



# Cochise County

## Development Services

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

### **MEMORANDUM**

**TO:** Cochise County Board of Supervisors  
**THROUGH:** Richard G. Karwaczka, County Administrator  
**FROM:** Christine Mclachlan, AICP, Planner II  
**FOR:** Daniel Coxworth, AICP, Development Services Director  
**SUBJECT:** SUA 21-01 (MM Ft Grant Rd Appeal La Sota)  
**DATE:** April 5, 2021 for the April 20, 2021 Meeting

### **APPEAL OF A PLANNING AND ZONING COMMISSION SPECIAL USE AUTHORIZATION APPLICATION**

The Applicant, Mr. Timothy La Sota of the Pharm LLC, has filed an appeal against a decision made by the Cochise County Planning and Zoning Commission on March 10, 2021. The Commission approved the request 5-2 (approval, denial) for Special Use Authorization to allow the construction of a medical marijuana cultivation and infusion facility on a 318.31-acre parcel. The project is located at 9910 North Fort Grant Road on parcel number 20117002E. The proposal includes approximately 63 acres of outdoor grow, 817,120 SF of new greenhouses, 140,000 SF of processing and a 5,100 SF office/security, 30,640 SF storage. The construction of proposed uses is subject to site development standards contained in the Cochise County Zoning Regulations and requires Special Use Authorization from the Planning and Zoning Commission in a rural zoning district. The special use authorization applicant was Ms. Hannah Bleam of Willcox OC LLC.

Section 1716.04 of the Zoning Regulations states that appeals of Special Use decisions shall be heard by the Board of Supervisors at a duly noticed public hearing. Following its deliberations on the date of decision, the Board of Supervisors shall either affirm, reverse, or modify the decision of the Planning and Zoning Commission.

### **PLANNING AND ZONING COMMISSION HEARING**

The Applicant, Willcox OC LLC, requested a Special Use Authorization (SUA) to approve the construction of a marijuana cultivation and infusion facility on a 318.31-acre parcel. Because of their unique characteristics, and often high potential to adversely impact surrounding properties, SUAs may be permitted only when they can demonstrate that potentially negative off-site impacts can be mitigated. The Commissions' role in a SUA is to evaluate whether negative impacts can be successfully mitigated. To assist this analysis, the Zoning Regulations includes ten special use factors. These factors represent policy decisions by the Commission and the Board, reducing uncertainty concerning their probable response to a given request. The SUA Factors focus on how a proposed land use will impact its neighbors, including the effects on traffic, demand on County services, and whether and/or the degree to which, the proposed use creates offsite nuisances.

Most Special Use Authorizations have both factors in favor and factors against. In this case, planning staff determined the SUA: complied with six factors, partially complied with one factor, complied with conditions on two factors, and did not comply with one factor.

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

1415 Melody Lane, Building F  
Bisbee, Arizona 85603  
520-432-9300  
520-432-9278 fax  
planningandzoning@cochise.az.gov

The Planning and Zoning Commission held a public hearing on March 10, 2021. At the hearing, the commissioners considered both verbal and written testimony. After considering all the facts, the commission voted 5-2 in favor of the request. The appellant represents the property owner directly south, and adjacent, to the subject property. The appellant was present and allowed to address the commission during the hearing. His written objections to the SUA were also included in the staff report that was submitted to the commission prior to the hearing.

### **APPEAL REQUIREMENTS**

The application for an appeal of a special use authorization must include:

- 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
- 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.

**The appellant includes the following reasons for why he believes the decision was erroneous, arbitrary, capricious, or an abuse of discretion:**

1. *The Pharm has been a good community partner.*

The appellant states that the current marijuana facility, known as the “The Pharm,” is a community asset. He provides employment numbers and recent purchase data. He further states the proposed use presents an economic threat to their operation.

Staff Analysis: The special use process is a quasi-judicial function of the Planning and Zoning Commission. The commission does not have the authority to make or change zoning law. Rather, in quasi-judicial hearings, the commission must interpret the meaning and spirit of the zoning ordinance as enacted by the Board of Supervisors, which is the governing, policymaking body of Cochise County. The commission factors into account off-site impacts when examining special use applications. However, these impacts are physical rather than economic in nature, and specifically include consideration of dust, smoke, noise, odor, lights, or storm water run-off. During the March 10<sup>th</sup> public hearing, the commission considered all off-site impacts included within the Zoning Regulations and assigned several conditions that were intended to mitigate these impacts. Consequently, staff does not agree that the decision was erroneous, arbitrary, capricious, or an abuse of discretion.

2. *The proposed use is a nuisance. Insufficient separation can lead to cross-contamination, transfer of pests and disease (see applicant memo for details).*

Staff Analysis: The separation of uses is addressed by setback requirements of the Zoning Regulations. Medical marijuana uses are required to have a 500’ setback from the following uses (Section 1825.02 of the Zoning Regulations):

- Any other Medical Marijuana Dispensary or Infusion Facility.
- Any library.
- Schools (private or public).
- Day Care centers (private or public).

Where those specific uses are not present or applicable, the use must abide by the setback requirement of the underlying zoning district, which in this case is RU-4. The application meets or exceeds all setback requirements contained within Section 604.03 (RU-4 Setbacks) and Section 1825.02 (Medical Marijuana Setbacks).

Relation to Subject Parcel	RU-4 (Min)	Medical Marijuana (Min)	Proposed Setbacks
North	20'	20'	100'
South	20'	500'	500'
East	20'	20'	100'
West	20'	20'	100'

Whether larger setbacks are required to address the issue of cross-contamination and transfer of pests is a broader, Countywide, policy issue that would be more appropriately addressed by the Board of Supervisors as a text amendment to the Zoning Regulations. To impose a significantly larger setback to subject parcel within the context of one special use application, possibly to the degree that it prohibits partial or total use of the adjacent property, is beyond the scope of the Planning and Zoning Commission's quasi-judicial authority.

Moreover, because the applicant meets or exceeds all setback requirements, staff does not agree that the commission's decision was erroneous, arbitrary, capricious, or an abuse of discretion. Rather, the commission fairly applied what is currently allowed by Zoning Regulations. In addition, the commission recommended a condition of approval that limits the amount of approved outdoor grow to no more than 20% of the site, which is identical to the current percent of site used for outdoor growth of the adjacent medical marijuana appellant site.

3. *Project breadth and impact are largely unknown (see applicant memo for details). Specifically, the appellant has concerns regarding traffic, water conservation, floodplain/drainage.*

Concept Plan and Traffic Impacts - As stated in Section 1716.03 of the Zoning Regulations, the following are the minimum requirements for a concept plan associated with a special use:

- a. The type(s) of use(s) planned for the site is specified.
- b. 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.
- c. Project phasing.
- d. Other information deemed necessary to effectively review the Special Use Authorization request.

The concept plan submitted with the request fulfilled these requirements and, if the applicant moves forward with building permitting, they will be required "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" (Condition of Approval 2). This means that the applicant will need to comply with all applicable zoning and building code requirements moving forward. Specifically, in regards to traffic, Section 1807.04 of the Zoning Regulations, states the following: *"For all uses, other than the development of a single residential site, developers shall construct those off-site improvements related to traffic and safety needs resulting from development of the site....If the proposed use is of such magnitude as to significantly reduce the level of service on a street or streets, or if it is likely to cause a substantial increase in traffic or congestion, the County Engineer may require a traffic impact analysis from the developer before a building permit is issued...Developers shall then be required to construct improvements as may be necessary to address all of the issues identified in the study."*

Parking and traffic studies could be required in this case; however, as with other large developments, this additional analysis is only required prior to the issuance of building permits.

Aquifer demands – The Arizona Department of Water resources reviews and permits all new well requests. The request complies with all requirements contained in Section 1819 (Countywide Water Conservation Measures) and is not within the Sierra Vista Sub-Watershed Overlay Zone.

Floodplain Concerns – The appellant states that, “The retention/detention basins Willcox OC shows on their rudimentary site plan are not realistic and are too small and will not drain in 24 hours as required.”

As noted in the staff report, the parcel is within AO-1, AO-2 and X flood zones. A map delineating the each of these areas was included in the staff presentation to the commission. In addition, the commission recommended the following condition (Condition of Approval 9) prior to construction:

“Prior to the start of construction:

- A. A Stormwater Pollution Prevention Plan (SWPPP) will be required from the Arizona Department of Environmental Quality (ADEQ). This will also include a Notice of Intent (NOI) to clear land.
- B. A Notice to Clear Native Plants must be obtained from the Arizona Department of Agriculture and a copy submitted to Cochise County.
- C. A Drainage Analysis will be required for all parcels (hydrology and hydraulic report) as well as a Floodplain Use Permit. This includes, but not limited to, Grading Plans, Site Plans, Drainage Reports prepared by an Arizona Registered Civil Engineer.”

It is very likely additional treatment will be required, but until a drainage analysis and Stormwater Pollution Prevention Plan are submitted, staff cannot determine what specific measures are necessary.

In summation, additional information and analysis is required. Parking studies, drainage analyses and drainage reports are time-consuming and expensive. Cochise County, like many governmental entities, does not require the level of analysis mentioned in the appeal prior to the submittal of a planning application. The commission correctly applied the level of analysis that is appropriate for a Special Use Authorization, and consequently their ruling, was not erroneous, arbitrary, capricious, or an abuse of discretion.

4. *Previous track record of applicant. The appellant states that “The applicant has no track record in his community of anywhere else and even its identity is shrouded in mystery because it has not properly formed an LLC.”*

A special use authorization is a permit that applies to property. When a special use is approved, the conditions included within the docket become part of the permit. If those conditions are violated during the term of the permit, a process exists to revoke it. The Zoning Regulations (1716.03.H.) specifically states, “Should the Special Use Authorization 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 Authorization or to revoke the Special Use Authorization approval.”

Whoever submits an application/plans for future permitting will be required to follow all zoning regulations, building code requirements, as well as the additional conditions imposed by the commission. As it is not required by zoning, or even customary for the commission to investigate the applicant or their track record, the SUA ruling was not erroneous, arbitrary, capricious, or an abuse of discretion.

**The appellant includes the following additional testimony and evidence with an explanation of why this was not presented to the Planning Commission.**

The appellant stated “none,” within this section of the application.