

LAW OFFICES  
**Joe M. Agapay, Jr.**  
 A PROFESSIONAL CORPORATION

JOE M. AGAPAY, JR.  
 THOMAS S. LEVYN

May 24, 1977

City Clerk  
 City of Oxnard  
 305 West Third Street  
 Oxnard, California 93030

Re: Notice of Appeal  
 Griffin Development Company  
 Planned Development Permit No. 160

Gentlemen:

Please accept the following as the bases upon which Griffin Development Company appeals the decision of the planning commission whereunder planned development permit number 160 was revoked:

a. Planned development permit number 160 (hereinafter referred to as "PD 160") was approved by planning commission resolution no. 3406 on April 15, 1971. It permitted construction of 232 apartments in three phases over an 18 month period. The three phases of PD 160 are as follows:

<u>Phase</u>	<u>Lot</u>	<u>Apartments</u>
Phase 1	Lot 2, Tract 2213-1	84
Phase 2	Lot 1, Tract 2213-1	82
Phase 3	Lot 3, Tract 2213-1	66

On April 1, 1976, by resolution no. 4945, the planning commission approved planned development permit number 282 (hereinafter referred to as "PD 282"), amending PD 160 to permit construction of 80 two story apartment units on Lot 1 of Tract 2213.

On May 12, 1977, the planning commission, on a motion submitted for consideration by Mr. Joe Ruscio,

10801 NATIONAL BOULEVARD  
 SUITE 405  
 LOS ANGELES, CALIFORNIA 90064  
 TELEPHONE (213) 879-3179

5/25/77 AM

Sent

Rec'd



CITY OF OXNARD  
 OFFICE OF CITY CLERK

Carol Frances  
 1454 Victoria  
 for Theodore H. Set 6/21/77  
 7:30 A.M. S.D.  
 mt. Frances

City Clerk  
May 24, 1977  
Page Two

Chairman of the Neighborhood Council, revoked PD 160 for the reason that no developer should have two permits, i.e. PD 160 and PD 282. It is respectfully submitted that this action was ultra vires the scope of the power of the planning commission, and was antithetical to the long established precedent of the decisions of the administrative bodies of the City of Oxnard.

b. The City Ordinance Code provides, inter alia, for the termination of planned development permits. Section 34-111 of said code provides the time limit for planned development permits as follows:

"After approval of the planned development permit, initiation of improvements (anticipated therein) must be begun within 18 months, unless some other period is specified by the commission, or the permit shall without prejudice become null and void."

Condition 12 of PD 160 provides that the permit shall expire 18 months from the date of the resolution, or April 15, 1971. Section 34-111 of the City Ordinance Code and Condition 12 of PD 160 should be read together to determine their intent. It has been the policy of the City of Oxnard that if a building permit were obtained and work commenced thereunder during the specified period, then the developer had the right to complete the project, in all phases. This policy has been applied where more than one building permit was needed and the second building permit would be issued after the 18 month period had lapsed.

It is therefore apparent that in a three phase development (i.e. PD 160) only the first phase must be commenced during the first 18 months, and that once said phase has been commenced that the developer obtains a vested right to complete the other phases. (See Memorandum of the City Attorney to the City Council, May 27, 1976.) The first phase of PD 160 was commenced within said 18 month period, and therefore the condition precedent to retaining said permit was satisfied.

City Clerk  
May 24, 1977  
Page Three

c. There is no law prohibiting an open ended permit, or one that can run indefinitely. It is respectfully submitted that if the action of the planning commission in revoking PD 160 was an attempt to change or modify the existing law, then the commission is seeking to act as a super-legislature, and undertake action outside of its jurisdictional charter.

d. The planned development permits held by Griffin Development Company do not, nor do any ordinances of the City of Oxnard, providethat because a new permit is issued for the same area that the older permit is superseded or expires. There has never been an instance where the City of Oxnard has cancelled an old permit because of the issuance of a new permit (see Memorandum of City Attorney to City Council, *supra*.)

e. Similarly, the City of Oxnard has never terminated a permit because of its abandonment. The effect is that a developer may have more than one permit under which he can operate, and the permits will have different expiration dates.

f. The action of the planning commission in revoking PD 160 constitutes a violation of the substantive and procedural due process provisions of the United States Constitution as embodied in the fifth and fourteenth amendments thereto.

g. Stripping the developer of his vested rights under PD 160 constitutes not only an unlawful taking by a governmental authority, but a taking without just compensation as provided for in the fifth amendment to the United States Constitution as incorporated by the fourteenth amendment.

h. Mr. Ruscio had no standing to bring a motion for the consideration of the revocation of PD 160 for he failed to allege any damage to him or to his neighborhood council from the presence of PD 160.

i. If the planning director had standing to place the revocation of PD 160 on calendar, his actions

City Clerk  
May 24, 1977  
Page Four

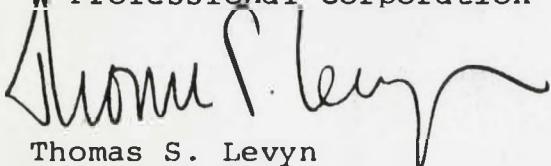
were in contravention of the administrative law doctrine of ripeness, by which the planning commission is governed. The California Coastal Commission has jurisdiction over the issuance of an adjunctive permit necessary for Griffin Development Company to commence construction under PD 282. The coastal commission has not granted the applicant approval to construct any type of project as of the date of this notice of appeal. Therefore, before it can be stated that the applicant has two permits to build, the coastal commission must approve PD 282, an action it has failed to take.

j. The initiation of the revocation of PD 160 was motivated by the political aspirations of a certain member of the neighborhood council and it shall be proven at the time of the appeal that such action lacked merit and was undertaken solely for personal gain.

Griffin Development Company wishes this letter to constitute its notice of appeal of the decision of the planning commission to revoke PD 160, and respectfully requests the office of the city clerk to set for hearing said appeal at its first convenience and pursuant to law.

Very truly yours,

JOE M. AGAPAY, JR.  
A Professional Corporation



Thomas S. Levyn  
Attorneys for  
Griffin Development Company  
and authorized to file  
this notice of appeal