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MARY ELLEN DONAHUE
CLERK OF SUPERIOR COURT
DEPUTY BLK

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF COCHISE**

12
13 **SONORAN CARE, LLC, an Arizona limited**
liability company,

14 **Plaintiff/Petitioner/Appellant,**

15 v.

16
17 **COCHISE COUNTY, a political subdivision**
18 **of the State of Arizona,**

19 **Defendant/Respondent/Appellee.**

Case No.: CV201600072

**COMPLAINT TO REVIEW DECISION
OF THE BOARD OF SUPERVISORS
OF COCHISE COUNTY;
ALTERNATIVELY,
COMPLAINT FOR INJUNCTIVE
RELIEF AGAINST COCHISE
COUNTY**

Assigned to:

DIV. 1

22 Plaintiff/Petitioner/Appellant Sonoran Care LLC (“Sonoran” or “Plaintiff”), by and
23 through counsel undersigned, respectfully requests this Court to overturn the denial of a special
24 use permit application to establish a facility for the cultivation and dispensing of medical
25 marijuana by the Board of Supervisors of Cochise County (“the Board” or “the County”). The
26 County abused its discretion, and acted arbitrarily, capriciously, and contrary to law, when it
27 wrongfully denied Sonoran a special use permit because (1) it took into account *extraneous*
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1 **factors** not included in the Cochise County Zoning Regulations, in violation of *A.R.S. § 11-1604*,
2 (2) it took into account factors that were **contradicted** by the record, (3) it misunderstood that
3 Arizona law already **limits the number and location** of dispensaries, and (4) it relied on “**public**
4 **input**” that itself violated A.R.S. § 11-1604, was contradicted by the record and was
5 unconstitutional (it urged denial based on the fact that Plaintiff was from a different county).
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7 Plaintiff brings this claim as a special action requesting this Court to review the Board’s
8 conduct under *Arizona Rules of Procedure for Special Actions*, and/or A.R.S. § 12-2021, because
9 there is not a plain, adequate and speedy remedy at law, in which the Court is requested to grant
10 Plaintiff’s special use application, or to overturn the County’s action and order the County to
11 consider only the factors enumerated in the County’s Regulations. Alternatively, Plaintiff requests
12 injunctive relief under A.R.S. § 12-1801 *et seq.*, and the *Arizona Rules of Civil Procedure*, in
13 which the Court is requested to overturn the County’s action and to issue an injunction ordering
14 that the County grant Plaintiff’s special use application, or consider only the factors enumerated
15 in the County’s Regulations.
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17 As and for its Complaint, Plaintiff alleges as follows:

18 **I. PARTIES, JURISDICTIONS AND VENUE**

19 1. This action arises from the final decision of the Board to uphold a vote of the
20 Cochise County Planning and Zoning Commission (“the Commission”) denying a special use
21 permit (“SUP”) to Plaintiff.
22

23 2. Plaintiff is a limited liability company registered to do business in Arizona, with
24 its primary place of business in Tucson, Arizona.

25 3. Defendant Cochise County is a political subdivision of the State of Arizona.

26 4. On or about September 25, 2015, Plaintiff applied for a special use permit with the
27 County.
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5. On November 18, 2015, Plaintiff's application was denied by the Commission.

6. On December 1, 2015, pursuant to Cochise County Zoning Regulation § 1716.04, Plaintiff appealed the Commission's denial to the Cochise County Board of Supervisors.

7. On January 5, 2016, at a public meeting, the Board upheld the Commission's denial of Plaintiff's application.

8. The Board advised Plaintiff in writing of its determination by letter dated January 5, 2016.

9. The acts and decisions that are the subject of this complaint all took place in Cochise County.

10. The property that is the subject of Plaintiff's application is located in Cochise County.

11. Venue and jurisdiction are proper in this Court.

II. ALLEGATIONS COMMON TO ALL CLAIMS

12. Sonoran incorporates the allegations contained in the preceding paragraphs as if they were fully restated and repeated herein.

Regulatory Background

13. Proposition 203 at Arizona's 2010 general election was titled "the Arizona Medical Marijuana Act." The voters approved Proposition 203 and it is codified at A.R.S. § 36-2801 *et seq.* ("the Act").

14. The Act authorizes the sale and use of marijuana for medical purposes and establishes a regulatory scheme over medical marijuana. A.R.S. § 36-2801 *et seq.*

15. The Act's purpose is to make medical marijuana available to those who need it across Arizona.

1 16. The Act establishes that the public’s interest is in having dispensaries for medical
2 marijuana open throughout the State. A.R.S. § 36-2804(C).

3 17. The Act gives the Arizona Department of Health Services (“the Department”)
4 regulatory authority over medical marijuana. A.R.S. § 36-2803.

5 18. The Act requires the Department to adopt rules governing marijuana dispensaries.

6 19. The Department adopted rules governing medical marijuana dispensaries, which
7 are set forth at Arizona Administrative Code (“AAC”) R9-17-101 *et seq.* (“the Rules”)
8

9 20. Under the Act, every medical marijuana dispensary must obtain a dispensary
10 registration certificate (“DRC”) in order to operate in Arizona. A.R.S. § 36-2804.

11 21. The Act allows for *one DRC to be issued* for every ten registered pharmacies, and
12 calls for no less than one DRC in each county in which an application has been approved. A.R.S.
13 § 36-2804(C).
14

15 22. To effect this requirement and to ensure that dispensaries are *dispersed evenly*
16 *across the State*, the Department determined that, in the beginning, only one DRC would be
17 issued for each of Arizona’s 126 Community Health Analysis Areas (“CHAA”). AAC R9-17-
18 303(B)(2).

19 23. A CHAA is a type of geographic unit.

20 24. CHAAs existed before the Act for unrelated reasons. But the Department
21 determined that they provide a convenient way to allocate DRCs so as to promote a *wide*
22 *distribution of dispensaries across Arizona*. AAC R9-17-303(B)(2).
23

24 25. If there is only one complete application for a CHAA, the DRC will be issued by
25 the Department. AAC R9-17-303(B)(2)(b).

26 26. When there is more than one application per CHAA, a random drawing will be
27 held to determine which *one applicant* will get the DRC. AAC R9-17-303(B)(4).
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1 27. The Rules provide that an applicant seeking a DRC must submit documents to the
2 Department stating that its proposed site meets all applicable local zoning restrictions or,
3 alternatively, there are none that need to be met. A.R.S. § 36-2804(B)(i)(d); AAC R9-17-
4 304(C)(5) and (6).

5 28. The Act requires local zoning ordinances to be reasonable. *See* A.R.S. § 36-
6 2806.01.

7 29. Cochise County’s own Zoning Regulations (“the Regulations”) expressly allow,
8 through a special use permit (“SUP”), for a “*Medical Marijuana Cultivation Facility*,” a
9 “*Medical Marijuana Dispensary*,” a “*Medical Marijuana Dispensary Cultivation Facility*,” and
10 a “*Medical Marijuana Infusion Facility*.” *See* Regulations, §§ 607.51 to 607.54. A copy of these
11 sections of the Regulations is attached hereto for ease of reference, marked **Exhibit A**.
12

13 30. The Regulations set out ten factors that the County “*shall consider*” in deciding
14 whether to grant an SUP. *See* Regulations, §§ 1716.02(A) to (J) (emphasis added). A copy of
15 these sections of the Regulations is attached hereto for ease of reference, marked **Exhibit B**.
16

17 31. The Regulations expressly provide that “[t]he special use factors represent *policy*
18 *decisions* by the Planning Commission and the Board, *reducing uncertainty concerning their*
19 *probable response to a given request*.” *See* Regulations, §§ 1716.02 (emphasis added).
20

21 32. The Regulations expressly provide that “[a] property owner who *adequately*
22 *demonstrates compliance* with the intent of Comprehensive Plan goals and policies may receive
23 approval *in spite of non-compliance* with any individual factor.” And “[c]onversely, a
24 determination that *unusual circumstances exist* or *there is significant public protest* pertaining
25 to a special use request may result in a denial.” *See* Regulations, §§ 1716.02 (emphasis added).
26

27 33. The ten factors set out by the Regulations are “Compliance With Duly Adopted
28 Plans;” “Compliance With the Zoning District Purpose Section;” “Development Along Major

1 Streets;” “Traffic Circulation Factors;” “Adequate Services and Infrastructure;” “Significant Site
2 Development Standards;” “Public Input;” “Hazardous Materials;” “Off-site Impacts;” and “Water
3 Conservation.” §§ 1716.02(A) to (J).

4 34. A.R.S. § 11-1604 prevents a county from basing a licensing decision on a
5 *licensing requirement or condition that is not specifically authorized* by statute, rule or
6 ordinance.
7

8 35. The Regulations set out what procedures an applicant must follow in order to
9 apply for an SUP. *See* Regulations, §§ 1716.03 to 1716.04. A copy of these sections of the
10 Regulations is attached hereto for ease of reference, marked **Exhibit C**.

11 36. The Regulations provide that an applicant must *inter alia* first meet with the
12 County’s staff and notify property owners; then an applicant must file the application for a SUP
13 (with a concept plan, fee, and “Citizen Review Report”) with the County Zoning Inspector, who
14 then submits the completed application to the Commission “for consideration and action.” *See*
15 Regulations, §§ 1716.03(A) to (D).
16

17 37. The Regulations provide that the Commission must hold a public meeting and
18 send written notice to all property owners within 300 feet of the proposed special use. *See*
19 Regulations, §§ 1716.03(D)(1) to (2).
20

21 38. The decision of the Commission is considered to be “final County action” unless
22 an applicant appeals a decision to the Cochise County Board of Supervisors within fifteen days.
23 *See* Regulations, § 1716.04.

24 39. Site development standards “for the permitting and operation of Medical
25 Marijuana Cultivation Facilities, Medical Marijuana Dispensaries, Medical Marijuana Dispensary
26 Cultivation Facilities, and Medical Marijuana Infusion Facilities” are set out in the Regulations.
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1 See Regulations, §§ 1802.27, 1825.01 to 1825.03. A copy of these sections of the Regulations is
2 attached hereto for ease of reference, marked **Exhibit D**.

3 40. Medical marijuana dispensaries and facilities are expressly allowed by “Special
4 Use Permit in the Rural (RU-4, RU-10, RU-18, RU-36), General Business, Light, and Heavy
5 Industry Zoning Districts.” See Regulations, §§ 1825.01.

6 41. Minimum setbacks are “no closer than 500-feet” from another facility, a library, a
7 school or a daycare center (see Regulations, §§ 1825.02), and “no closer than 300-feet” from “any
8 existing residential use.” see Regulations, §§ 1825.03.

9
10 **Factual Background**

11 42. Plaintiff’s agent, Becki Shumaker, purchased a parcel of land, APN-404-26-001,
12 located 2.8 miles north of Davis Road on Central Highway south of Elfrida, Cochise County,
13 Arizona (“the Parcel”). See affidavit of Rebecca Shumaker attached hereto marked **Exhibit E**
14 (“Shumaker Affidavit”), ¶ 2, 3; and see affidavit of David Blake attached hereto marked **Exhibit**
15 **F** (“Blake Affidavit”), ¶ 3.

16 43. In reliance on the Regulations, Plaintiff’s principal purchased the Parcel on behalf
17 of Plaintiff for the purpose of establishing a facility for the cultivation and dispensing of medical
18 marijuana on the Parcel. Shumaker Affidavit, ¶ 4.

19 44. The Parcel is situated in an RU Zoning District, pursuant to the Regulations.

20 45. The Parcel is located in Cochise County District Number 2.

21 46. The Parcel is located in CHAA Number 121. Shumaker Affidavit, ¶ 5.

22 47. No DRC has been issued for a dispensary in CHAA 121 or 124.

23 48. There are already dispensaries in the surrounding CHAAs 119, 120, 122 and 123.

24 49. On September 25, 2015, Plaintiff submitted an application to the Cochise County
25 Planning Department, pursuant to the Regulations, seeking a special use permit in order to
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1 establish a facility for the cultivation and dispensing of medical marijuana on the Parcel (“the
2 Application”). Shumaker Affidavit, ¶ 6; and *see* copy of the Application attached hereto marked

3 **Exhibit G.**

4 50. Plaintiff complied with the requirements set out in the Regulations at §§
5 1716.03(A) to (C) in that Plaintiff first met with the County’s staff and notified property owners;
6 then Plaintiff filed the Application (with a concept plan, fee, and “Citizen Review Report”) with
7 the County Zoning Inspector. Shumaker Affidavit, ¶ 7.

9 51. The staff of the Cochise County Community Development Department, Planning,
10 Zoning and Building Safety Division (“Staff”) recommended to the Commission that the County
11 grant Plaintiff’s Application because, in Staff’s opinion, Plaintiff’s proposal met all the
12 requirements set out in the Regulations. *See* Staff memorandum to the Commission dated October
13 29, 2014 (“Recommendation”), attached hereto marked **Exhibit H.**

15 52. In the Recommendation, Staff concluded that Plaintiff’s Application met the
16 minimum site development standards for special uses in the Rural Zoning District, as well as
17 those standards specific to medical marijuana uses. Recommendation, p. 7.

18 53. Staff found that Applicant’s request complied entirely with eight of the ten factors
19 set out in § 1716.02(A) to (J). Recommendation, p. 5-6, 7.

21 54. Staff advised that “The closest house, a vacant structure, on the north, is
22 approximately 384-feet from the existing residential structure. The *closest occupied residence is*
23 *over one mile* from the subject property’s boundary line. *There are no other facilities, libraries,*
24 *schools, or day-care facilities in area.*” Recommendation, p. 2 (emphasis added).

25 55. Staff advised that “The applicant is proposing to use a *rainwater collection system*
26 with storage tanks, *reuse reclaimed water* and use *water recycling*, landscaping with native
27 plants, and use water sense toilets and faucets.” Recommendation, p. 6 (emphasis added).
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1 56. Factor “D. Traffic Circulation Patterns” was found to *comply* with the condition
2 that Plaintiff agree to work with a traffic engineer to address the concerns raised by Staff
3 concerning driveway design, placement and construction.

4 57. The remaining factor, “H. Hazardous Materials” was deemed “not applicable” by
5 Staff in the recommendation because Plaintiff specified that the proposed use does not employ
6 hazardous materials.

7 58. On October 29, 2015, Staff forwarded Plaintiff’s Application to the Commission
8 with the Recommendation.

9 59. The Commission set a public hearing for Plaintiff’s Application for November 18,
10 2015.

11 60. At the November 18, 2015 hearing, Plaintiff (through its principals Becki
12 Shumaker and David Blake) explained their application, their backgrounds in health care and
13 medical marijuana fields, the uses of medical marijuana, their company, crime, water usage (no
14 wells, only precipitation and water hauling), and that they were seeking a *maximum of two acres*
15 to cultivate marijuana. *See* Minutes of meeting of Cochise County Planning and Zoning
16 Commission dated November 18, 2015, attached hereto marked **Exhibit I**, p. 2.

17 61. At the November 18, 2015 hearing, six members of the public spoke in opposition,
18 whose concerns related to “water rights,” that there was “no need for that much medical
19 marijuana in Cochise County,” “pesticides,” vocal opposition to marijuana as a whole, that
20 applicant should “keep it in Tucson,” that marijuana uses “cause controversy,” of a “lack of
21 transparency from the Applicants” (whom this resident had contacted himself), that “marijuana
22 destroys families,” of problems associated with “making marijuana readily accessible,” of “the
23 number of schools within several miles of the site” (no number mentioned), that “rural Arizona”
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1 should “stay as it is,” and opining that the Dragoon dispensary “was sufficient for the County.”

2 See minutes, p. 2-3.

3 62. At the November 18, 2015 hearing, Plaintiff clarified for the Commission that
4 “water would be hauled in and rainwater collected, but there would be no well drilled.” See
5 minutes, p. 3 (emphasis added). (Plaintiff, however, has not waived, and does not waive, any
6 rights it may have to access groundwater in the future.)

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8 63. At the November 18, 2015 hearing, Plaintiff clarified for the Commission that “no
9 pesticides would be used” by its facility. See minutes, p. 3.

10 64. At the November 18, 2015 hearing, Plaintiff clarified for the Commission that
11 “there is no evidence that dispensaries attract crime or increase drug use.” See minutes, p. 3.

12 65. The fact that dispensaries do not attract crime was *corroborated* by the very next
13 item on the Commission’s agenda, in which another applicant for an existing marijuana facility
14 testified (*and the same Commissioners accepted*) that “there have *not been any criminal*
15 *incidents* at their facility in the four years [since it was established *in Cochise County*].” See
16 minutes, p. 4 (emphasis added).

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18 66. At the November 18, 2015 hearing, Plaintiff reminded the Commission “how
19 stringent the state regulations are,” and “how difficult it would be for students to acquire
20 marijuana from the dispensary compared to buying it on the black market.” See minutes, p. 3.

21
22 67. After public comment, the Commissioners began consideration of Plaintiff’s
23 Application. See minutes, p. 3-4.

24 68. At the November 18, 2015 hearing, Commissioner Drake began by recommending
25 “Conditional Approval” of Plaintiff’s Application. See minutes, p. 3.

1 69. Commissioner Edie stated that she had concerns about “the speeds that vehicles
2 travel at on Central Highway,” and that she was “worried about traffic safety at that location.” *See*
3 minutes, p. 3.

4 70. Commissioner Gregan reminded the Commissioners that “water and security
5 issues were regulated by the State, and that the Commission could not consider those factors.” *See*
6 minutes, p. 3.

7 71. Commissioner Miller stated that “Cochise County is an agricultural area and that
8 she wanted it to stay that way.” *See* minutes, p. 3.

9 72. Commissioner Miller stated that “the water issue needed to be addressed.” *See*
10 minutes, p. 3.

11 73. Commissioner Miller stated that “the community’s concerns” needed to be
12 addressed. *See* minutes, p. 3.

13 74. Commissioner Miller expressed the “tough nature of the decision based on the
14 jockeying of various individuals’ private property rights.” *See* minutes, p. 3.

15 75. Vice-Chairman Martzke restated that “water rights were not an issue for the
16 Commission,” and that “the Commission was only approving the land use, not the actual
17 operation.” *See* minutes, p. 3.

18 76. The minutes of the November 18, 2015 reflect that the Commissioners *did not*
19 *consider any other factor* in deciding Plaintiff’s Application.

20 77. The minutes of the November 18, 2015 reflect that the Commissioners’
21 consideration of Plaintiff’s Application *disregarded the express criteria set out in detail in the*
22 *Regulations in §§ 1716.02(A) to (J)*, which criteria were set out clearly and distinctly in the Staff
23 Recommendation.
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1 78. The minutes of the November 18, 2015 reflect that the Commissioners'
2 consideration of Plaintiff's Application entirely *disregarded the statements made in, and*
3 *ultimate recommendation set out in, the Staff's Recommendation.*

4 79. The minutes of the November 18, 2015 reflect that the Commissioners'
5 consideration of Plaintiff's Application disregarded the admonishments of two of the
6 Commissioners to stay within the parameters of the Regulations.
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8 80. At the November 18, 2015 hearing, after the above discussion, Commissioner
9 Gregan made a motion of "Conditional Approval" of Plaintiff's Application. Commissioner
10 Miller seconded the motion. The motion for approval failed 2-3, with Commissioners Gregan and
11 Martzke in favor, and Commissioners Miller, Brauchla and Edie in opposition. *See* minutes, p. 3-
12 4. In other words, *the Commission denied Plaintiff's Application.*

13 81. At the same November 18, 2015 hearing, on the very next item on the
14 Commission's agenda, the same Commissioners *approved* the expansion of a *different*
15 *applicant's existing marijuana dispensary and cultivation facility* in a different part of Cochise
16 County. *See* minutes, p. 4.
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18 82. On December 1, 2015, Plaintiff filed an appeal with the Cochise County Board of
19 Supervisors ("the Board") pursuant to, and in compliance with, § 1716.04 of the Regulations. *See*
20 appeal dated December 1, 2015, attached hereto marked **Exhibit J**.

21 83. On December 18, 2015, Staff forwarded Plaintiff's appeal to the Board, *again with*
22 *a positive recommendation to grant Plaintiff's Application.* *See* Memorandum dated December
23 18, 2015, from Cochise County Planning Manager to the Board of Supervisors, attached hereto
24 marked **Exhibit K** ("the Memorandum").
25

26 84. In the Memorandum, Staff advised the Board that, at the Commission meeting on
27 November 18, six residents "voiced concerns about water and pesticide contamination, the broad
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1 accessibility of marijuana, about schools within several miles of the site and about the general
2 desire to avoid having marijuana in Cochise County.” See Memorandum, p. 1.

3 85. In the Memorandum, Staff pointed out to the Board that Plaintiff had rebutted the
4 residents’ concerns with statements that “the facility would use hauled water and *no well would*
5 *be drilled*, that there would be *no pesticide usage*, about the *stringent State regulations* for the
6 industry, and that is it *more difficult* for students to purchase marijuana from a dispensary than to
7 buy it on the black market.” See Memorandum, p. 1 (emphasis added).

8 86. In the Memorandum, Staff pointed out to the Board that some Commissioners
9 were concerned “about traffic safety at the proposed location,” about the “agricultural nature of
10 the County,” about “water issues and private property rights.” See Memorandum, p. 1.

11 87. In the Memorandum, Staff advised the Board that two Commissioners (who voted
12 in favor of granting Plaintiff’s Application) reminded the Commission that “the Commission
13 should not be considering water and security issues since those items were regulated by the
14 State,” and that “the Commission was considering only the land use.” See Memorandum, p. 1.

15 88. In the Memorandum, Staff advised the Board that, in the Staff’s expert analysis of
16 traffic circulation included in an “October 22, 2015 Transportation Memo,” Plaintiff’s proposed
17 use was unlikely to affect traffic at all. Staff’s traffic analysis concluded that: “as a growing
18 operation only the requested use is *unlikely to alter the type or volume of traffic*.” See
19 Memorandum, p. 3 (emphasis added). Staff goes on: “[O]nce the personal services component of
20 the clinic is added, ... the *traffic pattern in the area is unlikely to change or negatively impact*
21 *Central Highway or surrounding property owners*.” See Memorandum, p. 3 (emphasis added).

22 89. In the Memorandum, Staff pointed out to the Board four factors in favor of
23 *approving the appeal to overturn the Commission’s decision*, namely, “1. Medical marijuana
24 cultivation and dispensary facilities *are authorized by the State of Arizona*; 2. Medical marijuana
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1 land uses *are allowed as Special Uses* in Rural Districts *in Cochise County*; 3. The proposal
2 meets *minimum site development standards* for Special Uses in the Rural Zoning District, as
3 well as those *standards specific to medical marijuana uses*; and 4. Sonoran Care LLC submitted
4 an application what was *in major conformance with the criteria* used by the County to evaluate
5 these requests.” See Memorandum, p. 3 (emphasis added).
6

7 90. In the Memorandum, Staff pointed to *only one factor* in favor of denying the
8 appeal, namely, “Staff has received four letters in support of denial.” See Memorandum, p. 3.

9 91. At the end of the Memorandum, Staff (for the second time) recommended to the
10 Board that the County *approve Plaintiff’s Application* (with certain conditions not relevant to this
11 action). See Memorandum, p. 4.

12 92. The Board set a public hearing on Plaintiff’s appeal for its January 5, 2016
13 meeting.

14 93. At the January 5, 2016 hearing, Vice-Chairman Call, before any discussion
15 whatsoever, “moved to affirm” the Commission’s denial of Plaintiff’s Application. See Minutes
16 of public meeting of the Cochise County Board of Supervisors dated January 5, 2016, attached
17 hereto marked **Exhibit L**, ¶ 15.

18 94. After the motion was seconded, Staff made a presentation to the Board that
19 mirrored the Memorandum, and which re-iterated Staff’s summary of the Commission’s
20 proceedings, the objections, and the reasons that Staff *recommended approval of Plaintiff’s*
21 *Application*. See minutes, ¶ 15.

22 95. Undersigned counsel, on behalf of Plaintiff, was permitted to address the Board. In
23 sum, he reminded the Board that *medical marijuana is now legal in Arizona*, that Plaintiff’s
24 Application *met the County’s requirements*, and that the State limits the number of dispensaries
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1 certificates and so the County “would not be overrun by medical marijuana dispensaries.” See
2 minutes, ¶ 15.

3 96. Five residents spoke in opposition, whose concerns again included a *marked*
4 *disapproval of marijuana generally*, “*increase in danger*,” “*dispensary saturation in area*,”
5 *water issues*, and “*traffic increase*.” See minutes, ¶ 15.

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7 97. One resident submitted a speaker request form “in favor of the Board issuing the
8 permit” (without speaking). See minutes, ¶ 15.

9 98. After public comment closed, the County Administrator addressed the Board and
10 reminded the Board that “Staff is looking at *land use, not the use of marijuana*.” See minutes, ¶
11 15 (emphasis added). He also reminded the Board that “Planning Staff had *evaluated these*
12 *criteria* [the ten factors set out in the Regulations] and felt that *they had been complied with in*
13 *recommending approval* of the special use application.” See minutes, ¶ 15 (emphasis added).

14
15 99. After public comment and staff advice, the Board began its very brief
16 deliberations. See minutes, ¶ 15.

17 100. Vice-Chairman Call began by noting that “the Board had tried its best to meet the
18 requirements of the law, whether they agreed with it or not.” See minutes, ¶ 15.

19 101. Vice-Chairman Call then stated that “*there was enough of these types of special*
20 *use permits in the county*,” and that “the *community was obviously in opposition*” which “was
21 also important.” See minutes, ¶ 15 (emphasis added). Without any further elaboration, these were
22 his only two reasons given to support denial of Plaintiff’s Application.

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24 102. Supervisor English stated she was “concerned with the *ingress/egress* of getting on
25 the property, lack of *water*, and the *neighbors* being opposed.” See minutes, ¶ 15 (emphasis
26 added). Without any further elaboration, these were her only three reasons given to support denial
27 of Plaintiff’s Application.
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1 103. Chairman Searle stated that “the reason the public input criteria was added was to
2 ensure the *community* was in support,” and that he was “also concerned with the *water issue*.”
3 See minutes, ¶ 15 (emphasis added). Without any further elaboration, these were his only two
4 reasons given to support denial of Plaintiff’s Application.
5

6 104. At the January 5, 2016 meeting, the Board voted 3-0 to affirm the decision of the
7 Commission. See minutes, ¶ 15. In other words, the County made a final decision to deny
8 Plaintiff’s Application.

9 105. In a letter dated January 5, 2016, the County advised Plaintiff in writing of its
10 decision to deny Plaintiff’s Application.

11 106. Having exhausted all remedies prescribed in the Regulations, Plaintiff now seeks
12 relief with this complaint.
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14 **III. STANDARD OF REVIEW**

15 107. Sonoran incorporates the allegations contained in the preceding paragraphs as if
16 they were fully restated and repeated herein.

17 108. Rule 1, *Arizona Rules of Procedure for Special Actions*, allows for special actions
18 where there is no “equally plain, speedy, and adequate remedy by appeal.”

19 109. In the present case, there is no equally plain, speedy and adequate remedy by
20 appeal available to Plaintiff to challenge the decision of the County rejecting Plaintiff’s
21 Application.
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23 110. Rule 3(b), *Arizona Rules of Procedure for Special Actions*, provides that this Court
24 may grant relief where a defendant has proceeded or is threatening to proceed “without or in
25 excess of jurisdiction or legal authority.”
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1 111. Rule 3(c), *Arizona Rules of Procedure for Special Actions*, provides that this Court
2 may grant relief where a defendant’s determination “was arbitrary and capricious or an abuse of
3 discretion.”

4 112. “The superior court is required to determine whether the record contains any
5 evidence to support the decision of the merit board and city, and whether the inferior board or
6 officer erred as a matter of law and exceeded its legal authority.” *Stant v. City of Maricopa*
7 *Employee Merit Board*, 234 Ariz. 196, ¶ 15, 319 P3d 1002 (App. 2014).

8 113. An abuse of discretion is regarded as an error of law. *Twin City Fire Ins. Co. v.*
9 *Burke*, 204 Ariz. 251, ¶ 10, 63 P.3d 282 284-5 (2003).

10 114. An “error of law ... in the process of reaching [a] discretionary conclusion” is
11 regarded as an abuse of discretion. *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d
12 507, 529 (1982).

13 115. “Arbitrary action has been characterized as ‘unreasoning action, without
14 consideration and in disregard of the facts and circumstances.’” *Pima County v. Pima County*
15 *Merit Sys. Comm.*, 189 Ariz. 566, 568, 944 P.2d 508, 510 (App. 1997).

16 116. A.R.S. § 12-2021 allows this Court to grant a writ of mandamus “to compel, when
17 there is not a plain, adequate and speedy remedy at law, performance of an act which the law
18 specially imposes as a duty resulting from an office, trust or station, or to compel the admission of
19 a party to the use and enjoyment of a right or office to which he is entitled and from which he is
20 unlawfully precluded by such inferior tribunal, corporation, board or person.”

21 117. A.R.S. § 12-1801 allows this Court to grant injunctive relief where “it appears that
22 the party applying for the writ is entitled to the relief demanded, and such relief or any part
23 thereof requires the restraint of some act prejudicial to the applicant,” and “when applicant is
24 entitled to an injunction under the principles of equity.”
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26
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28

1 **IV. COUNT ONE – TO THE EXTENT THE BOARD RELIED ON “PERMIT**
2 **SATURATION” TO REJECT PLAINTIFF’S APPLICATION, THE BOARD VIOLATED**
3 **A.R.S. § 11-1604, AND ALSO MISUNDERSTOOD THE LIMITATIONS ON THE**
4 **NUMBER AND LOCATION OF DISPENSARIES PERMITTED UNDER THE ACT**

4 118. Sonoran incorporates the allegations contained in the preceding paragraphs as if
5 they were fully restated and repeated herein.

6 119. A.R.S. § 11-1604(A) prohibits a county from basing a “licensing decision” on a
7 “*licensing requirement or condition that is not specifically authorized* by statute, rule or
8 ordinance” (emphasis added); and see *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 207
9 Ariz. 95, ¶ 141, 83 P.3d 573 (App. 2004), and *ADWR v. McClennan*, 360 P.3d 1023, ¶ 15 (2015).

10 120. A.R.S. § 11-1604(A) also provides that “A *general grant of authority* does not
11 constitute a basis for imposing a licensing requirement or condition *unless the authority*
12 *specifically authorizes the requirement or condition.*” (Emphasis added.)

13 121. A.R.S. § 11-1601(4) defines a “license” as including “the whole or part of any
14 county permit, certificate, approval, registration, charter or similar form of permission required by
15 law.”

16 122. A.R.S. § 11-1601(5) defines “licensing” as including “the county process
17 respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or
18 amendment of a license.”

19 123. Plaintiff’s Application is an application for a “license” as defined by A.R.S. § 11-
20 1601, and the County’s process for considering the Application is a “licensing” decision.

21 124. Plaintiff’s Application for a “license” is made pursuant to §§ 607.51, 607.54,
22 1716.01, 1716.02, 1716.03, 1716.04, 1825.01, 1825.02, and 1825.03 of the Regulations.

23 125. As a result, the County *may not consider or impose any requirement or condition*
24 *that is not specifically authorized* by § 607.51, 607.54, 1716.01, 1716.02, 1716.03, 1716.04,
25

1 1825.01, 1825.02, and 1825.03 of the Regulations, in particular, the factors expressly and
2 specifically enumerated in §§ 1716.02(A) to (J).

3 126. The reason for this, as set out by the Regulations themselves, is *to reduce*
4 *uncertainty* regarding when the County will grant and when it will deny applications for special
5 use permits: “The special use factors represent *policy decisions* by the Planning Commission and
6 the Board, *reducing uncertainty concerning their probable response to a given request.*”
7 (Regulations, §§ 1716.02 (emphasis added).)
8

9 127. The *only ten factors that the County was entitled to consider* in reviewing
10 Plaintiff’s Application were “Compliance With Duly Adopted Plans;” “Compliance With the
11 Zoning District Purpose Section;” “Development Along Major Streets;” “Traffic Circulation
12 Factors;” “Adequate Services and Infrastructure;” “Significant Site Development Standards;”
13 “Public Input;” “Hazardous Materials;” “Off-site Impacts;” and “Water Conservation.” §§
14 1716.02(A) to (J).
15

16 128. In the present case, between the three Supervisors who comprise the Board, only
17 *four reasons* were given to uphold the rejection of Plaintiff’s Application – (1) *too many*
18 *marijuana permits* in the county (Supervisor Call), (2) *traffic concerns* (Supervisor English), (3)
19 *water issues* (Supervisors English and Searle) and *community opposition* (Supervisors Call,
20 English and Searle). *See* minutes of Board meeting dated January 5, 2016 (**Exhibit L hereto**), ¶
21 15.
22

23 129. The Board did not rely on any factor other than those four referenced in paragraph
24 116 above.

25 130. None of these reasons was in compliance with the Regulations.

26 131. None of these reasons is supported by the record.
27
28

1 132. To the extent that the County took into account the number of special use permits
2 for marijuana (or “permit saturation”) in Cochise County, this is quite simply a blatant violation
3 of A.R.S. § 11-1604.

4 133. Nowhere in Regulation §1716.02 is the amount of special use permits mentioned
5 as a factor to be taken into account by the County in deciding whether to grant or deny a special
6 use application.

7 134. Taking into account the amount of special use permits already issued by the
8 County in Cochise County is in *direct violation of A.R.S. § 11-1604*, because the County, in
9 deciding whether to grant Plaintiff’s Application for a SUP, took into consideration a factor not
10 expressly mentioned in Regulation §1716.02.

11 135. Moreover, taking into account the amount of special use permits already issued by
12 the County in Cochise County *misunderstands and misapplies the Act*, because *there can be*
13 *only one DRC issued per CHAA*. AAC R9-17-303(B)(4).

14 136. Even if a local zoning authority (in the present case, Cochise County) approves
15 multiple SUPs for marijuana facilities, *only one DRC* will ultimately be awarded by the
16 Department for any given CHAA (in this case, CHAA Number 121). AAC R9-17-303(B)(4).

17 137. The intent of the Act, implemented by the Department, is expressly to ensure that
18 dispensaries are dispersed evenly across the State.

19 138. Moreover, there is nothing on the record whatsoever, or even referred to by
20 Supervisor Call, and certainly not mentioned by Staff, regarding *how many* other SUPs have been
21 issued for marijuana facilities in the County, and how many would constitute *too many*.

22 139. Taking into account the amount of SUPs already granted county-wide as a reason
23 justifying denial of Plaintiff’s Application was arbitrary, capricious, an abuse of discretion, not
24 supported by the record, and in direct violation of A.R.S. § 11-1604.

1 **V. COUNT TWO – TO THE EXTENT THAT THE COUNTY RELIED ON**
2 **“TRAFFIC CONCERNS” TO REJECT PLAINTIFF’S APPLICATION, THE COUNTY’S**
3 **DECISION WAS ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION AND**
4 **CONTRADICTED BY THE RECORD**

4 140. Sonoran incorporates the allegations contained in the preceding paragraphs as if
5 they were fully restated and repeated herein.

6 141. The County itself (through its Staff) conducted a traffic analysis and concluded
7 that Plaintiff’s proposed use was unlikely to affect traffic ***at all***. See Memorandum, p. 3.

8 142. Before the Board made its decision, it was expressly advised by Staff that: “as a
9 growing operation only the requested use is ***unlikely to alter the type or volume of traffic;***” and
10 that “once the personal services component of the clinic is added, ... the ***traffic pattern in the***
11 ***area is unlikely to change or negatively impact Central Highway or surrounding property***
12 ***owners.***” See Memorandum, p. 3 (emphasis added).

13 143. Supervisor English (the only Supervisor who based her decision on traffic factors)
14 does ***not mention the Staff’s study at all***; she simply vaguely references “concerns” about
15 “ingress/egress,” without any elaboration whatsoever to explain to Plaintiff what those concerns
16 were, to support her denial of a special use permit to Plaintiff.
17

18 144. Neither of the other two Supervisors was concerned with traffic.

19 145. Staff were not concerned with traffic.

20 146. In fact, “concerns about traffic” are contradicted by the record because Staff had
21 already advised the Board that granting an SUP to Applicant would likely have no effect on
22 traffic at all. The Board simply ignored this vital piece of information.
23

24 147. The County’s reliance on “traffic concerns” as a reason to justify denial of
25 Plaintiff’s Application was arbitrary, capricious, an abuse of discretion and not supported by the
26 record.
27

28

1 **VI. COUNT THREE – TO THE EXTENT THAT THE COUNTY RELIED ON**
2 **“WATER ISSUES” TO REJECT PLAINTIFF’S APPLICATION, THE COUNTY’S**
3 **DECISION WAS ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION AND**
4 **CONTRADICTED BY THE RECORD**

4 148. Sonoran incorporates the allegations contained in the preceding paragraphs as if
5 they were fully restated and repeated herein.

6 149. Two of the three Supervisors (Supervisors English and Searle) asserted *water*
7 *issues* to justify rejection of Plaintiff’s Application.

8 150. The minutes of the Commission meeting on November 18, 2015, reflect that
9 Plaintiff is not going to be drilling a well (at least initially). *See* Minutes of Commission meeting
10 dated November 18, 2015, p. 3.

11 151. Plaintiff’s proposal is to use precipitation and “haul in” water. *See* Memorandum,
12 p. 1; Minutes of Commission meeting dated November 18, 2015, p. 3.

13 152. Staff advised that “The applicant is proposing to use a *rainwater collection system*
14 with storage tanks, *reuse reclaimed water* and use *water recycling*, landscaping with native
15 plants, and use water sense toilets and faucets.” Recommendation, p. 6 (emphasis added).

16 153. Staff advised the Commission and the Board that Plaintiff had complied with the
17 Regulations, and that Staff had no concerns with water proposed to be used by Plaintiff.

18 154. And yet *two of the three Supervisors* used nebulous, unsupported water concerns
19 to justify denying Plaintiff’s Application.

20 155. There is simply no support at all on the record for the issue of water to justify
21 denial of the Application.

22 156. The County’s reliance on “water” as a reason to justify denial of Plaintiff’s
23 Application was arbitrary, capricious, an abuse of discretion, and not supported by the record.
24
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1 **VII. COUNT FOUR – TO THE EXTENT THE COUNTY RELIED ON**
2 **“COMMUNITY OPPOSITION” TO REJECT PLAINTIFF’S APPLICATION, SUCH**
3 **OPPOSITION ITSELF WAS BASED ON FACTORS IN VIOLATION OF A.R.S. § 11-**
4 **1604, WAS CONTRADICTED BY THE RECORD, AND MOREOVER**
5 **DISCRIMINATED AGAINST PLAINTIFF**

6 157. Sonoran incorporates the allegations contained in the preceding paragraphs as if
7 they were fully restated and repeated herein.

8 158. The final ground relied on by the Board for rejecting Plaintiff’s Application was
9 community opposition.

10 159. The Board effectively relied on *this reason alone* (given that the other three
11 reasons were bogus) to override Staff’s resounding endorsement of Plaintiff’s Application, and
12 the fact that Plaintiff had complied in every possible way with the County’s own Regulations, as
13 well as the Act and the Rules.

14 160. The community opposition upon which the Board relied exclusively to reject
15 Plaintiff’s Application was based resoundingly on a simple *disapproval of marijuana*. See
16 minutes of Commission meeting dated November 18, 2015 (and Staff summary thereof), and
17 minutes of Board meeting dated January 5, 2016.

18 161. Taking *disapproval of marijuana* into account was a direct violation of A.R.S. §
19 11-1604, because the County, in deciding whether to grant Plaintiff’s Application for a SUP, took
20 into consideration a factor not expressly mentioned in Regulation §1716.02.

21 162. Even though Regulation §1716.02(G) permits the County to take “public input”
22 into account in deciding a SUP application, this does not provide *carte blanche* for the County to
23 rely on such “public input” if that public input itself is based on factors that violate A.R.S. § 11-
24 1604, including considerations such as a *judgment on the morality* of what is now *lawful*
25 *conduct in Arizona*, namely, the cultivation and dispensing of marijuana for medicinal reasons.
26
27
28

1 163. Permitting the County to act in this way (using “public input” as a means to
2 incorporate reasons that the County itself could not rely on) allows the County to avoid
3 compliance with the law, and allows the County to use zoning regulations to circumvent the law.
4 See A.R.S. § 11-1604(A) (“A *general grant of authority* does not constitute a basis for imposing
5 a licensing requirement or condition *unless the authority specifically authorizes the requirement*
6 *or condition.*”)
7

8 164. Community opposition was also based on “increase in danger,” “dispensary
9 saturation in area,” water issues, and “traffic increase.” See minutes of Board meeting dated
10 January 5, 2016, ¶ 15.

11 165. To the extent that the Board relied on *any one of these factors*, the Board erred
12 because none of these fears is supported by anything in the record.
13

14 166. The Supervisors themselves referenced three of the public concerns, namely,
15 “dispensary saturation in area,” “water issues,” and “traffic increase” as reasons to reject
16 Plaintiff’s Application.

17 167. As argued above, taking into account “dispensary saturation” is a clear violation of
18 A.R.S. § 11-1604, not to mention not supported by the record; there are no “water issues” because
19 Plaintiff will not be using Cochise County’s water; and Staff itself has undertaken a traffic
20 analysis and concluded that there is no traffic impact.
21

22 168. To the extent that the Board took into account community opposition based on
23 “increase in danger,” this amounts to yet another clear violation of A.R.S. § 11-1604, because this
24 is not a factor included in Regulation §1716.02.

25 169. Moreover, there is no support in the record whatsoever for this nebulous fear of
26 “increased danger;” no member of the public and no Supervisor pointed to *any evidence*
27
28

1 *whatsoever* to support this statement; and Staff stated no concerns regarding increased danger if
2 an SUP is granted to Applicant.

3 170. On the contrary, the record *contradicts* this fear of increased danger: another
4 applicant who has been licensed to conduct marijuana facilities *in Cochise County* for the past
5 four years has had *no reported criminal activity whatsoever*. See minutes of Board meeting dated
6 January 5, 2016, ¶ 16.

7
8 171. To the extent the Board relied on public comment expressing nebulous fears
9 regarding increased danger if Plaintiff's Application is granted, the Board acted arbitrarily,
10 capriciously, abused its discretion, and in violation of A.R.S. § 11-1604.

11 172. Moreover, the "community" upon whom the Board relied lived *outside the area*
12 *envisaged by the Regulations* as being affected by Plaintiff's proposed use. The Board expressly
13 considered, and took into account, objections from members of the public residing over *one mile*
14 *distant* from the proposed special use.

15
16 173. The Regulations require a dispensary to be at a minimum distance of only *300 feet*
17 from the nearest residence (§1825.03) and notice of the appeal was required to be given to
18 property owners within *300 feet* of the proposed special use (§1716.04(C)).

19 174. It was arbitrary, capricious, and an abuse of discretion for the Board to rely on
20 comments from the "community" when the "community" was not only *outside of the 300-foot*
21 *range* established by the Regulations, but was *over a mile distant*.

22
23 175. To the extent that the Board and/or the Commission relied on comments from the
24 public that Applicant should "keep it in Tucson" (*see* minutes of Commission meeting dated
25 November 18, 2015, p. 2), it is a blatant violation of the Arizona and U.S. Constitutions to reject
26 Plaintiff's Application on this ground, because the County is treating Plaintiff differently to other
27 similarly-situated (local) property owners.
28

1 176. Under both the federal and Arizona constitutions, a plaintiff has a claim for equal
2 protection where, under the rational basis test, a law or regulation imposes a *burden on one class*
3 but not another and the legislation does not serve *a legitimate state interest* and the facts support
4 the conclusion that the *classification does not rationally further that interest. Eller Media Co. v.*
5 *City of Tucson*, 198 Ariz. 127, ¶ 8, 7 P.3d 136 (App. 2000). The guarantee of equal protection is
6 violated if a classification rests on grounds *wholly irrelevant to the achievement of the state's*
7 *objective. Id.*, ¶ 9. A regulation that applies to some members of a class and not to others will not
8 be upheld if the classification is *arbitrary* and there is *not a substantial difference* between those
9 within and without the class. *Id.*, ¶ 9. “Though the law itself be fair on its face and impartial in
10 appearance, yet, *if it is applied and administered by public authority with an evil eye and an*
11 *unequal hand*, so as practically to make unjust and illegal discriminations between persons in
12 similar circumstances, material to their rights, the denial of equal justice is still within the
13 prohibition of the constitution.” *United States v. Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972). “The
14 purpose of the equal protection clause of the Fourteenth Amendment is to secure every person
15 within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned
16 by express terms of a statute or *by its improper execution through duly constituted agents.*”
17 *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (emphasis added). Equal protection
18 claims can be brought by a “class-of-one,” where a plaintiff alleges that she has been intentionally
19 treated differently from others similarly situated and that there is no rational basis for the
20 difference in treatment.” *Id.*, at 564. For an equal protection violation, “at the very least, there
21 must be some respect in which the discretion is being exercised so that the complaining individual
22 is being treated *less favorably than others generally are.*” *Towery v. Brewer*, 672 F.3d 650, 661
23 (9th Cir. 2012). *The burden lies on the state to show that differential treatment has a rational*
24 *basis. Engquist v. Oreg. Dept of Agric.*, 553 U.S. 591, 603 (2008).

1 177. The County has granted SUPs for medical marijuana facilities and dispensaries to
2 applicants who reside in Cochise County.

3 178. To the extent that the Board took into account that Plaintiff's principals are from
4 Tucson, the County acted arbitrarily, capriciously, beyond its discretion, and contrary to law.

5 179. The County abused its discretion, violated A.R.S. § 11-1604, acted arbitrarily and
6 capriciously, and in violation of the Arizona and U.S. Constitutions when it based its rejection on
7 public concerns which were themselves not supported (in fact, contradicted) by the record,
8 violated A.R.S. § 11-1604, and were unconstitutional.

9
10 **VIII. COUNT FIVE - BY SO CLEARLY DEVIATING FROM THE FACTORS**
11 **ENUMERATED IN THE REGULATIONS, THE COUNTY HAS CAUSED PLAINTIFF**
12 **HARM**

13 180. Sonoran incorporates the allegations contained in the preceding paragraphs as if
14 they were fully restated and repeated herein.

15 181. When Plaintiff's agent purchased the Parcel on behalf of Plaintiff, it was for the
16 express purpose of applying for an SUP to establish a facility for the cultivation and dispensing of
17 medical marijuana on the Parcel. *See Shumaker Affidavit, ¶ 4, 8.*

18 182. Plaintiff's agent, on behalf of Plaintiff, relied on the Regulations in purchasing the
19 Parcel and to determine whether Plaintiff could satisfy the requirements to qualify for an SUP.
20 *See Shumaker Affidavit, ¶ 9.*

21 183. The Regulations expressly provide that "[t]he special use factors represent *policy*
22 *decisions* by the Planning Commission and the Board, *reducing uncertainty concerning their*
23 *probable response to a given request.*" *See Regulations, §§ 1716.02 (emphasis added).*

24 184. The Regulations expressly provide that "[a] property owner who *adequately*
25 *demonstrates compliance* with the intent of Comprehensive Plan goals and policies may receive
26 approval *in spite of non-compliance* with any individual factor." And "[c]onversely, a
27
28

1 determination that *unusual circumstances exist* or *there is significant public protest* pertaining
2 to a special use request may result in a denial.” See Regulations, §§ 1716.02 (emphasis added).

3 185. Based on, and in reliance upon, these representations in the Regulations, Plaintiff’s
4 principal purchased the Parcel.

5 186. The County did not take these factors into account when it denied Plaintiff’s
6 Application (as argued above).

7 187. The County relied on community opposition, but such community opposition itself
8 did not take the ten factors into account, violated statutes and the constitution, and moreover
9 originated from people who are not neighbors of (or even within one mile of) the Parcel.

10 188. The County did not reject Plaintiff’s Application based on “unusual
11 circumstances” (Regulations, §§ 1716.02).

12 189. The County’s conduct is an express violation of the intent of the Regulations,
13 which is to give property owners certainty (or at least to “reduce uncertainty). The County, in the
14 present case, has done exactly the opposite: it has increased uncertainty by basing its denial on
15 factors *outside of the Regulations*, and *contradicted by the facts*, without giving any explanation
16 to Plaintiff.

17 190. The County’s conduct in arbitrarily and capriciously denying Plaintiff’s
18 Application has caused Plaintiff harm.

19
20
21 **IX. REQUEST FOR HEARING**

22 Plaintiff requests that this Court evaluate questions of fact pursuant to Rule 4(f), *Arizona*
23 *Rules of Civil Procedure for Special Actions*, if a triable issue of fact is raised in this complaint
24 and/or during subsequent proceedings, with any special orders concerning discovery the court
25 may find necessary to award.
26
27
28

1 **X. PLAINTIFF IS ENTITLED TO ITS ATTORNEYS' FEES**

2 Plaintiff is entitled to attorneys' fees and other expenses incurred in bringing this
3 action/appeal pursuant to A.R.S. § 12-348, A.R.S. § 12-2013 and A.R.S. § 11-1604(E).

4 **XI. CONCLUSION**

5 The facts on the record do not support any of the Board's stated reasons for rejecting
6 Plaintiff's Application for an SUP. The Board's stated reasons for rejection of Plaintiff's
7 Application are in violation of A.R.S. § 11-1604. The Board may not invoke the "public input"
8 factor to by-pass A.R.S. § 11-1604, because the community's reasons are also not supported by
9 the record, are in violation of A.R.S. § 11-1604, and are unconstitutional.

10 The Court is requested to *review the action taken by the County* and *overturn it*, because
11 it is arbitrary, capricious, an abuse of discretion, not supported by the record, and/or contrary to
12 law. The Court is requested to either *grant Plaintiff's Application*, or to *remand to the County*
13 for consideration subject to this ruling. Alternatively, if the Court declines to accept review of the
14 County's conduct by way of special action, then the Court is requested to consider this Complaint
15 as one for injunctive relief against the County, and is requested to order the County to either
16 *grant Plaintiff's Application*, or to *remand to the County* for consideration subject to this ruling.

17 **XII. RELIEF REQUESTED**

18 WHEREFORE, Plaintiff respectfully requests that the Court accept review and enter
19 judgment as follows:

20 A. Ordering the County to grant Plaintiff's Application for a Special Use, SU-15-18
21 (Sonoran Care), for a facility for personal services and the dispensing and cultivation of medical
22 marijuana on an RU-4, rural zoned property;

23 B. Alternatively, overturning the County's denial of Plaintiff's Application,
24 remanding Plaintiff's Application back to the County, and ordering the County to consider
25

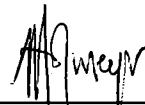
1 Plaintiff's Application with only the ten factors specified in Regulation §§ 1716.02(A) to (J);

2 C. Awarding Plaintiff its reasonable costs and attorney fees incurred in connection
3 with the action/appeal, pursuant to A.R.S. § 12-348, A.R.S. § 12-2013 and A.R.S. § 11-1604(E);
4 and

5 D. Awarding Plaintiff such further relief as the Court may deem just and proper.

6 RESPECTFULLY SUBMITTED this 8TH day of February, 2016.

7
8 MUNGER CHADWICK, P.L.C.

9
10 

11 _____
12 John F. Munger
13 Michael L. Monti
14 Adriane J. Hofmeyr
15 *Attorneys for Appellant*

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605.07 Wind Energy Systems, subject to site development standards in Article 18.

605.08 Solar Energy Systems, subject to site development standards in Article 18.

606 Other Permitted Uses

The following rural uses will be allowed without the establishment of a permitted principal use:

606.01 Solid fences or walls six-feet in height or less. Setbacks do not apply; no permit required unless greater than three feet in height on a corner lot (informational permit required).

606.02 Well houses, in a fixed location. Setbacks do not apply; no permit required.

606.03 In Category A and B only, one out-building, in a fixed location, corrals, and pens. Multiple structures allowed in Category C and D.

607 Special Use Authorization

The following land uses require a Special Use Authorization from the Planning Commission in the RU Zoning Districts, subject to the procedures and review criteria set forth in Article 17. If granted, each land use will also require a Non-Residential Use permit.

607.01 Guest Lodging.

607.02 Recreational vehicle parks that are designed to ensure that the park fits into the rural landscape such as clustering RV sites, maintaining perimeter open space and enhancing existing vegetation using drought tolerant vegetation.

607.03 Welfare and/or charitable services.

607.04 Recycling/Solid Waste transfer facilities.

607.05 Zoos and/or other animal exhibits or sanctuaries.

607.06 Animal hospitals, animal boarding, and/or veterinary clinics.

607.07 Animal husbandry services.

607.08 Indoor and/or outdoor recreational facilities.

607.09 Outdoor Firearms, skeet, archery, or trap shooting ranges.

607.10 Fairgrounds and/or outdoor amusement parks.

607.11 Gasoline/service stations.

607.12 Convenience stores.

607.13 Restaurants, bars, taverns, nightclubs and/or off-site winery tasting rooms.

607.14 Contract construction services.

607.15 Airports, airstrips, helipads and/or heliports.

- 607.16** Manufacturing, wholesaling, warehousing, distribution, and/or storage of agriculture-related products.
- 607.17** Manufacturing, wholesaling, warehousing, distribution, and/or storage of products, activity area not to exceed 5,000-square feet.
- 607.18** Commercial feed lots, stockyards, and/or livestock auction barns, on a site not less than 20-acres.
- 607.19** Wholesaling, warehousing, distribution, and/or storage of propane.
- 607.20** Motion picture production sites/studios.
- 607.21** Custom butchering/meat curing/processing with less than a 100-foot minimum setback.
- 607.22** Transient camps, migrant labor camps.
- 607.23** Retail sales, rentals, or accessory storage of materials, merchandise, supplies and/or equipment.
- 607.24** Civic, social, fraternal, and/or business associations.
- 607.25** Educational services.
- 607.26** Personal and professional services.
- 607.27** Hospitals.
- 607.28** Health clinics.
- 607.29** Repair services.
- 607.30** Recycling centers.
- 607.31** Cultural, historic and/or nature exhibits.
- 607.32** Residential care institutions.
- 607.33** Offender rehabilitation facilities.
- 607.34** Group quarters.
- 607.35** Funeral and/or crematory services.
- 607.36** Golf courses.
- 607.37** Agricultural processing services with less than 300-foot minimum setback.
- 607.38** Communications towers exceeding 30-feet in height, subject to site development standards in Article 18.
- 607.39** Cemeteries.
- 607.40** Slaughterhouses/meat packing plants.

- 607.41** Day care establishments.
- 607.42** Commercial plant nurseries.
- 607.43** Bed and breakfast establishment.
- 607.44** Grocery Stores.
- 607.45** Research and/or Testing Laboratories.
- 607.46** Impound Storage Yards.
- 607.47** Wind Energy Power Plants (in Category D Areas only).
- 607.48** Mini-warehouses.
- 607.49** Riding stables, commercial, on a site less than 10-acres.
- 607.50** Solar Energy Power Plants-in Category D areas only.
- 607.51** Medical Marijuana Cultivation Facility in RU-4 and greater only, subject to site development standards in Article 18.
- 607.52** Medical Marijuana Dispensary in RU-4 and greater only, subject to site development standards in Article 18.
- 607.53** Medical Marijuana Dispensary Cultivation Facility in RU-4 and greater only, subject to site development standards in Article 18.
- 607.54** Medical Marijuana Infusion Facility in RU-4 and greater only, subject to site development standards in Article 18.

Exhibit B

- B. The County Zoning Inspector shall use the following criteria to evaluate the proposal:
1. The proposed modification will not violate any provisions of the Comprehensive Plan, area plans, duly adopted master plans or other provisions of these Zoning Regulations.
 2. The proposed modification(s) will be considered in light of the surrounding community.
 3. The proposed modification(s) will not substantially reduce the amount of privacy currently enjoyed by nearby property owners if the development were located as specified by these Zoning Regulations.
 4. The proposed modification(s) will not adversely impact traffic or traffic circulation, drainage, water conservation measures, sewage treatment systems and other such systems.
 5. The modification(s) does not create a situation where the proposed use of the property will create a hazard or nuisance.

The County Zoning Inspector shall, via certified mail, provide the Applicant with a notice of disposition and written statement of the decision and reasons therefore, and any conditions of approval. Notice shall also be sent to the surrounding property owners within 300 feet of the site and shall include information on how to appeal the decision made by the County Zoning Inspector and the appeal deadline (see Article 21).

1715.06 Appeals

The decision of the County Zoning Inspector may be appealed to the Board of Adjustment in accordance with the provisions of Article 21.

1715.07 Fees

Applications for a Lot Development Administrative Modification shall be accompanied by the fee specified in the Planning and Zoning Fee Schedule.

1716 Special Uses

1716.01 Purpose

In order to give these Zoning Regulations the flexibility necessary to achieve the objectives of each Zoning District, special use approval may be granted for certain types of uses. Applications proposing more than two special uses on one or more parcels, unless considered to be closely related components of a single type of use, may be required, instead, by the County Zoning Inspector, to apply for a rezoning to an appropriate Zoning District.

Because of their unique characteristics, and often times high potential to adversely impact surrounding properties, special uses may be permitted within the Zoning District only when they can demonstrate that potentially negative off-site impacts have been mitigated.

1716.02 Factors For or Against a Proposed Special Use

The Planning Commission, and the Board of Supervisors if the special use is appealed, shall consider the factors listed below in deciding whether or not to approve a Special Use Permit. Compliance or non-compliance with applicable special use factors serves as the basis for analyzing the special use request and determining factors in favor or factors against the special use. The special use factors represent policy decisions by the Planning Commission and the Board, reducing

uncertainty concerning their probable response to a given request. No set of factors, however, can totally determine the acceptability of all land use proposals. A property owner who adequately demonstrates compliance with the intent of Comprehensive Plan goals and policies may receive approval in spite of non-compliance with any individual factor. Conversely, a determination that unusual circumstances exist or there is significant public protest pertaining to a special use request may result in a denial. Most special uses have both factors in favor and factors against. In a specific special use, an individual factor may weigh more heavily than other factors. All factors will be analyzed and balanced against other factors when making a recommendation.

Compliance with applicable factors below constitutes factors in favor of the special use:

A. Compliance With Duly Adopted Plans

The special use is consistent with the intent, goals, policies, and/or land use designations of the County Comprehensive Plan, Master Development Plans, area plans, transportation plans, or other land use plans if any have been adopted for the area encompassing the special use.

B. Compliance With the Zoning District Purpose Section

The proposed special use shall comply with one or more of the purposes stated in the "Purpose" section of the applicable Zoning District and is compatible with existing development.

C. Development Along Major Streets

The development limits the number of access points on major thoroughfares or arterial streets, and County collectors through the use of frontage roads, shared access, no access easements or other safe methods designed to minimize road cuts that create unsafe traffic conflicts, hazardous traffic congestion and obstruct the functioning of arterials.

D. Traffic Circulation Factors

1. The special use is consistent with preservation of the functions of surrounding streets as defined in the County Comprehensive Plan.
2. The special use does not result in the use of any residential street for non-residential through traffic.
3. Consideration of future circulation needs in the surrounding area have been taken into account through right-of-way dedication and off-site improvements, if warranted.

E. Adequate Services and Infrastructure

The following factors are used to determine if there are adequate services and infrastructure to serve the special use:

1. The Applicant has provided adequate information to evaluate the impacts on roads, other infrastructure, and public facilities. The Applicant must demonstrate that there are adequate provisions to address the impacts identified; the Applicant shall provide data supporting the estimated traffic volume as part of the application.
2. If the site accesses on a road where existing demonstrable traffic problems created by incremental development have already been identified, such as a high number of accidents, substandard road design or surface, or the road is near or over capacity. If so, the Applicant has proposed a method to address these problems.

3. The proposed development meets or will meet the applicable requirements for street, sewer, or water improvements.
4. The site has access to streets that are adequately designed and constructed to handle the volume and nature of traffic typically generated by the use.

F. Significant Site Development Standards

The special use adequately addresses the significant applicable site development standards, including development in or near a floodplain. The Applicant has requested and adequately justified, in writing, any requests for modifications or waivers from site development standards.

G. Public Input

If there is major public opposition to a proposed special use, this may indicate that the technical evaluation regarding compatibility of the use does not concur with the view of local residents and a recommendation of denial may be appropriate. If public concerns have been raised, it is fair to ask if the Applicant has made a reasonable effort to address these concerns through the Citizen Review Process. If there is major public support of a proposed use, this may be a factor in favor of the request.

H. Hazardous Materials

Impacts from special uses that may involve hazardous materials have been adequately mitigated.

I. Off-site Impacts

Adequate measures have been taken to mitigate off-site impacts such as dust, smoke, noise, odors, lights, or storm water run-off.

J. Water Conservation

The special use complies with the water conservation policies in the County Comprehensive Plan or any other adopted area plan and/or those described in Article 18.

1716.03 Procedures for Issuance of a Special Use Permit

- A. The Applicant for a special use shall participate in an informal pre-application meeting with staff, to provide a general overview of the proposed project, to obtain information as to the issues that will need to be addressed in the formal application and to discuss the proposed process for citizen notification.
- B. Prior to submitting the formal application to the Community Development Department, the Applicant shall notify property owners, homeowners' and community associations in accordance with the Citizen Review Process specified in Article 22.

Exhibit C

3. The proposed development meets or will meet the applicable requirements for street, sewer, or water improvements.
4. The site has access to streets that are adequately designed and constructed to handle the volume and nature of traffic typically generated by the use.

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- B. Prior to submitting the formal application to the Community Development Department, the Applicant shall notify property owners, homeowners' and community associations in accordance with the Citizen Review Process specified in Article 22.

C. The Applicant for a special use permit shall file an application for a special use on a form provided by the County Zoning Inspector, a Citizen Review Report in accordance with Article 22, the required fee as provided for in the adopted Planning and Zoning Fee Schedule, and a concept plan. The concept plan shall be submitted and reviewed by the Planning Commission as a means to determine whether the special use request will be able to meet the essential site development standards set forth in these Zoning Regulations. Note: Any anticipated waivers of the site development standards, such as setbacks, screening, etc., must be requested, justified and approved by the Planning Commission prior to building permit issuance. The Concept Plan, at a minimum, shall include:

1. The type(s) of use(s) planned for the site is specified.
2. The general location, size and height of all structures, location, surface and width of driveways, general location and number of parking spaces, setbacks, proposed screening and landscaping and any significant topographical features such as washes, wetlands, cultural, archaeological or historical sites, hills, and rock outcroppings.
3. Project phasing.
4. Other information deemed necessary to effectively review the special use.

D. Upon receipt of the completed application, the County Zoning Inspector shall submit it to the Planning Commission for consideration and action. Prior to taking action on approving or denying the special use request, the Planning Commission shall:

1. Hold at least one public hearing thereon after at least 15-days' notice by one publication in a newspaper of general circulation in the County seat and by posting the area included in the proposed special use(s).
2. Send notice by first class mail to each owner of real property, as shown on the most recent available records of the last property tax assessment, located within 300-feet of the proposed area of the proposed special use(s), if within Growth Categories A, B, or C, or within 1500-feet, if within a Category D area, and to each county and municipality which is contiguous to the area of the proposed special use(s). If the special use application proposes an airport, airstrip, firearms range, manufacturing, or storage of hazardous materials as a principal use, feedlot, or electric generation plant, then notification by the Planning Commission of property owners shall extend to 1-mile from the subject parcel(s). The notice sent by mail shall include, at a minimum, the date, time and place of the hearing on the proposed special use(s) including a general explanation of the matter to be considered, a general description of the area of the proposed special use(s), and how the real property owners within the area may file approvals or protests of the proposed special use(s).

E. Site development standards contained in these Zoning Regulations are considered applicable unless modified by the Planning Commission or Board of Supervisors on appeal. Standards may be modified based on a finding that modification of a certain standard will not adversely affect the public health, safety, and general welfare. These standards may be increased or decreased and reasonable requirements imposed as deemed necessary to promote the purpose of these Zoning Regulations, including but not limited to the following:

1. Site coverage, structure height and setback requirement;
2. Screening;
3. Off-street parking and loading specifications and improvements;
4. On-site and off-site street and drainage improvements;
5. Regulation of points of vehicular ingress and egress;

6. Regulation of signs;
 7. Landscaping;
 8. Control of noise, vibration, odor, emissions, hazardous materials and other potentially dangerous or objectionable elements;
 9. Hours of operation;
 10. Time limits for the commencement of construction or a time limit within which the special use shall cease to exist;
 11. Water conservation measures; and
 12. Hazardous materials information.
- F. If approved by the Planning Commission and no appeal has been submitted within the 15-calendar days appeal period, the Applicant shall return the signed acceptance of conditions and modifications and waiver for diminution of value form within 30-days after approval. However, if the Applicant does not return this form within 30-days after approval, the application for a special use approval shall be deemed null and void. A completed non-residential permit application and site plan meeting the requirements set forth in this Article, in substantial conformance with the approved concept plan and modifications, and accompanied by any additional documentation required by the Planning Commission as a condition of special use approval, shall be submitted within 12-months of approval of the special use or within the time frame otherwise specified by the Planning Commission. At the time of permit submittal, if the special use is not in substantial conformance with the approved concept plan and is not within the general purview of the original notice, then the matter shall be heard at a public hearing before the Planning Commission to modify the plan following the procedures set forth in this Article herein. A non-residential permit must be issued within 18-months of approval by the Planning Commission or within the time frame otherwise specified by the Planning Commission. Upon issuance of a building/use permit, the provisions of this Article regarding the withholding, display, time limit, validity, and misrepresentation of building permits shall be applicable.
- G. Should the conditions of the Special Use approval not be met within the time limits specified above or within the time limits specified by the Planning Commission, the Special Use approval may be revoked after 30-days notice to the owner and Applicant, unless a request for an extension is made within this 30-day appeal period. A request for an extension will be subject to the special use modification provisions of this Article.
- H. Should the Special Use not be in compliance at any time with any of the conditions specified by the Planning Commission and/or the building/use permit, then zoning enforcement action shall be taken to correct the violation(s). Unabated non-compliance may result in the matter being heard at a public hearing before the Planning Commission to either modify the special use or to revoke the special use approval.

1716.04 Appeal of Special Use Authorization Decisions

- A. The decision of the Planning Commission is deemed to be final County action on the issue unless that decision is appealed within 15-calendar days following the date of decision. Any appeal shall be submitted for review by the Board of Supervisors at a public hearing to be scheduled within 60-days of receipt of the appeal. An appeal may be filed by the Applicant, by any other person aggrieved in any manner by the decision, or by the County Zoning Inspector, if the Inspector believes an error was made.
- B. An appeal is filed by submitting a written notice of appeal to the County Zoning Inspector, together with an appeal fee in accordance with the adopted fee schedule. If the appeal is

filed by the County Zoning Inspector, no fee is required. The notice of appeal shall include the following:

1. An identification of the decision being appealed;
 2. A complete statement of all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion; and
 3. Written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.
- C. Upon receipt of an appeal, the County Zoning Inspector or designee shall compile the record of the proceeding and submit this to the Board of Supervisors with the appeal documents.
- The Board shall send to the appellant and the special use Applicant, if they differ, a notice of the designated date of the public hearing. The date of decision shall be not more than 90-days following the submittal of the notice of appeal. Notice of such public hearing shall be given by one publication in a newspaper of general circulation in the county seat and by posting the area included in the proposed special use(s) at least 15-days prior to this hearing. Notice shall also be sent by first class mail to each owner of real property, as shown on the most recent available records of the last property tax assessment, located within 300-feet of the proposed area of the proposed special use(s), if within Growth Categories A, B, or C, or within 1500-feet, if within a Category D area.
- D. Following its deliberations on the date of decision, the Board of Supervisors shall either affirm, reverse or modify the decision of the Planning Commission. The factual and legal basis for the decision shall be specifically stated by the Board. The Clerk shall record the basis for decision and shall provide a copy to the appellant, special use Applicant, and to the Planning Commission.
- E. If the special use is approved, the County Zoning Inspector shall issue the permit, subject to all applicable conditions; provided, however, that if the Applicant does not accept in writing the conditions within 30-days of approval, the permit shall be deemed null and void.
- F. In the case of an appeal of a charter school, decisions on the appeal shall be made in the time period specified in Arizona Revised Statutes.

1716.05 Modifications of a Special Use Approval

- A. The property owner or Applicant to whom the Special Use approval was granted may request a modification of the approval in writing to the County Zoning Inspector along with the appropriate fee.
- B. The County Zoning Inspector shall determine whether or not the requested change is a substantial modification or within the scope of the original notice and approval.
- C. If the change is insubstantial and within the general purview of the original notice and approval, the County Zoning Inspector may grant the modification.
- D. If the requested change is substantial and is not within the general purview of the original notice or approval, then the matter shall be decided at a public hearing before the Planning Commission and notice given in like manner as the original Special Use request.



Exhibit D

ARTICLE 18

SITE DEVELOPMENT STANDARDS

1801 Purpose

It is the intent of this article to set forth specific criteria, known as site development standards, with which all uses in all Zoning Districts must comply unless otherwise exempted in these Zoning Regulations. These standards are designed to protect surrounding properties from adverse impacts of a proposed use.

1802 Identification of Site Development Standards

Site development standards applicable to each use in a Zoning District are found in the appropriate Article in these Zoning Regulations for that Zoning District, and in this Article. They shall include, but are not limited to:

1802.01 Minimum Site Area and Maximum Density, see applicable Zoning District.

1802.02 Maximum Height, see applicable Zoning District.

1802.03 Setbacks, see applicable Zoning District. Setback Area and Easements, see Section 1803.

1802.04 Maximum Site Coverage, see applicable Zoning District.

1802.05 Distance Between Buildings, see applicable Zoning District.

1802.06 Screening, see applicable Zoning District and Section 1805.

1802.07 Off-Street Parking and Loading, see Section 1804.

1802.08 Landscaping, see Section 1806.

1802.09 Street Improvements, Access and Traffic Circulation, see Section 1807.

1802.10 Sewage Disposal and Water Requirements, see Section 1808.

1802.11 Floodplain and Drainage Requirements per Department of Highway and Floodplain,
see Section 1809.

1802.12 Outdoor Lighting, see Section 1810.

1802.13 Outdoor Storage, see Section 1811.

1802.14 Mobile Home, Manufactured Home and Recreational Vehicle Parks, see Section 1812.

1802.15 Communications Facilities, see Section 1813.

1802.16 Reserved for future use.

1802.17 Keeping of Livestock, see Section 1815.

1802.18 Swimming Pools, see Section 1816.

1802.19 Golf Courses, see Section 1817.

1802.20 Land Clearing, see Section 1818.

1802.21 Water Conservation Measures, see Section 1819.

1802.22 Human Remains Protection, see Section 1820.

1802.23 Wind Energy Systems, see Section 1821.

1802.24 Wind Energy Power Plants, see Section 1822.

1802.25 Solar Energy Systems, see Section 1823.

1802.26 Solar Energy Power Plants, see Section 1824.

1802.27 Medical Marijuana Uses, see Section 1825.

1803 Standards Applicable to Setbacks, see Article 2 for definitions.

1803.01 Setback Area

The setback area may contain parking areas or loading spaces subject to the requirements of Section 1804.06. The setback area may also contain landscaping, walkways, courtyards, driveway entrances (except as noted in Section 1804.06.F.2), open space, leisure activity areas, walls, fences, flagpoles, and screening. In residential areas the setback may also include swimming pools (see Section 1816), gardens, playground equipment, clotheslines, and storage incidental to the principal dwelling.

1803.02 Projections into Required Setback Area

Projections of structures into a required setback area shall not be allowed, except that on residentially developed sites:

- A. Cornices, eaves, and awnings may project not more than three-feet over any required setback area, provided they are not closer than two-feet to any property line.
- B. Window-type refrigeration units, suspended evaporative coolers and furnaces, attached solar and similar equipment used for the dwelling may project not more than five-feet into the required setback area, provided they are not closer than two-feet to the property line.

1803.03 Rules Pertaining to Setback Areas

- A. No space needed to provide a setback area may be sold, leased, bequeathed, or otherwise transferred apart from the site if the transfer would result in the site failing to comply with all applicable requirements of these Zoning Regulations, except that this section shall not apply to prohibit governmental acquisitions of property or the use of remaining property after such acquisitions.
- B. Adjustments – Lot Line and Common Wall Subdivisions
Setback areas between lots or parcels in a platted subdivision may be reduced or eliminated, thereby permitting lot line and common wall subdivisions, so long as appropriate setback areas are maintained at the perimeter of the subdivision.

There shall be no minimum distance required between Solar Energy Power Plant components.

1824.05 Construction

Building permits are required for all Solar Energy Power Plants. All Solar Energy Power Plants must comply with the prescriptive requirements of the National Electric Code (NEC).

1825 Medical Marijuana Uses

The purpose of this Section is to establish site development standards for the permitting and operation of Medical Marijuana Cultivation Facilities, Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities, and Medical Marijuana Infusion Facilities.

1825.01 Zoning Districts

Medical Marijuana Dispensaries, Medical Marijuana Dispensary Cultivation Facilities, Medical Marijuana Infusion Facilities, and Medical Marijuana Cultivation Facilities are allowed by Special Use Permit in the Rural (RU-4, RU-10, RU-18, RU-36), General Business, Light, and Heavy Industry Zoning Districts.

1825.02 Setbacks

Minimum setbacks for dispensaries, infusion facilities, on-site dispensary cultivation and off-site dispensary-affiliated cultivation facilities shall be no closer than 500-feet, as measured from the property boundary, from:

- A. Any other medical marijuana dispensary or infusion facility.
- B. Any library.
- C. Schools (private or public).
- D. Day care centers (private or public).

Minimum setbacks for dispensaries, infusion facilities, onsite cultivation facilities, and offsite dispensary-affiliated cultivation facilities shall be no closer than 300-feet as measured from:

- A. Any existing residential use located in a residential Zoning District or an approved subdivision. The distance would be measured in a straight and direct horizontal line between the closest exterior wall of the medical marijuana dispensary to the closest exterior wall of the nearest principal residential structure(s).

1825.03 Restrictions

The following restrictions shall be applied to Medical Marijuana Dispensaries and Medical Marijuana Infusion Facilities:

- A. All Medical Marijuana Dispensaries and Medical Marijuana Infusion Facilities shall be located in a permanent building and may not be located in a trailer, cargo container, or motor vehicle.
- B. No Medical Marijuana Dispensaries and Medical Marijuana Infusion Facilities shall provide drive-through services.
- C. No Medical Marijuana Dispensaries and Medical Marijuana Infusion Facilities shall provide outdoor seating areas.

Exhibit E

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MUNGER CHADWICK, P.L.C.
National Bank Plaza
333 North Wilmot, Suite 300
Tucson, Arizona 85711
Telephone: (520) 721-1900
Facsimile: (520) 747-1550

John F. Munger (ASB#003735)
JFMunger@MungerChadwick.com
Michael L. Monti (ASB# 016270)
MLMonti@MungerChadwick.com
Adriane J. Hofmeyr (ASB#025100)
AJHofmeyr@MungerChadwick.com
Attorneys for Plaintiff/Petitioner/Appellant

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE**

<p>SONORAN CARE, LLC, an Arizona corporation,</p> <p>Plaintiff/Petitioner/Appellant,</p> <p>v.</p> <p>COCHISE COUNTY, a political subdivision of the State of Arizona,</p> <p>Defendant/Respondent/Appellee.</p>	<p>Case No.:</p> <p>AFFIDAVIT OF BECKI SHUMAKER</p> <p>Assigned to:</p>
---	--

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I, BECKI SHUMAKER, pursuant to Rule 80(i) of the Arizona Rules of Civil Procedure, hereby state:

1. I make this affidavit based on my own personal knowledge.
2. At all times relevant to the Complaint herein, I had (and still have) full authority to act as an agent of Sonoran Care, LLC, Plaintiff herein.
3. I purchased a parcel of land, APN-404-26-001, located 2.8 miles north of Davis Road on Central Highway south of Elfrida, Cochise County, Arizona ("the Parcel").

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4. In reliance on the Regulations, I purchased the Parcel on behalf of Plaintiff for the purpose of establishing a facility for the cultivation and dispensing of medical marijuana on the Parcel.

5. The Parcel is located in CHAA Number 121.

6. On September 25, 2015, I submitted an application to the Cochise County Planning Department, pursuant to the Regulations, on behalf of Sonoran Care LLC, seeking a special use permit in order to establish a facility for the cultivation and dispensing of medical marijuana on the Parcel (“the Application”).

7. Sonoran Care LLC complied with the requirements set out in the Regulations at §§ 1716.03(A) to (C) in that I first met with the County’s staff and notified property owners; then I filed the Application (with a concept plan, fee, and “Citizen Review Report”) with the County Zoning Inspector.

8. When I purchased the Parcel on behalf of Plaintiff, it was for the express purpose of applying for a special use permit to establish a facility for the cultivation and dispensing of medical marijuana on the Parcel.

9. I, on behalf of Plaintiff, relied on the Regulations in purchasing the Parcel and to determine whether Plaintiff could satisfy the requirements to qualify for an SUP.

10. I have read the Complaint herein and affirm that, to the best of my knowledge and belief, everything alleged therein is true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 8, 2016.



Becki Shumaker

Exhibit F

1 **MUNGER CHADWICK, P.L.C.**
National Bank Plaza
2 333 North Wilmot, Suite 300
Tucson, Arizona 85711
3 Telephone: (520) 721-1900
Facsimile: (520) 747-1550

4 John F. Munger (ASB#003735)
5 JFMunger@MungerChadwick.com
Michael L. Monti (ASB# 016270)
6 MLMonti@MungerChadwick.com
Adriane J. Hofmeyr (ASB#025100)
7 AJHofmeyr@MungerChadwick.com
Attorneys for Plaintiff/Petitioner/Appellant

8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF COCHISE**

<p>11 SONORAN CARE, LLC, an Arizona 12 corporation,</p> <p>13 Plaintiff/Petitioner/Appellant,</p> <p>14 v.</p> <p>15</p> <p>16 COCHISE COUNTY, a political 17 subdivision of the State of Arizona,</p> <p>18 Defendant/Respondent/Appellee.</p>	<p>Case No.:</p> <p>AFFIDAVIT OF DAVID BLAKE</p> <p>Assigned to:</p>
--	---

19 STATE OF ARIZONA)
20 COUNTY OF PIMA) ss.


21 I, DAVID BLAKE, pursuant to Rule 80(i) of the Arizona Rules of Civil Procedure,
22 hereby state:

- 23 1. I make this affidavit based on my own personal knowledge.
- 24 2. I am a member and the manager of Sonoran Care, LLC. Plaintiff herein.
- 25 3. At all times relevant to the Complaint herein, Rebecca Shumaker had (and still
- 26 has) full authority to act as an agent of Sonoran Care, LLC.
- 27 4. I have read the Complaint herein and affirm that, to the best of my knowledge and
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belief, everything alleged therein is true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
February 5th, 2016.



David Blake



Exhibit G



COMMUNITY DEVELOPMENT

"Public Programs of Assistance Services"

Special Use Project Application

Applicant's Certification & Acknowledgement

By signing below, I certify that:

1. I am the Owner or authorized Agent of the Owner of the property being developed.
2. I am applying for the meetings/ review(s) indicated below.
3. I have read and understand the information provided in this Application Guide.
4. This application is complete and accurate to the best of my knowledge. Submission of false information may constitute fraud, and may be punishable by fine, imprisonment, or both pursuant to A.R.S. §13-2310.
5. I hereby request all inspections necessary to process this application, and if the permit is issued I request all inspections necessary to monitor progress, and document completion, at all stages of the work related to this permit.

By signing below, I acknowledge that:

6. Incomplete or inaccurate submittals by the Owner, Applicant or any other representative may result in delays, return of submittals, or denial of this application.
7. The submittal is subject to an administrative review of 10-business days (5-business days initial review, 5-business days resubmittal review) at which time I will receive written or electronic notice if the application is complete or, in the case of an incomplete application, a list of deficiencies that need to be corrected. An application will not pass the review for administrative completeness until all deficiencies have been corrected.
8. If the County does not issue a written or electronic notice of administrative completeness within the 10-business days, the application will be deemed administratively complete and the substantive review process begins.
9. The overall review time is 130-business days.
10. The substantive review process is 120-business days.

By signing below, I acknowledge that:

11. A complete response to any correspondence will be submitted to Cochise County for any subsequent reviews.
12. The Applicant or Agent will be sent written or electronic notice of a license approval or denial within the substantive review period.
13. All required permits must be obtained prior to any construction and that failure to obtain permits may result in fines or other penalties.
14. The Applicant or Agent is responsible for all changes and additional time required to correct plans and/or development as a result of differences between the proposed use and what is permitted in the zoning district in which the property lies.
15. The project review process and timeframe is suspended when a project triggers the requirement for an application for approval by an Outside Agency, the Planning and Zoning Commission, and/or the Board of Supervisors. If either the Planning and Zoning Commission or the Board of Supervisors approves the request contained in the application, then Community Development Department will resume the project review process. If the Board of Supervisors denies the request, then the Community Development Department will consider the project to be denied.

By signing below, I acknowledge that:

16. An appeal protesting any denial of an application may be made to Cochise County Community Development Department, Planning Division Deputy Director, Beverly Wilson, 1415 Melody Lane, Bldg. E, Bisbee, Arizona 85603. The appeal shall set forth all relevant facts pertaining to the denial, and must be in writing. It must be filed within ten-days from the date of the denial letter.
17. If the County does not issue to the Applicant the written or electronic notice granting or denying a license within the overall time frame or within the mutually agreed upon time frame extension, the county SHALL refund the Applicant all fees charged for reviewing the applications and SHALL excuse any fees not yet paid. The refund SHALL be made within 30-working days after the expiration of the agreed upon time frame pursuant A.R.S. § 11-1605(J).

Becki D. Shumaker

Signature

Date

Becki D. Shumaker

9-25-2015

Print Name Firm

Owner Agent

Special Use Project Guide

Effective January 1, 2013

Submittal Review Timelines

Overall review time will be 130-business days.

Administrative Review:	10-business days	
1 st review	5-business days	Accepted or Notice of deficiencies
2 nd review	5-business days	Acceptance or Denial Letter
Substantive Review:	120-business days	
1 st review	110-business days	Approved or Correction Letter
2 nd review	10-business days	Approved or Denial Letter

(Business days are defined as complete 8-hour working days.)

REMINDER: The project review process and timeframe is suspended when a project triggers the requirement for approval by an Outside Agency, the Planning and Zoning Commission, and/or the Board of Supervisors. If either the Planning and Zoning Commission or the Board of Supervisors approves the request contained in the application, then the Community Development Department will resume the project review process. If the Board of Supervisors denies the request, then the Community Development Department will consider the project to be denied.

6. Hazardous or Polluting Materials Questionnaire, if applicable.

OTHER ATTACHMENTS THAT MAY BE REQUIRED DEPENDING ON THE SCOPE OF THE PROJECT

1. Construction Plans (possibly stamped by a licensed Engineer or Architect)
2. Off-site Improvement Plans
3. Soils Engineering Report
4. Landscape Plan
5. Hydrology/Hydraulic Report
6. Traffic Impact Analysis (TIA): **Where existing demonstrable traffic problems have already been identified such as high number of accidents, substandard road design or surface, or the road is near or over capacity, the applicant may be required to submit additional information on a TIA.**
7. Material Safety Data Sheets
8. Extremely Hazardous Materials Tier Two Reports
9. Detailed Inventory of Hazardous or Polluting Materials along with a Contingency Plan for spills or releases

The Commercial Permit Coordinator/Planner will advise you as soon as possible if and when any of the above attachments are required.

PART TWO - QUESTIONNAIRE

In the following sections, thoroughly describe the proposed use that you are requesting. **Attach separate pages if the lines provided are not adequate for your response.** Answer each question as completely as possible to avoid confusion once the permit is issued.

SECTION A - General Description (Use separate sheets as needed)

1. What is the existing use of the property? Vacant Land
2. What is the proposed use or improvement? Medical marijuana dispensary
and cultivation site.
3. Describe all activities that will occur as part of the proposed use. In your estimation, what impacts do you think these activities will have on neighboring properties? Dispensing medical
marijuana for patient necessity and cultivation of medical
4. Describe all intermediate and final products/services that will be produced/offered/sold. agricultural crops, i.e. medical marijuana. Potential increase in traffic flow.
Medical marijuana products, medical marijuana, holistic
services such as massage therapy, promotional items

G. Does your parcel have permanent legal access*? Yes No If no, what steps are you taking to obtain such access?

*Section 1807.02A of the Cochise County Zoning Regulations stipulates that no building permit for a non-residential use shall be issued unless a site has permanent and direct access to a publicly maintained street or street where a private maintenance agreement is in place. Said access shall be not less than twenty (20) feet wide throughout its entire length and shall adjoin the site for a minimum distance of twenty (20) feet. If access is from a private road or easement provide documentation of your right to use this road or easement and a private maintenance agreement.

H. For Special Uses only - provide deed restrictions that apply to this parcel if any.

Attached NA

8. Identify how the following services will be provided:

Service	Utility Company/Service Provider	Provisions to be made
Water	MULLIGAN WATER SYSTEM	STORAGE TANKS / PRIVATE WELL (FUTURE)
Sewer/Septic	SEPTIC	
Electricity	SULPHUR SPRINGS VIE.	ELECTRIC AT PROPERTY LINE
Natural Gas	N/A	
Telephone	N/A	
Fire Protection	ELFRIDA FIRE DISTRICT	

SECTION B - Outdoors Activities/Off-site Impacts

1. Describe any activities that will occur outdoors.

CULTIVATION OF MEDICAL MARIJUANA ACCORDING
 TO STATE LAW.

2. Will outdoor storage of equipment, materials or products be needed? - Yes No if yes, show the location on the site plan. Describe any measures to be taken to screen this storage from neighboring properties. PANELING AND FENCING OR WALL.

3. Will any noise be produced that can be heard on neighboring properties? Yes No if yes; describe the level and duration of this noise. What measures are you proposing to prevent this noise from being heard on neighboring properties? _____

4. Will any vibrations be produced that can be felt on neighboring properties? Yes No if yes; describe the level and duration of vibrations. What measures will be taken to prevent vibrations from impacting neighboring properties?

5. Will odors be created? Yes No If yes, what measures will be taken to prevent these odors from escaping onto neighboring properties?

6. Will any activities attract pests, such as flies? Yes No If yes, what measures will be taken to prevent a nuisance on neighboring properties?

7. Will outdoor lighting be used? Yes No If yes, show the location(s) on the site plan. Indicate how neighboring properties and roadways will be shielded from light spillover. Please provide manufacturer's specifications.

8. Do signs presently exist on the property? Yes No If yes, please indicate type (wall, freestanding, etc.) and square footage for each sign and show location on the site plan.

A. B. C. D.

9. Will any new signs be erected on site? Yes No If yes, show the location(s) on the site plan. Also, draw a sketch of the sign to scale, show the copy that will go on the sign and **FILL OUT A SIGN PERMIT APPLICATION** (attached).

10. Show on-site drainage flow on the site plan. Will drainage patterns on site be changed?
Yes No NONE KNOWN.

If yes, will storm water be directed into the public right-of-way? Yes No

Will washes be improved with culverts, bank protection, crossings or other means?
Yes No NONE KNOWN

If yes to any of these questions, describe and/or show on the site plan.

11. What surface will be used for driveways, parking and loading areas? (i.e., none, crushed aggregate, chipseal, asphalt, other)

12. Show dimensions of parking and loading areas, width of driveway and exact location of these areas on the site plan. (See site plan requirements checklist.)

13. Will you be performing any off-site construction (e.g., access aprons, driveways, and culverts)?
 Yes No If yes, show details on the site plan. **Note: The County may require off-site improvements reasonably related to the impacts of the use such as road or drainage improvements. AS RECOMMENDED BY HIGHWAY DEPARTMENT.**

SECTION C - Water Conservation and Land Clearing

1. If the developed portion of the site is one acre or larger, specific measures to conserve water on-site must be addressed. Specifically, design features that will be incorporated into the development to reduce water use, provide for detention and conserve and enhance natural recharge areas must be described. The Planning Department has prepared a *Water Wise Development Guide* to assist applicants. This guide is available upon request. If the site one acre or larger, what specific water conservation measures are proposed? Describe here or show on the site plan submitted with this application.

WATER RECYCLING, USE RETAINED WATER, LANDSCAPING WITH
 NATIVE PLANTS, WATER SENSE TOILET AND FAUCETS
 RAIN COLLECTION AND STORAGE TANKS

2. How many acres will be cleared? ONE ACRE
 If more than one acre is to be cleared describe the proposed dust and erosion control measures to be used (Show on site plan if appropriate.) - N/A -

SECTION D - Hazardous or Polluting Materials

Some businesses involve materials that can contaminate the soil, air, water, waste disposal system or environment in general. Precautions must be taken to protect the environment when such products are distributed to or from the site, stored, manufactured, processed, disposed of, or released as raw materials, products, wastes, emissions, or discharges (When sold or incorporated in a product these materials are required to have Material Safety Data Sheets (MSDS) supplied by the manufacturer.) Examples of such products include but are not limited to paint, solvents, chemicals and chemical wastes, oil, pesticides, herbicides, fertilizers, radioactive materials, biological wastes etc.

Does the proposed use have any activities involving such materials? ALL NATURAL AND ORGANIC PESTICIDES, HERBICIDES, FERTILIZERS, IF ANY. NO CHEMICALS.
 Yes No If yes, complete the attached *Hazardous or Polluting Materials Use Questionnaire*.

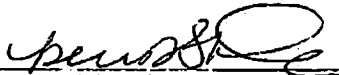
Note: Depending on quantities, this question does not apply to ordinary household or office products or wastes such as cleansers, waxes or office supplies. Answer YES only if the materials are involved in the commercial or special use process or if landscaping or maintenance chemicals (pesticides, fertilizers, paints, etc.) will be present in quantities greater than 50 pounds (solids) or 25 gallons (liquids).

If you answer NO to this question but in the County's experience, the type of business proposed typically uses such materials, you will be asked to complete the *Hazardous or Polluting Materials Questionnaire* prior to processing this Commercial Use/ Building/ Special Use Permit.

Applications that involve hazardous or polluting materials may take a longer than normal processing time due to the need for additional research. The Arizona Department of Environmental Quality Compliance Assistance Program can address questions about Hazardous Materials (1-800-234-5677, ext. 4333).

SECTION E - Applicant's Statement

I hereby certify that I am the owner or duly authorized owner's agent and all information in this questionnaire, in the Joint Permit Application and on the site plan is accurate. I understand that if any information is false, it may be grounds for revocation of the Commercial Use/ Building/ Special Use Permit.

Applicant's Signature 

Print Applicant's Name Becci D. SOMMER

Date signed 9-25-15

Exhibit H



Cochise County
Community Development
Planning, Zoning and Building Safety Division

Public Programs...Personal Service
www.cochise.az.gov

MEMORANDUM

TO: Cochise County Planning and Zoning Commission
FROM: Jesse Drake, Planning Manager
FOR: Mary Gomez, Interim Planning Director
SUBJECT: Docket SU-15-18 (Sonoran Care)
DATE: October 29, 2015 for the November 18, 2015 Meeting

APPLICATION FOR A SPECIAL USE

The Applicant is requesting a Special Use authorization to approve a facility for personal services and the cultivation and dispensing of medical marijuana at on an RU-4, Rural zoned property. The proposed uses are considered a Special Use in RU-4 Rural Zoning Districts under Sections 607.26 and 607.55 of the Zoning Regulations. The subject parcel, APN 404-26-001 is located at 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ. The Applicant is Sonoran Care, LLC.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Parcel Size: 8.91-acres
Zoning: RU-4 Rural (one residence per four-acres)
Growth Area: Rural
Comprehensive Plan Designation: D
Area Plan: None
Existing Uses: Vacant
Proposed Uses: Medical marijuana dispensary and cultivation, and personal services

Zoning/Use of Surrounding Properties

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-4	Latimer Road, Abandoned SFR, Vacant & Agriculture
South	RU-4	Vacant
East	RU-4	Central Highway & Vacant
West	RU-4	Vacant

Planning, Zoning and Building Safety
1415 Melody Lane, Building E
Bisbee, Arizona 85603
520-432-9300
520-432-9278 fax
1-877-777-7958
planningandzoning@cochise.az.gov

Highway and Floodplain
1415 Melody Lane, Building F
Bisbee, Arizona 85603
520-432-9300
520-432-9337 fax
1-800-752-3745
highway@cochise.az.gov
floodplain@cochise.az.gov

II. PARCEL HISTORY

Vacant land.

III. NATURE OF REQUEST

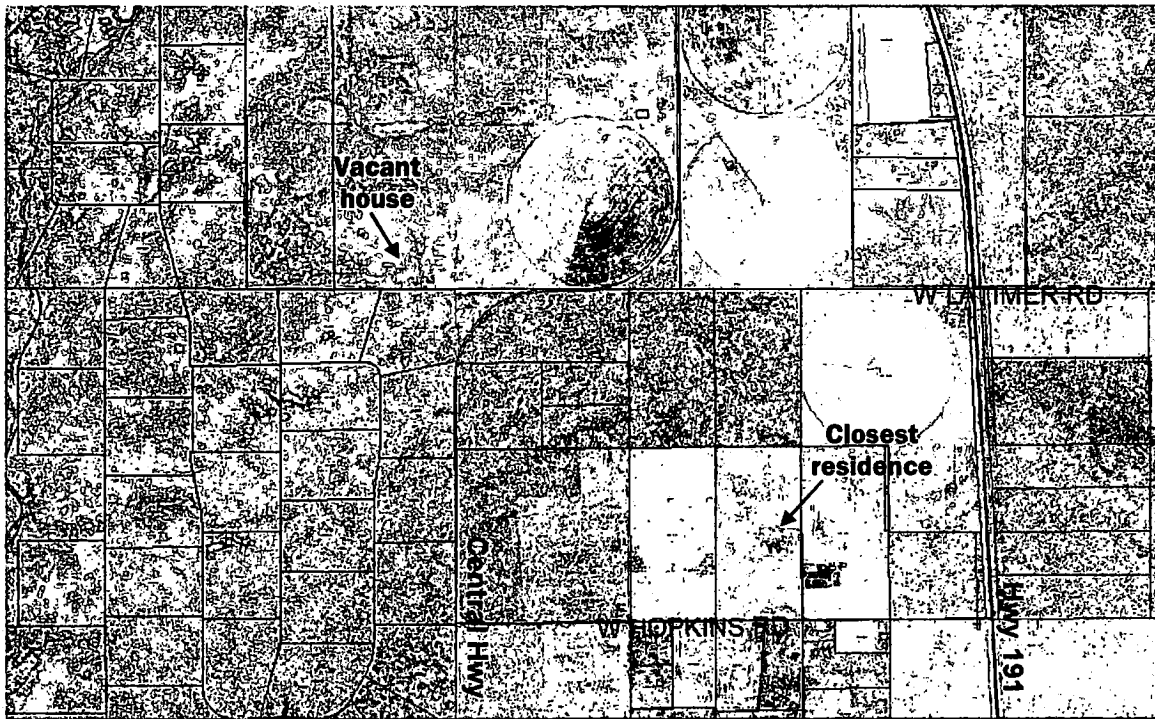
The Applicant is requesting a Special Use authorization to approve a facility for personal services and the cultivation and dispensing of medical marijuana on a vacant RU-4, Rural zoned property. The site is located approximately 2.8 miles north of Davis Road on Central Highway, south of Elfrida, AZ.

There are three components to the request: a medical marijuana cultivation area, a dispensary for the medical marijuana and associated products, and a facility for holistic services such as massage therapy and the sales of promotional items.

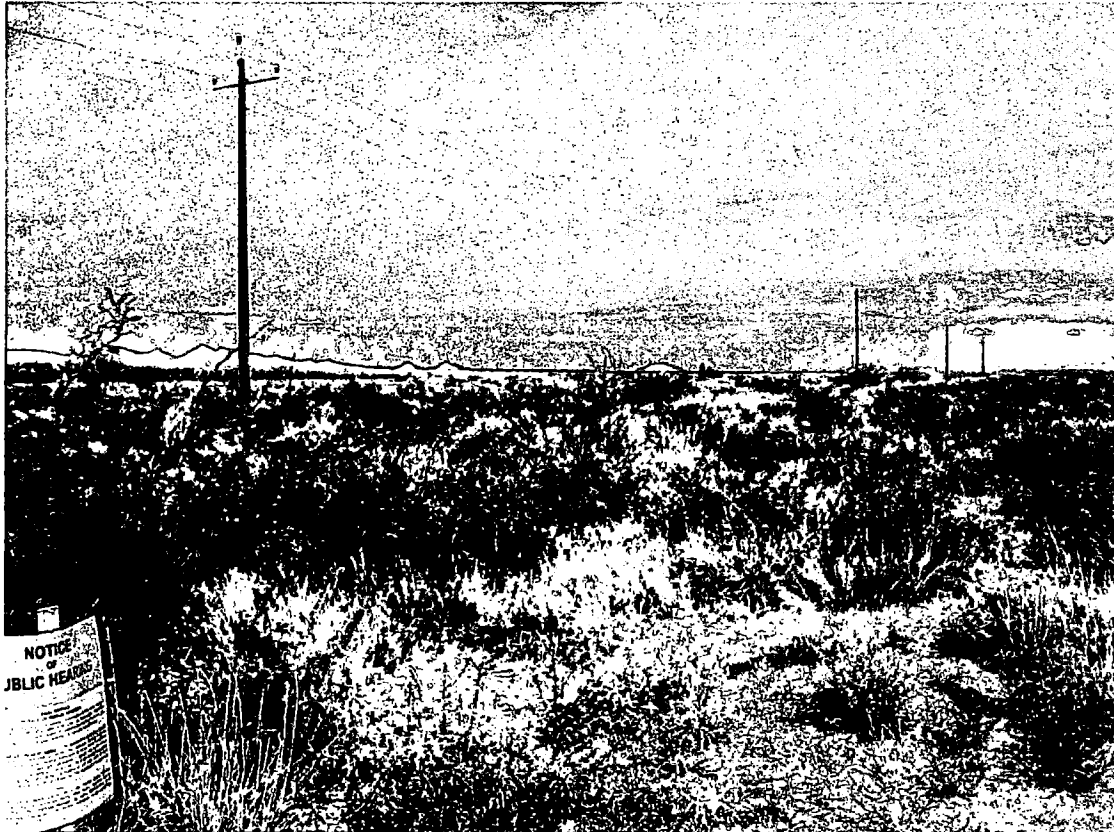
Since the property is vacant, the applicant will be applying for permits for all buildings and improvements on the property and will be using on-site water tanks prior to the installation of a new well. Estimated water use is 100 gallons per day. A permanent factory-built building will be installed for the office/dispensary/personal services. Hours of operation are five days a week, from 10AM to 4PM. The business will begin operations with three employees, increasing to as many as ten employees as the business increases. The business will have a sign, and a sign application has been submitted.

Article 1825 of the Cochise County Zoning Regulations requires a minimum 300-foot separation from any residence for a medical marijuana use. The closest house, a vacant structure, on the north, is approximately 384-feet from the existing residential structure. The closest occupied residence is over one mile from the subject property's boundary line. There are no other facilities, libraries, schools, or day-care facilities in area.

Any medical marijuana cultivation and dispensary facilities will be required to meet the security requirements mandated by the State of Arizona, and will require final approval from the Arizona Department of Health Services (AZDHS) prior to beginning of any marijuana cultivation or dispensing.



Location Map



View north across site to vacant house from southern edge of property



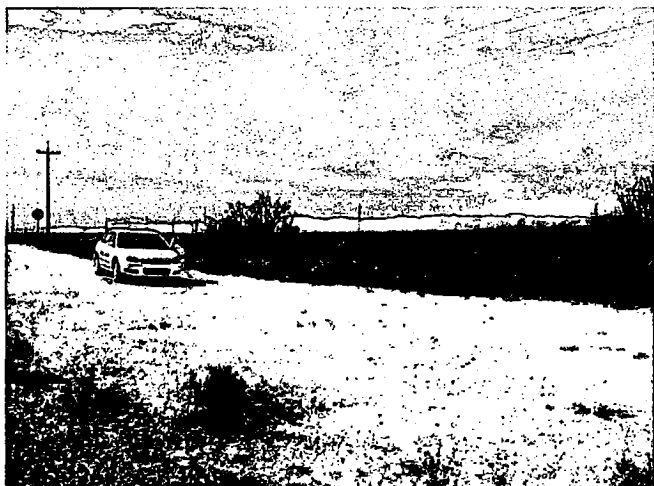
Vacant house and interior of house



View to north from southern edge next to Central Hwy



View to north to agricultural from north edge of property



View to southeast from southern edge of property



View to east across Central Hwy from southern edge



View to west across property at southern edge



View northwest to agricultural fields from northern edge

IV. ANALYSIS OF IMPACTS – COMPLIANCE WITH SPECIAL USE FACTORS

Section 1716.02 of the Zoning Regulations provides a list of ten factors with which to evaluate Special Use applications. Staff uses these factors to help determine the suitability of a given Special Use request, whether to recommend approval for a Special Use Permit, as well as to determine what Conditions and/or Modifications may be needed.

Nine of the ten factors apply to this request. The project, as submitted, complies with eight of the conditions and conditionally complies with the ninth factor. The one remaining factor is not relevant to this application.

A. Compliance with Duly Adopted Plans: Complies

The project site is not within the boundaries of any area plan.

The Comprehensive Plan designation for the property is Category D-Rural. In the Zoning Ordinance, Section 403.04, Category D, designated properties are identified as the outlying rural areas between cities and unincorporated communities, characterized by a low rate of growth; unimproved roads; low density, large lot rural residential development; agricultural production; and large tracts of undeveloped private and public lands.

The requested Special Use is in an outlying rural area between unincorporated communities that have a low growth rate, and is in a very low density area surrounded by agricultural and vacant lands, which is compatible with the D-Rural designation.

B. Compliance with the Zoning District Purpose Statement: Complies

The application complies with two of the purpose statements in Article 6:

601.01 To preserve the character of areas designated as "Rural" in the Cochise County Comprehensive Plan;

601.02 To encourage those types of non-residential and non-agricultural activities which serve local needs or provide a service and are compatible with rural living.

C. Development Along Major Streets: Complies

The property takes access from Central Highway which intersects with Davis Road on the south and with Highway 191 on the north. Both Central Highway and Davis Road are county-maintained roads and Highway 191 is maintained by the Arizona Department of Transportation.

D. Traffic Circulation Factors: Complies with Conditions

The Comprehensive Plan policies state that development should take place in such a way as to preserve the function of those streets. In particular, non-residential uses should have access to major roadways where possible, and non-residential traffic should not proceed along streets that primarily serve residential areas. In this case, one access point onto Central Highway is being proposed. The property has approximately 1500 foot of frontage onto Central Highway, county-maintained rural minor roadway that currently has an average of 585 vehicles per day going southbound (2013 traffic counts). All employees and customers would use Central Highway for access to the property.

The Country Transportation Department estimates that the project would generate an increase in traffic averaging of 13 to 30 trips per day.

As a growing operation only the requested use is unlikely to alter the type or volume of traffic. However, once the personal services component of the clinic is added the higher end of the estimated trip generation is more likely but the traffic pattern in the area is unlikely to change or negatively impact Central Highway or surrounding property owners.

The traffic impact for this use, as proposed, would be compatible with the area with access via maintained roadways to Highway 191. At the proposed scale of operation it is not anticipated that off-site mitigation would be needed.

With the proposed commercial use both a commercial apron and a Right-of-Way/Encroachment permit for taking

access from the county-maintained roadway would be required. Conceptually, the location of the driveway is adequate for this review; however, this location has super-elevation changes along this segment of roadway, horizontal curves, sight distance appears to be good in all directions but the rural area higher speed of drivers raises concerns with angled turning movements. The driveway should be redesigned to be perpendicular to the roadway with radii sufficient for truck turning movements in and out of the project site.

Trip generation at this location is not significant enough to warrant a full Traffic Impact Analysis nor does the County feel that a Traffic Impact Statement (which focuses on an analysis of the impacts of the proposed development) is needed. However, the driveway location and design must be coordinated with the County's Highway Department. The applicant is requested to work with a traffic engineer to identify the best location along their frontage for the driveway access, given the factors present on this roadway segment. The applicant is also requested to work with a traffic engineer to identify the driveway design criteria to meet a commercial driveway standards or as approved by the County Engineer. This information should be submitted to the County for review in advance or concurrent with the applicant's first Commercial Permit.

E. Adequate Services and Infrastructure: Complies

The project site is served by Sulphur Springs Valley Electric Cooperative, water will be brought in and stored until an on-site private well is drilled; and a septic tank will be installed. The parcel is in the Elfrida Fire District service area.

F. Significant Site Development Standards: Complies

The applicant has not requested any waivers from site development standards. All site development standards must be met to obtain a non-residential use permit, should this request be approved. The property has adequate area for parking. Any structures will be required to meet the zoning regulations as they pertain to set-backs, off-site parking, and loading areas, distance between buildings, screening, land clearing, water conservation, and Section 1825 of the Zoning Regulations pertaining to medical marijuana. In addition to County regulations, the applicant will be required to meet all regulations and requirements established by the State of Arizona for these types of facilities.

G. Public Input: Complies

The Applicant sent letters to all property owners within 1,500-feet of the tower parcel to notify them of his application and to address any neighbor concerns. This notification produced comments from eleven residents on seven properties, all in opposition to the request. Five of these neighbors sent an identical letter in twice.

H. Hazardous Materials: Not Applicable

The applicant has indicated that no hazardous materials will be used on site.

I. Off-Site Impacts: Complies.

The proposed facility is not anticipated to produce off-site impacts. The applicant is proposing to use carbon filtration and ozone odor eliminating technology to reduce any off-site odors. Any lighting required by the State of Arizona for medical marijuana facilities will be installed to meet the lighting requirements in the County Zoning Ordinance.

J. Water Conservation: Complies

The applicant is proposing to use a rainwater collection system with storage tanks, reuse reclaimed water and use water recycling, landscaping with native plants, and use water sense toilets and faucets.

V. PUBLIC COMMENT

The Planning Department mailed notices to neighboring property owners within 1,500-feet of the subject property. Staff posted the property, and published a legal notice in the *Bisbee Observer* on October 22, 2015. In response to applicant and County mailings, the Planning Department received three letters opposing this request. All three letters received by staff were from residents who had previously sent in letters from the citizen notification letter sent by the applicant.

VI. SUMMARY AND CONCLUSION

This request is for a Special Use authorization to approve a personal services facility together with a medical marijuana dispensary and cultivation area on an approximately nine acre RU-4 Rural zoned property south of Elfrida, Arizona. All site development standards will be met during the Joint Use Permitting process, including the security and lighting requirements from the State of Arizona.

Approval of this land use does not guarantee that the applicant will be successful in obtaining a license with the State of Arizona for a medical marijuana cultivation and dispensary facility; obtaining County land use approval is only one part of the State application process.

Factors in Favor of Approving the Special Use

1. With the recommended Conditions of Approval, the proposed use would fully comply with the nine Special Use factors used by staff to analyze this request;
2. The proposal complies with the Adopted Comprehensive Plan category and Zoning ordinance and purpose;
3. The County Transportation has stated that the project as submitted will not generate significant traffic impacts to the area; and
4. The facility will generate higher taxes than the currently vacant land and will provide jobs for up to ten employees.

Factors Against Allowing the Special Use

1. Eleven neighbors on seven properties have expressed opposition to this application.

VII. RECOMMENDATION

Based on the factors in favor of approval, Staff recommends **Conditional Approval** of the Special Use request, subject to the following Conditions:

1. Within 30-days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12-months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18-months of the Special Use approval, otherwise the Special Use may be deemed void upon 30-day notification to the Applicant;
2. It is the Applicant's responsibility to obtain any additional permits, or meet any additional Conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations;
3. Prior to or concurrent with the first Commercial Permit application the applicant will provide a Basic Traffic Report to the County Transportation Department that will include an assessment of the most suitable location for the driveway location and the design criteria of the driveway;
4. Prior to or concurrent with the first Commercial Permit application the applicant shall obtain a Cochise County Right-of-Way/Encroachment Permit;
5. The applicant shall design and construct any access from Central Highway to a commercial driveway standard per the Cochise County Roadway Design Standards or as approved by the County Engineer.

Sample Motion: *Mr. Chairman, I move to approve Special Use Docket SU-15-18, with the Conditions of Approval as recommended by staff; the Factors in Favor of Approval constituting the Findings of Fact.*

VIII. ATTACHMENTS

- A. Special Use application with site plan*
- B. Location map*
- C. Letter to neighbors*
- D. Agency comments*
- E. Public Comment*

Exhibit I

**COCHISE COUNTY PLANNING & ZONING COMMISSION
FINAL MINUTES
November 18, 2015
REGULAR MEETING at 4:00 p.m.**

The regular meeting of the Cochise County Planning and Zoning Commission was called to order at 4:00 p.m. by Vice-Chairman Martzke at the Cochise County Complex, 1415 Melody Lane, Building G, Bisbee, Arizona in the Board of Supervisors' Hearing Room. Mr. Martzke admonished the public to turn off cell phones, use the speaker request forms provided, and to address the Commission from the podium using the microphone. He explained the time allotted to speakers when at the podium. He then explained the composition of the Commission, and indicated that there was one Special Use Authorization Docket on the agenda. Mr. Martzke explained the consequences of a potential tie vote and the process for approval and appeal.

ROLL CALL

Mr. Martzke noted the presence of a quorum and called the roll, asking the Commissioners to introduce themselves and indicate the respective District they represent; five Commissioners (Jim Martzke, Carmen Miller, Gary Brauchla, Wayne Gregan, and Pat Edie indicated their presence. Staff members present included; Paul Esparza, Planning Director; Jesse Drake, Planning Manager; Peter Gardner, Planner I; Jim Henry, Planner I; Karen Lamberton, Transportation Planner.

APPROVAL OF THE MINUTES

Motion: Approve the minutes of the October 14, 2015. **Action:** Approve

Moved by: Ms. Edie **Seconded by:** Ms. Miller

Vote: Motion passed (**Summary:** Yes =3, No = 0, Abstain = 2)

Yes: Mr. Martzke, Ms. Miller, and Ms. Edie

No: 0

Abstain: Mr. Brauchla and Mr. Gregan

CALL TO THE PUBLIC: None

NEW BUSINESS

Item 1 PUBLIC HEARING Docket ALQ-15-09

A request for an authorization to approve an Accessory Living Quarter for a 704 sq. ft. one-bedroom manufactured home as an accessory structure to the existing 1,435 sq. ft. two bedroom site-built home on an RU-4 Rural property located at 4872 S. Ranch Road, in Sierra Vista, AZ. The Applicant is Martha Stoner. Vice-Chairman Martzke called for the Planning Director's report. Planner I Peter Gardner presented the Docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Gardner also explained Staff's analysis of the request. He closed by listing factors in favor of and against approval and invited questions from the Commission.

Vice-Chairman Martzke then opened the Public Hearing. Ms. Marti Stoner and her son, Mr. Kyle O'Brien, the Applicant, explained the request and invited questions. They stated that by living on

the site, they could help secure the property and speed up the improvements. They then invited questions.

There being no speakers in support or opposition, Mr. Martzke closed the Public Hearing and invited discussion. There being no discussion, Mr. Martzke asked for Staff's recommendation. Mr. Gardner recommended Conditional Approval. Mr. Martzke called for a motion. Mr. Gregan made a motion of Conditional Approval, with the Conditions recommended by Staff. Ms. Edie seconded the motion. There being no further discussion, Mr. Martzke called for a vote on the motion. The motion passed 5-0.

Motion: Motioned to Approve the Docket with the Conditions and Modifications recommended by Staff

Moved by: Mr. Gregan **Seconded by:** Ms. Edie

Vote: Motion passed (**Summary:** Yes = 5, No =0, Abstain = 0)

Yes: Mr. Martzke, Ms. Miller, Mr. Brauchla, Mr. Gregan, and Ms. Edie

No: 0

Abstain: 0

Item 2 PUBLIC HEARING Docket SU-15-18 (Sonoran Care)

A request for a Special Use authorization to approve a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4 (Rural) zoning district located approximately 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ. The applicant is Sonoran Care LLC.

Vice-Chairman Martzke called for the Planning Director's report. Planning Manager Jesse Drake presented the Docket, explaining the background of the request utilizing photos, maps, and other visual aids. Ms. Drake also explained Staff's analysis of the request. She closed by listing factors in favor of and against approval and invited questions from the Commission.

Mr. Martzke then opened the Public Hearing. Ms. Becki Shumaker and David Blake, the Applicants, explained the request. The Applicants explained their backgrounds in the health care and medical marijuana fields. They explained the uses of medical marijuana, and addressed concerns about their company, crime, and water usage. Mr. Gregan asked for the size of the cultivation area. Mr. Blake stated that it would be two acres maximum, but they expected 30,000 square-feet.

Mr. Ray Zuck of Elfrida spoke in opposition. Mr. Zuck noted that he farmed near the proposed site, and explained water rights, stating that he did not believe that water rights were available for the subject parcel. He also stated that he felt there was no need for that much medical marijuana in Cochise County. He closed by asking about pesticide use and its impact on his crops.

Ms. Laura Randolph of Elfrida spoke in opposition. She stated that she lived less than two miles from the site, and that Staff's photos were deceptive. She stated that as a teacher, she was opposed, and that marijuana should be dispensed in a medical facility. She closed by imploring the applicant to "keep it in Tucson".

Mr. Richard Anderson of McNeal spoke in opposition. He stated that the land that Staff referred to as vacant was actually occupied. Mr. Anderson stated that he had voted in favor of medical marijuana, but was concerned about the Applicants' history. He stated that he had communicated

directly with the Applicants, but felt that the answers he received were incomplete or evasive. He noted that marijuana uses cause controversy, and expressed alarm at his perceived lack of transparency from the Applicants.

Ms. Linda Bohling of McNeal spoke in opposition. She stated that she was involved in a number of children's programs in Elfrida, and that she was on the Foster Care Review Board. She stated that marijuana destroys families, with all of the parents of the foster children were using drugs, and that this dispensary would exacerbate the problem by making marijuana readily accessible. Ms. Bohling stated that people had to drive to Bisbee or Sierra Vista for other medication and it seemed right for them to do so for medical marijuana as well.

Ms. Brenda Anderson of McNeal spoke in opposition. She stated that she lived in the area since 1966, and could see the site from her home. She expressed concerns about the water, noting that she had lost her water rights for not farming constantly. Ms. Anderson also expressed concern about the number of schools within several miles of the site.

Mr. Eric Cartier of Sunizona spoke in opposition. He stated that he would like to see rural Arizona stay as it is. He stated that he felt the existing dispensary in Dragoon was sufficient for the County. Mr. Cartier expressed concern about substance abuse in the County, and that he felt the high school students would find the marijuana readily accessible. He claimed that in Europe, it is common for addicts to raid opium fields during harvest.

The Applicants rebutted, with Mr. Blake stating that water would be hauled in and rainwater collected, but there would be no well drilled. He explained how stringent the state regulations are, and how difficult it would be for students to acquire marijuana from the dispensary compared to buying on the black market. He noted that there is no evidence that dispensaries attract crime or increase drug use. Mr. Blake closed by addressing Mr. Anderson's concerns, and noting that no pesticides would be used.

There being no further speakers in support or opposition, Mr. Martzke closed the Public Hearing and asked for Staff's recommendation. Ms. Drake recommended Conditional Approval. Mr. Martzke called for discussion. Ms. Edie commented that she had concerns about the speeds that vehicles travel at on Central Highway, and that she was worried about traffic safety at that location. Mr. Gregan stated that everyone should understand what the Commission's purview was, staying under the strict limits of their powers. He stated that the water and security issues were regulated by the State, and that the Commission could not consider those factors. Ms. Miller stated that Cochise County is an agricultural area and that she wanted it to stay that way. She stated that marijuana was a cash crop in her mind, but felt that the water issue needed to be addressed, along with the community's' concerns. She expressed the tough nature of the decision based on the jockeying of various individuals' private property rights. Mr. Martzke stated again that the water rights were not an issue for the Commission. He also stated that the Commission was only approving the land use, not the actual operation. Mr. Martzke then called for a motion. Mr. Gregan made a motion of Conditional Approval, with the Conditions recommended by Staff. Ms. Miller seconded the motion. There being no further discussion, Mr. Martzke called for a vote on the motion. The motion failed 2-3, with Ms. Miller, Mr. Brauchla, and Ms. Edie in opposition.

Motion: Motioned to Approve the Docket with the Conditions recommended by Staff
Moved by: Mr. Gregan **Seconded by:** Ms. Miller

Vote: Motion failed (**Summary:** Yes = 2, No =3, Abstain = 0)

Yes: Mr. Martzke, and Mr. Gregan

No: Ms. Miller, Mr. Brauchla, and Ms. Edie

Abstain: 0

Item 3 PUBLIC HEARING Docket SU-11-06B (Mead)

A request for a modification to an existing Special Use to approve two items: additional cultivation areas for an approved medical marijuana dispensary and cultivation facility; and a wellness center for public use, in an RU-4 (Rural) zoning district located near the intersection of W. Dragoon Rd. and N. Old Coyote Rd. in Cochise, AZ. The applicant is Catherine Mead.

Vice-Chairman Greene called for the Planning Director's report. Planner I Jim Henry presented the Docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Henry also explained Staff's analysis of the request. He closed by listing factors in favor of and against approval and invited questions from the Commission.

Mr. Martzke then opened the Public Hearing. Ms. Catherine Mead and Tom Maglione, the Applicants, explained the request. She detailed how the project has grown since the initial approval four years ago, detailing the demand, and explaining the types of patients they work with. She stated that there have not been any criminal incidents at their facility in the four years. Ms. Mead noted that there was a great deal of community support in the area. She explained that the operation was a non-profit, as required by law, and that they were planning to invest in youth services in the area as part of the non-profit mission. Ms. Mead continued by detailing the proposed wellness center for natural and holistic health services. She closed by inviting questions. Ms. Edie asked about the greenhouses in comparison to the existing grow area. Ms. Mead stated that this was a best case, phased plan, with expectations to construct only one. Ms. Edie asked about the phasing plan. Ms. Mead stated that it was based on demand, but expected a two to three year period. Mr. Gregan then asked about the other capacity and if the product was for onsite or offsite dispensaries. Ms. Mead stated that it was both, but offsite was delivered, and clarified that the additional wholesaling would still be done in one truck. Mr. Gregan asked if there had been any break ins or product stolen. Mr. Mead stated that there had been no such occurrences, and detailed her security measures, noting that they exceeded state requirements. Mr. Gregan asked about traffic concerns associated with the wellness center. Ms. Mead stated it was hypothetical at this point, and compared it to traffic from the Amerind Foundation, and stated that she hoped much of the clientele would be local. She then stated that if she outgrew the site she would happily move.

Mrs. Dorothy Pickett of Cochise spoke in opposition. Mrs. Pickett stated that she lived near the property, abutting corner to corner with the Applicant's property. She stated that there were many homes in the area. She expressed concern about water rights, water usage, chemical usage, safety, and drug use.

Mr. Edward Pickett of Cochise spoke in opposition. Mr. Pickett expressed concern about nearby school districts and the presence of children. He stated that while there have not been any break ins yet, but that he felt it would happen soon.

Ms. Mead rebutted, stating that there would not a lounge, and that the state prohibits the use of medical marijuana at a dispensary. She showed the water usage in relation to other greenhouse crops, and explained the cultivation and pest control methods. She also explained the rainwater

collection systems that would be installed on the greenhouses. Mr. Gregan asked about delivery trips per month. Ms. Mead stated that it averages one trip every other month.

There being no further speakers, Mr. Martzke closed the Public Hearing and asked for Staff's recommendation. Mr. Henry recommended Conditional Approval. Ms. Edie asked for clarification of the permit process and when permits for each building would be required. Mr. Gardner explained that each building would be permitted when it was ready for construction, and the conditions would be satisfied when the first permit is issued. Mr. Greene called for a motion. Ms. Edie made a motion of Conditional Approval, with the Conditions recommended by Staff. Mr. Gregan seconded the motion. There being no further discussion, Mr. Martzke called for a vote on the motion. The motion passed 5-0.

Motion: Motioned to Approve the Docket with the Conditions recommended by Staff

Moved by: Ms. Edie **Seconded by:** Mr. Gregan

Vote: Motion passed (**Summary:** Yes = 5, No = 0, Abstain = 0)

Yes: Mr. Martzke, Ms. Miller, Mr. Brauchla, Mr. Gregan, and Ms. Edie

No: 0

Abstain: 0

Item 4 PUBLIC HEARING Docket SU-15-17 (Youth Pad, Inc)

A request for a Special Use authorization to approve a variety of uses for: educational services, group quarters, small engine repair services, restaurant, indoor/outdoor recreation, guest lodging, animal husbandry, and an RV Park that will be accessory to the church facility located in an RU-4 (Rural) zoning district located at 9210 E. Miracle Valley Loop in Palominas, AZ, locally known as the Miracle Valley Bible College. The applicant is The Youth Pad, Inc.

Vice-Chairman Martzke called for the Planning Director's report. Planner I Peter Gardner presented the Docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Gardner also explained Staff's analysis of the request, including the requested modifications to site development standards. He closed by listing factors in favor of and against approval and invited questions from the Commission.

Mr. Martzke then opened the Public Hearing. Mr. Luis Bettencourt, the Applicant, explained the request, and invited questions from the Commission. Mr. Gregan asked about the final overall number of people that would be on site. Mr. Bettencourt explained he was aiming for about 200 students with accompanying faculty and staff. Mr. Martzke asked about time frame for the project. Mr. Bettencourt explained that they operated on donations, but hoped to be running within five years. Mr. Gregan asked why the entire concept was coming in at once, and expressed worry about the traffic and potential traffic improvements that might be out of reach of the Applicant. Mr. Gardner explained that Staff had recommended that the Applicant submit the entire package at once, and how the conditions were crafted with the input of the Transportation Planner to mitigate the traffic issues, and how Staff would work with him to foresee and prevent problems.

Mr. Joe Scelso of Hereford spoke, identifying himself as the owner of the ranch to the south of the site. He expressed support for the entire project including the requested modifications, as he would be most impacted by the building and wall, and preferred them as is, without the screening wall. He expressed support for the Applicant and his plans, and urged the Commission

to approve the docket. Mr. Scelso also supported lowering the speed limit on that stretch of the highway.

There being no further speakers in support or opposition, Mr. Martzke closed the Public Hearing and asked for Staff's recommendation. Mr. Gardner recommended Conditional Approval with the requested Modifications. Mr. Gregan expressed concern about the RV Park and its potential to grow and create an eyesore, and suggested screening that portion of the property. Mr. Gardner suggested limiting the Park to the existing number of spaces, except as permitted under the temporary use regulations. Mr. Gregan expressed approval, and Mr. Gardner wrote a condition to codify the requirement. Mr. Martzke called for a motion. Ms. Edie made a motion of Conditional Approval, with the Conditions and Modifications recommended by Staff, including the additional Condition #7 limiting expansion of the RV Park. Mr. Gregan seconded the motion. There being no further discussion, Mr. Martzke called for a vote on the motion. The motion passed 5-0.

Motion: Motioned to Approve the Docket with the Conditions and Modifications recommended by Staff, including Condition #7 limiting expansion of the RV Park

Moved by: Ms. Edie **Seconded by:** Mr. Gregan

Vote: Motion passed (**Summary:** Yes = 5, No = 0, Abstain = 0)

Yes: Mr. Martzke, Ms. Miller, Mr. Brauchla, Mr. Gregan, and Ms. Edie

No: 0

Abstain: 0

PLANNING DIRECTOR'S REPORT:

Board of Supervisors:

October 20, 2015

- a. Z-15-06 (Hidalgo) Naco rezoning passed on consent agenda

Next P&Z Commission meeting

December 9, 2015

- a. SU-15-19 (Crisantes) Medical Marijuana, cultivation only
- b. SU-15-20 (Pinnacle Tower Naco) Communications tower in Naco

Upcoming:

- a. Verizon St. David stealth cell tower

CALL TO COMMISSIONERS ON RECENT MATTERS:

None

ADJOURNMENT – Ms. Edie moved to adjourn, Mr. Gregan seconded, and the meeting was adjourned at 6:30 pm.



Exhibit J



COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

SPECIAL USE APPLICATION FOR APPEAL

NAME OF APPELLANT: Sonoran Care, LLC

ADDRESS: Ms. Becki Shumaker, 8630 E. Bellvue Place, Tucson, AZ 85715

PHONE NUMBER: (520) 248-9958

EMAIL ADDRESS: shumaker.becki@gmail.com

NUMBER OF DOCKET APPEALED: SU- 15-18

DATE OF COMMISSION DECISION: Wednesday, November 18, 2015

DATE OF APPEAL SUBMITTAL: 12/1/2015 FEE PAID: \$ 300.00

In addition to the \$300 fee, the following information shall be provided before an appeal can be accepted. If more room is needed please attach additional pages.

1. Description of the decision being appealed. An appellant can appeal the Commission's decision for approval or disapproval or any conditions stipulated as part of docket approval.

This is an appeal from the DENIAL of Sonoran Care, LLC's request for a Special Use

Permit to establish a facility for personal services and the cultivation and dispensing

of medical marijuana on an RU-4, Rural zoned property, parcel 404-26-101,

located at 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ.

Special Use Appeal Application

Page Two

2. A complete statement of all reasons why the appellant believes that the decision, or any part of the decision was erroneous, arbitrary, capricious, or any abuse of discretion.

Please see attached.

3. Written presentation of additional testimony & evidence. A full explanation of the additional testimony & evidence that will be submitted with explanation of why this was not presented to the Planning Commission.

Please see attached.

SIGNATURE _____

**Special Use Application For Appeal
Attachment for Questions 2 and 3**

2. A complete statement of all reasons why the appellant believes that the decision, or any part of the decision was erroneous, arbitrary, capricious, or any abuse of discretion.

Applicant believes that the Cochise County Planning and Zoning Commission acted in error and arbitrarily, capriciously and contrary to law, in denying its request for a Special Use Permit. Section 1706.2 of The Cochise County Zoning Regulations specifies ten factors with which to evaluate a Special Use request. Only nine factors were found to apply in this instance. One factor was found not to apply to this Applicant (Factor H, Hazardous Materials). Staff found that Applicant's request complied outright with eight of the remaining factors, and the request conditionally complied with the ninth factor. The one conditional factor was Factor D., Traffic Circulation Patterns, which is insignificant because the Applicant has agreed to work with a traffic engineer to address the concerns raised by Staff concerning driveway design, placement and construction. In any case, the staff recommended approval of the requested special use permit based on County criteria. Thus, there is no question that the project meets the requirements of the county codes. But instead of deciding the matter on these relevant issues, Applicant believes that the Commission, in making its decision, took criteria other than the Cochise County Zoning Regulations into account. Specifically, the Commission made its decision based on 1) its own opinions about Arizona's marijuana laws (passed by the public in an election); 2) objections made by persons who live more than one full mile from the project, which objections amounted to mere unfounded speculation and (again) personal opinions about Arizona's marijuana laws; 3) bias against the principals of the proposed project because they live outside Cochise County.

3. Written presentation of additional testimony & evidence. A full explanation of the additional testimony & evidence that will be submitted with explanation of why this was not presented to the Planning Commission.

The evidence Applicant intends to present at the hearing includes the following:

- The recommendation of the county staff demonstrating that the project substantially meets the requirements of the County's codes and recommending approval of the requested special use permit.
- Quotes from the recording of the hearing will demonstrate that one or more of the Commissioners disliked the Applicant merely because the principals are from Tucson;
- Quotes from the recording will indicate that one or more commissioners' unfounded and speculative objections to traffic that would be generated by the proposed facility despite the Staff's finding that the impact of the proposed facility would be "unlikely to change or negatively impact" surrounding traffic patterns.
- Quotes from the recording will indicate that Commissioners may have been influenced by personal opinions about Marijuana in general, despite the proposed activity being permissible under Arizona Law and the Zoning Regulations.
- Additionally, Applicant will present evidence that letters of objection from the public were taken into account despite the fact that the nearest occupied residence is one mile distant from Applicant's parcel.

Exhibit K



Cochise County
Community Development
Planning, Zoning and Building Safety Division

Public Programs...Personal Service
www.cochise.az.gov

MEMORANDUM

TO: Cochise County Board of Supervisors
THROUGH: James Vlahovich, County Administrator
FROM: Jesse Drake, Planning Manager
FOR: Paul Esparza AICP, Planning Director
SUBJECT: Docket SUA-15-18 (Sonoran Care) Appeal
DATE: December 18, 2015 for the January 5, 2016 Meeting

I. APPEAL OF THE PLANNING AND ZONING COMMISSION DENIAL OF SU-15-18 (SONORAN CARE)

The Planning and Zoning Commission voted in a public meeting on November 18, 2015 to deny Special Use, SU-15-18 (Sonoran Care), a request for approval of a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4, Rural zoned property. The subject parcel, APN 404-26-001 is located 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ. It is further described as being situated in Section 03 of Township 21 South, Range 26 East of the G&SRB&M, in Cochise County, Arizona. The use is considered a Special Use in RU-4 Rural Zoning Districts under Sections 607.26 and 607.55 of the Zoning Regulations. The original Applicant, and Appellant, for the medical marijuana cultivation and dispensary facility is Sonoran Care LLC.

II. NATURE OF APPEAL REQUEST

This is an Appeal of the Planning and Zoning Commission denial of Special Use of SU-15-18 (Sonoran Care), a request for approval of a facility for personal services and the cultivation and dispensing of medical marijuana.

The approved minutes from the November 18, 2015 public meeting recount that the six residents in attendance who spoke in opposition to the Special Use request voiced concerns about water and pesticide contamination, the broad accessibility of marijuana, about schools within several miles of the site and about the general desire to avoid having marijuana in Cochise County. The applicant rebutted with statements that, the facility would use hauled water and no well would be drilled, that there would be no pesticide usage, about the stringent State regulations for the industry, and that it is more difficult for students to purchase marijuana from a dispensary than to buy it on the black market. The applicant also noted that there is no evidence that dispensaries attract crime or increase drug use.

In the Commission discussion following the public hearing Commissioner Edie raised concerns about traffic safety at the proposed location, Commissioner Gregan stated that the Commission should not be considering water and security issues since those items are regulated by the State. Commissioner Miller spoke about the agricultural nature of the County and her concerns about water issues and private property rights. Commissioner Martzke readdressed that water issues were not an issue for the Commission and that the Commission was considering only the land use. The motion for approval failed 2-3 with Commissioners

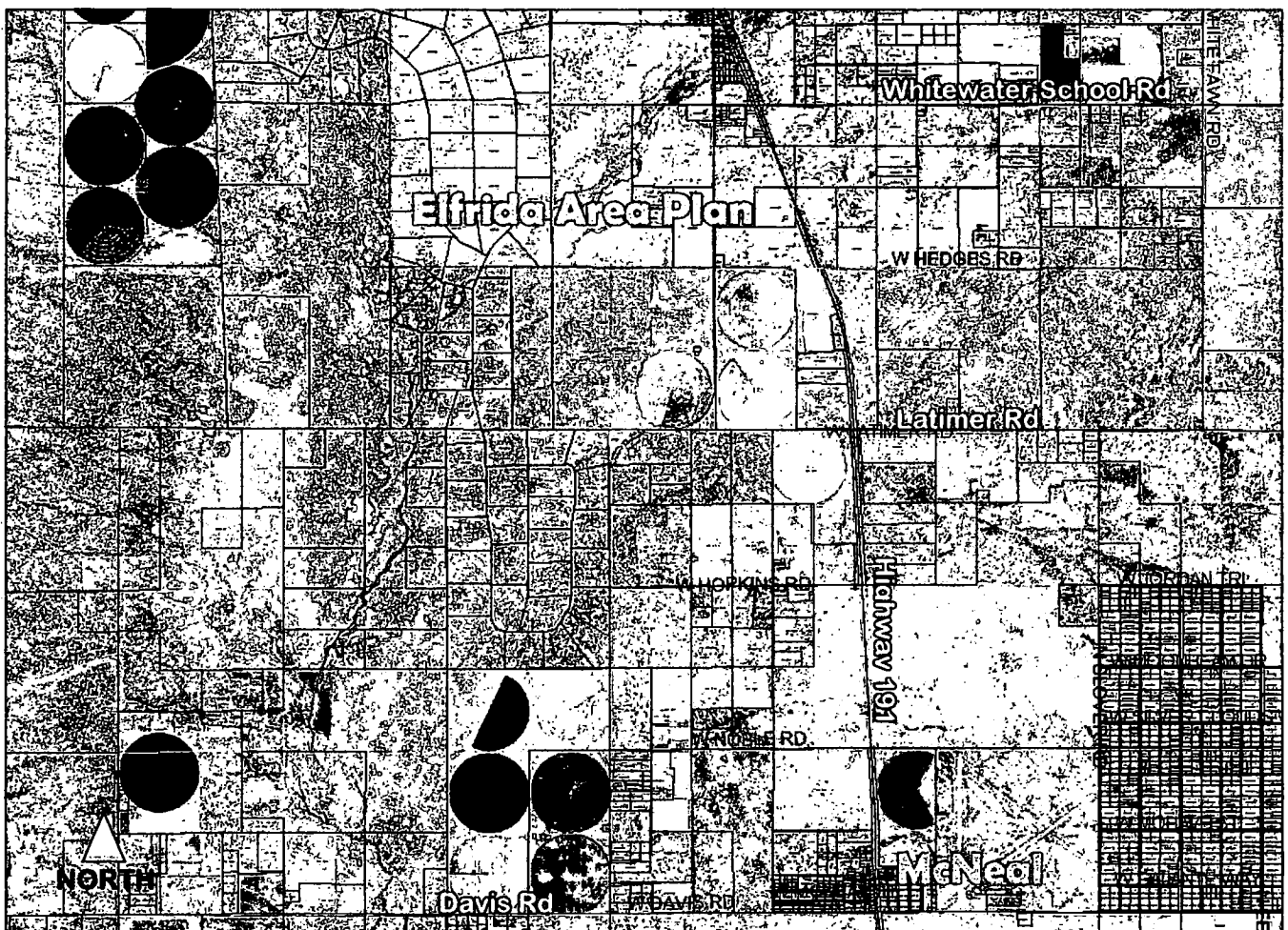
Planning, Zoning and Building Safety
1415 Melody Lane, Building E
Bisbee, Arizona 85603
520-432-9300
520-432-9278 fax
1-877-777-7958
planningandzoning@cochise.az.gov

Highway and Floodplain
1415 Melody Lane, Building F
Bisbee, Arizona 85603
520-432-9300
520-432-9337 fax
1-800-752-3745
highway@cochise.az.gov
floodplain@cochise.az.gov

Miller, Brauchla and Edie in opposition.

The applicant filed an application to appeal the denial on December 1, 2015. Section 1716.04 of the Zoning Regulations governs the Appeal of Special Use Authorization Decisions. 1716.04.B. states the appeal shall include:

1. An identification of the decision being appealed;
2. A complete statement of all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion; and
3. Written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.



Location Map

Sonoran Care LLC believes that the Cochise County Planning and Zoning Commission acted in error, arbitrarily, capriciously and contrary to law in denying its request for a Special Use authorization for SU-15-18. The basis for this claim is that the staff report indicated that the applicant's request complied with eight of the ten factors used to analyze Special Use requests. The ninth factor, concerning Hazardous Materials was not applicable.

The tenth and last factor, Traffic Circulation Patterns, could comply with conditions. The staff Memo analysis of traffic circulation based on the October 22, 2015 Transportation Memo states that

“as a growing operation only the requested use is unlikely to alter the type or volume of traffic. However, once the personal services component of the clinic is added, the higher end of the estimated trip generation is more likely but the traffic pattern in the area is unlikely to change or negatively impact Central Highway or surrounding property owners.”

The applicant agreed to work with a traffic engineer to address concerns raised by the County Transportation Planner regarding the design, placement and construction of the proposed driveway.

The staff Memo presented to the Planning and Zoning Commission recommended Conditional Approval of the request.

In their Appeal application the appellant, Sonoran Care LLC, state that they believe that in making their decision the Planning and Zoning Commission took into consideration criteria other than the Cochise County Zoning Regulations and that the Commission based their denial on three basic factors:

1. Opinions about Arizona’s marijuana laws;
2. Speculative and personal opinions raised as objections made by persons residing more than a mile from the proposed site; and
3. Bias against the applicants raised by persons in the audience during the public hearing who objected to the applicants because they reside outside Cochise County.

Sonoran Care LLC believes that basing their consideration of the application on these three factors rendered the Commission’s decision erroneous, arbitrary, capricious, and an abuse of discretion.

Licenses for medical marijuana dispensaries and cultivation areas are issued by the Arizona Department of Health Services. Permits are issued after proper security and containment measures are approved by the State. Cochise County reviews these types of dockets items for land use issues only.

III. PUBLIC COMMENT

Planning Department staff mailed notices to neighboring property owners within 1,500-feet of the subject property, posted the property, and published a legal notice on the County web page and in the *Bisbee Observer* on December 17, 2015. In response the Planning Department received four letters in opposition to medical marijuana at this location.

IV. SUMMARY AND CONCLUSION

This is an Appeal of the Planning and Zoning Commission denial of SU-15-18 (Sonoran Care), a request for approval of a facility for personal services and the cultivation and dispensing of medical marijuana.

Factors in Favor of Approving the Appeal to overturn the Planning and Zoning Commission decision.

1. Medical marijuana cultivation and dispensary facilities are authorized by the State of Arizona;
2. Medical marijuana land uses are allowed as Special Uses in the Rural Districts in Cochise County;
3. The proposal meets minimum site development standards for Special Uses in the Rural Zoning District, as well as those standards specific to medical marijuana uses; and
4. Sonoran Care LLC submitted an application that was in major conformance with the criteria used by the County to evaluate these requests.

Factors in Favor of Denying the Appeal to overturn the Planning and Zoning Commission decision.

1. Staff has received four letters in support of the denial.

V. STAFF RECOMMENDATION TO THE BOARD

Staff recommends **conditional approval** the Special Use Appeal to overturn the November 18, 2015 Planning Commission denial, thereby granting conditional approval of SU-15-18, with the conditions of approval as follows:

1. Within 30-days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12-months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18-months of the Special Use approval, otherwise the Special Use may be deemed void upon 30-day notification to the Applicant;
2. It is the Applicant's responsibility to obtain any additional permits, or meet any additional Conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations;
3. Prior to or concurrent with the first Commercial Permit application the applicant will provide a Basic Traffic Report to the County Transportation Department that will include an assessment of the most suitable location for the driveway location and the design criteria of the driveway;
4. Prior to or concurrent with the first Commercial Permit application the applicant shall obtain a Cochise County Right-of-Way/Encroachment Permit;
5. The applicant shall design and construct any access from Central Highway to a commercial driveway standard per the Cochise County Roadway Design Standards or as approved by the County Engineer.

VI. ATTACHMENTS

- A. Appeal application
- B. October 29, 2015 Staff Memo to the Planning and Zoning Commission.
- C. Final Minutes of the November 18, 2015 Planning and Zoning Commission meeting pp 1-4.
- D. Public comment.



Exhibit L

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
REGULAR MEETING HELD ON
Tuesday, January 5, 2016**

A regular board meeting of the Cochise County Board of Supervisors was held on Tuesday, January 5, 2016 10:00 a.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Richard R. Searle, Chairman; Patrick G. Call, Vice-Chairman; Ann English, Member
Staff James E. Vlahovich, County Administrator; Edward T. Gilligan, Deputy County
Present: Administrator; Arlethe G. Rios, Clerk of the Board; Elda Orduno, Civil Deputy County
Attorney

Chairman Searle called the meeting to order at 10:00 a.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

PRESENTATION

Presentation of Proclamation to Jessica Vincent, Co-Founder of the 4P Project, declaring Cochise County a Zero Tolerance Human Trafficking Zone.

The Board, Sheriff Mark Dannels, and Mr. Brian McIntyre, County Attorney, presented Ms. Vincent with the proclamation.

Ms. Vincent gave a brief background of the issue and thanked the Board for their action of approving this proclamation. She also noted that January was Human Trafficking Awareness Month so this was a great time to make the community aware of this problem.

CONSENT

Board of Supervisors

1. Approve a Proclamation declaring Cochise County a Zero Tolerance Human Trafficking Zone.
2. Approve the Minutes of the regular meeting of the Board of Supervisors of December 15, 2015.
3. Approve a letter to the U.S. Endowment for Forests and Communities supporting the proposal of Arizona Land and Water Trust (ALWT) for the Readiness Environmental Protection Integration Program grant.

4. Approve Resolution 16-01 to amend County Merit Award System Board members.

Community Development

5. Approve the award of Request for Qualifications (RFQ) 16-04-HFP-04 for On Call Hydrology & Hydraulic Analysis Services for the Community Development Highway and Floodplain Division for a three year period from January 5, 2016 through December 31, 2018 with possible renewal periods of two one-year periods.
6. Approve holding a public hearing for February 9, 2016 to accept the exchange of lands for a portion of Willson Road and the abandonment of an undeveloped highway established in 1988.
7. Approve an Intergovernmental Agreement (IGA) with the Town of Huachuca City for Rural Street Naming and Addressing Services effective January 5, 2016 through January 5, 2021 with automatic annual renewals.

County Attorney

8. Approve the proposed tax appeal settlement in Fasciola v. Cochise County, ST2015-000172, now pending in the Arizona Tax Court, a division of the Superior Court of Arizona in Maricopa County.

Finance

9. Approve demands and budget amendments for operating transfers. Warrants Nos. 94521-94636, 94638-94668, 94681-94885 were issued in the amount of \$1,225,785.24.

Pursuant to A.R.S. §11-217(C), the published minutes shall include all demands and warrants approved by the Board in excess of one thousand dollars except that multiple demands and warrants from a single supplier or individual under one thousand dollars whose cumulative total exceeds one thousand dollars in a single reporting period shall also be published. The voided warrants are listed below:

<u>Fund</u>	<u>Vendor</u>	<u>Amount</u>
100	Munoz, Cornelia G	\$155.00
109	AZ Dept of Transportation Equipment	3,666.06
105	AZ Dept of Environmental Quality	252.27
600	Empire Southwest LLC	3348.74
100	AZ State Land Dept	200.00
100	Edie Patricia	39.26
100	Allen, James C	24.00
100	Munson, Holly A	19.29
171	Amazon.com LLC	4,368.97
100	United Fire Equipment Co	381.66

Issued warrants are listed as an attachment at the end of the minutes

Health & Social Services

10. Approve Amendment 1 to Contract ADHS15-094960, Healthy People Healthy Communities, between the Arizona Department of Health Services and Cochise Health & Social Services for the period of 07/01/2015 to 6/30/2020 in the total amount of \$513,577, which includes the incremental amounts of \$22,700 for Family Planning and \$68,207 for Teen Pregnancy.

Juvenile Probation

11. Approve Food Program Permanent Service Agreement-Contract ED09-0001 between Cochise County Juvenile Detention and the Arizona Department of Education (ADE) in the amount of \$22,000 for the period of July 1, 2015 through June 30, 2016.

Workforce Development

12. Approve Amendment #1 to Title IB Adult, Youth, and Dislocated Worker contract DI16-002121 between Cochise County and the Arizona Department of Economic Security for the workforce Innovation and Opportunity Act (WIOA) Service Delivery Area from April 1, 2015 to June 30, 2017.

Vice-Chairman Call moved to approve items 1-12 on the consent agenda. Supervisor English seconded the motion and it carried unanimously.

PUBLIC HEARINGS

Board of Supervisors

13. Approve a new liquor license application for a series #13 Farm Winery liquor license submitted by Mr. John McLoughlin for Heavens Cellars, located at 8001 S Bell Ranch Road, Willcox, AZ 85643.

Ms. Arlethe Rios, Clerk of the Board, presented this item. Ms. Rios said the Sheriff's Office did not have a recommendation and the Planning and Zoning Department had recommended approval. The Environmental Health Division noted that they have no concerns with the issuance of the liquor license; the Treasurer's Office noted that all property taxes are current. The applicant has paid the \$100 processing fee and the Board staff recommended approval.

Chairman Searle opened the public hearing.

No one chose to speak and Chairman Searle closed the public hearing.

Supervisor English moved to approve a new liquor license application for a series #13 Farm Winery liquor license submitted by Mr. John McLoughlin for Heavens Cellars, located at 8001 S Bell Ranch Road, Willcox, AZ 85643. Vice-Chairman Call seconded the motion.

Chairman Searle called for the vote and it was approved 3-0.

14. [ITEM TABLED FROM December 15, 2015 Meeting] Adopt Ordinance 48-15 amending fee schedules to provide for a standardized cost of copying and electronic media for purposes of public records requests.

Vice-Chairman Call moved to remove the item from table. Supervisor English seconded the motion.

Chairman Searle called for the vote and it was approved 3-0.

Chairman Searle reopened the public hearing.

No one chose to speak and Chairman Searle closed the public hearing.

The item failed for lack of a motion.

Community Development

15. Affirm the decision of the Planning and Zoning Commission to deny a Special Use request for a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4 zoned property located 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ submitted by Sonoran Care LLC.

Vice-Chairman Call moved to affirm the decision of the Planning and Zoning Commission to deny a Special Use request for a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4 zoned property located 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ submitted by Sonoran Care LLC. Supervisor English seconded the motion.

Ms. Jesse Drake, Planning Manager, Planning & Zoning, Community Development Department, presented this item using a PowerPoint presentation. Ms. Drake gave the background and showed a map of the location and said six residents had spoken in opposition during the Planning & Zoning Commission meeting, where the application was denied.

She said the main concerns of those citizens opposed were:

1. Water Usage
2. Pesticide contamination
3. Broad accessibility of marijuana
4. Distance from the site to schools
5. A general desire to avoid having marijuana in Cochise County

The applicant's rebuttal in regard to the opposition:

1. Water would be hauled and stored, no well would be used
2. No pesticides would be used
3. The State has stringent regulations on the medical marijuana industry
4. Student access is more difficult from a dispensary than from the black market
5. There is no evidence that dispensaries attribute to crime or increase of drug use

She outlined the Commission's discussion and outcome of the vote:

- Commissioner Edie raised concerns about traffic safety at the proposed location
- Commissioner Gregan stated that the Commission should not be considering water and security issues since those items are regulated by the State
- Commissioner Miller spoke about the agricultural nature of the County and her concerns about water issues and private property rights
- Commissioner Martzke readdressed that water issues were not an issue for the Commission and that the Commission was considering only the land use.

The motion for approval failed 2-3 with Commissioners Miller, Brauchla and Edie in opposition

She stated that Sonoran Care LLC believes that the Cochise County Planning and Zoning Commission acted in error, arbitrarily, capriciously and contrary to law in denying its request for

a Special Use authorization for SU-15- 18. The basis for this claim is the 10/29/15 staff report that stated that the applicant's request complied with eight of the ten factors used to analyze Special Use requests. The ninth factor, concerning Hazardous Materials was not applicable; the tenth and last factor, Traffic Circulation Patterns, could comply with conditions. The Transportation analysis in the staff Memo indicated that the growing operation is unlikely to alter the type or volume of traffic.

Ms. Drake moved on to list the basic factors that the applicant feels that the Commission denied their special use permit:

1. Opinions about Arizona's marijuana laws
2. Speculative and personal opinions raised as objections made by persons residing more than a mile from the proposed site
3. Bias against the applicants raised by persons in the audience during the public hearing who objected to the applicants because they reside outside Cochise County.

She presented a slide with factors in favor of approving the appeal:

1. Medical marijuana cultivation and dispensary facilities are authorized by the State of Arizona
2. Personal services and medical marijuana land uses are allowed in Cochise County as Special Uses in the Rural Districts
3. The proposal meets minimum site development standards for Special Uses in the Rural Zoning District, as well as those standards specific to medical marijuana uses
4. Sonoran Care LLC submitted an application that was in major conformance with the criteria used by the County to evaluate these requests

One factor in favor of denying the appeal:

1. Staff has received 12 letters in support of denial.

She then stated that staff recommended approval of the appeal with the following conditions:

1. Within 30 days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12 months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18 months of the Special Use approval, otherwise the Special Use may be deemed void upon 30 day notification to the Applicant;
2. It is the Applicant's responsibility to obtain any additional permits, or meet any additional Conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations
3. Prior to or concurrent with the first Commercial Permit application the applicant will provide a Basic Traffic Report to the County Transportation Department that will include an assessment of the most suitable location for the driveway location and the design criteria of the driveway
4. Prior to or concurrent with the first Commercial Permit application the applicant shall obtain a Cochise County Right-of-Way/Encroachment Permit
5. The applicant shall design and construct any access from Central Highway to a commercial driveway standard per the Cochise County Roadway Design Standards or as approved by the County Engineer.

Ms. Drake concluded her presentation and clarified that an affirmation would deny the application.

Chairman Searle said before opening the public hearing he would allow the applicant or their representative to speak.

Mr. Michael Monti, applicant's attorney (Munger Chadwick Law Firm), said that the most important consideration is to take into account that the people of Arizona voted to approve the use of medical marijuana. He stated that his clients were trying to pursue the American Dream and become entrepreneurs. He clarified that the approval today should not include any bias against the use of marijuana, but instead it is an approval for the type of land use. He noted that the application did meet the County's requirements and that the State has a set number of dispensary certificates, so the County would not be overrun by medical marijuana dispensaries. He explained that the water and security issues are regulated by the State and he urged the Board to reconsider the Commission's decision and approve the permit.

Chairman Searle asked how large the growing facility would be.

Mr. Monti said that it would be two acres.

Chairman Searle opened the public hearing.

Ms. Judith Ramirez Short, McNeal resident, addressed the Board on her concerns with allowing a medical dispensary to be built: community does not support; would be a disruption to a quiet community; increase in danger; dispensary saturation in area; prison-like façade; light pollution, and traffic increase. (In favor of affirmation)

Mr. Terry Maddux, Elfrida resident, addressed the Board on his concerns with medical marijuana and noted that the approval of the ballot before the State had been by a very small percentage. He added that marijuana was still a dangerous drug and cited several journal articles that supported that marijuana is not a good drug and added that transport would be difficult since Border Patrol would seize the product. (In favor of affirmation)

Mr. JK Powell, Elfrida resident, addressed the Board on his concerns with marijuana being labeled for medical purposes. He noted that people in favor are trying to legalize marijuana for recreational purposes and those people do not understand the negative impacts of marijuana use. He also reminded the Board that they were elected to represent the local interests of the citizens. (In favor of affirmation)

Mr. Paul White, Elfrida resident, addressed the Board on his view of this proposal and said that the land investment is not very much because land is cheap and added that it would not have a positive impact for the community. (In favor of affirmation)

Ms. Cecelia Zuck declined to speak, but noted in her speaker request form that she was opposed to the approval of the permit.

Mr. Ray Zuck, McNeal resident, addressed the Board on his concerns with the approval of this permit. He noted that he agreed with all the opposition, but his main concern was the Douglas Irrigation Non-Expansion Area (INA) and should not be approved for any type of commercial crop. (In favor of affirmation)

Ms. Sandra Akers declined to speak, but noted in her speaker request form that she was in favor of the Board issuing the permit.

Mr. Monti asked the Board if he could answer some of the issues brought up. He began by saying that there were very few medical marijuana certificates left; he noted that the land is not cheap to his client; and clarified that the operation of the dispensary would be lawful and

enforcement for any illegal activities would be subject to the State.

No one else chose to speak and Chairman Call closed the public hearing.

Supervisor English said she understood that the Board had to have a denial based on a factual and legal reason and asked for Ms. Orduno and Mr. Vlahovich to comment on that.

Ms. Elda Orduno, Civil Deputy County Attorney, confirmed that the Board does have to include a factual and legal basis. She also provided the standard of review as erroneous, arbitrary, capricious or an abuse of discretion under zoning regulation 1716.04. She further stated that the decision had to be provided to the appellant in writing within 10 days.

Mr. Vlahovich noted that special use permits are allowed not as a right in specific zoning districts, but the zoning regulation indicates that due to their unique characteristics and often time high potential to adversely impact surrounding properties, special use permits may be permitted only when they can demonstrate that negative offsite impact has been mitigated. Planning & Zoning staff has a list of criteria: compliance with the duly adopted plan - County's Comprehensive Plan; compliance with the RU zoning district purpose section; compliance with development along major street; traffic circulation factors need to be addressed; address adequate services and infrastructure; address any significant site development structures; hazardous materials; offsite impacts; water conservation; and public input is a factor. He noted that if there is major public opposition; the recommendation of denial may be appropriate and clarified that staff is looking at land use, not the use of marijuana. He also stated that Planning Staff had evaluated these criteria and felt that they had been complied with in recommending approval of the special use application.

Vice-Chairman Call said that the Board had tried its best to meet the requirements of the law, whether they agreed with it or not, but thought that there was enough of these types of special use permits in the County and added that since the community was obviously in opposition that was also important and at this time he thought it was best to approve the recommendation of the Planning & Zoning Commission going forward.

Supervisor English did not want this to be an emotional decision and thought that it was the responsibility of the Board to base the decision on factual and legal reasons. She noted that she knew the neighborhood and was concerned with the ingress/egress of getting on the property, lack of water, and the neighbors being opposed. She thought these were good reasons to deny the special use permit.

Ms. Orduno stated that the factual reasons provided by the Board members met the factual basis requirement that the Board had to provide. She also stated that the Board's stated reliance on the factors in 1716.02 met the legal basis requirement that the Board also had to provide.

Chairman Searle stated that the reason that the public input criteria was added was to ensure the community was in support. He added that he was also concerned with the water issue and would support the motion as it is presented, which is to affirm the Planning & Zoning's recommendation.

Chairman Searle called for the vote and it was approved 3-0.

ACTION

Elections & Special Districts

16. Authorize payout of accrued vacation hours in excess of annual policy limit for Elections Program Coordinator.

Ms. Katie Howard, Elections/Special District Director, presented this item. Ms. Howard gave the background and said that this request was coming to the Board because it was not in line with established policy. She noted that time off had been difficult to take for her department with the election season and the purchase of new equipment and software and only having three staff members to man the office and attend trainings. Finally she said that over the last five years Ms. Rodriguez had already lost 271 vacation hours and that Ms. Howard would cover the estimated \$2,000 payment from the department's vacancy savings.

Mr. Vlahovich said that he thought the request was appropriate as this was not equatable to a management issue.

Supervisor English said that she could not support this item as she did not want to set a precedent.

Supervisor English moved to authorize payout of accrued vacation hours in excess of annual policy limit for Elections Program Coordinator. Vice-Chairman Call seconded the motion.

Vice-Chairman Call said that this was a special circumstance that allowed the Board to use its discretion and did not think it would set a precedent.

Chairman Searle said he did not want to set a precedent, but thought this was a reasonable exception.

Chairman Searle called for the vote and it was approved 2-0-1 (English opposed).

CALL TO THE PUBLIC

Chairman Searle opened the call to the public.

Mr. John McLoughlin, winery owner, addressed the Board regarding the Willcox American Viticultural Area designation and noted that it was number one on the federal list.

Mr. Jack Cook addressed the Board on matters of personal concern.

No one else chose to speak and Chairman Searle closed the call to the public.

This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda.

REPORT BY JAMES E. VLAHOVICH COUNTY ADMINISTRATOR -- RECENT AND PENDING COUNTY MATTERS

Mr. Vlahovich wished every one a Happy New Year and said the County was entering the second half of fiscal year, which meant it is budget preparation time. He noted that he would be hosting a countywide meeting with all departments to discuss this year's budget process on January 20th.

SUMMARY OF CURRENT EVENTS

Report by District 1 Supervisor, Patrick Call

Vice-Chairman Call said he would be attending a meeting with US Customs and Border Patrol to fund use of water impact in the County and he would also attend the Veteran of the Year Ceremony in Sierra Vista.

Report by District 2 Supervisor, Ann English

Supervisor English wished everyone a Happy New Year and noted that the County's birthday was coming up.

Report by District 3 Supervisor, Richard Searle

Chairman Searle said he would be attending a meeting in Tucson with the Bureau of Land Management (BLM) regarding the Mexican Wolf issue.

8.

Chairman Searle adjourned the meeting at 11:15 a.m.

APPROVED:

Richard R. Searle, Chairman

ATTEST:

Arlenthe G. Rios, Clerk of the Board