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U.S. DISTRICT COURT E.D.N.Y.

★ **NOV 23 2016** ★

**LONG ISLAND OFFICE**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**GURU GOBIND SINGH SIKH CENTER INC.,  
a Delaware Not-For-Profit corporation,**

**Plaintiff,**

**vs.**

**TOWN OF OYSTER BAY, N.Y., TOWN  
BOARD OF THE TOWN OF OYSTER BAY,  
SUPERVISOR JOHN VENDITTO, individually  
and in his official capacity as supervisor,  
COUNCILMAN JOSEPH D. MUSCARELLA,  
individually and in his official capacity as  
councilman, COUNCILMAN ANTHONY  
MACAGNONE, individually and in his official  
capacity as councilman, COUNCILMAN  
CHRIS J. COSCHIGNANO, individually and in  
his official capacity as councilman,  
COUNCILMAN JOSEPH G. PINTO,  
individually and in his official capacity as  
councilman, COUNCILWOMAN REBECCA  
M. ALESIA, in individually and in her official  
capacity as councilwoman, and  
COUNCILWOMAN MICHELE M. JOHNSON,  
individually and in her official capacity as  
councilwoman,**

**Defendants.**

Civil No. 2:16- cv- 03600 (JFB)(AKT)

**CONSENT ORDER**

HON. JOSEPH F. BIANCO, USDJ

**I. INTRODUCTION AND BACKGROUND**

1. This Consent Order is entered into between GURU GOBIND SINGH SIKH CENTER INC., a Delaware Not-For-Profit corporation, ("Guru Gobind" or "Plaintiff") and TOWN OF OYSTER BAY, N.Y., TOWN BOARD OF THE TOWN OF OYSTER BAY, (this defendant referred to as "Town Board") SUPERVISOR JOHN VENDITTO, individually and in his official capacity as supervisor, COUNCILMAN JOSEPH D. MUSCARELLA, individually

and in his official capacity as councilman, COUNCILMAN ANTHONY MACAGNONE, individually and in his official capacity as councilman, COUNCILMAN CHRIS J. COSCHIGNANO, individually and in his official capacity as councilman, COUNCILMAN JOSEPH G. PINTO, individually and in his official capacity as councilman, COUNCILWOMAN REBECCA M. ALESIA, in individually and in her official capacity as councilwoman, and COUNCILWOMAN MICHELE M. JOHNSON, individually and in her official capacity as councilwoman (collectively referred to as "Defendants", "Town" and/or "Town of Oyster Bay").

2. The Plaintiff brought this action on June 29, 2016, to redress alleged violations of civil rights, as protected by the Free Exercise and Equal Protection Clauses of the United States Constitution, 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), and the New York Constitution (the "Complaint") that Plaintiff contends was caused by the Defendants' land use regulations and conduct that have prohibited and continue to prohibit the Plaintiff from finalizing construction of its near-complete Sikh Temple (the "New Temple") located at 1065 Old Country Road, Plainview, New York, designated as Section 47, Block 7, Lots 35 & 36 on the Nassau County Land and Tax Map (the "Subject Property").

3. In 2014, the Town granted various approvals for the Plaintiff to demolish its existing house of worship ("Former Temple"), which had been serving an established Sikh religious community for twenty-nine years in the Town of Oyster Bay, in order to construct the New Temple on the same property as the Former Temple. However, on July 2, 2015, after demolition of the Former Temple and prior to the completion of construction of the New Temple, comprising approximately 28% of the remaining work, the Town issued a stop work

order (the "Stop Work Order") preventing the completion of interior electrical, drywall, and other work. After various negotiations with the Town, the Plaintiff believed that the Stop Work Order had been lifted and a new site plan was approved permitting the resumption of work on the New Temple. However, after being presented with concerns regarding the process by which the aforementioned approvals had been extended, on February 2, 2016, the Town Board adopted Resolution No. 65-2016, which "suspended" the site plan approval for the New Temple.

4. The Town has taken the position that the Plaintiff must re-apply for another site plan and that such site plan will now be subject to review by the Town Board under the State Environmental Quality Review Act.

5. Plaintiff contends that the Town's laws, actions and position with respect to the Plaintiff's construction activities substantially burden the Plaintiff's religious exercise without compelling or legitimate governmental interests and discriminate against the Plaintiff.

6. The Defendants have, however, repeatedly emphasized that none of the Town's actions were taken because of the religious beliefs or activities held by the Plaintiff's members and/or congregants, but rather to ensure that all necessary reviews that are required under New York State Law, the applicable regulations thereto, and the Town Code of the Town of Oyster Bay (the "Town Code") were, in fact, undertaken, as is required of all land use applicants in the Town of Oyster Bay.

7. The Town and Plaintiff agree that Plaintiff's claims should be resolved amicably and without protracted, expensive and unnecessary litigation. Accordingly, the Town and Plaintiff agree to the terms of and entry of this Consent Order, as indicated by their signatures below.

8. As such, this Consent Order represents a compromise of a disputed claim, and shall not in any way be construed as an admission of wrongdoing or liability on the part of any party, as any such wrongdoing and liability has been and continues to be denied by the Defendants.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED as follow:

**II. JURISDICTION AND VENUE**

9. The subject matter jurisdiction of this Court is founded upon 28 U.S.C. § 1331 (federal question jurisdiction) in that this action is brought under 42 U.S.C. § 2000cc *et seq.* and 42 U.S.C. § 1983. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) for claims brought under law of the State of New York.

10. Defendants are a “government” within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(4)(A)(i).

11. Plaintiff is a “religious assembly or institution” within the meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

12. Plaintiff’s use of the Former Temple and its proposed use of the New Temple as a house of worship constitute “religious exercise” within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(7)(A)-(B). The Defendant’s processes and requirements concerning the review and approval of a site plan, zoning, building plans and certification as well as the issuance of the Stop Work Order constitute “land use regulation” within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5.

13. The Town has authority and obligation under New York State Law and the Town Code to regulate and restrict the development of land within Town borders, subject to limitations

arising under state and federal law, including the authority to issue site plan approval and to rescind the Stop Work Order.

14. The parties agree that Defendants' issuance of the Stop Work Order and adoption of Resolution No. 65-2016 which suspended the New Temple's site plan approval constitute an "individual assessment of the proposed uses for the property involved," 42 U.S.C. § 2000cc(a)(2)(C), undertaken under the Town's land use regulation.

15. The parties agree that venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that all of the events giving rise to the claims herein occurred in the Eastern District of New York, and the Defendants are subject to personal jurisdiction in this District as of the commencement of this action and the service of the Summons and Complaint upon each defendant.

### III. SITE PLAN APPROVAL & CERTIFICATION PROCESS

16. Under authority of this Consent Order and without any further action, application, review process, meeting of the Town Board or any Town Department and/or public hearing, the Town hereby: (a) rescinds and lifts its July 2, 2015 Stop Work Order; (b) approves the site plan for the New Temple prepared by Angelo Corva, dated 4.11.16, Sheet ST1.2 (the "Corva Plan"), showing 61 parking spaces wholly located on site; (c) approves the landscaping plan for the New Temple prepared by R.B. Ignatow, Landscape Architect, bearing date 3.14.12, identified as "LP1" (the "Ignatow Plan"); (d) adopts, only for purposes of the design occupant load under Section 1004, *et seq.* of the 2010 New York State Uniform Building and Fire Prevention Code, the Title Sheet prepared by Angelo Corva, bearing date 2.26.14 with Town Approval identified as sheet "T.1", referencing building occupancy at 1,127 persons (the "Corva Title Sheet"); (e) authorizes Plaintiff to proceed with its construction work based upon the Corva Plan, the

Ignatow Plan, the Corva Title Sheet and building plans ("New Temple Building Plans") already on file with the Town; and (f) approves Plaintiff's public assembly license application ("Plaintiff's Public Assembly License Application"), which Public Assembly License is subject only to inspection required pursuant to Chapter 183 of the Town Code, designating that the maximum occupancy of the New Temple shall be 467 persons. The Corva Plan, Ignatow Plan, Corva Title Sheet and Plaintiff's Public Assembly License Application are incorporated by reference into this Consent Order and annexed as Exhibits "1", "2", "3" and "4" respectively;

17. The parties agree that the Town Board shall no longer be authorized to act as the oversight committee over the temple site plan approval process as previously authorized under Town Board Resolution 65-2016.

18. Plaintiff agrees to reduce parking lot lamp lighting height from 22 feet to 18 feet in height and to install boxwood plantings on the property line between the Subject Property and the properties on Hope Court.

19. The Town Board has, by resolution adopted at a duly noticed public hearing and pursuant to Town Code § 183-12(A)(1), fixed the public assembly occupancy for the New Temple at 467 persons, and a public assembly occupancy of 467 persons shall be used by the Town when issuing and renewing public assembly licenses for the New Temple, pursuant to Chapter 183 of the Town Code unless and until the Plaintiff applies for a proposed and/or modified site plan based on additional off-street parking to be used in connection with the New Temple. As stated in Paragraph 29 of this Consent Order, the Town shall issue the initial public assembly license for the New Temple simultaneous with the issuance of the Certificate of Occupancy.

20. The Town Board has, at a duly noticed public hearing, adopted a resolution

(1) approving all the terms and provisions of this Consent Order and (2) authorizing the Town Attorney to execute this Consent Order and present the same to the Court to be "So-Ordered."

21. Though not specifically noted on the Corva Plan, the Plaintiff agrees to install Wells 22402 Charcoal Ventless Hood Filters, or a similar odor eliminating device of such kind and quality that will substantially mitigate any odors that may emanate from the New Temple as a result of any cooking activities that the Plaintiff and its members and/or congregants shall undertake from time-to-time on the Subject Property. Installation of such odor elimination system shall constitute a necessary condition for the issuance of a Certificate of Occupancy.

22. The Plaintiff and the Town shall not be required to seek leave of Court to make any mutually agreeable modifications to the Corva Plan or to the New Temple Building Plans, provided that such modifications are confirmed in writing signed by the parties' respective duly authorized representatives

23. The Town agrees that the parking calculation on the Corva Plan, together with the other information contained thereon, satisfies zoning requirements both under the analysis of seating and that of worship assembly space. Under the worship assembly space calculation, the parties agree that the Corva Plan identifies 180 worshipping spaces in the Temple requiring 60 off-street parking spaces under the Town parking ordinance where the Corva Plan provides 61 off-street spaces.

24. The parties agree that approval of the Corva Plan and the New Temple Building Plans conforms to Town Code and New York State law.

25. This Consent Order contains all provisions necessary for the Town's site plan approval of the Corva Plan and the New Temple Building Plans.

26. The Consent Order is identified as a Type II action pursuant to the State Environmental Quality Review Act, and its implementing regulations, under the authority of 6 NYCRR § 617.5(c). Specifically, this Consent Order constitutes a Type II action under three separate provisions of 6 NYCRR § 617.5(c) inasmuch as it constitutes (1) "civil . . . enforcement proceedings[] whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order. . . ," (2) an "action[] of a[] court," and (3) involves the "reconstruction of a structure or facility, in kind, on the same site. . ." See 6 NYCRR § 617.5(c)(29), (37) & (2). Actions under these three provisions "have been determined not to have significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law." See 6 NYCRR § 617.5(a).

27. The Plaintiff shall inform its congregants to park only on the Subject Property for Plaintiff's events.

28. As noted on the Corva Plan and the Corva Title Sheet the basement assembly space of the New Temple shall not be used for worship services, and only for ancillary use by congregants after worship in the sanctuary. The first floor shall be used for worship and other religious activities (or those activities inherent to the religious activities), and the second floor shall be used for storage only. The Plaintiff shall complete the partially constructed structure in compliance with the New York State Uniform Building and Fire Code, the Corva Plan, the approved New Temple Building Plans and any approved amendments ("Completion").

Upon Completion of the New Temple, the Plaintiff shall request final inspection (the "Final Inspection") by the Town, which the Town shall schedule no later than fourteen (14) days after the Plaintiff's written request. The Town shall, within ten (10) days of the Final Inspection, provide the Plaintiff with written notice: (a) detailing (i) any defect in work and/or (ii) any



discrepancy between the work and the Town Code or the New York State Uniform Building and Fire Code State Code and/or (iii) any discrepancy between the work and the New Temple Building Plans ("Punch List Items") and (b) scheduling a follow-up inspection within a reasonably practicable period related to the identified Punch List Items. Such written notice shall be provided to the Plaintiff and its counsel.

29. Upon passing the Final Inspection, the Town shall within thirty (30) days issue a Certificate of Occupancy (as provided for in Town of Oyster Bay Code §§ 93-1 and 93-28) and a public assembly license for the New Temple.

30. Notwithstanding the provisions of paragraph 25 of this Consent Order, the Court shall retain jurisdiction of any disputes between the Town and Plaintiff regarding Completion, the Final Inspection, Punch List Items, the Certificate of Occupancy, the issuance and renewal of a public assembly license, or any other issues arising under this Consent Order. In the event the parties fail to resolve any of the foregoing matters after attempting to do so without judicial intervention, either party may make a motion to the Court to request a hearing at which the parties shall be permitted to present testimonial and documentary evidence concerning the unresolved matter.

31. The Court shall retain jurisdiction to enforce this Consent Order and to resolve any disputes arising under this Consent Order that would nullify any portion of this Consent Order, including a proceeding brought by any party or third party that would nullify or have the effect of nullifying any portion of this Consent Order.

32. The Court shall retain jurisdiction to enjoin any proceeding in any other court to challenge any part of this Consent Order or the Completion, Final Inspection, Certificate of Occupancy, or the public assembly license, including a proceeding brought by any party or third

party that would nullify or have the effect of nullifying any portion of this Consent Order, to the extent permitted by 28 U.S.C. § 2283. The parties intend that this Consent Order shall have preclusive effect against any future challenge to the Completion, Final Inspection and/or Certificate of Occupancy.

33. Bearing in mind the enormous pecuniary expense borne by the Plaintiff in resolving its building issues, the Town agrees to exercise good faith in working with Plaintiff towards the issuance of a Certificate of Occupancy and to refrain from issuing process to Plaintiff unless the circumstances pose immediate threat to health, safety and welfare.

34. Without limitation of the Town's statutory obligations, the exercise of good faith includes communicating matters involving technical requirements or ordinance interpretation with Plaintiff, and providing reasonable opportunity to respond to objections or to modify plans where there has been a misunderstanding or difference to avoid the issuance of process.

35. Plaintiff's claims will not be dismissed with prejudice unless and until the Town issues a Certificate of Occupancy and a public assembly license to permit occupancy for 467 persons at the New Temple.

36. To the extent that notice or hearing on approval, or the memorialization of such approval of this Consent Order or Certificate of Occupancy is adjudged to be deficient on substantive, procedural, or jurisdictional grounds, the Parties agree that the remaining terms of this Consent Order shall remain in full effect, and that it is incumbent upon all parties to take all steps necessary to cure such deficiency as expediently as possible. If it appears that such deficiency cannot be cured in a reasonable manner, the Plaintiff's claims and Complaint shall be reinstated in full.

37. This Consent Order shall not bar the Plaintiff or any of its affiliates from submitting to the Town of Oyster Bay, including any of its boards, future applications for relief -- including, without limitation, building permits, variances, site plan approval, special permits, and licenses (each a "Future Application") -- in connection with the Subject Property or any other parcels of property owned by the Plaintiff or any of its affiliates. Notwithstanding anything to the contrary contained in this Consent Order, in the event a Future Application submitted by the Plaintiff or its affiliates to the Town of Oyster Bay, including any of its boards, is denied, the Plaintiff and its affiliates shall have the right to pursue all administrative and judicial remedies available under the law of the State of New York and the United States, including, but not limited to, judicial review by the Supreme Court of the State of New York, Nassau County, the appellate courts of the State of New York, and the federal courts.

#### **IV. REPORTING AND RECORD KEEPING**

38. No later than six months after the date of entry of this Consent Order, Defendants shall send to the Plaintiff a report evidencing the Town of Oyster Bay's compliance with the terms of this Consent Order consisting of appropriate documentary evidence including, but not limited to, the issuance of a Certificate of Occupancy, and all Town memorandum, correspondence, reports, inspections and certificates pertaining to the New Temple.

39. In accord with municipal record-keeping requirements, as outlined by the New York State Department of Education's "MU-1 Schedule," the Defendants shall preserve all records that are the source of or contain any information pertinent to the Defendants' obligations under this Consent Order.

41. Upon reasonable notice to Defendants, Plaintiff shall be permitted to inspect and copy all pertinent records of the Town pertaining to the New Temple and the Subject Property, however, the Plaintiff shall endeavor to minimize any inconvenience to the Defendants.

**V. DURATION AND ENFORCEMENT**

42. This Consent Order shall remain in effect for eight years after the date of entry by the Court. The Plaintiff may move the Court to extend the duration of the Order in the interest of justice.

43. The parties to this Consent Order agree to use their best efforts to effectuate the spirit, intent and purpose of this Consent Order and to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to this Court for resolution. In the event of a failure by any party to perform in a timely or reasonable manner any act required by this Consent Order or reasonably required to carry out the spirit, intent and purpose of this Order, the aggrieved party may move this Court to impose any remedy authorized at law or equity, including, but not limited to, an Order requiring performance of such act or deeming such act to have been performed. In the event of any motion, civil action, or proceeding commenced by any party in connection with any matter arising under or in connection with this Consent Order, the prevailing party, as determined by the Court, shall be entitled to an award of reasonable attorneys' fees, costs, and disbursements.

44. In the event the either party fails to comply with any and all provisions of this Order or if the Town fails to permit the Plaintiff from occupying and using the New Temple as a house of worship within thirty (30) days after a satisfactory Final Inspection, such party will be subject to a motion before this Court brought on by Order to Show Cause for any appropriate

relief; and the moving party may seek any and all relief from this Court against the offending party/ies for a finding of contempt.

**VI. INTERGRATION AND MODIFICATION**

45. This Consent Order contains the entire agreement between the Defendants and Plaintiff. No statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties to this Order or their counsel that are not included herein shall be of any force or effect. This Order may be modified only in writing and with the written consent of the parties to this Order and approval of the Court.

46. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the parties to this Order and do not require Court Approval.

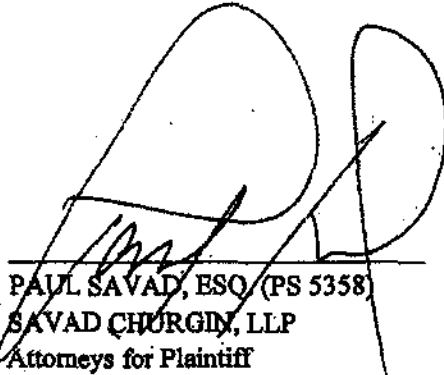
**VII. LITIGATION COSTS**

47. Each party to this Order shall bear its own costs and attorney's fees.

**EXECUTION PAGE TO FOLLOW**

AGREED TO:

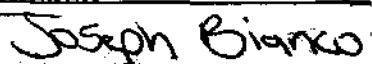
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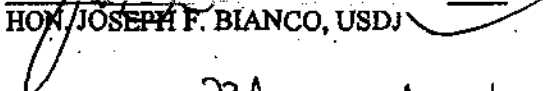


PAUL SAVAD, ESQ. (PS 5358)  
SAVAD CHURGIN, LLP  
Attorneys for Plaintiff  
55 Old Turnpike Road, Suite 209  
Nanuet, New York 10954  
(845) 624-3820  
p.savad@savadchurgin.com  
d.sobel@savadchurgin.com



LEONARD GENOVA, TOWN ATTORNEY  
By: Matthew M. Rozea, Esq. (MR 9384)  
Assistant Town Attorney, Town of Oyster Bay  
Attorneys for Defendants  
54 Audrey Avenue  
Oyster Bay, NY 11771  
(516) 624-6150

SO O 

HON. JOSEPH F. BIANCO, USDJ 

ENTERED THIS 23<sup>rd</sup> DAY OF November, 2016