

Meeting Minutes

Planning and Zoning Commission

Regular Meeting

May 17, 2023 | 5:30 p.m.
Chandler City Council Chambers
88 E. Chicago St., Chandler, AZ



Call to Order

The meeting was called to order by Chairman Heumann at 5:30 p.m.

Roll Call

Commission Attendance

Chair Rick Heumann
Vice Chair Sherri Koshiol
Commissioner Erik Morgan
Commissioner Michael Quinn
Commissioner Jeff Velasquez
Commissioner Kyle Barichello
Commissioner Rene Lopez

Staff Attendance

Derek Horn, Director of Development Services
Kevin Mayo, Planning Administrator
David de la Torre, Planning Manager
Lauren Schumann, Principal Planner
Alisa Petterson, Senior Planner
Harley Mehlhorn, City Planner
Ben Cereceres, City Planner
Mika Liburd, Associate Planner
Tulili Tuitelelapaga-Howard, Planning Intern
Thomas Allen, Assistant City Attorney
Julie San Miguel, Clerk

Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Barichello.

Scheduled Appearances

1. Recognition of David Rose for his seven years of service as a member of the City of Chandler Planning and Zoning Commission.

CHAIRMAN HEUMANN thanked David Rose for his years of service. He stated David was a great asset to the to the Planning and Zoning Commission and presented a plaque in appreciation for

his seven years of dedicated service to the City of Chandler Planning and Zoning Commission on May 2023.

DAVID ROSE Thanked the commission and stated it was an honor to serve and work with the City of Chandler. He stated he is looking forward to serving again in some capacity down the road, Chandler is a great city and Planning and Zoning does a lot more than people think. He further stated being on the Commission was a dream come to true because he used to watch the meetings with Jeff Kurtz years ago growing up. He thanked everyone again and stated it was an honor.

CHAIRMAN HEUMANN thanked David Rose and his family for their service and mentioned David's father is present and served the City in Parks and Rec.

DAVID DE LA TORRE, PLANNING MANAGER announced on behalf of the city of Chandler planning staff, he would like to recognize David Rose for seven years of service on the Planning and Zoning Commission. He explained in his years of service David has seen many projects presented to the commission, both large and small, and has helped maintain Chandler's high quality design standards for new developments. He stated being on the Planning and Zoning Commission is not always an easy job and David has seen his share of controversial cases. He further stated because it is a thankless job and staff would like to thank David Rose for his seven years of service and all the time that he spent with the Planning and Zoning Commission, thank you.

Unscheduled Public Appearances

Members of the audience may address any item not on the agenda. State Statute prohibits the Board or Commission from discussing an item that is not on the agenda, but the Board or Commission does listen to your concerns and has staff follow up on any questions you raise.

Action Agenda Item No. 2 and Discussion

2. ELECTION OF OFFICERS

Move Planning and Zoning Commission elect a Chair and Vice Chair of the Planning and Zoning Commission.

Action Agenda Item No. 2 Motion and Vote

COMMISSIONER KOSHIOL moved to elect Rick Heumann as Chairman of the Planning and Zoning Commission; Seconded by COMMISSIONER BARICELLO.

Motion carried unanimously (7-0).

CHAIRMAN HEUMANN moved to elect Sherri Koshiol as Vice Chair of the Planning and Zoning Commission; Seconded by COMMISSIONER VELASQUEZ.

Motion carried unanimously (7-0).

Consent Agenda and Discussion

3. Study Session and Regular Meeting Minutes of April 19, 2023, Planning and Zoning Commission Meeting

Move Planning and Zoning Commission approve Planning and Zoning Commission meeting minutes of the Study Session of April 19, 2023, and Regular Meeting of April 19, 2023.

4. PLH23-0016 AT&T EL LOBO WCF

Request for Use Permit approval to install a wireless communication facility. The property is located on the north side of the Hartford and Fairview Street intersection, approximately ¼ north of Pecos Road

Move Planning and Zoning Commission recommend approval of Use Permit PLH23-0016 AT&T El Lobo WCF for the installation of a wireless communication facility, subject to the conditions as recommended by Planning staff.

Planning staff recommends Planning and Zoning Commission move to recommend approval of the Use Permit, subject to the following conditions:

1. Expansion of the wireless facility or modification of the use beyond approved exhibits shall void the Use Permit and require a new Use Permit application and approval, except that any application for modification as an "eligible facilities request" under Section 6409(a) of the Spectrum Act of 2012 shall not require a new Use Permit application.
2. Use Permit does not constitute Final Development Plan approval. Compliance with the details required by all applicable codes and conditions of the City of Chandler and this Use Permit shall apply.
3. The facility pole that resembles a tree trunk shall use material and color that mimics tree bark.
4. The color of the leaves on the facility shall closely resemble the color of the leaves of the existing trees on the subject site.

**** Note:** Stipulation #5 was added due to discussions held by the Planning and Zoning Commission this date.

5. Additional trees of similar species to the existing trees within the basin shall be planted between the adjacent right of way and the stealth tower.

CHAIRMAN HEUMANN asked staff to read aloud the added stipulation.

HARLEY MEHLHORN, CITY PLANNER read aloud added Stipulation No. 5: Additional trees of similar species to the existing trees within the basin shall be planted between the adjacent right of way and the stealth tower.

6. PLH23-0028 MCCULLOUGH-PRICE HOUSE HISTORIC LANDMARK DISTRICT

Request for Landmark Designation for a building located at 300 S. Chandler Village Drive, generally located west of the intersection of Frye Road and Chandler Village Drive, roughly ½ mile south and west of Chandler Boulevard and Price Road.

Move Planning and Zoning Commission recommend approval of Ordinance 5053, PLH23-0028, McCullough-Price House Historic Preservation District Landmark zoning overlay subject to the conditions as recommended by Development Services staff.

The Development Services staff recommends the Planning and Zoning Commission move to recommend approval of PLH23-0028, Ordinance 5053, Historic Preservation District Landmark zoning overlay subject to the following conditions:

1. The property shall be subject to the General Design Guidelines for Historic Preservation Districts and Landmarks.

Consent Agenda Motion and Vote

VICE CHAIR KOSHIOL moved to approve the Consent Agenda of the May 17, 2023, Regular Planning and Zoning Commission Meeting, with stipulation 5 added to Consent Agenda Item No. 4; Seconded by COMMISSIONER MORGAN

Motion carried unanimously (7-0).

Action Agenda Item No. 5 and Discussion

5. PLH22-0061 MODERN MARGARITA PLANT SHOPS LLC

MIKA LIBURD, ASSOCIATE PLANNER, presented information regarding the request for an Entertainment Use Permit approval to allow for indoor live entertainment and outdoor patio speakers, located at 4165 S Gilbert Road, Suite 5.

COMMISSIONER VELASQUEZ asked if the outdoor speakers are meant for ambient noise or do they broadcast indoor performance during entertainment.

MIKA LIBURD, ASSOCIATE PLANNER stated she would like to refer that question to the Applicant who is present and able to answer questions from the Commission.

CHAIRMAN HEUMANN confirmed there were no further questions for Staff and announced there is a speaker card for this item. He asked the Applicant to come before the Commission for his presentation.

KYLE MASON, APPLICANT introduced himself as president of Mill Avenue Management, the parent company of Modern Margarita. He stated he is responsible for operations and with this new build out at the Chandler location, the speakers are for ambiance music during the day, lunch, happy hour, and dinnertime; then used for entertainment for DJ use or live acoustic sets. He stated the prior presentation was inaccurate and they are only seeking live entertainment on Friday, Saturday, and Sunday. He further stated Friday and Saturday nights will have a DJ present, then there is brunch on Saturday and Sunday with an acoustic set. He explained these are the only times for live entertainment except for special events like Cinco de Mayo and New Year's Eve, things of that nature. He stated their intent is to keep everything in house, not outside or asking for an extension of premise.

COMMISSIONER VELASQUEZ confirmed that this answered his question.

CHAIRMAN HEUMANN pointed out the restaurant has garage doors so obviously in the summer they will be closed, but when they are open in the wintertime there will be outdoor speakers and the music coming out as well.

KYLE MASON, APPLICANT confirmed this is correct. He stated they have patio heaters built in and the whole concept is an indoor-outdoor patio restaurant bar. He further stated a majority of the time they will try to have the garage doors open year-round weather permitting.

CHAIRMAN HEUMANN confirmed there were no questions from the Commission at this time and announced there is a speaker card on this item. He stated the speaker will now present then the Applicant can come back up to answer any questions.

KRISTA BILSTEIN, 301 S BIG HORN DRIVE thanked the Commission for their service to our community. She explained her family loves Modern Margarita and have been there several times since it's opened in September, they like it so much they purchased five gift cards for her daughter's teachers. She stated what brought her before the Commission is the negative experience, they had on Saturday night. She explained this past Saturday around 8:45 p.m. they went to grab some chips, salsa, and a drink, but it was so loud on the outdoor patio they could not even have a conversation. She stated they are already using the outdoor speakers and what

made them feel uncomfortable was that the music was very inappropriate and profane. She understands how some establishments want that kind of ambiance with a DJ and they have heard all sorts of music including rap and hip hop, but this music was different, very extreme like the DJ was going for shock value. She stated after the fourth inappropriate song in a row they talked to the DJ, and they continued to play the same music. She further stated when they brought up how uncomfortable the music was making them to the server, she advised that others also felt uncomfortable including the servers. She presented concerns for the surrounding businesses due to the location in a commercial strip center especially with the roll up doors that they intend on keeping open. She stated she cannot image the customers at the nearby businesses like the frozen yogurt shop or school wanting to hear that kind of music. She explained she understood that it is their choice of music and the crowd they want, and she is not suggesting that the Applicant change that, but she wonders if there is a stipulation that could be added to make sure people who do not want to hear that kind of music do not have to hear it. She further explained she is not opposed to the request; she would like consideration for the patrons of nearby business who do not want to hear it. She advised that they are happy that the establishment is close by and will continue to go to Modern Margarita, just not bring her family at night again. She asked if a stipulation can be put into place so the can be good neighbors and not infringe on others on the business center.

CHAIRMAN HEUMANN thanked the speaker and asked staff if they could read aloud the stipulation regarding noise carrying over. He explained to the speaker there are usually stipulation in terms of the noise carrying over that are in place throughout the city.

MIKA LIBURD, ASSOCIATE PLANNER read aloud Stipulation No. 4: No noise shall be emitted from external speakers or live entertainment in such a manner that exceeds the general level of noise by uses outside the premises of the business and disturbs adjacent businesses and residential areas.

CHAIRMAN HEUMANN asked the Applicant to address the concerns brought up by the speaker. He stated the music type does not matter and asked the Applicant to address the music with profanity that is playing with the doors open in this family center with surrounding businesses. He asked if that is considered normal or what we should expect.

KYLE MASON, APPLICANT stated absolutely not. He explained that the DJ is a contracted employee, and they are trying to find one that fits their atmosphere and culture that they want to present in the community. He further stated that they are conscious of their surrounding community and the request is to play after 8:00 p.m. and the surrounding businesses close at 8:00 p.m. . He stated he has twelve years of experience and presented statements regarding their location in Phoenix that is surrounded by many businesses and not have never had a complaint. He stated it is not clear if the issue is about the sound or the about the lyrics, but we do not foresee having any vulgar language as what was described. He further stated he has

never experienced this since he has been in his position, and it is their intent to play a range of music to attract all people just not just one genre.

CHAIRMAN HEUMANN asked who is going to be responsible to step in if the music is not appropriate. He pointed out the DJ is contracted and asked if there was a manager.

KYLE MASON, APPLICANT stated everything that play is built in house so there is lunch and happy hour music that is all just the click of a button but on Fridays and Saturday nights we have a DJ. He explained there is a general and assistant general manager on site and key holders. He further stated there are five different sets of management personnel on property any given time that can help monitor this. He explained since this is a new establishment, he may need to lean on them little bit more about the appropriate music that needs to be played.

COMMISSIONER LOPEZ stated this is the Applicant's business and they are going to need to figure out the content of the music and that every demographic is different and South Chandler is not Downtown Tempe. He further stated the biggest concern is the volume and to make sure that its appropriate for the business center. He explained it sounds like the Applicant wants to be a good neighbor by waiting for the nearby businesses to close as it becomes a little bit of an attraction right when people observe music going on and see it is a good time but there must be a balance. He liked that the Applicant said they want to be good community member and he hopes the Applicant considers this while feeling their way through the development here.

KYLE MASON, APPLICANT stated absolutely and stated since we have been open since September, this is the first complaint and it just happened Saturday. He further stated that he wished he was aware of it sooner so he could have made an adjustment, but this is not something that happens often, and they will definitely be more proactive and making adjusting.

CHAIRMAN HEUMANN stated the manager on site will need to stop that kind of thing.

KYLE MASON, APPLICANT stated the manager on site is into the hip hop and rap music culture, and he will be sure to reel him in so everyone is on the same page.

COMMISSIONER LOPEZ pointed out you cannot go wrong with 80's music.

COMMISSIONER VELASQUEZ stated he understood that the Applicant is trying to be a good neighbor and still feeling everything out and getting into the realm of managing this. He asked staff in the event a noise complaint is made at the restaurant by the yogurt shop at 7:00 p.m. and nothing happens, what is the next step. He asked is it a police call for a noise complaint.

KEVIN MAYO, PLANNING ADMINISTRATOR stated staff is not available at 7:00 p.m., so it could kind of originated as a police call, then staff will then get folded into it the next day. He explained its hardwired into staff to seek compliance and not down of enforcement until it's absolutely

necessary; therefore, staff would exhaust every avenue possible to get the business into compliance and only if staff could not they would go down the path of enforcement.

COMMISSIONER VELASQUEZ thanked staff and stated hopefully it will not get to that.

DAVID DE LA TORRE, PLANNING MANAGER added that there is a stipulation that is being proposed that says the establishment shall provide a contact phone number for the responsible person for a responsible person to any interested neighbors or property owners to resolve noise complaints quickly and directly. He explained in the event, there is an issue, and the neighbor calls police staff will find out the next morning. He further explained staff would want to connect the resident calls with the Applicant's phone number so that if this happens again, there is direct communication, and the issue can be resolved, and the resident does not have to continue to call the police.

CHAIRMAN HEUMANN stated this whole thing is interesting because it shows how one person can kill your business, just one bad DJ and people can turn to next door and all these other apps. He further stated the stipulation is a good and if somebody calls or is there said something to your manager, you are responsible enough to handle it. He explained rap and hip hop does not have to have every F bomb in the world going on and there is lots of great hip hop without things like that. He asked staff if there is a time stipulation on this item.

DAVID DE LA TORRE, PLANNING MANAGER stated there is no time stipulation.

CHAIRMAN HEUMANN stated he would not have to put a time stipulation on this as he is familiar with the establishment as the Applicant used to be in downtown Chandler. He explained what a time stipulation is to the Applicant and stated there is no sense to add it as the Applicant is aware of the concerns of the commission and council.

KYLE MASON, APPLICANT stated he will take care of it and advised he wished he had known about the complaint sooner.

CHAIRMAN HEUMANN confirmed there were no further questions or comments from the Commission.

Action Agenda Item No. 5 Motion and Vote

Move Planning and Zoning Commission recommend approval of Use Permit PLH22-0061 Modern Margarita Plant Shops LLC for live entertainment and outdoor patio speakers, subject to the conditions as recommended by Planning staff

Planning staff recommends Planning and Zoning Commission move to recommend approval of the Entertainment Use Permit, subject to the following conditions:

1. Substantial 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 Entertainment Use Permit is non-transferable to any other location.
3. The site shall be maintained in a clean and orderly manner.
4. No noise shall be emitted from external speakers or live entertainment in such a manner that exceeds the general level of noise by uses outside the premises of the business and disturbs adjacent businesses and residential areas.
5. Music shall be controlled so as to not unreasonably disturb area residents and shall not exceed the ambient noise level as measured at the commercial property line.
6. The establishment shall provide a contact phone number for a responsible person (i.e. bar owner and/or manager) to any interested neighbors or property owners to resolve noise complaints quickly and directly

COMMISSIONER LOPEZ moved to approve Action Agenda Item No. 5 of the May 17, 2023, Planning and Zoning Commission Meeting; Seconded by COMMISSIONER BARICHELLO.

Motion unanimously (7-0).

Member Comments/Announcements

DAVID DE LA TORRE, PLANNING MANAGER welcomed on behalf of staff, former Council Member, Rene Lopez, to Planning and Zoning Commission.

CHAIRMAN HEUMANN welcomed Commissioner Lopez and stated he will be a good addition.

COMMISSIONER LOPEZ stated when he was saying his farewell to council, he also said that he was not leaving.

CHAIRMAN HEUMANN wished everybody a safe Memorial Day and to honor this country by remembering the reason why we have Memorial Day.

Calendar

The next regular meeting will be held on Wednesday, June 7, 2023, in the Chandler City Council Chambers, 88 E. Chicago Street.

Adjourn

The meeting was adjourned at 5:56 p.m.



Kevin Mayo, Secretary



Rick Heumann, Chairman