

LIFT HIGH THE CROSS

Lutheran Church of the Cross

CROSS MONUMENT: A HISTORY

| | |
|-----------|--|
| Pages 1-2 | Why A Cross Monument? |
| 3 | July 6, 2005 Letter to original donors, Roy and Jan Schanne |
| 4-6 | May 8, 2006 Proposal for Services from Wotitzky, Wotitzky, Ross, Goldman, Sturges & Tuttle, P.A. to represent Lutheran Church of the Cross in the Cross Monument project |
| 7 | July 11, 2006 Letter from Mr. Warren Ross, ESQ. that Charlotte County Planning and Zoning Division has denied our petition to build; that the suggest we seek a “variance” and that this variance would be for a “CLASS ‘A’ SIGN” |
| 8 | July 10, 2006 copy of letter referenced by Mr. Ross, signed by Nicole Dozier, Zoning Official, declining the special exception and assigning it as a SIGN |
| 9 | December 15, 2006 letter from Nicole Dozier, Zoning Official, declining our petition to build as a variance under the sign codes |
| 10-13 | August 24, 2007 Filing with the Department of State of Florida that our petition to rezone from Agriculture Estates (AE) to Commercial General CG) has been approved and duly filed |
| 14 | September 23, 2012 Motion before the Lutheran Church of the Cross Voters Assembly to explore the prospects of legal support from Liberty Counsel in view of the fact that the county continued to deny our building project. |
| 15-16 | November 25, 2012 the Voters Assembly approved the recommendation to engage Liberty Counsel as our legal representative and to litigate as necessary. We have now become convinced that Charlotte County is no longer negotiating in good faith but that we are being denied our religious freedom to build within the county codes on our own campus. |
| 17-21 | January 2, 2013 Letter from Liberty Counsel to Charlotte County with subject line: “Unconstitutional Classification and Denial of Permit for Monument Cross” |
| 22-23 | January 18, 2013 Letter from Janette S. Knowlton, Charlotte County Attorney, refuting Liberty Counsel’s claims. |

- 24-27 January 29, 2012 Liberty Counsel replies to Charlotte County and restates the position that the county is unconstitutional in its designating our cross as a “SIGN”.
- 28 February 14, 2013 Address to Charlotte County Commissioners by Rev. Kenneth Redmann appealing to them to direct the county staff to re-classify our cross from a “sign” to a “structure.”
LATER THIS DAY, COMMISSIONER CHAIRMAN
CONSTANCE CALLED TO INFORM US THAT THE COUNTY
HAD RECLASSIFIED OUR CROSS AND THAT WE COULD
PROCEED!
- 29 February 18, 2013 Press Release from Liberty Counsel announcing that Charlotte County had reversed its position and is now allowing us to build
- 30-31 February 24, 2013 Herb Sass, member of the Cross Development Team, reported to the Voters Assembly on the status of the Cross Monument.
- 32 February 28, 2013 we received the official letter from Shaun Cullinan, Zoning Official, “*that this is not a sign, but is instead a monument/art which is an integral part of the Church’s proposed ‘Prayer Garden.’*” Therefore our building permit may proceed.

Why a Cross Monument?

Q: How did the Cross Monument project get started? It seems that we have been talking a lot and not a lot has been done.

A: Here is a brief history of the important milestones that have taken a long time to develop.

July 6, 2005 Lutheran Church of the Cross received a gift of \$50,000.00 from an anonymous donor designated for a Cross Monument. Several other items of significance were discussed that the gift may be applied toward but the donors determined that a Cross Monument would enhance the ministry of LCC by providing a dramatic “marker” for us. After all, we will become, Lutheran Church of the Cross located at the Cross Monument on Luther Road—you know, the huge cross that you see just off the interstate in Port Charlotte.

April 3, 2006 Lund Architecture, P.L.C. presented several artist renderings of possible Cross Monument designs. The donors strongly expressed their desire to stay with the “tried and true” dramatic cross design that is already appearing on the interstate in four or five locations along the eastern half of the United States. This preferred design is what will be unveiled on Sunday, August 30, 2009.

December 13, 2006 Attorney Warren Ross presented our petition before the Charlotte County Zoning Board for a variance in our zoning to allow us to build a 75 foot tall cross. (Our desire was to build 60 feet tall but Mr. Ross thought we should ask for slightly more in the event they felt they needed to scale us back some.) That request was rejected by a 3-2 vote. Their decision seemed devastating to a dream but it was determined that another approach may be more acceptable. We pressed on.

August 21, 2007 Attorney Geri Waksler successfully presented our case for rezoning our original 6.2 acres from Agricultural Estates (AE) to Commercial General (CG). This allows us to build any structure to a height of 60 feet. The unexpected supplemental benefit of this decision is that we are now able to build five stories on the eventual senior housing complex. How God blesses in strange ways!

April 7, 2008 Bruce Tyson of Tyson and Billy Architects prepared a “Request for Proposal” in order to gage an estimate of the final cost of the Cross Monument. The initial bid was returned at over \$300,000.00! However, subsequent bids have reduced this estimate to a total cost of approximately \$100,000.00 to complete the job.

May 29, 2008 Mr. James Potter has donated the cost to provide engineering drawings sealed by the Florida State Seal of the Cross Monument. These drawings have been completed by Cornerstone Engineers, Inc. Madisonville, TN.

July 14, 2009 Universal Engineering Sciences presented their findings of geotechnical exploration (aka soil borings) and it is determined that from the one drilling site, our location is suitable to build the proposed structure.

September 27, 2009 The Cross Monument project went before the congregation—finally—to ask congregational permission to seek outside funding sources to complete the project as envisioned.

Q: Why has it taken so long to bring to the congregation? It has been nearly five years!

A: Indeed! It has taken a very long time to move the project along. Early in the discussion, the Church Council determined that they would not bring a project to the congregation without having completed the prerequisite fact finding data. Questions such as: What will it look like? Where will it be located? Can we build such a tall structure on our campus? Is the soil adequate to build such a structure? Will it be built within the wind tolerance for hurricanes? How much will it cost? How will we pay for it?

How will we pay for the upkeep and the night lights to illumine it? Your Church Council determined that you deserved to have all this information at the time when you are asked to vote on the project. Therefore, let's take these questions one by one and give answer.

Q: What will it look like?

A: The unveiling tells it all. The base of the Cross Monument is subject to change but the design is substantially defined. The height is 60 feet. To give you perspective, our existing cross on the top of the church is approximately 30 feet. Our existing light poles in the parking lot are approximately 25 feet. The digital depiction is fairly close to proportion.

Q: Where will it be located?

A: It will be just a few steps south of the existing sign at the entrance/exit on Luther Road. It will tower over us as we enter and as we depart. We will truly be in the shadow of the Cross of Christ.

Q: Can we build such a tall structure on our campus?

A: Yes. Thus the lengthy efforts to first seek variance and when that was denied, to seek rezoning. As mentioned, the rezoning accomplished the additional blessing of the benefit to build senior housing five stories tall.

Q: Is the soil adequate to build such a structure?

A: Yes. Thus the soil boring sample. As with all soil borings, there is plenty of language in their finding that indicates there is a possibility that once we start digging, we may find some surprises. However, this is a reasonable first step that "passed the test."

Q: Will it be built within the wind tolerance for hurricanes?

A: Yes. Thus the engineering drawings drawn to Florida State code. It is a huge blessing that "Jimmie" Potter underwrote the total cost for these drawings.

Q: How much will it cost?

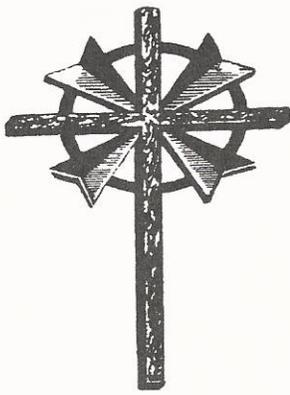
A: In one sense this is yet to be determined. However, the considerable research that has been done has reduced the bid (over \$300,000.00) to a bid under \$100,000.00. This is subject to government regulations, of course and may reach \$120,000.00. The cost reduction has been accomplished by identifying the supplier of steel and dealing with him directly. Further, Dwayne Leininger has extensive experience in the building industry and he required an itemized bid and required them to "sharpen their pencil." We currently have over \$38,000.00 remaining in the original gift. Therefore, it is estimated the cost to complete is around 60 thousand dollars to perhaps as much as 80 thousand dollars.

Q: How will we pay for it?

A: If approved, we will seek OUTSIDE FUNDING SOURCES to pay for it. In the same manner that the original donor caught this vision, we believe other outside individuals will also want to participate in a monument of a lifetime.

Q: How will we pay for the upkeep and the night lights to illumine it?

A: It is envisioned that a walkway from the parking lot to the base of the magnificent Cross Monument will be necessary. We plan to place pavers that can be purchased at increments of \$500.00 or \$1,000.00 as memorials to our loved ones. Out of these funds will come the cost for upkeep and lighting.



Lutheran Church of the Cross

LUTHERAN CHURCH-MISSOURI SYNOD

A Christian family who cares for you!

Rev. Kenneth Redmann, Pastor
2300 Luther Road

Port Charlotte, Florida 33983

Office: (941) 627-6060 Fax 941-627-5467

E-mail: secretary@lccross.org

July 6, 2005

Roy and Jan Schanne
1868 Wedgefield St.
Jackson, MI 49201-8346

Beloved Roy and Jan,

Greetings in the name of Jesus our faithful Savior!

What a great joy to hear from you! And then to hear of your message and decision to return to God a portion (large portion) of what He has given to you...I am stunned at what the Lord is doing. Thank you.

As we discussed, Roy, here are several ideas that you may want to prayerfully consider as the two of you contemplate how you want to designate your gift. Please know that this list is not restrictive, that you may have a wonderful designation that does not appear on the list. Also, this list may be "mix and match." That is, you may select one or more of the projects, as the Holy Spirit guides and directs you.

- The Endowment and Capital Fund (Enclosed please find a summary of provisions adopted by Lutheran Church of the Cross for this fund.)
- The General Fund
- The Building Fund to pay down the mortgage on the Fellowship and Ministry Center
- Additional equipment for the Fellowship and Ministry Center. (We have designed the center for closed circuit TV from the church to the center. I do not think that our current budget covers the actual TV monitors necessary to connect to the wiring provided. We could use 8 monitors for classrooms etc., in addition to the large overhead screens currently supplied by budget.)
- The Five Acres (Balance as of June 1st financial report is \$35,849.09.)
- Add to the Miller Endowment for the Advancement for Christian Education
- A landmark cross at the entrance of our driveway that towers above the interstate to proclaim that Lutheran Church of the Cross is here. (Enclosed please find some preliminary information from Chime Master. You may see more ideas at www.chimemaster.com.)
- A billboard size sign at our front entrance (anticipated at less than \$5,000.00)

One possibility we did not discuss is to remodel the parsonage into a Pre-school facility. The Leadership of Lutheran Church of the Cross has scheduled a planning session at an overnight retreat center to pray, study and brainstorm ideas for how God desires to use us in the future. Our land, our facilities, our energies, our gifts, etc. etc.

Concerning the time when King David assembled resources to build the Temple, Holy Scripture declares, "**The people rejoiced at the willing response of their leaders, for they had given freely and wholeheartedly to the Lord. David the king also rejoiced greatly**" (1 Chron 29: 9).

In Christian love and service,

WOTITZKY, WOTITZKY, ROSS, GOLDMAN, STURGES & TUTTLE, P.A.

ATTORNEYS AT LAW

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PUNTA GORDA, FLORIDA 33950-5308

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MEDIATOR
†ALSO MEMBER OHIO BAR
††LL.M. IN TAXATION
ALSO MEMBER
NJ & NY BARS

FRANK WOTITZKY
LEO WOTITZKY
OF COUNSEL

May 8, 2006

HAND DELIVERED

Gary R. Willecke
Lutheran Church of the Cross
2300 Luther Road
Port Charlotte, FL 33983-2611

Re: Proposal for Services and Preliminary Assessment

Dear Gary:

It was a pleasure meeting with you, Reverend Redmann and Jay Lund late last week.

The Church has presented me with an interesting challenge, one that a governmental law attorney does not normally happen upon.

Simply put, as I understand it, the Church would like to erect a large cross, approximately 75' in height and 20' into the county setback, pointing toward I-75 and on Church property.

The Church has previously received, approximately 25 years ago, a Special Exception allowing it to be located in the AE Zone, pursuant to Section 3-9-30(11) of the Charlotte County Code. I am still in the process of finding that Special Exception but, for the purposes of completing this letter, having it in hand is not absolutely necessary.

I believe there is going to be two potential routes to go, and as discussed, I believe a detailed presentation at a pre-application conference with County staff is necessary in order to determine which of the two the County staff will allow us to pursue. Both would involve presenting a special exception, in an effort to obtain either all necessary approval or primary approval for the proposed sign.

The first route would be to utilize the "permitted accessory uses and structures" language found a (c), of 3-9-30 where it states as follows:

"(c) Permitted accessory uses and structures. Uses and structures which are customarily accessory and clearly incidental to permitted uses and structures are also permitted in this district."

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Gary R. Willecke
Lutheran Church of the Cross
May 8, 2006
Page Two

I think it is safe to say that such a cross would be seen as a normal and logical use incident to a church. Because of its size and because the Church has already been approved for a Special Exception that presumably did not specifically reference such a cross, it is going to make sense for that reason and because of the language that appears in (22) of the same section

"(22) Such other uses as determined by the zoning official or his/her designee to be:

- a. Appropriate by reasonable implication and intent of the district.
- b. Similar to another use either explicitly permitted in that district or allowed by special exception.
- c. Not specifically prohibited in that district."

that this be presented as a special exception to the Board as a use that should be allowed by "reasonable implication".

Looking at the sign ordinance, it is possible that the County could deem the cross to be a "sign". The definition for sign given under 3-9-95 - "Sign shall mean any outdoor advertising display using symbols to attract the attention of the public to a place, . . ." To the extent that the cross is a "symbol" and is intended to "attract the attention of the public" to your Church, it does seem to fit into this definition.

The special exception process set forth in that same code section under (n) says as follows:

"(n) *Special exceptions.* Special exceptions may be granted by the board of zoning appeals to exceed the size and height limitations or to exceed the number of signs permitted within this section, provided the board of zoning appeals finds the following conditions exist:

- (1) That characteristics unique to the parcel of land on which the sign or signs are to be located would render the visibility of the business(es) on that parcel significantly less than the visibility enjoyed by businesses on similarly situated parcels.
- (2) That the request would not create a visibility hazard to businesses on adjoining properties or the traveling public.
- (3) The height of the sign shall in no case exceed eighty (80) feet above the crown of the road at the nearest point."

Finally I would note from 3-9-95 that (e)(1) states as follows:

Gary R. Willecke
Lutheran Church of the Cross
May 8, 2006
Page Three

"No private sign shall be erected, altered or maintained over or upon any public property or park strip unless permitted by the board of county commissioners after recommendation by the county administrator or erected, altered or maintained over or upon any easement or public right-of-way unless permitted by the board of county commissioners after recommendation by the county engineer."

I am not sure that (e) is necessarily going to be applicable but I throw it in because it indicates that the County Commission can directly approve a sign that is in or upon any public property which may well include the easement or setback within which you want to put the sign.

I would much rather go with the special exception process as outlined under 3-9-30 because there is more flexibility and latitude there.

As indicated, photographic and anecdotal evidence of other crosses of such magnitude at or near interstates and on church property would be greatly useful in this process.

I would propose as follows regarding our fee - to complete the initial analysis and research, prepare for and attend the pre-application conference and be the lead person on presentation at the time, the fee for my services would be a flat, earn when paid sum of \$1,250.00 (which would also include the fee for my services for the office conference and preparation of this letter) and then if the Church continues to go forward with the sign special exception preparation of the formal application, filing with the County, preparation for public hearing, further communication with staff, attendance at the public hearing (and there may be more than one, although there should be just the one before the Board of Zoning Appeals), including presentation at the time of any public hearings would be \$3,750.00. The filing fee (of approximately \$900.00) and any other out-of-pocket expenses (none specifically anticipated at this time), other than perhaps minimal mileage and copying expenses) would be in addition to those amounts.

Please advise your thoughts regarding the above at your convenience. I look forward to the exciting possibility of working with you on this interesting and unique challenge.

Very truly yours,

WOTITZKY, WOTITZKY, ROSS, GOLDMAN,
STURGES & TUTTLE, P.A.

BY:


Warren R. Ross

WOTITZKY, WOTITZKY, ROSS, GOLDMAN, STURGES & TUTTLE, P.A.

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FRANK WOTITZKY
LEO WOTITZKY
OF COUNSEL

July 11, 2006

HAND DELIVERED

Gary R. Willecke
127 Graham Street, S.W.
Port Charlotte, FL 33952-9122

Dear Mr. Willecke:

Enclosed you will find a copy of a letter that I received yesterday from the Zoning official. While I think her overall conclusion, regarding filing for a variance versus a special exception is incorrect, I am still under the impression that the odds in favor of obtaining this approval are significant. Please call to discuss this letter and the next step on behalf of the Church.

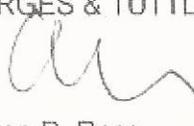
Please note that Ms. Dozier's determination that it should be done as a variance rather than a special exception is a determination that could be independently appealed to the Board of Zoning Appeals. Indeed, I would like to discuss with you the possibility of filing this as both a special exception and a variance, in the alternative, and combined with an appeal of the July 10th determination. That would only add a total additional \$1,000.00 to the cost for Phase 2.

I look forward to hearing from you.

Very truly yours,

WOTITZKY, WOTITZKY, ROSS, GOLDMAN,
STURGES & TUTTLE, P.A.

BY:


Warren R. Ross

WRR/plp
Enclosure

G:\Warren\LUTHERAN CHURCH OF THE CROSS\GARY W LLECKE 7.10.06.wpd

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REAL ESTATE CLOSINGS • TITLE INSURANCE • REAL PROPERTY LAW • CONDOMINIUM & COMMUNITY ASSOCIATION LAW • ZONING, LAND USE & ADMINISTRATIVE LAW



Community Development Department

Planning and Zoning Division
Charlotte County Administration Center
18500 Murdock Circle

Port Charlotte, Florida 33948-1094

Planning Division: (941) 743-1238 • (941) 623-1094 • FAX: (941) 743-1292

Zoning Division: (941) 743-1964 • (941) 743-1956 • FAX: (941) 743-1598

www.charlottecountyfl.com

"To exceed expectations in the delivery of public services"

July 10, 2006

Warren R. Ross
Wofitzky Law Firm
990 W. Marion Avenue
Punta Gorda, FL 33950- 5308

VIA: FAX (941) 639- 2197 and US Mail

Re: Hope Lutheran 75' Cross

Mr. Ross:

This letter is in response to your letter dated July 6, 2006.

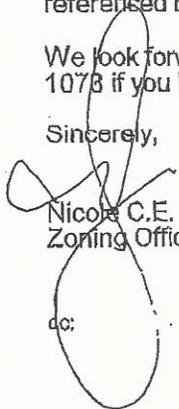
At the meeting with Jorge Perez on June 27, your clients indicated that one of the purposes of the cross was to aid drivers, including those on I-75, identify the location of the church. Based on that information, it has been determined that the proposed cross fits the definition of a Class "A" sign. Section 3-9-95(e)(3), County Code, indicates that the maximum height for such signs is 20 feet measured from the crown of the adjoining road on which the property fronts.

Based on the above, and if you wish to continue with this process, please submit a variance application. The variance would be for a Class "A" sign of 75 feet of height rather than the permissible 20 feet. Please note that the sign would not meet the Class "B" sign provisions of Section 3-9-95(m)(1)(l), and therefore a special exception would not be the appropriate route.

You are hereby notified that this letter is based only on the specific sections of the county code referenced herein, as those specific sections apply on the date of this letter.

We look forward to receiving your variance application. Please call Jorge Perez at (941) 623-1073 if you have any additional questions.

Sincerely,


Nicole C.E. Dozier
Zoning Official

cc: file

H:\Letters\Warren Ross Hope Lutheran Cross.doc

Exhibit A



Community Development Department

Planning and Zoning Division

Charlotte County Administration Center

18500 Murdock Circle

Port Charlotte, Florida 33948-1094

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"To exceed expectations in the delivery of public services"

December 15, 2006

Lutheran Church of the Cross
2300 Luther Road
Port Charlotte, FL 33983

RE: Petition #VAR-06-36

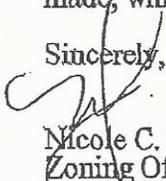
Dear Petitioner:

This letter is to confirm the decision of the Charlotte County Board of Zoning Appeals at their meeting held on Wednesday, December 13, 2006 regarding Petition #VAR-06-36 requesting a variance from County Code Section 3-9-95 to erect a cross at 75' rather than the allowable 20' in the Agriculture Estates (AE) zoning district. The property is addressed as 2300 Luther Road, Port Charlotte, Florida and is described as Tract P1-59, in Section 17, Township 40S, Range 23E. The property contains +/- 6 acres.

It was the decision of the Board of Zoning Appeals to **DENY** Petition #VAR-06-36 based on the Community Development Department staff report dated **December 4, 2006**, the evidence presented at the hearing and finding that the applicant did not meet six of the seven required criteria for the granting of a variance, specifically #s 1, 2, and 6.

Appeals from the decision of the Board of Zoning Appeals may be taken to a court of competent jurisdiction **within thirty (30) days after such decision has been rendered, but not thereafter.** "Rendered" in this context means from the date on the decision letter. Person(s) who decide to appeal any decision made by the Board of Zoning Appeals will need a record of the proceedings. Such person(s) may, at their own expense, ensure that a verbatim record of the proceedings is made, which includes the evidence upon which the appeal is to be based.

Sincerely,


Nicole C. E. Dozier
Zoning Official

/bdw

cc: Warren R. Ross, Esquire
223 Taylor Street
Punta Gorda, FL 33950

Exhibit B

Chg
BCC
#14

FILED WITH THE DEPARTMENT OF STATE Aug. 24, 2007

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ORDINANCE
NUMBER 2007 - 058

AN ORDINANCE APPROVING AN AMENDMENT TO THE CHARLOTTE COUNTY ZONING ATLAS FROM AGRICULTURE ESTATES (AE) TO COMMERCIAL GENERAL (CG), FOR PROPERTY LOCATED AT 2300 LUTHER ROAD, IN THE PUNTA GORDA AREA, COMMISSION DISTRICT I, CHARLOTTE COUNTY, FLORIDA, CONTAINING 6.2 ACRES MORE OR LESS; PETITION Z-07-05-31; APPLICANT, LUTHERAN CHURCH OF THE CROSS, INC.; PROVIDING AN EFFECTIVE DATE.

RECITALS

14
15 WHEREAS, in a public hearing held on Tuesday, August 21, 2007,
16 the Board of County Commissioners of Charlotte County ("Board") reviewed
17 Petition Z-07-05-31, submitted by applicant, Lutheran Church of the Cross, Inc.
18 ("Applicant") which requested a rezoning from Agriculture Estates (AE) to
19 Commercial General (CG) on 6.2 acres more or less of property owned by the
20 Applicant, described as property located at 2300 Luther Road, in the Punta
21 Gorda area, Commission District I, Charlotte County, Florida, and more
22 particularly described in Exhibit "A" attached hereto and by this reference
23 incorporated herein; and

24 WHEREAS, the Applicant seeks a rezoning to Commercial General
25 (CG) in order to allow for commercial development opportunities on the site; and

26 WHEREAS, Petition Z-07-05-31 has previously been heard by the
27 Charlotte County Planning and Zoning Board ("P&Z Board") and, based on the
28 findings and analysis presented in the Planning and Zoning Division staff report

★
TMS 4

1 dated June 19, 2007, and the evidence presented to the P&Z Board, has been
2 recommended for approval; and

3 WHEREAS, after due consideration, based on the Planning &
4 Zoning Division staff report dated June 19, 2007 and the evidence presented to
5 it, the Board has found that approval of Petition Z-07-05-31 is consistent with the
6 1997-2010 Charlotte County Comprehensive Plan, and that it meets the
7 requirements for the granting of a rezoning; and

8 WHEREAS, based on the above findings, the Board has
9 determined it to be in the best interests of the County to rezone the subject
10 property from Agriculture Estates (AE) to Commercial General (CG).

11 NOW, THEREFORE, BE IT ORDAINED by the Board of County
12 Commissioners of Charlotte County, Florida:

13 SECTION 1. The following petition for an amendment to the
14 Charlotte County Zoning Atlas is hereby approved:

15 Petition Z-07-05-31 requesting rezoning from
16 Agriculture Estates (AE) to Commercial General (CG)
17 for 6.2 acres more or less of property owned by
18 Lutheran Church of the Cross, Inc., described as
19 located in Commission District I, at 2300 Luther Road,
20 in the Punta Gorda area, Charlotte County, Florida,
21 and more particularly described in Exhibit "A"
22 attached hereto and by this reference incorporated
23 herein.

24 SECTION 2. That the zoning for this property shall run with the
25 property and shall apply to any subsequent owners, heirs and assigns.

26 SECTION 3. This ordinance shall take effect upon filing in the
27 Office of the Secretary of State, State of Florida.
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PASSED AND DULY ADOPTED this 21 day of August, 2007.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: Richard D. Loftus
Richard D. Loftus, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: Anne L. Bahler
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: Janette S. Knowlton
Janette S. Knowlton, County Attorney
RB
LR 2007-386

LEGAL DESCRIPTION

The West half of the East half of the Northwest Quarter of the Southeast Quarter of Section 17, Township 40 South, Range 23 East, Charlotte County, Florida, less right-of-way for interstate Highway 75 (State Road 93) as shown on State of Florida Department of Transportation right-of-way map Section 01075-2404

EXHIBIT A

VOTERS' MEETING
SEPT 23, 2012

New Business:

Motion to Discuss the Prospect of Legal Support for Cross Monument: President Leininger referred to the packet material and the Council's proposed motion: *Mark Polzin moved approval of the Church Council's authorization to expand the scope of options to proceed with the Cross Project by discussing the prospect of legal support with Liberty Counsel; to report the issue to the FL/GA District and LCMS, and to seek their advice; and for the Church Council to report back to the congregation on a regular basis; seconded by David Gruntman. Motion carried unanimously. Gerry Hougan moved approval, seconded by John Jacobsen.* Terri Leininger clarified this is not a vote to litigate but only a vote of support to find out more information. **Call on the Motion: Declared unanimous.**

Refinancing LCC Church Debt to Lower Interest and Payments – Stewardship Committee Recommendation: President Leininger referred to the packet material and the Council's proposed motion: *The Committee recommends that the voters, at the September meeting, be requested to approve the refinancing in substance, and that the officers be authorized to proceed to finalize terms and to sign the needed documents provided there is no material adverse change in the terms when the final package is complete. Marvin Fitzwater moved approval, seconded by Gerry Hougan and declared unanimous.*

Elect Lay Delegate for 2013 LCMS Convention July 2013: President Leininger referred to the packet material ballot to select one lay delegate. Pastor Redmann reviewed the duties of the Lay Delegate. President Leininger asked the voting members of the congregation to mark their selection of either Dwayne Leininger or David Gruntman and pass their completed ballot to Karen Mitchell for tabulation. Karen Mitchell announced the selection of David Gruntman.

Questions and Comments from the floor:

None.

Motion was made to adjourn by Gerry Hougan, seconded by John Jacobsen and declared unanimous.

Pastor Redmann closed the meeting with prayer at 12:25 PM.

Respectfully submitted,

Karen S. Mitchell
Secretary

Attachments:

1. Sign-In Sheets
2. Packet Material
3. Ballots

VOTERS MEETING
Nov 25, 2012

CROSS MONUMENT STATUS AS OF NOVEMBER 16, 2012

Our members were advised at the last voters meeting that our desire to build our cross according to our March 15 permit application was denied based on the zoning department's judgment that our cross is a "sign" subject to a height restriction of 40 feet maximum and a surface area not to exceed 150 square feet. Our cross is designed to be 60 feet high and 2400 square feet of surface area to include all four sides.

At a commissioners workshop meeting in August we were told that a new sign code was being prepared and would be available for our information at the October commissioners meeting and our permit would then be reviewed under that revised sign definition.

Pastor Redmann met with Commissioner Constance the first week of October along with some members to present our case for the cross "structure" ergo our right to have the design and specifications as presented in our permit application. We were told that the new sign definition/criteria would be ready for the December commissioners' meeting.

On November 7th Pastor, Rudi Voigt, and Herb Sass met with Geri Waksler, our attorney, who informed us that our cross project would not be on the December commissioners' agenda and she didn't receive a commitment for when it will be heard.

At our last voters meeting the members were informed that we have made contact with Liberty Counsel. This organization is a Christian advocacy firm aligned with Liberty University in Lynchburg Va. Liberty Counsel describes its practice as a First Amendment practice; focused on religious liberties, freedom of speech, church/state issues in public schools and in the public square.

A package of documents was sent to Liberty Counsel on Monday, November 12. They have reviewed our case and have agreed to represent us *pro-bono* and litigate if necessary. Our legal contact at Liberty feels we have a strong case.

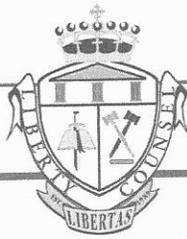
Liberty successfully represented First Baptist Central Florida in their quest to build a 199 ft. cross on their property in Pine Hills, a suburb in

Orlando. Their cross was also designated a sign and permit was declined on the basis of its size. Liberty stated the church/s position and rights under URIPA law (cited above) and the county acquiesced to Liberty's case.

The Cross committee is seeking voter approval to engage Liberty Counsel as our legal representative with their pledge of pro-bono compensation and representing us if litigation is required. Liberty's preference is to settle our issue without litigation by their sending a comprehensive letter outlining our case (which we will review before it is issued) with the notice that they will litigate if our permit issue is not resolved. They also suggest and from experience know that a public relations campaign can be very successful based on their past experience; case in point; First Baptist Central Florida. We will be in contact with First Baptist to hopefully learn from their experience.

Please support our effort by giving your cross committee the approval to proceed as we stated: **CAUTIOUS BUT DETERMINED TO GLORIFY OUR LORD AND SAVIOR JESUS CHRIST.**

LIBERTY COUNSEL



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Orlando, FL 32854-0774

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Facsimile: 407\$875\$0770

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1015 Fifteenth St. N.W., Ste. 1100

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Post Office Box 11108

Lynchburg, VA 24506-1108

Telephone: 434\$592\$7000

Facsimile: 434\$592\$7700

liberty@LC.org

Reply to: Virginia

January 2, 2013

Via U.S. Mail and Facsimile (941) 743-1310

Charlotte County Board of County Commissioners
18500 Murdock Circle
Port Charlotte, FL
33948

RE: Unconstitutional Classification and Denial of Permit for Monument Cross

Dear Chairman Constance and Members of the Charlotte County Board of Commissioners:

I write on behalf of Lutheran Church of the Cross to request that you reverse the decision of the zoning department and immediately approve the Church's proposed freestanding Monument Cross, so that construction may begin without delay. Construction has been delayed since March 2012, due to improper classification of the cross monument as a "sign" rather than a structure, as it actually is, for unconstitutional reasons as set forth below.

By way of brief introduction, Liberty Counsel is a national public interest law firm with offices in Florida, Virginia, the District of Columbia, and in Jerusalem, Israel, with hundreds of affiliate attorneys nationwide. Liberty Counsel's practice emphasizes constitutional law, particularly issues surrounding religious liberty. We have experienced great success in defending the rights of religious speakers and churches from unwarranted governmental interference.

Lutheran Church of the Cross ("the church") is a self-supporting congregation that has been serving the Port Charlotte-Punta Gorda community since 1982. It is located just off Interstate I-75 in the Port Charlotte-Punta Gorda-Deep Creek area. After officially organizing, the name "Lutheran Church of the Cross" was chosen, and it is a member of the Lutheran Church Missouri Synod. The church has 11.2 acres of campus on which is the original Parsonage, the Sanctuary and its newly dedicated, state-of-the-art Fellowship and Ministry Center. The congregation engages the community in four main ministry areas: Christian Education, Senior Ministry, Evangelism/Outreach and Enriching Worship. The

January 2, 2013

Page 2

church property has room for future ministry expansion, which centers around a Monument Cross tower and park, with additional plans including an assisted living facility, an education building with gymnasium and classrooms, an outdoor amphitheater, and outdoor sporting fields and open space.

In 2005, a significant initial donation was given to the church in order to build the Monument Cross. Soon after the initial donation, the church sought rezoning and was approved to change the property zoning classification from agricultural to commercial general, in order to build the cross as a "structure." In the commercial general zone, a "structure" is permitted up to a maximum height of 60'. In early 2012, the church obtained full funding to complete the Monument Cross, and the church applied to the Charlotte County Building Department for a permit on March 12, 2012. However, the permit was denied on March 15, 2012, on the grounds that the cross was a "sign," and did not meet the acceptable specifications of signage under the sign ordinance, namely, that the maximum square footage allowed for a sign is 150 square feet maximum area, with a maximum height of 40'. The Monument Cross as designed with a height of 60' has a total of 2400 square feet of white roll formed panels over a steel superstructure. The Church's cross is relatively small compared to many of the crosses that have been built all over the U.S.A. A church in Effingham, Illinois has a 200 ft. cross on its property, as does a church in Orange County, Florida.

On April 16, 2012, a land-use attorney who has been assisting the church with this project and church member Mark Polzin met with Charlotte County zoning officer Shaun Cullinan. In this meeting, Mr. Cullinan gave the impression through comments, body language, and logical conclusions that he was uncomfortable with the "size" and "mass" of the cross, and that it would attract opposition and complaints to the County from local atheists. The attorney and Mr. Polzin questioned him about other area church crosses, and whether those were considered "signs," as they would undoubtedly also be nonconforming. Mr. Cullinan believed that other churches had simply built them as a matter of course, and that they had never bothered to ask whether their crosses were "signs." He gave the impression that there would have been "no problem" with approving the church's Monument Cross as a structure, if only the church had desired to have a cross made of something thinner than what was called for by the submitted design. When the church stood firm with its desire to build the cross to full scale as permitted under the commercial general zoning classification, Mr. Cullinan countered by calling it a "sign" and denying the permit.

Former Commissioner Bob Starr has also spoken with Mr. Cullinan on this issue, confirms the testimony of the land-use attorney and Mr. Polzin, and notes that Mr. Cullinan specifically stated to him that a primary reason for the denial of a permit as a "structure" was due to concern that the cross would attract opposition and complaints to the County from local atheists.

This denial was improper. A limitation of a church's religious expression - a cross that would otherwise fit squarely within the category of "structure" - because it might attract

January 2, 2013

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complaints is an unconstitutional "heckler's veto." At least one other Florida county - Orange County - has classified and approved a significantly larger local Monument Cross as a structure. Based on the example of Orange County, Charlotte County's intransigent classification of the church's Monument Cross as a "sign" after expressing concerns of what non-Christians might think of the church's Monument Cross exposes the County to liability. At a minimum, the County's misclassification and continued delay is a violation of the church's rights under Florida's Religious Freedom Restoration Act ("RFRA"); the church's First Amendment rights; and its rights under the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

Florida's RFRA states that "the government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability," unless the burden "(a) is in furtherance of a compelling governmental interest; and (b) is the least restrictive means of furthering that compelling governmental interest." Florida Rev. Stat. § 761.03.

The Federal RLUIPA is similar. 42 U.S.C. § 2000cc(b)(1)-(3). "RLUIPA applies when the government may take into account the particular details of an applicant's proposed use of land when deciding to permit or deny that use." *Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter*, 456 F.3d 978 (9th Cir. 2006). "[A] substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property for the purposes thereof within the regulated jurisdiction generally—effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003) (emphasis added).

Zoning concern over the "mass" and "size" of a cross, and a desire to avoid atheist complaints are not compelling government interests sufficient to support denial of the church's permit to build the Monument Cross as a "structure." Further, a denial on this basis and classification as a "sign" in order to avoid complaints is prima facie evidence of an unconstitutional "heckler's veto." The denial essentially allows a private party to determine which expressive activities will not be tolerated and then the government enforces the decision of the private party. See *Lewis v. Wilson*, 253 F.3d 1077, 1082 (8th Cir.2001) (rejecting the government's attempt to censor the speaker's activity because of the potential responses of its recipients and noting that "[t]he First Amendment knows no heckler's veto"); *Frye v. Kansas City Mo. Police Dept.*, 375 F.3d 785, 793 (8th Cir.2004) (Bye, J., dissenting) ("The prohibition of hecklers' vetoes is, in essence, the First Amendment protection against the government effectuating a complaining citizen's viewpoint discrimination."). "Listeners' reaction to speech is not a content-neutral basis for regulation." *Forsyth Cnty v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

Finally, Orange County's classification of essentially the same type of (albeit larger) Monument Cross is further evidence of the irrational nature of this classification and consequent denial. Orange County defines "structure" as "all permanent or temporary, fixed or movable construction comprising buildings, stands, signs and billboards erected

Charlotte County Board of Supervisors

January 2, 2013

Page 4

independently or affixed to exterior walls; provided, however, that utility lines and poles shall not be considered structures for the purpose of this chapter." Orange County Ord. No. 93-11, § 2, 4-27-93. Charlotte County defines "structure" as "Any construction or any production or piece of work artificially built up or composed of parts joined together in some definite manner. 'Structure' includes 'building,' as well as other things constructed or erected on the ground, attached to something having location on the ground or requiring construction or erection on the ground." Charlotte County Code 3-9-1. Clearly, the Monument Cross is well within the Charlotte County and Orange County definitions of "structure."

Nothing in the Charlotte County Code *requires* the County to classify the proposed Monument Cross as a sign. The Monument Cross fits Charlotte County's definition of "structure." Conversely, a shoehorning of the Monument Cross into the "sign" category would raise a host of unworkable issues, which have already been detailed by the church in its September 24, 2012 Request for Reconsideration (attached), including issues of grandfathering all other existing crosses as "signs," non-compliance of existing crosses in the event of remodeling or renovations, and other undesirable or absurd results.

Where the most workable classification is that of "structure," and where the unworkable definition of "sign" is adopted after the County has expressed an unconstitutional preference of minimizing non-religious complaints, while being unable to proffer a compelling government interest for its insistence, the County stands exposed to liability for civil rights violations.

Therefore, I hereby request that the County **approve the church's Monument Cross as a structure, and provide written confirmation of the same within 30 days of the date of this letter.** If I do not receive such a response, I will conclude that the County is indifferent to the concerns raised in this letter, and I will take further measures to prevent continued irreparable harm to the rights of my client.

I appreciate your attention to this matter.

Sincerely,

Richard L. Mast, Jr.^H

^H Licensed in Virginia

Charlotte County Board of Supervisors

January 2, 2013

Page 5

RLM:jml

cc:

Via Facsimile

Dan Quick, Community Development Director (941) 743-1228

Shaun Cullinan, Zoning Official (941) 764-4905

Via Email

Lutheran Church of the Cross

Attachments



January 18, 2013

By facsimile 434-592-7700 and regular U.S. Mail

Richard L. Mast, Jr.
Liberty Counsel
Post Office Box 11108
Lynchburg, Virginia 24506-1108

Re: Lutheran Church of the Cross

Dear Mr. Mast:

We are in receipt of your letter dated January 4, 2013. First, I'd like to inform you that your letter is replete with inaccuracies, especially in regard to the statements attributed to Shaun Cullinan. You may not be aware that there is a well-documented history related to the Lutheran Church of the Cross ("Church") attempting to gain zoning approval for their cross. We have outlined the regulatory history below.

The cross was classified as a sign based on a determination made in 2006 by the then Zoning Official, Nicole Dozier, which was based in part on the applicant's assertion that "one of its purposes of the cross was to aid drivers, including those on I-75, identify the location of the church." The letter is attached as Exhibit A.

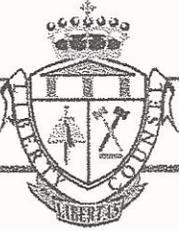
The Church then filed an unsuccessful request to the Board of Zoning Appeals for a variance to the **SIGNAGE** height requirements of Section 3-9-95 of the Charlotte County Code of Ordinances. The denial letter is attached as Exhibit B.

Ultimately, the decision that the cross is a sign was ratified by Mr. Cullinan based on the following section of the County's sign code:

1.1.2. Definitions

F. *Sign* means any outdoor advertising display comprehensible from a right-of-way using letters, words, figures, **symbols**, pictures, designs or a combination thereof to advertise, attract attention, indicate direction, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. (Emphasis added)

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liberty@LC.org

Reply to: Virginia

January 29, 2013

Via E-Mail - county.attorney@charlottefl.com

Ms. Jannette Knowlton
Charlotte Attorney
18500 Murdock Circle
Port Charlotte, FL
33948

RE: Unconstitutional Classification and Denial of Permit for Monument Cross

Dear Ms. Knowlton:

First, I would like to thank you for your response of January 18, 2013. In regard to your estimated indefinite time frame for approval, I would submit that a simple classification of the Monument Cross as a structure is not complicated, and needs no further study beyond what has been available to the county for the last six years.

Regarding the County's continued classification of the Monument Cross as a sign rather than a structure: even if the Monument Cross *could* be considered a sign, as per Section 1.1.2 of the Charlotte County Code of Ordinances Article 3, Zoning, 3-9-95, it is exempt and should have been long-ago approved under Section 1.1.3(E)(2). As it stands, the Monument Cross most appropriately fits within the Article 1, Section 3-9-2 definition of a structure. As the County well knows, if the Monument Cross is classified as a structure rather than as a sign, the Board would have no basis upon which to deny the Lutheran Church of the Cross's construction of the cross. Furthermore, to the extent the County may place the Monument Cross into either category at its discretion, the regulatory scheme is unconstitutional because it vests unbridled discretion in County officials, for plainly there are no detailed guidelines to cabin the exercise of its discretion.

In your letter, you stated: "An administrative decision was made in 2006 that this structure meets the definition of a sign because it is a symbol and symbols are considered signs under the sign code. The cross is intended to convey a message and it is undisputed that the cross is a symbol used to convey the message of Christianity."

Even if, for the sake of the argument, the Monument Cross was a "sign," which the church does not concede, the sign code itself states that "Murals and other artwork will not be calculated towards allowable sign area to the extent it does not contain text, registered corporate logos, or other symbols that advertise the particular use, business, product or

service rendered on the premises." Charlotte County Code of Ordinances Article 3, Zoning, 3-9-95, Section 1.1.3(E)(2). (Emphasis added).

The proposed Monument Cross does not contain text, corporate logos, and is not a "symbol that advertise[s] the particular use...on the premises." All artwork is symbolic for something, and is designed to elicit certain feelings, emotions, and thoughts. The cross is a symbol of Christianity itself, and the erecting of a cross is an act of religious expression recognized worldwide. If "conveying a message" is the standard by which artwork - sacred or otherwise - becomes a "sign," then no publicly-visible sculpture in Charlotte County is safe from regulation or denial of approval. Local examples of such artwork that are not classified as "signs," yet which convey a "message" of some sort include the Ponce de Leon sculpture atop a plinth at a local park 1, a large carved wooden monument by Peter Toth of an American Indian 2, and the four-story sun and waves sculpture adorning the new Charlotte County Justice Center 3. All of these items, the last in particular, would have fallen under the artwork exemption to the sign ordinance, or, like the cross, their area would have prevented their approval and installation.

Conversely, under the standard you suggest, the County would be obligated to *approve* an identical Monument Cross proposed for non-church property, so long as "no worship takes place," thus creating a religious test for approval of a cross sculpture. Such a test is, as you know, unconstitutional, and would also violate RLUIPA, as set forth below.

Your letter makes much of a statement *by the Zoning Department* in a 2006 letter from the Zoning Department, stating that representatives from the church had indicated "one of the purposes of the cross was to aid drivers, including those on I-75, identify [sic] the location of the church." Again, for the sake of the argument, a statement amounting to a truism - that a prominent piece of public sacred artwork would serve as a landmark or waypoint on I-75 - is insufficient to render the Monument Cross a "sign."

Thus, both arguments set forth in your letter and repeated hereinabove must fail. If the County had been dealing in good faith from the start, the Monument Cross would have been approved in 2006 under Section 1.1.3(E)(2), thus avoiding a denial based on the "sign" maximum square footage calculation.

Classifying the cross as a sign rather than as a structure is all too convenient in light of the statements made by Mr. Cullinan regarding his fear that if the cross were erected, it would subject the County to complaints from local atheists regarding the size and religious nature of the cross. These statements were not made in 2006, and are subject to verification by several witnesses. As you may know, the Eleventh Circuit Court of Appeals noted that an ordinance restriction will be upheld so long as it is a neutral policy of general applicability, there is no evidence suggesting that the ordinance was passed due to religious

1 <http://img.groundspeak.com/waymarking/display/d48b2342-9e33-4c85-bc82-e61588d59533.jpg> ;
http://conquistadors-florida.com/?page_id=2660

2 http://www.lindseywilliams.org/index.htm?Articles/Indians_Sculpted_From_Mrs_McAdows_-Ear_.htm~mainFrame

3 <http://swanlakevillage.com/noreens/cthouse.jpg>

animus, there is no evidence that the city specifically targeted religious groups in its enforcement of the ordinance, and there is no evidence that secular structures of the kind had been permitted regardless of the ordinance. *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 655 (11th Cir. 2006). In contrast, Charlotte County has demonstrated clear animus towards the church, a religious group, by deliberately classifying the cross as a sign (although it has none of the typical characteristics of a traditional "sign") instead of a structure so that the county can prevent its construction for fear of complaints from local hecklers.

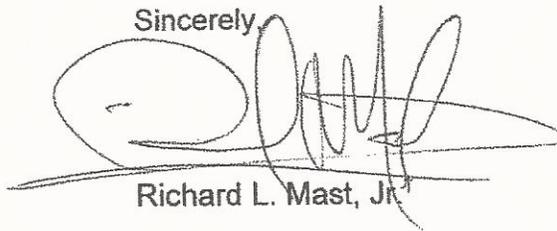
Furthermore, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) has made clear that when evaluating restrictions on the free exercise of religion, only those restrictions that are the *least restrictive* as possible have the chance of passing constitutional muster. 42 U.S.C. § 2000cc(a)(1)(B). Here, as demonstrated in your letter dated January 18, 2013, Charlotte County has not chosen the least restrictive means of enforcing its ordinance. Instead of classifying the Monument Cross as a structure, the county has chosen to classify it as a sign (while ignoring a clear exception to that classification), and thereby imposing a restriction on religious exercise greater than what is necessary. As stated in our letter dated January 4, 2013, the ordinance clearly authorizes the county to approve the Monument Cross as a structure. Thus, as the least restrictive means of regulating structures, signs, monuments, etc., in Charlotte County, the county should classify the Monument Cross as a structure to avoid both civil liability and unworkable precedent moving forward.

Finally, a plain reading of the Charlotte County ordinance shows that a "structure" is not a "sign" merely because it depicts a shape or symbol of some kind. Restaurants and businesses, for example, are often built to conform to a recognizable shape. Works of modern art are frequently "structures" without being signs. Michelangelo's *Pieta*, like the cross itself, is a recognized piece of sacred artwork. Whether constructed of solid marble, or the modern equivalent of facia over steel superstructure, the material of neither is sufficient to convert what is otherwise artwork and "structure" into a sign. Freestanding displays of modern art, bronze sculptures, obelisks, or any other art forms which convey a message, would also fall into this category of signs under your interpretation. If the County chooses to arbitrarily characterize the Monument Cross as a sign, every monument, work of art, or church steeple in Charlotte County will have to be reevaluated to ensure that it complies with this over inclusive standard.

Therefore, I hereby request that the County approve the church's Monument Cross as a structure, and provide written confirmation of the same by February 4, 2013. If I do not receive such a response, I will conclude that the County is indifferent to the concerns raised in this letter, and I will take further measures to prevent continued irreparable harm to the rights of my client.

I appreciate your attention to this matter.

Sincerely,



Richard L. Mast, Jr.

RLM:jml
Attachments

cc:

Via Facsimile

| | |
|---|----------------|
| Charlotte County Board of Commissioners | (941) 743-1310 |
| Dan Quick, Community Development Director | (941) 743-1228 |
| Shaun Cullinan, Zoning Official | (941) 764-4905 |

Via Email

| | |
|------------------------------------|------------------------------------|
| Ray Sandrock, County Administrator | bcc.administration@charlottefl.com |
| Lutheran Church of the Cross | |

[†] Licensed in Virginia

FEB 14, 2013

ADDRESS TO CHARLOTTE COUNTY COMMISSIONERS

Mr. Chairman and distinguished commissioners of Charlotte County,

Thank you for this opportunity to address you and to plead with you on behalf of the 375 active members of Lutheran Church of the Cross and the Cross Monument project.

As pastor of this loving congregation I assure you that we do not want to bring legal action against the county. We have sought to work with the county during this lengthy struggle.

However, as I have stated previously and as our advocate, Liberty Counsel of Lynchburg, VA has enumerated in their letter dated January 2, 2013, we believe the decision to classify our Cross Monument project as a "sign" imposes unnatural, unnecessary, irregular restrictions that ultimately deny Lutheran Church of the Cross our religious freedom.

It is our position that the Cross "is sacred art, erected for its beauty and symbolism. It is certainly a structure under the Charlotte County ordinances, but it is not a sign."

It is my personal opinion that this whole circumstance is ridiculous and flies in the face of common sense.

We beg the commissioners to direct the county staff to re-classify our application from a "sign" to a "structure" and allow the project to go forward without further delay.

Submitted in Christian love and service, Rev. Kenneth Redmann, Pastor



Press Release

February 18, 2013

County Board Reverses Decision and Allows Church to Erect a Cross

<http://www.lc.org/>

Port Charlotte, FL – After nearly six years of effort, culminating in a yearlong battle with Charlotte County’s zoning board, Lutheran Church of the Cross will now be able to build a 60-foot monument cross on its 11-acre property. Last week, the Charlotte County Board of Commissioners voted 4-0 to instruct zoning staff to reexamine whether the monument cross should be classified as a “sign” or as a “structure” and “work of art.”

In March 2012, the zoning board denied the church’s request because the board misclassified the freestanding cross as a “sign.” The cross exceeded the acceptable specifications under the inapplicable sign ordinance: 40 feet high and 150 square feet maximum area. The cross as designed is 60 feet high with 2400 square feet of area.

“Charlotte County’s intransigent classification of the church’s monument cross as a ‘sign’ after expressing concerns about what non-Christians might think of the church’s monument cross exposes the County to liability,” Liberty Counsel wrote in a [letter](#) to the Charlotte County Board of Commissioners. “At a minimum, the County’s misclassification and continued delay is a violation of the church’s rights under Florida’s Religious Freedom Restoration Act, the church’s First Amendment rights, and its rights under the Religious Land Use and Institutionalized Persons Act.”

“The Religious Land Use and Institutionalized Persons Act of 2000 has made clear that when evaluating restrictions on the free exercise of religion, only those restrictions that are the least restrictive have the chance of passing constitutional muster,” said Mat Staver, Founder and Chairman of Liberty Counsel. “When the zoning board classified the cross as a ‘sign’ on the basis that it might offend someone, it imposed an unconstitutional restriction,” Staver said.

“I am thankful that the Charlotte County Commissioners acknowledged that the cross was not a ‘sign,’ but a ‘structure’ as well as a ‘work of art,’ thereby enabling the county to issue Lutheran Church of the Cross a permit to erect a cross on their property. This classification is consistent with other works of art located throughout Charlotte County. I am pleased that the Charlotte County Commissioners made the right decision,” Staver concluded.

Liberty Counsel is an international nonprofit, litigation, education, and policy organization dedicated to advancing religious freedom, the sanctity of life, and the family since 1989, by providing pro bono assistance and representation on these and related topics.



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STATUS OF THE CROSS MONUMENT
February 24, 2013

After many months of frustration with the county staff breaking numerous promises of having a new “sign code” applicable to our cross project and demand letters from Liberty Counsel citing our First Amendment rights, Pastor Redmann and a group of our members attended a monthly council meeting on February 14 which was open to the public. An open forum was available for all who wanted to speak on any issue. Pastor Redmann addressed the commissioners (all were present except commissioner Duffy who voted against our project at a meeting last August) with a prepared statement (attached for your information) that was brief and cutting; but respectful. At the end of the public forum, Commissioner Deutsch addressed his colleagues and the audience in our project’s favor and expressed concern that the process involving our cross permitting has lasted too long. Commissioners Truax and Daugherty voted yea for our cause and Head Commissioner Constance directed County Administrator Ray Sandrock to “get it done”.

In the early afternoon on February 14 Commissioner Constance called Pastor after a meeting with his staff where they determined that our cross may be reclassified from a “sign” to a “work of art”. Therefore we are now on a schedule for the county to issue our permit to build, we pray, within the next 30 days.

Now we wait. Liberty has gone into a wait and see mode. We anticipate if the county will permit our cross with no project killing caveats in the permit affecting our design of the cross height, surface square feet maximum, and right of way issues with I75 as the reference point; we will proceed. 30 days from February 14th is March 15th; the day we received notice of our permit rejection in 2012. Brothers and Sisters, our God is not the God of coincidence. If all goes to plan we can start the construction process in early April. So what do we do in the meantime:

- 1) We pray for the successful permitting of our cross.
- 2) We reflect on God’s timing and His will as we plan our future ministries.
- 3) We further investigate the lighting of the cross, the appointments surrounding the cross, i.e. meditating benches, flower pots, and walkways from the parking lot to the cross without compromising drainage, and security to protect our beloved cross.

- 4) We ponder what ministry opportunities will come to us via the cross and grow in faith for future ministries as we have learned patience, perseverance and trust in our Lord as we work in His Kingdom.

IN SERVICE TO OUR LORD,
HERB SASS
MEMBER CROSS TEAM



MEMORANDUM

Date: February 28, 2013
To: Lutheran Church of the Cross
From: Shaun Cullinan, Zoning Official 
Subject: Determination on cross for Lutheran Church of the Cross, 2300 Luther Rd.

After reviewing the previous files and building permit application to construct a monument of a Christian Cross on the subject property located at 2300 Luther Rd., Punta Gorda, FL 33983, it is my determination that this is not a sign, but is instead a monument/art which is an integral part of the Church's proposed "Prayer Garden." As such, the monument/art may be constructed to the maximum height as allowed in the Zoning District, Commercial General (CG), which is currently 60 feet.

My determination is based on the following criteria:

1. The monument/art is sited in a manner so as to be readily accessible to pedestrians for passive viewing;
2. The monument/art is sited in a manner so as not to unduly divert the attention of motorists from the roadway;
3. The monument/art is stationary and does not revolve or otherwise move;
4. The monument/art is not internally illuminated;
5. The monument/art is in good taste and reasonably reflects acceptable community values;
6. The monument/art is of sufficient durability so as to have a life expectancy of at least ten (10) years;
7. The monument/art does not promote commercial interests.

Community Development

Zoning Division

18400 Murdock Circle | Port Charlotte, FL 33948-1068
Phone: 941.743.1964 | Fax: 941.743.1598