MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
JUNE 11, 2003

PRESENT:
David Gulino, Chairman
Steve Steinberg, Vice Chairman
David Barnett, Commissioner
James Heitel, Commissioner
Eric Hess, Commissioner
Tony Nelssen, Commissioner
Jeffery Schwartz, Commissioner

STAFF:
Pat Boomsma
Monique de los Rios-Urban
Pete Deeley
Ed Gawf
Randy Grant
Bill Verschuren
Al Ward
Kira Wauwie

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:15 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

OPENING STATEMENT

COMMISSIONER BARNETT read the opening statement, which describes the role of the Planning Commission and the procedures used in conducting this meeting.

MINUTES APPROVAL

May 28, 2003

COMMISSIONER HEITEL MADE A MOTION TO APPROVE THE MAY 28, 2003 MINUTES AS PRESENTED. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

CHAIRMAN GULINO stated case 4-UP-2003 has been pulled to the regular agenda. Case 4-ZN-2003 has been pulled from the regular agenda to the expedited agenda.

Chairman Gulino declared a conflict on cases 3-UP-2003 and 4-ZN-2003.

EXPEDITED AGENDA

3-UP-2003 (Flickas Cantina) request by Land Development Services, applicant, Richard Funkey, owner, for a conditional use permit for Live Entertainment on a 1 +/- acre parcel located at 2003 N Scottsdale Road with Highway Commercial (C-3) zoning.

MR. VERSCHUREN presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 3-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT TO IT MEETS THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH CHAIRMAN GULINO ABSTAINING.

4-ZN-2003 (Camelback Rezone) request by Land Development Services, applicant, Mindy Dow Productions, Andrew Charvoz & George Frances, owners, to rezone from Single Family Residential (R1-7) to Service Residential (S-R) on a 19,950 square feet area located at 7536, 7542 & 7548 E Camelback Road.

MR. WARD presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

VICE CHAIRMAN STEINBERG inquired if the alleys were designed for the traffic that would be generated for parking S-R zoned lots. Mr. Ward stated there would be a transition for a 16-foot wide alley to a 20-foot wide alley as it is converted to S-R.

COMMISSIONER SCHWARTZ MOVED TO FORWARD CASE 4-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HEITEL.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH CHAIRMAN GULINO ABSTAINING.

6-UP-2003 (Mountainside Fitness Express) request by James Elson Architect, applicant, BWE 2000 LLC, owner, for a conditional use permit for a health studio in a portion of the 11.96 +/- acre parcel located at 9181 E Bell Road with Industrial Park (I-1) zoning.

MR. WARD presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

VICE CHAIRMAN STEINBERG MOVED TO FORWARD CASE 6-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT TO IT MEETS THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER SCHWARTZ.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

6-AB-2003 (Abandonment Of ROW) request by Mirage Investments, applicant, Jonathan Lurie, Evan Lurie & Justin Lurie, owners, to abandon the south 15 feet of the Black Mountain Road right-of-way and the south 445 feet of the west 20 feet of the 40 Feet N 81st Street right-of-way that abuts the subject property.

MR. DEELEY presented this case as per the project coordination packet. Staff recommends approval subject to a public utility easement reserved over, under, and across the subject property.

COMMISSIONER NELSSEN stated he is assuming this will not be an equestrian community. Mr. Deeley replied in the affirmative.

COMMISSIONER SCHWARTZ MOVED TO FORWARD CASE 6-AB-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.

CHAIRMAN GULINO requested the Commission hold off on the vote because he just received a citizen comment card.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

RICH VARIO, 8102 E. Olsen Road, stated he is right down the street from this abandonment. He further stated the abandonment was fine. He remarked that he felt the developer should be required to improve 81st Street or at least the half street.

COMMISSIONER NELSSEN inquired if Mr. Vario's current access to his home is ON 81st Street. Mr. Vario replied in the affirmative. He noted they can drive on the street but it is dirt. He further noted he would like to pave where he lives and so would his neighbors. He inquired what is the sense of paving it if you have to drive on 600 feet of dirt to get to the pavement. If it is required the developer paves the portion that is being abandoned to the 600 foot south of Black Mountain the neighbors and he would agree to the rest of it so they could have a paved road.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

CHAIRMAN GULINO inquired what is the status of the preliminary plat application on this project.

JOHN BERRY, 4300 N. Scottsdale Road, legal counsel representing the applicant, stated the preliminary plat application is scheduled to go to the DR Board. He further stated they are not required to pave this half street. They don't access it. It is of no benefit to them. He reported that his client has agreed to pave the half street, which would be a requirement of the preliminary plat. Although, technically and legally his client is not required to do that he has agreed to do that.

Mr. Berry stated for the record the area immediately east of this property was done with 10 different lot splits. None of the 10 individuals involved in those lot splits were required to contribute anything for infrastructure improvements in this area.

COMMISSIONER HEITEL inquired if it would be acceptable to require the applicant to pave the other half street. Chairman Gulino stated the Commission does not have that authority.

CHAIRMAN GULINO called for the vote on the motion.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

4-UP-2003 (5th Avenue Parking) request by City of Scottsdale, applicant/owner, for a municipal use master site plan for a parking garage on a 1.6 +/- acre parcel located at 7143 E 5th Avenue with Central Business (C-2) zoning.

MS. WAUWIE presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

VICE CHAIRMAN STEINBERG stated the narrative still calls for rezoning. Ms. Wauwie stated that is an oversight.

Vice Chairman Steinberg inquired how many levels will be above grade. Ms. Wauwie stated there will be four levels and they are investigating the ability to place one level below grade.

Vice Chairman Steinberg inquired if it would be designed and engineered to allow other uses. Ms. Wauwie replied they are anticipating to some how do that, and they are working on the construction details of the structure.

Vice Chairman Steinberg stated with what is being proposed this will be an expensive garage as opposed to putting it for the most part below grade and putting retail and residential above. He further stated he is very adamant about trying to bury this as much as possible and providing mixed use for this area, which is so critical. It is a very sensitive site. He added a mixed-use project that relates to the area is very important. He further added he would hope they could move some reconsideration forward.

COMMISSIONER SCHWARTZ inquired if they have sent out an RFP to developers to put together a plan to develop the site with a mixed-use element combining residential

and office. Mr. Gawf stated they have looked at the possiblity of putting those types of uses on an upper floor. They did not send out an RFQ or an RFP but they have given that information to someone that does that kind of work to see if it is feasible. He further stated they are putting one level underground and two levels up. He noted they are looking at some options for the 3rd Avenue frontage.

Commissioner Schwartz stated you couldn't design a garage until you know how it will layout. He inquired in the interest of understanding some of their concerns, if it would be possible that prior to this full design going forward it would come back to the Planning Commission. So, they could have a better assessment of what they can and cannot do before they just approve a municipal parking garage. Mr. Gawf stated he would ask that the Commission act tonight on whether this is an appropriate location for public parking so it can go on to City Council. He further stated they understand that they need to retain flexibility for additional uses in the future design of the parking structure. He remarked he would be happy after they have done that analysis to come back and discuss the plan with the Commission.

COMMISSIONER NELSSEN inquired why they could not get a commitment from the City to design this structure so that it will accommodate mixed use on the roof. Mr. Gawf stated if that is the belief of the Planning Commission they should make it part of their motion to Council.

COMMISSIONER HEITEL inquired if it would be feasible to put more of those floors below ground to accommodate some of their concerns. Mr. Gawf stated based on the Planning Commission's earlier comments they are putting one level underground and two levels above and the next level could have residential.

Commissioner Heitel inquired from a safety standpoint would there be security in the garage. Mr. Gawf reviewed the safety measures that would be utilized.

VICE CHAIRMAN STEINBERG stated if you are digging out for one level it is not much more expensive to dig out for two or three levels. He reiterated that he is adamant about burying the entire garage. He further stated he felt they are killing a 1.6 acre piece of land that is so well situated in the arts district. If they build a garage on it will be an eyesore. It looks like a monolith over the Osborn campus. It should be underground with retail and residential above. Mr. Gawf stated usually he would agree with that concept, in this case he does not given the existing service area and alley. He further stated if they can do something with the 3rd Avenue side he felt it was a perfect location to do both below grade and above grade. Vice Chairman Steinberg stated the charm of this area is the alleyways, links and different areas that lend mystery to people in a pedestrian mode walking this area. When you build these walls you take away the mystery and desire to walk the alleys and explore. He concluded he cannot support a plan that shows parking above grade.

COMMISSIONER BARNETT stated they have in front of them a request for a municipal use for a parking garage that is a very specific request. He further stated they all understand that they need more parking and they need more people in the downtown. He remarked Commissioner Steinberg's concept and staff's concept are completely different. He further remarked they are being asked to make a decision on a multi-

million dollar facility and they do not have a clue regarding the cost. They don't have information about the soil in that area. The assumption they are working on that the market in this area is not working well in this area and a private individual does not want to come in and create a parking garage in this area. The city has come in and said they want to create parking. He remarked the decision they need to make is this an area for parking. He further remarked staff needs to create a model of going out and getting a couple of proposals with a dollar amount and then they can make a rational decision regarding how they can move forward. Mr. Gawf stated staff is coming to the commission with a proposed master use plan that shows parking in this area with one level below ground and two above. The Commission needs to make a recommendation whether this is appropriate. He commented he felt this was a great location to have above grade parking but that is the decision of the Commission.

COMMISSIONER SCHWARTZ stated what he is hearing is that everyone agrees there should be parking in this area and they want to move forward but it is the form they are concerned about. Mr. Gawf stated staff would not mind sharing the information they have regarding cost and the other analysis that has been done.

CHAIRMAN GULINO stated if this case were to be approved by the Council as it is presented today that would commit it to be one story underground and two above. Mr. Gawf replied in the affirmative.

COMMISSIONER SCHWARTZ stated this occurred in Santa Barbara where they had a ringed commercial around an area used for parking. What they did was put residential above the parking structure and ringed it around the commercial. He further stated this has been done in other areas. There are other case studies out there that can direct them to anchor the downtown parking garage with a number of other uses that would be beneficial to everyone. He noted they are all concerned that they get the right thing in this location. Mr. Gawf stated there are a lot of examples they can look at but that every site is not appropriate for the same solution so they need to pick the best solution.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

PATTY BADENOCK, 5027 N. 71st Place, stated she has a lot of trouble with adding heights in the downtown. She further stated she served on the Downtown Task Force so she is very interested in this site. She remarked she is disappointed that tuck under parking on the canal was not a priority. The tuck under parking serves as a foundation for the businesses to turn out to face the canal so it is a wonderful attribute to revitalize the area.

SAM WEST, 8160 N. Hayden #I-210, stated he served on the Downtown Task Force. He noted many of the comments made by the commissioners' are identical to the comments and concerns made by the task force. He noted his comments are not a criticism to what Mr. Gawf has presented. He further stated the recommendation of the task force was that the garage should be underground with a park on top.

MATT PERONE, 5027 N. 71st Place, stated he felt the mixed-use component has been overlooked in Scottsdale. He inquired if the businesses along Scottsdale Road have been addressed regarding redoing that neighborhood. Most of the businesses along

Scottsdale Road are vacant. He remarked he is concerned about this three-story garage going up against these one story buildings along the street.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. GAWF addressed the issue of tuck under parking on the canal. He noted they are working on doing tuck under parking on the canal bank. He further noted what they are seeing is just part of the overall approach.

COMMISSIONER HEITEL stated that Mr. Gawf and staff have been responsive to the Commission's concern but there appears to be a difference of opinion.

COMMISSIONER NELSSEN stated he would like to commend Mr. Gawf on the presentation he made two weeks ago on the vision for the Downtown. He further stated listening to the comments it seems this Commission is trying to exact a kind of poetry. They are talking about a parking garage and it is a difficult task. Throw into that mix expensive land. Appropriate land use. Mixed use and the need for open space in the downtown. It is all very complicated. He further remarked he has serious reservations because of the height of the structure. He concluded that unless something changes he would not be supporting this.

CHAIRMAN GULINO requested Mr. Gawf provides a brief history regarding how they got to this point. Mr. Gawf provided history on the direction they received from the City Council and the actions that have taken place to get to this point.

Chairman Gulino stated some very good issues have been raised. They are all on the same page that they need parking but are concerned regarding what form it takes. He remarked he would like to see a recommendation for approval with added stipulations to address their concerns. The other option is that they may require more investigation regarding going further underground with the levels and the practicality and feasibility of a retail or residential component. He noted he did not know whether any of the Commission could speak to the fact whether there is a market for it or not because it does not make a lot of sense to try and beef up a structure if there is not a market for it.

COMMISSIONER HEITEL stated they are constantly being reminded that the cost of things is not within their purview. He further stated he felt they should make a recommendation to the City Council that their number one priority is to see a below grade structure and let them deal with the financial component and whether it is feasible or not feasible. They could put restrictions on the site plan to accommodate a residential component. He added he would recommend moving this forward with those recommendations.

COMMISSIONER SCHWARTZ stated he felt that they needed additional information before they could make a clear recommendation.

VICE CHAIRMAN STEINBERG stated he considers a garage to be a dead building meaning it is not generating any tax revenue to the City. It is a vacant structure used to accommodate cars on an as needed basis. He further stated just think about all the tax revenue that could be generated if they make this more than just a parking garage. He

noted he felt the funds that have been appropriated for this garage should be more than adequate to bury this parking structure and do a sensitive layout.

VICE CHAIRMAN STEINBERG MOVED TO CONTINUE CASE 4-UP-2003 TO THE JUNE 25TH PLANNING COMMISSION MEETING TO ALLOW STAFF, THE COMMISSION AND THE CONSULTANTS TO STUDY ALTERNATIVES THAT INCORPORATED OPTIONS SUCH A S UNDERGROUND PARKING AND MIXED USE DEVELOPMENT ABOVE WHICH MIGHT INCLUDE RETAIL AND RESIDENTIAL.

MR. GAWF suggested they schedule a site walk with the Planning Commission and the architect and do a little brainstorming before the June 25th meeting. He stated he would provide the Commission with analysis that has been done.

SECOND BY COMMISSIONER HEITEL.

CHAIRMAN GULINO stated he would not support this. He further stated he gets a little uncomfortable when they start talking about cost because they are the Planning Commission. He further stated from his perspective he would have preferred to forward to the City Council and get some input rather than holding it and going through this step because it does have the ramifications of creating bigger bills for this project as a whole. He concluded he would not be supporting it but does agree with the intent.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO TWO (2) WITH CHAIRMAN GULINO AND COMMISSIONER NELSSEN DISSENTING.

9-UP-2003 (Old Town Parking) request by City of Scottsdale, applicant/owner, for a municipal use master site plan for a parking garage on a 2.45 +/- acre parcel located at 7335 E Main Street with Central Business (C-2) and Highway Commercial (C-3) zoning.

MR. GAWF presented this case as per the project coordination packet. Staff recommends a continuance to the June 25th Planning Commission meeting.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

PATTY BADENOCK, 5027 N. 71st Place, stated she does not want to put off the downtown parking because it is vital. She further stated she does not understand why the parking facility behind Saba's is not considered. In terms of the civic center parking facility it is an old beat up structure that should be torn down rather than a quick fix. She stated the area on 2nd and Brown has a greater potential. It will take more money but in the long run will be a better plan. She noted they want to enhance and maintain the western atmosphere in Old Town.

SAM WEST, 8160 N. Hayden #l-210, stated he is the architect on the Bischoff building and over the last two years has been down in this area almost everyday during construction and remodel of that building. He further stated when you spend that much time in an area you begin to get a sense of what is there. He noted he served on the Downtown Task Force and one of the recommendations was to have an underground-parking garage at the Noriega site that it is compatible with the look and feel in the area. He would strongly recommend that is the site that is selected and that it be two stories

underground. He commented on the existing garage they are talking about adding to noting he has always felt it should be taken out and a park put in its place with underground parking. This would create the ability for these businesses to open out the backside and create a strong east west connection up through the mall. He added he would encourage the commissioners' to look at a book commissioned from the National Park Service that goes into an in-depth analysis of what open space, parks and trails do for the environment both economically and socially. He further added that space is too valuable to put a parking garage from a lifestyle standpoint. He concluded he would like to note that none of his comments are aimed against staff. He noted he is aware of the time and effort they have put into the downtown to make it work.

TOM FRENKEL, 4332 N. Wells Fargo #200, stated he owns two buildings in this area. He further stated he agrees the parking structure blocks the park but felt it was unrealistic to think that the parking structure would be torn town and turned into a park. He remarked the park is one of the nicest amenities of downtown Scottsdale and probably the least used. He commented to add 200 spaces is an appropriate use and the property owners in the area are in support.

CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. GAWF stated the reason staff eliminated the behind Saba's site primarily was because of the small configuration and because it is out of sight. He further stated one of the problems in Old Town is that it is hard to find the public parking other than what is on the street. Part of the goal is to make access to parking very visible.

COMMISSIONER BARNETT stated this parking lot is a little different than the previous request and he does not have any problem moving forward. There is already a lot there. It sounds cost effective. He commented he did not think that space would be great for anything else. He further commented he would prefer they move this case forward.

COMMISSIONER HEITEL stated he would agree with Commissioner Barnett's comments. He further stated he felt this was a logical location. There is plenty of open space and a park is already there. He noted he liked the ideas presented by Mr. Gawf regarding creating a little more openness around the Bischoff's area. Creating more access and visibility to this site would bring things forward very fast and makes a lot of sense. He concluded he would support moving this forward.

COMMISSIONER SCHWARTZ stated he would agree that this is an appropriate addition to this area and would support moving it forward.

COMMISSIONER NELSSEN inquired how likely is this area going to look like the graphic before them. Mr. Gawf replied that is a tough but fair question. He stated that maybe they would do something different than that particular sketch but their goal is to have the highest quality look. Commissioner Nelssen stated he has found it troubling over the years that they have seen all kinds of pretty pictures and examples of how it could look and it just never seems to happen. He inquired what should they do to ensure that something equal to that picture occurs. Mr. Gawf replied include that request in the motion.

Commissioner Nelssen stated he felt it was important that as this motion goes forward that there is some sort of appropriate character element tied to the approval of this structure. Mr. Gawf reiterated that he would suggest that be part of the motion. He added he felt the future of the downtown is that they have to do things well because if they don't it will be an ordinary area, and hey need something special downtown.

CHAIRMAN GULINO stated he would encourage staff as they move forward to really look at the circulation both the vehicular and pedestrian. He further stated they should see what kind of things they can incorporate into the final structure that might be a little more inviting to encourage pedestrian traffic between the Civic Center Plaza and some of those businesses to the west. He noted he felt the comments about the character of the building were well taken. He remarked he would hope the motion would include a stipulation at the DR level that the existing structure is given a facelift and with the new structure bring the whole thing into character with the vision for Old Town.

MR. GAWF noted one of the benefits of doing this addition is that it mostly hides this existing structure from Brown.

COMMISSIONER SCHWARTZ MOVED TO FORWARD CASE 9-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT THAT IT MEETS THE USE PERMIT CRITERIA AND WITH THE FOLLOWING ADDED STIPULATIONS:

1) A FACELIFT BE MADE TO THE EXISTING STRUCTURE AND SHALL BE FORWARDED TO DEVELOPMENT REVIEW BOARD FOR THEIR APPROVAL.

2) A FOCAL ENTRANCE POINT LOCATED ON BROWN STREET BE DESIGNED TO DEPICT THE SLIDE THAT WAS PRESENTED TONIGHT AND BE FORWARDED TO THE DEVELOPMENT REVIEW BOARD FOR APPROVAL.

SECOND BY COMMISSIONER HEITEL.

MS. WAUWIE inquired if the motion included the stipulations in the staff report.

COMMISSIONER SCHWARTZ AMENDED THE MOTION TO INCLUDE THE STIPULATIONS IN THE STAFF REPORT.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

1-TA-2003 (Downtown Overlay and Related Amendments) request by City of Scottsdale, applicant, to amend City of Scottsdale Zoning Ordinance (Ordinance No. 455) Article I., Administration and Procedures., Section 1.403. Additional conditions for specific conditional uses., Article III., Definitions.; Section 3.100 General.; Article V., District Regulations., Section 5.3002. Conflict with other sections., Article IX., Parking and Loading Requirements., Section 9.104. Programs and incentives to reduce parking requirements., and Section 9.108 Special parking requirements in districts., and to add Article VI., Supplementary Districts.; Section 6.1200., (DO) DOWNTOWN OVERLAY.

The Downtown area is generally bounded by Chaparral Road on the north, Miller Road on the east, Earll Drive on the south and 68th Street on the west.

AND

5-ZN-2003 (Downtown Overlay) request by City of Scottsdale, applicant, to apply the Downtown Overlay (DO) zoning to 750 +/- acres known as the Downtown area and generally bounded by Chaparral Road on the north, Miller Road on the east, Earll Drive on the south and 68th Street on the west.

MR. GRANT presented cases 1-TA-2003 and 5-ZN-2003 as per the project coordination packet. He stated this proposal has two parts: to create a Downtown Overlay (DO) District and to place the Overlay on properties located in Downtown Scottsdale.

Mr. Grant stated the primary purpose of the Downtown Overlay is to create new opportunities for the development or expansion of properties that do not have (D) Downtown zoning. The Overlay also provides additional regulations for properties with and without Downtown zoning. Specific objectives of the Downtown Overlay include:

- Maintain a mixture of land uses to keep Downtown vital in the day and night.
- Allow for more residents in Downtown.
- Simplify parking regulations to ease the Downtown development process.
- Provide incentives for expansions of smaller Downtown businesses.
- Enhance the family friendly nature of Downtown by requiring greater oversight of potentially detrimental uses.
- Assure consistent regulation of design and architecture throughout Downtown.

Mr. Grant stated staff recommends approval of the City of Scottsdale Zoning Ordinance (Ordinance No. 455) amendment and the Downtown Overlay and its application to properties in the designated area.

CHAIRMAN GULINO inquired if a resturant wants to have dancing would they then be put in the bar category. Mr. Grant replied if patron dancing is allowed it does trigger it to go from a restaurant to a bar.

COMMISSIONER HEITEL inquired if a restaurant that served breakfast and lunch would be considered a bar because the kitchen closes before 9:00 p.m. Ms. Boomsma stated if they had a liquor license to serve alcohol, but if they just serve breakfast and lunch they would not be considered a bar.

Commissioner Heitel inquired if there was a conflict between their stated goal to have entertainment districts and this particular regulation. He commented he is wondering whether they are over regulating an area they are trying to encourage entertainment. Mr. Gawf stated he did not think there was a conflict. He further stated this ordinance does not prevent bars and nightclubs from going in because they are an important part of the downtown. What they are trying to do is make sure they go into appropriate places and they do not drive out other daytime uses. Commissioner Heitel inquired if there was the possibility that in an attempt to foster creativity they might be choking creativity. Mr. Gawf stated that is always a concern when you adopt a new regulation.

What they are trying to do is balance the comments they have heard in recognition that bars and nightclubs are important to the downtown. They are trying to provide some structure to new bars and nightclubs and do it in a way that tries to achieve the goals rather than just saying no more in the downtown. They have worked hard on the criteria they want to achieve in the downtown.

COMMISSIONER SCHWARTZ stated if he was a bar owner in downtown Scottsdale he would be jumping for joy right now because they just grandfathered him in. Now, they have a set of subjective criteria for future bars to come in setting a precedence that it will be tough for you to come into our town and do business unless you do it under a whole different set of rules than everybody else has done. He further stated that if they don't want any more bars in certain area then they should just regulate that they only go to a certain area. It is unfair to say you were here first and because you came in second you have to be set to a higher level of standards. Mr. Gawf stated they have three choices to either allow them without restrictions. They can say no you can't go in regardless. The other choice would be to say they are allowed but we are going to review them on an individual basis. He remarked in this case if they get too many bars it could drive away the other uses such as the galleries and once they have left it is hard to find those replacement uses. He further remarked they looked at those three options and tried to pick the middle ground.

MS. BOOMSMA presented information on the legal principles that come into play regarding the criteria for a use permit.

COMMISSIONER SCHWARTZ stated in the packet it says: "A use shall not impact adjacent properties from residential uses". He inquired who are they to determine that you cannot build a two or three story loft across the street from a bar, restaurant or tattoo parlor. Who is to say a person cannot live within those conditions because it occurs all over the world. He further stated if he were coming to build a nightclub he would never meet the guidelines of the special use permit. They just locked him out. Mr. Grant stated the issue is more should a new bar be allowed in a residential area that is residentially zoned. If someone chooses to build an apartment above, a business that would not qualify as residentially zoned property.

COMMISSIONER NELSSEN inquired if a property comes available for a bar how much time would this add to the process before they would be able to open. He further inquired if there could be incentive to expedite this process. Mr. Grant stated they would have this process running concurrently with the tenant improvement. He further stated they could look at things to expedite the process for use permits.

COMMISSIONER HEITEL reiterated his concerns regarding calling an area an entertainment district and then creating a use permit process in that entertainment district. Mr. Gawf stated the Commission could chose to identify and include in their motion an area that is exempt from this criteria.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

LYNNE LAGARDE, 3101 N. Central, Phoenix, AZ, representing Westcor, stated in general they support the goals of this downtown overlay the encouragement of

reinvestment in the downtown and redevelopment and making it easier for small businesses to do that without rezoning to downtown. She further stated it is very important to keep it simple and very clear.

Ms. Lagarde stated she would like to clarify that the Downtown Overlay does not apply to properties that are currently zoned downtown or will be zoned to downtown in the future except for the specific provision that relates to bars and nightclubs, tattoo parlors and parking requirements. Mr. Grant replied in the affirmative.

Ms. Lagarde stated there are some things that could be made clearer in the ordinance. She further stated in Section 5.3002 she thought it would be helpful to add language: "except where specifically superseded by the downtown overlay' you reference the exact sections that are superseding Section 5.3000 that will let people know they have to look at those specific sections.

Ms. Lagarde stated in the Purpose Section she would suggest right up front say very simply and clearly: That the downtown ordinance does not apply to properties zoned (D) within the downtown district.

Ms. Lagarde stated she has a concern regarding Section 6.1242 the section about the bar definition there is a problem with the dance floor provision. She further stated they ought to look at the provision regarding the kitchen closing before 9 p.m. they may want to add it does not apply to restaurants that just open for breakfast and lunch.

She further stated with regard to Section 6.1250 (B) Site development standards it should be made clear that this does not apply if you are zoned (D).

Ms. Lagarde stated the staff has done a great job simplifying the requirements for parking. She further stated she would agree with some of the comments that have been made the language for the bar criteria could be improved. She concluded all of that being said staff did an incredible effort to do something that is critically needed in the downtown.

SAM WEST, 8160 N. Hayden #I-210, stated he is working on a project that is on the edge of the downtown. The issue is that there is a line drawn for each of the different areas in the downtown. He further stated he felt there should be the ability to have transition at the perimeter for suburban area to the downtown area.

Mr. West stated if they are going to have residential in the downtown they need to provide services the type of services residents would expect in the downtown area. He further stated the restaurant and bar business uses up all of the parking spaces at night so there really is no place to have retail for the people who would want to live in the downtown. He noted his concerns is that when they get to the final solution regarding the desire to bring people into the downtown that they are not creating conflicts and other things that would have a negative impact.

Mr. West stated it appears on the bar and restaurant the change of footage requirements for parking places needs to be looked at a little harder.

Mr. West commended staff on the report. He stated he felt the suggestions as a whole are a very good solution to the problems that exist.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. GRANT stated in response to some of the questions that were raised their goal with this is to keep the ordinance amendments clear, concise, and simple. He further stated this is part of a much larger package. There is a work plan that includes a number of things. He remarked they expect this will be a living process so this is not the conclusion of this process. It is simply a milestone along the way and does not preclude further actions that might adjust this ordinance. They might want to keep this as something that they periodically review and discuss. He noted they concur with the comments made by Ms. Lagarde and Ms. Boomsma is making notes about things they could recommend be included in the motion if it is the Commission's desire.

VICE CHAIRMAN STEINBERG stated he has concerns that they might be increasing the barrier to entry on certain businesses, which could reverse revitalization. He further stated he wants to be careful not to preclude business from coming to Scottsdale or fleeing Scottsdale because of the new requirements. He remarked that he would like to encourage all level of residential including starter residential not just luxury and high end. They need a mix to give vitality.

Vice Chairman Steinberg inquired how feasible would it be to add 2,000 square feet to a commercial structure from a structural, economical, life, safety, UBC Code, ADA and utility point of view will that really happen when you look at all of those factors. Mr. Gawf stated the 2,000 square feet is important for a couple of reasons. One it would be giving an opportunity. Whether someone takes it or not is another question. He further stated he believes it applies even if you tear down a building and would provide extra incentives to build that new building. He added it may not apply to remodels.

COMMISSIONER SCHWARTZ stated he felt this was a step in the right direction. He stated it was his understanding that tonight's hearing was only an ordinance about revitalizing downtown and that the use permit issues was not part of the discussion. Mr. Grant replied that has been part of the discussion all along. He apologized if staff did not communicate effectively with the Commission.

Commissioner Schwartz inquired how does this ordinance promote connectivity and encourage pedestrian traffic. Mr. Grant stated they are trying to prevent obstacles. They are looking for a mix that will create synergy.

Commissioner Schwartz inquired how can they encourage a holistic plan and joint planning in the downtown rather than planning the downtown every 4500 square foot lot at a time. Mr. Grant stated that is a good observation. The reality they have been faced with is that they have had a lot of discussions for a lot of years. One of things they have been good at is studying things and the difficulty they have had is implementing things. They are not saying this is the end of the process. They are saying this is a step in the process and it is reflective of the input they have had to date from the citizen groups, Council, and the property owners.

Commissioner Schwartz inquired if it was financially practical to add residential use above existing commercial structures, which is the intent of this ordinance allows. Mr. Grant stated the ordinance also applies to new structures. They understand there maybe a limit financially to whether someone would take advantage of this but it does present the opportunity. He further stated they felt there is the opportunity not to only add residential uses above an existing structure but also horizontally.

Commissioner Schwartz stated with all the new emerging alternative destinations to downtown how does this plan ensure the downtown will be able to compete with other urban cores like Mill Avenue, Tempe Town Lake, Kierland Commons and the new Stack 40s development. Mr. Grant stated one thing the ERA study pointed out that they need a downtown that appeals to tourists as well as residents. The goal would be to diversify the activities they have in the downtown so they can appeal to every group. He noted there is a different market for what they are trying to do in downtown Scottsdale.

Commissioner Schwartz stated he has prepared a statement he would like to read:

The City of Scottsdale has long enjoyed an area of success and we continue to be among the places where people from all over the world want to visit. The sense of attractiveness massed the fact that we have a very sick heart. In fact, we now have many places that are competing with and out performing our downtown as the energy center of our community. This further compounded by the fact that we want to think of as our downtown rather than geographically in the center of things in fact one end of a very long city in which its most vibrant happenings are all occurring far to the north. But most problematic of all is that our downtown area has been a war zone fueled by fragmented piecemeal thinking. Perhaps we have given up on the notion we have a grand vision for the area that extends from Los Arcos on the south to the Old Safari site to the north. What can be said without fear of being wrong is that failure to give this area the benefit of the most brilliant holistic vision will doom it to a continual and steady decline no matter what incremental additions are made. No one site or group of structures will be able to generate enough magnetism to energize the whole. Now before us is an ordinance that backs up what I am saying. Rather than wrestling with the greater task of what we desire for the overall setting this ordinance memorializes fragmented thinking. At its very best, it will encourage individual landowners to proceed on their own. At its very worst these individual pursuits will not only not generate the mechanism for their own success but will for all practical purpose further complicate or prohibit any and all attempts to carry out the level of development necessary for a sustainable future.

CHAIRMAN GULINO stated there was a letter from Mr. Leery and he brought up the point of drive throughs that it has disappeared out of this. He further stated drive throughs have always been a point of contention. Mr. Grant stated they have been discussing this issue with Mr. Leery. He further stated staff wanted to be able to address this issue without amending the ordinance. Two things need to happen, one restrict drive throughs in the downtown. Amend the C-2 district to allow drive through in C-2 outside of the downtown overlay area.

Chairman Gulino stated the proposed use permit criteria has a statement that reads: Use shall not impact adjacent property for residential uses. He inquired if there is a R

district that would apply to this item. Ms. Boomsma stated that was one of the suggestions she was going to make for possibly revising the language. She suggested they revise this criteria to read: Use shall not adversely impact adjacent residential use.

Chairman Gulino stated he received an email regarding some problems specifically targeting after hour business. He inquired how does after hours businesses fit into this new ordinance. Are after hours businesses specifically identified as another use permit. Mr. Grant stated they have not specifically addressed after hour businesses in this ordinance. Ms. Boomsma stated there are regulations for after hour clubs and that is through the business license process. Mr. Ekblaw stated it could be added into this ordinance that after hour activities would be part of the criteria for review and require a use permit. Chairman Gulino stated he might support that. He further stated his office is in the middle of a bunch of bars, he finds between one, and two o'clock people are the most destructive.

Chairman Gulino stated he felt the item Commissioner Heitel brought up regarding the kitchen closure at 9:00 PM was a good point.

Chairman Gulino stated he supports what is here. He further stated this is a step in a long process. He noted he felt a certain amount of anxiety regarding the fact they are getting bits and pieces but he does not know any other way to do it. He further noted he felt the City of Scottsdale was entering a new era where they are getting into redevelopment. He remarked what they have here is not the entire answer to what they are trying to achieve downtown. He further remarked it is a step in the right direction. It is important to take that step. What they approve today will come with mistakes and the best way to flush out those mistakes is to move forward and start working with it. They can come back and revisit those issues. He commented he would encourage a motion for approval with some clarifications.

Chairman Gulino requested after the summer break that the Planning Commission has a joint meeting with the City Council to discuss the vision for the downtown. Mr. Ekblaw stated there are a number of items in the community that staff could share with the Commission at a work study session that would help them to focus on the issues and then they could schedule a joint meeting with the Council.

COMMISSIONER HEITEL stated he does not think this is a perfect document but he thought the movement and the interest in the downtown speaks to some kind of action and this is a good first step. He further stated he felt there were some larger issues that should be discussed in a study session with the Council after the summer break. He remarked he welcomes the opening up of the process in the downtown area that has been very restrictive and created some major impediments to bringing vitality to the Downtown area. He further remarked some of the vision Mr. Gawf has spoken of is part of this process. He noted bringing the residential component into the downtown will be huge. He further noted he would hate to stand in the way of restricting those sorts of things.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 1-TA-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT TO THE FOLLOWING CAVEATS:

CLARIFICATION OF THE DEFINITION OF THE DOWNTOWN OVERLAY AND THE DOWNTOWN DISTRICT.

CLARIFICATION OF THE BAR KITCHEN AREA.

EXEMPT THE BAR USE PERMIT PROCESS IN THE ENTERTAINMENT DISTRICT.

REMOVE THE PERCENTAGES IN THE DIFFERING AREAS.

ADD AFTER HOURS ACTIVITIES BE INCLUDED IN THE USE PERMIT PROCESS.

STRIKE THE BULLET POINT THAT READS: WILL NOT DISRUPT EXISTING BALANCE OF DAYTIME AND NIGHTTIME USES.

STRIKE THE BULLET POINT THAT READS: USE SHALL NOT IMPACT ADJACENT PROPERTIES FOR RESIDENTIAL USES.

MS. BOOMSMA provided language to be used in the motion that covered Commissioner Heitel's caveats to the motion as follows:

IN SECTION 6.1202 THAT READS: "PROPERTIES WITH (D) DOWNTOWN DISTRICT ZONING SHALL NOT BE SUBJECT TO THESE REGULATIONS EXCEPT FOR THE FOLLOWING REQUIREMENTS; REGULATION OF BARS/NIGHTCLUBS," INSERT THE LANGUAGE AFTER HOURS ACTIVITIES IF THAT IS GOING TO BE A CONDITIONAL USE PERMIT. "REGULATION OF TATTOO AND RELATED BUSINESSES, PROVISION OF PARKING, AND PARKING WAIVERS' THAT LANGUAGE SHOULD ALSO BE PUT IT IN SECTION 5.3002 AS WELL AS LEAVING IT IN SECTION 6.1202.

MS. BOOMSMA stated they could work on that language if the concept is acceptable.

SEC. 6.1230 SCHEDULE A, THEY WOULD ADD A NEW CATEGORY FOR BARS AND NIGHTCLUBS IN THE ENTERTAINMENT DISTRICT. A NEW CATEGORY P FOR THAT SPECIFIC LAND USE AREA.

NEW CLASSIFICATION FOR AFTER HOURS PERMITTED BY A CONDITIONAL USE PERMIT.

MS. BOOMSMA stated they would need to rely on staff to come up with suitable criteria for after hours criteria for after hours licensing.

UNDER THE CRITERIA FOR BARS AND NIGHTCLUBS DELETE THE FIRST BULLET POINT: USE WILL NOT DISRUPT EXISTING BALANCE OF DAYTIME AND NIGHTTIME USES. THE BULLET POINT THAT READS: USE SHALL NOT IMPACT ADJACENT PROPERTIES FOR RESIDENTIAL USES. BE CHANGED TO READ; USE SHALL NOT <u>ADVERSELY</u> IMPACT ADJACENT PROPERTIES FOR RESIDENTIAL USES.

UNDER TATTOO PARLORS AND RELATED BUSINESS THE BULLET POINT THAT READS: THE PROPOSED TATTOO PARLOR USE, IF ESTABLISHED SHALL NOT BE LOCATED WITHIN 500 FEET OF RESIDENTIAL USES…SHOULD BE CHANGED TO READ: THE PROPOSED TATTOO PARLOR USE, IF ESTABLISHED SHALL NOT BE LOCATED WITHIN 500 FEET OF EXISTING RESIDENTIAL USES…

COMMERCIAL USE CLASSIFICATION, CRITERIA 6 THAT READS: THE FULL KITCHEN CLOSES BEFORE 9 PM. SHOULD BE CHANGED TO READ: THE BUSINESS REMAINS OPEN AND LIQUOR SALE CONTINUE BUT THE FULL KITCHEN CLOSES BEFORE 9 PM.

COMMISSIONER HEITEL stated he was comfortable including that language in his motion.

SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO TWO (2) WITH COMMISSIONER NELSSEN AND SCHWARTZ DISSENTING.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 5-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO TWO (2) WITH COMMISSIONER NELSSEN AND SCHWARTZ DISSENTING.

MR. EKBLAW stated going back to case on the 5th Avenue parking garage staff would set up a site tour before the next meeting. He further stated they would come up with a date and advertise it tomorrow.

WRITTEN COMMUNICATION

There was no written communication.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 9:20 p.m.

Respectfully Submitted,

"For the Record " Court Reporters