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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWNSHIP OF TOMS RIVER, NJ,

Defendant.

Civil Action No.

COMPLAINT

The United States of America, by its undersigned attorneys, files this Complaint and alleges:

Introduction

1. The United States brings this civil action against the Township of Toms River (“Toms River” or “Township”) under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc *et seq.*, stemming from the Defendant’s enactment and application of its Land Use and Development Regulations (“Land Use Regulations”) beginning in 2009 that impose unreasonable limits on places to worship within the Township, treat religious assemblies and institutions less favorably than nonreligious assemblies and institutions, and impose a substantial burden on the exercise religion on religious communities, including the Orthodox Jewish community. The result of these zoning restrictions is that there is essentially nowhere in the Township for new congregations to develop a house of worship.

Nature of the Action

2. Since March 2009, the Township has revised its Land Use Regulations, Township Code, sec 348 *et seq.*, to drastically reduce the number of parcels eligible for a house of worship by reducing the number of zoning districts where houses of worship are allowed either as of right¹ or conditionally and by vastly increasing the minimum acreage size—from two to ten acres—required to develop a house of worship.

3. The effect of these post-2009 amendments to the Land Use Regulations on the availability of locations for houses of worship is striking:

¹ As the term is used in this Complaint, “as of right” use is a use that does not require a special permit, variance, or other discretionary action prior to development.

- The number of parcels where houses of worship are allowed as a conditional use fell from approximately 400 to 74 parcels (a reduction of approximately 80%);
- The total acreage of parcels where houses of worship are allowed as a conditional use fell from approximately 6,000 to 1,900 acres (a reduction of approximately 68%);
- The number of parcels where houses of worship are allowed as of right was reduced from approximately 1,500 to 700 parcels (a reduction of approximately 53%); and
- The total acreage of parcels where houses of worship are allowed as of right was reduced from approximately 2,000 to 200 acres (a reduction of approximately 90%).

4. The post-2009 amendments also eliminated houses of worship as a conditional use in many of the residential zoning districts located in the north area of the Township where population growth, and thus potential demand for new houses of worship, is most likely. The five zoning district classifications—out of a total of 57—where houses of worship are allowed as of right are all in the largely developed downtown area—miles away from where residents are moving.

5. The cumulative effect of these amendments has been to reduce significantly both the number of zoning districts in which houses of worship may locate and the number of sites available for houses of worship within the remaining districts where they may lawfully locate.

6. These amendments especially impact options for Orthodox Jewish residents to

to establish new houses of worship within walking distance from their homes, as required by their religious beliefs, and whose houses of worship are generally small and do not require significant acreage

7. The Township's Land Use Regulations further restrict houses of worship from operating on equal terms with nonreligious assemblies and institutions. Nonreligious assemblies and institutions such as clubs, commercial recreation areas, shopping centers, child care centers, art, dancing and other instructional schools, schools for vocational instruction, funeral homes, restaurants, bars, and administrative offices and research facilities may operate as of right (and with only a one-acre lot size minimum) in several zoning districts, while houses of worship are only conditionally allowed (with a ten-acre minimum lot size). The Township's Land Use Regulations exclude houses of worship from its rural residential zoning district while conditionally allowing clubs, administrative offices and research facilities, continuing care facilities and farmer's markets. The Land Use Regulations conditionally allow clubs and administrative facilities to operate in a variety of zoning districts on five-acre parcels while requiring houses of worship to have ten acres.

8. The Defendant has violated RLUIPA by: (a) unreasonably limiting religious assemblies, institutions, and structures within the Township, 42 U.S.C. § 2000cc(b)(3)(A); (b) treating a religious assembly or institution on less than equal terms with a nonreligious assembly or institution, 42 U.S.C. § 2000cc(b)(1); and (c) substantially burdening the exercise of religion in the absence of a compelling governmental interest pursued in the least restrictive means, 42 U.S.C. § 2000cc(a)(1).

Jurisdiction and Venue

9. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 2000cc-2(f).

10. Pursuant to 42 U.S.C. § 2000cc-2(f), the United States is authorized to commence suit against a local government for injunctive or declaratory relief to enforce compliance with RLUIPA.

11. Venue is proper under 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the District of New Jersey.

Parties

12. Defendant Toms River is a municipality that occupies approximately 53 square miles in Ocean County, New Jersey.

13. According to the 2010 Census, Toms River has approximately 89,000 residents, making it the sixth largest municipality in New Jersey.

14. Toms River is governed by a Township Council composed of seven members—four of whom represent one of four wards of the Township and three of whom are chosen at-large.

15. The Township Council is responsible for adopting Township legislation, including its Land Use Regulations. *See* Code of the Township of Toms River (“Township Code”) § 5-11.

16. For purposes of RLUIPA, the Township is a “government.” 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).

17. Defendant Toms River is responsible for the acts and omissions of its agents and agencies.

Facts

The Orthodox Community in Toms River

18. The north area of Toms River and the area immediately surrounding Toms River have experienced a recent increase in the Orthodox Jewish population relative to other religious groups.

19. Toms River has approximately 42 houses of worship, comprising 38 churches, two mosques, one Conservative Jewish synagogue, and one Hindu temple. There is no Orthodox Jewish house of worship in Toms River.

20. At least 1,000 Orthodox Jewish families live in Toms River.

21. Toms River has a growing Orthodox Jewish community, many of whom have moved from the Township of Lakewood, New Jersey, which borders Toms River on the north.

22. These relocating Orthodox Jews, many of them young families, have generally settled close to the Lakewood border in order to remain near established Orthodox Jewish communities, family, friends, and existing Orthodox Jewish houses of worship schools in Lakewood.

23. As the Orthodox Jewish community grows, Orthodox Jews are moving deeper into Toms River and farther away from Lakewood.

24. Orthodox Jewish religious law prohibits the use of automobiles, or any other form of powered vehicle, on the Sabbath and all major Jewish holidays.

25. In accordance with the beliefs and customs of Orthodox Judaism, Orthodox Jews attend Orthodox Jewish houses of worship to worship, study, and celebrate on the Sabbath and major Jewish holidays, among other times.

26. Because a “day” on the Jewish calendar begins at nightfall, many Orthodox Jewish congregants drive to an Orthodox house of worship before nightfall on the Sabbath, walk home after the evening service, walk to and from the house of worship after the morning service, walk back to the house of worship for the afternoon/evening services, then drive home at the conclusion of the Sabbath; totaling two round-trips on foot between home and the house of worship each Sabbath.

27. Because all major holidays other than Yom Kippur are observed for two consecutive days, there are a total of four round-trips on foot between home and an Orthodox house of worship for each of those holidays.

28. In 2019, for example, Orthodox Jews who regularly attend services would have attended services at an Orthodox house of worship on 52 Sabbaths plus the 11 days when a major holiday did not fall on the Sabbath, for a total of 63 days. This amounts to as many as 126 round-trips on foot between home and an Orthodox house of worship to attend services.

29. Under the religious practices, customs, and beliefs of Orthodox Jews, a mikvah, which is a ritual bath used on weekdays, the Sabbath, and on high/holidays to achieve religious purity, may be part of an Orthodox house of worship.

30. Orthodox Jewish houses of worship tend to be smaller than houses of worship of other faiths and even other denominations of Judaism, typically ranging between 25

and 150 congregants (with some larger congregations with as many as 200 on high holidays).

Resistance Toward the Orthodox Jewish Community in Toms River

31. The arrival of Orthodox Jews to Toms River has been met with resistance from local residents and politicians.

32. Hundreds of Toms River residents have formed a group called “TomsRiverStrong,” which advocates for resisting the sale of homes to Orthodox Jews moving into Toms River.

33. There is a Facebook group “Monmouth and Ocean Counties Strong,” which is “a forum for towns in Monmouth and Ocean counties to stop the expansion and overbuilding of our towns.”

- Comments on this Facebook page include calling the Orthodox Jewish community a “cult” and “Mafia-like institutions [that] run their racketeering enterprises with a reckless disregard for their own followers” and stating “they won’t stop until they have it all.”
- Other comments include: “I’m ashamed to say that we lost folks I live in Toms River and the growth is out of hand. It’s been completely taken over. We handed the town over to developers and they developed it, not for us but for Israel. It won’t stop here, they want NJ. Time to go.”

34. In late 2015, in response to allegations by residents of north Toms River that Orthodox Jews were engaging in door-to-door real estate solicitation, the Township held hearings in support of its plan to pass an anti-solicitation ordinance, which would ban

door-to-door real estate solicitation in most of the north portion of Toms River bordering Lakewood.

35. In February 2016, Toms River passed an anti-solicitation ordinance prohibiting the door-to-door solicitation of home sales in several “zones.” These zones are in the north section of Toms River, just south of the border with Lakewood, to where, as mentioned above, Orthodox Jews had already begun moving.

36. Shortly after the passage of the anti-solicitation ordinance, then-Toms River Mayor Thomas Kelaher publicly compared the alleged door-to-door solicitation by or on behalf of Orthodox Jews to an “invasion.”

37. Orthodox Jews in Toms River have been the target of harassment and intimidation. For example, Orthodox Jews, wearing black hats and coats—traditional clothing worn by many Orthodox Jewish males—have been verbally assaulted while walking down the street by passing motorists yelling anti-Semitic slurs and comments.

38. An Orthodox resident clad in clothing worn by Orthodox Jews had a cup of ice coffee thrown at her while walking home.

39. An Orthodox Rabbi, who had recently moved into a residential neighborhood in Toms River, found a sword stuck in the ground in his front yard.

***Toms River’s Zoning for Houses of Worship
Before 2009 Ordinance Changes***

40. Prior to March 2009, the Township’s Land Use Regulations provided that houses of worship were allowed as of right in seven zoning districts and as a conditional use in 26 zoning districts.

41. Prior to March 2009, a house of worship was allowed as-of-right or was conditionally permitted in over 30% of the Township's total acreage, including in approximately 400 parcels located in residential zoning districts or residential adjacent areas.

42. Prior to March 2009, the Land Use Regulations required that, when located in a zoning district in which houses of worship are only a conditional use, they must be located on a lot that was a minimum of two acres and that fronted a "minor or major collector" or a "minor or principal arterial roadway."

43. Many of these residential zoning districts, including the Rural Residential, R-200, R-400, and R-800 districts, are located primarily in north Toms River, either next to or near the border with Lakewood.

***Toms River's Zoning for Houses of Worship
After March 2009: Ordinance 4181-09***

44. In March 2009, the Township Council passed Ordinance 4181-09.

45. Ordinance 4181-09 reduced the number of residential zoning districts where houses of worship were allowed as a conditional use from 26 to 21, removing houses of worship in the Rural Residential, R-800, R-400, R-400C, and R/C-3 zoning districts.

46. There are currently at least eleven houses of worship—established before March 2009—in these zoning districts.

47. Ordinance 4181-09 reduced the number of parcels where a house of worship was allowed as a conditional use from approximately 400 to 165 parcels (a reduction of approximately 60%); in terms of acreage, it reduced the stock of conditional religious-use acreage from approximately 6,000 to 1,900 acres (a reduction of approximately 70%).

***Toms River's Zoning for Houses of Worship
After June 2014: Ordinance 4442-14***

48. In June 2014, the Township Council again revised its Land Use Regulations in the form of Ordinance 4442-14.

49. This ordinance removed houses of worship as an as-of-right use in the Rural Highway Business (RHB) zoning districts in the Township and instead made it a conditional use in that zoning district, thereby reducing the number of districts where houses of worship are allowed as of right from seven to six. The ordinance also allowed houses of worship as a conditional use only on sites that are a minimum of ten acres.

50. This change reduced the number of parcels in Toms River where houses of worship were allowed as-of-right from approximately 1500 to 1000 parcels (a reduction of approximately 33%), and reduced the available acreage for houses of worship as an allowed as-of-right use from approximately 2000 to 900 acres (a reduction of approximately 55%).

51. In all, the June 2014 ordinance vastly reduced the number of parcels where houses of worship were allowed as of right and only added 20 parcels to the pool of parcels where houses of worship are conditionally allowed.

***Toms River's Zoning for Houses of Worship
After August and November 2017: Ordinances 4554-17 and 4558-17***

52. In August 2017, the Township Council revised the Land Use Regulations once more.

53. Ordinance 4554-17 removed houses of worship as an allowed as-of-right use from the Highway Business (HB) zoning district and instead made it only a conditional use.

54. Then, in November 2017, the Township Council again revised the Land Use Regulations.

55. Ordinance 4558-17 increased the minimum lot size fivefold in all 23 districts where a house of worship was conditionally allowed from two to ten acres.

56. Ordinance 4558-17 also reduced the availability of locations for houses of worship allowed as conditional uses by eliminating minor collector roads from the list of road categories on which houses of worship were required to have road frontage. Because at least 18 different roads in Toms River are classified as minor collectors, including many in the northern section of Toms River, this change eliminated many parcels for which a house of worship could otherwise have been conditionally permitted.

57. Ordinance 4558-17 also increased the minimum lot width from 200 to 300 feet and added a 40% maximum impervious coverage requirement (the prior ordinance had a 20% “minimum unoccupied open space” requirement).

58. Ordinance 4558-17 drastically limited where potential houses of worship could locate, reducing the number of parcels where houses of worship were allowed as a conditional use from approximately 180 to 74 parcels (a reduction of approximately 60%).

59. Moreover, these 74 parcels are not suitable or otherwise available for development:

- Sixty-nine parcels have been, or are in the process of being, developed for commercial, residential, or municipal use;
- Of the five undeveloped parcels, none are suitable for any but the very largest houses of worship: one is 28.3 acres and is registered as farmland; one is 22.81 acres; one is 26.10 acres; one is 15.11 acres of farmland; and one is 10.88 acres, but has a stream that runs through the length of the property; and
- As of February 2020, none of these parcels was for sale.

Toms River Rezones Land from R-200 to R-800

60. On May 8, 2018, the Township Council approved an ordinance, which rezoned 60 acres of land in north Toms River from R-200 to R-800.

61. After the Ordinance was passed, the Township Council released a statement calling the rezoning a legal way “to tackle the problem of overdevelopment due to a sharp increase in the construction of high-density housing in the North Dover section of the township.”

62. The owners of the property vociferously opposed the rezoning, complaining that they had planned to resell the property to Lakewood developers.

63. Because houses of worship are conditionally allowed in R-200 zones, but are prohibited in R-800 zones, this rezoning further limited where houses of worship could potentially locate.

***Toms River Uses Eminent Domain to Prevent the Development
of a Residential Community with a House of Worship
Intended to Serve Orthodox Jews***

64. On December 22, 2015, two Orthodox Jewish developers entered into a contract with the owners of land located at 1940 Lakewood Road for the purchase of approximately 35 acres (“Lakewood Road Property”) at a cost of \$5.2 million.

65. The Lakewood Road Property is located in the northern portion of Toms River and is in the Rural Residential and RHB zones.

66. The developers planned to develop the Lakewood Road Property as a residential community, including townhouses, an apartment building, and a 3,600-square-foot clubhouse, with amenities such as kosher kitchens and multiple bedrooms that would be desirable for Orthodox Jewish families. The 3,600-square-foot clubhouse was intended to be a place where residents could assemble for religious worship, prayer and study.

67. On March 23, 2016, representatives from the developers met with the Township Planner to discuss the proposed development.

68. On April 26, 2016, after learning about the proposed development, the Township Council adopted Ordinance 4508-16, authorizing the Township's acquisition by eminent domain of the Lakewood Road Property in its entirety.

69. On February 3, 2017, over the objections of the developers, the Township brought eminent domain proceedings against the owner of the Lakewood Road Property, preventing the development of the property.

Toms River’s Purchase of Public Land

70. Over the last several years, the Township purchased a significant amount of land that could otherwise be used for development, including for houses of worship:

- In November 2014, the Township purchased a 14.73-acre parcel in a R-150 zoning district at a cost of \$2.2 million.
- In March 2015, the Township purchased 8.3 acres in an RHB zoning district adjacent to the Lakewood border at a cost of \$1.5 million.
- In April 2015, the Township purchased a 10.28-acre parcel in the same RHB zoning district at a cost of \$2.5 million.
- In 2017, the Township continued to purchase undeveloped parcels, including two or three ten-acre plus parcels of land in the RHB zoning district (for a total of 48 acres), further reducing the inventory of ten-acre parcels.

71. In the November 2017 election, Township voters approved a non-binding referendum supporting the acquisition of 250 additional acres of open space over a five-year period.

***Cumulative Effect of Post-2009 Ordinances
and the Township's Policies on Location Opportunities
for Houses of Worship***

72. As a result of the post-2009 Ordinances and the Township's land acquisitions, less than 9% of the acreage of the Township allows for religious use, down from 35% before 2009.

73. In residential or residential adjacent areas—essentially anywhere except for downtown Toms River—there are only about 74 parcels (less than 0.2% of all parcels in the Township) that meet the Land Use Regulations' current requirements for religious use, down from well over 1,000 parcels before 2009. Of these 74 parcels, only a handful are vacant and nearly all of them are already developed with commercial, residential, or

institutional uses. Development of any of these vacant parcels for a house of worship would be inappropriate for all but the largest of congregations with access to extensive financial resources.

74. The only area where houses of worship are allowed as of right is the well-developed downtown area in the south part of the Township, far away (as many as eight miles) from where the vast majority of Toms River residents live, including the growing Orthodox Jewish community.

Toms River's Treatment of Nonreligious Assemblies and Institutions

75. The Township's Land Use Regulations treat nonreligious assemblies and institutions differently and more favorably than religious assemblies and institutions in numerous residential zoning districts.

76. For example, clubs, commercial recreation areas, shopping centers, child care centers, art, dancing and other instructional schools, schools for vocational instruction, funeral homes, restaurants, bars, and administrative offices and research facilities are all allowed as of right and are allowed with a one-acre minimum lot size in the RHB and HB districts, while houses of worship are only conditionally allowed and must meet a ten-acre minimum lot size. *See* Township Code §§ 348-10.26 and 10.27.

77. Further, clubs, continuing care facilities, and farmer's markets are conditionally allowed in the Rural Residential district, while houses of worship are not allowed at all. *See id.* § 348-10.5.

78. When conditionally allowed, clubs and administrative facilities only require a five-acre minimum lot size, compared to the ten acres required for houses of worship, and

clubs and administrative facilities have higher impervious coverage caps at 80% and 70%, respectively, compared to the more restrictive 40% for houses of worship. *See id.* §§ 348-9.18 and 348-9.22.

79. Similarly, “private and parochial schools” are allowed as of right (with no minimum lot size requirement) in 13 residential and three office zoning districts where houses of worship are only conditionally allowed, and private and parochial schools are conditionally allowed in R-800 zones when houses of worship are not allowed at all. *See* Township Code § 348-10.4.

Post-2009 Amendments Impacts on Orthodox Jews

80. As stated above, Orthodox Jewish religious law and custom prohibit the use of automobiles, or any other form of powered vehicle, on the Sabbath and on all major Jewish holidays.

81. The frequent need to walk back and forth from home to a house of worship means that an Orthodox house of worship must be located in relatively close proximity to the homes of its congregants.

82. Because some Orthodox Jews also use a mikvah located in a house of worship on the Sabbath and/or on major Jewish holidays, the mikvah must be located in a relatively close proximity to the Orthodox Jewish community.

83. While it is common today for many religious institutions to serve populations that are less centered in the geographic communities in which they are located, this is not an option available for an Orthodox house of worship.

84. The only feasible locations for an Orthodox house of worship in the Township are those within reasonable walking distance of the congregants' residences.

85. Given that congregants of all ages and degrees of mobility would be walking to and from Orthodox houses of worship in all weather conditions throughout the year, a feasible walking distance on a safe route is limited to one half to one mile or a walking time of 20 to 25 minutes.

86. As stated above, houses of worship are allowed only as conditional uses with ten-acre minimums in the north areas of the Township experiencing growth in residential population.

87. A ten-acre minimum requirement for houses of worship is particularly burdensome for Orthodox Jews because the sizes of congregations are smaller due to the connection between residential living locations and reasonable walking distances.

88. The conditional use criteria for houses of worship, requiring that they have frontage on Principal Arterials, Minor Arterials, or Major Collectors, also is particularly burdensome for Orthodox Jews because the heaviness and the speed of traffic on these roads, and the frequent lack of sidewalks, make them unsafe for use as walking routes to an Orthodox house of worship.

89. Many of these roads lack sidewalks over major portions of their length in the Township or provide sidewalks on only one side, with the side on which the sidewalk is provided changing back and forth at various points. Posted traffic speeds on these roads are normally between 40 and 50 miles per hour.

90. These safety concerns are heightened where: (1) the congregants expected to be walking along these roads would almost certainly include both the elderly and parents with children and (2) they would frequently be walking at night and/or in weather conditions—such as fog, rain or snow—that increase the risk of both traffic accidents that could harm pedestrians and accidents attendant to walking long distances, such as trip and fall.

91. The downtown area of the Township where houses of worship are allowed as of right are as many as eight miles from where most Toms River residents live, including the Orthodox Jewish community.

92. For Orthodox Jews, it is part of their religious customs and beliefs to gather in an Orthodox house of worship for Sabbath, high holidays, and other life-cycle religious events.

93. The Township's post-2009 Ordinances prevent Orthodox Jews from constructing, establishing, or otherwise operating Orthodox houses of worship in Toms River.

94. The Township's post-2009 Ordinances force Orthodox Jews in Toms River to gather in nearby residential homes—that are not Orthodox houses of worship—for prayers on the Sabbath and high holidays.

95. Orthodox Jews praying in nearby residential homes must forego religious gatherings in large groups for prayers on the Sabbath and High Holidays and from conducting weddings, bris, Bar/Bat Mitzvahs and other events and rituals normally conducted in Orthodox houses of worship.

96. Orthodox Jews assembling for prayers in nearby residential homes face the uncertainty that Township officials are monitoring their activities and may cite them for violating the Township's restriction on locations for houses of worship.

97. The Township has issued citations to Orthodox Jews for unlawfully operating a residential home for religious purposes, such as for using a basement or other room for religious assembly not allowed in the zoning district.

98. Township officials have monitored the residential homes of Orthodox Jews on religious holidays, and have counted the number of people who come into a out of the homes.

99. Members of the Orthodox community in Toms River have met with officials to express their concerns about not being able to develop Orthodox houses of worship because of the post-2009 Ordinances.

100. These members of the Orthodox community have communicated that two acres would be a sufficient and suitable amount of land for the development of an Orthodox house of worship.

101. The post-2009 Ordinance zoning restrictions on houses of worship, including the ten-acre minimums, was an issue in the 2019 Toms River mayoral election.

102. Mayoral candidate Maurice Hill opposed proposed changes to the Land Use Regulations that would reduce ten-acre minimum requirements for houses of worship to two acres to address concerns of the Orthodox community, and was quoted in the press stating, "My colleagues and I on the council approved the existing zoning regulations for houses of worship over the last 10 years and I think we got it right. I don't know what the

lawyers are thinking, but I am opposed to these changes as a Councilman and I will oppose them as Mayor if I am elected.”

103. A few weeks later, Mr. Hill issued an official letter stating, in part, “Let me be clear. I am absolutely opposed to 2-acre zoning for housing of worship in Toms River.”

104. Mr. Hill was elected Mayor in November 2019.

CAFRA’s Impact in Toms River’s Zoning Regulations

105. The Township has claimed that the impervious coverage restriction imposed by the New Jersey Coastal Areas Facilities Review Act (“CAFRA”), N.J. Stat. §§ 13:19-1 *et. seq.*,—a law intended to protect coastal areas from the effects of uncoordinated development and to preserve ecologically sensitive and fragile coastlines—is the “primary” reason for the ten-acre minimums for houses of worship in its Land Use Regulations.

106. In Toms River, a CAFRA permit is not required for a proposed commercial development that has less than 50 parking spaces and is located more than 150 feet from beaches or dunes, or the mean high-water line of tidal waters. The vast majority of Toms River lies well beyond 150 feet from such points, which means that a CAFRA permit—and its 30% impervious coverage cap—would not be an obstacle to developing a house of worship with less than 50 parking spaces in those areas.

107. Accordingly, a modestly sized houses of worship with less than 50 parking spaces would not implicate CAFRA’s impervious coverage restrictions.

108. The Township’s Land Use Regulations also treat nonreligious assembly and institutional uses, including, but not limited to, shopping centers, child care centers, art,

dancing and other instructional schools, schools for vocational instruction, funeral homes, administrative offices, research facilities, farmer's markets, schools, health care facilities, restaurants, bars, recreational facilities, and clubs, on terms more favorable than houses of worship—including by not imposing ten-acre lot size minimums on them—even though these assemblies and institutions are covered by CAFRA and have a comparable or even greater environmental impact than houses of worship.

Court I: RLUIPA – Unreasonable Limitation

109. The allegations above are incorporated by reference.

110. The Defendant's enactment and application of the post-2009 Ordinances and Land Use Regulations, and the Defendant's actions described in this Complaint, constitute the imposition or implementation of a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(3)(B).

Count II: RLUIPA – Equal Terms

111. The allegations above are incorporated by reference.

112. The Defendant's enactment and application of the post-2009 Ordinances and the Land Use Regulations, and the Defendant's actions described in this Complaint, constitute the imposition or implementation of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

Count III: RLUIPA – Substantial Burden

113. The allegations above are incorporated by reference.

114. The Defendant's enactment and application of the post-2009 Ordinances and Land Use Regulations, and the Defendant's actions described in this Complaint, constitute the imposition or implementation of a land use regulation that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, that is not in furtherance of a compelling governmental interest and/or is not the least restrictive means of furthering a compelling governmental interest, in violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

115. The substantial burden affects, or the removal of that substantial burden would affect, commerce with among the several States.

116. The substantial burden is imposed in the implementation of a land use regulation or system of land use regulations under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

Prayer for Relief

WHEREFORE, the United States prays that this Court enter an order that:

A. Declares that the Defendant's policies and practices, as alleged herein, violate RLUIPA;

B. Enjoins the Defendant, its officers, employees, agents, successors, and all other persons in concert or participation with it, from:

- i. Unreasonably limiting religious assemblies, institutions, or structures within its jurisdiction;

- ii. Treating the religious assemblies and institutions, and their members, on less than equal terms with nonreligious assemblies or institutions; and
- iii. Imposing a substantial burden on the Orthodox community and all other persons, including other religious assemblies or institutions, absent a compelling governmental interest pursued in the least restrictive means;

C. Requires the Defendant, its officers, employees, agents, successors, and all other persons in concert or participation with it, to:

- i. Take such actions, including the amendment of its Land Use Regulations, as may be necessary to prevent the recurrence of such unlawful conduct in the future, including, but not limited to:
 - 1. Ensuring that religious assemblies or institutions are not treated on less than equal terms with nonreligious assemblies or institutions;
 - 2. Ensuring that religious assemblies, institutions, or structures are not unreasonably limited in the Township;
 - 3. Ensuring that members of the Orthodox community, and other persons, including religious assemblies and institutions, are not substantially burdened by in their religious exercise without a compelling governmental interest pursued in the least restrictive means;

4. Providing RLUIPA training to its personnel;
5. Establishing procedures to address complaints of RLUIPA violations; and
6. Maintaining records and submitting reports relating to RLUIPA compliance; and

D. Awards such additional relief as the interests of justice may require, together with the United States' costs and disbursements in this action.

Dated: March 10, 2021

Respectfully submitted,

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