

## Building in the Western Wall Plaza, Jerusalem

### Issues of Safety, Access and Amenities Versus Comprehensive Planning and Historic Preservation in Sensitive Public Places

#### Introduction

"And Jacob awaked out of his sleep, and he said: "surely the Lord is in this place; and I knew it not." And he was afraid, and said: "How full of awe is this place! This is none other than the house of God and this is the gate of heaven." (Genesis, chapter 28 verses 16-17).

Biblical commentators locate the place of Jacob's dream as the future site of the Temple built by King Solomon in Jerusalem and the former site where Abraham prepared to sacrifice Issac.<sup>1</sup>

This paper discusses a plan to build in the area of the Western Wall Plaza<sup>2</sup>. This place is indeed awesome. It is likely one of the most sensitive and emotionally and religiously charged places in the world.

The Western Wall, also known as the Wailing Wall, the Kotel, or the Burag Wall, is located in the Old City of Jerusalem at the western foot of the Temple Mount.

It is a remnant of the retaining wall of the Temple Mount built by King Herod around 19 BCE. The Temple Mount /Harm e Sharif itself is connected to Jewish, Islamic and Christian heritages.

#### Background

According to the Bible, the first temple was built by Solomon in the 10<sup>th</sup> century BCE. It was destroyed by the Babylonians in 586 BCE. The second Temple was built under the decree of Cyrus in 538 BCE. while Herod extended and embellished it around 19 BCE At that time, Herod expanded the Temple Mount and created a perimeter wall that is part of today's Western Wall. The Second Temple and the rest of Jerusalem were destroyed by the Romans in 70 CE.

Judaism over the past 500 years has venerated the Western Wall as the sole remnant of the Temple complex. It is widely regarded as the holiest accessible site for Jews and Accordingly, it has become a place of pilgrimage and devotion. For centuries Jews have gathered at the Western Wall to mourn the destruction of the temple, express gratitude and to pray for divine mercy, In the 1948 Arab-Israeli war the old city, including the Western Wall was captured by Jordan. The 1949 Armistice Agreement guaranteed Jewish access to the Western Wall<sup>3</sup>. However for the ensuing nineteen year period of Jordanian control, Israeli access was denied. Only in 1967 following the six-Day War the Western Wall came under Israeli control and Israelis were able to visit. At that time the narrow 4 meter pavement facing the Western Wall was extended in depth and length. Thus was created the Western Wall plaza covering 20,000 square meters. The plaza is used for worship and public gathering and can accommodate upwards of 400,000 persons.

Muslims regard the Western Wall as an Islamic endowment. They referred to the Western Wall as El-Mabka – "the place of wailing". Since about 1920 they have called it the Al-Burag Wall<sup>4</sup>. Al Burag refers to the winged steed of the prophet Muhammad. Various sources regard the Western Wall as where Muhammed tethered Burage. There was an 1840 deliberation in which Jews were refused the right to pave the area in front of the Western

Wall and an 1865 map of Jerusalem by Wilson that names the area around the "Wailing Wall", Hosh al –Burag<sup>5</sup>.

The Western Wall was apparently also a place of Christian veneration in the early Christian period. However some scholars suggest the after Jerusalem came under Christian rule in the fourth century, there was a "purposeful transference of sanctity" from the Western Wall and the Temple Mount to the Church of the Holy Sepulcher<sup>6</sup>. Sites around the Temple Mount including, the Western Wall, became a place for Christians to dump garbage. This symbolized for Christians their victory over Islam and Judaism. However modern Christian leaders including Pope John Paul II and Pope Benedict XVI restored veneration to the Western Wall. Both Popes visited the Western Wall and left prayer messages in its crevices.

Undoubtedly the sanctity of the western wall in all three religious traditions stems from and is connected with its proximity to the Temple Mount. The Temple Mount Haram e sharif itself is particularly holy for Jews and Muslims. It constitutes one of Jerusalem`s best know and most beautiful sites. It is also considered to be at the heart or center of the Jewish-Palestinian conflict.

### **Strauss – House –the Proposed Construction**

The plan under consideration is an urban planning scheme to allow expansion of a building known as the Strauss House<sup>7</sup>. The building is located on the northern side of the Western Wall Plaza. The proposed expansion would consist of 944 square meters that would be added to the existing building of 772 square meters, at the ground level on the southern side of the building in a two story addition and an additional story to the existing two stories that are in place. According to the plan additional restroom facilities would be added to those already existing on the western side of the ground level, while on the eastern side an existing portico would be expanded. The western side of the first floor is designated for a police station while the eastern side is intended for an auditorium that would function as part of an educational facility for the site. The second floor would serve as a visitors center. The third and top floor covering the existing structure, but not the two story expansion, would house offices, changing rooms for site employees and an operations center for the facility.

The Strauss House plan was approved by the Jerusalem District Planning and Building Committee. An appeal was filed with the National Planning and Building Board all in accord with provisions of the Planning and Building Law of 1965 as amended<sup>8</sup>. The author sat as one of three members of the National Board`s Appeals Committee that heard, considered and rendered a judgement in this matter.

The Appeals Committee realized that this appeal was in fact special or in the words of the biblical Jacob "awesome" based on the location and all the various considerations. The Committee conducted two visits to the site on in its own and others with all parties to the appeal invited. In the course of the Committees consideration of the appeal, there were several related developments:

The Jerusalem Administrative Law Court issued a ruling regarding the Mughrabi Ascent which also relates to comprehensive planning for the Western Wall Plaza. It came to the attention of the Committee that considerable progress was being made with the comprehensive plan for the Western Wall and its environs. The Committee also received a report from the Chairperson of the Israel World Heritage Committee of the UNESCO National Commission.

The Committee decided to conduct a second deliberation with all the involved parties, Usually appeals are deliberated in a single sitting. In this instance we also called for various completions to the appeal.

The District Planning and Building Committee was requested to reconsider:

1. the necessity of the police station.
2. the proposed location of the police station.
3. the comprehensive plan for the Western Wall and environs.

The chairperson of the Israel World Heritage Committee was also invited and appeared before the Appeals Committee.

In the interim period before the second deliberation, the District Committee approved the comprehensive plan for the Western Wall and environs. This approval also constituted a reapproval by the District Committee of the Strauss House plan. Immediately following this approval, two of the Appellants filed a petition with the Jerusalem District Court against the approval of the comprehensive plan.

It should also be noted that the State appealed the decision of the Jerusalem Administrative law court regarding the Mughrabi Gate.

This was the sensitive cultural heritage context and the complex progression of planning and judicial matters in which we were expected to adjudicate the appeal.

### **Appellant's Claims**

There were four parties to the appeal, two residents of East Jerusalem, a planning consultant from West Jerusalem and the Society, for the Protection of Nature in Israel. Some of the claims are dramatically different. It is also interesting to note the relationship of the different players and their positions.

The two East Jerusalem residents made the following claims:

1. The plan should be rejected out of hand as it establishes facts in an area considered to be occupied lands by international law. Furthermore not all requirements for notification and consultations were fulfilled.
2. The plan lacks an environmental impact statement especially as the plan impacts the Dome of the Rock.
3. The company for the renewal and development of the Jewish Quarter lacks legal authority to initiate the plan.
4. To the heart of the matter, the plan should not be approved as it was not preceded by a comprehensive plan. for the entire Western Wall area.
5. The new Jerusalem Statutory Plan provides that no changes be undertaken to the Western Wall, the Temple Mount/Haram e Sharif or the Church of the Holy Sepulcher unless the construction is for the purpose of preserving the existing or adapting the site to daily needs.
6. The urgent need for a police station has not been proven and alternative locations were not adequately considered. To the extent that the police station is temporary, permanent and massive construction is inappropriate.
7. In all events the Police Station is only a small part of the proposed construction and certainly the other intended uses are not justified.
8. Finally the plan should have been contingent upon the cessation of planning violations by the company which include parking cars in the Plaza.

The West Jerusalem Planning consultant presented the following claims:

1. Preserving maximum open space in the Western Wall Plaza serves to enhance the location and every centimeter of the Plaza is property of all the residents of Israel and world Jewry. Accordingly, the plan that takes about 350 square meters from the Plaza is not worthy.
2. The Western Wall Plaza, is the most sensitive location in Israel in general and in Jerusalem in particular, from planning, historical, religious, cultural and symbolic standpoints. As such, no building should be allowed without comprehensive inclusive planning, certainly no incursion to the Plaza. Many sites of lesser importance in Jerusalem required comprehensive plans before particular or spot planning was allowed.
3. Claims as to the crucial nature of the intended uses have not been substantiated. It is not at all clear, why offices, changing rooms and other facilities for site employees are necessary at this location. Additional restrooms on the opposite side of the Plaza would better serve visitors. Similarly the police station would better serve its purpose in alternative site locations.

The Society for the Protection of Nature in Israel makes several similar claims to the planning consultant and adds the following points:

1. Spot planning can only be justified for urgent security or safety needs. To the extent that the police station is an urgent need in this context, it should be built as a temporary structure and only after comprehensive planning should a permanent building be allowed. All the other intended uses have not been shown to be urgent needs.
2. Inclusive comprehensive planning should be accompanied by a broad based steering committee that includes first class professionals from the fields of architecture, urban planning, history, archaeology, rabbinics, education and additional public sector representatives. Currently the plan is being advanced by a limited steering committee that does not encompass broad public feelings and is promoting narrow interests.
3. On various occasions the Western Wall Plaza is full. Accordingly any reduction whatsoever to the open space adversely impacts the Plaza. The height of the proposed structure will deviate from the neighboring structures and may constitute a precedent for requests for additions to adjoining buildings.

## Respondents

There were three respondents to the appeal:

the Jerusalem District Committee for Planning and Building, the Local (municipal) Committee for Planning and Building and the Company for the Renewal and Development of the Jewish Quarter.

The response of the District Committee is according to the following points:

1. The purpose of the plan was first and foremost to provide for a police station at the Western Wall Plaza in place of a police station that was demolished for various reasons. The Police proved to the District Committee that the station is an urgent need for operational functions and that it should not be located outside of the Plaza because of control and command considerations. Given the urgency of the Police station for public safety considerations it became clear that the plan should be approved even in the absence of a comprehensive plan. As to the other intended functions they were also minimized to important site related functions based on a program to meet the needs of between seven and eight million visitors per year. However once the District Committee became convinced that the construction of the police station needed to precede a comprehensive plan, it did not make sense to plan only the police part of a building expansion.
2. While the plan for the Strauss House expansion was under consideration work on the comprehensive plan was also progressing. Accordingly the Strauss House expansion was

planned in accord with the principles of the comprehensive plan that was taking shape, Even though it was a spot plan much careful consideration was taken in shaping the plan and it was presented for consideration and comment to the staff of the comprehensive plan.

3. As to diminishing the area of the Plaza, the actual loss is only about 230 square meters because already today approximately 130 square meters are a covered area. The plan allocates considerable public space in the building; for example, the lobby of the building and the roof of the first floor will be open to the public. Public access will be guaranteed by an easement, Furthermore, the loss of public space in the Plaza is for important functions to serve the public.

4. Various alternatives were considered. Given that the police need to be located in the Plaza and require maximum observation of activities in the area, the chosen location best met functional needs.

5. There are no contradictions between the proposed plan and the new Jerusalem Statutory Plan, All requirements, of the Planning and Building Law were met and the approval of the National Planning and Building Board was not required.

6. The cultural facility in the building will occupy only 125 square meters. It has educational value and will enhance the site experience. Given that it is an accompanying use to critical ones the District Committee saw fit to approve it.

7. Regarding claims that the plan was submitted by bodies lacking statutory authority reference is made to decisions of the National Planning and Building Board and that the company for the Renewal and Development of the Jewish Quarter is a government company charged with operating the government property in the location and that it leases said property.

8. The status of the land in question is governed by the laws of the State of Israel and this matter has been previously addressed by the National Planning and Building Board. The District Committee rejects all claims that the plan changes the political status quo of the area.

9. The Judgement of the District Committee was independent and all consultation requirements were fulfilled as were all public notification procedures.

10. As the plan is in a built up urban area and does not adversely affect the environment an environmental impact statement is not required.

11. The depositing of the plan for public objections and citizen participation included cross sections and a building addendum providing the public with substantial and all required documentation to understand the plan.

12. The District Committee did not condition plan approval on the cessation of planning violations regarding parking in the Plaza as the violations are relatively minor and in another area of the Plaza. Never the less, the Municipality was requested to dispense its enforcement responsibilities in this regard and bring an end to the violations.

13. Finally, the District Committee States that its decision was made after lengthy and careful consideration, site visits and numerous consultations. The decision balances between different interests and the special attributes of the site. Accordingly the appeal should be rejected.

The Local Committee for Planning and Building joins the response of the District Committee and adds as follows:

1. The proposed building creates a unified building façade on the northern side of the Plaza and accordingly the experience of the Plaza is not diminished.

2. The plan was coordinated with the Jerusalem Preservation Committee and with the Antiquities Authority. The plan includes strict professional guidelines regarding preservation and integration with the sensitive existing building fabric.

The Company for the Renewal and Development of the Jewish Quarter joins the District Committee and the Local Committee in most of their responses.

### **Claims of the Sides Regarding Comprehensive Planning.**

As previously noted between the two sittings and during deliberations of the Appeals Committee, the District Committee approved the comprehensive plan for the Western Wall Plaza and environs and two of the appellants filed a petition with the Court against this decision. As a result the respondents claim the comprehensive planning contention is no longer an issue as a comprehensive plan was approved. The appellants claim it certainly is as the comprehensive plan that was approved is not worthy.

### **Adjudication**

The Appeals Committee was faced with a substantial array of planning, procedural and legal issues and striking a balance between public safety and historical preservation in this high profile case. The professional expertise of the Appeals Committee members were an attorney with an expertise in property law, an engineer with an expertise in public health and safety and an urban planner whose professional background is in planning and building regulatory matters. All of us though had a strong sense of reverence and responsibility regarding this very special place.

We knew that history and our consciences would judge us as to whether the balance we sought adequately preserved the "genius loci" of the place. We also knew the outcome has to meet the needs of large numbers of pilgrims, worshipers and tourists and the persons responsible for their hearth and safety.

### ***Threshold Claims***

The appeals committee rejected all of the threshold claims. We found that the initiators of the plan, the local Committee and the District Committee all acted within official and proper authority. We did not find that the plan contradicted any other approved plans and neither did we think that an environmental impact statement was called for. Neither did we think that there were procedural flaws in the posting and handling of the plan. We choose to hear the chairperson of the World Heritage sector of the Israel UNESCO Committee not because he had not been heard previously but because we desired an additional expert opinion in the matter of preserving cultural heritage.

### ***Comprehensive Planning***

There was no doubt between the Appeals Committee members that comprehensive planning should precede site planning and certainly all the more so in the Western Wall Plaza.

However comprehensive planning takes time and sometimes a long time, during which urgent needs can arise that require spot planning. In these instances, planning institutions are called upon to strike a balance between meeting the urgent needs while maintaining the proper planning framework.

This equilibrium will change from place to place. To the extent that the sensitivity of a particular site is greater, the scale should lean toward limiting spot planning.

### ***The Mughrabi Ascent Precedent***

The Mughrabi Ascent is located just above the Western Wall and provides access from the southern side of the Plaza to the Temple Mount. It is the only entrance to the Temple Mount for non-Muslim visitors.

In February 2004 an earthen ramp to the Gate collapsed and a temporary wooden bridge was erected. In January 2007 the Jerusalem Local Planning and Building Committee issued a permit for the construction of a permanent bridge after the Jerusalem city engineer warned that the temporary wooden bridge was hazardous and in danger of collapse. A lawsuit was brought against the actions of the Local Committee for issuing the permit. The Jerusalem Administrative Law Court needed to address this same issue of urgent site needs such as access and safety versus the importance of comprehensive planning. The court issued its verdict while the Strauss House plan was under consideration by the Appeals Committee. The court in its ruling stated: "Given the sensitivity of the place, comprehensive planning should be preferred over spot planning, Whereas comprehensive planning of this kind is sensitive and complex work that will likely take a long time, while the replacing the wooden bridge is focused and said to be urgent, we can not say that the decision in this regard in the context of spot planning is unreasonable".

### ***The Decision***

The Appeals Committee adopted this finding that particular or spot planning can be undertaken even in so sensitive a place as the Western Wall Plaza if it is based on urgent needs and that guided our deliberations. Accordingly, each of the designated uses in the Strauss House addition was tested against this principle.

The initial inclination of the Appeals Committee was to either find an alternative location for the Police Station or to locate it on the roof across the length of the existing structure without any incursion into the Plaza.

However after several site visits and extensive questioning of police officials and review of their submissions we were convinced of the pressing urgent need for a police station and that it is best located at the proposed location. The Police stressed to us over and over the operational importance of their presence in the Plaza. This includes their very ability to control the crowds and provide a rapid response to all safety and security needs.

As to the other functions and parts of the building we distinguished between the existing two stories and the proposed third story. While the additional restrooms and auditorium do not command the same level of urgency as the police station we were impressed as to their importance and site specific relevance. However more importantly, in order to create a unified two story façade to the expanded Strauss House we approved a two story expansion to the existing building façade facing south. It was our position that comprehensive planning, important as it is, is not an end in itself but rather the means to achieving the best possible solution. In this case that means an integrated building façade and nearly uniform height of the built up northern side of Plaza.

Our position differed as to the additional story. The intended uses do not have the same level of importance and urgency, Accordingly, we ruled in favor of the appeal regarding the third story. It should not have been approved in the absence of comprehensive planning for the Plaza.

### ***The Decision of the District Committee Regarding Comprehensive Planning***

The adjudication of the appeal to this point was based on the presumed absence of a comprehensive plan for the Western Wall and environs, However, as noted, during the period of time that the appeal was under consideration the District Committee approved a comprehensive plan the appellants challenged that approval in court.

It should be noted that the comprehensive plan was accompanied by a policy statement that sought to express the very special nature of the Western Wall and to strike a balance between the competing interests. The decision states: The comprehensive policy as adopted by the District Committee proposes: a broad inclusive view of the Western Wall based on planning principles of modesty, integration, preservation of authenticity while attempting to address flaws that detract from the experience of visiting one of the most important sites in the world and does not enable realization of the full spiritual, educational and touristic potential of the site".

As to the Strauss House and Mughrabhi Ascent the District Committee found that they both "comply with the comprehensive plan and provide solutions to basic urgent needs". The appellants as noted find the comprehensive plan to be substantially flawed and therefore request that the Appeals Committee wait for the outcome of their appeal to the courts before ruling on the Strauss House plan.

After considering the position of the sides, we decided it was not appropriate to stay our decision until there was a court ruling. The court could have but did not issue a restraining order against proceeding. Furthermore we accept the presumption of reasonable and appropriate action by the District Committee in approving the comprehensive planning. Never the less given the very special nature of the site we believe extra care is called for. Accordingly we ruled that the extra (third) story should not be added to the Strauss House so long as the court has not ruled on the comprehensive planning.

## Conclusions

The Strauss House plan presented a complex set of planning and legal circumstances in a super sensitive location.

The planner in this case needed to balance cultural heritage with urban liveability. This is generally best done through a comprehensive planning process that is inclusive by involving many or all stake holders and interested persons. Sometimes, despite a contentious situation the sides in a dispute can be brought together around shared goals of historic preservation, heritage and appropriate site management. Once engaged in constructive dialogue, there are also opportunities to promote mutual respect and understanding. These can lead to further convergence, around cultural diversity that respects different heritages and promotes practical solutions.

Ideally, the planning process should be pursued early enough to allow urgent site needs that are part of urban liveability to be adequately addressed in comprehensive planning. The planners should have better engaged all interested parties to reach an optimal solution. The interested parties themselves should have all been more amenable to the best compromise solution. It is often the case that the planner needs to address an imperfect situation. Urgent site needs can not wait for a comprehensive plan. The parties involved generally try to use the planning process to their maximum advantage and after the process has been exhausted they turn to legal remedies. It is highly desirable that planner also be an active part of the legal process as pertains to land use in general and cultural preservation in particular.

David Pilzer, Director Division of Planning and Building Guidelines and Regulations, Ministry of the Interior, Planning Administration, Israel.

The author sat as one of three members of the National Board for Planning and Building Appeals Committee that heard, considered and rendered a judgment in this matter. The two other members were Shlomo Hizler, an attorney from the Justice Ministry and chairperson

of the Committee and David Weinberg, a public health engineer from the Health Ministry, The author is an urban planner with the Ministry of the Interior.

Endnotes:

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