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February 3, 2025

Town Council
Town of Oro Valley
1100 N La Canada Drive
Oro Valley, AZ 85737

Re: Planning & Zoning Commission
Case # 2402255
Oro Valley Church of the Nazarene

Oro Valley Church of the Nazarene Appeal to Town Council

Mayor and Council Members:

Oro Valley Church of the Nazarene, Inc. (hereinafter OVCN) hereby appeals to this Council from the Planning & Zoning Commission's (hereinafter P&Z) January 14, 2025 decision to deny OVCN's request for an allowed auditorium height of 40-feet and other proposed building elements exceeding 24-feet in height but lower than 40-feet. Town Zoning Code provision 23.8.E, which allows the P&Z Commission to grant up to 45-feet height for an auditorium like OVCN's, was the only Town regulation applicable to OVCN's request. (See End Note 1)

Constitutional Considerations

Since the laws give context to the facts that will be reviewed, it is important to understand the legal restraints that guide the analysis of the facts that will be discussed.

This Town Council has regulatory authority afforded it by the US Constitution. That regulatory authority is, however, limited. One of the limitations

is found in the US Constitution, Article 1 that guarantees the Free Exercise of Religion. (14th Amendment)

The Constitution and the Federal Laws that emanate from the Constitution have legal supremacy over the State and Municipal laws, including the Town's zoning laws and regulations. (Article 6 Clause 2 – Supremacy Clause)

This Council may ask what the free exercise of religion has to do with the height of a church building? The Federal Laws protecting the free exercise of religion include, among others, the Religious Land Use (RLUIPA) statutes.

The Department of Justice, in their explanatory statement on RLUIPA, specifies that *"the use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise."* 42 USC 2000cc-5(7)(B).

In that same Statement published by the Dept of Justice specifically explaining RLUIPA, the DOJ said this: *"(RLUIPA) 42 USC Sections 2000cc to 2000cc-5, is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations."*

The law provides that this discrimination and undue burden can be on the face of the land use regulation, or it can be found in the manner in which the regulation was applied. In this appeal, the focus is primarily on the manner in which section 23.8.E of the Town Code was applied to OVCN's request.

OVCN appeals for these reasons, among others, that Code section 23.8.E :

Was discriminatorily applied; (RLUIPA 42 USC Sec 2000cc(b)(1) and (b)(2);

Was unreasonably applied; (RLUIPA 42 USC Sec 2000cc (b)(3)(B);

Placed a substantial burden on OVCN without a compelling governmental reason for doing so. (RLUIPA 42 USC Sec 2000cc (a);

Was used in a manner violative, in many respects, of the US Constitution Article 1 free exercise of religion guarantee as applied by the 14th Amendment to the Town of Oro Valley; and

Was applied to OVCN in a manner that violates the Arizona Religious Freedom Restoration Act. (See End Note 2)

OVCN

OVCN is a Church of the Nazarene. It is a member of the Nazarene denomination, a longstanding, world-wide evangelical Christian denomination. The

membership of OVCN is dedicated first to the God of the Bible. This is reflected in one of their core biblical tenets.

Matthew 22:37-40 ³⁷ Jesus replied: “Love the Lord your God with all your heart and with all your soul and with all your mind.”^[a] ³⁸ This is the first and greatest commandment. ³⁹ And the second is like it: ‘Love your neighbor as yourself.’^[b] ⁴⁰ All the Law and the Prophets hang on these two commandments.”

OVCN’s mission is largely rooted in another core Biblical tenet.

Matthew 28:18-20 ¹⁸ Then Jesus came to them and said, “All authority in heaven and on earth has been given to me. ¹⁹ Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, ²⁰ and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age.”

This Council may find it interesting to note that OVCN believes that the Bible is God’s Word and that it is powerful in their lives and in all who live by it. They are instructed in this verse from the book of Romans regarding the civil government:

Romans 13:1 Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God.

OVCN has demonstrated its willingness to try and cooperate with the civil authorities in the scores of conditions they have accepted and the concessions they have made throughout their building proposal process since 2022. Additionally, and for many years, they have happily made their current facilities available to the Town when the Town needed them for meetings and events.

This appeal addresses a conflict between the Town’s application of its Code 23.8.E and OVCN’s guaranteed free exercise of their religion in determining the height of a sanctuary building. It also addresses OVCN being subject to the Town’s exercised authority and the church’s ability to freely follow their first and primary allegiance to the God who directs their service to Him.

The Issue of Height

This is a hearing that only arises out of Code Section 23.8.E.. The Code provides that when a church has an auditorium to construct in Private School zone, it can get permission from the P&Z Commission to have a roof as high as 45 feet.

If the church's request for permission is not granted, the church may appeal to the Town Council.

OVCN made its formal application for permission for the auditorium portion of their new building to have a height of 40 feet pursuant to 23.8. E. The application was simple and straightforward.

In the Neighborhood Meeting in December 2024, The Town representative informed everyone present that the only issue to be discussed in the meeting was the "height" of a building OVCN planned to later develop. He made it clear that impact factors related to the development would only be discussed if and when OVCN made a development application to the P&Z Commission. This meeting was to just be about "height" "ONLY".

The Town representative further stated that OVCN has the right to make an application for determination of the height question alone. He also told the gathered people that the Town has a legal duty to give the OVCN application "due process" in its determination.

When these matters have gone to court under the RLUIPA statutes, the courts look to the history of the transactions between the governing authorities and the churches. OVCN has approached the P&Z Commission on multiple occasions to propose development projects since 2022 (and for many years prior, including when the Development Review Board (the P&Z's predecessor) granted OVCN the right to develop their now-existing 29-foot sanctuary building). There is history between OVCN and the P&Z Commission.

On February 7, 2023, OVCN went before the P&Z Commission with two items on the agenda, OVCN was applying for approval of a Planned Area Development ("PAD") to consolidate the 3 different zones that then applied to their property. Within that request was an athletic field with lighting.

The second item OVCN was looking for was the approval of their conceptual/architectural plans for a Multipurpose building of about 75,000 square feet.

There were renderings of the proposed building which depicted the varying roof heights used to "break up" the roof line for aesthetic purposes.

The renderings displayed the building from each of the four directions and the renderings clearly delineated the varying roof heights planned for the building's aesthetic appeal. One portion of the building displayed a roof height of 42 feet. This

part of the building was in the Private School zoning portion of the OCVN property, and subject to Code 23.8.E.

The Town staff, in its report, recommended that the P&Z Commission conditionally approve the PAD application and approve without condition, the conceptual architectural plan for the multipurpose building. After the public statements which had mostly to do with lighting, noise and traffic factors for the athletic field, the Chairman for the meeting had a discussion about the 42-foot height with the OVCN representative.

After the discussion about the need for 42-foot height, a Motion was made to deny the request for the PAD. That motion was passed 3-2 based on “the finding that it is incompatible with current general plan and land use designations”.

That denial meant that the OVCN property would keep its current zoning as it was not given the PAD zoning it had requested.

Then, with instruction from the staff and after the Chairman had just discussed the multipurpose building’s height, the Chairman entertained this motion:

“I move to recommend approval of the conceptual architectural renewed concession and multipurpose building for the Oro Valley Church of the Nazarene, located at the northeast intersection of Calle Concordia and Calle Buena Vista, **based on the finding that the request complies with all applicable zoning code criteria**”. (emphasis added) The motion passed unanimously, and nothing further was said about the motion in that meeting.

The P&Z Commission gave unanimous approval for the conceptual architectural plan including a 42-foot building in the Private School zone. That approval was within the P&Z Commission’s authority as stated in Code section 23.8. E..

Every height listed for the varying heights on this multipurpose building was within code for the zoning it was in. The approval language was correct, and the P&Z Commission had the authority to say that each of those heights was approved.

Whether or not this P&Z Commission approval was binding on the Town Council is not the point being made.

The point being made is that the Town’s P&Z Commission in 2023 saw and inquired about the 42-foot height of the proposed building in the same zoning area as the current proposed building and concluded unanimously that the 42-foot height was approved.

The question this calls for is: How does a 42-foot building height get unanimously approved and, less than two years later, a 40-foot height in the same zoning and property get unanimously denied by the same P&Z Commission?

This portends the kind of discrimination, unreasonableness and substantial burden that courts look askance at under RLUIPA, the US Constitution and the Arizona Religious Freedom Restoration Act.

For OVCN's current 40-foot height request, a Neighborhood Meeting was held on 12-12-2024. The request from OVCN was only for height increase pursuant to the Code for PS zoning, 23.8. E.. The only application filed by OVCN was for height increase. The Town representative repeatedly stated that the meeting was about that application; was limited to the height application; and height was to be the only issue addressed.

The Town's representative used slides to demonstrate that the process of the meeting was to deal "ONLY" with the height request. He also showed how this meeting was about height and a later development application meeting would deal with issues such as traffic, parking, safety, etc..

In this meeting the Town representative stated that OVCN had the right to submit an application solely for height. The representative further stated that the Town had a duty to provide OVCN with Due Process for this single item application.

The OVCN representative then presented his slides demonstrating what the Town Staff agreed was "minimal view interference" with many angles where the proposed 40' building could barely be seen by the neighbors. One neighbor challenged the OVCN photographs regarding view interference because they had been taken from the boundaries of the neighboring lots. Her point was that the view would be different had the photographs come from their houses as opposed to the boundary lines.

The OVCN representative then suggested that the view from the houses would be significantly less obstructed because of the increased distance from the proposed church building. Nevertheless, the OVCN representative offered to come to any or all adjacent landowner homes and take the photos from wherever they wanted, if he was invited, as he did not want to trespass on their properties. He offered to meet with any interested parties right after the meeting, if they desired. Not one person responded to his offer.

The point to be made from the Neighborhood Meeting of December 12, 2024 was that the Town represented the issue to be addressed was only height; and the

point was made that there was no evidence of any significant complaint about view interference.

Some of the neighbors speaking at the meeting suggested that this was not about height but was about the neighbors not wanting OVCN to grow on this property.

The next representation from the Town, relative to the current height request, was the dissemination of the Town's Agenda Packet for the 1-14-25 P&Z Commission hearing.

The Agenda Packet included a P&Z Staff report. In that report the staff acknowledged that this hearing was solely about the Code 23.8.E height request and that the staff had found multiple factors in support of granting the 40-foot height request.

The staff report identified the Phase 1 – Height Request as clearly distinct from the Phase 2 – Development Request to come. The staff report instructed that the scope of the issue for considering the height request was view impact. The issues to be dealt with in Phase 2 – Development would be traffic, parking, safety, drainage and such.

The staff reported that they found the height request to be in General Plan compliance; in compliance with Design Standards and their recommendation read as follows:

“Only the building height is being evaluated in association with this Public Hearing. The Building Height Increase requests have been found compatible with the Your Voice, Our Future General Plan and the applicable Design Standards. Both staff and neighbors have concerns about the forthcoming Development Plan elements regarding the interplay between building size, traffic, parking, lighting and drainage. These concerns will be raised, analyzed and discussed in greater detail when the applicant submits Phase 2 of this proposal.” (Emphasis added)

The Agenda Packet Staff Report's representation about the scope of this Public Hearing was accurate and consistent with the Town representatives' messages to the public in the Neighborhood Meeting on 12-12-24. The stated 2-Phase application and hearing process with Phase 1 to be solely about height was what OVCN had been told and what they relied upon in preparation for the hearing on January 14, 2025.

When the P&Z Commission hearing began at 5:00 PM on 1/14/25 in the Town Council Chambers, the Commission broke into executive session to consult with their legal counsel for about an hour.

After the formalities of the Public Hearing were conducted, Mr. Bayer Vella presented the staff report for the night's session. Everything was as advertised and expected until Mr. Vella changed the scope of the hearing and the scope of factors the Commission could consider in deciding the question of sanctuary height.

Mr. Vella acknowledged that the Code and the General Plan direct the staff to consider the height request's impact on neighborhood views. Pursuant to that direction, the staff did the research and found only minimal impact on neighborhood views. The public provided no evidence of view interference from a 40-foot tall building.

Mr. Vella, seemingly unsatisfied with the simplicity of the hearing as advertised, went on to create a scenario where essentially everything scheduled to be considered in the Phase 2 - Development application had to be considered in this Phase-1 height issue.

Mr. Vella's approach, heard by the public and the Commission, was essentially this:

"I want to spend some time going a little bit beyond views in talking about height and what is the nexus of height relative to size as well as building function."

No reference whatsoever was made to any potential source of the edict he was about to deliver. Mr. Vella continued:

"Height doesn't always comport with building bulk and mass." (He cites the difference between a retail grocery store with a relatively low roof and an office building with a much higher roof)

He continued:

"An auditorium is a different type of use. An auditorium architect has to design a building with more height so one can see from one side of the building to the other. ... So when it comes to auditoriums the bottom line is height does translate into building mass, a larger building to accommodate those sight lines."

Still there is no reference to any potential source for his "bottom line" for auditoriums. Seemingly, Mr. Vella was conveniently leaving out any of the other reasons for having auditoriums built for reasons than the ones he surmises. Suppose

the church just wanted a sanctuary balcony in the back or on the sides for their choir and organ? That could be a sanctuary the size of the existing OVCN sanctuary with just additional height. What about all the sanctuaries and cathedrals that are built all over the world with high ceilings for aesthetic purposes?

Mr. Vella continued with his theory:

“The site of that building (the existing OVCN sanctuary) is roughly 44,000 square feet. The new sanctuary proposed which is heights up to 40 feet --- (reference to the parapet excluded) we’ve been told that building is roughly 75,000 square feet. So, its not quite but almost double in size. So there is a correlation relative to building mass and height when you’re talking about an auditorium.”

Mr. Vella apparently did not bother to compare the existing sanctuary of 29-foot height to the new sanctuary of 40-foot height. The proposed 40-foot height new sanctuary including the platform, audio booth, vestibule, backstage rooms, prayer rooms and generous aisles is roughly 23,009 square feet. This is the square footage that is under the 40-foot parapet height.

Still there is no reference to any source outside of this cursory analysis apparently of his own creation. Mr. Vella was talking about the height of the existing auditorium without any reference to what all was housed in the building. Then he was talking about the height requested by OVCN of 40 feet only on the sanctuary without telling us if the square footage he used for either building was the entire building or just the sanctuary.

Next, Mr. Vella posed a question so that he could answer with his continuing theory:

“Why does that (his correlation between auditorium height and mass) matter?”

OVCN and the prior representatives of the Town in this process, could answer his question simply “It doesn’t, because this hearing is just about height and those issues have already been relegated to the Development application, meetings and hearings in Phase 2”.

Seemingly undaunted by a lack of facts and his fact-deficient quick conclusions, Mr Vella answered his question by continuing to reach for more issues:

“So the greater the mass the greater amount of occupancy. Occupancy does translate into parking counts, it does translate into traffic counts. So there is a correlation with all of those factors.”

If Mr. Vella wants to reach the conclusions he reaches, surely he has factored in the number of people who currently attend OVCN, the capacity of the proposed new sanctuary and what all is housed in the two auditoriums he compared. Are there musical instruments, sound systems with control booths, nurseries, classrooms, prayer rooms, open space for easier ingress and egress, storage rooms, altars, and platforms? The list is as varied as the number of churches.

Mr. Vella didn't have any of this information about the existing sanctuary and he couldn't have any of this information about the proposed new sanctuary because no Development application had been submitted. His edict was based on supposition without facts to support it. Yet he advised the public and the Commission that the factors he informed them of had to be considered.

Note how important it was to Mr. Vella that his analysis was "real" and that the connection to height (his theory) demonstrated a genuine connection:

"So, I really just want to make sure that that tie is real, the connection is there, and all of those factors are concerns that have been raised throughout this evaluation."

Mr. Vella was intent on selling his broadened scope for the hearing that had been characterized and advertised as a one issue matter – height with an impact on views. Not one person from the Town staff had expressed Mr. Vella's theory in any meetings or reports until Mr. Vella's announcement at the hearing on January 14, 2025.

Mr. Vella then displayed a slide that was titled "Neighbor Comments". On the slide, he had two lists.

One list at the top was titled "Building Height" and the factors to consider were listed as: "Views from homes" (the only item supported by the Code and General Plan) and then, the item he just made up, "Building mass & Associated impacts of accommodating more people." Mr. Vella never even found out how many people are already attending OVCN and whether or not the church is trying to build to better serve the people that are already attending.

The second list, at the bottom of the slide, was titled "Development Plan and Architecture". (Phase 2) The factors he listed to consider included:

- Area character (historic, large lot, horse properties, etc.)
- Challenges of current level of activity
- Extent of site coverage

Traffic
Drainage
Parking
Landscaping and heat island effect
Noise

Upon displaying this slide, the issues he was trying to add to the height question were also plainly identified in the Development Plan analysis.

Looking at the slide, Mr. Vella had this to say:

“There are concerns specific to building height.” “But again, the issues of building height bleed into the issues that are on the bottom half of the screen.” (meaning the Development Plan and Architectural – Phase 2)

To OVCN, Mr. Vella’s fiat, delivered to the public and the Commission, was a total surprise. They had been assured of one simple height hearing about views, and Mr. Vella turned it into a completely different hearing. OVCN was ambushed at the hearing.

OVCN does not know why they were treated this way. Was it to hide the fact that the height request by itself would have to be granted because there was no valid, evidence-based reason for not doing so? Was it to give the public “two bites of the apple” by being able to voice all their complaints on every issue of development in Phase 1 hearings and then again in Phase 2 hearings? Was it because the Town just doesn’t want OVCN in the location where they have been serving their Lord and their community for decades?

In the hearing, after OVCN made its presentation on the height issue, the public was invited to comment. There were roughly 19 people who addressed their complaints to the Commission. Of those 19, only 2 addressed some subjective concerns about “views” being obstructed. No evidence of the purported obstruction was offered (and in fact the viewshed slides in OVCN’s presentation preemptively refuted the claim of views being blocked).

When the public comment was finished, one of the Commissioners raised a question to the OVCN representative about Traffic studies. The representative answered as best he could since no traffic studies on this project had been done yet. The church needed the height decision so they could know what height they could build and then prepare a more detailed development design for the site around and supporting the building, and other items that would’ve been required to be submitted to the Town as part of Phase 2

The fact that a Commission member asked about traffic studies, and not about the building height or potential view impacts, demonstrates that the Commission was following Mr. Vella's lead. The vote was 7-0 to deny the OVCN height request.

What is evident is that this maneuver in the January 14, 2025 P&Z Public Hearing was exactly the kind of ploy that RLUIPA is designed to prevent. Under RLUIPA, the US Constitutional and the Arizona Religious Freedom Restoration Act, the Town P&Z Commission:

Acted discriminatorily by granting other churches and schools their requested height increases under the same code provision (Pusch Ridge Academy, CDO Baptist Church, St. Mark's Catholic Church and Resurrection Lutheran Church to name a few) but denying OVCN's request without any height related evidence to support the denial;

Acted unreasonably in applying a simple Code section on height by denying the request with no height related evidence against the request; and denying the 40-foot request when they had previously approved a request of greater height on the same property;

Created a substantial burden on the church by the way the Town dealt with the church without good faith and by applying a height code provision unfairly. The P&Z Commission acted with no compelling governmental interest to be protected by denying the height increase when all the development factors would still be analyzed when the Development plan is submitted.

Further, the Commission created a substantial burden on OVCN by causing it to go through this appeal with the Town Council. Significantly, the case law holds that, under RLUIPA, causing a church to make unnecessary administrative appeals or to litigate to preserve its free exercise of religion guarantee is, in and of itself, a substantial burden.

OVCN was denied their right to have a P&Z Commission decide on their height request based on the view impact in keeping with the Code and the General Plan. That is not the "Due Process" that was promised to OVCN in the presence of the Neighborhood Meeting back on December 12, 2024, and which is afforded by OVZCR 23.8E.

It should be understood by Town legal counsel that the RLUIPA claims of this nature are fee shifting provisions and that at least two of the claims available to OVCN are strict liability claims. In addition, the RLUIPA claims allow for damages to be collected.

In the public hearing of January 14, 2025, OVCN informed the Commission that denying their height request would put a substantial burden on OVCN. Their architect estimated that a change of design and new plans along with construction delay and additional construction requirements necessary to accommodate OCVN's sanctuary at a lower building height would bring a financial burden of \$6,000,000.00 to \$10,000,000.00 for this project.

In keeping with their desire to love the Lord their God with all they are and have, and in keeping with their desire to love their neighbor as themselves as Jesus directed, OVCN is in a difficult position.

Romans 12:18 gives those who follow Jesus, this instruction:

“If it is possible, as far as it depends on you, live at peace with everyone.”

But what do they do when it isn't possible because the governing authority is telling them they can't do what the Lord is leading them to do, and they've demonstrated that what they're proposing meets the governing authority's code criteria for approval?

In an instructive situation, the Apostles, Peter and John, had been preaching the gospel of Jesus in the Temple courts and people were responding and finding new life in Christ.

The governing authorities had them arrested and put in jail. When they called them out for a hearing, they instructed the Apostles that they would be released but that they could not preach this message of Jesus in the Temple courts. In Acts 4:19 and 20 the Apostles replied:

19 But Peter and John replied, “Which is right in God's eyes: to listen to you, or to him? You be the judges! ²⁰ As for us, we cannot help speaking about what we have seen and heard.”

OVCN is in a similar situation with the P&Z Commission's process. The authorities have told them they can't build the church to minister to the people who come as they believe they are guided to. But their primary obligation is to the Lord and to follow His direction.

The 29-foot Height Offer

The question comes to OVCN; have they done what they can to follow Jesus and live at peace and honor the governing authorities? The response to the question

is that they have been led, in this circumstance, to make one more effort and trust the Lord to provide the means to carry it out.

OVCN fully believes that it was wrong for the government to deny their request for 40-foot height allowance. But that is what the governing authorities did. Now they are before the Town Council, still believing they have been wrongly treated, they are willing to adjust their height request to 29 feet and trust the Lord for the additional expense it will cause.

The existing sanctuary has a height limit of 29 feet. OVCN is offering to match that height in their new building. If height was really the issue for the P&Z Commission, then revising the height request to match the height of the current sanctuary should resolve the height issue.

If this Council decides not to grant the 40-foot height increase or the 29-foot height increase, the only appeal offered by the civil governing authorities is to the Federal Court. If that occurs, OVCN's claims will include the 40-foot height and be enhanced by the Town's refusal to grant even a 29-foot height increase equal to their current sanctuary height.

If this Council decides not to grant the 40-foot height increase or the 29-foot height increase offer, the only appeal the civil governing authorities provide is to the Federal Court. If that occurs, OVCN's claims will be enhanced by the Town's refusal to grant even a 29-foot height increase, and OVCN will revert to seeking the 40-foot increase.

OVCN asks this Council to look at the height request the way it was presented by OVCN; the way it was presented by the Town representatives in the Neighborhood Meeting; the way it was presented by every P&Z staff report provided to the Public and the way it was presented by the AGENDA PACKET for the public hearing prior to the January 14, 2025 hearing .

Conclusion and Request

OVCN asks this Council to do the following:

Look at the Code language of 23.8.E.;

Recall the February 7, 2023 P&Z Commission approval of the 42-foot height for a building in the same area and PS zone as the current request;

Look at what the Code and General Plan say about impact to consider in this height question. Even Mr. Vella admitted it was just the view issue;

Recall that the Town staff and OVCN both demonstrated that any view interference from the 40-Foot height request is factually “minimal” at best;

Consider that only two of nineteen neighbors speaking at the P&Z hearing said anything about view interference and those two were speculating about what it might be. Others said this was not about height but about not wanting the church to grow on this property.

Consider that the Federal and State law is the final arbiter of the P&Z Commission’s action against OVCN; and the law that says constructing a building for religious exercise is a “religious exercise” protected by the Constitution and RLUIPA; and

Consider that granting the height request only lets OVCN know how high their building can be. All the other building issues/factors/impacts will be researched by the Town P&Z Staff, discussed by the neighbors in Neighborhood Meetings and ultimately decided by this Town Council according to the Town’s library of standard development regulations, after a Development plan is submitted in Phase 2.

The Church is looking for an opportunity to create a code-compliant development plan, so it can continue to serve the Lord Jesus and this community in a balance of its free exercise guarantee and the Town’s rules and regulations.

It is respectfully requested that this Council overrule the decision of the P&Z, Commission and grant the OVCN request for height increase as provided in Code section 23.8.E.

Submitted this 3rd Day of February 2025 on behalf of the Oro Valley Church of the Nazarene by their counsel undersigned.

Sincerely,

SCHMITT SCHNECK
EVEN & WILLIAMS, P.C.

By:


Jerry L. Steele, Attorney at Law
Of Counsel
006456

End Notes:

1. Some of what we say in this appeal to the Town Council is intentionally for the record so that a reviewing court can see that we informed this Council of the issues and the law and did what we could to resolve this height issue. The record is made so that this Council's legal counsel will not be able to represent to the court that this Council did not have an opportunity to consider the issues and law pertinent to this matter.

2. In the event that this Town Council leaves OVCN no redress or recourse after this appeal, OVCN reserves the right to include additional factual and legal claims, not specified in this appeal, in any subsequent judicial action in the courts.

PETITION FOR:

BUILDING HEIGHT INCREASE REQUEST FOR A NEW SANCTUARY BUILDING AT ORO VALLEY CHURCH OF THE NAZARENE

I certify that I am an Oro Valley Resident and I am of voting age.

I am signing this petition in favor of the Height request to the Town of Oro Valley for the new Oro Valley Church of the Nazarene Building Project.

DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
1-29-25	Walker	Jennie	13308 N. Sanidine Dr.	Oro Valley	AZ	85755	Jennie Wedke
1-29-25	Price	JENNIFER	1556 W. Canyon Shadows Ln	Oro Valley	AZ	85737	Jennifer Price
1-30-25	Pmburn	Patricia	1902 W Camino Bajo	Oro Valley	AZ	85737	Patricia Pmburn
2-1-25	BURROUS	ROBERT	1851 W. DESERT FOREST CT	ORO VALLEY	AZ	85737	Robert Burrous
01 FEB 25	PETERSON	SCOTT	1035 W ROCK DAISY LN	ORO VALLEY	AZ	85755	Scott Peterson
2.01.25	Peterson	Linda	1035 W Rock Daisy Ln	Oro Valley	AZ	85755	Linda Peterson
2-1-25	Schimke	Gary	1687 W Silver Berry Pl	Oro Valley	AZ	85737	Gary Schimke
2/2/25	Sheehan	Shelley	12934 N. Whitlock Canyon Dr	OV	AZ	85755	Shelley Sheehan
2/2/25	Carr	Alicia	144 E Silverstone Pl	OV	AZ	85737	Alicia Carr
2-2-25	Lowe	Robert	104 E Atelier Way	Oro Valley	AZ	85755	Robert Lowe
2-2-25	Jain	Craig	144 E. Silverstone Pl	Oro Valley	AZ	85737	Craig Jain
2-2-25	MURR	Shirley	11480 N. SCOTO Ave	Oro Valley	AZ	85737	Shirley Murr
2-2-25	Vidal	NORA	11570 N. Monica Leigh Pl	Oro Valley	AZ	85737	Nora Vidal
2-2-25	Kraft	Adam	671 W Soaring Hawk Pl	Oro Valley	AZ	85755	Adam Kraft
2-2-25	Deras	Karla	1905 W Mountain Lane Dr	Oro Valley	AZ	85737	Karla Deras
2-2-25	Dockett	Wayne	14365 N Canyon Dr	Oro Valley	AZ	85755	Wayne Dockett

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DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
2/2/25	ORR	RACHEL	13401 N RANCHO VISTA DR #123	Oro Valley	AZ	85755	Rachel L. Orr
2/2/25	Barrett	Patricia	11470 N Chevreau Dr	Oro Valley	AZ	85737	Patricia Barrett
2/2/25	Smith	Matthew	10730 N Oracle Apt 27202	Oro Valley	AZ	85737	Matthew Smith
2/2/25	Fontecilla	TROY	10950 N LA CANADA Apt 5224	Oro Valley	AZ	85737	Troy Fontecilla
2/2/25	Vidal	Raul	11870 W. Monika Leigh Pl.	Oro Valley	AZ	85737	Raul Vidal
2/2/25	Kraft	Elizabeth	671 W. Soaring Hawk Place	Oro Valley	AZ	85755	Elizabeth Kraft
2/2/25	Deras	Willie	1905 W Mountain Laurel Dr	Oro Valley	AZ	85737	Willie Deras
2/2/25	Vadnais	Justin	8501 N Yellowstone Ave	Oro Valley	AZ	86314	Justin Vadnais
2/2/25	Sipe	Linda	10261 N Hacienda Hermosa Dr	Oro Valley	AZ	85737	Linda Sipe
2-2-25	Ford	Paul	11701 N Rainier Dr	Oro Valley	AZ	85737	Paul M. Ford
02-02-2025	WYLIE	ALAN	8445 N. YELLOWSTONE Ave	Oro Valley	AZ	85704	Alan Wylie
2/2/25	Smith	Bethany	10730 N Oracle Rd. Apt 27202	Oro Valley	AZ	85737	Bethany Smith
2/2/2025	Sipe	Mark	10261 N Hacienda Hermosa Dr	Oro Valley	AZ	85737	Mark D. Sipe
2/2/2025	Harting	Steven	12830 N. Via Vista Del Pasado	Oro Valley	AZ	85755	Steven Harting
2/2/21	Solomon	Steve	12753 N. Walking Deer P	OV	AZ	85755	Steve Solomon
2/2/25	Helphinsthe	Robin	11470 W. Ironwood Res	OV	AZ	85737	Robin Helphinsthe

Wally

PETITION FOR:

BUILDING HEIGHT INCREASE REQUEST FOR A NEW SANCTUARY BUILDING AT ORO VALLEY CHURCH OF THE NAZARENE

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DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
1-29-25	Pinckley,	Britany	1008 W Rock Daisy Ln	OV	AZ	85755	Britany Pinckley
1-29-25	Pinckley	Jeffrey	1008 W Rock Daisy	OV	AZ	85755	Jeffrey Pinckley
1-29-25	Cox	GUY	2440 E. DELLA ROCCIA CT	OV	AZ	85737	Guy Cox
1-29-25	COX	MELANIE	2440 E. DELLA ROCCIA CT	OV	AZ	85737	Melanie Cox
1-29-25	Bussy	Alyson	611 W Cassidy Pl	OV	AZ	85737	Alyson Bussy
1-29-25	LINDAHL	AARON	911 W GRAYTHORN PL	OV	AZ	85737	Aaron Lindahl
1-29-25	Lindahl	Hridi	911 W Graythorn PL	OV	AZ	85737	Hridi E. Lindahl
1-29-2025	Hassman	ASHLEY	9222 N Rancho Verde	OV	AZ	85704	Ashley Hassman
1-29-2025	Robb	Scott	1483 W Fairway Wood Ct	OV	AZ	85737	Scott Robb
1/29/2025	Heneise	Sara	2880 W Chalfont Dr	OV	AZ	85742	Sara Heneise
1/29/25	WALKER	BENTON	13308 N SANIDINE DR	OV	AZ	85755	Benton Walker
1/29/25	KLEINSASSER	KELLY	11230 N. APEX DR.	O.V.	AZ	85737	Kelly Kleinsasser
1/29/25	SABO	ROBERT	8350 N. AUSTIN NIKOLAS CT	O.V.	AZ	85704	Robert Sabo
2/1/25	CHAMBERS	Christine	12624 N Haukerbrunnen Ln	OV	AZ	85755	Christine Chambers
2/1/25	THOMAS	BARB	11557 N. Flat Iron Rd	OV	AZ	85737	Barb Thomas
2/2/25	Ramutkowski	Barb	60101 N. HACIENDA HERNANDEZ	OV	AZ	85737	Barb Ramutkowski

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1/2/25	GEORGE	GREGG	10739 N. EAGLE EYE PL	ORO VALLEY	AZ	85737	Gregg L. George
2-2-25	Potter	Allie	1756 e Deer Shadow	Oro Valley	AZ	85737	Allie Potter
2/2/25	Broughton	Sherri	9151 N. Overlook Dr.	Oro Valley	AZ	85704	Sherri Broughton
2/2/25	Howe	Patricia	12356 N Echo Valley Dr.	Oro Valley	AZ	85755	Patricia Howe
2-2-25	Egleston	Pamela	329 W. Spearhead Rd OV	Oro Valley	AZ	85737	Pamela Egleston
2-2-25	WHITE	RICHARD	13459 N. ALISMA CT	ORO VALLEY	AZ	85755	Richard White
2/2/25	Leal	Aaron	11319 N. Big Star Trl	Oro Valley	AZ	85742	Aaron Leal
2/2/25	Gardner	Sharlene	13212 N Downy Dale Ct	Oro Valley	AZ	85755	Sharlene Gardner
2/2/25	Gardner	Douglas	13212 N Downy Dale Ct	OV	AZ	85755	Douglas Gardner
2/2/25	Winterton	Darcy	9901 N Oracle 4201	OV	AZ	85704	Darcy Winterton
2/2/25	HODAM	CHRISTOPHER	1346 E VOLANS PL	OV	AZ	85737	Christopher Hodam
2/2/25	QUINN	Michael	9950 N. Camino Pajarito	OV	AZ	85737	Michael Quinn
2-2-25	Peacock	Gayle	763 W. Annandale Way	OV	AZ	85737	Gayle Peacock
2/2/25	Ray	Trina	1211 E Camino Driestro	OV	AZ	85704	Trina Ray
2/2/25	BOSCARINO	ANTHONY	801 W. SAMALAYUCA DR	OV	AZ	85704	Anthony Boscarino
2/2/25	Peplinski	Terry	710 W. Buffalo Grass Dr.	OV	AZ	85755	Terry Peplinski

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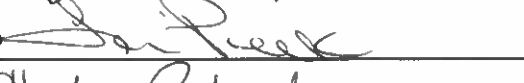




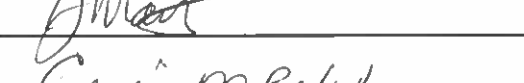
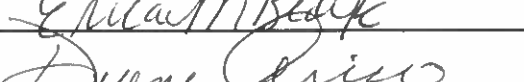


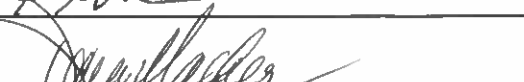
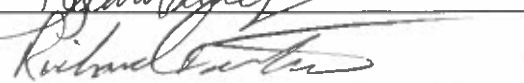

DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
1/29/25	HUFFMAN	DEBBIE	14410 N CHALIC CREEK	Oro Valley	AZ	85755	Debbie Huffman
1/29/25	Marr	Jason	7860 N Village Ave	Oro Valley	AZ	85704	Jason Marr
1/29/25	Marr	Sarah	7860 N Village Ave	Oro Valley	AZ	85704	Sarah Marr
1/29/25	Boone	Sabreen	833 W. Moore Rd	Oro Valley	AZ	85755	Sabreen Boone
1/29/25	Amburn	Elton	1902 W Camino Bajio	Oro Valley	AZ	85737	Elton Amburn
2/1/25	LOVELACE	SHARON	12820 N. Pioneer Way	Oro Valley	AZ	85755	Sharon Lovelace
2/1/25	Lovelace	Ricky	12820 N. Pioneer Way	Oro Valley	AZ	85755	Ricky Lovelace
2.1.25	Goff	Rita	14624 N Spanish Garden LN	Oro Valley	AZ	85755	Rita Goff
2/1/25	VAN CLEAVE	TERRY	8350 N VERDE CATALINA DR	O.V.	AZ	85704	Terry Van Cleave
2/1/25	Van Cleave	Virginia	8350 N. Verde Catalina Dr	OV	AZ	85704	Virginia Van Cleave
2/1/25	Anderson	Venita	10333 N. Oracle Rd #5201	OV	AZ	85737	Venita Anderson
2/1/25	Chansky	Vivian	881 E Bentwater ^{Place} Oro Valley	OV	AZ	85755	Vivian Chansky
2/1/25	Chansky	Don	881 E. Bentwater Place	OV	AZ	85755	Don Chansky
2/1/25	Lewis	Ruth	10000 N. Roxbury Dr.	Oro Valley	AZ	85737	Ruth Lewis
2/1/25	SCHOTTER	DAN	11328 N R ALAMEDA TORADA	OV	AZ	85737	Dan Schotter
2/2/25	YAEGER	LON	11470 N. CHAROLEAN DR.	OV	AZ	85737	Lon Yaeger

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2/2/25	Way	Andrew	325 W Linda Vista	OV	AZ	85704	
2/2/25	Emans	Deborah	344 E. Sunburst Pl	OV	AZ	85704	
2-2-25	Emans	Doug	344 E. Sunburst Pl.	OV	AZ	85704	
2/2/25	Peek	Gloria	13226 N Woodman way	OV	AZ	85755	
2/2/25	Peek	Tami	13159 N Flayer Pl	OV	AZ	85755	
2-2-25	Laker	Heather	1098 W Shoal Creek Ln	OV	AZ	85737	
2/2/25	Gore	Janet	14321 N Sky Trail	OV	AZ	85755	
2/2/25	Benitez	Hillari	1044 W Rock Daisy Lane	OV	AZ	85755	
2/2/25	MATTHEWS	Jordan	13106 N VISTOSO RANCH PLACE	OV	AZ	85755	
2/2/25	Matthews	Jordan	13106 N VISTOSO Ranch Pl	OV	AZ	85755	
2/2/25	Bedyk	Erica	1239 W. Calabria Ct.	OV	AZ	85755	
2/2/25	Arico	DIANE	606 W. Summer Rain Dr	OV	AZ	85737	
2/2/25	LIDDAS	NATHANIEL	7653 N VILLAGE AVE	OV	AZ	85704	
2/2/25	MACKAY	RYAN	1330 E. EPIDOTE CT	OV	AZ	85755	
2/2/25	Mackey	Dawn	1330 E Epidote Ct	OV	AZ	85755	
2/2/25	TEETER	RICHARD	10950 N. LA CAYADA DR	OV	AZ	85737	

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1/29/25	Hawbaker	Jon	11938 N Crescendo Dr	O.V.	AZ	85737	Jon Hawbaker
2/2/25	HICKS	MORRIS	9392 CALLE BUENA VISTA	OV	A	85704	Maria A. Nickolas
2/2/25	CARLSON	DONNA	970 W. DANCING RAIN CT.	OV	AZ	85755	Donna R. Carlson
2/2/25	CARLSON	RANDY	970 W. DANCING RAIN CT	O.V.	AZ	85755	Randy Carlson
2/2/25	Schotter	Donna	11328 N Placita Alameda Dorada	OV	AZ	85737	Donna Schotter
2/2/25	Ramsey	Amy	10738 N Glen Abbey Dr	OV	AZ	85737	Amy Ramsey
2/2/25	RAMSEY	CAROL	11327 N. PLACITA ALAMEDA	OV DORADA	AZ	85737	Carol F. Ramsey
2/2/25	Whitchouse	dulia	10779 N River Point ct	OV	AZ	85737	Dulia Whitchouse
2/2/25	Dallafor	Marie	13909 N Bentwater DR	OV	AZ	85755	Marie Dallafor
2/2/25	Dallafor	John	13909 N Bentwater DR	OV	AZ	85755	John Dallafor
2/2/25	Rushton	Judy	695 E. Kalalau Dr	OV	AZ	85755	Judy Rushton
2/2/25	Chatterton	Kim	11342 N. Twin Spr Ct	OV	AZ	85737	Kim Chatterton
2/2/25	Goldstein	Josh	1780 W. Quartz Rock Pl.	OV	AZ	85737	Josh Goldstein
2/2/25	HODAM	CURTIS	1340 E. VOLANS PL	OV	AZ	85737	Curtis Hodam
2-2-25	Hodam	Debi	1340 E Volans Pl	OV	AZ	85737	Debi L. Hodam
2/2/25	Petho	Susanne	10945 N Guava Dr.	OV	AZ	85737	Susanne Petho

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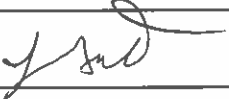
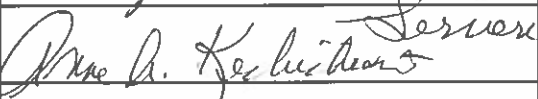
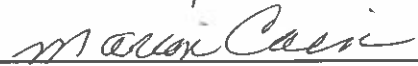

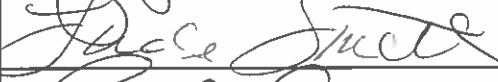






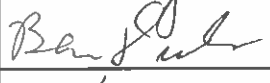


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1-29-25	Kleinsasser	Sue	11230 N Apex Dr	OV	AZ	85737	S. Kleinsasser
1-29-25	Kleinsasser	Breckin	11230 N. Apex Dr.	OV	AZ	85737	Breckin
1-30-25	FOLLETT	THOMAS	11380 N. FLYING BIRD DR	OV	AZ	85737	Thomas Follett
1-30-25	Skilsky	Lynn	1775 E. Ganymede Dr	OV	AZ	85737	Lynn Skilsky
1-30-25	SKILSKY	MIKE	1775 E. Ganymede Dr	OV	AZ	85737	Michael Skilsky
2-01-25	Marturello	VICTORIA	1049 W. Lark Bunting Rd	OV	AZ	85755	Victoria Marturello
2-1-25	ANDERSON	Richard	12834 N. LANTERN WAY	OV	AZ	85755	Richard Anderson
2-1-25	Wilford	Cindy	2302 E. Precious Shard	OV	AZ	85755	Cindy C. Wilford
2-2-25	Lowry	Marg	10788 N. Poinsettia Dr.	OV	AZ	85737	Mary Lowry
2-2-25	Lowry	Robert	10788 N. Poinsettia DR	OV	AZ	85737	Robert Lowry
2-2-25	LOWE	Stephanie	104 E. Atelier Way	OV	AZ	85755	Stephanie Lowe
2/2/25	McMillen	Martha	11915 N. Meteor Pl	OV	AZ	85737	Martha McMillen
2/2/25	Meshirer	Michael	12985 N. Carlsbad Place	OV	AZ	85755	Michael Meshirer
2/2/25	Harris Meshirer	Kelley	"	"	"	"	Kelley Harris Meshirer
2/2/25	Sandra Dockter	Sandra	14365 N. Caryota Way	OV	AZ	85755	Sandra L. Dockter
2/2/25	Fulker	Marlyn	5583 W. Sunset Vista Pl.	OV	AZ	85755	Marlyn Fulker

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	Winterton	William	9901 N. Oracle 4201	OV	AZ	85704	
	Agatano	Laurie	12420 N. Gmo Dr.	OV	AZ	85755	
	Peshkian-Servino	Anne	11134 N Sand Pointe Dr.	OV	AZ	85737	
	Cain Marton	MARION	11363 N Gray Boulder CT	OV	AZ	85737	
	Ohanlian	Jayle	13401 N. Rancho Vistoso Dr.	OV	AZ	85755	
	Smith	Linda	13440 D FLEXILE R	OV	AZ	85755	
	CROOKS.	Sheila	12154 N Red Mountain	OV	AZ	85755	
	Wongnikom	Panit	1034 W. Saddlehorn Pl	OV	AZ	85704	
	Huckins	Michael	235 W. Rolling Hills St	OV	AZ	85704	
	Oliver	Samuel	11371 N Sandbell Ln	OV	AZ	85742	
	Oliver	Jose	11371 N. Sandbell Ln	OV	AZ	85742	
	Dreher	Emily	10333 N Oracle Rd. Apt 9106	OV	AZ	85737	
	Dreher	Benjamin	10333 N Oracle Rd. Apt 9106	OV	AZ	85737	
	Goodner	KAREN	1040 W. Saddlehorn Dr.	OV	AZ	85704	
	Goodner	Wayne	1040 W. Saddlehorn Dr	OV	AZ	85704	

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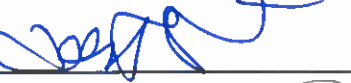



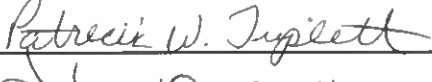
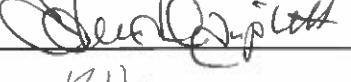
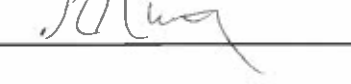

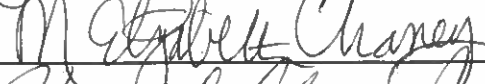





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2/2/25	Thoman	Jill	13455 N. Cape Marigold Dr.	Oro Valley	AZ	85755	Jill Thoman
2/2/25	Tonn	Julie	725 W. Bougainvillea Dr.	Oro Valley	AZ	85755	Julie Beth Tonn
2/2/25	Gray	Sally	11636 N. Teskow Dr.	Oro Valley	AZ	85737	Sally Gray
2/2/25	GRAY	Michael	11636 N. Teskow DR/OP	Oro Valley	AZ	85737	Michael Gray
2/2/25	Donna VanderZanden	Donna	108 E Silverstone Pl	Oro Valley	AZ	85737	Donna VanderZanden
2/2/25	Quinn	Bonnie	9950 N. Camino Paramo	OV	AZ	85737	Bonnie Quinn
2/2/25	Moring	Karen	2072 W Arizona Rose Dr	OV	AZ	85737	Karen Moring
2/2/25	Gerhart Boscarino -	Marguerite	801 W Samalayuca Dr.	TUL	AZ	85704	Marguerite Boscarino
2.2.25	Andresen	Sharon	11664 N. Via La Quinta	OV	AZ	85737	Sharon Andresen
2/2/25	Ten Elshof	Brann	8122 N Rancho Catalina	OV	AZ	85704	Brann Ten Elshof
2/2/25	Oliver	Maria-Joe	11371 N Sandbell Ln	OV	AZ	85742	Maria-Joe Oliver
2/2/25	Dreher	Byron	11124 N. Delphinus St.	OV	AZ	85742	Byron Dreher
2/2/25	Bowles	Abra	13606 N Palo Verde Wy	OV	AZ	85755	Abra Bowles
2/2/25	Bowles	Charles	13606 N Palo Verde Wy	OV	AZ	85755	Charles Bowles
2/2/25	Cooper	RUTH	10831 N. LA QUINTA DR.	OV	AZ	85737	Ruth Cooper

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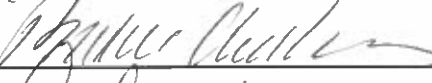










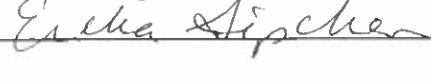
DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
1/24/25	Intschert	Michael	12460 N. Granville Canyon Way	Oro Valley	AZ	85755	
1/29/25	Intschert	Tabitha	12460 N Granville Canyon Way	Oro Valley	AZ	85755	
1/29/25	Price	Sharon	1556 W Canyon Shadows	Oro Valley	AZ	85757	
2/1/25	Nolan	Jordan	13310 N. Amberwing Place	Oro Valley	AZ	85755	
2/1/25	Nolan	Christine	13310 N. Amberwing Place	Oro Valley	AZ	85755	
2/1/25	TRIPLETT	PATRICIA	10757 N. PYRENEES AVE.	Oro Valley	AZ	85737	
2/1/25	TRIPLETT	EDWARD	10757 N PYRENEES AVE	Oro Valley	AZ	85737	
2/2/2025	NUNEZ	JANIE	555 W LINDA VISTA BLVD	"	"	85704	
2-2-25	Scoriers	Donna	385				
2-2-2025	CHARTER	Wendy	13045 N. WOODSNAW WAY	Oro Valley	AZ	85755	
2-2-25	CHANEY	M Elizabeth	13739 N Hidden Springs Dr	Oro Valley	AZ	85755	
2-2-25	Chaney	Kenneth	13739 N. Hidden Springs Dr	Oro Valley	AZ	85755	
2-2-25	CLARK	SUW	51 W. GREENOCK DR	Oro Valley	AZ	85737	
2/2/25	CLARK	ALANNA	51 W. GREENOCK DR	Oro Valley	AZ	85737	
2-2-	Jensen	Michael	11475 N. SKYWIPE WAY	Oro Valley	AZ	85737	
2/2/25	GRASSMEYER	JODI	325 W. LINDA VISTA	Oro Valley	AZ	85704	

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1/29/25	PRICE	RICK	1556 W CANYON SHADOWS LN	ORO VALLEY	AZ	85737	
1/29/25	Ambrose	Kate Karen	11885 N. Gray Eagle	OV	AZ	85737	
1/29/25	Ambrose	Brian	11885 N Gray Eagle	Oro Valley	AZ	85737	
2/4/25	George	Anna	10739 N. Eagle Eye Pl.	Oro Valley	AZ	85737	
2/4/25	George	GREGG	10739 N. Eagle Eye Pl.	Oro Valley	AZ	85737	
2/2/25	Mustain	Stephanie	11303 N Running River Pl	Oro Valley	AZ	85737	
2/2/25	MUSTAIN	CHARLES	11303 N Running River Pl	Oro Valley	AZ	85737	
2/2/25	SELL	Dawn	1362 W Par Three Ln	Oro Valley	AZ	85737	
2/2/25	Pauly	Rita	385 W. Sacaton Canyon	Oro Valley	AZ	85755	
2/2/25	Gomez	Betsy	12882 N. Lantern Way	Oro Valley	AZ	85755	
2/2/25	WILKIN	SEMPER	12882 N. Lantern Way				
2/2/25	SMITH	Craig	324 W. SPEARHEAD RD.	Oro Valley	AZ	85737	
2/2/25	THOMAN	NATHAN	13455 N. CAPE MARKOLD DR	ORO VALLEY	AZ	85755	
2/2/25	Leal	Jamie	11319 N. Big Star Trl.	Oro Valley	AZ	85742	
2-2-25	JENSEN	LOREN	10870 N. CANADA HILLS CT.	Oro Valley	AZ	85737	
2/2/25	Erika Sipchen	Erika	11911 N Centaurus PL	Oro Valley	AZ	85737	

PETITION FOR:

BUILDING HEIGHT INCREASE REQUEST FOR A NEW SANCTUARY BUILDING AT ORO VALLEY CHURCH OF THE NAZARENE

I certify that I am an Oro Valley Resident and I am of voting age.

I am signing this petition in favor of the Height request to the Town of Oro Valley for the new Oro Valley Church of the Nazarene Building Project.

DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
2/2	Adair	Taylor	12986 N. Vista ^{Del} Vista Parado	OV	AZ	85755	T. Adair
2/2/25	Vandivort	Philip	1280 W Desert Dew PL	Oro Valley	AZ	85737	Philip J. Vandivort
2/2/25	Lyon	Maria	10703 N. Hewitt Pl	Oro valley	AZ	85737	Maria G. Lyon
2/2/25	Coleman	Ashley	758 W Mallard Head Pl	Oro valley	AZ	85737	A. Coleman
2/2/25	Howell	Melinda	1360 N. Scioto Ave	ORO VALLEY	AZ	85737	Melinda Howell
2/2/25	MALIAS	FAUSTO	912 W Lock Oak Pl	OV	AZ	85755	Fausto
2/2/25	HELLENSTINE	MARK	11470 N Ironwood Canyon PL	OV	AZ	85737	Mark Hellenstine
2/2/25	Michelson	Robin	13934 N. Steprock Canyon Pl	OV	AZ	85755	Robin Michelson
2/2/25	Michelson	Bredley	13934 N. Steprock Canyon Pl	oro valley	AZ	85755	Bredley Michelson
1-21-25	Smith	DAVE	14244 N. Houserbee Tr.	Oro Valley	AZ	85755	D. Smith
2-2-25	Baker	Jan	556 W. Paseo Rio Grande	Oro Valley	AZ	85737	Jan C. Baker
2-2-25	Dreher	Noel	11124 N. Delphinus St.	Oro Valley	AZ	85742	Noel Dreher
2/2/25	Gandara	Angelica	864 W. Calle Ranunculo	Oro valley	AZ	85704	Angelica Gandara
2/2/25	Higuera	Karena	864 W. Calle Ranunculo	Oro valley	AZ	85704	Karena Higuera

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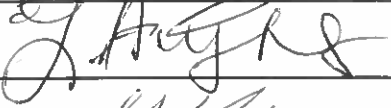
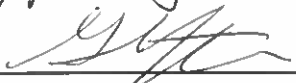
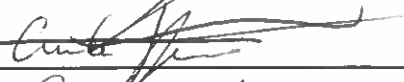







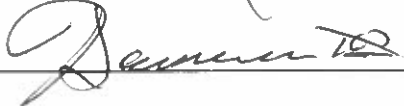
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DATE	LAST NAME	FIRST NAME	STREET ADDRESS	CITY	STATE	ZIP	SIGNATURE
2/2/25	Melton	Sharon	9901 N. Oracle Rd #3103	Oro Valley	AZ	85704	Sharon Melton
2/2/25	Melton	Rodney	9901 N. Oracle Rd #3103	Oro Valley	AZ	85704	Rodney Melton
2/2/25	Lasham	Heidi	1333 W. Saddlehorn Drive	OV	AZ	85704	Heidi Lasham
2-2-25	Coleman	Charles	758 W. Mallard Head pl	OV	AZ	85737	Charles Coleman
2-2-25	Peck	Clint	13159 N. PLAZA PLAZA	OV	AZ	85755	Clint Peck
2-2-25	Benitez, II	Julien	10441 W Rock Daisy Ln	Oro Valley	AZ	85755	Julien Benitez
2/2/25	Wolfe	Brianna	340 E Four Horses Cir	OV	AZ	85704	Brianna Wolfe
2/2/25	Erceg	Joseph	10730 N Oracle Rd #22103	OV	AZ	85737	Joseph Erceg
2/2/25	Wolfe	Christian	340 E Four Horses Cir	OV	AZ	85704	Christian Wolfe
2/2/25	Escobedo	Lori	9896 N Hacienda Hermosa Dr	OV	AZ	85037	Lori Escobedo
2/2/25	Roberts	Priscilla	611 W Cassidy A	OV	AZ	85737	Priscilla Roberts
2/2/25	SHORT	DRUSILLA	1 E DESERT SKY RD 4 ^{UNIT}	OV	AZ	85737	Drusilla Short
2/2/25	Doyle	Melissa	288 E. Painted Pottery A	OV	AZ	85755	Melissa Doyle

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2/2/25	Whitmore	Melanie	10779 N. River Point Ct.	Oro Valley	AZ	85737	
2/2/25	Whitmore	Jakob	10779 N. River Point Ct.	Oro Valley	AZ	85737	
2/2/25	Johnston	Kirk	12840 N. Geneva Dr	Oro Valley	AZ	85735	
2/2/25	Hughes	Lauren	10730 N. Oracle Rd #18301	Oro Valley	AZ	85737	
2/2/25	YALTER	GUY	13174 N. VISTOSO RN PL	Oro Valley	AZ	85755	
2/2/25	YALTER	CINDY	13174 N. VISTOSO RN PL	Oro Valley	AZ	85755	
2-2-25	Laker	Raymond	1098 W. Shoal Creek Lane	Oro Valley	AZ	85737	
2/2/25	BEADYK	Josie	1239 W. CALABRIA CT	Oro Valley	AZ	85755	
2/2/25	Rushton	Ryan	12245 N. Makayla Canyon Ln.	Oro Valley	AZ	85755	
2/2/25	Liodas	Jessica	7653 N. Village Avenue	Oro Valley	AZ	85704	
2/2/25	Liodas	Colin	7653 N. Village Avenue	Oro Valley	AZ	85704	
2/2/25	Tariz	Doyle	288 E Painter Pottery Pl Oro Valley AZ, 85755	Oro Valley	AZ	85755	
2.2.25	Heuseman	Kristi	11115 N. Calamondin Pl.	Oro Valley	AZ	85737	
2.2.25	Heuseman	Dean	11115 N. Calamondin Pl.	Oro Valley	AZ	85737	

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[illegible]

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[illegible]

BUILDING HEIGHT INCREASE REQUEST FOR A NEW SANCTUARY BUILDING AT ORO VALLEY CHURCH OF THE NAZARENE

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[illegible]

SCHMITT SCHNECK EVEN & WILLIAMS, P.C.

Jerry L. Steele, Esq.
(602) 722-1761 Direct
(602) 277-7000 Office
jerry@azbarristers.com

February 5, 2025

Town Council
Town of Oro Valley
1100 N. La Canada Drive
Oro Valley, AZ 85737

Re: Planning and Zoning Commission
Case #2402255
Staff request for information

Mayor and Council Members:

Oro Valley Church of the Nazarene was informed that the P&Z staff was requesting more information regarding the church's appeal. Specifically, the request was made for further description of the church's alternative offer of a 29-foot height request for their proposed sanctuary building.

The staff representative was reminded that this is simply an alternative offer for the church's height permission request. Further, it was conveyed to the staff representative, that it is anticipated that the design of the alternative sanctuary building would likely follow closely the preliminary design of the sanctuary building at 40-feet. That concept would just be 11-feet lower according to the Oro Valley Zoning Code's stated methodology for measuring building height. This would be accomplished by making part of the structure below ground.


Due to the projected costs of such an alteration of the church's request for the 40-foot height permission, which should still be granted, producing additional work for the 29-foot sanctuary would be just adding to the substantial burden the P&Z Commission has already imposed on the church.

If, there are remaining height-specific questions about the 29-foot alternative offered by the church, I am sure the church would entertain them and do their best to respond given that the 29-foot sanctuary is just a concept at this point.

Thank you for your understanding.

Sincerely,

SCHMITT SCHNECK
EVEN & WILLIAMS, P.C.

By: 
Jerry L. Steele, Attorney at Law
Of Counsel

SCHMITT SCHNECK EVEN & WILLIAMS, P.C.

Jerry L. Steele, Esq.
(602) 722-1761 Direct
(602) 277-7000 Office
jerry@azbarristers.com

February 10, 2025

Town Council
Town of Oro Valley
1100 N La Canada Drive
Oro Valley, AZ 85737

Re: Planning & Zoning Commission
Case # 2402255
Oro Valley Church of the Nazarene

Oro Valley Church of the Nazarene **Revised** Appeal to Town Council

Mayor and Council Members:

Oro Valley Church of the Nazarene, Inc. (hereinafter OVCN) hereby appeals to this Council from the Planning & Zoning Commission's (hereinafter P&Z) January 14, 2025 decision to deny OVCN's request for an allowed auditorium height of 40-feet and other proposed building elements exceeding 24-feet in height but lower than 40-feet. Town Zoning Code provision 23.8.E, which allows the P&Z Commission to grant up to 45-feet height for an auditorium like OVCN's, was the only Town regulation applicable to OVCN's request. (See End Note 1)

Constitutional Considerations

Since the laws give context to the facts that will be reviewed, it is important to understand the legal restraints that guide the analysis of the facts that will be discussed.

This Town Council has regulatory authority afforded it by the US Constitution. That regulatory authority is, however, limited. One of the

limitations is found in the US Constitution, Article 1 that guarantees the Free Exercise of Religion. (14th Amendment)

The Constitution and the Federal Laws that emanate from the Constitution have legal supremacy over the State and Municipal laws, including the Town's zoning laws and regulations. (Article 6 Clause 2 – Supremacy Clause)

This Council may ask what the free exercise of religion has to do with the height of a church building? The Federal Laws protecting the free exercise of religion include, among others, the Religious Land Use (RLUIPA) statutes.

The Department of Justice, in their explanatory statement on RLUIPA, specifies that *"the use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise."* 42 USC 2000cc-5(7)(B).

In that same Statement published by the Dept of Justice specifically explaining RLUIPA, the DOJ said this: *"(RLUIPA) 42 USC Sections 2000cc to 2000cc-5, is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations."*

The law provides that this discrimination and undue burden can be on the face of the land use regulation, or it can be found in the manner in which the regulation was applied. In this appeal, the focus is primarily on the manner in which section 23.8.E of the Town Code was applied to OVCN's request.

OVCN appeals for these reasons, among others, that Code section 23.8.E :

Was discriminatorily applied; (RLUIPA 42 USC Sec 2000cc(b)(1) and (b)(2);

Was unreasonably applied; (RLUIPA 42 USC Sec 2000cc (b)(3)(B);

Placed a substantial burden on OVCN without a compelling governmental reason for doing so. (RLUIPA 42 USC Sec 2000cc (a);

Was used in a manner violative, in many respects, of the US Constitution Article 1 free exercise of religion guarantee as applied by the 14th Amendment to the Town of Oro Valley; and

Was applied to OVCN in a manner that violates the Arizona Religious Freedom Restoration Act. (See End Note 2)

OVCN

OVCN is a Church of the Nazarene. It is a member of the Nazarene denomination, a longstanding, world-wide evangelical Christian denomination. The membership of OVCN is dedicated first to the God of the Bible. This is reflected in one of their core biblical tenets.

Matthew 22:37-40 ³⁷ Jesus replied: “‘Love the Lord your God with all your heart and with all your soul and with all your mind.’^[a] ³⁸ This is the first and greatest commandment. ³⁹ And the second is like it: ‘Love your neighbor as yourself.’^[b] ⁴⁰ All the Law and the Prophets hang on these two commandments.”

OVCN’s mission is largely rooted in another core Biblical tenet.

Matthew 28:18-20 ¹⁸ Then Jesus came to them and said, “All authority in heaven and on earth has been given to me. ¹⁹ Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, ²⁰ and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age.”

This Council may find it interesting to note that OVCN believes that the Bible is God’s Word and that it is powerful in their lives and in all who live by it. They are instructed in this verse from the book of Romans regarding the civil government:

Romans 13:1 Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God.

OVCN has demonstrated its willingness to try and cooperate with the civil authorities in the scores of conditions they have accepted and the concessions they have made throughout their building proposal process since 2022. Additionally, and for many years, they have happily made their current facilities available to the Town when the Town needed them for meetings and events.

This appeal addresses a conflict between the Town’s application of its Code 23.8.E and OVCN’s guaranteed free exercise of their religion in determining the height of a sanctuary building. It also addresses OVCN being subject to the Town’s exercised authority and the church’s ability to freely follow their first and primary allegiance to the God who directs their service to Him.

The Issue of Height

This is a hearing that only arises out of Code Section 23.8.E.. The Code provides that when a church has an auditorium to construct in Private School zone, it can get permission from the P&Z Commission to have a roof as high as 45 feet. If the church's request for permission is not granted, the church may appeal to the Town Council.

OVCN made its formal application for permission for the auditorium portion of their new building to have a height of 40 feet pursuant to 23.8. E. The application was simple and straightforward.

In the Neighborhood Meeting in December 2024, The Town representative informed everyone present that the only issue to be discussed in the meeting was the "height" of a building OVCN planned to later develop. He made it clear that impact factors related to the development would only be discussed if and when OVCN made a development application to the P&Z Commission. This meeting was to just be about "height" "ONLY".

The Town representative further stated that OVCN has the right to make an application for determination of the height question alone. He also told the gathered people that the Town has a legal duty to give the OVCN application "due process" in its determination.

When these matters have gone to court under the RLUIPA statutes, the courts look to the history of the transactions between the governing authorities and the churches. OVCN has approached the P&Z Commission on multiple occasions to propose development projects since 2022 (and for many years prior, including when the Development Review Board (the P&Z's predecessor) granted OVCN the right to develop their now-existing 29-foot sanctuary building). There is history between OVCN and the P&Z Commission.

On February 7, 2023, OVCN went before the P&Z Commission with two items on the agenda, OVCN was applying for approval of a Planned Area Development ("PAD") to consolidate the 3 different zones that then applied to their property. Within that request was an athletic field with lighting.

The second item OVCN was looking for was the approval of their conceptual/architectural plans for a Multipurpose building of about 75,000 square feet.

There were renderings of the proposed building which depicted the varying roof heights used to “break up” the roof line for aesthetic purposes.

The renderings displayed the building from each of the four directions and the renderings clearly delineated the varying roof heights planned for the building’s aesthetic appeal. One portion of the building displayed a roof height of 42 feet. This part of the building was in the Private School zoning portion of the OCVN property, and subject to Code 23.8.E.

The Town staff, in its report, recommended that the P&Z Commission conditionally approve the PAD application and approve without condition, the conceptual architectural plan for the multipurpose building. After the public statements which had mostly to do with lighting, noise and traffic factors for the athletic field, the Chairman for the meeting had a discussion about the 42-foot height with the OVCN representative.

After the discussion about the need for 42-foot height, a Motion was made to deny the request for the PAD. That motion was passed 3-2 based on “the finding that it is incompatible with current general plan and land use designations”.

That denial meant that the OVCN property would keep its current zoning as it was not given the PAD zoning it had requested.

Then, with instruction from the staff and after the Chairman had just discussed the multipurpose building’s height, the Chairman entertained this motion:

“I move to recommend approval of the conceptual architectural renewed concession and multipurpose building for the Oro Valley Church of the Nazarene, located at the northeast intersection of Calle Concordia and Calle Buena Vista, **based on the finding that the request complies with all applicable zoning code criteria**”. (emphasis added) The motion passed unanimously, and nothing further was said about the motion in that meeting.

The P&Z Commission gave unanimous approval for the conceptual architectural plan including a 42-foot building in the Private School zone. That approval was within the P&Z Commission’s authority as stated in Code section 23.8. E..

Every height listed for the varying heights on this multipurpose building was within code for the zoning it was in. The approval language was correct, and the P&Z Commission had the authority to say that each of those heights was approved.

Whether or not this P&Z Commission approval was binding on the Town Council is not the point being made.

The point being made is that the Town's P&Z Commission in 2023 saw and inquired about the 42-foot height of the proposed building in the same zoning area as the current proposed building and concluded unanimously that the 42-foot height was approved.

The question this calls for is: How does a 42-foot building height get unanimously approved and, less than two years later, a 40-foot height in the same zoning and property get unanimously denied by the same P&Z Commission?

This portends the kind of discrimination, unreasonableness and substantial burden that courts look askance at under RLUIPA, the US Constitution and the Arizona Religious Freedom Restoration Act.

For OVCN's current 40-foot height request, a Neighborhood Meeting was held on 12-12-2024. The request from OVCN was only for height increase pursuant to the Code for PS zoning, 23.8. E.. The only application filed by OVCN was for height increase. The Town representative repeatedly stated that the meeting was about that application; was limited to the height application; and height was to be the only issue addressed.

The Town's representative used slides to demonstrate that the process of the meeting was to deal "ONLY" with the height request. He also showed how this meeting was about height and a later development application meeting would deal with issues such as traffic, parking, safety, etc..

In this meeting the Town representative stated that OVCN had the right to submit an application solely for height. The representative further stated that the Town had a duty to provide OVCN with Due Process for this single item application.

The OVCN representative then presented his slides demonstrating what the Town Staff agreed was "minimal view interference" with many angles where the proposed 40' building could barely be seen by the neighbors. One neighbor challenged the OVCN photographs regarding view interference because they had been taken from the boundaries of the neighboring lots. Her point was that the view would be different had the photographs come from their houses as opposed to the boundary lines.

The OVCN representative then suggested that the view from the houses would be significantly less obstructed because of the increased distance from the

proposed church building. Nevertheless, the OVCN representative offered to come to any or all adjacent landowner homes and take the photos from wherever they wanted, if he was invited, as he did not want to trespass on their properties. He offered to meet with any interested parties right after the meeting, if they desired. Not one person responded to his offer.

The point to be made from the Neighborhood Meeting of December 12, 2024 was that the Town represented the issue to be addressed was only height; and the point was made that there was no evidence of any significant complaint about view interference.

Some of the neighbors speaking at the meeting suggested that this was not about height but was about the neighbors not wanting OVCN to grow on this property.

The next representation from the Town, relative to the current height request, was the dissemination of the Town's Agenda Packet for the 1-14-25 P&Z Commission hearing.

The Agenda Packet included a P&Z Staff report. In that report the staff acknowledged that this hearing was solely about the Code 23.8.E height request and that the staff had found multiple factors in support of granting the 40-foot height request.

The staff report identified the Phase 1 – Height Request as clearly distinct from the Phase 2 – Development Request to come. The staff report instructed that the scope of the issue for considering the height request was view impact. The issues to be dealt with in Phase 2 – Development would be traffic, parking, safety, drainage and such.

The staff reported that they found the height request to be in General Plan compliance; in compliance with Design Standards and their recommendation read as follows:

“Only the building height is being evaluated in association with this Public Hearing. The Building Height Increase requests have been found compatible with the Your Voice, Our Future General Plan and the applicable Design Standards. Both staff and neighbors have concerns about the forthcoming Development Plan elements regarding the interplay between building size, traffic, parking, lighting and drainage. These concerns will be raised, analyzed and discussed in greater detail when the applicant submits Phase 2 of this proposal.” (Emphasis added)

The Agenda Packet Staff Report's representation about the scope of this Public Hearing was accurate and consistent with the Town representatives' messages to the public in the Neighborhood Meeting on 12-12-24. The stated 2-Phase application and hearing process with Phase 1 to be solely about height was what OVCN had been told and what they relied upon in preparation for the hearing on January 14, 2025.

When the P&Z Commission hearing began at 5:00 PM on 1/14/25 in the Town Council Chambers, the Commission broke into executive session to consult with their legal counsel for about an hour.

After the formalities of the Public Hearing were conducted, Mr. Bayer Vella presented the staff report for the night's session. Everything was as advertised and expected until Mr. Vella changed the scope of the hearing and the scope of factors the Commission could consider in deciding the question of sanctuary height.

Mr. Vella acknowledged that the Code and the General Plan direct the staff to consider the height request's impact on neighborhood views. Pursuant to that direction, the staff did the research and found only minimal impact on neighborhood views. The public provided no evidence of view interference from a 40-foot tall building.

Mr. Vella, seemingly unsatisfied with the simplicity of the hearing as advertised, went on to create a scenario where essentially everything scheduled to be considered in the Phase 2 - Development application had to be considered in this Phase-1 height issue.

Mr. Vella's approach, heard by the public and the Commission, was essentially this:

"I want to spend some time going a little bit beyond views in talking about height and what is the nexus of height relative to size as well as building function."

No reference whatsoever was made to any potential source of the edict he was about to deliver. Mr. Vella continued:

"Height doesn't always comport with building bulk and mass." (He cites the difference between a retail grocery store with a relatively low roof and an office building with a much higher roof)

He continued:

“An auditorium is a different type of use. An auditorium architect has to design a building with more height so one can see from one side of the building to the other. ... So when it comes to auditoriums the bottom line is height does translate into building mass, a larger building to accommodate those sight lines.”

Still there is no reference to any potential source for his “bottom line” for auditoriums. Seemingly, Mr. Vella was conveniently leaving out any of the other reasons for having auditoriums built for reasons than the ones he surmises. Suppose the church just wanted a sanctuary balcony in the back or on the sides for their choir and organ? That could be a sanctuary the size of the existing OVCN sanctuary with just additional height. What about all the sanctuaries and cathedrals that are built all over the world with high ceilings for aesthetic purposes?

Mr. Vella continued with his theory:

“The site of that building (the existing OVCN sanctuary) is roughly 44,000 square feet. The new sanctuary proposed which is heights up to 40 feet --- (reference to the parapet excluded) we’ve been told that building is roughly 75,000 square feet. So, its not quite but almost double in size. So there is a correlation relative to building mass and height when you’re talking about an auditorium.”

Mr. Vella apparently did not bother to compare the existing sanctuary of 29-foot height to the new sanctuary of 40-foot height. The proposed 40-foot height new sanctuary including the platform, audio booth, vestibule, backstage rooms, prayer rooms and generous aisles is roughly 23,009 square feet. This is the square footage that is under the 40-foot parapet height.

Still there is no reference to any source outside of this cursory analysis apparently of his own creation. Mr. Vella was talking about the height of the existing auditorium without any reference to what all was housed in the building. Then he was talking about the height requested by OVCN of 40 feet only on the sanctuary without telling us if the square footage he used for either building was the entire building or just the sanctuary.

Next, Mr. Vella posed a question so that he could answer with his continuing theory:

“Why does that (his correlation between auditorium height and mass) matter?”

OVCN and the prior representatives of the Town in this process, could answer his question simply “It doesn’t, because this hearing is just about height

and those issues have already been relegated to the Development application, meetings and hearings in Phase 2”.

Seemingly undaunted by a lack of facts and his fact-deficient quick conclusions, Mr Vella answered his question by continuing to reach for more issues:

“So the greater the mass the greater amount of occupancy. Occupancy does translate into parking counts, it does translate into traffic counts. So there is a correlation with all of those factors.”

If Mr. Vella wants to reach the conclusions he reaches, surely he has factored in the number of people who currently attend OVCN, the capacity of the proposed new sanctuary and what all is housed in the two auditoriums he compared. Are there musical instruments, sound systems with control booths, nurseries, classrooms, prayer rooms, open space for easier ingress and egress, storage rooms, altars, and platforms? The list is as varied as the number of churches.

Mr. Vella didn't have any of this information about the existing sanctuary and he couldn't have any of this information about the proposed new sanctuary because no Development application had been submitted. His edict was based on supposition without facts to support it. Yet he advised the public and the Commission that the factors he informed them of had to be considered.

Note how important it was to Mr. Vella that his analysis was “real” and that the connection to height (his theory) demonstrated a genuine connection:

“So, I really just want to make sure that that tie is real, the connection is there, and all of those factors are concerns that have been raised throughout this evaluation.”

Mr. Vella was intent on selling his broadened scope for the hearing that had been characterized and advertised as a one issue matter – height with an impact on views. Not one person from the Town staff had expressed Mr. Vella's theory in any meetings or reports until Mr. Vella's announcement at the hearing on January 14, 2025.

Mr. Vella then displayed a slide that was titled “Neighbor Comments”. On the slide, he had two lists.

One list at the top was titled “Building Height” and the factors to consider were listed as: “Views from homes” (the only item supported by the Code and General Plan) and then, the item he just made up, “Building mass & Associated

impacts of accommodating more people.” Mr. Vella never even found out how many people are already attending OVCN and whether or not the church is trying to build to better serve the people that are already attending.

The second list, at the bottom of the slide, was titled “Development Plan and Architecture”. (Phase 2) The factors he listed to consider included:

- Area character (historic, large lot, horse properties, etc.)
- Challenges of current level of activity
- Extent of site coverage
- Traffic
- Drainage
- Parking
- Landscaping and heat island effect
- Noise

Upon displaying this slide, the issues he was trying to add to the height question were also plainly identified in the Development Plan analysis.

Looking at the slide, Mr. Vella had this to say:

“There are concerns specific to building height.” “But again, the issues of building height bleed into the issues that are on the bottom half of the screen.” (meaning the Development Plan and Architectural – Phase 2)

To OVCN, Mr. Vella’s fiat, delivered to the public and the Commission, was a total surprise. They had been assured of one simple height hearing about views, and Mr. Vella turned it into a completely different hearing. OVCN was ambushed at the hearing.

OVCN does not know why they were treated this way. Was it to hide the fact that the height request by itself would have to be granted because there was no valid, evidence-based reason for not doing so? Was it to give the public “two bites of the apple” by being able to voice all their complaints on every issue of development in Phase 1 hearings and then again in Phase 2 hearings? Was it because the Town just doesn’t want OVCN in the location where they have been serving their Lord and their community for decades?

In the hearing, after OVCN made its presentation on the height issue, the public was invited to comment. There were roughly 19 people who addressed their complaints to the Commission. Of those 19, only 2 addressed some subjective concerns about “views” being obstructed. No evidence of the purported

obstruction was offered (and in fact the viewshed slides in OVCN's presentation preemptively refuted the claim of views being blocked).

When the public comment was finished, one of the Commissioners raised a question to the OVCN representative about Traffic studies. The representative answered as best he could since no traffic studies on this project had been done yet. The church needed the height decision so they could know what height they could build and then prepare a more detailed development design for the site around and supporting the building, and other items that would've been required to be submitted to the Town as part of Phase 2

The fact that a Commission member asked about traffic studies, and not about the building height or potential view impacts, demonstrates that the Commission was following Mr. Vella's lead. The vote was 7-0 to deny the OVCN height request.

What is evident is that this maneuver in the January 14, 2025 P&Z Public Hearing was exactly the kind of ploy that RLUIPA is designed to prevent. Under RLUIPA, the US Constitutional and the Arizona Religious Freedom Restoration Act, the Town P&Z Commission:

Acted discriminatorily by granting other churches and schools their requested height increases under the same code provision (Pusch Ridge Academy, CDO Baptist Church, St. Mark's Catholic Church and Resurrection Lutheran Church to name a few) but denying OVCN's request without any height related evidence to support the denial;

Acted unreasonably in applying a simple Code section on height by denying the request with no height related evidence against the request; and denying the 40 foot request when they had previously approved a request of greater height on the same property;

Created a substantial burden on the church by the way the Town dealt with the church without good faith and by applying a height code provision unfairly. The P&Z Commission acted with no compelling governmental interest to be protected by denying the height increase when all the development factors would still be analyzed when the Development plan is submitted.

Further, the Commission created a substantial burden on OVCN by causing it to go through this appeal with the Town Council. Significantly, the case law holds that, under RLUIPA, causing a church to make unnecessary administrative appeals or to litigate to preserve its free exercise of religion guarantee is, in and of itself, a substantial burden.

OVCN was denied their right to have a P&Z Commission decide on their height request based on the view impact in keeping with the Code and the General Plan. That is not the “Due Process” that was promised to OVCN in the presence of the Neighborhood Meeting back on December 12, 2024, and which is afforded by OVZCR 23.8E.

It should be understood by Town legal counsel that the RLUIPA claims of this nature are fee shifting provisions and that at least two of the claims available to OVCN are strict liability claims. In addition, the RLUIPA claims allow for damages to be collected.

In the public hearing of January 14, 2025, OVCN informed the Commission that denying their height request would put a substantial burden on OVCN. Their architect estimated that a change of design and new plans along with construction delay and additional construction requirements necessary to accommodate OVCN’s sanctuary at a lower building height would bring a financial burden of \$6,000,000.00 to \$10,000,000.00 for this project.

In keeping with their desire to love the Lord their God with all they are and have, and in keeping with their desire to love their neighbor as themselves as Jesus directed, OVCN is in a difficult position.

Romans 12:18 gives those who follow Jesus, this instruction:

“If it is possible, as far as it depends on you, live at peace with everyone.”

But what do they do when it isn’t possible because the governing authority is telling them they can’t do what the Lord is leading them to do, and they’ve demonstrated that what they’re proposing meets the governing authority’s code criteria for approval?

In an instructive situation, the Apostles, Peter and John, had been preaching the gospel of Jesus in the Temple courts and people were responding and finding new life in Christ.

The governing authorities had them arrested and put in jail. When they called them out for a hearing, they instructed the Apostles that they would be released but that they could not preach this message of Jesus in the Temple courts. In Acts 4:19 and 20 the Apostles replied:

19 But Peter and John replied, “Which is right in God’s eyes: to listen to you, or to him? You be the judges!²⁰ As for us, we cannot help speaking about what we have seen and heard.”

OVCN is in a similar situation with the P&Z Commission’s process. The authorities have told them they can’t build the church to minister to the people who come as they believe they are guided to. But their primary obligation is to the Lord and to follow His direction.

The 29-foot Height Offer – Recission

The question comes to OVCN; have they done what they can to follow Jesus and live at peace and honor the governing authorities? The response to the question is that they have been led, in this circumstance, to make one more effort and trust the Lord to provide the means to carry it out.

OVCN fully believes that it was wrong for the government to deny their request for 40-foot height allowance. But that is what the governing authorities did. Now they are before the Town Council, still believing they have been wrongly treated, they were, based on the information they had at the time, willing to adjust their height request to 29 feet and trust the Lord for the then-estimated additional expense it would cause.

The information they were relying upon to make that offer proved to be incomplete and fraught with unknown factors regarding placing a good portion of the sanctuary building significantly below grade. As they studied the offer with multiple consultants, and after considerable discussion and prayer, it was determined that it is not reasonably feasible to maintain their offer to accept a height limit of 29-feet.

Not only would it involve exorbitant expense, but it would not provide them with the building the Lord had given them direction to design for their desired worship experience and ministry to their congregation. Their stewardship of the Lord’s provision would be called into question if they presumed upon God providing more funds for a building that was less than the building for which the Lord had given them direction.

Therefore, OVCN must yield to the fact that they must rescind their offer of agreeing to construct a significant portion of their sanctuary building below grade and that they cannot agree to the 29-foot height limit.

OVCN asks this Council to look at the height request the way it was presented by OVCN; the way it was presented by the Town representatives in the

Neighborhood Meeting; the way it was presented by every P&Z staff report provided to the Public and the way it was presented by the AGENDA PACKET for the public hearing prior to the January 14, 2025 hearing .

Conclusion and Request

OVCN asks this Council to do the following:

Look at the Code language of 23.8.E.;

Recall the February 7, 2023 P&Z Commission approval of the 42-foot height for a building in the same area and PS zone as the current request;

Look at what the Code and General Plan say about impact to consider in this height question. Even Mr. Vella admitted it was just the view issue;

Recall that the Town staff and OVCN both demonstrated that any view interference from the 40-Foot height request is factually “minimal” at best;

Consider that only two of nineteen neighbors speaking at the P&Z hearing said anything about view interference and those two were speculating about what it might be. Others said this was not about height but about not wanting the church to grow on this property.

Consider that the Federal and State law is the final arbiter of the P&Z Commission’s action against OVCN; and the law that says constructing a building for religious exercise is a “religious exercise” protected by the Constitution and RLUIPA; and

Consider that granting the height request only lets OVCN know how high their building can be. All the other building issues/factors/impacts will be researched by the Town P&Z Staff, discussed by the neighbors in Neighborhood Meetings and ultimately decided by this Town Council according to the Town’s library of standard development regulations, after a Development plan is submitted in Phase 2.


The Church is looking for an opportunity to create a code-compliant development plan, so it can continue to serve the Lord Jesus and this community in a balance of its free exercise guarantee and the Town’s rules and regulations.

It is respectfully requested that this Council overrule the decision of the P&Z, Commission and grant the OVCN request for height increase as provided in Code section 23.8.E.

Submitted this 10rd Day of February 2025 on behalf of the Oro Valley Church of the Nazarene by their counsel undersigned.

Sincerely,

SCHMITT SCHNECK
EVEN & WILLIAMS, P.C.

By: 
Jerry L. Steele, Attorney at Law
Of Counsel
006456

End Notes:

1. Some of what we say in this appeal to the Town Council is intentionally for the record so that a reviewing court can see that we informed this Council of the issues and the law and did what we could to resolve this height issue. The record is made so that this Council's legal counsel will not be able to represent to the court that this Council did not have an opportunity to consider the issues and law pertinent to this matter.
2. In the event that this Town Council leaves OVCN no redress or recourse after this appeal, OVCN reserves the right to include additional factual and legal claims, not specified in this appeal, in any subsequent judicial action in the courts.

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February 10, 2025

VIA EMAIL: council@orovalleyaz.gov

Oro Valley Town Hall
Attn: Mayor Joe Winfield
11000 N. La Canada Drive
Oro Valley, AZ 85737

RE: Oro Valley Church of Nazarene
Opinion Letter
Our File No. 7247.00001

Dear Council Members:

We write on behalf of Oro Valley Church of Nazarene (OVCN) in cooperation with their attorney Jerry Steele. Our firm has handled innumerable RLUIPA related zoning cases across the country. We are called upon frequently since the RLUIPA Federal Statute was originated by the undersigned prior to its unanimous approval by Congress in 2000.

Our purpose is to advocate for the church's request for a 40-foot height for their planned expansion. After reviewing the record including the public comments submitted, we know you are quite familiar with the application and political and community background. Consequently we focus our opinion on the legal aspects of the particular request for a 40-foot roof height allowance.

Our opinion relates to:

- I. Nondiscrimination under the Religious Land Use and Institutionalized Persons Act (RLUIPA)
- II. Unreasonable limitation under RLUIPA
- III. Substantial burden under RLUIPA
- IV. Arizona Religious Freedom Restoration Act (ARFRA)

Underlying, reinforcing and sometimes exceeding RLUIPA and ARFRA protections are the free exercise of religion, freedom of association, freedom of speech, and equal protection guarantees of the

U.S. and Arizona Constitutions. We omit analysis of these constitutional provisions to avoid excessively burdening the readers. However, we can provide further detail if requested.

- I. RLUIPA, Sec. 2(b)(2) NON-DISCRIMINATION prohibits land use regulations that discriminate between various religious denominations. We are informed that the St. Mark's Catholic Church, CDO Baptist, Pusch Ridge Christian Academy and Resurrection Lutheran Church have been granted building height increases up to 45-feet pursuant to your Zoning Code 23.8.E.. When a government has discretion in regulating a first amendment freedom, the Constitution holds such discretion to a "strict scrutiny" standard which means the discretions exercised by the Town when challenged in Court must be shown to be pursuant to a "compelling governmental interest" and "narrowly tailored" to meet that interest. Unless the Town has a "compelling interest" to deny the request, RLUIPA requires the allowance of a 45-ft height for the OVCN's auditorium.
- II. RLUIPA, Sec. 2(3)(B) prohibits "unreasonable limitations" on religious assemblies within a jurisdiction also unless the Town has a "compelling interest" to deny the request. Our understanding is that a high school is situated directly across the street from the new proposed worship auditorium and that the school's auditorium has a 60-foot roof!

Furthermore we understand that many of the surrounding residents occupied their homes after the school was built prior to the incorporation of the Town in 1974. We further understand the current church property zoning allowed – in the discretion of the Town – for 45-foot roof heights. Given the adjacent physical presence of a 60-foot auditorium roof and probable awareness of some or most of the neighbors that the zoning code allowed 45-foot buildings when they arrived, the current 40 feet request is clearly "reasonable" both because it is significantly less than the nearby auditorium and because it is five feet less than the code otherwise allows.

The discretion being exercised by the Town pertains to the free exercise of religion, RLUIPA §2000cc-5(7)(B). Therefore "strict scrutiny" again applies. Should there be any doubt that the denial of the 40-foot request is unreasonable the Court will consider RLUIPA §2000cc(g): broad construction.

“This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the constitution.”

Neither RLUIPA 2(3)(b)(2) or 2(3)(B) affords the municipality an affirmative defense in these cases. Summary judgment for the church on the issue of liability would likely result if litigation is required.

III. RLUIPA, Sec. 2 (a)(1) prohibits “Substantial Burdens” on churches resulting from “imposition or implementation” of land use regulations. The meaning of Substantial Burden has been much litigated and generally decided in favor of religious assemblies.

Because the determination is fact-based, if the Town effectively mandates a lawsuit for the enablement of the Church’s ministry to expand and the court denies the aforesaid summary judgment, both sides can expect to spend a lot of money on legal fees, experts, discovery and depositions and we’re dealing with fee shifting Federal statutes.

The church would present, among other claims:

1. The congregation has expended several years of considerable effort and expense to craft an expansion plan acceptable to the Town and neighbors. Sadly much of the Town’s response has been obstructive rather than cooperative. Thankfully the Courts have recognized disingenuous municipal maneuvers and come down hard on perceived bias. The Seventh Circuit upheld a verdict against a municipality in *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) based upon “delay, uncertainty and expense” and that formulation applies to Oro Valley and has been widely followed in the Courts. The attached news report on *Hale O Kaula Church* aptly represents the many federal court decisions where municipal obstruction has hindered free exercise of religion or freedom of association.

Please note that the Church of the Nazarene need not prove municipal bias, bigotry, or even bad faith to prevail on any of its legal arguments. Bias is sufficient but not necessary. Thus the anticipated testimony of the pastors, leaders,

members, architects and lawyers on behalf of the Church reinforced by some illogical, angry even vituperative correspondence from neighbors could well suffice to prove that the Town's position was unreasonable and/or created a substantial burden;

2. The significant restrictions on ministry growth for adults, youth and children;
3. The money spent to date by the church on legal and architectural fees has already been substantial. However, the estimated \$6,000,000 + needed to re-start, re-design, re-plan and lose the space a 40-foot height would provide, alone, will suffice for a court to conclude a substantial burden on the congregation;
4. The lost Spiritual and worship experience value of a new faculty with a 40-foot ceiling—uplifting the worship experience. A church architecture expert will testify that higher ceilings in sanctuaries are prevalent in churches and other religious assemblies worldwide because of the enhanced worship experience sensed;
5. Increase in construction cost due to delay and a different kind of construction, which will certainly exceed a million dollars.

IV. Also, Arizona has a Religious Freedom Restoration Act §41-1493.03 which prohibits an “unreasonable burden” on religious exercise, unequal treatment, discrimination or “unreasonable limitation.”

As you are probably aware, RLUIPA, ARFRA, and U.S. Constitutional protections all provide for a recovery of damages and attorneys' fees should a government be found to have violated the statutes.

In addition we trust that you are fully aware that any conflict between the zoning code or General Plan with federal or state law or constitution is resolved in favor of the civil liberties protected by those laws.

We do not know how high and broad the insurance coverage may be for Oro Valley; however, a large verdict for the aforesaid damages, potentially in the multi-millions, could exceed coverage and end up costing Oro Valley tax payers *several thousand per family*. In our experience, insurance companies often contest RLUIPA coverage when municipal constitutional violations are deliberate rather than inadvertent.

Also, please be aware that OVCN desires to avoid litigation and has authorized this letter for that reason. We and the Church believe the Council want to follow the law and therefore hope it takes appropriate actions to avoid the gathering storm.

Sincerely,

MAUCK & BAKER, LLC


JOHN W. MAUCK

Enclosure



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HAWAII'S **Complete** SOURCE

Posted on: Saturday, December 11, 2004

Maui church prevails in battle over land use

By Timothy Hurley

Advertiser Maui Bureau

WAILUKU, Maui — A Maui church concluded its settlement with Maui County yesterday, collecting a check for \$700,000 along with a permit allowing members to gather on their Pukalani property for worship.

That marks the end of a decade-long battle between Hale O Kaula Church and the county.

Last month the Maui Planning Commission voted to grant the church a special-use permit, following previous denials, a lawsuit by the U.S. Department of Justice and two other lawsuits in state and federal court.

Having held worship services in a small Ha'iku chapel since 1960, Hale O Kaula decided to expand and bought six acres of agricultural land on Maui in 1991. The property allows it to pursue its "Joseph Ministry" — a religious ministry drawn from the Old Testament of the Bible and involving agricultural activity.

But the Planning Commission twice denied a special-use permit that would have allowed construction of a sanctuary, fellowship hall and use of the land. The commission instead agreed with neighbors who claimed that the church would lead to increased traffic and noise, added burden to county services and a deterioration of the rural atmosphere.

The church challenged the permit denial under the Religious Land Use and Institutionalized Persons Act, a federal law that forbids local governments to discriminate against or needlessly burden religious institutions through zoning law. The suit became a national test case, with organizations across the country lining up on both sides of the issue.

"Frankly, this case should be a lesson for local governments nationwide," said Anthony Picarello, president and general counsel of the Beckett Fund for Religious Liberty, the conservative-backed Washington public-interest law firm that represented the church.

Picarello said the Religious Land Use and Institutionalized Persons Act "has teeth and will bite when provoked." Local governments should re-examine their land-use policies before litigation follows, he said.

Deputy Corporation Counsel Madelyn D'Enbeau, who oversaw the county's case, said the county's insurance company paid for the settlement. No money will be paid from county coffers.

D'Enbeau said the county's defense of the case was about protecting the right of the commission to make a decision based on the evidence as well as its right to impose protective conditions as it deems necessary.

"Unless we vigorously defend the commission's decisions, the commission ends up being bullied and brow beaten instead of rendering reasoned, evidence-based decisions," Mayor Alan Arakawa said in a statement. "This case was important because otherwise every disappointed applicant could look at a denial as a federal case. It just isn't."

County officials said that, in the end, the church responded to concerns regarding fire protection, potable water availability and traffic mitigation. It also agreed to indemnify neighbors against liability arising from the church's use of a private road and to abide by restrictions on the duration and size of church activities, officials said.

Reach Timothy Hurley at thurley@honoluluadvertiser.com or (808) 244-4880.

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