



CITY OF OXNARD

MEMORANDUM

July 15, 1977

To: City Council

From: City Attorney

SUBJECT: PD 160 (Phase 2)

*What does PD have to do with
another?*

The Planning Commission by Resolution No. 5287 revoked Planned Development Permit No. 160 (Phase 2) to build 82 apartment units on the west side of Victoria Avenue and south of Via Marina Avenue.

PD 160 had been approved in April, 1971, to permit the construction of 232 apartments in three phases. Phase 1 was built. The area of Phase 3 was sold to another developer and that was built under another PD permit. In April, 1976, the developer was granted PD 282 to develop 80 apartment units for the same area covered by PD 160 (Phase 2). While the Coastal Commission has approved PD 282, the approval is subject to the condition that the density be reduced to 76 units.

The decision of the Planning Commission (revoking PD 160 (Phase 2) has been appealed to the City Council.

Section 34-157.1c of the Code of the City of Oxnard provides for revocation of a permit on the ground that the use for which the permit was granted has been abandoned. Whether or not there is an abandonment is based on the intent of the applicant. (Trans-Oceanic Oil Corp. vs. City of Santa Barbara, 194 P.2d 148, 85 C.A.2d 776). I have been unable to find any cases which discuss abandonment of permits. However, there are cases dealing with whether or not a non-conforming use has been abandoned. (McQuillan Municipal Corporations, Volume 8A, Sec. 25.192, Pages 46 - 47). The same principles should apply whether the abandonment is of a permit or of a non-conforming use. The intent of the applicant as to abandonment is subjective, and can be rebutted by facts that are inconsistent with the intent. Facts that may rebut a subjective intent not to abandon are lapse of time and change of plans. Perhaps other facts will be brought forth to rebut the intent not to abandon or to buttress it.

I believe the issue is one of fact for the Council to decide.

Joseph W. Hodges, Jr.
Joseph W. Hodges, Jr.

JWH:mg

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RESOLUTION NO. 5287

A RESOLUTION OF THE PLANNING COMMISSION FOR THE CITY OF OXNARD REVOKING, AFTER RECONSIDERATION, PHASE 2 OF PLANNED DEVELOPMENT PERMIT NO. 160, APPLIED FOR BY GRIFFIN DEVELOPMENT COMPANY, TO PERMIT CONSTRUCTION OF 82 APARTMENT UNITS IN AN R-3-PD ZONE ON THAT APPROXIMATE 3.3 ACRE PARCEL SHOWN AS LOT NO. 1 OF TRACT NO. 2213 AT THE SOUTH-EAST CORNER OF VICTORIA AVENUE AND VIA MARINA AVENUE, FILED ON PLANNING COMMISSION RESOLUTION OF INTENTION NO. 5250.

WHEREAS, the Planning Commission of the City of Oxnard has reconsidered in a public hearing an application for Planned Development Permit No. 160 (Phase 2), filed by Griffin Development Company in accordance with Section 34-157 of the Oxnard City Code; and

WHEREAS, said Commission finds that the applicant for the Planned Development Permit No. 160 has submitted an amended Planned Development Permit to develop 80 apartment units (PD-282) on the subject property and said amended Planned Development Permit was approved by the Planning Commission on April 1, 1976; and

WHEREAS, said Commission finds that Planned Development Permit No. 282 supercedes Planned Development Permit No. 160, and that the revised plan and architectural treatment is more in keeping with good planning practices for said neighborhood; and

WHEREAS, said Commission finds that the proposed use for Phase 2 of Planned Development Permit No. 160 has not been exercised for more than 18 months and that it was the intent of the applicant to replace it with Planned Development Permit No. 282 and to abandon Phase 2 of Planned Development Permit No. 160.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby revokes Phase 2 of Planned Development Permit No. 160. The decision of the Planning Commission is final unless appealed in accordance with provisions of Section 34-155 of the Oxnard City Code.

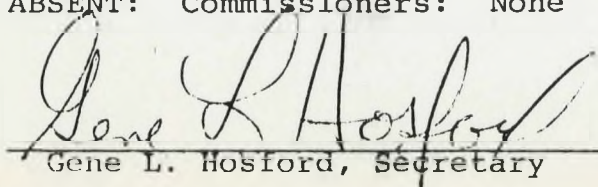
PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 12th day of May, 1977, by the following vote:

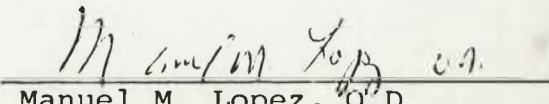
AYES: Commissioners: Duff, O'Connell, Maron, Stoll, Lopez

NOES: Commissioners: John, Flores

ABSENT: Commissioners: None

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ATTEST:


Gene L. Hosford, Secretary


Manuel M. Lopez, O.D.
Chairman

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