

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF CHANDLER, ARIZONA, May 2, 2007 held in the City Council Chambers, 22 S. Delaware Street.

1. Chairman Flanders call the meeting to order at 5:35 p.m.
2. Pledge of Allegiance led by Chairman Flanders.
3. The following Commissioners answered Roll Call:

Chairman Michael Flanders
Vice Chairman Rick Heumann
Commissioner Michael Cason
Commissioner Mark Irby
Commissioner Dick Gulsvig
Commissioner Angela Creedon
Commissioner Brett Anderson

Also Present:

Mr. Jeff Kurtz, Assistant Planning & Dev. Director
Ms. Jodie Novak, Senior City Planner
Mr. Kevin Mayo, Senior City Planner
Mr. Bill Dermody, City Planner
Mr. Erik Swanson, City Planner
Mr. Glenn Brockman, Assistant City Attorney
Ms. Joyce Radatz, Clerk
Mr. Robert Bortfeld, Senior Engineer/Traffic Engineering

4. APPROVAL OF MINUTES
MOVED BY COMMISSIONER IRBY, seconded by **COMMISSIONER CREEDON**, to approve the minutes of April 18, 2007. Motion was approved 6-0 with 1 abstention. (Commissioner Anderson was not present at the meeting.)
5. ANNUAL PLANNING COMMISSION BUSINESS MEETING
Chairman Flanders stated this is an election of officers. First was the nomination for Chairman. **COMMISSIONER GULSVIG** moved that they nominate **VICE CHAIRMAN HEUMANN** for **Chair**. Motion was approved unanimously 7-0.

For Item B, **VICE CHAIRMAN HEUMANN** moved to nominate **COMMISSIONER IRBY** for **Vice Chairman**, seconded by **COMMISSIONER ANDERSON**. Motion was approved unanimously 7-0. Chairman Flanders congratulated everybody and passed the gavel to the new Chair, Chairman Heumann.

6. CONSENT AGENDA ITEMS

CHAIRMAN FLANDERS explained to the audience that prior to the Commission meeting, Planning Commission members and Staff met in a study session to discuss each of the items on the agenda. He further stated that Staff would read the consent agenda for the record. At the conclusion of the reading, Commission would be voting on the Consent Agenda items with one motion. Consent items on the agenda are highlighted by an asterisk. The audience will have the opportunity to pull any of the items for discussion.

MR. JEFF KURTZ, ASSISTANT PLANNING & DEVELOPMENT DIRECTOR, stated items A, G, J and K are on the action agenda at this time. The following items are for consent agenda approval along with any additional stipulations:

B. DVR06-0037 MOTOWORKS

APPROVED.

Request amendment of existing Planned Industrial District with Planned Area Development Overlay (I-1/PAD) zoning to allow certain motorcycle service and customization. The property is located at 224 E. Chilton Drive, north and east of Elliot Road and Arizona Avenue. **(REQUEST FOR WITHDRAWAL.)**

C. DVR07-0011 GATEWAY OFFICE PARK SIGNAGE

APPROVED.

Request rezoning from Community Commercial (C-2) and Planned Area Development (PAD) to Planned Area Development (PAD) with Preliminary Development Plan (PDP) approval for new monument signage. The site is located at the southwest corner of Chandler Boulevard and McClintock Drive.

1. Development shall be in substantial conformance with existing zoning and PDP approvals except as modified by the application materials of this request (narrative, site plan, and sign illustrations) and associated conditions of approval.
2. 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.
3. The monument sign's sign panels shall have an integrated or decorative cover panel until a tenant name is added to the sign.
4. *The monument sign shall be placed at least 15 feet from the curb in accordance with City of Chandler site design standards.*
5. *The monument sign's vertical element shall use sandstone in order to better reflect the building architecture.*

D. PDP06-0061 HOLIDAY INN/T-MOBILE

CONTINUED TO THE MAY 16, 2007 PLANNING COMMISSION HEARING.

Request Preliminary Development Plan approval for a wireless communications facility located on top of an existing hotel. The subject site is located at 1200 W. Ocotillo Road.

E. PDP06-0062 SUNBELT EQUIPMENT RENTALS

APPROVED.

Request Preliminary Development Plan (PDP) approval for site layout and building architecture for an equipment rental facility on approximately 2.8 acres located at the northwest corner of Pecos Road and Hamilton Street, within the Bogle Business Park.

1. Development shall be in substantial conformance with exhibits submitted as part of this application and shall be kept on file in the City of Chandler Planning Services Division, in File No. PDP06-0062 SUNBELT EQUIPMENT RENTALS.
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. Equipment storage shall occur no higher than the screen wall.
6. All equipment servicing shall occur within the enclosed building.
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. The landscaping shall comply with the Commercial Design Standards.
9. *The storage and/or staging of the equipment taller than the height of the screen wall for the purposes of display is prohibited.*

F. UP06-0009 APPLEBEE'S NEIGHBORHOOD BAR & GRILL

APPROVED.

Request Use Permit approval for an extension of premises to allow for an outdoor patio at an existing restaurant. The Use Permit is for a Series 12 (Restaurant) liquor license. The subject site is located at 1245 W. Chandler Boulevard.

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. *At the time of patio construction, the landscaping being removed shall be replaced with landscaping similar in size and caliber.*

H. UP06-0089 84 LUMBER COMPANY
CONTINUED TO THE JUNE 6, 2007 PLANNING COMMISSION HEARING.
Request Use Permit approval to have a 1,000-gallon fuel storage tank on an industrial site at 275 E. Willis Road, approximately ¼ mile east of the southeast corner of Willis Road and Arizona Avenue.

I. UP06-0092 IGUANA MACK'S
APPROVED.
Request Use Permit approval for a time extension to sell liquor (Series 6 Bar License) within existing interior and exterior dining areas. The property is located at 1371 N. Alma School Road at the southeast corner of Alma School and Knox Roads.

1. *The Use Permit shall remain in effect for two (2) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.*
2. Expansion, modification, or relocation beyond the approved exhibits for interior and exterior areas (Floor Plan, Site Plan, and Narrative) shall void the Use Permit and require re-application and approval of a new Use Permit.
3. The Use Permit is granted for a Series 6 license only and any change of licenses shall require re-application and approval of a new Use Permit.
4. The Use Permit is non-transferable to other store locations.
5. 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 beyond outdoor speakers and live music shall require reapplication of the Use Permit.
6. The Use Permit is approved for the current business owner only. In the event the business is sold with the Series 6 License, the business shall require reapplication and new Use Permit approval.

L. PPT07-0003 POLLACK BUSINESS PARK NORTH III LOTS 1 THRU 5
APPROVED.
Request preliminary plat approval for a retail, showroom retail, and light industrial development located at the northeast corner of Arizona Avenue and Elliot.

M. PPT07-0004 MARKETPLACE PLAZA AT FULTON RANCH
APPROVED.
Request preliminary plat approval for a commercial retail and office development located at the northwest corner of Chandler Heights Road and Arizona Avenue.

N. PPT07-0013 DOBSON TOWN PLACE

APPROVED.

Request preliminary plat approval for an office development in south Chandler adjacent to the Las Tiendas shopping center located north of the northeast corner of Alma School Road and Queen Creek Road.

CHAIRMAN HEUMANN went back to the audience to see if anybody wanted to pull any of the items from the Consent Agenda for a full presentation. He stated items A, G, J and K would be heard in a full hearing.

COMMISSIONER FLANDERS stated that before he made a motion he wanted to point out that he has a conflict of interest on item M. The firm he works for is involved in that site with one of the users.

COMMISSIONER FLANDERS asked for a motion for the Consent Agenda with the additional and modified stipulations as mentioned by Staff. Motion was seconded by **VICE CHAIRMAN IRBY** and passed unanimously 7-0 with the one exception noted.

ACTION ITEM:

K. UP07-0017 FAMOUS SAM'S

Request Use Permit approval for an extension of premises to sell liquor (Series 6 Bar License) for on-premise consumption within an outdoor patio area. The property is located at 940 North Alma School Road at the southwest corner of Alma School and Ray Roads.

MS. JODIE NOVAK, SR. CITY PLANNER, stated Famous Sam's came in January 2007, and received a Use Permit extension for a period of five years for their main bar. With the new smoke-free act prohibiting smoking inside establishments, Famous Sam's is requesting to have an outdoor patio for their patrons, which would allow them to eat, drink, and smoke. The application includes a patio that is on the building's north side (Ray Road side). The patio would take over 17 parking spaces that currently exist along the front. The patio integrates well within the center. There will be some additional sidewalk walkway since the patio will be blocking off the existing colonnade. Additional landscaping, including shrubs and trees, is being installed in compliance with the landscape standards for commercial developments.

Ms. Novak noted that there is plenty of parking on the north side for patrons, as well as ample parking on the development's east side for the whole center. There will be a railing

surrounding the entire patio. For smoking patrons there will be an entrance to the patio on the north side for smoking patrons. There is another primary entrance, which is on the development's east side, which will be a main entrance for patrons that are not going to the patio for smoking.

Staff does not have any opposition from residents; however, after the neighborhood meeting there were some phone calls from residents that had concerns about the request for speakers for music on the patio, as well as television. The applicant has agreed that they wouldn't provide speakers or music on the patio area, but they do want to be able to have at least one television, if not more. Their patrons like to watch sports on television, as it is a sports bar, and secondly, there is a video game that is very popular with their patrons, and the applicant wishes to have these same services available on the patio. Ms. Novak stated that a speaker was present in the audience that had concerns with the outside noise coming from the patio on this establishment and would be speaking about that. The applicant does want to have television and would be willing to integrate one that is more on the inside of their business so it is just for viewing only with no sound.

Staff feels that the proposed extension of the patio and what they are proposing in terms of the size and the design, location of seating, the addition of a walkway area, and landscaping meets the standards and integrates well within the center. Staff does not feel there is a land use impact based on the request. Staff recommends approval of the patio extension. Ms. Novak said that there were several conditions (mostly standard conditions), but noting that condition no. 5 is to ensure that the landscaping and new landscape planters meet the landscape standards for planting (shrubs, ground cover, and trees).

6. The Use Permit is for a Series 6 liquor license only and any change in type of license shall require reapplication and new Use Permit approval.
7. 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.
8. Any substantial change in the floor plan to include such items as, but not limited to, additional seating, patio area, or additional entertainment related uses beyond those proposed shall require reapplication and approval of a Use Permit.
9. The Use Permit is non-transferable to any other store location.
10. Landscaping in the new landscape planters is required to meet commercial design standards.
11. Speakers and music are prohibited on the outdoor patio. Televisions are allowed on the patio and must be muted with no volume at 10:30 p.m.
12. The landscaping in all open spaces shall be maintained by the adjacent business owner or property owner.
13. 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.

AMALIA DICKERSON, 1301 W. SANDPIPER, GILBERT stated that she and her husband opened the restaurant 12 years ago and had not requested a patio until the smoke

free Arizona act. She said that they would like to have one or two televisions on the patio. The applicant stated that they would be happy to have a stipulation to turn off the sound at 10:00 p.m. because by then most of the people who play the trivia game are no longer there. She asked that Commission request the stipulation. Ms. Dickerson said that there was other patios being approved for other establishments which will have televisions and speakers, and asked that Commission please approve their establishment to have at least one or two televisions on their exterior, with a stipulation for no speakers.

COMMISSIONER CREEDON asked if the applicant would be comfortable with turning the sound down at 10:30 p.m. **MS. DICKERSON** stated that 10:30 would be great.

In response to a question posed by Chairman Heumann, Ms. Dickerson stated that the trivia game was a silent game.

MS. CAROL MALONE, 837 N. APACHE DRIVE, said that she lived behind the Jewish center. She said that sound was described in a term of frequency and intensity. Frequency is the pitch measured in vibrations per second, or hertz. A normal conversation in a quiet place is 500 to 2,000 hertz. Intensity or loudness is measured in decibels. Ms. Malone said that she would like to be able to limit the sound that could come from this establishment. Ms. Malone went on to describe different decibel levels from various items, such as vacuum cleaners, lawn mowers, jet liners, etc. Ms. Malone stated that she was not opposed to the patio; she is opposed to the sound emitting from the patio. She said she was afraid that one or two TVs might become too loud and the games would emit a 'pong, pong' sound. She said that she was concerned with hearing the base coming from the music.

COMMISSIONER GULSVIG asked Counsel about the noise ordinance. He said that he recalled there had been an issue that consolidated all of the issues of sound within the ordinances. He agreed with Ms. Malone that the base sound coming from music penetrates far more distance than the higher frequencies. He said that it is difficult to say that by adding the patio, with the restrictions that were being placed on the patio, that the base sound would come from the patio. He felt if the homeowner would look farther into the ordinances of sound, she would have the protection of the city ordinances to take care of the other portion. He said that there was a city ordinance to take care of any sound issues.

COMMISSIONER CREEDON stated that she would be comfortable with the stipulation that the applicant had agreed to eliminate speakers and music and that two televisions be allowed on the patio. She said that the applicant did agree to a 10:30 timeframe. This would allow the customers to watch a game outside, given the location of the residences.

VICE CHAIRMAN IRBY said that he wanted to make it clear that obviously, if there was live music or a live band he could see that being an issue. However, with this request

there are TVs that face Ray Road, which is the opposite direction of the citizen who had spoken.

MOTION BY VICE CHAIRMAN IRBY, SECONDED BY COMMISSIONER CREEDON to approve UP07-0017 FAMOUS SAM'S with a stipulation that TVs be allowed on the patio, no speakers or music, and no live entertainment, and that the TVs be turned off at 10:30 p.m.

MS. NOVAK asked for further clarification and said that she had a stipulation to be read, **“Speakers and music are prohibited on the outdoor patio. Televisions are allowed on the patio and must be muted with no volume at 10:30 p.m.”**

COMMISSIONER FLANDERS commented that they were requiring the applicant to do landscaping along the patio area. He thought it would be appropriate to provide a stipulation that the landscaping be maintained.

MS. NOVAK stated that there was a stipulation ‘**The landscaping in all open spaces shall be maintained by the adjacent property owner.**’ as well as a stipulation ‘**It 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.**’ She noted that these would be condition nos. 7 and 8.

VICE CHAIRMAN IRBY amended his motion to agree with these additional conditions.

When the vote was taken, the motion passed unanimously 7-0.

A. AP05-0003 / DVR05-0040 PINELAKE CONDOMINIUMS

Request an Area Plan amendment from business park to multi-family residential land use, and Rezoning from Planned Area Development (PAD) zoning for business park and Agricultural (AG-1) zoning to PAD for residential condominiums with Preliminary Development Plan (PDP) approval to allow a residential condominium development. The property is located at the southeast corner of Pinelake Way and Ocotillo Road, which is approximately one-half mile east of Arizona Avenue and on the south side of Ocotillo Road.

MS. JODIE NOVAK, SR. CITY PLANNER, stated that this parcel of land was located at the southeast corner of Pinelake Way and Ocotillo Road, approximately one-half mile east of Arizona Avenue and on the south side of Ocotillo Road.

The project is approximately 13.85 net acres. It is being proposed to amend the existing Southshore Area Plan, changing the land use that is in place from business park designation to multi-family. The proposal is to allow a 144-unit multi-family residential

condominium development. In addition to the Area Plan amendment is a rezoning request to allow for the residential condominium project, along with a Preliminary Development Plan request.

The proposal is for 144 residential condominium units. There are 116 two-bedroom units, and 20 three-bedroom units. It is approximately 10.39 dwelling units per acre. Unit sizes will range from 1,250 to 1,935 sq. ft. in area.

Ms. Novak commented that the development incorporates the design guidelines that are a part of the Southeast Chandler Area Plan. The property is located within that particular Area Plan. It also incorporates development standards for the Paseo Master Plan, as the Paseo Consolidated Canal is located on the east side of the subject property. It also incorporates the multi-family residential standards, which apply to both apartment and condominium type developments. The guidelines for the incorporation of all these plans deals with landscaping, setbacks, building orientation, open space corridors, and rural theming throughout the project.

In terms of the Area Plan amendment, Staff is recommending denial on the request to change the land use from a business park designation to a multi-family residential condo designation. Ms. Novak stated that this is based on the existing land uses that are in place for the area and the validity of being able to still do a business park on this particular parcel.

Ms. Novak continued that along Ocotillo Road there is the recently approved Paseo Lindo project at the northeast corner of Arizona Avenue and Ocotillo that has a commercial office business park component up against the railroad track. East of that is land within the Airpark Area Plan that is already land planned for light industrial and heavy industrial further north. There are also several rezonings and PDP products that have been approved for a mix of light industrial type development all the way east of the Canal. On the south side of Ocotillo Road this particular parcel had been designated business park, and immediately on the west side of Pinelake Way is another parcel designated for business park. These have been that same designation with the Southshore Area Plan, even with other amendments for land uses having been approved over the years.

Ms. Novak stated that this parcel does have the ability to be developed as a business park. The master plan for Southshore talks about having high-tech uses, research and development, and office type uses. Ms. Novak said that there are a variety of different offices that could go here, such as a small-scale garden office to a single user office, or perhaps some flex industrial warehouse type buildings. Staff does recognize, however, that it is not unusual for this property to also develop as a multi-family use. Even though this is what is being proposed, Ms. Novak said that it was not unusual to find other

business park areas or other industrial areas within Chandler that you might find a multi-family as an integral component of a larger employment area.

Ms. Novak commented that the project was very well done in terms of the Preliminary Development Plan. It has a good quality design with rural theming. It blends in with the rural theming that has been provided for with the Pinelake Estates, Pinelake Village, and the Chandler Methodist Church.

Ms. Novak stated that the property was located right off Pinelake Way and Ocotillo Road. Pinelake Way is a public road and is a collector street. It allows for traffic to access the two parcels that both business park designated along Ocotillo Road, as well as access to the people that live in the Pinelake Estates subdivision to the south. The development has access to Pinelake Way for emergency exit only. Ms. Novak advised Commission that there was a future traffic signal planned for Pinelake Way and Ocotillo Road to provide safe left turns onto Ocotillo Road to go west to Arizona Avenue.

Staff met with Economic Development, who agrees with staff that this parcel is still viable for a business park or office use. It is more compatible with the SRP receiving station, as well as the industrial business park uses on the north side of Ocotillo Road, and more compatible with the business park that is also designated office on the west side of Pinelake Way.

Ms. Novak noted that if Commission were inclined to support the residential condominiums on this particular site, the city wouldn't have any problem with that happening. This is not a key parcel within the City. She said there was an abundance of business park opportunities on the north side of Ocotillo Road as a part of the Airpark Area Plan. There are other developments in this area that are incorporating office as well as retail.

Ms. Novak went on to say that this property is up against an SRP receiving station, which will also be expanded into a substation. The applicant has made efforts to try to buffer this area, orienting the buildings, and providing a drive aisle along it to mitigate any impacts adjacent to the substation. It won't, however, fully screen the receiving station. It is clearly visible from Pinelake Way.

Ms. Novak continued on to say that a concern from the neighborhood was with the traffic emanating from this project. The residents who have been involved, approximately 6 or 7, are not opposed to this project. In fact, they support it and think that it will help their land value. They also feel it is a wonderful buffer next to SRP. They want to maintain a more residential land use on the south side of Ocotillo Road. They do have a fear, though, of parking along Pinelake Way or having other traffic going onto the public road other than their own traffic.

Ms. Novak said that Pinelake Estates has two major access points. The majority of the traffic from the middle of the development to the south end is to Chandler Heights Road. This will be more heavily traveled with Pinelake Way once the traffic signal goes in.

Ms. Novak did note, however, that this is a public street. Parking is being self-contained on site for this project. It is not being designed for off-site parking on Pinelake Way. Parking meets the standards and requirements. Staff feels that it is appropriate to use Pinelake Way as an access to go to and from this development; it is more than allowed by the city. Staff feels it is also appropriate for having a signal there.

Staff is recommending denial to maintain the business park land use that is on the property. Because of that, staff is recommending denial of the rezoning and PDP; however, they do not have any abstentions with the site plan layout or building architecture that is being provided.

CHAIRMAN HEUMANN asked Ms. Novak to point out the various business parks, the SRP receiving station, and other opportunities that she had mentioned in this area.

MS. NOVAK gave the audience and Commission a brief overview of the area and existing and/or proposed land uses.

CHAIRMAN HEUMANN asked if SRP had been consulted regarding the development. Ms. Novak replied that SRP did not have any concerns about the development that she was aware of.

COMMISSIONER CREEDON asked about the size of the SRP receiving station. Ms. Novak replied that it is approximately 8-10 acres in size.

COMMISSIONER CREEDON asked if there was the possibility of additional lines in close proximity to this development if the SRP receiving station became a substation.

MS. NOVAK responded that she wasn't sure of the intricacies of the equipment that would be brought in, but there was the potential of other take off lines coming off the existing power poles that are in the station right now and run along the canal.

COMMISSIONER FLANDERS asked if SRP had said when this would become a substation.

MS. NOVAK stated that she did not ask those questions. She said that she had called to confirm the name of the facility so that she could accurately represent the facility and understand what kind of facility it was. She said that she knew there had been some involvement with the community and SRP with regard to erecting a wall around it and providing extra landscaping.

CHAIRMAN HEUMANN commented that just north of his home is the Houston substation and that there was a big controversy with bringing in additional 69KV lines. He noted that as southeast Chandler expands and this receiving station becomes a

substation, the walls would have to be 15- to 20-ft. in height with barbwire. He stated that this was one of his concerns with this project.

RALPH PEW, 1930 E. BROWN ROAD, MESA, AZ said that he was present on behalf of Mr. Wendell Beck and Mr. Jim Runner, who are the owners of the subject property. Mr. Pew stated that they are requesting a change in the Southshore Area Plan. He said that they fully understood that the request for multi-family use on the 13-acre parcel was inconsistent with the Southshore Area Plan as it exists today. Mr. Pew said that they were asking Commission to amend the Southshore Area Plan and designate the acreage on the southeast corner of Pinelake Way and Ocotillo to multi-family.

He said there were a lot of good reasons for doing that. Mr. Pew said that they had spent a significant amount of time working with the adjoining property owners in the area. It had become clear to them that the residents in the Pinelakes Association and in the Kirby Estates Association that there would be support for the request.

Mr. Pew stated that there was an issue with access on Pinelake Way. As the plan is designed at this time, there is secondary access for emergency. He said that they understood that the planning department and the city traffic engineering department recommend that there be a full traffic movement at that location. Mr. Pew said the developer has agreed to the condition that there be an access point there. He commented that eventually it was expected that the intersection of Pinelake Way and Ocotillo would be a signalized intersection. If and when that happens, it makes perfectly good sense to have that access point there.

He went on to say that they believe that one of the reasons the Pinelake Estates Association supports the request is because it is the entryway to their residential community. They would much prefer the lower intensity residential uses than the high intense business employment uses that could occur. He pointed out that depending on the nature of the business park, employment uses or offices uses, the traffic would be two to three times more in the business setting than in a residential proposal.

Mr. Pew urged Commission to support the request. There is neighborhood support. There would be less traffic in the area as well. It would provide a better introduction to the Pinelake Estates subdivision than an employment use.

Mr. Pew went on to explain to Commission that east of the railroad tracks every non-residential use that was originally contemplated in the Southshore Area Plan had been changed to a residential use, except the parcel before Commission and the parcel immediately to the west. Mr. Pew said that in their opinion and in the opinion of the

neighborhood, the character of the Southshore Area Plan south of Ocotillo Road and east of the railroad tracks is residential. The staff is absolutely correct as it relates to north of Ocotillo and west of the railroad tracks. Mr. Pew said that that area is predominately developed for employment and non-residential uses. However, for the quadrant east of

the tracks and south of Ocotillo, virtually every use is residential; for that reason Commission is being asked to support the plan. It is consistent with the area.

Mr. Pew noted that developing this as a residential project at 'for sale' condominium units they could, through deed restrictions and through disclosure, let potential buyers know of the existing SRP receiving station. He said that the irony would be that recommending denial of the case because of residential proximity to the SRP receiving station didn't make a lot of sense because the same exact issue was presented when the Pinelakes area was approved. South of the receiving station and west of the tracks was light industrial and business park in the Southshore Area Plan. A conscious decision was made by the Council to approve residential development, abandon those employment uses, and develop housing immediately adjacent to the receiving station. Mr. Pew stated that they believed that it was totally consistent to do the same thing on the north side. He said the only use then that would be non-residential would be on the west side of Pinelakes and the receiving station.

Mr. Pew noted that they had worked on this project for over one year with the staff, and that they had answered all the design, architecture, and site issues.

COMMISSIONER GULSVIG stated that with regard to Mr. Pew's argument about the area east of the railroad tracks and south of Ocotillo, he recalled that the neighbors were in opposition when a request came forward for a storage area due to traffic. Now it's being said that these same residents are not opposed to putting all these residents in the same area. He felt this was an inconsistent argument.

MR. PEW said that he wasn't sure what had happened at the time of the mini-storage request; however, he did know that the Pinelakes' Association had objected to that. He noted that through meetings with the Pinelakes' Association and their representatives, as a group, they preferred the residential use to employment uses.

COMMISSIONER GULSVIG stated that he wanted to make the point clear that Commission had supported the residents back then in not allowing that product to go in, and now Commission is getting a counter argument.

COMMISSIONER GULSVIG also stated that he didn't agree with letting residences go on the opposite side of the receiving station. He said that when the SRP receiving station becomes a substation there would be larger towers going in. Commissioner Gulsvig stated that he had a problem with a residential development in this area that is designated business park.

MR. PEW said that he understood the concern of residences up next to the receiving station. However, he noted that homes were built south of the station, they were being purchased, people were living there, and people knew about the station. He said that while Commission may have a concern the purchasing public who want to live there may not have the same concern. He asked if this was a legitimate concern?

COMMISSIONER CREEDON commented that residents could co-exist with utilities. She said that she works for APS, and she understood the issue very well. She noted that it

was going to be increasingly difficult for Salt River Project to bring the lines in along a residential property. Having said that, Commissioner Creedon stated that her issue was not with the substation, but rather a land use issue. She said that she had a problem with amending the Area Plan from business park to residential. She said that she wanted to make that clear.

In response to a question posed by Chairman Heumann, Ms. Novak stated that Pinelakes Estates was approved in the early 1990s. It was a General Plan Amendment to allow it to go from industrial to residential, and there was a separate rezoning that followed.

MR. PEW commented that this 14-acre parcel was just not critical to the overall economic development of Chandler. Yet, nearly 10 years earlier there was a wholesale change of light industrial and business park to Pinelakes Estates.

CHAIRMAN HEUMANN commented that in reading the traffic study he noted that the traffic in the morning would increase at this corner versus that of a business park.

MR. PEW said that at peak hours there would likely be more traffic.

CHAIRMAN HEUMANN stated that generally residential goes out in the morning and comes back in the evening. Business parks go 'in' in the morning, so there would be reverse traffic. There would be more concern for the people living in Pinelake Estates with residential.

MR. PEW noted that the corollary is also true. People coming to the business park would be arriving within that peak hour time too as people are leaving Pinelakes.

CHAIRMAN HEUMANN recalled that the Pinelake residents objected to the storage facility to the west of this site. He felt this was a land use issue. He said that he might be more sensitive on the issue with the substation because he knew what had just gone on with the Houston substation. He commented that twelve years ago residential was being built everywhere. Chairman Heumann was also concerned with the economic impact.

MR. PEW said that they had come into the picture after the mini-storage project. They were urged to meet with the neighborhood and to work with them closely, and to do something that was agreeable with them. He said that that is exactly what they did.

CHAIRMAN HEUMANN stated that the project itself was a nice project. Access on Pinelake Way was a necessity. He looks at this as a land issue.

MR. DEREK LOGAN, 445 E. COCONINO PLACE, said that he hadn't really planned to speak due to all the work that Mr. Pew had done regarding this project. He

said that he had been one of the opponents of the self-storage facility on Pinelake Way. A concern was that someone in a truck or pulling a trailer would use Pinelake Way as a means of getting to Chandler Heights Road. Mr. Logan said that he believes that the neighbors

living in the condominium project would be aware of the difficulties transversing through their neighborhood unless it was absolutely necessary. He went on to say that they are aware that the traffic in the morning would be heavier than if there were business use here; however, that was why they wanted the gate to be for emergency entrance and exit only. Mr. Logan said that the city was in favor of leaving this access as a through way, and they would be in favor of that also if there was a traffic signal at Pinelake Way and Ocotillo Road. If there were a traffic signal Mr. Logan said that they would have no problem with the condo going in and out through the street.

Mr. Logan noted that regarding the receiving station, the vacant property for the substation is on the Pinelake Estates side, and it would probably be the residents on the northern end of Pinelake Estates that would be complaining. He said that he believed 69KV lines were already there; SRP would just be adding more.

Mr. Logan stated that he was the vice president of the HOA. He wanted to get involved because of what he had been seeing happening around him. They want their community to be nice with a community feel. They feel the condominiums would give that community feel that they're looking for. In addition, it provides a buffer from the SRP site as they drive into their community. Mr. Logan said that the condominiums would be a good addition to their community. He commented that the proposed landscaping is very beautiful and the buildings nicely done.

Mr. Logan stated that they did not like the self-storage facility proposal because they felt the self-storage was too industrial and did not provide a neighborhood feel.

CHAIRMAN HEUMANN asked Mr. Logan if he thought it would be attractive if a well-designed business park were to be built in this location that met the city's landscaping requirements? He pointed out that the business park would be one story and could also have an attractive entrance.

MR. LOGAN stated that a business park would be very nice, but they were worried that a storage building would be built in this location. Also, they were in favor of the two-story element of the condominiums because it helped to hide some of the power lines that already exist in this area. Another concern was that this land could stand vacant for a very

long time. He said what is being proposed now is very good and he wanted to see the project started instead of the land standing vacant for the next 20 years.

CHAIRMAN HEUMANN asked if there was anyone else in the audience that wished to speak. No one responded.

CHAIRMAN HEUMANN asked if the applicant wished to make a closing statement. The applicant did not wish to make any closing statements.

CHAIRMAN HEUMANN asked for comments from the Commission.

COMMISSIONER GULSVIG stated that he was not in favor of changing the land use. He said that had been his argument before when the storage facility request came forward.

VICE CHAIRMAN IRBY stated that he remembered the mini-storage request. His main objection was the quality of the project. It also left an unusable property between the mini-storage and the access drive into the community. He said that he had mixed feelings about changing the use of this land; however, Pinelakes should never have been zoned residential if the city was trying to hold onto all this commercial property. He felt that since they gave up the bulk of the property on the east side of the railroad tracks, he didn't have a problem with this parcel going to residential, especially when there is residential east of this property, with the exception of SRP. Vice Chairman Irby stated that he was going to vote in favor of the proposal, only because of what had already been done in this area. He said that he wanted to see the business park on the west side of the entry drive stay as business.

COMMISSIONER FLANDERS stated that he also had not liked the quality of the mini-storage. He said that after hearing from the neighbors with regard to the entryway into their community, he felt that could still be achieved with a higher quality business park.

Commissioner Flanders went on to state that his biggest problem with the subject development was with the access. There is nearly 14 acres to this site with only one point of access in and out. He also was concerned with the SRP receiving station becoming a substation and the problem with the additional power poles going in. Thirdly, going from employment designation to residential. That is also in conjunction with the SRP matter; he had a problem with the power station right in the middle of residential homes.

Commissioner Flanders feels that if this were to be developed as a nice business park that one- and two-story configurations could be achieved to help screen the SRP facility. He restated that he was not in favor of changing the use on this site.

CHAIRMAN HEUMANN stated that back in the 1990's things were being changed quite a bit to residential; Chandler wanted the people, and he didn't feel that the vision was quite there as yet. He said that one way to look at it is, two wrongs do not make it right.

In response to a question regarding motion making for the Area Plan, **MR. JEFF KURTZ, ASST. PLANNING & DEVELOPMENT DIRECTOR**, stated that it was

appropriate to make separate motions (*Area Plan amendment, Rezoning*) if the Commission desired. His advise to the Commission was to deal with both matters and then forward both matters on to Council.

CHAIRMAN HEUMANN asked if the Area Plan amendment were denied, would it be necessary to vote on the second part of the motion (rezoning). Mr. Kurtz responded said that for the record, if Commission were to separate the motions, then the second part of the request would need a motion. The purpose of this is for clarity.

MR. GLENN BROCKMAN, ASST. CITY ATTORNEY, stated that the Commission was a recommending body and their input on the planning issue and on the zoning was very important.

CHAIRMAN HEUMANN called for a motion.

MOTION BY COMMISSIONER CREEDON, SECONDED BY COMMISSIONER FLANDERS, to deny AP05-0003 PINELAKE CONDOMINIUMS, Area Plan Amendment from Business Park to Residential. Motion was approved 5-2 (Irby, Anderson).

MOTION BY COMMISSIONER CREEDON, SECONDED BY COMMISSIONER FLANDERS, to deny DVR05-0040 PINELAKE CONDOMINIUMS. Motion was approved 7-0.

G. UP06-0079 MUSIC MASTERS MUSIC ACADEMY

Request Use Permit approval to operate a music instruction business in a General Industrial (I-1) zoning district. The subject property is located at 344 N. McKemy Avenue, Suite 2.

MR. BILL DERMODY, CITY PLANNER, stated that this was a request for a music instruction business within a planned industrial I-1 district. It's located at 344 N. McKemy Avenue, Ste. 2, Southpark Business Center, which is generally zoned for light industrial uses. Some of the uses in this center include Heraeus, Crane Aerospace, and Odyssey Ware. At the exact corner of Chandler Boulevard and Kyrene Road are a mixed-use commercial office, industrial, and U-Haul, including a couple restaurants. Also surrounding that is a buffer district zoned I-1 PAD. That area includes not only I-1 uses,

but also assembly uses and office. There is a daycare there, as well as a gymnastics center and some churches. The rest of the park is zoned industrial. Also near the site, to the north, is a residential condominium project.

The business is called Music Masters Music Academy and occupies one office suite within an office warehouse building. The other tenant is a packaging warehouse business. Music Masters only occupies office with no warehouse. There are 10 employees and

contractors. They have music lessons up until 8:00 p.m. Monday through Saturday, by appointment only. There are no recitals on site. This business is for both adults and children. The children do not wait outside to be picked up; they wait for their parents inside the building, as do the parents wait inside for their children. Mr. Dermody stated that staff is not concerned with that part of the business.

MR. DERMODY noted that there is a significant parking shortage on site. It requires approximately 170 spaces while only 70 are provided. However, at this point parking is not an issue. The rest of the building uses only approximately five (5) spaces. Obviously the other 65 or so spaces are enough for this business.

MR. DERMODY stated that staff recommended denial for this request. He said that it might look familiar to other requests in the past, as staff recommends keeping assembly type uses out of industrial parks. One reason for this is that these kinds of requests are fundamentally incompatible with industrial uses. Noise, traffic, odors, and hazardous materials do not mix with kids, people, offices, and bringing large numbers of people to this area. It is bringing people to a problem. Secondly, generally staff tries to preserve unencumbered industrial spaces. There are only so many places that industrial uses can go. Staff feels that with a buffer district already in place, what is I-1 should be allowed to be for I-1 only.

Mr. Dermody said that there were other options where Music Masters could be located. They could be located in almost any retail center within the city. There are other industrial areas in west Chandler where the zoning has been changed for Use Permits. This location is just not the home for Music Masters.

Mr. Dermody commented that there had been quite a bit of neighborhood input on this request. No one attended the neighborhood meeting; however, staff received approximately 30-40 letters in support, mostly from the parents and few from the industrial neighbors. Mr. Dermody noted that some people feel very safe in this location and wondered if being in an industrial district was really a safety issue. He said that many people questioned what kind of negative effect this has on the neighboring industrial. Also, many of the people who wrote in noted that this was a valuable business for the community. Staff agrees with that; however, this is not the right location for the business.

MR. DERMODY stated that staff recommends denial.

CHAIRMAN HEUMANN asked Mr. Dermody to review the uses that are located in the I-1 buffer zone.

MR. DERMODY stated there was a church (which started the buffer district in 1997), an auto glass company, a daycare, gymnastics academy, and a couple more churches along the east side.

CHAIRMAN HEUMANN stated that the daycare and gymnastics center are approximately 400 feet of the project site. He said that he understood about preserving industrial. He asked Mr. Dermody how much of the industrial buffer district was hazardous waste/material.

MR. DERMODY pointed out the areas that had hazardous materials. He said that anything in an I-1 district has the potential for HAZMAT.

CHAIRMAN HEUMANN inquired if the daycare facility and gymnastics center were operating because of a Use Permit or by the fact that it was a designated buffer?

MR. DERMODY said that some of the uses were there by Use Permit and some were allowed by right after the buffer district was put in, the PAD Overlay by I-1. Responding to a question posed by Chairman Heumann, Mr. Dermody stated that the Fire Marshall would have some jurisdiction under the Fire Code to consider on a case-by-case basis whether HAZMAT would be allowed within 1,000-ft. of the condominiums. This would include this subject parcel as well. Mr. Dermody then explained that the Fire Code allows the Fire Marshall to individually review any hazardous materials request for a location within 1,000-ft. of a school, church, or any other public assembly type use.

COMMISSIONER GULSVIG asked if a childcare facility was right across the street from HAZMAT, as well as a gymnastics center close by. He wondered if this wasn't an inconsistent argument to have these two places across from HAZMAT? He pointed out that this applicant was further away from HAZMAT than the other two businesses.

MR. DERMODY said he did not believe so. He said that staff were to come to Commission with the overlay district, staff would probably recommend denial on it. However, staff suggested not compounding the problem; what is there is there, and staff would not suggest making it any worse.

CHAIRMAN HEUMANN asked if staff recommended denial on the Use Permit for the daycare?

MR. DERMODY responded that staff did not recommend denial on necessarily every individual one, but staff initially recommended denial on a couple of Use Permits and resisted the whole overlay district; however, supported the overlay district as a compromise – something better than haphazard throughout the business park.

CHAIRMAN HEUMANN then stated that this is consistent for staff because staff really didn't support the original plan.

MR. JEFF KURTZ stated that he would like to give some history on the daycare. He said that at the time it had stimulated some dialogue as to the appropriateness of that decision. This subdivision was developed under the concept of an industrial park that had services within it. At the time, a daycare was seen as providing an employment service to

the employment area; drop your kids off, go to work, pick your kids up, go home. It was encouraged to occur as one of the very limited type of industrial services that were appropriate to service an employment need. As the years went on, it became even more glaring that there were potential incompatibilities that existed. In order to accommodate both that concept of having a daycare next to your employment, which makes a lot of

sense, except when you start considering the HAZMAT uses going in just across the street. There was the intent and desire to create within that industrial park a greater level of protection. So, the city came back and did a PAD (Planned Area Development) overlay. Within that PAD overlay certain other levels of restrictions were put around the edge (buffer) of the industrial park to accommodate things that wouldn't otherwise be allowed as a matter of right within the industrial areas. That is what spawned the gymnasium and the churches that occurred within there. It's a reaction of 25 years worth of decisions that have occurred that staff is trying to relate back to. At the time the decisions were made and made appropriately for the decision-makers at that time. Mr. Kurtz said that staff is bringing this back to Commission in the context of a larger picture of what is appropriate to happen in employment areas and industrial areas. Industrial areas are pure and need to be preserved for employment opportunities. We need to not encourage non-compatible uses within an employment area, which in fact do away with our desire to have employment areas. He said that there had been several cases such as this one, and staff addressed those cases on a case-by-case basis. Mr. Kurtz reminded Commission of a few of those cases.

CHAIRMAN HEUMANN asked if the real estate community was not responsible to allow renters to know what can legally go in a space?

MR. KURTZ said that decisions are made on leasing and whether they have a more legal, moral or financial responsibility. He said in this case there was no need for the warehouse space so the office was leased out.

COMMISSIONER GULSVIG said that he appreciated Mr. Kurtz' history on this site and the fact that Commission should be consistent on how they apply the interpretation of the land use. If this is industrial, then that is what it should be.

CHAIRMAN HEUMANN asked the applicant to come forward.

LANI KUBAN, 15802 S. 13TH PLACE, PHOENIX, AZ, stated that she and her husband own Music Masters Music Academy located in the Southpark Center, 344 N. McKemy Avenue, Ste. 2. Music Masters provides private lessons to students of all ages. On September 21st they opened their doors to zero students and zero lessons being taught. Approximately 180 days later they are teaching over 100 lessons per week to students who come from the nearby surrounding areas, mostly within one mile of the facility. The student population is growing each and every day.

The applicant said that with regard to the incompatibility and hazardous materials issue, Music Masters is located at the very northwest edge of the Southpark Center. Approximately 20 yards north begins the condominium complex directly across the street from their site. If there is concern for Music Master's safety being in this industrial park, the applicant stated that she also wonders about the safety of the neighbors and residents who are directly across from their own location.

With regard to the uses allowed in industrial zoning, the applicant said that in staff's analysis there does not appear to be special circumstances applicable to this Use Permit request that would justify an exception to the general policy. Music Masters makes the comment that they are not asking for a rezoning of the area, they are merely asking for a Use Permit for the duration of their four-year lease that would allow them to transact business in their current location. She said that the letters of support in the Commissioners' packet speak for themselves that no one has any issue with them transacting business in this location or receiving a Use Permit to do so.

With regard to an area (identified east of Austin and south of Detroit Street) that was the subject of a rezoning in 1997 to create a transitional zone that would allow for certain uses beyond what code allows to be I-1 district. Because this district is specified on the edge of the industrial park staff cannot support such uses to the interior of the industrial park. Music Masters is located at the northwestern edge of the industrial park. They are approximately 20 yards away from residential. The applicant stated that even though they are not asking for rezoning, a precedent had been set for multi-use by rezoning the southeastern edge.

With regard to the shortage of parking at this site, the applicant said that a tenant change is not an issue. Music Masters is a sub-lessor from Sound Packaging who leases the entire building. Their lease is tied to the duration of the master Sound Packaging lease. If Sound Packaging were to terminate their lease, Music Masters lease would also be terminated. In addition, the applicant points out that their suite is approximately 3,000 sq. ft. There are two handicap and 34 regular designated spots. At their busiest times Music Masters can teach a maximum of seven lessons. Allowing one car for each student, one car for each instructor, two cars for the owners, and one car for the office help, that is 17 cars total, which is only one-half of the designated parking spaces.

In conclusion, the applicant stated that the growing success of Music Masters is testimony that they are providing a much-needed service in a day and age where both arts and music are being rapidly cut from school budgets, both public and private. They are members of the Chandler Chamber of Commerce and active board members of the Kyrene Music and Fine Arts Association. They chose to locate their business in Chandler because a service such as theirs was much needed in the area.

The applicant stated that in addition to the letters in the Commission packets, they have a total of over 60 letters of support from students, parents, instructors and neighboring businesses. She stated that no one had voiced any objection to them being located in this

industrially zoned area. The applicant requested Commission to approve the Use Permit request.

COMMISSIONER FLANDERS asked what the future intentions were for the business. The applicant responded that they have approximately 3 and ½ years left. The duration of the lease is for four years. It is tied to the Sound Packaging lease. If they decide to leave, Music Masters would either try to re-negotiate with the new tenant or move. She said that

was something that they had not gotten to the point of thinking about as yet. They were just trying to get through the first four years.

COMMISSIONER FLANDERS asked the applicant if they had been made aware of the permitted uses for this site. The applicant said that they were not made aware of the permitted uses. They were asked to fill out a lease application, indicating what the business was and to fully outline the use of the space. They were unaware of any zoning issues until the city informed them of that.

COMMISSIONER CASON asked the applicant if any of their customers stated they would leave their good services if the applicant had to move a couple blocks away. The applicant responded that most of their students come from within ¼ mile to one mile of their facility. They go to Music Masters because of the convenience. The applicant stated that her fear is that if they have to move, they would lose all the students that they have now.

COMMISSIONER CASON asked the applicant if she had had a conversation with their leaseholder about their misrepresentation of the property, so that the applicant would not be held liable if they wanted to break the lease and move someplace else?

The applicant responded that they had not had that conversation. Instead, they wanted to pursue this avenue first. The location is very desirable for the applicant, and it's a desirable location for the community.

COMMISSIONER CASON asked if it would be acceptable to the applicant if they were granted a Use Permit for a limited period of time in order to get their affairs in order so that they could move.

The applicant said that they had sunk approximately \$140,000 into the business. They are not in a position to move, and the area where they are located now is the most compatible for their use. The applicant stated that they had checked all over Chandler. Most sites were not compatible for their use. She said that this was the most perfect site. Most of their lessons are taught from 3 to 8 p.m. and most of the employees of the surrounding businesses have already gone home. It's very quiet around there with little traffic passing through.

COMMISSIONER GULSVIG asked what was in the building next door. The applicant responded that it is a warehouse, approximately 15,000 sq. ft., which stores cardboard boxes. They have maybe one employee there at any given time of day.

COMMISSIONER GULSVIG asked the applicant if they would continue to teach in this same environment if a sheet metal shop with noise were to come in next to them.

The applicant responded that the office building on the other side of their complex is approximately 100 yards away and they would not hear any noise. The building that is

across the street from them is a two-story office complex, not an industrial warehouse. There is no space that would be compatible with a sheet metal shop. The applicant stated that they would continue to teach at this site.

When Commissioner Gulsvig stated that this land use was designated as an industrial complex, the applicant reminded Commission that rezoning the southeastern edge as multi-use had set a precedent.

CHAIRMAN HEUMANN asked the applicant if they had a business prior to September 2006. The applicant responded that her husband had been teaching students out of their basement. They basically started from scratch. She said that they got a site, they started advertising, and people started coming. The applicant stated that they have approximately 3,000 sq. ft. at their site. The applicant further stated that most of their students come from the neighborhood; however, they do have students that travel from Casa Grande, El Mirage, and Gilbert.

CHAIRMAN HEUMANN stated to the applicant that the use is wonderful in terms of what they do. However, the concern was with the compatibility. The fact that it was zoned earlier as a buffer was done for a specific reason.

MR. GERALD ELAM, 16823 S. 8TH STREET, PHOENIX, AZ said that if this business were located in the middle of the Southpark Center then he would probably agree with staff, but this business is located at the edge. He stated that there are neither traffic issues nor any parking issues.

MR. ROB DUFRESNE, 6251 W. LINDA LANE, stated that he, his wife, and daughter are students at Music Master, and that it is in a very convenient location. The business is located on the outer boundary of the industrially zoned area and poses no threat to the industrial zone. He said that this business provides a unique atmosphere where students can learn to play instruments in a safe professional manner. The immediate businesses that neighbor Music Masters have no problem with their location. There have been zero problems with Music Masters at their location with regard to safety or noise. To not grant them a Use Permit would be a great disservice to the community.

MR. JERRY RIDDLE, 7050 W. CHANDLER BOULEVARD, said he had been trying for approximately five years to find someone that was compatible to teach him base, but had not found anyone with the ability like that of the owners. He stated that he felt that the applicants had done a beautiful job of doing something that was needed. He could not see that there was a threat from the use. In response to a question from Chairman Heumann, Mr. Riddle stated that his auto glass and window tinting business was located at 56th Street and Chandler Boulevard.

MR. JEFF HAYES, 15412 S. 16TH AVENUE, PHOENIX, AZ said that this location was very convenient for him as he works just south of the site. He said that being able to find a music instructor that is good at adult education in this type of area was very nice. Mr. Hayes said that he had previously worked in a building, now being called Odyssey Ware. He stated that to the best of his recollection this building had set empty the two years he was at this site. He said that it didn't seem that there was a great demand for preserving this type of zoning. He could not see how it would significantly impact the availability of industrial in the area. With regard to safety, if it were not safe here then it wouldn't be safe for any of the other businesses. Regarding the issue of the applicant moving, Mr. Hayes said that you don't sink that much money into a business and then just pick up and go. It's a hardship on the owners of the business.

Mr. Hayes further stated that it was his understanding that the benefit of a planning committee is to provide benefit to the population in a community. When one looks at a building that has been empty for a great percentage of the time, it now has a tenant. It provides a service to the community. They are not asking for a rezoning, just the opportunity to teach while they are there. The applicants have not been disruptive to the community. He asked that the Planning Commission approve the request.

MR. TROY GALE, 1041 W. PALO VERDE, GILBERT, stated that he is one of the owners of Sound Packaging, the leasor of the building to Music Masters. He said that they had built there building at 260 N. Roosevelt in 1995 (approximately 50, 000 sq. ft.); they are a corrugated box manufacturer. Approximately 1-1/2 years later they added another 25, 000 sq. ft. He said they were one of the earlier residents of Southpark Business Center. Subsequent to that a church was built across the street, and they started offering what looked like a school for troubled youth. When Mr. Gale was thinking about leasing the warehouse's front office space (approximately 80,000 sq. ft.), they went with

their regular real estate agent, who then leased the space to Music Masters. Mr. Gale said that they didn't think of any zoning issues, as there was a church right next door, as well as the gymnastics and daycare facilities. They were unaware of any potential zoning issues.

Mr. Gale stated that the lease with Music Masters ends when their own lease ends. There is a quite high probability that they will continue to lease the warehouse as they have primarily manufacturing in their facility at 260 N. Roosevelt, and they use the whole 75,000 sq. ft. of warehouse space for their finished product.

Mr. Gale stated that they do not have a problem with Music Masters. On the contrary, Music Masters does not seem to have a problem with what Sound Packaging does. There is no HAZMAT at the packaging site.

COMMISSIONER CASON asked Mr. Gale, if the applicant would have gone to him one week after moving in and told him that they needed to have a permit, would he have negotiated with them to break the lease so that they could move on to someplace else?

MR. GALE said that that was rather hypothetical, but he is a reasonable person.

MS. CHERYL SOFRE, 573 W. THOMPSON PLACE, CHANDLER, said that her stepson was a student at Music Masters. She said that she had taught in the Chandler school system for 25 years and knows the value of having a music background. It teaches a lot of disciplines. She feels that having this available outlet for students to go to after school is a bonus and feels they offer a valuable service to the area. She commented that there had been no parking or safety issues that she was aware of.

COMMISSIONER GULSVIG stated to the applicant that he applauds them for putting together a program such as this one because it was absolutely needed. He said that he was surprised that the people who are leasing the property would sub-lease without knowing that there are Use requirements. He felt that Music Masters have been a victim. They moved forward in good faith to establish a business. Commissioner Gulsvig said that on one hand he liked the idea of the facility, but on the other hand, there is a land use issue and it's incompatible. He felt granting a Use Permit for this applicant for the duration that they're there would be the right thing to do for them. Unfortunately, going beyond that time period, if the prime tenant pulls his lease, the applicant would be out a lot of money, unless the applicant could re-negotiate a new sublease. It puts everyone in a dilemma.

BRIAN KIBBON, 15802 S. 13TH PLACE, PHOENIX, AZ stated that the four years that they would have the lease would give them the time to do what was needed to do to move ahead. He said that if Sound Packaging decided after four years not re-negotiate their lease, at least they had time to plan for that. If it were to come to an end right now, it would probably end it for them. They had spent about \$140,000 in improvements.

VICE CHAIRMAN IRBY said that the use to the community is great. He had felt earlier that this was not what he wanted to see happen in an industrial area. Industrial areas needed to stay pure. What happens is that a business is allowed to move in that is breaking the rules, thus restricting other businesses around it from being able to move in. It becomes a domino effect. Vice Chairman said that he really felt for the applicant in terms of being blind-sided into this issue. He said that he was prepared to deny the application, but if Commission so favors it, he would go ahead and support a non-renewable 3-1/2 year Use Permit. He said that even 3-1/2 years was a long time. He said that he was toying with stipulating a 2-year Use Permit.

COMMISSIONER FLANDERS stated that there had been a lot of comments with regard to the service. He said that he understood the reason for the overlay area associated with the perimeter of this and why City Council did that. He said that this was just a little too far into the development for him. He agreed that industrial use should be industrial use. Commissioner Flanders said that something temporary would be appropriate.

COMMISSIONER CASON said that he empathized with the applicants, and that he was disappointed with the landlord for not knowing the background of the property and preventing this situation from the beginning. He said that he wanted to note that there might have been an opportunity to minimize the impact had the applicant reacted with a week of moving in. He didn't think that that could be dismissed. Commissioner Cason said that the applicant was in an envious position where they have probably some of the best customers. He felt from a customer standpoint, the applicant could weather a move of their business somewhere close.

Commissioner Cason said that he was not of the opinion to deny the request and leave the applicant hanging in the wind. He wanted to pursue a non-renewable Use Permit for one year. He said that he wasn't confident that the packaging business would move out, and would successfully renew their business. He thought that if the applicant would negotiate with the landlord to get out of the lease in one or two years would give the applicant time to find another location and sufficient notice to their customer base. Commissioner Cason stated that he would support a non-renewable temporary Use Permit for this property with the understanding that regardless of what the packaging business would do, the city would be able to protect the integrity of the area insofar as its intended purpose.

A question was raised regarding renewing Use Permits and a discussion ensued.

MR. GLENN BROCKMAN noted that, for the most part, he was hearing the Commissioners say that this doesn't appear to be use compatible with the zoning, but yet the city ought to give them a Use Permit. Mr. Brockman said it's not compatible with the zoning, either by right or by Use Permit. He said that he understood the humanity of the situation and said he didn't know if there was some way to give the applicant some time to put their affairs in order, find another location in some other manner, maybe by

deferring prosecution of violation for some reasonable period of time. He said that that seemed more logical than saying that the use wasn't compatible, but we ought to give them a Use Permit.

CHAIRMAN HEUMANN asked Counsel if Commission had the authority to offer a deferred timeframe.

MR. BROCKMAN responded that the decision that Commission had to make was whether or not this was a use that's compatible with the zoning that would justify issuing

the Use Permit. Once Commission decides to do that, Mr. Brockman said that he didn't believe they could put a type of non-renewable requirement that they were wanting. Mr. Brockman said that it was not within the Commission's jurisdiction to allow timeframes; that would be up to the Zoning Administrator and how they would proceed with what would otherwise be a violation of the Zoning Code.

MR. JEFF KURTZ stated that the Zoning Administrator is not empowered to make a deferred decision. They simply have to act on the matter before them. Any deferral of prosecution becomes a matter for the prosecutor to decide.

CHAIRMAN HEUMANN stated that the applicant had received notice one week after moving in that this was an incompatible use. The applicant still went ahead and did all the tenant improvements from that point.

The applicant stated that they had received notice from the City of Chandler the day they opened on September 21st. The person that delivered the notice told her that all she needed to do was apply for the Use Permit. She stated that it took approximately one week to get in touch with a city planner. The applicant said that she thought it would be as simple as getting a sales tax permit.

CHAIRMAN HEUMANN asked about the improvements that the applicant had made to the premises. The applicant said that they had made the improvements both prior and after opening the business.

CHAIRMAN HEUMANN stated that Commission's charge is for land use issues. He asked if the condominium project was approved prior to the approval of Southshore.

MR. KURTZ replied that the entire Southpark area included the 120 acres of which the condo project was a part. The existing single-family homes subdivision to the north existed at the time. The condo and apartment project to the east were the transition element leading into the industrial area, also to provide employment housing within the area. He said that it was pretty classic master land use planning; transitioning from existing single-family, higher density into the industrial area.

MR. BROCKMAN stated that Commission was a recommending body, and this may be one where the City Council would like to know how they all felt.

COMMISSIONER FLANDERS stated that the use in the industrial zone was not appropriate. Ultimately City Council would have to make the final decision.

MOTION BY COMMISSIONER FLANDERS, SECONDED BY COMMISSIONER CASON to deny UP06-0079 MUSIC MASTERS MUSIC ACADEMY. Motion was approved 5-0.

CHAIRMAN HEUMANN stated to the audience that this case would go before City Council on May 24, 2007.

J. UP07-0009 MICHAELS & ASSOCIATES
Request Use Permit approval to allow for the conversion of a residential home into a commercial business. The subject site is located at 200 N. Nebraska Street.

MR. ERIK SWANSON, CITY PLANNER, that with regard to this request, the issue at hand is Condition No. 4, which reads, "Increases in on-site employment over that represented (3), or the expansion of the home to provide additional office space, shall require Use Permit amendment and approval by the City of Chandler."

Mr. Swanson stated the floor plan represents five offices. Currently there are three employees. The concern is that under the Residential Conversion Policy, the parking required is one parking space per employee plus one for every 500 sq. ft. of floor area, which would be approximately eight parking spaces. The applicant is providing three spaces in the rear and two in the parking garage, leaving a shortage of three spaces. Mr. Swanson stated that the reason the condition was added was because there was a concern with parking, but due to the size and operation of the business, staff felt it was okay to have just the three parking spaces in the rear. In addition, this is a condition that is found on some of the other properties along Chandler Boulevard.

CHAIRMAN HEUMANN asked if there was street parking on Nebraska. Mr. Swanson stated that Nebraska Street was a public street with parking, but that is not taken into consideration for the parking requirements. Nor is the actual driveway taken into consideration. Staff's concern is that once the residential use changes into a commercial use, parking must go in on a motion forward and then a motion forward out basis, as required per the Commercial Guideline Standards. This means that a car has to pull in and turn around and then pull out. They aren't backing out into the street. The parking configuration in the rear utilizes the alleyway. Cars are able to pull into the space, back out into the alley, and then out onto Nebraska Street. Mr. Swanson added that the

applicant is requesting to have five employees, based on the amount of office spaces in the home.

VICE CHAIRMAN IRBY asked if there was a ramada just west of the three parking spaces. Mr. Swanson said there is currently a ramada, which will remain. He said that the previous owner paved the back yard with brick pavers. He said that the applicant is going to remove and shift the fence line forward, which would give enough room for three parking spaces.

VICE CHAIRMAN IRBY stated that his personal feelings were that converting a home into a commercial venture in a residential neighborhood should not impact the residential neighbors. He felt that to meet the parking requirement, the cars would park out on the

city street, which does impact the safety and flow of traffic in and out of the neighborhood. Vice Chairman Irby stated that he thought the applicant should provide the required parking on site. There would be an additional two or three more parking spaces if the ramada were removed. He said that even with that, the requirement would not be met, plus there would not be a landscape island on each side of the parking stalls.

MR. SWANSON said that originally the applicant could meet the parking with some different configurations – pulling in and allowing for some additional parking in the back. However, as part of the Residential Conversion Policy, the home must remain residential looking, and so the solution was to remove the existing 6-ft. wall, lower it to 3-ft., and create a raised planter box, which would hide the parking from the street and also provide some safety. That was a concern to the applicant and employees.

VICE CHAIRMAN IRBY suggested another parking configuration, which would ultimately provide three additional parking spaces in the rear of the building.

MR. KEVIN MICHAELS, MICHAELS & ASSOCIATES, 2593 E. TEAKWOOD, CHANDLER, stated that the request was rather simple and that he understood the parking issues. He said that this was an insurance business. He had been in the insurance business for the past 22 years, 17 years in Chandler. He stated that not more than two to three clients come to his office in any given week. The office staff is the only occupants on the premises. The home is large enough to accommodate six offices. Mr. Michaels said that he understood the requirement of three parking spaces (one for every employee) plus one for every 500 sq. ft.; however, he maintained that they would never use that.

He said that the request dealt with expansion of his business. If he wanted to expand his business he could either work harder or hire more staff – either a producer or an assistant. It doesn't bring in more clients to the place of business. Therefore, every time he wanted to hire someone, it would mean he would have to go before Commission. He said that the process would never happen. He said that if he could work on changing the requirement from three to five, they could address that at the renewal process. Mr. Michaels stated that at the present time he had no intention of expanding.

CHAIRMAN HEUMANN explained that at this time the Use Permit is at three. If Mr. Michaels decided to expand his business, prior to expanding he would need to go before Commission with his plan for additional spaces. Chairman stated that this would be a one-year Use Permit. After that there would be a three-year time extension.

CHAIRMAN HEUMANN went on to explain that the reason there is a Residential Conversion Policy is to protect the residential flavor of neighborhoods. Codes are in place for a reason. Three employees with five spots may work, but five employees with five spots does not work or meet the intent of the Conversion Policy.

VICE CHAIRMAN IRBY said that he would support the applicant having five offices with five employees if the applicant wanted to come back with a new site plan that could

get the additional cars. He said that he was not in favor of allowing five parking spaces on site with five employees, with no space available for a customer or salesperson. Vice Chairman stated that he felt that eight parking spaces would work with the right configuration.

MR. MICHAELS stated that he wanted to keep the spirit of a home there by keeping a back yard. Also, by changing it that way, it might be able to be sold as a residence later on; it's still a residential property.

VICE CHAIRMAN IRBY commented that with the additional parking there would be a better chance of selling the property as a commercial use. There would still need to be a Use Permit, which would be contingent on the sale of the property.

In response to a question regarding other properties, **MR. KURTZ** stated that those properties that have changed over go to a different occupant that has the same type of use. Staff administratively looks at it in terms of compatibility.

Mr. Kurtz further stated that it might be a good idea to take more time and explore other options for this request. It appears as though the applicant has had some thoughts of expanding. Perhaps there should be a phase plan, if it is the applicant's desire. If there are any changes to the occupancy, the applicant has the right to come back at a later date.

CHAIRMAN HEUMANN suggested that it might be a good idea to continue the case for an additional 60 days, giving the applicant time to figure out if he was going to expand in the future, prepare further plans if that were the case. It would be better to do it now than to come back at a later date.

MR. MICHAELS stated that he was okay with tabling the request. He was just hoping to simplify the process.

CHAIRMAN HEUMANN stated that what he was seeing in front of him he could not personally approve any more than three employees. If the applicant wanted to go back

and do a phasing plan as suggested by Mr. Kurtz, Mr. Michaels could have three employees now and later on add more employees. It would already be approved for more.

MR. MICHAELS stated that he would rather just moved forward as he wanted to get out of his current premises. He said that he did appreciate the offer though.

CHAIRMAN HEUMANN closed the floor at this time.

There was no further discussion from the Commission.

MOTION BY VICE CHAIRMAN IRBY, SECONDED BY COMMISSIONER GULSVIG to approve UP07-0009 MICHAELS & ASSOCIATES Use Permit as stipulated in the packet. Motion was approved 5-0.

7. DIRECTORS REPORT

Mr. Kurtz congratulated Chairman Heumann and Vice Chairman Irby on their new appointments.

8. CHAIRMAN'S ANNOUNCEMENT

The next regular scheduled meeting is on May 16th at 5:30 p.m. in the Council Chambers. Chairman Heumann stated that there was a bond election coming up on May 15th. He urged everyone to go out and vote, either by early ballot or at the polls on May 15th.

9. ADJOURNMENT

The meeting was adjourned at 8:05 p.m.

Rick Heumann, Chairman

Douglas A. Ballard, Secretary

Planning & Zoning Commission Meeting

May 2, 2007

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