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February 11, 2009

City of Los Angeles
Department of City Planning
Office of Zoning Administration
Attn: Zoning Administrator Andrew Passima
200 N. Spring Street, Room 763
Los Angeles, California 90012

Re: Case Nos: ZA-2008-2213 (CU)(ZV)
ENV-2008-2214 MND
Hearing: February 17, 2009, 10:00 a.m.
Room 1020, City Hall

Dear Zoning Administrator Pessima:

This firm represents Esma and Michelle Younis. For the reasons set forth below, the Younises oppose the application of Congregation Etz Chaim ("CEC") for a conditional use permit ("CUP") or variance to permit CEC to conduct congregational worship services – including weddings and funerals – at 303 S. Highland Ave. ("the Property").

I. Introduction.

Since 1973, Esma Younis had lived at 309 S. Highland, next door to the CEC Property. Until 2008, Esma's daughter Michelle lived there as well. Although Michelle now resides in Santa Barbara County, she frequently visits her mother's home.

For years, the Younises have suffered from the noise, parking problems and traffic hazards caused by CEC's operation of a synagogue on the Property. They have also suffered the loss of the sense of privacy they once enjoyed in their home. Heedless of any considerations other than its own advantage, CEC and its members have largely ruined the Younises' home life.

Although CEC has been in continuous violation of the zoning laws for 15 years, the City has done *nothing* about it. Left to their own devices, the Younises are suing CEC in superior court to abate the unlawful synagogue use as a nuisance. CEC's misuse of the Property inflicts unique injury on the Younises as next-door neighbors. But it also threatens all of Hancock Park, a historic, *residential* area

of Los Angeles. Last August the City officially protected Hancock Park with a historic preservation overlay zone ("HPOZ").

The Younises urge the ZA to DENY CEC's application, as the City did once before. As shown below, the application is based on serious misrepresentations and omissions of fact and law. Factually, CEC suggests that it is a group of elderly and disabled persons. While some congregation members may be elderly and disabled, CEC is a corporation. If the City issues a CUP to CEC, the City can expect a synagogue to exist on the Property indefinitely and long after any elderly congregants are gone.

CEC repeatedly refers to the building on the Property as a "residence." It is not. It is a synagogue. It was built as a synagogue and has no bedrooms. CEC obtained a property-tax exemption for the Property based on sworn representations that CEC uses the Property solely for religious worship and not as living quarters for any person. That exemption began in January 2003 and is in effect today. These and other key omissions – including the existence of numerous alternative locations for the synagogue, CEC's flaunting of the law in this and other contexts and its fraudulent conduct in obtaining building permits – fatally undermine CEC's application.

In 1996, CEC sought a CUP for a synagogue on the same Property. The City denied the application, making a variety of findings that such a use would be harmful both to the neighbors and the Hancock Park neighborhood. Those findings are still factually valid – and legally binding on CEC. The only relevant facts that have changed since the prior denial are the HPOZ and the opening of another illegal synagogue, operated by Yavneh Academy (which is in litigation), barely a quarter-mile away. The findings made in denying CEC's original application apply with even greater force today.

CEC's application is also based on misrepresentations of law. In particular, the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000 cc, provides no support for CEC's application. The case law, which CEC completely ignores in its CUP application, holds that the City would not violate RLUIPA by denying CEC's application and requiring it to locate in a nearby commercially zoned area. Denial at most would require congregation members to walk a few blocks farther to temple. Such an inconvenience (if it exists here at all) is not a substantial burden on religious exercise within the meaning of RLUIPA.

CEC demands that the City conform its zoning policy to CEC's religious beliefs and admitted desire to segregate itself from the rest of the community. A decision granting a CUP or variance because of CEC's religious beliefs, however, would violate the Establishment Clause. Indeed, the City has much more to fear from an Establishment Clause challenge to a decision *granting* the CUP than from an RLUIPA challenge to denial of the CUP.

Finally, the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA") and its regulations require an initial study of the environmental impacts of a synagogue use on the fragile, historic resource that is Hancock Park. CEC therefore is entitled neither to a CUP nor a variance. The ZA therefore should DENY CEC's application.

II. CEC's Application is Based on Significant Misrepresentations and Omissions of Fact.

A. The Property is Owned Not by a Small Group of Elderly, Disabled Individuals but by a Corporation.

CEC portrays itself as "neighborhood residents, a large number of whom are elderly and disabled...." CEC has never disclosed who its members are or how many are elderly and disabled. Further, the entity that owns the Property is Congregation Etz Chaim of Hancock Park, a *corporation*. (See Exhibits (hereinafter referred to by exhibit numbers) 1 (property ownership record), 2 (Secretary of State's Status Report.).) CEC's reference to the elderly and disabled is designed to suggest that the requested CUP would in some way be limited, perhaps by these persons' lifetimes. CUP's, however, run with the land and the likely recipient of the CUP would be a corporate entity. The ZA thus should be under no illusions that CEC is asking for a CUP for an unlimited synagogue use (see below) that would go on *forever*.

In its application, which is made *under oath*, CEC slyly misrepresents its status. At Page 2 of the application, CEC identifies the applicant as Rabbi Chaim Baruch Rubin and the "Company" as "Etz Chaim Congregation." The application form then asks for the property owner's name "if different from applicant." CEC leaves this portion of the application blank. The owner of the Property, however, is Congregation Etz Chaim of Hancock Park, a California Non-Profit Corporation.

B. The Synagogue Building at 303 S. Highland is a Church, Not a Residence.

CEC refers to the building on the Property over and over again as a "residence," or a "single family residence." This is untrue according to Rabbi Rubin's own sworn testimony. The City's official listing of property uses appears in its on-line Zoning Information Management Access System ("ZIMAS"). The ZIMAS report on the Property (Exh. 3) shows the use as "Church." It further reflects that the purported "residence" has *no* bedrooms.

On January 23, 2003, CEC's president Rabbi Rubin submitted a verified application for a church exemption from property taxes. (Exh. 4.) In the application, Rabbi Rubin certified *under oath* (¶ 6) that "all buildings and equipment claimed as exempt are **used solely for religious worship**; or that any building in the course of construction is intended to be used solely for religious worship." (Emphasis in original.)[1]

On the back of the application was a list of questions (also to be answered under penalty of perjury), including the following: "Is any portion of this property used for living quarters for any person?" "Yes" and

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[1] Section 3(f) of the California Constitution exempts from property tax "Buildings, land on which they are situated, and equipment used *exclusively for religious worship*." (Emphasis added.)

"No" boxes followed. Rabbi Rubin answered "No." CEC's tax exemption is still in place. (See Assessor's Report, Exh. 5.[2])

When CEC wanted to avoid paying property taxes, it swore to the County that the building on the Property ("the Synagogue") was used solely for religious worship and that no part of the Property was used as living quarters for any person. Now, when CEC wants a CUP, it says – *again under penalty of perjury* – that the Synagogue is a single-family "residence." CEC cannot have it both ways. In addition to the obvious estoppel that arises from CEC's tax exemption, the ZA should not be misled into believing that the Synagogue is any kind of residence. Nor should the ZA be misled that the religious services CEC seeks to conduct (including funerals and circumcisions) are those normally incident to residential use.

C. CEC Has Access to Numerous Alternative Locations in Commercial Areas.

CEC claims (Attachment to Application ("App." at 1) that its unidentified "elderly and disabled" members "cannot walk to services *at more distant synagogues*." (Emphasis added.) CEC provides no evidence to back up this statement. It does not provide a map of where its members live, so that one can tell whether the elderly and disabled members can walk elsewhere. But CEC also distorts the issue, which is whether *CEC itself could have located*, at some time during the last 15 years (see Section D. below), on a street zoned for commercial use.

Unquestionably, CEC could have done so if it had tried. Numerous Jewish synagogues and other houses of worship exist just a few blocks away on La Brea Avenue (.3 miles, or a six-minute walk, away), Fairfax Avenue, Beverly Boulevard and Wilshire Boulevard. These streets are zoned for commercial use. (See, Exh. 6 (area zoning map).) Many Orthodox synagogues are located on these streets. (See, Exh. 7 (excerpts of Jewish Journal Orthodox synagogue directory).)

D. CEC Has Flaunted the R-1 Zoning Restrictions for Fourteen Years.

1. CEC has operated an unlawful synagogue on the Property since 1994.

According to CEC's January 2003 exemption application (Exh. 4), it began using the Property "solely for religious worship" in April 1994. In its application, CEC admitted under oath that its use constituted operation of a "church" exempt from property taxes. In The League of Residential Neighborhood Advocates v. City of Los Angeles, 498 F.3d 1052 (9th Cir. 2007) ("LRNA") the Ninth Circuit held that CEC's activities (whether called operation of a synagogue (p. 1056) or "congregational worship" (p. 1057), required a CUP.

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[2] The Assessor's report shows a land value of $817,650, improvements valued at $825,564, all of which ($1,643,214) is exempt.

Never in its nearly 15 years of operation has CEC ever received a permit for a synagogue, temple, church or other house of worship.

CEC no doubt would respond that it relied in good faith on the invalid Settlement Agreement. But the Settlement Agreement was formed in September 2001, seven years after CEC began its illegal use. CEC's reliance on an illegal settlement agreement does not justify CEC's subsequent flaunting of the zoning laws. Advised by one of the most sophisticated law firms in Los Angeles, Latham & Watkins, CEC was in a position to know very well the problematic nature of the Settlement Agreement. Even after the agreement was held invalid in 2007, CEC continued its violation of the zoning laws and persists in the violation to this day.

2. CEC fraudulently obtained its building permits in 2002.

In the Settlement Agreement, CEC promised to maintain and restore the "single family use" of the Property, "including [its] residential character and architecture…." (Settlement Agreement, Exh. 8 § VI. A.) On March 13, 2002, CEC submitted a building permit application for the "addition" of 4,423 square feet to the "existing 2 story ***residential house***" as well as a 657-square-foot "loft" on the second floor and a 330 square-foot garage. (RJN Exh. 9.) A September 17, 2002 application for a methane detection system listed both the existing and the proposed *use* of the property as "***Dwelling – Single Family***." (Exh. 10.) (Emphasis added.) Barely four months later, CEC swore under oath in its exemption application that it was using the Property exclusively for religious worship and that no part of the Property was being used as "living quarters for any person." (Exh. 4.)

If CEC had honestly informed the Department of Building & Safety ("DBS") that it intended to use the Property solely as a church and not in any way as a residence, CEC would not have gotten a permit for a single-family dwelling. If CEC had told DBS that the new structure would have no bedrooms, CEC would not have obtained a permit. CEC obtained its permits by knowingly misrepresenting its true intended use of the Synagogue building.

3. In another context, Rabbi Rubin has demonstrated contempt for the law and the rights of others.

CEC seeks a governmental license granted only on a showing of exceptional circumstances. Any CUP the City issues to CEC must be based on a well-grounded belief that Rabbi Rubin and CEC will respect the rights of others, obey the law and comply with any conditions placed on the CUP. There is good reason to believe Rabbi Rubin and any organization he leads will not do so.

In 1998, Rabbi Rubin and his wife Marcia operated a facility called Bell Gardens Manor for the care of mentally disordered adults, aged 18-59. Such facilities are regulated and their operators are licensed by the State Department of Social Services ("DSS"). In 1996-1997, DSS conducted several inspections of Rabbi Rubin's facility. As the certified copies of DSS's records show (Exh. 11), the inspections reflected serious neglect of the residents and dangerous conditions at the facility. The

investigations also uncovered evidence of sexual misconduct by Rabbi Rubin toward staff.

The result was a disciplinary accusation, dated May 15, 1998, which sought revocation of Chaim and Marcia Rubin's licenses to operate care facilities and an order excluding Rabbi Rubin from working in a licensed care facility. DSS alleged that (a) in November-December 1997 Rabbi Rubin "pulled down his pants and underwear to his knees and exposed his penis" to a staff person and asked her to look at it; (b) Rubin patted the same staff person "on her buttocks"; (c) between November 1997 and February 1998 Rubin "caused or permitted several hundred computer-generated sexually explicit, obscene images to be stored on a Bell Gardens Manor computer," several of which appeared to contain images of actual or simulated sex acts by "girls under age 18"; (d.) Rubin downloaded the computer pornography despite knowledge that the computer was regularly used by another staff person and that she was likely to see the obscene images; and (e) many instances of patient neglect had occurred, including allowing patients to lay in filthy linens, lack of adequate night staff resulting in on-premises drug use, inadequate garbage disposal, inadequate air conditioning and unclean food practices.

As reflected in DSS's Order and Decision on June 10, 1998, the Rubins, who were represented by counsel, did not respond to the accusation and defaulted. In its Order and Decision DSS found all factual allegations in the Accusation true and correct. As discussed below in connection with administrative res judicata, these quasi-adjudicative findings are legally binding on Rabbi Rubin. DSS revoked the Rubins' licenses and prohibited Chaim Rubin from being employed or present in, or having any contact with, clients of community care facilities, child day care facilities and the like.

DSS's disciplinary action against Rabbi Rubin reveals disturbing facts. Rabbi Rubin has shown not only an unwillingness to follow the law, but contempt for the rights of his staff and the patients entrusted to his care. No organization headed by Rabbi Rubin should be trusted to follow the law or respect the rights of others. No such organization should receive the CUP that CEC seeks.

E. The Fictitious "Settlement Plan" and CEC's False Comparison to Churches Built Decades Ago.

CEC claims (App. at 2) that its application is part of "settlement plan with the City" in response to the Ninth Circuit's decision in LRNA, 498 F.3d at 1056-1057 (invalidating prior settlement agreement between City and CEC as discussed below). The City's sworn interrogatory responses deny knowledge of any such plan. (Exh. 12.) CEC fails to disclose what this "plan" is, or why the City has no knowledge of it. In truth, there is no settlement plan. CEC made that story up in order to suggest that granting CEC's permit application will have the collateral benefit (which in any event is irrelevant to the criteria for issuance of a CUP) of promoting settlement of litigation. The suggestion is false.

CEC also claims that three local churches exist within R1 zones in the Mid-Wilshire area. These examples (Christ the King Church on Rossmore, St. Brendan's on Van Ness and Daniel Murphy School on Detroit) are irrelevant. Christ the King and St. Brendan's go back to the 1920's, as their websites show. Daniel Murphy School (which included a church) opened in about 1943 and is either closed or in the process of closing. ZIMAS reports show that only St. Brendan's, built in 1927, is located in an R-1 zone. CEC cannot claim that issuance of a CUP for its synagogue in 2009 is required because of

churches built decades ago.

III. The City Rejected CEC's Prior Application for a CUP and Variance to Conduct Congregational Worship Services at 303 S. Highland

A. The ZA's Prior Findings Strongly Rejected CEC's Application and Were Upheld on Appeal.

1. CEC's revisionist "litigation history" omits the City's binding administrative findings and the Ninth Circuit's invalidation of the Settlement Agreement.

CEC's purported "litigation history" (App. at 1-2) is seriously misleading. CEC completely fails to mention the findings of the ZA and BZA, denying CEC's prior application, which were affirmed by the state courts and are *binding* on CEC now. These findings are set forth below. By detailing its terms, CEC tries to suggest that the September 2001 settlement agreement between CEC and the City ("the Settlement Agreement") was legitimate. (App. at 2.) It wasn't legitimate. It was illegal. CEC also tries to hide the fact that the Ninth Circuit did not merely reverse the district court's dismissal of the legal challenge to the Settlement Agreement and remand. The court expressly held that the agreement was *invalid* as a matter of law. (See below.)

2. The ZA and BZA found that a synagogue on the Property would harm the neighborhood and that CEC had alternative locations available.

In denying CEC's earlier CUP application, the ZA and BZA found, inter alia:

"The proposed [synagogue] use WILL NOT be desirable to the pubic convenience or welfare" because:

[U]se of 303 S. Highland as a synagogue is a "detracts [from] and diminishes the residential character and experienced quality of life of a significant number of the other residents of this long established single-family residential neighborhood";

"[A] significant number of [neighborhood] residents, including observant Orthodox Jews, . . . object to" the use;

"[T]he physical site is small and does not permit adequate buffering from adjacent residential uses or the provision of required parking";

"[T]he most probable result of the continuation of this use is an exacerbation of the current infringement on the enjoyment of their property by nearby residents and the existing parking and traffic congestion";

"[T]here are alternatives for the location of the physical synagogue and/or the exercise of the members' Orthodox faith;" [and]

[T]he site of the proposed Synagogue "is located in a long established and well maintained single-family residential neighborhood consisting of lot sizes that require buffering and parking beyond the . . . requirements of a single-family residential zone."
(BZA Report, Exh. 13 at 20.)

In light of the alternative locations, "there is no hardship to [CEC]." (Id. at 21.) (Emphasis added.)

"The proposed location of the subject use IS NOT in proper relation to adjacent uses or development insofar as: ***it is located in a long established and well maintained single-family residential neighborhood consisting of lot sizes that can not and were not intended to accommodate institutional uses that require buffering and parking beyond the minimal requirements of a single-family residential zone;*** there is ***no precedent in the 75 years of the subdivision that supports the granting of this use*** – the historical planning of this subdivision, in the context of the time recognized and planned for school sites and recreational uses within the neighborhood with church and commercial uses at the perimeter; the longevity, stability and quality of this single-family residential neighborhood sustains the long term intent and substance of this residential subdivision planning; this use compromises and is not in proper relation to the long established and maintained intent of the original subdivision planning.

"The proposed use WILL be materially detrimental to the character of the development in the immediate neighborhood insofar as: there are no other church or institutional uses on the residentially zoned properties within the notice radius for this action; ***this use would be precedent setting and compromise the 75 year maintenance and recognized quality and sought after ambience of this historical, residential neighborhood.*** (Exh. 13 at 21-22.)

"The proposed location of the subject use IS NOT consistent with and IS NOT in proper relation to the various elements and objectives of the General Plan insofar as: ...the use is a precedent setting encroachment of an institutional use by conversion of an existing single-family residence located on a small lot; this could destabilize what has been a long standing, quality single-family residential neighborhood that has through constant efforts maintained its stable, high quality and verdant residential character despite its central urban location and the onslaught of high volume traffic, pollution and increasing crime; this use though ***seemingly*** benign and supportive of community values is, as a ***first institutional/commercial intrusion into a single-family residence, a potentially***

significant rent in the residential character of this neighborhood.

For similar reasons, the ZA and BZA rejected CEC's application for a variance. The ZA/BZA found, inter alia, that (a.) alternative locations are available, alleviating any hardship to CEC, but the community would suffer hardship "from an institutional use…on a small residential lot which is insufficient to accommodate the required buffering and required parking for this use"; (b.) the lot was designed for residential use and can be used for that purpose; (c.) no other properties in the vicinity have been granted permits for institutional uses; (d.) spill-over impacts were likely and "ingress/egress to the site presents a potential safety hazard not only to the congregants but also to the local residents and those using the highways"; and (e.) the proposed use would set a precedent for institutional use in a residential area and "the original purpose of the City's zoning regulations, which are now consistent with the [General] Plan, was to ***protect residential areas***." (All emphases added.)

3. The ZA/BZA's Findings are Binding on CEC.

BZA's findings are binding on CEC. In granting or denying a CUP an administrative agency acts in a quasi-judicial capacity. Mountain Defense League v. Board of Supervisors, 65 Cal. App.3d 723, 728 (1977). The findings of an agency acting in such a capacity are binding. Briggs v. City of Rolling Hills Estates, 40 Cal. App.4th 637, 644 (1995) (zoning board decision res judicata as to civil rights claim); City and County of San Francisco v. Ang, 97 Cal. App.3d 673, 678 (1979) (zoning appeal board decision was res judicata).

BZA's findings are no surprise. In Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. City of Porterville, 90 Cal. App.2d 656, 659-660 (1949) the court affirmed denial of a permit for construction of a church in a single-family, R1 zone. The court recognized that in a single-family neighborhood church uses inevitably cause the problems identified by the BZA:

> It is a matter of common knowledge that people in considerable numbers assemble in churches and that parking and traffic problems exist where crowds gather. This would be true particularly in areas limited to single family dwellings. There ***necessarily*** is an appreciable amount of noise connected with the conduct of church and 'youth activities." . . . A single family residence may be much more desirable when not in an apartment house neighborhood or adjacent to a public building such as a church . . . . The provision in the ordinance for a single family residential area affords an opportunity and inducement for the acquisition and occupation of private homes where the owners thereof may live in comparative peace, comfort and quiet. Such a zoning regulation [excluding church uses from single-family zones] bears a substantial relation to the public health, safety, morals and

general welfare because it tends to promote and perpetuate the American home and protect its civic and social values. (Emphasis added.)

In City of Chico v. First Ave. Baptist Church of Chico, 108 Cal. App. 2d 297 (1951), the court followed Presiding Bishop in affirming an injunction against use of R1-zoned property as the site for a church. The court rejected the argument, id. at 300, 302, which resembles CEC's rhetoric here, that the zoning ordinance regulated "the right of a person to pray or preach" or the "right to worship." Id. at 300. The court held that the injunction against locating a church in an R1-zoned area "in no sense enjoins or restrains appellant *individually* from singing, praying or worshiping God as and where he pleases." Id. at 302. (Emphasis added.) Individual or family worship, singing and praying are quite different from the use of a building as a site for regular, *institutional* religious services.

4. The state courts affirmed the City's denial of CEC's CUP application.

CEC states (App. at 1-2) that it filed the Federal Action, but does not mention the *state court* litigation, in which the Superior Court and Court of Appeal *affirmed* the City's denial of CEC's application. On June 1, 1998, the district court stayed the Federal Action and ordered CEC to pursue its state-law claims in state court. (Federal Action Docket, Exh. 14, Entry 38.) On June 12, 1998, CEC petitioned the superior court for a writ of mandate to overturn the City Council's denial of the CUP. (Exh. 15.) On February 18, 1999, the court denied the petition, finding substantial evidence to support the BZA's findings adopted by the City Council. (Exhs. 16-17.) The Court of Appeal affirmed on December 3, 1999. (Exh. 18.) The Supreme Court denied review on February 16, 2000. (Exh. 19.) This final, non-appealable judgment is obviously binding on CEC and prevents CEC from re-litigating, in any forum, issues that were decided or that could have been decided in the case. The issues foreclosed by this litigation include the BZA's findings quoted above.

5. The City and CEC entered into an unlawful Settlement Agreement to avoid "adjudication" of an unripe claim.

After the state courts finished with CEC's meritless action, CEC had only one claim left, under RLUIPA. CEC states (App. at 2) that it settled with the City "[b]efore the court ruled on the merits of [CEC's] remaining RLUIPA claim." CEC thus implies the court had "merits" before it that the court could decide. The further implication is that the district court might have ruled in CEC's favor. Any such suggestion is false. The district court had *no jurisdiction* over CEC's RLUIPA claim because it was unripe. Before CEC could present a ripe RLUIPA claim it had to obtain a final administrative decision on the claim from the City. Murphy v. New Milford Zoning Commission, 402 F.3d 342, 348-352 (9th Cir. 2005.)[3] CEC could not present a ripe RLUIPA claim to the district court because the City

[3] The Younises are currently briefing an Order to Show Cause re: Dismissal for Lack of Jurisdiction in the Federal Action.

had not passed on whether, or to what extent, RLUIPA (which did not even exist when the City denied CEC's application) required issuance of the CUP.

In one of the most shameful episodes in its zoning history, the City entered into the Settlement Agreement (Exh. 8) with CEC. The Settlement Agreement sold out the neighborhood, and the Younises in particular. The agreement flew in the face of the ZA/BZA findings and the results of the state court litigation. Whether out of fear of RLUIPA or for political reasons, the City entered into the unlawful Settlement Agreement.

As the Ninth Circuit held in LRNA, under then-existing case law, Avco Community Developers, Inc. v. South Coast Regional Commission, 17 Cal.3d 785, 132 Cal.Rptr. 386 (1976) reconfirmed in a later decision, Trancas Property Owners Assn. v. City of Malibu, 138 Cal.App.4th 172, 41 Cal.Rptr.3d 200 (2006), the Settlement Agreement was invalid. LRNA, 498 F.3d at 1056-1057.

6. The Younis Nuisance Action

On September 24, 2004 the Younises sued CEC in state court for conducting a public and private nuisance on the Property. By order of July 5, 2005, the district court in the Federal Action enjoined the Younis state-court action. (Exh. 20.) The Ninth Circuit vacated the injunction at the same time it held the Settlement Agreement invalid. (Exh.. 21.) The Younis action is now set for trial on May 19, 2009.

C. Developments Since the City's Prior Decision Weigh Further Against the Synagogue Use.

1. The Hancock Park HPOZ.

In August 2008, the City adopted the Hancock Park Historic Preservation Overlay Zone ("HPOZ"). The HPOZ represents the City's official recognition of Hancock Park not just as a well-established, scenic *residential* neighborhood but also as a historic resource to be preserved. See http://preservation.lacity.org/hpoz/la/hancock-park. The BZA's conclusive findings, quoted above, clearly show the threat that the encroachment of non-residential uses poses to historic Hancock Park. Those findings apply with greater force today.

2. The Synagogue Use at Yavneh Academy Two Blocks Away.

In 1997, the Yavneh Hebrew Academy ("Yavneh") obtained a CUP for a school at 5353 W. Third Street, less than a quarter-mile from 303 S. Highland Ave. In 2006, a dispute arose between Yavneh and its neighbors over Yavneh's holding Saturday and holiday worship services when the school was closed. At an October 24, 2006 hearing, the City removed the conditions of Yavneh's CUP that had previously restricted religious services on campus when the school itself was closed. A neighborhood group, Concerned Residents of Hancock Park, sued the City over removal of the

conditions and lost in the trial court. The case is now on appeal. At the present time, Yavneh is conducting regular worship services on Saturdays and Jewish holidays just a stone's throw away from the Etz Chaim temple at Third and Highland. In assessing the effects of a synagogue use by CEC, the ZA should take into account the incursion of *two* institutional religious uses in what is zoned as a historic *residential* area. The prior BZA findings apply all the more in the context of *two* nearby non-residential uses thrust into a historic residential neighborhood. CEC of course makes no mention of the Yavneh temple.

IV. A Legalized Synagogue at 303 S. Highland Would Seriously Injure the Younises and the Neighborhood.

A. CEC Seeks to Hold Funerals, Weddings and Bar Mitzvah Parties as Well as Regular Worship Services.

CEC's holding regular Saturday and holiday worship services for 50-60 (or more) people has had serious negative effects on the Younises' quality of life for the last 15 years. The Younises have endured traffic, parking and noise problems, a loss of privacy in their own back yard and have been generally unable to enjoy their home as they once did. Esma and Michelle Younis have submitted sworn declarations in their superior court action against CEC describing the damage they have suffered. Those declarations are attached to the accompanying Compendium. (Exhs. 22-23.) The injury to the Younises has been serious and continuous even within the much-transgressed limits imposed by the former Settlement Agreement, which restricted the number of attendees and the times of services. Here, CEC seeks a CUP *without limits* as to the frequency, number and size of the services it seeks to conduct.

B. CEC Asks for Unlimited Types and Frequency of Services and Attendance.

CEC now seeks a CUP that permits uses far beyond anything previously requested or allowed by the illegal Settlement Agreement. At page 5 of the application (item g) CEC states that it intends to conduct not only "religious services," but services not allowed under the Settlement Agreement such as weddings, receptions, bar mitzvahs, banquets, brit mila (circumcision ceremonies), meetings, educational activities and "memorial services," i.e. funerals – with no restriction on the body of the deceased being present. Such an enormous expansion of an already intolerable institutional land use would make life impossible for the Younises. Traffic, noise and crowds at funerals, weddings and bar mitzvahs, the noise of bar mitzvah parties and other banquets would make the Younises' life torture.

Significantly, the City rejected CEC's prior application for a much more limited use. CEC's application stated that the capacity of the then-3,461-square-foot house (Exh. 24 (property transfer record showing square footage)) on the Property was 60 people, with an average of 40 attending Saturday services. (Exh. 25 (original permit application, showing 4,000 square feet and requesting CUP for limited attendance.) CEC now has an 8,100-square-foot synagogue and is not conceding any limits

on the number of attendees. The reasons for denying CEC's prior permit application apply all the more to the present application.

C. The Impact on the Neighborhood Will Be Serious Despite the Practice of Walking to Temple.

CEC makes much of the requirement that its members walk to Sabbath services and do not drive on Sabbath. This restriction, however, would not apply to weekday services, banquets, weddings, funerals, bar mitzvahs or other activities. Nor would it prohibit CEC members from driving to a nearby residence Friday afternoon before sundown, parking their car near the Synagogue and (after staying overnight with co-CEC members, friends or family and attending Sabbath services) driving home Saturday after sundown. That this practice occurs is well-known.

D. The Fragility and Historic Value of Hancock Park

As the ZA and BZA recognized in the findings quoted above, Hancock Park is located in a highly urbanized area, near areas that are or recently were in decline. It is not near the ocean or on the desirable west side. If Hancock Park did not already exist, it would not now be built. If the City approves CEC's application, there will be other applicants for non-residential uses in the R1-zoned area of Hancock Park. Having approved CEC's application, the City will be accused of discrimination unless it allows more such uses. As the ZA and BZA found in denying CEC's previous application, the neighborhood cannot withstand the onslaught of multiple non-residential uses. CEC's application is the "thin end of the wedge" of encroaching non-residential uses that could seriously destabilize Hancock Park and negate the protections of the HPOZ.

V. RLUIPA Provides No Support for Granting CEC's Application.

CEC makes two arguments under RLUIPA. The first is that RLUIPA exempts it from the CUP process. The second is that RLUIPA entitles CEC to a CUP or variance. Both arguments are wrong. CEC's first argument is based on the false factual assertion that it is operating a "residence" on the Property. As shown above, there is no "residence" on the Property. The courts have uniformly rejected CEC's argument that RLUIPA excuses religious organizations from generally applicable zoning requirements. See San Jose Christian College v. City of Morgan Hill, 360 F. 3d 1024, 1035-1036 (9th Cir. 2004) (requiring Christian college to submit complete zoning application and finding no substantial burden on religion where alternate locations for religious worship and education were available within the city); Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 n. 11 (11th Cir. 2004) (rejecting argument that requiring congregations to apply for CUPs violated RLUIPA); Guru Nanak Society of Yuba City v. County of Sutter, 456 F.3d 978, 987, 993 (RLUIPA does not apply to generally applicable land-use regulations, but to individualized applications of those regulations).

Nor does CEC's second argument have any merit. RLUIPA applies only to local zoning laws that (1) impose a "substantial burden" on religious exercise; or (2) discriminate against religion. See 42 U.S.C. § 2000cc (a)(1), (b). A fair reading of San Jose Christian College and the other relevant

RLUIPA cases shows that the City would not impose a "substantial burden" on religious exercise if it required CEC to locate its synagogue in a commercial zone. See id. at 1035-1036 (no substantial burden where Christian college failed to show it could not locate elsewhere within city); see also Civil Liberties for Urban Believers v. City of Chicago, 342 F. 3d 752, 761-762 (7th Cir. 2003) (restriction of churches to certain zones did not impose substantial burden on religion).

In Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227-1228 (11th Cir. 2004), a city's zoning ordinance excluded church uses from seven of its eight zones and required a CUP in the single zone (RD-1) where churches were allowed. Two Orthodox Jewish congregations challenged the CUP requirement, among other aspects of the ordinance. The congregations argued, as CEC argues here, that requiring them to locate in the RD-1 area imposed a substantial burden on their religious exercise because it required them to walk farther to temple. This burden was especially severe for "congregants who are ill, young or very old." The extra inconvenience of walking farther would cause some congregants to stop attending services altogether. Id. at 1227.

The court rejected this argument. It reasoned that while walking may be burdensome and walking farther more so, "we cannot say that walking a few extra blocks is 'substantial' as the term is used in RLUIPA...." Id. at 1228. The court further reasoned that if it adopted the synagogues' argument, a city would have to tailor its zoning such that every individual could "walk to a temple of choice." Such indulgence for religious uses would involve Establishment Clause risks of favoring religious over non-religious uses and some faiths over others. Id.

The court went on to hold that part of Surfside's ordinance, excluding church uses from the business and other districts violated the equal-treatment prong of RLUIPA. The city could not ban churches while allowing similarly intensive secular uses.

The Ninth Circuit recently endorsed Midrash's principle that added inconvenience is not a substantial burden under RLUIPA. See Guru Nanak, 456 F.3d at 988 (a substantial burden must place more than an inconvenience on religious exercise, citing Midrash).

Guru Nanak demonstrates what a substantial burden is. There the County overrode its own planning division's recommendations and denied a CUP for a Sikh temple. The temple society then chose a second location, agreed to a variety of conditions and again received the planning division's approval. Again, the County denied the CUP. The Ninth Circuit held that the County imposed a substantial burden on the society because (1) the broad reasons for the denial could apply to all future applications; and (2) the society readily agreed to every suggested mitigation measure.

Midrash Sephardi and Guru Nanak dispose of CEC's RLUIPA claim. As in Midrash, CEC can locate its temple in commercially zoned areas (where churches are a permitted, not merely a conditional, use) only a few blocks away. That congregants may have to walk farther (some may not have to walk as

far) is a mere inconvenience, not a "substantial burden" on CEC's religious exercise.[4] In other words, to require CEC's members to walk to La Brea, Wilshire or Beverly does not impose a substantial burden on their religious exercise within the meaning of RLUIPA. In contrast to Guru Nanak, CEC need only locate its temple in a nearby commercial zone.

The City has not subjected CEC to repeated permit denials, involving different properties, based on obviously trumped-up reasons as occurred in Guru Nanak. The City certainly has allowed many religious congregations to locate on nearby commercial streets. There is every reason to believe the City would allow CEC to do the same.

VI. The Proposed Synagogue Use Violates State Law and the Establishment Clause.

If presented with a similarly intensive, non-residential *secular* use, the ZA would have no difficulty in denying a CUP. At bottom, CEC seeks a zoning *preference* because it is a religious institution with certain beliefs. Such a preference would violate state law and the Establishment Clause of the First Amendment.

With respect to land-use issues, "a church [or synagogue], like any other property owner, is to be considered on its merits as fitting into the general scheme of comprehensive zoning, entitled to no preference and subject to no adverse discrimination." Minney v. City of Azusa, 164 Cal. App. 2d 12, 24 (1958) (affirming city's denial of variance to church for location in residential zone); Mumaw v. City of Glendale, 270 Cal. App. 2d 454, 455 (1969) ("with reference to zoning matters, a church is to be treated the same as a secular litigant"). The synagogue use thus must be judged under the same standards as nonreligious uses.

At the heart of the Establishment Clause is the principle that government "should not prefer one religion to another, or religion to irreligion." Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 703, 114 S.Ct. 2481, 2491 (1994). As Midrash recognizes, if cities must "alleviate even the small burden of walking a few extra blocks," they would "run the risk of favoring religion over other institutions, or of favoring some religious faiths over others." Id., 366 F.3d at 1228. CEC's arguments boil down to a claim to "specialness," and a demand that the City zone to *accommodate* and *communicate* CEC's perception of itself as special and apart.

CEC demands a CUP largely because its adherents walk to temple, which "further communicates that the Orthodox Jewish community is different from the surrounding community." (App. at 1.) This statement is revealing. CEC demands a CUP ultimately because it wishes to create a kind of enclave, in which CEC is on the inside and the rest of the world is on the outside. CEC can of course desire self-imposed segregation and pursue that goal freely within the bounds of the law. But for the City to adopt

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[4] As Midrash recognized: "In any given congregation, some members will necessarily walk farther than others, and, inevitably, some congregants will have greater difficulty walking than others." Id. at 1228.

zoning policy to further such a goal would place the City in exactly the "impossible position" discussed in Midrash. And the City should make no mistake that should it place itself in that position, it will face immediate and formidable challenges under the Establishment Clause.

VII. The Proposed Synagogue Use Requires an Initial Study and/or EIR under CEQA.

The California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA") applies to "discretionary projects," including the issuance of CUPs. Pub. Resources Code § 21080(a). Section 21065 defines a project as "an activity which may cause either a direct physical change in the environment, or reasonably foreseeable indirect change," and involves issuance of an entitlement by a public agency. See Pub. Resources Code § 21065(c).

CEC's proposed synagogue is a project under CEQA. Conducting institutional worship services, weddings, funerals and the like at the proposed synagogue require entitlements, i.e. approvals by City zoning officials. Under LAMC section 12.24.W.9, the congregational worship services require a separate CUP. CEC and the City are both bound by the Ninth Circuit's decision in LRNA that CEC's congregational worship services and operation of a synagogue require an entitlement. Id., 498 F.3d at 1056, 1057.

A church use in a historic, residential neighborhood like Hancock Park has the potential for direct physical change, or foreseeable indirect change, in the environment. As the court recognized in Presiding Bishop, Etc. 90 Cal.App.2d at 659, church uses necessarily tend to disrupt the "peace, comfort and quiet" of a residential neighborhood. Id. at 660. The Younis Declarations (Exhs. 22-23) support this conclusion. Because of CEC's synagogue, the Younises have endured parking, traffic, noise and loss of privacy in their home for years. Further, CEC's would be the *second* church use in the immediate vicinity. This double-barreled incursion of non-residential use into a historic residential neighborhood clearly entails a significant prospect of environmental effects.

A. CEQA involves a three-step process.

The first step in a CEQA analysis is a decision by the City whether (1) the project falls within an exempt category or (2) it is certain "that the activity in question will not have a significant effect on the environment...." If so, no further action is required. If the project could possibly have a significant environmental impact, however, then (3) the City must undertake the second step of a threshold study. Comm. to Save Hollywoodland, Etc. v. City of Los Angeles, 161 Cal.App.4th 1168, 1185 (2008). If the study indicates no significant effect, the City may issue a negative declaration. If the study indicates a significant effect, the City must take the third step of preparing an environmental impact report. Id.

B. At a Minimum, CEC's Project Requires a Threshold Environmental Study.

In its application, CEC falsely claims (CEQA section, page 2) that it seeks a CUP and variance "for reduced parking to permit daily prayer gatherings at a *residence* in the R1 zone." CEC again falsely asserts that the "existing use" of the land is "single family residence" and that the proposed "use is existing."

As shown above, the purported "residence" (with 8,456 square feet of floor areas according to CEC) is a "church." It is used solely for religious worship. By CEC's own sworn admission, no one lives there and no one ever has. The purported "residence" has no bedrooms. The regular, institutional religious services CEC intends to conduct far exceed anything allowed in a residence. CEC thus does not seek to conduct the occasional prayer-group meetings that might occur at a private home. CEC wants to operate a synagogue, just as it did when it submitted its previous CUP application, and just as it is doing now with no permit at all.

As the court explained in Hollywoodland, an exemption requires two levels of findings:

> The agency decides whether a project is categorically exempt without reference to any mitigation measures. If the agency establishes the project is within an exempt class, the burden shifts to the party challenging the exemption to show that it falls into one of the exceptions. Id at. 1186.

Three exceptions to the categorical exemptions apply in this case: (1) "cumulative impact" of two temples within two blocks of each other; (2) "unusual circumstances" of two temples in a residential neighborhood; and (3) historical resources, i.e. historic, HPOZ-protected Hancock Park. See Cal. Code Regs., tit. 14, § 15003.2 (b), (c), (f).

For a categorical exemption to apply to CEC's project, the ZA must first find that, *excluding any mitigating factors*, a church use at Third and Highland fits within a categorical exemption. The ZA next must give opponents of the project the opportunity to show that an exception to the exemption applies. The ZA then must make written findings, LAMC section 12.24. either accepting or rejecting the opponents' showing.

Absent mitigation, the unrestricted use of the Property as a synagogue where not only Saturday and High Holy Day worship services but bar mitzvahs, banquets, weddings funerals (presumably with the body present) and other services are held, without restrictions on number, frequency or attendance, could be environmentally devastating. In rejecting CEC's prior application, BZA found, among other things, that the synagogues use "diminishes the residential character and experienced quality of life" of many Hancock Park residents. (See Section III. A. 2. above.) This potential is far above the CEQA threshold for a threshold environmental study.

In Hollywoodland, the City found that a fence built atop a historic wall fell within a categorical exemption for minor alterations. Id., 161 Cal.App.4th at 1188; Cal. Code Regs. § 15305. In reversing denial of a writ of mandate, the Court of Appeal held that the City violated CEQA because the evidence did not support the exemption. Id. at 1188. The evidence was unclear as to how the fence would be built and whether it would affect the stability of the wall. Id. at 1187. The City further violated CEQA by failing consider whether the fence fell within the exception for "unusual circumstances." The City, the court concluded, had to conduct an initial threshold study. Id. Here, the potential environmental impact of CEC's project far exceeds that held to preclude application of the exemption in Hollywoodland.

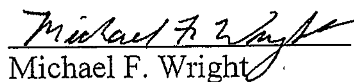
CEC has the initial burden to establish that its project falls within a CEQA exemption. CEC's perfunctory CEQA application (tacked on to the end of its application) not only fails to meet this burden, but is based on the false factual assertions. One is that the Synagogue is a "residence." Another is the non-existent "settlement plan" with the City. The City's prior findings, which still apply today, warn that the adverse environmental impacts CEQA is designed to address are a very real danger in this case. On the record presented, the ZA cannot find that CEC's project is exempt from CEQA. At a minimum, a threshold study is necessary.

VIII. Conclusion.

For each and all of the reasons set forth above, CEC's application for a CUP and/or a variance should be DENIED.

Dated: February 11, 2009

STEPTOE & JOHNSON



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