

**Minutes  
HEARING OFFICER  
APRIL 15, 2008**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**Present:**

David Williams, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Shawn Daffara, Planner II  
Alan Como, Planner II  
Nick Graves, Planning Intern  
Derek Partridge, Planner I

**Number of Interested Citizens Present:** 44

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by April 29, 2008 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for April 1, 2008.

2. Mr. Williams noted that the following case(s) had been continued:

- Hold a public hearing for a request by the **OASIS CAFE (PL080093)** (Ed Shalabi, applicant; Business Properties Partnership No. 41, property owner) located at 1731 East Broadway Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP08044** Use permit to allow a Hookah Lounge/ Tobacco Retailer.  
**CONTINUED TO MAY 6, 2008 HEARING OFFICER**

- Hold a public hearing for a request by **BETHANY CHRISTIAN SCHOOL (PL080059)** (Scott Wunderlich/ Cityspaces, applicant; Bethany Christian School, property owner) located at 6304 South Price Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP08047** Use permit to allow the addition of two (2) modular buildings.  
**CONTINUED TO MAY 6, 2008 HEARING OFFICER**

- 
3. Hold a public hearing for a request by **UNIVERSITY LUTHERAN CHURCH - T-MOBILE (PL080032)** (Rulon Anderson/T-Mobile West Corp, applicant; The University Lutheran Church Inc., property owner) located at 340 East 15<sup>th</sup> Street in the R1-6, Single Family Residential District for:

**ZUP08042** Use permit to allow a wireless antenna (sixty-five (65) foot monopalm).

Mr. Rulon Anderson was present to represent this case. He presented a prototype of materials that the mono-palms are composed and explained that currently he felt that mono-palms provided a viable alternate to cell towers. In addition, cell sites provide 911 location access to cell phones allowing emergency services. Mr. Anderson presented a site plan that depicted present day access to cell phone service and a plan that indicated the expanded area the wireless antenna would provide to cell phone service. By dropping the height from 65 feet to 55 feet, the area covered would be diminished. Photographs of East 15<sup>th</sup> Street, Apache, College and nearby locations were presented by Mr. Anderson showing extensive vegetation that he felt would cover the visibility of the monopalm site. He did not feel that the proposed ASU installations would supplant the services provided by T-Mobile to the neighborhood.

Shawn Daffara, staff planner, gave an overview of this request, stating that the applicant was willing to reduce the height from 65 feet to 55 feet. He noted that a co-location survey had been provided by the applicant as required. Shawn stated that at the time the staff report was issued, staff had received three(3) phones of inquiry, and one (1) phone call in opposition. Since the staff report has been issued two (2) letters of support and thirteen (13) letters of opposition have been received by staff.

Mr. Williams addressed the issue of the needs of ASU campus and that there were currently no cellular towers located on campus. In speaking with ASU's real estate department, Shawn explained, ASU has not accepted any new towers to be located on campus since the year 2003. ASU is trying to develop a different type of technology – that antennas are placed internally in buildings on campus and it eliminates the need for outside locations of antennas (i.e. monopoles, etc.). This is under study by ASU and has no definite implementation date as yet.

Mr. Williams asked if Mr. Anderson felt the monopalm would be comparable in height to the existing trees in are area; Mr. Anderson stated that it would. Mr. Williams asked about the property to the east of the monopalm – was that ASU campus property? Mr. Anderson presented a 1 mile co-location study diagram and stated that basically one when you exceed your area it is not like you can turn up the power or send more signal out. ASU has put them on notice that they will not renew; the T-Mobile lease expires in 2009. Mr. Williams questioned expanding the capacity of existing cell towers, of which there have been several cases that involved adding additional antennas. Mr. Anderson stated that there is a difference between coverage and capacity, because the T-Mobile sites cannot interfere with other mobile site towers. That is why instead of higher cell phone towers the monopalm allows more coverage because of new antennas accepting more signals.

Ruth Wootten, of the City of Tempe, far east corner of this neighborhood; she is a church member and did feel that this tower would be particularly useful and supportive in the neighborhood.

Mr. Gary McCluskey, of the City of Tempe, stated that he was the pastor at the church and supported this request.

Mr. Richard Creath, of the City of Tempe, stated that his property was directly across from the proposed site of the monopalm. This is a historical neighborhood which really needs to be preserved and protected. The

homeowners are working together to accomplish this goal. If the monopalm cannot be seen from his property, as stated by Mr. Anderson, then would Mr. Anderson agree to remove the monopalm if it is determined that it can be seen? He doubted if T-Mobile would be willing to do that. This is a purely commercial structure and should be located in a place better suited to those type of structures. The City does not have to help destroy these neighborhoods, it can help to preserve them.

Tom Caldwell, of the City of Tempe, stated that his property was directly south of the church of this proposed monopalm. He is totally opposed to this tower. There are several small children in the neighborhood and he is concerned for their safety. This structure is going to have a high visibility factor. City Council always talks about preserving the neighborhoods, and this type of action is not going to do that.

Maureen Kobierowski, of the City of Tempe, and that she is quite close to the proposed monopalm site. Her main concern is the health issues as well as the many children in the neighborhood who would be placed at risk from the cell structure and microwave. She felt that the 911 comments made by Mr. Anderson were an exploitive way of justifying this cell tower structure. She is appalled that the neighborhood would be placed at risk with the structure for financial gain.

Mr. Williams explained for the record that the City of Tempe does not regulate radio frequency (RF) emissions from wireless antennas. The Federal Communication Commission (FCC) is the only government agency that regulates RF emissions.

Mr. Joseph Lewis, of the City of Tempe, noted that he had seen several of these monopalm structures and that they are very visible and do not blend in with the natural landscape. He stated that it was unfortunate that the process for a variance requires a neighborhood meeting while a use permit request does not. It would have helped the whole process if a neighborhood meeting had been held. The Twin Palms Hotel recently went through the process to have additional antennas added for cell phone service, obviously the church offered a better financial deal to Mr. Anderson – this is about money, it does not belong in the neighborhood.

Craig Ellis, of the City of Tempe, stated that he had T-Mobile service and that he had not experienced any problems with coverage – where were those coverage areas that did not have coverage? Mr. Williams asked if Mr. Ellis would like to review the coverage site plan that Mr. Anderson had presented at today's meeting. Mr. Ellis said he did not understand how it can show lack of coverage when he had not been having any problems with his T-Mobile service. Mr. Ellis said he had been driving around the area and had not had any problems with coverage. He related recent health concerns about radiation – he said when he purchased his home he did so after investigating that there were no sources of high radiation such as light rail, electrical sub-stations, cell towers, etc. He does not want this monopalm in his neighborhood because he moved to that neighborhood specifically to stay away from that sort of thing. The City and Hearing Officer are there to protect the health and welfare of the citizens and he appreciates anything that can be done to deny this request.

Rob Cole, of the City of Tempe, was concerned about property values declining if this structure was erected. He referenced Mr. Anderson's comments about 911 calls and noted that all cell carriers are legally required to carry any 911 call regardless of the service carrier. He has A. T. & T. and has no problem with reception. He noted that many of the references that are presented by carriers such as T-Mobile indicating that there is no harmful effects are from studies done in the 1980's based on 'thermal effects' (i.e. like a microwave oven). These studies are outdated, and do not relate to current investigations on health concerns relating to cell towers. Recent investigations indicate all types of health dysfunctions to all people especially children and the elderly, both of whom live close to the area where the monopalm is proposed.

Eric Johnson, of the City of Tempe, stated that he had health concerns regarding the radiation and referenced several agencies that had issued recent information on the subject.

Nora Moss, of the City of Tempe, stated that she has a T-Mobile phone service and has never had any problems and she is not quite sure as far as coverage the monopalm is necessary. She referenced studies that indicated radiation and health concerns to anyone living near a cell tower. This would negatively affect her property values and she wondered how does the cell tower fit in a historical neighborhood – that is something the City of Tempe should be proud of and want to protect.

Joan Hale stated that she lived near the proposed structure and was 82 years old. She was opposed to the request based on health concerns and that this was a historical neighborhood.

Mr. Anderson spoke in rebuttal, stating that T-Mobile was not a public utility, and therefore did not take people's property to do what they want. It is not a matter of money for T-Mobile, it is a matter of coverage and customer service and demand. He is amazed when they talk about health concerns when the monopalm is at 55 feet and the antennas give off six (6) watts, while everyone stands in front of a microwave at 1200 watts of power. A person can find anything they look for on the internet and he is amazed at the health concerns. When the capacity of the tower is exceeded a call can be dropped – people who have coverage now and tell you how life is wonderful, are going to find out that life is not going to be wonderful, when the new dorms are occupied and the current capacity is exceeded in the future. He still thinks it is well sited and the proper location.

Mr. Williams stated that he had to go on record saying that he finds the monopalm much more appealing aesthetically than old cell towers. One of the more important issues is that there is now a larger demand in the neighborhood and that Mr. Anderson is correct in that it is going to continue to grow. Mr. Williams complemented Mr. Anderson on his thorough analysis and that he had answered all of Mr. Williams questions regarding alternative sites, finding a site in the neighborhood where the visibility factor would be minimized.

However, this is a residential area and a historical neighborhood as well. The character of this neighborhood is the number one factor for him as the Hearing Officer. It is not fair for this neighborhood to bear the burden of this use. Mr. Williams stated that although he is aware that health concerns are very important to the residents, he was not making his decision based on those health concerns as they were as yet undetermined.

**DECISION:**

Mr. Williams denied PL080032/ZUP08042 because of the location in the neighborhood.

-----

4. Hold a public hearing for a request by the **TURLEY RESIDENCE (PL070232)** (Neil Sheiner/Sheiner & Associates, applicant; Tom Turley, property owner) located at 947 East Carver Road in the AG, Agricultural District for:

**ZUP08043** Use permit standard to reduce the west side yard setback by twenty percent (20%) from twenty (20) feet to sixteen (16) feet.

**ZUP08049** Use permit standard to reduce the east side yard setback by twenty percent (20%) from twenty (20) feet to sixteen (16) feet.

Mr. Neal Sheiner was present to represent this case.

Nick Graves, staff planner, gave an overview of this request, and stated that no additional public input or information had been received since the staff report had been issued. He received a revised floor plan today from the applicant which he presented to those present.

**DECISION:**

Mr. Williams approved PL070232/ZUP08043/ZUP08049 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The use permits are valid for the plans as submitted within this application.
3. The game room portion shall have no ~~bathing or~~ cooking facilities, and must have interior access to the main residence through the garage to be considered attached. **MODIFIED BY HEARING OFFICER**
4. The proposed additions shall match the existing residence in materials, color and design.

- 
5. Hold a public hearing for a request by **LA PITA BAR & GRILL (PL080102)** (James Hoffman/ La Pita on Mill LLC, applicant; Reds Moviola Inc., property owner) located at 505 South Mill Avenue in the CC, City Center District for:

**ZUP08048** Use permit to allow live entertainment (karaoke, DJ, live acoustic music).

Mr. James Hoffman was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this request, and stated that no additional public input or information had been received since the staff report had been issued.

**DECISION:**

Mr. Williams approved PL080102/ZUP08048 subject to the following conditions:

1. This use permit is valid for "La Pita Bar and Grill" and may be transferable. Should the business be sold, the new owners must contact the Hearing Officer staff to review the use permit.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. The live entertainment shall be indoors only, no live entertainment will be allowed on the exterior patio; this is to include no outdoor speakers.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. The use permit is valid for the plans as submitted with this application, and any expansion or intensification of the use will require review of the use permit.
6. The applicant shall adhere to the City of Tempe Noise Ordinance.

- 
6. Hold a public hearing for a request by the **LEWIS RESIDENCE (PL080107)** (Marshall & Virginia Lewis, applicant/property owner) located at 330 East Lilac Drive in the R1-4, Single Family Residential District for:

**VAR08007** Variance to reduce the rear yard setback from ten (10) feet to three (3) feet (patio cover).

Mr. Marshall Lewis was present to represent this case.

Nick Graves, staff planner, gave an overview of this request, and stated that no additional public input or information had been received since the staff report had been issued. Staff has suggested to the applicant that he apply for a use permit standard that would allow a 8 foot setback that staff would recommend approval. Staff has recommended denial of this variance request.

Mr. Marshall Lewis stated that the back yard is only about 625 s.f. and while he appreciates the recommendation to extend that patio area and that this variance request would affect his home in a positive environmental manner by reducing his cooling costs.

Mr. Williams questioned the design of the structure; Mr. Lewis responded that the design consisted of 4 x 4 vertical support posts and 2 x 8 joists. Mr. Lewis noted, in response to a question from Mr. Williams that his neighbors to the west were in support of this request.

Mr. Williams explained to the applicant that variances were granted when properties contained a unique feature that required the use of a variance to accommodate an applicant's request. He noted that he was trying to understand what was unique about this property that constituted a hardship to the applicant if the variance was not granted.

Mr. Lewis stated that there were approximately 134 homes in his neighborhood and he would venture a guess that about 75% of them had patio covers.

Mr. Williams noted that variances are pretty narrow as a tool to allow encroachments into setbacks. The dimensions of this patio cover looks like it is 11 feet deep – it would have to be 6 x 6 to comply with the 20% use permit standard rule.

Staff planner, Shawn Daffara, responded to a question from Mr. Lewis that the setback is measured to the support post but that the roof can overhang that post.

**DECISION:**

Mr. Williams stated that he would approve this request modified as follows to allow a nine (9) feet six (6) inches encroachment:

**VAR08007** Variance to reduce the rear yard setback from ten (10) feet to ~~three (3)~~ **five (5)** feet (patio cover).  
**MODIFIED BY HEARING OFFICER**

Mr. Williams approved PL080107/VAR08007 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Department.
2. The patio cover shall match the main residence in color, design and materials.

- 
7. Hold a public hearing for a request by **MEMO'S CAFE (PL080109)** (Ramez Rabata/Memos Café LLC, applicant; Red Mountain Retail Group, property owner) located at 1845 East Broadway Road, Suite 9 in the CSS, Commercial Shopping & Services District for:

**ZUP08045** Use permit to allow a Hookah Lounge/ Tobacco Retailer.

Mr. Toni Rabata was present to represent this case.

Alan Como, staff planner, gave an overview of this request, and stated that no additional public input or information had been received since the staff report had been issued. He noted that staff had concern that no outdoor smoking be allowed as the entrance to other suites was nearby the outdoor entrance to this business.

Mr. Williams asked what where the hours of operation; Mr. Rabata responded that the hours of operation would be from 10 AM to 2 AM.

Ms. Anna Lauri, of the Red Mountain Retail Group, noted that the advertised suite did not appear to be correct, that the correct suite is Suite No. 8. Mr. Williams asked Mr. Abrahamson if there was an advertising issue; Mr. Abrahamson responded that he did not feel there was a problem as the address was correct even if the suite number has changed.

Mr. Abrahamson noted that the staff report indicated, based on the information submitted by the applicant, that the hours of operation were to be 5 PM to 2 AM not 10 AM to 2 AM. Mr. Abrahamson noted that a condition of approval did not need to be added, however documentation needed to indicate the correct hours of operation.

**DECISION:**

Mr. Williams approved PL080109/ZUP08045 subject to the following conditions:

1. The use permit is valid for Memos Cafe and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. The tables outside of the cafe may not be used to set up hookah smoking stations. All hookah smoking must be done indoors.
8. All rear doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
9. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
10. All business signs shall receive a sign permit. Please contact planning staff at (480) 350-8331.

- 
8. Hold a public hearing for a request by **THREE ROOTS COFFEE HOUSE (PL080106)** (Robin Bundy & Albert Quhuis/The Mat Corner Inc., applicant/property owner) located at 1020 South Mill Avenue in the CC, City Center District for:

**ZUP08046** Use permit to allow live entertainment (poetry, live acoustic and amplified music).

Mr. Yari Bundy was present to represent this case.

Derek Partridge, staff planner, gave an overview of this request, and stated that no additional public input or information had been received since the staff report had been issued.

Sharon Abramson, of the City of Tempe, spoke in opposition citing concerns of noise and vibrations generated by the amplified live entertainment which would interfere with the Jewish center's (Hillel Jewish Student Center) activities and worship (in particular Friday night services). Parking issues are also a concern if events were held by both the Jewish center (in existence since 1980) and the Three Roots Coffee House. She would like to know that they would be willing to work out this issues of concern. She noted that the applicant's letter of explanation clearly stated there would be outdoor entertainment.

Mr. Williams noted that staff had imposed a condition of approval that stated live entertainment would be indoors only, although the applicant has expressed interest in obtaining a special use permit for outdoor entertainment when the Mill Avenue Festival is held.

Shawn Daffara noted that the business owner and property owner are responsible for the parking – if there is concern that a conflicting event is going to occur the business owner does have the option of putting up a temporary barricade to assure that the parking spaces assigned to their business remain open.

Jenny Lucier, of the City of Tempe, stated that she was in support of this request with some restrictions to accommodate the immediate neighbors. This would be taking place in the Maple-Ash Neighborhood where there are a lot of noise sources to contend with. She feels that this is a viable business and enhances the neighborhood and fits in with the community plan. She stated that she did want to comment that her support of this request was not a support of live entertainment in general for this neighborhood.

Mr. Bundy stated that they would be more than happy to work out the timing and days of events with Sharon Abramson and coordinate accordingly.

Mr. Williams noted that he would modify condition of approval #1 as requested however, based on the discussion of special events permits, he would not try to monitor special events thru this use permit application. The applicant has indicated that they will coordinate the timing of these events with the property owner to the north and comply with the requirements of the special events permits. Mr. Bundy stated that they would make every effort to resolve the parking situation with their neighbors. Mr. Williams suggested that the parking be designated by signs during events.

#### **DECISION:**

Mr. Williams approved PL080106/ZUP08046 subject to the following conditions:

1. The use permit is valid for "Three Roots Coffee House" and ~~is not may be~~ transferrable. Should the business be sold, the new owners must contact the Hearing Officer staff to review the use permit.

#### **MODIFIED BY HEARING OFFICER**

2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. The live entertainment shall be indoors only, no live entertainment will be allowed on the exterior patio; this is to include no outdoor speakers.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. The use permit is valid for the plans as submitted within this application and any expansion or intensification of use will require review of the use permit.
6. The applicant shall adhere to the City of Tempe Noise Ordinance.



- 
9. Hold a public hearing for a request by the **MCLOUGHLIN RESIDENCE (PL080115)** (David Koss/Tuff Shed, applicant; John McLoughlin, property owner) located at 428 East Alameda Drive in the R1-6, Single Family Residential District for:

**ZUP08050** Use permit to allow an accessory building for storage.

Mr. John McLoughlin was present to represent this case. He has six (6) children and with eight (8) people in his family storage is a major concern. He went thru the process to meet with City requirements even reducing the size of the proposed building to satisfy the requirements. There is his home, a greenhouse and the storage building on the property.

Sherri Lesser, staff planner, gave an overview of this request, and stated that one additional letter of protest had been received since the staff report had been issued. She explained that the building permit was issued in error and the building has already been constructed. The applicant made this request to bring his project into compliance.

David Koss, of Tuff Shed Inc. spoke in support of this request and noted that all requirements of the City of Tempe had been met as stipulated.

**DECISION:**

Mr. Williams approved PL080115/ZUP08050 subject to the following conditions:

1. Obtain all final clearances from the Building Safety Inspections Division for building construction and installation.
2. **Accessory building is approved for storage use only, not to be a habitable structure. ADDED BY HEARING OFFICER**

- 
10. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **FAGAN RESIDENCE (PL080086/ABT08005)** (Shane Fagan, property owner) Complaint CE080101 located at 4433 South Poplar Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, City of Tempe – Neighborhood Enhancement Department, stated that there had been very little progress made on this property by the owner; landscape, junk and debris continue to be an issue. Landscaping continues to be a problem every four (4) to six (6) months.

Ms. Zedlar noted in response to a question from Mr. Williams that there has not been a complaint on the pool.

Mr. Williams noted that this property had been approved for abatement in the recent past; Ms. Zedlar stated that it had been brought into compliance prior to the abatement being accomplished.

**DECISION:**

Mr. Williams approved abatement proceedings for PL080086/ABT08005.

- 
11. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **HAZELTON PROPERTY (PL080087/ABT08006)** (Patrick Hazelton, property owner) Complaint CE075217 located at 1219 South Maple Avenue in the R-2, Multi-Family Residential District.

No one was present to represent the property owner.

Julie Scofield, City of Tempe – Neighborhood Enhancement Department, stated that this property has been a problem since June of 2006. Landscaping continues to be a problem and that chain/posts be installed to stop (limit) students and others from parking on the vacant lot. She asked that the garage be secured and the graffiti be taken care of within the abatement proceedings.

The property owner had confirmed via e-mail that these issues would be taken care of however it has not been done.

Ms. Scofield noted that everything except for the securing of the garage and graffiti were included in the estimate of charges submitted with this abatement request.

Mr. Williams asked if the City of Tempe did not have another venue to deal with graffiti. Ms. Scofield stated that she had discussed this with her supervisor and the Police Department did have a program to control walls but not specifically private (i.e. personal) property. Mr. Williams stated that he had a concern with going on to private property to deal with graffiti. He asked Mr. Abrahamson for input on this issue. Mr. Abrahamson responded that the Police Department will deal with graffiti on public property, commercial buildings, alleyways, etc. but it was up to the property owner to deal with graffiti on personal property (private residential property).

Mr. Williams asked if security of property had been done before within abatement proceedings. Ms. Scofield responded with Ms. Koehn that they had done so in the past.

Ms. Koehn stated that there was a specific ordinance that held the property owner responsible for removing graffiti on private property and she believes that it allows the City abatement authority to deal with that. She asked that this graffiti issue be continued to the next meeting to allow research of this issue.

Mr. Abrahamson suggested that the portion of securing the property be continued to the next hearing.

Mr. Williams continued the portions pertaining to access control and graffiti removal to the next Hearing Officer meeting until it can be definitely determined what can and cannot be done under Tempe City Code.

Jay Braun, of the City of Tempe, stating that he has been writing letters for ten (10) years on this property. This is an abandoned property and is a definite problem for the Maple Ash Neighborhood. It attracts the homeless and the residents are harassed by people knocking on doors and asking for handouts. The vacant lot is used as a drive thru and generate a great deal of dust for the neighborhood. He asked that something more immediate be done to deal with the vacant lot.

Mike Deskin, of the City of Tempe, stated that he has submitted letters and comments for the last six (6) years on this property. Police have been called repeatedly. It is more than a cosmetic issue – people are camping out, breaking into the garage, transients are attracted to the property – it is a danger to the community.

Karen Gittis, of the City of Tempe, stated that she would like to correct a misconception – they are not a historical neighborhood although they are the oldest neighborhood in Tempe. The Hazelton property has been an ongoing problem for the past ten (10) years and is inconsistent with the neighborhood plan. Mr. Hazelton for whatever reasons has not been able to take care of abatement problems on the property or follow thru on his plans for the property. Evidence of drug use, graffiti, fire hazard as weeds grow and dry out, ongoing safety issues and health concerns as well as property values affected are a result of this property. She asked about project documentation from 1998 that should exist. It seems as though it would be helpful to have a complete history of what has transpired on that property. She does not understand why parking on this unimproved lot does not qualify for ticketing by the Tempe Police Department. What is a possible resolution for people who remove the no trespassing signs – can the neighborhood replace those signs? They have been told they cannot do that.

Mr. Williams asked the Neighborhood Enhancement staff why parking tickets are not given to those parking on the vacant lot. Ms. Scofield responded that it is her understanding that if a property is posted as no trespassing the police can ticket the vehicles, however the sign that was on the front of the property has been removed. She asked several times for the sign to be replaced but that has not been done. Ms. Koehn explained that the only way the police can enforce the no parking and no trespassing issues is at the request of the property owner.

Mr. Williams stated that if we cannot do that why can we put up fence posts and a chain without his permission? Ms. Scofield stated that it would be considered a temporary fence and would stop the unauthorized parking. – for a vacant property in a residential area. Mr. Williams responded that it is not a vacant property – that it has two structures (accessory buildings) and they need to stop viewing the property as a vacant property. He would assume that all of the property west of those structures is front yard and would be citable anywhere west of those structures for parking.

Mr. Williams instructed the Ms. Scofield and Ms. Koehn to exercise caution. They are to meet with the City Attorney before enforcing the abatement to include the posts and chains to make sure it can be legally accomplished under a property nuisance abatement so that they do not cause a bigger problem than they are trying to solve.

**DECISION:**

Mr. Williams approved abatement proceedings for PL080087/ABT08006 for landscape, limiting the access to the property and securing the buildings (accessory structures).

Ms. Koehn and Ms. Scofield are to return to the May 6, 2008 Hearing Officer to inform the Hearing Officer with a follow up report of their findings on what is permissible to deal with the graffiti removal in a residential neighborhood on private property and what was determined on the access control to the property. This will enable the Neighborhood Enhancement to at least get started on the abatement proceedings, however they may need to be modified based on the determination by the City Attorney's office.

-----  
The next Hearing Officer public hearing will be held on **Tuesday, May 6, 2008.**  
-----

There being no further business the public hearing adjourned at 4:10 PM.

-----

Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



Steve Abrahamson, Planning and Zoning Coordinator  
for David Williams, Hearing Officer

SA:dm

APPROVED