



Cochise County
Community Development
Planning, Zoning and Building Safety Division

Public Programs...Personal Service
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MEMORANDUM

TO: Cochise County Board of Supervisors
THROUGH: Edward T. Gilligan, County Administrator
FROM: Peter Gardner, Planner II
FOR: Daniel Coxworth, AICP, Planning Director
SUBJECT: Docket SUA-18-14 (St Jude Alternative Healing Appeal)
DATE: January 31, 2019 for the February 12, 2019 Meeting

APPEAL OF A SPECIAL USE AUTHORIZATION

Julia Patten has filed an Appeal against a decision made by the Cochise County Planning and Zoning Commission on Wednesday, December 12, 2018. On a 0-7 vote, the Commission denied a request for Special Use authorization for the cultivation of medical marijuana northwest of Douglas. The subject Parcel, 407-84-009A, is located on W. La Luna Drive. 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

Per County Zoning Regulations, the outdoor cultivation of medical marijuana requires Special Use authorization per Section 607.53. At the Commission hearing, the Commissioners expressed concerns about the impacts to the surrounding homes. These impacts included visual impacts from the required ten-foot tall security wall and security lighting, odors from the crop, water usage from an outdoor hydroponic/misting grow operation, and traffic on the poor condition, non-county-maintained roadway. The Commission voted unanimously (0-7) to deny the request. As a result, the business was granted legitimacy.

Ms. Julia Patten, the applicant, has appealed the decision of the Planning and Zoning Commission to deny the request to authorize the commercial operation. In the Appeal documents, she cites information regarding "Ground Water and the Rural Homeowner" which was not provided to the Commission by Staff, notes that the security wall and lights are required by the State, and asserts that she is working with other property owners on improving the roadway.

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APPLICATION FOR A SPECIAL USE

The Applicant requests a Special Use Authorization to approve a facility for the cultivation of medical marijuana. The request is to enclose approximately two acres within a 10-foot high block wall for outdoor cultivation. Medical Marijuana Uses require Special Use Authorization. The 17.12-acre site, APN 407-84-009A, is located on the south side of W. La Luna Drive approximately ¾ mile west of N. Kings Highway in the Douglas area and is zoned RU-4. The applicant is St. Jude Alternative Healing, represented by Julia Patten.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Parcel Size:	17.12 acres
Zoning:	RU-4 (Rural; one dwelling per four-acres)
Growth Area:	D-Rural
Comprehensive Plan Designation:	Rural
Area Plan:	None
Existing Uses:	None
Proposed Uses:	Outdoor Medical Marijuana Cultivation

Zoning/Use of Surrounding Properties

Relation to Subject Parcel	Zoning District	Use of Property
North	Non-Maintained Road/RU-4	W. La Luna Drive/Rural Residential
South	RU-4	State Land
East	RU-4	Rural Residential
West	RU-4	Vacant

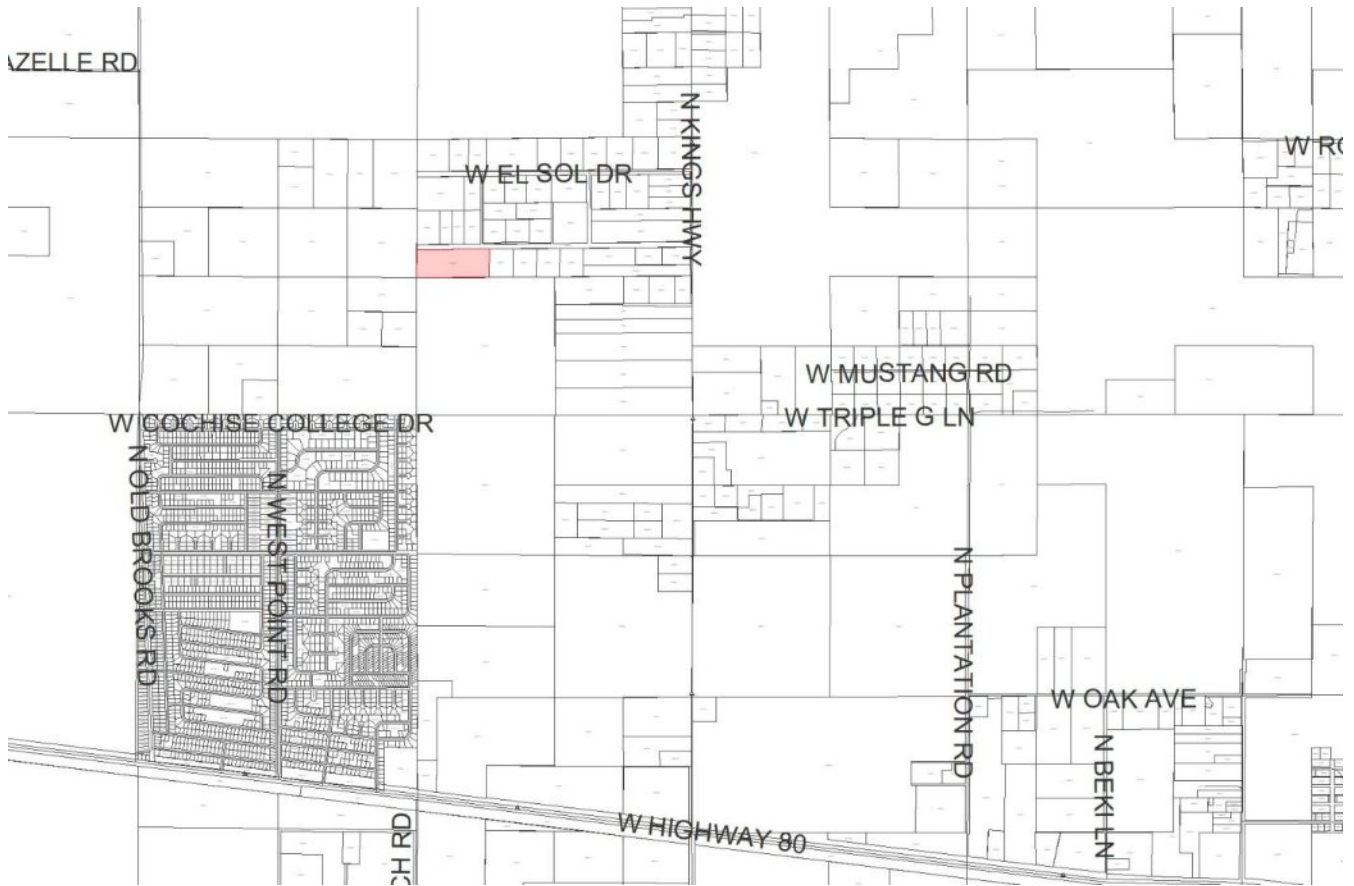
II. PARCEL HISTORY

None

III. NATURE OF REQUEST

The Applicant is requesting authorization for cultivation of medical marijuana on approximately two acres enclosed by a ten-foot-high solid wall on the 17-acre parcel located at the southside of the west end of W. La Luna Drive, an RU-4, D-Rural zoned property. The site takes access from N. Kings Highway via W. El Sol Drive to N. Valley Vista Avenue to W. La Luna Drive. The route passes through an existing rural residential neighborhood. Currently the property is vacant and was previous used as a private horse race track.

The product will be transported to the Phoenix area for processing and sale. Exterior grow operations are required under state law to be surrounded by a solid ten-foot barrier for security and visual screening purposes.



Site map with parcel highlighted in red



Site aerial with parcel highlighted in red

The parcel is located approximately two miles north of Highway 80, approximately five miles west of Douglas, within the Douglas Irrigation Non-Expansion Area. This INA prohibits the irrigation of more than two acres. The crop will be grown in an exterior area of approximately two acres, enclosed by a ten-foot solid barrier as required by state law. The Applicant applied for a similar use on another parcel in the neighborhood in 2011 and 2012 and was denied on both occasions.

The parcel takes access from Kings Highway via three non-maintained residential roads, none of which are County Maintained, and all are in poor condition.

Potential off-site impacts include traffic & associated roadway wear, visual impacts of the required wall and lighting, odors, dust, and well drawdown, not all of which may be effectively mitigated while still maintaining the proposed use.

The proposed project meets all of the County’s separation requirements from residences, libraries, schools and day care facilities found in Article 1825 of the Cochise County Zoning Regulations.

Any medical marijuana cultivation will be required to meet the security requirements mandated by the State of Arizona, including security cameras, perimeter fencing and secured access, and will require final approval from the Arizona Department of Health Services (AZDHS) prior to beginning of any marijuana cultivation.



The site



View the home to the northeast



Intersection of Valley Vista and La Luna

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, fully complies with three of the factors and with the recommended conditions, complies with three other factors. The request does not comply with three factors. The one remaining factor is not relevant to this application.

A. Compliance with Duly Adopted Plans: Complies

The proposed project satisfies the criteria for Comprehensive Plan D-Rural areas since the proposal is in an outlying rural area between unincorporated communities that have a low growth rate and is in a very low-density area is surrounded by agricultural and vacant lands.

The proposal also supports the following Comprehensive Plan Elements:

The Agriculture and Ranching Element goal that seeks to “Protect and promote the agricultural economy of Cochise County, its agricultural and ranching lands, and related land uses.”; and the policy to “Continue encouraging development of agricultural processing, both on-site and at industrial scale, to support production of value-added agriculture products in Cochise County.

The Economic Development Element that states that “Supporting small businesses will not only spur diversified income opportunities and ensure economic competitiveness but will also foster resilience in the face of economic challenges such as natural disasters” and the policy to Continue to communicate with the business community and be responsive to the changing needs of established and new businesses.’

The Rural Character Element: One goal of the Rural Character Element is to “Provide for a continuation of traditional rural ways of life, such as farming, ranching, and other agricultural-related activities, and provide for diverse and viable economic and development opportunities that are consistent with the character of Cochise County's rural areas.”

B. Compliance with the Zoning District Purpose Statement: Complies

The proposed project satisfies the following zoning district purpose statements:

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;

601.03 To preserve the agricultural character of those portions of the County capable of resource production;

C. Development Along Major Streets: Not Applicable

The property is located on the south side of W. La Luna Drive and therefore does not take access from any Major thoroughfare or arterial street.

D. Traffic Circulation Factors: Does Not Comply

Access is taken from a privately-maintained road network, W. El Sol Drive, N. Valley Vista Avenue, & W. La Luna Drive. El Sol Drive connects to Kings Highway, which is a county-maintained chip seal roadway. The proposed use routes non-residential traffic through streets currently used solely for residential traffic, in contravention of section 1716.02.D.2 of the zoning regulations.

E. Adequate Services and Infrastructure: Complies with Conditions

There are currently no utilities on site other than a well. Under the restrictions of the Douglas INA, no more than two acres may be irrigated. The Applicant proposes installing other required utilities.

The road network is inadequate for the proposed use. The existing conditions of the non-maintained roads along the access route are poor, with washboarding, ruts, tire tracks, and, in some places, no actual roadway at all. Staff recommends that if the docket is approved, a condition requiring the Applicant to improve the roadways from Kings Highway to the parcel to at least County primitive road standards and sign an agreement to participate in maintenance of said roads. This agreement would not obligate any other parties to participate in this maintenance. Another condition is included requiring a chip seal or better apron at the connection between Kings Highway and El Sol Drive.

F. Significant Site Development Standards: Complies with Conditions

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. 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 including security cameras, perimeter fencing and secured access to the cultivation greenhouses.

The enclosure of two acres in a solid fence or wall will require a drainage analysis to be submitted to and approved by the County Engineer to ensure that water will not be diverted onto other properties or otherwise alter the flow of water.

G. Public Input: Does Not Comply

The Applicant sent letters to all property owners within 1 mile of the subject parcel to notify them of this application. The County notified the same owners, and received opposition from 30 property owners, and support from eight, including the property owner and the Applicant, who owns another nearby property. This opposition includes concerns about water usage, roads, lighting, safety, visual impacts, and concerns about the overall legality of the use. Notably, the only support from the directly impacted neighborhood comes from the property owner and the Applicant, while the majority of the occupied parcels in the

immediate neighborhood object.



Portion of El Sol between Kings Highway and Valley Vista

H. Hazardous Materials: Complies

Natural pest controls will be used to deter and control pests. Only organic fertilizers will be used. No hazardous materials or pesticides will be used.

I. Off-Site Impacts: Does Not Comply

The proposed facility is anticipated to produce off-site impacts with lighting, visual impacts, dust, odors, and wear on the already poor roads. The required ten-foot wall and security lighting will be out of place in a rural neighborhood such as this. The Applicant proposes water trucks to keep dust under control but cannot mitigate water or visual impacts as the project is proposed.

J. Water Conservation: Complies with Conditions

The applicant is proposing to recycle and capture water during hydroponic growth. If approved Staff recommends a condition to follow the water conservation requirements in section 1819.B. These include, but are not limited to, the prohibition on misters, which the Applicant has stated they wish to use, and the requirement for rain or humidity sensors to limit use of irrigation during precipitation events.

V. PUBLIC COMMENT

The Planning Department staff mailed notices to neighboring property owners within 1 mile of the subject property. Staff published a legal notice in the *San Pedro Valley News Sun* and posted the property. In response to applicant and County mailings, staff received opposition from thirty property owners, and support from eight including the property owner and Applicant themselves.

The support letters cited the benefits of the medical use of this plant and property rights. The opposition letters expressed disapproval of marijuana in general, and concerns about traffic & road maintenance, water use, odor, dust, visual impacts from the required wall and lighting.

After the Appeal was filed, Staff again noticed the property and notified property owners of the appeal, again requesting public input. In response to this second mailing, seven letters of support of the appeal and 18 in opposition were received. As with previous mailings all of the support came from vacant parcels not immediately impacted by the request, with the opposition strongest from the nearby properties which use the impacted roads, have wells nearby, and would realize the offsite visual and odor impacts.

VI. SUMMARY AND CONCLUSION

This request is for a Special Use authorization to approve the cultivation of medical marijuana on a 2-acre portion of a 17-acre parcel located W. La Luna Drive in Douglas, AZ.

No waivers or modifications have been requested. Any State of Arizona requirement for cultivation, security and lighting requirements will be met.

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

Factors in Favor of Granting the Appeal

1. With the recommended Conditions of Approval, the proposed use would fully comply with three of the nine applicable Special Use factors used by staff to analyze this request, and complies with conditions with three additional factors;
2. The proposal complies with the Adopted Comprehensive Plan Agriculture and Ranching, Economic Development and Rural Character Elements;
3. The proposal complies with the Rural Zoning District purpose statement;
4. If any other crop were being grown, the use would be exempt from County Zoning and Building Codes;
5. Six property owners plus the owner and the Applicant have sent letters of support for this application.

Factors Against Granting the Appeal

1. The Planning & Zoning Commission voted unanimously to deny the request;
2. Three of the applicable nine Special Use Factors do not Comply, and cannot be met via Conditions;
3. Visual impacts cannot be mitigated due to state requirements;
4. The proposed cultivation method does not comply with water conservation regulations;
5. The site lies within the Douglas INA;
6. Thirty Property owners have sent letters in opposition to this application.

VII. RECOMMENDATION

Based on the factors against approval, Staff recommends **Denial** of the Special Use request. If approved, Staff recommends that the approval be 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. 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;
4. In advance of, or concurrent with their Commercial Permit application, the applicant is required to construct to County Standards and provide a Private Maintenance Agreement for W. La Luna Drive, N. Valley Vista Avenue, and W. El Sol Drive from their driveway to N. Kinds Highway Road;
5. In advance of, or concurrent with, the Commercial Permit application the Applicant shall apply for a permit to construct a private road apron meeting per the requirements of the County Engineer, and complete said apron within one year of permit issuance;
6. Prior to the construction of the screening wall a drainage statement/analysis will be required.