

**COCHISE COUNTY**

**SUA-21-02**  
**(MM Ft Grant Rd Appeal Holcomb)**

Appeal of a Planning and Zoning Commission Approval of  
a Special Use Authorization for Medical Marijuana  
Cultivation and Infusion Facility

Board of Supervisors

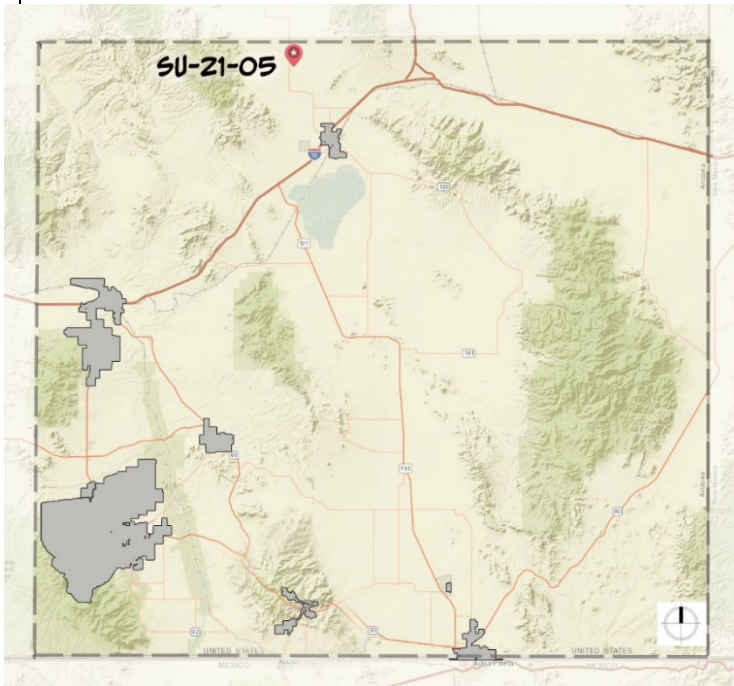
April 20, 2021



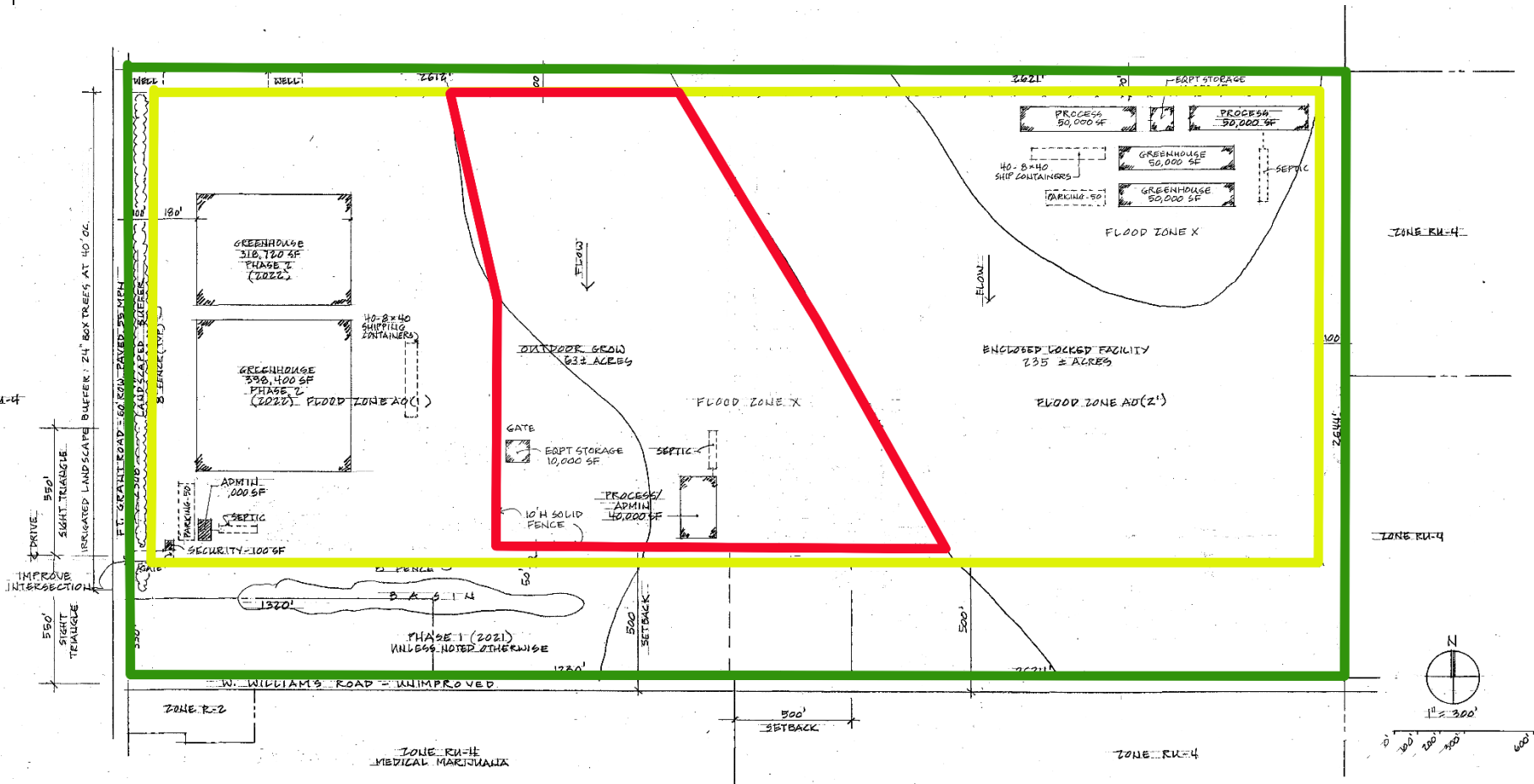
***Public Programs...Personal Service***

## COCHISE COUNTY **SU-21-000005 Background**

- SU-21-000005 was a request to allow the construction of a medical marijuana cultivation and infusion facility
- The subject property (201-17-002E) is 318 acres and has historically been in agricultural use. The location is on Ft Grant Rd approximately 10 miles NW of Willcox



# COCHISE COUNTY Proposed Site Plan



■ Property Line   
 ■ 8' Tall Fence   
 ■ 10' Wall



## COCHISE COUNTY **Evaluation Criteria Analysis Special Use**

There are 10 factors used to evaluate all **special use** proposals. As submitted, the application:

- Complies: 6 factors
- Complies with conditions: 2 factors (Site Development Standards, Hazardous Materials)
- Partial compliance: 1 factor (Zoning district purpose compliance)
- Does not comply: 1 factor (Off-Site Impacts)

The Special Use was approved by the Planning and Zoning Commission by a vote of 5-2 on March 10, 2021.



## COCHISE COUNTY **Evaluation Criteria Analysis Appeal**

There are two requirements the Board must consider to evaluate all **appeals of special uses** proposals.

1. All reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.
2. 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.



## COCHISE COUNTY **Appellant Claims**

The appellant is one of the landowners directly southwest of the subject parcel. This parcel includes Apple Annie's Farm and Produce as well as private owner/operator residences.

The following are reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion:

- 1. in accordance with 1716.02 (Offsite Impacts) – the applicant is deficient in the outdoor odor mitigation plan.*



## COCHISE COUNTY **Appellant Claims – Staff Analysis**

1. *In accordance with 1716.02 (Offsite Impacts) – the applicant is deficient in the outdoor odor mitigation plan.*

- The Zoning Regulations do not require submittal of an odor mitigation plan. Section 1716.02I of the Zoning Regulations provides the “Factors For or Against a Proposed Special Use Authorization” for Off-Site Impacts.
- The commission assigned a condition intended to mitigate the impact of outdoor grow, which states the following:

*“All proposed outdoor grow locations shall be equipped and maintained at their perimeter of the site with odor control devices, based on current industry-specific best control technologies and best management practices, that results in neutralization of the odor from the cannabis under normal circumstances. (Condition of Approval 12)”*

- The odor mitigation measures were intentionally broad in scope and were results focused.
- The decision was not erroneous, arbitrary, capricious, or an abuse of discretion



## COCHISE COUNTY **Appellant Claims**

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.

- 1. The Planning and Zoning Commission was presented an odor mitigation plan for outdoor cannabis cultivation by the Applicant. Applicant's staff stated that no cannabis odor would leave the property. This is a false and misleading statement.*
- 2. The appellant states that Cochise County needs to review their current Cannabis Regulations. They request that the Board of Supervisors direct staff to review regulations from other cannabis growing areas and compile a comprehensive set of cannabis regulations for Board consideration.*



## COCHISE COUNTY **Appellant Claims – Staff Analysis**

1. *The Planning and Zoning Commission was presented an odor mitigation plan for outdoor cannabis cultivation by the Applicant. Applicant's staff stated that no cannabis odor would leave the property. This is a false and misleading statement.*
  - As a result of condition 12, the SUA applicant is responsible for the installation and maintenance of an odor control system at the perimeter of the site that relies on current industry-specific best control technologies. Per 1716.03 of the Zoning Regs, “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).”
  - While a specific product was suggested by the applicant, the condition mandates a performance standard. The measurement of compliance, *“neutralization of the odor from the cannabis under normal circumstances”* is also stated/conditioned.
  - The appellant has submitted additional testimony or evidence they feel was not included in the original SUA within their appeal application.



## COCHISE COUNTY **Appellant Claims – Staff Analysis**

2. *The appellant states that Cochise County needs to review their current Cannabis Regulations. They request that the Board of Supervisors direct staff to review regulations from other cannabis growing areas and compile a comprehensive set of cannabis regulations for Board consideration.*
- Both the original SUA, and this appeal, are quasi-judicial in nature. Quasi-judicial decisions involve the application of already established zoning policies within the Zoning Regulations to individual situations
  - The consideration of expanded regulations are outside the scope of the SUA or this appeal
  - The appellant has submitted additional testimony or evidence they feel was not included in the original SUA within their appeal application related to this issue



## COCHISE COUNTY **Factors In Favor of the Appeal**

1. The appellant has proved the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion. (Board shall state an example for record).
2. The appellant has provided additional 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, that suggests a modification or reversal of the Commission's decision is warranted. (Board shall state an example for record).
3. The SUA applicant did not adequately comply with section 1716.02 (applicable factors for and against a proposed special use) of the Zoning Regulations. (Board shall state an example for record).



## COCHISE COUNTY **Factors In Favor of an Appeal Denial**

1. The appellant has not proved the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.
2. The appellant has not provided a 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, that suggests a modification or reversal of the Commission's decision is warranted.
3. It would overturn a 5-2 decision by the Planning and Zoning Commission, the board that is designated to consider all special use authorizations.



## Recommendation

*Based on the Factors in Favor of An Appeal Denial, Staff recommends **Denial** of the Appeal (SUA-21-01), thereby upholding the Planning and Zoning Commission's Approval of SU-21-000005, with the original Conditions of Approval.*



## Sample Motions

*Madame Chairman, I move to **approve** Docket SUA-21-02, overturning the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of the Approval constituting Findings of Fact.*

*Madame Chairman, I move to **deny** Docket SUA-21-02, upholding the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of an Appeal Denial constituting Findings of Fact.*

