

PALM BEACH COUNTY  
 BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 19, 2014

Consent       Regular  
 Public Hearing

Department:

Submitted By: COUNTY ATTORNEY

Submitted For:

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: a Stipulated Settlement Agreement with Westgate Tabernacle, Inc., settling liens for accrued fines against Westgate Tabernacle, Inc., 1700 Suwanee Drive, West Palm Beach, FL, Property Control No. 00-43-43-30-02-000-0420, recorded at book/page numbers 11345/101 and 23098/51.

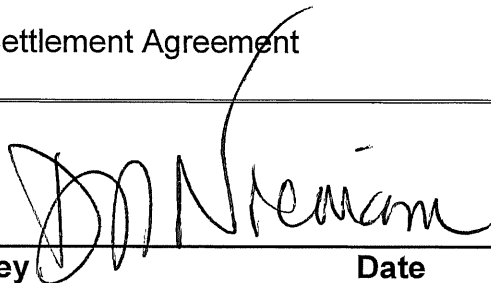
**Summary:** Westgate Tabernacle, Inc. ("Westgate"), was cited for unpermitted building improvements and for using its property as a homeless shelter without prior zoning approval in 1998. In 2008, Westgate was cited for erecting a tent without building permits and for using the property as a homeless shelter without prior zoning approval. The principal amounts of accrued fines for each code enforcement case are \$22,600.00 and \$28,050.00, respectively. Westgate's new owner has made an offer to compromise the outstanding fines and liens in the amount of \$5,000.00. The proposed Settlement Agreement would 1) accept \$5,000.00 as payment for the outstanding fines and liens; 2) require Westgate to execute a Release in the County's favor and an acknowledgement of the County's right to enforce its zoning, building, fire, and electrical code regulations; and 3) require Westgate to agree that, in the event that sheltering activities in excess of 6 persons per night resume without appropriate permits, the fines/liens would be reinstated, less the \$5,000 paid. District 7 (ATP)

**Background and Policy Issues:** Westgate Tabernacle, Inc. ("Westgate"), was cited for unpermitted building improvements and for using their property as a homeless shelter without prior zoning approval in 1998. In 2008, Westgate was cited for erecting a tent without building permits and for using the property as a homeless shelter without prior zoning approval. **(continued on Page 3)**

**Attachments:**

- Proposed Stipulated Settlement Agreement

Recommended by:



7/29/14

County Attorney

Date

Approved by:

N/A

Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	\$ (5,000)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	\$ (5,000)	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_ No X

Budget Account No.: Fund 0001 Department 600 Unit 6241 RVRC 5900  
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

Susan Peary 7/22/14  
OFMB  
7/21 7/22

Dr. J. Jacobson 7/31/14  
Contract Development and Control  
7-31-14

**B. Legal Sufficiency:**

Amy Taylor Rhode  
Assistant County Attorney

**C. Other Department Review:**

Rebecca J. Caldwell  
Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

**Background and Policy Issues: (continued from page 1).** Westgate sued the County in state court over the 1998 code enforcement action, alleging that the code enforcement case violated the Tabernacle, its pastors', and its congregants' religious rights under the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act, and the First Amendment. The case was heard before a jury and a verdict was returned in favor of the County. The verdict was upheld on appeal at the Fourth District Court of Appeal. The 2008 code enforcement action was also litigated by Westgate in a case brought in federal court. The federal court case was involuntarily dismissed. The County accrued litigation costs in both cases of approximately \$211,335.00.

In August, 2011, Westgate was purchased by Pastor Green. Pastor Green was not involved in the prior litigation or the sheltering activities and unpermitted building and electrical improvements that formed the basis of the original code enforcement actions. Pastor Green has offered to compromise the outstanding liens for \$5,000.00. The principal amounts of the liens in the two cases are \$22,600.00 and \$28,050.00, respectively. With interest, the total outstanding amount for both liens as of July 1, 2014, is \$97,379.56. In making the offer to compromise the liens for \$5,000, Pastor Green has requested that the County consider his substantial investment in bringing the Westgate property into compliance with building, electrical, fire, and zoning code requirements, which he estimates at approximately \$100,000.00.

The proposed Stipulated Settlement Agreement would accept \$5,000.00 in satisfaction of the outstanding liens, fines, and interest subject to the following conditions: 1) Westgate would acknowledge the County's right to enforce its zoning, building, fire, and electrical codes at the Westgate property and would execute a Release of any and all claims it may have now or in the future regarding the County's enforcement of its zoning, building, electrical, and/or fire codes on the property; and 2) Westgate would agree that, if sheltering of more than 6 persons takes place at the Westgate property without prior zoning approval, and if the County obtains a Code Enforcement Special Master order confirming such a violation, the compromised lien/fine amounts would be reinstated against Westgate less the \$5,000 paid. All of the conditions in the Stipulated Settlement Agreement would be enforceable against any successors, heirs, or assigns.

## **STIPULATED SETTLEMENT AGREEMENT**

This Stipulated Settlement Agreement (“Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, (“Effective Date”), by and between Palm Beach County, a political subdivision of the State of Florida (“the County,”) and Westgate Tabernacle Inc. (“Westgate”), a Florida non-profit corporation, authorized to do business in the State of Florida.

### **RECITALS**

WHEREAS, the County is a charter county and political subdivision of the State of Florida, with all home rule powers to provide for the health, safety, and welfare of the citizens of the County, to the extent the exercise of such powers is not inconsistent with general or special law; and

WHEREAS, Westgate is a Florida non-profit corporation, with its principal address at 1600 Suwanee Drive, West Palm Beach, FL 33409, and is authorized to do business in the State of Florida; and

WHEREAS, the County exercises land use regulation authority within its unincorporated jurisdictional limits; and

WHEREAS, Westgate owns property within the unincorporated limits of Palm Beach County, located at 1700 Suwanee Drive, West Palm Beach, FL, with the following property control number - PCN # 0043-43-30-02-000-0420; and

WHEREAS, Westgate’s property represents a non-conforming use, a non-conforming structure, and a non-conforming lot, under the current Palm Beach County Unified Land Development Code. The main structure on the property and the accessory building directly adjacent thereto are vested as a non-conforming use for a place of worship. The residential structure on the property is vested as a non-conforming use for single-family residential use.

During the pendency the litigation identified below, the parties acknowledged that the main assembly building and accessory structure used as the place of worship also had a vested accessory use as a Type 1 congregate living facility (CLF-1), for the temporary sheltering of and provision of services to no more than 6 persons; and

WHEREAS, the County issued numerous code enforcement notices of violation, including those identified by case numbers C1992-03110025, C980514002, C9904270026, C9904270027, C0308050037, C0308260008, C0402270014, C0407190009, C0412150021, C041020010, C0502070045, C0502240010, C0507180002, C080820015, C080915008, C0808200010, C0807250038, and C201012140001, to Westgate for a variety of building, fire, and zoning code violations, including but not limited to unpermitted building improvements and engaging in sheltering activities without proper zoning approvals; and

WHEREAS, the code enforcement citations issued in case numbers C980514002 and C0807250038 were challenged in state and federal court in cases styled: *Westgate Tabernacle, Inc., et. al., v. Palm Beach County et. al.*, Case No. 50 2002 CA 003598 XXXX MB (Florida Fifteenth Judicial Circuit); *Westgate Tabernacle Inc., et. al. v. Palm Beach County, et. al.*, Case No. 50 2004 CA 011943 XXXX MB (Florida Fifteenth Judicial Circuit); *Westgate Tabernacle, Inc., et. al., v. Palm Beach County, et. al.*, Case No. 09-80052-CIV-RYSKAMP/VITUNAC (Southern District Court of Florida); *Westgate Tabernacle, Inc. et. al., v. Palm Beach County et. al.*, 50 2010 CA 006562 XXXX MB (Florida Fifteenth Judicial Circuit); and

WHEREAS, the County prevailed in each and every one of the lawsuits filed by Westgate against the County and/or its employees; and

WHEREAS, the County incurred attorney's fees and costs in defending itself against Westgate's claims; and

WHEREAS, the County recorded code enforcement orders imposing fines/liens against Westgate and on its property at 1700 Suwanee Drive, West Palm Beach, FL at book/page numbers 11345/101 and 23098/51, true and correct copies of which are attached hereto and incorporated herein by reference; and

WHEREAS, costs and interest have accrued on the liens in the amount of \$97,379.56 as of and through July 1, 2014; and

WHEREAS, new leadership took control of Westgate in 2011; and

WHEREAS, Westgate is currently led by Bishop Ronnie Greene; and

WHEREAS, since the new leadership took control, Westgate has worked with the County's Code Enforcement and Building Division staff to remediate outstanding code enforcement violations and, in doing so, has incurred expenses; and

WHEREAS, Westgate recognizes the authority of the County to require building permits, to ensure compliance with fire and electrical code requirements, and to require zoning and land use approvals for land uses occurring within the County's jurisdiction and, specifically, at 1700 Suwanee Drive, West Palm Beach, FL; and

WHEREAS, the parties desire to compromise the outstanding fines and liens on the property incurred as a result of the actions of Westgate's prior leadership, according to the terms set forth in this Stipulated Settlement Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, the County and Westgate Tabernacle, Inc., agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and form a part of this Agreement.

2. **Effective Date.** This Agreement shall become effective upon approval by the parties. The Effective Date of this Agreement shall be the date the Agreement is ratified by the Palm Beach County Commissioners (the "Effective Date"). The County shall provide Westgate with a fully executed original of the Agreement within fourteen (14) days of the Effective Date.

3. **Lien Payment.** Within thirty days of receipt of the fully executed original of this Agreement, Westgate shall make a one-time payment of FIVE THOUSAND DOLLARS (\$5,000.00) in satisfaction of the fines and liens set forth in the Recitals of this Stipulated Settlement Agreement.

4. **Release of Liens.** Within thirty days of receipt of the FIVE THOUSAND DOLLAR payment from Westgate, the County shall execute and record with the Clerk and Comptroller of Palm Beach County a Release of Liens, for all of the fines and liens identified in the Recitals of this Stipulated Settlement Agreement. Fines and liens not expressly identified in the Recitals of this Stipulated Settlement Agreement shall not be affected by this Agreement or the Release of Liens executed and filed hereunder.

5. **No Unapproved Land Uses.** Westgate shall refrain from using the property at 1700 Suwanee Drive West Palm Beach, FL for any use other than the approved, non-conforming uses identified in the Recitals of this Agreement, without first seeking and obtaining proper land use and zoning approval from Palm Beach County. Westgate acknowledges and agrees that, based on its status as a non-conforming use, non-conforming structure, and non-conforming lot, any and all expansions, repairs, renovations and/or improvements on the property are limited by the provisions of Article I and Article 3.B.1.4, Palm Beach County Unified Land Development Code, governing non-conforming uses. Westgate agrees that it shall not engage in any

expansions, repairs, renovations and/or improvements on the property beyond that allowed under Article I and Article 3.B.1.4, Palm Beach County Unified Land Development Code.

6. **No Sheltering in Excess of 6 Persons Without Prior Zoning Approval.**

Consistent with Paragraph 5 above, Westgate specifically agrees that it will not provide temporary shelter for more than six persons on the property at 1700 Suwanee Drive, West Palm Beach, FL, without first seeking and obtaining required land use and zoning approval from the County.

7. **No Guarantee of Land Use or Zoning Approval.**

Westgate expressly acknowledges that the County has not agreed to exercise its discretionary land use and/or zoning authority to grant any land use and/or zoning approval for the property at 1700 Suwanee Drive, West Palm Beach, FL, and further acknowledges and agrees that this Agreement provides no rights, guarantees, warranties, or statements of intention regarding any future land use and/or zoning approval for any land uses, including but not limited to sheltering activities for more than 6 persons.

8. **No Unpermitted Building Improvements.**

Westgate shall refrain from performing and/or causing to be performed any unpermitted building improvements on the property at 1700 Suwanee Drive, West Palm Beach, FL.

9. **Reinstatement of Fines/Liens.**

Westgate agrees that the full amount of the fines, liens, costs, and interest satisfied by this Agreement shall be reinstated as a lien against the Property, less the FIVE THOUSAND DOLLAR payment, if Westgate is found by a Code Enforcement Special Magistrate after a code enforcement hearing to have engaged in unpermitted building improvements and/or unapproved uses of the property at 1700 Suwanee Drive, West Palm Beach, Florida, including but not limited to the provision of temporary shelter



to more than 6 persons. Westgate agrees that, should the fines, liens, costs, and interest be reinstated less the FIVE THOUSAND DOLLAR payment, such fines/liens constitute liquidated damages. Westgate agrees that a lien in the amount of the fines/liens less the FIVE THOUSAND DOLLAR payment may be imposed and recorded against the property at 1700 Suwanee Drive, West Palm Beach, Florida without further judicial action, except that Westgate may exercise such appellate rights that exist in the code enforcement proceeding(s) that forms the basis for re-imposing the fines, liens, costs, and interest.

10. **Fees and Costs.** Westgate agrees that it shall bear all fees, costs, and tax consequences, if any, resulting from this Agreement and that the County shall not be liable in any way for costs, fees, and/or expenses of any kind resulting directly or indirectly from this Agreement.

11. **Release and Waiver.** By signing this Agreement and in sole consideration for the release of the fines and liens upon the FIVE THOUSAND DOLLAR Payment to be made by Westgate, Westgate expressly waives, releases, acquits, and forever discharges the County, its agents, employees, heirs, executors, administrators, successors, and assigns, none of whom admit liability and all of whom expressly deny liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which Westgate may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, and property damages, and any and all consequences thereof, resulting or to result from the County's regulatory activities at and/or pertaining to 1700 Suwanee Drive, West Palm Beach, Florida. Such waiver is binding on Westgate's heirs, assigns, and successors-in-interest.

12. **No Assignment.** This Agreement shall be binding upon and inure to the benefit of Westgate and the County only. Neither Westgate nor the County may assign its rights under this Agreement.

13. **Beneficiaries.** This Agreement is solely for the benefit of Westgate and the County, and no other causes of action shall accrue upon or by reason hereof to or for the benefit of any third party, who or which is not a formal party to this Agreement. Furthermore, the parties acknowledge and agree that this is a negotiated agreement and does not constitute precedent for any other zoning, land use, planning, or legal issue relating to any parcel not expressly identified herein, or to any third party. Execution of this Agreement by the County does not modify the County's land use regulations or comprehensive plan and does not constitute an exercise of the County's zoning or planning authority.

14. **Headings.** The headings used are for convenience only and shall be disregarded in the construction and interpretation of this Agreement.

15. **Interpretation.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida. The drafting of this Agreement constituted a joint effort of Westgate and the County, and the Agreement's interpretation shall assume that neither had any more input or influence. All words, terms, and conditions are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

16. **Amendment.** This Agreement may be amended only if executed in writing and signed by Westgate and the County.

17. **Integration.** This Agreement and any documents referred to herein, collectively embody the entire agreement and understandings between Westgate and the County and there are no other agreements or understandings, oral or written, with reference to this Agreement that are not merged into and superseded by this Agreement.

18. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19. **Binding.** The rights and responsibilities of Westgate provided in this Agreement are binding on Westgate's heirs, assigns, and successors-in-interest. The rights and responsibilities of Westgate under this Agreement attach to the property located at 1700 Suwanee Drive, West Palm Beach, Florida, and run with the land.

IN WITNESS WHEREOF, Palm Beach County, and Westgate Tabernacle, Inc., have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed.

ATTEST:

**FOR PALM BEACH COUNTY:**  
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: *Amy Taylor Pellock*  
Sr Asst County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

By: *Rebecca J. Caldwell*  
Executive Director, Planning Zoning &  
Building Department

Bishop J. L. Keen  
By: PRESIDENT  
[INSERT TITLE]

ATTEST:

SHARON R. BOCK  
CLERK AND COMPTROLLER

PALM BEACH COUNTY  
BOARD OF COUNTY  
COMMISSIONERS:

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

104  
WC

CODE ENFORCEMENT BOARD  
OF PALM BEACH COUNTY

TO: Westgate Tabernacle Co.  
c/o Flora B. Haidt  
1213 Suwanee Drive  
West Palm Beach, FL 33409

CASE NO. C9805140002

CEO: Patrick Covault

ORDER IMPOSING FINE/LIEN

THIS CAUSE came for public hearing before the Code Enforcement Board on October 7, 1998, after due notice, at which time the Board heard testimony under oath, received evidence, and issued its Findings of Fact, Conclusions of Law and Order, which was reduced to writing and furnished to Westgate Tabernacle Co. c/o Flora B. Haidt ("the respondent(s)"). A copy of said Order is attached hereto.

Said Order required the respondent(s) to take certain corrective action by a specified date, as more specifically set forth in that Order dated October 7, 1998.

An Affidavit of Non-Compliance dated July 14, 1999, has been filed by the code inspector, which Affidavit certifies under oath that the required corrective action was not taken by the specified date as ordered.

Accordingly, it having been brought to the Board's attention that the respondents failed to comply by the date specified in said Order, it is hereby

ORDERED that Westgate Tabernacle Co. c/o Flora B. Haidt pay to Palm Beach County a fine in the amount of \$100.00 per day for every day in violation past April 5, 1999, which is the compliance date set by said Order, for the property at 1700 Suwanee Drive West Palm Beach, property control number is 00-43-43-30-02-000-0420. This amount shall accrue interest at the rate allowed by law.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute a lien against the above-described property, and upon any other real or personal property owned by the respondents pursuant to Sections 162.08 and 162.09, Florida Statutes, as may be amended and Article 14, Palm Beach County Unified Land Development Code.

104  
WC

Page 2  
Westgate Tabernacle Co.  
C9805140002

DONE AND ORDERED this 27 day of July, 1999, at West Palm Beach, Palm Beach County, Florida.

PALMBEACH COUNTY CODE ENFORCEMENT

By William E. Smith  
Chairman, Code Enforcement Board

Attest: Karon B. Lamb  
Secretary, Code Enforcement

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Kathleen M. Scarlett  
Assistant County Attorney

I HEREBY CERTIFY THAT I AM SECRETARY TO THE CODE ENFORCEMENT BOARD AND FURTHER THAT THIS IS A TRUE AND CORRECT COPY OF THE CODES ENFORCEMENT FOLLOW-UP ORDER AND/OR LIEN.

TO  
Westgate Tabernacle Co.  
K. Lamb  
SECRETARY  
CODES ENFORCEMENT BOARD

I hereby certify that a true and correct copy of the foregoing Order has been furnished to Westgate Tabernacle Co., by U.S. Mail this 16 day of August 1999

Resent. 8/16/99

Karon B. Lamb  
Secretary, Code Enforcement Board

NOTE: If this lien is not satisfied within ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for assignment to a collection agency. No modification requests will be accepted and you will be responsible for any County Collection fees included.

ORDER  
CODE ENFORCEMENT BOARD

ORB 11345 Pg 103

TO: Westgate Tabernacle Co. C#9805140002  
c/o Flora B. Haidt  
1213 Suwanee Drive  
West Palm Beach, Florida 33409

RE: Violation of Section 6.4 C 6 of the Palm Beach County  
Unified Land Development Code. Operating a homeless shelter  
is prohibited in this Zoning district.

Inspector: Patrick Covault

THIS CAUSE came on for public hearing before the Codes Enforcement Board on October 7, 1998, and the Board having heard testimony under oath, from Attorney William Broome, Rev. Avis Hall, Robert Sawyer, received evidence and heard argument, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent, Westgate Tabernacle Co., c/o Flora B. Haidt, whose mailing address is 1213 Suwanee Drive, West Palm Beach, Florida 33409, is the owner(s) or person(s) in charge of the property located at 1700 Suwanee Drive, West Palm Beach (00-43-43-30-02-000-0420).
2. Respondent(s) received notice of the code violations cited above and was given reasonable time to correct said violations. Respondent(s) failed to correct said violations within the allotted time.
3. At the time of hearing, the violations cited above continued to exist.
4. Palm Beach County incurred costs in the amount of \$144.30 in successfully prosecuting this case.

CONCLUSIONS OF LAW

1. Respondent, by reason of the foregoing is in violation of the Codes as cited above, and is therefore subject to the provisions of Article 14 of the Palm Beach County Unified Land Development Code, under the authority of Chapter 162 of Florida Statutes, as may be amended.
2. Palm Beach County is entitled to recover all costs incurred in successfully prosecuting this action.

ORDER

Respondent(s) is (are) to correct the violations cited above on or before April 5, 1999 to file a type II congregant living facility or come into compliance or a fine of \$100.00 for each day the violations continue to exist after the compliance date. Further, the Board stipulated that they limit about 14 people on the premises. If a repeat violation has been committed, then and in that event there shall be fine imposed against Respondent(s) in the amount of N/A for each day the repeat violations continues, beginning with the date the repeat violation is found to have occurred by the code inspector.



If a finding of violation or repeat violation has been made as provided in Section 162.09, Florida Statutes, a hearing shall not be necessary for issuance of the Order imposing such a fine. The burden shall rest upon Respondent(s) to request a reinspection to determine whether the violation or repeat violation has been brought into compliance.

In addition to the daily fine set forth above, you are hereby ordered, pursuant to Article 14 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statutes, as may be amended, to pay costs to the County in the amount of \$144.30. This amount is due and owing as of the date of this Order.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property. The findings in this Order shall be binding upon Respondent(s) and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns pursuant to Article 14 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statutes, as may be amended.

DONE and ORDERED this 7th day of October, 1998.

*William Pruitt*

WILLIAM PRUITT, CHAIRMAN

ATTEST:

*Janet Macapayag*  
Janet Macapayag, Secretary

I HEREBY CERTIFY THAT I AM SECRETARY TO THE  
CODES ENFORCEMENT BOARD AND FURTHER  
THAT THIS IS A TRUE AND CORRECT COPY OF THE  
CODES ENFORCEMENT BOARD ORDER AND/OR LIEN.

TO  
*Westgate Habernacle*

*K. Hambl*  
SECRETARY  
CODES ENFORCEMENT BOARD



CFN 20090065569  
 OR BK 23098 PG 0051  
 RECORDED 02/26/2009 09:34:10  
 Palm Beach County, Florida  
 Sharon R. Bock, CLERK & COMPTROLLER  
 Pgs 0051 - 56; (6pgs)

104  
 WC

Palm Beach County  
 Planning Zoning & Building  
 Code Enforcement Liens  
 2309 North Jog Road  
 West Palm Beach, FL 33411-2741  
 Acct. # 1019

CODE ENFORCEMENT SPECIAL MASTER  
 OF PALM BEACH COUNTY

CASE NO. C0807250038

TO: **Westgate Tabernacle, Inc.**  
**c/o Stephen Johnson, Reg. Agent**  
**1722 Suwanee Drive**  
**West Palm Beach, FL 33409**

CEO: **Matthew Dumas**

ORDER IMPOSING FINE/LIEN

PAGE 1 OF 6

THIS CAUSE came for public hearing before the Code Enforcement Special Master/Code Enforcement Board on **September 3, 2008**, after due notice, at which time the Code Enforcement Special Master or Code Enforcement Board heard testimony under oath, received evidence, and issued its Findings of Fact, Conclusions of Law and Order, which was reduced to writing and furnished to **Westgate Tabernacle, Inc., c/o Stephen Johnson, Reg. Agent**. A copy of said Order is attached hereto.

Said Order required the respondent(s) to take certain corrective action by a specified date, as more specifically set forth in that Order dated **September 3, 2008**.

An Affidavit of Non-Compliance dated **November 13, 2008** has been filed by the code inspector, which Affidavit certifies under oath that the required corrective action was not taken by the specified date as ordered.

Accordingly, it having been brought to the Code Enforcement Special Master's attention that the respondents failed to comply by the date specified in said Order, it is hereby

ORDERED that **Westgate Tabernacle, Inc., c/o Stephen Johnson, Reg. Agent** pay to Palm Beach County a fine in the amount of **\$50.00** per day for every day in violation past **November 10, 2008** which is the compliance date set by said Order, for the property at **1700 Suwanee Drive, West Palm Beach**, property control number is **00-43-43-30-02-000-0420**. This amount shall accrue interest at the rate allowed by law.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute a lien against the above-described property, and upon any other real or personal property owned by the respondents pursuant to Sections 162.08 and 162.09, Florida Statutes, as may be amended and Article 10, Palm Beach County Unified Land Development Code. After three months from the filing of the lien, the County is authorized to foreclose the lien or pursue any other collection actions the County deems appropriate.

104  
 WC

This is now a certified copy

Page 2

DONE AND ORDERED this 11th day of January, ~~2008~~ <sup>2009</sup> at West Palm Beach, Palm Beach County, Florida. gjm

PALM BEACH COUNTY CODE ENFORCEMENT

By: [Signature]  
Code Enforcement Special Magistrate

Attest [Signature]  
Secretary

PAGE 2 OF 6

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]  
Assistant County Attorney

I hereby certify that a true and correct copy of the foregoing Order has been furnished to Westgate Tabernacle, Inc., c/o Stephen Johnson, Reg. Agent, by U.S. Mail this, 21 day of January, ~~2008~~ <sup>2009</sup> 2/2/09 Remailed gjm

[Signature]  
Secretary

NOTE: If this lien is not satisfied within ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for referral to a collection agency. No modification requests will be accepted and you will be responsible for any collection fees incurred by the County.

Cc: Westgate Tabernacle  
c/o Avis L. Hill  
1722 Suwanee Drive  
West Palm Beach, FL 33409

I HEREBY CERTIFY THAT I AM SECRETARY TO THE  
CODES ENFORCEMENT SPECIAL MASTER AND FURTHER  
THAT THIS IS A TRUE AND CORRECT COPY OF THE  
CODES ENFORCEMENT SPECIAL MASTER ORDER AND/OR LIEN  
[Signature] TO Westgate Tabernacle  
Inc. c/o Stephen Johnson, Reg. Agent  
SECRETARY  
CODE ENFORCEMENT

U:\orderfms3 (2/02)

ORDER  
CODE ENFORCEMENT SPECIAL MASTER  
AMENDED

TO: Westgate Tabernacle, Inc.  
c/o Stephen Johnson, Reg. Agent  
1722 Suwanee Drive  
West Palm Beach, FL 33409

Complaint # C0807250038

RE: 1700 Suwanee Drive  
West Palm Beach, FL 33409

RE: Violation of 1) Sections 4.A.3.A.6.; 4.A.1.A.; 4.A.3.A-1, Standard Use Matrix, 4.A.3.A.8.; 4.B.1.A.34 of the Unified Land Development Code; 2) Section 3103.1.1 of the Florida Building Code; and 3) 406.4.1; 110.3(A); 110.3(B); 525.6; 525.20(A); 525.21(B); 525.22; 525.23(A); 525.30; 525.31; 525.32; 590.2(B) of the National Electric Code.

1) Operating a Type 3 Congregate Living Facility in the RH Zoning District without required approvals including Class A Conditional Use Approval from the Board of County Commissioners is prohibited (subject to appeal of Court ruling).

2) Temporary structures that cover an area in excess of 120 square feet including connecting areas or spaces with a common means of egress or entrance which are used or intended to be used for the gathering together of 10 or more persons, shall not be erected, operated or maintained for any purpose without obtaining a permit from the Building Official.

3) All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner. A) All fans, lights and extension cords must be suitable for installation and use in conformity with the provisions of this Code. Listed or labeled equipment shall be installed and used in accordance with any instructions included in the listing or labeling. B) Electrical equipment and wiring methods shall be provided with mechanical protection where such equipment or wiring methods are subject to physical damage. C) Flexible cords and cables shall be listed for extra hard usage. Where used outdoors, flexible cords and cables shall also be listed for wet locations and shall be sunlight resistant. D) Electrical wiring for lighting, where installed inside of tents, shall be securely installed and, where subject to physical damage, shall be provided with mechanical protection. All lamps for general illumination shall be protected from accidental breakage by a suitable fixture or lampholder with guard. E) Portable distribution or termination boxes shall comply with 525.22(A) through 525.22(D). F) Ground fault circuit-interrupter protection shall be provided as required by this Code. G) Equipment shall be properly bonded and grounded in compliance with this Code. The continuity of the grounding conductor system used to reduce electrical shock hazards shall be verified each time that portable electrical equipment is connected. H) Temporary wiring methods shall be accepted only if approved based on the conditions of use and any special requirements of the temporary installation.

CEO: Matthew Dumas

PAGE 3 OF 6

This is for a court case

THIS CAUSE came for public hearing before the Codes Enforcement Special Master on September 3, 2008, and the Special Master having heard testimony under oath, from witnesses, received evidence and heard argument, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

PAGE 4 OF 6

1. Respondent, Westgate Tabernacle, Inc., c/o Stephen Johnson, Reg. Agent, whose mailing address is 1722 Suwanee Drive, West Palm Beach, FL 33409 is the owner(s) or person(s) in charge of the property located at 1700 Suwanee Drive, West Palm Beach, FL, 33409. (00-43-43-30-02-000-0420)
2. Respondent(s) received notice of the code violations cited above and was given reasonable time to correct said violations. Respondent(s) failed to correct said violations within the allotted time.
3. At the time of hearing, the County dismissed Violation 1. Violation 2 and Violations 3(A) through (H) continued to exist.
4. The alleged violator was represented by Mr. Barry Silver, Esq., during the hearing and he produced several witnesses.
5. The Special Magistrate is limited to the express authority granted by Florida Statutes, Chapter 162, and Article 10 of the Unified Land Development Code and does not have the authority or jurisdiction of an Article III Court, under the State of Florida Constitution and does not have the authority to grant the relief request by Mr. Silver, including:
  - A. Waiving the violation;
  - B. Order the County to grant a permit for the tent;
  - C. Order the County to change the permitting process;
  - D. Order the provision of alternative shelter for residents; or
  - E. Order Palm Beach County to expend funds on this issue.
6. A Special Magistrate does have the authority to allow a reasonable period of time before fines are imposed for non-compliance and to order a re-inspection upon the date set for compliance.
7. The testimony established that the tent was erected on the July 4<sup>th</sup> weekend. It was erected by the Tabernacle because of overcrowding and the Tabernacle decided to house homeless men in the tent to leave room for the women and children indoors.
8. The County has dismissed allegation 1, related to operating a congregate living facility and indicated that they would be pursuing alternative enforcement procedures with regard to those items.
9. The evidence establishes that the property is in violation of the electrical code provisions, and erecting a temporary structure in excess of 120 square feet without a permit

- 10. The Tabernacle provided testimony that various police and sheriff agencies, and other community support organizations and hospitals, continue to deliver people to the Tabernacle Church as there is no where else for the people to go. No contrary evidence was provided.
- 11. The Tabernacle indicated that it was working with an electrical contractor to address the electrical violations to the best of its financial ability.
- 12. Pursuant to Section 3(A), Article 10, ULDC, the Special Master hereby notifies the Board of County Commissioners that the County may make all reasonable repairs to the electrical violations set forth above to correct any Life Safety Violations with respect to the electrical system and charge the cost therefore to the Violator.
- 13. Palm Beach County incurred costs in the amount of \$198.83 in successfully prosecuting this case.

CONCLUSIONS OF LAW

- 1. Respondent, by reason of the foregoing is in violation of the Codes as cited in 2, and 3(A) through (H) above, and is therefore subject to the provisions of Article 10 of the Palm Beach County Unified Land Development Code, under the authority of Chapter 162 of Florida Statutes, as may be amended.
- 2. Palm Beach County is entitled to recover all costs incurred in successfully prosecuting this action.

ORDER

Respondent(s) is (are) to correct the violations cited above on or before **November 10, 2008**. In the event the violations cited above are not corrected on or before the compliance date, then and in that event there shall be a fine imposed against Respondent(s) in the amount of **\$50.00** for each day the violations continue to exist after the compliance date. **Corrective action may include, but is not limited to, those methods set forth in the requirements for Correction Section of the Notice of Violation, which was properly served upon respondent as required by law.** If a repeat violation has been committed, then and in that event there shall be fine imposed against Respondent(s) in the amount of n/a for each day the repeat violations continues, beginning with the date the repeat violation is found to have occurred by the code inspector. If a finding of violation or repeat violation has been made as provided in Section 162.09, Florida Statutes, a hearing shall not be necessary for issuance of the Order imposing such a fine.

Failure to comply on or before the compliance date may result in a lien being placed against the above described property, and upon any other real or personal property owned by the respondent(s) pursuant to Sections 162.08 and 162.09, Florida Statutes may be amended and Article 10, Palm Beach County Unified Land Development Code. After three months from the filing of the lien, the County is authorized to pursue any other collection actions the County deems appropriate.

THE BURDEN SHALL REST UPON RESPONDENT(S) TO REQUEST A REINSPECTION TO DETERMINE WHETHER THE VIOLATION OR REPEAT VIOLATION HAS BEEN BROUGHT INTO COMPLIANCE.

In addition to the daily fine set forth above, you are hereby ordered, pursuant to Article 10 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statutes, as may be amended, to pay costs to the County in the amount of \$198.83. This amount is due and owing as of the date of this Order.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property. The findings in this Order shall be binding upon Respondent(s) and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns pursuant to Article 10 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statutes, as may be amended.

DONE and ORDERED this 3rd day of September, 2008.

*[Signature]*  
Gary M. Brandenburg, Special Master

ATTEST: *[Signature]*  
Janet Macapayag  
Secretary

I hereby certify that a true and correct copy of the foregoing order has been furnished to Stephen Johnson, Registered Agent, by U.S. Mail this 9th day of September, 2008.

*Remailed 9/16/08*  
*[Signature]*

*[Signature]*  
Janet Macapayag  
Secretary

I HEREBY CERTIFY THAT I AM SECRETARY TO THE CODES ENFORCEMENT SPECIAL MASTER AND FURTHER THAT THIS IS A TRUE AND CORRECT COPY OF THE CODES ENFORCEMENT SPECIAL MASTER ORDER AND/OR LIEN

u:ordersmwithtestimony(10/26/99)

cc: Westgate Tabernacle  
c/o Avis L. Hill  
1722 Suwanee Drive  
West Palm Beach, FL 33409  
  
Westgate Tabernacle Co.  
1700 Suwanee Drive  
West Palm Beach, FL 33409-5173

*To Westgate Tabernacle, Inc. c/o Stephen Johnson, Reg. Agent*  
*[Signature]*  
SECRETARY  
CODE ENFORCEMENT

PAGE 6 OF 6