

**Summary Minutes
City of Sedona
Board of Adjustment Meeting
Council Chambers, Sedona City Hall, Sedona, AZ
Friday, June 3, 2016 – 8:00 a.m.**

1. Verification of Notice, Call to Order, Pledge of Allegiance and Roll Call.

Chair Gilgoff called the meeting to order at 8:00 a.m., verified that the meeting had been properly noticed, led the Pledge of Allegiance and asked for roll call.

Roll Call:

Board Members Present: Chair Joel Gilgoff, Vice Chair Gary Rich and Board Members Robert Gordon and Mike Ward. Board Member Charlotte Hosseini was excused.

Staff Present: Warren Campbell, Karen Daines, Audree Juhlin, Robert Pickels and Donna Puckett

Other Participants Present: Andrew McGuire, with Gust Rosenfeld P.L.C., legal counsel for the Board of Adjustment; Francis J. Slavin, legal counsel for the Applicants; Heather N. Dukes, with Francis J. Slavin law firm, legal counsel for the Applicants; Applicant Linda Rose Robson and Witness David E. Richert.

Council Members Present: Mayor Sandy Moriarty and Councilor John Martinez

2. Approval of the following minutes: May 12, 2016 (E)

The Chair stated that he would like to have a motion to approve the minutes of May 12, 2016.

MOTION: Board Member Ward so moved. Board Member Gordon seconded the motion. **VOTE:** Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

Audree Juhlin asked to clarify something on the minutes; the agenda says that the May 12, 2016 minutes are Executive Session; that is not the case; the (E) is incorrect. It should say (R) for regular meeting, so just to make that clarification.

Chair Gilgoff stated okay and asked for a modification to the motion to change from the (E) to the (R).

MOTION: Board Member Ward moved to change the May 12th meeting minutes from (E) to (R). Board Member Gordon seconded the motion. **VOTE:** Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

3. CONSIDERATION OF THE FOLLOWING REQUESTS THROUGH PUBLIC HEARING PROCEDURES:

Continuation of the May 12, 2016 Public Hearing to discuss and possibly take action on an appeal filed by Mr. Francis J. Slavin, counsel and authorized agent for Linda Rose Robson, William B. Robson and Rio Cody Robson concerning the operation of Son Silver West Gallery, Inc. located at 1476 State Route 179, Sedona. The appeal is regarding an interpretation of the City of Sedona Land Development Code made by the Zoning Administrator (Community Development Director) pertaining to two Notices of Violation issued on November 10, 2015. These Notices outline code violations related to the expansion of a conditionally allowed commercial use on a residentially-zoned property and the use of three adjacent residentially-zoned properties for commercial purposes. Applicant: Mr. Francis J. Slavin, Counsel and Authorized Agent for Mr. William B. Robson, Ms. Linda Rose Robson, and Rio Cody Robson, Son Silver West Gallery, Inc. Case Number: AP2015-02

Chair Gilgoff read the request stated above and indicated that before we get started with the presentations, he would like to discuss the order of presentation. For those of you who are part of the case and those of you who are in the public, first, we will have a presentation by the representatives of the City of Sedona; followed by a presentation by the Applicants; followed by a public comment period, and those of you who are in the public who would like to speak make sure you fill out one of those cards and hand it to somebody in the front row; followed by rebuttal by the Applicant, and discussion and questions by the Board. Time limits that are established for this presentation -- in the interest of maintaining a fair and efficient public hearing, the following time limits will be adhered to unless expanded by the Board: Thirty minutes for the City's presentation; 30 minutes for the Applicant's presentation; public comment - each of you will be entitled to three minutes; 15 minutes for rebuttal and summation by the Applicant after public comment has concluded. Arguments and questions -- no interruptions or objections, each side will proceed without interruption by the other and all arguments and pleadings shall be addressed to the Board. No argument between individuals will be permitted, but each side may upon approval of, through the Chairman, himself, ask questions relevant to the issues involved in the appeal.

Chair Gilgoff stated that during the hearing, Board Members will be given an opportunity to ask questions and to make appropriate comments pertinent to the appeal. Board Members may direct any question to the Applicants, staff or any person speaking; may request that the staff provide information to bring out all relevant facts, circumstances and conditions affecting the board. Upon conclusion of the presentations, the Board shall render its decision. The decision shall be by separate motion. The concurring vote of a majority members present and not otherwise disqualified, shall be necessary to take any action provided that the number voting still constitutes a quorum. Members who are present and not otherwise disqualified must vote aye or nay on all properly made and seconded motions. The Board may reverse or affirm, wholly or partly, or modify the decisions of the Zoning Administrator appealed from, and make such order, requirement, decision or determination as necessary. The Board may also defer action on the appeal if it concludes that additional evidence is needed or that alternative solutions need further study. The City and the Applicant shall each prepare a Form of Order for the Chairman to sign upon determination by the Board. The Board may accept or modify the proposed orders.

Chair Gilgoff then stated that if the Applicant fails to appear for the appeal, at the Board's sole discretion, the Board may approve, deny or continue the appeal to another hearing or may hear those persons appearing in response to the notice of hearing. The Board may approve or deny the appeal at such hearing despite the Applicant's absence.

Chair Gilgoff asked Mr. Slavin if we are okay with the rules, and Mr. Slavin introduced himself as Francis Slavin, appearing on behalf of the Robsons, and added that also with him today is his colleague, Attorney Heather Dukes who will be doing their IT here this morning. Mr. Slavin then stated that he had previously discussed, well before today, with the City Attorney that we would need more than one-half hour to be able to present everything we think is important for you to take into consideration here today, and so he had previously discussed that we would need around two hours to do that; however, he has recently corresponded with your counsel, Andrew McGuire, and suggested that we could probably make that work with 90 minutes.

Mr. Slavin indicated that the thing we are trying, we want to make sure of here today, is that we've had twenty, well the Robsons have owned this property almost 35 years. They've been operating this business there for that period of time. There have been numerous . . . , Chair Gilgoff interrupted to ask if Mr. Slavin would like 90 minutes, and Mr. Slavin responded yes sir, he would like 90 minutes. The Chair then noted that Mr. Slavin could make the rest during his presentation and Mr. Slavin responded, yes, plus the rebuttal time. Chair Gilgoff replied right, plus 15 minutes for rebuttal. Mr. Slavin stated correct and the Chair asked if Mr. Slavin was comfortable with that. Mr. Slavin then stated yes sir, and the Chair replied okay. Chair Gilgoff then asked if the Board was okay with that and the Board Members responded yes.

The Chair then stated that we are going to modify that so you have 90 minutes. Mr. Slavin stated thank you, and the Chair stated that we will also modify it so the City can have 90 minutes if it needs it. Let's begin with the City's presentation.

Presentation by Sedona City Attorney, Robert Pickels:

Mr. Pickels stated for the record that his name is Robert Pickels and he is the City Attorney for the City of Sedona, and his role here for this proceeding this morning is to represent the City staff and to assist in the presentation of the City's case. The Board of Adjustment has been provided with a comprehensive Staff Report and some additional materials in the form of an affidavit by former Director John O'Brien that was submitted in response to a report of Mr. Richert that was submitted to the Board last week or circulated to the Board last week. We don't want to go back and review all of the materials already submitted to the Board of Adjustment, but what we do want to do today is take an opportunity to give a little more detail into some of the finer points of that report and also to talk a little bit about the background for this hearing, and what the City staff relied on in preparation of a Staff Report, as well as developing a presentation for you here today. So with that in mind, he wanted to talk a little bit briefly about the statutory authority for the Board of Adjustment to hear this appeal and what guided City staff in making preparations for this presentation.

Mr. Pickels then cited the following:

A.R.S. 9-462.06 establishes that Boards of Adjustment shall review decisions of the Zoning Administrator, which in this case is the City of Sedona Community Development Director Ms. Audree Juhlin, and shall adopt rules and procedures for the conduct of its business, which is what we are doing here today. The City Council for the City of Sedona adopted rules and procedures in 1994 and Article 12 of those procedures guide City staff in how we prepare for and present our case to you here today. Rule 12.2 (D) in particular says that the Chair shall call on City staff to present an overview, pertinent concerns and issues, recommendations, and then the City Attorney has an opportunity to address pertinent legal issues, and that is the order that we intend to present our case to you today.

A.R.S.9-462.06(D) says that appeals can be taken from person aggrieved by a decision of the Zoning Administrator; again the Community Development Director in this case, so what you are here to review today is a decision or decisions of the Community Development Director as presented to you.

9-462.06(G) says that the Board shall hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made.

Mr. Pickels then stated, so two things that we believe need to be focused on today, number one is a decision or decisions made by the Zoning Administrator and whether or not there is an error or errors in that decision-making process. In this case, Son Silver West has appealed decisions made by the Community Development Director that were clearly articulated in Notices of Violation that were issued to the Appellants on September 8th, 2015 and November the 10th, 2015 respectively. So again, the role of City staff in relation to those Notices of Violation and the appeal thereof is to present an overview, a background and overview of the decision, pertinent concerns that exist relative to those decisions and the appeal, and issues, and then ultimately recommendations relative to those decisions and the appeal.

Mr. Pickels stated that we are going to start off with a staff presentation in the form of an overview. Ms. Juhlin is going to take on those duties and give us a little bit of a background as to the history of this property, and we are not going to talk too much about this, because we know that the Appellant is going to give you a detailed background from their perspective, but we felt that it was important for you to hear, from the staff perspective, what the background has been at the staff level leading up to the Notices of Violation, which start with the 1992 Conditional Use Permit, what was allowed under the 1992 Conditional Use Permit, expanded uses that have occurred since 1992, based on what was approved on the Conditional Use Permit, and then ultimately the decisions that were made as a result of those expanded uses.

So with that background, he is going to turn it over to Ms. Juhlin and she is going to run through an overview of the case for us.

Presentation by Community Development Director Audree Juhlin:

Ms. Juhlin stated that before she gets into the presentation, she just wanted to make a few points. At this dais this morning, we provided you with some additional public comments that were received since the packet was distributed to you, so you do have those. Again, only use the Staff Report dated June 3rd; disregard the December 29th and May 12th Staff Reports; that is what we will be focusing on is the June 3rd Staff Report. If you do not have any of the materials provided by staff or by the Applicant, please let us know and we will make sure that you have them.

Ms. Juhlin stated that as Mr. Pickels indicated this is an appeal of Notices of Violation that were provided to the Robsons in November of 2015. The Notices of Violations essentially say that their four properties that are zoned Single-Family Residential have been used perhaps illegally for commercial purposes. The Robsons have a long history of code violation issues that pre-date the City. We're going to get into a little bit of that, but it is more extensively described in the Staff Report. Finally, she wanted to make a point that this process and the Notices of Violation are not intended to shut down Son Silver West Gallery; we do not intend, as the City, to take the property. This is merely the City's typical process in working with property owners in code violation situations, to bring them back into compliance, and we are not singling out the Robsons for any reason.

Audree Juhlin referenced an aerial map and indicated it is the properties that we are questioning right now. All four of the properties are Single-Family Residential Low Density, which is approximately two units per acre. This means that that zoning says you can use these properties for single-family purposes only. The exception is the retail parcel on State Route 179. It does have conditional allowances for some limited commercial uses. So the four properties specifically are 61 Arrow Drive, 365 Bowstring, the vacant lot on State Route 179 and the property that holds the gallery and the house, we're going to call the retail parcel, is also Residential with a Conditional Use Permit.

Ms. Juhlin stated that before she moves on to the history, she wanted to make a note for you. At the request of the Robsons, on May 11th, City staff conducted a site visit of Arrow Drive property and Bowstring properties to determine compliance with the November 2015 Notice of Violation. The Bowstring property at the time of the site visit was in compliance with City codes and found to be compliant. So, it is her understanding that the Applicant is going to be requesting withdrawal of the Bowstring property from the appeal process hearing today. The Arrow Drive property, however, was not cleared and not deemed to be compliant with code, so there are violations that still exist with that property.

Audree Juhlin indicated that in the mid-1950s, the Broken Arrow subdivision was made official with a final plat recorded with Coconino County. In the early 1960s, the property owner who happened to be an artist requested permission from the homeowners' association of that Broken Arrow subdivision to open a small gallery to sell her artwork and wares to the public. That was granted and she did so in the mid-60s. In 1964, Coconino County established zoning; prior to that date there was no zoning in that subdivision. The zoning established by Coconino County was Single-Family Residential Low Density, essentially again two units per acre. As a result of that zoning designation, the gallery portion of the home site was considered a legal nonconforming use and could continue to operate in that form and fashion as it had prior to the adoption of the zoning designation. Then in the early 1980s, the Robsons purchased the property, the house with the art gallery attached to it, and continued to operate it in which it had been operated by the previous owner, which was a live-work situation. The Robsons lived onsite and operated a small gallery retail operation. Then in 1988, the City incorporated and with that incorporation, adopted and carried forward the Coconino County zoning designation, so that whatever was applied in 1964 was carried forward in 1988, so with the incorporation of the City as an official incorporated city, that gave us the jurisdiction and authority to provide regulations and ordinances that applied to businesses and property owners within the City limits.

Ms. Juhlin stated that she was going to give a little bit of history that pertains only to the retail parcel, not to the other three properties – not to the vacant lot on S.R. 179 or Bowstring or 61 Arrow, and the reasons are because those are clearly Single-Family Residential; they do not have any conditional limited ability to be commercial, so she is going to focus on just the retail parcel for the moment. So after the incorporation in 1988, the City provided two after-the-fact building permits, and an after the fact building permit is essentially something that basically says that you've built a building or a structure or some kind of building that would require a building permit, without a building permit. So, the Robsons came in, filed and received after-the-fact building permits in 1989. In 1990, the Robsons submitted to the City a Zone Change application; however, they afterward subsequently withdrew that application. In 1991, former Director Tom Schafer determined that the uses at that time exceeded the uses allowed upon incorporation, so essentially, the legal nonconforming status at incorporation is how the property needed to continue to function, so however, it was functioning at incorporation is how it had to function into the future, unless they received other approvals from the City to change that operation. So as a result of the 1991 letter issued from the Director at that time, the Robsons submitted a Conditional Use application in 1991. They then withdrew that application. In 1992, they submitted a second Conditional Use application for expanding their use to continue in a broader fashion.

Audree Juhlin indicated that at the time in 1992, the Zoning Ordinance basically said you can expand a legal nonconforming use through a Conditional Use Permit; that is why they applied for that permit application. This was an option in which we could perhaps resolve the disagreement that was going on between the Director Tom Schafer at that time and the Robsons and the expansion. The Robsons at that time were saying no, we've been operating this way since before the City's incorporation and the City disagreed. So as a result of that Conditional Use Permit application, the Planning & Zoning Commission approved it in 1992. That was the last formal land use approval given to the property, so nothing else has been approved although we have received applications after that time. So what that means is that anything that they do, the Robsons do on that property – expansion, building permits or code violations, we all have to make sure they are in compliance with existing and applicable codes and regulations, as well as the conditions of the Conditional Use Permit that was approved in 1992.

Audree Juhlin stated that in 1994, she wants to point this out because it is important. In 1994, City of Sedona adopted a formal Zoning Ordinance and in that adoption there was language that no longer allowed for legal nonconforming uses to be administered through a Conditional Use Permit, so that Conditional Use Permit that was existing on the Son Silver West property could not be modified. Typically, if you want to change your Conditional Use Permit, you can come in and amend your Conditional Use Permit, but the Land Development Code in 1994 prohibited that. Their only options to change anything above what was allowed with a Conditional Use Permit in 1992 would be through a Community Plan Amendment and a Zone Change.

Ms. Juhlin indicated that with the 1992 approval of the Conditional Use Permit, there were a number of conditions applied to the property to allow them to have limited commercial abilities. The first condition basically says that uses and physical improvements on the property shall not exceed those as characterized in the Staff Report dated September 15, 1992 and as approved by the Planning & Zoning Commission with the Alternative Site Plan #2. The Staff Report then included specific square footage for different uses on the property in the different buildings identified, as well as other conditions, such as screening outdoor displays, outdoor lighting and screening parking.

Audree Juhlin then showed an image of the Site Plan Alternative #2 approved by the Planning & Zoning Commission; it is not to scale, as you can see it has been hand-drawn in as far as locations of buildings and parking areas. One discrepancy you see on the site plan from what happened after it was approved, is there are not three curb cuts from 179; there are only two. ADOT did not allow the north curb cut to remain in place, so that was removed and you only have the two on the southern portion of the property. There are no square footages included on the Alternative Site Plan; they are only identified in the Staff Report, and their precise locations of the pottery shop, the

storage space, workshops and the free-standing signs are not clearly labeled on this site plan, so there is just a little bit of discrepancy with this site plan.

Ms. Juhlin stated that a little bit of background on the other three parcels – the vacant parcel directly to the south of the retail property is again Single-Family Residential Low Density zoning. It does not allow for any commercial uses, including commercial parking. The Arrow Drive property also is Single-Family Residential Low Density. It does not allow for any commercial uses, except for those permitted in home occupation regulations. As well as the Bowstring; it is Single-Family Residential Low Density, no commercial uses are allowed.

Audree Juhlin stated, so code enforcement history, she is not going to get into a lot of the history. It is, again, provided in the Staff Report in more depth, but she did want to talk about a few points that are more related to today's topic. That starts in January 2006, when a Notice of Violation was issued by the City, and the Conditional Use Permit was suspended. This related to uses on the retail parcel that were not compliant with the Conditional Use Permit and a landscaped screen wall had been removed, as well as illegal commercial uses associated with the vacant parcel and the Arrow Drive parcel. So, there was some clarification that was needed; that Notice of Violation was revised in February of 2006 and, as was the case throughout the City's incorporation working with the Robsons, the City was able to cooperatively work with the Robsons to address all of the code violations and it was deemed to be code compliant after this action. Then in May 2008, it became known to the City that there were some other issues related to how the Robsons were using their property and a letter was sent from the City to the Robsons basically reminding them that they needed to comply with zoning regulations and Conditional Use Permit requirements, and this was the first time we had put in writing that if you want to expand, we're not saying you can't expand, but if you want to expand your use, you need to do so through the Major Community Plan Amendment and a Zone Change; that is the first time we put it in writing. We had been sharing that with them verbally for a number of years. And then in May 2011, the City again became aware of illegal commercial use of the vacant parcel for commercial parking and warehousing. As a result of that, the City did try and work with the Robsons to bring it into compliance; that was not successful, so a Notice of Violation was issued in August of 2011. This was the beginning of how we got to today's date. As a result of that Notice of Violation, which really basically said two things; you have an illegal ice cream shop, café on your property that's in violation of your Conditional Use Permit. You need to stop using that immediately and you have two shade structures on your property that we do not have any record of building permits, so we're saying you need to have a building permit. So, those were the two main items of the August 2011 Notice of Violation.

Ms. Juhlin then indicated that working again with the Robsons, like she said, we had a good history of bringing compliance voluntarily, we were able to get the coffee shop, the ice cream shop discontinued, so that was no longer a code violation; however, there was disagreement on the two shade structures. Former Director John O'Brien researched what he could find or not find for building permits related to those shade structures, and the Robsons indicated that they were existing and they were only doing repairs to those structures, so as a result of that circumstance, John O'Brien, former director, through an email offered a compromise to the shade structure remaining issue, and that was for the Robsons to provide a site plan indicating all buildings on the property as well as photos of the exterior of all buildings, and that was to be supplied to Mr. O'Brien by March 1st. March 1st came and went without that being met. In May of the same year, or May of 2012, Mr. O'Brien sent staff, right before he was retiring, an update list of properties and issues and things he felt important, and on that list was a comment that he was still waiting for the Robsons to provide this information to the City, and she has not seen that file, but she has been told that it was provided prior to his retirement in July of 2012.

Audree Juhlin stated that after John O'Brien retired, she became the Acting Director at the time and she is now currently the permanent Director of Community Development. She did not do any enforcement; she did not feel there was any need to. She felt code compliance was established at that time. In the summer of 2014, the City began receiving complaints from various people in the surrounding area of Son Silver West. As a result, staff went out and investigated those complaints

and found them to be true, and met with the Robsons to try and again voluntarily bring compliance to the properties. We weren't successful in this event and she again had to issue a Notice of Violation in October of 2014. The violations essentially outlined the illegal use for commercial purposes of the vacant property, and then commercial use of the Arrow and Bowstring properties as well. That 2014 October Notice of Violation did not identify any violations associated with the retail property.

Ms. Juhlin indicated that in response to that October 2014 Notice of Violation, the Robsons began to cooperatively work with the City to go through the proper approval process to expand legally, expand their business, and they were seeking a Major Plan Amendment and a Zone Change. They submitted those applications to the City on May 28, 2015, and as a result of those dealings with the City, we suspended our code enforcement action pending the outcome of the applications; however, in August of 2015, the Robsons withdrew their Community Plan Amendment and Zone Change applications, which then required the City to reinstate our code enforcement actions, so not only did we have our October 2014 Notices of Violations that we had identified as part of the review process, we identified a number of other issues associated with the retail site based on the application of their submittal documents and those conditions that they showed as existing. So the November 2015 Notice of Violation included, in summary, the October 2014 violations and those discovered as part of the 2015 Amendment to the Plan and Zone Change.

Audree Juhlin then referenced a map on the screen and explained it is the site plan that the Robsons submitted to the City as part of their application package, and it just demonstrates to you the areas in which they were proposing to expand in. On the right-hand side, she can't read it from here, so she knows you can't either; there are a number of numbers that show the square footage and identify each building and what their uses are going to be. This is where we determined there is inconsistency between what was submitted in 2015 and what was approved in 1992 through the Conditional Use Permit. This slide is kind of a synopsis of what is provided in your Staff Report, and it just shows a side-by-side comparison of what was approved in 1992 with the Conditional Use Permit versus what was existing by admission of the Robsons in 2015, and as you can see there are considerable differences between what was allowed in 1992 and how they had expanded in 2015.

Ms. Juhlin indicated that she wanted to talk a little bit about building permits that's been in your packet, you have seen it from not only the Staff Report, but from the Applicant's submittal documents that this has been an area that there has been some attention focused on. She wanted to point out that, yes, there has been a number of building permits approved for this location. Many of them are after-the-fact as she described, that is meaning that after something is constructed, they come in and get a building permit to validate and confirm their construction. The City does not contest the building permits that were issued. What the City does contest is how those buildings are currently used. In a number of cases, those after-the-fact permits were submitted for and reviewed for, from the building perspective and zoning perspective, a use far different than the use that is currently existing. For instance, two of them were for sheds; they were looked at as private property sheds, not for commercial retail purposes in which they are being used today. If they had put that on their building permit after-the-fact application, the City would not have been able to approve those building permits, and they would have had to been either removed or modified to meet code requirements. The City could not approve those if they had been actually shown as retail, because the Conditional Use Permit could not be expanded. The retail space could not be expanded beyond what was provided for in the Conditional Use Permit conditions of approval. So the 2015 Notice of Violation was again initiated with the withdrawal of their Major Community Plan Amendment and Zone Change applications. These again were issued in November of 2015, the property owners, as you are very much aware, has appealed those Notices of Violations; that is why we are here today. The issues related to those Notices of Violations are extensive, and they are provided in greater detail in your Staff Report, but essentially, it's saying the three residential properties – Arrow, Bowstring and the vacant property are Single-Family Residential. They do not have any ability to be used in any way for commercial purposes outside of the home occupation regulations, and that the retail parcel must conform to the conditions of approval established in

1992 with the Conditional Use Permit, so that is a synopsis of what those Notices of Violations entail.

Audree Juhlin stated that she was going to go through each violation on the properties very quickly, and then that is going to conclude her presentation, so she will start with 61 Arrow Drive. The allegations of noncompliance include employee parking, manufacturing, welding and assembly of materials and merchandise, shipping and receiving, and the use of the rear portion of the property for commercial purposes. The house specifically is where we were hearing that warehousing was taking place, manufacturing and that there was a home occupation inconsistent with home occupation requirements. On the back side of that property, a shed was approved; that was an after-the-fact shed; however, it has been converted to a commercial retail space and is called the "chapel". Around the chapel or approved shed space, a wall was constructed without a permit. This wall essentially delineates the chapel retail space, which should be a shed, to be part of the S.R. 179 property and removes it visually from 61 Arrow and puts it as part of the retail property.

Ms. Juhlin indicated that moving on to 365 Bowstring, the allegations are that the property was being used for employee parking and warehousing. She wanted to point out that the house, when we did our inspection recently, this property was in compliance and we saw no, again, no noncompliant issues with the house at the time of the site visit.

Audree Juhlin then stated onto State Route 179, the vacant parcel, allegations include commercial parking of this area, shipping and receiving are taking place here as well as the storage of merchandise, and then to the north where the retail parcel is located, the issues concern outdoor display areas that exceed the 1992 Conditional Use Permit and lighting fixtures that are not fully shielded as required by the Conditional Use Permit. On the back side of this property, identified as Building A in the site plan submitted by the Robsons, this was approved for a shed, a storage shed; it was an after-the-fact permit and it is currently being used as a retail space. Building B also on the back side of the property was approved as a storage shed, and it is being used as a retail space. Then, we have Buildings C and E, this area is the house; this is where the Robsons should be living, in accordance with the Conditional Use Permit. It is currently being used for commercial and retail purposes. Along the front, we do have some issues with the screening of the outdoor display area not in compliance with the 1992 Conditional Use Permit, and then these are shade structures that have been expanded without building permit approvals. On the back side of the property, again, another wall has been constructed and put in place without a building permit.

Ms. Juhlin indicated that is the conclusion of the specific issues related to the four properties. Again, they are all zoned Single-Family Residential, only one of them has limited commercial abilities and that is the crux of the Notices of Violation and the appeal of this hearing.

Presentation by Sedona City Attorney, Robert Pickels:

Mr. Pickels stated that the overview component of our presentation was the most significant component of the presentation, because it provides the Board with the background and the necessary sequence of events that led up to the Director's decisions that are being reviewed and appealed here today, so he is going to move very quickly through the last couple of components of our presentation towards conclusion. It should only take a few more minutes. He did want to talk a little about the pertinent concerns – issues and concerns. He doesn't want to oversimplify again, but what we are talking about here is a decision or decisions of the Community Development Director and whether or not errors existed in the process to arrive at those decisions.

Robert Pickels indicated that from the staff's perspective, the relevant factors that are for consideration by the Board of Adjustment are the factors that were considered by the Director or perhaps the factors that were not considered by the Director in arriving at her decisions that Notices of Violation should issue and whether or not doubt exists on the part of the Board as to that process or those processes.

Mr. Pickels stated that a concern that City staff has had since receiving the appeal packet is that there is information or facts that have been provided to the Board of Adjustment that were not relied upon by the Community Development Director in arriving at her decision that nonconforming uses existed and that Notices of Violation should issue. Recommendations, simply the recommendation of City staff at this point is that the decision of the Director in issuing the Notices of Violation be upheld.

Robert Pickels indicated that a pertinent legal issue, this is the last item Mr. Chairman and Members of the Board that he will cover, and he thinks that Mr. Slavin will agree with him on this, that from his perspective and his opinion, the most important legal issue today is that we have a fair, balanced approach to this review process, so that everyone involved has an opportunity to be heard, to express their position, so that the Board can make a well informed decision on what occurred in issuing the Notices of Violation and whether or not they were appropriate.

Mr. Pickels stated that staff believes that the Board should focus its attention on the 1992 Conditional Use Permit, the performance conditions that were associated and established with that Conditional Use Permit, expanded uses that occurred in the form of nonconforming uses beyond was authorized and allowed in the 1992 Conditional Use Permit and what the Director relied upon in arriving at her decisions and whether those decisions were appropriate.

Robert Pickels then stated, Mr. Chairman, Members of the Board that concludes the staff presentation.

Chair Gilgoff stated, thank you and asked if anyone on the Board has a question for City staff or the City Attorney and Board Member Gordon stated, several.

Board's Questions of City Staff:

Board Member Gordon indicated that first of all, just to clarify things in his mind, what is described as the Son Silver West property, the original property with the retail, that is actually two parcels, right, 41 and 42? Audree Juhlin explained that they're two tracts combined into one parcel. Board Member Gordon then stated okay, so at what point, he means did, when the original gallery was started in the 1960s, were both these parcels together? Audree Juhlin responded no, they were two separate tracts. As part of the Conditional Use Permit process, it was required that they combine those two tracts into one parcel. Board Member Gordon stated, okay, thank you.

Board Member Gordon then indicated that 1991, you have a Notice of Violation about exceeding the legal uses, okay, he is just not clear on what "exceeded" meant in those terms. Audree Juhlin explained when the City incorporated in 1988, however the property was functioning is what the City determined to be how it could continue to function, so whatever size of outdoor display or retail space they had in conjunction with their home is what the City determined to be legal nonconforming. In 1991, the City had determined at that time that what was existing in 1988 was no longer what was taking place at that time in 1991, so it had expanded from 1988 to 1991, and that is what that Notice of Violation related to was an expansion of . . . , the Board Member asked if that is a physical expansion or a change in the uses of the existing improvements on the property. Audree Juhlin indicated that it is her understanding that it was a physical expansion and change in the use, expanding the uses on the property.

Board Member Gordon stated that in 1994, you indicated that the City passed a new rule that basically limited the amount of modifications or type of modifications to continue Conditional Use Permits, and it is not clear to him whether that should necessarily apply to previous Conditional Use Permits or that they would somehow be grandfathered. He would like the attorney's opinion on that. Robert Pickels asked him to repeat that question please, and the Board Member again stated that in 1994, the City passed a new statute or rule, he is not sure what, basically saying we are not going to allow modifications to this type of Conditional Use Permit going forward, and his question is does that actually apply to a Conditional Use Permit of prior issue. Robert Pickels stated that in his opinion, yes.

Board Member Gordon then indicated that the recent violations that came up in 2011 and 2012, you indicated were reported by neighbors. How did the City learn of violations prior to that, was that also by neighbors or were they doing routine inspections? Audree Juhlin stated no, the City's policy for code enforcement is complaint-driven; we do not proactively, for the most part unless Council directs us to do proactive code enforcement, so all of the complaints associated with Son Silver West were complaint-driven. The Board Member stated, okay, thank you and he has one more question.

Board Member Gordon then stated that at some point, you said that the City approved construction of storage sheds and those were to be used consistent with the single-family requirements of the original zoning, and he is like mystified that anybody would expect these storage sheds that were on the original parcel there to be used for anything other than their commercial purposes. Now, maybe what you are saying is that they are not storing anything there, but rather they've got another little shop there or something. He just wants to be clear about that. Audree Juhlin indicated that she is not sure she understands your question, she's sorry. The Board Member indicated, okay, you said that at some point there were storage sheds added, he guesses that is 1993, okay, storage sheds added and that the City approved those based not on the Conditional Use Permit necessarily, but on the original zoning, which meant that they were simply to be used as storage in the sense that a homeowner might use them as storage. Now, we are saying that we issued a violation because those are being used in some other way. He just wants to clarify what the other way was – a different kind of storage, is it actual retail operations? Audree Juhlin stated thank you for the clarification. Yes, the sheds are no longer being used for storage purposes; they are retail outlet spaces. Board Member Gordon stated, thank you; he's done.

Chair Gilgoff asked Board Member Ward if anything, and Board Member Ward responded, no. The Chair then asked Vice Chair Rich.

Vice Chair Rich indicated just one quick question; is there a difference in building standards and codes for a shed and commercial? Audree Juhlin responded, yes there are. Vice Chair Rich then stated, thank you.

Chair Gilgoff then asked Mr. Slavin if he was ready for his presentation, and Mr. Slavin stated, yes, Mr. Chairman.

Presentation by Mr. Slavin, legal counsel for the Applicants:

Mr. Slavin indicated that before, he would like to set up an easel here; he will be referring to some boards. We'll also be using the PowerPoint as well, and while Ms. Dukes is setting that up . . . , Chair Gilgoff asked if he could do that so the audience can see it as well, maybe put it on the side. Mr. Slavin indicated that his question is will you be able to pick up my voice if I'm over there? He wants to make sure of that. Chair Gilgoff then confirmed with staff that we don't have a portable mic and noted that Mr. Slavin wanted to be next to it to point to it, okay. Mr. Slavin indicated that he would like to and he was thinking that he could have it here. Most of this will be put up on the screen as well, okay, and if there is any . . . The Chair stated that he understands now, that is fine.

Mr. Slavin indicated that while they are setting up, he would like to just again, a couple of housekeeping items. Number one, again, it is his understanding that based upon staff's inspection at the invitation of the Robsons, Ms. Juhlin inspected the 365 Bowstring home as well as the 61 Arrow Drive home and that the 365 Bowstring home was found to be in compliance with the Residential zoning district applicable to that property. That having been said, we would then withdraw our appeal of that particular item and that does not need to be considered today. He then asked Robert Pickels if that is correct, and Robert Pickels responded that is correct. Mr. Slavin indicated okay and Chair Gilgoff stated, so noted.

Mr. Slavin then stated that number two, with regard to 61 Arrow Drive, his understanding is that the disagreement with regard to 61 Arrow Drive is not necessarily with regard to the residence structure itself. It is his understanding that the residence structure was inspected and was found to be in

compliance; however, the noncompliance has to do with the so-called chapel that's erected on Lot 61 and the wall that is erected around the chapel. He then asked Robert Pickels if he is correct on that, and Robert Pickels stated that that is correct as well. Mr. Slavin indicated okay, so that for purposes of today and for your consideration, his understanding is that there are no violations now with regard to 61 Arrow Drive, the residence structure, and as far as the chapel is concerned, and this is based again on, by the way, Mr. Pickels and Ms. Juhlin have been very open in discussing matters with us in attempts to try to, as much as possible, solve issues so that we can make your job a little bit easier here today, and so in that regard, we talked about the fact that the Robsons would be, there would be no longer be any type of commercial use associated with the chapel. The chapel will be used as a private chapel for the residents of 61 Arrow Drive and that we will deal with the wall; there are some issues on a wall with regard to some flood control questions here, but essentially, the Robsons have cordoned off that area physically from being part of any area where customers would attempt to shop at the gallery, so what we've attempted to do at this point in time is take 365 Bowstring and 61 Arrow off of the table, so with that understanding and stipulation, we're prepared to say that that is what will occur on 61 Arrow Drive; hopefully then, that you would find that with that, and we can give you some language to that effect, that both 365 Bowstring and 61 Arrow Drive would be compliant.

Chair Gilgoff asked to be excused just one second on a housekeeping matter. He then asked Donna Puckett if she could lower the temperature in here a little bit, as people are kind of nodding off. Mr. Slavin indicated, oh, it's not because of his presentation, and the Chair stated not at all. Mr. Slavin commented oh, okay, because that does frequently happen, I can assure you.

Robert Pickels indicated that he just wanted to make sure that the record accurately reflects the fact that although potential resolutions have been discussed relative to the 61 Arrow Drive property, there's not been a formal agreement to that effect. Mr. Slavin stated that in fact is true, so hopefully, if we can get a stipulation here today to get that done, if that is comfortable with the City Attorney, we're prepared to do that, Mr. Chairman, so again, hopefully that your attention and consideration here today would be on the commercial art gallery property if you will, Tracts 42 and 41, and then the vacant Tract 40, which is just to the south.

Chair Gilgoff asked if he had that stipulation in writing somewhere, so we can put it in our conclusions, and Mr. Slavin stated that we will have that for you, but he doesn't have it right now. By the way, part of your rules that you announced at the beginning is that we could each submit findings and we do have findings we would submit to you at the end of our presentation for your consideration. The Chair indicated to just include those, that would be great, thank you, and Mr. Slavin stated okay, great.

Mr. Slavin indicated that a couple of other clarifications, and if it's okay with you he will remain seated during his presentation. The Chair indicated no problem, and Mr. Slavin stated thank you. Mr. Slavin then commented, just a point of clarification, again although the lots, the Tract 42 and 41 were combined, and it was combined as part of the 1992 Conditional Use Permit proceedings, in response to Board Member Gordon's question. The original gallery was on Lot 42 and as Ms. Juhlin stated, at the time of incorporation of the City of Sedona, all those uses on Tract 42 were, if you will, grandfathered – made legal nonconforming uses, and after the incorporation, excuse him, prior to the incorporation, the Robsons had purchased Tract 41. Their original purchase from Ms. Nestler Todd was in 1981, so the original gallery was on Tract 42. They purchased Tract 41 in 1987 and there were expansions, physical expansions, Board Member Gordon, on Tract 41. That, and as explained by Ms. Juhlin, that became controversial and at the time, your Zoning Ordinance allowed for expansions of legal nonconforming uses upon obtaining a Conditional Use Permit, just from the Planning Commission. Getting together with then Director Tom Schafer, there was the application was filed and that application was to allow for the expansion of art gallery uses onto the Tract 41. It did not at all limit, nor could it limit, what was already in existence and grandfathered on Tract 42, so he would like to at least, and we will go through that with you with some of the exhibits we have here for you today.

Mr. Slavin stated that having said that, there are three significant site plans. There is a 1991 site plan and there is a 1992, what Ms. Juhlin referred to as the Alternative Site Plan #2; that Alternate Site Plan #2 was the one that was prepared – sorry. The Chair noted that these mics are extremely sensitive, so you don't have to get quite as close to the microphone; you can be more comfortable and not have to lean into it. Mr. Slavin added plus his voice tends to project so he appreciates that, thank you sir.

Mr. Slavin then continued to state there are three site plans he would like to talk to you about today – actually four, there is a 1991, 1992, 1993 and a 2015 site plan, which we call the “as built” site plan, and what we will be presenting to you here today is that there are differences between the 1991 site plan and the 1992 site plan. There are differences between the 1992 site plan and the 1993 site plan, and by the way, the 1993 site plan was approved by then Director Tom Schafer, and then, there are also prior permits as discussed here today by Ms. Juhlin, and then we have the current site plan. And then, we have a Staff Report of 1992, and the 1992 Staff Report, we will show you was based upon the 1991 site plan and the areas and square footages on the 1991 site plan; however again, there are differences between the '91 site plan and the '92 site plan, the one that was made part of the Planning Commission's approval. Okay, then there were building permits that were issued for the two buildings that are located on what's known as Tract 41, which is the parcel that was purchased in 1987, and one was for a workshop and we have from your records, the City's records, copies of those building permits. One was for a workshop and one was for storage, and again, he thinks as Mr. Gordon appropriately pointed out, those applications were made by Son Silver West Gallery for purposes of the Son Silver West Gallery business, and if you look at those building permits, it is obvious when you look at them and what they are being applied for and where they are located that they weren't there for purposes of storing personal household items of the Robsons. They were there and have been used for a long period of time for storage in connection with their business.

Mr. Slavin stated, okay, so we now have the original site plan. While referencing an exhibit board, Mr. Slavin indicated that this was the original site plan; this was the site plan, Alternative #2 Site Plan was the one, and believe it or not this was the one that was stippled by the Planning Commission in 1992.

Chair Gilgoff indicated he was sorry and asked what the word was that Mr. Slavin used. Mr. Slavin repeated “stippled”; it was approved, stippled to, so when Ms. Juhlin stated the Alternative Site Plan #2, this is what she was referring to; that is from the records, and this was a site plan that was approved by an engineering firm in Flagstaff of Shephard Westnizer. He indicated that he shows this to you, because he is going to show you one without all of the color on it, but by looking closely, he knows you can't from there, but you can see that there are drawings and areas set forth on here for purposes of illustrating where we are in our presentation. He would point out to you, and Ms. Juhlin mentioned, that this was for the expanded parking on Tract 41, and that was for 5,000 sq. ft. of additional parking, excuse him, he's wrong; that is outside display, 5,000 sq. ft. of outside display area that would be allowed to be used in conjunction with the activities occurring on Tract 42. And again at this point in time, they are now together, but he is talking to you in terms of separately, because the '92 CUP applied to this property right here. Then, it shows parking in this location and there used to be parking in the front in this location, and that presented a problem of people pulling in off of the old S.R. 179, first backing out onto and driving in from old S.R. 179, so basically the agreement was this would become a drive-through area, but that then changed, so this is what was presented to the Planning Commission.

Mr. Slavin referenced an exhibit board and stated that this is the version that he just showed you, but without all of the color on it, okay. This indicates again the area and probably best, actually he can probably use the one on the screen better than refer to this one. Again, we show the, there was an existing outside display area on the south half, and then there was a proposed expansion of that area, and if you scale that off, it's a little over 5,000 feet, but the understanding is that this was 5,000 sq. ft. of outside display area. Now, the original 1991 site plan showed this area as . . . , can we get the original 1991 site plan up? If you'll notice this same area in the 1991 site plan, Mr.

Chairman, shows the outside display area, and then it shows outside storage on the remainder of the south half, and then it shows the shop building at this location, so that's the way it was being shown at this time. Now, what we ended up doing, if we go back to this map, this board, is that we put this area here that originally was outside display and we took additional area here, which was outside storage and made that all outside display, so we get an idea of what was going on back at that time, okay. So with that in mind, and you can see again on this map where the parking was at, in and off of the street, and so that was needed to be corrected so that we could direct all of the parking into the new self-parking area.

Mr. Slavin indicated that while she is putting this up here, and he doesn't think there is any disagreement about this, but the shop building that is shown on here, and that is tiny print, but it is 750 sq. ft. as shown on this plan. The as built is something less than that, but this shows the shop building. The shop building was not included in the square footage that was set forth in the 1992 Staff Report. You'll notice it talks about the site characteristics, wait a minute was a pork chop on there, Heather what are we doing here, what was not on here then? Heather Dukes explained it was on here, but the lot coverage does not take that into account. Mr. Slavin then stated that he was sorry, he misspoke. It was on here; when you calculate the lot coverage, again we've got 36,000 sq. ft. of total lot area. If you divide the total square footage of the buildings and improvements on here, the actual lot coverage turns out to be 19%, not 17%, and we can show you the math on that, but if you take a look at it closely, it actually does turn out to be 19%, and he believes the reason why the staff did this is because on the plan itself, the 1991 plan, erroneously it shows 17%.

Mr. Slavin asked to go to that original calc, because that doesn't include the 750, does it? Heather Dukes responded in the negative. Mr. Slavin then stated that if you will take this calculation right there, he doesn't know if we can, can we blow that up a little better? Okay. That does not include the 750 sq. ft. of shop area; it includes the retail, it includes existing outside display, it shows the residence, it shows a workshop of 1,300 feet and it shows storage, but it doesn't show the 750, does it? Heather Dukes explained that 1,300 is for the pottery shop and that is also referenced in the 1992 Staff Report, so when you look at the plan, this area is considered pottery shop, which is the 1,300 sq. ft.; there is no designation in that table for the shop area of 750 sq. ft., so that is why the building coverage percentage is off.

Mr. Slavin indicated that we point this up to you, because building percentages or lot coverages have been pointed out to you in the Staff Report as something that is important. We also think they're important, but he just wants to make sure, because a couple of percentage points one way or the other might make a difference in how, you know, this proceeding resolves itself.

Mr. Slavin indicated that before we go to the coverage table let's show the colored plan and what we did there for them. Mr. Slavin then stated that, Mr. Chairman, he noticed that again in Ms. Juhlin's presentation, she designated certain numbers for different buildings on the properties and we hadn't exchanged that with her in advance nor have we exchanged this, but essentially we used letters, and the reason for using letters is because our 2015 as built site plan used letters, so we are trying to make sure in our presentation that we are comparing lettered areas to lettered areas. Essentially what we have done is we've taken the shop building and we've labeled that as B, later on you will see there is a shop, there is a storage building just south of B that becomes A, but it is not on this plan yet – that comes after this plan. Okay, we took the residence, the house which was shown on here as having 1,950 sq. ft., and we broke that into two building references C and E, and we'll get into that in a moment as to why we did that. We'll point out to you that the building labeled as D that was not included in, there is no reference at all in the table on this map computing the square footages nor is it in the Staff Report at that time, but that was an existing building at that location, and it is currently being used as art workshop, so that was something that was omitted entirely; that is a 288 sq. ft. building. Then G is the combination of the retail and the pottery shop. The pottery shop is retail as well, even though this is called out to be retail pottery shop, the pottery shop is where the potteries are manufactured and sold, so that is part of the retail operation. We don't need a pottery shop of 1,300 sq. ft. to be able to accomplish that. Then, there was a storage

area just to the south, which again when we get into that, that is called the chili cage, and he knows he is throwing a lot at you right now; he'll try to bring it all together for you at the end. We then have Building H, which was an existing building as well, and this building you will see it shows on there a retail of 1,125 sq. ft. and it shows storage, he believes of 390 sq. ft., Heather is that right? Heather responded 350 and Mr. Slavin repeated 350, okay, so that is about, he thinks about 1,475 sq. ft. total. There is a difference between this plan and the 19 . . . , why don't we just go to the 1992 Alternate Plan and put them up there, okay.

Mr. Slavin stated that he would draw your attention to Building H. Building H on the '91 plan, the one that was not approved by the Planning Commission, shows retail and it shows storage. This plan as approved is all retail, so there's a difference between the '91 plan and the Staff Report based on the '91 plan, and what the Planning Commission approved in 1992 as part of the CUP. And essentially, so that's a major difference, also it shows Building D again as part of the overall existing development on this site, so but for those differences, this is essentially the 1991 plan.

Mr. Slavin then indicated that if we don't have people nodding off by now . . . , Chair Gilgoff interrupted to say that he would suggest Mr. Slavin that you try to tie this to something. Mr. Slavin stated that he will, and the Chair continued to say, rather than just saying this one doesn't have this and this one doesn't that; where are you going with it?

Mr. Slavin stated that you have anticipated his next move sir, and the Chairman thanked him. Mr. Slavin then stated that we have a table that we have prepared, so we've got a table here, and we can't make this any bigger he understands, okay, but in Column B, we've shown the 1991 plan. Mr. Chairman, we'll give you a copy of this, but for right now if we can just follow this here, it might work out better. Essentially we took the 1991 plan and we took Tract 41, and you'll see on the 1991 plan, it showed the workshop.

Board Member Gordon stated that he is sorry to interrupt, but he can't see this at all. Mr. Slavin stated that he is sorry, and Heather Dukes asked if Mr. Slavin wanted her to just pull up the table, and Mr. Slavin responded, pull up the table. Let's just pull up the table, thank you Mr. Gordon.

Board Member Ward then asked Mr. Slavin if these are in your exhibit package, and Mr. Slavin stated no, they will be, they are, well excuse me, you go ahead and answer that, thank you. Heather Dukes then responded to Board Member Ward that we have the 1991 site plan, the 1992 site plan in our exhibit packet. We have demonstratives where we put the colored overlays on them, and she has them for you right here in a packet form, and then also this table, because what we did, we spent the last two days comparing and preparing this table for your review. Board Member Ward then asked if it would help to have those copies now and Board Member Gordon stated yeah, he would like have it. Chair Gilgoff asked, do you have enough copies for the Board and Mr. Slavin responded yes. Heather Dukes then answered yes, Chairman, and the Chair suggested why don't you bring them up and distribute them, oh, and a copy for City staff as well or two copies if you have them. *[Ms. Dukes distributed the copies at this time.]* Board Member Ward then asked, in your presentation, could you indicate which tab, the material that you have this . . . , Board Member Gordon interjected November, and Mr. Slavin stated yes.

Mr. Slavin stated let's go to, okay so . . . , and Chair Gilgoff interjected to Board Member Ward, Tab November. Mr. Slavin then suggested to Heather going through what we've just given them, so they know what they have up there. Heather Dukes then stated, Chairman Gilgoff, for the record, we have just submitted exhibits into the record, Exhibit K is the 1991 site plan demonstrative which shows the buildings outlined in color. Exhibit L is the 1992 site plan demonstrative which also shows the buildings in color. Exhibit M is another 1992 site plan demonstrative which shows a scaled take off of Building H demonstrating errors in the square footage for that building. Exhibit N is the table comparison that is also on the PowerPoint screen right now. Exhibit O is our declaration of Richard Hubbell; Richard Hubbell is a registered land surveyor, or landscape architect, I apologize, and he prepared the current 2015 site plan that we are going to go over here in a minute. Exhibit P and Exhibit Q are aerial photographs taken from Google Earth and the

Coconino County Assessor's Office respectively. And then, Exhibit R, we have a declaration of Rio Robson. Exhibit S, declaration of Linda Rose Robson and Exhibit U is our proposed findings of fact, which will be modified based on our conversation earlier. Exhibit T is the stack of petitions in support of Son Silver West that she hasn't made copies for all of you, because it is so thick here, but she can give it to the clerk. Mr. Slavin asked if she wanted to do that and then stated to just get the petitions to the clerk as well, and Ms. Dukes stated, okay and delivered the petitions to Donna Puckett.

Chair Gilgoff asked Mr. Slavin if he is going to come around to say why this affects the decision of the Director of Community Development, and Mr. Slavin indicated that he plans on doing that sir, and the Chair stated okay. Mr. Slavin then commented to obviously feel free to ask him questions as we go. This was quite an interesting exercise, but he thinks what this will show you, he believes . . . the Chair interjected yeah, he wants to know what is it you're trying to present. Mr. Slavin then stated that we're not that far apart, that is what this is going to show you. We're not that far apart.

The Chair asked, then why didn't you negotiate with them, so we didn't have to have the hearing, and Mr. Slavin explained that it took us putting all of this together and we've done it in the last few days in order to bring all of this around, and he guesses, and to the extent if we had done this quite some time ago, maybe we would not have come here today or the issues would have been narrower than that were presented, but we did this only because in taking a look at the Staff Report, he thinks that it was perhaps painted with a broad brush, where we think we need some more intricate strokes for you to understand that how on earth in the period of time that the Robsons were here and when John O'Brien and Tom Schafer were watching this project and all these violations that Ms. Juhlin sets forth in her report, how did it go unnoticed that there was this apparently very large expansion on this site, when each time and even in the affidavit that Mr. O'Brien presented to you, each time the project became compliant with this 1992 CUP, and Mr. O'Brien says every time he worked on this, the purpose was to make it compliant, so until he left, he was working as well as his predecessor, Mr. Schafer, to make this property code compliant.

Mr. Slavin stated that he [*John O'Brien*] leaves in July of 2012; what happened between July of 2012 and October 2014 and in 2015 with regard to Tracts 42 and 41 that were not there at the time, when he believed he brought this property into compliance with the 1992 Conditional Use Permit? Chair Gilgoff indicated that he thinks what Mr. Slavin is stating is that Mr. O'Brien tried to bring them into compliance, not that he did bring them into compliance, okay, and there is a big difference between that, and he thinks that is what this hearing is about; whether you actually did that rather than that you, and that's what you need to show us as a Board of Adjustment, that you did bring it into compliance and Mr. O'Brien somehow agreed with that.

Mr. Slavin stated okay, with one clarification again Mr. Chairman, and he understands you've read a lot of material here, and Chair Gilgoff stated yes. Mr. Slavin then continued to say, and that he is being an advocate for his client and Chair Gilgoff then stated, of course. Mr. Slavin added, but in August 31st of 2011, after there had been an inspection by Jim Windham, your building official, and Mr. O'Brien, Mr. O'Brien came back and said here is a list of how you are out of compliance. Now, does that mean it was an exhaustive list and he measured every square inch of the property? No, but he's doing his job and he goes out there and he says at this time, based on my inspection, here are how you are out of code compliance. There is no question about that; that happened, so if that occurred in 2011, whether or not we brought that into code compliance based upon that decision, nevertheless, he made a decision at that time that here is how this property is out of compliance, and if you recall Ms. Juhlin's presentation, the only remaining item that needed to be resolved after all of that, he issued not only a Notice of Violation, but he issued a Notice of Suspension, and Mr. O'Brien, and he thinks his affidavit shows that and he thinks the record shows that he was a fastidious, scrupulous man. He was there to enforce the Sedona Land Code in the 1992 CUP to the best of his ability.

Chair Gilgoff indicated that he has a little problem with all of this, because he has known John O'Brien since he became an employee of the City of Sedona. Mr. Slavin stated right, and the Chair

continued to say that he has been the Chairman of this Board; he has been on the Board for more than 20 years, and he sees John O'Brien as a different person. He thinks John O'Brien is the kind of person who like most of us want to make things right. They want to make it so that people can do business in Sedona in a reasonable way in compliance with the ordinances, and just because the notices were friendlier in tone doesn't mean that he wasn't responsible for enforcing them. He sees nothing in any, you know you gave us hundreds of handouts, and he sees nothing in there where he says you're totally in compliance, except for this list. You're making the assumption just because he gives you a list of violations that there's no other violations.

Mr. Slavin stated okay, when you say we're making an assumption, what he would like to get clarified sir is that at least in August of 2011, based upon, he thinks you would agree with this, based upon his inspection, this is what he found at that time. Both he and Mr. Windham made two inspections, one in August and another one in November, and he also went back and looked at the building records at the City. At that time at least, Mr. O'Brien, and like you say he was there for 20 years. He doesn't think there is any disagreement that he's not a good man; he wasn't friendly and he wasn't cooperative, and his clients found him to be that way, but at the same time, he was there to enforce the ordinance and it was serious enough that he suspended the NOV.

Chair Gilgoff indicated that if that's the case, then you're totally out of compliance, do you agree? As soon as he suspends it, you are out of compliance. Mr. Slavin stated no, no he doesn't agree with that and the Chair stated okay. Board Member Gordon then stated, point of clarification, you said he suspended the NOV, did you mean he suspended the Conditional Use Permit., and Mr. Slavin stated no, well he's sorry. You're right, he misspoke; he said I'm suspending the Conditional Use Permit, which meant that the Robsons could continue to occupy the premises and run their business. The Chair indicated that he didn't see it that way, and Mr. Slavin stated, oh that's the way it works and Mr. Pickels won't disagree with that. Chair Gilgoff then asked Mr. Pickels if that is the way it works.

Robert Pickels stated that he would be happy to respond to that. He thinks there is a very critical distinction in interpretation here that needs to be addressed, and that is when there is a suggestion that the compliance has been achieved, we don't necessarily disagree that compliance has been achieved with respect to any individual or particular violation – not a sweeping compliance of all violations, and that is a very critical distinction in analyzing the overall situation. We don't disagree that compliance may have been achieved with respect to certain violations, but not the entirety of the violations that exist on the property.

Chair Gilgoff noted that this is the heart of the case and Mr. Slavin stated yes, yes it is. The Chair continued to state that this is what your case is reliant on, and this is the fact that you somehow got permission from John O'Brien to bless everything that was there at a particular time.

Mr. Slavin stated okay, and the Chair asked if that is correct. Mr. Slavin stated, yes from this standpoint. What he says then, and this is in his affidavit as well as in the December 21, 2011 email, Mr. Chairman; he says, "Going forward, I want you to submit to me a site plan and photographs, so we will have a record, so going forward this will be our baseline, so that you will know and we will know what to expect if you don't follow this baseline." Chair Gilgoff then asked if his Applicant actually did that, and Mr. Slavin stated yes. The Chair then asked if in compliance with the timeframe that Mr. O'Brien stated, because you waited for months after he said he wanted it. Mr. Slavin then stated, okay, and the Chair continued to say that therefore, he had basis for his decision, since he didn't have a site plan until almost the day he left the City.

Mr. Slavin then stated, okay, the testimony that you will hear from Mrs. Robson here today, which I think you will find compelling, is that the operations of Son Silver West, since the violations and the suspension was ordered back in 2011, that Son Silver West Gallery has conducted its operations the same as were being conducted in late 2011. Now, if we have Mr. O . . . , and I agree with you, we're all here and he understands your position that you're here to make sure that you do something and you make a decision that's reasonable, that respects the rights of business owners

and citizens of the community and all of that taken together. We have people here who have a business they've been operating for 35 years, earnestly and in good faith, and they have been good productive business people in this community and have contributed greatly to this community. In 2011, they were told upon inspection that they were compliant as far as Mr. O'Brien was concerned. There is no debate at that time; not that he went over and he did a wholesale inspection Mr. Chairman, but at that time, you cannot disagree with this point.

Chair Gilgoff indicated that he does disagree with that point; that is the whole contention of this hearing, and he doesn't see any documents in all of it, where he says he agrees that you are totally compliant. Board Member Gordon asked if he could ask a question, and the Chair suggested that he hold it. Mr. Slavin indicated to Board Member Gordon that he was sorry, and the Chair suggested that Mr. Slavin answer his question first. Mr. Slavin then indicated that it's a question of how best to describe this. Chair Gilgoff stated that he would like to see the document where he says you were totally in compliance; that's your statement.

Mr. Slavin stated to let him restate this and see if he can convince you to look at it a different way, Mr. Chairman. If a policeman stops me on the street and says you know your registration is out of compliance, and he says whoop, so he has to go take care of that, and maybe he had something else wrong with it, he is thinking he is in compliance. Okay, he is not saying that that policeman found everything, but what I'm saying is, what should a business owner be able to rely upon in terms of day-to-day operations or business within the codes or ordinances of the municipality where it's located? The only thing that they can do in terms of determining it being in compliance, they're not zoning officers, they're not people skilled in zoning and examination; they're business owners and it is a family business, very entrepreneurial, very hands on tangible, palpable business at this location. Okay, when the chief zoning enforcement officer of the City of Sedona comes by and does an inspection and finds that you are out of compliance with the following, and then they respond and become compliant. At that point in time, at least at that point in time, Mr. O'Brien as the chief zoning enforcement officer concluded that based upon what he had issued, they had come back into compliance with the 1992 SUP.

Chair Gilgoff again asked where he says that. Heather Dukes asked if she may, and the Chair stated yes. Heather then indicated that if you look at the history of John O'Brien's correspondence with Son Silver West, our client, there are Notices of Violation in the record. There is no letter or correspondence from O'Brien where he follows-up and says you are in compliance, but the fact is today, we still have a CUP, because he was making a determination all along, when they had a violation, they took care of it, they made an agreement, he made a decision, they were then in compliance, but nothing was ever documented sent from John O'Brien to their client saying you are now in compliance, but the fact that the Robsons still have a Conditional Use Permit establishes that, that they were always brought back into compliance. The Chair then stated that he disagrees with that. This whole project started as a single-family residential home located on 179 that had an art gallery in the house, and now it is a major commercial enterprise that obviously has annoyed the neighbors and expanded from a small property into five properties on the highway, and somehow you got there from that house to today and there has been a series of violations. There's documentation on all of them in here, and what the City is saying is you are still not in compliance and you're saying just because he didn't cite you again and again and again for certain things, that those are all in compliance, and he [*the Chair*] disagrees.

Mr. Slavin stated okay, we understand that; if you look at his affidavit that he turned in, and by the way, this is an affidavit that the staff obtained from Mr. O'Brien. He [*Mr. Slavin*] is looking at paragraph number 4 . . . , the Chair interjected a request to hold just a second, and Mr. Slavin asked if he had a copy of that. Heather stated she can pull it up and Mr. Slavin replied yeah, we'll pull it up. Audree Juhlin then asked the Chair if he needed a copy and the Chair stated yeah, he has so many of their sheets of paper. Vice Chair Rich indicated here it is right here, and the Chair responded oh thanks, okay; thank you, he's got it, okay, go ahead.

Mr. Slavin then indicated that for instance taking paragraph 4, he states since the initial zoning violation in 1984, he is referring to when he was at Coconino County, the owners of Son Silver West repeatedly violated zoning and building codes for which citations were issued. Now the next, the properties were brought back into compliance, and then the cycle would repeat again, but he is saying they were brought back into compliance from his perspective as the chief zoning enforcement official of the City of Sedona. Then he goes to paragraph 5 and he says, they were a chronic problem, with the City of Sedona staff finding out about violations, citing the property owners, and then bringing the property into compliance, and so all the way through here, he talks about . . . , Chair Gilgoff interrupted to say that you missed the last thing – only for new violations to emerge; it's like whack-a-mole. He cites you for this and you create this, and then you stamp that down and you create that, and so it is like all over the place, it is not like you come into compliance and stay that way, it is just that you come out of compliance, you come into compliance, you come out of compliance, so it is difficult to understand what he is saying – what's in compliance at the time and what's not out of compliance. Mr. Slavin responded, oh right, oh. you can't take anything specific from this, but again, the reason he [*Mr. Slavin*], yes sir, he's sorry.

Vice Chair Rich referenced item #19 where Mr. O'Brien refers that the only thing that he did during this process was to inspect two violations, the ones with the shade cloth and the other one. That's the only thing he looked at, at the property, and all of this relates to just two things he was looking at. Mr. Slavin stated okay, alright taking that at face value, but what he is attempting to do here Mr. Rich is to show ultimately, he thinks and he has talked to Mr. Pickels about this, in order for us to have the "clear blueprint" for going forward, because he [*Mr. Slavin*] thinks that's all we're attempting to get done here; whatever that looks like going forward, that's what we want to accomplish. He thinks so, Mr. Chairman, and you correct him if he is wrong.

Chair Gilgoff indicated that he disagrees with you, he means they don't want you to go forward; they want you to go backwards, okay, because of what we just said is the thing has grown way beyond a residential use, even a residential use with a Conditional Use Permit, and they're giving you the outline of what needs to be done to scale it back so you bring it into compliance – not so you can go forward and keep adding and adding and adding and using your other residential properties against code. Mr. Slavin stated that he is not sure our debate here is going to be resolved between you and . . . , the Chair indicated that he understands; no problem. Mr. Slavin then continued to say, but his point being is this – for purposes, whatever your decision is, okay, ultimately whatever your decision is here, whatever is made, it seems to him that it has to be reflected on some type of a document. The Chair then stated that we will give you our decision on a document, and Mr. Slavin stated no, but then it has to be able to be implemented going forward, and the Chair asked by who. Mr. Slavin indicated by the City and by the property owner, okay, and what Mr. O'Brien was trying to get done back in 2011, he [*Mr. Slavin*] thinks is actually what we're trying to get done here today, the thing on the give and the take and so on and so forth, and what you decide, but ultimately, what we think is that there will be a "site plan". It's not the '91 site plan, okay, but it may be something that looks like '92 site plan that was approved by the Planning Commission, so that where all the buildings . . . , we have an as built location now of all of the buildings on this property.

Mr. Slavin indicated to assume for a moment that that's correct; he is not going to say it is, but whatever it is, it would seem to him at the conclusion of this hearing, and it may not conclude today, there may be something that follows-up here from today, but your staff will have an engineered plan, an engineered plan that shows where these buildings are, where the uses are, so in the future, if there ever were another violation, it would be easy to detect and enforce.

Chair Gilgoff stated, but this hearing is not about the future; this is about the past, okay. The Director of Community Development has determined that you're currently in violation of the code, not that you can go forward. In fact, what you need to go forward is a Community Plan change and a Zone Change, because that property is residential, generally, with a Conditional Use Permit. It's not a big commercial establishment; he knows you would like it to be and you would like to go

forward and use all the land, but that can't happen unless you have a Community Plan change and a Zone Change.

Mr. Slavin indicated that with all due respect in honor of you sir, he doesn't think we're here today to decide that somebody needs to go rezone this property. Chair Gilgoff expressed that he understands, but you're just saying you want a path to go forward, and he is telling you what the path is. Mr. Slavin then asked what the path is again sir, and the Chair stated to get a Community Plan change and a Zone Change and you're arguing that you don't need to do that. Mr. Slavin stated that in all due respect, he is going to put this on the record, that is not your responsibility as the Board of Adjustment to make a determination that if we want to go forward, we have to rezone the property. We're here today to determine . . . , the Chair interrupted to say that we're not here to give you a path to go forward; we're here to rule on the decision of the Community Development Director, not to give you any path. Mr. Slavin then stated okay, but in terms of going forward, if, let's assume that we all agree with the Community Development Director, okay, let's assume we do. The Chair replied that if we do, we can end the hearing, and Mr. Slavin stated okay, but what he is suggesting to you then is that we want to make doggone sure that we don't cut off the board twice and it is still too short. We want to make sure that when we go forward, it is very clear to this City and to the citizens and to the Robsons of what's allowed to occur there and what's not allowed to occur there, and you can't just do it with language. We've got to have a map; we have to have a map. Chair Gilgoff indicated that as you just said that's not our decision and that's not part of this hearing; however Mr. Slavin stated no, he didn't say that. The Chair then stated yes you did; you said it is not your decision to determine how we go forward. Mr. Slavin stated that he disagrees with you, and Mr. Chairman this is becoming somewhat argumentative and he doesn't think you and him are ever going to agree on this, but you were suggesting that the only reasonable way for the Robsons to proceed forward is to exit these chambers right now and go and file an application to rezone the property, and that's what they ought to do and in your opinion probably should have done it some time ago, is that fair of your opinion?

Chair Gilgoff explained that you asked how they could move forward, okay, and that was his answer to your question. Mr. Slavin stated right. The Chair then indicated that the purpose of the hearing is to determine whether the Board of Adjustment should uphold the decision of the Director of Community Development, that is what we're here for, not to give you a path forward, but you brought the path forward in, and he was just answering your question.

Mr. Slavin the indicated that leaving here today, Mr. Chairman, we're leaving here today with whatever decision you make, then it should be abundantly clear to the Robsons as to how in the future, as well as today, and how in the future they should conduct their operations in order to be compliant with the 1992 CUP and the Land Development Code. The Chairman then stated that is your statement not ours, as he said before, we're here for one purpose and one purpose only – to determine whether the Director of Community Development acted properly in issuing her violations; that's it, and Mr. Slavin stated okay. The Chair then proceeded to state that we're not going to give the Robsons a plan to go forward.

Heather Dukes then asked the Chairman if she may, and the Chair stated of course. Heather indicated that she would like to bring the conversation back to the errors that we believe Audree Juhlin has made in her decision, and part of that we were starting to get to in the table we were showing. The Chair indicated that's great, just one further . . . , did you have a question?

Board Member Gordon stated yeah, at some point, you [*Mr. Slavin*] spoke about a conversation, and he doesn't know whether it was in writing or not, with John O'Brien where Son Silver was instructed to produce a map with photographs that would be a baseline, and it was not clear to him, it seemed like you were inferring that whatever it was they submitted, and you did say they submitted something, he's sure it is in this package somewhere, just would be accepted on the face of it or whether that then would be subject to review. Mr. Slavin stated to Mr. Chairman and Board Member Gordon that the only way that we can respond to that is that the Robsons did submit, not my March 1, but they submitted to Mr. O'Brien before he left the City's employment, did submit

photographs, dated photographs, and also submitted a hand-drawn site plan. Board Member Gordon then asked what happened then, and Mr. Slavin stated that's in the City files.

Board Member Gordon then asked if it was indicated to be approved or just it was okay, we received it. Mr. Slavin stated okay, here's what happened. Nothing happened. Board Member Gordon stated thank you, and Mr. Slavin repeated that nothing happened. The Board of Adjustment hearing that had been scheduled before was not rescheduled and four years went by without any further action being taken by Mr. O'Brien or his successor Ms. Juhlin, so four years.

Chair Gilgoff indicated that just for the record, the earlier appeal to the Board of Adjustment was cancelled by the Applicant, not by the Board. Mr. Slavin explained that it was postponed sir, and the Chair the stated that it was postponed by the Applicant, not by the Board. Mr. Slavin stated that the Applicant requested that it be suspended, excuse me postponed, and so in response to that your agent, Mr. O'Brien, agreed with that, and he then went back and looked at his records, because the only two things that were being appealed at the time were two shade structures. Everything else had been addressed, and after Mr. O'Brien went and looked through the records, came back and said he can find nothing in the City's records regarding those shade structures, and these shade structures could have been before the incorporation, and so, he is not going to hold you responsible for coming in and getting permits for those shade structures. Shade structures are not a problem under the 1992 Conditional Use Permit; the staff agrees with that. It's a question of whether or not you get building permits for those shade structures, that's the thing, but in terms of the 1992 CUP, if you put up a shade structure, let's say over an outside display area, you want to put up a shade structure, that is permitted so long as a, whatever building permit is needed, if any, that is obtained in advance, so that was the only remaining issue that came out of the two inspections, the one in August and the one in November.

Mr. Slavin indicated that having been said, the photographs and the site plan were submitted and four years went by – no violations were cited for four years. Board Member Gordon commented, but no approval either; he means they just exist. Mr. Slavin stated that they just exist, but for our purposes again, and we're trying to be reasonable business people in dealing with the City, Mr. Gordon, and if we met with Mr. O'Brien and he's taken certain actions with us and, basically, it's our understanding at that point in time we're code compliant. Four years goes by, as far as we know, we're still code compliant, okay, so that's the point we're wishing to make here is that the City at least, during that period of time, and he knows that Ms. Juhlin says, well we only respond when we get complaints, whatever, then four years went by apparently no one complained about this, so was it reasonable for us to believe that we were code compliant?

Chair Gilgoff asked Ms. Juhlin if there were any complaints during those four years, and Audree Juhlin stated that from the time John O'Brien left in 2012, the first complaint that she received and became aware of was 2014, that is when we conducted the first inspection leading up to the October Notice of Violation. The Chair then asked if there is any statute of limitations on violations, and Robert Pickels pointed out they are ongoing violations. Chair Gilgoff said that he was sorry and Mr. Pickels repeated his response that they are ongoing violations. The Chair then indicated so they're ongoing violations, just never got corrected, and Mr. Pickels stated right. The Chair then stated that the only thing we didn't do as a City he guesses is take any enforcement action during that period, correct? Audree Juhlin clarified, any proactive, and the Chair stated any proactive enforcement other than just conversation. Audree Juhlin then stated that's correct, and the Chair stated okay.

Mr. Slavin indicated that he believed that violation related to Tract 40 if his memory serves him correct and asked if that is correct. Heather Dukes indicated yes, and 42 and 41. Audree Juhlin then asked if the Chair wanted her to respond, and Chair Gilgoff stated yes, please. Audree Juhlin then stated – that the violations, if we're referring to the summer of 2014, they involved three properties – the Bowstring property, the Arrow Drive property and the vacant property. They did not include the retail property, and the three properties, the complaints were essentially based on commercial uses of those residential properties.

Vice Chair Rich referenced Tab 30 of your application and indicated that it shows the photograph sketches that were provided to the City. They are of such poor quality that he doesn't see how anyone could look at these photographs and tell what it is that actually exists on the property, and using this as a baseline is extremely, is not practical, because we have no way to know what has happened on the property between the inspection in 11 and 15. We don't know what the Robsons have built or changed on that property. Mr. Slavin responded to Mr. Chairman and Board Member Rich that Mrs. Robson is here to testify and you may ask her questions about that in detail, but you're right, as far as we know there have been no inspections by the City of Tracts 42 and 41 since 2011. The Vice Chair then asked if the Robsons have made any changes to that property since then and Mr. Slavin stated no, Tracts 42 and 41, they don't know, you can look at them, but they don't know; they didn't do an inspection. Vice Chair Rich stated that he knows; he is just asking you to say on the record that the Robsons have not made any changes to the property in the last four years.

Mr. Slavin suggested hearing from Mrs. Robson and Vice Chair Rich stated okay, fine. Mr. Slavin then indicated that he is wearing himself out over here. Chair Gilgoff stated no problem, that's fine and asked if he wants her sworn in. Mr. Slavin stated yes, sir.

Administering of the Oath and Mrs. Robson's Declaration:

Chair Gilgoff: Mrs. Robson would you state your name and address in the microphone, please.

Linda Rose Robson: My name is Linda Rose Robson, 1476 State Route 179, Sedona, Arizona.

Chair Gilgoff: Mrs. Robson do you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Linda Rose Robson: I do.

Chair Gilgoff: Thank you, proceed.

Linda Rose Robson: This is my declaration and good morning Board. I am Linda Rose Robson and I declare the following: I am one of the Applicants of the Board of Adjustments appeal. I am also President of Applicant, Son Silver West Gallery, Inc. 1981, my husband and I decided to purchase Tract 42 of the Broken Arrow subdivision to operate a commercial art gallery, because the property was being used as an existing commercial art gallery with outdoor retail display areas by prior property owner, Ernestine Nestler Todd.

The property was located along one of the main highways leading to and from downtown Sedona and the property was designated as a business lot within the Broken Arrow property restrictions. After purchasing Tract 42 in 1981, we obtained a permit from Coconino County to construct a kiln so that my husband, Bill Robson, could manufacture and create pottery onsite as part of our commercial art gallery business. Since purchasing Tract 41 and 42, we have always manufactured pottery and various art objects, including but not limited to leather and metal art pieces, on our Son Silver West property. This is verified by references to a pottery shop, kiln and art workshop uses shown in the 1991 site plan, the 1992 Staff Report, the 1992 Alternate Site Plan #2 and our current site plan prepared by Mr. Richard Hubbell.

Today, we use state of the art equipment and methods to create our metal art pieces, resulting in no odors, dust, noise or vibrations. Although we have upgraded our equipment used to create these metal art objects, our art workshop use and the business of creating and selling art remains the same.

The area of the residence designated as Building C on the current site plan prepared by Mr. Richard Hubbell dated November 24, 2015 has been continuously used as an art studio operated as part of the gallery business since before our purchase of Tract 42. I recall Ernestine Nestler

Todd and her husband using the art studio area in Building C to display art for purchase and to hold classes and gatherings for people to paint and display their art.

Since receiving a building permit for the chili cage in 1991, we have continuously used the chili cage to conduct retail sales, including chili and various art and pottery items. The chili cage area has never been restricted to storage. We have always imported, sold and/or served chilies as part of our Son Silver West business. The pictures attached to the 1991 chili cage permit in the City of Sedona's records established the history of this use

The pottery shop area known on the 1991 site plan and referenced in the 1992 Staff Report has always been used by our family to conduct retail sales. The residence located on Tract 42 has always been used in conjunction with the art gallery business. I recall meeting with Ernestine Nestler Todd in a bedroom of the residence prior to our purchasing the property. Although Ms. Todd lived in the residence, the room was clearly used as part of her art gallery business. When residing on Tract 42, we also used the residence to conduct business matters, prepare items for sale, and to store certain merchandise.

Today, the resident area, with exception of Building C area, continues to be maintained as a residence in conjunction with our business operations. The residence has a fully functioning kitchen, bathroom, dining and bedroom area. The residence is locked at all times with no public access. A code is made available to employees of our business and our vested guests, invited guests. No retail sales are conducted within the residence. Instead, the residence continues to be used as it was in the past to conduct business office matters, prepare items for sale, to store merchandise occasionally, and as an employee kitchen and lounge. The use of the residence in this manner does not increase the amount of retail area on Tract 42 and does not negatively impact our surrounding neighbors.

Tract 42 was being used for outdoor retail sales since before the city of Sedona was incorporated in 1988. Outdoor retail sales were being conducted as part of the La Galleria business at the time of our purchase of Tract 42 in 1981, as confirmed by a letter that was sent by the prior property owner, Ernestine Nestler Todd, to the City of Sedona in 1990. I have attached a copy of Ernestine's letter. Since the purchasing of the property, we have continued to use the entire area of Tract 42 not covered by buildings or parking areas as outdoor retail sales areas.

In 1987, we purchased Tract 41, lying south of Tract 42. A year later, the City of Sedona was incorporated. In 1992, we applied for and obtained a Conditional Use Permit to allow our expansion of the outdoor retail sales area, parking areas associated with the commercial art gallery use on Tract 41. The Conditional Use Permit was not necessary for us to continue operating our commercial art gallery use and outdoor retail sales area on Tract 42, because those had been in existence before the City's incorporation. The Conditional Use Permit limited our outdoor retail display areas on Tract 41 to 5,000 sq. ft. in accordance with the area depicted on the Alternative Site Plan #2 approved by the Planning Commission. The 5,000 sq. ft. limitation did not apply to Tract 42.

In 1993, it became necessary to configure the parking area and drive aisles depicted on Alternative Site Plan #2 due to future improvements planned for the State Route 179. As a result of this new parking plan, some of our 5,000 sq. ft. of outdoor retail sales area on Tract 431 would be reduced by the newly configured parking lot. Former Director Tom Schafer approved our 1993 site plan allowing us to relocate some of the outdoor retail sales area from Tract 41 to 42, frontage along State Route 179 remains the same as it is today.

The current outdoor retail sales areas depicted as shade gray areas on the current site plan prepared by Mr. Richard Hubbell are consistent with the outdoor retail sales areas that have been historically located and permitted on Tract 42 and 41 as a result of our legal nonconforming use rights, the 1992 Conditional Use Permit and the 1993 site plan.

From the time we received the Conditional Use Permit and the 1993 site plan approval until the time we received Director Juhlin's Notice of Violation in November of 2015, we never received a Notice of Violation from the City of Sedona relating to our outdoor retail sales area on either Tract 42 or 41.

The lighting on our Son Silver West property has been in place for many years as approved by former Director. Our Conditional Use Permit stipulations authorized former Director to make this determination. We have never received a Notice of Violation regarding our lighting until now.

With the exception of the masonry wall enclosing the chapel the wall fence located along our west property line has been in place since before the City of Sedona was incorporated.

Most of the shade structure on Tract 42 have been in existence since before the City of Sedona was incorporated. Some of those shade structures have required repairs and maintenance over the years. The remaining shade structures, arbors erected on Tract 42 and 41 after 1988 were erected in accordance with permits issued and final inspections performed by the City of Sedona.

We have erected and maintained "no parking" signs on Tract 40. We cannot fence off or prevent vehicular egress or degress to and from Tract 40 due to the owner of Tract 39 having no other direct access to State Route 179. Once the State Route 179 improvements were made by ADOT, Tract 39 could no longer access State Route 179. The owner obtains vehicular access to State Route 179 by driving across our Tract 40 in order to connect to our commercial driveway which serves both Tract 40 and our Son Silver West property. The recorded property restrictions for Broken Arrow allow for the owner of Tract 39 to access State Route 179 by driving through our Tract 40 property.

I have reviewed the history of violations set forth in the Staff Report prepared by Director Juhlin in advance of this hearing. Except for the outstanding Notice of Violations issued on November 10, 2015 all of the violations listed in the Staff Report were resolved. In the past, when we received correspondence from the City of Sedona regarding violations on our property, the violations were always resolved amicably with the City staff and former Director of Development.

When we received a notice of violation in the past, we either ceased the violation, obtained the necessary permits or approvals from the City, or presented evidence to the Director demonstrating that no violations were occurring.

We relied upon the decisions made by the former Community Development Director Tom Schafer and John O'Brien. We believed that they were acting within their authority to grant us site plans and building permit approvals, to determine whether certain uses or structures complied with those approvals and Conditional Use Permit, and to issue and resolve Notices of Violation with us.

When Director John O'Brien issued a Notice of Violation to us on August 31, 2011, we worked with him, as we had in the past, to resolve the alleged violations. His December 21, 2011 decision resolved the remaining alleged violation and our pending Board of Adjustment appeal involving two shade structures. With that last issue resolved by his decision, our property was again in compliance with the 1992 Conditional Use Permit .

Our uses, buildings, structures, parking areas and landscaped areas on Tract 42 and 41 have remained unchanged since receiving Director O'Brien's decision on December 21, 2011. We relied upon Director O'Brien's 2011 decision by making substantial financial investments with regard to our Son Silver West business. We increased our offsite warehousing and art inventory space from approximately 2,000 sq. ft. to 8,500 sq. ft. in order to maintain a constant supply of art objects and goods to our Son Silver West property for sale to our customers.

We are currently in the process of expanding our total warehousing space to approximately 14,000 sq. ft. We expanded our resources, our sources, and increased our wholesale purchases of art and objects and related inventory items for Son Silver West property.

The assurance supplied by Director O'Brien's 2011 decision that the Son Silver West property was operating with no violations of Land Development Code or the 1992 Conditional Use Permit caused us to purchase larger volumes of retail inventory to be stored in the expanded warehouse space and transferred to the Son Silver West property for sale. For instance, we purchased approximately \$300,000 worth of art inventory from Mexico in 2013 and an additional \$500,000 of inventory in 2014.

Chair Gilgoff: Excuse me one second. You stated that his decision caused you to buy all this additional art?

Linda Rose Robson: Correct.

Chair Gilgoff: How did his decision cause you to spend all this money?

Linda Rose Robson: It enabled us to expand our business to where it was . . .

Chair Gilgoff: Oh, okay, you assumed his decision was that you could expand your business, and therefore, you bought the art to expand your business, not really based on his decision.

Linda Rose Robson: It was based on his decision.

Chair Gilgoff: Okay, go ahead.

Linda Rose Robson: The assurance supplied by Director O'Brien's 2011 decision that the Son Silver West property was operating with no violations of Land Development Code or the 1992 Conditional Use Permit caused us to purchase larger volumes of retail inventory. We also purchased new art manufacturing equipment totaling approximately \$45,000 and spent approximately \$100,000 in updating computer software and telecommunication equipment for the Son Silver West property. As a result of these actions taken by us in reliance on the 2011 decision by Director O'Brien, we realized noticeable increases in annual net revenue starting in 2012 throughout that year to this date.

After O'Brien issued his 2011 decision to us, we did not receive any complaints from surrounding neighbors or the City regarding his decision or our existing uses or structures. It was not until my son, Rio Robson, ran for City Council election in the fall of 2014 that a complaint was received by the City.

Our Son Silver West property has been continually used for commercial art gallery purposes since before the City was incorporated. City staff and community leaders have always been aware of our commercial art gallery use.

Our surrounding neighbors who have purchased homes within Broken Arrow have always been aware of our commercial art gallery use and the designation of our tract delegation, designation, excuse me, of Tract 42, 41 and 40 as business lots under the Broken Arrow private recorded deed restrictions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Thank you.

Chair Gilgoff: Thank you.

Chair Gilgoff then indicated that before continuing he would like to take a 10-minute break. Mr. Slavin asked if you would have any questions, and the Chair stated that we will take questions of the witness right after the break. Mr. Slavin stated thank you, sir, and the Chair continued to say that you're still under oath. We'll return at 10:20 a.m.

The hearing was recessed at 10:10 a.m. and reconvened at 10:21 a.m.

Chair Gilgoff stated that when we took our recess, Mrs. Robson was completing her testimony.

Linda Rose Robson: Right, yes.

Chair Gilgoff: And it's time; you're still under oath.

Linda Rose Robson: Yes.

Chair Gilgoff: Questions from the Board.

Linda Rose Robson: Yes.

Questions from the Board for Mrs. Robson:

Board Member Ward: You've indicated a substantial increase in operations within Son Silver West. Could you characterize for me since 1993, the expansion of retail space with regard to enclosed areas, as well as outside areas; has there been a change since 1993?

Linda Rose Robson: No there hasn't, and I hope that there wasn't a misunderstanding when I said expanded. I meant expanded inventory. We purchased inventory; we had also had a wholesale business and we purchased inventory for our wholesale business and our retail business, but no footprint expansion.

Board Member Ward: And the wholesale business is on 41 and 42 or is it located elsewhere?

Linda Rose Robson: It has a business license for 1476 State Route.

Board Member Ward: Which is 41 and 42, so we're talking about one piece of property there.

Linda Rose Robson: Correct.

Board Member Ward: That's all he has at this time, thank you.

Linda Rose Robson: Alright.

Mr. Slavin: May I ask a question for clarification, Mr. Chairman?

Chair Gilgoff: Yes.

Mr. Slavin: Mrs. Robson, if I understand correctly, I think your testimony is that they didn't expand the sales area on the property. What they did is they were able to achieve more sales volume with the existing space, by their ability to inventory offsite. Did that come across?

Board Member Ward: Yes, but he was wondering where all this extra inventory is stored. There were sheds that were built for that purpose . . .

Linda Rose Robson: Oh, no.

Board Member Ward: . . . and not used that way now.

Linda Rose Robson: No, I think that what was not mentioned in my statement is that we have two offsite warehouses. Do you recall me saying that?

Board Member Ward: I didn't hear the offsite part, I guess.

Linda Rose Robson: Yes, they're in Rimrock.

Board Member Ward: Okay, thank you.

Linda Rose Robson: Right.

Board Member Gordon: I just want to be clear that when we're talking about this letter from John O'Brien that caused everybody, you know, from the Applicant to think that everything is okay, was an email, I think it's an email, dated 21st of December, 2011 from John O'Brien; it's Exhibit 28. Am I correct?

Linda Rose Robson: Oh, I'm sorry.

Chair Gilgoff: It's your Exhibit 28.

Linda Rose Robson: Yes.

Chair Gilgoff: Mr. Slavin, in the big book.

Heather Dukes: I have it up on the screen.

Mr. Slavin: Okay, she has it up on the screen.

Board Member Gordon: I can't see it.

Linda Rose Robson: What was the question, Mr. Gordon?

Board Member Gordon: Okay, I'm looking at, it actually says page 1 of 2, but I only have, oh, page two is blank. I'm looking at a printout of an email dated December 21st, 2011 from John O'Brien to Rio at Son Silver West, Son Silver West Status, and it says, "Hi Rose and Rio, I've been giving your building permit situation at Son Silver West some thought lately and how we might proceed . . . " Yes, that's the one, okay, so is that the letter that the Applicant has been relying on?

Linda Rose Robson: Yes sir.

Board Member Gordon: Thank you.

Chair Gilgoff: I just have one question Mrs. Robson. You say you have purchased a lot more inventory and dramatically increased the amount of sales within Son Silver West's properties, is that correct?

Linda Rose Robson: Yes.

Chair Gilgoff: Was that because you had more customers who liked the new inventory?

Linda Robson: Yes, I would say that we were accommodating the increase of tourists, customers, just plain visitors into Sedona, yes.

Chair Gilgoff: Okay, so you had more people visiting your property.

Linda Rose Robson: Exactly.

Chair Gilgoff: Thank you.

Board Member Gordon: I have one more question.

Chair Gilgoff: Oh, go ahead. Sorry.

CRG: There was some reference made to Tract 39 and that's not indicated on any of our maps, but I assume that that's the roughly square piece of land that is directly south of Tract 40.

Linda Rose Robson: Correct.

Board Member Gordon: And, it's my understanding that you said that the owners of Tract 39 are using Lot 40 for egress onto 179, is that correct?

Linda Rose Robson: Correct.

Board Member Gordon: And, is there a reason for that? I mean that it would seem like if you have a lot with frontage on 179 and no other street that there ought to be street access to that lot.

Linda Rose Robson: Well, I'm sure they would certainly agree to that as well, but ADOT did not provide that.

Mr. Slavin: ADOT took the right-of-way; no curb cut. I do condemnation work; that's not uncommon.

Board Member Gordon: Yeah, but I don't understand. Suppose that you sold Lot 40 and somebody built a house there and driveway and picket fence, what would the people on Lot 39 do? I don't understand how that's possible.

Chair Gilgoff: I think Mrs. Robson said that there was in the subdivision plat there was an easement across . . .

Board Member Gordon: There is an easement.

Linda Robson: There is an easement.

Board Member Gordon: Okay, thank you.

Mr. Slavin: It shows up, sir, in the . . .

Board Member Gordon: That's what I wanted to find out.

Mr. Slavin: . . . continued to say, the declaration of Covenants, Conditions and Restrictions, the CC&Rs provide for there to be access . . .

Board Member Gordon: Fair enough.

Mr. Slavin: . . . under these circumstances.

Board Member Gordon: Okay.

Chair Gilgoff: Mr. Slavin, you can continue with your presentation.

Vice Chair Rich: Could I, I'm sorry. When did you purchase the Arrow property and the Bowstring property?

Linda Rose Robson: Bowstring was purchased in 2006, and then Arrow Drive was purchased in 1989.

Vice Chair Rich: Thank you.

Linda Rose Robson: You're welcome.

Board Member Ward: Chairman, one more question. Mrs. Robson.

Linda Robson: Yes.

Board Member Ward: When was the building that you labeled H built and was it properly, was there a proper permit for it?

Mr. Slavin: We'll get that up on the screen, Mr. Chairman.

Linda Rose Robson: Oh, that building is an original adobe building built by Mr. Al Nestler in approximately 1960; it's a classic gallery structure, no windows, skylights, tract lighting, 1960.

Board Member Ward: Okay, thank you.

Mr. Slavin: Again as a clarification Mr. Chairman and Board Member Ward, that building is shown on both the 1991 site plan and the '92 plan that was approved.

Board Member Ward: Okay, thank you.

Chair Gilgoff: Okay, Mr. Slavin why don't you continue.

Linda Rose Robson: Thank you, Board.

Presentation by Mr. Slavin, legal counsel for the Applicants (continued):

Mr. Slavin stated that we'd like to now call David Richert. Mr. Richert is the past Zoning Administrator and the past Planning Director at the City of Phoenix. He has submitted a report for your consideration, and we've asked him to provide some testimony on that here today, also some testimony with regard to the affidavit that was recently provided to us by staff with regard to Mr. O'Brien's testimony. Do you want to swear Mr. Richert?

Administering of the Oath to Mr. David Richert:

Chair Gilgoff: Mr. Richert why don't you just state your name in the microphone and your address.

David Richert: David Richert, 26111 N. 49th Lane, Phoenix, Arizona, 85083.

Chair Gilgoff: Mr. Richert do you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

David Richert: I do.

Chair Gilgoff: Just please try, since you have a long document. We already have seen the document; it's been presented to everyone, could you please just summarize what it is you need, what pertains to this case. Thank you.

David Richert: Thank you Chairman and I planned to do that, because I do not want to confuse my comments with the maps and things that you've seen so far.

Chair Gilgoff: Great, thank you.

David Richert: My experience has taught me over the years that there is a way that you do zoning adjustment, and the way the City of Sedona does it -- very similar to most communities throughout the country. Best practices though would indicate when you're dealing with nonconformities that you be more precise than you are less precise. Your practice of having complaint-driven violations acted upon falls a little short of what I believe is the appropriate way to handle nonconforming uses. Normally, when a community has these types of things happen, they provide, if you will, records and information that is mapped and is done at the time, in this case, in incorporation. The property owners, or depending on who they may be throughout the state, country, whatever, generally rely on that information that you have in your file and what they do as business, and sometimes they stray -- that is the norm of nonconforming use, because generally they're not documented very well.

In this particular case, when I look at Mr. O'Brien's approach, it was a very friendly approach; he worked with them and he got compliance many times. The nature of the business though, being artists, just to me senses that a lot of these things start, because if they are artists they're trying things new. They're out there with their product. If they get good enough at it themselves or they get other products that are good enough, those things may stretch into other buildings or not, but the history here has been, you took them through a Conditional Use Permit in 1992.

I notice from the files that they filed back and forth on that; they filed back and forth on zoning. What was happening though is they didn't get support, so they have to rely on what they have today and by virtue of this hearing, moving forward, it will document everything for the staff in the future -- or should. By virtue of that, it is common practice or rule of thumb to make sure that when somebody asks for a building permit that the site has other compliance issues, they're dealt with. Generally, you don't go along and just say okay you're compliant on this issue, that issue or that, but, oh by the way, your septic system is leaking and your drainage is providing drainage downstream that's polluting the water supply. Many times those types of things get caught and rectified.

The history here, and by virtue of your Zoning Administrator, has indicated that they are in compliance. They were in compliance; I think she said, in 2006. To believe then that there has been expansion or non-expansion, you had Directors signing off building permits that gave permits to do things on the site. Now a logical person, yourself, personalize this if you had one and you came in and you got a permit, and they said you were in compliance, it is illogical to think that there's other things wrong on the property just because you didn't have that oversight, because somebody didn't complain about them.

It's a serious matter to be a Zoning Administrator; you don't often allow yourself to be too friendly, too cozy with any property owner, because you may have to come back and enforce. Those things should have gone on in each and every case a permit was issued. Now that is not your approach here; I'm not criticizing your approach, but with your approach you allow it to leave it open; you give it latitude. Your Zoning Administrator appeared to be exercising that, and exercising it in good faith.

From 2011 to 2015, when the Notices of Violation were issued, apparently things were running properly or so the property owners thought. If their volume increases, they get more there that has nothing to really do with the nonconforming use, other than the fact that it is being successful. It's a successful small business within your community, so with that in mind, my belief is that up until 2011 and the reliance on the email that they had concluded for purposes of the property owner, and emails have become the way of future in all sorts of communication -- phone calls, texts, all that sort of stuff is being used by everyone, to be efficient and carry on things. To say that you can't rely on that really is not true. Anything that is in the record, you should be able to rely on. It is not about if somebody submitted something, they should then follow-up and say okay, did you approve it or not? It is the responsibility of the community, the staff, to take care of those things. It's just my conclusion that Mr. O'Brien, when he left, thought that everything was in accord, the property was in full compliance, and the responsibilities of the City had been met at that point, and his office, to deal with the property as it sat. I'd be happy to answer any questions you have or the experience I've

had with this but I dealt with over 500 nonconformities in the City of Phoenix at the time as Zoning Administrator, and I supervised, as the Planning Director for 13 years, Zoning Administrator activity.

Detail is really important here today, and if in fact, you make a decision to go one way or the other, I think it's incumbent upon the City and the Robetsons [sp] to come together as to, okay, what is today, what's the baseline and where do we move forward. We have the site plan in file that already had indicated that and no one took any action against it, so by omission, you allow it to stand on the record. Thank you.

Chair Gilgoff: Mr. Richert, in the documentation, some of it I think that you provided, and the documentation that Mr. Slavin provided, there is a letter and it's attachment #28, and let me read that for the record:

"By March 1, 2012, I am requesting that you provide photographs of the exteriors of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan. This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question on what is allowed on the property."

So, this statement is really saying I'm not giving you carte blanche for what you did in the past; I want to see what you did in the past, because the way this is done, most of the buildings that were done were modified or built without permits, and all these permit applications were done when an inspector or somebody found the building and said you put up without an inspection. Therefore, the Applicant applied for a permit at that time, so it wasn't like the normal process of applying for a building permit. These were permits that were issued for things that were done without a permit, that required a permit. So I don't know that you can go to that extent to say all the evaluations were done. I mean the City was just being generous to do that rather than ask them to tear the buildings down.

David Richert: If I might, Mr. Chairman, can I respond.

Chair Gilgoff: Of course, of course.

David Richert: Once you accept the building permit, before or after, it's really irrelevant. You're about compliance, so the review should go on and the Applicant meets your standards, then you are in compliance. That word is so strong in all of what we do as Zoning Administrators and Community Development, because what else does the business have to rely on, if in fact, they can't rely on the word of the person, the Zoning Administrator in the City.

Chair Gilgoff: I just read you what the Zoning Administrator said; he wanted photographic evidence of what's there, so he could determine what was in compliance.

David Richert: Does it say determine if?

Chair Gilgoff: "From this point forward, there won't be a question of what is allowed and what is not allowed."

David Richert: So that is an open and loose statement about what is and what isn't. He wanted a drawing.

Chair Gilgoff: Based on, because he doesn't have anything from them at this point, he's asked for a document showing what's there. It's not his job to hire a surveyor and do a plot plan and aerial photography of the site.

David Richert: I agree, but if in fact, you are going to say somebody is out of compliance, you need documentation that shows that.

Chair Gilgoff: Well he wants; he asked the Robsons for the documentation that would show what's there, so he determine what's out of compliance. That's what he wrote in the letter.

David Richert: Okay, and the site plan was submitted, and the . . .

Chair Gilgoff: No, it wasn't submitted 'til months later and right at the time he was about to retire.

David Richert: Okay, if in fact someone submits it on the due date, he sent another notice to them, he had not gotten it in; again, it's about getting it in, complying with what . . . once it's done . . .

Chair Gilgoff: Well compliance means living up to what the request was. If you say your tax return has to be filed by April 15th, and you're late, you get fined, okay.

Mr. Slavin: Or you get an extension.

Chair Gilgoff: Well if you don't file for the extension, you get fined.

David Richert: That's true, but zoning is not about punishing the property owner once they comply. If in fact they have met the standard by which the Zoning Administrator asked for, then you do not hold; literally, you should be unbiased to that one way or the other. You've brought that property into compliance and you move on from there to all the other activities. If another violation comes in, you check it out as he did, and it was demonstrated, and your Staff Report indicated that's how you handle things here, so to say that it was late was probably a standard that was effectuated over 20-some years of how people get along in this community. And again, it's not a critical thing; it is how you do business here and it is a little bit . . .

Chair Gilgoff: It isn't the way we do business in this City though.

David Richert: Well I'm just . . .

Chair Gilgoff: People get building permits, before they build buildings, okay.

David Richert: I agree.

Chair Gilgoff: That's how we do things, right? They did that in Phoenix that way and Scottsdale didn't they?

David Richert: They did, and that's what I agree should be done, but when somebody . . .

Chair Gilgoff: And that's the way it's done, and when somebody doesn't, what do you do?

David Richert: We try to achieve the compliance with them.

Chair Gilgoff: That's exactly what . . .

David Richert: It's aggravating, I agree, but it is not; it's not that role to go back and hold that against them, but it's rather is it safe and can it be occupied for the business that's there.

Chair Gilgoff: Okay.

Board Member Ward: Would you say it's typical that a Conditional Use Permit, once granted as a result of some historical use of a property, which is the case here, is it typically amended and expanded upon?

David Richert: Typically it can be, yes, and the process by which you used here in Sedona, and I'm not sure if you were a part of when that was put in the ordinance and when it wasn't. The way we

handled it was it was a use permit that the Board of Adjustment would see – not the Planning Commission. The Planning Commission generally deals with rezoning and the things you discussed earlier as another option here and to make it commercial activity. The Board of Adjustment - Zoning Administrator connection to a use permit and meeting the standards under a use permit are a lot different than a use permit going through the Planning Commission. So there's a difference there, but I guess what I'm saying is yes, people do ask for alteration and expansion, modification of their nonconforming uses, and if you think about business, where we've been since this property was purchased by the Robetsons [sp] and now, we're light years difference in how people do business, so it's sometimes difficult to answer your question, but I'd say yes, people do ask for those things, and believe me, they're subject to a lot of scrutiny in Phoenix particularly or Scottsdale.

Board Member Ward: And, so the process would be they would apply for something, not just do it and then ask for forgiveness later, is that correct?

David Richert: Generally that is our recommendation to any property owner.

Board Member Ward: Is there anything in Arizona statute that allows the Director of Community Affairs here to amend or change a Conditional Use Permit unilaterally? Is that legal, can he do that?

David Richert: My belief is that there would be some process that would go along with that, public hearing and that type of thing. I don't think . . .

Board Member Ward: So an email saying okay, I'm going to let you do this or that has no legal bearing.

David Richert: Well, you're leading me into a direction here that, I think that when they did take their actions, they felt they were working within the Conditional Use Permit that was approved in 1992 by virtue of even '93, there was a site plan, a building permit, those types of things issued, and then, through following along, you have permits. Those are the one legal thing that was done that's valid.

Board Member Ward: Okay, what's a permit? If you have a permit to build a shed and it's constructed to the requirements of the City for storage, and that use is changed, you put a bathroom in it or whatever for public use; doesn't that require some sort of approval from the City for change of purpose or change of use?

David Richert: It's possible, yes. Again, you're giving me a scenario without having the building code and what goes . . .

Board Member Ward: Audree, is that correct that they would have to apply for a building permit to change its function?

Audree Juhlin: Your scenario, yes, they would require to file an amendment to their building permit for that change, yes.

Board Member Ward: Well, what about to using it for retail sales open to the public?

Audree Juhlin: So the, if it was approved as a shed in the first place, where there was no public access, there's no electricity, there's no plumbing, none of those things were taken into consideration in the first review and the property owner wanted to amend to allow for those things, yes, a different application of the building code would apply, especially the public use portion of that.

Board Member Ward: And, were any of those permits applied for?

Audree Juhlin: No.

Board Member Ward: Okay, thank you.

Mr. Slavin: I need to ask her a question then, was there any, I mean was there a bathroom placed in a storage unit someplace out there or a shed?

Board Member Ward: No, I was just using that as an example. What she was saying is for public use and public safety, there probably are, and I don't know these off the top of my head, but there certainly are restrictions on ventilation, heating, water, electricity or something that makes it more appropriate for public use than for storing boxes.

Mr. Slavin: It depends upon the occupancy.

Vice Chair Rich: Any more questions of Mr. Richert? I have a couple of questions. In Mr. O'Brien's email of December 11, he asked for a site plan, but basically that site plan wasn't provided by the Robsons until 2015 with their proposal for a Zone Change.

David Richert: No, I believe there was one provided before Mr. O'Brien left.

Vice Chair Rich: If you look at the document of where it is, it is so crude that you cannot determine anything on that.

David Richert: My belief is it's an artist rendering of what's there, and again it goes to the fact of what the property owners see the zoning regulations and the development of their property in terms of what they are trying to get accomplished, and like I said earlier on, just the whole idea of artistry and that type of thing, this is a little bit of a different nonconforming use than having a battery shop in the middle of a residential area. It just goes to the fact of how artists operate, and I had several of them in Phoenix as well that were operating in residential areas doing their galleries and creating anew, because they became interested in new subjects, and people tried to stop them from going from painting to pottery or steel construction or copper.

Vice Chair Rich: Or glass.

David Richert: Or glass, and there's really no distinction, once you've said it is a gallery and it's artistry and those types of things.

Vice Chair Rich: No, I understand, but xeroxing the cover of a brochure and saying this is my site plan, you know, you would expect a little bit more definitive site plan and really the one that was provided in 2015 is the first real true site plan that we've seen since 1992.

David Richert: Well I think you saw something in '93, but I'm not . . .

Vice Chair Rich: Well okay '93; I'm not going to argue semantics.

David Richert: Again, because I've gone through this file, yes, you saw something more cryptic, but the process I've that described looks a little bit looser than the norm. When somebody would have submitted something to me, it would have come across my desk, I would have looked at it and said and dealt with it there. I wouldn't have just put it in the file; that assumption right there means some kind of, some form of acceptance or decision made. Then, the photographs also were there to support it. Sometimes that's all people have, because they're not equipped or willing or whatever to go out and do the site plan you saw in 2015, which again lays out a lot of good information, and that is where you ought to go in terms of having a decision about what's allowed on this property and not allowed on this property, because otherwise, you're all going to be back here sometime down the road again, if in fact, you don't have that kind of detail, and again, how that all gets accomplished, you're right when you say that the City isn't responsible to go do those drawings, so

the long and the short of it is I think John O'Brien was trying to get them to bring a drawing that was acceptable to them and to him, and the photographs to support it.

Vice Chair Rich: Thank you.

Board Member Gordon: Yeah, I assume Mr. Richert you're familiar with the affidavit submitted by staff from John O'Brien dated April 28th.

David Richert: Yes.

Board Member Gordon: Okay, the reason I bring this up is because you basically have just repeated the statement that there's an implied approval going on here, because the photographs were finally received and filed.

Chair Gilgoff: For the lack of a disapproval, yes.

Board Member Gordon: Right, and so just going through this affidavit, #13, "I gave Rio Robson 'til March 1st, 2012 to provide me with the information." Now, he didn't provide it late like on March 15th, right, because #14 says that on May 8th, now that's over two months later, John sent an email to staff saying he had not received the requested information. Okay then, it says, I recall Rio Robson providing me with the photographs shortly before I retired, so basically, he was in a transition period. We can infer from this that this happened, I don't know, when did John retire, like in July or something?

Audree Juhlin: First of July.

Board Member Gordon: Yeah, so it probably happened sometime in June, which would be over three months late on those, okay, and they were delivered at a time of transition. Now, he also says that he conducted an inspection only of the structures and to determine the operation of the illegal coffee/ice cream shop had ceased. He did not conduct an inspection related to any other aspects of the Conditional Use Permit, and that he did not render a decision or make a determination that in December 2011, obviously he's referring to this email, the property was in complete compliance with the 1992 Conditional Use Permit. So having seen this affidavit, it troubles me that you are basically placing this thought process with Mr. O'Brien, that in fact he had approved this, when he specifically refutes that in his affidavit.

David Richert: Do you want me . . .

Board Member Gordon: I do.

David Richert: Okay, Board Member Gordon, I have read all of this too, and again, it goes through that there is a consistent pattern here, but the pattern isn't about precision. It's about a much looser way of going after and establishing compliance. Now why he did not do anything prior to him leaving; it was like he noticed his staff, well I did this on May 8th and I still haven't gotten this information, but it didn't seem to be all that vital that he have it, because he didn't say to them you need to get onto this or something else. In other words, there was not an overriding factor here that was driving him to say that this was in noncompliance.

Board Member Gordon: It was just like he was passing on a baseball score or something, is that what you're saying?

David Richert: Well, I'm not trying to characterize John, I don't know him personally, but I respect the fact that he did his job to the job that the community, the Mayor, Council, City Manager, all of you wanted him to do it and I assume he treated all other businesses the same way. So with this to say that he didn't do something purposely, I think though the actions that he and Mr. Schafer took previous to that counteract what he's saying here, and that by best practices, you wouldn't leave

something like this hanging if in fact it was the core of the business we're talking about here. It's not about the parking, it's not about how S.R. 179 got reconstructed and decreased the nonconformity, but increased it intensity; all of those things have happened along the way – government action, City action, County, all those things influence this type of stuff, and if there's an issue, it should run to the property owner, not necessarily at this point looking back 20 years and saying, oh my goodness, we didn't mean this. We didn't mean it was in compliance, and from my perspective, I always tried to stay in the middle, I never got close to the business people, I never got close to the residential folks, because these always came up as issues, so you have to document very clearly what you're doing and not doing, and I think as this gets down to the end, he didn't document it very well. He didn't even think it was probably a huge concern, because they were generally in conformance to the 1992 plan and the building permits that they found, and if you look at the permits, they're not huge permits, they're not big issues, but it references the City's desire to bring them into compliance and I believe that's where they are.

Board Member Gordon: Thank you.

Chair Gilgoff: Okay.

Mr. Slavin: I have a couple of questions if you don't mind, Mr. Richert. Mr. Richert in looking at Mr. O'Brien's affidavit, he makes references in here about, he uses the word "compromise" in a couple of locations, I think; actually in paragraphs 16, 17 and 18. In your experience as a Zoning Administrator and then as the Planning Director responsible for the duties of the Zoning Administrator that served under you, was it a common practice to your experience that it would not be uncommon for compromises to be reached with a property owner where the owner was found out of compliance with the zoning regulation?

David Richert: From the standpoint of John O'Brien's approach and what I did and supervised the activities of Zoning Administrators, we always tried to take a reasonable approach, and in a lot of people's minds that's a compromise.

Mr. Slavin: Now, you mentioned some 500 cases that came before you as a Zoning Administrator, approximately what percentage of those cases resulted in an agreement being reached with the property owner that was alleged to be out of noncompliance?

David Richert: Of the 500, their probably varied from site to site, the difference nonconformity. By virtue of road construction, like 179, you take parking spots off of a property that's at its minimum parking, you would end up with nonconforming parking – a standard. A use is different; expanding the use then was the third leg of that stool that you would have to deal with. Many times, and again, from time of annexation, prior to annexation, zoning changes, all those sorts of things had to be researched with somebody, and if it was not clear, you tried to achieve some compliance with the existing regulations that were on the books. So if there were no aerial photographs, there were no tax records that indicated things, there were not a lot of stuff that property owners would have at hand, generally you would work with them to try to come up with some reasonable accommodation, but you also could not go so far as to change a regulation. Then you needed an appeal to the Board of Adjustment or you referred it to the Board of Adjustment for their opinion, and I can tell you that the Board of Adjustment did work these things out as well. Just like you have that authority to do, so if there's a question about what the City did in the past or what they might have not concluded or did properly or erred in, you're the Board that can make that right, and so by virtue of that, what's happened for the last 20 years really has come to a head in 2015, but based on 2011 forward, there didn't appear to be any compliance issues. So, I guess what I would say is compromise is a good thing, but compromise is really more what you would find in a zoning case to work out the issues than a Board of Adjustment matter.

Chair Gilgoff: Mr. Richert, just to clarify something. You implied in your submittal that we should have taken some action; we only take action on appeal. Okay, we don't meet and take actions on zoning issues or anything else, unless an Applicant formally files a request for an appeal with us.

We don't look at properties and say this is out of compliance or we don't think they should be doing this; that's not our job. The City of Sedona is organized differently than the City of Scottsdale. The Planning & Zoning Commission in our City has people who give Conditional Use Permits. We don't; we only hear appeals of the Director of Community Development or things where somebody is asking for a setback variance or things like that, zoning variances, but nothing else.

David Richert: I understand that . . .

Chair Gilgoff: Just for clarification.

David Richert: . . . and it's a variety of how things get handled. City of Phoenix for a while had all of their appeals from the Board of Adjustment be routed through the City Council for about six months, because they felt like some of the things that were happening at the Board or at the staff level, the Council at that time didn't like. After about six months of it, they changed the ordinance back and sent it back to the Board of Adjustment, and then the appeal right to the courts. There's a variety of ways of handling it. I guess what I'm just saying is that the Zoning Administrator has broad authority to enforce the ordinance and broad means can be less accurate, less pointed on getting the compliance, and in each and every time, he was indicating there was compliance there. Now when this all was done with the CUP in 1992, all of the information that was submitted was for 41 and there were structures shown on that information, so to assume or not assume that they were allowed or not allowed, they went through an approval process, and then '93, they documented that with a permit against that against that same site plan.

Chair Gilgoff: But they've never applied since the Conditional Use Permit in '92 for any major structural changes or any major increase in the amount of retail facilities; that wasn't done. They didn't apply for zoning variances; they didn't apply for Community Plan changes; they were basically restricted to the same uses that they had back in '92.

Mr. Slavin: Mr. Chairman if I may, I think it would be a good idea, when we're done with this record for me to complete . . .

Chair Gilgoff: Oh yes, please go ahead.

Mr. Slavin: . . . because you are definitely under the impression that there were major expansions in buildings on this property.

Chair Gilgoff: Well I was just . . .

Mr. Slavin: And, we want to get into that . . .

Chair Gilgoff: Well, there was a major expansion in the business, okay.

Mr. Slavin: Right.

Chair Gilgoff: Your witness testified . . .

Mr. Slavin: . . . no, expansion no; volume of business.

Chair Gilgoff: Well, volume of business implies more people coming to the business, which requires more parking, more interference with the neighborhood. We're starting off with a residential gallery, you know with somebody selling paintings out of their house and now we have a major commercial institution on the highway that's ordering hundreds of thousands of dollars of additional inventory to meet the demands of their increasing public, as testified by your witness.

Mr. Slavin: As a child of people who operated a family business years ago in northwestern Pennsylvania, I can tell you that just because you have a greater volume of sales in any given

month means that there may be more people coming to shop at that particular location, but the parking requirements necessarily are already in place for that, and for instance, let's say that instead of getting five customers an hour, they get eight customers an hour, okay, that doesn't mean they are out of parking compliance or anything else, it just simply says they're doing a larger volume out of the existing space. There's nothing wrong, under the . . .

Chair Gilgoff: No there isn't, but they've been using the neighbor's lots for parking. That's one of the complaints we have.

Mr. Slavin: No, we haven't. No, we haven't.

Chair Gilgoff: No that they're using . . .

Mr. Slavin: No, no, that's not here.

Chair Gilgoff: Audree.

Audree Juhlin: The complaints that we have received in the past were the illegal commercial parking on the Arrow, Bowstring and vacant lot.

Chair Gilgoff: Correct, and those are the residential lots.

Mr. Slavin: Well okay, but they're not on . . ., okay.

Chair Gilgoff: They're not zoned for that; the increased business caused the overflow parking, which caused the noncompliant uses of residential lots for parking, do you agree to that?

Mr. Slavin: No, not necessarily and let me say this much, if people cannot find a place to park there on Tract 42 and 41, his understanding is they are free to park on the streets.

Chair Gilgoff: Not on highway 179.

Mr. Slavin: Right, we wouldn't recommend that.

Chair Gilgoff: And, it is up to the business to regulate where their customers park.

Mr. Slavin: Not necessarily. You own a shoe store and find out someone parked on the street two blocks away to come and buy a pair of shoes, you kidding me?

Chair Gilgoff: But, if you know that your customers are consistently illegally parking on residential lots, it is up to you to put no trespassing signs up on them.

Mr. Slavin: As far as Tract 40 is concerned, which is the one to the south that is zoned residential, although on the deed restriction it's allowed to be commercial, but the parcel to the south, there have been "no parking" signs posted there and they have been kept there posted, and to the extent, from time to time they are out there noticing this thing, they enforce it, but the problem with that is what the staff is looking for is for us to put up a barricade, which we can't do, because Mrs. Robson has already testified and told you that the owner of Tract 39 has the legal right to pass through this property, so we do what we can do, which is to post the property for no parking.

Chair Gilgoff: Okay, why don't you continue with this presentation?

Presentation by Mr. Slavin, legal counsel for the Applicants (continued):

Mr. Slavin stated thank you and thanked Mr. Richert. He then indicated that he was going to be going through this table chart comparison. This shows all of the square footages on this property,

every bit of it and the history of it, so you'll get an idea of the area that's been used, both building-wise as well as outdoor sales area.

Mr. Slavin indicated that for their purposes, on the left side of the screen is the 1991 plan and if you compare the 1991 plan to the Staff Report on the screen, you will see that the staff numbers are coming from the 1991 plan. These are not coming from the 1992 plan, which had more square footage on it than what was shown on the 1991 plan. So for instance, the retail shown on here; there are two places where retail is shown. He then pointed out the two retail areas and stated that those both are listed as being 1,125 sq. ft. of retail or a total of 2,250. Then, we have what is called the 5,000 sq. ft. of outside retail display area, which is the outside display already shown on here as being the 5,000 ft. Then we have 1,950 sq. ft. single-family dwelling and if you go to the house, that is shown as being 1,950 sq. ft. The pottery shop, you'll notice on here is 1,300 sq. ft., and then we have 590 sq. ft. of storage space, which is there and at that location. It's 350 and 240 combined, show that as being storage of 590, and then we have the shop that is on Tract 41, showing that to be 750 sq. ft.

Mr. Slavin stated that again, what the Staff Report in '92 does not do is not take into account that square area in the cutout of the house; that is not accounted for in the Staff Report and yet it existed, and the kiln. The kiln area, in 1989, there was a building permit issued and a new kiln was built at that location, which is shown on the 1993 site plan, which he will get to in a moment, so we had some discrepancies in terms of what was shown in this plan and the Staff Report on which Ms. Juhlin is basing her Staff Report. He purposely pointed out to you in that, going back to the building on the far north side, that this area was shown to be part storage and part retail, and we will now show you the 1993 plan that shows some differences here.

Heather Dukes asked if the '92 or '93; the '92 you mean. Mr. Slavin indicated the '92 Alternate just a moment. Again, keep in mind that this was the plan after we took all of the blue and red markings off of it that went before the Planning Commission; again, as we pointed out to you, the retail area, that is now shown as all retail, so the 1991 plan showed that as being 1,125 sq. ft. where actually the total square footage in that building is 1,575 sq. ft. and it is all retail. Now, if you take that into consideration, then there is more retail shown on this plan, the plan that the Planning Commission used in granting the 1992 CUP than the Staff Report, which was based upon an unapproved site plan, the 1991 plan, so when we are talking about expansion of uses, there are some differences when you compare these plans, so if we go all the way back just to the 1991 plan, and we take what we have here today and you compare the two, there are discrepancies, but what happened in-between we want to show you. We'll reconcile this.

Board Member Ward asked to clarify whether the retail space in Building H is 1,125 or 1,550? Mr. Slavin indicated he would get to that; we have a demonstrative that shows how we took that space and arrived at the amount of space in that building. Again, this is a scaled drawing sir, so it is one inch equals 20; it's a scaled drawing. For instance, we have here basically two parallelograms that are joined, so we scaled this off, Mr. Ward, and we took two of these, so the first one was 25 x 50 and we multiplied that out, so that was 1,250 sq. ft. – that was the blue rectangle. We then take the red area and that was 13 x 25, so that turned out to be 325 sq. ft.; that totals 1, 575 sq. ft. off of the approved 1992 site plan, and we'll show you this calculation shows there's 100 sq. ft. more in this building than what's attributable to that in the 1992 Staff Report. And not only that, it is now all retail as opposed to retail and storage, so we have two potential errors. We have the error in the amount of square footage total, and then we have the difference or the discrepancy between the uses that were shown on here.

Board Member Ward asked if he misunderstood Mr. Slavin to say retail and storage and now it's all retail and asked when that happened. Mr. Slavin indicated that it didn't happen. The 1991 plan, which was not approved by anybody; it's just an errant plan. It's just out there, but it is the staff records. The 1991 plan, which was not approved showed this to be retail and storage. This is the plan that was approved on the screen was the one approved by your Planning Commission and depicts it all as being retail. Board Member Ward noted that he sees a wall there and asked if

here's a separate room. Mr. Slavin indicated that is a roof and the Board Member stated, okay, thank you.

Mr. Slavin then showed the 1993 site plan and indicated that again this was stamped approved by Tom Schafer, your then Director of Community Development, and also your engineering people. This was in 1993 and you'll recall from the 1992 plan, it showed 5,000 sq. ft. of outdoor storage, their outdoor retail on here, outdoor display, and it also showed parking. What this plan did here is it eliminated, there was a drive-through on the 1992 plan right here, as we're showing. It eliminated the drive-through in front of the gallery buildings next to highway 79, and it eliminated an access point coming in off of that driveway, so there is no longer anybody being able to come in off of that area, and this then had the effect of taking part of the 5,000 sq. ft. of additional outdoor display approved for the south half of Lot 41 and it moved it to that area located between State Route 179 and the existing gallery, and the testimony has been from Mrs. Robson that that has always been used, that entire area, since 1993, along the frontage has been used for outdoor retail display. And so, if you were to take the area that is still on Tract 41, that location there, the widths of that is between 30 and 35 ft. and it basically runs from the front of the property back to the shed and just to the north of the shed area. That is the outside retail display area that was approved by this plan, and there has been retail shown in that area there; that has been removed.

Mr. Slavin stated that what we're also showing here is the storage building, and again this building, and Board Member Gordon in response to your question, that building was there for purposes of storage in connection with the gallery operation. The existing shed that's shown on here, excuse me that's shop, it says shed; it was shop on the previous drawing. Heather Dukes clarified that on the permit it was shop. Then Mr. Slavin added, and the building permit we got for that, and we put it in your materials, that's a workshop area, and that is where Mr. Robson does his leather workshop. That building will be dedicated to workshop; there was some retail in there. They admit that.

Board Member Gordon stated that he is not seeing where Mr. Slavin is indicating, and Mr. Slavin pointed out the building and stated that it is this building that was initially shown on the site plan, and the Board Member stated, got it. Mr. Slavin then indicated that we have that area, and then we have again the new, and there are separate building permits that we've attached that are in the City records for both of these buildings, and we've used actually those numbers for purposes of calculating the areas, but essentially, what this did was to accommodate, there was going to be some widening and improving of the highway, that took some more time. The Robsons at one time were stipulated to making improvements to the highway in front; they made some improvements and those turned out not to be acceptable to ADOT, and finally, ADOT just said, we'll do all of this improvement work, but essentially, this is what again was approved by Mr. Schafer, so when we say we had expansions, B-2524 was not on the Staff Report, was not on the 1992 plan that was approved by the Planning Commission, but it was approved by Mr. Schafer and a building permit was issued, and it's there, and it's been there since 1993, so that explains why there are some differences in areas. So, Mr. Chairman, when you say there were increases in square footages, you are correct, but it is for this storage building, and there is one other location. If you can show where the kiln is on here, Heather, and then we'll get back to that in a minute. That kiln area, if you'll look at the building here, it was right in this location. This building permit was issued in '89; it was built and the kiln area as it's depicted here is actually where it's located, so it's not precisely located on this 1992 plan. He can't explain it, but it wasn't there.

Chair Gilgoff asked what the application was for; what was being approved with this permit. Heather Dukes responded that the B-2582 was a paving permit for the parking, and you can see that permit number along the right side of the plan. The Chair then stated okay, so this is a permit just for the parking lot, and Heather added, and also the B-2524 permit on the building, the storage building, that also was for the issuance of the storage building. The Chair then stated okay, so this relates to the parking lot and the storage building; that's what these permits were for? Heather explained it is also a depiction of what the property would look like once that parking was moved

from the frontage of Tract 42 to Tract 41. They had to adjust their display area to accommodate that. The Chair then stated, okay.

Mr. Slavin explained that it had the essence of rearranging the outside retail display on 41 to get the parking, so that got approved, and then it did away with the driveway in the front, the curb cut; it filled this in then with retail display and it was the shed, so there's a difference then between the '92 Staff Report, because it didn't reflect the B-2524 building, and it didn't reflect the expanded kiln area that we have a building permit for. No explanation of this, but it just simply we're going back and looking at 20-some years of records. It's miraculous that we're able to find this and pull it together for you. Okay, been a long time, so now we have these three plans and Mr. Slavin indicated he was going to refer back to the table; this is Exhibit N in our materials.

Referencing Exhibit N, Mr. Slavin stated that column B is just a straight take-off from the 1991 plan. On Tract 41, it had the 750 sq. ft. of storage and not the additional building that came along in '93, and the remainder of this reflected what was on Tract 42, but when we get to Building H for a moment, he just wanted to point out that when you are down to Building H, that differed from the Alternate Site Plan, which if you'll go over three columns, that shows again what he explained to you before, there's a 100 sq. ft. difference between those two, so we've got some differences shown here. The Staff Report, which is in the second column, tracts the 1992 site plan as we've already gone through, or 1991 site plan, but it doesn't include the Building D area; Heather, it doesn't include the Building D, right? Heather stated right, and Mr. Slavin then indicated that if you remember Building D is this building right there; it didn't come up on this report, so that is 288 ft. different from this plan and the Staff Report, so the Staff Report would be 288 ft. less building area than was shown on the 1991 plan. He points that out to you, because it's obvious and plain that the 1992 Staff Report was not based upon the 1992 plan. It was based upon the 1991 plan, and if you recall there was an application in '91 that was withdrawn. It's possible that this was just a holdover; he doesn't know how to explain it 20-some years later, but there's a difference.

Mr. Slavin stated that then we go to the Alternate Site Plan, and on this Alternate Site Plan, again, now Building A for our purposes is the new shed; the new storage shed that was approved on the '93 site plan, but he points that out to you, so on Tract 4 I, we have now done a take-off on the 1992 Alternate Site Plan and the actual square footage of that existing shop building is not 750, it's 684, so there is a minus difference between those. Then, if you will go onto, we put Building C and Rose has testified that this Building C area was always an art gallery. We show this here, but it doesn't get included in the square footage of Building E, which is the so-called resident structure, but we're showing it on here to show you what appeared on the Alternate Site Plan as compared to what was on the Staff Report. So, we actually did a take-off and we had our engineers do a take-off and the actual single-family dwelling area was 2,034 sq. ft., not 1,950 sq. ft.

Mr. Slavin then referenced Building G and indicated that is the main retail building that's in front of the residence. We did a take-off on that, Shephard Westnizer did a scaled take-off and that actually was 2,753 sq. ft. as opposed to the 2,665 in the Staff Report, which would then show that the Staff Report, back at that time, understated that retail area by 88 ft. Then, we've already gone through and talked about Building H, which we showed the calculation, it's 1,575 sq. ft.; the Staff Report in '92 said it was 1,475 and it's all retail and it's all scaled to be 1,575, so there is 100 ft. more in the Alternate Site Plan, excuse him, the 1992 approved site plan than there is in the Staff Report, so all together, when we add these together on Tract 42, we have an additional 560 sq. ft. and that's the difference between the Staff Report and the approved plan. We have a negative . . .

Chair Gilgoff pointed out to Mr. Slavin that we are two and one-half hours into your 90-minute presentation. The Chair then stated that we did take a 10-minute break, but can he ask you to please start summarizing rather than just keep quoting numbers, and Mr. Slavin stated okay; he understand, but what he is trying to point out to you Mr. Chairman, first, you stated several times for the record that they made major expansions or they made expansions out here they weren't authorized to make. What he is attempting to do is show you, to have a balanced record here . . . , Chair Gilgoff interjected that is fine, just . . . , and Mr. Slavin stated that there is 560 sq. ft. that was

allowed by the Planning Commission that's not been taken into account in Ms. Juhlin's report to you.

Mr. Slavin then indicated that he would show the end result and noted that he wanted to talk about column G for just a moment. We have in the packet the 2015 as built engineered site plan that was done by Richard Hubbell, Exhibit O. On there, we for the first time show the true building area of Building A, which was with the additional area, so we've got the new building A, we've got Building B, these are on Tract 41, and they total 1,074 sq. ft. Again, much more than what was shown in the Staff Report. Then, Mr. Hubbell's take-off for the residence, we are down to 1,920 sq. ft. as opposed to 1,950, so we're negative on what's allowed of the building, if you will, for the residence, but we've accounted for all of these other differences, so that when we come up with the differences between the existing site plan today that's in your packet and the 1992 Alternate Site Plan, we have a difference of plus 176 sq. ft. for Tract 42, and there was the Building H annex area. The Building H annex was something that was an enclosure, Mr. Chairman, of some outside storage area and we will admit that was done outside of getting a permit.

Mr. Slavin stated that if we go back to the total overall lot coverage, because that's the intensity of use; that's what we're really trying to figure out here as far as what's going on here and in terms of what the neighborhood can expect and what you can expect. The intensity of use on the 1991 site plan was 19.8%, in the Staff Report it was 19%, but they treated it erroneously as being 17%, both places. The lot intensity of use on the 1992 site plan approved by the Planning Commission was 20.4%, and the lot intensity on our current site plan, as built site plan is 22%. That is due to not showing Building A on the previous plan, which was the new storage area in 1993, and it was the result of the kiln that was added by a building permit that was never shown on this plan, and it is a result of the Building H annex, which is a storage area, so what we're saying, if we were to simply cordon off or do something with the Building H annex, we are compliant. We are compliant with the approved 1993 site plan and the 1992 site plan, so what he said before, we're not that far apart.

Mr. Slavin commented that you ask me why didn't I do this before, and you look back and say it would have been a smart idea to go back and do this months ago. We probably would have settled it up, okay, so mea culpa. Chair Gilgoff asked if Mr. Slavin would like a temporary adjournment to settle up with the City, and Mr. Slavin stated sure. The Chair then asked if it is possible and Robert Pickels stated that if it be the pleasure of the Board that we confer with Mr. Slavin and his clients that's fine.

The Chair asked Mr. Pickels if he thinks it is possible to reach a meeting of the minds, and Mr. Pickels indicated that he doesn't, today he doesn't, based on the presumptions that were included. Chair Gilgoff then stated okay, based on the presentation, you don't think you can come to a fairly quick meeting of the minds. Mr. Pickels stated no, we don't; however, Mr. Slavin stated that one thing we have discussed though is no matter what goes on here, we probably need to get a site plan and you can use for enforcement of some type, right?

Chair Gilgoff indicated that Mr. Pickels could answer that; however, Mr. Pickels explained that he is not sure what is being suggested and asked if the suggestion is that we have some type of a modified site plan that is agreed upon by staff. The Chair stated no, and asked Mr. Slavin if he was just saying that you are willing to give you a current site plan for the entire operation, and Mr. Slavin stated yes. The Chair then stated okay, he thinks they're only volunteering to give you a site plan, not something that you accepted

Mr. Slavin clarified that we're not suggesting you accept it. What he's saying is that if we could turn back the clock where we originally met in good faith to try to resolve this thing. Chair Gilgoff indicated that we could continue this hearing and come to a conclusion, and there is nothing stopping you tomorrow, well not tomorrow, but Monday. Mr. Pickels stated if he may Mr. Chairman, in fact, he and Mr. Slavin talked about this at the break, when the exchange was occurring about the role of the Board and so forth, one of the things that came to his mind was the fact that under either scenario, whether the Board upholds or overturns the Director's decision, let's presume that

for a moment, hypothetically, that the Board upholds the decision, then the stay is lifted and enforcement action will continue to the prosecution phase. That doesn't stop the parties from, in fact, that's what we do is we sit down with the party and try to come to a compromise or a resolution short of ultimate adjudication of violation, so that would not preclude that process from occurring, regardless of what we agree on today.

Chair Gilgoff stated that he thinks, Mr. Slavin, that your question about how does Son Silver West continue operating in the future, and he guesses that's the answer from the City, is whatever the decision of this Board is, afterwards you're going to sit down with City staff and work something out that works for both of you. Mr. Slavin indicated that he doesn't disagree with that, but what, and he doesn't mean to speak for you, but basically, this is a lot for you to absorb, and assuming that this is true, what I've shown you, you're going to need time to look at this, he would suspect.

Chair Gilgoff stated well, don't presume that, it's just, we'll go forward with the hearing. Mr. Slavin then stated okay, you'll go forward with the hearing, but in terms of then being able to digest this and make analysis, if we then have a chance to sit down with staff and go back to you and say this is partially right or this is all right or whatever else and we've come up with something, does that help you in making a decision? The Chair indicated no, and Mr. Slavin stated okay.

Board Member Ward asked the Chair if he could ask for a clarification and the Chair stated yeah. Board Member Ward then indicated that Mr. Slavin had stated when you were talking about Building A earlier that it was storage, did you misspeak? Mr. Slavin stated no. The Board Member then commented, so that is not part of retail space, and Mr. Slavin stated that is correct, it is not retail space. Board Member Ward then stated, but it is counted in your list here; however, Mr. Slavin indicated not as retail space, he means, he is sorry, it is shown in the list you bet, but it is not retail space. Board Member Ward asked well, why you are listing it as retail space in Column G. Heather Dukes commented that it doesn't say retail; it just says permit, and Mr. Slavin explained that in Column G, we're just simply saying it is 585 sq. ft. of space and it has a permit, but if you would like for us to put on there "storage" we will, but . . ., Chair Gilgoff interjected that he would like for Mr. Slavin to complete his presentation. Mr. Slavin then asked if he answered Board Member Ward's question, he's sorry, and Board Member Ward stated it's storage, thank you.

Mr. Slavin stated that what their position is, is that we believe that we're not in violation. The buildings and how they're being, on Tracts 41 and 42 are consistent what's been approved in the past, the 1992 plan, the 1993 site plan, and the building permits that have been issued. He tried to justify all those on the table he gave you. That table, if you accept it, and if you study it, he believes you will conclude that we're not in violation. Chair Gilgoff stated, thank you.

Mr. Slavin indicated that we have people who have been doing business in this community for 30-some years, and he knows you respect that, and he knows you will take that into account when you are looking at this case. At the same time, you've got to make sure that you uphold the rules and regulations that you expect everyone to follow in this community. We have had some noncompliances in the past, and we worked very closely with Mr. O'Brien for 20 years. He's probably glad to not have to sit with us anymore, but we worked with him and we always worked it out after the fact, before the fact, whatever it was, we always worked it out with him. We think that having gone through that process and the things that got worked out with Mr. O'Brien, whether it was in 2011 or before 2011, we're entitled to rely upon that in going forward in operating our business. We have not gone out there and attempted to expand beyond what we're allowed to do. We have had our hands slapped in the past, and in 1992, that all got pretty well corrected. There is parking going on, on Tract 40 and we've done everything we can do without violating the arrangement or the legal rights of the guy that owns Tract 39. We've put up the signs, we discourage people from parking there and they park there, okay. We basically are conducting a business there; it is a unique business that's been a part of the southwest culture of Sedona and its art community for many, many years. There's a lot of famous artists who hung their paintings here and continue to do that and to provide their art objects for people's purchase. We believe that we can continue our operations there based on the approvals, and like he says, we are not that far

apart. They don't agree with going back to the 1992 Staff Report and using those numbers for you to make a decision that we're out of compliance, and he thinks we've shown you clear and convincing evidence that that would be an error to do that, and regrettably, that's the staff's position that you go back to that Staff Report, notwithstanding the fact that when we go through these records, and we've shown them to you, there has been substantial compliance – some of it after the fact, he respects in terms of what, but basically in terms of the buildings and the outside display areas we're there.

Mr. Slavin then indicated two more comments. The 5,000 sq. ft. of outside display area, as we've shown you, applies to Tract 41, that's what was approved in 1992, and the Robsons were using that for outdoor display, so that 5,000 sq. ft. as shown on these plans, and it's shown on the 1993 plan as to where that occurs. It is very clear that in Tract 42, it's legal nonconforming use rights come about because of history, not because of the 1992 Conditional Use Permit. Whatever was there when the City incorporated, that has legal nonconforming use status, period. The debate is with regard to he thinks Tract 41; however again, the outside display area that is shown on Tract 42, according to Mrs. Robson's testimony, has always been outside display area. Her testimony was that you take the buildings on Tract 42 that were there and you subtract out that space; the rest of it they use for outside sales, and if you go over there and walk through there, you can see it. It's all outside sales, and they've got walkways and things like that, and arbors and coverings, so Tract 42, the outside display has been there since before Sedona incorporated. That being the case, and we are confining our outdoor display to the area that was shown in the 1993 site plan approved by Tom Schafer. If that's the case, outside display, we're in conformance. The buildings we've shown you based upon this list are in conformance; we have done whatever we can do to keep parking from occurring on Tract 40. We have cleaned up 61 Arrow, and we still have the chapel issue to deal with, but 61 Arrow is not being used at all for what the citations are set forth in the Staff Report. Ms. Juhlin went there and he believes confirmed that, and 365 Bowstring is clean; that's been confirmed, so that's off the table, so essentially, we are looking at what's occurring on Tracts 42, 41 and 40. He has some proposed findings he will present to you. Heather Dukes stated Exhibit U and Mr. Slavin indicated, oh, they already have them, alright. Our proposed findings, Mr. Chairman and Board Members, are Exhibit U.

Chair Gilgoff stated thank you and Mr. Slavin then stated thank you for your indulgence, you've been very fair in time, more than fair. The Chair then restated well, thank you, thank you.

Public Comment Period:

Chair Gilgoff then announced that he was opening the public forum portion of this meeting and he has cards. If anybody wants to speak and has not filled out a card, please fill out a card and just bring it up to the front.

David Soto, Sedona, AZ: Mr. Soto stated his address in the Broken Arrow Estates subdivision and stated I am aware that I have three minutes and asked if that is correct. The Chair indicated yes. Mr. Soto indicated I would like to address the fact that on July 23, 2015, I had forwarded a concern about 61 Arrow that was addressed today in regards to the retail sales area on the rear one-third of that property, as well as the shed that evolved into a chapel, and after hearing today's statement, it sounds as though that chapel will now no longer exist as far as operational, but the retail sales area still exists from what I'm hearing, unless they're going to bring everything to the common property line, thereby excluding all retail business area operations for 61 Arrow, is that correct? Chair Gilgoff stated that is correct, and Mr. Soto stated, okay.

Mr. Soto indicated that one thing that is missing from this whole operation here, and hopefully within my time limit I can make sense of it, is there are CC&Rs that from the City's point of view does not enforce, but as a property owner we all are aware of, when we buy within a subdivision that has CC&Rs, and with that, we know what can and cannot be built within a property. When we choose to disregard those CC&Rs and build as an owner/builder and not get contractors involved, build what we want to build, and then wait until after the fact 'til a complaint is made, and the City comes out and in fact find a violation is a disconnect between what the City can enforce and what the

property owner knows what they can and cannot build, and I don't know how to resolve that other than I know that when you sign your permit to build something, whether before the fact or after the fact, the City assumes that everything is truthful and upfront and due diligence on research has been done. With that said, that clearly was not the case here over the years and things were built and increased, whether it's in square footage or in volume, so it's my hope that somehow down the road, we can ensure that when a permit is issued that all those items have been checked to make sure that CC&Rs are taken into consideration. Lastly, in reference to 61 Arrow, the parking is an issue, the no parking, perhaps tow away zone should be implemented. The employee parking that is partially on the street, on the setback, does allow that when there are deliveries for merchandise for the business, literally blocks that street from pedestrians and/or vehicular traffic, with no, anybody out there to direct or redirect traffic as it comes about, which is in a sense a safety issue, and I also realize that they cannot allow their employees to park there in that driveway to that home to alleviate that problem, because that would constitute a commercial use of that residential property, so the only solution is to allow their employees to park within their given parking lot.

Chair Gilgoff thanked Mr. Soto and Mr. Soto thanked them for their time and called Mr. Scott Schroeder.

Scott Schroeder, Sedona, AZ: Mr. Schroeder gave his address and stated my wife and I are just completing construction of our home on the corner of Arrow and Bowstring. We are located approximately above the Son Silver West business, and during the construction process, we had to comply with a number of codes, requirements. One of them was a fire suppression system, several thousand dollars I would have loved to have told my builder to skip that and spend money to hire an attorney to make an argument before this Board that that's an unnecessary expenditure; however, my monies went to paying for sewer permits and everything else, so I didn't have money for that either, so needless to say, my wife and I do support staff's position on this. We have no vendetta against the business. Clearly, they were there when we bought our property; however, we do believe that fair is fair and they ought to be held to the same standards that we are being held to in so far as staying within code compliance of our construction and of our residence. Thank you.

Chair Gilgoff thanked Mr. Schroeder for coming and called Mr. Rob Adams.

Rob Adams, Sedona, AZ: Mr. Adams stated good morning to the Chair and Board Members and stated I don't envy you your decision, it is a very difficult decision to make. It always bothers me when I see situations that come up in the City of Sedona that pit citizens against citizens or the City against businesses or whatever. It's always counterproductive to a harmonious community, and I want to address Rio. I was recently accused apparently on Facebook of being one of the co-conspirators of trying to destroy Son Silver West and that's not, there's nothing further from the truth there. I have been friends with the Robsons for quite some time and I have offered on several occasions to help mediate this situation, but I guess over a period of time from a homeowner's perspective, and Mr. Adams gave his address and stated it is in the Broken Arrow subdivision, from a homeowner's perspective, this has been a noncompliant property since the sale of it to the Robsons. The original intent was to have a 600 ft. gallery there, not as a commercial location, but a 600 ft. gallery and Mr. Richert kept referring to it as a gallery and the evolution of the production of the artists there. Well actually what it is, is it really a place that tchotchkes are sold. It's an import business, so I don't really see it as a gallery as the primary business anymore, so that in itself is out of compliance. The continued violations, and I think all you know that I was Mayor here for seven years and I got to know the Robsons during that time. I really wasn't aware of the violations that were going on until I was invited to take a tour, by Rio, of the property. During which time I observed the fact that they were fabricating and manufacturing on the Arrow Drive property; they were also doing their packaging and shipping out of that house, along with numerous other things like the chapel and the coffee shop and the ice cream store and all those kinds of things. At that time, I thought they had gotten permits for it and I mentioned it to the City Manager, and quite frankly, staff was surprised that those kinds of things were going on, so as you said Mr. Chairman, it's been an issue of whack-a-mole for years. The City approaches them to come into compliance, maybe they do, maybe they don't, but then something else comes up. I think fair is fair; this is all

about a level playing field for all businesses and all citizens to work from, and I believe that the Robsons have not, have always considered themselves to be doing things, and then asking for forgiveness later, and that is just not right. Thank you.

Chair Gilgoff thanked Mr. Adams and called Ms. Karen Farmer.

Karen Farmer, Sedona, AZ: Ms. Farmer gave her address on S.R. 179 and stated we purchased our home late in 2015, and we heard all of the issues going on, and I made an attempt to go over and introduce herself to the Robsons and find out about this situation, and they're very friendly people and very clearly invested in their business. I asked a lot of questions and heard a lot about the City trying to shut them down and I left the meeting really wanting to explore more and understand what was going on. I found the reality to be quite different than the story that I was told about the City trying to shut down the business. Our house is located directly across the street from the vacant lot that's been in question; the one that you've seen the photos; our driveway is in those photos across the street. This is listed in the Coconino Assessor's Office as a vacant residential property; as a real estate agent, I did the due diligence and the research from before we bought our home. In reality, it has been commercially developed; there's a left-turn lane off of Route 179 with an apron to provide access. This driveway is very, very wide. On a typical weekend, there are three to five cars parked along that paved area, and on the last Memorial Day weekend, the entirety of that lot, including the dirt areas was used for customer parking. Furthermore, there is a driveway, that I hadn't noticed before we purchased our property, that connects to the Bowstring area and there is frequent truck traffic up there, that again is commercial traffic that is coming across this lot, which is again zoned as vacant, so I believe that the use of this lot is not in commercial compliance. It is in conflict with the established zoning, and the records even seem to indicate that there was a request by the City to remove the pavement on that property, so it is my feeling that not everything has been done to mitigate the parking problem on that property. In fact, just a simple GIS photo shows broad expansion of buildings across property lines, and the successive sprawl, to me, I don't see how any of it is justifiable. It is clearly stipulated in the number of square feet in the Conditional Use Permit that's allowed. And, I think that there is a win-win; the Robsons are very nice people and they're very entitled to their business, but it shouldn't happen at the conflict of our community and to the property rights that we as homeowners' have, so it's my hope that really the community will look. I support the City in their effort to protect me, my family, our property rights, our property values to adhere to the 1992 CUP. I do believe that there's adequate parking and that driveway can be removed, if the business is right-sized. There's an abundance of commercial property here in Sedona and it's her hope that the business can continue to thrive at the location they're at and take the excess business that exceeds the limits of their property to these commercial areas, and I believe that is a win-win. They can continue to grow their business and they will find that they can have an economically viable growth, and then our community does not need to be continually impacted by all of the enhancements and growth, traffic and parking problems that we observe.

Chair Gilgoff thanked Ms. Farmer and called Mr. Tom Trimble.

Tom Trimble, Tucson, AZ: Mr. Trimble stated I will try to keep this short and gave his address and in Tucson, which is a little bit beyond the limits of Sedona, but I am speaking on behalf of both myself and my wife, June, who are native Arizonans, and over the past 20 years, we've had the pleasure of coming up to Northern Arizona and Sedona a multitude of times each year, and have found one of the highlights has been stopping at Son Silver West and just seeing what they have and purchasing a number of items. In this intervening time, both my wife and myself, in meeting the Robsons, have found them to be some of the nicest and honest families we have ever known, and we've noticed, as I am sure you all have, the great majority of people shopping and enjoying the character happen to be tourists who are from out of town and always mention and taking photos of how much they enjoy Son Silver West, and it's our strong belief that the City should be doing everything possible to support Son Silver West and the Robsons who have been a mainstay local business in Sedona for over 35 years, with a significant time of that being before Sedona was even incorporated. As well, you should be doing, you're asking Son Silver West to be a good neighbor

and we would also ask you guys to be a good neighbor to Son Silver West, and that's all I have to say.

Chair Gilgoff thanked Mr. Trimble and called Judith Reddington; however, the Chair was told that Ms. Reddington had left. The Chair then called Ann Fabricant, but Ms. Fabricant did not respond. Chair Gilgoff then called Stephen Schwartz.

Stephen Schwartz, Sedona AZ: Mr. Schwartz gave his address and stated I am an attorney and have been retained by homeowners in the Broken Arrow subdivision to represent their interests with regard to Son Silver West. I sat through this hearing and reviewed the documents, and I just has a few comments that hopefully are not simply reiterations of what you've heard. I wanted to address three things – equity, process and approach. With regard to equity, there is an attachment that you'll find in Attachment 7 to the public comment that wasn't included in the other documents. It's a supplemental restriction in the CC&Rs of the Broken Arrow community, and what it says, and this was from June of 1956, is that single-family homes, and this is on Tracts 38, 39 40, 41, 42, 43 and 44 – all of the tracts involved here, shall be used for single-family dwelling home purposes only, except that professional offices for surgeons, physicians, etc., may be maintained in conjunction with the use of the premises by any such professional persons for their own residential purposes as single-family dwellings.

Mr. Schwartz stated I understand there is a separation obviously between private and public enforcement of things, and this is a private matter, yet the point is that it goes to the equity of the situation. A purchaser purchasing a property with CC&Rs on it knows that there are inherent limitations. Those limitations were further enforced by the public zoning that was applicable to the area. Now, the point of this is that in order for you or any Board to do equities, and I heard Tom talking about being fair. I think the City has been more than fair with Son Silver West; it's bent over backwards to try and accommodate a business that supports the community, but that's a two-sided street and I don't think that we've got a party in Son Silver West that's been operating with clean hands, and that pretty much takes me into the second point, which is approach. We haven't seen good faith and we haven't seen anything other than the idea of a use of a grandfather clause. What the Chairman referred to as whack-a-mole and what I got was I kept hearing the word "substantial compliance", like we got these permits, well afterwards, but we did, so what I understand now about substantial compliance, I'm going to use this in future cases, is that it occurs at the end of noncompliance when you're caught. That's what substantial compliance is; if I can non-comply long enough, I get grandfathered in.

Chair Gilgoff stated that you are at three minutes, but he will give you two more minutes. Mr. Schwartz then stated the last point that I wanted to address was that Mike Ward brought this up and I thought it was brilliant, when he was talking with Mr. Richert, which is the changes that Son Silver West has effected, and essentially, they built them all, I mean come on, this is no different than a strip mall with all the amount of inventory going in and out. Those changes would need to be effected by a process that involved the community involvement, that's why all these complaints are here from the community. The residents have been impacted by the creation of a mall within their residential area without the ability to be part of the process, and that's why a process will be necessary, and I don't think that process can take place until after the decision of the Director is upheld. Thank you.

Chair Gilgoff thanked Mr. Schwartz for coming and called Eric Shrode.

Eric Shrode, Sedona, AZ: Mr. Shrode gave his address in Broken Arrow Estates and stated I am the third generation that has lived there since the house was built in 1952. We were personal friends with the previous owners before the Robsons. We were part of the group that helped them open their art gallery, just to give you some history of our background and knowledge of it, and we have seen tremendous expansion of that property since Robsons took over, and it's continued unabated to this day, so we're here to support City's trying to get them into compliance. I just want to address the issue, I think most of the things I was going to address have already been

addressed, but the intent of the Bradleys, there's been a lot said about that they wanted business districts. The business districts they specify are very small cottage in-home, in the home in which you reside, you can have a professional office. You can have a hairdresser, you can be a barber shop, you can be a realtor, you can be a dressmaker. They specified those were the types of businesses limited to 600 sq. ft., one room only – no other structures to be built on the property other than a single-family dwelling in which you will reside and a guesthouse – very clear that was their intent in the documents. What's happened now has really impacted our quiet enjoyment of the single-family neighborhood in which we all purchased our homes. We ask that the City hold them to the Conditional Use Permit and ask that you uphold the City's decision to do so. Thank You.

Chair Gilgoff indicated that he had a question. Many of the speakers have referred to the CC&Rs of the subdivision. Why wasn't an action taken under the CC&Rs? Mr. Shrode explained that an action could have been taken under the CC&Rs and may still be able to. That's a legal question that we'd have to ask an attorney, but the reason that they weren't is because most homeowners were in agreement with the original gallery; they enjoyed it and those people lived there and the gallery was in their home and it wasn't obtrusive. The obtrusiveness has grown little, by little, by little, by little; I mean it just keeps going on. Each day you're not surprised to see a new statue or horse or dragon on top of the house or whatever, you know something new happens almost daily. I think people should have acted frankly, I wish there had been a coalition of people who acted back then, but they didn't and that's unfortunate.

Chair Gilgoff thanked Mr. Shrode for coming and Mr. Schwartz stated as a point of order he could address the Chair's questions.

Stephen Schwartz, Sedona AZ: There are four separate subdivisions in Broken Arrow, none of them has a formal homeowners' association, so it would require one citizen to carry that burden on his back with the exposure of having the fees from an attorney and potentially the cost of paying the other attorney in the event of a loss. Chair Gilgoff thanked Mr. Schwartz.

Tim Ernster, Sedona, AZ: Mr. Ernster gave his address on Arrow Drive and stated I have lived there for the last seven years. During that period of time, I have known the Robsons, in fact I shop in that store and think it is really a neat store. They are my neighbors; however, their business has become a real imposition on our neighborhood. I live four houses down from the business basically, and in particular, the property at 61 Arrow Drive, from my perspective, is a huge problem for the neighborhood. Basically, Arrow Drive in that area has been turned into an employee parking lot and a service yard for Son Silver West. There's always five or six vehicles parked on the street from employees and that creates traffic circulation issues. The house is on the regular route for Fed-Ex and UPS. The trucks stop their every day, whether or not there are packages to deliver or pick-up. That's on their route, so that's an extension of their business. It's a real problem for the neighborhood and I know that there are people who live very close to that business that have been intimidated by the Robsons and are unwilling to even show up today to speak on this issue, because they're afraid to be real honest with you. The other issue is Mr. Robson uses a little green tractor to haul merchandise from the house at 61 Arrow Drive down to Son Silver West. You see that out there periodically, so it really is being treated, the street itself is being treated as a service yard for the business and it's a big imposition on the neighborhood.

The other problem that I have is the fact that when other neighbors observe a residential property operating a business illegally, then they start thinking well maybe I can do the same thing, so directly next door to 61 Arrow Drive, there is a house that on the weekends operates a bakery. They have a commercial-sized display case in their carport and during the week they cover it up with a portable trellis with big plants in front of it, and on the weekend to pick-up the church traffic, they pull the commercial case out to the edge of the carport and they fill it with baked goods, so that's what we're facing in our neighborhood. It's going to spread, and I'm very concerned about the future of our neighborhood, so I fully support the staff's position on this issue, and I hope the Board also supports that position. Thank you.

Chair Gilgoff thanked Mr. Ernster and called Bill Spencer, but there was no response. The Chair then called Terrie Frankel and again there was no response. The Chair called Timothy Byrne.

Timothy Byrne, Sedona, AZ: Mr. Byrne and stated I am the owner of the Blue Moon Café down in the Village of Oak Creek gave his address as a resident of Sedona. The reason why I live in Sedona now is because I lost his home during the road construction project of 179, which took seven years to be completed. That road construction project devastated my business; it is by the grace of God and hard work that I am still in business today. I had to work a part-time job or a full-time job during that period as a Pest Control Technician. I treated Son Silver West from 2003 to 2011, the physical land that I treated changed. How did it change; it got smaller. They lost parking that was there before the road construction and is now gone and replaced by sidewalks, curbing and an unnecessary divider in the highway. I've known the Robsons for many years, I treated their personal property as well as their business property. They're good people; if you ask them to do something, they will work with you. Retailers like myself in this community have suffered greatly from this road construction project. What considerations have you given them for the parking lot, parking spaces that they lost as a result of this road construction? I had a berm, a 3 ft. berm, in front of my property for his business and all of the traffic was diverted to the southbound lane for three years. I am one of four or five original owners of restaurants in the Village of Oak Creek that are still in business today from before, during and after the road construction project. Supporting the small business is very important to our community and a community that does not support its small business owners is not a community. I love you guys; let us open up our hearts and our minds and our spirit and find that middle ground that will work in this situation. I know the Robsons will work with you, please work with them. God bless you and thank you for your time.

Chair Gilgoff thanked Mr. Byrne and called Savas Sosangelis.

Savas Sosangelis, Sedona, AZ: Mr. Sosangelis gave his address and stated I want to thank the Board for squeezing me in at the end. I have all the concerns of the neighborhood; I really do and the fact that I live further away from the gallery perhaps I don't carry the same weight, but I do respect this Board and I do respect the wishes of the residents. I just want to tell you 30 years ago, my wife and I came to Sedona. While we were coming down 179, we stumbled into the gallery, and it was probably one of the finest experiences we've ever had. We came from the northeast, drove into Sedona and to us it represented what we were coming here – it was the west. For the last 30 years, we have been going to the gallery; we know the Robsons. They are good people, as a matter of fact, everybody in this room, we are all good people, the Board is. The gallery represents Sedona's past, and there are a lot of people that want Sedona to be as progressive as possible; they want it to grow, they want to cater to tourism, but you've got to realize one thing, that we do have a roots and our roots are the past, and the gallery is almost a living piece of history of Sedona. One consideration is that it's the Alpha; it's where we came from as a City and the Omega is where the City is going with the fast food, the mega resorts. I think the credibility of a small business that has grown, that is an asset to Sedona, is necessary in Sedona, and it's here to remind us of our past, our history and our roots, and also where we're going, and maybe we can all learn how to handle the future a little bit better from this proceeding. I know that the Robsons are good solid people, I know the Board is and I know that you two groups can work it out, because I'm sure there are concessions to be made. I appreciate it, thank you.

Chair Gilgoff thanked Mr. Sosangelis and closed the public hearing portion of this appeal.

The Chair asked Mr. Slavin if he needed summation time.

Rebuttal by Mr. Slavin, legal counsel for the Applicants:

Mr. Slavin stated that first just some housekeeping items, in that we want to make sure that the appeal narrative, and we have Exhibits A-1 to A-31 and Exhibits B through J are submitted in part, made part of the record sir. Okay? The Chair stated yes, sir. Mr. Slavin then indicated that Exhibits K through U, which were submitted today will be made part of your record sir. The Chair again

stated yes, sir. Mr. Slavin added that Mr. Richert's expert report has Exhibits 1 through 6 will also be part of your record. Chair Gilgoff stated yes sir, we'll add that and Mr. Slavin stated good.

Mr. Slavin indicated that not to get off on a tangent, but there is not a CC&R violation here, because the supplement that Mr. Schwartz referred to, and he has met with Mr. Schwartz and talked about this, was never made effective, and in fact the CC&Rs were reconfirmed by later recorded documents that these lots on the west side of State Route 179 are commercial lots as set forth in the original CC&Rs, so he just wanted to be on the record as saying that. So essentially, again reiterating what we already said, there is an element of fairness here and his sense is that you sense that as well. Where does that lie? We've attempted to show you that we have not, notwithstanding the past where we've had violations and then corrected those. He's done a fair amount of work in the past for builders, contractors and owners of property, and this will be the first time he represented someone who did something and realized they needed to go get a permit. Now over the years, he knows that this is something that's been there for the City and the Robsons to work through, but the fact that maybe the Robsons didn't always didn't come in, in advance and get a permit doesn't detract from the very fact that they always worked it out; they always worked it out, and to the satisfaction of your zoning enforcement folks and your building code enforcement folks. What we are suggesting to you here today is that we believe that that occurred in 2011 with Mr. O'Brien. We believe that we were justifiably allowed to rely upon Mr. O'Brien's actions, which in essence, found there were no violations at that time. We're not saying that he blessed this project in any shape or form, but the fact of the matter is, as your Zoning Administrator pointed out to you, the City operates in somewhat of a, if you will, well it operates on a complaint basis. The fact that there were no complaints for four years, and then the complaints that actually became filed were not about Tract 42 and 41. They're about Lot 61, excuse me, 61 Arrow, 365 Bowstring and the vacant lot, Tract 40. We are willing to repost, he doesn't know how many signs we have to put up on that property, with regard to Tract 40.

Mr. Slavin added that we've been operating a business that's a meaningful part of this community for over 35 years. We have shown you the permits that we have obtained; we've shown you the buildings that were already there, what minor expansion there have been in those buildings since they have been permitted, and that what we're willing to do in terms of the retail operations on this site, particularly with regard to Tract 41. Again, we're not that far apart, and basically, we think that with some minor tweaking this can get all accomplished without the need for there to be any further enforcement proceedings. Like Mr. Pickels mentioned, depending on how you rule here today, he may have the opportunity to go and go to court and start some enforcement proceedings. We attempted over six months ago, eight months ago Mr. Chairman to "work this out", when it was brought to our attention, spent considerable time on it, his only regret is he didn't do this table and submit this to staff, although it is something that staff could have also done instead of going it back and it simply saying, well this is what the 1992 Staff Report said; we take that, we take what's here today, and there's a violation. That's not a proof of a violation; that's a proof of the difference between a 1992 Staff Report, and what's on the property and what's permitted on the property by virtue of the legal nonconforming use rights, which have always existed on Tract 42, and what was the expansion rights allowed on 41. So in terms of equity and fairness and what have you, we believe that we are acting in accordance with the law at this location. We have a difference of opinion with staff and the Zoning Administrator; it's not something that cannot be resolved. We tried in good faith with staff to resolve it, and reasonable minds couldn't get it done. He still believes there is a way to get this done, so if you will review this and the information we've provided, and if you were to do that, and if you were to reach the same conclusions that we believe this chart shows, that there haven't been these expansions, that they're all explained, and we don't believe there's a violation, so that's not probably something you're going to be able to do in the next 10 minutes, but we'd request respectfully that you take the time to review everything that's been brought to you today and some of it is new to you, he knows, and some of it you've already had the opportunity to look at, but this is a really important decision for everybody and he would hope you would take for discernment and to come up with a fair resolution.

Mr. Slavin then stated, thank you for your time; thank you for giving us the opportunity to come here and present this case to you. He knows this isn't your highest paying job, but we really appreciate your time that you took to be here to serve the citizens to help us get through this process.

Chair Gilgoff thanked Mr. Slavin and announced that the Board was going to take a 10-minute break, and then we are going to resume, allow questions of the Board of the Applicant and the City and any further statements from the City, then we will discuss among ourselves and see if we can come to a decision, so 10 minutes and be back at 25 minutes to 01:00 p.m.

The Chair recessed the hearing at 12:25 p.m. and reconvened the hearing at 12:35 p.m.

Chair Gilgoff asked if staff had any questions of the Applicant, and Mr. Pickels stated no questions. The Chair then asked the Board if there were any questions of staff or the Applicant.

Board's Questions of the Staff or Applicant:

Vice Chair Rich indicated that it is his understanding from comments that have been made that the issue with Arrow Drive has been, the house was in compliance. The issue that remains is the building, the wall and the chapel. He then asked if that has been resolved, that issue. Mr. Pickels stated that the wall and the chapel have not been resolved. The issues with the residence as identified in the Notices of Violation have been resolved. Vice Chair Rich then indicated that the wall and the chapel are actually on the Arrow property, correct? Robert Pickels stated correct. The Vice Chair then indicated okay and asked if there is a building there as well. Robert Pickels asked, the residence? The Vice Chair indicated there is a residence, the chapel and he thought there was another . . . Audree Juhlin explained there's basically two structures on 61 Arrow, the main structure comprises the house, the single-family home. There is a shed attached to that home and a small apartment as well, then on the back side of the property is the approved shed that has been converted into the chapel area with the wall segregating it from 61 to the S.R. 179 property.

Vice Chair Rich indicated that another question refers to parcels 39 and 40; 39 is an undeveloped parcel and there's no way of knowing if, when or how that would be developed. In the intervening period of time to help resolve this issue with parking, since parcel 39 is not occupied, is there some way that a permanent barrier could be installed on 40 to prevent parking, and in the event that parcel 39 is developed, then an access road could be designated. Chair Gilgoff explained that is kind of beyond our scope; that's a negotiation between the Applicant and the City.

Board Member Ward stated Audree, a couple of questions. You provided us on page 15 of 22 a chart showing what was 1992-approved; he is assuming that's the agreement for a nonconforming, and then some numbers about what you have observed, and they are very much in difference to what was presented by the Appellant. He asked Mrs. Robson if to characterize the growth of her establishment since 1993 in terms of retail space and display space, and forgive him if he doesn't quite get this right, but basically, you testified that it was substantially the same. Mrs. Robson stated yes, and Board Member Ward indicated okay. You have 2,250 ft. of retail space in an enclosed building, 5,000 sq. ft. of outdoor display, a 1,950 single-family dwelling, a pottery shop, which he guesses is retail and kiln; is that what that was supposed to be? Audree Juhlin indicated that she thinks that is a safe assumption, yes. The Board Member then stated 750 sq. ft. of workshop building described as a shop, was that supposed to be storage or was that something else? Audree Juhlin stated that it is her understanding that that was a workshop only. The Board Member then said okay, and he missed the 590 storage feet assumed to be . . . ; it's too bad these don't have numbers, but do you see the one he is talking about? Audree Juhlin asked if the 1,950 for the single-family home, and Board Member Ward stated no, the 590 storage, and that's still storage? Audree Juhlin then stated oh, from the 1992 CUP and Board Member Ward again asked if that is still storage. Audree Juhlin indicated that she did not believe that is completely storage any more.

Board Member Ward then indicated that his key question is how far apart are we? Audree Juhlin indicated that there is significant difference between the 1992 CUP and the existing conditions.

She wanted to reiterate, this morning in her presentation, she talked about the existing conditions are based on the information that the Robsons provided to the City in 2015, so this is their information they provided to us. Given what Mr. Slavin has provided as discrepancies, it is approximately 500 sq. ft., she doesn't think that really is what we're talking about. The big areas of differences are the house is no longer being used as a house. It's being characterized as a house, but it is not being used as a home. The other big issue or difference is the outdoor display areas. Based on the information provided by the Robsons in 2015, they have existing 15,000 sq. ft. of outdoor space, and that is significantly different than the CUP-approved 5,000 sq. ft. and those are the two primary differences with the exception of Building A. As was mentioned today and testified by Mr. Slavin, that that building is storage; it is staff's understanding and based on a walk-through of that building that it is completely retail and is not functioning in a storage capacity.

Board Member Ward referenced the nonconforming property and asked if that is for both 42 and 41 or just 42. Audree Juhlin explained that 41 and 42 were combined; they're what's considered as part of the Conditional Use Permit. The Board Member then stated okay, as a business property is the City treating the two lots as a single entity. In other words, if we have some limitation on the amount of storage or display area, we're not just talking about one or the other or doubling it, we're talking about that is the amount of space that the business is allowed. Audree Juhlin stated yes, and that is governed by the Conditional Use Permit, and as she mentioned earlier, the Conditional Use Permit required those two tracts to be combined under one parcel number. The site plan that Alternative #2 discusses and shows where each use can be located, so we do not look at 41 separate than 42. We look at it exactly as the site plan indicates. Board Member Ward stated okay, thank you.

Board Member Gordon stated that he wanted to clarify some things and some of them are only tangentially related to our deliberations. It seems from the public testimony that the biggest problems concern employee parking on 61 Arrow; overuse of street parking on Arrow; and Bowstring wasn't mentioned, but there's that potential; non-residential use of 61 Arrow; the traffic and parking on Lot 40 and the issue with the display area and the lighting, which of course is something that is very important to us Sedonans, so his first question would be, and it's hypothetical, but if residents on Arrow Drive were to petition the City for parking restrictions on Arrow, is that something that could possibly be done, like no parking? Audree Juhlin indicated yes, through Council action "no parking" signs could be installed on that roadway.

Board Member Gordon then asked if he is right in inferring that the five or six employee cars parking at 61 Arrow is not legal, and Audree indicated that public parking on any roadway is allowed . . . , Board Member Gordon interjected not on the roadway, then Audree Juhlin stated on street and Board Member Gordon explained that he was talking about on the property, and Audree Juhlin stated no, that would not be allowed. The Board Member then stated that it is his understanding that has been happening, and Audree Juhlin indicated that had been happening in the past, but when we did their site inspection on May 11th, we did not observe that.

Board Member Gordon then indicated moving to lot 40, just along the lines that Board Member Ward was talking about, would it be possible to create an access to lot 39, but basically fence off the rest of lot 40, so it could not be used for parking and just had that one, basically a roadway. Audree stated that she thinks this was the question that Vice Chair Rich was bringing up; however, Board Member Gordon stated no, he was asking it a little different, he wanted to block off the whole lot. Audree Juhlin indicated a similar premise, she believes that the City and the property owners could work together to find a solution that would still accommodate the easement and discourage or not allow for the parking, yes. Board Member Gordon thanked Ms. Juhlin.

Chair Gilgoff asked if the Board was ready to discuss; he has no more questions; just like on Project Runway, have we come to a meeting of the minds.

Board's Summary Discussion:

Vice Chair Rich asked if we need to consider all of these in total or as subsets. Mr. McGuire stated

that if he is reading it correctly, the Notice of Violation is summarized on page 2 of the Staff Report. He then asked if that is the total of the violation, and Audree Juhlin stated that the actual Notice of Violation is provided in Attachment #2 of the Staff Report, so Attachment 2 provides the overview of the notice, and then the actual notice follows that.

Mr. McGuire then stated, Mr. Chairman to answer your question, in your deliberations what you're addressing are the actual components of the Notice of Violation. Those are the things that are being challenged. The staff and the Applicant have both expounded upon those. The staff has taken issue with a number of them as being applicable, in terms of things that were challenged, but in essence, they are three or four pages summarized, so your deliberations should focus on those and your motion, whatever it would be, would focus on whether you are upholding staff's determination, overturning staff's determination or somehow modifying it.

Chair Gilgoff indicated that the Board's attorney has a motion made up, so if you want to propose a motion, he could read the motion, and then you could say yes, and Board Member Gordon added, or modify it. Board Member Ward stated that it might be useful to speak or discuss the motion as it's going to be proposed, because he doesn't know if we're going to . . . , Chair Gilgoff interjected that is a good idea, and Board Member Ward continued to say, . . . put them together or we're going to deal with them separately.

Chair Gilgoff then asked Mr. McGuire if he could read the motion, and Mr. McGuire explained that there are two separate motions, and they both deal with whichever direction you determine to go. One is to uphold the proposed findings at Tab U from the Applicant, which would be many in number. The other would be to simply uphold the Zoning Administrator's determination in the respective Notice of Violation. The City has not proposed findings for us, so we have just the developer or Applicant's proposed findings.

Chair Gilgoff asked if Mr. McGuire had a proposed motion for the Board and Mr. McGuire explained that the motions that he had prepared were in anticipation of findings, so it doesn't do you any good for the City's side. We have a motion that would adopt the findings of the Applicant as submitted today in U, but in order to uphold the City's, you either have to address the individual components or a global motion upholding the Zoning Administrator's decision

Chair Gilgoff then asked Mr. McGuire if he could state what that would be, and he then asked if the City Attorney had something. Robert Pickels apologized for not having prepared a findings of fact or proposed order, but had he done so, it would have been a sweeping concurrence with the Zoning Administrator. The Chair then asked Mr. Pickels to state what it would be if we went in the direction of supporting the City. Mr. Pickels stated that again it would be a sweeping concurrence of all of the items identified by the Zoning Administrator in her Notices of Violation.

The Chair then stated, so it would be the Board of Adjustment . . . , Mr. Pickels explained that he doesn't know that it is appropriate for him to put that in the form of a motion or not. Chair Gilgoff commented no, you're not. Andrew McGuire then stated that he would be happy to put that in the form of a motion. The motion would be, "Move to uphold the Zoning Administrator's determinations with respect to Notice of Violation of November 10 . . ." He then asked if they were both November 10 and Audree Juhlin stated yes. Andrew McGuire then stated, both, and he doesn't see that they have individual numbers, so . . . , Chair Gilgoff interjected that is one and asked what the other one was that he has. Mr. McGuire stated that they are both November 10. The Chair then stated that he was sorry, and asked what about for Mr. Slavin. Mr. McGuire indicated that if your determination is for Mr. Slavin's client, it would be "Move to overturn the Zoning Administrator's interpretation and authorize the Chairman to execute the Applicant's proposed Form of Order", and that is that tab U in the record.

Board Member Gordon asked to make a suggestion, and he doesn't know if this makes sense or not, but we have Notices of Violation from November 10th, and it enumerates the particular violations, and he thinks it would be efficient to just go through these one by one and get a sense of

the Board on each of them, because it may be that we go one way on part of it and another way on another part of it. It's not all or none either way.

Andrew McGuire asked the Chairman and Members of the Board to keep in mind that two of the violations have been addressed – one in full and one in part, so whatever discussion you have . . . Board Member Gordon interrupted to say that Bowstring he understands is off of the table. Mr. McGuire then stated it is off the table all together; A has partially been addressed. Board Member Gordon indicated that he is less clear on that.

Chair Gilgoff explained that if you find in favor of the City, anything that's been addressed goes away anyway, and the rest of it, Mr. Slavin and his constituents will have to meet with the City to try to resolve, to move forward. He then asked Board Member Gordon if he was in agreement with that, and Board Member Gordon stated that he didn't disagree; what he is saying is that like we may find something about call it A, Arrow Drive, and something different about C, and then something different about D. It may not be all of one or all of the other. He then asked if he is making sense, and the Chair indicated yes, he hears what you are saying.

Board Member Ward indicated that a motion in total would be appropriate, and then we can discuss each individual citation or corrective action and remove it from the motion if we feel it is not appropriate. Board Member Gordon stated that he doesn't object to that. The Chair then asked Board Member Gordon and Vice Chair Rich if they were okay with that, and they responded yes. The Chair then suggested that Board Member Ward make the motion.

Board Member Ward then asked how the motion begins, I move to . . . , Chair Gilgoff then asked Mr. McGuire to read it.

Mr. McGuire's reading of the Motion: "Move to uphold the Zoning Administrator's interpretation". Board Member Ward then added, "of violations and corrective actions A.1 through A.5, B.1 through B.2, C.1 through C.2, and he believes D is the last one". Board Member Gordon clarified, D.1 through D.7 and the second Notice of Violations that doesn't have letters. Mr. McGuire explained that motion is presumed to include both Notices of Violation from November 10th.

The Chair stated ok, and Board Member Ward stated okay, that's my motion. The Chair asked if that is his motion, including both Notices for November 10th, and Board Member Ward stated that is correct.

Motion: Board Member Ward moved to uphold the Zoning Administrator's interpretation of violations and corrective actions A.1 through A.5, B.1 through B.2, C.1 through C.2, and D.1 through D.7, and the second Notice of Violations that doesn't have letters. Board Member Gordon seconded the motion.

The Chair then asked for discussion, and Board Member Gordon stated that as indicated in his questioning, he thinks we still have a major problem on Arrow Drive. It is his understanding that that is still just normal residential zoning, which means that house is supposed to be used for somebody to live in, so he thinks that as long as it is being used for business purposes and nobody is living there, then that is a clear violation. The employee parking at 61 Arrow Drive is a clear violation.

Chair Gilgoff asked if there is something that Board Member Gordon wants to remove; what we're discussing are things you might want to remove. Board Member Gordon stated no, he is concurring with that aspect of it, and the Chair stated, okay cool. Board Member Gordon then stated that he is going to pass on B. Okay, C, he doesn't know how you enforce this without physically restricting parking, unless you like hire a Security Guard to stand there. It seems like something would have to be done to alter the property to make it physically difficult to park there, but he does support the findings. D, there are several items and he certainly concurs with D.1 and he certainly concurs with D.3, and he thinks there are lighting issues that accompany those. He

doesn't, except for the requirements for building permits of course, oh yeah, D.5, that's the lighting. He would agree with 1, 3 and 5, and of course, the 6 and 7, which are the building permits. Two and four, he is not so sure about.

Vice Chair Rich asked if he could ask a question of staff. Is the wall fence in D.7 different than the block wall in A.3, and Audree Juhlin stated that is correct. The Vice Chair then stated they are different fences, and Audree again stated that is correct.

Board Member Gordon stated that he would support the staff findings on the second Notice of Violation, the one that starts with the Sedona Land Development Code, Article 12; he would support that Notice of Violation in its entirety.

Vice Chair Rich referenced A.5 on the chapel and stated that in the Land Development Code that we were provided, a chapel is permitted on a residential lot with a Conditional Use Permit. Audree Juhlin responded that if that chapel was for public use, a Conditional Use Permit would be required. A building permit would only be required if it is for private use as part of the residence, so the distinction is how it is being used – public or private. The Vice Chair then asked if it was public, could Son Silver West apply on Lot 61, since it's a residential lot, to have a public chapel. Audree Juhlin stated that is correct.

Board Member Ward stated with regard to the Arrow Drive property, and he got the impression we were taking that off of the table as all the issues A through 5 either don't exist or there is a proposal for correction, for example, the chapel and the wall being sorted out, are the others in fact no longer relevant? Audree Juhlin stated that based on the May 11th site visit, at that time, we did not see any active manufacturing, warehousing, shipping and receiving. Those items listed in the first part of the Notice of Violation. The only obvious continuation of violations related to the wall, the commercial use of the back side of 61, and the chapel area. Board Member Ward then asked which one was the wall, and Audree Juhlin indicated that the wall would be, she believes, A.3.

Amendment to the Original Motion: Board Member Ward moved to amend to remove items A.1, A.2 and A.4 from the previous motion of findings. There was no second.

Board Member Gordon stated that it is not clear to him that the employee parking has ended from the public testimony, and in any case, if it's not happening, then it is just moot, so he certainly wouldn't support removing A.1, and also he is just not clear, are you saying you know with substantial compliance that somebody is in residence at 61 Bowstring. Audree Juhlin indicated that is a difficult question to answer as someone mentioned earlier. The house itself is pretty much stripped down to the bare walls, but it is her understanding based on a conversation with Mr. Rio Robson that he lives in the apartment on the back side of the house, but the house itself was not being used as a residence, at the time of the inspection. Board Member Gordon stated thank you.

Board Member Ward stated but that finding is not a problem with A.1; the finding is not an issue that the City has. Audree Juhlin repeated that we did not notice or observe any active manufacturing, warehousing, any of those items in A.1. Board Member Ward then stated and that has nothing to do with the parking, and Audree stated that it does talk about employee parking in A.1, yes.

Chair Gilgoff indicated that in other words, during your site inspection on May 11th, you didn't find these specific violations still occurring. If they did occur after this hearing, you would recite them. Audree Juhlin stated that is correct, and the Chair stated, so that is what would happen.

Revised Amendment to the Original Motion: Board Member Ward moved to amend the original motion to remove items A.1, A.2 and A.4. There was no second.

Chair Gilgoff asked Board Member Gordon if he would still second it, and Board Member Gordon stated no; he would leave A.1 in there. He doesn't have a problem with two and four. The Chair

then asked Board Member Ward if it was okay to leave A.1 in there, and Board Member Ward stated, let's leave A.1 in then, and Board Member Gordon stated he will second it.

Second Revised Amendment to the Original Motion: Board Member Ward moved to amend the original motion to remove items A.2 and A.4. Board Member Gordon seconded the second revised amendment to the original motion.

Vice Chair Rich indicated that his only comment would be on A.5, if they, but that's you know, we go along with A.5, and then they have the option of coming to the City for a Conditional Use Permit for that. Audree Juhlin stated that is correct and Vice Chair Rich stated, okay.

The Chair then asked if we are all a meeting of the minds, and Board Member Ward stated that he believes we have to vote on the amendment, and the Chair stated that he knows, he is just finding out if we have finished discussion. Okay, all in favor of the motion as modified.

Vote on the Second Revised Amendment to the Original Motion: Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

The Chair stated that it carries unanimously.

Andrew McGuire asked if that was an amendment to the original and Board Member Ward interrupted to say, the original motion, removing . . . , then Chair Gilgoff interjected the original motion with the amendment to strike certain paragraphs from that. Mr. McGuire then asked if those paragraphs remaining are A.1, A.3 and A.5 and Board Member Ward stated that is correct.

Chair Gilgoff then asked Mr. McGuire if there was any other form of business; however, Board Member Ward asked if there was anything else we wanted to – he is kind of going through these, so if he could have a few minutes.

Andrew McGuire then stated, Mr. Chairman, so far all you have is a main motion to uphold the decision that has been modified as to A; we haven't talked about B, C, D. Chair Gilgoff indicated that he thought we were accepting all of those except for A. Board Member Ward clarified that we are discussing what to remove. Chair Gilgoff then stated, oh you are, you're not finished, and Board Member Ward indicated that he is just wondering, let him look at B and C. Board Member Gordon stated that you probably want to remove B, since everybody has agreed on Bowstring, and Vice Chair Rich stated yes.

Second Amendment to the Original Motion: Board Member Gordon moved to amend to remove B. in its entirety from the Notice of Violation. Board Member Ward seconded the second amendment to the original motion.

Chair Gilgoff noted that it is Board Member Ward's motion; however, Board Member Ward stated no, this is a separate one, and Board Member Gordon stated this is an amendment. Board Member Ward echoed an amendment. The Chair then asked if they wanted it as the original motion or a separate motion. Board Member Ward explained this is an amendment to the original and Andrew McGuire stated, correct. You still have a main motion that is to uphold; it has been amended once with respect to the items in A, and the Chair then interjected that now it is going to be amended again and he is just asking the original motion maker if he agrees to amend his motion. Mr. McGuire clarified that this is actually a motion to amend, so . . . , and the Chair then stated, okay, no problem.

The Chair then stated okay, we have to vote on that motion and asked all in favor.

Vote on Second Amendment to the Original Motion: Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

The Chair noted nobody opposed.

Vice Chair Rich stated C, Lot 40, the parking issue, as Donna Puckett asked for confirmation for the record on who had seconded that motion, and the Chairman stated that Board Member Ward seconded it. Donna then asked if they were amending B as in boy or D as in David, and Board Member Gordon stated B as in boy and the Chair stated B as in finding B.

Board Member Gordon stated so C, he doesn't think we can order them to erect something, so he would just leave the order in as it is and we can let them figure it out, yeah, he wouldn't touch that. Board Member Ward then indicated that D.1 and D.2 seem to be an obvious dispute between the City and the Appellant and asked why.

Robert Pickels asked to comment on that and stated that with respect to D.2, in light of the evidence presented by the Appellant today, we believe that there are some discrepancies that exist that need to be resolved; however, he doesn't know that we have heard enough to have any type of an agreement as to what that actual square footage is today. We have to take certain things at face value and some of the assumptions that were factored into that, but staff is willing to acknowledge that there are discrepancies with respect to the 2,250 square feet that need to be resolved.

Chair Gilgoff stated, so you'll work it out with the Applicant, and Robert Pickels stated right. Board Member Gordon then stated that we should remove D.2; however, the Chair indicated that you can just say D.2 shall be worked out, and Robert Pickels stated that he doesn't think it would be appropriate to remove it. The Chair agreed and stated yeah, why don't you say D.2 shall be . . .

Third Amendment to the Original Motion: Chair Gilgoff moved to modify the motion again that item D.2 will be resolved after this hearing at some time, between the City and the Applicant. Board Member Ward seconded the third amendment to the original motion.

VOTE: Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

The Chair stated, unanimous.

Board Member Ward indicated that he had a question about D.5 and asked if the lighting is grandfathered. Audree Juhlin stated that in her opinion the lighting that is in place is not grandfathered. The Conditional Use Permit basically said that the lighting had to be installed to be fully shielded, and the lighting that is in place is not fully shielded, so it does not meet . . ., Board Member Ward interrupted to ask when it was installed was it required to be fully shielded. Audree stated that she doesn't know when the lighting was installed to answer your question Board Member Ward, but the Conditional Use Permit requires that that lighting be fully shielded, and it is not fully shielded.

Mr. Slavin asked to comment on that and stated that it said to the approval of the Community Development Director. It was approved at that time, so now we are going back and trying to undo an approval of that lighting. Chair Gilgoff noted that the ordinance hasn't changed, and Mr. Slavin stated it doesn't make a, he means it is just a guess . . ., and the Chair continued to say, the ordinance originally . . ., what's the new lighting ordinance. Audree Juhlin explained that the Lighting Ordinance went into place, if she may Chair Gilgoff, in 2001, because the property owners have a history of replacing items on their property without notifying the City, she cannot say that that lighting is the same lighting that was in place in 1992 or 2001, but she can tell you it is not in compliance with the 1992 CUP.

Board Member Ward indicated that he understands that the Lighting Ordinance says that whenever a property owner replaces or upgrades lighting, it has to conform to the new lighting code and asked if that is correct. Audree Juhlin stated that is correct. The Board Member then stated, but we don't know when it was installed. Chair Gilgoff then pointed out that our Director of Community

Development says it is not in compliance with the 1992 CUP, and Board Member Gordon stated, right, and there is a compelling public interest in having our dark skies compliant. Chair Gilgoff added, so it's not; she is saying it is not in compliance, just leave it stand. Board Member Ward stated okay, and the Chair added that they can work it out, that's not something . . .

Mr. Slavin then stated even though the prior Director approved it, and Chair Gilgoff replied that is something for you to work out. Our current Director is saying it was not approved. Mr. Slavin then indicated that he thinks what she is saying doesn't comply with the wording other than she left off to the approval of the Development Director. It says fully shielded, is he thinks was the language, but she is not pointing out to you that there is language in there that says to the approval or to be approved by the Development Director.

Chair Gilgoff then asked if it is fully shielded and Mr. Slavin stated no. The Chair then stated if it is not fully shielded, it doesn't comply. Mr. Slavin then stated, wait a minute, he is not the Development Director, who knows? It was approved by the Development Director. Chair Gilgoff stated that is a fact whether it is fully shielded or not and Mr. Slavin stated okay. The Chair then added, it is not like conjecture and Mr. Slavin stated right.

Board Member Gordon stated that he thinks it is reasonable to assume that the lighting that was in place in 1992 is not in place in 2016. The Chair added yeah, but they've changed the fixtures in 14 years. Board Member Ward asked if there is documentation about the approval of the Director on the lighting; is there a note or something?

Audree Juhlin stated if she may while they are looking Board Member Ward, she can tell you that the City has historically tried to work with the Robsons to bring that light; we've told them that it is not in conformance with our Lighting Code and offered a small grant program to pay 50% of the changing out, so we have been over the last five or six years trying to work with them to bring it into conformance. Board Member Ward then noted and not just them, but all retailers, and Audree Juhlin stated right. The Board Member then stated, yeah.

Andrew McGuire stated Mr. Chairman, and for the benefit of the board, it is important to understand that a legal nonconforming use is a defense to a zoning action, so it is not a proof by City issue; it is a proof by owner issue, so whether or not it was approved by the Community Development Director as installed is one question, and that needs to be proven by the Applicant, because it is a defense to a motion.

Board Member Ward indicated that raises a question about if as new technology comes along and for public safety and all those kinds of things there are some improvements that may need to be made to a nonconforming property, how is that covered with any of this? Is that, he assumes, allowable? Mr. McGuire explained that there is an entire body of caseload that deals with whether or not changes to a code subsequent to enactment or a legal nonconforming designation applies; public health and safety things are typically allowed to be modified. In this case though it really is not even a question of that. It is a question of was it fully-shielded at the time of install, but that legal nonconformity only continues while that thing is still in conformance, so that is part of the issue here, because you are going to have difficulty on the Applicant's side and then for staff to show, whether or not it was approved by the Director at the time is only one part of the discussion; has it continued in that status ever since that time to continue its nonconforming status -- that's really the question you have to ask and if it is not fully-shielded today that's . . .

Board Member Ward asked if the Robsons are interested in working with the City to take advantage of that 50% grant to bring the lighting up to code. Mr. Slavin stated that we're not opposed to that. Chair Gilgoff asked why don't you leave it in, and Board Member Ward stated that we're going to leave it in with the assumption that you guys will work it out. Robert Pickels stated that if he might, he's just been informed that program no longer is available. The Chair asked, the 50% credit, there's nothing left in the fund, and Audree Juhlin explained that it was no longer brought forward in

the budget. Board Member Ward stated, well, it hasn't been approved yet, and Audree indicated that's true.

Mr. Slavin indicated that he has another question; he's trying to help here. Up until Mr. O'Brien left, was there a zoning violation noticed with regard to this lighting that's been there for virtually forever. Audree Juhlin indicated that she cannot speak to what the past Directors have identified as far as lighting is concerned. She can tell you that former Director John O'Brien did ask her to work with the Robsons, because he felt at that time, the lighting was not in conformance and felt this was the perfect way to create a win-win compromise by offering this program, so she can tell you that he acknowledged that the lights weren't in compliance with the code. When she did her evaluation in 2015, that is when she determined for herself, in her opinion, that the lighting was no longer in conformance with the 1992 CUP.

Board Member Ward suggested that the Board leave it in, but encourage both sides to resolve it and perhaps tap into the City Manager's slush account to come up with some money to deal with that, because the City does have the ability to deal with those things, and he thinks in good faith, if the City were to show good faith by being willing to engage in 50% of that, that might be a solution to that problem.

Chair Gilgoff asked if we have a motion, are we complete yet. Board Member Ward indicated that we just leave the lighting one in, and Board Member Gordon stated that he doesn't think we are making any changes there, are we? Board Member Ward stated, no, we're just encouraging them to deal with it.

Vice Chair Rich stated that there seems to be conflicting documents about the shade structures, whether they were built prior to the 1992 Conditional Use Permit and that these issues are just replacement repairs type situation, and as he read through this there was nothing about nobody could find any building permits or anything else; it could go back before the City, so are these new shade structures or were they existing structures that were replaced because of time. Audree Juhlin stated that's an excellent question; as you recall, as part of the 2011 Notice of Violation situation several shade structures were under consideration. In the email request, the site plan was to include all the structures, intending that the shade structures that were in place at that time be included on that site plan. No shade structures were included on the documentation that was provided by the Robsons, so she had her staff go back and do a thorough analysis of our building permits, and we did find one building permit for a shade structure. In comparing what is out on site and what was approved for that shade structure, they're completely different. The one on site is much larger than what was approved in the past, and any of the other shade structures that are in place, we do not have building permits for them, but she can tell you that we do have building permits to the buildings in which they are attached, and those buildings were approved without shade structures. That's the basis of what she understands at this point.

Chair Gilgoff asked if she would require one application for all of the shade structures and Audree Juhlin explained that each time you come in and put a new one up, you should come in to the City and . . . , the Chair interrupted to say that he understands, but to correct the wrongs of the past, the Robson family could come in and apply for a building permit for all the ones not in compliance, and Audree Juhlin stated yes, it could be one building permit for \$50, and we can get it done quick and easy.

Board Member Ward then stated that the shade structures have nothing to do with the nonconforming issue, right? They don't affect anything other than shade, and Audree indicated that is correct.

Board Member Gordon suggested calling the question and Chair Gilgoff stated yes, let's Call the Question are you ready? Let's make sure you got it all.

Andrew McGuire summarized that as to the first Notice of Violation from November 10th, it is upheld with respect to items, A.1, A.3 and A.5, C all of C, all of D, but with D.2, it will be resolved, there will be an effort to resolve after the hearing and in D.5 to work in good faith to find a solution to the lighting issue, although he won't use the same term to refer to the City Manager's contingency funds, and the second Notice of Violation of the same date is upheld in its entirety.

Vote on Original Motion as Amended: Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

Chair Gilgoff stated the motion carried unanimously.

Chair Gilgoff asked Mr. McGuire if we are ready to adjourn; however, Robert Pickels stated that he wanted to add that the City will prepare a Form of Order to reflect the motion as approved by the Board. Chair Gilgoff stated okay, great and thanked Mr. Pickels.

4. Adjournment

Chair Gilgoff asked for a motion to adjourn.

MOTION: Board Member Gordon so moved. Board Member Ward seconded the motion. VOTE: Motion carried four (4) for and zero (0) opposed. Board Member Hosseini was excused.

The Chair adjourned the meeting at 1:20 p.m.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment held on June 3, 2016.

Donna A. S. Puckett, *Administrative Assistant*

Date