

April 9, 2019

David Tran
Senior Council Assistant To Council Member Raul Perez
District 3

Dear David,

Thank you for reaching out to me regarding my thoughts on Council Member Diep's Memorandum recommending an amendment to the current request by Templo La Hermosa Church for rezoning and a conditional use permit (CUP).

The current proposal has San Jose City staff recommending approval of the Church's above stated request. Council Member's Diep would add a 10 year time limit on the ability of the Church to exist on the proposed site.

In short, the Church finds this recommendation unequivocally unacceptable.

The Church takes the position that the Council Member's recommendation is arbitrary and discriminatory on its face, and therefore in violation of the law (should it actually be adopted). Although, municipal entities are generally given wide discretion in determining conditions attached to CUPs, the courts have ruled they are not open ended. In summary, courts have ruled that conditions *must be reasonably related to mitigate a negative impact*.

Here, the City Council Staff Report, hereafter, Staff Report, (dating back to March of this year) makes *no findings of a negative impact*.

But on April 4th (just last week) a Supplemental Staff Report, hereafter, Supplemental, was issued calling into question the Staff Report's findings under 4b. Council Member Diep cites this point in his Memorandum. The Supplemental *questions, but stops short, of issuing an unequivocal statement* that the proposed use at the requested location would "impair the utility of value of property of other persons located within the vicinity of the site;" (Staff Report, Page 9, Paragraph 4b).

The Supplemental states in vague manner, that "For many businesses, the introduction of a church or similar use (especially one that includes programs for children), can directly impair the utility of adjacent properties and limit the businesses ability to grow."

No identifiable individual or entity is referenced.

Note the language states "can impair" rather than "does impair" or "will impair." In other words, the supplemental states a *theoretical possibility but makes no finding of an actual existing impairment*. This is crucial, because without an actual finding, Council Member Diep's recommendation is unreasonable.

In addition, the Church takes the position that Council Member Diep's recommendation is *discriminatory on its face*.

How many other Churches have been approved with such an onerous, burdensome condition attached to their CUP? I can think of absolutely none and it would definitely be a factor in any future Religious

Land Use and Institutionalized Persons Act (RLUIPA) litigation analysis.

In fact, the vague concerns raised by the Office of Economic Development have been raised for years, and I would hazard to guess, come up every single time a Church is in this predicament. In fact, the Silicon Valley Business Journal reported back on June 25, 2006, in an article entitled "Church Finds Itself in the Middle of Fight Over Industrial Zoning" the struggle of the *Bible Way Christian Center* to find a home. In that article, a manufacturer cites, almost verbatim the concerns echoed in the Supplemental at issue today. Curiously, approximately 12 ½ years later, that manufacturer is still in the same location (per a simple google search confirmation) even though the Church's CUP was approved. So in the Christian way, they've learned to live as neighbors. It leads me to question whether the concerns cited in the Supplemental actually have merit in a real and concrete way, rather than just an intellectual exercise

My final two thoughts on this matter.

The recommendation of the Council Member, if adopted, would impose an onerous, unreasonable, and discriminatory condition on a small Latino community Church, who desires nothing more than to find a home, after making a significant sacrifice (by relocating to make way for the Google development). This action, by the Church, should be applauded and fully supported by the Council as it is in line with the "vision of a vibrant and bright future." However, what constitutes the City's "brighter future" should not only be gauged by jobs, but by the quality of life for its residents. A quality of life that includes, among other things, the freedom to worship and the places to gather together in worship.

Finally, from a justice and fairness perspective, it is a cold and callous heart that would require this small Church to go through this unreasonably burdensome process (of requesting another CUP or even possibly being required to search for another home) again, in a mere 10 years, after investing hundreds of thousands of dollars in the Trade Zone location.

Thank you for allowing me the opportunity to respond in this matter and you are free to share this correspondence with your colleagues if you deem it appropriate.

Very truly yours,

Alexander Nunez