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VIA MESSENGER

Central Area Planning Commission
200 North Spring Street
Room 272
Los Angeles, California 90012

Re: **Appeal of Congregation Etz Chaim CUP and Variance Denial**
Case No. ZA 2008-2213 (CU)(ZV)
ENV-2008-2214 MND

Our firm represents Concerned Residents of Hancock Park (“Concerned Residents”), a group of Hancock Park residents who seek to preserve the residential character of their historic neighborhood. We also represent Mrs. Esma Younis, who lives at 309 S. Highland Ave., next door to the site of the proposed synagogue. Concerned Residents and Mrs. Younis urge you to **affirm** the decision of the Zoning Administrator (“ZA”) denying the application of Congregation Etz Chaim, a California non-profit corporation (“CEC), for a CUP and variance¹ to permit operation of a synagogue at 303 S. Highland Ave. (sometimes referred to herein as “the Property” or “303 S. Highland”).

This letter addresses some of the issues CEC and its supporters (“the Congregation”) are likely to raise at the February 23, 2010 hearing in this matter. For further discussion of these issues and others not included in this letter, we respectfully refer the Commissioners to our letter to the ZA of February 11, 2009 and the attached exhibits, which are part of the record.

¹ For brevity the term “CUP” as used herein includes a variance.

1. Nature of the proceedings.

This proceeding is an appeal. It is a quasi-judicial proceeding governed by prescribed legal standards. Mountain Defense League v. Board of Supervisors, 65 Cal. App.3d 723, 728 (1977). This Honorable Commission (“CAPC”) reviews the ZA’s decision for error or abuse of discretion. See Los Angeles Municipal Code (“LAMC”) §§12.24 I., 12.03. The issue therefore is not whether CAPC would have reached the same result if the Commissioners had been the ZA. CAPC may reverse the ZA only if he made a serious mistake.

2. The Congregation presented the same case before and lost.

In 1997, the Congregation made the same arguments it makes now to CAPC and CAPC rejected them. The Congregation then litigated CAPC’s decision all the way to the California Supreme Court and lost at every level. In rejecting the Congregation’s arguments, CAPC affirmed the ZA’s findings that a house of worship on the Property would be detrimental to the neighborhood and otherwise failed to meet the LAMC’s criteria for a CUP or variance. These findings are binding on CAPC. Briggs v. City of Rolling Hills Estates, 40 Cal.App.4th 637, 644 (1995). In other words, CAPC cannot re-litigate the same old arguments over and over again.

To avoid preclusion by the prior, judicially affirmed findings against it, CEC must show that something significant has changed since 1997. Factually, the only changes weigh in favor of affirming the ZA. One is that in 2007 the City designated Hancock Park, including the Property as a Historic Preservation Overlay Zone (“HPOZ”). See LAMC §12.20.3. The other is that Yavneh Hebrew Academy (“Yavneh”) is conducting Saturday and holiday worship services for 300 people barely a quarter-mile away. The legality of Yavneh’s services is still in litigation before the Court of Appeal. CAPC should review the ZA’s decision in the context of whether a **second** church use in the HPOZ-protected area is appropriate.

The other change is legal. In 2000 Congress enacted RLUIPA. Although CEC claims RLUIPA relieves CEC from having to obtain a CUP, CEC is wrong as shown in Section 4 below.

3. The City may not favor religious use over secular use or prefer one religious use over another.

The Congregation no doubt will claim that the ZA’s decision constitutes discrimination against the Congregation on grounds of religion. But in reality CEC has already benefited from discrimination **in its favor** on grounds of religion. If a secular group (e.g. the American Legion, the Ebell Club or the M.I.T. Alumni Association) applied for a CUP to conduct an identically intensive use on the Property, would CAPC have any difficulty in affirming denial of the application? In other words, if CEC were **not** a religious group, would there be any question that the ZA properly denied an application for a CUP to conduct 50-person events every weekend and several holidays each year, along with weddings, funerals and the like in an R1, HPOZ-protected zone? Clearly not. Such uses obviously disrupt the residential use protected by R1 zoning and the HPOZ. On what basis, then, can CEC claim that it is

entitled to a CUP? The **only** grounds are that CEC is a **religious** organization. CEC thus demands that the City discriminate in favor of CEC's religious use. The unstated but logically necessary basis of CEC's appeal thus is a demand that the City violate state law and the United States Constitution.²

4. RLUIA provides no basis for overturning the ZA.

RLUIPA contains two prohibitions. The first is that government may not impose a "substantial burden" on religious exercise, unless it is the least restrictive means of furthering a compelling governmental interest. The second is that government may not discriminate against a religious assembly on grounds of religion or treat a religious group on "less than equal terms" than a non-religious group. See 42 U.S.C. §2000cc(a)(1), (b)(1), (2). The ZA's decision does not violate either prong of RLUIPA.

a. Substantial burden.

As to the first prohibition, the key word is "substantial": "Any land-use regulation that a church would like not to have to comply with imposes a 'burden' on it, and so the adjective 'substantial' must be taken seriously lest RLUIPA be interpreted to grant churches a blanket immunity from land-use regulation." World Outreach Conference Center v. City of Chicago, 591 F.3d 531, 539 (7th Cir. 2009) (Posner, J.). Congregation members stated at the ZA hearing that they must walk to temple and if no temple is at Third and Highland they will not be able to worship according to the tenets of their faith.

The Eleventh Circuit confronted – and rejected – the same argument in Midrash Sephardi, Inc. v. Town of Surfside, 336 F.3d 1214, 1227-1228 (11th Cir. 2004). In that case, the zoning ordinance limited church uses to the RD-1 zone. Two Orthodox Jewish congregations claimed that the limitation forced congregation members (including the old, infirm and very young) to walk farther to temple, often in the searing Florida heat. The result, they claimed, was that many congregants could not attend worship services. The congregations claimed that the longer walk represented a substantial burden. They also claimed that the reduced attendance would force the synagogues to close and that no suitable facility existed in the RD-1 zone. Id. at 1227 and n. 11.

In rejecting these arguments, the court made two points. First, walking farther is a matter of inconvenience, not a substantial burden on religious exercise:

While walking may be burdensome and 'walking farther' may be even more so, we cannot say that walking a few extra blocks is 'substantial,' as the term is used in RLUIPA, and as suggested by the Supreme Court. The

² See, inter alia, Mumaw v. City of Glendale, 270 Cal.App.2d 454,455 (1969)(church is to be treated the same as secular group for zoning purposes); Board of Educ. Of Kiryas Joel Village School District v. Grumet, 512 U.S. 687, 703 (1994).

permitted RD-1 district is in the geographic center of a relatively small municipality, proximate to the business, tourist and residential districts....In any given congregation, some members will necessarily walk farther than others, and, inevitably, some congregants will have greater difficulty walking than others. While we certainly sympathize with those congregants who endure Floridian heat and humidity to walk to services, the burden of walking a few extra blocks, made greater by Mother Nature's occasional incorrigibility, is not 'substantial' within the meaning of RLUIPA. Id. at 1228.

Second, eliminating inconvenience incident to religious uses is impossible and even if practical risks violating the Establishment Clause:

Were we to adopt the synagogues' reasoning, it would be virtually impossible for a municipality to ensure that no individual will be burdened by the walk to a temple of choice. Municipalities that allow religious exemptions to alleviate even the small burden of walking a few extra blocks would run the risk of impermissibly favoring religion over other secular institutions, or of favoring some religious faiths over others. Id. (Emphasis added.)

CEC presented a map of its members' home locations to the ZA. The ZA considered the map (ZA Decision at 31) and concluded that if CEC's temple were located on La Brea, "for some the walk will be shorter and [for] others the walk will be longer..." However, "[t]he change in walk pattern is a matter of convenience and in and of itself does not constitute a substantial burden." (ZA's emphasis.) The ZA noted that La Brea is only about 1500 feet from the temple's current location at Third and Highland. (Id.)

The ZA's analysis is correct and reflects the holding in Midrash Sephardi. Wherever CEC's temple is located, the walk will be farther for some and shorter for others. As the court reasoned, RLUIPA does not require cities to meet the impossible burden of eliminating all inconvenience in the distance worshipers must walk to services. Any attempt to do so would likely run afoul of the Establishment Clause.

CEC's substantial-burden also fails because alternative locations are available. In World Outreach, 591 F.3d 531, a church claimed that the designation of its property as a historical landmark imposed a substantial burden because it prevented demolition of the structure to make way for the church's planned family-life center. In rejecting this argument, the court noted that a suitable alternative location existed on the church's campus. "The prohibition against demolition could harm [the church] only if there were no suitable alternative site for building a family-life center." Id. at 539 (emphasis added). The church could sell the landmark property, the court reasoned, and use the proceeds to construct its family-life center at the other location.

Here, as in World Outreach, alternative sites for CEC's temple abound on nearby commercial streets. (See ZA Decision at 31.) CEC could sell or rent 303 S. Highland and use the proceeds to fund the acquisition (by purchase or lease) of an alternative site. The ZA's decision thus does not impose a substantial burden on the Congregation.

b. Discrimination and unequal terms.

As to the second prohibition, the ZA's decision does not discriminate against CEC's proposed use on religious grounds or treat CEC less favorably than secular users. Nothing in the ZA's findings or discussion suggests that he denied the CUP because of the religious nature of the proposed use. He denied it on grounds such as the availability of nearby alternative sites (ZA Decision at 35), incompatibility of the proposed use (and the synagogue building) with the surrounding residences (id. at 35-36, 38) and lack of adequate parking (id. at 38).

The ZA's decision does not violate the "less-than-equal-terms" prohibition. There is nothing in the record that even remotely suggests that the ZA has or would approve a comparable secular use on the Property. As discussed above, the opposite is true. The strongest force behind CEC's case is an unspoken **preference** on the part of the City favoring CEC's religious use. If the City was not discriminating in favor of the Congregation, it would not have tolerated 15 years of continuous zoning violations. The ZA's decision does not discriminate against CEC's religious use or treat CEC on less than equal terms with comparable secular uses. The decision therefore does not violate either prohibition of RLUIPA.

5. The Congregation's contempt for the City's zoning requirements justifies denial of the CUP.

The Congregation's conduct for decades demonstrates a complete contempt for the Hancock Park neighborhood and the City's zoning laws. Before relocating to the Property, the Congregation operated an illegal house of worship on June Street for at least 30 years. CEC has illegally operated a synagogue at 303 S. Highland since 1995, while consistently misrepresenting its use as residential. For example, the Congregation repeatedly called the 8,000-square-foot synagogue building on the Property a "residence" throughout the litigation in The League of Residential Neighborhood Advocates v. City of Los Angeles, 498 F.3d 1052, 1056 (9th Cir. 2007) ("LRNA"), in which the Ninth Circuit held that CEC was operating a synagogue on the Property and therefore required a CUP. The LRNA decision invalidated the settlement agreement CEC had used to justify its un-permitted operation of a synagogue on the Property.

In March and September 2002, CEC submitted permit applications to the City in which it represented that it was using Property as a single-family dwelling and intended to continue that use in the new building to be constructed on the Property. (The permit applications are attached as Exhibit 1.) In the May 2008 CUP application now before CAPC, CEC still claims that it is using the Property as a residence.

Even as it made these representations, from January 2003 to approximately mid-2009 CEC received a property tax exemption from the County on the basis of sworn statements by its president, Rabbi Chaim Rubin, that CEC used the Property **solely for religious worship and not for any residential purpose**. (CEC's January 2003 exemption application is attached as Exhibit 2.) To this day, the City's ZIMAS report on the Property shows the use as "7100—Church." The report (attached as Exhibit 3) further states that purported "residence" has no bedrooms.

CEC thus has **continuously violated the zoning laws** for 15 years and **consistently misrepresented** to the City (and the courts) what it was doing. Each day's violation of the LAMC is a misdemeanor under LAMC §11.00(l) punishable by imprisonment and fines of up to \$2500 per violation. By filing fraudulent permit applications with the City – including the CUP application at issue in this hearing – CEC committed felonies. Cal. Penal Code §115(a). The notion that such flagrant lawbreakers deserve a CUP or can be trusted to comply with the conditions of a CUP is simply not credible. CEC's flagrant violations of law amply justified the ZA in denying its CUP application.

6. The applicant is a suspended corporation.

CEC's application is vague as to the identity of the applicant and the owner of the 303 S. Highland Ave. property. (See Application at 2, item 4.) The "applicant" is shown as "Rabbi Chaim Baruch Rubin" and his "Company" is described as "Etz Chaim Congregation." The form asks for the property owner's name "if different from applicant." This part of the form is blank. Therefore "Etz Chaim Congregation" must refer to the property owner.

The owner of the Property is Congregation Etz Chaim of Hancock Park, a California non-profit religious corporation. (See Westlaw Real Property Assessor's Record, February 12, 2010, attached as Exhibit 4 hereto.) This entity, CEC, is currently suspended. (See February 12, 2010 printout from Secretary of State, Exhibit 5.) "The suspended corporation cannot sue, defend, or appeal from an adverse decision." 9 B.E. Witkin, Summary of California Law, "Corporations," § 223 (10th ed. 2005). While suspended, CEC thus cannot pursue or defend a court action. It follows CEC cannot invoke the City's zoning-appeals process either.

Equally important, CEC's application is disingenuous. The application states: "The applicant, Congregation Etz Chaim, is an Orthodox Jewish congregation which has been located in Hancock Park for almost 50 years." (App. at 3.) The "applicant," however, is the same entity as the owner of the Property – i.e. CEC, a corporate entity. CEC was created in 1994, not fifty years ago. (See Exh.. 2.) CEC seeks to create the appearance that the applicant is a group of elderly and disabled individuals and a rabbi. That is not true. The CUP sought in the application would issue to a corporation for an institutional use.

7. Conclusion.

At the hearing, CEC and the Congregation will play to CAPC's emotions. They will portray themselves as victims. They will attack their opponents. But the real victims here are the people who

justifiably relied on the City's zoning laws when they bought and maintained their homes. CAPC should focus on the legally relevant issues: Did the ZA commit error or abuse his discretion in denying CEC's application for a CUP? The answer is no and the ZA's decision therefore should be affirmed.

Respectfully submitted,
STEPTOE & JOHSON LLP

Michael F. Wright

cc: Jane E. Usher, Esq.
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Sharon Seidorf Cardenas, Esq.