

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF CHANDLER, ARIZONA, August 21, 2013 held in the City Council Chambers, 88 E. Chicago Street.

1. Chairman Veitch called the meeting to order at 5:30 p.m.
2. Pledge of Allegiance led by Chairman Veitch.
3. The following Commissioners answered Roll Call:

Chairman Stephen Veitch
Vice Chairman Matthew Pridemore
Commissioner Andrew Baron
Commissioner Katy Cunningham
Commissioner Bill Donaldson
Commissioner Phil Ryan
Commissioner Devan Wastchak

Also present:

Mr. Kevin Mayo, Planning Manager
Ms. Jodie Novak, Senior City Planner
Ms. Erik Swanson, City Planner
Ms. Susan Fiala, City Planner
Kay Bigelow, Assistant City Attorney
Ms. Joyce Radatz, Clerk

4. APPROVAL OF MINUTES
MOVED BY VICE CHAIRMAN PRIDEMORE, seconded by COMMISSIONER CUNNINGHAM to approve the minutes of the July 17, 2013 Planning Commission Hearing with the change as noted. The motion passed unanimously 6-0 with 1 abstention (Commissioner Baron did not attend that meeting).
5. ACTION AGENDA ITEMS
CHAIRMAN VEITCH informed the audience that prior to the meeting Commission and Staff met in a Study Session to discuss each of the items on the agenda and the consent agenda will be approved by a single vote. After Staff reads the consent agenda into the record, the audience will have the opportunity to pull any of the items for discussion. Items A, D and E were pulled for action.

B. DVR13-0011 TAKE OFF CENTER

Approved.

Request action on the existing Planned Area Development (PAD) zoning to extend the conditional schedule for development, remove, or determine compliance with the three-year

schedule for development or to cause the property to revert to the former Agricultural (AG-1) zoning. The existing PAD zoning is for a commercial development that includes a fuel station on approximately 4.2 acres located at the southeast corner of McQueen and Queen Creek roads.

Planning Staff, upon finding consistency with the General Plan, recommends approval to extend the timing condition for three (3) years with all of the conditions in the original approval remaining in effect.

C. DVR13-0021 RANCHO BERNARDO

Approved.

Request action on the existing Planned Area Development (PAD) zoning to extend the conditional schedule for development, remove, or determine compliance with the three year schedule for development or to cause the property to revert to the former Agricultural District zoning. The existing PAD zoning is for a retail building on approximately 1 acre at the southwest corner of 56th Street and Chandler Boulevard.

Planning Staff, upon finding consistency with the General Plan, recommends approval to extend the timing condition for three (3) years with all of the conditions in the original approval remaining in effect.

F. LUP13-0011 99 CENT ONLY STORE

Approved.

Request Liquor Use Permit approval to sell beer and wine for off-premise consumption only under a Series 10 Beer & Wine Store License at an existing store. The business is located at 1996 N. Alma School Rd., southwest corner of Warner and Alma School roads.

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

G. ZUP13-0004 VIEN MINH BUDDHIST TEMPLE

Approved.

Request approval of a time extension for a Use Permit to allow a place of worship in a single-family home zoned SF-8.5 (Single-Family District). The property is located at 285 North Comanche Drive, west of Alma School Road and north of Chandler Boulevard. **(REQUEST CONTINUANCE TO THE SEPTEMBER 18, 2013 PLANNING COMMISSION HEARING.)**

H. CANCELLATION OF THE SEPTEMBER 4, 2013 PLANNING COMMISSION HEARING.

Approved.

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

ACTION:

D. DVR13-0001/PPT13-0001 LA VALENCIANA

Approved.

Request rezoning from Planned Area Development (PAD) Commercial to PAD (Single-Family Residential) for a single-family residential subdivision with Preliminary Development Plan (PDP) for site and housing products design and Preliminary Plat (PPT) approval on approximately 16 acres located at the northeast corner of Pecos and Cooper roads.

Rezoning

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "LA VALENCIANA", kept on file in the City of Chandler Planning Division, in File No. DVR13-0001, except as modified by condition herein.
2. Construction shall commence above foundation walls within three (3) years of the effective date of the ordinance granting this rezoning or the City shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.
3. Right-of-way dedications to achieve full half-widths, including turn lanes and deceleration lanes, per the standards of the Chandler Transportation Plan.
4. Undergrounding of all overhead electric (less than 69kv), communication, and television lines and any open irrigation ditches or canals located on the site or within adjacent right-of-ways and/or easements. Any 69kv or larger electric lines that must stay overhead shall be located in accordance with the City's adopted design and engineering standards. The aboveground utility poles, boxes, cabinets, or similar appurtenances shall be located outside of the ultimate right-of-way and within a specific utility easement.
5. Future median openings shall be located and designed in compliance with City adopted design standards (Technical Design Manual # 4).
6. The developer shall be required to install landscaping in the arterial street median(s) adjoining this project. In the event that the landscaping already exists within such median(s), the developer shall be required to upgrade such landscaping to meet current City standards.
7. Completion of the construction of all required off-site street improvements including but not limited to paving, landscaping, curb, gutter and sidewalks, median improvements and street lighting to achieve conformance with City codes, standard details, and design manuals.

8. Approval by the Director of Transportation & Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Transportation & Development for arterial street median landscaping.
9. The covenants, conditions and restrictions (CC & R's) to be filed and recorded with the subdivision shall mandate the installation of front yard landscaping within 180 days from the date of occupancy with the homeowners' association responsible for monitoring and enforcement of this requirement
10. Homebuilder will advise all prospective homebuyers of the information on future City facilities contained in the City Facilities map found at www.chandleraz.gov/infomap, or available from the City's Communication and Public Affairs Department. The homebuilder shall post a copy of the City Facilities map in the sales office showing the location of future and existing City facilities.
11. The approximate 2-acre commercial parcel shall remain zoned PAD for neighborhood commercial C-1 uses, as adopted by Ordinance No. 2699 in case PL96-114, if not developed as a part of the single-family residential development. The commercial parcel shall require separate Preliminary Development Plan application and approval.

Preliminary Development Plan

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "LA VALENCIANA", kept on file in the City of Chandler Planning Division, in File No. DVR13-0001, except as modified by condition herein.
2. The landscaping shall be maintained at a level consistent with or better than at the time of planting.
3. The landscaping in all open-spaces and rights-of-way shall be maintained by the adjacent property owner or association.
4. Sign packages, including free-standing signs as well as wall-mounted signs, shall be designed in coordination with landscape plans, planting materials, storm water retention requirements, and utility pedestals, so as not to create problems with sign visibility or prompt the removal of required landscape materials.
5. The tot lot shall be a minimum of 20 total play stations.
6. All homes built on corner lots within the residential subdivision shall be single-story or a combination of one- and two-story with the one-story portion on the street side.
7. The same elevation shall not be built side-by-side or directly across the street from one another.
8. Lots 1 through 22 shall be constructed with single-story homes only.
9. No more than two, two-story homes shall be built side-by-side along Pecos Road.
10. No more than two identical side-by-side roof slopes should be constructed along the arterial street, Pecos Road.

Preliminary Plat

1. Approval by the City Engineer and Director of Transportation & Development with regard to the details of all submittals required by code or condition.

MS. JODIE NOVAK, SENIOR CITY PLANNER, stated this is a rezoning application that also includes the Preliminary Development Plan and a Preliminary Plat. This property is on the

northeast corner of Pecos Road and Cooper Road. It is approximately 18 or so acres. What Ryland Homes is proposing is developing 70 single-family residential lots. They are about a minimum of 6500 square feet in size. They will have about 7 housing plans and a mix of one and two-story homes. The project has been reviewed by the Planning Division Staff and is in conformance and meets the intent of our adopted Area Plans for land use, our Residential Development Standards for house and product quality design and architecture as well as the subdivision layout and the diversity standards for creating a good neighborhood.

Through this process, this case had been worked on since the end of 2012 and came in at the beginning of 2013. They have been working on this project for quite a long time. It does include 2 parcels that are currently in place. They are both separately owned by individual owners. Ryland Homes has hired Bowman Consultant as the applicant on this case. Both property owners have consented to this zoning case being filed for the request for this to be a single-family residential subdivision. Currently the property is zoned PAD for a neighborhood commercial use which is consistent with the land plans for that particular area. The request would be to rezone all of this property for the single-family residential use. The development request and the development booklet have 2 options in there. The option 1 is to develop the full 70 lots for the whole single-family subdivision. This would include both properties being rezoned. The option 2 component of the development would be about a 2 acre commercial component of the neighborhood commercial that is at the immediate intersection corner remain as commercial which would then reduce the single-family development to approximately 58 lots.

The reason there are 2 options with this development request is that the corner parcel was formerly owned by Exxon Mobile. In their deed restriction they actually have a statement in there that prohibits any form of single-family residential from occurring on that land. That is something that is typical; that the gas station company would do just more of a covering themselves in case there would be any environmental contamination or something in the future where some homeowner might come back to them. They have been considering removing that deed restriction with the property owner of the 2-acre parcel for about a year now. Ryland Homes has been working with that 2nd property owner to develop that land as a part of the single-family but just recently learned that they still have not gotten Exxon Mobile to finalize getting rid of the language off of the deed restriction. Therefore, they have worked with the applicant, Bowman Consultant and their attorney to have another option that shows that if that deed restriction is not removed from that 2-acre parcel, it can still retain itself as the commercial that it is currently zoned, which is reflective in stipulation no. 11 in the rezoning components of the recommendation here.

What they have learned just today is that the property owner of parcel 2 is now contesting this development request and has some concerns about how this would affect him developing his property in the future. Note that he has been very aware of the land use entitlement, what is required for zoning, what is required for preliminary development plan, what are the commercial building setbacks and so forth related to the single-family residential land use. That property owner has been a part of this application the entire time. Her understanding is that a representative of Rose Law Group law firm as of this morning made them aware that the

property owner of the 2 acre piece now has concerns and may or may not want to be a part of this project any longer. The whole entire development team is clearly aware of that as of today. We will this evening first hear what they have to present before them.

From a Planning Staff standpoint as was mentioned at Study Session, they are confident in support of either of the 2 options. They have looked at that commercial corner and they know it can get developed. They have seen how it can meet all of their development code standards. They feel that it is designed compatibly with the single family, with the extra landscape buffer, the pedestrian access that has been provided and it would be very well integrated with the residential community that is proposed. If it all becomes single-family residential, they are o.k. with that as well which is why they had the 2 options, both site planning and landscape planning in the development booklet. The plat as was mentioned at Study Session is representing everything as single family. If this property owner on the 2 acres does not wish for his property to go single family or does not get the deed restriction removed, it will remain as it is, the plat won't come back through us and will be reflective of that as an exception piece for commercial and will stay that way, which is the way it has been for probably about 20 years.

At this point, Planning Staff is recommending support for this development. They do have conditions for both the rezoning and the preliminary development plan as reflected in the Staff Report she has prepared for them. They are not aware of any form of opposition or concerns with this project other than what she has stated. They did work with the Kempton Crossing community very well and their HOA. They have the stipulations in place to ensure that all the lots on the north end will be one story homes only because the homes in Kempton Crossing are one story homes only as well. Ms. Novak said that if they had any additional questions, she would be happy to answer them.

CHAIRMAN VEITCH asked if there were any questions of Staff at this time.

STEPHEN EARL OF EARL, CURLEY & LAGARDE stated that he is there on behalf of Ryland Homes and the President of the Arizona Division of Ryland Homes who is with him tonight. He said that Staff did an excellent job of describing to them the challenges that they have had over the past year because of the fact that there are 2 owners. There is a 2-acre commercial corner owned by one entity and then the balance of 16 acres owned by another entity. That made it a little bit challenging to figure out how to develop the property because they were informed that the 2-acre commercial corner just purchased by the current owner 3 years ago in 2010 had a deed restriction in it that prevented it from being used for residential purposes. They went into escrow with both owners to develop the project they see here on the board, which has residential all the way to the corner and that was based on the owner of the corner being able to remove the deed restriction that was a 50 year deed restriction with Exxon Mobile. Over the course of the last 8 months, they have kind of waited for that to occur and it hasn't yet occurred. They finally said with Staff last fall around December, why don't they do 2 plans. Let's do one with the corner being developed residentially and one without because they can't predict what one of the largest companies in the world is going to do with that deed restriction. So they worked with Staff and Staff was kind enough to let them come up with a plan that will remove the corner and allowed it to retain its current commercial zoning. They can

see that what they tried to do was internalize their setbacks against that commercial corner so they could be developed compatibly with them. They can see that on the north side of that corner parcel of 2 acres is open space so no home backs up to the northern side of it and on the eastern side of it they created a 21-foot track of mature landscaping and an 8-foot wall to protect the 3 owners on that side.

Now in fact there is only Ryland Homes that would own the property and there won't be any homeowners there for about 14 months. Ryland Homes has absolutely no problem with the commercial corner retaining its commercial; that is why they have the 2 options. They do not object to any legitimate commercial use from gas station to bank to retail PAD to a restaurant. All those are legitimate uses that the City may choose to approve there. If they wanted to process a PAD amendment since their property is zoned PAD now to reduce setbacks given the fact that they have created internalized setbacks on their property, they wouldn't object to that either. As Staff has noted, they are also willing to have a pedestrian access and build a sidewalk. They are trying to do everything they know how to do to make this work and today for the first time they found out that they may not want to be a part of the case or they want a continuance. They created the 2 plans so they wouldn't have to continue this and of course spent months and months trying to get this resolved and finally at this point they feel that either plans works just fine for them. They think both plans are an excellent use of the property. It has been vacant now for over a decade after Kempton Crossing was built and it is not a favored commercial corner. He has an exhibit that shows that within a mile of the subject site in yellow, they have both regional commercial where the Home Depot and a Walmart is on the south side of the 202 to neighborhood commercial to the west within a mile or a mile and a half. So these folks who live in this area certainly have commercial services and that is probably why this property has never developed and that is why the City Council adopted a policy that when you have unused commercial land it should be put to productive use. There is also a commercial corner on the west side of this intersection which would be the northwest corner which is a larger parcel next to a church that would not have any adjacent residences and could be developed commercially and they hope it is.

For all these reasons, they believe that this is an appropriate case and they appreciate Staff's recommendation of support and are in agreement with all of the stipulations. If the owner of the commercial parcel doesn't want to be a part of the case, he can tell them and they have an option that doesn't require him to be a part of the case. They would prefer to not continue the case given the fact that they have worked all this time and their phone numbers are in the book. They could have received a call from them. They have tried to reach them. That is his presentation and he said he would be happy to respond to any questions.

CHAIRMAN VEITCH asked if there were any questions for Mr. Earl.

COMMISSIONER RYAN asked Mr. Earl that if they were to make a motion tonight on his project, they would be o.k. if they just selected the option that was void of any residential on that corner? Mr. Earl replied that if the owner of the 2-acre commercial corner does not want both options to proceed and actually wants to be withdrawn from the case, then option 2 would be the

only option that could proceed. Candidly, they keep telling us that they are going to get this deed restriction lifted and they will notice that the plat in their packet assumes that the corner will be developed residentially. They have been going a long time on this assumption. Unless they say they want out they have been going forward with both plans as the appropriate thing at this point to allow them to buy the property should they get the deed restriction lifted. Again, it is up to them. They want out, they will let them out.

CHAIRMAN VEITCH said he had one speaker card from Cameron Carter of Scottsdale who he thinks represents the owner of the 2 acres.

CAMERON CARTER WITH THE ROSE LAW GROUP, SCOTTSDALE, ARIZONA, said that is correct. He represents Nextgen which is the owner of the 2-acre currently zoned PAD commercial property that is part of this rezoning request. As their Staff laid out for them, there is currently a deed restriction on this 2-acre property for the benefit of Exxon Mobile. They have been working vigorously over a several month period to get that removed and they are close. As they speak, it is difficult to make the largest company in the world move for a 2-acre vacant piece of dirt somewhere in Arizona that they don't even know about because they never actually built on it. The restriction is unnecessary but they have been working and they have given them indications that they are willing to remove it. Most recently they had told them that the process would be finished in July. They came back and asked us for an additional Phase I Environmental Study for the property, which is totally unnecessary because the property was never developed. Nevertheless, his clients Nextgen paid for that Study and sent it to Exxon showing again that the property was free and clear of any contaminants of any sort. They have satisfied all of Exxon's requirements and they think they are close. So they believe that the best interest of the City and everybody that this property be ultimately developed for residential uses. That said the proposal that is before them tonight has 2 options and option 1 for all residential for the complete 18 acres and then option 2 contemplates that this property is left out and the current PAD commercial zoning remains. That is where his client has some concerns and frankly their concern is that rezoning a portion of or the adjacent property to residential and now having a residential adjacent to commercial situation does impose some additional development restrictions on this property specifically related to building height and allowed building height and additional setbacks that are required. He understands that there is a process for adjusting those additional setbacks. They haven't engaged in that process to date. They are requesting a continuance tonight. Number one, so they can get this restriction removed from Exxon.

They are requesting a continuance to the September 18th hearing in one month. They believe that restriction will be lifted within that time and at that point they can go forward with Option 1 and everybody will be happy. If not, they are requesting that during this time they would continue to work with Staff and with the adjacent property owner to satisfy those additional restrictions on the commercial property. Whether that means an amendment to this PAD and tweaking that so they can memorialize that those additional setbacks are not impacting the commercial development on the 2-acre site or a PDP that memorializes those, aren't part of this plan. The current proposal for the rezoning and the PDP contemplate residential but it doesn't mitigate the additional impact on the commercial property. They are requesting more time to be able to deal

with those concerns and they believe in one month time until the September 18 hearing, it is appropriate to do that. He thanked the Chairman and Commission and said he would be happy to answer any questions.

CHAIRMAN VEITCH asked if there were any questions for Mr. Carter.

COMMISSIONER BARON asked if they are o.k. and they believe that the deed restriction will be lifted in one month and this case contemplates an option 1 and 2, why would they want it continued if they can build either within a month. They are going to be working on construction documents anyhow. Is he missing something? Mr. Carter replied they believe that the restriction will be lifted within that time but there is no guarantee of that and so in the event that the restriction is not lifted, they feel that option 2 is inadequate to address his client, the property owner's concerns and to adequately insure that they can develop their property on the 2-acre parcel as they had previously planned. **COMMISSIONER BARON** said so they are not 100% confident that it is going to be lifted? Mr. Carter said he cannot control Exxon Mobile but he wished he could. **COMMISSIONER BARON** said fair enough that was why he was asking the question.

CHAIRMAN VEITCH asked why doesn't the 2 track approach that Mr. Earl has outlined, which while a little bit unorthodox, the City has gone along with at least to this point, why isn't that sufficient in order to let you continue to do what you are doing and reach a good resolution? Mr. Carter responded that their client has been part of this application, they have consented to the application. The 2 prong approach certainly does address this issue of the restriction and they appreciate Staff's support of that and in working with them on that. The issue here is simply that option 2 in the event that restriction is not lifted in the time that this does move forward beyond the rezoning stage, in the event that option 2 becomes necessary, it does not currently and adequately address their concerns as far as developing the property. It doesn't address the additional restrictions that are placed on the 2 acre piece as a result of having now residential adjacent to commercial. The 2-acre property currently is zoned PAD commercial. Option 2 retains that zoning but the current zoning is adjacent to commercial property and under the city zoning ordinance when commercial property is to be developed adjacent to residential, it is subject to additional restrictions but in this case it needs to be dealt with adequately by option 2 and they have not been yet.

COMMISSIONER RYAN asked has Nextgen given Ryland Homes the authority as their agent to prepare a plan on their property. Mr. Carter replied that his understanding is that Nextgen is not the applicant for this rezoning case but they did consent to Ryland Homes processing the rezoning for this property but the current proposal doesn't adequately meet their needs.

CHAIRMAN VEITCH said his understanding was that the owner of the 2-acre parcel was a signatory to the application. Ms. Novak, Senior City Planner, said Exxon Mobile doesn't own that property but his client Nextgen full out 100% owns it. Exxon wasn't even a part of this except there is a legally recorded deed restriction just like a homeowners association that he pulled up and saw some stuff that he probably didn't research when he bought this property,

which he probably should have early on. She thinks that would answer that question. As far as the application goes, when an application is filed there is a formal applicant. That could be anyone; an architect, engineer, property owner, zoning attorney and they are the point of contact and the ones processing this on behalf of property owners. If the applicant wants to file it on behalf of the property owners, the property owner will have to sign a letter of authorization form consenting for that applicant to represent their land for what they are requesting. That has been completed. Both the property owner of Ryland's piece as well as Ryan Speakerman who owns the 2 acre have both signed their letter of authorizations for Bowman to file a request to rezone their land to residential on their behalf. They actually put that stipulation in place only because of the fact that a year has gone by and he has been conveying that he hasn't been able to get that deed restriction removed. She didn't think 4 more weeks was going to make a difference for that to be removed or not be removed. The discussion that she has had with the attorney before them this evening was that he may want to come in with his own PDP and he wants his PDP tied to this zoning case representing whether he wants to put a gas station or some other commercial use there and wants to ensure the City is going to be o.k. if he maybe wants reduced setbacks. If you have commercial next to residential, they have that 25 foot setback plus 1 foot for each foot of height for the building. They have already proven that this site can be built with a commercial use. They have a site plan that they have worked with. All the applicants and the property owners on that show how a commercial building can meet the building setbacks and the access where the driveway would be and the landscape intersection setback. They don't have any issue with that because they have already seen that. Maybe his client doesn't agree with that because his client has a different intention for the use that he wants there but to continue the case specifically to see if the deed restriction is going to go away that may not even happen. He is saying that they want the ability to research and look into and have their concerns addressed. Their concerns are the fact that after a year or more this property owner now realizes that he didn't research this and he might have these additional setbacks for what I want to do because it will be a residential zoning next to me and now he may not be able to get what he wanted when he bought the property 3 years ago. That is really that in a nutshell and what the situation is at this point.

They feel what has been explained already is that the option already covers the needs for this property owner. If the deed restriction is not removed, he still has his C-1 regardless but he will have to come in with a PDP case at any point to develop it for C-1 uses. If he wants to do a gas station or other use that is now allowed under the C-1 of that PAD, he would certainly need to come in and do a rezoning anyway to amend it. They have had that discussion with them for quite a long time – that has been well made aware of to that property owner. She wanted to give them that background as well this evening.

GLENN BROCKMAN, ASSISTANT CITY ATTORNEY, said it seems to him that at this juncture as he understands it, the applicant has the permission of both the landowners of all the property involvement including the 2-acre parcel to apply for and seek rezoning for a residential use. This gentleman is talking about concerns related to how that will impact a commercial property that this application initially expected would not exist once the zoning got through. It seems to him that the issues that this gentleman is raising, either his client should now state that

they are withdrawing from this application and they can proceed that way or else stay as it is and let this body make its recommendation to Council and between then and now maybe they will get an o.k. from Exxon Mobile, maybe they won't, but they can address the issues he is raising now at the time Council hears the matter.

MR. CARTER said while he appreciates Ms. Novak's summarization of their position, the intent of option 2 is to preserve the existing entitlements and development standards for the 2-acre parcel. The applicant is aware of that. That was their intent; that is Staff's intent in processing the application with option 1 and option 2. The reality is that option 2 does not fully preserve that because of the additional development restrictions imposed when the remaining commercial property is now subject to or adjacent to residential property. All they are asking for is additional time so that they can fulfill that intent by ensuring that option 2 maintains those standards. He is not prepared tonight and he doesn't have authorization from his client to withdraw the 2-acre parcel from the application and so their request again is that this be continued until the September 18 hearing.

CHAIRMAN VEITCH said to Commission that their legal counsel has indicated and he thinks he is right about this but both property owners have already consented to be represented by the applicant and unless there is a withdrawal, he thinks that is where they are. He asked if there were any further questions of Mr. Carter.

COMMISSIONER CUNNINGHAM had a question for Staff. If Ryland Homes wanted to develop their 16 acres, they wouldn't have had to consult the 2-acre parcel owner at all on the rezoning other than to notify them and let them come and speak their objection. Correct? Staff said that was correct.

CHAIRMAN VEITCH asked if there were any other comments from the audience at this point. There were none.

STEPHEN EARL said he wanted to make this clear that the owner of the corner parcel has known about this duality and proposal for months and months. In fact, they had specific meetings with Staff probably this time last fall as they moved forward on this dual tract. For them to come today and say they are now concerned about the tract that does not include their property, they have every ability to have their property included in this. All they have to do is remove the deed restriction and if they can't, then they will develop their property residentially; they will still have their commercial zoning on their property. They are willing to allow any commercial zoning and any use that is legitimate under the ordinance. They have internalized their setbacks so they can certainly come forward with their own plan. That is their choice and maybe even reduce some of their otherwise required setbacks because they have created their own internalized setbacks. The last thing they want to do is after a whole year is continue again.

CHAIRMAN VEITCH said there are 3 recommendations before them. One is for rezoning of the entire 18 acres. The 2nd is for the approval of a Preliminary Development Plan also covering

the entire 18 acres which is in effect option 1 as they have heard it. Finally, a Preliminary Plat for that same 18 acres and 3 separate motions would be involved.

GLENN BROCKMAN, ASSISTANT CITY ATTORNEY said he had a question for Staff on the Preliminary Development Plan approval. There is nothing from their perspective that would preclude the Commission from recommending either option at this point. Is that correct? Ms. Novak, Senior City Planner, said that would be their prerogative. They don't have any concern with that because they are both valid. **MR. BROCKMAN** said they don't have to necessarily make the choice of going option 1 or option 2. If both of them are acceptable to the Commission, then it just moves forward and the ultimate option will occur through Council. Ms. Novak said correct, through the plat.

CHAIRMAN VEITCH said so are they to think of the Preliminary Development Plan as actually a 2-pronged item and for that matter the rezoning as well. Ms. Novak replied that the Preliminary Development Plan includes both of those options. So the zoning condition that says development shall be in conformance with the Exhibit "A" development booklet which gives both options, and then they have that condition in place that helps that property owner of the 2 acres understand that he has his commercial rights just as he does right now and for some reason if it doesn't become residential. **CHAIRMAN VEITCH** said our motions are prepared in such a way that it accomplishes that. He asked if there was any further discussion on the part of the Commission.

MOVED BY COMMISSIONER RYAN, seconded by **COMMISSIONER BARON**, to approve the rezoning request DVR13-0001 for PAD commercial to PAD single-family residential subject to the conditions as recommended by Staff. The motion passed unanimously 7-0.

MOVED BY COMMISSIONER RYAN, seconded by **COMMISSIONER BARON**, to approve the Preliminary Development Plan under case DVR13-0001 for a single-family residential development subject to conditions as recommended by Staff. The motion passed unanimously 7-0.

MOVED BY COMMISSIONER RYAN, seconded by **COMMISSIONER BARON**, to approve the Preliminary Plat for PPT13-0001 subject to the conditions as recommended by Staff. The motion passed unanimously 7-0.

CHAIRMAN VEITCH stated this would go to Council on September 12, 2013.

D. PDP13-0004 THE RESIDENCES AT BELMONTE
Approved.

Request Preliminary Development Plan approval for housing product for an 83-lot single-family residential subdivision. The subject site is located south and east of the southeast corner of Chandler Heights and Gilbert roads.

1. Development shall be in substantial conformance with the Development Booklet, entitled "The Residences at Belmonte", and kept on file in the City of Chandler Planning Division, in File No. PDP13-0004, except as modified by condition herein.
2. Compliance with original conditions adopted by the City Council as Ordinance No. 3601 in case DVR04-0009 REID'S RANCH, LANDING AT REID'S RANCH, AND AMBERWOOD HEIGHTS, except as modified by condition herein.
3. The landscaping in all open-spaces and rights-of-way shall be maintained by the adjacent property owner or homeowners' association.
4. Approval by the Director of Transportation & Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Transportation & Development for arterial street median landscaping.
5. The covenants, conditions and restrictions (CC & R's) to be filed and recorded with the subdivision shall mandate the installation of front yard landscaping within 180 days from the date of occupancy with the homeowners' association responsible for monitoring and enforcement of this requirement.
6. The same elevation shall not be built side-by-side or directly across the street from one another.
7. The applicant shall work with Staff to provide additional landscape terracing along the Chandler Heights Road frontage.
8. The applicant shall provide trees consistent to development standards along the landscape tract adjacent to Gilbert Road.
9. Homes located on corner lots as well as, lots 10, 12, 47, 48, and 58 shall be restricted to single-story homes.
10. Lots backing up to Wood Drive shall be restricted to no more than two, two-story homes adjacent to each other.

ERIK SWANSON, CITY PLANNER, stated this is a request for Preliminary Development Plan approval for housing product for an 83 lot single-family residential subdivision located at the east and south of the southeast corner of Chandler Heights and Gilbert roads. He said he would give them some of the background which he believes is what is stemming some of the concerns being expressed and that is that this subject site was part of a larger master planned community that Kevin alluded to in the Study Session. During that point in time, the housing product for the proposed site was presented as either being custom or allowing for production housing which was part of that master planned community. At that point in time the subdivision was roughly 63 lots. In 2011, the home builder came through and requested a new PDP which maintained the same subdivision layout; however, it increased the lot count from 63 up to 83. At that point in time, they also presented its housing product. The housing product that was being presented included 4 single-family homes, the square footages ranging from about 1800 to just shy of 2300 square feet. That went through without any opposition and no concerns and was ultimately approved. The current request is from a homebuilder that has acquired that property

and what they are doing is they are proposing their housing product on this site and so they are presenting 7 homes, 7 different floor plans, 4 of them are 2 story and 3 of them are single story. Again, it is important to note that there has always been the ability to develop 2-story homes on this site with the exception that the last homebuilder opted on their own accord to say they will just do single-story homes.

Some of the concerns that have been expressed through various neighborhood meetings and contact with staff are that there is a concern that this subdivision and the surrounding community is largely single story and that this subdivision should also be restricted to that. When looking at this site in comparison to the rest of the subdivisions around the area, they have a subdivision to the south which is Mesquite Groves. They are in fact an all single-story subdivision. When that subdivision was approved, it was not done by outside forces imposing the condition on it. It was something that the homebuilder themselves opted for - the single stories. Additionally, the TW Lewis master planned community, Valencia II to the east, had a number of various parcels in there. Some of those parcels opted again by homebuilder choice to restrict them to single-story. It is important to note that there are also 2 story homes in that subdivision as well. North, again in the Reid's Ranch master planned community has the option for both single and two-story. Similarly to the west of Gilbert Road, that subdivision also allows for single and two-story homes.

Any time that there has been the imposing of single-story restriction it has all been by choice from the developer and so as these issues came up in the neighborhood meeting process, the current developer agreed to restrict properties along the east side of the subject site to single story to match what is the case in Valencia II. Based on a number of concerns expressed by the neighborhood to the south, the developer also agreed to restrict the amount of two-story homes along Wood Drive. As he has noted in his Staff memo, that is typically something that they will do for arterial streets to restricted corridor of two-story homes, which the developer is aware of and agreed to and that also applies to Chandler Heights. With all of these modifications being made and the agreements by the developer, Staff is certainly supportive of what is being presented from a housing product standpoint. As Kevin stated, it does meet our Residential Development Standards, it meets the requirements outlined in the Southeast Chandler Area Plan. Again, the developer has opted on their own to have some of these additional restrictions to help the neighborhood to the south and address those concerns. With that, Planning Staff is recommending approval and he said he would be happy to answer any questions.

CHAIRMAN VEITCH asked if there were any questions for Staff. There were none. He asked Mr. Swanson to put the subdivision on the overhead and point out to them the lots that are restricted to single story and the areas where the no more than two side-by-side two story restriction would go. He said they have a number of restrictions that kind of dovetail together.

ERIK SWANSON, CITY PLANNER, showed the subject site. They have Mesquite Groves to the south and then Valencia II to the east. This parcel of Valencia II is restricted to all single stories and then Mesquite Grove is all single stories. What the developer has agreed to and they can see on this exhibit, where all these darker stars are, they have agreed to single story homes.

This home down here (he showed where) they did not put that restriction on there simply for the reason that piece is a city well site. There is no adjacent homeowner there. All along Wood Drive there is a lighter shade of grey on all these parcels for the stars as well as on Chandler Heights. That restriction is no more than two two-story homes adjacent to each other. Again, that is a restriction that they usually apply to arterial but they have gone ahead and opted to include that along Wood Drive. In addition to that, they have also agreed to do no rear balconies on any of those two-story homes to help kind of preserve the neighborhood to the south and their privacy, if there is that issue. That is kind of it in a nutshell for what this subdivision is trying to do to mitigate any of those concerns with two-story homes.

CHAIRMAN VEITCH asked roughly what would be the separation of lot line to lot line between the homes on the north side of Wood Drive and the homes on the south side of Wood Drive. Mr. Swanson replied it look like it's about 88 feet. What you will have is the homeowner's home on the south side of Mesquite Groves, then you have the backyard, their wall, a landscape tract, right-of-way, landscape tract, Residences of Belmonte property line wall, backyard and then the two-story home. That equates roughly about a 160 feet.

MARIO MANGIAMELE, IPLAN CONSULTING, CHANDLER ON BEHALF OF TAYLOR MORRISON HOMES, stated that Staff has done an extensive job with their presentation both during this hearing as well as the Study Session. He said the exhibit he is putting up is the same exhibit that Staff had just illustrated to you. It's the exhibit that they did a lot overlay onto the aerial to show them their self-imposed limitations for the project.

As Staff has indicated, they purchased 83 entitled lots on this property. They already had zoning approval, subdivision plat approval, and residential product approval. This property was ready to move forward with development impact and if you have driven by this site recently, they will see that they are out there doing the site improvements based on the previously subdivision for this property. However, in further looking at the residential housing product for this development that was previously approved, Taylor Morrison did have concerns. The concerns were that they did not anticipate building some other builders product. They had concerns with the design or lack of detail with the design that was previously approved for this project as well as the square footage. As Staff has indicated, the homes previously approved for this property were 1800 square feet up to 2300 square feet, which was the largest home. The adjacent neighborhoods have homes that are much larger; the Valencia subdivision to the east as well as Mesquite Groves and the William Lyons to the south. They felt compelled or a need to increase the building area as well as the design quality for the homes to really be a better fit within the context of this neighborhood. Therefore, they opted to go back through the PDP process which is why they are here today, which is to amend the PDP or Preliminary Development Plan to modify the building architecture as well as the floor plans. As Staff has indicated, they are bringing forward to them 7 different floor plans, 3 are those are single story, 4 of those are two-story. They have at least 3 different architectural styles so what they have are a variety of about 21 different variations that could be built throughout the community.

In working with the neighbors, in his opinion they have done some pretty extensive public outreach on this particular project more so than they have done other similar projects. They realized that this is a change for the neighborhood and they wanted to reach out to the neighbors to find out what could work and what would fit best with these neighbors and find out if they had any concerns or issues with this. He doesn't want to speak for the neighbors he is just kind of summarizing what has transpired. They have largely concerns with the amount of two-stories that were being proposed for this development. They have gone through the development and self-imposed one story limitations on a number of lots throughout the development. Primarily those along the east project boundary. The neighbors along the southern project boundary across the collector level street, they also had similar concerns with respect to the amount of two stories being proposed along Wood Drive. In his opinion this is a little different situation. Yes, Mesquite Grove and the William Lyon homes are all one story homes. Again, they are separated by a collector level road. They are not immediately contiguous to a project boundary. He has been trying to work with the neighbors and trying to work out the best solution that they felt would benefit all, not only us but as well as the adjacent neighbors. They have agreed to not only limit the corner lots to a single story but also take the Chandler's typical or generalized condition they have for homes backing on to arterials of no more than two, two-story homes in a row can be built backing on to the arterials. They felt that by offering that similar stipulation or limitation on the lots backing up to Wood Drive that it would help alleviate some of the concerns. The concerns that he has heard from neighbors are with respect to privacy.

He heard some questions come up from the Commission on what is the distance wall to wall. He believes Staff identified that distance is approximately 89 feet from wall to wall. They had their engineer, Atwell Engineering prepare this exhibit. What they are showing is the back of the existing homes within Mesquite Grove to the back of the rear building within Belmonte. Now that he looks at this exhibit again, he believes the rear building may even be shy a few feet. It appears to him that is a 20 foot rear setback but they have agreed to provide 30 foot rear setback for single story on those homes there and he believes a 40 feet setback for the two-story further adding additional buffer for the homes. Assuming this is only a 20 foot setback, the worst case scenario if you will; the closest home is about 4 lots in from one of the primary points in the Mesquite Grove off of Wood Drive. That is about 144 feet which is just shy of the width of a football field to give you an analogy. Again, the concerns they heard were privacy and few were concerned with residents living in two story homes may be peering down into their one story homes, which they understand. They are trying to be sensitive to that to the best of their abilities and of course provide these limitations and also as Staff has pointed out, they have agreed to actually remove and prohibit any two story balconies throughout the entire subdivision, not just along Wood Drive. They have taken those out of the entire subdivision as well.

He said they do believe that this proposed development is a good fit for the community and is consistent with all the applicable policies, goals and guidelines of the City and they do believe it is going to add value to the neighborhood and really be a good fit. He said he would be glad to answer any questions that Commission members may have.

CHAIRMAN VEITCH asked if there were any questions for the applicant.

COMMISSIONER BARON asked if the existing PAD/PDP case had any restrictions on any of the lots to one story. Mr. Mangiamele replied that to the best of his knowledge the existing restrictions are consistent with what Chandler's general restrictions, lots backing on to arterial streets, corner lots, etc. Outside of that he doesn't believe there are any other restrictions for single-story. Mr. Swanson, City Planner, replied that they had two different products that came through here. With the original case they agreed to limit that east side to single story and then there was the historical single story on corner lots. With the new approval or the most recent approval, they just did all single-stories on their own and so they didn't have to apply that restriction. Just moving forward it was an easy solution. **COMMISSIONER BARON** said when you say recent approval, was that amendment to the PDP or was that administrative? Mr. Swanson replied it was an amendment to the PDP. They went through the hearing process. What this request does is almost take it back to the original approval. **COMMISSIONER BARON** said he had a question on the landscape plan. He is assuming that the intent is to maintain the scale of the trees that are shown on this schedule. He is seeing some big trees, 48 inch boxed, 54 inch boxed, 36 inch boxed. Is that consistent with what they are installing? Mr. Mangiamele replied that it is consistent with the approved plans. When they look at the landscape plan for this particular project, it is above and beyond what is typically required for a community this size. This project is going to be extensively landscaped. It also gated and they have gone through extensive design and cost for this. The open space amenity packages are fairly extensive for a community of this size. **COMMISSIONER BARON** said what he is wondering is if they shared with the neighbors the scale of the plant material and how that visually may break up any concerns that they may have. Mr. Mangiamele replied that was a good question. Early on from what he recalls from one of the neighborhood meetings is that they had addressed the issue with respect to what he considers the buffering in the distance of this retention area and buffer area along Wood Drive and that those trees will help mitigate any sort of privacy issues. Unfortunately, it didn't seem to matter in their opinion. They were still concerned with the amount of two stories within that location.

COMMISSIONER WASTCHAK said they had agreed that you would have a 40 foot setback for a two story backyard and 20 for a single. He isn't seeing that on his plan. Mr. Mangiamele said minimum rear yard setback is 30 feet for all two story dwelling units for lots backing on to Wood Drive. So it is 30 feet and the one story can actually go down to 15 feet. **COMMISSIONER WASTCHAK** said he sees 15 and 20 on the plat. Mr. Mangiamele said he is actually looking at the development regulations in the PDP amendment where they were actually modifying those and increasing those setbacks. **COMMISSIONER WASTCHAK** asked if that was going to be in the stipulation. Mr. Mangiamele replied that generally the PDP development booklet is adopted by an Ordinance so it is codified. They are bound by those regulations. Mr. Swanson, City Planner, stated it is not going to be an ordinance so it won't be in that regard. The PDP will override in essence what the plat does. The plat was actually done as part of the original approval of 2011 so it is taking some of those comments that were approved at the point in time and with this making modifications to that so their PDP will override this and so those larger setbacks would apply. **COMMISSIONER WASTCHAK** said he was looking at the narrative and wondered if they are limiting balconies and actually

restricting that. Is that actually then set forth in the PDP that there are no balconies? Mr. Swanson replied that he thinks that it was something that they agreed upon prior to the printing of the book so it's not represented in the book and he doesn't think there are any balconies shown on the elevations. Mr. Mangiamele said he could answer that question. They have taken all the two story balconies off the elevations and floor plans. Even as an option they are not even going to be permitted within the community. He said they would entertain an added condition to prohibit two story balconies in this community. That is not a problem whatsoever. **COMMISSIONER WASTCHAK** said if it is not shown as an option on any of their plans, he doesn't think it is necessary.

KEN GAYLORD, 3100 E. CEDAR DR., stated that Mario has been wonderful to work with and they have had some good meetings and discussions regarding the residents and the two stories being built. The two stories are not the only issue here. The elevation between the homes that are being built and our elevation is considerably higher. When you are standing in the back yard of the homes that are being built by Taylor Morrison, they are actually almost level with their fence line, maybe just a shade lower. Although there is an 80 feet distance between their yard and the homes that are being built, still the elevation is quite a bit higher. That is certainly a concern for the residents along Wood. The other concern that he has and the residents along Wood is that there are 6 homes along Wood. If they look from Gilbert all the way to Lindsay, up to Chandler Heights across all the way back down to Gilbert Road again, they are all single story homes with the exception of some two-story homes in TW Lewis. He thinks there are four and they are all in the interior of TW Lewis. All of the homes located in that particular area are all sprawling style large lots – high end homes. When you look along there it is all single-story homes. Taylor Morris has made some concessions and they want to put no more than two, two-story homes, then a single story and then a two-story again. If you look at the plot, they can put 7 two-story homes in a span of 4 houses along Wood Drive that are the Mesquite Groves Estates. Aesthetically, looking down Wood they are looking at a row of two-story homes. He doesn't think it fits in with the community and he doesn't think it fits in with the neighborhood. It fits in with what the original design was for that particular area. The concessions that were made regarding the balconies, he doesn't know that those were offered on those homes originally. Another concern they have is aftermarket balconies and things of that nature that can be built on. He is sure there are going to be extended patios that are going to be built along the backs of their homes and they envision maybe some spiral staircases going up to the top of those balconies. There is a great view of the San Tans looking out that way and so they are a little bit concerned about that too. Again, there is nothing in writing that these cannot be built. He would like to see something that would prohibit that from being done. With the concessions that were made he is confused as to why all the homes that back up to TW Lewis are all single-story homes. Two thirds of the homes that are being built along Chandler Heights and down Gilbert Road are all single-story homes but yet along Wood Drive there is no restriction there. He would really like to see that changed to all exterior homes be single story homes and then interior homes can be two story homes.

VICE CHAIRMAN PRIDEMORE asked if his house is on the picture shown on the overhead and asked him to point it out for him. Mr. Gaylord pointed out his house.

CHAIRMAN VEITCH said he had a question for Staff regarding the grade differential that has been testified to just now. Can he speak to that? Mr. Swanson, City Planner, looked at the plat briefly but he couldn't find any numbers. It is nothing he could give him a definite answer on. **CHAIRMAN VEITCH** said perhaps the applicant can answer that.

MR. MANGIAMELE said regarding the grade differential they actually did hear this at the last neighborhood meeting. They did go pull the as-built plans and he was able to get a hold of William Lyon homes from Mesquite Grove and get a copy of their as-built plans as well. The worst case scenario they are looking at 3 or 3-1/2 feet and it is only for about one lot. The majority of the grade differential between the finished pad for the homes and for the adjacent subdivisions average around 1-1/2 to 2 feet in maximum. There is one case that is around 3 to 3-1/2 foot. What is going to happen though is when you look at that grade differential, the rear wall will be built at pretty much the top of grade. It is not going to be a matter of the walls hanging down lower and you might have a two-story sitting higher. That is not the case whatsoever. It is the wall being built on the top of the grade to help better buffer or screen those homes from Wood Drive. That is also a concern of theirs and they wanted to make sure they have some sort of security and privacy for their future residents.

MR. RIGGS, 5091 S. GILBERT ROAD, showed where he lived on the map. They have concerns about two-story houses behind that are looking into their backyard. He knows there is a street there but that is still not a lot of distance. Originally with Amberwood Homes they had an agreement that they wouldn't build any two-story homes adjacent to their property. He didn't know if that carries through with this sale and all that. He hasn't researched that. They have concerns about two-story homes along there and they would like those to be single story. They had a couple meetings and they have made some concessions and he understands they are doing a little extra landscaping than was required but they still have concerns about the two stories looking into their backyards. He would like to see that restricted to single stories. Along the south side of their property, he doesn't think it matters. They have a driveway there so he is not concerned about that, just the backyard.

VICE CHAIRMAN PRIDEMORE said to the applicant that given the comment that they just heard from the other adjacent property owner, would he be willing to put the restrictions as he has on the north and south in terms of the number of two stories along lots 23 through 26.

MR. MANGIAMELE said he thinks if they were faced with looking at additional one story height limitations in this community, they would probably need to request a continuance to go back and look at revising their elevations as they are now. To be honest with you, they are at a point now where they are not going with anymore self-imposed limitations. Granted, if homeowners come in and they buy single-story homes throughout the development, that is fine and dandy. They are not in a position to go with any self-imposed additional regulations on this property. They have heard Mr. Riggs comments and have worked with him in the past. He understands there is some sort of agreement and the previous owner. Unfortunately, they have not seen that agreement. That agreement was not codified, not adopted as far as any zoning. He

does sympathize with him. Also, looking at the future and he doesn't want to speak for Mr. Riggs. He might want to live there the next 10, 15 or 20 years or he might sell out in 2 more years. He doesn't know. His guess is that as a long term future planning of this parcel, this is not going to remain an agrarian rural residential parcel in the future. They have been working with him through the process.

VICE CHAIRMAN PRIDEMORE said so he doesn't want to put any more restrictions on those 4 lots that he just mentioned. He asked if he would rather have a continuance. Mr. Mangiamele replied he thinks they are at a point now if they were to look at anymore additional imposed regulations on this property, they would really want to go back and re-examine this. Now since they have additional one story limitations they might have to remove some of the previous agreed upon one story limitations. What he wants to remind the Commission up here is the reason why they were going for two-story is that these lots are relatively small when you look at the surrounding area in the community. The largest single-level home they can get on these lots is going to just around 3000 square feet give or take a couple hundred square feet. In order to get some square footage that is conducive and compatible with the adjacent neighborhood that is the primary reason they are going two-story is to get some area to these homes and be consistent with the 3500 or 4000 square foot homes that surround us on all sides. Otherwise, they are going back to the Amberwood Plan where their largest home is 2200 square feet. How is that compatible, he doesn't know. That is what was previously approved.

VICE CHAIRMAN PRIDEMORE said he is a bit surprised that those 4 lots would be the tipping point and he is not asking for a full restriction. So hypothetically, if he was to make a motion that included restricting those 4 lots to the silver star lots on the north and south of the property, he would rather go back and re-evaluate the entire property? Mr. Mangiamele wanted to clarify the 4 lots. **VICE CHAIRMAN PRIDEMORE** said no - Lots 23 through 26. They basically have a silver story. Mr. Mangiamele said not just limiting those to single story to have a silver star. **VICE CHAIRMAN PRIDEMORE** said it would get one of them out of the mix. Mr. Mangiamele said he was sorry he thought he wanted those to be single story as well. That is something they definitely could consider and definitely take a look at. He would have to discuss that with the current property owner and see if that is going to work or not. Obviously, that is within your prevue. **VICE CHAIRMAN PRIDEMORE** said he is trying to get the applicant's opinion of that possibility. It sound like obviously yes that he would need to go back to his client and verify that. Mr. Mangiamele asked if he could invite Taylor Morrison up and answer some of his questions.

COMMISSIONER RYAN said all subdivisions aren't created equal. He understands what everybody is saying about the one story home and TW Lewis and Valencia have very few two stories in there but what is there is are mostly internalized. The custom residential, you generally just don't have that many two story elements. These aren't large lots. These are kind of medium sized lots and it is important for buyers today to get as much square footage as they can on a lot. So if they limit this developer to one story on more lots, it may hurt his sales. He has attempted to provide a buffer on that south side, a nice buffer. From a Planning standpoint they put together a good plan. On the east side where they are abutting TW Lewis they are limited to one

story because there is no buffer there so we all understand that. On the Southeast Area Plan there is an Ordinance that on corner lots you must go to one story. If they went to two stories on those corner lots and then brought some of those one stories out to the south side, he is o.k. with it. He doesn't really want to dicker with it here tonight. He would just rather approve this and let it go forward. Let the applicant work it out with the owners between now and City Council review and approval. It is a nice development. He lives right next to this development. They have already graded and he thinks they are putting utilities in now. They are getting very close. This is a tough enough market to sell homes. They don't need to be continued. From a Planning standpoint they have done everything that they have asked them or Staff has asked them to do from a good Planning standpoint. He understands the custom residential on the south side but he think things can be worked out between the applicant and that south side and Mr. Riggs. Let them do it between now and City Council and let's move on.

CHAIRMAN VEITCH said the recommendation before them is essentially for the configuration that is shown on the exhibit that they are looking at with the possible further adjustment of putting the silver stars on Lots 23 through 26 or maybe just 25.

COMMISSIONER RYAN said he doesn't want it mandated here. He thinks it is really between the applicant and the neighbors. They are going to come and voice their opinion again at City Council level. The applicant has to put up with this all over again. So let them work it out between now and the City Council review. So he is o.k. with moving those end conditions single story, which is the Southeast Area Plan. All the end conditions are one story on the internal part of the site. From a public site, they aren't really going to see that so if the applicant wants to go two story there and move those one story out to the periphery that is fine with him. That is kind of the way he feels about this whole thing. He thinks the applicant has done a good plan and he doesn't think we should chastise him by forcing him to do more single story lots on a plan they have already provided a good landscape buffer to begin with.

CHAIRMAN VEITCH asked if Staff had any thoughts about the idea of transferring the end lot single story restriction as provided in the Area Plan to the perimeter.

KEVIN MAYO, PLANNING MANAGER said it is not necessarily the Southeast Chandler Area Plan but the regular Residential Development Standards that really has driven that home. On a case by case basis, they cautiously approach that type a decision. It was put in place to not have building mass come right out to a street. Historically, when you have front yard condition like Lots 23 through 26, you have the 20 foot building setback and for the most part its garages that are forward and other things - single story elements. Internally on the streets when you have a true corner lot that doesn't have a large landscape tract next to it, you have the potential to have a home 10 feet on that line if it is a 5 and 10 foot setback. Historically, they put the largest setback on the street side but you could have a 2-story structure 10 feet right off that street. They don't have that when homes back up to streets. Obviously they have a rear yard setback and when they front on the street you have a front yard setback. The intention of that requirement in the RDS was to pull that massing further away from the street and 10 feet off the right-of-way line. They have in the recent past on corner lots that made sense and had a large landscape tract

they said o.k. this one could be a two story and we will use that single story over here. What it comes down to is really making something fit and make making something work for all sides. Just a blanket statement of are we o.k. removing the corner lots and taking that requirement out of the RDS, probably not. On a case-by-case basis like this, he can see corner lots in this plan that have quite a large landscape tract next to it so it already has that setback built into it. So case-by-case cautiously yes, we entertain it.

ERIK SWANSON, CITY PLANNER, said it also important to note that as you look at the overhead, Lot 1 is asterisked as a darker star and then also Lot 32. Historically, we would not apply the single story restriction to lots of that type. As Kevin mentioned, there is that ability for that horse trading to occur. He thinks it is also important to note that even on an early application, La Valenciana, when they are dealing with that single story restriction on a corner lot, there is actually a provision in the Residential Development Standards that allows for a two-story component, it just can't exceed a percentage of the footprint of that building and that two-story component has to be internalized on this inside lot line. Those are a couple things that can be addressed - lots 1 and 32 possibly doing some horse trading with 23 and 26. Again, as Kevin mentioned that they are dealing with the front setbacks which are going to be landscaped. When they were looking at the housing product, there is just one home that has the two-story massing element right at that building setback and it equates to one bedroom. When they are looking at that, they aren't looking at a whole host of bedrooms where multiple people are going to be in there. They are really looking at one situation where one bedroom has that potential right at that 15 foot because it is a side entry garage. When they are dealing with the other two-story plans, there is a natural stepping back from the garage plane to that two-story element so you are going to get some natural separation more than just the property line is right here and here is my two-story home. In short, he would say as it is currently presented, there is enough of a buffer to separate that. However, if it is deemed that is not enough, he would say they probably have the ability in looking at the exhibit on the overhead to trade out lots 1 and 32 and put those single-story restrictions in 23 through 26 and let those potentially develop as a two story.

CHAIRMAN VEITCH said so that is one step they could take to give in effect to what we now decided to call horse trading with respect to the heights in houses.

VICE CHAIRMAN PRIDEMORE said he was just curious given that scenario, how best could they help Staff get to that point. Is that a blanket statement about Staff will work with the applicant to further address the one story, two-story issues on certain lots, designated lots or do they need to actually spell it out. Mr. Swanson replied it certainly makes it easier to say lot A and B will be single story but they have had the discussion and understand what is going on so they can find a way to allow flexibility in the layout. Mr. Mayo, Planning Manager, said it is always Staff preference that it is called out only because long term administration of it obviously subdivisions get started, they stop, they sell and it could be a series of months before they start to do these things. Every single subdivision in Chandler has little nuances about itself. It is an easier implementation of the intent of that PDP to have it called out which lots are which.

CHAIRMAN VEITCH said so they have identified lots 1 and 32 as possibilities for allowing two-story in exchange for one story elsewhere. Are there other lots that they would like to identify in that regard for example lot 27, lot 41, and lot 40?

PHILLIP CROSS WITH TAYLOR MORRISON, 9000 E. PIMA CENTER PARKWAY, SCOTTSDALE, stated just as a point of clarification that map is inaccurate. So before they go too far down the road with discussing lot 1 that is not currently a restricted lot. The actual exhibit that is in their pack is this one. As you go further in this discussion, you'll see that lot 1 is not a restricted lot. Additionally, the use to the direct west is more along a farm implement as opposed to house. That is why it was not considered in our plot plan as having to be a single story. However, the restrictions of no more than two, two-story homes along Chandler Heights are still in existence. That is why it should be and is in your packet a silver star as opposed to a black star. In regards to lots 23 through 26 and the consideration of further restricting those or potentially restricting those to single story or some form thereof, quite frankly he has a hard time of going that route because they have further restricted this community far beyond what they have under wrote it. They have made a tremendous amount of concessions that were never part of the earlier PAD. They have made a tremendous amount of concessions that were never part of the earlier PAD. There weren't restrictions on them when they purchased the property. They thought they were providing high quality diversity as far as the streetscape plan previously proposed. That is why they are here tonight to talk about the product that they proposed. They have worked very hard with residents and staff to come up with this plan but if you look at the number of restrictions that are not only part city ordinance but also what they have self-imposed. They are creating a subdivision that is very much lending what the consumers is going to be demanding. If the consumers demand all single story homes there will be no one happier than himself. If they require two-story homes to meet their needs as well, they want to give them that flexibility and they believe they have provided that with this plan. Again, they have worked very hard to try to do that. As Commissioner Ryan has pointed out, they are restricting themselves well beyond any ordinance or beyond any other subdivision in the neighborhood. They were previously approved when they bought the property. That is why Mario was as stringent in his presentation that may be a continuance is in order. He is not looking for a continuance whatsoever. He hopes that they look at the merits of this plan and understand the amount of sacrifice that they have done along the way with working with the neighbors to come up with a plan that makes sense, that self imposes and restricts a number of lots that they think is pretty reasonable over and above any of the ordinance or anything they purchased when they bought the property. With that he said he could answer any questions that they may have for him.

VICE CHAIRMAN PRIDEMORE said he would be curious then if he is in favor or on board with the restricting of the no second story balconies. Mr. Cross replied yes sir. He is o.k. with that and if they want to make that a stipulation, they have no problems with that.

COMMISSIONER DONALDSON said he had a question for Staff. One of the residents mentioned the aftermarket or once the home was purchased about balconies and/or extending balconies being built. What is available to them or the homebuilder to restrict that?

KEVIN MAYO, PLANNING MANAGER, stated it doesn't come in very often where someone has a two-story home with a patio cover that they can come in and want to cut out some doors off of the master bedroom and that make that a now usable balcony. He honestly can't think of one but in the event that it would happen and it was already a two-story home, he is not really sure why they would prohibit that as long as architecturally it would be like it was a part of the home. If the intent is to prohibit those on this property, it really needs to be a condition with the PDP so that it gets memorialized that is the case so that it isn't added after the fact. No different than if somebody added a building addition that happens to fit within the building envelope. The PDP doesn't govern that. We would allow again working with the architectural integration, expansions of homes. The building envelope and setbacks start to dictate what can be done. If the agreement is that no balconies will ever be constructed, it really should be a stip. **CHAIRMAN VEITCH** asked the Commission what they thought in that regard.

VICE CHAIRMAN PRIDEMORE said from their point of view the applicant has been proactive enough to put it on the table he is willing to call him on it and make it stip.

CHAIRMAN VEITCH said so no balconies with original construction or after construction modifications. He agrees with Staff that for that to have any effect it has to be part of the PDP approval because it would get caught in the permit stage.

MR. CROSS asked for a point of clarification, if that were on lots 59 through 74 and Wood Drive.

CHAIRMAN VEITCH said the original representation was balconies would not be offered as original construction anywhere in the subdivision. Mr. Cross said he would be agreeable to that. **CHAIRMAN VEITCH** asked even concerning homeowner action afterward? Mr. Cross replied yes.

KEN GAYLORD said it is important to remember is that the original design in that area was 63 lots and now they are up to 83 lots. That is 20 more homes in that particular area. That is 20 less homes than they would have now and worrying about two stories. The builder in a sense kind of did this to himself by adding more homes. They want to make more money on the property that you own so you try to build more homes there. Again, he would just like to go back and say there are no two-stories in Mesquite Groves south of that property. There are no two stories in all the TW Lewis with the exception of a couple on the interior. He thinks they should remain consistent with the area and have all the interior homes, if they want to make them two stories that is fine but all the exterior homes should be single story to keep it consistent with all the rest of the community surrounding it.

CHAIRMAN VEITCH said if he is not mistaken, the subdivision and therefore the number of lots was in place and approved prior to the possession of the property by the current applicant. Mr. Cross said that is correct. **CHAIRMAN VEITCH** said so they didn't add to the total.

CHAIRMAN VEITCH called for a motion and perhaps an additional stipulation.

VICE CHAIRMAN PRIDEMORE commended the applicant for going above and beyond what we normally see for concessions that they have been making around the entire site. Kudos for that – he does appreciate that. Going back to some of his earlier comments, he was really never looking to continue this item. He was just kind of latching onto the words the applicant had made at the time. He said he has no issues with the project that they have in front of them. He thinks the distance especially along the south is more than adequate for what they are looking at. Lots 23 through 26 were brought up earlier tonight; the fact that it is a front yard condition facing the property to the west. He is not looking to put any other restrictions there.

MOVED BY VICE CHAIRMAN PRIDEMORE, seconded by **COMMISSIONER CUNNINGHAM** to approve PDP13-0004 THE RESIDENCES AT BELMONTE with added stipulation no. 11 per the applicant's comments to restrict the construction of any second story balconies throughout the entire project.

CHAIRMAN VEITCH asked if that stipulation no. 11 would apply to original construction or afterwards? **VICE CHAIRMAN PRIDEMORE** replied correct.

GLENN BROCKMAN, ASSISTANT CITY ATTORNEY, stated he questions whether or not in the process of approving the housing product to be constructed in a PDP. This is not a rezoning that they can now restrict subsequent users of the property from remodeling their houses including adding a balcony. He can see being able to impose a restriction on what's constructed now as part of the Preliminary Development Plan. This would be the first time he has ever seen a restriction through a PDP process on a subsequent homeowner's effort to remodel their property.

COMMISSIONER RYAN said he thinks they can request it if they state it on the plat. The plat is recorded. It can be amended.

VICE CHAIRMAN PRIDEMORE said realistically he would still love to see the stipulation there for the initial construction. He is willing to take the Asst. City Attorney's comment to heart and only restrict it to the initial construction understanding the fact that down the road when any current homeowner in this subdivision wants to add such a structure they would have to come back through the city process and staff could catch it at that time. He said he doesn't think they need to necessarily burden it at this point. It is not something that just can pop up. There is a process that the homeowner would need to go through. He is willing to make the restriction for the initial construction.

CHAIRMAN VEITCH said so stipulation no. 11 just prohibits second story balconies as part of the housing product that would be approved. He said he would like to concur with the notion that there is a distinction that can be made between how the east side of the subdivision is treated as opposed to how the south side is treated because of the distance of separation. He was concerned there for a moment about the grade differential and less so if the differences are as small as has been represented by the applicant. He took a vote on the motion.

The motion carried unanimously 7-0.

CHAIRMAN VEITCH said this will be at City Council on September 12, 2013.

E. LUP13-0007 AMERICA'S TACO SHOP

Approved.

Request Liquor Use Permit approval to sell liquor as permitted under a Series 12 Restaurant License for on-premise consumption in a new restaurant and new outdoor patio and to have live music outdoors. The business is located at 3235 W. Ray Rd., # 1, southwest corner of Ray Rd. and the Loop 101.

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 (Site Plan, Floor Plan, and Narrative) shall void the Use Permit and require new Use Permit application and approval.
4. The Use Permit shall remain in effect for one (1) year from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
5. The outdoor patio shall be maintained in a clean and orderly manner.
6. Live music within the outdoor patio area shall not occur past 8 p.m. and shall be limited to acoustic music without amplification.
7. The house speaker system shall not be utilized to amplify live music.
8. Music shall be controlled so as to not unreasonably disturb area residents and businesses and shall not exceed the ambient noise level as measured at the commercial property line.
9. No noise shall be emitted from the live music occurring outdoors that exceeds the general level of noise emitted by uses outside the premises of the business and further will not disturb adjacent businesses and residential areas.
10. The site shall be maintained in a clean and orderly manner.
11. The establishment shall provide a contact phone number of a responsible person (bar owner and/or manager) to interested neighbors to resolve noise complaints quickly and directly.

SUSAN FIALA, CITY PLANNER, stated this request is for approval of a Liquor Use Permit to sell and serve all types of liquor within a new restaurant and within an outdoor patio and as well as to have live music outdoors all under a Series 12 Restaurant License. The property is located at 3235 W. Ray Road in Suite 1 at the southwest corner of Ray Road and the Loop 101. Suite 1 is located in the northwest most tenants building of the development which is the Park at Santan and America's Taco Shop will be occupying a suite that was a former restaurant. They have added a new outdoor patio. It is important to note that this restaurant will be open from 9:00 a.m. to only 8:00 p.m., 7 days a week. There are approximately 87 seats with 32 seats outdoors. This request for live music outdoors would be played by groups of 1 up to maybe 3 people and that would probably be an acoustic guitar with a maximum of 1 amplifier. That would be only within the outdoor patio. This music would possible occur from 4 p.m. to 8 p.m. at the latest when the business closes and occur on Thursdays, Fridays, and Saturdays and select holidays throughout the year. It is also important to note that there are house speakers; a couple indoors

and a couple outdoors that would always be there to broadcast music at a low level. These would not be used to be amplified. She said she will bring that up again when they get to the conditions placed on this Liquor Use Permit. There has been a neighborhood meeting of which there were several residents in attendance and as well this evening, there are residents from the Darcy Ranch neighborhood which is located directly to the west of this development. The applicant is also here tonight to answer any questions and make his presentation. Working with the applicant and as well hearing the concerns of the adjacent neighborhood, it is important to note that when they hear live music especially outdoors that there are certain perceptions about that; this it is going to be loud and it is going to be rock music. No, the applicant for America's Taco Shop said this is just low background music that would occur during the happy hours of 4 to 7 p.m. and maybe until 8 p.m. If it reasonable and controlled and well managed by the owner, it can be compatible when you have residential next to it. That means that they have put several conditions on this application to address any future noise issues related to this music. With those it is important to note that item no. 7 of the conditions, during their Study Session it was brought to their attention that it was unclear and they would also like to rephrase that condition to:

The house speaker system shall not be utilized to amplify music.

As they can see, there are 11 conditions placed on this application. Some are typical and as well, they recommend approval for 1 year to evaluate the compatibility of having this music and as well the Series 12 Liquor License with this establishment and its compatibility with the adjacent neighborhood. Staff does recommend approval with the stipulations outlined in the attached memo. With that the applicant is here to answer any further questions and she is also there to answer any questions.

CHAIRMAN VEITCH asked if there were any questions for Staff.

VICE CHAIRMAN PRIDEMORE asked if she knew what the distance is between the patio and the closest neighbor. Ms. Fiala, City Planner said she has looked at that. As they can see, she has provided quite a few photos and she took the liberty to look at the as-builts and there is a right-of-way of 70 feet plus an additional 25 feet to the furthest west edge of that suite and then the patio is setback approximately another 20 feet. There is around a 100 - 110 feet between the patio area and the back wall of the nearest residential to the west across Federal Street.

MICHAEL MOORE, 1902 E. JADE PLACE, CHANDLER, OWNER & OPERATOR OF AMERICA'S TACO SHOP, stated that as they can see they had a vision on this patio to just have low sounding music, kind of a background music of acoustic music with just one guy and an acoustic guitar singing during their happy hour to be able to be spoken over where it is not loud music; where it is not imposing on the neighborhood, to enjoy your tacos, margaritas, and enjoy some background music. As far as the neighborhood goes, if he had heard that there was loud music or live music or any type of music going on being that close, he would be concerned as well. He is very sensitive to that as well and would not want to upset potential guests of his in that neighborhood. He would like to embrace that neighborhood and be a part of that community and provide a great place to eat, have margaritas and listen to some background music.

CHAIRMAN VEITCH asked if there were any questions of the applicant.

VICE CHAIRMAN PRIDEMORE said he had one question. Why not just have the live music indoors? Mr. Moore replied that it is Arizona and it is a great area to dine outside certain times of the year of course – not in the summertime. They are coming up on the fall and the spring and the winter when it would be great to enjoy outdoors. If the music was indoors, he is sure his guests would ask why they can't have some music outdoors. Being at a lower level and if it is not imposed on the neighborhood, he thinks it would be enjoyable and would be compatible.

CHAIRMAN VEITCH said he had 4 speaker cards.

JEFF GOBSTER, 730 N. FLORENCE, CHANDLER IN DARCY RANCH stated that first of all he is personally opposed to anything other than the amplified music. When they did the neighborhood meeting, the applicant indicated that would like to be able to have an acoustic guitar – somebody walking around playing low level music that wouldn't interfere with his customers being able to converse with one another. That seems extremely reasonable to him. Further on into the discussion it came up with the amplified and possibly bands on special occasions. In a little bit of research he did, normal conversation is about 60 decibels. Acoustic guitar played with the fingers is 80 decibels. At that level the guitar player is going to have work to keep the noise level down anyway. He doesn't understand the need for amplification. It seems to him that somebody playing acoustic guitar with their fingers should be able to play at a low enough level which the applicant indicates they would like to have. The other part is just the blanket approval of that amplified music. If this passes the way it is written, the applicant could have amplified bands out there every night even though it says on occasion. It is basically giving him permission to do it whenever they would like. He believes there is also a stipulation that allows for special event permits so if the applicant is looking to have amplified music once a year on Cinco de Mayo, it makes sense to him that they could get a Special Event Permit which would be specific to that day and then he would be still be able to have the acoustic guitar throughout the year. Again, he is happy that a restaurant is going in there. He understands they have excellent food and is not opposed at all to the acoustic guitar. It is the amplification that concerns him. According to the Maricopa County Assessor's website, their measuring tool, he did not want to get out there with a tape measure because Federal is a little bit of a crazy street sometimes. The measuring tools show that property line for the Santan Park where the patio sits to their nearest block wall is about 85 feet. The block walls along Federal are not quite 6 feet tall and there is no barrier between the patio and those homes to deaden the sound. If there is amplified music out there, those homes in the immediate area, if you want to go out and sit in your backyard and enjoy a beer and sit by the pool, you are going to be listening to whatever music the restaurant chooses to play. He thinks it is a livability issue. Again, his only concern is the amplified music.

COMMISSIONER DONALDSON asked Mr. Gobster if there was a way to get a map up. He would like to see where he lives in comparison to the property. Mr. Gobster showed where he lived.

COMMISSIONER WASTCHAK said in his letter he wants to have the decibel level left at speaking level which was indicated to him that he did research and 80 decibels would be typical for a guitar. Is that what he was saying? Mr. Gobster said the research he was able to do shows that an acoustic guitar played with the fingers is 80 decibels. **COMMISSIONER WASTCHAK** said then his concern is that it is louder than a person talking which is what he had said. Mr. Gobster said he is saying that he believes that can be toned down so that the acoustic level is compatible with the voices but if you put an amplifier to it, it is going to take it above those levels. **COMMISSIONER WASTCHAK** asked if he happened to do any research on how loud car traffic is that is going on behind his street. Mr. Gobster said it is pretty loud. He doesn't know what the decibel level is but he does know that one of their neighbors that lives 8 or 9 houses down along Ray Road, when the traffic levels are lower, they can hear conversations from the outdoor patio at Lou's sitting in his backyard. To him, anything that is amplified is going to be a little less livable along those areas which to him could affect property values which is one of his biggest concerns.

DAVE ARMONTROUT, 3334 W. MEGAN STREET, CHANDLER stated he backs up to Ray Road and is about 8 houses from Federal Street. On a Friday and Saturday night, they are sitting out at Lou's on the patio. When they are drinking, they get a little boisterous and you can actually hear them at his house when the traffic is down on Ray, when it isn't flowing real heavy. He is really happy that they are opening a business, especially now days with the way things are. He isn't opposed to that at all. Actually, he is not opposed to the music at all. It is just more about it being played to an amplifier. If he can sit at his house and he can hear what is going on at Lou's later at night and the applicant is only talking to 8:00 p.m. which is not that bad at all, but it is just the fact that if you sit in your backyard, you will have to listen to the acoustic coming over the speakers. That would be the only thing that would be a problem.

COMMISSIONER WASTCHAK said the restriction where after a year if it is a problem, they can make a comment, come back and show up and make a comment and they can restrict it. Does that not help them to at least give them a chance to see if the music is a problem over time? With that restriction and they have done that before with other permits where after a year, they have come back and said they can hear and then further restrictions were put in place. Mr. Armontrout replied actually no. What he is asking really isn't that bad and 8:00 p.m. is not a bad time at all. He is only open to 8:00 p.m. so the band won't be playing up to 8:00 p.m. If he is not mistaken, you have to have time to clean up and all the other good stuff that goes with it. He is not opposed to that at all. He thinks their biggest thing living at Darcy Ranch and being so close, the road traffic and if you back up to a major street you know right off the bat the road traffic is bad. He thinks it is just the part of the amplification. He is not saying that it will be anything that loud that will travel that far. On a good Friday or Saturday night if you are sitting out in the backyard, 8 houses from the street and then across that street and into the patio, you can hear people out there laughing and carrying on and stuff. If you can hear that, you are definitely going to be able to hear them. Again, they are at the point where it is only at 8:00 p.m. where the other place it is happening at 10 or 11 at night with Lou's. Traffic has died down a little bit at that point so it carries a little bit further than normal. With that being said, he is not

opposed to what he has and what he wants to do at all as long as he does stand by what he is saying and does keep it down.

VICE CHAIRMAN PRIDEMORE said just as a point of clarification with Staff, obviously they are looking at a 1 year stip. so that they know that in 1 year assuming this gets approved the way it is right now, the applicant would be have to come back before this Commission. However, hypothetical approval to that 1 year deadline, if there are issues that are occurring, it is not like they ignore those for a year. The City does have the opportunity and have the right to step in to fix the problem. Correct? Mr. Kevin Mayo, Planning Manager, said that is correct but he would not want to establish intent that it is very expeditious. It really comes down the end operator are they trying to be good neighbor? There will be instances and they have examples of this throughout the city. When an operator wants to be a good operator and good neighbor and know that there primary customers are going to be people who live right next to them, they try really hard. There will still be instances where somebody either strums to hard, things are too loud and you call them on it and they bring it right back down. In the event that it becomes a little bit out of control they reach out to them. If the applicant does not wish participate in some resolution, the have other avenues. Those other avenues do take time and they do become legal to get through those but they do have those avenues. In terms of this specific application, everything they are getting from the applicant obviously is they are going to be investing in significant amount of money into getting this thing going. The last thing they want to do is get off on the wrong foot. They are comfortable that they solely and truly a good operator. **VICE CHAIRMAN PRIDEMORE** said he just wanted to make sure that the neighbors understand that they are not stuck at a year. Mr. Mayo said correct. **VICE CHAIRMAN PRIDEMORE** stated there are mechanisms in place that if he is not true to his word that the city can step in. Again, they put the one year on it to make sure that they look at this no matter what happens in the interim and that after that one year time they will look at this. Again, if the applicant is not true to their word and there are issues throughout the year, there are mechanisms so they are not stuck for that one year. He wanted to make sure everybody out there understands.

DOUGLAS JONES, 3343W. MEGAN STREET, CHANDLER, stated they live across the street from each other; Dave and him. He is going to guess it is about a football field and a half away from the property. He doesn't have a problem with it so to speak. He and Mike actually talked Friday night at Lou's. There was something they discussed that somewhat concerns him. He has been involved with this office complex since the dirt was out there. Jack McKinney is a developer from Chicago that put it out there and he wanted a Class A office space. The City has always said they wanted a Class A office space. What he doesn't want to see and he's not saying that Mike wants this either, is doesn't want another applicant coming and saying they want live music. His thought is that Lou shows up, he wants live music and it goes to 11 or 12 p.m. at night. It is a Class A office so let's keep it that way. He doesn't have a problem it being acoustic as long as it is reasonable and not annoying to them. He can stand in his street at 8 or 10 at night and hear people talking on the patio. Can he hear exactly what their conversation is, no. I can't hear and he is going to say he lives a football field and a half away. He might be wrong on the distance but it is somewhere between a football field and a football field and a half. Otherwise, he is in supports of him doing what he wants to do. He thinks what he is doing being

a sole proprietor is admirable and they should always work to help make it a success. Those are his thoughts.

BRIAN JOHNSON, DARCY RANCH, 3261 W. SHANNON PLACE, CHANDLER stated he lives basically on Shannon Place which backs up to Federal. He also doesn't have a problem with what is proposed as long as it is kept down to the 80 decibel levels or below and also with the Special Events Permit if that is what he is planning on doing for an occasional band. He can also hear from his house and backyard conversations from Lou's. Just wanted to say for the record that he doesn't really have a problem either as long as it is kept to what they were saying and with the Special Events Permit and also the 80 decibel level.

CHAIRMAN VEITCH invited the applicant back up for additional comments.

MR. MOORE said for the Special Events there are only 2 that he is looking at. One is obvious, Cinco de Mayo more towards the daytime. His door is always open to the community for open communication for the noise level and making that accommodation. He also said that amplification would only be during those special events.

VICE CHAIRMAN PRIDEMORE asked Mr. Moore if he would be willing to do a stipulation to that effect – that amplified music would only occur on the special events where you would need it. Mr. Moore replied said yes, like maybe their anniversary down the road and Cinco de Mayo. He really doesn't want a lot of amplified music on his patio. That is not his intention at all.

KEVIN MAYO, PLANNING MANAGER said through that Special Events Permit through what is before them tonight, if the applicant is agreeing that they would just desire to that type of amplification on the special events. This Use Permit would really just need to go forward with an acoustic only on the patio and use that as the on-going approval and then they can come in and seek the Special Event Permits when they have those. It would be just a cleaner way to proceed with this Use Permit.

CHAIRMAN VEITCH said he thinks that is correct. Could that be done through further modification or re-write of stipulation no. 7? Does that do it?

SUSAN FIALA, CITY PLANNER, said yes, they can modify condition no. 7 and ensure that the language is appropriate to have only acoustic music and that they would not have any amplification. They will modify condition 7. They will work on the language and ensure that is appropriate.

CHAIRMAN VEITCH said so it will say something like 'music on the patio shall be acoustic only and shall not be amplified'.

MR. MOORE asked if that is something that he would have to apply for like a Cinco de Mayo special event. **CHAIRMAN VEITCH** said yes, his understanding is that it would be a part of the Special Event application.

KEVIN MAYO, PLANNING MANAGER, said to the applicant it is not this process here. It is an Administrative Permit that is done through our neighborhood Resources side. He doesn't want to call it over the counter but it is a sole and separate permit process. They would be happy tomorrow to walk him through that and get him that application and show him what it is. It is kind of a case-by-case approval to do that outside of this public hearing body.

CHAIRMAN VEITCH said with that modification the Use Permit approval if recommended would restrict him to acoustic only. Amplification would only occur through that other process for your special events if approved through that process.

MR. MOORE asked if there is a number of Special Events allowed. Mr. Mayo said there is. There is a number and absolutely just escaped him. It is actually quite a few. If they wanted to do an anniversary, like a 1 year anniversary and Cinco de Mayo, that is entirely what the Special Events Permit is intended for. People that want to have it Friday and Saturday considered a Special Permit then it becomes an abuse of that permit. There is a number and he can't think of it off the top of his head.

COMMISSIONER DONALDSON said in regards to Mr. Gobster's letter and his comments associated with potential Special Events aside, acoustic music can be loud. If you bring in a mariachi band, brass or horns that don't have amplification they could really disturb the neighborhood and his position in the center is something that is a little precarious. He is not facing completely north to the commercial side, he is not facing east so he does have the ability to bleed into the neighborhood. He doesn't get the impression and he wanted to ask him because it doesn't look like he intends to have loud music whether it is acoustic or amplified. Mr. Moore said his intentions are for people to be able to enjoy their food and enjoy their backyards and not have the two conflict. **COMMISSIONER DONALDSON** said that is the impression that he got. Mr. Moore stated in his past he has done night clubs and things in the restaurant business and he certainly doesn't want those things. They bring a certain element that he is not comfortable with and he is sure they would agree. **COMMISSIONER DONALDSON** took a moment to commend him on his business venture.

CHAIRMAN VEITCH urged that they not lose sight of the fact that they have stipulation no. 8 which talks about not unreasonably disturbing residents or area businesses. Stipulation 8 limits to the ambient noise level as measured at the commercial property line. It is papered up in such a way that it shouldn't be audible across the street and if it is, there is Stipulation no. 11 pursuant to which people will call you. **MR. MOORE** said he will make that public knowledge as well.

CHAIRMAN VEITCH said in addition to the one year time stipulation they have 5 other stipulations that seek to control the music. He wasn't sure what else they could add.

COMMISSIONER CUNNINGHAM said she wanted to commend the couple and thanked them for investing in Chandler. She said their daughter is very well behaved and she has been there the whole evening. She is amazing.

CHAIRMAN VEITCH said they could give her a speaker card.

VICE CHAIRMAN PRIDEMORE thanked them for being so open and obviously their intent is admirable. Obviously, they have had the stipulations that they are seeing here have come out of some horror stories that they have learned and they try to learn from past experiences. They also from his point of view they are innocent until proven guilty and they want to give them the opportunity to shine. He thinks the stipulations they have here are good ones in that hopefully when they see them in a year, we hear only good things and actually nobody else shows up. That would be a great thing. He commends him on trying to be so helpful up front. They don't always see that. With that being said, he would turn to Staff in looking for some assistance on the wording of stip. 7.

SUSAN FIALA, CITY PLANNER, said in looking at conditions no. 6 and 7, condition no. 6 says 'live music within the outdoor patio area shall not occur passed 8 p.m. and shall be limited to acoustic music only'. That can be added and then for reference for condition no. 7, they can go back to the text since there are speakers outdoors that reads 'the house speaker system shall not be utilized to amplify music. **CHAIRMAN VEITCH** said in other words the house speaker system could provide recorded background if there is nothing else going on. **KEVIN MAYO, PLANNING MANAGER** said on that no. 7 he would prefer to add the word amplified live music. The house speaker system isn't intended to amplify background music. If they say amplified music, they can't play music through the house speaker system. It was really intended to not allow the house speaker system to amplify the live music. So it will be 'it shall not be utilized to amplify live music'. **CHAIRMAN VEITCH** said so they have modifications to stipulations 6 and 7.

MOVED BY VICE CHAIRMAN PRIDEMORE, seconded by **COMMISSIONER RYAN** to approve LUP13-0007 AMERICA'S TACO SHOP with the modifications to stipulations 6 and 7 as mentioned by Staff. The motion passed unanimously 7-0.

CHAIRMAN VEITCH said this is also going to the September 12, 2013 City Council meeting.

6. DIRECTOR'S REPORT

Mr. Kevin Mayo, Planning Manager, said there was nothing to report this evening.

7. CHAIRMAN'S ANNOUNCEMENTS

CHAIRMAN VEITCH said the next regular meeting is September 18, 2013 at 5:30 p.m. in the Council Chambers at the Chandler City Hall, 88 East Chicago Street, Chandler, Arizona.

8. ADJOURNMENT

The meeting was adjourned at 7:46 p.m.

Stephen Veitch, Chairman

Jeffrey A. Kurtz, Secretary