

City of Piedmont  
Supplemental Council Agenda Report

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DATE: October 15, 2007

FROM: George Peyton, City Attorney

SUBJECT: Legal Issues Relating to Conditional Use Permit Applications by  
Ann Martin Center

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RECOMMENDATION:

Approve Conditional Use Permits for the Ann Martin Center to continue operation at 1250 Grand Avenue and 1246 Grand Avenue, attaching whatever reasonable conditions you may feel appropriate.

CONDITIONAL USE PERMITS:

Section 17.24 of the City Code provides the basic legal framework for the City Council to follow in connection with considering Conditional Use Permit Applications, such as the two Applications currently before you on behalf of the Ann Martin Center. Here are important requirements and considerations set forth in Section 17.24:

1. Section 17.24.6 sets forth a number of detailed items on which the Planning Commission should make findings when it recommends approval of a CUP. Depending on what the Council finally decides to do, it is appropriate for the Council to also make its own findings, whether adopting all or a portion of the Planning Commission findings or adding, removing or modifying findings to support the final decision of the Council. These findings can become very important if the decision of the Council is later challenged in Court.

2. Section 17.24.7 sets forth requirements relating to the CUP hearing and setting of terms and conditions. Section 17.24.7 states in part: "The City Council shall set a term and attach conditions which are necessary to preserve the health, safety, general welfare, beauty and tranquility of the City." This provides fairly wide discretion to the City Council to impose conditions that it feels are necessary to accomplish the ends set forth above.

3. It is important to remember that the City Council makes the final determination on a Conditional Use Permit, while the Planning Commission's role is to make recommendations to the Council. This is different from Design Review and Variance decisions, when the Council only becomes involved if there is an appeal of the Planning Commission's decision. Therefore, the City Council can follow all or part of

the Planning Commission's recommendations, or create all or some new conditions as the Council deems appropriate.

#### ATTACHMENTS:

In order to provide the Council with relevant information and arguments involving legal issues raised relating to the Ann Martin Center CUP Applications, I am attaching certain documents to this Agenda Report, and rather than rearguing or reanalyzing at length particular legal arguments or issues, I will where appropriate briefly cite them from the attached materials. The attachments are as follows:

1. A treatise with numerous attachments totaling 34 pages dated October 3, 2007 submitted to the City Council by Angela and Neil Teixeira.
2. An opinion letter dated October 8, 2007 from David J. Bowie, attorney for the Ann Martin Center, dealing with legal issues involving the CUP Applications before you tonight.
3. A separate legal opinion letter dated October 9, 2007 from Mr. Bowie dealing with specific legal issues raised by Mr. and Mrs. Teixeira in their treatise dated October 3, 2007.
4. A Memorandum dated December 28, 1998 from Linda C. Roodhouse, the then Deputy City Attorney, to the Planning Commission entitled "Issuance, Renewal and Revocation of Conditional Use Permits." While this Memorandum does not specifically deal with the Ann Martin Center CUP Applications, I believe that it does accurately state the legal considerations that should be applied to all Conditional Use Permit Applications, including those submitted by the Ann Martin Center. While this Memorandum was prepared in 1998, the legal principles and considerations set forth still stand and are directly relevant to the Applications before you.

#### SPECIFIC LEGAL ISSUES:

A series of legal issues have been raised by Mr. and Mrs. Teixeira and others, and Mr. Bowie has attempted to respond to these issues in his legal opinion letter dated October 9, 2007. In some cases the legal issues become intertwined and can sometimes be a bit confusing. I intend hereafter to address important legal issues that I believe you should consider relating to the Ann Martin Center CUP Applications as follows:

1. Is Anything That Occurred in 1977 Relevant to the CUP Applications Currently Before You? The Teixeiras contend that the original action relating to the Ann Martin Center operation at 1250 Grand Avenue taken by the City Council on April 18, 1977 was based on inaccurate, and possibly fraudulent, information and representations, and based on that contention that the Council should require the Ann Martin Center to relocate its business from 1250 Grand Avenue and return that property to use as a single family residential home only. Mr. Bowie argues that no fraud was involved, and

whatever the situation may be, that what happened in 1977 does not apply to the current Applications before you, specifically including that covering 1250 Grand Avenue. After careful review of the arguments made by both sides, I believe that what happened in 1977 does not apply to the Applications before you for the following reasons:

a. The action by the City Council on April 18, 1977 determined that the Ann Martin Center was a legally operating private school at 1250 Grand Avenue and that it preexisted the requirement of a conditional use permit for private schools, so that no conditional use permit was required in 1977. The current Application before you relating to 1250 Grand Avenue is for a Conditional Use Permit pursuant to Section 17.24 for "...continuing use as professional office (nonprofit) business that provides psychotherapy, grief counseling, educational therapy, and psychology/educational diagnostic testing for youth and families." It is not for a "private school" and does not involve Chapter 16 for the City Code relating to Conditional Use Permits for Private Schools.

(1) The Teixeiras argue that because of the alleged fraudulent representations, the current CUP Application for 1250 Grand Avenue, after 30 years of continuous operation at that location, should be revoked. Because we are dealing with a CUP Application for a different use from that set forth in 1977 and such Application is under different provisions of the City Code from any that apply to "private schools," I believe that whether or not there were fraudulent representations in 1977, that is irrelevant to the current Application before you involving 1250 Grand Avenue. In addition, as is set forth in the 1998 Memorandum of Linda C. Roodhouse and as is argued by David Bowie, there are a series of California legal decisions that indicate when a Conditional Use Permit Application requests continuation of a long existing business at the same location (as is requested in the Application before you on 1250 Grand Avenue), while additional conditions can be added to address outstanding problems, to disapprove a continuation of the Conditional Use Permit would require an extremely high showing of a major nuisance or totally unreasonable burden that cannot be addressed by additional conditions.

(2) Mr. Bowie contends that the Ann Martin Center could legally qualify as a private school to operate in Zone A. While that is an interesting argument, the fact is that the Application before you is not for a private school.

2. Does the Ann Martin Center Have a Vested Right to Continue its Operations? David Bowie states on page 5 of his October 9 legal opinion letter: "It (the Ann Martin Center) has a fundamental vested right to continue its operations in the absence of any compelling public necessity." In fact, there are a series of legal decisions that in various ways state and restate exactly what Mr. Bowie indicates. For instance, O'Hagen v. Board of Zoning Adjustment (1971) 19 Cal. App. 3d 151, 158 states: "Once a use permit has been properly issued, the power of a municipality to revoke is limited." This and related language in the O'Hagen case is mentioned both in the 1998 Memorandum from Linda Roodhouse and the Bowie opinion letter of October 9, 2007. Further in Goat Hill Tavern v. City of Costa Mesa (1992) 6 Cal App. 4<sup>th</sup> 1519, 1529, the Court states: "Interference

with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance.” The Ann Martin Center has been granted successive Conditional Use Permits in 1991 and 1999 by the Piedmont City Council, and for practical purposes has been continuing the same essential operation for at least 30 years at 1250 Grand Avenue, so the holdings of both the O’Hagen and Goat Hill cases would seem to directly apply in considering the current CUP Applications before you tonight.

3. Does the Fact that Only Part of 1250 Grand Avenue is Located within Zone D Prevent a CUP from Being Granted? The real property at 1250 Grand Avenue is bisected by the line between Single Family Residential Zone A and the Commercial Zone D, with approximately 70% located in Zone A and approximately 30% located in Zone D. How this came about is an anomaly, but it is a practical fact of life that the City Council must consider. The October 3 treatise submitted by the Teixeiras argues that all of 1250 Grand Avenue should be treated as Zone A and returned to single family residential use (Remember that David Bowie has also argued that even if it is determined that Zone A applies, that the Ann Martin Center could still qualify as a private school that can legally operate in Zone A.)

a. The fact is that whether directly or indirectly the Piedmont City Council in both its 1991 and 1999 decisions granting Conditional Use Permits for the Ann Martin Center has confirmed that the entire property, including the building, located at 1250 Grand Avenue is to be treated as Zone D for the purpose of the use proposed by the Ann Martin Center. For the City Council to now reverse the two prior decisions on this issue in my opinion would have a good possibility of being overturned by the Courts.

b. On pages 3 and 4 of his legal opinion letter of October 9, 2007, David Bowie addresses this issue at some length. He points out that while the Piedmont City Code does not specifically address the issue: “In other jurisdictions, however, the rule of thumb is to apply the least restrictive zoning district to properties similar to that in question.” Since 1946 Grand Avenue and other properties adjoining it are in Zone D, this would seem logical under his argument.

c. While if the Piedmont City Council had determined in its 1991 and 1999 decisions that the entire property at 1250 Grand Avenue must be treated as Zone A, that would produce a different situation from that which currently exists, the Council did not take that position, and in my opinion that in dealing with a long continuing business use by the Ann Martin Center, the current City Council cannot change that decision.

4. Does the Fact that the CUP Issued in 1999 Expired in 2006 Require that the CUP be Revoked and Not Renewed? Section 17.24.8 of the City Code states that an application for renewal of a conditional use permit must be submitted at least 90 days before it expires. Obviously, the Ann Martin Center did not meet that requirement. However, in checking with Kate Black, the City Planner, she has indicated that probably more than half of Conditional Use Permits that are up for renewal do not meet the requirements of Section 17.24.8, often with renewal applications filed long after the 90

day deadline, and she is not aware of the City ever trying to prevent such an application from being heard or a Conditional Use Permit from being renewed due to a violation of Section 17.24.8. In light of that track record, it would be inappropriate to selectively enforce such a violation against the Ann Martin Center.

5. Statute of Limitations. David Bowie has pointed out that the Statute of Limitations pursuant to the California Code of Civil Procedure Section 1094.6 sets a limitations period of 90 days following a quasi-adjudicative decision by a City, such as the granting of the Conditional Use Permits by the Council in 1991 and 1999, of which the current Application is requesting a renewal. It is correct that no legal actions were filed to challenge either the 1991 or the 1999 Council decisions, and any challenge at this time would be barred by such Statute of Limitations.

#### CONDITIONS:

I would like to emphasize again to the City Council that the very essence of the Conditional Use Permit process is establishing appropriate conditions. In many situations, particularly where there is little, if any, opposition to the CUP Application, the Council simply adopts both the findings and conditions recommended by the Planning Commission in total by reference. However, in contested matters such as the Ann Martin Center, it is appropriate for the Council to look carefully at negative impacts that a continued business may have, including on the surrounding neighborhood, and if further conditions would help relieve any such negative impacts, the Council may add to or modify conditions to provide further relief.

Obviously, neighbors, particularly along Fairview Avenue, have alleged a number of negative impacts, one of the most frequently mentioned being a negative impact on parking. Also the neighbors have raised matters where the Ann Martin Center has violated the terms of its 1999 CUP Approval, such as operating on Saturday, when no Saturday hours were granted in the 1999 CUP. Another type of impact that the Council can consider is making clarifications to prior permitted activities. The Ann Martin Center has requested and the Planning Commission has recommended a continuation of the current weekday hours from 8 a.m. to 8 p.m. However, certain neighbors claim that the staff at Ann Martin Center regularly stays later than 8 p.m., sometimes much later, and causes disturbance to the neighbors by starting their cars parked along Fairview Avenue later in the evening, so that such neighbors would like everyone out of the Ann Martin Center by 8 p.m. or soon thereafter. This again is the type of thing that the Council can clarify if it deems it to be appropriate.

Finally, there have been complaints that City staff has not periodically followed up to make sure the terms of the Ann Martin Center CUP are being carried out. As the Council is well aware, staff are already stretched thin, so that taking the additional time to police each CUP on a regular basis could become a burden. Nevertheless, if the Council deems it to be a necessary condition, the Council can always include a condition requiring either regular status reports from the Ann Martin Center or periodic staff inspections, such as once a year, or both.

10/9/07 - Mayor, Council: Atty

RECEIVED

OCT 5 2007

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CITY OF PIEDMONT

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October 3, 2007

Geoff Grote, City Administrator  
City of Piedmont  
120 Vista Avenue  
Piedmont, CA 94611-4031

Re: Letter opinion regarding whether conflicts of interest exist for public officials relating to the Ann Martin Center

Dear Mr. Grote:

You have asked for a written opinion regarding whether you or City Attorney George Peyton has any type of conflict in representing the City in a land use matter involving the Ann Martin Center.

The background information recited here is general in nature, based on what you have told me. The analysis which follows will be presented separately for the City Attorney and for the City Manager.

#### Background.

The Ann Martin Center is a long-standing, non-profit corporation which works with young people and their parents, and which owns two houses at 1246 and 1250 Grand Avenue in Piedmont. The City Council first issued an opinion in 1977 that the use at 1250 Grand Avenue was "within the category of a private school", and because the use pre-dated the requirement for a conditional use permit for a private school in a residential zone, the Council resolved that the Ann Martin Center "is now and has been legally operating as a private school in Zone A." (City Council Meeting Minutes, April 18, 1977.) In 1991, the Ann Martin Center wished to alter the building, and that alteration required a conditional use permit, which was granted in April, 1991. The City reconfirmed this use permit in January, 1999, and issued a new use permit for the adjacent property at 1246 Grand Avenue. (The property at 1246 Grand Avenue is within Zone D, a commercial zone.)

The terms of these two use permits will be considered again in the near future. At the time of the original 1977 Resolution, the applicants had argued that the use had been there for several years, before certain zoning regulations were adopted, and thus qualified as a legal non-conforming use. Apparently, the truth of those allegations is now in some question.

Some residents have proposed that the City Attorney recuse himself since he was the City's attorney in 1977. You, yourself, have asked whether you are precluded from participating in the land use entitlement process as City Administrator because, over the years, you have made contributions to the Ann Martin Center, as you have to several other local organizations.

Conflicts of interest analysis generally.

Conflicts of interest in California are governed by the Political Reform Act.<sup>1</sup> The fundamental standards are:

No public official shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.<sup>2</sup>

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the official, a member of his or her family, or one or more of his or her economic interests (including business interests, interests in real property, sources of income, sources of gifts, and personal finances).<sup>3</sup>

A "public official" as used in the Political Reform Act includes elected officials, appointed officials, employees with decision-making authority, city attorneys, city administrators, etc.<sup>4</sup>

"Participation" in a decision includes not only voting on a matter, but also advising or making recommendations to the decision makers.<sup>5</sup>

The California Fair Political Practices Commission enforces the Political Reform Act and has developed an eight-step analysis for evaluating when a conflict exists.<sup>6</sup> The eight steps are:

1. Is a public official involved?
2. Is the official making, participating in making, or using or attempting to use his/her official position to influence a governmental decision?
3. What are the economic interests of the official?
4. Is the financial interest directly or indirectly involved?
5. Applying the appropriate standards for materiality, is there a material financial effect on the official or his economic interests?
6. Is it reasonably foreseeable that the materiality standard will be met as a result of the governmental decision?
7. If there is a conflict of interest, does the "public generally" exception apply; that is, does the decision affect a significant percentage of the public in the same way?

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<sup>1</sup> Government Code §81000 and following. The Act is implemented through the regulations of the Fair Political Practices Commission, found at 2 California Code of Regulations §18109 and following.

<sup>2</sup> Government Code §87100.

<sup>3</sup> Government Code §87103.

<sup>4</sup> Government Code §82048; 2 Cal. Code of Regs. §18701.

<sup>5</sup> 2 Cal. Code of Regs. §18702 – 18702.4.

<sup>6</sup> 2 Cal. Code of Regs. §18700.

8. Is the public official legally required to participate (i.e. for a quorum in a vote that is legally necessary)?

Analysis Regarding City Attorney.

Considering the suggestion that the City Attorney recuse himself based on his representation of the City in 1997, there is no legal requirement for the City Attorney to do so. He is a public official (step 1), who uses his official position to influence decisions, by his legal opinions (step 2), but he has no economic interest in the decision based on the facts presented (steps 3-7). So there is no need for the City Attorney to step down from representing the City in this matter, under the Political Reform Act.

In his official role, the City Attorney has no obligation to conduct independent evaluations of projects that come before the City. Although there may now be some question about the facts presented by the applicant in 1977, this has nothing to do with the City Attorney's representation.

I have also separately reviewed the relevant portions of the California Rules of Professional Conduct for attorneys. (Rule 3-100 and following.) Nothing at all applies to or limits the City Attorney's continuing representation of the City in this matter.

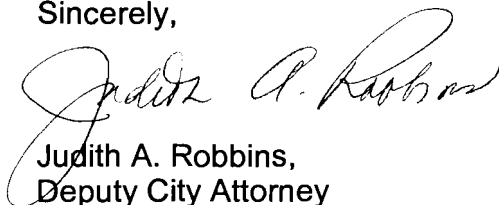
Analysis Regarding City Administrator.

Over the years, you have contributed to various local organizations, including the Ann Martin Center. Contributions to the Center have been modest (\$100 or less) . You have asked whether you are precluded from participating in the decision regarding the Ann Martin Center because of these contributions.

Applying the Fair Political Practices Commission's eight-step analysis, it is clear that you are a public official (step 1), and that your role as City Administrator necessarily means you use your official position to influence governmental decisions (step 2). But making voluntary, nominal contributions to a non-profit organization does not create a financial interest within the meaning of the Political Reform Act (steps 3-7). You are not precluded from participating, because the contributions you made do not represent a financial interest. You have no financial interest in the outcome of the upcoming land use decision.

Please let me know if I can be of further assistance in this matter.

Sincerely,



Judith A. Robbins,  
Deputy City Attorney



10-3-2007

Piedmont Mayor Nancy McEnroe & City Council Members  
120 Vista Avenue  
Piedmont, Ca 94611  
510 420-3040

Re: Ann Martin Center Conditional Use Permit (CUP) at 1250 Grand Ave.

Ms. McEnroe & City Council Members,

We are sending you this letter to officially request that you and your fellow City Council Members do not issue any Conditional Use Permits (CUP) to the Ann Martin Center to conduct business at 1250 Grand Avenue, Piedmont. The Ann Martin Center has been and is currently in violation of Piedmont's municipal codes, zoning guidelines and City ordinances. The Ann Martin Center's representatives have deliberately misinformed Piedmont City Official's, in 1977 and thru 2007, to obtain permits and CUP for their business.

Ann Martin Center should not receive any CUP for their business at 1250 Grand Avenue, because of the following reasons:

1. The main 1250 Grand Avenue building and property is mostly in Zone A and the City of Piedmont has historically for 102 years recognized 1250 Grand Avenue, for proper Zone A use only. This Zone A is for single family residential homes, church or previous existing private schools. Ann Martin Center Inc is a "clinical business" and has never been operated, promoted, accredited, advertised, certified or recognized its principal use as a "private school".

(See PMC "Private Schools" Chapter 16 & 17.2.51)

2. In 1977 Ann Martin Center was caught by City Official's of operating a clinical business in the residential house at 1250 Grand Avenue and in obvious violation of Piedmonts Zone A laws and codes. In 1977 AMC directors, representatives and a "Special Committee" knowingly and deliberately gave Piedmont Official's fraudulent information as to its claim

that AMC was a "Previously Existing Private School" business and how long they had been conducting business at 1250 Grand Avenue, Piedmont and for the sole purpose of deceiving City Official's , so as to obtain the coveted "Grandfathered/Legal Status" definition and thus sustain their clinical business at the 1250 Grand Avenue, Piedmont location. AMC directors and staff deliberately falsified their facts so as to deceive the Piedmont City Council and to skirt Piedmont's zone A code ordinance.

On February 1, 1977 Ann Martin Center Director, Diane Barnhill told Inspector Vince LeGris that AMC had been a clinical therapy business at 1250 Grand Avenue location for over 20 years. (Pre-1956?)

**(See Vince LeGris Feb 2, 1977 letter to City Attorney George Peyton. George Peyton letters to AMC staff. Letters from AMC Directors & staff to George Peyton.**

**In 1977, several Piedmont City Official's reviewed the "owner of record" May 1971 recorded property deed documents.)**

Note: Ann Martin Center Inc business was located at 401 East 21st Street in Oakland and 2287 Washington Street, San Leandro from 1967 thru 1971. AMC Inc bought 1250 Grand Avenue on May 6, 1971 from the Thomas Becker family. (See grant deed-dated May 6, 1971) The Beckers bought the adjacent house next door, at # 4 Fairview Avenue on May 7, 1971-the Beckers moved into it and lived there until 1987.

3. On April 18, 1977 because of AMC "Special Commitee" representatives deceptive correspondence to City Attorney George Peyton, the Piedmont City Council mistakenly concluded that AMC had been "previously existing" as a private school at 1250 Grand and was continuously so since before 1956. By Peyton's advise based on AMC false representations that they were a private school, Ann Martin Center was declared "Grandfathered and therefore is a legal" business.

Due to false pretenses, by Ann Martin Center Inc representatives, AMC was

mistakenly allowed to remain in business at 1250 Grand Avenue.

In 1991, 99 & 2007 Director David Theis has repeatedly said that AMC has been at this location in Piedmont since 1963-his false claims has opened the door for a thorough review of the 1971 recorded property deed and the City Council decisions of 1977 and to revoke AMC "grandfathered" status.

City Planner Kate Black also opens the same legal door by saying that her staff does not have the authority to research the truthfulness or accuracy of any old or new AMC CUP applications. And that burden, is on opponents to present any facts, frauds, paper trails, evidence, violations or untruths that contradict AMC claims or their CUP applications.

4. Ann Martin Center previous 1999 CUP expired in January 2006 and they currently have no CUP to operate a business at 1250 Grand Avenue and are in violation of the following codes; section 17.24.8 Renewal, 17.30.5-violations of permit and conditions, 17.5.1 Zone A uses, 17.25.6. item b5 says: If "significant errors "are discovered...17.25.8 (a) A significant error (b) Weight of the evidence (c) Substantial evidence (d) A significant violation. PMC 1956 Chapter 16 code "Private Schools"

5. Ann Martin Center's inappropriate clinical business activity in our Zone A residential neighborhood has had a negative adverse effect on our health, safety, and quality of life; foot traffic, noise, nuisance, vehicles and parking, personal safety, welfare, and the property values of our homes.

6. The 2007 Piedmont City Council members have no obligation, mandate or standing to issue (or re-issue) a CUP to the Ann Martin Center clinical business at 1250 Grand Avenue and in Zone A.

#### 17.30.3: Revocation

(a) Grounds for revocation. Any permit or approval under this Chapter maybe revoked or modified pursuant to the provisions of this section if the Planning Commission makes one or more of the following findings:

(1) The permit or approval or extension of either was obtained by the applicant's fraud or misrepresentation of a material fact, or by the mistake of either the applicant or the City.

(2) One or more of the conditions of approval have been violated.

- (3) The use or its operation violates applicable provisions of the Piedmont City Code, or any State or Federal law.
- (4) The use is so conducted as to be detrimental to the public health, welfare, safety, or as to be a nuisance.

On page 9 of the March 4, 1991 City Council Meeting minutes, the **Piedmont City Attorney Linda Roodhouse stated:** *" that the Center straddles both a residential and commercial zone, however, most of the building is within Zone A (residential). She recommended, therefore, that if the property is ever sold, it be sold as a single-family residence and revert back to "proper" Zone A use.*

On page 11, the minutes state: Resolved Further, Compliance with such laws is not waived by Planning Commission or City Council approval of this application and shall be required upon any discovery of non-compliance.

The City of Piedmont Official's routinely refer back to and cites the City/Planning Commission records, legal documents, deeds and the 1926 Tax assessment rolls to retro-actively enforce and demand Piedmont residents/businesses to bring their buildings and properties into compliance with and to adhere to the City zoning laws-building/permit codes and City's ordinances.

*The Ann Martin Center Inc "principal use" is as a clinical business.*

*The Ann Martin Center Inc CUP expired in January of 2006.*

*Ann Martin Center is applying for a brand new CUP-de novo.*

*The Ann Martin Center Inc is illegally operating a business in Zone A and its "Grandfathered Status" and previous CUPs were obtained fraudulently and should be nullified and revoked.*

Ann Martin Center should be given a short term-limited window to give them enough time to relocate their business from 1250 Grand Avenue.

( by Sep 1, 2008)

Then, 1250 Grand Avenue should return back to its original designated proper Zone A use as a single family residential home only.

We hope City of Piedmont Official's and Council members understand the Fairview/Grand Avenue neighbors resolve and commitment to finally, correct

the adverse zoning and CUP error problems in our neighborhood.

Angela & Neil Teixeira  
47 Fairview Avenue  
Piedmont, Ca 94610  
510 658-9938  
n.teixeira@worldnet.att.net

cc: Abe Friedman-Council Member  
Dean Barbieri-Council Member  
John Chiang-Council Member  
Garrett Keating-Council Member  
Geoff Grote-City Administrator  
George Peyton-City Attorney

## Ann Martin Center Inc History & Timeline

Dr. Ann Martin herself, created the Ann Martin trust and non-profit enterprise in 1961, two years before her death. Ann Martins "will" had very precise instructions for her trust and ultimately, the non-profit business and who was to benefit from it.

June 1, 1961 Ann Martin "will": " *The purpose and aim of the trust and non-profit is to provide mental health services for nursery and pre-school children.....all the efforts of the trust/non-profit should be directed toward these ends"..... (2-5 year olds?) # P-160962*

In 1963 the Ann Martin Foundation Inc non-profit is registered. Ann Martin Center buys 2287 Washington Street property from one of its trustees (Blanche Garcia) on April 1, 1964. Apr # 75-83-115 Ann Martin Center is located at 401 E-21ST, Oakland and 2287 Washington Street, San Leandro from 1967 to 1971. AMC sells its property at 2287 Washington Street, San Leandro on May 21, 1971. grant deed # 71-63703

The Thomas Becker family moved into Piedmont in 1947. The Thomas Becker family owned and lived in 1250 Grand Avenue from 1957 to May 1971. The Beckers sold 1250 Grand Avenue to Ann Martin Children's Center Inc on May 6, 1971. Grant deed # 71-54080

The Beckers bought the adjacent house next door, at # 4 Fairview on May 7, 1971 and lived there until 1987.

In 1977, after complaints from neighbors, City of Piedmont officials uncover that AMC was operating a illegal "clinical" business in the single family residential only Zone A home at 1250 Grand Avenue.

**In February and March of 1977, several City of Piedmont Official's reviewed the May 6, 1971 recorded property deed documents and determined that the official "owner of record" for 1250 Grand Avenue was the Ann Martin Foundation for Childrens Services and how long AMC had been at 1250 Grand Avenue.**

On February 1, 1977 AMC Director Diana Barnhill told Piedmont Building Inspector Vince J. Legris that the AMC claimed to have 15 clinical staff and 65 child clients in 1977, and has been at 1250 Grand Avenue since before **1956?**

AMC hires Attorney Robert T. Harbaugh in February 1977.

City Attorney George Peyton conducts a investigation of AMC claims, and he has telephone and written correspondence with various AMC representatives and a "**special**" AMC commitee that was formed to address the zoning law "**problem**" at 1250 Grand Avenue. George Peyton's research concluded that AMC was a "Previously Existing Private School" as defined in Zoning

Ordinance; 17.2.51: ...an institution of learning supported in whole or in part from private funds.

The Piedmont City Council "miracuiously" allows AMC to remain at the 1250 Grand Avenue location on April 18, 1977 as a "Previously Existing Private School"? Grandfathered-thus legal?

*What about the May 6, 1971 recorded deed document?*

*Why was the 1956 Chapter 16 code-Private Schools ignored?*

In 1991,1999 and 2007 the Ann Martin Center CUP applications, they are no longer considered a "Previous Existing Private School" but are now a "Professional Office Business".

*Somewhere between 1977 to 1991, AMC changed its business type at 1250 Grand Avenue.*

To try to understand the City Council April 18, 1977 decisions. On July 24, 2007 we requested copies of all City public documents and recollection of these 1977 events from George Peyton and Ann Swift.

George Peyton promptly replied, *"that he no longer has copies any of the 1977 letters, and he has no **"memory"** of his investigation or the details of the 1977 Ann Martin Center Inc CUP hearing"*.

City Clerk Ann Swift too, promptly replies in her July 27, 2007 letter: *" I have reviewed **all** the city's records. I can locate **no records** which comply with your request"*. Except for the February 2, 1977 letter from Vince LeGris to George Peyton.

Both George Peyton and Ann Swift's July 27, 2007 reply **letters and actions are very troubling**, in light of the fact, that there are several 1977 AMC known related letters in the City of Piedmont retention files storage system, that Ann Swift did not provide us copies of, as we had requested.

Some of the AMC letters that were withheld from us are:

1. George Peyton to AMC attorney Robert Harbaugh-Feb 22, 1977
2. AMC Director Loretta Early to George Peyton-March 16, 1977
3. George Peyton to AMC Director Loretta Early-March 17, 1977
- 4.
- 5.

*(see enclosed copies)*

On July 9, 2007 in a last minute decision, just before the Planning Commision meeting, the City Administrator, City Planner and City Attorney decided that a boundary survey is now needed to know how much of 1250 Grand Avenue is in Zone D. The majority of 1250



Grand Avenue property is in Zone A and has been recognized as such, as "proper Zone A" use for over 102 years.

*Why a boundary survey-now?*

On July 18, 2007 City Planner Kate Black replies to our July 17, 2007 email about the Ann Martin Center 2007 CUP "business classification". Kate Black replies *that she does not know if the 2007 AMC CUP is applying as a "Previous Existing Private School" or a "Professional Business Office"*. For the City Planner, not to know or be unwilling to confirm, what the actual CUP business is for.....is most troubleing.

July 31, 2007 We have repeatedly asked City Planner Kate Black, Geoff Grote and George Peyton "why" was Ann Martin Center Inc exempt from the 1956 City Code Chapter 16-Private Schools in 1977? No City Official's are willing answer this simple question and Geoff Grote has turned the matter over to Mr. Peyton to research.

Kate Black and AMC Director David Theis 2007 statements, coupled with the expiration of the January 2006 AMC CUP has opened the legal door to review and nullify Ann Martin Center "grandfathered" status from 1977.

July 15, 2007 AMC hires Attorney David Bowie to resolve the **special zoning** and CUP **problems** that AMC is having at 1250 Grand Avenue.

AMC Attorney Bowie and City staff delay hearings, to the late fall.

July 31, 2007 Kate Black email says: " Planning staff do not have the authority to make a determination of whether or not information in AMC 2007 CUP application is correct".

The purpose of the public hearing process is to provide the applicant and the public the opportunity to state for the public record, whether or not they find information to be accurate.

In 1977 and 2007, there is similar patterns of procedural behavior by both City of Piedmont Official's and Ann Martin representatives to facilitate the Ann Martin Center's CUP and business goals.

In 2007, AMC has 70 staff, over 900 clients and 2.3M-yearly. Ann Martin Center 2007 letter head..... The youth we serve: AMC targets the 5-18 year olds with severe emotional problems.

City of Piedmont Officials have repeatedly made investigative, planning, record keeping and zoning errors.

Chapter 16  
**PRIVATE SCHOOLS<sup>1</sup>**

- ' 16.1 Permit required
- ' 16.2 Application for permit-Filed with city clerk; Fee
- ' 16.3 Same-Investigation by clerk required; requirements to be fulfilled
- ' 16.4 Council may by resolution permit deviation or variation from requirements; procedure

SEC. 16.1 PERMIT REQUIRED

It shall be unlawful for any person to carry on, conduct, manage, direct or maintain any private school in the City, without a permit therefore. (Ord. No. 176 N.S., ' 1)

SEC. 16.2 APPLICATION FOR PERMIT-FILED WITH CITY CLERK; FEE

An application for a permit to carry on, conduct, manage, direct or maintain a private school must be made in writing and filed with the city clerk. such application must be accompanied by a fee of one hundred dollars. (Ord. No. 176 N.S., ' 2)

SEC. 16.3 SAME-INVESTIGATION BY CLERK REQUIRED; REQUIREMENTS TO BE FULFILLED

The city clerk shall investigate each application for a permit required by this chapter, and, except as provided in the following section, no application for such permit shall be granted, unless the clerk finds and determines that the following requirements have been fulfilled:

- (a) One-story Building. The building wherein the proposed school is to be located must be of no more than one story above grade construction.

---

For state law as to sale of books to private schools, see Ed. C., ' 11243. As to transportation of pupils attending private schools, see Ed. C., ' 16257. As to exemption of children instructed in private schools from compulsory attendance, see Ed. C., ' 16624.

For charter provisions as to board of education, see Char., Article VII.

As to license for private schools, see ' 16.2.

(b) Construction Requirements. Such building must satisfy all of the requirements for group C occupancies, as such occupancies are defined by the Uniform Building Code, then in effect as an ordinance of the City, and any and all regulations of the state which apply to the construction of public schools in the Piedmont Unified School District.

(c) Off-street Parking. The property where such school is to be located must have provision made thereon for off-street paved parking areas for motor vehicles in the ratio of one such parking space for every six pupils, based upon the estimated attendance at such school.

(d) Curriculum Generally; Attendance. The school must be taught in the English language and must offer instruction in the several branches of study required to be taught in the corresponding public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of each pupil from school for half a day or more during each day that school is maintained during the year.

(e) Classification of Grades. The school must be an educational institution offering instruction to pupils in all or any of the following classifications:

1. "Kindergarten", which for the purposes of this chapter, is defined to be a school for the instruction of pupils between the ages of four and one-half and six years.
2. "Elementary", which for the purposes of this chapter, is defined to be a school in which instruction is given in the first to eighth grades, inclusive, or in any one or more of such grades.
3. "Junior High School", which for the purposes of this chapter, is defined to be a school in which instruction is given in the seventh to tenth grades, inclusive, or in any one or more of such grades.
4. "High School", which for purposes of this chapter, is defined to be a school in which instruction is given in the ninth to twelfth grades, inclusive, or in any one or more of such grades.

(f) Residence Limitation. No person other than the principal administrative officer of such private school, his spouse, and immediate family, shall reside, room or lodge upon the premises upon which such school is to be located. (Ord. No. 176 N.S., '3; Ord. No. 181, N.S., '1)

SEC. 16.4      COUNCIL MAY BY RESOLUTION PERMIT DEVIATION OR VARIATION  
FROM REQUIREMENTS; PROCEDURE

The City Council may, by appropriate resolution, permit deviation or variation, in part, from the specific requirements of the preceding section, upon application; provided, that all plans and specifications of the building in which the school is to be located, as well as an outline of the proposed method of operation of such school, is submitted in writing to the City Council. (Ord. No. 181 N.S., '2)

1971

OR

2845

99

1250 Grand Ave

Order No.  
Escrow No. 700151-M  
Loan No.

WHEN RECORDED MAIL TO:  
Ann Martin Foundation  
816 Central Building  
Oakland, California 94612

RECORDED AT REQUEST OF  
FIRST AMERICAN TITLE CO.  
4:00 P.M.  
M. Mrs. P.M.

RE: 2845 IN: 99

MAY - 6 1971

OFFICIAL RECORDS OF  
ALAMEDA COUNTY, CALIFORNIA  
JACK G. BLUE  
COUNTY CLERK

TRANSFER  
TAX PAID  
ALAMEDA COUNTY

7-54080

SPACE ABOVE THIS LINE FOR RECORDERS USE

MAIL TAX STATEMENTS TO:  
Same as above

DOCUMENTARY TRANSFER TAX \$ 37.40 ✓  
Computed on the consideration or value of property conveyed; OR  
Computed on the consideration or value less liens or encumbrances  
remaining at time of sale.

Signature of Officer or Agent receiving fee - Firm Name  
City of Piedmont

## GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THOMAS A. BECKER and LORRAINE F. BECKER, his wife

hereby GRANT(S) to ANN MARTIN FOUNDATION FOR CHILDREN'S SERVICES, a non-profit  
corporation

the real property in the City of Piedmont  
County of Alameda

State of California, described as

FOR COMPLETE LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Dated, March 31, 1971

STATE OF CALIFORNIA  
COUNTY OF Alameda

On April 5, 1971

before me, the undersigned, a Notary Public in and for said  
State, personally appeared

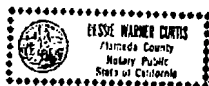
Thomas A. Becker and  
Lorraine F. Becker

known to me to be the person whose name is set  
subscribed to the within instrument and acknowledged that  
they executed the same.

WITNESS my hand and official seal.

Thomas A. Becker

Lorraine F. Becker



Signature Bessie Warner Curtis

(This area for official notarial seal)

My commission expires October 18, 1971

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1007 (1/8/69)

22

1971

OR

2845

100

## LEGAL DESCRIPTION

RE: 2845 IM: 100

Real property in the City of Piedmont, County of Alameda, State of California described as follows:

Portions of Lots 91 and 92, according to the Map of Nova Piedmont, filed December 18, 1913 in the office of the County Recorder of said Alameda County, and of record in Map Book 28, page 49, bounded as follows:

Beginning at a point on the southeastern line of Fairview Avenue, distant thereon south 52° 19' west 48.98 feet from the intersection thereof with the northeastern line of Lot 91, as shown on said map; thence along said line of Fairview Avenue, south 52° 19' west 15.70 feet; thence continuing along said line of Fairview Avenue southwesterly along the arc of a curve to the left, having a radius of 100 feet (said curve being that which connects said line of Fairview Avenue with the southeastern line of Grand Avenue, as shown on said map) an arc distance of 61.30 feet to a point distant northeasterly along said line of Grand Avenue, and said line of Fairview Avenue, 60 feet from the intersection of said line of Grand Avenue with the southwestern line of Lot 92; thence south 62° 31' east 80.22 feet to a point in the southeastern line of said Lot 92, distant thereon north 17° 58' east 41.06 feet from the southwestern line of said Lot 92; thence along said southeastern line of said Lot 92, north 17° 58' east 25.56 feet to the intersection thereof with the southeastern line of said Lot 91; thence along said last named line north 52° 19' east 27.44 feet to the southwestern line of the parcel of land described in deed to W. James Johnston and Alice J. Johnston, his wife, recorded in Book 4112 of Official Records, Alameda County, page 466; thence along said last named line, the two following courses and distances: north 33° 36' 40" west 20.09 feet and north 48° 07' west 57.50 feet to the point of beginning.

EXHIBIT "A"

II- 54030

CITY OF PIEDMONT  
CALIFORNIA

CITY COUNCIL  
CLARK GALLOWAY, JR.  
PRESIDENT AND EX OFFICIO MAYOR  
ANTHONY H. LOUGHRAN  
VICE PRESIDENT  
RUFERT H. RICKSEN  
CONNIE SHAPIRO  
FRANK S. ANDERSON

CITY ADMINISTRATOR  
GEORGE W. GARDNER, JR.



February 2, 1977

Mr. George S. Peyton, Jr.  
1710 Ordway Bldg.  
2150 Valdez Street,  
Oakland, Ca. 94612

Re: 1250 Grand Avenue, Piedmont.

Dear George:

At the request of Mrs. Alice Creason, Piedmont Planning Commission Member, I investigated the above address regarding a possible zoning violation.

The owner of record of this property is Ann Martin Foundation for Childrens Services. The City of Piedmont's maps and records indicate that this property is single family zoned.

Yesterday afternoon I talked personally with Ms. Diana Barnhill, director of the Ann Martin Childrens Center who explained that this non-profit organization has been in existence at this address for over twenty (20) years, maintains a staff of approximately fifteen people (social workers, educators, psychiatrists and psychologists) on a part time basis and treats approximately 65 children aged kindergarten through sixth grade at about one hour per week with an average of about seven to ten patients at one time. The facility consists of a two story ten room house with two and one half baths and one single detached garage. Ms. Barnhill further explained that no one lives at this address and that it is vacant at night. Attached is one of their "flyers" briefly explaining their activity.

Please advise me whether or not this clinical property use can be considered as "grandfathered" in and therefore is legal; or, should the clinical property use be stopped and the property be returned to a single family dwelling use?



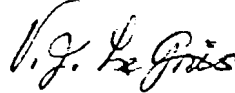
(2)

February 2, 1977

Re: 1250 Grand Avenue, Piedmont.

Further, if the present clinical use is condoned by the City, should the Ann Martin Children's Center make application for a variance and obtain City Council approval? Your reply will be appreciated.

Very truly yours,



V. J. Le Gris  
Building Inspector

VJL/lje

CC: Mr. Bob Bauer  
Mrs. Alice Creason  
Planning Commission  
City Council

ANN MARTIN CHILDREN'S CENTER, INC.

1250 GRAND AVENUE  
PIEDMONT, CALIFORNIA 94610

655-7880

Parent Group

The Ann Martin Children's Center is a private, non-profit agency that offers a range of psychological and educational services to children and their families.

The center is preparing to offer discussion groups for parents. Meeting 1½ hours per week for eight weeks, we will attempt to make sense of aspects of your child's behavior that may be puzzling or worrisome, including behavior that although typical for a certain age may not seem so or is difficult to manage. The focus will be on what the child is communicating by his or her behavior, how it makes you feel, and what you can do.

Topics will be chosen by the participants according to their interests and needs, but might include specific problem behavior such as fighting or lying, or difficulties at particular times of the day - meals, bedtime, homework. Other areas of discussion will include concerns of single parents, developing parental confidence (an often underestimated asset!), how you can help your child with feelings such as anger or disappointment, and how to talk with children about separations and deaths.

The group will meet at the Ann Martin Children's Center, in the evening. The entire fee is \$35 (if this is a problem let us know when you call). Medi-cal will be accepted. We plan to begin one series of meetings in February and another in April. If you are interested in joining the group, or have any questions, please call 655-7880 and ask for Naomi Steinfeld or Terese Schulman.

MARCUS HARDIN  
S. FLETCHER (1905-1964)  
WMAN COOK  
C. LOPER  
ENGEL  
D. J. BERGEZ  
EDERICK D. SCHWARZ  
ORGE S. PEYTON, JR.  
LPH A. LOMBARDI  
SANDRA F. ELSTEAD  
WILLARD L. ALLOWAY  
GENTIANO A. FILICE  
EVEN M. KOHN

LAW OFFICES OF  
HARDIN, COOK, LOPER, ENGEL & BERGEZ  
1710 ORWAY BUILDING KAISER CENTER  
2150 VALDEZ STREET  
OAKLAND, CALIFORNIA 94612  
AREA CODE 415-444-3131  
CABLE ADDRESS: HARDIN

L.R. WEINMANN (1884-1975)  
WILLIAM P. JAEGER, JR.  
OF COUNSEL

February 22, 1977

Mr. Robert T. Harbaugh  
11 Embarcadero West, Suite 140  
Oakland, CA 94607

Re: Ann Martin Children's Center, Inc.

Dear Mr. Harbaugh:

Following up on our telephone conversation today, I am enclosing a copy of my letter of February 10, 1977, to Mrs. Barnhill concerning the apparent zoning violation in the current use of the property at 1250 Grand Avenue, Piedmont by Ann Martin Children's Center, Inc.

After you have had an opportunity to review this letter, in the light of our discussion today, and to talk with your clients, I would appreciate hearing back from you, so that I will know how to proceed.

Yours very truly,

CITY OF PIEDMONT

By \_\_\_\_\_  
GEORGE S. PEYTON, JR.  
CITY ATTORNEY

GSPjr/mr

ANN MARTIN CHILDREN'S CENTER, INC.

1250 GRAND AVENUE  
PIEDMONT, CALIFORNIA 94610

655-7880

March 16, 1977

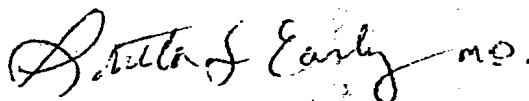
George S. Peyton, Jr.  
City Attorney  
2150 Valdez St.  
Suite 1710  
Oakland, California 94612

Dear Mr. Peyton,

We acknowledge your letter and correspondence. On March 9, 1977 we had a Board of Directors meeting at the Ann Martin Children's Center and addressed this problem. A committee has been appointed to investigate as to how we can comply to the zoning laws.

We have been tax exempt for real property taxes since 1971, because of our non-profit status.

Most Sincerely,



Loretta F. Early  
Board of Directors President  
Ann Martin Children's Center

LFE:da

J. MARCUS HARDIN  
L. S. FLETCHER (1905-1964)  
HERMAN COOK  
JOHN C. LOPER  
BARRIE ENGEL  
RAYMOND J. BERGEZ  
FREDERICK D. SCHWARZ  
GEORGE S. PEYTON, JR.  
RALPH A. LOMBARDI  
SANDRA F. ELSTEAD  
WILLARD L. ALLOWAY  
GERRARD A. FILICE III  
STEVEN M. KOHN

LAW OFFICES OF  
**HARDIN, COOK, LOPER, ENGEL & BERGEZ**  
1710 ORDMAN BUILDING - KAISER CENTER  
2150 VALDEZ STREET  
OAKLAND, CALIFORNIA 94612  
AREA CODE 415-444-3131  
CABLE ADDRESS: HARDIN

L. R. WEINMANN (1884-1975)  
WILLIAM F. JAEGER, JR.  
OF COUNSEL

March 17, 1977

Ms. Loretta F. Early  
Ann Martin Children's Center, Inc.  
1250 Grand Avenue  
Piedmont, CA 94610

RECEIVED  
MAR 21 1977  
ADMINISTRATION DEPARTMENT  
CITY OF PIEDMONT

Dear Ms. Early:

Thank you for your letter of March 16, 1977, concerning the apparent zoning violation on the property used by the Ann Martin Children's Center, Inc. at 1250 Grand Avenue.

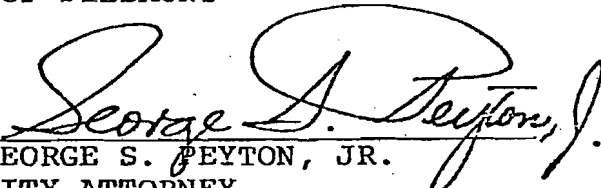
While the City realizes that your organization wants to study this matter fully, we would like to have some specific proposal in writing in my hands by Thursday, April 14, 1977, so that it can be considered by the City Council at their meeting of April 18, 1977.

I am having this question placed on the agenda for that Council Meeting at least on a tentative basis, and I would suggest that you or your representatives be present to discuss any questions that the City Council might have at that time.

Yours very truly,

CITY OF PIEDMONT

By

  
GEORGE S. PEYTON, JR.  
CITY ATTORNEY

GSPjr/mr

CC: Mr. Robert T. Harbaugh  
Piedmont City Council

City Council Mtg

April 18, 1977

ANN MARTIN CHILDRENS CENTER, INC.

By memorandum, City Attorney George Peyton presented the copy of a letter he had received from the Ann Martin Childrens Center, Inc. concerning the question of their zoning, and indicated that previous correspondence and telephone conferences with various representatives of the Center had taken place because of the apparent problem involving zoning, since the City records indicated that the Center is located in Zone A. Mr. Peyton explained that the Center claimed that it was a private school, and after investigation, it appeared that the institution would probably fall within the category of a private school as defined in the Zoning Ordinance, and since this use was in existence prior to the requirement of a conditional use permit for a private school under Section 6A of the zoning ordinance, which was passed in November 1974, the institution is currently operating a legal use of the premises.

After discussion of the matter, Councilman Anderson moved that the following resolution be adopted:

RESOLUTION 100-77

RESOLVED; That this Council declares that the Ann Martin Childrens Center, Inc. is now and has been legally operating as a private school in Zone A, since it was in existence prior to the requirement of a conditional use permit for a private school under Section 6A of the Zoning Ordinance.

Councilwoman Shapiro seconded the motion which was passed and adopted by the following vote:

YES: Mayor Galloway, Vice Mayor Loughran, Councilmembers Anderson, Ricksen, Shapiro  
NAYS: None

PROPOSED SKATEBOARD ORDINANCE AND RESOLUTION

As requested by the Council, City Attorney George Peyton presented a proposed ordinance setting forth basic provisions relating to the licensing of skateboard operators in Piedmont, together with a copy of a proposed resolution setting the rules and regulations for the operation of skateboards, and a proposed Parental Consent form. The City Attorney advised that he did not set forth rules and regulations concerning the operation of the "board of peers" or penalties that they might assess, but he did feel such a provision should be in the rules and regulations. Mr. Peyton explained that there is no way a juvenile can be forced to submit to a hearing by a board of peers and that it would have to be strictly a voluntary matter.

Councilman Ricksen moved that the following resolution be adopted:

RESOLUTION 101-77

RESOLVED: That this Council approves the first reading of Ordinance 347 N.S.,

7-18-2007

George Peyton/City Attorney & Geoff Grote/City Manager  
120 Vista Avenue  
Piedmont, Ca 94610  
510 420-3041

Re: Request for copies of George Peyton letter and Ann Martin Center correspondence documents from 1977.

Hello,

I would like to have copies of the following public documents of City Attorney George Peyton and Ann Martin representatives from 1977 in regards to the AMC zoning problems and their business at 1250 Grand Avenue. I would like to have copies of these documents before the Piedmont City council meeting of August 20, 2007.

1. **George Peyton letter to Mrs. Diane Barnhill-Director of Ann Martin Center. Date of letter: February 10, 1977**
2. **Copies of all letters or correspondence from Ann Martin Center, their directors, committees, staff or representatives to George Peyton or City Official's from Feb, March and April of 1977. Most specifically, the Ann Martin Center Inc letter that George Peyton recieved from AMC and he presented a copy of it, to the City Council members at the City Council meeting of April 18, 1977.**  
(see City council meeting minutes-page 279-1st paragraph)

Thank You  
Angela & Neil Teixeira  
47 Fairview Avenue  
Piedmont, Ca 94610  
510 658-9938  
510 658-8757 fax  
n.teixeira@worldnet.att.net

**n.teixeira**

---

**From:** "George Peyton" <gpeyton@ci.piedmont.ca.us>  
**To:** "n.teixeira" <n.teixeira@worldnet.att.net>  
**Cc:** <ggrote@ci.piedmont.ca.us>; <aswift@ci.piedmont.ca.us>  
**Sent:** Tuesday, July 24, 2007 4:37 PM  
**Subject:** Re: AMC 1977 letters

Dear Mr. Teixeira: I wanted to respond promptly to your email dated July 24. I did receive your letter of July 18, and promptly discussed it with Ann Swift, the City Clerk, who is the person for the City who is responsible for responding to Public Records Act requests, such as yours. I also have just discussed your July 24 email with Ms. Swift. Ms. Swift will be responding to you by your requested deadline of August 3.

Specifically addressing your request for copies of letters or documents from "...your own personal business files...", as soon as your letter was received by me last week, I started checking on whether I had any personal business file with the letters or documents that you are requesting, and I can find no such file, which is very understandable, since I regularly went through old files and often had them destroyed after they were 7 to 10 years old or so, since there was only so much space available to hold old files, particularly on items such as a particular Conditional Use Permit hearing, which was held 30 years ago. I had already informed Ann Swift of that fact before receiving your email today.

Therefore, Ann Swift and I will be reviewing the files here at City Hall for the letters and documents you have requested going back to 1977.

GEORGE PEYTON

----- Original Message -----

**From:** n.teixeira  
[mailto:n.teixeira@worldnet.att.net]  
**To:** gpeyton@ci.piedmont.ca.us  
**Cc:**  
ggrote@ci.piedmont.ca.us, aswift@ci.piedmont.ca.us  
**Sent:** Tue, 24 Jul 2007  
14:31:08 -0700  
**Subject:** AMC 1977 letters

> July 24, 2007

>

> George Peyton-City Attorney

> City of Piedmont

> 120 Vista Avenue

> Piedmont, Ca 94611

> 420-3040

>

> Re: Request for Ann Martin Children's Center 1977 letters.

>

> Dear Mr. Peyton,

> This is a follow-up email to my 7-18-2007 letter to you,

> that requested copies of the following Ann Martin Children's Center Inc

> written correspondence between you and the Ann Martin Center Inc



- > representatives in 1977. The two particular letters are:
- > 1. The February 10, 1977 letter from you to AMC Director-Mrs. Diane Barnhill
- > concerning zoning violations at 1250 Grand Avenue..
- > 2. The letter that you recieved from the Ann Martin Children's Center Inc
- > representatives, concerning the question of their zoning. You recieved it
- > after March 17, 1977 and you a presented a copy of it to the City Council
- > Members at the April 18, 1977 City Council Meeting.
- > (see City Council Mintues-page 279-1st paragraph)
- >
- > Plus: Copies of any other correspondence that you recieved from AMC,their
- > representatives or the public between March 17, 1977 and April 18,
- > 1977-that relates to 1250 Grand Avenue zoning problems.
- >
- > I assume that copies of both these letters and any others are in
- > the City of Piedmont records or in your own personal office business files.
- > And are easily accessible.
- > We would like to have copies of these letters or a response from you before
- > August 3, 2007. Thats well before the August 20, 2007 City Council Meeting
- > and gives us adequate time to properly review the letters.
- >
- > Thank You
- > Neil J. Teixeira
- > 47 Fairview Avenue
- > Piedmont, Ca 94610
- > 658-9938
- > 658-8757 Fax
- > [n.teixeira@worldnet.att.net](mailto:n.teixeira@worldnet.att.net)
- >
- > cc: Geoff Grote, Ann Swift
- >
- >
- >

**n.teixeira**

---

**From:** "George Peyton" <gpeyton@ci.piedmont.ca.us>  
**To:** "n.teixeira" <n.teixeira@worldnet.att.net>  
**Cc:** "Geoff Grote" <ggrote@ci.piedmont.ca.us>; "Ann Swift" <aswift@ci.piedmont.ca.us>  
**Sent:** Thursday, July 26, 2007 4:18 PM  
**Subject:** Re: Ann Martin 1977 letters.

Dear Mr. Teixeira: I have been thinking about your question even before I received your email. The fact is that while I very vaguely remember that there was a hearing relating to the Ann Martin Center back in 1977, I honestly cannot remember any details whatsoever, including the contents of the letters you requested. Considering that 30 years have gone by, my lack of memory is not surprising. GEORGE PEYTON

----- Original Message -----

From: n.teixeira  
[mailto:n.teixeira@worldnet.att.net]  
To: gpeyton@ci.piedmont.ca.us  
Sent:  
Wed, 25 Jul 2007 15:01:05 -0700  
Subject: Ann Martin 1977 letters.

> 7-25-2007

>

> George Peyton-City Attorney

> City of Piedmont

> 120 Vista Avenue

> Piedmont, Ca 94611

> 420-3040

>

> Re: Ann Martin Center 1977 letters.

>

> Dear Mr. Peyton,

> Thank you for returning my email, as to my request for copies of

> written correspondence between you and Ann Martin

> Center representatives, back in March and April of 1977. I am sorry to hear

> that you no longer have copies of the 2 letters in your

> personal files. I will hope that the Piedmont City Clerk-Ann Swift will be

> able to find the City's copies of these 1977 letters in the City's storage

> records.

> I wanted to ask you a question about these 1977 events and page

> 279 of the April 18, 1977 City Council Meeting

> minutes. You did an investigation and advised the City Council members that

> Ann Martin Center could be allowed to remain in Zone A, as they were a

> "Previously Existing Private School". You indicated that you had

> correspondence and telephone conferences with various representatives of Ann

> Martin Center Inc because of the zoning problems.

> My question is this: Do you recall or remember any of the

> details, conversations, reasoning, conclusions or particular points that you

> received thru verbal or written correspondence with various AMC

> representatives, that assured and convinced you, to recommend to the City  
> Council Members, that AMC was indeed-a Previously Existing Private School in  
> 1977?  
>  
> Thank You  
> Neil J. Teixeira  
> 47 Fairview Avenue  
> Piedmont, Ca 94610  
> 658-9938  
> [n.teixeira@worldnet.att.net](mailto:n.teixeira@worldnet.att.net)  
>  
>  
>

CITY OF PIEDMONT  
CALIFORNIA

July 27, 2007



Mr. Neil J. Teixeira  
47 Fairview Avenue  
Piedmont, Ca 94610

Dear Mr. Teixeira:

SUBJECT: Public Records Request Dated July 18, 2007

In response to your request for "*all correspondence between City Attorney George Peyton and the Ann Martin Center, Inc. in March and April of 1977 and any other correspondence that the city received from the Ann Martin Center, their representatives or the public between March 17, 1977 and April 18, 1977 that relates to 1250 Grand Avenue*", I have reviewed all of the city's records. I can locate no records which comply with your request.

The City of Piedmont did not have a formal records retention policy until August 3, 1987. Prior to that time, records were routinely destroyed when space was needed and no record was kept of the specific files which were being destroyed. Since your request pre-dates the adoption of the records retention policy by ten years, it is consistent that the city would have no record of the correspondence you requested.

On rare occasions, a letter or other correspondence was retained in the city files. I have located a letter from Vince LeGris to George Peyton dated February 2, 1977 regarding the Ann Martin Center. A copy of that record is attached.

As you know from correspondence with Mr. Peyton, he has also checked his personal files and has not been able to locate any of the letters which you requested.

Please feel free to give me a call if you have questions.

Sincerely,

CITY OF PIEDMONT

Ann Swift  
City Clerk

**n.teixeira**

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**From:** "Kate Black" <kblack@ci.piedmont.ca.us>  
**To:** "n.teixeira" <n.teixeira@worldnet.att.net>  
**Sent:** Wednesday, July 18, 2007 4:39 PM  
**Subject:** RE: 1250 Grand Ave

Dear Mr. Teixeira:

Thank you for your e-mail. I'm afraid that I can't answer your questions definitively yet, pending further research. City staff are doing more research to try to understand what actions the City took in 1977, 1991 and 1999 (the information is not in the physical files in the Planning Department), and are proposing a survey to determine whether or not part of the property at 1250 is within Zone D. We are hoping to have better information about the past actions of the Planning Commission and City Council for the Council meeting of August 20th. When I find information related to your questions, I will let you know.

Sincerely,

Kate Black  
City Planner

-----Original Message-----

**From:** n.teixeira [mailto:n.teixeira@worldnet.att.net]  
**Sent:** Tuesday, July 17, 2007 8:32 PM  
**To:** kblack@ci.piedmont.ca.us  
**Subject:** 1250 Grand Ave

Ms. Black,  
Hello,

This is Neil Teixeira at 47 Fairview Avenue.

I have a 3 questions about the Ann Martin Center CUP and its 1250 Grand Avenue location.  
In 1977 Ann Martin Center at 1250 Grand Avenue was considered a "Private School" by the Piedmont City Council.

Here are my questions:

What is Ann Martin Center considered or clasified as for their 2007 CUP application at 1250 Grand Avenue. Are they a "Private School" or a "Clinical Business" or what ?

In 1999 was AMC considered a "Private School" or a "Clinical Business" at 1250 Grand Avenue or what ?

In 1991 was AMC considered a "Private School" or a "Clinical Business" at 1250 Grand Avenue or what?

Thank You  
Neil Teixeira  
47 Fairview Ave.  
Piedmont, Ca 94610  
658-9938  
[n.teixeira@worldnet.att.net](mailto:n.teixeira@worldnet.att.net)

4. Type(s) of Staff/Personnel, Number of Each: **7 FTE psychologists, social workers, and learning specialists; 3 FTE administrators. The majority of our psychotherapists and learning specialists are part-time, seeing about ten client hours per week. We have a total of sixty professionals on staff. Note that shifts are not concurrent.**
5. Projected Busiest Hours/Days: **3 p.m. to 6 p.m. Monday to Thursday**
6. Potential Neighborhood Impacts: **Parking is the primary impact on neighbors. We go to lengths to inform our clients (and staff) of the sensitivity of this issue, asking that cars be parked appropriately (conserving space, yet not blocking driveways). We maintain a list of staff vehicle info (license, make, model, color) so that if there is a problem, it is often easy to identify the owner of the car and ask them to move. Neighbors have the executive director's cell phone number to call if there is a concern.**
7. Anticipated Gross Annual Revenue: **\$2.3M**
8. Term of the Lease: **n/a (property is fully owned)**
9. Benefit to Piedmont Residents: **Psychotherapy, educational therapy, psychological-educational diagnostic testing, bereavement counseling, parent guidance, school behavior management consultations are some of the benefits to Piedmont residents (as well as the larger community as a whole).**
10. Changes in the existing structure are necessary to accommodate the proposed use as follows:  
**N/A**

**REQUEST FOR FEE WAIVER:**

The applicant has also requested a waiver of the application fee of \$1,500 for this property and \$1,500 for the adjacent property at 1246 Grand Avenue, noting that the "Ann Martin Center is a non-profit organization and the two properties under review are practically part of one evaluation". No action by the Planning Commission is required on this request, as it is a decision that will be made by the City Council.

**CODE COMPLIANCE – ZONE A:**

This application is submitted as a renewal for an existing conditional use permit as specified in Section 17.24.8 of the Piedmont City Code. In accordance with section 17.24.8 of the Piedmont City Code, a conditional use permit shall be renewed at least 90 days prior to its expiration.

The property is located in Zone A, and consists of a single-family residence that was converted for the present use as the Ann Martin Center in 1963. According to Section 17.5 of the City Code: *"Zone A is established to regulate and control development in appropriate areas of single-family residential development in harmony with the character of existing and proposed development in the neighborhood and to assure the provision of light, air, privacy, and the maintenance of usable open space in*

WHEREAS, the Piedmont Planning Commission approved Drs. Piser's variance and design review application on January 14, 1991, and said approval was appealed to the City Council by several Blair Avenue residents; and

WHEREAS, this City Council has reviewed the appeal, application, plans and any and all testimony and documentation submitted in connection therewith, both as to the hearing before the Planning Commission and this City Council, and has visited subject property, the Piedmont City Council concurs with the findings and conditions of the Planning Commission as set forth in Resolutions 294-V-90 and 294-DR-90, adopted January 14, 1991.

THEREFORE, BE IT RESOLVED, that the Piedmont City Council denies the Blair Avenue neighborhood appeal and upholds the Planning Commission's January 14, 1991, approval of Drs. Joel and Jing Piser's variance and design review application for proposed construction at 201 Pacific Avenue, with the understanding that the revised landscaping plan dated February 28, 1991, will be implemented as a condition of this approval and that a deed restriction shall be placed on the Piser's property limiting vegetation height to below the 550' mean elevation level.

Moved by Hill, Seconded by Foulkes. MOTION CARRIED UNANIMOUSLY (Rhodes, Foulkes, Hill, Kegley, Schey)

Dr. Piser noted his unfamiliarity with legal issues involved with deed restrictions and stated his intent to have his attorney review the matter.

PUBLIC HEARING: Conditional Use Permit Request for 1250 Grand Avenue (Ann Martin's Children Center)

The Acting City Planner stated that the Ann Martin Children's Center is requesting a Conditional Use Permit to continue to operate a non-profit psycho-therapy and tutoring service at 1250 Grand Avenue. The Center has been in operation at the site for 27 years and the need for a CUP arose when the Center was granted a variance by the Planning Commission on February 11, 1991, to convert one upstairs bedroom/office into two separate offices. The Center currently does not have a CUP as its operation pre-dates the City's CUP ordinance; however, structural changes to the building now require that a CUP be obtained.

Speaker: David Theis, 330 Bateman Avenue, Berkeley

Dr. Theis, Executive Director of the Center, stated that the Center is Piedmont's only social service agency and provides psycho-therapy and remedial educational services to area children. The Center recently received a \$22,000 grant for capital improvements and is proposing via this funding to restore the building's original number of treatment rooms. Dr. Theis reviewed the on-site parking conditions imposed by the Planning commission and stated that the Center's garage has been cleaned out and both it and the driveway are being used for parking. The Deputy City Attorney stated that the Center straddles both a residential and commercial zone, however, most of the building is

within Zone A (residential). She recommended, therefore, that if the property is ever sold, it be sold as a single-family residence and revert back to proper Zone A use. Councilmember Schey commented on the inadequacy of the submitted remodel plans, noting that the plans do not meet the City's minimum submittal standards and should never have been accepted. Vice Mayor Foulkes requested Dr. Theis to use the garage and driveway for staff rather than client parking to minimize the frequency of in-and-out traffic.

Resolution 26-91 (0340)

WHEREAS, The Ann Martin Children's Center is requesting permission for a Conditional Use Permit to operate a non-profit counseling and tutoring service at 1250 Grand Avenue, Piedmont, California; and

WHEREAS, the Piedmont City Council has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont City Council makes the following findings:

1. The proposed conditional use is of benefit to Piedmont residents because it provides a service to many Piedmont citizens as well as to residents in the surrounding community;
2. The proposed conditional use will be properly related to other land uses and transportation and service facilities in the vicinity because although it is in Zone A, it adjoins a commercial area and is suited by its location to the type of use it is put to;
3. Under all the circumstances and conditions of the particular case, the proposed conditional use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity because there are no adverse impacts from the changes to be made to the building or the use it will be put to;
4. The proposed conditional use will not be contrary to the standards established for the zone in which it is to be located because its location is in an existing commercial area;
5. The proposed conditional use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area because no changes in noise or traffic are anticipated;
6. The proposed conditional use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods because there is no change in use being proposed and thus no aggravation of existing conditions;
7. Adequate provisions for driveways to and from the property have been made; facilities for ingress and egress from secondary



## DR. ANN MARTIN — HISTORY OF C.D.C.

Announcement of the resignation of Dr. Ann Martin, pediatrician at Children's Hospital for years since "Baby Hospital" days, and founder of the Child Development Center, was made at the annual meeting by Harry R. Pennell, president of the Board of Directors.

In commenting on Dr. Martin's resignation, Mrs. Wm. Harold Oliver said, "her name will go down in our history as one of the greatest contributors to the growth and development of this hospital."

The original idea of the Center came from Dr. Martin, its chief until January of this year when her health made it necessary for her to resign. The idea was born as the result of her work with mothers and children in Well Baby Clinics. Her aim was to establish, early, a wholesome mother-child relation through helping the mother to understand the needs of her child as his behavior changed in the process of his growth and development and thus prevent later difficulties.

After discussions with Dr. Arnold Gesell of Yale, Dr. Martin's idea grew and an addition of a guidance nursery school seemed important. With such a plan definitely in mind, Dr. Martin talked to Mr. and Mrs. Wm. Harold Oliver and on Mrs. Oliver's suggestion, the plan was presented to the Executive Council of the Branches. This body gave its full approval and support. The project was then presented to the Branches and again received enthusiastic response. The Branches sent a recommendation to the Board of Directors that \$6000 of their earnings be allocated to the support of the Center.

Fortunately a cottage recently purchased by the hospital was available and could be used.

In January, 1943 the Board of Directors approved the establishment of the Child Development Center. Miss Will Lloyd was employed as a clinical psychologist on a half-time basis. The Center was a reality.

In 1944 the necessary alterations on the cottage were completed. The Well Baby Clinic, conducted one afternoon a week in the Out-Patient Department, was moved to the Center and a public health nurse was employed half-time. A nursery school teacher was also employed half-time and the first



A young pupil at the Guidance Nursery School of C.D.C. Picture by Jon Brenneis.

group of children was registered. A circular describing the work of the Center was sent to the Medical Staff of the hospital and other pediatricians and physicians of the Bay Area.

Miss Lloyd gave a course of lectures for student nurses in child development in that year. Such a course is required as a part of pediatric training. The residents came to the Center for their training in "Care for the well child" with Dr. Martin.

The next big change in the growth of the Center came in 1946. The Rosenberg Foundation offered for one year the salary of a parent consultant. The staff now consisted of two nursery school teachers, two parent consultants and a part-time pediatrician as well as its former members, all of whom were working full-time except the half-time pediatrician.

There was a steady increase in the

families seeking help. The services of the center were meeting a very definite community need.

In 1948 at the request of the School of Public Health, of the University of California, the Center extended its educational facilities outside the hospital. Doctors taking their Master's degree under Dr. Jessie Bierman, Chairman of Maternal and Child Health, started coming to the Center for a semester of training. The State Department of Public Health nurses and doctors began an in-service training course for a three-month period. This was through Dr. Kent Zimmerman, Consultant for Mental Health of the California Department of Health. In '49 a research analyst was added as the result of an additional grant from the School of Public Health.

The establishing of the Center was a  
(Continued on page 5)

## DR. ANN MARTIN

(Continued from page 3)

pioneer step. In 1944 there was in existence in the country only one other center which confined its work to the pre-school child. This agency, in Roxbury, Mass., was concerned with the severely disturbed child. It was not a part of a children's hospital and it did not include the PREVENTIVE PROGRAM of the Well Child Conference.

Today, it is recognized that early years determine, largely, the learning of important attitudes of the child toward himself and others.

Articles are being written on the subject in leading magazines. PREVENTION is the keynote, as it is the Center's policy. It was with this recog-

nition of the importance of PREVENTION that the Center, under the leadership of Dr. Ann Martin, chose birth to six years on which to concentrate its clinical teaching and research program.

Today, in the Bay Area, Child Development Center of Children's Hospital is the only place which offers diagnostic, consultation, and treatment services exclusively to the pre-school children and their parents.

The Child Development Center has hitherto been supported by the hospital and by federal funds made available through the California State Mental Health Authority, and funds from the Children's Bureau received through the Department of Maternal

and Child Health of the University of California.

The majority of these funds are now running their allotted time, and the growing cost of operating the hospital has placed a definite limitation on the ability to absorb the cost of the Center. So of course the hospital is under the necessity of refinancing the Center.

The Board of Directors has appointed a committee to take care of this matter. Mrs. William Harold Oliver is chairman of this committee which also includes other members of the Board of Directors, members of the Child Development Guild, and members of the staffs of both the hospital and the Center. They are working on a very concrete plan of action.

## GIFTS OF REMEMBRANCE—JANUARY, 1953

## IN MEMORY OF

CYRUS W. ABBOTT.....Lucille McCaffery, Mrs. John Francis Slavich  
ALICE A. ADAMS.....Ed and Myrtle Kaufman  
LYDIA ADAMS.....Mabel E. Mason  
MARIA ALVARADO.....Union Oil Company of California  
—Oleum Refinery.

GORDON W. ANDERSON.....Dr. L. B. Atkinson  
EUGENE ANSEL.....Mr. and Mrs. Harold Middlemas  
ELARION ANTONOWICH.....Mrs. Lola B. Werber  
MARTIN ARNOLD.....William Swallow,  
Max Stenz, Dr. William Breig, Marshall Rutherford, J. A.  
"Till" Ferrari, Harold W. Blanchard, Alameda Unit No. 9—  
American Legion Auxiliary.

EDMUND VALENTINE ASZKLAR III.....Mr. and Mrs. George Mickle  
JOHN E. BADLEY.....Mr. and Mrs. E. M. Rebard,  
Edward W. Rebard, Florence L. Swan.

H. BAGBY.....Florence L. Swan  
WESLEY BAKER.....Mr. and Mrs. N. E. Bryan and family  
HARRY FRANKLIN BALL.....Mrs. Rose Brain, Forrest E. Thies  
LUCY ANN BALLARD.....Mrs. M. Street  
ERNEST BANNWARTH.....Berneta Harrell  
ORIMER BANTA.....J. William Burnet  
ALFRED LLOYD BARBER.....Arthur and Marjorie Pedersen  
GARY S. BARBERA.....Evon Everson, Ann B. Wentworth  
ELIZABETH BARTHOLD.....May and Ed Barthold, Amelia Berlin,  
Robert M. Barthold.

CHARLETON T. BARTLETT.....Gordon and Jeannette Whitehead  
MARY KATHRYN BARTLETT.....Ruth and Norm Cords,  
Mr. and Mrs. Clyde F. Diddle, Mr. and Mrs. Austin R. Eimer,  
Katherine Gaddis, Mr. and Mrs. O. L. Pringle, Mr. and Mrs.  
Ira H. Rowell, Evelyn and Wilson Sanchez, Mr. and Mrs. E.  
A. Schlueter, Bob and Ruth Sherrard, Capt. and Mrs. H. B.  
Wheeler, Elizabeth C. Warren, Barbara and Russell Wilson,  
Cub Pack No. 95.

H. L. A. BATES.....Maryly and Wyman Taylor  
CARL BEAN.....Bob and Colette Pitcher, Ruth Dixon  
E. BECHTLE.....Mary C. Moore, Anna A. Wignell  
ANK DAVID BECK.....Mr. and Mrs. Donald G. Peterson,  
Mr. and Mrs. Louis D. Hill.

WARD L. BEE.....Maurice and Margaret Huguet  
JOY BEEBE.....Mr. and Mrs. R. M. Lundquist  
CHARLES BELLER.....Myrtle and Forrest Peil  
H. BENNETT.....Cicely Riordan  
MABEL C. BENNETT.....Mr. and Mrs. D. C. Kerr  
WILLIAM BERCOVICH.....Daisy L. Fitzmaurice,  
Mr. and Mrs. C. R. C. Frederick, Inez and Irve Mathews,  
Dolly Smith.

ED BIANCO.....Reg and Pauline Hohenschild  
HUR F. BIDDLE.....Mr. and Mrs. Bob Menetrey  
CHARLES BLACKIE.....Mr. and Mrs. John R. Ober  
E. BOGARD.....Mr. and Mrs. George H. Crist, F. B. Dennis,  
Mr. and Mrs. C. A. McKenzie, Mr. and Mrs. Henry A. Stone.

## GIFT OF

WALLACE BOSWORTH.....Ward and Gladys Smith  
MYRTLE BOWEN.....Mr. and Mrs. Leland Wallace  
GLEN EDWARD BOWLSBEY.....Cass Altshuler, John D. Altshuler,  
Mrs. Irving S. Cohn.

JAMES NIXON BOYD.....Irene and Bob Hummel,  
Mr. and Mrs. Glenn R. Jackson, Eddie Krug, Lucille Sorenson,  
Katie Valerio, Lucille Knopik, Carl Armstrong, Al Baumgartner, Bob Kuntz.

LUCILE BRANTLY.....Mrs. Laura Rasbridge, Elizabeth E. Davis,  
Mrs. Janet S. MacLeod, Dr. Emerson F. Blodgett, Margaret M. Crosby,  
Helen Gehrke, Mary Jane Brancato, Mrs. Lillian Warren, Mrs. Merle Wood,  
Carl R. Quellmalz, Mrs. Evelyn Jackson, Dr. Merle Elliott, Mrs. Grace Ross.

GRACE HOPE BROOKS.....Anthony and Grace Cianciarulo,  
Lucille and Joe Sheaff, Mr. and Mrs. Ritchie C. Smith, Mrs. E. J. Unruh.

ALLEN BROWN.....Mr. and Mrs. Donald L. Kelley  
DELBERTA BROWN.....The Business Office Girls—Children's Hospital,  
Friends at Children's Hospital: M. Hadone, R. Curzi, M. Lucey,  
E. Hall, L. Baker, V. Archer, L. Young, S. Van Arden, G. Withrow,  
C. Bentham, E. Williams, J. Martin, M. McAllister, M. Alfrey,  
M. Henrich, M. Courtney, B. Armstead, M. Powell, D. Kolonges,  
L. Meschini, M. Krohn, B. Healy, A. Buckley, T. Lee, C. Griffith,  
H. Kling, E. Weber, E. Bibler, M. Davis, I. Hansen, A. Williamson,  
L. Jones, D. Rodrigues, J. Hathaway, L. Soldati, Louisa Young,  
Richmore Village Club.

MARIAN KEGAN BRUCK.....Mildred Hook,  
Mr. and Mrs. Wesley W. Kegan, Mrs. Kate G. Pedersen.

ALEX BUCHANAN.....Mr. and Mrs. D. E. Condon,  
Mr. and Mrs. Earl Parrish, Mr. and Mrs. D. Grassi, Mrs. H. Condon.

FRED BUCHHOLZ.....Naomi Borresen, Charles Mudd, Grace Boehl  
LYSANDER CALDWELL.....Mr. and Mrs. Ernest Voigt

SANTINA CANEPA.....Fellow Employees—Shell Chemical Corporation  
E. W. CARLTON.....Mrs. H. E. Parke, Mrs. George L. Stauffer

THORNTON CARROTHERS.....Mrs. Glenn A. Durston  
IDA CATHER.....Mrs. Carl Nordhausen

EMILY CHAMBERS.....Mr. and Mrs. F. W. Hammond  
EDWARD CHARLESTON.....The Ted Bonningtons

DONN A. CHRISTY.....Mr. and Mrs. Leland Wallace  
DR. JOSEPH CIERI.....Mr. and Mrs. Frederick Bruns,  
Mr. and Mrs. M. DeLuchi, Mr. and Mrs. Joseph Eastwood  
and family.

CAROLINE BELLE CLARK.....Wilma M. Baehr  
WILLIAM CLARKE.....Mrs. Oscar Krenz

CHARLES J. CLAUSEN.....Glenn and Mary Jane Christensen,  
Mrs. Andrea Povelsen.

PAUL K. CLEMENCE.....Walter J. Heyden  
CORA CLINE.....Lidvor and Wayne Maata, Christine and Arne Moen

MINNIE WETMORE COLE.....Mrs. Henry T. Bramwell,  
Mrs. A. F. Huntington.

**From:** dave@bblandlaw.com  
**To:** gpeyton@ci.piedmont.ca.us **Cc:** dave@bblandlaw.com  
**Date:** 10/08/2007 02:51 PM  
**Subject:** Atty Peyton 10-8-07

**LAW OFFICE OF DAVID J. BOWIE**

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October 8, 2007

George Peyton, City Attorney  
City of Piedmont  
120 Vista Avenue  
Piedmont, CA 94611

Re: The Ann Martin Center, 1246 and 1250 Grand Avenue, Piedmont, CA

Dear Mr. Peyton:

As you are well aware, I represent the Ann Martin Center, which operates from two Piedmont locations and elsewhere. The Piedmont locations are at 1246 and 1250 Grand Avenue. There is presently pending an application for renewal of the Conditional Use Permit(s) under which the Ann Martin Center has conducted its business operations. Neighbors have interposed a number of objections to renewal of the Center's Conditional Use Permit(s). The neighbors' objections are impliedly or expressly based on certain legal contentions. This letter is intended to respond to those legal contentions.

1. May the Ann Martin Center Legally Operate from its Facilities Located at 1250 Grand Avenue:

The Ann Martin Center property at 1250 Grand Avenue is apparently bisected by the boundary line between Zones A and D. Neighbors have argued that there is no legal basis for business operations from that location on the ground that the Center's use could never have been legally permitted within Zone A. This particular subject is one which the City has considered on at least three prior occasions. It does not appear that a challenge to prior City action was ever mounted by neighbors in opposition to the ongoing use at 1250 Grand Avenue; the applicable statutes of limitations to challenge City action in each instance would have run many years ago as Code of Civil Procedure Section 1094.6 provides a limitations period of only 90 days following any quasi adjudicative action of the City. A current challenge based upon such old contention is clearly time barred and now irrelevant.

The Ann Martin Center acquired 1250 Grand Avenue by Deed dated March 31, 1971. In or about November 1974, Section 6A was apparently added to the Zoning Code and then and thereafter required a conditional use permit for continuation of a non-conforming private school within Zone A. On or about April 18, 1977, the City Council unanimously adopted Resolution 100-77, pursuant to which it declared that the Ann Martin Children's Center, Inc was then and had been legally operating as a private school in Zone A as it had been in existence prior to the requirement for a conditional use permit pursuant to Section 6A of the 1974 Zoning Ordinance. The underlying factual evidence upon which the Resolution was based was a report which you prepared as City Attorney based on a number of interviews of interested parties. There is no evidence within City records which would contradict the factual report presented in your 1977 Report and no timely challenge to the factual or legal basis of the City's Declaration by Resolution that the Ann Martin Center required no conditional use permit to occupy and operate from 1250 Grand Avenue.

In both 1991 and 1999, Conditional Use Permits were granted the Ann Martin Center. On neither occasion following the City's actions was a legal challenge mounted to contest the factual or legal basis upon which the said permits were issued.

Regardless of the specific date on which Ann Martin Center operations commenced at its 1250 Grand Avenue Property, they have been continuous since at least 1971. The current Piedmont Municipal Code acknowledges that any use conducted within a structure or upon open land legally established prior to and legally existing as of October 19, 1987 which does not comply with current regulations of a particular zone should be considered non-conforming. Non-conforming uses may be continued unless discontinued for a period of one year or more. See Section 17.32 et seq. On the basis of the City Council's 1977 Resolution alone, the use of which neighbors now complain could not be challenged simply because such use might continue to be deemed non-conforming. Since in this instance conditional use permits were actually issued on two prior occasions, the Ann Martin Center must be deemed to have fundamental vested rights relative to its use of its own property, which rights cannot be revoked save in the instance of a compelling public necessity. See O'Hagen vs. Board of Zoning Adjustment (1971) 19 CalApp 3d 151, 158; Goat Hill Tavern vs. City of Costa Mesa, 6<sup>th</sup> CalApp 4<sup>th</sup> 1519.

The factual basis for neighbor contentions regarding whether or not the Ann Martin Center can legally operate from 1250 Grand Avenue is that the Center allegedly misrepresented its history of operations from that location. In Baird vs. County of Contra Costa (1995) 32 CalApp 4<sup>th</sup> 1464, the court held that the County was not required to consider evidence of purported violations of an original conditional use permit in determining whether to grant a permit expansion to add facilities. While the County could revoke an existing permit if violated, such alleged violations were unrelated to the application for expansion of the permit. In this case, the issue of alleged misrepresentations of operations prior to 1971 are clearly irrelevant to the decision to renew the currently existing conditional use permit as well as time barred by virtue of the prior failure to challenge the factual and legal basis of the previously issued permits.

For all of the foregoing reasons, the current use of its 1250 Grand Avenue property by the Ann Martin Center is clearly legal, permitted, and a fundamental vested right.

2. The Legal Effect of Two different Zoning Districts Upon the Single Parcel of Real Property at 1250 Grand Avenue:

As noted above, the building at 1250 Grand Avenue is bisected by the boundary line

between Zones A and D. There does not appear to be specific provision in the Municipal Code from which the applicability of either zoning district to the property might be determined. In at least one other municipality, this situation would permit differing uses on differing portions of individually owned real property. Conflicting uses are impossible in this instance given the fact that but a single building is located in two districts and the building is indivisible.

In this particular instance, the City long ago determined the Ann Martin Center use of 1250 Grand Avenue to be legal non-conforming on the assumption that it was located within residential Zone A. The subsequent conditional use permits specifically sanctioned the current and existing use regardless of the specific zoning district in which portions of the property might be located. At this time, and for the reasons noted above, the current use is permitted and years of that use have vested the Ann Martin Center with fundamental rights regarding that ongoing use. Under the circumstances, it should make no difference in which zoning district portions of the property might exist.

In the Goat Hill Tavern case cited above, a conditional use permit of limited duration was issued to a tavern owner to permit the addition of a game room. On expiration of that permit, the City argued that all right to continue in business had lapsed. In refusing to uphold the City's decision to deny renewal of the conditional use permit, the court noted that the City proposed to destroy a business which had operated legally for 35 years. The City's action was found to affect a fundamental vested right of the property owner to continue that business.

This circumstance involving renewal of the Ann Martin Center conditional use permit is quite analogous to the Goat Hill Tavern case. In both instances, long term business operations were and are threatened by a proposed non-renewal of a conditional use permit. In both instances, the use was deemed at least in part to have been legal non-conforming. In both instances, the business operators must be deemed to enjoy fundamental vested rights to continue operations from their respective properties. In both instances, heightened scrutiny must be employed before a determination of non-renewal of a permit might occur and then such non-renewal might occur only in the event of compelling public necessity. The unusual circumstance of a property bisected by two separate zoning districts should have no bearing on this current issue of renewal of a conditional use permit.

### 3. The Legal Context of Renewal of the Ann Martin Center Conditional Use Permit.

Section 1724 of the Piedmont Municipal Code addresses Conditional Use Permits. Section 1724.2 requires that a conditional use permit be obtained or renewed in the event of a change in actual existing use or a structural change relating to a commercial use in Zone D or in the event of any proposed new church, school, multiple dwelling unit or commercial use. Obviously, the Ann Martin Center is not a proposed new use. There is no proposed structural change relating to a commercial use; finally, there is no change in actual existing use. Section 17.2.9 defines "change in actual existing use" as the addition, withdrawal or other modification of the type or quality of service, time, place, or manner of delivery of a service, number of personnel on site, or terms of lease. There is no factual basis for any contention that Ann Martin Center business operations have materially changed over the years during which it has offered services from its two Grand Avenue locations.

Section 1724.2 also provides that a conditional use permit shall be renewed prior to expiration at the term of permit and Section 17.24.1 authorizes the grant of a permit for a limited period.

As a matter of law, a conditional use permit creates a property right that runs with the land rather than a personal right in the permittee. A conditional use permit creates a property right that may not be revoked without constitutional due process. Malibu Mountains Recreation Inc vs. County of Los Angeles (1998) 67 CalApp 4<sup>th</sup> 359. The grant of a conditional use permit with subsequent reliance by the permittee creates a vested right that subjects a revocation of that permit to independent judgment review by a court. In the Goat Hill Tavern case, it was held that the circumstances surrounding renewal of a conditional use permit are more like the revocation of a conditional use permit than the mere issuance of a new one.

It has been held that once a conditional use permit has been properly issued the power of a City to revoke is limited. Since courts have typically held renewal of a conditional use permit to be subject to the same standard of review as revocation, the following judicial language provides guidance to this City when considering this issue of renewal of existing conditional use permits for the Ann Martin Center:

“Once a use permit has been properly issued, the power of a municipality to revoke is limited. Of course, if the permittee does nothing beyond obtaining the permit, it may be revoked. Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he requires a vested property right to the protection of which he is entitled. When a permittee has acquired such a vested right, it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted, or if there is a compelling public necessity. A compelling public necessity warranting the revocation of a use permit for a lawful business may exist where the conduct of that business constitutes a nuisance. The principle underlying this rule is that if such a business constitutes a nuisance, it can be removed under the police power of a municipality to prohibit and enjoin nuisances.... It must be pointed out, however, that in each instance, in order to justify the interference with the constitutional right to carry on a lawful business, it must appear that the interests of the public generally require such interference and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals....”  
O’Hagen vs. Board of Zoning Adjustment (1971) 19 CalApp 3d 151, 158-159.

In the O’Hagen case, the court viewed requirements for “good cause” and “compelling public necessity” as grounds for revocation of a conditional use permit in the context of the law of public nuisance.

The Ann Martin Center has not materially changed its business operations over more than 35 years. There has never been any suggestion that those operations constitute a public nuisance or that its services are not necessary to and welcomed by the Piedmont Community. Pursuant to case authority in the context of conditional use permits, a failure to renew the Ann Martin Center conditional use permit would be functionally equivalent to a revocation of such use permit. No one has ever suggested that grounds exist for revocation, nor have any proceedings to such effect ever been commenced.

It is respectfully submitted that the application for renewal of the Ann Martin Center Conditional Use Permit should be granted on substantially the same terms as have existed for these past many years.

I appreciate your consideration of the comments set forth in this letter.

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Very truly yours,

David J. Bowie

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October 9, 2007

George Peyton, City Attorney  
City of Piedmont  
120 Vista Avenue  
Piedmont, CA 94611

Re: The Ann Martin Center, 1246 and 1250 Grand Avenue, Piedmont, CA

Dear Mr. Peyton:

Thank you for forwarding to me the lengthy position paper submitted by Angela and Neil Teixeira in opposition to issuance or renewal of a conditional use permit as to Ann Martin Center real property located at 1250 Grand Avenue. I understand the Teixeiras have not stated objections toward Ann Center operations on adjoining real property at 1246 Grand Avenue. In a prior letter, I have commented regarding a number of general issues which I felt existed with respect to the renewal of the Ann Martin Center conditional use permits. This letter will respond to a series of specific issues raised by the Teixeiras objections.

**1. The Contention that the Ann Martin Center And Certain City Officials  
Conspired in a Plan Of Deception Designed to Achieve Non-Conforming Use Status for  
Ann Martin Center Operations at 1250 Grand Avenue.**

The Teixeiras have argued that the 1250 Grand Avenue building was historically in single family residential use. That argument has little application to the present controversy. The Teixeiras have further argued that the 1250 Grand Avenue building is "properly" residential—although they concede that it is only "mostly" in Zone A—a residential zoning district.

Zone A uses have always permitted single family residences. Conditional uses have included church or private school (together with non-conforming or "grand-fathered" uses). The Teixeiras' claim is that the subject property should be deemed residential and within Zone A;



that activities of the Ann Martin Center have never constituted a "private school" within the meaning of the Municipal Code; and that City Council action approving an ongoing non-conforming use status for the school could only have been based upon deceptive and false information provided by the school and reviewed by public officials acting as co-conspirators with the Center to deceive the public. That argument is completely without merit.

The materials provided by the Teixeiras include a letter addressed to you as City Attorney dated February 2, 1977. The letter was authored by Vince LeGris, Building Inspector. The letter describes the types of services provided by the Ann Martin Center referencing specifically clinical services for school children. The specific question posed in the letter is whether or not "...this clinical property use can be considered as 'grand-fathered'...". An undated flyer from the Ann Martin Center is included as a part of the Teixeira package presumably related to the LeGris letter. That flyer refers to an offering of a range of "psychological and educational services to children...". Minutes of a City Council meeting held April 18, 1977 include a summary of a report from you as City Attorney to the effect that it appeared the Ann Martin Center "...would probably fall within the category of a private school as defined in the Zoning Ordinance..." and its use preceding the zoning ordinance of November 1974 might render it a legal non-conforming use. Pursuant to Resolution 100-77 adopted that same date, the City Council declared the Ann Martin Center to have been legally operating as a private school in Zone A; since its existence preceded the requirement for a conditional use permit adopted in 1974, it was unanimously deemed a legal use without the necessity of a conditional use permit.

The Piedmont Municipal Code does address private schools in Chapter 16. The Teixeira objection that the Center could not have been deemed a private school in 1977 assumes its own conclusion. Section 16.4 of the Municipal Code authorizes the City Council to permit deviation or variation from all specific requirements of the applicable chapter. In short, a private school is what the City Council declares it to be.

The LeGris letter and the accompanying flyer make clear that there was no effort to disguise the fact that clinical services were included—and were apparently a mainstay at Ann Martin Center operations as of 1977. There is no factual basis for the contention that deceptive and false information was provided to the City Council. The City Council acted in accordance with its authority to declare the Ann Martin Center to be a private school for purposes of Zone A. Moreover, the Teixeiras seem to indicate by their summary of personal historical information that they were present and involved in this matter in 1977. Neither they nor any other neighbor sought judicial review or other challenge as to the City's Council's declaration of status as to the Ann Martin Center.

The factual contentions of the Teixeiras are simply unsupported by the material they have submitted in support of thereof. Regardless, they fail to explain why the City Council was wrong in its declaration as to the Ann Martin Center status and/or how it exceeded its authority in making that declaration. Finally, challenges based on the Teixeira contentions were time barred 30 years ago.

Reckless accusations of fraudulent or deceptive behavior directed toward any applicant and/or city staff are simply inappropriate as to this or any application for a conditional use permit.

**2. The Teixeira Allegation of Fraudulent and Deceptive Behavior are Completely Irrelevant to the Current Application.**

In an earlier letter forwarded to you dated October 8, 2007, I cited the case of Baird vs. County of Contra Costa (1995) 32 CalApp 4<sup>th</sup> 1464. That case involved the issue of proper consideration of purported violations of an original conditional use permit when determining whether to grant a permit expansion to add facilities. The court noted that purported past violations were essentially irrelevant to the issue of expansion of the permit. Purported violations might apply in proceedings to revoke a CUP; they were not necessarily to be considered in a decision for issuance or renewal of such a permit.

Statutes of limitation exist for good and sufficient reasons. They are designed to avoid dredging up long past disputes concerning which memories become faulty and documentary evidence incomplete or misleading. The passage of 30 years makes impossible the task of rearguing and redeciding a City Council declaration of status made in 1977. As a matter of law, the Teixeiras' contentions regarding deceptive practices are long barred; as a matter of fact they should be as well, given the impossibility of reconstructing the decision-making process then in force and the evidence upon which such decision-making was then based.

**3. 1250 Grand Avenue is Properly Considered a Property Subject to Zone D and, Therefore, Entitled to a Conditional Use Permit.**

As already noted, the Teixeira contentions that the 1250 Grand Avenue property is "mostly" within Zone A and "properly" residential are meaningless. That property is in fact bisected by the boundary line between Zones A and D. While residential uses are permissible in both zoning districts, commercial uses are limited within Zone A, but widely permissible within Zone D—all subject to issuance of a conditional use permit. Clearly, a mistake was made in bisecting an indivisible property and building by the boundary line of two separate and distinct zoning districts.

The Piedmont Municipal Code does not address this particular situation wherein a single parcel of indivisible property is subject to different zoning districts. In other jurisdictions, however, the rule of thumb is to apply the least restrictive zoning district to properties similar to that in question. Such treatment is consistent with common law notions that zoning is an exercise of police power and should be enforced only in proper circumstances as a restriction on the exercise of private property rights. In any case, the City Council obviously reserves the right to zone property subject to proper procedures and its actions are therefore indicative of its construction and interpretation of its own zoning laws.

In this instance, Zone D is really less restrictive than A since both permit residential uses but D permits a wide variety of commercial uses. There is frankly no reason to apply Zone A regulations in preference to and priority over those applicable to Zone D despite the

happenstance that the particular property may have historically been in single family residential use. As was noted by the City Council in 1991, 1250 Grand Avenue is partially within and adjoins a commercial area and is suited by location to commercial use.

The Teixeiras themselves have argued that both 1991 and 1999 CUP proceedings involved discussions in which clinical uses as well as a tutoring service have been documented at 1250 Grand Avenue. Effectively, the Teixeira contentions of misleading and deceptive information relate to 1977—not to either of the later hearings for issuance or renewal of conditional use permits. With full information after hearing, the City Council actually approved conditional use permits for the 1250 Grand Avenue property.

It might be noted that there is a legal presumption that City Councils have acted properly and in a fashion consistent with their discretion and jurisdiction Desmond vs. City of Contra Costa (1993) 21 CalApp 4<sup>th</sup> 330. That presumption and inferences to be drawn from the City Council actions in 1991 and 1999 compel the conclusion that the Council chose to apply Zone D regulations to the subject property in a fashion when it could have considered regulations of either zoning district. Clearly, the Teixeiras favor and argue only Zone A could have applied. Assuming that to have been the case, the City Council still retains the discretionary ability to declare Ann Martin operations to be consistent with a private school—as indeed it has done in the past. (See Section 16.4 of the Municipal Code). Alternatively, the Council may be deemed to have properly determined the Ann Martin Center to be eligible for a conditional use permit under Zone D regulations. In either case, the City Councils' action was appropriate and presumed valid. More to the point, the objecting neighbors waived their rights to challenge those prior determinations based on their failure to pursue their administrative remedies, including judicial review.

For present purposes, the application of Zone D to the subject property appears proper and consistent with historic treatment of the property in terms of its ongoing use. While there is no particular reason to argue the application of Zone A, no different conclusion would be reached. This is because the Council long ago declared, first, that use to be consistent with a private school and grandfathered and, later, that issuance of a conditional use permit was proper at a time when the full character and extent of operations were fully known and concededly disclosed.

There is no factual or legal basis for Teixeira contentions regarding the exclusive applicability of Zone A regulations and the failure of the Ann Martin Center to qualify thereunder.

**4. The Expiration of the Latest Ann Martin Center Conditional Use Permit Does Not Disqualify the Center from Continuing Operations or from Exercise of its Fundamental Vested Rights.**

The Teixeiras have finally argued that the 1999 CUP under which the Ann Martin Center operated expired January 2006. For this reason, the Teixeiras argue that only a short term CUP should be granted sufficient to allow relocation of the business from 1250 Grand Avenue. This contention is also without merit.

The Ann Martin Center has concededly operated from the 1250 Grand Avenue premises at least since 1971 when it acquired that property. The Center has obviously acted in reliance upon its rights to conduct business operations over a period of many years. Pursuant to case authority discussed in my earlier letter, there is no question but that the Ann Martin Center has fundamental vested rights to continue its use of the premises at 1250 Grand Avenue. Moreover, renewal of a CUP-even if expired-is treated by the courts the same as revocation proceedings. In such latter proceedings, only compelling public necessity, equivalent to a public nuisance, may provide grounds to deny renewal of the CUP.

The court in the Goat Hill Tavern case cited in my prior correspondence, dealt with essentially the same issue facing the City Council in this instance. In Goat Hill Tavern, the proprietor of a 35 years' long business sought to expand the business by addition of a game room. In this case, the 1971 proceedings indicate that it was only the need to convert an upstairs bedroom/office into two separate offices which gave rise to the requirement for a CUP. In both instances, pre-existing uses were deemed non-conforming and grandfathered.

In Goat Hill Tavern, the CUP granted for the expansion of business space had lapsed. The court noted that cities often imposed terms on conditional use permits; whether those permits lapsed on their own terms or not, an applicant who had made material improvements and significantly relied upon the CUP was entitled to treatment as though fundamental vested rights were impacted by the issue of potential non-renewal.

It might be argued as to 1250 Grand Avenue-as in Goat Hill Tavern-that the CUP applies only to the structural change portion of the building and not to the underlying grandfathered use. Since there has never been an interruption in use since at least 1971, the essence of use might be deemed non-conforming without regard to the issue of whether or not a conditional use permit might be required. In that instance, the expiration of the 1999 CUP is largely truly irrelevant.

It is submitted that the Ann Martin Center's fundamental vested right to conduct its lawful business is at issue in these conditional use permit proceedings. Case law does not sanction a non-renewal of that CUP under these circumstances. Even a non-renewal of a CUP would not necessarily terminate the long standing uninterrupted and non-conforming use of most of the facility regardless of the CUP issue.

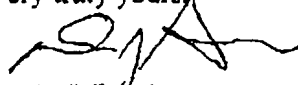
Technical expiration of the CUP has no relevance to the issue of its renewal and proceedings before the City Council. The Teixeira arguments to contrary effect are without merit.

##### 5. Conclusion.

The Ann Martin Center is a worthy organization providing needed services to Piedmont residents and others. It has a fundamental vested right to continue its operations in the absence of any compelling public necessity. The complaints of the vast majority of objecting neighbors relate to physical parking conditions and circumstances. It is submitted that parking conditions

are as typically found throughout the area and are not particularly affected by Center operations. Obviously, another commercial use can occupy the same properties as does the Ann Martin Center at present. Undoubtedly, the same or similar objections by neighbors based on parking would be raised. Neither the objections nor the factual evidence suggests a basis for concluding that a public nuisance exists as grounds for denial or non-renewal of a conditional use permit.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Bowie', with a stylized flourish extending to the right.

David J. Bowie

Cc: Ann Martin Center

## MEMORANDUM

TO : Members of the Planning Commission

FROM : Linda C. Roodhouse

DATE : December 28, 1998

RE : Issuance , Renewal and Revocation of Conditional Use Permits

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### Introduction.

Chapter 17 states that decisions to issue, deny, renew, or revoke a conditional use permit will all be governed by the standards set forth in §17.24.6. (See §§17.24.1, 17.24.2 and 17.24.8.) However, California courts have imposed additional constraints on revoking permits that are not imposed on issuing them (or denying them) on the initial application. There is little direct case law on renewals, but the fact that such permits are "conditional" from the beginning implies the right to change conditions on renewal.

### Discussion.

The concept of the conditional use permit is widely recognized in California planning law. "It permits the inclusion in the zoning pattern of uses considered by the legislative body to be essentially desirable to the community but which because of the nature thereof or their concomitants (noise, traffic, congestion, effects on values, etc.) militate against their existence in every location in a zone, or in any location without restrictions tailored to fit the special problems which the uses present." Upton v. Gray (1969) 269 Cal.App.2d 352, 357.

The greatest latitude in making a decision to grant or deny a permit exists at the initial application stage. Of course, even then, the Topanga findings requirements will apply, so that the decision must have an articulated factual basis which is tied to the applicable standards.

"Once a use permit has been properly issued the power of a municipality to revoke it is limited....Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled." O'Hagen v. Board of Zoning Adjustment (1971) 19 Cal.App.3d 151, 158. An agency may revoke a permit if (1) the permittee is not complying with the terms of the permit or (2) there is a compelling public necessity, which may exist where the conduct of that business constitutes a nuisance. O'Hagen, supra. "[I]n order to justify the interference with the constitutional right to carry on a lawful business it must appear that the interests of the public generally require such interference and that the means are reasonably necessary for the

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accomplishment of the purpose, and not unduly oppressive upon individuals. O'Hagen, supra, at p. 159. A permit may be obtained by application under a regulation requiring a permit before commencing the special use, or it may be obtained by nonconforming status, i.e., the operation began prior to the enactment of the regulation requiring a permit.

"Interference with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance." Goat Hill Tavern v. City of Costa Mesa 1992 6 Cal.App.4<sup>th</sup> 1519, 1529. The reviewing court will use its independent judgment to review the facts in deciding whether the permit should be revoked or not. Thus, in an agency hearing to revoke a conditional use permit, facts must be established to show clearly that the permittee is not in compliance with the permit or that the operation of the permitted use constitutes a nuisance which creates a compelling public necessity to terminate the use.

It is likely that the agency will also need to show that there are no conditions it could impose which would alleviate the alleged problem. If the imposition of reasonable new conditions will obviate the nuisance or bring the permittee back into compliance, it is preferable to amend rather than to revoke a permit. That is what happened in both the O'Hagen and the Upton cases. See also, Garavatti v. Fairfax Planning Com. 1971 22 Cal.App.3d 145, 149. The court will not exercise its independent judgment in cases about permit amendments, since the vested right to continue the business is not being "interfered with" in the sense of termination. See, Upton v. Gray, p. 358, 359. The court will uphold the agency's decision if there is substantial evidence in the record to support the decision. The hearing body's charge in amendment cases is therefore to carefully identify the problems, if any, and to tailor conditions to address those problems, potential or real, making careful findings for each applicable standard.

In Piedmont's case, the applicable standards for renewal are the same as for initial issuance, under §17.24.8. The right to fashion new conditions to meet changed circumstances is implied in California case law as explained above, although it is not stated clearly in the city's regulations.

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