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CALL TO ORDER

[Time: 00:00:01]

Mayor Ortega: I call the December 4th, 2023, City Council Regular Meeting to order. City Clerk Ben Lane, please conduct the roll call.

City Clerk Ben Lane: Thank you, Mayor.

City Clerk Ben Lane: Mayor David Ortega.

Mayor Ortega: Present.

City Clerk Ben Lane: Vice Mayor Solange Whitehead.

Vice Mayor Whitehead: Here.

City Clerk Ben Lane: Councilmembers Tammy Caputi.

Councilwoman Caputi: Here.

City Clerk Ben Lane: Tom Durham.

Councilmember Durham: Here.

City Clerk Ben Lane: Barry Graham.

Councilmember Graham: Here.

City Clerk Ben Lane: Betty Janik.

Councilwoman Janik: Here.

City Clerk Ben Lane: Kathy Littlefield.

Councilwoman Littlefield: Here.

City Clerk Ben Lane: City Manager Jim Thompson.

Jim Thompson: Here.

City Clerk Ben Lane: City Attorney Sherry Scott.

Sherry Scott: Here.

City Clerk Ben Lane: City Treasurer Sonia Andrews.

Sonia Andrews: Here.

City Clerk Ben Lane: Acting City Auditor Lai Cluff.

Lai Cluff: Here.

City Clerk Ben Lane: And the Clerk is Present. Thank you, Mayor.

Mayor Ortega: Excellent. We have Scottsdale Police Sergeant Brian Heiner and Officer Ryan Lowing, as well as Firefighter Jake Lorent if anyone needs assistance. Let's begin with the Pledge of Allegiance, Vice Mayor Solange Whitehead.

PLEDGE OF ALLEGIANCE

[Time: 00:00:54]

Vice Mayor Solange Whitehead: I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands: One nation under God, indivisible, with liberty and justice for all.

MAYOR'S REPORT

Mayor Ortega: Well, the large part of the world is in turmoil, and war torn and many families and victims as well as entire nations fighting for democracy and freedom. I would like for us to pause in reflection.

Mayor Ortega: Thank you. We do have the holiday lights which has begun at McCormick Stillman Railroad Park, as well as Scottsdazzle in Old Town, so you can check out all the special events and enjoy family time, as well as inviting guests.

I do want to congratulate the Saguaro football team for their 14th championship. They were victorious and that was amazing. It's a tribute to them. Also at Saguaro High School, there was a robotics trial competition. The kids were amazing. They had created these robotons and such, and they are part of an international competition. That was pretty amazing, straight up muscle and brains and everything in between. Let's go on to the City Manager's Report.

CITY MANAGER'S REPORT

[Time: 00:03:09]

City Manager Thompson: Thank you, Mr. Mayor and members of Council. This evening, we have a short video for you.

Stephanie Hirata: Hi, I'm Public Affairs Specialist, Stephanie Hirata, with five fast things happening around the City you need to know.

Starting us off at number five, our month-long holiday celebration Scottsdazzle continues through December in Old Town. Celebrate the season with a festive holiday lights tour or spirited dueling piano show. Attend new events and old favorites. Get all the dazzling details at Scottsdazzle.com.

Coming in at number four, break down shipping boxes before recycling. The surge in online shopping has increased shipping boxes in our waste stream referred to as the Amazon Effect, which is especially prevalent during the holidays. Do your part to properly recycle cardboard boxes. Break down your boxes before throwing them in your recycling bin. Be sure to remove shipping labels and packing tape. Moving, food, and shipping boxes and envelopes and folders can all be recycled if they are clean, dry, and free of plastic packaging materials. Greasy pizza boxes are not recyclable and must go in your trash can. Learn more at Scottsdaleaz.gov and search recycle right wizard.

Next up at number three, the latest episode of Veterans AZ features Margy Bons the founder of Military Assistance Mission, an Arizona nonprofit dedicated to helping military service members and their families. Bons founded MAM in honor of her son Marine Corps Sergeant, Michael

Adam Marzano who died in combat during Operation Iraqi Freedom. MAM strives to provide financial assistance annually to 120 Arizona active-duty guard and reserve military service members. Each year, about 2,500 military members and families benefit from MAM's morale event programs, such as Operation Holiday Giving, Seats for Soldiers, and Baby Bundle Bash. Watch the video at Scottsdaleaz.gov and search Veterans AZ.

At number two, help the City address the critical challenge of food waste. In 2019, the Environmental Protection Agency estimates that 66.2 million tons of wasted food was generated in the food retail, food service, and residential sectors. Residents across the nation account for about 349 pounds of food waste per year with the Majority ending up in landfills. As part of our commitment to cut food waste in half by 2030, we are turning to you for actionable solutions. We will gather your input and perspective on food waste management and ways to reduce food waste and keep it out of the landfill. Your participation is key to forging a sustainable path forward for Scottsdale. Share your views on food waste, composting, and recycling on Speak Up Scottsdale. Visit Scottsdaleaz.gov and search get involved.

Wrapping things up at number one, the Pinnacle Peak Park trail restoration project is set to begin in January. After 23 years, the two-mile trail, which gets about 230,000 visitors annually, has experienced erosion issues and restoration efforts are crucial to the trail's safety and longevity. The project is scheduled to be intermittent over the next three years, allowing for work to be completed in stages. Some temporary closures will be necessary, affecting the entire trail or portions. Construction activities will primarily take place on mid-weekdays, keeping the trail fully open on weekends and holidays to accommodate peak periods and ensure minimal impact to the park's users. Learn more on Scottsdaleaz.gov and search Pinnacle Peak Park and get real time updates on their Facebook page. And that's Scottsdale's Fast Five for December. Thanks for watching.

[Time: 00:07:02]

Mayor Ortega: Well, thank you. I have an announcement to make regarding Executive Sessions. During tonight's meeting, the Council may make a motion to recess into Executive Session to obtain legal advice on any applicable item on the agenda. If authorized by the Council, the Executive Session would be held immediately and will not be open to the public. The public meeting would then resume following the Executive Session.

Secondly, per our Council Rules of Procedure, citizens attending City Council Meetings shall observe the same rules and order and decorum applicable to members of the Council and city staff. Unauthorized remarks or demonstrations from the audience, such as applause, stamping of feet, whistles, boos, yells and/or other demonstrations, booze is not permitted either, and/or other demonstrations shall not be permitted. Violation of these rules could result in removal from the meeting by security staff.

PUBLIC COMMENT

[Time: 00:08:18]

Next, we move on to Public Comment. Public Comment by statute allows Scottsdale citizens, Scottsdale businesses, owners, and/or property owners to comment on non-agendized items that are within the Council's jurisdiction. Advocacy for or against a candidate or ballot measure during a Council meeting is not allowed, pursuant to state law and is therefore not deemed to be within the Council's jurisdiction. There will be no official action taken on non-agendized items, and brought forward by the public comment. If you do wish to speak, you should register with our Clerk, and you are allowed three minutes.

So, at this point, I recognize two requests to speak, and you will be coming to the podium to my left. That would be Alexia Jones and then Preston Bates. Please state your place of residence and, again, these could only be non-agendized subject. So, I'm calling Alexia Jones or Preston Bates. You will be stepping forward and to the left here, to your right.

[Time: 00:09:48]

Alexia Jones: Right here?

Mayor Ortega: Yes, there's a spotlight right there. No, I'm just kidding. Hi.

Alexia Jones: Hi. And hello Mrs. Littlefield. You have emailed me very kindly.

Mayor Ortega: Thank you.

Alexia Jones: When does the clock start ticking?

Mayor Ortega: It's going.

Alexia Jones: Oh sorry, hi, by the way, I had lunch with our former Attorney General by chance, so that was a mitzvah. Hi, my name is Alexia Norton Jones. I'm a rare orphan disease patient living here in Scottsdale and I'm here to speak to you about ableism, implicit bias, and racism. I'm here because I've lived here for eight years and I'm an orphan disease patient who moved here seeking a rare disease drug. It's \$100 million drug that I came to obtain to save my life. And the eight years I have lived here, it seems nobody has learned the disease that I have. It's called primary periodic paralysis. I also have one of the rarest other diseases in the world which is myasthenia gravis. I inherited the disease from my great-grandfather, Christian Archibald Herter, who discovered celiac disease years before Arizona was even a state.

Some of you know me because my father was Dr. Martin Luther King's attorney. I'm also the granddaughter of the largest independent book publishing company in the United States, WW Norton, the only grandfather I know founded the world bank in Amsterdam. You think I would have resources to get help for this disease. But my experience here has been utterly horrible. In

the apartment where I live, I've experienced marginalization of abuse. I've experienced the worst injury of my life, and it seems that just a pattern and I feel like here in Scottsdale you don't really want disabled people.

And, you know, I have written something down here and I feel like I'm doing a terrible job. I'm an award-winning writer. I won an award about abuse here, called City Code. I feel like I'm blowing everything here although, you know.

Mayor Ortega: Take a breath, take a breath.

Alexia Jones: I'm really here because I have been really terribly hurt. I sustained the worst injury of my life here, a catastrophic life-changing injury. I'm a scholar. I was first in my class at Harvard, which is nothing to be proud about these days. I was recruited by M.I.T. and I will never probably read a book again. There was a party for me in New York a few months ago, and I was ashamed to tell anybody what had happened to me. I was handcuffed here and taken down to psych because people did not believe this disease was real.

I worked under passports in the State Department, and when the FBI agent did my clearance, all due respect, Captain, the report was that I'm a paranoid hypochondriac who thinks she has a rare disease. Although, I'm an internationally known rare disease patient. I came here as an ambassador of the Channelopathy Foundation of Berne, Switzerland. This should not have happened to me here. I'm a researcher in rare diseases. Somebody should know me. As the FBI agent said, anybody could have Googled me. I nearly died in custody. That should not have happened.

So, I won two awards. The name of the poem is City Code, and the first line is it's okay to hit women where I live. I had 21 heart monitor on me when that happened. I deserve better and everybody else does here. Thank you for your time.

Mayor Ortega: Thank you. Next, Preston Bates.

[Time: 00:13:29]

Preston Bates: Council, Mayor, City Manager, and City staff, thank you so much for giving the opportunity to speak to you today. I'm Preston Bates. I live at 6855 East Camelback Road, Scottsdale, and I'm so grateful to be here. I'm grateful for Scottsdale. It's a great community. I'm a serial entrepreneur.

Recently one of my mentors challenged me to prove that American dream still exists. He said, "Preston, I want you in 90 days to build a \$1 million business. But here's the catch. You cannot use \$1 to your name, you can't use any credit that you have, and you are not allowed to do business with anyone that you have ever done business with before. And when you are successful, you are going to give 20% of what you make to a charity and a nonprofit that's going

to make sure that entrepreneurs never go without food or shelter.” And I told him, you know what, I'm crazy enough to do it.

So, I'm on day four today. I'm way ahead of where I thought I would be, and I humbly ask the Mayor and the City Council to give me five minutes of your time on a one-on-one meeting. I would love to tell you how I plan to bring attention, national attention, including, I have two billionaires following this project. One who will put me on the stage with 55,000 people and tell the world about what we are doing, but we are doing it in your back yard, your town. I want you to know.

On February 17th, I plan to have about 100 entrepreneurs, some of them are going to be customers, some are prospects, come to a grand opening for what I'm working on. I would like to invite you to be there and meet some entrepreneurs. It's very exciting. And I'm honored and humbled to be a Scottsdale resident. I appreciate you giving me the time to speak. I don't need the rest of the time and so I will yield that. Thank you so much.

Mayor Ortega: Thank you, sir. Well, with that I would then close Public Comment.

MINUTES

[Time: 00:15:30]

Next, we have the consideration of the Minutes. The Minutes are for Special Meeting Minutes of October 24, 2023, and the Regular Meeting and Work Study Session Minutes for October 24, 2023. Do I have a motion?

Councilwoman Janik: So moved.

Vice Mayor Whitehead: Second.

Mayor Ortega: A motion and a second. Any other discussion? Seeing none, please record your vote. Unanimous. Thank you.

CONSENT AGENDA

[Time: 00:15:55]

Mayor Ortega: Next, we have the Consent Agenda Items. Consent Agenda Items are fully documented and have been vetted by the staff, and certainly come before the public for consideration. I have received a request from Councilwoman Janik to place Item Number 7 on the Regular Agenda and I would also open up any discussion of any other Consent Agenda Items. I understood that, oh, Councilwoman Littlefield and then Councilwoman Caputi.

Councilwoman Littlefield: Yes, thank you, Mayor. I would like to make sure, I would like to ask Erin, if she's here tonight? Erin? On Item Number 6, has that letter been looked into that we received regarding the new business?

Erin Perreault: Yes, Mayor Ortega and members of Council. Yes, we did vet the liquor license associated with Item Number 6. The applicant has been in compliance since last year. So, there was a complaint and a violation that the City was pursuing last year. They came into voluntary compliance with the City at that time last year and have been in voluntary compliance since then.

Councilwoman Littlefield: Thank you.

Mayor Ortega: Very good. Consideration or questions about any other Consent Agenda Item, I see Councilwoman Caputi and Councilmember Durham.

Councilwoman Caputi: Mayor, Consent Agenda Item /number 3, I don't necessarily need a full presentation. I just want to make a comment of that. I'm not comfortable with forwarding a recommendation of approval. So, I don't know, it doesn't necessarily need to be, I don't need a presentation. I would like to take a separate vote on that if we could. I just want to say I would not recommend forwarding this to approval to the Arizona Department of Liquor License. So, I don't know if we need to pull it to take a vote, maybe others agree or not, but I'm not comfortable moving that forward on Consent.

Mayor Ortega: Well, we can move it to Regular then, Number 3.

Councilwoman Caputi: Great.

Mayor Ortega: It only takes one person to request moving it according to our rules. There was Councilmember Durham.

[Time: 00:18:32]

Councilmember Durham: Thank you, Mayor. I had some questions about Number 3 also, and maybe an explanation from Ms. Perreault will answer those. But it has not been moved to the regular agenda so I will deal with it when it comes up on the Regular Agenda.

Mayor Ortega: Again, thank you. And then Councilwoman Janik. You have the floor.

Councilwoman Janik: Thank you, Mayor. Yeah, I also requested a presentation on Items Number 9 and 10. I would like some more information on Core Center Amendment.

Mayor Ortega: So, it may be possible just for staff to answer any questions that Councilwoman Janik may have. Please come forward.

Katie Posler: Mayor, Councilmembers, my name is Katie Posler, and I'm here to present 19-ZN-2013 number 3, which is the Core Center Amendment, and there's also a Development Agreement, 1-DA-2023 with that case.

The site is located south of North Hayden Road and southwest of the North Hayden Road and north Northsight Boulevard roundabout. To the north are commercial buildings, to the east is a vacant parcel, to the east of that is Home Depot. To the south are the Core Center Apartments and to the west is Costco.

Here's a current look at the property on the east side, the property is vacant. And then on the west side, it's not shown on this aerial but there is a temporary parking lot. The zoning on the site is PCP-AMU which stands for Planned Airpark Core Development, Airpark Mixed Use and it was rezoned to that in 2013. Here is a look at the site from street view. You can see the apartments in the background and also the temporary parking lot on the right side.

The request in front of you today is in three parts. The first is to adopt Ordinance Number 4618 for a zoning district map amendment, amending the stipulations and development plan of case 19-ZN-2013 number two, including approval of bonus development standards for floor area ratio in exchange for special public improvements and a modified site plan that includes retail, restaurant, and a financial institution with a drive-thru. The second is to adopt Resolution 12985, declaring Core Center Amendment 19-ZN-2013 Number 3 development plan to be a public record and the third is to adopt Resolution 12986 authorizing the associate development agreement.

So, for some context, this the number three zoning case, meaning there was an original, and a number two after that. The original was for a church on this site in 2013. That was never built. The second one was for an office development that was around 190,000 square feet and was three stories. And then I will go over the site plan which is a significant reduction in square footage.

So, on the west side, we have a 50,000 square foot retail and furniture building. And then there's a 3,000 square foot bank with an associated drive-thru and that's what the associated Text Amendment is on this same agenda, is to allow for the drive-thru. And then a restaurant, that's around 6,000 square feet. The bonus square footage is around 3,000 above the minimum and so that's what the development agreement is for.

Access to the site remains unchanged via the two existing driveways, and there is still a traffic signal stipulation from the number two case that's still applicable with this case. And then the difference between this site plan and the number two is the number two site plan was an office configuration that had a little more plaza and amenity space, and this site plan is set up more as individual pad buildings.

[Time: 00:23:08]

Here is the landscape plan. The applicant is proposing to keep the existing trees along the street frontage, along Hayden, and is adhering to the minimum 35-foot scenic corridor buffer and 40-foot average and they are also providing trees up against the apartment to the south.

On the left side of the screen is the pedestrian plan, and on the right side is the vehicular circulation plan. The applicant is required to upgrade the sidewalk along Hayden from 6 feet to 8 feet, and they're also providing 6-foot sidewalks in between the new commercial buildings and the apartments to the south.

Here are the conceptual retail and furniture building elevations. It's 32 feet tall and all these buildings are allowed to go to 62. Here is the conceptual bank building elevations at 24 feet in height. Here's the conceptual restaurant building which is 25 feet in height. And then here's the applicant's conceptual rendering from north Hayden Road.

Just to recap some items on this case this is a reduction in square footage from the original number two case which was over 190,000 square feet of office space. The floor area ratio that is being requested is 3,434 square feet which is a difference from before where it was around 120,000. There is a related text amendment, which is 3-TA-2023, which is on your Agenda which is to allow for drive-thrus in the PCP AMU districts specifically for banks. The proposed mix of uses on this site with the commercial to the north and the apartments to the south, does align with the Greater Airpark Character Area Plan. The traffic signal and sidewalk upgrades are still stipulated in this case. This is a re-investment in underutilized airpark property.

We haven't received any public comment on either of the cases actually and the Planning Commission heard both cases on October 25th and recommended approval with a 6-0 vote. And that concludes staff presentation, but the Applicant is also here to present.

Mayor Ortega: Well, thank you, and at this point, Councilwoman Janik, do you have any questions?

[Time: 00:25:40]

Councilwoman Janik: Yes, I do have one question, very nice presentation. If we approve 3-TA-2023, does that mean we are approving any bank in the Airpark Area to have a drive-thru?

Katie Posler: Mayor, Councilwoman Janik, so if you approve that Text Amendment, it would allow for this zoning case to also move forward, because they're showing a drive-thru with their proposed bank. And any PCP-AMU zoning would then be allowed to have drive-thrus at financial institutions. So, the bank is already permitted by right, but the Text Amendment is to allow for a bank drive-thru.

Councilwoman Janik: OK and it is specifically limited to financial institutions, not restaurants?

Katie Posler: So, the district already allows for drive-thrus with restaurants.

Councilwoman Janik: Okay.

Katie Posler: And this text amendment is doing the same thing to allow banks to have the drive-thru and there's actually criteria for the restaurants that we are using for the bank too. So, there's screening with landscaping, sight walls and buffers from residential. So, we pretty much copied the same text amendment to keep those same criteria.

Councilwoman Janik: Okay. Thank you. Appreciate it.

Mayor Ortega: So, Councilwoman Janik, so that would also cover Item Number 10 in your question. Okay, so they were related, and I don't think we get two banks too often anymore. They are always closing down banks, but we'll see. Councilwoman Littlefield, Councilmember Graham.

Councilwoman Littlefield: Thank you, Mayor. My question was answered. Thank you.

Mayor Ortega: Councilmember Graham.

[Time: 00:27:17]

Councilmember Graham: Mayor, just a point of the order, Councilwoman Janik, did you want to have a separate vote on this?

Mayor Ortega: No.

Councilwoman Janik: No.

Councilmember Graham: I just wanted to ask.

Councilwoman Janik: No.

Councilmember Graham: You didn't request a special? Okay, thank you.

Mayor Ortega: It's still on the Consent Agenda. We have two items at this point, okay. So, I also open to the public the opportunity to speak on any Consent Agenda Items. And I see none. Just for the record, at this point, Item Number 3 and Item Number 7 have been moved to Regular Agenda. So, at this point, I'm open to a motion on Consent Agenda Items, excluding Item Number 3 and Item Number 7.

Councilwoman Janik: So moved.

Vice Mayor Whitehead: Second.

Mayor Ortega: Good we have a motion and a second. Seeing no one wishes to speak, please record your vote.

Mayor Ortega: Thank you, unanimous.

REGULAR AGENDA

[Time 00:28:25]

Mayor Ortega: Next, we are moving on to the Regular Agenda items which are listed and now we have moved Item Number 3 and 7. So at this point, go ahead, Tim, with your presentation.

ITEM 3 - 40 LOVE LIQUOR LICENSE (77-LL-2023)

Tim Curtis: Thank you, Mayor and good evening, and members the Council. Tim Curtis with the City's Planning Department. Item Number 3 is a liquor license request, 40 Love. Which is located 6th Avenue and Stetson. It used to be the Kelly's at South Bridge and you see the graphic showing the location there. There we go.

Mayor, members of Council, the action being requested for you tonight is for a favorable recommendation to the Department of Liquor for a Series 6, which is a Bar Liquor license, again, for that existing location. The Council only provides a recommendation to the state regarding their liquor licenses. The Arizona Department of Liquor requests for the City to make a recommendation and that's why we are here.

The Department of Liquor does grant the final authority of the liquor license. The property in question does have an existing Conditional Use Permit, for about 10 years for a bar and that use permit has associated stipulations that do run with the land, and this would be a new owner. The new owner intends to operate consistent with the existing bar conditional use stipulations.

[Time 00:30:19]

Council is not being asked to make any action or discussion, really, on the Conditional Use Permit, again, they've had that at this location for ten years. Staff, Planning and the Police Department, have determined that there's really no reason to recommend a denial of the request. There's currently no violations. So the action is in Council's court. I know that the applicant team is here, if there's any questions, I'm here if there's any questions, and also members of the Police Department are here if there's any questions.

Mayor Ortega: Very good. So, Councilwoman Caputi, you requested so please speak.

Councilwoman Caputi: I don't actually have any questions. I just want to make a motion since we are just approving or not approving, I just want to make a motion to not approve. I would like to recommend that we not approve the liquor license. I know the state makes the final determination, but I would just like to move that we not approve as a Council. That's it. That's my motion.

Mayor Ortega: Okay. I hear no second. So, we will move on. Councilmember Graham and then Councilmember Durham.

Councilmember Graham: I suppose I would contemplate a second. You don't have to Councilwoman Caputi, I was just wondering, you said you were not comfortable recommending it or forwarding the recommendation, if you care to expound on your discomfort to elucidate the Council so I could learn.

Councilwoman Caputi: I know that there's new property owners, but the history of this particular site is just difficult for me to move forward with.

Councilmember Graham: So it's a precedential matter.

Councilwoman Caputi: Sure.

Councilmember Graham: Okay.

Mayor Ortega: Councilmember Durham?

[Time 00:32:09]

Councilmember Durham: Thank you, Mayor. We received an email about this application, which caused me to look into the paperwork. I found a lot of inconsistencies and contradictions in the paperwork on this. For one, they continually say in some places, it will be a bar. In other places they say it's going to be a bar/restaurant. And they're very inconsistent about that.

The CUP says that the property shall include a kitchen, but the latest paperwork says there will be no kitchen. And the original CUP said there should be no amplified noise or DJs on the property, but it seems pretty clear that there was amplified noise very recently and DJs very recently at this location, and I think the fact that we received an email from Ms. Perreault today that agreed there had been recent violations. So, all of these things give me a bad feeling. I don't know what this property is about. Is it a bar or a restaurant? If it's a restaurant, how come it has no kitchen. There's a very recent history of violating the terms of the CUP and, you know, frankly, I don't know what's going on with this property. I have a little feeling of Councilwoman Caputi, that the recent history is not promising.

Mayor Ortega: Councilmember Durham, may I suggest we call the applicant up and then direct

those questions or inconsistencies to them.

Councilmember Durham: Yes, that would be good.

Sean Mulholland: Hi, guys, Sean Mulholland here. Councilmembers, city staff, thanks for having me today, I am the managing partner of 40 Love Scottsdale.

Mayor Ortega: So continue.

Councilmember Durham: So I sort of laid out what I see as some of the inconsistencies here.

Sean Mulholland: Yep.

Councilmember Durham: You say in one place you are going to be a bar and another place you say you are going to be a restaurant, although you have no kitchen and I think it's advertising some of the best food in Scottsdale but if you don't have a kitchen, I'm not sure how that's going to work. Obviously, you can cater it in or something, but I'm not sure that's going to produce the best food. There have been violations of the old CUP because very recently, I think, was around the Super Bowl, there was obviously amplified music. You had advertisements that listed performers who were going to be there. And I'm sure those performers must have amplified music. And there were clear advertisements for DJ's that would be appearing at the location. And so, for all of those reasons, I'm just concerned. Is this going to be a bar or a restaurant or what exactly is going to be the nature of the place?

Sean Mulholland: Yep. Well, firstly, I think the confusion with the kitchen is that in the building permits, it was out of scope, and we are completely utilizing the kitchen that's currently there. And it is going to be a full-scale restaurant. We have curated a menu. We have hired back-of-house staff, executive chef, and we fully intend to follow the CUP's stipulations regarding the food service and the restaurant/bar.

Regarding the amplified music, yes, we had a Super Bowl event which did have amplified music, which was, I would say my biggest regret. And we've been working with the City to make sure that we are following the rules and making sure that we take the necessary steps to make the City, the local community, comfortable and showing that we are a full-scale restaurant serving both lunch and dinner.

[Time 00:37:12]

Councilmember Durham: But part of your application and I'm looking for it right now, specifically says there will be no kitchen.

Sean Mulholland: I believe that's a mistake in the application. There is a full-scale kitchen, which throughout the tours with the City staff, we've shown that.

Councilmember Durham: Does anybody from the staff have a comment on that?

Tim Curtis: Mayor and Councilmember Durham, I do believe that we do have members of police that did the tour more recently. Thank you.

Detective Christian Bailey: Mayor, members of Council, I'm Detective Christian Bailey, I'm the police detective that looks at these licenses over the series of time. Once they come in from an application process. For this particular, I've done about four walkthroughs at this particular location. I reviewed all the plans that are on there. There is a kitchen, I physically saw it. It's been redone since then which looks a lot better than it was before, so there is a kitchen that's in there as well. I'm open to any questions that you have, as far as where we are at on the standpoint of that.

Councilmember Durham: I'm sorry, I'm just looking for the part where I thought it said no kitchen. I have to further questions at this time.

Mayor Ortega: Okay. Councilwoman Littlefield and Vice Mayor Whitehead.

[Time: 00:39:03]

Councilwoman Littlefield: Thank you, Mayor. I just wanted to say I think I said the wrong number earlier when I asked about the liquor license. I meant Item Number 3. That was the one I talked about Erin about. So, forget about 6, it was this one that I was concerned about for the very same reasons that other members of this Council were concerned. So, I wanted to make that clear. Thank you.

Mayor Ortega: Vice Mayor Whitehead, Councilmember Graham.

Vice Mayor Whitehead: Thank you, Mayor and thank you for being here. I guess my question is on the advertisements for the amplified or for the concerts and for the DJs, is that moving forward or is that from the past? And then I want staff perhaps to respond about what are the requirements from the CUP standpoint.

Sean Mulholland: Yes, that's certainly of the past. We're having no live performances. We're having no amplified music. We've actually gone through with the City on our, I suppose, music program which is very light. It's just ambience music for dinner and for lunch, and yeah, the amplified music is a thing of the past. We want to focus on our food and our service.

Vice Mayor Whitehead: Okay. Thank you. So then, my question for staff is simply if there is the, I guess Mr. Durham, if there is a mistake in this, shouldn't that be corrected? And I doubt basically knowing our planning staff there is a mistake. I would like to find the location where Councilmember Durham says there is no kitchen.

Councilmember Durham: I found it. It's on the liquor license.

Mayor Ortega: Your mic.

Councilmember Durham: Thank you. On the liquor license application, which was, it looks like it was signed October 30th. There is a question.

Councilmember Graham: Attachment two. Attachment two. It's attachment two.

Councilmember Durham: There's a question will the kitchen be less than 15% of the gross floor area? And the answer to that question is no kitchen. So that's what I was looking at when I said there, you've listed it as being no kitchen.

[Time: 00:41:23]

Andrea Lewkowitz: Excuse me. Good afternoon, Mayor, Councilmember Durham, my name is Andrea Lewkowitz. I'm an attorney and agent for the applicant. You are 100% correct. Somehow the page that got submitted to the City said no kitchen. I have an amended, but I don't know whether it made it to a file. It actually has a kitchen of 1,069 square feet, which is based on the drawings submitted for the permits. Like Sean said, one of the problems was that the kitchen was outside the scope of the change, and somehow, it's a serious error and I'm sorry. It came through my office. But there is a kitchen. It's been redone. It's over 1,000 square feet which is more than 15% of the license promises.

Vice Mayor Whitehead: Okay. So, when we make a motion, we're going to ask for that amended page to be, I guess, swapped out. Okay.

Andrea Lewkowitz: I'm looking forward to providing it.

Vice Mayor Whitehead: Okay. If there are other speakers.

Councilmember Durham: All right. That's fine with me. I was thinking of deferring this item until the paperwork is corrected. I don't know which would be better practice to approve it tonight on the promise of the corrected paperwork or to wait a couple of weeks until we have the amended application. I think that's probably what I would prefer is to wait until we have an amended application so that our file is correct. So, I would make a motion to defer this item for two weeks, or a date to be decided. Or I would just say I don't know what our schedule is of meetings.

Councilmember Graham: Tomorrow.

Andrea Lewkowitz: Councilmember Durham, I will make sure we can hand deliver this tomorrow morning. If we need to, we can have it in whoever's hands, whoever needs it.

Councilmember Durham: If we can put it on tomorrow's agenda, that would fine with me if that's possible.

Councilmember Graham: I don't know if that's possible.

Councilmember Durham: It may be too late now, isn't it?

City Clerk Ben Lane: It would be less than 24 hours, Councilmember to move. Sherry, would it be okay. I'm trying to think out loud here. Sorry. If they did it tomorrow, is that enough notice? Or should we move it to Wednesday?

City Attorney Scott: I think the safer choice Mayor and Councilmember Durham would be to move it to Wednesday, yes.

Councilmember Durham: That would be fine with me.

Mayor Ortega: Second. So, we have a motion on the table and a second. Councilmember Graham, did you have anything to add and then Councilwoman Janik?

[Time: 00:44:26]

Councilmember Graham: No, I suppose I'm ready to vote to move it to Wednesday.

Mayor Ortega: Thank you. Councilmember Durham. Your button is off. Thank you.

Councilmember Durham: Sorry.

Mayor Ortega: Councilwoman Janik, did you have a comment.

Councilwoman Janik: I wanted to say I agree that the paperwork needs to be accurate and if Wednesday, we could have it done by Wednesday, I would be comfortable with that.

Mayor Ortega: So with that, we have a motion and a second. Please record your vote. Mr. Durham. Thank you unanimous. We will see you on Wednesday.

Andrea Lewkowitz: Thank you for your consideration.

Sean Mulholland: Thank you.

Mayor Ortega: In person. Not certified mail, right? We'll get it then.

ITEM 7 – HARVEST OF SCOTTSDALE CONDITIONAL USE PERMIT

[Time: 00:47:32]

Next item is Item Number 7. We are asking staff to come forward and discuss a Resolution 12878 for Conditional Use Permit on a marijuana dispensary eliminating the five-year timing stipulation.

Bryan Cluff: Good evening, Mayor Ortega and Councilmembers. My name is Bryan Cluff, with the City's Current Planning Department and I'm going to be giving you an overview of the applicant's request this evening for Harvest of Scottsdale, Case 10-UP-2015#4.

Specifically, the requests this evening is for adoption of Resolution 12878. This is for an amendment to an existing Conditional Use Permit for a marijuana dispensary. The only part of that amendment is for elimination of the five-year timing stipulation that was previously placed on the site with the existing Conditional Use Permit. I will note that this did previously include a larger request that included a text amendment to the Code to allow drive-thru operation, as well as amending the use permit to allow drive through at this site. The applicant has removed those components from the request, leaving only before you the request for removing the five-year time frame stipulation.

[Time: 00:47:01]

So, the site we're looking at is in the Airpark Area. You can see on the area highlighted in yellow. It is on Hayden Road and 83rd Street. Here's a closer look at the site. Hayden and 83rd Street, you can see some other commercial industrial uses in the Airpark Area. The building you see on the site is the existing building, that has been operating as a marijuana dispensary since 2016.

This is the zoning map showing existing zoning on the property, Industrial Park I1 District. And then is the site plan of the existing facility, highlighted in gray there is the existing building. The parking areas and the rest of the site, including the building, will remain unchanged as part of this request. And then a quick look here at the existing site plan, which has been included into the updated record, as it exists today with no changes.

So, some of the considerations with regard to the Conditional Use Permit this evening is the Conditional Use Permit criteria, which addresses compatibility of uses in the area, including protected uses that are protected by Code for marijuana dispensaries within the City of Scottsdale that include separation requirements from these protected uses.

As I mentioned before, this site has been in operation since 2016. It has had a couple amendments over time that came through their process for updates to the application, which included renewals, subsequently with those approvals. The five-year timing stipulation specifically was a practice that was started back in 2011, when the state approved medical marijuana in the state of Arizona. And the City established a process for Conditional Use Permits for these uses. At that time, we were unsure about how these uses would operate within the

city. So some additional measures were put into place. Just through practice, through stipulation and the five-year time frame stipulation was one of those that was added, and just continued to be placed on to Conditional Use Permits as those were evaluated.

Since then, since 2011, there's been five marijuana uses in the City, and six since 2021. As those have been operated over the years, we found that there haven't been any negative impacts associated with those uses. We haven't received any complaints with the use or operations. And some of our most recent approvals that have come through, including within the last year, did include removal of the five-year timing on new use permits that were coming through.

[Time: 00:49:59]

So associated with this request since it did include a text amendment originally, the applicant did do more outreach than what would typically be associated with the Conditional Use Permit request, which included two open house meetings at those dates. And through the process, including with the text amendment when that was included, there was not any public comment received on the request.

Planning Commission did hear the case in July. They did recommend approval of the elimination of the time frame stipulation with a vote of 4-2. The Planning Commission review did also include those other components which received a recommendation for denial which was part of the reasons why the applicant removed those from the request. This concludes staff's presentation. I will end on this slide again summarizing the request. I'm happy to answer any questions you may have, and the applicant is also here with a presentation prepared.

Mayor Ortega: Excellent. We will move first to Vice Mayor Whitehead and then Councilwoman Littlefield.

Vice Mayor Whitehead: I wonder if Councilwoman Janik wants to speak first since she asked for the item to be pulled. I have some comments as well.

Councilwoman Janik: I'm find either way.

Vice Mayor Whitehead: Go ahead.

Councilwoman Janik: My first question is you said in the past you've had six dispensaries ask that the condition be lifted?

Bryan Cluff: Mayor Ortega, Councilwoman Janik, we have six medical marijuana uses in the City. That includes five dispensaries and one cultivation facility. Out of those six facilities, four of them have the five-year timeframe stipulation on them. The most recent one that was approved was approved without the timeframe stipulation and the cultivation facility didn't have the

stipulation on it originally.

Councilwoman Janik: Okay. Thank you.

Mayor Ortega: Vice Mayor Whitehead, Councilwoman Littlefield.

Vice Mayor Whitehead: Thank you Mayor and thank you Bryan. The reason I pulled the item was not because of this business. Because this business has been a model business and in fact, I drive by it frequently. My concern was that this Council works incredibly hard with every applicant to negotiate stipulations. And so the last thing we want, if we are dealing with a development or any CUP where we agree upon stipulations only to have the applicant come back and remove the stipulation a few years later. So that was my justification for wanting to pull the item. However, one of the items you mentioned is changing my position. And that is that, well, we know there's been no complaints, so there's no problem with this business, but as well that moving forward because of the track record of this business industry, we're no longer requiring the five-year stipulation moving forward, is that what I understand? I mean that happened with the last dispensary. Is that how you plan to move forward?

Bryan Cluff: Correct, Mayor Ortega and Vice Mayor Whitehead. It was never required by Code it was applied by practice. And as we have become more comfortable with the uses we have proposed the most recent ones coming forward without the five-year renewal stipulation.

Vice Mayor Whitehead: Okay. So, with the fact that the business has been operating in a manner that we are very grateful for and very respectful and that moving forward we're not even requiring this, then why would we add bureaucracy to this business and so I'm going to go ahead and support it. Thank you.

Mayor Ortega: Councilwoman Littlefield.

[00:53:49]

Councilwoman Littlefield: Thank you, Mayor. I just had a question for you. Are there other marijuana dispensaries currently in Scottsdale that have this five-year limitation?

Bryan Cluff: Yes, Mayor Ortega, Councilwoman Littlefield, of the five dispensaries, including this one, four of them have the five-year timeframe stipulation on them.

Councilwoman Littlefield: So, if we approve this tonight, would you anticipate the others coming forward asking for the removal of the stipulation also?

Bryan Cluff: I would anticipate most likely when the five years come up and they are coming before you to renew, request their renewal, I would anticipate that they would likely request removal of it at that time.

Councilwoman Littlefield: So basically, this is whether or not we want to remove it for all the dispensaries, the marijuana dispensaries. Thank you.

Mayor Ortega: Okay. Councilmember Graham and then Vice Mayor Whitehead.

Councilmember Graham: Thank you, Mayor, and Bryan. I just don't, as I sit here, I just don't see any reason compelling me to lift the stipulation for this and the other ones. It was placed there for a purpose, and I would like to continue with it. So, thank you.

Mayor Ortega: Vice Mayor Whitehead.

Vice Mayor Whitehead: I want to come at this from a different angle than Councilwoman Littlefield. We are always looking for ways to streamline our government so our businesses can thrive with the least amount of bureaucracy but at the same time, public safety is number one. So, while we've had five dispensaries approved with this stipulation, the process moving forward does not have this stipulation. So, indeed, this industry has proven themselves. They don't need the stipulation. And so, I see no reason to penalize the four or the five dispensaries that were first through the chute just because they had the stipulation as a precaution. So, I just would ask my colleagues to consider that perspective. Yes, indeed what we are going to probably see is this layer of bureaucracy removed for all of the businesses, but there is no public safety reason not to. Thank you.

[Time: 00:56:20]

Mayor Ortega: Well, we can only consider one application at a time. So, this subject will come up because it was stipulated for those particular cases. Accordingly, I move to adopt Resolution 12878, approving, yes but I'm making a motion anyway and you can speak to it. Thank you. I move to adopt Resolution number 12878 approving an amendment to an existing Conditional Use Permit, Case Number 10-UP-2015 Number 3 for a marijuana dispensary, eliminating the five-year timing stipulation for the site and only that site, located at 15190 N. Hayden Road Industrial Park I-1 zoning.

Councilmember Durham: Second.

Mayor Ortega: We have a motion and a second. Councilwoman Janik.

Councilwoman Janik: Thank you Mayor. Is Harvest currently up for renewal right now?

Bryan Cluff: Mayor Ortega, Councilwoman Janik, they are not up for renewal yet. I believe they have about two years left on their current use permit. Since they already had another application in with those other items that was set to come before you, they chose to leave this item on the agenda.

Councilwoman Janik: Okay. Thank you. I will not be supporting this. I feel that when they come up for renewal, it gives two additional years to evaluate how things have worked out and I think it's beneficial at this point.

Mayor Ortega: Okay. Well, I see no other comment and the motion has been made to approve the case. All in favor, please record your vote. Okay. It passes 4-3. 4-3. Graham, Littlefield and Janik opposing. We are moving on. Thank you.

ITEM 15 – SWAGS REZONING

[Time: 00:58:42]

Next, we will continue with Regular Agenda item in this case, Item Number 15, Swags Rezoning, case number 2-ZN-2023, Bryan Cluff our presenter and Development Area Manager, please proceed. Thank you.

Bryan Cluff: Yes, good evening again, Mayor Ortega and Councilmembers. The next request on the agenda, related to 2-ZN-2023 is a proposal for a rezoning request for the applicant for a restaurant called Swags. Specifically, this request before you is for approval of a zoning district map amendment that's requesting to change from the C-2/P-3 DO, which is the commercial district with our P-3 parking overlay to our downtown district, with the downtown multiple use type three and also maintaining the P-3 parking overlay and the DO overlay with amended development standards for proposal of a new three-story restaurant at 7323 East Shoeman on a .29 gross acre site.

So, this site is located within our Old Town area. You can see it in the entertainment district to the south of Camelback Road, and east of Scottsdale Road. A closer look at the site here shows it at the intersection of Shoeman Lane and North Wells Fargo Drive. There is an existing building on site that has historically functioned as a restaurant and bar use. And you can see it as directly adjacent to the Galleria Corporate Center Parking Structure. Also, you can see to the north the Maya Day Club and also the Maya Hotel that's currently under construction.

This is the zoning map depicting the existing zoning on the site of c2/p-3 with the downtown overlay and the requested zoning, downtown, downtown multiple use type three with the P-3 parking overlay and downtown overlay.

As I mentioned, the site is within our Old Town area, and within the Old Town Character Area Plan. Shown there towards the northeast quadrant. This is the site location relative to the Old Town Future Land Use Map. This depicts it within the downtown multiple use area, which corresponds to the DMU land use request and the D district. And then also within the development types of our Old Town Character Area Plan, depicting it within the type three area, which is the area of our Old Town area that allows the highest intensity of uses, height and density.

[Time: 01:01:28]

This is the proposed conceptual site plan for the new building. It is a three-story building shown on the corner of the street there, as you can see. As part of the proposal, the applicant would be constructing all new public sidewalks around the building with a 10-foot wide width. I will also point out the bulb out at the corner you see here is new. That's currently not there, and so that would help slow vehicles around the corner in this pedestrian-oriented environment, as well as provide additional refuge area for pedestrians. There is an existing patio on the east side of the building here that the existing building used historically. The applicant is proposing to maintain that. It's in the City's right-of-way and has been subject to the prior license agreement between the owner and the City of Scottsdale for use of that patio. That would be required to go through the adequate process for that license for this new user, as they intend to use it going forward.

The building is about 9100 square feet. I mentioned three stories. On the rear of the property, is a driveway that enters off of Wells Fargo, and you can see in this red box back here, there are 12 on site spaces in that area, and this property owner has rights to 8 of those parking spaces. So those would be 8 physical on-site parking spaces available for the users of the proposed restaurant. These are conceptual elevations of the proposed building. I mentioned it's a three-story building. The highest part of the building is around 56 feet in height.

A summary of some of the project information, I mentioned 9100 square feet and three stories. That building height, 56 possibly reaching 58, in certain areas. The district that it's within in the downtown would allow up to 84 feet in height. Parking required for the uses 30.52 parking spaces. The parking provided is those 8 on site spaces that I mentioned, as well as 18.5 P-3 parking credits and these P-3 credits are associated with the P-3 parking overlay that I mentioned that is currently on the property and provides a credit to the site based on the area of P-3. So those, that's where those 18.5 credits come from. As well as 4.02 in-lieu parking spaces. Those in-lieu spaces are those leased from the City to the property owner to help meet their parking requirement.

Also, in addition to those spaces, 14 physical spaces are going to be provided through private agreement, that the property owner or the applicant has entered into with another property owner nearby towards the west on Shoeman Lane. Those are 14 physical parking spaces that would be available between the hours of 5 p.m. and 2 a.m. I will note those 14 spaces are not required to meet their parking requirement. They meet the parking requirement with the eight on-site spaces and the in-lieu and P-3 parking credits. So, the 14 spaces in the private agreement are not required by the City. They're voluntarily being offered by the applicant through private agreement as part of this request.

[Time: 01:05:01]

Additionally with the request, the applicant is asking for amended development standards for certain components of the site design. The downtown overlay allows this for the City Council to

grant amended development standards for small parcels, which are parcels that are 20,000 square feet or less. One of the requests is regarding the building setback and this is on the Shoeman Lane side, on the north side of the building. So, the red line here is a 20-foot building setback which would typically be required by the downtown district.

The applicant is requesting to amend that down to 13.7 feet shown with the blue line. That request would allow the building to be about in line with other building fronts on the same frontage of the street. On the Wells Fargo side, there's no amendments proposed with regard to the building setback.

And then the second request related to amended development standards the building step back, that's more of the three-dimensional massing, whereas it gets to a certain height, the mass should be pushed back. And similarly, the red line indicates what the typical step back would be in the downtown district and then the blue is being requested. So essentially this line is being moved north in line with the building set back. And then also the point at which the building massing would start stepping back is being increased by around 8 to 9 feet. And then similarly on the east side, on the Wells Fargo frontage, there's no amendment proposed, and the building meets the requirements on that side.

Throughout the public outreach, there weren't a whole lot of comments received initially as it started going through the process, we started to hear a little bit more. Even these numbers on the screen right now are not completely accurate because some more has come in since this presentation was made.

So, we received a few comments in opposition. We have also received four or five, a handful of comments in support of the request. And then the applicant did provide a petition in support that was signed by multiple property owners. And then I will also note that the City did receive a legal protest that was submitted in opposition to the proposed development, by property owners in the area and that legal protest did make up 20% or more of the properties surrounding the proposed development, which makes that legal protest valid. And that valid legal protest requires five votes of Council for approval as opposed to the typical four.

And, again, the action requested this evening on the screen here, and that concludes the staff's presentation. Happy to answer any questions and the applicant is prepared with a presentation.

Mayor Ortega: Thank you. We will move on to the applicant and then there are requests for public comment, and then we'll move to the public comment after the applicant presentation.

[Time: 01:08:16]

Court Rich: Good evening, Mr. Mayor, Councilmembers, my name is Court Rich, I'm honored to be here before you tonight to represent this fine dining establishment that would like to be located in downtown Scottsdale. With me tonight is the development team along with the

owner, Aaron Wagner, who himself is owner of over 100 restaurants around the country and really excited about this opportunity.

So let me jump into it. You know the location. But here's what we have. As you can tell, it's sort of if you are going to open a restaurant, this is a great location. There are a number of, there's apartments. There's the hotels. It's in the heart of it all. It makes sense to have this here.

The current building is what I think we can all agree would not be ideal for the situation. It's not a pretty building. It doesn't do anything beneficial for the area. And instead, what Mr. Wagner would like to do is come in and build something that I think we can all agree is significantly superior to what is there today. He's going to invest millions of dollars to do that, and I will say I know there's some controversy around this case and I will get to it. But with regard to whether this is a restaurant or a bar, he is fully aware that if he were to want to operate a bar, this entire investment would be at risk and at risk of being lost because we cannot do that with his current zoning and the zoning that he's asking you all for. So, keep that in mind as we talk.

It is a restaurant. In fact, the neighbors who are here today, and we've had a chance to work with, that filed the protest, even at the last Planning Commission meeting when the Planning Commission voted 7-0 in favor of this, they indicated if it is a restaurant, we're in full support. And I haven't heard from anyone in all of Scottsdale that's against this as a restaurant. It is a restaurant.

[Time: 01:10:04]

So let me tell you a bit more about it. As I mentioned Mr. Wagner. And I'll take a minute. Swags. Why is it called Swags? His last name is Wagner, and his business is called Wags, that's his investment company. So, someone asked me why is it called Swags, but that's why it's called that. They don't operate bars. They have a series 12 liquor license. You just went through this with the series 6 license and the use permit about a bar. There's no bar use permit. There's no series 6 license. He knows he can't do any of that stuff. Or else, those millions of dollars he is investing in the property could all be lost.

Again, the bar requires a CUP and we are agreeing to aggressive noise reduction stipulations. I will take you through those. At the Planning Commission, we agreed, I think we are the only restaurant and maybe the only landowner in the entire City that has this stipulation. Certainly, one of the only. We're not going to exceed 68-decibels of noise when they measure it across the street. It's already louder than that out there. So, we have to be quieter than what's already going on in the area in order to comply with this stipulation. This will, you know if you wanted to do a bar, this is not compatible with operating a bar, obviously. So, 68 decibels, again, that's like a normal conversation level. This is going to be a restaurant.

Further, the speakers to the extent that there are any outside, this stipulation is unique for restaurants. They have to be pointed in and downward to make sure that none of this music or

noise or anything that would come out of them would be projected out and that's in his interest because he has that very strict stipulation to keep the noise levels very low.

[Time: 01:11:44]

So, we were really happy to be able to sit down and work with the neighbors and talk through some stipulations that we agreed to propose, and we agree to propose these stipulations to you all. In exchange, they agreed to remove the legal protest. What we're still here proposing the stipulations, but they haven't removed the legal protest, but what I want to tell you is that I understand that there's some consternation from your City Attorney's Office or your staff about these stipulations. We ask that you approve them, but even without them, I want to explain why this makes all the sense in the world and why these are more of a belt and suspenders situation.

One of the stipulations is no series 6 license shall be sought for the property. We are happy to agree to that because as you know, we need a use permit to operate a bar anyway. So we cannot operate a bar, even if your City Attorney tells you or your staff tells you don't put this stipulation on there, which we want you to because we worked really hard with the neighbor for it. But even if they say don't put it on there, it doesn't mean we can go operate a bar. We cannot. We have to come back to you all for a CUP if we ever want to do a bar in this location.

The next one, with regard to the subwoofers and the no DJs, no live bands we can't do DJs or live bands without a live entertainment use permit. We already have a stipulation that says that as much and that's just the law in the City. And so, both of these with or without them, Mr. Wagner would be putting his millions of dollars that he's going to invest in this property at risk if he were here really trying to do a bar that is going to be loud and have bands and DJs. He can't do that.

This makes it even clearer, and we support the neighbor, and we are happy to work with them on this and we hope you'll do it. And we think it's consistent with a lot of different types of stipulations that you have adopted over not only late history but recent history as well. I know I'm kind of running out of time. So, I will click through some of these. There was a case earlier this year where it was zoned I-1 but allowed uses in I-G and I-1 to be utilized in the same zone. That was just in February for the Desert Cove Self-Storage. My point with this is I'm going to run through a few. I think you do stipulation kind of like this all the time. Again, we don't need them, but I think you can do them. You did some stuff around the ratio of types of beds within a residential healthcare facility. You typically get involved in business and what's going to be going on there. With the High Street project, you got really involved in unique water stuff I think and things like that, that are very atypical but, again, we are the applicant. We are asking you to do this. This is not something that you are forcing on us, and we will complain about it. So, I hope you'll do it. But again, if you don't, we can't still do any of that stuff. Let me get going.

We have a great deal of community support. We have been out to the neighborhood. These green dots are the neighboring property owners, business owners, and residents that

have signed our petition in support. You will see that grayed out area, that's represented by the neighbor who filed the opposition, right? And I think you have a letter of opposition, it's from another business partner of theirs too. I'm not aware of anyone unaffiliated with the neighbor that's had any issues with this project.

[Time: 01:15:08]

And so let me take you through parking, because in addition to the issue around restaurant, I think parking is the other thing that we've heard the most about. As your staff said, 30.52 spaces are required. My point in all of this is to tell you we are going above and beyond. There's 8 spaces on site. There are P-3 credits, and this isn't something new. The existing site can use those P-3 credits. So, we are not inventing new P-3 credits and then there's four in-lieu spaces. That in and of itself, we meet the requirements, but we have gone above that and gone out and gotten 14 physical spaces within 530 feet. Again, they didn't have to do that, but we want to do that. And then you can actually add an additional, for valeting in those spaces, you can fit another nine. So that gets you up to 23 spaces for a total of 53.49 spaces.

Now, at the bottom of the screen there, sort of maybe I'm burying the lead. But you saw they are right next to the giant parking garage. Like, you can't get better parking, right? And so, The Galleria has stipulated to have 187 public spaces at all times and extra 200 valet spaces in that garage on the nights, on the weekend there.

Let me just show you on a map with these things are. The yellow box is our building. And there's the eight spaces right behind it. There's the off-site spaces that we signed up, and then obviously there's The Galleria, there's another look at the eight spaces. Let me just show you, because we went out and The Galleria really does present a very easy parking opportunity here. Here it is, we went out on a Friday, Saturday, Sunday taking pictures. There are 8 or 9 stories of vacant parking there every night of the week for whatever that is worth but also there's sufficient parking just the public parking that's allowed. So, I think that's all I've got. I will just stop. I will stop there. I'm happy to answer any questions that you have. And Mr. Wagner is here also to say a few words. I know he's signed in as public comment but however he can get his time.

PUBLIC COMMENT

[Time: 01:17:27]

Mayor Ortega: Okay, we can receive public comment if that's okay. So, let's go to public comment. I will call you forward. State your name, place of address and you've got a minute and a half left there. So, let's go to Tim LaSota, Aaron Wagner, and Brian Banks. And this case, Tim LaSota was granted, there were two other speakers that granted their time to Mr. LaSota. So instead of three minutes it will be five minutes maximum, and then Aaron Wagner.

Timothy LaSota: Thank you, Mr. Mayor, and members of Council. I'm Timothy LaSota, and I'm actually here on behalf of four clients, Maya Hotel, Equity Partners Group, Scottsdale Galleria Project Owner and Scottsdale Galleria Landowner and last time we were here, I think it was Councilwoman Janik who said she would appreciate it if the applicant and the opposing party would go back and discuss this. We did. And certainly, we still disagree with the applicant on the necessity for the stipulations, but the bottom line is we did go back, and we discussed stipulations and we came to an agreement as to those stipulations.

Certainly, in your mind, it was contingent upon the presentation of stipulations that were adopted by Council, and we are willing to drop the legal protest if the stipulations are included. But if they're not, we view the stipulations as critical to protecting our interests. So, if those stipulations can't be adopted, because the staff's position is credited, and I will get to that in a minute, but there would be another option for the applicant and that would be a deed restriction. So that's what we would tell the applicant is that if the staff cannot adopt the stipulations, there's a deed restriction way to go also that could garner our support and our withdrawal of the legal protest.

[Time: 01:19:33]

Now, in terms of the stipulations, I do want to talk about that, and I want to talk, there's been some talk about well, you've got to get a Conditional Use Permit anyway. We view, and that's true. But we view a stipulation as being more powerful than a Conditional Use Permit requirement and one the reasons is the legal protest. There's no legal protest for Conditional Use Permit, it's not a legislative zoning act as opposed to removing a stipulation is actually another, it's a zoning case, so it has to go through the full public process. There's also the potential referability and the legal standard is different. The Council has just about unfettered discretion to turn down a rezoning. It's not that way with the Conditional Use Permit. It's just not the type of protection we're looking for. Which is why we sat down and tried to hammer that out. We also think the live entertainment stipulation that we offered or excuse me that we suggested, would, is necessary. It's not covered by existing law, so we do think those are necessary.

Now, in terms of I know there's some discussion already about whether this can be done. I certainly agree with Mr. Rich, that the City has agreed to any number of stipulations over the years. We just had the, it was the 40 Love bar in here. And they, I don't know, and it was picked up by Councilmember Durham, and one of the things in there is they are a Series 6 liquor license, but the City of Scottsdale went ahead and required that they have 15% space devoted to a kitchen. Well, Series 6 doesn't have to sell any food. So, you know, the state liquor department, I think, gives cities, unincorporated counties, I think they give you wide discretion on the type of zoning to adopt.

The other thing I noticed in there is the hours are 5 p.m. to 2 a.m. That's also in the stipulations for 40 Love. Well, under state law you can open a bar at 6 a.m. So, we are already in the

business of essentially adopting these stipulations that I think are critical to zoning cases because they allow parties who otherwise cannot agree, this is a perfect example, they allow compromise.

And if you get rid of the stipulations, you don't allow them, I think you eliminate that. I think one the other things is, you know, the notion that you can have a requirement in your Code that you've got to go every single bar, every single series 6, has to go and get a Conditional Use Permit and that's okay and yet for one single project, if you stipulate, essentially to that as part of the zoning case, you are going to incur the wrath of the Department of Liquor or anyone else. I just don't see that happening. I think the two are, I think what we're asking for here, I think, is much less burdensome on the state regulatory requirement than the CUP requirement is, and no one has ever suggested that was illegal.

[Time: 01:22:44]

So, I think at the end of the day, we would ask, we are looking for stipulations, they are to essentially to bar live entertainment, DJs, et cetera, and that a Series 6 liquor license not be attached to this property. We do think it's critically important. We disagree with the applicant in that regard and that basically makes into a completely, making that as part of the zoning case makes that a completely sort of political decision on the part of the Council, as opposed to kind of a CUP, which is more administrative and more check the box. We think it's critically important. We have a big investment in the Maya Hotel. We want to make all of this work. We worked very hard to do so. We just, and last thing I will say, is Councilmember Durham talked about. Well, is it a bar or is it a restaurant? We just want to make sure this stays a restaurant and does not create noise that really causes a problem for our hotel and frankly puts us out of compliance with our covenance to our lender. So, with that, I'm happy to answer questions.

Mayor Ortega: Thank you. At this point, we will move on to other public comment. We have Aaron Wagner and Brian Banks.

Aaron Wagner: Hi, Aaron Wagner. I'm the applicant. I'm the founder of Wags Capital and the restaurateur and managing partner of all the restaurants, including the proposed Swags. So how much time do I have, Mayor?

Mayor Ortega: You have three minutes.

Aaron Wagner: Okay. Perfect. Great. So just as a formal introduction to all the Council, I grew up in Canada. I'm an immigrant here to the United States, came when I was 17 years old on a football scholarship and played college football and got a degree and went on to play professional football. And I have really viewed the United States as an incredible place where anybody can really pursue the American dream. And I think my life is kind of the epitome of that.

I have been married 18 years to the same woman. I have seven children with her and two years ago we bought a home here in Scottsdale. We love Scottsdale. We're looking for a new home here right now, because we love it so much. We're based out of Utah. We have been there for over 15 years. And when we first started visiting here, because my two older girls golf, they are both ranked top five in the world, 16-year-old and 12-year-old, we just fell in love with the place, and we really wanted to be here.

And I had the opportunity to buy this building and I have been in this business and bringing high-end restaurants for a long period of time. I think, you know, Court hammered it pretty hard, but I'm not in the bar business. I don't operate any bars. All of the operations that I do in my company are restaurants. And so that's the own thing that we intend to use this business for and operate as a restaurant. We are excited to do so. And we think it's a great location for that because of everything that's around it.

The last couple of things that I just wanted to touch on were, you know, there being some opposition previous to this, we were able to sit down with Shawn Yari's group and the neighbors and I personally, and Court, we went in there on their home turf for three hours and sat down with Mr. Yari personally, and his entire team, their counsel, all their operating partners, all the above and it was an amicable discussion.

I think one thing that they could probably support is that there was some pretense misunderstanding about who I was and what my intent was for the property going into that meeting and I was able to make it very clear that that those were not the case. I think we found some very common ground. In terms of these stipulations, I hope that they can be put in place just for the ease of this taking place because me knowing the, really the only person knowing the true intent of this location and what this project is for me, I think this is just my easiest path. I have been at this almost two years now and spent over half a million dollars just in this process through legal. So, at this point, I really just want to open a great restaurant and feed the residents of Scottsdale.

[Time: 01:27:11]

With that being said, with all due respect to the opposition, I do totally agree with Rich in the sense that I don't believe they are necessary. I never thought they were necessary. I've just only been agreeing to them because I felt like there's been a really tough path to go against somebody that's done a lot of great things for this community with Shawn Yari's group. They have some incredible properties; they have invested a lot. He shared that with me, and I can respect that and I'm hoping to get there as well. So, I hope you guys will support it either way and appreciate you guys' time.

Mayor Ortega: Thank you. Next, we have Brian Banks.

Brian Banks: How are you doing, members of the Council. I'm here as really just a neutral third

party. I'm just a resident of Scottsdale. I live within earshot of the entertainment district. I hear it every night. It doesn't bother me too much. So, I can respect some of their concerns with the noise level. I don't think it would be a concern. I really have no dog in the fight. I met Mr. Wagner an hour ago. I don't know the other side. I know some of the great projects that the other side has done. I think that this project would be a lovely use for the building.

Like I said, I live in the area, and you know, the more competition, the more restaurants I can eat at, the happier I am. You know, as I said, neither here nor there. I hope you guys approve this project. It's going to be great for the community and I'm excited to have more entrepreneurs like Mr. Wagner in our community, you know, just producing for all of us. The more the merrier. So that's it. Thank you.

[Time: 01:29:04]

Mayor Ortega: Okay. Let's get back to Mr. Court if you would like to respond to any particular points, and then I have a question or two for you.

Court Rich: Thank you, Mayor, Council, a couple things and thank you for the opportunity to respond. First, there was a notion that there should be a deed restriction or a private sort of way of settling this issue. And we have certainly used those in other zoning disputes, but this is, these are really two competitors. This is not sort of a homeowner and a business complex going in next door. And it's just, we think it's not a feasible position to give a competitor of your industry an ownership interest in your property and so that's just a nonstarter, again with the backdrop of we don't really need this to accomplish the goals that I think are already accomplished by the stipulations that are in place.

With regard to the notion that it's stronger to have the stipulation and the zoning than the CUP, you all turned down Conditional Use Permits for bars whenever you want. I know throughout the years I've represented many of those bars that come before this Council and sometimes you win and sometimes you lose. And I have no doubt, especially after we are up here swearing up and down and showing you that this will never be a bar. I certainly would not represent Mr. Wagner coming up here asking you for a CUP for a bar on this site. It makes no sense, and I would fully expect you all to say no to that.

So, we think this is a great, great project. I never imagined in a million years that proposing a nice restaurant in the downtown would have this much controversy and this much craziness, and I'm sorry it's come to that for you all. But I'm happy to now stop and answer any questions. We've got our traffic engineer here as well if you have questions about that, our design team, and Mr. Wagner is available as well.

Mayor Ortega: Good. Yeah, I have a couple of questions. First of all, just fundamentally, what would the building look like, the restaurant look like, if it was built under the same zoning that it has already? And I say that because it seems to be many parking tricks and I have been around

downtown and in-lieu and other purposes. So, what would it look like if the zoning was as is?

Court Rich: Mr. Mayor, that's a great question, and the reason why we need this zoning change is to get the extra footage, the extra area for more tables to make it make business sense and so they need that roof top area which allows a third floor of tables and that's really about the revenue for the business. So right now, we could do two stories, but we would not be able to do the roof top area. So that would not economically make sense for the applicant.

Mayor Ortega: Well, and then secondly, you asked for amended standards, which would be in this case, brought forward to the curb and then ascend and then, you know, change. Why couldn't you ask for an amended standard that maybe did that, but then step back at the second or third floor? The reason I'm saying that is because it's crowding the street, in my opinion, and an amended standard doesn't have to be all or nothing. I mean taking that same angle where a tier or a wedding cake may be another solution with possible terraces, you know, on the second floor.

[Time: 01:32:39]

Court Rich: Mr. Mayor, first of all, I know that there are challenges again with the size of the site and how much space we have to operate and to utilize. I don't know if anyone wants to have a comment on that as well. Thank you. If I can. If Mr. Wagner can...

Aaron Wager: One of the easiest answers to that, Mayor, is one first the amended standard of moving the setbacks closer towards the street simply mostly was to give me more of a footprint on the property because if you noticed it was a really small site. It's .29 acres. So, it's public information, I paid \$4.5 million for this tiny little building and to get extra 6 feet is a big deal in terms of seating to be able to make the numbers work to make this work. In addition to that, we wouldn't have asked if it actually changed, but if you look at the entire street, all we're doing is actually bringing our building out to the exact same level as all the other buildings that are on that street. So, it's not like we're protruding out. We are actually just trying to level up with the rest of the street.

Mayor Ortega: Okay. There's a couple of other questions from Council. Since you are up there too.

Aaron Wagner: Yeah.

Mayor Ortega: I believe we should have shaded walkways.

Aaron Wagner: Can you say that again?

Mayor Ortega: Shaded walkways. I know this is conceptual but sometimes this bulky mass ends up being what we get, and shaded walkways is what makes it interesting whether you have

some outdoor dining or not. Now, that's not a, well, I don't see it in your project and it's something that I tend to talk to people about when, because it's that trademark of Scottsdale. And it's a really welcoming aspect, especially on a gateway project like this. Councilwoman Caputi? Do you have a question?

Councilwoman Caputi: Not a question. Thank you, Mayor. I just want to motion to recess to Executive Session, please.

Mayor Ortega: Okay so we have a motion to recess to Executive Session.

Vice Mayor Whitehead: Second.

Mayor Ortega: We have a second. What this means is we will be able to consult with our attorneys regarding this, City Attorney, any other explanation, what we do and say is pertaining to legal matters and this particular case, the zoning case itself. Seeing no other further comment, please record your vote to go into Executive Session. Thank you. We're unanimous. We will resume shortly.

EXECUTIVE SESSION

[Time 01:35:23]

Mayor Ortega: We have returned from the jury box, oh, wait, wait. We have returned from Executive Session, and we'll resume our regular scheduled meeting. Chair recognizes Councilwoman Caputi.

Councilwoman Caputi: Thank you, Mayor, I would just like to start by making a motion to continue the case to whatever the Clerk decides is best, January 25th, I'm sorry, January 9th available? Whatever the first available?

City Clerk Ben Lane: Councilwoman Caputi, the two dates are January 9th and January 23rd.

Councilwoman Caputi: Then I motion to continue the case to January 9, 2024.

Councilwoman Janik: Second.

Mayor Ortega: Excuse me, we have the City Attorney for a second.

City Attorney Sherry Scott: Thank you, Mayor, and Councilwoman Caputi. Perhaps we could ask the applicant if that's a date where they'll be able to come and appear and talk to the Council about their case?

Mayor Ortega: So, before we get a second, we have the representative for the applicant and

there is an opportunity to discuss a continuance and the grounds for whether one would be granted at this time. But just on the point of whether, we don't have a second yet on the continuance. Did you have any comment?

Court Rich: Mr. Mayor, Councilwoman Caputi, I certainly would be interested in knowing what you would like us to try to do over the next month if there's some input that you could have for us, that would help as we evaluate this. Thank you.

Mayor Ortega: Okay. So we, I will call on Vice Mayor Whitehead.

Vice Mayor Whitehead: I think I will fill in some for that. So, there is some conflicts that we're dealing with that are legal in nature which is why we had the Executive Session in that there's some private agreements that would be beneficial. Both sides have agreed that the stipulations would be good, but they are not stipulations this Council is going to make. So we would like to, in my opinion, I think this is an excellent project. And it fills a tiny little spot and with a nice upscale restaurant but because of the challenges between the parties and also, I had negotiated with the applicant regarding a private parking lease which I'd like to see that included in the packet, even though the City's not a party to that, and we don't enforce that, it would be good to have that included.

So, I would say there's a few loose ends on our end that we, I personally would like to see and referring to Councilwoman Janik's stern direction from the last time, I think additional communication between the two parties. The City cannot be the principal in this case. I hope that helps and I'm seconding the motion.

Mayor Ortega: Okay. So, you did second the motion. At this point, we're going to have a discussion, but I see the applicant has also had direct discussion. Could you come up? That would be good, Aaron, and we'll discuss the continuation but go ahead.

[Time 01:40:01]

Aaron Wagner: Yeah, what I would like to understand a little bit more, and I appreciate you sharing that, Councilwoman Whitehead, but what else needs, I would really like to get a clear scope. With all due respect, I have been at this two years and just in the last two months spent six figures in legal fees to get to this point, there's not a city in the country that brings in a nice restaurant to a dilapidated building would be this difficult.

So just let me just ask you this. I have dotted every I. I have crossed every t. This parking agreement is signed. We can provide it today. With all due respect, another continuance for me which if that's all I can get, I will take it because I don't want the deal to be put to bed. But at the end of the day, me even agreeing with my neighbor in these things, I feel is very irrelevant to you guys just approving the project that I've met every single thing they've had asked for. I have gone over and above on parking, on noise. I'm already compliant everywhere.

And so, I just, if I'm going to be asked to do another continuance and keep spending money and keep waiting, which is my livelihood, I really want a comprehensive look of what I have to win at for the next month or whatever that period of time is, because I'm just getting strung along and it's really, really hard.

Vice Mayor Whitehead: I will add my two cents worth, and I will let my colleagues fill in. I support this project, but we've had both, we've had both your side, the applicant, you the applicant and the owner, ask us to put stipulations in this that we cannot. And we've had that from the party that did the legal protest. So, I personally would like to see that request go away, and I preferably would like to see the legal protest go away, but that doesn't affect my vote.

Mayor Ortega: Okay. Councilmember Graham, again, we're speaking directly to the continuance or providing more information to the applicant. I appreciate the question. Councilmember Graham, Councilmember Durham.

[Time: 01:42:17]

Councilmember Graham: Thank you, Mayor, just a question for the parliamentarian. The protest requires, or allows three votes would be a no; is that correct, it would be a denial?

City Attorney Sherry Scott: The protest requires, well, with the protest...

Councilmember Graham: Yeah.

City Attorney Sherry Scott: To approve this zoning case it requires five votes.

Councilmember Graham: So, three votes would be a denial. So, if you did a motion to continue, would that also require a supermajority?

City Attorney Sherry Scott: That requires a simple majority of four votes.

Councilmember Graham: So, could you contemplate a scenario, you keep, you do a majority vote to delay it or to avoid the requirements or the requirements of the legal protest?

City Attorney Sherry Scott: Well, I would think that at some point, this applicant would just ask to be voted up or down without a continuance, and I know the Council well enough to know that the Council wouldn't be making a motion to continue just to string an applicant along.

Councilmember Graham: Yeah, no, of course not. Okay. Thank you. Thank you, parliamentarian, thank you, Mayor.

Mayor Ortega: Okay, Councilmember Durham.

Councilmember Durham: Thank you Mayor. Mr. Wagner, I understand where you are coming from on this. You have done everything you need to do, but your problem is sitting over here. It's Mr. LaSota and the legal protest.

Aaron Wagner: Yeah.

Councilmember Durham: And that's something we don't have control over. And so, I think what we're trying to tell you is we can't be the referee between you two. That's not our role. We can't enforce an agreement like that. So, what we're looking for to you to do is for you two parties to figure it out for yourselves. You can make a private agreement, says whatever you want. We can acknowledge that private agreement as we go forward. But the City can't be in a position of enforcing that agreement either for you or for Mr. LaSota's clients. That's the reason that we are asking for a continuance is that the two parties here can figure it out between yourselves and come up with a solution, which I think all of us hope you do. But that's the situation we're in. We can't enforce your agreements with you, between the two of you.

[Time: 01:44:58]

Aaron Wagner: That's understandable. Is there anybody else that wants to add to, that because I'd like to just hear it all.

Mayor Ortega: Well, the way the case is presented, I cannot support it. And I say that because I believe that your zoning as is, and in other words, I would rather give a vote tonight up or down, and that's why I'm not going to support the continuance. I think that, I mean, that's my feeling about it. You've come down the road a long road, and whether there's an impasse, you know, between competitor and so forth is really hard for us to be able to look at. I also think that the downtown zoning that you have probably you could get what you wanted with some stipulations to that versus going to the rezoning, but that's just an opinion. And right now, you are pretty deep into the rezoning request. So, I see no other hands to speak. The motion is to continue this item until the second meeting in January, is that the 23rd?

Clerk Lane: Mayor Ortega, I believe Councilwoman Caputi's motion was to January 9th.

Mayor Ortega: Okay. Excuse me. Okay. Merry Christmas. Okay. Sorry. January 9th. And please record your vote. Okay. The motion does carry. So, we'll be able to see you back after the new year. Thank you so much. Hopefully some progress will be made in the meantime. Next, we will, that concludes our regular agenda item.

PUBLIC COMMENT

[Time: 1:47:02]

Next, we will go to Public Comment. Public Comment is the second opportunity for citizens of

Scottsdale businesses, owners, or property owners to come forward on any non-agendized item.

I'm told there is no request for Public Comment. Therefore, I will close Public Comment.

CITIZEN PETITIONS

[Time: 01:47:20]

Moving on to Citizen Petitions, we are allowed to bring forth petitions through the Clerk's Office. Seeing none, that matter is closed.

At this point, I would request well, I hope everyone has a wonderful, we'll see you tomorrow.

ADJOURNMENT

Councilmember Graham: Motion to adjourn.

Mayor Ortega: Motion to adjourn. Second?

Councilwoman Janik: Second.

Mayor Ortega: Please record your vote. Councilmember Durham.

Councilmember Durham: Yep.

Mayor Ortega: Sometimes it's sticky. Thank you. We are adjourned.