

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| CONGREGATION KOL AMI and | : | |
| RABBI ELLIOT HOLIN; | : | CIVIL ACTION |
| | : | No.: 01-1919 |
| Plaintiffs, | : | |
| | : | |
| v. | : | Hon. Lawrence F. Stengel |
| | : | |
| ABINGTON TOWNSHIP; BOARD OF | : | |
| COMMISSIONERS OF ABINGTON | : | |
| TOWNSHIP; THE ZONING HEARING | : | |
| BOARD OF ABINGTON TOWNSHIP and | : | |
| LAWRENCE T. MATTEO, JR., in his official | : | |
| Capacity as Director of Code Enforcement of | : | |
| Abington Township, | : | |
| | : | |
| Defendants. | : | |

PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED FACTS

Facts Regarding Congregation Kol Ami:

1. Congregation Kol Ami is a Pennsylvania non-profit corporation which has operated as a religious institution and held public worship services in and around the greater Philadelphia area since 1994. Complaint ¶ 5; Answer ¶ 5.
2. The Congregation's purpose is to engage in religious exercise by conducting religious services and operating a two-day per week Hebrew school. Complaint ¶ 5; Answer ¶ 5.
3. The Congregation ministers to Reform Jewish families who live in and around Abington Township. Complaint ¶ 5; Answer ¶ 5; Deposition of David Sloviter

- (June 28, 2001) (attached as Exhibit 9 to Declaration of Jonathan Auerbach), at 70:7-10 (hereinafter “Sloviter Dep.”).
4. The synagogue is important in Reform Judaism as the physical and spiritual center of the community. Declaration of Rabbi Elliot J. Holin (November 4, 2005) (attached hereto), at ¶¶ 4-8 (hereinafter “2005 Holin Decl.”). Without a synagogue, the Congregation is disjointed and faces difficulty in attempting to gather as a community. 2005 Holin Decl. ¶ 8; Declaration of Elliot J. Holin (May 10, 2001) (attached as Exhibit 6 to Declaration of Jonathan Auerbach), at ¶ 22 (hereinafter “2001 Holin Decl.”).
 5. A synagogue is known by its place of worship. “That place is defined by a sanctuary in which there must be an ark, a *Torah* scroll, and an eternal light. The word for ‘place’ in Hebrew is *makome*, which is also one of the Names of God in the Hebrew tradition.” 2001 Holin Decl. ¶ 5
 6. For more than a decade, the Congregation has had no permanent home. Declaration of David Sloviter (May 10, 2001) (attached as Exhibit 5 to Declaration of Jonathan Auerbach), at ¶ 4 (hereinafter “Sloviter Decl.”); 2005 Holin Decl. ¶ 2. The Congregation is still without permanent facilities until it closes on a property that only recently became available in Cheltenham Township. Declaration of Benjamin E. Long (November 4, 2005) (attached hereto), at ¶ 3 (hereinafter “Long Decl.”).
 7. Kol Ami’s services are thus split among several locations: it currently holds worship services in rented space at Gratz College in Melrose Park, religious school in rented space at Congregation Melrose B’nai Israel Emanuel in

- Cheltenham Township, and High Holy Days at Abington Friends School. It has also held High Holy Days at Keswick Theater in Glenside. Complaint ¶ 12; Answer ¶ 12; Long Decl. ¶ 9.
8. Weddings and funerals are important spiritual events in the lives of the members of the Congregation and should be held at the Congregation's synagogue. 2005 Holin Decl. ¶ 19. Because the Congregation has no permanent spiritual home, members are forced to hold weddings at area hotels and funerals at funeral homes and cemeteries. 2005 Holin Decl. ¶ 19; Deposition of Rabbi Elliot Holin (June 28, 2001) (attached as Exhibit 8 to Declaration of Jonathan Auerbach), at 25:17-24, 26:1-6 (hereinafter "Holin Dep.").
 9. The Congregation's administrative activities are also scattered among different locations. Board and committee meetings take place at members' homes, rented space, and other school and public buildings. Long Decl. ¶ 12; Sloviter Decl. ¶ 13. The Congregation's administrative work is carried out at the home of its Executive Director; she keeps all the Congregation's records and receives all mailings at her residence. Sloviter Decl. ¶ 16; Long Decl. ¶ 14.
 10. The synagogue library is a place for members to come for religious information so they can be educated and grow in their Jewish faith. 2005 Holin Decl. ¶ 20. The Congregation has no library for its religious books and materials, nor a central place its members may go for religious information. Sloviter Decl. ¶ 16; 2005 Holin Decl. ¶ 20.
 11. The Rabbi has no office space and must meet with members in their own homes or at his home. Sloviter Decl. ¶ 23. He and the Executive Director regularly meet

- to discuss business in a diner. Long Decl. ¶ 15.
12. The lack of office space impedes the Rabbi from serving the Congregation through activities such as grief counseling and prevents the members from having routine access to the Rabbi. Sloviter Decl. ¶ 17. When the Rabbi conducts adult education classes, he must do so at his home or another member's home. Holin Dep. 50:12-15.
 13. The Congregation's religious objects, such as its *Torah*, are kept in the Rabbi's home and he must transport them from place to place. This places the *Torah*, a centuries-old scroll which survived the Holocaust, at much greater risk than if it were kept in a permanent home. Sloviter Decl. ¶¶ 26-7; 2001 Holin Decl. ¶¶ 13-14, 17-19. If even a small portion of the *Torah* is damaged irreparably, the entire scroll is desecrated under Jewish law and must be disposed of and buried. 2001 Holin Decl. ¶ 19.
 14. The *Torah* was recently damaged and had to be repaired because of the wear and tear of frequent transportation. 2005 Holin Decl. ¶ 17; Long Decl. ¶ 18. For this reason, the Congregation no longer transports the *Torah* unless strictly necessary. 2005 Holin Decl. ¶ 18. Activities which require frequent use of the *Torah*, such as *Bar* and *Bat Mitzvah* rehearsals, must now take place at the Rabbi's home. 2005 Holin Decl. ¶ 18.
 15. Rehearsal in the Rabbi's basement, rather than in the sanctuary, impedes the mental, emotional and spiritual preparation and the sense of community which the Rabbi and the Congregation seek to instill through *Bar* and *Bat Mitzvah* rehearsals. 2005 Holin Decl. ¶¶ 12-14; Long Decl. ¶ 17. A child's *Bar* or *Bat*

- Mitzvah* is his or her introduction into the life of the Jewish faith community, and the process of building that sense of community is impeded when the child must prepare in the Rabbi's basement rather than the synagogue. 2005 Holin Decl. ¶¶ 12-14.
16. The Congregation's lack of facilities leaves its schedule at the mercy of its various landlords. It faces uncertainty and cancellation of religious activities when rented facilities are unavailable. Sloviter Decl. ¶¶ 21-22; 2001 Holin Decl. ¶ 7; 2005 Holin Decl. ¶¶ 9-11; Long Decl. ¶¶ 11-12.
17. Lack of permanent space makes it more difficult for the Congregation to communicate its message, to hold meetings and events, and to plan social action programs, all of which are part of its religious mission. Sloviter Decl. ¶¶ 20-21; Long Decl. ¶¶ 11-13.
18. One example of this occurred when the Congregation was forced to cancel its semiannual Blood Drive due to lack of facilities. Sloviter Decl. ¶ 22. The Blood Drive is part of the Congregation's religious mission of community service. Holin Dep. 19:13-24, 20:1-2.
19. As a further example, the Congregation was forced to move its Confirmation-*Shavuot* service to an unsuitable space at the last minute when one of its landlords scheduled a noisy dance recital in the room across the hall. 2001 Holin Decl. ¶ 7.
20. The *Shavuot*-Confirmation service is a sacred service and a milestone in a young adult's Jewish life. 2001 Holin Decl. ¶ 15. It occurs at the completion of three additional years of religious education and is celebrated through a creative service written by the confirmands. 2001 Holin Decl. ¶ 11. This confirmation is held in

- conjunction with *Shavuot*, a religious festival celebrating the giving of the Torah at Mt. Sinai. 2001 Holin Decl. ¶ 15. The ability of the confirmands, their families and their friends to celebrate this sacred service was impeded by the last-minute change of plans. 2001 Holin Decl. ¶ 7.
21. As yet another example, the members have often arrived at the chapel for services only to find the building locked, and must try to find Gratz College personnel to admit them. This is disruptive to religious services, and was particularly disruptive when it occurred at a *Bat Mitzvah*. 2005 Holin Decl. ¶ 10; Holin Dep. 30:9-14.
22. Members have left the Congregation because it lacks a synagogue in which to celebrate religious and familial milestones, such as *Bar Mitzvahs*, *Bat Mitzvahs* and weddings. Long Decl. ¶¶ 8-9; Sloviter Decl. ¶ 18.
23. While it has searched for a permanent home, the Congregation's membership has fallen from a high of 226 member-families to 152 member-families. This represents a 33% drop in membership. Long Decl. ¶¶ 5-6.
24. Based upon discussions with current and departing members, it is estimated that half this membership loss is directly attributable to the Congregation's lack of a permanent spiritual home. Long Decl. ¶ 7.
25. The failed attempts to locate a permanent spiritual home have left the members uncertain about the Congregation's future. 2005 Holin Decl. ¶ 25; Long Decl. ¶ 19.
26. This uncertainty has inhibited the Congregation's ability to plan for the future, attract new members, and retain current members. Long Decl. ¶¶ 19-20; 2005

- Holin Decl. ¶ 25.
27. This uncertainty has inhibited the Congregation's ability to raise the funds necessary for the purchase of property and necessary improvements. Sloviter Decl. ¶ 24; Long Decl. ¶ 21.
28. Since 1997, the Congregation has been searching for a permanent home that will meet its religious requirements; its search has centered upon Abington and Cheltenham Townships. Sloviter Decl. ¶ 5; Long Decl. ¶¶ 3-4; 2005 Holin Decl. ¶ 3.
29. The Congregation's search included investigation of several potential locations in Abington and Cheltenham. Sloviter Dep. 65:11-15. The Congregation engaged a real estate broker to search for property, Sloviter Dep. 76:12-14, and investigated properties which might come up for sale. Sloviter Dep. 71:23-24, 72: 1-3. The only available property after years of searching that could meet its requirements was the Villa Nazareth property. Sloviter Decl. ¶¶ 8-9; *see, generally*, Declaration of Yael Milbert (May 9, 2001) (attached as Exhibit 4 to Declaration of Jonathan Auerbach).

Facts Regarding the Subject Property:

30. In 1999, after a search for suitable properties, the Congregation entered into a purchase agreement with the Sisters of the Holy Family of Nazareth (the "Sisters") for the Villa Nazareth property, located at 1908 Robert Road in Abington (the "Property"). Complaint ¶¶ 20, 36; Answer ¶¶ 20, 36.

31. The Property occupies approximately 10.9 acres in the R-1 district, and it included a Catholic chapel built in 1957. Complaint ¶¶ 22, 35, 38; Answer ¶¶ 35, 38. The chapel contains a sacristy, the stations of the cross, confessionals, and stained glass windows. Complaint ¶ 23; Answer ¶ 23. *See also* Declaration of Mark Levin (May 16, 2001) (attached as Exhibit 7 to Declaration of Jonathan Auerbach), together with the photographs attached thereto and marked as Exhibits A through E.
32. The chapel included pews that could accommodate more than 250 worshippers and a consecrated altar. Zoning Hearing Board of Abington Township, Opinion and Order of the Board 99-36 (August 15, 2001) (attached as Exhibit 12 to Declaration of Jonathan Auerbach), FF at ¶ 85 (hereinafter “Aug. 2001 Bd. Op.”); Complaint ¶ 23; Answer ¶ 23. Congregation Kol Ami proposed to continue using this space for religious worship. 2005 Holin Decl. ¶ 22; Aug. 2001 Bd. Op. FF ¶ 30. After the congregation was forced to leave the property, the chapel was razed to make way for ten luxury homes. Long Decl. ¶ 30. *See also* Declaration of Mark Levin (May 16, 2001) (attached as Exhibit 7 to Declaration of Jonathan Auerbach), together with the photographs attached thereto and marked as Exhibits A through E.
33. The Property also included gathering, classroom, and dorm space. Complaint ¶¶ 25-27; Answer ¶¶ 25-27; Zoning Hearing Board of Abington Township, Opinion and Order of the Board 99-36 (March 20, 2001) (attached as Exhibit 2 to Declaration of Jonathan Auerbach), FF at ¶ 133 (hereinafter “March 2001 Bd. Op.”). Congregation Kol Ami proposed to hold receptions following *Bar* and *Bat*

- Mitzvahs* and weddings, Aug. 2001 Bd. Op. FF ¶ 32, to hold classes, Aug. 2001 Bd. Op. FF ¶ 29, and to have meeting space and offices, Aug. 2001 Bd. Op. FF ¶ 37. After the congregation was forced to sell, it was razed to make way for ten luxury homes. Long Decl. ¶ 30.
34. From 1951 to 1990, Abington Township permitted the Sisters' use of the Property within the "V-Residential District" – which allowed religious assembly uses by special exception – under the zoning ordinances that predate the current Ordinance. Zoning Hearing Board of Abington Township, Opinion and Order of the Board 95-33 (May 2, 1996) (attached as Exhibit 1 to Declaration of Jonathan Auerbach), FF at ¶¶ 14, 16-17 (hereinafter "1996 Bd. Op."); March 2001 Bd. Op. FF ¶¶ 32-33, 36-37.
35. After the 1990 amendments, the Sisters were able to continue their use of the Property, notwithstanding the rezoning of the Property from V-Residential to R-1 Residential. 1996 Bd. Op. FF ¶¶ 16, 17; 2001 Bd. Op. FF ¶ 39; *id.* CL ¶¶ 12, 13, 27.
36. In 1995, the Sisters leased the property to the Greek Orthodox Monastery of the Presentation of Our Lord into the Temple. On May 2, 1996, the Zoning Hearing Board of Abington Township (hereinafter "ZHB") approved a variance for the Greek Orthodox Monastery's religious institutional use of the Sisters' Property. Complaint ¶¶ 31-32; Answer ¶¶ 31-32; 1996 Bd. Op. at 4.
37. In its order granting that variance, the Township's Zoning Hearing Board ruled that "to deny this application would impose an unnecessary hardship on the applicant". 1996 Bd. Op. CL ¶ 3; *id.* at 4.

38. The Greek Orthodox Monastery ultimately decided it could not afford to purchase the Sisters' Property and vacated it in September 1999. Complaint ¶ 34; Answer ¶ 34.
39. After entering into the purchase contract, the Congregation filed an application with the Township's Zoning Hearing Board for permission to carry out its religious exercise on the Property. From January 2000 through March 2001, the Congregation pursued this application, which requested continuation of the then-existing nonconforming religious use of the property, or alternatively a variance to permit Plaintiffs' synagogue use, or alternatively a special exception. Complaint ¶ 55; Answer ¶ 55; March 2001 Bd. Op. at 1.
40. The Application requested an alteration of the driveways and parking areas to comply with current Abington Township standards, as well as the addition of screening and buffering. Complaint ¶ 60; Answer ¶ 60; March 2001 Bd. Op. FF ¶ 18.
41. The Application did not request permission to alter any of the exterior structures on the Sisters' Property. The Congregation did propose constructing an additional corridor, which would constitute less than 0.9% of the total square footage. The Congregation sought to use existing structures rather than build new ones. Complaint ¶ 60; Answer ¶ 60.
42. At the time of Kol Ami's application, thirty-seven houses of worship existed in Abington, but only one synagogue. Complaint ¶ 50; Answer ¶ 50; March 2001 Bd. Op. FF ¶ 219.
43. Twenty-six of those houses of worship were located in residential neighborhoods;

- no Jewish houses of worship existed in any residential district. Complaint ¶ 48; Answer ¶ 48. Cheltenham Township, by contrast, has at least six synagogues. Long Decl. ¶ 27.
44. The Township's Planning and Zoning Officer testified that some of these houses of worship create traffic and parking problems, but that those problems are mitigated by concessions such as adjusting schedules and employing special police officers to direct traffic. Deposition of Mark A. Penecale (July 5, 2001) (attached as Exhibit 10 to Declaration of Jonathan Auerbach), at 50:12-24, 51:1-3, 51:8-15, 51:17-20 (hereinafter "Penecale Dep.").
45. The Congregation participated in a lengthy application process – which required twelve separate hearings over the course of a year – before the Township ultimately rejected the Congregation's application. March 2001 Bd. Op. at 1.
46. On March 20, 2001, the Township's Zoning Hearing Board denied the Congregation's Application to use the Property for the Congregation's religious worship and ministry. March 2001 Bd. Op. at 23.
47. In its March 2001 denial of the Congregation's Application, the Township's Zoning Hearing Board expressed concern over traffic, aesthetics, and the protection of property values and 'neighborhood character'. See March 2001 Bd. Op. FF ¶¶ 187-92. The Township's Zoning Hearing Board alleged that the Congregation's proposed religious use of the Property would create traffic, noise, lighting and parking issues that would have an adverse impact on the surrounding neighborhood, that there were no sidewalks and neighbors walked through the streets, and that property values would be adversely affected. March 2001 Bd.

- Op. FF ¶¶ 43-45, 182, 184-85, 188, 190-92.
48. After this Court issued its July 20, 2001 order, the Township's Zoning Hearing Board conducted two additional hearings on the Congregation's Application in August 2001. At the conclusion of those hearings, the Board issued an opinion on August 15, 2001, approving the Congregation's application for a special exception permit for its proposed religious use of the Property pursuant to 26 separate conditions. Aug. 2001 Bd. Op. at 14-16.
49. In its August 2001 opinion, the Township's Zoning Hearing Board found that the Congregation's proposed religious use of the Property would not adversely affect the health, safety and welfare of the community. Aug. 2001 Bd. Op. CL ¶ 11.
50. In its August 2001 opinion, the Township's Zoning Hearing Board found that the Congregation's proposed religious use of the Property would not overcrowd the land or overwhelm public infrastructure. Aug. 2001 Bd. Op. CL ¶ 5(a)-5(e).
51. In its August 2001 opinion, the Township found that the Congregation's proposed religious use of the Property, subject to the 26 separate conditions identified in the opinion, would not "substantially increase the congestion in the public streets or adversely affect Township transportation." Aug. 2001 Bd. Op. CL ¶ 5(d).
52. The July 20, 2001 order of this Court that compelled the township to conduct the August 2001 hearings and issue the August 2001 opinion did not compel the Township either to grant the special exception or to make the findings set forth above in ¶¶ 48-51. 2001 U.S. Dist. LEXIS 10224, at *13-14 (E.D. Pa. July 20, 2001).
53. The special exception granted by the Township's Zoning Hearing Board and the

- land use permit issued by the Township were declared to be null and void by the Third Circuit decision published at 309 F.3d 120, 144 (3d Cir. 2002).
54. All told, the Congregation underwent fourteen hearings and submitted lengthy exhibits including two traffic studies, a supplemental traffic report, proposed floor plans, landscape and parking plans, proposed lighting plans and schematics, a headlight study, and a study of other places of worship within Abington. March 2001 Bd. Op. at 1; *id.* at FF ¶ 12; Aug. 2001 Bd. Op. at 1; *id.* at FF ¶ 15.
55. The Congregation spent more than \$226,000 – excluding legal fees – on its permit applications and plans for the Villa Nazareth property. Long Decl. ¶ 21.
56. Congregation Kol Ami intended to use the Property for purposes of religious exercise – worship services, religious education, fellowship, and other religious programs and meetings. Complaint ¶ 71; Answer ¶ 71; 2005 Holin Decl. ¶ 22.
57. Due to the denial, Congregation Kol Ami was unable to conduct religious services, ceremonies or classes at 1908 Robert Road. Long Decl. ¶ 23; 2005 Holin Decl. ¶ 23.
58. After continuing its search throughout this litigation, the Congregation ultimately had to sell the Property and purchase new space in Cheltenham. Long Decl. ¶ 24; 2005 Holin Decl. ¶¶ 26-27. The Cheltenham property was not available at the time of the Congregation’s initial search for property and became available only recently. Long Decl. ¶ 25.
59. Cheltenham Township has already granted the Congregation necessary approvals to use the new site, but the Congregation must make significant improvements on the new property before it is ready for synagogue use. Long Decl. ¶¶ 26, 28. This

will cause further delay in the Congregation's attempts to settle in a permanent spiritual home. Long Decl. ¶ 28.

60. The Roberts Road property has recently been subdivided and its buildings razed. Ten new luxury homes will be built on the Property where Kol Ami hoped to make its spiritual home. Long Decl. ¶ 30.

61. Because the Congregation has been entirely unsuccessful in finding a home in Abington, despite years of effort, it has left the Township altogether. Long Decl. ¶ 31; 2005 Holin Decl. ¶ 27.

Dated: November 4, 2005

Respectfully submitted,

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