

**Marked Agendas  
Approved Minutes  
Approved Reports**

## Resolution 9037

Official /Signed Resolution/Ordinance can  
be found at:

<https://eservices.scottsdaleaz.gov/eServices/ClerkDocs/Default.aspx>

City Council Hearing 5/8/2012

Planning Commission 4/11/2012

3-UP-2012

Downside Risk



# CITY COUNCIL REPORT



Meeting Date: May 8, 2012  
 General Plan Element: Land Use  
 General Plan Goal: Create a sense of community through land uses

## ACTION

Downside Risk  
 3-UP-2012

Request to consider the following:

1. Find that the Conditional Use Permit criteria have been met and adopt Resolution No. 9037 approving a request by applicant for a Conditional Use Permit for live entertainment in a 4,261 +/- square-foot restaurant located at 8989 N. Scottsdale Road with Central Business District, Planned Community District (C-2 PCD) zoning.

## OWNER

Downside Risk  
 602-418-0842

## APPLICANT CONTACT

Joseph D Goforth  
 Southwest Development Services / Joseph D Goforth  
 480-241-3735

## LOCATION

8989 N Scottsdale Rd

## BACKGROUND



## Zoning

The site is zoned Central Business District, Planned Community Development (C-2 PCD). Live Entertainment for a restaurant is permitted subject to a Conditional Use Permit.

## Context

The subject building is part of a mixed-use, multi-building commercial center at the southeast corner of N. Scottsdale Road and E. Doubletree Ranch Road. The pad building is located at the far

north end of the center and is currently occupied by a dry cleaning establishment. The remainder of the building will be occupied by the subject restaurant. To the north is a residential community that is part of the Gainey Ranch master-planned community. Please refer to context graphics attached.

### **Key Items for Consideration**

- Conditional Use Permit criteria
- Full food service provided until 10:00 PM daily, 12:00 AM Thursday – Saturday
- No impacts to existing infrastructure or services anticipated
- Written public comment in opposition to request (see Attachment #6)
- Planning Commission heard this case on April 11, 2012 and recommended approval, with amended stipulations, by a vote of 5-0.

### **Other Related Policies, References:**

- Zoning Ordinance
- 19-ZN-1997: rezoned site from Multi Family Residential District, Planned Community District (R-5 PCD) to Central Business District, Planned Community District (C-2 PCD)

## **APPLICANTS PROPOSAL**

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### **Goal/Purpose of Request**

The applicant seeks approval to provide live entertainment as part of a restaurant use. The live entertainment will be ancillary to the primary restaurant use, with less than 5% of the gross floor area devoted to the performance area. Patron dancing is not proposed as part of this application.

### **Development Information**

- Existing Use: Vacant Tenant Space
- Proposed Use: Restaurant w/ Live Entertainment
- Parking Required: 19 spaces (501 spaces for entire shopping center)
- Parking Provided: 711 spaces (for entire shopping center)
- Gross Floor Area: 4,261 square feet
- Patio Area: 2,030 square feet

## **IMPACT ANALYSIS**

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### **Conditional Use Permit**

Conditional Use Permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted after the Planning Commission has made a recommendation and City Council has found as follows:

- A. That the granting of such Conditional Use Permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
  1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.



- The proposed live entertainment will be contained within a completely enclosed building. The applicant would like the option of providing entertainment on the patio and is aware that live music on the patio must be non-amplified and consist of no more than two musicians. As the subject establishment is located within 500 feet of a residential district, any external speakers provided on the patio can only transmit recorded music. They cannot be connected to any live entertainment equipment. All doors will be closed during the hours live entertainment is provided. No damage or nuisance from noise, smoke, odor, dust, vibration or illumination is anticipated.
2. Impact on surrounding areas resulting from an unusual volume or character of traffic.
- The establishment will operate as a full-service restaurant. No changes to the operational characteristics are proposed as part of this application. Vehicular access to the site is provided by one main access point of N. Scottsdale Road, a Major Arterial, and a secondary access point off E. Gainey Suites Drive at the south end of the site. The shopping center is occupied by retail, service, and restaurant uses that generate vehicular traffic throughout the day. No significant impacts to existing traffic patterns are anticipated.
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
- The establishment is located in a multi-tenant commercial shopping center, with a wide range of uses, including restaurants, retail and personal service. The addition of live entertainment to the existing restaurant is compatible with the use mix in the surrounding area.
- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied. The proposal meets the provisions for Live entertainment as identified in Zoning Ordinance Section 1.403.K., including:
1. The site plan shall demonstrate that:
- a) Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and its required parking area to residential districts.
- The nearest residence is approximately 250 feet north of the subject establishment and is separated from the restaurant site by a 6-foot high block wall, landscaping and E. Doubletree Ranch Road. There is no direct access from the restaurant or the parking lot to the residential neighborhood.
- b) All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.
- Existing site lighting is sufficient to guide patrons to the main entrance.
2. The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.
- All doors will be closed during the hours live entertainment is provided. As required by ordinance, the existing external speakers will not be connected to any live entertainment equipment and will only transmit recorded music onto the



patio. Additionally, any performances provided on the patio will be non-amplified and limited to a maximum of two musicians, as specified in the Zoning Ordinance.

3. The applicant has provided a written public safety plan which the city police and fire departments have approved as complying with the written guidelines of the Planning and Development Department.
  - **A Security, Operations and Maintenance Plan has been reviewed and approved by the Scottsdale Police Department and is on file with the Current Planning Department.**
4. The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with Section 7.600 of the Zoning Ordinance and with the public safety guidelines.
  - **Existing site lighting is sufficient for this use. None of the existing lighting is located or installed in a manner that would be detrimental to surrounding properties.**
5. The applicant shall provide a written exterior refuse control plan which must be approved by the Planning and Development Department staff as complying with the written guidelines of the department, prior to issuance of a business license. The review will be conducted as provided in Section 1.305.
  - **A refuse control plan is included as part of the Security, Operations and Maintenance Plan, which requires the applicant to pick up refuse and debris within a 300-foot radius of the establishment. The provisions of the plan will be implemented and enforced by the Scottsdale Police Department and Code Enforcement.**
6. The applicant has provided a floor plan which identifies the areas for the primary use and ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.
  - **The applicant has provided a floor plan that clearly calls out the proposed location for the performance area and support equipment. A copy of the floor plan is included in this report as Exhibit A to Exhibit 2.**
7. If access to the establishment is from a street other than one classified by the General Plan as minor collector or greater, or classified by the Downtown General Plan as a local street or greater, the applicant has provided a traffic analysis which complies with Transportation Planning Department guidelines. The plan shall demonstrate to the satisfaction of the Transportation Department that the level of service on all streets accessed by the use shall meet the standard set by the City.
  - **Access to the site is provided from N. Scottsdale Road, which is classified as a Major Arterial by the Transportation Master Plan. Additionally, secondary access is provided from E. Gainey Sultes Drive at the south end of the site. There is no vehicular access provided from E. Doubletree Ranch Road at the north end of the site.**
8. If the Zoning Administrator determines a study is necessary, the applicant shall provide a parking study that complies with the written guidelines of the Planning and Development Department.



- **No parking study is required for the proposed use. The site has sufficient parking to support the restaurant.**
9. The applicant has provided any additional information required by city staff in order to evaluate the impacts of the proposed use upon the area.
- **The documentation provided by the applicant was sufficient for staff to evaluate the potential impacts of the proposed use on the surrounding area.**
10. The following operational standards must be met by the use throughout its operation:
- a) All external doors shall be closed but not locked during business hours.
  - b) No external speakers will be permitted on the premises of a use permitted under this section, which is within 500 feet of a residential district.
  - c) The applicant/operator shall comply with all plans approved as provided herein
    - **All doors will be closed but not locked during the hours live entertainment is occurring at the establishment. Any speakers on the patio will not be connected to any live entertainment equipment. The applicant will comply with the submitted floor plan with regard to location of the performance area and supporting equipment.**

### **Public Safety**

The nearest fire station is located at 7455 E. Shea Blvd., approximately one mile from the subject site. No significant impacts to existing service levels are anticipated. The Security, Maintenance and Operations Plan has been reviewed and approved by the Scottsdale Police Department.

### **Liquor License Review**

A request for approval of a new Series 12 (restaurant) liquor license was approved by City Council under case 16-LL-2012 on March 20, 2012.

### **Community Involvement**

The site is posted with the required signage and property owners within 750 feet of the site have been notified of the applicant's request. Staff has received written public comment in support and opposition to the request (see Attachment #6).

## **OTHER BOARDS & COMMISSIONS**

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### **Planning Commission**

Planning Commission heard this case on April 11, 2012, and found that the Conditional Use Permit criteria have been met and recommended approval by a vote of 5-0.

During the hearing, there was public comment in support and opposition to the request. Most of the concerns centered on the potential for noise as a result of the live music proposed by the applicant. Additionally, there was concern expressed about the potential for increased traffic generated by the live entertainment. The Planning Commission recommended approval, with amended stipulations that assure live entertainment occurs indoors only and that the conditional use permit expires in one year (see Exhibit 2 to Attachment 1).



**Staff Recommendation to Planning Commission**

Staff recommended the Planning Commission find that the Conditional Use Permit criteria have been met, and make a recommendation to City Council for approval per the attached stipulations.

**STAFF RECOMMENDATION**

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**Recommended Approach:**

1. Find that the Conditional Use Permit criteria have been met and adopt Resolution No. 9037 approving a request by applicant for a Conditional Use Permit for live entertainment in a 4,261 +/- square-foot restaurant located at 8989 N. Scottsdale Road with Central Business District, Planned Community District (C-2 PCD) zoning.

**RESPONSIBLE DEPARTMENT**

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**Planning, Neighborhood and Transportation**

Current Planning Services

**STAFF CONTACT**

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Greg Bloemberg

Planner

480-312-4306

E-mail: [gbloemberg@ScottsdaleAZ.gov](mailto:gbloemberg@ScottsdaleAZ.gov)

**APPROVED BY**

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Greg Bloemberg, Report Author

4-17-12

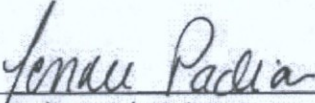
Date



Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

4/23/2012

Date



Connie Padian, Administrator  
Planning, Neighborhood and Transportation  
480-312-2664, cpadian@scottsdaleaz.gov

4/23/12

Date

**ATTACHMENTS**

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1. Resolution No. 9037
  - Exhibit 1. Context Aerial
  - Exhibit 2. Stipulations
  - Exhibit A to Exhibit 2: Floor Plan
  - Exhibit 3. Additional Criteria
2. Applicant's Narrative
3. Aerial Close-Up
4. General Plan Map
5. Zoning Map
6. Citizen Involvement
7. City Notification Map
8. April 11, 2012 Planning Commission Minutes



RESOLUTION NO. 9037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, ADOPTING A CONDITIONAL USE PERMIT FOR LIVE ENTERTAINMENT IN A 4,576 +/- SQUARE-FOOT RESTAURANT/BAR LOCATED AT 8989 N. SCOTTSDALE ROAD WITH CENTRAL BUSINESS DISTRICT, PLANNED COMMUNITY DISTRICT (C-2 PCD) ZONING.

WHEREAS, the Planning Commission held a public hearing on April 11, 2012; and

WHEREAS, the City Council, held a public hearing on May 8, 2012.

NOW, THEREFORE, LET IT BE RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council finds:

- a) that the granting of this conditional use permit per stipulations set forth on Exhibit 2 will not be materially detrimental to the public health, safety or welfare based on but not limited to the following factors: damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination and impact on surrounding areas resulting from an unusual volume or character of traffic;
- b) that the characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas; and
- c) that compliance with the additional conditions for live entertainment, set forth on Exhibit 3, is required.

Section 2. That a description of the conditional use permit is set forth in Case No. 3-UP-2012. The property that is subject to the conditional use permit is shown on Exhibit 1 and the conditional use permit approval is conditioned upon compliance with all of the stipulations that are set forth in Exhibit 2, including the expiration of this conditional use permit one (1) year after Council approval. All exhibits are incorporated herein by reference.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 8<sup>th</sup> day of May, 2012.

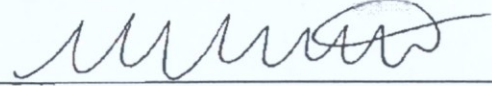
ATTEST:

CITY OF SCOTTSDALE, an Arizona  
Municipal Corporation

By: \_\_\_\_\_  
Carolyn Jagger  
City Clerk

By: \_\_\_\_\_  
W.J. "Jim" Lane  
Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:   
Bruce Washburn, City Attorney  
By: Sherry R. Scott, Deputy City Attorney





Downside Risk

Exhibit 1  
Resolution No. 9037

3-UP-2012



## **Conditional Use Permit - Live Entertainment**

### **Stipulations:**

### **Downside Risk for**

**Case Number: 3-UP-2012**

These stipulations are in order to protect the public health, safety, welfare, and the City of Scottsdale.

**Stipulations and addendums in bold recommended by Planning Commission**

#### **GOVERNANCE**

1. **EXPIRATION OF CONDITIONAL USE PERMIT.** This Conditional Use Permit shall expire one calendar year from the date of City Council approval.

#### **OPERATIONS**

2. **CONFORMANCE TO THE CONCEPTUAL FLOOR PLAN.** The interior layout of the premises shall be in substantial conformance with the conceptual floor plan submitted by Sixty First Place Architects Ltd., with the city staff date of 3/16/12, attached as Exhibit A to Exhibit 2. Any proposed significant change to the conceptual floor plan as determined by the Zoning Administrator, shall be subject to additional action and public hearings before the Planning Commission and City Council.
3. **NO BAR USE.** This Conditional Use Permit is for live entertainment only, and a bar use is not approved as part of this request.
4. **HOURS OF LIVE ENTERTAINMENT.** The hours of the live entertainment for this establishment shall be limited to:

	Start	To	End
Sunday	12:00 PM	To	11:00 PM
Monday	5:00 PM	To	10:00 PM
Tuesday	5:00 PM	To	10:00 PM
Wednesday	5:00 PM	To	10:00 PM
Thursday	5:00 PM	To	10:00 PM
Friday	12:00 PM	To	11:00 PM
Saturday	12:00 PM	To	11:00 PM

5. **SECURITY, MAINTENANCE, AND OPERATIONS PLAN.** The live entertainment shall conform to the Security, Maintenance, and Operations Plan approved by, and on record with the City of Scottsdale's Police Department and the Planning, Neighborhoods, and Transportation Division. A copy of the approved Security, Maintenance, and Operations shall be maintained on site. Within 10 days after a request by the City Manager or designee, the owner shall provide an update of the Security, Maintenance, and Operations Plan to the Scottsdale Police Department and the Planning, Neighborhoods, and Transportation Division. At least ten (10) days before any operational change of the live entertainment, or

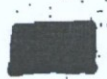


any promotional event (excluding Special Events), that modifies the requirements or contents of the Security, Maintenance, and Operations Plan, the owner shall submit a revised Security, Maintenance, and Operations Plan to the Scottsdale Police Department and the Planning, Neighborhoods, and Transportation Division. Any revised Security, Maintenance, and Operations Plan shall be subject to approval by the City of Scottsdale's Police Department and the Planning, Neighborhoods, and Transportation Division.

6. **NOISE.** In addition to the City's Noise Ordinance (Ordinance No. 3192, Article II, Chapter 19 of the Scottsdale Revised Code), noise generated from this use, including any speakers or other amplification equipment, shall not exceed ambient noise levels consistent to the use and the character of the area during hours of operation, as determined by the Zoning Administrator, or designee. **Live entertainment shall only occur inside the building, consistent with the floor plan. No live entertainment shall be provided on the patio.**
7. **EXTERNAL SPEAKERS.** External speakers shall only transmit recorded music and shall not be connected to any live entertainment equipment.
8. **EXTERNAL DOORS.** All external doors shall be closed but not locked during the hours live entertainment is provided.

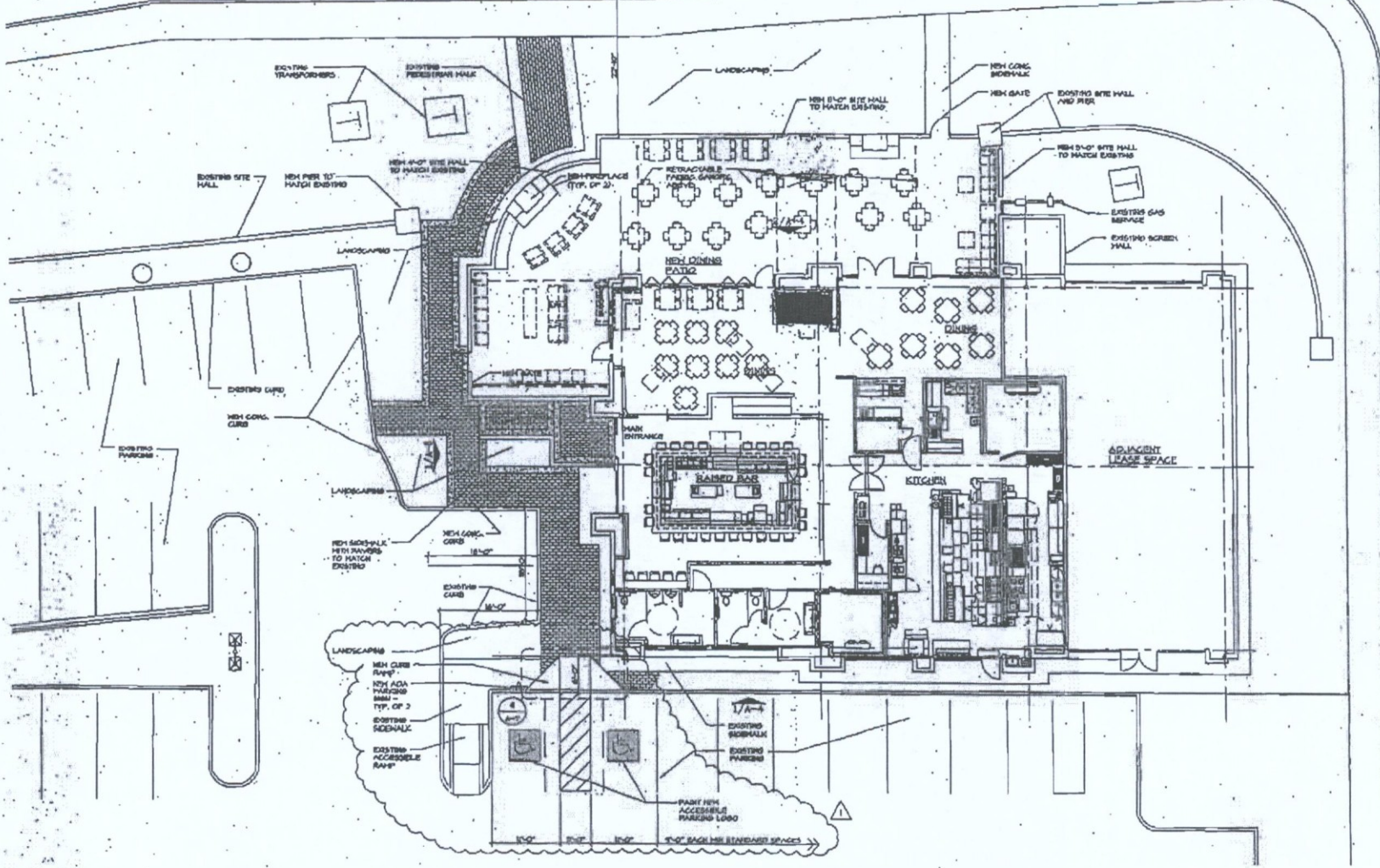
#### **ADMINISTRATIVE PROCESS**

9. **CONDITIONAL USE PERMIT ADMINISTRATIVE REVIEW.** Within ten (10) days after a request by the Zoning Administrator or designee, the owner, shall submit a letter to the Zoning Administrator or designee demonstrating compliance with all stipulations. A deviation from any stipulations or change in the floor plan may be grounds for revocation of the Conditional Use Permit.
10. **CHANGES IN OWNERSHIP.** Within ten (10) days after a change in ownership, the owner shall provide notice to the Zoning Administrator in writing of any such ownership change.



= Live Entertainment Area

Doubletree Ranch Road



1 PARTIAL SITE PLAN  
SCALE: 1/8" = 1'-0"

Exhibit A to Exhibit 2  
Resolution No. 9037  
Page 1 of 1

SIXTY FIRST PLACE ARCHITECTS, LTD.  
ARCHITECTS & PLANNERS

DOWNSIDE RISK  
GARNEY VILLAGE

DATE	REVISIONS	DATE	REVISIONS
1/12	1	1/12	1
1/12	1	1/12	1
1/12	1	1/12	1



## ADDITIONAL CRITERIA FOR LIVE ENTERTAINMENT

### K. *Live entertainment.*

1. The site plan shall demonstrate that:
  - a. Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and its required parking area to residential districts.
  - b. All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.
2. The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.
3. The applicant has provided a written public safety plan which the city police and fire departments have approved as complying with the written guidelines of the Planning and Development Department.
4. The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with section 7.600 of the zoning ordinance and with the public safety plan guidelines.
5. The applicant shall provide a written exterior refuse control plan which must be approved by the Planning and Development Department staff as complying with the written guidelines of the department, prior to the issuance of a business license. The review will be conducted as provided in Section 1.305.
6. The applicant has provided a floor plan which identifies the areas for the primary use and for ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.
7. If access to the establishment is from a street other than one classified by the General Plan as minor collector or greater, or classified by the downtown General Plan as local street or greater, the applicant has provided a traffic analysis which complies with transportation planning department written guidelines. The plan shall demonstrate to the satisfaction of the transportation department that the level of service on all streets accessed by the use shall meet the standard set by the city.
8. If the Zoning Administrator determines that a study is necessary the applicant shall provide a parking study which complies with the written guidelines of the Planning and Development Department.
9. The applicant has provided any additional information required by city staff in order to evaluate the impacts of the proposed use upon the area.
10. The following operational standards must be met by the use throughout its operation:
  - a. All external doors shall be closed but not locked during business hours.
  - b. No external speakers will be permitted on the premises of a use permitted under this section, which is located within five hundred (500) feet of a residential district.
  - c. The applicant/operator shall comply with all plans approved as provided herein.

# The Downside Risk Scottsdale

## Conditional Use Permit Project Narrative, Operations and Maintenance Plan

February 1, 2011

Prepared for: Randy Frederick  
The Downside Risk Scottsdale  
8989 N. Scottsdale Rd. Ste. 608  
Scottsdale, AZ 85253-2325

Prepared by: Joseph D. Goforth  
Southwest Development Services, LLC  
8683 E. Via de Negotio, STE 200  
Scottsdale, AZ 85258  
480-241-3735

ATTACHMENT #2

3-UP-2012  
1st: 2/07/12



## **I. Introduction**

The Downside Risk Scottsdale, located at 8989 N. Scottsdale Rd. (the "Property") requests approval of a City of Scottsdale, (the "City") Conditional Use Permit, ("CUP") for live entertainment. The Downside Risk Scottsdale, previously located in Downtown is an iconic Scottsdale restaurant and tavern with proud tradition of serving Scottsdale residents.

The Property is located within the Shops at Gainey Village (the "Shops"), generally located at the southeast corner of Scottsdale and Double Tree Ranch Rds. The Shops are zoned Central Business District, Planned Community Development (C-2, PCD).

The Shops include more than 150,000 gross square feet of commercial retail floor area and is the commercial core of the Gainey Ranch master planned community. The Shops and Property adjoin significant roadways including Scottsdale Rd. classified as a Major Arterial and Double Tree Ranch Rd. classified as a Major Collector. As such, commercial land uses including those with live entertainment, are appropriate at this location.

## **II. Conditional Use Permit Findings**

Conditional uses, as opposed to those permitted by right, are such that they may be appropriate under some conditions within a given zoning district, and or may be inappropriate under others.

In the case of a CUP for live entertainment, Section 1.401 of the Zoning Ordinance establishes the criteria utilized by the Planning Commission and City Council to determine that appropriateness of a proposed conditional use. Further, Section 1.401 (J) outlines additional criteria and is addressed below in section III, "Criteria for Live Entertainment".

The granting of a CUP will not be materially detrimental to the public health, safety or welfare. To reach this conclusion, the Planning Commission and City Council consider:

1. Damage or Nuisance arising from noise, smoke, odor, dust, vibration or illumination, and,
2. Impact on the surrounding areas resulting from an unusual volume or character of traffic.

The proposed live entertainment does not generate smoke, odor, dust vibration or illumination. Sound generated by the live entertainment is compatible with the surrounding area and does not cause damage. The nearest residential property is approximately 250 feet away from the Property and buffered by significant landscaping, site



walls and Double Tree Ranch Rd. No external speakers will be utilized for live entertainment.

The proposed live entertainment does not impact the surrounding area resulting from an unusual volume or character of traffic for a host of reasons. The Property is zoned C-2, PCD and trip generation from uses permitted in the area do not increase by the proposed live entertainment. Again, the Property is located generally at the intersection of Scottsdale and Double Tree Ranch Rds. Both streets are designed to convey significant trip traffic and enjoy excess capacity.

### **III. Criteria for Live Entertainment**

Section 1.403 (J) of the Zoning Ordinance specifies additional criteria for the Live Entertainment land use and is listed below:

Live entertainment.

1.The site plan shall demonstrate that:

- a. Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and its required parking area to residential districts.

**Response: The buffering and separation specified above is provided by both solid exterior walls and a substantial Landscaping. Double Tree Ranch Rd. provides additional landscaping and buffering.**

- b. All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.

**Response: Patron entrances are illuminated, clearly marked and controlled by employees.**

2.The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.

**Response: Activities related to live entertainment occur within a fully enclosed, commercially rated structure, and patio area. Sound will not exceed the decibel level prescribed by current City noise ordinances.**

3. The applicant has provided and obtained City approval of a written public safety plan.

**Response:** A public safety plan has been submitted to the City.

4. The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with Section 7.600. of the Zoning Ordinance and with the public safety plan guidelines.

**Response:** Plans previously submitted to and approved by the City for tenant improvements included an exterior lighting plan in accordance with Section 7.600.

5. The applicant shall provide and obtain City approval of a written exterior refuse control plan.

**Response:** This application includes a Security and Maintenance Plan and an Operation Plan that includes exterior refuse control.

6. The applicant has provided a floor plan which identifies the areas for the primary use and for ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.

**Response:** A floor plan depicting the areas specified above accompanies this application, including future patron dancing.

7. If access to the establishment is from a street other than one classified by the Transportation Master Plan as minor collector or greater, or classified by the if the establishment is located within the Downtown Area and access to the establishment is located on a street classified by the Transportation Master Plan as a local street or greater, the applicant shall provide a traffic analysis which complies with City's transportation guidelines. The traffic analysis shall demonstrate the level of service on all streets accessed by the use shall meets the City's standards.

**Response:** Access to the Property is from a street classified greater than a minor collector by the City's Transportation Master Plan.

8. If the Zoning Administrator determines that a study is necessary the applicant shall provide a parking study which complies with the City's written guidelines.

**Response:** The Zoning Administrator has not determined that a parking study is required for this application.



9. The applicant has provided any additional information required by the Zoning Administrator to evaluate the impacts of the proposed use upon the area.

**Response:** To date no additional information has been requested by the Zoning Administrator.

10. The following operational standards must be met by the use throughout its operation:

a. All external doors shall be closed but not locked during business hours.

**Response:** All external doors shall be closed but not locked during business hours with management and staff providing continuous monitoring and supervision.

b. No external speakers will be permitted on the premises of a use permitted under this section, which is located within five hundred (500) feet of a residential district.

**Response:** No external speakers are proposed in this application.

c. The applicant/operator shall comply with all plans approved as provided herein.

**Response:** The operator shall comply with all plans approved as provided herein.

#### **IV. Security, Maintenance & Operation Plan**

Separately, a Security and Maintenance Plan and Operation Plan accompany this application on forms provided by the City and are incorporated by reference herein.

#### **V. Conclusion**

The Downside Risk Scottsdale is *not* required to possess a CUP for a bar or cocktail lounge and holds a Series 12 liquor License, requiring the majority of sales to be food products versus alcohol. As such, the live entertainment proposed in this application is consistent with a restaurant/dinning experience rather than a bar or cocktail lounge.

The Shops represent a significant commercial retail center with a level of intensity that makes live entertainment, at this location, appropriate. The Property is surrounded by commercial land uses to the east, south and west. The nearest residential land uses are

approximately 250 feet away to the north and buffered by substantial landscaping, site wall and Double Tree Ranch Rd.

To date the applicant is not aware of any opposition to this request.





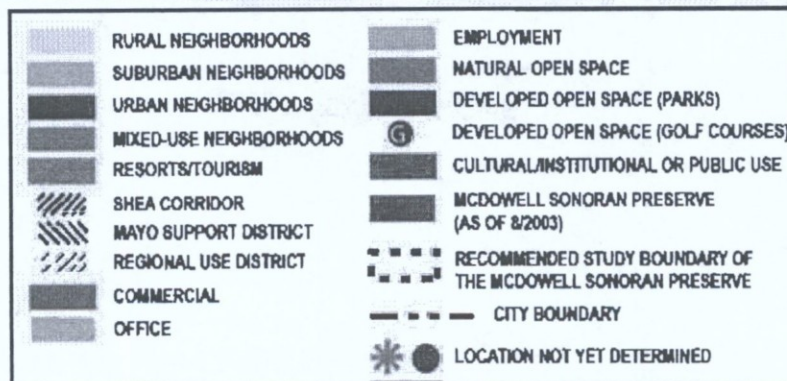
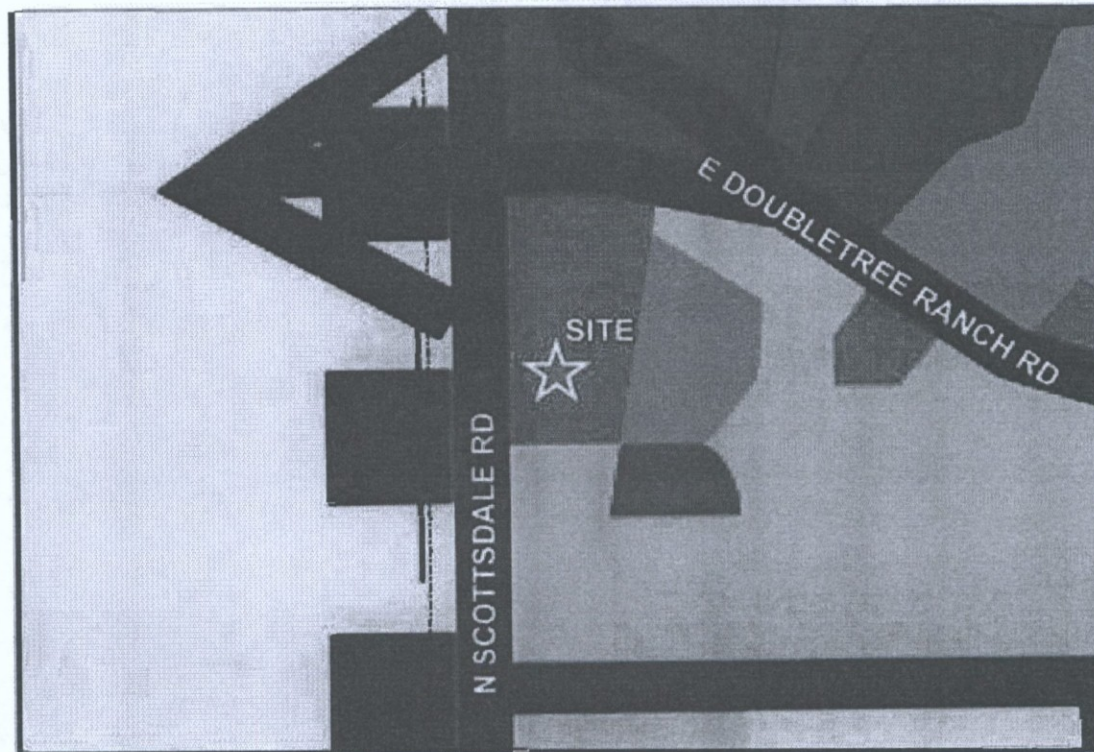
Downside Risk

3-UP-2012

ATTACHMENT #3



## Existing General Plan Land Use Map



3-UP-2012

ATTACHMENT #4

**N-SCOTTSDALE-RD-**

E-GAINEY-RANCH-RD-

R-5 PCD

O-S PCD

E-DOUBLE-TREE-RANCH-RD

~~R-5.PCD~~

SITE

C-O PCD

C-2 PCD

R1-7 PCD

**3-UP-2012**  
ATTACHMENT #5





# *Southwest Development Services, LLC*

VIA U.S. MAIL

January 20, 2012

Re: The Downside Risk Scottsdale / Live Entertainment

Dear Neighbor,

The purpose of this letter is to provide information regarding The Downside Risk Scottsdale, located at 8989 N. Scottsdale Rd., Ste. 608 (the "Property") within the Shops at Gainey Ranch. An application to the City of Scottsdale (the "City") for a Conditional Use Permit ("CUP") is being filed.

The Downside Risk Scottsdale, previously located in Downtown Scottsdale is an iconic restaurant and tavern with a long history of serving Scottsdale residents. The property is currently under renovation transforming it from office space to a restaurant.

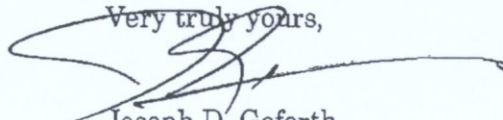
Our office represents The Downside Risk Scottsdale in the matter of obtaining a live entertainment CUP. Below please find a description of the application, my contact information, City contact information and a brief discussion of the CUP process. Your input is very important to us. The CUP approval process is intended to fully explain and incorporate surrounding property owner's questions and suggestions.

The Property is a restaurant open for lunch and dinner exclusively, live entertainment will be restricted to the hours of 11:00am to 12:00am and up to 1:00am on weekends; activities will be emblematic of entertainment associated with lunch and dinner service.

While a formal application has not yet been filed, the City has assigned the prospective application to Greg Bloemberg, Planner who can be reached at 480-312-4306 or by email at [greg.bloemberg@cityofscottsdale.gov](mailto:greg.bloemberg@cityofscottsdale.gov). My contact information is below.

The CUP application will undergo review from the City's planning staff and during that time, we invite your questions and comments. Thereafter the City's Planning Commission and City Council will hear this request in a public hearing that you are invited to attend. We welcome your questions and comments.

Very truly yours,



Joseph D. Goforth  
Principal

8683 E. Via de Negotio, Suite 200

Scottsdale, AZ 85258

Phone: 480-369-1486

**ATTACHMENT #6**

3-UP-2012  
1st: 2/07/12

## **Bloemberg, Greg**

---

**From:** boster@insight.rr.com  
**Sent:** Sunday, March 18, 2012 12:02 PM  
**To:** Bloemberg, Greg  
**Subject:** 3-UP-2012

### **City of Scottsdale Email**

Mr. Bloemberg, I am writing to object to the granting of a conditional use permit for live entertainment at the Downsize Risk Resturant by Southwest Development Services. I own a condo in Gainey Ranch at 7272 E. Gainey Ranch Road, #101. I feel the granting of this permit will disturb our neighborhood during the evening hours with loud music and partying. We can see the building from our neighborhood and certainly feel the noise generated from this conditional use permit will be detrimental to our quiet enjoyment and property values. I would appreciate you making my concerns known to the appropriate parties. thank you, Charles A. Boster

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**Bloemberg, Greg**

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**From:** Niederer, Keith  
**Sent:** Tuesday, March 20, 2012 7:37 AM  
**To:** Bloemberg, Greg  
**Subject:** FW: Downside Risk at Shops at Gainey Ranch

**From:** Brickell Williamson [mailto:brickellw@cox.net]  
**Sent:** Saturday, March 17, 2012 1:15 PM  
**To:** Niederer, Keith  
**Subject:** Downside Risk at Shops at Gainey Ranch

I'm resident immediately across st. to north. Any outside noise would have very detrimental effect on my property. Thank you for considering neighborhood in planning new business. B.Williamson

## Bloemberg, Greg

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**From:** jorkhall@cox.net  
**Sent:** Wednesday, March 21, 2012 1:29 PM  
**To:** Bloemberg, Greg  
**Subject:** Conditional Use Permit application (3-UP-2012)

### City of Scottsdale Email

As home owners in the Pavilions of Gainey Ranch (Unit 16), we were aghast to hear that you are considering granting a permit for patio music and entertainment just across the street from our unit. For months the controversy has raged about the problems and noise created in Scottsdale by outdoor, late night entertainment spots. Crime has increase, noise gets out of hand and no one fixes the issue, and undesirable characters and drunks are invited into our neighborhood. We are totally opposed to granting the exterior music and patio request. We do not have a problem with the restaurant, not that we were asked anyway. Thanks for any consideration you can give to the neighboring residential community.



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## Bloemberg, Greg

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From: peterlenton@cox.net  
Sent: Monday, March 26, 2012 9:29 AM  
To: Bloemberg, Greg  
Cc: deetbloom@msn.com  
Subject: RE: Case: 40791 (3-UP-2012)

Mr Bloemberg

Thank you for the prompt response

Im interested firstly in why I didnt receive correspondence, as I believe is required as part of the process, from the applicant informing me of the CUP application and therefore can you please let me know of the affect of this non-notification on the applicant's application for a CUP

I would like to respectfully register my strong opposition to this application, specifically:  
1. I believe that the late night operation of this business will result in undesirable noise impacts on a residential area and is therefore not compatible with this adjacent residential area. Can you please let me know if a noise study has been performed and if so can you please provide me a copy  
2. The increase in traffic is also of concern as there is already significant noise from via de ventura road and the increase in traffic into and out of the parking lot will only make it worse. Can you please let me know if a traffic study was required and if so if it was performed- if a traffic study was performed can you please provide me with a copy. The increase in traffic from this business I would respectfully argue is also incompatible with the adjacent residential neighborhood  
3. In terms of parking, is a parking study required and if so has it been performed. If so can you please provide a copy of the parking study and a count of the number of patrons the parking study was based on. On inspection of the site there is precious little parking available for the businesses in this complex and given several other vacant commercial buildings which will ultimately be filled I question whether the impact of these to be occupied businesses was considered in determining parking required and parking capacity available for this applicant's business

I would like to please be kept intimately informed, moving forward, of any developments in this application

Thank you in advance

Peter Lenton  
6023207520

----- "Bloemberg wrote:

> Mr. Lenton,

>

> I am the Planner assigned to this case. Thank you for your correspondence. Public input is critical to the success of this process. I will add your concerns to my report.

>

> Please feel free to contact me with any additional concerns or questions.

>

> Regards,

>

> Greg Bloemberg

> Planner

> Current Planning

> City of Scottsdale

> [gbloemberg@scottsdaleaz.gov](mailto:gbloemberg@scottsdaleaz.gov)

> 480-312-4306  
>  
> Get informed!  
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> ePZLink>  
> [cid:image005.png@01CB43AD.5DAF16B0]<<http://twitter.com/ScottsdalePand>  
> Z>  
>  
> From: peterlenton@cox.net [mailto:peterlenton@cox.net]  
> Sent: Sunday, March 25, 2012 6:25 PM  
> To: Bloemberg, Greg  
> Subject: Case: 40791 (3-UP-2012)  
>  
> City of Scottsdale Email  
>  
> Message for Mr Keith Niederer ((3-UP-2012)) I understand that there is  
> a proposal for a new Downside Risk bar at Scottsdale and Via De  
> Ventura. Given that I live across the road from this establishment I  
> understand I should have been informed of this proposal by mail, which  
> I was not. Secondly, I oppose the application as the noise from the  
> outside bar and music and increase in traffic are incompatible with  
> the neighborhood and other developments in that complex. Please keep  
> me informed of the status of this application Thanks Peter Lenton  
> [City of Scottsdale Logo]  
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> Events<<http://www.scottsdaleaz.gov/events.asp>> |  
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7272 East Gainey Ranch Road  
Unit 98  
Scottsdale, AZ 85258  
March 21, 2012

Planning Commission  
City of Scottsdale  
7447 East Indian School Road  
Suite 105  
Scottsdale, AZ 85251

**Re: 3-UP 2012 Downside Risk**

Gentlemen:

We would like to register our opposition to approval by the Planning Commission for a proposal by Southwest Development Services and Joseph D. Goforth to enable a restaurant and bar at 8989 North Scottsdale Road. The proposed outdoor patio and bar would be only about 200 yards from a residential community occupied by children and senior citizens. The establishment of such a business at this location would be detrimental to the lives of these residents and would otherwise be inappropriate to the neighborhood.

We urge you to reject this application.

Very truly yours,

*Rosalie S. Brownstein*

Rosalie S. Brownstein

*Arthur M. Brownstein*

Arthur M. Brownstein

## **Bloemberg, Greg**

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**From:** alanlezak@hotmail.com  
**Sent:** Wednesday, March 28, 2012 11:22 AM  
**To:** Bloemberg, Greg  
**Subject:** Downside Risk

### **City of Scottsdale Email**

I am in favor of granting the Downside Risk its conditional use permit. Many of my neighbors are imagining the worst possible scenarios. There are conditions by definition that will protect this community from voice annoyance. The owners of the shopping center have rights and have gone through all the necessary procedures to obtain the proper permits. Music with limitation regarding volume and time will not negatively affect us if they are properly adhered to. Active businesses in our community are a better asset than empty buildings.

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## Bloemberg, Greg

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**From:** Dale Folstad [dalefolstad@sasktel.net]  
**Sent:** Wednesday, March 28, 2012 12:10 PM  
**To:** Bloemberg, Greg  
**Cc:** 'Jim Funk'; 'DEE BLOOM'  
**Subject:** Downside Risk Restaurant

I understand you are the planner assigned to review information relating to Downside Risk application for permit to have amplified and non-amplified music inside their new restaurant and on the patio.

My wife and I own a condo at 7272 East Gainey Ranch Road, Unit 7. I estimate our patio is approximately 320 feet from the Downside Risk patio. Our awareness of this issue came only from word-of-mouth from neighbors until a few days ago we received an email from Jim Funk of Gainey Ranch Administration that incorrectly advised that people within 750 feet of this development would have received notification and information. I am concerned that there seems to have been a complete lack of information provided to homeowners that may be affected.

Over the last few days I have been trying to gather information to enable me to understand the potential impact on the quality of lifestyle we have invested a significant portion of our savings on if the Downside Risk is allowed to have music emanating from their building. I am also trying to gather information regarding what, if anything, we can do about it. Although my information is far from complete, there are a few observations and references that I would like to pass on to you.

A February 17, 2012 article by Peter Corbett in The Republic provides a little history regarding Downside Risk:...a lively tavern

...business declined

as more bars opened in the area

...Frederick was

unavailable for comment

It appears that Downside Risk has felt the need to move to a new location every few years.

A March 27, 2012 article by Edward Gately in The Republic regarding noise pollution from the entertainment district negatively impacting nearby residents and merchants.

...sharply divided issue between bar owners, and nearby residents and merchants

Mayor Jim Lane...progress on other issues, but

Bill Crawford, President of the Association to Preserve Downtown Scottsdale's Quality of Life:

...city's noise ordinance has done nothing to protect residents from loud music coming from the bars, and...noise remains a problem because the ordinance was "crafted" to protect the offenders.

Ron Keagy, the city's neighborhood resources director says there have been no verifiable violations

Les Corieri, president of the bar owners group said the music creates the "energy" and if "we don't have the energy, we're out". He also admits it's difficult to control the sound with patios and open buildings.

A Real Estate Agent has advised me that if the music emanating from Downside Risk was obvious to impact normal patio enjoyment, that would have to be a Disclosure if we went to sell and would negatively impact upon the sales price.

From reviewing the drawings of the proposed restaurant and patio, it appears to have a disproportionately large patio compared to the inside space and appears to be utilizing a very open-to-the-outside concept. Their initial application requested amplified music until 1:00 a.m.. Those factors make me concerned that they may intend to operate more as a bar than a restaurant as they apparently have in the past.

As I mentioned at the outside we have received no information or notification from the proponent or the city. My wife and I would have to be considered amongst the residents most affected, although there are residents right across the street. At the same time, the proponents have proven to be very capable of getting their licenses and approvals from the City and at least so far have seemed to manage to disarm the Gainey Board whom we would normally count on to fiercely defend their residents on the Gainey boundary. At this time I have to take it as a bad sign that the proponent has not contacted us. From the news articles I have read, it would appear they can operate pretty much as they like once they get the approvals.

We are not opposed to the restaurant opening in this location. We are firmly opposed to the city allowing any noise to emanate from this facility that would detract from the quality of our lifestyle. On the positive side, I coincidentally met a former employee of the Downside Risk yesterday who spoke very highly of the owners and thought they would understand our concerns and ensure noise from their facility would not extend across the street. I request that you pass on a copy of this email to the owner of Downside Risk and advise him we are interested in meeting with him for the purpose of reaching an acceptable compromise.

From the above noted article in The Republic it is obvious that the City of Scottsdale must recognize that there are already some very serious noise issues related to establishments of this type. I fail to understand how the City could consider granting the permission that Downside Risk is requesting in the absence of an agreement with the most affected residents and thereby extend the problem to our community.

Respectfully, Dale Folstad and Denise Jenkins Folstad  
(480) 248-8352



**Lebovitz, Brandon**

---

**Subject:** Downside Risk

**From:** [alanlezak@hotmail.com](mailto:alanlezak@hotmail.com) [<mailto:alanlezak@hotmail.com>]

**Sent:** Wednesday, March 28, 2012 2:40 PM

**To:** Bloemberg, Greg

**Subject:** Downside Risk

## City of Scottsdale Email

I wrote you earlier and I have more to add. I just spoke with our Executive Director, Jim Funk, who will be sending you his own communication. The negative comments that you are receiving are for the most part being sent at the urging of one person in our community who is a real estate agent and represents some of the owners who are submitting negative comments. Our Executive Director can't say the same things that I am relaying due to his obligation to represent the "Community" I can assure you, his feelings are similar to mine. This enterprise applying for the CUP, has been working to satisfy the issues being raised. Asking to deny a Conditional Use Permit for what may happen, with no indication that it would, is denying the rights of the business owner. I have no interest in that enterprise, other than seeing that people aren't denied the right to run a small business and conforming to all the regulations and codes. I have been a small business man all my life and that has been the basis for American economic growth. I have had a long history of leadership in this community going back to 1994. If you would like to discuss this with me and I hope you would, please call me at 480 9515353. Thank you, Alan Lezak 7272 E. Gainey Ranch Road Unit #17 Scottsdale, AZ 85258



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Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.

Public testimony is limited to three (3) minutes per speaker.

Additional time MAY be granted to speakers representing two or more persons.

Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) Michael J. Miller MEETING DATE 4/11

NAME OF GROUP/ORGANIZATION (if applicable) \_\_\_\_\_

ADDRESS 7285 E. Griswold Rd ZIP 85258

HOME PHONE 480-483-3646 WORK PHONE 602-412-7948

E-MAIL ADDRESS (optional) \_\_\_\_\_

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☐ I WISH TO SPEAK DURING "PUBLIC COMMENT"\* CONCERNING \_\_\_\_\_

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NAME (print) PATRICK COLLINS MEETING DATE 4/11/2012

NAME OF GROUP/ORGANIZATION (if applicable) \_\_\_\_\_

ADDRESS 7525 E GAINEY RANCH Rd # 139 ZIP 85258

HOME PHONE 480-922-0718 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS (optional) PTCOLLINS2@COX.NET

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NAME (print) Eugene Kaubius MEETING DATE April 11-12

NAME OF GROUP/ORGANIZATION (if applicable) Gaiety Ranch - Revision

ADDRESS 7272-E - Gaiety Ranch Rd - #24 ZIP 85255

HOME PHONE 480 607 0317 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS (optional) ekaubius@hotmail.com

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NAME (print) JAMES FUNK MEETING DATE 4/11/2012

NAME OF GROUP/ORGANIZATION (if applicable) Goway Ranch

ADDRESS 7220 Goway Ranch Road ZIP 85258

HOME PHONE 480-528-0793 WORK PHONE 480-951-0321

E-MAIL ADDRESS (optional) JFunk@GowayRanch.com

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NAME (print) Nancy Eisenhut MEETING DATE 4/10/12

NAME OF GROUP/ORGANIZATION (if applicable) Pavilions Disney Ranch

ADDRESS 7272 E. GAINWAY Ranch Rd # 46 ZIP 85258

HOME PHONE 480-609 7363 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS (optional) \_\_\_\_\_

☒ I WISH TO SPEAK ON AGENDA ITEM # 4 ☐ I WISH TO DONATE MY TIME TO \_\_\_\_\_

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NAME (print) Dez Bloom MEETING DATE 4-11-12

NAME OF GROUP/ORGANIZATION (if applicable) Gaining Ranch

ADDRESS 7272 E Gaining Ranch #8, Scotts ZIP 85058

HOME PHONE 480-951-3309 WORK PHONE 602-315-3021

E-MAIL ADDRESS (optional) Dez.T.Bloom@msu.com

☐ I WISH TO SPEAK ON AGENDA ITEM # \_\_\_\_\_ ☐ I WISH TO DONATE MY TIME TO \_\_\_\_\_

☒ I WISH TO SPEAK DURING "PUBLIC COMMENT" \* CONCERNING Downside Risk

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NAME (print) Susan Schafer MEETING DATE 4/11/12

NAME OF GROUP/ORGANIZATION (if applicable) Pavilions/Gainey Ranch

ADDRESS 7272 E. Gainey Ranch Rd #4, #6, #111 ZIP 85258

HOME PHONE 480-661-8800 <sup>cell</sup> WORK PHONE 602-685-4277

E-MAIL ADDRESS (optional) \_\_\_\_\_

☒ I WISH TO SPEAK ON AGENDA ITEM # 3-4-2012 ☐ I WISH TO DONATE MY TIME TO \_\_\_\_\_

☐ I WISH TO SPEAK DURING "PUBLIC COMMENT"\* CONCERNING Downside Risk

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NAME (print) RALPH VATALARO MEETING DATE 4/11/2012

NAME OF GROUP/ORGANIZATION (if applicable) \_\_\_\_\_

ADDRESS 7272 E. GAINES Ranch Rd #2 <sup>Scottsdale</sup> ZIP 85258

HOME PHONE 480 612-2559 WORK PHONE 480 947-3400

E-MAIL ADDRESS (optional) 22.v2t@20.com

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NAME (print) ALAN LEZAK MEETING DATE 4/11/2012

NAME OF GROUP/ORGANIZATION (if applicable) \_\_\_\_\_

ADDRESS 7272 E. CANYON RANCH RD #17 ZIP 85258

HOME PHONE 480 951 5353 WORK PHONE SAME

E-MAIL ADDRESS (optional) ALANLEZAK@hotmail.com

☒ I WISH TO SPEAK ON AGENDA ITEM # 4 ☐ I WISH TO DONATE MY TIME TO \_\_\_\_\_

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NAME (print) ANITA L. LUKOW MEETING DATE 4/11/12

NAME OF GROUP/ORGANIZATION (if applicable) PAVILLION @ GAIKEY RANCH.

ADDRESS 7272 E. GAIKEY Ranch Rd. # 116 ZIP 85258

HOME PHONE 303-921-4466 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS (optional) \_\_\_\_\_

☒ I WISH TO SPEAK ON AGENDA ITEM # 4 ☐ I WISH TO DONATE MY TIME TO \_\_\_\_\_

☒ I WISH TO SPEAK DURING "PUBLIC COMMENT"\* CONCERNING DOWNSIDE RANCH

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## WRITTEN COMMENTS

4

This card is used to submit written comments to the Board or Commission.  
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) Wayne Eisenhower MEETING DATE 4/11/12

NAME OF GROUP/ORGANIZATION (if applicable) Gaiety Ranch CC

ADDRESS 7272 E. Gaiety Ranch Rd # 46 ZIP 85258

HOME PHONE 480 609 7363 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS(optional) \_\_\_\_\_

AGENDA ITEM # \_\_\_\_\_ ☐ SUPPORT ☐ OPPOSE

COMMENTS (additional space is provided on the back) Concerned about the Noise  
issue from Downside Risk - This is designed for  
out door Entertainment. It's very quiet area at night  
We buy there because of that

This card constitutes a public record under Arizona law.





## WRITTEN COMMENTS

4

This card is used to submit written comments to the Board or Commission.  
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) DALE FOLSTAD MEETING DATE APRIL 11 / 12

NAME OF GROUP/ORGANIZATION (if applicable) \_\_\_\_\_

ADDRESS 7272 E GAINES RANCH RD UNIT 7 ZIP 85258

HOME PHONE (480) 248-8352 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS (optional) dale.folstad@sacktel.net

AGENDA ITEM # 3-WP-2012 Downside Biss ☐ SUPPORT ☒ OPPOSE

COMMENTS (additional space is provided on the back) Have previously sent emails expressing concerns that sound emanating from bar/restaurant would be a nuisance to our enjoyment of our patio. Any sound must be contained within restaurant.

This card constitutes a public record under Arizona law.





## WRITTEN COMMENTS

4

This card is used to submit written comments to the Board or Commission.  
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) Dee Bloom MEETING DATE 4-11-12

NAME OF GROUP/ORGANIZATION (if applicable) Gaiety Ranch

ADDRESS 7272 E. Gaiety Ranch #8, Scottsdale ZIP 85258

HOME PHONE 480-951-3309 WORK PHONE 602-315-3021

E-MAIL ADDRESS(optional) DeeT.Bloom@msn.com

AGENDA ITEM # 3-UP-2012 ☐ SUPPORT ☒ OPPOSE

COMMENTS (additional space is provided on the back) This is a disturbance to a peaceful  
environment with amplified music, TV's on patio -  
This will devalue our property values, traffic problems.  
I'm not opposed to a Restaurant - I'm opposed to  
music & TV's

This card constitutes a public record under Arizona law.





## WRITTEN COMMENTS

This card is used to submit written comments to the Board or Commission.

Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

4

NAME (print) ANDREA L. LINKOW + DR. RONALD G. LINKOW MEETING DATE 4/11/12

NAME OF GROUP/ORGANIZATION (if applicable) HAVILLIANS @ CAINEY RANCH

ADDRESS 7272 E. CAINEY RANCH Rd # 116 ZIP 85255

HOME PHONE 303-921-4466 WORK PHONE \_\_\_\_\_

E-MAIL ADDRESS(optional) \_\_\_\_\_

AGENDA ITEM # 4 ☐ SUPPORT ☒ OPPOSE

COMMENTS (additional space is provided on the back) IT APPEARS TO BE OUT OF

LINE THAT WE WERE NOT NOTIFIED ABOUT THIS PROJECT

UNTIL A WEEK AND A HALF AGO. WE ARE SHOCKED AND

DISTURBED BY YOUR LACK OF INTEREST IN MY NEIGHBORHOOD.

WE BOUGHT OUR HOME SPECIFICALLY FOR THE QUIET NEIGHBORHOOD,

STATE # STATE-300' CITY POLICY -

STATE NOT NOTIFIED - UNTIL 1 1/2 WEEKS AGO. 750 ft.

This card constitutes a public record under Arizona law.





## WRITTEN COMMENTS

4

This card is used to submit written comments to the Board or Commission.  
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) Miriam Nikich MEETING DATE Apr. 11, 2012  
NAME OF GROUP/ORGANIZATION (if applicable) PAVILIONS @ GAINES RANCH  
ADDRESS 7272 Gaines Ranch Road ZIP 85258  
HOME PHONE 480 948 4861 WORK PHONE —  
E-MAIL ADDRESS (optional) mbnikich@yahoo.com  
AGENDA ITEM # 3-UP 2012 ☐ SUPPORT ☒ OPPOSE  
COMMENTS (additional space is provided on the back) Oppose Bar w/ Patio & Music  
FACING RESIDENCES GAINES RANCH IS A RESIDENTIAL  
COMMUNITY & WAS NOT ADVISED OF THE DRUGS & RISK  
AND THEREFORE WOULD LIKE TO HAVE THIS CUP  
DENIED IN ORDER TO GIVE RESIDENCE OWNER

This card constitutes a public record under Arizona law.



Written Comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

Submitted time to organizer & address beside  
Ask

**REQUEST TO SPEAK:** Citizens wishing to address the Board or Commission in person may obtain a Request to Speak card from staff located at the Staff table in the Kiya.



## WRITTEN COMMENTS

4

This card is used to submit written comments to the Board or Commission.  
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) Susan Schaefer MEETING DATE 4/11/12

NAME OF GROUP/ORGANIZATION (if applicable) Residents / Gaiety Ranch

ADDRESS 1272 E Gaiety Ranch Rd #476 #111 ZIP 85258

HOME PHONE 602-624-8620 WORK PHONE 602-624-8620

E-MAIL ADDRESS (optional) \_\_\_\_\_

AGENDA ITEM # 3-UP-2012 ☐ SUPPORT ☒ OPPOSE

COMMENTS (additional space is provided on the back) I own 3 properties at the  
fauxons at Gaiety Ranch & are less than 300 feet  
from Downside Park. I rent my units and know  
that the noise from an outside area north  
speakers + TVs + crowds would make it near

This card constitutes a public record under Arizona law.



**Written Comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.**

impossible to rent to the type of tenants  
that want to rent. I can see downside risk  
from my driveway at #4 + #6. It does not  
seem ethical that people who already own +  
have owned property should have to put up  
with unwanted noise, especially when there  
is an ordinance in place, supposedly protecting  
people. I would request no noise, no music  
+ no TVs outside. Thank you for your  
consideration.

**REQUEST TO SPEAK:** Citizens wishing to address the Board or Commission in person may obtain a Request to Speak card from staff located at the Staff table in the Kiva.



## WRITTEN COMMENTS

4

This card is used to submit written comments to the Board or Commission.  
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) Donna L. Moore MEETING DATE 4/10/2008

NAME OF GROUP/ORGANIZATION (if applicable) Phoenix

ADDRESS 927 ZIP 85001

HOME PHONE 602-452-1111 WORK PHONE

E-MAIL ADDRESS (optional) dm@phoenix.gov

AGENDA ITEM # 3. UP-2008 ☐ SUPPORT ☒ OPPOSE

COMMENTS (additional space is provided on the back)

Not sure what concerns are being raised by the Board. I am not sure if the Board is the right place to raise the question of the proposed changes to the City Charter.  
The type of changes proposed to the Charter are not good.

This card constitutes a public record under Arizona law.



Written Comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

We are strong the demand in Nevada it drastically.  
We are strongly opposed to any more new mining  
television on the part and request the council  
vote against this request.

The

**REQUEST TO SPEAK:** Citizens wishing to address the Board or Commission in person may obtain a Request to Speak card from staff located at the Staff table in the Kiva.



## Lebovitz, Brandon

---

**From:** Bloemberg, Greg  
**Sent:** Monday, April 23, 2012 7:57 AM  
**To:** Lebovitz, Brandon  
**Subject:** FW: 3-UP-2012

Please add to folder in CDS. Thanks!!

Greg Bloemberg

Planner

Current Planning

City of Scottsdale

[gbloemberg@scottsdaleaz.gov](mailto:gbloemberg@scottsdaleaz.gov)

480-312-4306

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twitter

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**From:** [alaniezak@hotmail.com](mailto:alaniezak@hotmail.com) [<mailto:alaniezak@hotmail.com>]

**Sent:** Thursday, April 19, 2012 9:15 PM

**To:** Bloemberg, Greg

**Subject:** 3-UP-2012

## City of Scottsdale Email

Following is the message I sent to the City Council. I won't be able to attend the scheduled Council meeting. I am a proponent of allowing the request for a Conditional Use Permit for live entertainment at the Downside Risk. This is to be heard at your May 8, 2012 meeting. The applicant has made and is making major concessions and the Planning Commission is recommending a limitation of one year for this permit and then they must reapply. My neighbor's concern is that the City of Scottsdale won't enforce the City Code or the permit. I don't believe that will happen and the establishment should be given a chance to prove itself. Assurance from the City Council that all codes and permits will be enforced satisfies me.



[Home](#) | [Residents](#) | [Business](#) | [Visitors](#) | [Online Services](#)

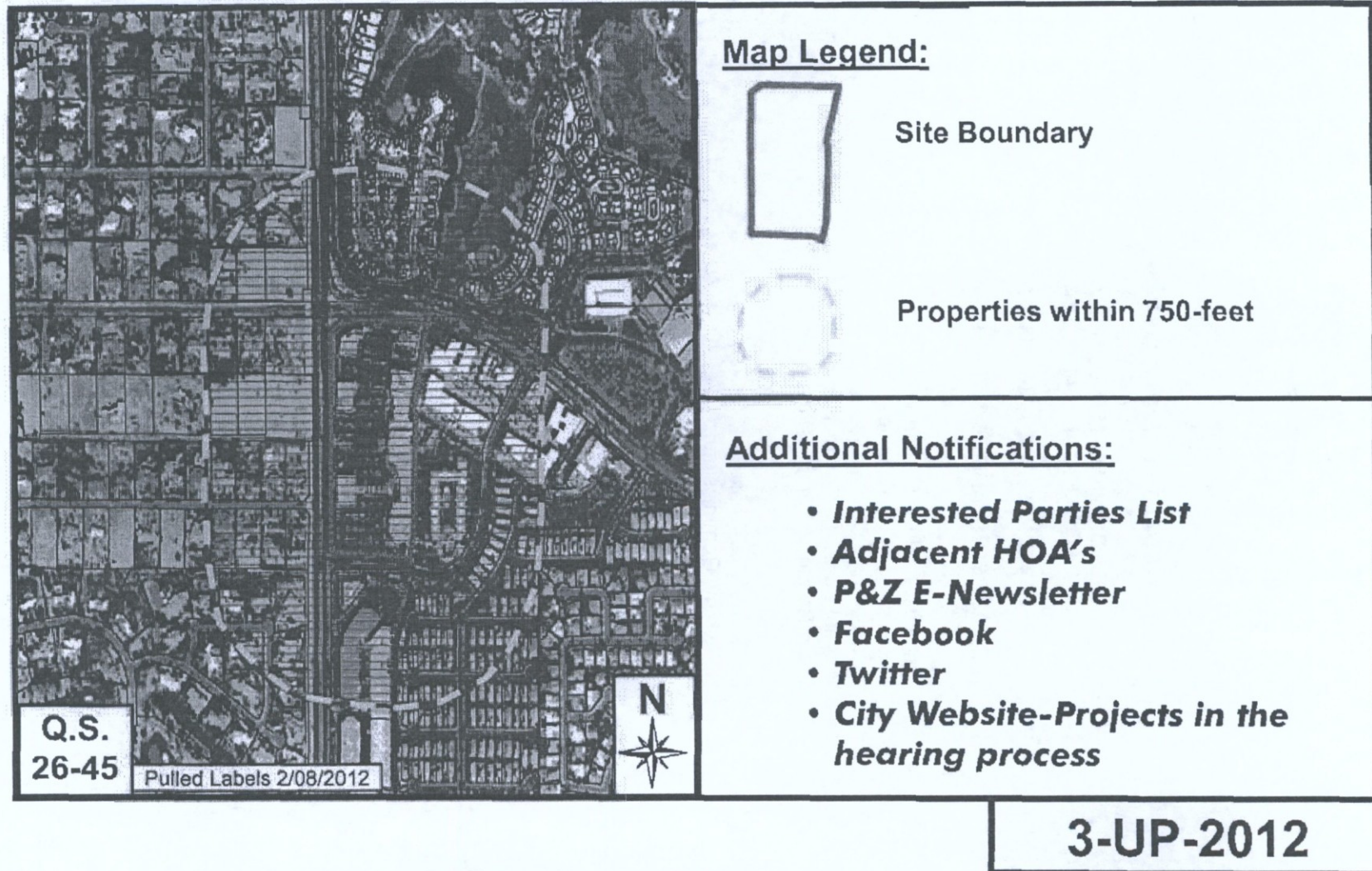
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## City Notifications – Mailing List Selection Map



**DOWNSIDE RISK**

ATTACHMENT #7



**SCOTTSDALE PLANNING COMMISSION  
KIVA-CITY HALL  
3939 DRINKWATER BOULEVARD  
SCOTTSDALE, ARIZONA**

**WEDNESDAY, APRIL 11, 2012**

**DRAFT SUMMARIZED MEETING MINUTES\***

**PRESENT:** Michael D'Andrea, Chairman  
Erik Filsinger, Commissioner  
Jay Petkunas, Commissioner  
Michael Edwards, Commissioner  
David Brantner, Commissioner

**ABSENT:** Ed Grant, Vice-Chair  
Matt Cody, Commissioner

**STAFF:** Tim Curtis  
Joe Padilla  
Dan Symer  
Greg Bloemberg  
Brandon Lebovitz

**CALL TO ORDER**

Chair D'Andrea called the regular session of the Scottsdale Planning Commission to order at 5:00 p.m.

**ROLL CALL**

A formal roll call was conducted confirming members present as stated above.

**MINUTES REVIEW AND APPROVAL**

1. Approval of March 28, 2012 Regular meeting Minutes including Study Session.  
**COMMISSIONER FILSINGER MOVED TO APPROVE THE MARCH 28, 2012 REGULAR MEETING MINUTES, INCLUDING STUDY SESSION. SECONDED BY COMMISSIONER PETKUNAS, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF FIVE (5) TO ZERO (0).**

\* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Planning Commission website at: [www.scottsdaleaz.gov/boards/PC.asp](http://www.scottsdaleaz.gov/boards/PC.asp)



**CONTINUANCE AGENDA**

2. 1-ZN-2010#2 (Optima Sonoran Village)
3. 1-II-2012 (Optima Sonoran Village)

Glen Shipp, Margaret Gossett, Barbara Henward, and Brad Henrod provided comments on the proposal.

**COMMISSIONER FILSINGER MOVED TO CONTINUE CASES 1-ZN-2010#2 AND 1-II-2012 (OPTIMA SONORAN VILLAGE) TO THE MEETING ON APRIL 25, 2012. SECONDED BY COMMISSIONER BRANTNER, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF FIVE (5) TO ZERO (0).**

**EXPEDITED AGENDA**

4. 3-UP-2012 (Downside Risk)

Michael Miller, Patrick Collins, Eugene Kaubus, James Funk, Nancy Eisenhut, Dee Bloom, Susan Schafer, Ralph Vatalaro, Alan Lezak, Andrea Linkow, Dr. Ronald Linkow, Miomir Nikich, Deb Teitelbaum, Howard Teitelbaum, and Dale Folstad provided comments on the proposal.

**CHAIR D'ANDREA MOVED TO THE REGULAR AGENDA.**

**COMMISSONER PETKUNAS MOVED TO MAKE A RECOMMENDATION TO CITY COUNCIL FOR APPROVAL OF CASE 3-UP-2012, PER THE STAFF RECOMMENDED STIPULATIONS, AND WITH THE ADDED STIPULATIONS THAT THE CONDITIONAL USE PERMIT HAVE A ONE (1) YEAR EXPIRATION AND THAT LIVE ENTERTAINMENT OCCURS INDOORS, BASED UPON THE FINDING THAT THE CONDITIONAL USE PERMIT CRITERIA HAVE BEEN MET. SECONDED BY COMMISSIONER BRANTER, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF FIVE (5) TO ZERO (0).**

5. 6-UP-2012 (Tesla Retail / Fashion Square Mall)

James Munier provided comments on the proposal.

**COMMISSONER BRANTNER MOVED TO MAKE A RECOMMENDATION TO CITY COUNCIL FOR APPROVAL OF CASE 6-UP -2012, PER THE STAFF RECOMMENDED STIPULATIONS, BASED UPON THE FINDING THAT THE CONDITIONAL USE PERMIT CRITERIA HAVE BEEN MET. SECONDED BY COMMISSIONER PETKUNAS, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF FIVE (5) TO ZERO (0).**

**REGULAR AGENDA**

6. 2-ZN-2012 (Bauhaus Flats & Studios)

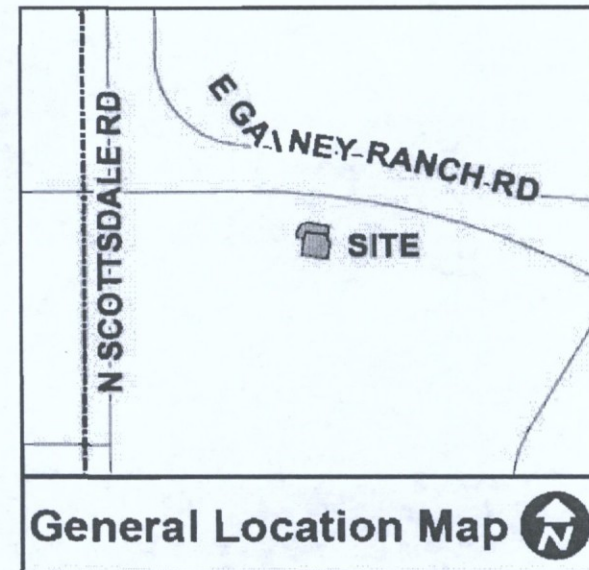
**COMMISSONER FILSINGER MOVED TO MAKE A RECOMMENDATION TO CITY COUNCIL FOR APPROVAL OF CASE 2-ZN -2012, PER THE STAFF RECOMMENDED STIPULATIONS, AFTER FINDING THAT THE PLANNED UNIT DEVELOPMENT CRITERIA HAVE BEEN MET, AND AFTER DETERMINING THAT THE PROPOSED ZONING MAP AMENDMENT IS CONSISTENT AND CONFORMS WITH THE ADOPTED GENERAL PLAN. SECONDED BY COMMISSIONER PETKUNAS, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF FIVE (5) TO ZERO (0).**

**ADJOURNMENT**

With no further business to discuss, the regular session of the Planning Commission adjourned at 6:58p.m.



## Downside Risk



**3-UP-2012**

City Council

May 8, 2012

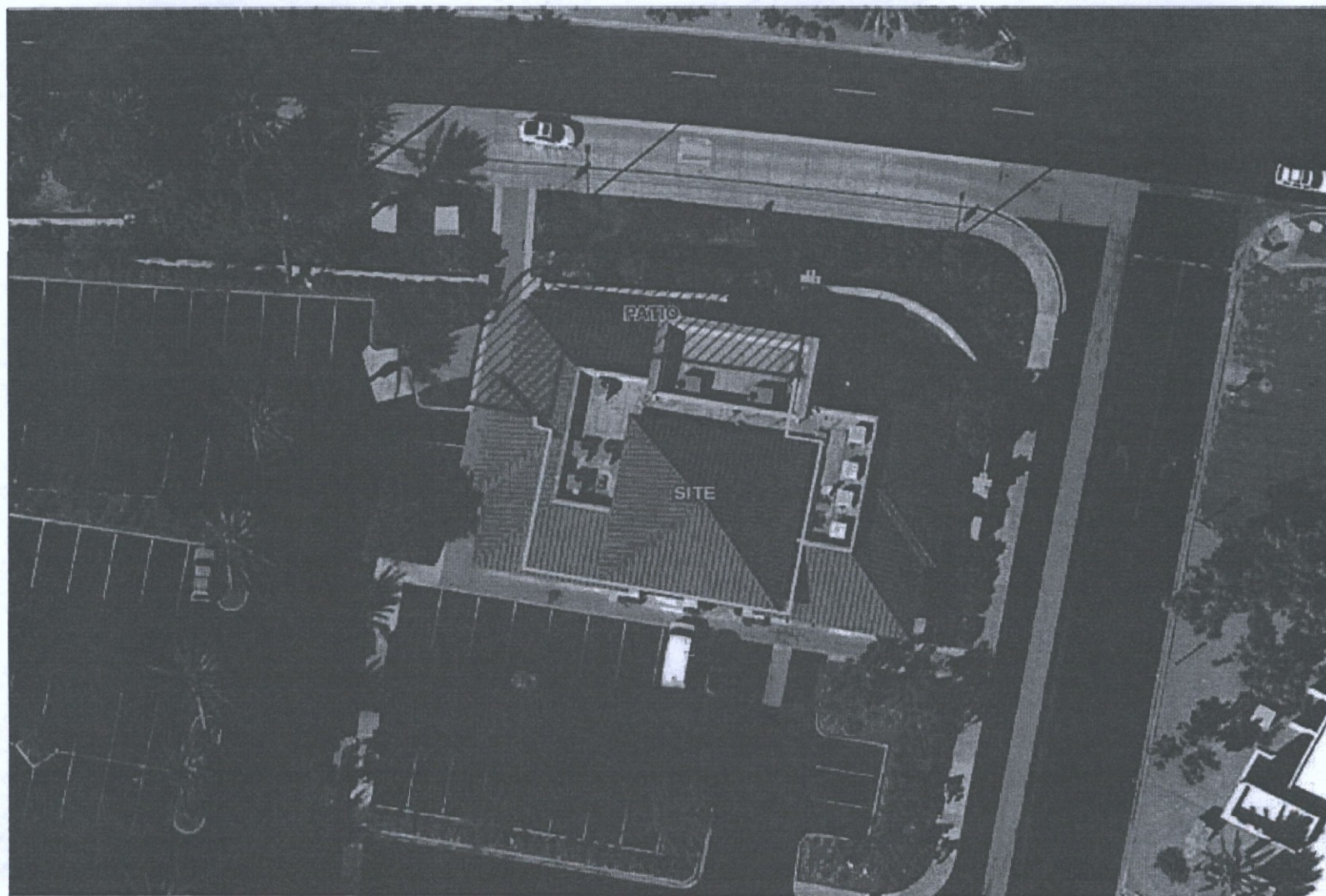
Coordinator: Greg Bloemberg

## Context Aerial Photo





## Close Aerial Photo

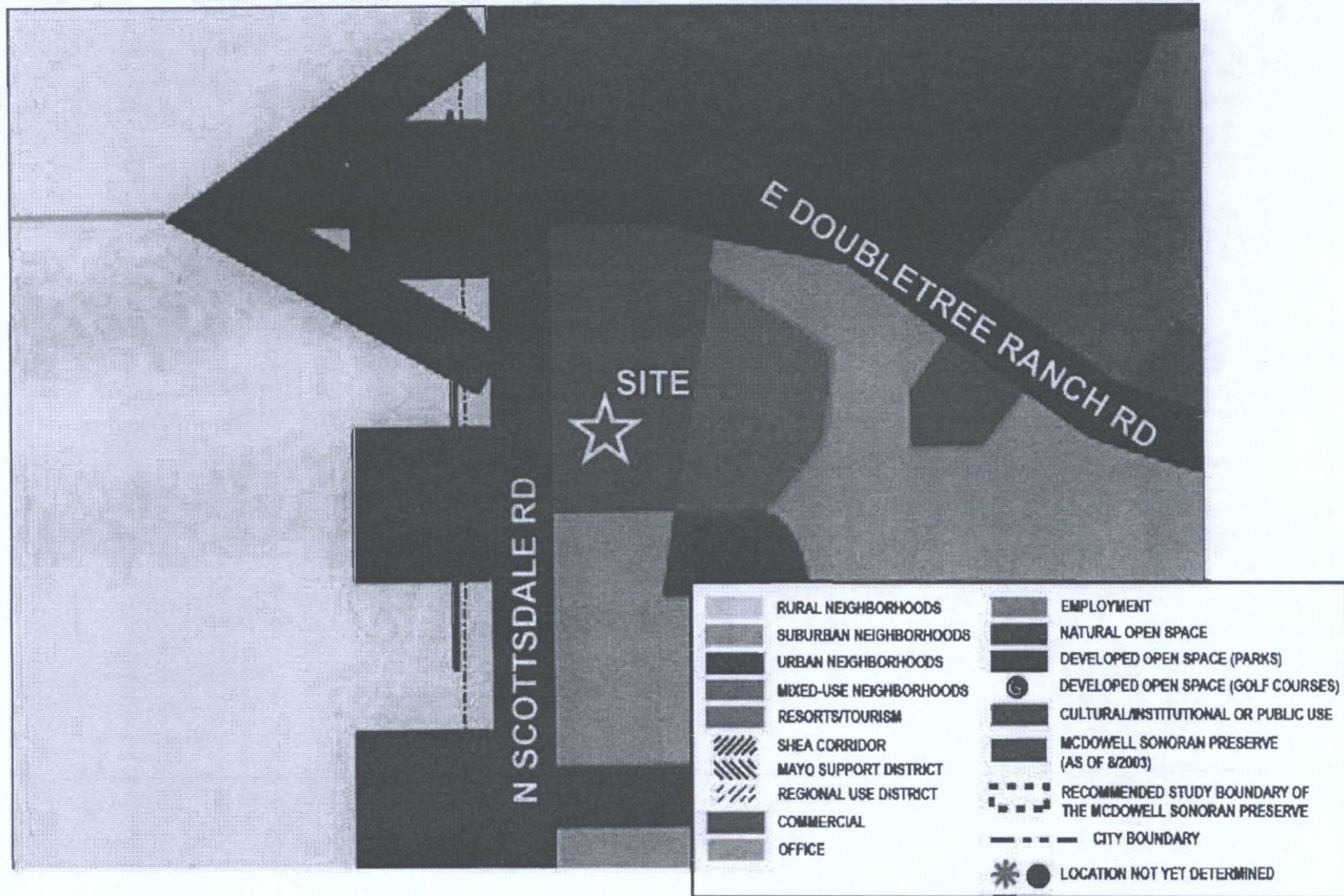


# Zoning



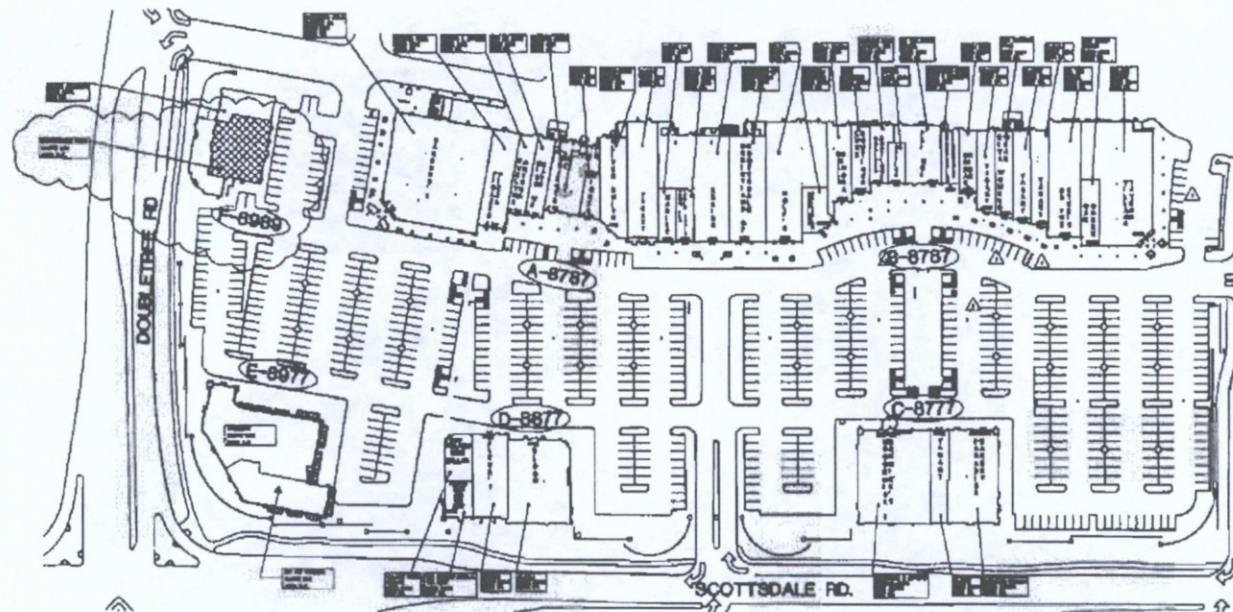


# General Plan





# Site Plan



1 PARKING CALCULATION SITE PLAN

SIXTY FIRST PLACE ARCHITECTS, LTD.

DOWNSIDE RISK  
GURNEY VILLAGE  
SCOTTSDALE, ARIZONA  
PARTIAL SITE PLAN

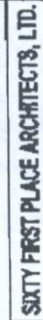
REVISIONS

DATE

11/29/11  
SP-2



Doubletree Ranch Road

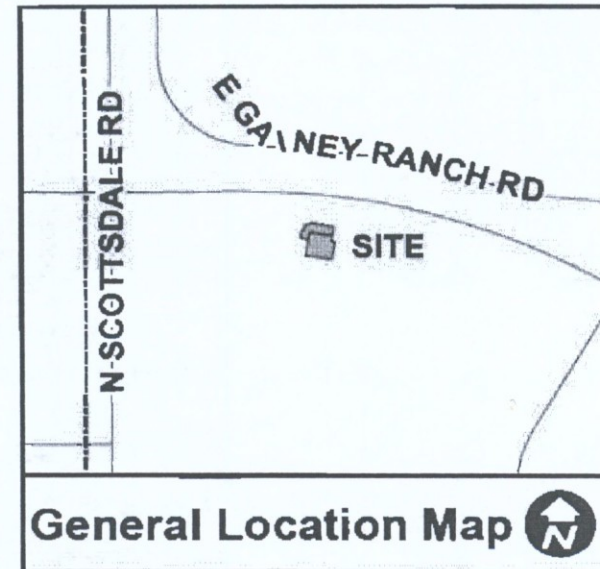


**DOWNSIDE RISK**  
GADNEY VILLAGE  
SCOTTSDALE, ARIZONA  
BARRELL STATE OF ARIZONA



	DATE	REVISIONS
[Redacted]		

## Downside Risk



**3-UP-2012**

City Council

May 8, 2012

Coordinator: Greg Bloernberg



# PLANNING COMMISSION REPORT



Meeting Date: April 11, 2012  
General Plan Element: *Land Use*  
General Plan Goal: *Create a sense of community through land uses*

## ACTION

**Downside Risk**  
**3-UP-2012**

**Request to consider the following:**

1. Find that the Conditional Use Permit criteria have been met, and recommend that City Council approve a request by applicant for a Conditional Use Permit for live entertainment in a 4,261 +/- square-foot restaurant located at 8989 N. Scottsdale Road with Central Business District, Planned Community District (C-2 PCD) zoning.

## OWNER

Downside Risk  
602-418-0842

## APPLICANT CONTACT

Joseph D Goforth  
Southwest Development Services / Joseph D Goforth  
480-241-3735

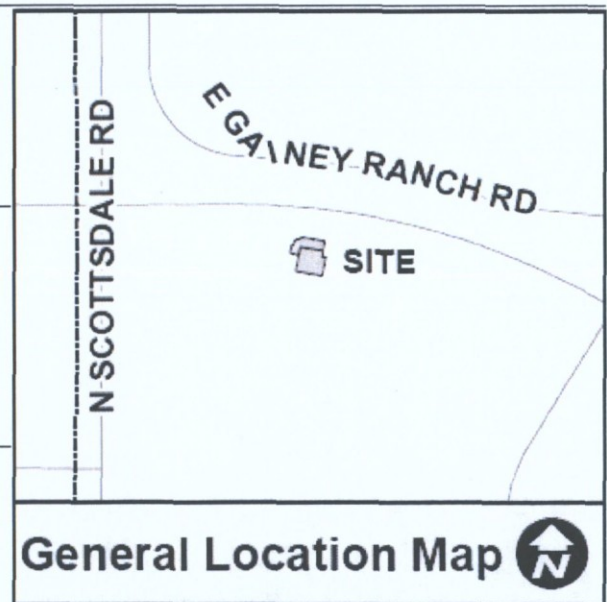
## LOCATION

8989 N Scottsdale Rd

## BACKGROUND

### Zoning

The site is zoned Central Business District, Planned Community Development (C-2 PCD). Live Entertainment for a restaurant is permitted subject to a Conditional Use Permit.





**Other Related Policies, References:**

- Zoning Ordinance
- 19-ZN-1997: rezoned site from Multi Family Residential District, Planned Community District (R-5 PCD) to Central Business District, Planned Community District (C-2 PCD)

**Context**

The subject building is part of a mixed-use, multi-building commercial center at the southeast corner of N. Scottsdale Road and E. Doubletree Ranch Road. The pad building is located at the far north end of the center and is currently occupied by a dry cleaning establishment. The remainder of the building will be occupied by the subject restaurant. To the north is a residential community that is part of the Gainey Ranch master-planned community. Please refer to context graphics attached.

**Key Items for Consideration**

- Conditional Use Permit criteria
- Full food service provided until 10:00 PM daily, 12:00 AM Thursday – Saturday
- No impacts to existing infrastructure or services anticipated
- Written public comment in opposition to request (see Attachment #6)

**APPLICANTS PROPOSAL**

---

**Goal/Purpose of Request**

The applicant seeks approval to provide live entertainment as part of a restaurant use. The live entertainment will be ancillary to the primary restaurant use, with less than 5% of the gross floor area devoted to the performance area. Patron dancing is not proposed as part of this application.

**Development Information**

- Existing Use: Vacant Tenant Space
- Proposed Use: Restaurant w/ Live Entertainment
- Parking Required: 19 spaces (501 spaces for entire shopping center)
- Parking Provided: 711 spaces (for entire shopping center)
- Gross Floor Area: 4,261 square feet
- Patio Area: 2,030 square feet

**IMPACT ANALYSIS**

---

**Conditional Use Permit**

Conditional Use Permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted after the Planning Commission has made a recommendation and City Council has found as follows:

- A. That the granting of such Conditional Use Permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:



1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
  - **The proposed live entertainment will be contained within a completely enclosed building. The applicant would like the option of providing entertainment on the patio and is aware that live music on the patio must be non-amplified and consist of no more than two musicians. As the subject establishment is located within 500 feet of a residential district, any external speakers provided on the patio can only transmit recorded music. They cannot be connected to any live entertainment equipment. All doors will be closed during the hours live entertainment is provided. No damage or nuisance from noise, smoke, odor, dust, vibration or illumination is anticipated.**
2. Impact on surrounding areas resulting from an unusual volume or character of traffic.
  - **The establishment will operate as a full-service restaurant. No changes to the operational characteristics are proposed as part of this application. Vehicular access to the site is provided by one main access point of N. Scottsdale Road, a Major Arterial, and a secondary access point off E. Gainey Suites Drive at the south end of the site. The shopping center is occupied by retail, service, and restaurant uses that generate vehicular traffic throughout the day. No significant impacts to existing traffic patterns are anticipated.**
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
  - **The establishment is located in a multi-tenant commercial shopping center, with a wide range of uses, including restaurants, retail and personal service. The addition of live entertainment to the existing restaurant is compatible with the use mix in the surrounding area.**
- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied. The proposal meets the provisions for Live entertainment as identified in Zoning Ordinance Section 1.403.K., including:
  1. The site plan shall demonstrate that:
    - a) Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and its required parking area to residential districts.
      - **The nearest residence is approximately 250 feet north of the subject establishment and is separated from the restaurant site by a 6-foot high block wall, landscaping and E. Doubletree Ranch Road. There is no direct access from the restaurant or the parking lot to the residential neighborhood.**
    - b) All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.
      - **Existing site lighting is sufficient to guide patrons to the main entrance.**
  2. The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.



- All doors will be closed during the hours live entertainment is provided. As required by ordinance, the existing external speakers will not be connected to any live entertainment equipment and will only transmit recorded music onto the patio. Additionally, any performances provided on the patio will be non-amplified and limited to a maximum of two musicians, as specified in the Zoning Ordinance.
3. The applicant has provided a written public safety plan which the city police and fire departments have approved as complying with the written guidelines of the Planning and Development Department.
    - A Security, Operations and Maintenance Plan has been reviewed and approved by the Scottsdale Police Department and is on file with the Current Planning Department.
  4. The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with Section 7.600 of the Zoning Ordinance and with the public safety guidelines.
    - Existing site lighting is sufficient for this use. None of the existing lighting is located or installed in a manner that would be detrimental to surrounding properties.
  5. The applicant shall provide a written exterior refuse control plan which must be approved by the Planning and Development Department staff as complying with the written guidelines of the department, prior to issuance of a business license. The review will be conducted as provided in Section 1.305.
    - A refuse control plan is included as part of the Security, Operations and Maintenance Plan, which requires the applicant to pick up refuse and debris within a 300-foot radius of the establishment. The provisions of the plan will be implemented and enforced by the Scottsdale Police Department and Code Enforcement.
  6. The applicant has provided a floor plan which identifies the areas for the primary use and ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.
    - The applicant has provided a floor plan that clearly calls out the proposed location for the performance area and support equipment. A copy of the floor plan is included in this report as Exhibit A to Attachment 1.
  7. If access to the establishment is from a street other than one classified by the General Plan as minor collector or greater, or classified by the Downtown General Plan as a local street or greater, the applicant has provided a traffic analysis which complies with Transportation Planning Department guidelines. The plan shall demonstrate to the satisfaction of the Transportation Department that the level of service on all streets accessed by the use shall meet the standard set by the City.
    - Access to the site is provided from N. Scottsdale Road, which is classified as a Major Arterial by the Transportation Master Plan. Additionally, secondary access is provided from E. Gainey Suites Drive at the south end of the site. There is no vehicular access provided from E. Doubletree Ranch Road at the north end of the site.



8. If the Zoning Administrator determines a study is necessary, the applicant shall provide a parking study that complies with the written guidelines of the Planning and Development Department.
  - **No parking study is required for the proposed use. The site has sufficient parking to support the restaurant.**
9. The applicant has provided any additional information required by city staff in order to evaluate the impacts of the proposed use upon the area.
  - **The documentation provided by the applicant was sufficient for staff to evaluate the potential impacts of the proposed use on the surrounding area.**
10. The following operational standards must be met by the use throughout its operation:
  - a) All external doors shall be closed but not locked during business hours.
  - b) No external speakers will be permitted on the premises of a use permitted under this section, which is within 500 feet of a residential district.
  - c) The applicant/operator shall comply with all plans approved as provided herein
    - **All doors will be closed but not locked during the hours live entertainment is occurring at the establishment. Any speakers on the patio will not be connected to any live entertainment equipment. The applicant will comply with the submitted floor plan with regard to location of the performance area and supporting equipment.**

### **Public Safety**

The nearest fire station is located at 7455 E. Shea Blvd., approximately one mile from the subject site. No significant impacts to existing service levels are anticipated. The Security, Maintenance and Operations Plan has been reviewed and approved by the Scottsdale Police Department.

### **Liquor License Review**

A request for approval of a new Series 12 (restaurant) liquor license was approved by City Council under case 16-LL-2012 on March 20, 2012.

### **Community Involvement**

The site is posted with the required signage and property owners within 750 feet of the site have been notified of the applicant's request. Staff has received written public comment in opposition to the request (see Attachment #6).

## **STAFF RECOMMENDATION**

---

### **Recommended Approach:**

Staff recommends the Planning Commission find that the Conditional Use Permit criteria have been met, and make a recommendation to City Council for approval per the attached stipulations.

## **RESPONSIBLE DEPARTMENT**

---

**Planning, Neighborhood and Transportation**

Current Planning Services


## STAFF CONTACT

---

Greg Bloemberg  
Planner  
480-312-4306  
E-mail: gbloemberg@ScottsdaleAZ.gov

## APPROVED BY

---



---

Greg Bloemberg, Report Author

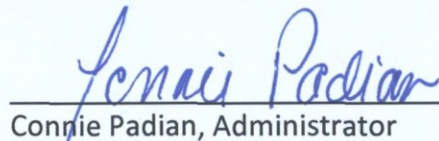
3-27-12  
Date



---

Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

3/27/2012  
Date



---

Connie Padian, Administrator  
Planning, Neighborhood and Transportation  
480-312-2664, cpadian@scottsdaleaz.gov

3/27/2012  
Date

## ATTACHMENTS

---

1. Stipulations  
Exhibit A to Attachment 1: Floor Plan
2. Applicant's Narrative
3. Context Aerial
- 3A. Aerial Close-Up
4. General Plan Map
5. Zoning Map
6. Citizen Involvement
7. City Notification Map



## Conditional Use Permit – Live Entertainment

### Stipulations:

### Downside Risk for

**Case Number: 3-UP-2012**

These stipulations are in order to protect the public health, safety, welfare, and the City of Scottsdale.

#### OPERATIONS

1. **CONFORMANCE TO THE CONCEPTUAL FLOOR PLAN.** The interior layout of the premises shall be in substantial conformance with the conceptual floor plan submitted by Sixty First Place Architects Ltd., with the city staff date of 3/16/12, attached as Exhibit A to Attachment 1. Any proposed significant change to the conceptual floor plan as determined by the Zoning Administrator, shall be subject to additional action and public hearings before the Planning Commission and City Council.
2. **NO BAR USE.** This Conditional Use Permit is for live entertainment only, and a bar use is not approved as part of this request.
3. **HOURS OF LIVE ENTERTAINMENT.** The hours of the live entertainment for this establishment shall be limited to:

	Start	To	End
Sunday	12:00 PM	To	11:00 PM
Monday	5:00 PM	To	10:00 PM
Tuesday	5:00 PM	To	10:00 PM
Wednesday	5:00 PM	To	10:00 PM
Thursday	5:00 PM	To	10:00 PM
Friday	12:00 PM	To	11:00 PM
Saturday	12:00 PM	To	11:00 PM

4. **SECURITY, MAINTENANCE, AND OPERATIONS PLAN.** The live entertainment shall conform to the Security, Maintenance, and Operations Plan approved by, and on record with the City of Scottsdale's Police Department and the Planning, Neighborhoods, and Transportation Division. A copy of the approved Security, Maintenance, and Operations shall be maintained on site. Within 10 days after a request by the City Manager or designee, the owner shall provide an update of the Security, Maintenance, and Operations Plan to the Scottsdale Police Department and the Planning, Neighborhoods, and Transportation Division. At least ten (10) days before any operational change of the live entertainment, or any promotional event (excluding Special Events), that modifies the requirements or contents of the Security, Maintenance, and Operations Plan, the owner shall submit a revised Security, Maintenance, and Operations Plan to the Scottsdale Police Department and the Planning, Neighborhoods, and Transportation Division. Any revised Security,

Maintenance, and Operations Plan shall be subject to approval by the City of Scottsdale's Police Department and the Planning, Neighborhoods, and Transportation Division.

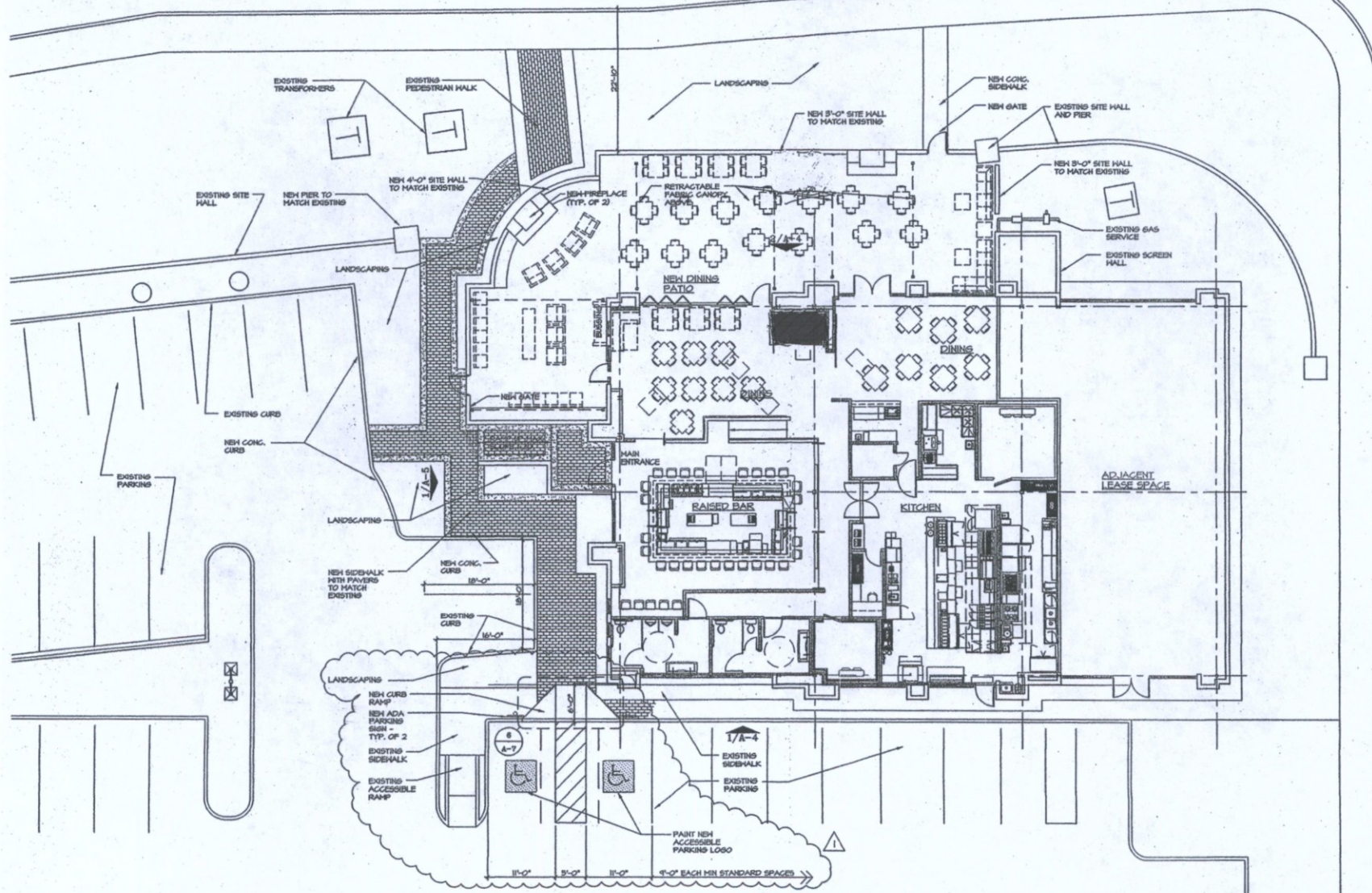
5. NOISE. In addition to the City's Noise Ordinance (Ordinance No. 3192, Article II, Chapter 19 of the Scottsdale Revised Code), noise generated from this use, including any speakers or other amplification equipment, shall not exceed ambient noise levels consistent to the use and the character of the area during hours of operation, as determined by the Zoning Administrator, or designee.
6. EXTERNAL SPEAKERS. External speakers shall only transmit recorded music and shall not be connected to any live entertainment equipment.
7. EXTERNAL DOORS. All external doors shall be closed but not locked during the hours live entertainment is provided.

#### **ADMINISTRATIVE PROCESS**

8. CONDITIONAL USE PERMIT ADMINISTRATIVE REVIEW. Within ten (10) days after a request by the Zoning Administrator or designee, the owner, shall submit a letter to the Zoning Administrator or designee demonstrating compliance with all stipulations. A deviation from any stipulations or change in the floor plan may be grounds for revocation of the Conditional Use Permit.
9. CHANGES IN OWNERSHIP. Within ten (10) days after a change in ownership, the owner shall provide notice to the Zoning Administrator in writing of any such ownership change.



■ = Live Entertainment Area Doubletree Ranch Road



1 PARTIAL SITE PLAN  
SCALE: 1/8" = 1'-0"





# The Downside Risk Scottsdale

## Conditional Use Permit Project Narrative, Operations and Maintenance Plan

February 1, 2011

Prepared for: Randy Frederick  
The Downside Risk Scottsdale  
8989 N. Scottsdale Rd. Ste. 608  
Scottsdale, AZ 85253-2325

Prepared by: Joseph D. Goforth  
Southwest Development Services, LLC  
8683 E. Via de Negotio, STE 200  
Scottsdale, AZ 85258  
480-241-3735

**ATTACHMENT #2**

3-UP-2012  
1st: 2/07/12



## **I. Introduction**

The Downside Risk Scottsdale, located at 8989 N. Scottsdale Rd. (the "Property") requests approval of a City of Scottsdale, (the "City") Conditional Use Permit, ("CUP") for live entertainment. The Downside Risk Scottsdale, previously located in Downtown is an iconic Scottsdale restaurant and tavern with proud tradition of serving Scottsdale residents.

The Property is located within the Shops at Gainey Village (the "Shops"), generally located at the southeast corner of Scottsdale and Double Tree Ranch Rds. The Shops are zoned Central Business District, Planned Community Development (C-2, PCD).

The Shops include more than 150,000 gross square feet of commercial retail floor area and is the commercial core of the Gainey Ranch master planned community. The Shops and Property adjoin significant roadways including Scottsdale Rd. classified as a Major Arterial and Double Tree Ranch Rd. classified as a Major Collector. As such, commercial land uses including those with live entertainment, are appropriate at this location.

## **II. Conditional Use Permit Findings**

Conditional uses, as opposed to those permitted by right, are such that they may be appropriate under some conditions within a given zoning district, and or may be inappropriate under others.

In the case of a CUP for live entertainment, Section 1.401 of the Zoning Ordinance establishes the criteria utilized by the Planning Commission and City Council to determine that appropriateness of a proposed conditional use. Further, Section 1.401 (J) outlines additional criteria and is addressed below in section III, "Criteria for Live Entertainment".

The granting of a CUP will not be materially detrimental to the public health, safety or welfare. To reach this conclusion, the Planning Commission and City Council consider:

1. Damage or Nuisance arising from noise, smoke, odor, dust, vibration or illumination, and,
2. Impact on the surrounding areas resulting from an unusual volume or character of traffic.

The proposed live entertainment does not generate smoke, odor, dust vibration or illumination. Sound generated by the live entertainment is compatible with the surrounding area and does not cause damage. The nearest residential property is approximately 250 feet away from the Property and buffered by significant landscaping, site

walls and Double Tree Ranch Rd. No external speakers will be utilized for live entertainment.

The proposed live entertainment does not impact the surrounding area resulting from an unusual volume or character of traffic for a host of reasons. The Property is zoned C-2, PCD and trip generation from uses permitted in the area do not increase by the proposed live entertainment. Again, the Property is located generally at the intersection of Scottsdale and Double Tree Ranch Rds. Both streets are designed to convey significant trip traffic and enjoy excess capacity.

### **III. Criteria for Live Entertainment**

Section 1.403 (J) of the Zoning Ordinance specifies additional criteria for the Live Entertainment land use and is listed below:

Live entertainment.

1.The site plan shall demonstrate that:

- a. Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and its required parking area to residential districts.

**Response: The buffering and separation specified above is provided by both solid exterior walls and a substantial Landscaping. Double Tree Ranch Rd. provides additional landscaping and buffering.**

- b. All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.

**Response: Patron entrances are illuminated, clearly marked and controlled by employees.**

2.The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.

**Response: Activities related to live entertainment occur within a fully enclosed, commercially rated structure, and patio area. Sound will not exceed the decibel level prescribed by current City noise ordinances.**



3. The applicant has provided and obtained City approval of a written public safety plan.

**Response:** A public safety plan has been submitted to the City.

4. The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with Section 7.600. of the Zoning Ordinance and with the public safety plan guidelines.

**Response:** Plans previously submitted to and approved by the City for tenant improvements included an exterior lighting plan in accordance with Section 7.600.

5. The applicant shall provide and obtain City approval of a written exterior refuse control plan.

**Response:** This application includes a Security and Maintenance Plan and an Operation Plan that includes exterior refuse control.

6. The applicant has provided a floor plan which identifies the areas for the primary use and for ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.

**Response:** A floor plan depicting the areas specified above accompanies this application, including future patron dancing.

7. If access to the establishment is from a street other than one classified by the Transportation Master Plan as minor collector or greater, or classified by the if the establishment is located within the Downtown Area and access to the establishment is located on a street classified by the Transportation Master Plan as a local street or greater, the applicant shall provide a traffic analysis which complies with City's transportation guidelines. The traffic analysis shall demonstrate the level of service on all streets accessed by the use shall meets the City's standards.

**Response:** Access to the Property is from a street classified greater than a minor collector by the City's Transportation Master Plan.

8. If the Zoning Administrator determines that a study is necessary the applicant shall provide a parking study which complies with the City's written guidelines.

**Response:** The Zoning Administrator has not determined that a parking study is required for this application.

9.The applicant has provided any additional information required by the Zoning Administrator to evaluate the impacts of the proposed use upon the area.

**Response: To date no additional information has been requested by the Zoning Administrator.**

10.The following operational standards must be met by the use throughout its operation:

a.All external doors shall be closed but not locked during business hours.

**Response: All external doors shall be closed but not locked during business hours with management and staff providing continuous monitoring and supervision.**

b.No external speakers will be permitted on the premises of a use permitted under this section, which is located within five hundred (500) feet of a residential district.

**Response: No external speakers are proposed in this application.**

c.The applicant/operator shall comply with all plans approved as provided herein.

**Response: The operator shall comply with all plans approved as provided herein.**

#### **IV. Security, Maintenance & Operation Plan**

Separately, a Security and Maintenance Plan and Operation Plan accompany this application on forms provided by the City and are incorporated by reference herein.

#### **V. Conclusion**

The Downside Risk Scottsdale is *not* required to possess a CUP for a bar or cocktail lounge and holds a Series 12 liquor License, requiring the majority of sales to be food products versus alcohol. As such, the live entertainment proposed in this application is consistent with a restaurant/dinning experience rather than a bar or cocktail lounge.

The Shops represent a significant commercial retail center with a level of intensity that makes live entertainment, at this location, appropriate. The Property is surrounded by commercial land uses to the east, south and west. The nearest residential land uses are



approximately 250 feet away to the north and buffered by substantial landscaping, site wall and Double Tree Ranch Rd.

To date the applicant is not aware of any opposition to this request.





Downside Risk

3-UP-2012

ATTACHMENT #3





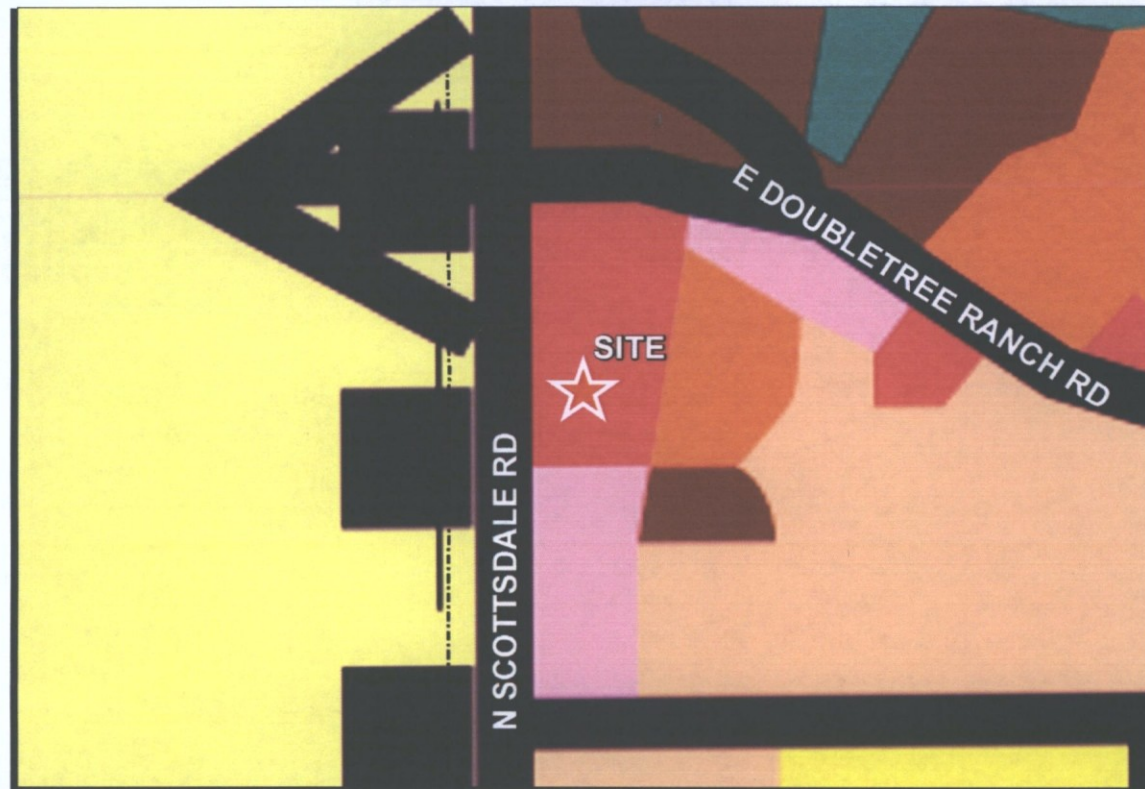
Downside Risk

3-UP-2012

ATTACHMENT #3A



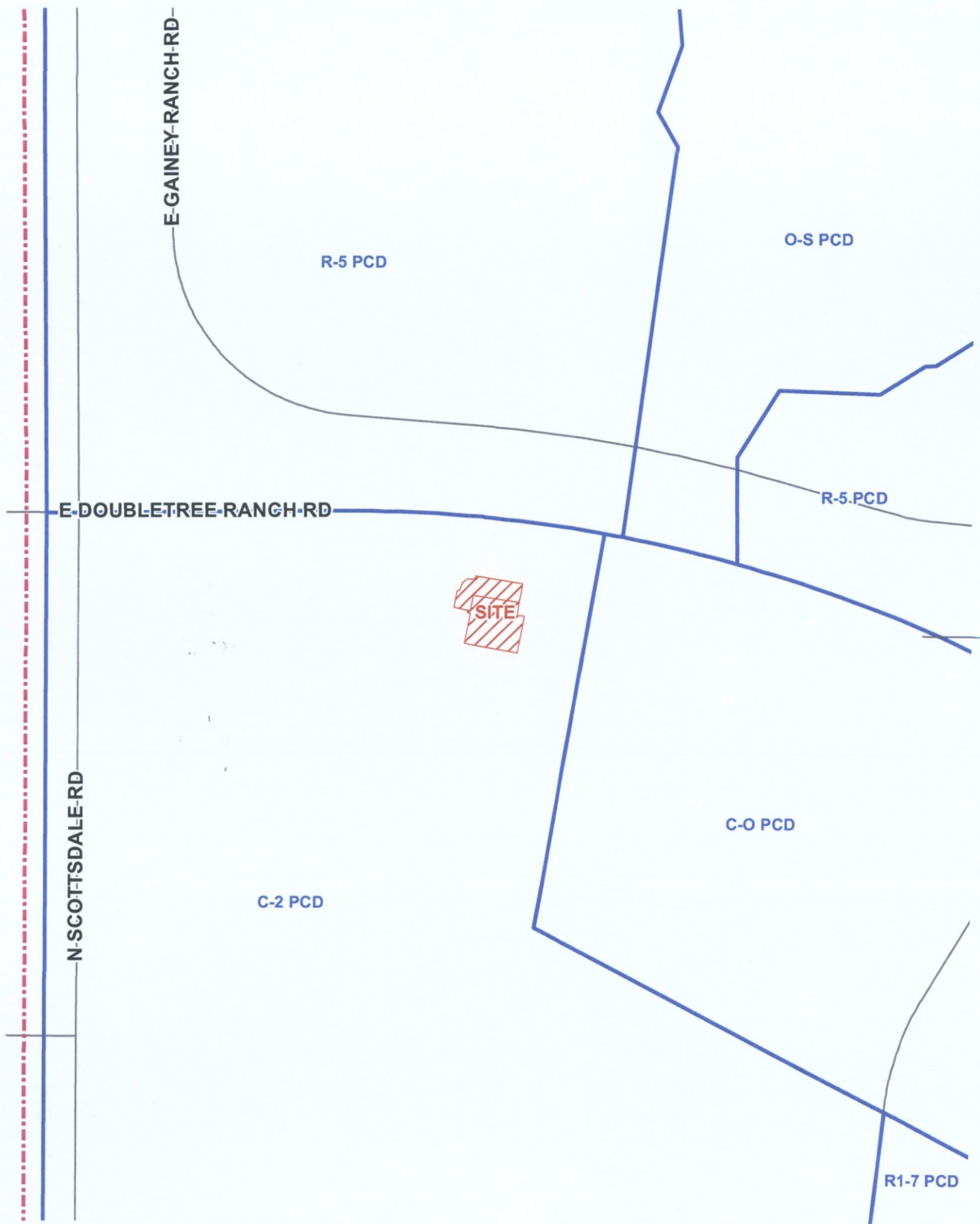
## Existing General Plan Land Use Map



3-UP-2012

ATTACHMENT #4





# 3-UP-2012

ATTACHMENT #5



# *Southwest Development Services, LLC*

VIA U.S. MAIL

January 20, 2012

Re: The Downside Risk Scottsdale / Live Entertainment

Dear Neighbor,

The purpose of this letter is to provide information regarding The Downside Risk Scottsdale, located at 8989 N. Scottsdale Rd., Ste. 608 (the "Property") within the Shops at Gainey Ranch. An application to the City of Scottsdale (the "City") for a Conditional Use Permit ("CUP") is being filed.

The Downside Risk Scottsdale, previously located in Downtown Scottsdale is an iconic restaurant and tavern with a long history of serving Scottsdale residents. The property is currently under renovation transforming it from office space to a restaurant.

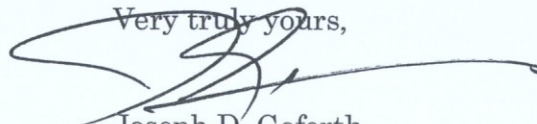
Our office represents The Downside Risk Scottsdale in the matter of obtaining a live entertainment CUP. Below please find a description of the application, my contact information, City contact information and a brief discussion of the CUP process. Your input is very important to us. The CUP approval process is intended to fully explain and incorporate surrounding property owner's questions and suggestions.

The Property is a restaurant open for lunch and dinner exclusively, live entertainment will be restricted to the hours of 11:00am to 12:00am and up to 1:00am on weekends; activities will be emblematic of entertainment associated with lunch and dinner service.

While a formal application has not yet been filed, the City has assigned the prospective application to Greg Bloemberg, Planner who can be reached at 480-312-4306 or by email at [gbloemberg@scottsdaleaz.gov](mailto:gbloemberg@scottsdaleaz.gov). My contact information is below.

The CUP application will undergo review from the City's planning staff and during that time, we invite your questions and comments. Thereafter the City's Planning Commission and City Council will hear this request in a public hearing that you are invited to attend. We welcome your questions and comments.

Very truly yours,



Joseph D. Goforth  
Principal

8683 E. Via de Negotio, Suite 200

Scottsdale, AZ 85258

Phone: 480-369-1486

**ATTACHMENT #6**

3-UP-2012  
1st: 2/07/12



## Bloemberg, Greg

---

**From:** boster@insight.rr.com  
**Sent:** Sunday, March 18, 2012 12:02 PM  
**To:** Bloemberg, Greg  
**Subject:** 3-UP-2012

### City of Scottsdale Email

Mr. Bloemberg, I am writing to object to the granting of a conditional use permit for live entertainment at the Downsize Risk Resturant by Southwest Development Services. I own a condo in Gainey Ranch at 7272 E. Gainey Ranch Road, #101. I feel the granting of this permit will disturb our neighborhood during the evening hours with loud music and partying. We can see the building from our neighborhood and certainly feel the noise generated from this conditional use permit will be detrimental to our quiet enjoyment and property values. I would appreciate you making my concerns known to the appropriate parties. thank you, Charles A. Boster

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**Bloemberg, Greg**

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**From:** Niederer, Keith  
**Sent:** Tuesday, March 20, 2012 7:37 AM  
**To:** Bloemberg, Greg  
**Subject:** FW: Downside Risk at Shops at Gainey Ranch

---

**From:** Brickell Williamson [mailto:brickellw@cox.net]  
**Sent:** Saturday, March 17, 2012 1:15 PM  
**To:** Niederer, Keith  
**Subject:** Downside Risk at Shops at Gainey Ranch

I'm resident immediately across st. to north. Any outside noise would have very detrimental effect on my property. Thank you for considering neighborhood in planning new business. B.Williamson



## Bloemberg, Greg

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**From:** jorkhall@cox.net  
**Sent:** Wednesday, March 21, 2012 1:29 PM  
**To:** Bloemberg, Greg  
**Subject:** Conditional Use Permit application (3-UP-2012)

## City of Scottsdale Email

As home owners in the Pavilions of Gainey Ranch (Unit 16), we were aghast to hear that you are considering granting a permit for patio music and entertainment just across the street from our unit. For months the controversy has raged about the problems and noise created in Scottsdale by outdoor, late night entertainment spots. Crime has increase, noise gets out of hand and no one fixes the issue, and undesirable characters and drunks are invited into our neighborhood. We are totally opposed to granting the exterior music and patio request. We do not have a problem with the restaurant, not that we were asked anyway. Thanks for any consideration you can give to the neighboring residential community.



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## Bloemberg, Greg

---

**From:** peterlenton@cox.net  
**Sent:** Monday, March 26, 2012 9:29 AM  
**To:** Bloemberg, Greg  
**Cc:** deetbloom@msn.com  
**Subject:** RE: Case: 40791 (3-UP-2012)

Mr Bloemberg

Thank you for the prompt response

Im interested firstly in why I didnt receive correspondence, as I believe is required as part of the process, from the applicant informing me of the CUP application and therefore can you please let me know of the affect of this non-notification on the applicant's application for a CUP

I would like to respectfully register my strong opposition to this application, specifically:  
1. I believe that the late night operation of this business will result in undesirable noise impacts on a residential area and is therefore not compatible with this adjacent residential area. Can you please let me know if a noise study has been performed and if so can you please provide me a copy  
2. The increase in traffic is also of concern as there is already significant noise from via de ventura road and the increase in traffic into and out of the parking lot will only make it worse. Can you please let me know if a traffic study was required and if so if it was performed- if a traffic study was performed can you please provide me with a copy. The increase in traffic from this business I would respectfully argue is also incompatible with the adjacent residential neighborhood  
3. In terms of parking, is a parking study required and if so has it been performed. If so can you please provide a copy of the parking study and a count of the number of patrons the parking study was based on. On inspection of the site there is precious little parking available for the businesses in this complex and given several other vacant commercial buildings which will ultimately be filled I question whether the impact of these to be occupied businesses was considered in determining parking required and parking capacity available for this applicant's business

I would like to please be kept intimately informed, moving forward, of any developments in this application

Thank you in advance

Peter Lenton  
6023207520

----- "Bloemberg wrote:

> Mr. Lenton,

>

> I am the Planner assigned to this case. Thank you for your correspondence. Public input is critical to the success of this process. I will add your concerns to my report.

>

> Please feel free to contact me with any additional concerns or questions.

>

> Regards,

>

> Greg Bloemberg

> Planner

> Current Planning

> City of Scottsdale

> [gbloemberg@scottsdaleaz.gov](mailto:gbloemberg@scottsdaleaz.gov)



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> ePZLink>  
> [\[cid:image005.png@01CB43AD.5DAF16B0\]](#)<<http://twitter.com/ScottsdalePand>  
> Z>  
>  
> From: peterlenton@cox.net [mailto:peterlenton@cox.net]  
> Sent: Sunday, March 25, 2012 6:25 PM  
> To: Bloemberg, Greg  
> Subject: Case: 40791 (3-UP-2012)  
>  
> City of Scottsdale Email  
>  
> Message for Mr Keith Niederer ((3-UP-2012)) I understand that there is  
> a proposal for a new Downside Risk bar at Scottsdale and Via De  
> Ventura. Given that I live across the road from this establishment I  
> understand I should have been informed of this proposal by mail, which  
> I was not. Secondly, I oppose the application as the noise from the  
> outside bar and music and increase in traffic are incompatible with  
> the neighborhood and other developments in that complex. Please keep  
> me informed of the status of this application Thanks Peter Lenton  
> [City of Scottsdale Logo]  
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7272 East Gainey Ranch Road  
Unit 98  
Scottsdale, AZ 85258  
March 21, 2012

Planning Commission  
City of Scottsdale  
7447 East Indian School Road  
Suite 105  
Scottsdale, AZ 85251

**Re: 3-UP 2012 Downside Risk**

Gentlemen:

We would like to register our opposition to approval by the Planning Commission for a proposal by Southwest Development Services and Joseph D. Goforth to enable a restaurant and bar at 8989 North Scottsdale Road. The proposed outdoor patio and bar would be only about 200 yards from a residential community occupied by children and senior citizens. The establishment of such a business at this location would be detrimental to the lives of these residents and would otherwise be inappropriate to the neighborhood.

We urge you to reject this application.

Very truly yours,

*Rosalie S. Brownstein*  
Rosalie S. Brownstein

*Arthur M. Brownstein*  
Arthur M. Brownstein



**Bloemberg, Greg**

---

**From:** alanlezak@hotmail.com  
**Sent:** Wednesday, March 28, 2012 11:22 AM  
**To:** Bloemberg, Greg  
**Subject:** Downside Risk

## City of Scottsdale Email

I am in favor of granting the Downside Risk its conditional use permit. Many of my neighbors are imagining the worst possible scenarios. There are conditions by definition that will protect this community from voice annoyance. The owners of the shopping center have rights and have gone through all the necessary procedures to obtain the proper permits. Music with limitation regarding volume and time will not negatively affect us if they are properly adhered to. Active businesses in our community are a better asset than empty buildings.

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## Bloemberg, Greg

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**From:** Dale Folstad [dalefolstad@sasktel.net]  
**Sent:** Wednesday, March 28, 2012 12:10 PM  
**To:** Bloemberg, Greg  
**Cc:** 'Jim Funk'; 'DEE BLOOM'  
**Subject:** Downside Risk Restaurant

I understand you are the planner assigned to review information relating to Downside Risk application for permit to have amplified and non-amplified music inside their new restaurant and on the patio.

My wife and I own a condo at 7272 East Gainey Ranch Road, Unit 7. I estimate our patio is approximately 320 feet from the Downside Risk patio. Our awareness of this issue came only from word-of-mouth from neighbors until a few days ago we received an email from Jim Funk of Gainey Ranch Administration that incorrectly advised that people within 750 feet of this development would have received notification and information. I am concerned that there seems to have been a complete lack of information provided to homeowners that may be affected.

Over the last few days I have been trying to gather information to enable me to understand the potential impact on the quality of lifestyle we have invested a significant portion of our savings on if the Downside Risk is allowed to have music emanating from their building. I am also trying to gather information regarding what, if anything, we can do about it. Although my information is far from complete, there are a few observations and references that I would like to pass on to you.

A February 17, 2012 article by Peter Corbett in The Republic provides a little history regarding Downside Risk:...a lively tavern

as more bars opened in the area

...business declined

unavailable for comment

...Frederick was

It appears that Downside Risk has felt the need to move to a new location every few years.

A March 27, 2012 article by Edward Gately in The Republic regarding noise pollution from the entertainment district negatively impacting nearby residents and merchants.

...sharply divided issue between bar owners, and nearby residents and merchants

Mayor Jim Lane...progress on other issues, but

Bill Crawford, President of the Association to Preserve Downtown Scottsdale's Quality of Life:

...city's noise ordinance has done nothing to protect residents from loud music coming from the bars, and...noise remains a problem because the ordinance was "crafted" to protect the offenders.

Ron Keagy, the city's neighborhood resources director says there have been no verifiable violations

Les Corieri, president of the bar owners group said the music creates the "energy" and if "we don't have the energy, we're out". He also admits its difficult to control the sound with patios and open buildings.

A Real Estate Agent has advised me that if the music emanating from Downside Risk was obvious to impact normal patio enjoyment, that would have to be a Disclosure if we went to sell and would negatively impact upon the sales price.

From reviewing the drawings of the proposed restaurant and patio, it appears to have a disproportionately large patio compared to the inside space and appears to be utilizing a very open-to-the-outside concept. Their initial application requested amplified music until 1:00 a.m.. Those factors make me concerned that they may intend to operate more as a bar than a restaurant as they apparently have in the past.

As I mentioned at the outside we have received no information or notification from the proponent or the city. My wife and I would have to be considered amongst the residents most affected, although there are residents right across the street. At the same time, the proponents have proven to be very capable of getting their licenses and approvals from the City and at least so far have seemed to manage to disarm the Gainey Board whom we would normally count on to fiercely defend their residents on the Gainey boundary. At this time I have to take it as a bad sign that the proponent has not contacted us. From the news articles I have read, it would appear they can operate pretty much as they like once they get the approvals.



We are not opposed to the restaurant opening in this location. We are firmly opposed to the city allowing any noise to emanate from this facility that would detract from the quality of our lifestyle. On the positive side, I coincidentally met a former employee of the Downside Risk yesterday who spoke very highly of the owners and thought they would understand our concerns and ensure noise from their facility would not extend across the street. I request that you pass on a copy of this email to the owner of Downside Risk and advise him we are interested in meeting with him for the purpose of reaching an acceptable compromise.

From the above noted article in The Republic it is obvious that the City of Scottsdale must recognize that there are already some very serious noise issues related to establishments of this type. I fail to understand how the City could consider granting the permission that Downside Risk is requesting in the absence of an agreement with the most affected residents and thereby extend the problem to our community.

Respectfully, Dale Folstad and Denise Jenkins Folstad  
(480) 248-8352

**Lebovitz, Brandon**

---

**Subject:** Downside Risk

---

**From:** [alanlezak@hotmail.com](mailto:alanlezak@hotmail.com) [<mailto:alanlezak@hotmail.com>]

**Sent:** Wednesday, March 28, 2012 2:40 PM

**To:** Bloemberg, Greg

**Subject:** Downside Risk

## City of Scottsdale Email

I wrote you earlier and I have more to add. I just spoke with our Executive Director, Jim Funk, who will be sending you his own communication. The negative comments that you are receiving are for the most part being sent at the urging of one person in our community who is a real estate agent and represents some of the owners who are submitting negative comments. Our Executive Director can't say the same things that I am relaying due to his obligation to represent the "Community" I can assure you, his feelings are similar to mine. This enterprise applying for the CUP, has been working to satisfy the issues being raised. Asking to deny a Conditional Use Permit for what may happen, with no indication that it would, is denying the rights of the business owner. I have no interest in that enterprise, other than seeing that people aren't denied the right to run a small business and conforming to all the regulations and codes. I have been a small business man all my life and that has been the basis for American economic growth. I have had a long history of leadership in this community going back to 1994. If you would like to discuss this with me and I hope you would, please call me at 480 9515353. Thank you, Alan Lezak 7272 E. Gainey Ranch Road Unit #17 Scottsdale, AZ 85258

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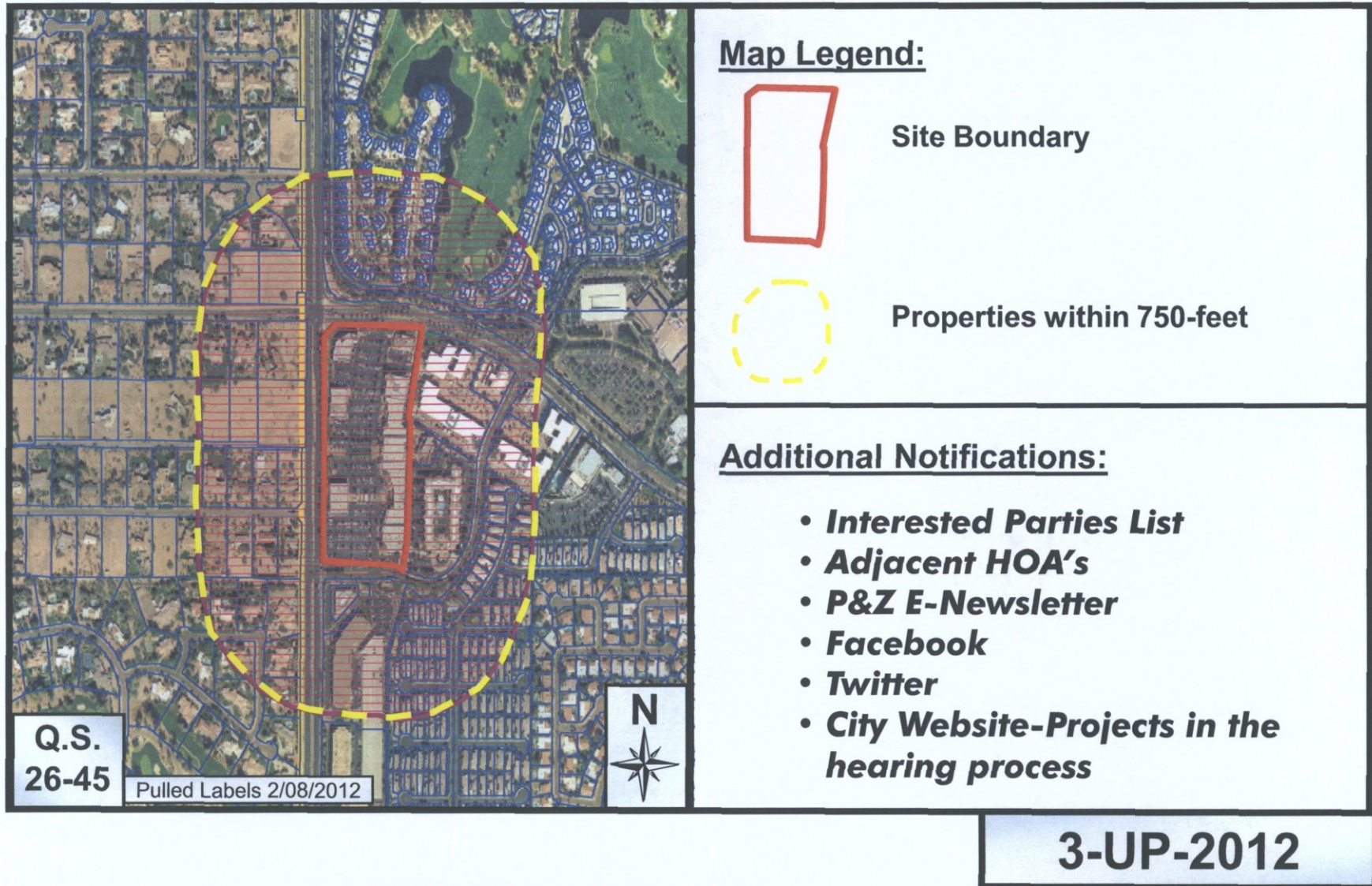
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**DOWNSIDE RISK**

ATTACHMENT #7