

**Minutes
HEARING OFFICER
OCTOBER 1, 2013**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Diana Kaminski, Senior Planner
Julie Stennerson, Executive Assistant

Number of Interested Citizens Present: 32

Meeting convened at 1:46 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by October 15, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for September 17, 2013 had been reviewed and approved.
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2. Request approval for a Use Permit to allow tandem parking for **LAKE COUNTRY VILLAGE RESIDENTIAL (PL130217)** located at 1030 East Baseline Road. The applicant is Charles Huellmantel, Huellmantel & Affiliates.

Continued from September 17, 2013

Charles Huellmantel, Huellmantel & Affiliates was present to represent this case.

Steve Abrahamson introduced the case. The applicant is requesting a Use Permit to allow tandem parking at a redevelopment site located at the northwest corner of Lakeshore Drive and Baseline Road. The site is part of the Lakes Country Village Shopping Center. The western side of the shopping center has already been redeveloped. The eastern side of the site is up for development or redevelopment as multi-family residential. Presently the property is zoned PCC-2, Planned Commercial Center General District. The applicant indicated they would have 367 residential units located on the site requiring 721 parking spaces. In order to make this feasible the applicant is requesting tandem parking. The applicant is requesting 114 tandem parking spaces. Staff recommends approval of the Use Permit subject to the conditions of approval.

Mr. Huellmantel stated the request meets the requirements for a Use Permit. When the apartments are leased the tenants will be informed of the tandem parking. Tandem parking is becoming more common in multi-family residential.

Ms. MacDonald agreed with the concept of tandem parking and understands the need for it in this situation. She also believes the request meets the Use Permit criteria. Ms. MacDonald questioned the tandem parking being asked for before the Development Review Commission application. Parking is calculated based on the number

of units developed. The Site Plan has not been approved from the Development Review Commission. The parking calculations could potentially change.

Mr. Huellmantel stated a significant change would invalidate the Use Permit.

Ms. MacDonald considered modifying stipulation number 2 to read: The Use Permit is valid for the plans as submitted within this application. Any change in the Site Plan or parking calculation shall require a return to the Hearing Officer for review of the Use Permit.

Mr. Huellmantel asked Ms. MacDonald if she would be willing to reword the condition to say: return to the Hearing Officer or Development Review Commission. Changes may be made before the project goes to the Development Review Commission. He stated the Development Review Commission has the same powers and authority to approve a Use Permit.

Ms. MacDonald agreed to change the wording of the condition.

Mr. Huellmantel stated he doesn't expect any major changes. The request for a Use Permit for tandem parking was brought before the Hearing Officer since the project has already gone through the Planned Area Development process. The Planned Area Development has been approved. Mr. Huellmantel stated it is unusual to go through the Planned Area Development process without also doing the Development Plan Review. He was not involved with the original case or the original property owners. The City processed the Planned Area Development for the whole case which allows the site to be built. Mr. Huellmantel will be going to the Development Review Commission for the Development Plan Review which will include the site plan, landscape, and elevations. The tandem parking does have some impact on the lender as the project moves forward. They would feel comfortable closing on the property knowing a Planned Area Development is in place along with a project that can be built.

Mr. Abrahamson stated the conditions of approval could remain the same as those written in the report.

Mr. Huellmantel agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130217/ZUP13106 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any modifications may be submitted for review during building plan check process.

3. Request approval for a Use Permit to allow outdoor live entertainment for **C.A.S.A. (PL130291)** located at 15 East 6th Street, Suite 101. The applicant is Charles Huellmantel, Huellmantel & Affiliates.

Continued from September 17, 2013

Charles Huellmantel, Huellmantel & Affiliates and Scott Price, owner of C.A.S.A. were present to represent this case.

Steve Abrahamson introduced the case. This is a request for a Use Permit to allow outdoor live entertainment. The site is in the City Center District located on the southeast corner of 6th Street and Mill Avenue. The applicant currently has a Use Permit for live entertainment for the indoor portion of the establishment. The applicant is requesting an expansion of the previous approval to now request live entertainment outdoors at the newly expanded patio/bar. The live entertainment would be on the western side of the bar. There is a structure that would shield the east portion of the playing area as well as the wall of the building on the south. Staff has received one letter of concern and three phone calls of concern. Two of the phone calls indicated opposition. One phone call was a call of concern as to how this may impact the residents of Orchid House. Staff has indicated approval of the Use Permit.

Ms. MacDonald received an email from Mr. and Ms. Davis in opposition of the Use Permit.

Mr. Huellmantel stated the requested Use Permit would allow live entertainment for the outdoor portion of the business. Mill Avenue was once known as a place for live music. Mr. Price is anxious to bring that back. Live music would also include the use of a DJ. A DJ that would operate the same music as a radio station requires a Use Permit. The proposed Use Permit for live entertainment uses the existing speaker system. There is already an ordinance in place in the city that requires certain sound limitations. The music would not be played any louder. The outdoor location is a fairly small place. An extension of the premise for a band would require a Special Use Permit. The Use Permit would allow acoustic music or a DJ. The business owner would like to provide some live culture to the business.

Ms. MacDonald asked the distance to the closest residential building which she believes is the Orchid House.

Mr. Abrahamson indicated the closest residential building is approximately 200 feet.

Ms. MacDonald asked Mr. Huellmantel about the hours of operation.

Mr. Huellmantel stated the restaurant opens at 6:00 am daily. The restaurant has a breakfast, lunch, dinner and late night menu. Before the patio conversion the site was an unsightly newspaper kiosk that had been closed for years. The space has been transformed and is now active. Active space is important for any urban streetscape.

Ms. MacDonald stated the new noise ordinance does not allow amplified music between the hours of 10 pm and 7 am in residential zones.

Mr. Huellmantel did not believe the property was located in a residential zone.

Ms. MacDonald stated she was informed in pre-session the City considered this area residential.

Mr. Huellmantel stated the zoning district is noted as City Center District in the Staff Report.

Ms. Kaminski stated the zoning is City Center District. There was a change to the Ordinance a few months ago that Mr. Levesque referenced in his report. The downtown area is considered a residential area in terms of the music and what happens in the evening hours.

Ms. MacDonald stated she would like to create stipulations that are in line with the code.

Mr. Huellmantel stated the City has been working to create live music downtown that would apparently be in direct conflict with the statute. Mr. Huellmantel wanted to discuss this with Mr. Price.

Mark Helling has two residential condos at the Orchid House, one on the fourth floor and one on the third floor. Both condos face north, which is the same direction as C.A.S.A. The Orchid House is about 30 yards from C.A.S.A. He considers the area residential. He has talked to several people from the Orchid House. He is

opposed to outdoor music beyond 10:00 pm. He likes C.A.S.A. and the new patio addition. The business is all about promotions. He heard a rumor the permit was going to be only for game days. He does not believe a Use Permit should be granted to allow outdoor music to be played in the late evening hours.

Ken Bonham lives, works and owns a business on Mill Avenue. He resides at West 6th, it is the largest apartment building in Arizona. He has a northeast facing unit. Mr. Bonham has worked with the City for a better part of a year to get the amplified noise off of Mill Avenue. Mill was a place for music at one time before the Orchid House and West 6th were built. The amplified noise is much different than the nightclub, the city and airplane noise. He stated he spent about a year wearing earplugs at night and calling the Police Department out due to the amplified noise issues on Mill Avenue. The Police Department informed Mr. Bonham he would need to contact the City Council regarding the noise complaints. Now Mill Avenue businesses want Use Permits for outdoor music. He stated he opposed granting the Use Permit 100%. In the past performers have been located on separate corners of 6th Street and Mill Avenue and they would try to outplay each other. He frequents C.A.S.A. and likes the establishment. Outdoor music is much different than a nightclub or bar with a DJ inside. The musicians and performers were bringing generators down to Mill Avenue to play electric guitars. He is opposed to any music being played outdoors at C.A.S.A. any time of the day. Take in to consideration West 6th is across the street which has 375 residential units.

Mr. Abrahamson stated staff did not receive any complaints or inquiries from the residents at West 6th. The complaints and inquiries received were from the Orchid House. There is a 300 foot notification area by code.

Mr. Bonham stated he believed West 6th is more than 300 feet away from C.A.S.A.

Mr. Abrahamson stated that is why Mr. Bonham was not notified. A sign was posted out in front of C.A.S.A. which is proper notification and the agenda was legally advertised in the newspaper.

Mr. Huellmantel stated he has been around Mill Avenue for a long time. Things have changed on Mill Avenue over the years. The people who moved in near Mill Avenue knew they were moving into an urban area. There have been some unintended consequences as well. Musicians sometimes lack any musical talent. He does not blame people for being concerned. It is legitimate for the people who live downtown to be concerned about the bars and restaurants in the area. The area of the restaurant closest to the Orchid House already has a Use Permit for live entertainment indoors. The live entertainment has been operating without any issues. Staff has created stipulations to address many of the concerns of the residents in the area. In this particular case the applicant is not asking to make the sound louder than it is today. The Use Permit is to allow live entertainment. The sound system that is being used today would continue to be used with the live entertainment. The applicant agreed to cease the outdoor live entertainment at 10 pm.

Ms. MacDonald stated the 10 pm ending time for outdoor live entertainment sounds reasonable. She also understands how aggravating the noise can be for the neighbors. Any intensification or expansion of use shall require a new Use Permit. Ms. MacDonald stated she would also like a review of compliance for the Use Permit in six months.

Mr. Huellmantel agreed to the conditions of approval. Mr. Price, the owner of the business would also like the people who spoke in opposition of the Use Permit to contact him to discuss any concerns. Mr. Huellmantel stated they did send notification letters out and went to the Homeowner Association Board for the Orchid House for neighborhood outreach.

Ms. MacDonald amended condition number 4 to read: Live entertainment shall begin no earlier than 11:00 am and end no later than 10:00 pm daily. Ms. MacDonald also added condition of approval number 10 which would require a review of the Use Permit in six months.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.

4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130291/ZUP13101 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application.
2. The live entertainment use permit is valid only for the following types of entertainment: recorded music by a DJ or from an acoustical instrument (i.e. guitar, violin, and saxophone).
3. Live amplified bands with drums are prohibited, unless authorized through a special events permit on a specified date.
4. Live entertainment shall begin no earlier than ~~4 pm~~ **11:00 am** and end no later than ~~12 am~~ **10:00 pm** daily.
(Modified by the Hearing Officer)
5. Amplified sound shall not exceed the maximum allowed decibel level for a Residential Zone, including ambient noise levels.
6. Live entertainment or other recorded music amplification is limited to the number and type of speakers currently provided and noted within this application.
7. The applicant shall contact the City of Tempe, Police Crime Prevention Unit for a revised security plan within 30 days of this approval.
8. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
9. Any intensification or expansion of use, including additional speakers or other types of live entertainment, shall require a new Use Permit.
10. **The applicant shall return to the Hearing Officer for a six month review of compliance on April 1, 2014. (Added by the Hearing Officer)**

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4. Request approval for a Use Permit to allow a bar in the General Industrial District and a Use Permit to allow temporary outdoor vending for **FOUR PEAKS ANNEX (PL130299)** located at 2401 South Wilson Street. The applicant is Michael W. Kelly, Michael Wilson Kelly – Architects, Ltd.

Continued from September 17, 2013

Michael W. Kelly, Michael Wilson Kelly – Architects, Ltd. was present to represent this case.

Diana Kaminski introduced the case. The property is located on the east side of Wilson Street, south of Broadway Road, on the west side of the Union Pacific Rail Road. Four Peaks is located in an existing building in an industrial area. Four Peaks entered into a Certificate of Occupancy last fall as a manufacturing warehouse facility to expand the production of their product. Four Peaks has opened up a product tasting room for the public. The applicant would like to expand by adding food trucks. The building does not currently have a kitchen at the facility. There are no food services and there are not a lot of restaurants in the immediate area since this is an industrial district. The applicant would like to allow for scheduled food trucks to come in on a regular basis for their customers. They are proposing to limit the hours until 10 pm.

There were items conditioned with the approval of the Site Plan modifications last fall. Staff is working with the applicant to make sure the conditions are brought into compliance. Signage on storage tanks is not allowed unless it goes through the permitting process. Four Peaks is in the process of removing the signage that came with the tanks. They are going to come in for an application to put on some enhanced signage specific to their business. The ladders on the sides of the silos were originally to be screened from view. The ladders will be painted to match the building. They are not intended to stand out as an architectural feature. The ladders are a

necessity of the industrial use. Four Peaks did get a temporary Certificate of Occupancy with the understanding that screening would be put in along the street front. The screening has not been put in place yet. Razor wire had been added to the top of part of the storage unit because they have had some unfortunate incidents with burglary on the property. Four Peaks is now in the process of upgrading the site to make improvements for security purposes which will bring them into conformance with the code. They are proposing to add an 8 foot CMU fence along the perimeter to replace the chain link fence. The razor wire has already been removed from the fencing. Staff has been working closely with the applicant and the property owner. Staff recommends approval of both Use Permits for the bar in the General Industrial area and the temporary outdoor vending for the food trucks. The trucks will not be at the location all the time, but the Use Permit would allow for vending 365 days a year within the parameters of the Use Permit.

Ms. MacDonald stated Four Peaks was given their Certificate of Occupancy last November. She asked Ms. Kaminski if the conditions of approval were given to Four Peaks at that time.

Ms. Kaminski stated Four Peaks was informed the signage was not allowed as part of the Site Plan. The signage came in with the tanks and was not removed. The ladders were another condition of approval of the Site Plan. The temporary Certificate of Occupancy was issued with the understanding that the screening would be added for the storage area in the future. The razor wire was added after Four Peaks had problems with theft.

Ms. Kaminski stated the Use Permit is necessary since the business is going from purely manufacturing with ancillary tasting for wholesale clientele to a retail facility operating as a bar. Outdoor vending for the food trucks also requires a Use Permit. The business did not have a security plan through the City of Tempe because the business did not previously have a Use Permit. A security plan is now required for the liquor license. There is a stipulation for the applicant to contact the City of Tempe Crime Prevention Unit for a security plan within 30 days. The security plan will also help address some on site security measures for storage of products.

Michael Kelly stated he is in full agreement with the case and the stipulations outlined.

Ms. MacDonald stated she does not have a problem with the Use Permits. This is a good appropriate use for the location. She stated her concern regarding the site improvements that have not been completed. She considered continuing the case because she would like to see it further along in its progress.

Mr. Kelly indicated the improvements are already in motion. The security plan is in progress. The razor wire has been removed from the fence. The new fence proposal has been given to staff. Signage on the tanks will be covered up with a new sign.

Ms. MacDonald stated she would like the conditions completed.

Mr. Kelly stated the owners are working on the improvements.

Ms. Kaminski stated Mr. Kelly is correct in that they are working through the issues listed. The conditions of approval do have some date specific conditions. Besides continuing the case, another option would be identifying a time frame for the items to be taken care of and making adjustments to the conditions of approval. If the conditions are not met by a certain time frame the Use Permit would not be valid.

Ms. MacDonald indicated she may want a two week continuance for this case. She would drive the site to see if the ladders have been painted, and the logo on the tanks is no longer visible. She would like to see actual progress on the site. She asked if the property owner or business owner was present.

Randy Schultz with Four Peaks Brewing Company stated he is getting oil based paint and will begin painting the ladders tomorrow. The razor wire has been removed. He is meeting with Detective Ryberg this week regarding the security plan. The security plan should be completed by the end of the week. The wall is going to take a little longer to be completed. The wall will need to be approved and built. The front part of the security fence matches the screening behind it. The fence in place does not keep people out and they have had a lot of problems with theft. Mr. Schultz was unaware the name of the company on the storage tanks would be an issue.

The tanks will be painted within the next day or two.

Ms. MacDonald asked Mr. Schultz what the downside would be returning in two weeks.

Mr. Schultz stated the improvements will be done within the next few days. Returning to the Hearing Officer would just be a matter of more time. He assured Ms. MacDonald the painting would be completed by Friday. After the fence is approved it will be built as fast as possible for their own needs.

Ms. MacDonald asked Ms. Kaminski how soon the fence could be approved.

Ms. Kaminski stated she would like to have approval of the Use Permit with plans as submitted. She wanted to have the drawing of the fence submitted included in the packet for recordation purposes.

Ms. MacDonald stated she feels better that the fence plans have already been submitted. The improvements at this time would just be a matter of painting the tanks and ladders. She understands the applicant not only wants to comply with the City but would also like to protect the inventory and mechanical equipment.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130299/ZUP13104/ZUP13105 subject to the following conditions:

1. These Use Permits are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permits are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. Food truck service is limited to six trucks at any one time, which are to be located as shown on the site plan, and not within the parking spaces.
4. Food trucks are required to comply with all Maricopa County Health Department food handling and environmental regulations, and shall not dump waste products on or off-site except in designated waste disposal facilities.
5. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
6. Any intensification or expansion of use shall require a new Use Permit.
7. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment requires a separate Use Permit.
9. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval.
10. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
11. Hours of operation to end no later than 11:00 p.m. on a daily basis.
12. All nonconforming building lighting shall be removed and replaced with compliant light fixtures by December 1, 2013.

13. Signage on storage silo shall be removed or permitted by sign permit process by December 1, 2013.

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5. Request approval for a Use Permit to allow live entertainment for **GLUTTONS (PL130315)** located at 203 East 7th Street. The applicant is Ryan Praedel, LLP Food Company L.L.C.

Continued from September 17, 2013

Ryan Praedel, LLP Food Company L.L.C. was present to represent this case.

Diana Kaminski introduced the case. The site is located in the City Center District on the south east corner of 7th Street and Forest Avenue. This is an existing building that is part of a tenanted suite. This location has been used as a restaurant the past several years. Prior to the site being a restaurant it was an art store. The restaurant currently located at the site is Gluttons. The applicant is requesting a Use Permit for live indoor entertainment. Staff has received a letter from the Reverend of the First United Methodist Church. His concern was regarding the potential noise affecting the Islamic Cultural Center. The Islamic Cultural Center is located on the northwest side of the site. The proposed use for live entertainment is located inside the building. Staff is recommending approval of the Use Permit. Staff does not believe the use will be detrimental to the surrounding area. Many restaurants and bars within the City Center District downtown have live entertainment indoors.

Mr. Praedel the executive chef and owner of Gluttons stated he applied for the permit for acoustic, chilled out music. His liquor license is a 60/40 license. The restaurant has to maintain 60% food sales. The establishment is a restaurant. They do not have room for a drum set. The restaurant will not seat more than 60 people. The customer base is about 80% Chinese students from Arizona State University. The restaurant is mellow and quiet similar to a cocktail lounge. The restaurant serves traditional Chinese food. The rowdiest the restaurant gets is on a Saturday afternoon for a football tailgate gathering. Most of the music will be acoustic. The loudest bass would be a bongo. The music would be calm and relaxing. Mr. Praedel can hear the music from the mosque at any given night. He thinks the music is beautiful and does not have a problem with it. The stage in the restaurant would be located in the back corner of the room. Mr. Praedel could not imagine the sound would travel to the mosque. He just moved here in March and is trying to make his business successful. He has discussed the Use Permit with the neighboring restaurant and would like to remain a good neighbor.

Marwan Tamimi uses the Islamic Cultural Center in Tempe. He voiced his concern about the noise and traffic that will be affecting the religious center. When you go to the mosque or the church you need the surroundings to be quiet. Muslims go to the mosque five times a day. The use of the facility is continuous. They need assurance that the Use Permit will not affect their life style.

Ms. MacDonald asked the hours of operation for the mosque.

Mr. Tamimi stated the hours change by lunar calendar. Prayer may begin as early as 4:00 am, reconvene at Noon, 4:00 pm or 4:40 pm, 6:30 pm or 7:00 pm, and the latest around 9:30 pm. Certain activities are held during the month of Ramadan. Longer hours of prayer are held during Ramadan.

Faizal Johnson stated he prays all the time. Any noise coming from a restaurant or club would be a distraction. Your prayer is considered useless if you cannot focus or concentrate. Noise, alcohol, drugs and all kinds of immoral activities will affect worship at the mosque.

Abdullah Mubarak does not think he should be subjected to hearing loud live music while he is trying to make salat.

Hafez Turk stated his concern regarding the noise that would interfere with his concentration while he is trying to pray.

Zarinah Nadir attends the Islamic Community Center. She was informed the music would be indoor as well as

outdoor. She would have been concerned with the outdoor music. If the situation is as the business owner stated, indoor, mellow low key music she would not be concerned. She supports Mr. Praedel in his business and would like to be able to communicate with him more to make sure they have a communal relationship.

Ahmad Shqeirah has worked for the mosque the last 16 years. He appreciates the relationship with the City and all of the businesses around him. He stated the music being indoors calms him 50%. The mosque has had a bad experience in the past with live entertainment at the southeast corner of Forest and 5th Street. There are five daily prayers from 4:00 am – 10:00 pm. The mosque is open for students who attend ASU. The mosque is used for the students to sit and study for their exams as well. Nightly prayers are held as well as weekend school. Whenever there is a game 50% of the congregation members do not attend services. The streets are restricted and the parking is limited. The main service is held on Friday at noon. The main weekly gathering for families is held on Friday evenings. The block is surrounded by four houses of worship. He is not happy that alcohol is served at the restaurant. This will bring drunken people around the Islamic Center. He would like the restaurant to avoid live entertainment when there is a game or a Friday service.

Ms. MacDonald noted the live entertainment hours would be limited to 8:00 pm – 2:00 am.

Mr. Shqeirah would like to limit the live entertainment hours to 10:00 pm – 2:00 am on Friday.

Ms. MacDonald stated this is a dense downtown environment. She asked Mr. Shqeirah what they do when there is an ASU football game.

Mr. Shqeirah stated they suffer.

Abdallah Khalife stated he was a member of the Islamic Cultural Center. He stated when there are activities downtown they cannot do anything because of the noise and congestion.

Zayed Al-Sayyed noted a live entertainment license will attract more activity to the area causing congestion to other businesses and the community center.

Reverend Ed Mendenhall is the interim Pastor at the First Congregational Church of Christ. Ahmad is a friend of his and he shares his concern. It seems clear that a dialog has been established and the implications of entertainment in regard to houses of prayer and worship are also being established.

Ms. MacDonald stated Gluttons has occupancy of 60 patrons. The size of the establishment is pretty limiting.

Reverend Mendenhall stated the size of the restaurant alleviates some of his concerns.

John Reaney had heard the Use Permit was for outdoor live entertainment. He is opposed to outdoor live entertainment. He is glad to hear the use is for indoor live entertainment. He would like to work with the owner of the restaurant to make sure the music is kept down. It sounds like the intent is for dinner music, not loud jazz music.

Hazim Nasaredden stated his concern regarding the live music causing a distraction to the congregation during worship hours and classes. The live music will also increase the traffic and the people who are drinking in the area. The addition of the music is to encourage more customers to go to the restaurant. When you have more customers you have more drinking. He is concerned that there will be more drunk people around the mosque. Mill Avenue is known as the bar district. There is a concern with this restaurant being so close to the mosque.

Mr. Praedel addressed the noise and parking issues. There is a large parking lot at the corner of 7th Street and Forest Avenue. The parking lot is usually fairly occupied on Friday and Saturday night with most people going down to Mill Avenue. There are usually parking spaces open on the end of the lot near Gluttons. Street parking is also available along both sides of the restaurant. Mr. Praedel stated he did not have a problem limiting the live music on Friday night to start after 10:00 pm. He addressed the concern with the drinking. If destructive behavior is coming from his restaurant he would like to be informed. If the customers can be pointed out and it is

proven that they come from his restaurant he will refuse service to those individuals if anything is done to harm the temple. That is out of mutual respect. He does not want to see anyone destroy the city. He has placed numerous calls into the Police Department to get drunken people off the grass and for erratic behavior. The indoor music will be played during eating times. The business is not a bar, club or party spot on Mill Avenue. His license allows him to sell 40% liquor, and 60% food. Right now he is at about 80% food so there is a little bit of room for growth there. With a full house the restaurant is not a big drinking place. The restaurant has 55 seats, at 16 tables. The establishment is about 5,000 square feet, but that is including an upstairs that is being used for storage and an office. Mr. Praedel is familiar with the month of Ramadan. He would be willing to work something out with the mosque during that month. He does not want to disturb the neighbors. The music played live will be no louder than the music that is currently being played. He understands silence is needed during prayer.

Ms. MacDonald reviewed condition of approval number 7 which reads: Doors must remain closed during live entertainment. She asked Mr. Praedel about modifying conditions number 2 to read: Live entertainment hours: 8 pm – 1:55 am Saturday – Thursday, 10 pm – 1:55 am Friday

Ms. Kaminski suggested a six month review of compliance for the Use Permit.

Ms. MacDonald stated she did want to add a condition for a six month review of the Use Permit.

Ms. MacDonald reviewed condition of approval number 6 which reads: The facility may be used for live music, djs, karaoke, but may not be used as a concert venue. No tickets may be sold for entry to the facility and the live music may not be the primary purpose for attendance. Condition of approval number 11 was added which reads: The applicant shall return to the Hearing Officer for a six month review of compliance.

Mr. Praedel agreed to the conditions of approval.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130315/ZUP13110 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. Live entertainment hours: 8 pm – 1:55 am **Saturday – Thursday, 10 pm – 1:55 am Friday (Modified by the Hearing Officer)**
3. A sound engineer or management staff shall continually monitor music and amplified sound levels for compliance with the Tempe Noise Ordinance.
4. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
5. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
6. The facility may be used for live music, djs, karaoke, but may not be used as a concert venue. No tickets may be sold for entry to the facility and the live music may not be the primary purpose for attendance.
7. No outdoor speakers shall be allowed; doors must remain closed during live entertainment.
8. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.

9. The applicant shall contact the City of Tempe Crime Prevention Unit to review the existing security plan within 30 days of this approval. Contact the Police Department at 480-350-8749 before **November 1, 2013**.
10. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
11. **The applicant shall return to the Hearing Officer for a six month review of compliance on April 1, 2014. (Added by the Hearing Officer)**

6. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarette retail business) for **BUTT OUT (PL130318)** located at 401 South Mill Avenue, Suite 106. The applicant is Matthew Berger, Seditious Vapours.

Continued from September 17, 2013

Michael Berger and Matthew Berger, Seditious Vapours were present to represent this case.

Diana Kaminski introduced the case. The site is located in the City Center District on the east side of Mill Avenue. This is an existing historic building adjacent to Rula Bula. The suite is about 900 square feet. The applicant is requesting a Use Permit for a tobacco retailer to sell electronic cigarettes. Staff received an email today from the adjacent tenant indicating they did not have an issue with the proposed business or any retail use going into the suite. They just wanted to clarify the new tenant would not have access to the restrooms within Rula Bula as part of the agreement. The suite Butt Out will be occupying does not have its own restrooms.

Ms. MacDonald stated she received the email from Steve Goumas for Rula Bula. She read the letter into the record. The email stated Rula Bula has no issued with a tobacco retailer, or any retailer to be in the same building, but wanted to be clear that the use of the restrooms located in Rula Bula have not been available to the prior tenant Cactus Sports since 2002 and will not be available to Butt Out. Also, currently there is ongoing litigation between the City of Tempe, the Tempe Mission Palms Hotel and the property owners on Mill Avenue and some tenants over the loss of adequate customer parking, which the City has failed to provide. He wanted to be sure all parties are complying with the requirements of the Use Permit for space in the 401 South Mill Avenue Building.

Michael Berger opened Butt Out, The Serious Electronic Cigarette Source in November 2012 in Central Phoenix. It has grown to the point where a Tempe shop seemed like an excellent idea. They recently vacated Cactus Sports location in the Andre Building at 401 South Mill Avenue. The site seems perfect for the operation and they are excited to be part of the Mill Avenue Community. His interactions with staff have been excellent. They have avoided any changes to the interior besides fixtures, finishes and furnishings. They do not feel that a Building Permit is necessary and would be a potential significant burden in their desire to open the business. They have an understanding with their landlord, Cactus Sports that no structural changes will be made. Fortunately, none are necessary for operation of the business. Troy Scoma, owner of Cactus Sports is present to answer any questions as is Whitney Hale who directs the interior design. They are all aware of the need to not do anything that would necessitate a Building Permit. His expectation was to obtain a Use Permit today, the stipulation of a Building Permit was not expected. He would like advice on how to remove the stipulation requiring a Building Permit.

Ms. Kaminski stated the condition of approval requiring a Building Permit is a standard condition placed on all applications to make the applicants aware. Sometimes businesses open and they indicate that they were not aware a Building Permit was required.

Mr. Berger agreed 99% of the time the applicant would have to do significant interior modifications. This is anticipated as part of opening up a business. In their situation the building suite does not need any significant changes.

Ms. Kaminski stated the condition is listed for those who need a Building Permit. If they decide to do any work

that requires plumbing, electrical, mechanical or structural the condition is to make sure the applicant is aware a Building Permit must be obtained first.

Ms. Kaminski stated if there is a Certificate of Occupancy there has been a final inspection. If for any reason the interior is changed, a final inspection is required and a new Certificate of Occupancy must be obtained. There should already be a valid Certificate of Occupancy for the suite unless there was work done without permits.

Mr. Berger wanted to clarify if there is a Certificate of Occupancy.

Ms. Kaminski stated the Certificate of Occupancy should be valid for the suite. She would need to go back and pull the records for the suite.

Troy Scoma, Cactus Sports stated Mr. Berger is subletting from him. His lease does not end until April 2015. He asked if the Certificate of Occupancy Mr. Berger needs is the original received for Cactus Sports.

Ms. Kaminski stated that is correct unless there have been any illegal changes to the suite. Any changes would require a new Building Permit.

Troy Scoma stated no changes are being made, it is all cosmetic. He asked if the City would have the Certificate of Occupancy on file.

Ms. Kaminski stated the City should have the Certificate of Occupancy on file.

Mr. Berger agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130318/ZUP13111 subject to the following conditions:

1. This Use Permit is valid **only after a Building Permit has been obtained** and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. No outdoor live entertainment or outdoor speakers shall be allowed.
6. Use Permit for Tobacco Retail does not allow live entertainment - live entertainment requires a separate Use Permit.
7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.

7. Request approval for a Use Permit to allow a Restaurant/Sandwich Shop in the General Industrial District for **PS BUSINESS PARKS – PORT OF SUBS (PL130320)** located at 1755 West University Drive, Suite 115-117. The applicant is Healey Mendicino.

Continued from September 17, 2013

Mr. Torres was present to represent this case.

Diana Kaminski introduced the case. The property is located in a General Industrial area, east of 52nd Street, south of University Drive. Port of Subs is requesting a Use Permit for a restaurant. There are not a lot of dining opportunities in this industrial area. The restaurant would be a good fit at this location. The parking at this site has been reviewed by staff. The applicant is requesting a patio addition which will be done administratively as a Development Plan Review. Staff has not received any calls of inquiry or concern regarding the project. Staff is recommending approval of the Use Permit for the restaurant.

Ms. MacDonald stated the sandwich shop would be a good fit for the area.

Mr. Torres stated there are about 24,000 employees within a one mile radius. This will primarily be a lunch time business offering carryout as well as dine-in. The hours of operation are 8 am to 9 pm. The restaurant will probably close around 7 pm since this is a high density employment area.

Ms. MacDonald asked Ms. Kaminski to explain condition of approval number 9 which reads: Update the data for parking file for this building prior to the Use Permit becoming effective.

Ms. Kaminski explained the applicant will need to provide an updated list of all the tenants on this property. The tenants change over time and staff may not have a current list of all the tenants. The list would be provided through the property manager.

Mr. Torres agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130320/ZUP13115 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. No outdoor speakers shall be allowed.
6. Live entertainment requires a separate Use Permit.

7. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
8. Replace all dead or missing trees and any other missing landscape material.
9. Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within 14 days or by October 15, 2013.

8. Request approval for a Use Permit to allow a tobacco retailer/smoke shop for **WHITE CLOUD SMOKE SHOP (PL130329)** located at 1535 East Apache Boulevard. The applicant is Ramie Alloush.

Ramie Alloush was present to represent this case.

Diana Kaminski introduced the case. The property is located on the south side of Apache Boulevard in the Commercial Shopping & Services Zoning district. The suite is located in a multi-tenant building near Elm Street. The business previously opened not realizing they needed a Use Permit. Staff received a letter from Hudson Manor Neighborhood Association. They had concerns pertaining to particular retail products they do not want to see sold at this site. Staff is recommending approval based on the criteria with conditions of approval.

Ms. MacDonald asked Mr. Alloush about the nature of the products sold at his business.

Mr. Alloush stated they sell hookahs which are flavored tobacco water pipes. They also sell clothing such as T-shirts, shorts, jewelry, and skateboards. Different types of electronic cigarettes, tobacco, cigarettes and tobacco pipes will also be available.

Ms. MacDonald asked if they sell glass pipes or bongos.

Mr. Alloush stated they sell glass, plastic, and glass/metal combination water pipes.

Ms. MacDonald asked if the pipes are for hookah.

Mr. Alloush stated a majority of the water pipes are for hookah and some are for tobacco.

Ms. MacDonald reviewed conditions of approval: 5. No outdoor live entertainment or outdoor speakers shall be allowed. 4. Any intensification or expansion of use shall require a new Use Permit.

Ms. Kaminski stated if the business became a lounge setting it would be considered intensification.

Mr. Alloush stated they are strictly selling retail tobacco, hookah tobacco and pipes. They are not renting any pipes or allowing smoking inside the building.

Ms. MacDonald asked the size of the suite.

Mr. Alloush stated the suite is a little less than 1,200 square feet.

Ms. MacDonald stated the suite is small. She did not believe the suite would be large enough for a lounge.

Mr. Alloush agreed to the conditions of approval.

Paul Neighbors stated there is a smoke shop at 1730 East Apache Boulevard, one block from this location. Another smoke shop is located at 1605 East Apache Boulevard, approximately 130 feet from this location. He questioned a third smoke shop in the proximity.

Ms. MacDonald asked staff if there were any separation requirements for this type of business.

Mr. Abrahamson stated the only separation requirement for this type of business is from schools. Business owners of tobacco retail must separate hookah lounges and smoke shops a minimum of 1,320 feet from a primary or secondary school. He stated he was unaware of the smoke shop at 1605 East Apache Boulevard. Mr. Abrahamson did not believe the business at 1605 East Apache Boulevard had a Use Permit.

Mr. Alloush indicated a week after signing his lease he noticed signage going up at 1605 East Apache Boulevard for pipes, and similar items sold at his shop.

Ms. MacDonald stated unfortunately that is a competitive thing.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL130329/ZUP13117 subject to the following conditions:

1. This Use Permit is valid **only after a Building Permit has been obtained** and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. No outdoor live entertainment or outdoor speakers shall be allowed.
6. Use Permit for Tobacco Retail does not allow live entertainment - live entertainment requires a separate Use Permit.
7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.

The next Hearing Officer public hearing will be held on October 15, 2013.

There being no further business the public hearing adjourned at 3:58 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer