November 8, 1991

TO: Greg Kipp
    George McCallum
    Lisa Pringle
    Rich Hudson
    Ken Dinsmore
    Lanny Henoch

    Harold Vandergriff
    Jerry Marbet
    Gary Kohler
    Hilda Hammon
    Terry Brunner

FM: Jerry Balcom

RE: Minutes of the November 8, 1991 Code Interpretation Meeting


1. and 2. The first two questions relate to K.C.C. 21.54 and involve pre-emption rights of either state or federal agencies regarding the County’s SAO. The facts provided for both questions were insufficient for the prosecutor to formulate an answer. This subject will be discussed at a future meeting once the PAO has an opportunity to review the additional information.

3. K.C.C. 21.52.030 (B)(C) requires that buildings and land shall not be used for or occupied by nonconforming uses if the nonconforming use of the building or land is discontinued for a continuous period of more than one year. Cass Jochman’s review of the 1986 Greg Montgomery opinion concerning abandonment of nonconforming uses agreed with the previous decision. The previous decision stated that reduction in the level of activity or even total cessation of business activity does not, by itself, constitute, for the purposes of 21.52.030, a discontinuance of activity. Discontinuance is, instead, equated by the courts with abandonment. The courts, have also concluded that abandonment of a nonconforming use can only be found where the facts establish both an intent on the part of the user to abandon the nonconforming use, and an overt act or failure to act which implies abandonment. Therefore, the conclusions of the Montgomery opinion are still appropriate. However, each case must be reviewed individually to determine whether there is an intent to abandon.

4. Can the owner of nonconforming apartment buildings erect garages with storage as an accessory use on property zoned AR-5 under the provisions of K.C.C. 21.52.050? No decision was made with
regard to expansion of nonconforming apartments. More information is needed to determine the legal status of the buildings. However, if the use was legally established, garages and accessory storage would be permitted as accessory uses. A new use, such as a mini-storage facility would not be permitted as an accessory to the nonconforming use and would have to be permitted in the current classification before it could be established.