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March 16, 2007

Via Fax 212-925-5199

Lori G. Cuisinier
Shelley Friedman
Friedman & Gotbaum, LLP
568 Broadway
Suite 505
New York, New York 10012

Re: Congregation Shearith Israel Project at 8-12 West 70th Street, New York, New York

Dear Ms. Cuisinier:

I did not respond immediately to your letter of January 12, 2007, because of some intervening personal family issues. However, you and your client have not been forgotten.

This letter clearly documents that it would be false for your firm or Congregation Shearith Israel ("CSI") to assert before the Community Board or the BSA that your firm and CSI have been sharing information with the community concerning this matter. To the contrary, your firm and CSI, working with city agencies, have basically said: if you want the information, expend the funds and time and effort to sue the city agencies to obtain the information. The fact that you will release only your final official filing just days before a community board hearing without providing the community with time to analyze the material and build community support is too little too late. For CSI to make a false claim would also be inconsistent with the principles of Halachic Law.

To summarize the situation, on March 1, 2006, the Landmarks Preservation Commission approved the project of CSI at 8- 12 West 70th Street, but it will not issue a Certificate of Appropriateness until it has received construction drawings. The DOB cannot approve drawings until the Board of Standards and Appeals (:BSA") approves a zoning variance, because the building height and depth violate the New York City Zoning Resolution. On September 1, 2006, I filed a Freedom of Information Law request as to the CSI project with the BSA.

Meeting attendees, please PRINT your name and information here.

Name	Organization	Telephone Number
1) Meenakshi Srinivasan	BSA	
2) [Signature]		
3) Joel Weiss	BSA	
4) [Signature]	P.O.	
5) Shelly Friedman	F&G	
6) [Signature]	FFA	
7) ZAY H. DOWEN	PBDW	
8) [Signature]	PBDW	212 691 2401 x20
9) Jeff Mulligan	BSA	
10) Chris Collins	BSA	

Nearly two months later, the BSA held an ex parte meeting with your firm and your clients. Even though the BSA was aware of my interest in this matter and lived across the street from the project, I was not notified of this ex parte meeting. As shown, two BSA commissioners were present at this meeting.

On November 14, 2006, after this meeting, the BSA provided me with certain ministerial documents including the agenda. One document, your letter to Chair Srinivisan, showed that the ex parte meeting had been set on October 13, 2006.



October 13, 2006

BY MESSENGER

The Hon. Meenakshi Srinivasan
Chair
NYC Board of Standards & Appeals
40 Rector Street, 9th Floor
New York, NY 10006

Re: Congregation Shearith Israel ("CSI")
10 West 70th Street, Manhattan

*Meeting
11/8 - 11:30 AM*

Dear Madam Chair:

We are special land-use counsel to the owner of the above-referenced site, which is being developed as a mixed-use building with community facility/educational use at the lower levels and residential use at the upper levels. The western portion of the site is located in an R8B zoning district and the eastern portion is located in an R10A zoning district. CSI may require bulk variances from the BSA to construct the new development. Attendees at the prospective BSA meeting will include the following:

Ray Dovell	Architect
Jack Freeman	Financial Analyst
Shelly Friedman	Counsel
Lori Cuisinier	Counsel

We look forward to meeting with the Board on Wednesday, November 8 at 11:30AM to discuss this project. Thank you for your cooperation.

Very truly yours,

Lori G. Cuisinier

Thus there was ample opportunity to notify me and other community members of this meeting.

However, the BSA refused to provide me with factual notes describing the meeting, on the spurious grounds that the notes were covered by the attorney-client privilege, thereby imposing on me the cost and expense of initiating a court action to force the BSA (and DOB – see below) what it should have done as a matter of course.

I also submitted a FOIL request to the Department of Buildings requesting documents relating to the CSI project; similarly, a FOIL request was submitted to DOB by Landmarks West. The DOB refused to provide documents based upon "security" grounds.

Due to the 9/11tragedy, the records for the block and lot or address listed in your request are considered "sensitive". In order to obtain agency clearance to release these records, please forward a letter from the owner / managing agent (on record) authorizing you to have access.

Page 3 of 4

Anticipating this, on December 19, 2006, I requested to your firm that CSI as the owner provide such a letter, and then, having received no response, I wrote a second letter to you on January 2, 2007 with the same request.

Even though I had sent you the statement from DOB that a letter from the owner was required to release the DOB document, you disingenuously replied that you were “unaware of any request.” I then pointed this out in my letter of January, 9, 2007. You then responded with your letter of January 12, 2007.

As to CSI’s continued collaboration with the Department of Buildings to thwart the transparency of DOB’s processes and the public right to access public records, I enclose the statement by the DOB that they will only provide CSI records if consented to by CSI based upon the completely dubious grounds of 9/11 security concerns. The fact that CSI will make some of these records available only when it suits the purposes of CSI shows there are no security issues. It is somewhat arrogant of CSI to say that documents, clearly subject to FOIL releases, will only be made available when CSI so desires -this is a perversion of FOIL. So, let’s just hope that CSI does not once again stand up in a public hearing and falsely claim how it has worked with community groups and made information available to the public– that would just be a lie.

As to your statement that your firm routinely engages in ex parte meetings, with the BSA, you state:

Second, and with respect to your assertion regarding an alleged “ex parte meeting ... with Commissioner of the BSA to discuss...how to present the application so as to gain the BSA’s waiver of zoning requirements.” the BSA procedures for pre-application meetings and staff directory are both posted on its website. Our project team’s meeting on November 8, 2006 was entirely within all procedural BSA guidelines as posted. As specifically stated on its website, these meetings are “conducted on an informal basis, and have no bearing on the ultimate outcome of the case if subsequently filed.”

I might add that this Firm’s administrative practice before the BSA has in every case since the Firm’s founding, begun with a pre-application meeting with the Chair, Executive Director and whomever else the Chair asks to attend the meeting. Our pre-application meeting regarding CSI was no different than the dozens of other cases for which such meetings were routinely scheduled.

I draw little comfort that your firm and the BSA have normalized completely aberrant behavior undermining basic concept of due process in administrative proceedings, thereby corrupting the administrative process.

The procedural guidelines only of the BSA do contemplate meetings between applicants and the staff, not applicants and the adjudicator, and it would be immaterial even if the regulations did permit ex parte meetings.

Section 1046 of New York City’s Administrative Procedure Act flatly states:

No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a hearing officer, including internal agency directives not published as rules.

Page 4 of 4

Section 307 of the New York State Administrative Procedure Act states:

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

Here, CSI had already proceeded through years of hearings before the Landmarks Preservation Commission, and CSI had filed information with the Department of Buildings. CSI has publicly stated that its project will require a hearing and a zoning waiver from the Board of Standards and Appeals. Moreover, BSA has a professional staff; therefore, there is no excuse for involving the adjudicators in such pre-application meetings. And, even then, there is no explanation as to why interested community groups were not advised of the meeting, and why no minutes or transcript was taken of the ex parte meeting.

Then, CSI contends that it is appropriate to hold a private meeting with the Chair of the BSA to discuss the upcoming adjudication of CSI's rights, a private meeting where the public was not invited and where no minutes were kept. The only justification provided by CSI is that everyone does it. Again, one wonders whether Halachic Law would approve this approach.

In summary, I request that your firm and CSA not utter the false claim that CSI has been cooperating with community groups, unless stonewalling is considered to be cooperation.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at www.protectwest70.org

cc: Office of the Mayor of the City of New York
Betsty Gotbaum, Public Advocate of the City of New York
Gail Brewer, New York City Council Member
Hon. Scott Stringer Manhattan Borough President
Hon. Richard Gottfried State Assembly Member
Commissioner Patricia J. Lancaster, Department of Buildings
Commissioner Meenakshi Srinivasan, BSA
Robert B. Tierney, Landmarks Preservation Commission
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7
Kate Wood, Executive Director, Landmarks West