

TEL: (626) 449-1362
FAX: (626) 796-1555

LAW OFFICES OF
KAREN A. DAVIS
THE ELEVEN-TWENTY-TWO BUILDING
1122 EAST GREEN STREET
PASADENA, CA 91106

P.O. BOX 5092
PASADENA, CALIFORNIA 91117

May 11, 2011

Hon. Wayne Rew, Chair and Commissioners
Los Angeles County Regional Planning Commission
320 West Temple Street
Los Angeles, CA 90012

Re: Site Plan Review Case No. 200801286 (Yard Modification)
May 18, 2011

Dear Chairman Rew and Honorable Commissioners:

The purpose of this correspondence is to summarize the current status of this matter and to respectfully request that the Commission uphold the findings of the Director of Regional Planning in denying the Application for a Yard Modification in this matter. As you are aware, this appeal has been heard and continued twice before by the Commission to see if the parties involved could reach a resolution. Despite numerous efforts including an unsuccessful mediation, there is no realistic chance of a private settlement and the Commission should not allow any further continuances.

As set forth in greater detail below with supporting exhibits attached hereto, the appellant-applicant has misled the Commission as to critical facts. Most importantly, there is more than substantial evidence to support the findings made by Regional Planning Department staff supporting denial of the requested yard modification including the following:

- There are no topographic features of the property that create unnecessary hardship or unreasonable regulation, or otherwise make it obviously impractical to comply with the applicable setback requirements.
- The applicant built an addition ... without first obtaining the necessary approval to encroach into the required setback area... At the time the addition was built, there was sufficient space on the property for the applicant to construct an addition that would not encroach into required setback areas.¹

¹ The Appellant-Applicant is not an "innocent encroacher" because he failed to have a survey done before construction. Granting the appeal would undermine the important public policy of compliance with the County's zoning regulations and show that it is better to break the law and ask for forgiveness than to ask for permission.

Hon. Wayne Rew, Chair and Commissioners
Los Angeles County Regional Planning Commission
May 11, 2011
Page Two

- There are no ... conditions that create an unnecessary hardship or unreasonable regulation or make it obviously impractical to comply with the applicable setback requirements.²
- The side Yard Modification would represent a 66.4% reduction from the standard 5-foot side yard setback requirement and would be out of character with the neighborhood pattern.³
- The Appellant-Applicant's Burden of Proof Statement filed with his application did not provide any example of other properties in the neighborhood with setbacks similar to the within request. Nor did the applicant otherwise provide sufficient justification of the need for relief from applicable setback requirements.⁴
- The application of the development standards (requested by the Appellant-Applicant), when considered on the basis of the suitability of the site for the particular use...does not insure the protection of the public health, safety and general welfare, does not prevent adverse effects on neighboring property and is not in conformity with good zoning practice. (Emphasis Added)⁵

Contrary to his claims made to the Commission at the prior hearings, the Appellant-Applicant has mislead and misrepresented himself to be an "innocent encroacher" and that he somehow has rights to keep the illegal structure by either a "prescriptive easement" or by "adverse possession" as demonstrated by the following:

² Any claim of hardship was self-imposed because the Appellant-Applicant built the subject structure illegally in the setback area without first having a survey showing the property line.

³ Granting the appeal would set a precedent for others to come to Regional Planning and the Commission seeking the same relief after they break the law.

⁴ A yard modification should only be granted as an exception to the rules where all of the legally-required findings can be made and not as a "hall pass" to someone who breaks the law and then asks for forgiveness. The fact that there are no other properties in the neighborhood with such significant deviations from the legal setbacks should be dispositive of this appeal on its face.

⁵ There is no question that the subject request is not in conformity with the zoning regulations or good zoning practice. As a matter of public policy, the Commission should uphold the zoning regulations and grant deviations only in situations that where there are unique characteristics of the property; where there is hardship that is not self-imposed; and based on other legally required findings.

Hon. Wayne Rew, Chair and Commissioners
Los Angeles County Regional Planning Commission
May 11, 2011
Page Three

1. The Applicant submitted plans which falsely represented that the proposed addition complied with the 5 foot minimum side yard offset and the 15 foot minimum rear yard offset. Inasmuch as the original plans reference the proper side and rear yard offsets, it is clear that the Appellant-Applicant was aware of the legally required setbacks prior to construction.

2. The rear-yard fence never moved. The Appellant-Applicant has no proper "excuse" for his non-compliance with the rear yard setback requirement.

3. The side yard chain link fence was located approximately 1'-3" to the legal boundary line at the area in question. As such, the Appellant-Applicant never had the legally required five feet from the Room Addition to the chain link fence. The photograph of the Room Addition and the chain link fence (before it was removed) conclusively establish this fact. [See Exhibit "1" attached hereto which is a photograph of the Room Addition and the Chain Link fence prior to its removal and Exhibit "2" which reflects the drawing prepared by a licensed surveyor depicting the placement of the Chain Link fence relative to the legal boundary line.]

4. The Appellant-Applicant also misrepresented to the Commission that he had a licensed architect walk the property, measure the boundary lines and advise him on the proper placement of his Room Addition. However, in response to a discovery request in the pending civil court action, the Appellant-Applicant admitted that this representation was false and that no licensed architect ever took such action at the time he obtained his building permits. [See Exhibit "3" attached hereto containing pages 8 and 13 of transcript of hearing before the Commission on February 17, 2010 and responses to discovery - Special Interrogatory No.30.]

5. The Appellant-Applicant also misrepresented to the Commission that he was a licensed contractor when in fact he has no such license. [See Exhibit "4" attached hereto containing page 31 of transcript of hearing before the Commission on February 17, 2010 and response to discovery - Special Interrogatory No. 32.]

6. The Appellant-Applicant also misrepresented to the Commission that he had claims for either a prescriptive easement and/or adverse possession as to portions of Ms. Keane's property. To the contrary, the Appellant-Applicant has admitted that he has no such claims. [See Exhibit "5" attached hereto containing the Appellant-Applicant's response to discovery - Special Interrogatory Nos. 5 and 6.]

On May 19, 2010, this matter was continued for the second time by the Commission to allow time for the Appellant-Applicant and Ms. Keane to further investigate settlement options. The parties have participated in settlement discussions through a formal mediation which was not successful. Although there are numerous issues which preclude such a settlement, one issue involving a possible lot line adjustment is not feasible as it would place Ms. Keane's

Hon. Wayne Rew, Chair and Commissioners
Los Angeles County Regional Planning Commission
May 11, 2011
Page Four

improvements in violation of the zoning laws. In addition, a lot line adjustment would not resolve the Appellant-Applicant's complaint about the pool equipment or use of the jacuzzi. Allowing the Room Addition to remain as configured is also not feasible as it unlawfully encroaches over the side-yard boundary line, poses a fire hazard, creates a nuisance and restricts further improvement of Ms. Keane's property in the area of the zoning violation.

Now, even though there is no possibility of settlement and even though Appellant-Applicant has admitted he has no claims for either a prescriptive easement or adverse possession, we understand that the Appellant-Applicant is seeking a third continuance until a time after the date set for trial in the pending civil action between the parties in October 2011. In addition to the above reasons why the Commission should take action without a further continuance, the Superior Court simply has no jurisdiction to approve the Room Addition which violates the zoning laws and building regulations. *Teachers Ins. & Annuity Assn. V. Furlotti* (1999) 70 Cal.App.4th 1487. The Court will decide the parties' civil claims. But the Commission should decide the yard modification appeal.

Most importantly, the Room Addition adversely impacts Ms. Keane's property as it creates a fire hazard due to its proximity to the boundary line and due to the improper placement of windows within the minimum setback requirements. The Room Addition also adversely impacts Ms. Keane's property with the water run off from the roof and from the re-graded terrain which was altered to direct water away from the Room Addition and on to Ms. Keane's property.

To date, notwithstanding receiving notice of such adverse impacts, the Appellant-Applicant has failed and refused to take **any** action such as regrading the terrain, cutting back the eave, removing the windows which violate the Building & Safety Codes due to their improper proximity to the boundary line or installing rain gutters with drains that would direct the water run off away from Ms. Keane's property. These conditions have remained for several years while this matter has been pending before the Regional Planning Department and the Commission. The Appellant-Applicant's failure to take any corrective action, with minimal expense, reflects his continued disregard for the zoning laws and building regulations that exist to protect adjacent properties.

It should be noted that while Ms. Keane's pool equipment was determined to be compliant with all zoning laws and building regulations, at her own expense, she undertook to address the Appellant-Applicant complaints by changing the pool motor to a Whisper-Quiet, installing an anti-vibration pad and installing a noise reduction housing around the unit. Clearly, Ms. Keane has acted reasonably and in good faith during the course of this dispute.

This matter has been pending with the Regional Planning Department since August 2008 and with the Commission since February 2010. Planning Staff has spent substantial time on this

Hon. Wayne Rew, Chair and Commissioners
Los Angeles County Regional Planning Commission
May 11, 2011
Page Five

case; the Commission has granted numerous continuances; and the Appellant-Applicant has been provided every opportunity to present evidence in support of the appeal. Over the course of the past 33 months and several extensions of time, the Appellant-Applicant simply has not provided any substantial evidence to support reversal of the Planning Director's denial of the yard modification. Based thereon, there is no merit to any further continuance of this matter.

For all of the reasons set forth, the Commission should uphold the Director's Findings which deny the Yard Modification. The Appellant-Applicant can bring his Room Addition into compliance with the applicable zoning laws and building regulations which apply to all other homeowners.

Thank you for your consideration and we look forward to answering any questions you may have at the public hearing on May 18, 2011.

Respectfully submitted,

LAW OFFICES OF KAREN A. DAVIS

A handwritten signature in black ink, appearing to read 'KAREN A. DAVIS', with a large, sweeping flourish extending to the right.

KAREN A. DAVIS

EXHIBIT "1"





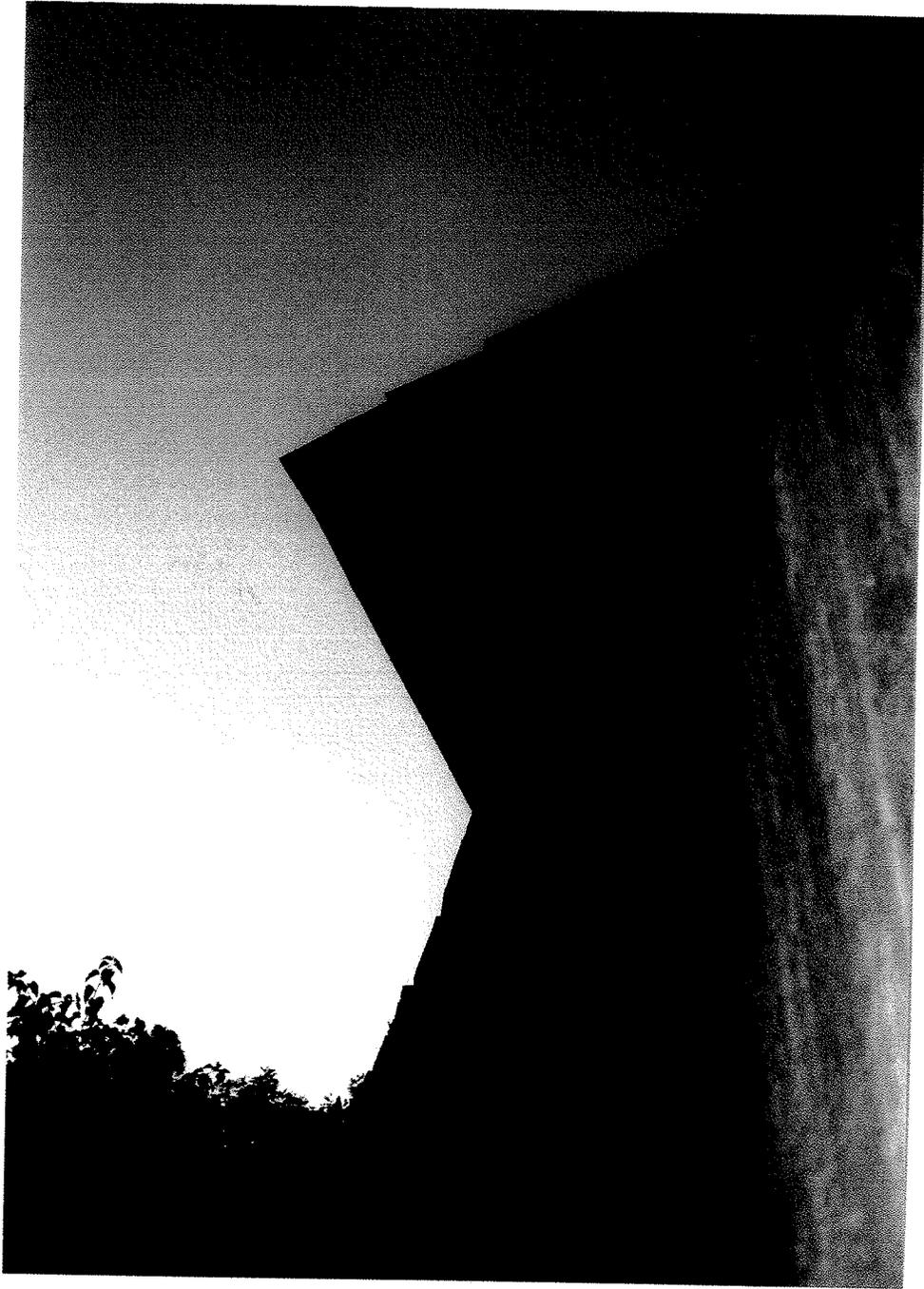
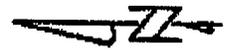
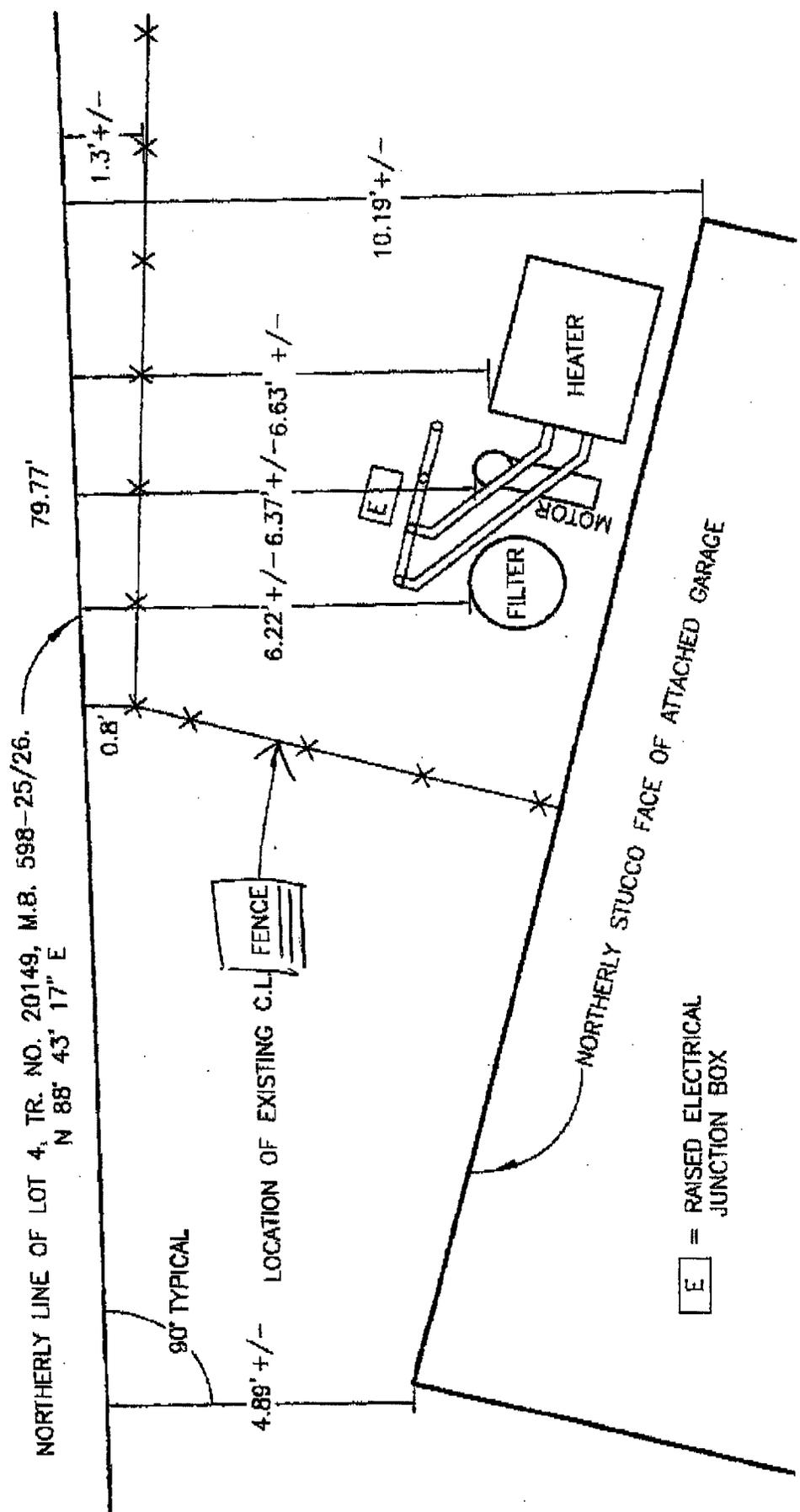


EXHIBIT "2"

LOCATION OF MAIN POOL EQUIPMENT IN
 RELATION TO LOT LINE.
 526 WENHAM ROAD, PASADENA.
 AS OF OCTOBER 9, 2007.



NO SCALE



E = RAISED ELECTRICAL
 JUNCTION BOX

EXHIBIT "3"

1 was not on the actual lot line, tore it down and built
2 a new fence, all within eight days. Happy
3 Thanksgiving. That's when it happened. Nobody knew.

4 That's three months after the construction is
5 completed. There were no red flags. The county did
6 not require a survey. My client handed these original
7 plans to his architect, who went to the property,
8 looked at it with the plans, said everything is fine,
9 and did the drawing. He -- Mr. Mason did his due
10 diligence. He's not an architect and he's not a
11 surveyor so he hired the right people to do that.

12 After it was discovered that the -- that the
13 lot line was not properly represented, he applied for a
14 Yard Modification, and this is the drawing he did for
15 that. Again, he's done everything that has been asked
16 of him at every step of the proceeding.

17 We obtained a report here, which you have a
18 hard copy of that was passed out to you this morning as
19 Exhibit 14. It was reserved in my original
20 supplemental brief that you've had. I apologize for
21 not being able to get it sooner.

22 This report was done by Kaitie Kouletsis, and
23 in blue you see her qualifications. She is here to
24 tell you in person that she is not really, really old
25 and that she hasn't been licensed since 1966. That's a

1 as this fence.

2 My client bought the property in 2006, hired an
3 architect. He doesn't have any special knowledge of
4 architecture or surveying. The architect came to the
5 property, took measurements, did their due diligence,
6 pronounced everything in accordance with the original
7 blueprints, which I have with me, and drew plans, which were
8 submitted to your Arcadia office. This is a copy in your
9 Exhibit 2 of the site plan that was submitted. It was
10 approved, it conforms with the original blueprints, and this
11 is a copy of your exhibit for the inspection record. It was
12 submitted, and the locations and setbacks were inspected by
13 a DRP inspector on January 12th. He got every inspection,
14 every approval, every permit that was required for a room
15 addition based on everything that everyone knew at the time.
16 It was finalized in August.

17 Some four months later, the neighbor to the south
18 obtained the survey we've discussed, within a week tore down
19 the fence and built a new fence, and thereafter, made this
20 complaint. Now, that neighbor had lived there for 18 years
21 and had never queried the lot line in that time, not until
22 four months after he was completely finished.

23 So this is a legally constructed room addition.
24 He did everything that was required him and that makes him a
25 good-faith improver under the law.

HUNT ORTMANN PALFFY NIEVES
LUBKA DARLING & MAH, INC.
301 NORTHLAKE AVENUE, 7TH FLOOR
PASADENA, CALIFORNIA 91101-1807
Phone (626) 440-5200 • Fax (626) 796-0107

1 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

2 The site plans prepared by Steve Eide were previously provided to Plaintiff in connection
3 with Defendant Mason's document production of over-sized documents, are dated January 2, 2007,
4 and identify Drafting & Design, Ltd. as the author.
5

6 **SPECIAL INTERROGATORY NO. 30:**

7 State all facts which support the contention that an architect came to 520 Wenham Road
8 property and measured all distances and compared them with the original plan, as referenced on
9 Page 6, Paragraph 1 of the letter from Gail Price attached hereto as Exhibit "3" by stating the
10 name, address and telephone number of the architect that took such action and the date(s) in which
11 the architect took such action.
12

13 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

14 Defendant Mason objects to this interrogatory on the grounds that it is compound.
15 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
16 An architect did not visit the site to walk the property and take measurements of Defendant
17 Mason's property. The person who measured the property and performed the comparison was
18 Paul Cramer, who was a drafter. Mr. Cramer measured the property and performed the
19 comparison in early November 2006. Defendant Mason does not recall the specific date.
20

21 **SPECIAL INTERROGATORY NO. 39:**

22 State all facts which support YOUR contention that the pool equipment located at 526
23 Wenham Road, Pasadena violates any applicable noise regulations for the County of Los Angeles.
24

25 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

26 Defendant Mason objects to this interrogatory on the grounds that it calls for a legal
27 conclusion. Defendant Mason further objects to this interrogatory on the grounds that it fails to
28 comply with *Code of Civil Procedure* 2030.030, as the propounding party has exceeded the limit

EXHIBIT "4"

1 MS. PRICE: Thank you.

2 I would like to rebut a certain incorrect
3 statements. My client has a contractor's license. He used
4 to work for a company as a site superintendent. That means
5 you go to sites and you make sure plumbers are plumbing and
6 framers are framing, and then you go to the next site and do
7 the same thing all day, and it affords you no particular
8 special knowledge regarding surveying or architecture or
9 anything of the kind.

10 Secondly, my client works for himself. He's just
11 a small one-man-band-type builder. This is his first
12 personal residence he's remodeled. He has no particular
13 knowledge, and he's done everything everybody requested, and
14 that goes to the point that, sure, he should have gotten --
15 he should have hired me a long time ago, and he'll be the
16 first to admit it, but he's not imbued with the knowledge
17 expertise of you ladies and gentlemen. He doesn't know how
18 to fight the system, and frankly, he let himself be walked
19 upon. That's the circumstances I perceive it.

20 He did not survey the lot line in question, and he
21 only did obtain a survey of another lot line for purposes of
22 dealing with this yard modification, but I haven't surveyed
23 the lot line in question. I haven't done any investigation,
24 and his investigation has been entirely incomplete. He
25 didn't know how to give you people the information you need.

HUNT ORTMANN PALFFY NIEVES
LUBKA DARLING & MAH, INC.
3611 NORKH LAKE AVENUE, 7TH FLOOR
PASADENA, CALIFORNIA 91101-1807
Phone (626) 440-5200 • Fax (626) 796-0187

1 **SPECIAL INTERROGATORY NO. 32:**

2 State all facts which support YOUR contention that you are a licensed contractor by stating
3 the date YOU became licensed and the number of your contractor's license.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 32:**

5 Defendant Mason objects to this interrogatory on the grounds that it is vague and
6 ambiguous as to the term "licensed contractor", lacks foundation, assumes facts not in evidence, is
7 compound, irrelevant, and not reasonably calculated to lead to the discovery of admissible
8 evidence.

9 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
10 Defendant Mason does not contend he is a licensed contractor.

11 **SPECIAL INTERROGATORY NO. 33:**

12 State the date(s) Gilbert Engineering Company visited 520 Wenham Road, Pasadena, CA
13 to obtain the information necessary to prepare the document which is attached hereto as Exhibit
14 "4".

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 33:**

16 Defendant Mason objects to this interrogatory on the grounds that it is vague and
17 ambiguous as to the terms "visited", "obtain", "information", "necessary", "prepare", it is
18 compound, irrelevant, and not reasonably calculated to lead to the discovery of admissible
19 evidence.

20 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
21 September 10, 2007.

22 **SPECIAL INTERROGATORY NO. 34:**

23 State the reason why YOU hired Gilbert Engineering Company to prepare the document
24 attached hereto as Exhibit "4".

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 34:**

26 Defendant Mason objects to this interrogatory on the grounds that it is vague and
27 ambiguous as to the terms "reason", "hired", and "prepare", it is overly broad, irrelevant, and not
28 reasonably calculated to lead to the discovery of admissible evidence.

EXHIBIT "5"

HUNT ORTMANN PALFFY NIEVES
LUBKA DARLING & MAH, INC.
301 NORTHLAKE AVENUE, 7TH FLOOR
PASADENA, CALIFORNIA 91101-1807
Phone (626) 440-5200 • Fax (626) 796-0107

1 **REQUEST FOR ADMISSION NO. 4:**

2 Admit that the distance between the footing for the South-East corner of the section
3 identified as "Existing 2007 Addition" in Exhibit "2" attached hereto was located less than five
4 feet from the chain link fence that existed between 520 Wenham Road, Pasadena, CA and 526
5 Wenham Road, Pasadena, CA at the time that the "Existing 2007 Addition" was built.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

7 Defendant Mason objects to this request on the grounds that it is vague and ambiguous and
8 calls for speculation.

9 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
10 Deny.

11 **REQUEST FOR ADMISSION NO. 5:**

12 Admit that YOU do not have an [sic] prescriptive easement on any portion of the real
13 property belonging to Maureen Keane and further described as 526 Wenham Road, Pasadena, CA.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

15 Defendant Mason objects to this request on the grounds that it is vague and ambiguous as
16 to the terms "prescriptive easement" and "any portion of the real property belonging to [Plaintiff]",
17 calls for speculation and calls for a legal conclusion, and is irrelevant and not reasonably
18 calculated to lead to the discovery of admissible evidence to the extent this request seeks
19 information not relating to the boundary line between Plaintiff's and Defendant's properties.

20 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
21 Defendant Mason admits that a prescriptive easement does not exist on or around the boundary

22 line of Plaintiff's and Defendant's properties that impacts the location of the true boundary line.

23 Defendant Mason has performed a reasonable inquiry concerning the remaining matters of this
24 request and the information and/or knowledge known or readily obtainable to Defendant Mason is
25 insufficient to enable him to admit the remainder of this request.

26 **REQUEST FOR ADMISSION NO. 6:**

27 Admit that YOU do not have a claim for adverse possession to any portion of the property
28 belonging to Maureen Keane and further described as 526 Wenham Road, Pasadena, CA.

HUNT ORTMANN PALFFY NIEVES
LUBKA DARLING & MAH, INC.
301 NORTHLAKE AVENUE, 7TH FLOOR
PASADENA, CALIFORNIA 91101-1807
Phone (626) 440-5200 • Fax (626) 796-0107

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

2 Defendant Mason objects to this request on the grounds that it is vague and ambiguous as
3 to the terms "adverse possession" and "any portion of the property belonging to [Plaintiff]", it calls
4 for speculation and for a legal conclusion, and is irrelevant and not reasonably calculated to lead to
5 the discovery of admissible evidence to the extent this request seeks information not relating to the
6 boundary line between Plaintiff's and Defendant's properties.

7 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
8 Admit.

9 **REQUEST FOR ADMISSION NO. 7:**

10 Admit that YOU were advised of the date in which a surveyor would perform a survey of
11 the property line between 520 Wenham Road, Pasadena, CA and 526 Wenham Road, Pasadena,
12 CA for Maureen Keane.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

14 Defendant Mason objects to this request on the grounds that it is vague and ambiguous as
15 to the terms "advised", "surveyor", and "perform", and is vague as to time.

16 Subject to, and without waiving, these objections, Defendant Mason responds as follows:
17 Admit.

18 **REQUEST FOR ADMISSION NO. 8:**

19 Admit that the document attached hereto as Exhibit "3" is genuine.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

21 Admit.

22 **REQUEST FOR ADMISSION NO. 9:**

23 Admit that the document attached hereto as Exhibit "3" represents a survey that YOU
24 obtained prior to October 31, 2007 for the property located at 520 Wenham Road, Pasadena, CA.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

26 Defendant Mason objects to this request on the grounds that it is vague and ambiguous as
27 to the term "represents", and "obtained".
28