Exhibit 3.i

Legal Memo regarding Tree Modification

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MEMORANDUM

TO: **Wendy Garrison**

FROM: **Brent Dille, Esq.**

DATE: **December 20, 2023**

RE: **Champions Centre Tree Removal Request for Modification**

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I. Issue Presented

Champion's Centre, a non-denominational Christian religious organization, wishes to construct a church and classrooms for religious assembly. However, in order build the church with the least impact to the building site, including the preservation of an historical knoll, it is required that three (3) Oregon white oak trees will need to be removed.

Although the City has allowed removal of Oregon white oak trees elsewhere in the City in order to accommodate the construction of warehouses, in this particular part of the city, white oaks are for some unarticulated reason, sacrosanct.

DuPont Municipal Code (DMC) Section 25.120.030 requires all landmark Oregon white oak trees be retained. However, in accordance with DuPont Municipal Code Section 25.120.050, the landowner may request modifications of this restriction based on special circumstances.

Such special circumstances exist in this case, not only because of topographical constraints, but constraints imposed by existing easement, but because , Champions Centre has protected rights under the Washington constitution, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) 42 U.S.C. § 2000cc et. Seq. as more fully described below. Consequently, it is my professional opinion that the request for modification to remove the Landmark oak tree should be granted in order to allow the proposed church to be constructed.

In addition to saving the historical knoll, Champions Centre's plans include planting 75 mature Oregon white oak trees, enhancing the existing grove and creating new groves; a 25 to 1 replacement ratio.

Even without the special considerations taken into account when the land use modification is being made by a religious organization, there appears to be sufficient legal basis for the City to grant the Applicants request. However, based on the analysis below and the mitigation proposed by Champions Centre, the City not only has the authority, but is encouraged by the law to approve Champion Centre's request for Tree Modification in accordance with DuPont Municipal Code Section 25.120.050 and thus the Applicant

to remove the 3 Landmark white oak trees that are located in such a way that to do otherwise would unreasonably restrict the Church's protected rights.

II. Description of Proposed Use

Champions Centre intends to construct a building for religious assembly (the "Church") with a height of approximately 25 feet and a total floor area of 26,000square feet. The Church's design is intended to create an open friendly and inviting environment for people to worship, pray and study. The architectural design for the Church will meet the City's design standards for the commercial district in which it is located, including the location of the building in relation to public rights of way, and the design shies away from looking like a more formal house of worship in order to complement and be harmonious with the surrounding commercial uses. The size and topography of the Church parcel, existing easement encumbrances upon the Church parcel, and the needs of the DuPont congregation, dictate the building footprint. In this case, the footprint is the smallest possible that will allow the intended religious uses in accordance with the needs of the DuPont congregation, while respecting the topography of the land and saving as many Oak trees as possible.

III. Additional Legal Basis for Request for Modification by a Religious Organization

The Church has protected rights under the Washington constitution, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) 42 U.S.C. § 2000cc et. Seq. as follows.

1. Washington Constitutional Rights.

Article 1, section 11 of the state constitution absolutely protects "freedom of conscience in all matters of religious sentiment, belief, and worship" and guarantees that "no one shall be molested or disturbed in person or property on account of religion". This constitutional guaranty of free exercise is "of vital importance." *Bolling,* 16 Wash.2d at 381, 133 P.2d 803.

If the "coercive effect of [an] enactment" operates against a party "in the practice of his religion", it unduly burdens the free exercise of religion. *Witters v. Comm'n for the Blind,* 112 Wash.2d 363, 371, 771 P.2d 1119 (1989); *cert. denied,* 493 U.S. 850, 110 S.Ct. 147, 107 L.Ed.2d
106 (1989); *Sumner,* 97 Wash.2d at 5, 639 P.2d 1358.

A facially neutral, even-handedly enforced statute that does not directly burden free exercise may, nonetheless, violate article 1, section 11, if it indirectly burdens the exercise of religion.
Sumner, at 7-8, 639 P.2d 1358; *Bolling,* 16 Wash.2d at 385-86, 133 P.2d 803.

The Washington Supreme Court holds that that the Washington Constitution's Article I, section 11 freedom of religious sentiment, belief and worship "absolutely protects the free exercise of religion, [and] extends broader protection than the first amendment to the federal constitution ..." *City of Woodinville v. Northshore United Church of Christ,* 166 Wn.2d 633, 211 P.3d 406, 412 (2009), quoting *First Covenant Church v. City of Seattle,* 120 Wn.2d 203, 229-30, 840 P.2d 174 (1992). The Church has more protection under Washington's constitution than under the federal Constitution. *Id.*

Government burdens religious exercise "[i]f the 'coercive effect of [an] enactment' operates against a party 'in the practice of his religion'" *First Covenant,* 120 Wn.2d at 226 (alteration
in original).

Proceeding under Article I, section 11, a party challenging government action must show two things: that the belief is sincere and that the government action burdens the exercise of religion. *Open Door Baptist Church v. Clark County,* 140 Wn.2d 143, 152, 995 P.2d 33 (2000). The government must then show it has

a narrow means for achieving a compelling goal.

Government action is constitutional under the free exercise clause of Article 1 if the action results in no infringement of a citizen's right or if a compelling state interest justifies any burden on the free exercise of religion. *Witters,* 112 Wash.2d at 371, 771 P.2d 1119; *Sumner,* 97 Wash.2d at 7-8, 639 P.2d 1358; *cf. Holcomb,* 39 Wash.2d at 864, 239 P.2d 545. A "compelling interest" is one that has a "clear justification…in the necessities of national or community life" *Bolling,* 16 Wash.2d at 385, 133 P.2d 803 (quoting *Barnette v. West Va. State Bd. of Educ.,* 47 F.Supp. 251 (S.D.W.Va.1942), *aff'd,* 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628, 147 A.L.R. 674 (1943)), that prevents a "clear and present, grave and immediate" dangerto public health, peace, and welfare. *Sumner,* 97 Wash.2d at 9, 639 P.2d 1358; *Bolling,* 16 Wash.2d at 385, 133 P.2d 803; *Holcomb,* 39 Wash.2d at 864, 239 P.2d 545; *State v. Norman,* 61 Wash.App. 16, 23, 808 P.2d 1159 (1991).

The Government also must demonstrate that the means chosen to achieve its compelling interest are necessary and the least restrictive available. *Sumner,* 97 Wash.2d at 8, 15, 639 P.2d 1358 (Utter, J. concurring); *Holcomb.*

The Washington Supreme Court found unconstitutional burdens through government regulation in the two decisions: *Munns v. Martin,* 131 Wn.2d 192, 930 P.2d 318 (1997) and *Open Door*. In *Munns,* St. Patrick's School was a state historic site and the Bishop of Spokane intended to change the church building use to a pastoral center. Id. at 195. Petitioner sought to enforce an ordinance to delay permitting for up to 14 months. This court held the potential burden of delay created an unconstitutional burden. Id. at 207.

In *Open Door,* a church bought a building intending to renew its use as a place of worship, and the county ordered the church to apply for a conditional use permit. *Open Door*, 140 Wn.2d at 145-46. Clark County allowed the church to continue operating pending decision on an application, but the church brought suit rather than go through the process.

The Supreme Court held the burden of properly applying for a permit was not an excessive burden on religion expressly noting, "we are not confronted in the case with the denial of a conditional use permit application " Id. at 149.

These cases conclude that a burden can be a ***slight*** inconvenience without violating Article I, section 11, but the State ***cannot*** impose substantial burden on exercise of religion. See also *First United Methodist Church v. Hearing Examiner,* 129 Wn.2d 238, 249, 916 P.2d 374 (1996) (landmark designation reducing value of a church by half is an excessive burden).

In *City of Woodinville v. Northshore United Church of Christ*, The Court found that imposition of a ***temporary*** moratorium, whereby the City did not process a church's land use application for a requested use was a substantial burden on religious activity.

Applying these principles to the Champion Centre's application, the City must grant the modification or it will be prohibiting development of the religious structure and place a substantial burden on the church.

2. **Federal Law: RLUIPA.**

    a. **Summary of RLUIPA**

RLUIPA, applicable to the states and the City of DuPont, ensures that when laws impose substantial burdens on religious exercise, they are subject to strict scrutiny to protect and vindicate the right to free exercise of religion from governmental encroachment.

Prior to enforcing land use regulations to a religious exercise use, the City is required to meet a strict

scrutiny standard and to the extent that the religious exercise use impacts compelling zoning interests of the City, the City is required to adopt the least restrictive means to attain those zoning objectives. The scope of this law extends to any development regulation that impedes the free exercise of religion, including what the City considers as tree retention code requirements.

As applied to this application, RLUIPA dictates that the local codes be analyzed in an individualized site assessment process to determine affect on the exercise of religion. Where strict application of a regulation burdens the exercise of religion, the City is required to impose the least restrictive means that can accommodate the intent of the regulation without burdening the religious practice or use.

b. **Federal Statutory Protection of Free Exercise of Religion**

The free exercise of religion is guaranteed by the First Amendment from governmental regulation. The provisions of the First Amendment apply to state and local government regulation. *See, e.g., Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 8 n. 4, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004).

In 1993, Congress enacted the Religious Freedom and Restoration Act of (RFRA) in response to the Supreme Court's decision in *Smith.* RFRA "prohibit [ed] '[g]overnment' from 'substantially burden[ing]' a person's exercise of religion even if the burden results from a rule of general applicability unless the government [could] demonstrate the burden '(1) [was] in furtherance of a compelling governmental interest; and (2)[was] the least restrictive means of furthering that compelling governmental interest.' " *City of Boerne v. Flores,* 521 U.S. 507, 515-16, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (second and third alterations in original) (quoting 42 U.S.C. § 2000bb-1). In *City of Boerne*, though, the Supreme Court invalidated RFRA, deciding that it was an unconstitutional exercise of congressional power pursuant to Section Five of the Fourteenth Amendment because of a "lack of proportionality or congruence between the means adopted and the legitimate end to be achieved." *Id.* at 533, 117 S.Ct. 2157.

Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) in response to the constitutional flaws with RFRA identified by *City of Boerne*. "RLUIPA 'replaces the void provisions of RFRA[,]' and prohibits the government from imposing 'substantial burdens' on 'religious exercise' unless there exists a compelling governmental interest and the burden is the least restrictive means of satisfying the governmental interest." *San Jose Christian,* 360 F.3d at 1033-34 (quoting *Wyatt v. Terhune,* 315 F.3d 1108, 1112(9th Cir. 2003) (citation omitted). To avoid RFRA's fate, Congress wrote that RLUIPA would apply only to regulations regarding land use and prison conditions. *See Cutter,* 125 S.Ct. at 2118.

RLUIPA is codified at 42 U.S.C. § 2000cc et. seq. Section 2000cc states, in pertinent part:

"(a) Substantial Burdens.

(1) General Rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution -

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest."

Under the trigger provisions of RLUIPA, the general rule stated above, as applicable to the case at bar, is triggered when:

"(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use

regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved."

(*id*. at § 2000cc(a)(2)(C).)

3. Use is a Protected Religious Practice.

RLUIPA prohibits a government from "impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person ... or institution, unless the government demonstrates that imposition of the burden on that person ... or institution is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1); *Westchester Day Sch. v. Vill. of Mamaroneck,* 386 F.3d 183, 186 (2d Cir.2004) (*"Westchester Day Sch. I"*).

Assuming the Church is successful in making that prima facie showing, the burden shifts to the government to demonstrate that the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that compelling interest. 42 U.S.C. § 2000cc(a)(1)(A-B).

a. **Protections Extend to Classroom Use and Building Design**

It is undisputed that the Champion Centre building use is a religious exercise. But RLUIPA protections also extend to protect the church's other use, as well as the building's design elements. "Religious exercise" is defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

"The use, building, or conversion of real property for the purpose of religious exercise shall be considered ... religious exercise." 42 U.S.C. § 2000cc-5(7)(B). "Religious exercise" under RLUIPA is to be defined broadly and "to the maximum extent permitted by the terms of this chapter and the Constitution." *Westchester Day Sch. v. Vill. of Mamaroneck,* 504 F.3d 338, 347 (2d Cir.2007) (*"Westchester Day Sch. III"*); 42 U.S.C. § 2000cc-3(g).

"Religious exercise" as used in RLUIPA "covers most any activity that is tied to a religious group's mission." *Living Water Church of God v. Charter Twp. Meridian,* 258 Fed. Appx. 729, 736 (6th Cir.2007).

Although the City may claim that the building's design is not a central or required religious practice. The law "bars inquiry into whether a particular belief or practice is 'central' to [an individual's] religion." *Cutter v. Wilkinson,* 544 U.S. 709, 725 n. 13, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005). In addition, the Court may not judge the merits of various religious practices. As the Second Circuit Court of Appeals has stated:

> "Because the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires, courts are not permitted to inquire into the centrality of a professed belief to the adherent's religion or to question its validity in determining whether a religious practice exists. As such, religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection. An individual claiming violation of free exercise rights need only demonstrate that the beliefs professed are sincerely held and in the individual's own scheme of things, religious."

Fifth Ave. Presbyterian Church v. City of New York, 293 F.3d 570, 574 (2d Cir.2002).

In light of this, the Champions Centre can clearly demonstrate that its (fellowship, classrooms and building design) are all motivated by religious obligations. Whether the use or building design are

absolute obligations-that is, whether it is secondary to any other religious precepts-does not affect their status as a "religious exercise" under the law.
Even uses which may also be carried out in the secular world are properly included as "religious use". *Fifth Ave. Presbyterian Church,* addresses this issue directly. There, a church argued that it had a free exercise right to use several outdoor staircases on its property for homeless persons to sleep. Almost two years later, New York City informed the church that the city would no longer allow the homeless to sleep on the stairs and proceeded to remove the homeless from the church's stairs. The city argued that the homeless were a public nuisance. After the Court issued a preliminary injunction allowing the church to operate a de facto homeless shelter on its stairs, but not on its property adjacent to the public sidewalk, the city appealed. The Court of Appeals for the Second Circuit upheld the preliminary injunction, finding that when the church allowed homeless people to sleep on its stairs, that constituted a religious exercise under the First Amendment. *Fifth Ave. Presbyterian Church,* 293 F.3d 570.

There, the church's program can be seen from two perspectives. The first is as a religiously- motivated program for the welfare of the community. The second is as a secular program aimed at improving the community. In finding the church's activities to be religiously motivated, the Court of Appeals implied that ***even if a religious exercise has a corresponding secular purpose that may be otherwise met by secular organizations, that exercise may still constitute a religious exercise to the religious institution.*** *See also Grace United Methodist Church,* 451 F.3d at 662-63 (observing that activity need not be mandatory to be a "religious exercise").

So too here. While a portion of the Church's uses can also occur in the secular world, Champions Centre can demonstrate that it is also motivated by the tenets of its faith. The use is properly shown to be a religious activity. See: *Bikur Cholim, Inc. v. Village of Suffern,* 664 F. Supp. 2d 267 (S.D.N.Y. 2009).

Given that the Champion Centre's activities constitute religious exercise and that the modification requested is an individualized assessment of the proposed use that triggers RLUIPA's protections, the City should consider that forcing the Champion Centre to maintain the three trees as "substantial burden" on the free exercise of religion. The building footprint as proposed was the smallest configuration that could accommodate the intended religious uses. This necessary building foot print requires the requested tree removal and should that request be denied, would result in the inability to proceed with the intended religious use.

The denial of the Champions Centre's request for modification in order to allow a place of religious assembly and worship substantially burdens its ability to engage in fundamental religious activities. Courts have repeatedly found that denying the members of a religious body the ability to use *their property* to conduct core religious practices of worship constitutes a substantial burden on religious exercise.

In enacting RLUIPA, Congress did not intend to depart from the traditional definition provided by previous cases. Indeed, RLUIPA's legislative history indicates that Congress meant for the term "substantial burden" to be interpreted "by reference to Supreme Court jurisprudence." 146 Cong. Rec. S7774, S7776 (2000).

The phrase "substantial burden" is a term of art in Supreme Court jurisprudence, defined previously in numerous cases on the Free Exercise Clause. *See, e.g., Lyng v. Northwest Indian Cemetery Protective Ass'n,* 485 U.S. 439, 450, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988); *Sherbert v. Verner,* 374 U.S. 398, 404, 83 S.Ct. 1790, 10 L.Ed.2d 965(1963).

In general, Supreme Court jurisprudence, a substantial burden exists when an individual is forced to "choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion ... on the other hand." *Sherbert,* 374 U.S. at 404. In the context of land use regulations, however, the Court of Appeals has defined a substantial burden as where "government action ... directly *coerces* the religious institution to change its behavior." *Westchester Day Sch. III,* 504 F.3d at 349; *see also Vision Church v. Vill. of Long Grove,* 468 F.3d 975, 997 (7th Cir. 2006) ("[A] land use regulation

imposes a 'substantial burden' on religious exercise if it necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise-including the use of real property for the purpose thereof within the regulated jurisdiction generally-effectively impracticable.").

A complete denial of the enjoyment of the property is **not** required to show a substantial burden. *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005).

If the denial of an application for a variance has a ***minimal*** impact on the institution's religious exercise, the denial is not a substantial burden. *Westchester Day Sch. III*, 504 F.3d at 349.

And even a temporary or incomplete denial may constitute a substantial burden, where an organization has no realistic alternatives to its desired use. *Westchester Day Sch. III*, 504 F.3d at 349. See also *Woodinville*, where the Washington Supreme Court found that imposition of even a ***temporary*** moratorium, whereby the City did not process a church's land use application for a requested use was a substantial burden on religious activity.

The Supreme Court has used a number of different descriptions in explaining how the term "substantial burden" is to be applied to any particular case. In *Sherbert v. Verner*, 374 U.S. 398 (1963), the court considered whether the denial of unemployment benefits to a Seventh-Day Adventist who was discharged from her employment for refusing to work on her Saturday Sabbath constituted a substantial burden on her free exercise of religion. The court concluded that it did because, although "only indirect" in its effect, that denial "forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." (*d.* at p. 404.) The Court explained that, "Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against the appellant for her Saturday worship." *(ibid)*

In *Murphy v. Zoning Commission of Town of New Milford*, 289 F. Supp. 2d 87 (D Conn. 2003), a local government ordered the owners of a single-family dwelling in a residential zone to cease and desist from using the property as a Sunday meeting place for groups of 25 to 40 persons, including the parking of numerous vehicles on or near the property. After the property owners challenged the order under RLUIPA, the District Court determined that the order constituted a "substantial burden" on the owners religious exercise by reason of limiting the number of persons at, and turning people away from, the Sunday meetings, (*id.* at pp. 113-114.)

Similarly, in *Westchester Day School v. Village of Mamaroneck*, 280 F. Supp. 2d 230 (SDNY 2003), the operator of a religious day school sought a permit to construct new school buildings. The local authority denied the application in its entirety, and the school challenged the decision as violating RLUIPA. The District Court stated the test for whether the City's decision constituted a substantial burden on religious exercise is that the governmental action" must compel action or inaction with respect to the sincerely held [religious] belief; mere inconvenience to the religious institution or adherent is insufficient." (*id.* at p. 240.) The court noted that the school had asserted various ways in which its existing facilities, some more than a century old, were inadequate for activities plaintiff deems necessary for its education and religious mission. The City had responded that the school had failed to meet its burden because, even in the existing school, the students continued to be able to gather to pray and be educated, (*id.* at pp. 240-241.)

The District Court agreed with the school that a substantial burden was imposed by the denial of the permit for three stated reasons: (1) The denial burdened the "quality" of the school's religious education; (2) the students' "religious experience is limited by the current size and condition of the school buildings"; and (3) denial of the permit prevented the school from accommodating a "growing number of students who wish to pursue a Jewish education…." (*id.* at pp. 241-242.)

Should the City deny the request from modification, this would result in a substantial burden to the Centre

as the building's footprint has been reduced to the minimum necessary to carry out the Champion Centre's varied missions. In particular, denial of the request for modification substantially burdens to religious use. Champion Centre will provide a grove of over 75 Oregon white oaks giving replacement ratio of 25 new white oak trees for each one removed.

Indeed, in factual circumstances indistinguishable from this case, the federal court found that a city had substantially burdened a Jewish congregation's religious circumstances. *See Congregation Kol Ami v. Abington*, 2004 WL 1837037 (E.D. Pa. Aug. 17, 2004). In *Kol Ami*, like here, a township disallowed a variance and thus denied a Jewish congregation the ability to develop and operate its property so that it could establish a permanent home for a synagogue.

Because of that denial, that congregation was forced to limp along at inadequate rented sites. The court held that this was a substantial burden under RLUIPA. *Id.* at 9 ("Under the statute [RLUIPA], developing and operating a place of worship…is free exercise. **There can be no** reasonable dispute that the Ordinance and the denial of the variance, which have effectively prevented the Plaintiffs from engaging in this 'free exercise,' create a substantial burden within the meaning of the Act."). Emphasis added.

A New York federal court also held that a denial of a permit for expanding a Jewish school in a residential neighborhood "hinder[ed] and significantly interfere[ed] with the religious education and practice of current students" and found a substantial burden violation under RLUIPA. *Westchester Day School v. Village of Mamaroneck*, 417 F. Supp. 2d 447, (S.D.N.Y. 2006).

Applying these principles to this case, if the City were to deny the Champion Centre's request to modify the restriction on removing trees, this would place a substantial burden on the Centre's exercise of religion where the evidence shows that the tree removal is needed to carry out the intended uses.

The Champion Centre has the right to undertake a use which carries out this religious exercise unless the City can demonstrate a compelling justification for failing to extend to the Centre individualized mitigating exemptions and that it has adopted the least restrictive means of achieving those compelling interests. See *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899-900 (7th Cir.2005) ("*Saint Constantine*") (finding that, to prove a substantial burden under RLUIPA, a religious group need not "show that there was no other parcel of land on which it could build its church").

In short, the Champion Centre has the right to ***this use on this parcel of land*** subject to reasonable and constitutional land use conditions.

4. The City Has the Burden Under RLUIPA.

It should be noted that the City has the burden under RLUIPA to show that that the restriction on tree removal as applied were the least restrictive means of carrying out the underlying intent of the code. The City "shall bear the burden of persuasion," 42 U.S.C. § 2000cc-2(b), to prove compelling interests and narrowly tailored restrictions.

"To protect religious liberty," Congress has prohibited local government from enforcing "a land use regulation in a manner that imposes a substantial burden on the religious exercise of . . . a religious assembly or institution" unless the government establishes that the burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc-1(a)(1). By its terms, RLUIPA must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." 42 U.S.C. § 2000cc-3(g).

Congress intended that the term "substantial burden" in RLUIPA be given the same meaning that it has been given in the Supreme Court's Free Exercise cases. See Joint *4 statement of Senator Hatch and Senator Kennedy (co-sponsors), 146 Cong. Rec. S7774, 7776 (July 27, 2000) ("That term [substantial burden]

should be interpreted by reference to Supreme Court jurisprudence."). See *Sherbert v. Verner,* 374 U.S. 398 (1983) (government action creates a substantial burden if it has a "tendency to inhibit constitutionally protected activity.")

a. **No Compelling State Interest Shown That Overcomes Burden On Religion**

Under RLUIPA, where government action poses a substantial burden on the Church's religious exercise, it is subjected to "the most rigorous of scrutiny," *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 546 (1993), and can be upheld only if narrowly tailored to meet a compelling governmental interest.

"Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Navajo *7 Nation v. U.S. Forest Service,* 9th Cir. No. 06-15371, slip op. at 2863-66 (March 12, 2007), pet for rehearing en banc granted Oct. 17, 2007 (citation omitted).

The City cannot show it has a compelling interest in denying Champions Centre's request for modification to remove the three trees. A compelling interest is an "interest[ ] of the highest order." *Westchester Day Sch. III,* 504 F.3d at 353. As the Supreme Court stated in the context of free exercise claims, "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." *Sherbert,* 374 U.S. at 406.

While upholding zoning laws may be considered a compelling interest, the City here is required to demonstrate that the enforcement of those zoning laws is compelling in this particular instance, not in the general scheme of things. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 432, 126 S.Ct. 1211, 163 L.Ed.2d 1017 (2006)

5. The granting of the modification is not a special privilege nor incompatible with City's Planning.

When contemplating adoption of RLUIPA, Congress compiled massive evidence of constitutional violations in land use decisions based upon nine separate hearings over the course of three years. (146 Cong. Rec. S7774 (daily ed. July 27, 2000); See also H.R. Rep. No. 106- 219, at 18-24 [summarizing hearing testimony regarding land use]. This evidence was statistical, judicial and pervasive. The statistical evidence included national surveys of churches, zoning codes, and public attitudes. Judicial decisions were explored including decisions of state and federal courts reflecting extensive constitutional violations.

Significantly, RLUIPA was enacted by Congress specifically against a backdrop of evidence of widespread state and local discrimination against religious institutions in the zoning context. 146 Cong. Rec. S7775; *see also* Religious Liberty Protection Act of 1999 Report, H.R. Rep. No. 219, 106th Cong., 1st Sess. 18 (1999) ("H.R. Rep. 106-219") (GA 2); *id.* at 24 (concluding that result of various forms of zoning discrimination is a "consistent, widespread pattern of political and governmental resistance to a core feature of religious exercise: the ability to assemble for worship"). Witnesses presented "massive evidence" of a pattern of religious discrimination, which frustrated the ability to assemble for worship. *See* 146 Cong. Rec. at S7774-75; H.R. Rep. 106-219, at 21- 24.

Congress also heard testimony that religious assemblies receive less than equal treatment when compared to secular land uses. Congress further determined that individualized land-use assessments readily lend themselves to discrimination against religious assemblies, yet render it difficult to prove such discrimination in any particular case. 146 Cong. Rec. at S7775; H.R. Rep. 106-219, at 18-24. In reaching this conclusion, RLUIPA's sponsors relied on evidence from national surveys and studies of zoning codes, reported land-use cases, and the experiences of particular houses of worship, all of which demonstrated unconstitutional government conduct. *See* 146 Cong. Rec. at S7775; H.R. Rep. 106-219, at 18-24; 146 Cong. Rec. E1234, 1235 (daily ed. July 14, 2000) (GA 44).

Significantly, one study relied on by Congress in support of RLUIPA's passage, conducted by Brigham Young University, concluded that Jews**, small Christian denominations, and nondenominational churches** are vastly overrepresented in reported zoning discrimination cases involving religious institutions. *See* H.R. Rep. 106-219, at 20. For example, the study revealed that 20% of the reported cases concerning the discriminatory conduct in the location of houses of worship involve members of the Jewish faith, despite the fact that Jews account for only 2% of the population in the United States. *See id.* at 21.

Ultimately, Congress determined that: "Churches in general, and **new, small, or unfamiliar churches in particular**, are frequently discriminated against on the face of zoning codes" […]"Sometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church. **More often, discrimination lurks behind such** vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.'" (146 Cong. Rec. S7774.)

This concept was further illustrated by the Supreme Court in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) wherein the Supreme Court stated:

"Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt. 'The court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders. [Citation]" (*id.* at p.534.)

By granting the modification, the City would not be granting any special privilege to Champion Centre especially in light of the fact that removal of Oregon White oak trees as permitted in other areas in the city.

IV. CONCLUSION

Based on the foregoing, the City should grant the Champion Centre's request for modification and permit the three white oaks to be removed in order to construct the church.