

Alan D. Sugarman
Attorney At Law

17 W. 70 Street
Suite 4
New York, NY 10023
212-873-1371
mobile 917-208-1516
fax 212-202-3524
sugarman@sugarlaw.com

June 8, 2007

Ralph Perfetto
Ombudsman
The Public Advocate for the City of New York
One Centre Street
New York, New York 10007

Re:
Congregation Shearith Israel
6-10 West 70 Street/99 Central Park West
BSA Improper Meetings and Failure to Comply With FOIL

Dear Mr. Perfetto:

Thank you for forwarding the letter you received dated May 29, 2007 from Jeff Mulligan of the Board of Standards and Appeals.

Interestingly, on the same day, I received from Mr. Mulligan a letter dated June 1, 2007, purporting to respond to my recent Freedom of Information Request – unbelievably, Mr. Mulligan did not provide to me a copy of his May 29 letter to you in his June 1 FOIL response to me. If anything can demonstrated the BSA's abusive and irresponsible refusal to comply with the requirement of FOIL, this failure to provide to me the letter to you is conclusive.

Mr. Mulligan is as well completely misapplying the attorney client exception provided in FOIL – it only applies to communications in the course of providing legal advice to a client. Anyone with the slightest understanding of the attorney-client privilege and acting in good faith would know that the meeting notes made by attorney of the improper November 8, 2006 meeting between BSA staff and Commissioners and the applicant are not subject to privilege.

Present at the November 8 meeting were five BSA representatives, only one of whom possibly was an attorney. So are we to believe that none of Commissioner Srinivasan, Commissioner Collins, Director Mulligan, and Senior Examiner Ned Weiss took notes at the improper November 8, 2006 meeting? Or, did these public servants, in order to conceal what was being said, have a BSA attorney attend the meeting to take meeting notes so as to artificially create a FOIL privilege where none existed?

Or, do these BSA officials claim that the meeting was part of the deliberative process and so exempt from FOIL? Now we have BSA's dilemma – if the meeting was a deliberative

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meeting, then OF COURSE there was an improper ex parte adjudicative meeting. The BSA cannot have it both ways. But, even then, notes of what was said cannot be privileged.

Finally, BSA could still redact attorney-client communications from the notes, if any privileged matter does in fact exist– something routinely done in litigation discovery (which are the rules that apply under FOIL for these types of documents.)

Remember, all I am asking to know is what did the Congregation representatives say to the BSA commissioners and staff, and vice versa? What is more appropriate for FOIL than this?

Finally, I note that the only communication between BSA and the applicant that BSA has provided in response to FOIL requests since the application was filed was an e-mail from the Congregation's attorney to BSA – and, of course, communications with other agencies such as the letter to you were not provided.

Clearly, BSA is abusing FOIL – and, it is even more improper because they are covering up the improper November 8, 2006 meeting.

As to the BSA reasons justifying the improper ex-parte meeting involving adjudicating hearing examiners in a quasi-judicial proceeding concerning the waiver of zoning laws, clearly, BSA cannot write rules to make legal that which is not legal.

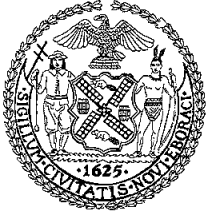
Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at ProtectWest70Street.org.

cc: Jeff Mulligan and other city officials.



Board of Standards and Appeals

40 Rector Street, 9th Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769
Website @ www.nyc.gov/bsa

MEENAKSHI SRINIVASAN
Chair/Commissioner

May 29, 2007

Ralph Perfetto
Ombudsman
The Public Advocate for the City of New York
One Centre Street
New York, New York 10007

Dear Mr. Perfetto:

We are in receipt of your letter dated May 9, 2007 asking the Board of Standards and Appeals to investigate allegations from Alan Sugarman that the Board is not cooperating on providing information on the application for a variance at 6-10 West 70th Street (Congregation Shearith Israel, BSA 74-07-BZ). We are also in receipt of Mr. Sugarman's correspondence to the Public Advocate, which you have shared with us after our request.

Your letter states that representatives of the Board met with the applicants without community representatives invited to attend. Please be advised that Board staff and two Board members met with the applicant prior to the filing of the application, in a meeting that is entirely consistent with the Procedure for Pre-Application Meetings, as posted on the Board's website. There is no requirement that community representatives be invited to attend such a meeting. After receiving Mr. Sugarman's complaint that community representatives had not been invited, we extended an invitation to Mr. Sugarman to also meet with representatives of the Board. He did not accept the invitation.

Your letter also states that we did not provide notes of the meeting pursuant to a FOIL request. Please note that I, as the Board's FOIL Officer, along with the Board's FOIL Appeals Officer have explained in letters to Mr. Sugarman that hand-written meeting notes are not disclosed because they are subject to attorney/client privilege or attorney work product privilege, or because they are exempt under FOIL §87(2). Copies of the Board's letters to Mr. Sugarman are attached.


Mr. Ralph Perfetto
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Your letter also refers to Mr. Sugarman's allegation that the pre-application meeting was an ex-parte meeting. Please see the attached letter which states that we will address Mr. Sugarman's allegations of ex-parte communication at the first public hearing of this case, when calendared.

Finally, you have also attached letters from Mr. Sugarman which identify questions and concerns based on his review of the filed application for the variance – including the date of the DOB objection letter for the proposed project. Please be advised that we will consider the issues raised in Mr. Sugarman's letter as we review the application for the variance.

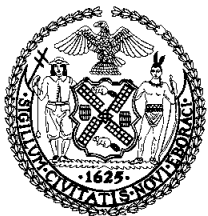
Please contact me at (212) 788-8805 should you have any questions.

Sincerely,



Jeff Mulligan
Executive Director

c: Greg Belcamino, General Counsel



Board of Standards and Appeals

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Website @ www.nyc.gov/bsa

MEENAKSHI SRINIVASAN
Chair/Commissioner

June 1, 2007

Mr. Alan Sugarman, Esq.
17 West 70th Street, Suite 4
New York, New York 10025

Dear Mr. Sugarman:

This letter is in response to your May 24, 2007 request made under the State Freedom of Information Law ("FOIL"). The date of your last request was April 12, 2007, so the Board searched for records dated between April 12, 2007 and May 24, 2007.

Attached you will find a letter and attachments from the Public Advocate; your faxed correspondence to the Public Advocate; your letter to Roberto Valez, Chief Administrative Law Judge of OATH and his response to your letter; and a letter from Friedman & Gotbaum, LLP to David Rosenberg, Esq.

Based on our review, there are no other documents responsive to our request.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law § 89(4)(b).

Please also be aware that it is the Board's policy to charge 50 cents/page for copies made in response to a FOIL request. Since the attachments total 17 pages, please forward a check or money order to the NYC Board of Standards and Appeals for \$8.50.

Sincerely,



Jeff Mulligan

Executive Director/Records Access Officer