



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes - Draft

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, 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

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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 Jorden, 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. Jorden 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. Jorden, 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. Jorden'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 Jorden. 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. Jorden --

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

25 CHAIRMAN CHAMBLISS: Mr. Jorden, 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. Jorden, 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. Jorden?

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. Jorden, 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. Jorden, 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. Jorden?

4 Thank you, sir.

5 MR. JORDEN: Thank you.

6 CHAIRMAN CHAMBLISS: Is there anyone else
7 from your team, Mr. Jorden, 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. Jorden, 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. Jorden, 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. Jorden,
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. Jorden -- 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. Jorden'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 then, 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. Jorden 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.)

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