



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

SUA-21-02 MM Ft Grant Rd Appeal Holcomb

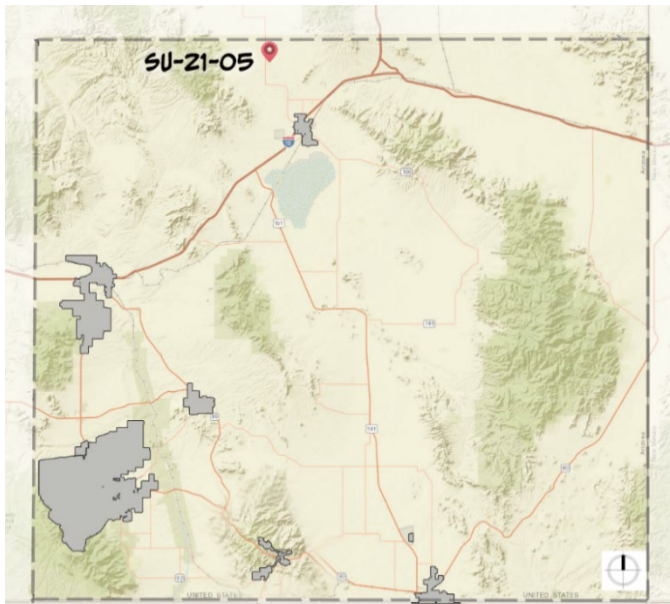
Board of Supervisors

June 22, 2021



SU-21-05 Special Use Background

- SU-21-05 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
- The use was **recommended** by staff and **approved** by the Commission on March 10, 2021 (Vote 5-2).





SUA-21-02 Appeal History

- An appeal of SU-21-05 was filed within the 15-days following the Commission Decision.
- The appeal was heard by the Board of Supervisors on April 20, 2021. This appeal was granted by a vote of 2-1. This decision was contrary to the recommendation of staff, and it reversed the decision of the Commission.
- On May 18, 2021, the special use applicant and the property owner served the Board of Supervisors and Apple Annie's Farm and Produce with a lawsuit claiming the determination of the Board was arbitrary and capricious and/or was an abuse of discretion.
- On May 26, 2021, following a discussion in executive session, the Board unanimously voted to re-hear this appeal.
- Special Use **Applicant** is Willcox OC, LLC (Adam Baugh). **Appellant** is John Holcomb (Apple Annie's). Original Case SU-21-05. Current Case SUA-21-02.



Special Use Application Evaluation Factors (Commission)

- Staff/Commission considers 10 factors when examining all special use requests.
- This includes offsite impacts, like odor.
- Most special uses have factors for and against. The evaluation and balancing of these factors is how staff arrives at conditions and recommendations.

The evaluation criteria for an appeal is different.



Appeal Application Evaluation Factors (Board)

- Staff/Board considers 2 factors when examining all appeals of special use requests.
- 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
- Whether the appellant can prove there was an omission of evidence, and that omission is sufficient to warrant a modification or reversal of the commission's decision.



Appeal Application Analysis

1. The appellant claims the applicant is deficient regarding odor mitigation and questions the effectiveness of the odor mitigation measures put forward.

Staff Response: The issue of odor was analyzed by staff, discussed by the commission, and conditions were attached to mitigate its impact.

- The special use decision was not erroneous, arbitrary, capricious, or an abuse of discretion.
- There was no omission of evidence.



Appeal Application Analysis

- 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.*

Staff Response: Both the original special use, and this appeal, are quasi-judicial in nature. Consequently, the consideration/application of expanded regulations are outside the scope of the special use or this appeal.

- The special use decision was not erroneous, arbitrary, capricious, or an abuse of discretion.
- There was no omission of evidence.



Factors In Favor of the Appeal

1. If 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. If 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).



Factors In Favor of an Appeal Denial

1. If the appellant has not proved the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.
2. If 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-21-02), thereby upholding the Planning and Zoning Commission's Approval of SU-21-05, with the original Conditions of Approval.*



Sample Motions

Madame Chairman, I move to approve the appeal (SUA-21-02), overturning the March 10, 2021, approval by the Planning and Zoning Commission of SU-21-05, the Factors in Favor of the Approval constituting Findings of Fact.

Madame Chairman, I move to deny the appeal (SUA-21-02), upholding the March 10, 2021, approval by the Planning and Zoning Commission of SU-21-05, the Factors in Favor of an Appeal Denial constituting Findings of Fact.