

Staff Summary Report



Hearing Officer Hearing Date: 12/07/10

Agenda Item Number: 7

SUBJECT: This is a public hearing for a request by **RYO SMOKE SHOP** located at 3400 South Mill Avenue, Suite No. 23, for one (1) Use Permit.

DOCUMENT NAME: 20101207cddk01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **DANELLE PLAZA – RYO SMOKE SHOP (PL100366)** (Andreu Pomykala, applicant & property owner) located at 3400 South Mill Avenue, Suite No. 23, in the CSS, Commercial Shopping and Services District for:

ZUP10133 Use Permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

PREPARED BY: Diana Kaminski, Senior Planner (480-858-2391)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

LEGAL REVIEW BY: N/A

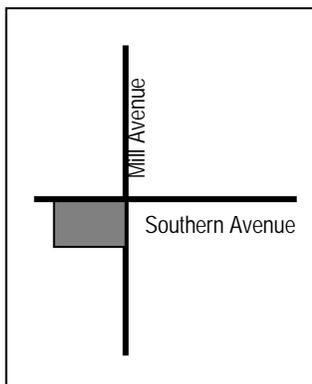
DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact on City funds.

RECOMMENDATION: Staff – Approval, subject to conditions

ADDITIONAL INFO:

The applicant is requesting approval of a use permit to allow a tobacco retail store. The business will involve the sale of tobacco-related products and has a rolling service to allow customers to choose their tobacco and roll their own cigarettes. To date, there has been one call of inquiry regarding this request.



PAGES:

1. List of Attachments
2. Comments; Reasons for Approval
3. Conditions of Approval;
- 3-4. History & Facts
4. Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map
2. Aerial Photo
3. Letter of Intent
4. Floor plan
5. Staff Photograph

COMMENTS:

The proposed store will be located within Danelle Plaza, a shopping center located at 3400 S. Mill Avenue, Suite 23 on the southwest corner of Mill and Southern avenues. The shopping center is a mix of retail, restaurants, churches and services. Multi-family residences are to the south, railroad tracks are to the west, and a grocery store and strip retail center are to the north, additional retail and restaurant uses are located on the east side of Mill Avenue. The suite is located in the center of the plaza with parking on the north and south sides. There are vacant lots to the north and south of this building, and the suite has no street frontage. To date, staff has received one call of inquiry concerning this request.

USE PERMIT

The business has been for operating without the required planning entitlements and is now requesting a Use Permit to operate a roll your own tobacco retail store in Danelle Plaza. The proposed use requires a Use Permit, to allow a smoke shop within the Commercial Shopping and Service (CSS) zoning district.

Section 6-308 E Approval criteria for Use Permit:

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code.

The product offered allows patrons to roll their own cigarettes. Tobacco and smoking accessories are also sold. The applicant indicated two employees would serve customers. Suite #23 is 640 square feet, with no street frontage. The proposed hours of operation are Monday through Thursday 10am to 8pm, Friday and Saturday 10am to 10pm and Sunday noon to 6pm. With the exception of illegal signage, there have been no complaints regarding this specific use within the plaza. Other uses within the plaza include restaurants, bars, a hookah lounge, a smoke shop, a thrift store, churches, personnel services, and a childcare center. The use is similar to other uses within the center.

2. Any significant increase in vehicular or pedestrian traffic. Describe any part of the use applicable to conformance with this.

The size of the store is not a destination retailer, and as indicated by the applicant would serve existing Danelle Plaza patrons, or surrounding residents or employees within the area. There is sufficient parking for this use. The center has pedestrian traffic, and challenges with loitering. The applicant has indicated that legitimate businesses would help activate the center and reduce the congregation of non-paying loiterers. It is not foreseen that there would be a significant increase in traffic caused by this use. A condition has been included to require a security plan and monitoring of the parking lot.

3. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. Describe any part of the use applicable to conformance with this.

The retail sale of tobacco products inside is not anticipated to have any nuisances exceeding that of surrounding conditions.

4. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not 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. Describe any part of the use applicable to conformance with this.

No information was provided to indicate that this use would contribute to the deterioration of the neighborhood. There is a cluster of similar businesses within this center, which may create an economic synergy between suites attracting similar clientele.

5. Compatibility with existing surrounding structures and uses.

The existing buildings and uses are compatible with the proposed use.

6. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

No specific information was provided in the application. A condition of approval is included to require a security plan.

Conclusion

Based on the criteria and information provided by the applicant, staff recommends approval of this request, with conditions.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

1. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
2. If smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
3. Obtain all necessary clearances from the Building Safety Division.
4. All illegal signage shall be removed. All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.
5. The Use Permit is valid for the plans as submitted within this application.
6. Any intensification or expansion of use, including will require a new Use Permit.
7. The Use Permit is valid for RYO Smoke Shop and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
8. 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.
9. The applicant shall submit a security plan to the City of Tempe Crime Prevention Unit. Contact Crime Prevention at 480-858-6330 within 30 days of this approval (January 6, 2011).

HISTORY & FACTS:

March 1965	Inspections approved for Certificate of Occupancy on building construction.
April 3, 1996	Hearing Officer approved a Use Permit for Labor Ready to locate in a pad building at the northwest corner of Danelle Plaza.
November 5, 1998	Hearing Officer approved a Use Permit for Reeves Auto Supply to allow an automobile parts and supply store at 3400 S. Mill Avenue, Suite 139.
April 19, 2000	Hearing Officer approved Use Permit for Dux Dermagraphics to allow a tattoo and body piercing shop at 3400 S. Mille Avenue, Suite 122.
May 2, 2000	Hearing Officer approved a Use Permit for General Printing to allow a 4,300 s.f. commercial print shop at 3400 S. Mill Avenue.

April 1, 2003	Hearing Officer approved a Use Permit for Yucca Tap Room to allow a 214 s.f. outdoor dining/drinking/smoking patio to be incorporated into a portion of the existing building area located at 29 W. Southern Avenue.
August 27, 2003	Board of Adjustment approved a Use Permit for Industrial Personnel Inc. to operate a temporary personnel agency.
December 16, 2003	Hearing Officer approved a Use Permit for The Arc of Tempe to allow a thrift shop at 3400 S. Mill Avenue in suite 39.
December 29, 2003	Board of Adjustment denied a Use Permit to Command Labor to allow a temporary staffing agency.
February 18, 2004	Hearing Officer approved a Use Permit for Iglesia Santidad Pentecostal de Tempe to allow a church.
April 20, 2004	Hearing Officer approved a Use Permit for Phoenix Design to allow an architectural consulting company.
May 4, 2004	Hearing Officer approved a request by Landmark Apostolic Church to allow a church.
May 19, 2004	Hearing Officer approved a Use Permit for Arizona Defensive Driving School to allow defensive driving classes within Danelle Plaza.
July 6, 2004	Hearing Officer approved a Use Permit for Iglesia Cristiana Ministerio de CReconciliacion to allow a church.
July 20, 2004	Hearing Officer approved a Use Permit for India Snacks to allow the sale of grocery items.
October 5, 2010	Community Development Staff approved a Development Plan Review for outdoor smoking patios serving customers of two tenants within Danelle Plaza 33 W. Southern Avenue.
November 16, 2010	Hearing Officer approved a Use Permit for Sky High Hookah Lounge.

DESCRIPTION:

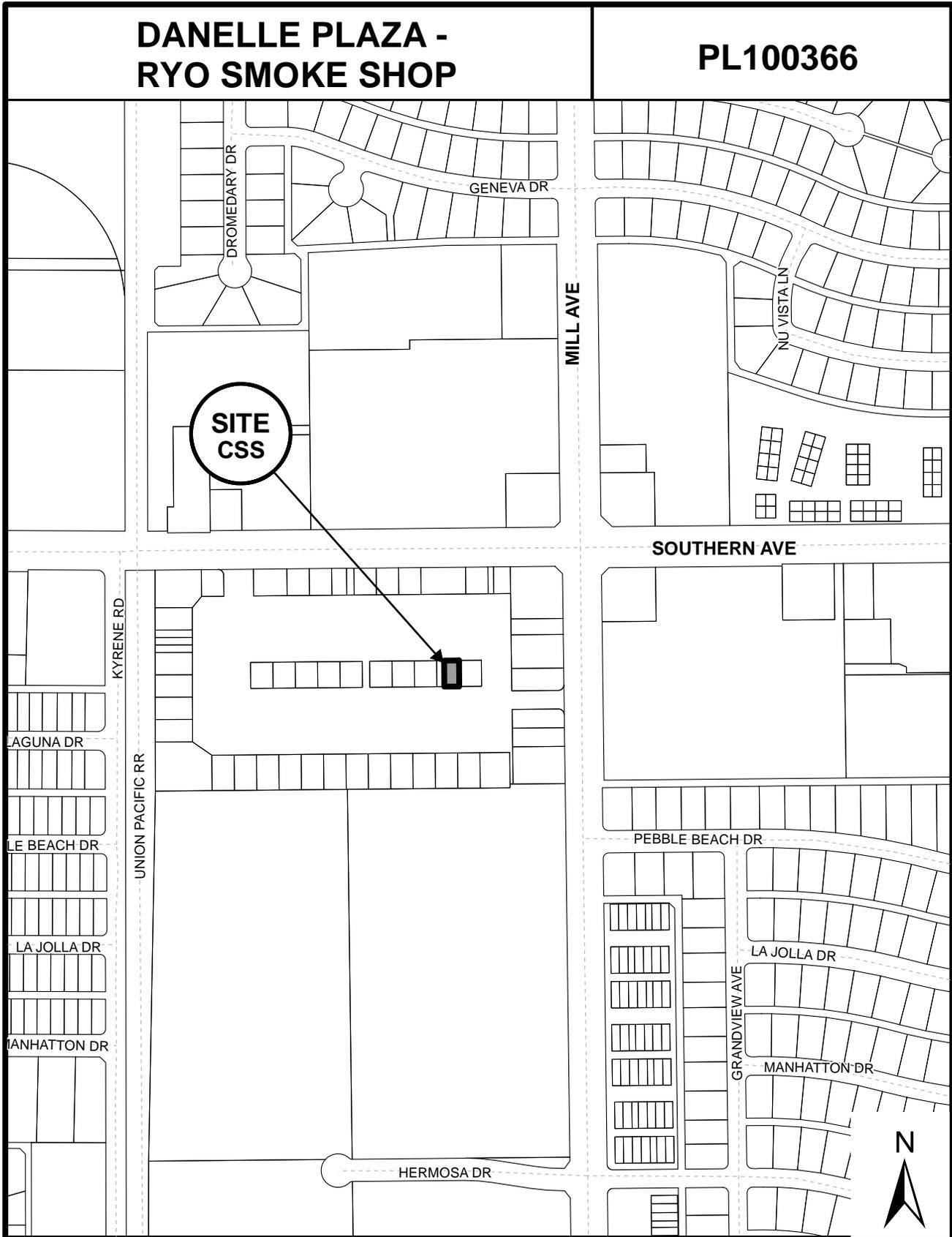
Owner – Andreu Pomykala
 Applicant – Andreu Pomykala
 Existing Zoning – CSS, Commercial Shopping & Services District

**ZONING AND
 DEVELOPMENT
 CODE REFERENCE:**

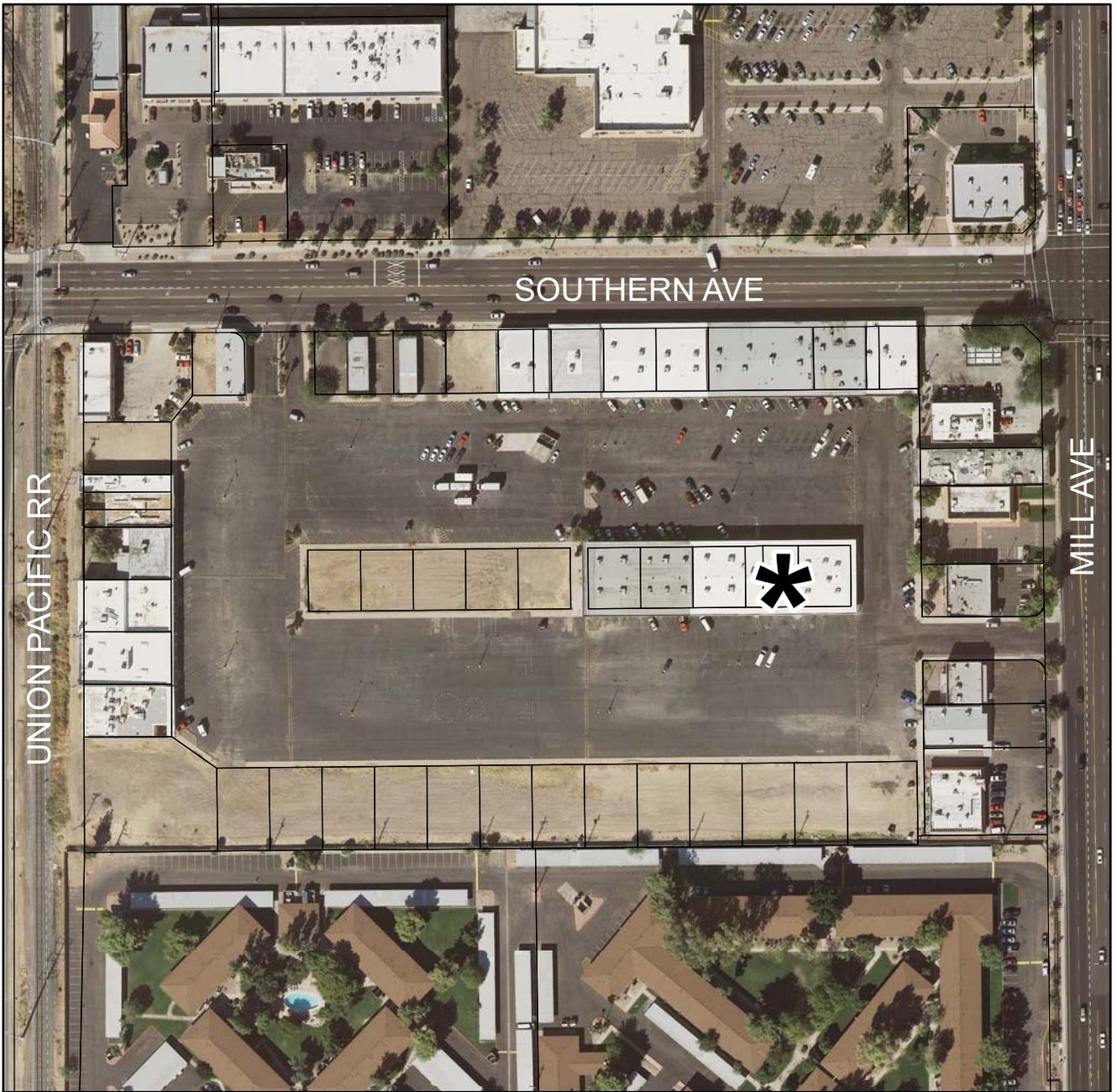
Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts
 Part 6, Chapter 3, Section 6-308 – Use Permit

**DANELLE PLAZA -
RYO SMOKE SHOP**

PL100366



Location Map



DANELLE PLAZA - RYO SMOKE SHOP (PL100366)

Letter of Explanation of Business

The hours of operation would be the following

Monday – Thursday 10am-8pm

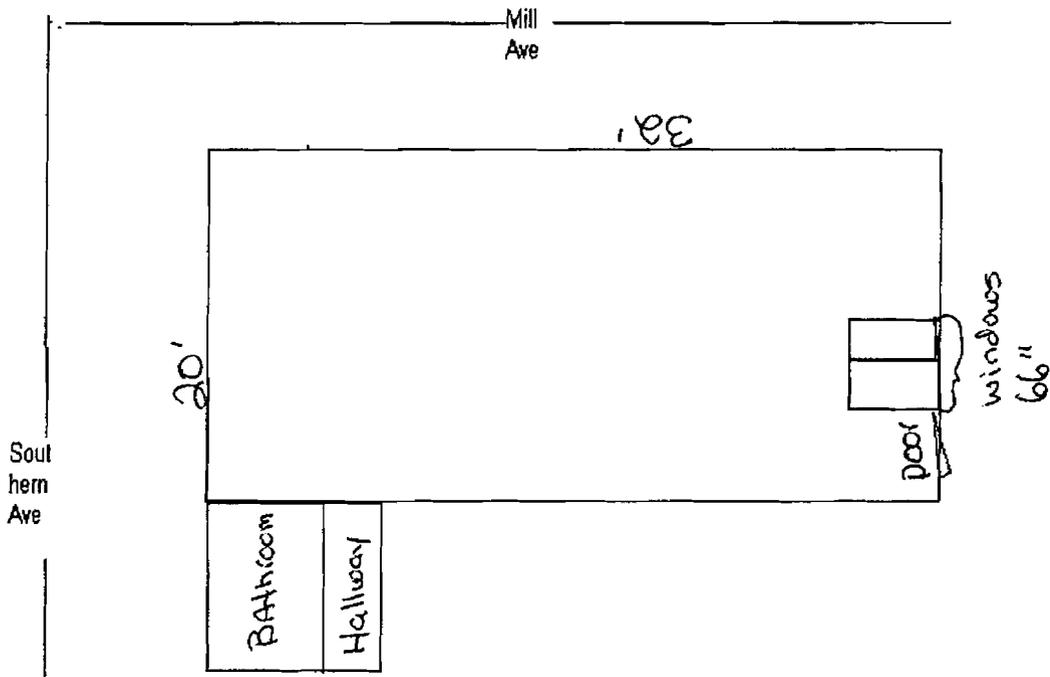
Friday & Saturday 10am -10pm

Sunday 12pm-6pm

The store would be run mostly by the owner and family members. Which would consist of two people or more if the demand gets greater. The customers would be people who already come to the plaza and just looking for a cheaper alternative to buying cigarettes. Right now a lot of people go to the Indian Reservation to buy their smokes. I am offering something cheaper than what Reservation is offering. Therefore the city and the state would benefit via tax revenue. We have a machine that rolls tobacco into a cigarette in 8 minutes.

I don't believe this small business would be a nuisance to anyone because Danelle Plaza needs people to be around so stuff doesn't happen to the plaza. We need much more traffic. That is just my opinion. Bums don't hang out where there are a lot of people and the more people that we get to come to Danelle Plaza the less bums we want to stay around here.

The employees and patrons from the local businesses that are in this plaza already come to the store and use the products that I supply. RYO Smoke shop does not stay open late so I don't think it is a nuisance to anyone. Many of the businesses in the plaza stay open much later so I don't think there will be a major effect to anyone. We are just a small smoke shop that is just trying to offer people an inexpensive product to try and help with their decreasing budget in this terrible economy. Especially after the smokers received a 2000% tax increase in 2009 on cigarettes.



RVD SmokeShop
3400 S. Mill Ave
Suite 23



DANELLE PLAZA – RYO SMOKE SHOP

**3400 SOUTH MILL AVENUE
SUITE NO. 23**

PL100366

FRONT OF BUSINESS

