

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF CHANDLER, ARIZONA, November 18, 2009 held in the City Council Chambers, 22 S. Delaware Street.

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

Chairman Michael Flanders
Vice Chairman Michael Cason
Commissioner Leigh Rivers
Commissioner Kristian Kelley
Commissioner Kevin Hartke

Absent and excused:
Commissioner Christy McClendon
Commissioner Stephen Veitch

Also present:

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

4. APPROVAL OF MINUTES
MOVED BY VICE CHAIRMAN CASON, seconded by **COMMISSIONER RIVERS** to approve the minutes of the November 4, 2009 Planning Commission Hearing. The motion passed 5-0 (Commissioners McClendon and Veitch were absent).
5. 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 the agenda and the consent agenda will be approved by a single vote. After Staff reads the consent agenda into the record, the audience will have the opportunity to pull any of the items for discussion. Items H and I were pulled for action.

A. APL09-1001 SOUTH ARIZONA AVENUE DESIGN GUIDELINES

Approved to continue to the December 16, 2009 Planning Commission Hearing.

Request to adopt design standards that will guide the building architecture and site design of developments requesting Planned Area Development (PAD) zoning, which are located along Arizona Avenue between Chandler Boulevard and Pecos Road, excluding the historic downtown square. **(REQUEST CONTINUANCE TO THE DECEMBER 16, 2009 PLANNING COMMISSION HEARING.)**

B. DVR09-1002 / PPT09-1101 AVIAN MEADOWS

Approved.

Request rezoning from Agricultural (AG-1) to Planned Area Development (PAD) along with Preliminary Development Plan (PDP) and Preliminary Plat (PPT) approval for subdivision layout of a 200 lot single-family residential subdivision on approximately 62 acres. The subject site is located north of the northwest corner of Lindsay and Chandler Heights Roads.

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 5, Development Booklet, entitled "AVIAN MEADOWS", kept on file in the City of Chandler Planning Services Division, in File No. DVR09-1002, 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. Preliminary Development Plan approval as granted herein shall apply to the subdivision layout only. Housing product shall require separate PDP submittal and approval.
12. 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 Avian Meadows development shall use treated effluent to maintain open space, common areas, and landscape tracts.

13. Rear setbacks for accessory structures shall maintain the same rear setback as determined by the number of stories for the home.

14. Prior to the time of making any lot reservations or subsequent sales agreements, the home builder/lot developer shall provide a written disclosure statement, for the signature of each buyer, acknowledging that the subdivision is located adjacent to or nearby an existing dairy farm and animal privileged properties that may cause adverse noise, odors, and other externalities. The "Public Subdivision Report", "Purchase Contracts", CC&R's, and the individual lot property deeds shall include a disclosure statement outlining that the site is adjacent to or nearby an existing dairy farm as well as other agricultural properties that have cow, horse, and other animal privileges, 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.
15. **All homes built on corner lots within the residential subdivision shall be single story.**
16. **When two story homes are built on lots that back up to Lindsay Road, a 20-foot separation shall be provided between homes.**
17. **No more than 2 two-story homes shall be built side by side for lots that back up to Lindsay Road.**

Staff recommends 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.

C. UP09-0042 STORAGE SOLUTIONS MONOPALM

Approved to withdraw.

Request Use Permit approval to install an approximately 58-foot monopalm wireless communication facility within the Storage Solutions development at 2100 W. Elliot Road, west of the northwest corner of Elliot and Dobson Roads. **(REQUEST WITHDRAWAL.)**

D. LUP09-1005 TONIC

Approved.

Request Use Permit approval to allow the sale of liquor (Series 6 Bar License) for on-premise consumption only indoors and within an outdoor patio at a new lounge/bar located at 3400 W. Chandler Blvd., Suite 5, which is west of the Loop 101 Price Freeway and north of Chandler Boulevard.

1. The Use Permit is granted for a Series 6 Bar License only, and any change of license shall require reapplication and new Use Permit approval.

2. Expansion, modification, or relocation beyond the approved exhibits (Site Plan, Floor Plan, and Narrative) shall void the Use Permit and require new Use Permit re-application and approval.
3. Any substantial change in the floor plan to include such items as, but not limited to, additional bar serving area or additional entertainment related uses shall require re-application and approval of the Use Permit.
4. The Use Permit is non-transferable to other restaurant locations.
5. No noise indoors or outdoors shall be emitted beyond the boundaries of the building so as not to disturb adjacent businesses and residential areas.
6. The rear door to this business shall remain closed and not propped open during businesses hours and shall not be used as a customer entrance or exit.
7. The site shall be maintained in a clean and orderly manner.
8. The patio shall be maintained in a clean and orderly manner.

E. LUP09-1006 GRILLE AT LONE TREE GOLF CLUB

Approved.

Request Use Permit approval to allow the sale of alcohol (Series 12 Restaurant License) for on-premise consumption only within an existing restaurant and outdoor patio. The subject site is located at 6262 S. Mountain Blvd., which is approximately ½ mile west of the southwest corner of Riggs and Lindsay Roads.

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

F. LUP09-1010 OCEAN BLUE CARIBBEAN RESTAURANT AND BAR

Approved.

Request Use Permit approval to allow the sale of liquor (Series 12 Restaurant License) for on-premise consumption only within a new restaurant. The property is located at 6140 W. Chandler Blvd., Suite 3, which is the northwest corner of Chandler Blvd. and Kyrene Rd.

1. The Use Permit is granted for a Series 12 Restaurant License only, and any change of license shall require reapplication and new Use Permit approval.
2. Expansion, modification, or relocation beyond the approved exhibits (Site Plan, Floor Plan, and Narrative) shall void the Use Permit and require new Use Permit re-application and approval.

3. Any substantial change in the floor plan to include such items as, but not limited to, a bar serving area or entertainment related uses shall require re-application and approval of the Use Permit.
4. The Use Permit is non-transferable to other restaurant locations.
5. The site shall be maintained in a clean and orderly manner.

G. LUP09-1011 SANDSTONE CAFÉ

Approved.

Request Use Permit approval for an extension of premises and to allow the sale of liquor (Series 12 Restaurant License) for on-premise consumption only within an existing restaurant. The subject site is located at 4959 W. Ray Road, Ste. #38, which is located at the southeast corner of Ray and Rural Roads.

1. The Use Permit is granted for a Series 12 license only, and any change of license shall require reapplication and new Use Permit approval.
2. 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.
3. The Use Permit is non-transferable to other store locations.
4. 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.
5. The site shall be maintained in a clean and orderly manner.

J. CANCELLATION OF THE DECEMBER 2, 2009 PLANNING COMMISSION HEARING.

Approved to cancel the December 2, 2009 Planning Commission Hearing.

MOVED BY COMMISSIONER RIVERS, seconded by **COMMISSIONER HARTKE** to approve the consent agenda with additional stipulations as read in by Staff. The consent agenda passed unanimously 5-0 (Commissioners McClendon and Veitch were absent).

ACTION:

H. LUP09-1012 REGAL BEAGLE

Request Use Permit approval to continue to sell alcohol (Series 6 Bar License; all spirituous liquor) in an existing restaurant located at 6045 W. Chandler Blvd., Suite #7, within the Kyrene Village Shopping Center.

1. The Use Permit granted is for a Series 6 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. No alcohol shall be carried outside of the building into the parking lot or off-premises. Sales of “to-go” liquor shall be prohibited.
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 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.
7. Any outdoor music shall be non-amplified acoustic and performed by a single person. Neither indoor nor outdoor music shall disturb area residences.
8. Transfer of ownership shall require a new Use Permit.
9. The applicant shall provide security on the weekends, if necessary.
10. The applicant shall maintain a liaison program with the adjacent neighborhood that allows neighbors to directly contact a representative of the establishment with their concerns.
11. The applicant shall work to mitigate litter issues resulting from the use.
12. The patio and surrounding area shall be maintained in a clean and orderly manner.

MR. BILL DERMODY, SENIOR CITY PLANNER, stated this is liquor Use Permit request. He said this would probably be very familiar to all of them. It has been in front of Commission and Council several times in recent years. A couple of years ago they had a change of ownership, then one year ago they were looking for an extension and added some music or at least the right to conduct music on their patio. They are coming back this year to get an extension of that 1-year permit and amend how music is played. This is for a Series 6 License. It used to be a Series 12 Restaurant License and changed to a Bar License due to the inability to meet the food requirements. This is at the southwest corner of Chandler Boulevard and Kyrene Road and the shopping center anchored by Bashas. He showed on the Elmo where the bar is located. It is on the northeast corner. The white portion is the former Bashas currently vacant.

A couple of years ago they had quite a few noise complaints generated by this facility. They had music on the patio in violation of their conditions and they received quite a few complaints in this neighborhood on the other side of Kyrene Road and they will be hearing from some of those neighbors this evening. He showed the floor plan and the wall between indoors and outdoors. Most of it is indoors. Music that has occurred indoors has not been a problem has not been a problem either in the past year or in years' prior. It is only what has happened on the patio. It was a condition approved a year ago that music would be allowed on the patio, which is different from prior approvals that it

be limited to acoustic music only, non-amplified and performed by a single musician. The bar had agreed to that condition at the time but they haven't actually had music on the patio reportedly for most of the last year. They haven't found that to be palatable to their performers. They only have had music on the inside. With Bashas closed they have tried to make money at this facility by bringing patrons in and that has driven their request to enhance the patio and make it a more fun environment and bring back the amplified regular type of music on that patio. They have heard from the neighbors this time. They heard from them last time. Their concerns are pretty consistent, although they did have one concern about drunken people wandering through the neighborhood. Other than that most of the concerns have revolved around noise. Basically, they are not diametrically opposed to music on the patio, but they are opposed to music they can hear in their homes. For some of the neighbors, the times that they are particularly concerned about are anything late at night. Staff does recommend approval of this request but with the same condition in place that was in place a year ago that music on the patio be limited to acoustic only, non-amplified and performed by a single musician. A couple years ago it was proven that amplified music was not working on the patio. It was a nuisance to the neighbors and until they are able to review a sound containment plan that is satisfactory they would not change that recommendation. It may be possible to have amplified music but it certainly can't be done as it was done a couple of years ago. He stated a few minutes ago he passed out a revised narrative on the second page of which there is a sound containment plan. Staff is not accepting of that at this time until they have had a chance to look it over. They have questions and if amplified music were allowed, they would want to continue this issue for further evaluation and to bring others into the process and into the discussion within the Planning department. As it stands, they do recommend approval without changing that music stipulation for an additional three years. Mr. Dermody said he would be glad to answer any questions.

CHAIRMAN FLANDERS asked in regards to the sound containment plan they received, they have not had time to review this at all then? Mr. Dermody said they received it a few minutes ago so that is correct. **CHAIRMAN FLANDERS** asked if they would need time to review that - possibly two weeks or so to talk with other members of the Planning Staff to see if it works or not. Mr. Dermody said since that cancelled the meeting that occurs in 2 weeks this would go to the December 16 Planning Commission if it were continued. **CHAIRMAN FLANDERS** said that would give them a full month then. Mr. Dermody agreed with him. He also said that it is his understanding that the applicant does not want to do that. They want to be able to have live music their way, amplified, as soon as possible. They would like to discuss this matter and they don't want it continued. With that in mind, they will stay with their recommendation as it is in the memo.

CHAIRMAN FLANDERS asked if there were any questions of Staff.

RAUL GARZA, 15550 S. 5H AVENUE, PHOENIX, stated he is there on behalf of Greg and Lisa Stanfield and the Regal Beagle. He is a business consultant that does other work for them including handling these matters here tonight. He said he would like to

point out is that they have been working very hard to get a comprehensive plan together that will satisfy all of the parties and the constituents involved. They would like the opportunity for the City and Planning to evaluate what they have discussed and what they amended. Through no fault of Mr. Dermody, he sent this document well over a week ago but he was unable to open it. He sent it again a second time and it still couldn't be opened so he printed it out for them tonight. With all due respect to Mr. Dermody and to the members of the Commission, they would be willing to table this matter to the next meeting so that the applicant and Planning can talk a little more about the comprehensive noise abatement plan and address some of those concerns. If it requires that they do that on December 16, they would be willing to do that. He didn't know based on Mr. Dermody's comments if that is something they are willing to do, but they are willing to do that.

CHAIRMAN FLANDERS said that typically when they get additional information the day of the meeting, a lot of times he won't consider it and he will go ahead and continue it so Staff has time to look at it and they have time to look at it. He stated he is going to go through the process here because there are neighbors that have provided him with speaker cards. He thinks probably a continuance is the best thing to do so their Staff has the ability to go ahead and review it and sit down with him and make any adjustments. Also, if there were neighbors involved, they would need to understand what that is all about.

COMMISSIONER HARTKE said it mentions in the e-mail that he brought today asking for live music 2 nights of the week. It might be helpful for the neighbors to know which nights he is talking about. Mr. Garza said he is talking about 2 nights, Wednesday and Saturday nights from 6:00 to 10:00 p.m. – no later than 10:00 p.m. He can get into the substance of what they have come up with and what they believe to be a workable plan, but if they are going to be entertaining a continuance, perhaps maybe a later date is best. He has met with both of the neighbors here tonight. They have discussed which nights and the actual times that they would be having the music. The patio is a focal point. As Mr. Dermody correctly stated, without Bashas the anchor, a lot of the foot traffic and a lot of the business that is generated from people being in the shopping center is just gone. That was the huge anchor and they have struggled mightily. This artist has been working with himself and others to understand and completely comprehend the gravity of the noise and how it needs to be done in the future. He said he had no doubt that has been conveyed, communicated and agreed and acknowledged. What they are trying to do now is get to the bottom line, speak with the neighbors, which they have done, address those concerns fully and move forward hand in hand to have a workable plan. They believe they can do that. They want to make sure that Planning does have the time they that need to go over those things. So it is 2 nights, 6 to 10 p.m. and no later than 10:00 p.m.

COMMISSIONER RIVERS stated that what they have in front of them is a request for the continuation of a Use Permit as is for three years. If he wants to change the ground rules of the permit, he would then be subject to a one-year trial period again. One year

trying the new rules to see if they work so that they would have recourse if they didn't. Would he be amenable to that? Mr. Garza said yes, he has discussed that with Greg and Lisa and that is the good faith that Regal Beagle wants to extend. This is not a 'let's see if we can fix it for a month' and then go back to doing things the way they were. As he has explained to Greg and Lisa and to all that have listened, this is a comprehensive effort to fix the problem once and for all. **COMMISSIONER RIVERS** said right, but as he said to the gentlemen last year when they did this, it would behoove him at that time to work with the neighbors and come to some kind of agreement that would be wonderful for everybody and not just for him. He guesses that hasn't been done. Now they are going to try and figure out how to do that because as he said again, last year, it is really important that he realize that his neighbors are his best assets. If they like his property, they are going to recommend it and they are going to come there themselves. It is really important that they work with the neighbors and he is in total favor of continuing this for a month so that he can work with the neighbors and work with Staff and perhaps come up with something that will work for everybody and they will try that for a year and he thought that was a good plan. Mr. Garza replied that working with the neighbors is paramount. They have instituted a community liaison program. He has spoken to the neighbors about that and how that would work on the nights that there would be music. There is a dedicated line and there is Staff and folks that are going to be answering those calls. They feel based on what they have come up with in our agreement with the person that is going to be doing the music that they are not even going to reach that level. What you will hear tonight is that they don't want to hear it in their house, as they shouldn't. The position of the Regal Beagle is that they be granted the opportunity to have music to continue to generate the business that needs to sustain this business during the months where the patio is the focal point of this business. That would be the goal and the measure of the success. **COMMISSIONER RIVERS** said he agrees with him and he can't wait to hear what the neighbors have to say regarding this issue.

CHAIRMAN FLANDERS went to the audience and asked when he called their name from the speaker card to please step forward and state their name and address for the record.

DARKO ROSIC, 5981 W. COMMONWEALTH, CHANDLER, said his residence is basically on the first street right on the corner. He pointed it out on the map shown on the ELMO. He is one of the closest residences to the Regal Beagle. First thing, last year they had very little music if at all. So it wasn't a problem. They say they have been trying to work with them. Since he is one of the closest, he has never received anything in the mail about what they were trying to do. All of the information he received was from his other neighbors. That is his first complaint. He said he has a question on the patio size. What is the occupancy of the patio? How much music are they going to have there? Amplified music when they had it, they could hear the bass inside their house. That was their major complaint.

CHAIRMAN FLANDERS said those are some questions that Staff could answer.

BILL DERMODY, SR. PLANNER, stated the patio is 1200 square feet but he didn't know what the fire code capacity was on that, but he does have another case where they assume about 10 square foot per person. So maybe if you really packed it in, you could get over 100 people out there. Realistically, being out there and with the bar occupying some of the space, you are probably talking substantially less than 100.

DARKO ROSIC said he has been to the Regal Beagle for the football games on Sunday and that patio space, the bar takes a lot of it up, the tables take a lot of it up and it has columns in there so he thinks 1200 is stretching it.

CHAIRMAN FLANDERS said seating capacity looks to be about 40 to 50 people.

COMMISSIONER RIVERS said he now knows where he lives and he asked when there was a problem with the music over a year ago, when they were hearing the music in their home, were they hearing the music in their home with their doors and windows closed or open? Mr. Rosic answered their doors and windows were closed. He thought it was one of the neighborhood kids with a boom box in his car and it wasn't. **COMMISSIONER RIVERS** said so actually the level of noise was vibrating your home. Mr. Rosic said yes.

CHAIRMAN FLANDERS asked how has it been? Mr. Rosic said it has been real good lately. All year long there has been no complaints at all. **CHAIRMAN FLANDERS** asked if the present owner is the gentleman that owned the establishment before when they had so many problems? Mr. Rosic said he never called to complain so he doesn't know. **CHAIRMAN FLANDERS** said he was just curious about that.

PAM ROSIC, 5981 W. COMMONWEALTH, CHANDLER, stated she has been at this residence about six years. She said her major concern has always been the noise. In stipulation 7 it says neither indoor nor outdoor music shall disturb the area residents. It has been so nice last year and not having to worry. They did do a test run but it is not the artist that they had to complain about. The test run was fine and they didn't hear it. But Alphonso is the one that plays the Caribbean music with all of the bass and the really loud music. In order to try and get Alphonso to actually be the one to play so they could see what the difference in what they had done to the patio would make. She tried to reach Raul who is their mediator on three different occasions and she couldn't even leave a message because his voice box is full. So she gave up trying to get a hold of him. If that is going to be the same kind of situation when they have a complaint with the bar because their music is too loud, and she can't get a hold of their mediator, how is she going to get a hold of the bar? When they did have the meeting, she said that this is their major complaint and she doesn't think her TV should compete with the music across the street. She said as long as you lower the music to a level they can't hear, she doesn't have a complaint with them on the patio. Mr. Stanfield said oh they will hear the music and he repeated that several times. This to her is not working with her. She is thinking maybe they are trying and she will be sure to give them the benefit of the doubt and if they want to do a test run with this guy that is fine. She doesn't have anything against the

bar. Her husband does go over there and watch some of the football games. She doesn't have anything against music. She just doesn't want to hear it in her home.

COMMISSIONER RIVERS asked Mrs. Rosic if she wouldn't have a problem if they had their Wednesday and Saturday night music from 6:00 – 10:00 p.m. as long as she couldn't hear it? Pam Rosic said as long as she doesn't hear it, she doesn't care. **COMMISSIONER RIVERS** said so if they were to theoretically re-craft the stipulation that allowed them to have the music on their patio and it said no music indoors or out shall disturb area residences, would that work for her? Pam Rosic said that would work for her, however, like she said he did say several times at that meeting that they would hear the music. **COMMISSIONER RIVERS** said he would have to ask him what he meant by that. Mrs. Rosic said he is very hard to talk to and which is why he probably sent Raul. She thinks they left there with a lot of questions that were still very open ended by his responses. It was like 'we will turn it down' but not low enough where you are still not going to hear it. **COMMISSIONER RIVERS** said he was making notes for himself for when they see this issue again next month. He will remember she is o.k. with it as long as they leave the stipulation in that says no music indoors or outdoors shall disturb area residents. Ms. Rosic said if that means non-amplified music that is great with her.

JAN HOSKOVEC, 5971 W. COMMONWEALTH AVE., CHANDLER, stated she is just east of the neighbors that they just heard. First, she would like to say it is not her intent or ever has been to drive the Real Beagle out of business. She understands the economy is bad and there is a lot of competition in the area. However, she believes in being a good citizen not just by exercising her rights but becoming involved in the community.

Since 1991 she has been involved and has watched the development of the area south of Chandler Boulevard and Kyrene. The area just south of the Regal Beagle used to be a horse farm with an area to pasture the many horses that were bred there. Once the farm was gone, the city zoned that area residential. Many of them from her neighborhood and surrounding neighborhood wanted to change that zoning to commercial. They are pro business. They want small businesses there and have been pleased by the development they have seen. Her second concern is at their neighborhood meeting Mr. Stanfield said "No one person is going to keep me from running his business however he wants". He also responded by saying 'you are going to hear the music' several times when they discussed it. Those of them here tonight are in direct line of sight of the bar. With the previous history of non-compliance of the Use Permit, she would ask the Commission to continue to protect their neighborhood by restricting the music, possibly having the music not go past the boundary of the shopping center. She also believes there is no guarantee that Mr. Stanfield won't abuse this permit even with a liaison program to call them if the music is too loud. There is no guarantee, as she had done that thirteen times in 2008 with no response to her call. She trusts they will continue to guarantee their peace and quiet in the most important place, their sanctuary that they call home.

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

COMMISSIONER RIVERS asked if she could point on the map where she lives. Jan Hoskovec said she is the 2nd house in. **COMMISSIONER RIVERS** asked from her front doorway if she could see this restaurant? Ms. Hoskovec said yes sir, directly.

VICE CHAIRMAN CASON asked her when the new ownership took over in mid 2007, was it at that time, actually before they saw us last, that they started to turn the music down? He doesn't recall what they said before. Ms. Hoskovec said it actually started in May and she would have to refer back to her documentation. It was May a year ago of 2008 when it started. She called on a regular basis and finally in August she called the city because she had basically had enough and it was at that point she realized they were up for renewal.

CHAIRMAN FLANDERS asked if there was anybody else in the audience that would like to speak in regards to this item. There were none. He asked Mr. Garza if he would like to respond to any of the comments that they heard?

MR. GARZA said no except simply to say that a continuance would be beneficial to allow planning to receive and digest and hear more about the noise abatement. He thinks what they have heard tonight is that they don't want to hear it in their home. So a stipulation could be crafted that says again, they have specific measures on the artist they intend to play who was the subject of the complaints last time to abate the music with the removal of the subwoofers and the woofers, reducing the speaker size, taking them off of the floor to reduce vibration and noise, paneling on that eastern most wall of the patio - things that will actually abate. What you have heard is that as long as they can't hear it in their house, they are o.k. with it. A stipulation could be crafted that would allow the Regal Beagle to have amplified music subject to that stipulation. That is the exact thing that he wants to talk to Planning about, wants to talk to the neighbors about and they would like to present to them the next time everyone is together. He thanked them for their time.

VICE CHAIRMAN CASON asked if they had considered moving the bar to the east side of the patio so that they have an opportunity now to move the music into that corner rather than having the bar take up all that space and they are forcing the amplification towards the east in order to focus on their seats? If they shoved that all to the west and bring their bar out to the east, wouldn't that be probably one of the most beneficial mitigating things that they could do? By the time they put up a back bar and all of those types of things that has an opportunity to help with what they are trying to do? Mr. Garza said if he could direct their attention to the pad where it states 'patio'. It is beyond the definition of a fixture. It is quite fixed to the cement floor and there are large granite tops that are on it. This is a one-person artist; this isn't a band per say with different parts - horns, vocals, and guitars. That is not what is happening here. They have a gentleman who plays Caribbean music and has a synthesizer, piano and steel drum. He has 2 speakers, which used to be 18 inches, which are now going to be less than 14 inches and all the subwoofers and bass is going to be removed. He actually faces towards the west.

What was happening was that the large amount of bass and subwoofer and noise was vibrating on the ground and it was carrying into the residences. What is going to happen now is they are going to remove all that level of noise and vibration and bring it off the ground and he will be facing away from the residents. What they have talked about is on this eastern most wall there is a noise-deadening top to the 4 to 5-foot wall that exists now. That would also curtail the noise. Those are just some of the measures that are going to be in place that would help do this. Again, these specific measures taken one by one might not mean a lot, but together in their sum it could be a lot. It could still capture exactly what the Commission intends to do and satisfying Planning's interest and protecting the sanctuary that Jan importantly pointed out by putting a stipulation that says no music amplified or acoustic shall not be heard in the residences. That could be the measure of success with all of these things. Moving the bar would be in the thousands in terms of actually moving it and situating it along this wall. That is something he couldn't speak to just yet. **VICE CHAIRMAN CASON** said so they have considered it but it is economically unfeasible. Mr. Garza said it would be tantamount to probably economic waste, especially in a time when the bar is struggling so much to maintain it in a financial position in anyway shape or form having lost it's anchor tenant and suffering from such reduced traffic. It would not only cost greater but would probably be economic waste.

COMMISSIONER RIVERS asked him if this gentleman plays a steel drum on this patio? Mr. Garza said yes sir. **COMMISSIONER RIVERS** asked him if he truly hopes to contain the noise of a steel drum with some kind of abatement wall? Mr. Garza replied it is his understanding and has been explained by the neighbors that the issue with the music was the vibration and the bass. They are removing that corner of it. If the steel drum is too loud and they can still hear it in their home, then there will be no steel drum. **COMMISSIONER RIVERS** said the steel drum is a wonderful instrument and he happens to enjoy steel drum music. However, you are not going to contain it with a little wall. That last time he heard a steel drum was on a cruise ship that he was on and he could hear it from the other end of the ship. There was a whole bunch of people and swimming pools and all kinds of things between me and that drum and he could still hear it. It is not a quiet item. It is not like an acoustic guitar. Mr. Garza said he would agree with that. **COMMISSIONER RIVERS** said if you have it bouncing off the parked cars out front and off of the bank building, especially when there is no traffic, you are going to hear that thing for ½ mile. He thought that was something he might want to consider. Mr. Garza replied absolutely and the variable there is the amplification. If there were a way to control that through amplification or reduce the amplification, then that would be the measure taken. **COMMISSIONER RIVERS** said he doesn't know that the steel drum is amplified but he is still leaning toward the 'if you can't hear it in the house, then we are o.k.'. Mr. Garza said right.

CHAIRMAN FLANDERS asked if there were any other questions to the applicant. He closed the floor for discussion and motion.

VICE CHAIRMAN CASON asked Mr. Dermody if the December 16 Planning Commission hearing was too soon given the rest of the items on that agenda? Will that give them enough time to analyze the sound plan?

KEVIN MAYO, ACTING PLANNING MANAGER, stated that they would get on the analysis of that really quick. It will be important to have the applicant meet with the neighbors. He would put it on the 12/16 agenda and if they just don't have the time to get that done, they can always continue it again. They are right, Thanksgiving is next week but maybe they can do it. They will give it their best shot and if they have to, they will move it to the first hearing in January.

MOVED BY VICE CHAIRMAN CASON, seconded by **COMMISSIONER RIVERS** to continue LUP09-1012 REGAL BEAGLE to the December 16, 2009 Planning Commission Hearing. The item to continue passed 5-0 (Commissioners McClendon and Veitch were absent).

I. ZUP09-1015 SPIRAL VOLLEYBALL

Request Use Permit approval to allow an athletic training facility within a Planned Industrial (I-1) zoned district. The subject site is located at 400 N. 56th Street, which is approximately ¼ mile north of the northwest corner of Chandler Blvd. and 56th Street.

1. 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.
2. 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.
3. The Use Permit is non-transferable to another location.
4. 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.
5. The parking lot located in the rear of the site shall be striped to accommodate additional parking stalls as represented by the site plan.
6. There shall be no tournaments held at the facility.
7. The remaining approximate 11,000 square feet of building area shall not be utilized to store hazardous materials or occupied by industrial uses as determined by all applicable building and zoning codes.
8. The site shall be maintained in a clean and orderly manner.

MR. ERIK SWANSON, CITY PLANNER, stated this is a request for a Use Permit for an athletic training facility within a Planned Industrial (I-1) zoned district. The subject site is located approximately ¼ mile north of the northwest corner of Chandler Boulevard

and 56th Street. Staff finding inconsistencies with the General Plan and I-1 zoning does recommend denial.

Surrounding the subject site is all I-1 zoned property to the northwest and south. East, adjacent to this site is 56th Street with an automotive solid yard beyond that. The subject site provides 2 access points directly on to 56th Street. Access points are not provided into the interior of the industrial site. The site was initially zoned in 1980 from AG-1 to I-1, however, was not developed until 1999. The approved I-1 zoning does allow for various mechanical, manufacturing and processing and storage type uses that you have the ability to contain hazardous materials by right. The subject building is a little shy of 32,000 square feet, however, approximately 20,000 square feet is going to be utilized for this use. The remaining area is going to be cordoned off and not utilized. At this point in time, the utilized area is currently housing office equipment and a demising wall will be placed. The athletes will not have access to that nor will there be any kind of contact between those two parties. There is approximately 45 parking stalls provided on the site's east side and an additional opportunity to have another 43 on the west side. The current parking requirement is 1 parking stall per 500 square feet. For public assembly uses it requires 1 parking stall per 200 square feet. To meet code, they are looking at approximately 100 to 110 parking spaces. The applicant has indicated that a number of the athletes are going to carpool to the site therefore not needing all of the parking stalls. However, in the event that parking is an issue, the applicant has indicated that a property owner southwest of the site is willing to allow overflow parking. They are not proposing any sort of tournaments at this facility. Again, it is just going to be to the athletes and the coaches. The hours of operation proposed are Monday through Thursday at 5:00 to 9:00 p.m. and then Saturday mornings. The reason for the late hours is that the athletes are going to be in school during the day. The athlete's ages range from 14 to 18 years and they are all female. Again, this lends them to be in school during the day and then only at the facility at night.

The site will have one full time employee that handles the day-to-day operations. There are a total of approximately 23 coaches and then 13 teams. The offices are not going to be provided for the coaches and so they will not be there during the day. Staff does recommend denial finding the proposed use incompatible with the existing zoning and surrounding areas. Athletic training facilities are typically located in commercial zoning districts such as a C-2 or in a PAD zoning district that specifically allows for these types of issues. Staff finds that the assembly use of this nature is not compatible with the manufacturing, processing and warehousing that was discussed earlier. That is usually found in these industrial sites primarily due to the concerns with the overall safety of the teenage athletes, potential truck traffic and then the noise and other concerns. Staff has provided the applicant with a list of vacant commercial sites that this type of use would be able to go into by right as well as identified the Red Rock development in the airport area that Commission and Council approved these types of uses. The applicant will discuss their concerns with these other sites that they have looked at during their presentation. However, the applicant does site that this location is ideal and that the hours are going to be after normal business hours, it has segregated access from the surrounding

industrial areas due to its frontage out on 56th Street, which is a major arterial as such. The applicant has canvassed the surrounding area as you can see in the Staff packet. There was a map showing where the applicant did canvas and did get a number of signatures from the surrounding businesses that do support the use. Directly to the northwest and south, all of those businesses said they did support the use. There is a sprinkling of other properties in the area. The applicant has also passed out the letter that the applicant received from Valley Christian High School recommending approval of the request. A neighborhood meeting was held. There were no neighbors in attendance and Staff has not received any phone calls or letters in opposition. Again, they did receive a petition and support as well as the letter that he did hand out. Again, Staff does recommend denial due to the incompatibility of the uses with the large industrial area. Mr. Swanson said he would be happy to answer any questions that Commission has.

CHAIRMAN FLANDERS said to Mr. Swanson that he knows they have approved a few of these with some type of a practice or sporting activities in industrial areas. He asked how many would he say that we have currently? He said he knew he mentioned Red Rock. Are there any others he is aware of? Mr. Swanson said as part of the review they did look into if there is any other industrial site that does allow these uses and to be able to provide the applicant that information to let them know they can go there by right. Really to allow this type of use they only one that really allows an industrial area is the Red Rock. Another is one up on Warner and some other various ones sprinkled throughout but there are additional conditions to allow that some of them require a manufacturing aspect or a storage aspect of it. The training itself would be an accessory use to show they manufacture the equipment and then have them come in and show them how to use it and not an outright training facility. They don't have very many of them. **CHAIRMAN FLANDERS** said he remembers a couple coming through that they had already approved. So would they say about 4 or 5?

MR. KEVIN MAYO, ACTING PLANNING MANAGER asked if he was talking PAD Amendments or other Use Permits that have been done? **CHAIRMAN FLANDERS** replied it was Use Permits. Mr. Mayo said there has been a sprinkling of them over the last 8 years that he can remember. There is a swim school further north of here but there have been very few. **CHAIRMAN FLANDERS** said they have looked at that and they have determined in certain circumstances these uses do work. He understands Staff's point of view as far as the uses that are permitted by the zoning district. In some instances it does seem to work better than others. He asked if there were any questions of Staff?

COMMISSIONER KELLEY asked why this came in as a Use Permit as opposed to rezoning it to C-2, which might be more appropriate?

MR. SWANSON, CITY PLANNER, stated since it is hard zoned they have the ability to go through the Use Permit process and it intends to be the easiest process. However, in this instance maintaining the underlying I-1 zoning designation does allow that in the event that the applicant finds another facility or a better facility or moves out that the

industrial type uses can then be picked up and the building can be utilized as such. If it were to be rezoned to a PAD or C-2 zoning, they would then have to go back through that process and if a rezoning were granted, it would really start to encroach into the industrial district whereas a Use Permit if it does move or fail, they can maintain that industrial area.

GLENN BROCKMAN, ASSISTANT CITY ATTORNEY, stated he wanted to follow up on this. He is saying the use that's requested is an allowable use as long as they get a Use Permit in the I-1 zoning? Mr. Swanson said it is their understanding that it is considerable granting Council approval.

VICE CHAIRMAN CASON asked if the Fire Department commented on the application? Mr. Swanson answered that when this process first started he met with the property owner and not the applicant out at the site along with a Building Inspector. A Fire Inspector did not make it, however, the Building Inspector was able to speak to the particular fire issues. At that point in time, he explained that there really weren't any concerns that he could see from a building standpoint issue. If Council does approve it, what they would do it they would look at the building aspect of it to make sure the Fire Sprinkler are up to code, if there is seating provided and things like that. The Building Inspector at that point and time did indicate that everything is pretty clear. As mentioned in the Staff memo, there is an unutilized area that is going to be cordoned off and they are going to have to put up a demising wall. That would have to go through the necessary permitting process and whether or not sprinklers are on that portion of the building that has that cordoned off area he doesn't know but he would imagine it does. Again, it will be reviewed through the permitting process if the Use Permit is granted. **VICE CHAIRMAN CASON** asked because it looks like they are going to cover up the truck doors, did the inspector say that was an approved amount of doors? Mr. Swanson said it is tough to discuss the points of the building because he is not familiar with them. At that point when they did go out to the site he did not say he had any concerns with it due to the occupancy level of the facility and the fact that it is going to be a few teams. He did say if there are going to be large tournaments where there are 300 + people, then there may be some issues. As the building is currently designed when you go inside, the building it is all opened. There aren't any demising walls that they need to take down and with that as the building was designed, there are a number of access points both on the front side of the building and on the back side that allows safe ingress and egress in case of a fire. **VICE CHAIRMAN CASON** asked if the applicant indicated a desire to sublet any of the remaining space they aren't going to use? Mr. Swanson said in looking at the floor plan, there are two sections; one is labeled as an existing warehouse and one is labeled as an existing workshop. The warehouse is being utilized to store office equipment. He is unsure of the workshop, however, he would imagine the property owner would not be subleasing that and if Planning Commission is considering a recommendation for approval, Staff does have some conditions that would address that. They would really want to prohibit any sort of hazardous material storage of industrial uses in that area just because there is going to that mix of athletes, etc.

CHAIRMAN FLANDERS went to the applicant.

MICHAEL CURLEY, 3101 N. CENTRAL, PHOENIX, stated in answer to a couple questions that Vice Chairman Cason raised, the entire building is sprinkled and none of the exiting doors on the east or west side are going to be eliminated. They will all remain operational. Secondly, they are not going to sublet any portion of the property. The building is roughly 30,000 + square feet. The volleyball functions are going to be a little over 20,000 square feet. He and Mr. Swanson had a discussion today about possibly expanding and adding another court. His client, who is here today, Reggie Fowler, is the owner of the building and he has a number of different businesses and he assumes they read his cover letter last week. Reggie has a number of businesses in the Chandler area including Polar Ice and Makutu's Island. He is storing some of his materials from other businesses in that building so it won't be sublet to another use. That is one of the advantages that they think exists. With this use over some of the other ones, which have been granted by the City and as Staff correctly points out that in some of the other buildings, particularly the one by Chandler Airpark, there was a bounce gym that only took a small portion of the building. Staff correctly pointed out in that particular instance the bounce gym might have only taken about a 1/5 of that building. Staff pointed out there was some concerns about what were going to be the other uses that were going to be adjacent to that bounce gym. That situation isn't the case here because they are going to be controlling the whole building; they aren't going to be subletting out. They are more than agreeable to a stipulation to that effect.

Mr. Curley said Reggie Fowler is here. He is a Chandler businessman and has a number of different businesses. He referenced the Polar Ice and the Makutu's Island and he owns this building. He said Molly Stark is also there. She is the varsity volleyball coach at Valley Christian High School which is sort of diagonally across the street from there on the east side of 56th Street just north of here. She acts as the Director of Spiral Volleyball. She is a graduate from a local high school here in the valley and she tells a pretty compelling story that she played club varsity volleyball when she was in high school and it was from the club experience that she was able to get a 4-year scholarship to college. She became such a devotee of the club image she is now in her second year of running the Spiral Volleyball club. She received a four-year scholarship from his Alma Mater, which is the University of Notre Dame. Reggie wanted him to begin by saying that he just recently got involved, as Erik has indicated in about the last week. Erik worked very diligently with Reggie in terms of getting the application before them and trying to make it to the extent the Planning Commission is agreeable to supporting it.

The Staff Report gives the background on the concept, but basically it is an existing warehouse built essentially with high ceilings so it lends itself to a volleyball type of game and that is one of the problems which he said he would talk about in a moment. Some of the sites that Staff has referenced, he didn't think Staff has gone out and done inspections of these other sites, they are saying these are vacant sites that are available in some commercial centers. One of the real advantages this particular building has that many of the other buildings don't have and are referenced in their Staff Report is the

height of the ceiling. Obviously, with volleyball you have to have a high ceiling. Standards are essentially about 24 to 25 feet and virtually all of the grocery store sites that are referenced in the Staff Report don't have those heights. The concept here is to develop a state-of-the-art facility. There will be 4 volleyball courts; there is a specialized floating floor that takes direction at trying to alleviate joint problems by having this floating floor with special lighting, video technology that will allow the filming of practice for analyzation for technique. It also allows for remote feeds so that practices that are taking place in the facility will be able to be transmitted to college coaches who are looking at these players for possible scholarships. And as the Staff Report indicates also there is a weight and cardio facility that will be part of this. It is not open to the public. Again, one of the real advantages that they think exists with this site as opposed to some of the others is that there are a very limited number of people of coming here. Basically, in the Staff Report there is a reference to 13 teams and there are actually a total of 4 teams right now. He thinks the 13 might have gotten introduced as their wildest expectation in terms of growth. They think the next year or two they are going to be in the 5 to 6 teams. There are about ten girls per team and they range from 14 to 18 year olds. As Erik said, because these girls are in school, the season runs from basically during the school year and is open roughly from 4:00 p.m. to 8 or 8:30 p.m. during the week and on Saturdays 11:00 a.m. to 1:00 p.m. The majority of the girls that participate in here are from Chandler. As Erik indicated also, parking is not an issue here and he would demonstrate in a minute why. But the 14, 15 to 16 year olds are typically dropped off. The 17 and 18 year olds do drive but they often times carpool.

He understands Staff's position and he thinks that it is probably is a good position as a general policy. When you have these recreational uses and you are looking at placing them in industrial districts, there is a concern for a number of reasons. As Chairman Flanders indicated, he thinks what ought to happen here is a case-by-case analysis to see whether or not a particular industrial property is suited for this type of use. Sometimes it may be suitable and sometimes it is not suitable. They think this site and building is sufficiently unique to the extent an exception could be granted from this general policy. They think that it ought to be granted in this instance. There are two main reasons why they believe this to be the case. First of all, unlike the bounce gym which he referred to over at the Chandler Airpark, that facility was in the midst of an overall industrial park which had a number of different buildings all sharing a common access way, common drives and common parking. You could see by the aerial this is a stand-alone site. There are two entrance points on 56th Street. It is completely cordoned off from the adjacent uses. Some of the concerns which Staff expresses legitimate concerns about are where you have an use like this in an industrial park which is sitting in the midst of a whole bunch of uses where there is a lot of truck traffic, where parents are dropping kids off and there are trucks perhaps going by. That situation isn't present here because, again, this is a stand-alone site and secondly, as he just indicated, this entire building is going to be devoted to this use. You are not going to have that scenario, which they talked about beforehand, where a 1/5 of the building is going to be the recreational use and the balance of it might be some sort of incompatible industrial use. For those reasons, they understand the Staff's recommendation and don't necessarily disagree with those general

policies, they think in this particular instance those concerns are not necessarily apparent here.

The Club Volleyball concept is really an adjunct of high school volleyball. It takes place during the months of November, July and after the high school volleyball season is over, and this is the time when a lot of these girls are developing their skills, but really they are polishing their skills so they can compete at the highest level. He thought he included in their packet materials a list of 12 local girls who have received scholarships – 6 girls last year. They see full rides and they see a very, very impressive list of schools. Those schools tuition are \$30,000 to \$40,000 a piece. This year right now there are 6 senior girls who are on the Spiral Club Volleyball who are also receiving scholarships. From just a policy standpoint, they think it is a very meritorious type of use. He is not suggesting that this use be allowed just because it is providing benefits to some local girls, they realize they have to deal with the land use situation. It is a unique aspect to this. Another real unique aspect to this is that this building is being donated free of charge. Reggie has a number of different businesses, owns this particular building free and clear. He is the President of Spiral Volleyball. He is donating his building. If this building were being rented out at normal industrial rates, you are probably talking about \$150,000 a year – so a very unique aspect to this. The unique aspect of it is that the girls who are playing on this Club Volleyball are paying anywhere between \$2500 to \$5000 a year to play on the club. That includes travel expenses for in state, out-of-state and in the valley that is a lot of money this day and age. To the extent that this club had to rent another facility, financially it couldn't be done because that \$2500 to \$5000 tuition would be tripled if they had to pay a commercial rate of \$150,000 or \$200,000 a year. They think that is a pretty unique opportunity.

Turning to the land use issues, as he reads through the Staff Report and he has talked to Erik, he thinks there are a number of concerns in general (they don't necessarily apply here) he wants to address. The first is the parking issue. He said beforehand that one of the concerns Staff raised before in connection with some of the other uses, is are these recreational? Are these recreational uses going to cannibalize the park that otherwise would be used by other industrial users? Again, you don't have that potential cannibalization here because this is the only use that is going to be on site. It is not open to the public. That was one of the other concerns that Staff has addressed in some of these other public recreational uses, whether it is a rock climbing gym or whether it is the bounce facility is that when it is opened to the public it is very high demand and lots of parking generation but that is not the case here.

In terms of the parking, he showed 56th Street looking north. There are 45 spaces in front. They were located in Stellar Airpark last year at an average of about 10 to 12 cars that were utilized in the spaces. They have about 45 here. There are roughly 45 that exist in the back and these are the truck wells where they estimate they estimate they can fit another 40 spaces in here. In total, they have over a 120 spaces. They have a lot of parking and there is not going to be a problem in terms of parking. Again, from a parking standpoint, people are going to be using this site from 4:00 p.m. on and that time is when

most of these businesses are going to be closing down at roughly 5:00 or 6:00 p.m. and probably not be located there during the weekend.

Again, he touched upon this a moment ago, in terms of mixing the truck traffic with pedestrian or just regular traffic that obviously isn't going to take place on the site. The reason why he thinks this ought to be looked at on a case by case basis is that when you look at 56th Street from essentially Ray to the north, down to Chandler Boulevard to the south, basically from Ray south to Galveston you have commercial on the west side of 56th Street. He showed where some residential is as well. Down at the corner of Chandler Blvd. and 56th Street is retail. You basically have got this segment between Galveston and where the rail comes in where it is industrial. He has driven up and down 56th Street a million times over the past 30 years. He would venture to say that probably 90% of the traffic that travels from Ray down to Chandler Boulevard is regular traffic that you see on the street. He doesn't consider 56th Street to be a heavy industrialized street where you are going to have an enormous amount of truck traffic. There is a distinction here in terms of 56th Street as opposed to other areas of the city, which may be very heavily industrialized. He thinks Staff raises a legitimate concern if there were a limited amount of industrial inventory in the marketplace right now. There may be a desire not to squander that opportunity by leasing out industrial space to a non-industrial related use.

The fact of the matter is he doesn't have to tell anybody in this room, there is an enormous of industrial space in the whole southeast valley and he just looked at Lee & Assoc. today and their third quarter projects indicated there is now 3,200,000 square feet of vacant built industrial space in the City of Chandler. He doesn't think that concerns the City. The City Staff correctly points out that they have to preserve their industrial inventory. He doesn't think that applies in this particular market. The fourth point is that there is a real lack of recreational facilities. These facilities just don't exist for these types of clubs. You have the girl's courts to accommodate this club. They are competing with freshman, jv and varsity basketball, both men and women's, as well as wrestling. The schools don't have the financial resource to make these available. There simply aren't enough of these facilities available to really accommodate this type of club activity particularly when they are talking about blocking out 4 hours of time at school. These facilities are just not present and that is one of the reasons why you received a letter from Valley Christian, which is right up here to the northeast. They have sent the letter to us indicating their support for this use primarily because there just aren't the facilities to accommodate those girls.

The 12 or 14 sites in which Staff has given to us as vacant sites, there are a number of reasons why these don't work. First of all, of the 12 or 14, there are 6 or 7 that are grocery store sites. They have actually physically gone out and looked at every one of these. Everyone has ceilings that are roughly 18 to 20 feet in height, so from a height standpoint they can't use them. The other problem is that in the grocery stores there is column spacing of about 20 feet. In order to accommodate the volleyball courts you have to have a column spacing of about 50 feet so about 1/2 of them don't work for that particular reason and actually more than 1/2 of that. Several of them that are listed on the

list are less than 20,000 square feet, which is less than what they need. Interestingly, they actually called up a couple of the larger anchor users and they indicated when they described this use to them, they said they didn't want them there. The reason is that some of the larger uses, like one here as mentioned as Mervyn's, the owner of the center said these are anchor tenants and they need foot traffic there. You are going to have a use that is going to be limited between 4:00 and 8:00 p.m. and they are talking about 20 to 30 girls, that is not the type of tenant that they want here to create synergy with some of the other users that are in there. When they appreciate that Staff has pointed these out, but for those particular reasons those sites just don't work for them.

Mr. Curley showed a site plan of the Red Rock and they can see the area where the bounce gym was. The balance of this is all other industrial uses. You can see how these sites are sort of interconnected. Again, it is not a stand-alone situation like they have. Rick Torres in his office pointed out to him that this Red Rock facility has got ceilings of 18 feet so they don't work.

Mr. Curley said this is a very good use and they think it is something that is accommodating to the local residents but for all of the reasons, which he just indicated, they think it is a good location. It is near the Ray and 56th Street and Ray and I-10 core. They think that it is something that a number of other jurisdictions allow – Phoenix, Scottsdale and Tempe. As Erik has indicated, they have gone to all of the surrounding property owners and they haven't encountered one individual who has a problem with the use. He said he would be glad to answer any questions and they ask for their support.

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

COMMISSIONER HARTKE thanked Mr. Fowler for his philanthropic altruism in helping some girls reach their dreams. It is very generous of him for what he is doing. He had a couple questions related to this. He went out there and walked around and walked through. They were painting the building. Will there be any truck traffic on the side of the warehouse so that the things that are there are stationary or be moved in and out during the time there is no use? Mr. Curley said they are actually putting the floor in right now and the reason they are putting the floor in, they are not being presumptuous that they are going to get their approval, it is just that they have a season ahead of them and they are trying not to lose any time. They realize they are doing that at their own risk. In connection with that, the establishment of the courts for removing any materials, which they don't need and again, the balance of that 15,000 to 20,000 square feet of space is storing racks and that is from Mr. Fowler's other business. By the time the use gets established they are going to have the place cleaned out. **COMMISSIONER HARTKE** asked so there won't be any materials stored on the other side? Mr. Curley said there may be some miscellaneous items that will be stored that are related to Mr. Fowler's other business. If you went there to see it, you can see there are pieces of furniture and equipment. **COMMISSIONER HARTKE** said his major question with that is that there is no mixing then if indeed they have to use that backside? The fully contained front parking lot would easily cover it but if there were use in the back, there

would not be any industrial mix, semis or vans moving something in and out? Mr. Curley said the use is going to be just for Mr. Fowler's own use and there won't be any subletting. **COMMISSIONER HARTKE** said he mentioned that the volleyball use is from November to July. Is there any other use for the other 4 or 5 months of the year? Mr. Curley answered that the period when it is not going to be used is when the girls are playing the high school teams. **COMMISSIONER HARTKE** asked so during those months it is evening use, but apart from that there is nothing else that is going to go on when there is no volleyball? Mr. Curley replied no.

VICE CHAIRMAN CASON asked what happens when the schools are on break? We are on a modified year round schedule in Chandler. During school breaks will there still be activity?

REGGIE FOWLER, 6909 W. RAY ROAD, CHANDLER, stated there would be no trucks on the facility. They have another location for the trucks to go to once the facility is open. There will be no truck traffic at all in that facility. **VICE CHAIRMAN CASON** asked how he was going to utilize the facility during school break? (Spring break, Fall break). Mr. Fowler said the facility will be used the same as it would be used currently. The people that are coaching are teachers, so during breaks they can be teaching or have other jobs so it will not be used as an 8-hour facility. It will always be confined to 4 hours, plus by the rules they only have certain hours a week that they train the girls. They don't train them every day. During fall and spring breaks a lot of them go away with their families or they are still involved with school activities. They will have the normal training they have today.

COMMISSIONER RIVERS said there is no issue if this building sits non-utilized part of the time. If it just sits empty that is not a problem for them, correct? Mr. Fowler said no that is not a problem. They own the building free and clear. **COMMISSIONER RIVERS** said he had a comment on what Mr. Curley said about the traffic on 56th Street. He stated he also doesn't see 56th Street as a truck aisle at all and he thinks that the traffic going to and from Valley Christian High School is unaffected by the traffic on 56th Street and therefore, he doesn't see why the traffic on 56th Street would affect this facility at all. He actually thinks this is a very good idea to put this into this building. Again, he also appreciates Mr. Fowler's generosity in letting them have the building. He thinks it is a good location and it is tall enough and he thinks it is so much better than having the building sit empty.

VICE CHAIRMAN CASON said he wanted to ask Staff a question. He asked if there are islands in the middle of 56th Street so it impacts the 56th Street entrances to the property? Mr. Swanson, City Planner, showed the site and 56th Street on the ELMO. He said it is all going to be a right-in only and then right-out only. If they need to head north, they would have to come down to roughly Erie and do a u-turn. **VICE CHAIRMAN CASON** asked the applicant if they are parking in the back, will they have both lots available to those folks that want to go back out to the north, and can utilize the back parking lot rather than the front parking lot? Mr. Curley said he thinks it will be

available. The only discussion that they had though was for security. It might be a better situation if the parking was confined in front, but if they needed excess parking, the back is available. In some of the initial discussions they had with Staff there is flood lighting on the front of the building and common sense would dictate they would want to keep it in the front area. If you did need to turn around, he actually did it and there is plenty of room to turn around and come back out. **VICE CHAIRMAN CASON** asked Staff if they were to create an opening in that part of the property to get out to Erie, would that cause any back up problems or queuing problems to get on to 56th? Mr. Swanson said there would be some issues potentially with the landscaping, if that is retention out there as well as meeting current design standards for those driveways. There would be traffic stacking issues and things like that they would really have to look at. He thinks he would try to stray away from that but it is something they could look at. **VICE CHAIRMAN CASON** asked the applicant if the back yard was gated? Mr. Curley said yes it is. There is a gate that closes it off. **VICE CHAIRMAN CASON** said so primarily they are looking at the only time they would really use the back with any consistency is if they were having a tournament. They would need the additional parking. Mr. Curley said there are no tournaments. It is just for practice. Mr. Fowler just told him that the coaches might be parking in the back area. They think that most of the girls would be parking in the front.

CHAIRMAN FLANDERS thanked the applicant. He went to the audience to see if there was anybody that would care to speak on this item. There were none.

COMMISSIONER HARTKE stated that similar to Commissioner Rivers statement and after visiting the place and seeing that if anybody needed to go into that back lot, this would have minimal influence or be a factor. The business around there and the industrial community would not be affected since it is an island and so close to Erie. He didn't see any problems with this. He also talked with Chris Mackay in Economic Development before this meeting and she also saw no complications with this use. He is for this and thinks it is a good use.

CHAIRMAN FLANDERS said he would go ahead and close the floor for discussion and motion.

COMMISSIONER RIVERS stated he thinks this is an excellent use for this building and he thinks it is very generous of the owner to contribute the use. He thinks it is better than having the building sit vacant. It is a wonderful facility and a wonderful concept. He made a motion.

MOVED BY COMMISSIONER RIVERS, seconded by **COMMISSIONER HARTKE** to approve ZUP09-1015 SPIRAL VOLLEYBALL with added stipulations.

MR. SWANSON, CITY PLANNER, read in seven additional stipulations.

1. *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.*
2. *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.*
3. *The Use Permit is non-transferable to another location.*
4. *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.*
5. *The parking lot located in the rear of the site shall be striped to accommodate additional parking stalls as represented by the site plan.*
6. *There shall be no tournaments held at the facility.*
7. *The remaining approximate 11,000 square feet of building area shall not be utilized to store hazardous materials or occupied by industrial uses as determined by all applicable building and zoning codes.*

CHAIRMAN FLANDERS added an additional stipulation:

8. **The site shall be maintained in a clean and orderly manner.**

CHAIRMAN FLANDERS asked Mr. Swanson if the applicant has reviewed those stipulations? Mr. Swanson replied that he had a brief conversation with the applicant earlier. **CHAIRMAN FLANDERS** asked Mr. Curley if they are in agreement with that? Mr. Curley said they are.

VICE CHAIRMAN CASON stated he had to make a comment for the record only because of the fact that he dissented when they went through Red Rock. He wasn't in support of Red Rock at all. As he has demonstrated many times, he supports the keeping of industrial areas industrial. However, in this case it seems ideal. There is enough space around the building. The building sits alone and it doesn't have any of the issues associated with it that were associated with Red Rock. So he too supports it and will be voting for it.

CHAIRMAN FLANDERS said in reviewing this they have been through this with different uses going into industrial areas. He wanted to thank Staff for their review. As he said earlier, he understands exactly their position on this and in most cases he agrees with that. With this particular item there are just too many things that just make sense to him as far as a training facility. They approved one previously for gymnastics in Chandler. So when they do something like this for volleyball they are bringing a little higher quality type of activity to the city. The street access, the limited industrial area of truck traffic and the parking and everything else made sense to him. He is glad that this is coming forward to them. It is a good use.

A vote was taken and the item passed unanimously 5-0 (Commissioners McClendon and Veitch were absent.)

6. DIRECTOR'S REPORT

Mr. Mayo stated there was nothing to report this evening.

7. CHAIRMAN'S ANNOUNCEMENTS

CHAIRMAN FLANDERS announced that the next regular meeting is December 16, 2009 at 5:30 p.m. in the Council Chambers, 22 S. Delaware Street, Chandler, Arizona. COMMISSIONER RIVERS wished everybody a Happy Thanksgiving, which will occur before their next meeting.

8. ADJOURNMENT

The meeting was adjourned at 6:56 p.m.

Michael Flanders, Chairman

Jeffrey A. Kurtz, Secretary