

MEMORANDUM OF LAW

DATE: October 11, 1991

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: 2761 A Street - Revocation of Building Permits - B000654-91
and B000655-91

This responds to the question whether certain building permits issued for 2761 A Street may be legally revoked. This is to advise you that, in our view, the permits were not validly issued and therefore may legally be revoked insofar as they purport to allow for the construction of twenty units, instead of eight units.

Attached to this memorandum, and hereby incorporated as Exhibit A, are the "Findings of Fact and Decision," dated October 3, 1991, hereafter referred to as "Decision," which the Building Official issued after a hearing. I am also attaching pertinent portions of ordinance Nos. O-17382 (N.S.) and O-17421 (N.S.) for reference, as Exhibits B and C respectively.

A permit, once issued, should not be revoked or suspended without due process, even if the permit is deemed to have been issued in error. The hearing and procedure in this case were consistent with administrative due process. We therefore conclude that the findings of the Building Official that the subject permit is invalid and would therefore not allow for construction of twenty units are in accordance with law.

Our analysis of the Decision may be summarized as follows:

1. The development permit, GHDP 88-1227, was originally issued on September 6, 1989, under the Golden Hills Planned District Ordinance (GHPDO).
2. Building permit application A008094-89 was filed on September 11, 1989, and expired on September 6, 1990. No building permits were issued.
3. On October 30, 1989, San Diego Municipal Code section 103.0709 was amended by Ordinance O-17382 (N.S.) to allow, among other things, that certain development permits be utilized within 36 months after their effective date, as provided for by section 101.0901H. The amendment by Ordinance O-17382 (N.S.) did not apply to permits issued prior to October 17, 1989. In this case, it would not apply to GHDP 88-1227, and such permit would not be valid after 18 months from its issuance, unless work was commenced. No evidence was found that any work was commenced under that permit during the operative time, however.

4. The amendments to the GHPDO by Ordinance O-17382 (N.S.) of October 30, 1989, which had also reduced the number of allowable units from twenty units to eight units, was further clarified by Ordinance O-17421 (N.S.), to not be applicable to permits which had been applied for prior to October 17, 1989. Thus, the reduction of allowable units would not be applicable to the original building permit application A008094-89 filed on September 11, 1989, but would apply to permit applications after October 17, 1989, or, in this case, to the application submitted on November 16, 1990.

5. On November 16, 1990, building permit application A008094-89 for twenty units was filed. The building permits issued under this application were not consistent with the terms of the ordinances in effect at the time of application, and hence would not allow for the construction of twenty units. As such, the permits were erroneously issued and therefore are subject to revocation pursuant to San Diego Municipal Code section 91.0303(e).

This analysis does not depend upon any consideration of equitable estoppel principles or of vested rights raised by the applicant. If the issue is litigated, those points will probably be raised. We cannot say as a matter of law, however, that those assertions rise to the level which would justify a different legal conclusion. See *Avco Community Developers, Inc. v. South Coast Regional Comm.*, 17 Cal.3d 785 (1976). However, if the City should not prevail on the law at trial, there is the potential for damages and attorneys fees and costs. Cf. *Consaul v. City of San Diego*, 231 Cal.App. 3d 131 (1991), rehearing pending.

In conclusion, you may treat the building permits as not having been validly and legally issued, insofar as authorizing construction of a twenty-unit structure.

If you should have further questions on the subject, please do not hesitate to contact the undersigned.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:ps:825(x043.2)

Attachments 3

cc Severo Esquivel

Tina Christiansen

Coleman Conrad

Fred Conrad

Joe Schilling

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