

MARMON LAW OFFICES

WATT PLAZA
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
WWW.VIMLAW.COM

TELEPHONE (310) 551-8120
FACSIMILE (310) 551-8113

VMARMON@EARTHLINK.NET

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February 11, 2014

BY HAND DELIVERY or EMAIL (patrice.lattimore@lacity.org)

The Honorable Los Angeles City Council
c/o Holly L. Wolcott, Interim City Clerk
200 N. Spring Street, Room 360
Los Angeles, CA 90012

Re: COUNCIL FILE 14-0171 -- Case No. ZA 2012-1402-ZV-ZAA-ZAD-1A

Dear Honorable Councilmembers:

Attached please find a copy of the transcript of the hearing on January 15, 2014, before the West Los Angeles Area Planning Commission in the above Case. As this transcript clearly shows, there is no basis for asserting jurisdiction in this Case, and the decision of the West Los Angeles Area Planning Commission should be upheld.

Very truly yours,



Victor I. Marmon

VIM:et

Attachment

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WEST LOS ANGELES AREA PLANNING COMMISSION
REGULAR MEETING
HENRY MEDINA WEST L.A. PARKING ENFORCEMENT FACILITY
11214 W. EXPOSITION BOULEVARD, SECOND FLOOR,
ROLL CALL ROOM
LOS ANGELES, CALIFORNIA 90064

TRANSCRIPT OF PROCEEDINGS

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Wednesday, January 15, 2014
Commencing at 4:44 p.m.

Joanna B. Brown, CSR No. 8570, RPR, CRR, RMR
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APPEARANCES OF COUNSEL:

FOR THE APPLICANT:

LEWIS, BRISBOIS, BISGAARD & SMITH LLP
BY: BRANT DVEIRIN, ESQ.
221 South Figueroa Street
Suite 1200
Los Angeles, California 90012
(213) 580-6317
(213) 250-7900 Fax
brant.dveirin@lewisbrisbois.com

FOR THE APPELLANT:

LAW OFFICES OF VICTOR I. MARMON
BY: VICTOR I. MARMON, ESQ.
1875 Century Park East
Suite 1600
Los Angeles, California 90067
(310) 551-8120
(310) 551-8113 Fax
vmarmon@earthlink.net

1 Los Angeles, California; Wednesday, January 15, 2014

2 4:44 p.m.

3

4 COMMISSIONER LINNICK: Good afternoon.

5 Welcome to the West Los Angeles Area Planning

6 Commission Meeting of Wednesday, January 15th.

7 Housekeeping items, phones should be off or on vibrate.

8 If you are planning to speak this evening, please fill
9 out a speaker card, and turn it in to staff. Parking
10 seems to be okay. The lot wasn't too full. So I won't
11 make any announcements about folks needing to move
12 their cars.

13 Let the records reflect the Commissioners
14 present today, Commissioner Halper,
15 Commissioner Donovan, Commissioner Linnick, and
16 Commissioner Foster. We are going to go in order of
17 the items on the agenda, although I think I'm going to
18 take four out of order because it's been continued. So
19 we'll start off with the departmental report, if there
20 is one, from the City Planning Department.

21 Hi, Mr. Tokunaga.

22 JIM TOKUNAGA: So I am going to be doing
23 everything today, yes. Shana could not be here today.
24 She had a conflicting meeting. So she asked that I
25 just convey that to you, and there was nothing to

1 report.

2 COMMISSIONER LINNICK: Okay.

3 JIM TOKUNAGA: And so I'll leave it at that.

4 COMMISSIONER LINNICK: Okay. Thank you.

5 We have on the agenda, although this may not
6 be coming up tonight, but other items of interest. We
7 have the presentation on the Expo corridor.

8 COMMISSIONER FOSTER: No. We are not going to
9 have that.

10 COMMISSIONER LINNICK: We are not?

11 JIM TOKUNAGA: Yeah. So I got a call from
12 Patricia Diefenderfer just saying that even though it
13 was on the agenda, the intent -- that they were not
14 ready. So they could possibly come on the next agenda.

15 COMMISSIONER LINNICK: Okay. Great. Thank
16 you. No. 2 is "Commission Business." The advance
17 calendar, are there any changes to the advance
18 calendar?

19 RANDA HANNA: We are good.

20 COMMISSIONER LINNICK: Okay. Thank you. Are
21 there any Commission requests? No. We are just
22 rolling along. The third item on "Commission
23 Business," approval of the minutes from our last
24 meeting, which was December 4th. It was last year.

25 COMMISSIONER FOSTER: Commissioner Foster. I

1 would move we approve the minutes of December 4th.

2 COMMISSIONER DONOVAN: Commissioner Donovan.

3 Second.

4 RANDA HANNA: Commissioner Foster?

5 COMMISSIONER FOSTER: Aye.

6 RANDA HANNA: Commissioner Donovan?

7 COMMISSIONER DONOVAN: Aye.

8 RANDA HANNA: Commissioner --

9 COMMISSIONER FOSTER: Halper.

10 RANDA HANNA: -- Halper?

11 COMMISSIONER HALPER: Aye.

12 RANDA HANNA: Commissioner Linnick?

13 COMMISSIONER LINNICK: Aye.

14 RANDA HANNA: And the item has been -- the
15 motion is carried. Thank you.

16 COMMISSIONER LINNICK: Thank you. Okay. And
17 then our next item, I'm going to take Item No. 4 out of
18 order. It's VTT-71898-CN-A1 and its related cases,
19 DIR-2012-1112-DB, CEQA Environmental
20 2012-111-MND [sic], and the address is 11965 West
21 Montana Avenue. We understand that this matter has
22 been continued.

23 JIM TOKUNAGA: Yes. Just so I set the record
24 straight, that is another one of those instances where
25 there was a tract map appeal, and there was a companion

1 density bonus case that's actually currently still in
2 the appeal period. So we don't want that -- a
3 situation which has happened, like, last time where we
4 had two things going on at different times. So we are
5 waiting for the appeal period on the density bonus to
6 finish so that if that's appealed, that it gets all
7 bundled as one package.

8 COMMISSIONER LINNICK: Good.

9 JIM TOKUNAGA: Okay? So that's -- we noticed
10 that on the agenda last week, and I immediately -- even
11 though it's not my case, I immediately let the staff
12 people know that this Commission would not accept it
13 that way.

14 COMMISSIONER FOSTER: Thank you.

15 JIM TOKUNAGA: Okay. Thank you.

16 COMMISSIONER FOSTER: You are listening.

17 JIM TOKUNAGA: Yes.

18 COMMISSIONER LINNICK: So do we need to -- do
19 we need to do anything or -- it happened, I know -- I
20 got a call. It happened from --

21 JIM TOKUNAGA: Oh.

22 COMMISSIONER LINNICK: -- your department, but
23 do we need to continue the matter?

24 COMMISSIONER FOSTER: Right. I think so.

25 JIM TOKUNAGA: I believe a letter has been --

1 COMMISSIONER LINNICK: Are the parties here --
2 (Simultaneously speaking.)
3 RANDA HANNA: Yes. It will be continued until
4 February 28th. It has been --
5 COMMISSIONER FOSTER: So we will make -- I
6 will make a motion --
7 COMMISSIONER LINNICK: Yeah.
8 COMMISSIONER FOSTER: -- that we continue
9 case, that 11966 [sic] West Montana Avenue, to
10 February the 18th, is it?
11 COMMISSIONER LINNICK: 19th? Oh.
12 COMMISSIONER FOSTER: February --
13 RANDA HANNA: February 28th.
14 COMMISSIONER FOSTER: -- 28th. Okay.
15 Commissioner Foster.
16 COMMISSIONER LINNICK: Okay. We don't, oh --
17 Commissioner Linnick -- point-of-order -- information.
18 We don't have -- do we have a meeting on -- we have
19 February 5th and then February 19th.
20 RANDA HANNA: February 19th. So it will be on
21 February 19th.
22 COMMISSIONER FOSTER: 19th.
23 COMMISSIONER LINNICK: 19th. Okay.
24 COMMISSIONER FOSTER: Okay. So I move -- I
25 change my motion -- I modify my motion to

1 February 19th.

2 COMMISSIONER DONOVAN: Commissioner Donovan.
3 Second.

4 RANDA HANNA: Okay. Commissioner Foster?

5 COMMISSIONER FOSTER: Aye.

6 RANDA HANNA: Commissioner Donovan?

7 COMMISSIONER DONOVAN: Aye.

8 RANDA HANNA: Commissioner Halper?

9 COMMISSIONER HALPER: Aye.

10 RANDA HANNA: Commissioner Linnick?

11 COMMISSIONER LINNICK: Aye.

12 RANDA HANNA: And the motion is carried.

13 COMMISSIONER LINNICK: Okay. Great. So

14 now we'll go back to Item No. 3,

15 ZA-2012-1402-ZV-ZAA-ZAD-1A, CEQA Environmental

16 2005-8611-MND-REC2, and the address is 10550 West

17 Bellagio Road. If staff can address that for us.

18 COMMISSIONER DONOVAN: Excuse me,

19 Madam President. I just have one quick -- a couple

20 quick disclosures. I have viewed the property site,

21 and also I received a telephone call from a

22 Steve Twining, asking me if I was going to attend

23 today's APC meeting. I understand Mr. Twining may

24 represent one of the homeowners associations in the

25 neighborhood. I told him yes. We had no discussion

1 whatsoever regarding the merits of this case.

2 COMMISSIONER LINNICK: Thank you.

3 Mr. Tokunaga --

4 COMMISSIONER FOSTER: Commissioner Foster. I
5 have the same disclosure. I went and I saw the
6 property. I viewed it. I did get a call from
7 Mr. Twining, but we had no discussion about the case at
8 all. It was just whether I was going to be here
9 tonight. I said, yes, I was.

10 COMMISSIONER LINNICK: Commissioner Linnick.
11 I'm feeling very alone in that I did not get a call
12 from this said Mr. Twining, whoever he is, but I also
13 have seen the property. Okay. Staff.

14 JIM TOKUNAGA: Okay. So --

15 COMMISSIONER LINNICK: Thank you.

16 JIM TOKUNAGA: -- this item is an appeal of my
17 approval of a height variance. Actually, it's a
18 partial appeal. The appeal itself is on the variance
19 that was granted for an over-in-height home, a
20 single-family home of 50 feet in lieu of the 36 feet
21 allowed. The site itself, I felt --

22 First of all, I think the site might be
23 familiar to you because, about a year ago, there was an
24 adjacent site that also was under the same request for
25 a variance for height, and in that case, I denied the

1 appeal -- I mean, denied the request. So, in this
2 particular case, I've approved it. Okay. And --

3 There are a lot of things that have happened
4 in that one year that we've held the original hearing,
5 which was in January, approximately one year ago from
6 today. We held another hearing back in September, and
7 a lot of new information was given to me. And I felt
8 that, on this particular site, there are some
9 circumstances on the site that perhaps should allow for
10 a variance. There is a creek, that you are all aware
11 of, that is required to be maintained. There is a
12 15-foot easement for the creek itself and then 10-foot
13 landscape buffer on each side. And that is part of a
14 parcel map approval that was approved by this
15 Commission, I want to say, five years ago or so.

16 And although the original applicant --
17 application was to remove that condition, they've kept
18 that condition. So, now, they have to comply with it.
19 In doing so, I felt that it did cut into the property,
20 at least portions of the property. The site itself has
21 what I believe is a very long frontage along the
22 street, and you have to maintain setbacks along that
23 street frontage.

24 And if you look at the site, too, it's
25 described -- and this is the way the applicants

1 themselves described it. It's sort of a bowl shape,
2 and by that, I mean, if you -- from the street, it sort
3 of slopes down a little. And because of the
4 landscaping and the creek and the way it's set back
5 from the street, I -- although the height, you know, is
6 50 feet, I didn't believe that it would be that
7 visible. And only a portion of that, the building
8 itself, the home itself, is actually above -- at the
9 50 feet, the portion that's measured nearest to the
10 creek. And so in order --

11 And I understand that the building can -- the
12 home can be designed to, sort of, terrace along the
13 topography, but in doing so, it may cut into the
14 hillside. There is -- once you, sort of, leave the
15 level -- marginally level area, it sort of slopes up,
16 not that they would build up there, but that is another
17 way to construct on the site.

18 And so, because of the slope, the creek going
19 through there, the setbacks that are required, I felt
20 that the site has some constraints on it that perhaps
21 allowed for the variance to be granted.

22 And then the appeal was filed by a neighboring
23 property owner, who believes that, you know, first, a
24 variance should not be granted because there's no
25 hardship, there's no special circumstance, and that,

1 you know, perhaps that the building itself would be --
2 obstruct views, or it would be -- sort of obstruct
3 views along the road itself, which is what I'm reading
4 now.

5 So the neighborhood itself, this is like, I
6 want to say, the last remaining or one of the last two
7 remaining parcels along this street. The homes vary.
8 Some are set back a lot, quite a bit. Others are --
9 don't have much of a setback. I don't -- some -- I
10 don't remember seeing the creek anywhere else. It
11 could be behind walls or fences so I can't see it, but
12 in this particular case, yeah, the creek is pretty
13 prominent. So that in itself I felt was a special
14 circumstance.

15 With that being said, the variance was
16 granted, and here we are today. The neighbors have
17 appealed.

18 COMMISSIONER LINNICK: Commissioner Linnick.

19 COMMISSIONER HALPER: Commissioner Halper. A
20 question --

21 JIM TOKUNAGA: Yes.

22 COMMISSIONER HALPER: -- Mr. Tokunaga. This
23 is, like, almost deja vu. The Stone Canyon case, which
24 the Commission heard, is very parallel to this
25 particular case. What would -- succinctly, what would

1 be the differences? Because the Commission did not
2 approve the case or did not approve the request of the
3 developer.

4 What do you see as the specifics that would
5 make this different than for approval?

6 JIM TOKUNAGA: Well, for myself, the original
7 case, the one adjoining this site -- I believe that was
8 the 360 Stone Canyon -- and in that particular case,
9 the whole argument from the very beginning, at least --
10 and they changed representatives, but the applicant's
11 original representative was saying that it -- the
12 hardship was that they had pulled the building permits,
13 and it was under construction, and therefore, it was a
14 hardship, you know, that --

15 But if that was their rationale for granting a
16 variance, I felt that that was not appropriate. And
17 then -- so they changed the representatives, and we
18 held the hearing. I felt that, at the second hearing,
19 the special circumstances were more geared towards the
20 actual physical site and not so much, you know, well,
21 the height is measured differently now than when we
22 originally pulled the permit, and, you know, so,
23 therefore, we have a hardship.

24 But, you know, in fairness to the question,
25 the sites are contiguous. So, you know, they are the

1 same.

2 COMMISSIONER HALPER: Thank you.

3 JIM TOKUNAGA: Yeah.

4 COMMISSIONER LINNICK: Commissioner Linnick.

5 So is that the new information that you are referring
6 to? When you started off your presentation, you said
7 that, you know, we had heard this before but that based
8 on the new information given to you, and then you
9 stated the slope and the creek and the setbacks.

10 JIM TOKUNAGA: Well, yes.

11 COMMISSIONER LINNICK: You now are --

12 JIM TOKUNAGA: The original hearing, which
13 was, you know -- was a joint hearing and with the
14 Advisory Agency, there were other -- this case, along
15 with two other cases, we were hearing all three
16 together, and there seemed to be all over the place.
17 It wasn't specific to one or the other. So it was hard
18 to discern what the requests were, but the hardship in
19 that particular case was -- in the 360 Stone Canyon was
20 that it was already under construction, and they
21 measured the height different.

22 Subsequent to that, they dropped the parcel
23 map modification request. So the original parcel map
24 that was approved by the West L.A. Area Planning
25 Commission now stands. And all this new information as

1 far as measuring and the way the setbacks are, the open
2 space, the hillside, the topography, all that stuff was
3 sort of being pushed onto the Commission perhaps during
4 the appeal for the 360 Stone Canyon, but all that
5 was information that the Zoning Administrator
6 originally never really was presented. So we -- that's
7 why we held the other hearing. And we held another
8 hearing for this case specifically in September of last
9 year.

10 COMMISSIONER FOSTER: I have -- my question is
11 the parcel map was approved --

12 JIM TOKUNAGA: Yes.

13 COMMISSIONER FOSTER: -- with the conditions,
14 the setback, and everything from the creek. Was the
15 current owner -- was the current owner the same owner
16 then? Did he own the property then?

17 JIM TOKUNAGA: Yes. I believe it was Mr. --
18 (Simultaneous speaking.)

19 COMMISSIONER FOSTER: Okay. So he's -- before
20 he started any construction, he was aware of all of the
21 conditions that were put on the property; is that
22 correct?

23 JIM TOKUNAGA: I would imagine he was.

24 COMMISSIONER FOSTER: Okay.

25 JIM TOKUNAGA: I can't speak for him, but I

1 would imagine he was, yes.

2 COMMISSIONER FOSTER: Well, I would think
3 so --

4 JIM TOKUNAGA: Yeah. Yes.

5 COMMISSIONER FOSTER: -- since he owned the
6 property then. You are saying he did own the property.

7 JIM TOKUNAGA: Yes.

8 COMMISSIONER FOSTER: And I remember very well
9 when we had a lot of testimony about that property from
10 various environmental groups and from the Council
11 office at the time because there was a great concern
12 over the creek. And it, the creek, runs all the way
13 down Stone Canyon.

14 JIM TOKUNAGA: Yes.

15 COMMISSIONER FOSTER: So it does.

16 JIM TOKUNAGA: Okay.

17 COMMISSIONER FOSTER: So it does. Okay.
18 Thank you. So he was the owner.

19 JIM TOKUNAGA: Yes, he was.

20 COMMISSIONER FOSTER: So he had that -- all of
21 that information before he drew plans and before he
22 started building?

23 JIM TOKUNAGA: Yes.

24 COMMISSIONER FOSTER: Okay. Thank you.

25 COMMISSIONER LINNICK: Commissioner Linnick.

1 A couple quick ones, although I probably have some more
2 later. So the information we received from the
3 architect, I think was in the letter from the
4 architect, of the appellant talked about the lack of a
5 slope analysis or a plot plan. Are those things that
6 you have or that you've seen?

7 JIM TOKUNAGA: I do not have them. No, I do
8 not have them.

9 COMMISSIONER LINNICK: Is that something that
10 you usually would have in a case like this? And was
11 that at all an issue for you?

12 JIM TOKUNAGA: We had some slope analysis
13 maps, but it wasn't specifically geared towards the
14 request. It was just sort of like a map that had the
15 topo lines on it, and I -- we did have that map, but it
16 wasn't an analysis of how the project height was
17 measured. So, you know, that's all I can say. I do
18 have that, but it's not a specific analysis.

19 COMMISSIONER LINNICK: Okay.

20 COMMISSIONER FOSTER: Do you -- do you not
21 have a plot plan still?

22 JIM TOKUNAGA: I do have a -- I do have a plot
23 plan that sort of defines the outline of the building,
24 yes. This is the one that we approved.

25 COMMISSIONER FOSTER. Okay. Thank you.

1 COMMISSIONER LINNICK: Go ahead.

2 COMMISSIONER DONOVAN: Commissioner Donovan.
3 Just so that I understand everything here, there's no
4 appeal of the adjustment allowing the overheight fence;
5 correct?

6 JIM TOKUNAGA: No, I did not see that.

7 COMMISSIONER DONOVAN: So that's not before
8 us. Okay. And, now, we have these two companion
9 cases. They are property right next to each other,
10 Stone Canyon and Bellagio. And the applications for
11 variances was filed -- both filed on the same day,
12 September 21, 2012, and they both requested the same
13 height variance; correct?

14 JIM TOKUNAGA: Yes, it sounds familiar. Yes.

15 COMMISSIONER DONOVAN: And they both had the
16 same public hearing on January 9, 2013?

17 JIM TOKUNAGA: Yes.

18 COMMISSIONER DONOVAN: Okay. Then, looking
19 through the timeline here, you denied the variance for
20 Stone Canyon, and then that was appealed to this APC,
21 and we denied -- that was -- we heard it on
22 June 5th, 2013. We denied the appeal, and we upheld
23 your denial; right?

24 JIM TOKUNAGA: That's correct.

25 COMMISSIONER DONOVAN: Okay. And then CD5

1 filed a 245 motion to remove the matter to the
2 City Council.

3 JIM TOKUNAGA: Uh-huh, yes.

4 COMMISSIONER DONOVAN: And then the
5 City Council essentially vetoed our determination and
6 remanded it back to this APC.

7 JIM TOKUNAGA: That's correct.

8 COMMISSIONER DONOVAN: Okay. So, then, on
9 August 7, we had another hearing on this Stone Canyon
10 property.

11 JIM TOKUNAGA: Appeal, yes.

12 COMMISSIONER DONOVAN: And at that time, you
13 did not change your initial denial -- determination to
14 deny the variance.

15 JIM TOKUNAGA: No.

16 COMMISSIONER DONOVAN: Okay. And, then,
17 there's another 245 motion. And then, on September 11,
18 the Council reversed the decisions and granted the
19 variance to Stone Canyon.

20 JIM TOKUNAGA: That's correct.

21 COMMISSIONER DONOVAN: Okay. And, then, after
22 that, on September 25th, you hold another hearing on
23 the Bellagio property.

24 JIM TOKUNAGA: That's correct.

25 COMMISSIONER DONOVAN: Okay. And then, on

1 November 1st, you grant the variance on pretty much the
2 same facts as presented on the Stone Canyon property.

3 JIM TOKUNAGA: You mean as far as what
4 happened at Council or --

5 COMMISSIONER DONOVAN: Well, I guess, when
6 Commissioner Halper was asking you for the difference,
7 what seemed to come out for me is that the facts were
8 the same, but the reasoning behind the applicant's
9 request for a variance had changed slightly.

10 JIM TOKUNAGA: Slightly, yes.

11 COMMISSIONER DONOVAN: But the facts are the
12 same.

13 JIM TOKUNAGA: The facts are the same.

14 COMMISSIONER DONOVAN: Okay. And I guess the
15 tough question I have to ask, did the decision by the
16 City Council on Stone Canyon have any effect whatsoever
17 on your determination to grant the variance on
18 Bellagio?

19 JIM TOKUNAGA: No, it did not.

20 COMMISSIONER DONOVAN: Did the -- when the
21 City Council made -- overturned both of our rulings,
22 did they find -- make different findings of facts?
23 Were different facts presented?

24 JIM TOKUNAGA: They would have had to -- well,
25 in order to grant the variances, they would have had to

1 make those findings.

2 COMMISSIONER DONOVAN: They'd have to make
3 findings, but did they -- did they -- were different
4 facts provided to them?

5 JIM TOKUNAGA: I have -- I do not know. Okay.

6 COMMISSIONER DONOVAN: Okay. And so did you,
7 in any way, decide that the Stone Canyon case created
8 precedent for the Bellagio variance?

9 JIM TOKUNAGA: Did the Stone -- no, no,
10 because I -- well, my initial decision wasn't a denial.

11 COMMISSIONER DONOVAN: Yeah. I only ask that
12 because --

13 JIM TOKUNAGA: Yeah.

14 COMMISSIONER DONOVAN: -- in your report, you
15 said you -- the adjacent property is currently being
16 developed with a similar height variance granted by the
17 City Council, and I was wondering about the
18 significance --

19 JIM TOKUNAGA: Oh, yeah. I just put that in
20 there as background information. Yeah.

21 COMMISSIONER DONOVAN: Okay. When we go
22 through the five findings that you have to make for a
23 variance -- and the first one is that the strict
24 application of the zoning ordinance would result in
25 practical difficulties or unnecessary hardships

1 inconsistent with the general purposes and intent of
2 the zoning regulations -- we asked the same question
3 with Stone Canyon.

4 Can a house of approximately the same footage
5 presently be built on the Bellagio property without a
6 variance?

7 JIM TOKUNAGA: Yes, it could.

8 COMMISSIONER DONOVAN: Okay. And I went
9 through the transcript of the -- of your hearing there,
10 and nobody from applicant represented to you that "If
11 we don't get this variance, we can't build a house
12 that's of the same square footage." Nobody said that;
13 correct?

14 JIM TOKUNAGA: No, I don't believe they did.

15 COMMISSIONER DONOVAN: Okay. And you did
16 receive a report, as a matter of fact, from the
17 appellant, David Applebaum, saying that they can
18 build -- they can redesign the house and basically
19 build something about the same size without needing a
20 variance. You did.

21 JIM TOKUNAGA: Yes, uh-huh.

22 COMMISSIONER DONOVAN: And you didn't receive
23 any evidence that contradicted Mr. Applebaum.

24 JIM TOKUNAGA: I did not.

25 COMMISSIONER DONOVAN: Okay. So a denial of a

1 variance is not going to prevent the applicant from
2 building a house on his property.

3 JIM TOKUNAGA: No, it would not.

4 COMMISSIONER DONOVAN: So I'm trying -- I'm
5 having difficulty finding the unnecessary hardship or
6 the practical difficulties if the applicant -- the
7 house isn't started to be built. They could just
8 design a house that's within the height limits. It can
9 be just as big as it was going to be big.

10 What are the unnecessary hardships or
11 practical difficulties?

12 JIM TOKUNAGA: Well, when I'm -- this is
13 Jim Tokunaga. When I'm reviewing a case, I'm looking
14 at the case as far as what they are proposing to build,
15 and I felt that with -- you know, I guess I can -- what
16 you are saying is I could say, "Well, no. You can
17 design it in a different way. So I'm going to deny the
18 variance."

19 But what I'm looking at is, based on the
20 proposal of the project, for what they want to do, do I
21 find that there are, you know, special circumstances or
22 any reasons why the hardships on the site would prevent
23 them from developing the home the way they want? And
24 that's, you know -- that was my reasoning for the
25 variance.

1 COMMISSIONER DONOVAN: That gets to the crux
2 of the matter because I remember, in the Stone Canyon
3 case, the applicant's attorney said, "We just want this
4 for aesthetic reasons." And I noticed in this case
5 that the reason for the variance is so that the
6 proposed residence can have a consistent roof line for
7 the entire home. So they basically want this variance
8 for subjective, aesthetic reasons.

9 JIM TOKUNAGA: You know, yeah, I imagine. You
10 will have to ask the applicants, but I would imagine
11 that's probably it.

12 COMMISSIONER DONOVAN: Now, you had -- one of
13 the things you had to find is that the proposed height
14 variance is going to be consistent with all of the
15 goals of the Baseline Hillside Ordinance, the BHO, and
16 I looked at that. And isn't one of the BH goals to
17 encourage terrace structures that break up a boxy
18 building?

19 JIM TOKUNAGA: Yes, it is.

20 COMMISSIONER DONOVAN: And the other thing,
21 you know, I saw a lot of things in the hearing
22 transcript and -- about that this height is not going
23 to block a view, which, I guess, is the subject of a
24 debate between both sides. But I looked at the BHO,
25 and it doesn't say anything about blocking the view.

1 It says the policy at 1-3.3 is to "preserve existing
2 views in hillside areas."

3 So even if it's not going to block the view, a
4 height variance on here is not -- it won't have the
5 same view it would have had if it was within the height
6 limit; correct?

7 JIM TOKUNAGA: "View" meaning from the
8 neighbor or --

9 COMMISSIONER DONOVAN: Yes.

10 JIM TOKUNAGA: Well --

11 COMMISSIONER DONOVAN: That would be the only
12 view that would be subject to the appeal, the neighbors
13 having their views changed, if not blocked.

14 JIM TOKUNAGA: Yes. Well, yeah. It's a
15 vacant site. So anything that you put on the site, you
16 know, is going to be visible regardless, I think,
17 whether it's 50 feet or 36 feet.

18 COMMISSIONER DONOVAN: And there was evidence,
19 at least from some of the neighbors, that they felt
20 that it was going to block their views.

21 JIM TOKUNAGA: The adjacent property owner, at
22 least their representative, did indicate that they felt
23 that there might be some obstruction of views.

24 COMMISSIONER DONOVAN: Now, the second part of
25 the variance findings that have to be made are the

1 special circumstances. And, again, we went through
2 this on Stone Canyon, but the second one there is that
3 there have to be special circumstances applicable to
4 the property such as size, shape, topography, location,
5 or surroundings that do not generally -- apply
6 generally to the other property in the vicinity. And
7 the special circumstances that I heard you cite in your
8 report and also today are the creek, the topographical
9 changes, and the long frontage on the street.

10 Now, this is not the only property in the
11 vicinity that has a stream running through it.

12 JIM TOKUNAGA: That's correct.

13 COMMISSIONER DONOVAN: And this is not the
14 only property in the vicinity that had varying
15 elevations.

16 JIM TOKUNAGA: That would be correct.

17 COMMISSIONER DONOVAN: I mean, all of the
18 properties on the hillsides have varying elevations;
19 right?

20 JIM TOKUNAGA: Yes.

21 COMMISSIONER DONOVAN: Okay. And the reason
22 why there's such a long frontage in this particular
23 case is the applicant voluntarily tied two properties
24 together to build the project; right?

25 JIM TOKUNAGA: Yes, the tied -- parcels are

1 tied.

2 COMMISSIONER DONOVAN: So wouldn't that
3 special circumstance be self-imposed?

4 JIM TOKUNAGA: Well, they tied it. So it's --
5 you know, it's their decision.

6 COMMISSIONER DONOVAN: Okay. And, then, I
7 think we've covered the No. 3, which is necessary -- is
8 the variance necessary for the preservation and
9 enjoyment of a substantial property right or use
10 generally possessed by other property but because of
11 the special circumstances and practical difficulties or
12 unnecessary hardship is denied. But we already know
13 that this property can be built on. A large house can
14 be built on.

15 And are there any other properties that
16 received a height variance for aesthetic reasons?

17 JIM TOKUNAGA: Well, for aesthetic reasons, I
18 can't say for sure. There are other variances in the
19 area, but I couldn't answer that. There is a house
20 across the street.

21 COMMISSIONER DONOVAN: And let's see. Now,
22 No. 4, which is another finding that you have to make
23 for granting a variance, whether it's going to -- and
24 you have to find that the variance will not be
25 materially detrimental to the public welfare. But the

1 only finding I saw that you had there on page 16 was
2 that it's not going to block any views, and the height
3 won't be noticeable. But that brings us back to
4 whether the BHO says "preserve existing views," not
5 necessarily "block," but isn't --

6 One thing that struck me on this was that you
7 stated at page 17 that "The proposed height is not
8 consistent with the plan's intent to require compliance
9 with regulations pertaining to development in the
10 hillside area." And I saw that, and it jumped out at
11 me. Isn't compliance with regulations important to the
12 public welfare?

13 JIM TOKUNAGA: Okay. So what I'm saying here
14 is that the height that they are asking for is, of
15 course, not permitted by the zone, and the only way we
16 can grant that additional height is through a variance
17 process subject to these findings, and I guess what all
18 I'm saying is that I've made those findings.

19 COMMISSIONER DONOVAN: Can the granting of a
20 variance on this property have any precedential effect
21 on future land use in the area?

22 JIM TOKUNAGA: I think any kind of approval
23 would, yes.

24 COMMISSIONER DONOVAN: I think we've covered
25 the fifth one about -- all of the things that go with

1 tied.

2 COMMISSIONER DONOVAN: So wouldn't that
3 special circumstance be self-imposed?

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21 on future land use in the area?

22 JIM TOKUNAGA: I think any kind of approval
23 would, yes.

24 COMMISSIONER DONOVAN: I think we've covered
25 the fifth one about -- all of the things that go with

1 No. 4 also are included in No. 5. Thank you. I have
2 no more questions.

3 COMMISSIONER LINNICK: All right. Let's start
4 with the appellant. Can I have the appellant's
5 representative, Mr. Marmon. If you can, state your
6 name and address for the record, please, and you have
7 five minutes.

8 MR. MARMON: Thank you. Members of the
9 Commission, Mr. Tokunaga, guests, public speakers, my
10 name is Victor Marmon. My office address is
11 1875 Century Park East, Suite 1600, Los Angeles,
12 California 90067.

13 COMMISSIONER FOSTER: Do you have a cell phone
14 on?

15 MR. MARMON: No.

16 COMMISSIONER FOSTER: It might be causing --

17 COMMISSIONER LINNICK: Our last meeting, the
18 same thing happened.

19 COMMISSIONER FOSTER: We had a problem with
20 that. Okay.

21 COMMISSIONER LINNICK: And I don't know -- we
22 don't know what it was. So we'll --

23 COMMISSIONER FOSTER: -- give you an extra
24 minute there.

25 COMMISSIONER LINNICK: We'll bear with it.

1 MR. MARMON: Hopefully -- I've moved it
2 further --

3 COMMISSIONER LINNICK: Okay.

4 MR. MARMON: -- further back. Wait. I have
5 it with me. That's the problem.

6 COMMISSIONER FOSTER: There you go. Maybe
7 that makes a difference. Give him an extra --

8 COMMISSIONER LINNICK: Yeah. We're --

9 COMMISSIONER FOSTER: We'll give him an extra
10 minute.

11 MR. MARMON: Sorry.

12 COMMISSIONER LINNICK: This won't count
13 against your time.

14 MR. MARMON: That's all right. I hope to not
15 use the time.

16 COMMISSIONER LINNICK: Okay. Okay.

17 MR. MARMON: First, I'd like to give to the
18 Commission some proposed findings of fact that specify
19 how the ZA erred and abused his discretion in this --
20 in issuing the letter of decision. So if I may.

21 Second, I'd like to point out that my client
22 is not here. She is extremely disappointed. She's
23 been at every single public hearing in this matter.
24 She was involved in issues relating to the protection
25 of the stream and -- since 2006, and she has the flu.

1 She just can't -- couldn't make it. So she's really
2 quite saddened that she can't be here.

3 I know that you all do your homework. You
4 really read through what people provide to you. So I'm
5 not going to repeat what I've said in my letter to you
6 or in the appeal. I just want to point out a few
7 things.

8 While the ZA said that approving cases will
9 have a precedential effect, I want to make it very
10 clear that the 360 case is not final. We have filed a
11 petition for writ of mandate against the City. It will
12 be heard, so that that matter is open. There is no
13 final decision there. And we will pursue that to the
14 Court of Appeal or the Supreme Court if necessary
15 because that adoption of the zone variance by the
16 City Council was in error and a massive abuse of
17 discretion. In fact, it was just a political hack job,
18 but we'll leave that for another time.

19 Mr. Tokunaga indicated that there were
20 different facts presented in the 360 case, perhaps more
21 effectively in the 10550 case, about grade differences
22 and elevations and things like that. I want to point
23 out that when Councilmember Koretz first 245'ed to
24 this -- your initial action, he cited the sloping
25 property from the northwest to -- northeast to the

1 southwest. He cited the grade difference between the
2 westerly portion and the easterly portion. He cited
3 the creek. These are not new facts. These are facts
4 that are the same for this property and the other
5 property, and you should treat both properties the
6 same.

7 Mr. Tokunaga was not provided with a slope
8 analysis map. That is a very particular document that
9 the Planning Department requires in order to determine
10 how much square footage can be built on a particular
11 property.

12 Now, Mr. Tokunaga told us at the hearing, at
13 the public hearing, that we could not talk about the
14 fact that this property will not comply with the
15 Baseline Hillside Ordinance for square-footage purposes
16 because that's just for the Planning Department or the
17 Building Department to determine after the variance
18 issues are determined, but the fact is he did not have
19 the slope analysis map.

20 Commissioner Donovan mentioned one of the
21 objectives of the plan is to preserve existing views.
22 Well, one of the existing views is from Stone Canyon
23 Road. This is a major entrance and exit to Bel Air,
24 and this house, like the 360 house, will tower above
25 that roadway.

1 And I want to also point out that the
2 applicant at the hearing before Mr. Tokunaga -- and I
3 expect the applicant to say it again today -- says that
4 the property is in a bowl.

5 First of all, this land was sort of foothill
6 land. It sloped upward gradually. You can see by --
7 well, you were -- many of you were on the same
8 Commission that approved the parcel map. What they
9 did -- you -- I don't want to repeat what you already
10 know, but I have to make it for the record. They
11 installed a massive 1700 -- sorry -- I think around a
12 750-foot double retaining wall roughly 17 to 20 feet in
13 height. They've chopped off the back of the hill.
14 They graded the property. They raised the grade of the
15 property. And, now, we have essentially a flat pad
16 that rises upward gradually. This is not in a bowl.

17 And I'd like to provide the Commission with
18 the applicant's own retaining wall exhibit from the
19 January hearing in 2013. Just a moment.

20 COMMISSIONER HALPER: Excuse me. You know,
21 it's very difficult for me and, I think, other members
22 of the Commission to be able to absorb documents in
23 lieu of a --

24 MR. MARMON: I completely understand.

25 COMMISSIONER HALPER: Yeah.

1 MR. MARMON: I'm sorry. I didn't mean to
2 interrupt you. No. I appreciate that. But the point
3 that I will make orally to you, Stone Canyon Road, as
4 shown on this exhibit that I've provided to you -- and
5 there's some blowups so that you can see it --
6 Stone Canyon Road ranges from an elevation of 478 feet
7 at the southwest corner of the property to 490 feet at
8 the corner of Stone Canyon and Bellagio. The finished
9 floor of the house, where you will see the house from
10 for the most part except for the west side where you
11 will see the full height of the house because of the
12 basement being exposed, is at 494.30. So the house
13 itself is not in a bowl. The house is actually above
14 Stone Canyon Road, which is the location that most
15 people will see the house.

16 And it's clear that the Commission understands
17 the Baseline Hillside Ordinance. I'd just like to
18 provide an ex- -- I'd just like to read very briefly an
19 excerpt from the City Attorney's report to the Council
20 when the City Council adopted the Baseline Hillside
21 Ordinance. It says, "The current method of calculating
22 height gives developers incentive to build large, tall,
23 box-like structures in the hillsides, which many
24 communities have specifically identified as a problem.
25 Thus, the existing regulations discourage the terracing

1 of structures up and down a slope. By contrast, the
2 proposed ordinance would encourage such terracing as a
3 design feature and would visually break up the massive
4 buildings. The proposed ordinance would also utilize a
5 method of calculating height which follows the slope of
6 the lot referenced in the proposed ordinance as
7 envelope height and encourage buildings to step up and
8 down a hillside and resulting in" -- "and results in a
9 more aesthetically pleasing development."

10 So I'd just like to conclude by saying that --

11 COMMISSIONER LINNICK: Okay.

12 MR. MARMON: -- this property is not
13 significantly different from the other properties, the
14 360. The applicant has not made -- provided evidence
15 sufficient to make the findings. You'll see in the
16 proposed findings that I provided that there are
17 numerous errors of fact and law as well as abuse of
18 discretion, and we request that you grant the appeal
19 and reverse the granting of the variance. Thank you.

20 COMMISSIONER LINNICK: Thank you. Any
21 questions?

22 MR. MARMON: I will provide a copy of the City
23 Attorney's Report.

24 COMMISSIONER LINNICK: Are there any questions
25 for Mr. Marmon at this time? No? Okay.

1 Okay. The applicant has five minutes. I
2 have -- I don't know if I'm going to pronounce this
3 correctly -- Dveirin, Mr. Brant Dveirin.

4 MR. DVEIRIN: Yeah.

5 MR. LO: If I may, I think I filled out the
6 wrong side.

7 COMMISSIONER LINNICK: You can talk to the
8 staff.

9 MR. MARMON: We do have other speakers. Is
10 that permitted or not?

11 COMMISSIONER LINNICK: It happens -- it
12 happens after.

13 MR. MARMON: Sorry.

14 COMMISSIONER LINNICK: The appellant goes.
15 The applicant goes, and then we have the speakers for
16 and against. So, if you can, state your name and
17 address for the record, please.

18 MR. DVEIRIN: Yes.

19 COMMISSIONER LINNICK: You have five minutes.

20 MR. DVEIRIN: I'm Brant Dveirin with the law
21 firm of Lewis, Brisbois, Bisgaard & Smith. I'm the
22 representative for the applicant M & A Gabae. I have
23 with me at these tables my architect, project manager,
24 land use consultant, and another attorney from my firm
25 if there are any questions.

1 I always understood this to be about
2 10550 Bellagio, not 360. I think that's what we should
3 be looking at. I do believe that it's pretty clear
4 that the properties are different. The -- one thing we
5 have to recognize with 360 is at the time when that
6 application was done, there was a huge issue regarding
7 the stream, that it was going to be covered, and that
8 characterized and invaded that whole process.

9 That is no longer the case. We're preserving
10 the stream. That was asked for us to do. We're doing
11 that, and because of that, this site requires us to be
12 55 feet away from Stone Canyon.

13 So I take issue with the fact that this idea
14 that you are going to see this driving along
15 Stone Canyon -- I was there the other day. The cars
16 zip along there. There's already a stone wall there.
17 There's going to be some ironwork on top of that. So I
18 just don't think that's correct.

19 I submitted some photos. Hopefully, everybody
20 got to see it. I understand that everybody -- at least
21 two people have said they've been to the site. They
22 say photos are worth a thousand words, and I agree with
23 that. If you look at the photos, particularly
24 Photos No. 1, 4, and 10, you can see in Photo No. 1,
25 for example, just how far --

1 COMMISSIONER FOSTER: What exhibit -- excuse
2 me. What exhibit is this?

3 MR. DVEIRIN: These are the photos I --

4 COMMISSIONER FOSTER: Oh, okay. You --

5 (Simultaneous speaking.)

6 MR. DVEIRIN: The first photo shows you just
7 how far this property is from the -- from the --
8 Stone Canyon, which is on the other side of that wall.
9 None of that -- none of that property between the
10 bottom of this picture and the stone wall can be used.
11 That has to be preserved at least 55 feet, in some
12 places more, further away from that wall.

13 If you look at the picture on page 4 -- the
14 picture on page 4, at the top, there's a little
15 building at the top. That's part of 33 [sic] Copa de
16 Oro Road, which is Mr. Marmon's client's property.
17 That's not her house. That's some art studio.

18 It's barely visible to this property with that
19 vegetation. This property sits -- I don't know if you
20 want to call it a bowl, but it has a huge wall behind
21 it. It has -- it's below the grade of the street.
22 None of the properties that surround it on the east and
23 on the north can see virtually anything on this
24 property except some of the roof, and it won't matter
25 whether that roof is 40 feet, 39 feet, 60 feet. They

1 can't see it. That's why you need to go out to the
2 property. That's why these pictures are important.

3 Essentially, what you have out there is you
4 have a slope that goes like this. It slopes down to
5 the stream. Then you have a flat roof. So the part to
6 my right is going to be a little bit higher than the
7 part to my left. So it's only the part of the home
8 that's closest to the stream that's going to be
9 50 feet. Eighty-two percent of this property is going
10 to be at the 36 feet. Eighteen percent is going to be
11 at 50 feet, and it's only this one part.

12 When we get into the detail of this, we have a
13 substantially difficult site to build on. Only
14 65 percent of that site can be used for building. The
15 rest of it has to be preserved because of the stream,
16 which we agreed to do. Because of that imposition, we
17 are entitled to seek a variance.

18 One of the most basic things under American
19 law is a property owner to use his property to his
20 desire and maximum use under the law, and the law
21 allows him to apply for a variance. And if you meet
22 the requirements for a variance, you are entitled to
23 get it. And I believe, based on what the zoning
24 administrator outlined in the -- in the determination,
25 that we've met the requirements for a variance.

1 I don't think it's particularly helpful to say
2 that these properties -- this should be treated exactly
3 the same way as 360 because -- because, at the time
4 that we did 360, we had a stream issue that we don't
5 have on Bellagio. We didn't have the -- we didn't have
6 the same information regarding the site. This site
7 is -- information is different.

8 And I really believe that if we look at the
9 particular opposition that we have in this case and
10 that we had in Stone Canyon, you will see, in light of
11 the two letters that I submitted today, one from the
12 homeowners association and one from another neighbor,
13 is that we don't have opposition from the neighborhood.
14 We have opposition essentially from one neighbor, maybe
15 two neighbors. It's always the same neighbor,
16 Ms. Lazarof -- Lazarof. That's her right. But as her
17 attorney said, he's going to take the Stone Canyon case
18 all the way to the Supreme Court. Good luck with that.

19 But the thing is, is that this is not about
20 land use. It's personal, and it's typical. When
21 you're the last one to build in a lot that everybody is
22 used to seeing empty for a substantial period of time,
23 certain people don't like it. I've seen it all over
24 the city.

25 This dispute needs to stop. It needs to stop

1 here. It needs to stop now, and it needs your help to
2 approve this variance so we can finally put an end to
3 this and we can finish the job on Bellagio Road.

4 There was a comment made with respect to the
5 variance that somehow this site, you could -- you could
6 do a home, I guess, that's terraced or that is a
7 different height. And I suppose there's a lot of
8 things you can do on a particular site, but understand
9 this -- and I think this goes for a lot of projects in
10 the city -- as a matter of right, when this thing
11 started, he had a parcel map, and he had four lots, and
12 he could have built four houses on there to spec and
13 sold those lots. He's now building two larger homes on
14 two lots that he's going to live in, and I understand
15 one -- his brother is going to live in one of them.

16 This is a much less intensive use of this
17 site. It's not for profit. It's for personal use.
18 This is the type of thing we should support, not
19 oppose. This is what we want. We want people to
20 maximally use a site, not to create waste, at the same
21 time to do something that's attractive and to make sure
22 that you listen to the requirements of the City
23 regarding the stream, regarding the retaining walls,
24 regarding the landscaping. We've done all of that.
25 We've met all of the requirements.

1 So I would ask that the appeal be denied, that
2 the zoning administrator's determination be affirmed.
3 And if you have any specific questions, I'm here to
4 answer them, and if I can't, I have several of my
5 experts here. They can answer them as well.

6 COMMISSIONER DONOVAN: Commissioner Donovan.
7 I have some questions. Now, it's my understanding -- I
8 know you are saying that the Stone Canyon property is
9 different from the Bellagio property, but it was my
10 understanding from the last -- the Stone Canyon
11 hearings that this -- well, first, let me ask you this:
12 The applicant has graded -- done preliminary grading on
13 both properties; correct?

14 MR. DVEIRIN: I believe that the applicant has
15 done preliminary grading on both properties. I've been
16 out there. There are pads there, yes.

17 COMMISSIONER DONOVAN: And he did them at the
18 same time?

19 MR. DVEIRIN: I don't know that.

20 COMMISSIONER DONOVAN: Okay. Well, didn't
21 your client apply for the Bellagio variance at the same
22 time as the Stone Canyon variance?

23 MR. DVEIRIN: I believe that's correct. I
24 believe they were heard at different times. I believe
25 that there was an initial reapplication.

1 Is that correct?

2 There were not just two. There were three
3 applications, one for a parcel map as well.

4 COMMISSIONER DONOVAN: And the applicant's
5 prior representative at the last hearing at
6 Stone Canyon said that the grading on there actually
7 lowered the level of the property somewhat.

8 MR. DVEIRIN: I read the transcript. I do
9 recall someone saying that. I don't believe it was --
10 I don't believe that that was a significant change on
11 the site, but, yes, there was a change in grading.

12 COMMISSIONER DONOVAN: So, in other words, to
13 some extent, if there is a bowl there, the applicant
14 did some of the creation of that?

15 MR. DVEIRIN: Yeah, but I -- look, I don't --
16 I don't doubt that there was some grading there, and I
17 don't doubt that some of that property may have been
18 raised or lowered in order to create a pad, which is
19 not unusual. But the idea that this is a bowl is a
20 misnomer. You can call it a bowl. What it really
21 is -- and if you go out there -- and it's in the photos
22 that I submitted -- there is -- there are two retaining
23 walls and a large hill in the back, extremely dense
24 vegetation north and east on the site, and there is a
25 55-foot-imposed setback from the road on Stone Canyon

1 and Bellagio that limits you to 65 percent use of the
2 site. And because of that hill and because of the fact
3 that even with the minimal grading that occurred, that
4 the pads are below the street level, you can't see the
5 home that -- well, from Stone Canyon, and you certainly
6 can't see it from the homes that are blocked by the
7 vegetation. So there are no view impacts. That's
8 what's important.

9 COMMISSIONER DONOVAN: So I'm clear on this,
10 you are saying this property is not in a bowl, or is it
11 in a bowl?

12 MR. DVEIRIN: I'm saying it's below the street
13 level, and it's located --

14 COMMISSIONER DONOVAN: But I'm using something
15 specific. Is it a bowl or not a bowl -- in a bowl?

16 MR. DVEIRIN: As I define a bowl, it is -- it
17 is -- it is backed up by a -- on a hill with
18 significant vegetation on the -- on the east side, and
19 it's below the street grade as it -- as it slopes
20 towards the west. Whether that's a bowl in your view
21 and my view, I don't know. I'm saying that's what it
22 is. It is below grade, and it's surrounded by a hill
23 and dense vegetation. You can call that a bowl, I
24 guess.

25 COMMISSIONER DONOVAN: Okay. I noticed also

1 that the height-variance request is to allow additional
2 height so the proposed residence can have a consistent
3 roof line for the entire home.

4 MR. DVEIRIN: Yes.

5 COMMISSIONER DONOVAN: That's so it -- for
6 aesthetic purposes?

7 MR. DVEIRIN: I would say that it is -- all
8 homes have to have aesthetic appeal for some reason or
9 other. I get that. I don't know if it's solely for
10 aesthetic purposes, but if your property slopes this
11 way towards -- this way towards the stream and you
12 want -- and your roof -- your roof, whether -- if
13 it's -- if it's an A-shaped roof, flat roof, whatever,
14 is going to be flat like this, you are going to have it
15 a little bit higher on this side, which is only
16 18 percent of the home. Eighty-two percent of this is
17 going to be at 36 feet.

18 But, yes, if you have a flat -- if you have a
19 consistent roof line and a -- and a -- and a slope this
20 way, you are going to have a little bit of a -- of a --
21 of a higher property towards the -- towards the water
22 channel than you are away from the water channel.

23 COMMISSIONER DONOVAN: But you can build a
24 home on this property with a varied roof line; correct?

25 MR. DVEIRIN: I don't know. I'm not a

1 builder. I'm a lawyer. I have an architect here. You
2 can ask him.

3 COMMISSIONER DONOVAN: Okay. Well, we can get
4 back to that, then. But you have -- any other -- it
5 seems -- it seemed to me -- and I'll say, the prior
6 representative of your client admitted that this was
7 for aesthetic purposes, said it on the record, and so
8 I'm asking you, is this for aesthetic purposes?

9 MR. DVEIRIN: Not -- I don't believe anything
10 is solely done for aesthetic purposes because --
11 because a roof also has structural integrity uses and
12 things like that, but, yes, all homes have an aesthetic
13 purpose, mine and yours.

14 COMMISSIONER DONOVAN: Okay. And I note there
15 was no evidence presented to the ZA in the underlying
16 hearings here to the effect that your client cannot
17 build a home on this property unless he gets the
18 variance. You didn't present any -- you haven't
19 presented any evidence to the ZA or to us to the effect
20 that if you don't get this variance, you can't build a
21 home?

22 MR. DVEIRIN: What we've explained to the
23 zoning administrator and we've made clear in our
24 submittals is that this neighborhood is characterized
25 by large, estate-type homes. In order to have a large,

1 estate-type home similar to our neighbors with the
2 amenities that all of our neighbors have such as tennis
3 courts and swimming pools, in order to do that with the
4 limited constraints of this site, that you can't use
5 35 percent of the site for building purposes, you need
6 to build a home in this way so that you can have the
7 same amenities. What our --

8 COMMISSIONER DONOVAN: But that's not my
9 question. It's a very narrow question because it goes
10 to the heart of finding the factors to find a variance.

11 Can your client build an estate home on this
12 property without a variance? Yes or no?

13 MR. DVEIRIN: I don't think that's -- I think
14 if you --

15 COMMISSIONER FOSTER: Yes or no?

16 MR. DVEIRIN: What?

17 COMMISSIONER FOSTER: Yes or no?

18 MR. DVEIRIN: No.

19 COMMISSIONER FOSTER: Okay.

20 COMMISSIONER DONOVAN: You cannot?

21 MR. DVEIRIN: No.

22 COMMISSIONER DONOVAN: Okay.

23 MR. DVEIRIN: And I'm saying that the -- if
24 you look at what a variance is for, which is, by law, a
25 variance is to allow you to have the same use as your

1 neighbors because of physical and other types of
2 restraints on your property -- of course, it's a
3 discretionary determination, but a variance isn't
4 defined by whether or not you can build something
5 smaller.

6 Of course, you can build something smaller
7 anywhere, but the idea is that in order to maximize the
8 use of your property, which is your right and my right
9 and my client's right, you're entitled to seek a
10 variance. And if you can show, which we can, that this
11 site is severely constrained by its gradient and by its
12 size and that it won't impact the neighbors, we're not
13 causing anybody any distress, if you stand -- and as
14 we've pointed out, if you stand on 333 Copa de Oro Road
15 on the first floor, you are looking 15 feet over the
16 roof line at 50 feet.

17 So we're not impacting any of our neighbors.
18 And because we have the severe restraints on the site,
19 it's within our right to seek a variance.

20 COMMISSIONER DONOVAN: Well, first of all,
21 Counsel, there's no doubt that your client is entitled
22 to seek a variance. Whether the client gets a variance
23 or not, nobody has impeded your client's right to seek
24 a variance thus far.

25 MR. DVEIRIN: That's correct.

1 COMMISSIONER DONOVAN: Okay. You now say you
2 cannot build an estate-like home without a variance.

3 What kinds of homes can you not build?

4 What can't you build here if you don't get
5 this variance?

6 MR. DVEIRIN: I would ask my architect to
7 answer that question because that's -- that's beyond
8 my -- my pay grade, but -- but -- I -- I -- I do think
9 that -- that -- that anytime that you apply for a
10 variance -- anytime you apply for a variance, it's a
11 discretionary determination. And what I'm arguing for
12 is that we meet the requirements for you to exercise
13 your discretion in favor of granting the variance. And
14 we are asking you to do that, but it's not a -- it's
15 not a mandatory determination. It's a discretionary
16 determination.

17 And in order for my client to maximally --
18 maximize the use of his property as his right in order
19 to have something similar to the estate-size homes that
20 surround him, he needs the variance, but he can't get
21 it as a matter of right, which is why we're here.

22 COMMISSIONER LINNICK: Commissioner Linnick.
23 But you were mentioning that he could have built four
24 homes, and --

25 MR. DVEIRIN: Yes.

1 COMMISSIONER LINNICK: -- they obviously would
2 have been smaller, and they wouldn't have been the sort
3 of estate-like home that you are saying, you know, if
4 they build the two. So I'm kind of confused. I mean,
5 you are saying both -- sort of saying both things.
6 So --

7 MR. DVEIRIN: They could have --

8 COMMISSIONER LINNICK: -- I'm saying, they
9 could have just built the four homes, and --

10 MR. DVEIRIN: What I'm saying is --

11 COMMISSIONER LINNICK: -- I've got this
12 variance to make this home that is, like, similar to
13 the others in the neighborhood, you are saying?

14 MR. DVEIRIN: My understanding -- and someone
15 on my side will correct me if I'm wrong -- is that the
16 City Planning Department wanted something different
17 than what he legally could do with the property; in
18 other words, to tie the lots together, to put some --
19 to put bigger homes on the property.

20 There's a difference between what you can
21 build as a matter of right and what is wise to build,
22 and -- and I'm saying is -- is that, all over the city,
23 there are instances where people seek approvals --
24 I've -- I've --as -- I've done this before where --
25 where -- where -- where people come out, and they --

1 they -- they don't like the particular project. And
2 one of the things that you need to make clear to the
3 opposition at times is that what you can do as a matter
4 of right, you might like less. That's what I'm saying.

5 COMMISSIONER LINNICK: Sure.

6 MR. DVEIRIN: What we can do as a matter of
7 right may not be as aesthetically and practical --
8 practically pleasing, not only to us, but to our
9 neighbors. And I don't want that -- that fact lost on
10 this Commission because -- because what we're
11 essentially doing is a less dense use and a more
12 attractive use of this site than four smaller homes,
13 and I think that's something we should promote.

14 COMMISSIONER HALPER: Counselor,
15 Commissioner Halper. You refer to the fact that there
16 was a single resident or neighbor who was the
17 complaining source. I've got a number of the
18 letters --

19 MR. DVEIRIN: Yes.

20 COMMISSIONER HALPER: -- that are complaints
21 from -- let me finish, please. I've got one here from
22 the Federation of Hillside and Canyon Associations,
23 which indicate that they represent 42 associations and
24 200,000 constituents, and asking us to enforce the
25 hillside ordinance. So I would say we -- the

1 Commission is very sensitive to what the neighbors are
2 concerned with in our decision-making. It doesn't
3 appear -- do you want to make a comment back?

4 MR. DVEIRIN: No, no. What I'm saying is that
5 I'm aware of some other opposition. Primarily, we have
6 one consistent opposition who is behind us on the hill
7 at 333 Copa de Oro, which is Ms. Lazarof, who I
8 understand is ill today, and I hope she gets better.
9 But that -- that -- that's what's driving this is that
10 single opposition.

11 But there are some other people that have sent
12 in letters, but that's not who is at every hearing,
13 opposed to everything that we've done on this property,
14 and will be with us until this gets done. And I think
15 it needs to stop, and I need your help to make it stop.
16 And the only way we can get that to stop is to get this
17 variance finally approved.

18 COMMISSIONER DONOVAN: Commissioner Donovan.
19 Do you believe that the Stone Canyon case created
20 precedent for the variance in this case?

21 MR. DVEIRIN: No.

22 COMMISSIONER DONOVAN: So you are not
23 asserting that?

24 MR. DVEIRIN: No, no. No, not at all. I
25 think this case stands on its own. I think I'm here on

1 Bellagio. I'm not here on Stone Canyon.

2 COMMISSIONER DONOVAN: And you would agree
3 that the Bellagio property isn't the only property in
4 the vicinity that has a stream running through it?

5 MR. DVEIRIN: I don't know that for a fact.

6 COMMISSIONER FOSTER: I do. I do.

7 MR. DVEIRIN: I do know this, that that stream
8 is not just on that property. I don't know where else
9 it runs. I do know this, is that --

10 COMMISSIONER DONOVAN: It runs down
11 Stone Canyon, doesn't it?

12 MR. DVEIRIN: Yes. But I'm saying that there
13 are other properties that I am aware of -- and I can't
14 cite their addresses -- that they have this stream, and
15 they've been able to cover it, build over it, do
16 various things with it. We are actually preserving it,
17 and because of our preservation of this, we have
18 imposed on us a 50- -- at least a 55-foot setback from
19 the property line in order to build on this site. That
20 makes this site usable -- only 65 percent of this site
21 is actually usable. That's one of the big constraints
22 of the site in addition to the slope that makes our
23 property not as usable as we would like and why we need
24 a variance to maximize the use of this property for my
25 client's purposes.

1 COMMISSIONER DONOVAN: Commissioner Donovan
2 again. Your client's property isn't the only property
3 in the vicinity with varying elevations; correct?

4 MR. DVEIRIN: I don't know of any other
5 properties in that immediate vicinity that has a
6 16-foot difference in elevation within a mere couple of
7 feet of property. Remember that -- that this property
8 slopes down towards the stream at a fairly -- a fairly
9 steep slope. There is a 16-foot difference between the
10 west and the east. That 16-foot differential is what
11 accounts for it being 50 feet here and then the rest of
12 the property, the other 82 percent, just being the
13 36 feet. So that's a very steep differential.

14 I'm unaware, as I sit here today, of any other
15 properties in that immediate vicinity that has a
16 16-foot differential in a matter of a few feet.

17 COMMISSIONER FOSTER: Is it not true --
18 Commissioner Foster -- that your client did the grading
19 on that property?

20 He did all of the grading and the backfill and
21 built the big retaining walls. He's had that property
22 for many years. Did he not know what the slope was?

23 He had no choice but to go along with the
24 preserving of the stream. That was something that this
25 Commission put on many years ago as an absolute. So

1 when he bought this -- when he had the property, when
2 he went to design it, when he went to grade it, if he
3 knew about that, why didn't he do something at that
4 time when he had all of the grading done?

5 I've been to the site several times. I
6 remember the site when there was another home on it.
7 It's -- it's hard for me to imagine that these aren't
8 self-imposed conditions that he's put -- that he's put
9 on himself. He knew right off -- from the beginning
10 that the stream had a buffer zone, that he had to
11 plant --

12 I mean, all of those things have been known
13 since before he designed the house. So it's difficult
14 for me to understand how, now that he knows all of
15 that, he wants a variance, because he could have
16 designed the house to go along with what was the
17 hillside ordinance and the stream preservation. All of
18 those things could have been taken into consideration.
19 I don't -- what I don't understand is why he didn't do
20 that. Just, a variance seemed easier?

21 MR. DVEIRIN: I don't -- I wouldn't
22 characterize this as "easy." By the way --

23 COMMISSIONER FOSTER: Well, it was pretty easy
24 getting the one on 360 because it just got taken care
25 of in Council, you know.

1 MR. DVEIRIN: No, no.

2 COMMISSIONER FOSTER: We've spent a lot of
3 time on this ourselves as a Commission. We've spent a
4 lot of time looking, reading, and studying this. So
5 it's not something that we take lightly either, you
6 know. And it's not easy for you, I'm sure, and it's
7 not easy for your client. But, on the other hand, it
8 hasn't been easy for us either because we've spent a
9 really lot of time reading through all of this
10 material, and so, you know, we are trying to do the
11 right thing for everybody. So that's --

12 MR. DVEIRIN: I don't know -- my understanding
13 from looking at the documents is that, when this
14 originally got started, there was a lot of time and
15 effort put into covering the stream -- okay? -- not
16 preserving the stream.

17 COMMISSIONER FOSTER: Right.

18 MR. DVEIRIN: Then there was a change to
19 preserving the stream. That's what I gathered from the
20 documents, that -- that, originally, there was a belief
21 that you could have a much deeper, longer pad than what
22 you have out there now.

23 When I was out there the other day, two weeks
24 ago, looking at this, for me the first time and walking
25 off that 55 feet, it's pretty clear that it's a

1 severely restricted building pad. Almost 50 percent of
2 your lot is not usable, and that requires a certain
3 type of design if you are going to have homes like what
4 surround you and are behind you.

5 COMMISSIONER FOSTER: Okay. I think we
6 understand that. Yeah. Okay.

7 MR. DVEIRIN: So, yes, I think it's -- he
8 graded -- yes, he bought the property, but I think --
9 what I keep getting back to and I think is important is
10 that the most fundamental of American rights is to use
11 your property to its maximum use within the law --

12 COMMISSIONER FOSTER: Right.

13 MR. DVEIRIN: -- and that, based on a very
14 detailed job done by the zoning administrator, we can
15 meet the requirements of the variance.

16 I think that the detail with which the zoning
17 administrator dealt with this is in response to the
18 detail with which we addressed it, which is not the
19 same as what we did on Bellagio -- I mean, on
20 Stone Canyon. And I don't think they are exactly the
21 same, and I don't think we should let one invade the
22 other. And I'm not arguing that 360 has precedential
23 value of any kind.

24 What I'm saying is that this is exactly the
25 type of situation that someone would want a variance on

1 and should get a variance. So I'm asking for your help
2 for him because he -- in order to make this work and to
3 have something similar to the neighbors, he needs the
4 variance, and he can't get it other than through your
5 discretionary approval.

6 COMMISSIONER FOSTER: Okay. Thank you.

7 COMMISSIONER DONOVAN: Commissioner Donovan.
8 Just to be clear on this --

9 MR. DVEIRIN: Yes, sir.

10 COMMISSIONER DONOVAN: -- you are asserting
11 that this property has the greatest degree in varying
12 elevations of any other properties in the vicinity?

13 MR. DVEIRIN: I don't know that for a fact.
14 I'm saying is -- is that when I was out there and when
15 I looked around and drove around, I'm unaware of any
16 properties that have a 16-foot differential --
17 personally unaware, in that immediate area, including
18 around the hills and behind him and on the other side
19 of the golf course, that -- that have a 16-foot
20 differential in such a short pad. That's what I'm
21 saying, and that's part of the difficulty of this site.

22 COMMISSIONER DONOVAN: All right. So that's
23 your personal impression. You don't have any evidence
24 to that effect?

25 MR. DVEIRIN: No, I don't have -- I don't have

1 any evidence other than what I saw.

2 COMMISSIONER DONOVAN: Okay. Thank you.

3 MR. DVEIRIN: Thank you.

4 COMMISSIONER LINNICK: Commissioner Linnick.

5 If you could bring up your architect, that would be
6 great. I don't know if -- some of the questions --

7 COMMISSIONER FOSTER: Why don't we wait and
8 hear some more and then --

9 COMMISSIONER LINNICK: Do you want to --

10 COMMISSIONER FOSTER: -- ask the architect
11 some questions --

12 COMMISSIONER LINNICK: Okay.

13 COMMISSIONER FOSTER: -- after we hear some
14 testimony just -- unless you have something immediate
15 you want to ask the architect.

16 COMMISSIONER LINNICK: Well, I wanted to ask
17 about -- the same question I asked of Mr. Tokunaga
18 about the plot plan and the -- you know, whether or
19 not --

20 COMMISSIONER FOSTER: Oh. Go ahead. I'm
21 sorry.

22 COMMISSIONER LINNICK: -- those things were
23 provided, the slope analysis.

24 COMMISSIONER FOSTER: The architect?

25 MR. DVEIRIN: Yeah, the architect would be

1 better to answer that --

2 COMMISSIONER LINNICK: Okay.

3 MR. DVEIRIN: -- than me.

4 COMMISSIONER LINNICK: Yeah. Just be quick.

5 MR. DVEIRIN: I know we are all aware of the
6 slope. I'm not familiar with the specific slope
7 analysis.

8 COMMISSIONER LINNICK: Okay. Okay.

9 COMMISSIONER FOSTER: Sorry. I just --

10 COMMISSIONER LINNICK: No. That's okay.

11 MR. DVEIRIN: Do you want the architect?

12 COMMISSIONER LINNICK: That would be great.

13 Thank you.

14 MR. DVEIRIN: Yeah. He's here.

15 COMMISSIONER LINNICK: Sure.

16 State your name and address for the record,
17 please.

18 MR. LO: Roland Lo, 9034 Sunset Boulevard in
19 West Hollywood.

20 COMMISSIONER LINNICK: Commissioner Linnick.

21 I just wanted to ask you the same question I had asked
22 of staff --

23 MR. LO: Sure.

24 COMMISSIONER LINNICK: -- about whether or not
25 there was a slope analysis presented to the planning

1 staff and whether there was a plot plan.

2 MR. LO: I have no knowledge of the slope band
3 analysis, but, generally, the slope band analysis is
4 required, you know, during the plan-check process.
5 That's an item that is technically reviewed by the
6 Planning Department for the appropriate size of the
7 building, FAR. I don't know if that's -- that was
8 requested by the ZA on this particular case.

9 COMMISSIONER LINNICK: But --
10 Commissioner Linnick. So, when you were designing, you
11 didn't have the benefit of a --

12 MR. LO: We have a preliminary slope analysis
13 saying that you -- this -- this is a maximum -- because
14 the site -- let's come back to it. The site is two
15 lots. It's about roughly 2.1 acres. So that's 80,000
16 square feet. The footprint of the building is really
17 about 12,000 square feet. That's about 15 percent lot
18 coverage. Fifteen percent, that's -- I believe the
19 Code allows you for 30 percent or 35 percent lot
20 coverage. I'm not -- I've got to verify that for sure.

21 But the slope band analysis is -- it will be
22 an item that will be technically approved by the
23 Planning Department during the plan-check process. So
24 I am aware of a big number, a number for a maximum
25 square footage, but I believe what we have designed is

1 within the maximum allowed square footage for this
2 particular site.

3 COMMISSIONER LINNICK: Do you have a question?

4 COMMISSIONER DONOVAN: I have a question.

5 COMMISSIONER LINNICK: Oh. Well, I was just
6 going to -- so back to -- Commissioner Linnick. So
7 back to the question of, you know, were there other
8 designs, you know, we heard from appellant's -- we had
9 testimony from appellant's architect about, you know,
10 another design that could give you, you know, a
11 wonderfully -- a wonderful estate-like, you know, home
12 that would be similar to those in the neighborhood
13 without doing -- without asking for the variance.

14 MR. LO: That is an aesthetics from architect
15 to architect.

16 COMMISSIONER LINNICK: Sure.

17 MR. LO: So it's a very subjective issue.
18 But, for a fact, an estate -- my understanding of an
19 estate site, a building, is that there are pitched
20 roofs, you know, a great motor court, backyard, a
21 great, large backyard. The pitched roof is actually a
22 functional -- and around the Bel Air area, the pitched
23 roof is very common for these French-chateau type of
24 buildings. So it's a functional thing where, you know,
25 you quickly shed water. I mean, it's really a

1 functional thing, and, also, it's a good way of
2 locating mechanical equipment and exhaust equipment
3 that's up there.

4 So, you know, in terms of it being solely on
5 aesthetics, I don't believe this is solely aesthetic
6 reasons why -- that you -- you know, that -- that
7 this -- this variance is granted. So what it is, it is
8 an opinion from architect to architect that -- you
9 know, what constitutes an estate, but I do believe that
10 this building does -- this house does -- contextually
11 is very responsive to the surrounding neighborhoods.

12 COMMISSIONER DONOVAN: Commissioner Donovan.
13 There are some questions that your attorney said you
14 had to answer. So I'm going to ask them.

15 MR. LO: I'm going to try my best.

16 COMMISSIONER DONOVAN: Okay. Are you -- are
17 you saying that you could not design a home on this
18 property without the need of a variance?

19 MR. LO: Without the need of a variance? The
20 property is constrained, you know, by the way it's
21 being sited. I have got to actually -- you have to go
22 to the site and actually take a look at it. That's a
23 yes-or-no question. Am I correct?

24 COMMISSIONER DONOVAN: (Inaudible response.)

25 MR. LO: This circumstance is no.

1 COMMISSIONER DONOVAN: You cannot design a
2 home on this property without getting a height
3 variance?

4 MR. LO: In this particular -- the way it's
5 sited, no.

6 COMMISSIONER DONOVAN: And tell me why you
7 can't design a home --

8 MR. LO: Because the --

9 COMMISSIONER DONOVAN: -- that's going to be
10 within the height limit.

11 MR. LO: Because the motor court is -- you
12 know, the motor court is facing the street, and the way
13 the site is being situated, the building has to situate
14 a particular location for, you know -- for the
15 circulation to actually function. So, in this
16 particular case, in this particular design, no.

17 COMMISSIONER DONOVAN: So the only reason you
18 can't do it is because of the location of the motor
19 court?

20 MR. LO: No. Various reasons of siting the
21 site. There's, you know -- you've got -- you've got
22 sun. You've got wind. You've got solar access.
23 You've got all of these other reasons. So, in this
24 particular location --

25 Any architect can tell you, you know, that

1 there is an alternative design to it, you know.

2 COMMISSIONER DONOVAN: Okay. That's what I'm
3 speaking to. I mean, let's see if I can be more
4 accurate -- I mean, specific.

5 Are you saying it's impossible to design a
6 home --

7 MR. LO: Oh, no.

8 COMMISSIONER DONOVAN: -- on this property?

9 MR. LO: No. No, I'm not saying that
10 whatsoever.

11 COMMISSIONER DONOVAN: So you could design a
12 home with a varied roof level; correct?

13 MR. LO: Varied roof level, yes.

14 COMMISSIONER DONOVAN: Okay. And you could
15 design a home on this property that would not need a
16 height variance; correct? It's possible; correct?

17 MR. LO: It's possible if it is -- you are
18 talking about a hypothetical scenario. Yes.

19 COMMISSIONER DONOVAN: And the varied roof
20 line, you said the reason why that won't --

21 First of all, one of the reasons you want a
22 consistent roof line is aesthetics. That's one reason;
23 correct?

24 MR. LO: Aesthetics and --

25 COMMISSIONER DONOVAN: Yeah, how it looks.

1 MR. LO: -- contextually responsive to the
2 surrounding neighbors. Yes.

3 COMMISSIONER DONOVAN: Yes. It's a
4 subjective, aesthetic viewpoint; correct?

5 MR. LO: Yes.

6 COMMISSIONER DONOVAN: Okay. And --

7 MR. LO: And we can't discuss aesthetics.
8 It's really subjective in reality, you know.

9 COMMISSIONER DONOVAN: Aesthetics are always
10 subjective.

11 MR. LO: Yes.

12 COMMISSIONER DONOVAN: Yes, of course. All
13 right. So -- all right. I guess I have no further
14 questions. Thank you.

15 COMMISSIONER LINNICK: Okay. Thank you. So
16 now we have --

17 MR. DVEIRIN: Do you have any questions for
18 me, or do you want to hear from the other speakers?

19 COMMISSIONER FOSTER: We are ready.

20 COMMISSIONER LINNICK: No. I think we are
21 good.

22 MR. DVEIRIN: Okay. Thank you.

23 COMMISSIONER LINNICK: Thank you. So let's
24 hear from speakers for the appeal. I have Jon Perica
25 or Perica and then John Murdock, then

1 Tania Hackbarth -- Hackbarth.

2 Name and address for the record. You have two
3 minutes.

4 JON PERICA: Jon Perica, 10338 Etiwanda
5 Avenue, Northridge, California 91326. I'm a retired
6 zoning administrator. Commissioners know that all five
7 variance findings have to be made. The zoning
8 administrator made none of the required variance
9 findings. I'm going to pick on two of those.

10 No. 3, evidence of a right to a 50-foot-built
11 house generally possessed by other property owners in
12 the same zone. The applicant lists no other examples
13 of houses that have the same zone, the same vicinity,
14 the same measuring distance, and the same type of use
15 to justify a previous precedent.

16 The ZA's findings relate to characteristics of
17 the lot and topography, not any other precedential
18 cases. By not citing another precedent of a previous
19 grant similar to what's being asked for, this finding
20 cannot be made. The inability of the zoning
21 administrator to provide a precedent finding also
22 occurred at the adjacent property at 360 Stone Canyon
23 Road, owned by the same family partnership. This
24 adjacent property has very similar topography and
25 features, and that was denied twice by your

1 condition -- Commission last year.

2 In that previous decision on the adjacent
3 Stone Canyon variance request, the ZA found that the
4 precedential -- that no precedential height grant
5 exists in the record previously in the community that
6 can be used as an example to justify granting this
7 particular case. There is absolutely no justification
8 for this finding submitted by the zoning administrator
9 or the applicants.

10 Finding No. 1, identifying a city hard- -- a
11 city-created hardship that can only be overcome by a
12 variance. As your Commission has already noted, the
13 applicant was not forced by the City to purchase this
14 property. Due diligence would have indicated what the
15 exact limitations on the property that was buildable
16 could have been for that.

17 The applicant had a choice of what the
18 building footprint was, where to locate it, and he
19 chose to make this particular location. At this point,
20 a noted architect has submitted a letter to you that
21 there are at least four other alternatives to build the
22 same size house on the property. I think that's a
23 valid compromise. The applicant gets a house similar
24 to what he wants in size. The neighbors aren't
25 burdened by another precedent.

1 As a zoning administrator, I've seen too many
2 examples of bad grants that other developers use to
3 say, "Well, the City granted that this time. I'm
4 entitled to the same thing." So I have that historical
5 long view for that.

6 COMMISSIONER LINNICK: Okay. Your time has
7 run.

8 JON PERICA: Thank you so much.

9 COMMISSIONER LINNICK: Okay. Thank you.
10 John Murdock, then Tania Hackbarth, and then Mr. Fisk.
11 Name and address for the record.

12 JOHN MURDOCK: Good evening, Madam President,
13 members of the Commission. My name is John Murdock. I
14 am an attorney, 1209 Pine Street, Santa Monica. I am
15 not being paid to be here. I'm actually speaking on my
16 own behalf, although I must say I'm biased because I do
17 represent this property owner in the litigation that's
18 pending on the adjacent property. Mr. Marmon and I
19 have filed a petition for a writ of mandate.

20 And I am here to say, as a member of the
21 public, I am extremely outraged at what happened in
22 this companion case with the use and, I would call it,
23 the misuse of Section 245.

24 I've been through the whole history of that
25 case, and I've been through all of the paper in this

1 case. There really isn't a difference. There's no
2 topographical difference. There's nothing that
3 distinguishes this case from that case. Your findings
4 were completely correct when you denied the variance or
5 upheld the zoning administrator's denial of a variance.

6 The same zoning administrator denied the
7 variance, and why is he granting the variance here?
8 Let's be real. The City Council reversed his decision
9 and said, "Here are the findings we want for this
10 property." Those findings are bogus. I guarantee you
11 they will be overturned in court.

12 Now, the applicant is here to ask you to do
13 the same thing, a set of bogus findings. You already
14 have pinpointed the main issue. Can you build a house?
15 Well, finally, you got a concession. "Yes, we can
16 build a house." That's it. It's all over. They must
17 make every one of the five findings.

18 When counsel says, "This is discretionary, and
19 please help us maximize the use of this property,"
20 that's completely wrong. It's not discretionary. It's
21 mandatory that the findings be made. And the courts
22 have consistently said, "It should be hard to get a
23 variance. It's not easy to get a variance." And
24 Councilmember Koretz was completely out of line because
25 how that happened, he came to the City Council at the

1 last minute. He didn't comply with the Brown Act. He
2 didn't agendize his request. He said, "Oh, I found out
3 too late, just Friday, about this decision."

4 His deputy, the same deputy, was at your
5 hearing. He knew that you had denied the variance.
6 Your letter went to his office. So how could he come
7 to the Council and excuse his violation of the
8 Brown Act by saying he didn't know about it?

9 That's completely abusive in my view, and that
10 led to the remand. You again denied it, and then he
11 took it up again. I guarantee you are going to deny
12 this, and he's going to take it up, and we'll be right
13 there. Thank you.

14 COMMISSIONER LINNICK: Ms. Hackbarth and then
15 Dan Fisk and then Steve Twining or Twining.

16 Name and address for the record. You have two
17 minutes.

18 TANIA HACKBARTH: Good evening.
19 Tania Hackbarth, 300 Stone Canyon Road. I am the
20 property owner directly next door to 360 Stone Canyon.
21 I submitted a letter, which you all have and you've all
22 read. First off, I'd like to compliment all four of
23 you. I've been listening very intently to your very,
24 in my opinion, correct questioning and your very
25 accurate overview to look at this the way you have

1 looked at it, and I want to compliment you on your very
2 wise questions that you've put forth this evening.

3 I've listened to this site being described as
4 a bowl, and in my mind, a bowl goes like this. Just a
5 womanly observation, to me, this is more like a saucer.
6 It's not even a bowl. It's more flat than what the --
7 what the applicant wants everybody to believe.

8 The 55 feet that he's talking about, that the
9 structure has to be pushed back 55 feet because of the
10 stream, et cetera, et cetera, to build the type of home
11 that he wants to build, one would normally do that
12 anyway to create a beautiful driveway, to create
13 beautiful landscaping, to create beautiful hardscape so
14 that you have a presence going up to a seemingly
15 beautiful house.

16 So I don't see that this 55 foot that he has
17 to bring this property back as being a detriment but
18 more being something that would logically need to be
19 designed anyway to create a beautiful frontage.

20 He also talked about how there's no other
21 properties in the neighborhood that have a significant
22 differential, and my property has an even stronger
23 differential, and I'm right next door. Plus, I've
24 observed other homes along Stone Canyon Road that have
25 differentials. So I would like to point out that it's

1 my observation that I have found many properties that
2 have differentials that have managed to build beautiful
3 homes and taking the stream into consideration.

4 My only -- my only other comment -- and I
5 truly believe this -- is that the reason that we are
6 all here today is that this applicant is once again
7 trying to obtain a special privilege that no other
8 homeowner is allowed to have. You -- we have in
9 Los Angeles a Baseline Mansionization Ordinance.
10 Everybody has to work within those guidelines. And I
11 want to plead to you one more time to deny his appeal
12 and to uphold the Mansionization Ordinance, which you
13 have put forward. Some other thoughts --

14 COMMISSIONER LINNICK: Okay. Well, your time
15 ran.

16 TANIA HACKBARTH: Okay.

17 COMMISSIONER LINNICK: Commissioner Linnick.
18 I have a question. Does the stream -- does it --

19 TANIA HACKBARTH: -- go right through my
20 property too?

21 COMMISSIONER LINNICK: Does your -- on your
22 property?

23 TANIA HACKBARTH: It goes right through my
24 property.

25 COMMISSIONER LINNICK: And how does your

1 property treat the stream?

2 TANIA HACKBARTH: Well, our structures are
3 pushed back. Our structures -- and my home is 36 feet.
4 And our structures are pushed back.

5 COMMISSIONER LINNICK: Okay. And I have a --

6 TANIA HACKBARTH: And my home is a -- was
7 built -- newer built, 2000 -- it was built in
8 the 2000 -- you know, I don't exactly remember the
9 exact year, but it was between 2000 and 2005. So it's
10 a newer-built home. But the stream runs straight
11 through, and we hear that beautiful water going
12 straight through.

13 COMMISSIONER LINNICK: Well, I was --
14 Commissioner Linnick. That was a question that I had
15 because the stream sounds like it's this huge burden,
16 but I would -- it would be lovely to have a stream on
17 my property. It would seem very estate-like, I would
18 think. So I'm glad to hear that, you know, you are
19 okay with -- the stream is okay. It's not like a
20 huge -- you like your stream.

21 TANIA HACKBARTH: Well, that's --

22 COMMISSIONER LINNICK: She's, like, "No, I
23 don't really like my stream."

24 TANIA HACKBARTH: -- not even the point.
25 That's not even the point. The -- you know, what I --

1 what I basically just want to convey to you is that the
2 parameters with which he has to build with, you know,
3 he can certainly do it with complying with the
4 ordinance, I believe, that is on the books, and I just
5 believe that he's asking for a special privilege. And,
6 also, Stone Canyon Road -- and he's saying, well, only
7 18 percent of it is going to be 55 feet, and the
8 other --

9 The problem is that the part that's going to
10 be 55 feet is on Stone Canyon Road. So as the
11 neighborhood drives through, up and down, they are
12 going to see this big towering structure, which is
13 probably equivalent to a four- or five-story office
14 building, and that's -- you know, that's the reality.
15 As you drive down Stone Canyon Road, it's the front
16 half of it that he's saying is the 18 percent that
17 needs to be 50-plus feet.

18 COMMISSIONER LINNICK: Okay. Okay. Thank
19 you. Dan Fisk. H. Dan Fisk and then Mr. Twining.

20 H. DAN FISK: Yes.

21 COMMISSIONER LINNICK: Name and address for
22 the record. You have two minutes.

23 H. DAN FISK: My name is Dan Fisk. I live at
24 1527 Stone Canyon Road, just off of Stone Canyon Road.
25 My mailbox is there. Our home is on Tanner Bridge

1 Road. We have -- our property is called
2 "Stone Bridge." It's the principal part of the
3 original estate that started Bel Air, the
4 Doheny Estate. Later, Bel Air, as you know, was
5 developed by the Bell family.

6 I'm here pro bono. The last time I appeared
7 before a -- in a commission setting, I was on your side
8 of the podium as chairman of a planning commission and
9 city councilman.

10 I have some empathy for the property owners.
11 Philosophically, it's nice to be able to develop your
12 own property the way you want to, but those of us who
13 have been involved in land use planning know that if
14 you don't have rules to follow, you end up with a
15 hodgepodge community. And I share the comments that
16 have been made against the variance before me. I have
17 provided you with a letter that concisely states my
18 point of view on this..

19 Picking up off of what Tania said a few
20 minutes ago, I'm quite concerned that coming into
21 Bel Air on Stone Canyon Road or on Bellagio, which is
22 the marquee entrance into this beautiful community, I
23 don't want to see a commercial-like structure there
24 with -- that has the appearance of three or four
25 stories to be incompatible with all of the beautiful

1 architecture that we have in the community. I think
2 that would be a big mistake. And I have not seen any
3 indication that they've met the five criteria that
4 should be met in good land use planning to permit such
5 a variance.

6 And so it is with that that I respectfully
7 oppose the issuance of the variance, and I would
8 appreciate the Commission carefully considering the
9 points made in the letter that I have submitted. Thank
10 you very much.

11 COMMISSIONER LINNICK: Thank you.
12 Steve Twining.

13 H. DAN FISK: There is one further comment I
14 might make. I think, if you talk to Ms. Ferris --
15 Tania, you'd find that the slope of her property is
16 very comparable to what the applicant has represented
17 their property has for their variance.

18 STEVE TWINING: Yes. My name is
19 Steve Twining. I live at 1535 Roscomare Road in
20 Bel Air. I am a Bel Air resident and have been for
21 over 40 years.

22 First of all, I'll say that a flat roof is
23 ugly in general. I'm speaking on behalf of the
24 Hillside Federation. You got the document. I won't
25 have to read, but I especially refer you to page 2.

1 This instance is a blatant political -- there's blatant
2 political influence on the zoning administrator to
3 change his mind from 360 to this property even though
4 they are adjacent, and I have -- I believe, if I'm not
5 incorrect, it was a councilman who wanted to preserve
6 the stream. Is that -- is that true?

7 SHAWN BAYLISS: He's supportive of it. The
8 previous councilmember was in office when we got that.

9 STEVE TWINING: But what is a current -- the
10 current councilman is in support of the stream.

11 Is that correct?

12 SHAWN BAYLISS: He certainly is.

13 STEVE TWINING: Thank you.

14 In the prior case, the top floor was -- on one
15 hand, it was for utilities, air-conditioning and so on.
16 On the other hand, it was for aesthetics. This
17 property will clearly be visible from Stone Canyon, and
18 I also want to say that the Hillside Federation
19 represents 42 homeowner associations. They are listed
20 on the left side. If I had more time, I would read
21 them to you, but you don't need -- you are capable of
22 seeing those.

23 So the fact of the matter is that there are
24 hillside residents -- and I would say the majority --
25 that would be opposed to this variance. Thank you.

1 COMMISSIONER LINNICK: Thank you. Okay. We
2 have rebuttal time unless counsel --

3 COMMISSIONER FOSTER: There's nobody opposing?

4 COMMISSIONER LINNICK: No. There's -- that's
5 all that I have.

6 Was there anyone -- I don't have any speaker
7 cards in favor of the -- or against the appeal. Okay.
8 I don't know if Mr. Bayliss -- would you like to go
9 before or after rebuttal?

10 SHAWN BAYLISS: I can go now.

11 COMMISSIONER LINNICK: Okay. Mr. Bayliss.

12 SHAWN BAYLISS: Shawn Bayliss, planning and
13 land use guy for Councilmember Paul Koretz' office.
14 There's definitely been a lot said here this evening.
15 The main takeaway points that we look at -- "we" being
16 in our office -- this is an irregular-shaped lot. A
17 lot of them are in Bel Air. It has a stream that runs
18 down it that, as it has been discussed, some properties
19 have. That stream is actually mandated to maintain by
20 order of this Commission. On top of that, it also has
21 an additional 15-foot buffer on top of it as mandated
22 by this Commission. It runs down the entire length of
23 this property.

24 Over 30 percent of the property is unusable
25 because of the river, the creek, the setbacks, the

1 hillside. One part of the Baseline Hillside
2 Ordinance -- something that we try to avoid is grading
3 into the hillsides. If you were to push this home
4 back, you further tear into the hillside. I don't
5 think Mrs. Lazarof would be a fan of that, nor would
6 anybody.

7 Mr. Twining is correct. The Councilmember is
8 a staunch supporter of the preservation of that creek,
9 does not want it touched, and let the applicant know
10 loud and clear that the request for it to be moved from
11 the tract map was not a good idea.

12 Knowing the limitations that the City has
13 placed on this project and that a small portion,
14 roughly 18 to 20 percent of it, reaches that
15 36 percent, our office feels that those findings can be
16 made. We felt that the situation was actually similar
17 to the other one, which is why we took the route that
18 we did, and we support the applicant's request here as
19 well.

20 I'm more than happy to take questions, address
21 anything you want me to talk about.

22 COMMISSIONER LINNICK: Okay. Thank you.

23 SHAWN BAYLISS: Okay.

24 COMMISSIONER LINNICK: Now we are going to
25 have rebuttal from both the applicant and the

1 appellant, two minutes. Does the applicant want to
2 come forward and have two minutes, Mr. Dveirin?

3 MR. DVEIRIN: Thank you, Ms. Linnick. A
4 couple quick points.

5 First of all, the way this thing, as I pointed
6 out, goes down to the stream and the roof is the
7 same -- it's the same elevation. The hardship -- and I
8 don't know if I made this clear -- is that the
9 requirement is that you measure the height five feet
10 from the lowest point. It's because of that
11 requirement that it's -- he deserves a variance
12 because, when you have to use that for the measuring
13 point, it only makes that one portion 50 feet. The
14 house isn't all 50 feet, but it's the artificial
15 constraint of the measurement five feet from the lowest
16 point that makes this difficult. We shouldn't lose
17 sight of that.

18 There are -- in the ZA's determination, there
19 are a list of properties that have similar variances
20 that have been granted to numerous properties that
21 surround us. We are not asking for anything that other
22 people don't normally get when they are developing on
23 this type of property. As I said to you when I was up
24 here, the problem is -- this is no different than when
25 I represented the Groman [ph] brothers, who were

1 building on the last lot at some fancy tract up on
2 Mulholland. And all of the neighbors came out because
3 they wanted to look over their lot. When you're last,
4 you hardly ever get the same modifications and
5 variances that your neighbors have.

6 There are no other properties that I'm aware
7 of that are under this type of constraint that have to
8 measure under this ordinance, with this sort of 16-foot
9 differential, and then pay the price for the entire
10 house. That's what makes this stand out. That's why
11 it's difficult. That's why you should support the
12 variance and deny the appeal.

13 My understanding about the hillside group,
14 they have no jurisdiction here. I don't believe the
15 gentleman who spoke to you is actually on that board.
16 I don't fully understand why they're here. The
17 Mansionization Ordinance, my understanding, doesn't
18 apply here.

19 If you want to talk mansionization, let's go
20 to my neighborhood just south of the Mormon temple.
21 I've got a mansionization problem. I've got big houses
22 next to my little house on Holmby. That's not what
23 this is about, but I understand what she's talking
24 about.

25 I think Mr. Bayliss is correct. This was

1 imposed on us. We are happy to deal with it, but it
2 does constrain this property. And with that, I'd ask
3 that you support the variance, deny the appeal, and
4 affirm the zoning administrator's very detailed and
5 dedicated work. Thank you.

6 COMMISSIONER LINNICK: Thank you. Any
7 questions? No. Okay. Mr. Marmon, two minutes. Name
8 for the record, please.

9 COMMISSIONER FOSTER: Don't touch it.

10 MR. MARMON: My name is Victor Marmon.
11 Do I have to give my office address,
12 et cetera?

13 COMMISSIONER LINNICK: No. That's fine.

14 MR. MARMON: Okay. First, measuring five feet
15 out from the perimeter of the property is not a
16 hardship. It's the law. It's been the law since 1993
17 with the original hillside ordinance. It is the law
18 today.

19 Second, measuring from that point is not
20 the -- the way the building envelope works. The
21 building envelope goes up the grade along with the
22 property. You can keep your 36-foot height if you move
23 up the grade and terrace your house.

24 There was some discussion about how much
25 grading was done at the property. I have a letter from

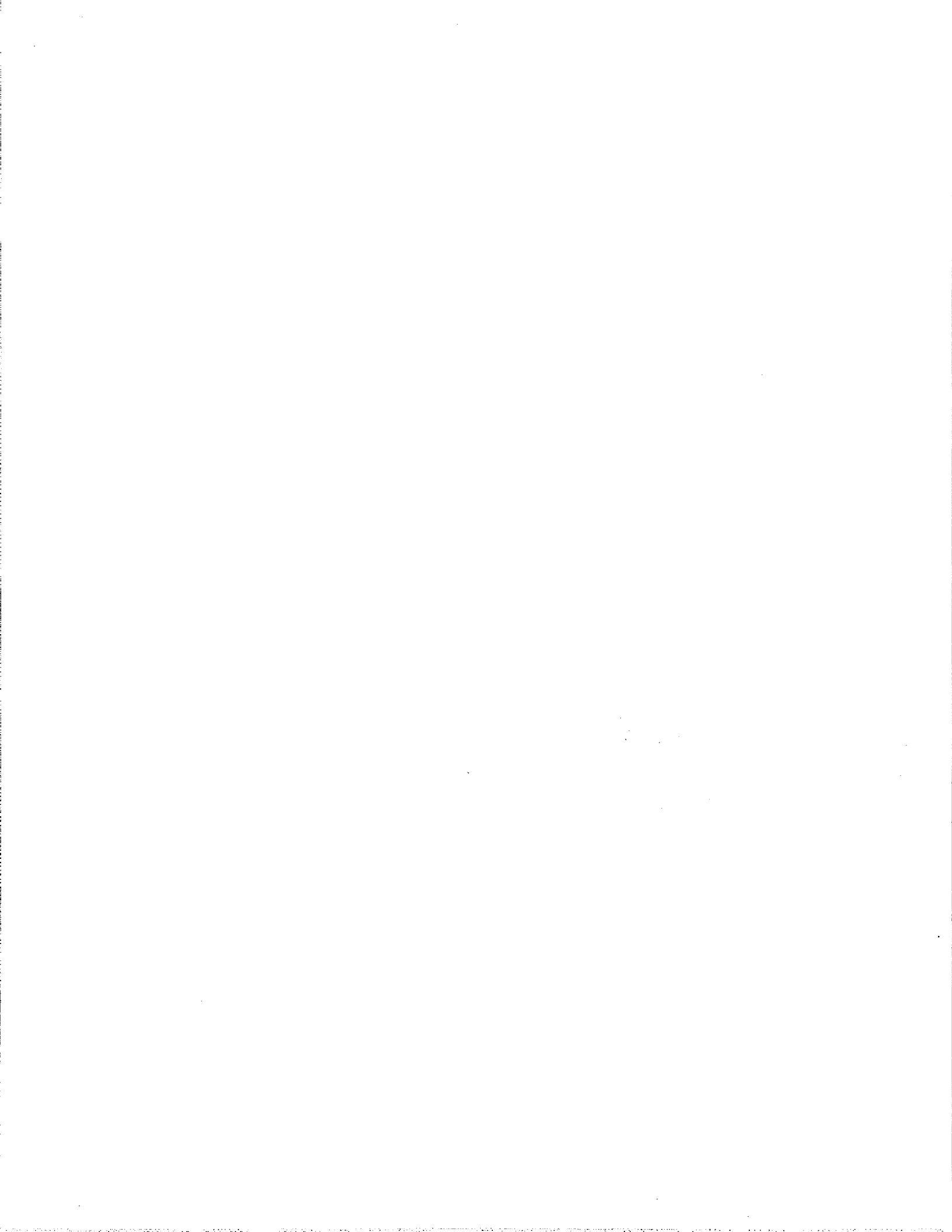
1 Mr. Tokunaga, granting a waiver of a tract map, where
2 he states that the previous approved amounts were
3 17,430 cubic yards of cut, 494,000 [sic] cubic yards of
4 fill, and 2,936 feet of export. The --

5 Mr. Dveirin talked about the house having a
6 flat roof. Think about it. A flat roof, the limit is
7 30 feet, not 36 feet. You are talking about a 20-foot
8 variance, a 50-foot variance instead of a 30-foot
9 house.

10 Again, Mr. Dveirin talked about the pad being
11 below. The pad is above street level. He talked -- so
12 I'm not sure if it was Mr. Dveirin or someone else
13 talked about preservation was imposed on us. It was
14 part of the conditions of a four-lot subdivision. It
15 was agreed to voluntarily when the map was recorded.
16 This is not an imposition. It was a voluntary
17 agreement.

18 And, then, there was reference to the Baseline
19 Mansionization Ordinance. I think that was a mistaken
20 reference. We all know it was the Baseline Hillside
21 Ordinance.

22 And, finally, there is no additional 15-foot
23 buffer. There is a stream which you can't go --
24 affect, and then there's a 10-foot vegetation buffer.
25 There is no 15-foot buffer.



1 Thank you very much. Thank you for your time
2 on this. I know you spent a lot of time on it.
3 Thanks.

4 COMMISSIONER LINNICK: Thank you.

5 Okay. Does anyone have any questions for
6 anyone?

7 Okay. We are going to close the public
8 hearing and begin deliberations.

9 COMMISSIONER HALPER: Commissioner Halper. If
10 I may start. I am always reluctant to oppose a
11 councilman's presentation from a council district.
12 They are the elected official, and I respect them
13 greatly. I also am -- would like to satisfy the needs
14 of a homeowner to build what he wants.

15 And I do resent the implication that
16 Mr. Tokunaga is being acted on in a political manner
17 because I believe he's a distinguished professional.
18 However, I don't believe that the findings were made in
19 a manner which satisfy me. I think they were fairly
20 weak, and for that reason, I have reservations about
21 the project.

22 COMMISSIONER DONOVAN: Commissioner Donovan.
23 I haven't heard any facts in this case that
24 differentiate from our ruling in the Stone -- in the
25 Stone Canyon case, and I agree with

1 Commissioner Halper. It is with great reluctance that
2 I disagree with a distinguished councilmember and
3 frankly with anybody from the Planning Department, and
4 I do that with the utmost respect. And I cast no
5 aspersions whatsoever on the planning staff or
6 Mr. Tokunaga at all, whatsoever, for his findings. He
7 calls them as he sees them. That's the way I see it,
8 but I just see them differently in this case.

9 COMMISSIONER FOSTER: Commissioner Foster. I
10 agree with what's been said by Commissioner Halper and
11 Commissioner Donovan. I have seen nothing that changes
12 the conditions. I see no reason why this house
13 couldn't have been -- knowing the owner had the home
14 since we made the ruling -- I think it was 2006 --
15 there's, to me, no real reason that this home couldn't
16 have been designed with the ordinance in mind and
17 follow the rules.

18 It's still a very big piece of property, and I
19 think the stream is an asset to the property, not a
20 liability. The stream makes for a natural beauty, and
21 I think Stone Canyon is one of the most beautiful
22 streets in our city. I've spent all my life living in
23 Westwood, and I used to jog up Stone Canyon. I know it
24 well, and it is beautiful. And a house that size with
25 a flat roof -- and I believe a flat roof is supposed to

1 be 30 feet, not 36 feet according to the ordinance -- I
2 just -- I can't see that it couldn't be built in a way
3 that would allow the ordinance to be followed. It
4 doesn't -- I can't make the findings either. I looked
5 at the findings, and I think the findings are very
6 difficult for me to make to justify this.

7 COMMISSIONER LINNICK: Commissioner Linnick.
8 I think I agree with everything that's been said, and I
9 think we've -- both the architect for the applicant and
10 the architect for the appellant have said that there
11 are other alternatives for this same property. So I
12 think that also, sort of, adds to my thoughts about the
13 fact that, you know, something else could be done.

14 I agree about the stream. And then, also, you
15 know, talking about the fact that it would -- that, you
16 know, this is a very large property and something very
17 estate-like -- I think the discussion from applicant's
18 lawyer was that -- you know, it needs to be something
19 like everyone else has, a big estate, and it sounds
20 like you can still do that, and it's a large, wonderful
21 property. And I think it could be -- you know, it
22 could be with -- more in keeping with the character of
23 the neighborhood. So that's all I have to add, I
24 think.

25 COMMISSIONER DONOVAN: Commissioner Donovan.

1 I'm prepared to make a motion to -- on this case with
2 the recognition and the cognizance that we have a court
3 reporter here. We have another companion case in
4 litigation right now, and so I have some detailed
5 findings to make, and I apologize for --

6 COMMISSIONER LINNICK: Okay.

7 COMMISSIONER DONOVAN: -- the length of it.

8 But I would -- my motion would be to grant the appeal,
9 and the findings that I would make, this, as concerns
10 the variance, would be as follows. And I will do the
11 best I can and get it all together along with my notes,
12 and I can make this available to staff in the next
13 couple of days so that you will have something to look
14 at, but --

15 In this particular case, you have to make five
16 findings in order to grant a variance, and in this
17 particular case, I don't think the applicant can make a
18 single one of these findings as he -- but even if you
19 made four of them and you couldn't make the fifth one,
20 you couldn't get a variance. So -- and this will be
21 pursuant to L.A. Municipal Code Section 12.27-D. The
22 first finding you have to make is that it would make a
23 strict application of the provisions of the zoning
24 ordinance will not result in practical difficulties or
25 unnecessary hardships inconsistent with the general

1 purposes and intent of the zoning regulations.

2 We saw from the report and from the transcript
3 of the hearing before the zoning administrator that the
4 applicant said the variance request is only to allow
5 additional height so the proposed residence can have a
6 consistent roof line for the entire home. Due to the
7 varying elevations at the site -- that's on page 13,
8 the second full paragraph -- the case is Committee To
9 Save Hollywoodland v. City of Los Angeles. It is 2008,
10 61 Cal. App. 4th, 1168, and Zakessian v. City
11 of Sausalito, 1972, 28 Cal. App. 3rd, 794 -- mandate
12 that hardships must be substantial.

13 There are no practical difficulties or
14 unnecessary hardships in designing and building a house
15 with a variance on this property, and the denial of a
16 variance will not prevent the applicant from designing
17 and building such a house that would be comparable to
18 others in the neighborhood. The evidence to support
19 this would be the September 24th, '13 report of
20 David Applebaum, which is attached as Exhibit C to the
21 January 6 -- January 2014 letter from the Marmon law
22 offices and testimony of Jon Perica as stated on
23 page 53 of the transcript of the September 25, 2013,
24 hearing. There's also testimony and letters submitted
25 to the ZA by Edgar Khalatian, Victor Marmon,

1 Michael Piszker, Jon Perica and Janice Lazarof. So I
2 would incorporate the evidence referenced in the Marmon
3 law offices January 6th of 2014 letters as though fully
4 set forth.

5 I would also incorporate the testimony
6 evidence submitted at this hearing as though fully set
7 forth.

8 Additionally, there was no competent evidence
9 submitted by applicant to the effect that applicant
10 could not build and design a house comparable to his
11 neighbors' homes without a variance. This application
12 for a variance is essentially for subjective reasons.

13 The second finding that you have to make
14 before you can grant a variance is that -- has to do
15 with special circumstances, and in this case, there are
16 no special circumstances applicable to the subject
17 property such as size, shape, topography, location, or
18 surroundings that do not apply generally to other
19 property in the same zone and vicinity.

20 Committee To Save Hollywoodland required --
21 that case requires that special circumstances
22 pertaining to the property must be such that the
23 property is distinct in character from comparable
24 nearby properties. We have received substantial
25 evidence that this is not the only property in the

1 vicinity that has a stream running through it. This is
2 not the only property in the vicinity with varying
3 elevations. The general topography of this property is
4 essentially the same as the surrounding property, which
5 Stone Canyon Creek also runs through.

6 There are no special circumstances that
7 prevent applicant from designing and building an estate
8 home without a variance. The same evidence to support
9 this is the same evidence I just cited for Finding
10 No. 1, and it also includes the testimony we heard
11 today.

12 The third finding that you have to make is
13 that regarding the preservation and enjoyment of a
14 substantial property right or use generally possessed
15 by other property. In this case, the variance is not
16 necessary for the preservation and enjoyment of a
17 substantial property right or use generally possessed
18 by other property in the same zone and vicinity but
19 which, because of the special circumstances and
20 practical difficulties or unnecessary hardships, is
21 denied to the property in question.

22 No special circumstances have been
23 demonstrated for the same reasons in the other
24 findings. No practical difficulties or unnecessary
25 hardships have been demonstrated. The property can be

1 built upon and used similarly as other properties in
2 the vicinity.

3 There are no nearby properties in the vicinity
4 with the same zoning that have received a height
5 variance for the same or similar reasons that are used
6 to justify the present request, and we touched on that
7 in the -- that was not really highlighted in the
8 testimony except for on the rebuttal by the applicant's
9 attorney.

10 I will say some of the properties --
11 540 Crestline is three miles away in a different zoned
12 area. 255 Mabery is eight miles away in a different
13 zoned area. 480 Bel Air, which was done in 1995, is a
14 quarter of a mile away and approved for only 45 feet in
15 height. 457 Bel Air was in 2003, and it's a quarter of
16 a mile away as well, an approval for only 55 feet. So
17 those comparable properties offer no support to the
18 applicant. All of the other evidence is the same as
19 I've cited to No. 1.

20 The fourth finding has to do with material
21 detrimental -- finding the variance to be materially
22 detrimental to the public welfare, and the granting of
23 this variance would be materially detrimental to the
24 public welfare, or injurious to the property or
25 improvements in the same zone or vicinity in which the

1 property is located.

2 We have evidence before us that the granting
3 of a variance on this property will create an adverse
4 visual effect as respects neighborhood -- neighboring
5 properties. We've seen that in letters, and it's the
6 testimony that we received today. It will defeat --

7 Granting a variance on this property will
8 defeat the purpose of the goals of the Baseline
9 Hillside Ordinance, including -- which includes the
10 encouraging of building terraced structures. They
11 break up the mass of the structures.

12 The granting of a variance will defeat the
13 purpose of the BHO also in that, under Policy 1-3.3,
14 it's to preserve existing views in hillside areas.
15 There's nothing in there about obstructing. It's
16 supposed to be preserve existing views.

17 Finally, the granting of a variance on this
18 property will and is likely to have a precedential
19 effect. It would essentially raise the general height
20 limit on the neighborhood because anybody could come in
21 and say, "I want a higher structure now." The same
22 evidence that I used before, on the other ones, would
23 be applicable here.

24 The fifth and last one is the granting --
25 finding would be the granting of the variance will

1 adversely affect elements of the General Plan. The
2 Bel Air-Beverly Crest Community Plan purposes include
3 preserving and enhancing the positive characteristics
4 of existing residential neighborhoods; preserving and
5 enhancing the positive characteristics of existing
6 uses, which provide the foundation for community
7 identity, identity such as scale, height, bulk,
8 setbacks, and appearances; and the land use policies in
9 the Community Plan there speak to the intensity, that
10 the land use should be limited in accordance; the
11 compatibility of the proposed development with existing
12 adjacent development; and the design should minimize
13 adverse visual impact on neighboring single-family
14 uses. The proposed --

15 It will adversely affect the existing
16 neighborhood. The proposed height is excessive and not
17 compatible with existing uses and appearances. It does
18 not minimize the adverse visual effect on neighboring
19 uses, and most importantly of all, it's likely to set a
20 precedent that will adversely affect the positive
21 characteristics of the neighborhood, and for all of the
22 other reasons that I have found, it applied to the BHO
23 as stated in No. 4.

24 Finally, the granting of this variance will
25 operate to grant a special privilege and permit a use

1 substantially inconsistent with the limitations upon
2 other properties in the same zone and vicinity.

3 We have no evidence, nor has any been
4 asserted, that another property has received a height
5 variance in the nearby vicinity under the same set of
6 circumstances and facts for the same reason, and
7 there's no evidence submitted by the applicant that he
8 could not design and build an estate home comparable to
9 his neighboring -- neighbors' homes without a variance.
10 This application for a variance is essentially for
11 aesthetic reasons, also for the same evidence.

12 The other finding that I would additionally
13 make, the need for a height variance is self-imposed by
14 the applicant. This need is for aesthetic purposes
15 only. A house -- a home can be designed that is
16 aesthetically pleasing without a variance and for the
17 same facts that I cited in the other ones.

18 Also, I will reference the Stone Canyon matter
19 because it was the same -- it's the same applicant.
20 The initial hearing was at the same time. The
21 properties are right next to each other. There's
22 evidence that it's substantially the same, and at that
23 point, the representative for the applicant said, yeah,
24 they wanted a higher roof because -- you know, for
25 aesthetic reasons. That was -- and I would incorporate

1 the testimony from that hearing as well.

2 The final thing that -- the second to the last
3 thing is that I would cite Orinda Association v. Board
4 of Supervisors, 1986, 182 Cal. App. 3rd, 1145, which
5 holds basically that attractiveness of design lacks
6 legal significance and is irrelevant in these kinds of
7 variance cases.

8 The last thing I would do, I would incorporate
9 the proposed findings by the appellant to the extent
10 that they are consistent with the findings that I've
11 set forth.

12 COMMISSIONER FOSTER: Commissioner Foster.
13 Second.

14 RANDA HANNA: Commissioner Donovan?

15 COMMISSIONER DONOVAN: Aye.

16 RANDA HANNA: Commissioner Foster?

17 COMMISSIONER FOSTER: Aye.

18 RANDA HANNA: Commissioner Halper?

19 COMMISSIONER HALPER: Aye.

20 RANDA HANNA: Commissioner Linnick?

21 COMMISSIONER LINNICK: Aye.

22 RANDA HANNA: And the motion is carried.

23 COMMISSIONER LINNICK: Okay. Our next item is
24 public comment, and I haven't received any comment
25 cards.

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RANDA HANNA: No comment cards.

COMMISSIONER LINNICK: So the meeting has
adjourned at 6:33.

(End of proceedings at 6:33 p.m.)

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Joanna B. Brown, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 8570 issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

Dated: February 5, 2014

Joanna B. Brown

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