



Twin Falls Planning & Zoning Commission Minutes

Tuesday, October 9, 2018, 6:00 PM

203 Main Avenue East
Twin Falls, ID 83301

Members -

City Limits: Danielle Dawson, Vice-Chair; Craig Hawkins; Gerardo "Tato" Muñoz, Chairman; Ed Musser; Carolyn Bolton; Curtis Hansen; Craig Kelley

Area of Impact: Ryan Higley; David Detweiler

1) Confirmation of Quorum/Call Meeting to Order

Chairman Munoz called the meeting to order at 6:00 pm. He then reviewed the procedures for the public hearing with the audience, introduces staff and confirmed a quorum

Members Present: Dawson, Hawkins, Munoz, Musser, Bolton, Hansen, Kelley, Detweiler

Staff Present: Barnhart, Cherry, O'Connor, Kingsbury, Kenworthy, Nope, Spendlove, Strickland, Wright

2) Consent Calendar

a) Approval of the following Findings of Facts and Conclusions of Law:

- Al Gamache-SUP
- Core Cycle-SUP
- Dutch Bros-SUP
- Tayler Chapin-SUP
- Eastland Storage Solutions-SUP

3) Items of Consideration

- #### a)
- Request for the consideration of the preliminary plat for Kaitlyn Court Subdivision, approximately 2.01 (+/-) acres consisting of 8 lots located along the 500 Block of Borah Avenue West c/o EHM Engineers, Inc, on behalf of Kaitlyn Courts, LLC (app. PZ18-0068)

Applicant Presentation:

Tim Vawser, EHM Engineers, Inc representing the applicant, he stated they are here tonight to request that the preliminary plat be approved. The property is approximately 2.01 Acres and consists of 8 lots, is zoned R-4 and is located south of Borah Avenue West. All of the parking for the development is interior to the subdivision. A few items discussed at a previous meeting by the neighbors was about an irrigation lateral and traffic flow. The irrigation lateral referred to in the discussion is not located in this

subdivision. As for the traffic conditions, the property meets the traffic flow requirements for an R-4 zone. The development has been designed to be in compliance with the zone and the Comprehensive Plan.

Staff Presentation:

City Planner O'Connor stated this is a request for the consideration of the preliminary plat for Kaitlyn Court Subdivision, approximately 2.01 (+/-) acres consisting of 8 lots located along the 500 Block of Borah Avenue West.

As per Twin Falls City Code 10-12-2.3: The Commission may approve, conditionally approve, deny or table for additional information when acting on the preliminary plat. If tabled, approval or denial shall occur at the regular meeting following the meeting at which the plat is first considered by the Commission. The action and the reasons for such action shall be stated in writing by the Administrator and forwarded to the applicant. The administrator shall also forward a statement of the action taken and the reasons for such action together with a copy of the approved preliminary plat to the Council for its information and record.

There is minimal history on this property other than it was Farmland since at least the '50's and '60's. This is a request for approval of the Preliminary Plat for Kaitlyn Court, a 2.01-acre subdivision with eight residential lots at the intersection of Rose St and Borah Ave. This plat complies with the standards as outlined in the City's General Subdivision Provision of Title 10, Chapter 12, Section 3, all regulations regarding R-4 zoning development standards, and the 2016 comprehensive plan. All general criteria for approval have been met, per State Statute 50-13.

Approval of a preliminary plat does not constitute a commitment by the City to provide water or wastewater services. The plat indicates that each lot will be connected to the City of Twin Falls water and sewer systems. A guarantee of services comes when the City Engineer signs a will-serve letter after final and construction plans are reviewed

A final plat that is in conformance with the approved preliminary plat and including any conditions the Commission may have required is then presented to the City Council. Only after a final plat has been approved by the City Council and construction plans approved, may the plat be recorded and lots sold for development.

Should the Commission approve the preliminary plat, as presented, staff recommends approval be subject to the following conditions:

1. Subject to final technical review and amendments as required by building, engineering, fire, and zoning officials to ensure compliance with all applicable city code requirements and standards.

PZ/Questions & Comments:

- Commissioner Bolton asked how this plat relates to the Special Use Permit request at

the last meeting.

- City Planner O'Connor explained that they are not related, Special Use Permit is for land use, the preliminary plat is for the subdivision of land. They are two separate processes.
- Commissioner Munoz clarified that the property has an R-4 zoning designation, this is just a review for the lot sizes and subdivision of land.
- Commissioner Dawson asked if the street shown on the plat a private drive.
- City Planner O'Connor explained it is a private drive.

Public Hearing: Opened & Closed Without Testimony

Discussions Followed: Without Concerns

Motion:

Commissioner Bolton made a motion to approve the request, as presented, with staff recommendations. Commissioner Musser seconded the motion. All members voted in favor of the motion.

Approved, As Presented, With the Following Conditions

1. Subject to final technical review and amendments as required by building, engineering, fire, and zoning officials to ensure compliance with all applicable city code requirements and standards.

4) Public Hearings

- a) Request for the revocation of Special Use Permit #1233 issued for the purpose of operating an indoor recreation facility with extended hours of operation on property located at 139 Shoshone Street North. c/o City of Twin Falls (app. PZ18-0075)

Staff Presentation:

P&Z Director Spendlove stated this is a request for the revocation of Special Use Permit #1233 issued for the purpose of operating an indoor recreation facility with extended hours of operation on property located at 139 Shoshone Street North

Per City Code 10-13-2-3: The commission may initiate revocation by adoption of a motion. The permit holder shall be notified of the motion, the change in circumstances which have been alleged to occur and the adverse impact the changes made, and the conditions alleged to have been violated. A public hearing would then be scheduled and held, where the permit holder will have the opportunity to address the allegations, and the Commission will be tasked with making a decision on revocation.

In Aug 1993, Ordinance 2413 was adopted changing City Code to include the limitation on the Retail Hours of Operation within the CB Zoning District. At that time, the business

located at 139 Shoshone St N was reported to be a music store. This type of use continued until the early 2000's when the music store vacated the space. Our records indicate the space had a time of vacancy, the length of vacancy is not entirely known, but our records indicate from 2001 until late 2005. This period of vacancy is important, as it "reset" the requirement for this location to now conform to the hours of operation (7:00 AM - 10:00 PM).

In 2006 Charlies Food Store requested a liquor license to serve bottled and draft beer for consumption on the premises. This request was granted by the City Council on Feb 27, 2006.

In June 2011 Special Use Permit #1233 was approved. This SUP was granted for Extended Hours of Operation and an Indoor Recreation Facility. This permit granted the right for the retail operation to be open past 10:00 PM on Wednesday, Friday and Saturday nights. It also permitted the "dance floor and live music" (see attachment).

In September 2017, the Planning and Zoning Commission took action to initiate revocation of SUP #1233. A Public Hearing took place on October 24, 2017. The commission voted to table the item until December 12, 2017. An additional Public Hearing took place on December 12, 2017. The motion to revoke the Permit failed by a vote of 1-4.

On September 11, 2018 the Planning and Zoning Commission initiated the revocation process and the public hearing was posted for October 9, 2018. The evidence of the Special Use Permit violation comes in the form of the applicant admitting they have been open on Thursday nights, multiple sources of posted hours of operation (see attachments) and some police activity on those nights. This evidence is only representative of research conducted during this past calendar year. On this information alone, the Commission has reason to revoke the Special Use Permit due to violation of Special Use Permit #1233, Condition 3.

Beyond the violation of the Special Use Permit, Staff is including further information regarding the public safety concerns.

Between January and October 2018 there were 66 calls for service attributed to this location (Business or Parking Lot) between the hours of 1:00 AM and 4:00 AM. The calls of serious note are 3 Battery's, 12 Fights, 4 Parking Lot Clears. Between January and October there have been 35 weekends, this indicates the police are being called to this area on average two (2) times each weekend.

For perspective, Staff tallied the numbers of total calls for service from January thru mid-September between the hours of 1:00 AM and 5:00; and compared that to the calls we responded to this location. Nearly 1 of 11 calls to the police department between these hours (1:00 – 5:00) was to this address. The City of Twin Falls has approximately 20,000

properties within the city limits. This one property has been attributed to every 11th call to the TFPD, for the time-frame they operated after 1:00 am. This is a significant drain on police resources. It is a significant safety issue for the surrounding property owners. Lastly, the applicant has not been able to contain the patrons wishing to frequent this establishment after 1:00 AM.

The Police Department would like to submit 2 videos as evidence of the safety issue they are facing. In these videos, you will see a few things: 1. Our police department is vastly outnumbered on a regular basis when attempting to investigate the numerous fights, disturbances, batteries, etc. It consistently requires every available officer (including calling in resources from the County and the State Departments) to contain the situation and property investigate the crimes. 2. The lack of control shown by the operator to limit the number of patrons inside the building which results in fire code violations for overcrowding and is a significant safety risk to the public and the patrons themselves in the event of a fire or other emergency situation.

{Videos shown here}

PZ/Questions & Comments:

- Commissioner Munoz asked for clarification on the time stamp.
- Officer Wright, explained the time is a Greenwich Mean Time-GMT, Idaho is 6 hours behind GMT, for example 7:54 am was approximately 1:54 am MDT.

Staff Presentation Continued...

Since meeting with the owner on September 7, the building safety portion of the issue has been improved. However, one of the videos shown took place two (2) days after Staff met with the operator. Due to the potentially escalating situation we feel it may be appropriate to elevate the conversation to a higher level of consequence order to create a safer environment for the owner, neighbors, patrons, police and ultimately the residents of the City of Twin Falls.

After conducting multiple internal discussions, City Staff (Police, Fire, Building, and Zoning Staff) do not wish to pursue barring an owner, or operator, from the ability to earn a living. The City strives to provide a consistent commitment to ensuring community residents have access to employment that supports personal and family well-being.

However we have also committed to provide a community where people feel and enjoy a high level of safety through crime and fire prevention, and enforcement of quality of life issues.

In conclusion, City Staff recommends amending the hours of operation for this business to 1:00 AM. As well as an additional condition whereby the commission may review the permit if public safety issues arise at any time in the future, or if circumstances arise which appear to violate the standards listed in City Code 10-13-2-2-(D).

The Commission is tasked with making a decision on this item. The Commission may do one of the following:

1. Take no action on this item - deny the revocation by voting no on the motion. (The business will continue operating as is).
2. Table the item to a future date in order to gather more information.
3. Modify the Special Use Permit by motion; including new conditions on hours of operation and/or other pertinent limitations.
4. Revoke the special use permit by voting yes on the motion. Thus reverting this property to the base zoning code allowances (no extended hours, and no dance floor).

PZ Questions/Comments

- Commissioner Detweiler asked if the wrist band is used to keep a count of people entering or to charge for entry into the building.
- PZ Director Spendlove explained that the Commission will be given the opportunity to speak the business operator however his understanding is that they have 99 wrist bands and they would not give out anymore, he is not sure about charging.
- Commissioner Hansen asked if they have security staff.
- PZ Director Spendlove explained staff has been told that there is security.
- Commissioner Munoz asked if the hours of operation changed on Thursdays.
- PZ Director Spendlove explained since the meeting with the business operator the business has not been operating after 10:00 pm on Thursdays.
- Commissioner Hansen asked for clarification on activity and times of these occurrences.
- Chief Kingsbury explained that as any other City where you have businesses that sell beer, wine and spirits on weekends there will be calls to those businesses on occasion. However, at 1:00 am those business are required to close, at that time people leave those establishments and travel to this location. The majority of the calls occur at this establishment after 1:00 am. The calls for service for this area between 1:00 am – 5:00 am average 1 out of 11 of the call responses on weekends are at this establishment. People are coming to this location to continue partying. The police department do perform a walk-through of the facility the Saturday AM, after meeting with the business operator, and found things were in good order. However, the next morning Sunday around 2:00 AM the occupancy within the building was controlled however the crowd outside in the parking lot increased in size and people were in the parking lot consuming alcohol. The size of the crowd leads to a huge police presence, it takes all of their resources to address problems at this establishment, with assistance from the State and County also.
- Commissioner Hansen clarified, that if all of the officers are at this location addressing problems, does the police department have enough resources to respond to other calls that may be of a serious nature.
- Chief Kingsbury, explained not the resources would not be available if another serious emergency occurred during this time.

- Commissioner Kelley asked if there could be some clarification on officer response.
- Chief Kingsbury, explained that whenever the officers respond to a disturbance at this type of establishment there is a heightened sense of awareness. Over the last year this particular location has become a routine call and if a call comes in at this location more than one office will be sent to respond and most often all available officers will be sent. A normal disturbance at any other location 2-3 officers would respond.
- Commissioner Bolton asked if the officers feel threatened personally when they respond to the calls at this location.
- Chief Kingsbury stated yes, safety for themselves is a concern. He asked Officer Hendrickson if during the night shown on the video if any arrests were made. It was explained to him that because of the lack of manpower and the size of the crowd no arrests were made for fear of a riot. He clearly understood the officers were clearly outnumbered and agreed with the decision. To date there have not be any cases of lethal force.
- Commissioner Munoz explained that he would like to have the business operator or their representative speak to the Commission at the beginning of the public hearing portion, but limit the time to two minutes for other citizens to speak.
- Commissioner Hansen asked if the Special Use Permit is revoked, can the applicant re-apply for the Special Use Permit with corrective actions for addressing these issues.
- PZ Director Spendlove explained that code does not restrict someone from applying for the Special Use Permit again if it is revoked. In the meantime they would have to restrict their operations to normal hours and eliminate the use of the dance floor. The process from the time the Special Use Permit is submitted to the time it can be scheduled is approximately 42 days, due to public notification requirements.
- Commissioner Bolton asked if the Commission chose to amend the conditions on the existing permit, can the hours be changed.
- PZ Director Spendlove explained yes, the Commission can add, remove, or amend any conditions or hours of operation. If amendments are made the business would have to abide by these amended conditions from this point forward.

Business Owner/Operator Testimony

- Berhan Hetemi, the owner/business operator, explained that he is willing to answer any questions the Commission may have, and apologizes for having to be here again. There are things he has attempted to do since the last time he was in front of the Commission but they have not been successful. He is not trying to create problems between him and the City or the police. On the first video that was shown, he called the police because there were too many people in the parking lot. Once they reach their occupancy limit the people outside are told to leave because he doesn't own the parking lot, and his 6 security guards aren't able to manage it by themselves. He has posted a no loitering sign thinking that if tickets were issued for loitering that would help the situation, but tickets have not been issued. He has no control over the

people in the parking lot. He has even closed early to assist in getting the crowd to leave. Twin Falls is growing and there is going to be a need for more officers and more places for people to go out. He has made changes to control the amount of people he allows in his business. The first time he implemented the changes he called the police because there were too many people and he needed help getting them to leave.

- Commissioner Bolton asked how he could improve on providing security for his business without having to use the police.
- Mr. Hetemi stated having the correct no loitering sign would make the difference allowing the police to issue tickets.
- Commissioner Bolton explained that is still involving the police in controlling the people in the parking lot.
- Commissioner Hansen asked if the majority of his business is occurring during the extended hours.
- Mr. Hetemi explained yes, he has estimated about \$54,000 a year just from the two extra hours.
- Commissioner Hansen asked if the parking lot is a shared parking area and if the business shares in taking care of the space.
- PZ Director Spendlove explained the parking lot is a public lot.
- Commissioner Dawson asked for clarification on the wristband.
- Mr. Hetemi explained the customers enter through one door and exit out another. When they enter they are given a wristband and they also keep count with a clicker. They have 99 wristbands and when people leave they have to give back the wristband.
- Commissioner Dawson asked about controlling the people at the doors as shown in the video.
- Mr. Hetemi explained the video was prior to him learning that any business with an occupancy of 100 or more would require a sprinkler system.
- Commissioner Dawson asked how the customers know where to exit.
- Mr. Hetemi explained he has security at each door.
- Commissioner Dawson asked about the hours on Thursday and if they would like to operate with extended hours on Thursday also.
- Mr. Hetemi explained he doesn't need extended hours on Thursday because there is not enough business.
- Commissioner Hansen asked for clarification about being open on Thursdays after 10:00 pm, because this was discussed during the last revocation discussion.
- Mr. Hetemi explained that he has been open past 10:00 pm on Thursdays since the last meeting where revocation was discussed, because he misunderstood the conditions of the permit.
- Commissioner Detweiler asked if they serve alcohol after 1:00 am.
- Mr. Hetemi explained they stop service at 12:50 because that is required by law. After 1:00 am they are serving non-alcoholic beverages, hookah, and people are there dancing.

- Commissioner Detweiler asked about security within the building.
- Mr. Hetemi explained they have security in the building and they have radio communication for them to use.
- Commissioner Munoz asked about the limit of 99 wristbands, why that number was chosen.
- Mr. Hetemi explained they have always started with 100 wristbands.
- Commissioner Dawson asked when they started using the wristband to restrict occupancy.
- Mr. Hetemi explained he has always used the wristbands, originally he thought based on the blue-prints he was allowed 150 people, however after meeting with the Fire Marshall he found that he is limited to 99, and the building would require a sprinkler system to allow for more. Once he found out about this he started restricting the occupancy to 99 and has been abiding by that requirement for approximately a month.
- Commissioner Dawson asked about him using the police to provide security for his business in the parking lot, and was wondering if they have called the police for inside the establishment.
- Mr. Hetemi explained he has never had to call the police for a disturbance inside the establishment, police do enter randomly because they are doing an inspection to make sure all of the liquor is securely put away. They have had to make people leave the establishment if they cause issues inside and they will call the police if they continue to cause problems in the parking lot.
- Commissioner Kelley asked about the hours of operation listed on the multiple websites even after the meeting with the City explaining the allowed hours of operation.
- Mr. Hetemi explained he will have to have that information corrected.
- Commissioner Hansen asked when the occupancy was exceeded in the video why didn't they shut the music off and announce to the customers that if they don't have a wristband they need to leave.
- Mr. Hetemi explained since the video they have changed the way they operate and nobody is allowed in the establishment without a wristband.
- Commissioner Munoz explained that the Commission the discussion is related to the revocation of the permit and reviewed the requirements for approving a Special Use Permit. He explained the Commission cannot give recommendations on how to resolve the security issues.
- Deputy City Attorney Nope clarified that this request has come before the Commission based on City Code Title 10- 13-2.3. In this section of the code it list three criteria under which a revocation can occur.
 1. When a significant change in the use which does adversely impact neighboring developments occurs.
 2. For violation of supplementary conditions, safeguards and/or restrictions imposed by the city council or the planning and zoning commission at the time the permit was granted.

3. Use of a zoning permit or certificate for a use other than the use for which said permit or certificate was issued.

The items listed by Chairman Munoz is the criteria under which a Special Use Permit can be granted. Once the permit is issued City Code 10-13-2.3 A outlines the criteria that can be used for the revocation process.

PZ Director Spendlove read the three criteria for revocation into the record. He explained staff has presented that there has been a violation of the conditions.

Public Hearing: Opened

- Tony Prater explained that he has a business that operated close to this business, there is a lot of waste left in the parking lot, he would agree on an amendment to the hours of operation. The outside activity decreases in the colder months but there are lots of things left behind because of the patrons that visit this establishment.
- Dana Benkula explained that her mother-in-law owns the building, she is here to speak on behalf of her employees, they have had to refrain from dropping off paperwork due to safety issues, the amount of debris left in the parking lot is also significant. She understands that this family that is trying to make a living but amending the hours would help.
- Ryan Verwhy, 140 Ash Street Kimberly, Id has known the Mr. Hetemi for a long time, they have changed the process for the wristbands to control their occupancy. However he feels the biggest issue is that loitering tickets are not being issued, if tickets were issued it would resolve the majority of the problem.

Public Hearing: Closed

Closing Statements: Declined

Discussions Followed:

- Commissioner Hawkins explained the crowd is the problem and that is what is creating the safety issue. However it is the business that is drawing the crowd to this location. He doesn't want to create a hardship for anyone however this is not a good situation.
- Commissioner Bolton explained the reality is that this was an issue a year ago, and there are people that like to drink but because of the decision by the Commission to allow for extended hours at this establishment, these people are funneled to this location creating a problem. She thinks steps need to be considered by the Commission to mitigate a problem.
- Commissioner Munoz explained he sees two options, there is enough information to make a decision, one option is to revoke the Special Use Permit limiting the hours of operation to 10:00 pm, the second option is to amend the conditions on the Special Use Permit to try and mitigate some of the issues.
- Commissioner Hansen agreed an amendment to the conditions could help.

- Commissioner Detweiler agrees that an amendment to the conditions would help but is not in favor of eliminating the dance floor, but he would be in favor of closing the business at 1:00 am.
- Commissioner Bolton explained that keeping the dance floor and cutting the hours back to 1:00 am would be effective. However if this is the only place open after 1:00 am that is where people are going to go after the other establishments close at 1:00 am.
- Commissioner Dawson asked for clarification of the violation.
- PZ Director Spendlove explained the business was operating after 10:00 pm on Thursdays, which is a violation of the conditions listed on the Special Use Permit, which is directly correlated with the revocation criteria listed in the code. Staff however has suggested amending the condition related to hours of operation. This change could potentially alleviate the issue.
- Commissioner Munoz explained that when specific days and hours are listed it is very difficult to track and enforce. He doesn't think the days of the week are the issue. It's the extended hours that are the problem.
- Commissioner Dawson stated she has struggled with this because she thinks there is a need for extended hours, however the testimony from a year ago is not much different from the testimony that was presented tonight. A restriction of hours is a need, because currently it is the only business that operates at this time.
- Commissioner Munoz explained that Twin Falls is growing and things don't close at 10:00 pm anymore. The problem is the owner is dealing with people that have already visited other venues, they are inebriated and hostile when they get to his establishment. The business needs to have a more effective plan for managing these type of customers.
- Commissioner Dawson explained this is a safety concern and she is in favor of limiting the hours of operation. Although the business owner has no control over the people in the parking lot it's the patrons of this business that are causing the safety concern.
- Commissioner Musser explained that it has been a year, the business owner has attempted several things to try and mitigate the issues, unsuccessfully.
- Commissioner Munoz explained there needs to be more thought put into running the business after 1:00 am.
- Commissioner Dawson asked if restricting the hours to 2:00 am would be a good compromise.
- Commissioner Kelley explained if they are still allowed to be open beyond 1:00 am, the same situation is going to occur, because other places have to close at 1:00 am. There should be an even playing field set to see how it works.

Motion 1:

Commissioner Dawson made a motion to amend condition no. 3 to state the business must be closed at 1:00 am with all customers out of the building by 1:30 am with no restriction on the days of the week. Commissioner Musser seconded. All members voted

in favor of the motion.

Amendment Approved As Follows

1. Subject to the business closing at 1:00 am with all customers out of the building by 1:30 am with no restriction on the days of the week.

Commissioner Munoz reviewed the additional condition presented by staff that states the Commission can review the Special Use Permit at any time in the future if public safety issues arise, or if circumstances arise which appear to violate the standards listed in City Code 10-13-2.2 D.

Discussion Followed

- Commissioner Munoz explained that he thinks this adds a burden to staff and the Commission to keep track of issues. He believes condition number one on the permit addresses the Commission's ability to review the permit when violations for zoning, building and fire code are identified.
- PZ Director Spendlove explained that condition no. 1 applies only to site plans that are in violation, which is why staff has suggested adding the other condition. This would allow the Commission to review the Special Use Permit again.
- Commissioner Musser asked about adding a one year review as a condition.
- PZ Director Spendlove explained that is possible or it could be that staff brings back an update to the commission in one year. Normally this would be to allow an applicant the opportunity to comply with a condition they may not fully agree with on the permit.
- Commissioner Bolton explained she is not sure that the people are going to stop coming to the parking lot even with the establishment closing at 1:00 am.
- Commissioner Dawson explained she doesn't think it is prudent for the Commission to just add a review date as a condition so that it can be reviewed again. She feels like if there are issues the item will be brought forward to the Commission again.
- Commissioner Kelley agrees that it may not be fair however this is one of the only permits that he has seen come back to the Commission a second time to discuss revocation.
- Commissioner Munoz stated that the Commission should move past babysitting a business. He also thinks that if this is a large part of their business income they will come up with a solution to address the safety concerns, monitoring the parking lot and will be back to request that the hours be extended again before the year is concluded. The business will most likely initiate the change with a proactive management plan.
- Commissioner Hansen stated he thinks that it should be reviewed again in a year.

Motion 2:

Commissioner Bolton to add a condition no. 5 to review the Special Use Permit in one year. Commissioner Hawkins seconded the motion. Commissioners Hansen, Bolton,

Kelley, Musser, Detweiler and Hawkins voted in favor the motion, with Commissioners Munoz and Dawson voting against the motion.

Amendment Approved As Follows

1. Subject to the Special Use Permit being reviewed again in one year. (October 9, 2019)

Discussion Followed:

Commissioner Hansen asked if the motion also allows the commission to review the permit at any time there are public safety issues.

PZ Director Spendlove stated that the condition is to review the permit in one year.

Commissioner Hansen suggested another condition be added allowing review at any time if public safety issues arise. Staff could bring the permit back up for review but by adding this as a condition it makes it a decision of the Commission to have the permit reviewed.

Commissioner Hansen explained that condition no. 1 only applies to the site plan but to make things easier to address problems staff would like to have a condition added allowing for Commission review.

Deputy City Attorney Nope explained there are two schools of thought occurring. One issue is that the Special Use Permit had to meet 9 criteria listed in the code to be approved along with conditions based on 7 other factors. The Commission has already reviewed the Special Use Permit and approved it based on the 9 criteria. There are some that want to revisit the criteria for approval, however this is a request for revocation. Revocation can only occur based on 3 criteria listed in City Code 10-13-2.3 A.

1. When a significant change in the use which does adversely impact neighboring developments occurs.
2. For violation of supplementary conditions, safeguards and/or restrictions imposed by the city council or the planning and zoning commission at the time the permit was granted.
3. Use of a zoning permit or certificate for a use other than the use for which said permit or certificate was issued.

In this case the business operating after 10pm on Thursday was a direct violation of the permit, this is what allows the Commission to revoke the permit. The problem now is that the Commission wants to amend the conditions but wants to be able to revisit the 9 criteria for approval. In order to consider revocation based on the 9 criteria listed for approving the permit the amendments to the permit should also include the condition proposed by staff.

Discussion Followed:

Commissioner Hansen thinks reconsideration of the conditions for approval is critical when considering revocation.

Motion 3:

Commissioner Hansen made a motion to add a condition no. 6 that a Commission review may occur at any time in the future if public safety issues arise, or if circumstances arise

which appear to violate the standards listed in City Code 10-13-2.2 D. Commissioner Musser seconded the motion.

Discussion Followed:

- Commissioner Munoz explained that he thinks the one year review allows the Commission to revisit permit and compliance with the conditions. He seriously thinks the business will propose something different prior to a year from now.
- Commissioner Hansen stated his understanding is that it allows staff to bring it back to Commission any time there is a public safety concern.
- Commissioner Bolton stated she thought that was already possible.
- Commissioner Dawson clarified that it can only be brought back if the issue meets any of the 3 criteria that would allow for revocation to occur.
- Commissioner Munoz explained that if the hours are amended to 1:00 am and there are problem occurring because they have continued to operate past 1:00 am that would be a violation of the Special Use Permit. This would also be a condition that other bars don't have to abide by.

Roll Call Vote Motion 3:

Commissioners Hansen, Musser and Hawkins voted in favor of the motion. Commissioner Bolton, Munoz, Kelly, Dawson and Detweiler voted against the motion.

Motion 3 failed 3-5

Motion 4:

Commissioner Dawson made a motion to amend Special Use Permit #1233 with the conditions approved by the Commission. Commissioner Bolton seconded the motion. Members Bolton, Dawson, Munoz, Kelly, Detweiler, Musser and Hawkins voted in favor of the motion. Commissioner Hansen voted against the motion. **Motion Passed 7-1**

Approved, With The Following Amended Conditions

1. Subject to site plan amendments as required Building, Engineering, and Zoning Officials to ensure compliance with all applicable City Code requirements and standards.
2. Subject compliance with State, County & City Alcohol licenses and regulations
3. Subject to the business closing at 1:00 am with all customers out of the building by 1:30 am with no restriction on the days of the week.
4. Subject to operation of an indoor recreation facility include a dance floor and pool table, as presented.
5. Subject to a review of the Special Use Permit in one year. (October 9, 2019)

Deputy City Attorney Nope explained that questions need to be directed to staff pending an appeal to the decisions.

5) Upcoming Meeting(s)

- a) October 23, 2018

6) Adjournment

Chairman Munoz adjourned the meeting at 8:31 pm

Lisa A Strickland

Lisa A. Strickland, City Planner