

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

4 UNITED WALNUT TAXPAYERS,

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SUPERIOR COURT

-VS-

NO. BC576587

MT. SAN ANTONIO COMMUNITY COLLEGE
DISTRICT,

RESPONDENT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, DECEMBER 6, 2016

APPEARANCES:

FOR CITY OF WALNUT: LEIBOLD MCCLENDON & MANN
BY: JOHN G. MCCLENDON, ESQ.
9841 IRVINE CENTER DRIVE
SUITE 230
IRVINE, CALIFORNIA 92618

FOR UNITED WALNUT TAXPAYERS: CRAIG A. SHERMAN
ATTORNEY AT LAW
1901 FIRST AVENUE
SUITE 219
SAN DIEGO, CALIFORNIA 92101

FOR MT. SAC COMMUNITY COLLEGE DISTRICT: STRADLING YOCCA CARLSON & RAUTH
BY: SEAN B. ABSHER, ESQ.
44 MONTGOMERY STREET
SUITE 4200
SAN FRANCISCO, CALIFORNIA 94104

REPORTED BY: PATRICIA ANN THAETE, CSR 8737
OFFICIAL REPORTER

1 CASE NUMBER BC576587
2 CASE NAME: UNITED WALNUT TAXPAYERS
3 VS
4 MT. SAN ANTONIO COMMUNITY
5 COLLEGE
6 LOS ANGELES, CA TUESDAY, DECEMBER 6, 2016
7 DEPARTMENT 85 HON. JAMES C. CHALFANT,
8 JUDGE
9 APPEARANCES: (AS HERETOFORE NOTED.)
10 REPORTER: PATRICIA ANN THAETE,
11 CSR NO. 8737
12 TIME: A.M. SESSION

13
14 THE COURT: OKAY. UNITED WALNUT TAXPAYERS
15 VERSUS MT. SAC. BC576587. NUMBER 1 ON THE
16 CALENDAR.

17 COUNSEL, YOUR APPEARANCES, PLEASE

18 MR. MCCLENDON: GOOD AFTERNOON, YOUR HONOR.
19 JOHN MCCLENDON ON BEHALF OF THE CITY OF WALNUT.

20 MR. SHERMAN: GOOD AFTERNOON, YOUR HONOR.
21 CRAIG SHERMAN ON BEHALF OF PETITIONER/PLAINTIFF
22 UNITED WALNUT TAXPAYERS.

23 MR. ABSHER: AND SEAN ABSHER ON BEHALF OF
24 THE MT. SAC COMMUNITY COLLEGE DISTRICT.

25 THE COURT: ALL RIGHT. GOOD AFTERNOON,
26 COUNSEL. THIS IS HERE ON DUELING MOTIONS. FIRST
27 IS UNITED WALNUT TAXPAYERS' RENEWED MOTION FOR
28 PRELIMINARY INJUNCTION UNDER CODE OF CIVIL

1 PROCEDURE 1008(B), ALTHOUGH THEY DON'T MENTION
2 THAT PROVISION, THAT'S WHAT IT IS. THE SECOND IS
3 MT. SAC'S MOTION FOR A PRELIMINARY INJUNCTION
4 AGAINST THE CITY TO ENJOIN THE STOP WORK NOTICE
5 THAT WAS ISSUED.

6 I'VE ISSUED A TENTATIVE WHICH IS TO
7 GRANT THE RENEWED MOTION FOR A PRELIMINARY
8 INJUNCTION, BUT IMPOSE A BOND, AND TO DENY
9 MT. SAC'S MOTION FOR A PRELIMINARY INJUNCTION TO
10 ENJOIN THE STOP WORK NOTICE. THE PRINCIPLE REASON
11 IS THE SAME FOR BOTH TENTATIVES, WHICH IS IT IS
12 CLEAR TO ME THAT MT. SAC, UNDER THE GOVERNMENT
13 CODE, GETS TO LOCATE AND CONSTRUCT A FACILITY THAT
14 IS A SOLAR -- LET ME BE CLEAR -- UNDER 53091 OF
15 THE GOVERNMENT CODE (E) -- THAT MT. SAC IS
16 ENTITLED TO -- THEY GO FURTHER, 53091, WHICH IS
17 PART OF A STATUTORY SCHEME, WHICH IS, I THINK IT'S
18 53090 TO 95, ENACTED BY THE LEGISLATURE TO VEST
19 CITIES AND COUNTIES WITH CONTROL OVER ZONING AND
20 BUILDING RESTRICTIONS BY OTHER PUBLIC AGENCIES.

21 53091(A) REQUIRES EACH LOCAL AGENCY TO
22 COMPLY WITH CITY OR COUNTY BUILDING AND ZONING
23 ORDINANCE, BUT 53091(D) AND (E) CONTAIN
24 EXCEPTIONS TO THAT REQUIREMENT AND (E) IS THE
25 PERTINENT ONE HERE AND IT SAYS THAT ZONING
26 ORDINANCE OF -- ORDINANCES OF A COUNTY OR CITY
27 SHALL NOT APPLY TO THE LOCATION OR CONSTRUCTION OF
28 FACILITIES FOR THE PRODUCTION OR GENERATION OF

1 ELECTRICAL ENERGY.

2 NOW, THIS IS A SOLAR PROJECT IN WHICH
3 UNDER THE CURRENT FACTS IT IS UNDISPUTED THAT
4 MT. SAC BUILDING A FACILITY THAT WILL GENERATE
5 ELECTRICAL ENERGY, THEREFOR, IT IS SQUARELY WITHIN
6 53091(E)

7 AND THE LOCATION OR CONSTRUCTION OF
8 THAT SOLAR PROJECT IS EXEMPT FROM LOCAL CONTROL BY
9 THE CITY OF WALNUT, BUT 53097 PROVIDES AN
10 EXCEPTION TO THAT EXCEPTION AND IT STATES,
11 "NOTWITHSTANDING ANY OTHER PROVISION OF THIS
12 ARTICLE, 53091 IS WITHIN ARTICLE 5, THE SAME
13 ARTICLE THAT 53097 IS IN.

14 IT SAYS, "NOTWITHSTANDING ANY OTHER
15 PROVISIONS OF THIS ARTICLE, GOVERNING BOARD OF
16 MUNICIPAL DISTRICT SHALL COMPLY WITH ANY CITY OR
17 COUNTY ORDINANCE REGULATING DRAINAGE IMPROVEMENTS,
18 REGULATING ROAD IMPROVEMENTS, OR REQUIRING THE
19 REVIEW AND APPROVAL OF GRADING PLANS."

20 SO DRAINAGE ROADS AND GRADING ARE ALL
21 SUBJECT TO LOCAL CONTROL BY A CITY, BY THE CITY OF
22 WALNUT, EVEN THOUGH THE OTHER ZONING ORDINANCES OF
23 THE CITY DO NOT APPLY TO THE SOLAR PROJECT.

24 NOW, THEN THE QUESTION BECOMES, DOES
25 THE CITY OF WALNUT HAVE A ZONING ORDINANCE FOR
26 THIS PRELIMINARY INJUNCTION AND I BELIEVE THE
27 PETITION OR SECOND AMENDED PETITION -- WHAT
28 PETITION ARE WE ON, SECOND AMENDED?

1 MR. SHERMAN: YES, SIR.

2 THE COURT: -- IS ONLY ABOUT GRADING, NOT
3 ROAD CONDITIONS OR DRAINAGE.

4 SO AS FAR AS GRADING IS CONCERNED,
5 DOES THE CITY OF WALNUT HAVE A GRADING ORDINANCE?
6 WELL, IT DOES, IT HAS ADOPTED THE COUNTY BUILDING
7 CODE INCORPORATING BY REFERENCE AS IT EXISTED ON
8 NOVEMBER 26, 2013. THEREFORE, ANY AMENDMENTS TO
9 IT -- TO THE COUNTY BUILDING CODE AFTER THAT ARE
10 IRRELEVANT. THE CITY HAS INCORPORATED THAT BY
11 REFERENCE, BUT THE CITY HAS ALSO SAID THAT ALL
12 GRADING WORK SHALL CONFORM TO THE MUNICIPAL
13 BUILDING CODE, THE ORDINANCE CODIFIED IN SECTION
14 6-5.3 TO 5.8, AND ALL CITY RULES AND REGULATIONS.

15 IT IS ALSO SAID IN 6.5.5 AND 6.5 --
16 6-5.5 AND 6-5.6 OF THE CITY MUNICIPAL CODE IT SETS
17 FORTH DEVELOPMENT STANDARDS RELATIVE TO GRADING AS
18 WELL AS PROCEDURES FOR APPROVAL OF GRADING. AND
19 IT ALSO HAS PROVIDED THAT IN 6-5.3, THAT ITS
20 DEVELOPMENT STANDARDS RELATIVE TO GRADING
21 COMPLEMENT THE BUILDING CODE APPENDIX CHAPTER J OF
22 THE COUNTY.

23 AND INsofar AS THERE IS CONFLICT, THE
24 NATURE AND SCOPE OF PERMITTED EARTHWORK IN
25 DEVELOPMENT SHALL BE GOVERNED BY THE CITY'S
26 DEVELOPMENT STANDARDS AND THE BUILDING CODE SHALL
27 PREVAIL AS TO GEOTECHNICAL AND ENGINEERING DESIGN
28 AND CONSTRUCTION AND THE ADMINISTRATION OF THE

1 PERMANENT PROCESS.

2 SO IT IS CLEAR THAT EVEN THOUGH THE
3 CITY HAS INCORPORATED BY REFERENCE THE COUNTY'S
4 BUILDING CODE, THERE ARE ELEMENTS OF ITS OWN
5 GRADING ORDINANCES THAT APPLY OUTSIDE OF THE
6 BUILDING CODE AND ANY CONFLICT HAS TO BE
7 INTERPRETED IN FAVOR OF THE CITY WHICH SAYS ALL
8 GRADING WORK SHALL CONFORM TO THE CODE. WHY IS
9 THAT IMPORTANT? BECAUSE THE COUNTY CODE SECTION
10 J 101.1 SAYS THAT ITS PURPOSE OF THE BUILDING CODE
11 IS -- AT LEAST AS IT APPLIES TO GRADING -- IS TO
12 SAFEGUARD LIFE, LIMB, PROPERTY AND THE PUBLIC
13 WELFARE BY REGULATING GRADING ON PRIVATE
14 PROPERTY. OF COURSE MT. SAC'S SOLAR PROJECT IS ON
15 PUBLIC PROPERTY, BUT I DO THINK THAT ASSUMING
16 ARGUENDO THAT APPENDIX J APPLIES ONLY TO PRIVATE
17 PROPERTY, THAT IS NOT CONTROLLING BECAUSE THE
18 CITY'S BUILDING -- MUNICIPAL BUILDING CODE IS
19 BROADER THAN SIMPLY APPENDIX J.

20 SO THE CITY DOES REGULATE, AT LEAST TO
21 SOME EXTENT, THE GRADING ON THE SOLAR PROJECT AND
22 THEREFORE THE MT. SAC HAS TO GO THROUGH THE CITY'S
23 PERMITTING PROCESS FOR GRADING. MT. SAC ARGUES AT
24 SOME POINT IN THEIR EVIDENCE THAT THEY NEVER HAD
25 TO APPLY FOR A CUP BEFORE; OF COURSE, THIS ISN'T A
26 CUP, THIS IS A GRADING PERMIT.

27 AND, IN ANY EVENT, THE FACT THAT THE
28 CITY HAS NEVER IMPOSED ITS WILL ON MT. SAC DOESN'T

1 MEAN THEY DON'T HAVE A RIGHT TO DO SO, AND I THINK
2 IT DOES.

3 THE BALANCE OF HARMS IS ACTUALLY NOT
4 PARTICULARLY STRONG FROM EITHER SIDE. MT. SAC
5 SAYS WE CAN'T BUILD DURING THE GNATCATCHER
6 BREEDING SEASON, WHICH IS FEBRUARY 1 THROUGH
7 SEPTEMBER 1, AND DELAYS IN CONSTRUCTION WILL PLACE
8 OUR NATIONWIDE PERMIT AT RISK AS WELL AS \$785,077
9 IN PERFORMANCE-BASED INCENTIVES.

10 WELL, BEING AT RISK IS A HARM, BUT
11 IT'S NOT A DEFINITE HARM. ON THE OTHER HAND, THE
12 PLAINTIFF SAYS, WELL, IF YOU CAN'T EVEN COMPLETE
13 THIS PROJECT BY NOVEMBER 23RD GIVEN THAT IT'S
14 GOING TO TAKE 109 WORKING DAYS AND THAT YOU ARE
15 NOT ALLOWED TO CONSTRUCT DURING THE GNATCATCHER
16 SEASON. BUT THE PROJECT HAS FOUR PHASES AND IT'S
17 NOT CLEAR THAT THE DISTRICT CAN'T COMPLETE IT ON
18 TIME.

19 AND THEN AS FAR AS PLAINTIFF'S
20 ENVIRONMENTAL HARMS, IT TRIES TO RELY ON VISUAL
21 IMPACTS, WHICH HAVE NOTHING DO WITH GRADING. THE
22 ONLY HARM IT CAN RELY ON IS GRADING HARM. AND
23 THIS PROJECT INVOLVES A MAJOR MOVEMENT OF EARTH
24 THAT PLAINTIFF SAYS 261,000 CUBIC YARDS OF FILL
25 WILL BE HAULED OR IMPORTED TO THE 9.9 ACRE SITE.
26 I THINK THERE IS EVIDENCE ELSEWHERE THAT IT'S LESS
27 THAN THAT, BUT IT'S STILL WELL ABOVE A HUNDRED
28 THOUSAND CUBIC YARDS.

1 THE DISTRICT SAYS, WELL, LOOK, WE HAVE
2 PERMITS, WE HAVE FEDERAL PERMITS, WE HAVE REGIONAL
3 WATER QUALITY BOARD PERMITS, WE HAVE DEPARTMENT OF
4 FISH AND GAME -- FISH AND WILDLIFE PERMITS, OR AT
5 LEAST APPROVALS, BUT THE DISTRICT DOESN'T EXPLAIN
6 HOW THESE PERMITS DEAL WITH GRADING, IF THEY DO AT
7 ALL.

8 SO IN THE PLAINTIFF'S MOTION THE
9 BALANCE WEIGHS MODESTLY IN FAVOR OF AN INJUNCTION.
10 AND AS PLAINTIFF ALSO HAS SHOWN A REASONABLE
11 PROSPECT OF SUCCESS, A PRELIMINARY INJUNCTION WILL
12 ISSUE, BUT I HAVE TO ISSUE A BOND, WHICH I WILL
13 DISCUSS WITH COUNSEL.

14 ON MT. SAC'S MOTION, THE FLIP SIDE
15 IS TO DENY FOR PRETTY MUCH THE SAME REASONS
16 EXCEPT THAT MT. SAC ALSO ARGUES THAT THE WRONG
17 PERSON ISSUED THE STOP WORK NOTICE, BUT AS THE
18 CITY POINTS OUT THERE IS NO REQUIREMENT THAT THE
19 STOP WORK NOTICE HAS TO BE SIGNED. AND, IN ANY
20 EVENT, THE CITY ENGINEER APPROVED -- DIRECTED,
21 REVIEWED AND APPROVED FOR THE STOP WORK -- I CALL
22 IT NOTICE.

23 THE CITY ALSO ARGUES THAT TRUCKS WILL
24 BE MAKING A TURN ON A ROAD THAT -- ON A DRIVEWAY
25 THAT HAS A MERGING LANE RIGHT NEXT TO IT EVERY 90
26 SECONDS DURING WORK HOURS FOR THREE MONTHS THAT
27 CREATES A SAFETY AND TRAFFIC HAZARD THAT THE CITY
28 SHOULD HAVE THE POLICE POWER TO ADDRESS. THAT

1 CERTAINLY SEEMS LOGICAL, BUT THE CITY -- THE
2 DISTRICT CORRECTLY POINTS OUT THAT THE STOP WORK
3 NOTICE IS NOT BASED ON THE LACK OF A HAUL PLAN AND
4 THE CITY'S AUTHORITY FOR A HAUL PLAN IS ONLY THE
5 CITY ENGINEER'S STATEMENT THAT IT IS HIS PRACTICE
6 TO REQUIRE A HAUL PLAN FOR MAJOR GRADING PROJECTS.

7 I WOULD HAVE WANTED TO SEE MORE
8 AUTHORITY THAN THAT.

9 WITH RESPECT TO THE BALANCING OF
10 HARMS, THE HARMS ARE ESSENTIALLY THE SAME AS
11 DISCUSSED IN THE PLAINTIFF'S MOTION. ON THE
12 DENIAL OF THIS MOTION, NO BOND IS REQUIRED.

13 SO, I DON'T KNOW, LET ME HEAR FROM
14 UNITED WALNUT FIRST. DO YOU WANT TO ADDRESS THE
15 ISSUE OF BOND?

16 MR. SHERMAN: I DO, YOUR HONOR, IF I MAY?

17 THE COURT: GO AHEAD.

18 MR. SHERMAN: THREE POINTS AND THEN --

19 THE COURT: THEY WANT THREE QUARTERS OF A
20 MILLION DOLLARS.

21 MR. SHERMAN: UNITED WALNUT BELIEVES THAT A
22 NOMINAL BOND IS SUPPORTED. I WOULD RENEW THAT
23 REQUEST. PLAINTIFF IS A NONPROFIT 501(C)(3), WE
24 DID PLEAD IT BOTH IN THE POINTS AND AUTHORITIES AT
25 PAGE NINE.

26 THE COURT: WELL, THE POINTS AND AUTHORITIES
27 ARE NOT EVIDENCE. SO, I MEAN, A PLEADING IS
28 EVIDENCE IF IT'S VERIFIED.

1 IS IT VERIFIED?

2 MR. SHERMAN: WE DO, YOUR HONOR. EXHIBIT D,
3 OUR SECOND AMENDED COMPLAINT, PARAGRAPH 5 DOES
4 PLEAD THAT AS WELL.

5 THE COURT: HOLD ON.

6 MR. SHERMAN: SO THOSE ARE THE TWO POINTS
7 AND WHY WE REQUESTED THE NOMINAL BOND BASED UPON
8 THAT NONPROFIT PUBLIC INTEREST STATUS OF THE HEAVY
9 BURDEN THAT ESSENTIALLY THE COMMUNITIES AND THE
10 CITY, BUT THE COMMUNITY ON BEHALF OF PETITIONER,
11 IS BURDENING ON BEHALF OF THE ENFORCEMENT OF
12 LAWS.

13 THE COURT: HOLD ON. HOLD ON. I'M LOOKING
14 AT PARAGRAPH 5.

15 MR. SHERMAN: EXHIBIT D. OH, I'M SORRY. IT
16 WAS ATTACHED TO THE MOTION, BUT NONETHELESS.

17 THE COURT: NO. I'M LOOKING AT THIS IS THE
18 SECOND AMENDED COMPLAINT FILED ON AUGUST 29TH OF
19 THIS YEAR VERIFIED, SINCE YOU ARE A NONPROFIT
20 ENTITY WHICH MEMBERS WERE RESIDING IN THE CITY AND
21 DISTRICT, THEY'RE RESIDENCES AND TAXPAYERS, VOTED
22 IN THE GENERAL ELECTION. OKAY. AND -- LET'S SEE.
23 LET ME SEE THE VERIFICATION. PAGE 23, VERIFIED BY
24 A LAWYER. I DON'T BELIEVE A COMPLAINT VERIFIED BY
25 A LAWYER IS EVIDENTIARY IN NATURE. 446 OF THE
26 CODE OF CIVIL PROCEDURE, I THINK, REQUIRES IT.
27 LET ME JUST DOUBLE CHECK THAT. I DON'T THINK IT
28 IS.

1 MR. SHERMAN: I WOULD ASK YOUR HONOR TO NOTE
2 THAT THE PRIOR COMPLAINTS DID HAVE CLIENT
3 VERIFICATIONS SIGNED TO THAT EFFECT. I KNOW THIS
4 AMENDMENT DOES SUPERSEDE IT, BUT NONETHELESS IT
5 WAS TESTIFIED TO AND IT IS IN THE COURT'S FILES
6 AND THOSE FACTS HAVEN'T CHANGED.

7 THE COURT: AND VERIFICATION BY A LAWYER IS
8 NOT EVIDENCE.

9 SO WHO VERIFIED YOUR PREVIOUS
10 COMPLAINT?

11 MR. SHERMAN: THE REPRESENTATIVE OF
12 PETITIONER.

13 THE COURT: WHO IS THAT?

14 MR. SHERMAN: LAYLA -- THE NAME IS SLIPPING
15 MY MIND NOW, BUT I KNOW -- IN FACT, I'VE LOOKED AT
16 IT, MT. SAC HAS PROVIDED AN ATTACHED COPY OF THE
17 FIRST AMENDED COMPLAINT WHETHER MY CLIENT SIGNED
18 THAT OR MY OFFICE DID, BUT THAT WAS EXHIBIT --

19 THE COURT: IT'S AN EXHIBIT?

20 MR. SHERMAN: IT'S AN EXHIBIT TO MT. SAC'S
21 OPPOSITION TO OUR PRELIMINARY INJUNCTION MOTION.
22 THEY PROVIDED BOTH THE FIRST AMENDED AND THE
23 SECOND AMENDED COMPLAINT AS EXHIBITS.

24 THE COURT: ALL RIGHT. SO MT. SAC'S
25 OPPOSITION TO YOUR MOTION.

26 MR. ABSHER: YOUR HONOR, THAT WOULD BE MY
27 DECLARATION IN SUPPORT OF OPPOSITION. I BELIEVE
28 IT WOULD BE EXHIBIT A AND B.

1 THE COURT: THAT'S YOUR MOVING PAPERS.

2 ALL RIGHT. THIS IS TO THE OPPOSITION.

3 MR. ABSHER'S DECLARATION EXHIBIT A IS THE FIRST
4 AMENDED VERIFIED COMPLAINT VERIFIED BY LAYLA
5 ABOU-TALEB, T-A-L-E-B, AUTHORIZED OFFICER AND
6 DIRECTOR.

7 IT SAYS WHEN MADE BY AN ATTORNEY OR
8 SIMILAR OR ON BEHALF OF A CORPORATION OR A PUBLIC
9 AGENCY BY ANY OFFICER THEREOF, THEY SHALL NOT BE
10 CONSIDERED AN AFFIDAVIT OR DECLARATION.

11 THE UNITED WALNUT TAXPAYERS IS AN
12 ASSOCIATION; IS THAT RIGHT?

13 MR. SHERMAN: IT'S A NONPROFIT. IT'S A
14 501(C)(3).

15 THE COURT: IT'S A CORPORATION.

16 MR. MCCLENDON: IT IS A CORPORATION.

17 THE COURT: NOT ADMISSIBLE.

18 OKAY. SO I DON'T HAVE ANY EVIDENCE OF
19 THE NONPROFIT STATUS, SO THE REST OF YOUR
20 ARGUMENT.

21 MR. SHERMAN: YES, YOUR HONOR. THE OTHER IS
22 A CAUSATION ISSUE. I WOULD ATTEST TO THE COURT OR
23 REPRESENT THAT THERE IS ZERO DOLLARS IN HARM
24 CAUSED BY PLAINTIFF IN LIGHT OF THE STOP WORK
25 ORDER. I THINK THE COURT NOTED THAT.

26 THE COURT: YOU DON'T GET TO ARGUE THAT. IF
27 YOU WANT TO RELY ON THE STOP WORK ORDER AND MY
28 RULINGS, THEN YOU GIVE UP YOUR MOTION FOR

1 PRELIMINARY INJUNCTION AND RELY ON THE STOP WORK
2 ORDER, THEN YOU WON'T HAVE TO POST ANYTHING.

3 IF YOU DON'T WANT TO RELY ON THE STOP
4 WORK ORDER, THEN YOU HAVE TO POST A BOND AND WE
5 HAVE TO IGNORE THE STOP WORK ORDER. YOU CAN'T GET
6 IT BOTH WAYS. I DON'T THINK THAT'S FAIR.

7 MR. SHERMAN: WELL, THEN THE PROPOSAL WOULD
8 BE, YOUR HONOR, TO MAKE THE ORDER ON INJUNCTION
9 AND THE POST OF THE BOND CONDITIONAL AND ONLY IF
10 NECESSARY TO THE EXTENT THAT THE STOP WORK ORDER
11 IS DISSOLVED. IT WOULD BE SUPERFLUOUS AND
12 UNNECESSARY TO A DEGREE TO --

13 THE COURT: OKAY. WELL, LET'S ASSUME THAT'S
14 A POSSIBLE CONDITION. HOW MUCH ARE WE TALKING
15 ABOUT?

16 MR. SHERMAN: I STILL PROPOSE IT'S A
17 THOUSAND DOLLAR BOND ON THE BASIS THAT
18 MT. SAN ANTONIO COLLEGE HAS NOT PROVEN
19 SUFFICIENTLY THAT ITS LOSS OF INCENTIVES IS CAUSED
20 BY UNITED WALNUT TAXPAYERS OR THIS INJUNCTION FOR
21 THE FOLLOWING REASONS;

22 ONE IS THEIR OWN DELAY IN PROCESSING
23 UNIT PERMITS TO GET THEM TO THAT LAST EXTENSION.

24 TWO, THE 109 DAYS IS, IN FACT, WE
25 SUBMITTED EVIDENCE, OF A 600-DAY WORK SCHEDULE TO
26 COMPLETE THE PROJECT.

27 THE COURT: SO THAT MAY NOT ALL BE
28 CONSTRUCTION. SEE, THAT'S ONE OF THE PROBLEMS.

1 THEY HAVE FOUR PHASES. I DON'T KNOW WHICH PHASES
2 ARE GOING TO BE GNATCATCHER PHASES AND WHICH
3 AREN'T.

4 MR. SHERMAN: UNDERSTOOD, BUT HERE IS THE
5 IMPORTANT POINT, THE DECLARATION OF NELLESEN
6 STATES THAT THEY DON'T GET THEIR INCENTIVES UNTIL
7 THEY'RE COMPLETE AND THEY'RE PLUGGED IN AND THEY
8 ARE GENERATING POWER.

9 THE COURT: OH, THEY DON'T GET THEIR
10 INCENTIVES?

11 MR. SHERMAN: RIGHT. SO IT'S COMPLETION,
12 PLUGGED IN, A HUNDRED PERCENT DONE. SO THE ISSUE
13 OF PHASE ONE, TWO, THREE AND FOUR, THEY NEED TO BE
14 DONE, YOU KNOW, WITH ESSENTIALLY THE EQUIVALENT
15 OF, YOU KNOW, AN OCCUPANCY PERMIT, EVERYTHING
16 FINALIZED BEFORE --

17 THE COURT: YES. SO, LOOK, THIS IS PRETTY
18 FUZZY. ON THE ONE HAND, WE DON'T REALLY KNOW --
19 THEY HAVE 109 DAYS, I WILL ACCEPT THAT. THEY
20 CAN'T WORK DURING GNATCATCHER SEASON, I'LL ACCEPT
21 THAT. THERE ARE FOUR PHASES. I DON'T REALLY KNOW
22 HOW THE WORK SCHEDULE FITS INTO THE GNATCATCHER
23 SEASON, SO WE HAVE SOME VAGARY THERE, AND THEN I
24 DON'T KNOW WHAT HAPPENS IF THEY DON'T FINISH ON
25 TIME. I MEAN, BEING AT RISK FOR LOSING THEIR
26 INCENTIVES DOESN'T MEAN THEY'RE GOING TO LOSE
27 THEIR INCENTIVES.

28 ON THE OTHER HAND, THE DAMAGES

1 SUSTAINED BY MT. SAC CONCEPTUALLY ARE LOSS OF
2 INCENTIVES, LOSS OF THE SOLAR ENERGY SAVINGS THAT
3 THEY WOULD OTHERWISE HAVE FOR SOME PERIOD OF
4 DELAY, AND THE COST OF THE ATTORNEYS' FEES TO SET
5 ASIDE MY IMPROVIDENTLY ISSUED PRELIMINARY
6 INJUNCTION.

7 I MEAN, I HAVE TO ASSUME IN SETTING
8 THE BOND THAT I'M WRONG IN ISSUING THE PRELIMINARY
9 INJUNCTION, SO WHAT WOULD IT COST THEM TO SET IT
10 ASIDE. IT'S EITHER THE ATTORNEYS' FEES FOR A
11 MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION OR
12 LEANING AT TRIAL.

13 SO THOSE ATTORNEYS' FEES, GIVEN THAT
14 WE'RE ON VOLUME 7 IN THIS CASE, THOSE ATTORNEYS'
15 FEES COULD BE SIGNIFICANT.

16 MR. ABSHER: YOUR HONOR, IF I MIGHT BE
17 HEARD?

18 THE COURT: YES. ALL RIGHT. SO LET ME
19 FINISH WITH THE PLAINTIFF.

20 SO I ASSUME YOU DON'T WISH TO BE HEARD
21 ON THE TENTATIVE SINCE YOU ARE PREVAILING, THE
22 ONLY ISSUE IS THE BOND FOR YOU?

23 MR. SHERMAN: CORRECT, YOUR HONOR.

24 THE COURT: OKAY. SO SHOULD WE ADDRESS THE
25 PLAINTIFF'S MOTION FIRST OR SHOULD WE ADDRESS THEM
26 TOGETHER?

27 HOW DO YOU WANT TO DO THIS?

28 MR. ABSHER: WELL, YOUR HONOR, I DO AGREE

1 FROM MY READING OF THE TENTATIVE IT COMES DOWN TO
2 A FUNDAMENTAL ISSUE ABOUT APPLYING 53097,
3 NOTWITHSTANDING THE COURT'S ANALYSIS ON 53091(E)
4 THAT THE EVIDENCE SHOWS IT'S A SOLAR GENERATING
5 FACILITY.

6 THE COURT: WELL, I'M AGREEING WITH YOU ON
7 THAT.

8 MR. ABSHER: CORRECT. AND, YOUR HONOR, I
9 THINK THE TENTATIVE RULING FOLLOWS THE LOGIC
10 FAIRLY WELL IN TERMS OF HOW THE STATUTORY SCHEME
11 IS LAID OUT IN APPLYING THOSE FACTS TO THE PROJECT
12 HERE.

13 THE ONLY PLACE I WOULD DISAGREE WITH
14 THE COURT IS AS A MATTER OF STATUTORY
15 INTERPRETATION, ONE WAY TO THINK ABOUT THIS
16 ORDINANCE, THAT IS, THE COUNTY ORDINANCE VERSUS
17 THE CITY ORDINANCE IS, IS THERE REALLY AN
18 AMBIGUITY.

19 THE AMBIGUITY IS CREATED, I THINK, IF
20 THE CITY CAN COME IN HERE AND SHOW THAT THEY HAD
21 ACTUALLY APPLIED THEIR ZONING ORDINANCES AND THEIR
22 GRADING ORDINANCES TO MT. SAC'S PROJECTS.

23 AND WE DID SUBMIT IN THE CONTEXT OF
24 THE TAXPAYERS MOTION, YOUR HONOR, A RULING BY
25 JUDGE LAVIN. WHEN JUDGE LAVIN DENIED THE CITY'S
26 MOTION FOR PRELIMINARY INJUNCTION AGAINST THE
27 PARKING STRUCTURE, JUDGE LAVIN FOUND -- THIS IS
28 WHAT HE SAID; "PETITIONER'S OWN EVIDENCE -- HE'S

1 REFERRING TO THE CITY -- "PETITIONER'S OWN
2 EVIDENCE SHOWS THAT IT WILL NOT BE ABLE TO SHOW
3 THE PROJECT VIOLATES CITY ZONING LAWS, THAT WITH
4 THE EXCEPTION OF FINAL ENGINEERING ON THE ROAD
5 MITIGATION, NO ADDITIONAL CITY APPROVALS WERE
6 REQUIRED."

7 THIRD, IN A MEMORANDUM FROM THE
8 PETITIONER'S CITY ATTORNEY -- PRIOR CITY ATTORNEY
9 TO THE MAYOR, "THE CITY ACKNOWLEDGES THAT ITS
10 INVOLVEMENT WITH THE PROJECT IS LIMITED TO REVIEW
11 OF IMPROVEMENTS OF SIDEWALKS, CURB-CUTS AND OTHER
12 STREET IMPROVEMENTS."

13 THOSE TYPES OF IMPROVEMENTS, YOUR
14 HONOR, ARE OFF-STREET, OFF-SITE GRADING. AND IF
15 YOU LOOK AT 53097, ASSUMING IT WERE TO APPLY, IT
16 MAKES A DISTINCTION BETWEEN ON-SITE GRADING AND
17 OFF-SITE GRADING.

18 SO I'M LOOKING AT 53097 RIGHT NOW AND
19 IT WILL SAY, "THE GOVERNING BOARD SHALL COMPLY
20 WITH GRADING, DRAINAGE, ET CETERA, ET CETERA,
21 OF ON-SITE IMPROVEMENTS."

22 THE COURT: RIGHT.

23 MR. ABSHER: "IF A SCHOOL DISTRICT ELECTS
24 NOT TO COMPLY WITH THE REQUIREMENTS OF A CITY
25 RELATED TO THE DESIGN AND CONSTRUCTION OF OFF-SITE
26 IMPROVEMENTS, THE CITY OR COUNTY SHALL NOT BE
27 LIABLE FOR ANY INJURIES."

28 THE COURT: RIGHT.

1 MR. ABSHER: SO 53097, YOUR HONOR,
2 CONTEMPLATES THAT COMPLETELY CONSISTENT WITH
3 JUDGE LAVIN'S RULING, THAT THERE IS NO OBLIGATION
4 THAT MT. SAC COMPLIED WITH THE OFF-SITE GRADING
5 REQUIREMENTS.

6 THE COURT: RIGHT.

7 MR. ABSHER: AND THE --

8 THE COURT: IT ONLY HAS TO CONSIDER THEM.

9 MR. ABSHER: CORRECT. AND, YOUR HONOR,
10 THERE WAS NOT ANY EVIDENCE SUBMITTED BY THE CITY
11 THAT THEY'VE EVER ENFORCED THE GRADING ORDINANCE
12 AGAINST THE COLLEGE.

13 THE COURT: TRUE.

14 MR. ABSHER: NOW, WE CAN LOOK AT THAT AS THE
15 CITY IS NOT REQUIRED TO ACQUIESCE TO EVERY
16 PROJECT --

17 THE COURT: RIGHT.

18 MR. ABSHER: -- BUT I THINK, YOUR HONOR,
19 IT'S MORE AN INDICATION OF HOW THE CITY
20 INTERPRETED ITS OWN MUNICIPAL CODE. THAT IS, THE
21 CITY'S CONDUCT, YOUR HONOR, IS CONSISTENT WITH THE
22 LANGUAGE IN THEIR OWN MUNICIPAL CODE WHICH
23 INCORPORATES THE COUNTY ORDINANCE AND THE COUNTY
24 ORDINANCE COULDN'T BE CLEARER, IT SAYS THE PURPOSE
25 IS TO REGULATE PRIVATE PROPERTY.

26 AND THE OTHER POINT, YOUR HONOR, ON
27 THAT IS THE COURT'S CITATION TO -- THIS IS THE
28 WALNUT MUNICIPAL CODE SECTION 6-5.3.

1 THE COURT: RIGHT.

2 MR. ABSHER: THERE IS NO QUESTION THE WALNUT
3 MUNICIPAL CODE HAS SORT OF TWO COMPONENTS TO IT,
4 AS THE COURT CORRECTLY READS IN 6-5.3. THERE ARE
5 THE DEVELOPMENT STANDARDS RELATIVE TO GRADING, AND
6 THERE, IF THERE IS CONFLICT, THOSE CONFLICTS GET
7 RESOLVED IN FAVOR OF THE WALNUT CODE, BUT THEN IF
8 YOU GO TO THE BOTTOM LAST SENTENCE IT SAYS, "THE
9 BUILDING CODE SHALL PREVAIL AS THE GEOTECHNICAL
10 ENGINEERING DESIGN AND CONSTRUCTION AND TO THE
11 ADMINISTRATION OF THE PERMIT PROCESS."

12 THE COURT: RIGHT.

13 MR. ABSHER: SO, YOUR HONOR, MY POINT IS
14 WHAT COULD BE MORE FUNDAMENTAL TO THE PERMIT
15 PROCESS THAN THE PURPOSE OF THE ORDINANCE.

16 THE COURT: WELL, THAT'S A SCOPE ARGUMENT.

17 MR. ABSHER: I UNDERSTAND THAT, YOUR HONOR,
18 BUT THE COURT IS RELYING ON ARGUMENT MADE BY THE
19 CITY THAT YOU CAN THEN LOOK TO 6-5.4, WHICH SAYS
20 ALL GRADING WORK. WELL, YOUR HONOR, IF YOU LOOK
21 AT THE WAY WALNUT SET UP ITS MUNICIPAL CODE, THEY
22 START BY IDENTIFYING APPENDIX J AND INCORPORATING
23 IT.

24 THE COURT: YES.

25 MR. ABSHER: THEN YOU MOVE DOWN AND 6-5.4 IS
26 TITLED "SAME/GENERAL REQUIREMENTS."

27 SO WE SUBMIT, YOUR HONOR, ALL THAT
28 6-5.4 IS DOING IS ESTABLISHING THE REQUIREMENTS

1 FOR GRADING WORK THAT IS SUBJECT TO THE ORDINANCE.
2 IT'S NOT INDEPENDENTLY STATING THAT ALL PROPERTY,
3 PUBLIC OR PRIVATE, IS SUBJECT TO THESE
4 REQUIREMENTS. IT'S SIMPLY STATING BY ITS OWN
5 TITLE, "HERE ARE THE REQUIREMENTS AND THESE
6 REQUIREMENTS APPLY TO ALL GRADING WORK."

7 THE COURT: THAT IS A FAIR ARGUMENT. THE
8 PROBLEM IS I THINK THERE IS AN AMBIGUITY AND THE
9 MUNICIPAL CODE ALSO SAYS ALL AMBIGUITIES ARE
10 CONSTRUED IN FAVOR OF APPLICATION OF THE MUNICIPAL
11 CODE.

12 SO, I MEAN, YOUR ARGUMENT IS THE
13 BUILDING CODE SAYS IT APPLIES TO PRIVATE PROPERTY,
14 THE MUNICIPAL CODE SAYS ALL GRADING WORK SHALL
15 CONFORM TO THE MUNICIPAL CODE. IT DOESN'T SAY
16 THAT IT APPLIES TO PUBLIC PROPERTY.

17 MR. ABSHER: WELL, EVEN MORE THAN --

18 THE COURT: HENCE, THE ARGUMENT.

19 MR. ABSHER: IT'S EVEN MORE THAN THAT, YOUR
20 HONOR, BECAUSE WHEN YOU LOOK AT THE WAY THE CITY
21 OF WALNUT SET UP ITS MUNICIPAL CODE, IT TALKS
22 ABOUT INCORPORATING APPENDIX J, IT TALKS ABOUT
23 CHANGING DEFINITIONS. THAT'S HOW WE GET THE CITY
24 ENGINEER AS THE --

25 THE COURT: RIGHT.

26 MR. ABSHER: -- BUILDING OFFICIAL.

27 SO THEY MAKE CHANGES TO APPENDIX J.
28 THEY CHANGE DEFINITIONS, THEY CHANGE THE

1 DESIGNATION OF THE BUILDING OFFICIAL. THEY DON'T
2 MAKE ANY CHANGES IN THE DEFINITION SECTION AS TO
3 THE MEANING OF THE WORD "PRIVATE PROPERTY."

4 AND, INDEED, IN THE OPPOSITION THAT
5 THE CITY SUBMITTED, YOUR HONOR, THEY SUBMITTED AN
6 AMENDMENT BY THE COUNTY BOARD OF SUPERVISORS TO
7 APPENDIX J TO CHANGE THE REFERENCE FROM PRIVATE
8 PROPERTY TO ALL PROPERTY. THAT WAS SUBMITTED IN
9 THEIR OPPOSITION.

10 THE COURT: RIGHT. AND YOU ARGUE THAT IT
11 DOESN'T APPLY AND I AGREE WITH YOU.

12 MR. ABSHER: RIGHT. RIGHT, BUT THE POINT I
13 MAKE, YOUR HONOR, IS THERE IS NOT AN AMBIGUITY IF
14 YOU LOOK AT IT IN THE CONTEXT OF HOW DOES THE CITY
15 EXPLAIN THAT IT DIDN'T APPLY ITS ZONING
16 ORDINANCES, ITS GRADING ORDINANCES TO MT. SAC
17 PROJECTS.

18 RATHER THAN SAYING THERE IS AN
19 AMBIGUITY, I THINK WHAT THAT EVIDENCE SHOWS IS
20 CRYSTAL CLEAR, THAT THE CITY ITSELF INTERPRETED
21 ITS OWN ORDINANCES AS TO NOT APPLYING TO MT. SAC
22 AND THAT'S WHY THERE IS NO EVIDENCE OF A SINGLE
23 GRADING PERMIT THAT'S BEEN ISSUED.

24 WE MADE A VERY EMPHATIC STATEMENT IN
25 OUR MOVING PAPERS TO THE CITY. CITY, YOU HAVE
26 NEVER REGULATED ANY PROJECT. YOU'VE NEVER ISSUED
27 ANY PERMITS. ALL THE CITY HAD TO DO IS AN
28 INVITATION, SUBMIT ONE EVIDENCE, ONE PROJECT WHERE

1 THEY APPLIED THEIR GRADING ORDINANCE. THERE IS
2 NONE, YOUR HONOR.

3 AND WHAT YOU DO HAVE IS ACTUALLY THE
4 REVERSE. YOU HAVE JUDGE LAVIN SAYING, "CITY, YOUR
5 OWN EVIDENCE SHOWS YOU DON'T APPLY YOUR ORDINANCES
6 TO MT. SAC EXCEPT FOR THIS VERY NARROW WORK
7 RELATED TO OFF-SITE GRADING."

8 SO I THINK, YOUR HONOR, THE WHOLE --
9 YOU KNOW, THERE IS A REFERENCE TO A RED HERRING IN
10 THE CITY'S PAPER, BUT THE RED HERRING HERE, YOUR
11 HONOR, IS THE IDEA THERE IS AN AMBIGUITY WHEN THE
12 CITY HAS NEVER APPLIED ITS ZONING ORDINANCES OR
13 IT'S GRADING ORDINANCES TO MT. SAC.

14 THE COURT: I WOULD HAVE LIKED TO HAVE KNOWN
15 HOW THE COUNTY INTERPRETED ITS BUILDING CODE.
16 WHAT DOES IT MEAN WHEN IT SAYS, "PRIVATE
17 PROPERTY"?

18 DOES THAT MEAN WE ARE NOT APPLYING OUR
19 OWN BUILDING CODE TO US, THE COUNTY AS A PUBLIC
20 AGENCY, PUBLIC ENTITY, OR DOES IT MEAN ANY PUBLIC
21 ENTITY WITHIN THE COUNTY WE'RE NOT APPLYING THE
22 BUILDING CODE TO?

23 HOW DO WE KNOW?

24 MR. ABSHER: WELL, YOUR HONOR, I THINK THERE
25 IS A HINT OF THAT ANSWER IN THE COUNTY'S OWN
26 APPENDIX J. THE PHRASE, "PUBLIC PROPERTY" AND
27 "PRIVATE PROPERTY" IS USED THROUGHOUT APPENDIX J.

28 SO THE COUNTY KNEW THE DIFFERENCE

1 BETWEEN PUBLIC PROPERTY AND PRIVATE PROPERTY. IT
2 USED THOSE DIFFERENT PHRASES IN DIFFERENT
3 PROVISIONS OF APPENDIX J.

4 THE COURT: WELL, I MEAN, I GUESS WHAT I'M
5 SAYING IS, I MEAN, I UNDERSTAND YOUR ARGUMENT
6 THAT, YOU KNOW, HEY, EVEN IF THE CITY OF WALNUT
7 COULD APPLY ITS GRADING ORDINANCE UNDER THE
8 GOVERNMENT CODE TO THIS PROJECT, IT DIDN'T BECAUSE
9 IT INCORPORATED THE COUNTY CODE. COUNTY CODE SAYS
10 IT APPLIES TO PRIVATE PROPERTY, NOT PUBLIC
11 PROPERTY, AND NOTHING IN THE MUNICIPAL CODE IS
12 INCONSISTENT WITH THAT SCOPE OF WORK.

13 AND, YOU KNOW, IT'S A FAIR ARGUMENT.
14 WHAT'S THE ANSWER TO THAT OTHER THAN YOUR
15 REFERENCE TO ALL GRADING WORK?

16 MR. MCCLENDON: WELL, SEVERAL THINGS. FIRST
17 OFF, I'M NOT HERE TO DEFEND WHAT THE PRIOR CITY
18 ATTORNEY MAY OR MAY NOT HAVE SAID, HE'S BEEN
19 RETIRED. I'LL LEAVE IT AT THAT.

20 WE'VE BEEN TELLING THEM FROM DAY ONE
21 ON THIS PROJECT WHEN THEY MADE IT KNOWN THAT THEY
22 WERE GOING FORWARD WITH IT THAT THEY HAVE TO
23 COMPLY WITH GRADING. THEIR OWN EIR SAID THEY WERE
24 GOING TO GET A GRADING PERMIT.

25 YOUR QUESTION IS FAIRLY ASKED. IF
26 IT'S NOT THE CITY ISSUING GRADING PERMITS, WHO
27 ISSUES GRADING PERMITS?

28 THE COURT: WELL, THEY SORT OF ADDRESS THAT,

1 RIGHT? THEY SAY NOT ONLY DOES THE EIR SAY THEY'RE
2 GOING TO GET A GRADING PERMIT, BUT THEY'RE GOING
3 TO CONSULT WITH THE CITY, WHICH SUGGESTS THAT
4 THEY'RE NOT GETTING THE GRADING PERMIT FROM THE
5 CITY.

6 MR. ABSHER: CORRECT, YOUR HONOR. AND I
7 DON'T WANT TO INTERRUPT MR. MCCLENDON, I DON'T
8 THINK HE'S DONE, BUT HE'S MADE CERTAIN FACTUAL
9 REPRESENTATIONS ALREADY TO THE COURT THAT AREN'T
10 TRUE AND THEY DO NEED TO BE ADDRESSED BECAUSE
11 THEY'RE CRITICAL AND THEY ARE VITAL TO THIS CASE
12 AND I WILL WAIT FOR MR. MCCLENDON TO FINISH,
13 BUT --

14 THE COURT: YEAH. OKAY. BACK TO
15 MR. MCCLENDON, BUT, YOU KNOW, JUST SOMETHING YOU
16 NEED TO THINK ABOUT IS THIS IS A BIG PROJECT WITH
17 A LOT OF GRADING AND A LOT OF TRUCKS HAULING DIRT.
18 SOMEBODY NEEDS TO REGULATE THAT.

19 GO AHEAD.

20 MR. MCCLENDON: YES. EXACTLY. IT SLIPS
21 THROUGH THE CRACKS. AND YOU ASKED A FAIR
22 QUESTION, WHAT IS THE COUNTY'S OFFICIAL POSITION
23 ON THIS. I SERVED THIS LAST NIGHT. THIS IS THE
24 SMOKING GUN. THIS IS THE COUNTY'S OFFICIAL
25 POSITION FROM THE SENIOR DEPUTY COUNTY COUNSEL FOR
26 THE PROPERTY DIVISION.

27 AND IN HERE, UNDER PENALTY OF PERJURY,
28 HE EXPLAINS THAT PRIVATE PROPERTY, SPECIFICALLY

1 THE SCHOOL DISTRICTS, DOES NOT EXEMPT SCHOOL
2 DISTRICTS UNDER 53097, NEVER HAS AND --

3 THE COURT: YOU MEAN UNDER THE COUNTY --

4 MR. MCCLENDON: UNDER APPENDIX J PRIVATE
5 PROPERTY HAS BEEN CONSIDERED TO BE ALL -- BECAUSE
6 IT'S CONSISTENT WITH THIS AS A STATE BUILDING
7 CODE -- PRIVATE PROPERTY IS THE TERM OF ART THEY
8 USE AND SINCE THAT TIME THEY'VE HAD SCHOOL
9 DISTRICTS RAISE THAT "AHA" YOU SAY THIS, AND THEY
10 SAY THAT'S ALL PROPERTY THAT'S NOT WITHIN THE
11 PUBLIC RIGHT OF WAY, THEY CALL IT "PRIVATE."

12 SO, IN OTHER WORDS, THE CODE ITSELF
13 EXEMPTS OUT PROPERTY WITHIN THE PUBLIC RIGHT OF
14 WAY, STREETS AND THAT SORT OF THING. THE CODE
15 DOES THAT ITSELF. THE OTHER THING THIS CODE DOES
16 IS THIS IS A CODE -- THINK OF IT LIKE A WATERFALL
17 SORT OF THING -- IT'S A STATE BUILDING CODE. IT'S
18 ADOPTED BY THE COUNTY. THE COUNTY DOES SOME
19 REVISIONS. THEY'RE ALLOWED TO DO REVISIONS THAT
20 MAKE IT MORE RESTRICTIVE, NOT LESS RESTRICTIVE.

21 THEY CAN'T TAKE THE STATE BUILDING
22 CODE AND SAY, OH, THAT WHOLE THING ABOUT
23 EXEMPTING, THE LEGISLATURE WANTS US TO ENFORCE THE
24 BUILDING CODES AGAINST SCHOOL DISTRICTS BECAUSE,
25 AS YOU'VE SAID, SOMEBODY NEEDS TO DO IT. WE'RE
26 GOING TO JUST EXEMPT THEM OUT. THEY'RE NOT
27 ALLOWED TO DO THAT.

28 THE CITY GOES AND TAKES WHAT THE

1 COUNTY DOES AND IT STEPS DOWN AGAIN AND WE JUST
2 ADOPT WHOLESALE APPENDIX J, WHICH ORIGINATES AT
3 THE STATE, AND EVEN INTERNATIONAL LEVEL, WITH THE
4 BUILDING CODE.

5 THE COURT: OKAY. SO NOW NONE OF THIS IS IN
6 FRONT OF ME. I DON'T CARE WHAT YOU FILED
7 YESTERDAY, I'M NOT GOING TO CONSIDER IT, AND SO
8 YOU'RE MAKING AN ARGUMENT OF A STEP-DOWN WATERFALL
9 FROM THE STATE WHICH NOBODY HAS PRESENTED TO ME IN
10 THEIR PAPERS THAT I HAVE CONSIDERED.

11 IT'S AN INTERESTING ARGUMENT, IT'S A
12 TRIAL ARGUMENT. IT'S NOT REALLY AN ARGUMENT FOR
13 NOW.

14 MR. ABSHER: YOUR HONOR, IF I COULD ADDRESS
15 SOME FACTS THAT ARE -- IS BEFORE THE COURT, JUST
16 ONE QUICK REFERENCE TO THE LETTER MR. MCCLENDON IS
17 REFERRING TO.

18 IN THAT PARTICULAR LETTER, YOUR HONOR,
19 THE COUNTY COUNSEL RELIED ON THE FACT THAT THE
20 SCHOOL DISTRICT HAD SUBMITTED ITS GRADING PLANS
21 PREVIOUSLY AND HAD SUBMITTED TO THE JURISDICTION
22 OF THE COUNTY. WE DON'T HAVE THOSE FACTS HERE.

23 YOUR HONOR, I SUBMITTED A DECLARATION
24 THAT OUTLINED A LOT OF CORRESPONDENCE BETWEEN MY
25 OFFICE AND THE CITY ATTORNEY'S OFFICE.

26 THE COURT: RIGHT.

27 MR. ABSHER: NOT IN ONE LETTER DID THE CITY
28 EVER RAISE THAT THEIR GRADING ORDINANCE APPLIES.

1 THEY NEVER CITED 59037 NOT -- 53097 NOT ONCE.

2 WHAT THEY KEPT SAYING WAS YOU'RE
3 SUBJECT TO CONDITIONAL USE PERMIT IN A LOT OF THE
4 ZONING BECAUSE YOU ARE NOT AN ENERGY GENERATION
5 FACILITY.

6 THE COURT: RIGHT.

7 MR. ABSHER: SO FROM THE PERSPECTIVE OF THE
8 COLLEGE, YOUR HONOR, YOU GOT A SITUATION WHERE
9 IN 30 YEARS THEY NEVER REGULATE, THEY NEVER IMPOSE
10 THEIR GRADING ORDINANCE. THE FIRST TIME, FIRST
11 TIME THEY MENTION IT IS IN A STOP WORK ORDER AND
12 NOT EVEN THERE BECAUSE IT SHOWS UP IN THEIR
13 OPPOSITION PAPERS THAT THEY'RE RELYING ON 53097.
14 BUT IN ALL THE CORRESPONDENCE I HAD WITH THE CITY
15 ATTORNEY'S OFFICE GOING BACK FROM SEPTEMBER --
16 OCTOBER 2015 THROUGH DECEMBER OF 2015 AND THE
17 CORRESPONDENCE BACK FROM THE CITY, THERE WAS NEVER
18 NOT ONE TIME, YOUR HONOR, REFERENCE TO 53097 AND
19 THAT WE ARE SOMEHOW SUBJECT TO THEIR GRADING
20 ORDINANCE NOTWITHSTANDING THE CODE SECTION. THEY
21 NEVER RAISED THAT.

22 THE COURT: SO, I MEAN, YOU KNOW, THAT'S A
23 CUSTOM AND PRACTICE ARGUMENT AND IT IS GERMANE TO
24 THE CITY'S INTERPRETATION OF ITS' OWN ORDINANCE,
25 BUT I JUST THINK THE EVIDENCE IS UNDEVELOPED ON
26 THAT. I DON'T KNOW IF THERE ARE OTHER PUBLIC
27 AGENCIES WITHIN THE CITY OF WALNUT THAT WOULD BE
28 REGULATED BY THIS ASIDE FROM MT. SAC, I DON'T

1 KNOW. I DON'T KNOW HOW THE CITY HAS HISTORICALLY
2 LOOKED AT THIS ISSUE.

3 THE FACT THAT THEY HAVE FAILED TO
4 ENFORCE AND HAVE GOTTEN ALONG WITH MT. SAC OVER
5 THE YEARS IS NOT POWERFUL EVIDENCE AS TO THE
6 MEANING.

7 I THINK YOUR ARGUMENT, THOUGH, IS, YOU
8 KNOW, IS A GOOD ONE AND THE COUNTER ARGUMENT IS
9 ALSO A GOOD ONE IF IT IS SUPPORTED BY EVIDENCE.
10 THE CASCADING EFFECT ARGUMENT BY MR. MCCLENDON,
11 THAT ARGUMENT IS NOT REALLY IN FRONT OF ME
12 SUPPORTED BY ANYTHING.

13 SO, I MEAN, THIS IS AN INTERIM RULING.
14 ALTHOUGH THESE MOTIONS HAVE GENERATED A LOT OF
15 PAPER, AND I'M SURE IT'S A BIG PROJECT FOR THE
16 SCHOOL, IT'S NOT A HUGE AMOUNT OF MONEY AS MONEY
17 GOES, IT'S THREE QUARTERS OF A MILLION DOLLARS
18 THAT'S AT RISK HERE.

19 MR. ABSHER: WELL, YOUR HONOR, IT'S THE
20 PERFORMANCE-BASED INCENTIVES THAT ARE AT RISK.
21 IT'S THE CONSTRUCTION SCHEDULE THAT'S AT RISK.
22 IT'S THE ABILITY OF THE DISTRICT TO IMPLEMENT A
23 PROJECT THAT DOES HAVE A DEFINED EXPRESS PUBLIC
24 PURPOSE. WE CAN ASSUME THAT THE REASON 53091(E)
25 IS IN THERE IS BECAUSE THERE IS PUBLIC BENEFIT TO
26 ENCOURAGING LOCAL AGENCIES LIKE MT. SAC TO DEVELOP
27 SOLAR INJURING FACILITIES.

28 THE COURT: THERE IS. THERE IS NO QUESTION

1 ABOUT THAT AND THE FACT THAT THEY DON'T LIKE THE
2 VISUAL IMPACT, THAT'S TOO BAD, ACCORDING TO THE
3 STATUTE.

4 MR. ABSHER: YES, BUT, YOUR HONOR, I THINK
5 IF YOU LOOK AT THIS IT'S TWO SIDES ARGUING ABOUT A
6 PAST HISTORY, ONE OF THEM RESOLVED BY LOOKING AT
7 JUDGE LAVIN'S ORDER. JUDGE LAVIN MADE A RULING ON
8 A PRELIMINARY INJUNCTION AND HE MADE IT CLEAR IN
9 THAT RULING THAT THE CITY HAD NOT ENFORCED ITS
10 ZONING ORDINANCES EXCEPT FOR THIS VERY NARROW
11 LIMITATION.

12 WHY SHOULDN'T THEY BE STUCK WITH THAT?
13 THAT'S CERTAINLY HOW MT. SAC CONDUCTED THIS
14 PROJECT.

15 THE COURT: BUT, I MEAN, I DON'T WANT TO
16 ARGUE FOR THE OTHER SIDE, BUT THE ANSWER IS
17 BECAUSE YOU'RE GOING TO BE MOVING HILLSIDES. WE
18 WANT TO BE SURE ABOUT YOUR RIGHT TO DO THIS AND I
19 CAN'T LET YOU MOW DOWN A BUNCH OF HILLS ON
20 JUDGE LAVIN'S RULING THAT THEY PREVIOUSLY HAVEN'T
21 ENFORCED THEIR ORDINANCES AGAINST YOU. THAT'S NOT
22 GOOD ENOUGH FOR ME.

23 MR. MCCLENDON: YOUR HONOR, MAY I BE HEARD
24 ON THAT. THERE IS A KEY ISSUE HERE. WE'RE NOT
25 TALKING ABOUT THE PAST STUFF AND I BELIEVE THEY
26 PUT A MAP IN OF THE CAMPUS, SO --

27 THE COURT: I SAW IT.

28 MR. MCCLENDON: -- YOU CAN DO THE JUDGE'S

1 EYEBALL TEST ON THAT, OKAY, AND YOU CAN SEE THAT
2 THERE IS A MAJOR -- A MAIN PORTION OF THIS 400 AND
3 SOMETHING ACRE CAMPUS. AND THEN ON THE OTHER SIDE
4 THERE IS A ROAD THAT SEPARATES IT.

5 THE COURT: YES.

6 MR. MCCLENDON: THERE IS THIS; 26 ACRES OF
7 PREDOMINANTLY GNATCATCHER HABIT, COASTAL SAGE
8 SCRUB, WHICH PROVIDES HABITAT. OKAY. IF THEY HAD
9 GONE AND THEY HAD TORN DOWN A SMALLER BUILDING, AN
10 OLD QUONSET HUT FROM, YOU KNOW, POST-WORLD WAR II
11 AND THEY PUT UP A BUILDING AND THEY HAVEN'T DONE A
12 BUNCH OF GRADING AND IT'S BEEN ALL INSIDE THERE,
13 MAYBE IN THE PAST, YOU KNOW, WHERE IT DOESN'T
14 REQUIRE AN ARMY CORPS OF ENGINEERS THING BECAUSE
15 THERE IS NOT A BLUE-LINE STREAM, IT DOESN'T
16 REQUIRE STATE WATER RESEARCH AND CONTROL, IT
17 DOESN'T REQUIRE FISH AND GAME BECAUSE THERE IS NO
18 HABITAT. THAT'S APPLES AND ORANGES HERE.

19 THEY HAVE NOT SHOWN THAT THIS
20 SITUATION IS LIKE ANY OTHER SITUATION. THIS IS
21 UTTERLY UNIQUE. THE FIRST TIME THEY'VE GONE TO
22 TAKE A SENSITIVE HABITAT AREA WHERE THEY THREATEN
23 SPECIES AND SAY WE'RE GONNA TEAR THE WHOLE PLACE
24 UP AND MASSIVELY FILL IT UP WITH IMPORTED DIRT
25 THAT'S GOING TO COME OUT ON CITY STREETS, A LOT OF
26 THIS OTHER GRADING THAT THEY MAY NOT HAVE DONE,
27 IT'S ENTIRELY WITHIN THE CONFINES OF THEIR SCHOOL
28 FACILITY AND THEY HAVEN'T COME TO US FOR PERMITS

1 BECAUSE, FRANKLY, THEY DON'T NEED TO BECAUSE THE
2 DIVISION OF THE STATE ARCHITECT, THEY'RE NOT
3 PROCESSING PERMITS FOR US LOOKING AT THEIR
4 BUILDINGS AND ENGINEERING THEIR DRAWINGS AND ALL
5 THAT. THAT'S DONE BY THE STATE AT THE STATE
6 LEVEL.

7 THE COURT: I MEAN, I THINK THIS IS AN
8 INTERIM SET OF MOTIONS, IT BOILS DOWN TO THE
9 FOLLOWING; THAT UNDER THE GOVERNMENT CODE THE CITY
10 HAS THE RIGHT TO REGULATE THE GRADING OF THIS
11 PROJECT AND THE ISSUE WE'VE BEEN ARGUING OVER FOR
12 THE LAST HALF HOUR IS DID THE CITY PURPORT TO
13 REGULATE THIS KIND OF PROJECT, OR DOES THE CITY
14 MORE ACCURATELY PURPORT TO REGULATE. THE CITY
15 SAYS IT DOES, MT. SAC SAYS IT DOESN'T.

16 WELL, ON A PRELIMINARY INJUNCTION
17 INVOLVING ENVIRONMENTAL HARM I HAVE TO ERR ON THE
18 SIDE OF STOPPING THE PROJECT UNTIL IT'S CLEAR TO
19 ME THAT THE CITY DOES NOT REGULATE THIS BECAUSE
20 UNDER THE LEGISLATIVE AUTHORITY 53097 THEY HAVE
21 THE RIGHT TO DO IT. I THINK IT BOILS DOWN TO
22 THAT.

23 MR. ABSHER: YEAH, YOUR HONOR, I CAN
24 UNDERSTAND THAT, BUT I WOULD NOTE THAT THESE
25 MOTIONS -- THE TAXPAYERS MOTION, OUR MOTION,
26 BECAUSE OF THE STOP WORK NOTICE, IT'S NOT -- THIS
27 IS A CEQA CASE TIED TO A LAND USE ZONING CASE.

28 THE COURT: YES.

1 MR. ABSHER: NOBODY IS ASSERTING FOR
2 PURPOSES OF THIS MOTION THAT THERE IS A CEQA-TYPE
3 VIOLATION HERE. THE CITY HASN'T CITED ANYTHING IN
4 THEIR STOP WORK NOTICE, YOUR HONOR.

5 THE COURT: TRUE.

6 MR. ABSHER: WE'RE LIMITED TO LOOKING AT THE
7 STOP WORK ORDER THE CITY ISSUED. AND THE CITY --

8 THE COURT: RIGHT.

9 MR. ABSHER: -- HASN'T STOPPED THIS PROJECT
10 BASED ON THINGS LIKE ENDANGERED SPECIES.

11 THE COURT: RIGHT.

12 MR. ABSHER: WE'VE COMPLIED WITH ALL OF
13 THAT, YOUR HONOR, THOSE REQUIREMENTS.

14 THE COURT: RIGHT. RIGHT. I'M NOT
15 DISPUTING THAT. AND YOU SAID IN YOUR PAPERS THAT
16 YOUR REFERENCE TO PERMITS AND CONSULTING WITH THE
17 CITY AND YOUR EIR DOES NOT BIND YOU BECAUSE YOU
18 WEREN'T TALKING ABOUT A PERMIT FROM THE CITY.

19 SO, YES, UNDER CEQA, RIGHT NOW I'VE
20 GOT NO CEQA. I'M ONLY RULING ON WHAT'S IN FRONT
21 OF ME AND THAT IS THAT THE CITY CONTENDS THAT IT
22 HAS THE RIGHT TO CONTROL THE GRADING OF THIS
23 PROJECT WHICH THEY CONTEND, AND YOU HAVEN'T
24 ADDRESSED, INVOLVES THE HAULING OF DIRT AS PART OF
25 THE GRADING, WHICH PROBABLY DOES, BUT I DON'T
26 REALLY LIKE THE ENGINEER SAYING MY PRACTICE IS TO
27 REQUIRE A HAUL PERMIT. THAT'S, AGAIN, WHERE I'M
28 NOT REALLY INTERESTED IN HIS PRACTICE. I'M

1 INTERESTED IN WHAT THE CITY ORDINANCES REQUIRE.

2 I HAVE TO ISSUE -- I HAVE TO DENY
3 MT. SAC'S STOP WORK -- I'M SORRY -- MOTION FOR A
4 PRELIMINARY INJUNCTION AGAINST THE STOP WORK
5 NOTICE.

6 NOW, DO YOU WISH TO BE HEARD ABOUT THE
7 BOND ON THE UNITED WALNUT MOTION?

8 MR. ABSHER: I DO, YOUR HONOR, BUT BEFORE I
9 MOVE TO THAT, JUST SO WE'RE CLEAR BECAUSE
10 OBVIOUSLY THE DISTRICT IS GOING TO TAKE THE
11 PRELIMINARY INJUNCTION LITERALLY IN TERMS OF THE
12 COURT'S COMPLIANCE, AND AS I UNDERSTAND THE COURT,
13 THE COURT IS IMPLYING -- IS APPLYING THE GRADING
14 ORDINANCE, BUT RESPECT TO THE VARIOUS OTHER
15 ORDINANCES RAISED IN OPPOSITION THE COURT IS NOT
16 IMPOSING THE INJUNCTION OR DENYING THE INJUNCTION
17 FOR THOSE PURPOSES.

18 THE COURT: THAT'S RIGHT. THE ONLY THING I
19 AM RULING ON IS YOU'VE GOT TO FOLLOW THE GRADING
20 ORDINANCES. NOTHING MORE.

21 MR. ABSHER: THANK YOU, YOUR HONOR, BECAUSE
22 WE MAY BE BACK IN FRONT OF THE COURT ON THAT
23 ISSUE. I JUST WANT TO MAKE THAT CLEAR.

24 THE COURT: I'M ALREADY ON VOLUME 7 IN THIS
25 CASE.

26 MR. ABSHER: YOUR HONOR, THE DISTRICT IS
27 COMMITTED TO THIS PROJECT, YOUR HONOR, AND IT'S
28 GOING TO BE DONE. NOTWITHSTANDING, THE TAXPAYER

1 GROUP MAY NOT LIKE THE VIEW, ACTUALLY I DON'T
2 THINK THE VIEW IS GOING TO BE ALL THAT MUCH
3 ALTERED, BUT PUTTING THAT ASIDE, YOUR HONOR, THE
4 BOND NEEDS TO BE SIGNIFICANT, BECAUSE AS THE COURT
5 HAS POINTED OUT, YOU HAVE TO ASSUME THAT THE
6 PRELIMINARY INJUNCTION WAS IMPROPERLY ISSUED. THE
7 HARM HERE IS THE LOSS OF THOSE DOLLARS, THE
8 \$750,000. THAT'S WHAT'S AT RISK.

9 THE COURT: RISK IS PROBABILITY TIMES
10 MAGNITUDE, RIGHT. THE MAGNITUDE IS THREE-QUARTERS
11 OF A MILLION DOLLARS. WHAT'S THE PROBABILITY OF
12 YOU LOSING IT; THAT WE DON'T KNOW.

13 SO IF IT'S SOMETHING LESS THAN
14 \$750,000 THE RISK IS, BUT ON TOP OF THAT YOU'VE
15 GOT ATTORNEYS' FEES TO SET ASIDE THE INJUNCTION
16 AND ANY LOST SAVINGS OF ELECTRICAL POWER THAT YOU
17 WOULD HAVE GOTTEN FROM THE PROJECT DURING THE TIME
18 THAT THEY'VE BEEN BUILT.

19 MR. ABSHER: WELL, YOUR HONOR, IF WE'RE
20 TALKING ATTORNEYS' FEES AND THOSE TYPES OF
21 DOLLARS, I THINK IT'S A MINIMUM OF \$250,000.

22 THE COURT: IT DOESN'T STRIKE ME AS
23 UNREASONABLE. I KNOW IT'S A NONPROFIT, AND AS YOU
24 POINTED OUT IN YOUR MOVING PAPERS, THERE IS NO
25 CALIFORNIA STATE CASE LAW ON NOMINAL BONDS FOR
26 NONPROFITS. WHAT I AM WILLING TO DO IS IMPOSE A
27 \$250,000 BOND ON THE PLAINTIFF TO BE POSTED WITHIN
28 FIVE CALENDAR DAYS OF YOUR STOP WORK NOTICE BEING

1 SET ASIDE. HOW'S THAT?

2 MR. SHERMAN: I THINK THAT'S A FAIR
3 CONDITION. YOUR HONOR, IF WE CAN GET FIVE WORKING
4 DAYS.

5 THE COURT: OKAY. FIVE COURT DAYS.

6 MR. SHERMAN: I WOULD LIKE TO BE HEARD ON
7 THE AMOUNT OF THE BOND.

8 THE COURT: GO AHEAD.

9 MR. SHERMAN: I THINK IT'S INCUMBENT UPON
10 DEFENDANTS TO SUBMIT PROFFERED EVIDENCE THAT WE
11 CAN REVIEW FOR THE COURT TO THE CONSIDER ON THE
12 BOND AMOUNT AND WE CITED THE AUTHORITY --

13 THE COURT: I'M SMILING AND I'LL TELL YOU
14 WHY, BECAUSE I DO A LOT OF INJUNCTIONS, I ALMOST
15 NEVER GET EVIDENCE ON WHAT THE BOND SHOULD BE.

16 I HAVE SAID ON THE RECORD, I WILL SAY
17 IT AGAIN, THAT BOND SETTING IS A RELATIVELY
18 ARBITRARY PROCESS WHERE I CONSIDER OFFERS OF PROOF
19 FROM THE PARTIES. THE COURT OF APPEAL HAS
20 EXPRESSLY AGREED WITH ME THAT IT IS A RELATIVELY
21 ARBITRARY PROCESS, THAT IS, EVIDENCE IS NOT
22 REQUIRED IN BOND SETTING. I HAVE TO SET A BOND.

23 GO AHEAD.

24 MR. SHERMAN: RIGHT. SO WITH THE TWO
25 FACTORS WE'RE LOOKING AT RISK, THE LIKELIHOOD
26 VERSUS THE AMOUNT. THE INCENTIVES, WE DO NOT
27 BELIEVE THERE WAS SUFFICIENT EVIDENCE SHOWING THAT
28 THOSE ARE REALLY -- THE RISK IS VERY LOW WITH

1 REGARD TO THE 750, WE DON'T THINK THEY CAN MAKE
2 IT. WE THINK THEIR OWN EVIDENCE SUPPORTS IT.

3 ATTORNEYS' FEES, ALBEIT, FOR THIS
4 TRIAL AND, YOU KNOW, THE FULL COURSE OF
5 LITIGATION, WE'RE GOING TO BE IN THE, YOU KNOW,
6 HIGH SIX DIGITS, WHATEVER. I'LL SUBMIT --

7 THE COURT: ARE YOU HOPING OR --

8 MR. SHERMAN: NO. I KNOW BECAUSE WE'VE BEEN
9 AT THIS FOR TWO YEARS AND WE KNOW WHERE WE'RE AT,
10 BUT ONLY A SMALL PORTION OF THAT IS ON THIS
11 PARTICULARIZED CLAIM WITH REGARDS -- BECAUSE THIS
12 IS, AS YOUR HONOR KNOWS, WE'VE GOT A COUPLE OF
13 DIFFERENT COMPLAINTS FILED ON THIS NARROW ISSUE OF
14 THIS INTERPRETATION FOR THIS SOLAR PROJECT IS BUT
15 LIKE A FIVE, TEN PERCENT ASPECT OF THE OVERALL
16 LITIGATION.

17 THE COURT: IS IT? I MEAN, I THOUGHT THERE
18 WERE THREE PROJECTS AND ONE OF THEM HAS BEEN
19 ABANDONED. SO THERE IS THE PARKING PROJECT, THE
20 SOLAR PROJECT AND ONE OTHER I CAN'T REMEMBER.

21 MR. SHERMAN: THERE IS THE STADIUM PROJECT,
22 BUT THE PARKING GARAGE IS STILL AT ISSUE BECAUSE
23 THEY HAVE NOT RESCINDED. SO THAT WASN'T MOVED,
24 YOUR HONOR, WE'LL BE LITIGATING THAT IN MARCH.
25 SOLAR PROJECT AND STADIUM AND, YOU KNOW, STANDARD
26 OF PRACTICE, BUT SUFFICE IT TO SAY, A LOT OF TIME
27 WAS SPENT LITIGATING THE PARKING GARAGE BEFORE
28 THIS LITIGATION UPENDED IT. IT WAS AN ASPECT OF

1 THE LITIGATION AFFECTING THINGS.

2 SUFFICE IT TO SAY, LITIGATING THIS
3 NARROW ISSUE OF THE SOLAR PROJECT I DO NOT BELIEVE
4 ON ITS OWN IS IN THE RANGE THAT COUNSEL MENTIONED,
5 250.

6 THE COURT: THE QUESTION YOU ALWAYS HAVE TO
7 ASK YOURSELF IS COULD THIS IMPROVIDENT DECISION BE
8 SET ASIDE ON A MOTION OR ARE THEY GOING TO HAVE TO
9 GO TO TRIAL TO WIN.

10 I MEAN, I SUPPOSE THEY COULD SET IT
11 ASIDE ON A MOTION, BUT THE REALITY IS THIS ISSUE
12 ISN'T GOING TO COME UP AGAIN. THE SOLAR PROJECT
13 ISSUE AND THE AUTHORITY OF THE CITY UNDER ITS
14 ORDINANCE, ITS ZONING ORDINANCE, ISN'T GOING TO
15 COME UP AGAIN UNTIL TRIAL WHICH MEANS THEY HAVE TO
16 WIN AT TRIAL ON THIS ISSUE, WHICH IS GOING TO BE
17 SIGNIFICANT ATTORNEYS' FEES I WOULD THINK.

18 AND, YES, I'LL ASSUME THAT
19 THREE-QUARTERS OF A MILLION DOLLARS HAS TO BE
20 DISCOUNTED HEAVILY BY A LOW RISK BECAUSE I TEND TO
21 AGREE WITH YOU THAT THEY PROBABLY ARE GOING TO GET
22 THEIR INCENTIVES, DESPITE A DELAY, ONE WOULD
23 THINK, BUT THERE IS SOME RISK.

24 AND THEN WHEN YOU ADD THE ATTORNEYS'
25 FEES INTO THAT, HOW MUCH ARE YOU SAVING -- WHEN
26 THIS PROJECT IS BUILT, HOW MUCH ARE YOU SAVING A
27 YEAR IN ELECTRICITY, A DOLLAR AMOUNT?

28 MR. ABSHER: OVER THE LIFE OF THE PROJECT,

1 YOUR HONOR, IT'S PROBABLY GOING TO BE SOMEWHERE
2 BETWEEN 15 MILLION TO \$25 MILLION.

3 THE COURT: HOW LONG IS THE PROJECT?

4 MR. ABSHER: 20 YEARS.

5 THE COURT: OKAY. SO OVER A MILLION A YEAR?

6 MR. ABSHER: EASILY. PROBABLY MORE IF YOU
7 FACTOR IN INFLATION ON UTILITY RATES.

8 THE COURT: ONE YEAR DELAY IN THE PROJECT
9 IS, YOU KNOW, A MILLION DOLLAR LOSS THAT CAN'T BE
10 RECOVERED. I'M COMFORTABLE WITH A \$250,000 BOND,
11 BUT IT DOESN'T HAVE TO BE POSTED UNTIL FIVE COURT
12 DAYS AFTER STOP WORK NOTICE IS SET ASIDE.

13 MR. SHERMAN: DISSOLVED OR LIFTED.

14 THE COURT: LIFTED.

15 MR. SHERMAN: FAIR ENOUGH.

16 THE COURT: ALL RIGHT. DOES THAT TAKE CARE
17 OF EVERYTHING?

18 SO LET ME BE CLEAR ON THIS SCOPE OF
19 THE CITY ZONING CODE ISSUE. IT'S A LIVE ISSUE. I
20 HAVEN'T FINALLY DECIDED IT. I'VE ONLY TENTATIVELY
21 DECIDED IT. THERE ARE GOOD ARGUMENTS ON BOTH
22 SIDES. ONE OF THE ARGUMENTS ON ONE SIDE I DON'T
23 HAVE ANY EVIDENCE OF, SO THIS IS JUST AN INTERIM
24 RULING ON THAT. OKAY.

25 MR. SHERMAN: IF I MAY, YOUR HONOR, ON THE
26 PROPOSED ORDER, THERE IS A WAY TO INTERLINEATE THE
27 CONDITION AND THE AMOUNT OF BOND IN PARAGRAPHS TWO
28 AND THREE IF THE COURT IS INCLINED TO DO SO ON THE

1 RECORD.

2 THE COURT: LOOK, EVERYBODY IS HERE, RIGHT.
3 NORMALLY I DON'T SIGN ORDERS BECAUSE IF I SIGNED
4 ORDERS, I'D BE SIGNING THEM ALL DAY. I ONLY SIGN
5 ORDERS IF YOU WANT TO WAVE IT IN SOME THIRD
6 PARTY'S FACE.

7 SO IS THERE SOMEBODY THAT IS NOT HERE
8 THAT YOU WANT TO WAVE A PIECE OF PAPER IN FRONT
9 OF? IF YOU DO, I WILL SIGN AN ORDER. IF THE
10 PERSON YOU WANT TO -- OR THE ENTITY YOU WANT TO
11 BAR IS MT. SAC, THEY'RE HERE, THEY KNOW WHAT THE
12 ORDER IS. THERE WILL BE A MINUTE ORDER.

13 SO DO YOU WANT TO --

14 MR. ABSHER: I WOULD PREFER THE MINUTE
15 ORDER, YOUR HONOR.

16 THE COURT: OKAY. FAIR ENOUGH. ALL RIGHT.
17 SO THERE IS NO NEED FOR A SIGNED ORDER.

18 THE TENTATIVE IS ADOPTED AS THE ORDER
19 OF THE COURT EXCEPT ON THE BOND ISSUE AND I HAVE
20 SEPARATELY AND ORALLY ADDRESSED THE BOND.

21 MR. ABSHER: THANK YOU.

22 THE COURT: ALL RIGHT. IS NOTICE WAIVED?

23 MR. MCCLENDON: NOTICE WAIVED.

24 MR. SHERMAN: NOTICE WAIVED.

25 THE COURT: THANK YOU.

26 MR. ABSHER: YES, YOUR HONOR.

27

28 (PROCEEDINGS CONCLUDED)

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

UNITED WALNUT TAXPAYERS,)	
)	
PETITIONER,)	SUPERIOR COURT
)	
-VS-)	NO. BC576587
)	
MT. SAN ANTONIO COMMUNITY COLLEGE)	
DISTRICT,)	
)	
RESPONDENT.)	
-----)	

I, PATRICIA ANN THAETE, OFFICIAL REPORTER OF
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT
THE FOREGOING PAGES, 1 THROUGH 38, COMPRISE A FULL,
TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD
IN THE ABOVE-ENTITLED MATTER, REPORTED BY ME ON
DECEMBER 6, 2016, IN DEPARTMENT 85.

DATED THIS 17TH DAY OF DECEMBER, 2016.

PATRICIA A. THAETE, CSR NO. 8737
OFFICIAL REPORTER