

APPROVED
BY THE CITY COUNCIL

MAR 8 1988

OFFICE OF THE
CITY CLERK

19

DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 200
SACRAMENTO, CA
95814-2998

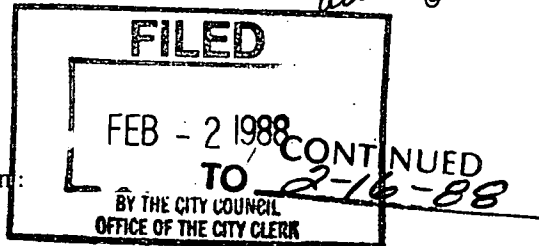
BUILDING INSPECTIONS
916-449-5716

PLANNING
916-449-5604

January 28, 1988

City Council
Sacramento, California

Honorable Members in Session:



SUBJECT: APPEAL OF PLANNING COMMISSION DENIAL OF A SPECIAL PERMIT TO EXPAND AN
EXISTING BAR (P87-465)

LOCATION: 601 15th Street

SUMMARY

The application is for a Special Permit to expand an existing bar by adding space to be used for additional pool tables, seating, cooking area and restrooms. The Special Permit was considered by the Planning Commission and after hearing public testimony, was denied. The matter is before the City Council on appeal by the applicant.

BACKGROUND

The existing bar occupies a portion of the lower level of a two story building. The remaining lower level space was previously used for a restaurant which is now vacant. Four residential units are on the second level. The site is primarily surrounded by residential uses except for a commercial radiator shop to the south.

In 1985, prior to the City's ordinance requiring a Special Permit for bars, the applicant obtained a building permit to expand the bar use by connecting (removal of separation wall) the bar area with the space formally used for a restaurant. Due to problems with the construction contractor, the applicant requested of the Building Division and was granted, an extension of time to start work. This extension lapsed and the permit was considered inactive. The applicant subsequently hired another contractor who did the work without contacting the Building Division.

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Prior to use of the new space, the applicant learned that approval by the State Department of Alcoholic Beverage Control was needed. On May 12, 1987, prior to the effective date of the City's ordinance, the applicant applied for ABC approval. On June 23, 1987, the City ordinance became effective and the applicant was subject to a Special Permit requirement.

The applicant's request was received and reviewed by Planning staff. The application was also sent to various agencies including the Police Department for review and comment. Staff observed that the site is located within a residential area and in a neighborhood the City is attempting to revitalize. Both the Commission and the Planning staff believe that the proposed use would jeopardize public and private investments in revitalization. The proposed project is opposed by the Police Department. The department cites that the area has a severe crime problem. Further, public comments received prior to, and at the Commission hearing, indicated that the existing bar has not been a compatible neighbor. Planning staff therefore recommended against the request.

The matter was considered by the Planning Commission. After hearing testimony for and against the request, the Commission voted to deny the Special Permit and parking variance for one space. The applicant did not appeal the denial of the variance.


VOTE OF THE PLANNING COMMISSION

On December 17, 1987, the Commission voted eight ayes (one vacant seat) to deny the request.

RECOMMENDATION

The Planning Commission and staff recommend the City Council deny the appeal based on the attached Findings of Fact.

Respectfully submitted,



Michael Davis
Director, Planning & Development

FOR CITY COUNCIL INFORMATION
WALTER J. SLIPE
CITY MANAGER

MD:MVD:AG:rt
attachments

February 2, 1988
District No. 1

P87-465

LAW OFFICES OF
ALAN L. EDELSTEIN
1225 8TH STREET, SUITE 570
SACRAMENTO, CALIFORNIA 95814

19
CITY OF SACRAMENTO
CITY PLANNING DIVISION

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3:16 PM

AREA CODE 916
TELEPHONE 443-6400

ALAN L. EDELSTEIN
ATTORNEY AT LAW
CALIFORNIA AND PENNSYLVANIA BARS

March 7, 1988

Art Gee
City of Sacramento
Department of Planning and Development
1231 I Street, Room 200
Sacramento, California 95814-2998

Re: P87-2998
James C. and Mary Vogeli dba Joe's Corner

Dear Mr. Gee:

Pursuant to your request of March 2, 1988, I am reducing to writing the corrections to the Planning and Development Department's report that Mr. Vogeli and I brought to your attention in our meeting of February 8, 1988. This letter will supplement my oral presentation on behalf of the Vogelis' appeal of the Planning Commission's denial of a special permit.

Preliminarily, I wish to reiterate our contention that the ordinance requiring a special permit does not apply to the Vogelis because they had received a permit to expand, and had expended over \$30,000 in reliance upon that permit, prior to the enactment in June of 1987 of the ordinance in question.

I wish to note the following corrections to the Planning Department's report:

1. In the summary on page 1, the report states that the application is for a special permit to expand an existing bar by adding space to be used for additional pool tables, seating, cooking area and rest rooms. The fact is that the expansion will result in a net gain of one pool table. The seating will be increased by two tables with two chairs each. New restrooms that accommodate the handicapped were added pursuant to Title 24 requirements. The cooking area currently exists, but has not been used since the restaurant terminated its business several years ago. The Vogelis' intention is to reopen the existing kitchen and, to that end, they have worked to bring it up to

current Department of Health standards. As you know, they could have avoided all of the problems they now face regarding the special permit by simply opening the facility as a restaurant. They were hesitant to do that at the outset and, therefore, decided to use the kitchen to serve light fare. Lastly, the summary gives the impression that new footage is being added to an existing building. That is not the case. All the footage that they will use currently exists. The area they want to make use of was a boarded-up unused restaurant that was separated from the bar by a wall. The Vogelis, with all the required permits, simply eliminated the wall that separated the bar from the restaurant.

2. The last paragraph on page 1 contains significant errors. It states that the Vogelis were granted an extension of time to start work under the building permit, that the extension lapsed, and that the permit was considered inactive at the time that construction actually commenced. Due to problems with the initial contractor, the job did not commence for quite a while after the permit was issued. Cal Ram Construction Company, Inc., a well respected contractor that did the work, contacted the Building Department prior to commencing the work so as to ensure that the permit was still valid and that Cal Ram could use the permit even though another contractor was initially involved in its procurement. The project received all the necessary inspections and sign-offs during the course of construction and none of the City's inspectors or any one else ever questioned the validity of the permit. Moreover, the City issued its final permit within the last several weeks. I refer you to a January 14, 1988, letter from the President of Cal Ram Construction Company, Inc., in which the contractor states that the work was done pursuant to the required process. I would also like to note that the contractor specifically states that the work was performed between the hours of 7:00 a.m. and 3:30 p.m. because I recognize that there have been unsupported charges that construction was done in the early hours of the morning. A copy of Cal Ram's letter is attached hereto and marked as "Attachment A."
3. Under the section entitled Applicant's Proposal on page 6 of the report (page 2 of the staff work prepared for the City Planning Commission's meeting), there is a misstatement. The first paragraph of this section states that a wall separating the bar and the vacant restaurant was removed in 1985. That wall was removed under a valid permit in 1987. It is important to note that the total allowed for the bar and restaurant will be reduced.

Currently, the bar has 25 stools and seating for 26 at tables and chairs for a total of 51. Combined with the seating that is authorized for the restaurant, there is capacity for 100 people. Under the new configuration, there will be seating for 60 persons at bar stools and tables and chairs.

4. On page 7 of the report (page 3 of the staff work done for the Planning Commission's meeting), it is stated under paragraph 1 that the bar is not a "neighborhood bar" in that the property owner does not take steps to deter drug and prostitution problems in the neighborhood." Approximately 90% of the Vogelis' customers are Hispanic. Many are former residents of the neighborhood who enjoy returning to the bar to visit with old friends. Many others work in the area and use the bar as a place to meet socially. The Vogelis would love to have more of the current neighbors use the bar. However, they take strong issue with the implication that because persons who are patrons of the bar do not live in the neighborhood, that they are any less entitled to be accommodated, or that they are automatically considered to be the cause of the neighborhood's problems. The Vogelis are very conscientious in their efforts to ensure that no illegal activities occur on their premises. Although the Police Department, in response to concerns of some neighbors, has now taken a position against issuance of the permit, police representatives on several occasions have stated that they recognize that the neighborhood's problems are not caused by the Vogelis, and that they know that the Vogelis attempt to operate a "clean" establishment.
5. On page 7 of the report (page 3 of the staff work for the City Planning Commission's meeting), in paragraph 2 near the top of the page, it is stated that children attending Washington School are exposed to illegal and potentially unsafe activities when walking past the bar. Very few children pass the bar while walking to and from school. We strongly disagree that illegal or potentially unsafe activities are occurring in the bar. We do note that there is a large transient population that walks the entire neighborhood. This population results from the many motels in the area and from the several facilities providing shelter and food to the jobless and homeless that are in the area. It is entirely unfair and contrary to the facts to lay the blame for this situation on the Vogelis. Moreover, it would appear that it is safer for passers-by if there is an operating business on the location rather than a boarded-up restaurant.

6. On page 7 of the report (page 3 of the staff work for the Planning Commission's meeting), in the section discussing the City Police Department's position opposing the expansion, it should be noted that the section does not indicate any problems caused by the applicants' establishment. Indeed, as discussed above, the representatives of the Police Department have recognized that the applicants' operate a law abiding establishment.
7. Under staff analysis on the bottom of page 7 and the top of page 8 of the report (bottom of page 3 and top of page 4 of the staff's work for the Planning Commission meeting), there is a summary of the licensing status of the applicants when the City's ordinance was passed. At the time the ordinance was passed, the applicants had completed the ABC's posting requirements. The next step is to have an evidentiary hearing on the protests that were filed. The Vogelis are very anxious to have such a hearing because it will provide an opportunity to have a hearing with witnesses under oath in order to determine the facts regarding this case. The fact of the matter is that the Vogelis have an exemplary record as holders of a liquor license. They have had one violation in over seven years that they have held their license. That one violation occurred in July of 1987, when a bartender employed by the Vogelis inadvertently sold alcohol to a minor who was sent into the bar by the Police Department. The Vogelis cooperated fully with the authorities when the violation occurred, did not contest the matter, and agreed to payment of a fine. A copy of a letter from the ABC with the Vogelis' license history is attached hereto and marked "Attachment B."
8. The staff reports states that the City Attorney has indicated that because ABC's final approval had not yet been issued, the applicant did not have a vested right to only undergo ABC review and approval. This sentence is difficult to understand. Our contention, which we believe is strongly supported by case law, is that the Vogelis acquired vested rights when they expended \$30,000 in reliance upon the valid permit that was issued by the City. The fact that they still had to receive ABC approval does not eliminate their vested rights.

Mr. Art Gee
March 7, 1988
Page -5-

9. In the second to the last paragraph on page 8 of the report (page 4 of the staff work for the City Planning Commission's meeting), it is stated that the proposed expansion will increase the occupancy load from 268 to 386. This is incorrect. As stated previously, the capacity will be reduced. The combined occupancy capacity of the bar and restaurant is 100 persons. The capacity that will be permitted when operated as one establishment will be 65 persons.

I would again like to point out that it is our position that the special permit requirement does not apply to the Vogelis. We believe that we would prevail on this issue in litigation. However, the Vogelis would like to avoid the cost, time and disruption that litigation causes. As you know, we have offered to take reasonable steps that would alleviate some of the concerns of the neighbors, such as putting windows in the bar and decreasing the number of pool tables. I believe we have been very forthcoming in attempting to reach a reasonable accommodation with the City. We would be very willing to continue to work with you on this issue.

Sincerely,

Alan L. Edelstein (kst)

ALAN L. EDELSTEIN

ALE:kst
Enclosures

cc: Diane Balter, Deputy City Attorney

CAL RAM CONSTRUCTION COMPANY, INC.

GENERAL BUILDING CONTRACTORS
1891 ENTERPRISE BLVD.
WEST SACRAMENTO, CA 95691
(916) 372-1610 • LIC. 466622

January 14, 1988

Mr. Jim Vogili
Joe's Corner
601 15th Street
Sacramento, CA 95814

Re: Commerical Improvements

Dear Jim,

We are writing to assure anyone concerned that the work performed by our firm on the above referenced project was done during normal working hours (7:00 AM to 3:30 PM), using plans approved by the Building Department and under city permit number M6152C.

This company performed no work on the project that was not inspected and approved by the City of Sacramento. The permit was procured by the owner and final completion of the project was still pending when our portion of the work was completed.

Sincerely,

Cal Ram Construction Company, Inc.
A California Corporation

BY: _____

James S. Repace
President

ATTACHMENT A

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

83 Scripps Dr. Suite 301
Sacramento, CA 95825 (916) 791-6451



RECEIVED

FEB 21 1988

JAN 21 1988

February 19, 1988

Alan L. Edelstein
Attorney At Law
1225 8th St. Suite 570
Sacramento, CA

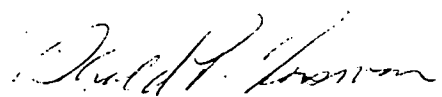
Re: James C. & Mary Vogeli
dba: Joe's Corner
601 15th Street, Sacramento
License 48-80234

Dear Mr. Edelstein:

In regards to your letter of February 11, 1988, Department records reflect the following license history and disciplinary action on Mr. and Mrs. Vogeli at the above address:

Mr. and Mrs. Vogeli have been the licensee of record for the On Sale General Public Premises license since October 1, 1979 to date. One accusation has been filed against them during the above time. Accusation filed July, 27, 1987, Reg. #9586 for sales of alcoholic beverages to a minor (18 year old). They paid a \$998.90 fine in lieu of a ten day suspension of their license.

Very truly yours,


Gerald P. Forsman
District Administrator

GPF:kc

ATTACHMENT B

CITY OF SACRAMENTO
CITY PLANNING DIVISION

FEB 24 1988

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LAW OFFICES OF
ALAN L. EDELSTEIN
1225 8TH STREET, SUITE 570
SACRAMENTO, CALIFORNIA 95814

ALAN L. EDELSTEIN
ATTORNEY AT LAW
CALIFORNIA AND PENNSYLVANIA BARS

AREA CODE 916
TELEPHONE 443-6400

February 23, 1988

Art Gee
City of Sacramento
Department of Planning and Development
1231 I Street, Room 200
Sacramento, California 95814-2998

Re: P87-465
James C. and Mary Vogeli dba Joe's Corner

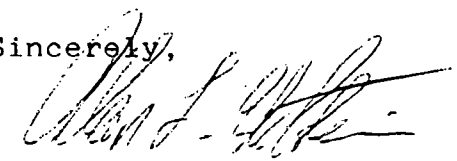
Dear Mr. Gee:

Enclosed for your information is a copy of a letter I requested from the Department of Alcoholic Beverage Control regarding the license history of James and Mary Vogeli.

As indicated in the ABC's letter, Mr. and Mrs. Vogeli have had one accusation filed against them in the over seven years that they have held the license. In that instance, a bartender employed by the Vogelis inadvertently served alcohol to a minor. The Vogelis cooperated fully with the authorities when the violation occurred, did not contest the matter, and agreed to payment of a fine.

Should you have any questions regarding this matter, or should you need any additional information, please do not hesitate to contact me.

Sincerely,


ALAN L. EDELSTEIN

ALE:kst
Enclosure
cc: Diane Balter, Deputy City Attorney (w/encl.)

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

83 Scripps Dr. Suite 301
Sacramento, CA 95825 (916) 791-6451



RECEIVED

FEB 19 1988

ALB. DEUKMEJIAN
GOV. CALIF.

February 19, 1988

Alan L. Edelstein
Attorney At Law
1225 8th St. Suite 570
Sacramento, CA

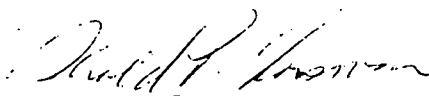
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Very truly yours,


Gerald P. Forsman
District Administrator

GPF:kc

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Appeal of James C. Vogeli vs.
City of Sacramento Planning
Commission's Denial of a Special Permit
to Expand an Existing Bar at 601 15th
Street in the C-2 Zone (P87-465)

Notice of Decision
and
Findings of Fact

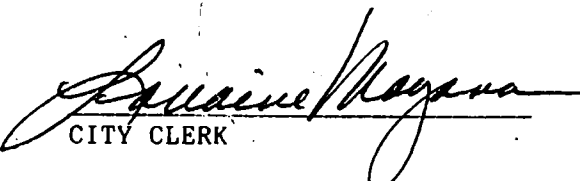
At its regular meeting of March 8, 1988, the City Council heard and considered evidence in the above entitled matter. Based on verbal and documentary evidence at said hearing, the Council denied the appeal based on the following findings:

1. The proposed land use is not based on sound principles of land use in that:
 - a. The proposed expansion encourages the development of a blighted area by adding to the existing concentration of establishments in the area dispensing alcoholic beverages. The use could also discourage private investments in an area the City has targeted for revitalization.
 - b. The expansion is detrimental to current efforts by police, surrounding neighbors, and public officials to combat existing illegal activities. The police cite that the area has a severe crime problem.
2. The proposed expansion will result in the creation of a nuisance to surrounding properties in that the existing bar has created problems for neighborhood residents.
3. The proposed project is not consistent with the goal of the Central City Community Plan to:

Conserve viable residential neighborhoods by not
allowing intrusion of incompatible uses.


MAYOR

ATTEST:


CITY CLERK

P87-465

Library of Congress

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Sacramento City Planning Commission VOTING RECORD

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MEETING DATE <u>December 17, 1987</u>
ITEM NUMBER <u>15 B</u>
PERMIT NUMBER <u>P87-465</u>

ENTITLEMENTS

- | | |
|--|---|
| <input type="checkbox"/> GENERAL PLAN AMENDMENT | <input type="checkbox"/> TENTATIVE MAP |
| <input type="checkbox"/> COMMUNITY PLAN AMENDMENT | <input type="checkbox"/> SUBDIVISION MODIFICATION |
| <input type="checkbox"/> REZONING | <input type="checkbox"/> LOT LINE ADJUSTMENT |
| <input checked="" type="checkbox"/> SPECIAL PERMIT | <input type="checkbox"/> ENVIRONMENTAL DET. |
| <input type="checkbox"/> VARIANCE | <input type="checkbox"/> OTHER _____ |

STAFF RECOMENDATION	
<input type="checkbox"/> Favorable	<input checked="" type="checkbox"/> Unfavorable
<input type="checkbox"/> Correspondence <input type="checkbox"/> Petition	

LOCATION <u>601 15th Street + 1506 F Street</u>

P R O P O N E N T S	NAME	ADDRESS
	<u>Tom Hunt</u>	<u>1220 N Street, Suite 101, Dacto.</u>

O P P O N E N T S	NAME	ADDRESS
	<u>Manuela Serna</u>	<u>1700 N Street, Dacto.</u>
	<u>Mrs. Holista</u>	<u>1501 F " "</u>
	<u>Interi " "</u>	<u>" " " "</u>
	<u>Jim Barclay</u>	<u>(Police Dept.) - 813 6th Street, Dacto.</u>
	<u>Martha Bustamante</u>	<u>408 10th Street, Dacto.</u>

MOTION # Yes No Motion Second

CHINN	✓			
FERRIS				
HOLLICK	✓			
HOLLOWAY	✓			
ISHMAEL	✓			✓
NOTESTINE	✓			
OTTO	✓			✓
WALTON	✓			
RAMIREZ	✓			

MOTION

- | | |
|--|---|
| <input type="checkbox"/> TO APPROVE | <input type="checkbox"/> TO RECOMMEND APPROVAL & FORWARD TO CITY COUNCIL |
| <input type="checkbox"/> TO DENY | <input type="checkbox"/> TO RECOMMEND APPROVAL SUBJECT TO COND. & FORWARD TO CITY COUNCIL |
| <input type="checkbox"/> TO APPROVE SUBJECT TO COND. & BASED ON FINDINGS OF FACT IN STAFF REPORT | <input type="checkbox"/> TO RATIFY NEGATIVE DECLARATION |
| <input checked="" type="checkbox"/> TO APPROVE/DENY BASED ON FINDINGS OF FACT IN STAFF REPORT | <input type="checkbox"/> TO CONTINUE TO _____ MEETING |
| <input type="checkbox"/> INTENT TO APPROVE/DENY SUBJECT TO COND. & BASED ON FIND. OF FACT DUE | <input type="checkbox"/> OTHER _____ |

CITY PLANNING COMMISSION

1231 'I' STREET, SUITE 200, SACRAMENTO, CA 95814

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APPLICANT JAMES VOGELI, 21 Grande Rio Circle, Sacramento, CA 95826
OWNER James Vogeli, 21 Grande Rio Circle, Sacramento, CA 95826
PLANS BY Archon Engineering, 2216 G Street, #3 Sacramento, CA 95916
FILING DATE 11/5/87 ENVIR. DET. Neg. Dec. 11/20/87 REPORT BY CS/vf
ASSESSOR'S-PCL. NO. 002-171-002

APPLICATION: A. Negative Declaration
B. Special Permit to expand an existing bar/pool room.
C. Variance to waive one parking space

LOCATION: 601 15th Street

PROPOSAL: The applicant is requesting the necessary entitlements to expand an existing bar in order to add additional space for three pool tables and four additional seats. The existing kitchen in the expanded area would also be activated.

PROJECT INFORMATION:

1980 Central City Community
Plan Designation: General Commercial
Existing Zoning of Site: C-2
Existing Land Use of Site: Bar/Pool Room

Surrounding Land Use and Zoning:

North: Single and two-family residential; R-3A
South: Commercial; C-2
East : Two-family residential; C-2
West : Four family residential; R-3A

Parking Required: 5 spaces
Parking Provided: 4 spaces
Property Dimensions: 80' x 80'
Property Area: 14+ acre(s)
Square Footage of Building: 3,726 lower level/4 units above approximately 3,194 sq. ft.
Height of Building: 2 story
Topography: Flat
Street Improvements: Existing
Utilities: Existing
Exterior Building Materials: Masonry and wood existing
Roof Material: Existing

PROJECT EVALUATION: Staff has the following comments regarding this proposal:

A. Land Use and Zoning

The subject site consists of .14+ acre(s) in the General Commercial (C-

APPLC. NO. P87-465 MEETING DATE December 17, 1987 ITEM NO 15

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2) zone. The bar is located on the lower level of a two story structure and there are four residential units above. A four space parking area is located to the south side of the building (see site plan, Exhibit A). Surrounding Land Uses include a radiator shop to the south of the subject site, a two family residential structure is located to the east, two and three family residential to the north and four family residential to the west. The project site is in the Washington District Preservation Area and surrounding residential structures are of a Victorian style. Other land uses in the vicinity include the Clarion Hotel and the Music Circus one block south of the subject site at the corner of 15th and G Streets. The La Raza Bookstore is also located at this intersection. Washington Elementary School is located two blocks east of the site at F and 17th Streets and the Plasma Center is one block north of the site on E Street between 15th and 16th Streets.

B. Applicant's Proposal

The applicant proposes to expand the existing bar/pool room from 2,184 sq. ft. to 3,850 sq. ft. The expansion includes a 779 sq. ft. pool area, a 588 sq. ft. kitchen/storage area, and new bathrooms at 299 sq. ft. (see floor plans Exhibit B). The addition area was previously a restaurant. A wall separating the bar and vacant restaurant was removed in 1985 and the new halfway wall shown in Exhibit C was built. Presently, this area is boarded off to deter access.

The current number of seats in the existing bar is 31. The area proposed for expansion would add another four seats. The hours of operation are 6:00 a.m. to 2:00 a.m. or as business dictates. The bar is allowed to operate after 2:00 a.m. as long as no alcoholic beverages are sold (per State Law).

C. Neighborhood Concerns

Staff contacted Councilman David Shore to request his opinion on the proposed expansion. Councilman Shore indicated he did not support the project because of numerous complaints from neighbors within a three block area of Joe's Corner over the past few years. Also, he indicated that the area has a concentration of establishments in the area (liquor stores, bars, plasma center) that attract illegal activities such as prostitution and drug abuse.

Staff also contacted the lead person of a neighborhood group that organized due to problems associated with the bar and surrounding area. The group started meeting in May of 1987 and has had a steady involvement of approximately 15 members (see letter, Exhibit E). They have met with community organizations, Police Department, City Officials, Mayor Rudin and others (see letters, Exhibits F, 6, and H). The lead person of the neighborhood group (also the Chairperson of the

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Mayor's Hispanic Advisory Committee) has indicated the neighbors are generally concerned about the following:

1. The bar is not a "r=neighborhood bar" in that the property owner does not take steps to deter drug and prostitution problems in the neighborhood.
2. Children attending Washington School, 2 blocks east of Joe's Corner are exposed to illegal and potentially unsafe activities when walking past the bar.
3. The expansion should not be allowed because of existing problems at Joe's Corner and the general vicinity.

Exhibit D is a letter from the City Police Department opposing the expansion. The letter generally indicates the two items below:

1. A severe crime problem exists in the area bounded by E and H Streets and 13th and 17th Streets. During the first six months of 1987, there were 270 criminal offense reports received and 192 arrests made within the boundaries mentioned above. Arrests were for crimes against persons, prostitution, drugs and driving under the influence.
2. The expansion of an alcohol beverage related business in the area will lead to an increase in existing problems and detract from efforts to combat them.

The applicant's attorney has submitted a letter in response to the neighborhood and police letters (see Exhibit I).

- D. The proposed project has been reviewed by Traffic Engineering, Engineering, Building Inspections, Sacramento Old City Association and the Midtown Business Association.

The following comments were received:

1. Midtown Business Association

The Association is opposed to any expansion of the bar due to strong neighborhood opposition.

2. Sacramento Old City Association

The Association is in support of the neighbors in recommending denial of the project.

E. Staff Analysis

City Ordinance 87-077 requires a special permit to establish a bar in the C-2 zone. Although the applicant is not establishing a new bar, this ordinance also applies to an existing bar that wants to expand. At the time the Ordinance was adopted (June 23, 1987) the applicant was midway into the process of getting review and approval from the State

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Department of Alcoholic Beverage Control (ABC) for the bar expansion. The Planning Department informed ABC that the Ordinance requires Planning Commission approval prior to ABC approval. The City Attorney has indicated that because ABC'S final approval had not yet been issued, the applicant did not have a vested right to only undergo ABC review and approval.

Staff has done a field survey of other establishments that dispense alcohol within a 1.5 block radius of the subject site. Six establishments were identified between E and H Streets and 14th and 16th Streets as listed below:

1. Diamond Grocery - northeast corner of 14th and E Streets.
2. Capitol Grocery - northeast corner of 15th and E Streets.
3. McAnaw's Retail Store - northeast corner of 16th and F Streets.
4. Don's Bottle Shop - east side of 16th Street between F and G Streets.
5. Shopper's Mart - southeast corner of G and 14th Streets.
6. Post 61 (Bar) - southeast corner of 15th and H Streets.

The applicant is also requesting the waiver of one parking space. Parking requirements for a bar are one space per three e=seats. The additional space is necessary because four new seats are proposed. Because of limited on-street parking in the area, especially during evening hours when residents are more likely to be home, staff does not support the variance. Additionally, the parking area is already short 10 spaces because it is a legal non-conforming parking lot. The type of on-street parking in the area is either 2 hours posted or 10 hour meters as shown on the attached Land Use Map.

The proposed expansion will increase the occupancy load from 268 to 386 which could have a negative impact on the area (increased traffic, noise, and illegal activities).

Under the new City Ordinance which regulates the bar expansion, the Planning Commission is required to make specific findings of fact stating that the use will not adversely affect the neighborhood or encourage the development of a blighted area. Based on the strong neighborhood opposition and Police Department opposition (see letter, Exhibit D) staff finds that the expansion cannot meet the findings stated in the Ordinance and therefore, recommends against the expansion.

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ENVIRONMENTAL DETERMINATION: The Environmental Coordinator has determined that the project will not have a negative impact on the environment and has prepared a negative declaration.

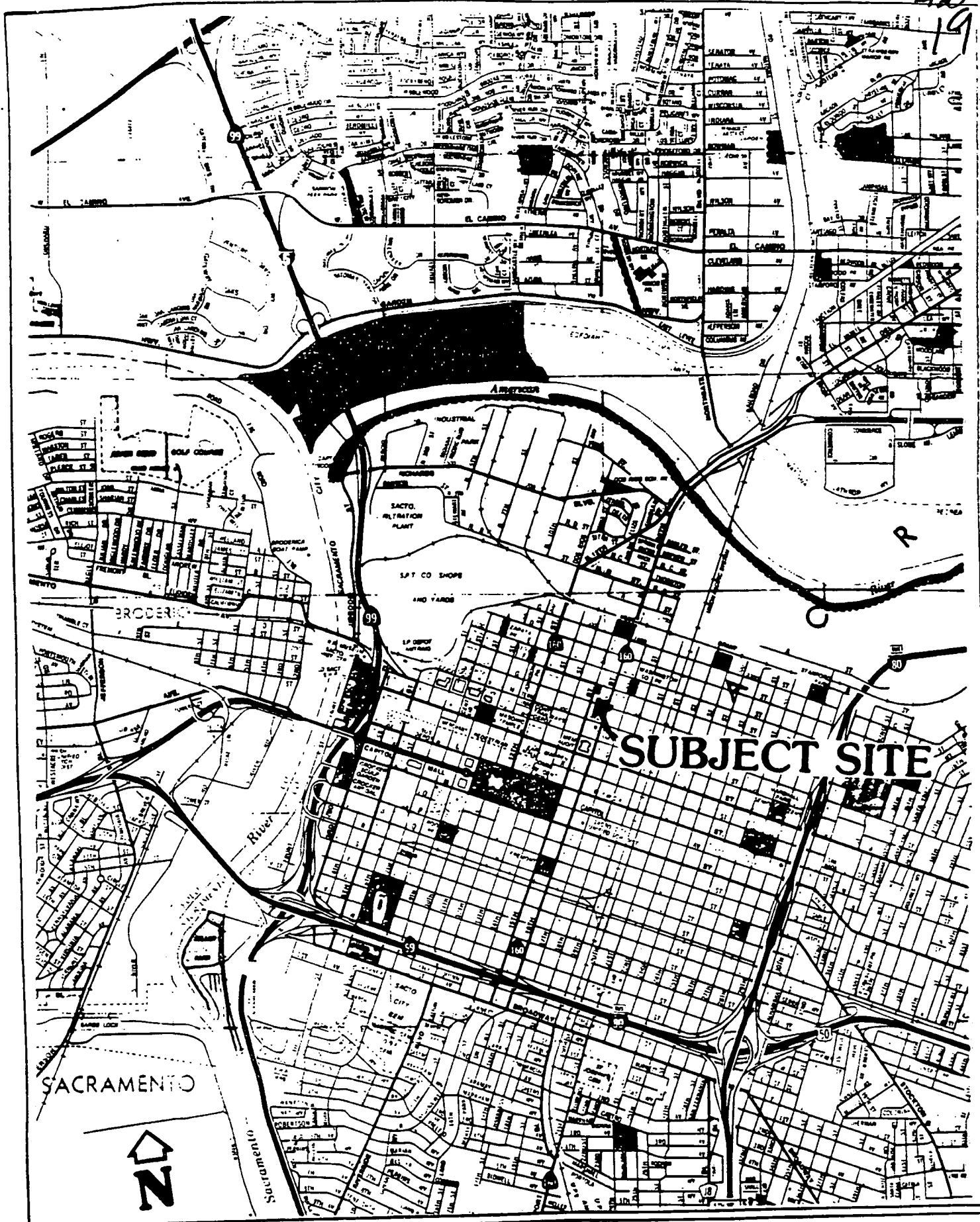
RECOMMENDATION: Staff recommends the Commission take the following actions:

- A. Ratify the Negative Declaration.
- B. Deny the special permit based upon findings of fact which follow.
- C. Deny the variance to waive one required parking space based upon findings of fact which follow:

Special Permit-Denial

- 1. The proposed land use is not based on sound principles of land use in that:
 - a. the proposed expansion encourages the development of a blighted area by adding to the existing concentration of establishments in the area dispensing alcoholic beverages.
 - b. the expansion is detrimental to current efforts by police, surrounding neighbors, and public officials to combat existing illegal activities.
 - c. adequate on-site parking is not provided.
- 2. The proposed expansion will result in the creation of a nuisance to surrounding properties in that:
 - a. the use is incompatible with surrounding residential uses.
 - b. parking cannot be waived unless a specific unique circumstance limiting on-site parking is established. No such circumstance exists to warrant the waiver of the parking space.
 - c. the variance would not be granted to other tenants facing similar circumstances.
- 3. The project, if granted, would be injurious to the public welfare and property in the area in that the waiver of required parking will congest on-street parking that is already in demand due to the existing shortage of on-site parking at the subject site.
- 4. The proposed project is not consistent with the following goal of the Central City Community Plan:

Conserve all viable residential neighborhood of non-compatible uses and excessive vehicular traffic.



VICINITY MAP

12-17-70 10

12-17-70 15

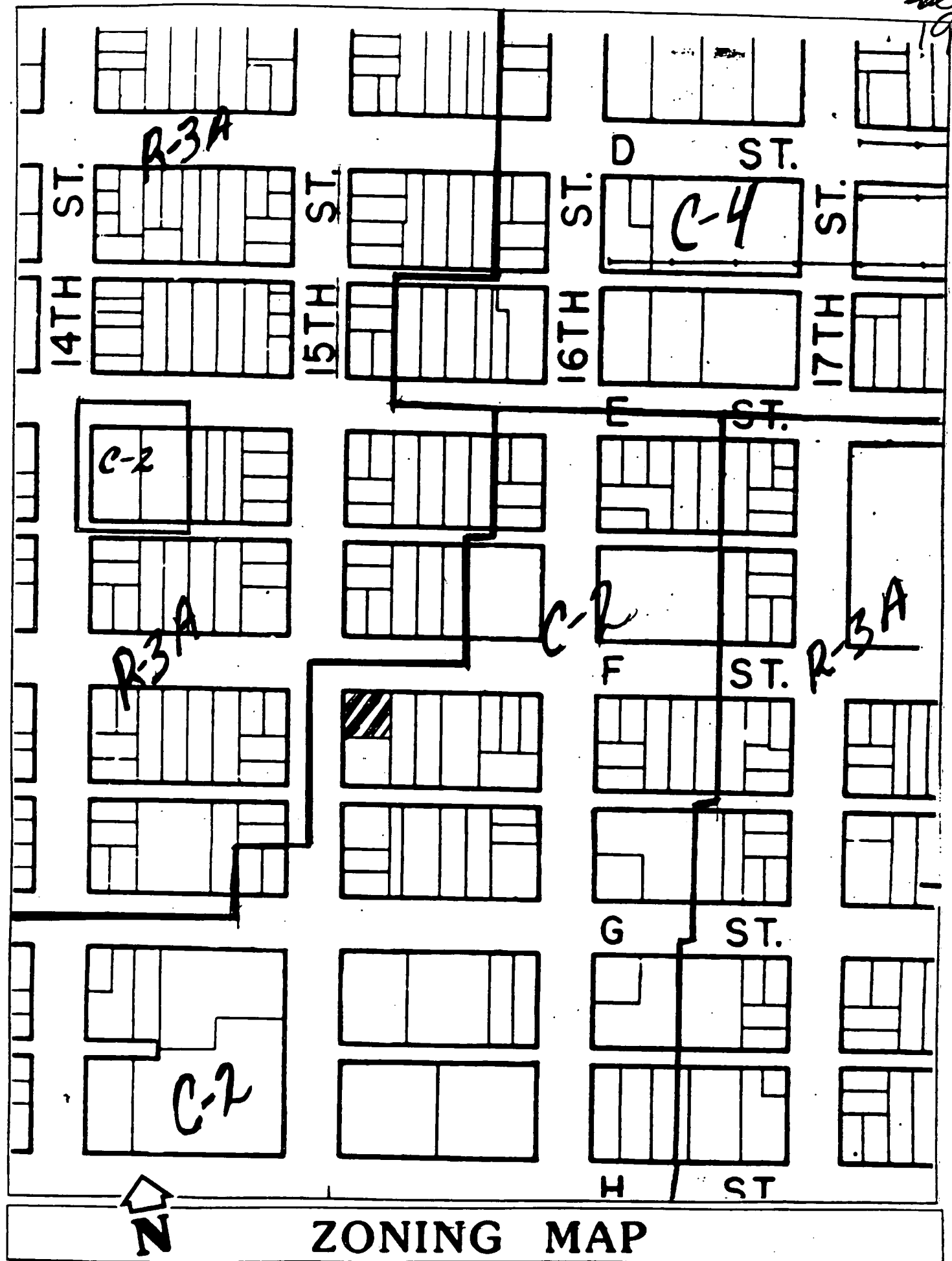


186-465

12-11-22-11

Page 15

187
19



187-4-5

12-12-12

2-15-15

12-17-87/13

15 th St

F St

SITE PLAN

JOES CORNER
601 15th St
SACRAMENTO, CA

Assessor's Parcel No. 2-171-02

SITE PLAN

1. ALL UTILITIES, INCLUDING EXISTING UTILITIES, SHALL BE SHOWN ON THE SITE PLAN. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN.
2. THE SITE PLAN SHALL SHOW THE LOCATION OF ALL UTILITIES. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN.
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15. THE SITE PLAN SHALL SHOW THE LOCATION OF ALL UTILITIES. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN.



EXHIBIT A

Sheet Index	
1	Site Plan
2	Floor Plan
3	Section/Elevation
4	Details/Notes

General Notes

1. ALL UTILITIES, INCLUDING EXISTING UTILITIES, SHALL BE SHOWN ON THE SITE PLAN. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN. THE LOCATION OF ALL UTILITIES SHALL BE SHOWN ON THE SITE PLAN.

Existing	Proposed
1. 15th St	1. 15th St
2. F St	2. F St
3. 15th St	3. 15th St
4. F St	4. F St
5. 15th St	5. 15th St
6. F St	6. F St
7. 15th St	7. 15th St
8. F St	8. F St
9. 15th St	9. 15th St
10. F St	10. F St
11. 15th St	11. 15th St
12. F St	12. F St
13. 15th St	13. 15th St
14. F St	14. F St
15. 15th St	15. 15th St
16. F St	16. F St
17. 15th St	17. 15th St
18. F St	18. F St
19. 15th St	19. 15th St
20. F St	20. F St

Joe's Corner
601 15th St.
Sacramento, CA 95811
(916) 447-3888

Earl N. Olson
STRUCTURAL ENGINEER
5150 15th St.
Sacramento, CA 95811

ARCHON ENGINEERING
Earl Olson & Associates
2215 - G St., No. 3
Sacramento, CA 95811

2886
1
19

EXHIBIT B

FLOOR PLANS

ARCHON ENGINEERING
1001 15th St.
San Diego, CA 92101
(619) 591-1000

Joe's Corner
807 15th St.
San Diego, CA 92101
(619) 447-3888

RECEIVED
JAN 11 1987
2885
1001 15th St.
San Diego, CA 92101
(619) 591-1000

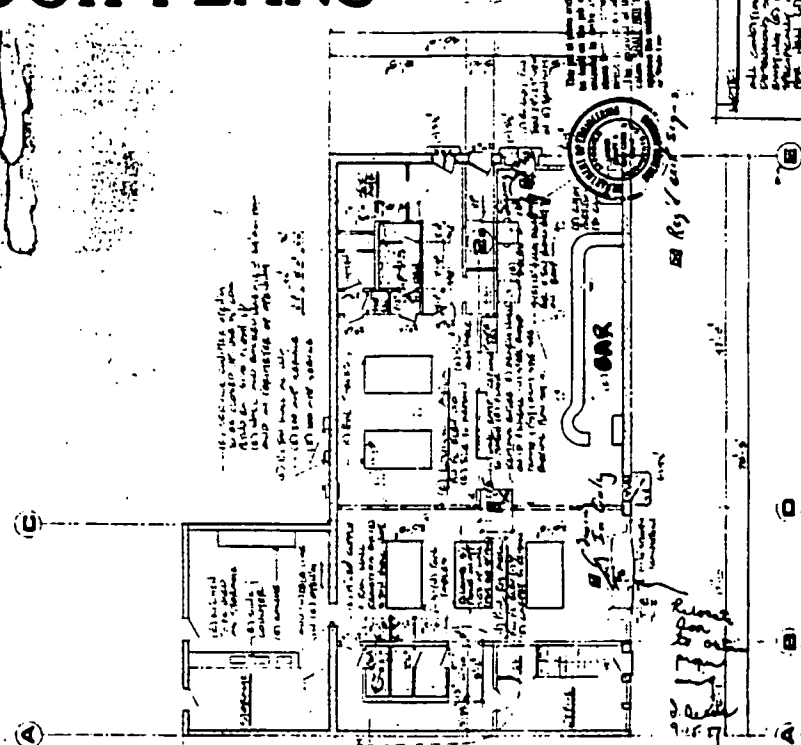
RECEIVED
JAN 11 1987
2885
1001 15th St.
San Diego, CA 92101
(619) 591-1000

RECEIVED
JAN 11 1987
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1001 15th St.
San Diego, CA 92101
(619) 591-1000

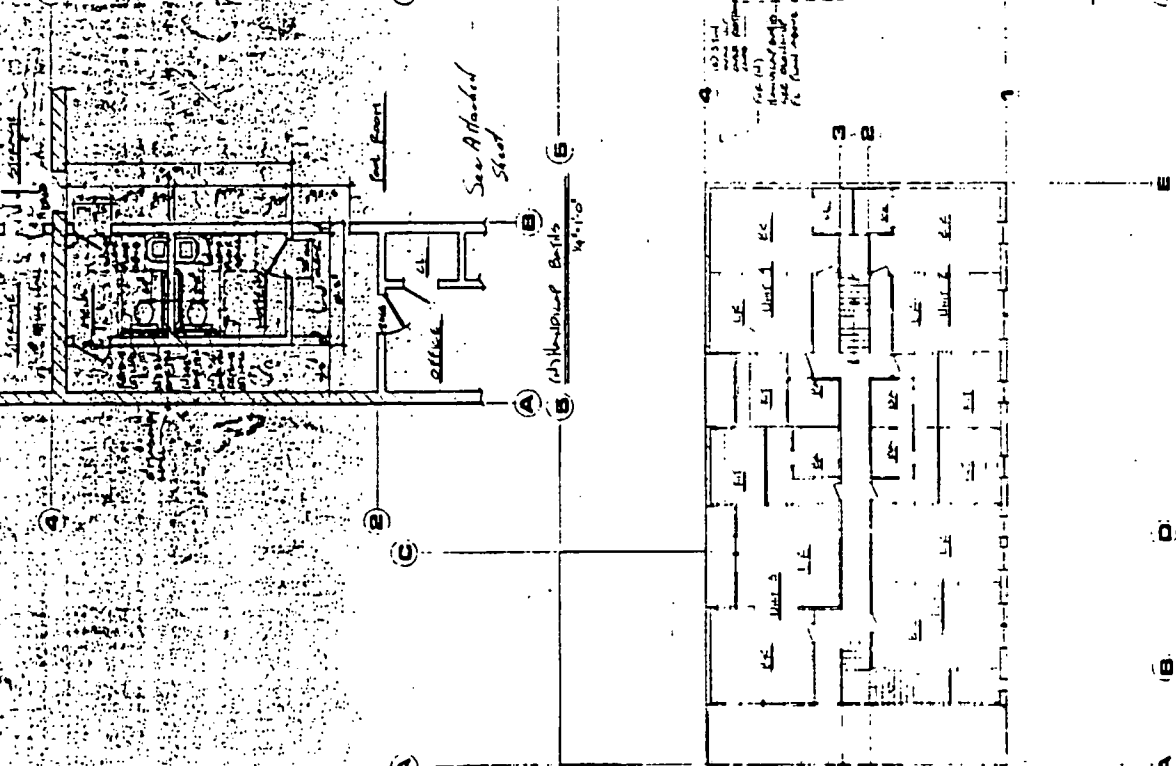
RECEIVED
JAN 11 1987
2885
1001 15th St.
San Diego, CA 92101
(619) 591-1000

RECEIVED
JAN 11 1987
2885
1001 15th St.
San Diego, CA 92101
(619) 591-1000

Handwritten notes in a circle:
THIS IS THE FIRST FLOOR PLAN
FOR THE JOE'S CORNER
RESTAURANT. THE PLAN
SHOWS THE LAYOUT OF THE
RESTAURANT AND THE
LOCATION OF THE RESTROOMS.
THE PLAN IS TO BE USED
FOR THE PURPOSES OF
THE INVESTIGATION.



FIRST FLOOR PLAN



SECOND FLOOR PLAN

12-17-87 14

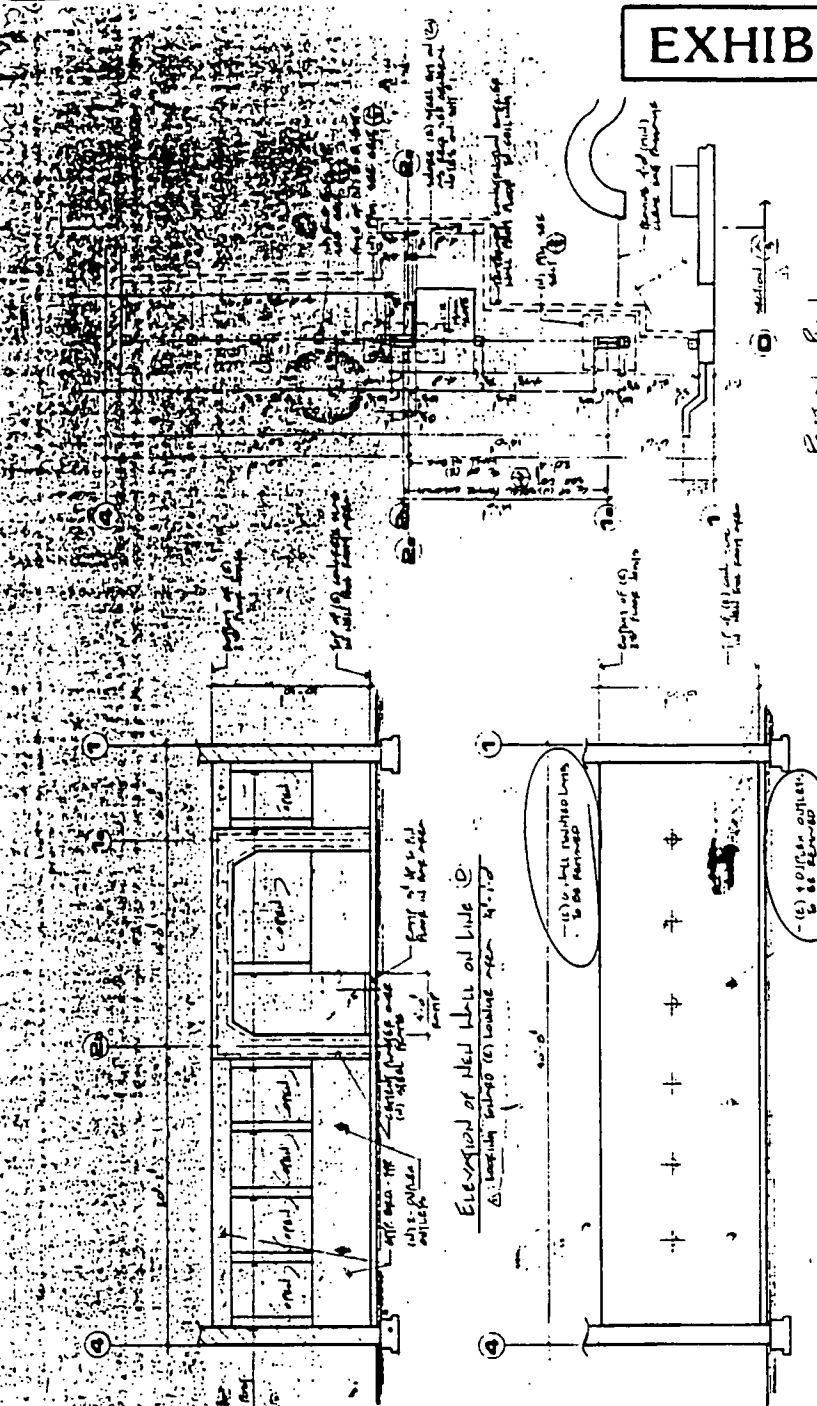
4

Joe's Corner
801 15th St.
Georgetown, CA 95024
(916) 447-3888

FBI N. OOOO
 STRUCTURAL DIVISION
 5 100

ARCHON ENGINEERING, INC.
Earl Odom & Associates
2216 O. St. N.D. 57
Bucaramento, CA. 95716
1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644,

EXHIBIT C



ELECTRICAL DIVISION

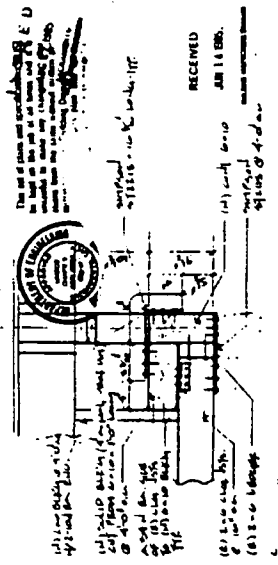
Willing to comply with The National Electrical Code—678
Offer providing electrical service for various equipment based on
contract work and gas priced per NEC 250.60. All electrical equip-
ment shall be UL listed. All features with no separate subcompo-
nent of non-potential wiring members. Service, sub feed, and
panels listed for ease of sample inventory for the calculated demand load per
NEC 250.70, 250.41, 250.5 & 250.10. Provides sufficient space for
working space for equipment per NEC 110.16. Provides disconnecting
means for conductors per NEC 430.102 and four meters per 430.9A.
City Amherst, Mass.

(11) (b) Technology and infrastructure factors; two steps provided

27 June 85

P.C. (A2)

New Wall





 Detail 6x10 Bay Building
 18' x 10' 18' x 10'



EXHIBIT D

CITY OF SACRAMENTO

CITY PLANNING DEPARTMENT

DEC 04 1987

RECEIVED

DEPARTMENT OF POLICE

HALL OF JUSTICE
813 6TH STREET

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 448-5121

JOHN P. KEARNS
CHIEF OF POLICE

December 3, 1987

Ref. 12-2

MEMORANDUM

TO: WILL WEITMAN, SENIOR PLANNER
CITY PLANNING DIVISION

FROM: JERRY V. FINNEY, ASSISTANT CHIEF
SACRAMENTO POLICE DEPARTMENT

SUBJECT: SPECIAL PERMIT FOR THE EXPANSION OF JOE'S CORNER BAR
(P-87-465)

Due to the severe crime problem and the opposition of the surrounding neighbors, the Police Department is opposing the request for the expansion of Joe's Corner Bar, located at 601 15th Street. We have also expressed our opposition to the State Alcoholic Beverage Control Commission.

For your information, during the first six months of 1987, we have received 270 Criminal Offense Reports and made 192 arrests in that area bounded by E and H Streets, 13th and 17th Streets. The arrests included 51 which were drug related, 46 for crimes against persons, 35 for prostitution and 21 for driving under the influence.

We feel that any expansion of an alcoholic beverage related business in this area will only lead to an increase in the existing problems and detract from the efforts being made to combat them.

JERRY V. FINNEY
Assistant Chief of Police

JVF/ks

12-17-87

12-17-87 16

Item #15

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19

EXHIBIT E

December 9, 1987

Mr. Frank Ramirez, Chairman
City Planning Commission
1231 I Street
Sacramento, California 95814

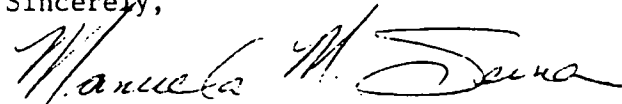
Dear Mr. Ramirez:

As a result of being contacted by one of your staff members, Ms Connie Spade, I have attached a packet of material submitted by a group of downtown residents to Alcoholic Beverage Control concerning Joe's Corner.

This group of downtown residents has been meeting since May of this year from a spin off of a community forum held by the Mayor's Hispanic Advisory Committee. This meeting was held as a result of residents complaining about the drugs, prostitution, and crime in the area. In attendance were a number of community based organizations, law enforcement agencies, and city officials, i.e. Mayor Rudin, District Attorney John Dougherty, Police Chief Kearns, Councilman Joe Serna. At this community forum residents signed up to form a group to deal with the problems in the area. The Mayor's Hispanic advisory Committee began to assist these residents with their concerns. There are many problems these residents have to face in this area. One of these problems is Joe's Corner and the illegal activity that goes on in and around this place. These concerns are reiterated on the attached protest forms submitted by the downtown residents to Alcoholic Beverage Control. It was this group of downtown residents who alerted the Alcoholic Beverage control of the illegal expansion activity going on in Joe's Corner.

It goes without saying that these downtown residents are completely opposed to Joe's Corner request to waive the required variance for parking.

Sincerely,



Manuela M. Serna, Chairperson
Mayor's Hispanic Advisory Committee

cc: Mayor Rudin.

44-765

10-10-87 17

Item 13



EXHIBIT F.

18
19

OFFICE OF THE
MAYOR

CITY OF SACRAMENTO
CALIFORNIA

ANNE RUDIN
MAYOR

CITY HALL
ROOM 205
915 I STREET
SACRAMENTO, CA
95814-2672

916-449-5300

Mr. John Sauderlund
Alcoholic Beverage Control
83 Scripts Drive, Suite 301
Sacramento, CA

Dear Mr. Sauderlund.

I have been kept informed by Manuella Serna, Chair of my Mayor's Hispanic Advisory Committee of the work they have been doing with our downtown residents. I am pleased that your agency has investigated the concerns of these residents regarding Joe's Corner. I understand that some violations were discovered and are in the process of being corrected.

At this time, I would like to express my support and concern for the downtown residents in cleaning up our community of illegal activity related to drugs, prostitution, and serving of alcoholic beverages to minors. I am in support of the downtown residents wanting reputable businesses that are compatible to the neighborhood and not businesses that are a nuisance and hinderance to residents and their families. Thank you once again for working with my committee.

Sincerely,

Anne Rudin
Mayor

12-17-91 18

Item # 15

EXHIBIT G



**BOARD OF SUPERVISORS
COUNTY OF SACRAMENTO**
700 H STREET, SUITE 2450 • SACRAMENTO, CA 95814

GRANTLAND JOHNSON
SUPERVISOR, FIRST DISTRICT
(916) 440-5485

June 9, 1987

Mr. John Sauderlund
Alcoholic Beverage Control
83 Scripps Drive, Suite 301
Sacramento, CA 95825

Dear Mr. Sauderlund:

I would like to support the Mayor's Hispanic Advisory Committee's efforts in working with downtown residents to clean up the area of drugs and crime.

During my tenure with the City Council, the Mayor's Hispanic Advisory Committee was an invaluable resource in combating drugs and crime though the Sacramento area.

I am pleased that your agency is working with downtown residents in eradicating illegal activities related to drugs or crimes.

The downtown area is part of my Supervisorial District. I am very concerned that businesses are reputable and compatible to residents in this area. Therefore, I support the committee's and residents' concern for a clean and safe community.

Sincerely,

Grantland Johnson
GRANTLAND JOHNSON, Supervisor
First District

GJ:kj

19

107-265

107-265

19

107-265



EXHIBIT H

Sacramento County
The Community of Trees



BOARD OF SUPERVISORS COUNTY OF SACRAMENTO

700 H STREET, SUITE 2450 • SACRAMENTO, CA 95814
(916) 440-5481

ILLA COLLIN
SUPERVISOR, SECOND DISTRICT

Joyce Mihanovich
Administrative Assistant

May 29, 1987

John P. Kearns, Chief
City Police Department
813 6th Street
Sacramento, California 95814



Dear Jack:

I am sorry I'm not able to join you and the Washington Neighborhood area residents to discuss problems in the area. I share the residents' concerns for the wonderful old area of our city which is currently experiencing a renaissance. There are many young families with small children in the area and they deserve the attention from the city and the police which will help them as they rebuild this section of our community.

There are three areas which have been reported to our office as problem sites by several sources.

- 1) Corner of 14th & E Streets on 14th St. side. Second house on the west side of the street across from a church.
- 2) Corner of D and 12th Streets. Second or third house on D Street, sits back in lot on north side (beyond empty lot behind rattan shop)
- 3) 624 14th Street

I'm quite concerned about the 624 14th Street address because there appears to be so many little children living in that building.

I hope the neighborhood discussion will lead to stricter police enforcement in the area. Our entire community needs to cleanse itself of the current drug scourge. However, in areas where the problem seems to be so rampant, I would like to encourage immediate action.

proposed

12-17-87

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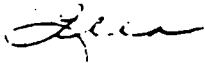
Exhibit H (continued)

18
19

John P. Kearns
May 28, 1987
Page 2

Thank you for your invitation. I'm sorry my schedule will not allow me to be present. If you have further questions, please call my office.

Sincerely,



ILLA COLLIN, Supervisor
Second District

IC:jt

cc: Dave Shore, City Councilman
Linda Boudier
Tim Quintero, Director, Alkali Flat PAC

87-132

1000000

21

1500000

EXHIBIT I

19

PHILIP F. DRIVER
THOMAS M. HUNT
DAVID R. DRIVER
THOMAS M. HUNT, JR.

PHILIP S. DRIVER (1890-1923)
B. F. DRIVER (1901-1951)
ROBERT S. DRIVER (1924-1975)

LAW OFFICES OF
DRIVER, DRIVER & HUNT
A PROFESSIONAL ASSOCIATION
101 DRIVER AND HUNT BUILDING
1220 H STREET
SACRAMENTO, CALIFORNIA 95814

TELEPHONE
(916) 443-6725

December 10, 1987

Will Weitman, Senior Planner
City Planning Division
1231 I. Street
Sacramento, California 95814

RE: Special permit for the expansion of Joe's Corner (P-87-465)

Dear Mr. Weitman:

Please be advised that we represent Mr. and Mrs. James C. Vogeli, owners of "Joe's Corner" at 601 - 15th Street, Sacramento; and that this letter is in response to letters sent you in opposition to their pending application for permit to enlarge the interior of Joe's.

The first letter being responded to is that of Manuela M. Serna dated December 9, 1987. Ms. Serna's letter states:

1. Illegal activities go on in Joe's; and
2. A group of downtown residents alerted the Alcoholic Beverage Control of the illegal expansion activity going on in Joe's Corner.

These are statements based upon hearsay, and they are vehemently denied by the Vogelis.

Ms. Serna attaches to her letter letters from Mayor Anne Rudin and Supervisor Grantland Johnson; both of which are addressed to Mr. John Sauderlund of the Alcoholic Beverage Control. Except for one statement of Mayor Rudin's letter, the Vogelis are 100% in accord with the contents of these letters. The statement is: "I understand that some violations were discovered and are in the process of being corrected". ABC has, as stated in Mayor Rudin's letter, investigated Joe's; and the Vogelis have not been advised of any violations and, in this respect, there have not been, nor are, any violations being corrected.

As to the remainder of Mayor Rudin's letter and as to whole of Supervisor Johnson's letter, the Vogelis take no exception. They are family oriented people and own the property at 601 - 15th Street; which not only houses Joe's Corner but, also, tenants who reside above the business. The Vogelis do not allow illegal activities in

187-465

12-17-87 22

Item #15

their premises, and do everything possible to keep such activities away from the immediate area of their property.

In reference to the letter of Police Chief John P. Kearns dated May 29, 1987, none of the properties described therein is that of our clients.

As to the memorandum from Assistant Chief of Police Jerry V. Finney dated December 3, 1987, please note that out of all the 270 criminal offense reports stated therein, there is no reference to any being at the premises of our clients.

In sum and substance:

1. All agree, including the VogelIs, that the area in question needs cleaning up. The VogelIs have been, presently are, and will continue to support and work towards doing so. Not only are they personally opposed to the type of activities within and about the area, they have a business and property investment to protect.
2. The VogelIs desire to re-open the small restaurant section of the premises for fast food. The application for special permit is merely to allow the customers at Joe's to take their beverage from the bar section into the other section.
3. There is an application pending before ABC for the same type of permit being sought from the City. Such application was pending and about to be acted upon when the City ordinance was passed; and, of course, this ordinance was passed after the City had granted a building permit to the VogelIs for revision of the restaurant portion of the premises and after such revisions were substantially made. If the City grants the special permit, there will then be an evidentiary hearing at ABC. It will be at this hearing that evidence will be presented for and against the application for expansion; and there will be for the first time an opportunity by the VogelIs to examine persons under oath who testify as to any illegal activities at Joe's.

Based upon the background of this matter, it would appear that the City should not at this point deny the application. Let ABC, which has complete knowledge of the background and present status of Joe's, conduct an evidentiary hearing; and based upon evidence, determine if a permit should or should not be granted.

Thank you.

Very truly yours,

THOMAS M. HUNT

TMH/cl

19

TO THE PLANNING DIRECTOR:

_____ Rezoning Application _____ Variance Application
xx _____ Special Permit Application 187 465

GROUNDS FOR APPEAL: (Explain in detail) 1) The use permit statute was not in effect at the time of issuance of my building permit nor was it in effect upon completion of construction. 2) Use permit was not in effect before nor during my 30 day A. B. C. posting period. 3) It prevents me from complying with State Handicap Laws.

(See attached)

PROPERTY DESCRIPTION:

FORWARDED TO CITY CLERK ON DATE OF:

P- 87-465

SG - (Original)

24

James C. Doyle

1. 8" Alia, living in western door and partition and
 2. One way mirror
 3. I don't all return to off side
 4. Only 1 dice box
 5. Removed mirror, public telephone
 6. Installed lights in parking lot.
 7. Moved front entrance box in front of building
 8. Moved three public telephones from in front
 of building.
 10. Reason for expense was relocation to maintain com-
 pletely correct premises.
 11. I have not a record that fail to cooperate to run
 my establishment in a clean and legal manner that
 the owner been personally approached by anyone from
 neighborhood, Sheraton or Dept. of C.B.C.
 from my establishment.

19

City of Sacramento
City Hall, City Council
915 I St. #203
Sacramento, Ca. 95814-2671

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
JAN 29 12 44 PM '88

19
con'd to
2/16/88

Reference: P-87465 Special Permit
601 15th St. Sac, Ca.

Jan 26, 1988

Dear Madam Mayor:
Dear Mr. Shore:
Dear Members of the City Council:

The Planning Commission had denied a Special Permit to allow for the expansion of a bar for the Joe's Corner in the past few weeks. We are applauded their decision because this is the only way to show them that they do care about our neighbors objections and our concerns for a safe living environment.

Our area in general is some what standard. We, property owners, are attempting to rejuvenate our neighborhood to have a positive effect on our standard of living. In 1986, we remodeled our building from a substandard to a high standard condition. We normally evicted at least one tenant in a month. Now, our tenants are respectable citizens who are gainfully employed, etc. Because of our special efforts as pioneers to upgrade this area, most of the neighbors follow our foot steps. As a result, most of buildings in our area have been up graded. We like to keep it that way because we have the positive attitude to do such thing: better neighborhood. And you can help us keep it that way as well.

Our area has experienced some high crime rate due to partly or mostly for the Bar being in our area. We do have street fights, drug addicts and drug transactions in the area, killings in the Joe's Corner, prostitutions, transients and winos terrorize our homes and belongings and dogs. Because we are the only concerned individuals who stand up and fight for such unlawful business in our neighborhood, the subject property, we do get threaten phone calls and evidence of attempting to do damage to our properties and lives. We do not afraid to fight for our cause. We can only WIN with your help and understanding. We do not need any more such business in our area since we already have enough problems with transients and winos who are constanly problemed us. We do call the police for assistance, but they can do so much. You can do someting to do neighborhood, by not granting them a used permit. Why should you grant them a Special Permit to expand the bar whereby most of these problems are attributable by them? As a matter of fact, you should consider closing them down or force them to move to another location because we do not want them around. Do us a good service by closing that place down. Therefore, request the Permit be denied and ask them to leave the area for our safety.

May we depend on you and keep our peace.

Sincerely,
Wallace Chin
Wallace Chin
DBA Capitol Investments & Projects
1424 F St. #1
Sacramento, Ca. 95814

P. 87465
18
19

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
JAN 5 10 52 AM '88

DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 200
SACRAMENTO, CA
95814-2998

BUILDING INSPECTIONS
916-449-5716

PLANNING
916-449-5604

December 31, 1987

MEMORANDUM

TO: Lorraine Magana, City Clerk
FROM: Roxanne Twilling
SUBJECT: Request to Set Public Hearing

P87-465 Appeal of the Planning Commission's Denial of a Special Permit to allow the expansion of a bar on 0.14+ developed acres in the General Commercial (C-2) zone. (D1) APN: 002-0171-002; located at 601 15th Street.

PFP DATE: none
HEARING DATE: 2-2-88
FINAL COUNCIL ACTION DATE:

SACRAMENTO CITY PLANNING DIVISION

Application Information

Application taken by/date: _____

Project Location 601 15th Street 1506 F Street
Assessor Parcel No. 002-0171-002
Owners James Vogeli Phone No. _____
Address 21 Grande Rio Circle Sacramento, CA 95826
Applicant owner Phone No. _____
Address _____

REQUESTED ENTITLEMENTS

ACTION ON ENTITLEMENTS

Commission date **Council date**

- ☒ Environ. Determination n/d w/omm BK 11-20-87
- ☐ General Plan Amend _____
- ☐ Community Plan Amend _____
- ☐ Rezone _____
- ☐ Tentative Map _____
- ☒ Special Permit to allow the expansion of a bar on 0.14 developed acres in the General Commercial (C-2) zone.
- ☒ Variance to waive 10 required parking spaces.
- ☐ Plan Review _____
- ☐ PUD _____
- ☐ Lot Line Adjustment _____
- ☐ Other _____

[illegible]

Sent to Applicant: _____ Date _____

By: _____
Sec. to Planning Commission

Key to Entitlement Actions

R — Ratified
A — Approved
AC — Approved W/conditions
AA — Approved W/amended conditions

D — Denied based on Findings of Fact
RD — Recommend Denial
RA — Recommend Approval
RAC — Recommend Approval W/conditions

RMC — Recommend Approval W/amended conditions
IAF — Intent to Approve based on Findings of Fact
AFF — Approved based on Findings of Fact
PDAC — Planning Director Approved with Conditions

EXPIRATION

EXPIRATION
VARIANCE: Any variance involving an action which requires a building permit shall expire at the end of one year unless a building permit is obtained within the variance term.

SPECIAL PERMIT: A use for which a Special Permit is granted must be established within two years after such permit is issued. If such use is not so established the Special Permit shall be deemed to have expired.

TENTATIVE MAP: Failure to record a final map within 2 years of the date of approval or conditional approval of a tentative map shall terminate all proceedings.

NOTE: Violation of any of the foregoing conditions will constitute grounds for revocation of this permit. Building permits are required in the event any City Assessor is notified of actions taken on rezonings, special permits and variances.

PP 87-465

Pink — permit book

Sacramento City Planning Commission VOTING RECORD

MEETING DATE
December 17, 1987

ITEM NUMBER
15B

PERMIT NUMBER
P87-465

ENTITLEMENTS

- | | |
|--|---|
| <input type="checkbox"/> GENERAL PLAN AMENDMENT | <input type="checkbox"/> TENTATIVE MAP |
| <input type="checkbox"/> COMMUNITY PLAN AMENDMENT | <input type="checkbox"/> SUBDIVISION MODIFICATION |
| <input type="checkbox"/> REZONING | <input type="checkbox"/> LOT LINE ADJUSTMENT |
| <input checked="" type="checkbox"/> SPECIAL PERMIT | <input type="checkbox"/> ENVIRONMENTAL DET. |
| <input type="checkbox"/> VARIANCE | <input type="checkbox"/> OTHER _____ |

STAFF RECOMENDATION

☐ Favorable ☒ Unfavorable

☐ Correspondence

☐ Petition

LOCATION

601 15th Street + 1506 F Street

P
R
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S

NAME	ADDRESS
Tom Hunt	1220 N Street, Suite 101, Sacto.

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NAME	ADDRESS
Manuela Serma	1700 N Street, Sacto.
Mrs. Hotista	1501 F " "
Artesti	" " " "
Jim Barclay	(Police Dept.) - 813 6 th Street, Sacto.
Martha Bustamonte	408 10 th Street, Sacto.

MOTION #

	Yes	No	Motion	Second
--	-----	----	--------	--------

CHINN	✓			
FERRIS	✓			
HOLLICK	✓			
HOLLOWAY	✓			
ISHMAEL	✓			✓
NOTESTINE	✓			
OTTO	✓			✓
WALTON	✓			
RAMIREZ	✓			

PLANNING AND DEVELOPMENT

MOTION

- | | |
|--|---|
| <input type="checkbox"/> TO APPROVE | <input type="checkbox"/> TO RECOMMEND APPROVAL & FORWARD TO CITY COUNCIL |
| <input type="checkbox"/> TO DENY | <input type="checkbox"/> TO RECOMMEND APPROVAL SUBJECT TO COND. & FORWARD TO CITY COUNCIL |
| <input type="checkbox"/> TO APPROVE SUBJECT TO COND. & BASED ON FINDINGS OF FACT IN STAFF REPORT | <input type="checkbox"/> TO RATIFY NEGATIVE DECLARATION |
| <input checked="" type="checkbox"/> TO APPROVE/DENY BASED ON FINDINGS OF FACT IN STAFF REPORT | <input type="checkbox"/> TO CONTINUE TO _____ MEETING |
| <input type="checkbox"/> INTENT TO APPROVE/DENY SUBJECT TO COND. & BASED ON FIND. OF FACT DUE | <input type="checkbox"/> OTHER _____ |

NOTICE OF APPEAL OF THE DECISION OF THE SACRAMENTO CITY PLANNING COMMISSION

DATE: December 28, 1987

TO THE PLANNING DIRECTOR:

I do hereby make application to appeal the decision of the City
Planning Commission of December 17, 1987 when:
(Date)

Rezoning Application

Variance Application

yx Special Permit Application 187 465

was: Granted XX Denied by the Commission

GROUNDS FOR APPEAL: (Explain in detail) 1) The use permit statute was not in effect at the time of issuance of my building permit nor was it in effect upon completion of construction. 2) Use permit was not in effect before nor during my 30 day A. B. C. posting period. 3) It prevents me from complying with State Handicap Laws.

(See attached)

PROPERTY LOCATION: 601 15th Street Sacramento, California

PROPERTY DESCRIPTION:

ASSESSOR'S PARCEL NO. 002 - 171 - 002

PROPERTY OWNER: James C. Vogeli and Mary F. Vogeli

ADDRESS: 21 Grand Rio Circle Sacramento, California 95826

APPLICANT: James C. Vogeli

ADDRESS: 21 Grand Rio Circle Sacramento, California 95826

APPELLANT: James C. Vogeli (James C. Vogeli)
(SIGNATURE) PRINT NAME

ADDRESS: 21 Grand Rio Circle Sacramento, California 95826

FILING FEE:

by Applicant: \$105.00 RECEIPT NO.

by 3rd party:	60.00
---------------	-------

FORWARDED TO CITY CLERK ON DATE OF:

P- 87-465

5/82

DISTRIBUTE TO -
(4 COPIES REQUIRED) : MVD

AG
WW
RT
SG - (Origin

The father numerous steps to eliminate undesirable elements from my establishment.

- 1-8" Alvin. Active in northern doors and partitions and locked room system.
- 2- One very minor
- 3- I don't all return to off sale
- 4- Only 1 dice box
- 5- Removed under public telephone
- 6- Installed lights in parking lot.
- 7- Bought new concrete planter box in front of building
- 8- Removed three public telephones from in front of building.

- 10- Reason for expansion was relocation to maintain competitive contract of premises.
- 11- I have not received but fail to cooperate to run my establishment in a clean and legal manner but I've never been personally approached by anyone from neighborhood, Sherbourne Office or Dept. of C.B.C.

James C. Doyle

January 29, 1988

Wallace Chin dba
Capitol Investments and Projects
1424 F Street Room 1
Sacramento CA 95814

Dear Mr. Chin:

On February 2, 1988, the following matter was scheduled to be heard before the City Council:

P-87465 Appeal of the Planning Commission's Denial of a Special Permit to allow the expansion of a bar on 0.14⁺ developed acres in the General Commerical (C-2) zone.

This hearing has been continued to February 16, 1988 at the hour of 7:30 p.m., in the City Council Chamber, Second Floor, City Hall, 915 "I" Street, Sacramento California. Interested parties may appear and speak at the hearing. A copy of your letter dated January 26, 1988 will be given to each City Councilmember.

If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk at or prior to the public hearing.

Sincerely,

LORRAINE MAGANA, CITY CLERK

Janice Beaman
Deputy City Clerk

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19

OFFICE OF THE
CITY CLERK

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 203
915 I STREET
SACRAMENTO, CA
95814-2671

March 11, 1988

916-449-5426

Mr. James C. Vogeli
21 Grand Rio Circle
Sacramento, CA 95826

Dear Mr. Vogeli:

On March 8, 1988, the Sacramento City Council heard your appeal from the City Planning Commission's Denial of a Special Permit to allow the expansion of a bar on 0.14± developed acres in the General Commercial (C-2) zone for property located at 601 15th Street. (P-87465) .

The Council denied your appeal based on Findings of Fact which is enclosed.

Sincerely,

Lorraine Magana
City Clerk

LM/rcr/#19

cc: Art Gee, Planning Department



CITY OF SACRAMENTO
CITY CLERK

CASHIER'S RECEIPT

FY 86/87 - 03640

DATE 4/13

Paid By: Alan H. Edelstein

Amount: \$75

Credit:

101

070

0700

3649

Fund

Agency

Org.

Obj. Cd.

Job #

Description Legal document

*Kathleen
443-6400*

CITY OF SACRAMENTO
PAID - 1

APR 1988

CITY CLERKS OFFICE

Received by: [Signature]

CC-40

White: Office

Yellow: Customer

Pink: Cashiering

19

LAW OFFICES OF
ALAN L. EDELSTEIN
1225 8TH STREET, SUITE 570
SACRAMENTO, CALIFORNIA 95814

ALAN L. EDELSTEIN
ATTORNEY AT LAW
CALIFORNIA AND PENNSYLVANIA BARS

April 8, 1988

AREA CODE 916
TELEPHONE 443-6400

Janice M. Beaman
Deputy City Clerk
City of Sacramento
City Hall, Room 300
915 I Street
Sacramento, CA 95814-2671

Re: Joe's Corner
P87-465

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
APR 11 2 17 PM '88

Dear Ms. Beaman:

Pursuant to our conversation in your offices on Wednesday, April 6, 1988, enclosed please find our check in the amount of \$75.00 for the deposit necessary to obtain the records we requested in our previously letter.

Should you have any questions, or need further clarification of records needed, please do not hesitate to contact us. Thank you in advance for your continued cooperation.

Sincerely,

Kathleen S. Treichak

Kathleen S. Treichak,
Secty. to Mr. Edelstein

/kst
Enclosures

*Manuscript not been picked up.
Have contacted Kathleen
several times & no response.
Owed \$145.50 - received ~~deposit~~
deposit of \$75 but still owe
\$145.50. J
6-30-88*

*Deposited
4-13-88*

LAW OFFICES OF
ALAN L. EDELSTEIN
1225 8TH STREET, SUITE 570
SACRAMENTO, CALIFORNIA 95814

ALAN L. EDELSTEIN
ATTORNEY AT LAW
CALIFORNIA AND PENNSYLVANIA BARS

19
RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
APR 1 2 39 PM '88

AREA CODE 916
TELEPHONE 443-6400

March 30, 1988

Lorraine Magana, City Clerk
City of Sacramento
City Hall, Room 203
Sacramento, California 95814-2671

Re: P87-465
Denial of Special Permit
Appeal of James C. and Mary Vogeli

Dear Ms. Magana:

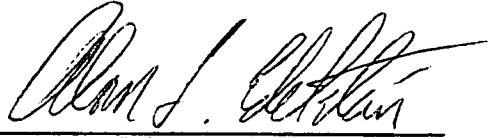
You are hereby requested by James C. and Mary Vogeli, a party in the above proceedings before the Sacramento City Planning Commission and the Sacramento City Council, to prepare and deliver to the undersigned, Alan L. Edelstein, the record in these proceedings, including:

1. All pleadings;
2. All notices and order issued by the City or any of its agencies or departments;
3. All proposed decisions of the City or any of its agencies or departments;
4. All final decisions of the City or any of its agencies or departments;
5. A transcript of all proceedings of the City or any of its agencies or departments;

Ms. Lorraine Magana
March 30, 1988
Page Two

6. All exhibits admitted or rejected;
7. All written evidence;
8. Any other papers in the case.

DATED: 3/30/88



Alan L. Edelstein
Attorney for James C.
and Mary Vogeli

ALE:kst
cc: Deputy City Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is 1225 Eighth Street, Suite 570, Sacramento, California 95814.

On 3/30/88, 1988, I served the foregoing document described as LETTER REQUESTING CITY RECORDS on the City Clerk for the City of Sacramento by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ms. Lorraine Magana, City Clerk
City of Sacramento
City Hall, Room 203
Sacramento, California 95814-2671

✓ (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California. Executed on 3/30/88, 1988, at Sacramento, California.

(By Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on _____, 1988, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Kathleen S. Treichak
Typed or printed name

Kathleen S. Treichak
Kathleen S. Treichak

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
APR 7 11 11 AM '88
re

ALAN L. EDELSTEIN
Attorney at Law
1225 Eighth Street, Suite 570
Sacramento, California 95814
(916) 443-6400

Attorney for Petitioners,
JAMES C. AND MARY VOGELI

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

JAMES C. VOGELI
and MARY VOGELI,

Petitioners,

v.

CITY COUNCIL OF THE CITY
OF SACRAMENTO,

Respondent.

No.
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF WRIT OF
MANDAMUS, OR IN THE
CONJUNCTIVE OR ALTER-
NATIVE, FOR DECLARATORY
RELIEF

- ADMINISTRATIVE MANDAMUS IS THE APPROPRIATE MEANS TO OBTAIN JUDICIAL REVIEW OF ANY FINAL ADMINISTRATIVE ADJUDICATORY DECISION OR ORDER. CCP Section 1094.5. Drummey v. State Board of Funeral Directors (1939) 13 Cal2d 75, 82-85, 87 P2d 848.

This action involves the final administrative decision of Respondent, the City Council of Sacramento. The decision of Respondent is adjudicatory in nature in that it specifically applies to Petitioners' interest alone and was not a legislative act applicable to all persons or a class of persons.

- A PETITION FOR A WRIT OF MANDATE IS PROPER TO CHALLENGE THE CONSTITUTIONALITY OF A STATUTE OR OFFICIAL ACT. Jolicoeur v. Mihaly (1971) 5 C3d 565, 570 fn 2, 96 Cal Rptr 697; Metropolitan Water Dist. v. Marquardt (1963) 59 C2d 159, 170-171, 28 CalRptr 724.

1 In this action, Petitioners contend, among other things,
2 that Respondent's official act of requiring issuance of a special
3 use permit violated Petitioners' rights to due process under the
4 constitutions of the United States and the State of California.
5 As discussed in Petitioners' Petition, Respondent violated their
6 rights to due process by applying Ordinance 87-077 to Petitioners
7 despite the fact that Petitioners had acquired vested rights to
8 complete the project prior to the enactment of said ordinance.

9 3. IT IS A VIOLATION OF DUE PROCESS TO APPLY A NEWLY
10 ENACTED PERMIT REQUIREMENT TO A PROJECT AFTER THE
11 INTERESTED PARTY HAS ACQUIRED VESTED RIGHTS. IN
12 VIOLATING PETITIONERS' DUE PROCESS RIGHTS, RESPONDENT
13 ABUSED ITS DISCRETION AND DID NOT PROCEED IN A MANNER
14 REQUIRED BY LAW.

15 After a right is vested, changes in the law cannot affect
16 the right to complete the project as approved. In County of San
17 Diego v. McClurken, (1951) 37 C2d 683, 691, 234 P2d 972, the
18 California Supreme Court described the doctrine as follows:

19 "If an owner has legally undertaken the construction of
20 a building before the effective date of a zoning
21 ordinance, he may complete the building and use it for
22 the purpose designed after the effective date of the
23 ordinance. Protection of an undertaking involving the
24 investment of capital, the purchase of equipment, and
25 the employment of workers, is akin to the protection of
26 a non-conforming use existing at the time that zoning
27 restrictions become effective. The same principal
28 underlies the rule that a permittee who has expended
substantial sums under a permit cannot be deprived by a
subsequent zoning ordinance of the right to complete
construction and to use the premises as authorized by
the permit." 37 C2d at 691.

29 There is a two-prong test used to determine if a party has
30 acquired vested rights to complete a project. The first prong is
31 whether the local agency has given all discretionary approvals
32 prior to commencement of the project. The key determinant of
33

34 / / /

1 this prong is often whether the local agency has issued the last
2 permit necessary for construction or conducted itself in such a
3 manner that would indicate a permit is not required. Halaco
4 Engineering Co. v. South Central Coast Reg. Commission, (1986) 42
5 C3d 52, 227 CalRptr 667, Penn-Co v. Board of Supervisors, (1984)
6 158 CalApp 3d 1072, 205 CalRptr 298.

7 If the last permit necessary for construction has been
8 issued by the local agency, and the second prong of the test has
9 been met, the party's rights vest regardless of the fact that
10 another agency at a different level of government has not issued
11 approvals required of the party. Monterey Sand Co. v. California
12 Coastal Commission, (1987) 191 CalApp 3d 17, 236 CalRptr 315,
13 Halaco, supra.

14 In this case, Petitioners met the first prong of the vested
15 rights test in that they obtained a valid building permit from
16 the City of Sacramento prior to construction. Moreover, they
17 obtained every inspection and approval required during the course
18 of construction and a final approval.

19 The second prong of the vested rights test is whether there
20 has been substantial work performed in good faith reliance on the
21 permit after it was issued and before the law was changed. In
22 "small" projects, the test involves a comparison of the amount
23 expended in relation to the total costs. When virtually all of
24 the work was completed prior to the enactment of the ordinance,
25 as is the case in this action, the second prong is satisfied.
26 Highland Development Co. v. City of Los Angeles, (1985) 170
27 CalApp 3d 169, 187, 215 CalRptr 881.

28 / / /

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CITY CLERKS OFFICE
CITY OF SACRAMENTO
MAR 7 11 11 AM '88

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CITY CLERKS OFFICE
CITY OF SACRAMENTO

MAR 7 1988

1 Since Petitioners spent virtually the entire amount needed
2 for the project prior to the enactment of the ordinance, the
3 project has met the second prong of the vested rights test.

4 Under the facts of this case and the law, Petitioners had
5 acquired vested rights to complete the project and it was, there-
6 fore, a violation of due process to apply Ordinance 87-077 to the
7 project. In violating Petitioners' due process rights,
8 Respondent engaged in a prejudicial abuse of its discretion and
9 failed to proceed in a manner required by law, i.e. a constitu-
10 tional manner.

4. IT IS IMPERMISSIBLE TO ENACT AN ORDINANCE FOR THE
PURPOSE OF DEFEATING A SPECIFIC PROJECT AFTER A PERMIT
HAS BEEN ISSUED.

11 It is well settled that it is impermissible to enact an
12 ordinance for the purpose of defeating a specific project after a
13 permit has been issued. Griffin v. Marin, (1954) 157 CalApp 2d
14 507, 272 P2d 519. Several recent cases, though holding against
15 the petitioners, made it clear that the doctrine is still alive:
16 a change in an ordinance is inapplicable if the enactment stems
17 from an attempt to frustrate a project. Avco Community
18 Developers, Inc. v. South Coast Regional Commission, (1986) 17
19 C3d 52, 227 CalRptr 667, Selby v. San Buenaventura, (1973) 10 C3d
20 110, 126 n. 11, 109 CalRptr 799 .

21 In the current case, Petitioners' application for a special
22 use permit was denied by Respondent's Planning Commission, and
23 the denial was upheld by Respondent, because Respondent and its
24 Planning Commission were attempting to carry out the purpose for
25 which Respondent enacted Ordinance 87-077: to prevent Peti-

26 / / /

1 tioners' project from being completed even though a building
2 permit had been issued.

3 5. ON REVIEWING A FINAL ADMINISTRATIVE ADJUDICATORY ORDER
4 OR DECISION, WHEN IT IS ALLEGED THAT THE EVIDENCE DOES
5 NOT SUPPORT THE FINDINGS, THE COURT IS AUTHORIZED TO
6 EXERCISE ITS INDEPENDENT JUDGMENT ON THE EVIDENCE, AND
7 TO DETERMINE WHETHER THE FINDINGS ARE SUPPORTED BY THE
8 WEIGHT OF THE EVIDENCE, WHEN BOTH (A) THE ORDER OR
9 DECISION SUBSTANTIALLY AFFECTS A VESTED FUNDAMENTAL
10 RIGHT OF THE PETITIONER AND (B) THE RESPONDENT IS NOT
11 DIRECTLY AUTHORIZED BY THE CONSTITUTION TO EXERCISE
12 JUDICIAL FUNCTIONS.

13 A. Reviewing Weight of Evidence. When it is claimed
14 that the findings are not supported by the evidence, in cases in
15 which the court is authorized by law to exercise its independent
16 judgment on the evidence, abuse of discretion is established if
17 the court determines that the findings are not supported by the
18 weight of the evidence. CCP Section 1094.5(c).

19 In this action, Petitioners allege, among other things, that
20 the findings are not supported by the evidence. In Paragraph
21 4.b.(1), (2) and (3) of their Petition, Petitioners allege that
22 Respondent's findings completely fail to consider vital evidence
23 regarding the applicability of the ordinance to Petitioners'
24 project. In Paragraph 4.b.(4), (5), (6), (7) and (8) of their
25 Petition, Petitioners allege with specific facts that
26 Respondent's findings are clearly erroneous. As discussed below,
27 this is a case in which the Court is authorized to exercise its
28 independent judgment. In such cases, abuse of discretion is
established if the Court determines that the findings are not
supported by the weight of the evidence. In this case, the
findings cannot meet the weight of the evidence test.

///

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CITY CLERKS OFFICE
CITY OF SACRAMENTO
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1 B. Authority to Exercise Independent Judgment. A
2 court is authorized to exercise its independent judgment on the
3 evidence when the administrative order or decision attacked
4 substantially affects a vested fundamental right of the
5 Petitioner and the respondent agency is not directly authorized
6 by the Constitution to exercise judicial functions. Strumsky v.
7 San Diego County Employee's Retirement Association, (1974) 11 C3d
8 28, 32, 35, 112 CalRptr 805.

9 In this case, Petitioners had a vested fundamental right in
10 that they had already obtained a valid building permit to build
11 the project. That right was substantially affected by
12 Respondent's decision; it was totally destroyed. The Respondent
13 City Council is not directly authorized by the Constitution to
14 exercise judicial functions.

15 C. Effect of Decision on Petitioners' Rights. The
16 courts must decide, on a case-by-case basis, whether some funda-
17 mental and basic right of the Petitioner will suffer substantial
18 interference because of the administrative order or decision
19 attacked and, if so, whether that right is possessed by and
20 vested in the Petitioner rather than merely sought by him. Bixby
21 v. Pierno (1971) 4 C3d 130, 144, 93 CalRptr 234.

22 The right to build was, as discussed earlier, "vested" for
23 the purposes of constitutionally-imposed due process require-
24 ments. The right was not merely being sought. While a right
25 need not be "vested" for constitutional purposes to be "vested"
26 for "independent judgment" purposes, in this case the same
27 factors that compel a finding of vesting for due process purposes
28 compel the same finding for independent judgment purposes: the

1 final building permit had been obtained and substantial work had
2 been done and funds expended in good-faith reliance thereon.
3 Moreover, Respondent's agents, during the course of several
4 interim building inspections, never questioned the validity of
5 the permit or the project.

6 D. "Fundamental" Denotes Important Right Not Necessar-
7 ily of Constitutional Dimension. For purposes of determining
8 the applicability of independent judgment review, the term "fun-
9 damental" denotes a right or interest that is important to
10 individuals in their life situations. The right or interest need
11 not be "fundamental" in a constitutional sense that gives rise to
12 due process or equal protection, but need only be of such sub-
13 stantial importance as to warrant independent judgment review.
14 Berlinghieri v. Department of Motor Vehicles (1983) 33 C3d 392,
15 397-398, 188 CalRptr 891. Thus, the mere preservation of purely
16 economic privileges will not likely be deemed "fundamental,"
17 while a basic human right such as the right to pursue a lawful
18 business or occupation will be "fundamental." Bixby v. Pierno
19 (1971) 4 C3d 130, 145-146, 93 CalRptr 234.

20 As discussed above, Petitioners' rights were "vested" in a
21 constitutional sense. However, even if the Court finds that the
22 rights were not vested for constitutional purposes, the facts
23 still compel a finding of "vesting" for independent judgment
24 purposes. Petitioners had already obtained a permit; they were
25 not applicants for one. The issue at stake substantially affects
26 their ability to make a living and the value and marketability of
27 their business and property. As discussed in the Petition,
28 Respondent's actions have left the Petitioners in limbo in regard

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1 to the use of the project area. Respondent's action has sub-
2 stantially interfered with Petitioners' rights.

3 E. "Fundamental" and "Vested" Not Absolutes but Are
4 Weighed Together. For purposes of determining the applicability
5 of independent judgment review, the terms "fundamental" and
6 "vested" are not used to establish absolutes but are used in a
7 relative sense. It is the weighing of both the fundamental and
8 vested nature of the right that determines whether independent
9 judgment review is required. In other words, the importance and
10 effect of the right is weighed together with the degree to which
11 that right is possessed, to determine whether independent judg-
12 ment review is required. Frink v. Prod (1982) 31 C3d 166, 177-
13 178, 181 CalRptr 893. Thus, for example, when the degree to
14 which a right is vested is not overwhelming but the degree of
15 fundamentalness is, independent judgment review may nevertheless
16 be required. Id. at 180.

17 In the current case, the right was clearly vested in that a
18 lawful permit had been obtained. And the right is clearly funda-
19 mental in that it is integrally part of the Petitioners' ability
20 to make a living and it substantially affects a business and
21 piece of property which is a centerpiece of their financial
22 future.

23 Petitioners contend that this case clearly requires the
24 Court's independent judgment of whether the findings are sup-
25 ported by the weight of the evidence. However, should the "sub-
26 stantial evidence" test be found to apply, Petitioners contend
27 that, in light of the whole record, the evidence does not support
28 the findings under that test. As discussed in both the Petition

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1 and previously in these Points and Authorities, the evidence
2 establishes that Ordinance 87-077 is inapplicable to the Peti-
3 tioners' project, and yet, the Notice of Decision and Findings of
4 Fact apply said ordinance to the project. (Petition, Paragraph
5 4.b.(1), (2) and (3).) The evidence also clearly establishes
6 that the Findings were erroneous in virtually every significant
7 factual determination made and conclusion drawn. (Petition,
8 Paragraph 4.b.(4), (5), (6), (7) and (8). Whether judged by the
9 independent judgment/weight of the evidence test or by the
10 substantial evidence test, Respondent's Findings of Fact are not
supported by the evidence.

6. THE WRIT MUST BE ISSUED IN ALL CASES WHERE THERE IS NOT
A PLAIN, SPEEDY AND ADEQUATE REMEDY, IN THE ORDINARY
COURSE OF LAW. CCP Section 1086.

As discussed in the above Petition and earlier in these
points and authorities, Respondent's action has left Petitioners
with a major investment in jeopardy, with a significant part of
their building unusable, and with a piece of property and busi-
ness whose value and marketability are substantially decreased.
As discussed above in the Petition (Paragraph 12), Petitioners
cannot make a rational, business-like decision regarding the
property until this issue is resolved. They have already
expended substantial sums relating to this project and, because
of Respondent's actions, cannot now recoup these sums. The
remedy requested in the Petition is the only one available that
will provide the speedy, certain answer they require to move
forward and attempt to recoup the funds.

7. THE COURT IN WHICH A PETITION FOR WRIT OF MANDATE TO
REVIEW AN ADMINISTRATIVE ADJUDICATORY ORDER OR DECISION

1 IS FILED MAY STAY OPERATION OF THE ORDER OR DECISION
2 PENDING JUDGMENT, IF THE COURT IS SATISFIED THAT A
3 STAY IS NOT AGAINST THE PUBLIC INTEREST. CCP Section
4 1094.5(f).

5 In this action, a stay is not against the public interest.
6 As described in the Petition, Petitioners took an unused, closed-
7 up restaurant and made it part of an existing establishment, and
8 in the process installed handicapped-accessible restrooms and
9 modernized the kitchen. Using the completed project will result
10 in a net increase of four seats, two tables and one pool table.
11 The public interest will not be damaged by this use. In
contrast, as discussed above, Petitioners continue to be
significantly damaged as a result of Respondent's action.

8. IN ANY CIVIL PROCEEDING FOR REVIEW OF A FINAL ADMINI-
STRATIVE ADJUDICATORY ORDER OR DECISION (EXCEPT ONE
MADE BY THE STATE BOARD OF CONTROL), WHEN IT IS SHOWN
THAT THE ORDER OR DECISION WAS THE RESULT OF ARBITRARY
OR CAPRICIOUS ACTION OR CONDUCT BY A PUBLIC AGENCY OR A
PUBLIC OFFICIAL IN HIS OFFICIAL CAPACITY, THE COMPLAIN-
ANT, IF HE PREVAILS, MAY COLLECT REASONABLE ATTORNEY'S
FEES, NOT EXCEEDING \$1,500, WHEN HE IS PERSONALLY
OBLIGATED TO PAY SUCH FEES. Gov C Section 800.

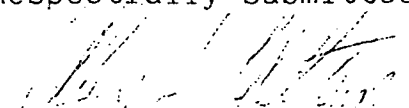
As shown in the Petition (Paragraph 8), Petitioners are
personally obligated to pay their attorney's fees. As also
shown in the Petition, Respondent acted arbitrarily and
capriciously in applying Ordinance 87-077 to Petitioners' project
when it was clear under the vested rights rule and the plain and
logical meaning of the ordinance that it was inapplicable to the
project. Respondent's actions were additionally arbitrary and
capricious because Respondent did not consider or address
Petitioners' contentions regarding the inapplicability of the
ordinance in its deliberations or in its Notice of Decision and
Findings of Fact. Respondent's action was further arbitrary and

1 capricious in that the ordinance under which it acted was passed
2 for the purpose of preventing Petitioners' project even though
3 Petitioners had already obtained a valid building permit.
4 Lastly, Respondent's action was arbitrary and capricious in that
5 Respondent's Findings of Fact are contrary to the facts
6 presented.

7 CONCLUSION

8 Based on the law and the facts, Petitioners respectfully
9 submit that the Court must issue a writ of mandate ordering
10 Respondent to set aside its Notice of Decision and Findings of
11 Fact and to issue a decision stating that Ordinance 87-077 is not
12 applicable to Petitioners' project. Conjunctively or
13 alternatively, Petitioners respectfully submit that this Court
14 must, under the law and the facts, issue a declaratory judgment
15 holding that Ordinance 87-077 is inapplicable to the project at
16 issue. Petitioners also respectfully submit that, should this
17 Court find that Ordinance 87-077 is applicable to the project, a
18 writ is nevertheless required. Petitioners contend that under
19 either the independent judgment test or the substantial evidence
20 test, Respondent's Findings of Fact are not supported by the
21 evidence and that, therefore, the Court must issue a writ
22 ordering Respondent to set aside its Notice of Decision and
23 Findings of Fact and to adopt a decision and findings that are
24 supported by the evidence.

25 Respectfully submitted,

26
27 
28 ALAN L. EDELSTEIN,
Attorney for Petitioners

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VOGELI V. CITY COUNCIL OF CITY OF SACRAMENTO
MEMORANDUM OF POINTS AND AUTHORITY IN SUPPORT OF
WRIT OF MANDAMUS

TABLE OF CONTENTS

1.	ADMINISTRATIVE MANDAMUS IS THE APPROPRIATE MEANS TO OBTAIN JUDICIAL REVIEW OF ANY FINAL ADMINISTRATIVE ADJUDICATORY DECISION OR ORDER. CCP Section 1094.5	1
2.	A PETITION FOR A WRIT OF MANDATE IS PROPER TO CHALLENGE THE CONSTITUTIONALITY OF A STATUTE OR OFFICIAL ACT.	1
3.	IT IS A VIOLATION OF DUE PROCESS TO APPLY A NEWLY ENACTED PERMIT REQUIREMENT TO A PROJECT AFTER THE INTERESTED PARTY HAS ACQUIRED VESTED RIGHTS. IN VIOLATING PETITIONERS' DUE PROCESS RIGHTS, RESPONDENT ABUSED ITS DISCRETION AND DID NOT PROCEED IN A MANNER REQUIRED BY LAW.	2
4.	IT IS IMPERMISSIBLE TO ENACT AN ORDINANCE FOR THE PURPOSE OF DEFEATING A SPECIFIC PROJECT AFTER A PERMIT HAS BEEN ISSUED.	4
5.	ON REVIEWING A FINAL ADMINISTRATIVE ADJUDICATORY ORDER OR DECISION, WHEN IT IS ALLEGED THAT THE EVIDENCE DOES NOT SUPPORT THE FINDINGS, THE COURT IS AUTHORIZED TO EXERCISE ITS INDEPENDENT JUDGMENT ON THE EVIDENCE, AND TO DETERMINE WHETHER THE FINDINGS ARE SUPPORTED BY THE WEIGHT OF THE EVIDENCE, WHEN BOTH (A) THE ORDER OR DECISION SUBSTANTIALLY AFFECTS A VESTED FUNDAMENTAL RIGHT OF THE PETITIONER AND (B) THE RESPONDENT IS NOT DIRECTLY AUTHORIZED BY THE CONSTITUTION TO EXERCISE JUDICIAL FUNCTIONS.	5
	A. Reviewing Weight of Evidence.	5
	B. Authority to Exercise Independent Judgment.	6
	C. Effect of Decision on Petitioners' Rights.	6
	D. "Fundamental" Denotes Important Right Not Necessarily of Constitutional Dimension.	7
	E. "Fundamental" and "Vested" Not Absolutes but Are Weighed Together.	8
6.	THE WRIT MUST BE ISSUED IN ALL CASES WHERE THERE IS NOT A PLAIN, SPEEDY AND ADEQUATE REMEDY, IN THE ORDINARY COURSE OF LAW.	9
7.	THE COURT IN WHICH A PETITION FOR WRIT OF MANDATE TO REVIEW AN ADMINISTRATIVE ADJUDICATORY ORDER OR DECISION IS FILED MAY STAY OPERATION OF THE ORDER OR DECISION PENDING JUDGMENT, IF THE COURT IS SATISFIED THAT A STAY IS NOT AGAINST THE PUBLIC INTEREST.	9

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8. IN ANY CIVIL PROCEEDING FOR REVIEW OF A FINAL
ADMINISTRATIVE ADJUDICATORY ORDER OR DECISION (EXCEPT ONE
MADE BY THE STATE BOARD OF CONTROL), WHEN IT IS SHOWN THAT
THE ORDER OR DECISION WAS THE RESULT OF ARBITRARY OR
CAPRICIOUS ACTION OR CONDUCT BY A PUBLIC AGENCY OR A PUBLIC
OFFICIAL IN HIS OFFICIAL CAPACITY, THE COMPLAINANT, IF HE
PREVAILS, MAY COLLECT REASONABLE ATTORNEY'S FEES, NOT
EXCEEDING \$1,500, WHEN HE IS PERSONALLY OBLIGATED TO PAY
SUCH FEES.

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8 JAMES C. AND MARY VOGELI
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

10 JAMES C. VOGELI
11 and MARY VOGELI,

12 Petitioners,

13 v.

14 CITY COUNCIL OF THE CITY
15 OF SACRAMENTO,

16 Respondent.

No.
PETITION FOR WRIT OF
MANDAMUS, OR IN THE
CONJUNCTIVE OR ALTER-
NATIVE, FOR DECLARATORY
RELIEF WITH POINTS
AND AUTHORITIES

17 To the above Court:

18 Petitioners, James C. Vogeli and Mary Vogeli, petition this
19 Court for a writ of mandamus under California Code of Civil
20 Procedure 1094.5, directed to Respondent, City Council of the
21 City of Sacramento and, in the conjunctive or in the alternative,
22 for a Declaratory Decree, and by this verified petition represent
23 that:

24
25 FIRST CAUSE OF ACTION

26 Administrative Mandamus

27 1. Petitioners, at all times mentioned in this petition,
28 have been and are now lawfully operating an establishment for the

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1 on-sale sale of alcoholic beverages located at 601 15th Street,
2 in the City of Sacramento, County of Sacramento. Petitioners
3 have been since October 1, 1979, and continue to be the licensees
4 of record for On Sale General Public Premises License No. 487-
5 80234.

6 2. At all times mentioned in this petition, Respondent has
7 been and now is the agency charged with administering and render-
8 ing the City's final decision regarding the provisions of City of
9 Sacramento Zoning Ordinance 87-077. (A copy of said Ordinance
10 87-077, along with the City Ordinance it amended, is attached
11 hereto as Exhibit A and hereby incorporated by reference.) The
12 City Clerk of the City of Sacramento is Lorraine Magana.

13 3. On or about August 27, 1985, Respondent City of
14 Sacramento issued Petitioners a building permit specifically
15 stating that said permit was for the "(r)emodel of existing bar
16 and expansion into existing restaurant and kitchen." (A copy of
17 said permit is attached hereto as Exhibit B and is hereby incor-
18 porated by reference.) In December of 1986, after confirming
19 with Respondent's Building Department that said permit was still
20 valid, Petitioners' contractor proceeded to remodel Petitioners'
21 bar and to expand its area by, among other things, eliminating a
22 wall between the bar and an area of the building that had pre-
23 viously been a restaurant but that had been closed and unused for
24 over six years. Petitioners, in good faith reliance upon the
25 building permit and several interim inspections, expended over
26 \$30,000 in performing virtually all of the work necessary to the
27 project. All required building inspections and approvals were
28 obtained during the course of the project, including the final

1 inspection and approval, which was obtained on or about February
2 19, 1988.

3 On or about May 12, 1987, Petitioners commenced the 30-day
4 "posting" period as required by regulation of the Department of
5 Alcoholic Beverage Control for a physical change in an establish-
6 ment. (4 CAC 64.2). Several "protests" were filed with the
7 Department of Alcoholic Beverage Control. In response to con-
8 cerns expressed by individuals regarding the alleged prolifera-
9 tion of establishments serving alcoholic beverages in the area
10 surrounding Petitioners' establishment, as well as concerns
11 regarding alleged illegal activities in the area, Respondent
12 enacted Ordinance 87-077 (Exhibit A) (adopted June 23, 1987, and
13 certified July 2, 1987). Said ordinance amends Sections 2 and 15
14 of the City of Sacramento's Zoning Ordinance to require a special
15 use permit "to establish" the use of property as a bar in the
16 area that included Petitioners' establishment.

17 On or about December 17, 1987, Petitioners' application for
18 a special use permit was heard by the Sacramento City Planning
19 Commission and denied. On or about February 2, 1988,
20 Petitioners' appeal of the Planning Commission's decision was
21 heard by Respondent and denied. (A copy of Respondent's Notice
22 of Decision and Findings of Fact is attached hereto as Exhibit C
23 and hereby incorporated by reference.) The administrative record
24 relating to this action was requested on March 30, 1988 and is in
25 the process of being produced. Said record is hereby
26 incorporated by reference.

27 4. Respondent's decision, Exhibit C, is invalid under CCP
28 Section 1094.5, in that:

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1 4.a. Respondent committed a prejudicial abuse of dis-
2 cretion and violated Petitioners' rights to due process under the
3 United States Constitution and the Constitution of the State of
4 California in that Respondent did not proceed in a manner re-
5 quired by law. More particularly:

6 4.a.(1) Respondent applied Ordinance 87-077 to
7 Petitioners despite the fact that said ordinance is inapplicable
8 to Petitioners because Petitioners had acquired "vested rights"
9 prior to the enactment of the ordinance. Petitioners had
10 acquired vested rights because: (a) they relied in good faith
11 upon the issuance of the valid building permit (Exhibit B); and
12 (b) they spent over \$30,000 to conduct substantial work pursuant
13 to said permit.

14 4.a.(2) Respondent applied Ordinance 87-077 to
15 Petitioners despite the fact that said ordinance by its plain and
16 logical meaning applies only to establishing a use, not to
17 expanding an existing lawful use as Petitioners desire to do.

18 The ordinance states, in pertinent part, as follows:

19 "A Special Permit shall be required to establish this
20 use in this zone." (Emphasis added.)

21 4.a.(3) Respondent enacted Ordinance 87-077 for
22 the purpose of preventing Petitioners' project after a valid
23 building permit had been issued and the project had been substan-
24 tially completed.

25 4.a.(4) Respondent, at its hearing on
26 Petitioners' appeal, did not consider or make any findings of
27 fact on the issue of the applicability of Ordinance 87-077
28 despite Petitioners' contention, raised at the hearing, that said

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1 ordinance is inapplicable to Petitioners for the reasons stated
2 above.

3 4.b. Respondent committed a prejudicial abuse of
4 discretion and violated Petitioners' rights to due process under
5 the United States Constitution in that Respondent's findings are
6 not supported by the weight of the evidence. More particularly:

7 4.b.(1) As more fully discussed in 4.a.(1) above,
8 the weight of the evidence establishes that Petitioners had
9 obtained vested rights prior to the enactment of Ordinance 87-077
10 and, therefore, said ordinance is inapplicable to Petitioners.
11 Respondent's Notice of Decision and Findings of Fact (Exhibit C)
12 completely ignores this evidence.

13 4.b.(2) As more fully discussed in 4.a.(2) above,
14 the weight of the evidence establishes that Ordinance 87-077
15 applies by its plain and logical meaning only to establishing a
16 use and not to expanding an existing use and, therefore, said
17 ordinance is inapplicable to Petitioners. Respondent's Notice of
18 Decision and Findings of Fact (Exhibit C) completely ignores this
19 evidence.

20 4.b.(3) As discussed in 4.a.(3) above, the weight
21 of the evidence establishes that Ordinance 87-077 was enacted for
22 the purpose of preventing Petitioners' project after a valid
23 building permit had been issued and the project had been substan-
24 tially completed. Respondent's Notice of Decision and Findings
25 of Fact (Exhibit C) completely ignores this evidence.

26 4.b.(4) Finding 1.a. of Respondent's Notice of
27 Decision and Findings of Fact (Exhibit C) is not supported by the
28 weight of the evidence in that it erroneously states, in part,

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MAR 12 1988

1 that "the proposed expansion encourages the development of a
2 blighted area by adding to the existing concentration of
3 establishments in the area dispensing alcoholic beverages." The
4 evidence establishes that Petitioners' expansion would alleviate
5 blight in that it would convert a closed-up, unused part of a
6 building to a useful business purpose. The evidence also
7 establishes that Petitioners' expansion would not add to the
8 concentration of establishments because Petitioners' project
9 would expand an existing establishment, not add another
10 establishment. Petitioners' project would result in an increase
11 of two tables with two chairs each and in an increase from two
12 pool tables to three. Petitioners' project would also result in
13 the re-opening of the unused kitchen in the long-closed
14 restaurant so that light, easy-to-prepare food can be served.
15 The project already has resulted in the construction of handi-
16 capped accessible restrooms.

17 4.b.(5) Finding 1.a. of Respondent's Notice of
18 Decision and Findings of Fact (Exhibit C) is additionally not
19 supported by the weight of the evidence in that it erroneously
20 states, in part, that "the use could also discourage private
21 investments in an area the City has targeted for revitalization."
22 The weight of the evidence does not establish that the expansion
23 into the now closed and unused part of the building would or
24 could discourage private investments. In fact, the evidence
25 establishes that Petitioners' project, involving an expenditure
26 of over \$30,000, will convert an unused part of a building to a
27 useful purpose and will make the area around the building safer
28 and more attractive.

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1 4.b.(6) Finding 1.b. of Respondent's Notice of
2 Decision and Findings of Fact (Exhibit C) is not supported by the
3 weight of the evidence in that it erroneously states that "(t)he
4 expansion is detrimental to current efforts by police, surround-
5 ing neighbors, and public officials to combat existing illegal
6 activities." The evidence establishes that crime in the area in
7 which Petitioners' establishment is located is a concern to some
8 residents of the area and the Police Department. The evidence
9 does not establish that the Petitioners' establishment is the
10 cause of or a significant contributor to the crime rate, and it
11 does not establish that the conversion of the unused part of the
12 building to a useful part of Petitioners' existing business will
13 contribute to an increase in the crime rate. The evidence
14 establishes that in the over seven years Petitioners have held a
15 liquor license for use at the premises, they have been cited once
16 by the Department of Alcoholic Beverage Control, a citation
17 resulting from the inadvertent service of an alcoholic beverage
18 to a minor by an employee of Petitioners. The evidence also
19 establishes that Petitioners have previously taken several
20 actions and have offered to take several other actions to
21 alleviate any perceived or real problems regarding their
22 establishment and the surrounding area. The evidence also
23 establishes that Petitioners were very concerned when the Depart-
24 ment of Alcoholic Beverage Control delayed its hearing on the
25 protests filed regarding Petitioners' application until after the
26 Respondent's final decision was issued because Petitioners are
27 anxious to participate in a hearing on allegations relating to

28 / / /

1 their establishment in which witnesses will be under oath and
2 subject to cross-examination.

3 4.b.(7) Finding 2 of Respondent's Notice of
4 Decision and Findings of Fact (Exhibit C) is not supported by the
5 weight of the evidence in that it erroneously states that "(t)he
6 proposed expansion will result in the creation of a nuisance to
7 surrounding properties in that the existing bar has created
8 problems for neighborhood residents." The evidence establishes
9 that some neighbors perceive the Petitioners' bar as the cause of
10 "problems," but that if there is any extraordinary crime problem
11 in the area, that it is caused by many factors and not by Peti-
12 tioners' establishment. Moreover, the evidence does not show in
13 any way whatsoever how remodeling and expanding into a now closed
14 part of the building to effect a net increase of two tables, four
15 chairs and one pool table will result in the creation of a
16 "nuisance," regardless of whether the existing bar has created
17 problems.

18 4.b.(8). Finding 3 of Respondent's Notice of
19 Decision and Findings of Fact (Exhibit C) is not supported by the
20 weight of the evidence in that it erroneously states that the
21 "project is not consistent with the goal of the Central City
22 Community Plan to conserve viable residential neighborhoods by
23 not allowing intrusion of incompatible uses." The evidence
24 establishes that Petitioners' use is not an "intrusion." The
25 use is an existing lawful use. The project would simply provide
26 more space for said existing lawful use.

27 4.c. Respondent failed to grant Petitioners a fair
28 hearing in that, as more fully discussed above, Respondent did

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1 not consider Petitioners' contention that Ordinance 87-077 is
2 inapplicable to Petitioners. Further, as discussed above,
3 Respondent's Notice of Decision and Findings of Fact are contrary
4 to the evidence presented.

5 5. Petitioners have exhausted the available administrative
6 remedies required to be pursued by them by, as stated in Para-
7 graph 3 above, applying to Respondent's Planning Commission for a
8 special use permit and by appealing the denial of said permit to
9 Respondent. Respondent is the final administrative adjudicator of
10 such issues for the City of Sacramento.

11 6. Petitioner does not have a plain, speedy, and adequate
12 remedy in the ordinary course of law.

13 7. If Respondent's decision is allowed to be executed,
14 Petitioners will be irreparably injured in that they are now
15 unable to use the area in question despite the fact that all the
16 work on the project is completed. Without a stay of Respondent's
17 Decision, coupled with issuance of a writ of mandamus and/or
18 declaratory relief, the only way Petitioners can put the area to
19 possibly profitable use is to replace the wall that was elimina-
20 ted and attempt to lease the premises or operate another type of
21 business. Should Petitioners take that course, a risky one at
22 best, and thereafter receive a favorable ruling, Petitioners
23 would then have to evict a tenant or cease operating a business
24 and once again remove the wall. The expense, inconvenience and
25 liabilities associated with this course make it impractical. The
26 current status of the property substantially decreases its use-
27 fulness, value and marketability. Moreover, should the
28 Respondent's Decision be in effect when the Department of Alcohol

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1 and Beverage Control conducts its hearing on Petitioners' appli-
2 cation, the Department will reject the application on the basis
3 of a lack of a necessary use permit, thereby depriving Peti-
4 tioners a full hearing and decision on their application. The
5 only way in which irreparable harm to Petitioners can be avoided
6 is to issue a stay, a writ and/or declaratory relief.

7 8. Petitioners are personally obligated to pay their attor-
8 ney for attorney services to prosecute this action. Petitioners
9 do not know the the total amount of attorneys' fees but will ask
10 leave of court to amend this petition to state the sums when they
11 have been ascertained. Petitioners are entitled to collect
12 reasonable attorneys' fees from Respondent under Government Code
13 Section 800 because Respondent's action and decision was the
14 result of arbitrary and capricious conduct by Respondent, more
15 particularly described as follows:

16 8.a. Respondent applied Ordinance 87-077 to Peti-
17 tioners' project, ignoring the fact that said ordinance is
18 inapplicable to Petitioners' project because Petitioners had
19 acquired vested rights, and further ignoring the plain and logi-
20 cal meaning of the ordinance. Respondent did not address or
consider Petitioners' contention that the ordinance is inapplic-
able to their project.

21 8.b. Respondent passed Ordinance 87-077 for the pur-
22 pose of preventing Petitioners' project after a valid building
23 permit had been issued and the project had been substantially
24 completed.

25 8.c. Respondent's Notice of Decision and Findings of
26 Fact (Exhibit C) are clearly contrary to the weight of the evi-
27
28

1 dence and, as discussed above, do not address several significant
2 issues.

3
4 SECOND CAUSE OF ACTION

5 Declaratory Relief

6 9. Petitioner incorporates by reference each and all of the
7 allegations contained in the First Cause of Action of this Peti-
8 tion, as fully as though set forth at length herein.

9 10. As described in Petitioner's First Cause of Action, an
10 actual controversy has arisen and now exists between Petitioners
11 and Respondent concerning their respective rights and duties.

12 11. Petitioners desire a judicial determination of their
13 rights and duties, and a declaration as to whether Ordinance 87-
14 077 is applicable to the project at issue herein.

15 12. A judicial declaration is necessary and appropriate at
16 this time under the circumstances in order that Petitioners may
17 ascertain their rights and duties under Ordinance 87-077. As
18 discussed at length in Petitioners' First Cause of Action, and
19 particularly at Paragraph 7, Petitioners are currently unable to
20 use the part of the building at issue and cannot make an informed
21 and sound business decision regarding future use of the property
22 until their rights and duties are clarified as requested herein.
23 Moreover, as discussed in Paragraph 7, Petitioners will lose the
24 opportunity for a complete hearing on all the issues involved in
25 their application to the Department of Alcohol Beverage Control
26 unless declaratory relief is granted as requested herein.

27 WHEREFORE, Petitioners pray that:

28 On Petitioners' First Cause of Action,

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- 1 1. An alternative writ of mandamus be issued;
- 2 2. An order be issued staying Respondent's Notice of Deci-
- 3 sion and Findings of Fact and ordering Respondent to show cause
- 4 why an order should not be granted further staying that
- 5 decision;
- 6 3. A peremptory writ of mandamus be issued ordering
- 7 Respondent to set aside its Notice of Decision and Findings of
- 8 Fact, and further ordering Respondent to issue a decision consis-
- 9 tent with this Court's holding that Ordinance 87-077 is not
- 10 applicable to Petitioners' project and that the Notice of
- 11 Decision and Findings of Fact are not supported by the evidence;
- 12 4. Petitioners recover their costs in this action;
- 13 5. Petitioners recover attorneys' fees not exceeding
- 14 \$1,500; and

15 6. Other relief be granted that the Court considers proper.

16 On the Second Cause of Action,

17 1. For a declaration that Ordinance 87-077 does not apply

18 to the project at issue herein and that, therefore, Petitioners

19 are not required to obtain a special use permit pursuant to said

20 ordinance to expand their existing operations into the area at

21 issue;

22 2. For costs of suit herein incurred; and

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3. For such other and further relief as the Court may deem proper.

DATED: April 5, 1988

Alan L. Edelstein
ALAN L. EDELSTEIN,
Attorney for Petitioners

DATED: April 5-1988

James C. Vogeli
JAMES C. VOGELI,
Petitioner

DATED: April 5-1988

Mary C. Vogeli
MARY C. VOGELI,
Petitioner

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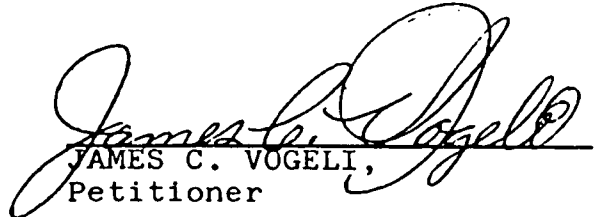
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2 VERIFICATION
3

4 I, the undersigned, say:

5 I am a Petitioner in this action. The above document is
6 true of my own knowledge.

7 Executed on April 5, 1988, at Sacramento,
8 California.

9 I declare under penalty of perjury that the foregoing is
10 true and correct.

11
12 
13 JAMES C. VOGELI,
14 Petitioner
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VERIFICATION

I, the undersigned, say:

I am a Petitioner in this action. The above document is true of my own knowledge.

Executed on April 5, 1988, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.


MARY VOGELI,
Petitioner

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Amended

ORDINANCE NO. 87-077

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

JUN 23 1987

AN ORDINANCE ADDING SECTIONS 2-C-56, 2-C-57, 2-E-40, 15-C-3-e, 22-A-95 and 22-A-96 TO THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF SACRAMENTO, ORDINANCE NO. 2550, FOURTH SERIES, AS AMENDED, RELATING TO BARS AND SALES OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION, AND DECLARING SAID ORDINANCE TO BE AN EMERGENCY ORDINANCE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Sections 2-C-56 and 2-C-57 are hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

Sec. 56. USE: ALCOHOLIC BEVERAGE SALES FOR OFF-PREMISES CONSUMPTION

Sec. 57. USE: BAR

	H	S	C1	C2	C3	C4	M1	M2	MIP
	C	C					M1	M2	
							(S)	(S)	
56.		40	40	40	40	40	40	40	40
57.	40	40	40	40	40	40	40	40	40

SECTION 2.

Section 2-E-40 is hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

Sec. 40.

A Special Permit shall be required to establish this use in this zone. No Special Permit shall be required for any store greater than 15,000 square feet in gross floor area where the shelving allocated to alcoholic beverages does not exceed ten percent of the total shelving within the store. No Special Permit shall be required for an on-sale

CERTIFIED AS TRUE COPY OF
Ordinance No. 87-077 4th Series

DATE

CERTIFIED JUL 02 1987

Ann Berman
City Clerk, City of Sacramento

-1-

EXHIBIT A

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licensee other than a bar on account of such licensee's statutory off-sale privileges, if the licensee does not hold itself out as selling alcoholic beverages for off-premises consumption.

A Special Permit shall not be issued unless the following findings of fact are made by the Planning Commission:

1. The proposed use will not adversely affect the peace or general welfare of the surrounding neighborhood.
2. The proposed use will not result in undue concentration of establishments dispensing alcoholic beverages.
3. The proposed use will not enlarge or encourage the development of a skid row or blighted area.
4. The proposed use will not be contrary to or adversely affect any program of redevelopment or neighborhood conservation.

In addition to the considerations applicable to all Special Permit applications, the Planning Commission may consider the following in evaluating a Special Permit application under this section: hours of operation; quantity and size of containers sold; alcoholic content of wines sold for off-premises consumption; percentage of shelf space devoted to alcoholic beverages; a requirement that the establishment post, in compliance with the City Code, signs prohibiting the possession of open alcoholic beverage containers or the consumption of alcoholic beverages on any property adjacent to the establishment under the control of the establishment's operator; any other activities proposed for the premises.

SECTION 3.

Section 15-C-3-e is hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

e. Alcoholic beverage sales for off-premises consumption; bars:

Notwithstanding the provisions of subparagraphs a), b) and c) above, in the case of an application for a Special Permit to sell alcoholic beverages for off-premises consumption or for a bar, notice shall be given to all owners of property located within five hundred (500) feet from the property involved in the proceedings.

SECTION 4.

Sections 22-A-95 and 22-A-96 are hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

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95. Alcoholic beverage:

Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

96. Bar:

Any premises designed, maintained, operated, used or intended to be used for the selling or serving of alcoholic beverages to the public for consumption on the premises which does not qualify as, or is not part of, a bona fide public eating place as defined in Business and Professions Code Section 23038.

SECTION 5.

This ordinance is hereby declared to be an emergency ordinance to take effect immediately. The ground for the emergency is the need to immediately halt increasing concentration and proliferation of establishments selling alcoholic beverages, which is occurring without adequate review of the long-term land-use implications and the impact on affected neighborhoods. Unless this ordinance takes effect immediately, the time which elapses during the holding of additional hearings before the Planning Commission and the City Council would allow additional liquor licenses to be issued without regard to the policy set forth in this ordinance, leading to permanent adverse impacts on the public welfare, without the possibility of subsequent effective mitigation.

DATED ENACTED: 06-23-87

DATE EFFECTIVE: 06-24-87

ANNE RUDIN

MAYOR

ATTEST:

LORRAINE MAGANA

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SECTION 2: LAND USE REGULATIONS

- A. The charts and text on the following pages are adopted as the City's basic land use regulations. The uses shown in this chart are divided into four groups: residential, industrial, commercial, other.

To determine in which zone a specific use is allowed:

1. Find the use in one of the above groups in the chart.
2. Read across the chart until either a "number" or an "x" appears in one of the columns.
3. If a number appears, this means that the use is allowed in the zone represented by that column, but only if certain conditions are complied with. The conditions applicable to that use are those listed in Section E. The number appearing in the zoning column corresponds to the number of the conditions which must be complied with.
4. If an "x" appears in a column the use is allowed in the zone represented by that column without being subject to any of the conditions listed.
5. If neither an "x" nor a "number" appears in a column, the use is not allowed in the zone represented by that column.

THE PLANNING COMMISSION SHALL INTERPRET THE APPROPRIATE ZONE FOR ANY LAND USE NOT SPECIFICALLY MENTIONED IN THIS CHART.

IF THE SPECIFIC USE YOU ARE CHECKING DOES NOT APPEAR IN THE CHART, CONTACT THE CITY PLANNING OFFICE FOR THE INFORMATION YOU DESIRE.

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USE	R E	R 1	R 1 A	R 1 B	R 2	R 2 A	R 2 B	R 3	R 4 A	R 4 B	R 5	R 6	R 7	R 8	R 9	R 10	R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20	R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30	R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40	R 41	R 42	R 43	R 44	R 45	R 46	R 47	R 48	R 49	R 50	R 51	R 52	R 53	R 54	R 55	R 56	R 57	R 58	R 59	R 60	R 61	R 62	R 63	R 64	R 65	R 66	R 67	R 68	R 69	R 70	R 71	R 72	R 73	R 74	R 75	R 76	R 77	R 78	R 79	R 80	R 81	R 82	R 83	R 84	R 85	R 86	R 87	R 88	R 89	R 90	R 91	R 92	R 93	R 94	R 95	R 96	R 97	R 98	R 99	R 100	R 101	R 102	R 103	R 104	R 105	R 106	R 107	R 108	R 109	R 110	R 111	R 112	R 113	R 114	R 115	R 116	R 117	R 118	R 119	R 120	R 121	R 122	R 123	R 124	R 125	R 126	R 127	R 128	R 129	R 130	R 131	R 132	R 133	R 134	R 135	R 136	R 137	R 138	R 139	R 140	R 141	R 142	R 143	R 144	R 145	R 146	R 147	R 148	R 149	R 150	R 151	R 152	R 153	R 154	R 155	R 156	R 157	R 158	R 159	R 160	R 161	R 162	R 163	R 164	R 165	R 166	R 167	R 168	R 169	R 170	R 171	R 172	R 173	R 174	R 175	R 176	R 177	R 178	R 179	R 180	R 181	R 182	R 183	R 184	R 185	R 186	R 187	R 188	R 189	R 190	R 191	R 192	R 193	R 194	R 195	R 196	R 197	R 198	R 199	R 200	R 201	R 202	R 203	R 204	R 205	R 206	R 207	R 208	R 209	R 210	R 211	R 212	R 213	R 214	R 215	R 216	R 217	R 218	R 219	R 220	R 221	R 222	R 223	R 224	R 225	R 226	R 227	R 228	R 229	R 230	R 231	R 232	R 233	R 234	R 235	R 236	R 237	R 238	R 239	R 240	R 241	R 242	R 243	R 244	R 245	R 246	R 247	R 248	R 249	R 250	R 251	R 252	R 253	R 254	R 255	R 256	R 257	R 258	R 259	R 260	R 261	R 262	R 263	R 264	R 265	R 266	R 267	R 268	R 269	R 270	R 271	R 272	R 273	R 274	R 275	R 276	R 277	R 278	R 279	R 280	R 281	R 282	R 283	R 284	R 285	R 286	R 287	R 288	R 289	R 290	R 291	R 292	R 293	R 294	R 295	R 296	R 297	R 298	R 299	R 300	R 301	R 302	R 303	R 304	R 305	R 306	R 307	R 308	R 309	R 310	R 311	R 312	R 313	R 314	R 315	R 316	R 317	R 318	R 319	R 320	R 321	R 322	R 323	R 324	R 325	R 326	R 327	R 328	R 329	R 330	R 331	R 332	R 333	R 334	R 335	R 336	R 337	R 338	R 339	R 340	R 341	R 342	R 343	R 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1007	R 1008	R 1009	R 1010	R 1011	R 1012	R 1013	R 1014	R 1015	R 1016	R 1017	R 1018	R 1019	R 1020	R 1021	R 1022	R 1023	R 1024	R 1025	R 1026	R 1027	R 1028	R 1029	R 1030	R 1031	R 1032	R 1033	R 1034	R 1035	R 1036	R 1037	R 1038	R 1039	R 1040	R 1041	R 1042	R 1043	R 1044	R 1045	R 1046	R 1047	R 1048	R 1049	R 1050	R 1051	R 1052	R 1053	R 1054	R 1055	R 1056	R 1057	R 1058	R 1059	R 1060	R 1061	R 1062	R 1063	R 1064	R 1065	R 1066	R 1067	R 1068	R 1069	R 1070	R 1071	R 1072	R 1073	R 1074	R 1075	R 1076	R 1077	R 1078	R 1079	R 1080	R 1081	R 1082	R 1083	R 1084	R 1085	R 1086	R 1087	R 1088	R 1089	R 1090	R 1091	R 1092	R 1093	R 1094	R 1095	R 1096	R 1097	R 1098	R 1099	R 1100	R 1101	R 1102	R 1103	R 1104	R 1105	R 1106	R 1107	R 1108	R 1109	R 1110	R 1111	R 1112	R 1113	R 1114	R 1115	R 1116	R 1117	R 1118	R 1119	R 1120	R 1121	R 1122	R 1123	R 1124	R 1125	R 1126	R 1127	R 1128	R 1129	R 1130	R 1131	R 1132	R 1133	R 1134	R 1135	R 1136	R 1137	R 1138	R 1139	R 1140	R 1141	R 1142	R 1143	R 1144	R 1145	R 1146	R 1147	R 1148	R 1149	R 1150	R 1151	R 1152	R 1153	R 1154	R 1155	R 1156	R 1157	R 1158	R 1159	R 1160	R 1161	R 1162	R 1163	R 1164	R 1165	R 1166	R 1167	R 1168	R 1169	R 1170	R 1171	R 1172	R 1173	R 1174	R 1175	R 1176	R 1177	R 1178	R 1179	R 1180	R 1181	R 1182	R 1183	R 1184	R 1185	R 1186	R 1187	R 1188	R 1189	R 1190	R 1191	R 1192	R 1193	R 1194	R 1195	R 1196	R 1197	R 1198	R 1199	R 1200	R 1201	R 1202	R 1203	R 1204	R 1205	R 1206	R 1207	R 1208	R 1209	R 1210	R 1211	R 1212	R 1213	R 1214	R 1215	R 1216	R 1217	R 1218	R 1219	R 12
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D. INDUSTRIAL

USE	R E	R 1	R 1 A	R 1 B	P 2	R 2 A	R 2 B	R 3	R 3 A	R 4	R 4 A	R 5	O B	R O	H C	S C	C 1	C 2	C 3	C 4	M-1 (S)	M-2 (S)	A	F	A O S	H
1. Beverage Bottling Plant																					X	X	X			
2. Billiard Manufacture																					X	X	X			
3. Boat Building (Small)																					X	X	X			
4. Concrete Batch Plant																						X	X			
5. Cement or Clay Products Manufac- turing																					4	4	X			
6. Contractors' Storage Yard																					X	X	X			
7. Dairy Products Processing																					X	X	X			
8. Food Processing Plant																						X	X			
9. Fuel Yard																					X	X	X			
10. Ice Manufacture-Cold Storage Plant																					X	X	X			
11. Junk Yard																						5	5			
12. Lumber Yard-Retail																					X	X	X			
13. Machine Shop																					X	X	X			
14. Metalworking Shop																					X	X	X			

SECTION 15: SPECIAL PERMITS

- A. **SPECIAL PERMITS - QUALIFICATIONS:** A Special Permit is a zoning instrument used primarily to review the location, site development, or conduct of certain land uses. These are uses which generally have a distinct impact on the area in which they are located, or are capable of creating special problems for bordering properties unless given special attention. A Special Permit is granted at the discretion of the Planning Commission and is not the automatic right of any applicant. In considering an application for a Special Permit, the following guidelines shall be observed:
1. Sound principles of land use: A Special Permit shall be granted upon sound principles of land use.
 2. Not injurious: A Special Permit shall not be granted if it will be detrimental to the public health, safety or welfare, or if it results in the creation of a nuisance.
 3. Must relate to a plan: A Special Permit use must comply with the objectives of the general or specific plan for the area in which it is to be located.
- B. **AUTHORITY - PLANNING COMMISSION:** A Special Permit may be granted at the discretion of the Planning Commission, with such conditions as may be necessary to carry out the intent and purpose of this Ordinance or to protect the public health, safety or welfare.
- C. **APPLICATION - NOTICE - HEARING:** An application for a Special Permit to be considered by the Planning Commission shall be subject to the following requirements:
1. Plans: The applicant shall submit no less than four sets of plans for the proposed use. Such plans shall be in sufficient detail to allow the Planning Commission to determine the exact nature and extent of the use. Such plans shall in all cases include a site plan clearly indicating the area of the subject property that will be utilized for the proposed use and the nature of the use in each portion of said area.
 - *2. Fee: The applicant shall pay a filing and investigation fee at the time the application is filed to be determined as follows:
 - a) For special permits for property containing one acre or less, the fee shall be \$253.
 - b) For property containing more than one acre but not more than five acres, the fee shall be \$380.
 - c) For property containing more than five acres, the fee shall be \$670.

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3. Hearing:

- a. At least one public hearing shall be held on an application to the Planning Commission for a Special Permit.
 - b. The procedural requirements for any hearing and the contents of the notice required by the provisions of this section shall be governed by the provisions of Section 18 of this Ordinance.
 - c. Notice of the hearing shall be given in the following manner:
 - 1) The Planning Director shall post notice of the hearing on the property involved in the proceedings in a conspicuous place for a period of seven (7) days prior to the date of the hearing.
 - 2) Written notice of the hearing shall be mailed by the Planning Director at least ten (10) days prior to the hearing to the following property owners, using for notification purposes names and mailing addresses as shown on the latest equalized assessment roll in existence of the date application is filed, and as checked in the manner specified in Section 18-B of this Ordinance:
 - a) All owners of property located within a radius of three hundred (300) feet from the property involved in the proceedings.
 - b) The owners of all property which adjoins the property in the same ownership as that involved in the proceedings or is separated only by a street, alley, right of way, or other easement.
 - c) Notwithstanding Subparagraphs a) and b) above, notice need not be given to property owners outside a radius of five hundred (500) feet from that portion of the property involved.
 - d. Adult-related establishments. Notwithstanding the provisions of subparagraphs a), b), and c) above, in the case of an application for a special permit for an adult-related establishment under the provisions of Section 2-E-24(a) or 2-E-24(b), notice shall be given to all owners of property located within one thousand (1,000) feet from the property involved in the proceedings. (Ordinance No. 33-145, December 6, 1963)
4. Resubmittal of application: If an application for a Special Permit has been denied wholly or in part by the Planning Commission, no new application for substantially the same project or use at the same location shall be resubmitted for a period of one year from the effective date of the final denial of such application, unless approval to file, prior to expiration of the one year period, has been granted by the Planning Commission.

D. TIME LIMITS IMPOSED ON SPECIAL PERMITS:

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FOUNDATION FORMS	INSPECTION	DATE
UFER GROUND	<i>Decker</i>	<i>2-4-87</i>
CONCRETE SLAB FORMS		
PLUMB. UNDER FLOOR/SLAB		
MECH. UNDER FLOOR/SLAB		
ELECT. CONDUIT-SLAB		
DO NOT COVER UNTIL INSTALLATION ABOVE HAS BEEN SIGNED		
FLOOR JOISTS OR GIRDERS		
DO NOT INSTALL SUB FLOOR UNTIL ABOVE HAS BEEN SIGNED		
TOP PLUMBING		
TOP MECHANICAL		
ROUGH ELECTRICAL	<i>D. Veng</i>	<i>2-25-87</i>
FRAME	<i>Decker</i>	<i>2-27-87</i>
ROOF PLYWOOD NAIL. COMM. & APTS		
EXTERIOR LATH		
DO NOT COVER UNTIL INSTALLATION ABOVE HAS BEEN SIGNED		
INT. LATH OR WALL BD. NAILING		
DO NOT TAPE PLASTER OR TOP UNTIL ABOVE HAS BEEN SIGNED		
SERVICE UNDERGRD CONDUIT		
SEWER SERVICE		
WATER SERVICE		
SPRINKLER SYSTEM		
DO NOT COVER UNTIL INSTALLATION ABOVE HAS BEEN SIGNED		
GAS TEST		
TEMP GAS ISSUED		EXPIRES
POWER POLE		
TEMP. POWER #		
SWIMMING POOLS ONLY		
SEWER SERVICE REROUTE		
WATER SERVICE REROUTE		
GAS TEST		
PLUMBING PRE-GUNITE		
PLUMBING PRE-DECK		
ELECTRICAL PRE-GUNITE		
ELECTRICAL PRE-DECK		
ELECTRICAL UNDERGRD		
DO NOT COVER UNTIL INSTALLATION ABOVE HAS BEEN SIGNED		
ENERGY COMPLIANCE CERTIFICATE TO BE ON FILE PRIOR TO FINAL APPROVAL.		
DATE	SIGNED:	
FINAL APPROVALS		
BUILDING	FINAL INSP. NO.	
ELECTRICAL		<i>D. Veng 5-1-87</i>
PLUMBING		
MECHANICAL		
DO NOT OCCUPY BUILDING UNTIL ALL OF THE ABOVE HAVE BEEN SIGNED AND CERTIFICATE OF OCCUPANCY ISSUED		
THIS CARD TO BE POSTED ON JOB AT ALL TIMES UNTIL FINAL APPROVAL.		

DESCRIPTION		NAME OF APPLICANT	ADDRESS	ZIP CODE	CITY LICENSE
LICENSED CONTRACTOR		Warren Crabtree	2541 Hernando Rd.	95825	
PROPERTY OWNER		James Vogell	601 - 15th St.	95816	
ARCH ENGR		Joe's Corner	2216 G Street	95816	LICENSE NO 442
NO. OF STORIES	NO. OF ROOMS	ROOF COVERING	AREA 1ST FLOOR	TOTAL AREA	GARAGE AREA
2					PATIO AREA
USE ZONE					
THIS PERMIT IS FOR: <input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> MECHANICAL <input checked="" type="checkbox"/> PLUMBING <input checked="" type="checkbox"/> ELECTRICAL					
NATURE OF WORK IN DETAIL					
Remodel of existing bar and expansion into existing restaurant & Kitchen					
STREET WIDTH		COMMUNITY PLAN NO		VALUATION \$ 13,000.00	
CALL 449-5191 FOR INSPECTIONS				ISSUED BY: Tieman	
BLDG. DIV. - 449-5716		PLBG. & MECH. DIV. 449-5661		DATE ISSUED 2-27-87	
ELECT. DIV. - 449-5671		COMMUNITY IMPVMT DIV. 449-5404		BUILDING PERMIT FEE \$ 149.00	
WORKERS' COMPENSATION DECLARATION				PLAN CHECK FEE \$	
I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C).				RESIDENTIAL CONST TAX \$	
POLICY NO.		COMPANY		SMI FEE \$.91	
<input checked="" type="checkbox"/> Certified copy is hereby furnished.				REG SEWER FEE \$	
<input type="checkbox"/> Certified copy is filed with the City Building Inspection Department or City Finance Department.				BRIDGE FEE \$	
DATE 2-27-87		APPLICANT		EXCISE TAX \$ 2.00 1985	
"I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this city to enter upon the above mentioned property for inspection purposes."				WDF FEE \$	
Signature of Applicant or Agent				CBL 5.20	
Date 2-27-87				TOTAL FEES \$ 155.11	
THIS PERMIT SHALL EXPIRE BY LIMITATION IF WORK AUTHORIZED IS NOT COMMENCED WITHIN 180 DAYS.					

Exhibit B

LINE 12

Appeal of James C. Vogeli vs.
City of Sacramento Planning
Commission's Denial of a Special Permit
to Expand an Existing Bar at 601 15th
Street in the C-2 Zone (P87-465)

18
16
Notice of Decision
and
Findings of Fact

At its regular meeting of February 2, 1988, the City Council heard and considered evidence in the above entitled matter. Based on verbal and documentary evidence at said hearing, the Council denied the appeal based on the following findings:

1. The proposed land use is not based on sound principles of land use in that:
 - a. The proposed expansion encourages the development of a blighted area by adding to the existing concentration of establishments in the area dispensing alcoholic beverages. The use could also discourage private investments in an area the City has targeted for revitalization.
 - b. The expansion is detrimental to current efforts by police, surrounding neighbors, and public officials to combat existing illegal activities. The police cite that the area has a severe crime problem.
2. The proposed expansion will result in the creation of a nuisance to surrounding properties in that the existing bar has created problems for neighborhood residents.
3. The proposed project is not consistent with the goal of the Central City Community Plan to:

Conserve viable residential neighborhoods by not allowing intrusion of incompatible uses.

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ANNE RUDIN

MAYOR

ATTEST:

LORRAINE MAGANA

CITY CLERK

P87-465

CERTIFIED AS TRUE COPY

of P87-465 Findings of Fact

3-15-88

DATE CERTIFIED

Deputy

CITY CLERK, CITY OF SACRAMENTO

EXHIBIT C

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PR

1 ALAN L. EDELSTEIN
2 Attorney at Law
3 1225 Eighth Street, Suite 570
4 Sacramento, California 95814
5 (916) 443-6400

6 Attorney for Petitioners,
7 JAMES C. AND MARY VOGELI

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 JAMES C. VOGELI)	No.
11 and MARY VOGELI,)	ALTERNATIVE WRIT OF
12)	MANDATE
13 Petitioners,)	
14 v.)	
15 CITY COUNCIL OF THE CITY)	
16 OF SACRAMENTO,)	
Respondent.)	

17 TO CITY COUNCIL, CITY OF SACRAMENTO, RESPONDENT:

18 WHEREAS, it is alleged by the verified Petition of
19 James C. Vogeli and Mary Vogeli that Respondent erroneously
20 applied City of Sacramento Ordinance 87-077 to Petitioners'
21 project located at 601 15th Street in violation of Petitioners'
22 rights to due process under the United States Constitution and
23 the Constitution of the State of California;

24 WHEREAS, the Findings of Fact adopted by Respondent in
25 denying Petitioners a special use permit are not supported by the
26 evidence;

27 WHEREAS, it appears that Petitioners are beneficially
28 interested in this proceeding; and

1 WHEREAS, it appears from the verified Petition that
2 Petitioners have no plain, speedy, and adequate remedy in the
3 ordinary course of law and that an alternative writ of mandate
4 should issue;

5 NOW, THEREFORE, you are commanded on or before _____
6 _____, 19__, to set aside your Notice of Decision and
7 Findings of Fact in case P87-465, certified March 15, 1988, and
8 to issue a decision consistent with this Court's holding that
9 Ordinance 87-077 is not applicable to Petitioners' project and,
10 further, that Respondent's Notice of Decision and Findings of
11 Fact are not supported by the evidence.

12 IN THE ALTERNATIVE, to show cause before this court at
13 the courtroom thereof at 720 Ninth Street, Sacramento,
14 California, on _____, 19__, at _____, why
15 you have not done so.

16 This writ shall be served on Respondent on or before
17 _____, 1988.

18 The written return, if any, to this writ shall be filed
19 and served by Respondent on or before _____, 1988.

20 DATED: _____

21 Witness the Honorable Cecil Bond, Presiding Judge.

22 Attest my hand and seal of this court this _____ day of
23 _____, 1988.

24
25 Clerk of the Superior Ct.

26
By _____

Deputy Clerk

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ORDER

Let the foregoing writ issue.

IT IS FURTHER ORDERED that a copy of this alternative writ be served at least _____ days before the hearing on the above order to show cause.

Dated: _____

Judge

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COPY

PLANNING COMMISSION
CITY OF SACRAMENTO

--o0o--

Re:)
)
Applicant's Request for)
Necessary Entitlements, a)
Special Permit to Expand)

--o0o--

Regular Meeting

Thursday, December 17, 1987

--o0o--

Sacramento, California

--o0o--

(Transcription from Taped Proceedings)

--o0o--

CAPITOL REPORTERS

DEPOSITION & GENERAL COURT REPORTERS

820 ALHAMBRA BLVD., SACRAMENTO, CA 95816

(916) 446-2757

100

transcript is
good now (edit & correct)
great by Glen
up p-874165
for
Jan 6-30-88

1 THURSDAY, DECEMBER 17, 1987

2 ---o0o---

3 CHAIRMAN RAMIREZ: Meeting is now in order.

4 We ask any one wishing to address the Commission this
5 evening please come forward at the proper time and use the
6 microphone. Please give your name and address for the
7 record.

8 Each item has a brief number with a brief description.
9 We often refer to this item by its number only. Please
10 pick up the agenda so you know which item we are moving
11 along on.

12 In taking action this evening, we take official
13 notice for State laws, general and specific plans,
14 environmental impact reports, staff reports and the City
15 Code. Any action this evening becomes final upon routine
16 adoption of findings of fact either tonight or at a
17 subsequent meeting should the item require findings of fact.

18 The first item of business this evening is to review
19 the agenda. Some items are considered consent because they
20 are noncontroversial and will not require oral testimony
21 in order for the Commission to act. The consent items this
22 evening are: Item number 1, findings of fact at 6240
23 Freeport Boulevard. Item number 7, a special permit, 3216
24 L Street. Item number 8, variance request for property located
25 on Research Drive and Opportunity Street. Item number 9,

1 request for property located at 5841 Newman Court. Item
2 number 10, variance at 630 Ark Way. Item 11, request for
3 property located at the northeast corner of Riverside
4 Boulevard and Lakelin Way. Item 14, the special permit at
5 3150 Wiseman Drive. Item 16, request for property
6 located at Opportunity Street, Performance Drive. Item 18,
7 request for property located at 1812 and 1820 L Street.
8 Item 21, request for property located on the southwest
9 corner of 10th and R Streets. Item 22, request for
10 property located at 470 Bannon Street. Item 23, request
11 for property located on the northwest corner of 65th Street,
12 Expressway and Fruitridge Road. Item 24, variance at 2326
13 K Street. Item 25, a lot line adjustment, 43rd Avenue.
14 Item 26, the general planning consistency findings for
15 abandonment. And Item 27, the amendment of the City
16 subdivision ordinance regarding flood hazards.

17 Are there any Commissioners that want to take any of
18 these items off of consent? I have a couple of additions on
19 two items. Item number 8 and Item 16 are both projects
20 that are going to be introduced into the North Sacramento
21 in the labor intensive zone and we normally tack on the
22 condition of that the applicant go to the (unintelligible)
23 to discuss any --- for potential employment opportunities.
24 And I would like staff to add that one -- add that particular
25 condition to both of those if the applicant -- it's okay

1 with the applicant?

2 UNIDENTIFIED SPEAKER: That's agreeable (inaudible).

3 CHAIRMAN RAMIREZ: Thank you, John.

4 Will, did you have a -- an additional?

5 COMMISSIONER ISHMAEL: I would also like to add a
6 condition on Item 16 that you just mentioned. There was
7 some comments from the Police Department and I just want to
8 add, it will be condition number 8, which would read: All
9 buildings within a complex shall have their numbers or
10 addresses clearly visable from all public or private access
11 streets.

12 CHAIRMAN RAMIREZ: That's on Item No. 8?

13 Okay. Any one in the audience wishing to take any
14 of these items off of consent? These items are on consent,
15 we take one vote, we pass everyone of them. No one wishing
16 to take any one of these off?

17 UNIDENTIFIED SPEAKER: There's a guy in the back.

18 CHAIRMAN RAMIREZ: Sir.

19 UNIDENTIFIED SPEAKER: 17.

20 CHAIRMAN RAMIREZ: Item 17? That is not on consent
21 this evening.

22 UNIDENTIFIED SPEAKER: Oh, 17 is not (inaudible).

23 CHAIRMAN RAMIREZ: It's not on consent. That one
24 will be continued. I will get to that one in a moment.

25 Any one else have any questions about the consent

1 calendar this evening? Is there a motion on consent?

2 UNIDENTIFIED SPEAKER: So moved.

3 UNIDENTIFIED SPEAKER: Second.

4 CHAIRMAN RAMIREZ: Call the roll, please.

5 CLERK: Commissioner Chinn.

6 COMMISSIONER CHINN: Aye.

7 CLERK: Hollick.

8 COMMISSIONER HOLLICK: Aye.

9 CLERK: Holloway..

10 COMMISSIONER HOLLOWAY: Aye.

11 CLERK: Ishmael.

12 COMMISSIONER ISHMAEL: Aye.

13 CLERK: Notestine.

14 COMMISSIONER NOTESTINE: Aye.

15 CLERK: Otto.

16 COMMISSIONER OTTO: Aye.

17 CLERK: Ramirez.

18 CHAIRMAN RAMIREZ: Aye.

19 Now we will go over those items that have been
20 continued. Item number 2 has been continued until January
21 14th. Item number 3 has been continued until February 25th.
22 Item number 4 has been withdrawn. Item number 5 has been
23 continued until January 14th. Item 6 continued until
24 January 14th. Item 12 has been continued until January 14th.
25 Item 13 has been continued until January 14th. Item number

1 17 has been continued until January 14th. Item 19 has been
2 continued until January 14th. Item 20 continued until
3 January 14th. Is there a motion on the continuances?

4 UNIDENTIFIED SPEAKER: So moved.

5 UNIDENTIFIED SPEAKER: Second.

6 CHAIRMAN RAMIREZ: Call the roll, please.

7 CLERK: Commissioner Chinn.

8 COMMISSIONER CHINN: Aye.

9 CLERK: Hollick.

10 COMMISSIONER HOLLICK: Aye.

11 CLERK: Holloway.

12 COMMISSIONER HOLLOWAY: Aye.

13 CLERK: Ishmael.

14 COMMISSIONER ISHMAEL: Aye.

15 CLERK: Notestine.

16 COMMISSIONER NOTESTINE: Aye.

17 CLERK: Otto.

18 COMMISSIONER OTTO: Aye.

19 CLERK: Walton.

20 COMMISSIONER WALTON: Aye.

21 CLERK: Ramirez.

22 CHAIRMAN RAMIREZ: Aye. That leaves Item 15. Staff
23 report please.

24 MS. SPADE: Chairman Ramirez, Members of the Commission,
25 my name is Connie, I live in Roseville. 103 Mueller Court.

1 The applicant is requesting the necessary entitlements,
2 a special permit to expand an existing bar pool room and a
3 variance to waive one parking space. The site is located
4 at 601 15th Street and it's called Joe's Corner.

5 The existing bar pool room would be expanded from
6 2,184 square feet to 3,850 square feet. It includes a 779
7 square foot pool area, a 588 square foot kitchen, storage
8 area and a new bathroom at 299 square feet. The addition was
9 previously a restaurant. The wall separating the existing
10 bar pool room from this restaurant area was removed in 1985
11 and a half-way wall was built in its place. In going over
12 the Building Department records, there was no final permit
13 issued on that wall for approval. The current number of seating
14 in the existing bar is 31 seats and the expansion would add
15 three more pool tables and four more seats. The hours of
16 operaton are from 6:00 a.m. to 2:00 a.m. or as business
17 dictates. No alcholoic beverages are given after 2:00 a.m.
18 per State law.

19 Staff contacted Councilman David Shore to request his
20 opinion on the proposed expansion. He indicated that he's
21 received numerous complaints within the three block area
22 residents that live there and they've indicated numerous
23 problems such as drug abuse and prostitution and so forth
24 within the vicinity of Joe's Corner.

25 We also contacted the lead person for a neighborhood

1 group. The neighborhood group got together last May and --
2 Manuela Serna is here. She is the head of the group. They
3 have met with community organizations, the police department,
4 city officials, and Mayor Rudin and letters have been
5 submitted, Exhibits F, G and H.

6 Ms. Serna has indicated that the three main concerns
7 of the neighborhood is that it is not a neighborhood bar and
8 that the property owner does not take steps to deter drug
9 and prostitution problems in the neighborhood. The children
10 attending Washington School, two blocks east of Joe's Corner,
11 are exposed to illegal and potentially unsafe activities
12 when walking past the bar. The expansion should not be
13 allowed because of existing problems at Joe's Corner and
14 within the vicinity.

15 We also received a letter from the Police Department,
16 Exhibit D. He indicated two concerns and that he does not
17 support the project. The first concern is that a severe
18 crime problem exists in the area bounded by E and H Streets
19 and 13th and 17th Streets. During the first six months of
20 1987, there were 270 criminal offense reports received and
21 192 arrests made. The arrests were associated with crimes
22 against persons, prostitution, drugs and driving under the
23 influence.

24 The second concern was that the expansion of an
25 alcohol beverage related business in the area will lead to

1 an increase in existing problems and detract from their
2 efforts to combat them.

3 The applicant's attorney has submitted a letter,
4 Exhibit I, requesting that ABC has a preliminary hearing
5 on the expansion and then report back to us and then we have
6 the Commission hearing.

7 The Mid-town Business Association and Sacramento Old
8 City Association is also in opposition to the project mainly
9 due to neighborhood concerns.

10 Our City Ordinance, adopted last June, Ordinance 97077
11 requires a special permit to establish a bar, but it also
12 applies to a bar -- an existing bar that wants to expand.

13 The applicant was under review with ABC at that time
14 and our City Attorney has indicated that the applicant did
15 not have a vested right to only undergo ABC approval at that
16 time because they hadn't issued their final approval when
17 our ordinance came into effect.

18 Staff has also done a field survey of other
19 establishments that dispense alcohol within a one and a half
20 block radius of the subject site. There were six sites,
21 Diamond Grovery at the northeast corner of 14th and E,
22 Capitol Grovery at the northeast corner of 15th and E,
23 Nigano's Retail Store, 16th and F, Don's Bottle Shop on 16th
24 Street between F and G, Shoppers Mart at G and 14th and
25 Post 61 Bar is at 15th and H.

1 The applicant is also requesting the waiver of one
2 parking space because he is adding four seats to the
3 expanded area. Because of limited on-street parking in the
4 area, especially during evening hours when residents are
5 more likely to be home, staff does not support the variance.
6 Additionally, the existing parking lot is an illegal, non-
7 conforming parking lot and under today's requirements he
8 would be required to have ten spaces.

9 The expansion will also increase the occupancy of
10 the building from 268 people to 336 people and we feel that
11 that could create a negative impact on the neighborhood
12 such as increased traffic noise and illegal activities.
13 Under the ordinance, the Planning Commission is required
14 to make specific findings that the use will not adversely
15 affect the neighborhood or lead to a blighted area. Based
16 on strong neighborhood opposition and the police concerns,
17 we feel that these findings cannot be made and staff
18 recommends denial of the project as well as the parking
19 variance. Are there any questions?

20 CHAIRMAN RAMIREZ: Questions of staff? Mike.

21 COMMISSIONER NOTESTINE: On the use permit, that goes
22 for the entire use, not just the expansion, if I'm under-
23 standing -- I asked Will this question earlier, but I'm not
24 real clear on --

25 UNIDENTIFIED SPEAKER: The use permits for the

1 expansion, the use as it exists there in the state that it
2 existed, at least before the expansion was -- is, you know,
3 doesn't require a use permit, it's the expansion that
4 requires the use permit.

5 COMMISSIONER NOTESTINE: Right. But the use permit
6 is tied to, after it's granted, is tied to the entire use;
7 is that correct? I mean, we're giving a use permit for
8 square footage, not for the sale of alcohol and --

9 UNIDENTIFIED SPEAKER: No. I think you're giving a
10 use permit for what they've applied for, that were -- that --
11 well, that's all.

12 COMMISSIONER NOTESTINE: I guess the question then is,
13 at some future date, if there becomes a problem, and -- could
14 the use permit be revoked, and then what would happen to
15 the pre-existing use.

16 UNIDENTIFIED SPEAKER: Pre-existing use, I think would
17 still exist. If that -- I was about to ask you what, you
18 know, what you were getting at, and the pre-existing use,
19 I think, would still exist. If it's a -- couldn't be revoked.

20 COMMISSIONER NOTESTINE: Okay. Just require them to
21 shut-off the area.

22 UNIDENTIFIED SPEAKER: Basically, yes. That's right.
23 However, that could be done physically, that's -- I think
24 that would be the extent of what the Commission could do on
25 a revocation proceeding.

1 CHAIRMAN RAMIREZ: Further questions of staff.
2 Will the applicant please come forward.

3 MR. HUNT: Good evening. My name is Tom Hunt. I
4 represent the property owners Mr. and Mrs. Vogeli.

5 There are a couple of points I'd like to bring to
6 your attention because I think there's some special
7 circumstances here which you should be aware of. This is
8 an application for a special permit to expand a liquor
9 related business. But, the expansion is done. The
10 applicant applied for his building permit, had his plans
11 and specifications approved and has completed the expansion
12 activity. There is just one bathroom left to be finished.

13 Before the bathroom was completed, this ordinance
14 went into effect and he was notified through the Planning
15 Department that he would have to seek this special permit.
16 I call that to your attention because there's going to be
17 some very, very serious repercussions if the permit is
18 denied. This property owner has spent almost \$32,000
19 remodeling his business all with City consent through the
20 permit process and through the inspection process. And then,
21 just days short of completion, he's hit with this ordinance.
22 And, if the permit is denied, he's going to have to board
23 everything up again and he's lost that investment. I
24 think that's very, very unfair result.

25 The second thing I would point out to you is this is

1 not a new business, this is a bar that has existed for over
2 25 years at its location. There is no doubt that there is
3 some problems in that location, but if you'll read the
4 police captain's letter and the neighborhood complaints,
5 there are no violations within the bar. The property owner
6 has never been cited and there has never been an arrest
7 within the premises themselves. On the street and
8 surrounding areas there are problems. Consequently, if the
9 business is to expand, and there is no criminal activity
10 presently taking place, I cannot go with the presumption
11 that there's going to be some kind of an expansion of illegal
12 activity that doesn't even exist in the first place.

13 The expansion itself is simply reopening a portion
14 of the business that existed for many years. What happened
15 was the restaurant business fell off, the property owner
16 closed down and just put up a wall. And that side portion
17 has not been in use. Well, now the wall has come down, and
18 it's going to be reopened. It is a type of restaurant that
19 will serve only the customers within the bar. It's not a
20 fast food take out, it's not going to -- my point being it's
21 not going to increase the activity outside the bar, it's
22 simply for customers who are there and, as I said, for a
23 25 year business, you have a pretty well maintained customer
24 clientele who will simply be able to have something to eat
25 while they're sitting there having a drink. And it's very

1 modest type of foods, hamburgers, sandwiches, things of that
2 nature.

3 The other portion of the expansion is to take an
4 already existing use, pool tables, and put them into
5 another portion of the bar. Pool tables are there. People
6 are playing pool now. They're simply going to have more
7 room to play in another portion of the premises.

8 The only liquor related activity is the bar itself.
9 And this expansion involves no more than 4 seats, that's all
10 that we're talking about here. So, I would ask you to take
11 these things into consideration and also one of the
12 Commissioner's point made earlier, the concern is that this
13 is going to increase the criminal activity. I think that that
14 is quite a presumption that I don't see warranted by the
15 history of this establishment itself; 25 years without
16 problems within the bar does not warrant or come to the
17 conclusion that all of a sudden something terrible is going
18 to happen.

19 If we were proposing opening a discotheque or
20 something of that nature, yes, you're going to increase the
21 customer flow because you are offering something you didn't
22 offer before. We're not doing that here. And if criminal
23 activity increases in the area, this can be reconsidered
24 and that permit can be revoked. In addition, the status of
25 his liquor license would be in jeopardy as well. There will

1 be a full hearing before ABC as soon as this meeting is
2 adjourned and you people have made your decision. At which
3 point, any one who has a concern can come and testify and
4 be cross-examined to find out exactly what they are talking
5 about.

6 For instance, the survey that was done, told
7 neighbors that the business was going to be expanded but
8 no one told them how. Many of the people that I talked to
9 thought that the building was going to be built on. That's
10 not the case. Existing building is exactly the same. We're
11 simply taking down a wall and reopening the form of the
12 business that was already there.

13 And, my final point to you would be to please
14 consider the status of this application. This is not
15 someone who is coming in here with a proposal, this is
16 someone who already received his permit to build and this is
17 someone who has done his building. If we deny the permit to
18 him, he has lost his investment, \$32,000 is down the drain,
19 and he simply has to put the wall back up. I ask you to
20 take all of that into consideration because I think the
21 permit is warranted.

22 The concern about the additional parking space, if
23 that is a concern, the property owner is more than willing
24 to put that in. There is space to do that and we'd be happy
25 to go along with that being a condition of your approval.

1 Thank you.

2 CHAIRMAN RAMIREZ: Are there any questions? Brian.

3 COMMISSIONER HOLLOWAY: You indicated that the
4 applicant completed the improvements before the ordinance
5 took effect.

6 MR. HUNT: That's correct. With the exception of
7 one last bathroom.

8 COMMISSIONER HOLLOWAY: Okay. Then what was your --
9 your application to ABC was for an additional liquor license,
10 expansion of the --

11 MR. HUNT: No. Expansion of the premises warranted
12 the expansion of the license.

13 COMMISSIONER HOLLOWAY: Okay. So your client
14 completed the improvements prior to receiving approval from
15 ABC to expand the liquor license.

16 MR. HUNT: The status of the ABC application was that
17 the application was in, the property had been posted and
18 the posting time had expired. We were ready to go in for
19 the hearing. The ordinance was past and ABC took the
20 position, since Planning was taking the position, that it
21 would require this special permit, you will get your permit
22 first, then come back to us.

23 COMMISSIONER HOLLOWAY: Okay. But, it's possible
24 that your client could have completed the improvements and
25 not received from ABC the expansion of the liquor license?

1 MR. HUNT: That's correct.

2 COMMISSIONER HOLLOWAY: Where would that put your
3 client?

4 MR. HUNT: About the same place. At the same place.

5 COMMISSIONER HOLLOWAY: That's what I thought. Okay,
6 thank you.

7 MR. HUNT: And that hearing is still to take place.

8 CHAIRMAN RAMIREZ: Further questions?

9 CLERK: May I have your name again, for the record
10 and an address, please.

11 MR. HUNT: Tom Hunt. My business address is 1220 H
12 Street, Suite 101, Sacramento, 95814.

13 CLERK: Thank you.

14 CHAIRMAN RAMIREZ: Thank you.

15 Is there any one wishing to speak in favor of this
16 application? In opposition? Come forward please.

17 MS. SERNA: My name is Manuela Serna. The address
18 is 700 H Street. I'm the chairperson of the Mayor's
19 Hispanic Advisory Committee, appointed by Ann Rudin.

20 Let me begin by saying, is it attorney Hunt, remarks
21 are half truths, that's as diplomatic as I can be. At this
22 particular time, I have a couple of neighbors here that live
23 on the east -- northeast side of Joe's Corner and another
24 lady here with her children that go to the Washington School.
25 As my letter indicated to you that was submitted in your

1 packet, that Ms. Spade has mentioned. This group is a
2 spin-off of a community forum that occurred at the
3 Washington School earlier this year. Trying to get to the
4 main points that Attorney Hunt has brought up, the expansion,
5 the reason for the hearing requested before the Alcoholic
6 Beverage Control is occurring as a result of these neighbors
7 advising ABC that Mr. Vogeli was expanding illegally.

8 In April of this year, we had a meeting at the
9 Washington Neighborhood Center where we had approximately
10 15 to 20 people, neighbors there, and invited Mr. Soderling,
11 who is a Supervising Investigator at ABC, a representative
12 from the Police Department, to try and research how the
13 neighbors could persue their complaints in terms of Joe's
14 Corner. Now, they are not just zeroing in on Joe's Corner,
15 they're very upset with the status of the neighborhood as it
16 is now. And, they decided at that time, that Joe's Corner,
17 given the fact that the neighbors lived around that
18 immediate vicinity, was one of the satellites attracting
19 the illegal activity. At that time, Mr. Soderling was
20 notified that Mr. Vogeli was expanding at 3:00 and 4:00 in
21 the morning. Cementing and building in his business.
22 Mr. Soderling, at that time, advised the neighborhood -- or
23 the neighbors that he would look into it. As a result of
24 that meeting, ABC sent in undercover people from ABC and
25 Mr. Vogeli was cited for serving minors in this year, in

1 May of this year, or shortly before then.

2 The expansion was looked into and it was found that
3 either permits were not valid or that he did not have the
4 appropriate permits to expand in that business. He was
5 therefore, according to Mr. Soderling, was thrown the book
6 at and had to comply with those permits. Now, whether or
7 not he completed the expansion before this ordinance comes
8 into play in June, your ordinance that your hearing now,
9 I do not know. But, I do know that when we were working
10 with the neighbors in April and in May, they were very upset
11 about the illegal expansion going on at 3:00 or 4:00 in the
12 morning. Thus, the snowball effect. Thus, the permits that
13 Mr. Vogeli had to acquire.

14 There has been illegal activity in and out of that bar.
15 Not as often recently since this situation has occurred.
16 The children are exposed, particularly when the good weather
17 is around, are exposed to prostitution and to illegal
18 activity, that's documented.

19 Another thing, it is true that Joe's Corner has been
20 around for 25 years. Mr. Vogeli has not been the owner of
21 Joe's Corner for 25 years. Before, Joe's Corner did have
22 somewhat of a reputable reputation, years ago. Now, I
23 don't have history in terms of when Mr. Vogeli came in, but
24 recently, let's say several years back, the illegal activity
25 and the prostitution has been more than abundant in that area.

1 That's basically what I wanted to point out. I'd
2 like to ask one of the neighbors, Mrs. Hotista, who is an
3 owner of -- of one of the homes in the area to say a few
4 words to you.

5 CHAIRMAN RAMIREZ: Thank you.

6 MRS. HOTISTA: Good evening. I am the neighbor that
7 lives, or the land owner that lives directly across from
8 Joe's Corner. We have been residents, owners on that corner
9 now for just about three years. When we moved into the
10 area, it was very clear to see that there was a lot of work
11 to be done in the neighborhood as far as cleaning it up.
12 We have a vested interest in the property all the way to
13 National Car Rental. So we own our property, as well as
14 interest in all the other homes.

15 So, yes, we too have a major stake in the neighborhood.
16 I have listened to both sides and I am appalled to think
17 that we can have someone come in and misrepresent the facts.
18 As owners and as people who live there for 24-hours a day,
19 it is a far cry from what is being represented here. As
20 far as the permits, he never filed for any permits. The
21 expansion took place in the middle of the night between about
22 3:30 and 6:00 in the morning. When I brought this fact up
23 to Mr. Soderling, he suggested, well, gee maybe we should
24 look into it and then of course, it was indicated that he
25 did not file for these correct permits. The part -- so there,

1 right there, tells me that maybe Mr. Vogeli is not looking
2 at this for the best interest in making this a better
3 neighborhood community bar.

4 The next issue was parking. We already have a problem
5 with parking. They have now, just started to enforce having
6 to have your parking permit, where you have to have it on
7 your vehicle in visitors parking. Even with that enforcement,
8 there still is a problem of parking down there. Although
9 I would say that the clientele that basically frequents Joe's
10 bar would be about 75 percent of that -- of those people
11 going in there are walk-in people. So maybe he's only
12 bringing in 25 percent. But, that extra 25 percent of
13 people coming by car, leaves us with the problem, where do
14 you put your cars? There isn't a place. Violations. We
15 started calling the police because we were appalled at all
16 these things that were going on in the corner. So as
17 neighbors, or concerned people for others in the neighborhood,
18 we started calling. We called and we called and when the
19 police would come and they would go in and try and solve the
20 problem. Well, then we came into Washington Group.

21 At that time, we formed this committee and we spoke
22 with Mr. Soderling and he gave us statistics. Those
23 statistics were that he didn't have any reports on Joe's
24 Corner. So we said, fine. We're going to start documenting
25 everything that goes on over there. Well, they could have

1 just had the police car sit over there day in and day out
2 and every night for all the police reports that had been
3 gathered.

4 There is stabbings. There is illegal drug use. They
5 walk out of his bar, they come to our front yard and shoot
6 up their heroine and drop the needles in our yard. We have
7 given this testimony, we have given the needles to the Mayor
8 in the Tuesday night Council meetings. They used our
9 backyard for prostitution, until we took the fence down so
10 they could not use the fence and the ivy as a hiding place.
11 So there is a lot of activity that comes from Joe's Corner
12 that we as neighbors on that block, that is all the
13 neighbors, do not wish to see continue on.

14 Another thing, that this food service. The people
15 don't stay in Joe's Corner long enough for food service.
16 They go in and do their drugs, they deal their drugs or
17 fence their goods and they leave. We have been broken into
18 our home four times in three years. It is interesting to me
19 that in four years, no one has ever seen these people
20 literally haul half of our house out the door. It came to
21 our attention, through some people who walk around the
22 neighborhood, oh, have you talked to Joe's Corner. Now,
23 that certainly is not, I mean it would never stand in any
24 court, but if these are what the people are saying, it gives
25 me just reason to believe that there is more activity than

1 just serving liquor over there.

2 For all the neighbors that are in this group, and a
3 lot of them have not been able to attend tonight, we all
4 wrote letters, submitted them to ABC, and we asked for a
5 hearing. To-date, we have had an article in the paper, we
6 have been in contact with David Shore, we go to the Tuesday
7 night meetings, we are still waiting for a hearing date. I
8 don't see how we can rule and give this man an extra parking
9 place when we don't even know if he is going to have the
10 expansion. So, on behalf of all these neighbors, I would
11 ask this committee to think about expanding that bar.
12 Because we, as the neighbors who are trying to do something
13 in this neighborhood, to bring it up as a part of downtown
14 Sacramento, do not wish to see this gentleman continue his
15 business nor certainly give him any room to expand.

16 CHAIRMAN RAMIREZ: Thank you. Any one else wishing
17 to speak against this proposal?

18 MS. BUSTAMONTE: Good evening. My name is Martha
19 Bustamonte. I have been a resident of Alkali Washington
20 neighborhood for 35 years. Out of those 35 years, 25 of
21 those years have been as an advocate to better our community
22 and the services to our low income community within that
23 area. I am a past client of Joe's Corner. And I'll tell
24 you why I'm a past client. You cannot go into Joe's Corner
25 and sit down and have a drink with a friend or with a couple

1 of friends, have a good conversation and then leave. When
2 you get there, within a very short period of time, you are
3 immediately called upon to see a VCR, a television, rings,
4 watches, you name it, they've got it. Guns, tons of guns.
5 If you're not approached to buy an item like that, you're
6 approached as to whether there is any interest in drugs and
7 purchasing drugs.

8 We had a series of meetings about this in our
9 neighborhood. We're concerned because we want to clean up
10 our area. Joe's Corner has attracted some of the worst drug
11 pushing, illegal activities that we have seen in a long time
12 within our area. We know that we have a big problem,
13 especially since we have a large transient population through
14 there. But that doesn't mean that we can't strive to be a
15 better community. And it doesn't mean that we don't have
16 the privilege and the right to fight to clean up our
17 neighborhood and to keep it clean.

18 I'm here to ask you to please, to please consider
19 what it is you're going to do. You are sitting here with
20 the future of our neighborhood, a portion of the future of
21 our neighborhood in your hands. If this bar expands, and
22 it continues to have the activities such as one of the
23 particular activities that was mentioned at one of our
24 meetings where a policeman told the owner, because the
25 owner said, no, there's no drugs going on in my area, in my

1 bar. A policeman sat there and said, on October the 30th
2 we busted people in your bathroom with drugs. And the
3 owner says, well, I didn't know. Some of the people that
4 have worked for Joe's Corner have been pushing drugs. They
5 are no longer pushing drugs because they happen to have been
6 caught and are now serving time. But, it's up to you. We
7 want to clean up our neighborhood, we want to have a nice
8 community that we can feel safe in. But every single time
9 we're ripped off, every single time there's a break-in, we
10 know where we can buy our own VCR and our own jewelry, or
11 whatever is taken from us. We know exactly where we can
12 go, we can go to Joe's Corner and we can buy it within a
13 few minutes. So, we ask you please, not to allow this
14 expansion. Thank you.

15 CHAIRMAN RAMIREZ: Thank you.

16 UNIDENTIFIED SPEAKER: May I, excuse me --

17 CHAIRMAN RAMIREZ: Ma'am, would you please give your
18 name and address for the record, again.

19 MS. BUSTAMONTE: My name is Martha Bustamonte.

20 CHAIRMAN RAMIREZ: And your address.

21 MS. BUSTAMONTE: 408 10th Street.

22 CHAIRMAN RAMIREZ: Thank you. Is there any one
23 wishing to speak against this?

24 MR. HOTISTA: My name is Satosti Hotista. I live at
25 1501 F Street, as in Frank. I live directly across Joe's

1 Corner. I've purchased a home three years ago. And, I have
2 to tell you my first experience was to -- traveling 500 miles
3 from L.A., moving my home, furniture is in there, I wanted
4 to grab a couple of beers, and right across I see Joe's
5 Corner. I says, my God, how convenient. But, unfortunately,
6 my confrontation there was not the most pleasant one. I
7 sat there, trying to order a beer. Sat there for five
8 minutes. Approached by two gentlemen for drugs and then
9 turn around, was chased away by a knife. And, that was my
10 first confrontation.

11 And, after that, obviously, I haven't gone there. But
12 the biggest problem is, I've got kids. But I already bought
13 the property, so I'm gonna make this place a better place
14 to live. But, it takes a lot of effort to keep these
15 people from doing obscene things underneath your house,
16 underneath your steps. You want to make sure you clean your
17 yard, not just over the weekend, but at least three times
18 a week so your kids won't step on the needle that's just
19 roaming around your front yard, back yard. I just cannot --
20 or feel, that you could allow this to happen in our
21 neighborhood. Not just the low income, we have average
22 income now and we have some good people coming in and we
23 like to keep the good people in. We love downtown. We are
24 very happy with downtown. I love the energy, I love the
25 growth. I think there's lot, lot of things that's happening.

1 But allow -- I am not against business, I'm definitely for
2 business. Being a business owner, definitely. But there
3 are certain business that just cannot be allowed to have
4 certain privileges. Parking, try find a parking space after
5 7:00, after 8:00. Try to call the police because there's
6 somebody in Joe's Corner that decided to park in front of
7 your garage, so you can't get your car out. And, allowing
8 that to happen, I think you are asking for future problem.
9 It's bad enough that the F Street has turned into two-way,
10 and if you check your records, we have at least four to five
11 accidents a week. And, it's -- you know, you might smirk,
12 but you know that's the truth. We don't allow our kids out
13 there. We don't -- everytime we hear a bang, it could be
14 our kids.

15 But we have a problem, not just the traffic problem,
16 parking problem. So, allowing that, Joe's Corner, and
17 allowing them to have the parking space, or waivering the
18 parking space, I think just cannot happen.

19 CHAIRMAN RAMIREZ: Thank you. Is there any one else
20 wishing to speak in opposition to this proposal?

21 OFFICER BARCLAY: I'm Officer Jim Barclay of the
22 Sacramento Police Department, 813 6th Street. Real briefly,
23 as far as reported crimes in Joe's Corner itself, since
24 August of 1984, there have been four reported armed robberies
25 inside Joe's Corner, including one in January of this year

1 where a female customer was held by one of the suspects
2 while the other suspect physically took her purse. In
3 checking with the officers that work the area, the sector
4 sargeants that are supervising it, all say pretty much what
5 has been said here prior to my coming up this evening. It
6 is no longer a neighborhood bar. It's pretty much taken
7 over by people from outside the area that are coming in and
8 causing quite a few of the problems.

9 At a public meeting with residents on October 15th,
10 the owner of the bar, according to the reports, was at that
11 meeting and made the comment that he was familiar with some
12 of the problems of some of the people coming into his bar
13 and said that they were verbally being told to leave the
14 bar and not come back. And, he made the comment that, at
15 that time, he was going to do something in addition to that,
16 he was going to start calling the police on these suspicious
17 peoples involved with, apparently, with selling stolen
18 property, narcotics, that sort of thing, prostitution. This
19 afternoon I checked with the officer who works the swing
20 shift through the tailend of the week and into the weekend,
21 through the weekend, and he is also the acting supervisor
22 in the area. He reports that he has noticed no increase in
23 calls to the bar itself, especially from anybody employed
24 in the bar, not receiving any appreciable increase in reports
25 of suspicious people at the bar or anything else.

1 I also checked with the sector sargeant on the day
2 shift today and he reports the same thing. So, we are not
3 receiving any reports on these suspicious people that are --
4 that neighbors all renounce, who say are using the bar. And,
5 as our documents prove, we are against the, any expansion
6 of the bar.

7 CHAIRMAN RAMIREZ: Thank you. Any one else wishing
8 to speak in opposition? The applicant, you have an
9 opportunity to summarize your comments.

10 MR. HUNT: Thank you. If I may respond, just briefly
11 to a couple of the points made. There is no doubt there's
12 a problem in this whole downtown area with crime. It's not
13 as neat as saying that it's all at Joe's Corner, and I'd
14 also like to tell you that if we don't expand, the criminal
15 activity will stop, it's not going to stop. We're talking
16 about a property owner who wants to improve his business, not
17 destroy it. We're talking about a property owner who would
18 like to improve his clientele by offering food services, not
19 make it worse. He's not going to make any money off the
20 illegal activities and there's no allegations that anywhere,
21 any part of that. If things are going on in the neighborhood,
22 the neighbors are to be commended for their work in trying to
23 stop that, but it's not going to end tonight by not granting
24 the special permit. The question is will it increase the
25 liklihood of criminal activities? That's the way the

1 ordinance reads. And when you look at the expansion, all
2 we're talking about is offering some modest food services
3 and moving a pool table and adding four bar stools. The
4 parking we're talking about is one space. And I ask you to
5 keep that in perspective, because it's not as simple as
6 saying, deny the special permit and we'll make a major dent
7 in criminal activity in this area. That's not what's going
8 to happen.

9 The question is, will it increase? And, again, I
10 emphasize to you, this is a property owner who has owned
11 this business, it's a family owned business for over 25 years,
12 they are tenants who live above the business. He has a
13 vested interest in improving this area as well, and he is
14 trying. This is an expansion which enhances and improves
15 the quality of the business and the services it offers.
16 Thank you.

17 CHAIRMAN RAMIREZ: Questions? Brian.

18 COMMISSIONER HOLLOWAY: Quick question. Did any of
19 your research include spending time inside Joe's bar?

20 MR. HUNT: I'm sorry. What?

21 COMMISSIONER HOLLOWAY: Did any of your research
22 include spending time in Joe's bar?

23 MR. HUNT: I have been in it, yeah. There's -- the
24 undesirable element, you can drive about a five block radius,
25 and it's all around there. Now, this is on 15th, which is a

1 very well travelled street, it's like 12th. And, you see
2 almost the exact same thing. Street corners, you're going
3 to have people gathered, doing whatever they're doing. This
4 is on a street corner. There's no way we can prevent that.
5 I don't think we can expect the property owner to go out and
6 sweep up the sidewalk every fifteen or twenty minutes. That's
7 the responsibility of the police department and the neighbors
8 who are observing it and watching and complaining about
9 what's going on. The location is a busy street location,
10 like I say, it's right on 15th and it's right on the corner
11 of F, and it's well lite, there's lots of street lights
12 around there so there is a pretty high level of activity.
13 When you go into the bar, it's a small bar, I wasn't
14 solicited, didn't see anything like that going on. And I
15 find it almost impossible to believe that someone could stay
16 in business for 25 years and have the magnitude of criminal
17 activity going on within the walls of that structure for that
18 period of time. It's just very, very hard to believe.

19 Outside the walls, on the streets and surrounding
20 blocks, yes. There's no question about it. We could go for
21 a drive right now and you're going to see it. We're talking
22 what is the property owner's responsibility and what's going
23 on in his structure.

24 CHAIRMAN RAMIREZ: Further questions? Thank you.

25 MR. HUNT: Thank you.

1 CHAIRMAN RAMIREZ: We'll close the public testimony
2 portion of the hearing and open it for Commission discussion.
3 I have a question of staff, there's some allegations of
4 some illegal building going on, was this ever reported, is
5 this a problem at all? There doesn't mention anything about
6 that in the staff report.

7 MS. SPADE: Today, I went over and checked the
8 Building Department records and, because it's a corner, I
9 looked for two addresses, 1506 F and 601 15th Street. All
10 we found was plumbing -- they came in for a gas check in
11 1985 in January and we didn't find any final permit issued
12 for the wall that went up, so -- and I -- I talked to the
13 property owner about that and he said he no longer had any
14 paperwork on that building permit approval, so -- he was
15 hoping we could find something, and we didn't, so --

16 UNIDENTIFIED SPEAKER: What was the plumbing permit
17 for?

18 MS. SPADE: Well, I guess it was vacant for about a
19 year and they come in and do a gas leak check, that's all
20 it was.

21 UNIDENTIFIED SPEAKER: I -- Ted. Can you hear me Ted?

22 UNIDENTIFIED SPEAKER: Yes.

23 UNIDENTIFIED SPEAKER: Is there anything the City can
24 do toward shutting down a business like this, I don't mean
25 the Planning Commissioner, I mean like the City Council, do

1 they -- Is there an action they take to shut down a business
2 that seems to harbor nuisance?

3 UNIDENTIFIED SPEAKER: It might be possible for the
4 City Council, in a proper circumstance to in effect authorize
5 our office to bring an action against a building that's a --
6 a building and an operation that's a public nuisance. I
7 don't know whether it would be justified in this case. It --
8 there's just -- I just haven't heard enough to say whether
9 it would or it wouldn't be. It would require a whole lot
10 more investigation, you know, than has come out in the
11 testimony here. But it might be possible -- it might be
12 possible to do that. It would probably be a common law
13 nuisance action. The only statutory thing I can think about
14 is a series of laws called a red light abatement act, but
15 that applies to places used for very narrow form of criminal
16 activity that really hasn't been alleged as going on in this
17 place.

18 UNIDENTIFIED SPEAKER: But the rap for that would be
19 a Council initiated. I mean, would the neighbors talk to
20 Shore? Is that --

21 UNIDENTIFIED SPEAKER: Yes. That would be the -- and
22 it would require a very thorough going investigation by the
23 police department and our office before anything were done.
24 And, I can't tell you that we could do anything. It might
25 be possible, but beyond my very (unintelligible) making it,

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1 I'm being purposely vague. That's all I can be on that.

2 UNIDENTIFIED SPEAKER: (Inaudible).

3 CHAIRMAN RAMIREZ: Any further questions of staff?

4 COMMISSIONER ISHMAEL: Well, I would move the staff
5 report.

6 COMMISSIONER OTTO: I'll second it.

7 CHAIRMAN RAMIREZ: Motion is to deny as stated by the
8 staff report, no further discussion. Call the roll, please.

9 CLERK: Commissioner Chinn.

10 COMMISSIONER CHINN: Aye.

11 CLERK: Hollick.

12 COMMISSIONER HOLLICK: Aye.

13 CLERK: Holloway.

14 COMMISSIONER HOLLOWAY: Aye.

15 CLERK: Ishmael.

16 COMMISSIONER ISHMAEL: Aye.

17 CLERK: Notestine..

18 COMMISSIONER NOTESTINE: Aye.

19 CLERK: Otto.

20 COMMISSIONER OTTO: Aye.

21 CLERK: Walton.

22 COMMISSIONER WALTON: Aye.

23 CLERK: Ramirez.

24 CHAIRMAN RAMIREZ: Aye.

25 You have been denied. You have ten days to appeal

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1 to the City Council.

2 That was our only hearing this evening. However,
3 there is an item, one item we did -- that is now presented
4 a recommendation to the Council regarding the work plan
5 follow-up to the general plan. And Darrell would like to
6 tell us about that and how it turned out.

7 UNIDENTIFIED SPEAKER: We had a letter authored by
8 members of the Commission last Thursday and last Monday.
9 Basically, suggesting proposed language that could be
10 introduced into the general plan. And, he is in fact -- we
11 did make a presentation to Council last Tuesday to air
12 their feelings on that. It was generally very supportive
13 of the concept of the language, but they did ask that the
14 letter be reviewed by staff and by a legal department.
15 Because there seemed to be a hint of nervousness on
16 whenever we add language to the general plan, it needed to
17 go through legal review.

18 So we can expect comments back from them sometime
19 early January, prior to the January 12th meeting and we'll
20 go from there. But, again, the Council was very supportive
21 of the concept and was happy to see that we've stepped
22 forward to present our views.

23 CHAIRMAN RAMIREZ: The other item too, I wanted to
24 bring up, is that when we were going through the South
25 Natomas -- we've already had one South Natomas community

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1 plan meeting, and we -- the community association asked us
2 at that time if we would be interested in some kind of a
3 workshop or a tour and we said, yes, we would. And, they
4 called me today asking if we could set up a time to do that.
5 Are there any feelings about doing that sometime early
6 January or mid-January?

7 UNIDENTIFIED SPEAKER: Is this where we
8 (unintelligible) have to get in the bus with the public?

9 CHAIRMAN RAMIREZ: Yes. And go out around and tour
10 the place. Their feeling was that there are a number of
11 Commission members who are new and have had not had the
12 benefit of going through the first round of hearings that
13 we had. So, would, say, mid-January be okay? Say, second
14 week in January sometime, if staff can fit it in, would
15 that be okay?

16 UNIDENTIFIED SPEAKER: Sure.

17 CHAIRMAN RAMIREZ: Okay. Would you report that
18 to the plan director. That we'd like to set up a workshop
19 tour through the South Natomas community plan area around
20 the second week in January.

21 UNIDENTIFIED SPEAKER: January -- A regular commission
22 meeting January 14th, so, do you want to have it the same
23 week or a week after that? While we are in special meetings,
24 is that what we're really looking at?

25 CHAIRMAN RAMIREZ: This is a special meeting.

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1 UNIDENTIFIED SPEAKER: So we'll have it off week, then?

2 CHAIRMAN RAMIREZ: Yes. It could be at the beginning
3 of that week --

4 UNIDENTIFIED SPEAKER: The third week, or --

5 CHAIRMAN RAMIREZ: When do we hear it? don't we hear
6 it the third week?

7 UNIDENTIFIED SPEAKER: I think it's the 21st of
8 January.

9 CHAIRMAN RAMIREZ: It's the 20 something. I want to
10 give us plenty of time to be able to go through it. So,
11 try the second week, and if we can't fit it in, maybe we'll
12 go into the third week.

13 UNIDENTIFIED SPEAKER: Okay, it'll probably -- our
14 normal commission meeting is on Thursday, so it'll probably
15 be what, Wednesday maybe, or did you want to have the
16 meetings back to back like that?

17 CHAIRMAN RAMIREZ: Or a Monday, it doesn't matter.

18 UNIDENTIFIED SPEAKER: Okay.

19 CHAIRMAN RAMIREZ: Why don't you come back with some
20 alternative dates.

21 Meeting adjourned.

22 (Proceedings concluded at this point.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, GUY W. DAVENPORT, Official Court Reporter for a Superior Court in the State of California, listened to the taped recording from which the foregoing transcript was prepared, and find it to be a complete and accurate record of the proceedings within the limits of the recording reproduced at the time and the hearing and provided for the purpose of transcribing into typewritten form.

CAUSE: PLANNING COMMISSION, CITY OF SACRAMENTO

DATE: December 17, 1987

Dated this 24th day of May, 1988,
at Sacramento, California.


GUY W. DAVENPORT RPR



CITY COUNCIL
CITY OF SACRAMENTO

---oOo---

Re:)
Appeal of Planning Commission's)
Denial of a Special Permit)

---oOo---

Regular Meeting

Tuesday, March 8, 1988

Sacramento, California

---oOo---

(Transcription From Taped Proceedings)

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1 TUESDAY, MARCH 8, 1988

2 --o0o--

3 MAYOR RUDIN: Item 19.

4 CLERK: Appeal of the Planning Commissions's denial
5 of a special permit to allow the expansion of a bar on a
6 0.14 $\frac{1}{2}$ developed acre in the general commercial zone for
7 property located at 601 15th Street.

8 MAYOR RUDIN: Mr. Gee.

9 MR. GEE: Members of the Council, as the clerk
10 mentioned the request is for a special permit to expand an
11 existing bar into an adjoining area previously used for a
12 restaurant. The new 2,100 foot square foot addition would
13 allow the applicant to add one additional pool table,
14 additional tables and seats for their patrons as well as a
15 cooking area in additional restaurants.

16 As noted in our staff report, the applicant did
17 start work on the expansion prior to the City's requirement
18 for a special permit for bars and bar's expansion. The work
19 was not completed prior to the effective date of the
20 ordinance. In the staff report, we made an evaluation of
21 the proposed request. We found that the site is located in
22 a residential area targeted for revitalization by the City.
23 You also noted there's a correspondence from the Police
24 Department which indicated that the area is suffering from:
25 severe crime problems and they expressed concern regarding

1 the expansion of the bar and its potential to increase the
2 problem for that area.

3 Based on the proximity of the expansion in the
4 residential area, the fact that it is located in an area
5 undergoing revitalization, and the input from the Police
6 Department, Planning Staff recommended to the Planning
7 Commission denial of this special permit.

8 And, no matter what's considered by the Planning
9 Commission and after hearing testimony for and against the
10 special permit, the Commission voted to deny the permit.
11 The applicant has filed an appeal to the City Council. I
12 should also note that yesterday I received a copy of a
13 letter from the attorney who represents the applicant and I
14 distributed copies to the Council prior to this meeting.

15 MAYOR RUDIN: Any questions of Mr. Gee?

16 Thank you, Art. All right --

17 UNIDENTIFIED SPEAKER: I'm sorry. Art, have there
18 been complaints from either the neighborhood or the Police
19 Department on this site (inaudible).

20 MR. GEE: There is an opposition from the neighbor-
21 hood -- residents of the neighborhood, the Mid-town Merchants
22 Association, and the Old City Association and there's a
23 letter from the Police Department opposing the expansion.
24 Now, there is also a letter from -- I can't remember the
25 task force now, I should remember. There is a correspondence

1 in your packet from --

2 UNIDENTIFIED SPEAKER: Well, I know what it is. I
3 just wanted it on the record.

4 MAYOR RUDIN: Okay. Thank you.

5 We should hear first from the person bringing the
6 appeal.

7 MR. EDELSTEIN: Good evening Mayor and Council Members.
8 My name is Allen Edelstein. I'm an attorney and I was
9 retained by the Vogeli's, either just prior or just after
10 the Planning Commission's decision denying the special use
11 permit. Basically, the reason why my client, Mr. and Mrs.
12 Vogeli have been persistent and are still here, is because
13 as Mr. Gee mentioned, they got a valid construction permit,
14 they expended over \$30,000 in reliance upon that permit.
15 They put in handicapped restrooms, as they were required to
16 do. Moved the entrance as they were required to do. They
17 posted with the ABC as they learned that they were supposed
18 to. Protests were filed by some neighbors and they were
19 already to go to their hearing process with the ABC, which
20 would be as you are aware, an Evidentiary hearing, witnesses
21 sworn under oath, they're already to do that and then your
22 ordinance went into effect at the end of June, beginning of
23 July. And, they have a hard time understanding how they can
24 spend all that money, have a permit, get all the valid
25 inspections, I think there were six or seven inspections in

1 the course of -- from the Building Department, and,
2 ironically, just a couple of weeks ago, they got their final
3 Building Inspection. And they have a hard time understanding
4 how this could happen if they've done everything by the book.

5 We've done some legal research and actually, I'm here
6 to ask you to give them the permit, but, I think more
7 accurately and more preferably, to recognize that your
8 ordinance does not apply in their case. And to therefore,
9 let the -- let them go to the ABC. The ABC will not move
10 forward as long as there's some question. And the reason
11 that I believe the ordinance does not apply is because, under
12 the vested rights theory that the courts have developed, it's
13 a violation of due process of the Constitution to apply this
14 ordinance to someone who has their final building permit
15 specifically authorizing this from the City agency and has
16 expended substantial amount of money in reliance thereon.

17 I will concede that the -- I think that the City
18 Attorney may have a differing view of the legal analysis
19 than I do, but I feel very strongly that if litigation were
20 to occur, the court would find in my client's favor. And I --
21 Our effort here is to avoid that litigation to try to work
22 something out. To indicate our willingness to accommodate
23 the concerns of the neighborhood in any way we can, but it
24 also, as business people, my clients can't see \$30,000 go
25 down the tubes.

1 Another reason why I frankly don't know if the
2 ordinance applies, is because the ordinance literally says
3 that it applies to establishing a use. And, my clients are
4 not attempting to establish a new use, they're attempting to
5 expand a current one. And, again, before that reason, I
6 don't know if the ordinance would be held to apply.

7 I would like to clarify, if I may take a moment or a
8 few moments so misunderstandings and to answer some assertions
9 that have been made by some of the neighbors. First of all,
10 there seemed to be, at the Planning Commission meeting
11 anyway, a feeling that the Vogelis wanted to greatly expand
12 the allowed square footage in the -- or the -- capacity -- the
13 occupancy capacity. It is true that the restaurant is now
14 boarded up and unused. And there was a wall between the
15 restaurant and the bar. That restaurant could be used at
16 any time under the current situation. The capacity of the
17 total area, the bar and the restaurant combined are 100
18 persons. After this remodeling job, removing the wall, it
19 reduces to 65 persons. So, there's a net reduction, as I
20 understand it, in the total capacity of the area. It is
21 true though, that as I said, that the restaurant currently
22 is not used, it's just boarded up.

23 The seats -- the total seating that will -- that my
24 clients will have after this is all done, only results in a
25 net increase of 9 seats and 1 pool table. Right now there's

1 room for 51 persons on seats. And, after this is done, there
2 will be room for 60. What he's really trying to do here is
3 open up the kitchen, which was there from the restaurant,
4 bring it up to health standards, current health standards,
5 he's been -- he worked on that. He didn't want to get into
6 the restaurant business at this point. If he did get into
7 the restaurant business, he wouldn't even have any of these
8 problems. He could have just gone that way. But he does
9 want to open up the kitchen and let his bar patrons use the
10 new square footage, have one more pool table and serve some
11 light fare. Things out of the microwave oven, if you will.

12 Another thing I would like to dispel is that the
13 Vogeli's establishment is a cause of the problems and that
14 they don't run a clean operation. It is true that the
15 police have taken an opposed position. But I should point
16 out that both at public meetings and in private conversations
17 with my client, the police, I believe, have recognized that
18 it's not problems that emanate specifically from my client's
19 establishment, but rather that it's a general concern with
20 the area. And there are problems in the area, we don't
21 deny that.

22 There have been charges about my client's history with
23 the ABC. They've had one violation since they've owned the
24 bar in 1979, there's a letter attached to my letter indicating
25 that one violation, I think it was a sale to a minor,

1 inadvertant, by a bartender. My clients did not dispute
2 that, they stipulated to a settlement and paid the fine.
3 They've taken steps over the years to erradicate problems
4 in and around their bar. They've put eight inch holes in
5 restroom doors and partitions so that sales of drugs and
6 other illegal activities cannot take place there. They
7 allow no off-premises wine sales, they removed indoor
8 public telephone and three outside public telephones. They
9 put lights in the parking lot, they've put a wrought iron
10 fence around a planter box. In discussions with Mr. Gee
11 and with others, they agreed, if necessary, not to have a
12 new pool table, to leave it with the current two pool
13 tables. They agreed to put windows in the establishment if
14 the police felt that would help. They agreed to consider,
15 if their finances allow, the posting of a security guard
16 outside at their own expense, a private security guard, if
17 that would help make the neighbors feel more comfortable in
18 their position.

19 One more point I'd like to make if I may. And, that's
20 the ascertainment that the establishment is not a neighborhood
21 bar in that the owner does not take steps to deter drug and
22 prostitution problems. As I've just reiterated -- stated --
23 they have taken many actions. It is true that many of their
24 customers do not now live in the neighborhood. Their
25 customers are 90 percent hispanic. Many of them are former

1 residents of the area. Many of them work in the area and
2 gather there after work. And, my clients take strong
3 exception to this implication that somehow they, and their
4 clientele are automatically suspect because they're not
5 from the neighborhood. They'd love to have more customers
6 from the neighborhood, being decent business people, they'd
7 like their customers from wherever they come.

8 There have been some accusations that the construction
9 work was done secretly; 3:00 or 4:00 in the morning. As I
10 mentioned, it was done with a valid permit. We have a
11 letter from the construction company, Cal Ram Construction,
12 that the permit was checked before construction began and
13 that everything was found to be legitimate, and that
14 construction was done during normal business hours.

15 As I stated at the outset, we don't feel that the
16 Vogelis are under the ordinance. We feel we would prevail
17 in court. We'd like to avoid that kind of litigation.
18 We're willing to make accommodations. We request that the
19 permit either be granted or that the City Council recognize
20 that the ordinance does not apply. Thank you very much.
21 I'd be happy to answer any questions.

22 MAYOR RUDIN: Thank you Mr. Edelstein. Are there
23 any questions? Ms. Robie.

24 COUNCILPERSON ROBIE: I have a couple of questions.
25 Actually, I think they're for staff. Art, I don't know

1 whether you can answer these or not. But I have a
2 misunderstanding here. Because we're talking about -- in
3 the staff report we talked about they did go -- they did
4 hire a contractor without contacting the Building Division,
5 and now we're being told that they have a final inspection
6 okay. And I -- there isn't anything in any of this that
7 actually says that their inspections have been completed.

8 MR. GEE: We've been talking with the applicant
9 and the Building Department since the Commission's action,
10 and as far -- the extent of my knowledge is that they applied
11 for a building permit several years ago, but because there
12 was problems with the original contractor, work was not
13 begun and the owner requested a 90-day extension of the
14 building permit. And, that was granted up to May, I believe,
15 of '86. And, subsequent to that, no work was done for quite
16 awhile. And, I believe six months later the new contractor
17 the owner hired came in and requested that they be allowed
18 to continue work.

19 I checked with the Building Department whether
20 between the time that their original time extension lapsed
21 and when the new contractor came in to talk about continuing
22 the work, whether there was subsequent extensions granted.
23 And, I could not find any records of whether an extension
24 was requested or granted. However, the Building Department,
25 on small projects like this, they do have a tendency to work

1 with small developers, small projects, and do provide a lot
2 of leniency in that area. And, as far as subsequent final
3 building inspections being done, they have been requested
4 to do additional inspection of the site and they have done
5 that. They've finalized, I believe, a number of areas,
6 including electrical.

7 COUNCILPERSON ROBIE: But, have they completely
8 signed-off on the whole construction in expansion?

9 MR. GEE: I thought, and maybe the applicant
10 could be helpful in this area. I thought that they --
11 they signed-off on plumbing, electrical, building, I believe
12 they had a few other areas yet to get completion and sign-
13 off, but maybe the applicant can help me in that area.

14 MR. EDELSTEIN: Mr. Vogeli indicates from the back
15 of the room that they did receive final inspection.

16 UNIDENTIFIED SPEAKER: Have they received an
17 occupancy permit?

18 COUNCILPERSON ROBIE: You know, I think there's a
19 real conflict here in what we're hearing from two sides.
20 On one side we're hearing the staff saying that you're
21 client did act without a permit, he did start construction
22 without a permit, which we frown on, believe me. And, then
23 you're saying that he has had -- been signed-off on in the
24 whole construction job.

25 MR. EDELSTEIN: Let me go into a little bit of detail.

1 My client received a permit in 1985 specifically authorizing
2 the work. Because of a problem with the contractor and some
3 other personal problems, he was not able to get the job
4 going right away.. Either he or the contractor at the time
5 received a 90-day extension as I understand it from Mr. Gee.
6 Finally, in 1987, my client made a new deal with a new
7 contractor, Cal Ram Construction Company, Incorporated. It
8 is our understanding that Cal Ram Construction Company, as
9 Mr. Gee said, contacted the Building Department and basically
10 said, hey, this is an old permit, it's another contractor
11 on it, can I proceed with this? And Cal Ram was told, yes,
12 you can. the Building Department soemtimes does do these
13 things on the smaller projects informally. My client simply
14 relied on Cal Ram Construction, which has a letter attached
15 to my letter, indicating that it was done under the permit
16 and that it was done during normal business hours. So,
17 apparently there was informal communication between Cal Ram
18 Construction and the Building Department.

19 And, on your other point, all the inspections through
20 the course of the project were done. No one ever mentioned
21 a question to my client that the permit is out of date or
22 no longer authorized or anything and the final inspection
23 was done just a few weeks ago.

24 COUNCILPERSON ROBIE: Okay. There's one other area
25 that I am confused about. And I still think that there's a

1 difference in opinion here as to whether it was done, you
2 know, with the correct permits or not. Is there is
3 inadequate parking provided. Now, don't they, Art, have to
4 have a special parking permit if -- particularly with the
5 expansion of a restaurant? We require more parking for
6 restaurants than we do for other types of facilities. Was
7 that never actually related to?

8 MR. GEE: There was an initial request for a variance
9 at the Planning Commission meeting as I recall. The former
10 use was a restaurant that had seating in the restaurant and
11 no parking allocated beyond the four spaces that are on the
12 site. And I think after discussion at the Planning
13 Commission meeting, there was a determination that the
14 restaurant and the bar generated the same amount of parking
15 demand and therefore did not require a variance.

16 COUNCILPERSON ROBIE: Okay. So they don't need a
17 variance for the extra parking?

18 MR. GEE: That's right. I think that was the
19 determination made by the Planning Commission in their
20 discussion.

21 COUNCILPERSON ROBIE: Thank you Art.

22 MAYOR RUDIN: Other questions?

23 COUNCILPERSON CHINN: Art, the facts are a little
24 bit confusing. I gather that what it boils down to at this
25 particular point in time, is that the work has been done

1 already even though he may have done without this special
2 permit, as we stand looking at it right now. The permit
3 is real -- what it boils down to, what is the special permit
4 for? To expand or to use it for a different purpose or to
5 use it for more expanded use?

6 MR. GEE: The special permit is to allow expansion
7 of a bar use into the restaurant area, the former restaurant
8 area.

9 COUNCILPERSON CHINN: Expansion of the bar use?

10 MR. GEE: Right.

11 COUNCILPERSON CHINN: So, if we deny it, then even
12 though they've put up the partitions and so forth and so on,
13 they would not be able to expand the bar into those
14 particular areas; right? Is that it?

15 MR. GEE: That's correct.

16 COUNCILPERSON CHINN: What does that mean? Does that
17 mean they'd have to go back and put in partitions?

18 MR. GEE: They could put that use into a use that's
19 not required of a special permit like, for example, a
20 restaurant. We had talked about that and the owner indicated
21 that that's not his current plans, to operate a restaurant,
22 but had he -- if he wanted to just operate that space as a
23 restaurant use, that would be allowed.

24 COUNCILPERSON CHINN: As far as the ABC problem is
25 concerned, what are they applying for as far as ABC is

1 concerned?

2 MR. GEE: They're applying for a modification of
3 their liquor license.

4 COUNCILPERSON CHINN: Again, more extended use?

5 MR. GEE: Right.

6 COUNCILPERSON CHINN: Thank you.

7 COUNCILPERSON ROBIE: I have a question about the
8 statistical -- the information we had about square footage.
9 Actually, whether or not the use was being -- the restaurant
10 was being used or not being used, the fact is that now that
11 they've taken down the wall, they have a bigger area and
12 they can accommodate more people in the bar; isn't that
13 right?

14 MR. GEE: Yes. I think the applicant, in their letter,
15 indicated that they would accommodate expansion of ten
16 additional people.

17 UNIDENTIFIED SPEAKER: Nine.

18 MR. GEE: Nine or ten additional people in that
19 expanded area.

20 MAYOR RUDIN: Any further questions? Thank you.

21 MR. GEE: Thank you very much.

22 MAYOR RUDIN: Is there any one in the audience who
23 wants to present testimony? Come on up to the front.

24 UNIDENTIFIED SPEAKER: The person who is coming up,
25 I'm just curious, is there a police representative?

1 UNIDENTIFIED SPEAKER: There was at the --

2 UNIDENTIFIED SPEAKER: Okay. Good.

3 UNIDENTIFIED SPEAKER: Yes.

4 MS. BAPTISTA: My name is Jeanette Baptista and for
5 many of you, we've been here to most all the Council meetings
6 before and have been very active in trying to clean up this
7 particular area of downtown Sacramento.

8 We purchased our home three years ago. We purchased
9 from one end of 15th Street to the other end of 16th Street,
10 which is right across the street from Mr. Vogeli's corner.
11 And, I really don't believe that there's any misunderstanding
12 of what the law is or what the law isn't here. Mr. Vogeli
13 took his permits out in '85, did not start his work until
14 '87. That of which most of the work was done between 3:00,
15 4:00 and 6:00 in the morning. Well, I don't about you, but
16 I don't do my expansions at 4:00 and 6:00 in the morning.
17 Maybe that's the only time he could get them to come.

18 I think to ask us, as neighbors, and I am speaking as
19 a whole from all the people at Washington group, that
20 Mr. Shore knows about and I know that you know, Mayor Rudin,
21 about. We have worked diligently for the past two years in
22 cleaning up this area. I can only ask each of you to look
23 at the facts and decide what you feel is best. Since the
24 bars closed on 12th Street, all of those kinds of people
25 have moved down to Mr. Vogeli's corner. Now, Mr. Vogeli

1 may have a \$30,000 investment, but I certainly have a lot
2 larger than \$30,000 at stake here. We have one end of the
3 block to the other end. The only reason why we have purchased
4 down there is to hopefully do something with this area
5 because we value those homes that are there. We ask that
6 you take a good look at this expansion. We don't have
7 enough parking already. We have a considerably high crime
8 rate, which has been, at times, linked to Mr. Vogeli's
9 premises, which those facts certainly speak for themselves.
10 They are currently being asked and reviewed by the Board of
11 Alcohol because we asked the Board of Alcohol to step in and
12 take a look because we could see all the minors and people
13 going in and out of there.

14 They did. They sent in undercover agents, and yes,
15 they were served, underage people. Since all this started,
16 the activity in the past four months is definitely slowed
17 way down. It will only stayed slowed down until summer comes
18 again until this whole thing blows over and hopefully we
19 all be quiet on the block and we don't say anything.

20 There is what, 25 people in our group who have been
21 to these meetings and because of all the postponements, not
22 many are here tonight. All of us are in agreement. That's
23 the first source to not allow an expansion.. And if any of
24 us could figure out a real sure way of not to have the bar
25 there, that's what we would try for. So we ask each of you

1 to take a good look before granting this expansion because
2 of all the neighbors on behalf of them, believe me, we do
3 not want to see this expansion. Thank you.

4 MAYOR RUDIN: Thank you. Is there any one else who
5 wants to speak? While this gentlemen is coming up, will
6 there be any other speakers, could you raise your hand?
7 Okay.

8 MR. BAPTISTA: My name is Natosh Baptista. As a
9 business owner I know how difficult it is trying to fight
10 a City Planning to get permits, whether it be parking
11 variance or a handicap variance, and costs lot of time,
12 money and effort. But I think if you are a legit. businessman
13 and do consider the City and their planning staff, you go
14 through the due processes as you would state..

15 I have never once been a homeowner downtown, as
16 Mr. Vogeli would say or his lawyer would say, had permit.
17 Well, I have never seen a permit as the City indicated or
18 have stated that you have legally have to do is to put the
19 little permit right there on the door or where it is visible.
20 I have never seen it. Expansion of the bar, done in normal
21 hours, if you consider doing during 2:00, 3:00 in the
22 morning, if that's normal for them, I don't think it's
23 normal for me, nor does the neighborhood consider that
24 normal.

25 The ABC did get involved and the only reason they got

1 involved because we complained because the expansion was
2 done in a illegal manner. And we have contacted the ABC
3 and they got involved. They stepped in and they put a stop
4 in it. If we're going through this process of trying to
5 appeal this, I ask you, then let them go through the due
6 process as the rest of the business people do.

7 MAYOR RUDIN: Thank you Mr. Baptista. Are there any
8 other speakers? Okay. Mr. Edelstein do you want the
9 opportunity to make any final comments.

10 COUNCILPERSON SHORE: Mayor. Before he makes a
11 final comment, I just wanted to ask the question of our
12 City Attorney. If there is -- there's been indication of
13 possible legal action depending on the outcome of the vote
14 tonight. With that in mind, does it -- is that legal action
15 affected by whether there -- by testimony on record here,
16 and in light of that, should we be asking the -- do we need
17 to ask the police officer for a statement or not or is it a
18 complete new hearing if it goes to legal action?

19 MR. JACKSON: It's a complete -- well, I think
20 according to Mr. Edelstein's testimony, I think that any
21 legal action they bring would be on the question of whether
22 or not they had a vested right because of the work they did
23 in the restaurant for the expansion. I -- their argument
24 would be that if they did have a vested right, then they
25 wouldn't have to get the special permit. I don't think

1 they're challenging the conduct of the hearing and whether
2 or not it's fair or not.

3 COUNCILPERSON SHORE: Okay. Would their vested
4 rights, as far as their potential vested rights, should
5 they seek legal action, is that potential right or lack of
6 right affected at all by testimony as to the appropriateness
7 of the Council's action as to whether there should be
8 expansion either by testimony by the police, neighbors, or
9 statements by councilmembers or is it a complete separate
10 matter that they would be proceeding on?

11 MR. JACKSON: I think it's separate. Maybe there is
12 something that's relevant that might come, but basically,
13 it's separate.

14 COUNCILPERSON SHORE: Maybe, what I would ask is I --
15 okay, go ahead, I'm sorry.

16 MR. EDELSTEIN: Thank you. Very briefly, I'd just
17 like to clear up one item that Mr. Chinn asked about. I
18 want to emphasize that when the ordinance that is the problem
19 here was passed, my client was substantially done with
20 construction. He did not start the construction after the
21 special ordinance was passed number one. Number two, again,
22 you've heard these charges of construction in the middle of
23 the night and so forth, and again, I want to emphasize, it
24 was done by a reputable construction company during business
25 hours. You're -- this special ordinance is holding up the

1 opportunity of going to the ABC hearing. The ABC will not
2 act as long as there is a zoning question. My clients are
3 more than willing, anxious to go to that hearing where
4 witnesses will be put under oath and where we have an
5 Evidentiary Hearing and the ABC can determine whether my
6 client causes problems with alcohol and can listen to all
7 the neighbors, under oath and with cross-examination.

8 Lastly, I'd just like to again emphasize all the
9 things my client has done and is willing to do to accommodate
10 the neighbor's concerns. He wants an expansion, not so much
11 for the numbers, just for more room and to start serving
12 light food. And, I ask you to consider the alternatives,
13 a boarded up restaurant. That's what it is now, a boarded
14 up building. Is it better to have a little expansion with
15 some light food and the things my client is willing to do,
16 or is it better to have litigation and a boarded up building
17 where my client's value of his premises is reduced? I don't
18 think that serves anybody's purposes. And I don't think it
19 helps to deter problems in the neighborhood to have a
20 boarded up building.

21 I ask you please to, either overturn the Commission's
22 denial or to simply take note of the fact that legally the
23 ordinance does not apply to my client's situation. Thank
24 you again.

25 MAYOR RUDIN: Thank you. All right. What is the

1 wish of the Council?

2 COUNCILPERSON SHORE: Mayor. I'd like to make a
3 motion -- I'd just like -- just in case it's needed for
4 findings of fact, have the record reflect that the police
5 are here and represented and have expressed previously
6 strong opposition to the granting of this permit.

7 Based on that, I would also move that we close the
8 hearing and deny the appeal based on findings of fact which
9 is the staff and Commission recommendation.

10 COUNCILPERSON SERNA: Second.

11 MAYOR RUDIN: Moved by Mr. Shore, seconded by
12 Mr. Serna that we close the hearing and deny the appeal
13 based on findings of fact and come back to us later.

14 Any further questions or discussion?

15 COUNCILPERSON ROBIE: There is only one thing I
16 wanted to add, and that is an interesting letter from
17 Ms. Serna, from the Mayor's Hispanic Committee. And, in
18 the letter she states about the many problems of -- that
19 her group investigated and actually did go into the
20 community to help those neighbors that were around and the
21 young people who were attending this bar to help them with
22 some of their problems. And her group is very much opposed
23 to the expansion. That they did find illegal activity
24 there and did help with some of the alcohol which they
25 felt was being sold to minors. So it's not just the

1 neighborhood, but it seems to me that it's other groups
2 also who have had some problems with this particular
3 facility.

4 COUNCILPERSON SERNA: Mayor, that Serna and myself
5 are not related.

6 MAYOR RUDIN: No conflict here.

7 COUNCILPERSON SERNA: No conflict.

8 MAYOR RUDIN: Okay. Anything further? All right.
9 Call the roll, please on the motion to deny.

10 CLERK: Chinn.

11 COUNCILPERSON CHINN: Aye.

12 CLERK: Ferris.

13 COUNCILPERSON FERRIS: Aye.

14 CLERK: Kastanis.

15 COUNCILPERSON KASTANIS: Aye.

16 CLERK: Mueller.

17 COUNCILPERSON MUELLER: Aye.

18 CLERK: Pope.

19 COUNCILPERSON POPE: Aye.

20 CLERK: Robie.

21 COUNCILPERSON ROBIE: Aye.

22 CLERK: Serna.

23 COUNCILPERSON SERNA: Aye.

24 CLERK: Shore.

25 COUNCILPERSON SHORE: Aye.



1 CLERK: Rudin.

2 MAYOR RUDIN: Aye.

3 Motion carries, then the appeal has been denied.

4 Thank you very much.

5 (Tape recording ended at this point.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, GUY W. DAVENPORT, Official Court Reporter for a Superior Court in the State of California, listened to the taped recording from which the foregoing transcript was prepared, and find it to be a complete and accurate record of the proceedings within the limits of the recording reproduced at the time and the hearing and provided for the purpose of transcribing into typewritten form.

CAUSE: CITY COUNCIL, CITY OF SACRAMENTO

DATE: March 8, 1988

Dated this 24th day of May, 1983,
at Sacramento, California.


GUY W. DAVENPORT, RPR

ORIGINAL

CITY COUNCIL
CITY OF SACRAMENTO

---oOo---

Re:)
Appeal of Planning Commission's)
Denial of a Special Permit)
_____)

---oOo---

Regular Meeting

Tuesday, March 8, 1988

Sacramento, California

---oOo---

(Transcription From Taped Proceedings)

---oOo---

1 TUESDAY, MARCH 8, 1988

2 --o0o--

3 MAYOR RUDIN: Item 19.

4 CLERK: Appeal of the Planning Commissions's denial
5 of a special permit to allow the expansion of a bar on a
6 0.14 \pm developed acre in the general commercial zone for
7 property located at 601 15th Street.

8 MAYOR RUDIN: Mr. Gee.

9 MR. GEE: Members of the Council, as the clerk
10 mentioned the request is for a special permit to expand an
11 existing bar into an adjoining area previously used for a
12 restaurant. The new 2,100 foot square foot addition would
13 allow the applicant to add one additional pool table,
14 additional tables and seats for their patrons as well as a
15 cooking area in additional restaurants.

16 As noted in our staff report, the applicant did
17 start work on the expansion prior to the City's requirement
18 for a special permit for bars and bar's expansion. The work
19 was not completed prior to the effective date of the
20 ordinance. In the staff report, we made an evaluation of
21 the proposed request. We found that the site is located in
22 a residential area targeted for revitalization by the City.
23 You also noted there's a correspondence from the Police
24 Department which indicated that the area is suffering from
25 severe crime problems and they expressed concern regarding

1 the expansion of the bar and its potential to increase the
2 problem for that area.

3 Based on the proximity of the expansion in the
4 residential area, the fact that it is located in an area
5 undergoing revitalization, and the input from the Police
6 Department, Planning Staff recommended to the Planning
7 Commission denial of this special permit.

8 And, no matter what's considered by the Planning
9 Commission and after hearing testimony for and against the
10 special permit, the Commission voted to deny the permit.
11 The applicant has filed an appeal to the City Council. I
12 should also note that yesterday I received a copy of a
13 letter from the attorney who represents the applicant and I
14 distributed copies to the Council prior to this meeting.

15 MAYOR RUDIN: Any questions of Mr. Gee?

16 Thank you, Art. All right --

17 UNIDENTIFIED SPEAKER: I'm sorry. Art, have there
18 been complaints from either the neighborhood or the Police
19 Department on this site (inaudible).

20 MR. GEE: There is an opposition from the neighbor-
21 hood -- residents of the neighborhood, the Mid-town Merchants
22 Association, and the Old City Association and there's a
23 letter from the Police Department opposing the expansion.
24 Now, there is also a letter from -- I can't remember the
25 task force now, I should remember. There is a correspondence

1 in your packet from --

2 UNIDENTIFIED SPEAKER: Well, I know what it is. I
3 just wanted it on the record.

4 MAYOR RUDIN: Okay. Thank you.

5 We should hear first from the person bringing the
6 appeal.

7 MR. EDELSTEIN: Good evening Mayor and Council Members.
8 My name is Allen Edelstein. I'm an attorney and I was
9 retained by the Vogeli's, either just prior or just after
10 the Planning Commission's decision denying the special use
11 permit. Basically, the reason why my client, Mr. and Mrs.
12 Vogeli have been persistent and are still here, is because
13 as Mr. Gee mentioned, they got a valid construction permit,
14 they expended over \$30,000 in reliance upon that permit.
15 They put in handicapped restrooms, as they were required to
16 do. Moved the entrance as they were required to do. They
17 posted with the ABC as they learned that they were supposed
18 to. Protests were filed by some neighbors and they were
19 already to go to their hearing process with the ABC, which
20 would be as you are aware, an Evidentiary hearing, witnesses
21 sworn under oath, they're already to do that and then your
22 ordinance went into effect at the end of June, beginning of
23 July. And, they have a hard time understanding how they can
24 spend all that money, have a permit, get all the valid
25 inspections, I think there were six or seven inspections in

1 the course of -- from the Building Department, and,
2 ironically, just a couple of weeks ago, they got their final
3 Building Inspection. And they have a hard time understanding
4 how this could happen if they've done everything by the book.

5 We've done some legal research and actually, I'm here
6 to ask you to give them the permit, but, I think more
7 accurately and more preferably, to recognize that your
8 ordinance does not apply in their case. And to therefore,
9 let the -- let them go to the ABC. The ABC will not move
10 forward as long as there's some question. And the reason
11 that I believe the ordinance does not apply is because, under
12 the vested rights theory that the courts have developed, it's
13 a violation of due process of the Constitution to apply this
14 ordinance to someone who has their final building permit
15 specifically authorizing this from the City agency and has
16 expended substantial amount of money in reliance thereon.

17 I will concede that the -- I think that the City
18 Attorney may have a differing view of the legal analysis
19 than I do, but I feel very strongly that if litigation were
20 to occur, the court would find in my client's favor. And I --
21 Our effort here is to avoid that litigation to try to work
22 something out. To indicate our willingness to accommodate
23 the concerns of the neighborhood in any way we can, but it
24 also, as business people, my clients can't see \$30,000 go
25 down the tubes.

1 Another reason why I frankly don't know if the
2 ordinance applies, is because the ordinance literally says
3 that it applies to establishing a use. And, my clients are
4 not attempting to establish a new use, they're attempting to
5 expand a current one. And, again, before that reason, I
6 don't know if the ordinance would be held to apply.

7 I would like to clarify, if I may take a moment or a
8 few moments so misunderstandings and to answer some assertions
9 that have been made by some of the neighbors. First of all,
10 there seemed to be, at the Planning Commission meeting
11 anyway, a feeling that the Vogelis wanted to greatly expand
12 the allowed square footage in the -- or the -- capacity -- the
13 occupancy capacity. It is true that the restaurant is now
14 boarded up and unused. And there was a wall between the
15 restaurant and the bar. That restaurant could be used at
16 any time under the current situation. The capacity of the
17 total area, the bar and the restaurant combined are 100
18 persons. After this remodeling job, removing the wall, it
19 reduces to 65 persons. So, there's a net reduction, as I
20 understand it, in the total capacity of the area. It is
21 true though, that as I said, that the restaurant currently
22 is not used, it's just boarded up.

23 The seats -- the total seating that will -- that my
24 clients will have after this is all done, only results in a
25 net increase of 9 seats and 1 pool table. Right now there's

1 room for 51 persons on seats. And, after this is done, there
2 will be room for 60. What he's really trying to do here is
3 open up the kitchen, which was there from the restaurant,
4 bring it up to health standards, current health standards,
5 he's been -- he worked on that. He didn't want to get into
6 the restaurant business at this point. If he did get into
7 the restaurant business, he wouldn't even have any of these
8 problems. He could have just gone that way. But he does
9 want to open up the kitchen and let his bar patrons use the
10 new square footage, have one more pool table and serve some
11 light fare. Things out of the microwave oven, if you will.

12 Another thing I would like to dispel is that the
13 Vogeli's establishment is a cause of the problems and that
14 they don't run a clean operation. It is true that the
15 police have taken an opposed position. But I should point
16 out that both at public meetings and in private conversations
17 with my client, the police, I believe, have recognized that
18 it's not problems that emanate specifically from my client's
19 establishment, but rather that it's a general concern with
20 the area. And there are problems in the area, we don't
21 deny that.

22 There have been charges about my client's history with
23 the ABC. They've had one violation since they've owned the
24 bar in 1979, there's a letter attached to my letter indicating
25 that one violation, I think it was a sale to a minor,

1 inadvertant, by a bartender. My clients did not dispute
2 that, they stipulated to a settlement and paid the fine.
3 They've taken steps over the years to erradicate problems
4 in and around their bar. They've put eight inch holes in
5 restroom doors and partitions so that sales of drugs and
6 other illegal activities cannot take place there. They
7 allow no off-premises wine sales, they removed indoor
8 public telephone and three outside public telephones. They
9 put lights in the parking lot, they've put a wrought iron
10 fence around a planter box. In discussions with Mr. Gee
11 and with others, they agreed, if necessary, not to have a
12 new pool table, to leave it with the current two pool
13 tables. They agreed to put windows in the establishment if
14 the police felt that would help. They agreed to consider,
15 if their finances allow, the posting of a security guard
16 outside at their own expense, a private security guard, if
17 that would help make the neighbors feel more comfortable in
18 their position.

19 One more point I'd like to make if I may. And, that's
20 the ascertainment that the establishment is not a neighborhood
21 bar in that the owner does not take steps to deter drug and
22 prostitution problems. As I've just reiterated -- stated --
23 they have taken many actions. It is true that many of their
24 customers do not now live in the neighborhood. Their
25 customers are 90 percent hispanic. Many of them are former

1 residents of the area. Many of them work in the area and
2 gather there after work. And, my clients take strong
3 exception to this implication that somehow they, and their
4 clientele are automatically suspect because they're not
5 from the neighborhood. They'd love to have more customers
6 from the neighborhood, being decent business people, they'd
7 like their customers from wherever they come.

8 There have been some accusations that the construction
9 work was done secretly; 3:00 or 4:00 in the morning. As I
10 mentioned, it was done with a valid permit. We have a
11 letter from the construction company, Cal Ram Construction,
12 that the permit was checked before construction began and
13 that everything was found to be legitimate, and that
14 construction was done during normal business hours.

15 As I stated at the outset, we don't feel that the
16 Vogelis are under the ordinance. We feel we would prevail
17 in court. We'd like to avoid that kind of litigation.
18 We're willing to make accommodations. We request that the
19 permit either be granted or that the City Council recognize
20 that the ordinance does not apply. Thank you very much.
21 I'd be happy to answer any questions.

22 MAYOR RUDIN: Thank you Mr. Edelstein. Are there
23 any questions? Ms. Robie.

24 COUNCILPERSON ROBIE: I have a couple of questions.
25 Actually, I think they're for staff. Art, I don't know

1 whether you can answer these or not. But I have a
2 misunderstanding here. Because we're talking about -- in
3 the staff report we talked about they did go -- they did
4 hire a contractor without contacting the Building Division,
5 and now we're being told that they have a final inspection
6 okay. And I -- there isn't anything in any of this that
7 actually says that their inspections have been completed.

8 MR. GEE: We've been talking with the applicant
9 and the Building Department since the Commission's action,
10 and as far -- the extent of my knowledge is that they applied
11 for a building permit several years ago, but because there
12 was problems with the original contractor, work was not
13 begun and the owner requested a 90-day extension of the
14 building permit. And, that was granted up to May, I believe,
15 of '86. And, subsequent to that, no work was done for quite
16 awhile. And, I believe six months later the new contractor
17 the owner hired came in and requested that they be allowed
18 to continue work.

19 I checked with the Building Department whether
20 between the time that their original time extension lapsed
21 and when the new contractor came in to talk about continuing
22 the work, whether there was subsequent extensions granted.
23 And, I could not find any records of whether an extension
24 was requested or granted. However, the Building Department,
25 on small projects like this, they do have a tendency to work

1 with small developers, small projects, and do provide a lot
2 of leniency in that area. And, as far as subsequent final
3 building inspections being done, they have been requested
4 to do additional inspection of the site and they have done
5 that. They've finalized, I believe, a number of areas,
6 including electrical.

7 COUNCILPERSON ROBIE: But, have they completely
8 signed-off on the whole construction in expansion?

9 MR. GEE: I thought, and maybe the applicant
10 could be helpful in this area. I thought that they --
11 they signed-off on plumbing, electrical, building, I believe
12 they had a few other areas yet to get completion and sign-
13 off, but maybe the applicant can help me in that area.

14 MR. EDELSTEIN: Mr. Vogeli indicates from the back
15 of the room that they did receive final inspection.

16 UNIDENTIFIED SPEAKER: Have they received an
17 occupancy permit?

18 COUNCILPERSON ROBIE: You know, I think there's a
19 real conflict here in what we're hearing from two sides.
20 On one side we're hearing the staff saying that you're
21 client did act without a permit, he did start construction
22 without a permit, which we frown on, believe me. And, then
23 you're saying that he has had -- been signed-off on in the
24 whole construction job.

25 MR. EDELSTEIN: Let me go into a little bit of detail.

1 My client received a permit in 1985 specifically authorizing
2 the work. Because of a problem with the contractor and some
3 other personal problems, he was not able to get the job
4 going right away.. Either he or the contractor at the time
5 received a 90-day extension as I understand it from Mr. Gee.
6 Finally, in 1987, my client made a new deal with a new
7 contractor, Cal Ram Construction Company, Incorporated. It
8 is our understanding that Cal Ram Construction Company, as
9 Mr. Gee said, contacted the Building Department and basically
10 said, hey, this is an old permit, it's another contractor
11 on it, can I proceed with this? And Cal Ram was told, yes,
12 you can. the Building Department sometimes does do these
13 things on the smaller projects informally. My client simply
14 relied on Cal Ram Construction, which has a letter attached
15 to my letter, indicating that it was done under the permit
16 and that it was done during normal business hours. So,
17 apparently there was informal communication between Cal Ram
18 Construction and the Building Department.

19 And, on your other point, all the inspections through
20 the course of the project were done. No one ever mentioned
21 a question to my client that the permit is out of date or
22 no longer authorized or anything and the final inspection
23 was done just a few weeks ago.

24 COUNCILPERSON ROBIE: Okay. There's one other area
25 that I am confused about. And I still think that there's a

1 difference in opinion here as to whether it was done, you
2 know, with the correct permits or not. Is there is
3 inadequate parking provided. Now, don't they, Art, have to
4 have a special parking permit if -- particularly with the
5 expansion of a restaurant? We require more parking for
6 restaurants than we do for other types of facilities. Was
7 that never actually related to?

8 MR. GEE: There was an initial request for a variance
9 at the Planning Commission meeting as I recall. The former
10 use was a restaurant that had seating in the restaurant and
11 no parking allocated beyond the four spaces that are on the
12 site. And I think after discussion at the Planning
13 Commission meeting, there was a determination that the
14 restaurant and the bar generated the same amount of parking
15 demand and therefore did not require a variance.

16 COUNCILPERSON ROBIE: Okay. So they don't need a
17 variance for the extra parking?

18 MR. GEE: That's right. I think that was the
19 determination made by the Planning Commission in their
20 discussion.

21 COUNCILPERSON ROBIE: Thank you Art.

22 MAYOR RUDIN: Other questions?

23 COUNCILPERSON CHINN: Art, the facts are a little
24 bit confusing. I gather that what it boils down to at this
25 particular point in time, is that the work has been done

1 already even though he may have done without this special
2 permit, as we stand looking at it right now. The permit
3 is real -- what it boils down to, what is the special permit
4 for? To expand or to use it for a different purpose or to
5 use it for more expanded use?

6 MR. GEE: The special permit is to allow expansion
7 of a bar use into the restaurant area, the former restaurant
8 area.

9 COUNCILPERSON CHINN: Expansion of the bar use?

10 MR. GEE: Right.

11 COUNCILPERSON CHINN: So, if we deny it, then even
12 though they've put up the partitions and so forth and so on,
13 they would not be able to expand the bar into those
14 particular areas; right? Is that it?

15 MR. GEE: That's correct.

16 COUNCILPERSON CHINN: What does that mean? Does that
17 mean they'd have to go back and put in partitions?

18 MR. GEE: They could put that use into a use that's
19 not required of a special permit like, for example, a
20 restaurant. We had talked about that and the owner indicated
21 that that's not his current plans, to operate a restaurant,
22 but had he -- if he wanted to just operate that space as a
23 restaurant use, that would be allowed.

24 COUNCILPERSON CHINN: As far as the ABC problem is
25 concerned, what are they applying for as far as ABC is

1 concerned?

2 MR. GEE: They're applying for a modification of
3 their liquor license.

4 COUNCILPERSON CHINN: Again, more extended use?

5 MR. GEE: Right.

6 COUNCILPERSON CHINN: Thank you.

7 COUNCILPERSON ROBIE: I have a question about the
8 statistical -- the information we had about square footage.
9 Actually, whether or not the use was being -- the restaurant
10 was being used or not being used, the fact is that now that
11 they've taken down the wall, they have a bigger area and
12 they can accommodate more people in the bar; isn't that
13 right?

14 MR. GEE: Yes. I think the applicant, in their letter,
15 indicated that they would accommodate expansion of ten
16 additional people.

17 UNIDENTIFIED SPEAKER: Nine.

18 MR. GEE: Nine or ten additional people in that
19 expanded area.

20 MAYOR RUDIN: Any further questions? Thank you.

21 MR. GEE: Thank you very much.

22 MAYOR RUDIN: Is there any one in the audience who
23 wants to present testimony? Come on up to the front.

24 UNIDENTIFIED SPEAKER: The person who is coming up,
25 I'm just curious, is there a police representative?

1 UNIDENTIFIED SPEAKER: There was at the --

2 UNIDENTIFIED SPEAKER: Okay. Good.

3 UNIDENTIFIED SPEAKER: Yes.

4 MS. BAPTISTA: My name is Jeanette Baptista and for
5 many of you, we've been here to most all the Council meetings
6 before and have been very active in trying to clean up this
7 particular area of downtown Sacramento.

8 We purchased our home three years ago. We purchased
9 from one end of 15th Street to the other end of 16th Street,
10 which is right across the street from Mr. Vogeli's corner.
11 And, I really don't believe that there's any misunderstanding
12 of what the law is or what the law isn't here. Mr. Vogeli
13 took his permits out in '85, did not start his work until
14 '87. That of which most of the work was done between 3:00,
15 4:00 and 6:00 in the morning. Well, I don't about you, but
16 I don't do my expansions at 4:00 and 6:00 in the morning.
17 Maybe that's the only time he could get them to come.

18 I think to ask us, as neighbors, and I am speaking as
19 a whole from all the people at Washington group, that
20 Mr. Shore knows about and I know that you know, Mayor Rudin,
21 about. We have worked diligently for the past two years in
22 cleaning up this area. I can only ask each of you to look
23 at the facts and decide what you feel is best. Since the
24 bars closed on 12th Street, all of those kinds of people
25 have moved down to Mr. Vogeli's corner. Now, Mr. Vogeli

1 may have a \$30,000 investment, but I certainly have a lot
2 larger than \$30,000 at stake here. We have one end of the
3 block to the other end. The only reason why we have purchased
4 down there is to hopefully do something with this area
5 because we value those homes that are there. We ask that
6 you take a good look at this expansion. We don't have
7 enough parking already. We have a considerably high crime
8 rate, which has been, at times, linked to Mr. Vogeli's
9 premises, which those facts certainly speak for themselves.
10 They are currently being asked and reviewed by the Board of
11 Alcohol because we asked the Board of Alcohol to step in and
12 take a look because we could see all the minors and people
13 going in and out of there.

14 They did. They sent in undercover agents, and yes,
15 they were served, underage people. Since all this started,
16 the activity in the past four months is definitely slowed
17 way down. It will only stay slowed down until summer comes
18 again until this whole thing blows over and hopefully we
19 all be quiet on the block and we don't say anything.

20 There is what, 25 people in our group who have been
21 to these meetings and because of all the postponements, not
22 many are here tonight. All of us are in agreement. That's
23 the first source to not allow an expansion. And if any of
24 us could figure out a real sure way of not to have the bar
25 there, that's what we would try for. So we ask each of you

1 to take a good look before granting this expansion because
2 of all the neighbors on behalf of them, believe me, we do
3 not want to see this expansion. Thank you.

4 MAYOR RUDIN: Thank you. Is there any one else who
5 wants to speak? While this gentlemen is coming up, will
6 there be any other speakers, could you raise your hand?
7 Okay.

8 MR. BAPTISTA: My name is Natosh Baptista. As a
9 business owner I know how difficult it is trying to fight
10 a City Planning to get permits, whether it be parking
11 variance or a handicap variance, and costs lot of time,
12 money and effort. But I think if you are a legit businessman
13 and do consider the City and their planning staff, you go
14 through the due processes as you would state.

15 I have never once been a homeowner downtown, as
16 Mr. Vogeli would say or his lawyer would say, had permit.
17 Well, I have never seen a permit as the City indicated or
18 have stated that you have legally have to do is to put the
19 little permit right there on the door or where it is visible.
20 I have never seen it. Expansion of the bar, done in normal
21 hours, if you consider doing during 2:00, 3:00 in the
22 morning, if that's normal for them, I don't think it's
23 normal for me, nor does the neighborhood consider that
24 normal.

25 The ABC did get involved and the only reason they got

1 involved because we complained because the expansion was
2 done in a illegal manner. And we have contacted the ABC
3 and they got involved. They stepped in and they put a stop
4 in it. If we're going through this process of trying to
5 appeal this, I ask you, then let them go through the due
6 process as the rest of the business people do.

7 MAYOR RUDIN: Thank you Mr. Baptista. Are there any
8 other speakers? Okay. Mr. Edelstein do you want the
9 opportunity to make any final comments.

10 COUNCILPERSON SHORE: Mayor. Before he makes a
11 final comment, I just wanted to ask the question of our
12 City Attorney. If there is -- there's been indication of
13 possible legal action depending on the outcome of the vote
14 tonight. With that in mind, does it -- is that legal action
15 affected by whether there -- by testimony on record here,
16 and in light of that, should we be asking the -- do we need
17 to ask the police officer for a statement or not or is it a
18 complete new hearing if it goes to legal action?

19 MR. JACKSON: It's a complete --- well, I think
20 according to Mr. Edelstein's testimony, I think that any
21 legal action they bring would be on the question of whether
22 or not they had a vested right because of the work they did
23 in the restaurant for the expansion. I -- their argument
24 would be that if they did have a vested right, then they
25 wouldn't have to get the special permit. I don't think

1 they're challenging the conduct of the hearing and whether
2 or not it's fair or not.

3 COUNCILPERSON SHORE: Okay. Would their vested
4 rights, as far as their potential vested rights, should
5 they seek legal action, is that potential right or lack of
6 right affected at all by testimony as to the appropriateness
7 of the Council's action as to whether there should be
8 expansion either by testimony by the police, neighbors, or
9 statements by councilmembers or is it a complete separate
10 matter that they would be proceeding on?

11 MR. JACKSON: I think it's separate. Maybe there is
12 something that's relevant that might come, but basically,
13 it's separate.

14 COUNCILPERSON SHORE: Maybe, what I would ask is I --
15 okay, go ahead, I'm sorry.

16 MR. EDELSTEIN: Thank you. Very briefly, I'd just
17 like to clear up one item that Mr. Chinn asked about. I
18 want to emphasize that when the ordinance that is the problem
19 here was passed, my client was substantially done with
20 construction. He did not start the construction after the
21 special ordinance was passed number one. Number two, again,
22 you've heard these charges of construction in the middle of
23 the night and so forth, and again, I want to emphasize, it
24 was done by a reputable construction company during business
25 hours. You're -- this special ordinance is holding up the

1 opportunity of going to the ABC hearing. The ABC will not
2 act as long as there is a zoning question. My clients are
3 more than willing, anxious to go to that hearing where
4 witnesses will be put under oath and where we have an
5 Evidentiary Hearing and the ABC can determine whether my
6 client causes problems with alcohol and can listen to all
7 the neighbors, under oath and with cross-examination.

8 Lastly, I'd just like to again emphasize all the
9 things my client has done and is willing to do to accommodate
10 the neighbor's concerns. He wants an expansion, not so much
11 for the numbers, just for more room and to start serving
12 light food. And, I ask you to consider the alternatives,
13 a boarded up restaurant. That's what it is now, a boarded
14 up building. Is it better to have a little expansion with
15 some light food and the things my client is willing to do,
16 or is it better to have litigation and a boarded up building
17 where my client's value of his premises is reduced? I don't
18 think that serves anybody's purposes. And I don't think it
19 helps to deter problems in the neighborhood to have a
20 boarded up building.

21 I ask you please to, either overturn the Commission's
22 denial or to simply take note of the fact that legally the
23 ordinance does not apply to my client's situation. Thank
24 you again.

25 MAYOR RUDIN: Thank you. All right. What is the

1 wish of the Council?

2 COUNCILPERSON SHORE: Mayor. I'd like to make a
3 motion -- I'd just like -- just in case it's needed for
4 findings of fact, have the record reflect that the police
5 are here and represented and have expressed previously
6 strong opposition to the granting of this permit.

7 Based on that, I would also move that we close the
8 hearing and deny the appeal based on findings of fact which
9 is the staff and Commission recommendation.

10 COUNCILPERSON SERNA: Second.

11 MAYOR RUDIN: Moved by Mr. Shore, seconded by
12 Mr. Serna that we close the hearing and deny the appeal
13 based on findings of fact and come back to us later.

14 Any further questions or discussion?

15 COUNCILPERSON ROBIE: There is only one thing I
16 wanted to add, and that is an interesting letter from
17 Ms. Serna, from the Mayor's Hispanic Committee. And, in
18 the letter she states about the many problems of -- that
19 her group investigated and actually did go into the
20 community to help those neighbors that were around and the
21 young people who were attending this bar to help them with
22 some of their problems. And her group is very much opposed
23 to the expansion. That they did find illegal activity
24 there and did help with some of the alcohol which they
25 felt was being sold to minors. So it's not just the

1 neighborhood, but it seems to me that it's other groups
2 also who have had some problems with this particular
3 facility.

4 COUNCILPERSON SERNA: Mayor, that Serna and myself
5 are not related.

6 MAYOR RUDIN: No conflict here.

7 COUNCILPERSON SERNA: No conflict.

8 MAYOR RUDIN: Okay. Anything further? All right.
9 Call the roll, please on the motion to deny.

10 CLERK: Chinn.

11 COUNCILPERSON CHINN: Aye.

12 CLERK: Ferris.

13 COUNCILPERSON FERRIS: Aye.

14 CLERK: Kastanis.

15 COUNCILPERSON KASTANIS: Aye.

16 CLERK: Mueller.

17 COUNCILPERSON MUELLER: Aye.

18 CLERK: Pope.

19 COUNCILPERSON POPE: Aye.

20 CLERK: Robie.

21 COUNCILPERSON ROBIE: Aye.

22 CLERK: Serna.

23 COUNCILPERSON SERNA: Aye.

24 CLERK: Shore.

25 COUNCILPERSON SHORE: Aye.

1 CLERK: Rudin.

2 MAYOR RUDIN: Aye.

3 Motion carries, then the appeal has been denied.

4 Thank you very much.

5 (Tape recording ended at this point.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, GUY W. DAVENPORT, Official Court Reporter for a Superior Court in the State of California, listened to the taped recording from which the foregoing transcript was prepared, and find it to be a complete and accurate record of the proceedings within the limits of the recording reproduced at the time and the hearing and provided for the purpose of transcribing into typewritten form.

CAUSE: CITY COUNCIL, CITY OF SACRAMENTO

DATE: March 8, 1988

Dated this 24th day of May, 1983,
at Sacramento, California.


GUY W. DAVENPORT, RPR

