



SOCIETY HILL CIVIC ASSOCIATION

# THE RESIDENT NEWSLETTER

Box 3, Philadelphia, Pennsylvania 19105

July, 1989

## SPECIAL NEWS EDITION

JUDGE DECIDES

### **injunction against open air parking lot on Abbotts Square property!**

On July 10, 1989 Common Pleas Court Judge Victor J. DiNubile, Jr. ruled that Gloria Levin, owner of the Abbotts Square property at 3rd and Lombard Streets, is enjoined from erecting an open-air parking facility on the lot.

The suit was brought on April 20, 1989 by our community organizations who sought an injunction on the basis of the following two issues. First, that the proposed parking lot would create a nuisance of increased traffic, air pollution and noise, and the lighting of such a facility would combine to interfere with the peaceful enjoyment of their properties by area residents, as well as pose a threat to local school children. Since the property is located adjacent to a registered historic district, the aesthetics of the area and property values would be significantly diminished.

The second issue was that Ms. Levin was precluded from erecting the parking facility by a bill introduced by James Tayoun on April 27, 1989 in City Council. This bill, unanimously approved and signed into law on June 15, 1989, changed the zoning of the property from G-2 Industrial to R-10-B Residential.

Ms. Levin's attorneys argued that the ordinance could not be applied retroactively, and that this was a "case of changing the rules during the course of the game," denying Ms. Levin her constitutional rights to the free use of her property. According to Judge DiNubile, however, the rules of the game were laid out over a period of years, beginning when the City Planning Commission set forth development controls for the property in 1980-81. Years-long negotiations had occurred between the prior

owner-developer (Jack Blumenfeld) and community associations, which resulted in the granting of zoning variances exclusively for residential/commercial purposes for the entire Abbotts Square complex. The Zoning Board approved these variances in 1981 and went on record that the property should be used solely in this fashion. City Council enacted Land Use Controls in 1982. As late as 1988, additional variances for residential purposes were granted for the property.

Judge DiNubile opined that the June 15th ordinance was merely a reaffirmation of the use intended by the Planning Commission and the 1982 Land Use Controls Ordinance. He stated, "It is difficult to conceive that the defendant (Ms. Levin) who owned two parking facilities within striking distance of the site was not generally aware of the history of this property."

In February 1989, Ms. Levin filed and received approval of zoning and use permits for a 275-car open-air parking lot. In April, when she learned that an air quality impact review hearing is required by the Philadelphia Department of Health for parking facilities of over 250 vehicles, Ms. Levin literally "raced," according to Judge DiNubile's opinion, to obtain a second set of permits--this time to erect a 245-car lot! Judge DiNubile's opinion states: "Under these circumstances, one cannot myopically apply for permits under the general guise that the property was zoned G-2 and expect to prevail on the good faith issue." Given the applicability of the June 15th ordinance, the judge felt it was unnecessary to decide the nuisance issue of our suit.

### AT PRESS TIME

### LEVIN APPEALS!

On July 13th, Gloria Levin's attorneys filed an emergency appeal to a superior court judge, requesting that Judge DiNubile's injunction be dissolved on the alleged grounds that his opinion is "so contrary to established law." Ordinarily, appeals go before a three-judge panel, but Ms. Levin has requested this one-day, one-judge hearing.

This superior court hearing will take place on Tuesday, July 18th at 2 o'clock at the Post Office Building, (9th and Chestnut) Room 3102 before Superior Court Judge Montemuro.

### \$\$ LEGAL FUND NEEDS \$\$

Although the remarkable work of our legal team has come to us pro bono, administrative expenses were incurred. To cover these costs, as well as appeals fees, a LEGAL FUND has been established. Your financial support is urgently needed. PLEASE MAKE YOUR CHECKS OUT TO St. Peter's School Parking Lot Fund and mail to Caroline E. Seamans, St. Peter's School, 319 Lombard Street, Philadelphia, PA 19147--so that we can continue to fight the good fight!

A fundraising event is being planned. Please watch for notices.

# NEIGHBORS WORKING TOGETHER

We recognize, as neighbors, that without the joint efforts of involved community organizations--Society Hill Civic Association, St. Peter's School, South Street Neighbors Association, Queen Village Neighbors Association, and condominium owners from Abbotts Square and Blackwell Court--the results might have been very different. Our neighborhoods have been spared the threat of an ugly blacktop parking lot that would have destroyed the quality of residential life here. Clearly, working together gives us strength . . . and hope.

How do we begin the long list of "thank you's" to all the individuals and groups who worked tirelessly on our behalf? It's a tough job, but somebody's got to do it! So here goes . . .

FIRST, we are all indebted to the team of lawyers who worked full time and without remuneration since this fight first began. These extraordinary attorneys can never be paid enough for their dedication and brilliance---so we salute you, our neighbors from Society Hill and Queen Village:

**Robert J. LaRocca**  
of KOHN, SAVETT, KLEIN & GRAF, P.C.;  
**Thomas R. Kline**  
of BEASLY, CASEY, COLLERAN, ERBSTEIN,  
THISTLE, KLINE & MURPHY;  
**Arthur M. Kaplan**  
of FINE, KAPLAN AND BLACK;  
**William J. Cluck**  
of SAUL, EWING, REMICK & SAUL.

VERY SPECIAL THANKS to Caroline E. Seamans, headmistress of the St. Peter's School, whose efforts helped to mobilize community protest and involvement. SPECIAL THANKS to Jeff Rush, president of Queen Village Neighbors Association, who upon learning of the parking lot crisis, initiated the chain reaction that resulted in getting the property rezoned by City Council.

We are particularly grateful to Councilman James Tayoun, whose key contribution was to introduce the ordinance to City Council and also to David Cohen, chair of the Rules Committee, who conducted the hearing and helped expedite passage of the bill. Special thanks go to Dr. Richard Tyler, executive director of the Philadelphia Historical Commission and G. Craig Shelter of the Philadelphia Industrial Development Corporation, who had been executive director the City Planning Commission in the early 1980's, both of whom testified in court that the "highest and best use of this property" is residential.

Thanks to all neighbors who volunteered their expert testimony: PARKING AND CITY PLANNING expert witnesses Duane Perry and Professor Michael Lang of Rutgers University; ARCHITECTURE expert witness Gray Smith (who gave testimony twice); REAL ESTATE expert witnesses Laurie Phillips and Cathy Conway; ENVIRONMENTAL EXPERT witnesses Bernard Hamel, PhD. (who gave a video-taped deposition and also rebuttal court testimony on air pollution emissions) and Jack Snyder, M.D., environmental toxicologist at Jefferson Hospital. Irving Shapiro deserves special recognition as the ARCHITECT of Abbotts Square, who testified to the history of variances granted by the Zoning Board of Adjustment designating the lot specifically for townhouse construction.

Ed Barenco, co-owner of the Chef's Market, a major commercial tenant at Abbotts Square deserves our thanks for coming out to testify, as do Abbotts Square residents: Røe Laveson, Tom Eddington, Tammy Echols, Dede Bennett, Dr. Block, Jacqueline Ross, Estelle Brauffman, David Oaks, Marlene Kirchenbaum, and Nina Lopez.

Other representatives of community organizations who testified in court include Bob Pierson, vice-president of the South Street Neighbors Association and Marge Schernocke, vice-president of Queen Village Neighbors Association.

Several SHCA members testified, including, of course President, Becky Stoloff, whose many efforts throughout these recent busy weeks have been a constant source of energy and inspiration to all involved; and Steven Skale, vice-president, who in 1988 was SHCA's participant representative for the development of Abbotts Square. Others include: Brigette Knowles, Roger Kunkel, Rita Bridger, and Libby Brown, who testified on behalf of St. Peter's Church.

We are grateful to ALL COMMUNITY MEMBERS who showed their support by coming to the courtroom. Particular mention and thanks must be given to Dale and Lee Truscott who attended every day throughout the three-week period of testimony.

Most of our expert witnesses were volunteers. We did, however, need to hire the services of the distinguished LEGAL ZONING EXPERT, Lenard L. Wolffe. Also, to investigate the amount of available parking space in the area, the paid services of expert witness Edward M. O'Shea were required.

#### Staff for this issue--

Bernice Hamel, Sherrill Joyner,  
Carolyn Mooney

Distribution--Faith Lemmer