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RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JAN 12 8 41 AM '87

*Withdrawn @
Appellant's Request*

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WILLIAM G. HOLLIMAN, JR.
MICHAEL A. HACKARD
JOHN M. TAYLOR
ROBERT B. PYE
GEORGE E. PHILLIPS
B. DEMAR HOOPER
JOHN P. YEAGER

January 9, 1987

Ms. Lorraine Magana
City Clerk
915 I Street, Room 203
Sacramento, California 95814

Re: KOVR Tower Appeal (DR 86-101)

Dear Ms. Magana:

On behalf of appellant Peter McCuen, we hereby withdraw the appeal on the referenced project, which is scheduled for hearing on January 20, 1987. This withdrawal is being requested because the project applicant, KOVR-TV has decided not to build and no longer has an interest in constructing a transmission tower in the requested location.

Thank you for your attention to this matter.

Very truly yours,

B. Demar Hooper
B. Demar Hooper

BDH/cdg
cc: Peter McCuen
Curtis S. Sproul



CITY OF SACRAMENTO

31

CONTINUED
TO 12-16-86

DEPARTMENT OF PLANNING AND DEVELOPMENT

1231 "I" Street

Sacramento, Ca. 95814

July 10, 1986

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Appeal of the Planning Commission's Denial of the Appeal of the Design Review Board's Approval of the color of a 300' Offsite Transmission Tower. (DR86-101)

LOCATION: 2213 Ventura Oaks Way

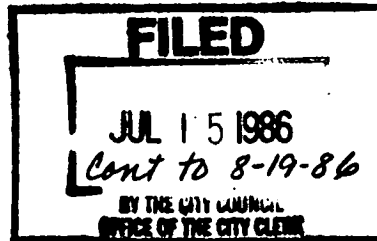
SUMMARY

On July 11, 1985, the City Planning Commission granted a Special Permit for construction of a television station and a 300 foot high transmission tower. Although the material of the tower was known, the applicant was not certain about the color. The Commission approved the permit for the station and tower and referred the issue of color to the Design Review Board. The Review Board approved two colors for use. A nearby property owner appealed the Board's decision to the Planning Commission. The Commission denied the appeal and the owner has appealed that action to the City Council.

BACKGROUND INFORMATION

On July 11, 1985, the City Planning Commission granted a Special Permit to construct a television broadcast studio and a 300 foot high transmission tower. Since the applicant was uncertain about the color of the tower this matter was referred to the Design Review Board. On April 2, 1986, the Design Review Board approved the use of tan or light blue-grey colors for the tower. This decision was appealed by a nearby property owner to the Planning Commission. Although the applicant requested the Commission to re-open the issue of location and height of the tower, the Commission was informed by the City Attorney's office that the only issue before them was the color (see May 22, 1986 memo from Ted Kobey to Commission, Attachment A). On May 22, 1986 the Commission voted to deny the appeal.

The appeal filed with the Council states, "The colors allowed for the antenna are not suitable for the site due to the high visibility of the site from other properties and from nearby roads and freeway".

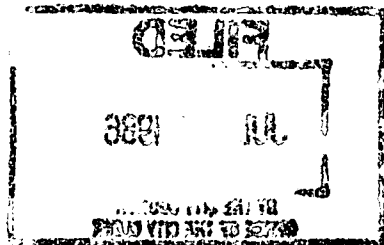


Administration
Room 300 449-5571
Building Inspections
Room 200 449-5716
Planning
Room 200 449-5604

CONTINUED
TO 1-20-87

COMMUNICATIONS

NO



COMMUNICATIONS

NO

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City Council

-2-

July 10, 1986

VOTE OF THE PLANNING COMMISSION

On May 22, 1986 the Commission voted six ayes, three absent to deny the appeal.

RECOMMENDATION

The Design Review Board, City Planning Commission and staff recommend the City Council deny the appeal based on the attached findings.

Respectfully submitted,


Marty Van Duyn
Planning Director

FOR CITY COUNCIL INFORMATION

**WALTER J. SLIPE
CITY MANAGER**

MVD:AG:DH:jg
Attachments
DR86-101

July 15, 1986
District No. 1



CITY OF SACRAMENTO

DEPARTMENT OF LAW

812 TENTH STREET
SUITE 201SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

May 22, 1986

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City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA L. MILLIGAN-HARMON
Deputy City Attorneys

MEMORANDUM

TO: City Planning Commission
FROM: Theodore H. Kobey, Jr., Assistant City Attorney
RE: KOVR TRANSMISSION TOWER

The question has arisen as to what action, if any, the Planning Commission can now take regarding the transmission tower for which the Commission granted a special permit on July 11, 1985. The Commission currently has before it an appeal of the Design Review Board's determination as to the color of the structure.

Answer

The Commission's jurisdiction is limited to a determination of color for the structure. The Commission cannot redetermine whether the structure should be in its current approved location or review the structure's design.

Discussion

On July 11, 1985, the Commission approved a special permit for a television broadcast studio and a 300'-high off-site transmission tower, along with a 60,000 square foot television broadcast studio. The tower was not to be located on the same site with the studio. The staff report (attached) provided in part as follows:

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"D. Transmission Tower: The proposed tower would be 300 feet in height. The tower would be located approximately 1,500 feet northwest of the site. The tower would be constructed of tubular steel with a one-story masonry block equipment building located beneath the tower. The applicant has not decided upon a color for the tower; however, it should be noted that the tower does not have to be painted the traditional red and white. Staff recommends that the Design Review Board make the final determination as to the appropriate tower color." (Staff Report pp 2-3) (emphasis added)

Plans and maps showing the tower location accompanied the staff report. Condition 11 of the approval stated: "The proposed project shall be subject to Design Review Board approval." (Staff Report, page 7) Insofar as the tower was concerned, this approval power conferred by the Commission was limited to color. This is true for two reasons. First, the emphasized portion of the discussion of the tower quoted above clearly indicates this. Second, where the Commission intended to delegate the power to approve design and materials to the Design Review Board, the condition clearly said so:

"7. The base of the proposed satellite dishes shall be screened by an enclosure. the enclosure shall be planted with climbing evergreen vines. The design and materials of the structure shall be approved by the Design Review Board prior to the issuance of building permits. (CPC amended)"
(Staff Report, page 6)

Thus, the Commission's jurisdiction presently is limited to the appeal of the Board's decision on color of the tower.

We turn now to the main issue: Can the Commission institute proceedings to revoke or modify the previously granted special

City Planning Commission
Re: . KOVR Transmission Tower
May 22, 1986
Page Three

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permit for the tower?

Initially, I should point out what is not involved here. This is not a vested rights case. I do not believe that KOVR's right to build the tower has vested, but that really isn't the issue. The real question is whether the Planning Commission can rehear a matter on which it took action more than ten months ago.¹ I believe it cannot. The general rule was stated in Lindell v. Board of Permit Appeals (1943) 23 C 2d 303. That case involved the power of a city board to rehear and rescind its action which had allowed the issuance of construction permits. There was an express ordinance provision allowing a rehearing. The court upheld the board's action after the rehearing, but in doing so stated:

"This holding as to the boards continuing jurisdiction in this matter does not impair the efficacy of the general principle that action by an administrative board, when the authoritative law intends it to be final, may not thereafter be revoked. The only question to be determined is when action becomes final. This is in every case a question dependent for its answer upon the scheme of the law by which power is conferred." (23 C 2d, 323) (emphasis added)

¹The zoning ordinance does not provide a procedure for the revocation of a special use permit where the use has not been commenced:

"When...a use permitted by a special permit is being conducted in a manner detrimental to the public health, safety or general welfare or in such a manner as to constitute a public nuisance...." (Zoning Ordinance §18-F-2, in part) (emphasis added)

This language simply does not address or allow revocation of a use permit where the use has not been commenced. Instead, the quoted provision speaks to uses already established. The entire section 18F relating to revocation and modification is attached.

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See also 59 Ops Cal Atty Gen 123 (1976), in which the California Attorney General opined that the Coastal Commission lacked authority to reconsider a previous final decision:

"This general rule has been followed numerous times by California courts. In the leading case of Heap v. City of Los Angeles, 6 Cal. 2d 405 (1936), the question presented was whether the Los Angeles Civil Service Commission, once having sustained the discharge of a city employee, 'could thereafter vacate its findings and make another and contrary order.' 6 Cal. 2d at 406. The Commission had followed the required procedure, and its resolution sustaining the employee's discharge was 'final and conclusive'. The court found that the Commission 'had no jurisdiction to retry the question and make a different finding at a later time. The [city] charter gives no such grant of power, and it may not be implied.' 6 Cal. 2d at 407.

"In explaining why an administrative agency has no power to reconsider its previous final decisions in the absence of express statutory authorization, the Court posed a series of questions (6 Cal. 2d, supra, at 407-08):

'....If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure....'" (59 Ops Cal Atty Gen., 124)

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Here, there seems no question that the Planning Commission's July 11, 1985 decision granting the special permit was "final".

Section 18J of the Zoning Ordinance states in pertinent part:

"A decision of the City Planning Commission shall become final upon expiration of the time within which an appeal from that decision may be taken (unless additional time is granted by the City Council)."

Moreover, the Commission's own rules state, in part:

"4-g Any action taken by the Commission on the item of business which is the subject of the hearing shall be deemed an intended decision which is not final, effective or appealable until findings of fact in support thereof have been adopted by the Commission." (Sacramento City Planning Commission Rules and Procedures, page 4.)

These rules show that the Commission's decision was final as to its own jurisdiction (§4-g) when the special permit was granted and the findings were adopted on July 11, 1985. Under section 18J of the zoning ordinance, the Commission's decision became final for purposes of appeal to the City Council ten days thereafter.

Because the Commission's decision is final, it has no jurisdiction to reconsider a matter on which it has already taken final action could not be applied to the KOVR transmission tower permit to allow its reconsideration. While rights to build have not vested, the adoption of such a rule could be characterized as an attempt by the City to frustrate KOVR's development plans and therefore held unapplicable to the KOVR tower special permit.

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CEB California Zoning Practice (1985 Supplement) at §5.55, page 141, observes:

"The general...rule holds that a permit, license, or other governmental entitlement must conform to the law in effect at the time it is issued or recorded rather than at the time of application or denial. Book §§5.56-5.57; Supp §5.58. In Atlantic richfield co. v. Board of Supervisors (1974) 40 CA 3d 1059, 11 CR 731, the court (accepting the distinction made in Book §5.57) held that the applicant had no right to a building permit for a service station when, after application and before issuance of the permit, zoning was changed to require a use permit for service stations. The evidence showed that the zoning permitting the service station was inconsistent with a land-use plan adopted by the county and that the ordinance requiring a use permit for service stations was of general application. There was no showing that the ordinance was changed to frustrate the developer's plans. The opinion suggests that a court cannot order issuance of a building permit if it is contrary to a zoning ordinance at the time of the judicial decision. This is (and probably should be) the law if the ordinance precluding issuance of the permit is truly one of a general nature and not directed at the permit applicant. If the ordinance was directed at the applicant, he should be entitled to the permit and should be given fair time to vest it by physical construction. If the rule were otherwise, a local government could always cure a denial of a building permit, however gross, by merely changing the ordinance before judicial review." (emphasis added)

See also Selby Realty Co. v. City of San Buenaventura (1973) 10

Cal. 3d 110, 123 fn. 11:

"The cases holding that an appellate court will apply the rule in existence at the time of deciding the appeal appear to be inconsistent with another line of authority holding that if an applicant complies with all the requirements

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for a building permit at the time the application is made he is entitled to a permit even though the law has been changed prior to the decision on appeal. (See, e.g., Sunset View Cemetery Assn. v. Kraintz (1961) 196 Cal. App. 2d 115, 123-124; McCombs v. Larson (1959) 176 Cal. App. 2d 105, 107; Munns v. Stenman (1957) 152 Cal. App. 2d 543, 551 [315 P. 2d 67].) These two apparently conflicting lines of cases have been distinguished on the ground that the change in the ordinance is deemed inapplicable if its enactment stemmed from an attempt to frustrate a particular developer's plans. (Russian Hill Improvement Assn. v. Board of Permit Appeals, *supra*, 66 Cal. 2d 34, fn. 5 at p 37; Cal. Zoning Practice (Cont. Ed. Bar (1969) \$5.57; cf. Keitzer v. Adams (1970) 2 Cal. 3d 976.)" (emphasis added)

In light of the foregoing, I would advise against the application of any rule allowing reconsideration of prior final decisions to the KOVR tower special permit.

Respectfully submitted,


THEODORE H. KOBEY, JR.

THK/jmv
Attachments

~~REPORT AMENDED BY STAFF 7-8-85~~
CITY PLANNING COMMISSION

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1231 I STREET, ROOM 200, SACRAMENTO, CALIFORNIA 95814

APPLICANT	KOVOR-TV, Inc., 1216 Arden Way, Sacramento, CA 95815		
OWNER	Gateway Center Associates, 1451 River Park Drive, #110, Sacramento, CA 95815		
PLANS BY	Providence Partnership, One Charles Street, Providence, RI		
FILING DATE	6-7-85	50 DAY CPC ACTION DATE	REPORT BY: FG:bw
NEGATIVE DEC	6-13-85	EIR	ASSESSOR'S PCL NO. 274-320-14,15

- APPLICATION:**
- A. Negative Declaration
 - B. Special Permit to construct a 60,000+ square foot television broadcast studio and a 300 foot high off-site transmission tower.
 - C. Variance to waive 35 required parking spaces.

LOCATION: 2213 Venture Oaks Drive

PROPOSAL: The applicant is requesting the necessary entitlements to construct a TV broadcast facility and an off-site transmission tower.

PROJECT INFORMATION:

1974 General Plan Designation:	Heavy Commercial/Light Industrial
1978 South Natomas Community Plan Designation:	Heavy Commercial/Light Industrial
Existing Zoning of Site:	MRD-PUD
Existing Land Use of Site:	Vacant

Surrounding Land Use and Zoning:

North:	Vacant; MRD-PUD
South:	Office (under construction); OB-PUD
East:	Vacant; OB-PUD
West:	Residential (under construction); R-1A-PUD)

Setbacks:	Required	Provided
Front:	50'	146'
Side(St.):	60'	50'
Rear:	15'	85'
Parking Required:	238 spaces	
Parking Provided:	203 spaces	
Property Dimensions:	Irregular	
Property Area:	5.74+ acres	
Square Footage of Building:	59,500: 1st flr=42,400; 2nd flr=14,800 Mechanical penthouse=2,300	
Height of Building:	44 feet	
Topography:	Flat	
Street Improvements:	Existing	
Utilities:	Available to site	
Exterior Building Materials:	Granite	
Lot Coverage:	Building = 16.96%	
	Surfaced = 37.85%	
	Landscaped = 45.19%	

APPLC. NO. P85-257

MEETING DATE 100.00% July 11, 1985

CPC ITEM NO. 15

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BACKGROUND: The subject site consists of a vacant 5.74 acre lot within the Gateway Centre PUD. On January 2, 1985, the City Council rezoned the subject site from the Townhouse (R-1A-PUD) to the Manufacturing Research and Development (MRD-PUD) zone (P83-1452).

APPLICANT'S PROPOSAL: KOVR-TV, Inc. has an option to develop the site with a 60,000+ square foot broadcast facility. A 300 foot high transmission tower will be located off site, approximately 1,500 feet northwest of the subject site. The facility will operate 24 hours a day and will employ 150 people.

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

- A. **Special Permit/Variance Entitlements:** The entitlements requested relate specifically to 1) special permit to construct the broadcast facility; 2) special permit to erect a 300 foot high transmission tower, and 3) variance to waive 35 required parking spaces.
- B. **General Plan Designation/Zoning:** The subject site is designated for heavy commercial/light industrial uses on both the General Plan and the 1978 South Natomas Community Plan. The site is zoned Manufacturing, Research and Development - Planned Unit Development (MRD-PUD). Surrounding uses include vacant land and both office and residential uses which are under construction.
- C. **Building Design:** The proposed structure consists of a three-story building (including mechanical penthouse) with building materials of brown/gray granite and blue/silver reflective glass. A three-tiered fountain will highlight the front entrance to the building, with landscaped terraces located at the front of the building on the second story exterior. The overall building configuration, colors and materials will compliment the State Fund Building (under construction) and the proposed Orchard Office Park. The project complies with the Architectural Design Criteria of the South Natomas Office Park pud Guidelines as relates to quality of materials and design.

The building is divided into two principle uses - office and studio. The studio square footage is as follows:

- Studio A = 2,400 square feet
- Studio A = 4,356 square feet
- Total = 6,756 sq. ft. (11% of total building)
- Offices, etc. = 52,744 sq. ft. (89% of total building)

D. **Transmission Tower:** The proposed tower would be 300 feet in height. The tower would be located approximately 1,500 feet northwest of the site. The tower would be constructed of tubular steel with a one-story masonry block equipment building located beneath the tower. The applicant has not decided upon a color for the tower; however, it should be noted that the tower does not have to be painted the traditional red and white. Staff recommends that the Design Review Board make the final determination as to the appropriate tower color.

//

The tower is located in the area designated for such use on the South Natomas Office Park PUD Guidelines. The proposed location is appropriate in that existing electrical transmission towers are located on the site. This site is designated for a 'joint use' transmission tower which shall be shared by all users in the PUD. It is unclear at this point as to whether or not other PUD tenants will require transmission facilities. The applicant has indicated that the tower can accommodate other users (within reasonable limits). The tower site has been reviewed by the County Airport Department and Natomas Air Park. No comments have been received.

E. Satellite Dishes: The applicant is proposing to locate two receiving dishes at the rear of the site in the parking lot. Each dish would be seven meters (22.9 feet) in diameter and stand no higher than 25 feet. The dishes would be visible from Venture Oaks Way and to a lesser degree from Gateway Oaks Drive and I-5. As adjacent properties develop, it is likely that the dishes will also be visible from upper story office windows.

Staff recommends that the dishes be screened by locating them inside a structure similar to that used by Federal Express at their Point West facility. The structure should be constructed of a material which is compatible with the proposed building and climbing ivy should be planted at the base of the structure. The Design Review Board should make the final recommendation as to design and color of the structure.

F. Parking/Circulation: The applicant's site plan indicates that the parking calculations have been based upon the net square footage and not the gross square footage as is required by the Zoning Ordinance. The proposed broadcast facility contains 59,500 square feet of gross floor area which, at a ratio of one space per 250 feet of gross floor area, would require that 238 parking spaces be located on site. The site plan indicates that only 203 spaces have been provided, or 35 spaces less than required by ordinance. *Staff feels that the studio can be classified as a warehouse use which would require six parking spaces and reduce the overall parking to 216 or 13 more spaces than are provided on site. Staff feels that warehouse classification for the studios is appropriate only if both studios are utilized for non-audience participation programming. In the event that an audience participation shows are broadcast from either studio, then parking must be calculated at a higher ratio. (staff added)*

The applicant has not indicated what, if any, unique circumstances exist which warrant the granting of a parking variance. A redesign of the parking configuration (30% compact spaces and utilization of helipad site) would in all likelihood provide the necessary parking ratio. Staff recommends that the parking variance be denied.

The applicant indicates that an enclosed secure parking area will be located at the rear of the building. Company cars will be located in this area, along with mechanical equipment and gas pumps. The parking must be completely enclosed and the enclosure must be constructed of a material which is similar to the material use on the main structure.

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It appears that the handicapped parking spaces shown on the site plan will not meet code. All handicapped parking must be redesigned and/or relocated so as to comply with all applicable standards.

The proposed development is subject to the City's trip reduction ordinance only to the extent that it relates to a minor development project (i.e. 50-199 full-time workers). The applicant need only to provide information which describes the various transportation options available to the employee. This development will necessitate the construction of 12 bicycle storage facilities, of which 50% shall be Class I. The remainder may be Class II or III.

G. Landscaping: The applicant's landscaping plan indicates that 45% of the site will be landscaped. The site plan indicates that the applicant has provided for the required 50 foot and 25 foot landscape setback on Gateway Oaks Drive and Venture Oaks Way, respectively. All landscape setback areas shall be bermed (minimum 4 ft. high) and all berms shall be landscaped with predominantly evergreen trees, shrubs and ground cover. In addition, the parking lot must be planted with trees so that at least 50% of the parking lot will be shaded. A complete landscape and irrigation plan must be submitted to the Planning Director for review and approval prior to the issuance of building permits.

H. Building Setbacks/Heights: The PUD Guidelines require a 50-foot building setback along both street frontages; however, in addition the MRD zone requires that the maximum building height shall be 25 feet for that portion of any building located within 100 feet of the east curb of the part of Gateway Oaks Drive that abuts residentially designated, zoned or used land to the west.

As proposed, a corner of the building would extend into the height restricted area along Gateway Oaks Drive. Staff recommends that the site plan be revised to locate the building outside of the height restricted area or at least that portion of the upper floors of the building which are greater than 25 feet in height.

I. Signage: The applicant shall submit a signage plan which complies with the PUD Development Guidelines. In the MRD zone the applicant may erect one non-illuminated monument sign at the major entry to the site. The sign can be no more than 48 square feet in size and no higher than 12 feet from street grade or parking lot grade, whichever is lower. It should also be noted that no signage is to be allowed on the transmission tower.

J. Other Agency Approvals/Recommendations: The proposed tower requires that the applicant complete the necessary Notice of Proposed Construction to the Federal Aviation Administration. Staff will require that verification be submitted to the Planning Division prior to the issuance of occupancy permits for the proposed studio.

Regional Transit is requesting an easement and funding for a bus shelter to be located on Gateway Oaks Drive. This project requires review/approval of the Design Review Board. No other agency has commented on this project.

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- K. Gateway Centre PUD Square Footage Summary: The development agreement permits an overall gross square footage (GSF) in the MRD zone in Gateway Centre not to exceed 500,000. A maximum of 50 percent of the permitted overall GSF may consist of offices as primary uses (250,000 GSF). The KOVR-TV studio is the first project in the MRS zone to date and contains 60,000+ square feet of office use.
- L. Helicopter Landing Site: Although a helipad is shown on the site plan, the applicant is not applying for the helipad use at this time. At a later date the applicant may choose to submit a special permit application for the helipad. Staff would like to recommend that the helipad be located at another site. The proposed helipad site is inappropriate due to its location adjacent to Venture Oaks Way, the future/proposed office uses adjacent to the subject site and the residential uses being developed to the west of the site.

RECOMMENDATION: Staff recommends the following action:

- A. Ratification of the Negative Declaration;
- B. Approval of the Special Permit to develop a 60,000+ square foot broadcast facility and 300 foot high off-site transmission tower, subject to conditions and based upon Findings of Fact which follow;
- C. Denial of the Variance to waive 35 required parking spaces, based upon the Findings of Fact which follow.

Conditions Special Permit

- 1. A revised final site plan, detailed landscape and irrigation plans shall be submitted to the Planning Director for review and approval, prior to issuance of building permit, which incorporates the following changes:
 - a. detailed landscape plan for the entire project site;
 - b. four-foot high berms along the street frontages;
 - c. relocation of the building so that it does not encroach into the height restricted area along Gateway Oaks Drive;
 - d. 238 on-site parking spaces and 12 bicycle storage lockers.
- 2. The trash enclosure facilities shall be constructed in accordance with the following criteria:
 - a. The walls of the trash enclosure structure shall be constructed of solid masonry material with decorative exterior surface finish compatible to the main office structure;
 - b. The trash enclosure structure shall be designed to allow walk-in access by janitors without having to open the main enclosure gates;

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31/19/85

- c. The trash enclosure structure shall have decorative heavy gauge metal gates and be designed with cane bolts on the doors to secure the gates when in the open position;
- d. The perimeter of the trash enclosure structure shall be planted with landscaping, including a combination of shrubs and/or climbing evergreen vines;
- e. A concrete apron shall be constructed in front of the trash enclosure facility or at point of dumpster pickup by the waste removal truck. The location, size and orientation of the concrete apron shall depend on the design capacity of the trash enclosure facility (number of trash dumpsters provided) and the direction of the waste removal truck at point of dumpster pickup.

The minimum dimensions of the concrete apron for a single, two cubic yard dumpster shall be: width 10 feet or width of enclosure facility; length 20 feet. Larger trash enclosure facilities shall require a larger concrete apron, subject to the approval of the City Building Inspections Division Building Technician (Plan Checker). Paving material shall consist of five-inch aggregate base rock and six-inch portland cement paving.

- f. A trellis structure covering the trash facility shall be constructed to screen the enclosure from view from the upper floors of the office building;
- 3. The applicant shall submit a signage program for the project for review and approval by the Planning Director prior to issuance of sign permits.
- 4. The applicant shall adhere to all provisions of the South Natomas Office Park PUD Guidelines.
- 5. No signage shall be permitted to be placed on the transmission tower.
- 6. The applicant shall submit verification of Federal Aviation Administration approval of the transmission tower site.
- 7. The ^{base of the} proposed satellite dishes shall be screened by an enclosure. The enclosure shall be planted with climbing evergreen vines. The design and materials of the structure shall be approved by the Design Review Board prior to the issuance of building permits. (CPC amended)
- 8. The secured parking area shall be completely enclosed with a maximum six-foot high wall which is compatible with the main office building.
- 9. The applicant shall comply with the 50 percent parking lot shading requirement.

10. // The // applicant // shall // contact // and // work // with // Regional // Transit // regarding // easement // and // funding // for // a // bus // shelter // to // be // located // on // Gateway // Oaks // Drive. // (see // page // 7)

10. The applicant shall provide Regional Transit with an easement and funding for a bus shelter to be located on Gateway Oaks Drive unless RT determines that the planned bus stop or shelter at the northern landing of the PUD (on Gateway Oaks Drive) is sufficient for further transit service needs. (CPC amended)

11. The proposed project shall be subject to Design Review Board approval.

*see below

Findings of Fact - Special Permit

1. The special permit, as conditioned, is based upon sound principles of land use, in that the project complies with the South Natomas Office Park PUD Development Guidelines.
2. The special permit, as conditioned, will not be detrimental to the public health, safety or welfare, nor result in the creation of a nuisance, in that the project provides adequate on-site parking, landscaping and building setbacks and meets other PUD development requirements.
3. The special permit is consistent with both the General Plan and the 1978 South Natomas Community Plan which designate the site for heavy commercial/light industrial uses.

**Findings of Fact - Variance

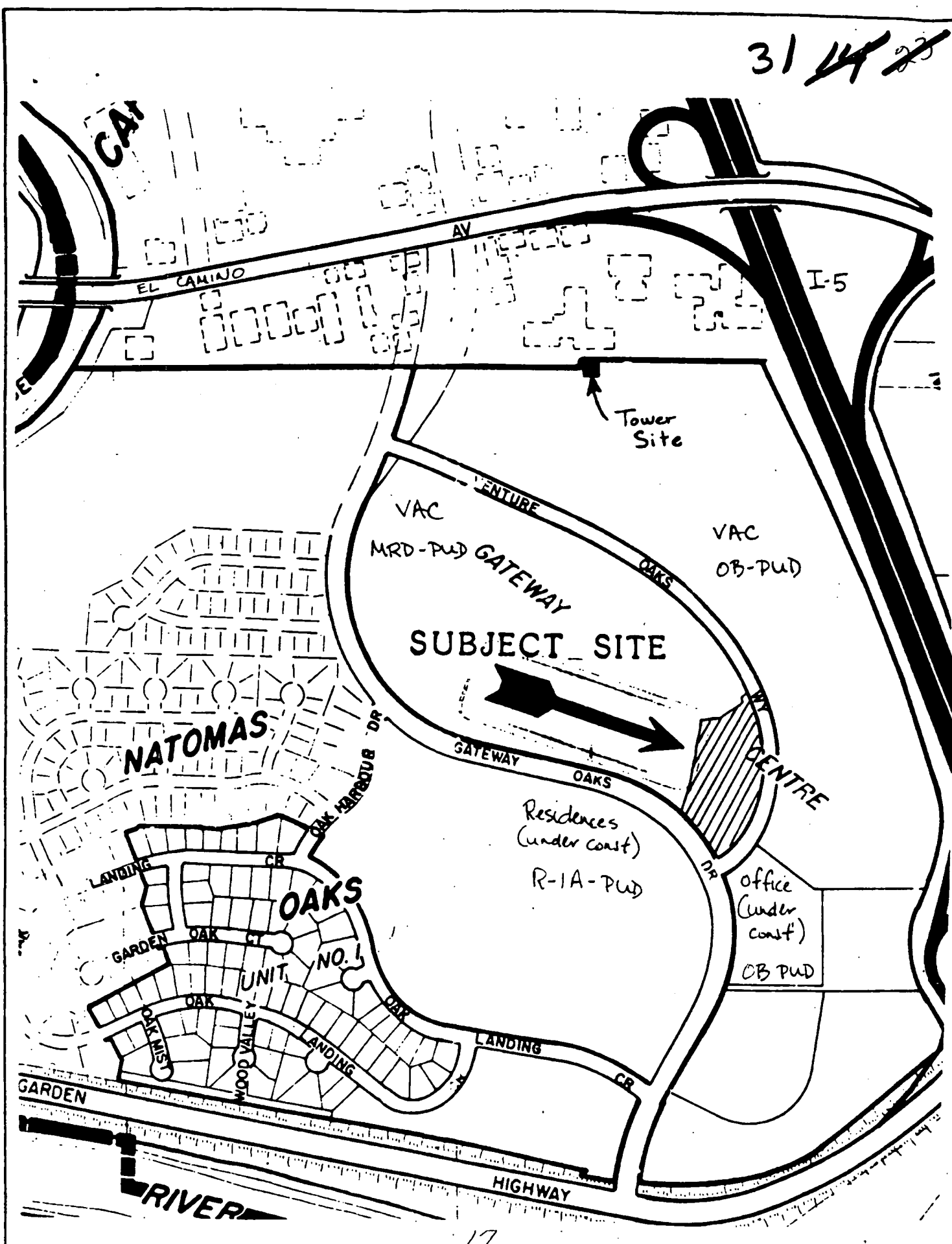
1. The proposed variance, if approved, would be a special privilege extended to one property owner, in that the site can be redesigned to meet the parking standards.
2. The requested variance would be injurious to the public welfare and properties in the vicinity, in that, other office development in the area has been required to provide adequate parking on site.

*Condition added by staff:

12. ~~Stalls A and B shall be utilized for non-automobile participation programming.~~
(CPC deleted)

**CPC approved the Variance with Findings of Fact and Conditions due for consideration at the July 25, 1985 meeting.

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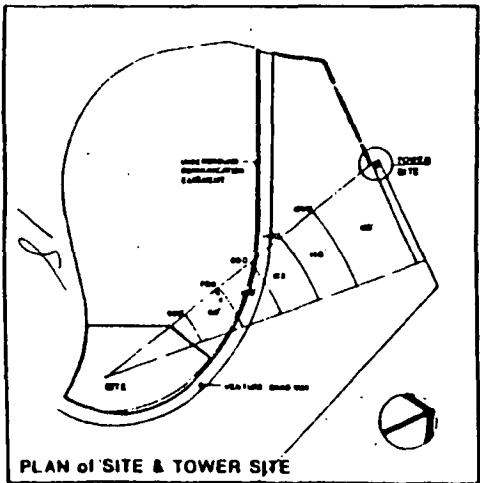


VICINITY MAP

185-257

7-11-85

Item 15



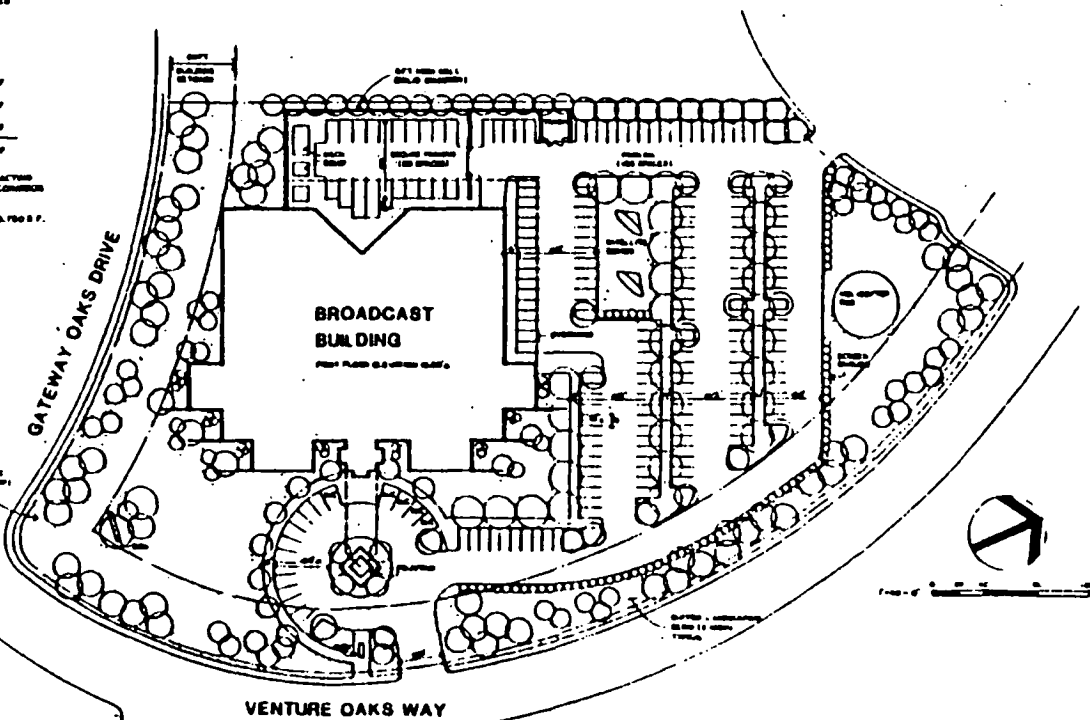
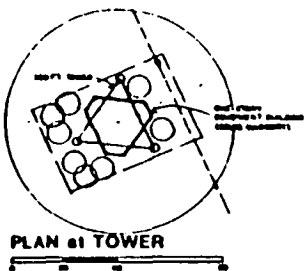
SITE DATA

BUILDING COVERAGE	48,400 SF	6.84%
LANDSCAPED AREA	118,275 SF	17.23%
TOTAL SITE AREA	2,000,000 SF	288.80%
TOTAL PARKING	800 SPACES	

BUILDING DATA

1ST FLOOR	48,400 SF
2ND FLOOR	118,275 SF
MECH. PENTHOUSE	8,300 SF
TOTAL	174,975 SF

NOTE:
 FIGURES ARE BASED ON SUBTRACTING
 100,000 SF FOR ELEVATOR SHAFTS & CORRIDORS
 8,300 SF MECH. PENTHOUSE
 800 SPACES @ 200 SF = 160,000 SF



THE
PROVIDENCE PARTNERSHIP
 A CORPORATION
 ARCHITECTURE
 ENGINEERING
 PLANNING
 ONE CHARLES STREET
 PROVIDENCE
 RHODE ISLAND

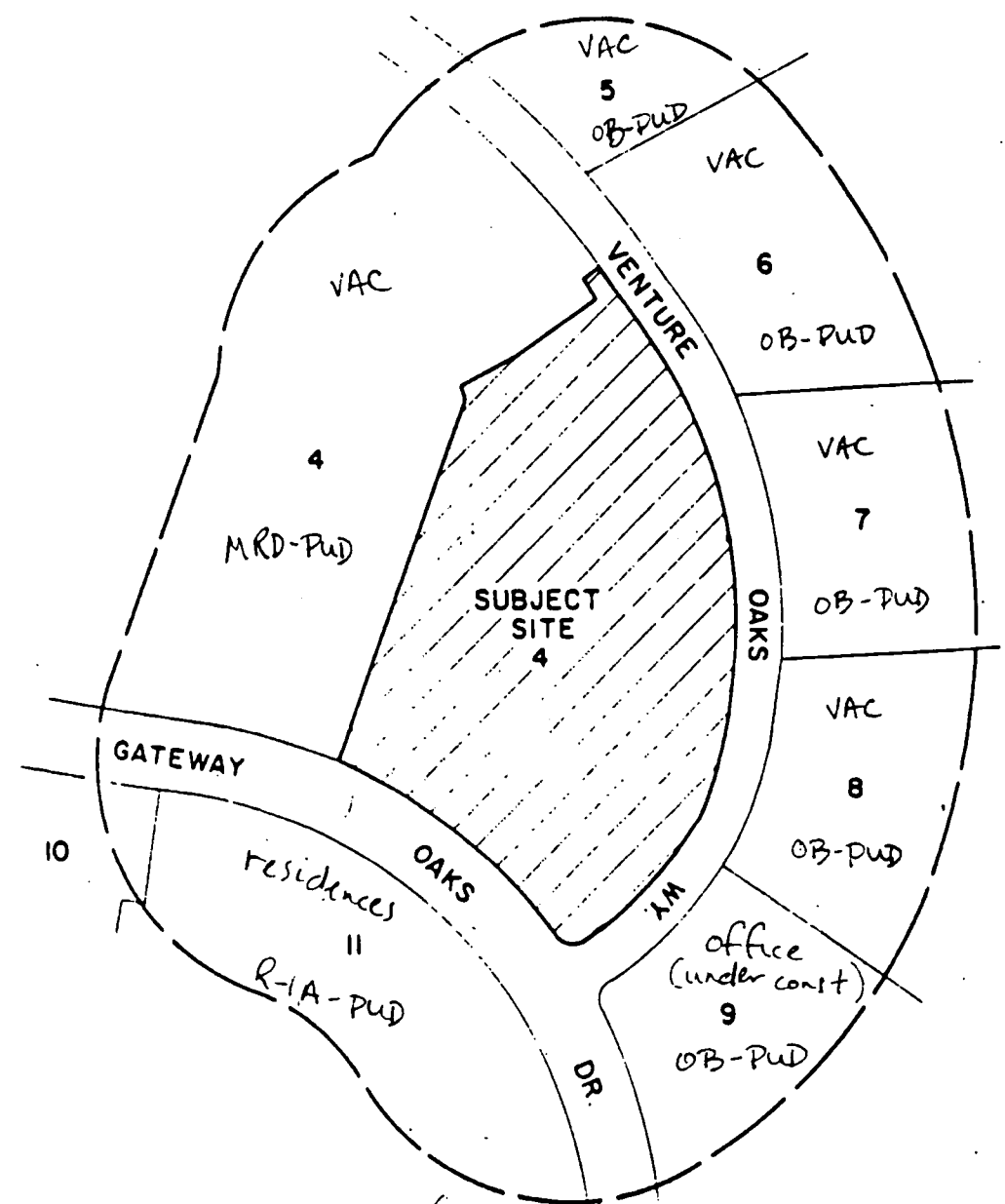
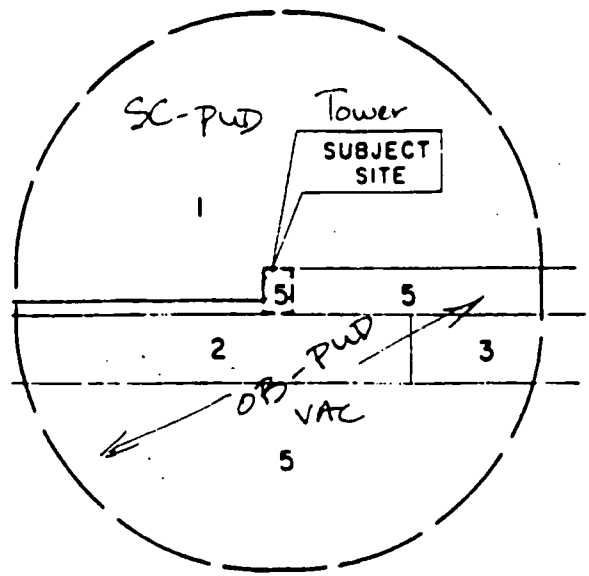
BROAD HOUSE

EXHIBIT A

SITE PLAN
 31
 1/22

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 2

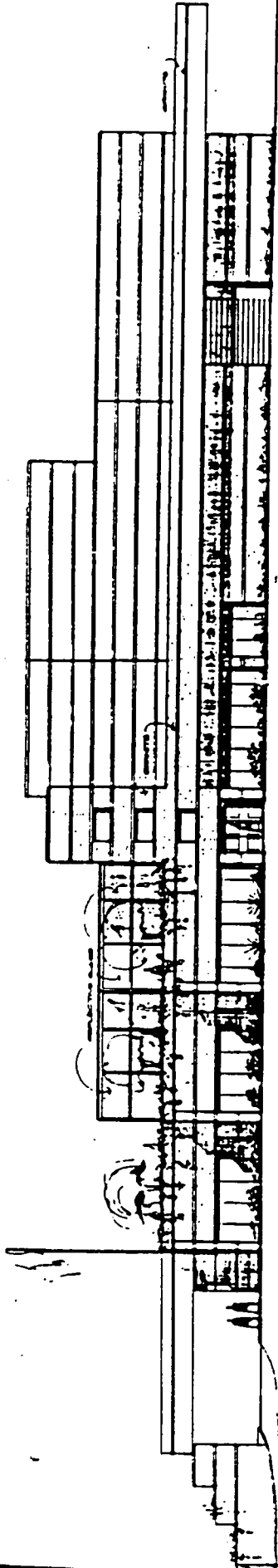
31 1985



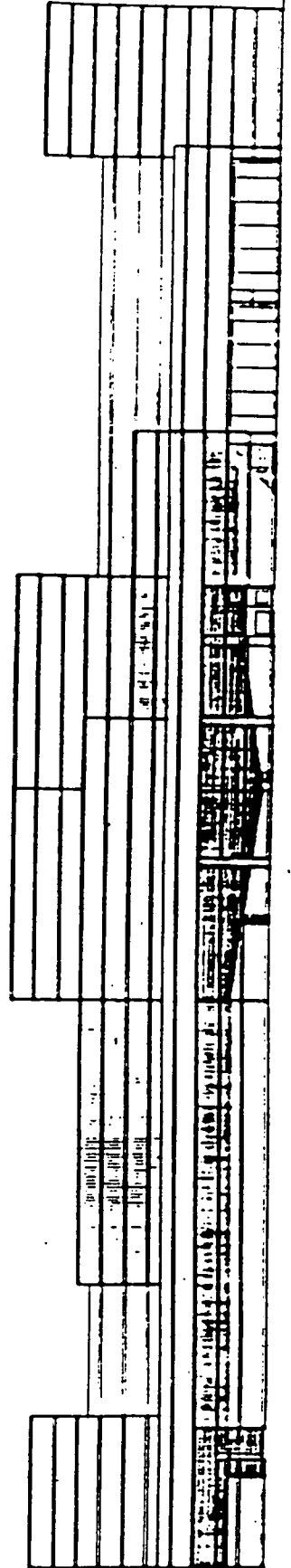
LAND USE & ZONING MAP

THE
PROVIDENCE
PARTNERSHIP
A CORPORATION
ARCHITECTURE
ENGINEERING
PLANNING
ONE CHARLES STREET
PROVIDENCE
RHODE ISLAND

AST TV
NS
1
ELEVATIONS
31
4



NORTH ELEVATION



EAST ELEVATION

P85-257

20
7-11-85

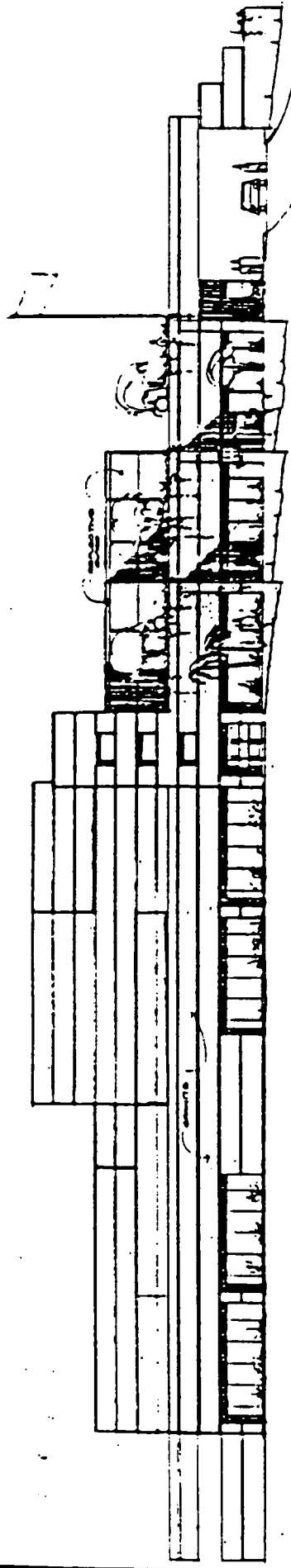
Item 15

EXHIBIT B
ELEVATIONS

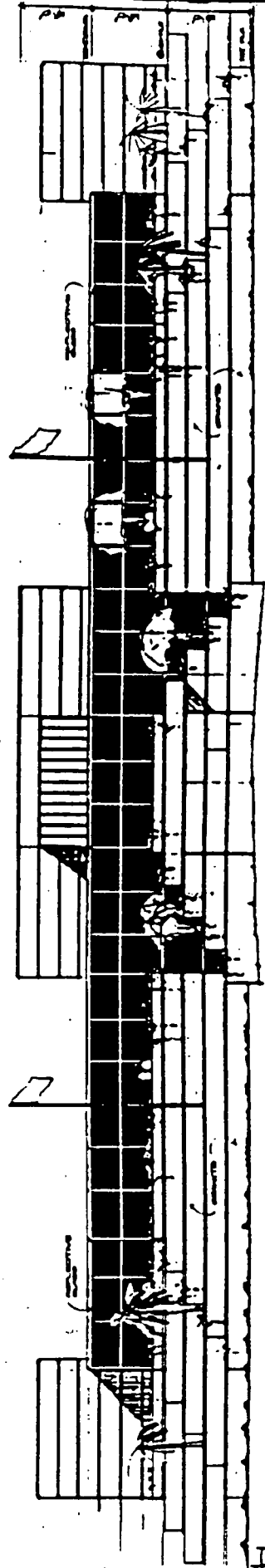
31 14

THE PROVIDENCE PARTNERSHIP
A CORPORATION
ARCHITECTURE
ENGINEERING
PLANNING
25 HULL STREET
PROVIDENCE
RHODE ISLAND

PHOTOGRAPHY



SOUTH ELEVATION



WEST ELEVATION

P85-257

21

7-11-85

Item 15

THE
PROVIDENCE
PARTNERSHIP
A CORPORATION
ARCHITECTURE
ENGINEERING
PLANNING
ONE CHARLES STREET
PROVIDENCE
RHODE ISLAND

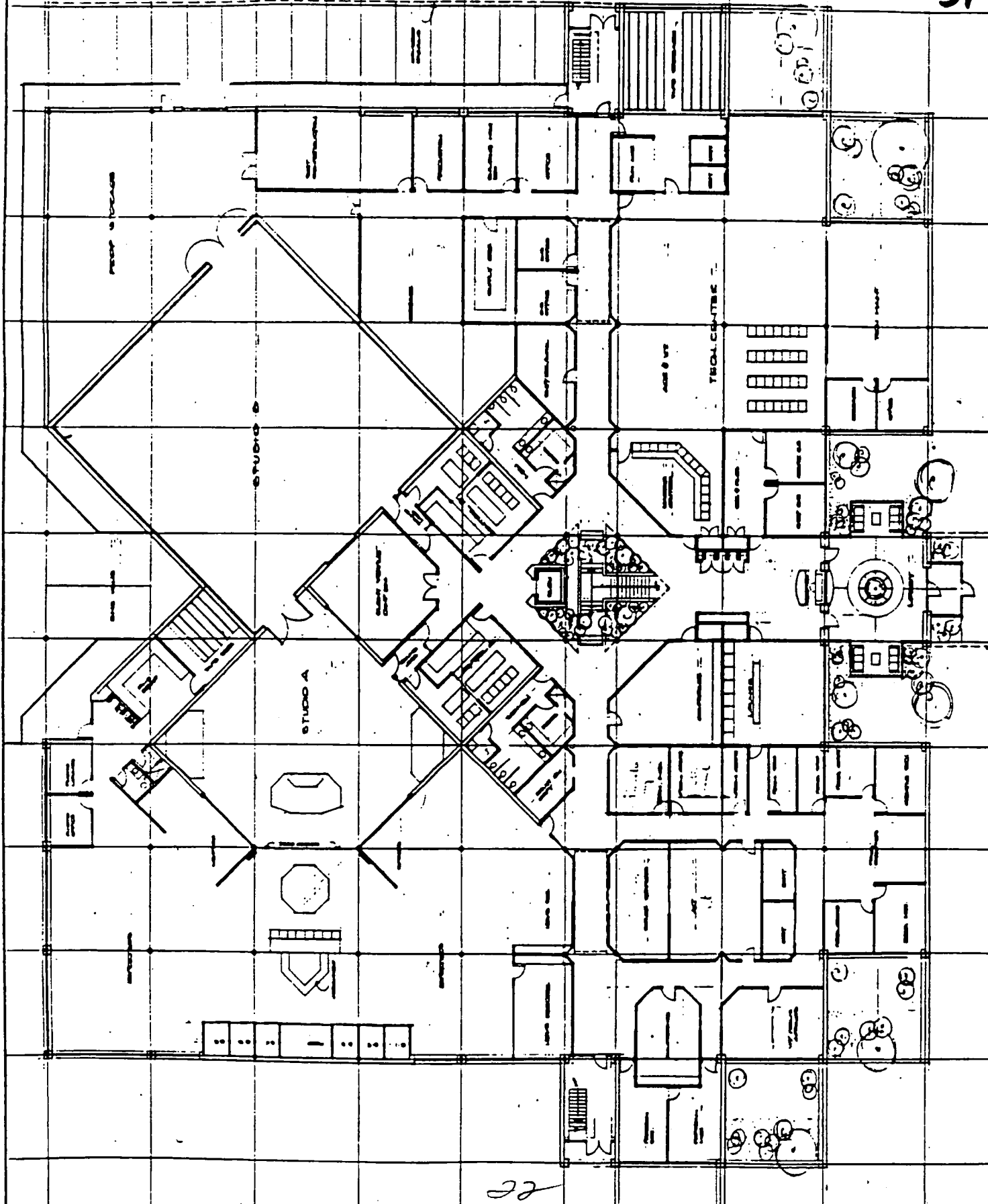
BROADCAST
HOUSE

FLOOR PLANS

1st Flr

EXHIBIT C

31

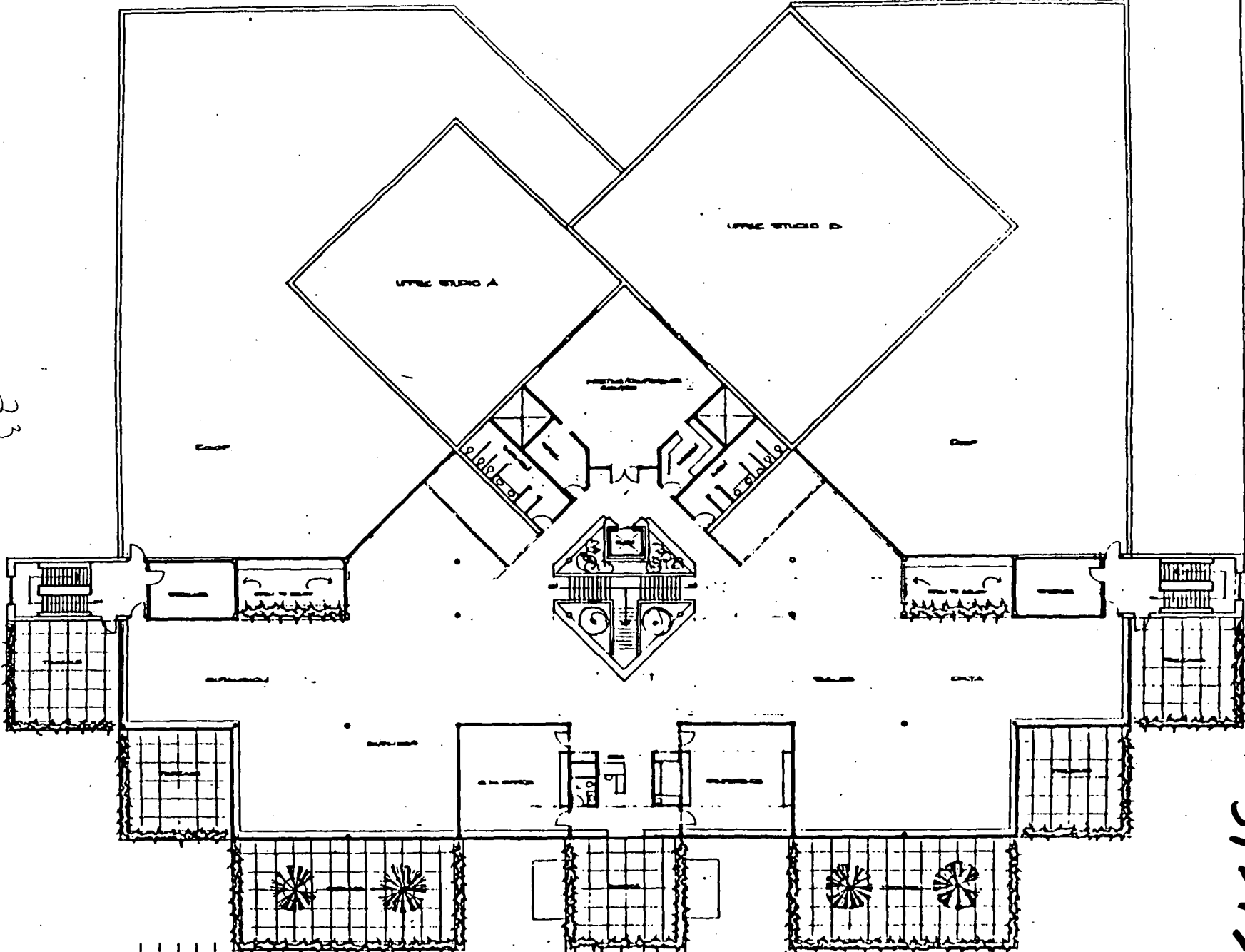


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PGS-257

23

7-11-05



THE
PROVIDENCE PARTNERSHIP
 A CORPORATION

ARCHITECTURE
 ENGINEERING
 PLANNING

ONE CHARLES STREET
 PROVIDENCE
 RHODE ISLAND

BROADCAST

TV

FLOOR

1

2nd Flr

2

FLOOR PLANS

31 W 22

Item 15

31 14/23

~~2. Determination of substantiality by Planning Commission. The Planning Director may, at his discretion, request a determination by the Planning Commission as to whether a proposed change is a substantial deviation. If the Planning Commission determines that the change is substantial, a public hearing shall be set as provided in subsection F-2 for the purpose of considering a modification to the permit.~~

3. Mandatory finding of substantial deviation: The Planning Director shall find the following changes to be substantial deviations. The list is not intended to be inclusive and the fact that a particular deviation is not included on this list shall in no way limit the authority of the Planning Director to, in his discretion, determine that a change is a substantial deviation.

- a. Any major change in the pattern or volume of traffic flow either on or off any property covered by the Special Permit.
- b. Any change in the nature of the use.
- c. Any increase in height of a structure which exceeds ten percent of the height of such structure as approved by the Planning Commission or which exceeds one story, whichever is less.
- d. Any increase in gross floor area of a building which exceeds ten percent of the gross floor area approved by the Planning Commission.
- e. Any increase in the density of dwelling units per acre.
- f. Any material changes in the orientation or location of structures on the parcel.

F. MODIFICATIONS OR REVOCATION OF A SPECIAL PERMIT: A Special Permit may be modified or revoked only under the following circumstances:

1. Modification at request of property owner: The owner of property which is the subject of a Special Permit may apply for a modification to said permit in the manner prescribed by subsection C of this section for the application for a Special Permit.

In considering a modification to an existing Special Permit the Planning Commission shall apply the standards set forth in subsection A of this section for the issuance of a Special Permit.

When granting a modification to a Special Permit, the Planning Commission may impose such additional conditions as may be required to mitigate any deleterious affect of the modification.

2. Planning Director may set hearing on revocation or modification of permit: When in the discretion of the Planning Director a use permitted by a Special Permit is being conducted in a manner

24

detrimental to the public health, safety or general welfare, or in such a manner as to constitute a public nuisance, or in violation of any condition imposed by the Planning Commission on the use, or if conditions specified in the permit as limiting the duration of the permit have occurred (other than the passage of time as provided in subsection D-3), the Planning Director shall set a hearing before the Planning Commission to consider revocation or modification of the Special Permit. Notice of any hearing so set shall be given in the manner prescribed by subparagraph C-3-c of this section and in addition thereto notice shall be given to the owner of the property upon which the use is conducted, and to the person in possession of said property if other than the owner, which shall include a specific statement of the conditions which are deemed to constitute a detriment to the public health, safety or welfare of which constitutes a public nuisance, or which are in violation of conditions imposed by the Planning Commission on the use.

- 3. Planning Commission may revoke or modify special permit: Upon a determination by the Planning Commission that the use is being conducted in a manner detrimental to the public health, safety or welfare, or in a manner so as to constitute a public nuisance, or in violation of any condition imposed by the Planning Commission, the Planning Commission may revoke the Special Permit. If the Planning Commission determines that the detrimental aspects of the use which exist may be alleviated through a modification to the Special Permit, it may make such modification in lieu of revocation.
- 4. Appeal: In the case of a revocation or modification of a Special Permit, an appeal may be taken in accordance with Section 18 of this Ordinance within ten days after the decision of the Planning Commission to revoke or modify said permit.

~~8. MAJOR PROJECTS IN THE OLD CITY: Notwithstanding any other provisions of this section to the contrary, the following procedures shall be applicable to the granting of all special permits for any project for which a special permit is required by Section S3-C-10:~~

- 1. A copy of the staff report provided to the Planning Commission shall be provided to members of the City Council.
- 2. Within five days after a Planning Commission decision to grant a special permit, the Planning Director shall provide a summary of the Planning Commission's decision to the City Council.
- 3. At its next regularly scheduled meeting, after receipt of the Planning Director's report pursuant to paragraph 2 of this subsection, the City Council, without holding a public hearing, shall review the action of the Planning Commission. Upon a determination ~~that the application involves significant policy issues, the City~~

*Ordinance No. 4146-4th Series (Eff. 11/16/78)

3179

Appeal of Peter McCuen vs. City of Sacramento)
Planning Commission's Denial of his Appeal of)
a Design Review Board decision to allow the)
use of tan or light blue-grey colors on a)
300' transmission tower for property located)
at 2213 Ventura Oaks Way. (DR86-101))

NOTICE OF DECISION
AND
FINDINGS OF FACT

At its regular meeting of July 15, 1986, 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 colors for the tower will blend into the sky.
2. The proposed colors would be the least obtrusive colors available.

MAYOR

ATTEST:

CITY CLERK

DR86-101

SACRAMENTO CITY PLANNING COMMISSION

31 ~~1475~~

MEETING DATE May 22, 1986

- GENERAL PLAN AMENDMENT TENTATIVE MAP
- COMMUNITY PLAN AMENDMENT SUBDIVISION MODIFICATION
- REZONING LOT LINE ADJUSTMENT
- SPECIAL PERMIT ENVIRONMENTAL DET.
- VARIANCE OTHER Appeal of Division Director's Board's approval of color for transmission tower

ITEM NO. 1 FILE # _____
 M: _____
DR86-101

Location: Stationary Center, 2213 Ventura Oaks Way

Recommendation:
 Favorable
 Unfavorable
 Petition Correspondence

PROPOSERS	
NAME	ADDRESS
<u>Sumar Hooper</u>	<u>-555 Capitol Mall Sacramento 95814</u>
<u>Peter Mc. Knox</u>	<u>-10969 Trade Center Drive, Rancho Cordova, CA</u>

OPPOSERS	
NAME	ADDRESS
<u>Curtis Sprau</u>	<u>-2535 Capitol Oaks Drive, Sacramento</u>
<u>Robert Hess</u>	<u>-1216 Arden Way Sacramento</u>
<u>John Hirschburger</u>	<u>1 - Box 6, Sacramento 95801</u>
<u>Charles Kennedy</u>	<u>-1216 Arden Way, Sacramento</u>

MOTION NO. 2 of 2

	YES	NO	MOTION	SECOND
Chinn	✓			
Ferris	✓			
Goodin	<u>absent</u>			
Hollick	✓			✓
Holloway	✓		✓	
Otto	<u>absent</u>			
Ramirez	<u>absent</u>			
Walton	✓			
Ishmael	✓			

- MOTION
- TO APPROVE
 - TO DENY appeal based on find. of fact in rep.
 - TO APPROVE SUBJECT TO COND. & BASED ON FINDINGS OF FACT IN STAFF REPORT
 - TO APPROVE/DENY BASED ON FINDINGS OF FACT IN STAFF REPORT
 - INTENT TO APPROVE/DENY SUBJECT TO COND. & BASED ON FIND. OF FACT DUE
 - TO RECOMMEND APPROVAL & FORWARD TO CITY COUNCIL
 - TO RECOMMEND APPROVAL SUBJECT TO COND. & FORWARD TO CITY COUNCIL
 - TO RATIFY NEGATIVE DECLARATION
 - TO CONTINUE TO _____ MEETING
 - OTHER CC negotiate with parties to reach an agreement on tower.

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

31 ~~4~~ 2

DATE: May 30, 1986

TO THE PLANNING DIRECTOR:

I do hereby make application to appeal the decision of the City
Planning Commission of May 22, 1986 when:
(Date)

 Rezoning Application Variance Application
 Special Permit Application X Design Review Appeal

was: Granted X Denied by the Commission

GROUND FOR APPEAL: (Explain in detail) The colors allowed for the
antenna tower are not suitable for the site due to the high visibility of
the site from other properties and from nearby roads and freeway.

PROPERTY LOCATION: 2313 Venture Oaks Way

PROPERTY DESCRIPTION: Vacant

ASSESSOR'S PARCEL NO. 274 - 320 - 14815

PROPERTY OWNER: KOVR TV

ADDRESS: 1216 Arden Way, Sacramento, CA 95815

APPLICANT: Same as above

ADDRESS:

APPELLANT: *Peter McCuen* (Peter McCuen
(SIGNATURE) PRINT NAME

ADDRESS: 10969 Trade Center Drive, Suite 100, Rancho Cordova, CA 95670

FILING FEE:

by Applicant: \$105.00 RECEIPT NO. _____

by 3rd party: 60.00

FORWARDED TO CITY CLERK ON DATE OF: _____

Rxx DR/PB #86-101

5/82

DISTRIBUTE TO -
(4 COPIES REQUIRED): MVD

28

31 44/25

Planning Commission
Sacramento, California

Members in Session:

Subject: Appeal of the Design Review Board's approval of the color to be used on the 300 foot high offsite KOVR-TV Transmission Tower.

Location: Gateway Center, 2213 Ventura Oaks Way.

BACKGROUND INFORMATION: On April 2, 1986, the Design Review/Preservation Board reviewed and approved staff recommendations that the tower be painted either a light tan or a light bluegray and the dishes on the tower to be painted the same color if possible.

Conditions pertaining to the structural element of the tower were not part of the Board's purview as determined by the City Attorney. Nevertheless, the applicant did agree to consider those conditions if possible.

The decision of the Board has been appealed by Peter McCuen on the grounds that the colors allowed for the antenna tower will not be suitable for the site due to the high visibility of the site from the nearby roads and freeway. Staff recommendation for the color was based on the finding that light tan or light bluegray would blend into the sky.

VOTE OF BOARD: Six ayes, three absent, approve staff recommendations.

RECOMMENDATIONS: Staff recommends denial of the appeal based on the following Findings of Fact:

1. The proposed colors for the tower will blend into the sky.
2. The proposed colors for the tower would be the least obtrusive colors available.

Respectfully submitted,

Richard B Hastings

Richard B. Hastings
Design Review/Preservation Director

RH:tc

31 47

NOTICE OF APPEAL OF THE DECISION OF THE
DESIGN REVIEW/PRESERVATION BOARD

DATE: April 4, 1986

TO THE PLANNING DIRECTOR:

I do hereby make application to appeal the decision of the City
DESIGN REVIEW/PRESERVATION BOARD of April 2, 1986 when:
(Date)

Structure Review Building Move
 Sign Review Other _____

was: Granted Denied by the Commission

GROUNDS FOR APPEAL: The colors allowed for the antenna tower are
not suitable for the site due to the high visibility
of the site from nearby roads and freeway.

PROPERTY LOCATION: 2313 Venture Oaks Way

ASSESSOR'S PARCEL NO. 274 320 14 & 15

PROPERTY OWNER: KOVR TV

ADDRESS: 1216 Arden Way, Sacramento, CA 95815

APPLICANT: same as above

ADDRESS: _____

APPELLANT: *LMC* Peter McCuen

ADDRESS: 10969 Trade Center Drive Suite 100, Rancho Cordova,
CA 95670

FILING FEE: \$40.00 RECEIPT NO. _____

FORWARDED TO PLANNING DIRECTOR ON DATE OF: _____

DR/PB # 86-101

1/82 DR86-101

30
APR 24 1986
5-13-86
5-22-86

(4 COPIES REQUIRED)

Item #31-2



CITY OF SACRAMENTO

31 ~~4/23~~

DEPARTMENT OF PLANNING AND DEVELOPMENT
1231 "I" Street Sacramento, Ca. 95814

Administration
Room 300 449-5571
Building Inspections
Room 200 449-5716
Planning
Room 200 449-5604

APPROVED

April 2, 1986

Design Review/Preservation Board
Sacramento, California

Members in Session:

Subject: 2313 Ventura Oaks, KOVR Transmitter Tower

Staff has discussed the Board's action with the City Attorney and has reviewed the Special Permit conditions sending the project to the Board for review and approval. They are as follows:

"Transmission Tower: The proposed tower would be 300 feet in height. The tower would be located approximately 1,500 feet northwest of the site. The tower would be constructed of tubular steel with a one-story masonry block equipment building located beneath the tower. The applicant has not decided upon a color for the tower; however, it should be noted that the tower does not have to be painted the traditional red and white. Staff recommends that the Design Review Board make the final determination as to the appropriate tower color.

As the Board has only been granted authority to review the color of the tower, staffs recommendations of approval are those of the attached staff report.

Respectfully submitted,

Richard B. Hastings *tc*
Design Review/Preservation Director

RH:tc

31 ~~44~~

March 19, 1986

Design Review/Preservation Board
Sacramento, California

Members in Session:

Subject: TV Tower Color and Base Structure

BACKGROUND INFORMATION: The Board, in approving the TV studio, required the TV tower and support building to be brought back for review and approval.

PROJECT EVALUATION: The transmission tower will be tripodal in plan with three legs rising 300 feet into the sky. A modified triangler tower building, for support equipment, will be placed at the base of the tower between the three legs. Cross bracing will run up the tower between each leg. The bracing changes in design as it moves up the tower. The legs and the bracing will be of round stock. An access ladder will run up one side of the tower. An exposed aggregate concrete block will be used on the equipment building.

STAFF RECOMMENDATIONS: Staff recommends the design with the following conditions:

1. The bracing at the base to only have one row of compound angles before changing to the simple triangle bracing. Base bracing to be similar to photo of tower supplied by applicant.
2. Dish locations to be placed within tower in place of an attachment to the outside of tower if possible.
3. Color of tower to be light tan or light blue gray. Dishes to be placed on tower to be the same color if possible.
4. Final landscaping and irrigation plans to be reviewed by staff.

Approval is based on the following Findings of Fact:

1. The tower project, as designed and conditioned, will allow it to blend into the sky.

31 ~~11/83~~

2. The equipment room is well designed and fits the tower.

Respectfully submitted,

RICHARD B. HASTINGS

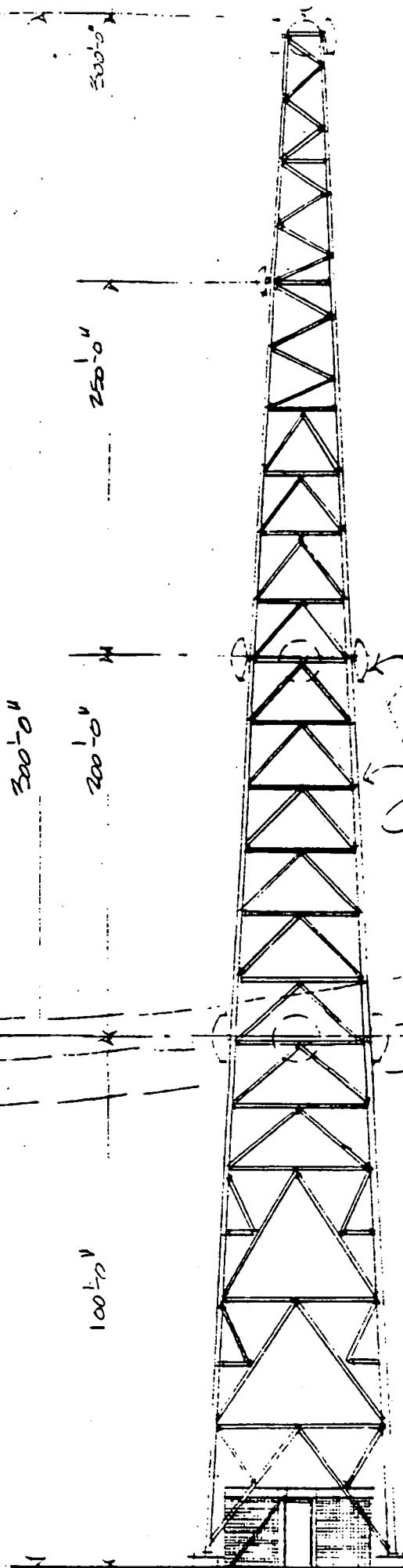
Richard B. Hastings
Design Review/Preservation Director

RBH:tc

APPROVAL BY THE DESIGN REVIEW/PRESERVATION BOARD DOES NOT RELIEVE THE APPLICANT OF THE RESPONSIBILITIES TO MEET REQUIREMENTS OF ALL ZONING ORDINANCES AND BUILDING CODES.

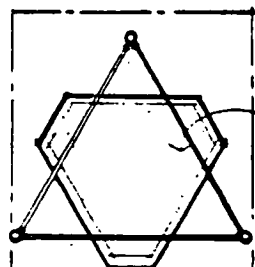
THE APPLICANT IS RESPONSIBLE FOR ANY DELAYS RESULTING FROM NONCOMPLIANCE WITH CONDITIONS OF APPROVAL.

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PROPOSED DISH LOCATIONS
 PAINTED STEEL TOWER
 (COLOR AS SELECTED)

EXISTING TRANSMISSION LINES @ 100'-0" ±

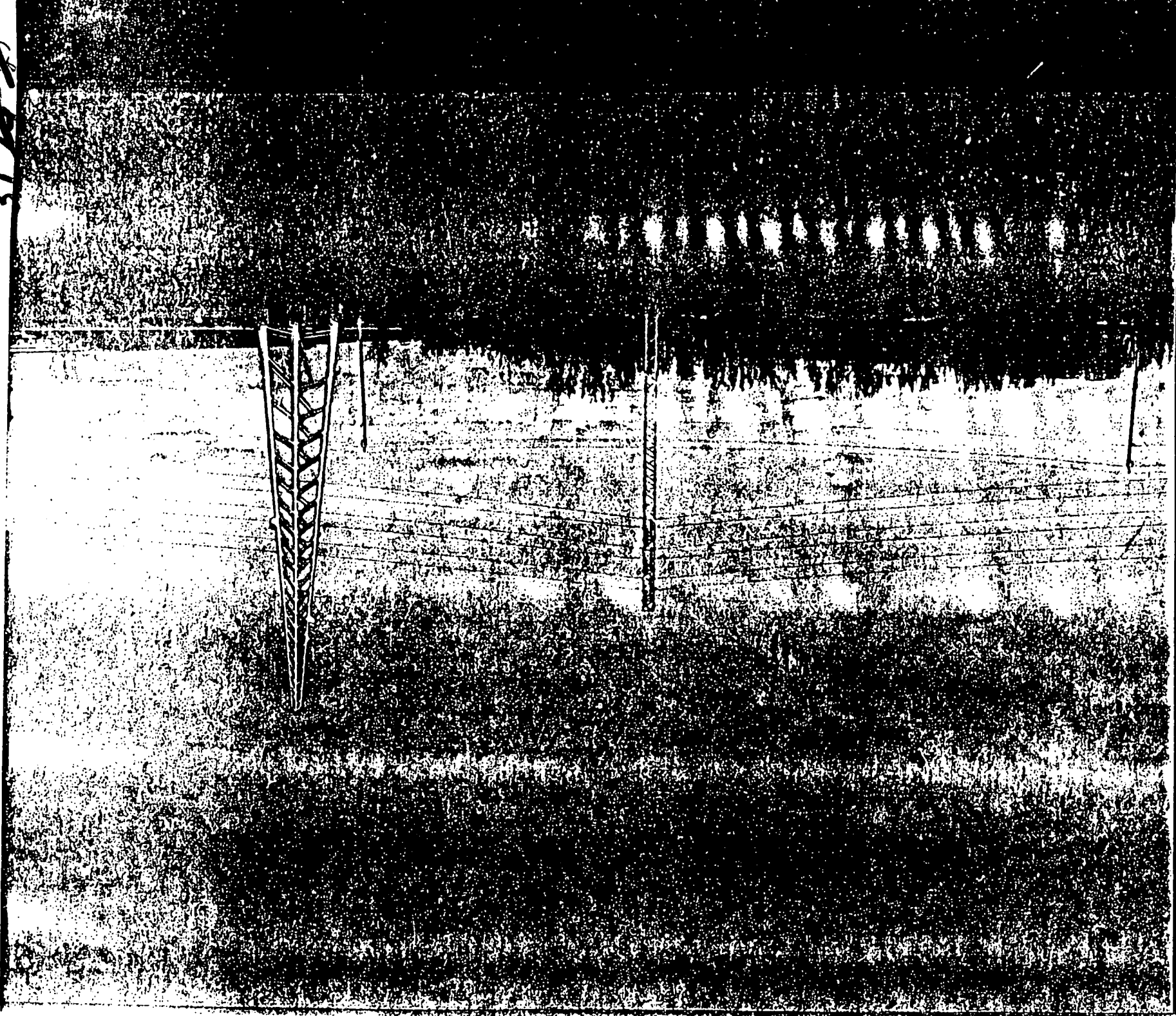


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**BROADCO
 HOUSE**

KOVR-

Gateway City
 Sacramento
 California

**TOWER AN
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 BUILDING**

DRAWN **CRB**

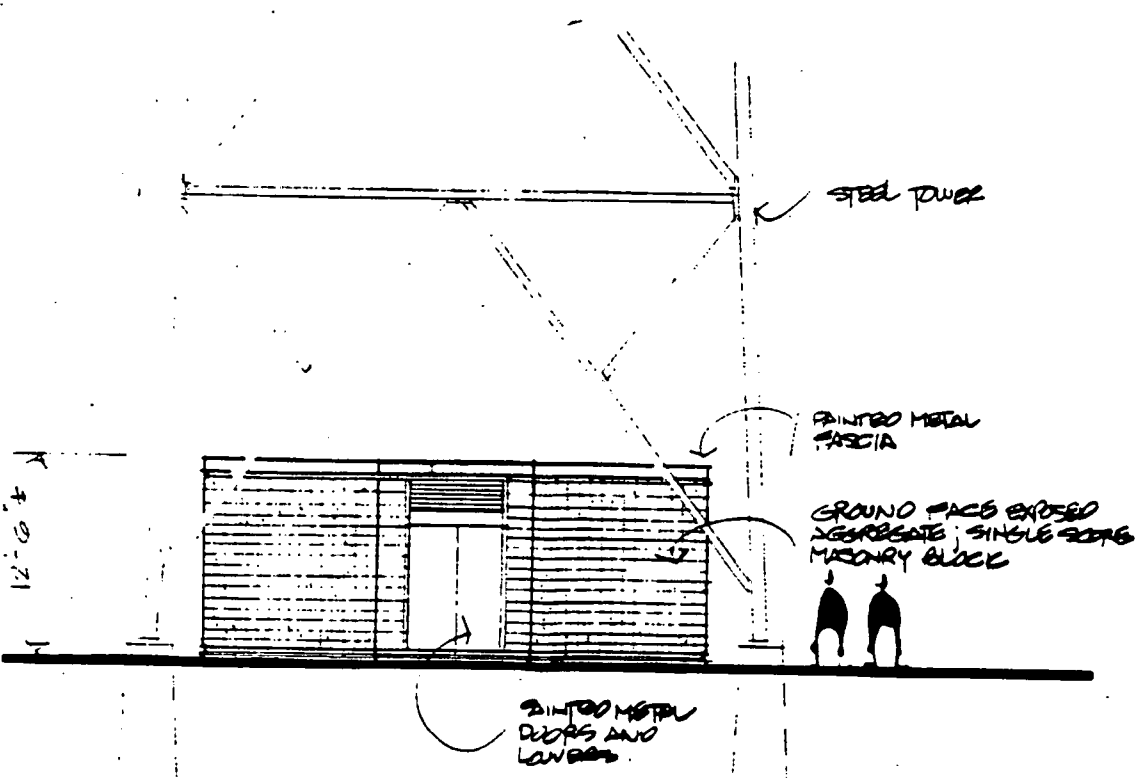
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P.I.C. **RAC**

DATE **1 MAR 86**

REVISIONS

SHEET NO.



DESB-101

5/8/86 5/22/86 36
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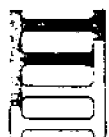
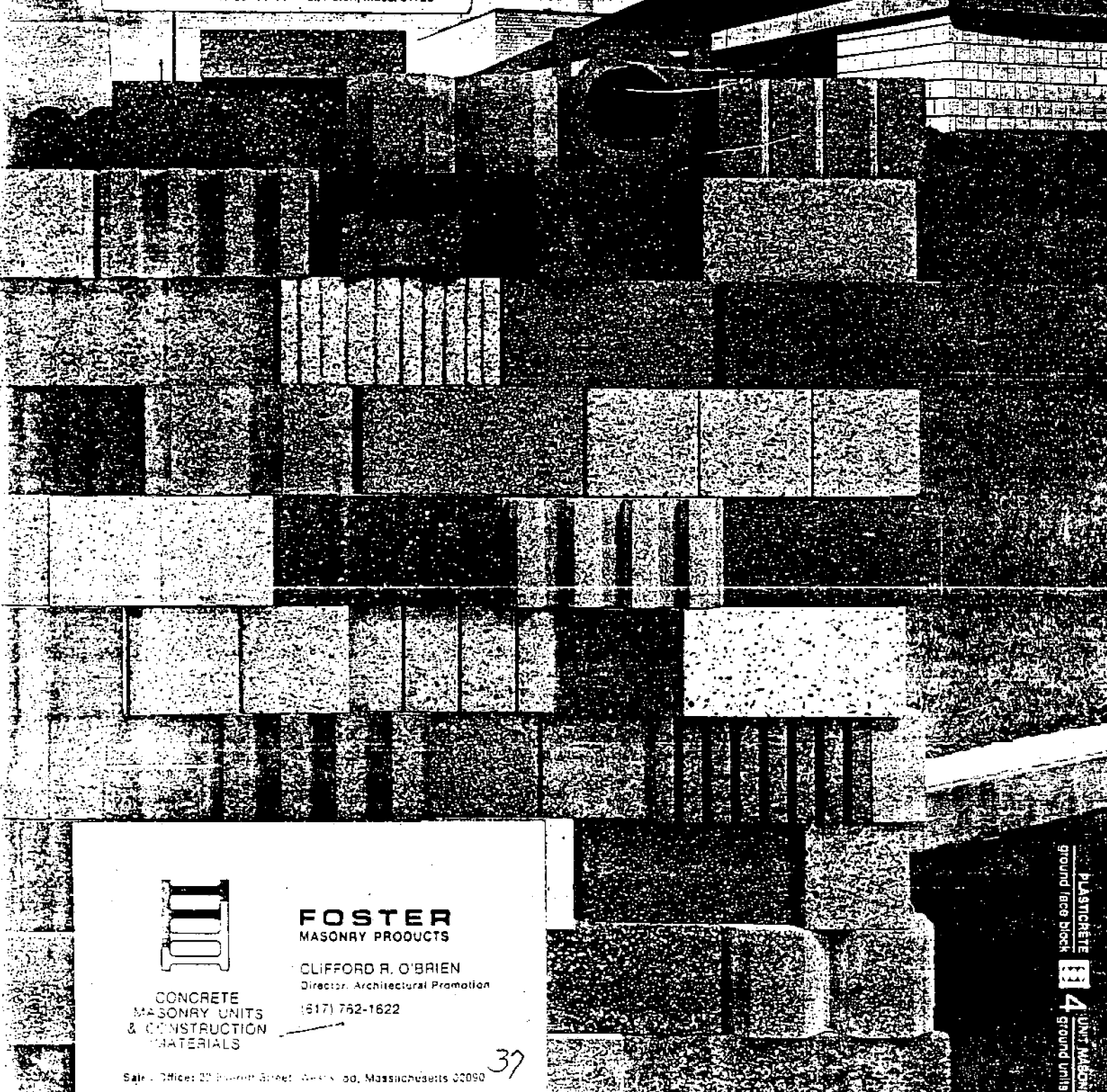


FOSTER
MASONRY PRODUCTS

(617) 762-1622

Office and Plant: 22 Everett St., Westwood, Mass. 02090

Acton Plant: 25 Lawsbrook Rd., Acton, Mass. 01720



FOSTER
MASONRY PRODUCTS

CLIFFORD R. O'BRIEN
Director, Architectural Promotion

(617) 762-1622

CONCRETE
MASONRY UNITS
& CONSTRUCTION
MATERIALS

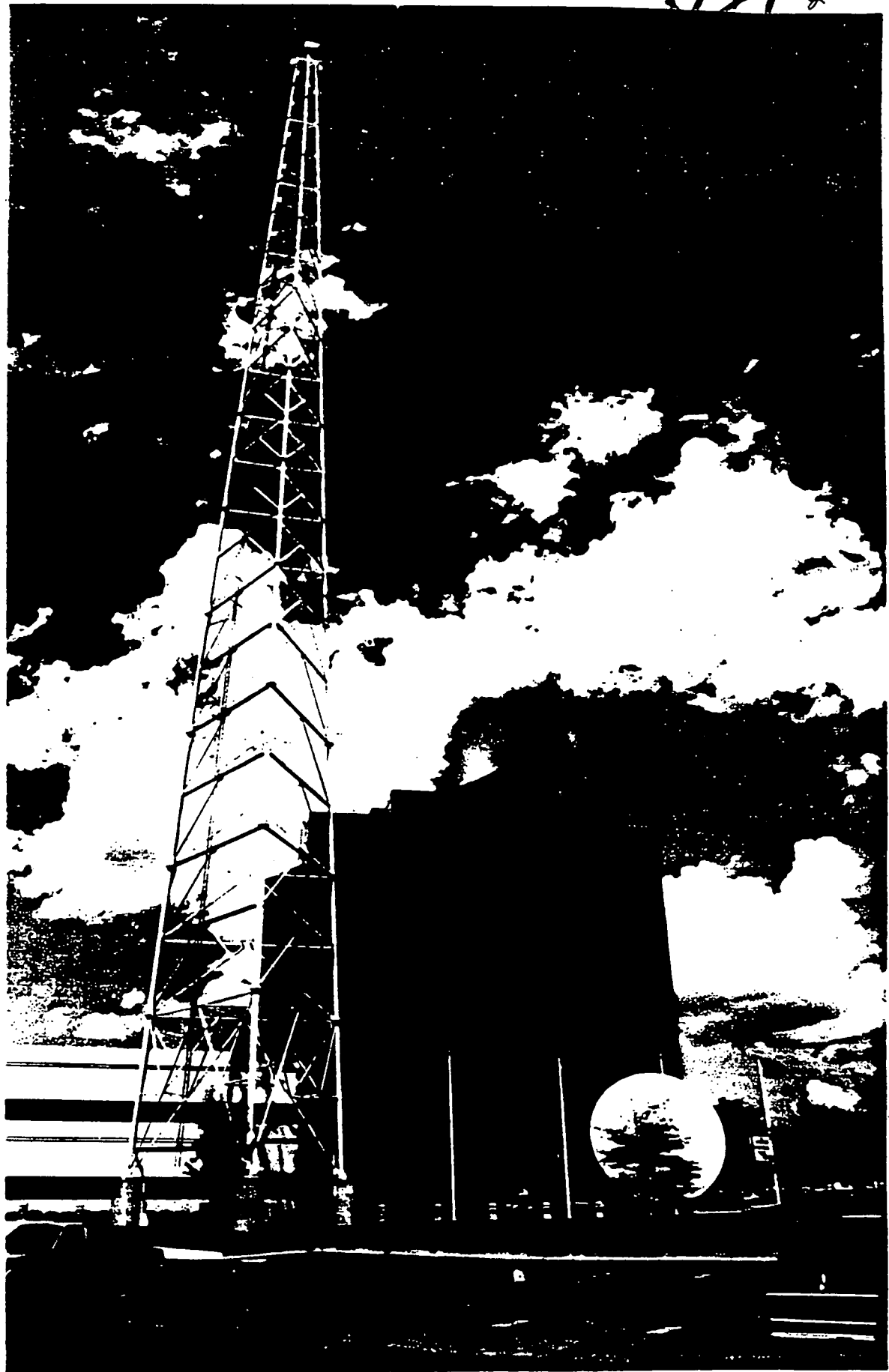
Sale Office: 22 Everett Street, Westwood, Massachusetts 02090

37

PLASTERED
ground face block
UNIT MASONRY
4
ground units

NE-1

31 14 83



OR 86-101

38
4-24-86 5/8/86

#3
#3



AMENDED
CITY OF SACRAMENTO

DR86-101

DEPARTMENT OF LAW
812 TENTH STREET SACRAMENTO, CA 95814
SUITE 201 TELEPHONE (916) 449-5346

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA L. MILLIGAN-HARMON
Deputy City Attorney

May 22, 1986

MEMORANDUM

TO: City Planning Commission
FROM: Theodore H. Kobey, Jr., Assistant City Attorney
RE: KOVR TRANSMISSION TOWER

The question has arisen as to what action, if any, the Planning Commission can now take regarding the transmission tower for which the Commission granted a special permit on July 11, 1985. The Commission currently has before it an appeal of the Design Review Board's determination as to the color of the structure.

Answer

The Commission's jurisdiction is limited to a determination of color for the structure. The Commission cannot redetermine whether the structure should be in its current approved location or review the structure's design.

Discussion

On July 11, 1985, the Commission approved a special permit for a television broadcast studio and a 300'-high off-site transmission tower, along with a 60,000 square foot television broadcast studio. The staff report (attached) provided in part as follows:

"D. Transmission Tower: The proposed tower would be 300 feet in height. The tower would be located approximately 1,500 feet

31423

northwest of the site. The tower would be constructed of tubular steel with a one-story masonry block equipment building located beneath the tower. The applicant has not decided upon a color for the tower; however, it should be noted that the tower does not have to be painted the traditional red and white. Staff recommends that the Design Review Board make the final determination as to the appropriate tower color." (Staff Report pp 2-3) (emphasis added)

Plans and maps showing the tower location accompanied the staff report. Condition 11 of the approval stated: "The proposed project shall be subject to Design Review Board approval." (Staff Report, page 7) Insofar as the tower was concerned, this approval power conferred by the Commission was limited to color. This is true for two reasons. First, the emphasized portion of the discussion of the tower quoted above clearly indicates this. Second, where the Commission intended to delegate the power to approve design and materials to the Design Review Board, the condition clearly said so:

- "7. The base of the proposed satellite dishes shall be screened by an enclosure. the enclosure shall be planted with climbing evergreen vines. The design and materials of the structure shall be approved by the Design Review Board prior to the issuance of building permits. (CPC amended)" (Staff Report, page 6)

Thus, the Commission's jurisdiction presently is limited to the appeal of the Board's decision on color of the tower.

We turn now to the main issue: Can the Commission institute proceedings to revoke or modify the previously granted special permit for the tower?

31/14 23

Initially, I should point out what is not involved here. This is not a vested rights case. I do not believe that KOVR's right to build the tower has vested, but that really isn't the issue. The real question is whether the Planning Commission can rehear a matter on which it took action more than ten months ago.¹ I believe it cannot. The general rule was stated in Lindell v. Board of Permit Appeals (1943) 23 C 2d 303. That case involved the power of a city board to rehear and rescind its action which had allowed the issuance of construction permits. There was an express ordinance provision allowing a rehearing. The court upheld the board's action after the rehearing, but in doing so stated:

"This holding as to the boards continuing jurisdiction in this matter does not impair the efficacy of the general principle that action by an administrative board, when the authoritative law intends it to be final, may not thereafter be revoked. The only question to be determined is when action becomes final. This is in every case a question dependent for its answer upon the scheme of the law by which power is conferred." (23 C 2d, 323) (emphasis added)

¹The zoning ordinance does not provide a procedure for the revocation of a special use permit where the use has not been commenced:

"When...a use permitted by a special permit is being conducted in a manner detrimental to the public health, safety or general welfare or in such a manner as to constitute a public nuisance...." (Zoning Ordinance §18-F-2, in part). (emphasis added)

This language simply does not address or allow revocation of a use permit where the use has not been commenced. Instead, the quoted provision speaks to uses already established. The entire section 18F relating to revocation and modification is attached.

City Planning Commission
Re: KOVR Transmission Tower
May 22, 1986
Page Four

31/423

See also 59 Ops Cal Atty Gen 123 (1976), in which the California Attorney General opined that the Coastal Commission lacked authority to reconsider a previous final decision:

"This general rule has been followed numerous times by California courts. In the leading case of Heap v. City of Los Angeles, 6 Cal. 2d 405 (1936), the question presented was whether the Los Angeles Civil Service Commission, once having sustained the discharge of a city employee, 'could thereafter vacate its findings and make another and contrary order.' 6 Cal. 2d at 406. The Commission had followed the required procedure, and its resolution sustaining the employee's discharge was 'final and conclusive'. The court found that the Commission 'had no jurisdiction to retry the question and make a different finding at a later time. The [city] charter gives no such grant of power, and it may not be implied.' 6 Cal. 2d at 407.

"In explaining why an administrative agency has no power to reconsider its previous final decisions in the absence of express statutory authorization, the Court posed a series of questions (6 Cal. 2d, supra, at 407-08):

'....If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure....'" (59 Ops Cal Atty Gen., 124)

31 1423

Here, there seems no question that the Planning Commission's July 11, 1985 decision granting the special permit was "final".

Section 18J of the Zoning Ordinance states in pertinent part:

"A decision of the City Planning Commission shall become final upon expiration of the time within which an appeal from that decision may be taken (unless additional time is granted by the City Council)."

Moreover, the Commission's own rules state, in part:

"4-g Any action taken by the Commission on the item of business which is the subject of the hearing shall be deemed an intended decision which is not final, effective or appealable until findings of fact in support thereof have been adopted by the Commission." (Sacramento City Planning Commission Rules and Procedures, page 4.)

These rules show that the Commission's decision was final as to its own jurisdiction (§4-g) when the special permit was granted and the findings were adopted on July 11, 1985. Under section 18J of the zoning ordinance, the Commission's decision became final for purposes of appeal to the City Council ten days thereafter.

Because the Commission's decision is final, it has no jurisdiction to reconsider the matter absent the establishment of a specific procedure to allow reconsideration.

Finally, a rule which specifically allows the Commission to reconsider a matter on which it has already taken final action could not be applied to the KOVR transmission tower permit to allow its reconsideration. While rights to build have not vested, the adoption of such a rule could be characterized as an attempt by the City

Planning Commission
Re: KOVR Transmission Tower
May 22, 1986
Page Six

31423

to frustrate KOVR's development plans and therefore held unapplicable to the KOVR tower special permit.

CEB California Zoning Practice (1985 Supplement) at §5.55, page 141, observes:

"The general...rule holds that a permit, license, or other governmental entitlement must conform to the law in effect at the time it is issued or recorded rather than at the time of application or denial. Book §§5.56-5.57; Supp §5.58. In Atlantic richfield co. v. Board of Supervisors (1974) 40 CA 3d 1059, 11 CR 731, the court (accepting the distinction made in Book §5.57) held that the applicant had no right to a building permit for a service station when, after application and before issuance of the permit, zoning was changed to require a use permit for service stations. The evidence showed that the zoning permitting the service station was inconsistent with a land-use plan adopted by the county and that the ordinance requiring a use permit for service stations was of general application. There was no showing that the ordinance was changed to frustrate the developer's plans. The opinion suggests that a court cannot order issuance of a building permit if it is contrary to a zoning ordinance at the time of the judicial decision. This is (and probably should be) the law if the ordinance precluding issuance of the permit is truly one of a general nature and not directed at the permit applicant. If the ordinance was directed at the applicant, he should be entitled to the permit and should be given fair time to vest it by physical construction. If the rule were otherwise, a local government could always cure a denial of a building permit, however gross, by merely changing the ordinance before judicial review." (emphasis added)

See also Selby Realty Co. v. City of San Buenaventura (1973) 10 Cal. 3d 110, 123 fn. 11:

"The cases holding that an appellate court will apply the rule in existence at the time of

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deciding the appeal appear to be inconsistent with another line of authority holding that if an applicant complies with all the requirements for a building permit at the time the application is made he is entitled to a permit even though the law has been changed prior to the decision on appeal. (See, e.g., Sunset View Cemetery Assn. v. Krantz (1961) 196 Cal. App. 2d 115, 123-124; McCombs v. Larson (1959) 176 Cal. App. 2d 105, 107; Munns v. Stenman (1957) 152 Cal. App. 2d 543, 551 [315 P. 2d 67].) These two apparently conflicting lines of cases have been distinguished on the ground that the change in the ordinance is deemed inapplicable if its enactment stemmed from an attempt to frustrate a particular developer's plans. (Russian Hill Improvement Assn. v. Board of Permit Appeals, supra, 66 Cal. 2d 34, fn. 5 at p 37; Cal. Zoning Practice (Cont. Ed. Bar (1969) \$5.57; cf. Keitzer v. Adams (1970) 2 Cal. 3d 976.)" (emphasis added)

In light of the foregoing, I would advise against the application of any rule allowing reconsideration of prior final decisions to the KOVR tower special permit.

Respectfully submitted,


THEODORE H. KOBAY, JR.

THK/jmv
Attachments

(14)

HOLLIMAN, HACKARD & TAYLOR
A PROFESSIONAL CORPORATION
ATTORNEYS

RECEIVED
CLERKS OFFICE
CITY OF SACRAMENTO

1545 RIVER PARK DRIVE, SUITE 550
SACRAMENTO, CALIFORNIA 95815
(916) 929-5545

SEP 23 5 10 PM '86

31

WILLIAM G. HOLLIMAN, JR.
MICHAEL A. HACKARD
JOHN M. TAYLOR
ROBERT B. PYE
GEORGE E. PHILLIPS
B. DEMAR HOOPER
JOHN P. YEAGER

September 23, 1986

HAND DELIVERY

Ms. Lorraine Magana
City Clerk
915 I Street, Room 203
Sacramento, California 95814

FILED
SEP 23 1986
Cont to 10-28-86
BY THE CITY COUNCIL
OFFICE OF THE CITY CLERK

Re: KOVR Transmission Tower Appeal
Agenda Item Number 23

Dear Ms. Magana:

On behalf of Appellant Peter McCuen, we wish to continue the referenced matter from tonight's City Council meeting. Mr. McCuen has been working toward resolution of the issue through the preparation of alternative tower designs which are in the process of being reviewed by KOVR representatives. It is our hope that the entire matter can be resolved without further Council action. Nonetheless, in the event a future hearing becomes necessary, we request that the matter be continued until October 28, 1986. Attached is a letter from the Applicant's counsel concurring in the continuance with the reservations stated in a previous letter to the City Clerk's office.

Thank you for your attention to this matter.

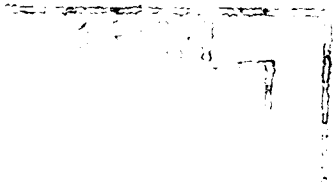
Very truly yours,

John M. Taylor
John M. Taylor

JMT/abu

Attachment

cc: All Council Members
Jim Jackson, Esq.
Ted Kobey, Esq.
Mr. Peter McCuen
Curtis C. Sproul, Esq.



WEINTRAUB
GENSHLEA
HARDY
ERICH
& BROWN

A Professional Corporation

September 22, 1986

Demar Hooper, Esq.
Holliman, Hackard & Taylor
1545 River Park Drive
Sacramento, CA 95815

Re: KOVR Transmission Tower;
City Council Hearing

Dear Demar:

Recently we have been discussing the desirability of continuing the City Council hearing on the above referenced matter which is currently scheduled for tomorrow evening, September 23, 1986. The reason for the continuance remains as outlined in my letter of August 12, 1986 to Anne Mason, Assistant City Clerk, namely that our clients continue to be involved in negotiations that could resolve this matter without further Council involvement. Mr. McCuen has submitted architectural drawings for several alternate tower designs and KOVR is having those designs evaluated by their own architects so that they will have a better understanding of the possible costs involved in adopting one of the proposed designs.

When we discussed the need for a further continuance of the September 23, 1986 hearing I noted the problem created by my client's competing desires to continue good faith negotiations which may ultimately prove fruitful and yet preserve the arguments presented by KOVR at the July 15, 1986 City Council meeting regarding the lack of any legitimate basis for granting the second continuance to August 19, 1986. You acknowledged your understanding that this consent would be in the spirit of promoting settlement negotiations and will not prejudice any arguments KOVR may wish to raise at a later date with respect to the validity of the Council's actions in granting the continuance at the July 15, 1986 hearing. Hopefully our clients' efforts will get this matter resolved and render

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Christopher Chédak
Sara A. Clark
Pamela E. Cogan
Daniel I. Coyle
Richard M. Cunha
Stephen F. Davids
Michael L. Dillard
Thomas I. Doyle
Kathleen Duagan
Lawrence S. Giardina
R. Dale Ginter
Theodore F. Gripek, Jr.
Paul D. Hoskins
Elizabeth M. Halker
Thomas F. Jeffrey
Bruce Kaminski
Kenneth M. Malovos
Nancy B. McGinn
James M. Meier
Karen Norene Mills
Timothy I. Nisson
Martha Evensen Opich
Bri R. Rossi
Robert L. Shibley
Charles S. Shibley
Kenneth I. Suley
Stephen W. Trapp
L. Kent Wyatt

Of Counsel
Leo H. Schuering, Sr.
Charles S. Franklin

2535
Capitol Oaks Drive
Sacramento
California 95833
916/648-9400

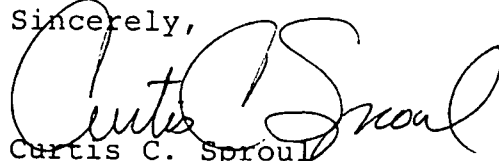
Redding Office
916/246-4201

Demar Hooper, Esq.
September 22, 1986
Page 2

these technical legal arguments most.

When you have arranged a new hearing date, please let me know of the date selected. Depending upon the Council's scheduling, I would think that a period of 30 days would be sufficient.

Sincerely,



Curtis C. Sproull

CCS:wd

cc: Bob Hess
Anne Mason

11

2423

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HOLLIMAN, HACKARD & TAYLOR CLERKS OFFICE
A PROFESSIONAL CORPORATION CITY OF SACRAMENTO
ATTORNEYS

1545 RIVER PARK DRIVE, SUITE 550
SACRAMENTO, CALIFORNIA 95815
(916) 929-5545

JUL 8 2 34 PM '86

WILLIAM G. HOLLIMAN, JR.
MICHAEL A. HACKARD
JOHN M. TAYLOR
ROBERT B. PYE
GEORGE E. PHILLIPS
B. DEMAR HOOPER
JOHN P. YEAGER

July 7, 1986

Lorraine Magana, City Clerk
City of Sacramento
915 I Street, Room 203
Sacramento, California 95814

Re: KOVR Tower Appeal - DR/PB 86-101

Dear Ms. Magana:

This letter confirms that the appellant requests continuance of the referenced appeal hearing from July 8, 1986 to July 15, 1986. This continuance has been requested due to the ongoing unavailability of the hearing tapes from the original project approval of July 11, 1985.

Thank you for your attention to this matter.

Very truly yours,
B. Demar Hooper
B. Demar Hooper

BDH/abu

FILED
JUL - 8 1986
2-15-86
BY THE CITY COUNCIL
OFFICE OF THE CITY CLERK

WEINTRAUB
GENSHLEA
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ERICH
& BROWN

A Professional Corporation

FILED
AUG 19 1986
Cont. to 9-23-86
BY THE CITY COUNCIL
OFFICE OF THE CITY CLERK

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CITY OF SACRAMENTO

23

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AUG 13 11 34 AM '86

August 12, 1986

Ms. Anne Mason
Assistant City Clerk
City of Sacramento
915 "I" Street, Room 203
Sacramento, CA 95814

Re: DR-86101 KOVR Transmission Tower
At 2213 Ventura Oaks Way
(APN:274-320-14,15)

Dear Ms. Mason:

This firm represents KOVR-TV, Inc. in the above matter which involves an appeal of the City Planning Commission's approval of the Design Review Board's earlier approval of the color of a proposed 300 foot transmission tower. The appeal was originally set for hearing on July 15, 1986 and was further continued to August 19, 1986 against our client's objections.

In the time since the July 15, 1986 City Council meeting, the appellant, Peter McCuen and my client have been involved in negotiations with a view towards reaching an amicable resolution of Mr. McCuen's aesthetic concerns. These discussions were initiated amid repeated requests from the City Council and the Planning Department that the parties attempt to resolve their differences through negotiation prior to the next scheduled hearing date.

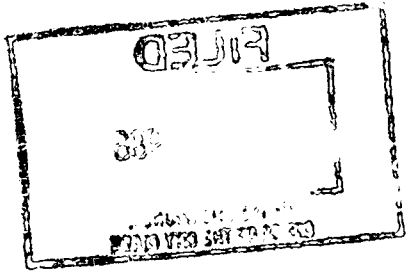
During this time period KOVR-TV has also undergone a change in ownership and the new owners have an additional interest in pursuing these settlement negotiations to gain a better understanding of the situation and the various alternatives that may be available. Due to the complexities of the issues it is not realistic to negotiate the specifics of a settlement prior to August 19, 1986.

- John Quincy Brown, Jr.
- Norwood R. Erich
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- Anthony D. Osmundson
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- Bruce Kaminski
- Kenneth M. Malovos
- Nancy B. McGann
- James M. Meier
- Karen Norene Mills
- Timothy I. Nisson
- Martha Evensen Opick
- Bret R. Rossi
- Robert L. Shipley
- Charles S. Sivley
- Kenneth I. Sylva
- Stephen W. Tropp
- L. Kent Wyatt

Of Counsel
Leo H. Schuering, Sr.
Charles S. Franklin

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Capitol Oaks Drive
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Redding Office
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ERICH
& BROWN

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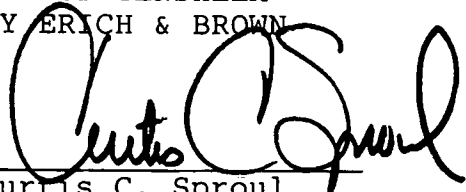
Ms. Ann Mason
August 12, 1986
Page 2

For these reasons, KOVR-TV is not opposed to having this matter heard on September 23, 1986 rather than August 19, 1986, as currently scheduled.

Sincerely,

WEINTRAUB GENSHLEA
HARDY ERICH & BROWN

BY:



Curtis C. Sproul

CCS:wd

HOLLIMAN, HACKARD & TAYLOR

A PROFESSIONAL CORPORATION

ATTORNEYS

1545 RIVER PARK DRIVE, SUITE 550
SACRAMENTO, CALIFORNIA 95815

(916) 929-5545

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CITY OF SACRAMENTO

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WILLIAM G. HOLLIMAN, JR.
MICHAEL A. HACKARD
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ROBERT B. PYE
GEORGE E. PHILLIPS
B. DEMAR HOOPER
JOHN P. YEAGER

August 12, 1986

Ms. Lorraine Magana
City Clerk
915 I Street, Room 203
Sacramento, California 95814

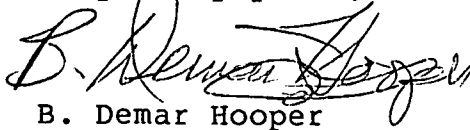
Re: KOVR Tower Appeal - DR/PB 85-101

Dear Ms. Magana:

This letter confirms that the appellant Peter McCuen requests continuance of the referenced appeal hearing from August 19, 1986 to September 23, 1986. This continuance is agreed to by the applicant, KOVR-TV, who will also be confirming by letter. The continuance has been requested because of ongoing negotiations between the parties, entered into at the request of the City Council at its July 15, 1986 meeting.

Thank you for your attention to this matter.

Very truly yours,



B. Demar Hooper

BDH/abu

cc: Mr. Peter McCuen
Curtis C. Sproul, Esq.



CITY OF SACRAMENTO

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CITY OF SACRAMENTO
JUN 17 3 45 PM '86

DEPARTMENT OF PLANNING AND DEVELOPMENT

1231 "I" Street

Sacramento, Ca. 95814

Administration
Room 300 449-5571
Building Inspections
Room 200 449-5716
Planning
Room 200 449-5604

June 12, 1986

MEMORANDUM

TO: Lorraine Magana, City Clerk
FROM: Leslie Oldridge
SUBJECT: Request to Set Public Hearing

PFP DATE: none
HEARING DATE: 7-8-86
FINAL COUNCIL ACTION DATE: 7-15-86

DR86-101

Appeal of City Planning Commission's Denial of Design Review Board's Approval of color proposed for 300' off-site transmission tower for property located at Gateway Center, 2213 Ventura Oaks Way. (D1) (APN: 274-320-14,15)

Per appellant's attorney, Damar Hooper (929-5545) continue to 7-15-86. Spoke w/ and ok'd thru Dick Hastings. 449-5609

SACRAMENTO CITY PLANNING COMMISSION

MEETING DATE May 22, 1986
 ITEM NO. 1 FILE # _____
 M: _____
DR86-101

- GENERAL PLAN AMENDMENT TENTATIVE MAP
 COMMUNITY PLAN AMENDMENT SUBDIVISION MODIFICATION
 REZONING LOT LINE ADJUSTMENT
 SPECIAL PERMIT ENVIRONMENTAL DET.
 VARIANCE OTHER Appeal of Design Approval Board's approval of color for transmission tower

Location: Interway Center, 2213 Ventura Oaks Way

- Recommendation:
 Favorable
 Unfavorable
 Petition Correspondence

PROPOSERS	
NAME	ADDRESS
<u>Sumar Hooper</u>	<u>-555 Capitol Mall, Sacramento 95814</u>
<u>Peter McKeon</u>	<u>-10969 Trade Center Drive, Rancho Cordova, CA</u>

OPPOSERS	
NAME	ADDRESS
<u>Curtis Sprau</u>	<u>-2535 Capitol Oaks Drive, Sacramento</u>
<u>Robert Hess</u>	<u>-1216 Arden Way, Sacramento</u>
<u>John Hirschburger</u>	<u>-Box 6, Sacramento 95801</u>
<u>Charles Kennedy</u>	<u>-1216 Arden Way, Sacramento</u>

MOTION NO. 2 of 2

	YES	NO	MOTION	SECOND
Chinn	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Ferris	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Goodin	<u>absent</u>	<input type="checkbox"/>		
Hollick	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Holloway	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Otto	<u>absent</u>	<input type="checkbox"/>		
Ramirez	<u>absent</u>	<input type="checkbox"/>		
Walton	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Ishmael	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

- MOTION
- TO APPROVE
 - TO DENY appeal based on find. of fact in rep.
 - TO APPROVE SUBJECT TO COND. & BASED ON FINDINGS OF FACT IN STAFF REPORT
 - TO APPROVE/DENY BASED ON FINDINGS OF FACT IN STAFF REPORT
 - INTENT TO APPROVE/DENY SUBJECT TO COND. & BASED ON FIND. OF FACT DUE _____
 - TO RECOMMEND APPROVAL & FORWARD TO CITY COUNCIL
 - TO RECOMMEND APPROVAL SUBJECT TO COND. & FORWARD TO CITY COUNCIL
 - TO RATIFY NEGATIVE DECLARATION
 - TO CONTINUE TO _____ MEETING
 - OTHER CC negotiate with parties to reach an agreement on tower.



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

CITY CLERK

LORRAINE MAGANA
CITY CLERK

June 20, 1986

Peter McKuen
10969 Trade Center Drive
Rancho Cordova, CA 95670

On June 17, 1986, the following matter was filed with my office to set a hearing date before the City Council:

DR-86101 - Appeal of City Planning Commission's Denial of Design Review Board's Approval of color proposed for 300' off-site transmission tower for property located at Gateway Center, 2213 Ventura Oaks Way. (D1) (APN: 274-320-14,15)

This hearing has been set for July 8, 1986, 7:30 p.m., Council Chamber, Second Floor, City Hall, 915 "I" Street, Sacramento, California. Interested parties are invited to appear and speak at the hearing.


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.

Pursuant to Council Rules of Procedure 4.5, continuance of the above matter may be obtained only by the property owner of the above property, applicant, or appellant, or their designee, by submitting a written request delivered to this office no later than 12:00 Noon the day prior to the scheduled hearing date. If written request is not delivered to this office as specified herein, a continuance may only be obtained by appearing before the City Council at the time of the hearing and submitting a verbal request to the Council.

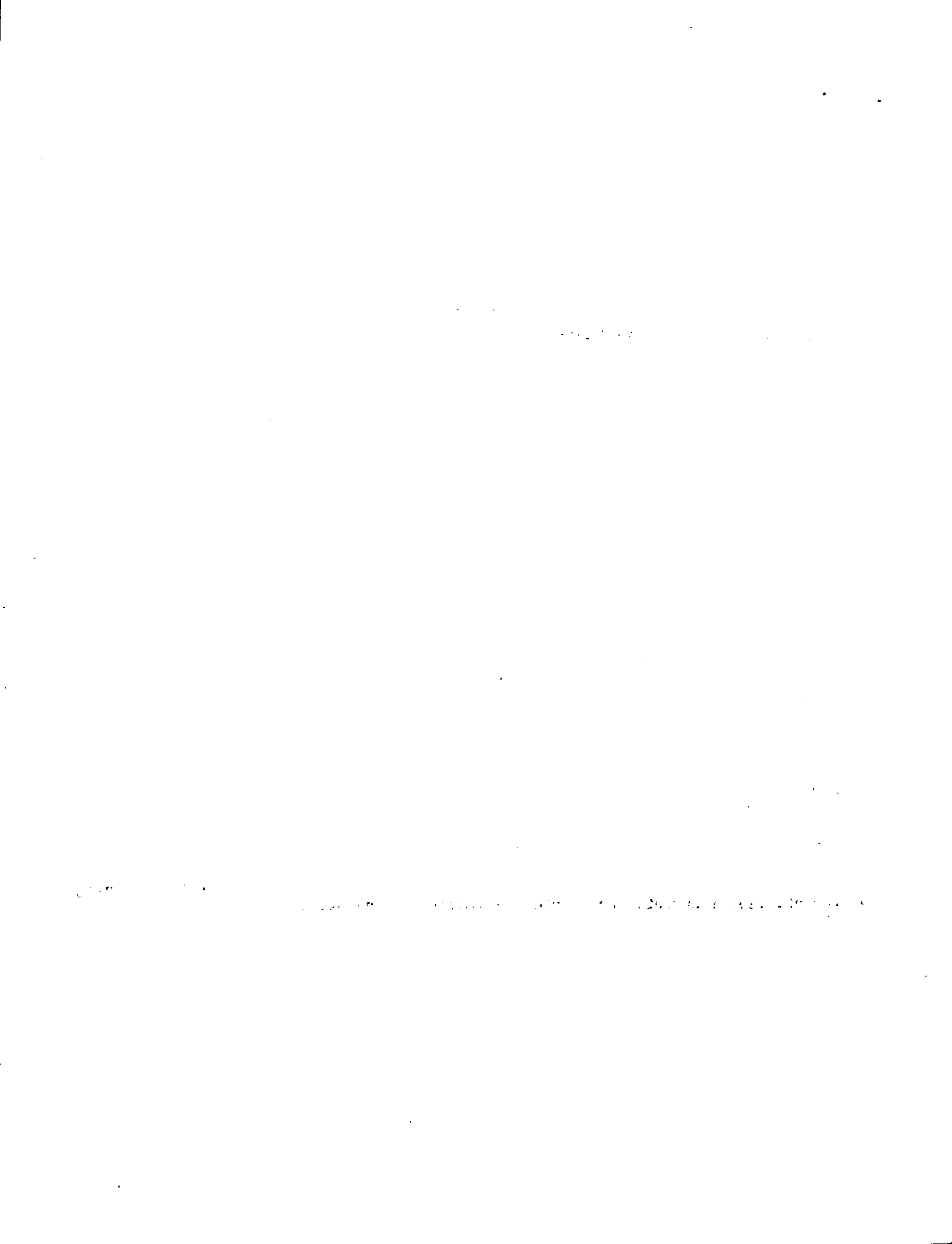
Any questions regarding this hearing should be directed to the **City Planning Department, 1231 I Street, Sacramento, California, phone 449-5604.**

Sincerely,

LORRAINE MAGANA
CITY CLERK


JANICE BEAMAN
Deputy City Clerk

cc: KOVR TV, 1216 Arden Way, Sacramento, CA 95815
Mailing List for DR-86101 - 14





CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

CITY CLERK

LORRAINE MAGANA
CITY CLERK

July 14, 1986

Peter McCuen
10969 Trade Center Drive, Suite 100
Rancho Cordova, CA 95670

On July 8, 1986, the following matter was scheduled to be heard before the City Council:

DR-86101 - Appeal of City Planning Commission's Denial of Design Review Board's Approval of color proposed for 300' off-site transmission tower for property located at Gateway Center, 2213 Ventura Oaks Way. (D1) (APN: 274-320-14,15)

This hearing has been continued to July 15, 1986, 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.

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.

Pursuant to Council Rules of Procedure 4.5(3), "No person who has once obtained a continuance of a hearing, whether by notice to the City Clerk as provided in Section 4.5(1) or by personal appearance as provided in paragraph 4.5(2) shall be granted a further continuance except by personally appearing at the Council meeting at the time at which the hearing is scheduled and by satisfying the Council that extraordinary circumstances exist which would justify such a continuance." Continuances may be requested by the owner of the subject property, applicant, appellant, or a designee for same.

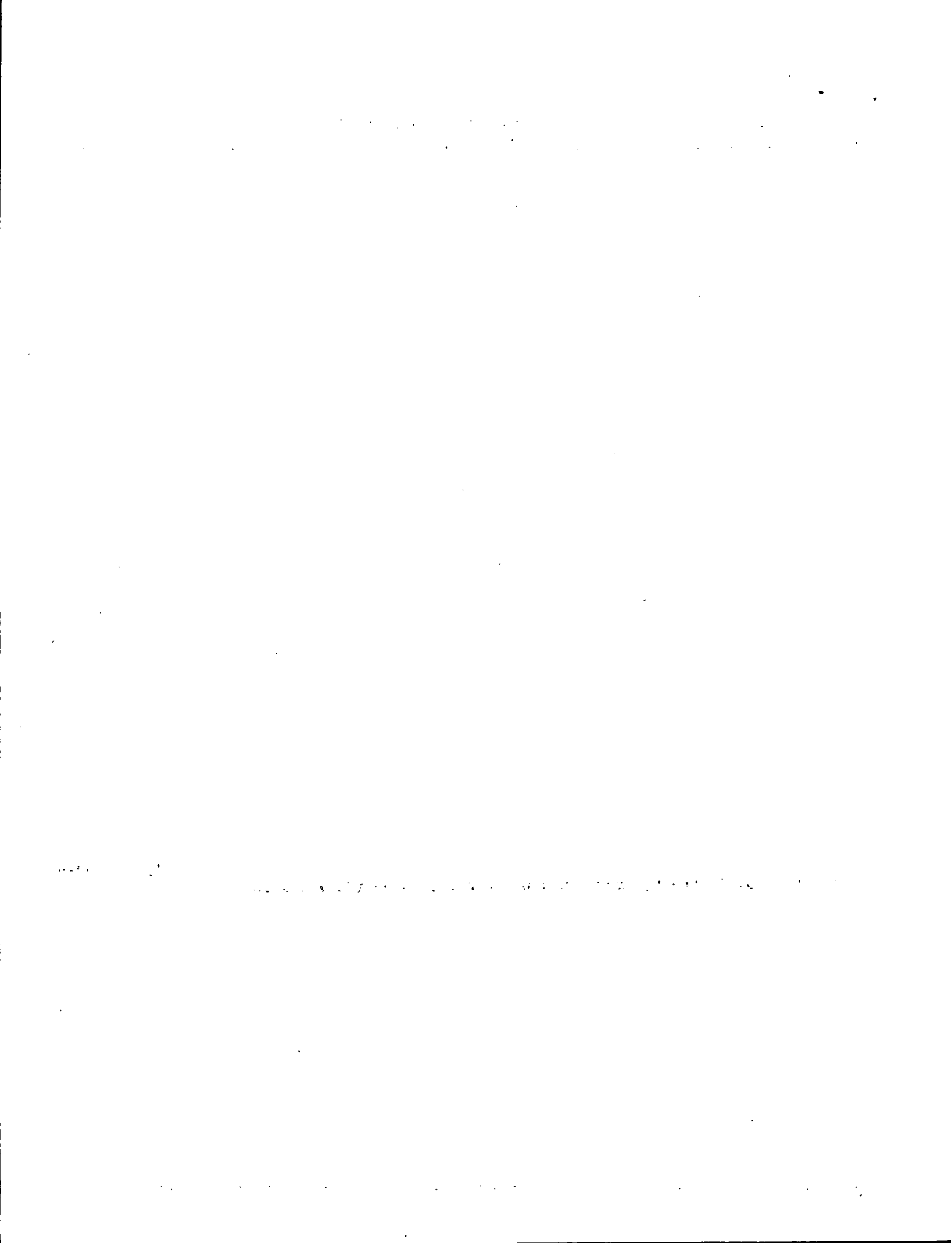
Any questions regarding this hearing should be referred to the **City Planning Department, 1231 I Street, Sacramento California, phone (916) 449-5604.**

Sincerely,

Lorraine Magana
City Clerk

ANNE MASON
Assistant City Clerk

cc: KOVR TV
Gateway Center Associates
Mailing List for DR-86101 - 14





CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

CITY CLERK

LORRAINE MAGANA
CITY CLERK

July 16, 1986

Peter McCuen
10969 Trade Center Drive, Suite 100
Rancho Cordova, CA 95670

On July 15, 1986, the following matter was scheduled to be heard before the City Council after having been previously continued.

DR-86101 - Appeal of City Planning Commission's Denial of Design Review Board's Approval of color proposed for 300' off-site transmission tower for property located at Gateway Center, 2213 Ventura Oaks Way. (D1) (APN: 274-320-14,15)

This hearing has been further continued to August 19, 1986, at the hour of 7:30 p.m., and in the Council Chamber, Second Floor, City Hall, 915 "I" Street, Sacramento, California. Interested parties may appear and speak at the hearing.

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.

Pursuant to Council Rules of Procedure 4.5(4), "No person who has twice obtained a continuance of a hearing shall be granted an additional continuance unless such person shall appear at the Council meeting at the time such hearing is scheduled, and satisfy the Council that a miscarriage of justice would result from the refusal of the Council to grant such a continuance." Continuances may be requested by the owner of the subject property, applicant, appellant, or a designee for same.

Any questions regarding this hearing should be referred to the City Planning Department, 1231 I Street, Sacramento, California, phone (916) 449-5604.

Sincerely,

Lorraine Magana
City Clerk

Anne J. Mason
ANNE MASON
Assistant City Clerk

cc: KOVR TV
Mailing List for DR-86101 - 14

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CITY OF SACRAMENTO
SEP 24 3 54 PM '86

Law Offices
**WEINTRAUB
GENSHLEA
HARDY
ERICH
& BROWN**
A Professional Corporation

September 22, 1986

Demar Hooper, Esq.
Holliman, Hackard & Taylor
1545 River Park Drive
Sacramento, CA 95815

Re: KOVR Transmission Tower;
City Council Hearing

Dear Demar:

Recently we have been discussing the desirability of continuing the City Council hearing on the above referenced matter which is currently scheduled for tomorrow evening, September 23, 1986. The reason for the continuance remains as outlined in my letter of August 12, 1986 to Anne Mason, Assistant City Clerk, namely that our clients continue to be involved in negotiations that could resolve this matter without further Council involvement. Mr. McCuen has submitted architectural drawings for several alternate tower designs and KOVR is having those designs evaluated by their own architects so that they will have a better understanding of the possible costs involved in adopting one of the proposed designs.

When we discussed the need for a further continuance of the September 23, 1986 hearing I noted the problem created by my client's competing desires to continue good faith negotiations which may ultimately prove fruitful and yet preserve the arguments presented by KOVR at the July 15, 1986 City Council meeting regarding the lack of any legitimate basis for granting the second continuance to August 19, 1986. You acknowledged your understanding that this consent would be in the spirit of promoting settlement negotiations and will not prejudice any arguments KOVR may wish to raise at a later date with respect to the validity of the Council's actions in granting the continuance at the July 15, 1986 hearing. Hopefully our clients' efforts will get this matter resolved and render

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 - Joseph S. Genshlea
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 - Anthony D. Osmundson
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 - Barbara L. Berg
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 - Christopher Chediak
 - Sara A. Clark
 - Pamela E. Cogan
 - Daniel I. Coyle
 - Richard M. Cunha
 - Stephen F. Davids
 - Michael L. Dillard
 - Thomas I. Doyle
 - Kathleen Duagan
 - Lawrence S. Giardina
 - R. Dale Ginter
 - Theodore F. Gropke, Jr
 - Paul D. Hoskins
 - Elizabeth M. Hujker
 - Thomas F. Jeffrey
 - Bruce Kaminski
 - Kenneth M. Malovos
 - Nancy B. McGunn
 - James M. Meier
 - Karen Norene Mills
 - Timothy I. Nisson
 - Martha Evensen Opich
 - Bret R. Rossi
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 - Kenneth I. Silva
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Demar Hooper, Esq.
September 22, 1986
Page 2

these technical legal arguments most.

When you have arranged a new hearing date, please let me know of the date selected. Depending upon the Council's scheduling, I would think that a period of 30 days would be sufficient.

Sincerely,

Curtis C. Sproull

CCS:wd
cc: Bob Hess
Anne Mason

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December 17, 1986

Lorraine Magana
Clerk of the City Council
915 I Street - Room 203
Sacramento, CA 95814

RE: DR-86 101; 300 Offsite Transmission Tower

Dear Ms. Magana:

Our offices represent KOVR-TV, Inc. regarding the above referenced item. Our client has agreed not to object to the continuance of the hearing before the City Council on this matter from December 16, 1986 to January 20, 1986.

Very truly yours,

Kenneth Sylva

KS:dss

cc: Robert Hess
Demar Hooper

John Quincy Brown, Jr.
Norwood R. Erich
Cavan Hardy
Joseph S. Genshlea
Malcolm S. Weintraub
William A. Wilson
Leo H. Schuering, Jr.
Anthony D. Osmundson
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L. Burda Gilbert
Lucinda C. Pohan
Dee Hartzog
Robert H. Zimmerman
Steven T. Scully
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Michael E. Zacharia
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Robert B. Zaro
Michael A. Kvarme
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Victoria Lani Arena
Randy Barrow
Barbara L. Berg
Nelson Keith Brooks
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Linda Y. Chang
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