

MINUTES OF THE REGULAR MEETING OF THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, held in the Council Chambers, 88 E. Chicago Street, on Thursday, October 27, 2011, at 7:02 p.m.

THE MEETING WAS CALLED TO ORDER BY MAYOR JAY TIBSHRAENY.

The following members answered roll call:

Jay Tibshraeny	Mayor
Trinity Donovan	Vice-Mayor
Kevin Hartke	Councilmember
Rick Heumann	Councilmember
Matt Orlando	Councilmember
Jack Sellers	Councilmember
Jeff Weninger	Councilmember

Also in attendance:

Rich Dlugas	City Manager
Pat McDermott	Assistant City Manager
Mary Wade	City Attorney
Marla Paddock	City Clerk

INVOCATION: Susan Stevens-Clark – Chandler Bahai Faith

PLEDGE OF ALLEGIANCE: Cub Scout Troop 888

UNSCHEDULED PUBLIC APPEARANCES:

None.

CONSENT:

MAYOR TIBSHRAENY noted that Item No. 37 (Use Permit, ZUP11-0013 New Horizon Youth Homes – Commonwealth Circle) and Item No. 38 (Use Permit, ZUP11-0014 New Horizon Youth Homes – Park Avenue) would be moved to the Action Agenda.

MOVED BY VICE-MAYOR DONOVAN, SECONDED BY COUNCILMEMBER WENINGER, TO APPROVE THE CONSENT AGENDA AS PRESENTED WITH ITEM NO. 37 (USE PERMIT, ZUP11-0013 NEW HORIZON YOUTH HOMES – COMMONWEALTH CIRCLE) AND ITEM NO. 38 (USE PERMIT, ZUP11-0014 NEW HORIZON YOUTH HOMES – PARK AVENUE) MOVING TO THE ACTION AGENDA.

MOTION CARRIED UNANIMOUSLY (7-0).

1. NO COST FEE INTEREST: United States Ord. #4324

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4324 granting a fee interest, at no cost, to the United States of America to a parcel of land approximately 22 feet wide by 962 feet long for underground irrigation facilities located on the north side of Willis Road west of Arizona Avenue.

In 2003, a Final Plat for San Tan Plaza was recorded that dedicated right-of-way for Willis Road and Arizona Avenue to the City of Chandler. Located in this new right-of-way was an irrigation ditch owned by the United States of America (USA). Due to an error by Security Title, the USA's interest was deemed to be an easement. However, after further review and analysis, it was learned that the USA had a fee interest rather than an easement interest. Since the Plat dedicated the right-of-way containing the USA's facilities to the City, Salt River Project, on behalf of the USA, has requested that the City grant a fee interest in the strip of land containing the irrigation facilities. In exchange, the USA will quit claim to the City a similar sized parcel of land that the facilities were previously in and grant an easement for ingress and egress to the City for the public over the parcel they are asking the City to provide them title to. This action will clear up a title issue and provide fee title rather than an easement interest to a strip of land that should rightfully be owned by the USA.

2. RIGHT-OF-WAY ANNEXATION: Chandler Auto Park Way and Germann Rd. Ord. #4325

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4325, Right-of-Way Annexation of certain Gilbert Road rights-of-way of approximately 3.47 acres between Chandler Auto Park Way and one-quarter mile south of Germann Road contingent upon de-annexation by the Town of Gilbert.

The 1987 Intergovernmental Agreement between the City of Chandler and the Town of Gilbert defined an ultimate jurisdictional boundary line. This line was based on build-out right-of-way widths with the intent to have full roadway control (and intersections) under one jurisdiction or the other. It was agreed that Chandler would have control of Gilbert Road rights-of-way from Pecos Road to ¼ mile south of Germann Road including the full intersections at Pecos Road and Germann Road.

Currently, along Gilbert Road between Chandler Auto Park Way and ¼ mile south of Germann Road, there are strips of right-of-way under the jurisdiction of the Town of Gilbert. The Annexation Map depicts the entire area to be annexed contingent upon de-annexation by the Town of Gilbert.

A.R.S §9-471-02 allows for county right-of-way with no taxable real property to be annexed to an adjacent city by mutual consent of the city's governing body and the county's board of supervisors.

The annexation process per A.R.S. §9-471-02 requires that the City adopt an "ordinance of intent" to annex the right-of-way. If approved by the City, a request for annexation, together with a copy of the ordinance, will appear as a published agenda item at a regular meeting of the Maricopa County Board of Supervisors. If the County approves the annexation, the right-of-way parcels will be annexed into the City.

3. IRRIGATION EASEMENT: Salt River Project Ord. #4326

INTRODUCED AND TENTATIVELY APPROVED Ordinance No. 4326 granting a no-cost irrigation easement to Salt River Project (SRP) located at the NEC of McQueen and Queen Creek roads for the McQueen Road (Queen Creek Road to Riggs Road) Improvement Project.

On November 20, 2008, City Council approved Resolution No. 4238 authorizing acquisition and condemnation, as needed, of property required for the McQueen Road from Queen Creek Road to Riggs Road Project ST-810. Condemnation proceedings were necessary in order to acquire real property rights needed at the NEC of McQueen Road and Queen Creek Road. The road

widening improvement at this location required that SRP relocate an irrigation facility along the north side of Queen Creek Road and east of McQueen Road. The condemnation process is now complete and the City has acquired the right-of-way needed for the project. SRP's irrigation facilities were relocated into a portion of the new right-of-way acquired for the project. A letter was given to SRP by the City that allowed for the relocation and construction of the irrigation facilities in advance of completing the condemnation process. The letter allowed the project to move forward on time. Construction has been completed on this phase of the project. The easement is being granted to SRP at no cost as it was necessary to relocate the SRP facilities to accommodate a City project and benefits the public.

4. CITY FEE SCHEDULE AMENDMENT: Section 7 Res. #4535

ADOPTED Resolution No. 4534 amending Section 7 of the City Fee Schedule relating to the Police Department extra duty work, with the changes to become effective November 1, 2011.

In November of 2010, research was conducted on extra duty employment for the Police Department to make it a cost-neutral program. Many aspects of the program were explored to ensure the same service level could be provided with (1) ensuring that costs were covered and fees kept competitive, and (2) still providing appropriate City of Chandler oversight. Several departments were involved in assisting with this examination including, Police, Transportation and Development, Human Resources, Law and Risk Management.

Analysis of job types was also conducted. Job types fall into two categories: (1) Security/Private Traffic Control (use of City facilities, churches, private events, mall, etc.) and (2) Contracted Traffic Control (construction). Transportation and Development, along with Law, has recently made appropriate changes to the Barricade Manual allowing Chandler Police Officers the first opportunity to staff extra-duty work within the City of Chandler. This was important to both the Police and Transportation and Development Departments for the safety of the motoring public using Chandler roadways along with knowing a consistent traffic control and direction philosophy would be utilized.

The Risk Management Division was included to examine officer safety concerns. Worker's compensation was extensively reviewed to ensure that officers have full coverage in case of an injury while working extra-duty. It was determined worker's compensation coverage costs equate to \$2/hour and would be added to the fee for direct hiring by an outside party. This payment will be made directly to the City of Chandler.

Discussion also took place regarding when a City vehicle would be needed for a job. If utilized, an additional fee of \$6/hour will be assessed and paid directly to the City of Chandler. All traffic control in the roadway will require a vehicle and the additional expense will be added to the outside party's invoice.

On December 9, 2010, Resolution No. 4483 was adopted to reflect that the extra-duty fee would be paid at one and one-half times a top officer pay, which currently equals \$52.70/hour. For a sergeant working in a supervisory capacity, the rate of pay would be one and one-half times a top sergeant pay, which equals \$65.93/hour.

In July of 2011, Officers received a .083% increase in pay. Keeping with paying at one and one-half times a top officer pay, the range will move to \$53.13. Also in July, Sergeants received a 2.07% increase in pay. Keeping with paying at one and one-half times a top Sergeant pay would bring the extra duty rate for a topped-out Sergeant working in a supervisory capacity to \$67.20. A

sergeant working extra duty in a non-supervisory capacity would be paid one and one-half times of top officer pay as stated above at \$53.13/hour.

5. GRANT AGREEMENT: Federal Aviation Administration Res. #4538

ADOPTED Resolution No. 4538 authorizing administrative action on behalf of the City to enter into a Grant Agreement with the Federal Aviation Administration (FAA) to accept Grant Number AIP 3-04-0008-021-2011 for \$75,000.00 for the design of the Airport Weather Observing System (AWOS) replacement.

On September 8, 2011, the FAA offered a grant to the City to design the replacement of the Airport AWOS. The FAA required the Agreement be signed on or before September 12, 2011. Airport Staff requested that this Agreement be signed by the City Manager to comply with the FAA deadline.

The project will design the replacement of the aging and antiquated weather monitoring system that is currently being used by aircraft that fly into and out of the airport. Replacement parts are unavailable and routine maintenance for this system makes it cost effective for its replacement.

The design for this project is in the current 5-year Capital Improvement Program (CIP). Federal grants represent 95% of total project costs. An ADOT grant is anticipated for 2.5% (\$1,973.00) of the project costs. Staff has identified the remaining 2.5% (\$1,973.00) local matching share in the Airport Operating Fund.

6. ONE YEAR ACTION PLAN: Neighborhood Stabilization Program Res. #4540

ADOPTED Resolution No. 4540 amending the 2011 One Year Action Plan and submitting Substantial Amendment Number One to the U.S. Department of Housing and Urban Development under the Housing and Economic Recovery Act of 2008 (HERA) for the Neighborhood Stabilization Program.

In 2009, the City of Chandler received \$2,415,100.00 from the U.S. Department of Housing and Urban Development (HUD) in Neighborhood Stabilization Program (NSP-1) funds.

A Substantial Amendment to the City's Action Plan for the CDBG Program was submitted to HUD in February 2009 to establish the program to be funded with NSP-1 dollars. The amendment identified four activities to take place under Chandler's NSP-1 Program including:

- A first-time homebuyer program operated by the Chandler Community Land Trust;
- A down-payment assistance program;
- A program to provide permanent affordable rental units and
- Funding for program administration.

A second change for expending NSP-1 funds was approved by City Council on November 18, 2010, to reduce the original program administration budget and to create a new activity; acquisition of foreclosed properties in the City of Chandler Land Bank area.

Currently, Staff is proposing to again amend the plan for expending NSP-1 funds to:

- Increase the program administration budget from \$56,500.00 to an amount not to exceed \$86,500.00;
- Decrease the acquisition budget for properties in the Chandler Land Bank area from \$185,000.00 to an amount not to exceed \$60,000.00 and;
- Establish an activity and budget for the demolition of blighted structures in an amount not to exceed \$95,000.00.

Staff is presenting this request for an amendment to the City's Annual Plan at this time to reallocate funds remaining under the NSP-1 program. Staff anticipated that all funding made available to Newtown under the First Time Homebuyer and Down Payment Assistance Programs will be expended as currently allocated. Staff is requesting that the \$185,000.00 be reallocated.

Funds allocated under the activities of acquisition and demolition are expected to be expended in the area of the Chandler Land Bank. Staff anticipates that funding for demolition of blighted structures will be necessary as properties are acquired in the Land Bank area. Also, additional funding for program administration is required, as implementation of the grant is continuing and therefore monitoring oversight and reporting of the grant activities is required. While HUD allows up to 10% of the grant award for administration, Staff is anticipating only spending roughly 4% of Chandler's NSP-1 award on program administration. All funds for NSP-1 must be expended by March 12, 2013.

The Housing and Human Services Commission (HHSC) held a public hearing on the proposed Substantial Amendment on October 5, 2011, during their regularly scheduled meeting. Following discussion of the amendment, the Commission approved a motion to recommend the approval of Resolution No. 4540 by the City Council.

All costs associated with the Federal Neighborhood Stabilization Program grant funds will be paid by the federal government and do not require repayment on the part of the City of Chandler.

7. MUTUAL AID AGREEMENT: Gila River Indian Community Res. #4543

ADOPTED Resolution No. 4543 authorizing a Mutual Aid Agreement with the Gila River Indian Community for dispatching police services during an emergency situation or when requested by either party.

The City of Chandler and the Gila River Indian Community have historically entered into Mutual Aid Agreements to provide police services to assist and aid each other during emergency situations or when situations arise necessitating such services. Each party will provide these services when requested unless the requests conflict with the then present duties, resources or general orders. This agreement is for a three-year term, retroactive to June 15, 2011.

8. DEVELOPMENT FEES Res. #4544

ADOPTED Resolution No. 4544 ratifying and authorizing administrative action taken on behalf of the City to reduce or eliminate the amount or type of development fees imposed and collected pursuant to Chapter 38 of the Chandler City Code for the sole purpose of complying with new statutory requirements set out in A.R.S. §9-463.05.

In fiscal year 2010-11, Senate Bill (SB) 1525 (50th Legislature – First Regular Session) redefined a municipality's ability to assess system development fees (a.k.a. impact fees) effective December 31, 2011, essentially rewriting Arizona's impact fee enabling act for municipalities.

The City needs to adjust fee categories to exclude capital projects from the calculation which are no longer eligible to be paid with impact fees under SB 1525. The City currently charges system development fees in the following categories: arterial street, fire, library, park, police, public building, reclaimed water, wastewater, water and water resource. The arterial street and utility categories are unaffected by SB 1525, however, the remaining categories require recalculation. The City hired Duncan Associates, the firm which prepared its last consultant update to non-utility system development fees in 2008, to assist with the necessary changes. The fee recalculations are described in detail in an October 11, 2011, memo from the consultant to the Management Services Director. Since this change is mandated by law, Council is only taking administrative action to allow City Staff to collect the fees at the reduced level starting January 1, 2012.

The Management Services Council Subcommittee will meet on October 21, 2011, for a briefing on the impact fee reductions that will take effect on January 1st. Later that same day, members of the development community have been invited to meet with City Staff on the same topic.

System development fees are charges designed to provide funding to a community for the cost of expanding infrastructure required to support new development. If these fees are not maintained at the proper level, the City may have to provide additional General Fund support through cash payments or debt issuance for growth-related projects. Based on the past two years of actual collections, and assuming the same mix of development, the annual impact of these fee reductions will be about \$1.5 million.

9. INTERGOVERNMENTAL AGREEMENT AMENDMENT: Superior Court of Arizona
Res. #4545

ADOPTED Resolution No. 4545 authorizing Amendment No. 1 to the Intergovernmental Agreement (IGA) with the Superior Court of Arizona in Maricopa County for jury services in an amount not to exceed \$10,000.00 for the period July 1, 2011 through June 30, 2012. This is the first of five one-year renewals.

The Chandler Municipal Court presently utilizes the services of the Maricopa County Superior Court Jury Commissioner to summon citizens of the City of Chandler for jury service. In addition to selecting the names of potential jurors, the contract also provides for the cost of mailing the summons/questionnaires, letters of excuse, postponement and failure to respond cards. The contract also provides a separate payroll service to pay jurors serving on a jury panel.

10. AMENDMENT: Resolution No. 1178 Res. #4546

ADOPTED Resolution No. 4546 amending Resolution No. 1178, Section 3, Subsection D prescribing standards of financial disclosure for local elected officials.

The Legislature amended the financial disclosure law to provide that an elected official whose term ends in January, the ability to file their final financial disclosure statement at the same time as the disclosure statement for the last immediately preceding year. This provision is applicable to those cities whose election dates have been moved to the fall election cycle.

11. GRANT AMENDMENT: ADOT Res. #4547

ADOPTED Resolution No. 4547 authorizing the City to enter into an amendment to Grant Number E8S45 with the Arizona Department of Transportation (ADOT), Multimodal Planning Division, to extend the grant expiration date to June 30, 2012.

The City received ADOT grant #E8S45 in 2007. This ADOT grant funding is for the design of the northwest apron project. This project is included in the current and proposed Five-Year Capital Improvement Program.

The ADOT grant related to this project expired June 30, 2011. The City is requesting, and ADOT has agreed, to extend the expiration date to June 30, 2012. This action is necessary to allow time for the construction of this project.

This grant is for \$186,750.00 from ADOT and requires a minimum match of \$20,750.00 from the City. The estimated design cost of the project is \$207,500.00. There are no new financial responsibilities associated with the amendment to this grant.

At the October 5, 2011, regular meeting of the Airport Commission, the Commission voted unanimously to recommend approval to enter into an agreement with ADOT to amend the grant.

12. LEASE AMENDMENT: Innovations Technology Incubator Res. #4548

ADOPTED Resolution No. 4548 authorizing an amendment to the lease at 149 S. 79th Street for 12 years to provide for expansion space for the Innovations Technology Incubator.

In 2009, City Council approved the Lease Agreement that created the Innovations Technology Incubator, a physical facility that brings numerous resources to bear to accelerate the pace of growth of new start-up businesses by providing unique, value-added services that entrepreneurs operating individually normally would not have access to. These include access to equipment, structured access to capital, interaction, and educational forums and shared business services. As these companies grow and succeed, it is anticipated that they will “spin-out” of the incubator into commercialized space creating new, well-paying jobs and capital investment in the community.

After breaking ground in December 2009, Innovations opened for business on April 30, 2010, and has seen tremendous success since that date. Now 100% occupied, 19 companies are operating out of the facility ranging in technologies from DNA research, sustainable technologies, cancer research, software and hardware devices, engineering and non-invasive therapies and the University of Arizona’s Center for Nanobiosciences and Medicine, among others. Several companies have already grown significantly since taking occupancy and the facility has been incredibly well received. More than 75 people work out of this facility each day, with an Economic Development team member working on site. Furthermore, attention to Innovations is coming not only from Arizona, but from a national and international level as well.

The City has identified many partners who are helping Innovations to succeed, but none more than the Small Business Development Center (SBDC). The SBDC has worked in partnership with the City of Chandler to create a program, with a grant provided by Chandler’s Industrial Development Authority, known as TechEDge. TechEDge, a 10-week course put in place to help companies succeed in their launch, is in its inaugural program and already has 15 companies meeting at Innovations each week for 10 weeks. Many of these companies are not currently Innovations tenants but the program is giving us the opportunity to showcase Chandler’s ability to be “tech ready”.

The building that houses Innovations was selected due to the existing infrastructure that includes gas lines, compressed air, vacuum lines and clean room-type construction, all very expensive items to duplicate. This facility was acquired by Capital Commercial Investments in 2008 as an investment opportunity and is now a "for lease" building. An expansion rental rate has been negotiated that includes the first six months of rent free to give staff time to secure tenants for the facility and then a rate of \$11.72 NNN per square foot annually with standard annual increases for a period of 12 years. A tenant improvement allowance of \$35.00 per square foot will be paid by the landlord towards improvements identified by staff. The existing space of nearly 37,000 square feet, which will be modified to be coterminous with the First Amendment to the Lease, will not adjust its rental rate.

The building owner, Capital Commercial Investments' general contractor LGE Corporation will oversee the construction of the tenant improvements and will subcontract all work through a competitive bid process. Pre-construction estimates have been secured on all disciplines through individual subcontractors that have toured the space. Unlike the initial construction on Innovations, there is not a capital contribution that will come from the City of Chandler. Instead, the building owner will bear the cost of the tenant improvements on the building. Furthermore, as the City was adjusting its workforce over the past few years, the Economic Development Division, in conjunction with warehouse staff, secured a significant amount of office furniture that was no longer needed, which has been stored and will be used for the expansion space of the incubator. Several pieces of lab furniture have been stored from the original construction of Innovations and will be used in this expansion space as well. This will ensure that the expansion of Innovations is a "turn-key" facility upon completion as was the original construction.

Economic Development Staff have identified several companies who are interested in taking space in the expansion of Innovations when it is completed, along with several existing tenants who need more space and will be actively marketing to other companies on an on-going basis. The City will pass along the rental rate and operating expenses to these companies that will represent a below-market rate for this type of space making it very attractive to technology start-ups.

The estimated annual amount of \$281,280.00 plus annual increases, triple net charges and utilities is budgeted in the strategic Economic Development Fund, which will be paid in part by the City during lease-up.

13. CONTINUED REZONING: Northeast Corner of Cooper and Riggs

CONTINUED TO DECEMBER 15, 2011, Zoning, DVR10-0014 Northeast Corner Cooper and Riggs, rezoning from AG-1 to PAD along with PDP and PPT for an 84-lot single-family residential subdivision on 32 acres and PAD zoning for commercial development on 7.5 acres located at the NEC of Cooper and Riggs roads. (Applicant: Michael Jorgensen; Cawley Architects.) The continuance is requested to allow the request to go before the Design Review Committee and to be heard by the Planning Commission at the November 16, 2011, hearing.

14. ZONING TIME EXTENSION: Kyrene Crossings

APPROVED a three-year timing extension for Zoning, DVR11-0013, Kyrene Crossings, on the existing PAD zoning for a childcare/preschool use on 3.72 acres (Lot 7) located at the SEC of Kyrene Road and Chandler Boulevard. (Applicant: Josh Oehler, Arc One Associates.)

In March 2008, City Council approved rezoning two pads, Buildings B and C, from office use to a childcare/pre-school use with a three (3) year construction time limit condition. The PAD zoning expired on April 27, 2011. Time limits are calculated from the previous zoning approval's effective date and time limit extensions are calculated from the expiration date.

This application requests a time extension approval to maintain the PAD zoning for a preschool/daycare use for an additional three (3) years in which the zoning would expire on April 27, 2014.

The property is located within the existing Kyrene Crossings commercial development at the SEC of Chandler Boulevard and Kyrene Road. This property is currently developed with a CVS pharmacy at the intersection corner, a Wendy's fast-foot restaurant, a Chase bank branch, a retail/restaurant shops building along Chandler Boulevard, and a veterinary office along Kyrene Road. There are two office buildings constructed west of the subject site that have not been completed. Single-family residential homes are adjacent to the site's east and south property lines.

This application does not seek to modify the previously approved land use, site or building design. The office portion of Kyrene Crossings, which includes the preschool/daycare lot, foreclosed and was purchased by a new owner in December 2010. The new owner does not know whether the site will develop with the approved use or if a different use would be proposed in the future. There are no development plans at this time.

If any other alternative design or use is proposed, an amendment to the PAD zoning and/or PDP will be required. If the City should approve the timing condition extension, all other conditions in the original approval would remain in effect. Planning Staff has no concerns with the conditions in the original approval.

This request was noticed on accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 29, 2011. There were no neighbors in attendance. Staff has received no correspondence on opposition to this request.

Upon finding consistency with the General Plan, the Planning Commission and Planning Staff recommend approval of a three-year extension.

15. ZONING TIME EXTENSION: Park Ocotillo Business Center

APPROVED a three-year timing extension for Zoning DVR11-0023 Park Ocotillo Business Center, on the existing PAD zoning for office, light industrial and retail on 37 acres located at the SWC of Price and Queen Creek roads. (Applicant: Burch & Cracchiolo, P.A., Ed Bull.)

In May 2008, City Council approved rezoning from Planned Area Development (PAD) zoning for light industrial use and/or commercial uses to PAD zoning for office, light industrial, and retail uses with Preliminary Development Plan (PDP) approval for a light industrial/business park. The approved PDP request represents the site layout and building architecture with flexibility for final site and building designs contingent upon being in substantial conformance with the approved zoning. The zoning was approved with a three (3) year construction time limit condition. The PAD zoning expired on June 21, 2011. Time limits are calculated from the previous zoning approval's effective date and time limit extensions are calculated from the expiration date.

This application requests a time extension approval to maintain the PAD zoning for office, light industrial and retail uses for an additional three (3) years in which the zoning would expire on June 21, 2014.

The property is a part of the larger Ocotillo Master Plan and designated for Employment use. The Gila River Indian Community is west and northwest of the site. Directly north is property zoned PAD and Planned Commercial Office (PCO) for commercial and office use as part of the Wells Fargo Corporate Center development. The City's Ocotillo water reclamation facility abuts the site's south side. East of the site are condo offices and the new Downtown Ocotillo retail/residential project.

In 1989, the property was rezoned from AG-1 (Agricultural) to PAD for an industrial park, which was planned for business and low intensity industrial uses consistent with surrounding uses. The development did not commence and the zoning expired due to the lack of construction activity. The zoning was changed through a separate case, Ocotillo Power Center, in 1996 allowing for an approximate 40-acre industrial development or a mixed-use development with 24.9 net acres of commercial retail and 14.7 net acres of industrial. This zoning expired and was extended in 1998 for an additional two years.

Following the 1996 zoning action, a PDP was approved for the Mobil gas station with a convenience store at the immediate intersection corner of Price and Queen Creek roads. The zoning for Park Ocotillo Business Center vested with the development of the gas station. This application includes offices, which was not a part of the previous zoning, incidental retail versus a large retail center, and flex industrial warehouse/office buildings instead of single or multiple user industrial development.

The development request allows up to a maximum of 415,000 square feet of building area; though the development plan exhibits a development with approximately 349,000 square feet of building area. As was done with the previous zoning for this site, the PAD zoning requests use and site design flexibility with final land use configurations determined at the time of Final Development Plan. The PAD zoning process allows the final land use configurations to be based upon the market demands and the expectations by the PDP. Planning Staff would review increased building area administratively for compliance with all other development standards.

The development includes two 3-story office buildings along Queen Creek Road along with a 15,000 square foot retail shops building. Along Price Road, there are four 1-story 8,000 square foot office buildings and a 33,400 square foot 2-story office building. Flex industrial warehouse/office buildings total approximately 197,000 square feet and are sited in the project's center and along the west and south property lines.

This application does not seek to modify the previously approved land use, site or building design. There are no development plans at this time.

If any other alternative design or use is proposed that is not in substantial conformance with the PAD, an amendment to the PAD zoning and/or PDP will be required. Upon approval of the timing extension, all other conditions in the original approval would remain in effect. Planning Staff has no concerns with the conditions in the original approval.

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 24, 2011. Three people attended in addition to the applicant. Those in attendance represented another office building along Price Road and a

representative from the Ocotillo Community Association. Staff has received no correspondence in opposition to this request.

Upon finding consistency with the General Plan, the Planning Commission and Planning Staff recommend approval of a three-year timing extension with all of the conditions in the original approval remaining in effect.

16. GRANT AGREEMENTS: U.S. Department of Homeland Security

AUTHORIZED a grant agreement with the U.S. Department of Homeland Security to be used for emergency preparedness in the total amount of \$275,047.00.

The City of Chandler has established a Fire/Police Rapid Response Team, Fire/Police Terrorism Liaison Officers, and a Community Emergency Response Team (CERT) program with federal funding from the State Homeland Security Grant program. Each of these programs ensures that Fire and Police personnel are prepared and equipped to respond to large scale emergencies, terrorist events and natural and/or man-made disasters. The awards are being made under the 2011 State Homeland Security Grant Program. The purpose of the awards is to provide equipment and training to sustain these emergency preparedness programs.

Funds will be used to fund the following grant projects:

- | | |
|--|-----------|
| • Enhance Rapid Response Teams – Police RRT | \$128,000 |
| • UASI Assessment Teams-Terrorism Liaison Officers (Chandler Police) | \$ 3,800 |
| • Chandler CERT Training | \$ 11,247 |
| • Enhance Rapid Response Teams – Fire RRT | \$128,000 |
| • UASI Assessment Teams-Terrorism Liaison Officers (Chandler Fire) | \$ 4,000 |

These grants have no match requirements and the Fire Department has the appropriation allocation in the FY 2011/12 Budget.

17. CLAIMS REPORT

APPROVED the Claims Report for the quarter ended September 30, 2011.

18. BOARD AND COMMISSION APPOINTMENTS

APPROVED the following Board and Commission appointments:

Human Relations Commission:
Bradley Singer

Chandler Municipal Property Corporation:
Nicholas Sheperd

19. AGREEMENT RENEWAL: Miller and Kramer, PLLC

APPROVED an Agreement renewal with the law firm of Miller and Kramer PLLC, to provide legal services related to eminent domain, litigation and advice on related issues, for the period October 23, 2011, through October 22, 2013.

The Chandler City Council has authorized the use of its eminent domain authority by the City of Chandler when necessary for various City projects and for the benefit of the citizens of Chandler.

The City has used this law firm over the past several years for these services and is satisfied with services rendered and the results achieved by this firm.

20. OFFSITE LUMP SUM AGREEMENT: Artesian 186, LLC

APPROVED Offsite Lump Sum Agreement #OA10-004, with Artesian 186, LLC, deferring the half-street improvements on Gilbert Road as a condition of their development and accepting a lump sum payment of \$268,241.00.

As a condition of development, Artesian Ranch, located at the NWC of Ocotillo and Gilbert roads, deferred roadway work on Gilbert Road adjacent to their property. Half street improvements, including a full median and one opposing lane and required underground utilities along the frontage of the property in Gilbert Road, were deferred in lieu of a lump sum payment of \$268,241.00 made to the City.

This agreement is intended to cover the cost for the above mentioned work. A lump sum agreement was used to secure their financial obligation to the City for the deferred work as well as release the developer from any future obligations for the improvements.

Funds in the amount of \$268,241.00 have been received from the developer and are being held in an interest bearing account to use for the future construction of Gilbert Road.

21. AGREEMENT: CPC Construction, Inc.

APPROVED Agreement #ST2-745-3040 with CPC Construction, Inc., for concrete repair and maintenance in an amount not to exceed \$1,589,000.00 for one year with options to extend for up to two (2) additional one-year periods.

22. AGREEMENT AMENDMENT: CPC Construction, Inc.

APPROVED Agreement #ST0-745-2801, Amendment No. 2, with CPC Construction, Inc., for asphalt rubber crack sealing in an amount not to exceed \$300,000.00 for the period December 1, 2011 through November 30, 2012 with options to extend for up to three (3) additional one-year terms.

23. AGREEMENT: CPC Construction, Inc.

APPROVED Agreement #ST2-745-3039 with CPC Construction, Inc., for asphalt patchwork, maintenance and repair in an amount not to exceed \$430,000.00 for one year with options to extend for up to two (2) additional one-year periods.

24. AGREEMENT AMENDMENT: The Frank Gates Service Company

APPROVED Agreement, Amendment No. 5, with The Frank Gates Service Company for Workers' Compensation Third Party Claims Administration for a six-month period in an amount not to exceed \$35,280.00.

The City is self-funded for workers compensation. To take advantage of optimal pricing and receive discounts available from health care providers, the City retains a Third Party Administrator (TPA) to process workers compensation claims. In addition, TPAs are adequately

staffed with knowledgeable professionals who work with the City's Risk Management Occupational Health Nurse to administer the workers compensation program.

This agreement was issued in 2007 with four additional one-year renewal options. This is the fourth and final renewal option. Council has approved years two and three of the contract. Staff is requesting a six-month extension to allow for a new Request for Proposal to be issued, evaluated and a new contract awarded.

25. AGREEMENT AMENDMENT: Plumbing Service

APPROVED Agreement #WW1-914-2899, Amendment No. 2, with Hoffman Southwest Corp. dba Roto Rooter Service and Plumbing Company, Cartright's Drain Service and Reddi Services, Inc. for plumbing service for a total amount not to exceed \$400,000.00. This is the first of four optional one-year extensions.

26. AGREEMENT AMENDMENT: Collection of Usable Items

APPROVED Agreement #SW0-926-2873, Amendment No. 1, with Stardust Building Supplies, Habitat for Humanity, Swift Charities for Children, Catholic Charities Community Services and Big Brothers Big Sisters of Central Arizona for collection of usable items and AUTHORIZED Staff to enter into agreements with additional non-profit corporations and revise categories of materials collected.

In 2007, a comprehensive waste characterization study identified materials in the solid waste stream that have recycling and reuse value. Information from this study suggested ways to achieve the City's goal of reducing waste through recycling and reuse.

In 2009, Staff looked at ways to divert goods self-hauled by residents to the Recycling-Solid Waste Collection Center. The reusable goods include gently used items of clothing, furniture, toys, small working appliances, exercise equipment and household decorative items.

In 2010, the City contracted with five non-profit organizations that assist those in need with varying services. The City increased diversion of usable items by 12 tons, keeping reusable goods out of the landfill and reducing costs associated with disposal. Although no additional charitable organizations are partnered with the City at this time, this program remains opportunistic to include other non-profit organizations in the future.

27. PROJECT AGREEMENT: Black and Veatch

APPROVED Project Agreement #WA1201-201 with Black and Veatch for design of Ocotillo Water Transmission Main from Dobson Road to McQueen Road in an amount not to exceed \$298,175.00, contingent upon written notification from Intel and appropriate funding, and AUTHORIZED an increase to annual contract #EN1003-103 with Black and Veatch from \$750,000.00 to \$850,000.00. This is the first of four optional one-year extensions.

28. PROJECT AGREEMENT: SDB, Inc.

APPROVED Project Agreement #WA1107-401 with SDB, Inc., for construction services for the Valve Replacement Program, pursuant to job order contract #JOC07-04, in an amount not to exceed \$232,423.99. On January 27, 2011, Council approved a fourth one-year extension to SDB, Inc, JOC07-04, for general construction services in an amount not to exceed

\$1,500,000.00. On July 28, 2011, Council approved an increase to the annual limit to \$2,500,000.00.

29. CONTRACT: Achen-Gardner Construction, LLC

APPROVED Contract #WW1104-401, construction manager at risk contract, with Achen-Gardner Construction, LLC, for Phase I of the Ocotillo Water Reclamation Facility (OWRF)/Airport Water Reclamation Facility (AWRF) lift station and deep sewer in an amount not to exceed \$12,685,782.71, contingent upon written notification from Intel and appropriate funding.

30. CONTRACT: Hunter Contracting Co., Inc.

APPROVED Contract #WA1004-251, construction manager at risk contract, with Hunter Contracting Co., Inc., for Phase I of Chandler Water Treatment Plant Flocculation System Rehabilitation in an amount not to exceed \$870,467.08.

31. CONTRACT CHANGE ORDER: Nesbitt Contracting

APPROVED Contract #AI0805-401, Change Order No. 2, with Nesbitt Contracting for Airport Boulevard Realignment in an amount not to exceed \$54,973.68, for a new contract amount of \$2,971,664.72.

After careful investigation, it has been determined that an existing 16" asbestos concrete water line will not have sufficient cover in a number of locations in the proposed new roadway construction limits. Staff has determined that approximately 500 feet of the 25-year old line needs to be vertically relocated and replaced with ductile iron to the proper depth providing sufficient cover. An additional 8 days has also been added to the contract for the completion of this work as well as additional scope of the SRP plans and rain days.

32. PURCHASE: Peoria Pest Control

APPROVED the purchase of pest control service for treatment of manholes from Peoria Pest Control, utilizing the City of Peoria contract, in an amount not to exceed \$100,000.00.

33. PURCHASE: Maintenance and Hardware Supplies

APPROVED the purchase of maintenance and hardware supplies from Home Depot and HD Supply Maintenance Solutions, utilizing the U.S. Communities contract, in an amount not to exceed \$275,000.00.

34. PURCHASE: RDO Equipment Co. (John Deere) of Arizona

WITHDREW the purchase of a backhoe loader from RDO Equipment Co., (John Deere) of Arizona, utilizing the Houston Galveston Area Cooperative (HGAC), to allow staff to conduct further research.

35. PURCHASE: RDO Equipment Co. (John Deere) of Arizona

WITHDREW the purchase of a landscape loader from RDO Equipment Co. (John Deere) of Arizona, utilizing the Houston Galveston Area Cooperative (HGAC), to allow staff to conduct further research.

36. USE PERMIT: Vintage 95

APPROVED Use Permit LUP11-0018 Vintage 95, Series 12 Restaurant License, to sell liquor for on-premise consumption only within a restaurant and adjacent outdoor patios at 95 W. Boston Street in Historic Downtown Chandler. (Applicant: Heullmantel & Affiliates.)

The subject site has existing Liquor Use Permit approval that was granted in January 2010 for Siracha Lounge. The only significant change requested from the 2010 approval, which had no time limit, is to add outdoor live music.

The subject site's zoning is CCD, which is a unique district that promotes specialty retail, cultural, dining, entertainment and other storefront businesses traditional to a downtown setting. The South Arizona Avenue Corridor Area Plan (SAZACAP) designates the subject site for Urban Commercial, which is intended for certain pedestrian-oriented uses that draw from a larger market area than the immediately surrounding neighborhoods. Across the alley to the south is the Site 6 City-owned parking lot that the SAZACAP designates for Cultural/Entertainment uses, which could include a range of more intense cultural, commercial, entertainment and office uses. One block southwest of the subject site is an established residential neighborhood that the SAZACAP designates for Low Density Residential uses with a Future Growth Area overlay for possible future expansion of the Cultural/Entertainment uses.

The subject site includes an approximately 2,800 square foot building interior with restaurant seating and a bar, a small front patio along Boston Street and a larger rear patio backing to the alley. The rear patio has restaurant seating, a bar, and three raised "square" features (a fire pit, a water feature and a future tree) that serve as gathering points. Seating is provided for approximately 178 persons, including 100 on the interior, 20 on the front patio and 58 on the rear patio.

The application proposes live music, both indoors and outdoors on the rear patio. The music may include amplified acoustic guitar and vocals (daily), or a small 3-piece jazz band (Thursday through Saturday only). Only the jazz bands will include a bass guitar. No drums or DJs are requested. The music schedule is 5 p.m. to 10 p.m. Monday through Wednesday, 11 a.m. to 1 a.m. Thursday through Saturday, and 12 p.m. to 10 p.m. on Sunday.

The subject business intends to open in early November 2011.

The Planning Commission and Staff support the request finding that live music (outdoor and indoor) is appropriate at this location if controlled so as to not unreasonably disturb the residential neighbors. The subject site and surrounding area is of a different nature than liquor uses located in shopping centers elsewhere in the City. In Downtown Chandler, the property lines are much closer to each other and there is a greater expectation for entertainment-related uses such as live music.

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held September 29, 2011. There were no residents in attendance. The Police Department has been informed of the application and has no issues or concerns. Staff has received no correspondence in opposition to the request.

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

1. The Use Permit granted is for a Series 12 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 or modification beyond the approved exhibits (Floor Plan and Narrative) shall void the Use Permit and require new Use Permit application and approval.
4. The outdoor patios shall be maintained in a clean and orderly manner.
5. The Use Permit shall remain in effect for one (1) year from the 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.
6. Music shall be controlled so as to not unreasonably disturb area residences.
7. The restaurant shall provide contact information for a responsible person (restaurant owner and/or manager) to interested neighbors that will allow music complaints to be resolved quickly and directly.

37. MOVED TO ACTION AGENDA

38. MOVED TO ACTION AGENDA

39. USE PERMIT: Generations Linked

APPROVED an extension of Use Permit ZUP11-0015 Generations Linked, for a residential childcare within a single-family residence located at 1102 N. Hudson Place, north and east of McQueen and Ray roads. (Applicant: Lauri Tupper.)

The subject site is located within The Provinces subdivision zoned Planned Area Development (PAD). The childcare business will continue to accommodate up to a maximum of ten (10) children for compensation. The business operates Monday through Friday from approximately 6 a.m. to 6 p.m. The business' two employees both live at this address. The applicant oversees the business from her home in Queen Creek where she moved in 2007. The day care was formerly known as Small Wonders Childcare.

The 2,379 square foot home is located near the end of a cul-de-sac and has a larger back yard than most lots on the block. The property is surrounded by single-family homes, though the homes to the west are separated by Concord Avenue. The first floor of the house is used for childcare and the back yard is used as an outdoor play area and is enclosed by a 6-foot masonry wall. Customer parking for drop-off and pick-up occurs within the cul-de-sac or the driveway. The business employs a staggered pick-up/drop-off plan that restricts customer traffic to predetermined times spaced by 15-minute intervals in order to prevent a large simultaneous influx of vehicles.

The applicant has been operating at the subject location since 1999. The subject property received a 1-year Use Permit for childcare in 1999, a 5-year extension 2001 and another 5-year extension in 2006. The site is licensed by the State of Arizona Department of Health Services (ADHS).

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 30, 2011. There were no citizens in attendance. Staff has received no correspondence in opposition to the request.

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

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 reapplication 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.

40. USE PERMIT: St. Luke's Behavioral Health

APPROVED Use Permit ZUP11-0023 St. Luke's Behavioral Health, to operate a therapy business in an office/industrial building at 325 E. Elliot Road, Suites 26-29, east of the SEC of Elliot Road and Arizona Avenue. (Applicant: Rob White, Univest Management Company; Owner: Chandler Commerce Plaza, LLC.)

The subject site is located within a larger 240-acre corporate park (Arizona Corporate Park) that was zoned I-1/PAD for industrial uses and a limited amount of commercial and office uses in 1981. The corporate park encompasses land both north and south of Elliot Road. The subject site's zoning was limited to I-1 uses in the 1981 zoning. A Use Permit was approved in 1988 for the subject site to allow general office uses to the extent allowed by parking provision, but it specifically prohibited medical office uses. The subject request is to allow a particular therapy business that would normally be classified as medical office and therefore requires a Use Permit.

The requested use is a therapy business that will occupy 8,000 square feet in the southwestern portion of the site. The site contains two horseshoe-shaped buildings with parking around the perimeter and a small truck court between the buildings. The floor plan features six (6) group rooms, a lunch room and 14 smaller offices. The smaller offices will house the program director, therapists, nurse, psychiatrist and other employees.

The business involves primarily group therapy in a clinical setting via two types of programs. Group Program #1 is run Monday through Saturday 8:30 a.m. to 2:30 p.m. Group Program #2 is run Monday, Wednesday and Thursday 9 a.m. to noon and 6 p.m. to 9 p.m. The exact days sometimes change due to holidays. Group Program #1 has a maximum of 5 groups of 10 persons (50 persons total) at a time, with a quicker turnover and shorter sessions (up to 5 time slots per day). Group Program #2 has a maximum of 15 persons per group and has had an average of 9 per group on recent years. Only one Group Program #2 operates at one time. There will also be some one-on-one therapy, patient assessments and administrative-type work (e.g. admission, discharge, treatment planning) conducted in the smaller offices. However, only group therapy patients (and potential patients) will take part in any individual therapy or assessments on the site. The business finds that on-site individual therapy is sometimes necessary to supplement and support the group therapy for proper patient care.

The business will use private passenger vans to transport all patients in Group Program #1 – none of these patients are allowed to drive themselves. Patients in Group Program #2 are allowed to drive themselves, though many are anticipated to use public transit – this is why the

business wishes to locate near the Elliot Road/Arizona Avenue intersection. Most business staff will generally drive themselves.

At 8,000 square feet, the Zoning Code would require 54 parking spaces for this medical use. The business, as proposed, could generate up to 42 vehicles if operating at capacity (5 vans for Group Program #1, 15 individual cars if participants in Group Program #2 drive separately, 6 therapists working with groups, 8 smaller offices all occupied by other staff (14 minus the 6 working with groups = 8), 8 smaller offices all with a patient). It is unlikely that the business will ever be at full capacity at any given time. Therefore, there is no parking conflict presented by the proposed use.

The Planning Commission and Staff recommend approval of the request finding that a group therapy use fits in well with the established office/light industrial neighbors and does not present land use conflicts. The unique nature of the business' transportation situation serves to significantly lessen the traffic impact compared to typical medical office uses. Though hazardous materials can be of concern in other industrial settings, this particular site has a less industrial nature due to its allowance of general office uses and its tight courtyard. In practice, it is anticipated that the proposed use will have an impact similar to the general office uses already permitted.

A two-year approval rather than a customary one-year approval is appropriate to allow tenant improvements to be completed and a substantial track record to be established. A time limit is appropriate to allow re-evaluation once the business is in operation at this location.

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on September 15, 2011. There were no neighbors in attendance. Staff has received no correspondence in opposition to this request.

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

1. Development shall be in substantial conformance with the submitted application documents (Narrative, Site Plan, Floor Plan) except as modified by condition herein.
2. Development shall be in substantial conformance with all existing approvals for the site, except as modified herein.
3. The Use Permit shall remain in effect for two (2) 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.

41. USE PERMIT: Triumph Air Repair

APPROVED Use Permit ZUP11-0024 Triumph Air Repair, to allow underground bulk fuel storage in conjunction with an aerospace systems and components business within an I-1 zoned district for Lot 5 of the CC&F Williams Field Road Industrial Center plat located at 50 S. 56th Street. (Applicant: Jay R. Jolley, K&I Architects.)

The property is zoned I-1 and is surrounded on the south and west by property zoned I-1 owned and operated by the Basha family as a grocery store distribution center. The intersection of Chandler Boulevard and 56th Street includes commercial zoned uses such as gas stations, automotive repair, and motorcycle repair and sales. North of the subject site is vacant land also

owned by the Basha family. 56th Street abuts the site's east side. East of 56th Street is Banker Solutions, which recently received a Use Permit for an 8,000-gallon fuel tank, as well as F5, an equipment service and rental facility that also received Use Permit approval for two 12,000-gallon diesel fuel storage tanks. The subject property was previously occupied by Southwest Aluminum Fabrication and Distribution Company.

Triumph Air Repair is a global leader in the overhauling and supply of aerospace systems and components. The request is for Use Permit approval to allow two (2) 5,000-gallon underground fuel storage tanks for use solely by the company. Bulk storage fuel tanks greater than 500 gallons require approval of a Use Permit. In all instances, fuel tanks need to receive building permit approval, which includes Fire Department review and approval. The fuel tank will also need to meet all other applicable State and Federal laws.

Staff supports the request as an ancillary use to the direct operation and services provided by Triumph Air Repair.

The request was noticed in accordance with the requirements of the Chandler Zoning Code. A neighborhood notice letter was mailed to all property owners and City registered neighborhood organizations in the surrounding area. The applicant and Planning Staff have not received any inquiries into this request. Staff has received no correspondence in opposition to the request.

Upon finding consistency with the General Plan and I-1 zoning, the Planning Commission and Staff recommend approval subject to the following conditions:

1. Development shall be in substantial conformance with narrative, site plan and associated conditions of approval.
2. The tank shall be constructed to comply with all City of Chandler Building and Fire Codes.
3. Fuel containment shall be in accordance with all State and Federal laws.
4. A Spill Prevention Plan shall be kept on file with the Fire Marshall.

42. LIQUOR LICENSE: La Victoria Carniceria

APPROVED a Series 10 Beer and Wine Store Liquor License (Chandler #137356 L12) for Martha A. Hernandez, Agent, La Victoria Carniceria, 731 S. Arizona Avenue, Suite 100. A recommendation for approval of State Liquor License #10076195 will be forwarded to the State Department of Liquor Licenses and Control. The Police Department reports no objections to the issuance of this license and no written protests have been received. All licenses, permits and fees have been paid and the applicant is in compliance with the City's Tax Code. Transportation and Development advises a new Use Permit is not required since this will be a continuation of the location's previous use as Mama Mia Panderia and Market.

43. CONTINUED LIQUOR LICENSE: Nate's Third Base

CONTINUED TO NOVEMBER 17, 2011, Liquor License, Series 6, for Destiny Yvonne Myers, Agent, Straight No Chaser LLC, dba Nate's Third Base located at 1949 W. Ray Road, Suites 11-13 to allow the applicant time to complete the requirements for a new Use Permit .

44. CONTINUED LIQUOR LICENSE: Sage Bar & Vietnamese Cuisine

CONTINUED TO NOVEMBER 17, 2011, Liquor License, Series 6, for Anny Dinh Narron, Agent, Cole Curtis, Inc., dba Sage Bar & Vietnamese Cuisine located at 4929 W. Chandler Boulevard, Suite 12 to allow the applicant time to complete the requirements for a new Use Permit.

45. SPECIAL EVENT LIQUOR LICENSE: American Legion Post 35

APPROVED a Special Event Liquor License for the American Legion Post 35 for the USMC 5th Annual Toys for Tots fundraising event on November 26, 2011, at the American Legion Post 35, 2240 W. Chandler Boulevard. A recommendation for approval will be forwarded to the State Department of Liquor Licenses and Control. With a Special Event Liquor License, the organization can sell all alcoholic beverages within the confines of the event during the designated event periods. The Police Department has no objections to this event and the applicant has applied for a Temporary Sales and Promotional Event Permit through Neighborhood Services.

46. SPECIAL EVENT LIQUOR LICENSE: Ahwatukee Chamber of Commerce

APPROVED a Special Event Liquor License for the Ahwatukee Chamber of Commerce for Women In Business Fall Gala fundraiser on November 5, 2011, at Lexus of Chandler, 7430 W. Orchid Lane. A recommendation for approval will be forwarded to the State Department of Liquor Licenses and Control. With a Special Event Liquor License, the organization can sell all alcoholic beverages within the confines of the event during the designated event periods. The Police Department has no objections to the issuance of this license. As this applicant is a non-profit organization, no sales tax license is required; however, the special event liquor fee has been paid.

47. SPECIAL EVENT LIQUOR LICENSE: US Airways Education Foundation, Inc.

APPROVED a Special Event Liquor License for the US Airways Education Foundation, Inc., for a Fundraising Golf Tournament on November 14, 2011, at Ocotillo Golf Resort, 3751 S. Clubhouse Drive. A recommendation for approval will be forwarded to the State Department of Liquor Licenses and Control. With a Special Event Liquor License, the organization can sell all alcoholic beverages within the confines of the event during the designated event periods. The Police Department has no objections to the issuance of this license. As this applicant is a non-profit organization, no sales tax license is required; however, the special event liquor fee has been paid.

48. SPECIAL EVENT LIQUOR LICENSE: East Valley Sol Organization's

APPROVED a Special Event Liquor License for the East Valley Sol Organization for a Fiesta del Sol VI fundraiser on November 5, 2011, at Noahs, 2100 E. Yeager Drive. A recommendation for approval will be forwarded to the State Department of Liquor Licenses and Control. With a Special Event Liquor License, the organization can sell all alcoholic beverages within the confines of the event during the designated event periods. The Police Department has no objections to the issuance of this license. As this applicant is a non-profit organization, no sales tax license is required; however, the special event liquor fee has been paid.

49. CLASS A BINGO LICENSE: San Tan Crown Rotary Club

APPROVED the State's issuance of a Class A Bingo License with Jeffrey D. Breese as Manager, for the San Tan Crown Rotary Club at the Hilton Hotel Chandler/Phoenix, 2929 W. Frye Road.

Bingo Game sessions will be conducted one to two times per year. Class A or Small Bingo Game Licenses are issued by the State and are designed for people who wish to play bingo primarily for recreational purposes. Any person or group may apply for a Class A License, but the license is restricted to gross sales of \$15,600 per year or less. State Code requires that the applicants receive city approval as part of the licensing process. The Police Department, Transportation and Development Department and Fire Department reviewed the application and indicated no objections.

ACTION:

**Item No. 37 (Use Permit, ZUP11-0013 New Horizon Youth Homes – Commonwealth Circle) and Item No. 38 (Use Permit, ZUP11-0014 New Horizon Youth Homes – Park Avenue) were discussed collectively. **

COUNCILMEMBER HEUMANN expressed concern over the calls of service at the locations over the years. He noted that previous Use Permits had expired and asked why they had not been renewed.

City Planner ERIK SWANSON explained to the Council that there were currently three Use Permits for group homes that were in operation by the current applicant. He added that there were half a dozen behavioral group homes that did not need Use Permits by way of having five or fewer residents.

Mr. Swanson stated that the Park Avenue site began operations in 2000 with five or fewer. In 2004 a Use Permit was granted for up to seven residents and in 2005 the Use Permit was granted for three years. He indicated that notification had been sent but an updated application was never received by staff. He stated similar issues were in hand in regards to the site on Commonwealth Circle. He explained that the applicant did not respond to the application and that staff did not follow up on the application due to turnover. He stated that there had been a loss of communication and was a dual responsibility.

Mr. Swanson told the Council that there had not been much neighborhood opposition or concerns. Staff was comfortable at having the Use Permit issued for a longer period due to no neighborhood opposition. He addressed the issues of calls of service by stating that the agencies direct the youths to the homes. He stated that it would be difficult to differentiate certain variables such as turnover being higher in certain locations as opposed to others.

COUNCILMEMBER HEUMANN expressed concern over the supervision levels at certain locations due to them changing. He was concerned over putting strains on community services by tying up Police Officers for long periods. He questioned what had changed with the homes since the time that they were open.

MR. TOM GRANADO, 947 Lafayette addressed the Council regarding the two Use Permits. He stated that he had the same coordinator in place at the home since the time the agency began. He explained to the Council that they had an obligation to the State and to local Courts to notify the authorities if a child has been out of their supervision for more than 2 hours, which he credited as being a reason for some of the calls for service.

COUNCILMEMBER HEUMANN questioned the difference between the homes on Commonwealth and Park Avenue. He asked if the difference in ranges of calls for service were

due to the coordinators or due to the amount of children at the homes.

MR. GRANADO responded that there had not been any changes. He stated that the same person was the coordinator at all three homes. He reiterated that it was the group's responsibility to report if a child is not present. He told the Council that the group does due diligence when a child is referred to one of the homes. He stated that the group requests a referral packet, which could include a psychological evaluation, history, or a copy of dependency hearing. He told the Council that there was a structure to their program and explained the intricacies and structure of the program.

Mr. Granado told the Council that a Police Officer did not remain at the homes for an hour. He stated that the homes place calls when a child has been missing for over 2 hours and then again once the child returns. He indicated that the Officers responded to the home 4 hours after the calls are made. He did not believe focusing on the amount of calls did the program due diligence.

In response to a question from COUNCILMEMBER HEUMANN, Mr. Granado explained some of their processes. He acknowledged that there were some kids that did not want to change. He explained that when there were kids that had behavioral issues, the group would meet with the child and the child's legal guardian. He explained that many of the kids were not used to the structure and discipline in the home.

In response to a question from COUNCILMEMBER ORLANDO, Assistant Police Chief DAVE LIND explained the calls for service at the location. He explained that out of the 17 calls for service, 16 calls were for missing juveniles and one was coded as a runaway. He stated they were basically the same but were coded differently.

COUNCILMEMBER ORLANDO asked what the other 11 calls were about since 5 of the 16 calls had been cancelled.

ASSISTANT CHIEF LIND responded that a runaway report was taken based off of statistical data. He stated that the child did not come back during the timeframe. He explained that a report would have been taken and the juvenile's information would have been entered into the system. He added that Officers would have returned to do follow-up once the juvenile returned.

COUNCILMEMBER ORLANDO asked if the follow-up was counted as another visit to the location.

ASSISTANT CHIEF LIND responded that the same call number was used for the follow-up visit.

COUNCILMEMBER WENINGER commended Mr. Granado for the homes he runs. He noted that Mr. Granado had a home that was troublesome which resulted in Mr. Granado voluntarily shutting it down.

VICE-MAYOR DONOVAN stated she was impressed that there was no neighborhood opposition. She noted that some people were surprised to learn that there had already been a group home in the area.

MAYOR TIBSHRAENY thanked Mr. Granado for the services he offers to the community and to young people.

37. USE PERMIT: New Horizon Youth Homes – Commonwealth Circle

Use Permit ZUP11-0013 New Horizon Youth Homes – Commonwealth Circle, to operate a behavioral health group home for up to seven (7) residents within a single-family residential home located at 2504 E. Commonwealth Circle, south and east of the SEC of Chandler Boulevard and 132nd Street. (Applicant: Tom Granado, NYHY Owner.)

The subject site is located within the Colonia Coronita single-family residential subdivision. An alley is adjacent to the home on the west and north property lines, with single-family homes surrounding the site.

Similar to assisted living homes, the Zoning Code requires a Use Permit for group homes when there are more than five individuals residing at the home that are not related. However, different from assisted living homes, group homes are allowed to have up to four residents per bedroom provided sixty (60) square feet is provided per resident and three (3) feet is provided between beds. The floor plan shows the capacity for eight beds; the additional bed is to allow for flexibility rather than residency purposes. The home is restricted to no more than seven (7) residents per the Use Permit and the licensure by the State. The home meets the requirements established for room size.

New Horizon Youth Homes is part of the State of Arizona Department of Health Services housing for children at risk program and is licensed through the Office of Behavioral Health Licensure as a Therapeutic Group Home. The children are placed in the home from the Administration Office of the Courts, Child Protective Services, Salt River Pima Indian Community, Gila River Indian Community and various other organizations. The home has an adult staff member at the site at all times, with two staff members present during peak hours which includes the evenings and weekends.

The group home started operations at this location in 2005 with five or fewer residents and since mid-2006 with a Use Permit for up to seven residents. The Use Permit was granted for one-year in 2006. Notification was sent after one-year that the Use Permit was pending expiration; the Use Permit was never extended and the home has been in operation during this time. In spite of the expiration, Staff continues to support the request.

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 29, 2011. There were no neighbors in attendance. Staff has received two telephone calls expressing concern with the request; however, the callers were unaware that the home has been in operation for a number of years, so direct opposition was not stated.

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

1. 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.
2. The Use Permit is non-transferable to any other location.
3. The group home shall have no more than seven (7) residents at any time.
4. The Use Permit to operate a group home is specific to the existing property owner and if the property should be sold in the future, the Use Permit shall be null and void.

5. This Use Permit shall remain in effect for three (3) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.
6. The site shall be maintained in a clean and orderly manner.

MOVED BY VICE-MAYOR DONOVAN, SECONDED BY COUNCILMEMBER HEUMANN TO APPROVE ZUP11-0013 NEW HORIZON YOUTH HOMES – COMMONWEALTH CIRCLE, USE PERMIT EXTENSION APPROVAL TO OPERATE A GROUP HOME FOR UP TO SEVEN RESIDENTS WITHIN A SINGLE-FAMILY RESIDENTIAL HOME SUBJECT TO THE CONDITIONS RECOMMENDED BY PLANNING COMMISSION AND STAFF.

MOTION CARRIED UNANIMOUSLY (7-0).

38. USE PERMIT: New Horizon Youth Homes – Park Avenue

Use Permit ZUP11-0014 New Horizon Youth Homes – Park Avenue, to operate a behavioral health group home for up to seven (7) residents within a single-family residential home located at 795 W. Park Avenue, north and east of the NEC of Ray and Alma School roads. (Applicant: Tom Granado, NHYH Owner.)

The subject site is located within the College Park single-family residential subdivision. An alley is adjacent to the home on the south side, with single-family homes surrounding the site.

Similar to assisted living homes, the Zoning Code requires a Use Permit for group homes when there are more than five individuals residing at the home that are not related. However, different from assisted living homes, group homes are allowed to have up to four residents per bedroom provided 60 square feet is provided per resident and three feet is provided between beds. The floor plan shows the capacity for eight beds; the additional bed is to allow for flexibility rather than residency purposes. The home meets the requirements established for room size.

New Horizon Youth Homes is part of the State of Arizona Department of Health Services housing for children at risk program and is licensed through the Office of Behavioral Health Licensure as a Therapeutic Group Home. The children are placed in the home from the Administration Office of the Courts, Child Protective Services, Salt River Pima Indian Community, Gila River Indian Community and various other organizations. The home has an adult staff member at the site at all times, with two staff members present during peak hours which includes the evenings and weekends.

The group home started operations at this location in 2000 with five or fewer residents. A Use Permit was granted in 2004 and extended in 2005 for up to seven residents. The 2005 Use Permit was granted for three years. Notification was sent after the three year timeframe notifying the operator that the Use Permit was pending expiration; however, the applicant never submitted for a Use Permit extension. The home has been in operation during this time. In spite of the expiration, Staff continues to support the request citing no known opposition and the continued successful operation of the home.

This request was noticed in accordance with the requirements of the Chandler Zoning Code with a neighborhood meeting being held on August 29, 2011. There were no neighbors in attendance. Staff has received no correspondence in opposition to this request.

Upon finding consistency with the General Plan, the Planning Commission and Staff recommend approval subject to the following conditions:

1. 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.
2. The Use Permit is non-transferable to any other location.
3. The group home shall have no more than seven (7) residents at any time.
4. The Use Permit to operate a group home is specific to the existing property owner, and if the property should be sold in the future, the Use Permit shall be null and void.
5. This Use Permit shall remain in effect for three (3) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.
6. The site shall be maintained in a clean and orderly manner.

MOVED BY VICE-MAYOR DONOVAN, SECONDED BY COUNCILMEMBER HEUMANN TO APPROVE ZUP11-0014 NEW HORIZON YOUTH HOMES – PARK AVENUE, USE PERMIT EXTENSION APPROVAL TO OPERATE A GROUP HOME FOR UP TO SEVEN RESIDENTS WITHIN A SINGLE-FAMILY RESIDENTIAL HOME SUBJECT TO THE CONDITIONS RECOMMENDED BY PLANNING COMMISSION AND STAFF.

MOTION CARRIED UNANIMOUSLY (7-0).

50. USE PERMIT: Wee Blessings Preschool & Academy

Use Permit ZUP11-0021 Wee Blessings Preschool & Academy, to operate a preschool and tutoring business at 1751 E. Queen Creek Road, approximately one-quarter mile west of Cooper Road. (Applicant/Property Owner: FNBN UTAZ, LLC.)

Background:

The application requests Use Permit approval to operate a preschool and tutoring business within a partially constructed office development located west of the SWC of Cooper and Queen Creek roads. Specifically, the use will be located in “Building 3” and its adjacent parking lot in the northwestern portion of the site. The larger development of 8.1 acres was zoned PAD in 2006 to allow medical/general office uses. Only four (4) of the development’s 12 approved buildings have been constructed, though the drive aisles and parking spaces are all installed. To the west are large-lot rural residential properties (Twin Acres); to the north, across Queen Creek Road, is vacant land zoned for industrial and airport-related uses; to the east is vacant land zoned PAD or commercial uses and to the south is vacant land zoned for custom homes.

The subject business will occupy the entirety of a 5,300 square foot building. In order to accommodate the state-mandated outdoor playground, they will remove four (4) parking spaces west of the building as well as some landscaping. The playground design will be reviewed administratively in accordance with Zoning Code standards. The playground will be located approximately 45’ from the western property line and 225’ from the nearest house.

The subject business will generally be open from 8 a.m. to 6 p.m. weekdays, with occasional special events on weekends during the same hours. Programming includes typical pre-school

activities as well as tutoring and after-school activities (karate, computers, etc.) for older children. There will be approximately 12 to 15 employees.

The development's other buildings contain several medical uses, including a children's speech-language clinic that operates a special-needs pre-school on site. That use is deemed "medical office" rather than "pre-school" because it is medically related and not open to the general public. Also, classes are run by speech therapists rather than typical teachers.

The subject building and parking area fall within Airport Noise Overlay One (ANO-1) of the AIO district. ANO-1 corresponds to the area between the Chandler Municipal Airport's 55 DNL and 60 DNL noise contours. ANO-1 allows preschools, day cares and other educational facilities so long as they provide indoor sound attenuation in accordance with Zoning Code requirements. The subject building was already required to meet these sound attenuation levels through the approved PAD zoning conditions.

Staff has analyzed the application's Zoning Code conformity based on the existing noise contours. Notably, updated noise contours have been approved by City Council and are currently under review by the FAA. However, until the new noise contours are approved by the FAA, the older noise contours remain in force. The new noise contours would shift the subject site from ANO-1 to ANO-2 (60 to 70 DNL). ANO-2 does not allow educational facilities.

The Airpark Area Plan designates the property for Rural Residential within a Transitional Overlay Zone. The 2006 rezoning to PAD that established the office uses met the Transitional Overlay Zone's requirements for transition to non-residential uses. The Airpark Area Plan also has several policies that could potentially pertain to the subject application and its relation to the nearby airport. Most significantly, Policy 5.2 states:

The City shall prohibit the development of noise-sensitive institutions such as day-care facilities, schools and churches within arrival and departure flight tracts, touch-and-go patterns and within the 55 DNL noise contour.

Staff notes that area plans, like the Airpark Area Plan, are policy documents intended to guide land use decisions. However, unlike the Zoning Code, area plans are not intended to be legal documents that either prohibit or allow by-right any uses. In Staff's opinion, Policy 5.2 highlights uses that require special attention with regard to their noise-sensitivity. The Zoning Code's AIO district provides this special attention through its insulation requirements and use regulations dependent on which noise contours overlay the site.

Staff also notes that the Arizona Department of Health Services (ADHS) may require that operators of day care centers, including preschools, provide written waivers from agricultural land owners located within ¼ mile regarding their pesticide use. Some of the rural residential property owners to the west regularly apply fly spray to their horses. It will be up to the preschool operators to meet the state legal requirements to the satisfaction of ADHS.

Staff recommends approval of the request finding that a preschool use fits well in the existing zoning and will not present land use conflicts with the surrounding uses. The use is adequately buffered from the residential neighbors to the west by distance and landscaping. As indicated by the ANO-1 regulations in the Zoning Code, the use is appropriate at this distance from the airport if adequate sound attenuation is provided. Also, the use is complementary to the medical office uses in the development and has a lower parking requirement that will free up parking spaces in the long run. Noise effects from children playing on the outdoor playground are of little concern

adjacent to Queen Creek Road and near the airport, which both produce measurable amounts of noise.

This request was noticed in accordance with the requirements of the Chandler Zoning Code. A neighborhood meeting was held on August 30, 2011. Four rural residential neighbors attended. The neighbors expressed concern that the subject use should not prevent them from applying fly spray to their horses nor result in any related legal liability. Other concerns regarded visibility to/from the outdoor play area to their back yards. Neighbors complained of the wall being too short (less than 6' high) and dead trees not being replaced. Staff has determined that the wall was built to the correct height, but that four (4) trees need to be replaced. The neighbors also noted that a fence section farther south on the property was missing. The applicant is working to remedy the missing wall section and dead trees. Besides the neighbors in attendance at the neighborhood meeting, Staff has not received any other citizen input on the request.

The Planning Commission heard this item for a second time as it was referred back to them by City Council. The second vote was the same as the first, 4-3 for denial.

During the first hearing, a rural residential neighbor to the west spoke in opposition, primarily citing pesticide-related concerns. He reiterated that he does not wish to change how he tends his horses or his land. He also stated concerns related to airport noise compatibility.

Commission raised concerns during both hearings regarding the safety of pesticides used by neighboring properties to the west, the safety of aircraft flown by experienced and student pilots based at the airport, and conformance to noise contour regulations (both in the Zoning Code and Airpark Area Plan). It was noted that with the future noise contours, approved by City Council and currently under review by the FAA in place, the Zoning Code would prohibit the use due to the zoning overlay changing from ANO-1 to ANO-2. ANO-2 does not allow educational uses. One Commissioner stated that Policy 5.2 in the Airpark Area Plan was inserted for a reason and that the responsible board's logic should be respected. Though it was acknowledged that pesticide safety is addressed by the state via their licensing process, several Commissioners were uncomfortable with the school's proximity to known pesticide use (horse spray).

Upon finding inconsistency with the General Plan, the Planning Commission recommends denial of the request.

Upon finding consistency with the General Plan, Staff recommends approval subject to the following conditions:

1. Development shall be in substantial conformance with the submitted application documents (Narrative, Site Plan, Floor Plan) except as modified by condition herein.
2. The Use Permit shall remain in effect for three (3) 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. In order for the Use Permit to be valid, a signed and completed Agreement For Waiver of Claim form under A.R.S. §12-1134 shall be provided to Transportation & Development Department's Planning Division Staff within three (3) weeks of City Council approval.

Senior City Planner BILL DERMODY told the Council the Use Permit request was for a Preschool and tutoring business at 1751 E. Queen Creek Road. He stated that the site was part of a PAD from years ago that is on the western half of the development for general office and medical office only. He stated that the eastern site had been zoned for general commercial uses. He pointed out to the Council areas that surrounded the site including part of the runway of the Chandler Municipal Airport to the north and a rural residential development to the west. The recommendation brought forward to the Council was a split recommendation with the Planning & Zoning Commission recommending denial.

Mr. Dermody explained that the Preschool was hoping to have a playground to the rear of the building, which would be at a distance of 90-100 feet from a neighboring barn. He noted that horses were kept at the barn and that pesticide was often dispersed on the horses. He noted that the Planning & Zoning Commission was concerned over pesticide near the location of the Preschool. He indicated that the State addressed the issues of pesticides when Preschools are licensed. He stated that if there were an issue with the pesticide then the State would have denied the application. Mr. Dermody further explained that the State had a licensing process that would not allow a preschool or daycare in a distance of a ¼ mile of certain pesticides. He told the Council that the applicant had provided a checklist form the State and had verbally told staff that there was not an issue of pesticide at the location.

Mr. Dermody also noted that a second issue of concern that the Planning & Zoning Commission had dealt with flight safety. He explained that the Planning & Zoning Commission felt that the location of the Preschool was too close to the Airport and feared the possibility of a crash near the site.

The third issue of concern to the Planning & Zoning Commission dealt with Airport noise contours maps. He reviewed the noise contours and the requirements under the zoning code for buildings in the area. He added that it was also an issue in regards to the Area Airpark Plan and read the following excerpt from the plan:

“The City shall prohibit the development of noise-sensitive institutions, such as day-care facilities, schools and churches, within arrival and departure flight tracks, touch-and-go patterns and within the 55 DNL noise contour.”

Mr. Dermody stated that the Planning & Zoning Commission believed that noise could be an issue as part of the Airpark Plan. He explained that it was Staff's opinion that the noise issue was handled by the zoning code. He further noted that staff had received a petition with over 100 people in support of the application. Staff also received emails form people associated with the Airport in opposition of the application.

MAYOR TIBSHRAENY asked if the property was developer owned.

MR. DERMODY replied that there was one landowner for most of the development. He believed that the land was owned by a group out of Utah.

In response to a question from MAYOR TIBSHRAENY, Mr. Dermody stated that the property was not in foreclosure.

COUNCILMEMBER ORLANDO questioned if the process for the Preschool license was similar to that of liquor licenses where the City's opinion is weighed.

MR. DERMODY responded that the City's input was not specifically part of the process.

COUNCILMEMBER ORLANDO asked how the Airport Airpark Area Plan was developed. MR. DERMODY replied that the Plan had been a large effort done with Airport constituents, landowners, business interests and residents. He added that the Council had approved the Plan back in 1998 and covered a 9 square mile area surrounding the Airport.

COUNCILMEMBER ORLANDO questioned why staff felt it was okay to put the preschool at the location.

MR. DERMODY responded that the language in the Airport Airpark Area Plan was viewed as a directive to change the zoning code. Staff did not feel it was appropriate to apply the language to one use without applying it equally to all uses.

In response to a question from COUNCILMEMBER HARTKE, Mr. Dermody elaborated on the Airport Airpark Area Plan. He stated that it was staff's opinion that the language in the Airpark Area Plan as a directive that could or should be applied to the Zoning Code. He stated that there was a district that applied to the same area. He stated that anything within the ANO-1 District applied equally to the district.

COUNCILMEMBER HARTKE questioned if latitude had been given to prior cases.

MR. DERMODY did not recall certain cases but believed there were many properties within the 55 DNL that could be affected. He stated that the zoning code had not changed to affect the properties.

COUNCILMEMBER HARTKE asked how the site would fit in with most recent Airport Noise Study. MR. DERMODY went over maps that were sent to the FAA.

Transportation & Development Director RJ ZEDER staff had worked on the PAR150 Noise Study for several years. He told the Council that the way the noise contours were modeled had changed since the previous noise study. He told the Council that staff had received a letter from the FAA asking that staff review their assumptions, primarily the ones that had to do with the number of flight operations. He explained that staff had assumed significant growth when the background data and information had been prepared for the noise study. He pointed out that the Airport had seen a decrease in operations due to the economy. He noted that changing the forecasts could change the proposed noise contour maps.

In response to a question from COUNCILMEMBER HARTKE, Mr. Zeder stated that the FAA had approved the noise contour maps. He explained that the FAA revisited the flight operations since the full submittal of the noise study was done. He added that the assumptions and actual operations were far lower for 2009 and 2010.

COUNCILMEMBER HARTKE asked if there was timeline in submitting the revised staff assumptions. MR. ZEDER did not recall a specific timeline but stated it could take time for them to respond once formal submittals are made.

MAYOR TIBSHRAENY questioned the purpose of the waiver listed as part of Condition No. 3 in the Use Permit.

MR. DERMODY replied that the consent waiver was a standard waiver that was usually handled administratively that stated the applicant wouldn't sue the City because of conditions based on the approval.

In response to a question from COUNCILMEMBER HARTKE, Mr. Dermody stated that there were two ways the State could approve the use. He explained that the State could decide that the pesticides near the school are not harmful to the children and approve the use outright. The second way the State could approve the use would be to determine that the pesticides were harmful to the Children and have the Preschool Operator to get signatures and waivers from the effected agriculture uses stating they would not spray the pesticides on certain hours. He added that the owners could not be forced upon to sign the waivers.

COUNCILMEMBER HEUMANN questioned the process in which the signatures would have to be obtained.

MR. DERMODY responded that he believed the applicant would have to go door to door to get the signatures and submit them to the State. He did not know if the signatures had to be notarized. Mr. Dermody clarified that Staff was being told second hand by the applicant that the State was going through the first option, because they did not feel the pesticides were harmful.

VICE-MAYOR DONOVAN clarified that the Condition No. 3 on the Use Permit was not the pesticide waiver; rather the waiver listed is a waiver that staff usually handles administratively and does not go before Council. Vice-Mayor Donovan and Mr. Dermody both noted that the waiver had already been received by the applicant and was a moot point.

MR. JOHN WILLIS, WILLIS PROPERTY COMPANY, 3850 E. BASELINE RD., MESA, AZ addressed the Council on behalf of UTAZ. He told the Council that a fly fogging pesticide was used throughout the day through a water based misting system. He stated that the State had done an investigation on the pesticide issue and found there not to be an issue. He told the Council that the applicant already had pre-approval and reiterated that State had no concerns over pesticide and location issues.

Mr. Willis addressed the issues of proximity of the Airport. He noted various other businesses that were near the Airport. He stated that businesses such as Wal-Mart and Target were in the direct flight path. Mr. Willis noted that there might be issues regarding noise levels once the noise contour lines information is revised with the FAA.

MAYOR TIBSHRAENY asked how much square feet was going to be leased to the Preschool.

MR. WILLIS responded that 5300 square feet would be leased on the inside and 1,000 square feet for the playground.

In response to a question from COUNCILMEMBER ORLANDO, Mr. Willis stated that the property would be leased to the Preschool.

MR. BILL CHAVEZ, addressed the Council regarding the application. He and his wife are the owners of Wee Blessings Preschool. He presented a map to the Council showcasing the other Preschools in the area as well as the noise contour levels in the area.

COUNCILMEMBER ORLANDO asked if the other schools were in City or County property.

MR. CHAVEZ replied that the schools were located in the City.

MR. DERMODY clarified the other school in the location that dealt with medical use. He stated that that school was deemed a medical office due to it being a speech school. He stated that it was not open to the public and that it did not have regular teachers completing the classes. He stated that the school as not approved by the Council but was done outright.

MR. CHAVEZ noted a different Church and Preschool near the area.

MR. DERMODY noted that the Church was in the County and did not go before the Council.

MS. DEBBIE CHAVEZ, owner of Wee Preschool addressed the Council regarding the request before Council. She explained to the Council that the process to receive approval for a Preschool was difficult. She stated that it was difficult to get the Agriculture report signed. She noted that she had verbal approvals from the State. She said that the State had formed a committee and had reviewed the case of the Preschool and pesticides. She added that the information had been given to the State by them and the neighbor of the Preschool.

COUNCILMEMBER SELLERS expressed concern over the pesticide issue. He questioned if the parents knew of the pesticides adjacent to the property.

MS. CHAVEZ responded that the parents were aware of the pesticides and proximity to the Airport.

COUNCILMEMBER SELLERS questioned if stating there would not be noise complaints at the site as part of the Use Permit.

MR. DERMODY replied that it might be difficult to enforce but stated that it could be listed as a condition.

COUNCILMEMBER SELLERS stated that he did not see the preschool as a noise threat to the Airport.

MS. CHAVEZ reiterated that the Preschool was not a Day Care facility and stated that the programs were 2-4 hour programs. She noted that there was not a diaper changing or napping done at the school.

COUNCILMEMBER WENINGER questioned the City Attorney if the pesticide issue was an issue for both the City and the State.

CITY ATTORNEY MARY WADE responded that the pesticide issue was something that the State approved and enforced.

In response to a question from COUNCILMEMBER HEUMANN, Mr. Dermody stated that there was a notification requirement for UTAZ to tell all future owners/buyers about the Airport near the property.

COUNCILMEMBER HEUMANN expressed concern over the pesticide issue. He noted there were agriculture uses to the West. He questioned what would happen to the people to the West who used pesticide.

MR. DERMODY stated that a standard notification was sent to those 600 feet away from the UTAZ property. He stated that the State looked at locations within a ¼ mile. He reiterated that the pesticide issue was handled by the State.

MAYOR TIBSHRAENY questioned if the properties with the pesticides were single-family horse privileged properties. MR. DERMODY concurred.

MR. CHAVEZ stated that aerial pesticide was not allowed near the preschool. He stated that the school would not have any issues with noise and noted that their current location was near a railroad track.

VICE-MAYOR DONOVAN questioned why the applicant was moving their school. MR. CHAVEZ explained that the school had grown and that the number of students had increased. He added that the Church was also looking to expand and use all of their space. He explained that the school wanted to move to an area not too far away from their current location as they did not want to lose current students.

VICE-MAYOR DONOVAN asked if the Economic Development helped locate Preschools. She questioned if there were other alternatives.

Economic Development Director CHRIS MACKAY stated that the Economic Development Office did help Preschools locate throughout the City. She indicated that staff could look into different sites within the area to identify retail space that was available.

MR. CHUCK DIRUZZA told the Council he was the broker for Wee Blessings Preschool. He indicated that safety, accessibility and accessibility by the Parents were the three primary concerns for the business. He stated that the area in the shopping center that was conducive of a playground would be the rear. He told the Council that most shopping centers were not willing to locate a preschool in their shopping center. However, those that were willing to accept a Preschool, wanted to put a playground 20-40 feet along major arterial roads. He stated that the fumes from the vehicles would be harmful as well as there being potential for a vehicle to go wild. Mr. Diruzza told the Council that the location that was picked was the most conducive and most desirable to everyone.

COUNCILMEMBER HEUMANN questioned the distance between the property and Queen Creek Road. He noted that the road would be widened in the future.

MR. DIRUZZA replied that the building would be approximately 150 feet from the road.

MAYOR TIBSHRAENY believed that the part of the road and the sidewalks were built by the developer. He did not believe that the profile of the buildings would not be changed.

MR. DIRUZZA concurred.

MR. JIM ORMSBY, 3131 E. HORESHOE, told the Council he did not believe there was a noise issue with the business. He recalled a hearing he attended where a parent voiced concern over the noise levels at a school that is outside the noise contours. He believed that those parents would voice opposition because of the noise if the preschool was allowed. He expected contention to arise in the future.

COUNCILMEMBER WENINGER asked Mr. Ormsby if he believed there was a safety factor between the airplanes and the site. MR. ORMSBY did not believe there was. He stated that accidents can happen at any place at any time.

COUNCILMEMBER WENINGER did not believe it was fair to deny a business owner the right to open their business on a private property because of potential complaints.

MR. ORMSBY stated he did not see a problem, however, he noted that many people have moved near the Airport and then notice they have issues with the Airport. He recalled instances where many residents moved near the Airport and then wanted to shut the Airport down.

In response to a question from COUNCILMEMBER HEUMANN, Mr. Ormsby stated that the Preschool would be differ from another business such as a deli in the fact that people show up and leave, whereas with the Preschool, children would be dropped off for hours. He believed that people will discover the problem after the business gets placed in the center.

MR. JAMES COURTEAU, 2075 E. GRAND CANYON DRIVE, expressed confusion to the Council regarding the time spent on the pesticide since it was the State's responsibility. He believed that sound would not be an issue but could be corrected. He did not believe there was any issue as to why the Use Permit should not be approved.

In response to a question VICE-MAYOR DONOVAN, Mr. Dermody stated that there would be no consideration for the business at the site due if the building fell into the ANO-2 category as it would not be allowed in the zoning code. He added that staff would not be allowed to issue permits if the site was a shopping center and fell into the ANO-2 category.

Mr. Dermody further explained that the zoning code had different levels with ANO-1 being the least noisy sound effects from the Airport. He clarified that other types of uses could be allowed in ANO-2 if certain levels of sound attenuation were allowed.

VICE-MAYOR DONOVAN questioned why the particular use was not allowed in ANO-2.

MR. DERMODY responded that the type of use was deemed more sensitive to noise than other uses.

VICE-MAYOR DONOVAN noted that the regardless of additional noise barriers in the building, the type of use would still not be allowed in the ANO-2 area.

MR. DERMODY concurred.

COUNCILMEMBER HEUMANN asked what would happen if the area were to change by the FAA and fall under the ANO-2 category.

MR. DERMODY responded that the business would be grandfathered in if the noise contour category changed to ANO-2. He further added that if the noise contour category changed and the use permit was up for approval then the issue would have to be reviewed.

MR. JOHN WALKUP, 551 S. EVERGREEN STREET, addressed the Council regarding the Use Permit. He believed from a business standpoint the business should not be placed at the site. He noted that the Use Permit did not go before the Airport Commission where other cases, agreements and projects had in the past. He recalled comments made at the bond election that

stated, "Don't expand the Airport" and "Don't improve the Airport". He told the Council to protect the Airport.

MS. KAREN ELDRED, 3500 E. LEO PLACE, spoke to the Council on behalf of the staff at Wee Blessings Preschool. He commended the owners of the school and the Parents of the children that attend the school. She noted that the building was already at the site with businesses already at the site. She noted that Chandler was one of the 100 Best Cities to raise families. She hoped that Wee Blessings could contribute in attracting families in Chandler.

COUNCILMEMBER WENINGER questioned if the Council needed to base their decision on the current DNL.

CITY ATTORNEY MARY WADE told the Council that their decision needed to be based on the current DNL levels.

COUNCILMEMBER WENINGER acknowledged that a business owner may be inconvenienced if they happened to receive a call or compliant but he did not believe that the Preschool would harm any businesses in the area.

MOVED BY COUNCILMEMBER WENINGER, SECONDED BY COUNCILMEMBER SELLERS TO APPROVE ZUP11-0021 WEE BLESSINGS PRESCHOOL & ACADEMY USE PERMIT FOR A PRESCHOOL AND TUTORING BUSINESS SUBJECT TO THE CONDITIONS BY STAFF.

COUNCILMEMBER SELLERS noted he has always supported the Airport, however he did not believe the business would harm the Airport.

COUNCILMEMBER HEUMANN asked if calls had been received by residents in the Twin Acres area regarding the issues of pesticide.

MR. DERMODY responded that staff had heard from two different couples in the Twin Acres area. Both couples voiced opposition of the application, with their concern being that the Preschool might affect any pesticides they want to use in the future.

COUNCILMEMBER HEUMANN questioned what would happen if harmful pesticides were used by neighboring areas.

CITY ATTORNEY WADE stated that the issue would be investigated by the State and would most likely result in stopping the use of the pesticide. She believed that the legislation dealt with fly over spray.

COUNCILMEMBER HEUMANN expressed concern over inhibiting neighboring businesses that were already there. He asked if the City could be held liable under Prop. 207 if the Use Permit were approved.

CITY ATTORNEY WADE did not believe the City could be held liable, as it was a State regulation.

In response to a question from VICE-MAYOR DONOVAN, City Attorney Wade stated that the FAA coming back with information was speculation.

VICE-MAYOR DONOVAN stated that if the FAA were to approve the lines that the Council approved but it was no longer conformance with use, then the case might be grandfathered in because the Council was operating under what had been voted on to change.

CITY ATTORNEY WADE concurred.

VICE-MAYOR DONOVAN told the applicant she would like to see them working with the Economic Development Office if the permit should not pass. She stated that she had previously voted on something that is awaiting approval from the FAA. She stated she could not change her prior vote and saw a conflict with her prior vote and her vote for the permit if she were to vote to approve it.

COUNCILMEMBER ORLANDO stated that he did not want to see anything in the 55 DNL, wanted to protect the Airport and had been his tradition to do so.

COUNCILMEMBER HEUMANN asked if staff had contacted the State in regards to the issue of pesticides.

MR. DERMODY replied that although he had had conversations with the State, it had been difficult to receive a straight answer from the State.

COUNCILMEMBER HEUMANN stated that a lot of the talk about pesticides was here say and questioned if someone from the State could appear before the Council to address concerns.

CITY ATTORNEY WADE replied that the State would need to be subpoenaed in order to appear before the Council. She stated that the applicant would receive a written approval.

COUNCILMEMBER HEUMANN stated he wanted to receive a written opinion from the State that would state the facts regarding the pesticide. MS. WADE did not believe they State would do that, however, she reiterated that a written approval would be given to the applicant.

COUNCILMEMBER HARTKE believed that people would use the Preschool if they liked it or not. He said he would be voting nay on the item based upon on the site being adjacent to the Airport and expressed concern over the sound level.

WHEN THE VOTE WAS CALLED, THE MOTION FAILED FOR LACK OF MAJORITY (3-4), WITH VICE-MAYOR DONOVAN, AND COUNCILMEMBERS HEUMANN, ORLANDO AND HARTKE VOTING NAY.

PUBLIC HEARINGS:

Ph1. ANNEXATION: SEC Lindsay and Ocotillo roads

CANCELLED the Public Hearing for the annexation of approximately 23.8 acres located east of the SEC of Lindsay and Ocotillo roads due to inaccurate legal description.

The correct legal description has been filed with the City Clerk. A Public Hearing for the annexation will be held at the November 14, 2011 City Council meeting in accordance with Arizona Revised Statutes.

CURRENT EVENTS:

A. Mayor's Announcements

Mayor Tibshraeny thanked the staff and the citizens who participated in the Neighborhood Connect event.

Mayor thanked those that participated in Chandler's Day of Play and the For Our City clean-up.

Mayor also thanked Chandler High School for inducting him into their Hall of Fame.

Mayor announced the Halloween Spooktakular would take place on October 28 in front of the Downtown Chandler Library and invited residents to attend.

B. Councilmembers' Announcements

Councilmember Heumann gave his thanks to those participating in the For Our City event. He also thanked those that attended the Desert Cancer Foundation Luncheon. He noted that a new business, Vintage 95 would be moving into Downtown Chandler. He also announced that a science tech festival would be held February of 2012.

Vice-Mayor Donovan expressed excitement over the lease expansion of Innovations Incubator. She thanked Councilmembers Heumann and Hartke for being involved in the Desert Cancer Foundation.

C. City Manager's Announcements

None.

Adjournment: The meeting was adjourned at approximately 9:11 p.m.

ATTEST: _____
City Clerk

Mayor

Approved: November 14, 2011

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of Chandler, Arizona, held on the 27th day of October 2011. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this _____ day of November, 2011.

City Clerk