

MINUTES OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF CHANDLER, ARIZONA, January 16, 2008 held in the City Council Chambers, 22 S. Delaware Street.

1. Chairman Flanders called the meeting to order at 5:50 p.m.
2. Pledge of Allegiance led by Chairman Flanders.
3. The following Commissioners answered Roll Call:

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

4. APPROVAL OF MINUTES  
**MOVED BY COMMISSIONER CASON**, seconded by **COMMISSIONER RIVERS** to approve the minutes of the December 19, 2007 Planning Commission Hearing. Minutes were approved 6-0 (Commissioner Creedon abstained as she was not present at that meeting).
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 Consent 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 put any of the items for discussion. There were three action items; Items A, F and H.

**MR. BOB WEWORSKI, PLANNING MANAGER**, stated the following items are for the Consent Agenda approval along with any additional stipulations.

B. DVR07-0034 SANTA MARIA VILLAGE  
**CONTINUED TO THE FEBRUARY 6, 2008 PLANNING COMMISSION HEARING.**

Request rezoning from Planned Area Development (PAD) for conceptual commercial uses, to Planned Area Development (PAD) Amended with Preliminary Development Plan (PDP) approval for the construction of a mixed-use development with commercial and residential uses on approximately 18-acres located north and east of the northeast corner of Chandler Boulevard and McQueen Road. **(REQUEST CONTINUANCE TO THE FEBRUARY 6, 2008 PLANNING COMMISSION HEARING.)**

**C. DVR07-0038 PARK OCOTILLO BUSINESS CENTER  
CONTINUED TO THE FEBRUARY 20, 2008 PLANNING COMMISSION  
HEARING.**

Request rezoning from Planned Area Development (PAD) zoning for light industrial use and/or commercial uses to PAD zoning for office, light industrial, and retail uses with Preliminary Development Plan (PDP) for a business/industrial park development. The property is located at the southwest corner of Price and Queen Creek Roads. **(REQUEST CONTINUANCE TO THE FEBRUARY 20, 2008 PLANNING COMMISSION HEARING.)**

**D. DVR07-0040 SSB PRICE ROAD  
APPROVED.**

Request rezoning from Agricultural (AG-1) to Planned Area Development (PAD) zoning with Preliminary Development Plan (PDP) for two office/industrial buildings on approximately 22 acres north and east of the northeast corner of Germann and Price Roads.

1. Right-of-way dedications to achieve full half-widths, including turn lanes and deceleration lanes, per the standards of the Chandler Transportation Plan.
2. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "SSB Price Road", kept on file in the City of Chandler Planning Services Division, in File No. DVR07-0040, except as modified by condition herein.
3. 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.
4. Future median openings shall be located and designed in compliance with City adopted design standards (Technical Design Manual # 4).
5. 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.
6. The developer shall be required to install landscaping in the arterial street median(s) adjoining this project. In the event that the landscaping already exists within such median(s), the developer shall be required to upgrade such landscaping to meet current City standards.
7. 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.

8. Approval by the Director of Planning and Development of plans for landscaping and perimeter walls and the Director of Public Works for arterial street median landscaping.
9. 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.
10. 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 subject development shall use treated effluent to maintain open space, common areas, and landscape tracts.

11. 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.
- 12. There shall be no building signage on the western face of "building 1".**
- 13. Landscaping and/or decorative wall shall be added east of the building to trucking area to provide adequate screening from the adjacent neighborhood.**
- 14. Pending Fire Marshall approval "building 2" shall be moved south to further offset the cross aisles off the main drive.**
- 15. The applicant shall work with Staff to incorporate art features within the development.**

E. DVR07-0042 NORTON'S CROSSING  
**CONTINUED TO THE FEBRUARY 6, 2008 PLANNING COMMISSION HEARING.**

Request rezoning from Planned Area Development (PAD) for commercial uses to PAD amended for an office, retail and multi-family development, with Preliminary Development Plan (PDP) approval for site layout and building architecture on approximately 23.5 acres. The subject site is located at the northwest corner of Chandler Boulevard and Gilbert Road. **(REQUEST CONTINUANCE TO THE FEBRUARY 6, 2008 PLANNING COMMISSION HEARING.)**

F. DVR07-0051 RANCHO BERNARDO  
**APPROVED.**

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

1. Compliance with the original stipulations adopted by the City Council as Ordinance 3397, case DVR02-0019 GATEWAY MARKETPLACE, except as modified by condition herein.

I. DVR07-0059 SOUTHEAST CORNER OF ARIZONA AVENUE AND GERMANN ROAD  
**APPROVED.**

Request the establishment of initial City zoning of Regional Commercial District (C-3) on an approximate 3.5-acre site located at the southeast corner of Arizona Avenue and Germann Road.

J. DVR07-0060 NORTHEAST CORNER OF ARIZONA AVENUE & QUEEN CREEK ROAD  
**APPROVED.**

Request the establishment of initial City zoning of Agricultural District (AG-1) and Regional Commercial (C-3) on an approximate 36-acre site located at the northeast corner of Arizona Avenue and Queen Creek Road.

K. DVR07-0061 SOUTHWEST CORNER OF WILLIS & HAMILTON ROADS  
**APPROVED.**

Request the establishment of initial City zoning of Agricultural District (AG-1) on an approximate 2-acre site located at the southwest corner of Willis Road and the future Hamilton Road alignment.

L. PDP07-0027 MISTY MATE

**APPROVED.**

Request Preliminary Development Plan (PDP) approval for an office/warehouse building on approximately 4.25 acres. The subject site is located at 450 E. Elliot Road, located at the northeast corner of Colorado Street and Elliot Road.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "MISTY MATE PDP07-0027", kept on file in the City of Chandler Planning Services Division, in File No. PDP07-0027, except as modified by condition herein.
2. The landscaping in all open spaces and rights-of-way shall be maintained by the adjacent property owner or property owners association.
3. The landscaping shall be maintained at a level consistent with or better than at the time of planting. The site shall be maintained in a clean and orderly manner.
4. Approval by the Director of Planning and Development of plans for landscaping (open spaces and rights-of-way) and perimeter walls and the Director of Public Works for arterial street median landscaping.
5. The use of turf shall be limited to 10% of all landscapable areas.
6. In the landscape plan of the Development Booklet, where new palm trees are to be located, the palms used are to be Date Palms.
7. The signage shall require a separate Preliminary Development Plan submittal, and approval by City Council.
8. All roof drainage shall be internalized.
9. Shade trees shall be provided at the southern entrance to the building
- 10. The applicant shall work with Staff to provide horizontal banding through the use of materials and/or paint colors.**

M. PDP07-0030 THE CAYS AT DOWNTOWN OCOTILLO

**APPROVED.**

Request Preliminary Development Plan (PDP) Amendment approval for a Mixed-Use development on approximately 6.7-acres located south and west of the southwest corner of Dobson and Queen Creek Roads.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "THE CAYS AT OCOTILLO" kept on file in the City of Chandler Current Planning Division, in file number PDP07-0030, except as modified by condition herein.
2. Compliance with original stipulations adopted by the City Council as Ordinance No. 3889 in case DVR06-0051 DOWNTOWN OCOTILLO, except as modified by condition herein.
3. The site shall be maintained in a clean and orderly manner.

N. UP07-0095 SHANE'S RIB SHACK

**APPROVED.**

Request Use Permit approval to allow liquor sales as permitted under a Series 12 Restaurant License for on-premise consumption only within a new restaurant. The property is located at 7131 W. Ray Road, Suite 6/7 in Casa Paloma, which is the southeast corner of 54<sup>th</sup> Street and Ray Road.

1. 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.
2. Any substantial change in the floor plan to include such items as, but not limited to, a bar serving area or the addition of entertainment related uses shall require new Use Permit reapplication and approval.
3. The Use Permit is granted for a Series 12 license only, and any change of licenses shall require re-application and new Use Permit approval.
4. The Use Permit is non-transferable to other restaurant locations.
5. The site and outdoor dining area shall be maintained in a clean and orderly manner.

O. UP07-0100 THE WILD HARE

**APPROVED.**

Request Use Permit approval to sell liquor for on-premise consumption only within a restaurant (Series 12 Restaurant License). The restaurant is located at 4910 West Ray Road, within the Chandler Sunset Plaza at the northeast corner of Ray and Rural Roads.

1. The Use Permit granted is for a Series 12 license only, and any change of license shall require reapplication and new Use Permit approval.
2. The Use Permit shall remain in effect for five (5) years from the effective date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler.
3. The Use Permit is non-transferable to any other location.
4. 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 outdoor live entertainment shall be prohibited and outdoor speakers for ambient music shall be kept at a volume level that does not disturb neighbors.**
7. No alcohol shall be carried outside of the building into the parking lot or off-premises.
8. Umbrellas placed on the patio facing Ray Road shall be solid, full color with no lettering.
9. Banners installed visible from Ray Road for special events shall be installed for a maximum of one week.
10. The patio and area adjacent to the establishment shall be maintained in a clean and orderly manner.

P. UP07-0105 PRICELESS TOO  
**CONTINUED TO THE FEBRUARY 6, 2008 PLANNING COMMISSION HEARING.**

Request Use Permit approval for a Series 6 (Bar) liquor license, for an extension of premises to allow for an outdoor patio. The subject site is located at 3029 N. Alma School Road, Suite 2, at the northeast corner of Alma School and Elliot Roads. **(REQUEST CONTINUANCE TO THE FEBRUARY 6, 2008 PLANNING COMMISSION HEARING.)**

Q. UP07-0107 CALVARY EVANGELICAL LUTHERAN CHURCH  
**WITHDRAWN FOR THE PURPOSE OF RE-ADVERTISING.**

Request Use Permit approval for a modular building used by the church. The property is located at 1270 N. Dobson Road, which is approximately 1730 feet north of Chandler Boulevard on the west side of Dobson Road. **(REQUEST WITHDRAWAL FOR THE PURPOSE OF RE-ADVERTISING)**

R. UP07-0108 CVS PHARMACY (CORCOVADO VILLAGE)  
**APPROVED.**

Request Use Permit approval to sell liquor (all spirituous liquors) for off-premise consumption only (Series 9 License) in an existing CVS Pharmacy. The subject property is located at 990 E. Warner Road, at the northwest corner of Warner and McQueen 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 granted for a Series 9 liquor license only, and any change of license shall require reapplication and new Use Permit approval.
3. The Use Permit is non-transferable to another store location.
4. The site shall be maintained in a clean and orderly manner.

S. UP07-0110 HOMEVESTORS  
**APPROVED.**

Request Use Permit approval to operate a real estate business in a converted residence at 598 W. Chandler Blvd.

1. The Use Permit shall be granted for a period of one (1) year, at which time re-application shall be required. The one-year time period shall begin from the date of City Council approval.
2. Substantial expansion or modification beyond the approved exhibits shall void the Use Permit and require a new Use Permit application and approval.
3. There shall be no tandem parking in the designated parking spaces at the rear of the property.

4. Parking along Hartford Street is not permitted for either employees or clients.
5. Parking shall not be permitted in the front yard on the brick area or on the grass.
6. The business shall be limited to five (5) employees at all times and three (3) employee vehicles on-site at any given time.
7. The site shall be maintained in a clean and orderly manner.
- 8. Screening shall be provided between the parking lot and Hartford Street.**
- 9. Landscaping shall be added to the front yard to improve the site's appearance.**
- 10. Landscaping shall be maintained in a clean and orderly manner.**

T. PPT07-0048 COTTMAN TRANSMISSION

**APPROVED.**

Request Preliminary Plat approval for a Planned Industrial and motor vehicle repair development located north and east of the northeast corner of 56<sup>th</sup> Street and Chandler Boulevard.

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

**COMMISSIONER CREEDON** stated she would like to see condition number 11 on item H removed.

**CHAIRMAN FLANDERS** asked the assistant city attorney about this.

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY** stated that the item needs to be addressed as an individual item because there is a difference among the Commissioners as to what the stipulation should be.

**CHAIRMAN FLANDERS** then pulled the item for action.

**COMMISSIONER CREEDON** said that they asked the previous applicant whether or not they were in agreement. She asked if we have asked the applicant before this if they wanted to pull it from consent?

**BOB WEWORSKI, PLANNING MANAGER**, said they have asked the applicant and he does not want to discuss it as an action item. They would like to keep this on the consent agenda as much as possible.

**COMMISSIONER CREEDON** said she will go ahead and leave it on consent but she would like to maintain that until Council has reviewed this, this is an item concern for her that we are adding this as a stipulation in addition to the design standards that have already been met by the applicant.

**COMMISSIONER RIVERS** asked if we are leaving it on the consent agenda and are they just supposed to note that they are opposed to stipulation no. 11?

**GLENN BROCKMAN** said that would be an appropriate way to do it as well.

**CHAIRMAN FLANDERS** said they will keep it on the consent agenda with items noted.

**CHAIRMAN FLANDERS** asked if anybody in the audience wanted to pull any of the consent items for a full presentation. A citizen asked if they could pull item F from the Consent Agenda. She stated her backyard overlooks the property that Safeway wants to build on. She objects to it. **CHAIRMAN FLANDERS** stated that the item on the agenda has been approved through the zoning of this particular shopping center and this is just a time extension. She said she objects to it because they have had this from 2002 to build it. She said they already have a gas station and a grocery store right across the street. They don't need that property to be an empty dirt lot for the next few years. That area really needs to be developed.

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, stated he thinks the item needs to be handled as a separate action item. He said that she is addressing it as specific issue and if it goes forward as a consent item to Council, it will be treated as a consent item when in fact it won't be.

**CHAIRMAN FLANDERS** said he would pull the item and they would have a full presentation on it.

**COMMISSIONER GULSVIG** said he would like to pull item H to get that resolved.

**CHAIRMAN FLANDERS** asked if there were any comments or questions from Commission. He also stated that he has two items on the Consent Agenda that he has a "conflict of interest" on. On Item B he works for the Architect of Record and on Item I the owner of that property is a current client, so he will be abstaining from any vote or comments in regard to those items. He then entertained a motion.

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

## **ACTION:**

### **A. DVR06-0013 TCF BANK**

Request rezoning from MF-3 (High-Density Residential District) and C-3 (Regional Commercial District) to PAD (Planned Area Development) for a bank and a commercial building with Preliminary Development Plan (PDP) approval on approximately 2 acres located at the southwest corner of Arizona Avenue and Willis Road.

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "PAD REZONING AND PDP Southwest corner of Willis Road and

Arizona Avenue aka TCF Bank”, kept on file in the City of Chandler Planning Services Division, in File No. DVR06-0013, except as modified by condition herein.

2. Construction shall commence above foundation walls within three (3) years of the effective date of the ordinance granting this rezoning or the City shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.
3. Right-of-way dedications to achieve full half-widths, including turn lanes and deceleration lanes, per the standards of the Chandler Transportation Plan.
4. Undergrounding of all overhead electric (less than 69kv), communication, and television lines and any open irrigation ditches or canals located on the site or within adjacent right-of-ways and/or easements. Any 69kv or larger electric lines that must stay overhead shall be located in accordance with the City’s adopted design and engineering standards. The aboveground utility poles, boxes, cabinets, or similar appurtenances shall be located outside of the ultimate right-of-way and within a specific utility easement.
5. Future median openings shall be located and designed in compliance with City adopted design standards (Technical Design Manual # 4).
6. 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. Landscaping shall be in compliance with current Commercial Design Standards.
9. The monument sign’s sign panels shall have an integrated or decorative cover panel until a tenant name is added to the sign.
10. Raceway signage shall be prohibited within the development.
11. The landscaping shall be maintained at a level consistent with or better than at the time of planting.
12. The site shall be maintained in a clean and orderly manner.
13. The landscaping in all open-spaces and rights-of-way shall be maintained by the adjacent property owner or property owners' association.
14. 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.
15. 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.
16. 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 TCF Bank development shall use treated effluent to maintain open space, common areas, and landscape tracts.

17. The development shall provide foundation landscaping in accordance with the Zoning Code.
18. Signage on the in-line shops to be reverse pan channel lettering.
19. The ramada feature at the intersection shall be replaced with a feature that better relates to the project.
20. The applicant shall work with Staff on the in-line shops tower elements in regards to height and massing making towers smaller in size.

**MS. JODIE NOVAK, SENIOR CITY PLANNER**, stated that this was a request for rezoning from MF-3 (High-Density Residential District) and C-3 (Regional Commercial District) to PAD (Planned Area Development) for a bank and a commercial building with Preliminary Development Plan (PDP) approval on approximately 2 acres located at the southwest corner of Arizona Avenue and Willis Road.

This property is located just south of the Loop 202 Freeway. There is existing commercial development across the street with a Kohl's shopping center, and on the northeast corner of the intersection is a Sam's Club shopping center. The property is approximately a 2.3 net acre parcel. The proposal is for a rezoning and PDP for a development that includes a bank with drive up lanes on the corner, and an in-line shops

building for retail and office uses immediately west of the bank. The project fronts on Willis Road, as well as on Arizona Avenue.

The rezoning portion of the request is to change existing zoning on the property. Ms. Novak explained that this parcel was a remnant piece after different right-of-way takes for the improvement to the adjacent city street. There is some C-3 regional commercial zoning on this property, and the other portion of the property has MF-3 High Density Residential zoning. The proposal is to change the zoning to a PAD for a bank and in-line shops building. The Preliminary Development Plan includes a site plan, a landscape plan, building elevations, and other development design details.

Ms. Novak pointed out that Staff recommended the request be denied. Staff felt that the rezoning request for the in-line shops building was not consistent with the General Plan's land use or the Santan Freeway Corridor Area Plan planning for this property. Staff did not have an issue with the bank use on the corner or if the in-line shops were 100% general office. The opposition was with retail and restaurant uses. She stated that the development for the most part complied with all of the Commercial Design Standards, site design, and building design. Staff did not have an issue with the Preliminary Development Plan, but rather the nature of the land use as proposed.

Ms. Novak went on to say that the buildings had been designed to match each other in terms of building materials, color, roofing, elements on the columns, trellis features, and common pedestrian areas. The bank, being a corporate bank, did a good job matching with the in-line shops building to make sure that they were complimentary. They are site designed and in a cluster fashion even though there will be some vehicular activity with the drive through. They have related the two buildings by having a trellis and large plaza area east of the in-line shops building. The buildings also incorporate some design elements found on the property across Willis Road, including the Santan Gateway Center, which includes providing the downtown light fixtures, trellis elements, stone veneer columns, flared columns, and some of the decorative metal columns, as well as the paint colors, roof materials, and stucco.

Ms. Novak stated that the Development Booklet exhibited some of the other quality standards in terms of the landscaping, special features, as well as the parking. The special features consist of the common pedestrian plaza area, an inlaid Kokopelli art feature, shade structures, a pedestrian connection to provide a sitting area, and shaded ramadas.

There is a 10-foot landscape buffer with trees 20-feet on center that provide a landscape buffer from the mobile home park to the south. The buildings are centered in the middle of the site and do not butt up against the property line. Ms. Novak noted that the site exceeds the city's parking requirements by a substantial amount.

Two freestanding monument signs are being proposed for the TCF Bank building, and one of them has an additional tenant panel on it. Representations were provided in the Development Booklet for signage on the TCF towers. Ms. Novak noted that the Development Booklet did not include an exhibit for wall-mounted signage on the in-line

shops building, but the applicant had agreed to do reverse pan channel lettering on the in-line shops building for any signage. There would be no raceways.

Ms. Novak commented that there had been two neighborhood meetings. Six people went to the meeting and for the most part supported the project. There was a concern with the trash containment area, which was moved from the center of the project to the southwest corner of the project. There were also some questions about landscape buffering. Ms. Novak said that she had received some calls with regard to restaurants in the in-line shops. The homeowners did not feel it was appropriate to have restaurants that would be grilling or having fryers whereby the odors would emanate to the south side of the property. There were no concerns with the project design.

Ms. Novak noted that the proposed site lies at the intersection of an arterial, which is Arizona Avenue, and Willis Road, which is a collector street. Since Willis Road is a collector road, it is very limited in the access getting in and out of this property. A typical arterial street has a landscaped median and there is naturally going to be median breaks. That is not the case with a collector street; there will not be landscaped medians. Given the intersection with all the turn lane movements that they have, this development is restricted to only one driveway at the very left end. Ms. Novak stated that that was not conducive to commercial development of this size. There will be a right in right out access along Arizona Avenue. There is no opportunity to make a left out onto Arizona Avenue.

Ms. Novak stated that the primary concern for Staff was the land use in the in-line shops building. Staff would rather see the shops building become general office. She noted that, although the PDP for the project implemented many of the Commercial Design Standards, there were still concerns with compatibility of retail and restaurant uses next to the residential that is existing; the retail/restaurant uses being located along a collector street versus having a larger master planned development that would be along two arterial streets, and in some circumstances, larger master planned development that would be potentially along a collector, but would have a substantial amount of arterial street frontage. This property is small in size so it does have some challenges in what could be developed on it. It is Staff's opinion that in trying to make something more compatible for the area and compatible with what is surrounding it, it is more appropriate to maintain general office use, keeping it low traffic, and maintaining uses that would be more comparable with one another. She went on to point out that in the General Plan and the Santan Freeway Corridor Area Plan, this site is not land planned for commercial uses at all. However, there are things in the General Plan that would allow the city to consider commercial when it is substantiated in certain areas where it's a strategic corner. Staff feels that the land plan specifically didn't designate this site for commercial retail uses because there are more appropriate areas. Ms. Novak noted that retail restaurants are already in existence across the street on the Kohl's site, as well as on the northeast corner and further north of the freeway at Pecos and Arizona Avenue. She commented that there are other commercial retail restaurant developments happening at the southwest corner of Pecos and the freeway (AZ 202), as well as the downtown corridor area where there a

substantial amount of commercial retail and restaurant that would be promoted as part of the redevelopment area.

Ms. Novak stated that this particular property would serve great for general office and a bank since a lot of the properties up and down Arizona Avenue are predominately retail/restaurant properties. Staff felt this site would have marketing challenges to get quality retailers or restaurant users in the four proposed tenant spaces of the in-line shops. She said that staff works very hard to make sure that they get quality tenants with the developers and property owners in all the other large retail centers, and the competition would be challenging for this site. She said that if this development were to be approved there could potentially be some constraints in redeveloping what happens next to this project, should the mobile home park were ever to go away in the future. She noted that there are sometimes constraints when a corner is developed first with some small uses and when a larger property might want to be incorporated with it.

Ms. Novak stated that there was no immediate need for this site to be developed, as it was not a prime commercial corner for the city. She said the shop design could accommodate general offices, and the site was parked to accommodate general office uses. Allowing that restriction on the building would not have any effect on the Preliminary Development Plan that was being proposed, should Commission agree with Staff's recommendation to limit the building to general office use in association with the bank use.

Ms. Novak said furthermore that there had not been any concerns from the area residents. She said that one could argue that this was an infill area and would be helping the area by developing a site that is blighted and has not been maintained in a few years. She said there is a serious amount of dumping on the property. There were various requests for this site to be cleaned up. There have also been requests from the city for the property owner to place fencing around the site to further prevent hazards happening on the property. It is not beneficial to the mobile home park homeowners adjacent to the property, or the look that the city is trying to achieve as an entrance to the freeway and to the downtown area. Ms. Novak stated that in the long-term need, this site would benefit being developed with some larger land, if the land around it were to be redeveloped. In the interim, having retail restaurant here does not benefit the city's need of trying to promote more of that further north with other projects that is coming about, especially in the downtown area on Arizona Avenue.

In summary, Ms. Novak stated that Staff supports the project in terms of the development plan. As far as the request to rezone it, Staff had concerns and recommended denial because they don't support the retail restaurant use being uses allowed in the in-line shops building due to fundamental land use planning, incompatibility with the area, and the development that the city is looking for long term.

**COMMISSIONER CASON** said that he had some confusion with the parking in that it was stated in the Staff report that there would not be enough parking if the building were to be offices as it is designed.

**MS. NOVAK** stated that in the Development Booklet Narrative it is represented that the applicant wanted retail, restaurant, and office use in the building. When looking at the parking calculations on the site plan, the building is parked with retail and restaurant. Office was not included, so there was a question whether the applicant really wanted to put office in the building, which was based on Staff's concern that this should be an office building. Presently, there are no calculations for office use. Secondly, what is calculated is incorrect. The applicant calculated individual uses in the building; however, from a planning standpoint, Staff looks at the building simply as an in-line shops buildings in which a mix of uses is requested (retail, restaurant, and office), which would fall typically in the parking code as just retail sales at 1/250. She said that was where Staff was coming up with the applicant supplying 50 more parking spaces than was needed. The applicant has incorrectly parked it the way they have it shown. She said that if the building were to be 100% general office, there would be plenty of parking.

**COMMISSIONER CASON** asked how the mobile home park to the south worked in with the master plan.

**MS. NOVAK** stated that the land use plan called for this area to be Medium Density Residential. There are no categories shown where there would be commercial retail or industrial south of Willis Road on the west side of Arizona Avenue. Further south is residential and property that is planned for High Density Residential. It is strictly all residential on the west side of Arizona Avenue from Willis Road south to Germann Road. Ms. Novak added that on the east side of Arizona Avenue south of Willis Road there was a conglomeration of City- and County-owned property. On the southeast corner there are slivers of C-3 Regional Commercial zoning along the street frontage, which really isn't developable due to right-of-way take. There is some Industrial, a landscaping company, and a contracting company. The land plan for that area calls for that to be Light Industrial because it is part of the Airpark Area Plan, a separate Area Plan on the east side of Arizona Avenue. She noted that she is working on other projects for that area because they are Light Industrial because of their adjacency to the railroad track.

The Santan Gateway project, located on the north and south side of the freeway, is the key Regional Commercial, which is where the bulk of the retail restaurant has been developed. Furthermore, there is another Area Plan on the opposite side at the freeway, which was for the Kohl's and north of the freeway for other office/business park and/or commercial retail development or mixed-use developments to occur. That was what had been recently approved and what was developing in that area. South of Willis Road was a breaking point because of a change in the Area Plan.

When asked to elaborate on the foundation landscaping and the issues of landscape along Willis Road, Ms. Novak stated that she had noted in the Staff report that there were several items that were incorrect in the Development Booklet, i.e., the parking (over parked - not under parked), building signage (applicant left out an exhibit showing what kind of signage they would have on the in-line shops building), landscaping adjacent to the building (no representation) and landscaping/tree species along Willis Road. Ms.

Novak noted also that there is a substantial colonnade and walkway area that very much exceeded a pedestrian pathway so the applicant should not have any issue with trying to incorporate some additional foundation landscaping next to the building.

When asked about the appropriate commercial use for the mobile home park, should it leave, Ms. Novak said that in thinking long-term, there was a land plan that called for that area to be residential. That doesn't mean someone would want to come in and amend the Area Plan and propose commercial development at the corner as part of a larger redevelopment effort. It could be single-family homes with a commercial corner, or something along those lines. She stated that Staff would not necessarily be opposed to commercial at that time if there is a larger shopping center development at least 10 acres in size that further meets the definitions of a neighborhood commercial or community commercial center. However, there would have to be justification that there was a need for that. Ms. Novak said that for this site the applicant was required to do a market analysis to justify the need for retail and restaurant use on the property. Staff knew, economically speaking, that this would be a challenging corner obtaining quality tenants and success. Ms. Novak went on to state that development of the corner property may not necessarily prohibit another quality development, but it would more likely create some constraints. Usually the constraints are cross-access, getting the appropriate access to the street in terms of median breaks, and integration of the uses so that this site wouldn't appear as strip retail, but as part of a larger development. The goal is to integrate projects and to have something much larger so that it looks cohesive. She said that if an employment use were to go in adjacent to this parcel, there is always a way to come up with a design (it may not ultimately be the best or practical design), but usually Staff can work to come up with something whereby the projects would be integrated in some fashion. She said that when there's a will there's a way.

**MS. LINDSAY SCHUBE, BEUS GILBERT, 4800 N. SCOTTSDALE ROAD,** stated that it was their client's vision to develop a site that has high-quality standards, that has a long-term balance with the neighborhood that it currently exists within, and the standards with the City of Chandler of which it is becoming a part. She stated that the site has been vacant since its annexation from the County and has existing zoning of MF-3 and C-3. The adjacent zoning includes MF-3, C-3 to the south, as well as C-3 to the east, and a PAD Commercial Retail to the north and northeast.

Ms. Schube said that based on the land use, this development was a minimal intensity development. She said that it was their opinion that it would buffer the surrounding zoning and the existing and future proposed developments. In addition, the property is ideally situated to provide a vital transition between the more intense commercial retail uses to the north and east, with Willis and Arizona Avenue, respectively. The site plan was designed with the utmost sensitivity to the currently existing mobile home park, as well as any potential redevelopment that could occur with that site. She said that the applicant believes that this site could be integrated into whatever might be built to the property's south. Ms. Schube stated that the current General Plan is designated for medium intensity residential. She stated that a neighborhood office/retail/restaurant use

would complement that very well. They believe the development would help support, balance, and encourage investment on a site that had been overlooked for many years.

Ms. Schube further explained that the application included a PAD rezoning request to allow for a 4,500 sq. ft. bank on the corner. The bank is ready to go; therefore, the in-line shops will be constructed and will follow. The in-line shops are proposed at 7,500 sq. ft. The proposal is to allow for commercial retail and general office-type uses. With regard to the parking calculations identified only as 'Retail and Restaurant', Ms. Schube noted that the retail and the office parking calculations were the same. It is not the developer's intent to limit office in any way. They believe that the office and retail/restaurant can complement each other. The restaurant use that is being proposed is a café/sandwich shop.

Ms. Schube said that limiting this property to simply office would limit the potential to develop the site and to find proper tenants. She said that was where they disagreed with Staff. Staff did not believe that commercial and retail were appropriate on this corner; however, the applicant felt that the mix would complement each other very well. The tenants will be smaller tenants, and hopefully this would give someone an opportunity to start their own business.

Ms. Schube stated that the General Plan calls for Medium Density Residential surrounding this project, and the General Plan designation for the subject site is Low Density Residential, which they do not feel is appropriate at a major corner such as this. The current zoning is C-3 on the corner, which was the result of County zoning. It is a very intense designation. She said that they felt comfortable asking for an inclusive C-3 PAD zoning on the corner, eliminating the C-3, as well as the MF-3 zoning, as this is a narrow piece of land that wouldn't work for a multi-family project.

Ms. Schube stated that their clients had worked diligently for a long time on the project. They believe it to be a high quality comprehensive development. It will provide an excellent opportunity to offer a much needed neighborhood facility, a buffer transition to the mobile home park, and provide a visual entry feature to those traveling south on Arizona Avenue. The client's primary desire is to build a safe, clean, and functional comprehensive development while continuing to be a responsible member of the Chandler business community.

Ms. Schube stated that their client was not aware of the illegal dumping on the site; however, is now aware of this matter and has a contract to get the debris removed. She said that they had not thought about a fence, but they could discuss that option.

She added that as far as building signage, they would agree to a stipulation for reverse pan channel lettering. As far as foundation landscaping, they would also be amenable to a stipulation, and stated for the record, that if Staff would like additional foundation landscaping close to the buildings, they would be comfortable with that.

In response to a question posed by Commissioner Gulsvig regarding the request for an economic impact study, Ms. Schube stated that there had been a request for a market study for the area. The applicant believes there is a market for these smaller, in-line shops; however, the study was not provided to Staff.

**MR. RICK CAMPBELL, 18968 E. TINSDALE AVE, CENTENNIAL, CO.** stated these developments are what he does for a living. The formula is simple: buy a piece of land and find someone with the quality of TCF to buy a corner of the property, and then develop a portion of it himself, usually around some larger existing retail nodes.

He said that economics does play a factor. The rental rates around this area are more than what this developer's rates will be; they will cater to a different clientele. The tenants that are in his existing buildings are dentists, chiropractors, hair salons, nation sandwich shops, cafes, New York style pizza shops, coffee shops, and cleaners, to name a few. Of his existing space, 30% would be classified as Office, and 70% is Retail.

In terms of a market study, Mr. Campbell said that this site had been on the market since they tied up the property. They have received a lot of interest, as well as leases that had gone back and forth. They are committed to build the building at the same time as the bank. He said that he understood that the current market is not as good as it was a year ago, but he did not anticipate any problem getting the space leased.

Mr. Campbell explained that he had not received a salary in approximately eight years. The way the projects are financed is that he has three financial partners and the projects are built 'out of pocket'. When the buildings are occupied, they get permanent loans. He said that a building had never been sold. The tenure of their ownership is anywhere from two to five years. He said that the best market study he had was the success he's seen with the other leases throughout Arizona. This development was no different. Mr. Campbell said that there were no ulterior motives other than building the project out of their pocket, lease it, put a loan on it at some point, and own it for a long time. He said that to him, that was a tremendous market study.

**COMMISSIONER GULSVIG** noted the heavy commercial across the street with very few rooftops in the area to sustain this development. He wondered what the environments were like with some of the applicant's other developments. He also commented that Staff's argument against the in-line shops was in part due to access to the facility. The arterial coming off the roads makes it difficult for in-line shops and was more appropriate for a business-type facility. He felt that was the only argument Staff had put forward - that this site was more in line with a business due to its location.

With regard to his existing developments and the surrounding areas, Mr. Campbell responded that this site fell right in line with just about everything he had done previously. One or two of his developments are in more intense in-fill areas. In some instances he's next to a K-Mart or a Target store, and in some instances he's next to nothing. Mr. Campbell went into much further detail regarding his other developments. He said his buildings could range in size from 5,800 sq. ft. to 16,000 sq. ft.

Mr. Campbell pointed out that the retail across the street held more nationally recognized retail. He said that for instance a phone store liked being near a Wal-Mart or other larger stores, while a chiropractor, a dentist, or a nail salon did not actually need to be right next to a large retail store.

When asked if the recommendation for this site would have been any different given all the detailed information as outlined by the applicant, Ms. Novak responded that if Staff would have been given a market analysis as requested justifying the retail restaurant there, Staff would still have concerns from a land use fundamental standpoint. She said that with what was already in the area, any vacancies in the area, as well as other products that were already coming through, there was no guarantee what users would occupy this space. She said that if more information would have been supplied it wouldn't necessarily change their decision, although it would have been helpful.

**COMMISSIONER CASON** asked the applicant if the reason for having Retail use in addition to Office was to make sure that if he couldn't fill the office space that he would be able to lease the space out to different clients.

**MR. CAMPBELL** stated that his definition of an Office user was one that wanted a retail type of presence on the street. He said that the rents he needs are quite a bit lower than a larger more regional tenant. He feels he offers a more affordable alternative for this space. He said that there is always room for and the need for sandwich shops, CPAs, chiropractors, cleaners, etc. that this project would attract.

**COMMISSIONER CASON** asked Ms. Novak if there would be enough parking spaces if the tenants were medical oriented.

**MS. NOVAK** responded that there would be adequate parking for general office uses. Medical and dental uses create more parking; however, she felt there would still be enough parking.

**COMMISSIONER CREEDON** requested to hear from the city's economic development staff.

**MR. JAMES SMITH, CITY OF CHANDLER ECONOMIC DEVELOPMENT DEPT.**, stated that they had worked with Ms. Novak on this project and were in agreement with Staffs' conclusions that the type of retail that had been mentioned (coffee shops, sandwich shops, etc) were already very well served, as there were those retail shops across the street, as well as those that would come in with the proposed AZ 202 center. He felt these type uses were already established in the area.

**MS. CHRIS MACKAY** said that from a small general office/medical office standpoint, this would be a really good location. She said there was not much size to the property to do a larger general office. She felt a medical office, real estate office, insurance company, etc. would be an outstanding general office use for this area. In response to a question

from Chairman Flanders, Ms. Mackay stated the inexpensive spaces are located one-mile to the west and one-mile to the east, which run approximately \$20-25 per sq. ft.

**COMMISSIONER RIVERS** stated that he didn't feel that a shopper would drive deliberately north across the Santan to have a sandwich for lunch if they were shopping or banking on the south side of the freeway. He didn't think one side would take business from the other side. He asked Ms. Mackay if she thought this was a viable location. Commissioner Rivers said that limiting this site to one use or another did not sit well with him. He felt it would be good for the owner to offer a variety of uses to his prospective tenants.

**MS. MACKAY** stated it was not their position that it wasn't a realistic location or viable or that it couldn't be supported. Predominately in that area of the market the people that are going to and coming from lunch are coming from the employment areas. The employment in the area is light and is on the east side of Arizona Avenue. They would go to the north or Santan Plaza for lunch. As employment develops to the east, it will provide for more daytime traffic south of the 202. Right now the daytime population for lunch tends to come more from north of the 202. She said that the question is more of what could be attracted to this site and what could go into that market.

**VICE CHAIRMAN IRBY** stated that when he first saw the project he wondered why anyone would want this project to go in next to such other big centers. However, the more he learned about the project, the more it made sense to him. He said he did have a concern with the bank drive-through queuing and possible traffic back-up.

**MS. NOVAK** stated that the city has very specific queuing standard requirements for high turnover uses, such as fast food restaurant uses. However, those same standards are not applied to banks because they do not have the high peak hours. There are no specific standards that the applicant needs to provide for entrance into their teller areas, although there are lane width standards. This bank would be treated as a low turnover use, which is explicitly listed that way in the Zoning Code.

**MS. SCHUBE** stated that there are approximately five car lengths per lane available for queuing.

**MS. MYRNAN FRONCZAK, 6400 S. FIDDLER'S GREEN CIRCLE, GREENWOOD VILLAGE, CO.** stated that there were four drive-up lanes. The outside lane is an ATM, while the inside lane has a dealer drawer and then two kiosks. There is a bypass lane as well. There is enough space for five cars going through the driveway, and it would not impede the drive around the rest of the site. She stated that there were approximately 500 TCF Banks nationwide in six states. There are four in the Phoenix area, and one just opened at the corner of Cooper and Ray roads. She commented that some of the earlier banks had seven drive-throughs, but that has been scaled down to four. She said that more people are doing online banking, and there is not the need nowadays for as many drive-through lanes. She said that as the development is laid out,

there should be no cars backing up in front of the retail due to the drive-through. Trash pick-up for the bank will be handled privately.

**VICE CHAIRMAN IRBY** commented that he had some concern with parking in terms of landscaping and a combination of pedestrian access. This small neighborhood center has three pedestrian accesses from the main streets. He said that it appeared there was quite a bit of landscaping along the street frontage, but the landscape islands have walkways going through them. He said the best they could get in there would be some shrubbery. He wondered if there was a code for a tree in landscape islands.

**MS. NOVAK** stated the developer would need to be putting in the typical landscape planter islands, 9' x 19'. That would be coming up in plan review.

**MS. SCHUBE** stated that they would be amenable to putting in some landscape islands if that stipulation was required.

**VICE CHAIRMAN IRBY** said he also had some concerns with a patio next to the drive-through lanes with cars sitting there idling. He felt the bulk of the idling would be a good distance from where the people would be sitting; however, it had been his experience not to design a patio where it would be next to idling cars; it wasn't a good idea.

He went on to say that he had a concern that the bank would be built and the rest of the site sitting vacant, but he did note that this was not going to be a phased project.

Vice Chairman Irby stated that the architecture was nice. Some of the towers on the retail seemed a little tall, although it does tie together nicely. He suggested that the ramada feature at the intersection of Arizona Avenue and Willis Road seemed totally foreign in terms of architecture as compared to the rest of the building. He said he wanted the applicant to work with Staff to come up with a little different element that tied better with the architecture. He said that he did not see any round ramadas in this project; everything was square or rectilinear.

**COMMISSIONER RIVERS** asked Staff if an application would have to come back before Commission should a restaurant and patio want to go into this site.

**MS. NOVAK** stated that the only time this would come back was if they were proposing to have liquor sales in an outdoor patio area. They would need approval for a liquor Use Permit. The plaza area is large enough to accommodate some tables and chairs as typically would be found in front of a bagel store or something along that line. If an applicant wanted a restaurant that wasn't serving liquor, but decided to cordon off a patio area, Staff would work with them to make sure they were meeting standards for passing space in pedestrian walkway areas without infringing on the colonnade, but it wouldn't come back. Ms. Novak noted that if there was a concern about where a patio could be located so close to cars queuing up, Commission would want to address that concern.

**MS. SCHUBE** stated that the closest lane to the sitting area is a pass through lane. There would be no cars idling right there. She said that they felt there was a decent amount of landscaping and a water feature, and they were hoping that that would help to mitigate the cars in proximity to the outdoor area.

**CHAIRMAN FLANDERS** asked if there was anyone in the audience that cared to speak on this matter. There was no response from the audience. Chairman asked if the applicant had any closing statements.

**MS. SCHUBE** commented about the definition of employment. She said that they felt there were some retail uses that could create some fantastic employment, a wonderful neighborhood use, and lower leasable rate space that would fit in this building. They feel that all of the uses that may fall under retail, restaurant, or office will complement each other. Ms. Schube said that they have tenants ready to go and they need the zoning. The bank and the shops building are ready to go.

**CHAIRMAN FLANDERS** closed the floor at this time for discussion.

**VICE CHAIRMAN IRBY** stated that he was comfortable with having retail in this location, as it would provide some alternative type of retail users. He said that it was nice to have a variety. Vice Chairman Irby stated that after studying it, it did appear that the patio was far enough away from the idling cars. He said that it actually made a lot of sense to have the patio in this location in terms of the view from the intersection. He said he wanted to add a stipulation that the applicant work with Staff on either alternative designs for the towers or to shrink down the towers so that the towers were not so massive. He said that he would not stipulate the additional landscape islands in the parking lot. He felt it might reduce the amount of parking spaces when the landscape islands go in.

**MOTION BY VICE CHAIRMAN IRBY, SECONDED BY COMMISSIONER RIVERS** to approve **DVR06-0013 TCF BANK** project with the additional stipulations.

**MS. NOVAK** stated that if this project were approved by Commission, the 16 standard stipulations would need to be added, as well as any new stipulation(s).

**MR. GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, asked if the applicant had been provided a copy of the standards stipulations.

**MS. SCHUBE** stated that they had reviewed the stipulations and had no objections.

**MS. NOVAK** stated that there were other stipulations that had come up besides the stipulation for the towers: foundation landscaping if Commission wanted to require that; whether or not to stipulate that the in-line shops have reverse pan channel lettering; and a stipulation regarding replacing the feature at the intersection. They would read as follows:

1. Development shall be in substantial conformance with Exhibit A, Development Booklet, entitled "PAD REZONING AND PDP Southwest corner of Willis Road and Arizona Avenue aka TCF Bank", kept on file in the City of Chandler Planning Services Division, in File No. DVR06-0013, except as modified by condition herein.
2. Construction shall commence above foundation walls within three (3) years of the effective date of the ordinance granting this rezoning or the City shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.
3. Right-of-way dedications to achieve full half-widths, including turn lanes and deceleration lanes, per the standards of the Chandler Transportation Plan.
4. Undergrounding of all overhead electric (less than 69kv), communication, and television lines and any open irrigation ditches or canals located on the site or within adjacent right-of-ways and/or easements. Any 69kv or larger electric lines that must stay overhead shall be located in accordance with the City's adopted design and engineering standards. The aboveground utility poles, boxes, cabinets, or similar appurtenances shall be located outside of the ultimate right-of-way and within a specific utility easement.
5. Future median openings shall be located and designed in compliance with City adopted design standards (Technical Design Manual # 4).
6. 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. Landscaping shall be in compliance with current Commercial Design Standards.
9. The monument sign's sign panels shall have an integrated or decorative cover panel until a tenant name is added to the sign.
10. Raceway signage shall be prohibited within the development.
11. The landscaping shall be maintained at a level consistent with or better than at the time of planting.
12. The site shall be maintained in a clean and orderly manner.
13. The landscaping in all open-spaces and rights-of-way shall be maintained by the adjacent property owner or property owners' association.
14. 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.
15. 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.
16. 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 TCF Bank development shall use treated effluent to maintain open space, common areas, and landscape tracts.

- 17. The development shall provide foundation landscaping in accordance with the Zoning Code.**
- 18. Signage on the in-line shops to be reverse pan channel lettering.**
- 19. The ramada feature at the intersection shall be replaced with a feature that better relates to the project.**
- 20. The applicant shall work with Staff on the in-line shops tower elements in regards to height and massing making towers smaller in size.**

Before the vote was taken, Commissioner Gulsvig stated that this was a very nice project and had been well presented. He said that he had listened to the economic development marketing assessment and was torn between voting for or against it. He noted that on Cooper and Ray roads there were a number of in-line shops with a bank that had failed and there were a lot of vacancies sitting in there right now. He stated that he was very concerned about this. He said that he was in favor of Staff's recommendation, but he would go forward.

**COMMISSIONER CREEDON** stated that she agreed with Commissioner Gulsvig, but did believe in the applicant that they wouldn't be building this if the economics didn't

pan out. She said that she did share those similar concerns, but would vote in favor of the project.

**CHAIRMAN FLANDERS** said that this project was more of a neighborhood type center. He said that the centers near his home are not the large shopping centers, but seem to work well with him and his wife for getting in and out and the services that they look for. Chairman said that he was sure that there would be office use in this subject site. It may not be as intense as far as traffic goes, or retail and restaurants, but he felt it would offer a variety. The architecture is fine.

When the vote was taken the motion was approved.

In Favor: 6    Opposed: 1 (Gulsvig)

## **ACTION:**

### F.    DVR07-0049 GATEWAY MARKETPLACE

Request action on the existing Planned Area Development (PAD) zoning to extend the conditional schedule for development, remove, or determine compliance with the three year schedule for development or to cause the property to revert to the former Agriculture District (AG-1) zoning. The existing PAD zoning is for a commercial retail development on approximately 17 acres at the northwest corner of Gilbert and Riggs Roads.

1. Compliance with the original stipulations adopted by the City Council as Ordinance 3397, case DVR02-0019 GATEWAY MARKETPLACE, except as modified by condition herein.

**BOB WEWORSKI, PLANNING MANAGER** said this is a request to take action on the existing planned area development zoning to extend or remove the conditional schedule for the development, determine the compliance within the three-year schedule for development or to cause the property to revert to its former agricultural AG-1 zoning district.

This is a development that has been zoned for planned area development for a shopping center. This is located at the northwest corner of Gilbert and Riggs Roads. It was approved originally in 2002 and was for the planned area development with the preliminary development plan for the shopping center; it was a Safeway anchored center grocery store along with retail in-line shops, a restaurant pad along Riggs Road and a corner gas station. The site is surrounded around primarily residential and commercial property. Directly to the west of this site is an eastern canal that borders this site directly on it's western edge. Across the canal is single-family residential development. To the north of the site is an existing RWCD water recharge site and to the east of the site is residential development along with some planned commercial. To the south of the site is an existing shopping center anchored by an Albertson's Grocery store. What's being requested here is to determine whether they would extend the zoning for an additional

three years as requested by the applicant. He mentioned that this location is at Gilbert and Riggs Roads and is in the Southeast Chandler Area Plan. When this project originally came forward, it was determined whether it was appropriate for this type of development for this site. At that time, Staff evaluated and ultimately did get approved for this type of development of a 100,000 square foot shopping center. With that in mind that there was this planned and existing development with already a planned or built grocery center to the south, this would be an additional shopping center to the north side of Riggs Road. It also meets the Southeast Area Plan guidelines as far as a rural agrarian development and a commercial development keeping in tune with the area around it. Again, this was originally approved in 2002 and it came back in the year 2004 for an additional three years. It was described by the applicant that the market perhaps had not been ready for development at that time given that southeast Chandler is still a growing area – not every area of that has been developed just yet. The applicant has come back to them recently to ask for an additional three years. Their intention in their narrative is that they would develop this site by next year, 2009 with the intent to develop the site completely. They did try to hold a neighborhood meeting on December 20. Nobody attended the meeting. Also, Staff has not received any kind of correspondence from any residents in the area. They did send their normal notification about the action and they have not heard any input except for this evening when a resident did express some concerns about the development itself. Again, the request is to extend this zoning condition for an additional three years or to revert it to its original classification and then determine that they have zoning conditions from the original ordinance that are still in place. It is from Staff's perspective that all of this is still applicable and very viable; it meets all their commercial design standards and the Southeast Chandler Area Plan. They think it is still applicable today. If it were coming in as a new project, they would certainly support it and recommend approval as well. With all those things, they recommend approval.

**CHAIRMAN FLANDERS** stated he remembered when this came through. He was impressed with the cyclone layout and also the building layout. It pretty much captures what they were looking for in this area. He is still satisfied with the type of use and how it looks and how it is intended to develop. In regards to that he still remains positive for it. He asked if there were any questions of Staff on this.

**COMMISSIONER KELLEY** asked Staff if this was an anomaly?

**BOB WEWORSKI** answered that it wasn't an anomaly. There are certain times when developments are not quite ready or there are market conditions or the area around it hasn't been developed just yet. It happens on occasion and understanding this particular area in southeast Chandler they understand they may need some more time. They do support the extension that way.

**CHAIRMAN FLANDERS** asked about the residential lots to the west of this. Were they in place at the time of this original zoning case? Mr. Weworski replied that those properties already existed. Part of it is County property along Riggs Road (single-family large lot) and then you have single-family large lots to the north and west as well. Those

parts existed at the time. The neighborhood was at least established. He doesn't know if each home was built on each lot. Chairman Flanders asked in that original zoning case if he remembered any neighborhood concerns at all? Mr. Weworski answered that when this case came through originally in 2002 there was no opposition or any concerns that he was aware of from any of the residents at the time and he was the original planner in fact.

**COMMISSIONER CASON** said that the gas station is on the lower right hand corner of the drawing and the way that it is designed it could only be a Safeway gas station. That is all it could be under the current case? Mr. Weworski said it was represented that it was going to be Safeway gas and in support of the grocery store. It is set up that way and generally that type of layout is conducive to being that way. It is not required that it has to be along with the grocery store. It has to be Safeway gas. It's just that layout is very similar to what they see on Safeway gas stations. Commissioner Cason asked if Safeway wasn't to develop that gas station there for whatever reason, could somebody else come in and put in a gas station and have a totally different design without coming through this Commission? Mr. Weworski said if somebody wanted to keep a gas station use yet change the layout and the design that would require coming back through a preliminary development plan amendment. Commissioner Cason asked if that design was not approved, would we have to let in a gas station down the road if Safeway chose not to develop a gas station there as part of the original plan? The plan that is presented shows a corporate type of gas station (building or structure) in the southeast corner of this property. If Safeway at the time of construction decided not to build a gas station for whatever reason, could they sell that corner property to somebody else and put in a gas station there? Could they sell that corner of the property and come back through this Commission and submit to put in another type of gas station with a market attached to it? Mr. Weworski said the short answer is yes they would have the ability to sell that as a parcel for a different user for the gas service. Again, if someone did purchase that and wanted to develop it as a different gas than Safeway gas and they want to do something different like a larger convenience area or a different configuration, they would definitely have to come back through an amendment process that would require the approval here of Commission and Council.

**COMMISSIONER CASON** asked the gas station is not grandfathered in unless Safeway builds the gas station?

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, responded the zoning and PDP approvals that apply to any site run with the land not with the applicant. They are not personal to the applicant. If Safeway were to sell their business or the gas station portion to say ACME, ACME could come in and operate a gas station. They would have to design it and set it up in accordance with the PDP that is already approved. They couldn't expand it or come in with a new design unless they came back to the Planning and Zoning Commission. Anybody can use the site as long as they use it according to the zoning and the PDP that's presently on the site.

**COMMISSIONER CASON** said just to clarify the gas station is already approved. There isn't really any way to remove the gas station from the property or anything else like that.

**VICE CHAIRMAN IRBY** said he is disappointed that this did not get built when it first came through. It is a very nice looking project and hits a lot of the points that they were trying to have for that part of town, architecturally and land planning wise. When they came back for the additional three years awhile back, they made a promise that they were hoping to get it built within the next year at that point too. Personally, he is still willing to provide an additional extension. At this point, they will hear what the applicant has to say and the audience. He his hoping this thing gets built some day. It is a very positive direction for the area and there is never a guarantee even if they turned this down. It still sits vacant for several more years. It could sit vacant for ten years. There is never a guarantee and obviously, if they come back and want to eliminate the gas or make changes, they will be back through our process and approvals from Planning & Zoning and City Council for any modification to what they see there today. He is going to hold his breath and hope that in a year or year and a half he is going to see something being built out there.

**COMMISSIONER RIVERS** said he had questions for Bob Weworski. He said the choice tonight is "does this happen sometime within the next three years" or what's the other side of that coin? Mr. Weworski said the other one is to remove the timing condition or revert it back to its original designation of agricultural zoning. That's what you are being asked tonight to consider.

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, stated you really have four or five choices. Everything is related to the issue of extending the time. You can recommend extending the time three years, you can recommend an extension for some other time period, you can recommend that the time extension condition of the zoning be eliminated completely, you can recommend that the timing condition be deemed satisfied or you can recommend the zoning revert back to its previous AG-1 zone. Those are the four or five options they have.

**COMMISSIONER RIVERS** said since they have said they intend to start the construction process sometime in the next 12 months, can you put a stipulation on this that they do that? Can they instead grant a two-year extension to see if they really do build this since it has gone on for seven years so far? Where is the end of the line? Can they do that?

**BOB WEWORSKI** stated that as Glenn Brockman just mentioned, you could change the time extension that they are requesting. If you want to recommend a one-year instead of a three-year, that is your option to do that.

**COMMISSIONER RIVERS** stated he just didn't know – the time extension is to start building or to be finished building or do they get to decide that too?

**BOB WEWORSKI** said they have to develop their site, start the construction and is above the foundation of the structure on the site. They have to be above the foundation of the building to be vested for the zoning. Construction has to be well underway and the actual building structure has to be under construction for the zoning to be vested.

**COMMISSIONER RIVERS** said he would be interested in doing that. He thinks seven years is enough and if they are going to do it they need to get started so that other people would have a chance at the land as well. He doesn't know if he needs to put forth the idea of a one-year or a two-year. Looking at what they read, they plan to get started this year but he doesn't know if they would be to the point that he is talking about.

**BOB WEWORSKI** said he would like to give him a little background. They used to have a two-year timing condition on all our zonings and it wound up getting changed to three because sometimes it is difficult for a developer to get the zoning in place and then with the other processes of permits and all those other things, by the time they get there some of their time is already eaten up. Even two years was sometimes challenging if they didn't get started right away in the permit process and plan review. In the past that has been challenging, sometimes even on a good market.

**COMMISSIONER RIVERS** asked how far down the path are they?

**BOB WEWORSKI** said obviously they have gotten the zoning entitlement and the final plat. It is going through the plan review for the permitting stage.

**GLENN BROCKMAN** said there is a lot of ancillary activity that has to occur before you can begin construction and certainly get above foundation. That is the reason why two or three years are not an unreasonable period of time. Just their experience with the City Hall project for example – there are budgeting issues, pulling building permits, the construction plans have to go through review and everything else. It takes more time than one would think.

**CHAIRMAN FLANDERS** said he doesn't want to lose how this development is put together as far as the architecture and layout. They aren't even sure if Safeway has this on their radar as of this year or next year. As the City Attorney has said, it takes time to put all that stuff together. Safeway has been a good corporate citizen with their facilities and everything else. He would be opposed to limiting it to anything less than three years. He stated that he would like to make sure that if they are going to do it, let's do it right. It is not going to sit empty if they indicate that they are going to be active in the next couple of years or so. Let's give them time to get it right.

**COMMISSIONER CASON** said what he likes about this is that they already have a wonderful design locked in. He is sure that they have all seen enough of corner shopping centers to realize that with this design they could probably put a lot more building into there. The way that it is laid out and it is stretched out and the PADS are at different angles and they have patio insets - it is really a dynamic project. He would really hate to lose this dynamic by letting it revert. They don't know what is going to come back to

them. If they were to sell it, they would have to come back through but they might not get anything as nice as this. He thinks they should go ahead and leave it because what it looks like to him is a good thing here and what they might get in return might not be as nice.

**CHAIRMAN FLANDERS** said to the applicant that there is one citizen that had some concerns and before he goes to him he would like to hear what the citizen has to say. That way he can go ahead and address those issues.

**PATRICIA TODONG, 2856 E. AUGUSTA AVENUE**, stated she lives in Cooper Commons. Her back yard faces Riggs Road and she is able to see this property. She has reviewed the information and it looks like a lovely shopping center. She's not saying it's not, what she is saying is why in 2002 did the Board approve a shopping center that's practically the mirror image of what's on the other side of the street. She thinks the neighborhood needs more diversity than that. She understands that is not the issue. The issue is either build it or let it revert. If you want to give them more time, she understands that. She realizes that she is the only person from the entire neighborhood that came forward to express any opinion. That doesn't mean that she is the only person from the neighborhood that has an opinion. They have all talked in the cul-de-sac and said they don't like this, but she is the only one that showed up. Commissioner Rivers made a couple of good points as to why is this going on since 2002. They said they intend to build and then they ask for a time extension and now they are doing it again. They intend to build in 2009 but yet they are asking for three years, which will give them to 2011. She will be really gray by then. Why is Safeway dragging their heels? The developer is here but there is no representative from Safeway, which makes her wonder if this project is even on their radar. Do they even care about this project? They decided they are going to develop this property in 2002 and then they said, "no, let's do this first" because the Council will give them an extension. Now they are doing it again. How long are they going to jerk them around so to speak? If you decide to give them an extension on their time, how is that empty lot going to be maintained for the next year or two or three or eight or however long it takes for them to get moving. Right now it's wide open with ditches and mounds of dirt. People could start dumping things there. It hasn't happened yet but it certainly could. There are a lot of kids in the area who ride bikes and skateboards. That's a concern too. If you going to give them extra time, she asks that some sort of stipulation goes into cording that area off with a fence or something or do something to make it better looking than it is now. She has to drive past it every day. Hundreds of people have to drive past it every day. It is really unsightly the way it is now. She asked if there were any questions.

**COMMISSIONER CREEDON** stated she wanted to make a comment. While she will be voting in favor of extending this time, she does understand her concerns and they will ask the applicant to address cleaning it up and making it more presentable. She wanted to compliment her for staying to 8:00 p.m. and being the only person there because that is why they are there – to hear her concerns. She thanked her for staying and voicing her opinion. Ms. Tudong thanked her for hearing her out. She realizes that this is a David and Goliath kind of situation. One woman is not going to change several years of

planning and it does look like a lovely center. Why aren't they developing it? Commissioner Creedon said you could have gotten more gray hair waiting for them to get to their item. Thanks for that.

**CHAIRMAN FLANDERS** asked if there is anybody else in the audience that would care to speak in regards to this item.

**BRENNAN RAY, 702 E. OSBORN**, there on behalf of Safeway, stated he heard a lot of discussion and appreciates Staff's recommendation for approval. He thinks they have done a thorough job in explaining it and a lot of things they say in their Staff Report they agree with. They still think from a land use perspective that it makes it a lot of sense on the site and they would recommend their approval in accordance with Staff's recommendation for an additional three years. He thought they covered many of the things that have been discussed in terms why three years is good versus some other time frame. Getting to Patricia's comments, one of the things he heard was safety and driving by the site. He too drives by the site almost daily living at Lindsay and Riggs. Because they are a client of his and Burch & Cracchiolo, he happened to notice the site and he likes to know what is going on. He said you can tell there is a fence that is around the perimeter and that lines it. Tri-Plus and Safeway don't want people dumping on their property and they don't want kids trespassing on their property. There is a fence that is maintained there that prevents people from accessing the site. Secondly, with respect to it being unsightly, he thinks if it were to be unsightly, zoning code enforcement would be out. They are under an obligation for the code to keep this site in a neat and clean manner to which they do. In terms of the current status of the site and what it looks like, they hear the concerns and they are certainly cognizant of that with the fence and maintaining it clean. He stated he can answer any other questions that she might have, but again from their perspective they think it still makes a lot of land use sense. In the cases he has heard and made reference to in the Southeast Chandler Area Plan in terms of architecture and planning, this one was held as a flagship to try to match its architecture and its planning and layout.

**VICE CHAIRMAN IRBY** asked if he could shed some light on Safeway's intentions. Mr. Ray said Safeway is very committed to building on this site. It's a unique situation in at least his experience working with some other grocery stores. Safeway actually owns the dirt and has money invested into the site. In terms of the timing of it again, as Staff has indicated and from their understanding of where Safeway is, the timing hasn't been right. They are very much committed to the plan to building there as is indicated in the memorandum that is attached to your Staff Report. They anticipate they will start construction in the year 2009 and hopefully finish it by then. They went through an extensive remodel program to try to take care of some of their aging centers and that is what put this project back on hold. Through discussions that Tri-Plus has had in working up this zoning application for this time extension, Safeway has indicated that they want to be here and build. **VICE CHAIRMAN IRBY** said if understood him, the other two parcels are owned by the developer or have they been sold off. Mr. Ray said they are still under the control of Tri-Plus and if they could, tomorrow they would be up and running.

**VICE CHAIRMAN IRBY** said as he mentioned earlier he thinks it's a beautiful site and he hopes it gets built and he can understand Safeway's lagging. He lives not too far from an Albertson's and watched the news not too long ago and how they are going to shut down some of their stores. He was holding his breath that it wasn't the one next to him. Luckily it wasn't. Then it would sit empty for who knows how long. He would rather see the tenant build the facility and be a long-term user of it versus being built and then see it vacant. Then the whole center suffers for it. He doesn't have a problem with giving an extension to this project with the hope that it eventually gets built. Obviously, they and the developer are paying some holding costs to let this sit here vacant. They are motivated and if they denied them an extension, it could still sit vacant and they could come back through the zoning process and take twice as long to get them up out of the ground again or they turn around and sell it. Even if we turned them down now and they decide to sell it, it still would probably take an equal amount of time to see something develop there.

**COMMISSIONER CASON** asked Mr. Ray if he could share with the citizen some of the rationale for delaying the start of the construction? Mr. Ray said in terms of the reasons for the delay as he mentioned and as Staff pointed out, it is everyone's perspective that this is a good site, a good location and a good use. In terms of why it has lagged and again, as Staff has pointed out, the market wasn't right and he knows we hear so much about that it's even more sensitized in today's economy with what is going on. Tri-Plus and Safeway continue to feel this is a good site. Safeway has it on their program and on their sheets as starting construction in 2009. They feel the time is ripe or fast approaching ripeness to be able to come out of the ground.

**COMMISSIONER RIVERS** said one of the things Mr. Ray said was that the timing wasn't right. Could Mr. Ray please give him some ideas that would make the timing right? Mr. Ray said in terms of the timing it's one of those things that you have to look and see what's around them. As the area continues to develop and evolve in southeast Chandler, you still have two corners on the opposite side of the intersection that are vacant. You have some property that is north of the Mesquite Groves subdivision along Gilbert Road that is still vacant. Continuing down to Lindsay there is a lot of undeveloped property still in the area and he believes that there are plans to develop that. He knows for example up on the other side of Mesquite Groves that is a residential custom lot home subdivision. On the other corner, a custom lot home subdivision is being put in. At the time this was in place, he wasn't involved in the original case but Mr. Bull was. At the time, they thought it would make a lot of sense to go ahead and construct it then. They thought it in 2004. They continue to think so or they wouldn't have put the time and energy to get this put back together so they can request the extension. Timing is one of those things that if they knew, he doesn't think any of them would be sitting there. They would be out making millions at some other place than standing there doing this. He can tell you that Staff has indicated, as they believe the area is getting to a point where it would support this type of a use. **COMMISSIONER RIVERS** asked if Safeway is going to wait until these possible single-family home developments are completed before they build this store? If they are going to wait for the Arizona real estate market to rebound, that may take longer than three years. Mr. Ray

said they are not going to wait that long. As is indicated in the Staff Report and the memorandum that they prepared and the memorandum that Tri-Plus had sent in as well, Safeway is planning on this going in 2009. As was pointed out by Vice Chairman Irby, they own the dirt and they have a lot of money invested in it. There are a lot costs associated with it. Not too many shopping centers and grocery stores these days own the dirt. They go and lease the building because of the high cost that is associated with building brick up when you own the dirt. They are very committed to going here. **COMMISSIONER RIVERS** said so they can be reasonably assured that he won't be standing there in 2011 explaining the market hasn't reached it's right timing yet to start construction and asking for another three years. Mr. Ray said that is not correct because for him to stand up there and say that would possibly be malpractice, number one. The second thing is he can't predict the future. As he alluded to a minute ago, if he could predict the future, he can guarantee he wouldn't be standing there talking with him there today. If Safeway could predict the future, if anyone could reasonably predict the future in terms of timing to offer a guarantee, than he doesn't think we would be there. So no, he can't stand up there and tell him in three years he won't be back there. He hopes and he would like to think and believe that he won't be back there. But for a sure guarantee, he can't make that. **COMMISSIONER RIVERS** asked then when it says that they plan to start construction next year, that's kind of a maybe? Mr. Ray said that's not correct. The way that it is represented is being that they want to do that then. Just as you have plans and just as all of us make plans. The timing might not be right or the plans might change. If the plans change substantially enough as indicated by the City of Attorney and by Staff, they are back here talking with everybody. Yes, there is every intention for them to do that and to go in 2009. **COMMISSIONER RIVERS** stated that those intentions could change next week. Mr. Ray said with all due respect the world could end tomorrow at 2:00 p.m. and we wouldn't be here.

**CHAIRMAN FLANDERS** asked if there were any other questions of the applicant. He went back to the audience and asked if there was anybody that would like to speak in regards to this item. There was not so he went ahead and closed the floor.

**COMMISSIONER RIVERS** wanted to know if we could put a stipulation on this that this will be the last extension of time. He asked if we could do that?

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, replied that you couldn't do that.

**COMMISSIONER CREEDON**, seconded by **VICE CHAIRMAN IRBY** to approve DVR07-0049 GATEWAY MARKETPLACE. The item passed unanimously 7-0.

**CHAIRMAN FLANDERS** said to the citizen that this would go to City Council on February 14, 2008. He said that would be a good time for her to talk to her neighbors and if they would like to attend, that would be the time to do it.

H. DVR07-0052 CHANDLER 101 BUSINESS CENTER

Request rezoning from Planned Industrial (I-1) to Planned Area Development (PAD) for an approximate 18-acre site, and Preliminary Development Plan (PDP) approval for two office buildings located at the southwest corner of Frye Road and Ellis Street.

1. Development shall be in substantial conformance with Exhibit E, Development Booklet, entitled "CHANDLER 101 BUSINESS CENTER PHASE II", kept on file in the City of Chandler Planning Services Division, in File No. DVR07-0052, except as modified by condition herein.
2. The landscaping shall be maintained at a level consistent with or better than at the time of planting.
3. The site shall be maintained in a clean and orderly manner.
4. 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.
5. 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.
6. All raceway signage shall be prohibited within the development.
7. The site shall be maintained in a clean and orderly manner.
8. The landscaping in all open-spaces and rights-of-way shall be maintained by the adjacent property owner or property owners' association.
9. Right-of-way dedications to achieve full half-widths, including turn lanes and deceleration lanes, per the standards of the Chandler Transportation Plan.
- 10 The applicant shall provide shade trees at the pedestrian areas located at the building entrances.
11. The applicant shall work with Staff to provide facade relief through the use of recess windows and shadow lines.

**ERIK SWANSON, CITY PLANNER**, stated that in the interest of time he was going to give a brief description and then get to the issue at hand.

Item H is a request for a rezoning and PDP for the Chandler 101 Business Center. The request is for two office buildings located along Frye Road. The buildings are approximately three stories in height. The top of the building is 45 feet. There is an architectural element at the entrances to the building that would go up to 51 feet. Overall, the square footage of the buildings is about 78,000 square feet. The request is to rezone to PAD from I-1. Mr. Swanson said he would be happy to answer any questions.

**CHAIRMAN FLANDERS** asked if anybody had any questions of Staff.

**COMMISSIONER KELLEY** asked in regards to the art ordinance was the language used "encouraged"? Is that correct? Mr. Swanson said more or less that is correct and

there are eleven design standards – six of them are required, one of those eleven is dealing with artwork. Under the guidance and direction of Council, one of their goals and objectives was to increase artwork in commercial developments. With that intention and that objective they then decided to move that optional artwork into one of those required six, now making it a required seven. Commissioner Kelley asked does that circumspect this board? Mr. Swanson said this did come before the Planning Commission but he doesn't recall when it did. He assumed it was before Commissioner Kelley came to the board. Commissioner Kelley said he recalls voting on the "encouraged" language. He doesn't remember seeing it again as a "requirement". He said he needs some memory refreshment on when that happened.

**BOB WEWORSKI, PLANNING MANAGER**, said he wanted to clarify things. What is going to City Council tomorrow evening for approval on code amendment for Artwork is the same thing you have seen. The intent is that it was originally an optional quality item that someone could do on a development and now it's under the required standard list. That is what was presented to them. The only thing that has changed is some of the language and the wording of it. Beyond that it's pretty well the same thing.

**CHAIRMAN FLANDERS** asked if there were any other questions of Staff. He stated to the applicant that there is a specific item they are discussing. They all felt pretty good about his project so it is just the issue of the artwork they would like to discuss.

**GARY HAYS, 2415 E. CAMELBACK ROAD, PHOENIX**, stated he is here on behalf of the Kieckhefer Company, which is the developer of this project and he will be sticking to number 11. He said that about 3:00 p.m. today he received a phone call from Mr. Swanson that he had a stipulation he wanted to talk to him about. He read him the stipulation which was "the applicant shall work with Staff to incorporate art features within the development". His question to Mr. Swanson was "what does that mean"? Mr. Swanson said it was going in front of City Council tomorrow and there is a definition but it's not an ordinance yet and it's not going to be an ordinance until at least tomorrow and of course, there is a second reading. If you were to file this application after the ordinance goes through, you would have to comply with it. Mr. Hays said if he's not mistaken there are eleven design elements of which you must meet six. Did we meet at least six? Yes, they did. He is a little confused. His confusion is not art. His confusion is not whether they are going to build a quality project. He stated they were well aware that the same company owns the piece that goes around the site. It is going to be a large campus and it has been developed for a while and they have put up a quality development. He said he is not standing there today saying he doesn't want quality development, they just want to make sure that they have the rules applied to us evenly and they know what it is they are getting into. To say the applicant shall work with Staff to incorporate art features within the development makes him anxious because he is not sure what that means. Is it statues? Is it fountains? What is it? That is the reason he had some concerns as Staff alluded to earlier. He believe based on when they filed the application, this shouldn't apply to them. He said that is basically all he has. He asked if anybody had any questions.

**CHAIRMAN FLANDERS** asked if there were any questions for the applicant. He stated that in his comments about what types of art features that may fall under what Council is looking at. He said he thought it was water features, statues, landscape features or something that in the past that they have asked for and they have worked through that with Staff. They have done a good job in providing those elements for those developments. That is why they have the applicant work with Staff to have your architect/developer provide something for them to take a look at.

**MR. HAYS** responded that it doesn't. He showed a very large pedestrian gathering area and there are lots of benches and landscaping. He could make an argument that placing benches throughout and having them designed artistically could be art. That gets to his point of art features. It is his view that they met the standards that the city puts forth by having met six elements of the eleven design standards. He is just a little surprised to have this last one thrown on him at the eleventh hour.

**CHAIRMAN FLANDERS** said he thinks Staff has done real well with working with the applicants on that. Mr. Hays said Staff has done a great job of working with them and feels that Staff will back him up on this one. They have done a great job working with Staff to put forth a quality development. As it is now, it is a quality development that the city should be proud of.

**COMMISSIONER CREEDON** said since she was the one that actually started with the concern with condition no. 11 and was in favor of the project and moving forward, she did want condition no. 11 excluded. She said she just wanted to state some of her concerns and she does agree with Mr. Hays that they do want quality development in Chandler, but they also have to balance the expectations of what they are requiring. If they have design standards in place and they have met those design standards, to come to a developer or applicant at 3:00 p.m. and require that, she felt that was like holding them hostage. If they want this to move through on consent, they have to agree or simply don't move through and then you have to go through what we are going through tonight and be here until 8:30 p.m. She had concerns with that. She thinks developers will do what's right in most cases as long as you set expectations and they can meet those expectations. They had one applicant where they raised this issue earlier tonight and they have twenty stipulations. She maintains that they need to look at how many stipulations they are requiring and are they doing the right thing and why would people want to do business in Chandler if they are going to do that to them every time they bring forward a project.

**COMMISSIONER GULSVIG** stated he is the one that suggested that stipulation and they are not holding someone hostage. He has a problem with that terminology. They often stipulate other things outside what's normally presented and developers will look at it and agree or not agree with it. In this case, it was his understanding that he initially agreed with it but took exception to it earlier on tonight. They had a discussion here about they could vote on it as a separate stipulation when they went forward and he didn't want that to go forward to Council with that kind of a split vote on this dais. His perception of what artwork is to add another element. If artwork is putting it on a park bench, that would satisfy the requirement. They are not asking for a lot. They are asking

that they go the extra effort to add a little bit more artistic value to a developer when it goes forward. There are lots and lots of facilities that are very stoic looking because that element has not been put on there and that's the reason why this ordinance is being passed. That was his reason to ask Erik to put this on as a stipulation because they have done it in the past on two other occasions; one tonight and one in the first week of November. They asked the developer to do that and he agreed with it. He is sorry it got sprung on him in the eleventh hour but the intent was not to hold them "hostage" for it, the intent was to work with them

**MR. HAYS** stated he hopes the record reflects that he did not use that term. He wasn't implying that in any of his comments. He thinks Commissioner Gulsvig said it best. Your perception of art could be something on a bench. Staff's perception of art could be 45 statues. His perception of art could be the benches turned one way. When the stipulation says "the applicant shall work with Staff to incorporate art features within the development" he could show up tomorrow and he's not saying it's going to happen because he has full faith and confidence that it wouldn't, but Erik could say they talked about it and they want forty statues and five fountains. He said he knows it isn't going to happen. Commissioner Gulsvig said that is unreasonable to expect that and even make that statement. A reasonable developer would not accept that from a Planner.

**COMMISSIONER CREEDON** asked Mr. Hays if he agreed with condition no. 11 before he walked in here today? Mr. Hays responded that he did not. He said he had concerns all along. She asked him if he would have agreed to it if it were going to remain on consent. Mr. Hays that is correct and he really had no option. Commissioner Creedon said thank you and that her point was proven. Mr. Hays said he did say that even if he agreed to it he still had concerns.

**COMMISSIONER RIVERS** said he thinks for himself that artwork is a good thing, however, as already stated here, artwork is a subjective item. No matter how long they discuss and carry this conversation forward, the way no. 11 is written is extremely vague and he doesn't know that they can ask anyone to go along with the stipulation that is written extremely vague.

**MR. HAYS** stated to say that this is not a responsible developer is troubling to him. This developer has about one million square foot of retail in Tempe, Chandler and Mesa. They will have at the completion of these buildings, about 400,000 square feet at Frye and Ellis. They have owned this property since 1985 and they developed the first section in 1996 or 1997, which is when they started permits. That would be the west side of Fairview and south of Benson. It is a wonderful project as you probably drive by it all the time and see. It's office on the front and industrial on the back, which is exactly what they are doing here and it's a great project as this will be. The concern is not whether or not it is going to be a good project. The concern is where's the subjectivity going to stop. That's what is concern has been all along.

**CHAIRMAN FLANDERS** asked Bob Weworski what have they done regarding the art features that they have asked for in the past as far as what type and quality in their

process in working through this with previous applicants? He asked for an example of some of the stuff that has been provided in some of the developments and what the developers have come to him with.

**BOB WEWORSKI, PLANNING MANAGER**, stated they have addressed this issue as far as having projects providing artwork in various ways and sometimes they have had conditions that say provide artwork and Staff administers it later. Certainly, the challenge is what do we do with artwork. With specific developments it is usually what kind of feature is going to be most appropriate for that specific site and the architecture and it's setting. Often it is pedestrian oriented so we have seen freestanding sculptures and usually something uniquely designed feature done in a creative manner. That is what we have seen. We have seen sculptures, site work and some building architectural feature done that was integrated with the development. It makes sense for that specific site but it may not have applied to another location. They are certainly comfortable with the applicant here. Their reputation is impeccable and they have done outstanding work and the developer as well. If they are charged with working with the applicant to develop artwork here, they are going to be looking at what's the best essence of their site and how can we do something that integrates it with this development in a creative manner. If it is a bench, it will be something that's a unique bench. It's not something they just purchase somewhere. They are going to put something in there that does make a presence and an impact. That is what they are looking for and that is how they have done it in the past.

**GLENN BROCKMAN, ASSISTANT CITY ATTORNEY**, stated he would like to make a couple of comments because he knows of the item that is on the agenda tomorrow and he has had an opportunity to look at it and read the comments on the code change. What is art and what is artwork is very subjective. To a certain extent the whole PAD and at least the PDP process of what's compatible is somewhat subjective. He said what he finds is that the way you resolve it is through that PDP or PAD process. You work out what is a design that's palatable to both the applicant and to the Staff and ultimately to the Commissioner and Council. That is the way he looks at the art requirement. If an applicant knows going in that they have to meet an artwork requirement that can be worked out through the PAD/PDP process. It can be as strong as identifying a specific artwork at a specific location or it can be more general such as some type of art in the open space area as opposed to between the buildings. At least it gets more clarified that way. The problem is with this situation is that the applicant in the whole process of coming forward with PAD wasn't focused on the art because Staff wasn't focused on it and neither one of them was addressing it. That's part of the problem with springing something on at the last minute.

The other comment he made was on the tendency on the part of the Commission from time to time to add a stipulation that reads work with Staff. It is not "Staff works with the applicant" it is almost always "applicant will work with Staff". In this situation it's very difficult to treat it as anything other than somewhat ambiguous because there is no standard. Often times when they have "applicant will work with Staff" conditions, there has already been some sort of standard identified. For example, earlier tonight Vice Chairman Irby identified the tower structures and wanted some changes and so he did an

“applicant shall work with Staff”. You don’t get the detail but there is some standard that can guide Staff and the applicant in terms of what they want to do. That wasn’t here tonight either. He can understand the applicants concerns and he can understand why the Commission would want to have an artwork of some sort. The problem is you don’t know if there has been a meeting of the minds and what all that’s going to be when it kind of hits at the last meeting like this.

**CHAIRMAN FLANDERS** said so you are asking them to be specific.

**GLENN BROCKMAN** said no he is not asking for any of that. If the applicant knows that there is going to be an artwork requirement starting out, then it will be worked out through the normal PAD/PDD process. When the applicant doesn’t know about it until the last minute, there is no time to refine what that concept of artwork will mean for the particular project.

**COMMISSIONER GULSVIG** said they have in the past made a stipulation that this is subject to the applicant’s approval. In this case since the applicant doesn’t approve and doesn’t endorse it since he asked for it to be placed on the agenda, then he will ask for it to be removed.

**CHAIRMAN FLANDERS** said he was ready for a motion.

**MOVED BY COMMISSIONER CREEDON**, seconded by **COMMISSIONER KELLY** to approve DVR07-0052 CHANDLER 101 BUSINESS CENTER with the exclusion of condition no. 11.

**COMMISSIONER CASON** said he was absolutely surprised that they had this conversation as early as we did because as he recalls when this first came before them as part of the ordinance change there was some commentary as to what was going to be art and what was going to the economies of art. He knows that they had some discussion as to what was art and how much art was going to cost and at that time Staff was going to work with respective applicants. Art is money more than really being art. To not have an understanding before you come before Commission and Council of what your costs are going to be, he thinks is unfair. He has to agree with Commissioner Creedon that if it hasn’t been passed and the applicant has met all the other features then we shouldn’t mandate anything upon them because of those economic issues. He said he has a feeling in the future if this ordinance is passed by Council that art will be a part of the discussion and won’t wait until later. The developers are going to want to know exactly what that cost is, whether they intend to spend \$100,000 on art or whether they intend to spend \$50,000 on art. It’s part of the economy of the project and it should be addressed as such. Art and what it is going to be and where it is going to be and what it’s going to look like is going to be an integral part of the design that they will be seeing before them here on out.

**CHAIRMAN FLANDERS** asked if there were any other comments. Item passed 6-1 (Chairman Flanders opposed).

6. DIRECTOR'S REPORT

7. CHAIRMAN'S ANNOUNCEMENTS

The next regular meeting is February 6, 2008 at 5:30 p.m. in the Council Chambers, 22 S. Delaware Street, Chandler, Arizona.

8. ADJOURNMENT

The meeting was adjourned at 8:43 p.m.

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Michael Flanders, Chairman

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Douglas A. Ballard, Secretary

