

UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

**TITLE VIII**

**CONCILIATION AGREEMENT**

Between

**Wayside Christian Mission**  
(Complainant)

And

**Jerry E. Abramson, Mayor**

**Louisville/Jefferson County Metro Government**  
(Respondents)

Approved by the FHEO Region IV Director on behalf of the United States  
Department of Housing and Urban Development

**FHEO CASE NUMBER:  
04-10-0250-8/4/6/9**

## **A. PARTIES AND SUBJECT PROPERTY**

### Complainant

This Conciliation Agreement is entered into by and between the United States Department of Housing and Urban Development (hereinafter, the Department) on behalf of:

Wayside Christian Mission  
120 West Broadway  
Louisville, KY 40202

### Respondents

Louisville/Jefferson County Metro Government  
527 W. Jefferson Street  
Louisville, KY 40202

Jerry E. Abramson, Mayor  
Louisville/Jefferson County Metro Government  
527 W. Jefferson Street  
Louisville, KY 40202

## **B. STATEMENT OF FACTS**

A complaint was filed on November 24, 2009 with the United States Department of Housing and Urban Development (the Department) alleging that the Complainant was injured by a discriminatory act of the Respondents. Complainant alleges that the Respondents, the Louisville/ Jefferson County Metro Government violated §3605 of the Fair Housing Act as amended in 1988, 42 U.S.C. 3601 *et seq.* (the Act), on the basis of Race (African American), sex, handicap and familial status by declining the Complainant's right to relocate to property formerly known as Mercy Academy located at 1176 East Broadway in Louisville, Kentucky. The Complainant alleges that the Respondents had no zoning restrictions to prevent the move, but Respondents declined the move after a local neighborhood association submitted concerns that the property values in the neighborhood would severely suffer and decline if the Respondents agreed to permit the relocation of the homeless shelter.

## **A. PARTIES AND SUBJECT PROPERTY**

### Complainant

The Respondents filed their Answer to the Complaint denying Complainant's allegations. Respondents stated that Complainant requested a zoning determination from the Planning & Design Services Division of Metro Government for operation of a homeless shelter in an OR-3, Office Residential Zone, the zone for the former Mercy Academy. The

Planning & Design staff issued an opinion dated April 7, 2009 stating the various uses proposed for the site by Complainant would be permitted in the OR-3 Zone. This administrative decision was then appealed by the Original Highlands Neighborhood Association, Inc. to the Board of Zoning Adjustment (“BOZA”) as permitted by Kentucky law. After a hearing on July 20, 2009, BOZA disagreed with the opinion of the Planning & Design staff and found that a homeless shelter of the size proposed by Complainant was not a permissible use in the OR-3 zone.

Since the Respondents current zoning ordinance has no definition of “homeless shelters”, or reference to where such a use might be permissible, the Board of Zoning Adjustment requested the Louisville Metro Planning Commission to develop legislation to address the issue of homeless shelters in the Metro Land Development Code (Metro’s zoning regulations). The Planning Commission appointed a diverse group of stakeholders to a “Homeless Shelter Task Force” to make recommendations to it for amendments to the Land Development Code. Recommendations have been made to the Planning Commission and a public hearing was held on September 30, 2010, after which the Planning Commission voted unanimously to recommend to the Metro Council the adoption of the proposed amendments to the Land Development Code.

Respondents deny having discriminated against Complainant, in any manner, but agree to settle this Complaint and related lawsuits by entering into this Conciliation Agreement.

### **C. TERM OF AGREEMENT**

1. This Conciliation Agreement (hereinafter “Agreement”) shall govern the conduct of the parties to it for a period of one year from the effective date of the Agreement.

### **D. EFFECTIVE DATE**

2. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the U.S. Department of Housing and Urban Development, through the FHEO Region IV Director, or his or her designee.
3. This Agreement shall become effective on the date on which it is approved by the FHEO Region IV Director, Regional Office of FHEO in Atlanta, Georgia of the United States Department of Housing and Urban Development (HUD).

### **E. GENERAL PROVISIONS**

4. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced,

intimidated, threatened, or in any way forced to become a party to this Agreement.

5. The Respondents acknowledge that he or she has an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act.
6. This Agreement, after it has been approved by the FHEO Region IV Director, or his or her designee, is binding upon the Respondents, its officers, employees, agents, successors and assigns and all others in active concert with the authority in the operation of the Louisville/Jefferson County Metro Government in Louisville, Kentucky.
7. It is understood that, pursuant to Section 810(b) (4) of the Act, upon approval of this Agreement by the FHEO Region IV Director, or his or her designee, it is a public document.
8. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaints involving Respondents made pursuant to the Fair Housing Act, or any other complaints within the Department's jurisdiction.
9. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Region IV Director.
10. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.
11. Wayside Christian Mission, Complainant, hereby forever waives, releases, and covenants not to sue the Department or Respondents: Jerry E. Abramson, Mayor; and the Louisville/Jefferson County Metro Government of Louisville, Kentucky, its elected or appointed officials, successors and assigns, agents, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 04-10-0250-8-4-6-9 or which could have been filed in any action or suit arising from said subject matter.

12. The Respondents: Jerry E. Abramson, Mayor; and Louisville/Jefferson County Metro Government of Louisville, Kentucky, hereby forever waives, releases, and covenants not to sue the Department or Complainant, Wayside Christian Mission, and their successors, assigns, agents, officers, board members, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 04-10-0250-8-4-6-9 or which could have been filed in any action or suit arising from said subject matter.

#### **F. RELIEF FOR COMPLAINANT**

13. The Respondents, Jerry E. Abramson, Mayor; and Louisville/Jefferson County Metro Government of Louisville, Kentucky, agree to allow the Complainant, Wayside Christian Mission to continue occupancy of its current site commonly known as Hotel Louisville as a homeless shelter for women and families located at 120 West Broadway in Louisville, Kentucky without repercussions of any eminent domain action by Respondents to acquire said property or any new zoning codes added to terminate the current occupancy.
14. The Respondents: Jerry E. Abramson, Mayor; and Louisville/Jefferson County Metro Government agree to compensate the Complainant for its expenses resulting from the Board of Zoning Adjustment's decision denying Complainant's use of the former Mercy Academy property in the amount of **\$145,335.01**. This amount is composed of the loss of Complainant's good faith deposit on the former Mercy Academy property in the amount of \$70,000; \$7,091.00 for architectural and engineering evaluation of the former Mercy Academy property; \$243.00 for the filing fee to appeal the Board of Zoning Adjustment's decision; and \$68,001.01 in attorney fees to Goldberg & Simpson and Middleton Reutlinger.
  - a. A certified check(s) in this amount payable to Wayside Christian Mission, Goldberg & Simpson and Middleton Reutlinger will be sent to the investigator, Pat Green at U.S. Department of Housing and Urban Development, 1835 Assembly Street, Columbia, South Carolina 29201 within 5 days of execution of this agreement.

#### **G. RELIEF IN THE PUBLIC INTEREST**

15. Within thirty days of the effective date of this Agreement, Respondents shall inform all of its agents and employees responsible for compliance with this Agreement, including any officers and board members, of the terms of this Agreement.

16. Prior to December 31, 2010, Respondents' Inspection, Permits & Licenses code enforcement personnel, BOZA Board Members and Metro Planning Commission Members shall receive Fair Housing training relative to its zoning policies and procedures to be conducted by the Department's Office of Fair Housing and Equal Opportunity, or other appropriate agency or facility approved by the Department. Within 10 days of completion of training, Respondents shall send certificates to the Department as proof that this training has been completed.
17. The Respondent, Jerry E. Abramson, in his capacity as Mayor and chief executive officer of Respondent Louisville /Jefferson County Metro Government, shall use his best efforts to encourage the Louisville/Jefferson County Metro Council to adopt on or before December 2, 2010, the amendments to the Land Development Code concerning Community Facilities, Transitional Housing and Homeless Shelters in substantially the form and substance recommended by the Metro Planning Commission at its September 30, 2010 meeting.
18. The Respondent, Jerry E. Abramson, in his capacity as Mayor and Chief Executive Officer of Respondent Louisville/Jefferson County Metro Government, shall use his best efforts to encourage the Louisville/Jefferson County Metro Council to adopt on or before December 2, 2010 the Homeless Shelter Licensing Ordinance as introduced to the Metro Council on October 21, 2010, together with any amendments mutually agreed upon by the parties.
19. Until the earlier of December 31, 2010 or the enactment by the Metro Council of the proposed amendments to the Land Development Code in substantially the form and substance recommended by the Metro Planning Commission at its September 30, 2010 meeting, Respondents will not seek to take any land use related enforcement action against any existing homeless shelter, community service facility, transitional housing or emergency shelter. Respondents further agree that all existing homeless shelters, community service facilities, transitional housing and emergency shelters will immediately be recognized by the Respondents as legally permitted land uses within their current scope and area.
20. As a condition to the performance by Respondents of their covenants and agreements contained herein, Complainant shall dismiss with prejudice its bifurcated suit styled Wayside Christian Mission v. Louisville Metro Board of Zoning Adjustment, et al. now pending in the Jefferson Circuit Court (Case No. 09-CI-08510) and in the United States District Court or the Western District of Kentucky (Case No. 3:09CV-959-H).

## **H. MONITORING**

21. The Department shall determine compliance with the terms of this Agreement. During the term of this Agreement, HUD may review compliance with this Agreement. As part of such review, HUD may examine witnesses, and copy pertinent records of Respondents. Respondents agree to provide their full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

## **I. REPORTING AND RECORDKEEPING**

22. Within forty-five (45) days of the effective date of this Agreement, Respondent shall certify to the FHEO Region IV Director, in writing, that it has complied with paragraphs 15 and 16 of this Agreement.
23. All required certifications and documentation of compliance must be submitted to:

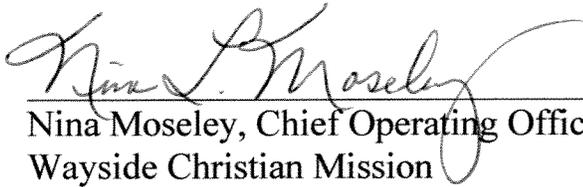
Carlos Osegueda  
FHEO Region IV Director  
Regional Office of FHEO  
Five Points Plaza  
40 Marietta Street, 16<sup>th</sup> Floor  
Atlanta, Georgia 30303

## **CONSEQUENCES OF BREACH**

24. Whenever the Department has reasonable cause to believe that the Respondents or the Complainant has materially breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act.
25. If Respondents or Complainant have reasonable cause to believe the other party has materially breached the terms of this Agreement, then such party shall have the right to enforce the terms of this Agreement

pursuant to an independent cause of action in a court of competent jurisdiction.

**SIGNATURES**

  
\_\_\_\_\_  
Nina Moseley, Chief Operating Officer  
Wayside Christian Mission

10-28-2010  
Date

\_\_\_\_\_  
Jerry E. Abramson, Mayor  
Louisville /Jefferson County Metro Government  
Respondents

\_\_\_\_\_  
Date

**HUD APPROVAL:**

\_\_\_\_\_  
Carlos Osegueda  
FHEO Region IV Director

\_\_\_\_\_  
Date

pursuant to an independent cause of action in a court of competent jurisdiction.

**SIGNATURES**

\_\_\_\_\_  
Nina Moseley, Chief Operating Officer  
Wayside Christian Mission

\_\_\_\_\_  
Date

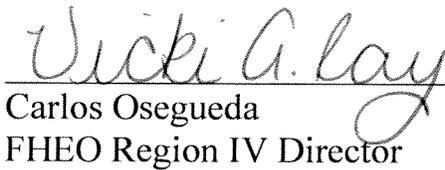


\_\_\_\_\_  
10-28-10

\_\_\_\_\_  
Jerry E. Abramson, Mayor  
Louisville /Jefferson County Metro Government  
Respondents

\_\_\_\_\_  
Date

**HUD APPROVAL:**

*for*   
\_\_\_\_\_  
Carlos Osegueda  
FHEO Region IV Director

\_\_\_\_\_  
11/4/2010  
Date