

**PLANNING AND ZONING COMMISSION
CITY OF PEORIA, ARIZONA
COUNCIL CHAMBERS
JULY 19, 2007**

A **Regular Meeting** of the Planning and Zoning Commission of the City of Peoria, Arizona, convened at 8401 W. Monroe Street., Peoria, AZ in open and public session at 6:30 p.m.

Members Present: Vice Chair Veda McFarland, Commissioners William Louis, Kenneth Compton, Marc Melbo, John Gerard, Michael Worlton and Anne Wojcik.

Members Absent: Commissioners. Chair Greg Loper.

Others Present: William Emerson, City Attorney, Chad Daines, Planning Manager, Chris Jacques, Principal Planner, Robert Gubser, Senior Planner, Cody Gleason, Planning Technician, Dawn Prince, Planning Assistant and Cathy Griffin, Executive Assistant.

Opening Statement: read by Chad Daines, Planning Manager.

Final call for speaker request forms.

Audience: Approximately 25

Note: The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.

Comments from the floor on non-agenda items: There were no comments from the floor on non-agenda items.

***CONSENT AGENDA**

All items listed with an asterisk (*) are considered to be routine by the Planning and Zoning Commission, and were enacted by one motion. There was no separate discussion of these items during this meeting.

Commissioner Gerard moved to approve the Consent Agenda items with removing CU03-16A.1. The motion was seconded by Commissioner Compton and upon vote, carried unanimously.

***Minutes:** Approved the minutes of the Regular Meeting, June 21, 2007

***Disposition of Absence:** Approved the absences of Commissioners Kenneth Compton and William Louis from the June 21, 2007 Meeting.

- *1. **CU03-16A.1:** WITHDRAWN AT THE REQUEST OF DAVID W. ELSTON, ATTORNEY, JENNINGS, STROUSS & SALMON, PLC.
- *2. **CU06-08:** Circle K (Represented by Ahmad Ghaderi, A & S Engineering, P.O. Box 15397, Scottsdale, AZ 85267), 1130 W. Warner Rd, Bldg B, Tempe, AZ 85284, a Conditional Use Permit to construct and operate a gasoline service station located at the SEC of 83rd and Olive Avenues. The gasoline service station use (requiring the CUP) coupled with the Circle K convenience store will be the first development phase of a larger commercial center to be located at that corner.
- *3. **CU07-13:** Archicon LLC (c/o Tim Rasnake), 4041 North Central Avenue, Suite C-100, Phoenix, AZ 85012, a conditional use permit to allow an outdoor dining area in conjunction with the Sandbar Mexican Grill restaurant located at 9868 West Northern Avenue within the Parke West Development, and is more particularly described as Maricopa County Assessor's Parcel Number (APN) 142-55-008F.

REGULAR AGENDA

NEW BUSINESS, PUBLIC HEARINGS and/or ACTION:

4. **Z 06-01:** Paradise Nursery (Represented by Mr. Charles Huellmantel, Charles Huellmantel & Affiliates, LLC, P.O. Box 1833, Tempe, AZ 85280-1833), request to rezone approximately 10 gross acres from its current Zoning of General Agriculture (AG) and Single-Family Residential (R1-18 and R1-12) to a Planned Area Development (PAD) to consolidate the development standards applicable to an existing nursery business and incorporate a parcel not previously included. The property is generally located at the southwest corner of Acoma Drive and 75th Avenue.

The staff report, presented by Chris Jacques, Principal Planner, addressed the proposed application as outlined in the commissions' staff report. Staff is recommending approval of this case, subject to the revised conditions distributed this evening.

Public Comment:

Charles Huellmantel, on behalf of the applicant, Charlie Kendall, PO Box 1833, Tempe, AZ 85280. Mr. Huellmantel stated that staff has done a thorough job explaining many of the points. Mr. Huellmantel stated that Mr. Kendall has been on this location for almost 30 years, since before the location was annexed into Peoria and tried very hard to be a good neighbor. Mr. Huellmantel referred to the number of stipulations proposed by staff. These stipulations put tighter restraints on what can happen on the property than what can happen today. He stated that this is good for everyone that

surrounds the site and it's good for Mr. Kendall because it allows him to operate on the acre that he purchased. Mr. Huellmantel stated that Mr. Kendall purchased this property without the knowledge that it needed re-zoning.

Commissioner Melbo asked what if in the future this supplier decided to become a retail establishment and remain open on Saturday and Sundays, would he have to come before the City Council or would he just have to obtain a special use permit.

Mr. Jacques, Principal Planner, explained that would be correct. If they requested to become a retail establishment, that would require an amendment to the PAD and therefore, they would have to come before the Planning Commission.

Mr. Huellmantel stated that Mr. Kendall has no intension on converting this location into a retail operation.

Bill Souder, directly north of the area, stated that he did not receive notice of the meeting and felt it was intentional. Mr. Souder referred to one of the documents in the case files it states that they do use the dirt road running from north to south. He stated they use this road all the time. It is trucks at 5:30 in the morning or 5:30 at night or later. Mr. Souder stated that Mr. Kendall operates two nurseries on each side of 75th Avenue. Mr. Souder also stated that Acoma Drive is a Maricopa County road, that perhaps the City of Peoria may have joint maintenance, and the road is marked for no through trucks, which doesn't seem to dissuade anybody that goes in and out of there. Deliveries from 7:00 to 3:00 are fiction. Mr. Souder stated that people are parking there at 5:30 in the morning with their truck waiting for the gate to open, with their forklifts loading and unloading right in front of Mr. Sounders' driveway. Mr. Souder moved to this location approximately 11 years ago, and would like Mr. Kendall's trucks to stay on his side of the road and to enter and exit on the business highway, 75th Avenue.

Bill Moore stated he lives near the southwest corner of this property and he is in love with the nursery. Mr. Moore stated that the nursery is a very nice thing to have close to him because he does not hear any noise, doesn't get any dust and as far as he is concerned, he is in favor of this case.

Patrick Sponsel, stated that the nursery is an ideal neighbor, there's very little traffic that goes up and down Acoma. As far as the workers or dust, it's very minimal. Mr. Sponsel stated that he would prefer have the nursery as opposed to having buildings or high density housing on this location.

Sharon Hendrickson stated that her home is directly to the north, northwest. Ms. Hendrickson also stated that she is speaking on behalf of her neighbor, the Turnbolls, whose entire backyard abuts the nursery. Ms. Hendrickson stated that they are not in love with the nursery. She stated that there is quite a bit of traffic going up and down a back road along a fence line, occasionally there is some loud Mexican music. Her main concern is there has been spraying of herbicides and pesticides, which was done on a windy day and she had to close her windows and flee her home. Ms. Turnbull was also

concerned with the pesticides and herbicides because she is pregnant. Ms. Hedrickson stated that overall, the fact that the nursery is a commercial enterprise and the fact they just sell wholesale, has kept the activity level at a dull roar, so she doesn't have complaints of the overall complex. Ms. Hedrickson stated that Mr. Kendall hasn't been a terrible neighbor nor a great neighbor, and their right to quiet enjoyment was interrupted when he put up a block fence. Ms. Hedrickson requests that the Planning Commission deny the zoning to PAD and to leave it general agricultural and let him continue his business there and annex the one section, parcel 3. Ms. Hedrickson also stated that she is concerned and interested to see how quickly Mr. Kendall would plant the trees to try to reduce the unsightly view of the greenhouses.

Wayne Smithson, stated that he lived next to Mr. Kendall for 15 years and that Mr. Kendall is a good neighbor, and he never hears any noise, and never sees any dust. Mr. Smithson stated he wished all his neighbors were like Mr. Kendall.

Commissioner Gerard asked staff to establish the boundary and age of the nursery and asked if it was originally constructed within a county island and then annexed into the City of Peoria. Mr. Huellmantel stated the nursery has been there 28 years and was a county island which has been annexed. Therefore, the nursery pre-dates all of the residential communities that abut the nursery. Commissioner Gerard then questioned the issues regarding noise, dust and use of pesticides, if a neighbor had a complaint regarding that they could probably check with Code Enforcement, would that be an appropriate avenue for them? Mr. Jacques, Principal Planner, stated that would be correct.

Commissioner Gerard also discussed the site plan review and the ability of the developer to install a buffer between the residential sections and the commercial usages as well. Commissioner Gerard stated that a landscape buffer would mitigate many of the concerns of the neighbors.

Mr. Huellmantel stated that they were anxious to work with the neighbors and plant trees in September. Mr. Huellmantel went on to explain that Mr. Kendall paved Acoma with his own funds to address the issue of dust.

Commissioner Worlton questioned the first speaker statement that they did not receive a notice, isn't that the city's responsibility? Mr. Jacques stated that is correct, the City sends postcards to all properties within 300 feet using the latest records according to Maricopa County Assessor's Office. Commissioner Worlton asked the applicant about deliveries and stipulation number 2, which states there will be no deliveries loading or unloading on parcel 3 prior to 7:00 a.m.

Mr. Huellmantel explained that parcel 3 is used differently, and that it is sheltered so that young plants can grow. Occasionally those plants are loaded onto vehicles. This does not happen often and is certainly something that could be scheduled. He also stated that they did not only rely on the staff's notice to the public. They did go out and talk to neighbors and have 154 signatures of people who live in the surrounding

community that find what we're asking for acceptable. Mr. Huellmantel provided a copy for staff and commissioners.

Additional discussion pertaining to traffic ensued.

Commissioner Compton questioned if there was discussion with the city about whether the covered nursery area could be removed and used for more mature plant storage. Thus, the neighbors would be looking at a more mature landscape.

Mr. Huellmantel explained that having less mature plants on parcel 3 results in less activity in that area. He also said that they will be planting trees in September and that over time anyone along that boundary will be looking at trees.

Commissioner Compton also questioned staff regarding the entrances on Acoma. Is that something that can be chained off and just used for fire access, so that its usage would not be an issue?

Mr. Jacques stated that potentially it's an additional condition that could be placed on the property. He also explained that since the establishment of the business, access had been occurring on Acoma, it was a pre-existing condition.

Further discussion ensued regarding restricting access on Acoma, including information from William Emerson, City Attorney.

Mr. Huellmantel stated that losing access from Acoma would be a problem, but the concern is really dust. They would certainly be willing to do something, i.e., granite, watering every day and work on other ways to reduce the dust. He stated that the plastic huts are important twice per year, when it's really cold and this time of year. Without these huts, Mr. Kendall can't grow plants. The developer committed to work with staff to create a landscape buffer to mitigate the issues.

Commissioner Compton stated that his problem is that the new owner basically did not check with the city on the zoning before making changes.

Mr. Huellmantel stated that if Mr. Kendall had to do it over, he would do it differently. However, nothing was done maliciously and once he found out what he should have done, he started taking the steps required.

Mr. Emerson, City Attorney, stated the land use change that the commission is being asked to approve is not personal. It doesn't depend on who owns the property. The commission is answering the questions about whether this land use is appropriate at this location regardless of who owns it.

Vice Chair McFarland asked if a compromise could be reached regarding the pesticides. Mr. Huellmantel explained about the spraying and the prevailing wind. Further discussion pertaining to spraying pesticides ensued.

Vice Chair McFarland also asked if removal of one or two of the huts would be an option, then use that space for plants that grow outside.

Commissioner Melbo asked the City Attorney regarding parcel 1 and 2 being grandfathered prior to the annexation by the City and the entire site is to be PAD, what happens to the grandfather issue with parcel 1 and 2, does that terminate now and the entire parcel 1, 2 and 3 become one parcel under a PAD?

Mr. Emerson stated that is correct, that is no longer a grandfather right that they will have. This is a new zoning for the entire parcel.

Commissioner Melbo also questioned the site plan approval process. Mr. Emerson explained that there would be a site plan approval process.

Mr. Huellmantel stated that they have tried to do the right thing regarding the landscape buffer with additional trees, path and existing pecan trees.

Commissioner Gerard stated that when the use of the parcel is changed, a bigger problem for the neighborhood could be created. Additional discussion ensued regarding placing trees rather than huts on parcel 3.

Commissioner Gerard also questioned the possible restriction of access on Acoma. Mr. Jacques stated that if access was restricted on Acoma then all the extra trips are being placed on the access road to the back, which might create a worse situation.

Commissioner Wojcik asked about the noise concern and deliveries. Additional discussion regarding these concerns ensued.

Commissioner Worlton questioned the distance between the shelters and the site wall. Mr. Huellmantel explained that it was approximately 40 feet and rows of landscaping would be added to this area. Mr. Jacques stated that the distance between first hut and the wall is 56.2 feet.

Commissioner Louis complimented the applicant in working with the concerns of the neighbors and staff to make it as aesthetic as possible for the neighborhood. This looks like a logical expansion to the nursery and the steps taken have been appropriate.

Commission Action: Commissioner Gerard moved to approve case Z06-01 subject to staff recommendations 1 through 5, modified by memo of July 19, 2007. The motion was seconded by Commissioner Melbo and upon vote, passed with 5 yeas to 1 nay vote from Commissioner Compton, with the following conditions:

1. The development shall conform to the *Paradise Wholesale Nursery* Planned Area Development (PAD) Standards Report and Development Plan stamped 05/23/06.

2. No deliveries or loading / unloading shall occur on Parcel 3 prior to 7:00 a.m. or later than 6:00 pm.
 3. The applicant shall obtain Site Plan approval for Parcel 3 (expansion area). The Site Plan Review application must be submitted within six (6) months of affirmative Council action on this case.
 4. Any new lighting fixtures installed on Parcels 1 and 2 after the effective date of the Ordinance or any fixtures installed on Parcel 3 shall be limited to 16 feet in height and be Dark Sky compliant. All lighting fixtures on Parcel 3 shall be located no closer than 20 feet from an abutting residential district.
 5. The applicant shall provide dust control measures along the southern access road in accordance with the City's requirements or as approved by the City Engineer. This shall be verified during Site Plan Review for Parcel 3.
5. **Z 04-19A.2:** Peoria Investors, LLC & Chevy 33 (c/o Mr. Russell Beck), 14287 N. 87th Street, Suite 220, Scottsdale, AZ 85260, amend the Park West Planned Area Development (PAD) Standards and Guidelines Report. The amendment increases the amount of gross floor area (GLA) above that originally contemplated for Parcels 3 and 4 for a proposed office, hotel and townhouse use and contain other housekeeping updates to the aforementioned document. Park West is a mixed-use project generally located at the northeast corner of 99th Avenue and Northern Avenue.

The staff report, presented by Chris Jacques, Principal Planner, addressed the proposed application as outlined in the commissions' staff report. Staff is recommending approval of this case, subject to the conditions outlined in the report.

Public Comment:

Russ Beck, 14287 N 87th Street, Scottsdale, Arizona 85260, stated that this PAD amendment and site plan amendment has been worked on since last fall. The applicant has met with the neighbors, discussed concerns and moved the trail further to address the concern about the proximity to the residential walls. Other concerns that we addressed were with the landscaping and security in the area. Mr. Beck presented various renderings of the proposed site.

Commissioner Melbo questioned the red-line areas of the staff report. Mr. Jacques explained all the conditions of approval established with the initial entitlement and its amendment, those conditions remain in place and are attached to the PAD document in the report.

Commissioner Gerard asked if the applicant suffered any reduction in developable land as a result of the SRP power line corridor. Mr. Jacques explained that the original entitlement did not include the SRP corridor.

Commissioner Gerard asked the applicant with the addition of the 86 residential units bringing it to 340 units, is it anticipated by the developer that these will be owner-occupied?

Mr. Beck stated that was correct, residential condos.

Sandy Irons stated she did not receive the postcard notice. Her concern with the expanding the footprint of this project, where are the mandatory parking spaces going to come from to provide for these new 86 tenants to have adequate parking, security, fire lane, emergency lanes. Are they going to encroach on the neighbors? Ms. Irons stated she never saw a 10 or 12 story hotel building in any of the drawings that were submitted. Ms. Irons stated she is concerned regarding security, noise during the night, not being keep informed on what's going on and the information is too vague. Ms. Irons asked the commission not to approve any higher, any wider or any further north than where they are now. She also stated that the towers were never in any of the renderings so that they can see where the blacktop is going to be. Ms. Irons would like to see the developer provide more disclosure on the entire project and would like to have more citizen meetings rather than a postcard.

Mr. Beck stated that they did have a citizen meeting, did discuss the concerns and showed elevations. Mr. Beck reviewed the renderings.

Commissioner Gerard asked to clarify the parking for commercial site is going to be above ground. Mr. Beck explained that there will be parking structures that will serve both residential and commercial. Further discussion regarding adequate parking for the facility ensued.

Commission Action: Commissioner Worlton moved to recommend approval to City Council of case Z04-19A.2 subject to the conditions in the staff report. The motion was seconded by Commissioner Louis, and upon vote, Z04-19A.2 was approved unanimously, with the following conditions:

1. All development shall conform to the amended *Park West* Planned Area Development (PAD) Standards Report and Development Plan, as revised herein. The approval entered herein shall not negate any of the prior conditions contained or referenced within the original Case Z 04-19 (*Villages at Northern PAD*) and its successive amendment (Case Z 04-19A.1). Those conditions shall remain in force for the PAD and are attached for reference.
2. No permits shall be issued for Parcel 3 (as revised) until the Improvement District for the frontage road has been created.
3. The Developer shall prepare a sound study for any residential units for sale or lease. The sound study shall be submitted with the Civil Improvement Plans. *This is required for all non-commercial projects adjacent to the Loop 101 corridor.* The Developer shall design and construct all walls as required by the approved sound study.

REPORT FROM THE PLANNING AND ZONING COMMISSION: none

REPORT FROM STAFF: Chad Daines, Planning Manager, stated that we have started a new format in the reports where the Zoning Ordinance or Development Plan image being embedded in the report. Mr. Daines asked if the Commissioners felt this is helpful and should it be continued in future reports.

Commissioners stated they liked the information.

ADJOURNMENT: There being no further business to come before the Planning and Zoning Commission, the meeting adjourned at 8:00 p.m.

Veda McFarland, Vice Chair

Date Signed