Summary Report

Development Review Commission Date: 11/13/07 **Agenda Item Number:**

SUBJECT: Hold a public meeting for an Appeal of the Hearing Officer Approval for The Sets located at 93 East Southern Avenue.

DOCUMENT NAME: DRCr_THESETSAPPEAL_081407

SUPPORTING DOCS: Yes

COMMENTS: Request an Appeal of the Hearing Officer Approval for **(PL070167)** by Steve Bonaguidi, Applicant for an appeal of the approval of The Sets, located at 93 East Southern Avenue in the CSS, Commercial Shopping and Services District. The request includes the following:

UPA07007 – Appeal of the approval of Use Permit (ZUP07042) for billiard parlor and sports bar with live entertainment.

PREPARED BY: Steve Abrahamson, Planning and Zoning Coordinator (480-350-8359)

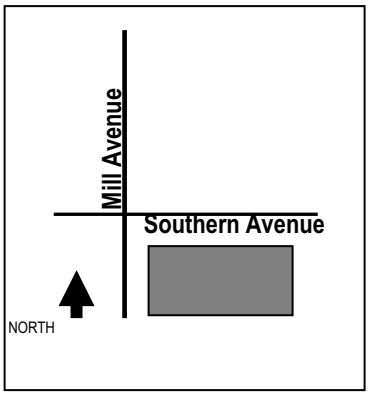
REVIEWED BY: Lisa Collins, Planning Director (480-350-8989)

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: **Staff – Denial of the appeal**

ADDITIONAL INFO:



Gross/Net site area	7.56 acres
Total Building area	86,598 s.f.
Tenant area	15,033 s.f.
Vehicle Parking Required	121 spaces
Vehicle Parking Provided	399 spaces (total on-site)

A neighborhood meeting is not required with this application (appeal).

Mr. Steve Bonaguidi of 126 East Pebble Beach Drive is requesting an appeal of the June 5, 2007 Hearing Officer's approval of a Use Permit for The Sets to allow a billiard parlor and sports bar with live entertainment located at 93 East Southern Avenue in the CSS, Commercial Shopping and Services District. The Hearing Officer reviewed the use and determined it complies with the criteria for approval of the Use Permit. To date, with respect to the request for an appeal, the only public input received has been the letter of appeal. Staff recommends denial of the appeal, thus upholding the Hearing Officer's approval of the Use Permit.

ATTACHMENTS:

1. List of Attachments
2. Comments / Neighborhood Meeting / Comments 06/05/07 H.O.
3. Reasons for Denial of Appeal / Conditions of Approval for Use Permit / Use Permit Criteria
4. Conclusion / History & Facts / Zoning & Development Code Reference

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent from Mr. Hamid Hekmatian

4-5. Appeal Letter from Mr. Steve Bonaguidi
6. Letter Supporting Appeal Request from Mr. David Massanova
7. Continuance Request from Mr. Bonaguidi

8-9. Hearing Officer Approval Letter (June 7, 2007)
10-12. Letter of Explanation from The Sets' Attorney dated 5/25/07 (3 pages)
13-25. Calls for Service Report (PD) 05/01/05 – 04/30/07 (13 pages)
26. Site plan
27. Floor Plan
28. Staff Photograph

COMMENTS ON APPEAL:

The Sets went before the Hearing Officer on June 5, 2007 to request a Use Permit to allow a billiard parlor and sports bar with live entertainment within the Valley Fair Shopping Center at 93 East Southern Avenue in the CSS, Commercial Shopping and Services District (southeast corner of Mill and Southern Avenues). Two (2) neighbors appeared at the Hearing Officer Meeting to oppose the Use Permit request. The concerns were largely focused on noise/music levels and the effects the noise and the business have on day-to-day life for the neighbors. Three (3) individuals appeared in support of the request. One of the citizens opposed to the use spoke about the "calls for service" to the Tempe Police Department regarding excessive noise. He indicated that although the Tempe Police Department had been called to the site, that The Sets has not been cited as a result of these calls.

The Hearing Officer stated he felt that the calls for service are average for a bar and that noise is a significant concern. He went on to add that the owner of The Sets has exceeded what he could do for noise mitigation. The Hearing Officer approved the Use Permit, subject to seven (7) conditions of approval.

Mr. Steve Bonaguidi of 126 East Pebble Beach Drive (directly behind the shopping center) is requesting the appeal of the Hearing Officer's approval. He outlined his concerns in his appeal request letter as noise, reduction in property values and diminished quality of life. Further, he pointed out the occurrence of crimes at the center he feels is related to the establishment.

There has been one (1) letter supporting the appeal received from one of Mr. Bonaguidi's neighbors.

Staff recommends denial of the appeal, thus upholding the Hearing Officer's approval of the Use Permit.

NEIGHBORHOOD MEETING

The applicant for the Use Permit (Mr. Hamid Hekmatian) held a neighborhood meeting on Monday, September 10, 2007). One (1) neighbor, Steve Bonaguidi (the appellant) attended this meeting. Discussion focused on possible ways to mitigate the appellant's main concern (perceived noise from the establishment) as well as the Development Review Commission meeting process.

COMMENTS FROM HEARING OFFICER JUNE 5, 2007:

The Hekmatian & Sons Inc. d.b.a. The Sets is returning to the Hearing Officer for review of their Use Permit to allow a billiard parlor and a sports bar with live entertainment located at 93 East Southern Ave in the CSS, Commercial Shopping and Services District. The Hearing Officer previously approved this request on March 21, 2006 and, by condition of approval, remanded the applicant to return the Hearing Officer for review of the Use Permit within one (1) year.

Staff has attached a report from the Police Department identifying the calls for service from this address, the number and kinds of calls are consistent with a pool hall/bar location. According to the report, there were seventeen (17) calls for service complaints regarding loud music and noise. On page four (4) of the "calls for service" report there is break down on the number of calls for service by month for the given time period. Also the report identifies "fight calls"; these service calls appear to be isolated incidences with no established pattern (see monthly breakdown page 5 of report).

In addition to the previous "calls for service report"; the Police Department has issued another "calls for service" report for not only this property but the properties adjacent to the establishment. The applicant has also provided an updated letter of explanation regarding improvements they are proposing to construct to help mitigate noise from the establishment.

REASONS FOR DENIAL OF THE APPEAL:

1. Traffic generated by this use should not be excessive.

2. No apparent damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.

3. The use appears to be compatible with the building, site and adjacent property.

4. There appears to be a demonstrated need for this use at the proposed location.

THE HEARING OFFICER'S CONDITIONS OF APPROVAL JUNE 5, 2007:

1. No noise shall emanate beyond the walls of the building. The four doors leading to the back of the shopping center shall be closed at all times, and use for emergency exit only.

2. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing set to re-evaluate the appropriateness of the use permit.

3. There shall be no live entertainment on the patio.

4. No overflow parking allowed in the alley or on adjacent properties.

5. No 'car shows' or special events allowed on the exterior of the building or within the parking area. All special evens that extend beyond the interior of the business to obtain approval from Special Event Task Force.

6. All proposed upgrades to the interior and exterior to obtain Development Plan Approval and Building Safety Division clearance.

7. **Complete the wall and sound mitigation measures as presented at the June 5, 2007 Hearing Officer hearing and as submitted to the Building Safety Department (reference BP070834). ADDED BY HEARING OFFICER**

USE PERMIT:

The Zoning and Development Code requires a Use Permit for billiard parlors serving alcohol with live entertainment. The criteria for approval of the Use Permit are the following:

a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
d. Compatibility with existing surrounding structures and uses;

Additionally, conditions of approval may be imposed by the decision making body which limit the days, hours, place and/or manner of operation.

CONCLUSION:

This applicant is seeking to appeal the Hearing Officer's decision to approve the Use Permit to allow live entertainment. Staff recommends denial of the request thus, upholding the Hearing Officer's original Use Permit approval. It is recommended the conditions placed on the original approval be maintained. These allow staff to monitor the conduct of the business and require review of the Use Permit, if necessary.

HISTORY & FACTS:

May 28, 2003	Board of Adjustment approved a Use Permit for Pinke's/ The Sets to allow outdoor speakers on the patio area, subject to conditions.
January 17, 2006	The Hearing Officer approved a permit for The Sets allowing a sports bar/pool hall with live entertainment subject to conditions. By condition, the applicant is to return to the Hearing Officer for review of the Use Permit.
March 21, 2006	The Hearing Officer approved a permit for The Sets allowing a sports bar/pool hall with live entertainment subject to conditions. By condition, the applicant is to return to the Hearing Officer for review of the Use Permit.
May 1, 2007	The Hearing Officer continued the request for review of the Use Permit for the Sets to allow for input from the Tempe Police Department.
June 5, 2007	The Hearing Officer approved the request for a Use Permit to allow a billiards parlor and sports bar with live entertainment.
June 19, 2007	Mr. Steve Bonaguidi of 126 East Pebble Beach Drive requested an appeal of the June 5, 2007 Hearing Officer's decision.
September 10, 2007	Neighborhood Meeting was held by the Sets management. One (1) neighbor attended.

DESCRIPTION:

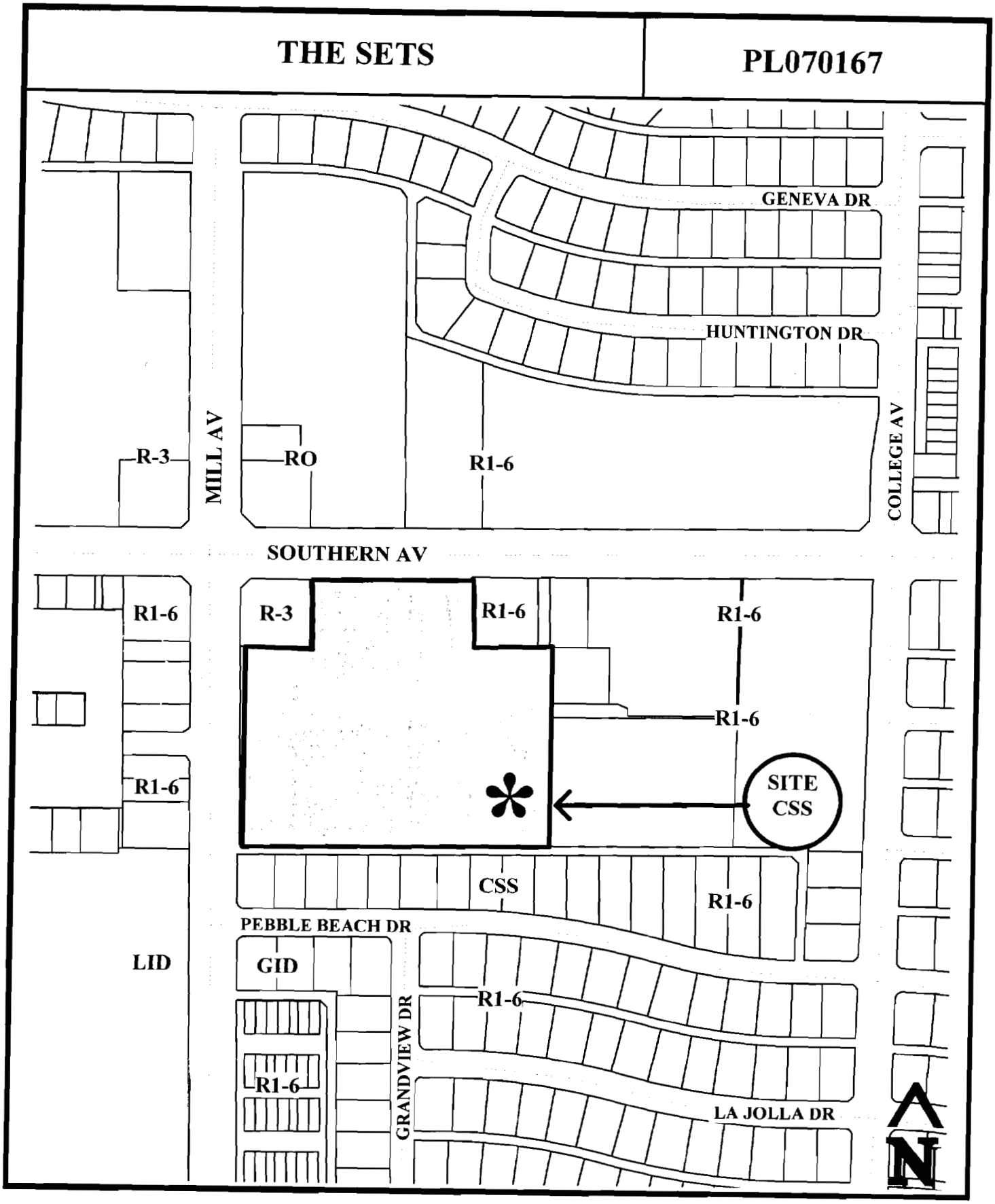
Owner – Ethan Christopher LLC
Applicant – Hamid Hekmatian
Appellant – Steve Bonaguidi
Existing Zoning – CSS, Commercial Shopping and Services District

ZONING AND DEVELOPMENT CODE REFERENCE:

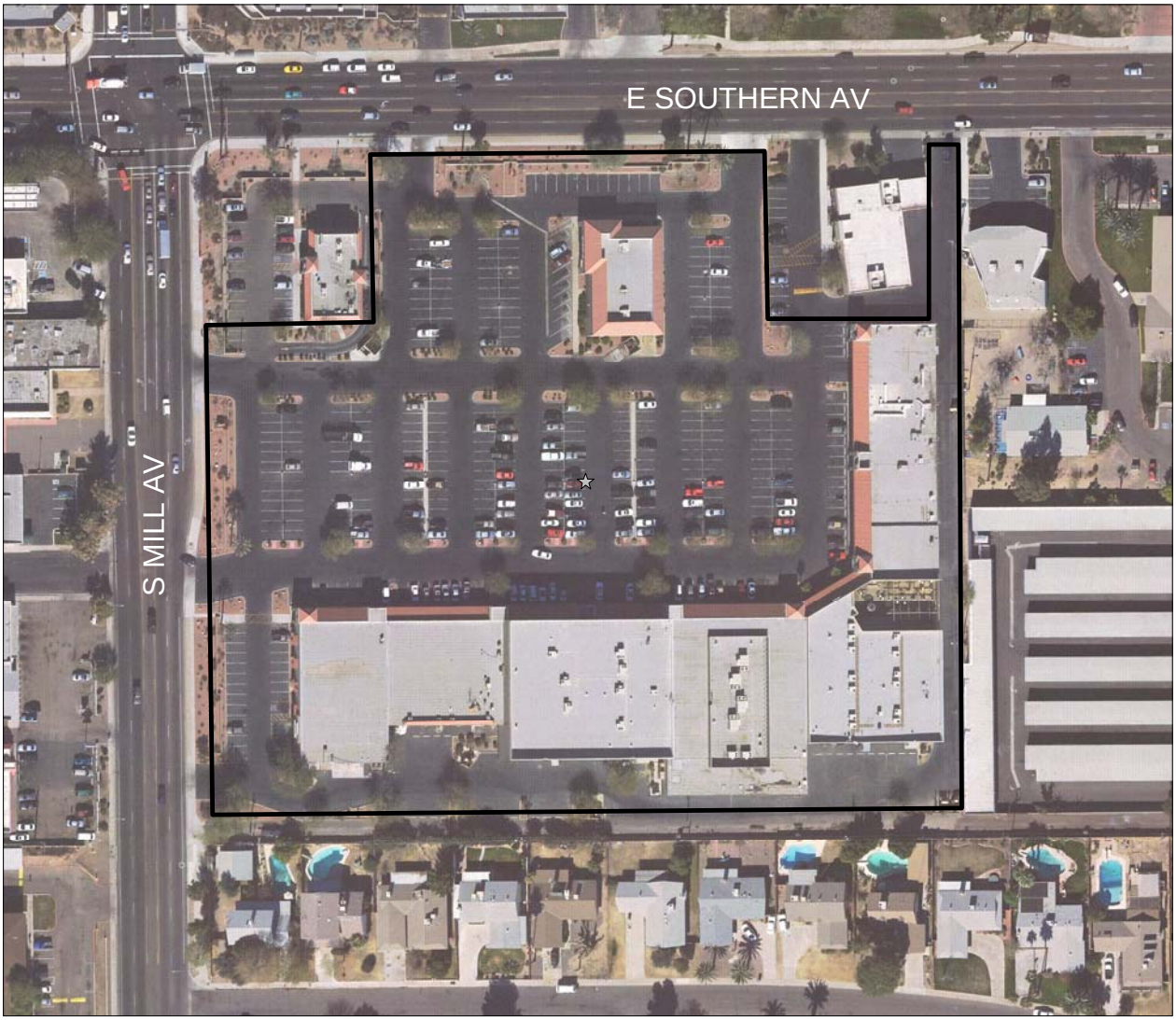
Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts

Part 6, Chapter 3, Section 6-308 – Use Permit

Tempe



Location Map



THE SETS (PL070167)

April 9th 2007

City of Tempe
Development Department Services
31 East Fifth Street, Tempe, Arizona 85281

Subject: Valley Fair Center – Hekmatian & Sons Inc, d.b.a - The Sets 93 East Southern Ave, Tempe AZ 85282 – BA 050184 – Ethan Christopher Inc, Landlord.

Dear Ms. Kelly,

Thank you for meeting with me last week.

The Intention of this letter is to request an extension to our existing use permit with it's current conditions through Dec 2013 which is when our current lease expires.

The Sets and the previous business PinkE'S has been under the ownership of Hekmatian & son, Inc. since 1997. The history of our operation and our renewals is clearly indicative of our absolute cooperation and respect for our customers, neighbors, The City and Tempe Police.

Since last March, with the blessing of the Fire Marshall, City of Tempe Inspectors, Plan reviewers and the Police we have added at an astronomical cost a tremendous amount of sound insulation to our facility. We have by any standard one of the quietest and acoustically cleanest music facilities anywhere.

Since the first application that I made to the City for the use permit, one neighbor has shown up every time and has objected to our existence. There has always been data presented by this neighbor. This year we have kept a record of every call or communication. There are other neighbors and local residence that have completely the opposite view and are grateful for our existence. We have a fantastic working relationship with The Police department and I would encourage you to obtain a reference from them.

In conclusion, The Sets with it current use has the profound privilege of being a service to the community by providing the following:
Billiards, ping pong, shuffleboard, darts, foosball, video games, leagues and tournaments
Three full service bars and a restaurant,
Live music venue, receptions and a place to meet and greet.
Neighborhood sports bar,
And finally, a specially designed patio to accommodate the patrons that smoke.
There is something for everyone to do here at The Sets.

Sincerely,

H.Hekmatian
The Sets
93 E. Southern Ave Tempe, AZ 85282
480 8291822 – after 2 PM

Abrahamson, Steve

From: Steve Bonaguidi [skykid34@hotmail.com]
Sent: Wednesday, June 20, 2007 10:29 PM
To: Abrahamson, Steve
Cc: skykid34@hotmail.com
Subject: Appeal - The Sets Use Permit Renewal

Dear Mr. Abrahamson,

I am writing to convey to you the rationale behind my filing of an appeal of the hearing officer's renewal of the use permit for The Sets - a sports bar and night club with live entertainment - at 93 E. Southern.

When Tempe passed the new no-smoking ordinance (an ordinance which I fully support), the owners of the bar decided to completely remodel, creating three distinct zones in the bar: a pool hall, an outdoor smoking patio, and a night-club/stage. The name was also changed, and the bar has changed its target audience over time, evolving into a venue for live music shows, typically 4 or more shows a week. As a result, most nights of the week there is a distinctive bass thump-thump that permeates the walls of my house and surrounding properties.

I have taken my concerns to both the Tempe Police and the city's committee on use permits. While both have acknowledged the noise as a legitimate concern, nothing has been done about it. Twice in the past week alone, I have attempted to go to bed on weeknights before work, and I was unable to sleep due to the bass emanating from the club. I tried to call the club to request a reduction in volume, and nobody picked up the telephone. I called the police, and they informed me that there is nothing that they can do. Despite the steady resistance of the neighbors at each renewal hearing, the Hearing Officer has renewed the Sets use permit each time that it was up for review.

The noise from the club has substantially affected my sleep, and thus my work, quality of life, and property value. When/if I decide to sell the house, I will be required by law to disclose the noise problem to any potential buyer, substantially diminishing my leverage and the resale value of my home. Both of my neighbors that share the misfortune of living behind the Sets share the same concerns.

In addition, since the bar has started holding live shows on a consistent basis, there has been a shooting in the alley directly behind my house (related to a scuffle that started inside the club on a "hip-hop" night), over 20 additional calls for Type 1 and 2 Crimes, and nearly 40 documented complaints to the Tempe Police Department for noise emanating from the club.

The hearing officer, when he granted the bar's most recent request for renewal of its permit over the objection of all adjacent neighbors, acknowledged that the bar constitutes a nuisance to the neighborhood and to the homeowners. Clearly, a nuisance exists, and for the reasons set forth above, I and my neighbors respectfully request that the Hearing Officer's decision to renew the Sets' application for a use permit be overturned, and the club, at very least, be forbidden from hosting live music.

Thank you for your time, and please contact me at any time if you are in need of further information.

Sincerely,

Steve Bonaguidi

126 E. Pebble Beach Drive
Tempe, AZ 85282
480-296-5724
602-506-7456 (work)

Make every IM count. Download Messenger and join the i'm Initiative now. It's free.

Abrahamson, Steve

From: Dave [dave.mass@cox.net]
Sent: Monday, September 24, 2007 12:37 AM
To: Abrahamson, Steve
Cc: skykid34@hotmail.com
Subject: The Sets license appeal

Greetings Mr. Abrahamson,

My name is David Massanova and I am writing to you because I understand there is an appeal taking place on Tuesday September 25th concerning the license renewal of The Sets bar at 93 East Southern Avenue and I wanted to voice my input since I would be unable to attend the appeal. I live at 138 E. Pebble Beach Drive in the Tempe Gardens planned development which is positioned about 100 feet east of the alleyway running behind The Sets. My personal experiences with the bar are not as involved as perhaps others in closer proximity, but I still have noticed a few things while living in the nearby vicinity.

Generally I have noticed the noise output on the weekends and on occasion a weeknight when perhaps there was a special event held there. On a Saturday or Friday there are the sounds of a band warming up for a performance later that evening and then during the evening there is music audible to me in my backyard and to a lesser extent even sometimes it is heard while I am inside. Aside from the music I can also hear the sounds of an audience screaming and quite distinctly certain members of that audience.

I really am neither for nor against The Sets business operation, but I am concerned if unrestricted operation of this establishment affects my property value and the safety of myself and my family. I trust that all steps are being taken to ensure that The Sets works harmoniously with its surrounding community and isn't a hindrance. Thank you for your time.

Regards,

David Massanova

10/08/2007

Abrahamson, Steve

From: Bonaguidi Steven [bonags01@mcao.maricopa.gov]
Sent: Monday, September 24, 2007 1:22 PM
To: Abrahamson, Steve
Cc: Steve Bonaguidi
Subject: Motion to Continue Appeal

Hi Steve,

I learned this weekend from Paul Bennowitz's son that he is on an extended vacation cruising down the Danube River and as such he is unable to attend the scheduled hearing on 9/25/07 regarding the Sets.

Mr. Bennowitz is a strong opposer to renewal of the Sets permit, and as one of the two residents unfortunate enough to be situated directly behind the bar, he is affected most by the noise pollution emanating from the club.

As such, I request a continuance of the hearing to October 23, in order to give Mr. Bennowitz the opportunity to be heard on this important issue that affects the peace and quality of life of the residents of the Tempe Gardens development.

Thanks,

Steve Bonaguidi

Steve Bonaguidi
Deputy County Attorney
Auto Theft Bureau
Maricopa County Attorney's Office
602-506-7442

ps - as I understand that payment is required for a requested continuance, I am providing my credit card information:

Steven M Bonaguidi
Visa
card number: ends in 1290, expires 4/10 (will call with rest of card # for security purposes).

(480) 350-8331 (Phone)

June 7, 2007

Mr. Hamid Hekmatian
Hekmatian & Sons/The Sets
93 East Southern Avenue
Tempe, Arizona 85282

RE: THE SETS
PL070167 / ZUP07042

Dear Mr. Hekmatian:

You are hereby advised that at the hearing held June 5, 2007, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request from **THE SETS (PL070167)** (Hamid Hekmatian, applicant; Ethan Christopher LLC, property owner) located at 93 East Southern Avenue in the CSS, Commercial Shopping and Services District for:

ZUP07042 Use permit to allow a billiard parlor and sports bar with live entertainment previously granted on March 21, 2006, and required to return for review after one year.

Subject to the following conditions:

1. No noise shall emanate beyond the walls of the building. The four doors leading to the back of the shopping center shall be closed at all times, and use for emergency exit only.
2. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing set to re-evaluate the appropriateness of the use permit.
3. There shall be no live entertainment on the patio.
4. No overflow parking allowed in the alley or on adjacent properties.
5. No 'car shows' or special events allowed on the exterior of the building or within the parking area. All special evens that extend beyond the interior of the business to obtain approval from Special Event Task Force.
6. All proposed upgrades to the interior and exterior to obtain Development Plan Approval and Building Safety Division clearance.
7. **Complete the wall and sound mitigation measures as presented at the June 5, 2007 Hearing Officer hearing and as submitted to the Building Safety Department (reference BP070834). ADDED BY HEARING OFFICER**

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with.

If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer.

You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

Sherri Lesser
Senior Planner

SL/dm

cc: Ms. Brenda Cerkowske/Ethan Christopher LLC
Randy Nussbaum, Esquire/Jaburg & Wilk PC
File

Jaburg
& Wilk, P.C.
ATTORNEYS AT LAW

RECEIVED
07 MAY 29 PM 5:01
TEMPE - DEVELOPMENT
SERVICES DEPARTMENT

Randy Nussbaum

ARIZONA CERTIFIED SPECIALIST IN BANKRUPTCY
BOARD CERTIFIED BUSINESS BANKRUPTCY LAW
AMERICAN BOARD OF CERTIFICATION

rxn@jaburgwilk.com
Main Line 480/609-0011
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May 25, 2007

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David N. Farren
Daniel L. Hulsizer
Jill M. Hulsizer
Thomas A. Connelly
Laurence B. Hirsch
Valerie L. Marciano
Lisa S. Soo

Of Counsel
Arly Richau

Via Email, Facsimile and U.S. Mail

Sherri Lesser
Senior Planner
City of Tempe
31 East Fifth Street
Tempe, Arizona 85280

Re: The Sets 9P:070167/ZUP07042

Dear Ms. Lesser:

Because of my long standing relationship with Hamid Hekmatian and his business, the Sets, he has asked me to contact you regarding the City of Tempe hearing currently scheduled for June 5, 2007, in hopes of bringing this matter to a satisfactory and expeditious resolution. Mr. Hekmatian has no desire for this matter to proceed any further and is hoping that the explanation contained in this letter will demonstrate his commitment to operate in accordance with the City of Tempe's ordinances and requirements.

As a preliminary matter, independent of any complaints or concerns voiced by the City of Tempe or its citizens, Mr. Hekmatian wants his business to be a welcomed and attractive neighbor. He is proud of his business and the reputation that the Sets has developed over the years with not just its customers but the Tempe Police Department. He will do everything in his power to maintain that reputation and respect even if not required to take the action described below.

The Sets is prohibited from sponsoring "Special Events". The Sets contends that no such events have been conducted in the past, but to eliminate any possibility of confusion or concern, the Sets has contacted the promoters that it had talked to in the past and advised them that the Sets will not allow any activity that could be interpreted as "Special Events". This includes the fetish shows of any kind with the Sets did not believe were "Special Events", but may have been interpreted by others as being such. This leaves the issue of the alleged noise, which emanates from the outside patio.

Jaburg
& Wilk, P.C.
ATTORNEYS AT LAW

Phoenix Office:
3200 N. Central Ave.,
Suite 2000
Phoenix, AZ 85012

Tel 602/248-1000
Fax 602/248-0522

Scottsdale Office:
14500 N. Northsight Blvd.,
Suite 116
Scottsdale, Arizona 85260

Tel 480/609-0011
Fax 480/609-0016

As you are aware, the Sets received well deserved publicity for its innovative approach to Tempe's anti-smoking ordinance. The Sets had certain customers which demanded the right to smoke while drinking and the Sets designed its bar so that a significant portion of its area was no longer under roof. Redesign of the bar cost a staggering amount of money, but the Sets and the Sets landlord wanted to comply with all city ordinances and create an attractive atmosphere for the Sets patrons. However, because the construction of the patio was an innovative and unique project, the Sets could not rely upon precedent for guidance as to unintended consequences or other issues that may arise.

Even though the Sets has been careful to limit what noise would emanate from the patio, Mr. Hekmatian appreciates that two neighbors, Steve Bonaguidi and Paul Bennewitz, have expressed displeasure with that noise. Because even one disgruntle neighbor is one too many, Mr. Hekmatian has already engaged in an expensive, extensive and in depth investigation regarding the noise emanating from the patio area. That investigation has concluded the following.

Mr. Bonaguidi's home is directly at the end of the alley and therefore is the most vulnerable to any noise coming from the bar, even though other neighbors have not voiced complaints. Mr. Bonaguidi had expressed anger at the volume of music in his neighborhood and not the patrons' noise itself. In response to this complaint, Mr. Hekmatian and the Sets have voluntarily agreed to heighten the existing wall separating the patio from the alley from 6 feet to 12 feet and 8 inches. Pursuant to studies conducted by experts hired by Mr. Hekmatian, this wall will stop any and all noises, including drumbeats, from reaching the hard block walls of the alleyway and the noise from then reverberating off the walls and interfering with the neighbors enjoyment of their properties. Mr. Hekmatian is using 8 inch block wall filled with sand and 1-1/2 inch of insulation and dryvit on the inside and painted on both sides. This will reduce any noise generated by the bar by at least 51%.

Plans for the construction of this wall has been submitted to the City of Tempe for a building permit. Once the permit is granted, an experienced masonry contractor is ready to immediately construct the wall. Bother Mr. Hekmatian and the Sets acknowledge that the wall will not eliminate every noise emanating from the bar, but he is confident that at least 90% of it will be eliminated by this construction one the wall is constructed, Mr. Hekmatian will make sure that levels have been dramatically reduced by utilizing the services of Acoustical Solutions, Inc., a manufacturer specializing in reduction and noise reduction materials. The Sets will install additional noise buffering product, including the use of custom made baffles, banners and wall panels. They will hang from the existing walls and the patio itself to ensure that there will not be any place for noise to escape the boundaries of the Sets into the neighborhood. Although the Sets will need to procure an additional building permit for this purpose, he is confident that the city will approve that permit since doing so is for the benefit of the neighborhood, though at an additional expense to the Sets. Once this work is done, in independent testing company will be employed to confirm for

Jaburg
& Wilk, P.C.
ATTORNEYS AT LAW

the Sets, the City of Tempe and the neighborhood that all such action taken by the Sets has been successful and has reduced the noise to a level far below mandated. The neighbors, The City and The Police are invited to participate in the test procedures so that they are satisfied with the authenticity of these tests.

Mr. Hekmatian is confident that though he and his landlord will have to spend tens of thousands of dollars to complete this project, the solutions described above will end this problem once and for all and will demonstrate unequivocally that the Police Department and City of Tempe can feel comfortable with this business.

Sincerely,

JABURG & WILK, P.C.

Randy Nussbaum

RXN:klt
cc: Mr. Hekmatian

Phoenix Office:
3200 N. Central Ave.,
Suite 2000
Phoenix, AZ 85012

Tel 602/248-1000
Fax 602/248-0522

Scottsdale Office:
14500 N. Northsight Blvd.,
Suite 116
Scottsdale, Arizona 85260

Tel 480/609-0011
Fax 480/609-0016

McGuire, Diane

From: Lesser, Sherri
Sent: Wednesday, May 30, 2007 1:51 PM
To: McGuire, Diane
Subject: FW: Noise Complaints and Part I&II Crimes at 93 E Southern Ave
Attachments: The Sets 05-01-2005_04-30-2007.xls

Diane-

Also include this email in the attachment. Sherri

From: Qureshi, Mona
Sent: Monday, May 14, 2007 2:38 PM
To: Vanek, Bill
Cc: Rogers, Buck; Lesser, Sherri; Abrahamson, Steve
Subject: Noise Complaints and Part I&II Crimes at 93 E Southern Ave

Bill,

Per your request, attached is an analysis of noise complaints at 93 E Southern Ave (The Sets), 120 E Pebble Beach Dr, 126 E Pebble Beach Dr, and 132 E Pebble Beach Dr, covering the time period of May 1, 2005 - April 30, 2007. Also included is Part I & II crime information for the same period for 93 E Southern Ave (The Sets).

Of 15,360 noise complaints received in Tempe for the specified time period, 38 (0.25%) were in reference to this area.

Of 57,800 Part I & II crimes committed in Tempe for the specified time period, 26 (0.05%) were connected to 93 E Southern Ave.

I hope this information is helpful for you, feel free to contact me if you have any questions or would like any further information.

Mona Qureshi
Strategic and Administrative Crime Analyst
City of Tempe Police Department
480-858-6249
www.tempe.gov/cau

Noise Complaints
93 E Southern Ave (The Sets) and E Pebble Beach Dr Addresses
May 1, 2005 - April 30, 2007

Totals

Address	Frequency	Percent
93 E Southern Ave	37	0.24%
120 E Pebble Beach Dr	1	0.01%
126 E Pebble Beach Dr	0	0.00%
132 E Pebble Beach Dr	0	0.00%
Total for Specified Addresses	**38**	**0.25%**
Total for All Addresses	**15,360**	**100.00%**

Dispositions

Disposition	Frequency	Percent
GOA/UNABLE TO LOCATE	4	10.53%
CIVIL MATTER	1	2.63%
FI CARD	1	2.63%
TICKET	1	2.63%
T.O.T.	2	5.26%
OTHER	29	76.32%
Total	**38**	**100.00%**

Noise Complaints
93 E Southern Ave (The Sets) and 120 E Pebble Beach Dr
May 1, 2005 - April 30, 2007

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
05126448	120 E PEBBLE BEACH DR	30-Jul-05	23	8	GOA/UNABLE TO LOCATE	CT LC VALID: 120 E PEBBLE BEACH DR CT CT VALID: 415E COMPLAINT IS FOR LOUD MUSIC AT THE SETS 93 E SOUTHERN..COMP WANTS OFCR TO 25 AT HIS HOME FIRST
05075295	93 E SOUTHERN AV	6-May-05	21	49	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E LIVE MUSIC DUPLICATE CALL INFO-CALL TYPE: 415E LOC: THE SETS @93 E SOUTHERN AV CITY:TMPE CT:415E NAME:CHRIS SUMMERS CONT: N PH#:(480)6207771 LIVE BAND LOUD MUSIC CONT: N PH#:(480)9686794 NAME:JAY REEDER CITY:TMPE CT:415E DUPLICATE CALL INFO-CALL TYPE: 415E LOC: THE SETS @93 E SOUTHERN AV
05079396	93 E SOUTHERN AV	13-May-05	20	3	OTHER	CT CT VALID: 415E CT LC VALID: THE SETS @93 E SOUTHERN AV LOUD MUSIC | ONGOING PROBLEM | COMPL IS WILLING TO AID IN PROSECUTION IF NECESSARY
05079432	93 E SOUTHERN AV	13-May-05	21	26	OTHER	CT CT VALID: 415E CT LC VALID: THE SETS @93 E SOUTHERN AV

ATTACHMENT 15

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
						COMPL ADV 2ND CALL//4P18 OUT EARLIER AND ADV THEM TO TURN IT DOWN//LOU D MUSIC CT VIEWED PREMISE HISTORY
05079524	93 E SOUTHERN AV	13-May-05	23	20	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD MUSIC CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY
05089578	93 E SOUTHERN AV	29-May-05	21	41	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E SE CORNER MILL / SOUTHERN // LOUD MUSIC
05090076	93 E SOUTHERN AV	30-May-05	20	16	OTHER	CT LC VALID: SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD RECORDED MUSIC.....IN THE LOUNGE AREA....COMPL TRYING TO HAVE DI NNER....HEARING IT THRU WALLS OF HOME.....REQ PD CHECK
05101795	93 E SOUTHERN AV	19-Jun-05	0	44	OTHER	CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV COMPL ADV EXTREMELY LOUD MUSIC FROM BAR
05105967	93 E SOUTHERN AV	26-Jun-05	0	19	OTHER	CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV LOUD MUSIC COMING FROM THE BAR....CALLED THE BUSN/SETS....COMPL TALKED TO MGR EARLIER....BUT IT IS STILL LOUDER THAN USUAL.....

ATTACHMENT 16

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
05109119	93 E SOUTHERN AV	1-Jul-05	22	50	GOA/UNABLE TO LOCATE	CT LC VALID: SETS @93 E SOUTHERN AV CT CT VALID: 415E COMP SAYS MUSIC IS SO LOUD HER WALLS ARE SHAKING CT VIEWED TEMPORARY SITUATIONS CT VIEWED PREMISE HISTORY
05109179	93 E SOUTHERN AV	2-Jul-05	0	1	OTHER	CT CT VALID: 415E CT LC VALID: PINKY'S @93 E SOUTHERN AV HAS BEEN GOING ON SINCE 1800..LOUD MUSIC AND PEOPLE.. **4P18 RESPONDED EARLIER / CLEARED W/03 / DIFF COMPLAINTANTS** CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY
05126390	93 E SOUTHERN AV	30-Jul-05	22	0	OTHER	CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV LOUD MUSIC COMING FROM THE SETS FOR PAST FEW HOURS / MUSIC LOUDER THAN USUAL
05134979	93 E SOUTHERN AV	14-Aug-05	0	19	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD TALKING AND YELLING OVER A PA SYSTEM ON THE OUTSIDE PATIO
05138416	93 E SOUTHERN AV	19-Aug-05	21	53	OTHER	CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV LOUD MUSIC....NFI CT VIEWED TEMPORARY SITUATIONS
05152105	93 E SOUTHERN AV	10-Sep-05	23	4	OTHER	CT LC VALID: SETS @93 E SOUTHERN AV CT CT VALID: 415E LIVE BAND PLAYING OUTSIDE//ONGOING PROBLEM // CHECKED PERMITS FOR TONIGHT DIDN'T SEE ANYTHING FOR SETS// //CALLER ADV ONGOING PROB AND CT VIEWED PREMISE HISTORY

ATTACHMENT 17

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
						PD RESPONDS AND QUIETS THINGS DOWN// CT VIEWED TEMPORARY SITUATIONS
05176702	93 E SOUTHERN AV	22-Oct-05	21	43	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD MUSIC // COMPL BACK ON 21 ADVG MUSIC HAS STARTED UP AGAIN AND IT'S VERY LOUD CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY
05176779	93 E SOUTHERN AV	22-Oct-05	23	41	OTHER	CT CT VALID: 415E CT LC VALID: THE SETS @93 E SOUTHERN AV VERY LOUD MUSIC / CT VIEWED PREMISE HISTORY
05176847	93 E SOUTHERN AV	23-Oct-05	1	18	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD MUSIC DUPLICATE CALL INFO-CALL TYPE: 415P LOC: THE SETS @93 E SOUTHERN AV CITY:TMPE CT:415P NAME:CHRIS SUMMERS CONT: Y ADR:132 E LIVE BAND PLAYING OUTSIDE // COMPL AND OTHER NEIGHBORS REALLY UPSET .. PEBBLE BEACH > PH#:(480)6207771 THEY WILL BE OUTSIDE ON THE STREET WAITING FOR OFCR // COMPL ADVING HE 'S CALLED SEVERAL TIMES IN LAST MONTHS CT VIEWED PREMISE HISTORY
05180836	93 E SOUTHERN AV	29-Oct-05	19	7	CIVIL MATTER	CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV LIVE BAND OUTSIDE / COMPL HAS BEEN GOING ON FOR AWHILE / COMPL REQ CON

ATTACHMENT 18

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
						TACT AT HIS RESD /
05180953	93 E SOUTHERN AV	29-Oct-05	22	5	OTHER	CT CT VALID: 415E CT LC VALID: THE SETS @93 E SOUTHERN AV AND WARNED HIM THIS WAS GOING TO BE HAPPENING TONIGHT... LOUD MUSIC GOING ON SINCE 1700HRS..UPSET ABOUT POSS WEDDING GOING ON A T THIS LOCATION // FYI, THE BUSN CONTACTED HIM LAST WEEK TO APOLOGIZE CT VIEWED PREMISE HISTORY CT VIEWED TEMPORARY SITUATIONS
06005119	93 E SOUTHERN AV	8-Jan-06	22	34	OTHER	CT CT VALID: 415E CT LC VALID: 93 E SOUTHERN AV @THE SETS FROM ABOVE ADD/ LOUD LIVE MUSIC INSIDE BUT COMPL CAN HEAR INSIDE HIS A PT// CT VIEWED PREMISE HISTORY
06050638	93 E SOUTHERN AV	26-Mar-06	0	39	OTHER	CT 2965724 SETS @93 E SOUTHERN AV CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV COMPL LIVES ON PEBBLE BEACH AND WANTS TO SPK TO PD REF LOUD MUSIC AT T HE SETS...REQ PD RESPOND TO HIS HOUSE FIRST...NFI
06063116	93 E SOUTHERN AV	16-Apr-06	0	17	GOA/UNABLE TO LOCATE	CT CT VALID: 415E CT LC VALID: SETS @93 E SOUTHERN AV LOUD MUSIC
06081796	93 E SOUTHERN AV	16-May-06	21	32	OTHER	CT CT VALID: 415E CT LC VALID: 93 E SOUTHERN AV @THE SETS

ATTACHMENT 19

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
						CALLER SAYS THE BASE IS SO LOUD IT IS SHAKING HIS RESIDENCE...
06085551	93 E SOUTHERN AV	22-May-06	22	55	OTHER	CT LC VALID: 93 E SOUTHERN AV @THE SETS CT CT VALID: 415E LOUD MUSIC ...CALLER NOW WANTS CONTACT BY PHONE (480-296-5724) NAME IS STEVE
06086718	93 E SOUTHERN AV	24-May-06	22	22	T.O.T	CT CT VALID: 415E CT LC VALID: 93 E SOUTHERN AV @THE SETS LOUD MUSIC / ONGOING PROB / AREA CODE (480) CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY CT VIEWED PREMISE HISTORY
06089245	93 E SOUTHERN AV	28-May-06	22	35	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD MUSIC CT VIEWED PREMISE HISTORY CT VIEWED TEMPORARY SITUATIONS
06107993	93 E SOUTHERN AV	29-Jun-06	21	31	TICKET	CT LC VALID: SETS @93 E SOUTHERN AV CT CT VALID: 415E LOUD MUSIC...COMP ALREADY TALKED TO MANAGER BUT MUSIC IS STILL LOUD... NFI
06116508	93 E SOUTHERN AV	13-Jul-06	21	58	T.O.T	CT LC VALID: 93 E SOUTHERN AV @THE SETS CT CT VALID: 415E LOUD MUSIC....LOUD BASE.....FROM THIS COMPLEX...REQ PD CHECK NOISE LEV EL...AND WANTS 21 CONTACT-YES

ATTACHMENT 20

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
06151105	93 E SOUTHERN AV	7-Sep-06	22	24	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E COMPL ASKED THE OWNER TO TURN DOWN THE MUSIC AND HE REFUSED // COMPL R QSTING OFCR ASK THEM TO TURN THE MUSIC DOWN
06172340	93 E SOUTHERN AV	13-Oct-06	22	20	OTHER	CT LC VALID: SETS @93 E SOUTHERN AV CT CT VALID: 415E REQ PD CHECK THIS BUSN....HAVE THEM TURN MUSIC DOWN....COMPL WANTS PD CONTACT BY 21-YES
06174631	93 E SOUTHERN AV	17-Oct-06	19	32	OTHER	CT CT VALID: 415E CT LC VALID: 93 E SOUTHERN AV @THE SETS MUSIC IS REALLY LOUD //COMP CAN HEAR IT IN HIS LIVING ROOM CT VIEWED PREMISE HISTORY
06177614	93 E SOUTHERN AV	22-Oct-06	22	11	OTHER	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E EFUSED / COMPL REQ CONTACT PRIOR TO OFCR GOING TO THE SETS / LOUD MUSIC / COMPL SAYS HE ALREADY CALLED THEM AND ASKED THEM TO TURN IT DOWN AND THEY R .. COMP CALLED BACK ADVISED NO CONT COMP IS GOING TO TRY AND GO TO SLEEP M CONT: Y -> N
06178145	93 E SOUTHERN AV	23-Oct-06	22	52	OTHER	CT LC VALID: 93 E SOUTHERN AV @THE SETS CT CT VALID: 415E

ATTACHMENT 21

IR#	Address	Date	Hr	Min	Disposition	ICIS Comments
						COMPL REQ OFFCR TO ASK BAR OWNERS TO TURN MUSIC DOWN / COMPL SAYING BA SS IS COMING THRU HIS BEDROOM WALLS / NFI-NFD / CT VIEWED PREMISE HISTORY
07010046	93 E SOUTHERN AV	17-Jan-07	21	3	OTHER	CT LC VALID: SETS @93 E SOUTHERN AV Y HAVE NOT YET//COMP DOES NOT WANT CONT//TRYING TO GO TO SLEEP// CT CT VALID: 415E COMP WOULD LIKE MUSIC TURNED DOWN AT ABOVE LOCATION//COMP TALKED WITH MANAGER 1/2 HOUR AGO AND MANAGER ADVISED HE WOULD TURN IT DOWN BUT THE
07024323	93 E SOUTHERN AV	10-Feb-07	23	26	OTHER	CT LC VALID: 93 E SOUTHERN AV @SETS CT CT VALID: 415E LOUD MUSIC // COMPL WANTS CONTACT IN PLOT // BRO SWEATHER BLU JEANS // CAN CALL COMPL IF UNABLE TO LOCATE 480-296-5724
07044878	93 E SOUTHERN AV	17-Mar-07	2	5	GOA/UNABLE TO LOCATE	CT LC VALID: THE SETS @93 E SOUTHERN AV CT CT VALID: 415E CMP RESIDES IN THE 100BLK OF E PEBBLE BEACH & CAN HEAR A BULLHORN COMI NG FROM ABOVE ADDRES | RQST WE HAVE THEM SHUT WHATEVER IT IS DOWN |
07061462	93 E SOUTHERN AV	14-Apr-07	19	53	FI CARD	CT CT VALID: 415E CT LC VALID: THE SETS @93 E SOUTHERN AV LOUD MUSIC // COMP SAYS THE CITY ADVISED HIM THE NOISE SHOULD NOT BE A UDIBLE OUTSIDE BUSN AT ALL // WOULD LIKE CONTACT IN PERSON / ADV COMP THAT PD IS 23 ON ANOTHER CALL WILL 25 HIM SHORTLY @2030HRS**JNM**

Part I and II Crimes
The Sets at 93 E Southern Ave
May 1, 2005 - April 30, 2007

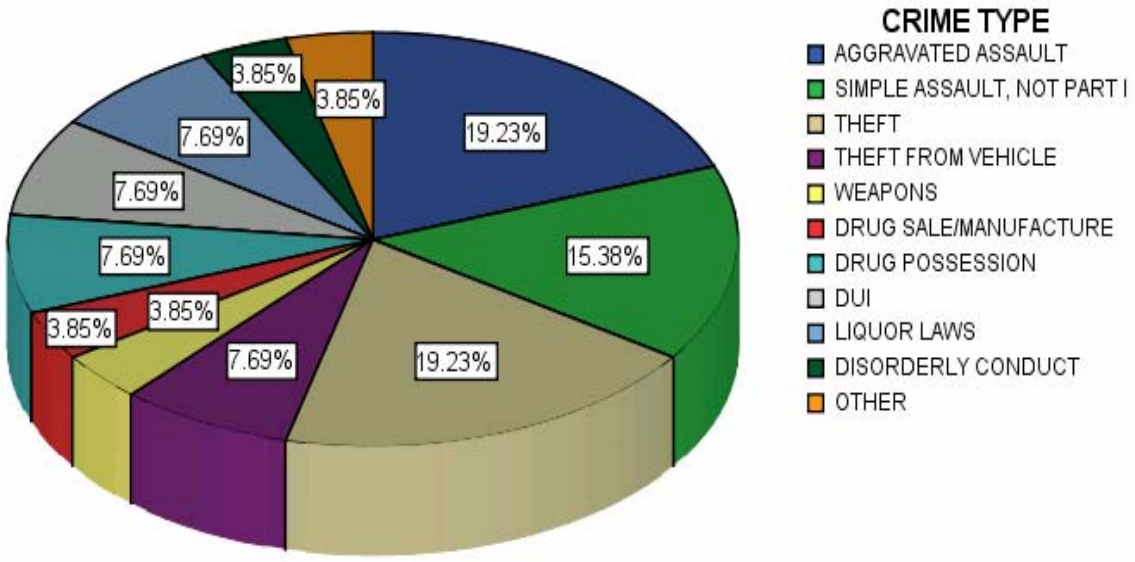
IR#	Date	Crime	Disposition
05094797	6-Jun-05	THEFT	Other
05109296	2-Jul-05	THEFT	Arrest, Adult
05109341	2-Jul-05	SIMPLE ASSAULT, NOT PART I	Other
05109223	2-Jul-05	THEFT FROM VEHICLE	Other
05180302	29-Oct-05	AGGRAVATED ASSAULT	Other
05181301	30-Oct-05	DUI	Arrest, Adult
05192101	17-Nov-05	THEFT	Other
06013494	23-Jan-06	AGGRAVATED ASSAULT	Other
06013504	23-Jan-06	THEFT	Other
06018831	31-Jan-06	DRUG SALE/MANUFACTURE	Arrest, Adult
06059357	9-Apr-06	THEFT FROM VEHICLE	Other
06060545	11-Apr-06	LIQUOR LAWS	Arrest, Adult
06087438	26-May-06	SIMPLE ASSAULT, NOT PART I	Arrest, Adult
06090439	30-May-06	DISORDERLY CONDUCT	Arrest, Adult
06090408	30-May-06	AGGRAVATED ASSAULT	Other
06109377	2-Jul-06	DUI	Arrest, Adult
06109499	2-Jul-06	DRUG POSSESSION	Arrest, Adult
06137591	17-Aug-06	WEAPONS	E/C, Adult(Exceptionally Cleared)
06143891	26-Aug-06	SIMPLE ASSAULT, NOT PART I	Other
06146454	30-Aug-06	AGGRAVATED ASSAULT	Other
06153411	11-Sep-06	THEFT	Other
06168436	7-Oct-06	SIMPLE ASSAULT, NOT PART I	Arrest, Adult
06192948	16-Nov-06	AGGRAVATED ASSAULT	Other
06198308	26-Nov-06	OTHER	Arrest, Adult
07035758	2-Mar-07	LIQUOR LAWS	Arrest, Adult
07060320	12-Apr-07	DRUG POSSESSION	Arrest, Adult

Disposition Frequencies

Disposition	Frequency	Percent
Arrest, Adult	12	46.15%
E/C, Adult(Exceptionally Cleared)	1	3.85%
Other	13	50.00%
Total	**26**	**100.00%**

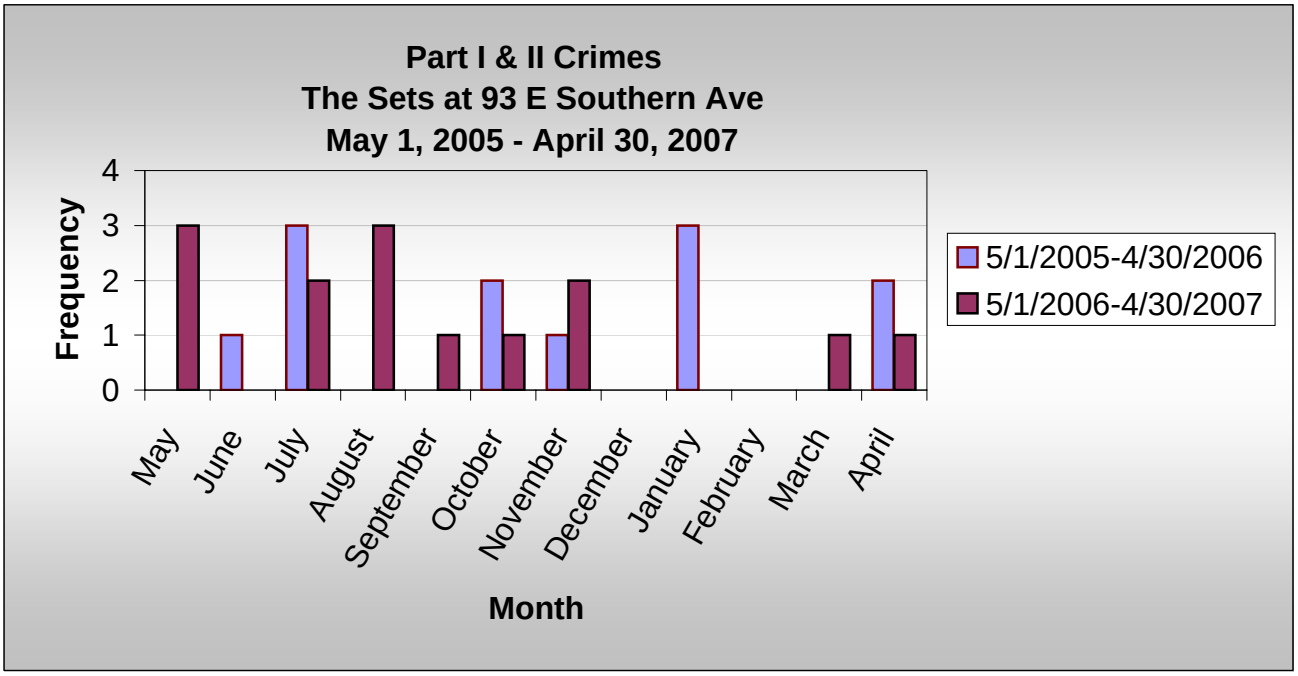
Part I and II Crimes
The Sets at 93 E Southern Ave
May 1, 2005 - April 30, 2007

Crime	Frequency	Percent
AGGRAVATED ASSAULT	5	19.23%
SIMPLE ASSAULT, NOT PART I	4	15.38%
THEFT	5	19.23%
THEFT FROM VEHICLE	2	7.69%
WEAPONS	1	3.85%
DRUG SALE/MANUFACTURE	1	3.85%
DRUG POSSESSION	2	7.69%
DUI	2	7.69%
LIQUOR LAWS	2	7.69%
DISORDERLY CONDUCT	1	3.85%
OTHER	1	3.85%
Total	**26**	**100.00%**



Part I & II Crimes
The Sets at 93 E Southern Ave
May 1, 2005 - April 30, 2007

Month	5/1/2005-4/30/2006	5/1/2006-4/30/2007
May	0	3
June	1	0
July	3	2
August	0	3
September	0	1
October	2	1
November	1	2
December	0	0
January	3	0
February	0	0
March	0	1
April	2	1
Total	**12**	**14**



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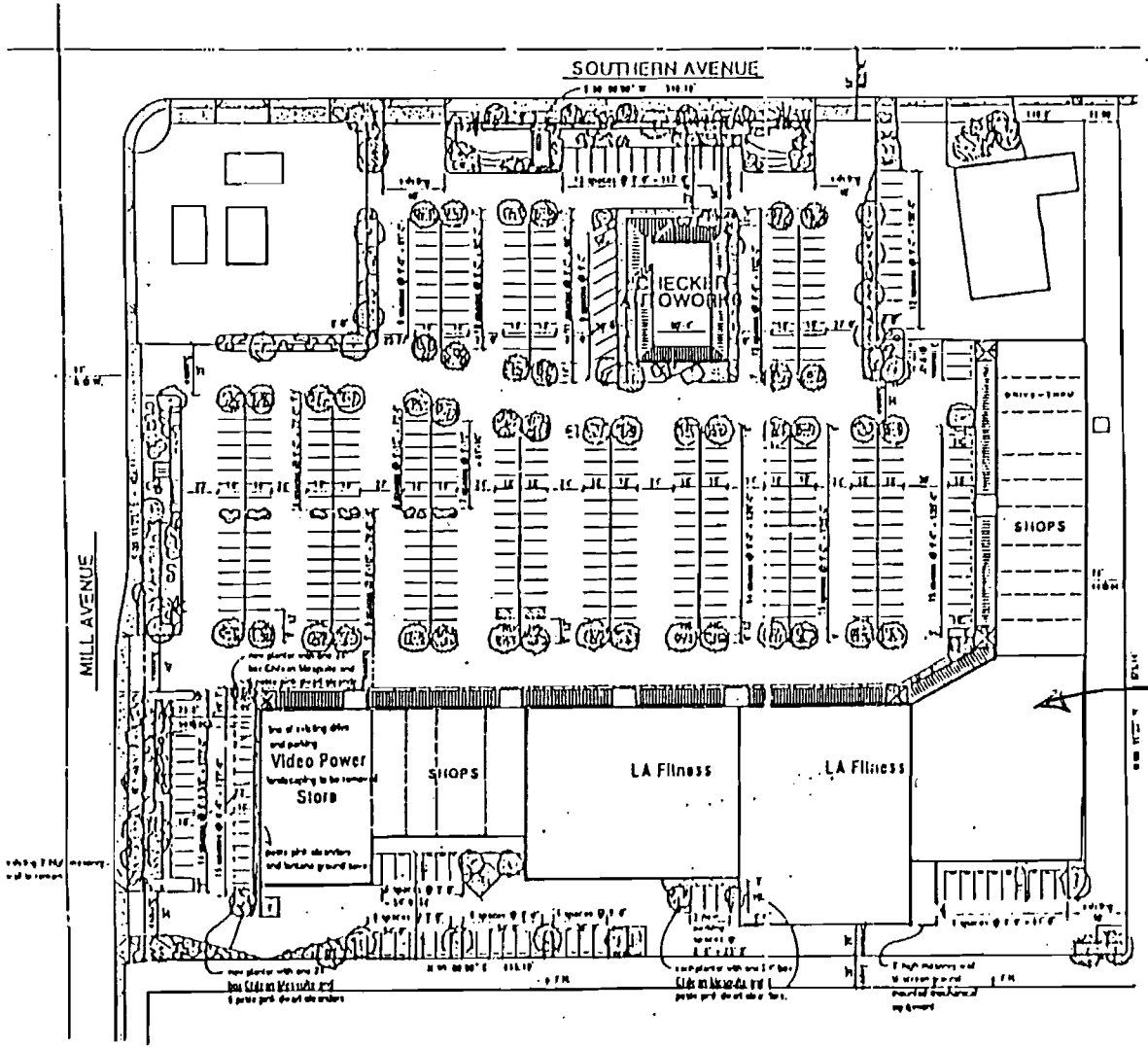
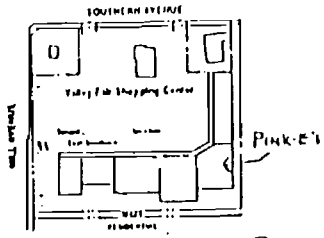


SITE PLAN

PROJECT DATA

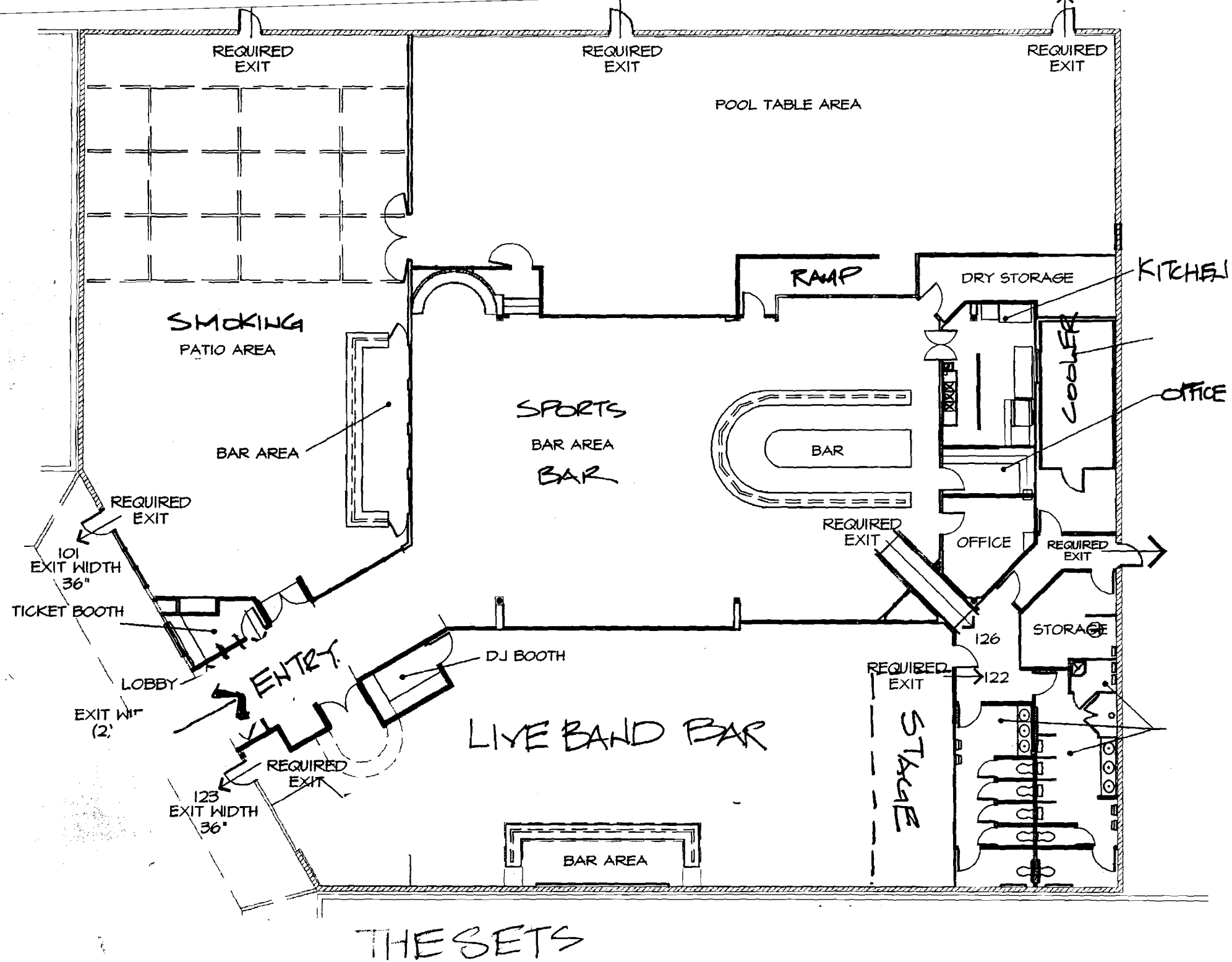
VICINITY MAP



PROJECT LOCATION MAP

LEGAL DESCRIPTION

ATTACHMENT 26



ATTACHMENT 27

THE SETS

93 E SOUTHERN AVE

PL070167

FRONT OF BUSINESS: VIEW TO SOUTHEAST