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SECONDARY SUBMISSIONS

February 28, 2022

Via Electronic Mail

West Los Angeles Area Planning
Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012-4801
E-mail: apcwestla@lacity.org

Re: 10701 Bellagio Road and 627 Carcassonne Road; Appeals of
Decisions in Case Nos. DIR 2020-4145(BSA) / DBS-200035-DCP
and DIR 2020-4145(BSA) / DBS-200037-DCP

Hon. Members of the West Los Angeles Area Planning Commission:

This firm represents The Bel-Air Association (“Association”) in Cases DIR 2020-4145(BSA) / DBS-200035-DCP and DIR 2020-4145(BSA) / DBS-200037-DCP. In these cases, the Association appealed the Los Angeles Department of Building Safety’s (“LADBS”) determination that it properly relied on a 2014 topographic survey of the properties at 10701 Bellagio Road and 627 Carcassonne Road (“Properties”) in determining their “grade” prior to issuing development permits there, despite clear evidence that the elevations shown in this 2014 survey were the result of substantial, illegal, unpermitted fill. LADBS acknowledged that this unpermitted fill altered the surface of the Properties significantly in 2018 and 2019, when it issued an “Order To Comply” and “Notice to Stop Work and Intent to Revoke Building Permits” for the Properties, but subsequently concluded that the 2014 survey established a new “grade” because the City approved a lot line adjustment there in 2015.

Crucially, the Planning Director and this Commission disagreed with LADBS’s sole justification for relying on the 2014 topographic survey: According to this Commission’s prior determination, “a lot line adjustment is not a parcel map action” (West Los Angeles Area Planning Commission Letter of Determination, Case Nos. DIR-2020-4144-BSA-1A/DIR-2020-4144-BSA-1A (Nov. 9, 2021) (“APC Determination”) at 25 (pdf page 27), and thus it cannot be relied upon to establish “grade” under the relevant code section, Los Angeles Municipal Code (“LAMC”), Chapter 1, § 12.03 (defining “grade” in the hillside areas as “finished or natural surface of the ground, whichever is

lower,” unless a different grade has been approved as part of a “recorded tract or parcel map action”).

Having found this error, the Planning Director, and this Commission, should have sent the matter back to LADBS to determine what the correct grade was, pursuant to a correct interpretation of LAMC § 12.03, and whether the permits issued for the Properties were consistent with the LAMC’s limits on height, floor area, etc., based on that correct grade. Instead, the Planning Director and this Commission “dismissed” the Association’s appeal on the grounds that it did not arise out of Chapter 1 of the LAMC, and thus fell within the jurisdiction of the Board of Building and Safety Commissioners. West Los Angeles Area Planning Commission Letter of Determination in Case Nos. DIR-2020-4144-BSA-1A/DIR-2020-4145-BSA-1A (“APC Determination) at 25 (pdf page 27).

On November 23, 2021, out of concern for the severe code violations and precedent-setting nature of the Department’s determinations, the City Council vetoed this decision pursuant to Los Angeles Municipal Charter § 245. The appeal is now back before you for review.

To ensure a consistent interpretation of the City’s Zoning Code and correct substantial code violations, this Commission must grant the Association’s appeal and direct LADBS to take corrective action. Contrary to this Commission’s prior determination, this appeal falls squarely within your jurisdiction because it arises out of the definition of “Hillside Area Grade,” which is found in LAMC, Chapter 1, § 12.03. As a result, the Commission has jurisdiction over the appeal and must take the following actions:

- 1. Affirm the Planning Director’s determination that a “lot line adjustment” is not a “parcel map action” for purposes of determining “Hillside Area Grade” pursuant to LAMC, Chapter 1, § 12.03, and overturn LADBS’s determination to the contrary.**
- 2. Overturn the Planning Director’s determination that the Planning Commission lacks jurisdiction over this appeal.**
- 3. Direct LADBS to re-evaluate the “grade” for the Property, based on the correct application of “Hillside Area Grade” (LAMC § 12.03) and in light of evidence in the record that the “natural” grade was illegally raised with unpermitted fill between 2012 and 2014, and take any necessary corrective action.**

Issues Presented

The fundamental issues in this case are:

1. LADBS erred in determining that a lot line adjustment (LLA) is a “parcel map action,” and thus that a 2015 LLA established a new “grade” for the Properties, effectively legalizing significant, prior, illegal and unpermitted fill on the site; and

2. The Director of Planning erred in concluding that he did not have jurisdiction to correct LADBS’s error, which arose out of a misinterpretation of LAMC, Chapter 1, § 12.03.

Analysis

I. LADBS erred in determining that a lot line adjustment (LLA) is a “parcel map action,” and thus that a 2015 LLA established a new “grade” for the Properties, effectively legalizing significant, prior, illegal and unpermitted fill on the site.

Chapter 1, section 12.21-C(10), of the LAMC contains the City’s development standards for properties that are located in hillside areas, including the Properties at issue here. Many of these standards, including how high a building can be and how much “floor area” may be developed, are measured from, and thus dependent on, the “grade” of the site. See, e.g., LAMC, Chapter 1, § 12.21-C(10)(d)(1)(i) (“Maximum Envelope Height. Envelope height (otherwise known as vertical height or “plumb line” height) shall be the vertical distance from the Hillside Area Grade to a projected plane at the roof Structure or parapet wall located directly above and parallel to the Grade.”). Under the LAMC, “grade” for these hillside properties is defined by LAMC, Chapter 1, § 12.03, “Hillside Area Grade.” LAMC. § 12.21-C(10)(d).

The definition of “Hillside Area Grade” is at the heart of this appeal.

According to Municipal Code Section 12.03, which is found in Chapter 1 of the Municipal Code, “GRADE, HILLSIDE AREA,” is defined as follows:

For the purpose of measuring height on an R1, RS, RE, or RA zoned Lot in the Hillside Area, pursuant to Section 12.21 C.10. of this Code, Hillside Area Grade shall be defined as the Elevation, at the perimeter of a Building or Structure, of **the finished or natural surface of the ground, whichever is lower, or the finished surface of the ground established in conformance with a grading plan approved pursuant to a**

recorded tract or parcel map action. Retaining walls shall not raise the effective Elevation of Grade for purposes of measuring Height of a Building or Structure.

(Emphasis added.)

Pursuant to this definition, “grade” is not just the existing surface of the ground at the time a developer applies for a permit. Rather, it is either (a) the finished or natural surface of the ground, whichever is lower; or (b) the finished surface of the ground established in conformance with a grading plan approved pursuant to a recorded tract or parcel map action. Section 12.03.

Here, LADBS determined that a LLA is a “parcel map action,” as that phrase is used in LAMC § 12.03, and that “grade” is the existing surface of the ground on the property at the time a LLA is approved, even when there is evidence that the surface had been illegally raised prior to the LLA by unpermitted fill activities. LADBS Determination Re: 10701 WEST BELLAGIO ROAD; DBS-200035-DCP (June 23, 2020) (“LADBS Determination”) at 3. Based on this interpretation of LAMC, § 12.03, LADBS concluded that the permits issued for development of two residences on the Properties were proper, because they were based on “grade” shown on a 2014 topographic survey submitted shortly before the LLA was approved. Id.

Both the Planning Director and this Commission found LADBS’s interpretation of LAMC § 12.03 erroneous. As the Planning Director put it: “A lot line adjustment is not a parcel map action.” APC Determination at 25 (pdf page 27). As the Director explained, the Subdivision Map Act is inapplicable to lot line adjustments between four or fewer existing parcels. Id.; Govt. Code § 66412(d) (providing that a lot line adjustment between four or fewer existing, adjoining parcels, is not subject to the Subdivision Map Act, provided the adjustment does not create more parcels than originally existed). Moreover, under the Subdivision Map Act, the purpose of a parcel map is to subdivide property (Govt. Code § 66426), while a lot line adjustment simply modifies the boundaries of existing parcels (Govt. Code § 66412(d)). The LAMC also plainly states that the City’s local regulations for parcel maps “*shall not apply to*” lot line adjustments. LAMC 17.50(B)(3) (emphasis added).

Having determined that there was no “parcel map action” related to the Properties, much less a “grading plan approved pursuant to a . . . parcel map action” (LAMC § 12.03), and thus that the sole basis for LADBS’s determination was in error, the Planning Director should have sent the matter back to LADBS to determine what the correct grade is for the Properties under the remaining provisions of LAMC § 12.03, i.e.,

“the finished or natural surface of the ground, whichever is lower.” LADBS had already concluded that the surface of the ground had changed substantially between 2005 and 2015. West Bellagio Road; DBS-200035-DCP (June 23, 2020) (“LADBS Determination”) Exhibit L, Notice to stop construction and Notice of Intent to Revoke Building Permits (November 12, 2019) at 3-6 (pdf pages 74-77) (topographic survey dated 2015 does not match the existing grades shown on the building permits issued in 2007; topographic surveys used to determine allowable residential floor area, maximum grading, envelope height, number of retaining walls, etc., “relied on altered grades”). Substantial evidence in the record shows that the surface of the ground was substantially lower before 2015. Exhibit A (email from J. Healey; “Based on the Google “street view” screen shots below and from my research of previously submitted and finalized grading permits, it is evident that soil was used on site to raise and extend the existing building pad towards Bellagio Road.”). And, as LADBS previously concluded, a lower “grade” could affect the allowable building height, floor area, and other development standards. LADBS Determination, Exhibit L, at 3-6 (pdf pages 74-77).

Instead of correcting LADBS’s error, the Planning Director, and then this Commission, determined that the appeal was not within their jurisdiction, but rather should be heard by the Board of Building and Safety Commissioners. APC Determination at 26 (pdf page 28). As discussed below, that determination was plainly incorrect.

II. The Director of Planning erred in concluding that he did not have jurisdiction to correct LADBS’s error, which arose out of a misinterpretation of LAMC, Chapter 1, § 12.03.

In dismissing the Association’s appeal, the Planning Director claimed that it concerned errors in applying the Chapter IX of the Municipal Code (the Building Code), rather than violations of Chapter 1 (Zoning Code). APC Determination at 26 (pdf page 28). Under LAMC § 12.26 K, the Planning Director, and this Commission, “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.”

As is clear from the Planning Director’s own determination, however, the heart of the Association’s appeal is that LADBS failed to apply the correct definition of “Hillside Area Grade” in reviewing the legality of the permits for the residences on the Properties. See APC Determination at 26 (pdf page 28). That definition is indisputably

located in Chapter 1 of the Municipal Code (Section 12.03). Moreover, the initial LADBS decision specifically stated that it was appealable to the Director of Planning pursuant to LAMC §12.26 K. LADBS Determination at 1. Thus, the sole basis for the Planning Director's dismissal of the Association's appeal was erroneous.

III. This Commission must correct LADBS's error and direct LADBS to enforce the development standards in the City's Municipal Code.

The reason all of this matters is that there is substantial evidence in the record showing that huge quantities of fill were imported to the site sometime between 2012 and 2014 without a permit, and that this fill raised the surface of the ground on the site significantly. LADBS agreed with this conclusion in its 2019 letter regarding its intent to revoke the project's building permits, as well as in correspondence with the appellant. LADBS Determination, Exhibit L at 4-6 (pdf pages 75-77) (topographic survey from 2015 does not match earlier surveys; concludes that grade had been altered); Exhibit A ("After Building permits Nos. 04030-30001-02147 and 04030-30000-03272 were both finalized on 2-13-2012, it appears that soil was used on site to raise and extend the existing building pad towards Bellagio Road **without a permit.**" [emphasis added]).¹

If LADBS had properly enforced the legal "grade" of the site once the unpermitted and illegal fill was discovered, rather than using an after-the-fact lot line adjustment as a pre-text to approve the surface of the ground as it existed in 2014, the residences developed on the Properties would very different. For example, the height limits for the new residences would have been measured from a lower surface elevation, resulting in much lower buildings than were actually approved. Because LADBS did not use this lower elevation as "grade," the residences almost certainly of the Municipal Code's height restrictions, and likely violate other development standards, such as RFA limits. Indeed, LADBS staff reached this same conclusion in 2018 and 2019, when LADBS notified the owner of the agency's intent to revoke all of the building permits for the Property. LADBS Determination, Exhibit L at 3-6 (pdf pages 74-77); Exhibit A.

¹ During the course of this appeal, the owner's representative has asserted that there were grading permits in effect that permitted massive fill between 2005 and 2015. That is simply not the case. See LADBS Determination, Exhibit L, at 3-4 (pdf pages 74-75) (reciting permit history; no fill permits issued between 2009 and 2015); Exhibit A ("After Building permits Nos. 04030-30001-02147 and 04030-30000-03272 were both finalized on 2-13-2012, it appears that soil was used on site to raise and extend the existing building pad towards Bellagio Road without a permit.").

The Area Planning Commission must correct this error. If it does not, it will create an incentive to all developers in the hillside area to raise the surface elevation of their lots without permits, obtain a topographical survey of the new grade, and then use that higher elevation as the starting point for any new development. This will incentivize and reward illegal fill, create a significant code enforcement burden on the City, and place lives at risk as homes are constructed on unpermitted and uncertified fill, just as these homes were.

Conclusion

For the foregoing reasons, the Association urges the Commission to:

1. **Affirm the Planning Director's determination that a "lot line adjustment" is not a "parcel map action" for purposes of determining "Hillside Area Grade" pursuant to LAMC, Chapter 1, § 12.03, and overturn LADBS's determination to the contrary.**
2. **Overturn the Planning Director's determination that the Planning Commission lacks jurisdiction over this appeal.**
3. **Direct LADBS to re-evaluate the "grade" for the Property, based on the correct interpretation of "Hillside Area Grade" (LAMC § 12.03) and in light of evidence in the record that the "natural" grade was illegally raised with unpermitted fill between 2012 and 2014, and take any necessary corrective action.**

Thank you for your attention to this appeal.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Winter King

Exhibits:

Exhibit A: Email from J. Healy (October 18, 2018)

1469832.7

Exhibit A – Appeals in Case Nos. DIR 2020-4145(BSA) / DBS-200035-DCP and DIR 2020-4145(BSA) / DBS-200037-DCP

From: Jason Healey <jason.healey@lacity.org>
Sent: Thursday, October 18, 2018 10:45 AM
To: Shawn Bayliss <shawn@belairassociation.org>
Cc: info@belairassociation.org; Jack Conger <jack.conger@lacity.org>; Matt Kellerman <matt.kellerman@lacity.org>; Eric Jakeman <eric.jakeman@lacity.org>; John Whipple <john.whipple@lacity.org>; Frank Lara <frank.lara@lacity.org>; Victor Cuevas <victor.cuevas@lacity.org>; Kamran Ghotbi-Ravandi <kamran.ravandi@lacity.org>
Subject: Re: B&S Appeal

Good Morning Shawn,

I agree with your observation stated below. Based on the Google "street view" screen shots below and from my research of previously submitted and finalized grading permits, it is evident that soil was used on site to raise and extend the existing building pad towards Bellagio Road.

(Shawn's observation)

Grading

There appears to have been a tremendous amount of grading and raising of the site/pad after 2011. Photos show a large amount of earth moving and stock piling taking place September 2014, which I believe was prior to their 2015 Grading Permit (14030-30000-06886)

When comparing the 2006 Cadastral Maps, and previous Topo Plans of prior permits, the pad appears to have been raised 8-13 feet along the entirety of Bellagio and much of Carcassonne. The flat pad portion seen in the 2011 street view appears to have been raised 1-3 feet.

Street View - September 2011:

Note: A low lying, sloped area is located between the building pad and the street. Building permits Nos. 04030-30001-02147 and 04030-30000-03272 were both finalized on 2-13-2012, shortly after the date of this google image.



Street View - September 2011:

Note: The driveway's slope is fairly gentle.



Street View - September 2014:

After Building permits Nos. 04030-30001-02147 and 04030-30000-03272 were both finalized on 2-13-2012, it appears that soil was used on site to raise and extend the existing building pad towards Bellagio Road without a permit. Subsequently, the property owner submitted permit applications and plans on 10-31-2014 for a new single family dwelling, and a separate accessory living quarters. Included with these plans is a topographic survey dated 9-5-2014 and a slope density analysis map. From my observation, the 9-5-2014 topographic survey reflects the earthwork shown below, more so than the 2011 images above and the what was finalized on the 2004 grading permits in February of 2012.



September 2014: Driveway slope is more pronounced and ramps up to a higher building pad area.



Shawn, since the grading work was done without a permit between 2-13-2012 and 9-5-2014 (the date of the topographic survey that was submitted with building plans on 10-31-2014), you must referred this matter our Code Enforcement section for further investigation and action.

As you are aware, City Planning determines the maximum RFA for this property by reviewing and verifying a slope density analysis map that is submitted by the owner. Consequently, the slope band analysis map is based off the 9-5-2014 topographic map that was provided with the building plans that were submitted on 10-31-2014. If it is determined that the slope density analysis was determined from an illegitimate topographic survey, a revised density analysis map (based on a correct topographic survey) will need to be created, submitted, and reviewed by City Planning again. As you mentioned below, having an incorrect topographic may greatly affect the allowable height of the buildings, the slope density analysis map, and the allowable residential floor area.

Regarding the number kitchens and retaining walls, inspection has offered to look into your claims and to report back to me.

Please feel free to reach out to me if you have any questions or concerns.

Kind regards,

Jason

DAY OF HEARING SUBMISSIONS



Esther Serrato <esther.serrato@lacity.org>

Fwd: DIR-2020-4145-BSA (DBS-200035-DCP & DBS-200037) 10701 Bellagio Rd. & 627 Carcassonne Rd.

2 messages

Stephanie Savage <ssavage@babnc.org>

Sat, Nov 28, 2020 at 1:00 PM

To: Esther Serrato <ESTHER.SERRATO@lacity.org>

Cc: "Freedman, Daniel" <DFF@jmbm.com>, Benjamin Reznik <BMR@jmbm.com>, Shawn Bayliss <shawn@belairassociation.org>, alex@belairassociation.org, Robin Greenberg <rgreenberg@babnc.org>, Robert Schlesinger <rschlesinger@babnc.org>, Catherine Palmer <council@babnc.org>, Daniel Skolnick <Daniel.Skolnick@lacity.org>

Attn: Esther Serrato

Re: DIR-2020-4145-BSA, DBS-200035 DCP & DBS-200037 DCP – [10701 Bellagio Rd.](#) & 627 Carcassonne Rd.

Attached you will find the letter from the BABNC board on the vote for the DIR-2020-4145-BSA case/appeal for [10701 Bellagio Road](#) and [627 Carcassonne Road](#). Please provide for the review of the Zoning Administrator and include in the project file for the record.

Thank you, Stephanie Savage, BABNC



BABCNC_Letter_re_10701_Bellagio_Road_and_627_Carcassonne_Road_Signed.pdf

397K

Esther Serrato <Esther.Serrato@lacity.org>

Mon, Nov 30, 2020 at 11:01 AM

To: Stephanie Savage <ssavage@babnc.org>

Cc: "Freedman, Daniel" <DFF@jmbm.com>, Benjamin Reznik <BMR@jmbm.com>, Shawn Bayliss <shawn@belairassociation.org>, Bel Air Association <alex@belairassociation.org>, Robin Greenberg <rgreenberg@babnc.org>, Robert Schlesinger <rschlesinger@babnc.org>, Catherine Palmer <council@babnc.org>, Daniel Skolnick <Daniel.Skolnick@lacity.org>

Thank you. I have received the attachment and will provide to the Zoning Administrator.

[Quoted text hidden]

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LOS ANGELES
CITY PLANNING

Esther Serrato

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Building A Better Community

Bel Air-Beverly Crest Neighborhood Council

PO Box 252007 Los Angeles, CA 90025

www.babcnc.org Office 310-479-6247 council@babcnc.org

November 25, 2020

Esther Serrato esther.serrato@lacity.org

Department of City Planning, 213-978-1211

Re: DIR-2020-4145-BSA (DBS-200035-DCP & DBS-200037) 10701 Bellagio Rd. & 627 Carcassonne Rd.

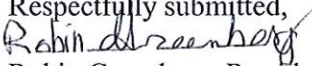
Dear Esther Serrato,

On November 10, 2020, a Brown Act-noticed public meeting was held by the Planning and Land Use Committee (PLUC) of the Bel Air-Beverly Crest Neighborhood Council (BABCNC), which reviewed the BSA appeal of the properties at 10701 Bellagio Road and 627 Carcassonne Road. There was a presentation of the chronology of the project's permit history, related to the appeal, presented by Daniel Freedman and Benjamin Reznik. An additional presentation was provided by Alexandra Benavidez of the Bel-Air Association reviewing site history. After review and discussion on the presentations, there was a motion to **SUPPORT the appeal that LADBS did error and abuse its discretion in issuing building permits for 10701 Bellagio Road and 627 Carcassonne Road.** The PLU committee approved the motion by a vote of **11 yes, 0 no, 0 abstentions.**

On November 18, 2020, a Brown Act-noticed public meeting was held by the Board of the Bel Air-Beverly Crest Neighborhood Council and with a quorum of 22 members present, the Board of the BABCNC approved a motion by **19 yes, 0 no, and 3 abstentions to SUPPORT the appeal**, as motioned by the PLU committee, including that LADBS did error and abuse its discretion in issuing building permits.

We wish this position of the BABCNC to be entered into the official file for this case.

Respectfully submitted,



Robin Greenberg, President

Bel Air-Beverly Crest Neighborhood Council

rgreenberg@babcnc.org

cc:

Daniel Freedman, Esq. DFF@jmbm.com

Benjamin Reznik, Esq. BMR@jmbm.com

Shawn Bayliss shawn@belairassociation.org

Alexandra Benavidez alex@belairassociation.org

Robert Schlesinger, BABCNC PLU Chair rschlesinger@babcnc.org

Stephanie Savage, BABCNC PLU Vice Chair ssavage@babcnc.org

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Bel Air Association

Bel-Air Crest Master Association

Bel Air Hills Association

Bel Air Ridge Association

Benedict Canyon Association

Casiano Estates Association

Doheny-Sunset Plaza Neighborhood Assn.

Holmby Hills Homeowners Association

Laurel Canyon Association

Residents of Beverly Glen

RESIDENTIAL DISTRICTS

Bel Air District

Bel Air Glen District

Franklin-Coldwater District

North of Sunset District

NON-RESIDENTIAL REPRESENTATION

At-Large Members

Commercial or Office Enterprise Districts

Custodians of Open Space

Faith-Based Institutions

Public & Private Schools

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March 1, 2022

BY EMAIL ONLY (apcwestla@lacity.org)

President Newhouse and the Honorable
Members of the West Los Angeles Area
Planning Commission
Attn: James K. Williams, Exec. Assistant II
City of Los Angeles
200 North Spring Street, Room 532
Los Angeles, CA 90012

Re: 627 North Carcassonne Road
DIR-2020-4144-BSA-1A
Hearing Date: March 2, 2022
Agenda Item No. 6

Dear President Newhouse and Honorable Members of the Commission:

As noted in our prior correspondence, we are counsel for Mr. and Mrs Louis Hsieh, the owners of 627 N. Carcassonne Road. We submit this letter in response to the February 28, 2022, letter submitted by appellant's legal counsel, Shute Mihaly & Weinberger, LLP, in support of the appeal. Although the letter is new, the substance of it provides absolutely no new arguments or evidence in support of the appeal, nor does it raise any issues that could not have been raised at the first hearing. In fact, this letter primarily rehashes arguments made in their prior October 29, 2020, letter submitted to the Zoning Administrator. As the letter provides no new evidence, it should simply be disregarded for the purposes of this hearing.

With respect to the arguments it does make, it once again attempts to create something out of nothing, by conflating the difference between a zoning code interpretation, which is subject to the jurisdiction of the Department of City Planning, and the issue of alleged unpermitted grading, which is subject to the jurisdiction of the Department of Building and Safety. As the Zoning Administrator clearly explained in his April 23, 2021 determination, "[s]ince the issuance of grading permits and the legality of the same are not contained in Chapter 1 of the LAMC but in Chapter IX of the LAMC (the Building Code) the appeal of the on-site grading [] belongs with the Board of Building and Safety Commission." (Page 26.) It really is that simple, and it is exceedingly unreasonable for the appellant to ask this Commission to ignore City laws for the benefit of the Bel-Air Association.

To try and argue around this fact, the letter contends the Zoning Administrator was wrong to dismiss the issue because the definition of "Hillside Grade" is contained in Chapter 1, and therefore it is a Department of City Planning issue. This, again, misses the point, because the appellant has never argued that the grade in the field and the grade in the plans were inconsistent at the time the permits were

March 1, 2022

Page 2

issued, which is why the appellants' fervent demand to have the City revoke our client's building permit is completely disconnected from the law and the facts. Given this, we join with our clients' neighbors and their legal counsel, Armbruster Goldsmith & Delvac, LLP, in respectfully requesting that you reaffirm your prior decision and once again deny the appeal. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D.F.F.', likely representing Daniel F. Freedman.

BENJAMIN M. REZNIK and
DANIEL F. FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

cc: Charlie Rausch, Associate Zoning Administrator, Department of City Planning
Terry Kaufmann-Macias, Esq., Supervising Attorney, Office of the City Attorney
Oscar Medellin, Esq., Deputy City Attorney, Office of the City Attorney
Dale Goldsmith, Esq., Armbruster Goldsmith & Delvac LLP

Exhibit A

Exhibit B

Benjamin M. Reznik
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March 2, 2022

BY EMAIL ONLY (apcwestla@lacity.org)

President Newhouse and the Honorable
Members of the West Los Angeles Area
Planning Commission
Attn: James K. Williams, Exec. Assistant II
City of Los Angeles
200 North Spring Street, Room 532
Los Angeles, CA 90012

Re: 10701 Bellagio Road / 627 North Carcassonne Road
Case No(s). DIR-2020-4144-BSA-1A; DIR 2020-4145-BSA-1A
Agenda Items No(s). 6/7

Dear President Newhouse and Honorable Members of the Commission:

Please accept this letter as notice that this evening's hearing on the two-home development constructed at 10701 Bellagio Road and 627 N. Carcassonne Road constitutes a violation of the California Housing Accountability Act ("HAA"), and therefore may not be heard. Pursuant to Government Code § 65905.5, a local agency may conduct a maximum of five hearings, *including hearing continuances*, in connection with a housing development project. This limitation includes hearings held in connection with project appeals. **To date, the City has held at least six (6) hearings on this development, and therefore no further hearings may be held.**¹ As with the several other egregious violations of the City's Municipal Code and Charter that has occurred in connection with this appeal process, we reserve our clients' right to bring a legal action against the City in connection with any further violations of state housing laws.

Sincerely,



BENJAMIN M. REZNIK and
DANIEL F. FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

¹ The prior hearings include at least the following: (1) **October 8, 2020**: Zoning Administrator's Hearing; (2) **October 29, 2020**: Second Zoning Administrator's Hearing; (3) **November 10, 2020**: Bel-Air Beverly Crest Neighborhood Council Hearing; (4) **September 1, 2021**: First APC Hearing; (5) **October 20, 2021**: Second West Los Angeles APC Hearing; (6) **November 23, 2021**: City Council Hearing.

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cc: Charlie Rausch, Associate Zoning Administrator, Department of City Planning
Terry Kaufmann-Macias, Esq., Supervising Attorney, Office of the City Attorney
Oscar Medellin, Esq., Deputy City Attorney, Office of the City Attorney
Dale Goldsmith, Esq., Armbruster Goldsmith & Delvac LLP

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March 1, 2022

BY EMAIL

The Honorable West Los Angeles
Area Planning Commission
City Hall, Room 272
200 N. Spring Street
Los Angeles, CA 90012

Attn: Alice Inawat, Commission Executive
Assistant

apcwestla@lacity.org

RE: 10701 Bellagio Road/ DIR 2020-4145-BSA (Item #7 on the Commission's March 2, 2022 agenda

Dear Commissioners:

As you know, we represent Tri and Hugh Nguyen, innocent purchasers and current owners of the single-family home (the "Home") at the above address. We are writing in response to the last minute letter ("Letter") from Winter King in support of the subject appeal ("Appeal") by the Bel Air Association ("Appellants"). As set forth below, the Letter is merely a rehash of arguments that the Commission properly rejected when it denied the Appeal in October 2021. Therefore, we respectfully request that Commission reaffirm its prior, well-reasoned action and deny the Appeal once again.

A. Discussion

1. LADBS Correctly Determined Grade Based on a Topographic Survey, not the 2015 Lot Line Adjustment ("LLA"). As set forth in Section B.1 of our October 11, 2022 letter to the Commission, LADBS properly determined grade based on a stamped topographic survey ("Survey") from a licensed surveyor, not the LLA¹. Appellants have not provided any credible evidence that the Survey was in any way inaccurate.

2. Appellants' Allegations of Unpermitted Grading Are Baseless. The Appellants allege that illegal grading occurred on the Site from 2012 to 2014, but provide no credible evidence to support this claim. The Letter asserts that LADBS agreed that illegal grading

¹ Even assuming, for argument's sake, that LADBS determined grade based on the LLA, the time period for challenging the LLA has long since passed.

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occurred. In fact, after a thorough investigation, *in 2019 LADBS rejected Appellants' claims, determined that the permits were properly issued, and lifted the Order to Comply.*

The Letter also claims that a 2018 email exchange between Shawn Bayliss and Jason Healy of City Planning is evidence of illegal grading. However, this exchange only discloses Mr. Healy's opinion, which he concedes primarily is based on Google "street view" screen shots.

As the Zoning Administrator stated in denying the Appeal: "To show error or abuse, one must show substantial evidence not hearsay and estimates from off-site views ... Photographs and estimates by bystanders are not substantial evidence of error or abuse of authority."

In any event, *Mr. Healy's opinion is irrelevant as he has no authority over grading issues.* Rather, only LADBS is authorized to investigate allegations of illegal grading, did so in 2019, and determined that the permits for the Home were properly issued. LADBS reaffirmed this determination in 2020 when it concluded that the LADBS did not err or abuse its discretion in denying Appellants' appeal of the building permits.

3. The Appeal Does Not Raise Any Appealable Zoning Issues. LAMC Section 12.26 K.1 only permits the Planning Director (and this Commission on appeal) to hear appeals of certain zoning matters. As set forth in Section B.3 of our October 11, 2022 letter, illegal grading is an enforcement issue for LADBS based a violation of the Building Code (see LAMC Section 91.103.1) and not a zoning issue. As the Zoning Administrator stated in his denial of the Appeal: "It is not up to Planning to determine if LADBS errored in interpreting their own Code."

B. Conclusion

Last October, this Commission properly found that the Zoning Administrator did not err or abuse his discretion and denied the Appeal. Appellants have provided no new or credible evidence showing that the Commission's prior action was wrong. Therefore, we respectfully request that you reaffirm your prior decision and once again deny the appeal.

Very truly yours,



Dale J. Goldsmith

cc: Charlie Rausch
Terry Kaufman-Macias, Esq.
Benjamin Reznik, Esq.
Tri and Hugh Nguyen