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15 **PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE**

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22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

23 **IN AND FOR THE COUNTY OF MARICOPA**

24 **ELEANOR P. WEEDON, MARK**
25 **DeHERRERA, JENNIFER DeHERRERA,**
RICKEY L. SMITH, CATHY JO ERNEST,
NATHAN FREDERICK CRARY and
MISTY ROW CRARY, each of whom are
Chandler property owners, taxpayers, and
residents, and **PHYSICIANS COMMITTEE**
FOR RESPONSIBLE MEDICINE, a
Deleware not-for-profit corporation with
Members in Chandler,

Plaintiffs,

vs.

CITY OF CHANDLER, a political subdivision
of the State of Arizona,

Defendant.

COPY

JUL 02 2007



MICHAEL S. SENDER, CLERK
DEPUTY CLERK

L C - 2007 - 000429 - 0010T

Case No.:

~~CV2007 011716~~

COMPLAINT FOR SPECIAL ACTION

1 Plaintiffs, for their Complaint for Special Action against Defendant, allege as follows:

2 **PARTIES, JURISDICTION AND VENUE**

- 3 1. Plaintiff Eleanor P. Weedon is a resident and taxpayer of the City of Chandler, Maricopa
4 County, Arizona.
- 5 2. Plaintiffs Mark DeHerrera and Jennifer DeHerrera, husband and wife, are residents and
6 taxpayers of the City of Chandler, Maricopa County, Arizona.
- 7 3. Plaintiff Rickey L. Smith is a resident and taxpayer of the City of Chandler, Maricopa
8 County, Arizona.
- 9 4. Plaintiff Cathy Jo Ernest is a resident and taxpayer of the City of Chandler, Maricopa
10 County, Arizona.
- 11 5. Plaintiffs Nathan Frederick Crary and Misty Row Crary, husband and wife, are residents
12 and taxpayers of the City of Chandler, Maricopa County, Arizona.
- 13 6. Plaintiff Physicians Committee for Responsible Medicine (“PCRM”) is a Delaware not-
14 for-profit corporation with Members in Chandler.
- 15 7. Defendant City of Chandler (“Chandler”) is a political subdivision of the State of
16 Arizona.
- 17 8. Defendant Chandler is the real party in interest and is made a defendant pursuant to Rule
18 of Procedure for Special Actions 2(a).
- 19 9. This court has jurisdiction to hear and determine this Complaint for Special Action and to
20 grant the relief requested by virtue of Article VI, Section 18 of the Arizona Constitution
21 and Rule 4, Rules of Procedure for Special Actions.
- 22 10. Plaintiff does not have an equally plain, speedy, and adequate remedy by any
23 administrative appeal from the action taken by Defendant Chandler.
- 24 11. Plaintiffs have filed administrative appeals with Chandler’s Board of Adjustment and
25 Building Commission. Based upon letters received from the City of Chandler, Plaintiffs

1 believe that Chandler may take the position that Plaintiffs are without any administrative
2 remedy. If Chandler agrees that Plaintiffs are entitled to be heard on the merits of one or
3 more administrative appeals, Plaintiffs will agree to a stay of this action during the
4 pendency of this appeal(s).

5 12. Plaintiff will suffer irreparable injury and damage unless the requested relief is granted
6 by means of this Special Action.

7 13. The City of Chandler has caused an event to occur in Maricopa County out of which this
8 claim arises.

9 **GENERAL ALLEGATIONS**

10 **COVANCE’S SUBSTANDARD HEALTH AND SAFETY RECORD**

11 14. Covance Laboratories, Inc. (“Covance”) is a foreign corporation duly licensed and
12 authorized to do business in the State of Arizona. Covance is an international contract
13 research corporation that is paid to test cosmetic ingredients, food additives, pesticides,
14 and drugs on monkeys, dogs, rabbits, rats, and mice.

15 15. Covance intends to construct an approximately 288,472-square-foot animal testing
16 facility in Chandler, where it will test chemicals, drugs, and other substances whose
17 dangers to humans are unknown, on monkeys, dogs, rabbits, rats, and mice. Those
18 substances will be fed, injected, or otherwise forced at extreme concentrations into the
19 bodies of the animals who will urinate and defecate those substances and/or their
20 breakdown products, all of which Covance will flush into the municipal sewage system.

21 16. Covance’s business model includes inserting chemicals of unknown toxicity into the
22 bodies of tens of thousands of animals each year, in sufficient quantity so that most of the
23 animals get sick and die, or are killed. Covance then makes “scientific” assumptions
24 about how toxic these chemicals are, and how effective they might be, in humans. Such
25 predictions have long been recognized as grossly lacking in accuracy. The FDA has

1 stated that over 90% of drugs tested safe and effective in animals fail in human trials.
2 (*Innovation or stagnation: challenge and opportunity on the critical path to new medical*
3 *products*. U.S. Department of Health and Human Services, Food and Drug
4 Administration, March 2004 (updated March 2005): p.8. Accessed online:
5 <http://www.fda.gov/oc/initiatives/criticalpath/whitepaper.html>. and Von Eschenbach
6 Andrew C (Acting Commissioner of the FDA) speaking during FDA teleconference
7 January 12, 2006. Accessed online:
8 <http://www.fda.gov/oc/speeches/2006/fdateleconference0112.html>.) Furthermore, a 2007
9 report by the National Research Council, the principal operating agency of both the
10 National Academy of Sciences and the National Academy of Engineering in providing
11 services to the government, the public, and the scientific and engineering communities,
12 acknowledges the questionable nature of animal-derived data, its cumbersome costs and
13 its lacking relevance to human outcomes. This agency calls for a paradigm shift in
14 toxicity testing away from the traditional animal model used by Covance. ("Toxicity
15 Testing in the Twenty-first Century: A Vision and Strategy," Committee on Toxicity and
16 Assessment of Environmental Agents, National Research Council, ISBN: 0-309-10989-2,
17 146 pages, 6 x 9, (2007). <http://www.nap.edu/catalog/11970.html>.)

- 18 17. Covance is the largest U.S. importer of primates and breeder of dogs for research.
- 19 18. Covance, a successor by merger to Hazelton Research Products, has an abominable,
20 substandard health and safety record.
 - 21 a. In November 1989, monkeys at the Hazelton Primate Facility in Virginia were found
22 to carry the Ebola virus, prompting the United States Centers for Disease Control and
23 Prevention ("CDC") to intervene with a tactical medical military team and seal the
24 facility.

- 1 b. In February 1990, Ebola-infected monkeys were shipped to Hazelton facilities in
2 Virginia and Texas, resulting in at least four laboratory workers and one animal
3 handler at Kennedy Airport in New York testing positive for antibodies to a strain of
4 Ebola now known as Ebola-Reston (referring to Hazelton's Reston, VA facility).
- 5 c. As a result of the second Ebola outbreak and safety violations, the CDC revoked
6 Hazelton's primate import license in March 1990, after which Hazleton abandoned its
7 Virginia facility. The facility then stood empty until June 1995, when it was
8 destroyed to allay safety concerns of future tenants on the property.
- 9 d. In March 1996, after Hazleton's import license had been reestablished, Hazelton
10 imported yet another shipment of Ebola-infected monkeys to its Texas facility.
- 11 19. Covance's previous health and safety protocols—assuming they even exist—have proven
12 inadequate and woefully lacking.
- 13 a. Between 1999 and 2000, fifteen (15) monkeys imported from Vietnam and shipped
14 from Covance's Texas facility to its Wisconsin facility were found to harbor the
15 parasite *Cryptosporidium*, a frequent cause of gastroenteritis outbreaks among
16 humans.
- 17 b. In July 2001, a monkey imported from Vietnam and then sold by Covance was found
18 to harbor the bacteria that causes trench fever, a reemerging disease that involves
19 endocarditis, neurological disorders, and bone disease in humans.
- 20 c. In June 2006, five (5) monkeys at Covance's Wisconsin facility tested positive for
21 tuberculosis. Covance appeared to have concealed this infectious disease outbreak
22 from Chandler officials who were at that time supposedly investigating Covance's
23 record for safety.
- 24 d. In each of these cases, the monkeys had already passed through Covance's
25 "quarantine facility," which is intended to prevent imported primates carrying

1 infectious diseases from being sent to regional research facilities. Covance's
2 quarantine policies are obviously inadequate to prevent infectious diseases from being
3 spread beyond Covance's so-called "quarantine facility."

4 20. In 2006, Covance agreed to pay a fine of \$8,720 to the United States Department of
5 Agriculture for sixteen (16) violations of the federal Animal Welfare Act, 7 U.S.C.
6 §§2131 – 2159, at its Virginia facility. Video footage obtained by People for the Ethical
7 Treatment of Animals ("PETA") during its investigation of the Vienna, VA Covance
8 facility is available at www.covancecruelty.com. PETA's investigator was hired by
9 Covance as a technician and worked inside the company's primate testing lab in Vienna,
10 Virginia from April 26, 2004 to March 11, 2005. The investigator's video documentation
11 inside the lab started on July 30, 2004, and reveals animal technicians physically and
12 psychologically abusing monkeys through withholding appropriate veterinary care
13 (monkeys left with necrotic tails, infected abdomens, etc), yelling at them, failing to
14 provide any socialization or enrichment, and performing routine handling in
15 exceptionally rough and callous ways.

16 21. Covance's substandard health and safety record is especially egregious in light of
17 Covance's refusal to explain how it will avoid similar health and safety beaches at the
18 proposed Chandler facility—for example, Covance has refused to describe how it will
19 safely dispose of the nearly 100,000 drug- and chemically-laden animal carcasses that it
20 will generate each year.

21 22. Covance's substandard health and safety record makes especially egregious the secrecy
22 and lack of transparency with which Covance and the City of Chandler have proposed,
23 approved, and begun development of the animal-testing facility, despite substantial
24 community concern and inquiries.

1 23. The City of Chandler has directly violated or ignored its own Rules, Resolutions, and
2 Zoning Ordinance in its dealings with Covance.

3
4 COVANCE AND CHANDLER'S IMPROPER COLLABORATION

5 24. On July 12, 2005, Covance Laboratories, Inc. purchased property at the southwest corner
6 of Price and Germann Roads (the "Price Property") in the City of Chandler.

7 25. Covance gave wide public notice at the time of the purchase that it intended to develop its
8 animal testing facility on the Price Property.

9 26. When Covance purchased the Price Property, the property was zoned Agricultural (AG-
10 1) and required rezoning and strict compliance with the Chandler Zoning Ordinance
11 before Covance could apply for a building permit and construct its animal testing facility.

12 27. There was strong, public citizen opposition to Covance's plan to develop an animal
13 testing facility in Chandler.

14 a. Concerned citizens posted signs opposing Covance near the Price Property.

15 b. Within the time required for a referendum application, opponents of Covance had
16 collected more than enough signatures to force a referendum if Chandler's City
17 Council ("Council") approved a rezoning ordinance for the Price Property.

18 c. Thousands of letters and e-mails in opposition to building the facility in Chandler
19 were sent to the City.

20 d. There were orderly public protests and demonstrations against allowing Covance
21 into Chandler.

22 e. A poll was taken showing a majority of Chandler residents opposed allowing
23 Covance into Chandler.

24 28. On July 14, 2006, almost exactly one year after purchasing the Price Property, Covance
25 filed a rezoning application for the problematic Price Property.

1 29. While the public was focused on the rezoning application for the Price Property,
2 Chandler was quickly, but secretly, pushing through a rezoning application for property
3 located within the Chandler Airpark at the southwest corner of Gilbert and Ryan Roads
4 (the "Airpark Property").

5 30. On June 22, 2006, FR/CAL Ryan, LLC ("FR/CAL") and First Industrial Investment, Inc.
6 ("First Industrial") filed a rezoning application for the Airpark Property. Upon
7 information and belief:

8 a. At the time the rezoning application was filed, the applicant knew that the end user of
9 the rezoned property would be Covance, but deliberately did not disclose that fact in
10 its application so as to deceive the citizens of Chandler.

11 b. Covance advised Chandler officials, including a majority of the City Council of
12 Chandler, of its intent to build its facility on the Airpark Property once the rezoning
13 was approved and the appeal period had passed.

14 c. The City Council discussed, in private and in violation of Arizona's Open Meeting
15 Law, Covance's secret plan, and aided and abetted Covance in keeping its plan secret
16 from any citizen of Chandler not a member of City government.

17 31. FR/CAL and First Industrial sought rezoning approvals on the Airpark Property for an
18 unspecified and unnamed industrial use.

19 32. The Airpark Property rezoning application proceeded at an unusually fast pace through
20 Chandler's review and approval process, completed in just fifty-one (51) days from the
21 date of application until City Council approval, whereas it took one hundred ninety-one
22 (191) days on average for eleven (11) similar rezoning cases filed in 2005 and 2006 to go
23 from application to approval.

24 33. In violation of State law and the Chandler City Code, Chandler failed to give proper
25 notice of the Planning and Zoning Commission's ("Commission") July 19, 2006 public

1 hearing, and the City Council's Introduction and Final Hearings for the Airpark Property,
2 held on July 27, 2006 and August 10, 2006 respectively.

3 a. On July 4, 2006, Chandler published in *The Arizona Republic* a notice for the
4 Commission's public hearing and the Council's Introduction Hearing.

5 b. Upon information and belief, on July 4, 2006, a national holiday on which all United
6 States Post Offices are closed, Chandler mailed notice for the Commission's public
7 hearing and the Council's Introduction Hearing to property owners within six
8 hundred (600) feet of the Airpark Property.

9 c. Upon information and belief, on June 30, 2006, the applicant posted on the Airpark
10 Property a sign announcing the Commission's public hearing and the Council's
11 Introduction Hearing.

12 d. Upon information and belief, the Zoning Administrator did not waive the Chandler
13 City Code's requirement to personally deliver door hanger notices, and these notices
14 were never made for the Commission's public hearing or the Council's Introduction
15 Hearing.

16 e. Upon information and belief, the Zoning Administrator did not waive the Chandler
17 City Code's requirement to send notice to the abutting jurisdiction, and this notice
18 was never made for the Commission's public hearing or the Council's Introduction
19 Hearing.

20 f. Upon information and belief, Chandler did not provide any notice for the Council's
21 Final Hearing held on August 10, 2006, other than the minimum required 24 hour
22 posting of the City Council agenda.

23 34. On July 19, 2006, less than fifteen (15) days after Chandler published and mailed the
24 notices (as the notice period is set by Arizona law and the Chandler City Code), the
25 Commission held a public hearing on the Airpark Property rezoning application.

- 1 35. The Commission, on the consent agenda and without any public discussion, voted to
2 recommend that the Chandler City Council approve the Airpark Property rezoning
3 application.
- 4 36. On July 27, 2006, the Council held its Introduction Hearing for the Airpark Property
5 rezoning application on the consent agenda and without any public discussion.
- 6 37. On August 10, 2006, the Council held its Final Hearing, at which it approved the Airpark
7 Property rezoning application as Ordinance No. 3814 on the consent agenda and without
8 any public discussion, for an unspecified and unnamed industrial use. As of that date, no
9 one but Covance and the applicant, outside the government of Chandler, knew that
10 Covance was the intended end user of the Airpark Property.
- 11 38. Upon information and belief, the Council and the Planning and Zoning Commission
12 engaged in non-public discussion and debate in approving the Airpark Property zoning
13 application.
- 14 39. On October 3, 2006—fifty-four (54) days after the Airpark Property rezoning was
15 approved by Chandler and only three (3) weeks after the referendum deadline expired for
16 Ordinance 3814—Covance held a joint press conference with Chandler Mayor Boyd
17 Dunn and Chandler City Council members announcing Covance was purchasing the
18 recently rezoned Airpark Property.
- 19 40. On December 1, 2006, Covance purchased the Airpark Property.
- 20 41. After announcing in October 2006 that it would purchase the Airpark Property, Covance
21 abandoned its pursuit of the Price Property rezoning in favor of the newly rezoned
22 industrial Airpark Property whose referendum deadline had just expired.
- 23 42. Mayor Dunn and some Council members have now conceded on record that they were
24 aware of Covance's interest in the Airpark Property during the time the Council was
25

1 approving the Airpark Property rezoning, and especially at the time of the "final
2 approval" on August 10, 2006.

3 43. It is critical to note that at the August 10, 2006 Airpark Property Council hearing there
4 were concerned members of the public speaking in vehement opposition to Covance's
5 request to rezone the Price Property. Council members with knowledge of Covance's
6 interest in the Airpark Property sat by silently, listening to extended public input adverse
7 to Covance's proposal to rezone the Price Property, which they knew was pointless as
8 Covance had already made them aware of its intention to switch to the Airpark Property.

9 44. Neither Commission nor Council members ever disclosed to the public Covance's
10 interest in the Airpark Property.

11 45. Had Chandler disclosed what it knew, there could have been an open, public process. If
12 the true end user and the use to which the Airpark Property was actually to be put had
13 been fully disclosed during the public hearing process, the citizens of Chandler who
14 opposed Covance would have exercised their right to refer this Council decision to the
15 citizens of Chandler for a vote.

16 46. Since the approval of the Airpark Property rezoning application, community opposition
17 to Covance has continued.

18 47. On January 30, 2007, Covance filed an Air Quality Permit for the Airpark Property,
19 Permit No. 070012.

20 48. On March 20, 2007, Covance filed a Building Permit Application for the Airpark
21 Property, Permit No. CM07-0148.

22 49. On June 1, 2007, Chandler approved Covance's Building Permit, No. CM07-0148, along
23 with several other ancillary permits and administrative use permits including, but not
24 limited to, WM07-00117, AU07-0039, TNT07-0593, EP707-0088 and EP807-0071.

25

1 HEALTH AND SAFETY RISKS

- 2 50. Chandler has failed to require Covance to develop and explain its health and safety
3 protocols for the proposed Chandler facility.
- 4 51. Chandler does not have a Special Hazardous Materials Program in place to adequately
5 react to and contain the potential health and safety risks posed by the proposed Chandler
6 facility, such as Ebola outbreaks and water contaminated with toxic chemicals and drugs.
- 7 52. Covance has refused to describe how it will ensure the health and safety of residents
8 located near its Chandler facility.

9
10 PLAINTIFFS' STANDING

- 11 53. All Plaintiffs have a unique risk of harm arising from their heightened sensitivity to the
12 various health hazards and/or animal cruelty issues created by Covance. Because they
13 have specific awareness and understanding of the issues that others in the community do
14 not have, they will suffer special damages that will be more substantial than those
15 suffered by the community at large.
- 16 54. Two of the Plaintiffs—Eleanor P. Weedon and Rickey L. Smith—have specific personal
17 history with the Virginia Covance Ebola outbreak in 1989-1990, and they have a
18 heightened and specific awareness of the infectious disease outbreak risks associated with
19 Covance.
- 20 55. If Covance builds its animal testing facility on the Airpark Property, the facility will
21 interfere with the individually named Plaintiffs' use and enjoyment of their property.
22 Because of their close proximity to the proposed animal testing facility, Plaintiffs, most
23 of whom own property and live within 2,000 and 3,000 feet of the proposed animal
24 testing facility will suffer:

- a. Substantial risk of health and safety hazards, including Ebola outbreaks and the spread of tuberculosis, which animals at the facility will potentially be carrying;
- b. Exposure to potentially hazardous effluent impacts resulting from the Project's release of untreated wastewater. Such wastewater is not proposed to be pre-treated to remove the many hazardous chemicals, unknown drugs and other substances from the water prior to release into the Chandler sewer system;
- c. Increased traffic load, particularly along the routes where the thousands of animals will be imported to the facility;
- d. Increased air and water pollution from the chemicals, drugs, and animal carcasses that are at the core of Covance's business; and
- e. Increased noise produced by and in connection with Covance's daily operations.

56. All of the individually named Plaintiffs will suffer economic damage due to the potential decline in property values of land directly impacted by the Project, either in near proximity or along potential animal and carcass transport routes. This economic damage will be more substantial than that suffered by the citizens of Chandler in general.

57. Plaintiff PCRMM has associational standing in that it has a legitimate interest in an actual controversy involving its members, and judicial economy and administration will be promoted by allowing representational appearance.

58. PCRMM's members in Chandler have standing to sue in their own names, and PCRMM's organizational purpose of promoting ethics in medical research—and, accordingly, its opposition to an improper approval that allows a dangerous and unethical animal research facility to be constructed in Chandler—ensures that PCRMM will adequately and fairly represent the interests of those members who have standing to sue in their individual capacities.

1 59. PCRM seeks a single determination/rescission rather than damages for separate property
2 owners. Principles of judicial economy, therefore, are advanced by allowing the issues to
3 be settled in a single action rather than in a multitude of individual actions because the
4 relief sought is universal to all of PCRM's members and requires no individual
5 quantification by a tribunal.

6
7 **COUNT ONE**

8 (Violation of Arizona's Open Meeting Law)

9 60. Plaintiff reiterates each and every allegation in Paragraphs 1 through 59 as though fully
10 set forth herein.

11 61. Defendant City of Chandler participated in non-public meetings with Covance and
12 members of the Council and other City officials participated in non-public meetings with
13 each other during the rezoning of the Airpark Property in violation of A.R.S. §38-
14 431.01(A).

15 62. As a direct and proximate result of the non-public discussion decisions made concerning
16 the Airpark Property, that property was rezoned surreptitiously and without public
17 disclosure and/or discussion of Covance and its known involvement in the property at the
18 time the decisions were made.

19
20 63. If there had been open and public discussion of Covance's true role in this matter, it is
21 likely that there would have been not only substantial citizen opposition but also a
22 concerted effort by the concerned citizens of Chandler to refer that decision to the general
23 public for the City of Chandler for a vote.
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1 64. The interaction of Covance and the City of Chandler in violating the laws of the State of
2 Arizona requiring open and public discussion of all rezoning issues, effectively deprived
3 the citizens of Chandler of their constitutional right to refer this matter for a public vote.

4 **COUNT TWO**

5 (Violation of Arizona's Zoning Enabling Act)

6 Planning and Zoning Commission's Public Hearing

7 65. Plaintiff reiterates each and every allegation in Paragraphs 1 through 59 as though fully
8 set forth herein.

9
10 66. Defendant Chandler failed to provide fifteen (15) days' notice in a newspaper of general
11 circulation pursuant to A.R.S. §9-462.04(A)(1) for the Planning and Zoning
12 Commission's public hearing held on July 19, 2006.

13 67. Defendant Chandler failed to provide notice to an abutting unincorporated area pursuant
14 to A.R.S. §9-462.04(A)(2) for the Planning and Zoning Commission's public hearing
15 held on July 19, 2006.

16 68. Defendant Chandler, therefore, lacked jurisdiction and legal authority to approve the
17 Airpark Property rezoning application, Ordinance No. 3814.

18 City Council's Introduction Hearing

19 69. Defendant Chandler failed to provide notice to an abutting unincorporated area pursuant
20 to A.R.S. §9-462.04(A)(2) for the City Council's public hearing held on July 27, 2006.

21 70. Defendant Chandler, therefore, lacked jurisdiction and legal authority to approve the
22 Airpark Property rezoning application, Ordinance No. 3814.
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COUNT THREE

(Violation of Chandler's City Code)

Planning and Zoning Commission's Public Hearing

71. Plaintiff reiterates each and every allegation in Paragraphs 1 through 59 as though fully set forth herein.

72. Defendant Chandler failed to provide fifteen (15) days' notice in a newspaper of general circulation pursuant to Code §35-2602(A)(1) for the Planning and Zoning Commission's public hearing held on July 19, 2006.

73. Defendant City of Chandler failed to provide fifteen (15) days' notice by mail pursuant to Code §35-2602(A)(2) for the Planning and Zoning Commission's public hearing held on July 19, 2006.

74. Defendant Chandler failed to provide fifteen (15) days' notice by personal delivery pursuant to Code §35-2602(A)(4)(b) for the Planning and Zoning Commission's public hearing held on July 19, 2006.

75. Defendant Chandler failed to provide notice to an abutting unincorporated area pursuant to Code §35-2602(A)(3) for the Planning and Zoning Commission's public hearing held on July 19, 2006.

76. Defendant Chandler, therefore, lacked jurisdiction and legal authority to approve the Airpark Property rezoning application, Ordinance No. 3814.

City Council's Introduction Hearing

77. Defendant Chandler failed to provide fifteen (15) days' notice by personal delivery pursuant to Code §35-2602(C) and §35-2602(A)(4)(b) for the City Council's Introduction Hearing held on July 27, 2006.

1 78. Defendant Chandler failed to provide notice to an abutting unincorporated area pursuant
2 to Code §35-2602(C) and §35-2602(A)(3) for the City Council's Introduction Hearing
3 held on July 27, 2006.

4 79. Defendant Chandler, therefore, lacked jurisdiction and legal authority to approve the
5 Airpark Property rezoning application, Ordinance No. 3814.

6 **COUNT FOUR**

7 (Violation of Chandler Zoning Ordinance)

8 80. Plaintiff reiterates each and every allegation in Paragraphs 1 through 59 as though fully
9 set forth herein.

10 81. The approval of the building permits by the City of Chandler was in violation of its own
11 zoning ordinance.

12 82. The City of Chandler has adopted its own Zoning Ordinance which specifically
13 prescribes the uses that I-1 property can be put.

14 83. To date, Covance has not specifically described in substantial detail its intent with respect
15 to the use of the property so that an informed, intelligent decision can be made as to
16 whether it is in compliance with the Chandler Zoning Ordinance.

17 84. The building plans themselves do not specify the uses to which certain portions of the
18 structure will be put. From the information available, it appears as though a huge
19 percentage of the square footage will be devoted to the operation of a kennel/veterinarian
20 clinic, which will house thousands of animals. The Zoning Ordinance for the City of
21 Chandler does not allow either of these uses within I-1, the zoning presently applicable to
22 the Airpark Property.
23
24
25

1 85. In addition, Covance has not properly disclosed the impact on traffic in the area; the use
2 of an incinerator for disposal of toxic animal carcasses, and the environmental and health
3 impact of such incineration; the number and size of storage tanks; the traps and/or
4 recycling that will be used for animal waste; its method for storage and transportation of
5 animal carcasses at and from the facility; its intention for the disposal of contaminated
6 waste water, which, based on the present design, would call for all waste water,
7 regardless of its danger, to be placed directly into the City of Chandler's water disposal
8 system; and the types and amounts of toxic chemicals (whether FDA approved or not)
9 that will be stored on the premises and how these chemicals will be disposed of. In light
10 of the minimal information and misinformation that Covance has supplied to the City and
11 the citizens of the City of Chandler, it is impossible to list in further detail the other
12 specific violations of the restricted uses that are necessary to comply with the Zoning
13 Ordinance.
14

15 86. The approval of the Building Permits was granted despite the fact that Chandler knew
16 that many of the intended uses of the property by Covance were nonconforming and
17 noncompliant with its Zoning Ordinance.

18 87. In addition, Chandler went through the entire approval process without conducting
19 appropriate due diligence or reasonably necessary inquiry into the proposed activities of
20 Covance so that the full extent of Covance's noncompliant uses is unknown.

21 88. The City of Chandler has a legal obligation to know in advance the general and specific
22 uses to which a property will be put before granting zoning approval and/or issuing
23 building permits. The City of Chandler acted arbitrarily and capriciously, in excess of its
24
25

1 constitutional, statutory, and municipal authority in approving the zoning and separately
2 in issuing the Building Permit.

3 89. The arbitrary and capricious action of the City of Chandler is illegal and void as a matter
4 of law.

5 90. Since the actions of the City of Chandler are void, they must be set aside as the nullity
6 they are, and the process must be redone in compliance with applicable State and local
7 laws.

8 **COUNT FIVE**

9 (Violation of Chandler Zoning Ordinance)

10 91. Plaintiff reiterates each and every allegation in Paragraphs 1 through 59 as though fully
11 set forth herein.

12 92. Defendant Chandler wrongfully approved the Final Development Plan ("FDP"), because
13 the proposed uses in the FDP do not meet I-1 zoning requirements, and the approved FDP
14 is inconsistent with the putatively approved Preliminary Development Plan ("PDP").

15 93. Among other things, the bulk storage of natural gas and propane, and a number of the
16 non-compliant uses articulated above require a use permit which must be approved by the
17 city before FDP approval or zoning clearance can be issued.

18 94. Several non-permitted uses were illegally approved and must be eliminated from the
19 Project before any FDP could be approved or zoning clearance for building permits
20 issued. These non-permitted or non-compliant uses include, but are not limited to, the
21 following:
22

23 a. Kennel - not permitted in the I-1 zoning district.

24 b. Veterinary hospital or clinic - not permitted in the I-1 zoning district.
25

1 c. Medical clinic - not permitted in the I-1 zoning district.

2 d. Bulk storage of natural gas and propane - not permitted in the I-1 zoning
3 district without a use permit.

4 95. In addition, several City Code development standards and requirements have not been
5 met.

6 a. No Traffic Impact Study was completed as required by the City of Chandler
7 City Code and by the city's Scope of Work for Traffic Impact Studies.

8 b. The parking calculations approved by the Zoning Administrator do not meet
9 Chandler City Code requirements for unlisted use parking approvals.

10 c. The Project does not meet stipulation number 6 of DVR06-0038.

11 96. Defendant Chandler approved the FDP in an arbitrary and capricious manner, and the
12 FDP and subsequent building permits are void. The only appropriate remedy is to void all
13 approvals and start the process from the beginning in compliance with the Chandler City
14 Code.

15
16 97. The hasty actions of the Chandler City Council, which are in excess of its authority, have
17 expedited the zoning approval process at such an accelerated pace that Plaintiffs request
18 that the Court stay all construction and/or development until the legality of the Council's
19 actions can be fully and fairly considered by this Court.

20 WHEREFORE, Plaintiffs request that this Court enter judgment voiding all illegal acts in
21 excess of the authority of the Chandler City Council beginning with the rezoning of the
22 Airpark Property, the approval of the PDP, the approval of the FDP, and any permits, licenses,
23 or authority for construction and/or development of the Airpark Property.
24
25

REQUEST FOR RELIEF

1
2 1. Grant a stay of site and building construction and/or development during the pendency of
3 that portion of this legal action that is necessary to determine whether the actions of the
4 Chandler City Council were done in conformity with the applicable City Code and state
5 statutory provisions. This must be done by way of a stop order, or a stop work order, of
6 all issued and to be issued building and other permits, special inspections or tenant
7 improvements related to the Airpark Property including, but not limited to, permit
8 numbers CM07-0148, WM07-00117, AU07-0039, TNT07-0593, EP707-0088 and
9 EP807-0071;
10

11 2. Rescind all issued building and other permits related to the Airpark Property including,
12 but not limited to, permit numbers CM07-0148, WM07-00117, AU07-0039, TNT07-
13 0593, EP707-0088 and EP807-0071;
14

15 3. Invalidate the Zoning Administrator approval of the Final Development Plan for DVR06-
16 0038;
17

18 4. Invalidate the Zoning Administrator approval of zoning clearance for building permits
19 under CM07-0148;
20

21 5. Invalidate the Property's rezoning, Ordinance No. 3814; and
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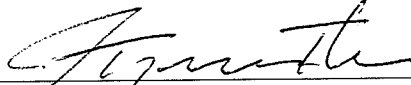
23 6. Grant such other and further relief that this Court deems just and proper.
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25 DATED this 2nd day of July, 2007.

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TABER LAW FIRM, P.C.

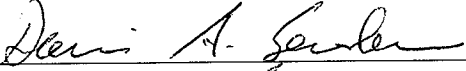
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