



**NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113**

Court of Common Pleas

**ANSWER AND THIRD PARTY COMPLAINT AND COUNTERCLAIM \$150
September 14, 2021 19:28**

By: JOHN P. SLAGTER 0055513

Confirmation Nbr. 2352109

CITY OF UNIVERSITY HEIGHTS

CV 21 948437

vs.

UNIVERSITY REALTY USA, LLC, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 35

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CITY OF UNIVERSITY HEIGHTS,

**Plaintiff/Counterclaim
Defendant,**

v.

**UNIVERSITY REALTY USA, LLC, et
al,**

**Defendants/Counterclaim
Plaintiffs/Third-Party
Plaintiffs,**

v.

**MICHAEL DYLAN BRENNAN,
3814 WASHINGTON BOULEVARD
UNIVERSITY HEIGHTS, OHIO 44118
Third-Party Defendant.**

CASE NO. CV-21-948437

**JUDGE JOAN SYNENBERG
MAGISTRATE STEPHEN M. BUCHA III**

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES AND
COUNTERCLAIM TO PLAINTIFF'S
VERIFIED COMPLAINT, AND THIRD-
PARTY COMPLAINT AGAINST
MICHAEL DYLAN BRENNAN**

Now come Defendants, UNIVERSITY REALTY USA, LLC ("URU"), SHNIOR ZALMAN DENCIGER ("Denciger"), and ALEKSANDER SHUL, and for its Answer to Plaintiff City of University Heights' (the "City") Verified Complaint Seeking Temporary Restraining Order, Preliminary and Permanent Injunction (the "Complaint") says:

FIRST DEFENSE

1. Defendants admit the allegations set forth in Paragraph 1 of the Complaint.

2. Defendants admit the allegations set forth in Paragraph 2 of the Complaint.
3. Defendants respond that the Aleksander Shul is incorporated. Defendants deny the remainder of the allegations in Paragraph 3 of the Complaint.
4. Defendants admit that Denciger is an individual who resides in University Heights, Ohio and that he is the leader of the Aleksander Shul. Defendants deny the remainder of the allegations set forth in Paragraph 4 of the Complaint.
- 5(a). Defendants respond that the Complaint contains two paragraphs numbered as Paragraph 5. Defendants admit the allegations set forth in the first of the two paragraphs numbered as Paragraph 5 of the Complaint.
- 5(b). Defendants respond that the University Heights Codified Ordinance (“UHCO”) speaks for itself and no response is required. To the extent that a specific response is required, Defendants deny the allegations set forth in the second paragraph numbered as Paragraph 5 of the Complaint.
6. Defendants respond that the allegations set forth in Paragraph 6 of the Complaint are legal conclusions and no response is required.
7. Defendants respond that the allegations set forth in Paragraph 7 of the Complaint are legal conclusions and no response is required.
8. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 8 of the Complaint and leave Plaintiff to its proofs.
9. Defendants admit the allegations set forth in Paragraph 9 of the Complaint.
10. Defendants respond that the correspondence attached to the Complaint as Exhibit A speaks for itself.
11. Defendants admit the allegation set forth in Paragraph 11 of the Complaint that “the

University Heights Planning Commission heard the Special Use Permit/Variance application at its duly convened meeting on November 21, 2019.” To the extent that a specific response is required, Defendants deny the remainder of the allegations set forth in Paragraph 11 of the Complaint.

12. Defendants admit the allegation set forth in Paragraph 12 of the Complaint that the University Heights Building Commissioner inspected the Premises in January 2020. Defendants deny the remainder of the allegations set forth in Paragraph 12 of the Complaint.

13. Defendants admit the allegation set forth in Paragraph 13 of the Complaint that Defendant URU’s application was brought before the University Heights Planning Commission again at its February 6, 2020 meeting. To the extent that a specific response is required, Defendants deny the remainder of the allegations set forth in Paragraph 13 of the Complaint.

14. Defendants respond that the correspondence attached to the Complaint as Exhibit B speaks for itself. Defendants deny the remainder of the allegations set forth in Paragraph 14 of the Complaint.

15. Defendants respond that the correspondence attached to the Complaint as Exhibit C speaks for itself. Defendants deny the remainder of the allegations set forth in Paragraph 15 of the Complaint.

16. Defendants admit the allegations set forth in Paragraph 16 of Plaintiff’s Complaint.

17. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 17 of the Complaint and leave Plaintiff to its proofs.

18. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 18 of the Complaint and leave Plaintiff to its proofs.

19. Defendants respond that the correspondence attached to the Complaint as Exhibit D speaks for itself. Defendants deny the remainder of the allegations set forth in Paragraph 19 of

the Complaint.

20. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 20 of the Complaint and leave Plaintiff to its proofs.

21. Defendants admit the allegation set forth in Paragraph 21 that an administrative search warrant was executed. Defendants lack knowledge or information sufficient to admit or deny the remainder of the allegations set forth in Paragraph 21 of the Complaint and leave Plaintiff to its proofs.

22. Defendants admit the allegations set forth in Paragraph 22 of the Complaint.

23. Defendants admit that they currently exercise their religion at the Property. Defendants deny the remainder of the allegations set forth in Paragraph 23 of the Complaint.

24. Defendants respond that the allegations set forth in Paragraph 24 of the Complaint are legal conclusions and no response is required. To the extent that a specific response is required, Defendants deny the allegations set forth in Paragraph 24 of the Complaint.

25. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in Paragraph 25 of the Complaint and leave Plaintiff to its proofs.

26. Defendants respond that the allegations set forth in Paragraph 26 of the Complaint are legal conclusions and no response is required.

27. Defendants respond that the allegations set forth in Paragraph 27 of the Complaint are legal conclusions and no response is required.

28. Defendants respond that the allegations set forth in Paragraph 28 of the Complaint are legal conclusions and no response is required.

SECOND DEFENSE

29. Plaintiff's claims fail to state a claim upon which relief may be granted.

THIRD DEFENSE

30. Defendants aver that they at all times acted reasonably, in good faith, and in accordance with all applicable laws of the United States, State of Ohio, and local ordinances.

FOURTH DEFENSE

31. Plaintiff's claims are barred by the doctrines of estoppel, laches, waiver, and/or unclean hands.

FIFTH DEFENSE

32. Defendants have a constitutionally protected right under the Ohio Constitution to engage in religious assembly at the premises, and Plaintiff's claims are barred by the same.

SIXTH DEFENSE

33. Defendants have a constitutionally protected right under the Ohio common law to engage in religious assembly at the Premises, and Plaintiff's claims are barred by the same.

SEVENTH DEFENSE

34. Plaintiff has violated Defendants' right to Free Exercise of Religion under the First Amendment to the United States Constitution, and Plaintiff's claims are barred by the same.

EIGHTH DEFENSE

35. Plaintiff has violated Defendants' right to Equal Protection under the Fourteenth Amendment to the United States Constitution, and Plaintiff's claims are barred by the same.

NINTH DEFENSE

36. Plaintiff has violated Defendants' rights under the Nondiscrimination provision of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(b)(2), and Plaintiff's claims are barred by the same.

TENTH DEFENSE

37. Plaintiff has violated Defendants' rights under the Substantial Burdens provision of

the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a), and Plaintiff's claims are barred by the same.

ELEVENTH DEFENSE

38. Defendants reserve the right to raise additional affirmative defenses or supplement affirmative defenses already raised herein as discovery progresses.

WHEREFORE, Defendants pray that the Complaint be dismissed.

COUNTERCLAIM AGAINST CITY OF UNIVERSITY HEIGHTS AND THIRD-PARTY COMPLAINT AGAINST MICHAEL DYLAN BRENNAN

Now come Defendants/Counterclaim Plaintiffs/Third-Party Plaintiffs, UNIVERSITY REALTY USA, LLC (“URU”), SHNIOR ZALMAN DENCIGER, (“Denciger”) and ALEKSANDER SHUL (hereinafter collectively “Defendants”), and for their Counterclaim against Plaintiff/Counterclaim Defendant, CITY OF UNIVERSITY HEIGHTS (the “City”) and Third-Party claim against MICHAEL DYSON BRENNAN (“Mayor Brennan”) and state as follows:

NATURE OF ACTION

1. Defendants file these Counterclaims to redress violations of their civil rights caused by the Counterclaim Defendant's and Third-Party Defendant's intentional conduct in engaging in a continuing pattern of harassment and intimidation designed to disrupt their Orthodox Jewish religious exercise in violation of the United States and Ohio Constitutions, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc, *et seq.* (“RLUIPA”), and Ohio common law.

PARTIES

2. Defendant University Realty, USA, LLC (“URU”) is the record owner of real

property located at 4380 University Parkway, University Heights, Ohio 44118 (the “Property”).

3. Defendant Aleksander Shul is a non-profit corporation in the State of Ohio.

4. Defendant Shnior Zalman Denciger (“Denciger”) resided at the Property during the relevant period.

5. Plaintiff/Counterclaim Defendant City of University Heights (the “City”) is a chartered municipal corporation in Cuyahoga County, Ohio.

6. Third-Party Defendant Michael Dylan Brennan (“Mayor Brennan”) is the Mayor of the City.

FACTUAL ALLEGATIONS

The Aleksander Shul

7. In 2009, Denciger purchased the Property as a residence for his family.

8. Denciger subsequently conveyed the Property to URU and continued to reside in the house as a tenant.

9. Denciger does not own any other property in the City.

10. URU does not own any property other than the Property in the City.

11. Denciger is a member of the Aleksander sect of Chasidic Judaism.

12. The Aleksander sect is a subset of Orthodox Jews with distinct and unique religious practices.

13. Prior to the Holocaust, the Aleksander sect was one of the largest sects of Chasidic Jews in Poland, with over 400 Aleksander shuls.

14. The vast majority of the Aleksander sect was murdered by the Nazis during the Holocaust.

15. Today, only a small remnant of the Aleksander sect remains.

16. Defendant Aleksander Shuls is one of the only Aleksander shuls in the United States.

17. Upon information and belief, the closest Aleksander Shul to the Property is located approximately 450 miles away in Brooklyn, New York.

18. As part of their religious exercise, Orthodox Jews do not travel in cars on the weekly period known as *Shabbos*, or during certain Holy days.

19. As a result, Orthodox Jews require an Orthodox Jewish house of worship (a “*shul*”) that is within walking distance of their residences to exercise their religious obligation to pray on *Shabbos*.

20. Also, as part of their religious practice, Orthodox Jews, including Denciger, require a quorum of ten Jewish men to fulfil their religious obligation of prayer.

21. As a Chasidic Jew, Denciger requires a *shul* that has regular prayer services in the Chasidic style of prayer.

22. The Chasidic style of prayer is different from the type or prayer conducted at non-Chasidic shuls.

23. When Denciger moved to the City, there was only one Orthodox Jewish *shul* in the City.

24. The one *shul* was not within walking distance of Denciger’s home.

25. Further, the prayers at the *shul* were not in the Polish Chasidic style of prayer.

26. Other than the Aleksander Shul, there is no *shul* that offers the Polish Chasidic style of prayer within the City.

27. The closest shul that offers the Polish Chasidic style of prayer is 350 miles away in Chicago, Illinois.

28. Beginning in 2009, Denciger began inviting neighbors to the Property to observe Jewish holidays and rituals and to join him and his family in Polish Chasidic prayer in the style of the Aleksander sect.

29. At that time, Denciger used the house exclusively as a residence for his family.

30. As Denciger and his wife have sixteen children and always invited guests to join them for *Shabbos* and Jewish holidays, there was always the necessary quorum of ten Jewish men (a “*minyan*”) at the Property at those times.

31. Over time, Denciger’s open invitation to join him in prayer gradually drew others from the neighborhood surrounding the Property.

32. By 2013, the Property was known to neighbors as a regular place of gathering for Orthodox Jewish prayer.

33. The Property became known as the “Aleksander Shul” because the prayers held at the Shul were conducted in the unique Orthodox Jewish tradition of the Chasidic sect known as Aleksander.

34. Numerous neighbors depend on the Aleksander Shul to exercise their religion because it is the only Orthodox Jewish place of worship that is within walking distance of their homes.

35. It is also the only place in the State of Ohio that allows them to exercise their religion by praying in the Polish Chasidic style with a quorum of ten Jewish men.

36. The Aleksander Shul is also unique in that no other place of worship in the State of Ohio engages in prayer in the tradition of the Aleksander Chasidic sect.

37. The Aleksander sect prays with certain sacred melodies, liturgy, and Torah interpretations that are distinct from any shul in the City or elsewhere in Ohio.

38. Some of the people who come to pray at the Aleksander Shul are elderly and/or infirm and are only able to exercise their religion because they live within close proximity to the Property.

39. If the Aleksander Shul were shut down or forced to move, these individuals would also not be able to exercise their religion.

40. It is a religious obligation for Orthodox Jews to take their young children to *shul*

on *Shabbos* from the earliest age possible to teach them the religion.

41. In the cold Ohio winters and hot summers it is dangerous for some children and the elderly to walk too far.

42. There are people who come to pray at the Aleksander Shul who have young children and who bring their children to *shul* on *Shabbos*.

43. If the Aleksander Shul were to close, these individuals would have no other alternative *shul* to bring their children.

**The City Had, Until Recently, Permitted the Aleksander Shul
to Operate at the Property**

44. On October 14, 2019, Defendant URU, through counsel, submitted an application (“Application”) to the City Planning Commission (the “Commission”) for a Special Use Permit (“SUP”) to operate a house of worship at the Property.

45. The Application was heard at a Commission meeting on November 21, 2019.

46. After the application was submitted, but prior to the Commission’s meeting on November 21, 2019, the City’s Building Commissioner, James McReynolds conducted a walk-through of the Property.

47. At that time, McReynolds met with Denciger and told him that he would “partner with him to assist the Shul to successfully navigate the process.”

48. The City’s policy and procedure at that time was to work with applicants for a house of worship SUP to navigate the process collaboratively and help them obtain the permit.

49. At the City Council meeting on December 2, 2019, the City Law Director stated that at the meeting on November 21, 2019, there was “overwhelming support” for the Application, it was “literally wall to wall people,” with everyone present “in support of the application, there was no one in attendance who was opposed to the application.”

50. At the meeting, evidence was presented that neighboring homeowners had provided signed guest parking grants offering a total of 193 parking spaces for the use of congregants.

51. The 193 spaces well exceed the required parking spaces under the City's Code.

52. At the same meeting, the Commission was "very receptive to the use, and made that abundantly clear to . . . the applicant."

53. Before granting final approval for the Application, the Commission wanted to see "as-built drawings of the premises" and "make sure that the Building and Fire Department have an opportunity to inspect to make sure that the shul as it is, is currently built up to code."

54. The Commission also unanimously voted to allow Defendants to continue exercising their religion on the Property until the Commission reconvened in February of 2020 to "consider the matter for final approval."

55. In December of 2019, Mayor Brennan joined the Aleksander Shul for a Torah dedication ceremony during the Jewish holiday of Chanukah at the Property.

56. A few weeks later, on January 15, 2020, the City's Building Commissioner, James McReynolds, inspected the Property with the City Fire Department.

57. At the time of the inspection, McReynolds met with Denciger and assured him that "the City wants to work with you," and that "we are all on the same team."

58. McReynolds' statements and actions led Denciger to understand that the City supported the Application to operate at the Property.

59. Subsequent to that inspection, McReynolds contacted the Ohio Board of Building Standards to "help formulate a plan of action for the owner to perform in order to obtain a certificate of occupancy."

60. In a Memorandum dated January 23, 2020, McReynolds set forth ten items to be addressed in the as-built drawings.

61. The Application was then placed on the agenda for a Commission meeting on

February 6, 2020.

62. At the Commission meeting on February 6, 2020, counsel for Defendant URU requested an extension to present the “as-built” drawings.

63. The Commission unanimously approved a motion to table the Application until the next scheduled Commission meeting, with certain conditions.

64. The Motion called for the Defendant URU to submit its agreement to the conditions in writing to the Commission.

65. On February 11, 2020, counsel for Defendant URU acknowledged its agreement to the conditions in a letter to Mayor Brennan.

66. The February 11, 2020 letter stated in part:

- 1) My Client will agree to post notice on the Property as follows:

“NOTICE - Occupancy in the Shul is temporarily limited to a maximum of fifteen (15) individuals to allow the Shul to work cooperatively with the City of University Heights to address Special Permit issues. Thank you very much for your cooperation.”
- 2) My client will agree that no candles will be permitted in the Shul.
- 3) My client has installed fire extinguishers in the Shul.
- 4) My client has engaged Bialosky Cleveland to prepare Plans to retrofit the existing window wells as emergency exits. Upon completion, same will be immediately submitted to the City.
- 5) My client has engaged Bialosky Cleveland to address those items identified in Building Commissioner McReynolds’ Memorandum dated January 23, 2020. Upon completion of “as-built” drawings, same will be immediately submitted to the City.

67. The February 11, 2020 letter did not provide any time limit or deadline by which the as-built drawings were required to be submitted to the Planning Commission by Defendant URU.

68. On March 2, 2020, the architectural firm retained by the Defendant URU to prepare the as-built drawings submitted a Memorandum to the City Building Department setting forth a

“roadmap” to address any safety concerns.

69. On March 9, 2020, the Governor of Ohio declared a state of emergency in the State of Ohio due to the COVID-19 pandemic.

70. City municipal operations were suspended, and City employees were furloughed through October of 2020.

71. The City did not have a full time Building Commissioner from April 3, 2020, until March 4, 2021.

72. Beginning in March of 2020, due to the pandemic, Defendants did not allow any neighbors to gather for prayer indoors at the Property.

73. All gatherings for prayer at the Property were conducted outdoors in a tent until January of 2021.

74. On February 11, 2021, a new architect retained by Defendants sent to the Commission a Memorandum indicating that work on the as-built drawings had resumed.

The City Abruptly and Without Notice Began Prohibiting Defendants' Religious Exercise

75. On February 19, 2021, the City sent a letter to Defendants URU and Denciger demanding that they immediately cease and desist using the Property as a “place of religious assembly.”

76. The letter also stated that “the City will not tolerate any use of the Premises as a shul without a special use permit. If operation of the Premises as a shul do [sic] not cease immediately, the City will have no choice but to consider what legal options may be at its disposal.” (Emphasis in original.)

77. On June 7, 2021, the City filed this action seeking a Temporary Restraining Order and Preliminary and Permanent Injunctions against Defendants.

78. On June 9, 2021, Mayor Brennan met with Denciger and representatives of the Aleksander Shul.

79. At the meeting on June 9, 2021, Mayor Brennan stated that it was a waste of time to attempt to continue with the Shul at its current location and that there was no path to success in obtaining an SUP.

80. Mayor Brennan further said that any plan to continue to operate the Aleksander Shul must involve finding an alternative location.

81. Mayor Brennan publicly confirmed the statements made at the June 9, 2021 meeting in his report to the City Council at the City Council meeting on June 21, 2021, when he stated:

I want to be very clear, that while the city did stipulate on June 14, 2021, to allow limited operation to continue, this is merely to afford time to allow the congregation to make alternative arrangements. . . . I am saying this publicly, and on the record, so that there is no question as to where the city stands on the enforcement of its laws, or on its position in this matter. Come July 29, 2021, 4380 University Place may be a residence and nothing more.

82. The Mayor's sudden and dramatic change in his treatment of Defendants is consistent with his recent efforts to enforce the City zoning laws against any attempts by Orthodox Jews to gather for prayer in their homes throughout the City.

Beginning in January of 2021, the City Implemented “Strategies” to Shut Down Orthodox Jewish Prayer Groups.

83. Between January of 2021 and May of 2021, the City shut down at least three other groups of Orthodox Jews that attempted to gather for prayer in residential houses in the City.

84. In January of 2021, the City took zoning enforcement action against the Orthodox Jewish prayer group Kehillat Heichal Hakodesh.

85. In January of 2021, the City took zoning enforcement action against Daniel Grand for inviting neighbors to gather for Orthodox Jewish prayer.

86. In May of 2021, the City took zoning enforcement action against the owner of 4136 University Parkway for allegedly hosting an Orthodox Jewish prayer group.

87. Upon information and belief, the City has never enforced its zoning laws against any other religious group for gathering in a residence for prayer.

Enforcement of Chapter 1274 against Kehillat Heichal Hakodesh

88. On January 3, 2021, Mayor Brennan became aware that the Orthodox Jewish owners of a house at 4464 Churchill Boulevard in the City intended to open the house as a meeting place for a group for “Jewish learning and prayer.”

89. This group was called Kehillat Heichal Hakodesh (“KHH”).

90. The first prayer gathering at KHH was scheduled on “Shabbos Parshat Yitro,” which corresponded with Friday, February 5, 2021, after sunset.

91. Upon information and belief, Mayor Brennan was aware that the first prayer group was scheduled for that date.

92. On January 11, 2021, the City Law Director, on behalf of Mayor Brennan, sent a cease-and-desist letter to KHH.

93. The letter stated that the use of 4464 Churchill Boulevard as a place of “religious assembly and/or as a shul or synagogue” is not permitted under the City’s zoning laws and requires a Special Use Permit.

94. On February 3, 2021, KHH sent a mass email to its neighbors, copying the Mayor, that stated that they were “actively seeking another location for the shul, and putting the house on the market to be sold.”

95. KHH’s February 3, 2021 email further stated that they intended to “move quickly” to find an alternative location.

96. KHH’s February 3, 2021 email further stated that “we fully intend on working

together with you to avoid any issues that may arise and we would appreciate your cooperation with us for the short amount of time that we plan on being on Churchill.”

97. KHH’s February 3, 2021 email further stated that during the “short amount of time” before the house was sold, neighbors were only invited to gather for prayer on days when driving is forbidden by Jewish law.

98. The email further stated that during the week an invitation to learn Torah at 4464 Churchill Boulevard would be limited to “a small group of members only so as not to cause any disturbances or parking issues on the street.”

99. On February 3, 2021, Mayor Brennan forwarded KHH’s February 3, 2021 email to the City’s Law Director.

100. On February 5, 2021 at 10:48 a.m., the City’s Law Director, on behalf of Mayor Brennan, filed a Motion for a Temporary Restraining Order against KHH with this Court.

101. The City argued in that Motion that the religious conduct described by KHH “indicates that Defendants plan to continue to operate the Property as a place of religious assembly,” in violation of the City’s zoning laws.

102. When the City’s Temporary Restraining Order was granted, some Orthodox Jewish neighbors who had been invited to pray with KHH were walking to 4464 Churchill Boulevard to pray; others had already arrived.

103. Upon information and belief, on Friday, February 5, 2021, immediately upon receiving that Temporary Restraining Order, the City dispatched a City employee to 4464 Churchill Boulevard.

104. Upon information and belief, the City employee was sent to monitor and ensure that no Orthodox Jews gathered for prayer at 4464 Churchill Boulevard.

Enforcement Action Against Daniel Grand

105. On January 10, 2021, Daniel Grand (“Grand”), the Orthodox Jewish owner of 2343 Miramar Boulevard in the City (the “Grand Property”) sent a private email to ten or so Orthodox Jewish neighbors.

106. In the email, Grand invited his friends to join him in his home for Orthodox Jewish prayer on *Shabbos*.

107. On January 21, 2021, at 5:08 p.m., Mayor Brennan called Grand and left a voice message asking him to return his call regarding an “urgent matter,” leaving both his office and cell phone numbers.

108. On January 21, 2021, at 5:22 p.m., the City Law Director, at the direction of Mayor Brennan, sent a cease-and-desist letter to Grand and his wife accusing them of intending to use their house as a “place of religious assembly and operation of a shul,” in violation of the City’s zoning laws.

109. Grand returned Mayor Brennan’s call immediately upon receiving the cease-and-desist letter.

110. During that call, Mayor Brennan told Grand that hosting a prayer group in his home would be a violation of the City’s zoning laws.

111. During that call, Grand told Mayor Brennan that his intention was only to invite friends to pray in his home.

112. During the call Grand asked, “if I invite ten Jews to my house does that make my house a synagogue?”

113. Mayor Brennan answered, “Yes it does, and if you do so you will be in violation of Chapter 1274 for operating an illegal shul.”

114. Mayor Brennan further stated that “if you go ahead and do what you just described, you will be in violation of the cease-and-desist order and the City will take all legal means available

to it.”

115. On January 22, 2021, Grand sent an email to the clerk for the Commission stating that he intended to fill out an application “for a special use permit with the city planning commission to have friends come over to pray at my house.”

116. That same day, Grand submitted an application for a SUP for a place of religious assembly in his home at 2343 Miramar Boulevard (the “Grand Application”).

117. The Grand Application did not indicate that he intended to make any improvements to his home.

118. The Grand Application stated that “no one will be parking in my driveway - except my wife and myself - and on Sabbath people can not bring car [sic] either.”

119. A hearing on the Grand Application was scheduled for the Commission meeting on March 4, 2021.

120. Commissioner Michael Fine, who had served on the Commission for a number of years, said that the process for the Grand Application was “dramatically different” from anything the Commission had been asked in the past.

121. Fine said that the process with respect to the Grand Application lent itself to a “hostile, confrontational approach.”

122. Commissioner Paul Siemborsky moved to dismiss the Grand Application without discussion.

123. However, Commissioner April Urban moved to table the Grand Application instead and Commissioner John Rach seconded her motion.

124. The motion to table the Grand Application was approved by a vote of 3 to 2, with Mayor Brennan joining Commissioner Siemborsky in voting against it.

125. A second hearing on the Grand Application was scheduled for the Commission meeting on March 23, 2021, but Grand withdrew his application just prior to the meeting.

126. At the March 23, 2021 Commission meeting, Mayor Brennan stated:

Let there be no confusion: Congregating at 2343 Miramar Blvd., or any other address located in a residence zoned U-1, without a special-use SUP is a violation of city law. I am hopeful that the wording of the withdrawal is not intended to suggest that congregating weekly at a residence to conduct activities consistent with those in a house of assembly does not require a special-use SUP. As recently as two months ago, the city brought suit against the organizers of another residential shul, one on Churchill Boulevard, and ultimately obtained a permanent injunction in court.

To the community members who are here, let there be no question. There is no permission granted here to operate ... a house of assembly or conduct activities consistent with one at 2343 Miramar Blvd. If you observe such activities – I hope you do not – but if you do, you may report them to the city, and the city will enforce its laws. ... And we will seek all appropriate remedies in court.

Enforcement of Chapter 1274 Against the Owner of 4136 University Parkway

127. At the May 3, 2021 meeting of the City Council, a single City resident complained that the owner of a house on 4136 University Parkway was using the residence as a house of worship.

128. The Law Director replied that “he was asked late last week by Mayor Brennan to send a cease-and-desist letter to 4316 University Parkway, and that letter will go out this week. [He] further stated that he could assure [the resident] that the City’s position for what he was describing is not permitted. There are strategies in place that begin with a cease-and-desist letter to enforce the city’s ordinances.” (Emphasis added.)

129. Upon information and belief, Mayor Brennan and the Law Director were aware that the house of worship referred to by the resident was a gathering for Orthodox Jewish prayer.

130. Upon information and belief, when the City Law Director said “the City’s position for what he was describing is not permitted” he meant that “the City’s position” regarding gatherings for Orthodox Jewish prayer is that they are “not permitted” pursuant to the City’s zoning

laws.

The City and Mayor Brennan Engaged in Discrimination Against the Defendants by Fabricating False Pretexts and Engaging in Falsehoods to Shut Down the Aleksander Shul

Mayor Brennan accused Defendants of exceeding the occupancy without evidence as a pretext to shut down the Aleksander Shul

131. On February 11, 2020, Defendants agreed to post a notice limiting the occupancy of the Aleksander Shul to 15 people.

132. Defendants abided by this agreement.

133. For a full year, the City did not allege that Defendants breached this agreement.

134. Mayor Brennan claimed in a written statement that he personally drove by the Property just before 10 a.m. on Sunday, February 14, 2021.

135. Mayor Brennan claimed in a written statement that he “observed over 50 cars parked on or around the vicinity” of the Property.

136. In the Complaint, verified by Mayor Brennan, the Counterclaim Defendants allege that on February 14, 2021, Mayor Brennan observed thirteen cars parked in the driveway of the Property or in driveways of surrounding dwellings, and 33 cars parked “on the streets immediately surrounding the Premises.”

137. Mayor Brennan does not allege that he observed anyone entering or leaving the Aleksander Shul at that time.

138. Mayor Brennan does not allege that there was evidence that the owners of the cars were at the Property.

139. Parking on the street on University Parkway is permitted by law.

140. The Gearity School baseball field is adjacent to University Parkway.

141. There is access to the baseball field from University Parkway.

142. People frequently park on University Parkway to access the baseball field.

143. It is not unusual for several cars to be parked on the street of University Parkway on a Sunday morning.

144. Upon information and belief, Mayor Brennan used his observations of parked cars as a pretext to accuse Defendants of exceeding fifteen people at the Property.

The City Used the Delay Caused by the Pandemic as a Pretext to Falsely Claim that Defendants Failed to Make “Timely Serious Attempts to Obtain a Special Use Permit”

145. On February 11, 2020, Defendants agreed that as-built drawings would be submitted to the City “upon completion.”

146. The agreement did not include a deadline by which the as-built drawings must be completed.

147. On March 3, 2020, the Bialosky architectural firm submitted a memo to the City indicating that work on the as-built drawings had begun.

148. On March 9, 2020, the processing of the Application came to a standstill.

149. During the pandemic, Denciger strictly abided by all COVID-19 guidelines, not allowing any worshipers or even his adult children into the house on the Property.

150. All prayer gatherings were conducted outdoors in a tent until January 2021.

151. There was no way for an architect to complete the as-built drawings under the circumstances presented by the pandemic.

152. On April 23, 2020, the City Clerk sent an email to counsel for Defendant URU “Checking to see that 4380 University Parkway is ready to go to the Planning Commission on May 7. Also can you confirm if the new set of stamped architectural drawings have been submitted.”

153. At a City Council meeting just three days earlier, on April 20, 2021, the Mayor reported that the Building Commissioner James McReynolds retired on April 3, 2021.

154. On April 23, there was no Building Commissioner.

155. McReynolds stated that after he left the City Building Department was in a state of “turmoil.”

156. The City could not find a suitable replacement for Mr. McReynolds for almost an entire year.

157. Part of the duties of the City Building Commissioner is to attend Commission meetings.

158. The Commission would seek McReynolds’ opinion when reviewing applications for SUPs and variances.

159. At the same time that the City sent an email asking if Defendants were “ready to go to the Planning Commission,” Mayor Brennan reported that “This state, like the rest of the country, still does not have sufficient diagnostic testing, which will be essential to any successful reopening of the state, and indeed the country.”

160. On January 19, 2021, the COVID-19 vaccine first became available in Ohio.

161. On February 11, 2021, the architect for Defendant URU sent to the Commission a memorandum indicating that she had resumed work on the as-built drawings.

162. On March 4, 2021, the City appointed a full time Building Commissioner.

163. Given the circumstances, Defendants made serious, timely attempts to obtain a special use permit.

164. On February 19, 2021, the City sent a cease-and-desist letter to Defendants.

165. The cease-and-desist letter falsely stated, “You have continued to operate without making timely serious attempts to obtain a special use permit.”

166. The cease-and-desist letter falsely stated that Defendants agreed to “return to the Planning Commission with a revised proposal within ninety days.”

167. Upon information and belief, the City was not prepared to process the Application until March 4, 2021.

168. Upon information and belief, the City used the delay caused by the pandemic as a false pretext to send the February 19, 2021 cease-and-desist letter.

The City's Enforcement of Its Zoning Laws Against Orthodox Jewish Prayer Groups Is in Response to a Vocal Group of Residents Motivated by Animus Toward Orthodox Jews

169. The City's strategy and policy of enforcing its zoning laws against Orthodox Jewish prayer groups is directly responsive to community hostility and animus towards Orthodox Jews in the City.

**Local Animus Against Orthodox Jews at the
March 4, 2021 Commission Hearing for the Grand Application**

170. There was significant community animus toward the Grand Application.

171. This was evident at the March 4, 2021 Commission hearing on the Grand Application.

172. 195 residents signed a petition opposing the Grand Application.

173. At least four City residents who spoke at the meeting in opposition to the Grand application identified themselves as being affiliated with GESU, a Christian church located on Miramar Boulevard in the City, on the same street and in the same U-1 residential district as the Grand residence.

174. GESU is a Christian church with hundreds of members, and an affiliated 700-student school that is also located on the premises.

175. A few examples of statements made at the meeting by residents were:

“I understand that Mr. Grand is from New York ... [when] he was looking for a home ... the location of the Temple [shul] may have been considered.”

“Over two years ago when he bought this property all of those structures were already in place on Green Road. He knew that he was going to have to walk and yet he chose to buy the house here.”

“They did not purchase the home on Miramar with no concept of where any temples or synagogues were.”

“You should have picked somewhere else . . . you should have bought a house closer to where your house of worship is.”

176. Following the tabling of the Grand Application for the SUP at the March 4, 2021 Commission meeting, the residents in attendance made statements about the Commission’s decision, including: “embarrassing,” “ridiculous,” and “Gross, Gross, Gross.”

To Placate Hostile Residents, Mayor Brennan Is Attempting to Confine Orthodox Jews to the “Green Road Ghetto”

177. In a meeting with Denciger and representatives from the Aleksander Shul on June 9, 2021, Mayor Brennan stated that the “demographics [of the City] are changing.”

178. Upon information and belief, Mayor Brennan was referring to Orthodox Jews moving into the City.

179. At the same meeting, the Mayor said that he “sympathizes” with the people who oppose the Aleksander Shul because “people bought homes in the area with the expectation that it was going to be a certain way, and now it’s changed.”

180. Upon information and belief, Mayor Brennan was referring to people who bought homes with the “expectation” that they would not have to live near Orthodox Jews.

181. At no time at the meeting did Mayor Brennan rescind his comments or attempt to qualify his words as having any meaning other than that local residents are unhappy that Orthodox Jews are moving into the community.

182. At the same meeting, Denciger said to Mayor Brennan that he was “forcing Jews to live only in the Green Road Ghetto.”

183. By the “Green Road Ghetto,” Denciger was referring to the area at the extreme eastern side of the City adjacent to Green Road, where a large population of Orthodox Jews resides.

184. Mayor Brennan did not answer, other than saying that “some of the people who complained are Jews.”

185. Mayor Brennan is aware that the area around Green Road is known to have a large population of Orthodox Jews.

186. In a Facebook post on August 12, 2021, Mayor Brennan referred to the area of the City where the Orthodox Jews live as “the tract along Green Road.”

The City’s action against Defendants in Shaker Heights Municipal Court

187. On September 6, 2019, the City filed charges against URU in the Shaker Heights Municipal Court, in *University Heights, v. University Realty USA, LLC*, Case No. 19 CRB 01016 (the “Shaker Heights Case”).

188. The City alleged that Defendant URU made improvements to the Property without obtaining a permit, including installing an elevator and enlarging the driveway.

189. The City acknowledges that it “cannot find” any documents regarding permits for the Property in its records prior to 2017.

190. Prior to 2017, the City granted a permit to enlarge the driveway.

191. The elevator was installed by previous owners of the Property prior to 2009.

192. Upon information and belief, the City granted a permit to the previous owners to install the elevator.

193. Upon information and belief, the City prosecutor brought charges in the Shaker Heights Case without conducting a proper investigation of the facts prior to filing the Complaint.

194. Upon information and belief, the City brought the Shaker Heights case only for the purpose of shutting down the Aleksander Shul.

Other Discriminatory Acts by Mayor Brennan Against the Orthodox Jewish Community

195. Upon information and belief, Mayor Brennan targeted the Aleksander Shul on the basis of its Orthodox Jewish character.

196. Mayor Brennan attended every hearing of the Aleksander Shul in the Shaker Heights Case.

197. Upon information and belief, Mayor Brennan does not typically attend hearings in the Shaker Heights Municipal Court for building code violations in the City.

198. On March 23, 2021, at a City Council meeting, Mayor Brennan called on citizens to report Orthodox Jews who gathered in the City for prayer.

199. On July 29, 2021, Defendants filed their Brief in Opposition to Plaintiff's Motion for Preliminary Injunction.

200. On August 2, 2021, Mayor Brennan released a statement to the Cleveland Jewish News in response.

201. In the August 2, 2021 statement, Mayor Brennan falsely stated, "I have offered to work with the Aleksander Shul time and again if they would only bring an acceptable proposal, which time and again they have declined to do."

202. Defendants never declined to bring an acceptable proposal.

203. In the August 2, 2021 statement, the Mayor falsely stated that Defendants presented a proposal "that would have expanded the occupancy of the house at [the Property] to 501 occupants, with no additional parking or additional land acquired."

204. Defendants never presented such a proposal.

205. On June 29, 2021, the parties consented to a Temporary Restraining Order ("TRO").

206. One of the terms of the TRO was:

Defendants shall forbear from making any submission to, or otherwise attempting to appear on the agenda of, the City University Heights' Planning Commission prior to the scheduled hearing on the Preliminary Injunction, set for July 29, 2021. It is agreed and understood that Defendants are not waiving any rights and/or remedies by virtue of their agreement as set forth in this Paragraph 6.

207. On July 27, 2021, the parties consented to an Amended and Extended Temporary Restraining Order ("Amended TRO").

208. One of the terms of the Amended TRO was:

The Defendants are now permitted to submit to, or otherwise appear on the agenda of the City of University Heights Planning Commission any time after the filing of this Order. The City will cooperate with the Defendants to schedule a special meeting of the Planning Commission, if the Defendants timely submit revised plans for use of the Premises, failing which, the Defendants may appear before the Planning Commission at their regular meeting on September 2, 2021, if a timely submission is made to the City.

209. On August 16, 2021, Sally Levine, the architect for Defendants, sent a Special Use Permit/Variance Application requesting to be heard at the Commission meeting scheduled for September 2, 2021.

210. On August 20, 2021, the Commission clerk confirmed that Defendants were on the agenda for the September 2, 2021 Commission meeting.

211. On August 30, 2021, Mayor Brennan postponed the meeting "due to conflicts with the commission members' schedules/lack of quorum. There will either be a special meeting or (more likely, given the [Jewish] holidays and the anticipated scarcity of available dates) the agenda item will be the next regular meeting in October on October 7th."

212. Upon information and belief, Mayor Brennan's reason for delaying the meeting was a false pretext fabricated to cause the Defendants undue and unnecessary delay.

213. On September 7 and 8, 2021, which corresponded with Rosh Hashanah, one of the holiest days of the year for the Jewish community, Mayor Brennan authorized the City's outside attorneys to hire a private investigator to spy on the Aleksander Shul.

214. At the City Council meeting held on September 9, 2021, the Vice Mayor made the following statement about the incident on Rosh Hashanah:

Regarding the incident that occurred in the City on Rosh Hashanah this week; this marks the start of the ten days of the high holidays for the Jewish Community. Because of the rise in hate crimes against the Jewish Community over the past few years, the Jewish Federation of Cleveland provides security vehicles to patrol all areas where services are conducted, in addition to the University Heights Police. One of these patrols became aware of a suspicious vehicle, parked outside one site, and called the University Heights police to investigate. The individual would only identify himself as a “private investigator” and would not cooperate any further. Our City Council was not aware that, with the authorization of the Mayor, the City’s outside attorneys hired a private investigator to sit outside of a place of worship on one of the holiest days of the year. I am personally apologizing on behalf of the City and City Council for the fear and outrage that this has caused within the Jewish Community. This tactic that was supposed to gain information violated the trust and openness used in the past to mediate disputes that arise between the City and the community. Council does not approve or accept that such tactics are appropriate for any issues that arise with any of the diverse groups that exist within our city. The City should not be spying on its residents ever, especially during one of the holiest days of the year for our Jewish residents. It is unconscionable, that if this was Easter or Christmas it would even be contemplated. The City Council is shocked by the behavior of the Mayor and the outside law firm and will look at our options in dealing with the situation. If the Mayor worried more about the citizens than the City signs then we would be in a better place altogether.

215. Upon information and belief, Mayor Brennan was in communication with the private investigator during the surveillance.

216. On Rosh Hashanah, Orthodox Jews do not use phones unless there is a life-threatening situation.

217. Upon information and belief, the presence of the suspicious vehicle parked outside of a synagogue on Rosh Hashanah caused the Jewish residents to reasonably fear a potential life-threatening situation, such that they used their phones on the holiest day of the year to contact additional security.

218. According to a concerned resident who spoke at the City Council meeting, “mothers who were walking their children to synagogue were deeply traumatized by this incident.”

Impact of the City’s Actions on the Defendants

219. The City’s actions will force the Aleksander Shul to shut down.

220. Closing the Aleksander Shul will greatly burden Defendants’ religious exercise.

221. Prohibiting the Aleksander Shul from operating in its current location does not serve any legitimate government interest.

222. Shutting down the Aleksander Shul would not be the least restrictive means of achieving any legitimate governmental interest.

223. The actions taken by the City against the Defendants were malicious and in bad faith.

224. The actions taken by the City against the Defendants have been for the sole purpose of harassing the Defendants in an effort to prohibit religious exercise at the Property.

225. The City’s actions described above all took place under color of state law.

226. The actions of the City against the Defendants were undertaken within the context of the application of the City’s zoning laws.

227. Upon information and belief, the City has never taken similar action against a prayer group, Bible study, or worship service conducted by a religious organization that was not Orthodox Jewish.

228. The actions of the City to block religious worship and religious activities at the Aleksander Shul were undertaken because of the particular religion and religious denomination of the Aleksander Shul and those using it.

229. The harm to Defendants caused by the City’s actions, which prevent it from using the Property to accommodate their religious needs, is immediate and severe.

230. Defendants have also suffered financial damage as a result of the City's actions.

231. The Aleksander Shul's operation affects interstate commerce by or through, amongst other things, serving as a site for ongoing fundraising; its receipt of charitable donations from persons working or living outside of the State of Ohio; providing a place of worship for the families of residents visiting from other states; the use of means of interstate communication to facilitate the Aleksander Shul's ongoing operations; the use of interstate travel related to the Aleksander Shul's ongoing operations; and the purchase of goods and services related to the Aleksander Shul's ongoing operations and maintenance.

232. The City's zoning enforcement actions against the Defendants were undertaken within the City's formal and informal procedures and practices in which the City and officials such as the Mayor make individualized assessments of the proposed uses of properties.

233. The City's enforcement actions imminently threaten to burden Defendants' free exercise of religion.

234. There are no quick, reliable, and viable alternative options for the Defendants' religious exercise.

235. Defendants have no adequate remedy at law for the harm and damage caused by the City's wrongful laws and actions.

236. The Defendants have also suffered significant harm as a result of the City's enforcement actions.

COUNT I

Violation of Religious Land Use and Institutionalized Persons Act of 2000 – “Substantial Burdens” 42 U.S.C. § 2000cc(a)

237. Paragraphs 1 through 236 are incorporated by reference as if set forth fully herein.

238. The City has deprived and continue to deprive the Defendants of their right to the free exercise of religion, as secured by RLUIPA, by implementing land use regulations in a manner that places a substantial burden on their religious exercise without using the least restrictive means of achieving a compelling governmental interest.

COUNT II

Violation of Religious Land Use and Institutionalized Persons Act of 2000 – “Nondiscrimination” 42 U.S.C. § 2000cc(b)(2)

239. Paragraphs 1 through 238 are incorporated by reference as if set forth fully herein.

240. The City and Mayor Brennan have deprived and continue to deprive the Defendants of their right to the free exercise of religion, as secured by RLUIPA, by implementing land use regulations in a manner that discriminates against them on the basis of religion and religious denomination.

COUNT III

United States Constitution 42 U.S.C. § 1983: First Amendment Free Exercise of Religion

241. Paragraphs 1 through 240 are incorporated by reference as if set forth fully herein.

242. The City and Mayor Brennan have deprived and continue to deprive the Defendants of their right to free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by implementing land use regulations in a manner that burdens their religious exercise without using the least restrictive means of achieving a compelling governmental interest, and discriminates against the Defendants on the basis of religion in a manner that is not the least restrictive means of achieving

a compelling governmental interest.

COUNT IV

United States Constitution 42 U.S.C. § 1983: Fourteenth Amendment Equal Protection

243. Paragraphs 1 through 242 are incorporated by reference as if set forth fully herein.

244. The City and Mayor Brennan have deprived and continue to deprive the Defendants of their right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by implementing land use regulations in a manner that discriminates against them on the basis of religion.

COUNT V

Ohio State Constitution Article I Section 7 Rights of Conscience; education; the necessity of religion and knowledge

245. Paragraphs 1 through 244 are incorporated by reference as if set forth fully herein.

246. The City and Mayor Brennan have deprived and continue to deprive the Defendants of their “natural and indefeasible right to worship Almighty God according to the dictates of their own conscience,” by implementing land use regulations in a manner that interferes with their religious exercise without using the least restrictive means of achieving a compelling governmental interest.

COUNT VI

Ohio Common Law Right to a house of worship in the part of the community where the people live

247. Paragraphs 1 through 246 are incorporated by reference as if set forth fully herein.

248. The City and Mayor Brennan have deprived and continue to deprive the Defendants of their common law right to a house of worship “in that part of the community where the people

live," *Anshe Chesed Congregation*, 97 Ohio App. at 76, 115 N.E.2d at 69 (1953), by implementing land use regulations in a manner that will deprive the members of the Aleksander Shul of a house of worship that is within walking distance.

PRAYER FOR RELIEF

WHEREFORE, the Defendants respectfully request that this Court grant the following relief:

- A. An order enjoining the City, its officers, employees, agents, successors and all others acting in concert with them from applying their laws in a manner that violates the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, Article I, Section 7 of the Ohio Constitution, the Ohio Common Law right to a house of worship in the community where the people live, or undertaking any and all action in furtherance of these acts;
- B. An order compelling the City, its officers, employees, and/or agents to rescind all complaints, fines and notices of violation issued to the Defendants arising out of the use of the Property;
- C. An order directing the City, its officers, employees, and/or agents to allow Defendants to use the Property as a House of Worship;
- D. An award for compensatory damages to be determined by the finder of facts;
- E. An award to the Defendants of full costs and attorneys' fees; and,
- F. Such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,

TUCKER ELLIS LLP

/s/ John P. Slagter

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Attorney for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing has been filed via the Court's electronic filing system on this 14th day of September, 2021. Notice of this filing will be sent to all parties and parties may access this filing through the Court's electronic filing system.

/s/ John P. Slagter

John P. Slagter

One of the Attorneys for Defendants