



# Cochise County

## Development Services

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### **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 21-02 (MM Ft Grant Rd Appeal Holcomb)  
**DATE:** April 7, 2021 for the April 20, 2021 Meeting

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

The Applicant, Mr. John Holcomb, 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 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.

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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 southwest 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:**

*The appellant states that in accordance with 1716.02 (Offsite Impacts) – the applicant is deficient in the outdoor odor mitigation plan.*

Currently, the Zoning Regulations do not require the submittal of an odor mitigation plan for any special use application. In this case, the applicant voluntarily submitted one as part of their application material. Section 1716.021 of the Zoning Regulations provides the “Factors For or Against a Proposed Special Use Authorization” for Off-Site Impacts. Specifically, it states, “Adequate measures have been taken to mitigate off-site impacts such as dust, smoke, noise, odors, lights, or storm water run-off.”

In review of the SUA application, staff was concerned about the amount of outdoor odor associated with the activity and their ability to control off-site impacts, odor in particular. Initially, the applicant had requested to include approximately 170 acres of outdoor grow. Prior to the Planning and Zoning Commission hearing, thisIn addition, the commission imposed the following two conditions:

*All indoor grow facilities shall be equipped and maintained with odor control filtration and ventilation system(s) based on current industry-specific best control technologies and best management practices. No operable windows or exhaust vents shall be located on any building façade that abuts a residential use or zone. Exhaust vents on rooftops shall direct exhaust away from residential uses and Ft Grant Road. (Condition of Approval 11)*

*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)*

Unlike a sound nuisance, where a decibel limit could be established, or a light nuisance where a lumen cap could be imposed, an odor abatement does not have a similar measurement threshold. Consequently, the mitigation measures mandated by condition were intentionally broad in scope and were results focused. Although the SUA applicant proposed a very specific product to abate the transmission of odor, the condition mandates the installation and maintenance of a perimeter-based odor control system. The system must be able to neutralize the odor to a degree that it cannot be detected on surrounding property. What this means, is if a surrounding property owner detects the odor of cannabis, it would potentially constitute a code violation that could be reported to the County. A Code Compliance case could be opened to determine, first, whether this property is responsible for the odor and, if so, how the property owner will correct the problem.

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

*The appellant states that Cochise County’s Recommended Conditions were not supplied to [him] prior to the March 10,*

2021 Planning & Zoning Commission Meeting. [His] research has found that this Condition is not sufficient to mitigate outdoor cannabis cultivation odor.

1. The appellant states that “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.”

Staff Analysis: The Agenda for the March 10, 2021 Planning and Zoning Commission Meeting, which included the staff’s recommended conditions, was posted online to the County’s website on March 4, 2021. What is included within Section V. Outdoor Odor Mitigation of the SUA Applicant’s Odor Mitigation Plan, referenced by the Appellant, is as follows:

“We have done extensive research on the best system to mitigate outdoor odors with marijuana grow facilities and have found a state-of-the-art odor mitigation system from FogCo. This system is installed around the perimeter of the outdoor cultivation areas and utilizes misters in order to capture any potential odor coming from the property. In addition, the mister system works as a dust-proofing system and therefore provides two benefits with one system.”

While the SUA applicant listed a specific product within their Odor Mitigation Plan, the condition of approval imposed by the Planning and Zoning Commission regarding outdoor odor mitigation is significantly broader. Specifically, the condition of approval was as follows:

“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 12)”

Consequently, 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. Unlike any other marijuana operation in Cochise County, this development has a condition attached that mandates odor neutralization. Any report of odor generated from this facility effectively constitutes a code violation.

Staff is not qualified to dispute with the appellant’s claim of the difficulties associated with neutralizing the odor associated with the cannabis crop. Nor are we qualified to dispute the effectiveness of any particular product or installer. However, the County is authorized to enforce the neutralization of the air, as conditioned. Specifically, the Zoning Regulations grant the following powers:

*(Zoning Regulations, 1716.03.G.) Should any other conditions of the Special Use Authorization approval not be met within the time limits specified above or within the time limits specified by the Planning Commission, the Special Use Authorization approval may be revoked by the County Zoning Inspector after 30-calendar days notice to the owner and Applicant, unless a request for an extension is made within this 30-calendar day appeal period. A request for an extension will be subject to the Special Use Authorization modification provisions of this Article.*

*(Zoning Regulations, 1716.03.H.) 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.*

2. The appellant states that Cochise County needed 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. Furthermore, they suggest that it would be to the benefit of both the residents and growers to have a well defined set of regulations provided by Cochise County for an orderly growth of this industry.

Staff Analysis: The Planning and Zoning Commission’s role in Special Use Authorizations (SUA) is quasi-judicial.

Quasi-judicial decisions involve the application of already established zoning policies within the Zoning Regulations to individual situations. These decisions must include the finding of facts regarding the specific proposal and the exercise of some discretion in applying predetermined policies to the situation. Whether additional regulations are required to regulate the placement and operation of marijuana cultivation facilities is not a matter that can be decided upon by the Planning and Zoning Commission, and consequently, this information was not included within SU-21-000005. Staff also believes it cannot be included within the context of this appeal, because it is a review of a quasi-judicial decision by the Board. The merits of this suggestion are most appropriately relegated to a text amendment to the Zoning Regulations.