

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 12/11/2012
Agenda Item: 3**

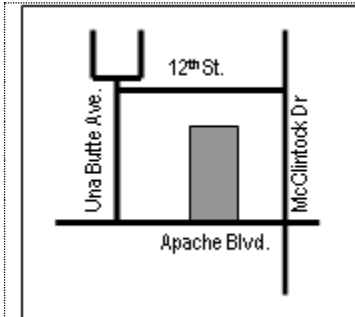
ACTION: This is an Appeal of the Revocation of a Use Permit for a retail tobacco store with live entertainment for MIDNIGHT HOOKAH, located at 1630 E Apache Boulevard Suites 103-104. The applicant of the Appeal is Nadir, Yousef, Midnight Hookah.

FISCAL IMPACT: N/A

RECOMMENDATION: N/A

BACKGROUND INFORMATION: MIDNIGHT HOOKAH (PL110015) is located on the north side of Apache Boulevard west of McClintock Drive, east of Una Butte Avenue, with commercial uses on both sides, light rail to the south and single-family residential properties to the north. Midnight Hookah is located in an existing commercial building built in 1986. The L-shaped building has multi-tenant suites; all suites except MIDNIGHT HOOKAH are currently vacant. The Hearing Officer granted a Use Permit for a tobacco retail store (hookah) with live entertainment with conditions in March 2011. After three hearings to review compliance with the conditions of approval, the Hearing Officer revoked the Use Permit for failure to comply with the conditions of approval. The applicant is appealing the Hearing Officer Revocation decision to the Development Review Commission. This request is for:

RVA10004 Appeal of the Revocation of a Use Permit to allow a retail smoke shop (Hookah Lounge) offering tobacco and tobacco paraphernalia products and live indoor entertainment (dj, live music and dancing).



Property Owner	Milivoje Djordjevich, 1630 Apache Corp.
Applicant	Nadir Yousif, Midnight Hookah
Zoning District	CSS Commercial Shopping & Service, TOD
Business Suite Area	3,600 suite 103-104
Building Occupancy	49 people (staff and customers)
Parking	12 spaces for retail tobacco use in suites 103-104; 67 provided by variance from 77, for all suites

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Diana Kaminski, Senior Planner (480-858-2391)

Department Director: Lisa Collins, Interim Community Development Director

Legal review by: N/A

Prepared by: Diana Kaminski, Senior Planner

Reviewed by: Lisa Collins, Interim Community Development Director

APPEAL COMMENTS:

The property is located on the north side of Apache Boulevard, west of McClintock Drive, east of Una Butte Avenue, with commercial uses on both sides, light rail to the south and single family residential properties to the north. Midnight Hookah is located in an existing commercial building built in 1986. The L-shaped building has multi-tenant suites; all suites except MIDNIGHT HOOKAH are currently vacant. The property has a variance for parking, reducing the required parking up to 77 spaces down to 67 required and provided on site. The occupancy limit for this tenant is 49 people including staff. This is the former location of Harem Nights, a previously approved hookah lounge with live entertainment, which had its use permit revoked and closed for failure to comply with conditions of approval.

In 2011, staff met with Nadir Yousef and Joseph Johnson regarding their proposed new hookah business, using the former Harem Nights suite and an additional suite, for a larger hookah facility. Staff reviewed requirements for a security plan, standard conditions of approval required of tobacco retailers and the ventilation requirements. They requested a Use Permit for tobacco retail sales with live entertainment as a single use permit. Staff advised the applicant that if any of the conditions of approval were not met, both components of the use permit would be reviewed and potentially revoked. The Hearing Officer granted the Use Permit request with conditions and after a year, revoked the Use Permit for failure to comply with the conditions. The applicant is appealing the Hearing Officer Revocation decision to the Development Review Commission. Below is a summary of events leading to the requested appeal of a Revocation of the Use Permit:

- **March 1, 2011** the Hearing Officer approved the request as a single Use Permit with a condition to return to the Hearing Officer six months after receipt of Certificate of Occupancy. The C of O was delayed due to construction delays and challenges caused by adjacent tenants, who later vacated the property.
- **September 23, 2011** the business opened after receiving Certificate of Occupancy.
- **Between September 2011 and March 2012**, the Police Department reported that there were two calls for fights, and three calls complaining about loud music. At that time, Police staff indicated there had not been significant calls for service related specifically to the operations of the business; however the parking lot was regularly littered with trash and containers from alcoholic beverages. Planning staff received a call from neighbor, stating that the business was open until 5am; noise from building woke him on weekend. He did not wish to file a complaint, he wanted to call owner to ask them to keep the doors closed so that the sound would not travel into neighborhood. Hours of operation were beyond what was approved in hearing, however, the resident did not wish to file complaint.
- **January 13, 2012**, Planning staff sent a courtesy letter to the applicant/owner as a reminder of the conditions of approval, highlighting which conditions had not yet been met and letting them know that calls had been received regarding the hours of operation, noise and conditions of the property, and that a security plan had not yet been implemented.
- **March 20, 2012** the applicant came back to the Hearing Officer for review of compliance with the Conditions of Approval of the Use Permit. A summary of the six months were documented at the hearing and the owner was advised that the criteria for the use permit required compliance with all conditions of approval. At that time, it was determined they were not in compliance with all of the conditions, and an additional six months was granted to establish a credible pattern of business operations.
- **Between March 25th and September 4th 2012**, the Police Department reported there had been 28 calls for service to the property, with this being the only business on site. 13 of these calls for service were citizen initiated, 2 were owner initiated, and 13 were officer initiated:
 - Citizen calls included five loud music complaints between 2-2:23am on Sundays and Fridays, after allowed hours. Other calls for service included theft, burglary from vehicle, alarm, criminal damage, fight and assault.
 - The owner called for trespass warning and threat with a gun.

- Officer initiated calls for service were responses to information provided by the fire department, other law enforcement agencies, observations made driving by, or proactive security checks. These included loitering, altered state of consciousness, drinking in the parking lot, smoking outside and warrants for arrest. Since March, police have filed 10 arrests and 10 warrants during the operation of Midnight Hookah.
- **On August 16, 2012**, the Police Department observed the following activities:
 - Security guard at door checking IDs but did not have readily identifiable attire as security (per Security Plan requirement)
 - Security guard did not leave door to inspect parking lot for loitering (per Security Plan requirement)
 - Patrons leaving establishment for short visits to cars in the parking lot, behavior typical of drug or alcohol related activity occurring prior to re-entry into hookah lounge
 - Patron retrieved glass bottle from vehicle and hid it as he re-entered hookah lounge.
 - Loitering in the parking lot, no signage or security in parking lot to enforce no loitering (per Security Plan requirement)
 - Music heard greater than 100 feet away from the entrance and past the hours of operation
 - Security guard talking with one female patron most of the evening, not watching entrances or parking area
 - Security guard smoking hookah with customers 5-7 feet from the entrance (violation of smoking law)
- **On August 25, 2012**, the Police Department observed the following activities:
 - 15 individuals hanging out in the parking lot
 - 5 people smoking hookah on the sidewalk adjacent to the building (smoking law violation)
 - No identifiable security guard presence in parking lot (Security Plan violation)
 - Attempted intimidation of people in vehicle (unmarked police car with uniformed officers inside) by eight men surrounding the car, leaning on vehicle and lightly rocking the car.
- **Between September 5 and October 7, 2012**, the Police Department indicated two calls for service were made:
 - September 8th at 12:41 am- Commander Kim Hale noticed that the entire parking lot was filled (67) spaces, as well as approximately 15 cars parked along the front curbs. There was only one security guard who was at the front of the business and he was standing out with about 12 patrons. The Commander had to make the security guard move the cars blocking the fire lane; it appeared there was only one guard. Indoor head count was approximately 80 persons inside.
 - September 16th 2:28 am- Welfare check subject dizzy and bleeding from the mouth.
- **September 18, 2012**, a hearing was scheduled for the second review of compliance with the Conditions of Approval for the Use Permit for Tobacco Retail (Hookah) with Live Indoor Entertainment. The applicant had failed to comply with several conditions and requested a continuance from the September 18, 2012 hearing to allow time to address building safety and public safety issues with the business.
- **October 2, 2012**, staff met with applicant representatives and advised them of the life safety danger of exceeding occupancy limits. Staff was told that they would maintain the 49 person maximum occupancy until a solution to the building code issues with fire protection and air ventilation was addressed. The solution was to be initiated before the hearing on October 16th. As of October 10th, Building Safety had indicated that there was no submittal for plans to revise the occupancy of the space.
- **October 8, 2012**, staff received an email regarding Midnight Hookah activity, paraphrased as follows: '....10/7/12 about 3:15 a.m. music was so loud a neighbor could hear and understand every word of music. The front door was propped open with a chair. The neighbor then engaged in conversation with a nearby resident who complained that loud music starts every Friday and Saturday night at midnight and lasts until 4 to 5 a.m. Most weekends he spends

calling a towing company to remove illegally parked cars. He said the lounge takes on the atmosphere of a nightclub rather than a hookah lounge late on the weekend nights....'

- **October 9, 2012**, staff received one email from five residents: '....they go on until four in the morning. The noise is always a disturbance. The patrons' loud talking, music thumping.' They wished to remain anonymous.
- **October 12, 2012**, the Police Department cited Nadir Yousef (as the owner of the business) for an employee selling tobacco products to a minor. Although this occurred prior to the Hearing Officer hearing on October 16th, the information was not available to Planning Staff until after the hearing. This is a violation of State and Federal regulations for tobacco sales. Several other hookah lounges were cited this evening, when a state undercover investigation was conducted of smoking establishments. Officers cited the staff and manager at 1am on October 13th, and noted that the parking lot had 5 vacant spaces: 62 spaces were occupied, a head count inside was not conducted at that time.
- **October 13, 2012**, staff received an email from Reliable Impound manager Joey Polichuck, stating that they had been hired by Bakers Acres on Apache Boulevard and on a couple of occasions they had towed cars from the property on Friday and Saturday nights because they were not guests of Bakers Acres, but were coming from Midnight Hookah and parking off site.
- **October 16, 2012**, a hearing was scheduled for the second review of conditions of approval. The applicant was found not-compliant with conditions: 4, 6, 8, 13, 15, 16, 19 and 20.
- **After the October 16th hearing**, staff received one call that the business was open past the allowed time limits and another call from a representative of Baker's Acres property next door, expressing concern about noise and loitering at Midnight Hookah, illegal parking on this adjacent lot, and concerns for the safety of their guests.
- **October 25, 2012**, staff met with Mr. Nadir, his contractor Mr. Johnson, his attorney Ms. Lagarde, and his security manager Chris H. The purpose of the meeting was for the applicant to request that the use permit revocation be limited to live entertainment only, and allow the sale of tobacco to continue for a 90-day extension. The purpose of this request is to enable Midnight Hookah to remain in business, while the management proves their ability to comply with the regulations. Prior to this meeting, the applicant fired a staff member who violated State Smoking laws by selling to a minor, increased his security, and indicated he has maintained occupancy of 49 total persons (staff and customers) and eliminated the disc jockey.
- **November 7, 2012**, the Hearing Officer revoked the Use Permit for retail tobacco sales with live entertainment. The applicant is appealing the Hearing Officer's Decision to the Development Review Commission.
- **November 20, 2012** the applicant appealed the Hearing Officer's decision to revoke the Use Permit. Additional information for this case is provided in the attachments.

There have been no further police, fire or building safety reported incidents or calls from residents. The business continues to operate until the appeal decision of the Development Review Commission is reached. All prior reports and minutes are attached for reference. With regard to the requested grounds for appeal, a letter from the applicant is attached. The applicant has also requested a continuance of this case, this request is also attached.

HISTORY & FACTS:

May 4, 1999

BA990101 Hearing Officer approved a Use Permit request for National Bankcard Services, Suite 101, to allow a professional telemarketing office in the C-2 Commercial District (Zoning Ordinance 808)

August 12, 1999	BA990203 Hearing Officer approved a Use Permit request for The Intraverse, Suite 107 to allow a network of computers for entertainment and office purposes in the C-2 Commercial District. (Zoning Ordinance 808)
December 21, 2000	BA000369 Hearing Officer approved a Use Permit request for Phoenix Church of Pentecost Suite 107 to allow a church in the C-2 Commercial District (Zoning Ordinance 808)
May 19, 2009	ZUP09063 Hearing Officer approved a Use Permit for a hookah lounge/tobacco retailer.
January 8, 2010	CM100037 Violation of Use Permit Condition of Approval #4 All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective.
February 19, 2010	Administrative Hearing with business owner to gain compliance.
April 7, 2010	Business owner requested a continuance until May 19, 2010.
May 19, 2010	RVK10002 Hearing Officer revoked the Use Permit to allow a hookah lounge/tobacco retailer.
July 13, 2010	Development Review Commission heard and continued an appeal of the revocation of the Use Permit.
July 27, 2010	Development Review Commission continued the appeal until September 28th to allow more time for the building to be brought into compliance with the conditions.
September 28, 2010	Development Review Commission denied the appeal and upheld the May 19, 2010 Hearing Officer's decision to revoke the Use Permit.
March 1, 2011	Hearing Officer approved a use permit for Tobacco sales (Hookah) with live entertainment, subject to conditions and a 6 month post-occupancy review.
March 20, 2012	Hearing Officer approved a use permit for Tobacco sales with entertainment, subject to conditions and a second 6-month review of operations.
September 18, 2012	Hearing Officer continued the review of conditions of approval for the use permit to allow additional time to comply.
October 16, 2012	Hearing Officer reviewed business operations for compliance with conditions of approval and determined that the business was non-compliant. Authorization was granted to initiate the revocation hearing process.
November 7, 2012	Hearing Officer revoked the Use Permit for tobacco retail with live entertainment.

**ZONING AND DEVELOPMENT
CODE REFERENCE:**

Part 3, Chapter 2, Section 3-202, Table 3-202A – Permitted Land Uses in CSS, Commercial and Shopping and Services District.
Part 3, Chapter 4, Section 3-423 – Use Separation Requirements
Part 6, Chapter 3, Section 6-308 – Use Permit
Part 6, Chapter 3, Section 6-313 – Security Plan
Part 6, Chapter 9, Section 6-902 – Revocation of Use Permit



DEVELOPMENT PROJECT FILE

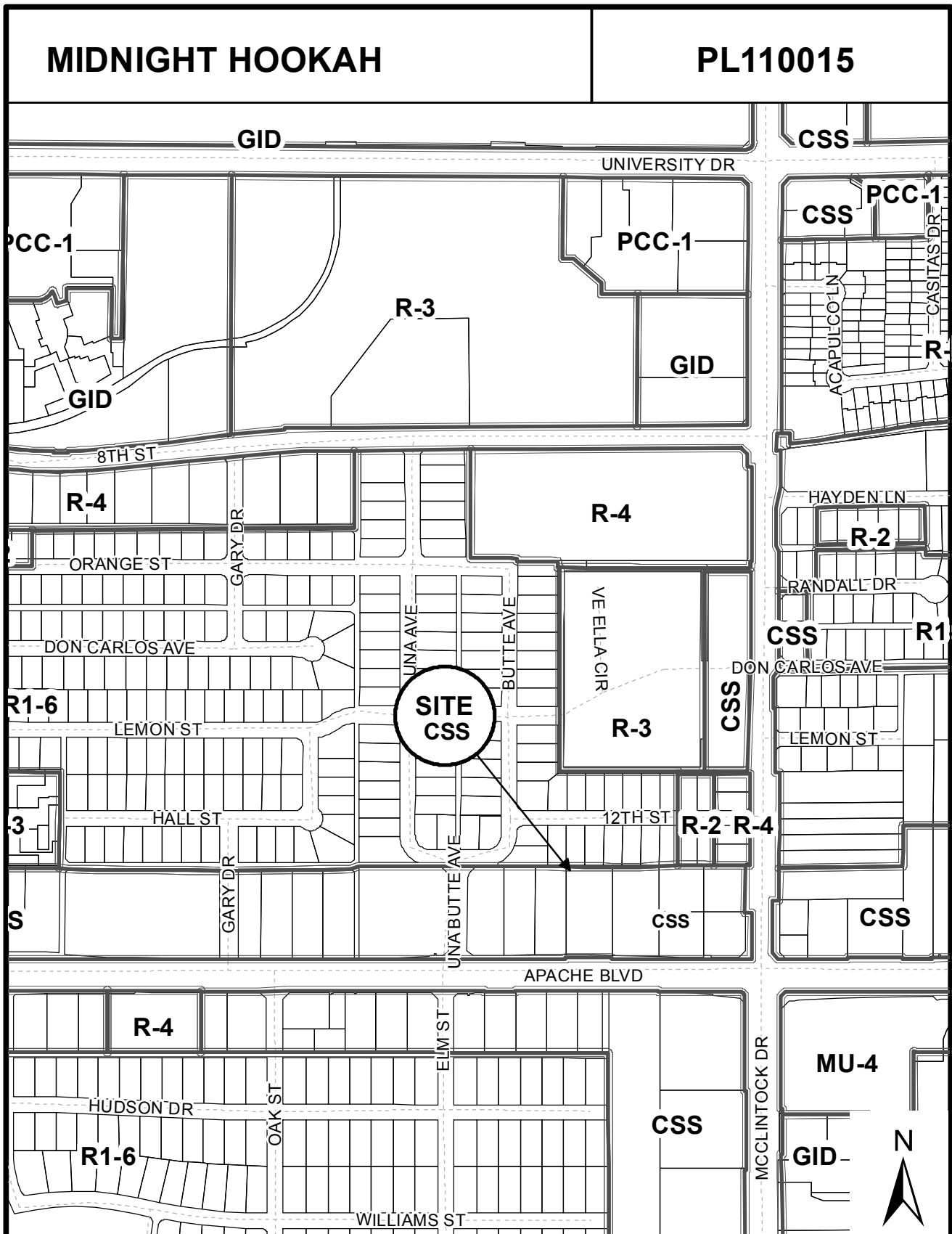
for

MIDNIGHT HOOKAH

ATTACHMENTS:

1. Location Map
2. Aerial Photo
- 3-4. Appeal letter
5. Request for Continuance
- 6-11. Police Reports
- 12-14. Building Safety request for occupancy modification
15. Building Safety Certificate of Occupancy
- 16-17. Advertisements on Internet and in Window showing hours of operation and occupancy
18. Public Input up to 11/7/12
- 19-26. Hearing Officer Report for Revocation Hearing
- 27-33. Hearing Officer Report for Compliance Review of Conditions of Approval
- 34-35. 12/3/12 website of Midnight Hookah showing hours of operation for events in August and September.
- 36-38. Minutes of March 20, 2012 Hearing Officer Review of conditions of approval.
- 39-43. Minutes of October 16, 2012 Hearing Officer Review of conditions of approval.
- 44-49. Minutes of November 7, 2012 Hearing Officer Revocation.





Location Map



MIDNIGHT HOOKAH (PL110015)

November 20, 2012

Nader Yousif
Midnight Hookah
1630 E Apache Blvd
Tempe, Az 85281

RE: Case #'s PL110115 and ZUP11007

To Whom It May Concern:

Enclosed with this letter please find additional documents substantiating our grounds for appeal on the above referenced cases. Specifically, we are appealing the City of Tempe's ruling from the hearing held 11/7/12 and requesting more time to bring our business into full compliance.

While we acknowledge our mistakes in this difficult process, we also believe firmly that they were, in fact, mistakes. Our inexperience, combined with language barriers and misunderstandings, led us to errors we would have never committed intentionally. We have sought professional guidance and feel confident that we can meet the City's code requirements if given a reasonable amount of time to do so.

We respectfully request, that after further review of our situation, you allow us the opportunity to proceed through the official appeal process, as well as the additional time to address the existing issues. We appreciate your time, understanding, and cooperation in this matter and look forward to hearing from you soon.

Sincerely,

Nader Yousif
Midnight Hookah

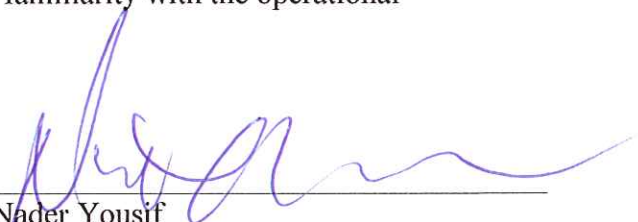


**APPEAL OF CITY OF TEMPE HEARING OFFICER DECISION
IN CASE NOS. PL110015 and ZUP11007**

This Appeal is being filed by: Nader Yousif, Midnight Hookah
1630 East Apache Boulevard, Tempe, AZ

Grounds for Appeal:

1. Unsubstantiated, previously undisclosed and extremely prejudicial unfounded allegations by Tempe Police Department officer relative to incidents at Midnight Hookah
2. Unverified complaints by citizens, none of which mentioned vibration issues, nor did testimony at the revocation hearing
3. Failure of Hearing Officer to take into account legitimate misunderstanding by applicant of occupancy limitation, which was corroborated by police testimony and subsequently clarified by Staff
4. Failure of Hearing Officer to recognize compliance actions of applicant and to differentiate between either earlier compliance issues that had been addressed by the applicant or his more recent actions to assure compliant operation of business
5. Lack of disclosure prejudicial to applicant of increased/resumed enforcement against all hookah lounges by the City commencing in August, 2012
6. Characterization of hookah lounges as "strange animals" by Hearing Officer and "unique business" that indicated a lack of familiarity with the operational characteristics of the business



Nader Yousif
Midnight Hookah

Date: 11/20/12

EARL, CURLEY & LAGARDE, P.C.
ATTORNEYS AT LAW

Telephone (602) 265-0094
Fax (602) 265-2195
www.ecllaw.com

3101 North Central Avenue
Suite 1000
Phoenix, Arizona 85012

December 6, 2012

VIA EMAIL

Diana Kaminski
Development Services Department
City of Tempe
31 East Fifth Street
Tempe, AZ 85281

RE: Midnight Hookah/PL110015 and ZUP11007

Dear Ms. Kaminski:

We are hereby formally requesting a 30-day continuance of the above-referenced matter scheduled to be heard by the Development Review Commission (DRC) at its hearing on Tuesday, December 11, 2012. The City of Tempe did not provide in a timely manner information that was originally requested two days after the revocation hearing on November 7, 2012. We were only given that information two days ago, almost a month later and only a week before the hearing. The documentation we were finally given did not include the most critical element we need to review, unsubstantiated allegations made by the police at the revocation hearing. Without full background information on the allegations made at prior hearings, it is impossible to present our appeal. The loss of my client's business and livelihood is an extremely serious matter that requires informed decision-making based upon the facts and should be afforded every Constitutional procedural due process protection of his right to a fair hearing.

We can find nothing in City regulations on appeals that requires a hearing to be held less than three weeks following the filing of an appeal or that requires the City to act with this undue haste denying my client a fair hearing based on the full facts. Having received the requested information only two (2) days ago, we cannot possibly be prepared to present an adequate appeal case to the DRC on Tuesday. We need the meeting with the Police Department that you have offered to schedule to clarify the information provided. Under these circumstances, we trust that the City will grant this request.

Very truly yours,



Lynne A. Lagarde

LAL:amc

cc: Development Review Commission
Lisa Collins
Nader Yousif
Joseph Johnson

O:\INDEX\Yousif\Letters\Kaminski 12 0 512.docx

Citizen & Officer Calls for Service
 Midnight Hookah - 1630 E Apache Bl
 March 21 - September 4, 2012

IR#	Date	Time	Address	Call Type	Dispo	Source
1238274	03/25/2012	12:10	1630 E APACHE BLVD	Other Officer Initiated Call	No Further Action	Officer Initiated
1242995	04/05/2012	9:54	1630 E APACHE BLVD	Other Officer Initiated Call	No Further Action	Officer Initiated
1244151	04/07/2012	17:08	1630 E APACHE BLVD	Theft Call	Report	Citizen
1247466	04/15/2012	4:33	1630 E APACHE BLVD	Assault Call	No Further Action	Citizen
1252614	04/26/2012	12:17	1630 E APACHE BLVD	Other Officer Initiated Call	Cite/Back Of Cite Arrest	Officer Initiated
1256186	05/04/2012	2:00	1630 E APACHE BLVD	Loud Music/Noise/Party Call	No Further Action	Citizen
1256206	05/04/2012	2:31	1630 E APACHE BLVD	Theft/Burglary From Vehicle Call	No Further Action	Citizen
1259592	05/11/2012	2:23	1630 E APACHE BLVD	Loud Music/Noise/Party Call	No Further Action	Citizen
1260195	05/12/2012	4:18	1630 E APACHE BLVD	Subject W/ Weapon Call	Report	Citizen
1260498	05/12/2012	22:46	1630 E APACHE BLVD	Other Officer Initiated Call	No Further Action	Officer Initiated
1262734	05/17/2012	22:32	1630 E APACHE BLVD	Other Officer Initiated Call	No Further Action	Officer Initiated
1269576	06/01/2012	2:08	1630 E APACHE BLVD	Loud Music/Noise/Party Call	No Further Action	Citizen
1269580	06/01/2012	2:14	1630 E APACHE BLVD	Fight Call	No Further Action	Officer Initiated
1271809	06/05/2012	16:37	1630 E APACHE BLVD	Alarm Call	No Further Action	Citizen
1274154	06/10/2012	22:33	1630 E APACHE BLVD	Loud Music/Noise/Party Call	No Further Action	Citizen
1278738	06/21/2012	2:45	1630 E APACHE BLVD	Subject Disturbing/Harassing Call	Street Check	Citizen
1285694	07/06/2012	3:40	1630 E APACHE BLVD	Illegal Parking Call	No Further Action	Citizen
1289673	07/14/2012	19:45	1630 E APACHE BLVD	Alarm Call	No Further Action	Citizen
1289375	07/14/2012	1:51	1630 E APACHE BLVD	Other Officer Initiated Call	No Further Action	Officer Initiated
1291088	07/18/2012	2:41	1630 E APACHE BLVD	Other Officer Initiated Call	No Further Action	Officer Initiated
1292874	07/22/2012	1:34	1630 E APACHE BLVD	Other Officer Initiated Call	Street Check	Officer Initiated
1296046	07/29/2012	22:47	1630 E APACHE BLVD	Loud Music/Noise/Party Call	No Further Action	Citizen
12101857	08/11/2012	13:39	1630 E APACHE BLVD	Criminal Damage Call	No Further Action	Officer Initiated
12104524	08/16/2012	19:42	1630 E APACHE BLVD	Other Officer Initiated Call	Warned	Officer Initiated
12104631	08/16/2012	23:26	1630 E APACHE BLVD	Other Officer Initiated Call	Report	Officer Initiated
12109336	08/25/2012	2:36	1630 E APACHE BLVD	Other Officer Initiated Call	Report	Officer Initiated
12112989	09/01/2012	13:54	1630 E APACHE BLVD	Alarm Call	No Further Action	Citizen
12114118	09/04/2012	1:46	1630 E APACHE BLVD	Criminal Damage Call	Street Check	Citizen



Tempe Police Department

Incident Report

Priority 3

Copy To: CRIME PREVENTION

Report Title INFORMATION CRIMINAL	Report Date 08/25/12	Incident Number 12-109336
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Officer Name/Serial Number M. HAYES #13103	Offense Code 37010000	Location of Occurrence 1630 E. APACHE BLVD
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RD 0417	Beat 14	Shift	Division	# Victims 0	Date Occurred 08/25/12	Time Occurred 02:30	Latest Possible Date 08/25/12	Latest Possible Time 02:50	Stolen Property
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Name Type	Name (Last, First, Middle)	Address	City
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State	Zip Code	Phone	School/Business Name	School/Business Phone	DOB	Race	Height
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Weight	Hair	Eyes	Veh Lic State	Veh Lic Number	PROSECUTE PAMPHLET NOTIFICATION	Veh Year	Veh Make	Veh Model	Veh Style	Veh Color
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Name Type	Name (Last, First, Middle)	Address	City
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On 8/25/12 at approximately 0230 hours Officer Moriarty and I went to the Midnight Hookah Lounge at 1630 E. Apache Blvd, Tempe reference prior security plan violations. It had been noted while talking to previous subjects whom had attended previous functions at this location that it had become a "gang hangout", primarily on Thursday nights. The gang unit had also worked a function at this location with Phoenix PD and contacted numerous gang members. Officer Moriarty and I noticed tonight that there were no signs in the parking lot which indicated no loitering as required by the existing security plan. We also noticed approximately 15 persons in the parking lot hanging out. There were also 5 subjects outside of the business smoking hookah on the sidewalk that runs North and South adjacent of the business.

At no time did we see a security guard who had a properly marked security shirt come out in the parking lot and tell people to either leave the parking area or to go into the business. This is the only business open at that time of day. At one point approximately 8 males surrounded our unmarked police vehicle. Three of the subjects began to lean on our vehicle and one subject

Routing:	CID	Press/Patrol	QC	Other	Special Code
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Item Type:	Item #	Property Type
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Brand	Model	Description
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Serial Number	Owner Applied #	Date Stolen	Date Reported	Date Recovered
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Dispo Code: 60	Property Location:	Locker Number	Value Stolen \$	Value Recovered \$	Released On (Date)
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Property Tag #:	Evidence?	Owner Name	Owner Address
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City	State	Zip Code	Location Removed From:
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Date/Time Placed into Property:	Supervisor's Approval/Signature	ECC: Yes No
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TEMPE POLICE DEPARTMENT NARRATIVE

INCIDENT NUMBER: 12-109336

OFFICER: M. HAYES #13103

began to lightly push against it. It was at this point that Officer Moriarty and I made our presence known and told the subjects to leave the area. I then went to speak with the owner/manager Nader Yousif. I asked Yousif if he had a security plan, while I was in a fully marked police uniform. Yousif presented the security plan.

I informed Yousif that there was no signage in the parking area that stated no loitering as required by the security plan and that we had not seen any security guards in the parking area. I also asked Yousif if he could get the security guards so I could speak with them. Yousif brought out one subject who had a black button down shirt on. The black shirt had no writing on either side that said security. Yousif also relayed this subject was inside security and he had let the other security guard go earlier as it wasn't busy. I informed Yousif that per his security plan he needed to have two security guards in security shirts when open for business.

Yousif was informed of the violations and I explained to him our concerns of a gang crowd coming to this location. Yousif stated he had also noticed this and was going to change the direction on Thursday nights to stop that from happening. I relayed to Yousif that the security plan had already been written and negotiated and he would have to read that security plan and abide by its directions. I also relayed we had come on another evening and noticed similar violations. This report was taken for information purposes only and no charges are pending.

ECC



Tempe Police Department

Incident Report

Priority 1

Copy To: LIQUOR BOARD

Report Title INFORMATION CRIMINAL / SECURITY PLAN VIOLAT						Report Date 08/16/12		Incident Number 12-104631		
Officer Name/Serial Number SULLIVAN #20543			Offense Code 37010000		Location of Occurrence 1630 E APACHE					
RD 1006	Beat 14	Shift	Division	# Victims 0	Date Occurred 08/16/12	Time Occurred 23:26	Latest Possible Date 08/17/12	Latest Possible Time 01:25	Stolen Property	
Name Type		Name (Last, First, Middle)			Address				City	
State	Zip Code	Phone	School/Business Name			School/Business Phone	DOB	Race	Height	
Weight	Hair	Eyes	Veh Lic State	Veh Lic Number	PROSECUTE PAMPHLET NOTIFICATION	Veh Year	Veh Make	Veh Model	Veh Style	Veh Color
Name Type		Name (Last, First, Middle)			Address				City	
State	Zip Code	Phone	School/Business Name			School/Business Phone	DOB	Race	Height	
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Weight	Hair	Eyes	Veh Lic State	Veh Lic Number	PROSECUTE PAMPHLET NOTIFICATION	Veh Year	Veh Make	Veh Model	Veh Style	Veh Color

On 08/16/12 at approximately 2326 hours I entered the parking lot of the Midnight Hookah Lounge at 1630 E Apache Blvd in Tempe in an unmarked police vehicle to observe possible security plan/use permit violations. I parked my vehicle on in the northeast corner of the parking lot facing westbound. While watching the establishment, I observed the following violations:

1) Security Personnel to be readily identifiable as security. I observed a large black male subject, shaved head, and wearing a black button up T-shirt with a design on the front left chest and a large design on the back of the shirt. This subject appeared to be acting as security as he never left the area of the front door, and appeared to be checking person's ID's as they attempted to enter the establishment. This was the only subject I observed who appeared to be watching the entrances to the business. Per the business security plan, members of Security are required to wear shirts that reflect that they are security. These shirts are required to have "SECURITY" written on the back of the shirt with at least 4 inch lettering, and on the front of the shirt in at least 2 inch lettering. I observed no person's wearing a shirt that met these requirements. The black male subject who appeared to be

Routing:	CID	Press/Patrol	QC	Other	Special Code
Item Type:	Item #	Property Type			
Brand	Model	Description			
Serial Number	Owner Applied #	Date Stolen	Date Reported	Date Recovered	
Dispo Code: 60	Property Location:	Locker Number	Value Stolen \$	Value Recovered \$	Released On (Date)
Property Tag #:	Evidence?	Owner Name	Owner Address		
City	State	Zip Code	Location Removed From:		
Date/Time Placed into Property:	Supervisor's Approval/Signature				ECC: Yes No

TEMPE POLICE DEPARTMENT NARRATIVE

INCIDENT NUMBER: 12-104631

OFFICER: SULLIVAN #20543

acting as security had a black T-shirt with an unknown design, but nothing identifying him as security.

2) Entrances and parking areas will be monitored by Permittee or a designated security service at least once each hour. I sat in the parking lot of the business from 2326-0125. In this two hour time frame the black male who appeared to be acting as security for the business never left the front door to the establishment. According to the security plan, the Permittee or security is supposed to check the parking lot regularly to make sure that no illegal activity is occurring inside their parking lot. I observed on multiple occasions patrons coming from inside the bar to their vehicle in the parking lot, and then re-enter the bar (on multiple occasions). From my experiences in working Downtown Mill Ave, this is usually indicative of drug use, or consumption of spirituous liquors. On one occasion (approximately 0000 hours) I observed a white male subject wearing a black and grey checkered T-shirt exit the north door to the business, go to his SUV bearing AZ plate ANY4978 parked on the northeast corner of the parking lot, retrieve a glass bottle which appeared to be alcohol, and hide the bottle behind his right leg and re-enter the bar through the north entrance. This north entrance was not monitored for patrons entering and exiting the bar for the time period which I was present. It should be noted that there was not a large number of vehicles, but there are multiple areas of the parking lot that cannot be viewed from where the security guard was standing near the front door.

3) Signs stating "No Loitering" shall be posted throughout the parking area utilized by patrons. I drove around the parking lot, and there are zero "No Loitering" or "No Trespassing" signs posted on the west, north, south, or east walls. There are also no signs posted on any of the light poles (with the exception of one restricted parking sign). During my two hours within the parking lot, subjects were allowed to loiter around vehicles, and inside vehicles for extended periods of time (approximately 10-15 minutes). The black male acting as security never entered the parking lot to warn these people of the violation.

4) According to the use permit hours of operation for a Thursday night are 5pm-1am with a mention that the music will be turned off by midnight. I stayed in the parking lot the entire time from 2326 hours until 0125 hours and observed that the music continued past 0100 hours which is a violation. The music was very loud, and the bass from the music could be heard from greater than 100 feet. Also, I purposely stayed in the parking lot past 0100, and observed that nobody was required to exit the business, and the business did not close down which is also a violation.

It should also be noted that I observed the security guard speaking with a black female for the majority of the night and not paying much attention to either of the entrances to the establishment. The security guard was also observed with multiple patrons smoking hookah from a hookah pipe on the front patio approximately 5-7 feet from the south entrance to the business.

I cleared from the call at approximately 0125 hours, and at the time of this report, none of the employees, or the manager/owner of the business have been contacted. This report will be submitted pending.

TEMPE POLICE DEPARTMENT NARRATIVE

INCIDENT NUMBER: 12-104631

OFFICER: SULLIVAN #20543

This concluded my involvement with this incident.

Pending

MIDNIGHT HOOKAH

DS# 110096

1630 E. APACHE BLVD., SUITES 3-6

1. REQUEST REDUCTION OF OCCUPANT LOAD
REQUIRED IN IBC ~~1004.1~~ ^{1004.1 & TABLE 1004.1.1} TO 49 PEOPLE
FOR THE ENTIRE SPACE.

2. REQUEST USING ASHRA METHOD FOR CAL-
CULATING VENTILATION IN LIEU OF IMC
403.3.

3. REASON FOR ITEM 1: USE IS NOT AS IN-
TENSE AS A-2 OCCUPANCY ANTICIPATED.
FURNITURE FOR SITTING AND TABLES FOR
PIPES PROHIBIT 15 PEOPLE P.S.F.

4. REASON FOR ITEM 2: ASHRA IS A MORE
ACCURATE ALTERNATIVE TO IBC 403.3.

5. REDUCTION OF PEOPLE WILL MAKE
THE FACILITY SAFER. IT IS MORE THAN
EQUIVALENT.

6. USAGE OF ASHRA 62.1 IS EQUIVALENT
TO IBC BY TAKING INTO CONSIDERATION
VOLUMES AND USES OF DIFFERING SPACES/
ROOMS. THIS METHOD IS EQUIVALENT TO
THE IBC METHOD.

City of Tempe
31 East Fifth Street
Tempe, AZ 85280
480-350-8341
www.tempe.gov



Community Development Department

MODIFICATION FILE #11-019

**RE: Outside Air requirement
Midnight Hookah
1630 East Apache, Suites 3-6**

June 15, 2011

Mr. Chris Doran
2375 East Camelback Road, Suite 5127
Phoenix, Arizona 85016

Dear Mr. Doran:

This letter is in response to your correspondence in which you have requested permission to utilize the an alternate method to establish the maximum occupant load and the outside ventilation air requirement for the Midnight Hookah located at 1630 East Apache, Suites 3-6.

As you know, Chapter 10 of the 2006 International Building Code establishes the method of calculating the occupant load of buildings. It also allows the design occupant load to be less than the calculated occupant load when approved by the Building Official. You have requested a design occupant load of 49 occupants.

Section 403 of the 2006 International Mechanical Code establishes the minimum outside ventilation air requirements for the occupied spaces within buildings. Table 403.3 is used to determine the estimated occupancy load rate and the outdoor ventilation air rate per occupant for each occupied space.

However, Section 403 also allows for the use of an alternate occupancy density rate. You have presented a letter stating that the occupancy of the Midnight Hookah would not exceed 49 occupants. You have therefore proposed to establish a maximum occupant load of 49 for this tenant space and to use this maximum occupant load along with the applicable ventilation rates in Table 403.3 to calculate the amount of outside ventilation air required at 60 CFM per occupant or 2940 CFM of outside air.

Your request is approved provided that:

1. Plans are submitted for review depicting a maximum occupant loads posted within the suite, in conspicuous locations near the exit doors. The signs shall be of an approved legible permanent design and shall be maintained by the owner. The signs shall state:

Sign 1 - "Maximum occupant load of this suite is 49 persons – Maximum occupant load of this space is 25."

Sign 2 - "Maximum occupant load of this suite is 49 persons – Maximum occupant load of this space is 24."

2. Plans are submitted for review that depict conformance to the Tempe Building Code utilizing a maximum occupant load of 49 occupants.

MODIFICATION FILE #11-019


June 15, 2011

Page 2

3. Plans are submitted for review that depict the provision of seating for a maximum of 49 occupants.
4. Plans are submitted for review that depict a mechanical ventilation system is designed to provide at least 60 Cubic Feet per Minute of outside air per occupant at all times that the building is occupied.
5. Plans show an occupancy classification of B.

Please be advised that this approval is predicated on the specific facts of this situation and shall not be construed as allowing future deviations to code requirements. The use of this space with occupant loads higher than 49 occupants is a violation of the Certificate of Occupancy and the terms of this approval and shall render this approval null and void, thus requiring full compliance with the prescriptive requirements of the Tempe Building Code and the Tempe Mechanical Code. Please do not hesitate to contact me at (480) 350-8670 if you have questions or require additional information.

Sincerely,



Michael J. Williams, CBO, CPM
Deputy Community Development Director

**Certificate of
Occupancy**

City of Tempe
Development Services Dept
Building Safety Division
P.O. Box 5002
31 East Fifth Street
Tempe, Arizona 85280



Address of Building: 1630 E APACHE BLVD STE103

Note: Any change of use or occupancy must be approved by the Building Safety Division.

This certifies that so far as ascertained by or made known to the undersigned, the building at the above address complies with the applicable requirements of the Tempe City Code as to permitted uses for the following occupancies.

Certificate Issuance Date: 09/23/2011

Permit No.: BP110594

Description: Type: II-B

AFES: N

Use: HOOKAH LOUNGE

Occupancy Group(s): B

Sq. Ft.: 3600

Occupancy Load: 49

/

/0

/0

/

/0

/0

/

/0

/0

Building Official

By *David Moskop*

Post in a conspicuous location

MIDNIGHT

HOOKAH LOUNGE & CAFE

Hookah

(All Flavors: Starbuzz, Alfakher, handmade Special Tobacco)

WiFi Internet

Hot / Cold Drinks

Flat Screen TVs

(Come Watch All Your Favorite Sports)

DJ on the weekends

Dance Floor

Up to 250 People Occupancy

Reservations Available

Happy Hour: 5-8pm (\$6.99 Hookah)

3800 sq. Foot

(To Lounge, Hang Out & Relax)

Opens at 5pm (18 and up)

1630 E. Apache Blvd Tempe, AZ 85281

MIDNIGHT

Hookah Lounge & Cafe



Happy Hour
5-8

DJ on the Weekend, Dance Floor

UP to 250 People Occupancy 3800 sq/f

Open @ 5 PM - 4 AM Weekend Only

Open @ 5pm

1630 E Apache BLVD Tempe, AZ 85281

480 272 9524

From: [charles buss](#)
To: [Kaminski, Diana](#)
Subject: midnight hookah
Date: Monday, October 08, 2012 1:44:27 AM

Diana

I spoke to you about Midnight Hookah before the Sep 18th hearing. My neighbor Steve, who lives behind the business, has had many issues with noise and an encounter with the belligerent owner. Other neighbors have mentioned noise issues as well.

At the end of the Sep 18th meeting I attempted to discuss the matter with the owner but was intercepted by his contractor who told me of his efforts to soundproof the building (efforts which seem to have had little effect). He seems to believe his vague minimalist soundproofing effort is all that should be required, even if it's ineffective.

Last night (about 3:15 a.m.) a close friend of mine walked past Midnight Hookah after taking the last eastbound light rail trip of the night from Phx. He said the rap music was so loud he could hear and understand every word. The front door was propped open with a chair. He proceeded westward and started talking to a Baker's Acre resident. That resident explained the loud music starts every Friday and Saturday night at midnight and lasts until 4 to 5 a.m. He stays awake late most weekends calling a towing company to remove illegally parked cars. He also says the lounge seems to take on the atmosphere of a rap nightclub rather than a hookah lounge late on the weekend nights. My friend encouraged the Baker's Acre resident to write a letter to the hearing officer as his work schedule will not allow him to attend.

Several questions come to mind over my friend's observations and the Baker's Acre resident. First, isn't it an original condition of approval that the door ALWAYS remain closed? (thought I personally fought for that one?). Second, aren't they required to stop the music at 1:55 a.m. on weekends? And finally, don't the conditions of approval also require them to close at 3 or 4 a.m.? (can't recall which but sure it's not 5 a.m.)

Thanks,
Chuck Buss
Chairperson - University Heights N.A.

**CITY OF TEMPE
HEARING OFFICER**

Meeting Date: 11/07/2012
Agenda Item: 6

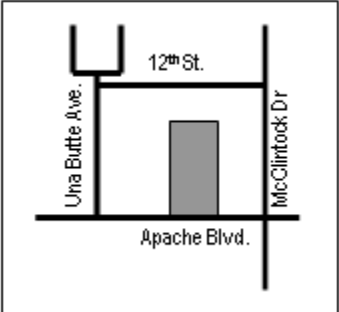
ACTION: Review for revocation of a Use Permit for a retail tobacco store with live entertainment for MIDNIGHT HOOKAH, located at 1630 E Apache Boulevard Suites 103-104. The applicant of the revocation is the City of Tempe.

FISCAL IMPACT: N/A

RECOMMENDATION: N/A

BACKGROUND INFORMATION: MIDNIGHT HOOKAH (PL110015) is located on the north side of Apache Boulevard in an existing commercial building built in 1986, with commercial to the east and west and residential to the north. This is the former location of a previously approved hookah lounge with live entertainment, which closed. Last year, a new applicant proposed a new business, using the former suite and an additional suite, for a larger Hookah facility, and requested a Use Permit for tobacco retail sales with live entertainment. This request was approved on March 1, 2011 as a single Use Permit. A condition to return to the Hearing Officer six months after receipt of Certificate of Occupancy was delayed due to construction delays and challenges caused by adjacent tenants, who have now vacated the property. The business opened in September 2011; on March 20, 2012 the applicant came back to the Hearing Officer for review of compliance with the Conditions of Approval of the Use Permit. At that time, it was determined they were not in compliance with all of the conditions, and an additional six months was granted to establish a credible pattern of business operations. A hearing was scheduled for September 18, 2012 for the second review of compliance with the Conditions of Approval for the Use Permit for Tobacco Retail (Hookah) with Live Indoor Entertainment. The applicant had failed to comply with several conditions and requested a continuance from the September 18, 2012 hearing to allow time to address building safety and public safety issues with the business. A hearing was held on October 16th to review conditions of approval. The applicant was found not-compliant with conditions: 4, 6, 8, 13, 15, 16, 19 and 20. This request is for:

ZUP11007	Revocation of a Use Permit to allow a retail smoke shop (Hookah Lounge) offering tobacco and tobacco paraphernalia products and live indoor entertainment (dj, live music and dancing).
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	Property Owner	Milivoje Djordjevich, 1630 Apache Corp.
	Applicant	Nadir Yousif, Midnight Hookah
	Zoning District	CSS Commercial Shopping & Service
	Business Suite Area	3,600 suite 103-104
	Building Height	1-story
	Parking	12 spaces for retail tobacco use in suites 103-104; 67 provided by variance from 77, for all suites

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Diana Kaminski, Senior Planner (480-858-2391)

Department Director: Lisa Collins, Interim Community Development Director

Legal review by: N/A

Prepared by: Diana Kaminski, Senior Planner

Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS:

The property is located on the north side of Apache Boulevard, west of McClintock Drive, east of Una Butte Avenue, with commercial uses on both sides, light rail to the south and single family residential properties to the north. The L-shaped building has multi-tenant suites, all suites except MIDNIGHT HOOKAH are currently vacant. The property has a variance for parking, reducing the required parking up to 77 spaces down to 67 required and provided on site. The site was formerly approved for a hookah lounge, however the previous applicant was unable to comply with the conditions of approval and the use permit was revoked. The current application is a different business owner/operator using the former suite and another suite for a larger business.

The applicant planned to serve teas, coffees, sodas and water and not serve alcohol. Food service was limited to snack foods and appetizers, not full meals. Entertainment would include disc jockeys and live music as background to belly dancing as well as dancing on a dance floor. During a meeting last year with staff the business owner indicated plans for parking security for patrons as well as indoor security. The Security Plan agreed upon by the owner and Police staff included requirements for one indoor and one outdoor security staff member in clearly marked clothing. The outdoor guard was responsible for patrolling the parking area.

Currently, the total allowed occupancy is 49 people including staff. The applicant had asked for a continuance to address the building safety issues. Staff met with applicant representatives on October 2nd, and advised them of the life safety danger of exceeding occupancy limits. Staff was told that they would maintain the 49 maximum occupancy until a solution to the building code issues with fire protection and air ventilation was addressed. The solution was to be initiated before the hearing on October 16th. As of October 10th, Building Safety has indicated that there was no submittal for plans to revise the occupancy of the space. As of October 26, 2012, the applicant has indicated they will comply with the limitation of 49 staff and customers (total number of people) for the entire space to meet fire and air handling requirements.

On October 25th, staff met with Mr. Nadir, his contractor Mr. Johnson, his attorney Ms. Lagarde, and his security manager Chris H. The purpose of the meeting was for the applicant to request that the use permit revocation be limited to live entertainment only, and allow the sale of tobacco to continue for a 90-day extension. The purpose of this request is to enable Midnight Hookah to remain in business, while the management proves their ability to comply with the regulations. Prior to this meeting, the applicant fired a staff member who violated State Smoking laws by selling to a minor, increased his security, and indicated he has maintained occupancy of 49 total persons (staff and customers) and eliminated the disc jockey. On the night of the citation for selling to a minor, police noted there were approximately 62 vehicles in the parking lot.

Calls for Service:

Between September 2011 and March 2012, the Police Department indicated that there have been two calls for fights, and three calls complaining about loud music. At that time, Police staff indicated there had not been significant calls for service related specifically to the operations of the business; however the parking lot was regularly littered with trash and containers from alcoholic beverages. These issues were documented in the March 21st hearing and the owner was advised that the criteria for the use permit required compliance with all conditions of approval. Below is a summary of subsequent activity, full police reports are available in the attachments.

Between March 25th and September 4th 2012, the Police Department indicated there have been 28 calls for service to the property, with this being the only business on site. 13 of these calls for service were citizen initiated, 2 were owner initiated, and 13 were officer initiated:

- Citizen calls included five loud music complaints between 2-2:23am on Sundays and Fridays, after allowed hours. Other calls for service included theft, burglary from vehicle, alarm, criminal damage, fight and assault.
- The owner called for trespass warning and threat with a gun.
- Officer initiated calls for service were responses to information provided by the fire department, other law enforcement agencies, observations made driving by, or proactive security checks. These included loitering, altered state of consciousness, drinking in the parking lot, smoking outside and warrants for arrest. Since March, police have filed 10 arrests and 10 warrants during the operation of Midnight Hookah.

On August 16th the Police Department observed the following activities:

- Security guard at door checking IDs but did not have readily identifiable attire as security (per Security Plan requirement)
- Security guard did not leave door to inspect parking lot for loitering (per Security Plan requirement)
- Patrons leaving establishment for short visits to cars in the parking lot, behavior typical of drug or alcohol related activity occurring prior to re-entry into hookah lounge
- Patron retrieved glass bottle from vehicle and hid it as he re-entered hookah lounge.
- Loitering in the parking lot, no signage or security in parking lot to enforce no loitering (per Security Plan requirement)
- Music heard greater than 100 feet away from the entrance and past the hours of operation
- Security guard talking with one female patron most of the evening, not watching entrances or parking area
- Security guard smoking hookah with customers 5-7 feet from the entrance (violation of smoking law)

On August 25th the Police Department observed the following activities:

- 15 individuals hanging out in the parking lot
- 5 people smoking hookah on the sidewalk adjacent to the building (smoking law violation)
- No identifiable security guard presence in parking lot (Security Plan violation)
- Attempted intimidation of people in vehicle (unmarked police car with uniformed officers inside) by eight men surrounding the car, leaning on vehicle and lightly rocking the car.

Between September 5th and October 7th the Police Department indicated two calls for service were made:

- September 8th at 12:41 am- Commander Kim Hale noticed that the entire parking lot was filled (67) spaces, as well as approximately 15 cars parked along the front curbs. There was only one security guard who was at the front of the business and he was standing out with about 12 patrons. The Commander had to make the security guard move the cars blocking the fire lane; it appeared there was only one guard. Indoor head count was approximately 80 persons inside.
- September 16th 2:28 am- Welfare check subject dizzy and bleeding from the mouth.

On October 12th the Police Department cited Nadir Yousef for selling tobacco products to a minor. Although this occurred prior to the Hearing Officer hearing on October 16th, the information was not available to Planning Staff until after the hearing. This is a violation of State and Federal regulations for tobacco sales. Officers cited the staff and manager at 1am on October 13th, and noted that the parking lot had 5 vacant spaces: 62 spaces were occupied.

Between October 16th -26th the Police Department received 4 calls for service. Two were for fights, one was a complaint about business open after hours, and the last was a suspicious vehicle.

Public Input:

Staff previously received two emails regarding the advertised hearing notice, which incorrectly advertised the applicant's original request for live entertainment to include lingerie modeling. This portion of the entertainment request was removed prior to the original hearing when the applicant stated he did not wish to have lingerie modeling. The resident and business owner were opposed to lingerie modeling being a part of a use permit for selling tobacco products. Staff informed the inquirers that this use was never permitted.

On October 8th, staff received an email regarding Midnight Hookah activity, paraphrased as follows:

'...10/7/12 about 3:15 a.m. music was so loud a neighbor could hear and understand every word of music. The front door was propped open with a chair. The neighbor then engaged in conversation with a nearby resident who complained that loud music starts every Friday and Saturday night at midnight and lasts until 4 to 5 a.m. Most weekends he spends calling a towing company to remove illegally parked cars. He said the lounge takes on the atmosphere of a nightclub rather than a hookah lounge late on the weekend nights....' On October 9th, staff received one email from five residents: '...they go on until four in the morning. The noise is always a disturbance. The patrons' loud talking, music thumping.' They wished to remain anonymous in their complaint.

Since the October 16th hearing, staff has received one call that the business was open past the allowed time limits. Staff received a call from a representative of Baker's Acres property next door, expressing concern about noise and loitering at Midnight Hookah, illegal parking on this adjacent lot, and concerns for the safety of their guests.

Use Permit

The proposed use requires a Use Permit, to sell tobacco and to have live entertainment within the Commercial Shopping and Service CSS zoning district. Section 6-308 E Approval criteria for Use Permit:

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code. The building design has no windows or doors on the western side near the residences to the south. The interior floor plan places the DJ and musician platform closer to the Apache Boulevard end of the suite, away from the residential area. Conditions have been added to limit live entertainment to indoors only, with doors closed, and to end at 1:55am. **The property has continued to have incidents in the parking lot, indicating non-compliance with the security plan or described operations of the business (indoor and outdoor security personnel on site). The business uses hot coals as part of the tobacco use and has exceeded occupancy limits of 49 with a police head count of 80 people inside and the fire lane blocked by cars. This is a violation of building safety code and poses a threat to the safety of patrons of the business and the public in general.**
2. Any significant increase in vehicular or pedestrian traffic. The proposed use is anticipated to rely on a combination of pedestrian, light rail and vehicular access to the site. The applicant indicated that carpooling of couples and groups is common for this use. Due to the hours the hookah lounge is open, it is anticipated that there will be sufficient parking on site. All traffic would enter and exit on Apache Boulevard. **There has been one complaint about vehicles illegally parking off site at Baker's Acres late at night. There are 67 parking spaces on site.**
3. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. The applicant is aware of the requirements for special indoor air handling equipment to mitigate smoke indoors. There will be no outdoor patios or entertainment. There are no known nuisances arising from tobacco retail uses and conditions have been included to mitigate potential live entertainment issues. **There have been complaints regarding noise and vibration nuisances since the hearing in March.**
4. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan. The center has had vacant suites and a history of various businesses. The applicant has indicated security both indoors and outdoors in the parking lot for customers. The hours of operation will provide increased activity to the area, with employees and customers on site from 8am to 3am, which may reduce crimes related to vacant buildings. The property was upgraded with site lighting, landscaping and bicycle parking, to enhance the aesthetic appeal of the center. **There have been observations and complaints about alcohol consumption on property, trash and bottles and cans of alcohol left in the lot. There have been 10 arrests made since March.**
5. Compatibility with existing surrounding structures and uses. There is no conflict with the commercial uses within the area. Due to the proximity of residential uses, conditions are included to prohibit outdoor entertainment or speakers, and restrict hours of entertainment to those similar other late night uses. **The business was described as a Hookah Lounge with live entertainment (ancillary to main use). The current operation of the business, as indicated by information on the internet and observations by Police Staff, and input from the public is that it is functioning as a nightclub.**
6. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. The applicant has met with the police staff to discuss security plan requirements, and is planning to provide indoor and outdoor security staff. The applicant has indicated extensive experience with operating this type of establishment and is aware of the importance of controlling behavior for the safety and security of patrons

and public alike. No alcohol will be served on premises and those who are coming from another business and are under the influence of alcohol will not be permitted entrance. **Based on the information in the police summary of calls for service, there is not adequate control of behavior on site.**

Conclusion

Because the applicant did not receive separate use permits for tobacco sales and for live entertainment, the two uses were combined on one advertised request. At that time, the applicant was made aware that any violation of either use could result in revocation of the use permit in its entirety. The use permit was originally approved with a condition to review operations after six months (at the March 21st hearing). At that time, the owner was found partially in compliance, but in violation of several conditions; the use permit was approved conditionally to allow a re-review after six additional months, this hearing was continued upon request and on October 16th the business was found in non-compliance with conditions of approval. The information provided by Police Department records indicates that both the use of tobacco products on site and the live entertainment have failed the test of the use permit criteria and violated the conditions for these uses. Staff recommends revocation of the use permit for Midnight Hookah for the sale of tobacco products with live entertainment.

REASON(S) FOR APPROVAL:

1. The use is in a commercial zoning district with similar businesses in the area.

REASON(S) FOR DENIAL:

1. The business has failed to comply with the conditions of approval after two 6-month hearing reviews.
2. The business has failed to comply with requirements of the security plan.
3. The business has not demonstrated compliance with the criteria set forth to determine appropriateness of use.
4. The business has violated state smoking and federal tobacco sales laws.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL From March 21, 2012 Hearing:

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. **This condition has been met.**
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. **This condition has been met.**
3. The Use Permit is valid for MIDNIGHT HOOKAH and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
4. 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. Return to the Hearing Officer by September 18th, 2012 for a review of operations in compliance with all conditions of approval. **There have been two more complaints since the last hearing on October 16th.**
5. No outdoor speakers shall be allowed. **This condition has been met.**

6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011. **This condition has been met; implementation has not been met.**
7. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
8. The business hours of operation shall be Sunday through Thursday 5pm to 1am, with music off at midnight, and Friday through Saturday, 7pm to 3am, with live entertainment to stop at 1:55am. **The applicant agreed to these hours of operation as a part of the use permit, yet has a sign in the window stating they are open until 4am. There have been five calls regarding loud music after 2am on Sundays and Fridays. An email indicated loud music playing until 4 and 5 am as recently as 10/7/12.**
9. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review. Site lighting must remain on from dusk to dawn. **This condition has been met.**
10. Replace all dead or missing trees and landscape material within the property. **This condition has been met.**
11. Provide bicycle parking to meet bicycle commute ratio requirements and replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard. Contact Planning Staff by April 1, 2011. **This condition has been met.**
12. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372. **This condition has been met.**
13. Any intensification or expansion of use, including shall require a new Use Permit. **The building safety occupancy of this building is II-B, allowing 49 occupants for the total space. A website flier for Midnight Hookah advertises "up to 250 occupancy"; this would be an intensification of use to a banquet hall or nightclub, requiring a different occupancy type (assembly) for building safety. The Certificate of Occupancy is supposed to be prominently placed at the entrance and security staff is to adhere to the occupancy limits posted. The owner told fire department staff that he has had as many as 100 people in the building. After a meeting with staff on October 2nd to review Building Safety Occupancy requirements, staff received a resident email indicating that patrons were parking in the adjacent business' parking lot to access Midnight Hookah. The parking lot for 1630 has 67 spaces, which should adequately accommodate the 49 person occupancy of this space. Tempe Police Department indicated there were approximately 62 vehicles in the parking lot on October 13th at 1am. There are no other businesses within the center at this time.**
14. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective. **This condition has been met.**
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01. **A police report indicated patrons smoking hookah outside, next to main entrance of establishment, this is a violation of smoking laws. Any night that the occupancy of the building has exceeded 49 people would also be a violation of the state statute. A staff member was cited for selling tobacco to a minor. This condition has not been met.**
16. The owner/management shall adhere to the City Adopted International Mechanical Code. **This condition has not been met; the air handling system is not large enough for the number of patrons advertised to occupy the space.**
17. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
18. Any modifications to the exterior of the building requires a Development Plan Review.
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective. **This condition was met at the time of opening, but has been violated since last year.**
20. Use Permit approval is for a Retail Tobacco Store (Hookah Lounge) with live entertainment, not a nightclub. Reduce

the volume level of the background music within the Hookah lounge, and provide sound insulation to the interior of the structure to mitigate excessive noise. **The sound insulation was added, per condition. Loud noise complaints continue to be called in on different nights of the week. This condition has not been maintained.**

HISTORY & FACTS:

May 4, 1999 BA990101 Hearing Officer approved a Use Permit request for National Bankcard Services, Suite 101, to allow a professional telemarketing office in the C-2 Commercial District (Zoning Ordinance 808)

August 12, 1999 BA990203 Hearing Officer approved a Use Permit request for The Intraverse, Suite 107 to allow a network of computers for entertainment and office purposes in the C-2 Commercial District. (Zoning Ordinance 808)

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July 13, 2010 Development Review Commission heard and continued an appeal of the revocation of the Use Permit.

July 27, 2010 Development Review Commission continued the appeal until September 28th to allow more time for the building to be brought into compliance with the conditions.

September 28, 2010 Development Review Commission denied the appeal and upheld the May 19, 2010 Hearing Officer's decision to revoke the Use Permit.

March 1, 2011 Hearing Officer approved a use permit for Tobacco sales (Hookah) with live entertainment, subject to conditions and a 6 month post-occupancy review.

March 20, 2012 Hearing Officer approved a use permit for Tobacco sales with entertainment, subject to conditions and a second 6-month review of operations.

September 18, 2012 Hearing Officer continued the review of conditions of approval for the use permit to allow additional time to comply.

October 16, 2012 Hearing Officer reviewed business operations for compliance with conditions of approval and determined that the business was non-compliant. Authorization was granted to initiate the revocation hearing process.

DESCRIPTION: Owner – 1630 Apache LLC

Applicant – Nader Yousif
Existing Zoning – CSS, Commercial Shopping and Services District within the Transportation
Overlay District Corridor

ZONING AND DEVELOPMENT **CODE REFERENCE:** Section 6-308 Use Permit

**CITY OF TEMPE
HEARING OFFICER**

Meeting Date: 10/16/2012
Agenda Item: 2

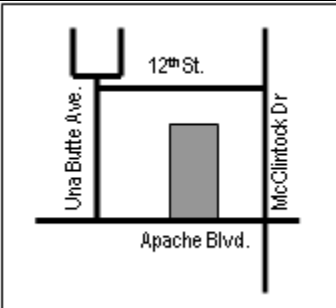
ACTION: Review of compliance of Conditions of Approval for a Use Permit for a retail tobacco store with live entertainment for MIDNIGHT HOOKAH, located at 1630 E Apache Boulevard Suites 103-104. The applicant is Nadir Yousif, Midnight Hookah.

FISCAL IMPACT: N/A

RECOMMENDATION: N/A

BACKGROUND INFORMATION: The site is located on the north side of Apache Boulevard in an existing commercial building built in 1986, with commercial to the east and west and residential to the north. This is the former location of a previously approved hookah lounge with live entertainment, which closed. Last year, a new applicant proposed a new business, using the former suite and an additional suite, for a larger Hookah facility, and requested a Use Permit for tobacco retail sales with live entertainment. This request was approved on March 1, 2011 as a single Use Permit. A condition to return to the Hearing Officer six months after receipt of Certificate of Occupancy was delayed due to construction delays and challenges caused by adjacent tenants, who have now vacated the property. The business opened in September 2011; on March 20, 2012 the applicant came back to the Hearing Officer for review of compliance with the Conditions of Approval of the Use Permit. At that time, it was determined they were not in compliance with all of the conditions, and an additional six months was granted to establish a credible pattern of business operations. A hearing was scheduled for September 18, 2012 for the second review of compliance with the Conditions of Approval for the Use Permit for Tobacco Retail (Hookah) with Live Indoor Entertainment. The applicant had failed to comply with several conditions and requested a continuance from the September 18, 2012 hearing to allow time to address building safety and public safety issues with the business. This request includes the following:

ZUP11007	Use Permit to allow a retail smoke shop (Hookah Lounge) offering tobacco and tobacco paraphernalia products and live indoor entertainment (dj, live music and dancing)
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	Property Owner	Milivoje Djordjevich, 1630 Apache Corp.
	Applicant	Nadir Yousif, Midnight Hookah
	Zoning District	CSS Commercial Shopping & Service
	Business Suite Area	3,600 suite 103-104
	Building Height	1-story
	Parking	12 spaces for retail tobacco use in suites 103-104; 67 provided by variance from 77, for all suites

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Diana Kaminski, Senior Planner (480-858-2391)

Department Director: Lisa Collins, Interim Community Development Director

Legal review by: N/A

Prepared by: Diana Kaminski, Senior Planner

Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS:

The property is located on the north side of Apache Boulevard, west of McClintock Drive, east of Una Butte Avenue, with commercial uses on both sides, light rail to the south and single family residential properties to the north. The L-shaped building has multi-tenant suites, all suites except MIDNIGHT HOOKAH are currently vacant. The property has a variance for parking, reducing the required parking up to 77 spaces down to 67 required and provided on site. The site was formerly approved for a hookah lounge, however the previous applicant was unable to comply with the conditions of approval and the use permit was revoked. The current application is a different business owner/operator using the former suite and another suite for a larger business.

The applicant planned to serve teas, coffees, sodas and water and not serve alcohol. Food service was limited to snack foods and appetizers, not full meals. Entertainment would include disc jockeys and live music as background to belly dancing as well as dancing on a dance floor. During a meeting last year with staff the business owner indicated plans for parking security for patrons as well as indoor security. The Security Plan agreed upon by the owner and Police staff included requirements for one indoor and one outdoor security staff member in clearly marked clothing. The outdoor guard was responsible for patrolling the parking area.

Currently, the total allowed occupancy is 49 people including staff. The applicant had asked for a continuance to address the building safety issues. Staff met with applicant representatives on October 2nd, and advised them of the life safety danger of exceeding occupancy limits. Staff was told that they would maintain the 49 maximum occupancy until a solution to the building code issues with fire protection and air ventilation was addressed. The solution was to be initiated before the hearing on October 16th. As of October 10th, Building Safety has indicated that there was no submittal for plans to revise the occupancy of the space.

Calls for Service:

Between September 2011 and March 2012, the Police Department indicated that there have been two calls for fights, and three calls complaining about loud music. At that time, Police staff indicated there had not been significant calls for service related specifically to the operations of the business; however the parking lot was regularly littered with trash and containers from alcoholic beverages. These issues were documented in the March 21st hearing and the owner was advised that the criteria for the use permit required compliance with all conditions of approval. Below is a summary of subsequent activity, full police reports are available in the attachments.

Between March 25th and September 4th 2012, the Police Department indicated there have been 28 calls for service to the property, with this being the only business on site. 13 of these calls for service were citizen initiated, 2 were owner initiated, and 13 were officer initiated:

- Citizen calls included five loud music complaints between 2-2:23am on Sundays and Fridays, after allowed hours. Other calls for service included theft, burglary from vehicle, alarm, criminal damage, fight and assault.
- The owner called for trespass warning and threat with a gun.
- Officer initiated calls for service were responses to information provided by the fire department, other law enforcement agencies, observations made driving by, or proactive security checks. These included loitering, altered state of consciousness, drinking in the parking lot, smoking outside and warrants for arrest. Since March, police have filed 10 arrests and 10 warrants during the operation of Midnight Hookah.

On August 16th the Police Department observed the following activities:

- Security guard at door checking IDs but did not have readily identifiable attire as security (per Security Plan requirement)
- Security guard did not leave door to inspect parking lot for loitering (per Security Plan requirement)
- Patrons leaving establishment for short visits to cars in the parking lot, behavior typical of drug or alcohol related activity occurring prior to re-entry into hookah lounge
- Patron retrieved glass bottle from vehicle and hid it as he re-entered hookah lounge.
- Loitering in the parking lot, no signage or security in parking lot to enforce no loitering (per Security Plan requirement)
- Music heard greater than 100 feet away from the entrance and past the hours of operation

- Security guard talking with one female patron most of the evening, not watching entrances or parking area
- Security guard smoking hookah with customers 5-7 feet from the entrance (violation of smoking law)

On August 25th the Police Department observed the following activities:

- 15 individuals hanging out in the parking lot
- 5 people smoking hookah on the sidewalk adjacent to the building (smoking law violation)
- No identifiable security guard presence in parking lot (Security Plan violation)
- Attempted intimidation of people in vehicle (unmarked police car with uniformed officers inside) by eight men surrounding the car, leaning on vehicle and lightly rocking the car.

Between September 5th and October 7th the Police Department indicated two calls for service were made:

- September 8th at 12:41 am- Commander Kim Hale noticed that the entire parking lot was filled (67) spaces, as well as approximately 15 cars parked along the front curbs. There was only one security guard who was at the front of the business and he was standing out with about 12 patrons. The Commander had to make the security guard move the cars blocking the fire lane; it appeared there was only one guard. Indoor head count was approximately 80 persons inside.
- September 16th 2:28 am- Welfare check subject dizzy and bleeding from the mouth.

Public Input:

Staff previously received two emails regarding the advertised hearing notice, which incorrectly advertised the applicant's original request for live entertainment to include lingerie modeling. This portion of the entertainment request was removed prior to the original hearing when the applicant stated he did not wish to have lingerie modeling. The resident and business owner were opposed to lingerie modeling being a part of a use permit for selling tobacco products. Staff informed the inquirers that this use was never permitted.

On October 8th, staff received an email regarding Midnight Hookah activity, paraphrased as follows:

'...10/7/12 about 3:15 a.m. music was so loud a neighbor could hear and understand every word of music. The front door was propped open with a chair. The neighbor then engaged in conversation with a nearby resident who complained that loud music starts every Friday and Saturday night at midnight and lasts until 4 to 5 a.m. Most weekends he spends calling a towing company to remove illegally parked cars. He said the lounge takes on the atmosphere of a nightclub rather than a hookah lounge late on the weekend nights...'. The full email is included as an attachment. On October 9th, staff received one email from five residents: '...they go on until four in the morning. The noise is always a disturbance. The patrons' loud talking, music thumping.' They wished to remain anonymous in their complaint.

Use Permit

The proposed use requires a Use Permit, to sell tobacco and to have live entertainment within the Commercial Shopping and Service CSS zoning district. Section 6-308 E Approval criteria for Use Permit:

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code. The building design has no windows or doors on the western side near the residences to the south. The interior floor plan places the DJ and musician platform closer to the Apache Boulevard end of the suite, away from the residential area. Conditions have been added to limit live entertainment to indoors only, with doors closed, and to end at 1:55am. **The property has continued to have incidents in the parking lot, indicating non-compliance with the security plan or described operations of the business (indoor and outdoor security personnel on site). The business uses hot coals as part of the tobacco use and has exceeded occupancy limits of 49 with a police head count of 80 people inside and the fire lane blocked by cars. This is a violation of building safety code and poses a threat to the safety of patrons of the business and the public in general.**

2. Any significant increase in vehicular or pedestrian traffic. The proposed use is anticipated to rely on a combination of pedestrian, light rail and vehicular access to the site. The applicant indicated that carpooling of couples and groups is common for this use. Due to the hours the hookah lounge is open, it is anticipated that there will be sufficient parking on site. All traffic would enter and exit on Apache Boulevard. **There has been one complaint about vehicles illegally parking off site at Baker's Acres late at night. There are 67 parking spaces on site.**

3. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. The applicant is aware of the requirements for special indoor air handling equipment to mitigate smoke indoors. There will be no outdoor patios or entertainment. There are no known nuisances arising from tobacco retail uses and conditions have been included to mitigate potential live entertainment issues. **There have been complaints regarding noise and vibration nuisances since the hearing in March.**

4. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan. The center has had vacant suites and a history of various businesses. The applicant has indicated security both indoors and outdoors in the parking lot for customers. The hours of operation will provide increased activity to the area, with employees and customers on site from 8am to 3am, which may reduce crimes related to vacant buildings. The property was upgraded with site lighting, landscaping and bicycle parking, to enhance the aesthetic appeal of the center. **There have been observations and complaints about alcohol consumption on property, trash and bottles and cans of alcohol left in the lot. There have been 10 arrests made since the hearing in March.**

2. Compatibility with existing surrounding structures and uses. There is no conflict with the commercial uses within the area. Due to the proximity of residential uses, conditions are included to prohibit outdoor entertainment or speakers, and restrict hours of entertainment to those similar other late night uses. **The business was described as a Hookah Lounge with live entertainment (ancillary to main use). The current operation of the business, as indicated by information on the internet and observations by Police Staff, and input from the public is that it is functioning as a nightclub.**

3. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. The applicant has met with the police staff to discuss security plan requirements, and is planning to provide indoor and outdoor security staff. The applicant has indicated extensive experience with operating this type of establishment and is aware of the importance of controlling behavior for the safety and security of patrons and public alike. No alcohol will be served on premises and those who are coming from another business and are under the influence of alcohol will not be permitted entrance. **Based on the information in the police summary of calls for service, there is not adequate control of behavior on site.**

Conclusion

Because the applicant did not receive separate use permits for tobacco sales and for live entertainment, the two uses were combined on one advertised request. The use permit was originally approved with a condition to review operations after six months (at the March 21st hearing). At that time, the owner was found partially in compliance, but in violation of several conditions; the use permit was approved conditionally to allow a re-review after six additional months (at this September 18th hearing). The purpose of this hearing was to fulfill the condition of approval. The information provided by Police Department records indicates that both the use of tobacco products on site and the live entertainment have failed the test of the use permit criteria and violated the conditions for these uses. Staff recommends continuance of the hearing for the requested use permit until December 18th, to allow the revocation process for this use permit for Midnight Hookah for the sale of tobacco products with live entertainment.

REASON(S) FOR APPROVAL:

1. The use is in a commercial zoning district with similar businesses in the area.

REASON(S) FOR DENIAL:

1. The business has failed to comply with the conditions of approval after two 6-month hearing reviews.
2. The business has failed to comply with requirements of the security plan.
3. The business has not demonstrated compliance with the criteria set forth to determine appropriateness of use.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL From March 21, 2012 Hearing:

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. **This condition has been met.**
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. **This condition has been met.**
3. The Use Permit is valid for MIDNIGHT HOOKAH and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
4. 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. Return to the Hearing Officer by September 18th, 2012 for a review of operations in compliance with all conditions of approval. **There have been thirteen citizen-initiated complaints since the last hearing. This hearing fulfills the requirement of the condition, verifying complaints and re-evaluating the appropriateness of the uses.**
5. No outdoor speakers shall be allowed. **This condition has been met.**
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011. **This condition has been met; implementation has not been met.**
7. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
8. The business hours of operation shall be Sunday through Thursday 5pm to 1am, with music off at midnight, and Friday through Saturday, 7pm to 3am, with live entertainment to stop at 1:55am. **The applicant agreed to these hours of operation as a part of the use permit, yet has a sign in the window stating they are open until 4am. There have been five calls regarding loud music after 2am on Sundays and Fridays. An email indicated loud music playing until 4 and 5 am as recently as 10/7/12.**
9. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review. Site lighting must remain on from dusk to dawn. **This condition has been met.**
10. Replace all dead or missing trees and landscape material within the property. **This condition has been met.**
11. Provide bicycle parking to meet bicycle commute ratio requirements and replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard. Contact Planning Staff by April 1, 2011. **This condition has been met.**
12. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372. **This condition has been met.**

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14. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective. **This condition has been met.**
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01. **A police report indicated patrons smoking hookah outside, next to main entrance of establishment, this is a violation of smoking laws. Any night that the occupancy of the building has exceeded 49 people would also be a violation of the state statute. This condition has not been met.**
16. The owner/management shall adhere to the City Adopted International Mechanical Code. **This condition has not been met; the air handling system is not large enough for the number of patrons advertised to occupy the space.**
17. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
18. Any modifications to the exterior of the building requires a Development Plan Review.
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective. **This condition was met at the time of opening, but has been violated since last year.**
20. Use Permit approval is for a Retail Tobacco Store (Hookah Lounge) with live entertainment, not a nightclub. Reduce the volume level of the background music within the Hookah lounge, and provide sound insulation to the interior of the structure to mitigate excessive noise. **The sound insulation was added, per condition. Loud noise complaints continue to be called in on different nights of the week. This condition has not been maintained.**

Additional Conditions of Approval:

21. Security Plan must be maintained and implemented at all times.
22. The doors to the business may not be propped open.
23. Parking lot shall be posted and monitored for no loitering.
24. Parking lot shall be maintained free of trash and debris.
25. Certificate of Occupancy must be prominently posted and there shall be no more than 49 people in building at any time.
26. This Use Permit expires December 4th, 2012. The applicant must re-apply for two new use permits, one for a tobacco retailer and one for live entertainment, both to be compliant with all conditions, subject to Hearing Officer Approval.

HISTORY & FACTS:

May 4, 1999

BA990101 Hearing Officer approved a Use Permit request for National Bankcard Services, Suite 101, to allow a professional telemarketing office in the C-2 Commercial District (Zoning Ordinance 808)

August 12, 1999	BA990203 Hearing Officer approved a Use Permit request for The Intraverse, Suite 107 to allow a network of computers for entertainment and office purposes in the C-2 Commercial District. (Zoning Ordinance 808)
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February 19, 2010	Administrative Hearing with business owner to gain compliance.
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March 1, 2011	Hearing Officer approved a use permit for Tobacco sales (Hookah) with live entertainment, subject to conditions and a 6 month post-occupancy review.
March 20, 2012	Hearing Officer approved a use permit for Tobacco sales with entertainment, subject to conditions and a second 6-month review of operations.

DESCRIPTION: Owner – 1630 Apache LLC
Applicant – Nader Yousif
Existing Zoning – CSS, Commercial Shopping and Services District within the Transportation Overlay District Corridor

ZONING AND DEVELOPMENT

CODE REFERENCE: Section 6-308 Use Permit

MidNight Hookah Lounge

HOME ABOUT MENU GALLERY CONTACT

The only place on the grid bringing you the freshest flavors and parties.

MIDNIGHT HOOKAH LOUNGE

NEWS

- Coming back to the spot is DJ M3 and R2 are on the 1s and 2s Saturday, September 1st party starts from 11:30 pm to 3:30 am, plan on having a good night.
- New special blends now available, just ask.
- Featuring for the first time @ MidNight DJ Slim Nasty

News
Events
Deals

CALL US @
602-540-9659
10a.m - 10 p.m.

MidNight Hookah Lounge

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MIDNIGHT HOOKAH LOUNGE

Events

- Sat. August 25th, DJ M3 11pm - 3am

News

Events

Deals

CALL US @
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10a.m - 10 p.m.

**Minutes
HEARING OFFICER
MARCH 20, 2012**

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
Sherri Lesser, Senior Planner
Diana Kaminski, Senior Planner

Number of Interested Citizens Present: 23

Meeting convened at 1:35 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 April 3, 2012 at 3:00 PM, to the Community Development Department.

Ms. MacDonald noted that the Hearing Officer Minutes for March 6, 2012 had been reviewed and approved.

-
3. Hold a public hearing for a request by **MIDNIGHT HOOKAH (PL110015)** (Nader Yousif, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite Nos. 103-104, in the CSS, Commercial Shopping and Services District within the Transportation Overlay District Corridor for:

ZUP11007 Use Permit to allow a retail smoke shop (Hookah Lounge) offering tobacco and tobacco paraphernalia products and live indoor entertainment (dj and live music, dancing, and lingerie modeling). **This is a review of Use Permit compliance as assigned by the Hearing Officer at the March 1, 2011 Hearing.**

Ms. McDonald indicated that this is a review of a Use Permit that had been previously granted to this applicant. This Use Permit had a stipulation that the applicant shall come back to the Hearing Officer after being open for six months.

Diana Kaminski gave an overview of this case which included a brief history since this establishment has been open. Ms. Kaminski indicated that she received one call from a citizen who wished to remain anonymous. This caller stated there was an issue with loud music being played, often until early morning hours but asked if music could be turned off by 2:00 a.m. on weekends, which is a condition of approval. There were no complaints in regards to vehicular traffic, only to cars possibly being parked on an adjacent property and loitering during late night hours.

Ms. Kaminski stated that there are also concerns with trash and debris being left around the site and fights occurring in the parking lot, which could be indications that the security plan and operations proposed in their original application are not being adhered to. Ms. Kaminski indicated that staff is recommending that they get the security plan finalized and another review take place in 6 months and they come back before the Hearing Officer. She also indicated that a representative from the Police Department is available as well to answer any questions.

Ms. McDonald had asked staff if they had a copy of the original letter of explanation and if it addressed their intended hours of operation.

Ms. Kaminski stated that the letter of explanation states their hours of operation will be Sunday through Thursday from 5:00 p.m. to 1:00 a.m. and Friday and Saturday from 7:00 p.m. to 3:00 a.m. She indicated that the stipulation stated that music needed to end by 2:00 a.m.

Nader Yousif, owner/applicant and Joseph Johnson, contractor spoke to address concerns raised. Mr. Johnson indicated that sound proofing measures had been taken in all of the walls and the ceiling.

Ms. McDonald questioned Mr. Yousif as to the hours of operation. Mr. Yousif stated that he has been open until 3:30 or 4:00 a.m.

Ms. McDonald stated that she would like to add the stipulation, based on the original letter of explanation, that the establishment will be open Sunday-Thursday from 5:00 p.m. to 1:00 a.m., music being turned off at midnight. On Friday and Saturday, hours shall be 7:00 p.m. to 3:00 a.m. with music being turned off at 1:55 a.m.

Mr. Yousif indicated that he only has music on Friday and Saturdays and asked if the hours during the weekdays could be extended.

Ms. McDonald stated that she would like applicant to follow through on the original request.

Mike Fleming, Tempe Police Department, spoke in regards to the security plan and how important it is to have that finalized because it will address parking lot, noise and general security issues associated with this establishment.

Ms. Kaminski stated that the deadline for the previous security plan was April 1, 2011, possibly a deadline could be placed on the security plan for April 1, 2012. Mr. Yousif agreed to that stipulation.

There was no public input.

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

1. It will not contribute to a significant increase in vehicular or pedestrian traffic
2. It will not create a nuisance arising from the omission of odors, dust, gas, noise vibration or smoke.
3. It will not contribute to the deterioration of the neighborhood.
4. It is compatible with existing uses and structures.
5. The applicant will have control over behavior inside and outside of the establishment.

DECISION:

Ms. MacDonald reaffirmed PL110015/ZUP11007 subject to the following conditions:

1. The applicant is required to return in 6 months for review.
2. The Use Permit is valid for Midnight Hookah and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
3. All business signs shall be Development Review approved and permits obtained.
4. 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.

5. Obtain all necessary clearances and permits for the occupancy from the Building Safety Division.

2. Hold a public hearing for a request by **ATC GUADALUPE - CRICKET COMMUNICATIONS - PHX 232 (PL110405)** (Doug Kearney, applicant; City of Tempe, property owner) located at 735 West Carver Road in the GID, General Industrial and SWOD, Southwest Overlay District for:

ZUP11108 Use Permit to increase the height of an existing monopole from 85 ft. to 95 ft.

CONTINUED FROM DECEMBER 6, 2011 HEARING OFFICER BY COMMUNITY DEVELOPMENT

Sherri Lesser gave a brief overview of this case.

Doug Kearney, American Tower (applicant) stated he would be happy to answer any questions and is in agreement with the Conditions of Approval.

There was no public input.

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

1. No apparent nuisance resulting from noise, smoke, odor, dust, vibration or glare.
2. Traffic generated by this use should not be excessive.
3. The use appears to be compatible with the building, site and adjacent property.
4. It will not contribute to the deterioration of the neighborhood or downgrade property values.
5. There will be adequate control of behavior both inside and outside the premises.

DECISION:

Ms. MacDonald approved the modification to PL110405/ZUP11108 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division of the Community Development Department.
2. Any intensification or expansion of use, including co-location of additional antennas, will require a new Use Permit.
3. The proposed antennas shall match in color the existing antennas on the site.
4. Antenna and rad center appurtenance may not extend higher than 98' maximum.
5. The wireless device shall be removed within 30 days of discontinuance of use.

4. Hold a public hearing for a request by the **CASA DE SMITH (PL120053)** (W. Brent Armstrong, ISOS Architecture, Dave Smith, property owner) located at 1724 S. Ventura Drive in the R1-6, Single Family Residential District for:

ZUP12021 Use Permit standard to reduce the rear yard setback by twenty percent (20%) from 15 feet to 12 feet (as measured from midpoint of alley).

ZUP12022 Use Permit to allow a second story addition

ZUP12023 Use Permit to increase the **allowable** wall height within the front yard setback from 4' to 6'

Sherri Lesser gave a brief overview of this case. Ms. Lesser indicated they have received several emails in regards to this case, both in support and opposition. Staff is recommending approval based on the Use Permit criteria. A condition has been added to provide landscaping between the wall and the City sidewalk.

**Minutes
HEARING OFFICER
OCTOBER 16, 2012**

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

Number of Interested Citizens Present: 9

Meeting convened at 1:30 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 30, 2012 at 3:00 PM, to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for October 2, 2012 had been reviewed and approved.

3. Request approval for a Use Permit to allow a massage establishment for WELLSRING HOLISTIC HEALTH, located at 430 West Warner Road, Suite 104. The applicant is Ben Zorensky.

Ben Zorensky, BEZ LLC. was present to represent this case.

Steve Abrahamson introduced the case. Wellspring Holistic Health is requesting a Use Permit to allow a massage establishment located at 430 West Warner Road, Suite 104 in the Warner Professional Plaza. The center is a group of four massage therapists and wellness professionals. Staff has not received any public input. Staff is requesting approval of the Use Permit.

Mr. Zorensky 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 the Use Permit for PL120308/ZUP12086 subject to the following conditions:

1. The Use Permit is valid for Wellspring Holistic Health and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. All business signs shall be Development Plan Review approved and permits obtained.
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.
4. Obtain all necessary clearances and permits for the occupancy from the Building Safety Division.
5. All required State, County and Municipal permits shall be obtained or the Use Permit is void.
6. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

2. Review of compliance with conditions of approval for a Use Permit to allow a retail smoke shop and live indoor entertainment for MIDNIGHT HOOKAH, located at 1630 East Apache Boulevard, Suite 103-104. The applicant is Nader Yousif.

REVIEW OF COMPLIANCE WITH CONDITIONS OF APPROVAL BY THE HEARING OFFICER AT THE MARCH 20, 2012 HEARING.

CONTINUED FROM SEPTEMBER 18, 2012

Ms. MacDonald stated this is a review from the March 20, 2012 hearing. Conditions of approval were imposed on Midnight Hookah. One of the conditions was to return to the Hearing Officer to see how they have complied with the conditions of approval.

Lynne Lagarde, Attorney from Earl, Curley & Lagarde, representing Nader Yousif, owner of Midnight Hookah was present to represent this case.

Diana Kaminski introduced the case. Midnight Hookah is located on the north side of Apache Boulevard just west of McClintock Drive. It is an existing commercial center that would allow a variety of retail uses. All of the suites are currently empty with the exception of Midnight Hookah. This is a review of the conditions of approval. The staff report includes information provided by the Police Department as well as comments received from the public.

Ms. MacDonald stated the applicant received their Use Permit in September 2011. On March 20, 2012 the applicant came back to the Hearing Officer for review of compliance with the conditions of approval of the Use Permit. At that time several of the conditions had not been met. An additional six months was granted to establish a credible pattern of business operations. Ms. MacDonald asked staff for a review of the second six month review period of operation from March 2012.

Ms. Kaminski stated between March 25th and September 4th, 2012 the Police Department indicated there were calls for service for loud music complaints between 2:00 – 2:23 a.m. on Sundays and Fridays after hours. There was a trespass call for a threat with a gun. There were officer initiated calls regarding loitering, altered state of consciousness, drinking in the parking lot, smoking outside and warrants for arrest. Since March, police have made 10 arrests at Midnight Hookah.

On August 16, 2012 the Police Department observed the following activities during a check on the property: The security guard at the door checking IDs did not have readily identifiable attire as security per Security Plan requirement. The security guard did not leave the door to inspect the parking lot. There was a lot of behavior in the parking lot that indicated possible drug or alcohol related activity outside of the business. There was loitering in the parking lot and no signage posted to prevent loitering. Music was heard greater than 100 feet away from the business. The security guard was smoking with customers within five to seven feet from the entrance which is a violation of the smoking law.

On August 25, 2012 the Police Department noticed 15 individuals hanging out in the parking lot. People were smoking on the sidewalk, outside adjacent to the building. The security guard was not clearly identifiable. The Police Department has met with the owner to review the Security Plan. The business owner is working on bringing these items up to compliance within the requirements of the Security Plan.

On September 8, 2012 Commander Hale noticed that the entire parking lot was filled. The parking lot consists of 67 parking spaces. The business is required to have occupancy of no greater than 49 patrons. There were approximately 15 cars parked along the front curb blocking the fire lane. There was only one security guard located at the front of the business. The security guard was standing with about 12 patrons outside. The commander went inside and counted approximately 80 people which is in excess of the occupancy allowance. There was also a welfare check for someone that was dizzy and bleeding from the mouth on September 16, 2012.

Staff has received a few calls and several emails and provided them in the staff report primarily regarding the loud music after hours in violation of the hours of operation. Someone also indicated there have been parking problems in the adjacent business to the extent that cars have been towed. An email received today indicated there were noise complaints over the weekend as late as 2:25 a.m. The music is supposed to be off at 1:55 a.m.

Ms. MacDonald stated some of the conditions of approval have been met by the applicant.

Ms. Kaminski reviewed the conditions of approval that Staff believes Midnight Hookah is not in compliance with.

4. 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. **There have been thirteen citizen-initiated complaints since the last hearing. This hearing fulfills the requirement of the condition, verifying complaints and re-evaluating the appropriateness of the uses.**
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. **This condition has been met; implementation has not been met.**
8. The business hours of operation shall be Sunday through Thursday 5pm to 1am, with music off at midnight, and Friday through Saturday, 7pm to 3am, with live entertainment to stop at 1:55am. **The applicant agreed to these hours of operation as a part of the use permit, yet has a sign in the window stating they are open until 4am. The sign has been removed since a meeting held on October 2, 2012. There have been five calls regarding loud music after 2am on Sundays and Fridays. An email indicated loud music playing until 4 and 5 am as recently as 10/7/12.**
13. Any intensification or expansion of use shall require a new Use Permit. **The building safety occupancy of this building is II-B, allowing 49 occupants for the total space. A website flier for Midnight Hookah advertises "up to 250 occupancy"; this would be an intensification of use to a banquet hall or nightclub, requiring a different occupancy type (assembly) for building safety. The Certificate of Occupancy is supposed to be prominently placed at the entrance and security staff is to adhere to the occupancy limits posted. The parking lot for 1630 has 67 spaces, which should adequately accommodate the 49 person occupancy of this space. There are no other businesses within the center at this time.**
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01. **A police report indicated patrons smoking hookah outside, next to the main entrance of the establishment, this is a violation of smoking laws. Any night that the occupancy of the building has exceeded 49 people would also be a violation of the state statute. This condition has not been met.**
16. The owner/management shall adhere to the City Adopted International Mechanical Code. **This condition has not been met; the air handling system is not large enough for the number of patrons advertised to occupy the space.**
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use

Permit becoming effective. **This condition was met at the time of opening, but has been violated since last year.**

20. Use Permit approval is for a Retail Tobacco Store (Hookah Lounge) with live entertainment, not a nightclub. Reduce the volume level of the background music within the Hookah Lounge, and provide sound insulation to the interior of the structure to mitigate excessive noise. **The sound insulation was added, per condition. Loud noise complaints continue to be called in on different nights of the week. This condition has not been maintained.**

Ms. MacDonald noted the occupancy and the Mechanical Code requirements are related. The occupancy of 49 people is relevant to the air handling system for proper ventilation of the Hookah Lounge.

Ms. Lagarde introduced Nader Yousif, the owner of Midnight Hookah and Joseph Johnson, the contractor for Midnight Hookah. Ms. Lagarde explained there was a misunderstanding related to the main compliance issue which is occupancy. The issue was not clear until the meeting on October 2, 2012 with Ms. Kaminski, the Building Safety Department, Fire Department, and Police representatives. Mr. Yousif and Mr. Johnson were under the false impression that the occupancy was 49 patrons per suite. The City plans clearly show that the total occupancy is 49 for the entire space. The business has been operating under the misunderstanding of the occupancy. It was indicated the architect did not communicate what had been approved.

After meeting with Mr. Williams in Building Safety, Ms. Lagarde indicated they were given two options: They could use the entire space for 49 people or reconstruct the firewall and conduct two separate businesses. The firewall could be reconstructed without a great deal of difficulty. Plans could be submitted to the City by the end of the week. In order to have a hookah lounge in the second suite another Use Permit would be necessary. Mr. Yousif would like to move forward with a second suite and a restaurant in the building.

Ms. Lagarde further explained that the conditions regarding the hours of operation are well understood now. The security guards have been given shirts so they can be identified. The security guards have also been given additional instructions for patrolling the parking lot. The enforcement of patrons in the parking lot is going to be difficult to enforce. People may step outside to take a phone call or smoke a cigarette. There is an understanding that the behavior outside needs to be controlled. Three no loitering signs have been posted. The occupancy sign is in the main hookah lounge area. The type of entertainment that occurred on Thursday nights has been eliminated. Mr. Yousif recognizes what the rules are now to run a business that is compliant. Maintenance personnel have been hired to take care of the litter problem. The noise problem has been difficult to address. Mr. Yousif indicated the music is turned down and the disc jockey stops at the appropriate time. There have still been reports of loud music. Mr. Yousif recognizes he has a limited period of time to prove to the City that he can operate in compliance.

Ms. MacDonald stated Mr. Yousif has had a year to bring his business into compliance. The issues should have been resolved by now. In this case the issues have increased.

Ms. Kaminski stated the Use Permit was granted in March 2011, due to construction delays the certificate of occupancy was issued in September. The first six month review did not start until September 2011.

Ms. Lagarde indicated most of the issues are due to the occupancy misunderstanding. Mr. Yousif is clear on what needs to be done now. Staff has recommended a continuance until December followed by a revocation process. Mr. Yousif would like to get the business into compliance quickly. He plans to submit plans to get the wall installed and submit for a second Use Permit. He also wants to control the noise and the behavior in the parking lot.

Chuck Buss, Tempe resident lives in the neighborhood behind Midnight Hookah. He is also the Chair for the University Heights Neighborhood Association. He stated there are after hours noise complaints regarding the loud music, several people hanging out in the parking lot, and parking issues. He does not feel the establishment is ran the way it should be. The business looks and sounds like a hip-hop nightclub.

Carl Leggett, Tempe resident lives in the neighborhood behind Midnight Hookah. He stated the loud music is still playing at the establishment after 3:00 a.m. and the parking lot is still full. This is a routine occurrence for Midnight Hookah.

Ms. Lagarde stated the type of entertainment being offered on Thursday night has been discontinued. There has been noncompliance. Mr. Yousif is asking for the opportunity to comply now that he understands the rules. The live music is required to stop Sunday – Thursday at 1:00 a.m., Friday – Saturday at 1:55 a.m. Music can still play after those times at a lower level. The music will need to be played lower so it does not impact the neighborhood. The business closes at 3:00 a.m. but sometimes it takes people a while to clear out of the parking lot.

Ms. MacDonald asked for an explanation regarding a sign in the window at Midnight Hookah advertising the business hours of operation open until 4:00 a.m. This disregards the conditions of approval.

Ms. Lagarde stated they originally wanted the business to be open until 4:00 a.m. The sign should have been taken down.

Ms. Kaminski noted condition #8 The business hours of operation shall be Sunday through Thursday 5 p.m. to 1 a.m., with music off at midnight, and Friday through Saturday, 7 p.m. to 3 a.m., with live entertainment to stop at 1:55 a.m. All of the bars in Tempe are required to stop live entertainment at 1:55 a.m. The last hour of operation would be a winding down period, not an after-hours club.

Ms. MacDonald stated she carefully reviewed all of the information provided by the City of Tempe and the history of the business. This applicant has failed to make a good faith effort to follow the rules. The misunderstandings apply to critical parts of the business. The conditions of approval for the occupancy and hours of operation have been completely disregarded. The Security Plan was not implemented. The control of behavior in the parking lot was nonexistent. There was a conflict with the Mechanical Code and the occupancy level. One of the most notable violations was the overcrowded parking lot with the fire lane blocked, and overflow parking. That is a threat to the public health, safety and welfare. The hot coals and combustible materials used in the business are flammable products. Based on the track record, it would not be prudent for the City to allow this business to continue.

Ms. MacDonald reviewed the criteria for a Use Permit:

The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity to the adjacent property, to the neighborhood, or to the public welfare in general.

This business has affected the wellbeing of the neighbors and the public welfare in general. Safety measures are not being followed.

1. Does this business create a significant increase in vehicular or pedestrian traffic?

The parking on site and the occupancy has increased the traffic for this center.

2. Does this business create a nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare?

Based on testimony from the Police Department and the neighbors it does create a nuisance. The noise, vibration and outdoor smoking have not been controlled.

3. Does it contribute to the deterioration of the neighborhood or downgrade of property values?

This business does contribute to the deterioration of the neighborhood and downgrade of property values.

4. Is it compatible with existing surrounding structures and uses?

It is not compatible with surrounding structures and uses.

5. Is there adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area?

There has not been control of behavior inside or outside the premises.

DECISION:

Ms. MacDonald authorized the Zoning Administrator to initiate the revocation process. The applicant has not met the conditions of the Use Permit approval as outlined. Due to the threat to the public health, safety and general welfare the revocation hearing will be held on November 7, 2012.

**Minutes
HEARING OFFICER
NOVEMBER 7, 2012**

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
Sherri Lesser, Senior Planner
Diana Kaminski, Senior Planner

Number of Interested Citizens Present: 20

Meeting convened at 1:30 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 November 21, 2012 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for October 16, 2012 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the MAROUFKANI PROPERTY, located at 1951 East Oxford Drive. The applicant is the City of Tempe – Code Compliance.

THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.

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3. Request approval to abate public nuisance items at the JONES PROPERTY, located at 5837 South Country Club Way. The applicant is the City of Tempe – Code Compliance.

THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.

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4. Request approval for a Use Permit to allow a private day school for CHRYSALIS ACADEMY, LLC located at 600 East Baseline Road, Suite B6. The applicant is Tara Rice.

CONTINUED FROM THE JULY 17, 2012 HEARING

Tara Rice and Dr. Patty McCartney, Chrysalis Academy were present to represent this case.

Sherri Lesser introduced the case. Chrysalis Academy is requesting approval of a Use Permit to allow a private day school. Ms. Lesser noted this Use Permit request has been continued from a previous hearing held on July 17, 2012. At that time there was a tenant that expressed opposition of the Use Permit. There were also building safety requirement concerns for the use of the building. Staff is recommending approval of the use permit. Staff has not received any opposition to this request. Chrysalis has brought additional letters of support for their use. Chrysalis Academy has also worked with the Building Safety Department to address the occupancy concerns.

Ms. MacDonald asked the applicants how they have addressed the issues regarding the adequate control of disruptive behavior both inside and outside the premises.

Dr. Patty McCartney indicated they were not aware of the problem until the day of the last hearing. To correct the problem they talked to all of the neighboring tenants and the landlord. The landlord worked with the applicant to move all of the classrooms to a free standing building. The bus drop off/pick up area was also moved so it would not disrupt the other tenants.

Ms. MacDonald asked about the tenant that expressed opposition at the July 17, 2012 Hearing Officer meeting.

Glenda Cope, Baseline Business Park, property manager representing the landlord was present to answer questions. Glenda Cope was not present at the last hearing. She received one complaint from one tenant. She has not received complaints from any of the other tenants. Ms. Cope indicated the tenant that complained had previously asked to be released from the terms of her lease. The request was rejected and subsequently the property manager started receiving complaints about the school. The complaints were regarding the bus route and the noise. These issues were discussed with Chrysalis and the school has resolved the problems. Ms. Cope stated the Chrysalis Academy is now consolidated in a building away from the other tenants.

Ms. MacDonald noted the previous issues have been resolved by addressing the transportation issues and consolidating the school.

Ms. Rice and Dr. McCartney 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 PL120193/ZUP12056 subject to the following conditions:

1. Obtain all necessary occupancy clearances from the Building Safety Division prior to use permit becoming effective.
2. 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.

5. Request approval for a Use Permit to allow a dust collector for COMTECH BUILDING 3, located at 2126 West 7th Street. The applicant is Mike Hall, Michael Hall Architect.

CONTINUED FROM THE OCTOBER 16, 2012 HEARING

Mike Hall, Michael Hall Architect was present to represent this case.

Diana Kaminski introduced the case. The applicant is requesting a Use Permit to allow a dust collector for Comtech, Building 3. The property is located north of University Drive, west of 52nd Street. The area is surrounded by industrial property. The design of the addition fits in with the character of the building. The dust collector would have a screen wall around the base; however the unit would be exposed above the wall. Sound specifications have been provided and included in the staff report. Staff has not received any public input on this case. Staff is recommending approval of the Use Permit.

Mr. Hall 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 PL120164/ZUP12089 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.
4. The dust collection equipment must comply with nuisance noise ordinance decibel levels both day and night, or the hours of the dust collection operation is to end no later than 10:00 p.m. on a daily basis.

6. Request the review for revocation of the Use Permit to allow a retail smoke shop and live indoor entertainment for MIDNIGHT HOOKAH, located at 1630 East Apache Boulevard, Suite 103-104. The applicant is The City of Tempe.

CONTINUED FROM THE OCTOBER 16, 2012 HEARING

Lynne Lagarde, Attorney from Earl, Curley & Lagarde, and Nader Yousif, owner of Midnight Hookah were present to represent this case.

Diana Kaminski introduced the case. A review of compliance with the conditions of approval took place at the October 16, 2012 Hearing Officer meeting. Staff has met with the applicant a few times to work towards compliance on several issues. Ms. Kaminski gave an overview of the issues at the site.

The Use Permit took effect in September 2011. A six month review took place in March 2012. Between March 25, 2012 and September 4, 2012 the Police Department indicated there have been 28 calls for service to the property. Thirteen of the calls for service were citizen initiated, two were owner initiated, and thirteen were officer initiated. Most of the calls were related to the business being open after hours or activity going on in the parking lot.

On August 16, 2012 the Police Department observed issues regarding the security plan, loitering, loud music and the behavior of the security guard.

On August 25, 2012 the Police Department observed 15 individuals hanging out in the parking lot. People were smoking on the sidewalk adjacent to the building, which is a smoking violation. It also appeared there was insufficient security to control the property.

Between September 5, 2012 and October 7, 2012 the Police Department had two calls for service. The Police Department also noticed the parking lot was filled. The site has 67 parking spaces. Approximately 15 cars were parked along the front curb blocking the fire lane. The Building Safety occupancy limit is 49 people including staff. The Police Department has indicated the occupancy limit has been an issue on several occasions.

On October 12, 2012 the manager was cited for selling tobacco to a minor. This is a violation of State and Federal regulations for tobacco sales.

Between October 16, 2012 and October 26, 2012 the Police Department received four calls for service. Two were for fights, one was a complaint about the business being open after hours, and the last was for a suspicious vehicle.

Midnight Hookah is not in compliance with the following conditions of approval:

4. 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. Return to the Hearing Officer by September 18th, 2012 for a review of operations in compliance with all conditions of approval. **There have been two more complaints since the last hearing on October 16th.**
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011. **This condition has been met; implementation has not been met.**
8. The business hours of operation shall be Sunday through Thursday 5pm to 1am, with music off at midnight, and Friday through Saturday, 7pm to 3am, with live entertainment to stop at 1:55am. **The applicant agreed to these hours of operation as a part of the use permit, yet has a sign in the window stating they are open until 4am. There have been five calls regarding loud music after 2am on Sundays and Fridays. An email indicated loud music playing until 4 and 5 am as recently as 10/7/12.**
13. Any intensification or expansion of use shall require a new Use Permit. **The building safety occupancy of this building is II-B, allowing 49 occupants for the total space. A website flier for Midnight Hookah advertises "up to 250 occupancy"; this would be an intensification of use to a banquet hall or nightclub, requiring a different occupancy type (assembly) for building safety. The Certificate of Occupancy is supposed to be prominently placed at the entrance and security staff is to adhere to the occupancy limits posted. The owner told fire department staff that he has had as many as 100 people in the building. After a meeting with staff on October 2nd to review Building Safety Occupancy requirements, staff received a resident email indicating that patrons were parking in the adjacent business' parking lot to access Midnight Hookah. The parking lot for 1630 has 67 spaces, which should adequately accommodate the 49 person occupancy of this space. Tempe Police Department indicated there were approximately 62 vehicles in the parking lot on October 13th at 1am. There are no other businesses within the center at this time.**
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01. **A police report indicated patrons smoking hookah outside, next to main entrance of establishment, this is a violation of smoking laws. Any night that the occupancy of the building has exceeded 49 people would also be a violation of the state statute. A staff member was cited for selling tobacco to a minor. This condition has not been met.**
16. The owner/management shall adhere to the City Adopted International Mechanical Code. **This condition has not been met; the air handling system is not large enough for the number of patrons advertised to occupy the space.**

19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective. **This condition was met at the time of opening, but has been violated since last year.**

20. Use Permit approval is for a Retail Tobacco Store (Hookah Lounge) with live entertainment, not a nightclub. Reduce the volume level of the background music within the Hookah lounge, and provide sound insulation to the interior of the structure to mitigate excessive noise. **The sound insulation was added, per condition. Loud noise complaints continue to be called in on different nights of the week. This condition has not been maintained.**

Staff has received a few complaint calls from adjacent property owners and residents in the neighborhood since the last Hearing Officer meeting. Staff is recommending revocation of the Use Permit.

Officer Sullivan gave an overview of the Midnight Hookah Lounge during the last few months. The Police Department was instructed to observe Midnight Hookah to see if they were following the security plan. Police Officers used an unmarked vehicle and observed multiple security violations. The individual that maintains the property has been contacted multiple times by the Police Department advising him what needs to be done to correct the issues. Enforcement was recently done with the Attorney General's Office on multiple hookah bars. Tobacco was sold to under age kids at Midnight Hookah. The Attorney General's Office along with the Police Department did a search of the premises and located three or four bottles of vodka in the dishwasher. Mr. Yousif claimed he had no knowledge of the vodka. A bag of white crystal substance was also located in a cabinet. The substance in the bag was tested for crystal meth and cocaine. It tested negative for both. Without sending it out to the lab it could not be ruled out as another illegal substance. On another visit to the site Officer Sullivan asked Mr. Yousif how many people were occupying the building. Mr. Yousif responded 120, he said he could have 50 people in each area of his building. Officer Sullivan informed Mr. Yousif he was only allowed to have a total of 49 people in the building. Officer Sullivan has driven by two or three times and has observed more than 50 people in the building. The Police Department was trying to let Mr. Yousif be proactive about the situation. Unfortunately the situation has not been rectified.

Ms. Lagarde stated there was a misunderstanding regarding the occupancy of the two spaces. The business has been operating with 49 people since the last hearing with proper security and business hours. Ms. Lagarde visited the Midnight Hookah Lounge last Friday night around 10:30 p.m. to see how the operation was being conducted. It was a perfectly calm environment. Mr. Yousif voluntarily eliminated the live entertainment. The applicant would like the Hearing Officer to consider eliminating or amending the live entertainment portion of the Use Permit instead of a revocation of the entire Use Permit. Mr. Yousif would like the opportunity to operate in full compliance with 49 people without live entertainment for a 90 day period. Mr. Yousif would also like to hire an off-duty Police Officer to monitor the operation. He would still like to open a restaurant next door to the hookah lounge. Ms. Lagarde indicated Mr. Yousif was not at the business when the tobacco sale to the underage person took place. The employees who sold the tobacco to the underage person and had the alcohol at the establishment have been fired.

Chuck Buss, Tempe resident lives in the neighborhood behind Midnight Hookah. He is also the Chair for the University Heights Neighborhood Association. He stated the neighbors have had a lot of problems this past year with complaints regarding noise, traffic and the behavior of people in the parking lot. Mr. Buss visited the Midnight Hookah before the last hearing in October on a Friday and a Saturday night. He observed everything his neighbors were complaining about. The music was playing very loud afterhours. There were a lot of people in the parking lot with no security. The parking lot was full so the occupancy limit was probably exceeded. Since the last hearing Mr. Buss visited early hours at 1:15 a.m. on Monday, October 22, 2012. The business was supposed to be closed at 1:00 a.m. and they were still operating. The Police Department was notified. The manager of Midnight Hookah told the Police Department they were allowed to remain open until 4:00 a.m. This business has had several opportunities to make the needed corrections. Mr. Buss feels the Use Permit for Midnight Hookah should be revoked.

Officer Sullivan stated that Mr. Yousif has been told about the conditions of approval several times but does not seem to be concerned. The music has been amplified loud enough that it can be heard on Apache Boulevard. The music has been turned down the last few weeks. The occupancy limit has been over 49 people since the last hearing.

Daniel Rozales , Manager from Baker's Acre Motel spoke in opposition. The music at Midnight Hookah is played too loud. The customers use the Baker's Acre parking lot for over flow parking. Customers also use their parking lot for drinking and smoking. The Police Department has been called on several occasions.

Ms. Lagarde indicated the Police have not been by Midnight Hookah during the last few weeks. The live entertainment has stopped, the 49 occupants were enforced and the hours have been enforced. Security comes in at 11:00 p.m. The parking lot activity has slowed down. Mr. Yousif would like the opportunity to operate for 90 days without entertainment to make this work.

Ms. MacDonald stated this has gone on for some time. The operation of the business poses a direct danger to the public safety and health to the citizens of Tempe. Ms. MacDonald does not agree with splitting up the Use Permit. It has been processed as a single Use Permit. She does not feel that live entertainment is the issue. The amplified music is a concern for the adjacent neighborhood and each time an officer has to respond to a call at this address creates a drain on city resources. This business has not been run successfully within the rules established by the City of Tempe even though the property owner has been given ample time to demonstrate his ability to operate the business within the conditions set forth in his use permit.

Ms. MacDonald reviewed the criteria for a Use Permit

The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity to the adjacent property, to the neighborhood, or to the public welfare in general.

This business has demonstrated this use is detrimental to the neighborhood and surrounding businesses.

1. Traffic generated by this use should not be excessive.
The parking lot is full, the occupancy has not been maintained, overflow parking goes into surrounding neighbors.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
A nuisance is created from smoke, vibration and noise at this location.
3. It won't contribute to the deterioration of the neighborhood.
This business contributes to the deterioration of the neighborhood and downgrades property values.
4. It is compatible with existing surrounding structures and uses.
It is not compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.
Disruptive behavior has not been adequately controlled inside or outside the property.

DECISION:

Ms. MacDonald approved the revocation PL110015/ZUP11007/RVK12002.

7. Request approval for a Use Permit to allow a hookah lounge for ALMAZA HOOKAH LOUNGE, located at 107 East Baseline Road, Suite A-3. The applicants are Jack and Mary Narsa.

CONTINUED FROM THE OCTOBER 16, 2012 HEARING

Jack and Mary Narsa, Almaza Hookah Lounge, were present to represent this case.

Diana Kaminski introduced the case. Almaza Hookah Lounge would be located in a commercial shopping center on the south east corner of Baseline Road and Mill Avenue. There would be occupancy limitations. The applicant indicated they are working with the Police Department on their security plan. Staff has not received any public input. Staff is recommending approval of the Use Permit.

Ms. Narsa stated the pool tables for the establishment have been eliminated due to space. The applicant is not