



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: FEBRUARY 13, 2006

U.3.
ITEM NUMBER:

**SUBJECT: 90-DAY REVIEW OF CONDITIONAL USE PERMIT PA-95-10
CORNER OFFICE SPORTS BAR AND GRILL
580 ANTON BLVD. #201**

DATE: FEBRUARY 3, 2006

**FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP, SENIOR PLANNER
(714) 754-5611**

PROJECT DESCRIPTION

Review of conditional use permit PA-95-10 for an existing sports bar/restaurant (Corner Office Sports Bar and Grill) for either possible modification to the conditions of approval or revocation.

APPLICANT

The operators of Corner Office Sports Bar and Grill are Duane V. Heldt and Stephanie Potter. The property owner is Roger Allensworth.

RECOMMENDATION

Revoke conditional use permit PA-95-10 by adoption of Planning Commission resolution.



MEL LEE, AICP
Senior Planner



R. MICHAEL ROBINSON, AICP
Asst. Development Services Director

BACKGROUND

On October 10, 2005, Planning Commission conducted a review of Conditional Use Permits PA-03-39 and PA-95-10 for Corner Office Sports Bar and Grill. PA-95-10 allowed the expansion of the business, then called Legends Sports Bar, into an adjacent restaurant space to allow 6 billiards tables and 4 or more electronic game machines¹. PA-03-39 allowed live entertainment consisting of a combination of karaoke, live music, mobile disc jockey, and dancing on various nights.

Both CUP's were brought before the Commission for review because of problems related to the operation of the establishment documented by Police and Code Enforcement staffs. At the hearing, the Commission revoked PA-03-39 (which allowed live entertainment and dancing) with the consent of the operators, and modified the conditions of approval for PA-95-10 to further restrict the operation of the establishment, with the requirement that the CUP be brought back within 90 days for review by the Commission.

Copies of the meeting minutes, resolutions and staff reports for PA-03-39 and PA-95-10 are attached for reference.

ANALYSIS

At the hearing, the following conditions of approval were added and/or modified for PA-95-10:

- Condition No. 2(A): Daily hours of operation shall be restricted to the period between 9 a.m. and 1 a.m. with a review after 90 days and another after 90 additional days.
- Condition No. 2(B): There shall be no use of outdoor seating or tables in conjunction with this use; there shall be no service of alcoholic beverages outside the building.
- Condition No. 8: Private parties shall terminate no later than 10 p.m. (Private parties are defined as a group using a separate room for an event of their own.)
- Condition No. 9: There shall be no paid parties (where persons have to pay to get in).

The purpose of these conditions were to minimize the calls for Police service to the establishment, which were related to the private parties and late operating hours at the establishment.² According to the most recent report prepared by the Police Department dated January 25, 2006 (a copy of which is attached to this memo), despite the efforts of the Police Department to work with the operators of the establishment to prevent further Police problems, two major incidents involving Police activity occurred at the

¹ The establishment currently has 2 billiard tables and 2 electronic game machines, both of which are located in the main restaurant/bar area; the adjacent space that was approved for the expansion is currently used as a banquet room for private parties.

² Live entertainment and dancing were prohibited once the Commission revoked PA-03-39.

Roger Allensworth
P.O. Box 68021-256
Anaheim, CA 92817

Law Offices of Robert C. Hawkins
110 Newport Center Drive, Suite 200
Newport Beach, California 92660

File: 021306PA9510	Date: 020106	Time: 9:00 a.m.
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establishment in the past 90 days; the first on November 19, 2005 involving an assault with a deadly weapon, and the second on January 4, 2006 involving a situation of overcrowding which resulted in the deployment of nearly all available on-duty patrol officers. These incidents were the result of the operators failing to comply with the following conditions of approval for the CUP:

Condition Of Approval	Violation
2(B): There shall be no use of outdoor seating or tables in conjunction with this use; there shall be no service of alcoholic beverages outside the building.	Rear door to the business was open; patrons observed drinking on the patio outside the building. (January 4, 2006 incident).
2(D): The supervision of the patrons on the premises shall be adequate to ensure there is no conduct that is detrimental to the public health, safety, and general welfare. 2(H): The business shall be conducted at all times in a manner that will allow for the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute necessary security and operational measures to comply with this requirement	Insufficient security staff provided for supervision of patrons. (November 19, 2005 and January 4, 2006 incidents).
6: The maximum occupancy, as determined by the Uniform Building Code or other applicable codes, shall be posted in public view within the premises. It shall be the responsibility of management to ensure that the maximum allowable occupancy is not exceeded at any time.	The posted capacity for the establishment is 234; 500 persons observed within the establishment. (January 4, 2006 incident).

Based upon the applicant's failure to comply with the conditions of approval, and the severity of the violations, the Police Depart is recommending that PA-95-10 be revoked, rather than have the establishment continue to operate in its present form for another 90 days per condition no. 2(A). If the CUP were revoked, the following activities per PA-95-10 would be required to cease operation at the site:

1. The establishment would be required to close at 11:00 p.m. per Code Section 13-47;
2. The billiard tables would be required to be removed and electronic games limited to no more than 4 per Code Section 13-160;
3. The establishment would be required to return to its original footprint (i.e., the banquet room expansion allowed under PA-95-10 would be eliminated).

If the CUP is revoked, the establishment would still be allowed to operate as a restaurant, within its originally approved foot print, per the original master plan approved for the site, subject to the provisions of the Code as they pertain to restaurants (Code Section 13-47). However, if problems continue to persist, the Commission may modify the master plan approved for the site to further reduce or eliminate the restaurant.

ALTERNATIVES

The Planning Commission has the following alternatives:

1. Revoke the conditional use permit;
2. Modify the conditions of approval for PA-95-10; or
3. Retain the conditions of approval for PA-95-10 with no modifications for an additional 90-day review period.

CONCLUSION

The operation of the Corner Office does not comply with the conditions of approval and is detrimental to the public health, safety, and general welfare. Therefore, staff is recommending the CUP be revoked.

Attachments: Draft Planning Commission Resolution
 Exhibit "A" – Findings
 Police Department Memo
 Minutes of the October 10, 2005 Planning Commission Meeting
 Zoning/Location Map
 Plans
 Resolutions and Staff Reports for PA-95-10 and PA-03-39

cc: Deputy City Manager-Dev. Svs. Director
 Deputy City Attorney
 Police Department – Area II Commander
 City Engineer
 Fire Protection Analyst
 Staff (4)
 File (2)

Duane V. Heldt
Corner Office Sports Bar and Grill
580 Anton Boulevard, #201
Costa Mesa, CA 92626

Stephanie Potter
Corner Office Sports Bar and Grill
580 Anton Boulevard, #201
Costa Mesa, CA 92626

Eric Strauss
America West Properties
26302 La Paz Road #215
Mission Viejo, CA 92691

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RESOLUTION NO. PC-06-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA REVOKING CONDITIONAL USE
PERMIT PA-95-10**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES
AS FOLLOWS:

WHEREAS, an application was approved, with respect to the real property located at 580 Anton Boulevard, #201, for conditional use permits for an existing sports bar and restaurant (Corner Office Sports Bar and Grill); and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 13, 2006 to review, modify, and/or revoke the conditional use permits.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **REVOKES** PA-95-10 with respect to the property described above.

PASSED AND ADOPTED this 13th day of February, 2006.

Bill Perkins, Chair
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS

- A. The use, does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
- The use is not compatible and harmonious with uses on surrounding properties.
 - The use is not consistent with the General Plan.
 - The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the use, is not compatible with developments in the same general area. Specifically, despite the efforts of the Police Department to work with the operators of the establishment to prevent further problems, two major incidents occurred at the establishment. The use is detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity.
- C. The use as operated or maintained does not comply with the conditions of approval as required by Costa Mesa Municipal Code Section 13-29(o)(2). Specifically, conditions of approval pertaining to the maximum capacity and supervision of patrons, and drinking outside of the building.
- D. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- E. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

JANUARY 25, 2006
POLICE DEPARTMENT MEMO

**CITY OF COSTA MESA
POLICE DEPARTMENT
INTER OFFICE MEMORANDUM**

TO: Mel Lee, Senior Planner

FROM: Lieutenant Karl Schuler, Area II Commander

SUBJECT: Update on Corner Office Sports Grill Activity

DATE: January 25, 2006

PURPOSE:

Update appropriate City Staffs on the activity level at the Corner Office Sports Grill since the Planning Commission Hearing on October 10, 2005.

BACKGROUND:

At the October 10, 2005 Planning Commission Hearing, the Corner Office Sports Grill was allowed to continue business with the following conditions:

- No live entertainment, Disc Jockey or dancing.
- Private parties are permitted with an ending time of no later than 10:00 pm.
- Closing time will be no later than 1:00 am.

These conditions were placed on the Corner Office Sports Grill as a result of ongoing criminal activity, as well as, constant violations of City Municipal Codes.

ANALYSIS:

On October 13, 2005, police department staff met with Corner Office Sports Grill ownership, management, and legal staff, to discuss a partnership between their associates and the police department staff. The meeting was very educational, and it set the ground rules for a positive working relationship. As a result, police department staff composed a memorandum outlining the method in which the

police were going to conduct routine patrol checks and document activity at the Corner Office Sports Grill. A copy of this memorandum was sent to Robert C. Hawkins, lawyer for the Corner Office Sports Grill. Police department staff spoke to Mr. Hawkins, who felt the contents of memorandum were fair and proper.

Since the date of the Planning Commission Hearing, there were two (2) major incidents that took place at the Corner Office Sports Grill. These incidents directly violate their conditional use permit. The events are as follows:

Assault with a Deadly Weapon:

On November 19, 2005, a patron of the Corner Office Sports Grill was hit on his head with a blunt object, causing major injury. The crime was not reported until after the victim had gone to the hospital and received medical treatment. Corner Office Sports Grill management made no attempt to contact the police at the time of the incident. As a result, the crime scene had been compromised, spoiling any available physical evidence.

Municipal Code Violation:

On January 4, 2006, officers conducted a patrol check of the Corner Office Sports Grill. During the patrol check, officers estimated that there were approximately 500 patrons inside the establishment. The posted capacity for the location is 234. Due to a strain on police manpower (almost all available officers were at the Corner Office Sports Grill), officers were unable to conduct a walk-out head count. The sergeant on scene told the business management to turn off all televisions/monitors and ask the patrons to voluntarily leave the location to reduce the head count. Once the announcement was made to reduce the number of patrons, several of them began yelling and shouting. This prompted the on scene sergeant to call for more officers, further depleting police staff to handle other issues in the City. Enough patrons eventually complied, which allowed the business to remain open.

During the clearing of the interior, it was determined that the rear door to the business was open and there was at least one subject drinking beer on the rear patio area.

These two incidents demonstrate ongoing violations on the behalf of Corner Office Sports Grill ownership and management. As far as the assault with a deadly weapon call, there was insufficient security staff to monitor business. Additionally, if security staff would have been present, they could have made an attempt to detain or apprehend the suspect.

During the second incident, there was only one security guard on duty to deal with approximately 500 patrons (more than double the business' capacity). Leaving the rear door open, as well as allowing a patron to drink on the rear

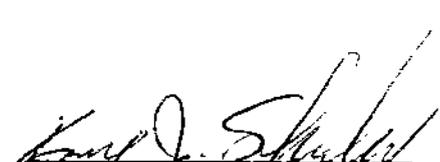
patio, directly violates the Corner Office Sports Grill's conditional use permit. Police department staff has documented these same types of violations since 2004.

During the Planning Commission Hearing on October 10, 2005, the Commission made it clear that any future violations of the Corner Office Sports Grill conditional use or entertainment permits would not be tolerated. Additionally, police department staff met with Corner Office Sports Grill ownership and management in order to set grounds rules for a good working relationship with law enforcement. With all that City staffs have done to make it clear what the Corner Office Sports Grill must do to comply with the Planning Commission's requests, Corner Office Sports Grill ownership and management has neglected to abide.

Corner Office Sports Grill ownership is in direct violation of Costa Mesa Municipal Code section 9-201, (Revocation or Suspension of Permit) subsections b, c, d and e.

RECOMMENDATIONS:

Police department staff recommends the Planning Commission proceed with the revocation of the conditional use and entertainment permits granted to the Corner Office Sports Grill.


KARL J. SCHULER
Lieutenant

**OCTOBER 10, 2005
PLANNING COMMISSION MINUTES**

GENERAL PLAN AMENDMENT
GP-05-04 AND REZONE
PETITION R-05-03

Harbor Center Partners/Meldrum

The Chair opened the public hearing for consideration of General Plan Amendment GP-05-04 and Rezone Petition R-05-03 for Mick Meldrum/ICI Development Company Inc., for Harbor Center Partners L.P., to operate a recreational vehicle storage facility on a 1.49-acre parcel, located at 2300 Harbor Boulevard/380 West Wilson Street, currently in a C1-S and R3 zone. Environmental determination: Mitigated Negative Declaration.

(a) GENERAL PLAN AMENDMENT GP-05-04/REZONE PETITION R-05-03 to change the General Plan land use designation from High Density Residential to General Commercial and to rezone from R3 (Multiple Family Residential District) to C1-S (Shopping Center District) for property located at 380 W. Wilson Street.

(b) PLANNING APPLICATION PA-05-22 for a master plan amendment and conditional use permit to operate a recreational vehicle storage facility with a variance from maximum wall height (6 feet maximum wall height allowed; 8-12 feet wall height proposed), for properties located at 2300 Harbor Boulevard in a C1-S zone and 380 W. Wilson Street in an R3 zone, (rezone request to C1-S pending).

Senior Planner Mel Lee said that staff was recommending a continuance of this item to the Planning Commission meeting of November 14, 2005 due to an error in the public notice and that the continuance would allow staff to provide proper notice.

A motion was made by Chair Perkins, seconded by Commissioner Egan and carried 5-0 to continue this item to the Planning Commission meeting of November 14, 2005.

MOTION
GP-05-04/R-05-03/PA-05-22
Continued

REVIEW OF PLANNING
APPLICATIONS PA-95-10 AND
PA-03-39

City

The Chair opened the public hearing for review of Planning Applications PA-95-10 and PA-03-39 for Eric Strauss/Duane Heldt and Stephanie Potter, authorized agent for Barbara & Roger Allensworth, for possible revocation and/or modification to the conditions of approval for an existing sports bar/restaurant (Corner Office Sports Bar & Grill), located at 580 Anton Boulevard, Suite 201, in an PDR-HD zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and made a presentation. He said staff was recommending revocation of Conditional Use Permit PA-03-39 and modifications of the conditions of approval for Conditional Use Permit PA-95-10.

Lt. Karl Schuler of the Costa Mesa Police Department introduced Corporal David Makiyama who gave a brief history of police service at the Corner Office Sports Bar & Grill. He said that the Corner Office Sports Bar & Grill was a part of his response area during 2004. Corporal Makiyama described an increase in complaints for loud music and drunken patrons resulting in the need for extra patrols. More obtrusive calls for service were made for: vandalism and battery (2 victims injured and multiple arrests were made); there were numerous DUI arrests; assault with a deadly weapon (stabbing); patrons drinking or had alcoholic beverages on the patio in violation of the ABC license; a victim was raped at the bar; and a shooting which was the result of a birthday party celebration in the rear room that was pushed out into the parking lot and where numerous shots were fired.

Lt. Schuler stated that as the Area Commander for Area 2, when he determined through Corporal Makiyama's reports how much activity was taking place, he decided to meet with the co-owners of the business (Duane Heldt and Stephanie Potter). He said they told him the reason they were having problems at the restaurant was due to the fact that they had hired a promoter for parties and events and they were getting "unsavory" type people into their business. They assured Lt. Schuler that this promoter would no longer be working

with the establishment and felt the problems would subside. They also discussed private security with Lt. Schuler and assured him that this security would take care of any issues that could occur at that location. Lt. Schuler stated that there were also 4 additional fights, which occurred at that location and during that 13-month period all of the fights occurred after 11 p.m. In addition to the 16 municipal code violations in reference to drinking on the patio, he received noise complaints from both the Wyndham Gardens and Marriott Hotel personnel.

Lt. Schuler said he did a comparison study of these calls with 3 additional bars in the area to determine if these calls were excessive in activity. The results of the comparison showed that the Corner Office Bar & Grill had a higher count of activity with a more violent nature. For these reasons and others, he said Police staff agrees with Planning staff's recommendations regarding the permits.

Mr. Lee stated that staff's recommendation is based upon their review of the conditional use permit and the input provided by the Police Department, and is to initiate the revocation of Conditional Use Permit PA-03-39 and to modify the conditions of approval for PA-95-10 per exhibit "B", pages 8 and 9 of the Planning Division staff report.

At the Chair's request, there was discussion between the Chair, Lt. Schuler and Corporal Makiyama regarding the details of many of the calls for service and how they were handled over the past 13 months. There were no additional calls for service since May of 2005.

In response to Vice Chair Hall, Mr. Lee agreed that both permits could be revoked because of violations, if it is the desire of the Commission.

In response to a question from the Chair regarding the difference between criminal and non-criminal reports (as shown on page 14 of the staff report), Lt. Schuler explained that a criminal complaint would be a violation of state statute penal code such as drunk driving, assault with a deadly weapon, etc., and non-criminal would be an alarm for medical aide, etc.

Commissioner Garlich, referring to a letter sent to the Commission in which the applicants agree to eliminate live music, karaoke, mobile disc jockey, entertainment and dancing, but would like the Commission to continue to allow them to be open until 1 a.m. and are interested in continuing some form of private parties, did Lt. Schuler think that would result in a correction of the kinds of incidents previously reported this evening. Lt. Schuler did not agree because of the extensive meeting back in February of this year as previously explained where the applicants felt the problems would subside. He said they did subside for a short period of time but again the activity rose and most of the problems occurred after 11 p.m.

Commissioner Egan explained that there is no definition of "private party" in our municipal code and asked that Lt. Schuler give the Commission some idea of what specific event he would like them to prohibit at this location. He said without being event-specific, he believed any type of party that requires a private room where people are removed for the other activities going on in the facility, or where it's a paid event where people have to pay when they come in, i.e., a cover charge to get in. In further response to another question from Commissioner Egan, he agreed that if the parties were restricted to daytime and early evening hours, such as a Christmas party, he recommended that the cut-off hour should be around 9 or 10 p.m.

Robert Hawkins, attorney from Newport Beach representing the applicant (The Corner Office Bar & Grill) stated that they have reviewed the staff report, but he has not had an opportunity to review it in detail because he was just retained on this date, and they do not accept the conditions or the action item that staff has proposed. He thanked the Commission for this opportunity to review the matter.

Mr. Hawkins stated that the Police Department supported the application (PA-03-39) for live entertainment noting, "no previous problems with the business." Based upon that notation, the Planning Commission made certain findings one of which said again, "the Police Department notes no previous problems with this business." He said what is being proposed in the revocation is to return the establishment to an earlier time.

Mr. Hawkins said he was not minimizing the seriousness of the security problems and they all understand that, but they are here to encourage the Commission's consideration of their proposal. Mr. Hawkins made the point that this a high-class sports bar which caters to professionals and is listed on various websites as one of the top 3 sports bars in Orange County. He proposed that: (1) they will surrender the "Live Entertainment Permit" because they believe this is what has created their problems. (2) They continue the hearing on Conditional Use Permit PA-95-10 for 6 months to allow time to evaluate how this situation will return to what they regard as normal; there will be no live entertainment during that six-month period. (3) They will return to the time when there were only 5 incidents during a year. The owners believe the live entertainment brought in an element, which conflicted with the business and it was a financial disaster for his clients.

Commissioner Garlich noted that the conditions of approval for PA-03-39 allowed the operation to be open until 2 a.m. and he heard earlier it was 1 a.m. Lt. Schuler said when he met with the applicants in February of 2005, they agreed to close at 1 a.m. as he requested.

In response to a question from the Chair regarding Mr. Hawkins' description of the sports bar clientele and the element of conflict in live entertainment, Mr. Hawkins said with respect to the private parties, that is a problem because of the ambiguity of private parties as Commissioner Garlich has mentioned. He said their concerns are that many of these parties are corporate parties and many of their competitors will not be having the security problems that the applicants have experienced. The problems he was referring to are the ones the officers are legitimately complaining about. He said these security problems are unacceptable for his clients and the proposal is to eliminate that live entertainment. Eating and drinking establishments often run promotions and that's not what creates these problems; it is the heavy marketing with a lot of people coming in from out of the area and there is no telling what will happen. He said from their perspective, the live entertainment "adventure" created problems for which they truly apologize.

The Chair and Corporal Makiyama discussed the birthday party shooting and whether it was considered a "private party", and whether those attending were corporate patrons.

Commissioner Egan proposed conditions to be added to the conditions of approval (shown below in the motion). These conditions were discussed between the members of the Commission.

Mr. Hawkins responded that he did not believe under normal operations outside of the live entertainment, there is a cover charge. He said with respect to the hours for private parties, which are in a sepa-

rate banquet facility, her suggestions for restricted hours were good and a way to handle it. However, he felt to restrict the hours of the entire operation, it goes overboard. He agreed her suggestion to prohibit the use of the patio was understandable, but he would have to speak with his clients. Commissioner Egan thanked him for his comments.

Commissioner Garlich said, to understand the applicant's proposal, they are willing to surrender PA-03-39 and would like to extend PA-95-10 for six months. He did not believe that these conditions would allow a disc jockey, which was confirmed by staff. Mr. Garlich also confirmed with staff that this CUP would close operations at 1 a.m.

Eric Strauss, America West Properties, 26302 LaPaz Road, Mission Viejo, said he is the property manager for the Allensworths who own the property. He said he has had no complaints from either of the general managers from the Wyndham or Marriott hotels, or The Lakes Retail Association about any complaints with Mr. Heldt's operation. He said prior to Mr. Heldt, they had 2 operators that were very shady and they went through some tough times with some evictions at that property. Mr. Heldt has come in and cleaned up the establishment considerably and he runs a fine operation and he's filling a need for sports enthusiasts in Costa Mesa. He is agreeing to make concessions to the Commission and he asked the Commission to be subjective on their decision because private parties is a broad term and Mr. Heldt is give up live entertainment and private parties. He felt this would eliminate many of the problems that he's been seeing as evidenced by "no major complaints since May 21st." He said both exit doors say, "No Alcohol Beyond This Point." He is doing his best to comply with the CUP. Restricting and giving up his licensing is difficult because his operation relies on groups such as alumni clubs for football, etc. and he asked the Commission for their consideration.

Susie Dedich, 1654 Iowa Street, Costa Mesa, stated that her concerns are that the Commission may be taking away her ability to be protected by the police force. She said this establishment has specific concerns that can't be addressed today. She also said she would appreciate having police officers available for things that are necessary to protect.

Commissioner Garlich stated that from all he has looked at, this establishment has never had an 11 p.m. closing condition. He confirmed with staff that it was initially 1 a.m. and subsequently 2 a.m. He stated that the issues the Police Department has been observing came about with PA-03-39 and prior to that, operating under the PA-95-10 CUP, the call for services were not out-of-line with other similar businesses. Lt. Schuler confirmed that Commissioner Garlich's understanding was correct. However, he said it was the feeling from the Police Department that if the CUP for the live entertainment was to be revoked, that because it's a sports related type bar/grill, there would be no need to be open passed 11 p.m. He said the Police Department staff also felt that with no live entertainment, the crime level would go down.

The Chair confirmed with Corporal Makiyama that most of the calls for service took place after 11 p.m.

Duane Heldt, operator for Corner Office Sports Bar & Grill, 580 Anton Boulevard, Costa Mesa, stated that contrary to what Lt. Schuler said about no need for business after 11 p.m., they host a lot of patrons from neighboring restaurants, and after each performance of a play or production, the people from Performing Arts Center (cast and crew) come this establishment. He said they need those operating hours because they also get a lot of customers from the

hotels (the Marriott and Wyndham) and places like the Macaroni Bar & Grill. He said they do not advertise "happy hour" like their neighbors do and don't encourage people to drink after those hours, but they do want to be able to keep the place open.

Mr. Hawkins reiterated that the substantial clientele of the sports bar after 11 p.m. saying that those folks are going to go somewhere and from their perspective, given the fact that the earlier operation under PA-95-10 was not problematic, he restated their proposal. He also pointed out there was only one public speaker this evening and there was not a substantial number of people that are aggrieved, or aggravated by the operation. He said they are concerned, and they believe returning the operation to the conditions set forth in PA-95-10 and continuing this matter for six months will work and is their proposal.

Commissioner Fisler asked when Mr. Heldt took over management of this property. Mr. Hawkins said it was his understanding that he began operations about 5 years ago.

No one else wished to speak and the Chair closed the public hearing.

A motion was made by Commissioner Egan, seconded by Chair Perkins and carried 5-0 to revoke Conditional Use Permit PA-03-39, by adoption of Planning Commission Resolution PC-05-66, based on public testimony, analysis and information and findings contained in exhibit "A."

During discussion on the motion, Commissioner Fisler asked if there was a difference between revoking the license and the applicants abandoning it as far as fines, or their standing with the City. The Chair said no.

Vice Chair Hall said that Commissioner Fisler brings up a point that he felt should be part of the record. The motion is to revoke that particular CUP and part of the record should be that the applicant has also offered to voluntarily abandon it.

In response to the Chair, Commissioner Egan said she was okay with that and said she would be willing to withdraw that motion and let the record reflect that PA-03-39 is voluntarily surrendered.

The Chair asked for clarification from Planning Commission Secretary R. Michael Robinson who said he was deferring to the City Attorney, but he believed that unless it is revoked, the CUP runs with the land so he preferred to have it revoked as staff recommended. Vice Chair Hall said that before the City Attorney even comments, he said the Commission should be positive on this and that he liked Commissioner Egan's original motion to revoke the permit.

The Chair stated that the original motion still stands and he is still the second; he then called for the question.

A motion was made by Commissioner Egan, seconded by Commissioner Garlich and carried 3-2 (Perkins and Hall voted no), to modify the conditions for Conditional Use Permit PA-95-10, by adoption of Planning Commission Resolution PC-05-67, based on public testimony, analysis and information, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following modifications:

Conditions of Approval

8. ~~No~~ Private parties shall ~~be permitted~~ terminate no later than 10 p.m. (Private parties are defined as a group using a separate room for an event of their own).
9. There shall be no paid parties (where persons have to pay to get in).

MOTION 1:
PA-95-10 AND PA-03-39
Revoked PA-03-39
Conditioned PA-95-10

MOTION 2:
PA-95-10
Modified

2A. Daily hours of operation shall be restricted to the period between 9 a.m. and ~~11 p.m.~~ 1 a.m. with a review after 90 days and another after 90 additional days.

2B. There shall be no use of outdoor seating or tables in conjunction with this use; there shall be no service of alcoholic beverages outside the building.

During discussion on the motion, the Chair confirmed Commissioner Egan's proposed conditions.

Regarding the hours of operation and in response to the Chair, Commissioner Egan said her thought on this was that the hours should be set at 1 a.m. and see if it works with a 90-day review and another 90 days after that. If it is not working, shut it down at 11 p.m. The Chair said the conditions say their hours cannot exceed 11 p.m. and she said she has not included that condition in her motion. The Chair withdrew his second.

Commissioner Fisler seconded the motion. Commissioner Garlich said if he understands the motion, he supports it. He said the notion of making it 11 p.m. some period of time to see how it works and then deciding to make it 1 a.m. is illogical to him. He repeated the motion by Commissioner Egan and said he felt it was reasonable.

Vice Chair Hall questioned the constitutionality of condition of approval #2G regarding the prohibition of designated areas reserved for the exclusive use of designated persons or "Private Club Members." There was discussion by all members of the Commission on this subject. Deputy City Attorney Bettenhausen stated that this is a broad-based restriction and the Commission is entitled to restrict the uses, and further, he did not see that any particular group was being singled out and saw it as being enforceable.

The Chair said he believed the Commission still needed to modify the condition regarding seating outside to include, "no alcoholic beverages." Commissioner Egan said she is happy to add it as a reminder, but she did not believe the Commission should apply state law as a condition. Mr. Robinson said that staff had recommended that there be no outdoor seating because they are looking at an area specifically designated as outdoor seating, which may have parking implications and because use of the outdoor seating was created for all the uses there. In response, Mr. Lee confirmed that one of the provisions for PA-95-10 was the restriction for the outdoor seating area specifically related to parking for The Lakes Center because when the center was originally built, it was built with a parking variance for provisions that limited onsite parking and for valet parking.

There was discussion among Commissioners Egan, Garlich, the Chair, and Mr. Robinson regarding access to the seating area, and condition of approval "2F".

The Chair said from what he's heard from the Police Department, there are some serious issues that need to be resolved. He said the same property owner has owned this property for 5 years and these problems have occurred and they would still continue to occur unless the City did something about them. He said he is not going to support this motion for one reason. He said we ought to shut them down at 11 p.m. and give them 90 days and let them go back to 1 a.m. because when you involve alcohol, you involve dancing, and you need to involve security. If there's not enough security there, then there's a problem. He said when we have to involve our officers in shootings, rapes, or whatever, he has issue with that.

Now if the business suffers, the business suffers; that's their fault for not securing their location. His concerns lie in the fact that we cannot secure this location.

Commissioner Hall commented that with indifference to the attorney's comment that we can't set aside a room for some friends to get together because it might be considered a private party is ludicrous. He also felt the same way about limiting outdoor seating.

Commissioner Hall said the Commission has revoked a CUP because figuratively speaking, the people didn't mow the lawn. He said here we have a problem that has gone on and on for some time with many reasons to revoke the CUP, and yet we still try and help them out. He believed in 3 to 6 months they would be back, the police would be back and report again and the Commission would find a way to help again.

SUBSTITUTE MOTION:
PA-95-10
Failed

A substitute motion was made by Vice Chair Hall, seconded by Chair Perkins to revoke Conditional Use Permit PA-95-10. The motion failed to carry by a 2-3 vote (Egan, Garlich and Fisler voted no).

During discussion on the motion, Commissioner Fisler stated that he could not support that motion.

Commissioner Egan said she would like to make it very clear in the record that those of us who are not in favor of a total revocation, in essence, putting this person out of business entirely, are extremely concerned about the nuisance that it has become, and absolutely, our concern is to protect the public. She said that by not allowing live entertainment, not allowing dancing, not allowing the private parties after 10 p.m., and not allowing service out of doors, we are taking care of the problem. It is even more restrictive than the original conditional use permit under which there were few police problems. We are going back to that situation with some additional restrictions. The only thing left is what time do they close, or are they going to stay in business. If indeed, an 11 p.m. closing is called for, the Commission will know that, but with nothing there but a sports bar with some billiards and an after theatre crowd, it seems unlikely that the Commission has to go back to an 11 p.m. closing. If that's what's needed to protect public safety, that's what the Commission will do, but at this point she was not persuaded.

Commissioner Fisler said he goes to that area a lot and its unique and it does have a crowd afterwards at Jerry's Deli. He said definitely, as Commissioner Egan said, we recognize that there is a problem there and the applicant recognizes it and that it has not been handled well. He believed revoking PA-03-39 will handle that situation and it is why he supporting this motion. Further, he said by restricting their hours to 11 p.m., he believed it would be a fatal blow to that business. He was glad to see the applicant stopping the karaoke and live music. He was also glad to see the motion he supports from Commissioner Egan to allow them to operate until 1 a.m. with a review in 90 days.

Commissioner Garlich commented that Commissioner Egan said it well. From his own point of view, those who support this motion are just as concerned about battery, rape, shootings, and other criminal events as anyone else on the dais, and to suggest otherwise, he finds it offensive. Second, the notion of allowing them to operate until 11 p.m. for 90 days and then saying, okay now they can operate until 1 a.m. makes absolutely no sense. He felt they were doing the right thing and supported the motion.

Commissioner Egan said that regarding condition of approval #2G, she believed her reading of it is a little different than from Vice Chair Hall's reading of it. She said what we are telling them they

can't do is simply, "have a room that nobody can go into except certain people." She said the Rotary Club can have their breakfast there every week, or whatever, or however the restaurant wants to use it. What we're prohibiting is a "special room" that is reserved all the time, only for a certain group chosen by the restaurant, generally on the basis of paying a fee.

The Chair reiterated testimony from his previous comments. He also said he did not intend to offend anyone with his previous dialogue. He believed the Commission was putting a band-aid on a problem. He said they will be back in 90 days and he looks forward to that, hopefully, with a more positive response, but if there is not a positive response, he's going to be the first one to champion it. He then called for the question on the original motion as shown above.

The Chair explained the appeal process.

ONE-YEAR EXTENSION OF TIME FOR PLANNING APPLICATION PA-04-17

Nguyen and /Duong General Partnership/LamTristan Nguyen

The Chair opened the public hearing for consideration of a one-year extension of time for Planning Application PA-04-17 for Nguyen & Duong, for a design review for an 822 square-foot, second floor addition to a single-family residence, construct a new 2,734 square-foot, two-story duplex at the rear of the property, with a variance from driveway parkway landscaping (10 ft. required; 0 ft. proposed); and a minor modification to allow a 12 ft. wide driveway (10 ft. required), located at 1992 Anaheim Avenue, in an R2-HD zone. Environmental determination: exempt.

Planning Commission Secretary Michael Robinson reviewed the information in the staff report and gave a presentation. He said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions.

No one else wished to speak and the Chair closed the public hearing.

MOTION:
PA-04-17
Approved

A motion was made by Commissioner Garlich, seconded by Chair Perkins, and carried by 5-0 to approve a one-year extension of time to expire on September 13, 2006, by adoption of Planning Commission Resolution PC 05-68, based on analysis and information contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B."

The Chair explained the appeal process.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:

None.

REPORT OF THE CITY ATTORNEY'S OFFICE:

None.

ADJOURNMENT:

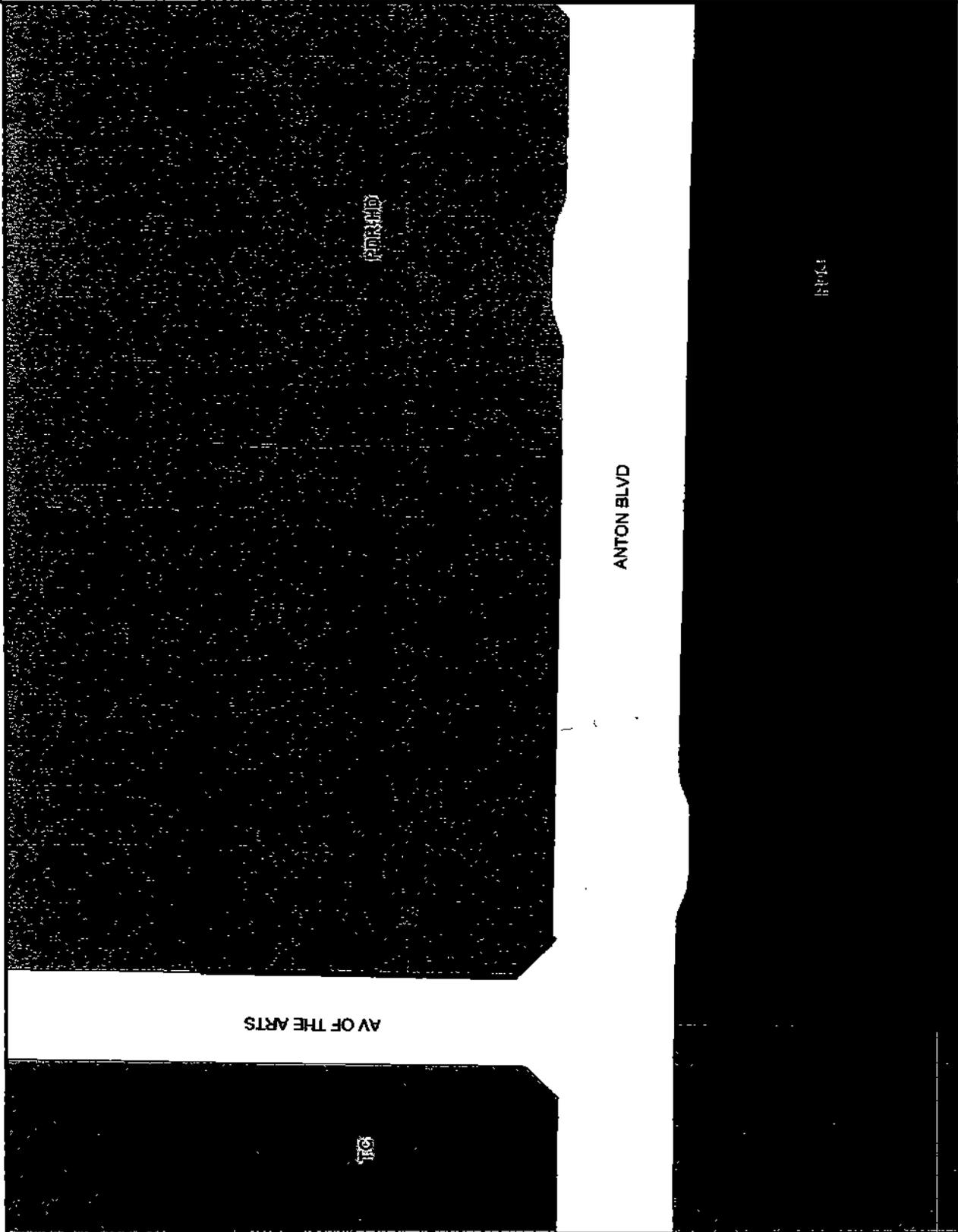
There being no further business, Chairman Perkins adjourned the meeting at 8:04 p.m. to the Joint Study Session with City Council on Tuesday, October 11, 2005, beginning at 4:30 p.m. in Conference Room 1A.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION

ZONING/LOCATION MAP

PA-95-10



Legend

Street Names
Zoning

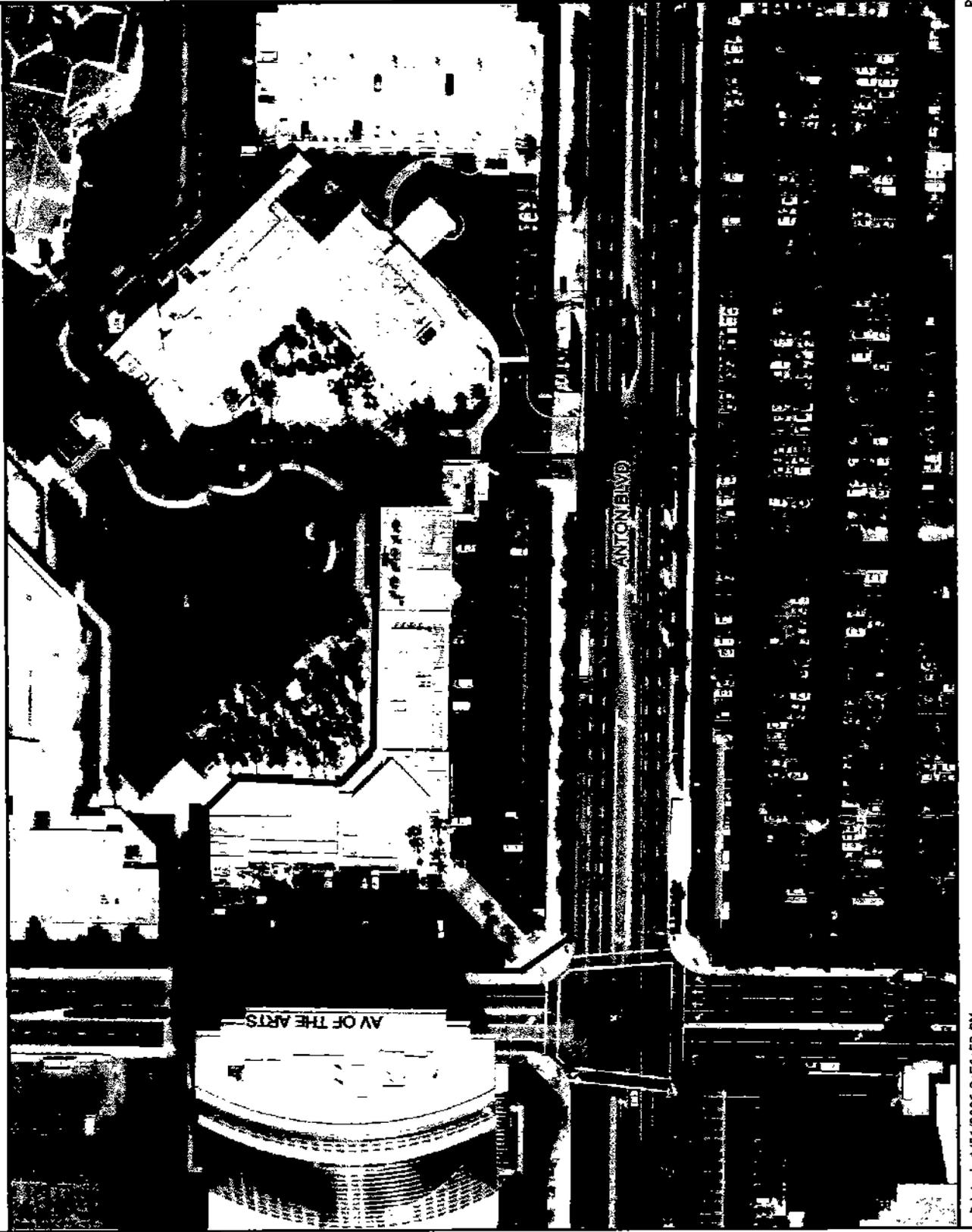
AP	CI	CI-S	C2	CL	IGR	IGR-S	HG	MP	P	PDC	PDI	PDR-MD	PDR-LD	PDR-MD	PDR-NCM	R1	R2-MD	R2-MD	R3	TC
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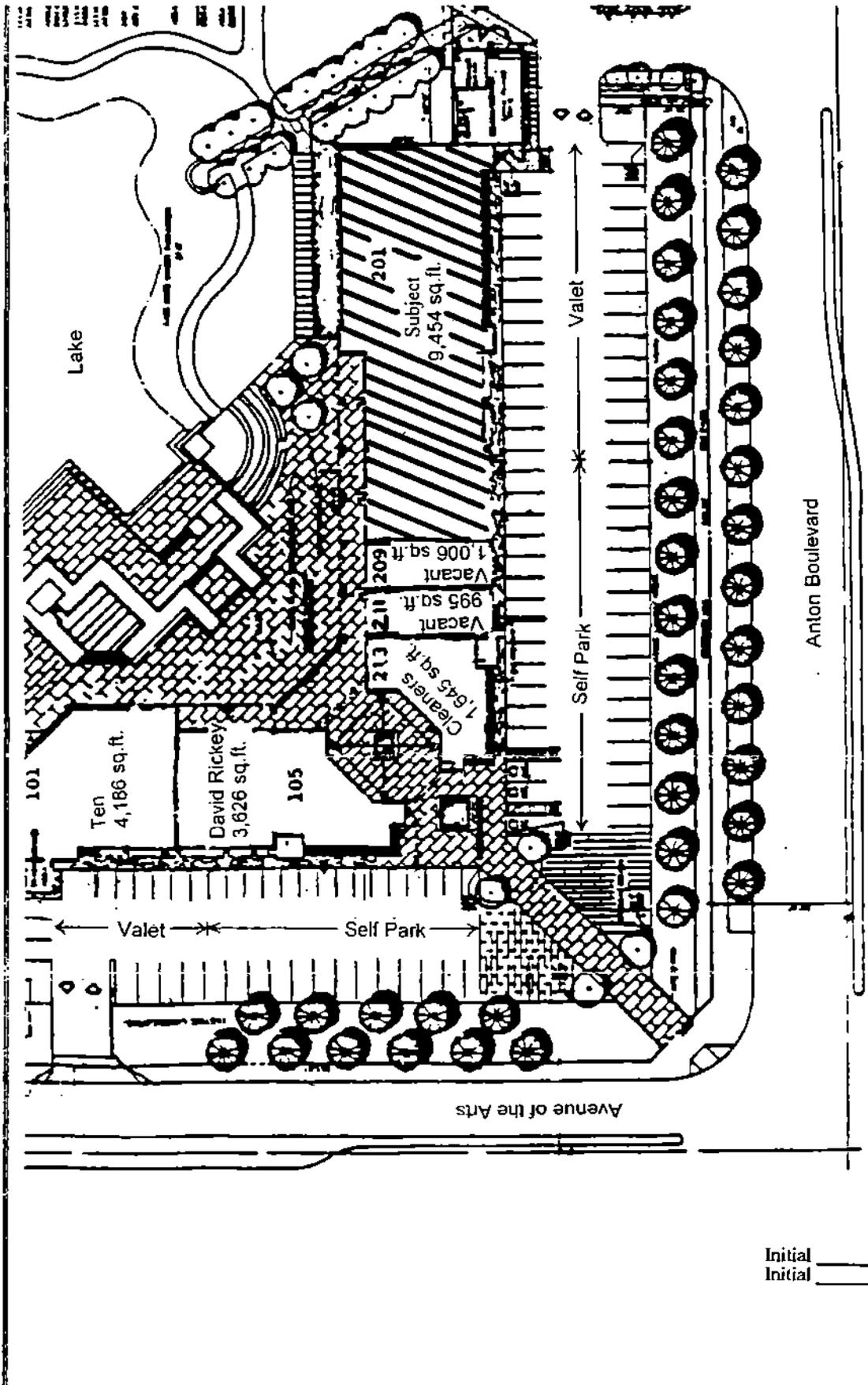


580 ANTON BLVD., #201

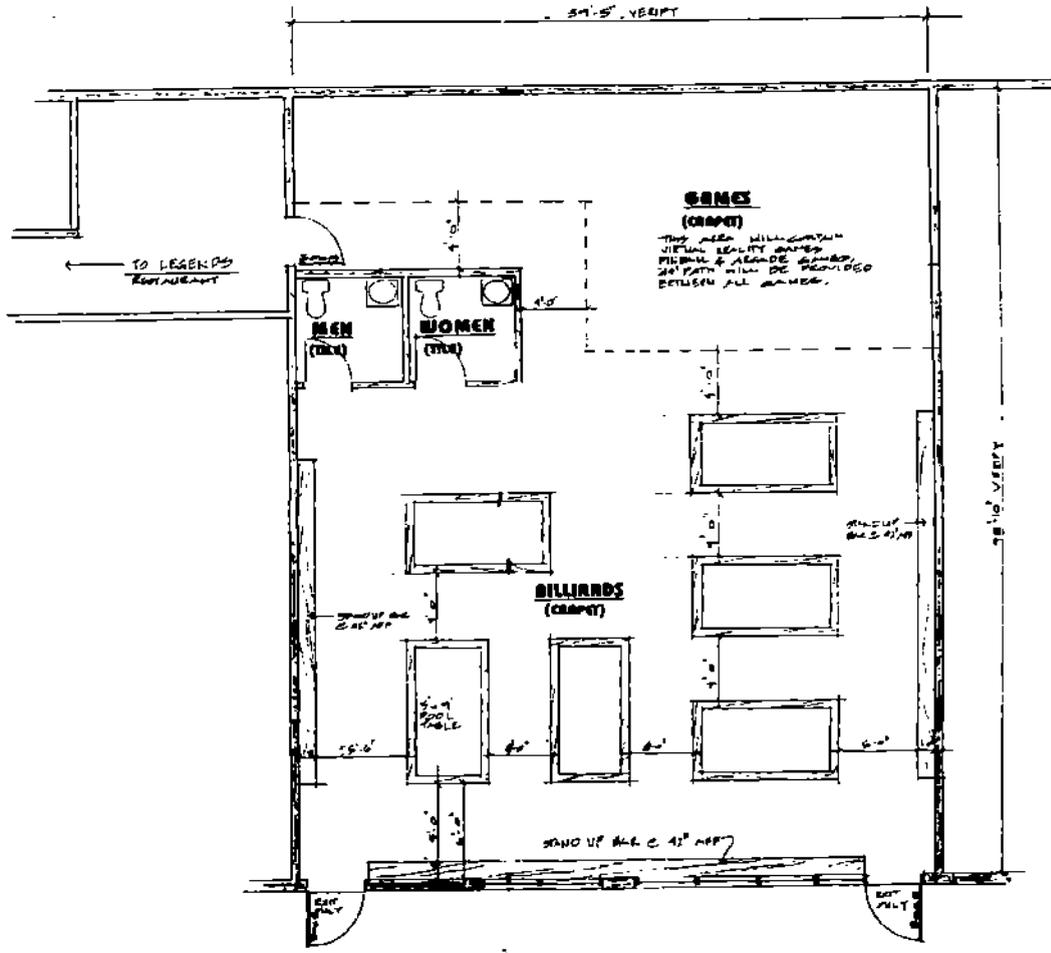
Legend

Street Names
Ortho
Photography





Initial _____
 Initial _____



FLOOR PLAN
1/8" = 1' (1956 DP)

**OCCUPANCY TABULATION
FOR PROPOSED BILLIARDS ROOM**

192.0 S.F.	GOODS ROOM
876.0 S.F.	BILLIARD TABLES
74.5 S.F.	STAND UP BAR
128.0 S.F.	TOILETS
1490.5 S.F.	
1490.5 S.F. / 18 OCCUPANTS/S.F. = 83 OCCUPANTS	

LEGENDS COSTS SHEET

SEE OTHER SHEET, DRAWING NO. LEG-1000 FOR
MATERIALS, QUANTITIES, AND NOTES

DATE: 10/1/56

BY: [Signature]