

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

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

Commission Present:

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

Commission Absent:

Dennis Webb
Dave Maza
Dan Killoren

City Staff Present:

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

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

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

CONSENT AGENDA

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

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

STAFF REPORT: [DRCr TheHaven 012213](#)

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

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

STAFF REPORT: [DRCr MidnightHookah 012213](#)

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

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

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

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

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

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

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

Chair DiDomenico opened the hearing to public input.

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

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

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

Chair DiDomenico closed the hearing to public input.

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

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

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

Officer Scoville indicated none directly related to the business.

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

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

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

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

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

Chair DiDomenico asked about patrons bringing alcohol into the lounge.

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

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

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

Chair DiDomenico asked about the white substance found.

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

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

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

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

4. ANNOUNCEMENTS - None

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

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



Lisa Collins, Interim Director, Community Development Department