

Staff Summary Report



Hearing Officer Hearing Date: April 20, 2010

Agenda Item Number: 11

SUBJECT: This is a public hearing for a request for revocation of the use permit issued to **URBAN CAFE** to allow a hookah lounge/tobacco retailer

DOCUMENT NAME: 20100420dssd02 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

Request by **SUNSTOP PLAZA – URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by Hearing Officer at the May 6, 2008 HO hearing.)

PREPARED BY: Shawn Daffara, Planner II (480-858-2284)

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

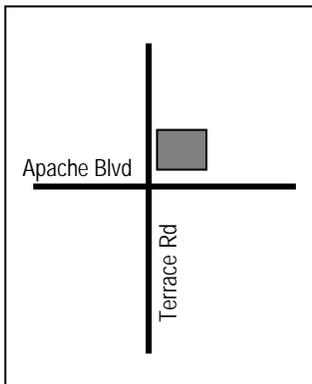
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO:



The City of Tempe is requesting a review of Urban Cafe (ZUP08063) for possible revocation of the use permit. Urban Cafe has been in violation of the use permit, non-compliance with Condition of approval No. 4: "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

PAGES:

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

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent for Use Permit, dated March 10, 2008
- 4-5. Use Permit Approval Letter, dated May 14, 2008
6. Code Enforcement Violation Letter, dated January 13, 2010
7. Administrative Hearing Letter, dated January 20, 2010
8. Site plan
9. Floor Plan
10. COT letter of resolution from the April 20, 2010 Hearing Officer hearing
11. April 20, 2010 Hearing Officer Minutes

REVOCACTION COMMENTS:

The applicant, City of Tempe is requesting the use permit (ZUP08063) be revoked due to failure to meet the conditions of approval. Urban Cafe received a use permit approval on May 6, 2008 subject to ten (10) conditions of approval. Urban Cafe has not complied with condition number four (4): "All permits and clearances required by the Building Safety Sections shall be obtained prior to the use permit becoming effective." The business has not completed the necessary HVAC and occupancy upgrades to meet the condition of approval. Both the City of Tempe Code Compliance and Building Safety Inspections Divisions have been working with the business and property owner to gain compliance. On February 4, 2010; City staff held an administrative hearing with the business owner to discuss the status of the use permit. The intent of the meeting was to provide 30 days for the business to come into compliance with the use permit. If after 30 days, a building permit is not issued and final inspection received, then the use permit will be brought back to the Hearing Officer for revocation. The business did not gain compliance within 30 days; however the business did apply and receive the required tenant improvement (TI) building permits on August 20, 2009. To date, the building permit has only received one inspection and work has not been completed.

COMMENTS FROM USE PERMIT (ZUP08063) MAY 6, 2008

The applicant Urban Café is requesting a use permit to allow a hookah lounge/tobacco retailer located at 1212 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District. Urban Café occupies approximately 1,257 square feet of space and plans to sell snacks and beverages in addition to hookah and related products. Hours of operation will be from 6pm to 2am, seven (7) days a week; they will employ 2 full time employees. Peak hours for hookah tend to be after dinner into the late evening. No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge.

City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, disallow a tobacco retailer from locating within 1,320 feet of a school. Thus, Urban Café requested a Zoning Administrator's opinion to determine if they would be permitted to submit a use permit request to operate a hookah lounge/tobacco retail establishment. The applicant provided a copy of their "Tobacco Distributors License" dated 2005, from the State of Arizona, as evidence that they had been operating as a hookah lounge prior to the separation requirement. In the Zoning Administrator's letter, Planning Director Lisa Collins opined that Urban Café had been operating as a hookah lounge prior to the separation requirement taking effect; therefore permitting them to submit a use permit request to operate a hookah lounge/tobacco retail establishment.

Use Permit

The Zoning and Development Code requires a Tobacco Retailer to obtain a use permit in the CSS, Commercial Shopping and Services District. When the use permit was approved it met applicable tests in the following manner:

Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no 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;
 - This is a retail use, similar to others within the shopping center; there should be no nuisances.
- 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;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan

Land Use Element Goals and Strategies.

- d. Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses.
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public.
 - The use is confined to its suite with sole purpose of providing hookah smoking inside which should not create a nuisance to the surrounding area.

**ORIGINAL
CONDITION(S)
OF APPROVAL (ZUP08063) MAY 6, 2008:**

1. The use permit is valid for Urban Cafe and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This 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.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products.
7. All rear doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a Sign Permit. Please contact the planning staff at (480) 350-8331.
10. A security plan is required for this establishment due to the late hours of operation in conjunction with tobacco retail. Contact Tempe Police Department Crime Prevention Unit (480-350-6333).

Conclusion

In that the applicant failed to meet the conditions of approval, staff recommends approval of the revocation of the use permit.

**REASON(S) FOR
REVOCAION:**

1. Non-compliance with the conditions of approval. Zoning and Development Code, Section 6-603 allows for a review and possible revocation of use permits, if conditions of approval are not met.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE USE PERMIT WOULD BE REVOKED.

HISTORY & FACTS:

April 3, 2008 DSM08014: Zoning Administrator Opinion to allow URBAN CAFE hookah lounge to apply for a use permit given they did not meet the 1,320 foot separation from a school.

May 6, 2008 ZUP08063: Hearing Officer approved use permit for a hookah lounge/tobacco retailer.

August 19, 2009 BP091036: Tenant Improvement plans submitted for Hookah Lounge.

August 20, 2009 BP091036: Tenant Improvement plans approved and building permit issued.

August 31, 2009 BP091036: Building Permit Inspection requested for Framing.

January 8, 2010 CM100038: Violation of use permit condition of approval # 4 - All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

February 4, 2010 Administrative Hearing with business owner to gain compliance.

April 6, 2010 At the request of staff, the Hearing Officer continued this case to the April 20, 2010.

DESCRIPTION:

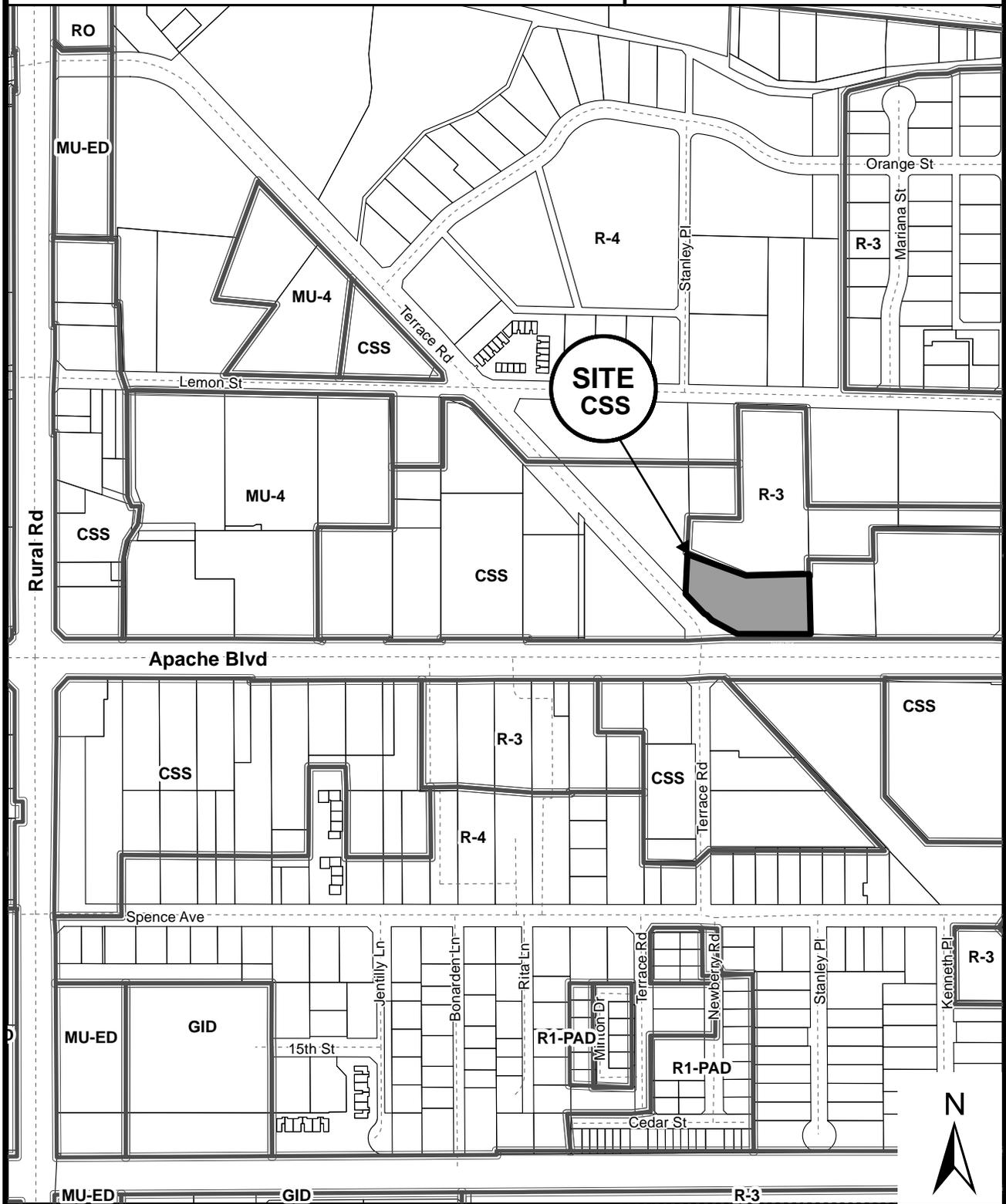
Property Owner – Royal West Investments LLC
Business Owner – Mohamed Elghalayini
Applicant – Jeff Tamulevich/City of Tempe – Commercial Code Compliance
Existing Zoning – CSS, Commercial Shopping & Services District
Total Building Area – 10,707 s.f.
Tenant Area – 1,257 s.f.
Parking Required – 4 spaces
Parking Provided – 57 spaces in plaza

ZONING AND DEVELOPMENT

CODE REFERENCE: Part 3, Chapter 2, Section 3-202, Table 3-202A – Permitted Land Uses in CSS, Commercial and Shopping and Services District.
Part 3, Chapter 4, Section 3-423 – Use Separation Requirements
Part 6, Chapter 3, Section 6-308 – Use Permit
Part 6, Chapter 3, Section 6-313 – Security Plan
Part 6, Chapter 9, Section 6-902 – Revocation of Use Permit

SUNSTOP PLAZA - URBAN CAFE

PL080094



Location Map



SUNSTOP PLAZA - URBAN CAFE (PL080094)

URBAN CAFÉ
1212 E Apache Blvd. #103
Tempe, AZ 85281

March 10, 2008

Zoning Administrator
City of Tempe

Re: Zoning Requirements

To whom it may concern,

Requesting a zoning administrator's opinion on the following:

1. Can Urban Café apply for a use permit to allow a Hookah Lounge?
2. Urban Café is located adjacent to a School. However, Urban Café has Provided Hookah since 2003.

Thank you

(480) 350-8331 (Phone)

~~May 14, 2008~~ **March 18, 2009**

**MODIFIED
CORRECTION TO SUITE NUMBER**

Mr. Mohamed Elghalayini
Urban Cafe
1212 East Apache Boulevard Suite ~~403~~ **102**
Tempe, Arizona 85281

**RE: URBAN CAFE
PL080094 / ZUP08063**

Dear Mr. Elghalayini:

You are hereby advised that at the hearing held May 6, 2008, 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 by **SUNSTOP PLAZA - URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite ~~No. 403~~ **No. 102** in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.

Approved subject to the following conditions:

1. The use permit is valid for Urban Cafe and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This 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.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact planning staff at (480) 350-8331.
10. A security plan is required for this establishment due to the late hours of operation in conjunction with tobacco retail. Contact Tempe Police Department Crime Prevention Unit (480-350-6333).

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,

A handwritten signature in black ink, appearing to read 'Alan Como', with a horizontal line extending to the right.

Alan Como
Planner II

AC:dm

cc: Mr. Tony Husayno/Royal West Investments LLC
File

January 13, 2010

Mr. Mohamed Elghalayini
Urban Cafe.
1212 East Apache Blvd. Suite 102
Tempe, AZ 85281

RE: Zoning Violation – 1212 East Apache Blvd. Tempe

Dear Mr. Elghalayini:

Your business, located at 1212 East Apache Blvd. continues to be in violation of the City of Tempe Zoning and Development Code section 6-308(I). The use permit approval for your Hookah Lounge/Tobacco Retailer was based on several specific conditions. Condition number four (4) of the approval letter, dated March 18, 2009, states that “All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective”. Our records indicate that your business has not complied with this condition of approval.

The purpose of this letter is to inform you that if corrective actions are not taken, then the original decision making body may revoke the use permit, per City of Tempe Zoning and Development Code, Part 6, Chapter 9, Section 6-902.

Please contact me if you have any questions or concerns. Your cooperation in this matter is greatly appreciated.

Sincerely,



Dean Miller
Sr. Code Inspector
Development Services Department
480-350-8435

Copy: File

January 20, 2010

Mr. Mohamed Elghalayini
Urban Café
1212 East Apache Boulevard Suite 102
Tempe, AZ 85281

**RE: URBAN CAFE- Use Permit
1212 East Apache Blvd.
PL080094/DS080269/ZUP08063**

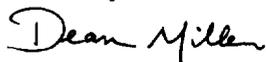
Dear Mr. Elghalayini:

We are requesting your presence at an administrative hearing to discuss the conditions of approval for your use permit for Urban Café at 1212 East Apache Blvd (ZUP08063). Condition number four (4) of the approval letter dated May 14th, 2008 stated that “All permits and clearances required by the Building Safety Division be obtained prior to the use permit becoming effective”. Our records indicate that this condition has not been complied with.

Please be advised that the City of Tempe Zoning and Development Code Part 6, Chapter 9, Section 6-902 states that if the applicant has not taken corrective actions to resolve the issues related to the approval, then the original decision making body may revoke the use permit. We have scheduled the hearing for Friday February 4th, 2010 at 9:00 AM in the City of Tempe Development Services Department Conference Room located at 31 E. 5th Street, Tempe. Staff recommends that you be in attendance for the hearing to provide any relevant information and/or plans for possible corrective actions that may be taken to avoid the revocation of your use permit.

Should you have questions concerning this notice, please contact me directly at (480) 350-8435.

Sincerely,



Dean Miller
Senior Code Inspector
Development Services Department
480-350-8435

Copy: File

City of Tempe
P. O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
www.tempe.gov



Development Services
Planning

(480) 350-8331

April 9, 2010

Mr. Mahmoud Elghalayini
Urban Cafe
1212 East Apache Boulevard, Suite No. 102
Tempe, Arizona 85281

RE: URBAN CAFE
Revocation of use permit ZUP08063
PL080094 / ZUP08063

Dear Mr. Elghalayini:

You are hereby advised that at the hearing held April 6, 2010, the Hearing Officer of the City of Tempe did hear the following case:

Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

Request by **SUNSTOP PLAZA – URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the May 6, 2008 HO hearing.)

At that time, it was the Hearing Officer's decision to continue the revocation proceedings for the use permit for PL080094/ZUP08063 to the **April 20, 2010 Hearing Officer hearing**. At that time this case will be re-heard to determine if all outstanding issues have been resolved.

If you have any questions please contact me at (480) 858-2284.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Daffara', with a stylized flourish at the end.

Shawn Daffara
Planner II

SD:dm

cc: Mr. Jeff Tamulevich, Mr. Dean Miller, Mr. Steve Abrahamson
File

DECISION:

Mr. Williams continued the revocation proceedings for the use permit for PL080075/ZUP08085 for a period of sixty (60) days (until the June 1, 2010 Hearing Officer).

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8. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **SUNSTOP PLAZA – URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the May 6, 2008 HO hearing.)

Shawn Daffara gave an overview of this case and stated that no further public input has been received since the staff report was issued. He noted that a Building Permit had been issued to this applicant on August 20, 2009. In conversations with Michele Lorange, Building Safety Inspector, it is his understanding that the business owner is really close to receiving their final inspection. Based on this information, Mr. Daffara requested that a 30 day continue to this revocation request be given.

Jeff Tamulevich, Code Compliance Administrator, gave an overview of this case, stating that Mr. Daffara had pretty well summed up the current status of this case. Condition of Approval No. 4 had never been complied with. City staff held an administrative hearing on February 4, 2010 to work with the business owner and/or their representatives to resolve this issue.

Mr. Williams asked Mr. Tamulevich what his recommended action would be; Mr. Tamulevich responded that it would be for a 30 day continuance for this revocation request.

Ms. Lorange stated that in a conversation with the business owner today, he indicated that the property would be ready for a final inspection tomorrow.

Mr. Elghalayini was present. He stated that he had no questions.

DECISION:

Mr. Williams continued the request for the revocation for the use permit for PL080094/ZUP08063 to the April 20, 2010 Hearing Officer hearing.

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9. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**