

AIDE MEMOIRE

Set Value: only to be evaluated at a cost of living adjustment.

We will not agree to any value.

Proposed to leave the churches alone.

Hung up on the value

Other churches exempted from taking and not asked a set value,  
why St. Sarkis?

Nov 6, 1990

~~1/15~~ ~~Page~~

To Discuss  
~~Notes to file~~

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living adjustment

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Proposed to leave the  
Churches alone

Hang up on the Value

Other churches exempted  
from taking & not asked  
for a set value - why St. Lukes

SHAVASP HANESIAN

*Attorney at Law*

*File*

631 MAIN STREET  
NIAGARA FALLS, NEW YORK 14301  
TELEPHONE 282-6179  
AREA CODE 716

September 26, 1990

Lee Simonson, Chairman  
Niagara County Legislature  
Box 57  
Lewiston, N.Y. 14092

Re: Mega Mall

Dear Mr. Simonson:

After reading the enclosed letter and accompanying data please circulate it to the legislators at the next session of the Niagara County Legislature for their information.

Very truly yours,

*Shavasp Hanesian*  
SHAVASP HANESIAN

SH/lah  
Enclosures

Cc: St. Sarkis Armenian Apostolic Church  
St. Hagop Armenian Apostolic Church  
Larry Krizan et al  
David Bauldauf  
William Feder  
City Council Members  
Senator John Daly  
Assemblyman Joseph Pillittere  
Niagara Gazette Editorial Board



# City of Niagara Falls, New York

Office of the Mayor

MICHAEL C. O'LAUGHLIN  
Mayor

July 24, 1990

Board of Directors  
St. Sarkis Armenian Church  
St. Hagops Armenian Church

Dear Members of St. Sarkis and St. Hagops:

Over the last several months, the City of Niagara Falls, in its effort to secure a location for the Mega Mall and the financial and employment benefits which would result, has had the opportunity to meet with representatives of both the St. Sarkis and St. Hagops churches. The following two conditions have been accepted by the City as non-negotiable by the Armenian community and serve as the basis for the attached proposal.

1. No portion of the Armenian land must be touched.
2. The Armenian Community has no interest in a buy out, as all land must stay in the possession of the Armenian community for religious purposes only.

The City also understands that if the churches are not disturbed, the congregations are willing to enhance the visual aspects of the property and are willing to support the development of the mall.

It must be understood that this proposal is not firm, but must be in place prior to further negotiations with other principal parties. Should the other third parties fail to participate, the City may be forced to re-evaluate its proposal to the Armenian churches for the overall good of the community.

Sincerely,

MICHAEL C. O'LAUGHLIN  
Mayor

CITY OF NIAGARA FALLS PROPOSAL TO  
ST. SARKIS AND ST. HAGOPS CHURCHES  
RELATIVE TO THE MEGA MALL PROJECT AND  
CONTINGENT UPON THIRD PARTY AGREEMENTS

1. The City shall . . . .
  - a. Agree to leave the property of both churches undisturbed by eminent domain actions.
  - b. Agree to provide both churches with reasonable parking and access in perpetuity so long as the property is used for primarily religious purposes.
2. St. Sarkis and St. Hagops shall . . .
  - a. Agree to retain the respective ownerships and to use the properties only for religious purposes.
  - b. Agree that in the event that one or both of the properties shall not be used for primarily religious purposes, then the subject property or properties, shall be sold only to the City of Niagara Falls at a price of \$250,000 per property fixed at January 1, 1991, and escalated by a percentage equal to the consumer price index annually, until the time of sale.
  - c. Agree to enhance the esthetics of the properties to the maximum feasible degree.
  - d. Agree to define religious purpose as:
    1. All Christian worship services of the Armenian culture.
    2. All religious or cultural celebrations and observances of the Armenian culture and Christian beliefs.
    3. All educational or cultural programs related to the Armenian culture or Armenian Christian belief.
3. The City, St. Sarkis, and St. Hagops agree to have their respective legal counsels meet to construct a formal document setting forth this agreement in legally binding form after the City shall signal that the referenced third party agreements have been secured (respective liability questions will also be addressed).

OUTPARCEL 4

HOTEL  
150 ROOMS  
6 FLOORS

SERVICE

NEW WALL

X 573  
ST. HAGOP CHURCH  
& COMM. CENTER

ST. SARKI'S  
CHURCH

X 578

UPPER LEVEL  
PARKING

UPPER LEVEL  
ENTRANCE

UPPER LEVEL  
SERVICE AREA

MID-LEVEL  
PARKING

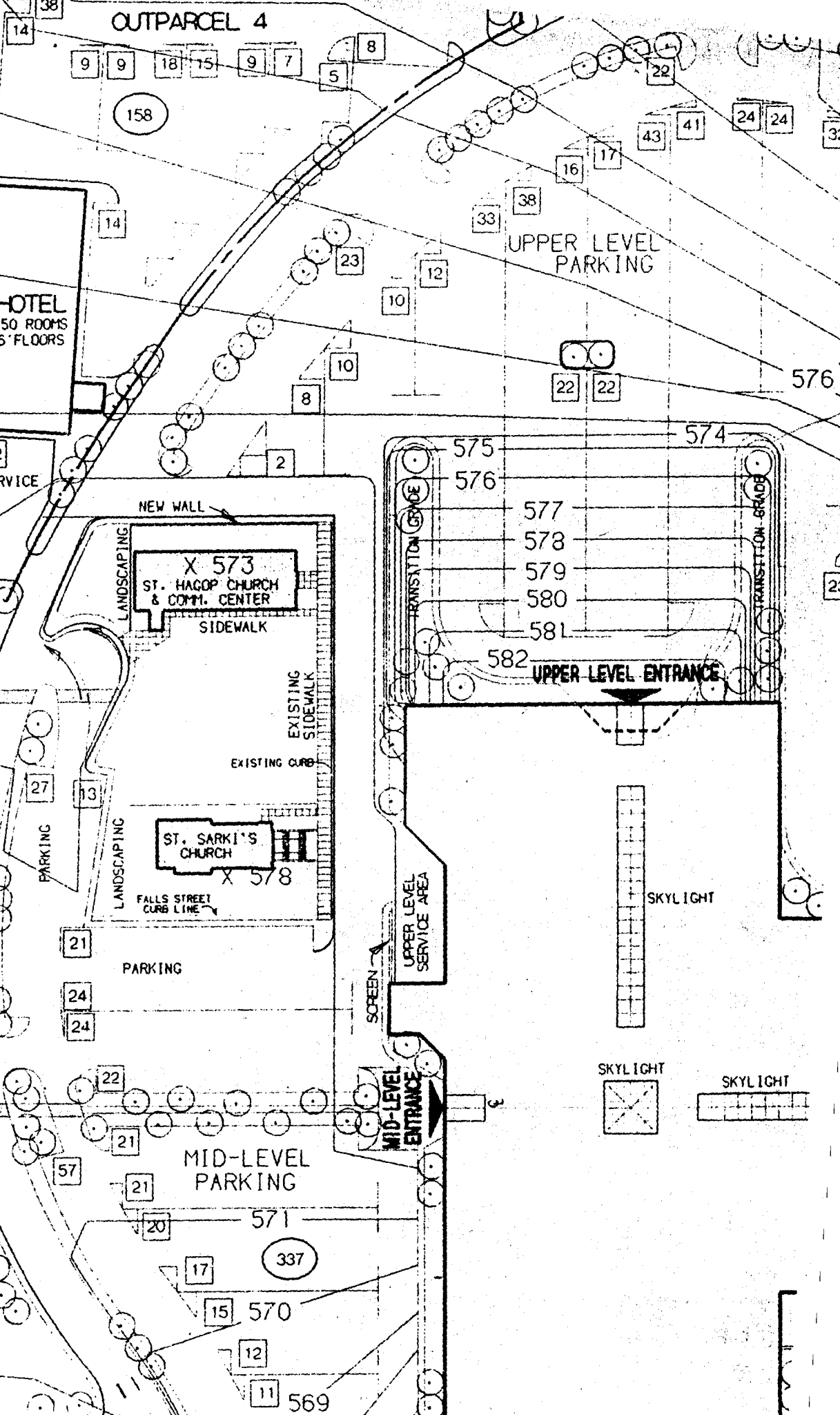
MID-LEVEL  
ENTRANCE

SKYLIGHT

SKYLIGHT

SKYLIGHT

JAY STREET

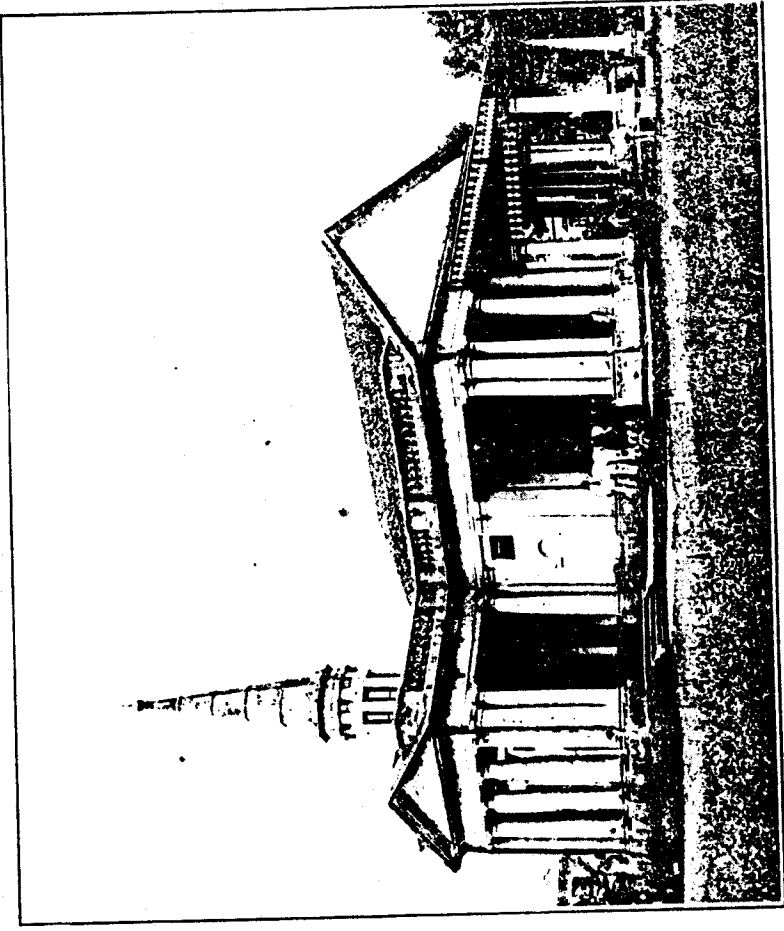




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Ստանուց հասնող  
 Կառնայ Միտիկան  
 Կառնայի ստանու-  
 վը:  
 Եղ լայնը Մաս-  
 Տիպիկը անկի  
 ք կանոնադրական  
 լանտիկի կրկնը  
 ստանուցիկը Մի-  
 բնան սպառչի  
 Կարիկերան:

Կր լուկ տրամ-  
 կի կրկնը լոկ ճե-  
 ան, ճափայի մե-  
 րանակն սպառչի-  
 կն տրամայի կեղև  
 կի կրկնը լոկ ճե-  
 րկնի մեկ նամու-  
 ճիկ ճանկու ճառ-  
 անը, գաղտնիք մը  
 անու ճանդ անի  
 Կանոնադրական ճա-  
 րիկը կրկնայ մա-  
 ճի, որանյով լոկու-  
 անյան Միտիկան  
 անը.— Եր գաղ-  
 ճանի, կր կրկն ճ.  
 Կրկն կրկն, սեղա-  
 կր կրկն կրկն Կ  
 Միտիկանայի ճեկ  
 կն ուղղած մեկ ճա-  
 անը: Թեպետև կի  
 ճեկնիկ կրկն, կր-  
 ճագան և տրամա-  
 նան՝ տանկեկով որ  
 անիկը տրամայի մի  
 լայնատրամ լայն-  
 արձանի ճառու-  
 անիկն, որի սպառ-  
 ճագանի Կ, ճառու-  
 ճի ճայ ճագանիկի



ՍՈՒՆԿՐՈՓՈՐԻ ՀԱՅԿՐԱՆՆԵՐԻ ԵԿԵՂԵՑԻՆ

SHAVASP HANESIAN

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NIAGARA FALLS, NEW YORK 14301  
TELEPHONE 282-6179  
AREA CODE 716

September 26, 1990

St. Sarkis Armenian Apostolic Church  
300 Ninth Street  
Niagara Falls, N.Y. 14304

St. Hagop's Armenian Apostolic Church  
322 Ninth Street  
Niagara Falls, N.Y. 14304

Re: Mega Mall

Ladies & Gentlemen:

I met this morning to further discuss the Mayor's July 24, 1990, proposal to St. Sarkis and St. Hagop.

This meeting was an extension of, and supplementary to, meetings that various parish members have had with David Baldauf, a representative of Benderson Niagara Associates, during July and August, and telephone discussions that I have had with James Engel, Director of Dept. of Economic Development, on August 31, September 14, and September 20, 1990. In most of my discussions with Mr. Engel we talked about the Mayor's proposal in general, and among other things, I touched upon the continued need of City services and street access for the churches, and its religious and cultural life.

Present at the meeting were Larry Krizan, Coordinator, Development Services; City Manager Mark Palesh; James Engel; William Clark, Director of Community Development; David Baldauf, and the undersigned. The meeting commenced at 11 A.M. and lasted until 1:10 P.M. Mr. Palesh left early, but the others were present to the end. The meeting ended with Mr. Krizan's expression of need to meet with the council members



(trustees) of both churches.

The meeting commenced with a positive note when Mr. Baldauf responded to my queries about drop-off areas as depicted in a new map which had been prepared showing the mall modifications that would be made if the Mayor's proposals were accepted. In answer, Mr. Baldauf said that the sketch was obsolete and that a new design allowed for the continuance of Ninth Street, in part. His exact words were, "You've got your street, Ninth Street is untouched." The large map he had of the Mega Mall was segmentally photocopied, in pertinent part, which I enclose for your information. As the discussion continued, however, this concept of the street being untouched became less clear. Apparently it has not yet been resolved whether it should remain as a city street or as the functional equivalent of a street which would be a part of the Mega Mall. While dimensions of the Benderson version of Ninth Street are not given, the scale of the map, viz., 100' = 1", should give you an idea of its width. Under the Benderson proposal parking would not be allowed on the street, but there would be Mall parking and ingress and egress from the Mall to the street. This would include car line-ups for funerals, weddings, etc.

As for the rest I expressed the umbrage that Armenians had taken with the choice of language in the Mayor's proposal that the properties be used for "religious purposes only". The offensive implication was that we might use it for non-religious purposes, and that the City wanted a contract type guaranty that such would not be the case. I simply pointed out: —

1. That the churches would lose real property tax exempt status if these properties were put to non-religious purposes, and that the City held a heavy hammer here, more effective than any breach of contract action.

2. That we had already agreed to only conduct religious related activities in our compact with the State of New York when we were enfranchised and chartered: —

(a) The **Religious Corporation Law** is very specific in these premises, and very clearly states that the Trustees of a church "shall not use [church] property or revenues for any other purpose [than religious] or divert the same for such uses":

"The **trustees of every religious corporation** shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation, or, providing the members of the corporation at a meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by said corporation or in connection with it, or with the denomination, if any, with which it is connected; and **they shall not use such property or revenues for any other purpose or divert the same from such uses...**"

(emphasis added; see **Religious Corporation law Section 5, General powers and duties of trustees of religious corporations**).

(b) There is yet another hammer. The **Not-For-Profit-Corporation Law** applies to all religious corporations. Ibid. Section 2-b (1). If there is a conflict between the two laws the **Religious Corporation Law** prevails. See **Religious Corporation Law, Section 2-b(1) (a); Rector, Church Warden and Vestrymen of St. Bartholomew's Church in the City of New York v. Committee to Preserve St. Bartholomew's Church Inc., 84 AD2d 309 (1st. Dept.)**

(1982), stay denied 56 NY2d 592 (1982), appeal dismissed, 56 NY2d 645 (1982).

Furthermore, every religious corporation is a Type "B" Not-For-Profit Corporation. (A Type "A" or "B" corporation may be formed only for a "non-business purpose". As examples, a Type "A" purpose would be "social" or "fraternal", or "political", etc.; Type "B" purpose would be "religious", or "literary" or "scientific", etc. Type "C" can be formed for "any lawful business purpose" that has a "lawful public or quasi-public objective". The City's N.F.C. Corporation is an example. Type "D" can be formed for either a non-business or business purpose combining the purposes of Types A, B, and C).

If any Type "B" Not-For-Profit Corporation, which includes every Religious Corporation, deviates from its stated "non-business purpose" its activity would be "ultra vires" (beyond the powers) of a corporation. It could have its charter annulled. Even if a court were to approve of a transfer of property to another entity for a "non-religious purpose" the defense of ultra vires would be unavailing "in an action or special proceeding by the attorney-general to annul or dissolve the corporation or to enjoin it from the carrying on of unauthorized activities". **Not-For-Profit Corporation Law, Sect. 203, generally, and para. (3).** Stated differently, a business activity sanctioned even by a "judge, court, or administrative department, or agency" would not necessarily defeat proceedings to enjoin the activity or quash the corporate charter brought by the attorney general.

These are pretty strong antidotes to the poison of non-religious activity.

The same requirements were not insisted on from St. Mary's, St. Peters, First Presbyterian, and will not now be insisted on from Holy Trinity, or New Hope Baptist Church, because those situations are "different". They were never in the project area. Hence the differential treatment. And we should not mind that Holy Trinity is deeper into the project's perimeter than the Armenian churches are. Never having been embraced by the project's compass they are exempt from such requirements, whereas, our churches which are on the periphery of the project, having been first cursed by such embrace, must now extricate themselves only by agreeing to such a demeaning covenant.

The City officials, from the Mayor on down, can't seem to grasp that Armenians merely want to be treated like others similarly situated. In fact, constitutional decisions make it plain that equal protection means just that, i.e., all in a class must be treated equally. It was the City that arbitrarily put us in the project even though Holy Trinity and New Hope Baptist Church also were bounded by the Quay Street-Niagara Street-Portage Road-Buffalo Avenue perimeter. The City officials do not understand the Armenian psychology, the psychology of a people who have been treated differently with regularity.

The City officials gloss over the Holy Trinity and New Hope Baptist situations and point out that two churches — Jehovah's Witnesses Kingdom Hall and Apostolic Church (I don't know the name) — are moving from the area. The former church is housed by the onetime 14th Street Library Branch (I read my first book there and it was a mistake of major proportions for the City to close it); the latter church is housed by a Mom & Pop storefront type building on Niagara Street. If they have chosen to leave why must we explain it? That should be their concern. We have insisted on staying.

Nevertheless, the City does have some concern. If the property is

not used for religious or cultural purposes the City wants the property to go to them or Benderson, not some other entrepreneur. This is a legitimate concern, but a needless one. I have told Jim Engel, and others about how the Armenians tenaciously cling to their churches. The reason is not hard to discern. Generally, we have nothing else left of our cultural past. The Church is everything. Even when an Armenian loses faith he still relates to his Church. Much more so, for example, than the materialist philosopher George Santayana who still remained emotionally attached to the Catholic Church in Spain.

The American writer, William Saroyan, once observed that if two Armenians meet anywhere in the world they will form a group, and then, a new community. In Singapore we have a church that was founded in 1835 by Armenian immigrants mostly from India and the Molucca Islands. In April of 1986 (the time of my last information) there were around 30 Armenians living in Singapore. Five families! The Armenian Church of St. Gregory, which is the name of the Singapore Church, is being supported by five families! This is a church which is in a busy part of Singapore, right across from the British Embassy. (Photo enclosed.)

We Armenians, too, have saints and sinners. Even with the clergy we have sinners. (Our divine liturgy commences with the same confession of sins by the celebrant priest as with other Christian liturgies and masses.) But we have no Elmer Gantrys, that character created by Sinclair Lewis in his 1927 critical novel of that name which depicted the religious shams and hypocrisies in the United States. In the early 1960's the book was made into a movie starring Burt Lancaster. Gantry was a college football hero and a half-educated, vulgar, and dissimulating clergyman. If Gantry were a real person, and alive today, he would be a TV evangelist and worth millions. As you know, Armenian priests do not run their churches like Elmer Gantry, or like other well dressed,

sparkling ecclesiastics, which the prophet Jeremiah would roundly condemn. Armenian priests are learned and do not profane the altar of God. Sins are confessed before the altar, but none are committed there. Famed for commerce, Armenians do not traffic in their churches.

That part of the meeting addressed to non-religious activities ended on a more positive note, with the prospect of expressing City concepts in more "non-sensitive language". Mr. Krizan and Mr. Engel collaborated to say that "if the active religious services (or cultural activity) would cease, we would not oppose language that would accept the church buildings and properties as a religious monument". In other words, if the Saroyan vision did not materialize and no two Armenians could be found in Western New York, the properties could remain even though desolate and unpeopled as the Cathedral at Ani.

Mark Palesh left the meeting early. He felt that I was making an issue of value. On the contrary. It was the City who injected value into the proposition. It was I who rejected it as arbitrary on the very day that it was proposed. The value judgment should be left to future generations. What a pity that some feel that we will reap any benefit from a location our parents selected. Perish the thought that their children, and grandchildren, should enjoy the premises, while their great grandchildren, and so on, might benefit from it in some added way, after the founders and their children had experienced the worst of times — told and untold numbers of burglaries, vandalism, and other acts of anti-social conduct. Some of you may remember my godfather who was mugged in the sacred confines of St. Sarkis. Some of you may also remember that this is the same church which was incorporated by Edward Mooradian, a son of the first Armenian immigrant in Niagara Falls, and father of Carl Mooradian, the present Corporation

Counsel; Kerrigan Sarkissian, a former Treasurer of the City of Niagara Falls, and Leo Dardarian, a prominent restaurateur, who with Samuel Friedman, operated Louis Restaurant, and concessions on Goat Island and Beaver Island. Perish the thought that we should benefit from the foresight of such contributors to the life of our City.

The major hang-up we had was on the concept of future transfer and value. I am not going to attempt any delineation of this except to say that the City is adamant that there be an agreement to sell only to them, and at a value that is fixed now. My position as stated was that the future should be handled by future generations. There was even a suggestion made that I was too close to the life of the churches, that I should have only an input as a parishioner, and not as an attorney. Perhaps this is true. Sometimes a professional detachment, so necessary for a balanced analysis, is lost when an attorney is too close to the core of the case. But then who has lastingly cared for Armenian causes but Armenians? One could deny the Armenian genocide with impunity, even favor. In vain do we prove and prove again, and again, of "the great conflagration that consumed Armenia", to use Toumanian's elegiac comment. In vain do we protest differential treatment, as our current church problems demonstrate. In Canada to deny the Jewish holocaust is a crime. (It is a crime!) Recently, in France, where it is also a crime to deny that the holocaust existed, a University professor in Lyons was discharged because he questioned the existence of Nazi gas chambers. See **Niagara Gazette, July 19, 1990**, p. 12A.

In contrast compare the recent book review of David Corn in **The Nation**, May 28, 1990, entitled **Report From the Inferno**. The book being reviewed was **The Slaughterhouse Province; An American Diplomat's Report on the Armenian Genocide, 1915-1917**, by Leslie Davis, the U.S.

Consul in the province of Harput, which was the scene of some of these nightmarish massacres. The book was edited by Susan Blair who has received threats to her life. According to David Corn when he called Morris Amitay, a former head of the American Israel Public Affairs Committee, who was working against Senator Dole's bill to commemorate the 75th Anniversary of the Armenian Genocide, Amitay asked rhetorically, "Genocide, what genocide? Most people look at genocide as a concerted, determined, attempt to eliminate a race of people. And some, presented with the facts — I don't know if they're true — say that the Armenians...were not singled out. So was it genocide? It's difficult to determine." **The Nation** at page 748.

Perhaps Mr. Amitay should read deeper into history. Were he anything but a lobbyist, i.e., someone with a biased view, he might be dismissed as the French professor was. At Nuremberg it was ascertained, as closely as these catastrophies can be ascertained, that 12 million human beings died in the Nazi concentration camps. Even not counting the millions who were field casualties, or those that died of slave labor, these are considerable numbers. Of those 12 million people, 6 million were Jews. On August 22, 1939, Hitler said, "I have given orders to my Death Units to exterminate without mercy or pity men, women and children belonging to the Polish speaking race. It is only in this manner that we can acquire the vital territory which we need. **After all who remembers today the extermination of the Armenians.**" (emphasis added).

Certainly not Mr. Amitay who doesn't seem to know what a genocide is. That Hitler meant to eliminate the Polish nation for the realization of pan-German concepts of **lebensraum** (living space) with a thorough-going geopolitical war policy of **drang nas osten** (drive on the east) came as a surprise only to people, who like Mr. Amitay, have a limited sense and grasp of history.



Being Anti-Armenian just does not have the same cutting edge as Anti-Semitism does. Perhaps it is that the Christian nations of the West do not feel guilt or remorse about the Armenian genocide as they do for the Jewish genocide that followed centuries of Anti-Semitism. But those Americans like Mr. Amitay should feel guilty, at least, for letting down the American Ambassador to Turkey, Henry Morgenthau, and the promise that he made to Talaat Bey, the Turkish Interior Minister who issued a similar order of extermination of the Armenian people. Our Ambassador told Talaat that the American people "will never forget these massacres":

"After this war is over you will face a new situation. You say that, if victorious, you can defy the world, but you are wrong. You will have to meet public opinion everywhere, especially in the United States. **Our people will never forget these massacres.** They will always resent the wholesale destruction of Christians in Turkey. They will look upon it as nothing but wilful murder and will seriously condemn all the men who are responsible for it. You will not be able to protect yourself under your political status and say that you acted as Minister of the Interior and not as Talaat. You are defying all ideas of justice as we understand the term in our country. (See, **Morgenthau, Ambassador Morgenthau's Story, Doubleday, Page & Co., 1918,** p. 334, emphasis added.)

On April 17, 1985, I sent this same quote in a letter to Congressman LaFalce. A copy of the letter is enclosed. Congressmand LaFalce has never answered that letter.

Perhaps the suggestion is right. Perhaps I am too close to the "Armenian question", as the Mayor has distastefully phrased it. Perhaps you should get another lawyer for professional advice so as to benefit

from a detached analysis. Abilities are there to match mine, but not the concentrated and dedicated concern.

One last note, and a caveat. The Mayor's July 24, 1990, proposal is now firm. The last paragraph of that letter, giving the City an out, is now obsolete. The caution is that, whereas, the City will be bound by an agreement, assuming its constitutional viability, and worth under contract law, or that it does not contravene public policy, other public entities, or agencies exercising the power of eminent domain still can take the properties. In this event, we are assured, we would not be "bound" by our saving contract with the City and its evaluation of the properties. Since someone else will extinguish our cultural existence, we would be free from the City's evaluation.

Please arrange a new meeting with the **Joint Committee to Save Our Churches** and Mr. Krizan and associates. If value is to be discussed a further meeting can be held with the trustees of each church. A separate meeting may become necessary since the two properties have many physical dissimilarities — one lot versus 3 lots, block and brick construction, basement vs. no basement, square footage, size, etc. The City really did an arbitrary job of evaluation. The plaint that they were not allowed in the churches is simply not true. They inspected the interior of St. Hagop's, and were told by St. Sarkis to await my return from Spring vacation. Moreover, the churches are open to the public. Walk in when divine liturgy is being celebrated and you see the church. Attend a function such as a picnic and you see the other part of the church. Remember when the Mayor, and some other forgetful politicians, made it a practice of honoring their "Armenian friends" when votes were implicitly solicited by conferring on us the grace and benefit of their presence? We still have friends. Friend or foe all parts of the churches are accessible and in plain view. The

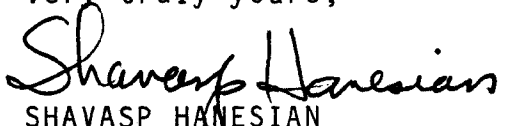
only **sanctum sanctorum** is the altar, which however, is in plain view during services.

Value is the second plateau of discussion and thus will not play a role unless we leave the first plateau of discussion, which is, shall we agree to evaluate the properties now and be treated differently than Holy Trinity, New Hope Baptist and the other churches earlier named? I resisted and did not move off the first plateau, except to refute misconceptions. The group at the meeting regarded me as a "hardliner" and thought that I was not reflecting the common will of the churches.

Do me the favor of meeting with Krizan and associates and please feel free to consult other lawyers. I won't feel offended. I will be there. Laury will too. The meeting can be held at night in one of the church facilities.

Perhaps I am too close. This letter started out to be a short report and just grew. It is good that we remember our tragic history, but the lesson of all history is that man overcomes not by the naked remembrance of agony, isolated in parochial despair, but by the lifting up of tormented hearts with tempered reason, so that others may also see.

Very truly yours,

  
SHAVASP HANESIAN

SH/lah  
Enclosures

Cc: Larry Krizan, et al  
David Baldauf  
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