

**Correspondence Between
Staff and Applicant**



March 12, 2012

Joseph D Goforth
Southwest Development Services
8683 E Via De Negocio Ste 200
Scottsdale, AZ 85258

RE: 3-UP-2012
Downside Risk

Dear Mr. Goforth:

The Community & Economic Development Division has completed the review of the above referenced submittal dated 2/7/12. The following **1st Review Comments** represent the review performed on the project by our team, and are intended to provide you with guidance for compliance with city codes, policies, and guidelines related to this application type.

Significant Ordinance Related Issues

The following ordinance related issues have been identified in this first review of the project and will need to be addressed in a re-submittal prior to scheduling a hearing. Please address the following:

Zoning:

1. Please provide a revised floor plan showing the proposed location for the live entertainment area. NOTE: If the request is to entitle the entire restaurant for live entertainment, additional parking will be required. If the live entertainment is clearly ancillary to the primary restaurant use, no additional parking is required. Also note, this location is within 500 feet of residential; as such, no external speakers are permitted.

Legal:

2. Please provide a copy of the mailing list for your neighborhood notification.
3. NOTE: Signed and notarized acknowledgement of the Prop 207 Waiver will be required shortly after the case is considered by Planning Commission. Staff will provide the customized document after stipulations have been completed.

Please resubmit the revised legal requirements and plans addressing the comments/corrections identified above as soon as possible for further review (**Please see Attachment A, Resubmittal Checklist, for a consolidated list of information to be resubmitted**). The City will then review the revisions to determine if it is ready to be scheduled for a hearing date.

If you have any questions, or need further assistance please contact me at 480-312-4306 or at gbloemberg@ScottsdaleAZ.gov.

Sincerely,



Greg Bloemberg
Planner

ATTACHMENT A
Resubmittal Checklist

Case Number: 3-UP-2012

Please provide the following documents, in the quantities indicated, with the first submittal (all plans larger than 8 ½ x11 shall be folded):

☒ One original: Signed Prop. 207 Waiver Request (after stipulations have been created)

☒ Revised Floor Plan:

_____ 1 _____ 24" x 36"

_____ 1 _____ 11" x 17"

_____ 1 _____ 8 ½" x 11"



July 11, 2012

Joseph D Goforth
Southwest Development Services / Joseph D Goforth
8683 E Via De Negocio Ste 200
Scottsdale, AZ 85258

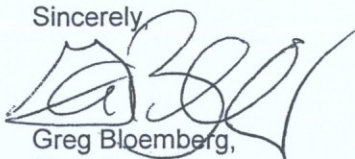
Re: 719-PA-2011-2
3-UP-2012
Downside Risk

Dear Joseph D Goforth,

This is to advise you that the case referenced above was approved at the May 8, 2012 City Council meeting. A copy of the approved report/stipulations/conditions will be sent to you in 31 days.

It is your responsibility as applicant to distribute all necessary copies to any persons involved with this project.

Sincerely,



Greg Bloemberg,
Planner

Bloemberg, Greg

From: Miller, John - 579
Sent: Wednesday, November 07, 2012 2:30 PM
To: Bloemberg, Greg
Subject: SPD Call For Service

** LOI search completed at 11/02/12 20:43:04 NAME OF THE BUSN IS DOWNSIDE RIFT PLAYING LOUD MUSIC RP STATES THEY ARE INVIOLATION OF THEIR CONDITIONAL USE PERMIT ** Event Location changed from "8989 N SCOTTSDALE RD SC: @GAINEY CLEANERS" to "8989 N SCOTTSDALE RD SC: @DOWNSIDE RIFT" at: 11/02/12 20:43:13 ** >>>> on terminal: hpdv5850091 ** Event Location changed from "8989 N SCOTTSDALE RD SC: @DOWNSIDE RIFT" to "8989 N SCOTTSDALE RD SC: @DOWNSIDE RISK" at: 11/02/12 20:44:38 ** >>>> on terminal: hpdv5850091 4L10 -- WILL ADV ONE CALLER AND DOES NOT WANT CONTACT. DROVE BY AND HEARD MUSIC PLAYING, NOTHING MORE THAN REASONABLE ** Event E1102120549 closed.

John Miller
Detective, Scottsdale Police Department
Liquor Investigations and Enforcement
480.312.5252

Collaboration, Compliance, and Enforcement

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Bloemberg, Greg

From: Smetana, Rachel
Sent: Monday, November 05, 2012 8:56 AM
To: Bloemberg, Greg
Subject: FW: Downside Risk - Gainey Ranch

Hi Greg- please can you make certain this e-mail is added to the case file for the CUP on Downside Risk?

Thank you!
Rachel

From: DEE BLOOM [<mailto:deetbloom@msn.com>]
Sent: Friday, November 02, 2012 9:40 PM
To: Lane, Jim; Robbins, Dennis E; Klapp, Suzanne; Littlefield, Robert; limlhaven@scottsdaleaz.gov
Cc: eugene kaulius; jfunk@gaineyranchca.com; 3sbutton@cox.net; rjgill55@gmail.com; rlockwood@cox.net; vaughas@nationwide.com; frannyg1@cox.net; mslicker@cox.net; ptcollins2
Subject: Downside Risk - Gainey Ranch

Dear Mayor Lane and City Council

I am writing to you because tonight - November 2nd at 8 30 pm - I had to phone the Scottsdale Police Dept -

The Downside Risk - which was granted a CUP - for live music - has music coming from their restaurant - all the windows and doors are wide open - and according to their CUP - all windows and doors - were to be closed when live entertainment was performing at the venue.

This is the Second time in the past month that the police have had to be notified of their disturbance in our community and would like to have this documented.
They are in violation of their CUP -

Thank you

Dee Bloom
7272 E Gainey Ranch Rd #8
Scottsdale, AZ 85258
480-607-3824

Scottsdale City Council
Planning Commission
3939 N. Drinkwater Bld.
Scottsdale AZ 85251

Dear Scottsdale City Council Members;

I am an owner of Pavilions 7272 Gainey Ranch Rd. unit # 101.

It has come to my attention that the Restaurant Downside Risk at 8989 North Scottsdale Road, Scottsdale Arizona is in the process of renewing the Conditional Use Permit to allow live music at the restaurant. For reference this restaurant is located within 100 feet of my community.

During 2012 the restaurant applied for and received a CUP for a year time period that allowed live music within the restaurant with the stipulation that all windows and doors would remain closed during the performance. While activity at the restaurant can be heard by residents of the Pavilions, the requirement of closed windows and doors, kept the restaurant impact below the Scottsdale Noise Ordinance limits and tolerable for Pavilions homeowners.

It is my understanding as the restaurant applies for the new CUP; management is requesting that the stipulation to close all windows and doors be removed. With the close proximity to Pavilions should windows and doors be allowed to remain open during live music performances the impact to the Pavilions community will become significant and a potential nuisance to the surrounding community.

Homeowner Comment

WE ARE VERY CONCERNED ABOUT OUR FUTURE REAL
ESTATE VALUE. THIS MUSIC IS VERY ANNOYING IN THE
EVENINGS

Charles A Boster

Printed Name

101

Unit #

8/30/13

Date

Charles A Boster

Signature

Bloemberg, Greg

From: joe.goforth1@gmail.com
Sent: Monday, February 27, 2012 10:03 AM
To: Bloemberg, Greg
Subject: RE: 70th street rezoning

Yes, food service is the same as the operating hours, full dinner menu, etc.
Sent from my LG phone

"Bloemberg, Greg" <Gbloemberg@scottsdaleaz.gov> wrote:

>Hello Joe,
>
>I assume we will be sending out a letter. I am copying Frances Cookson in this e-mail. She can confirm.
>
>Frances, fyi. Please respond to Joe's inquiry when you have a moment.
>
>Had a rush of medical marijuana CUP's that I had to finish up last week. I will be looking at Downside today, though there is not much to review. My biggest concern is proximity to residential. There is residential to the north. Has that neighborhood been notified of the request??
>
>Also, can you please confirm with the Downside folks how long the kitchen will remain in operation during evening hours?? In order for this CUP to qualify as live entertainment ancillary to a restaurant, the kitchen needs to provide full food service well into the evening hours; otherwise, we may have to review it as a bar, which will increase the parking requirement.
>
>Thanks!!
>
>Greg Bloemberg
>Planner
>Current Planning
>City of Scottsdale
>gbloemberg@scottsdaleaz.gov
>480-312-4306
>
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>Z<<https://eservices.scottsdaleaz.gov/listserve/default.asp>> Link
>newsletter
>[\[cid:image001.png@01CB43AD.5D597CA0\]](#)<<http://www.facebook.com/Scottsdale>
>PZLink>
>[\[cid:image005.png@01CB43AD.5DAF16B0\]](#)<<http://twitter.com/ScottsdalePandZ>
>>
>
>From: Joe Goforth [mailto:joe.goforth1@gmail.com]
>Sent: Friday, February 24, 2012 9:59 AM
>To: Bloemberg, Greg
>Subject: 70th street rezoning
>
>Greg,
>
>Are you going to kick out a letter confirming adoption of Ord. 3999 (59-ZN-1964#2)?

>
>Also, how's the Downside Risk CUP application going?
>
>Have a good weekend, stay in touch - thanks.
>
>--
>Joseph D. Goforth
>
>Principal
>Southwest Development Services LLC
>8683 East Via de Negocio, Suite 200
>Scottsdale, AZ 85258
>
>Phone: 602-369-1486
>

Cookson, Frances

From: andy.Linkow@gmail.com
Sent: Saturday, March 17, 2012 8:10 AM
To: Cookson, Frances
Subject: 8989 N. Scottsdale Rd. pdf, 1.6 MB

City of Scottsdale Email

This request for "Live entertainment-" will be a disturbance to our "quiet residential home". It is disturbing that a change is being considered. We just bought this residence because of the "QUIET" surroundings. A place that we can RELAX. I appreciate your support in keeping our neighborhood as is. Thank you. Dr. Ronald & Andrea Linkow



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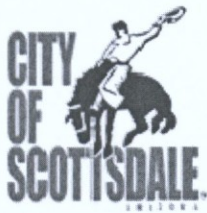
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Cookson, Frances

From: dmiller233@cox.net
Sent: Saturday, March 17, 2012 8:35 AM
To: Cookson, Frances
Subject: 3-UP-2012 DOWNSIDE RISK

City of Scottsdale Email

I live in Ganey Ranch near the Gainey Village shopping center and I am opposed to a restaurant with live entertainment in that facility. Teh shopping center is located on a busy street but is directly across the street from the very quiet residential community. Having live entertainent will cause noise pollution in our very queit neighborhood. Please reject thsi request



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Cookson, Frances

From: LGGILL1948@gmail.com
Sent: Saturday, March 17, 2012 9:45 AM
To: Cookson, Frances
Subject: Zoning C-2pcd

City of Scottsdale Email

Applicant, Southwest Development Services, is applying to open "Downside Risk" in the Shops at Gainey on Scottsdale Road. Their address would be 8989 N. Scottsdale Road. I live on Gainey Ranch and have 2 homes there. The lights and noise generating from this restaurant/nightclub would disrupt our quality of life. They plan to have live music afternoons and nights. This would totally change the tranquility of our area and, no doubt, affect our property values. I would encourage a highend restaurant; but not a "night club" scene as in Old Scottsdale.



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Cookson, Frances

From: boster@insight.rr.com
Sent: Sunday, March 18, 2012 12:03 PM
To: Cookson, Frances
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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Cookson, Frances

From: britchko@gmail.com
Sent: Wednesday, March 21, 2012 8:35 AM
To: Cookson, Frances
Subject: 3-UP-2012 Downside Risk

City of Scottsdale Email

We object to the granting of a conditional permit for live entertainment to Southwest Development Services. The proposed business for a bar and outdoor patio would be only about 100 yards from a residential community in which children and elderly people live. It would be detrimental to the welfare of the residents and the property value of the nearby community.



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Lebovitz, Brandon

From: Bloemberg, Greg
Sent: Tuesday, May 08, 2012 1:28 PM
To: Lebovitz, Brandon
Subject: FW: Agenda Item Comment for 05/08/12 - Item 3-UP-2012 - Downside Risk

Brandon,

Please add to folder in CDS. Thanks.

Greg Bloemberg
Planner
Current Planning
City of Scottsdale
gbloemberg@scottsdaleaz.gov
480-312-4306

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-----Original Message-----

From: Jagger, Carolyn
Sent: Tuesday, May 08, 2012 1:16 PM
To: Borowsky, Lisa; Klapp, Suzanne; Lane, Jim; Littlefield, Robert; McCullagh, Ron; Milhaven, Linda; Robbins, Dennis E
Cc: Richert, David; Washburn, Bruce; Smith, David; Walker, Sharron; 'deetbloom@msn.com'; Padian, Connie; Bloemberg, Greg
Subject: FW: Agenda Item Comment for 05/08/12 - Item 3-UP-2012 - Downside Risk

Your Honor and Members of the City Council,

Below is an e-mail from Dee Bloom regarding Item 28 (Downside Risk CUP) on tonight's agenda.

Best regards,

C.

-----Original Message-----

From: deetbloom@msn.com [<mailto:deetbloom@msn.com>]
Sent: Monday, May 07, 2012 6:13 PM
To: Jagger, Carolyn; Stevens, Katie
Subject: Agenda Item Comment for 05/08/12 - Item 3-UP-2012 - Downside Risk

Meeting Date: 05/08/12
Item Number: 3-UP-2012 - Downside Risk

Contact Information (if blank, user did not provide):

Name: Dee Bloom
Address: 7272 E Gainey Ranch #8
C/S/Z: Scottsdale, AZ 85258
Phone: 602-315-3021

Comment for 05/08/12 Item 3-UP-2012 - Downside Risk:

My opposition to grantng a CUP for this bar in a residential neighborhood because residents were not properly notified, post cards mailed w the incorrect address, 240 feet to the closet neighbor,we are requesting no music outdoors,no windows or doors opened,no TV's outdoors,no speakers whatsoever allowed on the patio areas;

Lebovitz, Brandon

From: Bloemberg, Greg
Sent: Tuesday, May 08, 2012 3:14 PM
To: Lebovitz, Brandon
Cc: Curtis, Tim
Subject: FW: Agenda Item Comment for 05/15/12 - Item 3-UP-2012 - Downside Risk

Brandon, please add to folder in CDS. Thanks.

Greg Bloemberg
Planner
Current Planning
City of Scottsdale
gbloemberg@scottsdaleaz.gov
480-312-4306

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-----Original Message-----

From: Jagger, Carolyn
Sent: Tuesday, May 08, 2012 2:54 PM
To: Borowsky, Lisa; Klapp, Suzanne; Lane, Jim; Littlefield, Robert; McCullagh, Ron; Milhaven, Linda; Robbins, Dennis E
Cc: Washburn, Bruce; Walker, Sharron; Smith, David; Richert, David; Padian, Connie; Bloemberg, Greg; 'peterlenton@cox.net'
Subject: FW: Agenda Item Comment for 05/15/12 - Item 3-UP-2012 - Downside Risk

Your Honor and Members of the City Council,

Below is an e-mail from Mr. Peter Lenton regarding Item No. 28, Downside Risk Conditional Use Permit, on tonight's agenda.

Best regards,

Carolyn

-----Original Message-----

From: peterlenton@cox.net [<mailto:peterlenton@cox.net>]
Sent: Tuesday, May 08, 2012 2:17 PM
To: Jagger, Carolyn; Stevens, Katie
Subject: Agenda Item Comment for 05/15/12 - Item Item 3-UP-2012 - Downside Risk

Meeting Date: 05/15/12

Item Number: Item 3-UP-2012 - Downside Risk

Contact Information (if blank, user did not provide):

Name: Peter Lenton
Address: 7272 E. Gainey Ranch Rd #103
C/S/Z: Scottsdale, AZ 85258
Phone:

Comment for 05/15/12 Item Item 3-UP-2012 - Downside Risk:

I oppose granting this conditional use permit unless the permit is amended with the following stipulations:

No tvs on patio

No speakers on patio

Windows and doors closed when live

music inside

No music past 10pm

Two sets of doors to patio to attenuate noise from inside Quarterly audit to ensure 60percent of sales from food Two noise violations in a month means automatic revocation of CUP

Lebovitz, Brandon

From: Planning Commission
Sent: Tuesday, April 10, 2012 5:38 AM
To: Lebovitz, Brandon
Subject: Planning Commission Public Comment (response #79)

Planning Commission Public Comment (response #79)

Survey Information

| | |
|-----------------------|-----------------------------------------------------------------------------------------------------------|
| Site: | ScottsdaleAZ.gov |
| Page Title: | Planning Commission Public Comment |
| URL: | http://www.scottsdaleaz.gov/boards/PC/comment |
| Submission Time/Date: | 4/10/2012 5:37:46 AM |

Survey Response

COMMENT

Comment:

In reading over the narrative of the Downside Risk request, several times, I can't help but think that the stipulation that you placed on the Spanish Fly for live entertainment would be a good fit for this is request, too. As we see more and more changes to small strip malls, changes that bring completely different activities and clientele in closer proximity to mature residential neighborhoods, a period of time that allows folks to see if "they can't just get along" makes sense. In this case allowing all parties a chance to adjust and work out problems and then coming back for discussion to see if this can be permanent and workable for all, or a majority. It could add to our knowledge in the planning process, as well, because there are a lot concepts we as a city have to carefully examine. This is an action/stipulation that would be important to all mature residential neighborhoods as we see more mixed used in closer proximity to residential. Nancy Cantor member Neighborhood Advisory Commission

Comments are limited to 8,000 characters and may be cut and pasted from another source.

PLEASE PROVIDE YOUR NAME

First & Last Name:

Nancy Cantor

ADD ONE OR MORE OF THE FOLLOWING ITEMS:

| | |
|-----------------------------------------------------|--------------------------------------------------------------------|
| Email: | nancycantor5@gmail.com |
| Phone: | (480) 516-4666 |
| Address: | 5850 North 83rd St. |
| Example: 3939 N. Drinkwater Blvd., Scottsdale 85251 | |

Bloemberg, Greg

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

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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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