

## **PUBLIC MEETING MINUTES**

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### **MINUTES OF THE DEVELOPMENT REVIEW COMMISSION STUDY SESSION**

**JANUARY 22, 2013**

**HARRY E. MITCHELL GOVERNMENT CENTER  
TEMPE CITY HALL – CITY COUNCIL CHAMBERS  
31 EAST 5<sup>TH</sup> STREET  
5:30 p.m.**

#### **AGENDA**

Commission Present:

Mike DiDomenico, Chair  
Paul Kent  
Peggy Tinsley  
Angie Thornton  
Jim Delton  
Linda Spears  
Ron Collett

Commission Absent:

Dennis Webb  
Dave Maza  
Dan Killoren

City Staff Present:

Lisa Collins, Interim Community Dev. Director  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Diana Kaminski, Senior Planner  
Kevin O'Melia, Senior Planner

Chair DiDomenico called the Study Session to order at 5:30. He indicated that prior to the PAD discussion; there would be some regular housekeeping issues to review.

The minutes of December 11, 2012 were recommended for approval with no modifications. He also indicated that there were two cases on the agenda this evening, as one item had previously been pulled. He stated that Item

No. 2, the appeal for Midnight Hookah, would be heard and Item No. 3, The Haven, could be placed on the Consent Agenda.

Sherri Lesser, Senior Planner, gave a brief overview of the history of the PAD process.

Chair DiDomenico asked Ms. Lesser if there is a minimum standard of density that the PAD process can address.

Ms. Collins stated that the General Plan allows for ranges in density and although there is a maximum, the Commission is not held to approving cases that fall to the higher end of that range. If a development comes in higher than the maximum, then a General Plan Amendment is necessary and also possibly a Zoning Map Amendment.

Chair DiDomenico asked staff if something, such as a fast food restaurant, could replace a project with much more density, such as multi-family housing and if there is a test in density on the minimum side.

Ms. Collins indicated that with mixed use and R1-PAD there are no development standards. A PAD is necessary in those zoning districts to create the development standards and creating the maximums for that piece of land. The approval of PAD's is very important and although a project may come in that is not bigger than what the PAD allows, it could be drastically different and then it could be considered a major amendment. PAD's can provide a great deal of flexibility, just not a lot of certainty.

Chair DiDomenico stated that he feels the minimums are as important as the maximums as it relates to density. He asked if someone can come in and purchase a 30 acre piece of property zoning multi-family and build two units.

Ms. Collins stated that yes, there are times where a site could have significant development and it comes in with a lot less than what we'd like to see but private property rights allow them to do what they want with their property. She stated that the question should be is there anything we can do about it, short of having a development agreement.

Chair DiDomenico stated that he would like to see the Commission spend some time and make the process more protective of the General Plan.

Commissioner Spears asked about parking.

Ms. Collins indicated that although the PAD gives us the ability to amend parking; it may not be the best way and it may be time to look at the parking ordinance and looking at parking in the downtown. She indicated that it would be good for the Commission to discuss General Plan 2040 and what it is and how to deal with zoning that is on land lower than the General Plan is recommending and when the property owner/developer doesn't want to rezone as you cannot force someone to rezone into conformance with the General Plan.

Commissioner Collett expressed concern over the changing of the General Plan every 10 years and trying to work within those changing guidelines.

Commissioner Spears stated that she felt the intent of the PAD process was to give a developer room to work outside the development standards when a project cannot fit into the current zoning on a site and that the City is supposed to be given a unique or special project for approval of that PAD.

Ms. Collins indicated that she think staff can do a better job articulating what they feel is good about the projects and what the benefits the City will receive from approving the PAD.

Chair DiDomenico asked for input from the group as to what worked best for their schedules for scheduling short working retreats for the Commission to facilitate discussions on various topics such as PAD's and the General Plan.

Ms. Collins indicated that she would work with staff and the Commission to find a time that would work for everyone.

Chair DiDomenico stated that since City is no longer televising the DRC meetings, staff is looking into alternatives so that it may be possible to start televising the meetings again. One of the alternatives is possibly moving the meeting to the afternoons during working hours. He indicated that he wanted to keep the Commission apprised of the various solutions being looked at and if anyone has any suggestions, to please let staff know.

The Study Session adjourned at 6:00 p.m.

Prepared by: Lisa Novia, Administrative Asst. II  
Reviewed by: Lisa Collins, Interim Director Community Development Department

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Lisa Collins, Interim Director, Community Development Department

## **PUBLIC MEETING MINUTES**

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### **MINUTES OF THE DEVELOPMENT REVIEW COMMISSION JANUARY 22, 2013**

**Harry E. Mitchell Government Center  
Tempe City Hall - City Council Chambers  
31 E. 5<sup>th</sup> Street, Tempe, AZ 85281  
6:00 PM (5:30 Study Session)**

Commission Present:

Mike DiDomenico, Chair  
Paul Kent  
Peggy Tinsley  
Angie Thornton  
Jim Delton  
Linda Spears  
Ron Collett

Commission Absent:

Dennis Webb  
Dave Maza  
Dan Killoren

City Staff Present:

Lisa Collins, Interim Community Dev. Director  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Diana Kaminski, Senior Planner  
Kevin O'Melia, Senior Planner

#### **1. CONSIDERATION OF MEETING MINUTES: 12/11/12**

On a motion by Commissioner Tinsley and seconded by Commissioner Collett, the Commission with a vote of 6-0 (Commissioner Spears abstained) approved the minutes of the December 11, 2012 meeting.

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#### **CONSENT AGENDA**

On a motion by Commissioner Thornton and seconded by Commissioner Kent, the Commission with a vote of 7-0 approved the Consent Agenda as recommended in the staff report.

3. Request for a Development Plan Review consisting of a proposed +/-4,795 sf. office/clubhouse, remodel of an existing +/-1,729 sf. office/clubhouse, a proposed +/-2,080 sf. fitness building and associated site amenities in two courtyards for **THE HAVEN (PL120267)** located at 1440 East Broadway Road. The applicant is Todd & Associates Architecture and Planning, Incorporated.

STAFF REPORT: [DRCr TheHaven 012213](#)

2. Request appeal for a Use Permit Revocation for tobacco retail sales with live entertainment for **MIDNIGHT HOOKAH (PL110015)** located at 1630 E Apache Boulevard Suites 103-104. The appellant is Nadir Yousef, Midnight Hookah.

**THIS ITEM WAS CONTINUED FROM THE DECEMBER 11, 2012 HEARING AND THE JANUARY 8, 2013 HEARING**

STAFF REPORT: [DRCr MidnightHookah 012213](#)

This case was presented by Diana Kaminski and represented by Lynn Lagarde, attorney for the applicant.

Ms. Kaminski gave a brief presentation on the history of this case as reported in the staff report.

Ms. Lagarde addressed the Commission and thanked them for allowing a continuance on this case. Ms. Lagarde indicated that although staff does not feel Mr. Yousef was responsive to the issues brought forth, she indicated he was responsive. She also stated that up until October of 2012 it was unclear to Mr. Yousef as to the occupancy for both suites. She indicated that since it was determined that it was 49 in the combined suites, he has been operating that way. She also indicated he has made many other changes to comply with the conditions of approval. Ms. Lagarde stated that there are many statements in the staff report that are prejudicial and inaccurate and it may give the Commission a negative opinion that may not be warranted.

Commissioner Collett asked about the letter from the Community Development Department, dated June 2012, that indicated the total occupancy is 49 people. He also asked about the hours of operation as stated in the conditions of approval.

Ms. Lagarde indicated that Mr. Yousef has been operating according to the conditions of approval since October and there was some confusion about the occupancy number but he has been operating under the 49 occupancy since October.

Commissioner Kent asked for clarification as to the suites occupied as it would appear there are three suites that are occupied by Midnight Hookah.

Ms. Lagarde indicated that she couldn't confirm the numbering on the suite and Chair DiDomenico indicated that it could have been an issue when the suites were renumbered with the post office.

Chair DiDomenico opened the hearing to public input.

Chuck Buss, from University Heights Neighborhood, spoke in opposition of Midnight Hookah. He stated that Mr. Yousef has been unresponsive to the neighbor's concerns and he caused a scene when he confronted Mr. Buss outside of the Hearing Officer meeting.

Chair DiDomenico asked Mr. Buss how the noise has been over the last few months. He also asked if Mr. Buss had an issue with the use or the way business has been conducted.

Mr. Buss indicated that it had been pretty quiet. He also stated that his issue is with both the use and the way Mr. Yousef conducts his business.

Chair DiDomenico closed the hearing to public input.

Commissioner Spears asked the members from the Police Department to compare calls of service from this hookah lounge to others in the City.

Sue Scoville, Tempe Police Department, indicated that other hookah lounges do not have the number of calls or types of calls for service that they experience with Midnight Hookah.

Commissioner Kent asked how many calls for service to Midnight Hookah since November.

Officer Scoville indicated none directly related to the business.

Commissioner Spears asked if Officer Scoville had contact with security guards or staff during a call and if they were receptive and/or cooperative.

Officer Scoville indicated that she had not been on the calls for service but had been out once issues had been identified and offered Mr. Yousef ideas and information so he could better prevent issues. She indicated that Mr. Yousef appeared cooperative and willing to make the necessary changes but some of those issues have not yet been addressed, such as security cameras.

Commissioner Thornton questions the reasoning that the parking lot is Mr. Yousef's responsibility.

Officer Scoville indicated that businesses open late at night could attract a criminal element and it's important that as a business owner he take measures to eliminate loitering, etc., so that the business isn't a facilitator for drug deals, shootings, fights etc. and he creates a safe environment for his business and the shopping center as a whole. Cameras in the parking lots will also be able to identify if there are false reports being made or if there are issues that need to be addressed.

Ms. Lagarde is not sure if there are actually two calls for service relating to a gun or if it was a duplicate call. Mr. Yousef had an incident after hours with an individual. She indicated that Mr. Yousef has had security monitoring the parking lot. She also indicated cameras have not been installed because they are afraid they will be stolen. She also asked for a ninety day extension.

Chair DiDomenico asked about patrons bringing alcohol into the lounge.

Ms. Lagarde indicated that Mr. Yousef will not allow any outside containers inside the establishment.

Chair DiDomenico asked about the container of alcohol found in the dishwasher.

Ms. Lagarde indicated the employee was fired, Mr. Yousef wasn't there at the time the incident occurred.

Chair DiDomenico asked about the white substance found.

Ms. Lagarde indicated that the substance tested negative for methamphetamine and cocaine but no further testing was done.

Chair DiDomenico indicated he does not have an issue with the use as a hookah lounge and is glad to see that the past few months have been better but that does not take away from the issues that have occurred in the past.

Commissioner Collett stated that although this case is supposed to be heard denovo, he does not want the misunderstanding that the Commission is to only take into consideration the things that have occurred in the past few months. He also indicated that in his opinion, Mr. Yousef's past actions over the past year or more, speak louder than his words.

On a motion by Commissioner Spears and seconded by Commissioner Collett, the Commission with a vote of 7-0 denied the appeal and upheld the decision of the Hearing Officer to revoke the Use Permit.

**4. ANNOUNCEMENTS** - None

The meeting was adjourned at 7:00 p.m.

Prepared by: Lisa Novia, Administrative Asst. II  
Reviewed by: Lisa Collins, Interim Director Community Development Department

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Lisa Collins, Interim Director, Community Development Department