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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
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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.