

# SECTION 5

Transcript of the  
August 1, 2022  
Landmark Commission  
Hearing  
338 S Fleming Avenue  
CD212-014(MGM)

In Re:

- - -

CD212-014 (MGM) 338 S Fleming Ave.

Audio Transcription of  
LANDMARK COMMISSION HEARING

August 1, 2022

Transcribed By:

Maureen Cunningham Brzycki, Court Reporter

MAGNA LEGAL SERVICES

1 THE CHAIRPERSON: Yes. We're  
2 hearing D3, Commissioner Anderson has  
3 returned because he's no longer recused.  
4 We have two speakers, who we will hear  
5 from after we hear from the staff on D3.

6 MR. MILLER: Discussion Item D3,  
7 CD212-014 (MGM) is a request for a  
8 certificate of demolition, removal of a  
9 primary structure located at 338 South  
10 Fleming Avenue.

11 This photo shows the existing  
12 structure as seen from South Fleming  
13 Avenue. The north elevation is depicted  
14 in the top image and the south elevation  
15 is depicted in the bottom image. The  
16 rear elevation is depicted here at the  
17 top, and the front elevation at the  
18 bottom. A key issue related to this  
19 request is whether the property is  
20 contributing or noncontributing. I  
21 wanted to show the map of the  
22 contributing and noncontributing  
23 structures that is associated with the  
24 district. The property that is

1 highlighted in red, which is 334 South  
2 Fleming Avenue is listed as  
3 contributing. This is 334 South Fleming  
4 Avenue today, which underscores that it  
5 is not adequate to rely on a list from  
6 1994 without undertaking a current  
7 evaluation. These are the seven aspects  
8 of integrity that should be considered  
9 when evaluating whether a property  
10 contributes to a historic district.

11 The subject property is in the  
12 location where it was constructed.  
13 Therefore, it retains integrity of  
14 location. While the subject property  
15 still retains sufficient integrity of  
16 design because its current state allows  
17 for the understanding of the elements  
18 that created the form, plan, space  
19 historic function, structural system,  
20 fenestration pattern, exterior materials  
21 and tile of the property.

22 The block face upon which the  
23 subject property at 338 South Fleming  
24 Avenue exists, while having lost a

1 couple of houses since the 1990s, still  
2 retains sufficient integrity of setting  
3 because the character of the street and  
4 the property's relationship to  
5 surrounding homes features an open  
6 space, remains recognizable as that  
7 which would have existed during the  
8 district's period of significance.  
9 While certain aspects of materials have  
10 been altered, the subject property  
11 remains sufficient integrity of  
12 materials because the choice and  
13 combination of materials that were used  
14 on the subject property are evident and  
15 they reveal the preferences of those who  
16 created it in the 1920s during the  
17 district's period of significance.

18 While certain aspects of the  
19 workmanship have been altered, the  
20 subject property remains sufficient  
21 integrity of workmanship because its  
22 current state allows for an  
23 understanding of the labor and skill in  
24 constructing the subject property in the

1           1920s during the district's period of  
2           significance.

3                   The subject property retains  
4           sufficient integrity of feeling because  
5           the presence of physical features that  
6           are sufficiently expressed in its  
7           location, design, setting materials, and  
8           workmanship, when taken together, convey  
9           the property's historic character and  
10          conveys the significance of the  
11          district.

12                   The subject property retains  
13          sufficient integrity of association  
14          because the property is sufficiently  
15          intact to convey a direct link between  
16          an important historic event and the  
17          physical evidence of the historic  
18          property to an observer.

19                   In relation to the standard for  
20          approval, 51A-4.501H4A, indicates that  
21          the landmark commission must deny an  
22          application to replace a structure with  
23          a new structure, unless it finds that  
24          the new structure is more appropriate

1 and compatible with the historic overlay  
2 of district than the structure to be  
3 demolished or removed.

4 From a preservation  
5 perspective, it is unlikely that the  
6 replacement of an existing structure at  
7 338 South Fleming Avenue with a more  
8 appropriate and compatible new structure  
9 is possible. Because the existing  
10 structure adds more historic value to  
11 the district than a replacement new  
12 structure. A commonly accepted  
13 definition of a contributing property is  
14 one that adds historic value to a  
15 historic district. Staff, therefore  
16 recommend the request for a certificate  
17 of demolish and removal to demolish a  
18 noncontributing structure use the  
19 standard, replace with a more  
20 appropriate and compatible structure, be  
21 denied without prejudice.

22 This recommendation is made  
23 where the finding that the proposed  
24 demolition would not satisfy the

1 standard in City Code Section  
2 51A-4.501H4, Romanette I.

3 This concludes the staff  
4 presentation.

5 THE CHAIRPERSON: Thank you, Mr.  
6 Miller, for your very intriguing and  
7 extensive examination of the qualities  
8 of this existing structure.

9 After we hear from the  
10 applicants, who are here to speak, I'm  
11 probably going to ask our city attorney  
12 to comment upon some of the  
13 suggestions Mr. Miller has made about  
14 how this lines up with our -- our  
15 ordinance and our legal expectations.  
16 But first let us hear from our speakers.

17 ELAINE: We didn't read in the task  
18 force. Sorry.

19 THE CHAIRPERSON: Oh, sorry.

20 Y'all just won't let me get  
21 away with making any mistakes; will you?

22 MALE VOICE: Task force  
23 recommendation, no quorum comments only.  
24 Task force is not supportive of review



1 proceedings until entry access is  
2 granted to property.

3 After task force meeting,  
4 access to the property was granted to  
5 city staff and a representative of the  
6 task force on Monday, July 25. Comments  
7 resulting from this visit have been  
8 included in the docket.

9 THE CHAIRPERSON: All right.

10 So first we're going to -- do  
11 you want to go before the speakers?

12 First we're going to hear from  
13 our speakers. Randy Sheer, are you  
14 here?

15 Good evening, Mr. Sheer.  
16 Please begin by stating your name and  
17 address. The microphone is not on?

18 MR. SHEER: I think it's on now.  
19 Thank you.

20 THE CHAIRPERSON: All right. Good.

21 MR. SHEER: My name is Randy Sheer.  
22 I live at 7027 Gaston Parkway in Dallas,  
23 Texas, and I swear to tell the truth.

24 THE CHAIRPERSON: Thank you.

1 Note that he has affirmed to  
2 swear to tell the truth.

3 Okay. You have three minutes.  
4 Elaine will time you.

5 MR. SHEER: Right.

6 We predict after the tour of  
7 the property on July 25th that the bill  
8 of report today will represent a  
9 predetermined verdict -- will cement a  
10 vote of a denial on the project, as the  
11 commissioners had done in the video  
12 meeting last December.

13 However, our prediction -- if  
14 our prediction is wrong, we will comply  
15 with the approved conditions. Last  
16 November the task force approved with  
17 the conditions both the CA and CD. The  
18 question remains, if this tour was so  
19 consequential, why did it take Mr.  
20 Miller one year to implement the house  
21 tour? Why isn't it the home tour  
22 mandatory or a requirement? Why were  
23 the new staff members not fully briefed  
24 on our project? In the plan land use

1 development workshop of 2021, Mr.  
2 Miller's team suggested a gross restore  
3 of a pharmacy in the same location along  
4 the block of Fleming Avenue, a pharmacy.

5 Mr. Johnson spoke to me during  
6 the property tour. He admitted he had  
7 not seen or read the bedrock report,  
8 explaining -- I'm paraphrasing -- the  
9 owners always want to knock down these  
10 homes. I don't trust those reports.  
11 Those companies will say anything if you  
12 pay them enough money. Moreover, he  
13 claimed he would trust and prefer Brown  
14 Foundation company. He also estimated  
15 the cost at a mere 8000 dollars, which I  
16 told them I could pay for.

17 It's concluded that -- this is  
18 the bedrock report conclusion. It is  
19 concluded that most, if not all, the  
20 lumbar is damaged and not salvageable.  
21 If lifting the structure is attempted,  
22 the rot lumbar will crush. It's  
23 concluded that structure will need to be  
24 demolished -- demolished -- demolished

1 and reconstructed off the ground. The  
2 foundation can't be reconstructed with  
3 the structure left in place, end quote.

4 I have to say that the owner,  
5 Ann Marie Bristo, is a structural  
6 engineer. And David Presiocia, maybe I  
7 said it wrong, highly recommended the  
8 bedrock engineer company.

9 Project cost. The landmark  
10 commission voted on the CA, approved the  
11 new proposal design with more compatible  
12 than the existing structure. A denial  
13 vote is a vote against your own  
14 collective determination, approving the  
15 CA package in June of this year.

16 In other words, we would be  
17 starting over. Here's the present  
18 reality. Slippage in the schedule of 8  
19 months has increased all new  
20 construction by at least 35 percent  
21 across the board. Renovation or  
22 rehabilitation of the existing structure  
23 is cost prohibitive. It's clear from  
24 the bedrock report the structure cannot

1 be leveled, lifted, or moved without  
2 emanant collapse. In other words, no  
3 foundation will be put in there.  
4 Further delays or denial of the CD would  
5 force my client to sell the property  
6 outright, and it's possible there maybe  
7 a pharmacy at the location once they  
8 knock it down.

9 If the project -- I have to say  
10 finally, Mr. Swan said at the last  
11 landmark meeting, if the project is  
12 excellent, we love the spirit of it. We  
13 just because of it's tremendous  
14 opportunity, want to set an example, we  
15 want to do it right.

16 ELAINE: Excuse me. That's your  
17 time.

18 MR. SHEER: Oh, yes.

19 THE CHAIRPERSON: Mr. Winesky, I'm  
20 sorry. I don't have my mic on. Here  
21 I'm asking you to turn your mic on.

22 We see you. Please turn on  
23 your mic and give me your name and  
24 address.

1 MR. WINESKY: (Inaudible) Winesky.  
2 1300 Summit Avenue, Fort Worth, Texas.  
3 And I swear to tell the truth.

4 THE CHAIRPERSON: Thank you.

5 We look forward to the truth.  
6 You now have three minutes to speak.  
7 And Elaine here will time you.

8 MR. WINESKY: Thank you.

9 I'd like to start off by just  
10 letting you know I spent a collective 40  
11 years as a city attorney or assistant  
12 city attorney in Northeast (inaudible)  
13 City, so I do understand the City's  
14 viewpoint on things.

15 The very material that is  
16 included in your packet, the Texas  
17 Administrative Code Provisions are  
18 setout for the Texas Historical  
19 Commission, and one of those items  
20 states property does not contribute to  
21 the historic significance of the  
22 district if its location, design,  
23 setting, materials, workmanship, and  
24 association have been so deteriorated

1 the overall integrity of the building  
2 has been irretrievably lost. And I  
3 believe Mr. Sheer just gave you guys the  
4 information that demonstrates that it  
5 is -- it's irretrievably lost. And  
6 cannot be restored in its present state.

7 And I have to say that the  
8 continued refusal of the Commission to  
9 allow Ms. Bristo to demolish the  
10 unsalvageable existing structure and  
11 construct one that this board already  
12 determined is appropriate and compatible  
13 with the area would come dangerously  
14 close to a regulatory (inaudible). The  
15 impact on the economic -- this decision  
16 on the claimant would be great since  
17 it's cost prohibitive to restore it in  
18 its present condition. And the -- the  
19 refusal to allow this to move forward  
20 would seriously frustrate and interfere  
21 with the distinct and reasonable backed  
22 expectations of Ms. Bristo when she  
23 bought the property. And being a  
24 retired structural engineer, she knew

1           what she was getting into and hired the  
2           appropriate experts to determine whether  
3           that foundation could be saved, and it  
4           can't. So I would simply -- despite the  
5           staff report, which is quite elaborate  
6           in detail, I would urge this board to go  
7           ahead and approve the certificate of  
8           demolition and let this project move  
9           forward.

10                   THE CHAIRPERSON: Thank you, sir.

11                           I am so sorry for the owner's  
12                   perfectly justified irritation because  
13                   this is taking so long. But we do, you  
14                   know, we're talking about taking down a  
15                   building. We don't want to make a  
16                   mistake because we can't get the  
17                   building back once we say take it down.

18                           The judgment of whether  
19                   something retains integrity is a  
20                   judgment call about seven different  
21                   things. So it's not even just like one  
22                   sliding scale, it's like 7. So we have  
23                   to consider this carefully. I was,  
24                   after you spoke, going to ask our own



1 city attorney, Mr. Vandenberg, to opine  
2 on some of the points either in Mr.  
3 Miller's presentation that he thought we  
4 should have his viewpoint on. And I  
5 also wish him to respond to Mr.  
6 Winesky's because you're an attorney,  
7 and I'm not an attorney, and I'd like to  
8 thoroughly understand where you think we  
9 stand.

10 MR. VANDENBERG: Thank you Madam  
11 Chair. Burt Vandenberg, assistant city  
12 attorney.

13 You've asked me some rather  
14 broad things, so I'm going to try to  
15 wing it.

16 THE CHAIRPERSON: (Inaudible).

17 MR. VANDENBERG: Thanks.

18 Whether or not the existing  
19 structure meets the definition of a  
20 contributing structure or  
21 noncontributing structure, defined  
22 either by Director Miller or the 1994  
23 survey, while it has bearing on this  
24 issue, the actual standard for approval,

1           which was read earlier, and we've been  
2           talking about, is that the landmark  
3           commission shall deny the application  
4           unless it makes the following findings.

5                     And you guys have already  
6           approved a new structure. And so now  
7           the question in your judgment, which you  
8           have been charged with, regardless of  
9           the legal assertions made earlier, is in  
10          your opinion, is the new structure that  
11          you approved more appropriate and  
12          compatible with the historic district  
13          than the structure to be demolished or  
14          removed.

15                    I think that is -- there's also  
16          a second prong of financial ability.  
17          But I think we can do that. The  
18          second -- but really it is your opinions  
19          as to whether or not the new structure  
20          is this more appropriate and compatible,  
21          regardless of the definition or semantic  
22          label contributing or noncontributing.  
23          It's whether or not it is more  
24          appropriate and compatible.

1                   Again, I would say that it is  
2                   in your judgment and it is the standard  
3                   in the code, while I understand Mr -- I  
4                   believe it's Winesky's comments, is that  
5                   right? Mr. Winesky's comments, again, I  
6                   would urge the landmark commission to  
7                   stick to the standard that they have  
8                   before them and not take those other  
9                   items into account. You guys are  
10                  charged with a very limited -- limited  
11                  scope of what you should do. And I  
12                  don't know what you'll find, but I'm not  
13                  a historic expert.

14                 THE CHAIRPERSON: Thank you,  
15                 Mr. Vandenberg. We always want to hear  
16                 about the law.

17                 Okay. I'm going to open this  
18                 up for questions either of our speakers  
19                 or Mr. Miller or Mr. Vandenberg on what  
20                 he knew.

21                 MALE VOICE: I do have a question  
22                 for the city attorney.

23                 They chose the replacing a  
24                 building is more architecturally or

1           culturally important than the one that  
2           was there; is that correct?

3           MR. VANDENBERG: The standard --  
4           Madam Chair --

5           MALE VOICE: Please read the whole  
6           standard for me, please.

7           MR. VANDENBERG: Madam Chair, the  
8           standard for approval, 51A-4.501H4, I  
9           believe. Standard for approval, the  
10          Landmark Commission shall deny the  
11          application unless it makes the  
12          following findings:

13                 The Landmark Commission must  
14          deny an application to replace a  
15          structure with a new structure, unless  
16          it finds that the new structure is more  
17          appropriate and compatible with the  
18          historic overlay district than the  
19          structure to demolish or remove. And  
20          the owner has the financial ability and  
21          intent to build the new structure.

22                 The Landmark Commission -- this  
23          is a little irrelevant, but must first  
24          approve the predesignation certificate

1 of appropriateness or certificate of  
2 appropriateness for the proposed new  
3 structure and guarantee they're going to  
4 construct the new structure before  
5 making the application to demolish or  
6 remove.

7 I can't -- that is -- that is  
8 the end of that particular --

9 MALE VOICE: Okay.

10 Then I have a question for the  
11 applicant.

12 There are several criteria or  
13 reasons for a building can be  
14 demolished. Is the reason you chose  
15 this as opposed to immanent public  
16 health and safety, which maybe more  
17 germane? Did you choose this on your  
18 own? How did you come up with this  
19 criteria for demolition of this  
20 structure?

21 MR. SHEER: Would you repeat the  
22 question? I'm so sorry.

23 MALE VOICE: There are different  
24 reasons or criteria for demolition of a

1 building in a historic district. One is  
2 the one you used, which is the building  
3 that replacing this building is more  
4 appropriate than the one that is being  
5 removed. And the other -- that you  
6 could use is an emanant threat to public  
7 health and safety that this building is  
8 in bad shape. It's going to fall down.  
9 It's going to hurt somebody.

10 What was the rationalization  
11 for choosing this criteria why -- how  
12 did the criteria come to be what you  
13 chose to use?

14 MR. SHEER: Let me tell you a little  
15 history about the project. Last year --  
16 in about July of last year Ann Marie had  
17 me design the project --

18 MALE VOICE: I'm sorry. I can't  
19 hear you.

20 MR. SHEER: Ann Marie had me design  
21 a project for her. And we had this  
22 house that was existing there. And at  
23 first we had designed it around this  
24 historic home. We tried to save it.

1 But it wasn't until the second we  
2 applied three times during the year up  
3 until the landmark meeting in December.  
4 So we actually came up with -- to save  
5 the home the first round, but then in  
6 the second round, we had the engineer's  
7 report, which was conclusive that this  
8 house couldn't be saved, and it was  
9 collapsed, that you really can't even  
10 get underneath it nor could you lift it  
11 because of this things that were rotted.  
12 So we then changed the plan to making it  
13 more compatible structure. If that's  
14 understood. And as for the safety of  
15 the building, I mean the staff showed up  
16 with hard hats. That how safely it is  
17 --

18 MALE VOICE: But what I'm getting  
19 to, there's at least two criteria. You  
20 chose one saying the building replacing  
21 the building is better than the one  
22 that's there. And you might have used  
23 the criteria is an emanant threat to  
24 health and safety. It's my

1           understanding after hearing the city  
2           attorney, we don't -- at this type of  
3           criteria, we don't really look at the  
4           structure's stability. We look at -- we  
5           have A, and we have B. Do we like B  
6           better than A? It doesn't say the  
7           building is falling down and it's going  
8           to be a problem. So my --

9           MR. SHEER: Well, we have to --

10          MALE VOICE: So it's -- my concern  
11          is we don't have the ability in my  
12          understanding to say this building has  
13          got structural problems. We need to say  
14          this building -- the old building is  
15          better than or not as good as the new  
16          building.

17                    Is that correct? We don't  
18          really look at the structural stability  
19          of it.

20          THE CHAIRPERSON: I believe even  
21          though the applicant may not have  
22          officially stated part of the reason  
23          they chose to take the building down is  
24          because it is physically unsalvageable,



1 structurally unsound -- that's what they  
2 claim -- we can still consider that  
3 because it's obviously pertinent. So  
4 even if they didn't bring it up, we can  
5 bring it up.

6 MALE VOICE: Okay.

7 MR. SHEER: I mean, to cherry pick  
8 what Mr. Miller had done in his  
9 presentation all the little details,  
10 that doesn't have any bearing on what  
11 the structure safety is. And also the  
12 fact that the floors are sloping and  
13 most of the foundation is already rotted  
14 and collapsed.

15 Not only has the building  
16 collapsed, but it's shifted because of  
17 the -- I don't know what the reason  
18 is -- the structure and the foundation  
19 had collapsed. So the building not only  
20 fell, but it actually tilted and fell.  
21 So it's on an angle. It's kind of like  
22 the Wizard of Oz home that landed on the  
23 wicked witch of the west. It's on an  
24 angle and if you're going to technically

1 get underneath it, you can't. You can't  
2 can jack it. You can't lift it nor can  
3 you level it out.

4 Mr. Johnson was terribly  
5 mistaken that for 8,000 dollars we can  
6 fix this problem. We can't it. Can't  
7 be done.

8 MALE VOICE: I guess my point was  
9 there might have been a better criteria  
10 to use to talk about the instability and  
11 instead of having all these new  
12 construction stuff getting in the way.

13 MR. SHEER: Well, we knew this  
14 building was in bad shape when she  
15 bought the property. But the thing is  
16 once we had the engineer report, and I'm  
17 going on the engineer report, I can't  
18 make my own opinion about how bad shape  
19 the building is in, other than I can see  
20 it's collapsed.

21 THE CHAIRPERSON: Okay.

22 I think we established we can  
23 consider the condition of the building  
24 as well as we make our discussion.

1 Obviously, a building that cannot  
2 continue to stand doesn't have much  
3 integrity. So if we were to rule it --  
4 accept it was going to fall over, that's  
5 a loss of integrity.

6 Does anybody else have any  
7 questions for applicants, staff? Who?  
8 Commissioner Offit. Okay. Yes.

9 COMMISSIONER OFFIT: I'm sorry. I  
10 don't have a question. I'm ready to  
11 make a motion.

12 THE CHAIRPERSON: Is there anyone  
13 else who wishes to ask a question before  
14 we have Commissioner Offit make his  
15 motion?

16 MALE VOICE: Yes.

17 THE CHAIRPERSON: Commissioner Sp --  
18 oh, let's ask -- let Commissioner Taylor  
19 make his motion. I'm sorry your little  
20 girl left.

21 COMMISSIONER TAYLOR: It's not a  
22 motion. It's a question. So if this  
23 home can't be demolished or it's not  
24 deemed a contributing structure, what is

1 the steps forward for this home to be  
2 repaired if it's unrepairable, and it  
3 can't be demolished? What's the plan  
4 for if they're not allowed to build a  
5 home that is contributing or meets the  
6 criteria of that district?

7 MR. SHEER: Am I supposed to answer  
8 that?

9 THE CHAIRPERSON: Let's probably go  
10 with having Mr. Miller answer that. I  
11 do believe the applicant said something  
12 about perhaps selling it if we wouldn't  
13 move forward, but if we were to say they  
14 could not take it down, Mr. Miller, what  
15 would you see as the way forward?

16 MR. MILLER: Thank you for the  
17 question.

18 I think there are probably  
19 several options, but I think that is  
20 probably also not the subject of the  
21 application, so I'm not sure how much we  
22 can get engaged into what is possible  
23 because what is before us is different.

24 THE CHAIRPERSON: All right.

1                   But if we deny the request to  
2                   demolish the building, they would be  
3                   unable to get a permit to demolish, and  
4                   so they would not demolish it. And if  
5                   it's in as bad of shape as we've been  
6                   told, I supposed it could present a  
7                   danger to the public, and they would  
8                   have to approach it that way if they  
9                   wish to, or they could sell it and walk  
10                  away. That is an option for them.

11                  Did you have any other  
12                  questions, Mr. Taylor?

13                  COMMISSIONER TAYLOR: No.

14                  THE CHAIRPERSON: Commissioner Swan  
15                  has a question.

16                  COMMISSIONER SWAN: Yes, Madam  
17                  Chair.

18                  First of all, question directed  
19                  to Attorney Vandenberg, are we not  
20                  straying from the purpose of the hearing  
21                  if we are considering anything beyond  
22                  whether the proposed -- proposed new  
23                  structure would bring more historic  
24                  value to this site than an existing

1 historic structure?

2 MR. VANDENBERG: Madam Chair, it's  
3 hard to answer that without me just  
4 going back to the standard. People are  
5 repeating the standard different ways,  
6 but the standard -- the pertinent part  
7 of the standard is fundamentally that  
8 the new structure, which is the CA you  
9 guys did is more appropriate and  
10 compatible with the historic overlay  
11 district than the structure to be  
12 demolish or removed.

13 My understanding, and again,  
14 I'm -- I'm not an architect or anything.  
15 I'm just a humble zoning attorney -- is  
16 that -- is that part of the presentation  
17 was that the integrity of the building  
18 goes to it's -- whether -- how much it  
19 adds to it. And maybe I misheard, but  
20 that was part of it. So I think that is  
21 within the scope of what you guys are  
22 talking about, the history value of the  
23 home, the integrity of the home, as  
24 Madam Chair said. I think that's on

1 point.

2 When you start going into the  
3 possibility of the future, that is  
4 perhaps beyond the scope of the  
5 Saturday. Because you guys have already  
6 defined the future by the CA you  
7 approved.

8 COMMISSIONER SWAN: Right.

9 Okay. But for it to satisfy  
10 the standard, the new structure would  
11 have to be more appropriate than the  
12 existing structure, correct?

13 MR. VANDENBERG: That is correct.

14 And what is more appropriate  
15 and I'm sorry -- more appropriate and  
16 compatible is why you guys are paid the  
17 big bucks to make that determination.

18 COMMISSIONER SWAN: Right.

19 That's exactly what I'm asking.  
20 I just wanted to bring our focus back to  
21 that determination because it seems we  
22 are straying from that.

23 Now, I would also -- I would  
24 like to really ask everybody to look

1           Figure 17, let's see, which is on D3,  
2           page 24. And this is a question to  
3           staff, the applicant, anyone: Have we  
4           seen this -- not this image because I  
5           realize this image was taken on July 25,  
6           but have we seen this view of the  
7           interior porch -- wrap around porch  
8           behind the wall, have we seen this at  
9           any previous hearing or in any previous  
10          material submitted to us?

11           MR. MILLER: Thank you for the  
12          question. No because access to the  
13          interior was restricted, and that is why  
14          we were dealing with an application  
15          months and months down the road.  
16          Because we didn't have access.

17           COMMISSIONER SWAN: Thank you.

18           MR. SHEER: Can I say something  
19          about that?

20           COMMISSIONER SWAN: Sure.

21           MR. SHEER: Oh.

22           COMMISSIONER SWAN: My question is,  
23          have we seen this view before?

24           MR. SHEER: We had taken in the



1 first package -- first of all, in the  
2 first submittal last year, I notice that  
3 the city has edited the package that we  
4 actually sent in. And in that package  
5 they never did show the north elevation.  
6 It was edited only because they couldn't  
7 take a picture of the north elevation  
8 because of the growth.

9 In terms of that package and  
10 the other packages that have been sent  
11 in, we've shown plenty of interior shots  
12 of the project, even when it was filled  
13 with a bunch of statuettes and garbage.  
14 And so this time around, our package did  
15 include those interior views, and the  
16 porch areas that Mr. Miller is speaking  
17 of.

18 COMMISSIONER SWAN: Okay.

19 MR. SHEER: So the answer is yes,  
20 you did see it.

21 COMMISSIONER SWAN: No, I did not  
22 see it. I have never seen this.

23 Has any other commissioner seen  
24 this view? I have not seen this view

1           before. This is full of information  
2           that the brand new to me.

3           MR. SHEER: Well, I don't actually  
4           have access to the pictures you're  
5           looking at. So if you can put them on  
6           up on the screen, I can speak to it.

7           COMMISSIONER SWAN: Well, it's in  
8           the agenda. I mean, it's in the public  
9           agenda.

10          THE CHAIRPERSON: Perhaps staff can  
11          pull it up and put it on the big screen.  
12          Because it's hard for him to talk about  
13          a picture he can't see. We can see it,  
14          but we can look for it on our own  
15          computers, but it's not up for the  
16          applicant to see.

17          COMMISSIONER SWAN: And I don't want  
18          to get hung up on this image. But this  
19          is full of brand new information to me,  
20          and I -- I guess I'm just curious if I'm  
21          the only one.

22          MR. SHEER: Are you speaking of the  
23          third leg of the porch area? Is that  
24          what you're talking of?

1           COMMISSIONER SWAN: I'm speaking  
2 of -- let's see. It's figure 17 in the  
3 agenda on page -- it would help if staff  
4 could bring it up, actually. D3, page  
5 24 in the -- in the agenda. It's a --  
6 it's a view of a corner. I'm not sure  
7 exactly which corner it is. My guess  
8 would be it's the southwest corner. But  
9 that's a guess. I don't know. It might  
10 be -- it might be the southeast corner.

11           THE CHAIRPERSON: Commissioner Swan,  
12 can I ask you to share with us any --  
13 any specifics of this new information  
14 that this photo reveals to you? It  
15 reveals new things to me.

16           COMMISSIONER SWAN: Well, I think  
17 I'm raising the question because I wish  
18 Commissioner Cummings were here today. In  
19 the initial discussion of -- of forensic  
20 analysis of the building or a little bit  
21 of building archeology, we were asking  
22 to know what was behind the wall.  
23 And -- and my reelection is we were  
24 assured nothing stable, valuable,

1           informative was behind the wall. And  
2           I'm looking at a picture that tells me  
3           all kinds of things about this building  
4           that I didn't know until I saw this  
5           picture.

6                         That's why I'm asking.

7           THE CHAIRPERSON: All right. Thank  
8           you.

9                         Do you have any further  
10          questions, Mr. Swan, or --

11                        All right.

12                        So I think to clarify the point  
13          is that we had asked before, what does  
14          it look like behind that wall in this  
15          enclosed porch, and now we have some  
16          very new information. And perhaps it  
17          gives us some ideas about the condition  
18          of the existing building.

19                        MR. SHEER: Mr. Cummings asked me at  
20          the last landmark --

21                        THE CHAIRPERSON: Excuse me, sir.  
22          You only get to answer questions,  
23          unfortunately. And I'll try to think of  
24          one to ask you.

1                   What is your opinion of where  
2                   Mr. Cummings says in relation to what  
3                   Mr. Swan just asked you.

4                   MR. SHEER:   Mr. Cummings  
5                   discussion -- and I didn't include it  
6                   because I didn't have time to include it  
7                   in my comments, but it was surrounded  
8                   around a selective demolition, where  
9                   Mr. Cummings thought that what was in  
10                  the wall was very important.  And at the  
11                  time in December we actually took off  
12                  some of the panels on the exterior east  
13                  south corner just to investigate if  
14                  there was a balustrade or a column or a  
15                  some kind of architectural detail we  
16                  might have missed, and we found nothing.  
17                  So those images on the exterior were  
18                  included on the package.

19                  THE CHAIRPERSON:  All right.  Thank  
20                  you.

21                  MR. SHEER:  The other issue is that  
22                  this photograph is -- I actually don't  
23                  know where that photograph has been  
24                  taken.  So that's an interior view, and

1 the porch was compromised by a toilet  
2 that they put on the porch. So there  
3 was no architectural details other than  
4 the siding, and the lap -- the decking  
5 out on the porch area. So we found no  
6 evidence of any kind of fantastic  
7 architectural detailing in this  
8 building. But it's very unclear if the  
9 selective demo he was suggesting that  
10 the engineers can do this, they can take  
11 it apart piece by piece to investigate  
12 the structure as we take it down.

13 THE CHAIRPERSON: Okay.

14 If I may interrupt, sir,  
15 because I'm famous for interrupting, I  
16 get what you're saying. And he's not --  
17 Mr. Cummings is not here to say what he  
18 meant, so we'll just do without his view  
19 at this point.

20 I can see from this picture, I  
21 must tell you, some interesting things  
22 that seem quite in tact; the way the  
23 siding goes on, the way it meets the  
24 corner boards, as Mr. Miller pointed out

1 to us. There's some trim at the top in  
2 place. The pattern of the flooring. A  
3 lot of revealed in some of these  
4 pictures that the staff took while they  
5 were out there that are pertinent to  
6 deciding whether if you took out that  
7 outside wall enclosing the porch, it  
8 might be a meaningful and contributing  
9 structure, and I don't know if you're --  
10 are you aware, sometimes, sir, something  
11 that originally is called  
12 non-contributing, if we look at it again  
13 or if it is repaired, we have changed  
14 things to the status of contributing.  
15 And if that were to happen, all the  
16 money put into fixing this house could  
17 be put towards the tax credits that the  
18 city offers. I'm not going to go into  
19 the detail of that because I'm going to  
20 get it wrong, but the staff could help  
21 with that. It could significantly help  
22 the bottom line. If -- if we don't  
23 allow you to demolish it, and it is  
24 repaired instead, that could really be

1 helpful in some ways. So that is  
2 something I wanted to throw in and have  
3 someone think about.

4 Okay. Mr. Anderson, it's your  
5 second round.

6 COMMISSIONER ANDERSON: I have a  
7 question for the applicant.

8 How long have you guys owned  
9 the building? How long has this been in  
10 ownership?

11 MR. SHEER: Since last July.

12 COMMISSIONER ANDERSON: So about a  
13 year.

14 MR. SHEER: Yes, it's been one year.  
15 In fact, it's our anniversary, actually.

16 COMMISSIONER ANDERSON: I share  
17 Commissioner Swan's concern. I've been  
18 by this building before. It's been  
19 successfully mothballed. I mean, it's  
20 been quite a mothball job to cover the  
21 entire building with plywood as if it's  
22 being saved for another day. And I  
23 guess I'm a little shocked that we're  
24 talking about the demolition of this



1 building. And it's been on our docket  
2 for a while. And until either the  
3 neighborhood or the city requested to go  
4 inside, we didn't know what was in  
5 there. I'm just a little bit surprised  
6 that this information wasn't part of  
7 your application.

8 We're talking about, is this  
9 building better than that building. But  
10 there's been a lot of stuff in this  
11 building that have been boarded up. I  
12 mean, there's likelihood if you take all  
13 the boards off, you might have --  
14 notwithstanding the foundation -- you  
15 may have a pretty pristine full Cottage  
16 that has never seen the light of day for  
17 the last twenty years. So I'm just a  
18 little bit surprised we're learning this  
19 at this late date.

20 MR. SHEER: Well -- oh, I didn't  
21 really get a question.

22 MALE SPEAKER: Yeah. I didn't  
23 really hear a question either. But I  
24 was about to say that I let you go

1 second for your second time, and I  
2 missed that Commissioner Spellacy. And  
3 so if you don't gave an actual question  
4 can Commissioner Spellacy talk?

5 Or do you have a question?

6 COMMISSIONER ANDERSON: Well, my  
7 question was why didn't they submit the  
8 photographs of the interior -- you've  
9 been inside the building before; haven't  
10 you?

11 MR. SHEER: Of course, yes. Like I  
12 said, it was a plaster -- it's been a  
13 plaster business for over 3 decades, and  
14 it was completely filled with garbage.  
15 And it's been empty for over ten years  
16 now, at least.

17 COMMISSIONER ANDERSON: Right.

18 I guess my question is, why did  
19 we not see these photographs until the  
20 city or neighborhood wants to go inside?

21 MR. SHEER: Because it's just been  
22 cleaned out a month ago. She had seven,  
23 she told me, dumpsters of garbage from  
24 this building. And you couldn't get a

1 good shot of all these details.

2 But I have to admit, we  
3 measured all these details, including  
4 the soffit lights and the fascia board  
5 and we -- and the porch depth, and we've  
6 recreated it in the CA packet.

7 THE CHAIRPERSON: All right.

8 Commissioner Spellacy?

9 COMMISSIONER SPELLACY: I have a  
10 question for Mr. Miller.

11 I was wondering why was a case  
12 for demolition by neglect not started by  
13 the city?

14 I mean, regardless of whether  
15 or not we were able to go in, in terms  
16 of understanding whether or not the  
17 property should be demolished at this  
18 point?

19 MR. MILLER: Thank you for the  
20 question.

21 I think once an application for  
22 certificate of appropriateness is  
23 submitted, very difficult to then switch  
24 over to a demolition by neglect. We're

1 looking for an a appropriate outcome. I  
2 guess, had we not had an application  
3 then that might have been an appropriate  
4 route.

5 COMMISSIONER SPELLACY: Why is it  
6 hard to switch over?

7 MR. MILLER: Well, the  
8 application -- if one submitted an  
9 application for a certificate of  
10 appropriateness or certificate for  
11 demolition, you're kind of in motion to  
12 consider the request, which is somewhat  
13 different that going down the path of  
14 demolition by neglect. You know, you  
15 kind of have to let the application take  
16 its course, I think.

17 COMMISSIONER SPELLACY: So does that  
18 continue throughout the appeals process  
19 as well? Because part of what I'm  
20 curious about in terms of evaluating  
21 this property is really the creation  
22 strategically to apply for a CA, if you  
23 drag that process out for a year or  
24 more, while the property continues to

1           deteriorate. So my question then is  
2           throughout the appeals process, which  
3           they of course have the right to do, do  
4           you initiate it or are you still sort of  
5           hards off in regards to a case like  
6           that?

7           MR. MILLER: Thank you for the  
8           question.

9           I think I would have to look at  
10          that in discussion with our city  
11          attorney, if that were the case. But  
12          certainly if -- if there isn't a look at  
13          practical reasonable alternatives, that  
14          may be best way of signaling this is  
15          really important, really, really  
16          important.

17          THE CHAIRPERSON: All right.

18          I think -- Mr. Swan, do you  
19          have further questions right now?  
20          Because I was about to say I need  
21          someone to make a motion. Then we can  
22          discuss. All righty. Good because we  
23          talked a lot. And I think it would be  
24          better if we had a motion to respond to.

1           COMMISSIONER SWAN: First of all, my  
2 question is for Mr. Miller. And this is  
3 with reference to the building  
4 inventories or structure inventories  
5 that are provided on the national  
6 register (inaudible), where they  
7 indicate contributing, and they usually  
8 supply a -- a date of construction for  
9 the building. In the case of the date  
10 of construction for a building, were  
11 subsequent research undertaking 10, 15,  
12 20 years after the creation of the  
13 inventory for designation purposes  
14 reveal, like research through, say city  
15 directory, census records, building  
16 inspectors records, were to yield a  
17 different date of construction that then  
18 is listed in the national registry the  
19 listing, would we defer to the date in  
20 the national register listing or to the  
21 date provided by the primary source  
22 evidence?

23           MR. MILLER: Thank you for the  
24 question.

1                   I think any time that new  
2 information becomes available, that has  
3 to be considered.

4                   MALE SPEAKER: Okay.

5                   In this particular case, the  
6 new information, would it be given more  
7 consideration than a date in a building  
8 inventory on the national registry?

9                   MR. MILLER: I think that depends on  
10 whether that fell within or outside of  
11 the period of significance. Because if  
12 it fell within, it would be meet, I  
13 think, because then you'd be looking at  
14 everything else other than the date.

15                   MALE SPEAKER: Okay. I see. Okay.

16                   Then the second part of the  
17 question is: When it comes to  
18 contributing or noncontributing, would  
19 we -- should we find evidence in a  
20 building, in a structure, that tells us,  
21 gives us information as to the  
22 significance location -- the 7 points of  
23 integrity, which evidence is the more  
24 compelling? The evidence in the

1 building, or the line the national  
2 register structure inventory?

3 MR. MILLER: Thank you for the  
4 question. The evidence that is on the  
5 ground today is given the weight and  
6 that is the whole purpose of the best  
7 practice requirement to update and  
8 reevaluate surveys every five years or  
9 so or as conditions change. So that  
10 best practice acknowledges that the  
11 information we need to rely onto make  
12 good sound decisions has to do with  
13 currency and accuracy.

14 COMMISSIONER SWAN: Thank you.

15 All right. If no one else has  
16 questions, I have a motion.

17 All right.

18 COMMISSIONER OFFIT: I have a  
19 motion.

20 THE CHAIRPERSON: Mr. Swan had  
21 already said he was going to go ahead  
22 and propose a motion. So let's hear  
23 what he has to say.

24 MALE VOICE: I'm sorry. I believe I



1           said I was going to about 30 minutes  
2           ago.

3           COMMISSIONER SWAN:    Okay.

4           THE CHAIRPERSON:    Okay.

5                        I hope it wasn't that long ago.  
6           Time flies when you're having fun.

7           MALE SPEAKER:    I think it was.

8                        And unless staff or a  
9           commissioner can tell us or believes  
10          that the structural engineer foundation  
11          reports are somehow fraudulent, then I  
12          move to grant the certificate of  
13          demolition removal demolish the  
14          nonconforming structure using the  
15          standard replaced with a more  
16          appropriate, compatible structure.

17          ELAINE:    Excuse me.

18                        You -- we needed you to read in  
19          the whole -- the date, the case number,  
20          and all of that.

21          MALE VOICE:    Item number 3, 338  
22          South Fleming Avenue, 10th Street  
23          Historic District, CA212-014 (MGM), move  
24          to grant the certificate of demolition,

1 removal to demolish and noncontributing  
2 structure using the standard replacement  
3 with a more appropriate, compatible  
4 structure.

5 THE CHAIRPERSON: Do we have a  
6 second on this motion?

7 COMMISSIONER TAYLOR: Second.

8 THE CHAIRPERSON: Mr. Taylor has  
9 seconded. Now, I invite the  
10 customers -- commissioners to discuss  
11 this motion.

12 Commissioner Spellacy?

13 COMMISSIONER SPELLACY: I'm not  
14 going to support to motion today.

15 Part of the reason why -- I  
16 certainly understand and am sensitive to  
17 Commissioner Offit's contention that to  
18 do so is essentially calling into  
19 question the integrity of the -- the  
20 reports. But I think it's important to  
21 remember that Mr. Sheer specifically  
22 pointed out that the property owner is a  
23 structural engineer.

24 If the structural engineer felt

1 at this point, post purchasing of the  
2 property that there was a structural  
3 problem, why did you begin doing a  
4 design in the first place with the  
5 structure intact? That, to me is what I  
6 find to be a compelling reason frankly,  
7 as to why we would not move forward with  
8 that. Because I think the information  
9 you provided is what's important, so I  
10 won't be supporting that motion today.

11 Thank you.

12 THE CHAIRPERSON: Any other  
13 discussion from anyone? I'm trying to  
14 look at the screen.

15 I don't see anybody. To what  
16 Commissioner Spellacy said, I would like  
17 to add, I'm really on the fence about  
18 this. But I hate for us to condemn  
19 structural engineers like they're all  
20 dishonest or something. I don't think  
21 we intend to do this. We all discussed  
22 this before, that is structural  
23 engineer, because of their dedication to  
24 protecting life and their insurance that

1           they must carry, is going to tend to  
2           always want err on the side of safety,  
3           so err on the side of saying a building  
4           could cause damage, unless they're  
5           absolutely certain it could not possibly  
6           fall over on anybody. And I think  
7           that's perfectly understandable, but  
8           since we have seen some engineer's  
9           reports come through saying the building  
10          looked like it was going to collapse and  
11          we looked at the pictures, and the  
12          architects among us say that's easily  
13          repairable, we sometimes do tend to  
14          wonder. I hope we haven't become jaded,  
15          and we don't mean to impugn an entire  
16          industry, but we do have to balance out  
17          what might have been in their mind when  
18          they made their determination.

19                            Anybody else have discussion?

20                            Commissioner Swan?

21                            COMMISSIONER SWAN: Yeah.

22                            Yeah. I'm trying to keep this  
23          squarely on what we are charged to do as  
24          Commission, which is not to make a

1 judgment about the structural engineer's  
2 report.

3 This one figure, Figure 17, is  
4 the figure that I wish I had seen when  
5 this had come in front of us the first  
6 time. And the reason I asked Mr. Miller  
7 the question about evidence is because  
8 this -- this single image -- and as the  
9 applicant pointed out -- I said, this is  
10 an excellent project, and it's very  
11 important that we get it right. And in  
12 this case part of getting it right is  
13 determining whether a new structure can  
14 bring more historic value in the 10th  
15 street historic district than the  
16 building structure that is here. And  
17 just looking at this one image -- and  
18 there are others that yield more  
19 information, but by looking at the -- at  
20 the way the ceiling meets the walls, the  
21 part -- partial walls that used to come  
22 down on top of the columns, I can tell  
23 you from that how this building is  
24 framed.

1                   You know, because there is so  
2 much more depth. And when you look on  
3 the outside, the soffits are lower than  
4 the height of the ceiling, I know they  
5 used a birds mouth type of rafter in the  
6 framing.

7                   The way that the porch boards  
8 are mitered, I've never seen a three  
9 sided wrap-around porch on 10th Street.  
10 I think is the only one that exists.  
11 And I made a wrong assumption at a  
12 previous meeting because I never seen  
13 this before. I said they would not have  
14 mitered the corner. And now evidence  
15 showed me that they did, and I  
16 understand why they did. Because when  
17 you have a three-sided porch, you got  
18 long porch lengths, and you have long  
19 lengths of porch boards that are running  
20 parallel to the building and wouldn't be  
21 draining as effectively. Whereas, when  
22 you got an L type configuration, it's  
23 not worth making the miter because you  
24 can introduce enough of a slope in those

1 boards to let them drain themselves, but  
2 not when you have a situation like this.  
3 I'm learning from this building, and if  
4 we take a building like this out, we're  
5 removing valuable evidence from 10th  
6 Street. We already lost too much of it.

7 THE CHAIRPERSON: That you,  
8 Mr. Swan, who I will note is also a  
9 trained architect and a longtime  
10 resident of 10th Street, and he's been  
11 studying the houses out of passion, so I  
12 always respect his opinion about the  
13 construction of houses on 10th Street  
14 because I don't know.

15 Any other comments?

16 ELAINE: Madam Chairperson? Yes,  
17 Madam Chairperson, this is Commissioner  
18 (inaudible).

19 THE CHAIRPERSON: Okay.

20 You're next.

21 ELAINE: Can you repeat the motion,  
22 please? There's been so much discussion  
23 that I'm -- I'm thinking I'm on the  
24 fence too, so I'd like to have the

1 motion repeated.

2 THE CHAIRPERSON: Thank you. You're  
3 right. The motion before us is to  
4 approve their request for a demolition  
5 permit. And that would be based on the  
6 idea that the new design that we did  
7 approve last time or another time is  
8 more compatible than this building that  
9 we're looking at right now.

10 ELAINE: So I got a followup  
11 question then.

12 To approve the demolition is  
13 that the same thing as what the staff  
14 recommendation has, which is to deny  
15 without prejudice?

16 THE CHAIRPERSON: No. To approve it  
17 would be we're saying we will -- that we  
18 wish to have them issued a permit no  
19 demolish. The staff recommendation is  
20 to deny that without prejudice and their  
21 reasoning is now they've seen the house.  
22 They think it does not satisfy the  
23 requirement that the new we design that  
24 we saw before is more compatible. That



1           this one is in fact more compatible. So  
2           we're trying to decide that. And I want  
3           to take a moment just to put in that  
4           part of compatibility, as I said this  
5           before, is its condition. That's why we  
6           talked about the condition so much. If  
7           it's salvageable, it's integrity is --  
8           any integrity it has is still there. It  
9           it's going to fall over, the integrity  
10          is gone, so --

11                   ELAINE: Right.

12                           I thought so. So I have my  
13          final question for staff.

14                           Did staff see the pictures that  
15          we were just shown when they made the  
16          recommendation to deny without  
17          prejudice?

18                           MR. MILLER: Thank you for the  
19          question.

20                           Are you referring to the photos  
21          that are in your packets?

22                           ELAINE: Yes.

23                           MR. MILLER: Yes.

24                           Those were taken by staff.

1 ELAINE: Okay.

2 And based off those photos that  
3 the staff then decided to deny without  
4 prejudice the demolition?

5 MR. MILLER: No.

6 I wouldn't -- thank you for the  
7 question. I wouldn't say it was  
8 strictly based on those photos. It was  
9 based on a better understanding of the  
10 structure having regard to the seven  
11 aspects of integrity.

12 ELAINE: Got it. Got it. Okay.  
13 Thank you very much.

14 THE CHAIRPERSON: Any other  
15 discussion? In that case, it's time to  
16 call for a vote.

17 On the proposed -- on the  
18 motion in front of us, all those in the  
19 favor of it, please say aye.

20 COMMISSIONER OFFIT: Aye.

21 THE CHAIRPERSON: All those opposed  
22 say aye or raise your hand.

23 MULTIPLE VOICES: Nay.

24 THE CHAIRPERSON: Say nay.

1                   Okay. Commissioner Velvin, I  
2                   did not see what side you were on.

3                   COMMISSIONER VELVIN: (Inaudible).

4                   THE CHAIRPERSON: Okay. All right.  
5                   It appears that this motion --

6                   COMMISSIONER OFFIT: Madam Chair, do  
7                   a role call vote, please.

8                   THE CHAIRPERSON: All righty. We'll  
9                   do that. That's Elaine's job. Elaine,  
10                  please do a role call vote.

11                  ELAINE: Yes, yes.

12                  District 1, Commissioner  
13                  Sherman?

14                  COMMISSIONER SHERMAN: Commissioner  
15                  Sherman from District 1 votes nay.

16                  ELAINE: District 2, Commissioner  
17                  Montgomery.

18                  THE CHAIRPERSON: That'd be me. I  
19                  vote nay too.

20                  ELAINE: District 4, Commissioner  
21                  Swan?

22                  COMMISSIONER SWAN: Nay.

23                  ELAINE: District 5, Commissioner  
24                  Offit.

1 COMMISSIONER OFFIT: For.

2 ELAINE: Districted 6, Commissioner  
3 Henajosa?

4 COMMISSIONER HENAJOSA: Nay.

5 ELAINE: District 8, Commissioner  
6 Spellacy?

7 COMMISSIONER SPELLACY: Nay.

8 ELAINE: District 9, Commissioner  
9 Reneau?

10 COMMISSIONER RENAEU: Nay.

11 ELAINE: District 12, Commissioner  
12 Rothenberger.

13 COMMISSIONER ROTHENBERGER: Nay.

14 ELAINE: District 13, commissioner  
15 Slade?

16 COMMISSIONER SLADE: Nay.

17 ELAINE: District guess -- I'm  
18 sorry. District 14, Commissioner Guess.

19 COMMISSIONER GUESS: I vote nay.

20 ELAINE: District 15, Commissioner  
21 Velvin.

22 COMMISSIONER VELVIN: Nay.

23 ELAINE: Commissioner Jim Anderson?

24 COMMISSIONER ANDERSON: Nay.

1 ELAINE: Commissioner Taylor?

2 COMMISSIONER TAYLOR: Yes.

3 ELAINE: Okay.

4 We have two yeses.

5 THE CHAIRPERSON: The motion has  
6 therefore failed. We'll entertain  
7 another motion.

8 Commissioner Swan has a motion.

9 COMMISSIONER SWAN: In the matter of  
10 Discussion Item Number 3, 338 South  
11 Fleming Avenue, 10th Street Historic  
12 District, CA212-014 (MGM), I move that  
13 the certificate for demolition, removal  
14 to demolish a contributing structure  
15 using a noncontributing structure using  
16 the standard replace with a more  
17 appropriate compatible structure be  
18 denied without prejudice with the  
19 finding that the proposed demolition  
20 would not satisfy the standard in City  
21 Code Section 51A-4.501H4A, Romanette I.

22 THE CHAIRPERSON: Thank you,  
23 Mr. Swan.

24 So our new motion is that we

1 deny this request without prejudice  
2 because we feel the existing building  
3 has not been proven to be less  
4 compatible and important to the district  
5 than the new proposed structure.

6 Any further discussion?

7 MALE VOICE: I'll second that.

8 THE CHAIRPERSON: Oh, yeah. A  
9 second.

10 I need so many helpers to keep  
11 me going in the right direction.

12 All right. We have our motion,  
13 our second.

14 Any discussion? I guess,  
15 Mr. Offit?

16 COMMISSIONER TAYLOR: I guess my --  
17 I --

18 THE WITNESS: Oh, sorry.

19 COMMISSIONER OFFIT: I think  
20 Mr. Taylor was first.

21 THE CHAIRPERSON: Okay.

22 Mr. Taylor. I saw Mr. Offit  
23 first.

24 Doesn't matter.

1           COMMISSIONER TAYLOR: My only motion  
2           for discussion is -- and I'll agree with  
3           the second motion, but as someone who  
4           lives in the 10th Street area, who has  
5           seen dozens of cases come over the last  
6           ten years, whether I been on task force,  
7           Landmark Commission, as an applicant, as  
8           someone trying to help another neighbor,  
9           it's extremely hard to navigate and get  
10          through this process when a lot of  
11          people don't understand the language  
12          that we just discussed for the last  
13          almost hour on this particular case.  
14          And I think there has to be motions that  
15          lead to either repair or some kind of  
16          renovation or construction that can help  
17          this neighbor, and it has been a pride  
18          of mine for the last ten years. And I  
19          just don't know sometimes how -- how is  
20          this house going to get repaired or  
21          repaired or rebuilt if it's this hard to  
22          navigate this process.

23                 THE CHAIRPERSON: And I -- are  
24                 you -- I was going to respond?

1                   Anything else? I was going to  
2                   respond. I -- I appreciate. You are  
3                   right, and I'm sure we sometimes use  
4                   terminology that sometimes people  
5                   don't -- do not understand, but we do, I  
6                   believe, have a professional architect  
7                   involved in this one. So Mr. Sheer was  
8                   probably familiar with all these terms.  
9                   But we do rely upon the staff to try to  
10                  help people interpret the way we talk  
11                  for the way other people will easily  
12                  understand who think about other things  
13                  for the rest of their life.

14                  As for how -- can we have in  
15                  our motion some guidance of what happens  
16                  next to this building, no, we cannot.  
17                  Because we're not asked about that. And  
18                  it was not within our purview to do  
19                  anything but occasionally give friendly  
20                  advice outside of the motion that  
21                  suggests, you know, why don't you try  
22                  doing this or that. So we would be  
23                  overstepping our boundaries and  
24                  answering a question we hadn't been



1           asked. And the City doesn't like us to  
2           do that. But I wish we could because  
3           you're right. People need help and that  
4           would be very helpful. But  
5           unfortunately, I don't think we can  
6           really do that today.

7                           Mr. Offit?

8                   COMMISSIONER OFFIT: Yes. I'm not  
9           going to support that motion. We've  
10          strung these people along for a year,  
11          and approved something a year ago. New  
12          information -- new information is that  
13          the foundation company, reputable  
14          foundation company, perhaps not the  
15          foundation company that somebody on City  
16          staff wanted them to go with, said it  
17          can't be done. Not the owner, who is a  
18          structural engineer, but the engineering  
19          company, once they had the engineering  
20          separate person come in there and do it,  
21          that this can't be done.

22                           And to suddenly look at some  
23          pictures from the interior and come up  
24          with all of these reasons to let this

1           thing set there after leading these  
2           people down this path for a year is  
3           reprehensible as far as I'm concerned.

4                       And Mr. Taylor, you're right.  
5           The 10th Street District has been  
6           ignored since it's been established.  
7           And not just ignored, it's been abused.

8                       THE CHAIRPERSON: Thank you,  
9           Mr. Offit. I understand you're very  
10          passionate about this -- this situation.  
11          And I am sorry that it's taken so long.  
12          I'm not sure it's quite that long, but  
13          we still come up with -- we have to come  
14          up with the right judgment, no matter  
15          how inconvenient it turned out to be for  
16          everybody. We can only apologize. I  
17          believe that Mr. --

18                      COMMISSIONER ROTHENBERGER: --  
19          Rothenberger, thank you.

20                      THE CHAIRPERSON: Is it Rothenberger  
21          or Rothenberger?

22                      COMMISSIONER ROTHENBERGER:  
23          Rothenberger. Thank you.

24                      THE CHAIRPERSON: Rothenberger.

1 COMMISSIONER ROTHENBERGER: Yes.

2 As my esteemed colleagues here  
3 were speaking about more detailed  
4 things, I was looking through the past  
5 agendas, and I found it interesting what  
6 I did see. Obviously, the Landmark  
7 Commission did err on the side of  
8 caution December 6th of last year in  
9 voting to deny the certificate of  
10 demolition against the recommendations  
11 of staff and the task force.

12 Because there was not enough  
13 information provided, and I think there  
14 is discussions tonight as to why that  
15 wasn't the case. But we erred on the  
16 side of caution at that point. The  
17 applicant then proposed a certificate of  
18 appropriateness that we approved June  
19 6th. And that was, from what I  
20 understand, the applicant's decision to  
21 do so. As to why it was done before the  
22 certificate of demolition was approved  
23 is the big question I have. But as to  
24 this being a process that's taken over a

1 year, the Landmark Commission's denial  
2 of the certificate of demolition last  
3 December should have given a pretty  
4 clear hint that more evidence should  
5 have been provided at that time. And  
6 it's still, from what I was looking at  
7 the June 6th meeting of the certificate  
8 of appropriateness, interior shots of  
9 this building still were not provided  
10 when I looked through this packet. That  
11 was months after that request -- as that  
12 discussion point was made on December  
13 6th of last year. Thank you.

14 THE CHAIRPERSON: Thank you, sir.

15 And I might point out so  
16 there's no confusion some of the  
17 internal notes that we saw were actually  
18 just inside the porch, so we're seeing  
19 the exterior of the actual house. It  
20 just looked like the interior of the  
21 hall because of the enclosure.

22 If there's no other discussion,  
23 I think it's time to vote on this  
24 motion. All those in favor of this

1 motion that we deny without prejudice,  
2 please say aye.

3 MULTIPLE VOICES: Aye.

4 THE CHAIRPERSON: All those opposed  
5 to this motion, please say nay.

6 COMMISSIONER OFFIT: Nay.

7 THE CHAIRPERSON: All right.

8 I do not think we need a role  
9 call vote on this. Because I believe it  
10 pretty much followed the voting pattern  
11 of last time, which means that it has  
12 passed. Now, what this means to the  
13 applicant is that you have received a  
14 denial and you have the right to appeal  
15 to CPC for a fee, within 30 days, so no  
16 daddling if you're going to do that.

17 All right. Let's move on to  
18 the next one.

19 - - -

20 (Whereupon, the next case was introduced.)

21 - - -

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CERTIFICATE

I HEREBY CERTIFY that this transcript is a true record of the content on the file provided to me to the best of my ability.

*Maureen Cunningham Brzycki*

Maureen Cunningham Brzycki,

Dated: September 1, 2022

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