



# Town of Paradise Valley

6401 E Lincoln Dr  
Paradise Valley, AZ 85253

## Minutes

### Board of Adjustment

---

Wednesday, April 12, 2017

5:30 PM

Council Chambers

---

#### 1. CALL TO ORDER

Chairman Chambliss called the meeting to order at 5:30 p.m.

##### STAFF MEMBERS PRESENT

Town Attorney Andrew M. Miller  
Community Development Director Eva Cutro  
Planner George Burton

#### 2. ROLL CALL

**Present** 5 - Chairperson Rick Chambliss  
Boardmember Jon Newman  
Boardmember Catherine Kauffman  
Boardmember Eric Leibsohn  
Boardmember Quinn Williams

**Absent** 2 - Boardmember Emily Kile  
Boardmember Hope Ozer

#### 3. EXECUTIVE SESSION

A motion was made by Boardmember Leibsohn, seconded by Boardmember Newman, to convene into executive session. The motion carried by the following vote:

**Aye:** 5 - Chairperson Chambliss, Boardmember Kauffman, Boardmember Leibsohn, Boardmember Newman, and Boardmember Williams

**Absent:** 2 - Boardmember Kile and Boardmember Ozer

#### 6. ACTION ITEMS

None

#### 4. STUDY SESSION ITEMS

None

**5. PUBLIC HEARINGS**

- A. 17-119 Appeal for relief from the ruling of the Town Zoning Administrator regarding the application by TMS Ventures, LLC for Hillside Building Committee Review for the Property located at 5507 E. San Miguel Ave (Assessor's Parcel Number: 172-47-078D).Case No. BA-16-7.

Please reference the attached "Transcript of Proceedings - 4/12/2017."

**6. ACTION ITEMS**

None

**7. CONSENT AGENDA**

None

**8. STAFF REPORTS**

It was noted there is one item is scheduled for the next meeting.

**9. PUBLIC BODY REPORTS**

None

**10. FUTURE AGENDA ITEMS**

**11. ADJOURNMENT**

A motion was made at 8:49 p.m. by Boardmember Williams, seconded by Boardmember Newman, to adjourn the meeting. The motion carried by the following vote:

**Aye:** 5 - Chairperson Chambliss, Boardmember Kauffman, Boardmember Leibsohn, Boardmember Newman, and Boardmember Williams

**Absent:** 2- Boardmember Kile and Boardmember Ozer

**Paradise Valley Board of Adjustment**

By: Eva Cutro Eva Cutro, Secretary

TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
PUBLIC MEETING

Held at:  
Paradise Valley Town Hall  
6401 East Lincoln Drive  
Paradise Valley, Arizona

April 12, 2017  
5:30 p.m.

Taken By:  
Charlotte Lacey, RPR  
Certified Reporter  
Certificate No. 50859

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

Board Members:

- Richard Chambliss, Chairman
- Catherine Kauffman
- Jon Newman
- Quinn Williams
- Eric Leibsohn

Also Present:

- Susan D. Goodwin, Esq., Special Counsel
- George Burton, Planner
- Eva Cutro, Community Development Director

1                   CHAIRMAN CHAMBLISS: Welcome, everyone.  
2    Good evening.  
3                   We're going to begin the board of adjustment  
4    meeting for April 12th.  
5                   And so we'll have a roll call, and then I'm  
6    going to say a couple of words to everyone so you can -- I  
7    can kind of give you the heads up on how we're going to  
8    proceed and hopefully give everybody an opportunity to say  
9    what they want to say with some limitations.  
10                  So, George, first let's have a roll call.  
11                  MR. BURTON: Board Member Kauffman.  
12                  MS. KAUFFMAN: Here.  
13                  MR. BURTON: Board Member Leibsohn.  
14                  MR. LEIBSOHN: Here.  
15                  MR. BURTON: Board Member Newman.  
16                  MR. NEWMAN: Here.  
17                  MR. BURTON: Board Member Williams.  
18                  MR. WILLIAMS: Here.  
19                  MR. BURTON: Board Member Ozer.  
20                  Board Member Kyle.  
21                  And Chair Chambliss.  
22                  CHAIRMAN CHAMBLISS: Present.  
23                  MR. BURTON: We have a forum.  
24                  CHAIRMAN CHAMBLISS: Okay. Thank you.  
25                  Folks, my name is Richard Chambliss. I'm

1 the chairman of the board of adjustment.

2 We're here to consider an appeal from a  
3 zoning administrator correspondence. We have -- I've been  
4 on the board for about five years now. This is the first  
5 time that I've been on the board that we've had an appeal  
6 from a zoning administrator's decision and/or  
7 communication. So we're a little rusty on how we should  
8 proceed.

9 What I want to do is welcome everybody here.  
10 You know, we're all citizens, and we look for your input.  
11 There is this piece of paper you can fill out if you want  
12 to speak to the board. If you want to just register a  
13 position, you can do so, and indicate on here whether you  
14 want to speak or not.

15 I have several forms that have been handed  
16 to me.

17 I don't know if we're out of forms, George,  
18 or we have some more. So we'll put those out.

19 I have two forms that I've received where I  
20 do not -- where the individual has not stated whether they  
21 want to speak or not. And so that's a Gerry Keim and a  
22 Martha Cozzi. So either of you two need to make a  
23 decision; do you want to speak, not speak? And I'll let  
24 you make that decision shortly.

25 Because this is the -- for me, a little bit

1 foreign territory, haven't done it before, we're going to  
2 do something called executive session where the board will  
3 adjourn. We'll go to the back room. We'll talk a little  
4 bit about this proceeding to make sure that I can conduct  
5 it as fairly as possible for all of the interested folks.

6 So we're not back there making back-door  
7 deals. We're back there getting a little information  
8 about how this should proceed in a way that's fair to  
9 everyone here. I expect we'll be there for 20 minutes or  
10 so.

11 We'll come back, and then we'll begin with  
12 the appeal.

13 My inclination, which might be subject to  
14 being revised after we're through with our executive  
15 session, is to have a staff report on the appeal, to have  
16 the appellant present his position, have the aggrieved --  
17 have the applicant present his position, and then seek  
18 input from those members of the public that also want to  
19 address the board. And hopefully what we'll do, through  
20 that presentation, is focus the citizens that want to  
21 speak on the issues that are really before the board this  
22 evening that we need to consider.

23 We've received a volume of material from a  
24 number of you. It's clear that there's a great interest  
25 in this. And some of the information that I've received

1 and looked at is -- is having to do with matters that are  
2 really not before the board this evening. And so what I'm  
3 hoping to do, after executive session, is try to frame it  
4 for everybody what it is we really need to be presented  
5 this evening.

6 And that's not to diminish anybody's  
7 concerns, comments about the building site or variances or  
8 a whole lot of other issues that will ultimately have to  
9 be looked at through this process. But they really aren't  
10 going to be material to this evening's consideration.

11 So if anybody is offended if I cut them  
12 short -- because I will say to them, "I don't" -- "With  
13 all due respect, that's not the matter before the board  
14 here."

15 That's what I'm trying to give you a heads  
16 up about. You know, there's a lot of people that are  
17 going to want to speak. They've got a point of view. And  
18 I don't want to diminish the point of view, but to some  
19 extent, that's not matters that the board needs to hear.

20 And we're likely to be here for a while this  
21 evening, so I'd like to proceed as efficiently as  
22 possible.

23 So for the next 20 minutes or so, we're  
24 going to take a break, go back, have an executive session,  
25 come back, and we'll begin the public presentation.



1 AUDIENCE MEMBER: May I ask one question?

2 CHAIRMAN CHAMBLISS: Certainly.

3 AUDIENCE MEMBER: All these people here, and  
4 you're going to adjourn for 20 minutes or so. We're going  
5 to be -- keep all these people waiting. Why didn't you do  
6 that before?

7 (Applause)

8 CHAIRMAN CHAMBLISS: You know, that's a  
9 great question, sir. But if you understood the process  
10 that we have to go through, we cannot have a meeting  
11 before we call order because of the public meeting law.  
12 We can't meet behind closed doors to have a discussion  
13 about matters that we're going to decide until the meeting  
14 has begun.

15 And the purpose of me trying to give you the  
16 heads up is so that you're not confused, nor are you  
17 drawing negative inferences from the fact that we're  
18 trying to do this the right way.

19 I want to -- I want to let you all have your  
20 chance to speak. But this is not a popularity contest.  
21 And applause or comments are really not helping the board  
22 make any decision. We're here as a quasi-judicial body to  
23 take information about the appeal that is relevant and  
24 germane to the matters that we have to decide.

25 I understand that the temperatures run

1 pretty high on this and that folks have got a very -- some  
2 people have a very, very adamant point of view. I  
3 appreciate that. And I do not mean to disrespect them.  
4 But as I said earlier, a number of the comments we've  
5 already received are important and germane to other  
6 matters but not the ones that we need to consider this  
7 afternoon -- or this evening.

8 So I'm going to adjourn the board to an  
9 executive session. We'll get back to it just as quickly  
10 as we can so we can continue with this meeting.

11 Hope I've addressed your comments, sir.

12 AUDIENCE MEMBER: Excuse me, sir. Can you  
13 perhaps tell us what you can consider when you come back  
14 from your executive session?

15 CHAIRMAN CHAMBLISS: Let me -- I'll address  
16 that in one second, please.

17 We need a motion to go into executive  
18 session also.

19 (An off-the-record discussion ensued.)

20 MS. GOODWIN: I was advising the chair that  
21 we -- that a motion is needed to go into executive  
22 session.

23 (An off-the-record discussion ensued.)

24 MS. GOODWIN: I was advising the board that  
25 a motion is required, by the open meeting law, to go into

1 executive session. And in that motion, if you would  
2 please state the item that you're going into executive  
3 session on, namely the appeal from the applicant of the  
4 zoning administrator's decision in the TMS application  
5 matter.

6 CHAIRMAN CHAMBLISS: Okay. Before that  
7 motion -- I request, before that motion be made -- there  
8 was a question from the audience about what matters are we  
9 going to consider after we're through with the executive  
10 session. And it's the matters that are set forth on the  
11 agenda, which is the appeal as referenced in the agenda.

12 So at this point, if there's a motion to  
13 adjourn to executive session to consider the appeal of the  
14 zoning administrator's November 29th, 2016, letter.

15 Is there a motion?

16 MR. NEWMAN: So moved.

17 CHAIRMAN CHAMBLISS: Second?

18 MR. WILLIAMS: Second.

19 CHAIRMAN CHAMBLISS: Any discussion on that  
20 motion?

21 All in favor.

22 (Ayes)

23 CHAIRMAN CHAMBLISS: Any opposed? No.

24 We're going to executive session. We'll do  
25 it as quickly as possible, and we'll be back here as soon

1 as we can.

2 (Executive session held, not reported.)

3 CHAIRMAN CHAMBLISS: Good afternoon, folks.

4 Let me have a moment to go through these speaker forms so

5 I can organize --

6 AUDIENCE MEMBERS: We can't hear you.

7 CHAIRMAN CHAMBLISS: Good evening. I'm

8 going to -- I've got some additional speaker forms in

9 front of me. I'm going to go through them in the next

10 minute or so and try and organize them, and then we'll

11 proceed forward with the public process.

12 (An off-the-record discussion ensued.)

13 CHAIRMAN CHAMBLISS: Okay, folks. Let's get

14 started. I appreciate you giving me the opportunity to

15 get the speaker forms in order.

16 So we will proceed, first, with having a

17 staff report on the appeal. I -- I would then like to

18 have the appellant proceed with their position.

19 And I'm not holding strict time limits, but

20 I'm hoping that can take something on the order of

21 20 minutes or so.

22 If the applicant is here and wants to speak,

23 the applicant can, or anyone else in favor of the

24 applicant's position.

25 And we kind of have the double negative

1 here. Where we are at this point is appeal of the zoning  
2 administrator's November letter. So to the extent I've  
3 received speaker forms that says they are in favor of the  
4 agenda item, this is the appeal of the zoning  
5 administrator's decision. And if you are opposed, then  
6 you are on the side of the owner/applicant.

7           When we're through with the owner/applicant  
8 or his representative speaker, I want to give the  
9 appellant the last opportunity to speak.

10           And I've got a whole bunch of forms in front  
11 of me. For those of you have who are concerned citizens  
12 who want to address the board, I will be calling your  
13 names out here. And then hopefully confine your comments  
14 to three minutes.

15           And let me remind you that the issue that's  
16 before the board this evening is not whether this house  
17 gets built. It's not whether a variance gets granted.  
18 Not having to do with a whole lot of things pertaining to  
19 the structure, the lot, or other matters.

20           The -- the thing that's before the board to  
21 consider is when the zoning administrator's November 29th  
22 letter said that this application can proceed at risk, is  
23 that a decision that was a proper decision for the zoning  
24 administrator to make or was that a decision that was not  
25 a proper decision for the zoning administrator to make.

1 All of the issues that pertain to the actual  
2 building of the structure, the variances, the potential  
3 for safety and things of that nature are all matters that  
4 are going to be considered at some point in time if this  
5 application proceeds, but those are not matters that are  
6 before the board this evening. And so to the extent you  
7 have a burning desire to tell the board about those, we've  
8 got a limited amount of time, and I'd ask you to really  
9 direct your comments specifically to the zoning  
10 administrator's decision; was it right or was it wrong  
11 and, if so, why? And that really is not directly related  
12 to the issues pertaining to the actual building of the  
13 structure or things of that nature.

14 I just got a couple more applications. Give  
15 me one more second.

16 All right. Let's proceed with the public  
17 hearing on the appeal of item 17-119.

18 And first, what I would like is to have the  
19 staff give us a report with respect to this appeal.

20 MR. BURTON: Good evening, Chair, board  
21 members, members of public.

22 The application tonight is for an appeal  
23 that was filed by the Law Offices of Francis Slavin on  
24 behalf of three PV residences and the City of Camelback  
25 Mountain Corporation. The applicant is appealing the town

1 zoning administrator's decision to allow TMS Ventures  
2 Hillside application to proceed at risk during the pending  
3 litigation regarding access to the property.

4 This is a city map is showing the location  
5 of the subject property, 5507 East Sammy Hill Avenue, and  
6 an aerial photo of the site.

7 Just a little bit of background. The board  
8 reviewed a variance application for this property back on  
9 March 2nd of 2016. The request was to allow a driveway  
10 pad to exceed the limited length. The board, at that  
11 time, continued the application to May; however, on  
12 March 30th, the applicant withdrew the variance request.  
13 I believe that to be the design modifications to bring  
14 that driveway into compliance with code.

15 Since then, TMS has submitted application  
16 for Hillside review. And the Hillside process consists of  
17 two reviews; a conceptual review and formal review. And  
18 the Hillside Committee's basically the code compliance  
19 committee that reviews the plan of the property for both  
20 compliance.

21 TMS believes it has legal access to the  
22 property; however, the legal status of that access is  
23 subject to pending litigation.

24 On September 8th of 2016, the Hillside  
25 Committee performed a concept review. Then, on

1 September 20th, 2016, Mr. Slavin sent a letter stating  
2 that the Hillside Building Committee lacked legal  
3 authority to process the formal application pending  
4 litigation. Then, on November 29th, the community  
5 development director issued a letter stating that the  
6 Hillside application would be processed at risk during the  
7 pending litigation.

8                   And December of 2016 the appeal was filed.  
9 And then most recently, in February, TMS submitted a  
10 formal Hillside application; however, appeal does suspend  
11 further decision-making, therefore, the town has not  
12 provided a response until the board has ruled on that  
13 appeal.

14                   Again, the applicant is appealing the town  
15 zoning administrator's decision to allow the TMS Ventures'  
16 Hillside application to proceed at risk during the pending  
17 litigation regarding access to the property.

18                   And with every case that's presented to the  
19 board, staff does make a recommendation, and staff is  
20 recommending denial of the appeal, to affirm the zoning  
21 administrator's decision to allow TMS to continue the  
22 process, the Hillside Building Committee application, at  
23 risk, in accordance with the November 29th letter.

24                   That denial is based upon several reasons.  
25 First is that the zoning administrator did not make any



1 order, requirement, or decision regarding application of  
2 the zoning ordinance. The zoning administrator notified  
3 TMS that if it sought to continue with its Hillside  
4 Building Committee review process, it would do so at its  
5 own risk. And the zoning administrator did not make any  
6 decision as it -- to any requirements that may or may not  
7 apply to the property.

8 . Also, the town will require final  
9 determination of the pending litigation before issuing any  
10 building permit or other permits. And then consistent  
11 with this position, staff will recommend that any  
12 determination of the Hillside Building Committee be  
13 subject to stipulation referencing the outcome of that  
14 litigation.

15 Lastly, the applicant is making subdivision  
16 code arguments in the appeal, and the board does not have  
17 jurisdiction regarding the subdivision issues.

18 And that concludes my presentation.

19 CHAIRMAN CHAMBLISS: Thank you, George.

20 Any questions to George on the staff  
21 presentation?

22 George, I guess I'm thinking in terms of  
23 this zoning administrator's characterization of the  
24 at-risk processing of this application. Do we have  
25 anything in -- in our town code that addresses

1 specifically proceeding at risk with a application?

2 MR. BURTON: Not that I'm aware of. I'd  
3 have to refer to Eva, if she knows anything that I'm not  
4 aware of.

5 MS. CUTRO: Chairman -- Chairman, board  
6 members, there is nothing in the code that explains at  
7 risk or not at risk.

8 CHAIRMAN CHAMBLISS: I see. Thank you.  
9 Any questions based on my question?

10 Okay. Let's proceed with the representative  
11 for the appellant. And if you would come before us and  
12 give us your name and address, sir.

13 MR. SLAVIN: Thank you, Chairman Chambliss,  
14 board members.

15 I am Francis Slavin. I'm appearing on  
16 behalf of appellants --

17 AUDIENCE MEMBER: Microphone.

18 MR. SLAVIN: Hello. Okay. All right.

19 So anyway, I'm appearing on behalf of the  
20 owners of lot 22, 23, and 24 of Stone Canyon East  
21 subdivision.

22 CHAIRMAN CHAMBLISS: Let me stop you one  
23 second, sir, because your microphone wasn't working when I  
24 heard you say your name and address.

25 MR. SLAVIN: Okay.

1                   CHAIRMAN CHAMBLISS: There are court  
2 reporters here, so if you would repeat your name and  
3 address, please.

4                   MR. SLAVIN: Okay. I am Frances Slavin, and  
5 my address is 2198 East Camelback Road. I am a town  
6 resident for more than 20 years.

7                   And I am appearing this evening, together  
8 with Attorney Heather Dukes, with our law firm, and making  
9 this presentation on behalf of the three appellants --  
10 three of the four appellants; Theresa and Joe Zachariah,  
11 who own lot 22; Terry and David Appel, lot 23; and Al and  
12 Ingrid Harrison, who own lot 24, all in the Stone Canyon  
13 East.

14                   And -- and we've put, on the screen, the  
15 location of the three parcels of the owners that we  
16 represent.

17                   I have a request at the outset of this  
18 hearing. I'm here -- one of the reasons, as a lawyer, I'm  
19 here, is that perhaps I have to make a record in the event  
20 we would want to appeal this decision, Mr. Chairman. So  
21 there may be some more legalisms in this presentation than  
22 we might otherwise be accustomed to.

23                   I would like to ask, at this time, if  
24 there's any member of this board who would wish to recuse  
25 himself or herself because of some interest with regard to

1 the applicant TMS Ventures.

2 CHAIRMAN CHAMBLISS: Appreciate the request.

3 Is there any board member here that either  
4 believes they should recuse themselves and/or wants to  
5 make a record with respect to the whether or not they  
6 should recuse themselves?

7 MS. KAUFFMAN: My name is Catherine  
8 Kauffman. I have known Marcella Scali since 1997.

9 I have no financial interest in this  
10 property, and I can tell you that I have no bias one way  
11 or the other regarding this property.

12 MR. SLAVIN: Mr. Chairman, if I may, may I  
13 address Member Kauffman?

14 CHAIRMAN CHAMBLISS: Certainly.

15 MR. SLAVIN: Okay. I --

16 Heather, would you mind, please.

17 And -- and I don't -- I don't mean to make  
18 an -- an issue, necessarily, on this, but I am charged  
19 with the responsibility of making a record for my client.  
20 And what I have put on the screen is a copy of a Facebook.

21 Is that right, Heather? I think they call  
22 this Facebook. I don't know.

23 But basically, this is -- appears to be a  
24 post to your Facebook, which I think is still maybe on  
25 your Facebook, that says, "Happy birthday, my dear friend.

1 Make it a fabulous day." And you're addressing this to  
2 Marcella Scali.

3 It seems to me that you are a close, dear  
4 friend of Mrs. Scali, who is married to Mr. Scali, the  
5 applicant. Is that true?

6 MS. KAUFFMAN: That is incorrect. I can  
7 tell you I have never socialized with the Scalis ever.

8 CHAIRMAN CHAMBLISS: And -- and Mr. Slavin,  
9 I appreciate the effort to make a record. You've heard  
10 Board Member Kauffman state she has no pecuniary interest.  
11 She acknowledges that she has some sort of friendship with  
12 Ms. Scali. She's also stated that she does not believe  
13 that that relationship will interfere with her ability to  
14 be fair and impartial in considering this matter. And  
15 with that statement, I don't believe that it's proper for  
16 further examination of her on that issue.

17 MR. SLAVIN: I'm fine with that,  
18 Mr. Chairman. I just wanted to make a record.

19 And appreciate your comments, Ms. Kauffman.  
20 Okay. So --

21 CHAIRMAN CHAMBLISS: Mr. Slavin, let me make  
22 sure there's no other board member that wants to address  
23 the issue of any potential recusal.

24 Any other board member?

25 Okay. Please proceed.

1 MR. SLAVIN: Okay. Thank you.

2 The other thing I wanted to also address, if  
3 I may, up front -- and -- and I understand, from the  
4 comments being made, that -- that the board has considered  
5 the -- the letter issued on September [sic] 29, 2016, as a  
6 decision by the zoning administrator to be considered here  
7 this evening?

8 CHAIRMAN CHAMBLISS: I don't believe that  
9 there has been any determination made by the board that  
10 the letter of the zoning administrator constitutes a  
11 decision. I believe that's one of the issues that has to  
12 be addressed in this appeal.

13 MR. SLAVIN: Okay.

14 CHAIRMAN CHAMBLISS: So I think you should  
15 proceed forward on the basis that there's two matters the  
16 board needs to hear. One is the argument, the legal  
17 issue, as to whether or not that November 29th, 2016,  
18 letter constitutes a decision and then, secondly, whether  
19 that decision, if it was, is a proper decision and should  
20 be upheld or not.

21 MR. SLAVIN: Okay. Thank you for your  
22 clarification, sir.

23 Okay. This proposed roadway leading to the  
24 TMS property is the subject matter of a pending lawsuit  
25 which has -- was filed in April of 2016 by TMS Ventures,

1 the owner of the property. It was filed against the  
2 Zachariahs, the Appels, and the Harrisons for the purpose  
3 of establishing legal access through, over, across  
4 appellants' properties to extend a private road from the  
5 cul-de-sac on East San Miguel Avenue, up the mountainside,  
6 to this parcel.

7 The state statutes, as well as the town  
8 zoning board, has established the defined rules of the  
9 zoning administrator of a municipality, as well as a  
10 municipal board of adjustment. And under our state  
11 statutes and the town code, the zoning administrator is  
12 charged with interpreting and enforcing the town's zoning  
13 ordinance. The zoning administrator is the only person  
14 contemplated by state law, as well as the town zoning  
15 ordinance, of issuing an interpretation or an enforcement  
16 of the zoning ordinance.

17 So the question is, was -- is this an  
18 interpretation, or is it an enforcement letter? And if  
19 it's undertaken by the zoning administrator, then it  
20 should be the proper subject of this appeal.

21 I'm referring to Statutes A.R.S. -- standing  
22 for Arizona Revised Statutes -- Section 9-462.05(C) and  
23 Town Code 2-5-3.C.1.

24 Now, appeals to the board of adjustment may  
25 be taken by persons who are aggrieved by the decision of

1 the zoning administrator.

2           Clearly, in this case, we have three owners  
3 whose properties will be severely impacted by the proposed  
4 roadway for the TMS property. They are aggrieved by a  
5 decision made by the zoning administrator of the town.

6           Under 9-462.06(C), it states as follows. "A  
7 board of adjustment shall" -- doesn't say "may"; it says  
8 "shall" -- "hear and decide appeals from the decisions of  
9 the zoning administrator."

10           And as Chairman Chambliss has already  
11 pointed out, you are a quasi-judicial body, so you have  
12 the opportunity to conduct an evidentiary hearing, which  
13 we're doing here. You have the right to administer oaths  
14 and take sworn testimony from witnesses and to perform a  
15 de novo review.

16           For those of you who are not lawyers, it  
17 means that you're not bound by what the zoning  
18 administrator decided or didn't decide. You have the  
19 right to decide it on your own. So you're free to decide  
20 it however you wish to decide it as far as the facts are  
21 concerned, as well as the law that might apply in this  
22 situation.

23           And the board is allowed -- you're allowed  
24 to reverse, affirm, modify, in whole or in part, the  
25 order, the requirement, or decision of the zoning



1 administrator appealed from and make the order requirement  
2 or decision of determination as necessary.

3 Again, citation, for the record,  
4 Mr. Chairman, to A.R.S. Section 9-462.06(G)(3).

5 What we have here is a November 29,  
6 2006 [sic] -- I'll call it a decision -- by the town  
7 zoning administrator which allows TMS Ventures to proceed  
8 with a Hillside Building Committee application at risk.  
9 At risk. Despite TMS having no proof of legal access to  
10 its property.

11 And I'll get into that a little bit more as  
12 what the ordinance states about the type of proof that an  
13 applicant must furnish to the town.

14 Having received no final judgment in its  
15 pending lawsuit against our clients -- keep in mind, TMS  
16 is the one who initiated the lawsuit -- and having  
17 additional application requirements which depend upon a  
18 final judgment in the lawsuit -- depending on that  
19 judgment, there could be a requirement for a subdivision  
20 plat for a conditional use permit for a roadway or for  
21 several variances involved.

22 So, again, I'm pointing this out to you so  
23 you understand the potential seriousness of the so-called  
24 November 29, 2016, letter.

25 By allowing TMS to proceed with its Hillside

1 review and to obtain a decision from the Hillside Building  
2 Committee, the zoning administrator's decision, by  
3 definition, has to interpret. It has to -- has to be  
4 interpreting the zoning ordinance, and she has to be  
5 enforcing the zoning ordinance.

6           You've also heard her say it. There's  
7 nothing -- there's nothing in the zoning ordinance that  
8 addressed at risk.

9           So what is -- what is really happening here?  
10 Do we have an administrative official of the city  
11 legislating, adding something to an ordinance that's not  
12 there, putting in an as-is provision that's not there?

13           I submit to you the zoning administrator  
14 does not have that authority. Only the mayor and the  
15 council have that authority to add an as -- an at-risk  
16 provision to the ordinance.

17           We're asking you to decide one issue other  
18 than the decision issue. Okay? We're asking you to  
19 decide one and only one issue; whether the zoning  
20 administrator erred by issuing the November 29, 2016,  
21 decision allowing TMS to obtain an at-risk decision from  
22 the Hillside Building Committee before Maricopa County  
23 Superior Court has made a decision whether or not TMS  
24 enjoys legal access through lots 22, 23, and 24. That's  
25 what we're -- that's the essence of our appeal.

1           The zoning administrator's decision was  
2 erroneous for at least three reasons. First, as I had  
3 mentioned, there's no provision that allows at-risk  
4 processing or approvals which would render that decision  
5 ultra vires, which means it went beyond the scope of the  
6 ordinance and went beyond the scope of the zoning  
7 administrator's authority.

8           TMS has not satisfied -- and I'll point this  
9 out to you -- has not satisfied certain application  
10 requirements in Sections 2205 and 2206, notwithstanding  
11 the at-risk aspects about the litigation.

12 Notwithstanding. And the -- and the zoning ordinance  
13 requires the TMS property to meet the definition of a  
14 lot -- a lot -- by having adequate frontage upon a public  
15 or private street.

16           Third, after receiving a copy of the  
17 Maricopa County Superior Court judge's order denying TMS's  
18 motion for summary judgment -- for those of you who are  
19 not familiar with that term, it means that you can cut  
20 short the hearing process -- the trial process because  
21 there's no dispute -- genuine dispute as to a material  
22 fact and you don't have to go to the jury or go through --  
23 to a judge decision as a trier of fact.

24           But that failed. And there were various  
25 access theorys that were argued in that motion. So the

1 town has no authority, absent that decision, to allow TMS  
2 to continue processing the Hillside Building Committee  
3 application until final judgment is entered in the  
4 lawsuit.

5 Cities and towns do not have inherent zoning  
6 authority in the state of Arizona. It comes by the way  
7 enabling legislation making statutes. And the zoning  
8 administrator is limited to enforcing the zoning ordinance  
9 as adopted by the mayor and the town counsel.

10 Notably, the zoning administrator has no  
11 authority to allow a Hillside application to be processed  
12 and decided at risk when the applicant has failed to  
13 satisfy application requirements. And no one has  
14 submitted, to the town -- TMS's counsel and -- and the  
15 town attorney and the zoning administrator have not  
16 provided any reference to an at-risk provision in the  
17 zoning ordinance. And there's a reason why. It was  
18 admitted here already. So the zoning decision exceeds the  
19 authority.

20 Okay. Let's look -- let's look at the  
21 definition of "lot" in the Hillside Section 2203 of the  
22 zoning ordinance. It defines lot.

23 The question here, is this 3.44-acre parcel  
24 a lot?

25 "A parcel of land occupied or intended for

1 occupancy by one main building, together with any  
2 accessory buildings, including the open spaces" -- we lost  
3 that -- "required in the Hillside regulations and having  
4 adequate frontage on the public or private street."

5 Now, that is in the Hillside Building  
6 regulations. Okay? I'm reading from 2205 -- 2203 --  
7 excuse me. And 2204, 05, 06, you'll find the Hillside  
8 building relations there.

9 Let's go to the definition -- the overall  
10 definition of a lot.

11 Heather, we're getting some -- my -- okay.  
12 My screen's off. That's okay. I'm okay.

13 Here's the definition of "lot" generally, in  
14 the zoning ordinance, right at the front end, where you  
15 see all of the definitions. "A parcel of land occupied or  
16 intended for occupation by one main building together" --  
17 sounds familiar -- "together with any accessory buildings,  
18 including the open spaces required by this ordinance, and  
19 having, either, A, adequate frontage upon a public street  
20 or, B, adequate and recorded access to a public street by  
21 a private road as defined by this ordinance."

22 I will go back, and I would ask you to  
23 triple underline the words "recorded access." It's got to  
24 be recorded access. An owner -- when the owner comes in  
25 and makes an application, the owner must provide proof of

1 access, and it has to be recorded access.

2 Now, if TMS were fortunate enough to obtain  
3 an order from the court, judgment granting access, that  
4 can be recorded, and that can establish access. But  
5 there's no established access.

6 Now, this is what is in the zoning  
7 ordinance. So why are we talking about at risk? Because  
8 there's a lawsuit that's been filed by the applicant to  
9 determine whether or not the applicant has a lot. That's  
10 what's at issue in the superior court.

11 CHAIRMAN CHAMBLISS: Mr. Slavin, could you  
12 help me understand why the consideration of whether this  
13 is a lot or not, how that ties in to the zoning  
14 administrator's November 29th letter? I'm losing a little  
15 bit of context in understanding the argument you're making  
16 now and how that connects to what I think this board has  
17 to decide, which is the zoning administrator's decision.  
18 Can you help me out there?

19 MR. SLAVIN: I can. Okay. Let's -- let's  
20 first start with the definition of lot.

21 Definition of lot -- and, in this case,  
22 there's no public street because there was an old 1960  
23 roadway easement that was granted to Maricopa County for a  
24 public road that Maricopa County and the town never picked  
25 up on, and it's been conceded by everyone that there's no

1 public road here.

2 So now we're focused on the private road.

3 And this ordinance says "adequate and -- and recorded  
4 access."

5 Now, the lawsuit is all about whether or not  
6 there is access to this property. Okay? If there's no  
7 access, Mr. Chairman, it doesn't meet the definition of a  
8 lot. And in order to be able to make an application --  
9 and I'll show you the application and the checklist where  
10 it talks about lot. Throughout the Hillside regulations,  
11 it talks about lot over and over again. And there's even  
12 a checklist that refers to the lot as well.

13 So in order for a person to have standing at  
14 all to obtain a permit from the town, you've got to  
15 establish that -- the applicant must establish that it has  
16 a legal lot. Without a legal lot, no permit.

17 So if we're down in court and the judge is  
18 being asked to decide whether or not -- this is basically  
19 a legal lot, meaning am I going to grant or not grant  
20 legal judgment for legal access? That's before the court.  
21 Unless and until that is decided, there's no -- nothing to  
22 proceed forward in processing this application. There's  
23 no authority, in the zoning ordinance, to allow the town  
24 staff to process an application which doesn't meet the  
25 definition of lot.

1                   CHAIRMAN CHAMBLISS: I understand your  
2 argument. Thank you.

3                   MR. SLAVIN: Thank you.

4                   Okay. I need to grab my bottle of water.

5                   CHAIRMAN CHAMBLISS: You're at 19 minutes,  
6 but who's counting?

7                   If there's any question that any of the  
8 board members have --

9                   MR. SLAVIN: Please.

10                  CHAIRMAN CHAMBLISS: -- in the course of  
11 the --

12                  MR. SLAVIN: Please.

13                  CHAIRMAN CHAMBLISS: -- presentation --

14                  MR. SLAVIN: Yeah. Please.

15                  CHAIRMAN CHAMBLISS: -- then please let's  
16 address it while the subject matter is ripe.

17                  MR. SLAVIN: Right. Certainly.

18                  MR. LEIBSOHN: Since you're bringing up the  
19 subject at risk and you're asserting the zoning  
20 administrator does not have the authority to make that  
21 interpretation, but I believe -- correct me if I'm  
22 wrong -- you did state the mayor and city council does  
23 have that authority. Where is that stated?

24                  MR. SLAVIN: And I might have confused you  
25 by my comments, Member Leibsohn.



1           In order for there to be at-risk processing,  
2 the mayor and the council must adopt an ordinance or an  
3 amendment to the zoning ordinance that allows there to be  
4 at-risk processing of applications. That's my point.

5           So that has not been done. So for instance,  
6 if -- if the mayor and council were to go forward and  
7 amend the ordinance that allowed it, then that would be  
8 something else. But that's not there right now.

9           Am I -- I'm okay with that? No?

10          MR. LEIBSOHN: Thank you. Can I ask one  
11 more?

12          CHAIRMAN CHAMBLISS: Sure.

13          MR. LEIBSOHN: And is there a reason lot 25  
14 does not belong to this as your client? Is there a reason  
15 lot 25's not part of this?

16          MR. SLAVIN: My understanding is that the  
17 owner of lot 25 has reached an agreement with the  
18 applicant that he's willing to be bound by however the  
19 lawsuit turns out, one way or the other. So we're not  
20 representing lot 25. However, I would submit to you that  
21 the biggest impact -- and we'll show you a slide that  
22 illustrates this. But the -- by large -- by far and away,  
23 the largest impact is on the owners of lot 22 and 23,  
24 which are the Zachariahs and the Appels.

25          CHAIRMAN CHAMBLISS: Further question?

1                   Please proceed.

2                   MR. SLAVIN: Thank you.

3                   Okay. So I'm going to quickly proceed  
4 through these, Heather.

5                   We know there's concept plan here. We know  
6 there is -- and that has -- you have to make submittals.  
7 The applicant must make a complete application submittal.  
8 Okay? And also, with regard to formal Hillside Committee  
9 approval or meetings, the applicant shall submit all  
10 materials outlined in Section 2206.

11                   And I read you the definition already of lot  
12 in 2206.

13                   Then, when you look at the concept plan  
14 review meeting, under 2206, if you look at part B, it  
15 talks about seven copies of the preliminary site plan, so  
16 on and so forth, along with topographic information for a  
17 lot. Says "lot." 2206.

18                   Going down to subpart D, "Must submit a  
19 recent aerial photo of the site, with topography, comma,  
20 lot lines." Uses the word "lot" there.

21                   Again, this is the Hillside review. Okay?

22                   Then, the formal Hillside Committee review  
23 meeting, the following plans and materials shall be  
24 required. And then it goes on to use the word "lot" for  
25 detailed site plan, topo information for a lot. A

1 detailed grading plan and drainage plan for topo  
2 information for the entire lot.

3 We're talking about the study model.

4 Heather, is that up there?

5 MS. DUKES: Yes.

6 MR. SLAVIN: I don't see it on my screen.

7 CHAIRMAN CHAMBLISS: It's in front of us.

8 MR. SLAVIN: Okay. My screen went blank.

9 Some gremlin is -- oh. Here it is. Okay. All right.

10 Oh. There it went off again.

11 MS. DUKES: Can you see it up here?

12 MR. SLAVIN: But I don't have a microphone.

13 MS. DUKES: Oh.

14 MR. SLAVIN: Okay. So this is what slide,  
15 Heather? 13. Okay.

16 And this refers to a study model, which  
17 shows -- showing the relationship with proposed  
18 improvements to the contours of the lot. And then it goes  
19 on to -- under K, to talk, again, about an accurate  
20 oblique view architecture rendering submitted showing the  
21 lot.

22 Now, let's move on to the checklist. I  
23 mentioned there was a checklist that the staff has  
24 developed under the Hillside Building ordinance.

25 If anything, we're getting a refresher

1 course, Mr. Chairman, on the -- on the Hillside Building  
2 Committee process.

3 Okay. Now, this is a -- this is a form the  
4 staff has developed based upon the Hillside regulations.  
5 And it's required to be filled out by the applicant as  
6 part of its submittal to determine, among other things,  
7 that there that be a complete submittal made by the  
8 applicant. This talks about the area of the lot in two  
9 different places. And at the bottom here, it talks about  
10 percentage -- percentage of lots steeper than natural  
11 grade.

12 My -- my screen keeps going on and off, so  
13 I'll try to do it the best I can. Okay.

14 Then, as part of its September 16, 2017,  
15 application, TMS left the town's checklist blank where it  
16 called for depiction of, first of all, water. Let's talk  
17 about water for a minute. Water is significant. Adequate  
18 water pressure to meet the fire safety standards.

19 We have a house that's at 1,800 feet  
20 elevation.

21 It's -- you're required to submit how you're  
22 going to furnish water to the home, not only for use of  
23 the occupants but for firefighting purposes. That was not  
24 checked. That's an important item.

25 At the bottom it talks about half street or

1 right-of-way improvements, yes or no. That was not  
2 checked.

3 So we have an applicant submitting, and he  
4 hasn't checked all of these areas. And -- and it would be  
5 up to the staff, if I understand the way it works here,  
6 the staff looks at the plan, and they look at the  
7 checklist to see if -- if it's in compliance. That wasn't  
8 done here.

9 CHAIRMAN CHAMBLISS: Mr. Slavin, if I could  
10 ask you, is it -- is it your position that if a  
11 application was incomplete, that that -- that the zoning  
12 administrator should not have proceeded forward because  
13 the application was incomplete --

14 MR. SLAVIN: Exactly.

15 CHAIRMAN CHAMBLISS: -- is part of -- is  
16 part of your contention that the zoning administrator  
17 either exceeded her authority or otherwise was rebellious  
18 because the application itself was incomplete?

19 MR. SLAVIN: Among others, yes. That's the  
20 point we're making. The application was incomplete.

21 And -- and of course, when it comes to the  
22 streets, without having a judgment entered by the superior  
23 court, there's no way to provide that.

24 Now, how did this application come this far?  
25 The process started in mid-2013. This is before the

1 lawsuit was filed, remember, in April of 2016, and the  
2 recent order entered by the court a year later,  
3 March 31st. How did we get this far in this process?

4 Well, there was a September 4, 2013, letter  
5 issued by the town attorney. And it was based upon some  
6 exchange that the town attorney had with TMS's attorney.  
7 And -- and he finally issues a letter, and it says here,  
8 "After reviewing the cases cited in your letter" -- and  
9 this is, again, to Doug Jordan, whom you all know -- "the  
10 cases cited in your letter, the town attorney's office  
11 agrees, there is legal access to the Scali property by  
12 way -- by way of necessity."

13 It doesn't say "there appears to be." It  
14 says "there is." There is -- and so, it appears to me --  
15 then -- then it goes on to say the exact location of it.

16 So does the town attorney don the court's  
17 robe, in September of 2013, and make this decision?  
18 Because on the strength of that, the application was  
19 accepted to go forward.

20 On July 20th, 2016, Mr. Jordan writes a  
21 letter, a follow-up letter, and he's attempting to enforce  
22 the town attorney's implied way of necessity determination  
23 as of the September 4, 2013, letter. Says, "As you  
24 recall, by letter dated September 4, 2013, parens,  
25 enclosed, the town agreed that there is a legal access to

1 the property by the way of an implied way of necessity.  
2 Now, it's interesting that this letter was issued three  
3 months after TMS had filed their lawsuit asking the court  
4 to determine that there was legal access. And one of the  
5 legal theories was implied way of necessity. Now, why is  
6 TMS coming around and saying, hey, back in 2013, you ruled  
7 this way? Kind of some befuddling circumstances.

8 The letter closes as follows -- now, the  
9 lawyer by the name of Mr. Lopez, who represented the  
10 appellants in -- in writing the letter to the town --  
11 says, in his July 15, 2016, letter, "Mr. Lopez requested  
12 the town abstain from taking any action on TMS's Hillside  
13 submittal until the pending litigation is concluded."

14 Seems like a reasonable position.

15 "However, this request is inappropriate  
16 because it would needlessly delay Hillside review based  
17 upon lack of access when the town has already determined  
18 that legal access exists."

19 So starting to get a flavor here. Is there  
20 some connection now to the at-risk determination? That  
21 somehow this has been moved along and then all of a sudden  
22 we're going to say it's not being done at risk instead of  
23 staying with what will the judge decide?

24 So we send a letter, on behalf of the  
25 appellants, to the town, and we notified the town attorney

1 that the town would have no authority to confirm legal  
2 access by an implied way of necessity theory. We state,  
3 at page 4 -- again, this is -- we're trying to, if you  
4 will, right the ship. Okay? We're trying to right the  
5 ship so we can see that we've got a level playing field  
6 here. Let's get the ship righted.

7 Neither the town attorney nor the town staff  
8 had any legal authority to make a determination that the  
9 parcel enjoys legal access by this common law doctrine.

10 And those of you who are not lawyers, common  
11 law means it's not a statute passed by the legislature.  
12 It is law developed by appellate court decisions published  
13 by Arizona judges. Only a court has that authority. The  
14 town attorney and the applicant's attorney attempted to  
15 usurp the court's authority by exchanging written  
16 correspondence with one another and our clients, finding  
17 the TMS property to have legal access by implied way of  
18 necessity. That's what happened. We're just calling it  
19 out in this letter.

20 "After sending" -- excuse me -- I'm sorry.  
21 That's not -- we're done with that. Okay.

22 "Since then, Judge Warner" -- and Randall  
23 Warner is in the complex division of the superior court  
24 civil division. And I believe he heads up the complex  
25 division.



1                   We asked this letter -- we asked this to be  
2 assigned to the complex division because it's got some  
3 issues that need to be decided by a judge of his caliber.  
4 Okay.

5                   Okay. So Judge Warner has denied the TMS  
6 motion for summary judgment on the issue of the implied  
7 way of necessity.

8                   Now, contrast that. The town has been  
9 proceeding, so far, on the -- that the town attorney ruled  
10 that there's an implied way of necessity providing access.  
11 Here we have a duly sworn superior court judge of Maricopa  
12 County deciding, after he's looked at a lot more of the  
13 facts and heavy briefing -- I can tell you it was heavy  
14 briefing, heavy statements of fact -- he concluded this  
15 case has to go to trial. So if he concludes that, then  
16 how, possibly, could there be any movement of this case  
17 forward based upon a September 2013 letter where the town  
18 attorney has decided that this property has access by an  
19 implied way of necessity?

20                   CHAIRMAN CHAMBLISS: Mr. Slavin, let me make  
21 sure I understand the argument. When I'm looking at the  
22 matters that have been presented before us, isn't the  
23 zoning administrator's letter -- I think also signed by  
24 the town attorney -- simply saying you can proceed  
25 forward, applicant, with this application. If the court

1 determines there's no legal access, you've just wasted a  
2 bunch of money and a bunch of time. And I'm missing the  
3 connection between how I'm reading that letter and your  
4 most -- presentation last couple of minutes of saying that  
5 the town attorney has made some sort of legally binding  
6 decision on access when that's the matter that's precisely  
7 before the court -- the superior court.

8                   Isn't that what the at risk is for the  
9 applicant?

10                   MR. SLAVIN: Mr. Chairman, board members,  
11 I'm not saying that he made a legally binding decision.  
12 I'm saying just the reverse. That's not legally binding.  
13 He doesn't wear a black robe. But he made that -- he's  
14 issued the letter that enabled TMS to proceed. Who knows  
15 why.

16                   But let me address -- because that's further  
17 on my -- my outline. But let me address that for you  
18 precisely, because that's a really important question,  
19 I'll concede.

20                   Let's suppose that this application were  
21 allowed to proceed to the Hillside Building Committee and  
22 the Hillside Building Committee were to decide, after  
23 going through everything else, that it was going to  
24 approve it but make it subject to conditions, like getting  
25 the superior court judgment, so on and so forth. I

1 guarantee you -- and I've been litigating for 40 years.  
2 Okay? And I just ended up litigating a case last week.  
3 And I can assure you that TMS will take that decision to  
4 the superior court and tell the judge, "Look, Judge. Here  
5 are the people who are charged with administering this  
6 ordinance. They're the ones that have the expertise.  
7 Look what happened here. Surely -- surely you should  
8 grant my client's application request for legal access."  
9 That will happen. I guarantee you. And I would be  
10 willing to put a thousand dollars bill on it here in a  
11 wager. If that were to go forward, that's going to  
12 happen. I've seen it multiple times.

13 CHAIRMAN CHAMBLISS: I would then have a  
14 pecuniary interest, I assure you.

15 MR. SLAVIN: Okay. You would. I withdraw  
16 that. I'm sorry. You didn't hear me say that. Okay. So  
17 anyway -- so essentially -- and so that -- well, let's --  
18 let's -- let's get around to that, Heather. I think we  
19 can kind of move forward a little bit.

20 The -- one of the things that -- let me see  
21 where we are here.

22 Okay. Let's go to slide 22. Are you there?  
23 Slide 22.

24 And that is, there is a letter that, again,  
25 has been submitted by Mr. Jordan, who's a very fine

1 attorney, and he and I practiced law together at one time.  
2 So I don't disregard his abilities as a good lawyer.

3 Mr. Jordan's claim that TMS' lot was created  
4 in 1970 was erroneous for this reason. And he stated it  
5 throughout his letter.

6 TMS property could not have become a legal  
7 lot in 1970 because, as we've already discussed, a legal  
8 lot requires there to be legal access. So it could not  
9 have become a legal lot in 1970 because there had been no  
10 determination -- there was no recorded document -- as the  
11 definition requires, no recorded document that established  
12 legal access. So it could not have become a legal lot in  
13 1970. Not even close.

14 And, again, here is -- and this -- this  
15 letter was sent to you before the court's decision on  
16 March 31st, a week later, which determined the court was  
17 going to deny the application for a summary judgment.

18 So the determination by the court that  
19 the -- that the lot -- so there's been no determination by  
20 a court that the lot enjoys legal access. There's no  
21 common law dedication by acceptance. That was decided by  
22 the court -- although part of that had to go with usage --  
23 prior usage, and so that still is up in the air. But as  
24 far as the common law identification, by reference to the  
25 1960 document, the court decided that issue. The court

1 decided there was no private easement by the 1960 roadway  
2 easement. There was -- it determined that that was not a  
3 private access. And there was no implied way of  
4 necessity, as a matter of law, because questions of fact  
5 exist that have to go to trial.

6 So -- okay. The staff, in its report,  
7 Mr. Chairman -- and I've already referred to part of this.  
8 The staff, in its report, states that my clients would not  
9 be prejudiced if -- if the application was allowed to  
10 proceed at risk. Okay.

11 My clients are expending a lot of money on  
12 attorneys' fees and on consultants' fees. They're  
13 spending a lot of their time involved in this, and that's  
14 a financial prejudice to them. I've already talked to you  
15 about the prejudice that could occur to the court  
16 proceedings if the Hillside Building Committee were  
17 allowed to go forward without there being establishing  
18 legal access.

19 Number three -- and there would be a severe  
20 prejudice for the owners of lots 22 and 23 because if the  
21 roadway were established in the location being claimed by  
22 TMS, it would cause the lot, as well as the structure on  
23 those lots, to be nonconforming. Legal nonconforming  
24 uses.

25 CHAIRMAN CHAMBLISS: Mr. Slavin, let me stop

1 you for a second. If we could roll back to the screen  
2 just for a brief second there. I completely understand  
3 the financial prejudice of, A, you and others to be before  
4 us and -- and present this -- this information.

5 The second item you address is prejudice in  
6 court proceedings, and that sounds to me like it's a  
7 potential perspective prejudice if the applicant  
8 manipulates some potential decision by the town to try to  
9 persuade the superior court judge that that is relevant  
10 information for the superior court judge. I'm seeing that  
11 as a prospective prejudice. Are you with me?

12 MR. SLAVIN: Well, let me -- let me be more  
13 clear. The applicant doesn't have to go back to the town  
14 and do anything. The applicant will take the decision, a  
15 written decision from the Hillside Building Committee, and  
16 it will be submitted directly by TMS in the litigation.  
17 They don't have to come back to the town.

18 CHAIRMAN CHAMBLISS: Maybe I misspoke. I  
19 understood you saying you're anticipating that if the  
20 board of adjustment upholds the zoning administrator's  
21 decision to proceed at risk, then the application's going  
22 to be processed. Then there's going to be something from  
23 the Hillside Committee that is speaking to the  
24 application. And your argument about prejudice in court  
25 proceedings is that TMZ [sic] is going to take whatever

1 the Hillside Building Committee does, at some point down  
2 the road, and use the Hillside Building Committee's  
3 report, statement, whatever as evidence in the superior  
4 court proceeding going -- excuse me -- going to the issue  
5 of whether there's legal access or not to the property.

6 MR. SLAVIN: Yes.

7 CHAIRMAN CHAMBLISS: Am I understanding that  
8 correctly?

9 MR. SLAVIN: That is correct. You've got  
10 that exactly, Mr. Chairman.

11 CHAIRMAN CHAMBLISS: Okay.

12 MR. SLAVIN: And, again, I -- I'm not going  
13 to make any wagers here, 'cause I understand --

14 CHAIRMAN CHAMBLISS: Can't do that.

15 MR. SLAVIN: I don't want to be in trouble  
16 with you, but --

17 CHAIRMAN CHAMBLISS: Okay. I just want to  
18 make sure I understand point number --

19 MR. SLAVIN: Yes.

20 CHAIRMAN CHAMBLISS: -- 2.

21 Point number 3, I think, if I understand  
22 what you're saying there is what may happen in the future  
23 may impact prejudice to the -- your clients, the lot  
24 owners of 22, 23, 24.

25 Doesn't that require, though, that the

1 superior court judge has decided there's a legal right of  
2 access? If the superior court judge decides there's no  
3 legal right of access, this application cannot proceed  
4 forward, regardless of our decision. If the superior  
5 court judge decides there is legal access, then this  
6 application can proceed forward and whatever else needs to  
7 be done to make it in compliance.

8 I'm trying to --

9 MR. SLAVIN: I understand.

10 CHAIRMAN CHAMBLISS: I'm trying to connect  
11 what you're --

12 MR. SLAVIN: I understand.

13 CHAIRMAN CHAMBLISS: -- identifying as the  
14 second and third items for the board's consideration this  
15 evening. And I'm really seeing those as things that are  
16 sort of speculation on down the road.

17 MR. SLAVIN: Well, first of all, the -- the  
18 prejudice in the court proceedings then would, in turn,  
19 relate to the third -- the third point. And I wasn't very  
20 clear on that, I admit. Okay.

21 So you allow this to go at risk during the  
22 period of time when there is a court proceeding whether or  
23 not there's legal access. Okay? And before the trial on  
24 that issue of legal access, the matter gets processed, and  
25 the Hillside Building Committee blesses it and -- but says



1 this all depends on the court determining you have legal  
2 access. If you have legal access, we're approving this.

3           What I'm saying to you, that -- is simply my  
4 experience is -- and it's -- I don't -- it's not  
5 speculative. If that were to happen, I'll send it to you  
6 so we can -- we can prove the point. But I can tell you  
7 that there is significant prejudice to my clients that  
8 could occur -- that could occur if you were to allow this  
9 to go forward on an at-risk basis. The prejudice would  
10 not be there if you were to decide that the zoning  
11 administrator did not have the authority to allow this  
12 case to go forward on an at-risk basis. But it has to be  
13 held until the litigation is completed. Then, and then  
14 only, depending upon the outcome, may the application go  
15 forward. That is the simplest way to do it. There's  
16 no -- there's no departure from the regulations and the  
17 ordinances as they're written. There's no need for anyone  
18 from the -- from the town to determine that there's legal  
19 access and so on and so forth. It all gets decided in a  
20 regular, sensical matter and manner.

21           So by -- by putting this on hold and saying,  
22 wait a minute. There's no at-risk provision anywhere in  
23 our ordinance. We can't allow that, because there's no  
24 provision on it. So there'd be no provision to allow it  
25 to go forward on an at-risk basis. Then, if it goes

1 forward -- then if -- it can't go forward. The lawsuit is  
2 done -- and by the way, the plaintiff is -- is the one in  
3 charge of pushing the lawsuit. Okay? And we have a  
4 counter-lawsuit, but it's up to the plaintiff, TMS, to  
5 push that as rapidly as it can. And it tried to do -- do  
6 that already with the motion for summary judgment.

7           So they've taken the initiative to be in  
8 court. Please don't give them some advantage in that case  
9 by allowing this matter to go forward until the sole issue  
10 of legal access has been decided by a court in Maricopa  
11 County. That makes a lot of sense here. It's -- I think  
12 it's difficult to argue the other position. It makes a  
13 whole lot of sense. Doesn't it?

14           And then the town is not -- the other thing  
15 is everybody's -- somebody can have his or her  
16 interpretation what that person means. You know, we can  
17 probably ask all five of you, and you may have a  
18 different -- if -- in a room separately, you could give us  
19 your own idea of what at risk means. And maybe the people  
20 behind me, the same thing. What does it really mean?

21           Well, without there being an ordinance  
22 definition, no one really knows. Does that then enable  
23 TMS to claim, listen, we went ahead on the basis of at  
24 risk. You knew we were spending lots of money. But you  
25 went ahead and approved it anyway. Now we're not going to

1 allow you to undo that improvement. You are equitably  
2 estopped from doing that. And that's law in the state of  
3 Arizona after this estoppel. Whether or not it applies  
4 here, what I'm telling you, this is -- this is a slippery  
5 slope that the town is proceeding down. And it doesn't  
6 have to go there. All it has to do -- and TMS gave them  
7 the perfect opening. All right? TMS said we're filing a  
8 lawsuit. And the town should go great. We'll just wait  
9 and see what happens to that lawsuit. But no. Somehow  
10 the town has to then still become involved to allow a  
11 process to go forward that's never been considered or  
12 conceived by the mayor and council. So I think that's  
13 where the error is coming in.

14 I would -- if I may --

15 CHAIRMAN CHAMBLISS: I would remind you  
16 your --

17 MR. SLAVIN: I -- I --

18 CHAIRMAN CHAMBLISS: -- 20 minutes is now  
19 50. We don't want to cut you off --

20 MR. SLAVIN: Okay.

21 CHAIRMAN CHAMBLISS: -- if it's important,  
22 but if you could please get to your conclusion, tell us  
23 whatever you need to tell us that's important.

24 MR. SLAVIN: Can you -- can you put up the  
25 one that shows where this would go, Heather, for me. If

1 the Hill -- if the -- I just want to show potential  
2 prejudice.

3                   There we go. Okay.

4                   This is a -- this is a slide that we had  
5 prepared. And the -- TMS is seeking a -- an access that's  
6 50 feet in width. And TMS plans to use the existing  
7 driveway on the Zachariahs' property and to then go  
8 forward up the hill with lots of heavy equipment and lots  
9 of jackhammering and all that fun stuff. But what it  
10 really does is it -- it has a incredible impact -- will  
11 have an incredible impact on these two homes. So if you  
12 see -- if there's no other aspect of prejudice here, the  
13 aspect is this. Let's let the process take its normal  
14 course. TMS gave you an opening to do it. They gave you  
15 an opportunity to do it. Let it -- let it make its way  
16 through the court. If the court decides that there is  
17 access, then maybe the appellants will have to live with  
18 that. Right?

19                   But unless and until, this is what really is  
20 at issue for these two lot owners. And you can see how  
21 close that 50 feet is to their residences right now. They  
22 are about 50 feet from the town property line. This  
23 roadway would make them 25 feet away from the -- on the --  
24 from the right-of-way for the private road.

25                   So, Mr. Chairman, you have been extremely

1 fair, and I apologize for all the time we took. I thought  
2 it was important to make a good record. And -- okay.

3 She's Edgar Bergen. I'm Charlie McCarthy.  
4 Just so you know. So anyway.

5 Thank you, Heather.

6 We have one other person to mention. We --  
7 we have hired Copper State Engineering. Copper State  
8 Engineering has determined that there is a shorter access  
9 that would disturb less Hillside and would be less steep  
10 in terms of making its way up to the TMS property. I  
11 would like you to allow David Deatherage to spend three or  
12 four minutes talking about that as well.

13 CHAIRMAN CHAMBLISS: Before we do that,  
14 Mr. Slavin -- and thank you for your presentation -- I'm  
15 not sure how that alternative access issue bears on what's  
16 before the board here, which is whether or not the zoning  
17 administrator had the authority to make the decision that  
18 she made.

19 MR. SLAVIN: Okay.

20 CHAIRMAN CHAMBLISS: I don't think we're  
21 here at some sort of variance hearing where we're going to  
22 be exploring are there less obtrusive ways, better ways to  
23 get access, assuming we're going forward. So tell me why  
24 it is that it would be significant to the issue that's  
25 before the board that we consider or hear testimony about

1 potential other access.

2 MR. SLAVIN: I think you've boxed me in with  
3 that.

4 CHAIRMAN CHAMBLISS: Good. It only took me  
5 54 minutes, I think.

6 MR. SLAVIN: Well, Edgar Bergen just told me  
7 to sit. Well, I think perhaps I'm Mortimer Snerd more  
8 than Charlie McCarthy.

9 CHAIRMAN CHAMBLISS: I'm making some of  
10 those references. I get it.

11 MR. SLAVIN: Okay. Thank you.

12 Anyway, one of the issues in the court  
13 proceeding regarding access, and -- and there's a private  
14 way of condemnation count that TMS has -- has set forth in  
15 this complaint. So the question is what is the most  
16 appropriate road to get to this property? And that will  
17 be decided in the lawsuit itself. So in terms -- in terms  
18 of legal access and what that means, this would show that  
19 there's a possibility that the court would not find that  
20 this is the appropriate location for that -- for the legal  
21 access to the TMS lot.

22 CHAIRMAN CHAMBLISS: And I appreciate that  
23 information, and I can see that that would be very  
24 significant for the evidence for the superior court judge  
25 to decide or to hear. But I don't know that we need to

1 hear that this after -- this evening.

2 MR. SLAVIN: Okay.

3 CHAIRMAN CHAMBLISS: On the other hand, I'm  
4 doing my best not to interfere with your ability to tell  
5 the board whatever it is you think the board needs to  
6 hear.

7 MR. SLAVIN: Mr. Chambliss and board  
8 members, I respect your judgments on that, so I will take  
9 my seat.

10 CHAIRMAN CHAMBLISS: Okay.

11 MR. SLAVIN: Thank you very much.

12 CHAIRMAN CHAMBLISS: All right.

13 MR. SLAVIN: By the way, thank you for  
14 giving us the opportunity, because I know this was  
15 scheduled earlier, but you granted us an extension so we  
16 could get our trial under way. We sincerely appreciate  
17 that courtesy. Thank you very much.

18 CHAIRMAN CHAMBLISS: Not a problem.

19 All right. That 20 minutes took just a  
20 little bit longer. But I think where we are now is I'd  
21 like to hear from the applicant or the applicant's  
22 representative.

23 (An off-the-record discussion ensued.)

24 CHAIRMAN CHAMBLISS: Has Mr. Slavin left the  
25 room yet?

1 MR. SLAVIN: No. I'm just --

2 CHAIRMAN CHAMBLISS: Mr. Slavin, would you  
3 come back for one second. I want to -- I want to do one  
4 thing here.

5 MR. SLAVIN: Get over here.

6 Okay. Yes.

7 CHAIRMAN CHAMBLISS: You and I had a  
8 wonderful dialogue.

9 But I should have made sure, is there any  
10 member of the board that wants to ask any question of  
11 Mr. Slavin before he takes a seat?

12 MR. WILLIAMS: No.

13 CHAIRMAN CHAMBLISS: All right. Thank you,  
14 sir.

15 MR. SLAVIN: Thank you.

16 MR. JORDEN: Chair of the board, my name is  
17 Doug Jordan. My address is 6122 East Courts Mountain  
18 Road, Paradise Valley.

19 I am going to be much briefer because I  
20 think that the staff got it right on the -- right on the  
21 money in terms of the decision that they made. And I look  
22 forward to taking Slavin's \$1,000 from him, because --

23 MR. SLAVIN: Okay.

24 MR. JORDEN: -- you know, it -- it borders  
25 on -- on crazy to think that, given the letter from the --



1 from the town that's the subject of this appeal, that  
2 it's -- that it's -- if you don't have access, then the  
3 process that you have gone through with the board -- with  
4 the Hillside Committee is meaningless, there's no way --  
5 and I -- I'm sitting here to tell you there's no way that  
6 we would or could try and leverage or estoppel that. We  
7 understand what the at-risk letter means. It says that  
8 you're proceeding on your own nickel. And if it doesn't  
9 turn out well for you in court, this may be a total waste  
10 of -- of your effort and time. So to suggest that somehow  
11 we would try and slip something into the court or use some  
12 kind of estoppel theory, I'm here to tell you that that is  
13 not true.

14 Okay. I'm not going to spend much time on  
15 this first hearing, because, Chairman, you've already done  
16 a very good job of telling everybody what this is not  
17 about. It's not what the house looks like. It's not  
18 about the Hillside code, variances, whatnot.

19 Heather?

20 You know, it was a little bit hard to kind  
21 of follow the -- the request that Mr. Slavin made. In his  
22 first letter December 29th, the -- it was very clear that  
23 what he was purporting to appeal was a decision to waive  
24 enforcement of the town zoning ordinance and subdivision  
25 ordinance regarding our application. And these are two

1 quotes from his letter. And one of those is actually in  
2 the staff report.

3 "Can't proceed at risk without complying  
4 with the following town code and ordinance requirements."  
5 And then, in the letter, there was a list of seven or  
6 eight different things that were supposedly problematic,  
7 from subdivision, code divisions, the need for a CEP for a  
8 private road, to a list of variances and whatnot. Then we  
9 filed our response, and --

10 Heather, the next one.

11 -- in Mr. Slavin's March 29th letter, that  
12 had shifted dramatically. And instead of saying that the  
13 decision that was being appealed was a decision to waive  
14 enforcement of all of these things, the -- the shift of  
15 the last letter, it makes it clear that they are not  
16 talking about the subdivision plat requirements, the  
17 conditional use, the variance requirements, and even  
18 asserts that the board doesn't have jurisdiction.

19 Frankly, we agree with that. And that had  
20 been our position all along.

21 But what Mr. Slavin does focus on in his  
22 last letter, and was the subject of his presentation, was  
23 the notion that this is not a lot and there's not any  
24 access.

25 So the Hillside Building Committee, its

1 charge, under the town zoning ordinance, is to review that  
2 particular lot as to whether it complies with the Hillside  
3 code requirements. The Hillside Committee review is very  
4 much a code compliance. In other words, here's the  
5 requirement. If you meet the requirement, check. Move on  
6 to the next one. So it's not a subjective judgment about  
7 whether there should be a house here. But it's a code  
8 compliance review.

9 And a couple of experts from the staff  
10 report with which we completely agree. One, access is  
11 typically reviewed as part of the building permit process.  
12 And there is nothing in the Hillside ordinance that talks  
13 about the Hillside Building Committee is to consider  
14 whether there was access.

15 The second quote from the staff report, I  
16 think pretty clearly summarizes what they're about. They  
17 examine land disturbance and other matters regulated by  
18 the Hillside code within the boundaries of the subject  
19 lot. That is the charge of the Hillside code, to look at  
20 what's going on within the boundaries of that lot. Not to  
21 consider access.

22 And --

23 CHAIRMAN CHAMBLISS: Mr. Jordan --

24 MR. JORDEN: -- you know, there's --

25 CHAIRMAN CHAMBLISS: Mr. Jordan, let me --

1 let me interrupt you for a second. There's two issues  
2 that are rolling around in my head. And -- and one of  
3 them is, is I understand argument number one, I will call  
4 it, is that we don't have the jurisdiction; it's not  
5 properly before the board of adjustment to consider this  
6 appeal because the November 29th letter from the zoning  
7 administrator is not a decision regarding zoning, and,  
8 therefore, that's not before us.

9 I've listened to Mr. Slavin's presentation.  
10 And seems to me that if the zoning administrator's letter  
11 is not a decision about zoning, it -- it certainly seems  
12 to be about enforcement. Would you agree with me that the  
13 zoning administrator's letter has to do with a enforcement  
14 of -- of code, or interpretation, then there is a right to  
15 appeal and we have jurisdiction to consider that?

16 MR. JORDEN: Mr. Chairman, no, I don't  
17 agree. And here's why. The Hillside Committee, their  
18 charge is to deal with land disturbance and other things  
19 within that lot. Their charge is not to deal with access.  
20 And, in fact, the letter from the zoning administrator --  
21 and we set this forth in our written materials, and I  
22 didn't want to -- to repeat some of that stuff here. But  
23 it was simply a statement that we are not going to make a  
24 decision until later on as opposed to a decision that  
25 we're not going to require access or any of these other

1 things. So I don't think that there is any decision that  
2 is properly in front of the board right now.

3           Beyond that -- and what this really focuses  
4 on is even, Mr. Chair, if you assume that there is a  
5 decision, an enforcement decision or whatnot, that the  
6 types of things that are being complained of, the notion  
7 of there being no access or this not being a lot, are not  
8 within the purview of the Hillside Building Committee.  
9 And I'll get into that in just a second here.

10           I think the last point on this screen is  
11 something that is important. And the -- the case law out  
12 there is substantial and consistent that zoning ordinance  
13 are in derogation of property rights, and they're to be  
14 construed in favor of a property owner. In case after  
15 case after case, it says that.

16           So if Mr. Slavin had said, well, there's  
17 nothing in the ordinance that authorizes the at risk, I  
18 would take just the opposite position. In the absence of  
19 something in the ordinance that's saying that this is  
20 allowed or not or allowed, you have to construe the zoning  
21 ordinance, or this Hillside code, in favor of the property  
22 owner and to allow them to proceed.

23           Again, we understand that if the litigation  
24 turns out poorly, we're -- we're -- we lose if there's no  
25 access to the property.

1                   CHAIRMAN CHAMBLISS: Mr. Jorden, I might be  
2 slowing you down. But I'm looking back to my notes on  
3 what Mr. Slavin said. And I wrote that if the zoning  
4 administrator is interpreting or enforcing the zoning  
5 decision -- and I think I may fall on the side of the camp  
6 that it may not have been enforcement of the zoning  
7 decision, but it certainly seem seems to me that the  
8 letter may be interpreting zoning.

9                   And, again, I'm stuck on the jurisdictional  
10 issue, because obviously, if we decide we don't have  
11 jurisdiction, we're done. But it seems to me that we do  
12 to the extent that the zoning administrator was doing an  
13 interpretation. And could you address that, please.

14                   MR. JORDEN: The -- the interpretation, if  
15 you will, that the zoning administrator made was to not  
16 make an interpretation. They -- they simply deferred --  
17 she simply deferred, until later on, whether or not any of  
18 the subdivision codes or conditional use permit or  
19 anything was going to apply.

20                   Again, this is -- the process that we're  
21 talking about, the Hillside code process, is not issuance  
22 of building permits. And the first point on the screen  
23 here, access is typically reviewed as part of the building  
24 permit process.

25                   Okay. This is not the type of thing that

1 the Hillside Committee is authorized to hear in terms of  
2 whether there is legal access here.

3 I hope I answered your question. If not,  
4 I'll try again.

5 CHAIRMAN CHAMBLISS: No, we're through on  
6 that discussion. Thank you.

7 MR. JORDEN: Okay. The -- the other point  
8 that Mr. Slavin --

9 Go to the next slide if you would, please.

10 The other point that Mr. Slavin spent a lot  
11 of time on was the definition of lot. And this definition  
12 that he relied upon was not put into the zoning ordinance  
13 until 1999. This lot -- this lot was created long before  
14 1999. 1970 at the very latest, and maybe earlier. And  
15 there was actually a letter from town manager Kevin Burg  
16 and Andrew miller to Mr. Lopez, the prior attorney, which  
17 is included in our materials in Exhibit 16, that says, no,  
18 this definition of lot doesn't -- has no relevance here  
19 this is a lot up there. Whether or not it has access or  
20 not is a different issue, but it is a lot.

21 So Mr. Slavin is essentially trying to  
22 bootstrap his position on access based upon an ordinance  
23 that was adopted years -- you know, 29 years that the --  
24 that the -- at least, after this lot was established in  
25 1970 or before.

1 Heather.

2 So, again, we don't think that there was a  
3 decision on an interpretation or whatnot that was made. I  
4 think the letter was very clear that that decision was  
5 deferred. Nothing in the Hillside regulations gives the  
6 Hillside Committee right to review access. And if you go  
7 under the premise that zoning ordinances are to be  
8 construed in favor of the property owner, I -- I think  
9 that it's clear to us that staff's position is correct.

10 I'm happy to answer any other questions that  
11 you may have. Thank you.

12 CHAIRMAN CHAMBLISS: Mr. Jordan, I think I  
13 have one. I've been asking a lot more than anybody else.  
14 But -- and I'm going to ask a question that the audience  
15 may want to applaud. Please don't.

16 But the question is while the applicant may  
17 have property rights, don't the folks that are right next  
18 to the applicant who have property that might be affected  
19 also have property rights?

20 MR. JORDEN: Absolutely. They absolutely  
21 have property rights, Mr. Chairman. But that's something  
22 that will be decided when it goes in front of the Hillside  
23 Committee. Okay? That's not something that's in front of  
24 this board today. There's no question that they have  
25 property rights just like Terry Scali does.



1                   CHAIRMAN CHAMBLISS:  But I'm just following  
2   your argument about how the lack of specificity in the  
3   zoning ordinance may -- should be interpreted in favor of  
4   the property owner because of the property rights.  And  
5   I'm thinking that that argument would also apply to the  
6   adjoining property owner.  Is that a fair statement?

7                   MR. JORDEN:  In terms of our ability to  
8   proceed forward with this application in front of the  
9   Hillside Committee, which is a very limited scope, I think  
10  that's the -- the property right that we're talking about  
11  in terms of our ability to proceed forward at risk.  We  
12  understand that if -- if litigation goes badly, we're in a  
13  world of hurt.  But I think the focus would be on our --  
14  our right to proceed forward with that application in  
15  front of the Hillside Committee.

16                   CHAIRMAN CHAMBLISS:  Thank you.

17                   I've asked a bunch of questions.

18                   Board Member Leibsohn.

19                   MR. LEIBSOHN:  I'm not sure if you can  
20  answer this.  But I'd like a clarification of the pending  
21  status of where we are in the Hillside Committee review.  
22  I understand there's a conceptual part and a formal part.  
23  Is the conceptual part and now we are ready to enter the  
24  formal?  Has there been a formal submittal for that  
25  portion?

1                   MR. JORDEN: Mr. Chair, Mr. Leibsohn, you  
2 are correct. So the conceptual meeting, that was held in  
3 September of 2016. The formal application was submitted  
4 in February of this year. But because of this pending  
5 appeal, staff has not done anything in terms of responding  
6 substantively; you need this, you need that, because the  
7 effect of this appeal was to put everything on hold. But  
8 the formal application has been filed.

9                   MR. LEIBSOHN: So in other words, there's  
10 been no further communications or discussions regarding  
11 the formal review process with the applicant; is that  
12 correct?

13                   MR. JORDEN: That is correct because of  
14 Mr. Slavin's appeal, because he is correct that under  
15 state law, once that appeal has been filed to this board,  
16 that puts everything on hold, if you will, until you make  
17 a decision.

18                   So we would have very much liked to have  
19 kept those discussions with the staff. But staff said no,  
20 we can't do anything on this until such time as you -- the  
21 board makes a decision.

22                   CHAIRMAN CHAMBLISS: Any other questions of  
23 Mr. Jordan?

24                   Board Member Kauffman.

25                   MS. KAUFFMAN: Yes. What is the benefit for

1 you guys going to the Hillside Building Committee prior to  
2 getting this court settlement?

3 MR. JORDEN: The -- the benefit is simply  
4 that this is going to be a long process. Mr. Scali has  
5 been at this for, I think, three years, maybe four years,  
6 since he bought this property. We know that this is not  
7 going to be a single meeting, likely or -- by the time we  
8 get feedback from staff and whatnot. Right now we are  
9 frozen. We can't even talk to staff. They won't talk to  
10 us and give us any formal feedback. So we -- we want to  
11 keep moving forward. Mr. Scali wants to build his home on  
12 the lot. And we don't want to be sitting in abeyance for,  
13 you know, another 6 months, 12 months, whatever the case  
14 may be, fully recognizing that we're at risk. We  
15 understand that. We get that.

16 CHAIRMAN CHAMBLISS: Any further questions?  
17 Board Member Williams.

18 MR. WILLIAMS: Mr. Chairman.

19 Mr. Jordan, what I've got trouble with is  
20 this at-risk review. There doesn't seem to be any  
21 statutory authority for it, and you said there was nothing  
22 to prevent it. But doesn't it create a precedent, when  
23 you're dealing with future applicants who would be in a  
24 similar, situation that would be willing to say, well,  
25 they -- you gave it -- board of adjustment approved it in

1 that case, so I should have the same rights and get a  
2 at-risk review? And that seems to put the whole process  
3 for the zoning in -- in a cocked hat, as far as I'm  
4 concerned.

5 MR. JORDEN: You know, if you go back to the  
6 notion that the zoning ordinance or -- you know, you're  
7 supposed to take an individual's property rights into  
8 account. I think that's a partial answer to your  
9 question. But I don't think this is the only issue here.  
10 People are allowed to proceed at risk, maybe not in front  
11 of the Hillside Committee, but I think it's not uncommon,  
12 if, you know, you want to proceed in submitting your plans  
13 or construction plans or whatnot, having a risk, I don't  
14 think that's all that uncommon.

15 Frankly, this is such an odd circumstance  
16 here where we have this dispute about the -- the access.  
17 I understand your theoretical point. I think, as a  
18 practical point, the chances of this coming up again are  
19 pretty darn slim.

20 CHAIRMAN CHAMBLISS: Follow-up questions?  
21 Board Member Leibsohn.

22 MR. LEIBSOHN: Yes.

23 What -- regarding the pending litigation,  
24 what is the anticipated time frame for this case to be  
25 resolved?

1                   MR. JORDEN: Mr. Chair, Mr. Leibsohn, I am  
2 not directly involved in the litigation. I am not  
3 representing Mr. Scali in the litigation. As was  
4 indicated, the -- the judge decided a summary judgment  
5 motion just recently, within the last couple of weeks, as  
6 Mr. Slavin pointed out. My best guess is anywhere from 6  
7 to 12 months. But I'm -- that's just a guess on my part,  
8 because I am not directly involved in the litigation. My  
9 understanding is this is going to be a bench trial, which  
10 means it's going to be tried to the judge as opposed to a  
11 jury. So that will move things along a little bit  
12 quicker. But that's just a guess, sir.

13                   CHAIRMAN CHAMBLISS: And, Mr. Jordan, if  
14 there's a bench trial and there's a decision by the trial  
15 court judge, whoever doesn't like that decision can appeal  
16 to the court of appeals. And so in terms of getting  
17 what's called a final judgment, you know, from the trial  
18 court process through the appellate court process,  
19 probably looking at two and a half years from now.

20                   MR. JORDEN: That could be. And -- and you  
21 know, the issue -- let's say the -- that we won, if you  
22 will. You know, I think the issue of posting a  
23 supersedeas bond or whatnot would maybe come into play on  
24 that also.

25                   But, yeah, if it goes to appeal, it's --

1 it's a ways away. There's no question about that.

2 CHAIRMAN CHAMBLISS: Thank you.

3 Any further questions of Mr. Jordan?

4 Thank you, sir.

5 MR. JORDEN: Thank you.

6 CHAIRMAN CHAMBLISS: Is there anyone else  
7 from your team, Mr. Jordan, that needs to address the  
8 board at this point, or should we ask for input from the  
9 public, which is primarily opposed to this?

10 MR. JORDEN: Nothing further from us --

11 CHAIRMAN CHAMBLISS: Okay.

12 MR. JORDEN: -- Mr. Chairman.

13 CHAIRMAN CHAMBLISS: I have about ten of  
14 these things that have been filled out for folks wanting  
15 to address the board. And so I'm going to call some of  
16 these names forward. And if I mispronounce your name,  
17 please forgive me.

18 And I've seen a number of these filled out.  
19 And there's one person that's conceded their time. So the  
20 first person I'm going to ask to come to the podium is  
21 David Selden.

22 Good afternoon, sir.

23 MR. SELDEN: Good afternoon -- or good  
24 evening.

25 CHAIRMAN CHAMBLISS: Good evening.

1                   MR. SELDEN: I have a handout. If I might  
2 approach the -- the Chair or somebody could distribute it.

3                   CHAIRMAN CHAMBLISS: I'm sure someone can  
4 get those things to us. Why don't you get them to George.  
5 George can circulate them for us.

6                   MR. SELDEN: Chair, Members of the board, My  
7 name is David Selden. I'm a resident of Paradise Valley  
8 at 5501 East Solano Drive.

9                   I'm an attorney. I did title insurance work  
10 back in the 1980s, and studying up on this project  
11 reminded me why I had stopped doing title insurance work  
12 back in the 1980s.

13                   But I have spend a fair amount of time going  
14 through relevant documents. And I've put together -- the  
15 first document for you is a chronology of some of the  
16 important events to understand this issue. And there's an  
17 important issue here that the staff has not considered and  
18 I suspect the town, as a whole, has not considered and  
19 this board has not considered and perhaps, you know,  
20 ultimately it's a policy decision that the town council  
21 should review. And I suspect perhaps even the applicant  
22 may not have considered it, because there's a defect in  
23 the title insurance policy for the property, which I will  
24 explain in a moment. So I'm not placing any blame on  
25 anyone for not dealing with this issue, but it is an

1 important issue that the town is going to have to come to  
2 grips with.

3 To put this in perspective, certainly in  
4 Paradise Valley, we value certain common values. And we  
5 often hear people speak of this, one of which is we are a  
6 town of limited government. We are a town that respects  
7 private property rights. And we are also a town that  
8 cherishes our natural environment, particularly our  
9 mountain views, and Camelback being among those. It's on  
10 the new street signs we've posted. It's on the town's new  
11 logo. It's -- it permeates the essence of what Paradise  
12 Valley is, and it's enshrined in the -- even in the  
13 Hillside ordinance.

14 So let's go back to the history of what has  
15 happened in this property, how we're in the position that  
16 we are. The first operative fact, as in the chronology,  
17 is that on February 27, 1959, before this town was even  
18 incorporated, the Stone Canyon subdivision was platted.

19 And, Heather, page 3 has the Stone Canyon  
20 plat. The -- and as shown on the Stone Canyon plat, the  
21 property at issue, TMS, is just to the south of the land  
22 here, is actually outside the boundaries of the Stone  
23 Canyon plat. However, the alleged route of access being  
24 sought is within the Stone Canyon plat, as shown on this,  
25 through lots 22, 23, 24, and 25.



1                   Then, going back to the chronology, four  
2 days later, on March 3rd, 1959, four days after this  
3 subdivision was platted, we have a document recorded by  
4 the developers called the declaration of restrictions.  
5 And that would be the last three pages of this handout to  
6 you. And you see it there. Obviously it's too small to  
7 read on your screen.

8                   But this is a recorded document. In 1959,  
9 they called it a declaration of restrictions. Today, most  
10 people would call it covenants, conditions, and  
11 restrictions, or CC&Rs.

12                   And this, as the document states, are  
13 legally binding restrictions that run with the land.  
14 These embody private property rights of the residents of  
15 the Stone Canyon community.

16                   CHAIRMAN CHAMBLISS: Mr. Selden.

17                   MR. SELDEN: Yes.

18                   CHAIRMAN CHAMBLISS: Let me ask you --  
19 again, I'm -- I'm focused on two issues that I think are  
20 before the board. Do we have authority to -- to hear this  
21 appeal? Because the letter from the zoning administrator  
22 is an interpretation or enforcement of the zoning  
23 ordinance. And if we do have jurisdiction to hear the  
24 appeal, why should we uphold or why should we not uphold.  
25 And if you could focus me on either of those two issues, I

1 would appreciate it.

2 MR. SELDEN: I will do that.

3 And, yes, Mr. Chairman, the board does have  
4 the authority to consider the appeal. And one of the  
5 reasons to consider the appeal and send this back to the  
6 staff is that the staff has missed the fact that the  
7 proposed access in the application violates five different  
8 provisions of the CC&Rs for this community. And this is a  
9 town that -- in fact, the mayor, to his credit, has an  
10 advisory committee to interact with all the communities  
11 within Paradise Valley that have community committees that  
12 administer CC&Rs.

13 That has not happened in this case with this  
14 application. And it is a complete backward process to  
15 have an application come before the town when it hasn't  
16 even come before the neighborhood committee that has  
17 jurisdiction to enforce the property rights of the 25 lot  
18 owners in that community. And it would be a horrible  
19 precedent for this town, for this board, for this staff to  
20 be considering applications when it -- before those  
21 applications or -- and those applicants have even gone  
22 before the neighborhood committees who enforce the CC&Rs.  
23 This is going forward at risk. Who's at risk here? Sure,  
24 the applicant is at risk. The homeowners whose property  
25 would be taken are at risk. But the neighborhood is at

1 risk as well, and the town is at risk. What sense does it  
2 make for a board of adjustment to authorize a town staff  
3 to consider applicants when they haven't even gone before  
4 the neighborhood committee. And who knows whether the  
5 committee is going to approve it or not. So the town has  
6 spent all this money, all this staff time, engineering  
7 reports, lawyers, inside counsel, outside counsel, and  
8 they didn't even go to the neighborhood committee. They  
9 don't have the permissions to even do what they propose to  
10 do until they go through that process. They're putting  
11 the cart before the horse.

12           The -- and to return to the chronology just  
13 briefly, I think the important point here is that this was  
14 all done. It's recorded. It's part of the county list of  
15 property records.

16           50 years later, TMS purchases this property.  
17 And the title insurance policy for TMS -- it's an owners  
18 policy -- guarantees access to the property. But the  
19 title report, or at least the schedule of the exceptions,  
20 do not note the 50-year-old CC&Rs. It's not an exception  
21 to schedule B in the TMS title insurance policy. That,  
22 frankly, is a simple thing. So we now have a title  
23 insurance policy that supposedly insures the applicant's  
24 access to a property without noting that he can't build  
25 that roadway or driveway without approval of the

1 neighborhood committee and without getting multiple  
2 variances to the CC&Rs that that neighborhood committee  
3 probably doesn't even have legal authority to grant  
4 because the CC&Rs run with the land.

5 We've got a huge problem here. The simple  
6 solution, by the way, we'd love to join hands with TMS and  
7 perhaps make a claim on this title insurance policy. The  
8 policy gives him the legal authority to pay the 725 grand  
9 and, boom, we're done. This problem is solved. We solve  
10 the problem for him. We solve the problem for the town.  
11 We solve the problem for the neighborhood. And we all go  
12 happily ever after being able to look at Camelback  
13 Mountain as the icon that it is.

14 And then -- I'll be real quick,  
15 Mr. Chairman.

16 The second page of this lists the five  
17 different violations of the CC&Rs that this project would  
18 entail. The first is -- and I've referenced each of these  
19 by paragraph numbers and the copy of the CC&Rs that you  
20 have in front of you. I've color-coded, in yellow  
21 highlighting, the operative language. So you can take a  
22 look at the summary sheet, see the paragraph numbers, read  
23 the yellow highlighting, and it will guide you through  
24 this. So I'll be real quick.

25 The first thing is in two different places,

1 these CC&Rs, paragraph 1 and paragraph 6, it states that  
2 property within Stone Canyon East must be used exclusively  
3 for single-family residential purposes. Putting a roadway  
4 or driveway through Stone Canyon East to reach property  
5 outside Stone Canyon East, not subject to any restriction,  
6 is certainly antithetical to the concept that this was a  
7 neighborhood that the developers set up to be  
8 single-family houses ending in cul-de-sacs.

9 The second item --

10 CHAIRMAN CHAMBLISS: Mr. Selden.

11 Mr. Selden, I -- I understand some of your positions,  
12 and -- and I appreciate them. What I'm having difficulty  
13 to is connecting potential violations of CC&Rs to the  
14 matter that's before the board this evening. And if you  
15 could help me understand that connection, then -- 'cause  
16 right now I understand the argument about the CC&Rs, but I  
17 don't see how that bears on what's before the board here  
18 this evening.

19 MR. SELDEN: This board should direct the  
20 staff -- should grant the appeal, have the staff go back  
21 to the drawing boards to think and consider the CC&Rs. As  
22 a policy matter and as a legal matter, this board and the  
23 staff and the town ought not to be processing applications  
24 that are subject to the jurisdiction of the CC&R without  
25 having that process completed so the neighborhood can work

1 its jurisdiction over this. Otherwise -- if we have  
2 people in this town coming straight to the staff and then  
3 going straight to the board and bypassing the CC&Rs,  
4 what -- what's the purpose? It's -- that's certainly --  
5 certainly a very flawed process. And that's something  
6 that needs to be rethought, and, frankly, legal advise  
7 ought to be given to that. It would also be helpful for  
8 the two absent board members, to be able to have the  
9 opportunity for them to know that. I'm certainly not to  
10 faulting them for -- for not being here.

11 But it creates all kinds of risks for the  
12 town, including the fact, by the way, that these CC&Rs  
13 give every single lot owner, within Stone Canyon East, the  
14 legal authority to go to court to stop any violation. So  
15 this is going to be a mess if this appeal is not granted.  
16 Send it back to the staff, and let's figure out how we can  
17 resolve this matter, because otherwise, when the town says  
18 it's -- that this application will proceed at risk, it's  
19 at risk for all kinds of parties. And it makes sense to  
20 really take this back to square one and try and resolve  
21 this issue. And I think, frankly, the title company would  
22 be the best solution for it.

23 I won't belabor the point with respect to  
24 the -- I won't belabor the point but will briefly mention  
25 this application calls for a cantilevered driveway to be

1 constructed within Stone Canyon. Not on the TMS property.  
2 Within the Stone Canyon property. That's a structure.  
3 The CC&Rs prohibit that kind of a structure.

4 The CC&Rs also require that whatever  
5 structures are allowed -- even if a cantilever driveway  
6 were a permitted structure, it would have to be submitted  
7 to the committee. And the Stone Canyon East has a  
8 committee to enforce the CC&Rs and to consider  
9 applications. And there has been no application for this  
10 project. So this board would be bypassing -- an approval  
11 would be bypassing the neighborhood committee.

12 There is also a provision that requires  
13 approval of the committee for removal of native  
14 vegetation. And this project would require widespread  
15 removal of native vegetation within the Stone Canyon  
16 community.

17 The Stone Canyon CC&Rs also prohibit the  
18 conveyance of any portion of a lot less than a full lot  
19 other than to a neighboring Stone Canyon lot owner. Okay?  
20 So maybe, for some reason, they do a little lot swap or  
21 something. Every property has to be at least an acre.

22 But the easement that is alleged in this  
23 case is, in fact, a conveyance. So this would be  
24 implementing a conveyance or recognizing a conveyance  
25 that's prohibited.

1                   So all of those are reasons that this  
2 application should not proceed. The appeal should be  
3 granted. There are significant legal issues that have not  
4 been considered.

5                   And when Mr. Jordan, a few moments ago,  
6 spoke about all how these ordinances should be construed in  
7 favor of the property owner, in this case, we've got 25  
8 property owners. This affects much more than the -- than  
9 the applicant. And the town, as a matter of policy and as  
10 a matter of legal process, should not put -- should not  
11 disregard the CC&Rs of the communities. You know, Colonia  
12 Miramonte is a -- certainly a well-recognized, beautiful  
13 community. I saw several of the residents here today.  
14 They probably don't want to have to look across the valley  
15 at this project.

16                   But would the town do this to Colonia  
17 Miramonte and decide, oh, gee, let's process the  
18 application for somebody to build a three-story house in  
19 there. And I haven't seen their CC&Rs, but I'm sure  
20 that's not allowed.

21                   But there's all kinds of procedures where  
22 this town -- and the mayor's committee certainly reflects  
23 that she'd be working hand in hand with the community  
24 groups and committees for those communities that have  
25 CC&Rs. And in this case, the town should -- and the board



1 and its town staff should require that the applicant come  
2 to the Stone Canyon East committee. Let's see its  
3 proposals. We'll consider them and then determine how  
4 that impacts upon this. Because otherwise, we may be  
5 wasting lots of time, lots of taxpayers' money reviewing  
6 application that can't even be approved or does not be  
7 approved by the CC&Rs of the affected community.

8           And the title insurance policy in here in  
9 essence guaranteed the applicant access to property  
10 without even seeing, noting, or considering that the route  
11 of access went through a property that's subject to  
12 50-year-old CC&Rs.

13           So there's a lot more to be considered. And  
14 I appreciate the -- the Chair's indulgence, because it's  
15 important new information that really makes us have to go  
16 back to square one and not proceed with this application  
17 and therefore approve the appeal.

18           CHAIRMAN CHAMBLISS: Thank you, Mr. Selden.

19           Any questions to my left?

20           Board Member Leibsohn.

21           MR. LEIBSOHN: I have two questions if I  
22 can.

23           First one, you made the statement that the  
24 board -- you're making a proposal to uphold the appeal and  
25 to refer back to staff. What -- what staff are you

1 referring to?

2 MR. SELDEN: The town staff.

3 MR. LEIBSOHN: What -- I mean, specifically,  
4 what -- who does that consist of?

5 MR. SELDEN: Well, the normal people that --

6 MR. LEIBSOHN: The town staff is the zoning  
7 administrator.

8 MR. SELDEN: Right. The zoning  
9 administrator. Whoever the applicant would come to.

10 And I'll have to admit I'm not a expert on  
11 how the Town of Paradise Valley has organized its staff.  
12 But -- but, in this case, the staff has made a  
13 recommendation to say that this application should go  
14 forward. And conspicuously absent from that  
15 recommendation is any consideration of the CC&Rs. And the  
16 staff should consider that. And if -- if the board is not  
17 going to deny this outright, at least let the staff  
18 consider the impact of this on the CC&Rs. I would,  
19 frankly, hope the staff would get some guidance from the  
20 elected officials here in terms of how does this town, as  
21 a matter of policy, want applicants and staff to deal with  
22 people who come for building projects when they haven't  
23 even gone to the neighborhood associations.

24 MR. LEIBSOHN: That brings me to my second  
25 question, if I can.

1 CHAIRMAN CHAMBLISS: Sure.

2 MR. LEIBSOHN: So obviously it's a  
3 requirement to post notification of -- of these Hillside  
4 Committee meetings and so forth. So can you inform me of  
5 the participation of the Stone Canyon residents at the  
6 Hillside Committee review and were not -- were these items  
7 brought up at that review or -- or any other neighborhood  
8 input available at that -- at that hearing?

9 MR. SELDEN: There was certainly -- quite a  
10 few Stone Canyon residents were present at the Hillside  
11 review. I believe a number of them spoke in opposition to  
12 it. I was out of town. I don't know exactly how many.  
13 But, yes -- and there's quite a few of them here tonight.  
14 I don't know how many are still here.

15 MR. LEIBSOHN: So -- so the specific items  
16 about the CC&Rs, was that -- was that discussed at the  
17 Hillside review committee?

18 MR. SELDEN: That was not. Not to my  
19 knowledge. This is something, frankly -- and I'll have to  
20 acknowledge, a lot of this work, we weren't aware of this  
21 ourselves. Although the CC&Rs are part of the title  
22 report, you know, for our property. But it's not  
23 something that the neighborhood had really focused on  
24 until it was given further thought and further examination  
25 and further study.

1 MR. LEIBSOHN: Thanks.

2 CHAIRMAN CHAMBLISS: Further questions?

3 MR. LEIBSOHN: I'm good. Thank you.

4 CHAIRMAN CHAMBLISS: Questions to my right?  
5 Board Member Kauffman.

6 MS. KAUFFMAN: I have to believe that  
7 there's a hierarchy of property documents. And while I  
8 respect your CC&Rs, I would think that the lawsuit in the  
9 superior court would take precedent over whether or not  
10 this roadway goes in through Stone Canyon or not. And  
11 what you stipulate -- first -- no cantilevers or whatever.  
12 That point is secondary -- maybe even fourth -- after the  
13 superior court, then you have the Hillside Committee.  
14 Then you have the building, and then I would think it  
15 would come to -- and I could be wrong -- the CC&Rs. So I  
16 just want to make sure that I'm correct on this hierarchy  
17 of governance.

18 MR. SELDEN: With all due respect, no.  
19 The -- the neighborhood, the Stone Canyon association, is  
20 not a party to the lawsuit. At least not yet. But even  
21 if the court were to grant a right-of-way, that doesn't  
22 supercede the CC&Rs. In fact -- and the CC&Rs were  
23 recorded before the easement. It was recorded before the  
24 property was severed that created the landlocked parcel.  
25 So the CC&Rs came first.

1                   In fact, the really peculiar thing here is  
2 the 1960 easement did not even reference the 1959 CC&Rs of  
3 the subdivision plat. So there's all kinds of screwy  
4 things with respect to the way in which the -- the title  
5 recordation was done on some of these.

6                   But even if the court were to grant a --  
7 say, okay, there's a right of access up through -- between  
8 lots 22, 25, et cetera, that -- even if that granted a  
9 right of access, that doesn't control the CC&Rs and the  
10 rights -- the property rights of the Stone Canyon East  
11 community. And if the committee -- and I certainly  
12 wouldn't prejudge what the committee might do. I'm not a  
13 member of the committee. But if the committee determines  
14 that, no, even though there's a right of access, you can't  
15 build that driveway there because that's cantilevered.  
16 Our -- our regulations don't allow it. Our CC&Rs don't  
17 allow it. They run with the land is a mandatory thing.

18                   Or the determination could be that the CC&Rs  
19 don't permit it because that's using lots within our  
20 residential neighborhood as a throughway to reach property  
21 outside the community that are -- that's not restricted at  
22 all. And -- and that would contravening the whole purpose  
23 of the CC&Rs, which is to make this a quiet, you know,  
24 single-family residential community with every street  
25 ending in a cul-de-sac. And that's the way these lots

1 were sold.

2                   And then -- and we're falling back, in the  
3 1960s, when this was done, there was a proposal, at one  
4 point, to put a tramway up to the top of Camelback  
5 Mountain. The TMS property could have been the tramway  
6 station under the theory that they're coming from to say  
7 that they can build a roadway through the Stone Canyon  
8 East community. And if the CC&R is saying no restaurants,  
9 no stores, no this -- you know, to allow a property  
10 outside Stone Canyon to use Stone Canyon as a  
11 throughway -- it could be a new trailhead, and we'd have  
12 another Echo Canyon situation in the neighborhood if that  
13 were to be the interpretation.

14                   So no, even -- regardless of what happens in  
15 the lawsuit, the issue of the CC&Rs and the property  
16 rights of the neighborhood will have to be determined.  
17 And those are, at any point, not being determined in any  
18 court, because there's been no applicant -- no application  
19 that -- the -- Stone Canyon community hasn't taken any  
20 action because no applicant has asked, hey, we claim some  
21 kind of a -- an easement property right, implied or  
22 otherwise, through this community that is governed by any  
23 CC&R. And here's what we intend to do. Community, please  
24 act upon this.

25                   CHAIRMAN CHAMBLISS: Further questions?

1 MS. KAUFFMAN: No.

2 CHAIRMAN CHAMBLISS: Thank you, Mr. Selden.

3 MR. SELDEN: Thank you.

4 CHAIRMAN CHAMBLISS: I have a number of  
5 names here. And I don't know if you all, who have  
6 listened to the presentations now, intend to speak  
7 further. So I'll call you out. If you want to come  
8 forward, please do so. And if you say not necessary,  
9 we'll note that as well.

10 And if I mispronounce your name, again,  
11 forgive me.

12 Patrick McMullen. Is he still here?

13 Mr. McMullen, do you wish to address the  
14 board?

15 MR. McMULLEN: Yes, sir.

16 CHAIRMAN CHAMBLISS: Please come forward.

17 MR. McMULLEN: Good evening, Mr. Chairman.  
18 My name is Patrick McMullen. I live at 1601 West Windrose  
19 Drive, Phoenix, Moon Valley. I'm president of the Phoenix  
20 Mountain Preservation Council, which is why I'm here. I  
21 was asked by the Save Camelback Mountain.

22 PMPC was created in 1975 with the focus of  
23 protecting the preserves following Barry Goldwater's  
24 precedent about protecting Camelback Mountain. That's why  
25 I'm here today.

1                   And I'll be done shortly, but -- because I  
2 just want to -- the point I want to make, I filled out my  
3 form incorrectly. I said that I oppose, when actually,  
4 I'm not in opposition. So I put in another one, so you  
5 might see my name twice. The one that it's supposed to  
6 say is that we support the appeal, and we would like to  
7 see the -- the board of adjustment here just shelve this  
8 decision at this point and wait till the court of appeal  
9 is done and wait till Maricopa County does their job and  
10 then pick it up.

11                   CHAIRMAN CHAMBLISS: Thank you, sir.

12                   And the form I have in front of me says that  
13 you are in favor of upholding. I think you got it right.

14                   MR. McMULLEN: I don't know which one --  
15 what it is. Anyway, the -- there's an appeal with it, and  
16 just -- just don't move forward on this. The court will  
17 decide, and then you go from there.

18                   CHAIRMAN CHAMBLISS: Okay. Can you hold for  
19 one second.

20                   Anyone have any questions for Mr. McMullen?

21                   Thank you, sir.

22                   MR. McMULLEN: Oh. And I sent you a letter  
23 too.

24                   CHAIRMAN CHAMBLISS: We've got a lot of  
25 letters.



1 MR. McMULLEN: Thank you, sir.

2 CHAIRMAN CHAMBLISS: Giselle Alexander.

3 Good evening.

4 MS. ALEXANDER: Good evening. I am Giselle  
5 Alexander. You pronounced it right. I am a Paradise  
6 Valley resident. I live down the street at 6017 North  
7 Invergordon.

8 Like so many before me, I, too, am an  
9 attorney, and I'm here supporting the appeal. I'm  
10 concerned about the potential precedent that this sets, as  
11 well as the lack of authority for an at-risk decision. I  
12 would like the board to wait until the court case has  
13 resolved between the other residents at Paradise Valley  
14 before putting all of us at risk.

15 I understand that someone has accepted the  
16 at-risk decision, but, as an attorney, I can tell you  
17 everyone accepts at risk until it doesn't go their way.  
18 And then it becomes someone else's fault, and in our case,  
19 potentially the town.

20 That's all I have to say.

21 CHAIRMAN CHAMBLISS: Thank you.

22 MS. ALEXANDER: Thank you.

23 CHAIRMAN CHAMBLISS: Excuse me one second.

24 Let's make sure there's no questions for you.

25 Any questions from the board members?

1 MS. KAUFFMAN: I just have one  
2 clarification.

3 Excuse me. Most of the cases that come --  
4 sorry -- before the board of adjustment do not set  
5 precedent. One case is solely looked at individually.  
6 And so I want to ask the attorney if this case is  
7 different than our normal board of adjustment cases  
8 brought before us.

9 CHAIRMAN CHAMBLISS: And for point of  
10 clarification, for our attorney -- Susan Goodwin, by the  
11 way, who is our special counsel for this evening. I  
12 believe what Board Member Kauffman is referring to is  
13 typically we hear variances. And what we've been advised  
14 with respect to variances is that they are specific to  
15 that application only, and the decision has no precedent  
16 or value for any other applicant. I believe  
17 Ms. Kauffman's asking whether our decision here, with  
18 respect to the appeal of the zoning administrator  
19 decision, does that have any precedent or impact over any  
20 other.

21 MS. GOODWIN: I think that if you decide  
22 deny the appeal, which would have the effect of permitting  
23 the application to go forward at risk, that that could set  
24 precedent because you've -- the zoning administrator has  
25 interpreted the code in a certain way. And I don't know

1 how you change that interpretation from case to case.

2 CHAIRMAN CHAMBLISS: So it may -- it may  
3 have precedential impact, whatever decision we make this  
4 evening one way or the other.

5 MS. GOODWIN: It may.

6 CHAIRMAN CHAMBLISS: Thank you.

7 Any further questions for counsel?

8 Does anyone any questions of Ms. Alexander?

9 Thank you, ma'am.

10 Ashley Wallace.

11 Is Ashley Wallace still here, and does she  
12 want to say anything?

13 I don't see anybody coming forward to the  
14 podium. I'll note, for the record, that Ms. Wallace is in  
15 favor of upholding the appeal.

16 David Appel.

17 MR. APPEL: I respectfully cede my time to  
18 Mr. Slavin if necessary.

19 CHAIRMAN CHAMBLISS: Okay. We can hear you  
20 from the way back. I think what you said is you ceded  
21 your time to Mr. Selden, who's already presented to the  
22 floor.

23 MR. APPEL: If necessary.

24 CHAIRMAN CHAMBLISS: Okay. Thank you.

25 This may be the same. Terry Appel.

1 MS. APPEL: I ceded my time to Buzz Slavin.

2 CHAIRMAN CHAMBLISS: Okay.

3 Okay. I'm -- okay. And I understand that  
4 you also, like Mr. Appel, your ceded your time to  
5 Mr. Slavin. You are in favor of upholding the appeal,  
6 correct?

7 MS. APPEL: Yes.

8 CHAIRMAN CHAMBLISS: Okay. I have a Linda  
9 Miller. And it says don't address and might address. So  
10 I don't know if Ms. Miller is still here, whether she  
11 wants to make a presentation.

12 I don't see Ms. Miller. And she's checked  
13 both boxes, so I'm not sure which matter she -- where she  
14 is on that.

15 I have a speaker form from a Tom Husband.  
16 And it doesn't indicate which way Mr. Husband is leaning.  
17 So Mr. Husband.

18 MR. HUSBAND: My name is Tom Husband, and  
19 I've had the good fortune to live at 5520 East San Miguel  
20 in Paradise Valley. And I'm here representing the Save  
21 Camelback Mountain organization, which was recently formed  
22 to oppose the development up on Camelback Mountain. And  
23 we basically are a grassroots organization. And we are  
24 here about Camelback Mountain and saving it for future  
25 generations. And to date, our organization has 1,834

1 signatures supporting a petition opposing this  
2 development.

3 Let's see. Is Ms. Sellers here? Yes.

4 Okay. Allow me to introduce Jennifer  
5 Sellers, our lawyer who will be representing us going  
6 forward. And let me know, and I'll get her contact  
7 information to you.

8 Our organization agrees with the arguments  
9 put forth by the three neighbors and their lawyer, Buzz  
10 Slavin, and we request that the board of adjustment uphold  
11 this appeal and not permit the application for  
12 TMS Ventures, LLC, to go forward unless and until the  
13 legal right of access is established with finality and all  
14 legal issues regarding access to the property are  
15 resolved. We thank you for supporting the private  
16 property rights of existing residents and supporting a  
17 process that does not waste taxpayer money by having town  
18 employees and volunteers spending time and resources on  
19 evaluating and processing an application that does not  
20 even have a legal right of access.

21 My I answer any questions?

22 CHAIRMAN CHAMBLISS: Are there any  
23 questions?

24 No questions. Thank you, sir.

25 MR. HUSBAND: Thank you.

1                   CHAIRMAN CHAMBLISS: I don't have any other  
2 speaker forms that have been filled out that are in favor  
3 of upholding the appeal.

4                   I'm going to next ask for public input on  
5 those that are opposed to the appeal. But before I ask  
6 that, is there any other member of the public that wants  
7 to address the board in favor of upholding the appeal?  
8 And if not, we'll move to the next segment here.

9                   No one else is coming forward. I will note,  
10 for the record, that I have 83 forms that have been filled  
11 out that are in favor of upholding the appeal and they did  
12 not wish to speak.

13                   And I have two more forms that have just  
14 been presented to me.

15                   I have two additional forms from -- one from  
16 Cherie Cobb and one from Arlyn Cobb. Both of you are in  
17 favor of upholding the appeal. Neither of you have  
18 indicated whether you want to address the board. So if  
19 either of the Cobbs are here and they want to address the  
20 board, please come forward.

21                   So let's make that 85 that have given  
22 speaker input saying they are opposed to they -- they're  
23 in favor of upholding the appeal.

24                   I've got three forms that have been filled  
25 out for folks that may want to come forward and speak in

1 favor of the applicant. J. David Deatherage.

2 Is Mr. Deatherage here?

3 MR. DEATHERAGE: I filled it out wrong.

4 CHAIRMAN CHAMBLISS: Excuse me?

5 MR. DEATHERAGE: I filled out the form  
6 wrong. I'm in favor of.

7 CHAIRMAN CHAMBLISS: Upholding the appeal?

8 MR. DEATHERAGE: Upholding the appeal.

9 CHAIRMAN CHAMBLISS: Okay. I will note  
10 that.

11 Patrick McMullen, I think we just had him  
12 speak.

13 And this one I'm going to have trouble with.  
14 Liz Clendenin. I don't know if Liz is here. I got Liz  
15 right, but the last name, I don't know.

16 AUDIENCE MEMBERS: Clendenin.

17 CHAIRMAN CHAMBLISS: She has filled out her  
18 form saying that she's opposed to the appeal. I don't  
19 know if she filled out her form correctly. I have three  
20 other forms that have been filled out. They do not want  
21 to address the board, but they are in favor of opposing  
22 the appeal. And there is there was a hand that was raised  
23 there, so yes, ma'am.

24 AUDIENCE MEMBER: Liz just left, but she's  
25 in favor of opposing.

1 CHAIRMAN CHAMBLISS: Could you stand up,  
2 please. I couldn't hear you.

3 AUDIENCE MEMBER: Liz just left, but she's  
4 in favor.

5 CHAIRMAN CHAMBLISS: She's in favor of  
6 upholding the appeal?

7 AUDIENCE MEMBER: Yes.

8 CHAIRMAN CHAMBLISS: Okay. Maybe we need to  
9 make the form more clear.

10 (Applause)

11 CHAIRMAN CHAMBLISS: When we started out, I  
12 said that we would give one more opportunity for the --  
13 for the appellant to speak, and Mr. Slavin was speaking on  
14 behalf of the appellant. If he wants to address the board  
15 for a short presentation, that would be -- you're welcome  
16 to come to the podium.

17 MR. SLAVIN: Thank you. And I will be  
18 brief.

19 I wanted to address one of the comments that  
20 my colleague at the bar, Mr. Jordan, stated. And that is  
21 that this lot was created prior to 1999, when the  
22 definition of lot was added to the Hillside ordinance.

23 There's no proof that this lot was created.  
24 A lot resulted -- this -- this parcel this 3.44-acre  
25 parcel was originally part of 23 acres that had been



1 severed from the -- from the Stone Canyon East property.  
2 It has an elevation -- or it has a slope of 53 percent or  
3 greater, and it, as so, went up to the ridge of Camelback  
4 Mountain.

5           When a prior owner deeded away, to the City  
6 of Phoenix Mountain Preservation Club -- deeded away  
7 everything except 3.44 acres, that's how this parcel was  
8 created. It was -- it was a remainder left after the  
9 remaining property was conveyed away. That's just a  
10 parcel. It's sitting out there as a parcel. It's  
11 floating out on the -- on the Hillside as a parcel. And  
12 until -- unless and until an action was taken with regard  
13 to determining that to be a parcel under the zoning  
14 ordinance, it's at risk -- any piece of property in the  
15 state -- in the town that hasn't received permits and  
16 approvals, are at risk for changes, from time to time, in  
17 the zoning ordinance. Otherwise the town can never amend  
18 its zoning ordinance. So we know that the mayor and  
19 council, from time to time, amend the ordinances.

20           And in this case, a parcel of property was  
21 sitting out there -- and if you want to talk about at  
22 risk, it was at risk that there could be changes made in  
23 the future. And so long as there have been no approvals  
24 granted, there are no, what are called vested rights  
25 available for that property to claim it was validly

1 created. Vested rights came out of a famous case called  
2 Gulf Leisure Corporation v. Town of Paradise Valley. And  
3 basically, it holds -- stems from the proposition that  
4 when substantial funds are expended based on an  
5 approval -- in that case, a special use permit approval  
6 for a resort -- and not only in terms of acquiring, but  
7 also spending it on engineering and design fees, it says  
8 that you have vested rights.

9 This parcel has sat there on that  
10 mountainside since 1970, when it was the remainder created  
11 out of the remaining -- that was left over after  
12 conveyance to the mountainside. It's been sitting there  
13 for 45 years. It has no vested rights. It has no claim  
14 at all that it's a validly legal created lot. And  
15 therefore, the town, mayor, and council had the right to  
16 make changes to the zoning ordinance that are binding on  
17 that property.

18 So I would submit to you that it's putting  
19 the rabbit in the hat to say that -- and then pulling it  
20 out to say that this was a legally created lot sometime in  
21 1999 or before -- before 1999. There's nothing at all to  
22 support that. There's no research. There's nothing there  
23 that -- that would serve that statement. So that having  
24 been said, again, I respectfully request that you consider  
25 this to be a decision of the zoning district and that you

1 have the authority to -- to grant this appeal, send  
2 this -- I say send it back. What you basically do -- we  
3 would hope you would do and implore you to do -- would be  
4 to deny the decision, reverse the decision. That then  
5 places everybody back to the status quo ante. It would  
6 allow the litigation to proceed that TMS initiated, not  
7 the letter. Let that -- let that wend its way through the  
8 courts. And, Mr. Chairman, it may take a while for the  
9 case. But that's the process this applicant chose. That  
10 was the only process it had available.

11 So that being said -- we've also submitted  
12 to you a proposed form of order for your consideration.  
13 And if you would see fit to review that and vote on it, we  
14 would respectfully appreciate that. But that is up to  
15 you.

16 So having said that, there's nothing to  
17 support at risk. We've all -- we've talked about that.  
18 We've talked it to death here. So essentially, we request  
19 your approval of our appeal.

20 Thank you.

21 CHAIRMAN CHAMBLISS: Appreciate it. Don't  
22 sit down yet.

23 Any further questions of Mr. Slavin?

24 Board Member Leibsohn.

25 MR. LEIBSOHN: Yes. Mr. Slavin, one of the

1 arguments that you used in the your presentation was the  
2 potential -- the decision of this board and how that could  
3 potentially influence or create prejudice for the court  
4 one way or the other. And it works both ways, actually.  
5 So could you maybe expand your thoughts on how that could  
6 turn out?

7 MR. SLAVIN: Well, yes. And -- and, again,  
8 in all due respect to my colleague at the bar, Mr. Jordan,  
9 I don't think he makes his way to court very often.  
10 However, I spend a lot of time in court, and particularly  
11 on issues like this, or related issues. I -- simply, my  
12 point being that -- that if a decision -- if this were  
13 allowed to go forward at risk, which it should not --  
14 allowed to go forward and the Hillside Building Committee  
15 were to say, well, it meets all the disturbance criteria,  
16 even though you're -- you're basically building a house on  
17 a 53 percent slope, which is pretty steep, and you're  
18 carving a roadway up a 53 percent slope at a diagonal.  
19 And if the board -- if the Hillside Building Committee  
20 would approve that but make it subject to having a legal  
21 access established through the court, it's been my  
22 experience, Mr. Leibsohn, that TMS will take that  
23 approval, take it to the court, and argue that the court  
24 should give weight to that decision in making its -- its  
25 decision on whether or not there's legal access because

1 there is -- the expertise and experience on these issues  
2 is at the town, and the court should give that some  
3 weight. That will happen in this case. So if -- if this  
4 were to go forward, that, I think, is a very realistic  
5 happening.

6 MR. LEIBSOHN: I mean, would it not work  
7 both ways?

8 MR. SLAVIN: I don't see it working both  
9 ways.

10 In other words, are you suggesting that the  
11 Hillside Building Committee would deny the application?  
12 Then -- then we don't have we don't have to -- we don't  
13 have to go to court.

14 MR. LEIBSOHN: Not deny the application, but  
15 just deny the appeal.

16 MR. SLAVIN: I'm not sure I understand  
17 your --

18 MR. LEIBSOHN: So the question before us is  
19 uphold the appeal to --

20 MR. SLAVIN: Okay. I -- I think -- I think  
21 I may have confused you, sir. And I apologize if I did.

22 CHAIRMAN CHAMBLISS: Mr. Jordan -- or --  
23 excuse me -- Mr. Slavin, let me take a stab at what I  
24 think you've said, and Board Member Leibsohn's question.  
25 And I think, as I understand your prior statements, your

1 concern is that if we deny the appeal and if the at-risk  
2 application is processed through the Hillside Building  
3 Committee and there is some determination made by the  
4 Hillside Building Committee favorable to the applicant,  
5 that the applicant is going to take that favorable  
6 decision to the superior court and bootstrap the argument  
7 of legal access by saying the Hillside Building Committee  
8 said something favorable to the applicant, and that's  
9 additional evidence that, therefore, the superior court  
10 judge should consider in favor of the applicant's legal  
11 access argument.

12 Did I get that right?

13 MR. SLAVIN: Precisely.

14 CHAIRMAN CHAMBLISS: Does that answer your  
15 question, Mr. Leibsohn?

16 MR. LEIBSOHN: Well enough.

17 MS. GOODWIN: I -- I've tried not to say  
18 anything, but I have to ask Mr. Slavin a question, because  
19 I believe you're talking about some cause of action based  
20 on a theory of government estoppel. But isn't one of the  
21 elements of government estoppel or equitable estoppel  
22 reasonable reliance on an action of a city or town, or of  
23 a government? And I can think of at least five different  
24 ways to be sure that the applicant knew what the at --  
25 what at risk meant.

1                   In other words, I can think of five  
2 different ways to -- to be sure to preclude the argument  
3 of reasonableness.

4                   CHAIRMAN CHAMBLISS: And before you respond,  
5 Mr. Slavin, I think what I'm hearing, from the testimony,  
6 is in addition to what Ms. Goodwin has stated, I heard the  
7 applicant's counsel say -- say, pretty unequivocally, I  
8 say here, on the record, that we will not take any  
9 decision here and attempt to use it to bootstrap our  
10 position in superior court. So if they attempted to do  
11 that, wouldn't you have this record to say, to the  
12 superior court judge, forget about it?

13                   MR. SLAVIN: I still think -- again --  
14 but -- but -- can I answer her question first?

15                   CHAIRMAN CHAMBLISS: Absolutely. Yes.

16                   MR. SLAVIN: First of all, Mr. Chairman and  
17 Ms. Goodwin, I'm not making an equitable estoppel  
18 argument. I understand equitable estoppel extremely well,  
19 because I'm the one who tired and argued the Pingitore v.  
20 Town of Cave Creek case. And you're very familiar with  
21 that case, I know. Okay.

22                   So in any event, so I know the nature of  
23 equitable estoppel. I'm not arguing that -- that somehow,  
24 if you were to go forward -- although I think it's  
25 possible -- that because you gave this at risk, that --

1 that somehow they could reasonably rely. My -- my  
2 argument is this, simply. When you get down in the pit  
3 with the other litigators and you're going at this, that I  
4 believe, and reasonably anticipate, that -- that if the  
5 board were to deny our appeal and this case would go to  
6 the Hillside Building Committee and it would be approved  
7 subject to the court approving, that would be taken by  
8 TMS, notwithstanding Mr. Jordan's comments -- and he's not  
9 the litigator on this case, by the way -- but sure. If  
10 they tried to do that, I would certainly try to bring this  
11 in. But I don't think that dilutes it that much, because  
12 the judge is still being asked to say, listen, this is  
13 what the town did. They have the experience.  
14 Notwithstanding what their lawyer might have said. Okay?  
15 They have the experience, and they have the expertise.  
16 And -- and, actually, there are cases out there when --  
17 when you appeal a decision, let's say, from -- let's say a  
18 board of adjustment decision to a special action case.  
19 There's deference given. There's deference given by  
20 superior courts to people who are put in the position of  
21 responsibility because they have the resources and the  
22 education and the experience to make the types of  
23 decisions on more regular basis than, let's say, a  
24 superior court judge does.

25 So TMS brings this down, hands it to Judge



1 Parker, and I can argue all I want. But that that's still  
2 going to be there for him to consider. He might not  
3 recite, in his ruling, that that's what he relied upon.  
4 What I'm saying, that is potentially prejudicial. I've  
5 seen it happen. And -- and all I can tell you is that I  
6 think that's going to be a problem.

7           The reason why I address this -- the reason  
8 I -- again -- well -- the reason I address this, among  
9 other things, is one of the -- one of the statements made  
10 by the staff in support of its -- of -- excuse -- me made  
11 in the zoning administrator's -- in support of the zoning  
12 administrator's decision, the staff report, is that  
13 there's no prejudice to the owners of lots 22, 23, and 24.  
14 If you were to allow this case to proceed on an at-risk  
15 basis.

16           What I'm trying to demonstrate to you, not  
17 only what Mr. Selden had to say here, but also for the  
18 other reasons why that's going to be prejudicial. I  
19 didn't have the opportunity to expand on the legal  
20 nonconforming use. But these lots would be reduced to  
21 less than 1 acre, which is the requirement in the Town of  
22 Paradise Valley, in the setbacks from the street. The new  
23 street will be reduced, less than 40 feet, to 25 feet, and  
24 it makes the property legally nonconforming. The only way  
25 that any of these owners could ever expand those

1 properties would be in a direction other than the street,  
2 and they will forever have legal nonconforming use lots.  
3 And so when they go to sell them, they're going to be  
4 substandard lots in the town of Paradise Valley.

5 So I think all this --

6 CHAIRMAN CHAMBLISS: Mr. Slavin, I  
7 understand. And I think what you're doing is making a  
8 great argument for the superior court judge as to why he  
9 shouldn't grant legal access. But I don't know that  
10 that's -- that's prospective down the road, and I don't  
11 think that's really the issue that's before the board of  
12 adjustment this evening. Am I missing something?

13 MR. SLAVIN: Well, I would respectfully  
14 disagree with you only because if -- if you were -- let's  
15 say -- you're a real estate lawyer?

16 CHAIRMAN CHAMBLISS: Yes, sir.

17 MR. SLAVIN: Okay. And -- I do real estate  
18 as well, and I have respect for your work.

19 Once you get down and you start doing  
20 litigation and -- and that's a different -- that's a whole  
21 different world than, ordinarily, someone might otherwise  
22 anticipate. What I'm suggesting to you is a very real  
23 problem that I perceive in this lawsuit. And what I'm  
24 suggesting to you, actually, is this is the reason why --  
25 one of the reasons why TMS is trying to move this at risk

1 so it can be used in litigation. It's an opportunity to  
2 leverage up. And I'm suggesting to you that's real. It's  
3 real in my world.

4 CHAIRMAN CHAMBLISS: I understand what  
5 you're saying, sir.

6 MR. SLAVIN: Yes.

7 CHAIRMAN CHAMBLISS: Any further statements,  
8 sir? No?

9 Any further questions of Mr. Slavin?

10 Thank you, sir.

11 We are through with the input from public.  
12 At this point, I think that we should have discussion and  
13 consider a motion.

14 Before anyone makes a motion, any discussion  
15 amongst the board?

16 MR. LEIBSOHN: Would it be appropriate to  
17 request our attorney to weigh in on her thoughts?

18 CHAIRMAN CHAMBLISS: I think it would be  
19 appropriate to ask the attorney a specific question as  
20 opposed to just ask her to talk. So if -- if there is  
21 some specific question you'd like her to address, then  
22 please do so.

23 MR. LEIBSOHN: I'll come back to that.

24 CHAIRMAN CHAMBLISS: Okay. Any further --  
25 any discussion of the issue?

1 MR. WILLIAMS: I'd like to just give my  
2 interpretation of some of the discussion that's here.

3 As being the newest member on the board of  
4 adjustment, I was told that cases rarely come to the board  
5 of adjustment except for variances and, you know, other  
6 issues. So this has been -- and I read all of the  
7 materials that Mr. Slavin and Mr. Jordan gave us. And --  
8 and I guess I find this issue somewhat troubling. As a  
9 citizen, you want certainty in your zoning code. You want  
10 certainty in interpretations. And I can't, in my  
11 diligence and so forth, ever find support that we have  
12 made at-risk reviews, whether at Hillside or any other  
13 committee. So I find that somewhat troubling, because,  
14 you know, I -- I'm -- as a lawyer, I rely on statutory  
15 authority, 'cause the cities don't have an applied zoning  
16 power. It's a creature of statute, as Mr. Slavin said.

17 And I think when you have bad facts, as we  
18 do here, you tend to make bad decisions. And I -- and I  
19 think this decision is -- this committee has spent a lot  
20 of time on. It's really a hard decision for everybody to  
21 make. And I appreciate the staff, the appellant, and the  
22 applicant for -- for their time. They put a lot of time  
23 and thought into it, and it's not an easy decision for  
24 this board.

25 I'm certainly swayed by the fact that the --

1 that the applicant filed this lawsuit, as he had to; he  
2 had no other option, and that this matter will never get  
3 finally determined, regardless of how we decide tonight,  
4 until the that lawsuit is resolved. And I think  
5 somewhat -- I'm sympathetic that we may be putting the  
6 cart before the horse, because if the Hillside Committee  
7 were to review it and then, later, the council amended the  
8 Hillside code, my guess is the applicant would have to go  
9 back in again and redo it. And -- or there may be changed  
10 circumstances on the site. And, therefore, I think it's  
11 really hard to anticipate two years out, three years out,  
12 and try to secure a Hillside building -- Hillside  
13 ordinance committee approval at this point. It seems it's  
14 just not ripe for a decision until we hear what the  
15 superior court says.

16 So it's for those reasons, I'm -- I'm having  
17 some problems with the staff's recommendations and I'm  
18 sympathetic to the -- to the application. So...

19 CHAIRMAN CHAMBLISS: Any further discussion?

20 I guess I'll make some observations based on  
21 the presentation that's been made this evening and the  
22 staff report.

23 It seems to me that we've got a -- a issue  
24 that we have to decide, first off, which is whether or not  
25 this matter is properly before the board. Is the

1 November 19th -- November 29th -- is the letter from the  
2 zoning administrator either an enforcement or  
3 interpretation of the zoning ordinance. And while I'm not  
4 persuaded that it's an enforcement issue, it certainly  
5 seems to me that it's an interpretation, and therefore, it  
6 seems to me that the board has the jurisdiction to  
7 consider the matter that's before the board.

8 I am also troubled, as -- welcome, by the  
9 way, council -- or board member, to your first meeting  
10 here. It's usually not three hours long.

11 I am -- I echo your concerns that we ought  
12 to have certainty in how it is we direct the citizens to  
13 comply with our zoning ordinances and whatever our code  
14 requires. And I'm troubled by the fact that there doesn't  
15 seem to be any authority in the code for this platypus of  
16 an at-risk proceeding.

17 And -- and if I take that in -- in  
18 isolation, then I'm -- I'm more inclined to rule in favor  
19 of the appeal. And, further, it seems to me that since,  
20 on a very practical level, this matter isn't going to go  
21 very far forward until there's been a final legal judgment  
22 on the -- a final judgment on the access issue, we really  
23 are letting folks spin their wheels a bit and spend money  
24 on something that may be completely either redone or  
25 completely wasteful. That -- that issue is really more of

1 sort of an emotional tug and pull as opposed to, you know,  
2 what are we supposed to look at this evening with respect  
3 to the two issues before us.

4 And my inclination is to say, one, we've got  
5 proper jurisdiction and, two, no one has presented to us  
6 any specific authority for the at-risk proceeding, and,  
7 therefore, I'd be inclined, on that basis, to find in  
8 favor of the appellant.

9 And having made those statements, any  
10 further discussion by the board? None?

11 Special counsel.

12 MS. GOODWIN: Just because I think it's  
13 going to be very important that the record be clear on  
14 this matter, you -- in your comments, Mr. Chairman, you  
15 made a distinction between interpretation and enforcement.  
16 And I would like to read the statute to you and maybe make  
17 a comment at that.

18 It says that the board of adjustment shall  
19 hear and decide appeals in which it is alleged there is an  
20 error in an order, requirement, or decision made by the  
21 zoning administrator in the enforcement of a zoning  
22 ordinance adopted pursuant to this article.

23 So it doesn't -- so the order, requirement,  
24 or decision would be an enforcement -- would be related to  
25 enforcement.

1                   But I would agree with you that this is a  
2 decision, and it's a decision in interpretation, if you  
3 will, but a decision, and that the board does have proper  
4 jurisdiction.

5                   CHAIRMAN CHAMBLISS: Thank you, Counsel. As  
6 I understand your comments, then, while you may disagree  
7 with my characterization about interpretation, I'm  
8 understanding you to say that you believe that the zoning  
9 administrator's letter is a enforcement decision that this  
10 board would have jurisdiction over to consider the appeal.  
11 Is that correct?

12                   MS. GOODWIN: Not an enforcement decision.  
13 It's a decision in enforcement of the provisions of the  
14 zoning code. And due --

15                   CHAIRMAN CHAMBLISS: And, therefore, this  
16 matter is properly before the board to hear?

17                   MS. GOODWIN: That's what I believe.

18                   CHAIRMAN CHAMBLISS: Okay. Thank you.

19                   Any discussion on that comment?

20                   Any motion to be considered?

21                   And we may want counsel to assist us in the  
22 specific wording of the motion to make sure that that's  
23 accurately done.

24                   Does either -- any board member want to make  
25 a motion?



1                   MR. WILLIAMS: I'll make a motion. I'd like  
2 to make a motion that we grant the appeal to the board of  
3 adjustment.

4                   And Ms. Goodwin can put the form of order in  
5 that needs to be done.

6                   And then it goes back -- this matter goes  
7 back to staff, and we base that on the fact that we find  
8 the decision by the zoning administrator to be without  
9 substantial authority.

10                  CHAIRMAN CHAMBLISS: Is the motion clear  
11 enough, Counsel, or do you think that that motion needs to  
12 be clarified before the board considers it.

13                  MS. GOODWIN: I thought I heard him say  
14 that -- that special counsel put this in the form of an  
15 order. Are you -- I'm a little unclear about what you  
16 mean.

17                  CHAIRMAN CHAMBLISS: Yeah. I appreciate  
18 that.

19                  What I -- what I am wanting to make certain  
20 of is Board Member Williams has made a motion to affirm  
21 the appeal for relief, which is our public hearing  
22 matter 17-119.

23                  And assuming that motion is seconded and  
24 granted, he would request that counsel take that motion,  
25 turn it into an order.

1 Is that your motion?

2 MR. WILLIAMS: That was my motion.

3 CHAIRMAN CHAMBLISS: Is -- is that clear  
4 enough for counsel to understand?

5 MS. GOODWIN: Yes.

6 CHAIRMAN CHAMBLISS: Is there a second on  
7 the motion?

8 MR. NEWMAN: Second. Second. Second that.

9 CHAIRMAN CHAMBLISS: There's a second,  
10 although your microphone --

11 MR. NEWMAN: I second that.

12 CHAIRMAN CHAMBLISS: There we go.

13 Any further discussion on the motion?

14 No further discussion.

15 All in favor, please say "aye."

16 MR. WILLIAMS: Aye.

17 MR. NEWMAN: Aye.

18 CHAIRMAN CHAMBLISS: Aye.

19 Any opposed?

20 No one is opposed.

21 Do we need to have a roll call on that,  
22 George?

23 MR. BURTON: If I could, I'd prefer to do  
24 that.

25 CHAIRMAN CHAMBLISS: Okay. Let's -- let's

1 do it one more time with the motion and have a roll call  
2 on our vote.

3 MR. BURTON: Board Member Kauffman.

4 MS. KAUFFMAN: Yes.

5 MR. BURTON: Board Member Kauffman is yes.  
6 Board Member Leibsohn.

7 MR. LEIBSOHN: Yes.

8 MR. BURTON: Board Member Leibsohn is yes.  
9 Board Member Newman.

10 MR. NEWMAN: Yes.

11 MR. BURTON: Board Member Newman is yes.  
12 Board Member Williams.

13 MR. WILLIAMS: Yes.

14 MR. BURTON: Board Member Williams is yes.  
15 And Chair Chambliss.

16 CHAIRMAN CHAMBLISS: Yes.

17 MR. BURTON: Chair Chambliss is yes.

18 The motion passes.

19 CHAIRMAN CHAMBLISS: Thank you, everyone,  
20 for your time. We've got a couple more matters to take  
21 care of. And unless you want to watch us in action,  
22 you're free to leave.

23 Are there any other action items, Members,  
24 that we need to look at?

25 MR. BURTON: There are not.

1                   CHAIRMAN CHAMBLISS: And the consent agenda,  
2 board approval of minutes, but I understand we had a  
3 little snafu, so that will be on the next go 'round.

4                   MR. BURTON: On the next meeting's agenda,  
5 yes.

6                   CHAIRMAN CHAMBLISS: Any staff report?

7                   MR. BURTON: The only staff report is the  
8 one agenda item for the actual meeting.

9                   CHAIRMAN CHAMBLISS: And just -- do we want  
10 a copy of the filing report?

11                   MR. BURTON: That's from you.

12                   CHAIRMAN CHAMBLISS: Done it.

13                   And we've talked about future agenda items.  
14 We have one more coming up. And I think we have now  
15 completed our agenda.

16                   Is there a motion for adjournment?

17                   MR. WILLIAMS: So moved.

18                   CHAIRMAN CHAMBLISS: Second?

19                   MR. NEWMAN: Second.

20                   CHAIRMAN CHAMBLISS: I don't think we need  
21 to have discussion. Let's just go to a vote.

22                   Go ahead and roll call this.

23                   MR. BURTON: Board Member Kauffman.

24                   MS. KAUFFMAN: Yes.

25                   MR. BURTON: Board Member Kauffman's a yes.

1 Board Member Leibsohn.  
2 MR. LEIBSOHN: Yes.  
3 MR. BURTON: Board Member Leibsohn's yes.  
4 Board Member Newman.  
5 MR. NEWMAN: Yes.  
6 MR. BURTON: Board Member Newman's yes.  
7 Board Member Williams.  
8 MR. WILLIAMS: Yes.  
9 MR. BURTON: Board Member Williams is yes.  
10 And Chair Chambliss.  
11 CHAIRMAN CHAMBLISS: Thank you, everyone,  
12 for your time.  
13 Yes.  
14 It's adjourned.  
15 MR. BURTON: Thank you.  
16 (The meeting concluded at 8:49 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF MARICOPA )

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, CHARLOTTE LACEY, Certified Reporter No. 50859 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 25th day of April, 2017.

CHARLOTTE LACEY, RPR  
Certificate No. 50859