

1 or anything because of the fact that you needed to  
2 have the exits out of there.

3 Q. But you were aware that this was  
4 built, correct?

5 A. It wasn't built at this time.

6 Q. No, not in 2012, but in 2016, one was  
7 required to be built, correct?

8 A. Well, if the building permit was  
9 issued for them to build that.

10 Q. Excuse me. Did I say 2012? It was  
11 required in 2012 as part of these plans.

12 A. The stairs were required in 2012?

13 Q. Is that correct?

14 A. Or the door?

15 Q. The door and the stairs.

16 A. If that space would have been  
17 occupied, it would have been required. But it  
18 specifically states on Exhibit 66 that new  
19 exterior exit stair construction by separate  
20 permit with HPC approval. So if we did not have  
21 any permit for this work and HPC approval, they  
22 couldn't occupy that space.

23 (OFF THE RECORD)

24 (Whereupon, Deposition Exhibit No. 61  
25 was marked for identification and a copy is

1 attached and hereby made a part of this  
2 deposition.)

3 BY MR. MILLER:

4 Q. Showing you what's marked as Exhibit  
5 Number 61. Would you take a look at that, please?

6 A. Okay. Question on Exhibit 61?

7 Q. Would you identify that, please?

8 A. Yes. An email I sent to Steve Ubl  
9 regarding trying to get the SAC credits from Mr.  
10 Rupp at 79 Western for the Commodore.

11 Q. And it states that you conducted an  
12 exhaustive search with Larry Zangs?

13 A. That's correct.

14 Q. And what was included in the  
15 exhaustive search?

16 A. Went through the address file, going  
17 through SAC information, books. And trying to  
18 find out if there are any kind of credits anywhere  
19 on the property.

20 Q. So you were looking for credits?

21 A. Correct.

22 Q. And you evidently reached a  
23 conclusion that the banquet room was formerly an  
24 exercise room when the squash addition was  
25 constructed in 1976?

1           A.       That is correct.

2           Q.       Is that a conclusion that the  
3       exercise room was in fact used as an exercise room  
4       in 1976?

5           A.       I believe that is correct, what I've  
6       got written down here, yes. I have there, "When  
7       the squash addition was constructed in 1976, it  
8       remained an exercise room until 1987."

9           Q.       What led you to the conclusion that  
10      it was an exercise room in 1976?

11          A.       Probably found some documents in the  
12      address file that stated something in there. I'm  
13      not sure. I mean, when you go to the address  
14      file, you're going to find information on the  
15      property, very large information, two inches thick  
16      worth of all kinds of information. You have to go  
17      through each of those papers to see if you can  
18      find any information on it. That's probably where  
19      we came up with that information where it changed  
20      from a squash to an exercise room.

21          Q.       Would you repeat that last sentence?  
22      It was changed from what?

23          A.       Well, it appears that it was -- when  
24      it was the squash room that was added on to the  
25      building, then it was that for awhile, and then it

1     **changed over to an exercise room.**

2             Q.       Okay. So are you saying in this  
3     sentence that the exercise room was used as an  
4     exercise room in 1976?

5             A.       **I am saying that it was an exercise**  
6     **room from 1976 until 1987.**

7             Q.       And what evidence do you have that it  
8     was used as an exercise room from 1976 through  
9     1987?

10            A.       **Like I say, that information probably**  
11    **would be in the address file.**

12            Q.       Did you take any notes of your  
13    exhaustive search?

14            A.       **Probably, with the Affidavit C, which**  
15    **is a Met Council affidavit that you fill out, I**  
16    **might have put the information on that form.**

17            Q.       Is there any record of the results of  
18    the exhaustive search?

19            A.       **Not that I recall, no.**

20            Q.       You don't have any other  
21    recollection?

22            A.       **No.**

23            Q.       Do you know what information  
24    indicated that the exercise room was vacant in  
25    2004?

1           A.       Like I say, the information is in the  
2       address file. You'd have to go to the address  
3       file and pull everything and start looking at  
4       everything. When I did this letter for Steve,  
5       sent this email to Steve, it was just to let him  
6       know that we've looked all the information up that  
7       was in the address file, and just highlighted what  
8       we found out. I didn't keep any of the documents  
9       that pointed anything out that I recollect, or  
10      made any copies or anything to send to him. I  
11      don't believe I have. The only attachment I put  
12      on that email was for that affidavit. Like I say,  
13      that Affidavit C, that 2015 Affidavit C, which is  
14      a Met Council form, it might have been broken down  
15      on that form, or I might have said where  
16      everything is at. And you don't have that  
17      affidavit, right? I don't think we do.

18           Q.       Do you know how we can get a copy of  
19      that?

20           A.       Yeah, we have that information.  
21      Should still have it. In fact, I thought one was  
22      sent to Mr. Rupp, I thought.

23           Q.       Would you be able to try to provide a  
24      copy to Miss Skarda?

25           A.       Sure.

1            **there.**

2 (Deposition Exhibit 82 marked  
3 for identification).

4 Q I'm showing you what has been marked as  
5 Exhibit No. 82. Do you recognize that?

6      **A    Yes.**

7 Q That appears to be an e-mail that's dated  
8 January 25th, 2016. Is that correct?

9     **A**     That is correct, yes.

<sup>10</sup> Q From a John Skradski to Stephen Ubl?

11       **A     Yes.**

12 Q The subject line is 79 Western Avenue  
13 North, Commodore Bar and Restaurant.  
14 Correct?

15      **A    Yes.**

16 Q And it talks in the first line of the  
17 substance of it. It says, "After an  
18 exhaustive search conducted by Larry Zangs  
19 and myself the information we found was the  
20 "now" banquet room was formerly an exercise  
21 room." Is that correct?

22       **A**     **Yes.**

23 Q And that sentence goes on?

24      **A**      **Yes.**

25 Q And you participated in the exhaustive

1 search or were you the one who did  
2 primarily the exhaustive search?

3 **A I would say I did most of it, yes.**

4 Q You were referring to earlier before this  
5 exhibit was introduced several things that  
6 you had done?

7 **A Yes.**

8 Q Talked to Mr. O'Brien?

9 **A Yes.**

10 Q Looked at some photos that he gave you?

11 **A Yes.**

12 Q Could you briefly summarize what else?

13 **A I looked at license records or was looking**  
14 **for license records. Sometimes they have**  
15 **floor plans. I was hoping I would find**  
16 **one. I did not.**

17 Q What did you find in the license records?

18 **A There was one document between Mr. Rupp and**  
19 **Kris Schweinler in licensing.**

20 Q Was there anything in the licensing  
21 department that you found that would  
22 indicate that this was -- and I'm pointing  
23 to the west dining room -- that it was  
24 licensed as an exercise facility?

25 **A There was a sketch, if you will, on a**

1 document indicating that area. And I want  
2 to say it was included as an attachment to  
3 a letter that I saw from Mr. Rupp to Kris  
4 Schweinler, the license person.

5 Q That the west dining room was licensed as  
6 an exercise room?

7 A No. As part of the -- it was included as  
8 part of the liquor service area.

9 Q But was there anything in the licensing  
10 records showing that the west dining room  
11 was licensed as an exercise facility?

12 A I didn't see any.

13 Q Where else did you look?

14 A Well, I think I might have looked at a Polk  
15 directory (ph). At that particular point,  
16 the address file was not producing a lot of  
17 convincing evidence. Mr. O'Brien was  
18 digging up stuff because I had repeated  
19 conversations with him. So we have some  
20 information about the site. There's a  
21 license letter that would that indicate --  
22 some information indicating that the liquor  
23 service area for licensing purposes was  
24 inclusive of the west dining area. And  
25 that was sort of the track I was going down

1       saying, okay, it's sort of looking like  
2       what I had thought originally it was. And  
3       then we got the photos from Mr. O'Brien and  
4       it was like whoa.

5                       So it turned -- it sort of  
6       changed the conversation, if you will, and  
7       the City's position on the area of the west  
8       dining room.

9       Q   And that position changed primarily because  
10       of the photos?

11       A   I would say that that was a major turning  
12       point, yes.

13       Q   Did you ever check to see if the west  
14       dining room had an occupancy permit for an  
15       exercise room?

16       A   It seems to me that we did, and the records  
17       were not clear. I mean, you're correct.  
18       That was another source we were looking  
19       for. Sometimes you can get lucky, if you  
20       will, that the fire inspector went in there  
21       and made some kind of notation. I was  
22       hoping for that and we never found  
23       anything.

24       Q   How about records relative to SAC issues?

25       A   I don't recall anything on that.

1 Q Any records, Planning Commission meetings  
2 that may have dealt with the use of the  
3 west dining area?

4 A Not specific to the west dining area. I  
5 believe there was something a while back to  
6 the Commodore, but I don't think it was --  
7 I don't recall it being specific to  
8 addressing the west dining room, the  
9 expansion or whether it was included or any  
10 of that sort of thing. I don't believe it  
11 was clear.

12 Q What zoning records did you look at?

13 A I think there was an action by the Planning  
14 Commission. I'd have to consult it. I  
15 recall there was something, but I don't  
16 recall all the specifics of it.

17 Q Where would those records be?

18 A Well, either in planning or we should  
19 have -- they should have been in the  
20 address file in our office as well. I  
21 recall something, but I don't recall the  
22 specifics. I'd have to, actually, look at  
23 it again.

24 Q Did you look to see whether or not any  
25 building permits had ever been issued for

1 the west dining room as part of it being --  
2 or connected to its being an exercise room?

3 **A None that I recall.**

4 Q Did you look or did you not look? I didn't  
5 ask the question very well. Let me put it  
6 that way.

7 Did you check to see if there  
8 were any permits for the exercise room, for  
9 the west dining room as an exercise room?

10 **A I looked at all the permits that were**  
11 **available because that would have been**  
12 **clear evidence of a use of that, and I**  
13 **don't recall a permit for that room as an**  
14 **exercise room.**

15 Q Were there any other permits that you  
16 recall that weren't related to it being an  
17 exercise room?

18 **A I'd have to go back and look to be sure,**  
19 **but I don't recall.**

20 Q Did you talk to the architect who  
21 originally drew the plans for the  
22 Commodore?

23 **A I did.**

24 Q Who was that? Tom Blanck?

25 **A Thank you. Yes.**

1 Q What did he say?

2 A There was a conversation about a  
3 building -- I believe it was this addition,  
4 this link here. It was this area here.  
5 I'm sorry. The west dining area. My  
6 recollection of the conversation is it  
7 didn't go anywhere. Mr. Blanck had done  
8 what is essentially sort of a shell. He  
9 had focused on, because it's in the  
10 historic district, on the windows along  
11 Holly. That seemed to be his scope of  
12 service. He wasn't specifically clear  
13 about what the use was. I believe his  
14 client was John O'Brien's dad, Thoma  
15 O'Brien.

16 His focus was building this, and  
17 there was the issue of windows on Holly.  
18 And that's where it was. There wasn't a  
19 lot of clear -- there wasn't any conclusion  
20 that he drew that gave us some indication  
21 as to what was going to go in this space,  
22 just about the exterior.

23 Q Did he tell you why the west dining room  
24 was added to the plans, what its purpose  
25 was?

1     **A**     **I don't recall. He could have. I don't**  
2             **recall.**

3     **Q**     Is there any evidence that the O'Briens,  
4             Thoma or his son, when this was built in  
5             1975, '76 intended it to be used at that  
6             time as an exercise room?

7     **A**     **Ask the question again.**

8     **Q**     Is there any evidence that when it was  
9             built by the O'Briens in 1975 or '76, that  
10            they intended it to be used as an exercise  
11            room?

12    **A**     **I don't think so. I don't know.**

13    **Q**     Could you look at the second line?

14    **A**     **First paragraph?**

15    **Q**     First paragraph.

16    **A**     **(Witness examining document). Okay.**

17    **Q**     It says that you found -- I will quote.  
18             "We found that the "now" banquet room was  
19             formerly an Exercise Room when the Squash  
20             addition was constructed in 1976 and  
21             remained an Exercise Room until 1987."

22    **A**     **Okay.**

23    **Q**     So what evidence did you have that  
24             indicated that it was an exercise room when  
25             it was constructed in 1976?

1     **A**     Well, for certain, the photos, I believe.  
2             There may have been some additional  
3             information that may have been in the  
4             architect, Mr. Blanck's, information that  
5             would have drawn this conclusion. I think  
6             this document is trying to sort of  
7             encapsulate as best as it can where we  
8             think everything was. So I would say that  
9             it's intended to try to suggest to sort of  
10            a timeline. But the record I can tell you  
11            was very sketchy. We were trying to draw  
12            whatever we could conclusions, if you will,  
13            from the information that we had. So I  
14            guess that's where I would say that  
15            statement comes from.

16                         (Discussion off the record).

17     **Q**     (By Mr. Miller, continuing) Now, you  
18             referred to some photos?

19     **A**     Yes.

20     **Q**     They weren't from 1976, were they?

21     **A**     I'd have to look at them again to know  
22             when.

23     **Q**     How many photos were there, approximately?

24     **A**     I'm trying to picture them in my mind.  
25             There was eight or so maybe.

1 Q Color photos?

2 A Yes.

3 Q Did he say who took them?

4 A I don't recall who took them. Mr. O'Brien  
5 provided them to us. So beyond that, I  
6 don't know who produced them.

7 Q Then going on in Exhibit No. 82, there's  
8 some information that indicated the  
9 exercise room was vacant in 2004. What was  
10 that information, do you remember?

11 A No, I don't.

12 Q Then you also referred to a building permit  
13 issued to install windows on Holly Avenue  
14 South was evidence of it being an exercise  
15 room?

16 A Are we referring to the building permit  
17 12-017614?

18 Q No.

19 A Okay.

20 Q In the third line down it says, "In 1987 a  
21 building permit was issued to install  
22 windows on the Holly Avenue (South) side of  
23 the building."

24 A Yes.

25 Q What does that have to do with the exercise

1 room?

2 **A** I'm not sure there is a connection between  
3 the building permit to install the windows  
4 and the exercise room, unless there was  
5 some note on there. I'd have to go back  
6 and look at it and see.

7 **Q** Can you remember, going down a line, what  
8 information indicated that the exercise  
9 room was vacant in 2004?

10 **A** You know, I don't know. There might have  
11 been a note on the permit. There might  
12 have been something. I don't know. I'd  
13 have to go back and look.

14 **Q** Then you noted that building permit number  
15 12-017614 was issued in 2012 for an  
16 interior remodel. Could you take another  
17 look at Exhibit No. 4?

18 **A** Yes.

19 **Q** That's the building permit. Do you have  
20 that exhibit?

21 **A** Yes, I do.

22 **Q** That's the building permit that you are  
23 referring to?

24 **A** Yes. Well --

25 **Q** Go ahead.

1 BY MR. MILLER:

2 Q. I'd like to refer you again to Exhibit  
3 No. 38.

4 A. Okay.

5 Q. And I think that you established that  
6 those are -- or that's probably a printout from  
7 AMANDA, and the information that is on that exhibit  
8 was inputted by you?

9 A. That is correct.

10 Q. And do you know when that was inputted?

11 A. Probably 10/27/15, I'm assuming, from  
12 what is on here.

13 Q. And what does that refer to?

14 A. It refers to the corrections that were  
15 needed in order for the final to be completed.

16 Q. And that arose out of a walkthrough,  
17 correct?

18 A. That is correct.

19 Q. And what triggered the walkthrough?  
20 Why was it scheduled?

21 A. I was asked to go take a look at it to  
22 see what was still needed, I believe, from Steve Ubl,  
23 to go take a look at the site to see what was still  
24 needed for the site to get a final.

25 Q. So you were directed to go out there by

1 Steve Ubl?

2 **A. Yes.**

3 Q. And can you state again what the  
4 purpose was?

5 **A. To go take a look to see what was still  
6 needed for the site to get a final, to what was still  
7 needed to get completed.**

8 Q. What did you review before you went?

9 **A. I didn't review anything.**

10 Q. Had you seen Exhibit No. 54 prior to  
11 going out?

12 **A. I did not.**

13 Q. Did you bring anything with you?

14 **A. I did not.**

15 Q. So, just so we're clear, you didn't  
16 know what permits had been issued?

17 **A. That is correct.**

18 Q. And you didn't know what had been  
19 inspected?

20 **A. That is correct.**

21 Q. When I say "permits," I'm talking about  
22 plumbing, electrical, so forth and so on.

23 **A. That is correct, I did not know what  
24 had all transpired as of that day I went out there.**

25 Q. And did you review any documents ahead

1 of time?

2           **A.       I did not.**

3           Q.       Did you bring any documents with you?

4           **A.       I did not.**

5           Q.       Did you go out there by yourself?

6           **A.       I did.**

7           Q.       And did you meet anybody at the  
8 property?

9           **A.       I did not at the time.**

10          Q.       Did you do this inspection by yourself?

11          **A.       Yes.**

12          Q.       Did you have any conversations at all  
13 at that time with John Rupp?

14          **A.       I do recall seeing John Rupp when I was**  
15 **walking through there, and I believe we had spoken a**  
16 **little bit about a couple things that were going to be**  
17 **needed to get done.**

18          Q.       Okay. Do you recall what those things  
19 were?

20          **A.       I believe it was most of the stuff that**  
21 **I had written down in here.**

22          Q.       Did you tell John that you were going  
23 to circulate a punch list?

24          **A.       I did not. That I recall.**

25          Q.       Did you tell him that he could open

1 subject to certain conditions?

2 A. I said that he could possibly open  
3 after all trades had completed their inspections and  
4 were okay with them.

5 Q. So what were the conditions that you  
6 told them?

7 A. So I told him -- well, I'm not sure  
8 exactly what my words were, but I said that we needed  
9 to get the finals from all trades to be completed and  
10 that they needed to make the corrections of stuff that  
11 was still needed to get done if we talked.

12 Q. So were the --

13 MR. RUPP: I need to talk to you for  
14 one second. I'm sorry about this, but this is the  
15 nature of this.

16 (Off the record.)

17 BY MR. MILLER:

18 Q. When you made that comment, did you  
19 know what trades had been finalized?

20 A. At the time I did not.

21 Q. Now, could you look at Exhibit No. 38  
22 again.

23 A. Yes.

24 Q. And down towards the bottom there, the  
25 third to the last line, it says, "I would be okay for

1 a temp occupancy" -- I would imagine that's temporary  
2 occupancy permit; is that correct?

3 A. Um-hmm.

4 Q. Okay. "With a signed document to  
5 finish all corrections within 30 days."

6 A. Um-hmm.

7 Q. Was that an accurate statement at the  
8 time?

9 A. I believe it was.

10 Q. And was that document prepared?

11 A. No.

12 Q. And why wasn't it prepared?

13 A. I didn't prepare a document for him. I  
14 think I was expecting him to -- or somebody -- I think  
15 what it meant was, let's sign documents from all the  
16 trades showing that they had been correct -- that the  
17 corrections were done, I believe, is what I was  
18 referring to.

19 Q. But who was going to prepare that  
20 document?

21 A. There was no document to be -- I think  
22 what I meant was that -- that I was looking for the  
23 corrections to be completed in AMANDA with all the  
24 trades within -- if they were all completed within  
25 30 days, that I would be okay with giving out a

1       temporary --

2               Q.       Who would have signed that document?

3               A.       That would have been the plumbing, the  
4       fire inspectors, the electrical inspectors, the --  
5       that they would have been all completed in their  
6       permits.

7               Q.       But it says that --

8               A.       I realize what this says.

9               Q.       A signed document to finish all  
10       corrections.

11              A.       I think it got entered in -- I think I  
12       entered it in with a bad language.

13              Q.       Were you expecting John Rupp to sign a  
14       document?

15              A.       I wasn't expecting anybody to sign a  
16       document.

17              Q.       Did you ever tell John that he could  
18       open on a temporary basis if all these corrections  
19       were made?

20              A.       I believe I did say that.

21              Q.       Okay. And can you remember, to the  
22       best of your recollection, what is it that you said?

23              A.       To the best of my recollection, I think  
24       I said that if he -- if all the corrections and all  
25       the trades were completed within the 30 days, that I

1       **would be happy to give him a temporary occupancy.**

2               Q.       A temporary occupancy starting when?

3               **A.       As soon as they were done with their**  
4       **corrections.**

5               Q.       Not at the time?

6               **A.       Pardon?**

7               Q.       Did you -- were you aware that he was  
8       ready to open?

9               **A.       I would agree that he was not ready to**  
10       **open.**

11              Q.       Did you tell him that he could not open  
12       under a temporary or final?

13              **A.       I said that he could open within -- if**  
14       **the completions were corrected within 30 days.**

15              Q.       And how was he to know what it was that  
16       had to be completed?

17              **A.       That, I don't know. I don't think I**  
18       **gave him anything.**

19                      MR. RUPP: We need a break again.

20                      (Off the record.)

21       BY MR. MILLER:

22              Q.       Mr. Palm, I believe that you testified  
23       that the missing piece was to find out whether or not  
24       all of the subcontractors had been signed off on.

25              **A.       Correct.**

1           Q.       Is that correct?

2                   And -- but you didn't have that  
3 information with you?

4           A.       I did not.

5           Q.       Okay. And you were aware that the --  
6 that John wanted to open the property for -- open to  
7 the public -- in the very near future, correct?

8           A.       I was aware that he would probably be  
9 looking to open it at some time in the near future,  
10 yes.

11          Q.       Okay. A matter of days?

12          A.       I had -- I didn't know how much, I was  
13 just asked to go take a look at to see where the job  
14 was at.

15          Q.       And did you tell him that he could open  
16 on a temporary basis?

17          A.       I did not.

18          Q.       Did you tell him what he needed to do  
19 in order to open on a temporary basis?

20          A.       I believe I did. I don't know if it  
21 was him, could have been -- I can't remember if there  
22 was -- I think John was there, I'm not positive, it's  
23 a long time since I've been there. I don't know if  
24 there was actually a contractor onsite, which there  
25 might have been that I was walking with, now that I'm

1     **thinking back. But I can't remember if I told John or**  
2     **it was another person onsite, that they needed to get**  
3     **a bunch of stuff done in order to be able to open.**

4             **Q. But you said earlier today that the key**  
5     **piece was getting the subcontractors to sign off, and**  
6     **you didn't know.**

7             **A. I did not know if they were completed**  
8     **yet or not. I'd have to go look and see in the system**  
9     **who's been signed off or not when I got back.**

10            **Q. Okay. If all of the subcontractors had**  
11    **signed off, would he have been given a permanent**  
12    **occupancy certificate?**

13            **A. No, because he wasn't done yet with the**  
14    **building portion of it.**

15            **Q. Was he done with the building portion?**

16            **A. There was a few corrections that needed**  
17    **to get done for a permanent. It's stated here in my**  
18    **comments there what needed -- a lot of stuff that**  
19    **needed to get done yet.**

20            **Q. "I would be okay for a temporary**  
21    **occupancy." Does that mean temporary occupancy**  
22    **permit?**

23            **A. That means a temporary. A temporary is**  
24    **something that we would give if we were close to**  
25    **having all the safety aspects in place for being able**

1 to open. That would be all the trades giving a nod  
2 that there might be some minor corrections yet to do;  
3 and including the building inspection department, too,  
4 that there was just some minor stuff yet to be  
5 completed in order to give out a temporary. As long  
6 as it was safe for people to be inside.

7 Q. So a safety issue?

8 A. It's a safety issue.

9 Q. Which ones -- what exactly are the  
10 safety issues that would have to be --

11 A. Exit signs needed to be installed yet,  
12 the emergency lights were still -- there were some  
13 missing, handrails needed to be installed yet, a  
14 sprinkler system needed to be installed throughout,  
15 the fire alarm system had not been completed yet. And  
16 I don't know -- I didn't know at the time if the  
17 plumbing was okay, the electrical was okay, the  
18 ventilation was okay, at the time when I entered this.

19 Q. But this particular information was  
20 never given to John, correct?

21 A. I don't believe it -- I don't know if I  
22 sent it to him or not. I don't recall.

23 Q. When was the 30 days supposed to start?

24 A. October 27th.

25 Q. And how would Mr. Rupp know that that

1 was the date that all these items had to be done?

2           A.       If I talked to him, it would have been  
3 a verbal okay at that time, that I would grant him  
4 30 days to try to get stuff done. And I don't know if  
5 I said that or not to him.

6           Q.       And if he had gotten all that stuff  
7 done, would he have gotten a temporary or a permanent?

8           A.       If he would have been completed with  
9 all the major -- the majority of the stuff, yes, I  
10 would have been happy to give it to him.

11          Q.       Give him what?

12          A.       A temporary.

13          Q.       Okay. Why not a permanent?

14          A.       I would have given him a permanent if  
15 everything was -- been completed.

16          Q.       To the best of your knowledge, he was  
17 never informed of what needed to be done; is that  
18 correct?

19          A.       That, I don't know.

20          Q.       Okay. Who would have informed him if  
21 not you?

22          A.       I don't know. I can't recall if I sent  
23 him this or not.

24          Q.       This list, and everything else that  
25 we're talking about, that was done without your review

1 when that was taken off by the contractor and the  
2 owner and whoever, a building, a document called  
3 "building permit" would have been attached to it.

4 A. Well, it's not physically attached to  
5 the plans. The permit clerks would have stapled  
6 all the permit information that would go with this  
7 permit, with this building permit, and give that  
8 back to the contractor owner along with the plans.

9 Q. But not attached?

10 A. They are not officially attached to  
11 the plans, that I am aware of.

12 Q. Again, looking at Exhibit Number 66.  
13 Are these the plans that were approved?

14 A. It is a copy of the plans that were  
15 approved.

16 Q. And you did the coloring, correct?

17 A. That is correct.

18 Q. And when would this have been  
19 approved?

20 A. Well, according to this building  
21 permit application, it looks like it might have  
22 been issued on 8/28/2012, unless you can make  
23 something different out of that. It didn't make a  
24 very good copy on it. And actually, on the  
25 building permit that was issued, it says

R-63



1 that, that is existing to me. So when I'm looking  
2 at any revisions that come in, I'm going to look  
3 at that as existing because I don't see anything  
4 down here that says that was a revision.

5 Q. When Exhibit Number 66 came in, did  
6 you compare Exhibit 66 to Exhibit 55?

7 A. Yes, I would have compared the two.  
8 Like I say, I didn't see that difference there,  
9 but as I was looking at it, to me, this mark  
10 was -- that symbol that they show there was  
11 existing. It didn't really show that it was going  
12 to be built up or anything, it was saying that  
13 that was an existing part of the building.

14 Q. There's a key note in the west dining  
15 area on Exhibit Number 66, which isn't on  
16 Exhibit 55; is that correct?

17 A. Right. There are no key notes on --  
18 on Exhibit 66 there are no key notes on the west  
19 dining area, and on Exhibit 66, then the key notes  
20 show up, but those key notes show, number 7 says,  
21 "New service bar and counter, electric and  
22 plumbing by future permits." So that's saying  
23 they're going to get a future permit for that.  
24 That's not saying it's being built. It says  
25 "future permit."

R-64

1 Q. 108.

2 A. Correct. Which would be stamped on  
3 the back of the original plans.

4 Q. And this, you agree, is a copy of the  
5 original plans?

6 A. That's correct.

7 Q. After these were dropped off in May,  
8 do you know who reviewed them?

9 A. I reviewed them and went over them  
10 with Jim Bloom. I mean, I did the coloring, and  
11 then I went over them with Jim Bloom.

12 Q. Do you know if anybody else besides  
13 Jim Bloom looked at them?

14 A. I don't recall anyone else looking at  
15 them.

16 Q. Okay. I'm going to bring out another  
17 set of plans.

18 (OFF THE RECORD)

19 BY MR. MILLER:

20 Q. I'm going to ask you to look again at  
21 Exhibit Number 66 and 55. What are the  
22 differences between --

23 A. What are the differences?

24 Q. Yes.

25 A. Extended the boundaries of the

R-65

1 existing on plan 55 -- is it 55 or 65? On plan  
2 55, it just shows the center core that's being  
3 worked on. And on 66, all of a sudden, it bumps  
4 out and goes up and around, which was missed.

5 Q. Which was missed?

6 A. Right.

7 Q. Well, what do you mean, "missed"?

8 A. Well, I mean, I did not -- when I was  
9 looking at this --

10 Q. When you were looking at Exhibit --

11 A. When I was looking at Exhibit 66, I  
12 did not notice that the bump-out went here because  
13 there's still the note over here that said "future  
14 dining area" and all that other stuff over there.

15 Q. But in fact, the bump-out did exist  
16 on this?

17 A. The bump-out does exist on 66, yes.

18 Q. Okay. And when you say bump-out, are  
19 you talking about the west dining area? I'm just  
20 trying to make sure that the record is correct.

21 A. Right. What had happened from  
22 Exhibit 55 to Exhibit 66 was the area of existing  
23 that was marked on the plans also went out and  
24 included the west dining area.

25 Q. And when you say the west dining

1 area, is that the same as the area that you --

2 A. That I highlighted on Exhibit 55  
3 where it says "area of future work."

4 Q. And on 55, that includes --

5 A. That's the west dining.

6 Q. And some area south of that?

7 A. Right.

8 Q. And then I'm pointing to the south  
9 terrace.

10 A. Correct.

11 Q. For the record, it's close to --  
12 actually, that's a reference to key note 14?

13 A. Right. The key note 14 says "New  
14 dining terrace. Terrace construction by separate  
15 permit with HPC approval."

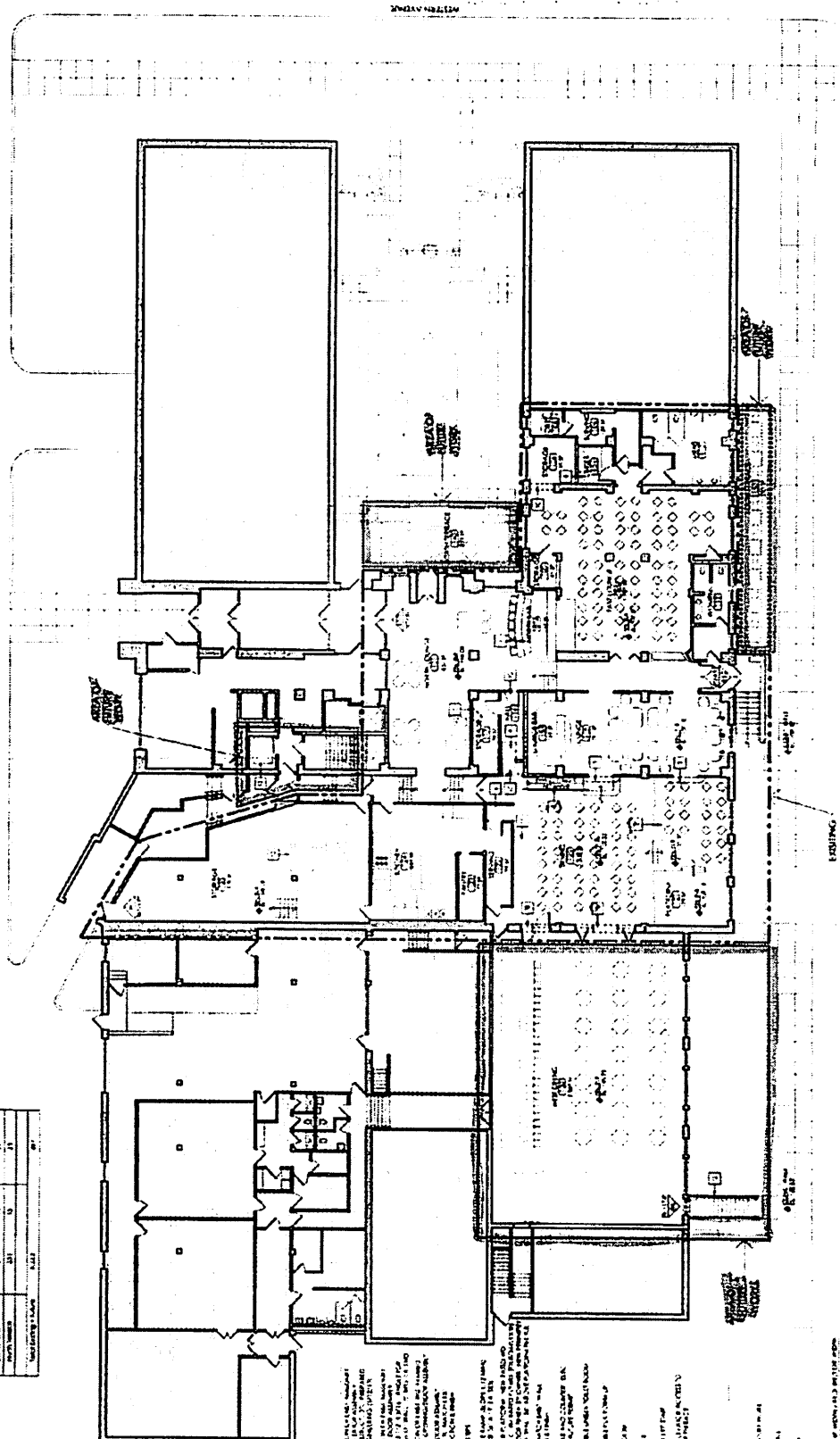
16 Q. That was referring to a permit from  
17 HPC, right?

18 A. No. You would need a separate  
19 building permit, but you need HPC approval in  
20 order to do any exterior work.

21 Q. Okay. And then the other change  
22 is -- number 13 is included, key note 13 is  
23 included?

24 A. 13 says, "Remove and replace existing  
25 concrete systems. Add new decorative iron fencing



[illegible]

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

14) Percent			Number/Total	
	Age	Sex		
Female	41	58	1	1
Female	18	26	1	1
Male	79	38	1	1
Female	18	18	1	1
Female	99	35	1	1
			5	5

[illegible]

1. *What is the purpose of the study?*  
 2. *What are the research objectives?*  
 3. *What is the research design?*  
 4. *What are the variables?*  
 5. *What are the data sources?*  
 6. *What are the data collection methods?*  
 7. *What are the data analysis methods?*  
 8. *What are the results?*  
 9. *What are the conclusions?*  
 10. *What are the limitations?*  
 11. *What are the implications?*  
 12. *What are the future research directions?*

100-443886-100

## HEALTH AVISOR

10.1117/1.3000000

1 "Accessible unisex toilet room. See detail  
2 1R-A2." And 1R-A2, I believe, is this in that  
3 packet.

4 Q. By "this," you're referring to the  
5 last two pages of what has been marked as Exhibit  
6 --

7 A. 63.

8 Q. Item number 10?

9 A. Item 10 says, "New toilet room. See  
10 detail 1R-A1, electrical and mechanical by  
11 separate permit." So that was also in this packet  
12 63, which shows the toilet room. All that  
13 information was included in the building permit  
14 packet that the clerks gave back to the  
15 contractor/owner.

16 MR. RUPP: Give me another 30  
17 seconds.

18 (OFF THE RECORD)

19 BY MR. MILLER:

20 Q. What are the changes, other than the  
21 ones that we've already discussed, the changes  
22 between number 55 and 66?

23 A. Well, we've already discussed the  
24 changes. I'm not sure what else you want to know. R-66

25 Q. Have we discussed all of the changes?

1           A.       Well, the change from Exhibit 55 to  
2 Exhibit 66 is, he's got the revision symbols over  
3 there, and they're clouded. And that's basically  
4 changing from down on the original Exhibit 55  
5 where it says, future, future, future for  
6 everything, whereas on Exhibit 66, he specifically  
7 states stuff, but he says, "by separate permit."

8           Q.       Permit with HPC?

9           A.       No, it's by separate permit with HPC  
10 approval. It's two different things. We need a  
11 building permit for doing the work, and if there's  
12 any exterior work, it has to be approved by the  
13 historic preservation people. That's a whole  
14 separate group that has to look at the plans. And  
15 we cannot issue the building permit until we have  
16 their approval for exterior work.

17          Q.       There's another cloud area up here on  
18 66, correct?

19          A.       At the very top of the page?

20          Q.       Yes.

21          A.       That's different from Exhibit 55 to  
22 Exhibit 66, and what that is is just another  
23 revision, that it's clouded, and what that is  
24 talking about is just talking about the plumbing  
25 fixtures. And it's basically the same. It's the

1 exact same as what was on the original Exhibit 55.

2           There are some numbers that were  
3 changed because he had some different calculations  
4 for a couple things here, I see. I have no idea  
5 -- here, this one here, the plumbing scope of  
6 work, and that's for future work.

7           Q.       And do you know what the reason for  
8 the changes are?

9           A.       No, I do not know why those changes  
10 were made.

11          Q.       Is that something that you would have  
12 looked at during your review of Exhibit Number 66?

13          A.       That's something we normally look at,  
14 yes.

15          Q.       Could you explain on the record what  
16 the differences are between this scope of work,  
17 which is on the top of 55, and the analogous --

18          A.       All right. It appears that from  
19 Exhibit 55, at the very top, it has "Plumbing  
20 fixtures, scope of work." And then it has, the  
21 other item there that says "Plumbing fixtures,  
22 scope of work, future work." And it appears that  
23 on Exhibit 66, they combine those two on  
24 Exhibit 55 to come up with the totals that they  
25 have there. And that's what it appears that they

1 did, is they just added those two together, and  
2 did it as a revision.

3 Q. Do you know why the plumbing fixture  
4 changes were made?

5 A. It appears what they had done is they  
6 added the future work onto the original scope of  
7 work.

8 Q. Did the plumbing fixture calculation  
9 take into account the west dining area?

10 A. Not that I'm aware of. Because when  
11 it says up here at the top, "For the future work"  
12 on Exhibit 55, it says "See notes 8 and number  
13 10." And number 8 is "Accessible unisex toilet  
14 room," and "see details" in that other packet.  
15 And 10 says, "New toilet room. See detail 1 over  
16 R-A1," and "electrical and mechanical by separate  
17 permit." So it was mainly addressing these toilet  
18 rooms that were being worked on.

19 Q. I think that you were pointing to a  
20 note that was on 55.

21 A. Right, Exhibit 55.

22 Q. But those notes changed between 55  
23 and 66, didn't they?

24 A. Right. Because on Exhibit 55, number  
25 8 says, "Future accessible unisex toilet room."

1 And number 10 says "Future toilet room on  
2 Exhibit 55." And on Exhibit 66, all of a sudden,  
3 8 changes to accessible unisex toilet room, and  
4 then you see the detail that was given to us, 1  
5 over RA-2, and number 10 is the new toilet room:  
6 "CD-21 over R-1, electrical and mechanical by  
7 separate permit." Which to me means that the  
8 whole thing is a separate permit.

9 Q. Did the plumbing fixture calculations  
10 take into account the west dining room?

11 A. Not that I'm aware of.

12 Q. And why do you believe that?

13 A. Because that wasn't included in the  
14 permit application that we approved the permit  
15 for. Exhibit 8, this building permit application,  
16 says "Interior remodel," and the interior remodel,  
17 by our -- the way that we had looked at it for the  
18 value that it was, at \$10,000, which is  
19 undervalued for doing restrooms, which is just for  
20 doing the restrooms and doing these minor  
21 structural changes. It wasn't for doing any work  
22 over here. Because if there would have been work  
23 being done in the west dining area, we would have  
24 required a full H mechanical plans, HVAC plans for  
25 that area to be looked at.

First Amendment Docs

5/7/12

added west doors  
room to "garage"  
interior alterations  
works  
added westrooms  
west 4 doors on

[illegible]

3.2. <i>Ureaplasma</i>		Antib	Factor	Strain/amp. tested
Strains	41	330		1
Strains	55	330		1
Factor	17	330		1
Strains	139	330		4
Strains	99	330		5
Total	1,031			9

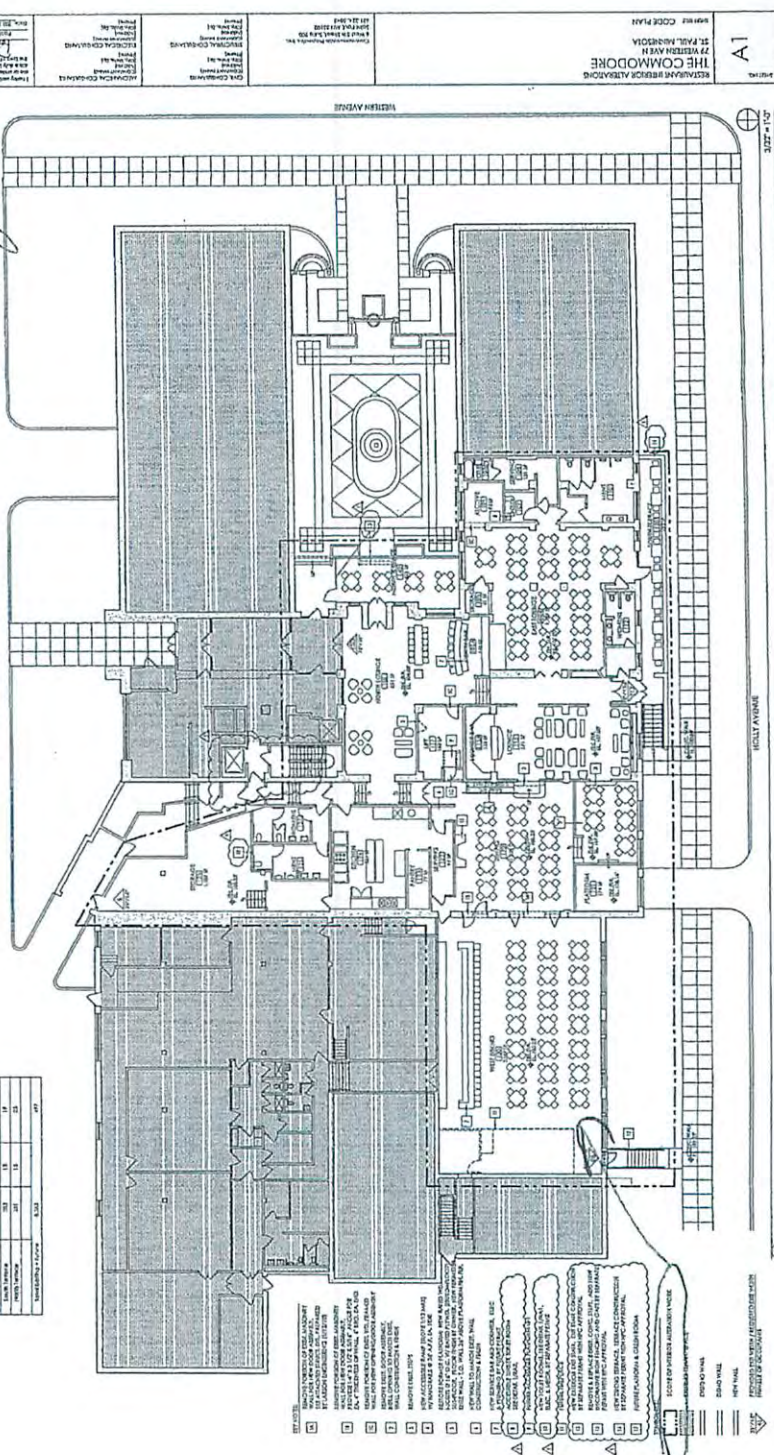
[illegible]

EXHIBIT  
R-67

	Area	Factor	Octopoid load
Shoreline	41	300	1
Shoreline	15	300	1
Penalty	17	300	1
Shoreline	109	300	4
Shoreline	89	300	1
Total	1,421		8

OUTSIDE	CLASS	TIME	ROOM
ON 20F			
7566			
GEORGE			
1778			
THURSDAY			
2:00 PM			
201C			



EXHIBIT  
R-60

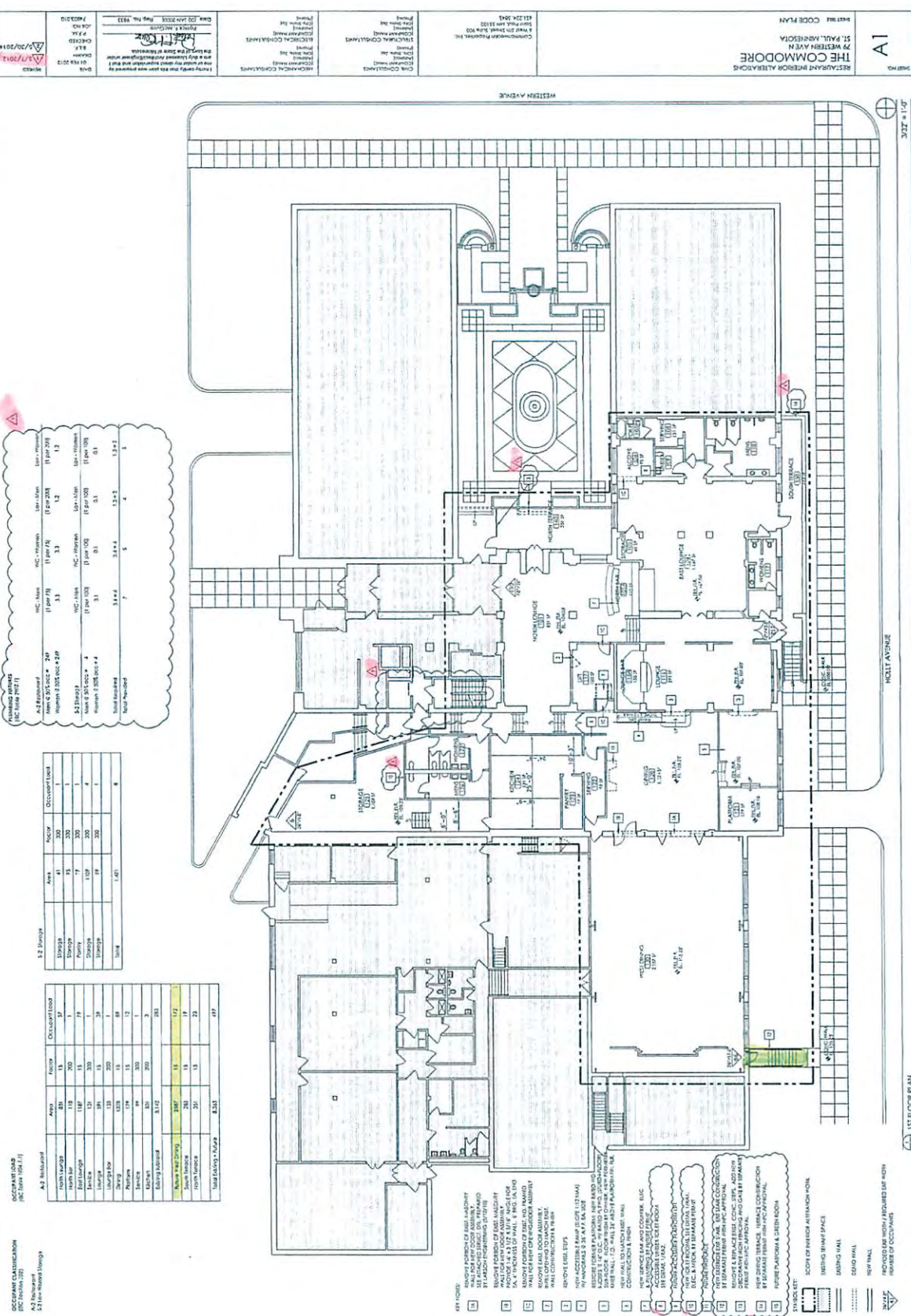
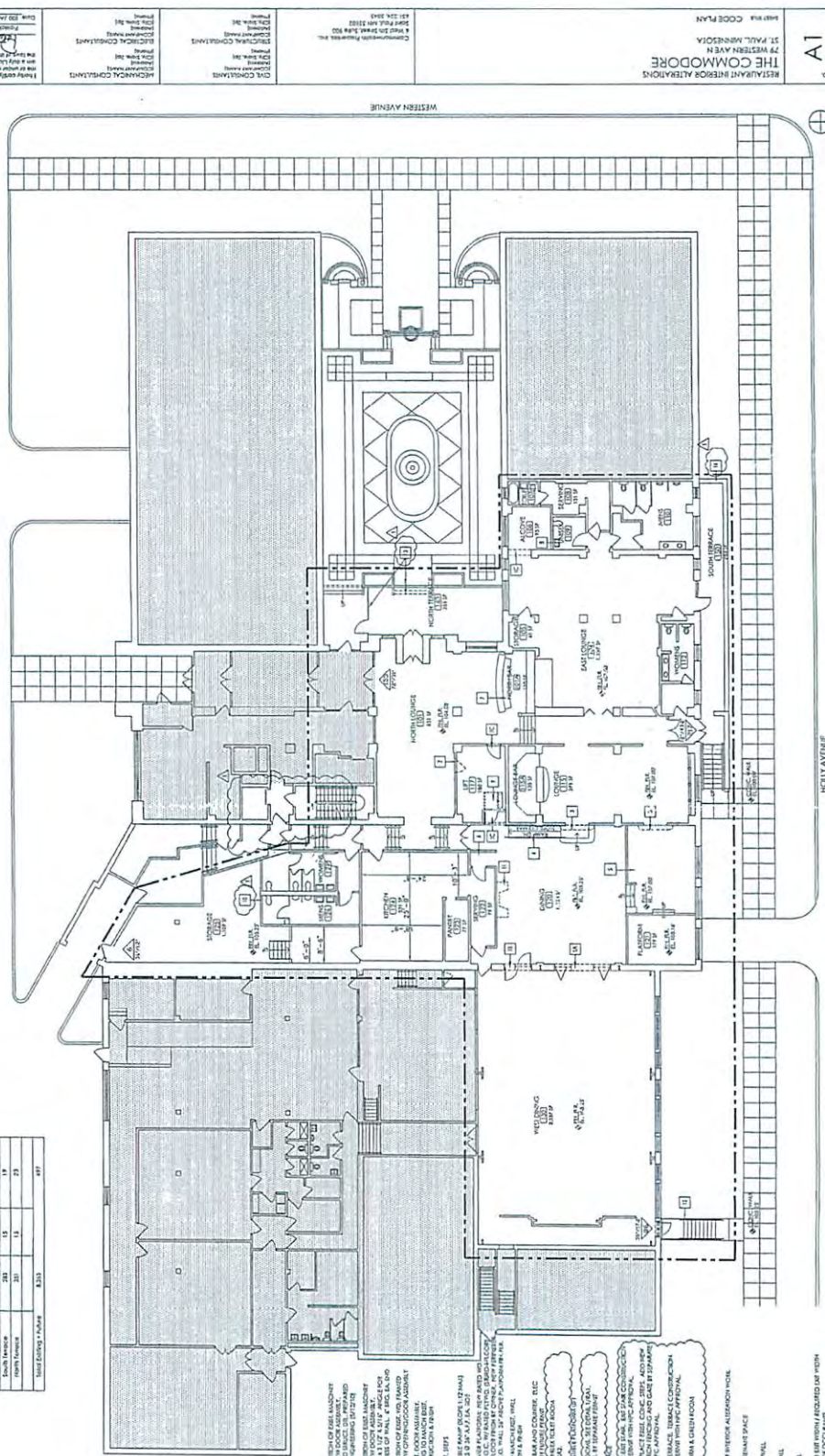


EXHIBIT  
R-69



1ST FLOOR PLAN



MECHANICAL CONSULTANT

DATE: 5/17/2012

PROJECT: THE COMMODORE RESTAURANT INTERIOR ALTERATIONS

CLIENT: J. J. L. HOLDINGS, INC.

DESIGNER: J. J. L. HOLDINGS, INC.

SCALE: 1/8" = 1'-0"

MECHANICAL CONSULTANT

DATE: 5/17/2012

PROJECT: THE COMMODORE RESTAURANT INTERIOR ALTERATIONS

CLIENT: J. J. L. HOLDINGS, INC.

DESIGNER: J. J. L. HOLDINGS, INC.

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MECHANICAL CONSULTANT

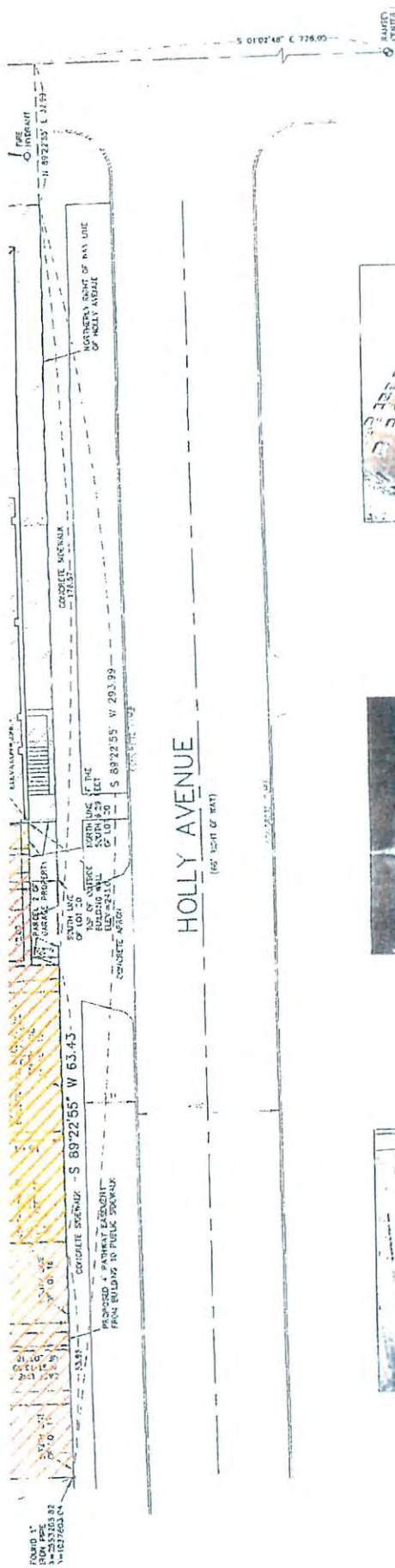
DATE: 5/17/2012

PROJECT: THE COMMODORE RESTAURANT INTERIOR ALTERATIONS

CLIENT: J. J. L. HOLDINGS, INC.

DESIGNER: J. J. L. HOLDINGS, INC.

SCALE: 1/8" = 1'-0"



NOTE: COMMONWEALTH LAND COMPANY COMMITMENT NO. 41 MAY 7, 1988 (TORRENS) AND (ABSTRACT) INCLUDES PARCEL 3 OF THE TITLE COMMITMENT NO. 3 OF THE SEPARATE PARCEL 3 OF THE TITLE COM PARCEL 3 OF THE COM 7 FACILITY PROPERTY PARCEL COMMITMENT IS THE SAME AS SEPARATE FACILITY PROPERTY



EXHIBIT

121

# TH

Q-71



Jim Bloom - 4/30/2018  
In the Matter of All Licenses Held by the University Club of St. Paul

1 MR. MILLER: We have nothing else at  
2 this time.

3 MS. SKARDA: My turn. Okay. Sorry.  
4

5 EXAMINATION

6 BY MS. SKARDA:

7 Q. Mr. Bloom, I just want to go over a few  
8 things briefly with you. I'm going to kind of push  
9 these down, if that's all right. First of all, I'm  
10 going to have you look up here in the upper top. Take  
11 a look at how this area was described. Can you tell me  
12 what that is?

13 A. Future west dining room.

14 Q. What does that tell us?

15 A. It tells us, in the future, it is going  
16 to be -- it is going to be a dining area, but it is not  
17 part of the scope of work. That is how I would read it  
18 at this point.

19 Q. That's on Exhibit 123, just for the  
20 record.

21 Can we talk a little bit about how  
22 architects note changes on plans.

23 A. Normally, the bubble. It will be a  
24 cloud. And there isn't anything indicated. Oh, wait.  
Actually, they are clouds over here.

EXHIBIT

29-59

EXHIBIT

R-72

1 Q. And with respect to comparing Exhibit  
2 123 to Exhibit 55, if they were going to change a  
3 symbol key, would they also cloud that?

4 A. Normally, they would, yes.

5 Q. You talked a little bit about the  
6 western dining area and if it was going to be finished  
7 off under these plans, Exhibit 123. You talked about  
8 HVAC and exiting and some other items. Would those  
9 have been plans, in your experience, that were attached  
10 to the plans, or would an architect put all the  
11 information they needed right on the plans?

12 A. They would have been a separate  
13 submittal. Let me rephrase that. There's any number  
14 of ways it could come in. It could come in as a  
15 complete package. Architectural, HVAC, mechanical,  
16 electrical, plumbing, all stamped and signed by the  
17 appropriate disciplines and designers.

18 They would be submitted to the different  
19 review sections within DSI. Then when the reviews are  
20 done, they are brought back together, and they are put  
21 together.

22 Mr. Rupp explained that, at times when  
23 there isn't a change of use and the mechanical systems  
24 can be verified that they are -- they qualify or they  
25 meet code for -- even if it is a change or if it is the

EXHIBIT

29-60

1 same, within the same category -- it is occupancy  
2 groups. But if it is in the same occupancy groups, the  
3 air changes would be the same, the mechanical systems  
4 would be the same, it may be fine, and the senior can  
5 approve that without the plans being submitted.

6 MS. SKARDA: I'll have these marked.

7 (Exhibits 130 and 131 marked.)

8 BY MS. SKARDA:

9 Q. I'm showing you what's been marked as  
10 Exhibit 130 and 131. I would submit to you that  
11 Exhibit 130 is actually just blown-up pictures that  
12 appear on the bottom of 131.

13 A. Thank you.

14 Q. I would also submit, this is a document  
15 that is in the file at DSI and has been previously  
16 disclosed.

17 Were you ever in the western dining  
18 area?

19 A. No, I was not, not to my recollection.

20 Q. I'll have you look at the first two  
21 pictures and tell me what those first two say, over on  
22 the left-hand side of the paper, Exhibit 131.

23 A. You want me to read it?

24 Q. Sure.

A. "Easterly end of proposed banquet room

EXHIBIT

tabbies  
29-61

1 parcel."

2 Q. And below that?

3 A. "Westerly end of proposed banquet room  
4 parcel."

5 Q. I'll have you look at Exhibit 131. On  
6 the right-hand side, there's a box. Can you just tell  
7 me what it is entitled. I'm not going to make you read  
8 it.

9 A. "Proposed Banquet Room Parcel  
10 Description."

11 Q. So can you look at this document and  
12 tell us if that proposed banquet room description is  
13 the western dining room, based on what you see before  
14 you?

15 A. Yes, it is.

16 Q. What about that tells you --

17 A. That it is?

18 Q. -- that it is the western dining room?

19 A. Because the angles on the northern  
20 portion face of the Commodore addition are matching up  
21 with the angles, and that west -- or that north-south  
22 wall is the same north-south wall, which is the face  
23 between the existing dining room and the west dining  
24 room.

Q. I'm going to give you my pen. I'm going

EXHIBIT

tabbies

29-62

1 to have you circle, on Exhibit 131, what that proposed  
2 banquet room parcel description includes.

3 You were being questioned by Mr. Miller.  
4 You said that sometimes architects draw plans like  
5 puzzles. I think that was the word you used. You  
6 reviewed what is Exhibit 123 and Exhibit 55. Do you  
7 look at plans like pieces of puzzles?

8 A. Yes, I do. Why I said that is the  
9 existing dining room, east lounge and dining room, is a  
10 stand-alone. It is code compliant on its own. It  
11 doesn't rely on the west dining for any exiting systems  
12 at all.

13 Okay. Where the west dining relies on  
14 the existing dining and the east lounge for an exiting  
15 service system, because they exit into -- the west  
16 dining exits into the existing dining and has its own  
17 secondary exit stairs going directly outside.

18 The existing dining doesn't have to exit  
19 into the west dining. It has its own exit going up and  
20 going north and going south out of the building.

21 Q. So --

22 A. That's how the pieces of the puzzle work  
23 together, to give you how it all works together.

24 Q. So we know, at some point in time, you  
became aware that the western dining area had been

EXHIBIT

tabbies 29-63

Jim Bloom - 4/30/2018  
In the Matter of All Licenses Held by the University Club of St. Paul

1 finished off. Can you talk a little bit about your  
2 recollection, if any, with respect to that.

3 A. I don't recall how I learned it. It was  
4 just -- it was office conversation that work had been  
5 done, and I, honestly, don't recall.

6 Q. Do you remember having any conversations  
7 with Mr. Rupp about the western dining area and the  
8 work that was done?

9 A. I don't recall having conversations  
10 about the work that was done. I do recall discussions  
11 prior to any permits or very, very early on, which we  
12 had --

13 Mr. Rupp and I have had many  
14 conversations on proposed projects that he was. The  
15 intention was always to use that as the west dining  
16 room and turn that back into a banquet west dining  
17 area. I was aware of that, absolutely.

18 Q. Do you recall any conversations about  
19 occupancy, allowing occupancy or use of that western  
20 dining area?

21 A. Oh, I'm sorry, I do not. There's just  
22 too much.

23 Q. Can you talk a little bit about what --  
24 you used the term, "legally established," what that  
means to you.

EXHIBIT

tabbies

29-64

1           A.    Legally established, from this person,  
2 plan reviewer, ex-plan reviewer's perspective is a  
3 review process of construction review, licensing --

4                   If I can give you a quick synopsis. At  
5 DSI, you have zoning. You have -- which is the land  
6 usage allowed to be on that piece of property. You  
7 have the building codes, which is the building that  
8 sits on the piece of property. And then you have the  
9 licensing section, which is the operation that sits in  
10 the building that sits on the land. That's how it  
11 works, to me.

12                   When it is legally approved or  
13 established, those processes, or a facsimile of those  
14 in past years, would have been of record, and those  
15 records could be recaptured and shown that it was legal  
16 at some period, at some point.

17           Q.    So if the western dining area looked  
18 like it looked in these two pictures -- and I'm going  
19 to have you describe them for the record -- how would  
20 you interpret that as to whether --

21           A.    Those are raw spaces. There is no --  
22 there is no use of those spaces at this point.

23           Q.    Does it give us any evidence of any kind  
24 of a use?

A.    No, to me, it does not. I'm only

EXHIBIT

29-65

1     looking at two small photographs. There is no use.

2                 Q.     Assuming those two pictures are what is  
3     now the western dining area, what would you, as the  
4     plan examiner, want to see to finish off that space,  
5     what kind of supplemental documents?

6                 A.     It is a full use, as far as I would be  
7     concerned, even though it may have been -- for zoning  
8     purposes or for SAC determination, maybe, it may hold  
9     some credit. But as far as building code compliance,  
10    it is not a continuation of a use.

11                Q.     And for the record, I was referring to  
12    Exhibit 130. I apologize.

13                    I'll have you, just real quickly, look  
14    at Exhibit 118, which is somewhere. I'm going to kind  
15    of point to the "Plan review remarks." Tell us what  
16    that says there.

17                A.     "Door and exit steps."

18                Q.     So that tells --

19                A.     That is correct.

20                Q.     I'm going to have you flip to the second  
21    page of that exhibit.

22                A.     It is signed by Mr. Williamette. It is  
23    approved by him.

24                Q.     There's some notes kind of towards the  
bottom of the page. Can you review those and tell me

**EXHIBIT**

tabbies®

**29-66**

Jim Bloom - 4/30/2018  
In the Matter of All Licenses Held by the University Club of St. Paul

1    what that tells you about what the scope of that permit  
2    was.

3                   A.    This permit was for stairs only.

4                               "Contact Larry Zangs before issuing  
5    building permit.  Owner should provide documentation to  
6    verify SAC has been paid for expansion of ballroom -  
7    need HPC approval to issue permit - owner supplied  
8    information to HPC."

9                   Q.    What does that tell you, if anything, as  
10   the plans reviewer, about that permit?

11                   A.    The permit was for the fire stair only  
12   and that the other items in the dining room had not  
13   been reviewed or approved by these other sections, by  
14   Larry Zangs or -- verification for the SAC  
15   determination had not been done.

16                   Q.    Do you recall having conversations with  
17   Mr. Rupp about the restrooms in the existing area of  
18   the Commodore?

19                   A.    We had talked -- I believe, we had  
20   talked about using a unisex.  That's partially looking  
21   at some of the notes that were here or the letter.  I  
22   think it was using a unisex restroom as part of  
23   complying with the handicap accessible restrooms.  You  
24   can have a male and female non-accessible restroom if  
you have a unisex restroom, in certain cases, in

EXHIBIT

tabbies  
29-67

1 existing establishments.

2 Q. And when you had those conversations  
3 with Mr. Rupp, your understanding was the scope of the  
4 permits that were being issued was only the existing  
5 portion?

6 A. That's correct.

7 Q. Do you recall letting the new restrooms  
8 be constructed to 2007 Minnesota Accessibility Code,  
9 Chapter 1341, and what that might mean?

10 A. No, I do not.

11 Q. Might it help if you reviewed your  
12 notes? I don't know if it will or won't.

13 A. Not really.

14 (Exhibit 132 marked.)

15 BY MS. SKARDA:

16 Q. Reviewing Exhibit 132, which is just --

17 A. Yeah, Chapter 1341 of the Accessibility  
18 Code is very specific. It doesn't matter to the code  
19 whether it is on an accessible route or not or whether  
20 it makes any -- if there's any commonsense. It assumes  
21 that, at some point, it may be on an accessible route;  
22 and therefore, you are going to make it handicap  
23 accessible. That's what the code calls for.

24 MS. SKARDA: I don't have any more.

25 MR. MILLER: I think Mr. Rupp has --

EXHIBIT

tabbies  
29-68

Jim Bloom - 4/30/2018  
In the Matter of All Licenses Held by the University Club of St. Paul

1 MR. RUPP: I have a question.

2 THE WITNESS: Sure.

3 MR. RUPP: When you look at the photos  
4 here, you have got this unfinished space with no  
5 evidence it has ever been used.

6 THE WITNESS: Correct.

7 MR. RUPP: Let's say all the evidence  
8 says that it was never legally used because we can't  
9 find any building permit that was completed for this  
10 after it was built in 1976.

11 THE WITNESS: Okay.

12 MR. RUPP: So now in comes this plan or  
13 a plan for the west dining room. It's my  
14 understanding -- I want you to just -- this is a  
15 question.

16 THE WITNESS: Sure.

17 MR. RUPP: You can evaluate a plan under  
18 the building code, in your department, either as a  
19 change of use or as a continuation of use. Those are  
20 different code provisions; isn't that right?

21 THE WITNESS: There's one more piece to  
22 the puzzle. It is no use. Now, when you have a raw  
23 space -- bear with me. Zoning plan usage established  
24 what a use is for that space. I don't care what it  
looks like. They approved it for something. SAC

EXHIBIT

tabbier  
29-69

Jim Bloom - 4/30/2018  
In the Matter of All Licenses Held by the University Club of St. Paul

1 determination is for a space, and they determined  
2 something for that. It sticks. Okay. That's my  
3 understanding.

4 Building code is a little different. If  
5 you rip everything out and it is raw space, it is  
6 nothing right now. It is nothing. Therefore, you are  
7 starting like it is new.

8 MR. RUPP: Can I get -- mind if I ask a  
9 clarification?

10 THE WITNESS: Go ahead.

11 MR. RUPP: Let's say the facts in this  
12 case, hypothetically -- not hypothetically, because  
13 these are actually the facts. It gets built for  
14 restaurant use and never gets finished, which is what's  
15 happened, because there's no evidence --

16 THE WITNESS: Wow. Okay.

17 MR. RUPP: -- including by me, by the  
18 way, that's there ever been construction-built anything  
19 in there.

20 Under those circumstances, you would  
21 need, from a zoning standpoint -- I'm asking a question  
22 now.

23 THE WITNESS: Uh-huh.

24 MR. RUPP: You would need a  
reestablishment of the original non-conforming use for

EXHIBIT

29-70

Jim Bloom - 4/30/2018  
In the Matter of All Licenses Held by the University Club of St. Paul

1 zoning; is that correct?

2 THE WITNESS: I'm really not the person  
3 to ask on the zoning. All I know is that I would  
4 verify with zoning. There would be a trigger, toggle  
5 switch for me to say I have to go to zoning.

6 MR. RUPP: Let's say, hypothetically, if  
7 they said, since it was built as a restaurant, never  
8 got finished, 40 years has passed --

9 THE WITNESS: Okay.

10 MR. RUPP: -- you have to go get a  
11 reestablishment of a non-conforming use. Let's say  
12 that, which is what they said, by the way.

13 THE WITNESS: Okay.

14 MR. RUPP: Now, how do you evaluate --  
15 what provisions of the building code do you use on  
16 those facts to evaluate a building permit to the west  
17 dining area?

18 THE WITNESS: Zoning does not determine  
19 what the occupancy group or what the use of the space  
20 is --

21 MR. RUPP: Right.

22 THE WITNESS: -- or how the building  
23 code is applied. A raw space is a raw space is a raw  
24 space. Whether it had been a restaurant before,  
25 whether it had been -- whatever it had been before, it

EXHIBIT

tabbles  
29-71

**Jim Bloom - 4/30/2018**  
**In the Matter of All Licenses Held by the University Club of St. Paul**

1 is not a change of use. It is a new use. It is an  
2 existing space, but it is like a brand-new finished-out  
3 space, because it is raw space.

4 MR. RUPP: Is that the case -- I'm not  
5 being argumentative.

6 THE WITNESS: No, no, no. I can --

7 MR. RUPP: I'm just curious.

8 THE WITNESS: After seeing these  
9 pictures -- I don't recall seeing these pictures. I'm  
10 surprised I wouldn't have seen these pictures at some  
11 point along the way. But I don't recall seeing these  
12 raw spaces, because I always thought it was some  
13 finished space that was being remodeled. That's what I  
14 have in my memory. But, you know, that's not as good  
15 as it used to be.

16 But -- but seeing raw space, I would  
17 have said this is a new use, you know, not for zoning,  
18 not for SAC. But for building code, it is a new  
19 remodel. I would have addressed permits as a new  
20 remodel.

21 MR. RUPP: As a -- let's take a look at  
22 the pictures.

23 THE WITNESS: Yeah.

24 MR. RUPP: If there was some lighting in  
here and there was an HVAC system in there --

**EXHIBIT**

**29-72**

**Jim Bloom - 4/30/2018**  
**In the Matter of All Licenses Held by the University Club of St. Paul**

1 THE WITNESS: Uh-huh.

2 MR. RUPP: -- isn't it, particularly  
3 these days, in some people's minds, a completed space?  
4 If it has got just painted cement block walls and a bar  
5 joist ceiling and an air conditioning system and  
6 lighting, it is a completed space.

7 THE WITNESS: I've never seen your end  
8 product looking like that.

9 MR. RUPP: Not mine. We've all been to  
10 places that are finished spaces like that.

11 THE WITNESS: Absolutely.

12 MR. RUPP: So the question is: This  
13 picture, per se, is not determinative of whether or not  
14 it is a finished space. There's different  
15 architectural design ideas than I have. To some  
16 people, these days, it is a finished space?

17 THE WITNESS: These days are not what an  
18 existing space would have been 40 years ago.

19 MR. RUPP: In this particular case, we  
20 discovered, that there was some exercise equipment in  
21 the space, without the benefit of a license or  
22 occupancy certificate or construction, and it was  
23 considered a finished space by that user, because they  
24 tried to use it, even illegally.

I used it, since the year 2000, as part

**EXHIBIT**

**29-73**

**Jim Bloom - 4/30/2018**  
**In the Matter of All Licenses Held by the University Club of St. Paul**

1 of the restaurant. I, occasionally, used it for  
2 banquets and storage space. I considered it finished,  
3 although not my standard. So it is a subjective idea  
4 of what aesthetically constitutes a finished space;  
5 isn't that true?

6 THE WITNESS: I don't see anything that  
7 says that's a usable space.

8 MR. RUPP: Is there anything in the  
9 pictures?

10 THE WITNESS: The pictures?

11 MR. RUPP: Is there anything in the  
12 picture that says it is not a usable space?

13 THE WITNESS: I don't see any exit  
14 signs.

15 MR. RUPP: Except for the exit signs.  
16 Let's say the photo shows an exit sign. The picture is  
17 not determinative of whether it is a usable space, from  
18 some people's perspective, assuming it has a fire exit?  
19 It doesn't say it is not finished, the picture?

20 THE WITNESS: The picture, it looks like  
21 a raw space, to me. But it could be something to  
22 somebody else; that is correct.

23 MR. RUPP: That is correct. Thank you.

24 MR. MILLER: I don't have anything.

MR. RUPP: Thank you for coming out of

**EXHIBIT**

**29-74**

**Jim Bloom - 4/30/2018**  
**In the Matter of All Licenses Held by the University Club of St. Paul**

1 retirement briefly.

2 MR. MILLER: We're finished. I'd like  
3 it as soon as possible, electronic copy.

4 MS. SKARDA: Electronic copy.  
5 Do you want to read and sign?

6 THE WITNESS: I don't think so.

7 (Whereupon, the deposition of JIM BLOOM  
8 was concluded at 12:15 p.m.)

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**EXHIBIT**

tabbles

**29-75**

involves a liquor license) of objection to issuance of the license, the matter shall be referred for a hearing before the legislative hearing officer, who shall give notice of the time, place and date of the hearing to the affected neighborhood organization(s) and the applicant. The legislative hearing officer shall take testimony from all interested persons and shall make a recommendation to the council as to whether the matter should be referred for a hearing before an independent hearing examiner in accordance with the procedures set forth in section 310.05. Where the application for the grant, issuance or renewal of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the director shall issue such license in accordance with law.

- (2) *Renewal.* The director shall in writing notify the council, and the affected neighborhood organization(s) established for citizen participation purposes, at least sixty (60) days before the expiration date of all Class N licenses. A public hearing on the renewal of any such license shall not be held except on the request of a councilmember, which request shall be incorporated in the form of a council resolution. Upon the passage of such resolution, the director shall give written notice of such hearing to the affected neighborhood organizations. Such public hearing does not replace or amend any of the procedures set forth in section 310.05 of the Legislative Code. If no request for a public hearing is made before the expiration of any such license, and where there exists no ground for adverse action, the director shall issue the license in accordance with law.
- (e) *Appeal; Class R or Class T licenses.* An appeal to the city council may be taken by any person aggrieved by the grant, issuance or renewal of a Class R or Class T license; provided, however, that the appeal shall have been filed with the city clerk within thirty (30) days after the action by the director. The only grounds for appeal shall be that there has been an error of law in the grant, issuance or renewal of the license. The appeal shall be in writing and shall set forth in particular the alleged errors of law. The council shall conduct a hearing on the appeal within thirty (30) days of the date of filing and shall notify the licensee and the appellant at least ten (10) days prior to the hearing date. The procedures set forth in section 310.05, insofar as is practicable, shall apply to this hearing. Following the hearing, the council may affirm or remand the matter to the inspector or director, or may reverse or place conditions upon the license based on the council's determination that the decision was based on an error of law. The filing of an appeal shall not stay the issuance of the license.
- (f) *No waiver by renewal.* The renewal of any license, whether Class R, T or N, shall not be deemed to be a waiver of any past violations or of any grounds for imposition of adverse action against such license.

(Code 1956, § 510.04; Ord. No. 17455, § 1, 5-21-87; Ord. No. 17551, § 1, 4-19-88; C.F. No. 94-500, § 1, 7-6-94; C.F. No. 95-473, § 3, 5-31-95; C.F. No. 95-1517, 1-31-96; C.F. No. 97-1446, § 1, 12-30-97; C.F. No. 99-500, § 2, 7-7-99)

Sec. 310.05. - Hearing procedures.

- (a) *Adverse action; notice and hearing requirements .* In any case where the council may or intends to consider any adverse action, including the revocation or suspension of a license, the imposition of conditions upon a license, or the denial of an application for the grant, issuance or renewal of a license, or the disapproval of a license issued by the State of Minnesota, the applicant or licensee shall be given notice and an opportunity to be heard as provided herein. The council may consider such adverse actions when recommended by the inspector, by the director, by the director of any executive department established pursuant to Chapter 9 of the Charter, by the city attorney or on its own initiative.
- (b) *Notice.* In each such case where adverse action is or will be considered by the council, the applicant or licensee shall have been notified in writing that adverse action may be taken against the license or application, and that he or she is entitled to a hearing before action is taken by the council. The notice shall be served or mailed a reasonable time before the hearing date, and shall state the place, date and time of the hearing. The notice shall state the issues involved or grounds upon which the adverse



action may be sought or based. The council may request that such written notice be prepared and served or mailed by the inspector or by the city attorney.

- (c) *Hearing.* Where there is no dispute as to the facts underlying the violation or as to the facts establishing mitigating or aggravating circumstances, the hearing shall be held before the council. Otherwise the hearing shall be conducted before a hearing examiner appointed by the council or retained by contract with the city for that purpose. The applicant or the licensee shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in its discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.

- (c-1) *Procedure; hearing examiner.* The hearing examiner shall hear all evidence as may be presented on behalf of the city and the applicant or licensee, and shall present to the council written findings of fact and conclusions of law, together with a recommendation for adverse action.

The council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. After receipt of the hearing examiner's findings, conclusions, and recommendations, the council shall provide the applicant or licensee an opportunity to present oral or written arguments alleging error on the part of the examiner in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after considering the record, the examiner's findings and recommendations, together with such additional arguments presented at the hearing, the council shall determine what, if any, adverse action shall be taken, which action shall be by resolution. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

- (c-2) *Ex-parte contacts.* If a license matter has been scheduled for an adverse hearing, council members shall not discuss the license matter with each other or with any of the parties or interested persons involved in the matter unless such discussion occurs on the record during the hearings of the matter or during the council's final deliberations of the matter. No interested person shall, with knowledge that a license matter has been scheduled for adverse hearing, convey or attempt to convey, orally or in writing, any information, argument or opinion about the matter, or any issue in the matter, to a council member or his or her staff until the council has taken final action on the matter; provided, however, that nothing herein shall prevent an inquiry or communications regarding status, scheduling or procedures concerning a license matter. An interested person, for the purpose of this paragraph, shall mean and include a person who is an officer or employee of the licensee which is the subject of the scheduled adverse hearing, or a person who has a financial interest in such licensee.

- (d) *Licensee or applicant may be represented.* The licensee or applicant may represent himself or choose to be represented by another.
- (e) *Record; evidence.* The hearing examiner shall receive and keep a record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- (f) *Council action, resolution to contain findings.* Where the council takes adverse action with respect to a license, licensee or applicant for a license, the resolution by which such action is taken shall contain its findings and determination, including the imposition of conditions, if any. The council may adopt all or part of the findings, conclusions and recommendations of the hearing examiner, and incorporate the same in its resolution taking the adverse action.
- (g) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions shall be complied with and shall supersede inconsistent provisions of these chapters. This shall include, without limitation by reason of this specific reference, Minnesota Statutes, Chapter 364 and Minnesota Statutes, Section 340A.415.
- (h) *Discretion to hear notwithstanding withdrawal or surrender of application or license.* The council may, at its discretion, conduct a hearing or direct that a hearing be held regarding revocation or denial of a license, notwithstanding that the applicant or licensee has attempted or purported to withdraw or