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November 2, 2017

REPORT RE:

COURT-ISSUED WRIT COMMANDING CENTRAL AREA PLANNING COMMISSION TO SET ASIDE ITS JULY 12, 2016 DETERMINATION IN CASE NO. DIR-2015-3031-BSA

SAMATAS v. CITY OF LOS ANGELES, et al.
LASC CASE NO. BS164400
(COUNCIL DISTRICT 4)

The Honorable Central Los Angeles Area Planning Commission
of the City of Los Angeles
Room 532, City Hall
200 North Spring Street
Los Angeles, California 90012

Case No. DIR-2015-3031-BSA

Honorable Members:

We are presenting to you for your action, consistent with its terms, a court-issued Writ of Mandate ("Writ") in *Samatas v. City of Los Angeles et al.* (Los Angeles Superior Court Case No. BS164400).

Specifically, the Writ commands the Central Los Angeles Area Planning Commission (APC) to "set aside and invalidate … the APC's written determination, dated July 12, 2016, that overturned the written determination of the Director of Planning, dated April 13, 2016, that the City of Los Angeles Department of Building and Safety erred and abused its discretion in issuing building permits for a 13,755-square-foot home (the "Project") located at 1410 N. Tanager Way … based on an inaccurate slope band analysis used to determine the residential floor area for the Project."

An unsigned copy of the Writ is attached as Exhibit A.

Background

The subject action concerns a single family home under construction at 1410 N. Tanager Way ("Subject Property"), owned by 1410 Tanager LLC ("Applicant" or "Tanager"). Petitioner James Samatas ("Samatas") lives next door. Both properties are located in the area of the Hollywood Hills commonly referred to as the "Bird Streets".

On April 29, 2015, the Los Angeles Department of Building and Safety (DBS) issued four building permits to Tanager, including the permit for the construction of a new single family home. A neighbor, Randall Whitten ("Whitten"), appealed the issuance of those permits to DBS on June 17, 2015. Whitten owns a nearby home located on Thrasher Avenue as well as a landlocked parcel that is adjacent and downslope from the Subject Property. DBS issued a written Determination denying the appeal on July 30, 2015.

Whitten[1], joined by Samatas, appealed the DBS Determination to the Director of Planning ("Director") pursuant to Los Angeles Municipal Code ("LAMC") §12.26-K. Following a public hearing on December 3, 2015, Associate Zoning Administrator Jack Chiang ("AZA Chiang") issued a Director's Determination on April 13, 2016. AZA Chiang partially *granted* the appeal, and partially *denied* it. As both were dissatisfied with the Determination, Tanager and Samatas each timely appealed the Determination to the APC.

Tanager's appeal related to the "*Slope Band Issue*." Tanager appealed the Director's finding that Tanager had overstated the maximum Residential Floor Area ("RFA") permitted for the upper levels of the new home based on an inaccurate Slope Band Analysis. In argument to the APC, Samatas suggested that Tanager's Slope Band Analysis was incorrect, because its surveyor wrongly assumed that all land under the previous house was flat. Tanager argued that its survey complied with all industry standards and LAMC §12.21-C.10(b)(1).

Petitioner's appeal concerned the "*Private Street Map Issue*." Samatas appealed the finding that LAMC §18.10 did not require the approval of a Private Street Map prior to issuance of building permits to build a new home on the Subject Property. Samatas argued that the mere fact that Tanger's property was adjacent to a private easement meant that Tanager had to apply for a private street map before obtaining any building permits. Tanager argued that Samatas' reading of the code was not in conformance with the City's interpretation and would lead to absurd results.

Following a public hearing held on June 28, 2016, the APC granted Tanager's appeal as to the *Slope Band Issue* and denied Samatas' appeal with respect to the

[1] Whitten withdrew his appeal via email dated September 15, 2015 and later wrote in support of the Subject Project.

Private Street Map Issue. The APC thus found that DBS did not err on either issue and that DBS properly issued building permits to Tanager.

On August 16, 2016, Samatas filed a Petition for Writ of Mandate in the Los Angeles Superior Court to set aside the APC's decision on both issues (Petition). On August 10, 2017, Judge James Chalfant partially granted the Petition, and partially denied it. More specifically, Judge Chalfant granted the Petition on the *Slope Band Issue*, ruling in Samatas' favor. Judge Chalfant denied the Petition on the *Private Street Map Issue,* ruling in the City's favor. Attached as Exhibit B is a copy of the Court's written ruling. Judgment was entered against the City on October 11, 2017.

In his ruling and in comments made during the trial, Judge Chalfant explained that he felt the topographical map that Tanager submitted to the City during plan check failed to account for Tanager's actual knowledge that the old home was not built on a flat pad. In support of this conclusion, the Judge referred to the architectural plans[2] for the new home as well as pre- and post- demolition photographs, which the Judge felt showed the property was steeply sloped. (See Exhibit C, portions of August 10, 2017 Court Transcript (Court Transcript), at pages 5:22-6:23; 39:13: "I care whether Tanager knew;" 43:11-13: "But if you know it's not flat, then you have to make an assumption about how much of it isn't flat;" and 49:1-2: "If Tanager knows better, they have to tell LADBS.") The Judge's ruling thus required that Tanager submit a new Slope Band Analysis to the City in order to continue construction; this will result in a home with a smaller RFA. (Court Transcript at 51:17-22; see also 64:1-8.)

Recommendation

This Office recommends that the APC act to comply with the Writ by setting aside its July 12, 2016 Determination granting Tanager's appeal on the *Slope Band Issue*.

If you have any questions regarding this matter, please contact the undersigned at (213) 978-8244. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEURER, City Attorney

By

JENNIFER K. TOBKIN
Deputy City Attorney

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[2] While the APC did not view the plans the Judge relied on, they were described to the APC in letters and testimony from the Petitioner and Petitioner's witnesses, including real estate expert Ann Gray.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

JAMES SAMATAS, an individual,

Petitioner,

v.

CITY OF LOS ANGELES, a municipal corporation and political subdivision of the State of California, acting by and through its commissions, committees, staff, agencies, departments and officials; CITY OF LOS ANGELES CENTRAL LOS ANGELES AREA PLANNING COMMISSION; and DOES 1 through 50, inclusive,

Respondents,

TANAGER NK, LLC; 1410 TANAGER, LLC; and DOES 51 through 100, inclusive,

Real Parties in Interest

Case No. BS164400

Judge James C. Chalfant
Dept. 85

[PROPOSED]

PEREMPTORY WRIT OF MANDATE

Hearing Information:
Date: August 10, 2017
Time: 9:30 a.m.
Dept.: 85

Petition for Peremptory Writ of Mandate
Filed: August 16, 2016

Judgment having been entered in this proceeding, ordering that a peremptory writ of mandate be issued from this Court,

IT IS COMMANDED that, immediately upon service of this writ:

1. Respondents City of Los Angeles (the "City") and City of Los Angeles Central Los Angeles Area Planning Comission (the "APC" and, collectively with the City, "Respondents") shall:

a. set aside and invalidate (i) the APC's written determination, dated July 12, 2016, that overturned the written determination of the Director of Planning, dated April 13, 2016, that the City of Los Angeles Department of Building and Safety erred and abused its discretion in issuing building permits for a 13,755-square-foot home (the "Project") located at 1410 N. Tanager Way (the "Site") based on an inaccurate slope band analysis used to determine the residential floor area for the Project, and (ii) Building Permit Nos. 14010-30000-03562 (new single-family dwelling with attached garage) and 14010-30001-03562 (supplement to 14010-30000-03562 to revised proposed floor plans and revise structural inventory) subject to the ability of Respondents to issue a new or supplemental permit pursuant to a revised slope band analysis map consistent with the Court Decision;

b. be enjoined from issuing, granting, adopting, executing or taking any further permits, approvals, contracts or other documents or actions relating to the development of the Project until Respondents and Real Parties in Interest have taken such actions as may be necessary to comply fully with Section 12.21.C.10(b) of the Los Angeles Municipal Code (the "LAMC") relating to the slope band analysis and residential floor area for the Project, provided that the foregoing shall not limit the City's ability to respond to violations of the LAMC relating to the Site or the Project; and

c. prohibit any and all grading, construction and other development activity authorized pursuant to the Building Permits until Respondents and Real Parties in Interest have taken such actions as may be necessary to comply fully with Section 12.21.C.10(b) of the LAMC relating to the slope band analysis and residential floor area for the Project.

2. Respondents shall file a return to this peremptory writ of mandate within sixty (60) days following after the date of its issuance.

Dated: _____, 2017

_____
Clerk of the Superior Court

EXHIBIT B

James Samatas v. City of Los Angeles, et al., BS 164400

Tentative decision on (1) motion to correct the record: denied; (2) petition for writ of mandate: granted in part

Petitioner James Samatas ("Samatas") seeks a writ of mandate to compel the City of Los Angeles ("City") to set aside its decision to grant building permits to Real Parties-in-Interest Tanager NK, LLC and 1410 Tanager, LLC (collectively, "Tanager"). Samatas additionally moves to correct the administrative record in this action.

The court has read and considered the moving papers, oppositions, and replies,[1] and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner Samatas commenced this proceeding on August 16, 2016. The verified Petition alleges in pertinent part as follows.

1410 N. Tanager Way ("Property") is located in the Hollywood Hills, within a Hillside Area, Very High Fire Hazard Severity Zone, and a Bureau of Engineering Special Grading Area. The Property is steeply sloped, and development on the Property is subject to the City's Baseline Hillside Ordinance. The Property was previously improved with a 2,368 square foot single family home ("Prior House").

The northwest portion of the Property is encumbered by a private road easement ("Easement") that is 20 feet wide adjacent to N. Tanager Way and widens to approximately 30 feet. The purpose of the Easement is to provide vehicular and related pedestrian access to a large, undeveloped parcel of land in the canyon that surrounds the Property (the "Whitten Property") and is owned by R. Guy Whitten ("Whitten"). The Easement provides the sole means of vehicular access to the Whitten Property.

In January and April of 2015, the City's Department of Building and Safety ("LADBS") issued four building permits and supplements thereto (collectively, the "Building Permits") for the construction of a 13,755-square-foot hillside residence ("New House") on the Property.

LAMC Section 18.10 requires the approval of a private street map by the LADBS Director with respect to any "private road easement" contiguous or adjacent to a building site prior to the issuance of any building permit relating to that building site. On June 17, 2016, Whitten submitted to LADBS a Request for Modification of Building Ordinances ("LADBS Appeal") stating that LADBS abused its discretion in issuing the Building Permits, in part because no private street map process had occurred with respect to the Easement pursuant to Section 18.10 and related provisions in Article 8 of the Los Angeles Municipal Code ("LAMC") prior to the issuance of the Building Permits. The LADBS Appeal also alleged that Real Party

[1] Petitioner filed a 20-page "joint reply" to the oppositions. While Petitioner is entitled to file a 10-page reply to each opposition, there is no authority for a joint reply exceeding the 10-page limit of CRC 3.1113(d). Doing so gave Petitioner the unfair opportunity to expand arguments replying to his opponent's similar positions. Nonetheless, the court has exercised its discretion to consider the reply.

Tanager, the developer of the Project, violated the LAMC because it wrongly omitted approximately 6,800 square feet of floor area in the "basement" of the New House from the calculation of the New House's residential floor area.

On July 30, 2016, LADBS issued a determination that it had not erred and abused its discretion in issuing the Building Permits. Samatas and Whitten appealed that determination to the Director on August 14, 2015 ("Director Appeal"). As part of the Director Appeal, they again raised the private street map issue and further challenged the issuance of the Building Permits on the ground that the floor area of the New House significantly exceeded the maximum residential floor area permitted under the LAMC.

Prior to filing the Director Appeal, LADBS had not provided Samatas with a meaningful opportunity to review the approved plans for the New House. When a consultant retained by Samatas' counsel was finally allowed to review the plans, she discovered that Tanager had manipulated the "slope band" analysis used to calculate the maximum residential floor area for the New House so that Tanager could build a larger home than permitted under the LAMC. Specifically, Tanager significantly overstated the maximum residential floor area for the portions of the New House above the basement by assuming a flat grade below the Prior House in the slope band analysis, when in fact the slope under the Prior House was quite steep. When the slope band analysis is recalculated using the actual steep slope under the Prior House, the maximum residential floor area for the New House is reduced from 5,380 square feet to approximately 4,343 square feet.

On December 3, 2015, Jack Chiang, an Associate Zoning Administrator (the "ZA"), conducted a public hearing on the Director Appeal. On April 13, 2016, the ZA issued a written determination (the "Director Decision") granting in part and denying in part the Director Appeal. The ZA's Director Decision granted the appeal with respect to Samatas' claim that Tanager overstated the maximum residential floor area for the upper levels of the New House based on the inaccurate slope band analysis, finding there was "clear evidence that the site contains a steep slope underneath the prior house."

The Director Decision denied the appeal with regard to the private street map issue. It acknowledged that LAMC section 18.10 requires the approval of a private street map prior to the issuance of the Building Permits. However, the Director Decision held that Article 8 was only intended to apply narrowly to landlocked building sites that directly benefit from the private road easement, and should not apply more broadly to any building site adjacent to a private road easement.

Samatas filed an appeal to the Central Los Angeles Area Planning Commission ("APC") regarding the portion of the Director Decision relating to the private street map issue ("APC Appeal"). Tanager filed an appeal to the APC with respect to the portion of the Director Decision relating to the slope band analysis issue. On June 28, 2016, the APC denied Samatas' appeal and granted Tanager's appeal ("APC Decision").

Petitioner Samatas contends that the actions of the City and the APC were unlawful and must be set aside. LADBS unlawfully issued the Building Permits because the slope band analysis for the New House was improper -- the residential floor area of the upper levels of the New House significantly exceeds the maximum floor area allowed. LADBS further unlawfully issued the Building Permits prior to the Director's approval of a private street map with respect to the Easement.

08/15/2017

2. Course of Proceedings

On April 20, 2017 the court granted in part Petitioner Samatas' motion to compel the City to lodge the building plans for the New House with the court, and to release copies of the plans to Samatas. The court ordered the City to produce the two 403 pages in the plans, and the equivalent pages of the revised plan.

B. Motion to Correct the Record

Petitioner Samatas moves to correct the City's Corrected Administrative Record in this action to include additional documents from the City's Project files and records, and to add legible copies of documents already included in the Corrected Administrative Record. Samatas also seeks to correct the descriptions of the documents in the index of the City's Corrected Administrative Record.

The administrative record includes "all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case." CCP §1094.6(c). The administrative record may be augmented by relevant information and evidence where the evidence could not have been produced at the hearing with the exercise of reasonable diligence. Pomona Valley Hospital Medical Center v. Superior Court, (1997) 55 Cal.App.4th 877.

1. Documents From City Files

Petitioner Samatas asserts that the 36 documents contained in the Samatas Supplemental Record should be included in the Corrected Administrative Record under CCP section 1094.5(c) because the documents were included in the City's records and files concerning the Project, and therefore constitute "written evidence" and "other papers in the case." Mot. at 13. Samatas argues that the record is not limited to documents physically submitted to the decision-makers, and a simple reading of CCP section 1094.6(c) shows as much. Id. Samatas contends that the court agreed in ruling that certain pages from the Project building plans and 1986 architectural plans for the Prior House should be included in the record. Mot. at 8-9. Samatas seeks to include the following documents under CCP section 1094.5(c): Geology and Grading Documents; Project Emails; Field Observations; and PRA Request Documents. These documents were obtained either in response to a public records act request, or were obtained online through the City's website. Rubens Decl. ¶5.

While the court does not agree with the City's position that Samatas' motion to correct should properly be characterized as a motion to augment governed by CCP section 1094.5(e) (Opp. at 4-6), Samatas' request is procedurally improper and must be denied. The court's general practice is to require the record to be complete and certified before it sets trial. Any challenges to the contents of the administrative record should be made at the trial setting conference. At the March 9, 2017 trial setting conference, all counsel represented to the court that the administrative record was complete. Samatas may not now contend that the record is defective, unless he could not have discovered the defect in the exercise of due diligence. He has made no such showing and has waived any objection to its content. Samatas' motion to correct the record must be denied for this reason.

Assuming *arguendo* that the motion to correct is procedurally proper, Samatas has not shown that the documents in the Samatas Supplemental Record should properly be part of the

Corrected Administrative Record. "The general rule is that a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency." Toyota of Visalia, Inc. v. New Motor Vehicle Bd., (1987) 188 Cal.App.3d 872, 881.

Samatas does not assert that any of these documents were actually considered by any decision-maker, and instead argues that the record should not be limited to exhibits physically submitted to the Director or APC. Mot. at 13. Samatas interprets the "any other papers in the case" language of CCP section 1094.6(c) to mean that all papers in the City's Project file should be part of the administrative record. In contrast, the City's position is that the document must have been considered by the decision-maker or found in the file of the decision-makers. Opp. at 7.

The court does not agree with either party about the meaning of CCP section 1094.6(c)'s "any other papers in the case" language. The City is correct that it is a large entity with many departments, and not every document mentioning a project should be part of the record. Opp. at 7. On the other hand, the City's limitation to documents reviewed by the decision-maker or found in the decision-maker's file is too narrow. Documents that concern the project generated by, received by, or in the files of staff whose job it is to aid the decision-maker also should be included.

Samatas provides no evidence that any of the documents that he wishes to submit meet this test. His argument -- that any document referring to the Project in the possession of the City is too broad and an insufficient basis to show that the documents should be part of the Corrected Administrative Record under CCP section 1094.5(c). Samatas has failed to show that these documents are properly part of the record.

2. Legible Documents

Samatas also seeks to augment the record with complete and legible copies of the Building Permits for the Project, and letters submitted by Samatas' counsel during the proceedings dated November 25, 2015, December 29, 2015, and June 17, 2016. Rubens Decl. ¶4. Samatas argues that the copies of these documents in the certified record are illegible and incomplete. Mot. at 13, n. 4.

As the City correctly points out, Samatas has failed to identify which pages in the record he seeks to replace with the documents in the Samatas "Supplemental Record." Opp. at 8. Nonetheless, the court has examined what appear to be the documents that Samatas claims are illegible. These documents are not illegible. The correspondence from Samatas' counsel to the City is quite readable. The permits, while not of the best quality, are sufficient to be read and understood. The court also notes that the permits submitted by Samatas in the Samatas Supplemental Record are not identical to the permits in the certified record, having been printed from City files on different dates and revealing different payment information. *Compare* AR 843-44 *with* SSAR 15-16. Samatas has not demonstrated that it is necessary to correct the record to include legible copies of any particular document.

3. Index Description

Samatas seeks to correct the index description of the three building plan documents that the court ordered to be included. Samatas argues that the document description in the index is inadequate because it only refers to the City's microfiche reel numbers and does not permit the court to identify the building plan set and date of which the sheet is a part. Mot. at 14-15.

08/15/2017

Petitioner has provided no authority that would permit him to challenge the City's description of the documents in the record. Moreover, such a challenge is unnecessary. Samatas may describe the cited documents in any way he chooses. The index descriptions are for convenience and are not binding. Samatas is not entitled to an order to compel the City to edit its index to the record.

4. The City's Corrected Administrative Record

After the court's March 28, 2017 ruling on Petitioner's motion to include three building plan documents in the record, the City prepared and served a Corrected Administrative Record removing approximately 97 documents. Mot. at 12; Although Petitioner's counsel objected at the time, Petitioner motion does not seek any remedy with respect to the Corrected Administrative Record. The City contends that it may certify a record without leave of court. Opp. at 9. Only in reply does Petitioner rise to the bait and argue that the City may not unilaterally correct a certified record without bringing a motion to correct/strike based on good cause. Reply at 10.

This is an interesting issue. The City may have the right to correct its certification of a record, but its attorney also represented at the trial setting conference that the record was complete. The City may have waived any right it had to unilaterally correct the record just as Petitioner waived his right to object to it. The court need not decide this issue, which is hanging in the breeze unsupported by any motion.

The motion to correct the City's Corrected Administrative Record[2] is denied.

C. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not in its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999)20 Cal.4th 805, 811. In cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. Bixby v. Pierno, (1971) 4 Cal.3d 130, 143. See CCP §1094.5(c). In other cases, the substantial evidence test applies. Mann v. Department of Motor Vehicles, (1999) 76 Cal.App.4th 312, 320; Clerici v. Department of Motor Vehicles, (1990) 224 Cal.App.3d 1016, 1023. As Petitioner has no vested, fundamental right at issue in this case, the court will apply the substantial evidence standard.

"Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, ("California You Authority") (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The petitioner has the burden of demonstrating that the agency's findings are not supported by substantial evidence in light of the whole record. Young

[2] Hereinafter, the Corrected Administrative Record is referred to as "AR". Pursuant to the court's order of April 20, 2017, the City lodged a Supplemental Administrative Record ("SAR") containing the building plan documents, which will be referred to as "SAR".

v. Gannon, (2002) 97 Cal.App.4th 209, 225. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

The agency's decision must be based on the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Topanga, 11 Cal.3d at 515.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137. "[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion. Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691.

D. Statement of Facts[3]

1. Background

Real Party Tanager owns the real property located at 1410 North Tanager Way

[3] Petitioner asks the court to judicially notice (1) LAMC sections 18.00-18.12 (Article 8-Private Street Regulations) (Ex. 1), and (2) pertinent portions of LAMC section 12.21 (Ex. 2). The requests are granted. Evid. Code §452(b).

The City and Real Party jointly request judicial notice of (1) various LAMC provisions (Exs. A-D), (2) the City's Baseline Hillside Ordinance ("BHO"), (Ex. E), (3) an August 27, 2009 building permit for 1424 Tanager Way (Ex. F), (4) a September 9, 2016 appeal by Samatas (Ex. G), (4) a December 19, 2016 LADBS letter in response to Samatas' appeal (Ex. H), (5) a January 31, 2017 appeal by Samatas (Ex. I), and (6) a November 28, 1977 Certificate of Occupancy for 1410 Tanager Way (Ex. J). The ordinances are judicially noticed. (Exs. A-E).

However, Petitioner's objections to Exhibits F-J are well taken. Not every letter or action taken by an agency employee is subject to judicial notice as an official act. *See* Evid. Code §452(c). None of these documents are official acts subject to judicial notice except the Certificate of Occupancy. Moreover, a document is not subject to judicial notice unless it is relevant. Moreover, a request for judicial notice may not be used as a disguised motion to augment the record. There is no showing of relevance to the extra-record documents that were either generated for other properties or that concern Petitioner and were generated after the APC's decision in this case. The Certificate of Occupancy concerns the Prior House, but it still is irrelevant without a showing that the record should be augmented under CCP section 1094.5(e). The request for judicial notice of Exhibits F-J is denied.

Finally, Real Party Tanager asks the court to judicially notice a May 26, 2017 appeal by Samatas (Ex. K). Although Real Party's request purports to attach Exhibit K, in fact it does not. This is a violation of CRC 3.1306(c). In any event, Exhibit K is not subject to judicial notice as an official act by any agency, and also is an extra-record document without the proper showing under CCP section 1094.5(e). The request is denied.

08/15/2017

("Property"). AR 21-26. Non-party Whitten owns the real property located at 8919 Thrasher Avenue. AR 33-37. Whitten also owns a parcel of land adjacent to the Property ("Whitten Property"). AR 27-32. On September 15, 1982, a quitclaim deed was recorded granting the then-owner of the Whitten Property an easement for an "ingress and egress right of way" across the Property ("Whitten Easement" or the "Easement"). AR 61-63.

Between 2014 and 2015, Tanager applied for building permits from LADBS to demolish an existing house on the Property and construct a new single-family home ("Building Permits" or "Permits"). AR 40-55. The existing house on the Property was built on stilts over the natural slope of the Property. SAR 3. The original Project building plans submitted prior to the issuance of the Building Permits shows a steep "Existing Natural Grade" under the Prior House. SAR 1. The revised Project plans submitted in November 2015 show the same steep Existing Natural Grade. SAR 2.

2. LADBS Appeal

On June 17, 2015, Whitten filed a Request for Modification of Building Ordinances seeking a determination that LADBS abused its discretion in issuing the Building Permits. AR 8-9. Whitten alleged that the Permits should not have been issued because no private street map was approved, and the Project artificially lengthens the basement perimeter to exempt 6,600 square feet from the allowable residential floor area. AR 9.

On June 23, 2015, the Director of Planning issued a decision on the appeal. AR 16-20. The Director of Planning held that LAMC section 18.01 did not apply to the Project because the Whitten Easement is not a private street or private road easement. AR 19. The Zoning and Planning Code contain requirements for private street approval, and they were never followed for the Whitten Easement. AR 19. With respect to the basement floor area, the LAMC does not dictate how a basement must be designed, or that basement walls must be built in a straight line. AR 20. The basement complies with the criteria necessary to be exempt from the total Residential Floor Area. AR 20.

3. The Appeal to ZA

a. Application

On August 14, 2105, Whitten and Samatas filed an Appeal Application appealing the determination of LADBS. AR 1-2. The appeal contended that the Project violates various provisions of the LAMC, and the Building Permits were therefore unlawfully issued. AR 3. The appeal alleged that the Project failed to apply for and obtain the approval of a private street map for the Whitten Easement. AR 3. The appeal further alleged that the Project significantly exceeded the maximum residential floor area permitted under the BHO because the basement floor area was omitted from the residential floor area calculation, and the basement walls were "baffled" in order to increase the percentage of the basement below grade. AR 4.

On September 15, 2015, Whitten withdrew his appeal, stating that since Real Party Tanager was planning to leave the Whitten Easement in place, he was not going to move forward with further legal filings. AR 69.

b. Samatas Letter

On November 25, 2015, a week before the ZA hearing of December 3, 2015, Samatas' counsel submitted a letter in support of the LADBS appeal. AR 96-108. Samatas argued that the

08/15/2017

issuance of the Building Permits was unlawful because no private street map was approved for the Whitten Easement, the floor area of the basement should not have been excluded from the residential floor area calculation, and the developer improperly used the finished grade of the Property rather than the natural grade to determine that the basement should be excluded. AR 97-98. Samatas further argued that, even if the basement was properly excluded, the developer (Tanager) substantially overstated the maximum residential floor area by assuming a flat grade below the Prior House, when in fact the slope under the Prior House was quite steep. AR 98.

Attached to the November 25, 2015 letter was a slope band analysis performed by Samatas' expert, Ann Gray ("Gray"). AR 107, 185-87. Gray stated that the surveyors who performed the initial slope band analysis incorrectly assumed that the land under the existing house was flat. AR 185. When the house was demolished, it became clear that the land under the house was sloped at a more than 60% angle. AR 185. Gray's slope band analysis provided a maximum Residential Floor Area of 4,419 square feet, 961 square feet less than the Residential Floor Area used by the developer. AR 185.

c. Tanager Letter

On December 2, 2015, Real Party Tanager submitted a letter opposing the LADBS appeal. AR 188-92. Tanager stated that Whitten no longer objected to the Project, and had ceased supporting the appeal. AR 189. Tanager additionally argued that Samatas had failed to raise the slope band analysis as an issue in the original appeal to LADBS, and the Director of Planning did not consider or address those allegations. AR 190. Tanager further stated that the slope band analysis was performed in accordance with the standard methodologies supplied by the City. AR 191.

Tanager argued that no private street map was necessary because the Whitten Easement was not an approved private road easement. AR 191. LAMC section 18.00 therefore did not apply to the Project. AR 191. Tanager further asserted that the Property fronts on an existing public street, and therefore no private street map is necessary to provide access to the Project. AR 192.

Along with the letter, Tanager submitted letters of support from neighbors, including Whitten. AR 194-95.

c. The ZA Hearing

A public hearing on Whitten and Samatas' appeal to the ZA was held on December 3, 2015. AR 71. At the hearing, the ZA indicated that the matter would remain open for four weeks to permit additional briefing. *See* AR 198.

d. Post-Hearing Samatas Letter

On December 29, 2015, Samatas submitted a second letter in support of the appeal and in response to the December 2, 2015 Tanager letter. AR 198-207. This letter focused on (a) the private street map issue and (b) the slope band analysis issue. AR 198-99.

Samatas challenged Tanager's claims that the Whitten Easement was not a private road easement, pointing out that the plain language of the Easement stated that it was for "ingress and egress right of way." AR 200. Samatas also argued that the private street easement designation was designed as an exception to the private street map process, and did not preclude the application of LAMC section 18.10's private street map process to the Project. AR 201.

08/15/2017

With respect to the slope band analysis, Samatas stated that, following the hearing, Gray examined the original approved plans for the Prior Home in order to precisely measure the flat portion of the Property. AR 202. Gray determined that the actual square footage of the flat area was only 640 square feet. AR 202. Based on this refinement, Gray modified her slope band analysis and determined that the maximum residential floor area was 4,343 square feet. AR 202, 209. This was a reduction of 1,037 square feet from Tanager's calculation. AR 202, 209.

e. Post-Hearing Tanager Letter

Tanager responded to Samatas' post-hearing letter on January 12, 2016. AR 214-19. Tanager provided letters from experience hillside surveyors supporting the slope band analysis used by Tanager to calculate the maximum residential floor area for the Project. AR 217, 230-35. These letters state that existing structures are included as part of the "existing" topography, both as consistent with LAMC section 12.21(c)(10)(b)(1) and standard topographical surveying practices. AR 230-35. It is not feasible for a surveyor to look underneath an existing structure. Id. Where an existing structure resides on a hillside, it will properly be included in the surveyor's topographical map for purposes of a slope band analysis. Id. The floor of the hillside home is flat, and will be shown as flat on a map. Id. Consistent with this, a slope analysis map will show a structure's foundation area to be flat, which in turn is properly considered in performing the residential floor area calculations. Id. The LAMC's reference to "natural/existing topography" is interpreted by surveyors as including the existing structures located on the site. Id This is consistent with standard topographical surveying practices. Id.

f. The ZA Decision

On April 16, 2016, the ZA found that LADBS erred in part in its issuance of the Building Permits. AR 257-82.

The ZA found that a legal lot must have street access. AR 273. Tanager's lot is legal because it has legal public street frontage off Tanager Way. AR 273. Not all parcels of land in the City are created by a subdivision map process; many hillside parcels are created by legal and illegal grant deeds that result in land-locked parcels. AR 273. The Whitten Property is one such lot. AR 273.

The City established Article 8 to provide a resolution process for creating private street access and frontage for landlocked parcels in order to permit property owners to render their land buildable. AR 273. Article 8's procedures are therefore clearly aimed at the landlocked parcels, not the surrounding parcels. AR 273. The process enumerated in Article 8 has no bearing on the Project or the Building Permits so long as Tanager respects the Whitten Easement as granted. AR 273. Although LAMC section 18.00-A and 18.10 do not expressly state that lots already having a public street access are excluded from the requirements of LAMC section 18.10, the intent of the LAMC is extremely clear. AR 274.

The ZA further concluded that Samatas' literal interpretation of LAMC section 18.10-K was flawed, as it would require Samatas to also apply for a private street action if Samatas sought any future building permits. AR 275. The only property owner who could have the responsibility to file for a private street action is Whitten. AR 275. The ZA found that LADBS did not err on the issuance of the Building Permits without a private street map. AR 275.

The ZA found that LAMC section 12.26-K permitted the slope band analysis issue to be raised on appeal even though it had not been presented to LADBS. AR 277. Appeals are not

08/15/2017

limited to issues or evidence presented to LADBS. AR 277. Any issue related to the Building Permits could be raised before the ZA. AR 278. The sole limitation is that no challenges to new or additional permits could be included in the appeal. AR 278.

The ZA found that the slope band analysis is reviewed by the Planning Department, which trusts that the maps and calculations are submitted truthfully and professional by licensed surveys. AR 280. LAMC section 12.21-C.10(b)(1) requires the slope analysis survey to contain "existing features." Id. Real Party Tanager is correct that the slope band survey must include the existing features, including built structures, on the Property. Id. However, the ZA disagreed that a surveyor is entitled to assume that any buildings already on the property were on a flat pad. Id. The surveyors must determine what the existing foundation system under the house is, and use that foundation system in the survey. Id. If the house were built on flat pad, then it is legitimate to show the area as flat on the slope band analysis survey. Id. However, if the house was built on stilts or a raised foundation without earth fill, the natural or finished grade under the house must be accurately shown on the slope band analysis survey. Id. Surveyors cannot merely assume that the area under the house is flat in preparing the analysis. Id.

The ZA further verified the proper methodology for a slope band analysis with both the Planning Department's author of the BHO and LADBS's designated hillside plan check engineer. AR 280. Both experts confirmed that the intent and purpose of the slope band analysis is to show the actual flatness or steepness of all areas of a building site, including the area under the prior house. Id. The application should exhaust all efforts to produce a survey that accurately represents the topography of a site, and should not make any assumptions about the slope of a site. Id.

The ZA found that the Project site pictures detailing the demolition stage of the project submitted by Samatas were clear evidence that the site contained a steep slope underneath the Prior House. AR 281. Stilts were clearly visible, and no earth filled flat pad was ever created. AR 281. The evidence was strong and compelling that the slope band analysis was prepared inaccurately, which led to an inflated calculation of permitted residential floor area. AR 281. The ZA concluded that LADBS erred in issuing the Building Permits based on the inaccurate slope band analysis. AR 281.

4. The Separate APC Appeals

On April 18, 2016, Samatas appealed the portion of the ZA's decision relating to the private street map to the APC. AR 286-90. Samatas argued that the ZA erred in misreading the requirements of LAMC section 18.10 that a building permit not be issued for a project adjacent to a private road easement until a private street map has been approved. AR 290.

On April 27, 2016, Tanager appealed the portion of the ZA's decision relating to the slope band analysis. AR 385-87. Tanager argued that the ZA erred in finding that man-made features were not a part of the existing topography, that off-the-record discussions with LADBS staff do not constitute substantial evidence, and that the decision would produce absurd results. AR 387.

The APC scheduled a hearing on the two appeals for June 28, 2016. AR 416.

a. Tanager

On June 13, 2016, Tanager submitted a letter to the APC in support of its appeal and in opposition to Samatas' appeal. AR 428-37. Tanager repeated its assertion that man-made

features must be included on a topography map, and argued that the standard articulated by the ZA would be unworkable in practice and reach absurd results. AR 433-35. Under the ZA's standard, no slope band analysis could be performed without first demolishing the existing structure to ascertain the slope under the building. AR 435.

b. Samatas

On June 17, 2016, Samatas submitted a letter in support of his appeal and in opposition to Tanager's appeal. AR 485-501. Samatas argued that the ZA erred in disregarding the literal language of LAMC section 18.10, and instead focusing on the intent of Article 8. AR 490. As the literal language of LAMC section 18.10 does not limit its application to land-locked lots, Samatas argued that it was an abuse of discretion to interpret the section in that manner. AR 491.

On the slope band analysis issue, Samatas pointed out that the existing slope of the Property underneath the Prior House was plainly visible, and also noted on the structural plans maintained by the City. AR 494. The Prior Home was cantilevered over the slope and the natural and existing grade beneath it is sloped just as steeply as the land below. AR 494. Tanager knew that the slope-band analysis significantly misrepresented the slope underneath the Prior House. AR 494. Tanager's architectural plans clearly delineate the steep natural grade under the Project. AR 494. Thus, it was improper for Tanager to conduct a slope band analysis based on the assumption that the Prior House was built on a flat pad. AR 496.

c. Whitten

On June 25, 2016, Whitten submitted a letter in support of the Project. AR 550. Whitten stated that Samatas was the only neighbor currently opposing the Project. AR 550.

d. Peak Surveys

On June 27, 2016, Gareth Crites ("Crites"), Vice President of Peak Surveys, a land surveying, civil engineering, and consulting firm, submitted a letter in support of Tanager's appeal. AR 551. Crites stated his firm had considerable experience in preparing slope band analysis surveys, which is an objective mapping of the existing conditions, not opinions of "what existed [before]" or was "shown on design plans." AR 551. He opined that basing a slope band analysis on natural grade would cause the reports to be based on arbitrary historical mapping that is not consistent with City or State mapping standards for topography. AR 551. No professional could be expected to certify such a report. AR 551.

e. Becker & Miyamoto

On June 27, 2016, Tanager submitted an additional letter responding to Samatas' June 17, 2016 letter. AR 552-54. This letter included as an exhibit a letter from Becker & Miyamoto, Inc., the surveying firm that prepared the slope band analysis. AR 560. Becker & Miyamoto stated that the profession of land surveying involved recording all conditions present on the land, both natural and man-made. AR 560. They do not have the responsibility to speculate on conditions that existed previously. Nor do they have the ability to do so by accessing spaces or removing concrete slabs. AR 560.

Becker & Miyamoto always used accepted professional common practices in preparing its surveys, which includes estimating the footprint of homes built on slopes to be within the 0-

14.99% slope category. AR 560. To do otherwise would be to speculate on unseen ground conditions. AR 560. This is how Becker & Miyamoto was instructed to perform topography surveys when the BHO first was implemented. AR 560. The Planning Department has never raised to Becker & Miyamoto the issue of using a flat slope to represent an existing building. AR 561. To change at this point would create confusion at best, and chaos at worst. AR 561.

f. LC Engineering Construction Group

On June 28, 2016, Leonard Liston of LC Engineering Construction Group, Inc. submitted a letter in support of Tanager's appeal. AR 583-84. Liston stated that it was common practice in the surveying industry to represent the floor/foundation of an existing building as flat on a topography survey. AR 583. Consistent with the topography survey, a slope analysis map would also show the structure's foundation area to be flat. AR 583.

g. Chris Nelson & Associates

Chris Nelson, a professional land surveyor, also submitted a letter in support of Tanager's appeal. AR 585. Nelson reviewed the slope band analysis for the Project, and agreed that the map was prepared correctly and consistent with the City's guidelines. AR 585. If the ZA's determination were upheld, it would be the first time the author would have seen the City require a survey of a lot's natural/existing topography by disregarding man-made structures and only show the natural slope. AR 585.

5. The APC Hearing

At the hearing on June 28, 2016, the staff recommended adoption of the ZA's findings, denial of both Samatas's and Tanager's appeals, and sustaining the ZA's decision that LADBS erred in part in issuing the Building Permits. AR 891.

The ZA reported to the APC at the hearing. AR 894. The ZA stated that both LADBS and the Planning Director found that LAMC section 18.10 was not applicable to the Project because the Property was not landlocked. AR 898. The Whitten Easement is not a private road, and it was the responsibility of Whitten to apply for a private street map. AR 901. The Property already has legal access to a public street. AR 901. The issue of the slope band analysis was granted because it was demonstrated that the Prior House was built on a slope. AR 902.

i. Private Street Map Public Comment

Samatas' counsel argued at the hearing that a private street map is required before any building permit can be issued for a building site contiguous to a private road easement. AR 910. Counsel stated that the Whitten Easement met all five requirements to be a private road easement. AR 910-11. The Whitten Easement is privately owned, provides vehicular access to the Whitten Property, is contiguous with the Whitten Property, connects to a public street, and the document creating the easement is recorded in real property records. AR 911. The ZA's conclusion that no private street map is required violates the plain meaning of LAMC section 18.10. AR 912.

Counsel for Samatas also argued that the private street map process would benefit all of the residents in the Hollywood Hills, not just Whitten, as it would provide necessary access to fire and emergency vehicles. AR 915. If the Project was allowed to proceed as planned, no private street could be constructed at a later date because the Project fronts the Easement line and

08/15/2017

a private street would require a 10-foot setback. AR 916.

Counsel for Tanager argued that the Property is a legal lot with frontage and street access, and therefore none of the provisions in Article 8 of the LAMC apply. At 924-25. In addition, the Whitten Easement is not a private road easement because it provides only for ingress and egress and is not an "easement for road purposes." AR 925. The easement was also not granted to Tanager, but to Whitten. AR 926. Tanager will not be building on the easement, and will preserve it as an egress-ingress easement. AR 928.

Shahen Akelyan ("Akelyan") appeared at the hearing on behalf of LADBS. AR 936. Akelyan stated that LABDS does not recognize the Whitten Easement as a private street or a private road easement. AR 937. At the time that the Whitten Easement was recorded in 1982, there was a required process to create a private road easement, and that process was not followed. AR 937. Without City approval of a private street, it is just an agreement between two neighbors to grant access/egress. AR 937. Akelyan also stated that the Whitten Easement could not, in its present form, support vehicular access because there was a big drop and slope throughout the easement. AR 938. Retaining walls would be necessary in order to construct a road. AR 938.

In rebuttal, counsel for Samatas argued that Article 8 does not state that it applies only to the creation of a legal lot. AR 944. The purpose of Article 8, according to its plain language, is to require that lots or buildings contiguous or adjacent to private streets conform to the minimum requirements of the chapter before a building permit may be issued. AR 945.

ii. Private Street Map Findings

Vice-President Bogdon and Commissioner Chung-Kim both concluded that the Whitten Easement is not a private street easement, and therefore LAMC section 18.10 does not apply. AR 968-69. President Chemerinsky agreed, and also stated that it appeared that Article 8 itself did not apply to the Project. AR 969. Vice-President Bogon moved to adopt the findings of the AZA on the private street map issue, and deny Samatas's appeal. AR 973. The APC voted unanimously to pass the motion. AR 974.

iii. Slope Band Analysis Public Comment

The ZA stated that the slope analysis survey performed by the surveyor was incorrect because photographs submitted by Samatas clearly showed that the area under the previous home was not flat, and was instead sloped. AR 975.

Blake Lamb (agency status unstated) stated that a slope band analysis calculates an allowable floor area based on the steepness of the slope in the property. AR 978. The argument before the APC was whether the slope band survey was properly calculated, given that the surveyors had used a flat slope for the location of the Prior House when in actuality that land was sloped. AR 979-80.

Counsel for Tanager stated that the slope band analysis was based on the natural and existing topography of the property, not natural grade. AR 984. Anything built on the site is considered existing topography. AR 984. The practice has been for many years for land surveyors to treat existing structures as if they were flat because it is impossible to see under the structure. AR 984. If the ZA's interpretation was used, no surveyor would be able to determine the actual existing topography while a structure was still present. AR 985. This would mean that a permit applicant could not plan for a future house until the present house was demolished.

08/15/2017

AR 985.

Counsel for Samatas argued that the slope underneath the Prior Home on the Property was clearly visible from pre-demolition photographs. AR 992. The assumption that the Prior Home had a flat pad was clearly incorrect, even before demolition. AR 992. When the slope band analysis is recalculated using the visible slope under the previous home, the maximum residential floor area is only 4,342 square feet, not 5,380 as Tanager claimed. AR 993. In addition, the approved plans for the Prior Home clearly show the steep slope underneath the house. AR 994. Tanager's surveyor could have referenced these plans and accurately calculated the slope. AR 994.

Akelyan stated that LADBS does not have the authority to approve or disapprove slope band analysis. AR 1005. LADBS relies on City Planning to approve the slope band analysis, and then uses that analysis when approving the building plans. AR 1006. LADBS does not verify any of the information in the slope band analysis or survey maps. AR 1006.

Jim Faul ("Faul"), a civil engineer, spoke about the method of performing a slope band analysis. AR 1007. Faul did not perform the analysis on the Project. AR 1007. His practice is to receive a survey from a surveyor, and then perform a slope band analysis based on the topographic information in the survey. AR 1007. The topographic survey for the Project did consider the visible sloped area under the prior house. AR 1008. However, there was likely a concrete wall that prevented the surveyor from seeing the slope under the remainder of the building. AR 1008. That area was marked as flat. AR 1009-10.

George Barajas ("Barajas") is a professional land surveyor. AR 1010. It is common practice in surveying to locate natural grade around structures. However, any structure that touches the ground is perceived as being level or flat. AR 1010. Surveyors will measure any area that can be seen underneath a structure. AR 1010. Anything underneath the foundation, however, cannot be measured. AR 1011. With respect to the Project, Barajas would have measured the visible slope underneath the Prior House, and assumed that the remainder of the structure was on a flat pad. AR 1011.

Jason Somers ("Somers") spoke in support of Tanager's appeal. AR 1012. He stated that the LAMC is clear that a slope analysis map must be based on natural existing topography, which includes existing structures. AR 1013. The map for the Project counted all sloped areas that were actually visible. AR 1013. Only the portions of the building where a wall went all the way to the ground were treated as a flat feature. AR 1013-14. Somers appeared on behalf of two other surveyors who had submitted letters, Chris Nelson & Associates and Peak Surveys. AR 1014.

iv. <u>The Oral Slope Band Findings</u>

Vice-President Bogdon initially stated that he would sustain the ZA's decision. AR 1024. President Chemerinsky stated that she believed the issue was whether the APC should require a surveyor to exhaust all efforts to determine the actual slope underneath a house in creating a topographical survey. AR 1026-27.

Commissioner Chung-Kim stated that she interpreted the evidence as showing that the slope visible to the naked eye was accounted for. AR 1030. The question was whether the surveyors should have looked at the architectural plans to determine the actual slope. AR 1030. Commissioner Chung-Kim moved to deny the appeal and adopt the AZA's findings. AR 1031. There was no second. AR 1031.

President Chemerinsky stated that she did not believe that LADBS erred in issuing the Building Permits because at the time that the Permits were issued, the Prior House was still present on the Property and the surveyor could not have known that the land was sloped under the structure. AR 1035. It was only after demolition had occurred that it became obvious that the land was sloped. AR 1035. However, the slope band analysis was correctly performed when it was performed. AR 1036. Thus, President Chemerinsky did not believe that LADBS erred in relying on the slope band analysis submitted by Tanager. AR 1036. Commissioner Chung-Kim agreed, and stated that the ZA erred in determining that LADBS erred. AR 1037.

President Chemerinsky summarized the deliberations as follows. AR 1040. The slope band analysis presented to LADBS and the Planning Department correctly took into account the visible slope under the prior structure; it did not simply ignore the fact that there was a structure on stilts and the slope of the land. AR 1040. The slope band analysis should not be subjected to a *post-hoc* analysis once it was revealed by the demolition that the land was sloped underneath the structure. AR 1041. At the time the slope band analysis was presented, it was properly conducted and accurate. AR 1041.

Commissioner Chung-Kim moved to grant the appeal on the slope band analysis issue, adopt the findings as summarized by President Chemerinsky, and conclude that there was no error in the issuance of the Building Permits. AR 1042-43. The APC voted unanimously to pass the motion. AR 1043.

d. Determination Letter

On July 12, 2016, the APC mailed its Determination Letter. AR 587 On the private road issue, the CPAC adopted the findings of the ZA, denied Samatas's appeal, and sustained the decision of the Director of Planning that LADBS did not err in approving the Building Permits without a private street map. AR 587.

On the slope band analysis issue, the PAC did not adopt the findings of the ZA, granted Tanager's appeal, and overturned the decision of the Director of Planning finding that LADBS erred in issued the Building Permits based on an inaccurate slope band analysis. AR 587. The PAC concluded that LADBS did not err in issuing the Building Permits. AR 587.

E. Analysis

Petitioner Samatas seeks a writ of mandate to compel the City to rescind the Project's Building Permits on the grounds that (1) the square footage of the Project exceeds the maximum residential floor area permitted under the LAMC, and (2) no private street map was approved with respect to the Whitten Easement.

1. Slope Band Analysis

Petitioner Samatas argues that Tanager's slope band analysis improperly assumed that the land under the Prior House on the Property was flat, and therefore the residential floor area for the Project exceeds the maximum residential floor area allowed under the LAMC.

a. Exhaustion of Administrative Remedies

As a preliminary issue, Real Party Tanager argues that Samatas failed to exhaust his administrative remedies with respect to the slope band analysis issue, and that as a result Samatas has waived this argument. Real Party Opp. at 15. The issue whether Tanager properly

08/15/2017

performed the slope band analysis was not raised as part of Whitten's LADBS appeal. AR 8-9. The issue was first raise by Samatas in his appeal letter to the ZA dated November 25, 2015. AR 96-108. LADBS therefore never made any determination on the slope band analysis issue. Samatas's last minute addition of this argument only days before the ZA hearing resulted in an incomplete administrative record, deprived the ZA of any analysis by LADBS, and deprived Tanager of the opportunity to fully and completely oppose the issue. Real Party Opp. at 16-17.

Tanager made this same failure to exhaust argument to the ZA, who ruled that LAMC section 12.26.K.2 does not limit the appeal of the LADBS determination only to the issues or evidence presented to LADBS. AR 277. The ZA concluded that he could consider any issue related to the Building Permits at issue. AR 278.

LAMC section 12.26.K.1 provides that the Director of Planning has "the power and duty to investigate and make a decision upon appeals from determinations of [LADBS] where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety." The appellant must set forth specifically how LADBS erred or abused its discretion. LAMC §12.26.K.2. There is no provision in LAMC section 12.26.K.1 explicitly limiting the Director of Planning's appellate review to the specific issues or evidence presented to LADBS. The ZA's opinion that he was not so limited is entitled to weight.[4]

More important, the exhaustion of administrative remedies rule does not apply to interim administrative remedies. The doctrine concerns the termination of all available, non-duplicative administrative review procedures before judicial review. Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd., (2005) 35 Cal.4th 1072, 1080. It is principally grounded on concerns of administrative autonomy (courts should not interfere with an agency determination until the agency has made a final decision) and judicial efficiency (overworked courts should decline to intervene in an administrative dispute unless necessary). Farmers Insurance Exchange v. Superior Court, (1992) 2 Cal.4th 377, 391. The exhaustion requirement also permits the agency to apply its expertise, resolve factual issues, apply statutorily delegated remedies, and mitigate damages. Rojo v. Kliger, (1990) 52 Cal.3d 65, 86. The doctrine does not apply to require exhaustion of administrative remedies at a lower level, and Tanager does not argue that the ZA erred in his interpretation of LAMC section 12.26.K.1. Samatas exhausted his administrative remedies before seeking judicial review, which is all the exhaustion doctrine requires.

Finally, an appeal of the slope band analysis issue to LADBS would have been futile. Testimony at the APC hearing established that LADBS would not have considered the adequacy of a slope band analysis because it does not have the authority to address this issue. AR 1005. LADBS employee Akelyan stated at the APC hearing that LADBS does not have the authority to approve or disapprove a slope band analysis; that matter is the responsibility of the Department of Planning. AR 1005. Thus, Tanager is incorrect that the failure to raise the slope band

[4] Samatas's appeal was at least within the general scope of issues raised by Whitten to LADBS. Whitten's appeal argued that the Project's basement exceeded the maximum residential floor area because Tanager had improperly "baffled" the basement to meet the criteria for exemption of the basement from the residential floor area calculation. AR 9-13. In his appeal to the ZA, Samatas's slope band analysis argument also alleged that the Project exceeds the maximum residential floor area, albeit for a different reason.

analysis issue before LADBS resulted in an incomplete record, as LADBS would not have made any ruling or provided any additional discussion of the slope band analysis issue.

Tanager argues that it was prejudiced by Samatas's last-minute addition of the slope band analysis issue before the ZA. Real Party Opp. at 16. This argument is mooted by the parties' full presentation of the slope band analysis issue to the APC. Moreover, Tanager had the opportunity fully to discuss the slope band analysis issue before the ZA. Tanager was able to submit a letter regarding the slope band analysis to the ZA prior to the ZA's hearing. AR 188-92. The ZA also held the record open after his hearing, allowing both Samatas and Tanager to submit additional evidence on the slope band analysis issue. AR 198-207, 214.19. Tanager does not suggest any arguments that it was unable to make before the ZA that resulted in prejudice.

Samatas did not fail to exhaust his administrative remedies with respect to the slope band analysis.

b. Merits

The substantial evidence standard applies to this case. Under that standard, the court may overturn the APC's decision only if a reasonable person could not have reached the same conclusion. No Oil, Inc. v. City of Los Angeles, (1987) 196 Cal.App.3d 223, 243.

Under the BHO, the residential floor area for a hillside residence cannot exceed the sum of the square footage of each "slope band" multiplied by the corresponding floor area ratio for that slope band. LAMC §12.21.C.10(b).[5] The applicant must submit a Slope Analysis Map based on a survey of the "natural/existing topography" prepared, stamped and signed by a registered civil engineer or licensed surveyor, to verify the total area (in square feet) of the portions of a property within each Slope Band. LAMC §12.21.C.10(b)(1). The flatter the slope band analysis shows a property to be, the bigger a home can be built. *See* City Opp. at 3.

Tanager's slope band analysis for the Project states that 4,961 square feet of the Property has a slope less than 14.99 %, and 14,209 square feet of the Property has a slope of more than 60%. AR 493-98, 549. The area identified as flat is located underneath the Prior House on the Property. AR 493-98. Based on this analysis, Tanager determined that the maximum residential floor area for the Project was 5,380 square feet. AR 549. The Project's proposed residential floor area (excluding the basement) is 5,210 square feet. AR 167.

Petitioner Samatas argues that Tanager manipulated the slope band analysis to build a substantially larger home than permitted by the BHO (LAMC section 12.21.C10(b)). Pet. Op. Br. at 11-12. Samatas contends that Tanager's slope band analysis was based on the false premise that the ground underneath the Prior House was flat. In reality, the land under the Prior House was quite steeply sloped at the same angle as all of the other land on the Property, and the Prior House was cantilevered over the slope, supported by stilts. This is shown by photographs taken before and during demolition of the Prior Home. AR 112-17, 211-13. The steep gradient underneath the Prior Home was visible to anyone willing to simply look. AR 203, 992. In

[5] LAMC section 12.21.C.10(b) provides:

"**Maximum Residential Floor Area.** The maximum Residential Floor Area contained in all buildings and Accessory Buildings shall not exceed the sum of the square footage of each Slope Ban multiplied by the corresponding Floor Area Ratio (FAR) for the zone of the Lot, as outlined in Table 12.21.C.10-2a...."

08/15/2017

addition, Samatas's real estate expert, Gray, reviewed the 1986 plans for the remodel of the Prior Home, as well as plans for the Project, and determined that the actual flat square footage underneath the Prior Home was only 640 square feet, not the 4,961 square feet assumed by Tanager's analysis. This means that the Project's 5,210 floor area exceeds the maximum by approximately 867 square feet. AR 493-95. Pet. Op. Br. at 13.

According to Samatas, Tanager claimed prior to the APC hearing that it is standard practice for a surveyor to assume the area under an existing home is flat in performing a slope band analysis. During the APC hearing, Tanager then claimed that it could not know that the slope beneath the Prior Home was steep until it was demolished. Samatas contends that, if the photographs showing the obvious steep slope beneath the Prior Home are ignored, Tanager and its representatives still knew that the Prior Home was cantilevered over the steep slope and supported by caissons. This is shown in the building plans for the 1986 remodel of the Prior House on file with the City. SAR 3. More tellingly, Tanager's Project plans (Sheet A403) submitted to the City in May and again in November 2015 show that most of the "Existing Natural Grade" under the Prior Home was extremely steep. SAR 1-2. Therefore, Samatas concludes that Tanager deliberately misrepresented the slope under the Prior Home was flat in order to artificially increase the maximum residential floor area for the Project. Pet. Op. Br. at 14-15.

The undisputed evidence shows that (a) the Prior Home was cantilevered over a steep slope and supported by caissons, (b) the Prior Home was therefore built on the steep slope and only a small portion of it was flat, and (c) the definition of "natural/existing topography," as used in LAMC section 12.10.C.10(b)(1) includes both natural and man-made features, including a house.

The ZA concluded that Tanager's slope band analysis, which assumed the area under the Prior Home was flat, was inaccurate and led to an inflated calculation of the permitted residential floor area. AR 281. At the APC hearing, Tanager presented letters and testimony from numerous surveyors and civil engineers stating that it is common practice in the industry to assume that any structure on a property is built on flat ground. AR 551 (Peak Survey), 560-61 (Becker & Miyamoto), 583-84 (LC Engineering), 585 (Chris Nelson), 1007-10 (Jim Faul), 1010-11 (George Barajas), and 1012-14 (Jason Somers). The experts made clear that they do not assume the entire footprint of a building to be flat. Rather, any area that cannot be measured due to a wall or obstruction that reaches to the ground is assumed to be flat. AR 560-61. The testimony at the hearing established that the Project's slope band analysis took into account the slope that was visible under the Prior Home. AR 1008, 1011. Only the area underneath the Prior Home that could not be seen and measured was assumed to be flat. AR 1010-11.

The APC relied heavily on this surveyor/engineer testimony in finding that LADBS had not erred in relying on the slope band analysis presented by Tanager. AR 1040-41. President Chemerinsky, in summarizing the APC's findings, stated that the testimony showed that the slope band analysis presented to LADBS prior to the issuance of the Building Permits was as accurate as it was possible to be. AR 1040. It was only after the Prior Home was demolished that it became clear that the land underneath the house was sloped. AR 1040-41. She concluded that the slope band analysis should not be subjected to a *post-hoc* analysis. AR 1041.

The APC properly interpreted LAMC section 12.10.C to mean that the slope band analysis should be based on conditions that exist at the time it is prepared, not after buildings have been demolished and additional information discovered. AR 1040-41. This interpretation

08/15/2017

is supported by the surveyor/engineer opinion that it would be impossible to determine the actual slope under the Prior Home without demolishing the house, and it would be a hardship on applicants and contrary to the BHO's intent to require that effort. AR 551 (Peak Survey), 560-61 (Becker & Miyamoto), 583-84 (LC Engineering), 585 (Chris Nelson), 1007-10 (Jim Faul), 1010-11 (George Barajas), and 1012-14 (Jason Somers). [6]

In reply (Reply at 10), Samatas contends that the phrase "natural/existing topography" in LAMC section 12.21.C.10(b)(1) cannot be used to assume that the area underneath a home is flat. Samatas notes that Eric Lopez, the Planning Department author of the BHO, and Hernan Arreoloa, the LADBS plan check engineer for hillside properties, both stated that a slope band analysis must accurately show the slope of all areas of a building site, including under the existing home. AR 673-74, 995-96. Samatas points out that the APC agreed with this argument, stating that it would be "absurd that you would ignore land that you can see and pretend that there's a structure, a flat pad on it." AR 1040. As such, Samatas argues that the APC should not have granted the appeal when it was clear that Tanager improperly relied on just such an assumption. Pet. Op. Br. at 9-11.

This argument is a red herring because there is substantial evidence that the Project surveyor, Becker & Miyamoto, based its slope band analysis on the visible portions of the Prior Home's slope and did not simply assume that the area under the Prior Home was flat. AR 560-61. *See* Real Party Opp. at 14. Becker & Miyamoto stated that it always estimate the footprint of homes built on slopes to be within the 0-14.99% slope category, as to do otherwise would be to speculate on unseen ground conditions. AR 560. Nonetheless, the survey did include accurate slope measurements of the sloped ground accessible and visible underneath the structure. Id. Thus, the surveyor performed its job of evaluating the Prior Home and preparing a slope band analysis of the "natural/existing topography", using the information that was visible at the site.

Samatas's contention that photographic evidence of the Prior Home shows the cantilevered nature of the house and that there was no flat pad is overcome by substantial evidence to the contrary. Engineer Faul and Somers (appearing on behalf of two surveyors who reviewed the Project's slope band analysis), concluded that that it was impossible for Becker & Miyamoto to measure the slope of the land underneath the Prior Home due to concrete walls used to support the structure. AR 1008, 1011.[7] This is substantial evidence. Moreover, the court has reviewed the photographs; it is not evident in the photographs that the area under the Prior Home was cantilevered off a steep slope. AR AR 112-17, 211-13.

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[6] As City and Tanager both point out, the requirement that the slope band analysis be based on "natural/existing topography" clearly demonstrates the City Council's intention to take into account changes to the natural grade caused by structures currently on the land. City Opp. at 4-5; RPI Opp. at 14-15. The definition of "topography" includes man-made features. AR 433, 558. Had the City Council intended for the slope band analysis to be based solely on the natural grade of a property, it would have so provided.

[7] Samatas criticizes Faul and Somers as not credible because they did not personally inspect the Prior Home before its demolition. Reply at 12. This is true (AR 1007-10, 1012-14), but this does not make the testimony not credible. Faul reviewed the topographic survey for the Project, and concluded that the survey did consider the visible sloped area under the Prior House, but there was likely a concrete wall that prevented the surveyor from seeing the slope under the remainder of the building. AR 1008.

The question becomes how the area under the Prior House that is not visible should be represented on the slope band analysis. The court agrees with the City and Tanager that the phrase "natural/existing topography" requires a surveyor to represent the existing structures on a property when producing a slope band analysis map. When it is impossible for a surveyor to determine what the actual slope is underneath a structure, the surveyor must make some assumptions when producing the map. Assuming that the slope underneath a structure is flat is a reasonable course of action and the common practice of the surveying profession. As Barajas testified and wrote, when an existing structure rests upon a hillside, the residence will be properly included in the topographical map. As the floor of a hillside home is flat, it will be shown as flat on a map. AR 1011. *See* City Opp. at 7.

Samatas argues that Tanager's surveyor should have accessed the building plans for the Prior House, or the building plans from the 1986 remodel, in order to accurately determine whether the land underneath the house was sloped or flat. While that was certainly an available option, LAMC section 12.21.C.10(b)(1) requires a survey of the natural and existing topography, which would not necessarily be accurately represented by historical building plans from 1968 or the 1986 remodel. Without demolishing a house, there is no way for any surveyor to know that the slope underneath a house is in the same condition as it was in the building plans. Thus, Tanager's surveyor was not required to review the Prior House's original building plans or the building plans for the 1986 remodel on file with the City. *See* SAR 3. Samatas's contention otherwise merely seeks to substitute one form of speculation for another.

However, Samatas contends that Tanager actually knew that the Prior House was built on a slope without a flat pad. He presents evidence of Tanager's May and November 2015 Project plans, which both clearly state and show the "Existing Natural Grade" under the Prior House as steep. SAR 2-3. They also show that very little of the Prior House is on a flat pad. SAR 3. These documents demonstrate that Tanager's representative knew that the Prior House was cantilevered and not on a flat pad. Tanager should have informed its surveyor this fact and cannot rely on Becker & Miyamoto's ignorance in preparing its slope band analysis.

Real Party Tanager does not address this evidence, and the City merely argues that it should not be considered because it is "extra-record" evidence that the APC did not consider. City Opp. at 9.

The City's contention that the Project plans are extra-record evidence is incorrect. On April 20, 2017, the court ordered that the documents be included in the administrative record. The City complied with this order, and Tanager's Project plans cannot be deemed extra-record evidence.

As for the City's argument that the APC did not consider the key documents, Samatas first raised the slope band analysis issue in its November 25, 2015 letter to the ZA, and his position was based on Gray's analysis of photographs of the Prior Home as it was being demolished. AR 107. In a December 29, 2015 post-hearing letter to the ZA, Samatas relied on both the photographs and Gray's review of the Prior Home's original plans and the 1986 remodel. AR 201.

Samatas then submitted a June 17, 2016 letter for the APC appeals. AR 485-501. On the slope band analysis issue, Samatas accused Tanager of significantly misrepresenting the slope underneath the Prior House in order to gain an advantage concerning the Prior House's maximum height. AR 494. Samatas concluded that it was improper for Tanager to conduct a slope band analysis based on the assumption that the Prior House was built on a flat pad. AR

08/15/2017

496. Samatas's letter relied in part Tanager's structural plans submitted to the City show that the Prior House was cantilevered over the slope and the natural and existing grade beneath it is sloped just as steeply as the land below. AR 494. Samatas's expert, Gray, reviewed the approved plans for the New House (AR 494), but she could not copy them because of the architect's copyright. Hence, the two key documents (SAR 2-3) were never reviewed or considered by the APC. But they were in the LADBS file and available for APC review should there be any dispute over Gray's conclusions.

The two key documents (SAR 2-3) show that Tanager's representative knew that the Prior House was cantilevered and not on a flat pad, whether or not that fact was visible to the surveyor. Tanager should have informed its surveyor this fact and cannot rely on Becker & Miyamoto's ignorance in preparing its slope band analysis. This evidence that the Prior House was built on a slope without a significant flat pad is undisputed. The evidence that Tanager knew this fact when the slope band analysis was prepared is unrebutted. Tanager cannot allow its surveyor to make assumptions about a flat pad when it knew better. Therefore, the PAC's decision to grant Tanger's appeal based on the adequacy of Becker & Miyamoto's slope band analysis was not based on substantial evidence.

This is not a failure of the surveyor. The court's decision is not contrary to the expert opinion that a surveyor must make assumptions about the slope underneath a structure where it is impossible to determine what the actual slope is, and that an assumption that the slope underneath a structure is flat is a reasonable and common practice. But, where a developer or its representatives knows that assumption is false, the developer cannot rely on and use a surveyor's slope band analysis based on the false assumption.

This evidence was before the APC, and it abused its discretion in granting Tanager's appeal. Samatas is correct that LADBS erred in granting the Building Permits because the slope band analysis incorrectly assumed that the Prior House was built on a flat pad when Tanager knew better.[8]

2. Private Street Map

Petitioner Samatas argues that the Building Permits should not have been granted because no private street map was approved to protect the Whitten Easement. Pet. Op. Br. at 15.

a. Standing

Real Party Tanager argues that Samatas is not entitled to a writ on this issue because Samatas has not demonstrated how the City's failure to approve a private street map to protect the Whitten Easement affected his substantial rights. Whitten is the beneficiary of the Whitten Easement. A private street map, if issued, would benefit the Whitten Property by assuring Whitten with legal access to his undeveloped property. Tanager argues that Whitten is not a party to this action, and that Samatas cannot assert Whitten's rights. Samatas already has legal frontage and access to a public road, and his property rights will not be affected by the private

[8] The parties disagree whether Gray's numbers are accurate. Tanager vigorously disputes them (Real Party Opp. at 14, n.6), while Samatas contends that Tanager is estopped from disputing the accuracy of Gray's estimate of the natural grade. Reply at 13. The court need not adopt Gray's numbers to conclude that most of the Prior House was not built on a flat pad and that Tanager's representative, and therefore Tanager, knew it.

street map. Real Party Opp. at 18.

As Samatas acknowledges (Reply at 23), Tanager's contention is a challenge to Samatas's standing to raise the private street issue. A petitioner seeking a writ of mandate must show that he is beneficially interest in the outcome. Sacramento County Fire Protection District v. Sacramento County Assessment Appeals Board II, (1999) 75 Cal.App.4th 327, 331. "Beneficially interested" means that the petitioner has "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." Id.

Samatas contends that he has standing because he is the next door neighbor to Tanager's property and the Whitten Easement. AR 545, 547. Samatas argues that in land use cases a petitioner's proximity to the challenged project is sufficient to establish standing. Scott v. Indian Wells, (1972) 6 Cal.3d 541, 549 ("adjoining landowners... have standing to challenge zoning decisions of the city which affect their property."). Reply at 23.

There is no doubt that Samatas lives next door to the Project and has standing to raise a legal challenge to the City's zoning decisions for the Project which affect his property. For this reason, Samatas clearly as standing to raise the slope band analysis issue. But it is not enough that Samatas wants to use a zoning issue to stop Tanager's Project; the zoning issue must affect Samatas's property. Samatas does not show how private street mapping requirements ensuring Whitten legal access to his undeveloped property would affect Samatas's property.

Samatas argues that he has a beneficial interest in protecting vehicular access to the landlocked Whitten property, and a private street map will ensure a ten foot setback of the Project from the private street to allow the eventual development of the Whitten property and ensure fire protection access to the Whitten Property, which would impact all nearby homes. AR 915. Samatas does not have a beneficial interest in ensuring development of the Whitten property, and his argument that he has an interest in avoiding wildfire risk through the development of the Whitten property is based on pure speculation that Whitten will ever develop the property. Samatas does not have a beneficial interest in enforcing the private street map requirement.

Samatas also relies on public interest standing "to procure enforcement of a public duty." Bozung v. Loca Agency Formation Comm., (1975) 13 Cal.3d 263, 272. Reply at 24. California courts have crafted a limited "public interest" exception to the beneficial interest requirement. When "the duty is sharp and the public need weighty, the courts will grant mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced." McDonald v. Stockton Met. Transit Dist., (1973) 36 Cal.App.3d 436, 440 (citing Board of Social Welfare v. County of Los Angeles, (1945) 27 Cal.2d 98, 100-101). "This public right/public duty exception to the requirement of beneficial interest for a writ of mandate promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." Save the Plastic Bag Coalition v. City of Manhattan Beach, (2011) 52 Cal.4th 155, 166 (citations and punctuation omitted). Ibid. (citations and punctuation omitted). Public interest standing promotes the guarantee to citizens of the opportunity of ensuring that government does not impair or defeat a public right. Brown v. Crandall, (2011) 198 Cal.App.4th 1, 14 (citation omitted).

Samatas cannot meet the requirements of public interest standing because he cannot show that the City has a "sharp" mandatory duty to require a private street map or that the public need is weighty. Instead, invocation of a private street map will benefit only Whitten. *Compare, e.g.,*

08/15/2017

Common Cause v. Board of Supervisors, (1989) 49 Cal.3d 432, 437-39 (public interest standing applied to plaintiff seeking to enforce public right to voter outreach program); Green v. Obledo, (1981) 29 Cal.3d 126, 145 ("There can be no question that the proper calculation of AFDC benefits is a matter of public right."); Venice Town Council v. City of Los Angeles, (1996) 47 Cal.App.4th 1547, 1564-65 (plaintiffs had public interest standing where they were seeking compliance with the Mello Act, which requires affordable housing for low and moderate income persons in the coastal zone); Brown v. Crandall, (2011) 198 Cal.App.4th 1, 14 (public interest standing applied to petitioners challenging the denial of medical benefits to indigent citizens who were not provided an opportunity for administrative review of decision). *Compare also* Carsten v. Psychology Examining Commission, (1980) 27 Cal.3d 793 (plaintiff member of board lacked public interest standing to compel her own board to comply with statute).

Samatas lacks standing to raise the issue that the City should have required a private street map for the Project to protect the Whitten Easement.

b. Estoppel

Real Party Tanager also argues that Samatas should be estopped from arguing that a private street map is required for development of the Property because Samatas' home was built without requiring a private street map, despite the fact that Samatas' property is also adjacent and contiguous to the Whitten Easement. Real Party Opp. at 19.

The short answer is that there is no admissible evidence to support this argument; Tanager's request for judicial notice was denied. Moreover, as Samatas points out (Reply at 25), he was not the party who applied for the building permits to construct the house in which he now resides. AR 950-51. Samatas has never taken the position that his property is exempt from the private street map requirement. Any positions taken by a prior owner cannot be imputed to Samatas under the estoppel doctrine. AP-Colton LLC v. Ohaeri, (2015) 240 Cal.App.4th 500, 507. Samatas is not estopped from raising his private street map claim.

c. Merits

Assuming *arguendo* that Petitioner Samatas has standing, he contends that the plain meaning of LAMC section 18.10 required Tanager to obtain a private street map approval before the Building Permits could be issued. As no private street map was approved, Samatas argues that the City abused its discretion in granting the Building Permits. Pet. Op. Br. at 15-18.

(i) Governing Ordinances

Article 8 (Private Street Regulations) (LAMC §18.00 *et seq.*), sets forth the procedures for approval of private street maps. The purpose of Article 8 is:

> "[T]o prescribe rules and regulations governing the platting and division of land as lots or building sites which are contiguous or adjacent to private road easements; to provide for the filing and approval of Private Street Maps; to provide for the approval of private road easements as private streets, to provide for the naming of private streets, and to require that lots or building sites which are contiguous or adjacent to private streets conform to the minimum requirements of this chapter before permits may be issued." LAMC §18.00.A (Joint RJN Ex. C).

08/15/2017

A "Lot" is defined as follows:

"LOT. A parcel of land occupied or to be occupied by a use, building or unit group of buildings and accessory buildings and uses, together with the yards, open spaces, lot width and lot area as are required by this chapter and fronting for a distance of at least 20 feet upon a street as defined here, or upon a private street as defined in Article 8 of this chapter. The width of an access-strip portion of a lot shall not be less than 20 feet at any point. In a residential planned development or an approved small lot subdivision a lot need have only the street frontage or access as is provided on the recorded subdivision tract or parcel map for the development." LAMC §12.03 (Joint RJN Ex. D).

LAMC section 18.10 provides:

"No building permits shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets or private road easements unless the following requirements have been met:

(a) That the "Private Street Map" shall have been duly approved and written findings made as to the conditions of approval thereof...." LAMC §18.10 (emphasis added) (Joint RJN Ex. C).

A "private road easement" is defined as follows:

"**Private road easement** shall mean a parcel of land not dedicated as a public street, over which a private easement for road purposes is proposed to be or has been granted to the owners of property contiguous or adjacent thereto which intersects or connects with a public street, or a private street, in each instance the instrument creating such easement shall be or shall have been duly recorded or filed in the Office of the County Recorder of Los Angeles County. LAMC §18.01 (emphasis added) (Joint RJN Ex. C).

(ii) Private Road Easement

The APC denied Samatas' appeal on the private street map issue in part because it found that the Whitten Easement was not a private road easement triggering application of LAMC section 18.10. AR 969. LADBS's representative Akelyan stated at the hearing that the City does not recognize the Whitten Easement as a private street or a private road easement. AR 937. At the time that the Whitten Easement was recorded in 1982, there was a required procedure to create a private road easement that was not followed. AR 937. Akelyan also stated that the Whitten Easement could not, in its present form, support vehicular access because there was a big drop and slope throughout the easement and retaining walls would be necessary in order to construct a road. AR 938.

Petitioner Samatas argues that the Whitten Easement meets all of LAMC section 18.01's criteria to qualify as a private road easement: (1) the Whitten Easement is not dedicated as a public street; (2) the Easement is for road purposes; (3) it was granted to the owners of the

Whitten Property, which is contiguous and adjacent to the Easement area; (4) the Easement connects with a public street (N. Tanager Way); and (5) the Easement was recorded. Pet. Op. Br. at 16.

Tanager responds that the Whitten Easement does not meet the definition of a private road easement, which requires it to be a parcel of land over which an easement has been granted. According to Tanager, the Easement is not a "parcel", but rather an ordinary private easement. Real Party Opp. at 12. This argument is disingenuous. Black's Law Dictionary defines a "parcel" as "a tract of land," which would clearly include the Whitten Easement. Black's Law Dictionary (10th ed. 2014).

Tanager next contends that the Whitten Easement is not a private road easement because it was not granted to the owners of contiguous property, but was instead granted by the owner of the Property itself. Real Party Opp. at 12.

Tanager is correct. As pertinent, the purpose of Article 8 is to prescribe rules governing the division of land as lots or building sites which are contiguous or adjacent to private road easements, to provide for the approval of private road easements as private streets, and to require that lots or building sites adjacent to private streets conform to minimum requirements. LAMC §18.00.A. A private road easement is a parcel of land over which a private easement for road purposes is proposed or has been granted to the owners of adjacent property. LAMC §18.01. A private road map is required before a building permit may be issued to build on lots adjacent to a private road easement. LAMC §18.10.

The stated purposes of Article 8 must be viewed collectively, not individually. Hence, Article 8 exists to prescribe rules for the division of lots adjacent to private road easements, to provide for the approval of private road easements for these divided lots, and to require that the divided lots conform to minimum requirements. Samatas is simply wrong that he can pick and choose an Article 8 purpose to rely upon – requiring a lot adjacent to a private road easement to have a private road map – without considering the others.

Collectively, Article 8's provisions intend that a private road map is required only when the beneficiary of a private easement for road purposes proposes to build on their lot. This customarily occurs during subdivision of lots. There simply is no application to the development of a property whose owner has granted a private easement to another property. That property owner has no reason to prepare a private road map to ensure access to his or her own property. Samatas describes this as "nonsense" (Reply at 16), but he ignores the purpose of the provision.

The Whitten Easement is not a private road easement under LAMC section 18.01.[9]

[9] Tanager and the City argue that the Whitten Easement is not a private road easement because it is not suitable for vehicular access. Real Party Opp. at 12, n. 4; City Opp. at 12, n. 6. Testimony at the APC hearing indicated that the Whitten Easement could not support vehicular access because of a "big drop" into the canyon below, and retaining walls would be necessary in order to construct a road. AR 938. There is nothing in the definition of a private road easement that requires vehicular access without modification; the easement must only have been granted for "road purposes." LAMC §18.01. The Whitten Easement does not specifically state that it is for road purposes, but it does state that it is for the "ingress and egress right of way." Samatas argues that the term "right-of-way" includes roadways. Reply at 16, n. 10. The court need not decide this issue.

08/15/2017

(ii) Article 8 Does Not Apply to the Project

The APC also denied the appeal because Article 8 does not apply to the Project. AR 969. The APC finding was based on the ZA's finding that Article 8 was intended to provide a resolution process for creating private street access and frontage for landlocked parcels in order for property owners to have buildable lots. AR 273. The ZA concluded that Article 8's procedures applied only to landlocked parcels, not surrounding parcels. AR 273.

Petitioner Samatas argues that the plain language of LAMC section 18.10 applies to the Project, requiring a private street map before the Permits could issue. Pet. Op. Br. at 16-17. He contends that Article 8's purpose as set forth in LAMC section 18.00 should not override LAMC section 18.10's plain language. Reply at 18-19. Moreover, Samatas argues, LAMC section 18.00's purpose is not inconsistent with this plain language. LAMC section 18.00 sets forth multiple purposes for private street regulation and the third purpose – to require that lots or building sites adjacent to private streets conform to the private road map requirements -- clearly includes the Project. Reply at 18. Samatas asserts that this section of LAMC section 18.00.A is consistent with the plain language of LAMC section 18.10, and requires that a private street map be obtained for the Project. Reply at 18.

The construction of local agency charter provisions, ordinances, and rules is subject to the same standards applied to the judicial review of statutory enactments. Domar Electric v. City of Los Angeles, (1994) 9 Cal.4th 161, 170-72; Department of Health Services of County of Los Angeles v. Civil Service Commission, (1993) 17 Cal.App.4th 487, 494. In construing a legislative enactment, a court must ascertain the intent of the legislative body which enacted it so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., ("Brown") (1989) 48 Cal.3d 711, 724; Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841.

The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The various parts of a statute must be harmonized by considering each particular clause or section in the context of the statutory framework as a whole. Lungren v. Deukmejian, (1988) 45 Cal.3d 727, 735. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity. To that end, the court must consider, in addition to the particular language at issue and its context, the object sought to be accomplished by the statute, the evils to be remedied, and public policy. Lungren v. Deukmejian, *supra*, 45 Cal. 3d at 735. The court must give deference to a legislative body's interpretation of its own ordinances. *See* City of Walnut Creek v. County of Contra Costa, ("Walnut Creek") (1980) 101 Cal.App.3d 1012, 1021.

The court disagrees with Samatas's interpretation of LAMC section 18.10 because he ignores the purpose of Article 8's private street regulation. It is true that LAMC section 18.00 lists multiple purposes: to prescribe rules governing the division of land as lots or building sites which are contiguous or adjacent to private road easements, to provide for the approval of private road easements as private streets, and to require that lots or building sites adjacent to private streets conform to minimum requirements. LAMC §18.00.A. But as stated *ante*, the purpose of

08/15/2011

Article 8 is to regulate the division of lots and to require a private road map when the beneficiary of a private easement for road purposes proposes to build on their lot. LAMC section 18.10's literal language must be read to implement this purpose. *See* Brown, *supra*, 48 Cal.3d at 724. Viewed in the light of Chapter 8's purpose, LAMC section 18.10's requirement of a building permit for development on a lot adjacent to a private road easement is intended to ensure that the private road easement provides access or legal frontage. As the City argues, the ordinance applies to landlocked property such as the Whitten undeveloped property, not Tanager's Property. City Opp at 12-13.

The City's personnel consistently have agreed that Article 8 does not apply to the Project. The ZA found that the City established Article 8 to provide a resolution process for creating private street access and frontage for landlocked parcels, Article 8's procedures are clearly aimed at landlocked parcels, not the surrounding parcels, and it has no bearing on the Project or the Building Permits. AR 273. At the APC hearing, Akelyan testified that the Easement was not a private road easement. AR 936. The Commissioners agreed that that Chapter 8 did not apply to the Project, the Whitten Easement is not a private street easement, and therefore LAMC section 18.10 does not apply. AR 968-69, 973. To the extent there is any doubt – and there is none – the court must give deference to the City's interpretation of its own ordinances. Walnut Creek, *supra,* 101 Cal.App.3d at 1021.

The City and Real Party argue that requiring a private street map before approval of the Project would lead to absurd results, requiring a private street map before a building permit can be issued for any property burdened by an ingress/egress easement. City Opp. at 13; Real Party Opp. at 13. This rule would have required Petitioner to get a private street map before building his home. City Opp. at 13. Petitioner Samatas disagrees, contending first that the courts do not lightly rely on the "absurdity principle" to rewrite legislation and do so only when it is repugnant to the statutory purpose, citing Unzuelta v. Ocean View School District, (1992) 6 Cal.App.4th 1689, 1697. Reply at 19-20. Samatas then argues that (1) a private street map is beneficial to ensure that residential structures are setback ten feet from a private street and (2) the Project, which is not setback from the Whitten Easement, would preclude development of the undeveloped Whitten Property and the resulting vegetation would impose a fire risk to Samatas's home. Pet Op Br at 17; Reply at 20.

While requiring a private street map for any property burdened by an ingress/egress easement may not be absurd, it would be an unnecessary burden on most development with an easement. It also would be inconsistent with the purpose of Article 8 and a collective interpretation of its provisions. This interpretation is not rewriting the plain language of LAMC section 18.10 as Samatas argues, but rather interpreting it in light of the entire statutory scheme, which is not intended to require private street maps for the development of every property next to an ingress/egress easement.

The City did not abuse its discretion in denying Samatas' appeal and finding that Tanager was not required to obtain approval of a private street map prior to the issuance of the Building Permits.

F. Conclusion

The petition for writ of mandate is granted as to the slope band analysis issue only. Samatas is correct that LADBS erred in granting the Building Permits because the slope band analysis incorrectly assumed that the Prior House was built on a flat pad when Tanager knew

better. The APC abused its discretion in granting Tanager's appeal. On the other hand, Samatas both lacks standing to raise the private street issue and is wrong on the merits; Article 8 has no application to Tanager's Project and no private street map is required. The petition is denied on the private street issue.

Petitioner's counsel is ordered to prepare a proposed judgment and a writ, serve it on Respondent's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for September 21, 2017 at 9:30 a.m.

08/15/2017

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CENTRAL 85 HON. JAMES C. CHALFANT, JUDGE

JAMES SAMATAS,)
)
PETITIONER,)
VS.) CASE NO. BS164400
CITY OF LOS ANGELES,)
RESPONDENT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, AUGUST 10, 2017

APPEARANCES:

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FOR THE REAL PARTY IN INTEREST: JEFFER, MANGELS, BUTLER & MITCHELL
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ATTORNEY AT LAW
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(310) 201-3558

RONALD KIM, CSR #12299
OFFICIAL REPORTER

INDEX FOR JULY 18, 2017

M A S T E R I N D E X

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

(NONE)

EXHIBITS

(NONE OFFERED)

CASE NUMBER: BS164400
CASE NAME: JAMES SAMATAS VS. CITY OF LOS ANGELES
LOS ANGELES, CA. THURSDAY, AUGUST 10, 2017
DEPARTMENT C-85 HON. JAMES C. CHALFANT, JUDGE
REPORTER: RONALD KIM, CSR NO. 12299
TIME: A.M. SESSION

APPEARANCES: THE PETITIONER BEING PRESENT WITH COUNSEL, DANIEL BANE AND JACK RUBENS, ATTORNEYS AT LAW; THE RESPONDENT BEING PRESENT WITH COUNSEL, JENNIFER K. TOBKIN, DEPUTY CITY ATTORNEY; THE REAL PARTY IN INTERESTED, REPRESENTED BY MATTHEW HINKS AND DANIEL FREEDMAN, ATTORNEYS AT LAW

THE COURT: James Samatas versus city of Los Angeles, BS164400, No. 6 on calendar.

(A pause in the proceedings.)

THE COURT: And I don't need any pictures, Counsel.

MR. RUBENS: Good morning, Your Honor. Jack Rubens for Petitioner, James Samatas.

MR. BANE: Good morning, Your Honor. Dan Bane on behalf of the petitioner, James Samatas.

MS. TOBKIN: Good morning, Your Honor. Deputy city attorney Jennifer Tobkin, T-o-b-k-i-n, for the city.

MR. HINKS: Good morning, Your Honor. Matthew

assume that it is flat for purposes of calculating the residential floor area.

That seems reasonable to me. (Unintelligible) reasonable to me, and I think that is what the law is so there's a red herring about whether or not they can make an assumption about it being flat without trying to look underneath.

That isn't what happened here. They tried to look underneath. At least there was evidence, substantial evidence, that they were blocked from doing so by the wall to see what was underneath while the structure was -- the former structure was cantilevered out on the hill. It could not be determined whether there was a flat pad underneath or not so that assumption was made, and that is a fair assumption.

Up until you have evidence that it was not, in fact, flat, and that's what the supplemental record shows, and that slope, which is not the same as the grade, was basically the same except for a small portion of the pad, as represented in the plans submitted by Tanager's representatives to the city.

So, here, we have a situation where the surveyor couldn't look under the house. He didn't know whether it was flat or not underneath the house. That portion of the house assumed -- fairly assumed that it was. The A.P.C. agreed with us, and I agree with them except Tanager knew or its representative knew that it was not true, and that plan -- I don't know what kind of

plan you call it -- that plan was before the city. It was before the Building and Safety. It was before -- the A.P.C. had access to it.

As I understand it, Ms. Gray, the petitioner's expert, could not copy the plan, but she looked at them. The A.P.C. knew she looked at them because it's in Samatas's letter to the A.P.C. that she had looked at them.

I know from the motion to augment, I think it was, the motion to augment back in April, that she was unable to copy them and provide them, but they were available to the A.P.C. to look at. They were available to the Building and Safety to look at. She did look at them. She told them she looked at them. She told the A.P.C. she looked at them. It's properly part of the record. They're properly something that was before the A.P.C., even if she didn't actually look at them, and they show that Tanager knew that the slope was not flat underneath the house. It is a small portion.

So the defendant is to grant Mr. Samatas's claim with respect to the Slope Bend Analysis, which reduces the square footage that is permissible, the residential structure like the base of the house.

There's a failure to exhaust the issue because they didn't make this argument to the Z.A. They did make it to the Z.A. I'm sorry. They didn't make it to Building and Safety, and that's an internal failure to exhaust, which the Z.A. says is perfectly permissible

is, if you know that it's not flat, then you have to include that in your analysis. That's the --

MR. HINKS: How can you --

THE COURT: -- natural result of what you've just said.

MR. HINKS: No. It's that --

THE COURT: If you know -- you can't say it, but if you know that it's not flat, then you have to include it.

MR. HINKS: Well, first off, there isn't evidence that the surveyors knew; right? The evidence --

THE COURT: I don't care whether the surveyor knew. I care whether Tanager knew.

MR. HINKS: So what you're saying is that the only way then to do -- because, remember, the second part of this definition is that the survey must be prepared, stamped and signed by a registered civil engineer; right?

So they've get to attest to their accuracy. They've got to put their license on the line.

THE COURT: Right.

MR. HINKS: They can't go in and say, well, you know, we've got -- there's a drawing here that looks like, well, it might be, you know, 35, 40 percent, and I'm going to base my survey -- and I'm going to base my survey based upon that assumption.

So what -- the only then remedy for that, I guess, is that you're saying you have to -- you have to demolish the house --

THE COURT: You're making an assumption.

MR. HINKS: You're not making an assumption.

THE COURT: You are. You --

MR. HINKS: You're taking an --

(Multiple parties speaking at one time.)

THE COURT: You're making an assumption, and if you can't see it, you're assuming it's flat, but --

MR. HINKS: So if you --

THE COURT: But if you know it's not flat, then you have to make an assumption about how much of it isn't flat.

MR. HINKS: So Barajas, who testified before the A.P.C., he doesn't even -- section 231, Yamashita from Becker Miyamoto did the actual survey here, didn't say it was an assumption. Eric Wittenberg didn't say it's an assumption. It said it's standard mapping procedure to include the square footage of the house as part of the topography, and the reason for that, as Your Honor's tentative points out, topography is different than slope. Topography is different than the grade.

You're not looking for slope. You're not not looking for grade. You're looking for topography, and in some instances, that includes the slope, and in some instances that the includes a manmade structure where it exists.

THE COURT: Okay. So let's -- your argument is,

THE COURT: It would not. I am not in any way purporting to change the way surveying is done.

MR. HINKS: Oh, this is the way it's done in every instance though, Your --

THE COURT: I understand, and that's perfectly appropriate. What's wrong here is not the surveyor's actions I'm so finding. It's your client's actions. Your client cannot rely on a survey that he knows is improper or should know was improperly done that's -- and present it to L.A.D.B.S.

So the surveyor does his job. He does it the way he always does it. Everyone says that's the way you're supposed to do it, and your client, Tanager, takes it and gives it to L A.D.B.S. knowing or should have known that it was wrong.

MR. HINKS: But Mr. -- Even Mr. Rubens says even the surveyors knew that there was a slope under the house, and here they are testifying --

THE COURT: I don't know whether --

MR. HINKS: -- this is --

(Multiple parties speaking at one time.)

THE COURT: I mean, he is -- he thinks it's so obvious, when they walked to the site that it's sloped, that the surveyor should have known.

MR. HINKS: That's his --

THE COURT: It's not --

is used by Tanager. If Tanager knows better, they have to tell L.A.D.B.S. It's straightforward. It is.

MR. FREEDMAN: But why are you assuming that L.A.D.B.S. wasn't aware that there was a slope? The testimony --

THE COURT: Well, if L.A.D.B.S. was aware there was a slope, then they made a mistake too.

MR. HINKS: No. They did not make a mistake because, again, there's testimony -- there's a plethora of testimony that this is the way that surveying is done under the B.H.O. in the city of Los Angeles, and this is the practice, regardless of whether --

THE COURT: What's the purpose of this; right? We don't want to build a big house that is, you know, hanging out too far from this hill; right? Isn't that the whole purpose of this slope --

MR. HINKS: Well, I've got to tell you that --

THE COURT: And it --

(Multiple parties speaking at one time.)

MR. HINKS: And it worked to perfection here because absent the B.H.O. --

THE COURT: This is a huge house, by the way, not just a small --

MR. HINKS: Well, and you know what's under the -- it's a huge lot too. It's 22,000 square feet. If there was no B.H.O., this would be entitled to the three to one

THE COURT: Yeah --

(Multiple parties speaking at one time.)

THE COURT: I'm sorry to interject. Unless we're going to rely on Ms. Gray's analysis.

MS. TOBKIN: She's not qualified under --

THE COURT: Okay. I'm not -- I don't have to accept her numbers to find that Mr. Samatas --

MR. HINKS: So, now, the site has been graded pursuant to --

THE COURT: That's bootstrapping to the worst degree.

MR. HINKS: No. I'm going -- I'm looking forward in terms of what does that mean? Is there a remedy here that you can provide Mr. Samatas because --

THE COURT: We're not talking about the slope. We're talking about the house. So, yes, there's a remedy. The remedy is figure out -- figure out what the grade was or the slope -- pardon me -- the slope at the time of the previous Slope Bend Analysis, and that will determine what size house he can have.

MR. HINKS: But now you're -- so this again -- this Slope Bend Analysis --

THE COURT: You've got to use those papers.

MR. HINKS: The slope analysis -- well, how's -- there's got to be evidence that this is something --

THE COURT: Use those pictures.

CENTRAL LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 532, Los Angeles, California, 90012-4801, (213) 978-1300
http://planning.lacity.org

Determination Letter mailing date: JUL 12 2016

Case No. DIR-2015-3031-BSA-1A
CEQA: N/A

Location: 1410 N. Tanager Way
Council District: 4 - Ryu
Plan Area: Hollywood
Zone: RE15-1-H

APPLICANT: Tanager NK, LLC

APPELLANT #1: Tanager NK, LLC
Representative: Ben Reznik

APPELLANT #2: James Samatas and Guy Whitten
Representative: Jack H. Rubens, Esq., Sheppard, Mullin, Richter & Hampton LLP

At its meeting on **June 28, 2016**, the commission separated the appeal as to two motions reflecting the Private Road, and Slope Band Analysis. The following actions were taken for these two appeals by the Central Los Angeles Area Planning Commission:

Private Road:

1. **Adopted** the findings of the Zoning Administrator.
2. **Denied** the appeal.
3. **Sustained** the decision of the Director of Planning Determination that the Department of Building and Safety did not err or abuse its discretion issuing a Building Permit without requiring a private street map action in conjunction with the construction, maintenance and use of a single family house.

This action was taken by the following vote:

Moved:	Brogdon
Seconded:	Chemerinsky
Ayes:	Chung Kim
Absent:	Oh
Vote:	**3 - 0**

Slope Band Analysis

1. **Did not Adopt** the findings of the Zoning Administrator.
2. **Granted** the Appeal.
3. **Overturned** the Director's Report that Building and Safety did err in the Slope Band Analysis or abused its discretion in issuing building permits based on an inaccurate slope band analysis survey in conjunction with the construction, maintenance and use of a single family house.

This action was taken by the following vote:

Moved:	Chung Kim
Seconded:	Chemerinsky
Ayes:	Brogdon
Absent:	Oh
Vote:	**3 - 0**

Conclusion: The commission finds that the Building and Safety did not err on the above issues of properly issuing a Building Permit.

Fiscal Impact Statement: There is no General Fund Impact as administrative costs are recovered through fees.

Effective Date
Effective upon the mailing of this report

Appeal Status
Not Further Appealable

Renee A. Glasco, Commission Executive Assistant
Central Los Angeles Area Planning Commission

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachment: Director's Determination dated April 13, 2016

Cc: Notification List
Jack Chiang

LINN K. WYATT
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS
JACK CHIANG
HENRY CHU
LOURDES GREEN
ALETA D. JAMES
JAE H. KIM
CHARLES J. RAUSCH, JR.
FERNANDO TOVAR
DAVID S. WEINTRAUB
MAYA E. ZAITZEVSKY

CITY OF LOS ANGELES
CALIFORNIA

ERIC GARCETTI
MAYOR

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April 13, 2016

James Samatas (Appellant)
1424 North Tanager Way
Los Angeles, CA 90069

Randall Guy Whitten (Appellant)
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Los Angeles, CA 90069

Tanager NK, LLC (Owner)
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San Marino, CA 91108

Jack H. Rubens, Esq. (R)
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333 South Hope Street, 43rd Floor
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CASE NO. DIR 2015-3031(BSA)
BUILDING AND SAFETY APPEAL
1410 North Tanager Way
Hollywood Planning Area
Zone : RE15-1-H
D. M. : 147B169
C. D. : 4
CEQA : N/A
Legal Description: Lot 11, Tract 19229

Pursuant to the provisions of Section 12.26-K of the Municipal Code, I hereby FIND that the Board of Building and Safety Commissioners:

1. Did not err in its decision that the Department of Building and Safety had not erred in its determination on the applicability of the Private Street Section of the Code, Sections 18.00 and 18.10. This appeal is DENIED.

2. Did not err in its decision that the Department of Building and Safety had not erred in its determination on the design of the basement, its perimeter walls, and the residential floor area exemption within the basement. This appeal is DENIED.

3. Did err in its reliance of an inaccurate slope band analysis map used to plan check the residential floor area above the basement level. This appeal is GRANTED.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal, the information provided by the Department of Building and Safety, the statements made at the public hearing conducted on the matter on December 3, 2015, and the applicable provisions of the Municipal

Code, I find that the Department of Building and Safety erred, in part, in its issuance of Building Permit Nos. 14010-30000-03562, 14020-30000-02880, 14030-30000-06992, and 15020-30000-00272 based on the following findings of fact:

BACKGROUND

The subject property is a steeply sloping, irregular-shaped, approximately 22,389 square-foot interior lot zoned RE15-1-H and designated for Very Low II Residential land uses within the Hollywood Community Plan Area. The property has a 161.7-foot frontage along the easterly side of North Tanager Way and a maximum depth of approximately 150 feet. The property is subject to the provisions of the Baseline Hillside Ordinance (BHO) and is located within the Hillside Area, Very High Fire Hazard Severity Zone, Bureau of Engineering Special Grading Area, and the Hollywood Fault Zone. The site was previously developed with a 2,368 square-foot single-family dwelling, which has since been demolished, and is currently undergoing shoring and grading work for a new single-family dwelling.

The subject property is located at 1410 North Tanager Way, approximately 0.4 miles north of Sunset Boulevard, in the Hollywood Hills. The area is characterized by sloping topography and curved hillside streets. Surrounding properties are all zoned RE15-1-H. The adjoining property to the north, located at 1424 North Tanager Way, is owned by one of the appellants (James Samatas) and is developed with a 5,031 square-foot single-family dwelling constructed in 1964. The adjoining property to the east and south is an undeveloped 96,406 square-foot parcel of land owned by the other appellant (Randall Guy Whitten); the parcel is a steeply sloping canyon that does not have any street frontage.

North Tanager Way, adjoining the property to the east, is a cul-de-sac Hillside Local Street dedicated to a width of 36 feet.

Previous related actions on the site include:

Report No. DBS-15005-DCP – On June 17, 2015, the appellant submitted an appeal alleging that the Department of Building and Safety erred or abused its discretion in issuing Building Permit Nos. 14010-30000-03562, 14020-30000-02880, 14030-30000-06992, and 15020-30000-00272, which relate to the construction of a new hillside residence. On July 30, 2015, the Department of Building and Safety rendered a written determination that it did not err or abuse its discretion in issuing the above-referenced permits.

Building Permit No. 15020-30000-00272 – On April 29, 2015, the Department of Building and Safety issued a building permit for temporary shoring in conjunction with a new single-family dwelling with attached garage.

Building Permit No. 14010-30000-03562 – On April 29, 2015, the Department of Building and Safety issued a building permit for a new single-family dwelling with an attached garage.

Building Permit No. 14020-30000-02880 – On April 29, 2015, the Department of Building and Safety issued a building permit for new retaining walls in conjunction with a new single-family dwelling.

Building Permit No. 14030-30000-06992 – On April 29, 2015, the Department of Building and Safety issued a building permit for grading in conjunction with a new single-family dwelling with attached garage, new retaining wall, and new pool and spa.

Document No. 82-935998 – On September 15, 1982, an individual quick-claim deed was recorded with the Los Angeles County Recorder's Office to establish a 20-foot wide easement located at the northwest portion of the property.

STATUTORY PROVISIONS OF AUTHORITY

Section 12.26-A of the Los Angeles Municipal Code addresses the functions of the Department of Building and Safety and provides in part: "The Department is granted the power to enforce the zoning ordinances of the City."

Section 12.26-K of the Los Angeles Municipal Code provides in part, "The Director of Planning shall have the power and duty to investigate and make determination upon appeals where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases..."

ZONING CODE PROVISIONS

The applicable Los Angeles Municipal Code (LAMC) sections relative to this matter are as follows:

SEC. 18.10. BUILDING PERMITS.

No building permits shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets or private road easements unless the following requirements have been met. (Amended by Ord. No. 109,695, Eff. 8/23/57.)

(a) That the "Private Street Map" shall have been duly approved and written findings made as to the conditions of approval thereof. (Amended by Ord. No. 126,468, Eff. 3/1/64.)

(b) That the Director shall certify to the Department of Building and Safety that the conditions, if any, required by said written findings have been fulfilled in a satisfactory manner and that a permit may be issued. (Amended by Ord. No. 109,695, Eff. 8/23/57.)

SEC. 18.01. DEFINITIONS.

"Private road easement" shall mean a parcel of land not dedicated as a public street, over which a private easement for road purposes is proposed to be or has been granted to the owners of property contiguous or adjacent thereto which intersects or connects with a public street, or a private street, in each instance the instrument

creating such easement shall be or shall have been duly recorded or filed in the Office of the County Recorder of Los Angeles County. (Amended by Ord. No. 122,064, Eff. 6/14/62.)

SEC. 18.00. SCOPE.

C. When a developed residential lot or building site has its access driveway located within a private road easement and the dwelling and access driveway existed prior to September 6, 1961, said private road easement shall be deemed to have been approved in accordance with the provisions of this article and may be continued. Further, on such lot or building site additions and alterations may be made to such dwelling, and accessory buildings may be erected on said lot if no additional dwelling units or guest rooms are created.

SEC. 12.21-C,10. Single-Family Zone Hillside Area Development Standards.

(b) Maximum Residential Floor Area. The maximum Residential Floor Area contained in all Buildings and Accessory Buildings shall not exceed the sum of the square footage of each Slope Band multiplied by the corresponding Floor Area Ratio (FAR) for the zone of the Lot, as outlined in Table 12.21 C.10-2a. This formula can be found in Table 12.21 C.10-2b, where "A" is the area of the Lot within each Slope Band, "FAR" is the FAR of the corresponding Slope Band, and "RFA" is the sum of the Residential Floor Area of each Slope Band.

SEC. 12.03. DEFINITIONS.

FLOOR AREA, RESIDENTIAL. (Amended by Ord. No. 181,624, Eff. 5/9/11.) The area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R1 Zone. Any floor or portion of a floor with a ceiling height greater than 14 feet shall count as twice the square footage of that area. The area of stairways and elevator shafts shall only be counted once regardless of ceiling height. Area of an attic or portion of an attic with a ceiling height of more than seven feet shall be included in the Floor Area calculation.

Except that the following areas shall not be counted ...

6. Basements ... For Lots located in the Hillside Area, a Basement when the Elevation of the upper surface of the floor or roof above the Basement does not exceed 3 feet in height at any point above the finished or natural Grade, whichever is lower, for at least 60% of the perimeter length of the exterior Basement walls.

DEPARTMENT OF BUILDING AND SAFETY'S ACTIONS

On June 17, 2015, the Department of Building and Safety issued a written report in response to an appeal filed by Randall Guy Whitten and James Samatas which concluded that the Department of Building and Safety did not err or abuse its discretion in issuing Building Permit Nos. 14010-30000-03562, 14020-30000-02880, 14030-30000-06992, and 15020-30000-00272. The Department of Building and Safety's report is included below. It references exhibits attached to the report which are attached to the case file.

REPORT ON APPEAL FROM LADBS DETERMINATION TO THE DIRECTOR OF PLANNING PURSUANT TO LAMC, §12.26 K (Ordinance No. 175,428)

REPORT NO. DBS-15005-DCP

JOB ADDRESS: 1410 North Tanager Way
ZONE: RE15-1-H
C.D.: 4 (Councilmember Tom LaBonge)
PLANNING AREA: Hollywood

Date of Report: June 23, 2015
Effective Date of Determination: July 30 2015
Deadline to Appeal to DCP: August 18 2015
Appeal Fee: 500.00

APPEAL:

Determine that the Department of Building and Safety ("LADBS") erred or abused its discretion in issuing the subject permits listed below for the following reasons: 1) No "Private Street Map" process has been undertaken per section 18.10 of LAMC, prior to issuance of the permit and 2) The project artificially lengthens the basement perimeter to "exempt" 6,600 sf area from the allowable residential floor area, which violates the intent of Baseline Hillside Ordinance (Section 12.21 C10).

EXHIBITS:

EXHIBIT A: City of Los Angeles Department of City Planning ("DCP") Parcel Profile Report for 1410 Tanager Way, APN# 5561024007.

EXHIBIT B: City of Los Angeles Department of City Planning ("DCP") Parcel Profile Report for "Land-locked" lot, APN# 5561024016 (address not known)

EXHIBIT C: City of Los Angeles Department of City Planning ("Den Parcel Profile Report for 8821 W. Collingwood Drive, APN# 5560038005.

EXHIBIT D: Lot Cut information for "Land-Locked" lot and 8821 Collingwood Drive. Reference # 2174

EXHIBIT E: Building Permit No. 14010-30000-03562 for "New single family dwelling with attached garage."

EXHIBIT F: Building Permit No. 14020-30000-02880 for "New retaining walls."

EXHIBIT G: Building Permit No. 14030-30000-07966 for "Site grading for new single family dwelling with attached garage, new retaining wall, and new pool and spa."

EXHIBIT H: Building Permit No, 15020-30000-00272 for 'Temporary shoring for (N) SFD with attached garage."

EXHIBIT I: Copy of Sheet A203 showing the Basement Plan

APPENDIX: Appeal package submitted by petitioner.

OVERVIEW:

The site is located in the Hollywood Community Plan area. The site is zoned RE15-1-H, and it is currently developed with a 2-story Single Family Dwelling with attached garage (Exhibit A). The applicant has proposed to demolish the existing dwelling and construct a new 2-story Single Family Dwelling with attached garage, with related retaining wall, grading and shoring work.

The appellant claims that LADBS approved the plans in error because the applicant did not obtain an approval for the "Private Street Map" process from the Department of City Planning prior to issuance of the permits. Further, the project does not comply with the intent of the Baseline Hillside Ordinance because the project artificially lengthens the basement perimeter so that the basement floor area of 6,600 square feet can be exempt from the allowable residential floor area (RFA).

The appeal was filed pursuant to City of Los Angeles Municipal Code ("LAMC") Section 1226K which gives the Director of Planning the power and duty to investigate and make a decision upon appeals from determinations of LADBS where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by LADBS in the enforcement or administration of land use ordinances in site-specific cases.

HISTORY:

- On February 22, 1972, the lot located at 8821 W. Collingwood Drive was subdivided and is shown by the Bureau of Engineering record under Reference No. PER-2174. However, the subdivision of the lot was not approved by the Department of City Planning. Therefore, the lot cut is considered invalid and "Land-Locked" lot created by this subdivision cannot be developed.

- On September 15, 1982, an individual quick-claim deed was recorded under Document No. 82-935998 with Los Angeles County Recorder's Office to establish a 20' wide easement at the north-west portion of 1410 Tanager Way.

- The following is chronology for Building Permit Nos. 14010-30000-03562, 14020-30000-02880, 14030-30000-06992:
  - On November 6, 2014, the plans were submitted to LADBS
  - On November 20, 2014, the project was assigned to an engineer for plan check.
  - On November 24, 2014, the plans were checked and corrections were issued.
  - After several verification appointments, on April 29, 2015, the plans were approved and permits were issued.

- The following is chronology for Building Permit No. 15020-30000-00272:
  - On February 4, 2015, the plans were submitted to LADBS.
  - On February 25, 2015, the plans were assigned to engineer for plan check.

- On March 2, 2015, the plans were checked and corrections were issued.
- After several verification appointments, on April 29, 2015, the plans were approved and permit was issued.

- On June 17, 2015 the subject appeal was filed.

DISCUSSION:

The following is a summary of the land use issues identified in the petitioner's appeal (Appendix), along with corresponding responses from LADBS:

- **Issue No. 1:**

The permits should not have been issued since no "Private Street Map" process has been undertaken per section 18.10 of LAMC, prior to issuance of the permit.

- **LADBS Response:**

Per Los Angeles Municipal Code Section 18.00 C:

> *When a developed residential lot or building site has its access driveway located within a private road easement and the dwelling and access driveway existed prior to September 6, 1961, said private road easement shall be deemed to have been approved in accordance with the provisions of this article and may be continued. Further, on such lot or building site additions and alterations may be made to such dwelling, and accessory buildings may be erected on said lot if no additional dwelling units or guest rooms are created.*

The subject easement is not deemed to be approved Private Street since the easement was recorded after September 6, 1961 and the benefiting neighboring lot is not developed.

Per Los Angeles Municipal Code Section 18.10, in part:

> *No building permits shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets or private road easements unless the following requirements have been met, (Amended by Ord. No. 109,695, Eff 8/23/57.)*
>
> *(a) That the "Private Street Map" shall have been duly approved and written findings made as to the conditions of approval thereof ...*

Los Angeles Municipal Code Section 18.10 does not apply to the subject project since the easement is not a private street or a private road easement that is deemed to be approved Private Street. When the easement shown on document No. 82-935998 was recorded on September 15, 1982, Los Angeles Zoning and Planning Code contained requirements and procedures for applying for a private street approval, which was never followed and approved. Therefore, the easement cannot be considered a private street or private road easement.

Moreover, On February 22, 1972, the lot located at 8821 W. Collingwood Drive was subdivided and is shown by the Bureau of Engineering record under Reference No. PER-2174. However, the subdivision of the lot was not approved by the Department of City Planning. Therefore, the lot cut is considered invalid and the "Land- Locked" lot created by this subdivision cannot be developed. Therefore, the project site at 1410 Tanager Way is not subject to any "Land-locked lot" restrictions.

- **Issue No. 2:**

The project artificially lengthens the basement perimeter to "exempt" 6,600 sq. ft. of floor area from the allowable residential floor area, which violates the intent, of Baseline Hillside Ordinance
(Los Angeles Municipal Code Section 12.21 C10).

- **LADBS Response:**

Per Los Angeles Municipal Code Section 12.03,

FLOOR AREA, RESIDENTIAL. (Amended by Ord. No. 181,624, Eff. 5/9/11.) The area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R1 Zone ...

Except that the following areas shall not be counted:

6. Basements. ...For Lots located in the Hillside Area, a Basement when the Elevation of the upper surface of the floor or roof above the Basement does not exceed 3 feet in height at any point above the finished or natural Grade, whichever is lower, for at least. 60% of the perimeter length of the exterior Basement walls.

Los Angeles Municipal Code does not dictate how a basement should be designed nor does the code require that basement walls shall be built in a straight line. Therefore, when LADBS plan checked the project, the plan check engineer measured the perimeter of the basement using normally accepted definition of a perimeter. The approved plan shows that the basement of the project complies with the criteria which exempts the basement floor area from the total Residential Floor Area. (See exhibit I) Therefore, the project complies with Baseline Hillside Ordinance and Section 12.21 C 10.

CONCLUSION:

LADBS did not err or abuse its discretion in issuing Building Permit Nos. 14014-30000-01441, 14020-30000-02880, 14030-30000-07966, and 15020-30000-00272.

APPEAL TO THE DIRECTOR OF PLANNING

An appeal of the Department of Building and Safety's action was filed by appellants Randall Guy Whitten and James Samatas to the Director of Planning pursuant to the provisions of Section 12.26-K of the Municipal Code, as to whether the Department of Building and Safety erred or abused its discretion in its issuance of permit Nos. 14010-30000-03562, 14020-30000-02880, 14030-30000-06992, and 15020-30000-00272.

APPELLANTS' POINTS

The following points were included in the appeal to the Director of Planning:

The project developer recently demolished a 2,368 square-foot, single-family home on the subject property and has started the shoring and grading work for a 12,005 square-foot new home. The developer has elected at its risk to proceed with construction during the pendency of this appeal.

1. The Building Permits Must Be Invalidated Because The Director Did Not Approve a Private Street Map

   The property is encumbered by a private road easement (the "Easement") that is 20 feet wide adjacent to North Tanager Way and widens to 30 feet. The easement was granted in an Individual Quitclaim Deed that was recorded in 1982. The purpose of the easement is to provide vehicular and related pedestrian access to a large, undeveloped parcel of land in the canyon that surrounds the subject property. R. Guy Whitten, one of the appellants, owns the property; the easement provides the sole means of vehicular access to the Whitten property.

   James Samatas, the other appellant, owns a developed parcel located at 1424 North Tanager Way that is adjacent to, and to the northwest of, the subject property. The easement area separates his property from the subject property.

   The Department of Building and Safety erred or abused its discretion in its issuance of permits for the new home on the subject property because Section 18.00-18.12 provides that no building permits shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets or private road easements unless (a) a "Private Street Map" shall have been duly and (b) that the Director shall certify to the Department of Building and Safety that the conditions, if any, required by said written findings have been fulfilled in a satisfactory manner.

   The Easement is a private road easement that is located on the subject property and adjacent to, and part of, the development site for the new home. The developer did not apply for, and the Director has not approved, a private street map with respect to the Easement.

2. The Residential Floor Area of the New Home Exceeds the Maximum Residential Floor Area Allowed Under the LAMC

   a. The Basement Floor Area Should Not Have Been Excluded From the Calculation of the New Home's Residential Floor Area

      The current definition of "residential floor area" in Section 12.03 of the Municipal Code, which was established by the Baseline Hillside Ordinance, excludes the floor area of a basement where the "Elevation of the upper surface of the floor or roof above the Basement does not exceed 3 feet in height at any point above the

finished or natural grade, whichever is lower, for at least 60% of the perimeter length of the exterior basement walls."

The residential floor area for the new home exceeds the maximum residential floor area permitted because the approximately 6,800 square feet of floor area in the basement should not have been excluded from the calculation of residential floor area.

First, the basement perimeter wall was artificially lengthened to increase the percentage of wall considered to be below-grade to exactly 60 percent. Second, the developer improperly used the finished grade, instead of the lower natural grade, of a portion of the subject property to determine that the basement floor area should be excluded from the calculation of the new home's residential floor area.

b. The Residential Floor Area of the Portion of the New Home Above the Basement Also Substantially Exceeds the Residential Floor Area

The developer overstated the maximum residential floor area permitted on the subject property by assuming a flat grade below the prior home, when in fact the slope under the prior home is quite steep. As a result, the floor area of the portion of the new home above the basement exceeds the maximum allowed residential floor area by more than 700 feet.

PUBLIC HEARING:

A Notice of Public Hearing was sent to nearby property owners and/or occupants residing near the subject site on November 6, 2015, for which an application, as described below, had been filed with the Department of City Planning. All interested persons are invited to attend the public hearing at which they could listen, ask questions, or present testimony regarding the project.

The hearing was held by Associate Zoning Administrator Jack Chiang under Case No. DIR-2015-3031(BSA) on December 3, 2015, at approximately 10:00 a.m. in Los Angeles City Hall, 200 North Spring Street, Room 1020, Los Angeles, CA 90012.

The purpose of the hearing was to obtain testimony from affected and/or interested persons regarding the project. After a review of the file the matter was opened to public testimony and the following points were considered:

Appellant's representatives, legal counsel Jack Rubens, and development expert Ann Gray testified and provided the following comments:

- There are four points to be made on this appeal that the Department of Building and Safety erred in issuing permits for the construction of a new house at 1410 North Tanager Way.
- First – per Code Section 18.10, no building permit shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets or private road easements unless a "Private Street Map" has been approved.

- Second – the applicant's lot has an easement granted to an abutting parcel of land. This easement is not a private street or a private road easement per Section 18.00; therefore it requires a private street action to satisfy the requirement stipulated by 18.10.
- Third – the new house is constructed on top of the previous house. Per the Baseline Hillside Ordinance, the project is required to submit a slope band analysis map and calculation to show the maximum residential floor area square footage. There is no explanation on how the slope band analysis survey was done. As it stands, the slope band analysis map was prepared incorrectly because it showed the area underneath the house as flat, when in fact the area in question is a steep slope. This fact was verified when the existing house was demolished and much of the area underneath the house is exposed and the slope area can be seen now. When this slope area underneath the house is counted towards the residential floor area calculation, the current floor area approved by the Department of Building and Safety exceeds the maximum floor area permitted by about 800 square feet.
- Fourth – the applicant has intentionally circumvented the City's Code to design a basement bigger than what the Code intends. The perimeter of the wall and the natural grade of the site were manipulated in order to beat the regulation and gain extra square footage. No portion of the northwestern basement wall should have been included in determining whether the basement requirement was met.
- Lastly – the project site is located in the fire hazard area. The abutting property is in a canyon without improved roadway access. If the easement roadway is not approved and improved to a standard satisfactory to the Fire Department, it will jeopardize the life and safety of the community in an event of fire. Johnny Mathis's house was located very close to this project site on the other side of the canyon. His house burned down because of inadequate access for the Fire Department to reach the house.

Applicant's legal counsel, Benjamin Resnik, provided the following comments:

- We reviewed the letter and arguments submitted by the appellant's legal counsel and concluded that the basis for the appeal contains many errors.
- The appeal should be a Code Section 12.26-K appeal regarding planning issues and not fire safety, which resides within the jurisdiction of the Department of Building and Safety.
- Appellant's argument on the private street action requirement is wrong because the property in question is a legal lot and it has a public street frontage. It does not need a private street; the abutting property is the parcel that needs the private street action. Appellant's interpretation of 18.00 is incorrect.
- Appellant's argument on slope band analysis is wrong because the regulation allows the applicant to include existing features of the site into the slope band analysis map. Department of Building and Safety plan check found no error on the slope band analysis survey.
- This hearing is not a de novo hearing and issues not raised in the previous appeal cannot be considered in the subsequent appeal. Appellant did not bring up the slope band analysis survey issue to the Department of Building and Safety and it should be barred from this hearing.

- Appellant's allegation that applicant intentionally designed an unusually meandering and long basement wall to create a big basement and further increase the residential floor area is wrong. The basement design is out of necessity, and the regulation does not prohibit turning walls.
- The design of the house passed plan check, and it is a plan check issue and not a zoning issue. The appellant is demanding planners to be super plan checkers on issues that have no relevance.

Russel Holtse, the designer of the project, provided the following comments:

- The slope band analysis was prepared by a licensed surveyor; it was reviewed by the City and approved by the City.
- No Code stipulates how one should design the basement wall. A part of the basement will be used as a wine room and a mechanical room.
- He met the plan check engineer in five verification meetings.
- Section cut drawing shows the basement is complying with the Code.

Jason Sommers, a representative of the applicant, provided the following comments:

- The project was designed to protect the view shed.
- The new house can be built taller.
- The owner of the canyon property (the Whitten Property) withdrew his appeal.
- The submitted slope band analysis is very consistent with other slope band analyses prepared since 2011.
- The existing house foot print occupies 35% of the lot and it is flat.
- The 60/40 basement design criteria listed in the Code is very clear.

Craig Fry, a representative of the applicant, provided the following comments:

- He is a City of Los Angeles retired fire marshal. He was the assigned fire chief in the district that oversees the project property.
- Johnny Mathis's house was beyond the six minute response time.
- The project must be reviewed by the Fire Department.

Roman James, the construction manager of the project and representing the applicant, provided the following comments:

- The applicant communicated with the neighbors before construction.
- We observe the construction hours so the project does not become a nuisance.

Rebuttal

Appellant:

- All issues raised in this appeal are all planning matters and shall be considered by Planning Department.
- The project requires a private street action per Section 18.10.

- The assumption that slope band analysis considers the land under the house is flat is just a wrong practice.
- Much of the information was not available to the appellant at the time of filing of an appeal to the Department of Building and Safety. New evidence relevant to the appeal should be considered.
- The design of the basement is to circumvent the Code and further maximize the residential floor area.

Applicant:

- The easement is to serve the adjacent property and not the subject project lot.
- The basement is designed according to the Code.
- The Director shall not consider any new argument including slope band analysis.

At the closing of the public hearing, the Zoning Administrator commented that based on the testimony provided he would check on the policy on slope band analysis requirements, 12.26-K procedures on consideration of new evidence submitted, and review Section 18.00 on the private street action requirement. The case was taken under advisement for further review.

Correspondence

September 15, 2015 – R.G. Whitten, Tri-Vestco

The applicant submitted an email written by Mr. Whitten, who is the owner of the abutting parcel of land and the grantee of an ingress and egress easement located on the applicant's property. Mr. Whitten was one of the appellants in the LADBS appeal. In this email, Mr. Whitten indicated that he is not to move forward via legal filings and appeals (to the Planning Director).

November 25, 2015 - Jack H. Rubens, representing the appellant

On behalf of the appellant, Mr. Rubens stated three points in his letter. First – Sections 18.00 to 18.12 of the Code provide that no building permit shall be issued for the erection of a building on a lot or building site that is contiguous or adjacent to a private roadway easement unless and until a private street map has been approved by the Director of Planning. The project site contains an easement for egress and ingress purposes for an adjacent parcel of land which has not been approved as a private street. Second – The current definition of "residential floor area" in Section 12.03 of the Code excludes the floor area of basement where the "elevation of the upper surface of the floor or roof above the basement does not exceed 3 feet in height at any point above the finished or natural grade, whichever is lower, for at least 60% of the perimeter length of the exterior basement walls." The basement wall was artificially lengthened to increase the percentage of wall considered to be below-grade to exactly 60%, and the developer improperly used the finished grade to exclude basement floor area from the calculation of the actual residential floor area. Third – The residential floor area above the basement is also overstated as the slope band analysis survey assumes a flat grade below the prior home when in fact the slope under the prior home is quite steep. Therefore, the Department of Building and Safety erred and all building permits shall be revoked.

December 2, 2015 – Benjamin M. Reznik, representing the applicant

Mr. Reznik, representing the applicant, stated in his letter responding to the appeal that the appeal is without merit due to the following reasons: First – The building permits were issued ministerially, and therefore did not require any environment review under CEQA. Appellant contends that LADBS erred because it lacked the legal authority to issue the building permits prior to environmental review. A single family home project constructed without any discretionary approval is not subject to CEQA. Second – The proposed single family home does not exceed the maximum allowed Residential Floor Area (RFA) permitted under the LAMC. There is nothing in the LAMC which supports that the perimeter of the basement was improperly designed. LADBS also explained in its report that the basement square footage is exempted for the RFA calculation. A slope band analysis survey includes existing features of the site including foundation and graded pad which are all flat. Appellant failed to raise issues regarding the application of finished grade versus natural grade in LADBS's determination of basement RFA, and that the slope band analysis included an inaccurate slope band under the prior home. These two issues were not before the LADBS appeal and shall not be a part of this appeal to the Director of Planning. Third – As the property is a pre-existing legal lot and abuts a public street, the processing of a "Private Street Map" was not required before the issuance of the Building Permits. As noted by LADBS in its report, the entirety of Sections 18.10 – 18.12 of the Code is inapplicable since the easement at issue is not a private road easement. Therefore, the appeal shall be denied.

December 29, 2015 - Jack H. Rubens, representing the appellant

In responding to the testimony at the December 3, 2016 hearing, Mr. Rubens submitted a follow-up letter contesting the applicant's arguments. Mr. Ruben reiterates his reasoning on the private street action requirement because if the existing roadway easement were approved by the Director of Planning, the new house under construction will need to observe a setback of a least seven feet from the easement area. The existing easement is granted for ingress and egress proposes which makes it a clear private roadway easement that needs a Director's action. A deemed to be approved private street status also does not apply to the said easement as it did not exist prior to September 6, 1961, thus it needs a private street action He urges the Director to follow and comply with the straightforward language in Section 18.10. The RFA of the house above the basement exceeds the maximum allowed RFA as the slope band analysis was prepared incorrectly. Ms. Ann Gray, the development expert for the appellant, reviewed the structural plans of the prior home and determined that less than flat land exists under the previous house. Based on a refined slope band analysis, the new house exceeds permitted residentially floor area by about 851 square feet. The applicant's representatives did not make any substantive arguments or provide evidence to the unlawful slope band analysis that the applicant submitted. Slope band analyses prepared for the City do not all assume that land under existing or demolished homes is flat when it is not. Applicant's procedural claim is also meritless as Section 12.26-K reflects that any party aggrieved by any action of LADBS can raise any issue at any appeal phase. The appellant also could not raise this issue as the City did not release the construction plans of the new house to the appellant for review.

January 12, 2016 – Benjamin M. Reznik, representing the applicant

In responding to testimony from the December 3, 2015 hearing, and Mr. Rubens' letter dated December 29, 2015, Mr. Reznik submitted a follow-up letter contesting appellant's arguments. Mr. Reznik reiterates that the appellant provided no support for his contention that Section 18.10 restricts the issuance of building permits to a property that is already serviced by existing public streets. Article 8 is inapplicable because the easement at issue is not a private road easement and this project does not involve the platting or division of land. LADBS also did not err in performing the slope band analysis for determining the maximum RFA allowed on the property as appellant's interpretation of the slope band analysis is inconsistent with the Code and the well-defined methodologies properly utilized by LADBS and licensed surveyors. Per Section 12.21-C10(b)(1) surveyors include a site's existing structures as part of the site's existing topography, including both natural and artificial features. The floor and foundation of the (prior) home was flat, and thus the slope of the home was shown as flat on the map. The appellant has failed to meet his burden of providing substantial evidence to support a conclusion that LADBS erred or abused its discretion in issuing the building permits.

January 13, 2016 - Jack H. Rubens, representing the appellant

Mr. Rubens submitted an email responding to Mr. Reznik's January 12, 2016 letter, in which he stated that applicant's letter consists of rhetoric and personal attacks without credible evidence to applicant's arguments. One other neighbor who lives at 1415 North Tanager Way is also opposing this project. Mr. Reznik also ignores the evidence provided that the land underneath the prior home was a steep slope, and further ignores that the private street map process clearly applies to the 1982 easement. No trespass of applicant's property has occurred and the appellant is not the party engaging in a self-interested interpretation of the Code.

DISCUSSION

Pursuant to Section 12.26-K of the Los Angeles Municipal Code, the Director of Planning shall have the power and duty to investigate and make a decision upon appeals from the determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances on site-specific cases. In this instance, the Director of Planning's action is limited to determining whether the Department of Building and Safety erred or abused its discretion in the issuance of permits to allow for the development of a single-family dwelling with garage, retaining walls, and grading. The appeal targets the Department of Building and Safety's issuance of Building Permit Nos. 14010-30000-03562, 14020-30000-02880, 14030-30000-06992, and 15020-30000-00272 relating to the construction of a hillside residence.

The Building Permits Must Be Invalidated Because the Director Did Not Approve a Private Street Map

Article 8, Private Street Regulations, Code Sections 18.00 to 18.12, addresses private street action requirements. The appellant contends that the Department of Building and Safety issued the permits in error because based on the following straightforward language of

Section 18.10, a private street action must be approved by the Director of Planning prior to the issuance of building permits:

Sec. 18.10. Building Permits states:

"No building permits shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets or private road easements unless the following requirement have been met.

(a) That the "Private Street Map" shall have been duly approved and written findings made as to the conditions of approval thereof.

(b) That the Director shall certify to the Department of Building and Safety that the conditions, if any, required by said written findings have been fulfilled in a satisfactory manner and that a permit may be issued. "

The subject property located at 1410 North Tanager Way contains an easement granted to an abutting parcel of land (Whitten property) for ingress and egress purposes. According to the appellant, this easement meets the definition of a private road easement, and only compliance with Section 18.10 by obtaining a private street map would satisfy the building permit requirement.

In its June 17, 2015, determination regarding the issuance of the four permits, the Department of Building and Safety responded that the Department did not err or abuse its discretion on the private street matter, as the subject easement is not a Deemed To Be Approved Private Street per Section 18.10-C since the easement was recorded after September 6, 1961, and the benefiting adjacent lot is not developed. Section 18.10 is also inapplicable since the easement is not a private street or a private road easement because after its grant execution, the Whitten property owner never filed for a private street action. Further, the lot located at 8821 West Collingwood Drive was subdivided on February 22, 1972 as shown in the Bureau of Engineering records under Reference No. Per-2172. The Planning Department disapproved the subdivision, which resulted in an invalid lot cut and a land-locked parcel (Whitten property). The project site at 1410 Tanager Way is not subject to any "land-locked" parcel restrictions.

In the appeal to the Director of Planning, much of the debate on the private street action issue focuses on whether Article 8 is applicable to the construction of the new house located at 1410 North Tanager Way. To make a determination on this matter, the "lot" as defined in Section 12.03, the Definitions section of the Code, must be discussed. The definition of a "lot" is as follows:

"LOT. A parcel of land occupied or to be occupied by a use, building or unit group of buildings and accessory buildings and uses, together with the yards, open spaces, lot width and lot area as are required by this chapter and fronting for a distance of at least 20 feet upon a street as defined here, or upon a private street as defined in Article 8 of this chapter. The width of an access-strip portion of a lot shall not be less than 20 feet at any point. In a residential planned development or an approved small lot subdivision a lot need have only the street frontage or access as is provided on the recorded subdivision tract or parcel map for the development."

As explained in the definition of a "lot", a legal lot must have a street access. In this case, the applicant's lot was created legally by a Tract Map, Tract No. 19229, Map-Book 652-34/36, designated as Lot No. 11. No illegal lot-cut was created from the applicant's lot, and it has legal public street frontage and access off Tanager Way. As authorized by the City's regulations, this is a legal building lot for which a building permit can be issued by the Department of Building and Safety.

However, not all parcels of land in the City are created by a subdivision or a parcel map process enumerated in Article 7, Sections 17.00 and 17.50. Many hillside parcels are created by legal and illegal grant deeds among private property owners without the City's review. These private land splits are referred to as the "lot-cut" process, which results in parcels of land that do not meet the definition of a "lot". In this case, the "Whitten" property owned by Mr. Randall Guy Whitten was created illegally without an access recognized and approved by the City. For instances like these, the definition of a Lot in Section 12.03 includes a phrase "or upon a private street as defined in Article 8 of this chapter" to provide an alternative means for a deeded parcel to gain access rights and further apply for building permits.

As indicated, the City established Article 8 to provide a resolution process for creating private street access and frontage for landlocked parcels in order for property owners to render their land buildable. Article 8's procedures and its authority clearly aim at parcels and potential building sites that do not have frontages. Once the landlocked parcel is approved with a City recognized access right, a property owner is able to obtain building permits to erect structures.

The "Whitten" property was created by a deed cut in 1972 from its master lot, Parcel B of Parcel Map No. 1051 in Book 12-85, resulting in an "Arb 1" number on the City's legal description record. The same deed cut also resulted in another piece of parcel, labeled as the "Arb 2" piece of Parcel B of Parcel Map No. 1051 in Book 12-85. The Arb 2 piece is owned by 8821 Collingwood Drive, LLC. A proper Parcel Map application process with designs complying with the City's requirements would have addressed the division of Parcel B and the access to the "Whitten" property, but the Map process never prevailed. A subsequent remedy to render the Arb 1 piece of the Parcel B, "Whitten" property buildable is the application of a private street action prescribed in Article 8 as cited in the definition of a lot per Section 12.03.

The process enumerated in Article 8 has everything to do with the development of the "Whitten" property and has absolutely no bearing on the applicant's current new house project, its building permits, or any other development on the applicant's property as long as it respects the easement granted to the "Whitten" property as shown on the recorded quitclaim deed, Document No. 82-935998. Further, Mr. Randall Whitten also owns the property located just north of the applicant's property, at 8918 West Thrasher Avenue. Aerial photos show that improvements enjoyed by 8919 West Thrasher Avenue property extend into the "Whitten" property. A simple lot-tie affidavit would cure the lack of access problem of the "Whitten" property and provide a legal status to it, without the involvement of the Article 8 process, though the property would become a part of 8919 West Thrasher Avenue

The Appellant has filed this appeal arguing on the grounds that Article 8 is applicable; therefore, the scope of Article 8 shall be considered. Let us first review Sections 18.00-B and 18.00-C. Section 18.00-B stipulates that this article shall not apply to a recorded subdivision

map as Article 7 would address the access issue of lots in a recorded subdivision and the design requirements of a lot for development. Section 18.00-C pertains to properties that (1) contain existing buildings with proof of building permits or similar documentation and (2) must have already taken access off an existing private roadway easement; these two criteria must occur prior to September 6, 1961, to satisfy a deemed to be approved street status. It is clear that both Sections 18.00-B and 18.00-C are irrelevant to this appeal because both Sections are exemption clauses relieving lots, parcels and building sites from having to comply with Article 8 requirements. Section 18.00-B relieves the applicant's property from filing a private street because the property was created by a tract map with a public street access, and Section 18.00-C also does not apply to the applicant's current new house project as the applicant's property does not take an access driveway located within a private road easement.

Additionally, Section 18.00-A provides the following:

> "The purpose of this article is to prescribe rules and regulations governing the platting and division of land as lots or building sties which are contiguous or adjacent to private road easement; to provide for the filing and approval of Private Street Map; to provide for the approval of private road easements as private streets;
> to provide for the naming of private streets; and to require that lots or building sites which are contiguous or adjacent to private streets conforms to the minimum requirements of this chapter before permits may be issued."

There are three clauses enumerated in Section 18.00-A. The first clause is for the Article to serve new division of land to assure that new lots, parcels, or building sites are created with legal access by way of private roadways when public street access is not available. The second clause is for the Article to provide the procedure of filing for a private street application and the process of granting the decision of such application. The third clause is to authorize Article 8 to act and provide decisions for private street actions and the naming of private streets. The third clause of Section 18.00-A also requires lots or building sites which are contiguous or adjacent to private streets to conform to Article 8 for the issuance of the permit. This last requirement relates to Section 18.10 – Building Permits, which requires that all lots "contiguous or adjacent to private streets" file for a "Private Street Map" if property owners are to develop their properties. The intent of the last portion of the third clause of Sections 18.00-A and 18.10 are aimed at landlocked parcels that are "contiguous or adjacent to private streets" to undergo private street actions in obtaining building permits. Section 18.10 is not intended to subject legal and buildable lots to private street actions for developments per a narrow interpretation and the straightforward read of the phrase "contiguous or adjacent to private streets". A lot that has a public street frontage and access is excluded from complying with Section 18.10. Although Sections 18.00-A and Section 18.10 did not express the obvious language that lots already having public street access are excluded, the intent of Code is extremely clear.

In addition, per Section 18.02(a) – under Duties of Director, it states, "That there exists adequate and safe vehicular access to the property from a public street over a private street for police, fire, sanitation and public service vehicles." So the Director's responsibility is to see that projects under Article 8 applications shall provide their private street access via public streets. If the applicant were to apply for a private street action, his property at 1410 Tanager Way would be project property. In this situation, the applicant's lot already has a superior and direct access off the public street on Tanager Way, and it does need not to provide its

"vehicular access to the property from a public street over a private street". Therefore, there is not any access issue or an access safety issue over a private street on the 1410 Tanager Way property for the Director of Planning to review and act upon. This further proves that the intent of Article 8 is not applicable to the project.

The Appellant's fixation on the straightforward interpretation and enforcement of the Code phrase requiring lots "contiguous or adjacent to private streets" to undergo private street action for building permits is dangerous because if the City were to enforce such straightforward meaning of Section 18.00A and 18.10, then the appellant's own property must apply for a private street action and set aside a distance from the easement for all future developments and the issuance of building permits as the appellant's property is also located contiguous to the same easement that is in this appeal. No relief in Article 8 is found to disassociate lots that are "contiguous or adjacent to private streets" but do not contain such easement; thus the appellant would be barred from any building permit application and the issuance of it by the City unless a private street action benefiting the Whitten Property is filed per 18.10-K. If any property owner should file for a private street action, it shall be Mr. Randall Whitten who owns the "Whitten" Property as the parcel only has an easement with no City recognized access rights. The parcel does not front a public street and its easement does not currently have an approved private street status with the City. The literal application of Section 18.10-K is flawed, and it has no bearing on applicant's project.

Therefore, the Board of Building and Safety Commissioners did not err on the issuance of building permits without a private street map approved by the Planning Director.

The Residential Floor Area of the New Home Exceeds the Maximum Residential Floor Area Allowed Under the L.A.M.C. - a. The basement floor area should not have been excluded from the calculation of the new home's residential floor area.

The appellant contends that, in order to manipulate a Code requirement, the applicant has lengthened the perimeter walls of the basement level so that it can achieve exactly 60 percent of the overall perimeter wall below grade. This creates 6,800 square feet of floor area at the basement level which should not be exempted from the overall residential floor area. In this matter the Department of Building and Safety has reviewed the subject matter in the first level appeal and responded in its determination dated July 30, 2015:

> "Per Los Angeles Municipal Code Section 12.03,
>
> *FLOOR AREA, RESIDENTIAL. (Amended by Ord. No. 181,624, Eff. 5/9/11.) The area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R1 Zone ...*
>
> *Except that the following areas shall not be counted:*
>
> *6. Basements. ...For Lots located in the Hillside Area, a Basement when the Elevation of the upper surface of the floor or roof above the Basement does not exceed 3 feet in height at any point above the finished or natural Grade, whichever is lower, for at least 60% of the perimeter length of the exterior Basement walls.*

Los Angeles Municipal Code does not dictate how a basement should be designed nor does the code require that basement walls shall be built in a straight line. Therefore, when LADBS plan checked the project, the plan check engineer measured the perimeter of the basement using normally accepted definition of a perimeter. The approved plan shows that the basement of the project complies with the criteria which exempts the basement floor area from the total Residential Floor Area. (See exhibit I) Therefore, the project complies with Baseline Hillside Ordinance and Section 12.21 C 10.

The Zoning Administrator reviewed Code Section 12.03, the Definition of Floor Area (Residential), as well as the Baseline Hillside Ordinance per Code Section 12.21-C10,(b), Maximum Residential Floor Area, and a Baseline Hillside Ordinance "A Comprehensive Guide" to the New Hillside Regulations published by the Department of Building and Safety on May 9, 2011 for design and plan check purposes, and found that the basement is exempt from the residential floor area calculation, and no language specifically regulates the footprint design of the basement perimeter wall except how a basement should be designed in relation to the grade of the site and the light well's visibility from public views. The Zoning Administrator agrees with LADBS interpretation and determination. The code is clear on the basement design requirement and no Section of the Code regulates the footprint variation of the basement perimeter wall. No further compelling evidence has been shown and provided that the applicant's design on the baffling of the basement perimeter wall is not out of a necessity, or that applicant's personal preference on a floor plan design with varied depth and articulation violates the Code. Further, much of the perimeter wall issue is plan check work instead of an interpretation of the Code. The Zoning Administrator finds no violation of the Baseline Hillside Ordinance or any wrong doing on LADBS plan check process.

Therefore, the Department of Building and Safety did not err on the issuance of building permits in determining the basement floor area is exempted from the overall residential floor area of the new house.

<u>The Residential Floor Area of the New Home Exceeds the Maximum Residential Floor Area Allowed Under the L.A.M.C. - b. the residential floor area of the portion of the new home **above the basement** also substantially exceeds the residential floor area.</u>

The appellant has provided new evidence in this appeal asserting that the slope band analysis survey map for the applicant's new house was prepared incorrectly. The applicant challenges such new evidence and states that it is a new issue, not heard previously by the Department of Building and Safety Commission, and it is also against the proper appeal procedure, which should not be raised now in a subsequent appeal. Only in a de novo hearing can this issue be raised. In this third issue, the Zoning Administrator will determine if the consideration of this new evidence pertaining slope band analysis is a violation of the appeal to Planning Director per 12.26-K procedure. And, if the 12.26-K procedure is intact in this appeal, the Zoning Administrator will determine the appropriateness and the accuracy of the slope band analysis survey, per the requirements set forth in Section 12.21-C,10(b)(1), prepared and submitted by the applicant.

In reviewing 12.26-K in its entirety, the Zoning Administrator finds that only parts of Sections 12.26-K,1 – **Right of Appeal**, 12.26-K,2 – **Filing of an Appeal**, 12.26-K,3 – **Procedure**, and

12.26-K,4 – **Decision**, have relevance to the challenge on procedures of Appeals from Building and Safety Department Determinations raised by the applicant.

Section 12.226-K, 1, the **Right of Appeal**, first paragraph authorizes the following:

> "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases. This provision shall not apply to requests for extensions of time to comply with any order issued by the Department of Building and Safety. An appeal to the Director of Planning may only be made after the Department of Building and Safety has rendered a decision in writing and provided written justification and findings on an appeal made pursuant to Section 98.0403.2(a) of the Code."

As stated, the Section grants the Director of Planning the absolute power in investigating the matter of an appeal from Building and Safety Department Determinations. The Zoning Administrator did not find language that new issues or new evidence on the issuance of the same permits in this appeal cannot be discussed or raised to the Planning Director. Contrary to the applicant's challenge, the Director has a duty to make a full investigation to assure if the determination made by the Department of Building and Safety is accurate or erroneous.

Section 12.26-K,2, **Filing of an Appeal**, states:

> "The appeal shall be filed at the public counter of the Department of City Planning on a form prescribed by the Department within 15 days after the Department of Building and Safety has rendered a decision in writing providing justification and findings on the issues set forth in the appeal made pursuant to Section 98.0403.2(a). The appeal to the Director must be accompanied by a written copy of the decision of the Department of Building and Safety, and any written copy of the underlying order, interpretation, requirement, determination or action taken on the matter by the Department of Building and Safety. The appellant shall set forth specifically how there was error or abuse of discretion in the action of the Department of Building and Safety. Each appeal shall be accompanied by a filing fee as specified in Section 19.01 B. of this Code."

As stated, under the filing of an appeal to the Planning Director, the appellant can submit any interpretation, requirement, determination, or action taken on the matter by the Department of Building and Safety. Section 12.26-K,2 does not limit the appeal to the Director only to issues or evidence presented in the first level appeal to the Building and Safety Commission. In fact, the Code is very permissive on the submittal of material to the appeal to the Planning Director.

Section 12.26-K,3, **Procedure**, states:

> "Upon receipt of an appeal in the Department of City Planning, the Department shall notify the owner of the subject property of the filing of the appeal. The Director shall investigate the matter. The Director shall set the matter for hearing if it is likely to be

> controversial. Notice shall be by mail, shall state the time, place and purpose of the hearing at which evidence will be taken and shall be sent to the applicant, appellant, the Department of Building and Safety, owners of all properties abutting, across the street or alley from, or having a common corner with the subject property, and to all persons known to have an interest in the matter. The Department shall mail the notice at least 15 days prior to the hearing."

As stated, 12.26-K,3, only stipulates the public notification of the case. The "procedure" does not limit how the hearing should be conducted or what material can be presented in the hearing to the Planning Director.

Section 12.26-K,4, **Decision**, states:

> "The Director shall make his or her decision within 75 days after the expiration of the appeal period or within an extended period mutually agreed upon in writing by the applicant and the Director. The Director shall determine whether there was error or abuse of discretion by the Department of Building and Safety. The Director shall place a copy of the findings and decision in the file in the City Planning Department, and furnish a copy of the decision to the applicant, appellant, the Department of Building and Safety, owners of all properties abutting, across the street or alley from, or having a common corner with the subject property, and to all persons known to have an interest in the matter. The Director, as part of the determination, shall make a finding regarding whether the matter may have a Citywide impact. The Director shall find that there is no Citywide impact if the matter concerns only the use of the specific property, or circumstances or issues connected with other zoning matters which are unique to the affected site and would not generally apply to other sites in the City, or would not result in changes in the application of Chapter I of this Code and other land use ordinances to other sites."

As stated, the Planning Director's only duty is to determine if the Department of Building and Safety has made an error on its decision. No limitation of evidence presented to the Planning Director is set forth in this Section as well.

Based on the review of Section 12.26-K, the Zoning Administrator finds that no part of 12.26-K stipulates the Planning Director can only consider certain information while excluding other types of information, nor this point raised is outside of the project description of the building permits issued. The appeal is to challenge the legitimacy of the issuance of four building permits to property located at 1410 Tanager Way. It is not a challenge limited to only the residential floor area, although that is a primary issue raised in the first level appeal. The appeal before the Planning Director is whether the Building Department erred, but the gist of the matter is still the issuance of the four building permits. What the Planning Director will not hear is if the appellant introduced a fifth building permit aside from the four building permits listed in the original appeal to the Building and Safety Commission on this project. That would be out of the original scope of the entire appeal matter. If the appellant were to bring up a fifth permit to argue against the project, then the applicant's objection to the new information and evidence raised would be valid. Therefore, the appellant can introduce new and relevant evidence pertaining to the appeal of the same matter, in this case, the slope band analysis.

The slope band analysis is an integral part, and serves as the basis, of the architectural design for the proposed new house. The slope band analysis survey also produces the fundamental residential floor area square footage that the Department of Building and Safety plan check is based on. Building permit issuance is the ultimate result of this analysis, and it cannot be carved out from determining the appropriateness of the building permit issuance. The analysis is essential to the plan check and it must be a piece of discussion in the Zoning Administrator's consideration to validate the determination on the appropriateness of the issuance of these four building permits. Thus there is no procedure conflict and prohibition in considering the inclusion and the accuracy of the slope band analysis.

As challenged by the appellant on the accuracy of the slope band analysis survey, the applicant responded on a January 12, 2016, letter that the appellant's appeal on the slope analysis is inconsistent with the Baseline Hillside Ordinance and it is in contrast to the well-defined methodologies property utilized by the Department of Building and Safety and licensed surveyors experienced in performing the slope band analysis to the City's standard. Code Section 12.21-C,10(b)(1) also requires licensed surveyors to document a site's "natural/existing topography". This "natural/existing topography" would include the site's existing structures as the existing artificial features of the topography. The applicant contends that the floor and foundation of the prior home were flat, and thus the slope of the area under the prior home was shown as flat on the map. According to the applicant, this is a standard surveying practice for the preparation of topographical maps; and the appellant's allegation is not only contrary to the express language of the Code and the Department of Building and Safety policy, it also purports to redefine the entire purpose and intent of topographical mapping.

To make a determination on the intent and purpose the slope band analysis, and its survey methodology, Baseline Hillside Ordinance No. 181,624, Section 12.21-C,10,(b)(1) of the Code, Slope Analysis Map, must be examined. Section 12.21-C,10(b)(1) states:

> "**Slope Analysis Map.** As part of an application for a permit to the Department of Building and Safety, or for a Discretionary Approval as defined in Section 16.05 B. of this Code to the Department of City Planning, the applicant shall submit a Slope Analysis Map based on a survey of the natural/existing topography, prepared, stamped, and signed by a registered civil engineer or licensed land surveyor, to verify the total area (in square feet) of the portions of a property within each Slope Band identified in Table 12.21 C.10-2a. The Director of Planning, or his/her designee, shall verify that the Slope Analysis Map has been prepared by a registered civil engineer or licensed land surveyor. In addition, the Director of Planning, or his/her designee shall approve the calculated Maximum Residential Floor Area for the Lot by the registered civil engineer or licensed land surveyor using the Slope Analysis Map prior to applying for a permit from the Department of Building and Safety.
>
> The map shall have a scale of not less than 1 inch to 100 feet and a contour interval of not more than 10 feet with two-foot intermediates. The map shall also indicate the datum, source, and scale of topographic data used in the Slope analysis, and shall attest to the fact that the Slope analysis has been accurately calculated.
>
> The Slope Analysis Map shall clearly delineate/identify the Slope Bands (i.e. with contrasting colors or hatching), and shall include a tabulation of the total area in

square-feet within each Slope Band, as well as the FAR and Residential Floor Area value of each corresponding Slope Band as shown on Table 12.21 C.10-2b.

The Slope Analysis Map shall be prepared using CAD-based, GIS-based, or other type of software specifically designed for such purpose."

As stated, the slope band analysis is reviewed by the Planning Department. The Planning Department also reviews and approves the residential floor area as shown on the slope analysis survey before it is released to the applicant and forwarded to the Department of Building Safety for a building permit consideration. In fact, the current practice in dealing with the slope band analysis survey is that the applicant must submit four copies of the survey map directly to a Planning Department public counter planner for an over the counter review and approval. The Department of City Panning trusts that all plans, maps, and calculations are submitted truthfully and prepared professionally by licensed surveys. Planning Department officials are not conducting site verifications. Counter planners rely on the accuracy as shown on the survey prepared by licensed surveyors. Once the review is completed, all four survey maps are stamped by a counter planner. The Planning Department will keep one set of survey map for record keeping and return the other three sets to the applicant, so that these three sets of stamped surveys can be included in the plan check drawings submitted to the Department of Building and Safety. Building and Safety Department plan check engineers only utilize the said map and rely on the information as shown on the survey map to plan check projects. No plan check engineer is required to review, check and approve a slope band analysis. The Building and Safety Department does not have a policy on the review of the survey nor does it approve what licensed surveyors show on the slope analysis band map.

The applicant cited Section 12.21-C,10(b)(1), explaining the slope analysis survey shall contain "existing features". The applicant is correct in that assertion that a survey must contain existing features including built structures, but the existing feature should not go as far as the "flat floor" of the prior home. The existing foundation system as the "natural/existing topography" must be taken into consideration. If the house were built on a flat pad created by retaining walls, grading, and earth fill, then it is legitimate to show the area as flat on the slope band analysis survey. This would be an appropriate artificial feature to be shown on the survey. However, if the prior house were built on stilts or raised foundation without earth fill, then the de facto natural or finished grade and the slope band must be accurately shown on the slope band analysis survey. There is no flexibility on the interpretation of the methodology on the preparation of a slope band analysis survey, nor can a slope band be argued to be a flat surface. Surveyors cannot assume that the area under the house is flat and transfer such an assumption onto the survey.

In addition, the Zoning Administrator verified the proper methodology of slope band analysis surveys with both the Planning Department's Eric Lopez, who is the author of Baseline Hillside Ordinance, and the Department of Building Safety's designated hillside plan check engineer, Hernan Arreola. Both experts are the City's authority on the Baseline Hillside Ordinance and hillside projects, and both categorically confirmed that the intent and the purpose of the said slope band analysis survey is to, and shall, show the actual flatness or steepness of all areas of a building site, including the area under the prior house. The applicant shall exhaust all efforts to produce a survey that accurately represents the topography of a site; no assumption can be made on the slope of the site to produce a larger

residential floor area than authorized by the Code. The Zoning Administrator finds project site pictures detailing the demolition stage of the project submitted by the appellant as clear evidence that the site contains a steep slope underneath the prior house. Also, stilts of the previous house are also clearly presented in the photographs in areas under the prior house where no earth-filled flat pad was ever created. The evidence is strong and compelling in proving that the slope band analysis survey was prepared inaccurately, which further led to an inflated calculation of permitted residential floor area square footage.

Therefore the Zoning Administrator determines that the Department of Building and Safety erred in issuing building permits for residential floor area on the level above the basement based on an inaccurate slope band analysis.

Conclusion

In the opinion of the Zoning Administrator, acting on behalf of the Director of Planning, after reviewing the information attached to the file including: information submitted by the Department of Building and Safety, the minutes of the Board of Building and Safety Commission meetings and transcripts, the findings of the Board's actions, the testimony at the public hearing conducted by the Zoning Administrator, and the appellant's and the applicant's statements on the appeal, it is determined that the Board of Building and Safety Commissioners did not err in denying the appeals based on the inapplicability of private street action, and the exclusion of basement floor area from the new home's residential floor area. It is also determined that the Board of Building and Safety Commissioners did err on the issuance of the building permits by relying on an inaccurate slope band analysis survey map.

Citywide Impact

Pursuant to the requirements of Section 12.26-K,4, the determination herein will not have a Citywide Impact as the use of the specific property, circumstances and issues are unique to the affected site and will not generally apply to other sites in the City.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after APRIL 28, 2016, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at http://cityplanning.lacity.org**. Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Inquiries regarding this matter shall be directed to Michael Sin, Planning Staff for the Office of Zoning Administration at (213) 978-1345.

VINCENT P. BERTONI, AICP
Director of Planning

JACK CHIANG
Associate Zoning Administrator

JC:MS:lmc

cc: Councilmember Mitch O'Farrell
Thirteenth District
Adjoining Property Owners