



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) REHEARING
DATE: June 8, 2021 for the June 22, 2021 Meeting

APPEAL OF A PLANNING AND ZONING COMMISSION SPECIAL USE AUTHORIZATION APPLICATION

On March 24, 2021, Mr. John Holcomb 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 201-17-002E. 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 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.

The Planning and Zoning Commission held a public hearing on March 10, 2021. At the hearing, the commissioners

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considered both verbal and written testimony. After considering all the facts, the commission voted 5-2 in favor of the request. The appellant is 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.

Although the Board may review the special use factors considered by Planning and Zoning Commission, their decision whether to affirm, deny or modify a special use, must be based on one or both of the above requirements.

BOARD OF SUPERVISORS APPEAL HEARING

On April 20, 2021, the Board of Supervisors heard two separate appeals regarding this case, SUA-21-01 (Pharm) and SUA-21-02 (Holcomb). The Board voted to deny SUA-21-01 by a vote of 1-2 (approve, deny). The Board voted to approve SUA-21-02 by a vote of 2-1 (approve, deny). The SUA-21-02 decision was contrary to the recommendation of staff, and it reversed the special use authorization granted by the Planning and Zoning 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. The hearing on June 22, 2021, which was publically noticed in the same manner as the original application, will serve as the re-hearing requested by the board. Staff shall provide a presentation to the board at this meeting.