code § 17-4-27, regarding live-in RV's at the Church.

The hook-ups, which include electric, sewage, and water, were present at the building when the Church purchased the building in 2009. The hook-ups have been approved by the City. And they are in good working order. They are safe, clean, and reliable. The Church would welcome further inspection from the City to confirm this and to ameliorate any concerns the City has regarding health or safety.

Numerous people connected with the Church have used its RV ministry over the years. The typical stay is less than two weeks. One woman connected with the church, Sister Carol Lee, used the hook-ups when her and her late husband fell on hard times and needed a place to stay. For Sister Lee and her husband, the ministry was a literal Godsend. Her husband who was unemployed and undergoing treatment for end-stage diabetes at the time could not afford the \$700-\$800 per month that City-allowed RV parks charge. Without the help of the Church's hospitality ministry, the Lees would have had no place to stay to get back on their feet. Reverend Paul Hicks currently uses the Church's RV hook-ups. Reverend Hicks is the principal of the Church's on-site school. His RV, like all those that have come before it, is clean, safe, and sightly. See **Exhibit F**, pictures of Rev. Hicks's RV (Sept. 16, 2021).

All to say, the church and Reverend Elder take seriously St. Paul's injunction, "[d]o not forget to show hospitality to strangers, for by so doing some people have shown hospitality to angels without knowing it." *Hebrews 13:2* (NIV). The Church shows hospitality everyday—to the people of Pueblo, and to ministers and missionaries who need a clean and safe place to park their RV. The Church's RV hospitality ministry is essential to its religious identity and mission.

2. RLUIPA

2.1. Land-use laws that impose a substantial burden on religious exercise violate RLUIPA.

The Religious Land Use and Institutionalized Persons Act (RLUIPA or the "Act") is a federal law Congress enacted to restore in part the original meaning of the First Amendment's guarantee of "free exercise" of religion. *City Walk - Urb. Mission Inc. v. Wakulla Cty. Fla.*, 471 F. Supp. 3d 1268, 1280 (N.D. Fla. 2020). Congress enacted RLUIPA to ensure churches and believers would be exempt from generally applicable land-use regulations absent a compelling municipal need that cannot be implemented in any other

way. *Id.* Governmental bodies charged with implementing the Act, like this Board, must interpret the Act's terms "in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the Act] and the Constitution." 42 U.S.C. § 2000cc-3(g).

Among other things, RLUIPA prohibits municipalities like Pueblo from "impos[ing] or implement[ing] a land use regulation," such as a zoning ordinance, "in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution," like the Christian Growth Center. 42 U.S.C.A. § 2000cc(a); *see also id.* § 2000cc-5 (4)(a)(i)(defining government entities subject to RLUIPA); *id.* § 2000cc-5(5) (defining land-use regulation). The key phrases of the statute to understand are *substantial burden* and *religious exercise*.

"Substantial burden" means "a regulation that significantly inhibits or constrains conduct or expression that constitutes an exercise of religion." *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs. of Boulder Cty., Colo.*, 481 F. Supp. 2d 1213, 1223 (D. Colo. 2007). A substantial burden exists when a municipality puts "substantial pressure on an adherent to modify his behavior and violate his beliefs." *Id.*

Congress chose to define the next key phrase of RLUIPA—"religious exercise"—as expansively as it could. "Religious exercise" means "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(a). The definition of religious exercise enacted by Congress, and binding on this Board, includes the "conversion of real property for the purpose of religious exercise" by the "entity that uses or intends to use the property for that purpose." *Id.* § 2000cc-5(7)(b).

RLUIPA is thus not limited to substantial burdens on *fundamental* religious practices (say, the Eucharist for a Roman Catholic or daily prayer for a Muslim). It instead prohibits regulations that significantly inhibit *any* exercise of religion—whether or not essential to a church's worship. *Grace Church of Roaring Fork Valley v. Bd. of Cty. Com'rs of Pitkin Cty., Colorado*, 742 F. Supp. 2d 1156, 1162–63 (D. Colo. 2010).

Several recent examples (there are many more) show how broadly RLUIPA is applied—and how it must be construed by the Board in this appeal:

- A federal court in Florida ruled that a church's use of a three-bedroom home as a transition house for registered sex offenders constituted "religious exercise" because God had called the church to minister to sex offenders, and so a city's attempt to enforce its zoning code to prohibit the church's sex-offender ministry was a "substantial burden" on its religious exercise in violation of RLUIPA. *City Walk - Urban Mission Inc. v. Wakulla County Florida*, 471 F. Supp. 3d 1268 (N.D. Fla. 2020).
- A federal court in Minnesota ruled that RLUIPA exempted a church ministry that ran a daytime shelter to the homeless in the church's basement from a 20-guest daily limit on homeless shelters imposed by the City's zoning code. *First Lutheran Church v. City of St. Paul*, 326 F. Supp. 3d 745, 753 (D. Minn. 2018).
- And a federal court in Manhattan ruled that a city's wetlands ordinance imposed a substantial burden on Orthodox and Hasidic Jewish congregations' religious exercise in violation of RLUIPA because the ordinance operated to ban the congregation from constructing a rabbinical college on a congregation-owned site. *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY*, 280 F. Supp. 3d 426 (S.D. N.Y. 2017).

In short, a city violates RLUIPA when it attempts to enforce a zoning ordinance that will prohibit the ministry of a church, regardless whether the ministry is central to the church's beliefs.

You should be aware that RLUIPA permits a city like Pueblo to defend its decision to burden a religious ministry on the ground that its land-use regulation is the "least restrictive means" to achieve a "compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). But this standard of proof is as onerous as it comes in the law. A City cannot assert generalized interest (public health or safety, for example); it instead must prove it has an interest of the highest order in an enforcement of the regulation at issue against the specific church challenging the ordinance. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430 (2006). It is the City's burden, in other words, to show that there is no possible exemption or accommodation it can make for the church before it; not that it has a compelling interest in public health or safety, generally.

2.2. Land-use laws that are imposed unequally against ministries violate RLUIPA.

RLUIPA likewise preempts local land-use regulations that are "impose[d] or implemente[d] . . . in a manner that treats" religious entities or persons "on less than equal terms with a nonreligious" entity. 42 U.S.C. § 2000cc(b)(1). Otherwise neutral laws (*i.e.* laws that do not single out religious institutions) can violate RLUIPA's equal-terms provision if a city does not enforce the neutral law against similarly-situated persons or entities. *Thai Meditation Ass'n of Alabama, Inc. v. City of Mobile, Alabama*, 980 F.3d 821, 833 (11th Cir. 2020). For example, unequal application and enforcement of a zoning code constitutes a violation of RLUIPA. *Muslim Community Ass'n of Ann Arbor and Vicinity v. Pittsfield Charter Tp.*, 947 F. Supp. 2d 752 (E.D. Mich. 2013).

3. RLUIPA exempts the Christian Growth Center from the terms of § 17-4-27.

On September 13, 2021, the City began an enforcement action in Pueblo Municipal Court against the Church for violation of § 17-4-27. § 17-4-27 prohibits RV's from being "used for living, sleeping or house-keeping purposes when parked or stored on a residential lot, or in any location not approved for such use." If the Church and Pastor Elder's hospitality ministry is found in violation of § 17-4-27 they are liable for up to a \$1,000 fine or one-year imprisonment *per day of violation*. Pueblo Mun. Code § 17-7-3. Enforcement of § 17-4-27 violates RLUIPA's clear command that churches are exempt from land-use regulations that burden their religious exercise and enforced unequally.

3.1. The City has violated RLUIPA.

First, the City's enforcement of § 17-4-27 against the Church's hospitality ministry imposes a substantial burden on the Church's religious exercise in violation of RLUIPA. Remember that under RLUIPA "substantial burden" simply means a significant impediment. The City has filed an enforcement action that, if successful, would force the Church to stop its RV ministry and would expose the Church as well as Reverend Elder to \$1000 in fines per day of violation or one year in prison per day of violation. Recall, too, that RLUIPA defines "religious exercise" expansively to mean any exercise of religion, regardless of whether it's a core denominational belief. The Church's RV ministry clears this low bar. Pastor Elder believes living according to *Hebrews* 13:2 and countless other scriptural commands requires his congregation

to minister to evangelists, preachers, missionaries, and other people connected to the ministry by letting them use the Church's single set of RV hook-ups free of charge.

Second, the City's enforcement of § 17-4-27 treats the Church unequally with other non-religious institutions in violation of RLUIPA's prohibition against unequal treatment of religious institutions and people. Within a mile radius of the Church's Hudson Avenue address there are tens of live-in RV's in areas not zoned for them. Indeed, in the Val-U Inn and Suites across the street from the Church there was as recently as September 16, 2021 a RV being lived in in violation of § 17-4-27. The City has, in other words, singled out the Church, but not the many non-religious live-in RV's near the Church, in violation of RLUIPA's equal-terms provision.

Third, the City has no compelling interest in enforcing § 17-4-27 in this case. The City claims that enforcement of § 17-4-27 against the Church's hospitality ministry serves its interest in public health and safety. Remember, however, that a generalized interest like public health or safety is not sufficient to overcome RLUIPA. The City must instead articulate a compelling interest as to enforcement of § 17-4-27 *specifically* against the Church. Pueblo has not done so; nor can it. The Church's RV hook-ups are safe and sanitary—they are City-approved. And the RV's that have used the site are safe and sanitary as well. The Church's ministry poses no danger to the safety or health of Pueblo's citizens. Indeed, the City's interest in enforcement of § 17-4-27 against the Church is so minimal that the City waited thirty years to notice a violation.

Fourth, even if the City could articulate a compelling interest for enforcement of § 17-4-27 against the Church's hospitality ministry, the means its chosen to do so—an outright ban—is not the least-restrictive means to serve the City's interests in health and safety. At a minimum, the City could inspect the Church's RV hook-ups, ensure they comply with the City's standards for health and safety, and permit the Church to continue its ministry.¹ The Church welcomes further inspection to ameliorate any concerns the City has.

3.2. This Board must grant an exemption to the Christian Growth Center.

Article VI to the United States Constitution says that the "Constitution and the laws of the United States" are "the Supreme Law of the land." What Article VI means in practical terms for this Board is its members must comply with RLUIPA, a federal law, if RLUIPA conflicts with enforcement of City zoning ordinances. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1242 (11th Cir. 2004). That is precisely the case here. The City has violated RLUIPA by enforcing § 17-4-27 against the Church's hospitality ministry. This Board is dutybound to comply with RLUIPA and must grant the Church an exemption from § 17-4-27. That is, it must either order the City to not enforce § 17-4-27 against the Church, or it must

¹ For similar reasons, the City's decision to enforce § 17-4-27 against the Christian Growth Center's hospitality ministry violates the Free Exercise Clause of the First Amendment. The City's variance and special-use permit programs create a system of exemptions that discriminate against religious entities and individuals like the Christian Growth Center and Pastor Elder. The City's disparate enforcement of § 17-4-27 likewise demonstrates animus toward religion in violation of the First Amendment.

The City's decision to enforce § 17-4-27 against the Christian Growth Center but not similarly situated secular institutions and individuals also violates the Equal Protection Clause of the Fourteenth Amendment.

craft a reasonable accommodation for the Church that does not burden its religious exercise. The Church welcomes an open dialogue with the Board and the City on how best craft the terms of that exemption.

If the Board does not grant the Church an exemption, the City will be liable for a substantial attorneys' fees and damages awards in subsequent litigation. *See* 42 U.S.C. § 1988 (b) ("In any action or proceeding to enforce . . . the Religious Land Use and Institutionalized Persons Act of 2000 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs).

4. The Church's appeal is timely.

The City Attorney will likely advise the Board that the Church's appeal is untimely. That is incorrect. The City did not inform the Church of the City's final decision regarding RLUIPA and § 17-4-27 until September 24, 2021.

4.1. The Church negotiated in good faith with the City.

On May 18, 2021, Officer Karen Willson, the Pueblo Police Department's code enforcement manager, notified the Christian Growth Center that its RV hospitality ministry was in violation of Pueblo Municipal Code § 17-4-27. *See Exhibit A*, Notice of Violation from K. Willson (May 18, 2021).

On July 29, 2021, the Church, through its attorneys, responded by letter to Officer Willson that, as applied to the Church, § 17-4-27 violated the RLUIPA and the First Amendment. *See Exhibit B*, Letter from M. Nussbaum to K. Willson (July 29, 2021). Among other things, the Church explained that enforcement of § 17-4-27 imposed a substantial burden on its religious exercise in violation of RLUIPA, and that the City's policy of individualized exceptions and uneven enforcement violate the Constitution and RLUIPA.

On August 11, 2021, Assistant City Attorney Trevor Gloss, the Administrative Official tasked with interpretation of § 17-4-27 in this case, replied to the Church. *Exhibit C*, Letter from T. Gloss to M. Nussbaum (August 11, 2021). Mr. Gloss denied that enforcement of § 17-4-27 imposed a substantial burden on the Church's hospitality ministry and stated the City's preliminary determination that it would enforce § 17-4-27 against the Church's ministry.

On August 24, 2021, the Church, through one of its attorneys, Martin Nussbaum, called Mr. Gloss. The Church expressed its strong desire to resolve the dispute informally and indicated that Andrew Nussbaum, another of the Church's lawyers, would contact Mr. Gloss at the end of the second week of September to schedule a time for a sit-down meeting. Mr. Gloss agreed to continue the negotiations with the Church until then.

On September 9, 2021, Andrew Nussbaum called Mr. Gloss. He asked to meet Mr. Gloss in-person to further discuss the case. Mr. Gloss refused. Mr. Gloss agreed, however, to continue informal discussions between the Church and the City until the next week.

Despite their agreement to continue discussions and without first informing the Church, on September 13, 2021, Mr. Gloss and the City of Pueblo filed an enforcement action against the Church for violation of § 17-4-27. *Exhibit C*, Summons to Christian Growth Center. The summons for the action listed a violation

date of September 1, 2021. Simultaneous with filing this appeal, the Church has moved to stay the enforcement action under Pueblo Municipal Code § 17-5-23.

On September 20, 2021, the Church through its attorney Andrew Nussbaum called Mr. Gloss. Mr. Nussbaum again reiterated the Church's strong desire to resolve the case informally without litigation. See **Exhibit D**, Email from T. Gloss to A. Nussbaum (Sept. 24, 2021). Mr. Gloss indicated that was a possibility but said he would need until the end of the week to discuss the Church's request with City officials. *Id.* Mr. Gloss did not tell Mr. Nussbaum that the City had begun an enforcement action against the Church or that the City had reached a final decision on its interpretation of RLUIPA and § 17-4-27.

On September 24, 2021, the City, through Mr. Gloss, informed the City of its final decision regarding RLUIPA and § 17-4-27. See **Exhibit D**. Mr. Gloss explained that the City would make no effort to accommodate the Church's hospitality ministry and that it would proceed with enforcing § 17-4-27 against the Church and Reverend Elder. Mr. Nussbaum responded the next day thanking Mr. Gloss for informing the Church of the City's "final decision" regarding its interpretation of § 17-4-27 and RLUIPA. *Id.*

4.2. The Church's appeal was filed within thirty days of the final determination of the City.

Pueblo Municipal Code § 17-5-22 says that "[a]ppeals to the Zoning Board of Appeals concerning interpretation or administration of this Title may be taken by any person aggrieved . . . by any decision of the Administrative Official. Such appeal shall be taken within a reasonable time, not to exceed thirty (30) days, by filing with the Administrative Official and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof." See also *id.* § 17-2-1(40)(defining "person aggrieved" to mean "any unsuccessful applicant for a particular interpretation or administration of this Title or for a variance or special use permit or zoning or rezoning, or any officer or Administrative Official of the City affected by any final action."). The Administrative Official tasked with interpretation and administration of § 17-4-27 against the Church was Mr. Gloss. Mr. Gloss was the City's point person for negotiation with the Church, and the Official who began the enforcement proceedings against the Church in Municipal Court. See Pueblo Mun. Code § 17-2-1(7)("Administrative Official" means the City official tasked with "administer[ing] and enforc[ing]" the zoning code.). He notified the Church of the City's final decision regarding its "interpretation" of § 17-4-27 and RLUIPA by email dated September 24, 2021. See **Exhibit D**. The Church responded to Mr. Gloss the next day thanking him for providing the City's "final decision." *Id.* The Church's appeal, which was served on the Board, Mr. Gloss, and Officer Willson on September 30, 2021, is within the 30-day time period permitted for appeals in § 17-5-22.

The City will likely advise the Board that the Church's time to appeal ran on June 16, 2021, the deadline for appeal listed in Officer Willson's notice of violation to the Church. See **Exhibit A**. That is incorrect for three independent reasons.

First, the notice of violation provided the Church with inconsistent guidance. It listed three possible dates for appeal: "6/16/2021," only twenty-nine days from the alleged date of violation (May 18); "thirty (30) days from the date of this Notice" (June 17, 2021); and the time for appeal in "Section 17-5-22 of the Pueblo Municipal Code." **Exhibit A** at 2. Of those three options, only Section 17-5-22 has the force of law, and so the Church consulted it and followed its terms. Section 17-5-22 does not start the time for appeal from the date of a notice of violation. It instead envisions a collaborative process of negotiation with City

officials and only starts the time for appeal from the date an Administrative Official makes his “decision” regarding the “interpretation” of the zoning code to the “person aggrieved.” That date was September 24, 2021 when Mr. Gloss emailed Mr. Nussbaum.

Second, at no point before September 24, 2021 did Mr. Gloss inform the Church that the City had made its final decision or that if it filed an appeal that appeal would be untimely. He instead negotiated with the Church. Consider the timeline above. When Mr. Gloss responded on behalf of the City on August 11, 2021, he did not inform the Church that his letter was purely a matter of courtesy because, in fact, the City’s time for appeal had run. He instead engaged the Church’s arguments. Nor did Mr. Gloss inform the Church’s attorneys by phone on August 24, September 9, or September 20 that the City had reached its final decision or that the Church’s time to appeal had run. Just the opposite—until September 24, 2021, Mr. Gloss held the City out as engaging in good-faith negotiations with the Church; not having reached a final decision; and representing that more discussions were warranted. The time for appeal was thus, at a minimum, equitable tolled until September 24, 2021 when Mr. Gloss informed the Church the City’s final decision and, for the first time, that the Church’s appeal was untimely. And the City is equitably estopped from taking any other position.

Third, the Church’s appeal is timely under the only possible alternative triggering dates. Section 17-5-22 requires three conditions (1) a final decision of an Administrative Official, (2) regarding the interpretation of Pueblo’s zoning code, and (3) a person aggrieved by that decision. The Church was not aggrieved by any such interpretation at least until the City made a final decision on RLUIPA and § 17-4-27 (September 24); the date the City took steps to enforce § 17-4-27 by issuing a summons to the Church (September 13); or at earliest, the date the City listed as the day of violation in its summons (September 1). The Church’s appeal is timely under any of those dates.

5. The Board has jurisdiction over the Church’s appeal.

The City Attorney might likewise advise the Board that it lacks power to hear the Church’s appeal. That is also incorrect.

The Pueblo Municipal Code gives this Board the “power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrative Official in the enforcement of this Title.” Pueblo Mun. Code § 17-5-31. This Board likewise has the power to hear appeals “concerning interpretation or administration of” by any “person aggrieved” by an enforcement decision of the “Administrative Official” tasked with enforcing Pueblo’s zoning code. *Id.* § 17-5-22. And in deciding appeals, the Code empowers the Board to grant a “variance from the terms of this Title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Title would result in unnecessary hardship.” *Id.* § 17-5-34.

The City has erred in its interpretation and enforcement of § 17-4-27 against the Church. A literal enforcement of the terms of the Zoning Code would violate RLUIPA and the Constitution. The Board thus has jurisdiction under Section 17-5-31, 17-5-22, and 17-5-34. But even if those provisions did not give the Board power to hear the Church’s appeal, Article VI to the Constitution does. As explained above, this Board must comply with RLUIPA regardless of any local ordinances to the contrary.

6. The Church has attached the requisite attachments and fees, and requests a hearing as is its right.

The Church has attached all documents required for an appeal to the Zoning Board of Appeals:

- The Zoning Board of Appeals Application form;
- The \$1,000 appeal fee as indicated in Officer Willson's notice of violation and in the Fee Schedule on Pueblo's website, *see* <https://www.pueblo.us/DocumentCenter/View/5028/Fee-Schedule-5-19-2017?bidId=>;
- **Exhibit A**, the notice of violation from Officer Willson;
- **Exhibits B-D**, correspondences demonstrating the Church's good-faith negotiations and the City's final decision on September 24, 2021;
- **Exhibit E**, the Pueblo County Assessor page for 1906 N. Hudson Avenue; and
- **Exhibit F**, pictures of the RV currently parked at the Church and the hook-ups.

Should you need any further information, please let me know.

Finally, the Church requests a hearing as is its unconditional right. Pueblo Municipal Code § 17-5-22(b) says, "the Zoning Board of Appeals shall fix a reasonable time for the hearing of appeal, give fifteen (15) days' public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney." This provision is mandatory: the Board "*shall* fix a reasonable time for the hearing of appeal." *Id.* (emphasis added). Nor is it sufficient reason to refuse the Board a hearing on the ground its appeal is untimely under § 17-5-22(a). That provision is non-jurisdictional, meaning that even if the Board incorrectly believes the Church's appeal is untimely it still must hold a hearing on the Church's request for non-enforcement.

Best regards,



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Cc: Trevor Gloss, Assistant City Attorney