

**Minutes  
HEARING OFFICER  
JULY 16, 2013**

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

**Present:**

Vanessa MacDonald, Hearing Officer  
Sherri Lesser, Senior Planner  
Diana Kaminski, Senior Planner  
Michael Spencer, Senior Code Inspector  
Ryan McCann, Community Development Intern  
Julie Stennerson, Executive Assistant

**Number of Interested Citizens Present: 44**

Meeting convened at 1:43 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 July 30, 2013 at 3:00 PM, to the Community Development Department.

- 
1. Ms. MacDonald noted that the Hearing Officer Minutes for June 18, 2013 had been reviewed and approved.

- 
2. Request approval to abate public nuisance items at the **HAZELTON PROPERTY (PL130014)** located at 1219/1223 South Maple Avenue. The applicant is the City of Tempe – Code Compliance.

**THIS IS A REVIEW OF COMPLIANCE FROM THE FEBRUARY 5, 2013 HEARING.**

**This property was withdrawn by the request of Code Compliance Staff.**

- 
13. Request approval for a Variance to reduce the east street side yard setback from 10 ft. to 5 ft. for a detached accessory building- shade canopy for the **HERNANDEZ RESIDENCE (PL130219)** located at 627 East Loma Vista Drive. The applicant is Bo Radojevic, Le Reve Custom Homes Inc.

**This case was withdrawn by the applicant.**

- 
17. Request approval for a Use Permit to allow a drive-thru for a **WPP VII, LLC RESTAURANT (PL130232)** located at 1315 North Scottsdale Road. The applicant is Scott Whittington, Avalon Investments, Inc.

**This case will be continued to August 20, 2013 by the request of Community Development Staff.**

- 
3. Request approval to abate public nuisance items at the **ROYSE PROPERTY (PL130208)** located at 1210 East Marny Road. The applicant is the City of Tempe – Code Compliance.

Mr. Royse was present to represent this case.

Michael Spencer requested approval of abatement for the property located at 1210 East Marny Road. The property is in violation of junk and debris in the front and back yards. Three notices have been sent to the owner of the property. There has been very little change in the condition of the property. Two citations have been issued to the owner of the property. The owner failed to appear in court for the citations. Code Compliance is requesting approval of the abatement to have the items removed from the property.

Ms. MacDonald stated it looked like the property owner was trying to make an attempt to clean up the property.

Mr. Spencer stated the property is a rental property. He indicated the property owner was trying to get the tenants to remove the items in violation from the property but has had little success. There has been some improvement to the front yard, but there are still numerous items in the back yard.

Mr. Royse stated he rented the house at the beginning of the year. He did not realize a hoarder was going to move in. A large family is residing at the property. In all of his years of renting property he has never had an experience this bad. He is going to have the Police Department involved to remove the tenants from the property. He believes about 90% of the junk and debris has been removed from the front yard. Within two weeks he will have the tenants removed from the property and will have the front and back yards in compliance.

Ms. MacDonald stated she was going to go ahead and approve the property abatement. The property owner would have a two week window to get the property cleaned up. If the property is not cleaned up in that time period the property will be abated.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL130208/ABT13017.

- 
4. Request approval to abate public nuisance items at the **FACIO PROPERTY (PL130209)** located at 2032 East 10<sup>th</sup> Street. The applicant is the City of Tempe – Code Compliance.

Mr. Facio was present to represent this case.

Michael Spencer requested approval of abatement for the property located at 2032 East 10<sup>th</sup> Street. The abatement request includes towing three inoperable/unregistered vehicles from the front of the property. Two notices have been issued to the property owner. The property owner has failed to make any change in the condition of the vehicles. One citation has been issued. The property owner failed to appear in court. Code Compliance is requesting approval of the abatement to remove the vehicles from the property.

Ms. MacDonald indicated this complaint was initiated by a neighbor.

Mr. Facio stated the vehicles have been registered and insured as of yesterday.

Mr. Spencer stated he drove by the property yesterday morning.

Ms. MacDonald asked Mr. Facio if he brought the registration documents with him.

Mr. Facio presented documentation to Ms. MacDonald.

Ms. MacDonald asked Mr. Spencer if he would agree to withdraw the abatement since the issue with the vehicles has been taken care of.

Mr. Spencer agreed to withdraw the request for the abatement. He stated he would verify the situation with the vehicles. He could resubmit the abatement request if needed.

**DECISION:**

Ms. MacDonald withdrew the abatement proceedings for PL130209/ABT13018.

-----

5. Request approval to abate public nuisance items at the **PERAHIA PROPERTY (PL130210)** located at 1649 North Bridalwreath Street. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Michael Spencer requested approval of abatement for the property located at 1649 North Bridalwreath Street. The property is in violation of deteriorated landscape. Two notices have been sent to the property owner, and a citation was issued. The owner failed to appear in court for the citation. One dead tree from the front of the property has been removed. There are still two dead trees on the north side of the property that need to be removed.

Ms. MacDonald stated this case represents months of communication with the property owner. The property owner has failed to bring the property in compliance.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL130210/ABT13019.

-----

8. Request approval for a Use Permit to allow a new Monopine, a walk-in equipment cabinet and a back-up emergency power generator for **BROTHERS TAE KWON DO CENTER - VERIZON PHO ROCKFORD (PL130166)** located at 6356 South Price Road. The applicant is Richard Shaw, Shaw & Associates, P.L.C.

**Continued from July 2, 2013**

Mr. Shaw was present to represent this case.

Diana Kaminski introduced the case. The property is located on the north west corner of Guadalupe Road and Price Road. A co-location study was done and the nearest location was in Mesa. The Mesa site would not cover the Tempe clientele. The applicant has been working with staff regarding the location of the monopine and landscaping improvements to the site. Verizon has agreed to make this new monopine look as realistic as possible by emulating it with the existing Aleppo Pine in color and having the tree come to a tapered finish. Staff has not received any public input on this case.

Ms. MacDonald stated her concerns regarding the looks of the monopine structures. She believes many of them look cartoonish.

Mr. Shaw stated Verizon works with two companies in Tucson. The companies are Larson Camouflage and Cell Trees. Both companies are leaders when it comes to disguised wireless facilities. He agreed to work with the cell tower tree provider to make sure it looks good. The most recent Pine Trees and Palm Trees have turned out pretty well. He agreed to have the tree the right color and tapered at the top for a more realistic look. The good thing about the Pine Tree is that it can accommodate additional antennas. The Palm Trees can only be used for one carrier.

Mr. Shaw 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 PL130166/ZUP13055 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
  2. Monopine pole should go no higher than 65' 0" but branches should extend an additional 2' to 3' so the tree will look more realistic by forming into a point.
  3. The monopine branches shall be designed in color to match existing Aleppo Pine trees on site.
  4. Equipment facility should be completely concealed on all sides with a masonry wall or other durable material, refer to ZDC Section 4 – 405.
  5. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
  6. Any intensification or expansion of use shall require a new Use Permit.
  7. The proposed equipment cabinet shall be constructed of similar material and color to match the existing building.
  8. The proposed monopole (monopine) shall maintain a twenty foot (20') separation from any existing tree.
  9. A weather resistant emergency contact information sign shall be posted on the site and shall be visible to the public.
  10. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
  11. Replace all dead or missing trees along the east and south frontage, landscaping islands and any other missing landscape material.
- 
12. Request approval for a Use Permit to allow a recreational use-curling club in the General Industrial District for **HOHOKAM INDUSTRIAL PARK – COYOTES CURLING CLUB (PL130218)** located at 2202 West Medtronic Way. The applicant is Carol Ann Naso.

Ms. Naso and Ray Johnson, Architekton were present to represent this case.

Sherri Lesser introduced the case. The applicant is requesting a Use Permit for a curling club. The site is located in the Hohokam Industrial Park which is located south of University Drive, north of Broadway Road between 48<sup>th</sup> Street and 52<sup>nd</sup> Street on Medtronic Way. The curling training center will occupy a large portion of the building. The proposed use would be a low volume use that would be compatible with the industrial area. A very low volume of parking is required. The site has adequate parking for the use. Staff has not received any public input regarding this request. Staff recommends approval of the Use Permit.

Mr. Johnson stated the site is over 2,400 feet from any residential use. The access to the property is along 52<sup>nd</sup>

Street with access to University and the freeways. Traffic would not be driving through the neighborhoods. The proposed project is a low volume use. All of the activities would be indoors.

Ms. MacDonald reviewed the conditions of approval.

Ms. Naso 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 PL130218/ZUP13074 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.

-----

15. Request approval for a Use Permit to allow a 6 ft. high fence located in the front yard setback for the **BURKWOOD APARTMENTS (PL130222)** located at 701 South Roosevelt Street. The applicant is Scott Merritt, Fine Line Designs.

Mr. Merritt, Fine Line Designs and Mr. Hashemi, Property Owner, were present to represent this case.

Sherri Lesser introduced the case. The Burkwood Apartments are located between 5<sup>th</sup> Street and University Drive, west of the downtown area. The applicant is requesting a Use Permit to allow a wrought iron fence in the front portion of the front yard setback. The fence would be placed along the property line along Roosevelt Street. Vehicular access gates are currently in place. The applicant would like to expand the fence to include a recreational area for the residents. The fence will minimize pedestrian traffic within the space so the landscape will grow. The physical barrier will also help eliminate loitering by the non-residents. Staff has not received any public input on this request. Staff recommends approval of the Use Permit.

Mr. Merritt stated they were in the process of getting a permit for the vehicular gates, new landscaping, lighting design and a building repaint. The color scheme of the building will be changing. The fence will be painted to accent the building in a grayish tone.

Ms. MacDonald stated this will be a major upgrade to the property. The improvements will allow the property owner to address some behavioral issues on the property.

Mr. Merritt and Mr. Hashemi agreed to the condition 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 PL130222/ZUP13075 subject to the following condition:

1. The wrought iron fence to complement the buildings in color and design.

-----

16. Request approval for a Use Permit to allow the required parking to be located in the front yard setback for the **BEER RESIDENCE (PL130225)** located at 1623 East Broadmor Drive. The applicant is Raquel Beer, Simply Done LLC.

Mr. Alexander was present to represent this case.

Sherri Lesser introduced the case. This property is located south of Broadway Road, west of McClintock Drive in the R1-6, Single Family Residential District. The applicant is requesting a Use Permit to obtain approval to allow the required parking to be located in the front yard setback. This has been an existing condition for quite a while. The garage had been enclosed without a building permit. The applicant is trying to obtain a building permit for the enclosure. The applicant recently purchased the property and would like to upgrade the interior. Staff recommends approval of the Use Permit. Staff included stipulations in the conditions of approval regarding code violations from the previous owner. The conditions include the upkeep of the landscape and parking on the paved driveway surface only.

Mr. Alexander was present representing Ms. Beer. He indicated they were not planning on using the house as a rental. The property has been completely landscaped. The problem with the enclosure was inherited and they are just trying to rectify the issue.

Ms. MacDonald reviewed the conditions of approval.

Mr. Alexander 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 PL130225/ZUP13078 subject to the following conditions:

1. All parking on the site shall take place on paved driveway surface only.
2. Any on street parking of vehicles for residents or guests to comply with limitations of City Code Chapter 19- Motor Vehicles and Traffic.
3. All vehicles parked on the premises must be actively registered and in operable condition at all times.
4. Landscaping in yard shall be continuously maintained with any dead landscaping removed and replaced immediately.
5. If there are any complaints arising from the use permit that are verified by a consensus of the complaining

party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing set to re-evaluate the appropriateness of the use permit. In the event that the use permit is revoked per the process outlined in the Zoning and Development Code; the required parking shall be provided behind the front yard setback with the potential to convert livable space back to a carport or garage.

6. Obtain all necessary building clearances for the enclosure.

-----

14. Request approval for a Use Permit to allow Resale Retail of used electronics for **UNION PLAZA – GREAT DEAL RESALE LLC (PL130220)** located at 1438 North Scottsdale Road. The applicant is Joseph Chrisman.

Mr. Chrisman was present to represent this case.

Diana Kaminski introduced the case. The property is located on the west side of Scottsdale Road within the existing Union Plaza Shopping Center. The applicant is requesting use of a suite that is about 800 square feet, located toward the southern end of the property. The business would be for an electronics resale business. Customers would be able to sell used electronics to the business owner. The business owner would sell the items online or to customers. The business would be a one person operation. Business would be conducted by appointment only. The doors would be locked for security. A second-hand resale license requires the product to be held prior to resale. The regulations are the same as a pawn shop. Staff received two calls of concern regarding the application. The applicant is new to this business. He is coming to the Hearing Officer prior to opening his shop. There are no calls for service specific to this use. Activities within the area, calls for burglary and theft that might include electronic equipment may be a concern to residents. A security plan is required for the business. Staff is recommending approval of the Use Permit with conditions of approval.

Ms. MacDonald clarified that the Use Permit was for a resale retail license not a pawn shop.

Mr. Chrisman stated he would not be purchasing items with cash on site. Products would be purchased with checks for safety purposes. His business would provide an opportunity for citizens to resale electronics in a regulated environment.

Ms. MacDonald asked Mr. Chrisman to explain the process for purchasing electronics.

Mr. Chrisman stated he advertises in different ways. He would like to have a fixed location where people can come to him to sell the electronics in a secure environment. He feels there are a lot of people that have electronic devices they no longer use. There is a huge market for those second-hand items but many people don't ever deal with it. By providing cash for the used electronics it will help that shopping center and the local businesses. If items are sold by retail sales they would be by appointment only. A majority of the sales would be handled on eBay.

Mr. Chrisman agreed to the conditions of approval.

Ms. Justus resident of Tempe and President of the North Tempe Neighborhood Association liked the things Mr. Chrisman had to say right now. She would like to caution Mr. Chrisman of some of the issues they have. She would also like to ask for a six month review of this business. The neighborhood has a real problem in that area with crime. There have been several arrests. A property detective was present at a recent NTNA meeting along with a crime prevention officer. The neighbors were informed that there have been a lot of problems in south Scottsdale and north Tempe with burglaries. They are primarily taking electronics. In Scottsdale vehicles have also been stolen from driveways. Scottsdale is on high alert. Tempe is starting neighborhood watch programs in the community. Ms. Justus wanted to know if Mr. Chrisman will be recording the serial numbers for items he purchases and sells. She feels it is important to have a tracking mechanism to record the electronics. She stated his business is similar to a pawn shop. She indicated there are also problems in the community with the recycling centers. Some of the stolen items are sold for scrap and end up in recycling centers in the County

Island. She is glad the business is required to have a security plan through the Crime Prevention Unit. She is also glad the business is required to obtain a second-hand dealers license. She does not want the applicant to be involved with the burglary ring in the community. She does not want this business to be a mechanism to increase the crime in the community.

Mr. Carraway, lives in Cavalier Hills, directly across from the location of this business. He noted the hours for the business are listed as 8:00 am – 7:30 pm. He asked if Mr. Chrisman would meet clients after the regular business hours. He stated Ms. Justus covered most of the issues he was questioning. He noted the huge problem with burglaries in the area. The type of electronics Mr. Chrisman wants to purchase is exactly what is being stolen, iPads, computers, and cell phones. Having this business at this location is perfect for criminals. He wants to make sure the business is treated like a pawn shop even though it is not a pawn shop. When people are bringing you merchandise to buy and resale that is basically identical to a pawn shop. He wants to make sure there is a security plan in place and that the applicant understands the conditions of approval.

Mr. Chrisman understands the concerns. He lives in south Scottsdale and knows how crime in the area affects the neighbors. A lot of the crime is already happening. There are pawn shops up the street and plenty of other places for people to sell items versus going to a regulated business. A place like his will be secure. He will not be paying for items with cash. He will be recording the serial numbers for items purchased and sold. His business will be a deterrent to criminals. By having his business in the neighborhood it isn't necessarily going to increase the rate of crime that is already happening in that neighborhood. Photo surveillance will be implemented on the premises. Mr. Chrisman agreed to return to the Hearing Officer for a six month review of compliance for the business. He is confident his business is not going to increase the crime rate in the area. He does not want to be personally dealing with someone who is stealing items. He believes there are plenty of people who want to sell their items in a legal and secure way. Mr. Chrisman added he would follow the guidelines for the hours of operation.

Ms. MacDonald added condition number 8 which reads: The applicant shall return to the Hearing Officer for a six month review of compliance on January 21, 2014. This will give the neighbors some satisfaction as to how the business is operating.

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 PL130220/ZUP13076 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact Tempe Police at 480-350-8749 before August 16, 2013.
6. Hours of operation to end no later than 7:30 p.m. on a daily basis.
7. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.

8. **The applicant shall return to the Hearing Officer for a six month review of compliance on January 21, 2014. (Added by the Hearing Officer)**

-----

6. Request approval for a Use Permit to allow a Reception/Event Hall with live entertainment for **RIO SALADO CENTER - ELEGANT RECEPTION HALL, LLC (PL110435)** located at 1290 North Scottsdale Road, Suite 120-122. The applicant is Arnaldo Matos.

Arnaldo Matos was present to represent this case.

Ms. MacDonald stated the existing Use Permit was conditioned for 18 months. The use required a review. This hearing was required to determine whether or not the Use Permit should be continued.

Diana Kaminski introduced the case. The property is located on the west side of Scottsdale Road, north of Curry Road, south of Weber Drive. The site is a large commercial shopping center. There are some other retail and light industrial office uses surrounding the property. Multi-family residential is located to the west and the north, single family residential is located about 300 feet away from the site. The business has been in operation for a year. Parking is available within the entire shopping center; it is a shared parking model. The former Use Permit basically terminated as of one year. This is an application for a new Use Permit. The applicant was required to apply for a new Use Permit after one year, at no additional expense. Originally the Use Permit was conditioned for 18 months. The decision was appealed. City Council granted the Use Permit for one year.

The applicant had made a request to extend the hours from what they were previously approved. Staff has conditioned to have business hours of operation from 6 am-2 am. Live entertainment hours would end at 10pm Sunday – Thursday, and end at midnight Friday and Saturday. Events shall end at 1:30am to allow thirty minutes for clean-up after events.

Staff has reviewed the calls for service within the last year. There were 111 calls for service for the entire center. Fourteen of the calls could be attributed specifically to this business during their hours of operation. Six of the complaints were for loud noise, two complaints for fights, and two complaints for family fights, three threats and one assault. Staff has received several emails, eight letters, two phone calls and a visit from a resident concerned with how the business has been operated in the past. Residents are present to discuss the conditions.

Ms. Kaminski would like the applicant to discuss the management of the facility. When the facility is leased out the security should be provided by Elegant Reception Hall for all activities. Lease of the space for events shall not allow separate security companies to oversee events. Staff is recommending approval of the Use Permit for live entertainment.

Mr. Matos, Property Owner from San Jose, California is seeking new management for the business. He is presently in negotiations and looking for someone with more experience. Lately Elegant Reception Hall has been losing business due to the neighborhood complaints and calls for Police service at the site.

Ms. MacDonald stated it was her understanding that 14 of the calls for service in the past year were attributed to the Elegant Reception Hall.

Mr. Matos stated he did not see anything on the reports related to Elegant Reception Hall.

Ms. Kaminski reviewed the Police Report that was provided by the Tempe Police Department. The Police Department highlighted the incidences that they could directly attribute to this business. It is a large center and there are a lot of other businesses in the center. The 14 cases read were attributable to this business either because of the time of day they occurred or by the reports that were taken by the officers.

Ms. MacDonald reviewed the Police Report.

Ms. Kaminski stated the security plan outlines the number of security staff required based on the number of people in attendance and up to 300 people which is what they allowed by occupancy. Three security staff inside and two security staff are required in the parking lot during events. If alcohol is being served the security is increased to four security staff inside and two in the parking lot. Alcohol would only be served if there was a licensed liquor provider on site for events with a third party vendor.

Mr. Matos stated he just replaced the interior and exterior cameras on the premises. He likes to have the recorder to know what is going on since he lives in San Jose. He is able to see what is going on at the establishment with his phone or the internet.

Mr. Matos agreed to the conditions of approval.

Robert Ferraro, City of Tempe Police Officer was present to answer questions. He is currently assigned to the Central City Bureau which encompasses the downtown bar district. He works with security plans and the Crime Prevention Unit. He made one correction regarding the Police Report recording. The calls for service included in the packet are correct. If there is a vehicle or subject stop in the area officers will use a physical address for safety reasons. The Rio Salado Center is a large center, this one address attributes for many calls. Mr. Ferraro went through all the highlighted calls yesterday. He found that all of the calls for fights, threats, and assaults were not related to the business. The calls were related to Goodwill, the gas station, and the parking lot. The only calls attributed to the Elegant Reception Hall were the loud noise calls. From June 1, 2012 – July 15, 2013 there were 10 loud music or noise calls. Two of the calls were documented on a Police Report. In the other instances the officers got with security and the call comments reveal that Elegant Reception Hall turned the music down. No criminal reports have been taken regarding the noise and no security plan violation has been taken.

Noise complaints are investigated under reasonableness. Tempe City Code Sec. 20-11 Reads: Unnecessary noise. (a) Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person without justification to make or continue, or cause or permit to be made or continued, any unnecessary, excessive or offensive noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

The Tempe Police Department use to investigate noise complaints under the same ordinance but a different section related to decibel level. The Prosecutors Office had issues with that because the Police Officers were not trained in evaluating sound. The Prosecutors Office made the determination that the Police Department would need to investigate under Tempe City Code Sec. 20-11.

The officer will respond to the complainants address, and determine if it is reasonable noise coming from that location. The time of day or night, the tone and bass of the noise are all taken into account. Then the officer will make the decision based on factors determined in the City Code.

One security plan violation was forwarded to the City Prosecutors Office dealing with traffic cone placement. There is a specific traffic cone placement in the security plan. Traffic cones shall close the driveway on Weber Drive (facing Sunset Drive) after 8pm. When the officer responded to the call he noticed there were no traffic cones. The Police Officer wrote up a report and forwarded it to the City Prosecutors Office. They are waiting to see if charges will be files.

Ms. MacDonald asked Officer Ferraro if he believes the applicant has operated in good faith.

Officer Ferraro stated the Police Department does not want to state if they are in favor or against businesses. They will only speak to the calls for service. He wanted to explain that there are 111 calls for service at this location. However, when you look deeper into the actual calls for service, you find that only 10 are attributed to this location and they are all regarding noise.

Thomas George is the business owner of Mijana Restaurant and Hookah Mania in Rio Salado Center. He has had problems in the past with the neighborhood association. When he had a teen club there were a few people that were always against the business that he ran. Those same people will be here today speaking against the banquet facility. The teen club shut down due to the lack of business. Mr. Matos has cleaned up his property. In the past the neighbors stated there was drug activity, homelessness, prostitution, and crime in the shopping center. Mr. George asked if it is better to have a business that is established or a business that is closed down. When he had the teen club he also had numerous noise violations. There were never any reports just service calls. There were one or two households that complained about the noise. He believes the household complaining belongs to Lane Carraway and Paul Dunham. He read a complaint letter he received from Mr. Matos that he feels is unrealistic regarding the noise and vibration from the music coming from the reception hall.

Lane Carraway spoke in opposition of the Use Permit to allow live entertainment. Mr. Carraway wanted to know how a permit could be granted without knowing what type of management the business has. He stated two weeks ago he went down to the establishment because the bass was so loud. He introduced himself and the employee recognized him as the person who always calls to complain about the business. The conversation went downhill from there. He feels he has tried to make some type of professional bridge with the business but feels it is not working and they do not care. Mr. Carraway stated the business was not open until mid-September. From June – September there was no business. The reception hall is only open on Saturdays. As far as calls for service, ten is incorrect. He has had numerous Police Officers come to his home. The security plan has not been followed. Mr. Carraway indicated he brought the cones for the security plan to the Police Departments attention. He has never seen a security person walking the parking lot either. He feels the City of Tempe Police Department does not do their job. The owners of the business do not do their job either. He also indicated the establishment tried to have a stripper night twice. The City of Tempe Police Department gave them a get out of jail free card. He does not feel this is a family oriented business. Mr. Carraway wanted to make sure Ms. MacDonald had the stack of letters in opposition of the use permit.

Ms. MacDonald stated she did have a stack of letters in opposition of the use permit.

Darlene Justus resident of Tempe spoke in opposition of the Use Permit to allow live entertainment. She stated one of the stipulations for a Use Permit is that there is no nuisance arising from the emission of noise or vibration. There is vibration when the bass of the music is played real high. The vibration causes the windows to rattle and shake. She stated her concern of the Use Permit being issued without a manager to run the business. The cones have not been properly placed in the parking lot as required in the conditions of approval. There has also been a debate regarding the number of security officers at the site and within the parking lot. The reception hall has been a continuous problem for the neighbors who live nearby.

Paul Dunham resident of Tempe spoke in opposition of the Use Permit to allow live entertainment. He noted the numerous conditions of approval. Mayor Hallman, the City Council and Darlene Justus came up with the 19 conditions of approval. Mr. George, Mr. Matos, his son and Ms. Patty all agreed with the conditions of approval. In the past year they have not adhered to the conditions. Mr. Matos is ultimately responsible for the business. He brought up the character of Mr. George. Mr. Matos does not follow the security plan. It does not take an army of people to complain about the noise for something to be done. If the noise bothers one person something should be done. His home is approximately 300 feet from the establishment. The reception hall now wants to be open until 2:00 am. Mr. Matos wanted to meet with the owners of the bird sanctuary yesterday. Mr. Dunham was asked to join the meeting with a two hour notice. He was advised to have the City of Tempe or the Police Department present. Neither was available so he did not meet with them. Mr. Matos is asking their friend from the bird sanctuary to be the manager of the Elegant Reception Hall. He believes this is in hopes that they will no longer oppose the Use Permit for live entertainment or complain about the noise. He stated this has been a constant battle. If he is home he calls every Saturday to complain about the bass and the vibration. He believes there is only one security guard outside and there is loitering in the parking lot.

Mr. Matos stated Mr. George has nothing to do with his business. He is a tenant in the shopping center. Mr. Matos was here last Saturday to check on the activity at the Elegant Reception Hall. He was in the parking lot all night until about 1:00 am. The event being held on Saturday was a Quincinara. There were approximately 150 people present at the event. Two security staff were present inside and one outside. He felt the level of noise

was completely acceptable. This property has been a large investment for him. He does not want to disturb the neighborhood. It's the same two or three people calling to complain about his business constantly.

Ms. MacDonald stated typically the same people will be calling because they are the ones most impacted.

Mr. Matos stated he is here to cooperate with the City and the neighborhood. He is looking for a new manager and would like to bring more business to his establishment if possible.

Ms. MacDonald reviewed the Use Permit criteria. In this case there is the benefit of a track record to consider and determine whether this applicant has truly complied with the conditions of approval. Looking at the calls for service and the nature of the calls she does not believe they have met the criteria outlined for a Use Permit.

1. Traffic generated by this use should not be excessive.
2. Will this business create a nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions?  
Ms. MacDonald believes the record based on calls for service to the Police Department and antidotal evidence from the neighbors the business does generate an unacceptable noise and vibration level.
3. Will this Use Permit contribute to the deterioration of the neighborhood or downgrade property values?  
Ms. MacDonald stated that you could argue that the deterioration of the quality of life in your home or in your backyard is definitely a deterioration of your neighborhood. She believes this Use Permit will contribute to the deterioration of the neighborhood.
4. Is this use compatible with existing surrounding structures and uses?  
She believes it has clearly demonstrated that this use at this particular location is not compatible with the existing residential neighborhood.
5. Will this business or will this use have adequate control of disruptive behavior both inside and outside the premises?  
She believes this operator has not done a good job adequately controlling the behavior both inside and outside the premises. Given the fact that he is an absentee owner and does not have a manager on staff who can speak to how the security plan will be implemented, it would be hard to find that there would be adequate control.

**DECISION:**

Ms. MacDonald denied the Use Permit for live entertainment for Rio Salado Center – Elegant Reception Hall, LLC PL110435/ZUP13072.

-----

7. Request approval for a Use Permit to allow a drive-thru for a **RESTAURANT (PL130084)** located at 1420 North Scottsdale Road. The applicant is Darin Sender.

**Continued from July 2, 2013**

Ms. Sender was present to represent this case.

Sherri Lesser introduced the case. This request was originally advertised in April earlier this year. At that time the request was for a Filiberto's Restaurant with a 24 hour drive-thru. Since that application they have had several continuances. The property owner is requesting the Use Permit now. He is seeking a new drive-thru restaurant. He wants limited hours. The drive-thru would only be open until 11:00 pm. The site plan has also been modified. The site is located on the west side of Scottsdale Road between McKellips Road and Weber. The building was constructed in the late 60s. It was a Pizza Hut Restaurant. Over the years different restaurants have occupied the building. The building has been vacant for the last 3-5 years. Staff recommended denial on the project in April. There is no formal cross access agreement and the proximity to single family residential is an issue. There is only one other example of a restaurant in Tempe with a drive-thru that backs up to single family so closely. The applicant has come forward with another site plan which does

resolve the cross access issue. The new site plan brings the drive-thru cueing lane closer to the neighbors. Staff is still recommending denial of the Use Permit. The intent of this building was for a walk-in restaurant. It was never designed for a drive-thru. If the building were raised and it was redesigned a drive-thru could work. Ms. Lesser noted an additional email received from Mr. Schuck this morning was given to Ms. MacDonald.

Ms. MacDonald noted she had the email from Mr. Schuck along with several other letters provided to her.

Ms. Sender, Sender and Associates, was present representing Mr. Loxas, the property owner. The property is not directly adjacent to any residential. There is a 50 foot drive, parking lot area for the Budget Rent A Car directly west, a large parking area behind the Union Plaza shopping center to the north and the north west, and a 12 – 16 foot alley. The west property line is 50 feet from the wall of the nearest resident. The menu board would be about 135 feet from any residential area. The location is primarily commercial and industrial development. There is some Multi-Family Residential in the neighborhood and a few commercial hotels. Tempe is landlocked. All we have left is redevelopment, reinvestment and rehabilitation of our sites. Mr. Loxas bought the property in 2007-2008 as an investment. He would like to rehabilitate the property. It has not had a tenant in it since there was a fire. There was some damage done and unfortunately the contractor hired did not get permits. Those issues will need to be taken care of. They have been trying to get a tenant into the property. They do not want to cause problems with the neighborhood. The proposed drive-thru hours would be from 7:00 am to 11:00 pm. There is a lot of reinvestment going on in the area. Mr. Loxas needs to rehabilitate this building. It is sufficiently structurally sound. The property is 14,000 square feet. The building on the property is approximately 1,700 square feet. It lends itself to only a very few types of tenants. They feel they meet the Use Permit criteria for the drive-thru. There are a lot of examples of drive-thru restaurants throughout Tempe that are much closer to residential than this site. (Ms. Sender gave several examples.) Proper buffering will help control the noise. An 8 foot block wall would replace the existing chain link fence at the rear of the property along with some landscaping. The menu board would be located approximately 135 foot from the nearest residential fence.

Karl Kreiling resides behind the site for the proposed drive-thru. He spoke in opposition of the Use Permit. He has lived in his home since 1987. He used to go to the restaurant when it was a pizza place. The site is a very small property. He has driven there and parked on the north side. He does not see how you can have cars parked there and have enough space for a drive-thru. The new wall would only help the house directly behind the site. It would not help the other neighbors up the street. The entire fence behind Union Plaza used to be much higher. The transient population knocked down the original wall. When the wall was rebuilt it was not as high. Most of the landscaping along the back of the property has died. There is a significant amount of noise from the back parking lot. He appreciates they are trying to make an investment. He feels they are trying to put a square peg in a round hole trying to make money off something that shouldn't be in that site.

Ms. MacDonald asked Mr. Kreiling if he thinks he will hear the noise from the drive-thru if the speaker is facing south.

Mr. Kreiling stated he was almost positive he would hear the noise from the drive-thru. They can hear just about everything going on in the back parking lot. He stated he would also be against outdoor seating. Darlene Justus stated the neighbors do not want to prevent a successful business at this site. The building was not built to be a drive-thru and it is extremely close to the neighbors. There are other drive-thru restaurants along Scottsdale Road but they are buffered from the neighborhood. This could be a real problem. She suggested other ideas for this site that would not need a drive-thru. Her suggestions included Papa Murphy's, Baskin Robbins, Jamba Juice or a Yogurt Shop. The applicant wants to adapt this small place to make it a drive-thru for an unknown business. The building has been in disrepair for quite some time. The neighbors have tried to help make the building look better by replacing and painting the boards on the windows. The neighbors would like to see a business open at this location without a drive-thru. The menu board speakers, cars, and car radios are going to be a nuisance to the neighbors. The building was not designed for a drive-thru and it is not really adaptable to be there.

Lane Carraway stated they do not want to run anyone away. The neighbors would like a business that the neighborhood could use. Mr. Carraway stated he has received numerous phone calls and emails the last few weeks from neighbors trying to figure out what is going on at this site. He met with Ms. Sender yesterday. The

biggest concern is the unknown of what is going to happen here. The site is too small for a drive-thru. If there is a drive-thru at this site, cars will be cutting through the back alley. The lower rebuilt walls behind the center caused a nuisance for the community, with people in the back loitering. The owner has not taken a true interest in the place. He has had the property for years and it has sat there unoccupied. He tried to put a 24 hour title loan in at this location. He is trying different avenues wasting time. The property owner should try to focus on something the site is built for or tear it down and rebuild. There is not a lot of trust with the neighborhood.

Ms. MacDonald stated the property owner is trying to get the property developable and marketable for users.

Paul Dunham is in support of a business at this location, but not a drive-thru. The property owners will be affected in a negative way by the noise from the drive-thru. The existing chain link fence is not an acceptable buffer. The conditions now include a block wall and landscaping to be used as a buffer. A drive-thru at this location will also be very crowded with the parking. The alley traffic will be increased with a drive-thru located at this site. There are lots of businesses that could be successful at this location without a drive-thru.

Ms. Sender stated we need to keep in perspective that a restaurant is permitted on the site by right. With a drive-thru at this location you are allowed to stipulate the hours, buffer wall and landscaping. There is a demand in this area for drive-thru restaurants. They do not currently have a tenant. She feels the drive-thru use is needed before going out to the market for a tenant. She understands there are problems in the area. Activating a site like this will be better for the back of the shopping center and the community. We need to adapt. The property owner has been trying to find a tenant for the site. The speaker on the menu board will be small, it is not a pa system. The newer speakers used for a drive-thru are sufficiently monitored so that the noise is focused on the driver. Quick service restaurants get people in and out. The cars on the site will be there regardless. They would love this opportunity to obtain this Use Permit with the stipulations as attached.

Ms. Sender agreed to the conditions of approval.

Sherri Lesser added condition of approval number 8 which reads: The menu board shall have a digital read out panel to reduce the amount of dialog.

Ms. MacDonald stated she wished she had a greater comfort level about what the use was going to be on the premises here. It would certainly help to know who the operator was and what the specific use was going to be. It would put the neighbors at ease if they knew what type of business would be occupying the space. The applicant is trying to revitalize a dilapidated property. This type of application takes a leap of faith on the part of the City, the neighbors and on the applicant. She is going to give the applicant the benefit of the doubt in the hopes that they find a good quality operator to bring to this area.

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 PL130084/ZUP13020 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. The site plans shows the driveway on the north side of the building as the point of access to the parking area to the rear of the building. The drive thru cue lane starts from the rear of property, between the parking spaces, heading east toward Scottsdale Road abutting the south side of the building. The menu board is to be located in the landscape island behind building and pick up window on south side of building. The south driveway to accommodate all exiting from the site, the drive thru lane and fire lane. Any additions or modifications may be submitted for review during building plan check process.

3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
5. The Property Owner shall replace all dead or missing trees along the street frontages (minimum of 1 tree per 30 linear feet of street frontage) and within the existing required landscape islands within the parking lot.
6. Replace the existing chain link fence at rear of property with an 8 ft. masonry wall and a landscape buffer along property line.
7. Drive-thru hours limited to 7:00 am - 11:00 pm
8. **The menu board shall have a digital read out panel to reduce the amount of dialog. (Added by Staff)**

- 
11. Request approval for a Use Permit to allow a Tobacco Retail Hookah Lounge for **BROADWAY CENTER – VERTIGO HOOKAH LOUNGE AND CAFÉ (PL130216)** located at 1320 East Broadway Road. The applicant is Ali Alsharif, Al Fayhaa LLC.

Mr. Ali Alsharif was present to represent this case.

Diana Kaminski introduced the case. The applicant is requesting a Use Permit for a Tobacco Retailer which includes Hookah Lounges. The property is located on the north east corner of Dorsey Lane and Broadway Road in an existing commercial center. The site is the former location of the Horse & Hound Sports Bar. The suite is being subdivided. The suite has been reviewed by Building Safety with regard to restroom access. They are required to do some modifications to the interior of the suite to accommodate doors for the ventilation system required for a hookah lounge. Staff has not received any calls or inquiries from the public on this request. The applicant is familiar with the conditions of approval, specifically the requirements of Building Safety for the mechanical system and the changes to the interior for access to the restrooms. Staff recommends approval of the request for the Use Permit for tobacco retail.

Ms. MacDonald asked how this business was going to function with a good outcome when there is space between the two suites. One space is for a bar and the other is a hookah lounge. The restrooms are shared. There will be easy access between the two uses. She stated her concerns keeping the customers from going to one establishment to the other.

Ms. Kaminski stated that was a concern staff had without knowing what the adjacent suite would be. Knowing that it had a liquor license in the past, it has that potential to become that use. There is a condition for security at the door to verify age for tobacco sales/consumption. If the other side is a restaurant it would be open to anyone of any age. If it were a bar there would be additional security for 21 and over. She would like the applicant to address the intention of the additional suite. At the time of writing the report Ms. Kaminski was unaware of the intent.

Mr. Alsharif indicated the additional suite will be a restaurant. There will not be any liquor. He is from Saudi Arabia. Alcohol is prohibited in Saudi Arabia for religious reasons. There will be a juice bar in the restaurant. Both spaces will be occupied by the applicant. The access near the restrooms will be controlled.

Ms. Kaminski stated the hookah lounge would require a security plan because of the hours of operation, as well as the fact that it is a business that does not allow minors. Sale of tobacco is restricted by age and therefore requires additional security. This application is specifically for the hookah lounge. There are not any conditions in the report restricting the other suite to not apply for a liquor license. The intent of the suite next door may need to be addressed.

Mr. Alsharif stated the restaurant would be open until 10 or 11 pm. The door would be locked to the restaurant

at that time. The restaurant will not be fully operated. Sandwiches will be available in a to-go box until the hookah lounge closes.

Ms. Kaminski suggested the condition related to the intensification or expansion of use could be extended to the adjoining suite. If the restaurant operator changed and the new operator applied for a liquor license it would be considered an intensification.

Mr. Alsharif stated the establishment is rented as one place. There is a wall that separates the two businesses. The contract states the suites cannot be rented to another party. The businesses have one operator, but will be operating under separate business names.

Ms. Kaminski indicated both businesses would be under separate suites and would be given different addresses. A mechanism is needed to address the intensification if the adjacent suite were to change use. Restaurants are allowed to apply for a series 12 liquor license. If the suite converted to a bar they could apply for a series 6 liquor license.

Ms. MacDonald would like to continue the case for two weeks. She would like staff to work with the City Attorney's Office to sort out how the business with one owner and two suites with two different uses should be addressed.

Mr. Alsharif agreed to return to the Hearing Officer on August 6, 2013.

**DECISION:**

**Ms. MacDonald continued PL130216/ZUP13073 to August 6, 2013.**

-----

9. Request approval for a Use Permit to allow a Bar/Restaurant with live entertainment for **HAVANA CABANA BAR & GRILL (PL130198)** located at 1001 East 8<sup>th</sup> Street. The applicant is Francis Massimiano, MBM 101 LLC.

Ms. Sender, Sender and Associates, Mr. Francis Massimiano, and Mr. Scott Mossimiano, Property Owners were present to represent this case.

Diana Kaminski introduced the case. The property is located on the south side of 8<sup>th</sup> Street, east of Rural Road, south of University Drive. Over the years there have been a series of taverns, restaurants and bars at this location. The outdoor fountain was converted into an outdoor bar. They do have an interior stage contained within the building. There have been several remodels to the property over the years and they have had Use Permits for live entertainment in the past. Recently the owner, who has been the owner since 2010 worked with Spike Television to do a rehabilitation of the property. It was primarily a facelift but they are also proposing a modification to the use as far as how the business is managed and operated on the site. In looking at the conditions of approval from the 2010 Use Permit, staff determined there had been noncompliance in several cases. It was decided to bring it back to the Hearing Officer for a new Use Permit for live entertainment with the conditions of approval modified to address concerns on the site.

Ms. Kaminski read into the record the proposed times of business as well as the public input and calls for service for the property. The applicant is requesting live entertainment until Midnight Sunday – Thursday, and 1 am Friday and Saturday. The police calls for service over the past year include: 10 fights, 5 assaults, 1 liquor violation, 10 loud noise complaints, 1 criminal damage, and 1 subject disturbing and harassing. This year we have had 1 assault and 6 loud noise complaints. Some of the cases where there have been fights could be attributed to the security of the property where they were calling police for assistance.

Ms. Kaminski received a petition with 18 signatures in opposition of the Use Permit for live entertainment. She also received 8 emails from 7 individuals as well as several calls of concern from residents in the area who have

had experiences with the loud noise, loitering and other activities within the area. Staff is recommending approval of the Use Permit with the conditions of approval stipulated. This is being done to provide the property owner the opportunity to operate with the new proposed use. The largest issue is the calls for service for noise. The residents are fairly close to this site. Live entertainment is typically for indoor entertainment. In this case the bar is outside, the stage is inside. There is a garage door that was added. The establishment likes to have the garage door open so people at the bar can see the performances going on. Staff has conditioned the garage door can be open during live entertainment, but if there are calls for service the door be closed. This is an attempt to mitigate the noise issues that have occurred there in the past. There are several members of the public here to speak on this case.

Ms. Sender is representing the owners of the property and the bar Havana Cabana. They understand staff is recommending approval of the Use Permit. They have talked to staff and some of the neighbors regarding the conditions of approval. This site has been a bar since the 1970s. There has been live entertainment allowed with Use Permits since the early 1980s. This establishment was not on the city's radar until Bar Rescue came out. The clients bought the property and the bar in 2010. The property owners had a little bit of a rocky time when they started operating. A few concerts and events were held and they were not able to control the noise. Since then in 2012-2013 the bar has done a complete turnaround. There has been a significant reduction in the police calls for service. The numbers Ms. Sender has for calls for service are lower than the numbers Ms. Kaminski reported. She also did not have any evidence of liquor violations on the property in 2013.

There were some issues with the building permits that were inherited. The owners are working with the Building Safety Department to resolve those issues. The bar was primarily used for concerts and events in the past. They are focusing on being a local community location where people can come and hang out. Bar Rescue did not get permits for some of the work done. The work included painting the building, and changing the signs. The manager of Four Peaks has taken them under their wing and helped with operations. He believes they property owner had a rough time getting started but has turned the operation around and is doing a great job. Steve Lynch from Four Peaks Brewery has written a letter of support for Havana Cabana. A sound engineer has also been hired to work on the noise issues. Most of the complaints from the neighbors are related to the noise.

Ms. MacDonald asked Officer Ferraro if someone called from their condo to make a noise complaint if the complaint would be attributed to the condo or the bar next door that they are complaining about.

Officer Ferraro stated it would depend on the situation, but it could be deciphered. He went through the attributable loud noise complaints. The dispatchers enter the bar address for the complaint, if they do not know the address it would be entered under the complainants address as the location, with a comment who they were complaining against.

Ms. MacDonald asked Officer Ferraro for the number of noise complaints for Havana Cabana.

Office Ferraro stated he could only attest to the numbers that he ran using the address 1001 East 8<sup>th</sup> Street. Starting from June 1, 2011 – July 15, 2013 he had 40 noise calls for service related to the business. Disposition Codes: 7 of the 40 calls were documented on police reports. Of the 40 calls, there were 11 different callers and 5 different addresses attributed; some of the addresses were anonymous. In 2012 there was a spike in calls for service. A lot of that was due to high intensity stops by patrol squads. They could have been making contacts for the State Liquor Task Force, the Gang Squad or the Central City Unit. Due to the volume of calls for service the Police Department stepped in and started making contacts to anyone who may have been walking in the area. A lot of the calls for service are subject stops and vehicle stops. The Police Department was making their presence known. Ms. Kaminski is correct in the breakdown of assaults and fights. In 2013 the subject stops are attributed to the business.

Ms. Sender stated the bar did have some trouble in 2010, 2011 and early 2012. The last 12 months have been significantly better. Of the calls Officer Ferraro mentioned in 2013 she believes there were 8. Six of the calls were for noise, and several of them were placed on nights the establishment was not open. There are a lot of other noise sources in this neighborhood. There are swimming pools located in student housing complexes or condominium complexes. There is another bar located up on University. Occasionally the other bar has outdoor

concerts, outdoor music or live entertainment. It is difficult for anybody to find out where the noise is coming from. She has talked to many of the neighbors about making sure the noise level is down. Havana Cabana has a security plan. One of the neighbors suggested a good neighbor policy be implemented. She believes that would be a great idea for the bar. It gives everyone the manager's phone number and the owner's cell phone number so they can contact them if there are any issues. The property owner needs to know if there are any problems. The bar is going to be in charge of all the security, the music and the facility making sure the noise does not travel off the site.

The goal here is to keep operating the way they have over the last 12 months or so. Keep reducing the calls for service from the Police Department, and reducing the sound so it does not travel. The neighbors have a right to not be disturbed by the noise. The property owners will do everything they can and comply with the conditions of approval. The conditions of approval include a six month review.

Tracy Bruner has a residence in Tempe at El Adobe next to Havana Cabana. She spoke in opposition of the Use Permit for live entertainment. She stated the complaints have shot up since 2005. The reason the complaints are down right now is because the bar is not open that often. If the establishment is open seven days a week the noise complaints are going to go up. The bar is an open air area for concerts. The bar will most likely open the garage door for the patrons. A lot of the complaints are not reported. She has witness public urination, and loitering but has not reported the incidences. She is also concerned about the safety issues in the area. Strange people tend to hang out right outside the Havana Cabana. Vehicle and pedestrian traffic will also increase. This will cause a problem for all the students trying to get to the light rail and the university. As a real estate broker she is required to tell potential buyers that live bands perform at the establishment. Most of the people are looking for their students and the fact that live bands play nearby discourages the buyers. This causes a devaluation of the property.

Amanda Clayton is a resident at El Adobe Condominiums. She has been an owner for about seven years. She has seen the transition from Dos Gringos, to Rocky Point and now the Havana Cabana. As an owner/occupant she rents to tenants. The Use Permit for live entertainment is bad for her business and bad for her safety. The noise keeps her up at night. She is a master student at ASU. She has to walk from the light rail station past the bar. She has been verbally harassed walking by and from her patio from bar patrons. She would like a friendly neighborhood bar. She is excited to hear they are trying to make improvements. Since 2013 she has made noise complaints. She has heard loud music until 2 am on school nights. The volume of the noise is unacceptable for the neighborhood. They deserve better.

Chuck Buss, Tempe resident, was not present. Ms. MacDonald read his comment card. He would like the conditions to include the doors to remain closed to keep the music inside.

Kaelee Wilson is a resident of El Adobe. She stated the bar is surrounded by residentially zoned properties. She is in opposition for what the bar has submitted. She believes there should be a time limit for live entertainment on weekdays until 10 pm and she believes the garage door should be closed during the live entertainment. This is an incompatible land use with the surrounding residential zoning districts. She personally reached out to the two apartment complexes on the south side of the bar, University Heights and Crossroads. Neither apartment complex was notified of the proposed Use Permit. They are both in opposition and were supposed to send a letter. There was a previous approval in 2010 for live entertainment. It was conditioned the applicant cease all live entertainment at midnight. She stated there have been 40 noise violations after midnight since 2010, which is when the applicant has owned the bar. There have also been 6 gun violations, since 2010. The establishment has been in violation of the 2010 conditions of approval. She is questioning why the bar would be granted more allowance when they have not complied by the conditions previously approved. There are other bars in the area and college parties. However, there is a difference between concerts and party noise. Other live entertainment Use Permits have been approved adjacent to residential uses but they have been in a completely closed facility. An 8 foot wall surrounding the premises would also be helpful as a buffer for the noise. She submitted some pictures of barstools and bar mats that have been thrown over the wall from the bar. The primary use of the live entertainment permit has been for a concert venue. The bar has only been open during concert hours. She believes the calls for service are down because the neighbors are fed up that no action has been taken and they have not had that many shows recently. She understands they must abide by

the City's noise ordinance. Why keep exhausting the Police Department when the situation can be handled prior to needing to call for service? The bar has not been a good neighbor since Fran has taken ownership of the bar. She would like to have a great neighborhood bar to hang out with her friends. Due to the patrons at the bar, she and her friends are afraid to walk to the light rail station at night.

Cheryl Wilson is resident of Gilbert. She is a real estate investor and President of the Home Owners Association at El Adobe. She owns 6 of the 48 condos at El Adobe. She is concerned about this proposal on many of the levels her daughter and other residents have mentioned. As an investor she is asked by prospective tenants if this is a quiet place. She believes having music on weekdays until midnight is unreasonable. Many students and young professionals live in this area. She believes 10 pm would be an acceptable time to end the live entertainment. She would like the bar to be a successful business but there has to be some compromises made. If the music is loud and the garage door is up she will get fewer tenants. This will cause a loss of income and it lowers the property values. Live concerts do not fit in near a residential area. She also worries about the safety of her daughters and the other tenants that live there. She has seen people jump the wall and come into their gated parking lot. There have been bicycles stolen, damage to the property, and excessive trash adding cost to clean up after the patrons. There has to be a really good security plan in place for the bar to be successful.

Jennifer Boblick, Sender Associates read a letter from Steve Lynch into the record. Steve Lynch is the owner of Four Peaks Brewery located east of the subject property.

City of Tempe –

Over the past few months it has been my pleasure to work with Scott Massimiano and family at Havana Cabana, formerly the Rocky Point Cantina. While I am well aware of the issues and concerns involving this venue in the past I can whole heartily say that I have complete faith and the conviction of the Massimiano family to instill nothing but the most sound business practices looking to the future. Owning a restaurant is a constant learning experience and I strongly believe the previous negative connotations, perceptions and problems can be put behind them as they look to grow with the community. Upon purchase of Dos Gringos by the Massimianos, it has been extremely difficult for them to overcome the hurdles both by the surrounding neighborhood and the City. The family is prepared to move forward and prove their willingness to turn the place around to the community yet the shadows of Dos Gringos remain. I know firsthand that there are finally some sound solutions in place to get the establishment moving in a positive direction and we at Four Peaks are willing to help in any way to keep our closest restaurant up and running successfully. We have seen many bars and restaurants come and go in our 16 years of operation. Dealing with the Massimianos has been a pleasure and their optimism for change and growth has been refreshing. We would certainly have no reservations inviting them to a long, prosperous and professional operation on 8<sup>th</sup> Street and the surrounding neighborhood. Thank you for your time and consideration in this matter.

Steve Lynch

Ms. Sender wanted to clarify the liquor license allegation listed by Diana from the police report was alleged and has not been proven. They have appealed that, there was no liquor license violation. There are a lot of places in this area that have parties and alcohol. There are student parties all over this area. There is another bar in the area and the patrons also park on 8<sup>th</sup> Street. The patrons in the neighborhood are not exclusively from Havana Cabana. This bar has been here since 1970. Most of the adjacent residential areas had been built out, rented or purchased after there has been a bar and live entertainment at this location. The owners understand they need to do better and they have been doing better. The bar has made some mistakes in the past and they are moving forward. The stipulations will attest to that. The property owners are working with businesses in the local area including Four Peaks to make sure they can do better. The business has been open during the week, so there will be increase in vehicle traffic. The bar has security officer outside. There will be additional security officers in the parking lots and around the streets watching the area.

Ms. Sender has seen the pictures from El Adobe. The Havana Cabana has been vandalized by residents partying at El Adobe. The tenants El Adobe also have parties with djs that go well past 2:00 am. There are

issues here that are broader in scope than just the bar establishment. None of the gun violations were attributable to the site of Havana Cabana. The establishment is going to be a bar that has concerts occasionally. Stipulations permit live entertainment of this matter from Thursday – Sunday. The hours are restricted in the Staff Report. The bar will have to comply with the noise ordinances. The focus of the establishment is going to be a bar open during the day for lunch and open in the evenings for happy hour. The live entertainment component is needed to draw the students, the community and the neighborhood in. Live entertainment is a big part of the business.

The Massimiano family is putting a large investment in this building. The structural issue with the portion of the second floor may cost \$2,000 - \$3,000 to repair. It is unknown if the insurance will cover the cost. The architect and the sound engineer have been hired. Without the live entertainment option and drawing people in from the community the bar may be shut down. A new security plan is being implemented with the Police Department to help improve the operations of the bar. It was a big wakeup call when Bar Rescue came in. The neighbors' concerns are valid. They have a right to private enjoyment of their property. Balance that against the business that has been here since the 70s that has had live entertainment in a community that was built up around it. We have got to balance those rights. The bar needs to do a better job as they have been and make sure they are a good neighbor. Ms. Sender requests that the Use Permit is approved with the stipulations. She believes the live entertainment is compatible with the area. The bar will be operated appropriately, and the neighbors' concerns will be addressed.

Ms. MacDonald stated this operator has demonstrated a track record throughout his ownership. The ownership goes back to 2010. There is a three year history on this property that has been less than impressive. Looking at the Use Permit criteria the operator of the bar has failed. Ms. MacDonald reviewed the Use Permit criteria.

1. Will this Use Permit create a significant increase in vehicular or pedestrian traffic?  
She does believe this will create an increase in vehicular and pedestrian traffic. Some of the documents illustrate occupancy of 450 for the business with only 75 parking spaces. The additional cars will be parked along 8<sup>th</sup> Street and in the neighborhood.
2. Will this business create a nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions?  
She believes a nuisance would be arising from noise, vibration, and possibly smoke from cigarettes. She is concerned that the larger part of this property is outdoors. It looks great but there is really no way to attenuate the sound. Raising and lowering a garage door to control the sound is not realistic.
3. Will this Use Permit contribute to the deterioration of the neighborhood or downgrade property values?  
She believes this clearly deteriorates the life style of the neighbors.
4. Is this use compatible with existing surrounding structures and uses?  
She does not believe the operator has proven this business to be compatible at this location.
5. Will this business or will this use have adequate control of disruptive behavior both inside and outside the premises?  
She does not believe the behavior has been adequately controlled. The volume of calls and the police reports are lengthy. When she drove the site on Sunday the parking lot was littered with trash and there was a guy sleeping on a white plastic chair.

**DECISION:**

Ms. MacDonald denied the Use Permit for live entertainment for Havana Cabana Bar & Grill  
PL130198/ZUP13068.

-----

10. Request approval for a Use Permit to allow a Reception/Event Hall with live entertainment for **POLLACK SOUTHWIND PLAZA – PARAGON DANCE AND RECEPTION CENTER (PL130203)** located at 931 East Elliot Road, Suite 101. The applicant is Mike Gadberry, Paragon Dance Center

Mike Gadberry and Connie Radoff were present to represent this case.

Diana Kaminski introduced the case. This property is located on the south east corner of Elliot Road and Rural Road in an existing commercial center. The property is adjacent to residential on two sides. The closest residence is approximately 70 feet away. This property was previously approved for a Use Permit for live entertainment. A reception center is allowed by right at this location. The live entertainment is the issue with having djs, karaoke or any type of entertainment as part of the reception. In 2005 the Use Permit was overturned by City Council. The business was sold in 2010 to a new owner/operator. The new owner was under the impression that they had all the permits they need to operate. It was brought to staffs attention that events were being held with live entertainment. The owners immediately submitted an application for the live entertainment Use Permit. Ms. Kaminski researched the calls for service since 2010. The site has been relatively quiet. Since April 2010 there have been two calls for noise during the last three years. Staff has received 10 emails, 1 phone call and a letter representing 3 residents. Ms. Kaminski also met with some of the residents that provided information from the 2005 case. Most of the situations where she asked for further clarification from the people in opposition have been related to whatever happened in 2005. When she asked if there have been any issues in the past three years the answer was "no". Based on the calls for service received and the analysis in the application presented by the applicant staff is recommending approval of the live entertainment Use Permit with conditions.

Ms. Kaminski reviewed some of the conditions of approval. Business hours of operation: 6 am – 2 am, Live Entertainment would end at 10:30 pm Sunday – Thursday, and midnight Friday – Saturday, Events shall end at or before 1:30 am, with thirty minutes for clean-up. Security would be on-site. Management would be on-site to clean up from events. There would not be third party providers for security or management of the events. The event capacity would be limited to 277 people maximum. There would be no valet parking off-site. The shopping center has a shared parking model. With the combination of uses and the times of day the different businesses are open there should not be any issues with parking on the site. The parking model will be updated so the list of the new tenants will be on record.

Mr. Gadberry stated the music is shut down between 11:00 pm – 12:00 am (midnight). They bought the business in April 2010. They have had two complaints. On April 2<sup>nd</sup>, one of the air conditioners went out and one of the attendees opened up a side door. He was out front doing security work and was unaware of the situation. As soon as he saw the door was opened he closed it. He does want to get along with the neighbors. The establishment is not a club. They will never host an event outdoors. The security hired for the functions have been active or retired MCSO, Phoenix Police Department or himself. They all have law enforcement experience. Mr. Gadberry has done sound decibel readings at the south property line which abuts the residential area. The sound level has been between 41 - 48 decibels. Sound checks have been also done on Vinedo Lane and they are somewhere between 28 – 32 decibels of ambient sound. There have been no complaints from the 91 residents that live in the Terramere Residential area. The distance from the back door to the property line is 67 feet; the east side door is 107 feet away from the property line. Most of the complaints are referenced to 2004-2005.

Ms. Radoff stated the sound system has been changed. The woofer has been placed far away from the door. Paragon has new speakers and a new sound system. They have been working with someone to help them mitigate the sound that would be emitted. The establishment has had two live bands in the last three years. Both occasions were fund raisers. She does not like having live bands in the studio. The live entertainment they need is the dj to play music.

Mr. Gadberry stated they are going to install a volume modulator which will only allow a limited amount of decibels to be emitted from the sound system. He and Ms. Radoff are professionals that want to get along with the neighbors. The business has been a large investment, the \$60,000 hardwood dance floor in the studio cannot be picked up and moved.

Jennifer Basinger is here representing the neighbors in the Carver/Terrace Neighborhood. She lives on Vinedo Lane, behind Paragon Dance Studio. She has resided there for over 11 years. The neighborhood was very involved back in 2004-2005 when this was represented as a dance studio by the previous owners. They do not

have a problem with the dance studio. The past owners decided to take it to the next level with live music and reception hall events. The reasons the neighbors opposed the events and the City Council had a mandate against it are all still in place. The proximity of the site from residential is less than 70 feet. The homes look good, but when you have loud music the windows on the back side of the house vibrate. When this case was tried before she was not able to sleep in her own house. She could also hear the music at her neighbor's house across the way. The music creates a nuisance not only on her patio, but also inside her bedroom.

She stated many of her neighbors took the time to express their concerns. Many of the neighbors have lived in the neighborhood for a long time and love the neighborhood. They are adamantly opposed to expanding this business from a dance studio to a live entertainment reception hall. She feels since this case was tried before there are certain overflow of activities that come from having over 400 people parting, in some cases drinking depending on the event up at 2:00 am in the morning. People are loitering, being noisy outside of the event, urinating, littering, and fights occur with that many people in hosting events. The neighbors all experienced the noise and the disruptions when this permit was looked at in the past.

The Use Permit was granted on a temporary basis back in 2005. That was based on bad information that was provided at the hearing. It was admitted at the Council Meeting that it was bogus information. The hours on the permit were to only go to 9:00 pm on Sunday – Thursday and 11:00 pm on Friday and Saturday. The neighbors were outraged and appealed the permit through City Council. Why would we be overturning a Council decision that was practically a mandate, a 6 – 1 decision that this is not an appropriate venue to have so close to residential neighbors who are opposed? She does not see what has changed since then that all of a sudden this type of activity would yield any different results. She knows there are new owners but the permits were not denied because of the ownership. The permits were denied for the reasons that she shared and it seems that those items are still in place today. The neighbors have concerns about going backwards and overturning this well thought Council decision.

Ms. MacDonald asked Ms. Basinger what her experience has been with Paragon Dance & Reception Center within the past three years.

Ms. Basinger did not know how there could only be two calls for noise complaints during the past few years, because she has personally called more than twice. For every legitimate call that is coming in there are probably 10 others that are not calling, do not have time or just get tired of calling. It becomes a bit ridiculous to call every weekend. The calls for service have not been as severe during the past few years as they were before. It doesn't mean that the neighbors do not hear the noise. Things have not changed much. She does not put much precedence in the calls to the Police Department.

Ms. MacDonald stated it sounds like the noise issues have been better since the new ownership but not completely silent, peaceful and serene.

Ms. Bassinger stated that was correct.

David Basinger stated this exact issue was visited in the past. There has been an ownership change, but the neighbors feel this is the same issue. It is his understanding if there was a new build out at this point there would be an adequate buffer zone required for a dance hall, live entertainment or other events. He is not against Mike or Connie. He enjoys music and dancing. He does not have any issues with the dance studio or the dance lessons. He is in opposition to opening this establishment up to 400 plus people with a possibility of renting this out to third parties and the activity that goes with that. The neighbors would like the Council decision to be honored that was made in July of 2005. The noise and disturbance does exist. He would like the conditions and stipulations to be far more adequate to allow this to be opened up to third party rentals or to have live music and parties. In his estimation the activity going on past 10:00 pm is ridiculous. They have an 86 year old woman that lives next to them. She feels the noise is detrimental to her health. They feel the vibration and the disturbance. He asked that the permit for the live entertainment be denied.

Ms. MacDonald asked Ms. Kaminski to verify the occupancy.

Ms. Kaminski stated she did some additional research for the Staff Report and learned that Building Safety has restricted this property to 277 people, per the Building Permit.

Ms. MacDonald asked Mr. Basinger what stipulations would be reasonable to him in terms of business hours.

Mr. Basinger stated there are young children in the neighborhood. The music should be down in the evening and should not disturb the quality of life. He believes 10:00 pm would be a reasonable time to end the events. The fact of the matter is they are 70 feet from this place of business. He understands the dance lessons require music. It is unfortunate that the past owner misrepresented the permits they had. He would prefer they continue to operate as a dance studio and provide dance lessons. He encourages and supports them in that effort.

Mr. Gadberry stated they are not a dance club. They are a dance studio. They give lessons and have social dances afterwards where the students get a chance to dance. The Paragon Dance Center is a historical place in the valley for dances. It is a family establishment. The customers range from 8 years old to 80 years old. The neighborhood is still talking about 2004-2005. The last three years need to be taken into consideration. It appears the fence line has been raised an additional 24 inches. This should help as a buffer to the sound system. They have never had 400 people at the site. They have not even had 300 people at an event. The average occupancy is 65 – 220 people. That is about what could be managed really well.

The previous owner told them the occupancy is 400 people, so they advertised 400 people. When they bought the business they met with Building Safety and were told if you are doing nothing more than what was already done you do not need to do anything. He felt he did due diligence and did his job as a business owner. When he was informed they did not have the proper permits they immediately filed a Project Submittal Application to apply for the necessary Use Permit. There is no drinking on the property inside or out. When they have private functions there is no outside dj equipment brought in except a mixer, because they want to scratch. The volume of the music is kept down. The dj is needed to change the music. Two of the neighbors stated they have not had a problem with the studio during the last 3½ years. The majority of the complaints came in after Ms. Basinger sent out her email saying protect our neighborhood and our values. Mr. Gadberry would like to have the Use Permit approved for live entertainment/reception center.

Ms. Radoff stated they have had 37 events where djs were brought in. The security was provided by Paragon. There was no alcohol and Mr. Gadberry was on-site at all times from set-up to take-down. The only complaints they were aware of were on April 2, when the air went out and the door was open. She does not know when or what day of the week they are hearing the noise or the music. Saturday nights are the only nights the outside events are being held. Sunday – Friday are always taken. She and Mr. Gadberry do not want live bands. They just want to play music and continue with the activities they have been doing. They did have alcohol once for a New Year's event and they did get a liquor license. It was a great event and they are hoping to do it again next year.

Ms. MacDonald asked Mr. Gadberry and Ms. Radoff if they would agree to earlier ending times for their hours of operation and live entertainment. She suggested live entertainment ending at 10:00 pm, 7 days a week.

Mr. Gadberry stated the dance lessons do not even start until 7:00 or 7:30 pm. They have a beginner class followed by an intermediate class. The social dance does not begin until 9:00 pm. An hour is not enough time for the social dance.

Ms. Kaminski stated she was informed by Ms. Lesser that Paradise Valley has a limit of 11:00 pm for live entertainment.

Ms. Radoff asked how late The Vine was allowed to be open. Mr. Gadberry stated The Vine is open until 2:00 am. The smoking area is about 50 feet from his residential area. That smoking area is really loud.

Ms. Macdonald asked Mr. Gadberry and Ms. Radoff if they would agree to end the live entertainment at 11:00 pm.

Mr. Gadberry and Ms. Radoff agreed to live entertainment hours of 9 am – 11 pm Sunday – Thursday, 9 am – midnight Friday and Saturday.

Ms. MacDonald stated the late hours give the business a bar feel. The business operations are entirely different than a bar. She would like to tighten up the hours of operation for a good thriving business.

Ms. Radoff asked about condition of approval number 4 which reads: Security provided by licensed security company hired by Paragon Dance Center for all activities. Does that mean security is necessary every night of the week?

Ms. Kaminski stated no, and clarified the security needs to be provided by either staff of Paragon or a licensed security company that Paragon hires. If the owners are on site they are providing the security. Staff does not want any third party events to be held with outside/unknown security. Condition number 4 was modified by staff to read: Security provided by Paragon Dance Center for all activities. Lease of the space for events shall not allow separate security companies to oversee events.

Ms. Radoff asked about condition number 8 which reads: Signs stating "No Loitering and No Trespassing" shall be posted throughout the parking area utilized by patrons. Signs shall be placed in locations visible to all patrons.

Ms. Kaminski indicated the property owner would be involved with posting the signs.

Mr. Gadberry and Ms. Radoff agreed to the conditions of approval.

Ms. MacDonald requested an additional condition of approval to revisit the case. Condition of approval number 21 was added, which reads: The applicant shall return to the Hearing Officer for a six month review of compliance on January 21, 2014.

Mr. Gadberry asked what would happen if the neighborhood got together and started calling every night to complain about the business and they have unfounded nuisance phone calls just to close them down.

Ms. Kaminski stated that is why they have to rely on the police reports. The police reports are the verifiable source of information. If there are calls to the Police Department, the Police go to the site and verify the complaints.

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.  
She stated there may possibly be vibrations and noise. The property owner has taken every effort to attenuate all of the noise coming out of the establishment. Limiting the hours to 11:00 pm might help the neighborhood.
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 PL130203/ZUP13070 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. Business hours of operation: ~~6am-2am~~ **9am – 11pm Sunday – Thursday, 9am-12am (midnight) Friday – Saturday**

~~Live entertainment hours: 9am to 10:30pm Sun-Thurs, 9am-12am (midnight) Fri-Sat~~

~~Events shall end at or before 1:30am, with thirty minutes thereafter permitted for clean-up.~~

**(Modified by Hearing Officer)**

3. A designated reception center management staff to be present on site for all events from set up to clean up.
4. Security provided by ~~a licensed security company hired by~~ Paragon Dance Center for all activities. Lease of the space for events shall not allow separate security companies to oversee events. **(Modified by Staff)**
5. A sound engineer or management staff shall continually monitor music and amplified sound levels; at 10pm, music shall be reduced so that it is not audible from any property line of the center.
6. Event capacity limited to 277 people maximum.
7. No valet parking shall be allowed off-site.
8. Signs stating "No Loitering and No Trespassing" shall be posted throughout the parking area utilized by patrons. Signs shall be placed in locations visible to all patrons.
9. Security staff is responsible for implementation of the security plan and monitoring of the premises both indoors and in the parking lot.
10. 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.
11. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
12. The Use Permit is for the following activities: weddings and receptions (not Bachelor or Bachelorette Parties), Birthday Parties, Bar mitzvahs, Bat mitzvahs, Graduation Parties, Family Reunions, Anniversary Parties, Educational Seminars and Religious Services. Any intensification or expansion of use shall require a new Use Permit.
13. The facility may be used for live music, djs, karaoke, banquets, receptions and parties, but may not be used as a concert venue. No tickets may be sold for entry to the facility and the live music may not be the primary purpose for attendance. Cover charge for dance events is permitted.
14. All events with live entertainment are by invitation only.
15. Only licensed bar service vendors are to be used for events providing alcohol.
16. No outdoor speakers shall be allowed; doors must remain closed at all times.
17. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
18. The applicant shall contact the City of Tempe Crime Prevention Unit to review the existing security plan within 30 days of this approval. Contact the Police Department at 480-350-8749 before **August 16, 2013**.
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
20. An updated parking model is required for this request; submit a parking count of existing available spaces including accessible spaces, and a list of all suites in each building, with the business name, square footage of the business and use for staff verification of parking availability. This information shall be provided by August 16, 2013. If the parking does not support occupancy of this suite for evening use, a parking solution will need to be determined prior to leasing the suite for reception uses with live entertainment.
21. **The applicant shall return to the Hearing Officer for a six month review of compliance on January 21, 2014. (Added by the Hearing Officer)**

-----

The next Hearing Officer public hearing will be held on August 6, 2013.

-----

There being no further business the public hearing adjourned at 6:30 PM.

-----

Prepared by: Julie Stennerson, Executive Assistant  
Reviewed by:

A handwritten signature in blue ink that reads "Steve Abrahamson". The signature is written in a cursive style and is positioned above a horizontal line.

---

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

SA:js