SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 86 HON. MITCHELL L. BECKLOFF, JUDGE

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| SNOWBALL WEST INVESTMENTS, L.P., PLAINTIFF, V. CITY OF LOS ANGELES, ET AL., DEFENDANT. | SUPERIOR COURT NO. 20STCP00771 |

COPY

REPORTERS' TRANSCRIPT OF PROCEEDINGS

MARCH 24, 2021; APRIL 2, 2021

APPEARANCES:

FOR PETITIONER AND PLAINTIFF:
GAINES AND STACEY LLP
BY: FRED NEIL GAINES
LISA ANNE WEINBERG
16633 VENTURA BOULEVARD
SUITE 1220
ENCINO, CALIFORNIA 91436
(818) 933-0200
FGAINES@GAINESLAW.COM
LWEINBERG@GAINESLAW.COM

FOR DEFENDANT AND RESPONDENT:
OFFICE OF THE CITY ATTORNEY
BY: PATRICK JAMES HAGAN
DONNA WONG
700 CITY HALL EAST
200 N MAIN STREET
LOS ANGELES, CALIFORNIA 90012
(213) 978-1687
PATRICK.HAGAN@LACITY.ORG
(213) 978-8120
DONNA.WONG@LACITY.ORG

REPORTED BY:
JANET CHO, CSR NO. 14359
CINDY CAMERON, CSR NO. 10315
OFFICIAL REPORTERS

CASE NUMBER: 20STCP00771
CASE NAME: SNOWBALL WEST INVESTMENTS, L.P. VS CITY OF LOS ANGELES, ET AL.
LOS ANGELES, CALIFORNIA WEDNESDAY, MARCH 24, 2021
DEPARTMENT 86 HON. MITCHELL L. BECKLOFF
REPORTER: JANET CHO, CSR NO. 14359
TIME: A.M. SESSION
APPEARANCES:

DEFENDANT CITY OF LOS ANGELES, NOT PRESENT WITH COUNSEL, PATRICK JAMES HAGAN, DONNA WONG, CITY ATTORNEYS, PRESENT (VIA LACOURTCONNECT); FRED NEIL GAINES, LISA ANNE WEINBERG, PRIVATE COUNSEL, APPEARED (VIA LACOURTCONNECT), REPRESENTING THE PETITIONER SNOWBALL WEST INVESTMENTS, L.P., NOT PRESENT.

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(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

THE COURT: LET ME -- THIS ISN'T WORKING. LET ME TRY MS. WEINBERG. I CAN SEE YOU. CAN YOU HEAR ME? IT'S JUDGE BECKLOFF.

MS. WEINBERG: YES, YOUR HONOR. I CAN SEE AND HEAR YOU NOW.

THE COURT: OKAY. SO LET ME -- I APPRECIATE THAT

YOU ARE THERE. LET ME SEE WHAT I CAN GET ACCOMPLISHED. I -- I APOLOGIZE. SO I'LL BE BACK TO YOU IN A MOMENT. HOLD TIGHT.

MR. HAGAN, CAN YOU HEAR ME? IT'S JUDGE BECKLOFF.

MR. HAGAN: THIS IS PATRICK HAGAN. I CAN SEE YOU, AND I CAN HEAR YOU.

THE COURT: AND SO I KNOW -- HI THERE -- I KNOW MS. WONG IS WITH YOU. MR. GAINES AND MS. WIENBERG ARE BOTH AVAILABLE AT 1:30.

COULD I HAVE YOU COME BACK AT 1:30? I'M SORRY TO --

MR. HAGAN: YES, YOUR HONOR. 1:30 WORKS FOR US. THANK YOU. IF THAT'S BEST TO PROCEED.

THE COURT: OKAY.

AND MS. WONG IS OKAY WITH THAT? I DON'T KNOW IF SHE'S STILL ON.

MR. HAGAN: I'VE -- I'VE ASKED HER TO JOIN ON VIDEO. BUT I CAN TELL YOU WE DISCUSSED EARLIER, ESSENTIALLY, BEING AVAILABLE WHENEVER THE COURT IS AVAILABLE SO --

THE COURT: ALL RIGHT.

MR. HAGAN: -- I BELIEVE THAT INCLUDES 1:30 TODAY.

THE COURT: OKAY. AND I'LL JUST -- AND, MR. GAINES, I'VE -- I'VE UNMUTED YOU NOW, AND, MS. WEINBERG, I'VE UNMUTED YOU --

(AUDIO BACKGROUND

INTERFERENCE NOISE.)

THE COURT: I'M GOING TO SEE YOU ALL BACK AT 1:30. AND JUST SO YOU KNOW NOW, I'M PROPOSING THAT THE SECOND HALF OF OUR TIME TOGETHER BE ON APRIL 2ND. SO IF YOU CAN JUST LOOK ON YOUR CALENDARS FOR APRIL 2ND, WE'LL TALK ABOUT THAT AT 1:30, AND, HOPEFULLY, THE CONNECTIVITY ISSUE WILL BE RESOLVED THEN. I JUST -- I -- I LOOKED AT MY JUDGE MANUAL, AND THERE'S NOTHING TO DO WHEN THE LACOURTCONNECT IS COMPLETELY DISSOLVING IN FRONT OF YOUR VERY EYES. SO I APOLOGIZE FOR THAT. I'LL SEE YOU AT 1:30 WITH ANY LUCK. OKAY? THANK YOU.

MS. WONG: ALL RIGHT. THANK YOU, YOUR HONOR.

MS. WEINBERG: THANK YOU.

THE COURT: OH, BOY.

THANK YOU, MR. HAGAN.

(OTHER UNRELATED CASES HEARD.)

(LUNCH BREAK.)

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| CASE NUMBER: | 20STCP00771 |
| CASE NAME: | SNOWBALL WEST INVESTMENTS, L.P. VS CITY OF LOS ANGELES, ET AL. |
| LOS ANGELES, CALIFORNIA | WEDNESDAY, MARCH 24, 2021 |
| DEPARTMENT 86 | HON. MITCHELL L. BECKLOFF |
| REPORTER: | JANET CHO, CSR NO. 14359 |
| TIME: | P.M. SESSION |
| APPEARANCES: | (AS HERETO NOTED.) |

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT:)

THE COURT: GOOD AFTERNOON. I WAS GOING TO SAY MORNING, BUT I THINK I MEANT -- WE SURVIVED THE MORNING. IF I COULD -- IF YOU ALL CAN HEAR ME -- YOU SHOULD BE UNMUTED. LET'S START WITH MR. GAINES.

MR. GAINES, COULD YOU, PLEASE, STATE YOUR APPEARANCE.

MR. GAINES: GOOD AFTERNOON, YOUR HONOR. FRED GAINES OF GAINES AND STACY ON BEHALF OF THE PETITIONERS.

THE COURT: THANK YOU VERY MUCH.

MS. WEINBERG.

MS. WEINBERG: GOOD AFTERNOON, YOUR HONOR. LISA WEINBERG OF GAINES AND STACY ON BEHALF OF PETITIONERS SNOWBALL WEST INVESTMENTS.

THE COURT: THANK YOU VERY MUCH.

MR. HAGAN, CAN YOU HEAR ME? AND IF SO, WILL YOU

STATE YOUR APPEARANCE, PLEASE.

(NO AUDIBLE RESPONSE.)

THE COURT: OH, I CAN'T -- I -- WAIT ONE SECOND. I MESSED UP. TRY AGAIN.

MR. HAGAN: THANK YOU, YOUR HONOR. DEPUTY CITY ATTORNEY PATRICK HAGAN ON BEHALF OF CITY OF LOS ANGELES.

THE COURT: THANK YOU VERY MUCH.

AND, MS. WONG, CAN YOU HEAR ME, AND IF SO, WOULD YOU STATE YOUR APPEARANCE, PLEASE.

(NO AUDIBLE RESPONSE.)

THE COURT: MR. HAGAN, ARE YOU EXPECTING MS. WONG?

MR. HAGAN: I'M INFORMED THAT SHE'S --

MS. WONG: HELLO?

THE COURT: OH, HI THERE.

MS. WONG: HI. YOU KNOW, I APOLOGIZE. I AM CONNECTED BY PHONE AUDIO.

THE COURT: OKAY.

MS. WONG: HOPEFULLY, THE COURT CAN HEAR ME.

THE COURT: I AM. I AM. SO COULD I HAVE YOU STATE YOUR APPEARANCE.

MS. WONG: YES. DONNA WONG FOR THE CITY OF LOS ANGELES. GOOD AFTERNOON.

THE COURT: GOOD AFTERNOON. SO I'M ASSUMING YOU

ALL HAD PLENTY OF TIME TO LOOK AT THAT TENTATIVE. AND SO I ASKED YOU BEFORE WE BROKE FOR THE LUNCH HOUR -- ALL OF OUR TECHNOLOGICAL PROBLEMS IF WE COULD CONCLUDE OUR HEARING ON APRIL 2.

MR. GAINES, WOULD THAT WORK FOR YOU?

MR. GAINES: YES, YOUR HONOR.

THE COURT: OKAY.

AND, MR. HAGAN, WOULD THAT WORK FOR YOU?

MR. HAGAN: YES, YOUR HONOR, IT WOULD.

THE COURT: OKAY. SO LET ME -- LET ME JUST START WITH -- I -- I GUESS I HAVE TO START WITH THE CITY AND ITS FOOTNOTE 23. AND I GUESS MOST OF WHAT I'VE WRITTEN IS SORT OF DIRECTED TO THE CITY IN MY LACK OF APPRECIATION OR MAYBE IT'S UNDERSTANDING OF THE CITY'S ARGUMENT.

SO, MR. HAGAN, CAN I ASK YOU TO -- YOU ARE WELCOME TO ADDRESS ANYTHING YOU WANT TO ADDRESS IN THE TENTATIVE, BUT I JUST -- IT SEEMS TO ME THAT THE MAJORITY OF THE CITY'S ARGUMENT REALLY SEEMS TO BE FOOTNOTE 23, AND THIS IS WITH REGARD TO THE HAA. AND THAT -- THE FALL BACK WOULD, THEN, BE ABOUT CONSISTENCY.

MS. WONG: YOUR HONOR, DONNA --

MR. HAGAN: YOUR HONOR, MS. WONG WILL HANDLE --

THE COURT: OKAY. GO AHEAD, MS. WONG.

MS. WONG: YES -- SORRY TO INTERRUPT THERE.

THE COURT: IT'S OKAY.

MS. WONG: SO WE UNDERSTAND THE -- THE COURT'S QUESTIONS ABOUT FOOTNOTE 23. I GUESS I JUST WANTED TO

PREFACE MY MISSTATEMENTS TO THE COURT CONTAINED -- THIS -- THE FOOTNOTE 23 IS A MEMORIALIZATION OF DECADES-OLD CODE INTERPRETATION AND ON POLICY IN THE CITY, AND SO IT WAS MEMORIALIZED IN FOOTNOTE 23. WE JUST WANTED TO DRAW THE COURT'S ATTENTION TO THE -- TO THE EXTENT THAT THERE WAS AMBIGUITY IN FOOTNOTE 23 THAT, I THINK, STEMS FROM THE COURT, JUST WANT TO DRAW THE COURT'S ATTENTION TO THE LEGISLATIVE HISTORY OF FOOTNOTE 23 AT ADMINISTRATIVE RECORD PAGES 35015, 35003, AND 35023. ALL OF WHICH INDICATE THAT THE -- THE LANGUAGE THERE IS MEANT TO BE A SHORTHAND REFERENCE FOR THE LONG-HELD POLICY INTERPRETATION OF THE CITY THAT THE -- THE ZONES ARE NOT THE -- FIRST TYPE OF ZONES ARE NOT JUST THOSE LISTED BUT ALSO ALL MORE RESTRICTIVE ZONES. SO THE ZONES THAT CARRY LESS INTENSIVE USAGE, SO TO SPEAK.

AND I KNOW THE COURT WAS LOOKING AT A PARTICULAR -- THE -- JUST FOR EXAMPLE -- AND THIS IS JUST WHAT WE PICKED UP IN THE TENTATIVE OF LOOKING AT THE, YOU KNOW, WHERE OR HOW TO TRACK THE R1 USES IN COMPARISON TO WHAT WOULD BE THE RA USES WHEN IN COMPARISON TO THE RD USES. AND ONE THING I JUST WANTED TO POINT OUT IS THAT, YOU KNOW, ALL -- ALL OF THOSE ZONES ARE BASICALLY SHORTHAND REFERENCES FOR A CATEGORY OF USES. AND SO, AS THE COURT NOTES, THERE'S NOT GOING TO BE AN EXPRESS REFERENCE OF THE ZONE THAT ARE MORE RESTRICTIVE, AND THE COURT NOTES THAT. BUT WHAT THE COURT WILL NOTICE IN THE A PARAGRAPH OF THOSE SECTIONS,

YOU WILL SEE MANY OF THE SAME USES CARRIED THROUGHOUT.

SO, FOR EXAMPLE, IN THE A ZONE, RA ZONE, R1 AND RD ZONES, YOU'LL FIND REFERENCES TO USES LIKE SINGLE-FAMILY WHO ARE GOING TO PARKS. YOU ALSO NOTE THAT, WHEN LOOKING AT OF HOW MANY DWELLING UNITS PER ACRE ARE ALLOWED, YOU'LL NOTE THAT, IN THE A ZONE, YOU REQUIRE MORE ACREAGE FOR ONE DWELLING UNIT AND LESS ACREAGE FOR ONE DWELLING UNIT IN THE MORE DENSE RD ZONE. BUT, IF SOMEONE WANTED TO BUILD LESS DENSE HOUSING IN AN RD ZONE, THEY WOULD BE ABLE TO DO THAT.

THERE'S NO MINIMUM DENSITY REQUIREMENT IN THE CITY ZONE OR CODE, IF THAT MAKES SENSE TO THE COURT. WE DON'T HAVE ANY PLAN PROVISION OR ZONING CODE PROVISION THAT SAYS, IN THIS ZONE, YOU MUST HAVE A MINIMUM DENSITY OF X. THERE'S NOTHING LIKE THAT THAT EXISTS IN OUR -- IN OUR PLANS. AND -- AND, BASED ON OUR HISTORICAL -- THE HISTORICAL INTERPRETATION OF OUR CODE, THE -- THE FOOTNOTE 23 EXPRESSES THE FACT THAT WE CONSIDER ALL LESS INTENSE ZONES TO BE INCLUDED WITHIN THE RANGE OF CORRESPONDING ZONES FOR ANY ONE PARTICULAR LAND USE DESIGNATION.

ANOTHER WAY TO LOOK AT THAT IS THE CITY WOULD BE ABLE TO -- IF IT -- IF IT -- IF IT DID IT THIS WAY -- WOULD BE ABLE TO LIST, IN ITS GENERAL PLAN NEXT TO A PARTICULAR LAND USE DESIGNATION, EVERY SINGLE ZONE ALL THE WAY A TO RD FOR ANY PARTICULAR LAND USE DESIGNATION, AND THOSE COULD BE ALL THE CORRESPONDING ZONES. HOWEVER, IN THE CITY OF LA, WE DID NOT LIST IT THAT WAY.

WE LISTED IT IN A SHORTHAND WAY THROUGH THE LANGUAGE IN FOOTNOTE 23. AND THE -- THE PAGES IN THE ADMINISTRATIVE RECORD THAT I MENTIONED UNDERSCORE THAT.

THE COURT: RIGHT. I -- I SAW THE 35023 SAYS -- IT'S ACCURATE THAT I THINK THAT'S FROM 1990 OR 1991?

IS IT -- IS IT YOUR VIEW -- I JUST -- TO TAKE PETITIONER'S REPLY, THERE'S A STATEMENT IN THE REPLY THAT THE CITY COULD ZONE EVERYTHING AS OPEN SPACE AND THERE -- THEREBY AVOID ANY APPLICATION OF THE HAA.

DO YOU --

MS. WONG: NO. THAT'S --

THE COURT: YEAH. GO AHEAD.

MS. WONG: SORRY. I -- I APOLOGIZE. THERE'S A DELAY IN THE AUDIO SO PLEASE --

SHOULD I RESPOND?

THE COURT: YES. I'M SORRY. YES.

MS. WONG: OKAY. WITH THE -- WITH THE DELAY IN AUDIO, IT -- IT CREATES ITS OWN SET OF COMPLICATIONS, SO I APOLOGIZE FOR INTERRUPTING.

NO. THE CITY WOULD NOT BE ABLE TO JUST SIMPLY ZONE EVERY PARCEL OPEN SPACE. SO THIS TAKES -- TO ONE OF THE QUESTIONS THAT THE COURT RAISED. I HAVE IT LISTED AT PAGE 10 OF THE TENTATIVE, BUT THE COURT ASKED ABOUT THIS FINAL SENTENCE IN FOOTNOTE 23. YOU KNOW, IT SAYS:

> ANY ENTITLEMENT SHALL BE
> CONSISTENT WITH THE ZONES
> SHOWN ON THE COMMUNITY PLAN,

UNLESS ACCOMPANIED BY A
CONCURRENT PLAN AMENDMENT.

AND WHAT THAT IS IS A FORWARD-LOOKING PROVISION OF THE -- OF FOOTNOTE 23. SO FOOTNOTE 23 HAS A PROVISION THAT TALKS ABOUT THE EXISTING ZONE AND HOW THEY ARE CONSISTENT. AND IT ALSO HAS THAT -- THAT FINAL PROVISION -- THAT FINAL CLAUSE THAT TALKS ABOUT WHAT KIND OF ZONES COULD BE APPROVED IN THE FUTURE.

AND SO THAT FINAL CLAUSE TALKS ABOUT THE KIND OF ZONE THAT WOULD BE APPROVED. SO, FOR EXAMPLE, WE FURTHER CITE, IF SOMEONE REQUESTED A ZONE CHANGE FOR RD5, THEY WOULD BE APPROVED FOR AN RD5. THEY WOULD NOT BE APPROVED FOR SOMETHING LESS.

THE COURT: I'M NOT SURE --

MS. WONG: -- IMPOSE AN OPEN SPACE ZONING ON THEM, IF THAT MAKES SENSE.

THE COURT: SURE. I -- I GUESS IF -- LIKE THE LEGISLATIVE HISTORY THAT YOU CITE ON 35023 WHERE THE CITY COULD HAVE LISTED EVERY POSSIBLE ZONE ON EVERY LAND USE MAP OR IN EVERY COMMUNITY PLAN, DOESN'T -- DOESN'T IT JUST AVOID -- THEN, DOESN'T IT MAKE THE HAA INAPPLICABLE TO THE CITY OF LOS ANGELES?

MS. WONG: NO. THERE ARE -- THERE ARE POTENTIAL INSTANCES WHERE --

(REPORTER INTERRUPTION;
BACKGROUND FEEDBACK.)

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MS. WONG: -- WHERE THE HAA -- SORRY. THERE'S A LITTLE BIT OF FEEDBACK -- WHERE THE HAA COULD'VE AND WOULD'VE APPLIED TO THE CITY. AND ONE THING THAT WE WOULD ASK THE COURT TO KEEP IN MIND IS THAT, OBVIOUSLY, THE HOUSING ACCOUNTABILITY ACT IS A STATEWIDE LAW. HOWEVER, EVERY JURISDICTION, EVERY CITY HAS ITS OWN SET OF CODES AND PLANS THAT CARRY WITH IT ITS OWN UNIQUE HISTORY OF INTERPRETATION AND POLICY. AND SO, FOR THE CITY OF LA, WE ARE LIKELY TO BE DIFFERENT THAN OTHER JURISDICTIONS.

BUT GETTING TO THE COURT'S POINT OF WHERE WOULD IT APPLY TO THE CITY, IN AN INSTANCE WHERE A PARCEL WAS, FOR EXAMPLE, ZONED INDUSTRIAL, WHICH DOESN'T ALLOW RESIDENTIAL PROPERTY BUT PERHAPS THE LAND USE DESIGNATION WAS SOME RESIDENT -- THE LAND ASSOCIATION WAS RESERVED RESIDENTIAL LAND DESIGNATION THAT WOULD ALLOW MULTI-FAMILY DEVELOPMENT, THE CITY WOULD, THEN, BE REQUIRED TO ALLOW MULTI-FAMILY DEVELOPMENT AT THE PLAN STANDARD, WHICH WOULD BE MEDIUM RESIDENTIAL. WE WOULDN'T -- WE WOULDN'T -- WE WOULDN'T APPLY THE INDUSTRIAL STANDARDS TO THE SITE, IF THAT MAKES SENSE.

THE COURT: CAN I -- YES --

MS. WONG: SO THAT'S -- THAT'S WHERE IT WOULD APPLY TO THE CITY.

THE COURT: UNDERSTOOD.

CAN I ASK YOU TO EXPLAIN THE FINAL SENTENCE OF FOOTNOTE 23 AGAIN. I'M NOT SURE I FOLLOWED IT OR UNDERSTOOD.

MS. WONG: SURE. LET ME JUST PULL UP --

THE COURT: SURE.

MS. WONG: -- THE FOOTNOTE VERY QUICKLY. SO I -- IF I'M READING THE COURT'S TENTATIVE CORRECTLY, THE COURT IS POINTING TO THIS SENTENCE OF:

> IT IS THE INTENT OF THE PLAN
> THAT THE ENTITLEMENTS
> GRANTED SHALL BE ONE OF THE
> ZONE DESIGNATIONS WITHIN
> THE CORRESPONDING ZONES
> SHOWN ON THE PLAN, UNLESS
> ACCOMPANIED BY A CONCURRENT
> PLAN AMENDMENT.

SO THAT PHRASE IS -- IS WHAT I WAS REFERRING TO AS THE FORWARD-LOOKING PORTION OF FOOTNOTE 23. AND WHAT THAT MEANS IS: IF THERE IS A REQUEST FOR A ZONE CHANGE, THEN, IF THERE IS ANY ZONE CHANGE TO BE GRANTED AT ALL, THEN IT WOULD BE ONE OF THE ZONED ZONES THAT ARE LISTED ON THE FACE OF THE PLAN.

THE COURT: OKAY. I -- I UNDERSTAND WHAT YOU ARE EXPLAINING.

MS. WONG: AS OPPOSED TO A SCENARIO WHERE THE CITY WOULD SIMPLY SAY, WE WILL MAKE YOU OPEN SPACE, EVEN THOUGH THE FACE OF THE PLAN SAYS THAT. HOWEVER, IF THERE ARE EXISTING ZONES, THOSE EXISTING ZONES WOULD REMAIN IN PLACE. AND WE WOULD UPHOLD THOSE ZONES UNDER FOOTNOTE 23.

THE COURT: UNDERSTOOD. OKAY.

ANYTHING ELSE YOU WANT TO ADD ABOUT FOOTNOTE 23 BEFORE I HEAR FROM MS. WEINBERG OR MR. GAINES ON FOOTNOTE 23?

MS. WONG: I THINK, WITH REGARD TO FOOTNOTE 23 -- AND I DON'T KNOW IF THIS WOULD BE THE APPROPRIATE TIME IN THE HEARING TO RAISE THIS -- BUT WE WOULD LIKE AN OPPORTUNITY TO DISCUSS THE ISSUE OF WHETHER THE APPROPRIATE POINT OF ANALYSIS IS THE CONSISTENCY OF THEIR REQUESTED ZONING -- THE DEVELOPERS' REQUESTED ZONING OR THE CONSISTENCY OF THE EXISTING ZONING.

THE COURT: MEANING, THE QUESTION -- WELL, I THINK YOU ARGUED THAT THE QUESTION -- AND MAYBE I'M WRONG -- BUT THE QUESTION IS, NOT THE CONSISTENCY OF THE ZONING THAT THE DEVELOPERS ARE REQUESTING, BUT THE CONSISTENCY OF THE CURRENT ZONING WITH THE COMMUNITY IN PLAN.

MS. WONG: CORRECT. THAT --

THE COURT: UNDERSTOOD.

MS. WONG: -- DETERMINING WHETHER A ZONE CHANGE IS -- IS EXCUSED, THE APPROPRIATE FRAMEWORK IS TO LOOK AT THE EXISTING ZONING.

THE COURT: UNDERSTOOD.

MS. WONG: OKAY.

THE COURT: SO -- SO -- I -- I -- WE -- YOU'LL HAVE PLENTY TO -- I'M NOT GOING TO CUT YOU OFF. I MEAN, IF I -- IF I DON'T CIRCLE BACK TO THAT, YOU ARE WELCOME TO BRING IT UP. I -- I -- AND I WILL SAY, EVEN THOUGH THIS MORNING WAS WHAT IT WAS IN TERMS OF ALL OF THE

WAITING AND ALL OF THAT, I'M SORT OF GLAD THAT YOU ARE HERE BY YOURSELF THIS AFTERNOON SO WE CAN HAVE A DISCUSSION ABOUT THESE THINGS.

LET ME ASK MS. WEINBERG OR MR. GAINES TO RESPOND TO THE FOOTNOTE 23 ISSUE.

MS. WEINBERG: THANK YOU, YOUR HONOR. LISA WEINBERG. I'LL BE HANDLING THAT.

MAY I JUST ASK, DO WE STILL HAVE THE BENEFIT OF A COURT REPORTER FOR THIS HEARING?

THE COURT: YES. YES.

MS. WEINBERG: WE DO? OKAY. THANK YOU. THANK YOU.

YOUR HONOR, I'D LIKE TO DRAW YOUR ATTENTION TO ANOTHER PAGE -- NEARBY PAGE IN THE LEGISLATIVE HISTORY OF FOOTNOTE 23. IT'S ALSO IN THE RECORD. IT'S PAGE 35018.

THE COURT: OKAY.

MS. WEINBERG: IF YOU LOOK AT THE PART THAT TALKS ABOUT THE RATIONALE FOR THE AMENDMENT, THE FIRST BULLET POINT SAYS:

> THE ZONE MORE RESTRICTIVE
> THAN SHOWN IN THE PLAN
> CATEGORY ARE CONSISTENT WITH
> PLAN BASED UPON HISTORY OF
> 8283.

8283 IS GOVERNMENT CODE 65860 WHICH REQUIRES THAT ZONING ORDINANCES BE CONSISTENT WITH PLANS. THE -- THIS STATUS REPORT GOES ON TO STATE THAT THERE'S

APPROXIMATELY 8,000 AFFECTED PARCELS.

SO WHAT WAS HAPPENING AT THE TIME WAS THAT THE CITY WAS REQUIRED TO COMPLY WITH THE STATE LAW REQUIRED CONSISTENCY OF THE ZONING ORDINANCE OF THE GENERAL PLAN AND FOUND THAT THERE WERE ABOUT 8,000 PARCELS REMAINING TO BE REZONED -- MAINLY UNZONED BECAUSE THEY WERE ZONED INAPPROPRIATELY AND INCONSISTENTLY. THE CITY HAS TRIED FOR A WHILE TO TRY TO DO BATCH PROCESSING OF LARGE NUMBERS OF PROPERTIES THAT WERE INCONSISTENTLY ZONED AND FOUND THAT TO BE VERY EXPENSIVE AND CUMBERSOME.

SO FOOTNOTE 23 WAS ADOPTED BY THE CITY TO PUT THE BALL BACK IN THE PROPERTY OWNER'S COURT. THEY SAID, YOU KNOW WHAT. WE'RE JUST GOING TO SAY FOR NOW THAT THESE MORE RESTRICTIVELY ZONED PROPERTIES IS CONSISTENT WITH THE PLANS, AND WE DON'T HAVE TO DEAL WITH 65860. BUT THEN, AS PROPERTY OWNERS COME TO US WANTING TO DEVELOP THEIR PROPERTY, WE WILL HAVE THEM DO A REZONE APPLICATION. THEY CAN PAY THE FEES FOR DOING IT. THEY SAVE THE CITY THE TIME AND THE EFFORT, AND WE'LL ADD THIS LAST SENTENCE TO FOOTNOTE 23 THAT SAYS THAT, WHEN THAT HAPPENS -- WHEN ENTITLEMENTS ARE SOUGHT, IT IS THE INTENTION THAT THE CORRESPONDING ZONES SHOWN ON THE PLAN ARE THE ONES THAT ARE GOING TO BE FOUND -- ARE GOING TO BE APPROVED BECAUSE THOSE ARE THE ONES THAT ARE TRULY CONSISTENT WITH THE GENERAL PLAN. SO IT WAS JUST A HOLDING PATTERN SO THEY DIDN'T HAVE TO DEAL WITH THE HEADACHE OF -- OF MAKING EVERYTHING COMPLY ALL AT ONCE.

THERE IS -- THE COURT GOT IT ABSOLUTELY RIGHT

THAT THE CITY'S ZONING ORDINANCE, UNLIKE MANY OTHER CITIES AND COUNTIES, DOESN'T BEGIN EACH DESCRIPTION OF EACH NEW ZONING DESIGNATION BY SAYING THAT IT ALLOWS ALL THE USES IN THIS NEXT LOWER DESIGNATION PLUS THE FOLLOWING. THAT'S A TYPICAL WAY OF DOING IT. IF THE CITY HAD DONE THAT, THEN THIS FOOTNOTE 23 MAY HAVE MADE SOME SENSE, BUT IT DOESN'T. THERE'S NO INCORPORATION OF MORE EXCLUSIVE ZONES, SO THE -- FOOTNOTE 23 IS INTERNALLY AMBIGUOUS AND -- AND REALLY NONSENSICAL ANYWAY, BUT THAT LAST SENTENCE REALLY IS THE NAIL ON THE COFFIN FOR THE CITY CLAIMING THAT IT EXEMPTS THEM FROM COMPLYING WITH THE HAA.

I THINK THAT MS. WONG AND HER ARGUMENT BASICALLY CONCEDED THAT. SHE SAID THAT IT'S LOOKING FORWARD. IF A PROJECT AND DEVELOPER COMES AND SEEKS A ZONE THAT IS ONE OF THE CORRESPONDING ZONES, THEN THAT WOULD BE CONSISTENT WITH THE PLAN AND THAT WOULD BE APPROVED. THE CITY WOULDN'T IMPOSE ONE OF THE MORE RESTRICTIVE ZONES. WELL, THAT'S EXACTLY WHAT HAPPENED HERE.

SNOWBALL CAME AND SAID, I HAVE ONE OF THESE MORE RESTRICTIVE ZONES THAT'S NOT LISTED AS THE CORRESPONDING ZONE. YOU NEED TO EITHER APPROVE ME BECAUSE I AM CONSISTENT NOW WITH MY PROPOSED PROJECT -- CONSISTENT WITH THE GENERAL PLAN, OR YOU DON'T EVEN NEED TO DO IT BECAUSE, UNDER THE HAA, BECAUSE I HAVE THIS EXISTING -- EXISTING, NON CONSISTENT -- INCONSISTENT ZONING, I DON'T EVEN NEED THE ZONE CHANGE. THE LEGISLATIVE HISTORY THAT WE CITED TO THE COURT IN OUR REPLY BRIEF ALSO SAYS THAT,

WHEN THE HAA WAS AMENDED IN 2018, EFFECTIVE JANUARY 1, 2019, THE EXACT PURPOSE OF THE AMENDMENT WAS TO PROHIBIT THE CITY FROM DOING EXACTLY WHAT IT'S TRYING TO DO HERE.

THE -- THE SENATE COMMITTEE ON GOVERNMENTS AND FINANCE HAD A BILL ANALYSIS JUST COUPLE MONTHS BEFORE THE BILL WAS FINALLY APPROVED STATING THAT, ACCORDING TO DEVELOPERS, SOME LOCAL AGENCIES INTENTIONALLY MAINTAIN INCONSISTENCIES BETWEEN THE ZONING AND GENERAL PLANS -- GAIN AN ADDITIONAL MEASURE OF CONTROL OVER DEVELOPMENT. BY MAINTAINING LOW DENSITIES THAT ARE INCONSISTENT WITH THE GENERAL PLAN FOR THE EXPRESSED PURPOSE OF REQUIRING REZONING, EVEN WHEN PROJECTS ARE CONSISTENT WITH HOUSING DENSITY AND OTHER OBJECTIVE STANDARDS CONTAINED IN THE GENERAL PLAN, LOCAL GOVERNMENTS CAN ENSURE THAT THEY MAINTAIN DISCRETIONARY APPROVAL OVER PROJECTS. SO, TO AVOID THAT, THE LEGISLATURE AMENDED THE HAA TO ADD SECTION J4 WHICH SPECIFICALLY SAYS THAT, IF YOU HAVE ZONING THAT'S INCONSISTENT WITH THE GENERAL PLAN, WHICH YOU CAN TELL FROM THEIR LEGISLATIVE HISTORY MOVE -- MORE RESTRICTIVE ALLOWING LESS DENSITY, THEN YOU DON'T NEED A ZONE CHANGE, AND THE PROJECT NEEDS TO BE APPROVED UNLESS THERE'S SOME FINDINGS MADE.

THE -- SNOWBALL'S SHOWN HERE THAT ITS PROJECT IS CONSISTENT WITH GENERAL PLAN. THE COURT HAS TENTATIVELY RULED AND FOUND THAT THAT'S NOT IN DISPUTE. AND THAT -- JUST, AS A MATTER OF COMMON SENSE, BECAUSE OF THE NUMBERS INVOLVED -- THE DENSITY THAT'S ALLOWED, AND, UNDER FOOTNOTE 23 ITSELF -- THE LAST SENTENCE OF IT AND

UNDER THE EXPRESS LANGUAGE AND INTENTION OF THE HAA, THE CITY'S INTERPRETATION OF ITS OWN CODES IS SIMPLY WRONG, AND, ALSO, IT'S NOT ENTITLED TO THE KIND OF DEFERENCE THAT THE CITY IS CLAIMING. THE HAA ITSELF AGAIN SAYS THAT, WHEN YOU ARE TALKING ABOUT CONSISTENCY WITH THE GENERAL PLAN, YOU HAVE TO LOOK AT WHAT A REASONABLE PERSON WOULD -- WOULD FIND SUBSTANTIAL. SO IT'S NOT THE CITY HAVING UNFETTERED DISCRETION TO MAKE THAT DETERMINATION IN ITS OWN HEAD AND THEN IMPOSE IT ON PEOPLE. IT HAS TO COMPLY WITH STATE LAW AND IS MAKING THIS LAW STRONGER AND STRONGER EVERY YEAR TO PREVENT CITIES FROM DOING EXACTLY WHAT THE CITY OF LA IS TRYING TO DO HERE, SO WE WOULD ASK THE COURT TO ENFORCE THE HAA AGAINST THE CITY OF LA IN THIS CASE.

THE COURT: MS. -- MS. WONG?

WELL, LET ME -- BEFORE MS. WONG, LET ME ASK A QUESTION. THERE IS A STATEMENT IN THE OPPOSITION THAT THE REPLY WAS NOT ADDRESSED. AND IT WAS A SUGGESTION THAT, IN ORDER FOR A PROJECT TO QUALIFY FOR THE HAA, THE PROJECT WOULD HAVE -- HAD TO HAVE BEEN INITIATED UNDER THE PERMIT STREAMLINING ACT, AND I'M WONDERING WHAT YOUR THOUGHTS ARE ABOUT THAT. YOU KNOW, BECAUSE THERE'S THAT LANGUAGE IN THE HAA ABOUT AN APPLICATION BEING DEEMED COMPLETE. THE OPPOSITION BRINGS UP THE -- THE STREAMLINE -- THE PERMIT STREAMLINING ACT, AND I WAS WONDERING WHAT THE REPLY TO THAT IS.

MS. WEINBERG: YEAH. I THOUGHT THAT WAS SORT OF A RED HERRING, SORT OF A SIDE NOTE. I DON'T THINK THAT

IT REALLY RAISES ISSUES THAT ARE RELEVANT OR -- OR IMPORTANT HERE. BUT THE -- THERE ARE DEFINITIONS WITHIN THE HAA THAT REFER TO THE PERMIT STREAMLINING ACT, WHICH HAS BEEN AMENDED TO REFER TO THE HAA. SO LEGISLATURE HAS AMENDED BOTH LAWS JUST LIKE THEY ALSO ADOPTED THE HOUSING CRISIS ACT, WHICH HAS THE SAME LANGUAGE AS THE HAA WHEN IT COMES TO SECTION J4 --

(REPORTER INTERRUPTION;
COURT TECHNOLOGICAL FEED
BREAKING UP.)

MS. WEINBERG: SO THEY ARE REALLY TRYING TO GET THEIR FINGERS INTO EVERY STATE LAW THAT MAY HAVE SOMETHING TO DO WITH -- SO THAT THEY CAN ENFORCE THEIR -- THE -- THE STRONG NEED TO GET HOUSING APPROVED. SO THERE IS SOME LANGUAGE IN THERE ABOUT WHEN A PROJECT IS DEEMED COMPLETED -- DETERMINED TO BE COMPLETE THAT REFERENCES TO THE ADDITIONAL -- ADDITIONS TO THE -- TO THE DSA PERMIT ISSUING ACT. BUT THEY DON'T IMPACT ON THE HAA'S APPLICATION FOR THE PROJECT. THE HAA SIMPLY SAYS THAT, ONCE A PROJECT IS BEING APPROVED, THEN THE CITY CAN'T GO BACK LATER AND -- I'M SORRY -- THE APPLICATION IS DEEMED COMPLETE, THE CITY CAN'T GO BACK LATER AND CHANGE THE STANDARDS.

HERE, WE'VE GOT A PROJECT THAT WAS FILED 12 YEARS BEFORE THE CITY FINALLY APPROVED IT, SO THE PERMIT STREAMLINING ACT CERTAINLY DOESN'T APPLY TO THIS

PROJECT. BUT THAT DOESN'T MEAN THAT THE HOUSING ACCOUNTABILITY ACT DOESN'T APPLY TO THIS PROJECT. IT CERTAINLY DOES. BECAUSE IT'S EXACTLY INTO THE FOUR CORNERS OF A HOUSING DEVELOPMENT PROJECT THAT'S DEFINED IN THE LEGISLATION ITSELF.

MR. GAINES: AND --

THE COURT: WHAT DO YOU MAKE OF -- WHO WAS THAT?

MR. GAINES: THIS IS MR. GAINES.

DO YOU MIND IF I ADD A COMMENT?

THE COURT: SURE. GO AHEAD.

MR. GAINES: THANK YOU. SO THE EVEN MORE OBVIOUS REASON -- THE PERMIT STREAMLINING ACT, ON ITS OWN, DOES NOT APPLY TO THE ZONE CHANGE -- DOESN'T APPLY TO LEGISLATIVE ACTS. BUT, CLEARLY, THE HOUSING ACCOUNTABILITY ACT APPLIES TO ZONE -- TO ZONE CHANGES. IT TALKS SPECIFICALLY ABOUT HOW YOU MAY NOT EVEN NEED A ZONE CHANGE IF YOU ARE CONSISTENT AND THAT THE ZONE, YOU KNOW, MUST BE CONSISTENT. SO THE -- I THINK THAT EVEN DRIVES -- IT DRIVES HOME THE POINT ABOUT HOW THE -- THERE WAS A REFERENCE PURPOSED ON SOME OF THE DEFINITIONS, BUT IT CLEARLY DOESN'T DISQUALIFY THE PROJECT IN ANY WAY FROM -- OF BEING DEEMED APPROVED UNDER OR BEING -- ALLOWING YOU TO ORDER IT TO BE APPROVED UNDER THE HOUSING ACCOUNTABILITY ACT.

NOW, THE OTHER COMMENT I WANTED TO MAKE ON THE EARLIER POINT, YOUR HONOR, WAS, TO THE EXTENT THAT THE CITY HAS A LONG TIME INTERPRETATION OF FOOTNOTE 23 THAT THEY ARE NOW ARGUING, SOMEHOW, THE CITY PLANNING

DEPARTMENT DIDN'T SEEM TO KNOW ABOUT IT BECAUSE IT NEVER CAME UP IN ALL -- IN THEIR APPROVALS THAT WERE -- IN EVERY ONE OF THEM WHERE THEY WERE SAYING, IN ORDER TO BE CONSISTENT, YOU NEED TO CHANGE THE ZONE. AND IT NEVER CAME UP WITH THE PLANNING COMMISSION; IT NEVER CAME UP WITH THE -- ABOUT DEPUTY WISER INSTANCE. SO THE -- THE ANALYSIS OF BEING ASKED TO -- TO ACCEPT NOW IS NOT ONE THAT IS -- THAT YOU'LL FIND IN THE RECORD BEING SUPPORTED BY -- IF IT WAS SUCH A DECADES-OLD INTERPRETATION THAT EVERYONE KNEW OF -- THIS WAS THE RULE. THAT WAS NOT. THEN, EVERYONE FORGOT ABOUT IT -- THE PLANNING DEPARTMENT AND THE PLANNING COMMISSION. BECAUSE THEY DID NOT -- IT NEVER -- IT WAS -- YOU WON'T FIND THAT STATED ANYWHERE IN ANY OF THE APPROVALS WITH DETAILED FINDINGS AS TO WHY THE ZONE CHANGE IS NEEDED TO FORM A BASIS. THANK YOU, YOUR HONOR.

THE COURT: MEANING -- MEANING IT'S A POST HOC RATIONALIZATION.

MR. GAINES: CORRECT.

THE COURT: OKAY.

MS. WONG, RESPONSE TO ANYTHING MS. WEINBERG OR MR. GAINES SAID.

MS. WONG: YES. I'LL START OFF WITH THE -- THE LANGUAGE IN SOME OF THE OTHER DECISIONS -- TRACT MAP DECISIONS AND THE SITE PLAN REVIEW DECISIONS THAT WAS JUST RECENTLY DISCUSSED. SO THAT LANGUAGE THAT THE COURT POINTS TO IN ITS TENTATIVE, YOU KNOW, THINGS LIKE THE ZONE -- THE ZONE CHANGE WOULD BRING THE ZONING INTO

CONFORMANCE OR BRING ZONING INTO CONFORMANCE, THAT LANGUAGE IS MEANT TO INDICATE JUST THAT THE REQUESTED ZONING WOULD ALSO BE CONSISTENT WITH THE PLAN. IT IS -- IT IS CLEARLY ONE OF THE ZONES LISTED ON THE FACE OF THE -- THE MAP LEGEND, AND IT WAS STATED THAT WAY, BUT IT'S MEANT TO REFER TO HOW THE DECISION MAKER IS -- SHOULD BE LOOKING AT OR WAS ASKED TO LOOK AT THE REQUESTED ZONE. THERE -- IT'S NOT A STATEMENT THAT THE EXISTING ZONE WAS INCONSISTENT, AND, THEREFORE, THE NEW ZONING WOULD MAKE IT CONSISTENT. THERE'S ALWAYS A -- THEY MAKE A REFERENCE TO THE REQUESTED ZONING. THAT THE REQUESTED ZONING WOULD ALSO BE CONSISTENT. THAT THE REQUESTED ZONING WOULD NOT MAKE THE SITE INCONSISTENT; IT WOULD BE CONSISTENT. SO THAT'S JUST TO CLEAR THAT UP. THE --

THE COURT: NOW --

MS. WONG: I'M GOING TO --

THE COURT: I'M SORRY. GO AHEAD.

MS. WONG: OH, NO. GO AHEAD.

THE COURT: I WAS JUST GOING TO ASK YOU IF THAT WAS THE TOPIC THAT YOU BROUGHT UP EARLIER THAT I SAID I THOUGHT WE WOULD CIRCLE BACK TO? IS THAT THE EARLIER POINT YOU WANTED TO MAKE?

MS. WONG: IT'S RELATED. AND, SINCE WE'RE ON THE THAT TOPIC, YOU KNOW, I WOULD LIKE TO GET INTO THAT A LITTLE FURTHER. FOR PURPOSES OF THIS LAWSUIT, PETITIONERS ARE ASKING THE COURT TO APPLY THE HOUSING ACCOUNTABILITY ACT TO FIND AND TO DENY TO THE CITY OF

LEGISLATIVE ACTION. WE -- WE LAID OUT OUR VIEWS, YOU KNOW, IN OUR BRIEF WHY WE THINK IT DOES NOT APPLY.

FOR, ONE, A PROJECT WHICH DOES NOT COMPLY WITH THE ZONING AND PLANNING STANDARDS -- THE OBJECTIVE PLANNING AND ZONING STANDARDS IS NOT ENTITLED TO THOSE FINDINGS. THE CITY CAN DENY SUCH A PROJECT. SO THE PROVISION OF THE HOUSING ACCOUNTABILITY ACT IN J1 INDICATES THAT. IT SAYS THAT, IF A PROJECT COMPLIES WITH THE PROSPECTIVE STANDARDS, THEN THE CITY WOULD NEED TO MAKE THE FOLLOWING FINDINGS IN ORDER TO DENY OR REDUCE THE DENSITY. BY DEFINITION, IF A PROJECT IS SEEKING A ZONE CHANGE TO -- TO MOVE FROM WHAT IS ALLOWED AT 19 UNITS OR 20 UNITS TO LITTLE OVER 200, THAT PROJECT DOES NOT COMPLY WITH THE OBJECTIVE STANDARDS. THE ONLY WAY THAT THE PETITIONER CAN GET TO A POINT WHERE THEY DON'T NEED A ZONE CHANGE IS IF THEY CAN DEMONSTRATE ZONE PLANNING CONSISTENCY UNDER THE HOUSING ACCOUNTABILITY ACT AT SUBDIVISION J4.

AND WE UNDERSTAND PETITIONER'S ARGUMENT IS THAT THE HOUSING ACCOUNTABILITY ACT PURPORTEDLY WAS BEING AMENDED SO THAT ALL PROJECTS WOULD NEED TO BE JUDGED BY THE DENSITY STANDARD IN THE PLAN. HOWEVER, IN LOOKING AT THE LEGISLATIVE ANALYSES ATTACHED TO THEIR RJN THAT THEY DON'T APPLY, THOSE ANALYSES SHOW THAT ANY LANGUAGE THAT MIGHT HAVE BEEN INITIALLY BEEN PUT INTO THE BILL TO REQUIRE CITIES TO JUDGE PROJECTS BY THE STANDARD IN THE PLAN ONLY, THAT LANGUAGE WAS THEN LATER DELETED OUT AND TAKEN OUT BY THE TIME THAT IT ACTUALLY PASSED BOTH

HOUSES IN THE LEGISLATURE. AND, TO JUST POINT OUT WHY -- POINT OUT TO THE COURT WHY THE COURT SHOULD FIND THAT LANGUAGE -- THAT DELETION TO BE IMPORTANT IS THAT THE LEGISLATURE KNOWS HOW TO INDICATE THAT CITIES SHOULD JUDGE PROJECTS BY THE STANDARDS IN THE GENERAL PLAN. WE CITED THAT AT PAGE 24 IN THE OPPOSITION BRIEF. BUT GOVERNMENT CODE 65913.4, WHICH SOME INDIVIDUALS DEFER TO SB 35, THAT PROVISION ALLOWS FOR THE STREAMLINING OF PROJECTS THAT HAVE DEEP LEVELS OF AFFORDABLE UNITS. SO THERE ARE -- IT'S MANY MORE AFFORDABLE UNITS THAN WOULD NORMALLY BE INCLUDED IN A TYPICAL PROJECT THAT WOULD QUALIFY FOR WHAT'S KNOWN AS DENSITY BONUS, WHERE YOU PROVIDE A CERTAIN PERCENTAGE OF AFFORDABLE AND THEN YOU GET CERTAIN DEVIATIONS FROM DEVELOPMENT STANDARDS. AND, IN THAT PROVISION AT SUBDIVISION A5A, WHICH WE CITE ON PAGE 24 OF OUR BRIEF, THAT -- THAT PROVISION REQUIRES THE CITY TO JUDGE PROJECTS BY THE MAXIMUM DENSITY ALLOWED IN THE PLAN. IT -- IT JUST SAYS THAT A DEVELOPMENT SHALL BE CONSIDERED CONSISTENT IF IT COMPLIES WITH THE MAXIMUM DENSITY STANDARDS IN THE PLAN.

THE HAA DOES NOT HAVE THAT KIND OF LANGUAGE. THE FACT THAT THE LEGISLATURE DID NOT INCLUDE THAT KIND OF LANGUAGE HERE AND THE HOUSING ACCOUNTABILITY ACT DELETED THAT LANGUAGE OUT BY THE TIME THE -- THE BILL PASSED BOTH HOUSES IS INDICATIVE OF THE FACT THAT THE LEGISLATURE, AT THE END OF THE DAY, INTENDED TO NOT INCLUDE A REQUIREMENT THAT THE CITY ONLY JUDGE PROJECTS BY THE MAXIMUM DENSITY ALLOWED IN THE LAND USE

DESIGNATION IN THEIR GENERAL PLAN.

AND, FOR THAT REASON, WE SUBMIT TO THE COURT THAT THE HOUSING ACCOUNTABILITY ACT DOES NOT REQUIRE THE CITY TO APPROVE A PROJECT SIMPLY BECAUSE IT MEETS THE GENERAL PLAN STANDARDS. UNDER THE HOUSING ACCOUNTABILITY ACT UNDER (J)(1), A PROJECT NEEDS TO MEET BOTH THE ZONING AND PLANNING STANDARDS BEFORE THE CITY IS REQUIRED TO MAKE THE TWO FINDINGS TO DENY. AND SO, FOR THE REASON STATED EARLIER, WE SAY THAT BECAUSE THIS PROJECT, IN PARTICULAR, DID NOT MEET THOSE STANDARDS, THE CITY WOULD, THEN, BE SEEKING A ZONE CHANGE. THE CITY ISN'T REQUIRED TO MAKE THOSE FINDINGS.

MS. WEINBERG: YOUR HONOR, MAY I -- OH.

THE COURT: MS. WONG, CAN I INTERRUPT YOU TO ASK YOU --

MS. WONG: SURE.

THE COURT: -- A QUESTION. CAN YOU -- LOOKING AT (J)(1), CAN YOU TAKE THAT FIRST SENTENCE THAT YOU WERE TALKING ABOUT WHICH IS: APPLICABLE, OBJECTIVE GENERAL PLAN, ZONING, AND SUBDIVISION STANDARDS AND CRITERIA -- CAN YOU PUT IT IN A CONTEXT OF THIS CASE?

WHAT THAT -- WHAT THAT STATEMENT MEANS TO THE CONTEXT OF THIS CASE?

(REPORTER INTERRUPTION.)

THE COURT: OKAY. SORRY. I'LL TRY TO KEEP MY VOICE UP.

THE COURT REPORTER: THANK YOU, YOUR HONOR.

THE COURT: LET ME -- SOMETIMES -- THESE PROBLEMS -- SO -- JUST SO THE COURT REPORTER -- MAKE SURE THE COURT REPORTER HEARD, THE FIRST SENTENCE OF (J)(1), RUNNING THROUGH SUBDIVISION STANDARDS AND CRITERIA, MS. WONG, CAN YOU -- CAN YOU USE THAT SENTENCE AND -- THAT PHRASE AND THAT SENTENCE AND PUT IT IN THE CONTEXT OF THIS PROJECT?

MS. WONG: SURE. I CAN TRY. THE (J)(1) -- AND THE COURT IS LOOKING AT THE -- THE STATEMENT OF:

> WHEN A PROPOSED HOUSING
> DEVELOPMENT PROJECT
> COMPLIES WITH APPLICABLE,
> OBJECTIVE GENERAL PLAN,
> ZONING, AND SUBDIVISION
> STANDARDS AND CRITERIA,
> INCLUDING DESIGN REVIEW
> STANDARDS, IN EFFECT AT THE
> TIME THAT THE APPLICATION
> WAS DEEMED COMPLETE.

IS THAT THE LANGUAGE THE COURT IS LOOKING AT?

THE COURT: YES.

MS. WONG: THE -- FOR THIS PROJECT, AT THE TIME THAT THE APPLICATION WAS SUBMITTED, IT WAS PROPOSED TO DEVELOP IN EXCESS OF 200 UNITS OF HOUSING. AT THE TIME THE APPLICATION WAS SUBMITTED -- WHILE THE PLAN THAT IDENTIFIED A PARTICULAR LAND USE DESIGNATION, IT ALSO IDENTIFIED A PARTICULAR ZONE THAT APPLIED TO EACH OF THE

PARCELS. AND THE ZONING STANDARDS, IN CONJUNCTION WITH THE PLANNING WITH THE PLAN DESIGNATION, LIMITED DEVELOPMENT ON THE SITE TO 19 UNITS. AND, FOR THAT REASON, THIS PARTICULAR PROJECT DOES NOT COMPLY WITH THE ZONING AND PLANNING STANDARDS IN EFFECT AT THE TIME THE APPLICATION WAS SUBMITTED.

THE COURT: OKAY. SO LET ME -- LET ME --

MS. WONG: DOES THAT HELP?

THE COURT: YES. SO LET ME -- LET ME TRY TO SUMMARIZE THAT TO SEE IF THIS IS WHAT YOU ARE SAYING, AND THEN I'LL HEAR FROM MS. WEINBERG, IF THEY HAVE SOMETHING TO SAY. THEY MAY WANT TO ADD SOME -- SOMETHING -- ADD SOMETHING TO THIS DISCUSSION AS WELL.

BUT THE -- THE NOTION IS THAT THIS HOUSING PROJECT HAD 249 RESIDENTIAL UNITS WHEN THE APPLICATION WAS SUBMITTED. AND THE ZONING THAT WAS THEN -- THE ZONING STANDARDS AND CRITERIA THAT WAS IN EFFECT AT THE TIME THE APPLICATION WAS COMPLETE ALLOWED FOR 19 RESIDENTIAL UNITS. AND, FOR THAT REASON, THE HAA DOES NOT APPLY.

MS. WONG: THE FIND -- WE WOULD SAY THAT THE FINDINGS DO NOT APPLY.

THE COURT: THE WHAT -- WHICH FINDINGS?

MS. WONG: THE FINDINGS IN (J)(1)(A) AND (B).

THE COURT: MEANING THAT --

MS. WONG: THEY'RE FINDING --

THE COURT: SORRY.

MEANING THAT THE CITY WOULD NOT HAVE TO MAKE THE

FINDINGS IN ORDER TO DISAPPROVE THE PROJECT.

MS. WONG: CORRECT.

THE COURT: OKAY. THANK YOU.

MS. WEINBERG.

MS. WEINBERG: YOUR HONOR, READING SECTION (J)(1) IN A -- IN A VACUUM WITHOUT ALSO READING SECTION (J)(4) WOULD BE INCORRECT. (J)(4) WAS THE MORE RECENT AMENDMENT THAT WAS INTENDED TO STOP, SAY, FROM HAVING ZONING THAT'S MORE RESTRICTIVE THAN THE PLANS AND USING THAT AS THE BASIS -- THE NEED FOR AN INDIVIDUAL REASON AS THE BASIS FOR DENYING THE PROJECT UNDER (J)(1). SO (J)(4) EXPLICITLY STATES THAT, IF THE ZONING IS NOT CONSISTENT WITH THE PLAN, WHICH THE LEGISLATURE MEANT TO MEAN MORE RESTRICTIVE THAN THE PLAN AS SHOWN BY THE LEGISLATIVE HISTORY, THEN -- YOU KNOW, DENSITY WISE -- THEN THE PROJECT SHOULD BE TREATED AS THOUGH IT IS IN COMPLIANCE WITH ALL OBJECTIVE STANDARDS OF THE CITY, AND (J)(1) AND ITS FINDINGS REQUIREMENT WOULD APPLY.

MS. WONG'S ARGUMENT SUFFERS FROM THE SAME ISSUE AS THE ARGUMENT ABOUT FOOTNOTE 23. IT IGNORES THE LAST SENTENCE OF THE PROVISION. SECTION (J)(4) STATES THAT THE ZONE CHANGE WILL NOT BE REQUIRED IF THE PROJECT IS CONSISTENT WITH THE OBJECTIVE GENERAL PLAN STANDARDS AND CRITERIA, BUT THE ZONING FOR THE PROJECT SITE IS INCONSISTENT WITH THE GENERAL PLAN. IT GOES ON TO THEN SAY:

> THE STANDARDS AND CRITERIA
> SHALL BE APPLIED TO

FACILITATE AND ACCOMMODATE
DEVELOPMENT AT THE DENSITY
ALLOWED ON SITE BY THE
GENERAL PLAN AND PROPOSED
BY THE PROPOSED HOUSING
DEVELOPMENT PROJECT.

AND THE LEGISLATURE DID PUT THAT INTO THE AMENDMENT. THEY DID SPECIFICALLY STATE THAT, IF A PROJECT IS PROPOSING A DENSITY THAT IS PERMITTED UNDER THE GENERAL PLAN, THEN THAT'S WHAT SHOULD BE FACILITATED AND ACCOMMODATED BY THE CITY.

THE COURT: OKAY. WHAT -- I INTERRUPTED YOU, AND I THINK YOU WANTED TO SAY SOMETHING EARLIER, AND I SAID, "ONE MOMENT."

IS THERE SOMETHING ELSE?

MS. WEINBERG: THAT -- THAT WAS THE POINT I WAS GOING TO MAKE, YOUR HONOR.

THE COURT: OKAY.

MS. -- MS. WONG.

MS. WONG: YES. THANK YOU. DONNA WONG.

WITH REGARDS TO THE LAST SENTENCE OF (J)(4), THAT NEEDS TO BE UNDERSTOOD WITHIN THE CONTEXT OF THE (J)(4) PROVISION. AND THAT PROVISION WILL ONLY KICK INTO PLACE PRESUMING THERE IS A DEMONSTRATION OF ZONE PLANNING INCONSISTENCY. MEANING THAT THERE'S A DEMONSTRATION THAT THE EXISTING ZONE IS INCONSISTENT WITH THE EXISTING PLAN.

OUR ARGUMENT IS, OBVIOUSLY, FOOTNOTE 23 AND HOW

THAT OPERATES, BUT, IN TERMS OF THE LAST CLAUSE OF (J)(4), WHICH MS. WEINBERG JUST STATED, THAT ONLY -- THAT ONLY TAKES INTO EFFECT IF THERE IS A ZONE PLANNING INCONSISTENCY. AND THAT LANGUAGE IS TAKEN AS ALLOWING A DEVELOPMENT TO PROCEED IF THERE IS SOME SORT OF AMBIGUITY IN THE STANDARDS, NOT SIMPLY JUST THAT ONLY THE GENERAL PLAN STANDARDS APPLY TO THE EXCLUSION OF THE ZONING.

SO WHATEVER THE HIGHEST -- WHAT PETITIONERS ARE ARGUING FOR IS THAT THE -- THE HIGHEST, MOST INTENSE STANDARDS THAT COULD POSSIBLY BE IN EXISTENCE UNDER THE LAND USE DESIGNATION SHOULD BE THE RULER BY WHICH THE DEVELOPMENTS ARE JUDGED BY. AND IT'S -- IT'S NOT STATED THAT WAY. THE AMENDMENT HISTORY INDICATES THAT THOSE -- THAT THE LANGUAGE THAT WOULD HAVE PUT THAT IN THERE WAS ULTIMATELY DELETED.

THE COURT: OKAY.

MS. WEINBERG, DO YOU WANT TO RESPOND TO THAT?

MS. WEINBERG: THE LEGISLATIVE HISTORY SHOWS THAT THE LANGUAGE WAS MODIFIED, YOUR HONOR. I WOULDN'T SAY THAT IT WAS DELETED. THE LEGISLATURE -- THE LEGISLATIVE INTENT HAS BEEN THE SAME FROM THE DATE THAT THE BILL WAS INTRODUCED, AS WE SHOWED, TO PERMIT THE MAXIMUM DENSITY ALLOWABLE UNDER THE GENERAL PLAN AND TO PREVENT CITIES FROM KEEPING PROPERTIES DOWN ZONED OR DOWN ZONING THEM AFFIRMATIVELY TO AVOID THE APPLICATION OF THE HAA. SO THE LANGUAGE WAS MODIFIED OVER TIME, BUT THE MEANING AND THE INTENT WAS NOT AS SHOWN BY THE FINAL LANGUAGE AND BY

THE LEGISLATIVE STATEMENTS THAT WERE MADE SHORTLY BEFORE THE BILL WAS ADOPTED.

THE COURT: LET ME -- CAN I SWITCH GEARS A LITTLE BIT? DO YOU WANT TO ADDRESS THE STATUTE OF LIMITATIONS ISSUE THAT THE CITY RAISES?

MS. WEINBERG: YES, YOUR HONOR, I DO. THANK YOU.

SO OUR FIRST CLAUSE OF ACTION WAS BROUGHT UNDER SECTION 1085 AS A TRADITIONAL WRIT. WE, THEN, HAVE A SECOND CAUSE OF ACTION ALSO UNDER 1085 IN THAT IT SEEKS TO SET ASIDE A LEGISLATIVE DECISION, THE DENIAL OF ASSUMPTIONS. OUR THIRD CAUSE OF ACTION -- BECAUSE IT IS STATED UNDER THE HAA -- BROUGHT PURSUANT TO SECTION 1094.5 AS IT IS CALLED FOR IN THE STATUTE. SO WE -- WE SORT OF COVERED ALL BASES THERE. SO, IF THE COURT FINDS SUBSTANTIVELY THAT WE ARE CORRECT, THAT THE EXISTING ZONING IS INCONSISTENT WITH THE GENERAL PLAN AND THAT THE HAA APPLIED AND REQUIRES PROJECT APPROVAL BECAUSE THE FINDINGS WERE NOT MADE AND CANNOT BE MADE, THEN WHETHER THAT OCCURS BY MECHANISM OF THE FIRST CAUSE OF ACTION, THE SECOND CAUSE OF ACTION, OR THE THIRD CAUSE OF ACTION MIGHT NOT MATTER IN THE LONG RUN SO LONG AS IT GETS TO THE RESULT OF THE PROJECT BEING APPROVED AND BEING ABLE TO MOVE FORWARD.

HOWEVER, WITH THAT BEING SAID, WE BELIEVE THAT THE FIRST CAUSE OF ACTION DOES STATE A VALID CLAIM, YOUR HONOR, AND IT'S NOT BARRED BY THE STATUTE OF LIMITATIONS. IT IS A 1085 WRIT BECAUSE IT IS SEEKING TO ENFORCE AN ADMINISTERIAL DUTY BY THE CITY'S PLANNING

DEPARTMENT TO ISSUE MAPS THERE THAT THEY CLAIM CAN'T BE ISSUED BECAUSE A ZONE CHANGE IS REQUIRED THAT WE CLAIM NO ZONE CHANGE IS REQUIRED UNDER THE HAA, SO THERE IS NOTHING PREVENTING THE CITY FROM DOING ITS ADMINISTERIAL DUTY OF ISSUING A MAP THERE. THAT ISSUE AROSE IN JANUARY OF 2020. THAT'S WHEN WE SUBMITTED -- JANUARY 16TH. IT'S IN THE RECORD AT PAGE 34991. WE WROTE A LETTER DEMANDING THAT THE CITY ISSUE THE CLEARANCES CITING THE HAA. WE THEN FILED THIS LAWSUIT FEBRUARY 24TH. SO JUST A LITTLE OVER 30 DAYS LATER AFTER WE DID NOT GET A RESPONSE. AND IT WASN'T UNTIL MAY 8TH OF 2020, AFTER THE LAWSUIT WAS PENDING, THAT THE CITY RESPONDED WITH A LETTER DENYING OUR REQUEST THAT THEY ISSUE THE CLEARANCES, SO THE LAWSUIT IS TIMELY. IT IS NOT A 1094.5 WRIT CLAIM TO INVALIDATE THE CONDITION ON THE MAP. IT IS A 1085 WRIT TO ASK THE CITY TO ISSUE IT'S ADMINISTERIAL APPROVAL.

THE COURT: I -- I'M NOT SURE I REALLY FOLLOW ANY OF THAT. SO I -- I FOLLOWED YOUR ARGUMENT. I -- I KNOW WHAT YOU'RE ARGUING, BUT I -- I DON'T UNDERSTAND WHY IT'S NOT A COLLATERAL ATTACK ON THE CITY'S DETERMINATION THAT YOU WOULD NEED TO APPLY FOR A ZONE CHANGE. THAT'S WHAT I'M NOT -- I DON'T UNDERSTAND THAT.

MR. GAINES: WELL, YOUR HONOR, AT THE -- AT THE TIME, WE HAD APPLIED FOR A ZONE CHANGE, AND THE ZONE CHANGE WAS PENDING. SO WE HAD THIS TRACT APPLICABLE, AND THEN THE ZONE CHANGE WAS GOING FORWARD WITH THE RECOMMENDATION -- UNANIMOUS RECOMMENDATION OF THE

PLANNING COMMISSION TO APPROVE THIS. SO THE SITUATION THAT THE CITY ATTORNEY IS NOW CLAIMING IS THAT WE WOULD HAVE HAD TO BRING A 1095 -- A 10 -- A 1094.5 WRIT CHALLENGING A MAP CONDITION TO GET A ZONE CHANGE WHILE WE HAVE A ZONE CHANGE PENDING IN FRONT OF THE -- WHILE WE HAVE THAT APPLICATION PENDING. WE -- WE -- IT TURNS OUT THAT MONTHS AND MONTHS AND MONTHS LATER, THEY DENY THAT. OKAY? WE DID NOT SUE THEM WHILE THEY WERE CONSIDERING THE ZONE CHANGE. AND, THEN, WE'RE NOT -- AT THIS POINT, WE DON'T HAVE TO CHALLENGE THE MAP BECAUSE THAT CONDITION AB INITIO, BASED ON THE HAA, WHICH SAYS YOU DON'T NEED A ZONE CHANGE IF WE'RE CONSISTENT WITH THE PLAN AND THE ZONING IS INCONSISTENT, SO, BASED ON THAT CLAIM, WE WENT TO THE FINAL DIRECTOR AND SAID SIGN OFF ON OUR MAP, AN ADMINISTERIAL TASK. HE DIDN'T -- HE DID NOT DO THAT. AND, THEREFORE, A 1085 WRIT WOULD BE TO ORDER HIM TO DO THAT IF WE ARE CORRECT. THAT WE DON'T NEED THAT ZONE CHANGE, EVEN IF THEY'VE PUT IT IN AS A CONDITION. BUT -- SO THAT'S -- MAYBE THAT LAYS OUT THE TIME FRAME A LITTLE MORE.

I NOTICED, ON THE FIRST PAGE OF THE TENTATIVE, IT TALKED ABOUT HOW, THEREAFTER, THE PETITIONER'S APPLICATION FOR ZONE CHANGE, AND BEFORE THAT, IT SAYS, WE SOUGHT CLEARANCES. WE DIDN'T SEEK THE CLEARANCES. YOU KNOW, WE WAITED FOR THE ZONE CHANGE, WHICH WAS THE LAST PART OF THE WHOLE PACKAGE UNDER ENTITLEMENT ACTIONS, AND THEN WE TOOK ACTION. WHICH I THINK IS CORRECT -- THE CORRECT WAY TO DO THIS. NOT SUE THE CITY

IN ADVANCE OF THEM ACTING ON THE ZONE CHANGE.

THE COURT: UNDER -- UNDERSTOOD.

MS. WONG, YOU WANT TO RESPOND TO THE STATUTE OF LIMITATIONS?

MS. WONG: YES, JUST BRIEFLY. AND I WOULD ALSO ASK, IF THERE IS A TIME PERMIT, I WOULD LIKE TO CIRCLE BACK ABOUT A CONSISTENCY -- THE CONSISTENCY ISSUE RAISED BY THE COURT THAT I RAISED AT THE BEGINNING.

SO JUST GOING BACK --

THE COURT: SURE.

MS. WONG: -- TO THE ISSUE OF THE MAP ACT LIMITATION PERIOD. I WOULD JUST LIKE TO POINT OUT TO THE COURT THAT THE -- THE CONDITION THAT THE ZONE CHANGE COULD BE OBTAINED WAS PUT IN PLACE WHEN THE -- THE TRACT MAP AND SITE PLAN WERE AT THE APPROVAL OR WAS APPROVED IN 2019. NONE OF -- THAT CONDITION WAS NOT APPEALED AT ALL BY THE PETITIONER. THAT CONDITION STILL STANDS. WHEN THE ZONE CHANGE REQUEST WAS, THEN, BEFORE COUNSEL, THE TRACT MAP APPROVAL NOR THE SITE PLAN REVIEW APPROVAL -- NEITHER OF THOSE ACTIONS WERE IN FRONT OF THE CITY COUNSEL. WHY? BECAUSE IT WAS NOT APPEALED BY PETITIONERS. ON THAT BASIS, NOT ONLY DID THEY NOT FILE A LAWSUIT, THEY ALSO ADMINISTRATIVELY WAIVED THAT ISSUE IN TERMS OF, IF THEY BELIEVED THAT THAT LANGUAGE WAS OBJECTIONABLE, THAT WOULD HAVE BEEN THE TIME TO RAISE THE ISSUE.

THE COURT: OKAY. I -- UNDERSTOOD. LET ME -- YOU WANTED ME TO CIRCLE BACK TO YOU? YOU MAY ADDRESS

ANYTHING YOU WANT, MS. WONG. SO WHAT ELSE WOULD YOU LIKE.

MS. WONG: ONE OF -- THE LANGUAGE AT -- THERE'S SOME LANGUAGE IN THE TENTATIVE AT PAGE 10 WHERE THE COURT -- THE COURT SAYS, DOES NOT FIND PERSUASIVE, AT LEAST IN THE CONTEXT OF THE HAA, THE CITY'S ARGUMENT THAT CONSISTENCY MEANS COMPATIBILITY. WOULD JUST POINT OUT TO THE COURT, AS IT LOOKS THROUGH THE -- THE CASES AND AUTHORITIES REGARDING CONSISTENCY UNDER 65860, IS THAT THE HOUSING ACCOUNTABILITY ACT DID NOT CREATE A SEPARATE DEFINITION OF CONSISTENCY OR INCONSISTENCY. IT DID NOT SAY SOMETHING AS PLAIN AS A -- A DEVELOPMENT SHOULD BE CONSIDERED CONSISTENT IF -- IF IT COMPLIES WITH THE STANDARDS OF THE GENERAL PLAN. AND IT STATED THAT PLAINLY IN THE OTHER CODE SECTION I REFERENCED, WHICH WAS 65913.4 AT SUBDIVISION (A)(5)(A). THERE, IT STATES PLAINLY LIKE THAT. IT IS NOT STATED LIKE THIS IN THE HAA. THE HOUSING ACCOUNTABILITY ACT DOES NOT CARRY WITH IT ITS OWN SEPARATE SPECIAL DEFINITION OF CONSISTENCY OR INCONSISTENCY. AND, AS A CONSEQUENCE, THAT -- THAT TERM NEEDS TO BE UNDERSTOOD WITHIN THE GREATER BODY OF LAND USE AND PLANNING REGULATIONS, AMONG THEM GOVERNMENT CODE 65860, WHICH TALKS ABOUT CONSISTENCY --

(REPORTER INTERRUPTION;
COURT TECHNOLOGICAL FEED
BREAKING UP.)

THE COURT: SO -- SO, MS. WONG, YOU BROKE UP A LITTLE BIT.

MS. WONG: OKAY.

THE COURT: THE COURT REPORTER DIDN'T HEAR YOU.

MS. WONG: OKAY. NOT A PROBLEM. I'LL REPEAT MYSELF.

THE COURT: OKAY.

MS. WONG: I APOLOGIZE IF THIS IS REPETITIVE, BUT I'LL DO IT AGAIN FOR THE RECORD.

THE -- WE JUST POINTED OUT THAT THE HOUSING ACCOUNTABILITY ACT DOES NOT CREATE ITS OWN SEPARATE UNIQUE DEFINITION OF CONSISTENCY OR INCONSISTENCY IN THE SAME WAY THAT GOVERNMENT CODE SECTION 65913.4 HAS. IN THAT -- IN THAT SECTION -- IT'S SUBDIVISION (A)(5)(A) -- THE LEGISLATURE IDENTIFIED THAT CONSISTENCY WOULD MEAN COMPLIANCE WITH THE GENERAL PLAN STANDARDS. IN CONTRAST, THE HOUSING ACCOUNTABILITY ACT DOES NOT HAVE THAT LANGUAGE. IT SAYS THAT YOU -- YOU NEED TO COMPLY WITH ZONING AND PLANNING STANDARDS. THE ONLY INSTANCE WHERE YOU WOULD BE EXCUSED FROM THAT IS IF THERE IS A ZONING PLAN INCONSISTENCY. AND WHAT I MEAN BY THAT IS, IF YOU COMPARE THE EXISTING ZONE TO THE EXISTING PLAN, IF THERE IS INCONSISTENCY, UNDER THE CASE LAW AND AUTHORITIES THAT EXIST FOR JUDGING WHETHER A ZONE -- ZONING AND PLANNING ACTIONS ARE CONSISTENT -- THAT'S GOVERNMENT CODE 65860 -- THOSE LEGAL AUTHORITIES AND CASES CITED BY THE CITY ARE APPLICABLE HERE. AND THEY INDICATE THAT CONSISTENCY DOES NOT REQUIRE AN EXACT MAP.

IT DOES NOT REQUIRE THE CITY TO USE THE MAXIMUM PLAN DENSITY AS THE RULER BY WHICH WE MEASURE A DEVELOPMENT. AND SO, WITH THAT, WE WOULD SUBMIT THE ARGUMENT TO THE COURT ON THAT ISSUE.

THE COURT: SURE. I GUESS ON THAT -- ON THAT PORTION OF THE ARGUMENTS, I DIDN'T THINK -- THERE WAS ONE CASE. I THINK IT'S CALLED LESHER -- I COULD BE WRONG -- L-E-S-C-H-U-R -- THAT -- THAT PETITIONER CITED. THERE WERE TWO CASES CITED BY THE CITY. I DIDN'T FIND EITHER -- ANY OF THE CASES REALLY HELPFUL. THE TWO CASES CITED BY THE CITY CERTAINLY DISCUSSED CONSISTENCY IN TERMS OF LAND USE GENERALLY BUT CERTAINLY NOT IN THE CONTEXT OF ZONING AND A GENERAL PLAN CONSISTENCY. AND -- AND I DON'T KNOW. I JUST DIDN'T FIND IT PARTICULARLY PERSUASIVE.

BUT I -- I DO UNDERSTAND WHAT YOU'RE -- YOU'RE ARGUING. I JUST -- I -- I HAVE JUST A CONCEPTUAL PROBLEM WITH THE NOTION THAT EVERY -- EVERY COMMUNITY PLAN, EVERY LAND USE DESIGNATION INCLUDE THAT THE STATED CATEGORIES AND EVERYTHING THAT IS MORE RESTRICTIVE. I DON'T KNOW. I JUST -- I GUESS I HAVE TO LOOK BACK AT THIS THING -- DENSITY BONUS LAW OR BONUS DENSITY LAW TO SEE THAT (A)(5)(A) DISTINCTION THAT YOU'RE TALKING ABOUT.

MS. WONG: THAT --

THE COURT: BUT -- GO AHEAD.

MS. WONG: THAT'S NOT DENSITY BONUS LAW. THAT'S A -- THAT'S STREAMLINING PROVISION IN ANOTHER SECTION OF

THE GOVERNMENT CODE. I APOLOGIZE FOR INTERRUPTING. I DID HAVE -- IF THE COURT IS WILLING, I DID HAVE ONE OTHER POINT OF LAW THAT MIGHT AID THE COURT IN ITS ANALYSIS.

THE COURT: SURE. PLEASE.

MS. WONG: SO THE CITY CITED A CASE. THAT'S PFEIFFER VERSUS CITY OF SUNNYVALE.

THE COURT: YEAH.

MS. WONG: AND, IF THE COURT WOULD DRAW ITS ATTENTION TO -- TO PAGE 1563 OF THAT OPINION, THAT CASE DISCUSSES HOW TO LOOK AT THE QUESTION OF ZONE PLAN INCONSISTENCY, AND THE LANGUAGE THERE SAYS THAT ZONE PLAN CONSISTENCY CAN ONLY BE REVERSED IF NO REASONABLE PERSON COULD HAVE REACHED THE SAME CONCLUSION. AND, BASED ON THE EXISTENCE OF FOOTNOTE 23, IT IS A REASONABLE CONCLUSION TO REACH THAT THE EXISTING ZONING IS CONSISTENT WITH THE PLAN. AND SO THAT'S -- THAT'S THE POINT WE JUST WANTED TO -- TO DRAW TO THE COURT.

THE COURT: OKAY. THANK -- THANK YOU.

MS. WEINBERG?

MS. WEINBERG: YES, YOUR HONOR. YOU ARE RIGHT. THE LESHER CASE DOES DEAL WITH CONSISTENCY. IT'S A SLIGHTLY DIFFERENT FACT SITUATION, BUT IT'S THE CALIFORNIA SUPREME COURTS LOOKING AT A DEVELOPMENT MORATORIUM THAT THEY SAID WAS AKIN TO A ZONING ORDINANCE AND FOUND THAT IT WAS INCONSISTENT WITH THE GENERAL PLAN WHICH -- THE GENERAL DEVELOPMENT. SO, THERE, YOU'VE GOT NO DEVELOPMENT VERSUS WE ALLOW DEVELOPMENT, AND THE

CALIFORNIA SUPREME COURT SAYS THAT'S NOT CONSISTENT. THERE HAS TO BE SOME -- SOME DRIVING BETWEEN THE GOALS AND OBJECTIVES FOR THEM TO BE CONSISTENT.

AND, THEN, IN PFEIFFER AS WELL AS CORONA-NORCO UNIFIED SCHOOL DISTRICT, COURTS OF APPEAL DID LOOK WHETHER ZONING WAS CONSISTENT WITH THE GENERAL PLAN. AND, YOU KNOW, THE QUOTED LANGUAGE IS THAT IT'S -- IT'S ONLY CONSISTENT WHEN CONSIDERING ALL ITS ASPECTS. THE ZONING ORDINANCE WILL FURTHER BE OBJECTIVE WITH POLICIES OF THE GENERAL PLAN AND NOT OBSTRUCT THEIR ATTAINMENT.

SO I THINK THAT THE ONLY CONSISTENT -- ONE COULD DRAW IN TRYING TO APPLY THAT RATHER GENERAL STANDARDS TO THIS PARTICULAR CASE IS THAT, IF YOU HAVE ZONING THAT PERMITS ONLY 19 HOMES ON 58 ACRES AND YOU HAVE A PLAN THAT -- THAT SUPPORTS ALLOWING 215 OR MORE HOMES THAT -- CLEARLY THAT ZONING IS OBSTRUCTING THE ATTAINMENT OF THE GENERAL PLAN'S GOALS FOR PROVIDING HOUSING WITH THIS PARTICULAR LOCATION. AND, THEN, WHEN COUNSEL CITES TO THE, YOU KNOW, DEFERENCE THAT IS AFFORDED TO CITIES IN DETERMINING CONSISTENCIES STATED IN PFEIFFER, AGAIN, IN THE HOUSING ACCOUNTABILITY ACT, THE LEGISLATURES HAVE SAID ENOUGH. WE WANT TO CONTROL THE DISCRETION OF THE LOCAL AGENCIES. AND SO, FOR PURPOSES OF THIS SECTION, CONSISTENCY IS DETERMINED WHEN THERE IS SUBSTANTIAL EVIDENCE THAT WOULD ALLOW A REASONABLE PERSON TO CONCLUDE THAT THERE'S CONSISTENCY.

SO IT DOESN'T -- IT'S -- IT'S LIKE A SUBSTANTIAL EVIDENCE TEST. IT DOESN'T MATTER IF THERE'S SUBSTANTIAL

EVIDENCE ON THE OTHER SIDE. YOU HAVE TO HAVE SUBSTANTIAL EVIDENCE THAT A REASONABLE PERSON WOULD SAY, YES. THIS IS CONSISTENT. WELL, HERE, WE HAVE HAD EVERY REVIEWING AGENCY OF THE CITY LOOK AT THIS AND SAY THIS IS NOT CONSISTENT, THAT WE NEED TO BRING IT INTO CONSISTENCY BY APPROVING THE ZONE CHANGE. WE NEED TO CREATE CONSISTENCY. THAT'S NOT -- THOSE AREN'T VERBS THAT YOU USE IF YOU ALREADY HAVE CONSISTENCY. SO ALL OF THE CITY'S DECISION MAKERS UP TO THE COUNSEL LEVEL WERE NOT UNREASONABLE PEOPLE. THEY SAW EVIDENCE THAT THE EXISTING ZONING WAS INCONSISTENT AND THAT THE PROPOSED PROJECT'S REZONE WOULD BE CONSISTENT. AND THAT IS THE SAME STANDARD THAT THE COURT SHOULD APPLY AS WELL.

THE COURT: THANK YOU.

MS. WONG, BEFORE WE BREAK, IS THERE ANYTHING ELSE YOU WOULD LIKE TO BE HEARD ON?

MS. WONG: JUST -- WITH REGARD TO THE -- YES. WITH -- DONNA WONG FOR THE CITY. JUST WITH REGARD TO THE LAST COMMENT REGARDING THE -- THE STANDARD UNDER THE H -- THE HOUSING ACCOUNTABILITY ACT AT GOVERNMENT CODE 65589.5, I BELIEVE MS. WEINBERG WAS REFERRING TO PROVISION IN SUBDIVISION (F), AS IN FRANK, (4). AND JUST LIKE TO POINT OUT TO THE COURT THAT THAT PROVISION SAYS:

> FOR PURPOSES OF THIS SECTION, A HOUSING DEVELOPMENT PROJECT OR SHELTER SHALL BE JUDGED BY

THAT STANDARD.

AND IT TALKS ABOUT THAT LANGUAGE -- INDICATES THAT THAT TYPE OF ANALYSIS IS APPLICABLE TO LOOKING AT CONSISTENCY FINDINGS RELATED TO A PARTICULAR PROJECT, NOT THE MORE GENERAL ANALYSIS OF ZONE PLAN INCONSISTENCY THAT THE COURT WOULD ENGAGE IN TO SEE IF THE (J)(4) PROVISION OF THE HOUSING ACCOUNTABILITY ACT ARE TRIGGERED. AND THE (J)(4) PROVISIONS -- THAT'S THE PROVISION THAT WOULD EXCUSE THE ZONE CHANGE FOR THE PETITIONER IN THIS CASE.

THE COURT: THANK YOU.

ANYTHING ELSE, MS. WONG?

MS. WONG: NO, NOT AT THIS TIME. THANK YOU.

THE COURT: OKAY.

MS. WEINBERG, ANYTHING ELSE?

MS. WEINBERG: NO, YOUR HONOR.

THE COURT: MR. GAINES?

MR. GAINES: NO, THANK YOU, YOUR HONOR. WE'RE GOING TO HAVE A -- AN OPPORTUNITY FOR FURTHER ARGUMENT?

YOUR INTENTION IS TO ISSUE A REVISED TENTATIVE AND HAVE ADDITIONAL ARGUMENT; IS THAT CORRECT?

THE COURT: THAT'S CORRECT. SO ON -- ON -- BY 8:00 O'CLOCK ON APRIL 2ND, I WILL HAVE A REVISED TENTATIVE POSTED FOR YOU, AND WE WILL CONCLUDE THE ARGUMENT AT THAT TIME.

MS. WEINBERG: AT 9:30 THAT MORNING, YOUR HONOR?

THE COURT: YES. HOPEFULLY, THAT MORNING WILL GO A LITTLE BETTER THAN THIS MORNING WENT.

MS. WEINBERG: IT CAN ONLY GET BETTER; RIGHT?

THE COURT: YEAH. TRULY.

OKAY. WAIVE NOTICE FOR APRIL 2ND AT 9:30.

MS. WEINBERG?

MS. WEINBERG: YES, YOUR HONOR.

THE COURT: AND -- AND MR. HAGAN?

MR. HAGAN: NOTICE WAIVED, YOUR HONOR. THANK YOU.

THE COURT: THANK YOU VERY MUCH. I APPRECIATE THE HELP.

MS. WEINBERG: THANK YOU, YOUR HONOR.

THE COURT: HAVE A GOOD DAY.

MS. WONG: THANK YOU.

THE COURT: BYE, BYE.

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(WHEREUPON, THE PROCEEDINGS CONCLUDED AT 2:46 P.M. AND CONTINUED TO 9:30 A.M. APRIL 2, 2021.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

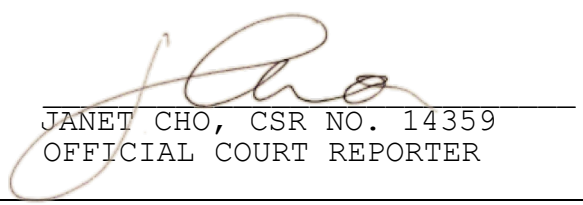
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 86 HON. MITCHELL L. BECKLOFF, JUDGE

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|---|---|
| SNOWBALL WEST INVESTMENTS, L.P., PLAINTIFF, VS. CITY OF LOS ANGELES, ET AL., DEFENDANT. | NO. 20STCP00771 REPORTER'S CERTIFICATE |

I, JANET CHO, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND THAT THE FOREGOING PAGES 1 THROUGH 42/300, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON MARCH 24, 2021.

EXECUTED THIS DAY, DECEMBER 18, 2021, AT LOS ANGELES, CALIFORNIA.



JANET CHO, CSR NO. 14359
OFFICIAL COURT REPORTER