

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF CHANDLER, ARIZONA, November 7, 2007 held in the City Council Chambers, 22 S. Delaware Street.

1. Chairman Flanders called the meeting to order at 5:39 p.m.
2. Pledge of Allegiance led by Vice Chairman Irby.
3. The following Commissioners answered Roll Call:

Chairman Michael Flanders
Vice Chairman Mark Irby
Commissioner Dick Gulsvig
Commissioner Angela Creedon
Commissioner Michael Cason
Commissioner Leigh Rivers
Commissioner Kristian Kelley

Also Present:

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

4. APPROVAL OF MINUTES
MOVED BY COMMISSIONER GULSVIG, seconded by **COMMISSIONER RIVERS**, to approve the minutes of the October 17, 2007 Planning Commission Hearing. Minutes were approved 6-0 (Commissioner Kelley abstained).
5. INTRODUCTION OF NEW PLANNING COMMISSIONER
CHAIRMAN FLANDERS introduced and welcomed Kristian Kelley as the new Planning Commissioner. **COMMISSIONER KELLEY** thanked the Mayor and Council for giving him the opportunity to serve the City.
6. ACTION AGENDA ITEMS
CHAIRMAN FLANDERS informed the audience that prior to the meeting Commission and Staff met in a Study Session to discuss each of the items on tonight's agenda. Staff will read into the record each of the items on the consent agenda. At that time, anyone in the audience may inform Commission they would like to pull an item from the consent agenda to the action agenda.

MR. BOB WEWORSKI, PLANNING MANAGER, stated the following items are for consent agenda approval along with any additional stipulations. There are three action items at this time.

A. DVR06-0047 K ESTATE SUBDIVISION
CONTINUED TO THE NOVEMBER 21, 2007 PLANNING COMMISSION HEARING.

Request rezoning from Mobile Home District (MH-1) to Planned Area Development (PAD) zoning with Preliminary Development Plan (PDP) approval for single-family attached housing product on 12 lots within a new single-family residential subdivision. The approximately 1.31-acre site is located at 390 E. Commonwealth Avenue, east of the Union Pacific Railroad and south of Chandler Boulevard.

B. DVR07-0013 APPLEBY ROAD PROPERTY
CONTINUED TO THE DECEMBER 19, 2007 PLANNING COMMISSION HEARING.

Request rezoning from AG-1 (Agricultural) to PAD (Planned Area Development) to allow a light industrial business park on approximately 35 acres. The property is located at the southwest corner of Appleby Road and the Consolidated Canal, just west of McQueen Road.

C. DVR07-0022/PPT07-0012 STELLAR AIRPARK ESTATES II
WITHDRAWN FOR THE PURPOSE OF RE-ADVERTISING.

Request rezoning from Agricultural District (AG-1) and Planned Commercial Office District (PCO) to Planned Area Development (PAD) for a 2-lot custom single-family residential subdivision with aviation-related uses, with Preliminary Development Plan (PDP) and Preliminary Plat (PPT) approval for subdivision layout and development standards on approximately 14.5-acres located at the southeast corner of Chandler Boulevard and Galaxy Drive, ½-mile west of McClintock Drive.

D. DVR07-0050 SOUTHWEST CORNER OF 116TH STREET & RIGGS ROAD

APPROVED.

Request the establishment of initial City zoning of Agricultural District (AG-1) on an approximately +34.3-acre site located west of the southwest corner of 116th Street and Riggs Road.

E. DVR07-0032 GALILEO PIAZZA
APPROVED.

Request rezoning from Agricultural District (AG-1) to Planned Area Development (PAD), and Preliminary Development Plan (PDP) approval for a 38 custom lot single-family residential neighborhood on approximately 34-acres. The subject site is located at the southwest corner of 116th Street and Riggs Road.

1. Construction shall commence above foundation walls within three (3) years of the effective date of the ordinance granting this rezoning or the City shall schedule a

public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

2. Development shall be in substantial conformance with Exhibit F, Development Booklet, entitled "GALILEO", kept on file in the City of Chandler Planning Services Division, in File No. DVR07-0032, except as modified by condition herein.
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. 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.
7. 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.
8. 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.
9. The landscaping in all open-spaces and rights-of-way shall be maintained by the adjacent property owner or a homeowners' association.
10. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Public Works for arterial street median landscaping.
11. The development's housing product will be custom homes built by individual builders.
12. Preliminary Development Plan approval as granted herein shall apply to the subdivision layout only.
13. The source of water that shall be used on the open space, common areas, and landscape tracts shall be reclaimed water (effluent). If reclaimed water is not available at the time of construction, and the total landscapable area is 10 acres in size or greater, these areas will be irrigated and supplied with water, other than surface water from any irrigation district, by the owner of the development through sources consistent with the laws of the State of Arizona and the rules and regulations of the Arizona Department of Water Resources. If the total landscapable area is less than 10

acres in size, the open space common areas, and landscape tracts may be irrigated and supplied with water by or through the use of potable water provided by the City of Chandler or any other source that will not otherwise interfere with, impede, diminish, reduce, limit or otherwise adversely affect the City of Chandler's municipal water service area nor shall such provision of water cause a credit or charge to be made against the City of Chandler's gallons per capita per day (GPCD) allotment or allocation. However, when the City of Chandler has effluent of sufficient quantity and quality which meets the requirements of the Arizona Department of Environmental Quality for the purposes intended available to the property to support the open space, common areas, and landscape tracts available, Chandler effluent shall be used to irrigate these areas.

In the event the owner sells or otherwise transfers the development to another person or entity, the owner will also sell or transfer to the buyer of the development, at the buyer's option, the water rights and permits then applicable to the development. The limitation that the water for the development is to be owner-provided and the restriction provided for in the preceding sentence shall be stated on the final plat governing the development, so as to provide notice to any future owners. The Public Report, Purchase Contracts, and Final Plats shall include a disclosure statement outlining that the Pecan Trace development shall use treated effluent to maintain open space, common areas, and landscape tracts.

14. A minimum of two trees at a minimum of 2-inch caliper each shall be planted in all front yards.
- 15. The applicant shall work with staff to enhance the perimeter fence wall along the railroad tracks and incorporate a decorative wall design such as, but not limited to, color variations, decorative cap at columns and/or top of wall, and any other horizontal or vertical plane changes.**
- 16. Prior to the time of making any lot reservations or subsequent sales agreements, the homebuilder/lot developer shall provide a written disclosure statement for the signature of each buyer acknowledging that the subdivision is located adjacent to, or nearby, existing industrial zoned property. The public subdivision report, purchase contracts and CC&Rs shall include a disclosure statement outlining that the site is adjacent to, or nearby, existing industrial zoned property and the disclosure shall state that such uses are legal and should be expected to continue indefinitely. The disclosure shall be presented to prospective homebuyers on a separate, single form for them to read and sign prior to, or simultaneously with, executing a purchase agreement. This responsibility for notice rests with the homebuilder/lot developer and shall not be construed as an absolute guarantee by the City of Chandler for receiving such notice.**

Approval of the Preliminary Plat subject to the following condition:

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

F. DVR07-0033 PORTICO PLACE AMENDMENT

APPROVED.

Request rezoning from Planned Area Development (PAD) to Planned Area Development with a Mid-Rise Overlay to allow additional building height along with Preliminary Development Plan (PDP) approval for a commercial hotel and retail development. The property is located on approximately 5.3 acres at the southwest corner of Chandler Boulevard and Dobson Road.

1. Development shall be in substantial conformance with Ordinance No. 3893 and exhibits submitted as part of this application and shall be kept on file in the City of Chandler Planning Services Division, in File No. DVR07-0033 PORTICO PLACE AMENDMENT.
2. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or property owners association.
3. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls.
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 landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
6. The Phasing Plan shall include, as part of the first phase, Retail Building B, the pharmacy and the East Office building along with the perimeter landscaping along Chandler Boulevard, Dobson Road and the south property line.
7. The applicant shall work with staff to provide continuous screening of the drive through lane along the Chandler Boulevard at Building B. The screening shall include staggered low walls, additional landscaping, and a variety of screen wall materials and height variations.

H. PDP07-0004 595 E. ELLIOT ROAD

APPROVED.

Request Preliminary Development Plan (PDP) approval for site layout, landscaping, and building architecture for a multi-tenant warehouse/office building. The 1.9-acre site is located at 595 E. Elliot Road, approximately ½ mile east of Arizona Avenue.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "595 E. ELLIOT ROAD" kept on file in the City of Chandler Current Planning Division, in file No. PDP07-0004, except as modified by condition herein.
2. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or property owners association.
3. The landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
4. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Public Works for arterial street median landscaping.

5. Any building signage will utilize reverse pan-channel letters.
- 6. The eastern property wall shall be constructed of decorative block drawn from the building architecture.**

J. PDP07-0023/PPT07-0038 HILTON HOTELS AT SPECTRUM
APPROVED.

Request Preliminary Development Plan (PDP) and Preliminary Plat (PPT) approval for site layout and building architecture for a hotel development on approximately 8-acres located east of the southeast corner of the Loop 202 Santan Freeway and Price Road.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "HILTON HOTELS AT SPECTRUM" kept on file in the City of Chandler Current Planning Division, in file number PDP07-0023, except as modified by condition herein.
2. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or property owners association.
3. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls.
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. Completion of the construction, where applicable, of all required off-site street improvements including but not limited to paving, landscaping, curb, gutter and sidewalks, median improvements and street lighting to achieve conformance with City codes, standard details, and design manuals.
6. 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.
7. The landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
8. All raceway signage shall be prohibited within the development.
9. The comprehensive sign package contained within the attached Development Booklet shall include approval of only the building mounted signage criteria. Freestanding monument signage criteria shall comply with the approved criteria contained with the Spectrum Master Preliminary Development Plan PDP06-0003.

Approval of the Preliminary Plat subject to the following condition:

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

K. PDP07-0025 PARK PLACE II

APPROVED.

Request Preliminary Development Plan (PDP) approval for site layout and building architecture for a business park development on approximately 38-acres located east of the northeast corner of Price and Willis Roads.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "PARK PLACE II" kept on file in the City of Chandler Current Planning Division, in file number PDP07-0025, except as modified by condition herein.
2. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or property owners association.
3. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls.
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. Completion of the construction, where applicable, of all required off-site street improvements including but not limited to paving, landscaping, curb, gutter and sidewalks, median improvements and street lighting to achieve conformance with City codes, standard details, and design manuals.
6. 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.
7. The future covered parking canopies shall utilize architectural materials and elements found upon the buildings **such as decorative steel trellis elements. (Amended)**
8. The landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
9. All raceway signage shall be prohibited within the development.
10. The comprehensive sign package contained within the attached Development Booklet shall include approval of only the building mounted signage criteria. Freestanding monument signage criteria shall comply with the approved criteria contained with the Spectrum Master Preliminary Development Plan PDP06-0003.
11. **The applicant shall work with staff to incorporate art features within the development.**

L. PECOS VILLAGE

APPROVED.

Request Preliminary Development Plan (PDP) approval for an office and commercial retail development on approximately 14 acres. The property is located at the northwest corner of Pecos and Cooper Roads.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "Pecos Village", kept on file in the City of Chandler Planning Services Division, in File No. PDP07-0026, except as modified by condition herein.
2. Compliance with original stipulations adopted by the City Council as Ordinance No's. 2694 in case PL96-081 Pecos and Cooper and 3292 in case DVR01-0013 Pecos and Cooper, except as modified by condition herein.
3. A comprehensive sign package is required to be reviewed and approved through a separate Preliminary Development Plan request.
4. Landscaping shall be in compliance with current Commercial Design Standards.
5. The site shall be maintained in a clean and orderly manner.
6. The parking space canopies shall incorporate building materials, forms, and colors to match the development.
7. **The applicant shall work with staff to vary the building footprints for buildings along the arterials except for the two intersection corner buildings.**
8. **The paint color 'Milk Moustache' shall be replaced with the paint color 'Cream Wave' as submitted to staff.**

M. UP07-0054 201 E. SARAGOSA ST.

APPROVED.

Request Use Permit approval to locate a single-family home within a multi-family zoning district. The subject site is located at 201 E. Saragosa Street, north and east of the northeast corner of Pecos Road and Arizona Avenue.

1. Development shall be in substantial conformance with the exhibits and representations.
2. Approval by the Zoning Administrator of all project details required by Code or condition.
3. Stucco shall be utilized as the exterior building material.
4. **At the time of construction of the home, the applicant shall ensure that the subject site has a perimeter block fence.**

N. UP07-0058 LATITUDE 8

CONTINUED TO THE DECEMBER 19, 2007 PLANNING COMMISSION MEETING.

Request Use Permit approval to sell alcohol (Series 12 Restaurant License) for on-site consumption in a new restaurant at 11 W. Boston Street, Suite #4.

P. UP07-0068 ST. MARY'S CATHOLIC CHURCH

APPROVED.

Request Use Permit approval to allow the addition of new buildings within the existing church property, which is located at 230 West Galveston Street.

1. Development shall be in substantial conformance with the exhibits including Site Plan, Narrative, Floor Plan, Building Elevations, Materials and Color Board, and Landscape Plan. Expansion or modification beyond the approved exhibits shall void the Use Permit and require new Use Permit application and approval.

2. Use Permit approval does not constitute Final Development Plan approval; compliance with the details required by all applicable codes and conditions of the City of Chandler and this Use Permit shall apply.
3. The landscaping shall be maintained at a level consistent with or better than at the time of planting.
4. The site shall be maintained in a clean and orderly manner.

Q. UP07-0085 THE LEARNING LAGOON

APPROVED.

Request Use Permit approval to allow for residential childcare for up to five children in a single-family residential home. The subject site is located at 4121 E. Colonial Drive, south of the southeast corner of Riggs and Lindsay Roads

1. The residential childcare home shall have no more than five (5) children at any time.
2. Should the applicant sell the property, this Use Permit to operate a childcare home shall be null and void.
3. This 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 reapplication to an approval by the City of Chandler.

S. UP07-0090 HOLLYWOOD BILLIARDS

APPROVED.

Request Use Permit approval to sell and serve beer and wine (Series 7 Liquor License) within an establishment at 3029 N. Alma School Road, Suite #114, at the northeast corner of Elliot and Alma School Roads.

1. The Use Permit granted is for a Series 7 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. No alcohol shall be carried outside of the building into the parking lot or off-premises. Also, the sale of "To Go" packaged liquor is prohibited.
5. The Use Permit shall remain in effect for one (1) year from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
6. There shall be no customer access through the rear of the building.
7. The applicant shall install software on the computers to prevent access to adult-oriented sites, internet gambling sites, and other inappropriate sites for children.
8. **The area adjacent to the establishment shall be maintained in a clean and orderly manner.**

U. PPT07-0043 CHANDLER CENTER COMMONS, A CONDOMINIUM

APPROVED.

Request preliminary plat approval for an office and industrial development located at Chandler Boulevard east of Gila Springs Boulevard.

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

CHAIRMAN FLANDERS asked if anybody in the audience wanted to pull any of the consent items for a full presentation. He asked if there were any comments or questions from Commission.

MR. GLENN BROCKMAN, Assistant City Attorney, stated someone in the audience had a question on Item F, there may be a speaker card for that item.

CHAIRMAN FLANDERS asked audience member **FRED MEYER** if he would like to make a statement regarding concerns he had with the development of Item F, Portico Place Amendment. **MR. MEYER** conveyed he was going to work with staff and the applicant to work out his concerns.

CHAIRMAN FLANDERS asked if there were any questions from the Commissioners.

COMMISSIONER CASON asked staff about additional information regarding the pits on Item E, Galileo Piazza. **MR. ERIK SWANSON** responded between Study Session and the regular meeting he met with the applicant and the property owner. Those two areas where there was a site remediation, where there's dry wells, have been given clearance with a Phase I and Phase II environmental assessment study. If it hadn't been that way, the property wouldn't have been purchased by the owner. Everything is completely clear. As a safety precaution, it shows that area as a green zone in the plat to prevent development on it.

MOVED BY VICE CHAIRMAN IRBY, seconded by **COMMISSIONER KELLEY** to approve the Consent Agenda with the additional stipulations as read in by Staff. Motion passed unanimously 7-0.

ACTION:

G. DVR07-0043 305 E. COMSTOCK DRIVE

Request amendment of existing Planned Industrial District zoning with Planned Area Development overlay (I-1/PAD) to allow certain vehicle repair, customization, and accessory sales; installation of retail products; sign sales, repair, and fabrication; repair and manufacturing of certain small-scale equipment or goods; small-scale machine tool and plastics manufacturing; and certain vehicle sales. The site is approximately 39,150 square feet and located south and east of Elliot Road and Arizona Avenue.

1. Development shall be in substantial conformance with existing zoning and PDP approvals except as modified by the application materials of this request (narrative and site plan) and associated conditions of approval.
2. Engine repair shall be prohibited.
3. All work shall be conducted indoors.

4. There shall be no outdoor storage of parts.
5. There shall be no overnight outdoor storage of vehicles.
6. There shall be no testing of the vehicles on streets.
7. There shall be no auto body repair nor oil changes.
8. There shall be no motor vehicle sales or rental.

MR. BILL DERMODY, CITY PLANNER, stated this application is for an existing industrial building zoned as part of a larger corporate business park for I-1 uses. There is a PAD overlay that doesn't affect this parcel in any way, and the applicant is requesting to amend the PAD overlay to allow certain types of uses in addition to I-1 light industrial uses. Those uses would include certain customization and repair of vehicles, installation of retail products, etc. This request mirrors other rezonings in the same area that have been approved in recent months. They include Pollack Business Park North and South, and a little farther east, Stevens Off Road. The request, and the conditions attached, virtually mirror what was requested and approved for the Pollack Business Park, with a few exceptions. The exceptions are issues of contention with the applicant and will be discussed this evening. Among the differences is the applicant wants to have auto and motorcycle sales on site, auto body repair, small-scale plastics manufacturing and on-site engine repair. Staff supports the small-scale plastics manufacturing finding it doesn't have the noxious uses that some plastics manufacturing might have. It's being limited to such a small square footage per user. However, staff is recommending stipulations that would prohibit the other uses. Staff's main issues with those types of auto related uses have to do with traffic, noise and the condition of the site. Auto sales in particular tend to bring large numbers of people to the site. Even if it is intended to be in the short term, as the business gets more successful, these are some the highest traffic generating uses there are. That type of use is more appropriate on an arterial street not in an industrial park. Also, engine testing and major auto body repair tend to create noise that disturbs the offices in the area. If there were any allowance for outdoor storage, it could also cause a mess in the area. Staff opposes those types of effects, therefore, recommends approving all the proposed conditions. Staff is recommending approval of the request with conditions.

CHAIRMAN FLANDERS asked if there were any questions for staff.

COMMISSIONER CASON stated that in the applicants' narrative he mentioned being able to service or sell firearms, but it's not mentioned in the staff narrative. Is there some rationale as to why it's mentioned in one and not the other? **MR. DERMODY** responded staff viewed it as a minor addition to office equipment and computer hardware, however, that may be an oversight. The intention is that there could be a manufacturer with a small showroom, but not 100% retail. If the Commission would like a condition added that made sure there wasn't 100% retail sales, testing, or firing ranges; staff would support that. Commissioner Cason stated he was more concerned about why it wasn't in the staff memo but it was in the applicant's narrative. If the applicant wanted to sell and service firearms, would he be allowed to? Mr. Dermody responded he would be allowed to, but it's something that should probably be clarified through an amendment

to the stipulations. It wasn't staff's intention to allow a gun sales shop in this area. Commissioner Cason stated he has no personal preference if they sell or service firearms at this location or not, if it meets Zoning Code for the way this property is zoned. If firearm sales and service can be done in this zoning, then he's okay with it. If it can't, then there should be a stipulation. Mr. Dermody responded right now the property is zoned for I-1 uses only, and firearm sales and service would not be allowed. This proposal would allow it as an additional use. The applicant is requesting rezoning to allow that use, among others. Commissioner Cason clarified with Mr. Dermody that approval of this rezoning request would allow firearm sales and service.

CHAIRMAN FLANDERS asked if there were any other questions of staff. There being none, called for the applicant presentation.

MR. JON SHERBECK, 1929 E. CALLE DE CABALLOS, TEMPE, ARIZONA, stated he provided a handout with a logo at the top dated 1982. In 1982, he had 3 years of engineering study under his belt and not enough money to continue. At that time, he couldn't get a job because no one would hire someone who was just about to complete an engineering degree, and he couldn't work as an engineer. So he started a garage. He paid his rent, made some money, and paid a lot of taxes. In the midst of a recession, auto repair is one of the few things that can make it because people don't have a choice. They don't have the money to buy a new car. That's why he feels strongly about having repair allowed in this facility. Another economic downturn is possible and he wants to be able to keep his building occupied. The request he submitted and the conditions recommended by staff, by and large, he has no problem with. However, he feels strongly that he needs to be able to have engine and auto body repair in the facility. This is happening quickly and he thanked Bill Dermody for his professional help in this matter. He also thanked Michael Pollack for his idea to go ahead and look at the potential uses of the property and get them approved ahead of time. In this market, his average tenancy is around 1400 square feet. When a new tenant comes to him, more often than not, it will be a new start up that has grown out of their garage. If they hear they have to go through use permit process to conduct business, they will turn on their heels. It's a challenge for them and him. Mr. Pollack's idea to take care of all the concerns up front with one zoning change is brilliant. After hearing what conditions staff was recommending, he met with Mr. Dermody to try and understand what the concerns were in regards to the engine repair, auto body and motor vehicle sales. The engine repair and auto body share a lot of the same problems; they have the same storage problems. An auto repair shop may need to pull an engine out of the car, and it might be parked in the parking lot with no engine. He shares staff's concerns with that. He has no interest in having a cluttered parking lot, so he is okay with condition #3 which requires all work to be conducted indoors, condition #4 which prohibits outdoor storage of parts and condition #5 which prohibits overnight outdoor storage of vehicles. He has no problem with most of the conditions. However, he feels the prohibition of engine repair can be addressed by limiting the noise and the condition should state 'No activity shall result in a one second average noise greater than 85 dBA at the property boundary.' What that will do is protect the neighbors and it's something that is easily determinable. It can be measured with a

meter for compliance. If it's not in compliance, something would need to be done. He's sure at some time someone has run an engine test with no mufflers and that would be extremely obnoxious. He had a long career in engine design manufacture testing certification. It's a very tough environment to work in, so he understands that concern. The same thing applies to auto body repair. If there's work going on outside, there's going to be noise. But if all work is required to be indoors, they should be able to find a way to make it work. In regards to the motor vehicle sales, he has a tenant in suites 2 & 3, who currently can build a chopper there but can't sell it. He feels that's very important. He had an inquiry from a gun manufacturer. A license to manufacture a gun includes a license to sell the gun. The Federal Government doesn't make any distinction between the two. If a tenant wanted to have gun manufacturing, they have to be able to sell it according to the Federal license. Currently, they have light manufacturing and start-up operations. To allow tenants to manufacture something and not be able to sell it, is asking a lot for a start-up business. He has a number of tenants who would be affected. Occasionally in the auto body business the opportunity exists for the owner to buy a wrecked vehicle and restore it. It would be nice if they could also sell the vehicle there. His suggested alternative for Condition #9 reads 'Motor vehicle sales shall be limited to vehicles that are manufactured, modified, or repaired on site, and to internet sales. Vehicles for sale will only be displayed inside the building.' There is another category of motor vehicle dealers that he has had a lot of inquiries from for space. That is someone who is selling vehicles on eBay. The State Motor Vehicle division doesn't care how a vehicle is sold except you have to have a dealer's license if you sell more than 5 vehicles a year. His facility can meet the needs of those people. It would basically just consist of dead storage. They have invested in a vehicle and are going to sell it on eBay. They need a place to store the vehicle where it won't be stolen or vandalized until it's sold. In that case, he doesn't feel it would be a traffic generator. The customer may not even come to the site, the vehicle may just be loaded on a carrier and delivered.

CHAIRMAN FLANDERS called for questions of the applicant.

COMMISSIONER RIVERS asked how the test-driving of vehicles would be handled if testing of the vehicles on the premises or on the surrounding streets is not allowed. **MR. SHERBECK** responded that staff's proposed condition #6 states 'There shall be no testing of the vehicles on streets.' He suggested alternative condition #6 to read 'There shall be no testing of the vehicles on the streets of the business park.' This condition is the least enforceable. A vehicle is either licensed for the road or it's not. He suggested not testing the vehicles on the streets of the business park to try and be a good neighbor, so there wasn't a concentration of testing activity within the business park. Commissioner Rivers stated he understands that wonders how realistic it is to even mention it in the conditions. If someone is trying to sell a vehicle that they manufactured or repaired, a purchaser would need to drive the vehicle. It's unrealistic to think it would be put onto a car carrier and hauled somewhere else for a test drive and then hauled back. Mr. Sherbeck stated he agrees and feels it's basically unenforceable. Off-road vehicles not licensed for the street would be the issue. Commissioner Rivers stated the problem is if the Commission grants zoning for a vehicle manufacturing company, they can't then

deny them the ability to test drive the vehicles. It's a package deal. Mr. Sherbeck stated it's somewhat like the noise ordinance. His suggestion is one-second average noise no greater than 85 dBA at the property boundary. The noise ordinance says what a reasonable person would accept. Commissioner Rivers stated that's why it would be hard to do this as a piece-meal thing. It's going to have to be all or nothing. That's what he will think about when he's voting. Mr. Sherbeck stated he would delete condition #6.

COMMISSIONER CASON asked the applicant if he has a shop at this location. **MR. SHERBECK** responded he doesn't. At this time, he just provides space to others. However, at some point he might like to make boats and would like to be able to sell them there. Commissioner Cason asked if the applicant's ability to monitor compliance with the conditions would require him to visit the property occasionally to make sure the tenants were following what could be unusual rules for this area. Mr. Sherbeck responded that the ordinance would allow Chandler to enforce the conditions. He is in a position to be able to assist his tenants with things like the noise requirement; testing and measuring to determine if they are in compliance.

CHAIRMAN FLANDERS asked the applicant how he would realistically monitor the noise levels on a day-to-day basis. **MR. SHERBECK** responded he wouldn't. The tenants run the same type of tests repeatedly. He would just have to establish the conditions they could operate under initially. He ran a test this morning. The 85 dBA, which is a number Cave Creek has historically enforced on street side noise, is reasonable. Staff has some concern about noise in surrounding offices. The offices are 400 feet to the west and further than that to the north. His nearest neighbor to the east continuously runs a cyclone separator for dust. It's a wood manufacturing operation. That equipment continuously operates at 80 dBA at the property line. Chairman Flanders reiterated with the applicant that essentially he can tell tenants where they need to be, but there's no way to monitor it. Mr. Sherbeck stated there shouldn't be a need to monitor it. Once the test is set up, it will make the same noise each day. It's just a matter of establishing the guidelines to meet the requirement. After that, unless something unusual happens and they deviate from the plan, they will be in compliance.

COMMISSIONER GULSVIG stated the Commission is wrestling with the fact that this site is currently zoned industrial. It's a Planned Industrial District and the request is to convert it to a PAD/Industrial. It seems like all the uses the applicant is talking about are authorized within an Industrial zone. He feels what the applicant is trying to do is to break it down so it opens his door of opportunity to move the facility, and the land use, into other areas. One of the reasons the City has zoning standards is to prevent that kind of thing from happening. In his opinion, staff has bent over backwards trying to get him to use the facility, but with limitations. Right now it is zoned an Industrial District, and that type of manufacturing and noise is part of the Industrial District. It appears to change the land use to make it better for the applicant, and that's what staff has tried to do. He doesn't see any reason to change staff's position.

MR. SHERBECK stated, in his defense, everything he has asked for is permissible under the existing zoning ordinance on a use permit.

COMMISSIONER GULSVIG stated he feels staff has worked on this issue pretty extensively and asked staff to comment on the applicant's statement that everything he is asking for is already permitted under the land use. Mr. Dermody responded not exactly. There are a range of uses allowed in Industrial Districts with a Use Permit. It's in the zoning code that way because staff recognizes some of the uses are appropriate in certain circumstances and not in others. They need to be considered on a case-by-case basis. What the applicant stated is true with the possible exception of the accessory retail sales. Every one of the users could come in individually and ask for a Use Permit. Planning Commission and City Council grant the Use Permit if they feel the situation is right. Mr. Sherbeck is trying to avoid the need for multiple Use Permits, and staff is trying to accommodate him to an extent. However, staff doesn't feel it's appropriate to blanket-allow everything that could go in with a Use Permit without analyzing each individual situation or without having the limitations staff is placing on them. Commissioner Gulsvig stated he agrees; that's why there is a process.

CHAIRMAN FLANDERS stated in a different situation the tenant would come in and file for a Use Permit and the owner of the building wouldn't even be a part of it. This applicant is taking care of everything so his tenants won't have to worry about it. Mr. Dermody added not only do the tenants not have to worry about it, but it's faster. The tenants could go in sooner.

VICE CHAIRMAN IRBY stated they have approved these types of conditions in the past for larger projects which affect numerous tenants. He could support some of these concepts if the entire industrial park were playing by the same rules, as opposed to one individual property having special allowances. Vice Chairman Irby asked if that thought process was discussed during staff's review of the application. Mr. Dermody responded it would have been preferable to have more properties included in this rezoning, but it wasn't practical in this case because the applicant only owns one property and the neighboring property owners weren't interested. It wouldn't make a difference to staff as far as the conditions being proposed. Pretty much any property within the central part of the industrial park would have the same problems with these types of auto uses, and staff would recommend the same sorts of restrictions on those other properties as well.

MR. SHERBECK stated he thought the mass rezoning was a great idea when Mr. Pollack originally advertised his change. As Vice President of the Owner's Association in the area, he approached Planning & Zoning with the exact same concept; this was such a good idea why don't they do it for the entire business park. At that time he was adamantly told that no such request would be considered. This was all done on a property-by-property individual basis.

VICE CHAIRMAN IRBY stated that leads him back to the opinion that what staff has proposed makes more sense than just giving a blanket options for just this one particular property.

CHAIRMAN FLANDERS called for audience speakers. There being none, he asked for any additional comments or questions.

COMMISSIONER RIVERS stated that after listening to everything that has been said, especially what Commissioner Gulsvig was saying, he feels the City should retain control of these areas through the use of Use Permits rather than making blanket changes which can set precedents for other areas of the City. He thinks City staff has tried to accommodate the owner and he agrees with staff's suggestions.

CHAIRMAN FLANDERS closed the floor for further Commission discussion and possible motion.

COMMISSIONER GULSVIG stated that since the applicant has objected to the conditions as outlined by staff, and would like to change them, that puts Commission in a position of questioning whether or not they should vote on this item.

CHAIRMAN FLANDERS asked if he was suggesting a continuance so the applicant and staff could work out some issues. **COMMISSIONER GULSVIG** stated yes, at this point he suggests a continuance for staff and the applicant to work together on some issues.

VICE CHAIRMAN IRBY stated he's not sure if it needs to be continued, or just vote it up or down. It didn't seem that staff was inclined to any of the additional changes.

COMMISSIONER GULSVIG stated if the applicant and staff are willing to adjust the changes, then a continuance would make sense.

MR. DERMODY stated although the handout just came from the applicant tonight, staff was aware they had these issues. Staff's recommendation wouldn't change after a continuance, it would still be the same. There is a difference of opinion between staff and the applicant as to what the stipulations should be.

COMMISSIONER GULSVIG stated that the applicant, as owner of the property, can require that each tenant come in with a separate process in its current condition. What he's attempting to do is have a blanket condition. If staff isn't going to change from their proposal, is the applicant going to want to withdraw his position or is he going to accept these conditions. If Commission approves these as they are, and the applicant isn't in favor of the conditions, we're at an impasse.

MR. GLENN BROCKMAN, ASSISTANT CITY ATTORNEY, stated they do have an impasse, that's why he feels they need to make a decision on the matter. Also, the

applicant's recommended change about the noise level at 85 dBA, he doesn't know if that tracks with the City Code requirements or not. However, the enforcement of something like that will be done by people who know the City Code requirements, not a specific requirement for a specific property. While the applicant's suggestion has some benefit of having an objective test, that may or may not be a benefit from a Code enforcement standpoint. The stipulations aren't going to be enforced by the applicant to his tenants, they're going to be enforced by the City. From his standpoint, he would prefer that any regulation on noise be based on what the City Code is, which is usually tied to the nuisance provisions.

COMMISSIONER RIVERS asked if the stipulations are more enforceable by a Use Permit process than a zoning change. **MR. DERMODY** responded there wouldn't be any difference. Whether it's a Use Permit or a zoning change, there would be a condition to enforce. Either way there would be an inspector at the site trying to determine what the volume level is. Commissioner Rivers stated with a Use Permit they're looking at a certain applicant and asked is that no different than with a zoning change. Mr. Dermody responded the difference is that it would apply to every business, rather than just one, but the subject matter of noise would be the same.

COMMISSIONER CASON stated he feels Mr. Sherbeck's arguments are somewhat valid. He can understand, and it's obvious to a certain extent, that the applicant already knows who his tenants are going to be and he's trying to fill up his building. The issue is that the Commission doesn't know whether to trust that what he says he's going to do, the tenants he's going to have and the conditions under which they will operate are going to remain in a fashion the Commission is comfortable approving. He suggested a time restriction be placed on the approval to see if there are complaints from neighbors or other people in the park about the testing of vehicles to see if they can allow the applicant to do what he needs to do. It would also protect the industrial area. It's a building with 9 suites that are already there. There will be other buildings around it in time, but now it just sits there by itself. The storage is only 4200 square feet, not a lot of vehicles could be stored there. All of his tenants would have to store their vehicles inside. He feels there's a lot of merit in the applicant's alternative conditions. If some of them are used, he feels they would still be able to protect the area. He would like to have further discussion about replacing some of the recommended conditions with the alternative conditions, such as the motor vehicle sales. He can understand that someone would want to sell a vehicle they repaired as long as they keep it inside. He agrees with the noise condition and feels it should be kept the way it is proposed. He sees some areas where there could be compromise.

CHAIRMAN FLANDERS asked Commissioner Cason if he was looking at deleting or modifying some of the stipulations. **COMMISSIONER CASON** responded he is suggesting that through discussion the Commission modify conditions such as Item #8 could be swapped for #8 and #9; #7 could be swapped for #7; #6, the testing of vehicles on the street, is not so much in sales but making sure something runs that has been

repaired. No outdoor storage of parts could remain, rather than changing it to no storage of parts in the parking lot. The other recommended actions would stay the same.

MOVED BY COMMISSIONER CASON to approve DVR07-0043 305 E. COMSTOCK DRIVE with the following conditions:

1. To remain as listed in the staff memo;
2. Deleted;
3. To remain as listed in the staff memo;
4. To remain as listed in the staff memo;
5. Condition listed in the staff memo will be replaced with condition #5 of the applicant's submission of suggested alternative conditions;
6. To remain as listed in the staff memo;
7. Condition #7 and condition #8 listed in the staff memo will be replaced with condition #8 and condition #9 of the applicant's submission of suggested alternative conditions.

Motion failed due to lack of a second.

MOVED BY COMMISSIONER GULSVIG, seconded by **COMMISSIONER RIVERS**, to approve DVR07-0043 305 E. COMSTOCK DRIVE as presented by staff. The item passed unanimously 7-0.

I. PDP07-0019 STELLAR OFFICE CONDOS

Request Preliminary Development Plan (PDP) approval for site layout, landscaping, and building architecture for an office development. The 3.14-acre site is located at the northwest corner of Chandler Boulevard and Juniper Drive, approximately ¼ mile west of McClintock Drive.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "STELLAR OFFICE CONDOS" kept on file in the City of Chandler Current Planning Division, in file No. PDP07-0019, except as modified by condition herein.
2. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or property owners association.
3. The landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
4. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Public Works for arterial street median landscaping.

MR. BILL DERMODY, CITY PLANNER, stated this was a request for a Preliminary Development Plan approval for a pair of connected office buildings that previously received zoning located at the northwest corner of Chandler Boulevard and Juniper

Drive, about ¼ mile west of McClintock Drive. Everyone is agreement with the site layout architecture with one exception. The main issue on the floor tonight is about safety. There is an airport, Stellar Airpark, directly across the street to the south. To their understanding this site plan has been submitted to the FAA and they responded that they didn't have any concerns or at least that was reported to them. That decision was appealed by the Airport and sent back to the FAA. They took another look at it and as he understands it still had no concerns with this application. There is a clear zone on the eastern part of the site and as far as Staff knows, they abide by that required clear zone. However, they have heard from the Manager of the airport who will be speaking tonight that perhaps that building is actually encroaching three or four feet within the no fly clear zone. That is the issue at hand. Staff recommendation is for approval on this.

CHAIRMAN FLANDERS said he remembers when this case went through Commission and he remembers the area that most of that lot was for parking lot. When that property was approved through Council and went through the platting process, the no fly zone is part of that recorded document. Is that correct? Mr. Dermody said he believes it is as a recorded easement. Chairman Flanders said from the basis of starting any design with an architect or engineer there is an ALTA survey or title report that would have all that information. He said he is assuming that everything was done correctly and that the no fly zone is part of this document and is correct. Mr. Dermody said he believes the information in this application is correct. Certainly they are concerned about safety issues if it is incorrect but they believe it is correct.

CHAIRMAN FLANDERS asked if there were any comments from Staff.

COMMISSIONER CASON said he wanted to ask for a clarification. When they pull permits and they start surveying the property, if in fact that surveying shows that building has been engineered to be in that no flight zone then permits would be issued until such time as the design is changed? Mr. Dermody said he believes that is correct.

BOB WEWORSKI, PLANNING MANAGER, stated that part of the process would be if this were approved through the plan review process that information would be reviewed and certainly if there was a deviation, it would have to be corrected either moving the building, decreasing the size of the building, but certainly not in that clear zone as determination of the information they would have as Staff.

CHAIRMAN FLANDERS said he was going to have the speakers come up first and express their concerns then go to the applicant.

JOE MARTIN, 4306 W. JUPITER WAY, CHANDLER, stated he had a prepared statement he would like to read but would also like to add some notes that the FAA was petitioned and he has a copy of the reversal of the original decision. He said he is the President at Stellar Airport and the Stellar Runway Utilizers Association (SRUA). He also represents 145 homes, 35 commercial properties on the airport or located around it. He is a homeowner and has been a pilot for 23 years. He has served as member of the

Project Advisory Committee for the Chandler Municipal Airport Master Plan in 2006. First he would like to compliment Sun State Builders for their attempt to work within the FAA design standards and he knows that they moved the building. He stated he would be remiss to not point out some grave concerns that they have with the PAD being proposed by Sun State. The first and foremost concern is the safety of the people who would work in and around the buildings at this site. Second would be the impact of the noise that the buildings tenants and employees would experience and the calls that would generate not only to Stellar but also to Council. Third, Stellar's and the City's exposure to lawsuits often happens when there is an accident or even on the issue of noise. Upon review of the two aeronautical studies performed by the FAA and there are two, one for each building, because of where they are located. There was a determination of no hazard to air navigation status but they do feel that several things were overlooked or misunderstood and he would like to point these out. He had handouts passed out.

The first one he would like to point out is the 2007 AWP 5176. On page 2 the seventh paragraph, the study disclosed that the described structure would have no substantial adverse effect on air navigation. He said he would have to remind them that this doesn't say "no effect". It says substantial. His point is if you considered the safety of your children when crossing the street after school, would pose no substantial threat to their lives would everybody be satisfied with that. If you turn to page 4 of the findings, item no. 2, he wanted to take minute and read it out and help them understand and clarify. It states the obstruction standards are exceeding. The structure is identified as a Part 77 Section 77.25(e) obstruction. It is an obstruction. The transitional surface area designated to prevent tall structures from being located at the edge of the primary and approach surfaces of an airport are established under 77.23, 77.25 and 77.29. This building in the FAA's words would exceed the transition by three feet. The other determination of non-hazard exceeds it by four feet. On number three, it says the effect on air nautical operations, the impact on arrival, departure and en route procedures for aircraft operating under VFR, which is visual flight rules, is as follows. The proposed building would exceed the transitional surface by three feet based on their runway 17. It exceeds it. These are the FAA's words not their words. On page 5, number 6, is the basis for their decision. The proposed building would not be in the P19 (airport identifier) RWY 17 approach surface trapezoid which he thought everybody has seen where Part 77 standards are applied and would not create a hazardous situation. Stellar does not object with that at all. They find that to be true also. While the proposed building does not constitute a hazard to air navigation, it would be located within the runway protection zone. The old term used to be clear zone. It's not a no fly zone, it is a runway protection zone. It further states the runway protection zone is an airport design surface and is not a Part 77 protected surface (not protected by the FAA). Structures which will result in the congregation of people within that Runway Protection Zone are strongly discouraged in the interest of protecting people and property on the ground. In cases where the airport owner can control the use of the property – in other words, if they did own it, such structures are absolutely prohibited. They would not let us build anything on it. It further states that in cases where the airport owner exercises no control, advisory recommendations are issued to inform the sponsor of the inadvisability of the

project from the standpoint of safety to personnel and property. He said the important thing to remember is that the front of the findings states "determination of no hazard to air navigation". But if you read into the guts of it, there are several concerns that the FAA has and that they have. Mr. Martin said that for all the important reasons mentioned here tonight, they are opposed to the placement and/or the height of the buildings in question. In general, they are in favor of this commercial development and feel it is good for the City and it's good for Stellar, but not quite as proposed. They would offer to work with Sun State to develop a better proposal. Some suggestions might be to relocate the building where it would sit, north or west or both and possibly lower the height to drop it down to four feet to bring it within FAA standards. They felt it could be accomplished.

They also would strongly suggest that a deed restriction be placed with the property providing the following. Purchaser, buyer and/or tenants are given full disclosure on the following items. The building and land is located at a very active airport traffic area. They have 500 percent more jets operate out of Stellar than at Chandler Municipal. They have a lot of traffic. People inside and especially outside the building would experience aircraft noise from landing and departing aircraft, including jet traffic. People inside and especially outside the building would be exposed to potential injury if an aircraft had an accident because of the close proximity of the flight path. If you can remember not long ago they had a twin go into a neighborhood. Sometimes things do happen. There is no sense in putting a building up in the way if he is just able to make it. Maybe he's not going to crash but he has an engine out which would cause the plane to veer to one side. They really shouldn't allow that. These provisions are similar to what they provided to LGE Design Build for the major developer north of them about a year ago and they offered support for their development. Attached is a copy of that letter. They agreed to do those things. They supported LGE because of what they were doing make sense. It was safe and the right thing to do. In closing, they welcome the commercial development again with some minor concessions but feel strongly about the safety issues and noise irritation this project will cause. If this project were approved as is, it would expose Stellar Airpark and the city and possibly the developer to complaints from noise levels and the potential for costly litigation as a result of an accident because the FAA recommendations were not adhered to during the planning approval process.

They are prepared to file a petition challenging the most recent application and findings by the FAA because the study was done and there was data that was used to conduct the study and they are not sure if the data that had been provided to them is accurate. There are too many variable associated with this study and when making a decision of this magnitude just does not make sense. They recognize the Planning and Zoning Departments judgment and wisdom in a matter of this type. He said he would like to ask for permission to allow one or two of their other residents (both past board presidents) to respond to the questions when appropriate. One of them is Joe Satelli. Joe currently serves as a captain and a check airman on the Boeing 757 for a major airline based in Phoenix. He served on the airline safety committee and the professional standards committee for more than ten years. Additionally, her serves as an aviation consultant in matters ranging from establishing policies and procedures for corporate flight

departments to providing expert witness testimony on maintenance and pilot operational issues related to aircraft accident investigations. The other person here is Mr. Ron Bates. He has been a past President at Stellar. He is currently their Board Secretary and is a 35-year veteran with the Phoenix Police Department and most recently he was the Commander over Sky Harbor Airport. He feels that both of these gentlemen are highly qualified to speak to this Commission.

CHAIRMAN FLANDERS asked Mr. Martin that he had mentioned some variables and if those presented to the FAA. He was wondering in his appeal to the FAA were those items presented to the FAA for their final decision. Mr. Martin said they have not as of yet. They received the notification card which was postmarked 10/26 and was received 10/29. They have only had a few days, but they would challenge them. The reason for the petition is to challenge the data that was used to calculate the findings. Chairman Flanders said based on what has been presented, FAA has reviewed and approved it and Stellar Airpark filed a petition. FAA reviewed that petition and has upheld their decision that was made initially. Is that correct?

BILL DERMODY replied that is the understanding of the situation but he is hearing something different right now.

CHAIRMAN FLANDERS asked if there were any questions of the speaker.

COMMISSIONER RIVERS stated that he had a diagram in front of him of this project and on Sunday he went out and parked at the corner of Enterprise Place and Jupiter Drive and watched aircraft land over his head. He asked when they go over Chandler Boulevard how high they are (the aircraft). Mr. Martin referred to Mr. Satelli. There are two things causing confusion here. Commissioner Rivers asked if he could put the diagram on the Elmo and draw a line where the aircraft are. There are two trapezoids. He showed where they are on the Elmo. He said that is the approach trapezoid and that is the area that they are not contesting. It starts 200 feet out and goes out to a total of about 5000 feet. It's about 25 feet off the center line and a total of 250 feet wide and the narrow. It is based on the center line of the runway and all the way out it is 5000 feet. It is 1200 feet wide. That is also at a 20 degree slope. That's the approach slope for aircraft coming in. You can see the proposed buildings and they are outside of that. They have moved them and he congratulates them for that. However, there is also there is another trapezoid for departures, fog or rain. That trapezoid starts 35 feet in the air at the end of the asphalt and projects out at a 40 to 1 slope, which is 40 feet out and one foot up. On each side there is another approach sloop for this departure that is called the transition zone. That is also at a 20 to 1 slope. You have the trapezoid out this way 40 to 1; the approach slope on each side is penetrating the building by four feet. That means if an aircraft takes off, and these are the minimum, and has an engine out and can't maintain a climb, that four feet on the building might make the difference as they probably saw in the home over at Twelve Oaks a few months ago. That is the only thing they are objecting to – four feet and three feet on the other one. It's about safety. Commissioner Rivers asked him how high are the aircraft when they come across Chandler Boulevard?

Mr. Martin said that depends – was he talking about approach. Commissioner Rivers said it was an approach and a single engine aircraft. Mr. Martin said they normally come in a 3% grade,

COMMISSIONER RIVERS said he watched the aircraft fly over and onto the runway and they were not going over where this building is going to be. They were going over where the parking lot would be. He's just trying to get an idea on how high they are above the parking lot for example. They are not just talking about safety but aircraft noise.

JOE SATELLI stated he has been a resident of Chandler for about 22 years. He has been out at Stellar the entire time. The height for an aircraft would be different on an approach as opposed to a departure. On a departure it would be 35 feet off the end of the runway climbing every 40 feet as it goes out it goes up one. On an approach it goes to the surface of the runway and every 20 feet that it comes in it is dropping down one. Joe Martin said 20% but what he really meant to say was 20 to 1. He said he was going to guess not knowing exactly what the distance is there was about 400 feet or so. Mr. Martin said he thought it was 308 feet. Mr. Satelli said that if you were to divide that by 20 or so, that's approximately the height that it would be on a normal approach. The protected air space now is going to be a little bit lower than that. The 20 to 1 they are talking about is a little different than the instrument departures where they allow you to go out on an instrument take off and you go out at 200 feet per nautical mile. That would be a standard departure. That's giving them a safety buffer there in the event they were to have some kind of a problem. The departure is really the biggest issue more than the arrival. This property that we are talking about unfortunately is penetrating into this area. The real issue is the fact that they are concerned about the safety of it. One of the other things that he does is a pilot examiner. That means if you decide to get your pilots license you would come to him after you completed months of training. They would go up and fly the airplane and do your practical tests. He would issue you FAA license. On any given day, the person that comes to him has to follow standards that they have to fly by. In the event you were going for a small aircraft multi-engine rating, they have maneuver that's called a minimum control (VMC Maneuver). The tolerances on that maneuver if you are able to hold the aircraft within 20 degrees of the heading you have successfully completed that maneuver on your check ride. If they were to depart this runway and turn 20 degrees, they would be way into this. The trapezoid shapes that we are talking about are approximately 10 degrees off the center line of that runway. If a person was to hold it within the tolerances of an FAA flight check, he could be very well into these buildings. They don't want to create a safety hazard that the City and Stellar and this developer has to live with for a long time.

CHAIRMAN FLANDERS asked if the FAA has reviewed this and they have provided all this stuff why did they approve it? Mr. Satelli replied that they didn't necessarily approve it. What they said is that first trapezoid that goes out from the end of the runway there is nothing that's penetrating that trapezoid. If it were in that trapezoid, they would definitely be very concerned about this. The next trapezoid they do not recommend that

you get into that. An example of this would of have been when they wanted to build the stadium in Tempe off the end of Sky Harbor. Although it really was legal to build it, it wasn't smart to build it when it was so close to those transition zones that the FAA recommends you don't penetrate.

COMMISSIONER CASON said if you can visualize this and if you look at the trapezoid in three dimensions and you are looking from the small end to the large end and you look at the bottom plane of the trapezoid, in the left hand side as you are looking north, there is a penetration in that trapezoid which is the roof of these two buildings – one three and one four feet. Mr. Joe Martin said one starts 35 feet off of the pavement and then when it gets outside of what the FAA says they don't have a problem with the buildings puncturing through this transition. Mr. Satelli added that the FAA and their recommendation are saying that it does not impose a hazard to Visual Flying Aircraft (VFR). In visual flying, they are assuming they can see obstacles and fly around them. They do have an instrument approach into this airport and they have airplanes that depart and arrive on instrument flight plans everyday. They are not really addressing the instrument flying portion of it because our approach comes in from the other end, but the primary runway that they are going to land on will be 17 circling to that runway. The real issue in the past has been noise and they have done everything they can to cooperate with the neighbors. They have done this by shortening the pattern, encouraging pilots to fly a tighter pattern and to keep the residents around Warner and Ray Roads from complaining about the noise. When you put this building in there and put an obstacle there the pattern is now going to have to be extended out to go around that building.

VICE CHAIRMAN IRBY said he understands what he is talking about. This information that they gave them is obviously not the complete report. It's highlighting a couple of pages of stuff. He said on page 2 there is no substantial reverse effect. But then it goes into on page 4 where it talks about these exceeding standards and operations. In this report are they saying that they understand it does encroach by three feet and you are saying it's actually four feet? Mr. Joe Martin said there are two reports - one building is three feet and one building is four feet. Their decision is actually to still approve it with the understanding that it does encroach by three to four feet. They think it falls within this gray zone of substantial adverse effect. Mr. Martin said they are very explicit. They are saying that it is a cause for concern but since we don't own that land they don't have control over it. If Stellar owned the property, it would be prohibited as stated. They couldn't build anything. Because they don't own the land they will no rule on it. Vice Chairman Irby said they won't rule on it but they are making recommendations. Mr. Martin says the FAA controls the air space and if that land is part of their airport, which they have jurisdiction over, they can tell them what they have to do. Since they don't own it, they are just saying they can't help them there. Mr. Satelli said there are certain things that they have from the FAA, one being a visual glide slope that they maintain out at the airport for them. The other thing is they have an approach for instrument airplanes to come and go which they flight test on a regular basis. It's a situation that if they owned this land and they came to Commission and wanted to put hangars up there that do nothing more than store airplanes, they would not approve it because they have authority

over them in a way. If you put those buildings up, they won't approve your approach and so forth. However, they aren't going to get involved with a private individual who owns this land and has no interest in the airport. If it were in the first trapezoid, they would be opposing it. Vice Chairman Irby said for example, if right in front of the runway somebody wanted to build a building 50 feet tall, you are saying that the FAA wouldn't deny it? Mr. Satelli said they would probably get very involved in that because now they could not operate an airplane. Vice Chairman Irby said he understood the trapezoids. He sat on the board when the property owners across the street from you tried to put all residential properties and sat through those explanations. He even did a couple of landings and take offs from your airport and understands what they are talking about. He is trying to understand that FAA is saying recommendations but they can't enforce somebody not building it? If somebody built a building, they would just shut down your airport? Mr. Satelli said there would not be an approval. Vice Chairman Irby says he sees the report as saying that they are allowing it with the following conditions that need to be met.

CHAIRMAN FLANDERS stated that essentially they have an encroachment three to four feet. They will ask the applicant when he comes up about his building and the three to four feet.

VICE CHAIRMAN IRBY said when you are building a building you have to get approval on cranes.

MR. MARTIN said the key point is the center trapezoid (the approach slope). If they owned the property they would prohibit it. Vice Chairman Irby said he understood this. Mr. Martin said on the outside, since they don't own it, they can't prohibit it - they can only make suggestions. They did suggest it was the wrong thing to do.

COMMISSIONER GULSVIG stated that he would like to point out in this memo that was handed out, the FAA is cautioning to make sure that they are apprised of the structure being built because it is critical to flight safety. They made that statement. Since Stellar does not own that property and it's not within the air corridor jurisdiction of the FAA, they can't rule on the individual building, but they can make a statement to the fact that it is critical to flight safety. Since it's not airport property they can't deny it. The FAA is being very political in how they are responding to this but also telling them they really need to be cognizant of the flight safety issue here. The other part of this is that it is not controlled air space and you don't have a tower. So you have pilots coming and going on will and you do have touch and gos. Who records the amount of landings and takeoffs? Mr. Satelli said they don't really have anyone recording them. He is sure they could probably estimate them. They are getting more and more every day. Commissioner Gulsvig said they are being apprised of the flight safety issue that this building is in that trapezoid area. They are not denying it but they are telling them to be careful. Vice Chairman Irby said that's right it is a recommendation. His last question was if they had appealed this? Mr. Joe Martin said they petitioned the original findings and it was overturned. Vice Chairman Irby said so this particular document was

overturned? Mr. Joe Martin said there was four of these plus a reversal. There were two submitted originally and they were both reversed. Somebody was hired to do a survey and the FAA said the data that was used to calculate the trapezoids and transition zones was inaccurate so they redid the calculations based on the new coordinates. Based on that they said it's not a problem any more. Before the transition zone that was being penetrated by two corners of the building, it was really penetrating because they showed the end of the runway at a different spot when they did the original calculations. They will be petitioning on the fact that they don't know where they got that data.

COMMISSIONER CREEDON said they just indicated that they were going to challenge the data. Will this be there second challenge? Mr. Martin said yes. The first petition had to do with the fact they did not do an onsite analysis, they did it from a chair in Washington D.C. When they said there was not a substantial hazard, they felt that was inappropriate. When you are dealing with safety and people and the encroachment coming in, they needed to get somebody out here and put their feet on the ground and do the measurements and make sure they have it right. They did file the petition for that reason and that's when they found their data was inaccurate. They redid it and they gave the determination of non hazard again. But now they don't know that that data was accurate because they went and changed the coordinates for the runway to something different than what was on the books, which had been changed and corrected 2 years earlier. They don't know who has the right data. They don't know the data they used to do this final finding is accurate. Commissioner Creedon said she doesn't have a lot of experience with the FAA but what she is having difficulty with is if they are just cautioning us why don't they say that instead of telling us that they have analyzed departures and arrivals, en route procedures, aircraft operating under visual flight rules. It seems pretty specific to her and no where does it end with a sentence that they are just cautioning them. It's hard for this Commission to differentiate. Mr. Martin said that was a good point. They are trying to point out that in the approach slope that is protected property. The FAA guards that property with their lives. Don't let anything be built there. They ruled this area here, which they do have control over, is o.k. They don't disagree with that. They are saying the area they don't have control over because they don't own those two transition zones they are giving them a warning that this isn't the right thing to do. The application is provided for the approach slope in the center trapezoid.

COMMISSIONER RIVERS asked if they could take hold of this building with your hands, what would you need to do to it to get the top of it out of the trapezoid? Would you need to go north, west, shorter – what would you need to do? Mr. Martin said it would need to be four feet shorter. He explained on the transition zone that one on instrument departure is 40 to 1 at 35 feet off the runway. As you meet this outer boundary of the center trapezoid, then this one goes up one foot for every 20 feet. Commissioner Rivers said he is with Commissioner Cason that if he holds that up he can envision a corner of the building sticking up through it. All the 30 to 1's doesn't mean much to him. Instead of making the building shorter if you moved it west a little bit it wouldn't be in the trapezoid anymore. If you moved it north it would be higher up the

glide? Mr. Martin said that's right. That's why he previously stated that they are open to anything – move it west but remember four feet equates in a 20 to 1 slope, equates to 80 feet. They only have 69 feet from the side of the building to the property line. Commissioner Rivers said then it would have to be shorter. Mr. Martin said it would have to be shorter, it could be moved partially to the west or north. The parking spaces could be re-changed and maybe two feet off the building. They feel there is a solution to it that would not be that difficult.

CHAIRMAN FLANDERS asked Staff if they were aware of all this? Mr. Dermody said no. He was aware this issue was being discussed weeks and months ago. Coming in today it was his understanding that it was all taken care of. Mr. Martin said he would get a copy of the reversal for their records.

GLENN BROCKMAN, ASST. CITY ATTORNEY, said the document they gave us is the final statement out of the FAA as it stands right now, correct? So the reversal they are talking about is from a prior decision? Mr. Martin said yes. Glenn Brockman said he didn't understand what the relevance is on the reversal. Mr. Martin said the statement was made that they filed the application and it was just approved. It was approved and nothing else happened and he wanted to correct that error that in fact they filed the petition and the FAA did file a reversal on the original one.

RONALD L. BATES, 4308 W. JUPITER WAY, CHANDLER, stated he is a resident of Stellar Airpark and is a past President. He doesn't belabor the point. He just came up to clarify a few things. He noticed a lot of confusion about this whole issue. He pointed out that the FAA letter. What is supposed to happen is any builder submits a form. There is a specific form the FAA requires and it goes to the FAA and they make a determination of whether or not what the person proposes to do constitutes a hazard to aviation. If they think it does, they issue a determination of hazard. If they are going to take the position that it doesn't then they issue a determination of no hazard, which is what they have done in this case. As Commissioner Gulsvig just pointed out there is a lot of equivocating in this document. It violates the standard and it sticks up in that area and yes they think that is enough of a problem to have created the rule, but in this particular case they don't think it's substantial. It's up there and there is a potential to strike it under the right or wrong conditions. During normal operations that building will not constitute an immediate hazard to any airplane normally at Stellar Airpark. But under the wrong conditions, when something goes wrong, if the pilot is having difficulty, it could. That's the reason for the standards. The standard says that building should not extend up to that slope. You could have a pilot with a twin engine aircraft depart on that particular runway and lose an engine at a critical moment that would cause the airplane to want to veer to the left, as previously pointed out, there is a number of things that pilot has to do immediately in order to maintain control of that airplane. It is a very difficult time. For that reason the FAA knows that a pilot could have difficulty maintaining that airplane within that first trapezoid, so they created that buffer zone on the side to add in a little additional safety. When they have come back and said this isn't a substantial hazard, he doesn't know. That has not been their position in the past. He emphasize that their letter

does not endorse the project, it simply says it can be built there and it won't be that much of a problem. As far as prior inactions with the Staff, they have worked very well with the Staff in the past. He thinks the one little link that is missing is when a project such as this is proposed around an airport, the airport should be notified immediately and get them involved early on. They are going to spot this sort of thing. It is not unusual. The current buildings on that site presented exactly the same problem. They came to them and asked them to support the project so that the FAA will allow it. When they wouldn't, they had to back to the drawing board and redesign their project. They feel they have to hold that space sacred because this will not be the last request you see of this type. Someone else will want to build a structure. Another example is when they put in the 202 Freeway. Apparently, they didn't take notice of the fact that there was an airport there. The lights they put up stuck right up into the approach. They had to fix that also. He hopes that clarifies some of the confusion he noticed.

MIKE FORST, SUN STATE BUILDERS, 1150 W. WASHINGTON STREET, TEMPE, 85281, said he also wasn't aware of this being an issue tonight so he didn't come prepared with a report that has been discussed or the exhibits. To clarify a couple of questions that came up during the discussion, there is a clear zone designated on the plat and discussed in the PAD. If you look at their site plan, there is a line coming up north and west on the site plan. That designates the clear zone, which is the no fly zone that was discussed originally. Yes, that was on the plat and it was on the ALTA survey and it is the reason that we located the building west of the line. There are several checks in place to ensure that a building does not pose a hazard to air traffic. One of them is this clear zone, which they fall outside of, another is a building height limit discussed in the PAD. They fall below the building height limit. Finally, the FAA has to give them approval to construct the building. He disagrees with Mr. Martin in that the letter is not an approval or disapproval to construct, it's just a recommendation. It is absolutely an approval to disapproval to construct. If the FAA issues a determination of hazard to air navigation they cannot build a structure. If they issue a determination of no hazard to air navigation than they can build the structure. To recap the FAA process that they went through, about a year ago they submitted to the FAA to build the building. It took 4 months for them to review the case and they issued the first determination of no hazard. That was in February of 2007. It was appealed by the Stellar Owners Association and months later the FAA sent the reversal. When they got the reversal, he contacted the FAA and asked them for the basis of the reversal. They found together that the information they used was faulty in terms of the latitude and longitude coordinates that were used. Through working with the FAA and the land surveyor that we hired, they submitted a new case. He looked at the coordinates very closely and made sure they were right and resubmitted to the FAA. They were very cordial and helpful and they realized the original basis for the original reversal was faulty. They committed to review the new case quickly. They said 30 days but it ended being 60 days. Part of the reason for the longer time period was that Mr. Martin was still very concerned and was discussing this with the FAA. The agent for the FAA contacted me a couple of times and expressed his interest in being very careful about the decision. He wants to make sure that everything is looked at correctly this time and he went ahead and issued the

determination of no hazard. He believes they have met the rules regarding the FAA approval. They complied with the PAD and they complied with the clear zone on the plat and ALTA.

CHAIRMAN FLANDERS asked the applicant if he was aware of the second area that projects at a greater angle off of that no fly zone? Mr. Forst said he became aware of that when he looked into the reversal of the original determination. He had to dig into the FAA guidelines and discuss with their agent what the rules are. He wasn't aware of all of that stuff. When he originally submitted, he submitted the building and site plans and said here's what we want to build. They approved it, then it was reversed. When it was reversed he had to familiarize himself with the rules. That is why he became aware of that. Chairman Flanders asked him at that time when he found that out was there any attempt on your part to modify the building to meet those concerns of the FAA? Mr. Forst said he discussed the building height with them and they reduced the height and the application slightly. When they originally applied, they didn't have the full design done. The second time they had the full design done in terms of elevations. Originally, he thinks he applied for forty feet. He wasn't sure what the building height would be. The second application brought it down a couple of feet because he knows they didn't need the full forty feet. Upon recognizing the building would be approved in its current location, he didn't take any further action to modify it.

COMMISSIONER RIVERS asked how devastating it would be if you made their building four feet shorter? Mr. Forst said what they need to do on the site is to build a two-story building. Half of their lot is unbuildable because of the clear zone. In order to make this project work in terms of square footage of floor area they need a two-story building. Reducing by four feet would eliminate the chance to have a two-story building because the ceiling heights would be too low on each floor. Commissioner Rivers said there are options like moving the building slightly more. The digging of a hole three feet deep to set your building down in would solve the same problem and he was wondering how devastating that would be to their design and costs. He said he was trying to get an idea how really complicated this would be to solve this whole problem. Mr. Forst said he hasn't built a building in the ground like that. Commissioner Rivers asked if this is something they would be willing to entertain or at least discuss? Mr. Forst said he doesn't think the owner of Sun State Builders would want to build that. It would sink your floor into the ground and you would have flood issues. Commissioner Rivers said there are ways to do that. There are buildings that are recessed a little bit. There are more than one way to solve this three or four feet of height issue and he was just wondering if he was open to discussion or not. Mr. Forst said he would prefer not to.

CHAIRMAN FLANDERS said as a follow up to the direction Commissioner Rivers was going, the building itself is more or less like a box but there are other roof configurations that can be used, like a pitched roof configuration would probably clear the area in question along the east side. It does change the profile. It's a nice looking building and to do that would mix it up a little bit. He thinks it is workable to modify the elevation. It doesn't change your interior space; it just provides a different elevation

configuration like a pitched roof instead of a straight parapet. The straight parapet with a flat roof is a lot easier and cheaper to build than with a pitched roof configuration so he can understand. He feels there is a way of modifying the building to achieve that concern as far as the three to four feet. Maybe it needs to be bumped a couple of feet to the west to provide a little relief.

COMMISSIONER CREEDON asked if they think they can work through it, do they continue this to allow him to go back and determine if that's something that they can work within or are they looking to kick it to design review?

VICE CHAIRMAN IRBY stated he was going to recommend a continuance while they and Staff researched some of the issues. One of the items he made a note of was if they are going to ask for another review they are going to look at another 30 to 60 days for the FAA re-verify coordinates and heights. He can see their building is 33 feet 4 inches to the top of the parapet. Their roofline is lower than that. He wanted to ask how low they could get their finished floor and structures to bring the building down even more even though it might not be ideal and still be functional and/or depressing the building a couple of feet. It might be a combination of depressing the floor a foot or two in the combination of changing of floor-to-floor heights and their roof structure. He was going to talk to him about that to see if that is a doable combination or something he needs some time to evaluate along with the FAA re-review. If they do re-review it and they come back and say no that it is a hazard and not a non-hazard, they are dead in the water anyways. Mr. Forst doesn't think the FAA will do that. The basis for the second appeal will be the same as the first appeal. They may want to re-look at the numbers, but the FAA was very careful this time because of Mr. Martin's concern. He believes they looked at it very closely. The FAA as an agency is very conservative from a safety standpoint and the language that Mr. Martin read from the most recent determination was put in their as a result of the fact that Mr. Martin had appealed it and was very concerned. They were showing that they looked at this very close because they did not use that language in the first determination and the building still penetrated that transition surface but they did not use near the same type of language in that first determination as they did in the second. They were giving Mr. Martin some credit yet they still issued the approval. Vice Chairman Irby asked what about the ability to do a continuance and have them take a study of their building heights and finished floor heights? Is that reasonable? Mr. Forst said he would rather not continue it. The FAA thing has already cost them time. They have followed all of the rules. The well outside the clear zone, they went to the FAA to get the determination "no hazard" and they worked with Mr. Dermody months and months on the architecture.

COMMISSIONER RIVERS then asked them if they are not open to any changes whatsoever in this issue? It's either as it is right now or not at all? Mr. Forst answered that they are so restricted by the site and that half of site is unbuildable. If there is a way to shift the building around on the site they would be open to that, but they have looked at a lot of different site plans just in making this one work in terms of getting an acceptable building coverage while half your lot is unbuildable. According to the numbers that the

owners association gave them he can't move the building west far enough to get the four feet that they need. Commissioner Rivers stated suggestions from Commission have included changing your roofline a little and changing your distance between floors. Again, it's a small distance that they are talking about. It would seem to him that people that know how to do these things could sit down and discuss it and come out with a workable solution in a very short time. It sounds to him that Mr. Forst is not open to that at all. Mr. Forst said that is because he has worked on the design of these buildings a lot and he knows that they don't build them higher than they need them but they look out for efficiency all around. He doesn't know if he can get four feet off the top of the building. In doing that he doesn't think that's going to get him anywhere. Commissioner Rivers said it would get them out of the safety zone. Mr. Forst said if they continue this in an effort to lower the building by four feet, he doesn't think it can be done. They can look into it and continue it and come back. He doesn't think they want to depress the floor by four feet and he doesn't think the pitched roof is going to get them there either. Commissioner Rivers said there is one way to find out and sit down at a design review table and figure it out together and see if they can make it work. Mr. Forst asked if there was a way to do it without the delay?

CHAIRMAN FLANDERS said he thinks they would probably like to continue it. It is important for the folks at Stellar that we do look at their concerns as far as getting out of that area. It doesn't seem like a lot in his opinion and he is an architect. Every day they have to figure out different design ways of making items work. He's not saying they haven't done that already but he thinks looking at it again or with a fresh set of eyes on it may provide some additional ideas to them. He understands they have a substantial investment here and they want to move forward to get it going so they can start recouping some of that. From a safety standpoint he thinks they need to address that issue.

COMMISSIONER GULSVIG said he would like to make one more appeal. In his opinion it should go to continuance. The reason for it is that the author of this memo says it is a determination of "no hazard" to air navigation, but they have stipulated that the following conditions be met. The third condition says as a result of this structure being critical to flight safety, it is required that the FAA be kept apprised as to the status of the project. Failure to respond to periodic FAA inquiries could invalidate this determination. So they are at risk. They are making a statement that the structure is critical to flight safety. It says determination of no hazard to navigation. Navigation is one thing, flight safety is another. They do make that statement in there. It's a condition of the structure being built. His point is that this should go to continuance and let all the parties come to an agreement on it. They have a group of people over here that want to sit and talk to you about it. Staff is willing to talk about it. Two more weeks to the next session would be adequate. Right? Mr. Dermody said perhaps. They would need results in one week actually to be able to get it to them in time. It may be worth noting that continuing to the next Planning Commission meeting sends it to the same City Council hearing. Commissioner Gulsvig said then they are not delaying that much. All parties can sit down and really talk through this thing like some of the architects in here are suggesting

that they can re-evaluate their structural component to the building. That is where he would like to go.

COMMISSIONER CASON said he would like the developer to modify the building in order to come out of the trapezoid. What concerns him the most with a continuance at this point is that the members of the Stellar Airpark Association are disputing the numbers that have been presented to the FAA and he is worried about these folks coming together and trying to find a solution. Then all of a sudden the report will come out and it will be different than what they know right now. Then the building will have to be further modified. He would think that they would either deny or that they would want to postpone until they have that third piece of information or the determination from that last appeal from the FAA so that the engineering numbers have been tested enough to be accurate. They need Stellar Airpark's estimation of what they believe to be accurate. If those gentlemen are coming to them and telling them they don't believe the data to be accurate, he has to lean towards them as saying the data is not accurate because he believes if it were, they wouldn't be taking the stance that they are at. They would not have any problem with your build if it wasn't entering the trapezoid and that they believe that is still going to be a problem. He thinks it's premature of them to have any negotiations about the building until they have the final determination from the FAA.

Mr. Forst replied that what they have is the final determination from the FAA. What the owners association says is that they would appeal it if they can't work this out. In the City process, they will appeal it again. It has been appealed and reviewed again and it has been approved. The FAA believes the data is accurate. Commissioner Cason said in response he didn't hear that but there is some dispute that the numbers are accurate and they are going to resubmit. He looks at it as it will either be continued or there will be a motion to deny. He can't possibly see in anyway that it will be approved tonight. The only message that he was trying to get across is that they might be premature in them sitting down together and trying to come up with a compromise if in fact the FAA was going to come out and change the numbers on them again. Then they would have to go through the process all over again. That's the only reason he mentioned it.

CHAIRMAN FLANDERS asked Mr. Martin if they were to continue this for a sit down meeting to try to figure out if it's possible to modify the building to get it out of the trapezoid areas. Is that something that Stellar Airpark people would be in agreement with and then there wouldn't be any appeal to the FAA? Mr. Martin said they would find it appropriate to file the petition, however, they would offer to expedite some research, a survey to validate the coordinates the FAA used in the study. If they did and the building was modified, something could be done as Commissioner Rivers said. If they could get that resolved they may have the potential to contact the FAA and withdraw the petition. Chairman Flanders said that was what he was looking for. Mr. Martin said in his defense, he filed the original petition within a few days of receiving the notice and unfortunately for the developer the FAA took six months. Again, as he stated earlier, they are for the commercial development with certain stipulations and they would be willing to make some accommodations and try to speed it up if possible. Chairman

Flanders said he is trying to accommodate their concerns as far as safety and also make sure the developer can reasonably stay on tract so he can get started. He wants everybody to be able to get together in a timely manner and work out something. It's a lot of work on the developer and his architect to go ahead and get out of those areas and then provide it to Staff in a timely manner so they can at least stay on track. Mr. Martin said they expedite it in any way they can to try to keep their project on track.

VICE CHAIRMAN IRBY said he was going to talk about that it appears that the owner has submitted to the FAA some additional engineering data that they based their second opinion on. Was that also provided to Stellar Airpark Association also? Mr. Martin said yes there was. It was done by an engineering company but their concern is when somebody says where is the end of the runway, is that to the end of the threshold, is that to the end of the pavement, which direction are you taking off and what's considered usable. It is a displaced threshold, a relocated threshold and is it an overrun. They are not confident that the measurements where they were taken are where they were supposed to be. Vice Chairman Irby said but they have given you the information to where they can determine what the FAA was working on. Is that correct? Mr. Martin said absolutely. What they would do is hire a surveyor to go out and see if it isn't the same. If it is, then that's fine.

CHAIRMAN FLANDERS said that seems like a lot more time than they were talking about. Mr. Martin said he could get a surveyor out there to see if the coordinates are where they are supposed to be. It won't take all that long. They would do everything in their power to get somebody out quick. They do have some contacts. Vice Chairman Irby said that being an architect it could take several weeks to get a civil engineer out there. Mr. Martin said he can't speak to whether they can or can't but he does have a few contacts that could probably make it happen quite quickly. He can't guarantee it, but they would try it. Chairman Flanders said he was trying to get them to work within the parameters with what the FAA has already established as far as critical errors such as the heights. Mr. Martin said if the coordinates are the same that they base their study on then they would accept their determination of non-hazard and also along with that their recommendations for the safety issue. Vice Chairman Irby said if you can agree that the FAA is working off the same data that you believe they should be, it appears to them there is obviously a zone to where it penetrates that trapezoid, there is a limit to what point they will start to go – three, four feet. There is a limit to where if it gets up to six or eight then it would be a hazard. He was hoping they could continue it for a certain period of time whether it's two or four weeks to confirm the FAA has the correct data. The same time the owner could take a look at the engineering and design aspects and say I can't lower it any more or maybe I can lower it a foot. So now instead of four feet its three feet or two feet. Can you live with that? Then they can vote yea or nay on it. Mr. Martin said he would like to comment on the point that Mr. Bates made. If it's four feet and it's five feet tomorrow and six feet on the next development, the standard design be adhered to and shouldn't be exceeded. As far as working with them and trying to hurry this up, we'll do everything they can in their power.

COMMISSIONER CREEDON asked how long they had the data. Mr. Martin said the determination of non-hazard was received on October 28. She asked him if that is when you had the data that would determine if the FAA had used the right information to calculate their recommendation to them. Mr. Martin said that showed them what they had for the reference point. That has to do with the building. As far as the reference to where the surveyor measures from to say here is where the runway is, he doesn't know that he has that. Mr. Forst said they resubmitted to the FAA and they have the package. Commissioner Creedon asked if they have had a reasonable amount of time to already check with the FAA to see what they are using for their determination. In fairness to this applicant, he has had it going along and she does want to consider what he needs to do. They could have a number of petitions move forward, but this is what they have to work with. They can't really hold off waiting for four or five petitions to go forward. Mr. Martin said he understands that. The application was re-filed and it gets sent off with the FAA and they found out they did a survey. The coordinates might be there. He is saying they are. At that point, they didn't look at it. They waited to see what the FAA says and there was a big surprise and they still question that the coordinates for the runway are accurate. That's the reason for the petition. Commissioner Creedon asked that they didn't choose to challenge those until now? Why the six weeks delay? Mr. Martin said they just received it a week ago. He doesn't know what they sent the FAA. They sent some documents to him but he doesn't know that he really looked at that at said this is going to be different than what the FAA had. He's not trying to be negligent in the process. Commissioner Creedon said she understands but she's trying to find a compromise but in due respect to the applicant he also has to have a time frame that he can work within. She would support it if they want to continue this and continue it for two weeks so that they can possibly reach a compromise. She wouldn't be in favor of continuing for much longer than that in fairness to everyone involved.

CHAIRMAN FLANDERS stated he was going to close the floor for further discussion and motion.

COMMISSIONER RIVERS asked if they were going to have a design review meeting? Chairman Flanders said they have given the applicant some ideas so he can go back and analyze the building, see what he can do and sit down with Staff to work with all three parties within the period of two weeks. He can comeback at the next Commission meeting.

VICE CHAIRMAN IRBY stated he doesn't think they need a design review board.

COMMISSIONER GULSVIG made a motion to continue this item to the November 21 Planning Commission meeting, seconded by **COMMISSIONER CREEDON**. The item passed unanimously 7-0.

O. UP07-0064 SAN TAN JUNIOR HIGH/T-MOBILE

Request Use Permit approval to install a 65-foot monopalm wireless communication facility on San Tan Junior High School property. The property is located at 1550 E. Chandler Heights Road, west of the northwest corner of Chandler Heights and Cooper Roads.

1. Expansion or modification of the use beyond approved exhibits shall void the Use Permit and require new Use Permit application and approval.
2. There shall be two live Date Palm trees installed and maintained adjacent to the monopalm. The trees shall be of 25' and 30' heights at the time of planting and shall match the monopalm's appearance.
3. The landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
4. The monopalm shall be limited to 60' in height.

MR. BILL DERMODY, CITY PLANNER, stated this is a request for Use Permit approval to have a monopalm wireless facility disguised as a palm tree to be located at the San Tan Junior High School, which is on the north side of Chandler Heights Road in between McQueen and Cooper Roads. This is familiar to most of you because it was before them a few weeks ago as a 65-foot monopalm. In that time, the applicant has agreed that 60-foot would meet his needs. That's a five-foot reduction. This is located approximately in the middle of the site in between athletic fields and immediately east of the school. Several classroom type buildings on the site, athletic fields on the east and then there are single-family homes in several directions. The closest being about 270 feet due east of the proposed location. Along with the monopalm it's suggested and stipulated that there be two live palm trees to help create a more natural grove effect. One of the stipulations would limit the height to 60 feet. With all of those considerations and stipulations, Staff does recommend approval of this request. As you are well aware from the last meeting and from some correspondence that has been handed out, there are numerous neighbors in opposition. There are several in attendance tonight to speak about their concerns.

CHAIRMAN FLANDERS asked if there were any questions of Staff on this item.

COMMISSIONER CASON asked how many people that are on the petition live in the neighborhood? Mr. Dermody said he hasn't done the evaluation of where they live. He is seeing a lot of addresses that could possibly be in the neighborhood. In the 4000 South and in the 1600, 1700 East would be right in that area.

CHAIRMAN FLANDERS asked the applicant to please step forward and state his name and address.

RULON ANDERSON, 3523 E. PRESIDIO CIRCLE, MESA, ARIZONA, representing T-Mobile. He stated he was hoping that Chairman Flanders would go to the speakers and let him come up after. He said that last time he could do nothing because he had engineering that said he couldn't go below 65 feet. He has talked to the engineer since then and they have dropped it to 60 feet. They are really pressing the technical envelope. They are trying to get as low as they can possibly get. If he could have went to 50 feet then, he would have done it. If he could go to 50 feet tonight, he would do it but he can't.

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

CHAIRMAN FLANDERS asked as result of this case, he has noticed in his travels around the valley of different cell towers in varying heights. The lowest he has seen was at Indian School and Hayden Roads. It was about 40 feet. He looked at that and thought is it true that any height is workable. Mr. Anderson replied that 44th Street and Indian School at Pete's Fish and Chips is at 45 feet. The difference is it's more residentially compact and remember how we talked about coverage and we talked about capacity. So whether it's a coverage site or capacity site, the more people that you have on a system, the more radios you have and the lower it gets. He could still do one 6000-foot tower in the middle of town and cover the whole metropolitan complex. But only three people can use their phone at one time. The more people on this system, the more radios you have to have, and the lower it gets. If you are a block and a half away, from another site like we have around Glendale arena (they are 35 feet tall), you can do that. But when you get out into the residential area and you take where this school is located, due west of this is a huge monopole. He almost stopped and took a picture but he didn't have a way to print it and show it to you. But less than ½ mile there is a huge monopole that site 80 feet tall in a Maricopa County island not disguised as anything. This is not a good thing. Not good for the citizens and not good for the City of Chandler. That's what they are trying to protect here. Maximum coverage with as disguised a site as they can do.

LISA MACDONALD, 1653 E. SAN CARLOS PLACE, CHANDLER is opposed to the item and did not wish to speak.

UMOYAK NOVELL, 1710 E. LYNX, CHANDLER, stated she is a resident of Creekwood Ranch. She lives in the cul-de-sac on the very north end, which is right next to the ten-foot easement that all the kids use to walk to the school north of their subdivision between Creekwood Ranch and Symphony. She said they lost half of their group because it has gone so late tonight. There were about 15 of them. Some of the residents who have been there in the past because there have been so many meetings, could not make it back tonight. The residents who actually provided them with the thirty names and signatures could not be here. That was Diane and Jodie Fray. They were the ones that collected those signatures. Not all the signatures were residents – some were parents whose kids attend the school. What they are looking at and why they are opposing it is because of the look and feel of the neighborhood. It's a beautiful

neighborhood. They just don't think it's a good fit. Commission Cason went out to that site and his comment last time that it wasn't a good fit for this neighborhood. It's not just surrounded by a couple homes, it's almost surrounded 70% by residential. In Staff's recommendation it talks about to the north is a park. Yes, the north is a park but it's only north of the building. North of the area that is visible to that pole is Symphony. Everyone in that neighborhood backs up to it and will see it. Everyone who uses the pathway behind her house to get to school, to recreate and to walk to that park to use that track will see it. It's just a dirt track – there are no poles there. There are no trees there to blend in with. There is nothing in that area to blend in with. There's a wall and grass and dirt and there is the football field and there's some mettle netting for the baseball field to the north and south. There is nothing else like a huge high school where you have large fields, large lights, large properties and you are not right next to a resident. This is a long, narrow strip of land that the school sits on. There are no trees blocking the neighborhood and it is very visible from the street and all the neighborhoods. She showed on the Elmo where the walkway is which many people use all the time.

Under the City code, 35-305, states that when you are considering use permits you have to consider the general compatibility of use of adjacent properties. All the adjacent properties are residential. The only difference is south of Chandler Heights they do have some farmland, but still they are large residential lots. He went to them and they said no. He went to the city park and they said no. They went to the school district and the school district said yes because of the money. Residents have called the superintendent and they said yes, this is money for them. They asked if they had considered the residents. They said they are going to agree to disagree. That was the final disposition on that. She understands that it's money for the schools. She is perfectly happy at the high schools that her kids will attend eventually. They are very young right now. She doesn't see a problem with that use. She sees a problem when you have a small school in a narrow strip of land surrounded by homes. Again, homes to your right, left, north and homes even in the southern section. This is not a large school property. So the compatibility with the use of the adjacent properties is not compatible. Again, some of the comments at the last hearing were that there are only a couple of people who will see it. That is not the case and they have pictures that Jordon Fray took. He placed that picture of the monopole that you see off the San Tan and put it in there. It's not too scale because he's not an engineer. He estimated as to what it would like. It's very visible. It's visible from the cul-de-sacs, it's visible from anyone walking to the school, and it will be visible from the park and from all the Symphony homes that back up to the school park to the north. Screening and buffering of uses is a consideration. Simply sticking in an additional two trees is not enough.

The city Staff specifically wrote in their report that other verticality's of similar heights could be placed by right and be expected in the schoolyard setting. She completely disagrees. It is not a huge high school and they are not going to be planting tons of trees here. They are not going to be ever putting up huge light poles to mix in with this use they are asking for. That's never going to happen. It could be expected in a high school setting but not in a small elementary/junior high setting. She doesn't agree with that

statement. Also, she didn't agree with the statement that the location presents no significant negative impact in surrounding communities. She is very proud that she is a top 100 city. Part of that are the five promises. One of those five promises is to maintain healthy, strong, vibrant neighborhoods. She appreciates what they have done for their square mile. It's a beautiful square mile. She is selling her home and is moving to the Fulton Homes just to the north in that same square mile. Although, she won't be directly affected, her kids will be going to the school. She will still recreate there and walk there. She is staying in there because it's a well-planned, well-designed square mile. Sticking a pole 60 feet tall in their square mile and in their school, surrounded by homes, is not a good fit and will never be a good fit. It says because of the monopoles location where such height will be reasonably expected, she can't imagine this would ever be reasonably expected. The height of the school at maximum is 35 feet. Their homes and everything around there is never going to be above 35 feet. It would take 50 years and some strong specific types of trees to ever get to that height to disguise it. There are no plans. Even if there were plans by the school or by the applicant to surround this property along the wall it would never be a good fit or a good use of this property. They are asking for their vote and give a proper recommendation to City Council of a no recommendation. She is hoping not just four this time but the whole panel here based on the fact that this is not a good use. This applicant she doesn't meet the city code requirements of putting forth that they can't do anything else. There is no other reasonable location. She doesn't think they have met that. They are telling her that they do it but there is no outside agency that actually looks at this. She thinks there are better locations than in the middle of a residential neighborhood.

JIM MACDONALD, 1653 E. SAN CAROLO, CHANDER, is opposed to the item but was unavailable to speak.

ALAN PEDERSON-GILES, 1650 E. LYNX PLACE, CHANDLER, stated he also borders the school site. He said he would like to briefly speak to the Commission. In reviewing the requirements since the last Commission meeting for a Use Permit, he came upon Section 2209 of the Zoning Code. It says evidence and justification must be brought up by the applicant to the zoning administrator to demonstrate that sufficient efforts to made to locate the antenna on all such towers and structures within a one-mile radius of the proposed location. It further says no new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. He thinks that the application is deficient on its face. What Staff has remarked on is that an applicant has put forth essentially four locations within a one-mile radius and he will fully admit that the applicant did something and asked the City's Parks Department. They said no. He will also opine that the third option co-location is impractical due to the lack of leasable ground space. That is, at least, the applicant has done something to locate in the third location. The problem he has is the other two locations and he quoted what Staff said. One option is located too far away to provide coverage. Another option is located too close. The applicant has analyzed these and found them implausible. He doesn't think analysis is sufficient effort but he does know that Section 2209 says, "The

applicant demonstrates that no existing tower or structure can accommodate. These being less than desirable locations are not showing these other structures can't accommodate their antennas. In particular, on this one-mile inventory list, items 2 and 3, the applicant only says of item 2 that this location is too far to the east of the desired coverage area and it would encroach and disrupt future coverage designs. That's not a showing that that can't accommodate or even that efforts were made to put an antenna on that existing 65-foot monopole. Similarly, item 3, un-locatable because of its location and it would encroach upon existing antennas and would disrupt future coverage designs. That is a statement that they don't want to put them at either of those locations. In his opinion, it's definitely not a statement that no existing tower or structure can't accommodate. He thinks the zoning code clearly makes that distinction and he doesn't think based on this application that the applicant has met that burden.

He is also the custodian of the aforementioned pictures. A picture is worth a thousand words. One of our neighbors took actual pictures and photo-shopped in an actual picture of a monopalm. They make no claim that they are accurate to the foot and particularly 60-foot. You get an idea based on this picture. It is a wide-open field and the highest thing there is a 30-foot school building. Proposing putting in something that is double the highest structure anywhere around the area would stick out. Mr. Pederson-Giles showed another picture taken from the south side of Chandler Heights Boulevard and of what it might look like from the road to everybody driving by. He also showed a picture from the northeast of the athletic fields. In terms of your review factors, he doesn't think this particular monopalm is consistent with the overall plan. He hopes that it shows the application is non-compliant with the zoning code. As far as general compatibility of use with adjacent property, the adjacent property is residential on three sides and mostly of a uniform height. There are some numbers of signatures of people who couldn't be there; property owners, many of whom bought with the expectation that nothing other than the existing 20-foot backstops and goal posts and things you would normally expect to see at a school. He thinks there is an impact on public services including the school and people who use that field for recreation activities. In essence, he looks at it as a property owner as the installation of a visual nuisance. That's what they are talking about - something that's not usually found in the middle of a ball field at an elementary school. You might be able to camouflage these next to a light pole or next to a big stadium or high school. This property is not of that character. There simply is not anything extending up that high.

In terms of screening and buffering of uses, this is one that it's a wide-open field and you can't screen or buffer it and two half-height trees would not be grove like. If anything, they would accentuate the large monopole sticking up between them.

JAMES KANG, 2315 E. TONTO PLACE, CHANDLER, is opposed to the item and did not wish to speak.

MICHAEL AND NICOLE SABETTA, 1709 E. CANYON WAY, CHANDLER, are opposed to this item and did not wish to speak.

JACKIE MERRITT, 1950 E. SPRINGFIELD PLACE, CHANDLER, stated she is not currently a resident in the area that they are speaking of but she does have a child that attend San Tan Elementary. She relocated her there because she liked the area and was planning on making a move to that housing development until she saw this plan. She asked who performed the radio frequency study because she feels that if it was done by the telecommunications company that they are speaking of it should be considered biased and invalid. This should have been done by an independent third party. Is there actual proof that there would be a hole in the coverage area? Based on the telecommunications act of 1996 they have to prove that there would be a hole in coverage not just that they are trying to provide better service. They can locate elsewhere. A better option is in developed areas where people come and go rather than close to residential areas and where children are required to be at by law. Six hours plus per day. Also, who is going to monitor the radio frequency emissions to make sure that they are within compliance with the FCC standards? They have talked about the 200-foot setback. What is the purpose of the setback? Is that strictly for visual effect or is also to protect structures in case the tower were to fall? In that case, it is too close to the school if it were to fall. It's also too close to where children congregate throughout the day if it were to fall. These cell towers, especially one that is going to be placed in an elementary school, can create what's called an attractive nuisance. Which means children who may dare each other to climb it. They are going to try to get into the cabinets that house the batteries. She thinks it's a safety hazard for children that milling in and around because it's going to be too attractive. They are going to want to be in it, around it, climbing it and it's a fun thing for them to want to do. Her next concern is based on lightning studies and this is sited from a NASA website. There are an increased amount of lightning strikes in areas where radio and cellular towers are. The higher the tower, the higher the probability of lightning strikes. Basically, this causes a lot of concern for the parents and the residents because with the Chandler District year round, the children are in school during the monsoon season. Even if the tower had a buffering system for lightning strikes, everything in that area is still at a higher probability for lightning strikes. Kids are constantly on the playground and it's a high risk for their safety. His next concern is the battery hazard that exists with the tower. It's either above ground or below ground. A typical battery ray is 2,400 pounds of lead and sulphuric acid. Sulphuric acid is on the EPA's of extremely hazardous substances. These cabinets are notorious for explosions and they also become unstable when the temperatures exceed a certain amount. Also, this creates a problem of possible explosion. Again, this is right where children play.

Her next concern has to do with property devaluation. From the home environmental source book, cell towers are listed as one of the environmental hazards to avoid when buying, selling or maintaining a home. From the 1998 American Bar Association Meeting, cellular towers are listed as one of the stigmas that can influence property evaluation for tax purposes. So, if property values decrease, is there going to be a tax change for the people that live in that area? From the Appraisal Journal and Institute from an expert real estate appraiser, he testified at a zone and board hearing, that cell towers dropped property values up to \$50,000. From the Office of Real Estate Research

of Illinois they cited two cases where courts did not require proof that a telecom tower imposed a health risk, but only that the perception that there is a health risk led to a drop in property value. The close proximity to the homes obviously imposes a more negative effect. In closing, she stated she moved to Chandler because she was so impressed with the planning and development of the areas. They have mixed residential areas with open spaces with parks. The business districts blend well in the environment. She knows that the City of Chandler has won many awards for providing a place reflects a vision of high quality but she wonders if allowing cell towers in the middle of a very small residential area is going to be contradictory to that purpose. She feels that the residents in Chandler should have a voice in what goes in and around their neighborhoods and what affects the health and safety of their children. She doesn't think that Chandler wants to get the reputation of treating its community as tenants rather than citizens.

RICHARD SWEENEY, 1789 E. LYNX PLACE, CHANDLER, stated that he lives adjacent to this proposed site. He showed a location where it's being proposed right behind the ball field tall fence. It's indicated that tall fence is adjacent to it. If you are in that area you will know that the height where the ball field is and where the parking lot is located is about 6-foot difference in height. It's an area where a lot of kids play. You can't avoid it because it's right at the field. It's also where cars congregate heavily. He still doesn't see where emergency vehicles could pass, but he's sure they have looked at that. He has had T-Mobile service for a long time and recently changed. He never had a problem in the area. He has asked a few other people and they haven't had a problem with reception. He knows that doesn't speak to how many people or in volume, but when he is at home it's usually during volume times.

Secondly, he is against monopoles at schools, especially at elementary schools. He is thinking they are asking for this not for coverage areas but for a cost savings only. His third point is location that he brought up first. It's described in this work that's written down introducing the proposal as being in between the field and in between two ball fields and that's not necessarily the case. It's triangulated with the whole school. The words brought him to believe that it was right at the end of one of the fields and that's not the case at all. It's even closer where people have to walk and where cars have to travel past. It brings up some questions about fencing. Every time you see these poles you hardly see them unprotected – there are fences usually around them. There is no room if you wanted to put a fence around this, let alone putting two other 25-foot trees right next to them. 25-foot is only the size of the ball field backboard.

The last thing he wanted to see to the location would be some of the barbwire or razor wire that usually surrounds some of these structures that you can see in a lot of different areas. There is no comment about what they will do to protect people from getting inside of it. We've seen kids climbing on the roofs. Being next to the school you get to see a lot of crazy things happen. When they are unsupervised and somebody is going to drop inside that little fence unless you try to keep them out. He is seriously opposed to having barbed wire fence in that area and the location as well. It's surrounded by cement and

this idea that we are going to make it look beautiful in between two trees when there is no room even for that one pole is not true.

Fourth, the height excessive, he agrees on. His fifth point is one safety. Not necessarily radiation, he is an RF Engineer and he understands that very well. He knows they can't vote on it but it is a concern of theirs. The palms that beautify it could also fall off. That would be terrible and we do get high winds. He is sure that there is a pole that has failed somehow. Being right next to the parking lot it might get hit. If you were in the kid's school parking lot where the circle is and they can drive fast around, it wouldn't be too hard to imagine that the car could veer into that. That would leave them exposed to lawsuits. It is just their school or is it our town. He wanted to bring that point up as well as on safety. There's another structure that's highlighted as no. 2 on the one-mile radius and on that fence with barbed wire that keeps you away from the pole, right up against houses and a nursery as a sign that it's unhealthy from humans. It's above the recommended levels. It can happen and these are thermal measurements and it doesn't have anything to do with any of the other types of problems that can harm a human. This is just the temperature of your skin will rise or is known to rise. They have to post it and they did.

The final point is with the lower property values and they are a little disappointed with the school because they spent a lot of hours with family activities and putting money into the schools. There is a lot of ways the school can raise money. He is disappointed at the school.

GARY HATCH AND JANET HATCH, 1930 E. LYNX PLACE, CHANDLER, are opposed to this item and do not wish to speak.

LYNNE HARRIS, 1160 E. POWELL WAY, CHANDLER, is opposed to this item and did not wish to speak.

LAURA CHAVEZ AND ILDE CHAVEZ, 1869 E. LYNX PLACE, CHANDLER, are opposed to this item and do not wish to speak.

TAMMY DREXLER, 2683 S. RINCON DRIVE, CHANDLER, stated that after many years of her children being in a private school she moved them to public school this year. The reason was for the safety of her children. The private school was not taking into account the safety of her children and she knew the Chandler school was good and they would take care of the kids the best they could. A week ago, Tuesday, she was at the dedication of Perry High School, where Dr. James Ted Perry spoke and Dr. Camille Castille was also there. The big issue they brought up, when Dr. Perry was Superintendent of the schools, that he made sure that if it wasn't good for the kids it didn't get done. Anybody that went to Dr. Perry for something, they had to prove that it was good for that school. Dr. Castille also got up and said she was still working under this pretense that it had to be good for the students. She doesn't see where this is.

She stated that in 2004 the German government did a study on people living within 1300 feet of cell tower radiation. They have three times the risk of cancer as a normal person not living in that area. In 2004, a resolution by the International Association of Firefighters, the IAFF, opposed commercial cell towers on fire stations after medical studies showed brain and nerve problems for irradiated personnel. It's been discovered that in L.A. the L.A. Unified School District Board has passed a resolution opposing cell towers on school property after the National Institute of Environmental Health Sciences classified electromagnetic fields as a Class 2B carcinogen. There's an Institute in Germany, ECOLOG, and in 2000 they had completed a study that was commissioned by the telecom giants. They were commissioned to collate known health risks of mobile telecommunication. ECOLOG summary sites everything from DNA damage to infertility and disruptions of the immune and endocrine system.

These kids are going to be there six hours a day and it's a modified year round school. They are very close to it. She doesn't live in the neighborhood but she did pick San Tan because it is a really good school and her daughter will be there in junior high. She doesn't know how and she may be speaking at the wrong place and time right now, she doesn't see how you can look at these kids or grandkids and think that you would put them in a school six hours a day, basically year round, with such a risk. She doesn't understand how you could possibly o.k. that. She certainly would hope that you would take that into consideration. There has been a lot of talk about this monopalm looking funny and she does have a question about that because she understands even though you would put two palm trees next to it, that it could interfere having things around it that the signals and frequencies wouldn't work as well. Her big issue is the health of the children and she is sure everybody here is involved with children's lives. She doesn't know how they can o.k. it – there has to be better options.

RULON ANDERSON, T-MOBILE, stated if anybody noticed how many cell phones rang in this room tonight. They rang for a reason because people depend upon them for everything they do. They talked somewhat last time about E911. E911 says that if there is an emergency, they call this phone and they know where you are standing. They can locate you with GPA based on the phone signal. He doesn't have to be at your home phone, they don't have to go to that address because that's the only thing tied into the 911 systems when you dial from home. He has four married children and not one of them has a landline in their home. They depend on this. If they have a medical emergency in their home guess what they do. All of the neighbors you have heard from tonight and no one is in favor of it either because their phone works o.k. They don't have a problem. But what about there neighbors who aren't here who are going to have a problem. They need to think about that. Everybody is going to see this. That was the second thing he heard tonight. Everybody is going to see this. Everybody always asks me when he goes to hearings, and he goes to many because he has done a lot of sites. This will be the 26th school that he has done in the Phoenix Metropolitan area with T-Mobile. If there were an issue, he wouldn't do it. He has six kids. Everybody says how would you like to look out your living room and see a cell tower. He showed his living room looking out at a monopalm that when he bought that house at a not deflated price because of that. This

tree is a block and a half away. He was painting that room and looked out the window and there was a tree – a monopalm. It was T-Mobiles and he didn't know it but his phone worked great. He didn't have a problem with that. He said yes, you are going to see it. We just listened about potential interference from the other two trees. He showed a site in Las Vegas. Count the cell trees. He showed the two token trees. There are five carriers on palm trees at that site. This is a site that you would do that with. There are no interference issues. He went to a palm tree at this site because the school wanted a light pole up front. They had a neighborhood meeting and the residents that came to the neighborhood meeting said they didn't want a light pole. The school wanted a light pole and he said they all know what light poles look like. This is a pretty typical school light pole. That's the alternative that was presented by the school and this is what they wanted. The school can come in hear and put lights on that field if they want to. State run, exempt from Arizona ordinances for those lights, they can put them up. Because it's an existing verticality he can come in and put it on and he doesn't have to come here. They chose not to go that route. They deferred to what the residents wanted and they made it a palm tree.

He loves the 2209 efforts to co-locate. They have in front of them a recommendation from Staff for approval. Staff does not do that lightly. No they don't. He does his homework and they have gone at odds before. He does his homework. This is the "G" candidate, San Tan Junior High. He has six dead candidates and those are the only the ones that we document to T-Mobile not the ones where we went and approached landowners that said "not interested" – go away. He has to have a willing landlord or he can't do a site. If he doesn't get a landlord he doesn't have the ability like the City does to take the house and build a freeway through it. He doesn't get to that although some people would suggest that we should. But they don't. They play this game to willing landlords. He stated that you will notice that Faith Church of the Valley at 2125 Chandler Boulevard. It was a rooftop on a building- not available; Walgreens monopole – not available. They couldn't get a lease. The Chevron Station at the southeast corner of Chandler Boulevard and Cooper. He couldn't get a lease with them; Redwood Estates at Ocotillo/Cooper, utility pole – not available. They tried to get ground space to mount on a 69Kv light pole, which by the way is a very normal way to do cell sites in the valley. Once again, SRP and APS, they don't own the land and they only have an easement across it. They can't put ground equipment there. Maricopa County site said no. Hence they are here and they have done their due diligence. They have provided the propagation study. He said he showed them a study that was done by their RF Engineers and granted they don't allow Verizon RF Engineers to come in to do an independent propagation study of their design. So, yes, it's a bias study because it's their engineers and their design. He showed the site without coverage; white is bad, green is good, and yellow is marginal. Green is solid indoor coverage, yellow is medium indoor coverage and gray is outdoor coverage. That means your phone works if you are outside. All of the white is bad and that means you don't have coverage. All of the homes in there don't have coverage. They have sites that cover this area.

Mr. Anderson showed where the hole in the coverage is. He stated that some young lady said the FCC in 1990 says six in the Federal Communications Act said you have to prove you have a hole in coverage. There's a hole in coverage. It's white and that means you can't use your phone there. If you do, its incidental coverage. This plugs that gap by putting that site on air. It solves the basic problem they have. That doesn't even deal with capacity and he didn't think in 1996 since T-Mobile came to the valley in 1997, he doesn't think that the FCC had any idea that they would be dealing with the numbers they were dealing with 10 years later in terms of users of cell phones. It's only going to increase. He said he had a picture of Oklahoma City after a Category 5 tornado that destroyed a part of that city. He said what was left behind in its destruction was little sticks. They were monopoles. That's all that was left standing. Utility poles went down and the only thing that stood was monopoles. There has not been a documented case that he has seen of a monopole failing and someone suggested that one might and fall on you. He referred to the statement about them being an attractive nuisance and stated they were at 26 schools. They have never had an issue and they cover their sites. They don't put barbed wire and they cover them across the top. Kids can't crawl into them. He said if they think it's a safety issue drive up on Scottsdale Road and look at the site and outdoor equipment that sits on the side of the road just like the green boxes in your yards. He has a green electrical box in his yard and his kids don't tear it apart. They don't pull it apart and try to shock themselves to death. He doesn't have any overhead power lines in his neighborhood and most of you don't either. They have pretty much gone. The only thing they have is 69Kv lines that come and feed your neighborhoods with power.

He stated he is a licensed realtor in the State of Arizona. He has never seen a documented case of property values declining because of the cell site nationwide. There are no documented cases. There are some opinions from people but as everyone knows prices rise and fall here for no good reasons. It doesn't have anything to do with the cell tower. If you could document it and blame it on one thing, you would be wrong. Fencing around our sites is for protection and they don't interfere. He thinks it is a great site and a great location. The schools recognize that there are no risks to anyone through the use of these sites and that's why they have them. He thinks it provides service for neighborhoods that need them in residential neighborhoods that need them for good reason.

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

COMMISSIONER RIVERS said he believes that this thing has a lightning rod on it. Is that true? Mr. Anderson replied that yes it does and it has ground rings in them. Ground rings are to protect their site because the last thing they want to happen is to have their sites blow up even though there never has been a documented case of a battery cabinet blowing up. With the ground rings they dig down in with great big huge wires from the base of the pole and it has a conduit so that if it gets a lightning strike it goes straight into the ground. When you have a lightning rod on your house, it takes a conduit straight into the ground so that it doesn't spread across your house and start on fire. That is what it is for and every tower has one.

COMMISSIONER CASON asked Mr. Anderson to show on the Elmo his A through F list or his priority list. Mr. Anderson said he printed this off their database at work. Commissioner Cason asked if this was a list of sites where they have checked out A through F and they are left with G? Mr. Anderson said those are the sites where they have done extensive work. Commissioner Cason asked him then that this isn't a list of places they have checked out before they decided to place one at San Tan Junior High? Mr. Anderson replied "yes" it is. Commissioner Cason stated that they went to "A" first thinking that they would be able to cover this area with a pole five miles away from the area? Mr. Anderson said not necessarily first. He said when you design a site, they use rings and if you have a hole in coverage in one place you need to be over here (he showed the spot on the Elmo). Commissioner Cason asked if Site A was not viable then why is it on his list to validate their concern to go all the way to G? He said this was the part he didn't understand and is G truly G or is G actually B? Mr. Anderson said the G is truly G. What happens is they do A, B and C. They are given three candidates. They go work the three candidates until they can't get a viable solution for that and then it moves around. Ocotillo and Cooper is the center of this spot here. If you have driven to Ocotillo and Cooper as he did today, there is nothing there but residential on all four corners. It's not like a normal corner where you have strip malls on all four corners. It's residential to the corners and you have a 69Kv line running there. It can get on a pole because it can't get ground space from the Redwood Estates. Commissioner Cason asked if Ocotillo and Cooper is really A? Mr. Anderson answered that Ocotillo/Cooper became their main emphasis. You will see that there are two sites. He showed the two sites and he said they are proposed future sites. They are working on them now. He also showed the existing sites. If you can't get exactly where you want to get, you have start moving around. They are in the southern edge of the ring. In a non-perfect world they can't get in the middle because they can't force someone to put something on that pole. Commissioner Cason said he granted him that point, but he asked as they are moving around, how did they get all the way to Chandler Boulevard? If you inspecting sites at Chandler Boulevard to get rid of this hole in your coverage, then you are looking at a twenty-five square mile area that you can place a tower in order to cover this coverage? He stated he is confused and why is this on his list? Mr. Anderson said originally they had cut the ring to a different area and they moved the ring because it interfered with the site that they already had. They shifted the ring without reassigning it, which probably killed the first three candidates. He didn't work on the first three. He only started working on it from "D" on. Commissioner Cason said so these candidates aren't places that you've researched for this particular pole. They are just candidates that your engineers just started on. They only partially have any viability for places that you have actually investigated to place the tower.

COMMISSIONER RIVERS said to Mr. Anderson to look at the circle he just drew with the "X" in the middle that would be the perfect location but they can't have. He said if you take the proposed location as being 7:00 there seems to be room out there at 3:00 and up there at noon. He said there appears to be room there at Gilbert and Ocotillo Roads - on the west side of Gilbert Road north of Ocotillo Road. Mr. Anderson said if

you put a site there under the current circumstances, you are bumped right against a tower. Commissioner Rivers said if you put a site where you are proposing, you are bumped right against the proposed one to the left because it's the same distance. Mr. Anderson said yes, but what you have is more capacity issues here because look at the number of homes that you have in the area and you are dealing with the capacity issues as well as coverage issues. That is one of the reasons that the engineer said if we drop the height to 50 feet it creates the need for two more towers. He showed where they would be. This is propagation with the projected site on air. This is a projected coverage. What will actually be covered remains to be seen when you turn the site on. You can predict it, but a prediction is still just a prediction. The others are actual because they are on air. It's not a prediction anymore. What they have here out of these two red dots is prediction not actual. He showed a picture without San Tan Junior High on air. You have huge areas of non-coverage. All their towers are set at 0, which is north, 120 and 240. They are triangulated into a circle pattern. In a perfect world this is a circle. He doesn't provide perfect cover in a circle with a triangulation. Commissioner Rivers said over any land area they have varying heights of buildings and structures and cars and things that are moving all the time. He said to Mr. Anderson that he has all these existing sites and then the proposed site in the bottom of the non-covered area and he is wondering if he has a proposed site somewhere else in that same circle? Would it cover that non-covered area just as well as the one here? Mr. Anderson said no it won't. What you will end up with a site out there and a site out here, etc. etc. That is what will eventually happen because you have to provide coverage and how else do you do it. An Engineer will eventually create a ring that will cover these spots that aren't being covered. Commissioner Rivers said the only spot they are currently concerned with is the one in this original circle he drew. Mr. Anderson said the white goes away and it solves the problem. Commissioner Rivers asked if the optimum location wasn't Ocotillo? Mr. Anderson said it used to be. They couldn't hold it because they couldn't get a site there. The engineers have to keep revising their design.

COMMISSIONER CASON asked how many on his A through G list are south of Chandler Heights? Mr. Anderson answered none of them. Commissioner Cason asked him if he has investigated any sites south of Chandler Heights? Mr. Anderson said he has a site south of Chandler Heights on air. Commissioner Cason asked if he had checked anything out in the first set of properties south of Chandler Heights Road or anything on the south side of Chandler Heights Road? Mr. Anderson said they initially went and talked to some of the people across the street because within a few hundred yards he can do that. A quarter of mile he can't do. Commissioner Cason asked if they were on his list? Mr. Anderson said they don't have everyone on his list that they talked to. Only when they become a viable site do they hit his official list.

VICE CHAIRMAN IRBY stated that over the year's technology changes. When cell towers first started coming into existence, what was the height of them? Mr. Anderson replied that in Dallas/Fort Worth the lowest tower he did was 75 feet and the highest tower was 240 feet and most of them were in that 160 to 240 range. Vice Chairman Irby said the height comes down based on the number of poles and close they are but he

assumes they also change based on technology. Mr. Anderson said yes they used to have a site on top of South Mountain. They no longer have them. It interferes with other sites and confuses your phone to the extent it doesn't know which tower it is supposed to be talking to so it drops you. You can't have the interference with the RF from multiple towers at multiple heights. They try to keep them fairly standard. They drop them where they can; they don't where they can't because of the surrounding heights of other towers that have to talk to each other to keep the continuity of the system. Vice Chairman Irby said his first cell phone was the size of a very large brick and now you can slip them in your pocket. He is assuming maybe cell towers go away completely and we'll end up having satellites. You have gone from 65 down to 60 and obviously in today's technology you can't get down to 50 to make that site work. So sixty is currently the lowest height you can go on this thing? Mr. Anderson replied yes. Vice Chairman Irby asked did he talk to the school or the school said they wanted to put lights on their field? Mr. Anderson said that was correct? Vice Chairman Irby asked if they elected not to do that because of the citizens? Mr. Anderson it was because of the neighborhood complaints. At the community meeting, the neighbors said they don't want to see a light pole here. They went to the school and said the neighbors don't want to see a light pole on that field. Vice Chairman Irby asked him if he was willing to put light poles up? Mr. Anderson said yes. Vice Chairman Irby said if the school could have done it he assumed they would have done it then they would be coexisting on their poles. Mr. Anderson said it's much easier for them to pay for them up front then it is for the school to pay for them and then for them to tear them down and put a new one up. He showed a site in Mesa of an ugly array. Then he showed a site of an array not so ugly. You can go to four-foot rays and he thinks the cities are forcing the carriers. They are forcing them tighter and tighter. Before they were fourteen feet wide with big cat walks. They don't do that anymore. Their technology has come to the point where they can do it on a four-foot array.

COMMISSIONER GULSVIG stated this is a land use issue and this is a commercial monopole going on a school property. The educational system doesn't seem to have a problem with it. From his perspective he has a problem with it going on a school and he is against putting a commercial entity on an education facility. It's not proper land use. Whether it's high or low it and it has nothing to do with the radiation and all those other things, it has to do with land use. He thinks it's an appropriate use of land.

CHAIRMAN FLANDERS closed the floor so they could discuss a possible motion.

CHAIRMAN FLANDERS stated that whether it's 60 or 65 feet or 50 feet it's all the same to him. The technology is always changing. They have approved three or four T-Mobile sites at 50 feet. When they first started seeing all these, Staff had brought to them the 50 feet with two accompanying palm tree, which he thought was great. It was great aesthetically for the where it was going. As far as putting in a schoolyard, he doesn't have a problem with it because he doesn't think there is a health issue here. In lowering it, he believes it does provide a little bit better aesthetics and compatibility for the area that is going. He wants to modify stipulation no. 4 to change it from 60 to 50 feet.

COMMISSIONER CREEDON stated that one of the concerns they had last time when they discussed 50 versus 60 was the fact that they would have to have these facilities somewhere else. To accommodate 60 here would alleviate the need for those elsewhere. That was one of the reasons she was comfortable lowering it from 65 to 60 feet. She asked Mr. Anderson if that has changed at all? Mr. Anderson said it would alleviate the other two sites.

CHAIRMAN FLANDERS said he's not sure he believes that. That is his view of it. He asked if there were any other comments or questions.

COMMISSIONER CASON stated that he still thinks the biggest issue is economy and that anybody will do anything for the right price. He thinks that perhaps the reason that they can't find anything anyplace else is because of the economy of the lease or the purchase of that property. They have gone to the path of least resistance although they couldn't determine that here tonight. He said that once again he is going to stick with that reason to be against it. He thinks they haven't done enough homework to find a better place.

CHAIRMAN FLANDERS entertained a motion. **COMMISSIONER CASON** made a motion to deny UP07-0064 SAN TAN JUNIOR HIGH/T-MOBILE, seconded by **COMMISSIONER GULSVIG**. The item was defeated 5-2.

R. UP07-0087 BARRIO FIESTA OF MANILA

Request Use Permit approval to sell alcohol (Series 12 Restaurant License) in an establishment at 941 W. Elliot Road, Suites #11-14, at the southeast corner of Elliot and Alma School Roads.

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. Music volume levels shall be controlled so as to not present a nuisance to area residences.
3. The Use Permit is non-transferable to any other location.
4. 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.
5. Any substantial change in the floor plan to include such items as, but not limited to, additional bar serving area or the addition of entertainment related uses shall require reapplication and approval of the Use Permit.
- 6. The area adjacent to the establishment shall be maintained in a clean and orderly manner.**
- 7. The Use Permit shall remain in effect for one year from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to, and approval by, the City of Chandler.**

MR. BILL DERMODY, CITY PLANNER, stated this item is a Use Permit request for Barrio Fiesta of Manila, which is an existing restaurant at the southeast corner of Alma School and Elliot Roads. They currently don't serve alcohol, but would like to. They recently expanded from three suites to four, and in the fourth suite they want to have a dance floor and bar, with occasional entertainment such as karaoke. The rest of the restaurant would remain as it is with tables and full-service dining. The request is for a Series 12; at least 40% of all their sales have to be in non-alcoholic beverages and food. Staff recommends approval without a time stipulation, which is typical for this type of license in this situation. Staff does not find any land use concerns. Staff does recommend a stipulation that would prohibit disturbing the neighbors with noise, but don't see any other negative effects on the area.

CHAIRMAN FLANDERS stated he doesn't think Commission has any problems with this request; it was pulled as a result of a speaker card being submitted. He is going to ask the speaker to come forward first, then the applicant can respond to any concerns.

CHRIS ROSSIE, 2702 N. JAY ST., which is behind the shopping center where the restaurant is located. He is one of the original owners in the neighborhood, moving into his house in 1982. As a tribute to the Commission and City Council, he has enjoyed the quality of life here. Approximately 20 years ago he approached Planning Commission and City Council when the Dirty Drummer wanted to move into what may be the same suites that Barrio Fiesta is currently occupying. The issues he presented then are the same issues he is presenting now. The location they want to add alcohol to is across the street from an existing bar, The Priceless Too. It is approximately 1 mile away from Fibber Magee's at Elliot and Dobson. Just beyond that on the northwest corner is a Priceless Prime Time, which is another bar. To the east, the Dirty Drummer relocated to just west of Arizona Avenue and have been in operation there for over 20 years. South there is a Chile's that is an alcoholic beverage restaurant location and there are 2 bars opposite Chile's on the northwest corner of Warner and Alma School. There is another license for Ibiza before the Commission tonight and another license for Hollywood Billiards, which is across the street just north of Barrio Fiesta in the same shopping center where Priceless and a liquor store already exist. There is comment in the application that there is liquor for sale at the Fry's Store and the gas station. There are already enough places for entertainment for liquor to be purchased and consumed in the neighborhood. He would ask Commission to uphold the quality of life they have in that neighborhood. He is concerned that once the application is approved and the restaurant adds alcoholic beverages, adds dancing, adds music that it is going to affect the quality of life in the neighborhood. To go through the process after the fact to address those issues is unacceptable. The fact that the application states live music isn't a consideration now, would only indicate that it may be later. If he were a business owner he would be considering that for future possibilities. He has nothing against the restaurant, the owner, or the business itself other than the quality of life that exists in the neighborhood that he would like to maintain. It indicates in the information there are no businesses in the area that would be affected by this restaurant adding liquor to its operation. He will present to

the Commission that is incorrect. He would agree that the Fry's, Kaybee Toy store and preschool would not be affected in the later evening hours. But there is an IHOP there open 24-hours and it is plausible children would be in and out during the evening hours when they are selling and promoting alcoholic beverages to benefit the restaurant. He feels that could be an issue, and was one of the issues presented 20 years ago. He thinks Commission needs to take the safety of the people into consideration that will be going to those locations. He was not able to attend the neighborhood meeting for this item, however, he talked to the planner on the phone and told him he lived in the neighborhood and had successfully stopped the Dirty Drummer from going into that location. He doesn't want to have to come back after the fact to address these issues, because he doesn't feel its in the best interest of the neighborhood to grant the license for that location. He is asking the Commission to recommend denial of this license.

CHAIRMAN FLANDERS asked if there was anyone else in the audience to speak on this item. There being none, he asked for the applicant response.

MR. NELSON REYES, 11161 E. FLOSSMOR CIRCLE, MESA, stated he is the owner and manager of Barrio Fiesta Restaurant.

There were no questions of the applicant.

CHAIRMAN FLANDERS asked staff how many restaurants in this area have a Series 12 license. **MR. DERMODY** responded the only active Series 12 license he is aware of at this intersection is a Chinese restaurant on the southwest corner. Chairman Flanders asked if the bars in the area are all Series 6 and 7. Mr. Dermody responded that is correct. Hollywood Billiards is before Commission tonight and would be a Series 6 or 7, once approved. The Fry's and the gas station are Series 9 and 10.

CHAIRMAN FLANDERS commented that, for the most part, this is more restaurant than anything.

COMMISSIONER CASON asked staff to explain why there isn't a time limit on this liquor application. Mr. Dermody responded typically when there isn't a perceived land use conflict, such as live music outside or bands performing regularly, historically a Series 12 in a shopping center doesn't have a time limit. An exception to that is Ibiza Blue which is also on the agenda tonight. That site had been a Series 12 in the past, even though it's most recently a 7. That had time limits on it because the neighbors had been complaining. With the neighbor being concerned in this case, it wouldn't be completely out of precedent to have some sort of a time limit. Staff wouldn't be opposed to it, although they are recommending there isn't one.

COMMISSIONER RIVERS stated his concern is the connection between the liquor license and extended hours of operation. Specifically, they will be having music and dancing until 2:00 a.m. The business that will attract won't be nearly as much without a liquor license. He is very much in favor of a one-year time limit if Commission approves

this so at the end of a year they can see how much it is affecting the neighborhood before allowing them to continue.

CHAIRMAN FLANDERS closed the floor and asked for discussion and comments among the Commission.

COMMISSIONER GULSVIG asked if the Commission was willing to ask for a one-year stipulation on this case. **CHAIRMAN FLANDERS** responded that Commissioner Rivers thought that was a good idea so he thinks that would be appropriate.

COMMISSIONER RIVERS stated he would like to formally ask for that stipulation. Also, during study session there was discussion on adding a stipulation regarding keeping the area clean and litter-free. **MR. DERMODY** stated that the motion maker would probably want to add a 6th and 7th stipulation to cover those areas. New #6 would read 'The area adjacent to the establishment shall be maintained in a clean and orderly manner.' New #7 would read 'The Use Permit shall remain in effect for one year from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require reapplication to, and approval by, the City of Chandler.'

MOVED BY COMMISSIONER RIVERS, seconded by **COMMISSIONER CREEDON**, to approve UP07-0087 BARRIO FIESTA OF MANILA for liquor sales subject to the conditions recommended by Staff. The item passed unanimously 7-0.

CHAIRMAN FLANDERS relayed to the resident this item will go before City Council on December 13, 2007.

VICE CHAIRMAN IRBY asked if this establishment is restricted from having live music. **MR. DERMODY** responded typically live bands would be allowed. If Commission wants to disallow live bands, the motion should probably be reconsidered with an 8th stipulation that states 'recorded music only.' Vice Chairman Irby stated he was just curious because it says recorded music and he wondered if that forced them to only have recorded music. Mr. Dermody responded historically there hasn't been a distinction. If the music is amplified it's treated the same way.

T. UP07-0098 IBIZA BLUE RESTAURANTE
Request Use Permit approval to sell liquor for on-premise consumption only within a restaurant (Series 12 Restaurant License). The restaurant is located at 1964 North Alma School Road, within the Pollack Warner Plaza at the southwest corner of Warner and Alma School Roads.

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 shall remain in effect for three (3) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
3. The Use Permit is non-transferable to any other location.
4. No alcohol shall be carried outside of the building into the parking lot or off-premises.
5. 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.
6. Any substantial change in the floor plan to include such items as, but not limited to, additional bar serving area or the addition of entertainment related uses shall require reapplication and approval of the Use Permit.
7. No noise shall be emitted so that it exceeds the general level of noise emitted by uses outside the premises of the business. Such comparison shall be made at the western property line.
8. Customer access into the restaurant from the rear (alley side), or south (Stottler Street side) shall be prohibited.
9. Security shall be provided when there is live entertainment.
10. A system will be set up with a responsible party for the neighbors to have access to for any concerns.
- 11. The area adjacent to the establishment shall be maintained in a clean and orderly manner.**

MR. BILL DERMODY, CITY PLANNER, stated this item is a Use Permit request for Ibiza Blue Restaurante, which is located in four suites at the southern end of a shopping center at Alma School and Warner Roads. Earlier this year they came forward as a new restaurant in a space that has been inhabited by many businesses over the past decades. They were approved for a Series 7 license, which allows wine and beer. They are now asking for a Series 12 restaurant license so they can serve Margaritas in addition to beer and wine. This site is a restaurant and also has a significant live entertainment component. There are pool tables and a stage inside. In early 2007, noise was a major issue. The police were called quite a bit. However, the business owner took drastic steps to reduce the noise problems, adding insulation, fixing doors and windows, etc. Eventually it got approved because the problem had died down. At this time, staff has received input from two neighbors who are opposed, and possibly more people speaking tonight. A neighbor a few doors south complained about litter on his front lawn, mainly beer cans. Staff doesn't believe that came from the subject site because they don't sell beer cans, they only sell bottles which are not supposed to leave the premises at all. Commission has a letter from Lisa Lugar, a neighbor immediately west. She is familiar because she has been watching this site. She had major concerns with the noise earlier in 2007. She reports at this time noise hasn't been a major problem. Staff's research into police reports over the last 6 months verifies that noise has become less of a problem. However, Ms. Lugar is against a Series 12 because it would add hard alcohol to the types of alcohol they are already allowed to sell, which would lead to more drunkenness, rowdiness and noise. As mentioned, staff did an analysis of the police reports looking at

the 6 months leading up to their last approval and compared it to the past 6 months. There has been a drastic reduction in calls, including those regarding noise. This request is to change their license from a Series 7 to a Series 12. It's a new license, however, staff recommends a 3-year time limit because they have essentially been under a probation period with their Series 7. Staff feels that would be fair to them, and also to the neighborhood. Staff recommends approval subject to a number of stipulations having to do with the noise which are repeated from their earlier approval, to make sure it's not a problem for the neighborhood.

CHAIRMAN FLANDERS stated going from a Series 7 to a Series 12 is a less intense use. They have to serve more food, which would cut down on the other activities in his opinion. **MR. DERMODY** responded that staff agrees. However, the neighbor does not.

COMMISSIONER CASON asked staff when the Series 7 license was approved. Mr. Dermody responded it was approved by City Council in April; he believes it came before Commission in January or February of this year. Commissioner Cason confirmed with staff it's been almost a year since the applicant has been complying with the issues brought up earlier. Mr. Dermody responded they had some problems in between Planning Commission and City Council; but have basically been good neighbors since April.

CHAIRMAN FLANDERS stated he had one speaker card from the audience and is going to have them speak first and then the applicant can respond.

MR. JOSEPH MORANDO JR., 1814 N. APACHE DR., stated he has lived in his home for 16 years. He has watched many owners and managers come and go in that unit over the years. He has great concerns because out the back door is the easement to the plaza for delivery vans, a wall, an alley, the back wall of a row of homes, and the street he lives on. He's about 400-500 feet from their back door. It's probably more of an issue with neighborhood and the clientele than it is with any particular owner, with the exception of a couple instances. When the latest owner came in, he decided to really pay attention to the notices that were sent to him concerning their alcohol usage. Over the years, this is probably one of the better-managed operations in this site. Commission has already addressed many of his concerns, one of them being litter and one being noise. Noise has been a problem off and on, however, he works nights and doesn't know what happens before midnight. In the last 3 weeks, at 1:00 a.m., he has noticed a significant increase in noise. The noise appears to be coming out their back door, which directs it towards his part of the neighborhood. The noise is increasing even though staff has reports it has gotten better. It's not horribly obnoxious, but he can't go home and go to sleep. Shortly before 2:00 a.m. when it's time to shut down, the noise is gone. For the last week and a half his wife has had to dodge broken bottles in the street. In the past, this happened on an occasional basis but in the last 3 or 4 weeks it seems to be more. They can't just point at the manager and owner and say they did it; it goes back to the clientele. His concern with their request for the license is that it keeps escalating and is at the point he is concerned about a repeat of the last 12 years. In the last 12 years there has

been a lot of rowdiness at the location from different establishments. It's usually late at night. There have been several fights in the parking lot, but that wasn't his concern. His concern is that portion of Apache Dr. is used as a shortcut between Alma School and Warner. Even though Apache is supposed to run parallel to Alma School, the way it's set up it is almost a 45-degree shortcut between the two streets at the southwest portion of the intersection. There are a lot of speeders late at night that he has observed coming directly out of that bar. He has confronted many of them by jumping out in the street. Most of them slow down. Now he has problems with a construction crew there driving 30-35 mph in a 25 mph zone. With the increased liquor approval, he feels that situation will get worse. More than that, he has been personally involved in two shootings in that area because he gets in his car and chases the shooters. He sees the car and the guy running, who just came out of that establishment shooting people in the parking lot. It's not the owners and managers fault, but the neighborhood has to live with the situation of the clientele. As was mentioned in the previous case, there are several availabilities for alcohol in the area already. This particular establishment is about a mile from the previous case discussed. He's watched this neighborhood go from families with young children to the families moving out as the children have gotten older. Most of the homes are going into rental situations with young children. Their street is a high usage street from this whole plaza because it's a shortcut. He is asking Commission to deny an increase in alcohol usage at this establishment. If it is approved, he would like to see a probationary period so the issues can be revisited.

CHAIRMAN FLANDERS asked Mr. Morando if he has talked to anyone at the City regarding the traffic issues. **MR. MORANDO** responded he has not because it's not a non-stop traffic situation. It varies from one week to the next. He has talked to the police on several occasions when they have been called out to this location.

CHAIRMAN FLANDERS asked the audience members if anyone else would like to speak on this item. There being none, called for the applicant response.

MS. LORI TAPIA, 1964 N. ALMA SCHOOL RD., stated the reason they are requesting a Series 12 license is because their restaurant is increasing, and that's what they're looking for. They would like to provide that service to their customers. For the record, they did start out with a lot of issues. There was a previous reputation, sound issues, etc. They have done everything possible to make sure they become part of the community and not a nuisance. If something happens with sound, she spends a lot of time in the alley and ran into a police officer one night who was doing the same thing. They are a family owned and operated restaurant. They have the live music because they are competing with other restaurants and it's not as easy to get people to come in to the smaller places. They are in total compliance with all the stipulations. They have the live security as requested; bottles do not come out of building. People get checked when they come in and when they go out. The Liquor Board asked her that the other day when they came to the restaurant. She told them that wasn't an issue for them because they are already prohibited from having off-premises sales. They are fine with that. Obviously, she can't control what happens with people in their cars. What happens in their premises

and around their premises they take care of very carefully. They walk the premises every night before they leave and if there's any litter they pick it up. They are working very hard to make sure they're not a nuisance to the community.

COMMISSIONER RIVERS asked the applicant if she would have an objection to a time limit on the Use Permit. **MS. TAPIA** responded she doesn't have an objection to a time limit, but would prefer the 3-year limit because she feels they have been through a probation period already. They have been open for a year and 2 weeks the 18th of November. Police records show they have done everything possible. They have a well-maintained place.

CHAIRMAN FLANDERS closed the floor for discussion and a motion.

MOVED BY COMMISSIONER CREEDON, seconded by **COMMISSIONER KELLEY**, to approve UP07-0098 IBIZA BLUE RESTAURANTE subject to the conditions recommended by staff and adding condition #11 which reads:

'The area adjacent to the establishment shall be maintained in a clean and orderly manner.'

Item passed unanimously.

7. DIRECTOR'S REPORT

There was nothing to report.

8. CHAIRMAN'S ANNOUNCEMENTS

The next regular meeting is November 21, 2007 at 5:30 in the Council Chamber, 22 S. Delaware Street, Chandler, AZ.

9. ADJOURNMENT

The meeting was adjourned at 10:13 p.m.

Michael Flanders, Chairman

Douglas A. Ballard, Secretary