

# Agenda Report

**TO:** CITY COUNCIL **DATE:** October 22, 2001  
**FROM:** CITY MANAGER  
**SUBJECT:** CALL FOR REVIEW OF ZONING ADMINISTRATOR'S INTERPRETATION NO. 18

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**CITY MANAGER'S RECOMMENDATION:** It is recommended that the City Council:

1. Acknowledge that this action is categorically exempt from CEQA; and
2. Uphold the decision of the Zoning Administrator that the First Summit Evangelical Church at 889 North Fair Oaks Avenue (previously known as Contending for the Souls) did not establish itself as a legal non-conforming Religious Assembly use; and
3. Require relocation of the religious assembly use, within 120 days, to a location where such a use is permitted/conditionally permitted; or if the Fair Oaks/Orange Grove Specific Plan is adopted within 120 days, obtain a conditional use permit within 90 days after the adoption of the Specific Plan to permit the use at the current location. If adopted, the Specific Plan will conditionally permit religious assembly uses in this proposed commercial/light industrial district.

**BACKGROUND:**

In April of 2000, the Code Enforcement Section received a complaint regarding the operation of a church at 889 North Fair Oaks Avenue in the IG (General Industrial) zoning district. A religious assembly use is conditionally permitted in the IG zoning district. The church is located in a two-story storefront structure south of Mountain Street. One month later the Zoning Administrator met with the pastor of the church, Dr. Benson who provided a letter stating that the church (Contending for the Souls) has been in existence since 1974 and in 1999 he took over the church as the Pastor. The Zoning Administrator sent a letter stating that the church had maintained its legal nonconforming status based on the letter from Pastor Benson and current utility records. Once the Zoning Administrator's determination was made, staff received phone calls from surrounding business owners stating that the information staff used to make the determination was not correct. They stated that the previous church had ceased operating as a church over a year ago. Staff conducted additional research as reflected on the timeline (Attachment C) and a second letter was sent from the Zoning Administrator stating that based on new information the church Contending for the Souls/First Summit Evangelical Church did not establish itself as a legal nonconforming use. Pastor Benson appealed the Zoning Administrator's interpretation.

In reviewing the nonconforming issue staff looked for evidence that the church, Contending for the Souls began operating a facility that had as its primary use religious worship. The City records and other resources used indicated that the building had been vacant for several periods of time that exceeded 90 days which would have restricted the church from occupying the building as a nonconforming use. There was no evidence found in the city records or provided by the appellant to prove that religious worship occurred within 90 days of any previous church use vacating the building. Section 17.16.040 of the zoning code states that religious assembly is "a facility in which the primary use is religious worship. A religious assembly use may include related accessory activities including but not limited to, religious education, ministry, clothing and food distribution, counseling, employment assistance, referral services, and support groups. Other uses such as private schools, and child day care centers that may occur on the site of a religious assembly use shall not be accessory uses."

### **BOARD OF ZONING APPEALS**

The Board of Zoning Appeals heard the case on May 16, 2001 and determined after a brief presentation by the appellant to continue the hearing to July 18, 2001 to permit Pastor Benson time to prepare his case. At the July 18 hearing, the Board of Zoning Appeals heard testimony from the appellant, and the property owners regarding the history of the church. Following the testimony the Board voted to sustain the Zoning Administrator's determination on a 3-2 vote.

### **RELOCATION EFFORTS**


Since the call for review by the City Council in August, staff has been working with Pastor Benson to review possible sites for relocation. Two locations within the Northwest have been identified that are currently occupied with existing churches. The first site is for sale and is in the RM-32 (Multifamily residential 32 d.u. per net acre) zoning district. The church is existing legal nonconforming since at the time it was established a conditional use permit was not required. The second site is located in the IG (General Industrial zoning district and the current church is considering relocating to this site. Pastor Benson is currently reviewing his options with both property owners. If either site is occupied within 90 days of the current church use vacating the building than the existing legal nonconforming status will continue. Both of these church uses were established prior to the conditional use permit requirement. The recommendation of 120 days is to permit negotiation of a lease or sale option for these properties or to permit the church to find other sites for relocation. If a conditional use permit is required to occupy another site chosen, a public hearing can be conducted within 120 days with a complete application.

### **ENVIRONMENTAL DETERMINATION:**

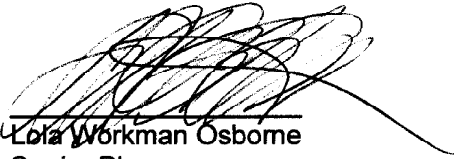
The action of the Council is exempt under Class 21 of the CEQA guidelines. Class 21 exemptions are for actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency.

The City will not be providing any financial assistance for the relocation efforts of the church. Any application fees collected for this project are intended to cover the additional workload that results from the relocation or the adoption of the specific plan.


Respectfully submitted,

  
Cynthia J. Kurtz  
City Manager

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Approved by:

  
Richard Bruckner  
Director of Planning and Development

#### LIST OF ATTACHMENTS

- Attachment A - Zoning Administrator's Interpretation Letter dated 12/6/00
- Attachment B - Decision Letter from the Board of Zoning Appeals
- Attachment C - Timeline