



Cochise County
Community Development
Planning, Zoning and Building Safety Division

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MEMORANDUM

TO: Cochise County Board of Supervisors
THROUGH: Edward T. Gilligan, County Administrator
FROM: Peter Gardner, Planner I
FOR: Daniel Coxworth, AICP, Development Director
SUBJECT: Docket SUA-18-01 (Tim's Electric) Appeal
DATE: March 14, 2018 for the March 27, 2018 Meeting

APPEAL OF A SPECIAL USE AUTHORIZATION

Roy Clayton Markle has filed an Appeal against a decision made by the Cochise County Planning and Zoning Commission on Wednesday, February 14, 2018. On a 6 – 0 vote, the Commission granted a request for Special Use authorization to legitimize an existing Contract Construction Services business in Richland Ranchettes. The subject Parcels (206-23-047/-048) are located at 402 E. Papago Way in Cochise. Section 1716.04 of the Zoning Regulations provides that Appeals of Special Use decisions shall be heard by the Board of Supervisors at a duly noticed public hearing.

NATURE OF THE APPEAL/PLANNING AND ZONING COMMISSION MEETING

In October of 2017 Mr. Tim Schmidt of Tim's Electric purchased the subject property and subsequently moved his existing Electric Contracting business onto the site. The previous owner operated an Irrigation Supply and Contracting Business without permits for approximately ten years prior to Mr. Schmidt's purchase of the property. The operation came to the attention of Staff when Mr. Schmidt began to install a driveway onto N. Arabian Way, a County maintained roadway. Upon discovering the lack of permits, Mr. Schmidt immediately moved to remedy the situation.

Per County Zoning Regulations, the business is considered Contract Construction Services, requiring Special Use authorization per Section 607.14. At the Commission hearing, the Commissioners noted that the previous business had been in operation for approximately ten years, without any complaint from neighboring property owners, which indicated that the operation was not producing negative impacts on the area. The Commission voted unanimously (6 – 0) to approve the request. As a result, the business was granted legitimacy.

Mr. Roy Clayton Markle has appealed the decision of the Planning and Zoning Commission to approve the request to legitimize the commercial operation. In the Appeal documents, he cites Constitutional and Civil Rights issues, and asserts that "there are more residents who oppose this docket than those who support this docket". Per Section 1716.02, Public Input is one of ten factors used to analyze Special Use Requests. Between written comments and speakers at the public hearing, the Commission received six responses in support and five in opposition.

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APPLICATION FOR A SPECIAL USE AUTHORIZATION

The Applicant requests a Special Use Authorization to legitimize an existing Contract Construction Services business established by a previous owner in Richland Ranchettes, Cochise, per Section 607.14 of the Zoning Regulations. The property is zoned RU-4 (Rural; one dwelling unit per 4 acres) and accommodates an existing 4,000 sq.-ft. shop that is currently being used for an electrical contracting business. The previous owner built the structure as a residential accessory building, and used it for an irrigation business. The Applicants have requested a SUP in order to legitimize the use and apply for commercial access and expand existing structures. The 9.25-acre site, parcels 206-23-047 & 206-23-48, is located at 402 E. Papago Way in Cochise, AZ.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Parcel Size: 9.25 acres
 Zoning: RU-4 (Rural; one dwelling per four acres)
 Growth Area: Category D-Rural Area
 Comprehensive Plan Designation: Rural
 Area Plan: None
 Existing Uses: Rural Residential
 Proposed Uses: Same, with Contract Construction Services

Zoning/Use of Surrounding Properties

Relation to Subject Parcel	Zoning District	Use of Property
North	Non-Maintained Road/RU-4	E. Papago Way/Scattered Rural Residential
South	RU-4	Scattered Rural Residential
East	County Maintained Road/RU-4	N. Arabian Lane/State Land
West	RU-4	Scattered Rural Residential

II. PARCEL HISTORY

1967 – SFR Built
 1978 – Second SFR, Attached Garage, Storage Building Built
 2006 – Permit issued for 4,000 sqft building for “personal, private use”

III. NATURE OF REQUEST

The Applicant requests Special Use approval to legitimize a Contract Construction Services business on the subject property. The site had previously been used as JV Irrigation Supply, using the existing structures. These structures had been permitted for personal, private use, and were built prior to the adoption of Building Code in the area. Full inspections which would have revealed the commercial nature of the building were therefore not done. The applicant purchased the property on October 6, 2017, with the understanding that the site was an existing commercial site based on the previous usage. It was brought to Staff’s attention when the applicant began to cut a driveway onto N. Arabian Lane, a County Maintained roadway. As the driveway was required to be a commercial driveway, coupled with the Applicant’s desire for possible future construction of a shelter for equipment, a Special Use Authorization was requested to legitimize the existing use.



Aerial view of the site.

C. Development along Major Streets: Complies

The proposed use would not result in the creation of any additional access points to an arterial road or major thoroughfare.

D. Traffic Circulation Factors: Complies

While non-residential traffic will travel on E. Papago Way and N. Arabian Drive, it will not be through traffic. The subject property is the first lot on each roadway, precluding commercial or heavy traffic passing by residential properties. A standard private road maintenance agreement for the section of E. Papago Way from the County maintained roadway to the Applicant's driveway will be required as a standard permit condition. That section of roadway is currently in good condition, better than most of the other roadway sections in the immediate area.

E. Adequate Services and Infrastructure: Complies

The site is accessed via E. Papago Way and N. Arabian Lane from Highway 191, with the road conditions described above. All utilities are currently in place, and have served the property during the previous unpermitted use.

F. Significant Site Development Standards: Complies

The site complies with all applicable site development standards.



The primary building.

G. Public Input: Complies

The Applicant mailed letters to property owners within 1,500-feet of the property prior to application submittal. The Planning Department mailed letters to neighboring property owners within 1,500-feet of the subject property, published a legal ad in the *San Pedro Valley News-Sun* and posted legal notices on the property. To date, staff has received three clear letters of support, one letter stating that the proposal was "fine" but voicing unrelated concerns, and five letters of opposition. At the public hearing, two additional individuals spoke in support of the request, and provided personal experience with the impacts. Concerns about opening the area to commercial activity, traffic, dust, and noise were raised. Traffic concerns have been addressed above. The site is located and oriented in a way that minimizes noise, and driving and parking surfaces are gravel or concrete. The site has been used for similar commercial purposes since 2006, and Staff has never received a complaint about the use.

H. Hazardous Materials: Does Not Apply

The Applicant states that no hazardous materials will be used or stored on site.

I. Off-Site Impacts: Complies

The primary concerns associated with the proposed legitimization pertain to traffic, dust, and noise. These are controlled under the current site setup.

J. Water Conservation: Complies

The project site is not located within the Sierra Vista Sub-Watershed. If approved, the Applicant would be required to demonstrate compliance with applicable water conservation policies at the commercial permit phase for any new construction.



Access to the proposed driveway onto N. Arabian Lane.

V. PUBLIC COMMENT

Staff mailed notices to neighboring property owners within 1,500 feet of the subject property on January 4, posted the property on January 31, and published a legal notice in the *San Pedro Valley News-Sun* on January 23, 2018. In response to applicant and County mailings, the Planning Department received three clear letters of support, one letter stating that the proposal was "fine" but voicing unrelated concerns, and five letters of opposition. At the public hearing two additional members of the public spoke in support.



The building and yard.

VI. SUMMARY AND CONCLUSION

The land use under consideration is one that is allowed by Special Use in the Rural Districts. Special Use Authorization requests are considered on a case-by-case basis, and if there is a reasonable presumption that off-site impacts can be effectively mitigated through Conditions of Approval, as is the case here, a recommendation of Conditional Approval is appropriate.

In the case of this particular land use, the previous owner established it without permits approximately ten years ago. In that time no complaints were received, indicating to Staff that there were no concerns about off-site impacts. At the public hearing, one neighbor indicated that the current owner produced even fewer impacts than the previous unpermitted business.

The Appellant has not demonstrated how the Commission's decision was "erroneous, arbitrary, capricious, or an abuse of discretion", nor has he provided additional testimony or evidence. The assertion that there were more residents in opposition than in support is factually incorrect, as noted above.

After questioning the applicant, the appellant, other public speakers, and staff, the Commission unanimously approved the original Special Use Authorization request.

Factors in Favor of Denying the Appeal

1. The use complies with the Comprehensive Plan and Zoning District purpose statement;
2. As presented, the request complies with each of the nine applicable Special Use factors;
3. The site has been in operation as Contract Construction Services since 2006, without incident;
4. Although commercial in nature, the use would be low-impact, and in overall harmony with surrounding residential development; and
5. Staff has received four letters of support of the request, along with two speakers at the public hearing; and
6. The Commission voted 6-0 to Conditionally Approve the Docket.

Factors Against Allowing the Special Use

1. The Planning Department has received five letters in opposition to the request.

VII. RECOMMENDATION

Based on the factors in favor of denial, Staff recommends the Board of Supervisors **deny** the appeal, and uphold the February 14, 2018 decision of the Planning and Zoning Commission, granting Special Use approval for Docket SU-18-01.

Staff further recommends the Board subject the land use to the following Conditions of Approval, which were approved by the Commission on February 14, 2018.

1. The Applicant shall provide the County a signed Acceptance of Conditions and a Waiver of Claims form arising from ARS Section 12-1134 signed by the property owner of the subject properties within thirty (30) days of approval of the Special Use Permit. Prior to permit issuance, the Applicant shall submit and obtain building/use permits within 12 months of approval, including a completed joint permit application. The building/use permit(s) shall include a site plan in conformance with this approval and meeting all site development standards (except those specifically waived or modified by the Planning Commission as part of this approval), the completed Special Use Permit questionnaire, and appropriate fees. A permit must be issued within 18 months of approval, otherwise the approval 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 additional conditions, if any, that may be applicable to the proposed activities pursuant to other federal, state, or local laws or regulations; and
3. Any changes to the approved Special Use shall be subject to review by the Planning Department and may require additional modification and approval by the Planning and Zoning Commission.

VIII. ATTACHMENTS

- A. Application
- B. Parcel map, aerial, and site plan
- C. Citizen and Agency comment memos