

TO: President Matt Cherry and Members of the City Council of Toledo

CC: ~~Dale R. Emch, Director of the City of Toledo Department of Law~~  
Thomas C. Gibbon, Director of the Toledo Plan Commission  
Karlene Henderson, Counsel for the City of Toledo Department of Law  
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Victoria Kamm, President of the Boshart's Hillandale Estates Association

FROM: Dick Wolff, Attorney for the Zen Buddhist Temple of Toledo

### BACKGROUND

On June 13, 2019, the Toledo City Plan Commission unanimously approved Zen Buddhist Temple of Toledo's minor site plan application for the building of a temple at 3900 Emmajejan Road. While acknowledging construction of the temple is permitted under the zoning for the site, Boshart's Hillandale Estates Association has appealed the Plan Commission's failure to limit the Zen Buddhist Temple of Toledo's use of the approved building to Religious Assembly. The Toledo Municipal Code provides that there are two **Permitted Uses by right** on the property site: (1) Religious Assembly and (2) Accessory Uses. Most, if not all churches and houses of worship in the City of Toledo accommodate accessory uses, including office administration, community dances, baking groups, retreats, workshops, A.A. meetings, carnivals and Boy and Girl Scout meetings, among other things. The neighborhood association does not and cannot satisfy its burden on appeal because limiting the Zen Buddhist Temple to Religious Assembly—in other words, prohibiting Accessory Uses—would violate the Toledo Municipal Code, precedent from the Ohio Supreme Court and Appellate Courts and the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"). As set forth below, each of these binding legal authorities **mandates** denial of the appeal.

*To the extent you have any questions with respect to these issues, please contact the attorneys for the Plan Commission and City Council on this matter, Karlene Henderson and Paul Syring from the City of Toledo Law Department.*

### ANALYSIS

The neighbors do not and cannot satisfy their burden to demonstrate that the Plan Commission's decision—to not limit the use of the proposed Buddhist Temple building to "Religious Assembly" (and, therefore, to not prohibit "Accessory Uses")—was improper. Any such limit or prohibition would violate the Toledo Municipal Code, precedent from the Ohio Supreme Court and Appellate Courts and RLUIPA. As set forth below, each of these binding legal authorities **mandates** denial of the appeal.

#### 1. THE TOLEDO MUNICIPAL CODE REQUIRES DENIAL OF THE APPEAL.

Toledo Municipal Code (TMC) §1104.0101 provides:

**Permitted Uses** are permitted by right, meaning they do not require any discretionary action for approval.

Under TMC §§1104.0100 and 1105.0100, respectively, two Permitted Uses on the proposed Emmajejan Road site are: (1) Religious Assembly and (2) Accessory Use. Under TMC §§1116.0240 and 1116.0103, respectively:

- “Religious Assembly” is defined as “religious services involving public assembly such as customarily occurs in synagogues, temples, mosques and churches.
- ~~“Accessory Use” is defined as “a use of land or of a building or portion thereof customarily used with, and clearly incidental and subordinate to, the principal use of the land or building and ordinarily located on the same lot with such principal use.”~~

There is no dispute that the Buddhist Temple’s principal use of the building is Religious Assembly under the Toledo Municipal Code and, therefore, is a Permitted Use as of right. Nearly all the Buddhist Temple’s current uses—worship services, kids & teen services, religious retreats and workshops, meditation & recovery group, vows and transmission ceremonies constitute Religious Assembly under the Toledo Municipal Code. These are the types of public assembly that customarily occur in synagogues, temples, mosques and churches throughout the City of Toledo and across the country. To argue that any of the current uses are not Religious Assembly, and therefore, should not be permitted, is simply wrong. Even if any of the proposed uses were not deemed Religious Assembly, at the very least any such use is an “Accessory Use” to the Religious Assembly and, therefore, also a Permitted Use by right under the Toledo Municipal Code.

In short, there is no reason to attempt to split hairs about whether any of the uses described above are Religious Assembly or Accessory Use because **both** are Permitted Uses **by right** on this property under the Toledo Municipal Code. To limit the Buddhist Temple to Religious Assembly would deny the Buddhist Temple the right to Accessory Uses and, therefore, would violate the Toledo Municipal Code.

## 2. OHIO PRECEDENT REQUIRES DENIAL OF THE APPEAL.

The Ohio Supreme Court and Appellate Courts hold that uses that go much farther afield from worship services than any of the Buddhist Temple’s current uses are permitted as “accessory use” to the religious assembly.

### **Cash v. Brookshire United Methodist Church** (10th Dist. Ohio Appt Ct. 1988)

The Ohio appellate court ruled that use of church property for purposes of playing **Little League baseball** was a permitted “accessory use” of the church.

The court reasoned: “A church is more than merely an edifice affording people the opportunity to worship God. Strictly religious uses and activities are more than prayer and sacrifice and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer. Churches have always developed social groups for adults and youth where the fellowship of the congregation is strengthened with the result that the parent church is strengthened. To limit a church to being merely a house of prayer and sacrifice would, in a large degree, be depriving the church of the opportunity of enlarging, perpetuating and strengthening itself and the congregation.”

The court also noted that Ohio courts have found that “there are many activities conducted in church buildings which do not constitute public worship, but which are designed to encourage people to use the church for public worship. The use of a room in the church to entertain young children while their parents attend church services . . . The use of the church building for meetings of boy scouts . . . The use of part of the building for the preparation of food for a church supper and the eating of such food.”

Finally, the court reasoned: “The lifestyle of the people of Ohio has changed a great deal over the years, and the nature of public worship has changed with it. Formal church services today constitute only a

portion of the worship experience, which now encompasses religious retreats, camps, athletics, and other social and recreational activities. Because these activities are a part of modern public worship.”

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**Henley v. City of Youngstown Board of Zoning Appeals (Ohio Supreme Court 2000)**

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The Ohio Supreme Court ruled that transitional apartments for homeless women and their children on church property was permitted as an “accessory use” to the principal religious use on the property.

The court reasoned that “social programs of a church, such as the ones in this *case*, are accessory uses in that they are customarily incidental to the principal use. The character of uses and structures that courts have deemed accessory to religious uses has varied widely and permissible accessory uses have ranged from activities buildings to playgrounds to parking lots.”

The court further reasoned that “because zoning ordinances deprive property owners of certain uses of their property \* \* \* they will not be extended to include limitations by implication.” In other words, mere concern over the possibility that a use will not be in accord with the character of the neighborhood, as argued by the neighbor association with respect to the Buddhist Temple, is wholly insufficient to deprive the Buddhist Temple of their right to Religious Assembly **and** Accessory Uses.

### **3. RLUIPA MANDATES DENIAL OF THE APPEAL.**

The Religious Land Use and Institutionalized Persons Act (“RLUIPA” or “Act”) (42 U.S.C. §2000CC et seq. (2000)) is a civil rights law that protects the free exercise of religion guaranteed by the First Amendment from government regulation, specifically protecting religious institutions and their members’ right to construct and use property for religious purposes.

RLUIPA provides a private cause of action for religious institutions and their members like the Buddhist Temple and applies to the decisions of planning commissions and city councils that violate the Act. Courts have awarded substantial damage awards under RLUIPA; for example, a city recently was required to pay \$3.7 million in compensatory damages in part due to “delay, uncertainty and expense” in the process, as well as attorney’s fees and other damages.

RLUIPA applies to any “land use regulation” where the proposed use is “religious exercise.” “Land use regulation” includes individualized decisions that limit or restrict a claimant’s use of land. Importantly, “religious exercise” is defined to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” **RLUIPA’s protections are even broader than those provided under Toledo Municipal Code, with RLUIPA defining “religious exercise” more broadly than the Toledo Municipal Code defines “religious assembly”; both RLUIPA and the Toledo Municipal Code apply here.**

As set forth below, the neighbors’ proposed limit on the use of the Buddhist Temple would violate three independent provisions of RLUIPA: Substantial Burden on Religious Exercise, Discrimination and Unequal Terms. Each violation warrants denial of the appeal.

#### **A. The Appeal Must Be Denied Because Substantial Burden On Religious Exercise Is Prohibited.**

RLUIPA forbids land use decisions that impose a “substantial burden” on “religious exercise,” except where justified by a “compelling government interest” that the government pursues in the “least restrictive way” possible. Discriminatory intent is not a required element of a Substantial Burden claim.

Courts have held that “religious exercise” covers a wide range of activities, including operation of various faith-based social services facilities, accessory uses such as fellowship halls, parish halls and similar buildings or rooms for meetings, religious education, operation of a religious retreat center, even where ~~the facilities would be used for both secular and religious educational activities.~~ Courts also have held that the term is “broad enough to cover other, less traditional, activities engaged in by many religious organizations, such as soup kitchens, homeless shelters, and counseling centers,” as well as “concerts, prayer meetings and social events.” As set forth above, **the Buddhist Temple’s current activities are more than covered by RLUIPA’s definition of “religious exercise” protected by RLUIPA.**

**B. The Appeal Must Be Denied Because Discrimination On The Basis of Religion Is Prohibited.**

The appeal runs seriously afoul of RLUIPA’s prohibition on government entities applying land use regulations in a manner that discriminates based on religion. Even attempting to prohibit Accessory Uses to Religious Assembly in the Buddhist Temple—when we could find no other Church or house of worship in the City of Toledo in a residential district or otherwise that has a blanket prohibition on Accessory Uses—smacks of religious discrimination. In fact, the Appellant neighborhood association conducts its meetings at Grace Church around the corner from Emmajeon Road at 3700 Dorr Street. Other churches in Toledo (within residential districts and otherwise) regularly use their building and property for plenty more than just worship services. Just a few of the examples at churches in similar neighborhoods include: AA and Al-Anon meetings at Grace Presbyterian Church; classic car show, summer festival, baking ministry, teen programs and school at Saint George Antiochian Orthodox Cathedral; weddings, lectures, public speaker training at every Kingdom Hall of Jehovah’s Witnesses; and boy scouts, girl scouts, teen programs, and parish festivals at Most Blessed Sacrament Parish. While a religious comparator is unnecessary to show a discrimination claim, a city council’s treatment of certain religious denominations more favorably than others is evidence of discrimination under RLUIPA.

In addition, discriminatory or distasteful comments made by members of the public have been attributed to the decision-making body for purposes of a RLUIPA discrimination claim. Appendix 1 lists some of the public statements that have been made by members of the Appellant neighborhood association. Suffice it to say, the neighbors’ comments could be attributed to the City Council for purposes of a RLUIPA claim of discrimination to the extent the Plan Commission’s decision is reversed, especially where, as here, the City Council is now on notice of the comments.

**C. The Appeal Must Be Denied Because Unequal Treatment For Religious Assemblies and Institutions Is Prohibited.**

RLUIPA prohibits government entities from applying land use regulations in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. Non-religious uses in the City of Toledo, including in residential districts, are not issued a blanket prohibition on Accessory Uses where, as here, they are permitted as of right in the Toledo Municipal Code.

**CONCLUSION**

For all the reasons mentioned above, the Zoning and Planning Committee of City Council must deny the appeal of the Plan Commission’s failure to limit the Buddhist Temple’s use solely to Religious Assembly.

## APPENDIX 1

At the Plan Commission meeting, comments in opposition to the proposed minor site plan included:

- “It's an American neighborhood. That's what we want to keep. We want to keep our neighborhood; we want to keep our integrity.” (S.H.)
- “The price of a neighborhood, a true American neighborhood, is incalculable.” (R.B.)
- “If the plan commission is going to include this, they strictly limit it to religious assembly and not any sort of crazy—ah, not crazy—accessory use or, or outreach or something that they try to tie into their religious practice. (P.B.)
- “I personally really feel like there's an invasion here \*\*\* I am seeing a change in the people and the kinds of people that we have lived with as neighbors.” (J.J.)

A neighbor's written statement to the Plan Commission provides:

- “Temple representatives are suspect (an understatement) in the eyes of the neighbors. . .[s]trong conditions are needed to prevent . . .the Temple from going beyond the use of the proposed Temple for religious assembly.

The Applicant transcribed the audio files of the meeting. Speakers' initials are provided solely for reference.