

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF CHANDLER, ARIZONA, September 7, 2011 held in the City Council Chambers, 88 E. Chicago Street.

1. Chairman Cason called the meeting to order at 5:40 p.m.
2. Pledge of Allegiance led by Commissioner Cunningham.
3. The following Commissioners answered Roll Call:

Chairman Michael Cason  
Vice Chairman Leigh Rivers  
Commissioner Stephen Veitch  
Commissioner Matthew Pridemore  
Commissioner Andrew Baron  
Commissioner Katy Cunningham  
Commissioner Bill Donaldson

Also present:

Mr. Kevin Mayo, Planning Manager  
Ms. Jodie Novak, Senior City Planner  
Mr. Bill Dermody, Senior City Planner  
Mr. Erik Swanson, City Planner  
Mr. Glenn Brockman, Assistant City Attorney  
Ms. Joyce Radatz, Clerk

4. APPROVAL OF MINUTES  
**MOVED BY VICE CHAIRMAN RIVERS** seconded by **COMMISSIONER VEITCH** to approve the minutes of the August 17, 2011 Planning Commission Hearing. The motion passed 7-0.
5. ACTION AGENDA ITEMS  
**CHAIRMAN CASON** informed the audience that prior to the meeting Commission and Staff met in a Study Session to discuss each of the items on the agenda and the consent agenda will be approved by a single vote. After Staff reads the consent agenda into the record, the audience will have the opportunity to pull any of the items for discussion. Items B and J were pulled for action.

A. DVR10-0014/PPT10-0002 NORTH EAST COOPER AND RIGGS-Approved to continue to the October 5, 2011 Planning Commission Hearing.

Request Rezoning from Agricultural (AG-1) to Planned Area Development (PAD) along with Preliminary Development Plan (PDP) and Preliminary Plat (PPT) approval for an 84 lot single-family residential subdivision on 32 acres and PAD zoning for commercial development on 7.5 acres. The subject site is located at the northeast corner of Cooper and Riggs roads. **(REQUEST CONTINUANCE TO THE OCTOBER 5, 2011 PLANNING COMMISSION HEARING.)**

C. DVR11-0026 CHANDLER CHRISTIAN COMMUNITY CENTER  
**Approved.**

Request Rezoning from Multi-Family (MF-1) to Planned Area Development (PAD) along with Preliminary Development Plan (PDP) approval for a multi-use community center. The subject site is located at 345 and 365 S. California Street, which is located south of the southeast corner of Frye Road and California Street.

1. Construction shall commence above foundation walls within three (3) years of the effective date of the ordinance granting this rezoning or the City shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.
2. Development shall be in substantial conformance with the attached exhibits kept on file in the City of Chandler Planning Services Division, in File No. DVR11-0026 CHANDLER CHRISTIAN COMMUNITY CENTER; except as modified by condition herein.
3. The site shall be maintained in a clean and orderly manner.
4. Preliminary Development Plan (PDP) approval does not constitute Final Development Plan approval; compliance with the details required by all applicable codes and conditions of the City of Chandler and this PDP shall apply.
5. Completion of the construction of all required off-site street improvements including but not limited to paving, landscaping, curb, gutter and sidewalks, median improvements and street lighting to achieve conformance with City codes, standard details, and design manuals.
6. All pedestrian walkways shall be A.D.A. accessible and shall not be interrupted by any obstacles preventing circulation (i.e. handicap shall have direct access to all indoor and outdoor pedestrian spaces).
7. **The applicant shall work with Staff to incorporate additional landscaping materials in the area between the face of the building and the California Street right-of-way where feasible.**

D. LUP11-0014 NINJA SUSHI

**Approved.**

Request approval of a Use Permit to sell liquor as permitted under a Series 12 Restaurant License for on-premise consumption indoors and within an outdoor patio area at a new restaurant. The property is located at the southwest corner of Germann and Alma School Roads; 2040 S. Alma School Road, Suite 3.

1. Expansion, modification, or relocation beyond the approved exhibits (Site Plan, Floor Plan, and Narrative) shall void the Use Permit and require new liquor Use Permit re-application and approval.
2. The liquor Use Permit is granted for a Series 12 license only, and any change of licenses shall require re-application and new liquor Use Permit approval.
3. The liquor Use Permit is non-transferable to other restaurant locations.
4. The site shall be maintained in a clean and orderly manner.
5. The patio shall be maintained in a clean and orderly manner.

E. LUP11-0016 THE SUSHI ROOM

**Approved.**

Request Use Permit approval to sell alcohol as permitted with a Series 12 (Restaurant) liquor license for a new restaurant and outdoor patio. The subject site is located at 2475 W. Queen Creek Road, Suite 6, which is west of the southwest corner of Queen Creek and Dobson Roads.

1. Expansion or modification beyond the approved exhibits (Site and Floor plans) shall void the Use Permit and require new Use Permit application and approval.
2. The Use Permit is non-transferable to other store locations.
3. Use Permit approval does not constitute Final Development Plan approval; compliance with the details required by all applicable codes and conditions of the City of Chandler and this Use Permit shall apply.
4. The site shall be maintained in a clean and orderly manner.
5. The Use Permit is granted for a Series 12 license only, and any change of license shall require reapplication and new Use Permit approval.

F. LUP11-0017 SIBLEY'S WEST GIFT SHOP

**Approved.**

Request Use Permit approval to sell wine and beer for off-premise consumption only (Series 10 Wine & Beer Store License) at 72 S. San Marcos Place within Historic Downtown Chandler.

1. The Use Permit granted is for a Series 10 License only, and any change of license shall require reapplication and new Use Permit approval.
2. The Use Permit is non-transferable to any other location.
3. Expansion beyond the approved Floor Plan and Narrative shall void the Use Permit and require new Use Permit application and approval.
4. The area adjacent to the store shall be maintained in a clean and orderly manner.

5. The Use Permit shall remain in effect for one (1) year from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.

G. ZUP10-0037 UNITED METHODIST CHURCH WIRELESS FACILITY

**Approved to continue to the October 19, 2011 Planning Commission Hearing.**

Request Use Permit approval to install a wireless communication facility on the campus of United Methodist Church at 450 E. Chandler Heights Road, the northeast corner of Chandler Heights Road and the Union Pacific Railroad. **(REQUEST CONTINUANCE TO THE OCTOBER 19, 2011 PLANNING COMMISSION HEARING.)**

H. ZUP11-0010 ALLRED CHANDLER AIRPORT CENTER

**Approved.**

Request Use Permit approval to allow a place of worship/church in a portion of Building B. The property is located at 2440 E. Germann Road, Suite 5, north of Germann Road and east of Cooper Road within Allred Chandler Airport Center.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "Allred Chandler Airport Center" kept on file in the City of Chandler Current Planning Division, in file number ZUP11-0010, except as modified by condition herein.
2. Compliance with original conditions adopted by the City Council as Ordinance No. 3673 in case DVR04-0037, except as modified by condition herein, and Preliminary Development Plan case PDP06-0001.
3. A church or place of worship use shall occur only within Building B, Suite 5 of Westech Corporate Center Lot 34. Parking related to this church shall occur in accordance with the representations in the Development Booklet.
4. Childcare and Bible study programs are not approved with this request.

I. ZUP11-0015 GENERATIONS LINKED

**Approved.**

Request extension of existing Use Permit approval for the operation of residential childcare within a single-family residence. The subject property is located at 1192 N. Hudson Place, north and east of McQueen and Ray Roads.

1. Use Permit approval for operating Residential Childcare shall be applicable only to the applicant and location identified with this application, and shall not be transferable to any other person or location.
2. The Use Permit shall remain in effect for five (5) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
3. Expansion or modification beyond the approved exhibits (Site Plan, Floor Plan, and Narrative) shall void the Use Permit and require new Use Permit application and approval.

K. MOTION TO CANCEL THE SEPTEMBER 21, 2011 PLANNING COMMISSION HEARING.

**Approved.**

**MOVED BY VICE CHAIRMAN RIVERS,** seconded by **COMMISSIONER CUNNINGHAM** to approve the Consent Agenda with additional stipulations as read into the record by Staff. The Consent Agenda passed unanimously 7-0.

**ACTION:**

B. DVR11-0025 PALOMA KYRENE BUSINESS COMMUNITY

**Approved.**

Request to amend the Planned Area Development (PAD) zoning to allow additional instructional sports and athletic training facility uses in Building M along with a Preliminary Development Plan (PDP) to address on-site parking requirements for the business park. The property is located south of Chandler Boulevard on the west side of Kyrene Road at Gila Springs Boulevard.

1. Compliance with original conditions adopted by the City Council as Ordinance No. 3729 in case DVR05-0002, except as modified by condition herein.
2. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "Paloma Kyrene Business Community Narrative Report", kept on file in the City of Chandler Planning Division, in File No. DVR11-0025, except as modified by condition herein.
3. Instructional sports and athletic training facilities are limited to only Building M with maximum of approximately 18,500 square feet in building area.
4. Instructional sports and athletic training facilities are defined as facilities that focus on the instruction, training, and related activities of a particular sport or field of sports. Examples include, but are not limited to, baseball, softball, fencing, martial arts, swimming, gymnastics, cheerleading, and dance.
5. Hosting of competitive events is limited to weekday evenings after 5:30 p.m. and anytime during weekends and national holidays. Events shall be planned so as not to interfere with other businesses in the business park.
6. Outdoor training is not permitted in conjunction with instructional sports and athletic training facilities.

**MS. JODIE NOVAK, SENIOR CITY PLANNER,** stated this is a request on an existing PAD zoning. The current zoning for this development is a mix of light industrial with some office as well as general office buildings, medical office buildings and some ancillary support retail. The request is to allow additional instructional sports and athletic training facility uses. There is also a Preliminary Development Plan (PDP) which is addressing parking for the overall development.

This property is located south of Chandler Boulevard and is on the west side of Kyrene Road at Gila Springs Boulevard.

The building in question is Building M. This building is constructed and has approximately 58,187 square feet of building area. It is part of this larger 21 acre development that has a total of 14 buildings throughout. This property had come back through Planning Commission and City Council in August of 2009. There was a separate request to do an amendment to the PAD zoning to establish instructional sports and athletic training uses in this project. That use was specifically to be allowed to be only in Building M as in Mary and it was granted to have a user that was 14,500 square feet. That 14,500 square foot maximum could be anywhere within Building M. At the time it was represented it would be in Suite 13. At the time, through that request, they have a parking ratio through their zoning code that establishes recreational centers to be parked at 1 per 200. They don't have a specific code necessarily for an instructional sports and athletic training use as defined by the PAD zoning for this project. Through the prior case the development had shown through their parking study and their review that the overall development of Paloma Kyrene Business Community would be short parking spaces. At the time it was estimated they would be short about 15 parking spaces. So as a part of the agreement to move forward with that request to allow that 14,500 square feet in Building M the development had agreed to hold off get any occupancy of two of the industrial tenant spaces in either Building M or Building N to the west of it. By holding off on two tenant spaces you would wind up granting this property another 18 spaces that would be freed up. By adding that fencing school, they were short 3 parking spaces. So in order to address the 15 parking spaces short they talked about different alternatives of how that could be achieved. Would they come back with the PDP for parking; would they look at trying to fit where they could build additional parking on the land; re-modify retention basins; put more retention underground; build more surface parking. In the end it came forward with a letter that was attached to that 2009 case in which it represented that Planning Staff and the applicant had agreed that if they held off on those two tenant spaces, the site met code at the parking ratio that was established at the time.

So here they are today and the property has another request to add an additional, second, instructional sports and athletic training facility use to the project – also in Building M. It would add another 4,500 square feet so that would mean out of that 58,187 square foot building they would have approximately an 18,500 total square feet that would be for instructional sports and athletic training uses.

With that amount, what the applicant had proposed to us was an alternative to look at a different parking ratio which is not unusual with many developments whether they are commercial shopping centers or a multi-family project. They do always look at opportunities to reduce the amount of asphalt, to reduce the amount of parking but also make sure there is enough parking for the users and the need of the project at the time on a case-by-case basis. With this particular request there is a shared parking analysis. Their city zoning code doesn't specifically address shared parking although that is pretty common that happens in most office developments and also in shopping centers. You typically don't have things saying this is just for the restaurant and this is just for the Hallmark store and this is just for the grocery. Everybody winds up parking all

over. But for this particular request similar to how other cities have in their code a shared parking model they felt was an appropriate thing to look at. They decided they would consider that and have the applicant give them a full review. They thoroughly went through all of the numbers which they have been doing since 2008/2009 with the prior case and understanding how many spaces are in the entire project; what percentage is for industrial; what percentage is for general office and medical office. Through the original zoning case in this development there is a maximum of medical office that could occur and the whole project is 20,000 square feet. That medical office and general office will never happen in buildings M and N because those are only zoned for light industrial. With those factors in place they looked at the shared parking model understanding that instructional sports and athletic training uses do not operate 8 to 5 or 8 to 6. They are not operating during the same business hours as any of the other office related uses in the project and that would be normally your biggest impact. With this request they looked at what hours does the fencing school operate that is existing. They have been very nominal and have had no impact on the function of parking in the development. They have not had any comments or concerns about it. They looked at if you add another 4500 square feet would that have an impact with parking as well.

The PDP portion of this request is asking them to look at a shared parking model. Instead at looking at their normal 1 per 200 which is one space for each 200 square feet of building area, they are looking at 1 per 333, one parking space for each 333 square feet of building area specifically for that instructional sports use. By doing that, if you looked at it at 1 per 200 for this building at 18,570 square feet, you would state that there needs to be 92 parking spaces for those 2 instructional sports uses. If you looked at it at the 1 per 333, you would say there would need to be 55 parking spaces. That is a 36 space difference. They compared it to a similar development where they did 1 per 300, which is the Allred Chandler Airport Center in which that development looked at athletic recreational child-oriented bouncy gym, dance school type uses throughout several buildings in that entire development which was the start with them looking at other options versus 1 per 200. That project came in at 1 per 300. If you looked at this building at 1 per 300 they would need 62 spaces - so 7 spaces more than what you would need if they were at 1 per 333. With that being said the fundamental premise of this case is to look at should you support adding in another instructional use of another 4500 square feet in building M and if you do add that, will that use have any impact on the overall parking and the function of parking for every user and use in the entire business community that is constructed today. Through that Study they have found through Planning that there isn't any impact. Based on the analysis they provided, which was very thorough and looking at all the data given that those instructional uses operate at very different times than all the other uses, the shared parking that everybody kind of uses each other parking at different times of the day, there isn't going to be an impact. Those instructional athletic uses when they operate in building M will not be causing the other businesses to not have parking for their employees and/or their customers and patrons that come to that site. They are very comfortable with how the request is represented today.

The original zoning standards in regards to no hazardous occupancies in the industrial building still exists. The restriction on the maximum square footage for medical office still exists. This

representation is to allow the uses in building M. It is not allowing it in any other building. If another user that was an instructional sports athletic training wanted to come back, they would come back through the same process as they are here today to ask for additional square footage and they would have to re-evaluate parking at that time and make sure whether it would have an impact or not.

The Staff Report as well as the development booklet clearly outlines the overall hours. The applicant has gone out at different times of the day and there is a lot more detailed analysis that they did that they reviewed; different times of the day; checking how many cars are out there; how much parking – kind of a need and demand that is currently going on which helped them understand the site even though they look at it more long term once everything is fully occupied. That is why they look at these ratios.

Through all of that they have had a couple of neighborhood meetings. They have had a lot of interaction with all of the property owners. It is a condo'd development so there is numerous property owners out there. They don't have anybody in opposition. Nobody has come out saying they are opposed to this request. They feel the use of the fencing school that is there today fits very well. They haven't had any impact on their parking. This particular user going in Suite 23 is a personal training type studio as well. They haven't had any concerns expressed about this other user coming into the site either. At this time they are not aware of any opposition or any concerns. They have their stipulations that hold it to the development booklet and how they represented it, 18,500 square feet in building M only. They have to comply with their definition of instructional sports, which they gave them. If these tenants were to leave, a similar user would have to come in that matches the definition and the representations and the intensity of how they represent themselves. It is not a carte blanche, any instructional user can go in there. They are tied to the development booklet representations about similar hours, similar amounts of people and all of those kinds of things about how much parking they would use. With that being said, Planning Staff is representing to them tonight that they are recommending that they support this request. Ms. Novak said she knows that there are some concerns about the parking and the shared parking model because it has never been pointed out specifically in a request even though it is inherent that most developments do shared parking anyways. She said she would be happy to answer any questions that they may have further about this item.

**CHAIRMAN CASON** asked if there were any questions for Staff.

**VICE CHAIRMAN RIVERS** said they have parking codes in Chandler which they discussed in the Study Session and even before that. He is curious to know why a developer sets up their project allowing certain uses for their suites and buildings and then after the fact they come back and they want to squeeze something else in there that wasn't originally approved and in this case they approved the fencing establishment with the idea they would give up leasing 2 of their other suites simply to compensate for the parking and now they are back again and they want to do it again. No mention has been made about giving up the parking for any additional suites to cover this one. He thinks it is important to look at the fact that Chandler has codes. There is a reasons

they have standards for parking and it bothers me that there are so many instances of developers coming and wanting them to change them so that they can fit into their development whatever is currently on their list. He understands that the economy is not very good right now and he understands that a lot of these developments sit empty and they do want to accommodate these additional uses if at all possible but he doesn't think we should be sacrificing their standards and parking codes simply to accommodate them. If they are willing to give up an additional suite or two to allow these people to park as code requires at 1 to 200, he thinks that is acceptable. He is very concerned about parking. He won't even get into the parking problems at the mall. There is a development in their neighborhood in which the developers stood in front of Commission and City Council and swore that their parking is going to be plenty for what they had. The Commission and Council agreed and it has never been enough for what they have. They are currently continually jamming their streets with on-street parking and why do they leave themselves open for that. Why don't they stick to their parking codes. They have set a precedent with the fencing school allowing this additional use to give up leasing 2 suites and they should stick with that rather than setting a precedent that now they don't even have to do that. He said that is all he is going to say at this moment.

**COMMISSIONER PRIDEMORE** said he heard at 1 to 200 which is the current code for the entire 18,500 which is about 92 spaces that are required. How many are they short? Ms. Novak said at this time with the 1 to 333 that they are requesting the need, they are 36 spaces short from what code would require.

**KEVIN MAYO, PLANNING MANAGER**, showed the zoning code book. In it they will have the Table of Permitted Uses which they just came through and they updated that Table of Permitted Uses and cleaned things up. They have these pages of types of uses and they know that Table of Permitted Uses is not all inclusive and there are tons of users and uses that are not in there but they use that Table to say where they can go. They are looking at in the code table of permitted uses pages of multiple things. When they look into the parking code they are looking at a page and a half of about 11 or 12 different things that are in a commercial designation. They are trying to take a specific use and fit into what has been defined as maybe 11 different categories. In the parking code they don't have that many things to take this peg and see where it fits into. They look at it and the closest thing they can stick it into is 'dance halls, skating rinks, amusement centers and recreation centers. That is what they have that is closest to what the requested use of the fencing school and the personal trainer is in terms of recreational users. When they read that it instills something that is large and something that lots of people come and gather in and they have lots of recreational activity in dance halls, skating rinks, amusement centers and recreation centers. They are sticking a peg into a hole that is saying that type of use parks at 1 to 200 and in reality an amusement center those things probably parked even higher than 1 to 200 but they are taking a peg that is a fencing school or a personal 1 on 1 type training thing and saying that they are analogous to this but it is only because they have such a limited amount of things in our code to say this is what you are closest to. The 1 in 200 number they are given by Council – it is the closest thing they have. The Parking Study done by the Allred Center out at Chandler Airport Center clearly indicated that this code is missing the mark in terms of what is required for these. When they got hung up on that 1 to 200 number it

really was a number that just because it was right here is not necessarily anywhere near representative of how these things operate. These Parking Studies try to put a footnote into our parking code that say this type of user is actually this. But obviously they don't want our parking code to be 12 pages long, but it may grow in the future. He just wanted to set the table of where the 1 to 200 is coming from and where that is in our code and the deficiency that it brings with it.

**MS. NOVAK, SENIOR CITY PLANNER**, said to add to that with the PAD zoning and the PDP the zoning code allows an applicant or developer to ask for release from code. If there is right justification for it. They have done that on other projects that have elderly care housing and even hotels where what is written in our code sometimes at a slightly lower ratio is appropriate and what really works. They have heard for years and as long as she has been there that their light industrial warehouse parking is too high compared to other cities and some people feel like they have 5 employees but your parking is going to make us feel like they have to have 50 employees and that is not how their warehouse operates. They are archaic, old codes that they do work with and they have to enforce them and tell the applicant that is what is appropriate until they prove otherwise through a professional review and Study of the data. They don't take it lightly. They are very passionate about this is their code and that is how they have to implement it until the Board and City Council find otherwise or direct them to amend the code.

**COMMISSIONER PRIDEMORE** asked if they were to approve a Variance to the parking, does the self-imposed 2 suites that they have been keeping on hold go away? Ms. Novak said yes. Their parking calculations accounted for those being re-occupied as actual light industrial with their ancillary office space. So those would go away as part of the shared parking analysis. Part of that, it is their understanding that they have 1 to 500 for the warehouse, 1 to 200 for the office in each of those individual condo. suites and with that ratio they now understand that might still be a little bit too high, but they are comfortable given that those users operate when any of the other users in that same building would be there. It does not cause a conflict. They will not be taking up parking spaces that are needed during the regular work day. **COMMISSIONER PRIDEMORE** asked if they know the occupancy rate of the whole entire center? How many empty suites are there? Ms. Novak said the applicant could answer that.

**CHAIRMAN CASON** asked if the Study supports the parking for the entire center 24 hours a day, 365 days a year? Ms. Novak said yes. **CHAIRMAN CASON** said so if the applicant claims that these uses happen at different hours then why would they need to change the PAD for the parking? Ms. Novak said because from the original request by adding that instructional athletic sports use at their code 1 per 200 ratio which is really for your typical skating rink, Castles and Coasters kind of a land use, it caused the whole project to be short parking because they had to use the 1 per 200 that is in their zoning code. It doesn't really fit into the kind of uses that they have. Because of that 1 per 200 it caused the site to be short 15 spaces. So the only way to make the fencing school still an appropriate land use because that PAD zoning did require a separate PDP application coming back to specifically address parking or else 2 tenant spaces for the industrial use would never be able to be relinquished for a tenant. That is why this is before us partly because of a new tenant coming in but also dealing with that prior case in 2009.

There would still be 15 spaces short. The only way to deal with that is to come up with the shared parking model to accommodate and prove that it gets absorbed by the sharing of parking at different hours of the day all year. **CHAIRMAN CASON** said so when the fencing center came around they would have realized or taken better heed of the fact that the parking happened at different times of the day and they didn't conflict with one another. They could have at that time not even messed with the parking and just let it go forward? Ms. Novak said at that time that was an option. Staff was originally recommending they weren't supporting the use with the applicant stating that they were 15 spaces short. Prove to them where they are going to put their 15 spaces. But the agreement they came up with was well they can meet the parking but they would still be 3 spaces short. Kevin mentioned earlier in Study Session that it is kind of a nominal thing, not that big of a deal. They would tell them that they would not be able to have 2 of their tenant spaces in the industrial building occupied so they had them put that in writing. It was part of the record of how they represented it both Planning Commission and City Council. So that is how it wound up coming forward but if that wasn't the case and Planning Commission and Council said they were 15 spaces short and not a problem. In essence everyone is probably sharing parking and they probably don't park at the same times as the other uses, they are comfortable with it. That certainly could have been an opinion at that time. **CHAIRMAN CASON** said so because they did that with the fencing now they are obligated to do it with this one? They are obligated where they can't just say they are short on parking but they know they aren't going to conflict with one another. They can't fall back on that? They can't modify that now the applicant doesn't have to keep their suites free? Ms. Novak said they could think of it that way but cannot. A hearing board could easily say they understand they are representing the shared parking lot but don't agree with it. They feel they need to stick with code, stick with the parking ratio which means that they wouldn't approve this extra 4500 square feet from coming in because they would already know the site is 15 parking spaces short. They would still have those 2 tenant spaces that they would not be able to occupy and they would just be stuck that way indefinitely until they came and maybe put in more underground retention and built another surface parking lot in some small area where they already have above ground retention. That was the only option. There is not really any room to build a parking garage unless they were to build where the self-storage facility is. If they were to say they don't agree with this and want to deny it, they would still be in the state that they are in today which means they in essence have 3 spaces short with 2 tenant spaces they couldn't ever lease out or sell or have occupied. **CHAIRMAN CASON** said but the parking code presumes that all spaces will be used 24 hours a day. If they are not and they acknowledge that they are not and the applicant presents that they are not, then why do they have to require a parking change. He said that is the part he doesn't understand. They have done it at other locations where they just said well it doesn't look like the parking is going to conflict so they would just let it go forward. The part he doesn't understand is because they made a deal to make it happen before and now they want to make some other deal why they can't. Why do they have to change the PAD for the parking when they acknowledge that those parking incidences are not going to be conflicting with one another? In reality when they are going to be using the parking, there is probably 700 parking spaces. The point is that there would be virtually every parking space available for them to use at 8:00 p.m. at night. So why change the PAD to allow 300 per when there is no need to. There is no need to make that change. Ms. Novak said to explain the whole share parking on other properties, it is

different than this one. In others it is just a mixed-use shopping center. You have all sorts of retail, you might have some restaurant uses, you might even have that dentist so it functions as an overall shopping center ratio in which you have a mix of those uses and they all kind of share the main parking lot that happens to be there. On a hotel site it is just by itself. A nursing home facility is just by itself. This one has specific uses in buildings that have to park individually. You have to park general office separate from medical office so that those buildings in that square footage had to have its own parking. You then have industrial which has a totally different parking ratio. This is not a shopping center that they look at with a mix of uses. It is different than a shopping center and because offices generate more parking you have to look at the buildings individually. You would not have automatically applied a shared parking model with this particular project. They don't do it with any other office projects either because the medical office generates more parking. They always make sure there is a percentage restriction or square footage restriction on the medical and they have to track it as they come in with their building tenant improvement permits. It is different than kind of how they would do sharing in a regular retail shopping center because this is not. This is an industrial business park and they have to ensure that office which does require a lot of parking parked appropriately. The industrial they happen to have a higher ratio and parking at the 1 per 500 so she fundamentally look at those very differently when those parking issues come up. **CHAIRMAN CASON** said he would agree except his argument is that the offices aren't open, they are closed and so those parking spots are available. He is saying that the applicant makes a solid argument about being able to use shared spaces because the hours of business are different and that there will be a lot of parking spots available for them to use. In fact, if you look at it from that perspective you could actually say they could park cars on top of one another. That this particular spot might have 3 cars parked on it because 1 car is now gone because that business doesn't operating during these business hours. The other one is gone because that other business does not operate during those business hours. Now just that single car there works during those business hours. If they are overlapping the parking spots and the applicant makes that claim that is in reality is what is going to happen, then his question is why do we need to change the PAD? Ms. Novak said they are amending the PDP because the way the zoning code is for the parking calc. doesn't account for shared parking in essence. From the way he is interpreting it, that is not how the code is written. You have one individual office building with that building x amount of square feet, you need x amount of parking just for that building. That parking isn't put onto the building next door because the building next door needs to provide their own parking just for their building. It is like a puzzle and each building has to have its own parking. Say this building needs 10, this building needs 5 so we'll put the 5 over on this other building because they have a little bit more land. That is not how it is viewed when you apply the parking. It is done more generically where the shared it is something that has to be discussed and comes about through its own case as a PDP to see if they are o.k. kind of exempting that more strict application of each parking requirement goes.

**KEVING MAYO, PLANNING MANAGER** said their zoning code does not have a shared parking concept model in their parking code. They are in fact looking at potentially bringing that as a component to their parking code amendment. They don't have that yet. Their code says this is what it has to park at. With a code you always have to have a path to get around it in the event that you can prove that it isn't. Two paths are either a Variance to the Board of Adjustment or

through our PAD and PDP. It allows the variances to be approved through that PAD/PDP process. The reason that they have to amend this PDP is because they had not requested application of a shared parking model to this project. The code tells them to park it to code. They have done the Study to say today and their best guess going forward is they operate under the shared parking model and they are looking to through the PDP approve this variance to code for this development.

**CHAIRMAN CASON** then what they are trying to do is move from an individual building to a shared parking model? Mr. Mayo said that is part of the request. Part of the request is to approve the concept of accepting the shared parking model for this piece as well as saying this specific recreational users that they have don't generate anywhere near the 1 to 200. They generate 1 to 333 so it is kind of this little snippet piece and then the umbrella shared parking model. **CHAIRMAN CASON** said so it could have come to them that they just want to change to a shared parking model and they wouldn't have to deal with the amount of parking spots there were. Mr. Mayo said in the end they still need to make sure that this whole development, whatever the user mix is, parks itself and that it doesn't have parking deficiencies that force parking to go out into the neighborhoods or out onto the public streets. They have to self-park. Their code back when it was written said this is how much parking is necessary to make sure that each thing self-parks. If each office building had a wall around and their parking was solely for their office building. In this case they have a multiple user, multiple types of user development and they are looking to apply a shared parking model on top of this piece. **CHAIRMAN CASON** said so once again the shared parking model at 333 square feet per parking spot is for the entire development. Mr. Mayo said no, the 1 per 333 has nothing to do with the shared parking model. The 1 per 333 is saying that I know the code says that recreation centers require 1 per 200. They aren't a dance hall, they aren't a skating rink, they are this and they have studied this and this requires 1 per 333. What they are more or less saying is if they could have the parking code, can they please add a fencing school and they require 1 per 333 and put that into the parking code. Obviously, they don't do that into their code, it gets tied to the PAD which is the code that applies to this piece through that PDP. So the 1 per 333 is solely for those recreational users and then they are also saying under the shared parking model they are going to have an abundance of extra parking of studying the shared parking model on this piece. Regardless if they add the 1 per 333 or we don't. **CHAIRMAN CASON** said he seems to not be getting this at all and he apologized for that. Is everything west of the covered parking going to be at 333 per parking spot? Mr. Mayo said no – simply just the 18,500 square feet where a total of recreational users is 1 per 333. Ms. Novak said all the remaining suites and buildings are still parked at how their zoning code establishes it today. That is the question. If you did that, they would still be short parking. That is why they are trying to convey shared model parking. **CHAIRMAN CASON** said but changing the PAD is where they are going to change it to 1 spot per 333. Mr. Mayo said that is strictly the PDP. Ms. Novak said a PAD is land use. **CHAIRMAN CASON** said so the PDP is only for this 18,000 square feet. It doesn't affect any place else on the property. Mr. Mayo said not true. Ms. Novak said it is 2 parts. Mr. Mayo said the request is 3 pieces. The first piece is to amend the PAD to allow an additional 4,019 square feet of recreational space within Building M. That is one part of it. The second part is a 2 piece PDP request. The first piece is saying that your code tells us that we have to park that total of

18,500 square feet at 1 to 200. They don't think that is accurate and they have studied it. It parks at their best guess is 1 to 333. That is the first part of the 2<sup>nd</sup> part of this request. He said this is going to get real confusing. The third part which is the 2<sup>nd</sup> part of that PDP request is saying that even if they parked at 18,500 square feet at 1 per 333 and they parked at 20% medical/office at 1 per 150, the balance of the office at 1 per 200 and the balance of building M and N at 1 per 500 and 1 per 200 for their office/warehouse space, that even approving the 1 per 333 for just that 18,000 square feet, if they take the whole thing parked individually it is still short parking. Then they studied if it is really short parking based on how big the center is and how users use parking during the day and don't at night and various things. Then they are saying that even with the addition of 1 per 333 the shared parking model is looking to be applied through a PDP. They have to do that through a PDP on the whole center to say that it is o.k. to say that they are still a little bit short. Let's say they had recreational users and they didn't have medical/office in this center and they wanted to add medical/office and now per code they would be short. They could look at a shared parking model saying that there is such big parking supply and users aren't using it. It is o.k. because in reality how this thing is going to function as one big development it is o.k. because there is enough parking. **CHAIRMAN CASON** said that is the part that scares him is that they could they bring in uses that would generate more to a point where now there would be too little parking and the reason that is because they changed their whole parking model on 2 tenants. Mr. Mayo said absolutely there is always that possibility. They have studied this very carefully and are comfortable with it but under the concept of office, they don't have in their parking code Class A Executive Offices that park at one space per 400. Our parking is 1 per 200 even though true Class A Office doesn't even approach 1 to 200. The opposite end of that spectrum are Call Centers. Those things can get 10 per 1000. Packing people into cubes where 4 people are sharing a 6 x 6 cube. By design, by just a level of quality of what this thing is, you would never fill this thing up with Call Centers. It is an office so it is allowed by right to go in there and they could load it up with these things and then they don't have enough parking. So there is always that worst case scenario of yes, it could happen. The chances of it by design probably would never happen. **CHAIRMAN CASON** asked if it didn't fill up with Call Centers would the 1 space by 333 square allow them to park more cars legally on site? Mr. Mayo said the 1 per 333 would not apply to the Call Center. The Call Center would be parked at 1 to 200 because it is office. The 1 per 333 part of this PDP only applies to the recreational users within that 18,500 square feet of Building M. **CHAIRMAN CASON** said they cannot add any more users that have the 1 per 333 to this property under what is before them tonight.

**COMMISSIONER DONALDSON** asked Mr. Mayo or Ms. Novak to illustrate for him the high to low what parks at above and below 333. Ms. Novak asked him if he meant this particular project? **COMMISSIONER DONALDSON** replied the parking codes even though it is outdated. Mr. Mayo said with the parking schedule it breaks it down to types of land use. He showed it up on the screen. He will see residential, industrial, and commercial. When they look at commercial there is auditorium, stadium at 1 per 200 or 1 for 5 seats whichever is greater. Private clubs and lodge, dance halls, funeral homes, medical/dental office clinics, general offices and non-retail, hotels, restaurants and he can read down that list. Number 3, the commercial category, there are 17 categories that they can put any type of commercial use into and say that it

is closest to. Again, when they look at the recreational things they try to find in this list of only 17 things what is it mostly close to it and it is the recreational centers. In that same kind of categories, dance halls, skating rinks and amusement centers, things that bring with them a much different level of intensity than a fencing school. Ms. Novak said below under the industrial it lists unlisted uses and it actually is in their code, number 6. It explains through this process through the Planning Commission or Board of Adjustment there are unlisted uses because there code doesn't have everything. This is the process where you would have to address it. That was the directive from City Council when it came back in 2009. They didn't say Staff just figure it out. No there are 15 spaces short and it is a problem. They can't occupy the other 2 tenant spaces so this needs to come back to a public forum to be discussed. The applicant spoke with the Zoning Administrator at length about that and they said no they definitely have to come back with a PDP for that. That is when they filed their original case, then they wind up getting the additional 4500 square foot user that wanted to go in there so they had to add it into this request. **COMMISSIONER DONALDSON** said from the list he only sees 2 things; manufacturing/warehousing and funeral homes that fall at or above 300 very specifically on this list. That is a pretty good illustration for him. He thanked them.

**VICE CHAIRMAN RIVERS** said their chart brought up a question. If he is looking at this numbers correctly, they are thinking that the fencing school and the personal trainer parking requirements will be about the same as a funeral home. Mr. Mayo said yes, since they don't have anything other than bulky merchandise sales, nurseries and building material equipment rental that is anywhere near the 1 per 300. That is not to say that every single one of these things that are 200 and 150 are correct numbers. Those are being scrubbed currently entirely by us and comparing them with other cities, comparing them with things that exist today in the field but they know that these numbers have not been studied in a while. **VICE CHAIRMAN RIVERS** said by the same token they are restricted, they can't decide how their code may change and go with that information until the code indeed does change. Mr. Mayo said correct but because PADS are ordinances that are written specifically for each property, they can through this PDP for this property only look at modifying that code. Ms. Novak said in the development book on page 7 there is a chart and that chart on this particular page outlines code requirements for this development so you have straight from the zoning code on the monitor and then they add in the 1 per 33 for the instructional sport fencing school and the new personal trainer and you will see that it really is about 9 parking spaces short right now. If they didn't even ask for the shared parking model, they would be saying they are 9 spaces short with this whole development. Are we o.k. with that or not. They are trying to show that 9 is not that big of a deal and if you look at it through a shared parking model in essence you never really would be short because those users operate at different hours. It kind of illustrates a straight analysis.

**REESE ANDERSON, PEW & LAKE, 1744 S. VAL VISTA, NO. 217, MESA,** said he wanted to start by answering a few of the questions that some of the Commission members may have had and go from there. Commission Pridemore had a question about occupancy. They are 85% leased now. They are almost all the way there. There are about 7 suites left that have not been sold and not to correct anyone's word but all these units are owner occupied units. As to the 2009 reasons why they did what they did, in 2009 the fencing school was going through the

process and they were in a rush. The reason was is because this school had the opportunity to host the 2010 World Cup Men's Fencing Championship. To get it through at that time there was a collective understanding that 1 per 200 wasn't the right ratio for this use for all of the reasons you heard. They didn't have the time to be able to do a detailed analysis parking study and still make the deadline to be able to be the host city for the World Cup Fencing Championship. Thinking kind of creatively it may have been wrong at the time but they were thinking how they could get through this as quickly as they could. They said let's hold out 2 units. That will free up the parking spaces so everybody is happy and they will come back later with an analysis of how they can solve this parking issue and pre-open those 2 spaces. He is pleased to let them know that in 2010 that World Cup Championship fencing tournament was held here with great success so much so that in 2012 the men's and women's World Cup Fencing Championships are coming back to this same site. It was a great success and hey thinks a win, win for Chandler. He addressed the Chairman and said he understands his point very well. Do they really need to set up a 1 per 133 parking ratio for this fencing club and training facility when they could easily recognize an allow this use to continue on and free up the 2 units that they put a hold on voluntarily through just a simple shared parking model. The answer to that is yes, absolutely they could. Our instructions coming back from 2009 were let's establish and agree upon a fair parking ratio for the fencing school and let's also at the same time figure how we are going to solve this parking issue. What they brought back to them was they think 1 space per 333 square feet is a fair establishment for the fencing school. On top of that they have advocated from the very beginning a shared parking model is really the one that solves all of the problems. Do they really need to establish a 1 per 133 to make the parking work? No, they could just simply recognize a shared parking model. They all agree collectively that parking is not going to be an issue at this site but they have established what they think is a fair ratio. He thinks if they wanted to establish an arbitrary ratio, they would have picked something like 1 per 400 so that he wouldn't have to say and admit he is still 9 spaces short. They picked what they thought was a fair one based on the use, based on the studies and they still find themselves 9 spaces short but clearly with the shared parking model recognizing the different users and different times have different peak demands, there is no issue at all whatsoever here. He said he has addressed that question and Commissioner Pridemore's question and he would be happy to answer any other questions at this time.

**VICE CHAIRMAN RIVERS** said he believe his ratio of 1 to 333 is fair. Does he believe that is fair all the time or only at some times? He is asking specifically if they are going to have the World Championships held in their place of business, do they not anticipate an increase in parking needs at that time? Mr. Anderson said absolutely they do but what they have to remember is that the approval for that requires it to be after hours and on weekends when no one else is there on site and the parking studies and counts they have done prove that plus the holding of the one championship they have had already has proved that it is not an issue. So absolutely, yes, they do anticipate more. They hope there is more but at off peak times with the rest of the businesses so there is no conflict. **VICE CHAIRMAN RIVERS** said he is striving to understand the parking requirements. If it is required that they have a parking place for 333 square feet of their business and they are going to be requiring more parking than that, he doesn't understand how that is working. Can he explain it? Mr. Anderson replied said he is not sure if

he understands the question. **VICE CHAIRMAN RIVERS** said they are assuming that during normal business weeks and months they don't occupy more than 56 parking places so they are giving him a permit to operate a business that parks at 56 parking spaces yet they are going to at some point need twice that many. There are going to be times when they need much, much more parking than that so he doesn't understand why they think that 1 at 333 is fair because he has seen too many examples in Chandler where this is the amount of parking places that we are going to require and then turns out to be 'well not really'. We really need a whole lot more than that but they didn't want to say that in front of the Council because then they wouldn't have gotten their permit. He thinks when you go from 92 parking places to 56 parking places they are taking a drop of 38% of available parking for their fencing establishment. That is a 38% reduction of required parking places between 1 at 200 and 1 at 333. Current code requires the 1 at 200 and they are looking now at 1 to 333. This is a reduction of required parking of 38% and he doesn't understand why that suddenly is taken as a matter of fact. He is confused. He didn't do a parking study but as he said to Mr. Mayo in a meeting earlier today he is assuming that he would like his business to increase or whoever it is that owns the fencing school. So if this 1 to 333 parking ratio is correct for most of the time, currently if they increase their business next year why would they not need more parking places then. The building isn't going to get any bigger but they are going to need more parking places if they have more students, if they have more audience members, anything if they are going to increase the parking that is needed for that building and same with the personal trainer. When he opens the business, they are going to have 'x' amount of parking needs and they are hoping if they are like any businessmen they have ever met, that their parking needs will increase as their business increases. Again, if you go to a situation where they have a fencing class and they have classes from 6 to 7, the class that starts at 7 to 8 is going to arrive while the other class is still going on and they are going to wait their turn. But again, they have increased their parking requirements without increasing the size of their structure so he is having a real difficult time with going from 1 to 200 down to 1 for 333 and reducing the parking requirements for these businesses by 38%. Mr. Anderson asked if the concern is that there is not sufficient parking or is the concern over just the change in ratios because if his concern is over them advocating for a 1 per 333, it is not necessary to go there to approve this case because they have advocated from the beginning a shared parking model is all that is needed to recognize that the off peak hours of these businesses allows everyone to share the parking spaces without conflict. Other cities have in their toolbox of their zoning code shared parking models; Tempe, Phoenix and Mesa. They have worked with those cities before and in a lot of those cities Staff is allowed to approve those administratively. He thinks the question to ask here is had Chandler had the tool, would Staff have approved a shared parking model on this site as was presented to them. He believes they would have answered yes and they would have approved the shared parking model on the site. Then they wouldn't have had to bother them with all these ratios today. The reason they are talking about ratios is because they were asked the question what is a fair ratio for this type of use. That is why it is before them. He knows it has muddied the waters a little bit. It is a simple way to skin the cat with just a pure shared parking model. He hoped that helped answer the question. **VICE CHAIRMAN RIVERS** said he had the World Championship there last year. How many people such as audience members, participants, and coaches came to their Championship? Mr. Anderson asked the developer. It was held on a weekend and there were less than a hundred. He thinks it is

absolutely a great thing that they can hold these types of events on a weekend when there is no conflict with the other businesses. They have over 600 plus parking spaces on the site. **VICE CHAIRMAN RIVERS** said he agreed with him that they can hold the World Championship in Chandler and he is sorry he didn't hear about it at the time because they would have had 101 people there. He is shocked that it was so sparsely attended but it adds to his point if the spaces aren't needed he can understand that.

**KEVIN MAYO, PLANNING MANAGER**, said in terms of how that operates is when they look at the 1 per 333, if the question was have they studied this to see that 1 per 333 is appropriate without the condition that says that the tournament and events have to be held after evening hours and on weekends. If that condition wasn't there and they were studying the 1 per 333 as being an appropriate use, the answer would probably be no. They would know that they have this peak that they would have to account for. The 1 per 333 is their daily average during the instruction, during their normal business hours. The tournament and things are really those extraordinary things that occur infrequently but as he said, one of those cool things to get into Chandler. That stipulation starts to identify the concept of that shared parking model. Even at 1 to 200 it probably wouldn't have done it in terms of how many people would have come. In a suite like that they are going to be limited by the building occupancy probably simply based on the number of exits that can occur in those suites because you can only go out the front or the back. You are going to be limited to a number of people and he doesn't know what that number is but you couldn't get 2000 people in there because of the building code, you just couldn't get that many people in there. In terms of 1 per 333, the study was done that this is an appropriate number for how they operate their business normally and then how do they accommodate those peaks through those type of special events. With the shared parking model and the stipulations they are requiring, they are almost forcing that the shared parking model is insured to work are what gives them that extra layer of confidence in this type of case.

**CHAIRMAN CASON** asked Staff said so the PAD and the PDP cannot be separated. Mr. Mayo replied they can be separated. **CHAIRMAN CASON** said so they could approve the PAD and not approve the PDP and it sounds like the applicant would be satisfied with that as well. Mr. Mayo said to do that you would have to acknowledge on the record that the PDP is set aside so the 1 per 333 isn't considered and the shared parking model isn't considered and you would just make a motion that they are approving the addition of 4,019 square feet of this space with the acknowledgement that the site will be under parked per code as it sits today. **CHAIRMAN CASON** said the two parts of the PDP – the first one is the 333 per parking spot, the second part is redoing the shared parking plan. Mr. Mayo said it is an acknowledgement of a shared parking model on this property. **CHAIRMAN CASON** said they can't acknowledge a shared parking on this property without changing the 333 per square foot. Mr. Mayo said not correct but it wasn't studied that way. They studied it with what is a fair parking generation for this and knowing that's what realistically is going to happen during the day, how does the shared parking model work. They easily could say the 1 per 333 they are not comfortable with that number but they still know that the shared parking model umbrella works on this regardless and you could approve it that way, they just haven't studied it that way. He isn't really sure that it is just the fact that it is not an even number – that it's not 340? Is the number a hang-up?

**CHAIRMAN CASON** said yes and no. The fact that it is 333 specifically, 334 or 335, it would be the same thing to him. The fact of the matter is that they haven't done anything internally and he doesn't want to set precedence on 333 if the applicant doesn't need to have 333. If they are perfectly acceptable with being able to free up their suites, increase their square footage, understand if they change to a shared parking model, they understand their won't be a conflict and they will not have set that precedence until they have an opportunity to the City and Staff to go through and analyze to see what number they really want that to be. Perhaps maybe associated with the renewal of the parking ordinances. He didn't whether that is possible for them to do. He doesn't know what the rest of the dais really feels about that. He would feel much more comfortable approving the PAD and the shared parking of the PDP and not even worry about the 333 parking spots per square foot. Mr. Mayo replied that his hesitation is that he gets nervous going that route simply because the 1 per 333 becomes integral and it is an ingredient of the cake that is the shared parking model. If you take that away, you are taking away a piece of what is held to the approval of the fencing school and the personal trainer in saying that there is a description of the level of intensity that they have described through words in there narrative and in their memo, and then through this acceptance of 1 per 333 that is now a numerical representation of a level of intensity for that type of use. Those 2 things packaged together are their ammunition to say if the fencing school goes away and some other use comes in, they would then say do they fit this word definition of what this is and do they feel that it is within that the 1 per 333 level of intensity of normal business hour generation. If they take that away, it steps back to the 1 to 200 level of generation which is much greater than 1 per 333 so they would have lost half of the tool that they would be measuring future users within here. The PAD sticks with the suites – it doesn't go with the fencing guy. The fencing guy can leave and they would be looking to put into another recreation of the user and their two tests are going to be parking generation and word definition in the narrative. If they take away the 1 per 333 that has been studied for this piece today, they would then have the 1 per 200 test strip in one hand and then simply words. He would feel better having the parking ratio and the words in that PAD as a fair description of what level of intensity is appropriate in here that they have studied for their shared parking model to exist. **CHAIRMAN CASON** said first of all he understands his concern gives him more control over what can happen in the future but his argument would be that by not automatically reverting back to the 200 and forcing tenants that need to have that parking ratio changed, doesn't that take away of a little of their control over that. In other words, they reverted back to the 200 if they automatically leave that suite or building M to the larger square footage, don't they actually lose some control over the parking? Mr. Mayo said he thinks they actually go the other way. If they removed the 1 per 333 number off of the first half of this PDP request, they then say it is 1 per 200. The 1 per 200 says now they can do these recreational users in 18,500 square feet of this building of how many suites are encompassed in that and they park at 1 to 200, which is the same ratio that office is parking at. You could almost get backdoored with saying 'if you are allowing something to go in here that per code generates 1 per 200, you should allow in here things that are already allowed by right in the rest of this PAD General Office to go into that suite because it has the same level of intensity at 1 per 200 which would actually generate more in a real life parking generation. They are simply just talking math right now but that 1 per 300 tried to characterize the level of intensity which is integral into our going forward in the future with reuses and things like that. They have a definition and a number

that helps to describe the level of intensity of things that can occur in here. If they take away the number, that level of intensity can be equated back to office and then why wouldn't you allow office to go into that 18,000 square feet even if the rest of buildings M and N have their maximum amount of office. You would have a hard time making that argument at least from a zoning administrator's standpoint saying they can't have anymore office but you can have something else that generates the same level parking per code.

**MS. NOVAK, SENIOR CITY PLANNER**, stated that in regards to the precedence issue, it is on a case-by-case basis. If another guy came in, they are not going to say their new code is 1 per 333 because you guys recommended it. 1 per 300 is kind of like their new average they have been looking at but it doesn't mean somebody is going to come in with that. They could have different uses in the development, different square footages, and a totally different type of user. They could come and say you know what they have competitive events all week long and they will be happening while the offices are going on. They would have to look at a totally different ratio and it may be something stricter where they can't support it so she doesn't want them to feel that the 1 per 333 is setting up precedence for somebody else. It just worked for their representation. It worked for them knowing they would still be 9 spaces short if they just parked it by code at the 1 per 33. If they came in and said they want to do 1 per 200. There more parking spaces short. If they say they want to do 1 per 400, which they are not sure 1 per 400 in any other city they have just been seeing the 1 per 300 generally. If these users leave and new users come in and as Kevin explained, they apply that 1 per 33 to those new users and they say you are way more intense and you have way more employees, way more people coming, they may have to bring them back. It is not a carte blanche that sets the precedence and forever assumes that this could become a problem property without it coming back. They still have to under that umbrella have that representation of that 1 per 33 integrally tied to that shared parking. It gives them more leverage and comfort to make sure things function appropriately at this site and don't get out hand like they could if they didn't have a ratio.

**CHAIRMAN CASON** stated he was feeling like he can't figure out which train is coming to the station first.

Mr. Anderson, the applicant, said either way works for them. If he puts himself in Kevin's shoes, he would ask for what he is asking.

**CHAIRMAN CASON** asked if anybody in the audience would like to address this subject before he closed the floor. There were none. He closed the floor and to see if there is any further discussion or questions for Staff.

**CHAIRMAN CASON** said he was concerned with the parking but with Staff's explanation and plus the fact that he thinks they have to look at the market to dictate what will work in there and what won't. If there are too many parking spaces for anybody to get a parking space, then people won't shop or do business there or lease there. It is the responsibility of the developer and the property manager and also the people in this case that purchase those actual properties to make sure they are able to get along with their neighbor and that other neighbors aren't doing

something that is going to affect their parking. In this particular case, no other neighbors came up and were concerned about the change in parking. Just like they would expect anyplace else if there were some radical change that causes effect on another persons' property, they would expect many people to be in here complaining about that case. They don't see anybody here doing that so evidently the people that have the most to lose are not the people here that are complaining about it. So for he just has to approve it. He has to go for it and can't see any reason not to simply because of the fact that right now he still doesn't have a grasp of the parking issue but maybe in this case it is a good thing.

**VICE CHAIRMAN RIVERS** said it is very difficult for him to support this item so therefore he will be voting no because he doesn't feel comfortable with reducing the parking requirements for 2 individual suites by 38%. He doesn't feel comfortable making a precedent setting move, at least what he feels is a precedent setting move. He is further distressed by not sticking to the code as it is written rather than speculating and using their best guess for what is required. They haven't had their code changed yet. Didn't know if they should vote on what they speculate that it might be. He is concerned that as in other places in the City of Chandler if you have parking issues there is no city enforcement on private property. It is up to the tenants to complain to their landlord and that also concerns him.

**COMMISSIONER PRIDEMORE** said he is agreeing more with Vice Chair Rivers than others. He is just not convinced that tomorrow or the next day every perspective tenant that comes in isn't going to add to the bust because the reality is if they approve it as is, they are still short. Earlier when the fencing business came in the landlord was able to stand up and think outside the box. That option to him is still available and for him now it is looking for an easier out. He said he agrees with the shared parking model but he is comfortable in waiting for Staff to recommend a change to the code that would bring one forward as opposed to approving one in this case. With that being said he will be voting against this as well.

**COMMISSIONER VEITCH** moved to approve DVR11-0025 PALOMA KYRENE BUSINESS COMMUNITY, seconded by **COMMISSIONER BARON**. The item passed 5-2 (Vice Chairman Rivers and Commissioner Pridemore opposed item).

J. ZUP11-0021 WEE BLESSINGS PRESCHOOL & ACADEMY

**Denied.**

Request Use Permit approval to operate a preschool and tutoring business at 1751 E. Queen Creek Road, approximately ¼ mile west of Cooper Road.

**BILL DERMODY, SENIOR PLANNER**, stated this is a Use Permit request to operate a preschool and tutoring business within an existing office development at 1751 E. Queen Creek Road west of the southwest corner of Cooper and Queen Creek roads. He said as they can see on the screen above them this is a fairly recent aerial photograph. There are only 4 buildings constructed within this office development. The preschool would like to go in the northwestern most building up near Queen Creek Road. This was zoned for office both general and medical a

few years ago. At the same time to the east of them a vacant lot was designated for future general commercial both retail and office. To the north are a variety of airport zoning. This is all vacant right now but airport related industrial types of uses are planned there in the future. To the west they have the Twin Acres subdivision which is a bunch of rural residential lots – horses on many of the lots. Not a lot of crops at this time and fully occupied and within the city. Most of it is within the city zoned AG-1. There is one property that is still in the County. The request is for a business that already exists and they are operating out of church in south Chandler. They are outgrowing that church and they need a more regularly available and larger environment for their preschool and tutoring business to grow. It will be mostly younger kids obviously in preschool and tutoring could be older children as well. The Use Permit is required because a preschool is not allowed where only general/medical offices are the uses approved. Staff is looking at preschools in this type of environment don't find a land use conflict with regard to parking. He thinks they will talk about state regulations that have to do with land use conflict but that city has no regulations, no consideration of pesticides or anything like that. Parking has been proven to work well in general commercial environments and other office environments throughout the city so it is not a great concern. They did look at the noise considerations for being near an airport. They are called upon to protect the airport and not encroach upon it with uses that might become a problem or complainers. This has often been applied to residential and also worth looking into for preschool and churches.

Their zoning code does address and requires sound attenuation to bring the decibel level down to an acceptable level. It actually is already built to that because of conditions that were put on this office development before the preschool use even came about. This should be able to conform to our zoning code in that respect and that is where they find it is an acceptable land use in proximity to the airport. Staff does recommend approval of the request for 3 years as Kevin mentioned in Study Session. It will take them some time to get off of the ground and it is appropriate longer than just 1 year so that they have enough time to evaluate how things are going. However, they anticipate no land use conflicts. He would like to mention they have plenty of neighborhood input. They had a neighborhood meeting – 4 neighbors attended all from Twin Acres to the west. One of them is here this evening. One of the biggest concerns has to do with their horses. They apply fly spray to their horses on a regular basis and they do not want to give up that right or take on any liability. That is something that is strictly the prevue of the state. The state does have regulations that have to do with pesticides which could include fly spray. In the Arizona Revised Statutes there is an entire section about this, 3-365 but that is not something that we enforce. The Arizona Department of Health Services licenses the preschools and it is up to them how to interpret this particular state law, what they determine as a pesticide that comes under their prevue, how to enforce this quarter buffer from agricultural types of uses that preschools must maintain and they have been working on that. He will provide an update and he would like to mention that an issue has come up for the applicant and aren't going to be able to attend this evening. He just spoke to the applicant's representative by phone and got an update on that matter and a few others.

The neighbors also brought up some site maintenance issues. There are a few trees missing and a portion of a fence that was taken down in the southern part of this development. The applicant

is working on that regardless of whether this get passed or not and to bring those into conformance. Also, the neighbors have spoken about a wall between them and this development that feels to low. Staff has looked at that in the past and has determined the wall is the correct height but the applicant is still looking at potentially adding to that even though they don't have to. It is still under review. With regard to the state regulations and pesticides, they have spoken several times with ADHS. They anticipate getting a certified letter tomorrow from them to certify that they are in conformance and that a license will be issued for the preschool and there proximity to agricultural zoning and horse issues will not prevent them from getting that license. However, they do note that is a state issue. This Use Permit must go into effect and take advantage of it within 1 year or it automatically expires so if they are not able to get the license, the Use Permit will go away 12 months after approval, if it is approved. Most likely it will take a few months for them to get the license and the title improvement and all that but they anticipate them being in business in less than a year if they do get approved. He believes those are all of the major issues that he wanted to address and he expressed an apology on behalf of the applicant. He did want to apologize to you that he wasn't able to be here this evening. Mr. Dermody said he would be glad to answer any questions that they have.

**CHAIRMAN CASON** asked if there is an issue where it is located according to the Airport Plan? Mr. Dermody said there is an issue. It is located within the 55 dnl noise contour also known as ANO-1. He showed where the subject building is located at the northwestern portion of the site, which falls into the 55 dnl noise contour. The Airpark Area Plan as they can see in the Staff memo has language that seems to suggest that uses such as preschools and churches shall be prohibited within the 55 dnl. Staff has gone back and forth and evaluated that quite a bit. They also have the zoning code which addresses it separately and says these uses are allowed within the 55 dnl as long as they do certain amount of noise attenuation. In Staff's analysis an Area Plan such as the Airpark Area Plan is just a policy guide, it is not the law. It should not make specific prohibitions or allowing uses by right automatically. It is more of a guiding document that they use when they adjust the zoning code. For that reason they don't see a conflict with the Airpark Plan. In their view it is more of a recognition that noise could be an issue and what steps need to be taken to make sure there is not a conflict and they believe that is addressed fully through the zoning code.

**CHAIRMAN CASON** asked if the contours are the new contours or the old contours? Mr. Dermody said these are the old contours. They are not the soon to be updated, not yet approved by the FAA contours. **CHAIRMAN CASON** asked where those contours would be. Mr. Dermody showed map of contours on the screen and noted this was only a draft. He showed the subject site which is just inside the soon to be 60 dnl. The 55 dnl falls another quarter mile or so to the southeast. The showed the 55 and 69 lines. **CHAIRMAN CASON** said so it is inside the 60 dnl contour that the FAA has in their hands right now waiting for approval but the one they are using to relate to this application is totally within the 55 dnl. Mr. Dermody said that is correct. **CHAIRMAN CASON** asked if there is any difference between the two that is relative to the applicant versus noise, rules, airplanes crashing on them, etc. Mr. Dermody asked if he meant in regards to FAA rules? **CHAIRMAN CASON** said no, City rules that are associated with those. Is it only regarding the amount of insulation they have to keep the noise down as

much as possible - those types of things? Mr. Dermody said he would have to refer to the zoning code. He doesn't recall what 60 requires. **CHAIRMAN CASON** asked Mr. Mayo, Planning Manager, if there are any differences between the two that are relevant? He said he is flipping through it right now. Again, they are dealing with an archaic code. This was written in '79. In the ANO-1 it is between 55 and 60 and the ANO-2 it is 60 to 70. It would fall within now what is known as the ANO-2 and so when they look towards out list, it isn't the Table of Permitted Uses is it a much smaller list of uses. The closest they could find would be an educational facility and that is under the formal heading of 'Public Facilities'. That really is intended for a Grammar School, a Jr. High, a High School but not necessarily a day care. That is what it would fall into. Under the ANO-2 per the code it says it is not permitted. Again, we are dealing with a list of uses that the intention of what educational facilities he doesn't equate it to what a 5,000 day care preschool is. He equates that to High School, Jr. High and Grammar school type things and it follows up with religious facilities and libraries, museums and galleries. **CHAIRMAN CASON** asked what happens to religious facilities and libraries in the ANO-2? Mr. Mayo said they are permitted in an ANO-2 with a higher level of noise reduction requirement. Once you get to ANO-3, then those are prohibited as well although he thinks the RLUIPA Federal would probably trump that too. **CHAIRMAN CASON** said but we are considering this as a school but not a church? Mr. May said correct. **CHAIRMAN CASON** said so as long as they have sound mitigation then it meets the stipulation of code for the ANO-2 area. Mr. Mayo replied no. It meets it for the ANO-1. The closest thing that we could say is that it is an educational facility and which is not permitted in an ANO-2. It is today since our noise contours on their zoning code in the first exhibit he showed those are our law today because the FAA has not formerly adopted or accepted the Part 150. **CHAIRMAN CASON** said so right now it is ANO-1 and they have to base the approval or denial on this application based on ANO-1. They can't consider the fact of what the FAA might approve and that it would be possibly later in an ANO-2. Mr. May replied that is correct. The FAA since they started their Part 150 Study 4 years ago changed their modeling requirements many times. He has seen he doesn't know how many different noise contours. If they sit on it long enough, they already know they are going to deny these noise contours because their modeling program will have changed again. What is approved today is what was adopted by FAA in the 90's and that is what is on their zoning code today but they know that those are incorrect. Mr. Mayo said he knows that takes away all level of assurance and comfort. **CHAIRMAN CASON** said at least it makes the line very definable and he thinks after talking about parking, having a nice defined line is a really good thing to have right now. Mr. Mayo said unfortunately when you are dealing with noise contours the concept of a nice defined line it isn't 60 dv on this side and you step a foot over and you are dealing with 70. They really should be a transition from black to gray and it just fades. **CHAIRMAN CASON** said for them that line is pretty clear.

**COMMISSIONER CUNNINGHAM** asked Mr. Dermody to put that map back up – the new one. The gray area designates the runways – correct? Mr. Dermody said that was correct. Is the flight school still using those runways for student pilots to take off and land? Mr. Dermody said he believes they are. **COMMISSIONER CUNNINGHAM** asked if they are to make a determination that it is safe for a school with 5, 25 or 50 children to be that close to where student pilots would be learning to take off and land? Mr. Mayo replied that he would tend to

say no only because the FAA establishes clear zones, they establish those areas where things cannot be and then they have recommendations on where other things can be. When you think about where is it appropriate to put kids the majority of airplanes don't crash when they are in glide path. They crash on take-off, landing and turning. For the most part you are not into a turning pattern on this you are into the glide path. The turns occur further to the southwest and to the northeast. With that being said no it isn't appropriate to say this is a high crash area potential. So no but right over here it is o.k. because it is just outside of something. The FAA is really the regulatory agency that dictates that type of thing. That is not to say that it shouldn't be a concern but it isn't something that you would base a finding on in this case. Mr. Mayo said he is just adding all sorts of level of uncertainty. **COMMISSIONER CUNNINGHAM** said her child wouldn't be there. Mr. Mayo said with that being said they do have a Harkins Theatre basically right at the end of the runway. **COMMISSIONER CUNNINGHAM** said he mentioned the pesticide. What is that pesticide? She said she knows it is fly spray but what is it? Mr. Dermody said the neighbors didn't mention what kind of fly spray they use. Most fly spray from what he was able to gather is the equivalent to 'Raid' or something similar to that. It is an aerial application not but airplane but by fogger or something similar to that.

**CHAIRMAN CASON** said the Airport Commission looks at everything within the Airport Area and makes a determination as to whether things conflict with FAA rules. Correct? Mr. Mayo replied they are not a regulatory authority in terms of FAA regulations. They are charged to look at something and they don't look at Use Permits. They solely look at a rezoning land use change. They don't even look at PDP's unless the PDP comes through with the rezoning. They are charged to look at something and determine a finding of conflict or no conflict with this use and the existing and planned activities at the airport not including what FAA says. You can't fly any lower than 1000 feet or this is your established clear zone and here is your trapezoid that creates it. They don't look at that. They all operate in terms of they are very versed in aviation verbage but it is not something that they say the FAA says therefore they find a conflict with it. They are strictly conflicts with planned and existing uses that are out there today. **CHAIRMAN CASON** said he recalls in the case of Chandler Airpark where they were doing some north of there and there was quite a bit of discussion about the trapezoid and those types of things. It was the pilots themselves that things should be o.k. because this is how things happen in reality with flying an airplane. Is it safe to assume that the Airport Commission works on that same thought process that we as pilots no that something in this area can't be over this height because it exceeds the trapezoid space that they are allowed to fly in? Mr. Mayo said that is probably a part of it but more fundamentally they look at a proposed land use and say is this going to cause a conflict for me and what we at the airport do. Mostly that is going to be either bringing in noise sensitive things that are going to increase the numbers of complaints that could possibly force them to change how they do things i.e. moving the heliport from one side to the other. That is predominantly kind of sentimentally how they look at things. Will it encroach upon the airport and encroach in terms of numbers of incompatible things coming near the airport. **CHAIRMAN CASON** so by virtue of being a zoning use permit then the airport didn't comment on this? Mr. Mayo said that is correct because the base land use of this did not change. **CHAIRMAN CASON** said regarding the spraying can he elaborate a little bit more on the responsibility that the state has versus the association between the spraying and the day care center and what

regulatory bodies work with each other. Mr. Dermody said there is a state law refers to pesticides and a ¼ mile separation from agricultural uses that use those pesticides and a preschool or a day care. The Arizona Dept. of Health Services licenses the preschools and day cares in the state and they are the regulatory body for interpreting that state law and determining whether they can issue a license or not issue a license. **CHAIRMAN CASON** asked how does the license see ADHS; how do they know that there might be a conflict in this particular case as being addressed with the spraying of animals? Mr. Dermody replied that in the application to the state the preschool or day care operator has to identify all the agricultural land uses within a ¼ of a mile. There has to be some investigation. He is not sure whether the state does it or the applicant as to what actually is occurring on all these agricultural lots. In some cases there needs to be something in writing but he is not sure that happens all the time from all the agricultural land owners stating that they aren't going to spray pesticides or certain pesticides to that extent. The City does not get involved in any of that.

**VICE CHAIRMAN RIVERS** asked Mr. Dermody that while the map is up why do they have three different 55 dnl lines on the south side? Mr. Dermody said he does not know why those are there. Mr. Mayo said they are not separate lines and said if the map could be pushed up it starts to almost fall off of it. It is a representation of where the actual glide pattern noise is and that is one wing of the glide pattern that parallels the runway. There would be another one on the other side but the modeling program dictates from where most traffic is coming from getting into our pattern and where the traditional prevailing wind is from the southwest heading northeast that more traffic goes right there, therefore, the average levels of 55 are increased right on that side. **VICE CHAIRMAN RIVERS** stated that Mr. Dermody had said when he was reading that there is one set of rules from 55 to 60 and then the next set of rules goes from 60 to 70. Is that correct? Mr. Dermody replied yes. **VICE CHAIRMAN RIVERS** so the fact that it this corner is really close to the 65 dnl line doesn't matter significantly either. Mr. Mayo replied that the ANO-2 goes from that 60 which is kind of in this picture clipping that property all the way to the one that is basically circling the runway. **VICE CHAIRMAN RIVERS** said from what they have discussed regarding the helicopter take-off and landing pad is they don't know where those helicopters go when they take off. They can pretty much go in any direction they would like. Mr. Mayo said no they cannot. They get into a similar traffic pattern. You will see the Helicopters if you go out there and hang out and watch the airport. You will see them 10 feet off of the runway on the taxiway and when they take off, most helicopters travel in a perpendicular pattern so they don't travel anywhere near the same speed as an aircraft. They can't get into normal patterns because aircrafts are going to be running into the back of them and so they actually take off basically mid field of the runway and they run perpendicular to the runway pattern. Once they are up and going you will see them circling around the runway and he is sure the citizen in the audience could tell you how many of those things come banking over Twin Acres in terms of their kind of touch and go practices that they do. They can get into the same oval pattern around the airport and they also go perpendicular to the runway.

**CHAIRMAN CASON** said the applicant wasn't here to speak to so he opened the floor to the public. He called up one speaker.

**CHRIS SORENSON, 12539 E. QUEEN CREEK ROAD**, said he is the one to the west – the County property. He stated the cards they mailed out said they are within 600 feet. State law says any agricultural land says  $\frac{1}{4}$  of a mile. There are over 30 properties and property owners within 1320 feet including the big farm that would be on the corner of Cooper and Queen Creek roads that has corn growing right now – still within that 1320. He believes they still aerial spray or use tractors to spray too. What this says is that the agricultural land owner may agree to comply with this buffer and they will go down and sign an agreement at the County Recorder. So are they going get all 30 people to sign because first of all he is the only one that showed up? Maybe the ones that are farther than 600 feet away didn't even realize what is going on here about spraying pesticides. Now it is great if all of the owners agree that they won't spray pesticides or flash spray but they also have horse boarding facilities so you have 20, 30 different people coming in that are using their particular fly spray. He uses Piranha. He showed a barn on the map where he has an automatic mister system that is just like your water mister system but it is hooked to a 55 gallon drum of fly spray that goes off on an automatic timer. He said he doesn't know the exact measurement to his property line from the back of the barn. He said let's say 50 feet and then from their building to the property line is 50 feet - they maybe have a 100 feet. The concern is they have 4 parking spaces that are going to be sanded and turned into a 2000 square foot playground. Then again kids are going to be outside playing within that 55, 60 dnl so that they are not in the building. They are right out there closer to the insecticides. They also spray herbicides too. They have lots of pests; flies, mosquitoes, roaches, scorpions, whatever they need to spray, they spray. Helicopters fly over his house all day long. They turn right on top of his house. They are supposed go down towards McQueen and turn across on that desert but they don't know matter how much he calls the tower and complain. They still fly where they want to fly. He complains about how high they are because there rules are they are flying at 2000 feet but 2000 feet minus there elevation of 1200 only puts them at 800 and that is pretty close. It is going to be noisy for those kids. He knows the state laws are not up to the City to approve. The City may need to notify everybody that is within  $\frac{1}{4}$  of a mile that this is coming and they might have to have an agreement on flash spraying or whatever they are going to do. Do they really know that it is safe to put that preschool there in that noise area? Does he know for sure it is safe? Is it legally acceptable to put that there because he is saying the building is all up to code of being in the 55 but they are going to take 4 parking spaces out back and put a fence up and put sand in it and then they are going to be outside. They are in the noise at that point. Mr. Mayo, Planning Manager said the noise sensitivity is not in the concept of the ANO and is not the concept that even a helicopter down force reverberation is going to physically damage kids ears or damage the development. It is that there are uses that are noise sensitive like a church when the whole congregation is quiet and they are listening to the minister or whatever that noise would disturb that type of use. In a school when the entire classroom is quiet and listening to the teacher that they hear the noise going by every once in a while then that becomes disruptive and then that use can't exist. In terms of a day care/preschool when the kids go outside, they typically aren't going out for any type of lesson they are going out to recreate and play and scream. He knows his 2 kids can sound like an entire schoolyard when they are out in their backyard. He doesn't believe that the intent of this is to say that they need to protect them from noise when they are outside because if they stuck a decimeter out there it might be spiking over 70 anyway with kids screaming. The disruption of uses that becomes sensitive to noise

such the churches and schools and things when they are trying to have quiet lesson learning experiences. He would love to see something in there he just doesn't believe that a preschool with pesticides/herbicides and with that facility being empty and kind of run down. The lights don't work and they get a lot of people jumping the fence robbing barns stealing saddles and all that stuff. He would love to see something in there but something more compatible with the existing properties.

**VICE CHAIRMAN RIVERS** thanked him for sitting patiently while they went through the other event before he was asked to come up. Regarding the helicopters that he said fly over his house, does he happen to know if those are student pilots. So they do have students in the helicopter that are flying over his house. Mr. Sorenson said there are several different helicopters. There are the big ones that carry students and the one that carries the instructors and their students. **VICE CHAIRMAN RIVERS** asked Mr. Mayo to reiterate the item on the 3<sup>rd</sup> page of the memo that talks about this preschool has to have waivers signed by their neighbors including this gentleman in order to get their state license. Is that not correct? Mr. Mayo said it could be correct if the state when they go out and start looking at all the things that are occurring in and around it, that it meets that test and the intent of what it is they are trying to stop. If those things are occurring and they can't speak to the fact that is it their timed mister system, is it can spray, is it aerial application, what is it. The state could explain that to the applicant but they don't regulate that. They would never say they don't know whether or not they would require a waiver. They may look at what is happening around and say that isn't what the intention of this regulation is and therefore they don't need to worry about it. **VICE CHAIRMAN RIVERS** said his point was that it is really up to the state. Mr. Mayo said it is. It sounds like what the applicant was conveying to Bill that it is more than likely the case and the state is going to be issuing them a letter that what occurs around there is not the intention of the thing that they are trying to protect in that state reg. Again, they have nothing to do with it.

**COMMISSIONER CUNNINGHAM** asked Mr. Sorenson if he has contacted the state licensing board regarding your concerns? Mr. Sorenson said no. **COMMISSIONER CUNNINGHAM** asked him if he would do so. Mr. Sorenson said if he needs to. He is hoping that all the procedures are followed properly if this day care facility wants to go in. It is going to be their tail or the City's tail not him. He didn't sign anything that is going to change the use of his property. It says on the state law that they have to have all agricultural owners agree to go down and sign paperwork. If they go down and apply and the state doesn't require them to do that maybe some parent later on will have their kid there and look up the law. His neighbor sprays in the morning before he goes out and he is 200 feet away from him. He sprays Piranha spray which is scented like Citranella and you can smell it 200 feet away. So it is obviously drifting.

**CHAIRMAN CASON** thanked Mr. Sorenson for coming up. There were no other speakers so he closed the floor and look for a motion.

**COMMISSIONER CUNNINGHAM** said she had one further question for Staff. She asked what is the current location of this school? Mr. Dermody said they are located in the church,

United Methodist Church, which was another agenda item regarding a cell tower this evening. It is east of the railroad track and on the north side of Chandler Heights.

**COMMISSIONER PRIDEMORE** said his concern is that he understands that the state is looking at the issue of the use of pesticide. His concern is the applicant has stated that it is their belief the state is going to give them approval and they would have their license to operate. His concern is say this does go through and down the road a parent's child does get sick. They don't know what is causing it but the reality is that there is these existing businesses or properties there that potentially could be leading to this problem. This concern is that the City then would be dragged into the whole thing because again they are looking at the project. They are getting an approval even though that one aspect of it isn't ours and they could get pulled into it anyway. He doesn't believe that the property owners next door should have to do anything. They are running their lives and running their businesses and doing what they need to do. He didn't think Mr. Sorenson should have to go sign anything if he doesn't want to and any burden to be put on him because he is not the one trying to go through the City. There is an applicant that should be carrying the burden for all of this stuff. He is not convinced that is being done. Is there a concern that the City can be dragged into this potential conflict down the road?

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, stated that actually from a legal liability standpoint they probably have more of a problem if they in the course of considering this Use Permit apply standards that don't have any application to the Use Permit. Their role isn't to enforce the state statute and any effort or decision based on that they might make based on what is in that statute is really not applicable here. They won't have any liability issues from simply doing our job. The state might have problems. He is presuming that what they are trying to do is get the state to determine that the statute isn't applicable because of the nature of the so called pesticide that is being used. He would suspect that if the state ultimately decides that it is applicable then the applicant for this Use Permit is going to have to go to all those landowners and get them to sign something. They have run into this before. There is a place or church or something on McQueen Road that wanted to have a child care facility and they told them they have to go the approval from the state and they were having a hard time doing it. They only get into trouble if they do more than what they are charged to do. **COMMISSIONER PRIDEMORE** asked if the applicant need to have that approval from the state prior to receiving this C of O. Mr. Mayo said no they can issue them everything. They still have to have the state license but they do not hold their C of O until the state issues them their license. He believes the state actually has to see that the building has a Certificate of Occupancy before they will issue their license. It is kind of the chicken or the egg but no he believes they can issue building permits, then final them and issue a Certificate of Occupancy and then they take that to the state and say he is clear to go in here and the state will give them their license assuming that all of their boxes are checked.

**COMMISSIONER CUNNINGHAM** said she just wants to go on record that she will be opposing this matter.

**CHAIRMAN CASON** entertained a motion.

**VICE CHAIRMAN RIVERS** moved to recommend denial of ZUP11-0021 WEE BLESSINGS PRESCHOOL & ACADEMY, seconded by **COMMISSIONER CUNNINGHAM**. The item was denied 4 to 3. The matter failed by majority. It will go before the City Council as a denial.

Mr. Dermody said it will go before Council on September 22, 2011, Thursday at 7:00 p.m.

**CHAIRMAN CASON** said they are just an advising body. They will be the people that make the actual decision.

6. DIRECTOR'S REPORT

Mr. Mayo said there was nothing to report.

7. CHAIRMAN'S ANNOUNCEMENTS

CHAIRMAN CASON announced that the next regular meeting is October 5, 2011 at 5:30 p.m. in the Council Chambers at the Chandler City Hall, 88 East Chicago Street, Chandler, Arizona.

8. ADJOURNMENT

The meeting was adjourned at 7:47 p.m.

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Michael Cason, Chairman

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Jeffrey A. Kurtz, Secretary