

NOV 06 2020

MICHAEL D. PLANET

BY: , Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA

DOS VIENTOS COMMUNITY )  
PRESERVATION ASSOCIATION, a )  
California unincorporated association; and )  
DONALD ARMSTRONG, )  
Petitioners and Plaintiff, )  
vs. )  
CITY OF THOUSAND OAKS, a municipal )  
corporation; and DOES 1 through 125, )  
inclusive )  
Respondents and Defendants. )

Case No.: 56-2018-00510555-CU-MC-VTA

**TENTATIVE DECISION AND  
PROPOSED STATEMENT OF DECISION**

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DAN H. WILKS and STACI WILKS, )  
TRUSTEES OF THE HEAVENLY )  
FATHER'S FOUNDATION TRUST DATED )  
DECEMBER 27<sup>TH</sup>, 2010, a 501(c)(3) )  
Charitable organization; CALVARY CHAPEL )  
FO THOUSAND OAKS, a California non- )  
profit religious organization; and DOES 27 )  
through 50, )  
Real Parties in Interest and Defendants )

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On September 23, 2020, at 8:20 a.m., the matter came before the Court for a hearing on the petition for writ of mandamus and/or prohibition filed by petitioners, Dos Vientos

1 Community Preservation Association (“Association”), and Donald Armstrong (“Armstrong”)  
2 (alternatively and collectively, “petitioners”), against respondent, City of Thousand Oaks (“City”  
3 or “respondent”), with real parties in interest being Dan H. Wilks and Staci Wilks, trustees of the  
4 Heavenly Father’s Foundation Trust dated December 27, 2010 (“Wilks/HF”), and Calvary  
5 Chapel of Thousand Oaks (“Calvary Chapel”) (alternatively and collectively, “real parties”).  
6 The parties appeared as set forth in the Clerk’s Minutes. The Court received and considered the  
7 pleadings, declarations, exhibits and arguments submitted in support of and opposition to the  
8 petition. The Court took judicial notice of documents as indicated below. Additionally, the  
9 Court received the Joint-Administrative Record lodged by cd rom on January 9, 2020. At the  
10 conclusion of the arguments, the matter was submitted to the Court for decision.

11 Pursuant to Code of Civil Procedure section 632, the Court hereby issues its Tentative  
12 Decision and Proposed Statement of Decision in this case. This Tentative Decision and  
13 Proposed Statement of Decision shall become the Court’s Final Statement of Decision and  
14 Judgment in this case, subject to the parties’ rights to timely object and make further proposals  
15 concerning same pursuant to California Rules of Court, rule 3.1590.

16  
17 **I. PARTIES AND CONTENTIONS**

18 Petitioners, a neighborhood association and a resident of City, seek to compel City to  
19 rescind its approval of a building permit granted to Wilks/HF and Calvary Chapel to occupy and  
20 operate the subject property as a church or place of worship. Petitioners argue that City abused  
21 its discretion by not requiring Wilks/HF and Calvary Chapel to undergo the development permit  
22 modification application process in order to operate a church at the subject property. The subject  
23 property had previously been occupied and operated as a club by the YMCA. That use of the  
24 property is identified expressly in the development permit which City approved as part of the  
25 construction of the shopping center in which the subject property is located.

26 Petitioners argue that a church is not the same use as a club, thus triggering the need for  
27 Wilks/HF to go through the development permit modification application process – which is  
28 discretionary and requires notice and a public hearing – as opposed to the building permit

1 application process – which is ministerial and which entitles the applicant to a permit as a matter  
2 of right in the event that the use of the property is approved within the development zone.

3 City argues that both clubs and churches are approved uses within the C-1 zone. Since  
4 the development permit process – which is extensive – was completed in accordance with the  
5 applicable zoning laws and ordinances many years ago, City argues that Wilks/HF and Calvary  
6 Chapel did not need to go through the development permit application process in order to  
7 convert the YMCA club use into a place of religious worship use of the subject property.  
8 Instead, since the two uses are similar and compatible, as well as being approved within the C-1  
9 zone pursuant to an existing development permit, all that Wilks/HF and Calvary were required to  
10 do was to submit an application for a building permit. Wilks/HF did so, complied with the  
11 building permit codes and regulations promulgated by City, and obtained a permit to operate the  
12 subject property as a place of worship.

13 City presents evidence in the form of declarations of its management employees who  
14 oversee City’s development and building permit processes, as well as copies of the ordinances in  
15 question and other documentary evidence. In particular, City’s declarations illustrate multiple  
16 instances which City argues are representative of its routine practice of approving building  
17 permits for minor modifications in approved uses within the C-1 zone, as opposed to requiring  
18 development permit modification applications for such minor use modifications. Thus, City  
19 argues that Wilks/HF and Calvary Chapel were accorded the same treatment as any other  
20 building permit applicant.

21 Wilks/HF and Calvary Chapel oppose the petition and agree that City’s ordinances were  
22 followed in the transition of the use of the subject property from a youth club to a place of  
23 worship. Wilks/HF and Calvary Chapel also argue that the petition – if successful – subjects  
24 them to unfair and discriminatory treatment in violation of the Religious Land Use and  
25 Institutionalized Persons Act of 2000 (“RLUIPA”) (42 USC, § 2000, et seq.).

1 **II. STANDARD OF REVIEW**

2 Code of Civil Procedure section 1085, subdivision (a), provides as follows:

3 “A writ of mandate may be issued by any court to any inferior tribunal,  
4 corporation, board, or person, to compel the performance of an act which the law  
5 specially enjoins, as a duty resulting from an office, trust, or station, or to compel  
6 the admission of a party to the use and enjoyment of a right or office to which the  
party is entitled, and from which the party is unlawfully precluded by that inferior  
tribunal, corporation, board or person.”

7  
8 “A traditional writ of mandate under Code of Civil Procedure section 1085 is a method of  
9 compelling the performance of a legal, usually ministerial duty.” (*Pomona Police Officers’ Assn.*  
10 *v. City of Pomona* (1997) 58 Cal.App.4<sup>th</sup> 578, 583-84, 68 Cal.Rptr.2d 205, internal quotation  
11 marks and citation omitted.) “Generally, a writ will lie when there is no plain, speedy, and  
12 adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear  
13 and beneficial right to performance.” (*Id.*, 58 Cal.App.4<sup>th</sup> at p. 584, 68 Cal.Rptr.2d 205.)

14 “A writ of mandate under Code of Civil Procedure section 1085 is a method for  
15 compelling an agency to perform a legal duty.” (*Association of Irrigated Resident v. San Joaquin*  
16 *Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4<sup>th</sup> 535, 542, 85 Cal.Rptr.3d 590.)  
17 “The trial court’s role in a traditional mandamus proceeding is a limited one. It must determine  
18 whether the agency’s action was arbitrary, capricious, or without evidentiary support, and/or  
19 whether it failed to conform to the law. The trial court may not substitute its judgment for that of  
20 the agency or force the agency to exercise its discretion in a certain way.” (*Ibid.*)

21 “The reviewing court exercises independent judgment in determining whether the agency  
22 action was consistent with applicable law.” (*Id.*, 168 Cal.App.4<sup>th</sup> at p. 543, 85 Cal.Rptr.3d 590,  
23 internal quotation marks and citation omitted.) “Where the issue is one of statutory  
24 interpretation, the question is one of law for the courts, which are the ultimate arbiters of  
25 statutory construction.” (*Ibid.*, internal quotation marks and citations omitted.)  
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1 **III. REQUESTS FOR JUDICIAL NOTICE**

2 The parties have made three separate, unopposed requests for judicial notice, as to which  
3 the Court makes the following rulings:

4 The Court GRANTS petitioners' request to take judicial notice of Exhibit 1 (City zoning  
5 codes and ordinances) pursuant to Evidence Code section 452, subdivision (c).<sup>1</sup>

6 The Court GRANTS petitioners' request to take judicial notice of Exhibit 2 (webpage  
7 information for YMCA) pursuant to Evidence Code section 452, subdivisions (g) and (h), only to  
8 the extent of the YMCA's commonly known activities.

9 The Court GRANTS Wilks/HF's request to take judicial notice of Exhibit 1 (City codes,  
10 ordinances, and regulations) pursuant to Evidence Code section 452, subdivision (c). The Court  
11 GRANTS real parties' request to take judicial notice of Exhibits 2 (IRS online records), 3  
12 (YMCA webpage information), and 4 (recorded documents) pursuant to Evidence Code section  
13 452, subdivisions (g) and (h).

14 The Court GRANTS Calvary Chapel's request to take judicial notice of Exhibits 1 (non-  
15 profit documents), 2 (HF deed of trust), and 3 (YMCA webpage information) pursuant to  
16 Evidence Code section 452, subdivisions (g) and (h).

17 Additionally, the Court takes judicial notice of all relevant sections of City's Municipal  
18 Code, especially since all parties have invited the Court to do so by making extensive reference  
19 to same in their pleadings. (Evid. Code, § 452, subd. (c).)

20 The Court does not take judicial notice of the truth of the contents of documents (except  
21 for ordinances and codes, or commonly known and easily confirmed facts) which are judicially  
22 noticed. (*Poseidon Development, Inc. v. Woodland Lane Estates* (2007) 152 Cal.App.4<sup>th</sup> 1106,  
23 1117-18, 62 Cal.Rptr.3d 59.)

24  
25 **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

26 Based upon the administrative and evidentiary record presented, the Court makes the  
27 following findings of fact and conclusions of law by a preponderance of the evidence.  
28

1           **A.     STANDING**

2           City and Calvary Church argue that Association and Armstrong lack standing to bring  
3 this petition for writ of mandate/prohibition. The touchstone of standing in the context of  
4 administrative mandamus is “beneficial interest.” (Code of Civ. Proc., § 1086.) City and Calvary  
5 Church argue that Association and Armstrong lack a beneficial interest in City’s enforcement of  
6 its building and zoning codes and regulations relating to the operation of the subject property as a  
7 place of worship.

8           Association and Armstrong argue they each have a beneficial interest in this matter as  
9 well as public interest standing. (*Save the Plastic Bag Coalition v. City of Manhattan Beach*  
10 (2011) 52 Cal.4<sup>th</sup> 155, 165-66, 127 Cal.Rptr.3d 710, 254 P.3d 1005.) “The requirement that a  
11 petitioner be ‘beneficially interested’ has been generally interpreted to mean that one may obtain  
12 the writ only if the person has some special interest to be served or some particular right to be  
13 preserved or protected over and above the interest held in common with the public at large.” (*Id.*,  
14 52 Cal.4<sup>th</sup> at p. 165, 127 Cal.Rptr.3d 710, 254 P.3d 1005, internal quotation marks and citations  
15 omitted.) “The beneficial interest must be direct and substantial.” (*Ibid.*)

16           “Nevertheless, where the question is one of public right and the object of the mandamus  
17 is to procure the enforcement of a public duty, the [petitioner] need not show that he [sic] has  
18 any legal or special interest in the result, since it is sufficient that he [sic] is interested as a citizen  
19 in having the laws executed and the duty in question enforced.” (*Id.*, 52 Cal.4<sup>th</sup> at p. 166, 127  
20 Cal.Rptr.3d 710, 254 P.3d 1005, internal quotation marks and citations omitted.) “This ‘public  
21 right/public duty’ exception to the requirement of beneficial interest for a writ of mandate  
22 promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental  
23 body impairs or defeats the purpose of legislation establishing a public right.” (*Ibid.*, internal  
24 quotation marks and citations omitted.)

25           The Court finds that Armstrong has both beneficial interest and public interest standing,  
26 and that Association has public interest standing. Association is an unincorporated association of  
27 citizens, residents, and taxpayers of City, each of whom has a public right and interest in the  
28 enforcement of City’s zoning and building codes and ordinances. Armstrong is a citizen and

1 resident of City, who lives with his family in the neighborhood in which the subject property is  
2 located. Thus, Armstrong has both a beneficial interest and public right/interest standing.

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4 **B. PETITIONERS CHALLENGE A MINISTERIAL ACT**

5 “Ordinary mandamus lies to compel the performance of a clear, present, and ministerial  
6 duty where the petitioner has a beneficial right to performance of that duty.” (*California Assn. of*  
7 *Professional Scientists v. Department of Finance* (2011) 195 Cal.App.4<sup>th</sup> 1228, 1236, 125  
8 Cal.Rptr.3d 328.) “A ministerial act is an act that a public officer is required to perform in a  
9 prescribed manner in obedience to the mandate of legal authority and without regard to his own  
10 judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts  
11 exists.” (*Ibid.*, internal quotation marks and citations omitted.)

12 “In the absence of any discretionary provision contained in the local ordinance or other  
13 law establishing the requirements for a permit, . . . the following actions shall be presumed  
14 ministerial: . . . Issuance of building permits.” (*Prentiss v. City of South Pasadena* (1993) 15  
15 Cal.App.4<sup>th</sup> 85, 91, 18 Cal.Rptr.2d 641, quoting Cal. Code Regs, tit. 14, § 15268, subd. (b)(1)  
16 [discussion pertinent to CEQA mandamus proceedings].)

17 “As a general rule, the building official is required to issue a permit if the application is in  
18 order, the proposed use is one permitted by the zoning ordinance, the proposed structures comply  
19 both with zoning conditions and with the applicable building codes, and any other conditions  
20 imposed on the development or subdivision approval.” (Miller & Starr, *California Real Estate 4<sup>th</sup>*  
21 *Ed.*, § 25:25.) Barring exceptions not present in this case, “. . . the local building official  
22 generally has no discretion to deny a building permit application for a project in compliance with  
23 applicable codes and ordinances, and is said to have a ministerial duty to issue the permit.”  
24 (Miller & Starr, *California Real Estate 4<sup>th</sup> Ed.*, § 25:25.)

25 “Under the State Building Code, the building official must issue a permit for the work ‘as  
26 soon as practicable’ after reviewing the application for conformity with the requirements with  
27 the applicable building laws, and must conduct the review ‘within a reasonable time’ after  
28 receiving the application; if the application does not meet the requirements of the applicable

1 building laws, the building official is required to ‘reject the application in writing, stating the  
2 reasons therefor.’” (Miller & Starr, *California Real Estate 4<sup>th</sup> Ed.*, § 25:25, quoting Cal. Code  
3 Regs., tit. 24, pt. 2, § 105.3.1.) “A failure to approve and issue a building permit where the  
4 application is in compliance with applicable codes and ordinances has been found to deprive the  
5 applicant of substantive due process and give rise to a cause of action under the federal civil  
6 rights law.” (Miller & Starr, *California Real Estate 4<sup>th</sup> Ed.*, § 25:25, citing *Bateson v. Geisse* (9<sup>th</sup>  
7 Cir., 1988) 857 F.2d 1300.)

8 Here, the Court finds that the petition challenges a ministerial act – City’s decision to  
9 receive, process and approve Wilks/HF’s and Calvary Chapel’s application for a building permit  
10 without the need for an application, processing and approval of a development permit  
11 modification. Accordingly, the Court reviews City’s decision to approve the building permit  
12 application of real parties for an abuse of discretion, that is, whether City’s actions were  
13 “arbitrary, capricious, or without evidentiary support, and/or whether it failed to conform to the  
14 law.” (*Association of Irrigated Resident v. San Joaquin Valley Unified Air Pollution Control*  
15 *Dist., supra*, 168 Cal.App.4<sup>th</sup> at p. 542, 85 Cal.Rptr.3d 590.) The Court exercises its independent  
16 judgment in determining whether City’s actions conform to law, that is, the ordinances and codes  
17 governing its approval of Calvary Chapel’s use and occupancy of the subject property as a place  
18 of worship. (*Id.*, 168 Cal.App.4<sup>th</sup> at p. 543, 85 Cal.Rptr.3d 590.)

19 As is explained more fully below, the Court finds that City’s Municipal Code did not  
20 require that City follow the discretionary development permit modification application process in  
21 deciding whether to allow Calvary Chapel to occupy and operate the subject property as a  
22 religious facility or house of worship. Instead, the Municipal Code directed City to do precisely  
23 what it did: process Calvary Chapel’s application for a building permit and determine as a  
24 ministerial act whether the proposed use of the subject property was permitted within the C-1  
25 zone by the existing development permit. The Court rejects petitioners’ argument to the  
26 contrary.



1           **C.     THE CODES & ORDINANCES CITY WAS REQUIRED TO FOLLOW**

2           As is pertinent to the instant petition, the following land use, development and building  
3 codes and ordinances enacted by City provide as follows:

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5           **Section 9-4.2107. “Findings for Approval of Entitlements for Permitted Uses”**

6           “‘It is presumed that a use allowable by development permit, hillside planned  
7 development permit, residential planned development permit, or trailer park  
8 development permit is appropriate at any location within a zone in which it is,  
9 subject to the limitations of the applicable sub-zone (e.g., density subzone in the  
RPD zone) and overlay zone (e.g. Protected Ridgeline), and if the applicable  
findings set forth in Section 9-4.2803(c) of this chapter are made.”

10          “Such a presumption is not applicable to special use permits. It is recognized that  
11 uses listed as special uses may not be appropriate at every location within a given  
12 zone because of the nature of the use. A special use permit may only be approved  
13 if the decision-making body makes all of the applicable findings in Section 9-  
4.2803(c) of this chapter.”

14          **Section 9-4.202. “Definitions”**

15          **§ 8170.14:**

16                 “‘Club’ shall mean any building or premises used by an association of  
17 persons, whether incorporated or unincorporated, organized for some common  
18 purpose, but not including a group organized solely or primarily to render a  
19 service customarily carried on as a commercial enterprise.”

20          **Part 1, Ord. 1449-NS:**

21                 “‘Religious Facility’ shall mean a permanently located building used for  
22 public or private purposes, including prayer, worship, weddings, or special  
23 services. Such building shall be fully enclosed with walls (including windows  
24 and doors) and shall conform to applicable legal requirements affecting design  
and construction.”

25          **Section 9-4.2103. Matrix Key.**

26                 “‘The following designations within the cells of the matrices presented in  
27 Sections 9-4.2104 and 9-4.2105 denote whether a listed use is permitted in a  
28 given zone and if so, what type of entitlement application is required and the level  
of authority that is required I order to render a decision on the application.”

1                   Following this statement, the Municipal Code contains the Matrix Key to  
2 which section 9-4.2103 refers. That Matrix Key is not reproduced herein.

3  
4                   **Section 9-4.2801. Variances: Authorized.**

5                   “Variances from the provisions of this chapter shall be granted when,  
6 because of special circumstances applicable to the property, including size, shape,  
7 topography, location, or surroundings, the strict application of the provisions of  
8 this chapter deprives such property of privileges enjoyed by other property in the  
9 vicinity and under identical zoning classifications.

10                   Any variance granted shall be subject to such conditions as will assure that  
11 the adjustment thereby authorized shall not constitute a grant of special privileges  
12 inconsistent with the limitations upon other properties in the vicinity and zone in  
13 which such property is situated.

14                   The applicant shall have the burden of proving the probative facts upon  
15 which he relies to prove the existence of such ultimate facts. No written findings  
16 of such ultimate facts need be made by the Commission unless the applicant  
17 requests such findings before the Commission renders its decision.

18                   A variance shall not be granted for a parcel of property which authorizes a  
19 use or activity which is not otherwise expressly authorized by the zoning  
20 regulations governing the parcel of property.”

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22                   **Sec. 9-4.107. City project review.**

23                   “‘The City Council finds that the use, size, design, budget, site and  
24 construction plans for public buildings, real property, or facilities to be built or  
25 owned by the City of Thousand Oaks should have a formal City permit issued for  
26 such and have received a Planning Commission decision approving or denying  
27 such permit and project. No review by the Planning Commission, administrative  
28 officer or other board or commission shall be required by this title for other City  
29 facilities or projects such as, but not limited to, structures not open to the general  
30 public, water and wastewater lines, water facilities, wastewater treatment plan  
31 additions or modifications, installation of signs, street work, or minor public  
32 works projects.”

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34                   **Sec. 9-4.1804. Multi-family residential and non-residential exceptions.**

35                   “Notwithstanding any of the provisions of this Code, the Community  
36 Development Director or designee may approve the following modifications to  
37 existing multi-family residential and non-residential projects through a Design  
38

1 Review application or zone clearance without hearing or notice and without the  
2 need for modification to any underlying permit:

3 (a) Repainting of structure(s) using the same color(s), or colors allowed  
4 within the Architectural Design Guidelines Resolution;

5 (b) Replacement of windows and doors with those of the same general  
6 type and design, or the addition of new windows and doors in compliance with  
7 the Architectural Design Guidelines Resolution;

8 (c) Reroofing without a change in roof elevation;

9 (d) Reroofing or minor roof changes with roof materials consistent with  
10 the project entitlement conditions, or as allowed by the Architectural Design  
11 Guidelines Resolution;

12 (e) Addition, modification or repair of trash enclosures, freestanding  
13 walls, lighting standards, flag poles and/or other miscellaneous improvements on  
14 the site;

15 (f) Modifications to parking areas within the scope authorized by Section  
16 9-4.2404(f)(2) of this chapter;

17 (g) Any other minor exterior building and site improvements consistent  
18 with the overall building and site design and the provisions of the City's  
19 Architectural Design Guidelines Resolution.”

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**D. CITY'S INTERPRETATION OF ITS DUTIES CONCERNING  
CALVARY CHAPEL'S BUILDING PERMIT APPLICATION  
CONFORMS TO THE MUNICIPAL CODE AND  
IS REASONABLE, NOT ARBITRARY OR CAPRICIOUS**

In opposition to the petition, City presented the declaration of Mark Towne, the Director of City's Community Development Department, the agency responsible for overseeing and implementing City's General Plan, as well as those provisions of the Municipal Code pertinent to development and building permits. Additionally, City submitted the declaration of Stephen Kearns, the Planning Manager in City's Community Development Agency. Both declarants had direct supervisory and oversight responsibilities over City's handling of the application of Wilks/HF and Calvary Chapel for a permit to occupy and operate a religious facility or place of worship at the subject property. Thus, they qualify as knowledgeable persons with regard to

1 City's actions and records concerning the permit application at issue here. Mr. Towne has direct  
2 personal knowledge of and was the City representative who authorized the ministerial approval  
3 of the building permit application of Wilks/HF and Calvary Chapel.

4 City, through Towne and Kearns, interprets the above-quoted excerpts of City's  
5 Municipal Code to authorize what is referred to as a "zone clearance." A "zone clearance"  
6 "refers to the process of confirming the proposed use is permitted in the underlying zone and any  
7 proposed improvements are consistent with the applicable zoning standards and conditions of  
8 approval for the underlying permit." (§3 Kearns Decl.) Towne declares that he personally  
9 approved the application of Wilks/HF and Calvary Chapel for a building permit utilizing the  
10 "zone clearance" protocol; the use of the subject property as a religious facility was approved in  
11 the C-1 zone under the existing development permit. Both Kearns and Towne declare that  
12 Wilks/HF and Calvary Chapel had a right to issuance of the building permit under the Municipal  
13 Code. Kearns described five other instances in which City used the "zone clearance" protocol for  
14 issuance of building permits to occupants of properties in which the use had changed but was  
15 still approved in the C-1 zone.

16 Petitioners argue that, because religious facilities are identified in the Matrix Key with  
17 the letters "DP," it necessarily follows that Wilks/HF and Calvary Chapel were required to apply  
18 for a development permit modification. There is no dispute that the initials "DP" mean  
19 development permit. Towne and Kearns point out, however, that City identifies the initials "DP"  
20 in those sections of the Matrix Key concerning clubs and religious facilities to indicate that they  
21 are permitted uses to the extent they are approved in an existing development permit. Towne  
22 and Kearns declare that a religious place of worship is such a permitted use in the C-1 zone  
23 identified in the existing development permit. Thus, City argues, Wilks/HF and Calvary Chapel  
24 were not required to seek a modification of the existing development permit in order to occupy  
25 and operate the subject property as a religious facility. Instead, Wilks/HF and Calvary Chapel  
26 were entitled as a matter of right to a building permit in order to occupy and operate the subject  
27 property in a manner already approved under the existing development permit in the C-1 zone.

1 Further, the Court rejects petitioners' argument that the change from the use of the  
2 subject property as a YMCA club to its use as a church is so major as to require either a special  
3 use permit or a modification of the existing development permit. This argument is not supported  
4 by the above-quoted sections of the Municipal Code as written and implemented by City.  
5 Pursuant to the Municipal Code, so long as the subject property is approved for use as a church  
6 (religious facility) within the C-1 zone – it is – then the City did what the Municipal Code  
7 required it to do: process real parties' application for a building permit. The change in use from  
8 a club to a church is minimal at best. Both uses involve adults and children coming to and going  
9 from the subject property, activities and events indoors at the subject property, and parking  
10 adjacent to the subject property. The change in use did not increase in any appreciable way the  
11 burden of such use on the shopping center or the neighborhood.

12 The Court concludes that City's interpretation of the above-identified excerpts of the  
13 Municipal Code is reasonable, and that City's ministerial decision to approve a building permit  
14 for the subject property to be occupied and operated as a religious facility by real parties was not  
15 arbitrary or capricious.

16  
17 **E. ORDER DENYING PETITION**

18 For the above reasons, the Court enters its ORDER that the petition of Association and  
19 Armstrong for a writ of mandamus and/or prohibition directing City to rescind the building  
20 permit issued to real parties Wilks/HF and Calvary Chapel, and compelling said real parties to  
21 apply for a modification to the existing development permit, is DENIED.

22 The Court hereby enters JUDGMENT on the petition in favor of respondent, City, and  
23 real parties, Wilks/HF and Calvary Chapel, and against petitioners, Association and Armstrong.  
24 Costs are awarded to respondent and real parties, and against petitioners, to be determined by the  
25 timely service and filing of a cost memorandum pursuant to the Code of Civil Procedure and  
26 California Rules of Court.<sup>2</sup>

27 The Clerk shall give notice of this Tentative Decision and Proposed Statement of  
28 Decision. This Tentative Decision and Proposed Statement of Decision and Judgment shall

1 become the Court's Final Statement of Decision and Judgment in this case, subject to the parties'  
2 rights to timely object and make further proposals concerning same pursuant to California Rules  
3 of Court, rule 3.1590. The Court will issue a Final Statement of Decision and Judgment pursuant  
4 to the procedure described in rule 3.1590. Thereafter, the Court shall direct counsel of record for  
5 respondent City to serve and file a proposed Judgment consistent with the Court's Final  
6 Statement of Decision and Judgment.

7  
8 Dated: NOV 06 2020



9 MATTHEW P. GUASCO  
10 Judge of the Superior Court  
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25 <sup>1</sup> The parties have adopted the confusing practice of identifying the exhibits accompanying their  
26 requests for judicial notice with numbers beginning with the number "1." Thus, there are  
27 different documents labeled with the same exhibit number (e.g., petitioners' exhibit 1 and real  
28 parties' exhibit 1.)

<sup>2</sup> As a result of the Court's ruling, order and judgment, the RLUIPA claims asserted by Wilks/HF  
and Calvary Chapel are rendered moot.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

SHORT TITLE: DOS VIENTOS VS. CITY OF THOUSAND OAKS	CASE NUMBER: 56-2018-00510555-CU-MC-VTA
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CLERK'S CERTIFICATE OF SERVICE BY MAIL

I certify that I am not a party to this cause. I certify that a true copy of Tentative Decision and Proposed Statement of Decision was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 11/06/2020.

Clerk of the Court,

By: *Lori Jacques*  
Lori Jacques, Clerk

ROBERT L GLUSHON  
LUNA & GLUSHON  
16255 VENTURA BOULEVARD  
# 950  
ENCINO, CA 91436 US

MARY E MCALISTER  
CHILD & PARENTAL RIGHTS CAMPAIGN INC.  
P.O.BOX 637  
MONROE, VA 24574 US

TRACY M NOONAN  
2100 THOUSAND OAKS BOULEVARD  
THOUSAND OAKS, CA 91362-7610 US

JAMES A LONG  
25026 LAS BRISAS ROAD  
MURRIETA, CA 92562 US

KRISTINA J WENBERG  
P.O.BOX 540774  
ORLANDO, FL 32854 US