

**Minutes  
HEARING OFFICER  
JUNE 7, 2011**

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

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Nick Graves, Planner

**Number of Interested Citizens Present: 9**

**Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by June 21, 2011 at 3:00 PM to the Community Development Department.**

1. Ms. MacDonald noted that the Hearing Officer Minutes for May 17, 2011 had been reviewed and approved.  
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2. Ms. MacDonald noted that the following case(s) had been removed from today's agenda:
  - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **WYLOGE PROPERTY (PL110164/ABT11009/CE110814)** (Jack Scofield, Inspector; Steven & Florence Wyloge, property owners) located at 1978 East Los Arboles Drive in the R1-7, Single Family Residential.  
**WITHDRAWN BY CODE COMPLIANCE**  
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3. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **PAIZ PROPERTY (PL110165/ABT11010/CE110932)** (Jack Scofield, Inspector; Christopher & Emiko Paiz, property owners) located at 4919 South Country Club Way in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that there are grass and weeds growing in the gravel areas of the front and side yards, a large amount of trash and debris in the rear yard, and the pool has green stagnant water. The property is in foreclosure proceedings. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL110165 /ABT11010 /CE110932 for an open period of 180 days.

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4. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **GOMEZ PROPERTY (PL110168/ABT11012/CE110977)** (Jack Scofield, Inspector; Mary Frances Gomez, property owner) located at 5511 South Hazelton Lane in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that there are overgrown grass & weeds, debris and a deteriorated pool. The property owner has been non-responsive to rectifying these issues. Due to a history of recidivism and four months of attempts to have the site remediated by the property owner, staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL110168 /ABT11012 /CE110977 for an open period of 180 days.

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5. Request by **ALPHA GRAPHICS CENTER - VERIZON WIRELESS – PHO GILLILAND (PL110171)** (Dani Waechter/Wireless Resources Inc., applicant; D & M Development LLC, property owners) located at 815 West University Drive in the CSS, Commercial Shopping & Services District for:

**ZUP11038** Use permit to allow a sixty foot (60') high monopole (monopalm).

Ms. Dani Waechter was present to represent this case.

Nick Graves, staff planner, gave an overview of this case. He noted that the proposed monopalm will be located at the southwestern corner of the site, just north of the refuge enclosure. The adjacent property to the west (Fiesta Plaza) has a T-Mobile 55 ft. monopalm. Staff feels that the two monopalms less than 250 ft. apart will create a cluster appearance. One (1) e-mail of support and one (1) phone call of inquiry have been received on this request.

Ms. Waechter acknowledged her understanding of the Conditions of Approval.

Ms. MacDonald stated that this request meets the criteria for a use permit.

**DECISION:**

Ms. MacDonald approved PL110171 / ZUP11038 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The use permit is valid for the plans as approved by the Hearing Officer.
3. The monopalm shall be no greater than 60'-0" in height (to the top of the monopalm fronds).
4. ~~The proposed monopalm shall match the existing T-Mobile monopalm located to the west of this proposal at 855 West University Drive.~~ **DELETED BY STAFF**
5. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
6. The wireless device shall be removed within 30 days of discontinuance of use.
7. The proposed equipment cabinet shall be constructed of a similar material and color to match the existing refuse enclosure for the property.
8. A weather resistant emergency contact informational sign shall be posted on the site and shall be visible to the public.
9. The 12'-0" T.S. rolling gate shall require 5 f.c. (foot candles) at the gate and 2 f.c. (foot candles) within a 15 foot radius.
10. A minimum of two (2) twenty foot (20') Phoenix Date Palm trees shall be planted on site to complement the proposed mono-palm; details to be resolved through the Building Permit Plan Review process.
11. A Development Plan Review (DPR) is required for modifications to the site regarding the parking lot layout and landscape plan.

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6. Review of compliance with Condition of Approval No. 18, assigned by the Hearing Officer at the November 3, 2010 HO, which reads 'The applicant is to return to the Hearing Officer on May 3, 2011 for review of compliance with these conditions' for the following:

Request by **RIO SALADO CENTER - TEEN DANCE CLUB (PL100060)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP10020** Use permit to allow a teen dance hall with live indoor entertainment (live bands, DJ).

Mr. Thomas George was present to represent this case.

Nick Graves, staff planner, gave an overview of this case. There have been noise complaint reports for this area.

Mr. George indicated that he had contacted the Police Department regarding the noise complaint report(s), and had received copy of their calls for service report. None of the officers filed a police report on the complaints. On the date of the May 21<sup>st</sup> a noise complaint was filed when he was not even opened for business and was in the process of being remodeled. Ms. MacDonald asked when the club was opened; Mr. George responded that it opened in February 2011. Business is generated by Facebook and fliers are distributed by kids at their schools indicating when the club will be open.

Ms. Toni Sykora spoke in opposition, stating that noise has reached a saturation point. She does not want sound disturbance to be increased with new venues adding to the problem. The bass sound carries and it is difficult to determine the point of origin. Noise travels from parties in the neighborhood and other businesses.

There is drinking and drug use prior to young people attending the events at the club. Intermittent going and coming of vehicles, drunken profanity and loud music/noises are generated by the young people. There is no point in calling the police because the individuals stop before they arrive. These issues affect the enjoyment of her home and she indicated that the community needs to offer greater protection of our young people.

Mr. Lane Carraway noted that loitering is an issue of concern. He noted that he had called in a noise complaint on Saturday not in relation to the Teen Venue but in relation to the loud noise/ bass music being generated from Hookamania, Mr. George's restaurant. Vehicles are coming and going without any control and add to the noise. Tempe's Code Enforcement is not open on the weekends and is not a source of available contact during that period. It is not fair to the citizens to allow this business when a petition had been signed by residents that they do not want this business in this area.

Mr. Paul Dunham spoke indicating that other clubs have been closed due to the noise issues generated by bass sounds. It is not the music, but the bass, and the request is to have the bass turned down. The police officer assigned to the area does not want to file a complaint report, regardless of the noise situation. The neighborhood should not have to put up with this type of issue. Mr. George should respect the neighborhood complaints, as he has control over the music, and he should turn down the bass.

Ms. Darlene Justus spoke, explaining that the concern was that there would be up to 600 students in one place. There have been no big functions as yet and the opening has been a 'soft' event. She knew that this has been a waiting period for this business to be reviewed. The bass noise needs to be turned down. She asked that the applicant be asked to return in 6 months for another review, as she feels that this business will intensify over the coming months.

Ms. MacDonald noted that a police report showed a complaint time of 11:30 PM; she asked if Mr. George was adhering to the 11:30 PM assigned closing time. Mr. George stated that it was possible it referred to his restaurant that had a later closer time. He understands the concerns about the bass sound, but there are other noises generated by cars and vehicle traffic in the area. He would expect complaints from the apartment dwellers, which he has not had, rather than the residents living behind the apartment complex. There are different officers that investigate the noise complaints. There is a Sports Bar on Scottsdale Road that could also be a source of noise. He feels that his business is being monitored to the point of harassment by the neighborhood.

Ms. MacDonald stressed that this application is just the review of a use permit that has already been granted. She also stressed that this type of business may generate more review than others due to the nature of business. The purpose of the 6 month review is to evaluate the level of adherence to the Conditions of Approval.

Mr. George explained that the bass has been turned down, and that the police have noise meters to evaluate the level of sound. He is not trying to dismiss the concerns of the neighborhood, he stated, but if he is operating properly and doesn't have police problems or kids on the street, etc. he is in compliance with the Conditions of Approval. If the noise/music was a justifiable complaint there would have been a police report, he noted. It may not be his business that is causing the concern, maybe it is another source/location such as the Sports Club. He doesn't leave the doors open.

These cases are difficult, Ms. MacDonald noted, due to the property rights and concerns of the surrounding neighborhoods, as well as giving the business owner an opportunity to have a successful business. Since Mr. George has only been open for 3 months, there has not been enough time to establish a track record. She feels that returning in 6 months will give a better overall perspective. Mr. George is entitled to run this type of

business, and the additional 6 month review period will be beneficial in determining if there is a verifiable record of complaints.

**DECISION:**

Ms. MacDonald reapproved PL100060 / ZUP10020 subject to the following modified conditions:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is valid for Teen Dance Club and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
3. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
4. Music/sound/noise generated from the use shall conform to the City of Tempe code requirements for noise control.
5. The live entertainment shall take place inside only. No live entertainment will be allowed outside.
6. 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.
7. ~~All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the use permit becoming effective. Applicant must obtain a Teen Dance Hall license per City Code, Chapter 16A-140, prior to this use permit becoming effective.~~ **ACTIVITY COMPLETE**
8. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
9. The use permit is valid for the plans as submitted within this application.
10. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business. Please contact William Gallauer at 480-350-8749. This security plan shall specifically address issues of parking lot monitoring and staffing, lighting improvements that might be necessary, identification training for employees, review of the parking lot escort plan and screening control at the door of the participants.
11. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8372.
12. Replace all missing trees along the north landscape area and in the north landscape islands; along with any other missing landscape material.
13. ~~All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.~~ **ACTIVITY COMPLETE**
14. ~~Provide ten inch (10") vinyl suite/address numbers on proper suites.~~ **ACTIVITY COMPLETE**
15. ~~Replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.~~ **ACTIVITY COMPLETE**
16. Hours of operation to end no later than 11:30 p.m. on a daily basis.
17. Applicant is responsible for trash pickup in the parking lot adjacent to the club.
18. The applicant is to return to the Hearing Officer on ~~May 3, 2011~~ **December 7, 2011** for review of compliance with these conditions. **MODIFIED BY HEARING OFFICER**
19. All conditions shall be completed prior to the use permit becoming effective.

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7. Request by **APACHE OAK SHOPPING CENTER – EDDIE'S SMOKE (PL110178)** (Ashley Thompson & Eddie Shamsa, applicants; Apache Oak Shopping Center LLC) located at 1501 East Apache Boulevard, Suite No. 101 in the CSS, Commercial Shopping and Services District for:

**ZUP11040** Use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

Mr. Eddie Shamsa was present to represent this case.

Nick Graves, staff planner, gave an overview of this case. One (1) phone call of inquiry has been received regarding the type(s) of products to be sold.

Mr. Shamsa acknowledged his understanding of the Conditions of Approval.

Ms. MacDonald asked the applicant if he intended to have a hookah lounge at this location; Mr. Shamsa stated he did not. Ms. MacDonald explained that an additional use permit would need to be obtained, if smoking was to be included in the scope of activities, since it would be an expansion of the current use. She also explained that there would be additional ventilation requirements for the space should indoor smoking be added. Mr. Shamsa indicated that he understood both of these additional requirements.

Ms. MacDonald stated that this request meets the criteria for a use permit.

**DECISION:**

Ms. MacDonald approved PL110178 / ZUP11040 subject to the following conditions:

1. The use permit is valid for Eddie's Smoke and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. The use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Should smoking be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
8. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8372.
9. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan. Contact Crime Prevention at (480) 350-8311 within 30 days of this approval by July 7, 2011.
10. Site shall be brought into compliance to reflect approved landscape plan.

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The next Hearing Officer public hearing will be held on **Tuesday, June 21, 2011.**

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There being no further business the public hearing adjourned at 2:31 PM.

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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



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

SA:dm

APPROVED