



# Cochise County

## Development Services

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### MEMORANDUM

**TO:** Cochise County Planning and Zoning Commission  
**FROM:** Robert Kirschmann, Planner II  
**FOR:** Daniel Coxworth, AICP, Development Services Director  
**SUBJECT:** Docket Z-20-10 (Chance Mine)  
**DATE:** October 1, 2020 for the October 14, 2020 Meeting

### APPLICATION FOR A REZONING

The Applicants are requesting a Rezoning from RU-4 (Rural, one dwelling per four acres) to RU-2 (Rural, one dwelling per 2 acres) on four separate parcels. No new lots will be created as a result of the proposed rezoning.

The subject properties are located off Charleston Road near mile post 14 and includes the following parcels: 609-05-020C (1627 S Charleston Road), 609-05-020F, (no address), 609-05-020J (1641 S Charleston Road), and 609-05-020K (1633 S Charleston Road). The Applicants are Mr. and Mrs. Jennings, Mr. Hawkins and Mr. and Mrs. Hernandez.

### I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Parcel Size: 8.15 acres  
Current Zoning: RU-4 (Rural; one dwelling per 4 acres)  
Proposed Zoning: RU-2 (Rural; one dwelling per 2 acres)  
Growth Area: D – Rural Areas  
Plan Designation: Rural  
Area Plan: None  
Existing Uses: Three (3) lots have single family homes, one (1) lot is vacant  
Proposed Uses: legalize the three (3) existing Single Family Residences and allow one(1) additional

### Zoning/Use of Surrounding Properties

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-4	Unpermitted camping/Recreational Vehicle Park
South	RU-4	Vacant State Land
East	RU-4	Vacant State Land/private land
West	RU-4	Vacant State Land/private land

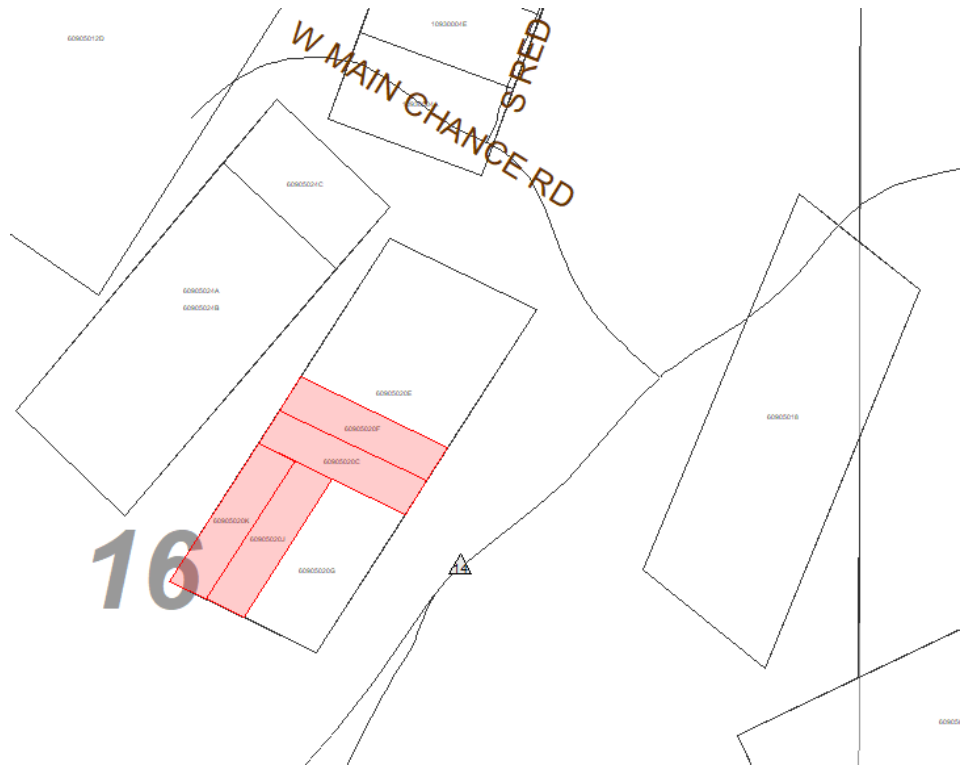
### **Planning, Zoning and Building Safety**

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Bisbee, Arizona 85603  
520-432-9300  
520-432-9278 fax  
planningandzoning@cochise.az.gov

**II. PARCEL HISTORY**

The parcel history for the parcels is extensive and confusing.

After extensive discussion with the assessor’s office it has been determined that there has been a series of lot splits conducted on the parent parcels over the recent years. All of the splits have taken place since zoning has been adopted. The most recent being in 2018 when parcels J and K were created, making the parcels, and homes on them non-conforming. The applicant, Mr. Jennings maintains that he was under the impression that Arizona Revised Statute(ARS), 11-812 exempted him from the Subdivision rules due the mining claim. ARS 11-812.A.2 says: *Nothing contained in any ordinance authorized by this chapter shall... Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, **mining**, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres...*



In the late 90s, early 2000s the today's parcels (J and K) were part of a parcel that was approximately 8 acres. Both the Single-family home barn/apartment combo and manufactured home had permits applied for and approved. Following that, the lots were split placing these homes on lots that were too small for the zoning district. The one parcel was subsequently sold. Below is a chart summarizing the permit histories.

Date	Permit #	Parcel #	Lot size	Use proposed	Square footage
1993	None located	609-05-020F	NA	Assessor picks up manufactured home, shed, no permit located	1344
7/22/93	93077B	609-05-020 B/D	8.3 +/-	SFR-Barn, APT Combo- Temp RV	1176
5/18/98	980466	609-05-020B/D	8	Manufacture Home	1456
6/29/01	010617	609-050-020 B/D	8	Renewal MH Permit	1456
8/10/10	100717	609-05-020H	Not provided	Power for water tanks	NA
01/04/12	11-268	609-05-020H	4.17	Metal carport	373
03/05/20	20-0326	609-05-020J	Not provided	Electric upgrade for MH	

**III. NATURE OF REQUEST**

The Applicants are requesting to amend the zoning of their parcels from RU-4 to RU-2. The lots have been split multiple times in recent years, ending with today’s configuration of four non-conforming lots.

**IV. ANALYSIS OF IMPACTS**

**Mandatory Compliance**

Section 2208.03 of the Zoning Regulations requires that the amendment of Zoning District boundaries take place in compliance with the Comprehensive or Area Plan Designation assigned to the area in question. In this case, the subject property lies within a Category “D” Rural Area. The Comprehensive Plan allows for rezoning to RU-2.

**Compliance with Rezoning Criteria**

Section 2208.03 of the Zoning Regulations provides fifteen criteria used to evaluate rezoning requests. Thirteen of the criteria are applicable to this request. Ten criteria are met as presented and three do not comply.

**1. Provides an Adequate Land Use/Concept Plan: Complies**

No site plan has been provided because three of the four lots requesting the rezoning are already developed.



appears to have an illegal Recreational vehicle park in process.

**4. Limitation on Creation of Nonconforming Uses: Complies**

The proposed rezoning will remedy the nonconforming lot size. No new nonconforming issues are expected.

**5. Compatibility with Existing Development: Complies**

As previously stated, the three residences exist and have so for twenty years. There have not been any compatibility issues raised in that time.

**6. Rezoning to More Intense Districts: Complies**

**2. Compliance with Applicable Site Development Standards: Does not comply**

The parcels as they occur today do not comply with the minimum lot size of four acres. This is why the rezoning has been requested. The current parcel configuration, and non-conforming status is a direct result of property owners splitting the parcels without verifying their zoning. Today, this would be caught by the Minor Land Division application.

**3. Adjacent Districts Remain Capable of Development: Complies**

The surrounding lots remain capable of development. In fact, this could set a precedent in for the surrounding lots. The parcel to the north (609-050-020E) already



If the vacant properties to the north or south were to request rezoning, this could establish a precedence. Increasing the density could add some additional impacts to the neighborhood, such as the commercial business located on Main Chance Road. The proposed rezoning is concentrated in a small portion of a mining claim, surrounded by silvers of State Land. The State Land will provide an approximately 200 foot buffer to the west and Charleston Road.

#### **7. Adequate Services and Infrastructure: Complies**

The parcels have been existing for approximately 20 years and have existing utilities and access.



#### **8. Traffic Circulation Criteria: Complies**

This rezoning request will not alter the layout or function of the existing roadway network and will not require right-of-way dedication. Again, the three residences have existed for 20 years. The possibility of one additional home will not result in substantial increase in traffic.

#### **9. Development Along Major Streets: Complies**

The parcels access the site via a driveway on Charleston Road or Chane Mine Road. No new driveways are proposed or required for the rezoning request.

#### **10. Infill: Not Applicable**

This Factor applies only for rezoning requests to General Business, Light Industry or Heavy Industry.

#### **11. Unique Topographic Features: Complies**

There is topography on and accent to the rezoning. Three lots have already been developed. Should the rezoning be approved, the fourth lot also has buildable areas on it.

#### **12. Water Conservation: Complies**

The lot and homes on three of the four lots are existing. One additional home will not add a significant burden to the water. Potential rezonings in the future if request) may have to provide additional information.

#### **13. Public Input: Does not comply**

Staff posted the property on October 1, 2020 and published a legal notice in the Herald/Review September 20, 2020. Four responses in opposition were received and none in support. The opposition cited the rural character, increase in density, the large number of stub outs on the parcel to the north.

#### **14. Hazardous Materials: Not Applicable**

No hazardous materials are proposed.

#### **15. Compliance with Area Plan, Master Development Plan or Comprehensive plan policies: Does not Comply**

The parcels are not located within an area plan. The comprehensive plan is designated as Rural and allows for rezonings to RU-2. However, Section 102, Goal 3, policy g of the Comprehensive Plan states *Small, isolated rezonings, also known as "spot zonings," should be discouraged.*



## **V. PUBLIC COMMENT**

In response to County mailings, the Planning Department has received four responses in opposition which are included in the packet.

## **VI. SUMMARY AND CONCLUSION**

The request is for a downzoning, from RU-4 (Rural; one dwelling per four acres), to RU-2 (Rural; one dwelling per two acres) on four parcels totaling 8.15 acres outside of Tombstone. Staff is recommending denial of the request due to the spot zoning of the request, public opposition, character of the area and the non-conforming lots are the result of the applicant splitting the properties.

### **Factors in Favor of Approval**

1. The request complies with ten the applicable Rezoning factors used by Staff to analyze this request;
2. The request would remove the non-conforming status of three residential homes and would allow future improvements and expansions.

### **Factors Against Approval**

1. Four letters in opposition were received;
2. The request is a spot zoning;
3. The request would be out of character with the surrounding area;
4. The parcels were created illegally after 1975.
5. The request does not comply with two factors.

## **VII. RECOMMENDATION**

Based on the factors in favor of approval, Staff recommends forwarding the request for a rezoning, from RU-4 (Rural; one dwelling per four acres), to RU-2 (Rural; one dwelling per two acres) on four parcels totaling 8.15 acres outside of Tombstone to the Board of Supervisors with a recommendation of denial. Should the Commission determine to recommend approval, the following Conditions should be included.:

1. The Applicant shall provide the County with 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 property within thirty (30) days of Board of Supervisors approval of the rezoning; and
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.