

**In the Matter of:**

Temecula Planning Commission Hearing

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**TRANSCRIPT OF PROCEEDINGS**

*February 15, 2023*

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Reporting and Videography

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BEFORE THE PLANNING COMMISSION  
OF THE CITY OF TEMECULA

IN THE MATTER OF THE REVOCATION OF )  
THE CONDITIONAL USE PERMIT OF THE )  
BANK AND ZIP THIRD INVESTMENTS, LLC, ) PUBLIC HEARING  
AND CONSIDER PROPOSED DECISION OF )  
THE OFFICE OF ADMINISTRATIVE HEARINGS) )  
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TRANSCRIPT OF PROCEEDINGS  
Temecula, California  
Wednesday, February 15, 2023

Reported by:

AMANDA KARMANN  
HEARING REPORTER

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Transcript of Proceedings, taken at  
Temecula City Hall, 4100 Main Street,  
Temecula, California, beginning at 10:00 a.m. and  
ending at 1:55 p.m. on Wednesday, February 15, 2023,  
heard before City of Temecula Planning Commission,  
reported by Amanda Karmann, Hearing Reporter.

1 APPEARANCES:

2

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1 APPEARANCES CONTINUED:

2

3 PLANNING COMMISSION MEMBERS:

4 Bob Hagel

5 Adam Ruiz

6 Fernando Solis

7 Lanae Turley-Trejo

8 Gary Watts

9

10 PUBLIC SPEAKERS:

11 Steven Slaughter

12 Cesar Rodriguez

13 Rod Parent

14 Deshai Tibbs

15 Chris Cuipo

16 Shawn Owens

17

18 ALSO PRESENT:

19 Denise Jacobo, Commission Secretary

20 Luke Watson, Deputy City Manager

21 Tyler Sherman

22 Amanda Lane, The Bank

23 General Public, not identified

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1 Temecula, California; Wednesday, February 15, 2023

2 10:00 a.m.

3

4 (The proceedings begin at 10:00 a.m. with  
5 the Pledge of Allegiance.)

6 COMMISSIONER TURLEY-TREJO: Thank you,  
7 Commissioner Watts.

8 Roll call, please.

9 MS. JACOBO: Vice Chair Hagel?

10 COMMISSIONER HAGEL: Here.

11 MS. JACOBO: Commissioner Ruiz?

12 COMMISSIONER RUIZ: Here.

13 MS. JACOBO: Commissioner Solis?

14 COMMISSIONER SOLIS: Here.

15 MS. JACOBO: Commissioner Watts?

16 COMMISSIONER WATTS: Here.

17 MS. JACOBO: And Chair Turley-Trejo?

18 COMMISSIONER TURLEY-TREJO: Here.

19 Thank you, Denise.

20 Do we have any public comments on non-agenda  
21 items?

22 MS. JACOBO: We have received none.

23 COMMISSIONER TURLEY-TREJO: Okay. Thank you.

24 Okay. So today we are conducting a hearing  
25 in the matter of the revocation of the Conditional

1 Use Permit of The Bank and Zip Third Investments, and  
2 consider a proposed decision of the Office of  
3 Administrative Hearings.

4 The recommendation is that the  
5 Planning Commission conduct a public hearing in the  
6 matter of the revocation of the Conditional Use  
7 Permit of The Bank and Zip Third Investments,  
8 consider the proposed decision of the Office of  
9 Administrative Hearings, and render a decision  
10 upholding or denying the proposed decision. This  
11 hearing is proceeding under Temecula Municipal  
12 Code Section 17.03.085.

13 All right. I will open the public hearing.  
14 I am going to go ahead and read the rules for the  
15 public hearing.

16 Any person may submit written comments to the  
17 Commission before a public hearing or may appear and  
18 be heard in support of or in opposition of the  
19 approval of the projects -- project or projects at  
20 the time of the hearing.

21 If you challenge any of the projects in  
22 court, you may be limited to raising only those issue  
23 you or someone else raised at the public hearing or  
24 in written correspondence delivered to the Commission  
25 secretary at or prior to the public hearing.



1           For public hearings, each speaker is limited  
2 to five minutes. Public comments may be made in  
3 person at the meeting by submitting a speaker card to  
4 the Commission secretary or by submitting an e-mail  
5 to be read out loud into the record at the meeting.

6           E-mail comments must be submitted to  
7 planningcommission@temeculaca.gov. E-mail comments  
8 on all matters, including those not on the agenda,  
9 must be received prior to the time the item is called  
10 for public comments.

11           Any person dissatisfied with the decision of  
12 the Commission may file an appeal of the Commission's  
13 decision. Said appeal must be filed within 15  
14 calendar days after service of written notice of the  
15 decision.

16           The appeal must be filed on the appropriate  
17 community development department form and be  
18 accompanied by the appropriate filing fee.

19           All public participation is governed by the  
20 council policy regarding public participation at  
21 meetings adopted by Resolution No. 2021-54.

22           Okay. So we will start with the attorney for  
23 the City and have her present their case. Thank you.

24 ///

25 ///

1 PRESENTATION SPEAKER

2 MS. PETRUSIS: Thank you. Okay. Great.

3 Good morning, Honorable Chairperson and  
4 members of the Planning Commission. My name is  
5 Jennifer Petrusis and I represent City staff in this  
6 proceeding before you today.

7 Now, the purpose of this hearing is for the  
8 Planning Commission to decide whether to confirm,  
9 modify, or revoke -- I'm sorry -- or overturn an  
10 independent hearing officer's decision to revoke the  
11 Conditional Use Permit that was granted to The Bank  
12 Restaurant.

13 To quickly introduce this matter, City staff  
14 seeks to revoke the CUP after issuing over 100  
15 citations and civil penalties over the course of  
16 17 months for violations that The Bank admits to  
17 making.

18 An administrative law judge with the  
19 California Office of Administrative Hearings heard  
20 all of the evidence offered by the City, by the  
21 owners and operators of The Bank Restaurant, and from  
22 the owner of the property on which The Bank is  
23 located, and decided that the CUP should be revoked.

24 Now, according to the Municipal Code, the  
25 decision by the administrative law judge is

1 automatically reviewed by the Planning Commission;  
2 however, this isn't a full evidentiary hearing. The  
3 parties will not be offering any new evidence at this  
4 hearing today.

5 Pursuant to the Municipal Code, the  
6 Planning Commission shall only consider the evidence  
7 that was presented to the administrative law judge  
8 and any new evidence offered by the public today.

9 To some of the City's position, given the  
10 evidence of 17 months' worth of violations of the  
11 CUP, including admitted violations of its operating  
12 hours, admitted violations of the approved hours to  
13 sell alcohol, undisputed excessive noise violations,  
14 and evidence that The Bank had become a disorderly  
15 house in violation of its CUP, the Planning  
16 Commission should confirm the administrative law  
17 judge's decision to revoke the CUP.

18 I would like to next give you an overview or  
19 roadmap for my presentation this morning, so first  
20 I'm going to discuss a history of the CUP that was  
21 requested by and issued to The Bank. I'm then going  
22 to discuss the specific violations, the timeline of  
23 those violations over the course of 17 months, and  
24 the many, many citations and civil penalties that  
25 were issued to The Bank.

1 I'm then going to explain that City staff has  
2 taken all of the necessary steps to comply with the  
3 Municipal Code requirements to revoke the CUP, and  
4 then I'm going to discuss the hearing that occurred  
5 before the administrative law judge, the evidence  
6 that was presented, and the ALJ's decision to revoke  
7 the CUP.

8 So first, a history of the CUP that was  
9 requested and issued. To begin, in November 2007,  
10 Craig Puma of CNC Corporation -- I'm sorry -- CNC  
11 Puma Corporation applied for a Minor Conditional Use  
12 Permit for use by The Bank Restaurant, and in  
13 January 2008 the planning director approved  
14 PA07-0314.

15 Now, the purpose of that CUP was to upgrade  
16 from a Type 41 ABC license to a Type 47 license so  
17 that the restaurant could sell distilled spirits, and  
18 then later that year, also in 2008, Mr. Puma sought  
19 to modify the CUP to extend the hours that The Bank  
20 could sell alcohol, and the Planning Department  
21 approved that. That was PA08-0236.

22 Now, through this modification the restaurant  
23 manager could decide to stay open past its regular  
24 operating hours until 2:00 o'clock a.m., and on those  
25 instances alcoholic beverages could be served until

1 2:00 a.m. with the last call of 1:30 a.m.

2 A few years later in 2012, Mr. Puma requested  
3 another modification of the CUP so that he could have  
4 certain live entertainment at the restaurant for  
5 background music while dining, and the Planning  
6 Department approved that, and that was PA12-0041;  
7 however, the conditions of approval changed the  
8 approved operating hours and there was no longer a  
9 provision permitting the restaurant to stay open  
10 until 2:00 a.m.

11 Now, The Bank asserted at the administrative  
12 hearing that the hours must have been changed back in  
13 error; however, Planning Manager Stuart Fisk  
14 testified at that hearing that he was involved in  
15 that -- in the issuance of the 2012 minor  
16 modification and that the director of Planning at the  
17 time told him he would only approve the 2012 minor  
18 modification application if the hours of operation  
19 were set back to those of the original 2007 CUP.

20 The hours set forth in the 2012 conditions of  
21 approval were not an accident, were not made in  
22 error. They were purposely set.

23 So to be clear, there's only one CUP at issue  
24 in this proceeding. It is 07-0314, which has been  
25 modified twice at the request of Mr. Puma. The final

1 conditions of approval for the 2012 modification are  
2 the current conditions of approval and they supersede  
3 the first minor modification and the provision that  
4 the restaurant could stay open until 2:00 a.m.

5 So I would like to now go over some of the  
6 important relevant provisions of the current  
7 conditions of approval for the CUP that are relevant  
8 to this proceeding.

9 The approved hours are contained in  
10 Condition No. 12, which is at page 113 in your agenda  
11 packet. The restaurant must close by 10:00 p.m.  
12 Monday through Thursday and on Sundays, and at 11:00  
13 o'clock p.m. on Fridays and Saturdays.

14 The approved hours for sale of alcohol are  
15 also in Condition No. 12, and they require the sale  
16 of alcohol to cease by 10:00 p.m. Monday through  
17 Thursday and on Sundays, and at 11:00 p.m. on Fridays  
18 and Saturdays, and the consumption of alcohol must  
19 cease one hour after these closing hours.

20 The Bank can have indoor entertainment  
21 consisting of one keyboard or other instrument played  
22 with one vocalist for the purpose of providing  
23 background music from noon until 10:00 o'clock p.m.  
24 That's in Condition No. 9.

25 And according to Condition No. 28C, as in

1 cat, the licensed premises may not become a  
2 disorderly house.

3 A disorderly house is defined in the  
4 Conditions of Approval as a licensed outlet that  
5 disturbs neighbors with noise, loud music, loitering,  
6 littering, vandalism, urination, defecation,  
7 graffiti, and/or has many ongoing crimes inside or in  
8 the parking lot such as drunks, fights, assaults,  
9 prostitution, narcotics, et cetera.

10 As part of its normal process, staff notified  
11 Mr. Puma about his right to appeal the Conditions of  
12 Approval. That document is page 111.

13 If Mr. Puma wasn't happy with the Conditions  
14 of Approval imposed as part of the modified CUP, he  
15 had 15 days from the date of the approval to appeal.  
16 It is undisputed that Mr. Puma never appealed the  
17 Conditions of Approval.

18 Now to discuss the violations of the CUP by  
19 The Bank. The City first became aware of The Bank  
20 operating outside of its approved operating hours  
21 when they received a complaint from the Temecula  
22 Police Department.

23 The police department had noticed problems  
24 related to over-serving of alcohol at The Bank and  
25 resulting disturbances caused by fights and public

1 intoxication.

2 Code Enforcement Field Supervisor Tom Cole  
3 began walking with police officers in the Old Town  
4 area and he personally observed The Bank operating  
5 outside of its approved operating hours and serving  
6 alcohol past the approved hours.

7 Mr. Cole also observed customers of The Bank  
8 falling down from intoxication and vomiting, and he  
9 observed individuals picking a fight with Temecula  
10 police officers, and all of this was happening after  
11 11:00 p.m., which is the required closing hour.

12 The Temecula Police Department also noted on  
13 many occasions individuals stopped for public  
14 intoxication and arrested for DUI were telling them  
15 that they were coming from The Bank.

16 The police department observed several  
17 assaults per night happening in front of deputies and  
18 in front of The Bank. They also noticed that  
19 security guards from The Bank would push individuals  
20 who were fighting away from the restaurant into the  
21 street.

22 Most of these incidents occurred after  
23 11:00 p.m., and a vast majority occurred closer to  
24 midnight to 2:00 a.m., outside of the approved  
25 operating hours.



1           In January 2022 there was a shooting at the  
2 restaurant that occurred after the restaurant should  
3 be closed. The shooting involved an ex-employee of  
4 The Bank who had worked at The Bank as a security  
5 guard and who had a felony conviction at the time  
6 that he was working at The Bank. That former  
7 employee was killed. Three other individuals were  
8 shot.

9           A few months earlier in November 2021,  
10 another shooting occurred when patrons of The Bank  
11 who were celebrating a birthday at the restaurant got  
12 into a verbal altercation and a shooting occurred  
13 approximately 50 to 100 feet down the sidewalk.

14           Mr. Cole determined The Bank was violating  
15 the City's noise ordinances, and he used a decibel  
16 reader to take noise readings.

17           Now, the permitted level of noise in Old Town  
18 is 70 decibels. Mr. Cole would check noise levels  
19 from an adjacent property at The Bank while a DJ was  
20 observed playing after approved hours, and that level  
21 was 95 on numerous occasions.

22           The Bank is permitted to have certain indoor  
23 dinner entertainment consisting of, as I mentioned,  
24 one keyboard or other instrument and one vocalist to  
25 provide background music from noon until 10:00 p.m.;

1 however, The Bank had a DJ with speakers pointed into  
2 the street intersection producing loud and excessive  
3 noise in violation of the City's noise ordinance and  
4 in excess of what live entertainment was permitted by  
5 the CUP.

6 Beginning in March of 2021, Mr. Cole started  
7 issuing citations to The Bank for violating the  
8 approved operating hours beyond 11:00 p.m. and for  
9 having excessive noise levels with outside speakers  
10 in violation of the CUP and Municipal Code.

11 Mr. Cole issued 34 citations between March  
12 and July of 2021. The violations continued, so  
13 pursuant to the Municipal Code, Mr. Cole began  
14 issuing civil penalty letters to The Bank which have  
15 a higher fine amount.

16 He issued 109 civil penalty letters from  
17 July 2021 up until we had our hearing before the  
18 administrative law judge in August of 2022.

19 Now, on August 20th, 2021, shortly after  
20 Mr. Cole started issuing civil penalties, Mr. Cole  
21 sent a notice to Zip Third Investments LLC. That is  
22 the company that owns the property on which The Bank  
23 is located, and the purpose of this notice was to let  
24 Zip Third know that its tenant, The Bank, was  
25 violating the Temecula Municipal Code, including that

1 it was operating in violation of the permissible  
2 operating hours.

3 Mr. Cole never received a response from  
4 Zip Third. Zip Third was then sent copies of each of  
5 the civil penalty letters that were thereafter issued  
6 to The Bank. All told, 97 civil penalty letters were  
7 sent to Zip Third. They were copied.

8 City staff used the address for Zip Third  
9 that is listed with the California Secretary of  
10 State, and Mr. Solomon of Zip Third testified at the  
11 hearing that this Wilshire address is the correct  
12 address.

13 None of these letters were ever returned as  
14 undeliverable. No person from Zip Third ever reached  
15 out to Mr. Cole.

16 So all told, staff issued over 100 citations  
17 and civil penalties over the course of 17 months.  
18 The Bank continued to violate the CUP even up until  
19 we had the hearing before the administrative law  
20 judge as part of this revocation process.

21 Now I'm going to talk about The Bank's and  
22 Zip Third's reaction. So Craig Puma -- again, his  
23 company is CNC Puma Corporation -- owns the  
24 restaurant, and he was aware of the citations. He  
25 testified he was aware of the citations.

1 Amanda Lane is the president and CEO of that  
2 corporation and she is the day-to-day manager of the  
3 restaurant, and she also was aware of the citations.  
4 In fact, she paid approximately \$15,000 in fines as  
5 she received citations and civil penalties.

6 Both of them contacted Luke Watson to claim  
7 that the operating hours in the CUP were incorrect.  
8 Mr. Watson explained, no, they're not, and he  
9 provided the operating hours again to Mr. Puma. He  
10 explained that they must file a minor modification  
11 application if they wanted to change those approved  
12 hours.

13 The Bank never applied. No one ever applied  
14 for a minor modification to change the operating  
15 hours, and certainly we know that Mr. Puma knew how  
16 to do that because he had done that twice before with  
17 the CUP.

18 No one ever appealed any of the citations for  
19 civil penalties, and as I mentioned, a portion of  
20 them were paid. The majority, though, have been left  
21 unpaid and are delinquent.

22 Additionally, Mr. Cole had several  
23 conversations with Ms. Lane over an approximate  
24 18-month period regarding The Bank's violations of  
25 approved operating hours. Ms. Lane never told him,

1     though, that she would comply, and so Mr. Cole  
2     continued to issue citations and civil penalties.  
3     With all of this, City staff really had no other  
4     choice but to proceed with this revocation action.

5             Now, Section 17.03.085 sets out the process  
6     by which the City may revoke a CUP. It begins with  
7     the planning director sending a notice to the permit  
8     holders and to the city clerk that explains that he  
9     is recommending the revocation of the CUP, and that  
10    was done. That letter is at page 267 of your packet.

11            During testimony before the administrative  
12    law judge, both The Bank and Zip Third admitted that  
13    they had received this notice.

14            The next step in the process is to have a  
15    public hearing before an independent hearing officer.  
16    In this case, as I mentioned, the hearing was held  
17    before an administrative law judge with OAH.

18            The ALJ received oral and written evidence  
19    from all of the parties, heard testimony from  
20    Mr. Watson, Mr. Cole, and Sergeant Hephner of the  
21    Temecula Police Department, and from Planning Manager  
22    Stuart Fisk regarding all of the violations.

23            The ALJ also heard testimony from the owners  
24    and operators of The Bank and from a representative  
25    from Zip Third.

1           Of particular note, during the hearing before  
2 the ALJ, the owner and operators admitted to  
3 operating the restaurant until 2:00 a.m. Ms. Lane  
4 testified that The Bank typically closed at 2:00 a.m.  
5 on Fridays and Saturdays, and that on Sundays it  
6 typically closed between 10:00 p.m. and midnight.

7           They admitted to selling alcohol past the  
8 approved hours in the Conditions of Approval. They  
9 admitted to having a live DJ that would perform  
10 usually up until 1:00 a.m. depending on the day.  
11 Ms. Lane also admitted to having drag show  
12 performances at the restaurant.

13           During the hearing a private investigator  
14 retained by the City testified that he went to The  
15 Bank on July 10, 2022. This is after the planning  
16 director sent the notice that he was recommending  
17 revocation.

18           That investigator observed The Bank continue  
19 to operate and sell alcohol after 11:00 p.m.  
20 Notably, when the investigator went outside of the  
21 restaurant to take a noise reading, he was approached  
22 by two security guards from The Bank who threatened  
23 to beat him up if he did not give him -- give them  
24 his phone. They had apparently seen him taking  
25 photographs from inside the restaurant.

1           So there was evidence presented as 17 months'  
2 worth of violations and that these violations  
3 continued even after the City notified The Bank and  
4 Zip Third that it intended to seek revocation of the  
5 CUP.

6           As to Zip Third, Ms. Lane testified that she  
7 contacted an individual with Zip Third in July of  
8 2021 to inform him of the citations that were issued  
9 from the City. As it turns out, this person is with  
10 the property management company hired by Zip Third.

11           Mr. Solomon of Zip Third testified that his  
12 office had received some of the civil penalties sent  
13 to his office. He admits to receiving at least 16,  
14 the earliest dated March 7, 2022, which was before  
15 the planning director sent his notice.

16           Of course, it is City staff's position that  
17 all 97 civil penalty letters were sent to Zip Third,  
18 none of which were returned, but at the very least  
19 Zip Third was on notice of the violations in March  
20 2022, which was five months before the hearing before  
21 the administrative law judge.

22           Based on the evidence presented by all of the  
23 parties, the ALJ decided that the City had  
24 demonstrated by clear and convincing evidence that  
25 CNC Puma Corporation doing business as The Bank had

1 frequently and continuously violated the approved  
2 conditions of approval for its CUP.

3 Specifically the ALJ found that The Bank  
4 violated Condition No. 12 by continuously operating  
5 outside of its approved operating hours, that it  
6 violated Condition No. 12 by selling alcohol to  
7 customers at hours beyond the approved hours,  
8 violated Condition No. 9 by having live entertainment  
9 beyond that which was permitted in the CUP, and  
10 violated Condition No. 28C by becoming a disorderly  
11 house.

12 The Bank argued that it did not realize the  
13 approved hours had changed in the last modification.  
14 The ALJ found that any mistaken beliefs about the  
15 permitted hours did not absolve the violations, and  
16 that is certainly City staff's position as well.

17 The ALJ also found The Bank had created loud  
18 noise beyond what was permitted by the Municipal Code  
19 and that law enforcement had established The Bank had  
20 become a disorderly house in violation of the CUP.

21 The evidence presented to the ALJ established  
22 a long history of intentional violations of the CUP.  
23 We are not talking about a few isolated mistaken  
24 violations.

25 What we have here is a restaurant that for



1 over a year and a half refused to comply with the  
2 CUP. No doubt The Bank does not want to close at its  
3 approved operating hours and wants to stay open later  
4 than 11:00 p.m. on Fridays and Saturdays, but it  
5 decided to continue to violate rather than to go  
6 through the proper process of applying for a minor  
7 modification or even to appeal any of the citations,  
8 any of the civil penalties.

9 City staff was left with no other option than  
10 to bring this revocation action as the AL determined  
11 the City has met its burden of establishing  
12 violations of the CUP and that the CUP should be  
13 revoked.

14 Accordingly, City staff requests that this  
15 Planning Commission confirm the independent hearing  
16 officer's decision to revoke the CUP.

17 Thank you very much, and I would like to  
18 reserve the rest of my time for rebuttal.

19 COMMISSIONER TURLEY-TREJO: Thank you so much  
20 for your presentation. You might want to stay there  
21 in case we have questions for you as Commissioners  
22 right now.

23 MS PETRUSIS: Of course.

24 COMMISSIONER TURLEY-TREJO: Okay. So thank  
25 you for that presentation. It was very clear.

1           So I'm going to start on my left with  
2 Commissioner Ruiz.

3           COMMISSIONER RUIZ: Thank you.

4           Thank you, Ms. Petrusis. I did have a  
5 question in reviewing the packet. There was the  
6 2008, the original CUP acceptance signed by the  
7 applicant.

8           2008 in the packet was presented, but there  
9 was no signature, at least it didn't appear a  
10 signature in our packet.

11           Was that ever signed?

12           MS. PETRUSIS: Do you mean the -- the 2012  
13 Conditions of Approval, was that ever signed?

14           I don't -- if it's not in the packet, I don't  
15 believe we have a copy of the signed --

16           COMMISSIONER RUIZ: Okay. Yeah.

17           MS. PETRUSIS: -- Conditions of Approval.

18           COMMISSIONER RUIZ: Yeah. I was just looking  
19 for those two, the 2008 acceptance and the 2012 that  
20 would be signed from the applicant acknowledging that  
21 they accepted those terms to that CUP, that  
22 modification.

23           MS. PETRUSIS: Right. And what we do have,  
24 though, is evidence in the testimony that Mr. Puma  
25 received the conditions of approval. He does not

1 dispute that he ever received the Conditions of  
2 Approval.

3 COMMISSIONER RUIZ: Thank you.

4 COMMISSIONER TURLEY-TREJO:  
5 Commissioner Watts?

6 On this end? No questions?

7 No questions. Okay. Thank you very much.

8 MS. PETRUSIS: Thank you.

9 COMMISSIONER TURLEY-TREJO: We appreciate  
10 that.

11 Okay. We will move on to the attorney for  
12 The Bank and restaurant owner to present their case.

13 You also have 45 minutes if you need it.

14

15 PRESENTATION SPEAKER

16 MR. PENMAN: Thank you.

17 Mr. Ruiz, to answer your question, they did  
18 not sign it. The Temecula Municipal Code provides  
19 that they are to sign it, and our position is they  
20 never did accept those conditions.

21 My name is James Penman. I was elected city  
22 attorney for the City of San Bernardino for 26 years.  
23 I've dealt with many of these cases.

24 When I was first hired on this one, I did my  
25 usual practice, looked at the record, see if I needed

1 to advise my clients they just need to say, Hey, the  
2 City is right, and go from there.

3 When I got on the record, I saw that wasn't  
4 the case here. In making the recommendation to  
5 revoke the decision, to revoke the CUP, the planning  
6 director relied on a great deal of incorrect  
7 information given to him.

8 One of those things was that a murder that  
9 occurred at The Bank could have been prevented by the  
10 restaurant owners -- and that's in the testimony --  
11 merely if they'd closed earlier, and Mr. Watson  
12 testified to that.

13 The shooting occurred at 10:39,  
14 10:40 a.m.[sic]. We just heard the city attorney say  
15 that the restaurant was supposed to close at 10:00,  
16 but patrons could continue to consume alcohol for an  
17 hour afterwards.

18 The shooting occurred at approximately 10:40  
19 according to Sergeant Hephner, so that had nothing to  
20 do with that. There was nothing that they could have  
21 done.

22 Planning director said that there was  
23 numerous violations, so forth and so on, but, in  
24 fact, the record does not completely substantiate  
25 that, and that's what you're being asked to look at,

1 is the record.

2 The primary problem is in 2008 The Bank  
3 applied for the minor modification, which was  
4 granted, and it allowed The Bank to stay open until  
5 2:00 a.m. Thursdays, Fridays, and on holidays.

6 On February 2nd, 2012, The Bank applied for  
7 another modification solely for the purpose of having  
8 live entertainment. The request to have live  
9 entertainment was granted, but in preparing that, the  
10 staff person inadvertently missed the 2008  
11 modification allowing the restaurant to stay open  
12 until 2:00 a.m.

13 How do we know that? There are three ways to  
14 tell that that was a mistake. One, in 2007 The Bank  
15 had a Type 41 liquor license allowing only the sale  
16 of beer and wine. In 2008, that minor modification,  
17 upgraded it to a Type 47.

18 But if you look at the 2012 modification --  
19 excuse me -- if you look at the 2008 modification,  
20 you will see that the staff cut and pasted -- I'm  
21 getting ahead of myself -- the 2012 modification, the  
22 staff cut and pasted not the 2008 modification  
23 allowing them to stay open until 2:00 a.m. on  
24 weekdays and holidays, but the one from 2007  
25 requiring them to close at 11:00 Fridays, Saturdays,

1 and weekends.

2           How did that happen? They simply missed the  
3 2008 modification. How do we know that? They later  
4 testified -- testimony indicates in the second  
5 transcript that when The Bank went to the Planning  
6 Department to ask for a copy of the 2008  
7 modification, they couldn't find it. They didn't  
8 have it.

9           The Bank went to ABC and ABC had filed a 2008  
10 modification which showed that The Bank was allowed  
11 to stay open until 2:00 a.m. The City did not  
12 have it, and that -- they testified. That testimony  
13 is in the records.

14           There's a 2021 exchange between  
15 Planning Director Luke Watson and Planner Stuart in  
16 the evidence that's before you, and there is no -- a  
17 number of e-mails. The e-mails are in evidence.

18           There's no discussion of change in the hours  
19 that appears on the record in that 2012 application,  
20 and there's a problem with the e-mails.

21           January 19, 2021, Planning Director Watson  
22 e-mails Fisk and includes a copy of the 2012  
23 modification, and Mr. Watson is confused or  
24 uncertain. You can see that in these e-mails about  
25 what happened. And Fisk e-mails to Watson, "I don't

1 recall taking anything to hearing to modify their  
2 hours," referring to 2012. "Are you recalling  
3 something?"

4 Watson, expressing surprise, responds, "No.  
5 Just the closing hours are so early."

6 That's Exhibit A of the hearing evidence,  
7 page 4 -- excuse me -- Exhibit H of the hearing  
8 evidence, page 4.

9 Jaime Cardenas denied to The Bank that the  
10 City had a copy of the 2008 minor modification. That  
11 information is on page 140, lines 14 to 16, Minor  
12 Modification, 2008, Exhibit I.

13 Cardenas also told Ms. Lane, the -- one of  
14 the owners, that the restaurant can be open until  
15 2:00 a.m., relying erroneously, I believe, on  
16 language in the 2012 modification. Nonetheless, the  
17 evidence shows that's what she was told.

18 Cardenas also told Lane, according to the  
19 transcript, Volume II, page 149, lines 7 to 15, that  
20 the City went from one program to another, and when  
21 they changed programs they lost a bunch of documents.

22 So okay. I don't know when that was, and I  
23 don't work for the City, but based on what Jaime  
24 Cardenas told me -- and this is Ms. Lane  
25 testifying -- she formed the opinion the City did not

1 have possession of the 2008 minor modification, which  
2 is why Mr. Puma went to ABC and got a copy of it.  
3 They did have it, and they presented that to the  
4 City. Mr. Puma e-mailed a copy of that to Mr. Watson  
5 on March 3rd, 2021.

6 Now, the City claims that the reason they did  
7 not enforce the new hours from the time of 2012 in  
8 that modification until they started enforcing it in  
9 February 2021, 9 years later, was they didn't know  
10 about it, but that's not what the evidence shows.  
11 The evidence shows that City staff and officials were  
12 at The Bank Restaurant themselves having dinner after  
13 10:00 p.m.

14 This record does not justify the decision  
15 made by the administrative law judge. We did not use  
16 administrative law judges in San Bernardino because  
17 our finding was that they have contracts with the  
18 city, and if they don't come back with a decision  
19 favorable to the city, their contracts don't get  
20 renewed.

21 We use independent hearing officers, retired  
22 judges, attorneys, who had a two- or three-year  
23 contract that cannot be renewed for another two or  
24 three years, so the motive to just rule in favor of  
25 the city was taken away.



1           You don't have that here in Temecula, and I  
2 think that's a problem. And I think it's a problem  
3 with administrative law judges, and that's one reason  
4 why the courts give more credence -- in my opinion  
5 and my experience -- to Hearing Officers -- they have  
6 limited contracts that can't be renewed -- than they  
7 do to the administrative law judges.

8           Now, the testimony of Sergeant Hephner was  
9 that the homicide occurred January 9, 2022. He was  
10 not working that evening, but he was briefed on it.

11           Subjects, two males, one pulled a gun. You  
12 heard the City attorney say that that -- that they  
13 were at The Bank. Huh-uh. Not so.

14           How do we know that? Because, according to  
15 the testimony, subsequently two officers went to  
16 The Bank and asked to see a copy of the tape from the  
17 November 2021 shooting. This is the second -- this  
18 is the first shooting, the one that they -- I'm  
19 skipping here, but there was another shooting in  
20 November of 2021, and Sergeant Hephner testified that  
21 the patrons were at The Bank. They were not.

22           When the investigating officers went to  
23 The Bank and saw the tape, they saw the bouncer turn  
24 away the two people that were involved in the  
25 shooting because they were already intoxicated having

1 come from other restaurants.

2           The officers told The Bank staff, Okay, they  
3 were never here. That's in the -- that's in the  
4 transcript as well. That's in Volume II, page 116,  
5 line 16 to 25, and page 117, lines -- you have this.  
6 All of these things I'm saying are -- the citations  
7 are in here.

8           Sergeant Hephner also testified that at the  
9 candlelight vigil for the victim of the murder, he  
10 encountered a person who was acting suspiciously, and  
11 he searched him and he found a gun on him, and that  
12 was an arrest that he attributed to The Bank.

13           The problem is the testimony also shows  
14 The Bank was closed the day of the vigil, January  
15 13th, 2022. Transcript Volume II, page 137, line 67.  
16 The Bank wasn't open.

17           This is all the evidence that Mr. Watson had,  
18 the planning director, when he made the  
19 recommendation to revoke the CUP, and it was based on  
20 this wrong evidence that Mr. Watson made that  
21 decision.

22           Sergeant Hephner testified that a security  
23 guard, whose name, the sergeant believed, was Venom,  
24 refused to tell the deputies he had witnessed what he  
25 had witnessed the day of the November 2021 shooting,

1 and he said he was uncooperative and wasn't --  
2 wouldn't provide the information.

3 Subsequent testimony shows that when he  
4 reported that, The Bank manager, they fired the man  
5 the same day. Sergeant Hephner testified they fired  
6 him for another incident later. Not true. The  
7 evidence shows they fired him the same day. Evidence  
8 further shows that the man's nickname was not Venom.  
9 It was Virus.

10 Why is this important? Because  
11 Sergeant Hephner testified that in his experience as  
12 a police officer, understandably, if someone had a  
13 moniker or a nickname, they were affiliated with a  
14 gang, and he made the assumption that this guy that  
15 he thought his name was Venom thought that was the  
16 case.

17 Later testimony showed the name wasn't Venom,  
18 it was Virus, and he was an artist and somehow that's  
19 how he got the name.

20 Sergeant Hephner testified that there were  
21 other security guards at the bank that had nicknames,  
22 and that indicated to him they were -- maybe had gang  
23 affiliation.

24 Subsequent testimony showed that the only  
25 other moniker or nickname by a security guard at

1 The Bank was Eagle, and that man was a  
2 Native American and the nickname Eagle was given to  
3 him by his father.

4 The list of the incidents involving DUIs  
5 shows -- connected to The Bank shows a stolen vehicle  
6 on July 3rd, 2021 that supposedly came from the  
7 parking lot behind The Bank, but The Bank doesn't own  
8 that parking lot. It's open to the public.

9 A person ran into the restaurant, a lady -- a  
10 young lady cried her car had been stolen. The  
11 restaurant called the police. The police came, but  
12 The Bank got stuck with that as one of the crimes  
13 occurring at The Bank.

14 A suspicious-circumstance call related to  
15 The Bank on August 1, '21, The Bank staffer  
16 testified -- it's in the record -- that was her  
17 birthday and she remembered it, and they were open  
18 that day but nothing happened.

19 By the way, you'll notice a lot of those  
20 incidents say, "no report." I -- I think more than  
21 that, about half of them say, "no report."

22 When it says, "no report," it's because when  
23 the officers got there, there was nothing to report  
24 on. There was no evidence of anything having --  
25 having occurred.

1           On another occasion an older homeless man was  
2 outside The Bank yelling and swearing. He was known  
3 to the police. Bank staff called the police, they  
4 responded, and that was charged to The Bank as a  
5 problem there at the restaurant, even though the man  
6 had never gone into The Bank.

7           As to the list of The Bank's calls for  
8 service, which are in the transcript, the other ones  
9 are in there, too, and you need to look at those.

10           The Bank was listed in this one period as  
11 having had 40 calls for service. That's in Exhibit  
12 L -- excuse me. Exhibit L is the Stampede, which had  
13 63 calls for service, 23 more than The Bank.

14           Exhibit M, Pub, 75 calls for service. Again,  
15 The Bank, 40. Exhibit N, Adelaide, 48 calls for  
16 service. Again, The Bank, 40. Exhibit O, Baily's,  
17 had 27 calls for civil service, and Blackbird had 29  
18 calls for service.

19           Calls for service are not unusual in an area  
20 such as Old Town, Temecula, because it's an active  
21 area, and that's going to happen. And the practice  
22 on calls for service is if it's in or near The Bank,  
23 it's attributed to The Bank.

24           Imagine you've got a problem neighbor next  
25 door. They're fighting and yelling all the time,

1 playing loud music. You call the police. The report  
2 comes back at some point in time that your house has  
3 had so many calls for service on it because you're  
4 the one that called the police, and that's what  
5 happened.

6 In many of these cases, it was The Bank  
7 employees who called the police, and yet Mr. Watson  
8 based his decision to revoke the CUP on that type of  
9 information.

10 Mr. Watson testified that we have a well-worn  
11 philosophy for code enforcement. We're not here to  
12 take a heavy hand. First talk with the owners, look  
13 for voluntary compliance, so forth and so on, but if  
14 that doesn't work, then we go to the penalties.

15 Tom Cole, the old supervisor of the City of  
16 Temecula, also testified the ultimate purpose of any  
17 violation is compliance.

18 Despite those explanations, Mr. Watson, when  
19 asked why did the City stop issuing noise violations  
20 on July 12, 2021, Watson responded, "Probably because  
21 they stopped violating code and the conditions of  
22 approval at that point." That's Transcript Volume I,  
23 page 123, lines 20, 25, page 124, lines 1 to 5.

24 Certainly when Tom Cole, code enforcement  
25 officer, was asked why The Bank wasn't cited for

1 violations after July 2021, Do you know?

2 "Yes, I do know. They turned their music  
3 down and took their speakers from being outside."

4 Then he was asked, "And that was the result  
5 of you speaking with someone there at The Bank?"

6 "I believe so."

7 Question, "How long after that conversation  
8 was the problem abated?"

9 "I believe the following week." And then  
10 later he said it may have taken a couple of weeks.

11 He was asked, "Do you believe the problem has  
12 been resolved?"

13 "Yes."

14 So if the problem was resolved in July of  
15 2021, why was the Hearing Officer giving testimony  
16 that one of the bases for revoking the CUP was the  
17 noise violations? Noise violations had stopped more  
18 than a year before the hearing before the CUP.

19 If it -- if you look at what Mr. Cole and  
20 Mr. Watson testified to, the goal was to get  
21 compliance. Evidently not. Evidently the goal was  
22 to build a record that even if they corrected it and  
23 got compliance a year ago, we still use it as a basis  
24 to revoke the CUP.

25 That problem continued on all the way through

1 the administrative law judge hearing. The problem  
2 with the confusion or the City misplacing the 2008  
3 modification, which allowed them to say open until  
4 2:00, the City at that point believed that they  
5 didn't have -- they believed it was 2007.

6 That's why they did the 2012, they cut and  
7 pasted the hours from 2007, skipping the change in  
8 2008.

9 Mr. Watson went on to testify that -- about  
10 that incident in November of 2021 where there was a  
11 shooting.

12 The Bank -- the PD told me they were at  
13 The Bank. I don't know if they were at The Bank  
14 drinking. Well, the sheriff found out they weren't  
15 at The Bank drinking, because the video showed them  
16 being turned away by the bouncer.

17 Watson was then asked, "Do you know of  
18 anything the Bank could have done that they didn't do  
19 that would have prevented the shooting?" This one  
20 talked about the murder.

21 He said, "Closed on time." Well, they did  
22 close on time. They closed at 10:00. The patrons  
23 continued drinking, as the 2012 CUP minor  
24 modification allowed, and the shooting occurred at  
25 10:40.



1           Mr. Watson didn't know that, and he was asked  
2 after he said that they -- you know, they'd closed on  
3 time, the problem wouldn't of happened, how it had  
4 any impact.

5           His answer, "Maybe they all wouldn't have  
6 been there."

7           Question, "You don't know that."

8           Answer, "Well, no. You just asked me if I  
9 thought there was anything they could do."

10          "Okay. Other than that, is there anything  
11 else they could have done?"

12          Answer, "No," Mr. Watson.

13          Yet, when he made the recommendation that  
14 went to the ALJ, he based it on The Bank not closing  
15 on time. They did. They closed at 10:00, but the  
16 patrons, under the 2012 modification, could continue  
17 drinking until 11:00.

18          The question to Mr. Watson, "You said earlier  
19 there were a number of crimes that happened at or  
20 near The Bank that you associated with The Bank; is  
21 that correct?"

22          Answer, "Yes."

23          "How close does something have to be at  
24 The Bank for you to believe that it's close enough to  
25 be their fault?"

1           Answer, "That is a question for the police  
2 department. I'm not on site. I go off what they  
3 tell me."

4           He actually goes off what he understands they  
5 tell him. Wait a minute, Planning Commissioners.  
6 Mr. Watson is the one recommending the CUP be  
7 revoked. Doesn't he doesn't have an obligation to  
8 verify the fact on which he bases his recommendation?

9           Question to Mr. Watson, "What do you believe  
10 'associated' means?"

11          Watson's answer, "They were patrons. They  
12 were employees. They were somehow associated on  
13 going there and doing business there."

14          And yet the evidence shows that that was  
15 mistaken on the case of November 2021 shooting, which  
16 was one of the major things that Mr. Watson based his  
17 recommendation on.

18          Mr. Watson was asked, "Why do you believe  
19 revocation will solve the problem with The Bank?"

20          His answer, "Well the specific actors that  
21 are involved that are operating the business in this  
22 manner, removing the liquor from the environment is  
23 certainly going to help. I don't know if it will  
24 solve everything, but that is what we have at our  
25 disposal to enforce and that's what we're using."

1 Wham bam.

2 Question, "You indicated code enforcement  
3 reaches out to owners to act collaboratively. Did  
4 you reach out to this owner, a phone call, or  
5 something that isn't an enforcement letter?"

6 Mr. Watson's answer, "No, we didn't."

7 City did not follow its well-established  
8 procedures. That's not my client's testimony, that's  
9 Mr. Watson testifying.

10 First he says we reach out to them and try to  
11 work it though, and then we do a gradual progression  
12 of things. He didn't do it.

13 In any event, as Planning Commissioners,  
14 there's reason you're here. State requires  
15 city-staffed planning commissions. You're a check  
16 and balance on the city staff. It is not your job  
17 just, as you know, to rubber-stamp what the city  
18 staff does or rubber-stamp what an administrative  
19 judge does.

20 It's your job to decide whether or not the  
21 information presented to the administrative law judge  
22 is sufficient in its totality to support  
23 revocating[sic] a permit. We respectfully submit  
24 it's not.

25 What we're asking you to do is be that check

1 and balance that you're intended to be and cut off  
2 the damages to the City.

3 This case is going to go to Superior Court.  
4 Superior Court is going to look at these records.  
5 They're going to see what you just heard, what it was  
6 based on. They're going to hear the disputes.

7 And by the way, the City attorney said our  
8 clients admitted the vio- -- they never admitted  
9 them. They paid the violations. They said that,  
10 because they also testified -- it's in the record --  
11 that they believed the City would eventually realize  
12 once they gave them a 2008 permit -- so the City had  
13 their own records which they got from ABC -- the City  
14 would come around and say, Hey, yeah, we made a  
15 mistake. We cut and pasted. We took it from 2007  
16 instead of 2008.

17 Every day that The Bank is getting this  
18 stuff, damages against the City are accruing. It  
19 needs to be cut off.

20 I would never have let this case go to a  
21 revocation as a city attorney of San Bernardino. I  
22 didn't want to be sued as a city attorney I don't  
23 want to lose. I see this as a losing case for the  
24 City.

25 This is not something that needs -- that

1 needs to be taken any further. The buck can stop  
2 with you. It doesn't have to, but it can, and I  
3 encourage you to do your job as good citizens of the  
4 City of Temecula. As responsible Planning  
5 Commissioners, stop this.

6 Look at the -- look at those transcripts and  
7 you will see that the testimony was mistaken, and  
8 Mr. Watson in effect, backed off.

9 Thank you for your time. And I'm reserving  
10 my time, by the way, the remainder of it. This says  
11 I've gone 19 minutes and 28 seconds, and I'm also  
12 renewing my motions for the admission of that video  
13 and for a continuance if we're not allowed to so that  
14 the problem -- the criminal case can be resolved and  
15 the Commission can hear the video and see that there  
16 was no argument leading up to that murder.

17 It happened very quickly, no way that  
18 The Bank was put on notice that there was some  
19 dispute going on, and that's in the testimony, too,  
20 but you haven't seen the video yet. And there's good  
21 reasons why you haven't seen it. Thank you.

22 COMMISSIONER TURLEY-TREJO: Thank you for  
23 your presentation, Mr. Penman.

24 Do we have any questions for Mr. Penman at  
25 this time?

1 COMMISSIONER SOLIS: I have a question.

2 COMMISSIONER TURLEY-TREJO: Okay.

3 Mr. -- Commissioner Solis?

4 COMMISSIONER SOLIS: I have a question, just  
5 very simple.

6 What is the active CUP right now that your  
7 client has right now active on the property?

8 MR. PENMAN: According to the City, it's the  
9 2012 CUP.

10 COMMISSIONER SOLIS: Okay.

11 MR. PENMAN: But we contend that was a  
12 clerical error and that the -- because the 2012  
13 application was just for live entertainment. It  
14 wasn't to change the -- it wasn't to change the  
15 hours. And I don't believe that one was accepted  
16 either, if I'm -- my memory is right, but you check  
17 that. I might be mistaken.

18 COMMISSIONER SOLIS: So your client did apply  
19 for a modification to the existing Conditional Use  
20 Permit and that's how the PA12 came up?

21 MR. PENMAN: Yes, and applied for it solely  
22 to allow live entertainment, not to change the hours.

23 COMMISSIONER SOLIS: Okay. And my other  
24 question is what is the resolution or the Conditional  
25 Use Permit that ABC has on file?

1           What is the --

2           MR. PENMAN:   The one ABC --

3           COMMISSIONER SOLIS:  -- what is the one that  
4 you're referring to that said that is incorrect?

5           MR. PENMAN:   The one that the ABC had on  
6 file, which the City now has as of March 3, 2022, is  
7 Conditional Use Permit 2008, which allows them to  
8 stay open until 2:00 p.m.  That's what ABC has.

9           Now, ABC by now may have No. 12 as well --

10          COMMISSIONER SOLIS:  Right.

11          MR. PENMAN:  -- but the City had lost No. 8  
12 or said they didn't have it at our -- and they got it  
13 again after our clients retrieved it from ABC.

14          And it's in the record, by the way,  
15 Exhibit -- I don't recall the exhibit number, but  
16 2008, 2012, and 2007 are all in the transcript,  
17 administrative record before you.

18          COMMISSIONER SOLIS:  Okay.  That's it.

19          MR. PENMAN:  Thank you, Mr. Solis.

20          COMMISSIONER HAGEL:  I have a question.

21 Excuse me, I have a question for you.

22          Just a point of clarification, so the 2012  
23 modification was for music; is that -- that correct?

24          MR. PENMAN:  Live entertainment, music, yes.  
25 Yes, sir.  Yes, sir.

1           COMMISSIONER HAGEL: Okay. And your position  
2 was that they did not sign that?

3           MR. PENMAN: Is -- on the 2012?

4           COMMISSIONER HAGEL: Right.

5           MR. PENMAN: My recollection is they did not,  
6 but I don't want to represent that to you and make a  
7 mistake. I don't have it right in front of me. You  
8 can check it and see.

9           My recollection is they did not sign that and  
10 they did not sign the 2008, as Mr. Ruiz pointed out.

11          COMMISSIONER HAGEL: Okay. Your client did  
12 start providing music after that, though; is that --

13          MR. PENMAN: Correct.

14          COMMISSIONER HAGEL: Okay. All right.  
15 That's it. Thank you.

16          MR. PENMAN: Thank you, sir.

17          COMMISSIONER TURLEY-TREJO: Commissioner  
18 Watts?

19          Mr. Penman, you're not done.

20          MR. PENMAN: I'm sorry. My apologies.

21          COMMISSIONER WATTS: On the 2012 minor  
22 modification -- and it was returned to your client,  
23 and you're stating that it wasn't signed by the City;  
24 is that correct?

25          MR. PENMAN: No. It was signed by the City.



1 It was not signed by my client, to the best of my  
2 recollection. That's --

3 COMMISSIONER WATTS: Why not?

4 MR. PENMAN: -- that's -- pardon?

5 COMMISSIONER WATTS: Why not?

6 MR. PENMAN: I don't know the reason it  
7 wasn't signed. I speculate because they didn't agree  
8 with it, that they didn't accept the conditions.

9 COMMISSIONER WATTS: And those conditions  
10 included the change of hours for operation; is that  
11 correct?

12 MR. PENMAN: That's correct.

13 COMMISSIONER WATTS: And did your client  
14 recognize -- you didn't sign it because you didn't  
15 agree with it, why did -- did he bring that to the  
16 attention of the City?

17 MR. PENMAN: Yes, he did. And, in fact --  
18 well, he brought it to the attention of the City when  
19 the City started to enforce the -- nine years later  
20 when the City started to enforce the 10:00 p.m.  
21 closing.

22 He testified -- Mr. Puma, who is actually not  
23 my client, but he was the guy involved at the time,  
24 so it's hard for -- that why I say I speculate,  
25 because I don't know why he didn't sign it.

1           But he testified to the City that he just  
2 looked at the part that said it was approved for the  
3 purpose he had requested, which was live  
4 entertainment, and he put it in an envelope and put  
5 it on the counter, and that's the last he saw of it,  
6 and I believe his testimony -- I believe his  
7 testimony -- it's in the transcript -- was that he  
8 did not see that the hours had changed at that time,  
9 and wasn't until 2009.

10           But the fact that he didn't sign it, I  
11 think -- you can say it's a technicality, but  
12 technicalities can matter, too, sometimes, and  
13 according to the Temecula Municipal Code, my reading,  
14 the applicant is supposed to sign the acceptance to  
15 show they accept it, and he didn't accept it.

16           So I don't think the burden was on him to go  
17 to the City. I think the City's burden was to go,  
18 Hey, why didn't he sign this. City should have  
19 contacted Mr. Puma and said, You haven't signed this.  
20 That means you haven't accepted the conditions.

21           The burden was not -- the City attorney put  
22 it on The Bank. Why didn't they apply? Why did the  
23 City just walk away and allow that unsigned document  
24 not be followed up on?

25           COMMISSIONER WATTS: It's fine. So you're

1 confirming then that the new information was  
2 contained in the 2012 minor modification?

3 It was returned to Mr. Puma; correct?

4 MR. PENMAN: Yes. I confirm that, but he did  
5 not accept that -- he did not sign his acceptance.

6 COMMISSIONER WATTS: And he didn't do any  
7 kind of formal protest or objection or anything of  
8 that nature?

9 MR. PENMAN: Not to my knowledge.

10 COMMISSIONER WATTS: Okay.

11 MR. PENMAN: Again, he's not my client.

12 COMMISSIONER WATTS: Okay. Thank you.

13 MR. PENMAN: Thank you, sir.

14 COMMISSIONER TURLEY-TREJO: Mr. Penman,  
15 you're not done yet.

16 COMMISSIONER RUIZ: Just a follow-up there --

17 MR. PENMAN: Can I ask a question?

18 My 45 minutes have now run.

19 Do the questions count against those?

20 COMMISSIONER TURLEY-TREJO: No.

21 MR. PENMAN: Okay. Thank you. I'm relieved.

22 I --

23 COMMISSIONER TURLEY-TREJO: It doesn't count  
24 against it. We just have some questions for you.

25 MR. PENMAN: Ask all the questions you want.

1           COMMISSIONER RUIZ: Thank you. And I just  
2 want to clarify. So on the 2012 modification to CUP,  
3 you've referenced a couple times live entertainment.  
4 That was for a single instrument or single vocalist  
5 up until 10:00 p.m.

6           That was what that modification was  
7 requesting; correct?

8           MR. PENMAN: Respectfully, I don't recall  
9 specifically, but I -- I don't recall to a certainty.  
10 My recollection is that it was for live music in the  
11 manner you suggested, one person was going to be  
12 presenting live music.

13           That was the reason behind it; however, you  
14 would need to look at the conditions to see if the  
15 conditions limited them to only one person, but I  
16 don't recall reading that.

17           That was what motivated him to do it. That  
18 may have been what he put on the application, but  
19 it's the terms, the conditions of approval that you  
20 would have to look at to see if he -- if The Bank was  
21 limited to just one performer, and I don't recall  
22 that, respectfully.

23           COMMISSIONER RUIZ: Okay. I believe that's  
24 what it did state in there, and then it also did  
25 state 10:00 p.m. I was just trying to confirm that

1 we were talking about the same thing, because live  
2 entertainment today has a different meaning also, so  
3 just I wanted to make sure we were talking about the  
4 same description.

5 MR. PENMAN: I -- I think we are.

6 COMMISSIONER RUIZ: Okay. Thank you.

7 MS. FOX: Madam Chair?

8 COMMISSIONER TURLEY-TREJO: Yes?

9 MS. FOX: A rule of procedure here. We had  
10 agreed for the procedure that we will be running  
11 today that The Bank had 45 minutes for the  
12 presentation of their case, so there's no ability to  
13 reserve time.

14 So I think there was about -- we'll have to  
15 check with the Planning Secretary, but I believe  
16 there was about 18 or 19 minutes left.

17 So if Counsel has anything further he wants  
18 to add, the time to do so is now.

19 MR. PENMAN: I'm confused because the City  
20 attorney reserved time for rebuttal, and I was trying  
21 to reserve my time to respond to what she responds  
22 to.

23 MS. FOX: Thank you so much, Counsel.

24 So the agreed procedure, the City has the  
25 burden. The City goes first. They have 45 minutes

1 allocated of which they can allocate any portion of  
2 that for their rebuttal. That is the only party that  
3 gets rebuttal.

4 Zip Third and Puma Corp each get 45 minutes.

5 MR. PENMAN: Okay. So I won't be allowed to  
6 come back, then?

7 MS. FOX: You will not be allowed to reserve  
8 time. That's correct.

9 MR. PENMAN: Okay. Very good. Then I do  
10 have just a couple more things to say.

11 MS. FOX: Let us set the clock, if we could,  
12 please, and hopefully somebody kept track.

13 They reset your 45 minutes.

14 MR. EDWARDS: Nineteen minutes and  
15 twenty-eight seconds.

16 MS. FOX: Thank you so much.

17 COMMISSIONER TURLEY-TREJO: Thank you for  
18 that clarification, Ms. Fox.

19 Hold on one --

20 MR. PENMAN: The City --

21 COMMISSIONER TURLEY-TREJO: Hold on one  
22 second. We're making sure that we have the timer  
23 working up here.

24 MS. JACOBO: You have 19 minutes and  
25 45 seconds.

1           COMMISSIONER TURLEY-TREJO: So Commissioners  
2 will go ahead and let him finish.

3           COMMISSIONER SOLIS: I have one more --

4           COMMISSIONER TURLEY-TREJO: Let's go ahead  
5 and let him continue, and then if we have any more  
6 questions we can ask him when his time is finished.  
7 Thank you.

8           COMMISSIONER SOLIS: Got it.

9           MR. PENMAN: Thank you.

10           Cities today have a huge problem. They don't  
11 have enough money to hire the number of police  
12 officers they need to police their cities. It's not  
13 the fault of the city.

14           What is problematic is when problems develop  
15 that are in the proper venue of law enforcement and  
16 there are not enough officers on the job to handle  
17 them, then the city needs to do something.

18           They're getting complaints. There was a  
19 murder there. There was a shooting down the street.  
20 There was a violent incident inside the -- inside the  
21 establishment.

22           And by the way, one of those incidents was  
23 the officer testified that a guy was badly beaten by  
24 the bouncer. Turned out that the guy was kicked out  
25 of the club, went to Officer -- Deputy Bowman to

1 complain.

2 Bowman came back, looked at the video, saw  
3 that he was not beaten by the bouncer. What happened  
4 was -- and this is in the testimony -- the guy was  
5 using a camera to go under girls' skirts, and he  
6 was -- the bouncer kicked him out.

7 And he goes to the deputy, and the deputy's  
8 name, Bowman, and he comes in and checks and he looks  
9 at the video and he says, Okay, you didn't do  
10 anything wrong. Those weren't his exact words, but  
11 roughly that's what he says, and that was it, but the  
12 testimony was that that had happened.

13 You know, this entire case is built on --  
14 COMMISSIONER TURLEY-TREJO: Sorry. Excuse  
15 me.

16 MR. PENMAN: Ma'am?

17 COMMISSIONER TURLEY-TREJO: So I don't have  
18 the time going down on mine here, so I just want to  
19 know --

20 MS. JACOBO: I thought he was responding to a  
21 question.

22 COMMISSIONER TURLEY-TREJO: No.

23 MS. JACOBO: Okay.

24 COMMISSIONER TURLEY-TREJO: He's going on  
25 with his time.



1 MS. JACOBO: Okay.

2 COMMISSIONER TURLEY-TREJO: All right. Thank  
3 you.

4 MR. PENMAN: Okay. I -- my thing shows I  
5 have 19 minutes, 37 seconds, approximately. Okay.  
6 Thank you.

7 Cities have this problem. The problem is we  
8 don't have enough law enforcement, and when the  
9 public starts complaining, cities need to do  
10 something to show the public they're responding.

11 Again, I did this for 26 years. I know it  
12 well. What do you do? You shift the blame. You  
13 blame the business. We're doing something. We're  
14 going to close that business. We're going to take  
15 away their CUP.

16 But wait a minute. They've got property  
17 rights, too. The testimony is there. The city  
18 planning director admitted there was nothing else  
19 they could have done, but yet they're going to pull  
20 their permit, and one of the bases is those -- those  
21 two shootings, I suspect one of the main bases.

22 How are you responsible as a third -- when  
23 the third party comes on your property, even if you  
24 invite them on. Let's say you have a -- you're  
25 having a party at your house and inviting guests, and

1 Heaven forbid your guest -- someone brings -- you  
2 invite somebody that brings somebody and that person  
3 pulls out a gun and shoots somebody.

4           Should that be your fault? It's your house.  
5 And it shouldn't be their fault either.

6           They had security. The testimony was that  
7 the security wasn't wearing the right uniforms, that  
8 they had criminal backgrounds, but the other  
9 testimony from The Bank was that we didn't know of  
10 any criminal backgrounds and that's not what the  
11 police told us.

12           And they are wearing the proper  
13 identifications, and they've been wearing them since  
14 the day the City of Temecula required them to start  
15 wearing clearly identifiable uniforms or jackets  
16 saying "security," which was July 31st, 2022. Prior  
17 to that they weren't required to do it.

18           But the planning director believed and the  
19 administrative law judge believed that there was a  
20 murder there that could have been prevented. There  
21 was a shooting down the street. The officer  
22 testified it was a -- it was less than a block. The  
23 business testified it was more than a block.

24           It was attributed there, but the officer  
25 thought that the people involved in the shooting,

1 November 2021, had been drinking at The Bank, and  
2 they weren't. The video showed them being turned  
3 away by the bouncer.

4 So this is a big mess. It's going to get  
5 unravelled at some point in time. I don't know if it  
6 will be at the Superior Court or the Appellate Court  
7 or the California Supreme Court.

8 It doesn't have to go that far because you  
9 guys can look at those transcripts yourself. You  
10 know, I understand an administrative law judge might  
11 believe what the officer said, but the officer may or  
12 may not have known about the follow-up visit, the one  
13 that the officer testified where the video showed  
14 they were turned away.

15 And by the way, sheriff did not take that  
16 video. They took the videos of the events of the  
17 night of the murder, but they did not take the video  
18 of the guy being turned away because the  
19 investigating officers were satisfied, Oh, yeah, they  
20 weren't here. So for their purposes, they didn't  
21 need the video.

22 They would have needed it. They would have  
23 taken it had they been there, but they didn't take  
24 it. And that's in the -- that's in the evidence,  
25 too.

1           So I spend a lot of my time advising city  
2 officials we can't violate someone else's rights just  
3 to make the city look like we're doing something,  
4 because elected officials, you know, they answer to  
5 those voters, as they should, and they don't want to  
6 say we can't do anything.

7           Can they do anything? Yeah, they can cut the  
8 budget somewhere else and hire more cops, but that's  
9 a tough call, and I'd be the first to admit that.  
10 But that's the problem.

11           It isn't just in Temecula. It isn't just in  
12 San Bernardino. Isn't just California. It's  
13 everywhere across the nation, there's -- violent  
14 things are happening, and obviously they need to be  
15 rectified.

16           But the way to rectify them is not to take  
17 away the Conditional Use Permit of a good restaurant  
18 that runs a good business where the owners do what  
19 the police says.

20           The testimony in the record shows that  
21 Captain Hall of the Sheriff's Department called  
22 Ms. Lane and said, Hey, the City wants you guys to  
23 close down earlier than 2:00 because we're having all  
24 of these problems. None of the other restaurants  
25 will do it. Will you do it? Yeah, we'll do it, and

1 they stopped closing at 2:00 and they closed at  
2 12:00. And Captain Hall told her -- it's in the  
3 transcripts -- nobody else was doing that. They did  
4 that several times.

5 The parking lot behind The Bank is owned by  
6 the same property owner that owns The Bank, but he's  
7 done everything -- he's put, like, 19 cameras in  
8 there to watch that parking lot.

9 The Bank paid for their security to go and  
10 patrol that parking lot because there were incidents  
11 happening there, even though The Bank had no control  
12 over that parking lot. They did that, and the other  
13 neighbors appreciated it.

14 The other tenants of the property owner  
15 thanked Mr. Solomon for what The Bank was doing.

16 Mr. Solomon testified that he had no  
17 complaints amongst his other tenants who were right  
18 there adjacent to The Bank about The Bank, and yet  
19 the testimony of the city officials and Sergeant  
20 Hephner is that this occurred in -- I think the --  
21 Mr. Watson -- this occurred immediately adjacent to  
22 The Bank. It did not. It occurred down the street.  
23 Mr. Watson made his decision based on erroneous  
24 information.

25 And I know what happens with planning

1 directors, and so do you. The -- you know, the  
2 mayor, the council member calls the city manager and  
3 says, Hey, we're having all this stuff and The Bank  
4 is getting the blame and you've got to do something  
5 about it.

6           Watson, in his testimony, expressed surprise  
7 that the -- excuse me -- in the e-mails, Watson  
8 expressed surprise that The Bank was being told to  
9 close that early when the 2012 permit was issued.

10           You can see it. It's right there. It's in  
11 his words back and forth between he and the other  
12 planner.

13           This thing was a mistake. It was an  
14 accident, and our clients testified to that. Our  
15 clients testified it was an honest mistake. They  
16 don't think the City purposely lost or disregarded  
17 the 2008 permit. Somehow it got lost, and according  
18 to Jaime at the counter, it got lost because the City  
19 changed its programs, and that happened.

20           I can tell you, 26 years in San Bernardino,  
21 we changed programs three or four times, and every  
22 time we change, something went wrong. I suspect that  
23 happens with you when you upgrade your computers to  
24 some new system, you may have some problems.

25           Maybe you're more technologically

1 sophisticated with computers than I am, but I know --  
2 we had a guy come in the other day and upgraded my  
3 wife's computer and she said she can't find anything  
4 she saved. She doesn't know what to do. Had to have  
5 the guy come back and train her how to do it.

6 It happens. It's an accident. City is not  
7 bad. Nobody is out there trying to hurt anybody.

8 The other problem is one planner testified  
9 that when he changed the 2012 application, he was  
10 told by the planning director, Mr. Richardson, at the  
11 time to do it.

12 That doesn't make any sense because the  
13 testimony of Mr. Puma shows Mr. Richardson is the one  
14 that told him he needed to apply for a change in his  
15 permit in order -- so he had to buy a license.

16 Why in 2012 did Mr. Richardson, who  
17 retired -- I think the testimony is -- in 2013,  
18 suddenly direct this planning staffer to change the  
19 hours and roll them back?

20 There weren't any problems going on of this  
21 nature at that time. There was no reason. There's  
22 no discussion in the 2012 record of change in the  
23 hours.

24 I suggest what happened is the person who  
25 testified to that is the person who cut and pasted

1 the 2007 hours onto the 2012 permit. He's the one  
2 that missed the 2008.

3 Maybe he missed it because it wasn't there,  
4 but he had come up with an explanation of how did  
5 this happen, and some of his testimony was you need  
6 to ask Mr. Richardson, but we don't know where he is.  
7 He retired and he's gone.

8 Since March of 2021 The Bank has been  
9 complaining to the City about the 2008 document being  
10 lost and not being there. There's a lot of e-mails  
11 in that time. There's a lot of evidence.

12 Why did this planner wait until the hearing  
13 before the administrative law judge to announce that  
14 he had been told by his boss to roll the hours back?

15 I suggest because I don't think that's what  
16 happened, because otherwise he would come forward and  
17 say, Oh, yeah. Mr. Richardson told me back in 2012  
18 to roll those hours back.

19 And why would Mr. Richardson have done that?  
20 There were no complaints going on. City of Temecula  
21 didn't start enforcing the 2012 closure time at  
22 10:00 o'clock until February or March of 2021.  
23 That's when the problems really started. Maybe a  
24 little before that they started in Old Town overall.

25 The Bank should not be the one to bear the



1 burden, the sole bearing of the burden for the  
2 problems Old Town is having. They didn't have even  
3 the majority of calls for service there.

4           Regardless of how you look at the calls for  
5 service, whether they are founded or unfounded,  
6 whether they are related to The Bank or not, they had  
7 less than most of the other -- the only two other  
8 restaurants that were looked at that had them.

9           How did they get those calls for service?  
10 Amanda Lane, manager over there, calls Captain Hall  
11 and says, I need the calls for service. They're  
12 saying that we got excessive calls for service.

13           It was Captain Hall who got those numbers for  
14 her. That's in the -- that's in transcript. He's  
15 the one that came up with it.

16           The owners of The Bank had a good working  
17 relationship with the city. The city people came to  
18 their restaurant. They had a good working  
19 relationship with the sheriff.

20           Sergeant Hall calls them, Hey, can you close  
21 at midnight, because the city -- the city is honest  
22 about -- and -- you know, about these problems.

23           And it wasn't just the City at that point  
24 asking The Bank, it was asking all the restaurants to  
25 close at midnight. The Bank was the only one that

1 did, according to the evidence.

2 Now we turn around and say, you know, some  
3 guy walks into your restaurant -- didn't even  
4 really -- wasn't even inside, he was in the patio,  
5 and he has a concealed weapon, and some guy comes in  
6 that he has a long-standing feud with, and he takes  
7 advantage of that opportunity and shoots that guy and  
8 shoots an employee, an ex-employee of The Bank.

9 That's something else, too. Mr. Watson  
10 testified the guy that was murdered was an employee  
11 of The Bank. He was an ex-employee of The Bank.  
12 He'd been let go from The Bank. He'd -- he just --  
13 he'd just come back that day. He worked as a cook at  
14 another restaurant down the street, the deceased.

15 When you see that much conflict in a  
16 transcript, and, you know, when the burden of  
17 evidence is either reasonable preponderance or clear  
18 and convincing -- which I believe it would have been  
19 before the ALJ and before you to revoke a CUP, clear  
20 and convincing -- it's not that clear and convincing  
21 when you've got that much dispute and that many  
22 credible witnesses.

23 No one in those transcripts accused Ms. Lane  
24 of lying. The only really suspicious thing is all of  
25 a sudden this one gentleman, planner, comes forward

1 and relates a conversation that is not in any record,  
2 is not in any e-mail, was never given as a reason why  
3 we rolled back your hours, but all of a sudden  
4 Richardson has been gone since 2013.

5 It's now September 1, 2022. I'm testifying  
6 before the administrative law judge. Yeah.

7 Mr. Richardson told me to do that. He told me to  
8 roll back those hours.

9 I think he's asked, Do you know why? No. I  
10 don't know why. That's what he told me. I did it.

11 Maybe that's true, maybe it isn't, but clear  
12 and convincing evidence, don't you need something  
13 more than that? Shouldn't an administrative law  
14 judge want something more than that?

15 The problem for the administrative law judge  
16 and the problem for you is you've got all this stuff  
17 you just heard from the City attorney, all of these  
18 terrible things that are going on there, but when you  
19 start picking them apart and you look at them one at  
20 a time, no, they're -- they're not.

21 The Bank doesn't have any more  
22 incidents there other than the murder -- that's a big  
23 thing. Don't get me wrong. You know, that horrible  
24 joke we heard in junior high, Other than that, how  
25 was the play, Ms. Lincoln?

1 I mean, a terrible joke, but nonetheless that  
2 could've happened on your property at a party you had  
3 with a guest of someone you invited brought, and  
4 that's what happened to The Bank, and The Bank should  
5 not have their livelihood cut off.

6 They've put a lot of money into this  
7 community. The evidence is they paid all the -- all  
8 the -- all the back fines were paid.

9 When the current owners, Amanda Lane, took  
10 over the running of the restaurant, they paid all of  
11 the back rent to Mr. Solomon. Excuse me, they did  
12 not pay all of the fines, they paid all of the back  
13 rent.

14 They paid the fines at that time not as an  
15 admission something was wrong, but because they were  
16 trying to work with the City, and the evidence in the  
17 transcript says they didn't want to make the City  
18 angry. That's why they paid them.

19 But when the City moved in the aggressive  
20 manner it did, would not meet with them, would not  
21 call them, then at that point they stopped paying the  
22 fines, and they owe those fines.

23 If this thing gets resolved, then they're  
24 going to pay those fines just to show their goodwill,  
25 but there's a strong legal argument that they don't

1 have to pay fines for being cited for going beyond  
2 the hours when that requirement was a mistake, just a  
3 simple mistake, and they shouldn't be having their  
4 revocation -- their CUP revoked for excessive noise  
5 when they stopped doing that, admitted by both  
6 Mr. Watson and the code enforcement officer, when  
7 they stopped doing that in July of 2021 and the  
8 recommendation to revoke the CUP didn't come out  
9 until March of 2022.

10 And yet it's partially based on something  
11 that they came into compliance on, they corrected.  
12 Exactly what Mr. Watson and exactly what the code  
13 enforcement officer said, the purpose of the citation  
14 is to get compliance. They got compliance, and yet  
15 this is still hanging over their head.

16 I'm not going to use all of my time. I hope  
17 you'll listen carefully to what the City attorney  
18 says in rebuttal, because she does have the burden.

19 She has the burden because the City wants to  
20 take away the livelihood of certain people. They  
21 want to take away their Conditional Use Permit  
22 despite the fact between 2012 and 2021, they never  
23 cited them or did anything to them.

24 Fire department inspections, I'm sure, once a  
25 year, nobody said, Hey, they're closing too late,

1 whatever. They have all this misinformation in  
2 there.

3 Please remember the points that I made after  
4 Ms. Petrusis finishes her rebuttal. Our clients  
5 never admitted they did anything wrong. They don't  
6 believe they did anything wrong. They think the City  
7 made an honest mistake, and now they're -- they're  
8 paying for it.

9 And the public can look at it and say, Well,  
10 City should do something. The City says, What are we  
11 going to do? We can't afford to double the number of  
12 police officers. That's another thing. After the  
13 murder, they not only hired more security, they  
14 doubled the number of security they have there.

15 As Mr. Watson testified, there's nothing else  
16 they could have done to have prevented that murder.  
17 Nothing, other than close on time, and Mr. Watson was  
18 mistaken because they did close at 10:00, and under  
19 the 2012 CUP they're entitled as a patron to stay  
20 there another hour and consume alcohol, and the  
21 patrons did.

22 The murder occurred at 10:40. 11:00 o'clock  
23 was the cutoff time for the consumption of alcohol  
24 there, if they were consuming alcohol. They probably  
25 were. I assume that were at that hour.

1           You have been very kind to listen to me. I  
2 appreciate it. I apologize for talking so long and  
3 for a couple mistakes I've made.

4           I've been tested for COVID. I don't have it.  
5 I do have a slight upper respiratory infection, so  
6 I've been wearing a mask to protect everybody else,  
7 and my thoughts were probably not as clear as they  
8 are every single day.

9           I have 19 seconds left. Thank you. I will  
10 shut up, unless you have any questions.

11           COMMISSIONER TURLEY-TREJO: Thank you,  
12 Mr. Penman. I'm going to have our Counsel clarify a  
13 couple things, so you can go ahead and have a seat,  
14 and then if we have any other questions for you we  
15 will have you come up.

16           MR. PENMAN: Thank you, Commissioner.

17           COMMISSIONER TURLEY-TREJO: Go ahead.

18           MS. FOX: Thank you, Madam Chair.

19           There were a couple points that were made  
20 for -- at issue here. One is the failure for there  
21 to be produced in transcript a copy of the executed  
22 acknowledgement of the conditions of approval for the  
23 2008 and the 2012 modification to the CUP.

24           There was a body of caselaw that says when  
25 you accept the benefits of the conditions, you

1 also -- of the permit, you also accept the burdens.

2 And, of course, there was some questioning by  
3 one of the Commissioners about, in fact, they did  
4 accept the minor modification. They did have some  
5 live entertainment there, and so there is an  
6 established caselaw that makes that clear that the  
7 failure to sign those is of no moment.

8 As well, there was a question raised about  
9 the use by the -- in this instance, of the  
10 administrative law judge. You can see from 17.03.085  
11 that that specifically provides that the city clerk  
12 shall refer the matter to the California Office of  
13 Administrative Hearings for the assignment of an  
14 administrative law judge to serve as an independent  
15 Hearing Officer. That is Section A(1)(b) of  
16 17.03085.

17 The administrative law judge said on the  
18 record she had no affiliation with the City of  
19 Temecula. There's been absolutely nothing put in the  
20 record that there's any motivation or any financial  
21 interest or anything other than an unbiased  
22 decision-maker from the administrative law judge.

23 In fact, the issue is, again, from a  
24 published decision, Haas v. County of San Bernardino,  
25 that took issue with the manner in which the County



1 of San Bernardino had retained its Hearing Officers,  
2 and in that particular case there was evidence of an  
3 improper motivation of getting more work from the  
4 city, none of which is apparent here, and quite the  
5 opposite.

6 The City has gone very thoughtfully in its  
7 approach and its Municipal Code to make sure that it  
8 has an independent Hearing Officer.

9 COMMISSIONER TURLEY-TREJO: Thank you so much  
10 for that clarification. I wanted to have that  
11 clarification before we asked any other questions of  
12 Mr. Penman.

13 Do you have questions for him?

14 COMMISSIONER SOLIS: I don't have anything.

15 COMMISSIONER TURLEY-TREJO: Okay. Mr. Hagel?

16 COMMISSIONER HAGEL: No.

17 COMMISSIONER TURLEY-TREJO: Okay. Any other  
18 questions on this side?

19 Okay. Thank --

20 COMMISSIONER WATTS: I have one.

21 COMMISSIONER TURLEY-TREJO: Okay. Go ahead,  
22 Commissioner Watts.

23 COMMISSIONER WATTS: Mr. Penman, you  
24 mentioned Mr. Richardson.

25 COMMISSIONER TURLEY-TREJO: Let's have

1 Mr. Penman come on up again. Thank you.

2 COMMISSIONER WATTS: You actually referenced  
3 Mr. Richardson quite a bit there --

4 MR. PENMAN: Yes, sir.

5 COMMISSIONER WATTS: -- in that last part.  
6 Did you attempt to locate him?

7 MR. PENMAN: Yes. We hired a private  
8 investigator. The private investigator was not able  
9 to -- to locate him.

10 We found a video online of a presentation  
11 that he made to a group. We tried to follow up on  
12 that. We were not successful. We are now -- we are  
13 still trying to locate him. We're trying -- because  
14 we're -- we'll probably be going to court, and we're  
15 doing that through some other -- some other avenues.  
16 So yes. Yes, sir. We --

17 COMMISSIONER WATTS: Okay. You tried,  
18 but you were unsuccessful --

19 MR. PENMAN: We were not successful. Tried  
20 hard. Spent quite a bit of money trying -- before I  
21 was on the case, my client spent quite a bit of money  
22 hiring a private investigator.

23 COMMISSIONER WATTS: Okay. Very good. Thank  
24 you.

25 MR. PENMAN: Can I ask Ms. Fox just to

1 clarify that the Hodge[sic] Case was the County of  
2 San Bernardino and not the City of San Bernardino?

3 MS. FOX: Madam Chair, everything should go  
4 through you.

5 COMMISSIONER TURLEY-TREJO: Yeah.

6 MR. PENMAN: Oh. I apologize. Through the  
7 Chair, I -- and I know that. I'm sorry. I  
8 apologize.

9 Through the Chair, I don't want any of the  
10 Planning Commissioners to believe that the Hodge  
11 Case, which I'm well-familiar with, was with the City  
12 of San Bernardino. It was with the County of San  
13 Bernardino, as Ms. Fox clearly said, and I was just  
14 asking her to reaffirm that, that it was County of  
15 San Bernardino that was doing something wrong and not  
16 the --

17 COMMISSIONER TURLEY-TREJO: Okay. I don't  
18 think it's really relevant to what we're discussing  
19 right now, but -- but thank you for your  
20 presentation, and I don't think we have any other  
21 questions.

22 Okay. Thank you very much.

23 MR. PENMAN: Thank you, all, again.

24 COMMISSIONER TURLEY-TREJO: So I did want to  
25 ask my colleagues if you want to take a little five,

1 ten-minute break?

2 Okay. So we're going to take a five-minute  
3 break right now. Thank you.

4 (A recess was taken.)

5 COMMISSIONER TURLEY-TREJO: All right. I  
6 think we have everybody back that we need.

7 All right. We will go ahead and call up the  
8 attorney for Zip Third Investments for your  
9 presentation.

10 MR. EDWARDS: Thank you, Madam Chair. I hope  
11 it was okay I made a little modification here for my  
12 height and my eyesight. This is a cardboard box and  
13 it's not scratching --

14 COMMISSIONER TURLEY-TREJO: Hey.

15 MR. EDWARDS: -- the table.

16 COMMISSIONER TURLEY-TREJO: Hey. I like it.  
17 That's awesome. Tell us your name, please.

18 MR. EDWARDS: My name is Rick Edwards and I  
19 represent Zip Third, LLC, and its manager,  
20 Mr. Solomon, is in attendance today.

21 COMMISSIONER TURLEY-TREJO: Okay. Great.  
22 And will you be the only attorney speaking for --

23 MR. EDWARDS: I'll be the only attorney  
24 speaking.

25 COMMISSIONER TURLEY-TREJO: Okay. Thank you

1 so much.

2 MR. EDWARDS: Thank you.

3 COMMISSIONER TURLEY-TREJO: And you know you  
4 have 45 minutes?

5 MR. EDWARDS: I couldn't miss it.

6 COMMISSIONER TURLEY-TREJO: All right.  
7 Great.

8 PRESENTATION SPEAKER

9 MR. EDWARDS: Thank you.

10 So believe it or not, without ever seeing any  
11 of you before, I thought of you, and I thought of you  
12 when I was watching the Super Bowl, and I'll tell you  
13 why.

14 There was a call at the end of the game, a  
15 holding call. It was criticized a lot because it  
16 wasn't a major violation, but it was a violation, and  
17 as a result many people feel the game was changed.  
18 You may remember it was a holding call on a defensive  
19 halfback.

20 Now, even the guy for Fox Sports who is  
21 supposedly their officiating expert said, Oh, I don't  
22 think he should have called it, but it was a  
23 violation of the rules. And what I'm -- why I  
24 thought of you is, we have a violation here by the  
25 City of its own rules in revoking the Conditional Use

1 Permit as to my client.

2 I do not represent The Bank, but as to my  
3 client, the property owner -- and we heard, by the  
4 way, the CUP holder -- we heard from the City's  
5 lawyer that the CUP holder is The Bank Restaurant.

6 That's true in part, but the administrative  
7 law judge specifically said -- and I will show when  
8 we get to the slides -- there are two permit holders,  
9 one of which is Zip Third, my client.

10 I don't criticize the procedure at all used  
11 regarding The Bank. It was very lenient. But as to  
12 my client, the procedure was improper, and I will go  
13 through that with you.

14 Now, why do I mention the Super Bowl? Those  
15 referees take an oath that they will enforce the  
16 rules.

17 I tried to get that oath from the NFL. I got  
18 into voicemail jail, to the public relations  
19 department, and maybe they figured I'm going to, you  
20 know, jump an official or something, so they never  
21 got back to me.

22 But I do know they take an oath, and they  
23 take an oath to enforce the rules. And that referee  
24 enforced the rule, and the player said, I held the  
25 guy. It was a hold. I just hoped I could get away

1 with it.

2 So here what I'm going to ask you to do is  
3 enforce the City's rules, the City of Temecula's own  
4 code. That's what I want to talk about. And that  
5 code says -- and you've all taken an oath, I believe,  
6 to support the code.

7 I tried to get the Planning Commission oath.  
8 I couldn't get it. I got the City Council oath, and  
9 the clerk tells me the same oath is given in the  
10 Planning Commission, so I hope -- I hope I'm correct  
11 on that.

12 But anyway, you take an oath to support the  
13 Constitution, and we have a Federal and State  
14 Constitution. They both provide for due process.

15 The City of Temecula wrote a code that  
16 specified the process for this type of a proceeding,  
17 a revocation.

18 Mr. Watson testified the CUP is a valuable  
19 property right, and my client has it. And the City  
20 at Title 1, Section 1.21.050, basically makes it  
21 idiot-proof that anybody gets notice of a violation  
22 if they're a permit holder, and here's how they get  
23 it. We'll go through this word by word.

24 By the way, even if it counts against my  
25 time, if anybody has a question when I'm talking -- I

1 personally don't like listening to speeches. I would  
2 rather be here than where you are. I'd be worn out  
3 by this point, frankly.

4 But if anybody has a question, even if it  
5 counts against my time, if you don't want to hold it,  
6 just jump in. I welcome questions, because I'm not  
7 here to mislead you. I'm going to give you facts. I  
8 represent that. I'm going to give you citations. I  
9 represent that I will do that. I'm going to give you  
10 excerpts of the City Code.

11 I'm not down here talking from anything but  
12 the bottom of my feet. So with that, let's -- let's  
13 proceed.

14 COMMISSIONER TURLEY-TREJO: We'll go ahead  
15 and ask questions when you're done, though.

16 MR. EDWARDS: Okay. Fair.

17 COMMISSIONER TURLEY-TREJO: Just to be fair  
18 with my Commissioners. Thank you.

19 MR. EDWARDS: Okay. I'm not trying to  
20 rewrite the rules.

21 COMMISSIONER TURLEY-TREJO: No, no, no. Just  
22 wanted to be clear.

23 MR. EDWARDS: Okay. Anyway, this 1.21.05, it  
24 provides first thing you want to try to do is serve  
25 the person personally. Hand it to them and get them



1 to sign for it.

2 If you can't do that, then you send them  
3 notice by certified mail. And if you send it by  
4 certified mail and you want to protect against it  
5 coming back unsigned, you also send it by regular  
6 mail. It's very, very business friendly to the  
7 property owner, as Mr. Watson testified the City is,  
8 very business friendly.

9 So here we have, as you've heard, an  
10 investor, and it came out that Mr. Solomon and his  
11 entities own nine buildings in Temecula. They own  
12 the entire block where The Bank is.

13 He invested down here after doing hundreds of  
14 projects for the last 40 years in part because it was  
15 business friendly. And he introduced himself to  
16 Mr. Watson. Nobody refuted this. And he became  
17 acquainted with the City's procedures.

18 So he's up there in LA -- I left -- I left at  
19 6:00 o'clock this morning because I wasn't sure how  
20 long it would take to get here. Only took two hours.  
21 But yesterday if I would have left at 4:00 o'clock,  
22 according to Siri, it would have taken me more than  
23 three hours.

24 So it's not -- this is a great town. It's  
25 beautiful, but it's not a -- not a dinner destination

1 if you live in San Monica, as I do.

2 So you've got a property owner in LA,  
3 assuming the property owner, because of your code, is  
4 going to get notice. And I will show you, there's no  
5 evidence that he ever received anything personally  
6 delivered, and he never received anything by  
7 certified mail. The City doesn't contend that. They  
8 do not contend that.

9 Basically, here's the temptation, and I  
10 completely understand this temptation. The  
11 temptation, just like in the Super Bowl, is to say to  
12 you, Well, look at what happened here. Let's just  
13 not apply the rules to this. Let's just go overlook  
14 the fact that there was no personal service, not  
15 once, let's overlook the fact there was no certified  
16 mail, not once.

17 Let's overlook the fact that never, not once,  
18 not a single time in the whole 17 months did anyone  
19 say to Mr. Solomon you did something wrong. You, the  
20 property owner, did something wrong. You are a  
21 responsible person. We are citing you. You have to  
22 do something about this.

23 Now, I will get later to the precise  
24 testimony, because there was an inaccurate statement  
25 by the City lawyer.

1           The City lawyer said that in June or July of  
2 2021 the -- Ms. Lane, who runs The Bank, contacted  
3 the property manager for the proper owner and said  
4 there are being a citations -- there are citations  
5 being issued.

6           That's not what that testimony was, and I  
7 clarified it on cross-examination. And I will show  
8 you that she did say, Well, we're being hassled, but  
9 she's not -- doesn't remember when she told them  
10 there were violations.

11           The testimony of Mr. Solomon was that when  
12 regular mail -- now, not in compliance with the  
13 code -- regular mail started arriving at his office  
14 in March of 2022, the property manager contacted  
15 Ms. Lane and was assured that she was handling the  
16 citations from the City, that she was operating, as  
17 her lawyer said -- and this is -- I don't think  
18 anybody contests that.

19           They operated for nine years, the same way  
20 they operated when they started getting these  
21 citations, except they added a musical person, but  
22 those hours had been going on for a long time without  
23 citation.

24           I'm not defending The Bank. I'm not -- I'm  
25 not saying they shouldn't have appealed, or whatever.

1 I'm just saying there was never a complaint to  
2 Mr. Solomon.

3 This is all in his testimony, and I will give  
4 you cites if you'd like. Never a complaint by any  
5 tenant that he has in Temecula. That's lot of  
6 tenants, including that entire block, about The Bank.  
7 No complaint from the police department, no citations  
8 to him, no certified mail.

9 How is he supposed to know? He's not  
10 clairvoyant.

11 But to get back to my point about the Super  
12 Bowl, please -- you have the responsibility. You  
13 took an oath to uphold the Constitution. The  
14 Constitution includes due process.

15 Let me get to your oath, if I can make this  
16 thing work. Mr. Watson was very kind and showed me  
17 how it worked, but it's not working.

18 Thank you, sir. Okay.

19 So there is the -- there is the oath, and I'm  
20 sure you're familiar with it, but it's to support and  
21 defend the Constitution of the United States, well  
22 and faithfully discharge the duties, and underneath  
23 that I have a name of a case -- I don't know why this  
24 isn't working -- okay -- "Today's Fresh Start."

25 That basically says that both the State and

1 Federal Constitution require due process before  
2 depriving property owner of a property interest.

3 And I've got Mr. Watson's testimony that a --  
4 quote, "a CUP conveys a vested right to the property  
5 owner," closed quote.

6 Now, I would like to -- if you'll look at --  
7 I just handed out packets to all of you. I'm sure  
8 you have it on your computer also.

9 But look at one of the first things that  
10 happened at the administrative hearing. The  
11 administrative law judge says, "Am I hearing from you  
12 that there are two --" two "-- permit holders here,  
13 both the property owner and the restaurant operator?"

14 And the City lawyer, Ms. Petrusis, said,  
15 "Yes."

16 Then the court, the administrative law judge,  
17 says, "Okay. I have the parties' position on that  
18 very critical issue," and then she said that she  
19 agreed with the parties' position.

20 Now, why is this important? It's important  
21 for the reason I alluded to earlier. The property  
22 owner has a property interest in the Conditional Use  
23 Permit. They are a holder of the permit.

24 Why are they not given any citations? Why  
25 did that happen?

1 I will tell you my theory why it happened. I  
2 don't think -- Mr. Watson, by the way, is a terrific  
3 trial witness. I've been evaluating trial witnesses  
4 for 50 years. He is a darn good witness. He very  
5 well prepared.

6 He testified -- and nobody will dispute this,  
7 and I will give you the cite later -- he testified  
8 there hadn't been a revocation proceeding in ten  
9 years. This is a business-friendly city.

10 He testified -- and I have no reason to  
11 question the guy. I asked him to help me with this.  
12 I mean, I trust him.

13 The bottom line is he testified that the  
14 City -- and this was read by The Bank's lawyer. The  
15 City wants to collaborate with property owners.

16 He testified, and you will see this in the  
17 slides, that the first thing they do before they send  
18 out warning letters, even, they'd go and talk to the  
19 person, say, Here's the rules, we want you to comply  
20 with the rules.

21 They give them a couple of weeks to comply  
22 with the rules. If the rules aren't complied with,  
23 what do they do? They don't hit them with  
24 administrative citations. They send them warning  
25 letters.

1           And he said, We want to work with them. We  
2 don't want a heavy hand. You heard that read. But I  
3 will show you when I examined Mr. Watson, he was very  
4 forthright. I give him a straight A. He said, No,  
5 we never talked to the property owner. We never did.

6           The procedure, he said, the City procedure --  
7 and this is in compliance with the spirit of the  
8 code. It's not a legal requirement. I can't stand  
9 here and tell you they have to do it, but this is  
10 what they say they do, exactly what I just said,  
11 collaborate, talk, urge compliance.

12           Then they issued these administrative  
13 citations, which went on about five months.  
14 Ms. Petrusis absolutely accurately described that.  
15 Then they elevated to civil penalties, and that was  
16 all against The Bank, never the property owner.

17           Now, as a technical matter -- I don't like  
18 technicalities. This why if I were the referee in  
19 the Super Bowl I probably wouldn't have called it.  
20 It didn't look big enough. I would be a bad referee,  
21 but I didn't take an oath, either. If I took the  
22 oath I would have to enforce the rule.

23           The point is they could mail -- they could  
24 mail citations to the property owner, but that's not  
25 effective service. Now, you can say, Oh, the

1 property owner must have known. We -- we say we sent  
2 97 citations to him.

3 He's the irony. The Bank, which got all of  
4 this collaboration, got meetings with City people.  
5 The Bank got everything perfectly per the code. They  
6 got in-person visits. They got certified mail to  
7 their agent for service of process, and Mr. Watson's  
8 team went one step further. They sent regular mail  
9 to The Bank.

10 This all came out in Mr. Cole's testimony.  
11 So they got concierge treatment, but the property  
12 owner, who is going to be there after the tenant is  
13 gone, did not. What happened when the property owner  
14 learned what was going on?

15 Now, this was COVID. Mr. Solomon testified  
16 that he's 76 years old. He was hiding. He was not  
17 going to his office. He did not want to catch COVID.

18 Thank God we're kind of past it, but those  
19 were the days when a lot of people hid. So whenever  
20 these letters started coming to his office -- and  
21 Ms. Petrusis absolutely accurately stated that he  
22 acknowledged getting 16 of them -- they were in the  
23 office, but here's where she missed the point. They  
24 were not delivered to him.

25 If I am in an office and I see something



1 certified mail, I'm going to make sure the boss knows  
2 about it. Probably it has legal significance,  
3 financial significance, or it's some kind of a hoax.  
4 One and two are more likely.

5 His office made a phone call to Ms. Lane.  
6 Now, you can say, Well, the property manager should  
7 have told him, and I don't disagree with you. The  
8 property manager should have told him, but the code  
9 does not require that.

10 The code, as I said, makes it idiot proof.  
11 Even a negligent property manager is very likely to  
12 say, Hey, I got a certified letter here and it must  
13 be important. They're talking about violations.  
14 They sent it certified. You need to know about this.  
15 This was not brought to his attention.

16 By the way, his testimony, which went on  
17 quite a while, was never impeached. Nobody said he  
18 was wrong about this fact or that fact. Totally a  
19 straight arrow and very credible, as was Mr. Watson,  
20 but the point is the code is on Mr. Solomon's side,  
21 and the code is what I'm asking you to enforce.

22 So if you look at -- the next slide that I  
23 have is 1.21.050, and that is -- that is the kind of  
24 code section you want if you are a property owner.  
25 The requirements, first the enforcement official has

1 to attempt to locate you.

2 Now, Mr. Solomon is not hard to locate. I'll  
3 tell you the irony. The City says they sent 97  
4 violation letters to Mr. Solomon. They -- they had  
5 sent a revocation letter, and they said to his  
6 Wilshire Boulevard, Los Angeles address.

7 The City sent a revocation letter, we're  
8 going to revoke the permit, to him May 19, 2022. You  
9 know where they sent that after they say they sent 97  
10 letters to him, that he says he only got 16 of  
11 starting in March?

12 They sent it to him at The Bank. At  
13 The Bank. Not to his address, which they said they  
14 have been using, but to The Bank Restaurant.

15 Ms. Petrusis must have figured that out.  
16 They continued the hearing because it didn't have  
17 adequate notice to the property owner.

18 And on July 1st at 5:00 o'clock, the 4th of  
19 July weekend, she called Mr. Solomon. He's not hard  
20 to reach. She called him and left a voicemail  
21 message. He got the message and called her back at  
22 5:15. He then learned the City planned to revoke the  
23 permit.

24 Somebody reached -- Ms. Petrusis did the  
25 absolute wise thing. I applaud her. She made up for

1 what hadn't happened. She called him.

2 The City could have called him at any time.  
3 You will see that Mr. Cole said, I wonder if the  
4 property owner knows about this, and then sent an  
5 August 20 letter to Mr. Solomon by regular mail, and  
6 that letter says this is to inform you, meaning we're  
7 telling you, that your tenant is violating.

8 There's no assertion -- no assertion -- that  
9 Mr. Solomon or Zip Third is violating anything.  
10 Nobody attempted to hold him responsible or told him  
11 he was responsible or attempted to fine him, nothing  
12 like that whatsoever.

13 Now, what happens after he learns? What  
14 happens after he learns July 1? He gets a bankruptcy  
15 lawyer because The Bank is in bankruptcy.

16 I don't know if any of you have familiar --  
17 have familiarity with bankruptcy, but if a bankruptcy  
18 has been going on for a few -- a couple years, like  
19 The Bank's bankruptcy was going, it's not that easy  
20 to get a judge to dismiss the bankruptcy case. I  
21 think that's a statement I can make to your common  
22 sense.

23 He went in and got a bankruptcy lawyer down  
24 here who testified to this who went in and got the  
25 bankruptcy dismissed -- that's not child's play --

1 because of the violations, and that set the stage so  
2 he could bring an unlawful detainer action.

3 That dismissal on an expedited basis, despite  
4 years of planning and so on in the Bankruptcy Court,  
5 was August 23rd. The dismissal order is in the  
6 record. Next step is to bring an unlawful detainer.

7 That had not happened at the time of the --  
8 of the hearing. It's not in the -- our hearing,  
9 which was August 31st and September 1st, referring to  
10 the revocation hearing, so I can't talk about what  
11 happened afterwards because I'm going to stick to the  
12 record. I would love to, but I won't.

13 So anyway, I think -- I think I'm kind of  
14 pounding the drum maybe to the point of nauseating  
15 you, but the service was bad. It was not service at  
16 all.

17 Now, the administrative law judge states, "It  
18 seems to be the question legally will come down to,  
19 can the City hold this permit holder responsible for  
20 violations of the CUP by their tenant?"

21 Now, let's look at City Code 1.21.020(c).  
22 "'Responsible person' means any person whom an  
23 enforcement official determines is responsible for  
24 causing or maintaining a violation of the code. The  
25 term 'responsible person' includes, but is not

1 limited to," and it lists all of the people who could  
2 be a responsible person, including a property owner.

3 But the City never said, You, sir, are a  
4 responsible person. Your entity is a responsible  
5 person. We are citing you. Responsible person could  
6 have come into play if the City had said there's a  
7 public nuisance here.

8 That's Title 8 of your code. That's the only  
9 section of your code that I can find that says a  
10 property owner has as its agent a tenant. In other  
11 words, if the tenant does something bad, you can  
12 attribute it to the property owner, public nuisance.

13 That's not what happened here. They didn't  
14 proceed on that basis, and according to the rules,  
15 they have to -- they have to accomplish service in  
16 the way I've told you.

17 Even if you think it's ticky-tack, that's the  
18 City of Temecula rules. That's due process. That's  
19 what you were sworn to uphold.

20 Now, the -- the -- I argued to the  
21 administrative law judge you've got these -- you've  
22 got these violations by The Bank. I'm assuming --  
23 you know, I'm assuming -- I completely understand the  
24 argument that who in their right mind would give up  
25 these late hours when you make all your money selling

1     booze, have somebody play music at dinner and lunch.

2             It's hard to believe that the guy who went in  
3     and applied for the modification in 2012 understood  
4     that, but that's not my fight. I'm not here trying  
5     to defend The Bank.

6             But the point of the story just is with the  
7     property owner also being a permit holder, I would --  
8     if you look at Section 4 of the CUP, it says that the  
9     City can review and modify this Conditional Use  
10    Permit based on changed circumstances.

11            Now here, I gather the changed circumstances.  
12    The business got loud. The business operated too  
13    late, and there were supposedly -- I didn't witness  
14    any of this, so I don't know, but there was testimony  
15    as to assaults and crimes in the area and so forth.

16            So the City fought and offered testimony that  
17    it had grounds to revoke as to the tenant, The Bank,  
18    but they didn't offer grounds to revoke as to the  
19    property owner, who was never cited and who is not  
20    responsible according to the city code.

21            The property owner's circumstances did not  
22    change. There was no basis to revoke as to the  
23    property owner. He didn't do anything wrong and he  
24    wasn't cited. It was the tenant whom the City  
25    complained of.

1           Now I mentioned the bankruptcy order, and  
2 that is the bankruptcy order dismissing the  
3 bankruptcy.

4           Now, I'm not going to belabor this, but  
5 Mr. Watson did talk about, as I alluded earlier,  
6 talking to the owners. And I asked Mr. Watson, after  
7 he talked about talking to the owners -- and by the  
8 way, I completely commend him on this procedure.  
9 He's business friendly, exactly as he says. As I  
10 said, he was a very good witness.

11           I asked him this question and he answered me  
12 very candidly. "You testified that the code  
13 enforcement situation is the City tries to be  
14 business friendly and that the City does not want to  
15 use a heavy hand as to owners, but instead to work  
16 collaboratively. I think I quoted that pretty  
17 accurately. Based on that, did you ever attempt to  
18 contact Mr. Solomon or anyone at Zip Third by phone,  
19 for example?"

20           Answer, "No."

21           Then I asked him, "My question is you  
22 indicated that code enforcement reaches out to owners  
23 to act collaboratively. Did you reach out to this  
24 owner to act collaboratively, meaning a phone call or  
25 something that isn't an enforcement letter? That is

1 my definition for purposes of this question."

2 His answer, "No, we didn't."

3 And I want to be clear. "We didn't." I'm  
4 not suggesting for one second that Mr. Watson  
5 personally did anything wrong. He seems like a very  
6 efficient guy, very good public server. My own  
7 theory is, hadn't done a revocation before, weren't  
8 that familiar with the proceeding, they did the best  
9 they could and went absolutely by the book as to the  
10 tenant, obviously, but not as -- as to the property  
11 owner.

12 And the property owner is not an unimportant  
13 person. The property owner comes down here, buys  
14 property, generates revenue for the city, rents  
15 property to people, and in the case of this property  
16 owner, nine properties in the City of Temecula, and  
17 met with Mr. Watson.

18 To his credit, he didn't deny the meeting, he  
19 just said he didn't recall it. And I believe he  
20 didn't recall it. I'm sure a lot of people want to  
21 talk to him.

22 But the administrative law judge noted in her  
23 decision that Mr. Watson acknowledged that he never  
24 reached out to the property owner.

25 Now -- I've got the slide I want now.



1 "Service on The Bank was proper. Service was not  
2 effected on the property owner." We've gone through  
3 this.

4 But if you look at Mr. Cole's testimony, it's  
5 a primer on how you serve an administrative citation.

6 He says, "I mailed those certified and  
7 regular mail. I mailed them to the agent for service  
8 of The Bank."

9 And if you look at the last answer on the  
10 slide, he says, "I did not initially mail this civil  
11 penalties to Mr. Solomon. We discussed internally  
12 about, does the owner know? Let's let the owner  
13 know. So I sent the letter that we discussed on  
14 August 20th."

15 And then he was asked -- he says that they  
16 mailed them regular mail to Mr. Solomon and  
17 Ms. Moore, but he mailed them certified and regular  
18 mail to The Bank's agent for service of process.

19 So I'm not sure why they digressed from the  
20 procedure regarding the property owner. Some  
21 misunderstanding. Hard to believe it was deliberate,  
22 but that's what was done.

23 And there's no debate about this. This  
24 isn't -- there's no spin. There's no evidence that  
25 it happened any differently than I'm telling you.

1           And as we will see in a minute, the City has  
2 a really heavy burden here. It's clear and  
3 convincing evidence, and I will show you before I  
4 finish, California Supreme Court saying clear and  
5 convincing evidence is evidence that is highly  
6 probable and compels the unhesitating assent of every  
7 reasonable mind.

8           I'm paraphrasing, but I'm within a word or  
9 two. It's not as severe as beyond a reasonable  
10 doubt, but it's way, way above preponderance of the  
11 evidence.

12           When you look at this record, there's no  
13 clear and convincing evidence that you could revoke  
14 as to the property owner. There's no reason that you  
15 can't revoke, if you choose to, simply as to the  
16 restaurant owner.

17           This business of revocation -- and this is  
18 why Mr. Watson said they didn't -- even in regarding  
19 The Bank, even after all that -- those months, he  
20 testified, quote, "This is not a decision we made  
21 lightly."

22           And I believe him. He did not make that  
23 decision lightly. He gave -- he -- from the City's  
24 perspective, if I were the City, I would say we gave  
25 them every chance. What more can we do?

1           If you believe that's a valid Conditional Use  
2 Permit, I completely agree with you. He did give  
3 them every single chance. Didn't make the decision  
4 lightly, and they shouldn't make the decision lightly  
5 because it's capital punishment. It's the most  
6 severe punishment you can provide, and there's no  
7 reason in the world that should be administered to  
8 the property owner here.

9           I can understand the temptation to do it,  
10 because you can kind of think, well, there were  
11 letters sent there. Yeah, it's not exactly what the  
12 rule says, but if the property manager didn't tell  
13 them, whose fault is that? We're not going to  
14 require what the code says.

15           But that would not be the right thing to do.  
16 That's not what you're sworn to do. I understand it  
17 might be what you want to do, but it's not what you  
18 were sworn to do.

19           By the way, the tenant is in violation of the  
20 lease. This is basis for an unlawful detainer claim,  
21 because failure to report to the landlord when all  
22 these violations were being alleged, and Ms. Lane  
23 testified that she did not know of that requirement.

24           Now, we heard from Ms. Petrusis that in June  
25 or July of 2021, Ms. Lane told Mr. Pinkerton, the

1 property manager, about the violations, but that's  
2 not the testimony.

3 I'm not casting the first stone at  
4 Ms. Petrusis. She's -- she's been honorable. So I  
5 cross-examined Ms. Lane, and this is transcript, day  
6 two, 169, lines 11 through 19.

7 "Okay. I understand now you had a  
8 conversation with David Pinkerton. And was this  
9 conversation referring to the conversation where he  
10 called you about the parking lot?" Let me start  
11 there.

12 It wasn't a situation where she contacted  
13 him. He called her about the parking lot. The  
14 testimony was there were problems in the parking lot.  
15 Mr. Solomon caused all those cameras that Mr. Penman  
16 told you about to be put in the parking lot. Also  
17 testified there was a loud speaker system. All kinds  
18 of crazy stuff was happening in that parking lot.  
19 You'd think it was a wild fraternity party.

20 But it had a monitor, a dispatch system, to  
21 send somebody out there if necessary. And here are  
22 these people getting drunk, or whatever, in the  
23 parking lot, and somebody is watching them and yells  
24 over a live loudspeaker, Get out of here, and it  
25 worked effectively.

1           So that was the parking lot they're talking  
2 about. So she -- so I asked her, "Am I clear with  
3 you what I'm talking about now, the parking lot  
4 conversation?"

5           The answer was, "Yes."

6           "Which is then approximately late June, early  
7 July of 2021; am I correct?"

8           Answer, "Correct."

9           So then page 170, this is day two, lines 19  
10 though 22 -- 23. "I recognize your testimony. You  
11 said that call you had with him was a long time ago  
12 and you said you were being hassled by the City  
13 attorney." The court -- "Am I correct you told him  
14 that?"

15           Answer, "Yes."

16           And then, "Do you know, Ms. Lane, whether it  
17 was this conversation or some other conversation  
18 where you said to him, 'I've gotten some citations or  
19 official communication from the City'?"

20           She said, "I know we had it in that  
21 conversation. I don't know if we had it in a  
22 previous conversation as well."

23           So then I asked her, "Okay. As best you can  
24 tell me, you said before it wasn't detailed. What is  
25 your best recollection of what you said? And let me

1 tell you what I'm trying to get at. You just  
2 mentioned I'm getting hassled, or did you say I have  
3 gotten a citation? And if you don't know, say you  
4 don't know, but be as precise as you can."

5 Here the testimony. "I actually -- I would  
6 actually be guessing if I said. I know -- I know I  
7 told him we were being hassled. I couldn't honestly  
8 say if I said exactly if there were citations, not  
9 citations, what it was about. Like I said, it was --  
10 it was -- like I said, it was mostly --" and then  
11 that was the end of that topic.

12 But she didn't know what she told them. She  
13 knows she talked to them about the parking lot in  
14 June or July of 2021. She doesn't know that -- if  
15 she talked to him about the citations.

16 Again, he contacted her about the parking  
17 lot, not about citations. So there was a little -- I  
18 understand the confusion there, but the version you  
19 were given by the City attorney was different than  
20 what Ms. Lane actually testified to.

21 And there was one other statement by the City  
22 attorney that Mr. Solomon knew about these citations  
23 in March of 2022, because that's when some of them  
24 showed up at his office.

25 As I said, they weren't sent certified mail.

1 His testimony, which was never impeached, was that he  
2 did not get those citations. They weren't delivered  
3 to him.

4 He was told -- he learned about them after  
5 Ms. Petrusis told him we're going to try to -- we're  
6 trying to revoke your permit on July 1st.

7 Then he said, to quote Vince Lombardi, What  
8 the hell is going on here? Contacted his people, Did  
9 you get any notices, whatever? And that's when he  
10 saw the 16 from March.

11 Now, I mentioned the requirement of clear and  
12 convincing evidence. I wanted to show you that.

13 We talked about due process is no less than  
14 the City Code. The clear and convincing evidence  
15 standard, the Supreme Court precisely says, "so clear  
16 as to leave no substantial doubt; sufficiently strong  
17 to command -- to command -- the unhesitating assent  
18 of every reasonable mind."

19 Now, there's a Justice called Walter Croskey  
20 who once said -- not a Supreme Court Justice, an  
21 Appellate Court Justice -- who once said, That's too  
22 strong. That almost sounds like even a tougher  
23 standard than beyond a reasonable doubt. And he  
24 wanted the Supreme Court to say, Oh, it's really not  
25 as strong as we said before. They wouldn't.

1           That's the standard here. That's what you  
2 are charged with reviewing, is the evidence  
3 sufficient to revoke -- is it clear and convincing to  
4 revoke the permit as to this permit holder?

5           That's the permit holder I represent and  
6 that's the permit holder that's entitled to due  
7 process.

8           Now, I want to -- I'm going to repeat  
9 something. I don't like to repeat myself, but this  
10 is one that I think is worth repeating.

11           If the City, in August of 2021 when Mr. Cole  
12 sent his letter to Mr. Solomon saying I want to  
13 inform you that there are violations, if the City  
14 corrected its records of that, as the City attorney  
15 said -- she's going by what the City has told her --  
16 if they corrected their records then and began  
17 sending all these notices at that point to the  
18 Wilshire address, why -- why in the world when it  
19 came to a really important piece of mail, the  
20 revocation letter of May 19, why was that sent to  
21 Zip Third at The Bank's address if they had been  
22 using the correct address all this time?

23           Now, I understand anything is possible.  
24 Mistakes happen. I'm simply suggesting it's not  
25 clear and convincing that all these notices went to



1 Zip Third.

2 But the overarching point I want to make --  
3 and this is a terribly important point because it's  
4 right in your code -- even if they all went there,  
5 even if not only did they go there, if Mr. Solomon  
6 was at the Los Angeles Coliseum at a football game,  
7 and in front of a hundred thousand people the City  
8 said, Mr. Solomon, we've been sending addresses --  
9 we've been sending letters to your Wilshire address  
10 regular mail, that still wouldn't comply with the  
11 City Code, and that's because somebody at the City,  
12 when they wrote this code, decided we are going to  
13 really respect the rights of a permit holder. And  
14 that's what I'm asking you to do.

15 I'm asking you, when you review this  
16 administrative law judge's decision, to respect the  
17 City of Temecula Code. That's what due process  
18 requires.

19 As I say, I -- I would love questions. Any  
20 question you want to ask, boy, would I love to have  
21 them. Because otherwise, you know, from the advocate  
22 point of view, you really want to know what the  
23 people who are going to make the decision are  
24 thinking. And if I miss something or if I misspoke  
25 or you think I misspoke, please hit me over the head.

1           COMMISSIONER TURLEY-TREJO: Are you through  
2 with your presentation, then?

3           MR. EDWARDS: Well, I've got four minutes  
4 left, but I -- I felt --

5           COMMISSIONER TURLEY-TREJO: Go ahead and  
6 finish up your presentation.

7           MR. EDWARDS -- I -- I felt that -- okay.  
8 I'll tell you what. I will finish my presentation.

9           COMMISSIONER TURLEY-TREJO: Okay. Thank you.

10          MR. EDWARDS: I was going to sacrifice some  
11 of my time, but I will finish it.

12          The only other point I would make is if  
13 Mr. Solomon had gotten these notices, he would have  
14 to be a fool to ignore them. Nobody wants to receive  
15 a bunch of notices like this and ignore them.

16          Mr. Solomon testified he's been involved in  
17 hundreds of properties for 40 years. He's got nine  
18 properties in Temecula.

19          Do you know happens if somebody gets a lot of  
20 notices and ignores them? Do you know what happens  
21 if somebody -- something happens in that restaurant  
22 that somebody says he should have known was an  
23 existing hazard?

24          He gets sued. It's a risk. If you're on  
25 notice of something, this is civil liability, not the

1 Temecula Code. Civil liability.

2           Somebody can sue you and say you indulged  
3 this. You have some responsibility. We're not  
4 governed by the Temecula code. You got a bunch of  
5 letters. You should have done something about it.

6           He would have to be a complete idiot to  
7 ignore notices he received by regular mail, or any  
8 other way. Again, that doesn't have anything to do  
9 with due process, but it does have to do with the  
10 need to follow the City Code, and it does, I think,  
11 impeach the idea that he knew about this before Ms.  
12 Petrusis told him on July 1st telephonically, which  
13 the City could have done at any time.

14           He owns nine properties. He wants to be a  
15 friend of the City. If they call him, do you think  
16 he's going to reject the call? He -- he came down  
17 here and introduced himself to Mr. Watson, and he  
18 testified he's never had problems like this in any  
19 other city, not with his hundreds of -- more than his  
20 hundred other projects.

21           With that I will just remind you I very much  
22 respect that you took an oath. I hope you will  
23 respect due process here. I understand all of the  
24 arguments that due process was given to The Bank.

25           Nothing remotely resembling the due process

1 that the City of Temecula promulgated was to adhered  
2 to here. It simply wasn't. Not because of bad  
3 motive, not because of incompetence. My theory,  
4 inexperience.

5 I commend the City for being -- and I commend  
6 Mr. Watson for saying we don't make these decisions  
7 lightly. You obviously don't.

8 Ten years without revocations, that's a very  
9 honorable record. Please continue that honorable  
10 record by not revoking as to Zip Third. I've  
11 concluded.

12 COMMISSIONER TURLEY-TREJO: Thank you, sir,  
13 for your presentation.

14 At this time is there -- are there any  
15 clarifications?

16 Ms. Fox, do you have any clarifications at  
17 this time with this presentation that you can give  
18 our Commissioners, or should we go ahead with  
19 questions?

20 MS. FOX: I think we should go ahead with  
21 questions, Madam Chair.

22 COMMISSIONER TURLEY-TREJO: Okay. All right.  
23 So are there any questions?

24 We'll start on this end.

25 COMMISSIONER RUIZ: Thank you, Madam Chair.

1 Thank you, Mr. Edwards. Just one clarifying  
2 question here because there's been so many different  
3 dates and --

4 MR EDWARDS: Sure. Absolutely.

5 COMMISSIONER RUIZ: -- you know, thrown out  
6 here.

7 So what is the date that you say that  
8 Mr. Solomon was first notified of the citations that  
9 the City was issuing?

10 MR. EDWARDS: First notified July 1 by  
11 Ms. Petrusis.

12 COMMISSIONER RUIZ: July 1?

13 MR. EDWARDS: That's 2022.

14 COMMISSIONER RUIZ: So nothing -- nothing  
15 prior to '22?

16 MR. EDWARDS: May I expand on my answer?

17 COMMISSIONER RUIZ: Please.

18 MR. EDWARDS: Okay. When he was notified on  
19 July 1 -- and thank you very much for your question.  
20 I really appreciate your engaging this.

21 When he was notified on July 1, his testimony  
22 was he contacted his office and said have we gotten  
23 any notice of any citations? Give me every piece of  
24 paper. And they assembled eight envelopes containing  
25 sixteen violations.

1           Now, after this, to Ms. Petrusis' total  
2 credit, she made sure that he got notice of every  
3 violation as this proceeding was going on, and he  
4 testified that he had several conversations with  
5 Ms. Lane, which she does not deny, saying, Comply  
6 with the code.

7           And she said, I'm advised by my lawyers that  
8 if I comply with the CUP -- excuse me. I misspoke.  
9 I said the code and I meant the CUP.

10           If I comply with the CUP as the City contends  
11 it's written, I will admitting that I have a weak  
12 case.

13           So unable to negotiate that with her, he then  
14 hired a bankruptcy lawyer and got the order you saw  
15 on August 23, and that was necessary because he could  
16 not initiate an unlawful detainer, as you probably  
17 all know, as an automatic stay.

18           You have to get permission from the court  
19 before you sue somebody who's in bankruptcy. The  
20 state prevents all -- if you're suing them, your  
21 litigation stops. If you're not suing then, you've  
22 got to go in and get permission from the court.

23           So he went in, asked for relief from the  
24 stay, but also asked that the bankruptcy be  
25 dismissed. The court dismissed the bankruptcy and at

1 that point he was free to bring an unlawful detainer  
2 as of August 23.

3 But the point I'm trying to make, and forgive  
4 me if I'm exceeding your question, but I think you're  
5 getting at what action did he take and when did he  
6 know and what did he know, and all that. He -- the  
7 action was very prompt after learned.

8 COMMISSIONER RUIZ: Okay. So but July 1st is  
9 when he received and then -- then discovered there  
10 was multiple stuff that was sent to his office prior  
11 to that day?

12 MR. EDWARDS: As starting in March, they had  
13 received some envelopes, total of eight that had  
14 sixteen violations, but by regular mail.

15 COMMISSIONER RUIZ: Thank you.

16 MR. EDWARDS: Nothing certified.

17 Thank you, sir, for your question. I  
18 appreciate it.

19 COMMISSIONER WATTS: And following up on  
20 that, nothing was communicated to your client from  
21 the office that received those 16 violations?

22 MR. EDWARDS: Nothing was communicated until  
23 he initiated it, and if -- if -- looking at you  
24 right -- he initiated to the office on July 1, What's  
25 going on, and what happened was -- and again,

1 Commissioner Watts, if you want to say the property  
2 manager should be punished, I would agree with you,  
3 but the City didn't comply with the code. It wasn't  
4 sent certified.

5 He -- the testimony was unimpeached. He  
6 received after July 1 these 16 envelopes -- excuse  
7 me -- 8 envelopes, 16 violations, that had been sent  
8 all by regular mail, and the testimony was that the  
9 property manager contacted Ms. Lane who said, I'm  
10 working this out with the City. We've operated the  
11 same way for nine years, and that's true. There's --  
12 nobody denies that.

13 What happened, that 2012 modification was  
14 never enforced for nine years, and then they -- then,  
15 which the City, according to how it's written, has  
16 every right to do, the City, as Mr. Watson testified,  
17 reached out to the property owner and said you're  
18 open too late.

19 I think the loudness came up later. But  
20 Mr. Solomon was involved in none of that.

21 But to answer your question directly, yes,  
22 the office did -- property manager did not tell him  
23 about those letters, and I'll go further and say they  
24 should have. But I will go further still and say if  
25 it had been certified mail, it's hard to believe they



1 wouldn't have.

2 COMMISSIONER WATTS: Okay. So the property  
3 manager did not --

4 MR. EDWARDS: Did not talk to him.

5 COMMISSIONER WATTS: At all?

6 MR. EDWARDS: Did not at all.

7 COMMISSIONER WATTS: Even though he had the  
8 copies of the letters?

9 MR. EDWARDS: Did not. That's true.

10 COMMISSIONER WATTS: Okay. That's all the  
11 questions. Thanks.

12 COMMISSIONER TURLEY-TREJO: Any questions  
13 down here?

14 COMMISSIONER SOLIS: I think I had the same  
15 question.

16 MR. EDWARDS: Sure.

17 COMMISSIONER TURLEY-TREJO: Okay.

18 COMMISSIONER SOLIS: Which was answered.  
19 Thank you.

20 COMMISSIONER HAGEL: Okay. Something that  
21 you didn't mention, and I just want to clarify, the  
22 CUP that you believe that is in place for your client  
23 is a Type 47 license, background music allowed, and  
24 the hours, I think, were 11:00 to 10:00 and 11:00 to  
25 11:00, you know --

1           MR. EDWARDS: I understand exactly what  
2 you're -- I don't know the number, if it's 47, or  
3 what, but what I do know is this.

4           I don't -- just as a human being walking down  
5 the street, talking to you not as a lawyer now, it's  
6 hard to believe that anybody, as I think I said  
7 earlier, would surrender those money hours where you  
8 make -- people drinking in bars late at night for the  
9 music, but that's what that CUP says.

10           And to expand on the question that was asked  
11 earlier, Mr. Puma testified that -- and I think  
12 Mr. Penman -- Mr. Puma testified, I went in there, I  
13 told them what I wanted, I'd been on the business --  
14 Old Town Business Association, which Mr. Solomon was  
15 a founder of when they renewed that association  
16 later.

17           Nobody told me that they were cutting the  
18 hours. I didn't know, and I didn't read it. I put  
19 in a drawer. Mr. Penman was -- his last description  
20 of that accurately reflects the testimony.

21           But Mr. Solomon bought the property, I think,  
22 in 2016, his entity did. '15 or '16. Sorry if I  
23 don't have the exact year. And that CUP was in  
24 place, and The Bank was in that restaurant at the  
25 time and they were operating the same way they had

1 for nine years -- not nine years -- three or  
2 four years at that point, you know, until the late  
3 hours, and they continued doing that until -- and  
4 only stopped doing it after the administrative law  
5 judge hearing.

6 Did I answer your question?

7 COMMISSIONER HAGEL: Yeah. I just want to  
8 know what your client's understanding of whether that  
9 CUP was in place or not. That's -- that's all.

10 MR. EDWARDS: That was the most recent CUP.

11 COMMISSIONER HAGEL: Okay.

12 MR. EDWARDS: So we -- unless somebody says  
13 that we're going to overturn it because --

14 COMMISSIONER HAGEL: Right.

15 MR. EDWARDS: -- it was a word processing  
16 error. The answer to your question, sir, is yes.

17 COMMISSIONER HAGEL: Okay.

18 MR. EDWARDS: Thank you.

19 COMMISSIONER HAGEL: That's it.

20 COMMISSIONER TURLEY-TREJO: Okay.

21 Commissioner Watts?

22 COMMISSIONER WATTS: Yeah. Going back.

23 So the first time your client heard about the  
24 violations was from the City calling?

25 MR. EDWARDS: From -- to her total credit,

1 from Ms. Petrusis calling, not -- you know, the City  
2 lawyer who has had to continue -- I -- I will just  
3 make an assumption here.

4 I'm going to make an assumption that when she  
5 looked at the record, she saw that they had sent the  
6 notice of revocation to Mr. Solomon, Zip Third, at  
7 The Bank Restaurant, and she wanted to make sure he  
8 knew there was a revocation proceeding.

9 But whatever the motive for the call was, she  
10 told him -- this was unrefuted testimony -- on  
11 July 1, We are trying to revoke your permit, and he  
12 said, What? And, you know, she spoke to him again on  
13 July 5th.

14 So this is Friday -- again, I want to  
15 emphasize, he's not hard to reach. She calls him  
16 Friday. This is the 4th of July long weekend. July  
17 1st is the Friday.

18 He calls her back within 15 minutes, and to  
19 her credit, she called him back 10 minutes after  
20 that. So it wasn't hard to tell him what was going  
21 on. Anybody at the City at any time could have  
22 called him.

23 COMMISSIONER WATTS: Okay. And the letters  
24 that were sent to the Wilshire address were all prior  
25 to July 1; is that correct?

1 MR. EDWARDS: Yes, they were.

2 COMMISSIONER WATTS: Is the same property  
3 manager still employed by your client?

4 MR. EDWARDS: That's not -- that's not in the  
5 record. I'll answer if you want me to, but I don't  
6 want to -- I don't think I'm supposed to exceed the  
7 record, and I always try to play by the rules.

8 I think I'm not supposed to --

9 COMMISSIONER WATTS: That's fine.

10 MR. EDWARDS: I'll tell you anything you  
11 want.

12 COMMISSIONER WATTS: No. You don't need to  
13 answer that --

14 MR. EDWARDS: Let me just say -- let me just  
15 say there was obvious disappointment; okay?

16 COMMISSIONER WATTS: Okay. Thank you.

17 MR. EDWARDS: I can say that because that  
18 came out in the hearing.

19 COMMISSIONER TURLEY-TREJO: Okay. Any other  
20 questions of Commissioners? Are we good?

21 Okay. All right. Thank you so much --

22 MR. EDWARDS: Thank you very much.

23 COMMISSIONER TURLEY-TREJO: -- for your  
24 presentation. We appreciate your time. Thank you.

25 Okay. So at this time we will ask

1 Ms. Petrusis to come up for her rebuttal, and Denise,  
2 can you clarify the time left?

3 MS. JACOBO: Twenty minutes,  
4 fifty-eight seconds.

5 COMMISSIONER TURLEY-TREJO: Okay. All right.  
6 Thank you.

7

8 REBUTTAL SPEAKER

9 MS. PETRUSIS: Thank you, Madam Chairperson.

10 Not quite as tall as Mr. Edwards, but I  
11 appreciate -- I might steal that idea from him.

12 So I wanted to begin first in response to  
13 this allegation that I got Ms. Lane's testimony  
14 incorrectly.

15 On page 1518 of your packet there's a page of  
16 transcript. My question to her, "In 2021 did you  
17 ever speak to anyone at Zip Third Investments or  
18 Metro Resources about the civil penalties or  
19 citations?"

20 Answer, "Yes."

21 Question, "And do you remember who you spoke  
22 to?"

23 Answer, "David Pinkerton."

24 My question to her, "What is Metro  
25 Resources?"

1           Answer, "They're the management company for  
2 the property owner."

3           Question, "And by 'property owner,' are you  
4 referring to Zip Third Investments?"

5           Answer, "Yes."

6           Apparently Ms. Lane changed her testimony.

7           Moving on. So Mr. Edwards referenced the  
8 definition of responsible party and  
9 Code Section 1.21.020(c). "Any person whom an  
10 enforcement official determines is responsible for  
11 causing or maintaining a violation."

12           It's City staff's position that it was  
13 The Bank that caused and maintained the violation.

14           Code Section 1.21.050(b) references the  
15 business owner. It's the business owner that  
16 receives notice of the violation and the specific  
17 requirements of how to serve that notice or that --  
18 that citation, in this case.

19           It does not require -- the code does not  
20 require separate notice to be given to the underlying  
21 property owner, and Mr. Edwards cannot point to a  
22 code section that requires that.

23           The Bank was properly served with citations  
24 and civil penalties; however, it went one step  
25 further and it put Zip Third on notice that its

1 tenant was violating the CUP.

2 It is disingenuous for Zip Third to claim it  
3 wasn't properly notified. It's simply unbelievable  
4 that someone receives a piece of mail at their  
5 official address from the City of Temecula addressed  
6 to their business referencing a property owned by  
7 that business notifying that their tenant is in  
8 violation of the Municipal Code and that they would  
9 then disregard that notice and claim, Well, it's not  
10 proper service. We don't -- we don't have to do  
11 anything.

12 As the ALJ found, Zip Third was on notice of  
13 the violations since at least August 2021.  
14 Mr. Solomon testified that he did not visit his  
15 office often during the pandemic, but his decision  
16 not to visit his office or make arrangements,  
17 apparently, to have mail forwarded is not the City's  
18 responsibility.

19 There's been, I think, this argument or  
20 suggestion about the CUP shouldn't be revoked as to  
21 the underlying property owner. There's only one CUP.

22 The code does not provide for an opportunity  
23 where a CUP is revoked as to a business but not to a  
24 property owner. I don't know what that would look  
25 like.



1           The City -- the City issues a CUP that allows  
2 that business to operate in a certain way, and I  
3 don't know how it could be administered effectively  
4 if the CUP had flip-flops between, okay, now it's in  
5 effect but now it's not in effect.

6           The Municipal Code also does not require  
7 staff to specifically work with the property owner or  
8 with the violating party before initiating a  
9 revocation process.

10           There's been some references to, Oh, well  
11 this was the established procedures, but really  
12 Mr. Watson's testimony referenced a philosophy.

13           There are not separate requirements in the  
14 code that staff work with, collaborate with an  
15 individual or with a business owner or property owner  
16 before issuing citations or before initiating  
17 revocation.

18           Turning to some of the arguments that were  
19 made by Mr. Penman, he mentions, A staff person  
20 inadvertently made an error on the hours contained in  
21 the 2012 Conditions of Approval, and then he accused  
22 Mr. Fisk of perjury.

23           The Bank is trying to manufacture some form  
24 of uncertainty when it comes to what the operating  
25 hours are in the approved CUP.

1           Mr. Puma testified that he received the 2012  
2 Conditions of Approval, but didn't look at them.  
3 Ms. Lane testified that she threw it away when she  
4 was doing a clean-out of the restaurant.

5           Not to belabor this point unnecessarily, but  
6 there's no requirement in the code that an individual  
7 receiving a CUP must sign the Conditions of Approval  
8 as being accepted.

9           The Bank spent a considerable amount of time  
10 taking issue with the evidence of criminal activity  
11 associated with The Bank, whether or not those two  
12 shooting events were properly attributed to The Bank.

13           Sergeant Hephner's testimony was based on his  
14 personal observations of the many, many instances of  
15 public intoxication, of DUI arrests, of individuals  
16 saying that they had come from The Bank, of his  
17 opinion that there were over-serving issues at the  
18 restaurant.

19           Mr. Cole also testified based on his personal  
20 observations of drunk and disorderly instances of  
21 picking fights with police officers.

22           The ALJ found their testimony to be credible  
23 and persuasive. It's our position that the Planning  
24 Commission can also find their testimony to be  
25 credible and persuasive.

1           Notably, The Bank does not dispute that the  
2 noise violations occurred or that they violated the  
3 live entertainment provisions of their CUP or that  
4 they operated and sold alcohol in excess of the  
5 permitted hours.

6           None of those violations are in dispute.  
7 They're focusing only on the amount of criminal  
8 activity associated with The Bank.

9           Any reason about why the hours were changed  
10 back to 2007's hours is protected by deliberative  
11 process privilege, but what they do have is  
12 Mr. Fisk's unequivocal testimony that there was an  
13 intentional decision made to roll those hours back.

14           There's been a suggestion that, Well, they  
15 only wanted to add live entertainment, but it's a  
16 condition of approval. Their request to modify the  
17 CUP was modified -- or it was granted, and that  
18 condition of approval was that their operating hours  
19 were changed.

20           Mr. Penman also mentioned about revoking the  
21 CUP is going to take away individuals' livelihood.  
22 There's no evidence of that in the record, but I want  
23 to point out that The Bank -- if the CUP is revoked,  
24 The Bank is not losing its ability to operate, it's  
25 losing its ability to sell distilled spirits and to

1 have live entertainment.

2 And I don't think I have anything further,  
3 but, of course, if the Commission has any questions  
4 for me, I would be happy to answer.

5 COMMISSIONER TURLEY-TREJO: Thank you,  
6 Ms. Petrusis.

7 Are there any questions?

8 Yes, Commissioner Ruiz?

9 COMMISSIONER RUIZ: Thank you. I just want  
10 to clarify a couple things.

11 So you mentioned first the City Code is only  
12 required to notify the business owner for citations;  
13 is that correct, and not the property owner?

14 MS. PETRUSIS: The business owner is who they  
15 determine to be responsible for the violations, and  
16 so the business owner, i.e. The Bank, was cited.

17 COMMISSIONER RUIZ: Okay. And then even  
18 though we've got two separate businesses here being  
19 represented, just to clarify, that's one CUP;  
20 correct?

21 These are not two separate items, it is one  
22 CUP that runs with the land that we all understand;  
23 correct?

24 MS. PETRUSIS: Yes, Commissioner. And I've  
25 heard some refer to the 2012 CUP. There's just one

1 CUP that's been modified twice.

2 When we're talking about 2012, we're talking  
3 about the Conditions of Approval that are associated  
4 with that one CUP, and they have changed.

5 COMMISSIONER RUIZ: Thank you very much.

6 COMMISSIONER TURLEY-TREJO: Commissioner  
7 Watts?

8 COMMISSIONER WATTS: If a CUP is revoked, and  
9 recognizing the City has not done that previously,  
10 would the property owner have redress as far as  
11 reapproaching the City for a new CUP?

12 MS. PETRUSIS: I don't know what the limits  
13 would be on a property owner applying for a CUP. I  
14 think that would be handled in the normal course.

15 COMMISSIONER WATTS: Thank you.

16 COMMISSIONER TURLEY-TREJO: Commissioner  
17 Solis?

18 COMMISSIONER SOLIS: No, thank you.

19 COMMISSIONER TURLEY-TREJO: Nothing? Okay.

20 All right. I don't think I have any  
21 questions. I appreciate your comments.

22 Any other questions before we close this part  
23 of the hearing?

24 MR. EDWARDS: I have a question, but I don't  
25 think you'll let me ask it.

1           COMMISSIONER TURLEY-TREJO: Yeah. I don't  
2 think so. Sorry.

3           MS. PETRUSIS: My pleasure.

4           COMMISSIONER TURLEY-TREJO: All right. Thank  
5 you. Okay. Are we good? Does anybody need a break?  
6 Are we good? Okay. Gary, are we good? Okay.

7           All right. So at this time we are going to  
8 ask for public comments.

9           And Denise, do we have any public comments?

10          MS. JACOBO: Yes, we do. We've received one  
11 letter for correspondence and we've received two  
12 request-to-speak slips here.

13          COMMISSIONER TURLEY-TREJO: Okay. So then I  
14 will go ahead and read this paragraph on public  
15 comment for those that are speaking here today.

16          A total of 30 minutes is provided for members  
17 of the public to address the Commission on matters  
18 not listed on the agenda.

19          Each speaker is limited to three minutes.  
20 Public comments may be made in person at the meeting  
21 by submitting a speaker card to the Commission  
22 secretary or by submitting an e-mail to be read aloud  
23 into the record at the meeting. E-mail comments must  
24 be submitted to [planningcommission@temeculaca.gov](mailto:planningcommission@temeculaca.gov).

25          Speaker cards for in-person comments will be

1 called in the order received by the Commission  
2 secretary, and then if time permits, e-mail comments  
3 will be read.

4 E-mail comments on all matters must be  
5 received prior to the time the item is called for  
6 public comments.

7 All public participation is governed by the  
8 council policy regarding public participation at  
9 meetings adopted by Resolution No. 2021-54.

10 Our first public speaker, please?

11

12 PUBLIC SPEAKER

13 MS. JACOBO: I will read into the record the  
14 letter of written correspondence that was received or  
15 e-mailed to our city clerk's office on Tuesday,  
16 February 14, at 9:58 a.m. from Alan Ronska.

17 "Erica, two shootings, one death, and three  
18 people shot, forty-six violations, loud, vulgar music  
19 until 1:30 a.m. A nuisance to all the surrounding  
20 businesses.

21 After all I have listed, I am amazed in why  
22 the City of Temecula is even remotely considering  
23 extending the CUP, question marks. Outrageous to  
24 waste the taxpayer, dollars symbols, and an insult to  
25 all of us at Old Town Temecula small business owners.

1           Please reconsider extending the CUP. This  
2 place brings a bad element to Old Town Temecula that  
3 we can all do without. Once they extend the CUP,  
4 they will revert back to previous behavior.

5           FYI, the outdoor music is so loud, our  
6 patrons have to speak louder in order to converse,  
7 exclamation points. Unacceptable, exclamation  
8 points.

9           Alan Ronska Properties."

10          COMMISSIONER TURLEY-TREJO: Okay. Thank you.  
11          And public comment?

12          MS. JACOBO: Yes. Our first speaker is  
13 Steven Slaughter.

14          COMMISSIONER TURLEY-TREJO: Okay.  
15          Steven?

16

17                           PUBLIC SPEAKER

18          MR. SLAUGHTER: Hello. Thanks for hearing  
19 me.

20           My name is Steven Slaughter and I'm a  
21 resident of Temecula. I have worked at The Bank  
22 Mexican Restaurant and Bar off and on since 1983.  
23 I've worked for all three owners at the time.

24           I do have a full-time job. I'm a liquor  
25 buyer for a grocery company, so I'm very familiar



1 with the on-sale protocols in the liquor industry.

2 I do work at The Bank one day a week. It was  
3 around 2008, like they said, that The Bank was  
4 permitted to stay open later in the evening two  
5 nights a week until approximately 1:30 a.m.

6 The new owners, Amanda and Ryan, have  
7 continued to keep the restaurant open. They do take  
8 the responsibility of liquor license holders very  
9 seriously.

10 The tragic -- the tragic incident that  
11 happened at The Bank made us all victims, but then  
12 it -- it also only strengthened our rigorous safety  
13 protocols.

14 I've been to many other bars and restaurants  
15 and nightclubs in Old Town, Temecula that do not have  
16 as rigorous as security procedures like we do at  
17 The Bank.

18 In fact, at this point I do feel very safe  
19 and confident working at The Bank because the owners  
20 have provided experienced security personnel.

21 The one thing I just want to leave you with  
22 here today is that the owners and management at  
23 The Bank are responsible individuals, and they do  
24 take their -- again, they take their liquor license  
25 holding very responsibly.



1 changed the place since the dynamic that had made it  
2 a fun and -- a fun and great place to be able to come  
3 and enjoy a good time.

4           During COVID they -- they established a great  
5 entertainment that allowed everybody from all of  
6 Southern California to come and truly experience and  
7 enjoy what Temecula has to offer.

8           If it ended at The Bank, it started at our  
9 beautiful wineries, and it only -- only gets better  
10 from there.

11           I'm just happy and fortunate to be able to be  
12 here, and as somebody who's -- who experiences the  
13 night life here in Temecula, The Bank is probably one  
14 of the least places that I feel that I don't feel  
15 safe at.

16           Every other place that I've ever been to  
17 brings in thugs from other places or up north, down  
18 south, and -- and have less -- less security guards  
19 there, as my -- my correspondent, Mr. Steve, said,  
20 that don't ever -- in other ways, seem very  
21 unprofessional.

22           And I've seen other instances of -- of, you  
23 know, very, very untrained people trying to take care  
24 of discourses in other places as well, too.

25           I'm -- like I said, I'm fortunate for the

1 employment that I've -- that I've gotten from them,  
2 and all -- all the safety protocols they've  
3 taken[sic] to be able to ensure that nothing of the  
4 manner that happened at The Bank ever happens again  
5 or will ever happen again.

6 Like I said, I feel very safe there, and I'm  
7 happy that you guys let me speak on behalf of The  
8 Bank.

9 COMMISSIONER TURLEY-TREJO: Thank you, Cesar.

10 MR. RODRIGUEZ: Thank you very much.

11 COMMISSIONER TURLEY-TREJO: Okay. Are there  
12 any other public comments?

13 MS JACOBO: There are no further requests to  
14 speak.

15 COMMISSIONER TURLEY-TREJO: Okay. And just  
16 to give anyone a chance in the audience that has a  
17 public comment, if you would like to come up at this  
18 time -- and just to clarify, they would only have  
19 three minutes.

20 I think the timer said five.

21 We have another -- okay. Come on up.

22 And if you'll just fill out a speaker card  
23 after you're done and make sure that the secretary  
24 has that, that would be great.

25 MR. PARENT: I will. Thank you.

1           COMMISSIONER TURLEY-TREJO:  And what is your  
2 name?

3           MR. PARENT:  I'm -- I'm Rod Parent.

4           COMMISSIONER TURLEY-TREJO:  Okay.

5

6                           PUBLIC SPEAKER

7           MR. PARENT.  I'm Ryan's father.  I've lived  
8 here for 25 years with my lovely wife and raised a  
9 family here.

10                   These -- the death of this young man at the  
11 restaurant was devastating to us, to this family, as  
12 well as to the family of the deceased young man.

13                   They are working really hard.  They're  
14 running a small business.  They're doing the best  
15 that they can.  They've made mistakes, but the  
16 operation, the permitting, is -- it's so  
17 questionable.

18                   Why would -- why would hours be cut by  
19 20 hours a week, the most profitable hours, in 2012,  
20 and the City would allow the restaurant to operate  
21 all the way through nine, ten years, and then  
22 suddenly pop up and cut these kids off from running  
23 the restaurant the way the restaurant had been run  
24 for all those years?

25                   The police reports, the police calls to

1 service are no higher at The Bank than they are at  
2 any other restaurant in town, like restaurant in  
3 town, bar.

4 I don't know how the tug-of-war happened  
5 between the City and these people, but it's escalated  
6 beyond what is reasonable.

7 I'm a small business owner, have been my  
8 whole life, and I can't imagine fighting something as  
9 enormous and powerful as the City just to stay in  
10 business when -- when there's literally what appears  
11 to be made up information that the City is trying to  
12 prove a point.

13 The kids are trying to fight to keep -- to --  
14 it seems almost ridiculous to pile on to these  
15 people --

16 COMMISSIONER TURLEY-TREJO: You have  
17 30 seconds.

18 MR. PARENT: It feels like an attack on my  
19 family, so I hope that you understand these are human  
20 beings. When you take away their right to a living,  
21 it's breathtaking to me. So thank you.

22 COMMISSIONER TURLEY-TREJO: Thank you, Ron.  
23 Anyone else? Okay. Come on up.

24 Again, make sure that you fill out a slip, a  
25 pink slip, and turn that in to our secretary,

1 Commission secretary.

2

3

PUBLIC SPEAKER

4

MR TIBBS: Understood. Thank you.

5

6

So I'm Sergeant Deshai Tibbs from the US --  
the United States Military.

7

8

COMMISSIONER TURLEY-TREJO: What? Tell me  
your name.

9

MR TIBBS: Deshai Tibbs.

10

11

COMMISSIONER TURLEY-TREJO: Deshai Tibbs.  
Okay.

12

13

14

15

16

17

MR TIBBS: So I've been coming to The Bank  
for the past three years since I've been back. It's  
been a while, but The Bank is the only place that I  
will allow my team to come to because of the least  
amount of trouble or turmoil that goes on at  
The Bank.

18

19

20

Yes. I -- I mean, I wasn't around. I was  
deployed for the -- for the -- I guess the murder  
that took place, and I wasn't there for that.

21

22

23

24

It's a sad situation, but we can't take away  
from what's been going in Old Town. It's not just  
happening at The Bank, as you guys -- I mean, sitting  
here listening.

25

There's been other shootings and other

1   altercations that take place. I mean, just say, we  
2   all can't be at -- we can't be in the place at the  
3   same time -- we can't be there for everything, I  
4   should say, so to speak, and a situation took place.

5           There was no police officers in that area at  
6   the time, as -- you know, can't say they could be.  
7   They were doing other jobs or trying to protect  
8   everything else that's going on.

9           But we can't control the other people or  
10  civilian around the area. We can't control those --  
11  that or how to do things that are uncontrollable, are  
12  unknown, because we don't know what's going on with  
13  other people's minds in situations.

14          The Bank has given multiple people a place to  
15  go that they feel safe, that it was fun. It was a  
16  growing situation.

17          I've seen it from when I started going there  
18  and there wasn't many people going, to it growing to  
19  be something where there was an abundance of people  
20  going.

21          So it's a beautiful thing to see that -- the  
22  unity that The Bank brought, and to see the City is  
23  attempting to take that away seems to be -- I mean,  
24  words that were used -- childish, reasons unknown.

25          I'm not here to bash the City. I've been



1 living here for a long time and I love the City, so I  
2 can't say too much about it.

3 But I -- it does hurt to see that I don't  
4 really have many places to tell my soldiers that's  
5 coming from Camp Pendleton, that's coming from Fort  
6 Irwin, you know, Hey, this is a good place that you  
7 can send your soldiers, that there won't be no  
8 turmoil, there won't no issues, there won't be no  
9 problems, and now to see that, hey, that place is  
10 about to be taken away from incidents that I can't  
11 even speak on.

12 So all I could say is that this is a great  
13 place and I can bring soldiers to this location, and  
14 if you guys take that away, we don't really have much  
15 of where else to go in this area. So that's all from  
16 me.

17 COMMISSIONER TURLEY-TREJO: Thank you.  
18 Appreciate you coming up. Okay. All right.

19 Oh. Okay. Come on up.

20

21 PUBLIC SPEAKER

22 MR. CUIPO: My name is Chris. I'm a DJ and  
23 I'm the general manager of The Bank. I've been  
24 living here since I was 12. I'm 42. One of the  
25 pioneers of creating this night life in this area,

1 and especially in Old Town.

2 To talk about my citations, as soon as  
3 Mr. Cole talked to me about how high the decibels  
4 were, I stopped it right away. It didn't take a  
5 week. It didn't take two. I just did what he told  
6 me to do.

7 As Shai said, you know, there's so many  
8 incidents, and every single club, night life, it's  
9 uncontrollable. It's part of the live,  
10 unfortunately, and all of these finger pointing at  
11 The Bank, yeah. No. We were with a long streak of  
12 no fights, no altercations of any kind.

13 The other thing I want to touch is that the  
14 livelihood comment, if you are going to switch it to  
15 a 41, that does affect it. We are a Mexican  
16 restaurant. What Mexican is going to come to the  
17 restaurant and just drink beer? They need tequila,  
18 you know?

19 And as far as that, it's like, the other  
20 people I mentioned, you know, liquor sells, and it  
21 really does sell, and it does make money.

22 You take that away, it's taking away from all  
23 my employees as well, whether it goes to a 41 or  
24 we're still in business.

25 Name one restaurant out here that survives

1 off beer and wine that wasn't already established off  
2 beer and wine. We were beer and wine, but we  
3 switched and made more income.

4 So in considering of my employees, I -- I  
5 hope that you guys make the right decision and not  
6 revoke the CUP. Thank you.

7 COMMISSIONER TURLEY-TREJO: Thank you.

8 Okay. Where are we time-wise -- I know, but  
9 where are we time-wise as far as 30 minutes on public  
10 comments?

11 MS. JACOBO: We have no limit on speakers.

12 COMMISSIONER TURLEY-TREJO: Not today? Okay.  
13 All right.

14 Does anyone else want to speak?

15

16 PUBLIC SPEAKER

17 MR. OWENS: Trying to get my notes ready. My  
18 name is Shawn Owens. I am the head security at  
19 The Bank from the last, I'd say, two and a half  
20 years.

21 I want to start off by saying it is a  
22 historical building. So even if The Bank is closed,  
23 if we are open for business, a nightclub, there's  
24 people that's going to come and read the signs on the  
25 building. They're going to come and be interested.

1 They want to see the vault. They want to be more  
2 involved in something of a building like.

3 So by saying that, there was a couple  
4 incidents -- or I say that one incident -- that was  
5 spoke about that an incident had occurred about a guy  
6 with a gun on the property.

7 That goes for any other day. There's bums,  
8 there's -- there's people that's drunk that just come  
9 on our property to sit during our -- the time period  
10 of when we are closed, so I feel like incidents that  
11 happen on the days that we're closed, there's nothing  
12 we can do.

13 The incident that happened with the man  
14 passing was my brother. I was also there at the  
15 location. I was also there at the scene. I was two  
16 steps away from the actual shooting. Bullet hole in  
17 my sweater, everything like that.

18 That night, there was nothing we could have  
19 possibly did, because there was no arguments. There  
20 was no fights. The location was closed.

21 Best thing we can do, just like every cop  
22 tells us on the weekend, is to get people off our  
23 property. Anything that's off our property, we have  
24 to contact them.

25 So all the calls and incidents that we do

1 have coming in, they're not big incidents. They're  
2 just somebody is on the property, somebody is drunk,  
3 somebody's not just listening to the after hours of  
4 what we're giving.

5 Since we changed our hours, I can't think of  
6 no incidents that can possibly be named since we have  
7 been -- have been changed of the hours that we  
8 accepted.

9 There's just so much. I just have three  
10 minutes.

11 It's a small location. It's a small  
12 business, so there's only so many people we can have  
13 in our location. So even with capacity or not, it's  
14 not like we can fit a lot of people at, say, Baily's  
15 or any other bigger locations.

16 So we are really strict about enforcement,  
17 even before the incident happened, and our security  
18 is, like, so locked on. Our -- the bosses, the  
19 owners, they're real strict on us.

20 The cops -- I can see since the incident  
21 happened, a lot of cops have changed their areas,  
22 because I'm seeing new officers, but even officers  
23 that was there, they -- they feel freely and  
24 comfortable to come and walk by our business or come  
25 in and have conversations with our security guards

1 because they know of the job that we do.

2 Like I said, the incidents that did take  
3 place around The Bank, there's nothing that security  
4 or owners should be -- can do, because we're not  
5 allowed to even step off property.

6 So anything that's down the block, anything  
7 like that that we're getting blamed for, it had  
8 nothing to do with us. No incidents came from us.  
9 We're just doing our job to stay on property.

10 So if any officers happen to get mad because  
11 we couldn't help, or anything like that, my job is to  
12 stay on property and protect my business.

13 That's really it. I hope it continues to  
14 stay open. It is cutting a lot of hours from the  
15 staff and everything and from my family and  
16 everything. I have to provide. And I say that's  
17 pretty much it, I guess.

18 I just hope you guys make the right decision  
19 for us, please, and so we show and prove to you guys  
20 that it was a good decision, and that we can continue  
21 going with the historical building that we have.

22 COMMISSIONER TURLEY-TREJO: Thank you for  
23 coming on up.

24 Okay. Anyone else? Last chance. Okay. All  
25 right.

1           So all right. So at this time, because we  
2 have had public speakers, there's five minutes  
3 allotted to the City attorney, The Bank attorney, and  
4 Zip Third attorney to respond to the public speakers.

5           So we will start with the City attorney.  
6 Five minutes.

7           MS. PETRUSIS: I don't think I need to  
8 respond to anything. I don't have anything further,  
9 but, of course, if you have questions. Thank you.

10          COMMISSIONER TURLEY-TREJO: Okay. All right.  
11          The attorney for The Bank, Mr. Penman. Five  
12 minutes.

13

14                               PRESENTATION SPEAKER

15          MR. PENMAN: Thank you. The public speakers,  
16 I think, did very well, underscored the true  
17 situation at The Bank, supported by the evidence in  
18 the transcript.

19               It's not the place that was described to  
20 Mr. Watson, and it's not the place that Mr. Watson  
21 described, although I agree that he backed off of  
22 that a little bit in his testimony.

23               It's certainly not the place that the  
24 administrative law judge saw it to be, and I hope  
25 that it is not a place that you see through the eyes

1 of some people in the City who are desperately trying  
2 to do something about the crime that has occurred in  
3 Old Town, but there is so little that they can  
4 effectively do.

5 And as a result, this matter is before you,  
6 first this morning and now this afternoon.

7 And I again can only ask you to do the right  
8 thing, not the right thing for the property owner or  
9 for the business operators alone, but the right thing  
10 for the City of Temecula.

11 The fact that these -- you heard the security  
12 gentleman speak. As the evidence shows, they have  
13 doubled their security after the tragic death, and as  
14 Mr. Watson's testimony said, all they can do is close  
15 on time.

16 But the murder happened within the time they  
17 were allowed to be there, and then Mr. Watson said  
18 there's really nothing else -- he didn't have any  
19 other discussions of what to do.

20 Revoking the CUP is not the solution to this  
21 problem. It's -- it's not the way to go.

22 Thank you very much for your time.

23 COMMISSIONER TURLEY-TREJO: Thank you.

24 Mr. Edwards?

25 ///



1  
2  
3  
4  
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PRESENTATION SPEAKER

MR. EDWARDS: Thank you. I want to respond to the letter that was written because I think it relates to questions that Commissioner Ruiz and Commissioner Watts had.

What you heard in that letter was the restaurant's noisy, it's dangerous, close it down. There was no mention whatsoever about the property owner, and that -- that is a knee-jerk reaction.

The first things -- one of the first things I said to you today was -- and I read you, and it's on a slide -- the administrative law judge at the start of the hearing says, Am I hearing from you that there are two permit holders here, both the property owner and the restaurant operator? Ms. Petrusis, the City lawyer, said, Yes.

Now, you're absolutely right that there's one Conditional Use Permit, and Commissioner Ruiz, 100 percent, right on.

Commissioner Watts, you're absolutely right that runs with the land, but here's where the rubber meets the road.

Mr. Watson, to his credit, correctly testified, and I quoted this, "A CUP conveys a vested right to the property owner."

1           And the city has this procedure. You let the  
2 owner know. Here's a citation, here's a violation.  
3 And you don't -- you don't just send them a letter  
4 and say we're going to revoke your permit out of the  
5 blue.

6           Due process requires -- even if the city code  
7 says, Well, we only -- the City is arguing, Well, we  
8 only have to give notice to the business owner, and  
9 that's obviously to the extent the person who wrote  
10 that e-mail or letter knows there are two permit  
11 holders here. They're certainly ignoring my client.

12           It would not be due process. I don't think  
13 either of you believe -- I can't -- I'm not a mind  
14 reader. I'm making an assumption.

15           I don't think either of you or anybody up  
16 here believes it is due process to revoke without  
17 notice in accordance with the code. Due process  
18 requires telling somebody.

19           You've got a property right. You're due the  
20 process. We owe you the process of knowing what's  
21 going on. We're telling you. This is what we do.  
22 We're business friendly.

23           Now, Mr. Watson -- it's correct, as  
24 Attorney Petrusis says, Mr. Watson's expression of  
25 the philosophy, his words, which he also says are the

1 practice of the City -- he didn't just say this is  
2 our philosophy, he said this is our practice. This  
3 is what we do.

4 It's true that that's not written in the code  
5 word for word, but I emphasized before about how the  
6 code was idiot proof.

7 So the point here is you could absolutely say  
8 there are two permit holders. We are revoking the  
9 rights of The Bank, but the owner still retains  
10 vested right in the CUP, can operate a restaurant,  
11 can get another tenant, can move forward.

12 And there's absolutely no reason not to do  
13 it, and it would be an absence of due process if you  
14 failed to do it.

15 I've got a minute and 46, and I'm happy to  
16 get any questions. Boy, would I love them if anybody  
17 has one.

18 COMMISSIONER TURLEY-TREJO: I do have a  
19 question --

20 MR. EDWARDS: Sure.

21 COMMISSIONER TURLEY-TREJO: -- regarding the  
22 unlawful detainer --

23 MR. EDWARDS: Yes.

24 COMMISSIONER TURLEY-TREJO: -- and the status  
25 of that --

1 MR. EDWARDS: Yes.

2 COMMISSIONER TURLEY-TREJO: -- and is that  
3 still set for March 3rd?

4 MR. EDWARDS: Now, that -- okay. I'm -- can  
5 I go out -- I have to ask your permission, and,  
6 Ms. Fox, I want to address this to you also, even  
7 though I know -- I know -- Madam Chairperson, you're  
8 the boss.

9 I just don't want anybody to ever say I went  
10 outside the record and that's not in the record,  
11 so --

12 MS. PETRUSIS: We believe that evidence of  
13 the current unlawful detainer action is new evidence  
14 that wasn't before the ALJ.

15 MR. EDWARDS: Now, that's -- that's accurate.  
16 It wasn't, because it -- we had the hearing on the --  
17 Ms. Petrusis, correct me if I'm wrong, the 31st of  
18 August and the 1st of September, I think, is correct.

19 MS. PETRUSIS: Yes.

20 MR. EDWARDS: And as of that time there was  
21 no unlawful detainer.

22 Please remember August 23rd is the first date  
23 that would have been feasible after that order was  
24 entered on August 23rd.

25 COMMISSIONER TURLEY-TREJO: Okay.

1 MR. EDWARDS: That's the bankruptcy order.

2 COMMISSIONER TURLEY-TREJO: All right.

3 MS. FOX: Thank you, Madam Chair. I think  
4 that Counsel can answer the question if he has the  
5 information.

6 COMMISSIONER TURLEY-TREJO: Okay.

7 MR. EDWARDS: Okay. Now, I will answer the  
8 question. There is an unlawful detainer trial set.  
9 There were -- we have an unlawful detainer lawyer.  
10 It's not me.

11 I thought the unlawful detainer was set for  
12 March 8th. If you looked it up and saw March 3rd,  
13 you may be correct. I could be wrong on the date,  
14 but it's the first few days of March. I know that.

15 I also know they waited a long time to get a  
16 trial date, even though the code says you get a trial  
17 date quickly. You don't. It -- the courts are  
18 really backed up with unlawful detainers.

19 We're still seeing the effects of COVID, plus  
20 it's a business case. It's going to be a little bit  
21 more complicated, and there was extensive negotiation  
22 with the tenant trying to get the tenant to move out.

23 Also, there's a lot of ways people can delay  
24 an unlawful detainer, even though you're entitled to  
25 a preference, but move forward as expeditiously as we

1 could.

2 COMMISSIONER TURLEY-TREJO: Okay. Thank you.  
3 Any other questions while Mr. Edwards is up  
4 here?

5 Okay. So thank you.

6 MR. EDWARDS: Thank you for your courtesies  
7 throughout. I really appreciate all your attention.  
8 Thanks so much.

9 COMMISSIONER TURLEY-TREJO: Thank you.

10 Okay. So this is really our last opportunity  
11 to ask questions before we have discussions, so if  
12 there's any other questions of any of the attorneys,  
13 this would be the time to do it.

14 So are we good? Everybody good?

15 Okay. And then I'm going to have Ms. Fox  
16 right now speak a little and give us a little  
17 guidance here at this time. That would be great.

18 MR. EDWARDS: Are we supposed to -- excuse  
19 me. I just don't want to hear anything that's  
20 attorney-client.

21 Are we supposed to leave when you do that?

22 I don't know the procedure.

23 COMMISSIONER TURLEY-TREJO: No. I think you  
24 can stay.

25 MR. EDWARDS: Okay. Thank you.

1                   COMMISSIONER TURLEY-TREJO: Correct?

2                   MS. FOX: Thank you, Madam Chair. Yes.

3                   So I wanted to offer to the Commission that  
4 now is the time for your deliberation to decide  
5 whether or not you were going to move forward with  
6 adopting the determination by the administrative law  
7 judge or modifying that in any way.

8                   I did want to add a couple of clarifications  
9 just to get the record complete here. One was  
10 mentioned by counsel for The Bank, Mr. Penman.

11                   Last evening he had asked for a  
12 reconsideration about entering into evidence the  
13 video from the January shooting that occurred on the  
14 patio of The Bank.

15                   That -- I had previously provided my  
16 rejection of that request. That was both  
17 evidence that was not before the administrative law  
18 judge, also it's part of an ongoing criminal  
19 proceeding of which the investigators and the  
20 district attorney do not want that information  
21 publicly released, and I also said it's appropriate  
22 official privileges under the Evidence Code.

23                   As well, he asked again for another  
24 continuance. I rejected that earlier for good cause,  
25 and so I would be -- my recommendation to this

1 Commission that any request for continuance be again  
2 rejected.

3 As well, I wanted to offer a couple of points  
4 of clarification. There was a lot of discussion  
5 regarding the notice issue, and I wanted to invite  
6 the Commission's attention again to the City  
7 Municipal Code 1.21.050.

8 I don't believe that that provision, as noted  
9 by the counsel for the City, is applicable to Zip  
10 Third, the property owner. That subdivision B, as in  
11 boy, provides that the enforcement official shall  
12 attempt to locate the business owner.

13 In this particular instance, the business  
14 owner is indeed the CNC Puma. That business, as we  
15 know, is the manager. The CEO is Amanda Lane, along  
16 with Ryan Parent, along with Craig and -- I think  
17 it's Christy Puma.

18 Finally as well, I wanted to point out, as  
19 has been argued, there is only one CUP. I would also  
20 like to offer a comment regarding an issue that is  
21 part of the presentation by Zip Third, and that is  
22 the reference when the administrative law judge is  
23 talking about the fact about permit holders.

24 I am of a different view for the permit  
25 holder, in this particular case I believe is indeed



1 Puma Corp. They are the applicant on the CUP. They  
2 are the applicant on each request for the  
3 modification.

4 It is true that the CUP runs with the land  
5 and is of interest of which the property owner has.

6 There was some discussion and statements that  
7 Mr. Watson declared that they have a vested right.  
8 Of course, a vested right is a legal determination.  
9 A vested right occurs when you have a permit, and  
10 then you have good-faith reliance on an issued  
11 permit, and you have a substantial expenditure of  
12 funds in reliance on that permit. That's from a  
13 seminal case, Avco(phoenetic) v. City of San Diego.

14 There was absolutely no testimony during the  
15 two days of hearing about any financial commitment  
16 that had been put forth.

17 I'm not disputing it, and I don't think  
18 that's necessarily a point that is relevant to the  
19 revocation hearing, but it felt to me like it was a  
20 legal issue that I wanted to bring forward as your  
21 legal counsel here today about the issue of the scope  
22 of the vested right.

23 We are not -- I'm not disputing that the  
24 property owner has an interest in the CUP that runs  
25 with the land.

1           So I hope those are some clarifications that  
2 are helpful to you, and if you have any questions,  
3 I'm happy to answer them.

4           COMMISSIONER TURLEY-TREJO: So at this time  
5 if any of my colleagues have questions of the  
6 attorney, this would be the time to do that.

7           Any questions?

8           COMMISSIONER HAGEL: No, thanks.

9           COMMISSIONER TURLEY-TREJO: Okay. Thank you  
10 so much for that -- those clarifications, and at this  
11 time I'm going to close the public hearing, and this  
12 is our time to discuss.

13           I would like to hear the discussion before  
14 any kind of motions are made, and so I'm going to  
15 start on my right this time with Commissioner Solis  
16 with any -- anything you would like to add.

17           COMMISSIONER SOLIS: Based on the report, and  
18 everything else that I've heard, to me it's clear  
19 that the applicant did apply for a minor modification  
20 to allow for live entertainment. And at the time  
21 that the applicant comes before the City and requests  
22 a modification, then all other conditions of approval  
23 might be affected, and I think that's what happened  
24 at this time.

25           The original Conditional Use Permit did not

1 allow for live entertainment, and then the applicant  
2 requested, Oh, well, we want live entertainment,  
3 which it would be a new Conditional Use Permit.

4 And upon that decision of the City granting  
5 approval, then there was also modifications to the --  
6 to the time of operation and also the sales of -- of  
7 alcohol, which is very common practice.

8 So if the applicant comes and requests  
9 something else, then maybe the hours of operation is  
10 probably one of the conditions that gets changed as  
11 part of the application process.

12 And I believe that the applicant is aware of  
13 that because the applicant did apply for a  
14 modification to the original CUP, and the City did  
15 approve it and -- and moved forward with that.

16 So my understanding is that the applicant is  
17 aware, just as -- just as he was aware to apply for a  
18 modification to the existing CUP, I believe he's also  
19 aware of the final conditions of approval, which  
20 limited the hours of operation and also the -- excuse  
21 me -- the hours of operation and the type of  
22 entertainment that goes with that, which is very  
23 specific.

24 And in the resolution or in the approval  
25 letter, it's in bold, so it's very clear the hours of

1 operation and also the entertainment that's allowed.

2 COMMISSIONER TURLEY-TREJO: Thank you.

3 Commissioner Hagel?

4 COMMISSIONER HAGEL: Okay. I just want to  
5 kind of start the bigger picture here.

6 We -- we have a major problem in Old Town,  
7 and I just want to state that no one is saying that  
8 The Bank is the only problem and that's where all the  
9 problems stem from.

10 So that was -- tended to be focused on here  
11 in some of the -- some of the discussion, but -- and  
12 I don't think we or anybody else should assume that  
13 actions aren't being taken against other restaurants  
14 or other organizations in Old Town that could be in  
15 violation. We shouldn't assume anything. Those  
16 things could -- could well be happening.

17 The creation of the metro team several years  
18 ago was one of the responses to this growing problem,  
19 and it's been brought up that there wasn't much  
20 happening in the way of violations or police writing  
21 tickets prior to whenever the date might have been,  
22 2018.

23 But in the early -- I will say the earlier  
24 dates, our issues had been growing, and continued to  
25 grow, and it just says -- says to us that, you know,

1 ten years ago, fifteen years ago, there wasn't a  
2 problem, but there is a problem today.

3 The -- a year ago, this Commission took up a  
4 discussion that led to the creation of an  
5 entertainment license, and the purpose of that  
6 entertainment license was to make it easier to deal  
7 with this issue, to make it a lot less expensive for  
8 the City and all of the parties that could be  
9 involved in it to -- to solve a problem that could be  
10 going on in a particular business, and that  
11 entertainment license would be applicable to any  
12 business that is making a change to their CUP or a  
13 new business that's coming in town.

14 And -- and that would be -- I think a goal  
15 would be to work towards having all of the businesses  
16 be on that entertainment license that would be  
17 renewed or apply for renewal each year, and if there  
18 are problems, that renewal could be denied, and  
19 without having to go through what has been, I guess,  
20 a year's worth of, you know, courts and legal battles  
21 and -- I'm not saying anything bad about attorneys,  
22 but having to hire attorneys and all of that expense.

23 So that's, you know, the goal that we have as  
24 the Commission, is to solve this problem and to work  
25 towards reducing the cost and burden on everyone to

1 be able to solve the problems step by step, business  
2 by business.

3 And that's all I will say for now. I will  
4 save my other comments for later.

5 COMMISSIONER TURLEY-TREJO: You don't want to  
6 finish up with your --

7 COMMISSIONER HAGEL: No. Go ahead.

8 COMMISSIONER TURLEY-TREJO: Okay. All right.  
9 Commissioner Ruiz?

10 COMMISSIONER RUIZ: I didn't know which  
11 direction you were going. Thank you.

12 I'll first start off by saying this is not  
13 something that's taken lightly. You know, this is  
14 1646 pages of, you know, information, a packet of  
15 information that we've received and read.

16 I think for me, some of the things that stand  
17 out is the citations I don't think were addressed the  
18 way I would have liked to see them addressed on the  
19 other side.

20 There was a lot of emphasis on the  
21 unfortunate night of the murder, which kind of falls  
22 into the disorderly house conversation, but we've got  
23 34 citations, 109 civil penalties, that still have  
24 not been addressed. They have not been paid. They  
25 have not been challenged or appealed. They're still

1 out there.

2           When it comes to modification to the CUP, I  
3 would think that if there was concern about what was  
4 stated in there, misinformation, misunderstanding,  
5 however that must be interpreted, why was that never  
6 then reapplied for?

7           Why was that never addressed moving forward?

8           You know, I appreciate the clarification by  
9 Ms. Fox earlier because I had actually jotted down  
10 when the -- Mr. Penman mentioned that, you know, the  
11 2012 modification may not have been signed because  
12 they didn't accept it, yet they accepted the  
13 live-music portion of it. So you are kind of in turn  
14 accepting it.

15           And then overall, I think, continuing since  
16 this issue has started, it's been admitted that we're  
17 operating outside of our business hours because it's  
18 good for our business, but that's not really what's  
19 been put in place.

20           We're doing live music when we applied for  
21 background music, and I really wish that would have  
22 been addressed a little bit more because to me that  
23 just speaks to the character of the business that  
24 we're looking at.

25           With regards to Zip Third, I don't -- you

1 know, that's -- that's -- that's challenging. I  
2 don't know how you would even begin to separate to  
3 even go down that side of things.

4 I think it's been demonstrated that the lack  
5 of communication has unfortunately led to, you know,  
6 Mr. Solomon in the position that he's in, but overall  
7 as I read through the packet and as I listened to all  
8 of the cases being made today, those are the things  
9 that still stand out to me that I didn't hear  
10 anything to say, hey, yes, this is -- this is good.

11 Even the public comments of hearing about the  
12 business, that's great, and I love to hear that. The  
13 Bank has been around forever, but why not address how  
14 do we -- let's fix this. I think the hours are  
15 wrong. Let me apply for this and just fix that.

16 It's just been, for whatever reason, ignored  
17 or forgotten about, and the fact that it's still  
18 operating as what's best for their business, not with  
19 what's down on the Condition of Approval in the  
20 original CUP, it still remains a concern.

21 COMMISSIONER TURLEY-TREJO: Thank you,  
22 Commissioner.

23 Commissioner Watts?

24 COMMISSIONER WATTS: Yeah. I spent Monday  
25 reviewing the file, 1100 pages -- and I didn't review



1 every one, don't get me wrong -- but the process  
2 requires the Commission to review the transcript and  
3 the hearing, and that's what I did, and today's  
4 hearing was focused on that information.

5 I didn't hear anything contrary to what I saw  
6 in my review. There may be some misinterpretation or  
7 different interpretation of certain things, but not  
8 really contesting the facts, and I know there has  
9 been a lot of things said today that I'm not sure if  
10 they're facts or not.

11 I know that it's been implied that one of the  
12 staff members may have made something up, at least  
13 that's how I took it.

14 If that's the case, it seems like there would  
15 have been a burden to find some sort of proof to  
16 justify that, and that wasn't done.

17 So the 2012 minor mod clearly had the  
18 information in it that was communicated by the City.  
19 The owner, or whoever was responsible at that time,  
20 chose not to comply with the requirements that were  
21 put on that business. A conscious decision, I think,  
22 to ignore what was put there.

23 If the owner at that time or the person had a  
24 beef with that, it seems like that should have been  
25 brought forward by that person, and said, I don't

1 agree with this, and that wasn't the case. They just  
2 kind of ignored it and went on with whatever that  
3 person wanted to.

4 Now, that person could have passed that on to  
5 the current owners and the current people there, and  
6 I'm -- I don't know what went on between you and the  
7 former operator, but it seems like there was a little  
8 bit of responsibility to pass that on, and more than  
9 just finding a copy of a document, and it was thrown  
10 away because -- during a cleanup.

11 You know, I don't have a lot of experience  
12 with private sector. I do have experience with  
13 governmental sector, and it seems a lot different  
14 than how things are viewed and reviewed and complied  
15 with.

16 I can say that ever since this item has been  
17 brought to our attention at the Commission, I was the  
18 Chair at the time, the City has bent over backwards  
19 to make sure that nothing unforward or untoward was  
20 done regarding our role and our information.

21 We knew absolutely nothing, and I want to  
22 compliment the City on following the rules and doing  
23 that. It still remains, though, that there were --  
24 there were, I don't know if there are continuing --  
25 but there were multiple, multiple violations of the

1 requirements.

2           And rather than trying to correct it -- and  
3 as I gather, the City tried to get compliance. They  
4 always do. As far as I know, the City has always  
5 bent over backwards to try to help the business  
6 community as much as we can.

7           It appears to me there was a complete failure  
8 to follow up on notice by the City that there were  
9 problems and ignoring it. Just flat out ignoring it,  
10 seems to me, over a hundred notices.

11           Letters were sent. Yeah, maybe they weren't  
12 certified. Maybe they weren't required. I'm not  
13 sure. But it seems like a lot of people knew a lot  
14 about what was going on and it wasn't communicated or  
15 wasn't dealt with. It was just ignored, hence we  
16 have a hearing today and we are charged with -- with  
17 our statutory roll in reviewing something such as a  
18 revocation of a CUP.

19           So you can't -- nobody has brought up any  
20 evidence to prove that or state that any of the  
21 problems were made up. Clearly there was problems.

22           We -- I read the testimony by the police  
23 officers that were -- responded to The Bank, and  
24 having law enforcement experience myself, I certainly  
25 can understand that -- that viewpoint from our police

1 officers and their responsibility to do.

2 That being said, there's probably things that  
3 the City can learn through this process, and if it  
4 ever happens again, probably will do it better.

5 But the fact is there may have been -- I'm  
6 not sure. There may have been an inappropriate  
7 application or something to that nature, but the  
8 administrative law judge made a finding that they --  
9 they agreed with the action.

10 So I haven't heard anything really  
11 overwhelming today that would change that view in my  
12 mind.

13 And I appreciate the fact that we have a  
14 business and we have an owner of that property where  
15 the business is, and that kind of complicates it, but  
16 the fact is it's been pointed out there's one CUP.  
17 That's what we're dealing with, and that's what our  
18 responsibility is in this hearing.

19 And I think that everybody has been given a  
20 fair chance today and the opportunity to either  
21 contest or review the material that was brought  
22 forward, and I think it's been a fair hearing.

23 And I know that there has to be one way or  
24 the other on this, and that's what we will be  
25 prepared to do in due time.

1           So those are my quick comments, Madam Chair.

2           COMMISSIONER TURLEY-TREJO: Thank you,  
3 Commissioner Watts.

4           You had more you wanted to say?

5           COMMISSIONER HAGEL: (Unintelligible.)

6           COMMISSIONER TURLEY-TREJO: Well, this is our  
7 time right now --

8           COMMISSIONER HAGEL: Okay. Yeah.

9           COMMISSIONER TURLEY-TREJO: Yeah. Go ahead.

10          COMMISSIONER HAGEL: So I think there's been  
11 a lot of miscommunication on just about every party  
12 that's -- that's involved in this, and I would agree  
13 with Commissioner Watts that there's things that I  
14 think the City needs to do differently, and, you  
15 know, I will be happy to have that conversation  
16 with -- with staff for the future.

17          But it is one CUP. You can't split it, and  
18 we -- you know, it's pretty -- pretty black and white  
19 as to what we have to do. We have to make a decision  
20 to either revoke or not revoke, and as one of the  
21 attorneys said, we should take everything into  
22 consideration, the total picture.

23          You know, given that you're each given  
24 45 minutes, you didn't have the opportunity to talk  
25 about everything that was in the document.

1           I did. I started Friday morning, and I have  
2 done nothing but read that document, so I've read  
3 every single page and I, you know, take this very,  
4 very seriously.

5           You know, we're -- I think we're getting to a  
6 stage that we're going to need to make a decision,  
7 but I would -- I would also just state that there is  
8 nothing that says that any business can't come and  
9 apply for a license for entertainment, which also  
10 takes into consideration alcohol.

11           And the reason why all of that is put  
12 together is that when you add individually, none --  
13 serving alcohol or music or loud music or shows,  
14 hours of operation individually, they in themselves  
15 don't create the problem. It's when you put them all  
16 together that they can create a problem, and that's  
17 what we have here.

18           We have a lot of businesses that are running  
19 with all of those things put together, and I think  
20 that tends to attract people who are not coming to  
21 Old Town just for dinner, as we did ten years ago,  
22 fifteen years ago.

23           I will say that I'm -- I've been here for  
24 over 20 years now. I used to eat dinner at Old Town  
25 all the time. I used to love Old Town, 24/7.

1 I now have -- I love Old Town in a very  
2 limited number of hours during the week. I rarely  
3 come here for dinner, and when I do, I go to a  
4 restaurant that is only serving dinner and maybe beer  
5 or wine, or whatever. That's just my choice.

6 I have heard plenty of complaints from  
7 residents over the last couple of years regarding Old  
8 Town, that they don't feel safe going to Old Town.  
9 And, you know, I've tried to encourage them that  
10 there are -- you know, you can bring your kids during  
11 the day. It's okay. But some people are just -- you  
12 know, just so much bad press and so many bad things  
13 have happened, and that they just don't want to go to  
14 Old Town any longer.

15 And I think that's a shame, because, as one  
16 of the speakers brought up, we have not only The  
17 Bank, but we have many historic buildings here. We  
18 have a historic downtown. It's a -- I love driving  
19 through downtown because it reminds of me of where I  
20 grew up, and, you know, a very historic area.

21 And unfortunately I feel that's been -- you  
22 know, it's being taken from us, so we really want  
23 that back. We want a place that -- to bring our  
24 kids. I want to bring my grandkids down and be able  
25 to walk -- walk in the evening and feel safe.

1           So that's all I'm saying at this point. I  
2 will let you go ahead.

3           COMMISSIONER TURLEY-TREJO: All right.  
4 Any -- go ahead.

5           COMMISSIONER RUIZ: Thank you. Just looking  
6 for some clarification as well.

7           So if this action of the revocation of the  
8 CUP does not close The Bank Restaurant, correct, it  
9 would revert to the original Type 41 under those  
10 hours, no entertainment, no music, no liquor sales,  
11 wine and beer?

12           COMMISSIONER TURLEY-TREJO: Is that correct,  
13 Ms. Fox?

14           MS. FOX: I think I might need to ask  
15 Mr. Watson to answer that for us.

16           I would say that the action here that will be  
17 taken, we are suggesting be brought back for action  
18 on a formal resolution. So you take action or bring  
19 back the resolution to confirm that, and then there  
20 will be a period of time that that action can be  
21 appealed before it's final. So even the action that  
22 this body takes will not be filed for a period of  
23 time.

24           I think that we can expect there's going to  
25 be an appeal to the City Council. I think Counsel



1 Penman pretty much noted as much during his  
2 presentation, but I haven't looked at the permitted  
3 uses that would be at play for The Bank facility if,  
4 indeed, the revocation goes forward.

5 COMMISSIONER TURLEY-TREJO: Okay. Well,  
6 before Mr. Watson does that, unless anyone else has  
7 any other discussion, I would like to say a few  
8 things, and then have him --

9 COMMISSIONER RUIZ: Yeah. That's great. And  
10 for me it speaks to the comments on livelihood and  
11 business.

12 We're not charged or looking to take a  
13 business and close it and remove it from the city. I  
14 just -- I want to be clear on what this action will  
15 result in if it does move forward. Thank you.

16 COMMISSIONER TURLEY-TREJO: Okay.

17 Well, maybe go ahead right now.

18 MR. WATSON: Madam Chair and members of the  
19 Commission, Commissioner Ruiz, yes. So if the CUP  
20 was revoked, it would remove the ability for The Bank  
21 to serve distills spirits under a Type 47, and it  
22 would remove all the conditions that are associated  
23 with that CUP approval.

24 The -- their ability to operate as a  
25 restaurant is a permitted use. It doesn't require a

1 CUP, so they could immediately start operating as a  
2 restaurant, and they would have the ability to serve  
3 beer and wine by right, so without a special  
4 Conditional Use Permit.

5 They would still need to, of course, get  
6 whatever permitting they needed from ABC to do that,  
7 but under our code, they could operate as a  
8 restaurant, by right, with beer and wine.

9 COMMISSIONER RUIZ: May I ask a follow-up  
10 question?

11 So if they reverted to that restaurant, would  
12 they have the ability in the future to reply for a  
13 Type 47?

14 MR. WATSON: Yes. Theoretically they could  
15 come back and reapply at some point.

16 COMMISSIONER RUIZ: Okay. Thank you.

17 COMMISSIONER TURLEY-TREJO: Okay. Any other  
18 questions for Mr. Watson? Okay.

19 Okay. All right. Well, first of all I want  
20 to commend my fellow Commissioners. This is kind of  
21 visible.

22 This is what we read and went through, and  
23 personally I did, and we take it very seriously, what  
24 we've done today.

25 And so I think someone said -- I think it was

1 Mr. Penman said we're not a rubber-stamp, and we're  
2 not. So I want to be clear about that, that we have  
3 done our due diligence here as a Commission, and, you  
4 know, this is not something that has ever come -- has  
5 been one of our tasks, but we have risen to that  
6 occasion.

7 So I appreciate each of my fellow  
8 Commissioners in doing their due diligence in this  
9 way.

10 So as I went through it -- and really, I  
11 agree with everything that has been said. I'm not  
12 going to say much, but just -- you know, when I first  
13 read it, it was, like, wow, there's this, like,  
14 nine-year gap, right, of where there haven't been any  
15 citations or things happening, and why would the City  
16 not know, and it -- you know, it came to my attention  
17 that the police are the ones who let the City know  
18 because there were problems.

19 So if there hadn't been problems, then I  
20 don't know if we would be here. So that answered  
21 that question for me that that was why the CUP was  
22 checked at that time.

23 As far as the failure to sign the Condition  
24 of Approval, our attorney cleared that up for me  
25 that, you know, you accept the benefit and of the

1 burden.

2           They were obviously accepting the benefit of  
3 having the live entertainment, but not the burden of  
4 the hours being changed, so that was pretty clear to  
5 me.

6           And Mr. Puma, or the owner at the time, never  
7 appealed to change these conditions of approval, so  
8 that was pretty telling that there is one CUP and  
9 that this owner is responsible to comply, and that  
10 has not been done.

11           So you know, I have watched personally the  
12 City bend over backwards in this situation to work  
13 with The Bank, and as we just discussed here, you  
14 know, the business isn't over. They have a business,  
15 even with this revocation, and I would encourage them  
16 to work with the City and be a good player.

17           Because for me, honestly, Old Town has been a  
18 concern of mine from day one being on this  
19 Commission, and -- but we respect and appreciate  
20 those restaurants that are good players and that  
21 comply with their conditions of approval, and that's  
22 really what we're looking at today.

23           And so that's really all I have to say, and I  
24 appreciate everyone involved who has taken time to be  
25 here today and bring their presentations to us, and I

1 appreciate our Counsel.

2 And at this time, if there -- so the motion  
3 at this time, I'm going to have our Counsel kind of  
4 help us with that, what that motion would be, if  
5 someone would like to give that motion.

6 MS. FOX: Was that a question to me, Madam  
7 Chair?

8 COMMISSIONER TURLEY-TREJO: Yeah.

9 MS. FOX: So there needs to be a motion  
10 either confirming or modifying or rejecting the  
11 decision of the administrative law judge to revoke  
12 the operation of The Bank and to direct that a  
13 resolution to be brought back confirming whatever  
14 that decision is.

15 COMMISSIONER TURLEY-TREJO: Okay. All right.  
16 So with that, do we have a motion?

17 COMMISSIONER HAGEL: Okay. Well, I believe  
18 at this point perhaps The Bank is making -- making  
19 efforts to -- to make changes, but I believe that  
20 they need to earn that, and I would make a motion  
21 that we confirm the revocation of the CUP at this  
22 time.

23 COMMISSIONER TURLEY-TREJO: Okay. Is that  
24 motion good, Counsel? Does that work?

25 MS. FOX: That sounds good, and maybe we

1 could add to it and bring back a resolution, a  
2 written resolution confirming same.

3 COMMISSIONER WATTS: I will second that  
4 motion.

5 COMMISSIONER TURLEY-TREJO: Why don't you add  
6 that to it, and bring back a resolution to --

7 COMMISSIONER HAGEL: And bring back a  
8 resolution to the Commission for approvals.

9 COMMISSIONER WATTS: And I will second that.

10 COMMISSIONER TURLEY-TREJO: Okay. We have a  
11 first, Commissioner Hagel, and a second by  
12 Commissioner Watts.

13 Okay. All in favor?

14 COMMISSIONER WATTS: Aye.

15 COMMISSIONER RUIZ: Aye.

16 COMMISSIONER TURLEY-TREJO: Aye.

17 COMMISSIONER HAGEL: Aye.

18 COMMISSIONER SOLIS: Aye.

19 COMMISSIONER TURLEY-TREJO: And any opposed?

20 Okay. Motion carried.

21 All right. So we will adjourn until our next  
22 regular scheduled meeting on March 1st at 6:00 p.m.  
23 here, and that is where we will receive that  
24 resolution; correct, Counsel?

25 MS. FOX: Correct.

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COMMISSIONER TURLEY-TREJO: Okay. Thank you very much. Thank you to all of you who have attended today. Thank you.

(The meeting was adjourned at 1:55 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Amanda Karmann, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 7th day of March, 2023.



AMANDA KARMANN  
HEARING REPORTER