

**James A. Greer, II**  
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March 25, 2008

Hon. Meenakshi Srinivasan, Chairperson  
New York City Board of Standards and Appeals  
40 Rector Street  
New York, NY 10007

Subject: Congregation Shearith Israel  
6-10 West 70<sup>th</sup> Street  
New York, New York  
74-07-BZ

Dear Chairperson Srinivasan:

I am writing to express my astonishment and dismay at Vice Chairman Collins' statement during the February 12, 2008, hearing on this matter, in which he volunteered the following:<sup>1</sup>

“VICE-CHAIR COLLINS: The presence of wealthy individuals in a congregation, regardless of the denomination, is of absolutely no relevance to the legal findings that this Board is going to make. I just wanted to state my opinion on that.” (Transcript at p. 86)

CSI has from the outset of this proceeding repeatedly emphasized that its proposed building is intended to provide the “economic engine” that is essential to its ability to carry out its mission. These statements were made by the trustees, officers, members and counsel of Applicant CSI before the BSA, CB7 and the Landmarks Preservation Commission.<sup>2</sup> Counsel for CSI has repeated that claim on numerous occasions.

For example, in the November 28, 2008, hearing before the BSA Counsel for CSI stated:

“And so we turn to, again, **the residential solely to provide the economic engine.** I’ve referred to it before. People don’t like it, but I think it’s a viable concept, **the economic engine to assist in providing the means for the new community house and to solve the accessibility problems and nothing else.**”  
Tr., p. 24, lines 534-537. (Emphasis supplied) Opp. Ex. A-3.

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<sup>1</sup> This came after you had bluntly told an Opposition witness that her oral testimony about the existence of a number of extraordinarily wealthy members of CSI “was over.” She asked for “another 30 seconds” and Vice Chair Collins rudely cut her off.

<sup>2</sup> See Opposition Ex. A-1.

Counsel continued, as follows:

“I mean the money, as you’ll see, is totally eaten up in the replacement of the community house and in overcoming the accessibility issue.

“There is no programmatic purpose for these funds other than to replace the aging facilities we have now. Tr. P.25, lines 538-541.”  
(Opp. Ex. A-4)

In short, from the beginning, not only in the BSA proceeding but also before the LPC and CB7,<sup>3</sup> CSI has consistently averred that, without the cash which would be generated from the residential portion of the proposed building, it would lack the material resources to refurbish its community house and deal with its asserted long-standing problems of handicap access and circulation<sup>4</sup>, as well as its claimed lack of adequate classroom space for its religious education program.<sup>5</sup>

CSI has never provided any evidence to support this claim of financial need. However, Opponents have submitted considerable extrinsic evidence that there is no such need. The Board at its February 12, 2008, hearing received Opponents’ evidence with some hostility, particularly from Vice Chair Collins, who indeed cut off an Opposition witness in mid-sentence.

By contrast, the Board has received **graciously** CSI’s numerous, unfounded assertions of financial need, which it seems to accept as factual. Despite Opposition’s numerous entreaties, the Board has also mistakenly refused to inquire into such matters as CSI’s income from the rental of its Parsonage as a private home and the expected rental income for its classroom and office space used by the Beit Rabban private school, or in any way to examine whether CSI’s assertions of need are justified.

As shown in the attached copy of my resume, I have had experience with the finances of religious institutions and other non-profit institutions that face the challenges of adapting old buildings, including those of historic significance, to their changing programmatic needs. In my experience one of the principal sources of financing for such institutions is the generosity of their wealthy members. In addition to their personal gifts, they frequently issue challenges to the other members of the organization, offering to match gifts by the latter if they exceed a certain, significant amount. Further, they are often sources of bequests and on occasion make other testamentary arrangements that – over time – generate substantial sums for the objects of their charity. In addition, they are often able to make direct appeals for contributions to their fellow members and, in some cases, non-member friends. Their ability to cite their own generosity as an example to

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<sup>3</sup> See Opp. Ex. A.

<sup>4</sup> It is now quite clear that the handicap access and circulation issues not only are resolvable in an as-of-right building, but indeed could be resolved simply by installing a modern ADA compliant elevator in the existing community house. Opponents’ submissions at the February 12, 2008, hearing and my letter to you of even date (copy attached) make it clear that CSI’s classroom needs can be accommodated in an as-of-right building.

their fellow members and friends is a powerful fund raising tool. In short, without the strong participation of its wealthy members, a non-profit, religious institution would be severely hampered in its fundraising. Indeed, in religious institutions and other non-profit organizations in New York City, financial support from wealthy trustees and directors is the norm, not the exception.

For members of religious institutions like CSI, there is the added incentive of the ancient tradition of tithing, which probably dates back to Babylonian times<sup>6</sup> and is well recognized in what is commonly referred to as The Old Testament.<sup>7</sup> The tithe has often been considered an obligatory contribution of 10% of one's income or its equivalent and is a common device by which religious leaders stimulate their wealthier followers to give generously.

Accordingly, the number of wealthy members of a religious institution and the amount of their resources directly affect its finances. If, contrary to fact, CSI had no wealthy members or a sizeable endowment, to say nothing of the \$14,511,000 of rental income from the Beit Rabban school that CSI's financial consultant shows will over time pay the entire cost of the new community house<sup>8</sup>, it might have a basis for its claim of need for an "economic engine." Accordingly, evidence that CSI has a number of very wealthy members is highly relevant to its claim of economic need.

Vice Chairman Collins provided no rationale for his statement that "The presence of wealthy individuals in a congregation, regardless of the denomination, is of absolutely no relevance to the legal findings that this Board is going to make...." We do note that Vice Chairman Collins did NOT interrupt Mr. Friedman's repeated "economic engine" arguments or suggest that "they were of absolutely no relevance to the legal findings that this Board is going to make." On the contrary, Mr. Friedman was not interrupted but was allowed - if not encouraged - to present drawings to the Board that modified the previous versions of its proposed scheme, which is solely intended to generate funds for the Congregation.

Absent a cogent explanation on the record, Vice Chair Collins' statement is arbitrary and capricious. Furthermore, his manifest hostility to the Opposition speaker who tried to introduce evidence relating to this subject, was in stark contrast to his - and the Board's - evident willingness to accept CSI's repeated iteration of its "economic engine" argument, despite its lack of legal support and contrary to the plain facts of the case, viz., that CSI has ample resources to construct a new community house and solve its

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<sup>6</sup> See "Tithe" [http://en.wikipedia.org/wiki/Tithe#The\\_Esretu\\_-\\_the\\_standard\\_Babylonian\\_one-tenth\\_tax](http://en.wikipedia.org/wiki/Tithe#The_Esretu_-_the_standard_Babylonian_one-tenth_tax).

<sup>7</sup> For example, see Leviticus 27:30: "And all the tithe of the land, whether of the seed of the land, or of the fruit of the tree, is the LORD'S: it is holy unto the LORD." Also see Deuteronomy 14:22-23: "Be sure to set aside a tenth of all that your fields produce each year."

<sup>8</sup> See Schedule A2, page 9, Fraser and Freeman Economic Analysis dated October 24, 2007 (copy attached).

accessibility problems and classroom space needs without any revenue from the sale of any residential real estate, most notably what it can build as-of-right.<sup>9</sup>

Accordingly, Vice Chair Collins' statement indicates not only total ignorance about the financing of religious and other non-profit institutions but an unwillingness to consider an issue that is fundamental to this case. In turn this suggests an unacceptable bias in favor of CSI and against the opponents of CSI's proposal. Further, the failure of the Board to disavow Vice Chair Collins' statement would evidence a similar lack of understanding and unacceptable bias on its part.

Respectfully yours,

James A. Greer, II

Atts: Resume of James A. Greer, II  
Schedule A2, Freeman and Fraser Economic Analysis dated October 24, 2007

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<sup>9</sup> As the Opposition's valuation expert pointed out on page 1 of his February 8, 2008, report, "*development of a mixed-use, "as of right" building, with two residential floors above four floors of community use space is economically feasible, producing a profit of \$4,200,000.*"