



MEMORANDUM

PUBLIC WORKS - DEVELOPMENT SERVICES

DATE: February 16, 2016

TO: BOARD OF ADJUSTMENT District #4

FROM: Tom Drzazgowski – Deputy Chief Zoning Inspector

SUBJECT: **P16VA00003 - EL CORTIJO LLC – SOUTH OLD SPANISH TR.**
Scheduled for public hearing on March 8, 2016.

LOCATION:

The applicant's property is located at 3700 S. Old Spanish Tr. on the eastern side of Tucson. The property that the applicant is appealing an interpretation on is located at the northwest corner of Old Spanish Tr. and Escalante Rd. The site is directly west of the main entrance to Saguaro National Park. The zoning on the property is SR (Suburban Ranch).

SURROUNDING ZONING / LAND USES:

Properties to the north, south and west are also zoned SR. To the east is Saguaro National Park which is zoned IR (Institutional Reserve). On the corner to the southeast is a 1.7 acre property that is zoned CB-1 (Local Business).

QUESTION

The question before the Board of Adjustment is whether the property at 3700 S. Old Spanish Trail is entitled to a non-conforming use permit as a Guest Ranch and allowed a 100% expansion of the property.

CONSIDERATION

The Board of Adjustment on July 14, 2015, determined that there was no legal non-conforming motel use on the property. At the time, staff presented an interpretation that there once was a non-conforming use permit for a motel, gas station and café. However, the use was discontinued as evidenced by a series of permits, the most telling a permit from 1960, signed and requested by Bert Calvert, for a sign with the copy "Houses for Rent". In addition, some of the later permits were for "Residence", "Build 2nd Residence" and "Add Residence". No comments or other information on the permits reference a motel use. In addition, no other documentation has been provided to evidence the motel use has been continuous and is still occurring on the property. As such, the non-conforming use for a motel was discontinued and the site was used for an allowed use of residences in accordance with the Pima County Zoning Code (PCZC). Staff has included the attached report written by Robert C. Johnson on behalf of El Cortijo LLC, which was written in conjunction with a conditional use permit requested on the property that clearly supports the change in use of the property. The Calvert family may have had ambitions of running a resort/hotel, but only operated a "rental complex containing

eight houses and a community pool.” This use would have been permitted in 1955 and is still a permitted use today.

Mr. Calvert requested a non-conforming use permit for a “motel, gas station and café”, which was granted by the Board of Adjustments in 1955. Neither Mr. Calvert, nor the Board of Adjustment, mention the term Guest Ranch during the process. In 1955 the definition of Guest Ranch stated:

A resort hotel and or group of buildings containing sleeping units, having a building site of not less than 4 commercial acres.

No permits for a Guest Ranch were every obtained. Instead, Mr. Calvert sought and obtained the required permits for what exists on the property, which are rental homes.

Furthermore, there are material differences between the El Cortijo property and the Tira Mira Guest Ranch which is cited in the applicant’s material. Tira Mira Guest Ranch had numerous units on the property that predated the adoption of the zoning code. In addition, and more importantly, the units on Tira Mira did not meet the density requirements for Suburban Ranch. There is no meaningful debate about certain facts and differences between the two properties:

1. No structures on El Cortijo’s property predated the adoption of the zoning code in February 1953.
2. The El Cortijo property is approximately 45 acres. The maximum number of dwelling units permitted is 13. The current number of dwelling units is under the maximum number allowed by the zoning code.

The PCZC does not regulate whether an owner lives in a residence or rents it out. Eight residences on 45 acres were an allowed use in 1955 and have been use since the adoption of the PCZC. In addition, the owners of the property would have been permitted up to 13 residences on the property in 1955 with nothing more than a permit based on the property acreage and minimum area per dwelling unit. Today, the same number of units is allowed on the property subject to approval of a Development Plan per Chapter 18.71. A development plan is an administrative engineering review by staff, imposing county regulations and ensuring requirements of all Pima County Codes are met. The existing rental units predate the requirement for a development plan; additional units up to a maximum of 13 could be added with a development plan.

CONCLUSION

Staff requests that the Board of Adjustment uphold the Deputy Chief Zoning Inspector’s decision that the property located at 3700 S. Old Spanish Trail is not a non-conforming Guest Ranch. As previously presented to the Board of Adjustment, the property once had a non-conforming use permit for a “gas station, café and motor court” that was memorialized as a permit in 1955 for “1 gas station, 1 café, 1 motel with 6 dwelling units.” This use was discontinued. Per 18.01 of the PCZC, a non-conforming use is no longer valid if discontinued for a period of 12 months. Following a previous unsuccessful appeal, the applicant is now suggesting that they have a non-conforming Guest Ranch. However, this is not a legally valid position, since the previous owner never requested or obtained a permit for a Guest Ranch. Additionally, the Board of Adjustment never considered or discussed a Guest Ranch in 1955.

The applicant suggests that when the motel use was discontinued, it automatically became a Guest Ranch. It did not since the use was, and still is, the rental of single family homes which is simply an allowed use. . No information has been provided by the applicant to date, including old yellow page advertisements, listings, brochures or other information to clearly document the use of the property as a guest ranch. Instead, the available historic documentation is permits for “homes for rent,” and “Saguaro Corner Rentals.”

Respectfully submitted,

Tom Drzazgowski
Deputy Chief Zoning Inspector

The Bike Ranch¹

A Guest Ranch for Cyclists

In the mid-1980s, in an effort to protect Saguaro National Park from overly intrusive development, the Pima County Board of Supervisor's tasked me, the County's Director of Planning & Development Services, to develop an ordinance that would guarantee an ecologically sound transition between natural preserves and urban development while concurrently permitting the economically reasonable use of the underlying land. After months of negotiation between the National Park Service, local residents and the development community, the Buffer Overlay Zoning Ordinance (BOZO) was adopted. The Buffer Ordinance did not change the underlying zoning; rather, it imposed development standards to ensure unobstructed living and movement spaces for wildlife.

Twenty six years later, El Cortijo LLC, proposes to replace an outdated, non-conforming rental complex containing eight houses and a community pool that have been leased as short and long-term rentals since the 1950's with a well-designed and environmentally compatible minor resort called the Bike Ranch. However, because the subject property, a 45-acre parcel located across from Saguaro National Park, lies within the jurisdiction of the BOZO, there have been land use questions raised from residents of the nearby communities.

The following project report answers questions about the Buffer Ordinance as well as the Bike Ranch application. In the end, the report confirms that the Bike Ranch not only meets the requirements of all of the County's environmental regulations, but it also exceeds the development standards of the Suburban Ranch Zoning District.

Issues addressed in this report include:

- Tucson, Famous for its Guest Ranches
- A World Class Bicycling Destination
- The Business Case
- What is the Bike Ranch?
- An Ideal Location
- Buffer Ordinance - A Mechanism Ensuring Environmentally Sensitive Site Planning
- Minor Resorts
- Listening to the Community
- Conclusions

¹ October 1, 2014, By Robert C. Johnson, Ph.D.; Member, Pima County Planning & Zoning Commission, 1981- 84 / Director, Pima County Planning & Development Services Department, 1985-89

Part I: Tucson, Famous for its Guest Ranches

Guest resorts have served the Tucson Metropolitan Area since the early 1930's. Some, such as the Arizona Inn and Lodge On the Desert are now embedded in an urban setting. Others built in the foothills near or adjacent to Tucson's natural parklands are surrounded by low-density residential neighborhoods. Their low visibility, low impact on the surrounding residences and their architectural sensitivity to the desert environment has drawn visitors from across the country. These guest resorts have long been a key part of the Tucson's tourist industry. They also boost the local economy by creating local jobs and capturing significant tax dollars.



However, in the last fifty years only those resorts that adapted to the changing demographics and demands of their customers have survived. They've done so by:

- Providing amenities and services that meet the tastes and needs of today's user.
- Updating and rehabilitating their facilities.
- Respecting the ambiance and secluded nature of their surroundings.
- Clustering their buildings to fit in with the physical environment.
- Assuring the unimpeded movement of wildlife.
- Being located adjacent to or within easy access to Tucson's natural parklands.

Several examples of guest ranches that have survived, thrived and provide a niche experience to the tourist include:

Tanque Verde Ranch

The 35-acre Tanque Verde Ranch Resort complex is approximately one quarter of a mile from Saguaro National Park's northern boundary and designated federal wilderness area. The Resort consists of a cluster of 75 rooms and ancillary facilities. The guests are provided with a broad range of amenities and activities including horseback riding, hiking, tennis, nature programs and mountain biking. The guests are able to access the many trails in both Saguaro National Park as well as in the Rincon Mountain Section of the Coronado National Forest.

Bob Cote, manager of the Tanque Verde Ranch, explains that the Ranch continuously adapts to customer needs in an effort to survive in a constantly changing industry. He said, *"If your customers are not happy they're not going to come back again, so our main objective is to try to find activities, interests, patterns, that will stimulate, encourage and excite our guests to come back."*

White Stallion Ranch

What is now called the White Stallion Ranch was originally built in the early 1900's and like many former guest ranches began its life as a cattle ranch. In 1940, Max Zimmerman of Chicago decided to move west and become part of the guest ranch industry in Tucson; there were over 100 guest ranches in the area at the time. In 1958, Drew and Marge Towne bought the ranch.

The operating cattle ranch is located on 3,000 acres adjacent to the northern boundary of Saguaro National Park West. There are forty-one guest rooms and ancillary facilities which include a heated pool, indoor hot tub, meeting rooms, a movie theater, fitness center, petting zoo, bar, and gift shop all clustered on approximately 15 acres of the ranch. White Stallion Ranch provides meals, tennis, volleyball, hikes, horseback riding, rodeos, hayrides, and cookouts for its guests. Horseback riders and guided hikers frequently traverse trails in Saguaro National Park *"that otherwise are not available to the public."* (<http://www.duderanch.org>)

Hacienda del Sol Guest Ranch Resort

In 1929, John and Helen Murphey created Hacienda Del Sol; a desert retreat inspired by early Moorish architecture. The property was originally a ranch school for the daughters of elite families. In the 1930's, renowned architect Josias Joesler was commissioned by the Murpheys to rebuild and redesign sections of the ranch.

In 1948, Hacienda Del Sol was converted into a guest ranch. The guest ranch struggled to survive for a number of years, but in 1995 the secluded property in the Catalina Foothills was acquired by a group of Tucson investors. With the vision of returning the ranch to its original glory, the new owners renovated the resort.

The 34-acre property that includes 30 guestrooms, suites, and private casitas is again expanding and updating its facilities. In a September 6, 2014 article in the Arizona Daily Star, Carli Brosseau writes, *"Hacienda del Sol is now on the verge of a dramatic expansion, set to double the number of guest rooms and make room for larger parties... The buildings occupy about six acres of its 43-acre property."*

Brosseau, quoting Jerry Hawkins, vice president of commercial real estate brokerage at CBRE who specializes in hotel properties stated that he sees *"Hacienda del Sol's expansion plans as smart business. For years, it has been operating as a 30-unit small boutique hotel. It's very hard to make money at that number of rooms because of the fixed costs."*

Canyon Ranch

Mel and Enid Zuckerman opened a health resort in Tucson. The Zuckerman's and their partner Jerry Cohen purchased the 42-acre Double U Dude Ranch in May of 1978. Initially, they considered razing the old and run-down ranch buildings but "*feared that tearing them down might damage the energy of the place and scare away the wildlife*" so they rehabilitated them instead. Canyon Ranch opened on Dec. 20, 1979, with 66 rooms and a staff of 88. One of the important draws is its immediate access to nearby canyons and trails in the Santa Catalina Mountains that allow their guests to walk, hike and bike year-round.

Flying V Ranch

L.A. Gilliam's Flying V Ranch, located at the mouth of Ventana Canyon in the Catalina Foothills, evolved from a cattle ranch into a "Dude Ranch" in the 1920s. Up to 35 Guests were housed in stone and stucco cottages. Gilliam offered his guests a variety of activities including polo, goat roping, tennis, dancing, picnics, pack trips, cattle activities, billiards and swimming. Guests were fed family style in a dining room located at the main ranch building.

According to an article written in the late 1970's, "*The Flying V Ranch: A step back in time,*" the Shield family purchased the dude ranch from Gillham in 1946. Unlike Gillham, the Shields offered a more passive vacation venue. They did not serve meals at the guest ranch; instead, they rented self-contained cottages with kitchens from October through May and closed the Ranch during the summer months.

In 1979, Nellia Shield-Young sold the 70-acre ranch to the Estes Company, a local land developer. The Estes Company envisioned converting the Flying V Guest Ranch into a world-class destination resort, and because of the broad application and loose interpretation of the Guest Ranch zoning requirements, an expedited approval was obtained (see Part VII, Minor Resorts). Five years later Lowes Ventana Canyon Resort was opened.

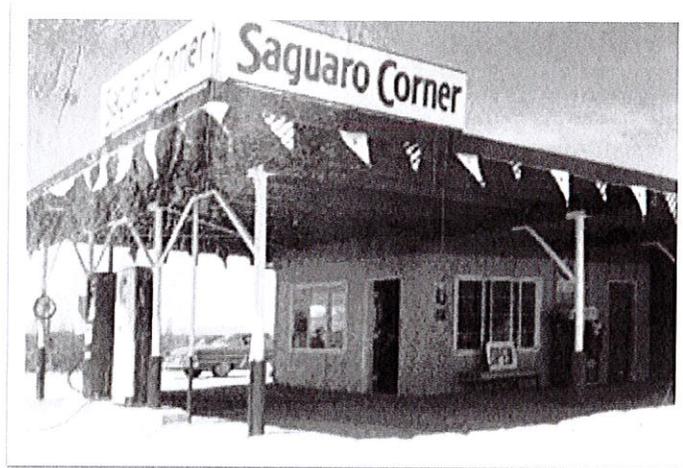
Saguaro Corners – A Dream Not Realized

Bert Calvert acquired nearly two full sections of land (some 1,200 acres) beginning in the early 1950s. Over a time span of approximately fifty years, the Calvert's sold and subdivided all their land into suburban ranch home sites with the exception of a 50 acre property located across from Saguaro Park at the northwest corner of Escalante Road and Old Spanish Trail.

When Bert Calvert bought the property it included a red-and-white, **eight-stool** hamburger stand, a little convenience store, and a couple of gas pumps located on the immediate corner. Eventually, he replaced the burger stand with a restaurant called Saguaro Corners, and built a cluster of slump block rental houses just west of the commercial buildings.

In the mid 1980's, the gas pumps were removed, and the commercial use was limited to a restaurant, gift shop, and bicycle repair shop. Eventually the whole building complex was converted into Saguaro Corners Restaurant.

Bert Calvert's son Frank maintained a long time ambition of expanding the rental units into a hotel across from the entrance of Saguaro National Park. Because of this, he resisted neighborhood pressure in 1994 to place restrictive covenants on his land that would have limited his use of the property. Frank's dream of developing the property never came to fruition and he died in 2006. In 2008, the Calvert Family Trust split off the restaurant and Frank Calvert's personal home from the larger parcel, and in 2013, El Cortijo LLC purchased the remaining 45-acres from the Trust.



Saguaro Corner, circa early 1950s

Part II: Tucson - A World Class Bicycling Destination

An article written by Nancy Lofholm, for the Travel section of The Denver Post on March 25, 2011 titled, “**Balmy Climate, Ideal Terrain Makes Tucson a Cycling Haven.**” stated:

“Tucson is internationally recognized as a winter road-biking destination — and that’s not just in the high-praise opinion of the spandexed spinners who flock there like migratory birds in winter. National Geographic magazine two years ago named Tucson the best town for cyclists in the Rocky Mountain region, and Outside magazine recently named Tucson the best road-cycling city in the country. Forbes magazine named it among the top five. The League of American Bicyclists consistently picks Tucson as tops, and not just for the hundreds of miles of cycling routes that wind out of the city in every direction. Tucson also gets kudos for its overall embrace of the cycling culture. That includes 660 miles of on-street bike lanes, 18 friendly bike shops and more group-riding bike organizations than you can shake a tire pump at.”

And, there is more:

- Visit Tucson, formally known as the Tucson Convention and Visitor Bureau, has made cycling and competitive training a key part of its international promotion of the city.
- Bicycling Magazine consistently rates Tucson as one of America’s most Bike-Friendly Cities, and recognizes Tucson as a training destination for competitive cyclists and top pros.
- Tucson is one of the eighteen US cities that have received a Gold rating by the League of Bicycling Friendly America.
- Tucson serves as a host to major biking events such as the El Tour de Tucson. This 100+ mile bike race attracts more than 9,000 participants each November and is the largest “perimeter” cycling event in the country.
- Professional biking teams from the US and abroad train on the 27 mile long Catalina (Mt. Lemmon) Highway, which is known for its 6,000 foot climb in elevation and the 5% average grade over the length of the ride.
- Matthew Zoll, Pima County’s Bike Manager, estimates that there are 900+ bike-lane miles in the Tucson Metropolitan Area—the most of any community in the nation.
- Pima County has spent tens of millions of dollars constructing “The Urban Loop,” a shared 110+ mile bikeway that encircles the City of Tucson.
- The Fantasy Island Mountain Bike Trails Park, the Kory Laos Memorial Freestyle BMX Park and Saguaro National Park East are linked to “The Urban Loop.”
- The bike-boulevard plan totaling 170 miles adopted in conjunction with a community-sponsored event named the Cyclovia, has increased bike commuting by 58 percent.

Part III: The Bike Ranch – The Business Case

In January 2014, Tucson's Mayor Rothschild sent a letter to Tucson businesses stating that: *"Cities that promote cycling are the same cities that attract an educated work force. Studies consistently rank bikeability as one of the determining factors in an individual's decision of where to live. Supporting alternative modes of transportation is more than a nicety, it is a critical piece of our economic development picture."*

Local Business Growth = Jobs

"The Great Recession ended five years ago, but according to a new study, Tucson is far from recovered; in fact, it's one of the least recovered cities in the country. Out of the 150 largest cities in the U.S., Tucson ranked 143." (Simone Del Rosario, Jul 28, 2014 – KGUN TV)

- *"Only 35% of the jobs lost in the recession since 2008 have been recovered"* in Tucson. (2014 Economic Blueprint Update-Tucson Regional Economic Opportunities)
- *"One thing will drive employment more than the rest—and that is growing small business."* (City of Tucson Economic Development Team)
- Tourism is a \$2.6 Billion industry in Pima County.
- 60% of visitors to Tucson ranked *"Participating in outdoor desert activities"* as third in visitor activities (following restaurant dining and shopping).

To maintain its pre-eminence as one of the nation's top bicycling destinations, there is the need to provide training and support facilities for those enthusiasts who want to take advantage of Tucson's ideal location and environment. With this in mind, El Cortijo LLC proposes to replace a cluster of existing outdated rental properties on the former 45-acre Calvert parcel with a minor resort and world class training facility called the Bike Ranch.

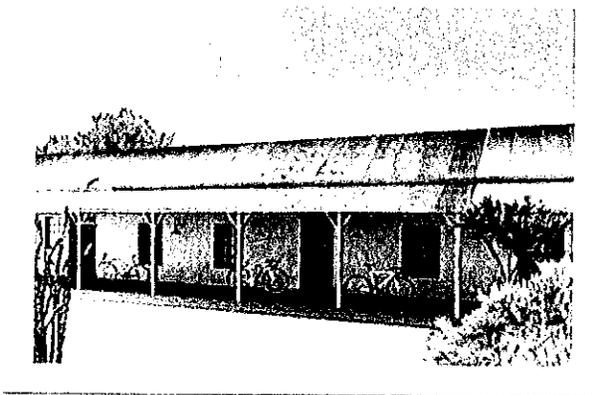
- The Bike Ranch will provide approximately 50 jobs including salaried employment opportunities for many cycling and fitness professionals, hospitality and culinary professionals, as well as many hourly positions for service, maintenance and cleaning. Salaried positions will have a pay range of \$35,000 to \$125,000.
- Provide an *indirect multiplier* impact when the business buys materials and services locally; and providing an *induced impact* from the flow of wages spent by new employees which will also result in a demand for services and products from other businesses.
- Create an *Accelerator Effect* by stimulating and attracting new businesses that support the cycling market.

Part IV: The Bike Ranch – What is it?

Currently, there is no combination resort/world class bicycle training facility in Tucson. The proposed Bike Ranch Complex will be composed of 11 casitas (each casita consists of three separate, independent suites), one luxury casita and a Bunk House with a total of 15 rooms. In addition, a Ranch House and Bike Barn are a part of the complex. The Ranch House consists of a large dining room called the Spoke House (open only to guests), and a living room/lounge. There will also be a kitchen and office spaces in the 12,000 square foot building. The Bike Barn includes a bike store and repair shop (open to the public), a fitness center, training rooms and a yoga studio as well as the Kickstand, a juice/snack bar which would be open to the public.

The latest technology and sustainability standards will be incorporated into the complex. The developer is striving to attain a Platinum LEED rating, a standard that is extraordinarily difficult to achieve.

The resort's buildings have been carefully fitted into the natural landscape by clustering small groups of casitas that respect the natural contours and desert landscape, and by maintaining existing wildlife corridors in and out of the Saguaro National Park. Most buildings are single story structures built low to the horizon, and the Bunk House, the only two-story structure on the site, is positioned to protect the integrity of the resort's northern view corridor from a neighboring cell tower.



Bunk House Design

The Bike Ranch's all-inclusive resort and training facility is designed to provide instruction and training camps for:

- Novices - Avid Cyclists.
- Road and Mountain bikers.
- Triathletes.
- Cyclists training for local races including the 100+ mile El Tour de Tucson.
- Endurance bikers who want conquer Mount Lemmon or train on long distance rides to points in S. Eastern Arizona.

- Support facilities including a training center, fitness center, bike fitting and testing, bike shop and bike repair and dining facility.
- Accommodations to house individuals, groups of bicycle enthusiasts or racing teams for one night to weeks at a time.

Part V: The Bike Ranch the Ideal Location

Recognizing the growing reputation of Tucson as a year-round bicycling mecca, El Cortijo LLC purchased the 45-acre Calvert property in 2013. The property is ideally located for a world-class bicycle guest resort and training facility because it is:

- Located at the eastern convergence of both the metropolitan bikeway system and a network of bike lanes that support extended rides throughout Eastern Pima County.
- Easily accessible to:
 - Catalina Highway and Mt. Lemmon, voted the best training mountain in the State (<http://clippedinaz.com/top-16-arizona-cycling-routes/>).
 - Redington Road/Pass.
 - Pima County's Colossal Cave Park via Old Spanish Trail.
 - Bounded on two sides by the El Tour de Tucson route.
 - Linked to "The Urban Loop" and Mountain Biking at Fantasy Island.
 - Located at the entrance to Saguaro National Park East which provides an important cycling, running, and hiking destination that services more than 25,000 cyclists annually.

Part VI: The Buffer Ordinance – A Mechanism Ensuring Environmentally Sensitive Site Planning

Pima County was one of the five fastest growing counties in the United States in the mid 1980's. Large vacant parcels, especially on the flat valley floor of east Tucson, were being rapidly developed as CR-3 subdivisions, development that typically cleared the land and channelized natural drainage ways. As this explosive scrapped-earth track housing migrated towards Saguaro National Monument East, the community was fearful that these new housing developments would intrude into the existing low-density environmentally sensitive neighborhoods bordering the natural parklands. Park managers were concerned that these new subdivisions would result in an incursion of domestic pets and invasive non-native plant species into the natural lands and, combined with the walling off of wildlife corridors in and out of the Monument, would rapidly destroy the ecological balance in the Parks.

In an effort to protect the natural parks surrounding Tucson from overly intrusive development, the Board of Supervisor's passed the Buffer Overlay Zoning Ordinance to guarantee an ecologically sound transition between the natural preserves and urban development, while at the same time permitting economically reasonable use of the land.

The BOZO was not written to change the underlying zoning, but rather to place environmental restrictions on new specific plans, rezonings and development on land parcels that were twenty five acres or greater in size. The Ordinance was crafted to protect wildlife

Purpose of Buffer Overlay Ordinance

- 1. Preserve and protect the open space characteristics of those lands in the vicinity of the public preserves while at the same time permitting the economically reasonable use of lands;*
- 2. Protect and enhance existing public preserves in Pima County as a limited and valuable resource;*
- 3. Establish mechanisms that will protect the public preserves and result in an ecologically sound transition between the preserves and more urbanized development;*
- 4. Assure the continued existence of adequate wildlife habitat and foster the unimpeded movement of wildlife in the vicinity of Pima County's public preserves;*
- 5. Provide for an aesthetic visual appearance from and to Pima County's public preserves;*
- 6. Promote a continued economic benefit to the region by protecting the public preserves for the enjoyment of residents and visitors alike; and*
- 7. Neither promotes nor discourages changes in underlying zoning, but rather provides continuing performance standards for the unique lands within the buffer overlay zone.*

Part VII: Minor Resorts

Because of explosive growth in the Tucson Metropolitan area in the late 1970's and early 80's, the Board of Supervisors asked staff to update the outdated 1952 zoning code and tighten and upgrade its development standards. Concurrently, and by coincidence, an application to convert the Flying V Guest Ranch to a destination resort was submitted to the County Planning Department while the Code was being updated.

At that time the development code requirements for a resort, whether a small dude ranch or a destination resort, were simple, ambiguous, and the applications were typically processed expeditiously.

With this in mind, the Estes Company assured the Loews Corporation that they would be able to quickly entitle their application. Nevertheless, in an effort to assuage the concerns of residents, the Estes Company presented a basic development plan along with a number of highly stylized exhibits to the Planning Commission, and strongly encouraged the Commission to approve the resort and submit their recommendation to the Board of Supervisors after only one hearing. The expedited process and lack of details concerned many of the residents and they ended up opposing the project. Nevertheless, the Commission sent a positive recommendation to the Board who also quickly approved the destination resort.

Following its approval the members of the Planning Commission expressed frustration that they had been forced to make a quick decision using outdated development standards on a project that was as significant as a major resort. It was then that they decided to create separate zoning requirements for guest ranches and major resorts.

As a member of that Planning Commission, and subsequently as Director of the Planning Department, I acutely remember the Commission wanting to continue the practice of embedding guest ranches into low-density residential zones located near or adjacent to natural parklands surrounding Tucson. But to ensure that guest ranches would not be placed in the middle of existing suburban ranch neighborhoods, they increased the minimum lot size from 4 acres to 10 acres. In addition, they restricted commercial uses to 5% of the total square footage of the resort to ensure that a guest ranch would not be a subterfuge for commercial zoning.

Once tightening the development standards for guest ranches, and to avoid confusion, they changed the zoning designation "Guest Ranch" to "Minor Resort" acknowledging that existing guest ranch development would be "Grandfathered" under the new code.

The Commission's final hurdle was to define the difference between a Minor Resort and a Major Resort. They reached a consensus: 50 or more overnight guest rooms were classified as a Major Resort and would require a zone change, and must be placed on parcels that are 20 acres or larger.

The Board of Supervisors approved the comprehensive Zoning Code update in 1985, which included the newly defined Major and Minor Resort categories.

Part VIII: Listening to the Community

At the Zoning Administrator's Hearing, and at subsequent community workshops, participants expressed concern that the Bike Ranch will result in an intensification of land use, and would encourage other property owners to commercialize their land in the Buffer Zone. They also believed that the resort complex would block western vistas from within the park, compromise the movement of wildlife, meet minimal permanent open space requirements, increase traffic, and light up the dark night skies.

There is an extremely low probability of development intensification within the Rincon Section of the Buffer Overlay Zone since there are very few vacant parcels that are large enough or provide the accessibility necessary to successfully support high-density residential or commercial development. Development of many of these vacant parcels is also constrained by the rigorous biodiversity requirements of the Maeveen Conservation Land System. Additionally, commercial zoning not consistent with the General Plan would violate the State's Spot Zoning prohibition.

That is why since the adoption of the BOZO in 1988 there has not been nor will there be a surge of specific plan or zone change applications within the Rincon section of the Buffer Overlay.

In response to other concerns raised, the applicant will:

1. Dedicate over 50% percent of the 45-acre site as permanent open space.
2. Create small clusters of casitas, carefully placed on the property in context with the natural desert landscape to minimize impacts on the view shed and maximize the size of the natural open space buffers.
3. Preserve the "Important Riparian Area" on the south side of the property, avoid encroachment into additional wildlife linkages to and from the Park and remove auxiliary parking formerly adjacent to the Riparian area.
4. Intensely screen the Bike Ranch from adjoining residents with native plants.
5. Plant native vegetation in paved parking lots and drainage swales to reduce runoff and break up potential heat islands.
6. Exceed and strictly enforce the Dark Sky Ordinance.
7. Provide a "Shared Use" bypass trail across the southeastern corner of the Bike Ranch property for both bicyclists and pedestrians in response to bicycle safety concerns regarding poor visibility at the intersection of Escalante Road and Old Spanish Trail.

Part IX: Conclusion

A Conditional Use Permit application has been placed before the Pima County Board of Supervisors to consider approval of a proposed world-class minor resort and training center for avid bicyclists—a project that will replace non-conforming, scattered and outdated rental houses located at the front gate of Saguaro National Park East.

Not only does the Bike Ranch site plan meet the intent as well as conform to all county and state regulations (including the Buffer Overlay Zoning Ordinance), in most instances it exceeds these regulations which have been enacted to:

- Ensure an ecologically sound transition between natural preserves and more urbanized development.
- Protect wildlife habitat and foster the unimpeded movement of wildlife in and out of Saguaro National Park.
- Promote new development that is compatible with and in context with the surrounding community.

The Bike Ranch proposal goes much further by:

- Clustering the guest suites and detached single-family homes to allow for the creation of significant natural open space buffers to nearby residences.
- Protecting all drainage ways to serve as wildlife corridors.
- Respecting the natural desert ambiance by replacing outdated buildings with low to the earth casitas that are designed to flow with the natural contours.
- Designing a complex that replicates traditional guest ranch architecture.
- Striving to meet a Platinum level LEED rating.
- Serving regional a need by creating a comprehensive training center for avid bicyclists.
- Creating new jobs.

The Bike Ranch Minor Resort represents the best in sustainable land use planning. In my forty years as an environmental and land use planner, and having served as a Planning Director for two cities and two counties, I cannot recall another site plan that is as environmentally compatible with its natural setting than the Bike Ranch. I believe that this minor resort will become a major destination for the outdoor enthusiast and a valued amenity widely promoted by Tucson's business and environmental community.

About the Author

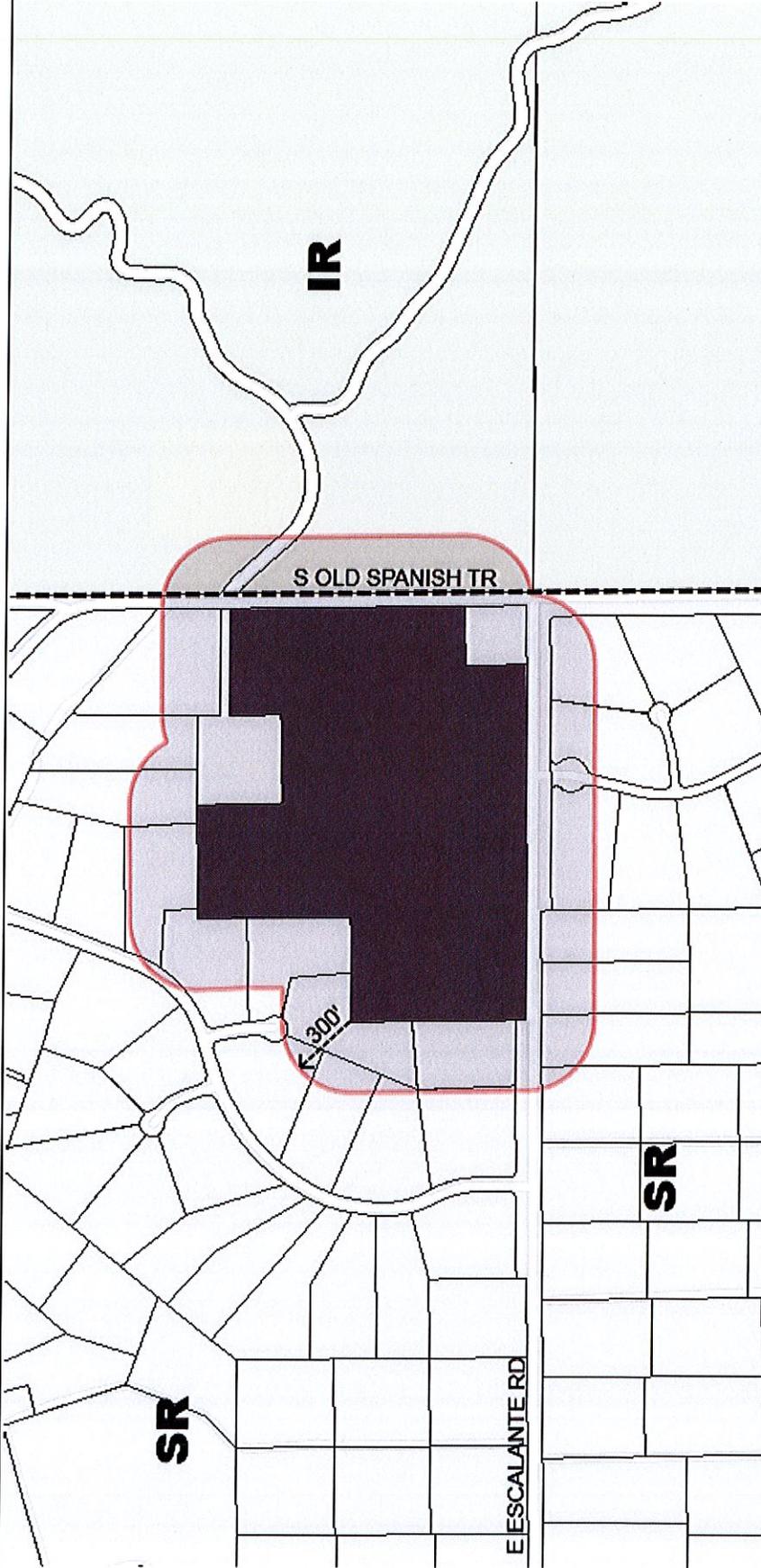
Robert C. Johnson, received both his Master of Science and PhD from the UA School of Renewable Natural Resources, and was the Director of Pima County Planning and Development Services from 1985-1989. Under his leadership, the most important environmental protective planning codes in Pima County were created including: the Buffer Overlay Ordinance, the Hillside Development Zone Ordinance, the Critical and Sensitive Habitat Protection Plan, the County Xeriscape Ordinance, as well as the down-zoning of Rural Lands. He also coordinated development of the County Environmental Site Analysis Process and led a taskforce to establish guidelines for development adjacent to San Xavier del Bac.

Since leaving Tucson in 1989, he has been the Director of Community Development for Irvine, CA, the Managing Director for the CA Energy Coalition, the Planning Director for Riverside County, and the Assistant City Manager/City Manager for Temecula where he successfully coordinated a multi-year campaign to defeat Granite Construction's proposed 5 million ton per year open aggregate pit mine adjacent to the city.

Programs developed under his leadership have received many awards including the prestigious California Association of Counties Challenge Award for Preserving Cultural Sites and Balancing Growth, the CA Governor's Award for Environmental and Economic Leadership, and the CA Energy Commission's ACES Award and the Air Quality Management District's Clean Air Award.

NOTIFICATION MAP

EL CORTIJO LLC—S. OLD SPANISH TRAIL



LEGEND

- Petition Area
- Notification Area

NOTES

File no.:	P16VA00003	Tax Code(s):	205-62-159G
Application:	VARIANCE/INTERPRETATION	Base Map:	88
		Drafter:	A.H.



2/4/2016

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January 29, 2016

BY HAND DELIVERY

Celia Turner, Secretary
PIMA COUNTY BOARD OF ADJUSTMENT #4
201 North Stone Avenue
Tucson, AZ 85701-1207

Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*

NOTICE OF APPEAL

Dear Celia:

This letter constitutes the appeal by El Cortijo, L.L.C., the owner of the approximate 45-acre parcel at 3700 South Old Spanish Trail, Tucson, Arizona, to the Pima County Board of Adjustment #4. El Cortijo is appealing the interpretation rendered by Tom Drzazgowski, Deputy Chief Zoning Inspector, dated January 13, 2016. A copy of that interpretation is included with this appeal as **ATTACHMENT 1**.

The present interpretation was identified as Interpretation No. 2, which responded to additional issues raised on December 24, 2015. That request for interpretation, together with supporting documents, is also included with the appeal as **ATTACHMENT 2**. The information in that letter and those supporting documents are incorporated herein in support of this appeal.

It should be pertinent for the Board of Adjustment to know that the need for this second Board of Adjustment review emanated from a decision rendered by the Honorable Sarah R. Simmons, Judge, Pima County Superior Court, which is included as **ATTACHMENT 3**. After this Board of Adjustment rendered its earlier decision on July 14, 2015, in Case Co10(4)15-01, an appeal was filed to the Pima County Superior Court. The issue arose in that lawsuit as to whether the use of the structures as a Guest Ranch was actually in conformance with the earlier provisions of the Pima County Zoning Code. From the time of the adoption of the original zoning ordinance, which became effective February 16, 1953, Pima County Ordinance 1952-111, through September 3, 1985, the date of the pertinent amendment, Ordinance 1985-153, a Guest Ranch was defined as:

GUEST RANCH: A resort hotel and/or group of buildings containing sleeping units, having a building site of not less than 4 commercial acres.

STUBBS & SCHUBART, P. C.
ATTORNEYS AND COUNSELLORS AT LAW

Celia Turner, Secretary
PIMA COUNTY BOARD OF ADJUSTMENT #4
Re: *El Cortijo, L.L.C. - 3700 South Old Spanish Trail*
NOTICE OF APPEAL

January 29, 2016
Page 2 of 2

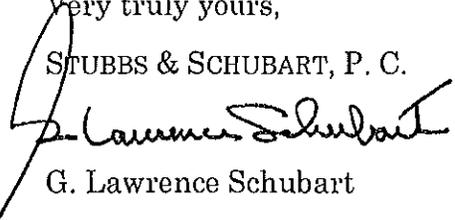
There is no meaningful debate about certain facts: commencing in 1955 a predecessor-in-title, Bert Calvert, obtained permits to develop the property with dwelling structures and an ancillary service stations and café. In his earlier interpretation of April 21, 2015 (ATTACHMENT 4), which was addressed by this Board of Adjustment, Mr. Drzazgowski acknowledged that as the result of a permit issued by Pima County on September 9, 1960, that sought a permit to construct a sign "Houses for Rent" the "motel" use was discontinued and the property was used as a traditional rental property. See April 21, 2015 Interpretation of Tom Drzazgowski. Mr. Drzazgowski then concluded those changes "eliminated the previous non-conforming status." (Emphasis added)

The argument raised in the Pima County Superior Court was that the only use in the Pima County Zoning Code that allowed a group of buildings containing sleeping units that were used as rental was as a Guest Ranch; thus, to conform, that had to be the identified use. Unfortunately, the Superior Court felt this Board of Adjustment had not yet had an opportunity to evaluate whether or not that was true, thus the case was dismissed without prejudice to allow this Board of Adjustment to consider this conclusion. We believe the use does meet the definition of a Guest Ranch, especially in light of the other ancillary facilities, such as the common swimming pool, hiking trails, and the remote setting of the site, which are all indicative of many historic guest ranches throughout Pima County. A clear example of a prior Pima County interpretation involves the Tira Mira Guest Ranch. The information on this similar Guest Ranch which was thoroughly documented and submitted to Tom Drzazgowski on October 14, 2014, which is now incorporated as part of this appeal.

The combined information provided in the request for interpretation submitted on May 29, 2015, is incorporated as part of the present appeal to enable the Board of Adjustment to adequately consider whether, when the property was brought into conformance by the abandonment of a motel use, it did, in fact, meet the definition of Guest Ranch. Certainly, for Mr. Drzazgowski's interpretation to be sustainable (that the use was brought into conformance in 1960), there has to be some use in the SR zone that identifies that use. The only conclusion is that at that point it then became a Guest Ranch use.

Very truly yours,

STUBBS & SCHUBART, P. C.


G. Lawrence Schubart

GLS/bmmh
Attachments

1. 1/13/16 Interpretation #2 by T. Drzazgowski
2. 12/24/15 Request for Interpretation, including attachments
3. 12/09/15 Minute Entry issues by the Honorable Sarah R. Simmons
4. 4/21/15 Interpretation by T. Drzazgowski



PIMA COUNTY
DEVELOPMENT SERVICES

January 13, 2016

Stubbs & Schubart P.C.
Attn: Larry Schubart
340 N. Main Av.
Tucson, AZ 85701

RE: 3700 S. Old Spanish Trail – Interpretation #2

Dear Mr. Schubart:

I am providing a second interpretation on the property listed above based on your letter dated December 24, 2015.

Bert Calvert, a previous property owner, received approval from the Board of Adjustment for a “gas station, café, and motor court”. Pursuant to the approval, the property owner received permits for the uses approved by the Board of Adjustment. Since that time, those uses were either brought into compliance through the rezoning process or outright discontinued. The motel and gas station operations have ceased, and the owner began to rent the units as residences as evidenced by a permit requested by then owner, Bert Calvert, for a sign for “Houses for rent” on September 9, 1960. Property owners are allowed to rent residences without special approval or additional permits.

A check of permits and Development Services records does not show a permit on the above addressed property for a “Guest Ranch”. As you are aware, the property owner at the time, Bert Calvert, did receive numerous permits on the property for other uses. Some of the permits received are “add 5 units”, “Build 2nd Residence”, “add residence”, “Residence”, “Add storage-bedroom and carport”, “Add ramada 10 x 20, storeroom 10 x 10”, “Add two bedrooms to cottage H” and “Sign, Houses for rent”. Absent a permit for a Guest Ranch, there is not a non-conforming Guest Ranch use on the property.

In conclusion, the property at 3700 S. Old Spanish Tr. does not have a non-conforming use for a Guest Ranch.

If you have any questions, please call me at (520)-724-6675.

Sincerely,



Tom Drzazgowski
Deputy Chief Zoning Inspector

STUBBS & SCHUBART, P.C.

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December 24, 2015

HAND DELIVERED

Tom Drzazgowski
Acting Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
201 North Stone Avenue
Tucson, AZ, 85701-1207

Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*

REQUEST FOR INTERPRETATION

Dear Tom:

As you observed during the hearing in the Pima County Superior Court, in the matter of *El Cortijo, L.L.C. v. Pima County Board of Adjustment, District 4, et al.*, Cause C2015-3647, the Honorable Sarah R. Simmons was concerned the Board of Adjustment did not first have an opportunity to evaluate whether or not the El Cortijo property constituted a guest ranch. The definition of a “guest ranch” is virtually unchanged from the time Pima County adopted the original Zoning Code, Ordinance No. 1952-111, through the time that definition was deleted in 1985, Ordinance No. 1985-153.

The Request for Interpretation that you ruled upon was based upon the information I provided to you on March 25, 2015. Your interpretation was rendered April 21, 2015, which arrived at the conclusion that the uses initially constructed on the property “have long since brought into conformance with the zoning code, changed or discontinued.” Your letter indicated that analysis was predicated upon the permit issued by Pima County on September 9, 1960, where the owner indicated he wanted a sign “Houses for Rent”; thus, the motel use was apparently discontinued. If I understand the analysis correctly, if the property was brought into conformance on or about 1960, there has to be some use in the Suburban Ranch (SR) Zone that supports the use then in existence. Thus, that gave rise to the guest ranch analysis.

STUBBS & SCHUBART, P. C.
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski
Acting Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*
REQUEST FOR INTERPRETATION

December 24, 2015
Page 2 of 2

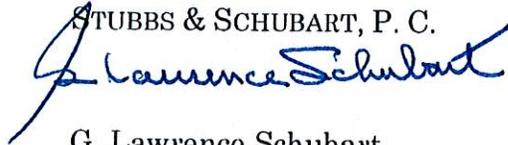
As part of the present request for interpretation, I am resubmitting to you all of the information provided on March 25, 2015, included under my letter then requesting an interpretation of the Zoning Code. This entire packet of information is enclosed herewith as EXHIBIT I. Additionally, now, I am also including all the information provided to you on October 14, 2014, which also requested an interpretation as to whether or not the property was a guest ranch use, but which I acknowledged, that request was later withdrawn. This entire packet of information is included as EXHIBIT II.

The effect of merging these two Requests for Interpretation is to provide all the available information so that you can reconfirm, if that if your intention, your conclusions rendered April 21, 2015, but also now complete the analysis by deciding when the property was "brought into conformance" and whether or not that conformance was as a Guest Ranch, consistent with the definition that existed through 1985.

Thank you for your continued assistance and cooperation in these matters.

Very truly yours,

STUBBS & SCHUBART, P. C.



G. Lawrence Schubart

GLS/bmmh
Attachments

Exhibit I – Copy of 3/25/15 Request for Interpretation
Exhibit II – Copy of 10/14/14 Request for Interpretation

cc: El Cortijo, L.L.C.

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March 25, 2015

BY HAND DELIVERY

Tom Drzazgowski, Acting Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
201 North Stone Avenue
Tucson, AZ 85701

Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*

REQUEST FOR INTERPRETATION

Dear Tom:

As you know from prior communications, including correspondence, I represent El Cortijo, L.L.C., the owner of the approximate 45-acre parcel at 3700 South Old Spanish Trail, Tucson, Arizona. The purpose of this letter is to request an official interpretation confirming the non-conforming status for the development of this property. The parcel is presently, and has been since adoption of the initial Zoning Ordinance, zoned Suburban Ranch (SR).

After discussing the development of the property with the previous owner, Dale Calvert, and hearing his observations I pursued a more thorough review of the Pima County records. The irrefutable fact is that zoning was first adopted in 1952, pursuant to Ordinance #1952-111, which became effective in February, 1953. My review required a reading of the initial Code and an understanding of how Pima County attempted to soften the transition of regulating land through the initial adoption of zoning codes.¹ The initial permit for the development of the property was issued by Pima County on June 13, 1955. A copy is attached as EXHIBIT 1. If you refer to this Building Permit, that bears the Record #048309, you will see the reference to a Board of Adjustment case heard in 1955 and a second Board of Adjustment case heard in 1957. Those records supplied the essential information in arriving at the proper conclusion.

The initial Zoning Code, Article 24, referenced general provisions and exceptions to development of the property, subsequent to the adoption of zoning.

¹ The County Zoning Plan, Ordinance #1952-111, is recorded in Book 507 at pages 35-108, records of the Pima County Recorder's Office.

STUBBS & SCHUBART, P. C.
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski, Acting Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
Re: El Cortijo, L.L.C. - 3700 South Old Spanish Trail
REQUEST FOR INTERPRETATION

March 25, 2015
Page 2 of 3

The obvious purpose of that provision was to avoid the harsh effect of impeding planned development that was reasonably anticipated before the adoption of Zoning. Section 2406, which I have copied and provided in its entirety as **EXHIBIT 2**, allowed an owner to file within 180 days after the adoption of zoning "a plan of development for such land, including uses not permitted by the zoning. . . ." These would be viewed as a non-conforming development and the use permit was to be issued by the Board of Adjustment. That is why the permit, **EXHIBIT 1**, referred to Board of Adjustment decision 55-33 and subsequently Board of Adjustment decision 57-29. The Minutes for those two Board of Adjustment meetings conclusively establishes what occurred.

On April 14, 1955, Bert Calvert appeared before the Board of Adjustment, together with the notable attorneys, Edward Scruggs and Edgar F. Rucker. (**EXHIBIT 3**) The record reflects, based upon Mr. Rucker's testimony, the file (before the Board of Adjustment) contained a sketch, timely filed with Pima County, which shows a non-conforming development for the property. Mr. Rucker continued that the only reason Mr. Calvert had not yet commenced development was because the building inspector felt the proposed development did not conform to zoning and a permit under Section 2406 had not been issued by the Board of Adjustment. *Id.* After arguing that the issuance of the permit was mandatory once the criteria for a timely submittal was made, the Board of Adjustment voted stating: "That the permit be granted." Thus, it was recognized in 1955 the property **could** be developed in a manner **not** conforming with the SR provisions of the Zoning Ordinance.

There is a second reference to the Board of Adjustment decision in 1957. (**EXHIBIT 4**) Here, again, the record reflects the permit was, in fact, issued on June 15, 1955, but that Mr. Calvert decided it would be a better development if the dwellings were separated, "instead of being in a string." The record further reflects that due to the delay in his construction, the Zoning Inspector sought review of his own action, questioning whether he had the authority to allow the development to proceed.

The 1957 Minutes continue with a discussion regarding the amount or value of the work that had been done and, ultimately, the Board of Adjustment, again, agreed with Mr. Calvert to allow the construction. As we can see from the Building Permit issued and inspection records, the non-conforming development was authorized.

My interpretation of the historical records does not stand alone. Dale Calvert, a responsible and respected certified public accountant and prior owner of the property, re-confirmed this information based upon his knowledge not just as the prior owner, but also upon information derived as the accountant for the

STUBBS & SCHUBART, P. C.
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski, Acting Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
Re: El Cortijo, L.L.C. – 3700 South Old Spanish Trail
REQUEST FOR INTERPRETATION

March 25, 2015
Page 3 of 3

corporation that held title for his parents, and also from visiting his grandfather before moving to Tucson in 1963. He clearly remembered the development was undertaken in the mid-1950's. This Affidavit confirms the facts necessary to conclude the non-conforming status of the property.

On behalf of El Cortijo, L.L.C., I respectfully request an official determination from the Chief Zoning Inspector, reflecting the fact that the development of the property was done legally, with permits, and in a fashion non-conforming with to the SR Zoning Code provisions. I also request that the opinion reflect the non-conforming status of this development is a right that inures to the property and runs with the land.

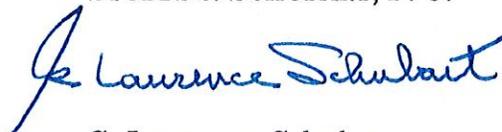
I can make available to you the initial Zoning Code and ensuing amendment, if you need them, but these records, together with the Minutes of the Board of Adjustment Hearings, should already be available as a resource for Pima County. Nevertheless, I would be happy to provide additional copies of whatever it is you might otherwise need.

If there is a fee for providing this interpretation, let me know and payment will be submitted forthwith.

Thank you.

Very truly yours,

STUBBS & SCHUBART, P. C.



G. Lawrence Schubart

GLS/bmmh
Attachments

- EXHIBIT 1 Copy of Pima County Permit 6984, issued 6/13/1955
 - EXHIBIT 2 Copy of County Zoning Plan, Cover Page and Sec. 2406
 - EXHIBIT 3 Copy of 4/15/1955 Board of Adjustment Meeting Minutes
 - EXHIBIT 4 Copy of 6/13/1957 Board of Adjustment Meeting Minutes
- Original Affidavit of Dale Calvert

ST: BUILDING USE OCCUPANCY

Pima County, Tucson, Ariz.

3700 ~~Spanish Trail~~ 6984
FEE \$ 1.00

Street & No. _____ (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone SR

Subdivision: _____ Parcel No. 18

Part of SR 184 Section 30

Township 11 Range 16

Owner: Bert Calvert AM 89900

Address: 65 W. Alameda

Builder: Gary

To Permit: 1 gas station, 1 cafe, motel with 6 dwelling units

Est. Cost (Labor & Material) 30,000.00

Date Issued: 6-13-55

Date Expires: ~~10-14-55~~ 10-14-55

Inspection Date _____

Conditions Imposed by B/A Case: 55-33 approved permit for above under section 2106

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant _____

Owner Builder Agent

Zoning Inspector: [Signature]

Sanitary Facilities: Sewer Septic

Remarks: [Handwritten notes and signatures]

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		9-27-55			JZ	footings poured
Concrete 54 ft x 15		10-25-55			JZ	no more done than previous
		11-22-55			JZ	This portion

See Permit # 15223

Project to be completed
11-9-57

10-19-57 Station + Cafe + 1 Cabin

90% Completed

Complete 2-10-57

Balance no record.

~~Completed in Cafe + Station~~

1 Res unit. J. D.

Balance approved

5-23-57 Expiration card ready
for Bert Calvert. J. D.

018310

BOOK 507 PAGE 35
Exhibit A

Library Copy--Pima County,
Planning & Zoning Dept.

COUNTY ZONING PLAN
Pima County, Arizona

As Revised by
County Planning and Zoning Commission
April 1952

*
* Planning Department.
* 89 North Court Street
* Tucson, Arizona

[Effective on
Feb. 16, 1953] *BMJ*

Library Copy--Pima County
Planning & Zoning Dept.

0765
8.26
85950

EXHIBIT 2

County Zoning Plan - Jan. 1952 - Rev. 4-24-52

-55-

Sec. 2403-b (cont'd)

necessary fencing shall be set at a distance not closer to a street lot line than the minimum front and side yards of the zone.

Sec. 2404 GRAVEL PITS, QUARRIES, GAS OR PETROLEUM DRILLING PERMITTED: Clay, sand or gravel pits, rock or stone quarries and drilling for petroleum or natural gas may be permitted by the Board of Adjustment in any zone, except MU, subject to the provisions of Article 25.

Sec. 2405 PARKING LOTS IN RESIDENCE ZONES: Land in a residence zone contiguous to a business or industrial zone and not exceeding 30,000 square feet in area, may be used for automobile parking space; provided the conditions of Sec. 2203 are complied with, that a front yard of 20 feet be provided, planted and maintained in keeping with the residential neighborhood, that side and rear yards of 10 feet each be provided, and that no entrance be provided from an alley at the rear of said parking lot.

Sec. 2406 PLANS FOR NON-CONFORMING USE: Any owner of land zoned under this Ordinance who shall file in writing with the Planning and Zoning Commission within 180 days after the effective date of this Ordinance a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development, or any part thereof, at any time within two years from the effective date of this Ordinance; and if any temporary governmental regulation prohibiting the proposed development is in full force and effect during said two year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development with necessary plans and sketches shall show the legal description of the land and the location of proposed buildings and improvements in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be a conforming use under this Ordinance.

Sec. 2407 HEIGHT LIMIT EXCEPTIONS: The height limits of this Ordinance shall not apply to:

-a. Barns, chimneys, conveyors, cupolas, derricks, domes, flag poles, observation towers, parapet walls extending not more than 4 feet above the height limit of the building, radio or television towers, masts and aerials, silos, smokostacks, transmission towers, windmills and power transmission poles.

-b. Churches, hospitals, sanatoriums, schools or other public and semi-public buildings. Any such building may be erected to a height not exceeding 40 feet, provided the minimum side and

55-31 WERNER C. HUCK: to build 5 stores at 2334 N. Ralph Ave. in CR-4 under Sec. 2406.

Mr. Huck was present in behalf of his petition and there was quite a bit of discussion regarding the proposed widening of Grant Rd. He was informed that he would need one parking space for each 200 sq. ft. of floor area, plus access, or 39 complete parking spaces. He was asked to present a better plan and to take into consideration the widening of that road. A letter from Mr. Ensign, notarized by John Jannetto, stated that Mr. Ensign was heartily in favor of Mr. Werner having his property approved for business.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the case be postponed until the May meeting, as long as there was no particular rush concerning the matter.

55-32 STEVE ELCHUCK: to build 3 stores at 4901-5 E. 5th St. in CR-4 under Sec. 2406.

Mr. Elchuck was present on behalf of his petition. There being no opposition to this case, on motion by Mr. LaForce, seconded by Mr. Eagle, it was

VOTED: That this petition be granted.

Mr. Schreurs informed Mr. Elchuck that he would have to pick up his permit in 60 days and would be required to start construction within 6 months, but that there was no completion date.

55-33 BERT CALVERT: to build gas station, cafe, and motor court at 11,851 E. Houghton Road in SR zone under Sec. 2406.

Mr. Calvert was present in behalf of his petition, with his attorney, Mr. E. Rucker. Mr. Rucker wanted the record to show that Mr. Calvert was present with his attorneys, E. Scruggs and E. Rucker and that the file contains a sketch which was filed 180 days after the effective date of the County Zoning Ordinance, and which shows the non-conformity of a business area in an SR zone, and that they assert that it is in sufficient detail to establish the non-conformity in this zone. He would also like the record to show that they had filed an application on behalf of Mr. Calvert to build this particular area out on Houghton Rd. and that it was denied by the Building Inspector for the reason that it did not conform or needed a 2406 permit and that Mr. Calvert was the owner of the land at the time the Zoning Ordinance was enacted and that to date he is still the owner of the land.

Mr. Kenneth R. DeHaven was present, representing himself and Dr. H. S. Rhu, as opposing this case and he asked if Mr. Calvert owned all of Section 30, to which the reply was, "Practically, yes".

When the word "Practically" was questioned, it was brought out that Mr. Calvert had sold a small amount of it to two people within the last two years since he first filed his application.

It was also asked if this was the most apropos location for this type of venture, that is, to travel, to need, and to location, and the reply was, "From the standpoint of this application, it is."

As this was filed as a hardship permit under 2406, Mr. DeHaven asked if there was a hardship in this case.

Mr. Rucker felt the answer lay in the Ordinance itself, which says, "Any owner of land zoned under this Ordinance, who shall file in writing, a plan of development, etc., shall be issued a special non-conforming use," and then under Sec. 401 of the Ordinance, it says "The word 'shall' is mandatory and not directory" so they have taken the position, and it has been their understanding that the Board took the same position, that it was bound to comply and grant the permit without any question as to whether it was appropriate, or wise, or anything else. He stated further that the provision 2406 was placed in the Ordinance for the benefit of those who owned land at the time of the enactment, and if they complied with the matters set in there, after filing their plans within a certain length of time, "they shall be issued" and he did not think there was any question of intent.

The question was asked, "Does the tenor of the voices of the community in any way dictate the feeling of the Board? In other words, if the community as a whole is against it, can it be developed?"

The answer was given that this is a law and as a law, it operates as it says. If the public does not like this law, the answer lies in amending the law, but that the Board does not have power to disregard a provision of this statute and say, "Well, the people don't like the law, so we aren't going to pay any attention to it." They are still a body governed by law and not by anything else.

The Board further stated in answer to Mr. DeHaven's question, that they do, of course, like to hear all sides of these stories, as it sometimes has some bearing on the conditions which we impose upon the granting of these permits.

Mr. LaForce asked how many people out there objected to this, to which Mr. DeHaven replied, "In the vicinity of 30 people." Mr. Garcia stated that there was not yet any petition to this effect, of record.

Mr. Karl Barfield stated that as a property owner nearby, he wished to say that he has talked to most of the neighbors regarding business zoning in that neighborhood and believes all of them are opposed to it.

He further stated that there is no need at the present time for business zoning at that corner; that there is no business to be served to anyone at that corner by any business zoning. If properly surveyed from a business standpoint, it will be found that the entire area east of there is government property and there never will be any house built on it, nor will there be any drawing power there for business at that corner.

He considers it a very unwise selection for the owner of the land in the first place and also very unwise to set it in the extremely east end of a very good

residential section. This entire section from Freeman Road and the Old Spanish Trail back to Houghton Road is all residential property, the Rincon Ranch Estates being a nice subdivision, highly restricted, and in asking to place a piece of property 600' by 600' right in their front or back yard is what they are objecting to:

Mr. Eagle asked if he might read the Ordinance in this regard, stating that at the time the Ordinance was enacted, 2406 was a way of escape for people owning property at that particular time, as it planned for non-conforming uses, as follows:

"Any owner of land zoned under this Ordinance, who shall file, in writing, with the Planning and Zoning Commission, within 180 days after the effective date of this Ordinance, a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development or any part thereof, at any time within two years from the effective date of this Ordinance, and if any temporary governmental regulation permitting the proposed development is in full force and in effect during said two-year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development, with necessary plans and sketches shall show the legal description of the land and the location of the proposed buildings and improvement in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be in conforming use under this Ordinance."

Mr. Eagle added that there has to be some very serious reason why the Board cannot grant it, such as a nuisance or a hazard.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the permit be granted.

55-34 CHARLES WILSON: to build 5 stores at 966-990 S. Craycroft Road in TR zone under Sec. 2406.

Mr. Wilson was present on behalf of his own petition. Mr. LaForce asked if this case had not been passed on before, to which Mr. Wilson replied that the first store passed on was with the condition that he build a fence directly behind that store itself. Then he applied for another store about 100 ft. down which the Board passed with the condition that he build a fence all along the 600 ft. Now he is applying for five stores in between the two. That was to make it one consolidated unit.

Mr. LaForce asked if he had not agreed and promised an alley at one time, but Mr. Wilson stated that when they made him put in a fence, he then took out the alley. There is no alley in there, but an easement. However, he has been approached by the property owners affected by the fence, and they agreed to come down here to

Mr. Armstrong pointed out that it would improve the situation by putting this house 9½' from the line as it would maintain the character of the neighborhood and give a comparable house to all the people in the same general area.

Mr. Armstrong said the FHA is very particular about a variation of front line setback and that is the reason for the reverse curves. This is where the buyer purchases a complete package. The minor variation will not violate the intent of zoning.

Mr. Volk added that this is a subdivision of 1500 homes and 50 or 60 are already built.

Mr. Garcia mentioned the fact that if this is taken into the City, it will not be a problem, as City side yard requirements are much less.

There being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-28 CHESIN CONSTRUCTION CO.; to construct dwellings with side yards of 9.5' at 6958-66, 7002-10-18-26 Calle Canis, 6957-58, 6965, 7001-9-17-25 Calle Denebola and at 6957 Calle Jupiter in CR-3. Sec. 1107 requires 10' side yards.

As this case was identical to the previous one, except for locations, there being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-29 BERT CALVERT: appealing decision of Zoning Inspector to continue construction on Permit No. 6984 at 11851 E. Houghton Road in SR, under Sec. 2503-c.

Mr. Scruggs of Scruggs, Rucker and Ackerman, represented Mr. Calvert, who was also present on behalf of this petition. He stated that Mr. Calvert had filed for a permit under Sec. 2406, which provided for one gas station, one cafe, one motel with six dwelling units, and was issued June 14, 1955. Later it was decided that it would look better if the dwellings were separated instead of being in a string.

As Mr. Calvert was not very prompt in his construction, but within the statutory time, he got his work under way and has completed a service station, cafe and one dwelling unit. They are here basically because of the legal and administrative confusion due to the uncertainty of the law itself, and are appealing for an interpretation of the Ordinance by the Zoning Inspector, asking for a variance and a reversal of his action, believing he acted beyond his authority.

Although the permit was outstanding, it was finally revoked on May 23, 1957, following a request by Mr. Calvert, who asked for permission to build four houses on this area, using as his index, the law itself in SR which calls for four acres for each house, but not giving the required 144,000 sq. ft. for each house, which he could build without any variance of any question.

Since they have the right under 2406 to have this type of operation there, they now want permission to build five dwelling units such as the one already there, complete with bedroom, bath, kitchen, living room, and carport for storage.

Mr. Scruggs further stated that there is a letter in the file from Mr. Dunipace, concerning the question of when a building permit can be revoked. However, he does not cite any authority in the law, for the legal case of this permit. Their first contention is that the Zoning Inspector does not have the power to revoke the permit, but assuming that he might have, following Mr. Dunipace's opinion, he points out that after a person holding a permit has advanced to the point where he is financially apt to be seriously damaged, by the regulations becoming effective, because if he has progressed, he has spent money on the proposition that certain things were permitted and then with the administrative action coming along permeating those rights, it is a serious question as to whether or not it is not an action in violation of the law and constitution.

Mr. Dunipace points out that \$100.00 is a pretty good index as to whether the man has advanced too far or not, and in this case, he has advanced to the amount of \$25,000.00 and wants to continue with this plan as originally set up and requests to be permitted to put the houses within that 600' x 600'.

They also contend that the permit is still good, but if the Inspector is right, and it has expired, they contend that the Board has the power to grant a variance and grant this request from which they did not appeal, as it was not formally turned down. They, therefore, ask the Board to declare this permit still in effect, permitting him to go ahead.

Mr. Desmond A. Williams came forward, as he owns property immediately adjacent to this tract, and stated he believed Mr. Calvert intends to develop this into a very fine project on the permit which was granted at that time. Mr. Williams also hopes to develop his acreage into high grade home sites and therefore has no personal objections.

When asked by Mr. Wilson if they were going to follow the original plan, Mr. Scruggs said they will, if they have to, but would prefer to break up the plan and scatter the houses around to make an attractive corner, grouping the houses as permitted under SR zoning, with the 20' minimum distance between them.

Mr. Schreurs explained that they do not want to expand this area, but merely want to erect five houses. SR permits single family dwellings on four acre sites and he is asking for a permit to build a non-conforming use because he had such a plan before the Ordinance came into effect, and had applied for a non-conforming use to build on less than four acres per unit. He said a memorandum dated December 12, 1955 states that they called for an inspection of a gas station.

He further stated that when a regular permit is issued, they have nine months in which to start construction, and if the foundation is in within the nine months, there is no deadline as to when it has to be finished. A footing and stem wall is considered a vested right, as it shows that construction has been started.

In this particular case, he was granted a permit in 1955, by the Board of Adjustment, and was supposed to show that the whole project was started by December of that year, which was six months after being granted by the Board. However, they found that the whole project was not started, as the foundation was not in.

Mr. Scruggs stated they had a permit for six dwelling units and then felt it would look better to have separate houses, and in effect, they were permitted to have separate units.

Mr. Wilson was of the opinion that a project is started when the foundation of one building is started but that they would not need a foundation for every unit as they could not do everything all at once.

Mr. Schreurs said he found a memorandum dated December 9, 1955 with the notation on it that he had talked to Mr. Dunipace, who ruled that date of issuance of a permit is the date the permit is actually issued, and that Mr. Calvert can change his plans as long as he does not have more than the number of units approved by 2406, but that construction must be started on all of them by December 14, 1955.

Mr. Ackerman felt that because \$25,000.00 worth of work had been done, there was no question but that the permit was a vested right, but Mr. Schreurs said that only trenches had been dug by the end of six months.

Mr. Scruggs said they would like a declaration by this Board that this permit is good, as the law does not allow the Zoning Inspector to terminate a permit once construction has started.

Mr. Schreurs contended that the Ordinance says the permit expires, while Mr. Scruggs stated that Mr. Dunipace agrees that the permit must be used and once you have a vested right in it, you can't take it away.

After considerable discussion, there being no one else to be heard, on motion by Mr. Wilson, seconded by Mr. Royal, it was

VOTED: That Mr. Calvert be allowed to continue construction with the provision that a plan for five units be submitted to the Zoning Inspector for his approval.

The motion was declared carried.

57-30 BILL RAPPAPORT: to allow open porch to remain attached to rear of residence with deficient rear yard at 1527 Avenida Sirlo in CR-3. Sec. 1108 requires 40' rear yard.

Mr. Rappaport was present on behalf of this petition.

STATE OF ARIZONA)
 :SS
COUNTY OF PIMA)

AFFIDAVIT OF DALE CALVERT

I, Dale Calvert, upon my oath depose and state:

1. I am a certified public accountant with the firm of Calvert & Ivester, PLLC, and graduated from the University of Arizona in 1970 with a degree in accounting.

2. I have resided in Tucson since 1963 and was the predecessor-in-title to the 45.19 acres bounded by Escalante Road on the south and by Old Spanish Trail on the east, formerly known as the Saguaro Corners Rentals. This is the land sold to El Cortijo, L.L.C., an Arizona limited liability company ("El Cortijo").

3. Saguaro Corners Rentals, an Arizona corporation, ("the Corporation") held legal title to the property the Calvert Family inherited from my grandfather, Bert Calvert, who, at one time, owned many hundreds of acres in the same area. My personal familiarity with this property starts well before moving to Tucson in 1963; my father, together with our family, regularly visited Bert Calvert before moving from California; and, at times I worked with my grandfather and stayed at the Saguaro Corners property. The information in this Affidavit is based on my own personal observations when visiting the property, my work as a CPA for both my parents and the Corporation, since 1975, and by being a part of the Calvert family and, ultimately, as an owner of the property itself.

4. When Bert Calvert owned the property, it included the area now owned by El Cortijo and also a gas station and café, then known as the Saguaro Corners Café. The construction of the improvements started with the café. The earliest permit issued by Pima County is dated June 13, 1955, which is attached to this Affidavit as **EXHIBIT 1**. The property was zoned Suburban Ranch (SR). It would appear, from historical records, that my grandfather was able to proceed under Sec. 2406 of the initial Pima County Ordinance, a copy of this provision is attached hereto as **EXHIBIT 2**.

5. The reason this appears to be the case is due to the records maintained by Pima County that reflect the decision rendered by the Pima County Board of Adjustment at the meeting that was held on April 15, 1955. A copy of the Minutes from the Pima County Board of Adjustment are attached as **EXHIBIT 3**.

6. It further appears, from the public records, that by 1957, my grandfather still had not undertaken the construction and again appeared before the Board of Adjustment, this time as an appeal from the Zoning Inspector's decision concluding the right to develop the non-conforming use had expired. The Minutes of that second hearing reflect that after receiving public comments, the Board of Adjustment concluded my grandfather would be allowed to undertake the described improvements as part of a non-conforming use of the property. A copy of the Minutes from June 13, 1957, are attached hereto as **EXHIBIT 4**. These Minutes and the actual commencement of construction are consistent with my own memory when visiting my grandfather, what I have been told by my father, Frank, and from the records of the Corporation.

7. These improvements were all, in fact, constructed while my grandfather owned the property and included in the property initially inherited by

my father and, ultimately, included in the Calvert Family Trust, which held title as Saguaro Corners Rentals, Inc., an Arizona corporation. As the Trustee of the Trust that owned and operated these facilities, I can attest to the fact that these units consistently were used as rental units. Later, the Saguaro Corners Café was severed off and sold as an independent site which, prior to the time of sale had been rezoned in 1989 from SR to CB-1. This rezoning changed the non-conforming status to a conforming use. Prior to 1989 we, as the owners, always viewed the use as a non-conforming use under the adopted Suburban Ranch Zoning Ordinance standards.

8. It was intended by my grandfather that the existing development would be expanded further to include additional rental units. In furtherance of this plan for expansion, Bert Calvert installed additional waterlines to increase the number of residential units, but he passed away before that proposal could be implemented.

9. The information contained in this Affidavit is based upon the records in the possession of Pima County, which includes building permits issued in 1955; inspection records indicating the date the construction was undertaken and completed; various permits for later-improvements and additions to the units; the Board of Adjustment records of 1955 and 1957, respectively; and, a portion of the historical Pima County Zoning Ordinance. In addition to those public records, the information in this Affidavit is also based upon my own personal observations and information, which has been established as being the accountant for the Corporation.

Further Affiant sayeth not.

Dale R. Calvert
Dale Calvert

SUBSCRIBED AND SWORN to before me on March 17, 2015.

Belle M. McDonald-Hamon
Notary Public
My Commission Expires:



IT: BUILDING USE OCCUPANCY

Pima County, Tucson, Ariz.

3700 ~~Spanish Trail~~ *Sold Spanish Trail*

6984

FEE \$ 1.00

Street & No. _____ (NEW CONSTRUCTION) _____

Lot No. _____ Block No. _____ Zone *SR*

Subdivision: _____ Parcel No. _____

Part of 584 584 Section *30*

Township *11* Range *16*

Owner: *Bert Calvert* AM 89900

Address: *65 W. Alameda*

Builder: *Carly*

To Permit: *gas station, cafe, motel with 6 dwelling units*

Est. Cost (Labor & Material) *30,000.00*

Date Issued: *6-13-55*

Date Expires: *10-14-55*

Inspection Date: _____

Conditions Imposed by B/A Case: *55-33 approved permit for above under Section 2406*

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: _____

Owner Builder Agent

Zoning Inspector: *[Signature]*

Sanitary Facilities: Sewer Septic

Remarks: *Permit granted 4/14/55 refer pla 55-33 57-29 [Signature] (over)*

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S ID INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		7-27-55			JZ	fasting passed
Concrete 24' x 15'		8-25-55			JZ	160 ft. pipes no more done
		11-22-55			JZ	than previous

See Permit # 15223

10-19-57 Station + Cafe + Cabin
90% Completed
Compliance planning
11-9-57

10-19-57 Station + Cafe + Cabin
90% Completed

Balance no record
2-13-57

~~Completed Cafe + Cabin~~

1 Res unit. J. 2. 2.
Balance approved

5-23-57 Expiration card ready
for Best Cabest. J. 2. 2.

018810

Library Copy -- Pima County,
Planning & Zoning Dept.

COUNTY ZONING PLAN
Pima County, Arizona

As Revised by
County Planning and Zoning Commission
April 1952

Planning Department.
89 North Court Street
Tucson, Arizona

[Effective on Feb. 16, 1953] *BW*

Library Copy -- Pima County
Planning & Zoning Dept.

0765
8.26
5950

Sec. 2403-b (cont'd)

necessary fencing shall be set at a distance not closer to a street lot line than the minimum front and side yards of the zone.

Sec. 2404 GRAVEL PITS, QUARRIES, GAS OR PETROLEUM DRILLING PERMITTED: Clay, sand or gravel pits, rock or stone quarries and drilling for petroleum or natural gas may be permitted by the Board of Adjustment in any zone, except R₁, subject to the provisions of Article 25.

Sec. 2405 PARKING LOTS IN RESIDENCE ZONES: Land in a residence zone contiguous to a business or industrial zone and not exceeding 30,000 square feet in area, may be used for automobile parking space; provided the conditions of Sec. 2203 are complied with, that a front yard of 20 feet be provided, planted and maintained in keeping with the residential neighborhood, that side and rear yards of 10 feet each be provided, and that no entrance be provided from an alley at the rear of said parking lot.

Sec. 2406 PLANS FOR NON-CONFORMING USE: Any owner of land zoned under this Ordinance who shall file in writing with the Planning and Zoning Commission within 180 days after the effective date of this Ordinance a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development, or any part thereof, at any time within two years from the effective date of this Ordinance; and if any temporary governmental regulation prohibiting the proposed development is in full force and effect during said two year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development with necessary plans and sketches shall show the legal description of the land and the location of proposed buildings and improvements in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be a conforming use under this Ordinance.

Sec. 2407 HEIGHT LIMIT EXCEPTIONS: The height limits of this Ordinance shall not apply to:

a. Barns, chimneys, conveyors, cupolas, derricks, domes, flag poles, observation towers, parapet walls extending not more than 4 feet above the height limit of the building, radio or television towers, masts and aerials, silos, smokestacks, transmission towers, windmills and power transmission poles.

b. Churches, hospitals, sanatoriums, schools or other public and semi-public buildings. Any such building may be erected to a height not exceeding 40 feet, provided the minimum side and

55-31 WERNER C. HUCK: to build 5 stores at 2334 N. Ralph Ave. in CR-4 under Sec. 2406.

Mr. Huck was present in behalf of his petition and there was quite a bit of discussion regarding the proposed widening of Grant Rd. He was informed that he would need one parking space for each 200 sq. ft. of floor area, plus access, or 39 complete parking spaces. He was asked to present a better plan and to take into consideration the widening of that road. A letter from Mr. Ensign, notarized by John Jannetto, stated that Mr. Ensign was heartily in favor of Mr. Werner having his property approved for business.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the case be postponed until the May meeting, as long as there was no particular rush concerning the matter.

55-32 STEVE ELCHUCK: to build 3 stores at 4901-5 E. 5th St. in CR-4 under Sec. 2406.

Mr. Elchuck was present on behalf of his petition. There being no opposition to this case, on motion by Mr. LaForce, seconded by Mr. Eagle, it was

VOTED: That this petition be granted.

Mr. Schreurs informed Mr. Elchuck that he would have to pick up his permit in 60 days and would be required to start construction within 6 months, but that there was no completion date.

55-33 BERT CALVERT: to build gas station, cafe, and motor court at 11,851 E. Houghton Road in SR zone under Sec. 2406.

Mr. Calvert was present in behalf of his petition, with his attorney, Mr. E. Rucker. Mr. Rucker wanted the record to show that Mr. Calvert was present with his attorneys, E. Scruggs and E. Rucker and that the file contains a sketch which was filed 180 days after the effective date of the County Zoning Ordinance, and which shows the non-conformity of a business area in an SR zone, and that they assert that it is in sufficient detail to establish the non-conformity in this zone. He would also like the record to show that they had filed an application on behalf of Mr. Calvert to build this particular area out on Houghton Rd. and that it was denied by the Building Inspector for the reason that it did not conform or needed a 2406 permit and that Mr. Calvert was the owner of the land at the time the Zoning Ordinance was enacted and that to date he is still the owner of the land.

Mr. Kenneth R. DeHaven was present, representing himself and Dr. H. S. Rhu, as opposing this case and he asked if Mr. Calvert owned all of Section 30, to which the reply was, "Practically, yes".

When the word "Practically" was questioned, it was brought out that Mr. Calvert had sold a small amount of it to two people within the last two years since he first filed his application.

It was also asked if this was the most apropos location for this type of venture, that is, to travel, to need, and to location, and the reply was, "From the standpoint of this application, it is."

As this was filed as a hardship permit under 2406, Mr. DeHaven asked if there was a hardship in this case.

Mr. Rucker felt the answer lay in the Ordinance itself, which says, "Any owner of land zoned under this Ordinance, who shall file in writing, a plan of development, etc., shall be issued a special non-conforming use," and then under Sec. 401 of the Ordinance, it says "The word 'shall' is mandatory and not directory" so they have taken the position, and it has been their understanding that the Board took the same position, that it was bound to comply and grant the permit without any question as to whether it was appropriate, or wise, or anything else. He stated further that the provision 2406 was placed in the Ordinance for the benefit of those who owned land at the time of the enactment, and if they complied with the matters set in there, after filing their plans within a certain length of time, "they shall be issued" and he did not think there was any question of intent.

The question was asked, "Does the tenor of the voices of the community in any way dictate the feeling of the Board? In other words, if the community as a whole is against it, can it be developed?"

The answer was given that this is a law and as a law, it operates as it says. If the public does not like this law, the answer lies in amending the law, but that the Board does not have power to disregard a provision of this statute and say, "Well, the people don't like the law, so we aren't going to pay any attention to it." They are still a body governed by law and not by anything else.

The Board further stated in answer to Mr. DeHaven's question, that they do, of course, like to hear all sides of these stories, as it sometimes has some bearing on the conditions which we impose upon the granting of these permits.

Mr. LaForce asked how many people out there objected to this, to which Mr. DeHaven replied, "In the vicinity of 30 people." Mr. Garcia stated that there was not yet any petition to this effect, of record.

Mr. Karl Barfield stated that as a property owner nearby, he wished to say that he has talked to most of the neighbors regarding business zoning in that neighborhood and believes all of them are opposed to it.

He further stated that there is no need at the present time for business zoning at that corner; that there is no business to be served to anyone at that corner by any business zoning. If properly surveyed from a business standpoint, it will be found that the entire area east of there is government property and there never will be any house built on it, nor will there be any drawing power there for business at that corner.

He considers it a very unwise selection for the owner of the land in the first place and also very unwise to set it in the extremely east end of a very good

residential section. This entire section from Freeman Road and the Old Spanish Trail back to Houghton Road is all residential property, the Rincon Ranch Estates being a nice subdivision, highly restricted, and in asking to place a piece of property 600' by 600' right in their front or back yard is what they are objecting to:

Mr. Eagle asked if he might read the Ordinance in this regard, stating that at the time the Ordinance was enacted, 2406 was a way of escape for people owning property at that particular time, as it planned for non-conforming uses, as follows:

"Any owner of land zoned under this Ordinance, who shall file, in writing, with the Planning and Zoning Commission, within 180 days after the effective date of this Ordinance, a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development or any part thereof, at any time within two years from the effective date of this Ordinance, and if any temporary governmental regulation permitting the proposed development is in full force and in effect during said two-year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development, with necessary plans and sketches shall show the legal description of the land and the location of the proposed buildings and improvement in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be in conforming use under this Ordinance."

Mr. Eagle added that there has to be some very serious reason why the Board cannot grant it, such as a nuisance or a hazard.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the permit be granted.

55-34 CHARLES WILSON: to build 5 stores at 966-990 S. Craycroft Road in TR zone under Sec. 2406.

Mr. Wilson was present on behalf of his own petition. Mr. LaForce asked if this case had not been passed on before, to which Mr. Wilson replied that the first store passed on was with the condition that he build a fence directly behind that store itself. Then he applied for another store about 100 ft. down which the Board passed with the condition that he build a fence all along the 600 ft. Now he is applying for five stores in between the two. That was to make it one consolidated unit.

Mr. LaForce asked if he had not agreed and promised an alley at one time, but Mr. Wilson stated that when they made him put in a fence, he then took out the alley. There is no alley in there, but an easement. However, he has been approached by the property owners affected by the fence, and they agreed to come down here to

Mr. Armstrong pointed out that it would improve the situation by putting this house 9½' from the line as it would maintain the character of the neighborhood and give a comparable house to all the people in the same general area.

Mr. Armstrong said the FHA is very particular about a variation of front line setback and that is the reason for the reverse curves. This is where the buyer purchases a complete package. The minor variation will not violate the intent of zoning.

Mr. Volk added that this is a subdivision of 1500 homes and 50 or 60 are already built.

Mr. Garcia mentioned the fact that if this is taken into the City, it will not be a problem, as City side yard requirements are much less.

There being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-28 CHESIN CONSTRUCTION CO.; to construct dwellings with side yards of 9.5' at 6958-66, 7002-10-18-26 Calle Canis, 6957-58, 6965, 7001-9-17-25 Calle Denebola and at 6957 Calle Jupiter in CR-3. Sec. 1107 requires 10' side yards.

As this case was identical to the previous one, except for locations, there being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-29 BERT CALVERT: appealing decision of Zoning Inspector to continue construction on Permit No. 6984 at 11851 E. Houghton Road in SR, under Sec. 2503-c.

Mr. Scruggs of Scruggs, Rucker and Ackerman, represented Mr. Calvert, who was also present on behalf of this petition. He stated that Mr. Calvert had filed for a permit under Sec. 2406, which provided for one gas station, one cafe, one motel with six dwelling units, and was issued June 14, 1955. Later it was decided that it would look better if the dwellings were separated instead of being in a string.

As Mr. Calvert was not very prompt in his construction, but within the statutory time, he got his work under way and has completed a service station, cafe and one dwelling unit. They are here basically because of the legal and administrative confusion due to the uncertainty of the law itself, and are appealing for an interpretation of the Ordinance by the Zoning Inspector, asking for a variance and a reversal of his action, believing he acted beyond his authority.

Although the permit was outstanding, it was finally revoked on May 23, 1957, following a request by Mr. Calvert, who asked for permission to build four houses on this area, using as his index, the law itself in SR which calls for four acres for each house, but not giving the required 144,000 sq. ft. for each house, which he could build without any variance of any question.

Since they have the right under 2406 to have this type of operation there, they now want permission to build five dwelling units such as the one already there, complete with bedroom, bath, kitchen, living room, and carport for storage.

Mr. Scruggs further stated that there is a letter in the file from Mr. Dunipace, concerning the question of when a building permit can be revoked. However, he does not cite any authority in the law, for the legal case of this permit. Their first contention is that the Zoning Inspector does not have the power to revoke the permit, but assuming that he might have, following Mr. Dunipace's opinion, he points out that after a person holding a permit has advanced to the point where he is financially apt to be seriously damaged, by the regulations becoming effective, because if he has progressed, he has spent money on the proposition that certain things were permitted and then with the administrative action coming along permeating those rights, it is a serious question as to whether or not it is not an action in violation of the law and constitution.

Mr. Dunipace points out that \$100.00 is a pretty good index as to whether the man has advanced too far or not, and in this case, he has advanced to the amount of \$25,000.00 and wants to continue with this plan as originally set up and requests to be permitted to put the houses within that 600' x 600'.

They also contend that the permit is still good, but if the Inspector is right, and it has expired, they contend that the Board has the power to grant a variance and grant this request from which they did not appeal, as it was not formally turned down. They, therefore, ask the Board to declare this permit still in effect, permitting him to go ahead.

Mr. Desmond A. Williams came forward, as he owns property immediately adjacent to this tract, and stated he believed Mr. Calvert intends to develop this into a very fine project on the permit which was granted at that time. Mr. Williams also hopes to develop his acreage into high grade home sites and therefore has no personal objections.

When asked by Mr. Wilson if they were going to follow the original plan, Mr. Scruggs said they will, if they have to, but would prefer to break up the plan and scatter the houses around to make an attractive corner, grouping the houses as permitted under SR zoning, with the 20' minimum distance between them.

Mr. Schreurs explained that they do not want to expand this area, but merely want to erect five houses. SR permits single family dwellings on four acre sites and he is asking for a permit to build a non-conforming use because he had such a plan before the Ordinance came into effect, and had applied for a non-conforming use to build on less than four acres per unit. He said a memorandum dated December 12, 1955 states that they called for an inspection of a gas station.

He further stated that when a regular permit is issued, they have nine months in which to start construction, and if the foundation is in within the nine months, there is no deadline as to when it has to be finished. A footing and stem wall is considered a vested right, as it shows that construction has been started.

In this particular case, he was granted a permit in 1955, by the Board of Adjustment, and was supposed to show that the whole project was started by December of that year, which was six months after being granted by the Board. However, they found that the whole project was not started, as the foundation was not in.

Mr. Scruggs stated they had a permit for six dwelling units and then felt it would look better to have separate houses, and in effect, they were permitted to have separate units.

Mr. Wilson was of the opinion that a project is started when the foundation of one building is started but that they would not need a foundation for every unit as they could not do everything all at once.

Mr. Schreurs said he found a memorandum dated December 9, 1955 with the notation on it that he had talked to Mr. Dunipace, who ruled that date of issuance of a permit is the date the permit is actually issued, and that Mr. Calvert can change his plans as long as he does not have more than the number of units approved by 2406, but that construction must be started on all of them by December 14, 1955.

Mr. Ackerman felt that because \$25,000.00 worth of work had been done, there was no question but that the permit was a vested right, but Mr. Schreurs said that only trenches had been dug by the end of six months.

Mr. Scruggs said they would like a declaration by this Board that this permit is good, as the law does not allow the Zoning Inspector to terminate a permit once construction has started.

Mr. Schreurs contended that the Ordinance says the permit expires, while Mr. Scruggs stated that Mr. Dunipace agrees that the permit must be used and once you have a vested right in it, you can't take it away.

After considerable discussion, there being no one else to be heard, on motion by Mr. Wilson, seconded by Mr. Royal, it was

VOTED: That Mr. Calvert be allowed to continue construction with the provision that a plan for five units be submitted to the Zoning Inspector for his approval.

The motion was declared carried.

57-30 BILL RAPPAPORT: to allow open porch to remain attached to rear of residence with deficient rear yard at 1527 Avenida Sirio in CR-3. Sec. 1108 requires 40' rear yard.

Mr. Rappaport was present on behalf of this petition.

STUBBS & SCHUBART, P.C.
ATTORNEYS AND COUNSELLORS AT LAW
340 NORTH MAIN AVENUE
TUCSON, AZ 85701

G. Lawrence Schubart*
Thomas M. Parsons
Robert C. Stubbs
(1927 - 2012)

LSchubart@StubbsSchubart.com

(620) 623-5466
Fax: (620) 882-3909
www.StubbsSchubart.com
*Also admitted in Pennsylvania

October 14, 2014

BY HAND DELIVERY

Tom Drzazgowski, Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
201 North Stone Avenue
Tucson, AZ 85701

Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*

REQUEST FOR INTERPRETATION

Dear Tom:

As you know from prior communications, including our meeting on Thursday, October 9, I represent El Cortijo, L.L.C., title-owner of the approximate 45-acre parcel at 3700 South Old Spanish Trail, Tucson, Arizona. When we met I discussed with you my interpretation of the Pima County Zoning Code, concluding the property had been developed under the Guest Ranch criteria that existed in the Code through September, 1985. I explained that when the Calvert Family owned the property it was initially combined with a restaurant, Saguaro Corners, which was also part of the Guest Ranch use. All of this development was pursuant to the Suburban Ranch Zone (SR).

During our meeting I provided you with what I felt was an identical precedent, a case that involved Tira Mira Guest Ranch acquired by Alexander T. Wilson. I left you a copy of the Court of Appeals decision together with an Affidavit from Alex Garcia, who appeared on behalf of Alexander Wilson to explain why those rental units did meet the SR criteria for a Guest Ranch use. Your subsequent message indicated you could not locate the Tira Mira property in order to confirm the similarities between the two cases. Thus, with this letter I am providing:

1. Two aerial photographs, one, larger in scale, that shows Tira Mira in proximity to Goret Road and the other, smaller in scale, that shows the various improvements.
2. Pima County Assessor's records that reflect Dr. Wilson constructed three additional rental units in 1991 which occurred before the litigation commenced and then, as you can see from the Assessor's records, five additional 480-square foot rentals units that were constructed after we prevailed in litigation.

STUBBS & SCHUBART, P. C.
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski, Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
Re: El Cortijo, L.L.C. – 3700 South Old Spanish Trail
REQUEST FOR INTERPRETATION

October 14, 2014
Page 2 of 3

3. Pima County GIS information that indicates the current street address for the Tira Mira property is 3130 West Rock Hill Road, Tucson, Arizona (formerly the street address was 3180 West Goret Road).
4. The Affidavit of Jim Altenstadter, then Acting Chief Zoning Inspector, identifying the Guest Ranch definition, and reflecting his interpretation of structures used as rental units met the definition of a Guest Ranch use.
5. The Affidavit of Alexander T. Wilson, reflecting the history of his acquisition of the property, the fact that it was used as rental units, and the fact he confirmed with Graham Arroll this met the Guest Ranch use. From this Affidavit and attachments, you can see that when Dr. Wilson purchased the property it had four rental structures, but he was able to raze and rebuild them over time, effectively doubling the area of the improvements and concomitantly, increasing the number of structures on the property.
6. Another copy of Alex Garcia's Affidavit to keep all this in proper context.

I have, at my disposal, a copy of the initial Pima County Zoning Code, Ordinance 1952-111, and the Zoning Codes that existed in 1957, when Bert Calvert sought and was issued a permit to build the units on the Saguaro Corners property, and a copy of the 1958 Zoning Code when Bert Calvert was issued a permit to build an additional residence, and the 1960 Zoning Ordinance when he sought and obtained a permit for an additional rental house, etc. I have also included, with this letter, copies of the permits issued to Bert Calvert (Tab #7).

A Guest Ranch is the only permissible use in the SR Zone for residential units used as rentals, with the accessory use of a restaurant. A Guest Ranch is a resort hotel and/or group of buildings containing sleeping units, having a building site of not less than four (4) commercial acres. This is what existed on the El Cortijo, L.L.C., property from the latter part of the 1950s forward, the use has been continuous, and that was the use when the property was purchased by my clients. I now need for you to confirm, in writing, the property (a) was developed consistent with permits issued by Pima County, in the Suburban Ranch Zone; and, (b) that development met the Guest Ranch criteria. I am not asking you to confirm further development rights, expansion rights, or anything else other than the obvious fact the initial development was legal and developed as a Guest Ranch use.

STUBBS & SCHUBART, P. C.
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski, Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
Re: El Cortijo, L.L.C. - 3700 South Old Spanish Trail
REQUEST FOR INTERPRETATION

October 14, 2014
Page 3 of 3

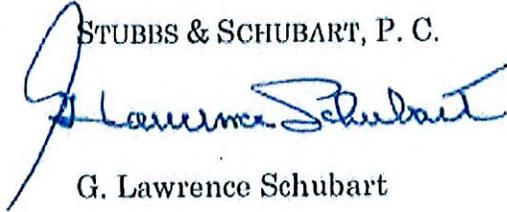
If you need additional information, I have available for consultation, Alex Garcia, who you know has the greatest degree of historical knowledge about the Pima County Zoning Code; Robert Johnson, who was the Director for the Pima County Planning & Zoning Department at the time he sought to amend the Zoning Code to eliminate the Guest Ranch use (in 1985); and, quite probably, Jim Altenstadter is still available to confirm many of the facts in the Wilson case.

If there is a fee for you to provide this written interpretation of the past use of the property at 3700 South Old Spanish Trail, I will be responsible for that fee. Certainly, if there are any additional questions or any additional information you need, it will be promptly provided to you.

Thank you for your attention to this matter.

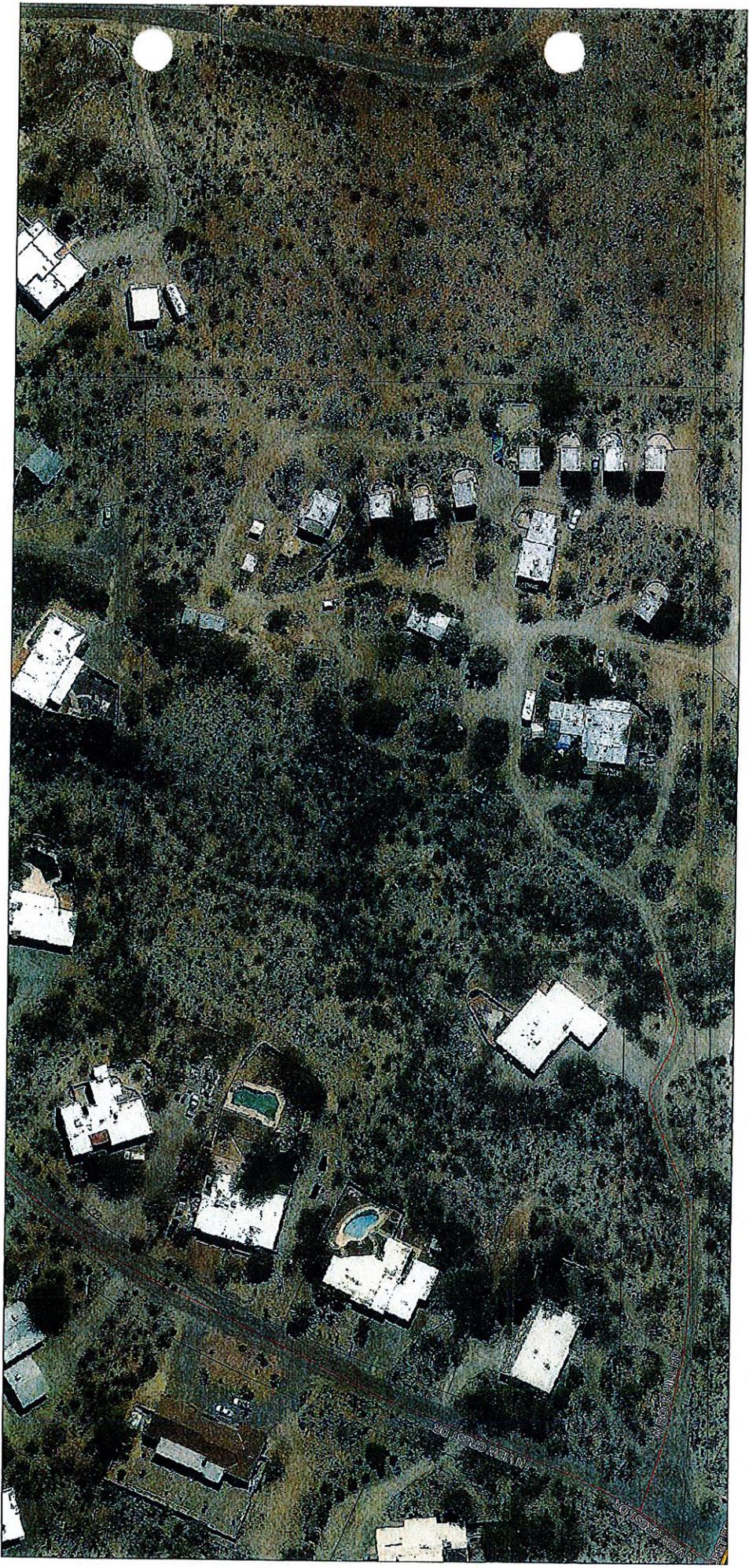
Very truly yours,

STUBBS & SCHUBART, P. C.



G. Lawrence Schubart

GLS/bmmh
Attachments
As Listed Above



Book-Map-Parcel: 103-11-0380 [Oblique Image](#) Tax Year: Tax Area: 0150

Property Address:

Street No: 3130 Street Direction: W Street Name: ROCK HILL RD Location: Tucson

Taxpayer Information:

WILSON ALEXANDER T
2620 W IRONWOOD HILL DR APT 13
TUCSON AZ

Property Description:

S60' E403' SE4 SW4 SE4 5.31 AC SEC 20-13-13

85745-1092

Valuation Data:

		2014			2015			
	LEGAL CLASS	VALUE	ASMT RATIO	ASSESSED VALUE	LEGAL CLASS	VALUE	ASMT RATIO	ASSESSED VALUE
LAND FCV	Res Other (4)	\$155,000	10.0	\$15,500	Res Other (4)	\$502	10.0	\$50
IMPR FCV	Res Other (4)	\$453,549	10.0	\$45,355	Res Other (4)	\$411,053	10.0	\$41,105
TOTAL FCV	Res Other (4)	\$608,549	10.0	\$60,855	Res Other (4)	\$411,555	10.0	\$41,165
LIMITED VALUE	Res Other (4)	\$608,549	10.0	\$60,855	Res Other (4)	\$411,555	10.0	\$41,165

Property Information:

Section: 29
Town: 13.0
Range: 13.0E
Map & Plat: /
Block:
Tract:
Rule District: 9
Land Measure: 5.31A
Group Code: 000
Census Tract: 4401
Use Code: 0360 (APARTMENTS 6 TO 24 UNITS)
File Id: 1
Date of Last Change: 1/8/2014

Commercial Characteristics:

SEQ-SECT	Construct. Year	Model	IPR	Sqft.	RCN	RCNLD	Model Description
001-001	1959	032 3	0000000	1358	\$112,336	\$68,526	
002-001	1944	010 3	0000000	828	\$80,187	\$45,226	
003-001	1938	010 3	0000000	600	\$65,138	\$38,736	
004-001	1993	035 3	0000000	2320	\$204,228	\$92,146	
005-001	1991	010 3	0000000	480	\$59,001	\$45,543	
006-001	1991	290 3	0000000	0	\$695	\$323	
007-001	1991	010 3	0000000	480	\$59,001	\$45,543	
008-001	1991	290 3	0000000	0	\$695	\$323	
009-001	1991	010 3	0000000	480	\$59,001	\$45,543	
010-001	1991	290 3	0000000	0	\$695	\$323	
011-001	1993	010 3	0000000	480	\$59,001	\$46,092	
012-001	1993	290 3	0000000	0	\$695	\$349	
013-001	1993	010 3	0000000	480	\$59,001	\$46,092	
014-001	1993	290 3	0000000	0	\$695	\$349	
015-001	1993	010 3	0000000	480	\$59,001	\$46,092	
016-001	1993	290 3	0000000	0	\$695	\$349	
017-001	1993	010 3	0000000	480	\$59,001	\$46,092	
018-001	1993	290 3	0000000	0	\$695	\$349	
019-001	1993	010 3	0000000	480	\$59,001	\$46,092	

Valuation Area:

Condo Market: 21
DOR Market: 21
MFR Neighborhood: SQ_TUCSON_MTNS
SFR Neighborhood: 01002201
SFR District: 12

Recording Information:

Sequence No. 0 Docket 6379 Page 958 Date Recorded 1990-10-06 Type

Owner's Estimate:

Tax Year Estimate
2014 \$568,817.00
2010 \$440,000.00
2008 \$476,334.00

ATTACHMENT #2



Pima County Geographic Information Systems

Parcel 103-11-0380

Read the [Disclaimer](#). Information on this page is **unofficial**.

Mail name and address	Legal description
103-11-0380 WILSON ALEXANDER T 2620 W IRONWOOD HILL DR APT 13 TUCSON AZ 85745-1062	S500' E463' SE4 SW4 SE4 S.31 AC SEC 29-13-13

Situs (property) address

(About situs addresses)

Street Address	Jurisdiction	Postal City	Zip Code	ZIP+4 Lookup
3130 W ROCK HILL RD	TUCSON	TUCSON	85745	

Information for this parcel

- [Assessor Parcel Detail](#) for tax year 2015 from the [Pima County Assessor's Office](#). Also see [Assessor Record Maps](#).
- [Real Estate Property Tax Inquiry](#) and [Property Tax Statement](#) from the [Pima County Treasurers's Office](#).
- [Recorded Information](#) from the [Pima County Recorder's Office](#)
 - [Recorded Document](#) for Docket 6379, Page 958.
 - [Voter Precinct and Districts](#)
- A **Subdivision Plat Map** is not available here because the GIS parcel record does not have subdivision Book/Page or Sequence numbers. The parcel may have an associated subdivision Book/Page or Sequence number that isn't documented here. See "Subdivision" in the "[Development](#)" [GIS overlay details group](#) results. As another option, the parcel legal description above may have a subdivision name you can search for in [Subdivision Final Plats](#).
- [Pima County Sanitary Sewer Connection Search](#) and [Connection Records Overview](#).
- [Permits from Pima County Development Services](#).
 - [Permit Database Search](#)
 - [Historical Permit Cards](#) - Prior to about 1998
- [Development Activity Records](#) (permit, plat, rezoning) from City of Tucson DSD [Property Research Online](#).
- [Section Information and Maps](#) for Township 13S, Range 13E, Section 29.
This parcel's GIS [overlay details Grids group](#) is a **more complete analysis** of sections when parcel boundaries extend outside of the listed section.
- **Floodplain Information:**
 - [Parcel Floodplain Information](#). See [FEMA Digital Flood Insurance Rate Maps \(DFIRMs\)](#) for more

ATTACHMENT #3

STATE OF ARIZONA)
County of Pima)ss A F F I D A V I T

JIM ALTENSTADTER, being first duly sworn upon his oath,
deposes and says:

1. That he first became employed by Pima County in 1987 as the Comprehensive Plan Administrator and he undertook the task of proposing the conceptual land use element of the Pima County Comprehensive Plan and holding public hearings for the purpose of adopting such a plan;

2. That in 1989 he became the Director of the Pima County Planning and Development Services Department which was formerly known as the Pima County Planning and Zoning Department;

3. That after Graham Arroll vacated the position of Chief Zoning Inspector, he, Jim Altenstadter, was assigned to fulfill that position while retaining his position as Director;

4. One of the major duties of the Chief Zoning Inspector is the obligation to interpret and enforce the Pima County Zoning Code, and to issue requested permits only after the Zoning Inspector has been satisfied that the proposed use of the property for which the permits are sought is a permitted use which conforms to the requirements in the Zoning Code, and other codes where applicable;

5. That prior to issuing the permits that allowed Alexander T. Wilson to build additional structures on the Tira Mira Ranch property, he inspected the Pima County records and

Affidavit (Page 1 of 3)

STUBBS & SCHUBART, P.C.
ATTORNEYS AND COUNSELORS AT LAW
940 NORTH MAIN AVENUE
POST OFFICE BOX 50547
TUCSON, ARIZONA 85703

ATTACHMENT #4

1 observed that in 1986 his predecessor had issued a zoning use
2 permit allowing for a 100% expansion of the existing Guest Ranch;

3 6. That the definition of a Guest Ranch that was set
4 forth in the Pima County Zoning code at the time the use was
5 established on the Tira Mira Ranch property stated:

6 "GUEST RANCH: A resort hotel and/or group of buildings
7 containing sleeping units, having a building site of not
less than 4 commercial acres."

8 7. That the definition contained in the Pima County
9 Zoning Code for a Guest Ranch required only that there be separate
10 structures used as sleeping units on a parcel of property that was
11 four commercial acres or larger in size;

12 8. That a nonconforming use is created when there is an
13 amendment to the Zoning Code that would preclude that use from
14 being created anew in the manner in which it is presently being
15 conducted. Based upon his research, he has concluded that the
16 property was used in conformance with the Guest Ranch definition
17 through 1985. At that time the Guest Ranch definition was deleted
18 and the definition of Resort was adopted, and therefore the Tira
19 Mira Ranch became a nonconforming Guest Ranch use;

20 9. That without regard to the Guest Ranch analysis, the
21 configuration of the structures and their use on a single
22 conforming SR-zoned parcel of land constitutes a business use
23 within the meaning and context of the Pima County Zoning Code.
24 The Zoning Code defines as a business use those uses which are
25 included in subsection B of the TR zone. See Pima County Zoning
26

STUBBS & SCHUBART, P.C.
ATTORNEYS AND COUNSELORS AT LAW
340 NORTH MAIN AVENUE
POST OFFICE BOX 50547
TUCSON, ARIZONA 85703

1 Code Section 18.01.030D(1)(c). One of these uses includes a
2 nonexpressed residential use. The Tira Mira Ranch property had on
3 its site under one ownership four renter-occupied buildings that
4 are detached one-family dwelling units that share common yards and
5 drives. This arrangement conforms to the Zoning Code definition
6 of a "dwelling group". A dwelling group is a permitted
7 nonexpressed residential use in the TR zone, and as such, it falls
8 within the Pima County definition of a business use;

9 10. It is Pima County policy, based upon Arizona
10 statute, that any business use, once it becomes nonconforming,
11 becomes subject to limitations, one of which denies any expansion
12 beyond 100% of the existing floor area used in the business. The
13 further development of the Tira Mira Ranch property proposed on
14 behalf of Alexander T. Wilson does not exceed a 100% expansion of
15 the original business use of the property;

16 11. The Pima County permits were properly issued for
17 this expansion.

18 FURTHER AFFIANT SAYETH NOT.

19 
20 Jim Altenstadter

21 SUBSCRIBED AND SWORN to before me this 16th of July, 1992,
22 by Jim Altenstadter.

23
24 My Commission Expires February 10, 1993

25 
26 Notary Public

STUBBS & SCHUBART, P.C.
ATTORNEYS AND COUNSELORS AT LAW
340 NORTH MAIN AVENUE
POST OFFICE BOX 50547
TUCSON, ARIZONA 85703

1 STATE OF ARIZONA)
2 County of Pima)ss A F F I D A V I T
3)

4 ALEXANDER THOMAS WILSON, being first duly sworn upon his
5 oath, deposes and says:

6 1. That he is a resident of Tucson, Arizona, and he is
7 employed as an Adjunct Professor in the Geosciences and Physics
8 Department at the University of Arizona;

9 2. That he is the Plaintiff in the case Wilson v. Pima
10 County, Cause No. 281853, and he seeks to enforce the permits that
11 were issued by Pima County enabling him to complete his planned
12 construction at the Tira Mira Guest Ranch;

13 3. That in early August, 1980, he was provided a copy
14 of a multiple listing service publication that described a 5.31-
15 acre parcel of property as the Tira Mira Guest Ranch. A copy of
16 this property information report is attached to this Affidavit as
17 Attachment 1.

18 4. That on August 20, 1980, he agreed to purchase this
19 guest ranch from Trent A. Maddox, and he completed the acquisition
20 in September 1980;

21 5. That the subject property at the time he acquired it
22 had four separate houses that were used as five rental units, and
23 he has consistently used the property in this manner since the
24 date he acquired the property, and through the present time;

25 6. That in 1986, he met with Graham Arroll, Pima County
26 Zoning Administrator, to discuss his use of the property and the

STUBBS & SCHUBART, P.C.
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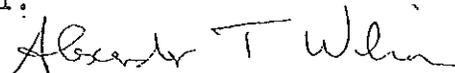
1 rights that he would have as an owner to further expand that use;

2 7. That Graham Arroll, in his capacity as the Zoning
3 Administrator for Pima County inspected the property rental rolls
4 and determined that the property was a Guest Ranch under the terms
5 of the Pima County Zoning Code that were in existence at the time
6 he acquired the property;

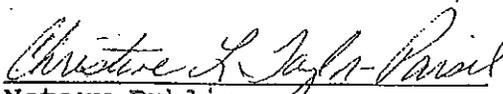
7 8. Thereafter Graham Arroll issued a permit which
8 acknowledged that this was a Guest Ranch. A copy this permit is
9 attached to this Affidavit as Attachment 2.

10 9. That subsequently on December 7, 1990, Pima County
11 again issued a permit for the Tira Mira property confirming that
12 the use was that of a Guest Ranch--nonconforming under the Pima
13 County Zoning Code and that as such it was allowed to expand as a
14 nonconforming business use. A copy of this permit is attached to
15 this Affidavit as Attachment 3.

16 FURTHER AFFIANT SAYETH NOT.

17 
18 Alexander T. Wilson

19 SUBSCRIBED AND SWORN to before me this 13th of July, 1992,
20 by Alexander T. Wilson.

21
22 
23 Notary Public

24 My Commission Expires November 1, 1994
25
26

RESIDENTIAL INCOME
TO BE PROCESSED THROUGH M.L.S. OF TUCSON

List Price \$ 169,900.00
† Tot. Loan \$ 93,500.00
Equity \$ 76,400.00

16-1699-401
Listing # 72-1401-LG
Grid Code K01E
Cross Block 3200N

Property Tira - Mira Guest Ranch - 4 Houses - 5.31 Acres
Address 3180 West Goret Road

M.L.S. OFFICE USE ONLY

How Shown Appointment Through Listing Office
Legal Description S 500' of E 463' of SE 4 H 5.31 A

Owner Trent A. Maddox Phone 743-0954 Manager Owner Phone 743-0954
Listing Office Roy H. Long Realty/1st American Realty Phone 8209 E. 22nd St. Zip 85710 Phone 296-8525
Salesperson Martha Hoag/Laurie Fitzgerald Phone 297-6020/296-4577 Broker/Mgr. C. A. Parvis/Schra

EXISTING FINANCING	Loan Balance	Tot. Mo. Pymnt.	Rate	Term to P/D	Restricted?	Lender	Loan No.
1st (M) (D) (C) †	\$ 700.00		8 %		*	Private	
2nd (M) (D) (C) †	\$		%				
3rd (M) (D) (C) †	\$		%				
POTENTIAL FINANCING							
1st (M) (D) (C)	\$ 120,000	922	8.5 %	30			
2nd (M) (D) (C)	\$		%				

FOR ADDITIONAL NOTES ON FINANCING
SEE "REMARKS" YES () NO ()

ANNUAL INCOME		
1.) Scheduled Gross Rent (100% Occupancy)	1100	\$ 9,600.00
2.) Less Vacancy & Credit Losses (%)		
3.) Plus Other Income (laundry, vending)		
4.) Total Gross Income (1 minus 2 + 3)		9,600.00
ANNUAL EXPENSES		
5.) Real Estate Taxes (19 79)		\$ 1,066.78
6.) Pers. Prop. Taxes (19)		
7.) Rental Sales Tax (if incl. in rent)		
8.) Assessments		
9.) Insurance		400.00
10.) Resident Manager		
11.) Professional Management		
Services (pool, rubbish, pest, etc.)		
12.)		
13.) Gas () Electricity ()		1,200.00
14.) Water & Sewer		
15.) Supplies		
16.) Reserves For Replacement		
17.) Other (adv., phone, legal, etc.)		
18.) Total Expenses (total lines 5-17)		\$ 2,666.78
19.) Net Operating Income (4 minus 10)	10450	6,933.22
20.) Annual Debt Service (Existing P&I ONLY)	11000	8,400.00
21.) Cash Flow Before Income Tax (19 minus 20)		\$ 1,466.78

Your Built † 1932-38-44-48 Sewer Septic Avail. () Conn. ()
Construction Adobe Parking Yes
Heating GFA - LP Paved Street Goret - Yes
Cooling EC Zoning SH S1
Pool No Lot Size † 5.31 Acres
Laundry: Leased () Own () None (X)

State Tax Code # 103-11-0380
Full Cash Value 19 _____
Land \$ _____ %
Impv. \$ _____ %
Pers. Prop. \$ _____ %
Total \$ _____ 100.00 %
Brokerage Fee 7 %
Co-Op Fee 50 %

Trade For No Trades
Terms Owner Will Consider Carrying With
Substantial Down
Remarks: *A private loan but possibility of assumption or new loan at higher %. With \$45,000 down seller will wrap. Submit All Offers. Owner living in #4 unit causing a cash flow at present. Possibility of a nice close-in guest ranch with some cosmetic work - units are basically sound. Good City Views.

ITEMS PRECEDED BY † ARE APPROXIMATE SEE REVERSE
FOR ADDITIONAL REMARKS AND PROPERTY RENTAL DATA

*Grant to Silverbell to Goret (1 mi)
1.2 mi (mi)*

INFORMATION ON THIS FORM IS FOR THE EXCLUSIVE USE OF MEMBERS OF MLS OF TUCSON AND WHILE RECEIVED FROM SOURCES BELIEVED TO BE RELIABLE IS NOT GUARANTEED.

USE THIS FORM FOR PROPERTY RENTAL DATA AND REMARKS

PROPERTY RENTAL DATA						
Unit	Br	Unit	Furnished?	Rent Now	Loose Expres	Deposit
1	2	1	No	\$ 264.00	None	\$ 1st & Last Mo. Rent.
	Studio	3/4	No	\$ 126.50	None	" "
2	2	1	No	\$ 280.00	None	" "
3	1	3/4	No	\$ 143.00	None	" "
4	2	1	No	Owner	Owner	\$ Owner
				\$		\$
				\$		\$
				\$		\$
				\$		\$

Remarks:

Present owner provides water from well on property and pays electric bills. Rents are low and could be increased. Apartment has panel heat.

Unit #1 has studio and could be made into a 3 bedroom house has a small room for nursery - den - sewing.

Unit #2 has fireplace in living room, hardwood floors, enclosed porch - basement.

Unit #3 has beamed ceilings and panel ray heat.

Unit #4 has franklin in living room - wood stove in bedroom.

All Other Units Have Furnace.

Square Footage: #1 - 1529 sq. ft.
 #2 - 600 sq. ft.
 #3 - 650 sq. ft.
 #4 - 837 sq. ft.



PIMA COUNTY CENTRAL PERMIT

T.O. NO. **00-99-81**

PROJECT ADDRESS 3180 W. Coast Road				
SUBDIVISION/METES & BONDS				
SEC. TWN	RNG	BOOK/PAGE-SHEET	LOT NO.	BLOCK NO.
APPLICANT Alex T. Wilson		MAILING ADDRESS 2620 Xanadu Hills Drive		ZIP CODE 85743
OWNER		MAILING ADDRESS		PHONE 791-7810
CONTRACTOR		MAILING ADDRESS		LICENSE NO. / PHONE
ARCHITECT		MAILING ADDRESS		ZIP CODE / PHONE
DESCRIBE WORK going permit to expand existing (grandfathered) guest ranch by 10% floor				
STATED VALUATION		SEPTIC TANK	LEACHING AREA	SEWER REF. # / BACK WATER VALVE
SPECIAL CONDITIONS:				

SE ZONE SR	H.O.Z.	FLOOD PLAIN	OCCUPANCY GROUP	TYPE OF CONST.	BLDG. SIZE (S.F.)	NO. OF STORIES
NO. OF DWELLING UNITS	MAX. OCC. LOAD	FIRE SPINKLERS	U.S. CENSUS DATA	TAX CODE NO.		

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 180 DAYS OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER WORK IS COMMENCED. SUCH TIME PERIODS SHALL BE EVIDENCED BY CALLED COUNTY INSPECTIONS. IT IS THE AUTHORIZED APPLICANT'S RESPONSIBILITY TO DETERMINE THE LOCATION OF ALL EXISTING UNDERGROUND UTILITIES, SEWAGE DISPOSAL SYSTEMS OR OTHER OBSTACLES THAT MAY INTERFERE WITH THE CONSTRUCTION OR WORK AUTHORIZED BY THIS PERMIT.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS PERMIT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. THE GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

SIGNATURE OF AUTHORIZED APPLICANT _____ DATE _____

TYPE OF PERMIT		FEE
CORRECTED VALUATION	CORRECTED P/C FEE	
3	2870	10.00
TOTAL FEES		\$ 10.00
RECEIPT NO.	LESS PREVIOUS PMTS (P/C FEE)	
	TOTAL AMOUNT DUE	\$ 10.00
RECEIPT NO.	APA NO.	BEGINNING BALANCE
	FEES CHARGED	
	SERV. CHARGE (-)	
	ENDING BALANCE	

- WE WILL NEED THE FOLLOWING INFORMATION TO MAKE YOUR INSPECTIONS:
- (1) T.O. NO. - SEE UPPER RIGHT CORNER OF THIS PERMIT
 - (2) YOUR "PROJECT ADDRESS"
 - (3) TYPE OF PROJECT INSPECTION YOU WANT - SEE YOUR INSPECTION CARD
 - (4) YOUR ADDRESS MUST BE POSTED AT FRONT PROPERTY LINE NEAR ROAD
 - (5) FOR QUESTIONS ON INSPECTIONS CALL 792-6855

CALL 792-6743 BEFORE 4:00 P.M. FOR INSPECTIONS

CLASSIFICATION	TYPE OF INSPECTION	INITIAL	DATE	PERMIT	FLOR	INSPECTION	STATUS
DO NOT POUR FOOTING UNTIL THE FOLLOWING HAS BEEN APPROVED							
B-1	BUILDING EXCAVATION LAYOUT, REBAR, ZONING					WATER	
DO NOT POUR FOUNDATION WALL UNTIL THE FOLLOWING HAS BEEN APPROVED							
B-2	FOUNDATION WALL (FORMS AND REBAR)					GAS	
DO NOT POUR FLOOR UNTIL THE FOLLOWING HAS BEEN APPROVED							
M-1	ROUGH PLUMBING (UNDER SLAB)					SEWER-DRETF FWT	
M-2	ROUGH MECHANICAL (UNDER SLAB)						
E-1	ROUGH ELECTRIC (UNDERGROUND)						
B-3	BUILDING FLOOR REIN. (PRE-SLAB) AND FLOOD PLAIN CLEARANCE						
DO NOT COVER UNTIL THE FOLLOWING HAS BEEN APPROVED							
B-5	REINFORCED MASONRY (BELOW GROUND)						
B-7	ROUGH FRAMING (1ST STORY)						
B-8	ROOF SHEATHING NAILING						
M-4	INTERMEDIATE MECHANICAL						
M-5	INTERMEDIATE FIRE SPRINKLER SYSTEM						
M-6	INTERMEDIATE PLUMBING (TOP OUT)						
E-2	INTERMEDIATE ELECTRIC						
B-9	FIND FLOOR FINISH SHEETROCK (AFTER M-4, M-5, E-2)						
B-10	EXT. SHEATHING/STUCCO FINISH						
B-11	LATH AND/OR WALL BOARD						
SPECIAL INSPECTION							
S-1	POOL					POOL FINE GUINTE	
S-3	POOL					POOL FINISH/ENCLOSURE	
T400	TRAILER-UNDERGROUND						
T300	TRAILER-UTILITIES						
T-5	TEMP SERVICE						
C-D	CABLE DROP						
T-P	TEMP FOLS						

YUMA COUNTY CENTRAL PERMIT

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 180 DAYS OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER WORK IS COMMENCED. SUCH TIME PERIODS SHALL BE EVIDENCED BY CALLED COUNTY INSPECTIONS. IT IS THE AUTHORIZED APPLICANT'S RESPONSIBILITY TO DETERMINE THE LOCATION OF ALL EXISTING UNDERGROUND UTILITIES, SEWAGE DISPOSAL SYSTEMS OR OTHER OBSTACLES THAT MAY INTERFERE WITH THE CONSTRUCTION OR WORK AUTHORIZED BY THIS PERMIT.

ALL CONTRACT WORK EXCEEDING \$10,000 WILL BE DONE BY A CONTRACTOR HOLDING A VALID PRIVILEGE TAX LICENSED BY THE STATE OF ARIZONA.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS PERMIT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. THE GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

X J. J. [Signature] 12-7-90
SIGNATURE OF AUTHORIZED APPLICANT DATE

JOB ADDRESS 130 W. ROCK HILL RD		PROJECT DESCRIPTION MINE USE PERMIT FOR EXISTING GUEST ROOM - NON CONFORMING		RECEIPT NO 005629	DATE 12/02/90	PROJECT NO 900047541
APPLICANT J. J. [Name]				SUB DIVISION		
ADDRESS 130 W. ROCK HILL RD				TAX CODE 1011000	LOT NO	BLOCK
CITY YUMA				CENSUS TRACT	ZONE CENSUS SH.	MODULE
OWNER ALSON, DR. ALEX T.				SETBACKS FRONT	RIGHT	LEFT
CONTRACTOR [Name]				DWELLING UNITS	MAX. OCC. LOAD	FLOOR SIZE (SF)
ARCHITECT/ENGINEER [Name]				WASTEWATER FU	R/NP	SEWER REF NO.
ADDRESS				FIRE PROTECTION	CONST. TYPE	OCCUP. GAP
CITY				LEGAL DESCRIPTION	SEC	TWN.
LICENSE #				TYPE OF PERMIT ZONING		
CITY				FEES 10.00		
STREET				VALUATION	TENDER	TOTAL FEES
PHONE NO.				RECEIPT NUMBER 005629		LESS PREVIOUS Pmts. (P.C. FEE)
CITY				APA No.	SERV CHARGE (S)	ADDITIONAL AMOUNTS DUE
STREET				BEGINNING BALANCE	ENDING BALANCE	
PHONE NO.						

THIS PARCEL IS 9.12 ACRES WITH 9 EXISTING BLDGS. INCLUDING TOTAL SQ. FOOTAGE OF 4200 SF. 100% EXPANSION ALLOWED. NONCONFORMING BUSINESS USE ALLOWED PER JIM ALLENSTADER LETTER DATED 5-9-90

CALL 792-8740 BEFORE 3:30 P.M. FOR INSPECTIONS											
REQ/INSP TYPE	DESCRIPTION	APPR DATE	APR BY	REQ/INSP TYPE	DESCRIPTION	APPR DATE	APR BY	REQ/INSP TYPE	DESCRIPTION	APPR DATE	APR BY
DO NOT POUR FOOTING UNTIL THE FOLLOWING HAS BEEN APPROVED.											
B-1	BUILDING EXCAVATION LAYOUT, REBAR ZONING			F-58	INTERIOR FIRE PIPING/TEST			B-19	BUILDING		
				P-48	INTERMEDIATE PLUMBING (TOP OUT)			E-39	ELECTRICAL		
DO NOT POUR FOUNDATION WALL UNTIL THE FOLLOWING HAS BEEN APPROVED.											
B-2	FOUNDATION WALL (FORMS AND REBAR)			E-38	INTERMEDIATE ELECTRIC			P-44	SEPTIC		
				B-9	FINAL FRAME PRE-SHEATHING AFTER N28, P48, E38			SPECIALTY INSPECTIONS			
DO NOT POUR FLOOR UNTIL THE FOLLOWING HAS BEEN APPROVED.											
P-40	ROUGH PLUMBING (UNDER SLAB)			B-10	EXT SHEATHING/STUCCO MESH			S-60	POOL - POOL PRE-GUNITE		
M-20	ROUGH MECHANICAL (UNDER SLAB)			B-11	LATH AND/OR WALL BOARD			S-69	POOL FINAL/ENCLOSURE		
E-30	ROUGH ELECTRIC (UNDERGROUND)							T400	TRAILER-UNDERGROUND		
F-50	OUTSIDE FIRELINE/TEST			P-41	WATER			7500	TRAILER-UTILITIES		
B-3	BUILDING FLOOR REIN (PRE SLAB) AND FLOOD PLAIN CLEARANCE			P-42	GAS			E-32	TEMP SERVICE		
DO NOT COVER UNTIL THE FOLLOWING HAS BEEN APPROVED.											
B-5	REINFORCED MASONRY (BEFORE GROUTING)			P-43	SEWER/STREET CUT			E-33	CABLE DROP		
								E-34	TEMP POLE		
B-8	ROOF SHEATHING NAILING			M-29	MECHANICAL			0-70	CERT OF OCC INSP		
				F-59	FIRE PROTECTION			0-71	SPECIAL INSPECTION/VIOLATIONS		
				P-40	PLUMBING						

34/177

STUBBS & SCHUBART, P.C.
ATTORNEYS AND COUNSELORS AT LAW
340 NORTH MAIN AVENUE
POST OFFICE BOX 50547
TUCSON, ARIZONA 85703

1 STATE OF ARIZONA)
2 County of Pima) ss A F F I D A V I T

3 ALEX R. GARCIA, being first duly sworn upon his oath,
4 deposes and says:

5 1. Commencing in 1945 he became employed by Pima County
6 for a short period of time, and then after serving in the United
7 States Army, he became employed on a permanent basis by Pima
8 County as of April 1, 1948;

9 2. That he was employed by Pima County during the time
10 that Pima County undertook the first public hearings for the
11 adoption of original zoning, and that he himself was involved in
12 the public hearing process;

13 3. That after the public hearing process had been
14 completed, the Pima County Board of Supervisors adopted Ordinance
15 No. 1952-111 on August 6, 1952, and the Pima County Zoning Code
16 became effective on February 16, 1953;

17 4. That he held the position as the Assistant Director
18 for the Pima County Planning and Zoning Department from 1964
19 through November 1970, and thereafter he became the Director of
20 the Planning and Zoning Department from November 1970 through
21 January 1985;

22 5. That in January 1985 he became a Special Assistant
23 to the County Manager, which position he held until August 1986
24 when he retired as a full-time Pima County employee;

1 6. That commencing in August 1986 he has been employed
2 by Pima County on a contract basis as the Zoning Hearing Officer,
3 and in this capacity he hears issues and decides matters which
4 concern alleged violations of the Pima County Zoning Code;

5 7. That based upon his experience in the public hearing
6 process to adopt the original Zoning Code, his experience as the
7 Assistant Director and as the Director of the Pima County Planning
8 and Zoning Department, and his experience as the Zoning Hearing
9 Officer, he has great familiarity with the Zoning Code and the
10 amendments thereto, and he has been required to render
11 interpretations of the Zoning Code innumerable times during the
12 course of his career with Pima County government;

13 8. That he is aware that the Suburban Ranch Zone
14 provisions in the Zoning Code were intended to permit a wide range
15 of uses including residences, agricultural, and even some
16 commercial-type uses. This zone was created to recognize the
17 ranch-type development common to the rural areas of Pima County;

18 9. That he is familiar with the definition of a Guest
19 Ranch as it was set forth in the initial Zoning Code in 1952, and
20 as it existed through 1985 when it was then deleted from the
21 definitions and replaced with the definition of Resort;

22 10. That he is aware that one of Pima County's
23 significant industries is that of tourism and that there are a
24 great number of visitors that would lease sleeping quarters or
25 dwelling units on a ranch-type environment, and that the liberal
26

1 definition of a Guest Ranch was intended to perpetuate this type
2 of business in the Suburban Ranch zone;

3 11. That there was no requirement that a Guest Ranch
4 have a swimming pool, horseback riding, restaurant, or other
5 recreational activities. These activities could be allowed as
6 accessory uses, but they are not required for a Guest Ranch;

7 12. That he has personally inspected the property owned
8 by Alexander T. Wilson, he has observed the older structures on
9 the property, and the more recently constructed structures, he has
10 reviewed the zoning permit issued in 1986, and the zoning permit
11 issued in 1990 for the property, and he has reviewed the staff
12 report that was prepared by Jim Altenstadter which discussed the
13 nonconforming business use for the property at 3130 West Rock Hill
14 Road (formerly addressed as 3180 West Goret Road);

15 13. That the requirements under the Pima County Zoning
16 Code when this use was established on the property required only
17 that there be a minimum of 144,000 square feet of land (4
18 commercial acres) and that there be separate structures containing
19 sleeping units which could then be leased to occupants;

20 14. That the subject property, the Tira Mira Ranch, is
21 in fact a Guest Ranch under the meaning and intent of the Pima
22 County Zoning Code, and once the Zoning Code was amended to delete
23 the Guest Ranch definition replaced with the Resort definition,
24 this business use became a nonconforming use of the property;

25
26

PERMIT: BUILDING USE OCCUPANCY

Pima County, Tucson, Ariz.

3700 S. ~~Freeman Rd~~ **No. 15223**

3700 S Old Spanish Trail FEE \$ **5.00**

Street & No. ~~1100 S. ~~Freeman Rd~~~~ (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone **BB**

Subdivision: **28 3600 + 2nd 600'** Parcel No. _____
07 3600/4 600/4 Section **30**
 Township **11** Range **16**

Owner: **Frank Schwartz** P.H. # **2017 10**

Address: **3700 S Old Spanish Trail**

Builder: **W. J. Jurek**

To Permit: **1100 S. ~~Freeman Rd~~ (to replace)**

Est. Cost (Labor & Material) **15000**

Date Issued: **12-13-57**

Date Expires: **12-13-57**

Inspection Date: _____

Conditions Imposed by B/A Case **57-10-12 Approved on 12-13-57**

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: _____

Owner Builder Agent

Zoning Inspector: **W. J. Jurek**

Sanitary Facilities: _____ Sewer Septic

Remarks: _____

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS	2-24-57	8-1-57				Not attempted
		9-7-57	✓		WJ	Satisfactory
		12-13-57	✓		WJ	Completed

ATTACHMENT #7

10-19-52 Station 4 Pipe 2 (Cabin)
 90% Cas fitted
 5-19-52 Completed pipe & set Sta
 1 Res unit fitted
 Balance approved
 5-23-57 Expiration card ready
 for Bent Cabest, J.T.D.

018319

unit
F

PERMIT: BUILDING USE OCCUPANCY

38 Pima County, Tucson, Arizona
3700 ~~FEELER RD~~
Old Spanish Trail No. 24764
FEE \$ 7.50

Street & No. ~~3700 FEELER RD~~ (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone *RM*

Subdivision: *Part of 117* Parcel No. _____
152 Section *30*
Township *14* Range *16*

Owner: *Bert Gilbert* PH: *400173*
Address: *Box 317*
Builder: *None*
To Permit: *Build and maintain / repair (Block)*

Est. Cost (Labor & Material) *7500*

Date Issued: *12-2-58*

Date Expires: *9-9-59*

Inspection Date: _____

Conditions Imposed by B/A Case: _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: _____
Owner Builder Agent

Zoning Inspector: _____
Sanitary Facilities: _____ Sewer Septic

Remarks: _____

Heat from Hotel & units + Bureau

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS	3-7-59	3-9-59	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>JD</i>	<i>Foundations</i>
		<i>5-1-59</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>JG</i>	<i>Complete</i>

18594

PERMIT: BUILDING USE OCCUPANCY

86 Pima County, Tucson, Arizona
 3700 - ~~Commercial~~ *Old Spanish Trail* No. 26356
 FEE \$ 7.50

Street & No. ~~1100 N. Harrison St.~~ (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone S R

Subdivision Part of S01/4 S02/4 Section 30
 Township 14 Range 16

Owner Bert Calvert APR 80173
 Address Rt 8 Box 317
 Builder same
 To Permit add residence
in lock

Est. Cost (Labor & Material) 7500
 Date Issued 2-2-58
 Date Expires 11-2-59
 Inspection Date _____
 Conditions Imposed by B/A Case _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant
 Owner Builder Agent

Zoning Inspector _____
 Sanitary Facilities _____ Sower Septic

Remarks _____

ZONING INSPECTION RECORD					
	DATE	DATE	Conform		REMARKS
	REQUESTED	INSPECTED	Yes	No	
FOUNDATION SET BACKS		4-13-58	Yes	No	OK
		4-26-58	Yes	No	Complete

PERMIT: BUILDING USE OCCUPANCY
Pima County, Tucson, Ariz.
 3700 S. ~~REISSUED~~
 Old Spanish Trail

No. 18594
 FEE \$ 7.50

Street & No. 3700 S. Old Spanish Trail
 (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone BR

Subdivision: Part of 3rd St Parcel No. 30
 Section 14 Township 14 Range 16

Owner: Bert Culvert PHA 180173
 Address: P.O. Box 317
 Bullder: Self
 To Permit: Foundation (Addn)
BEO no. Pt.

Est. Cost (Labor & Material) 5,000
 Date Issued 2-17-58
 Date Expires 11-13-58
 Inspection Date _____
 Conditions Imposed by D/A Case _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: _____
 Owner Builder Agent

Zoning Inspector _____
 Sanitary Facilities: Sewer Septic

Remarks: _____

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Comply	INSPECTION #	REMARKS
			Y/N	INITIALS	
FOUNDATION SET BACKS		3-18-58	Y	PHC	on stand
		6-10-58	Y	PHC	Foundation
		8-22-58	Y	PHC	Completed
		2-2-59			

PERMIT: BUILDING USE OCCUPANCY
 Pima County, Tucson, Arizona No. 56288
 Map No. 88 Street & No. 3700 *Old Spanish Trail* FEE \$ 5.00
 (NEW CONSTRUCTION)
 Lot No. Block No. Zone BR
 Subdivision: Parcel No. 2
 Section 30
 Township 14 Range 16
 Owner Sagunto Horners Rentals PH 290 0173
 Address Rt. 6 Box 317
 Builder SAGE
 To Permit Add storage-bedroom and carport
 1200 sq. ft. to Cottage B
 (Adobe and Frame)
 Est. Cost (Labor & Material) 3500
 Date Issued 6-22-66
 Date Expires 3-22-67
 Inspection Date
 Conditions Imposed by B/A Case
 This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.
 Applicant Owner Builder Agent
 Zoning Inspector
 Sanitary Facilities: Sewer Septic
 Remarks:

ZONING INSPECTION RECORD						
	Date Requested	Date Inspected	Conform		Inspector's Initials	REMARKS
			Yes	No		
FOUNDATION SET BACKS		7-2-66				
		8-3-66				
		9-29-66				
		11-16-66				

PERMIT: BUILDING USE OCCUPANCY
 Pima County, Tucson, Arizona

Map No. 88 No. 40675
 Street & No. 3700 S. ~~Proctor~~ ^{Old Spanish Trail} FEE \$ 2 00
(NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone SR
 Subdivision _____ Parcel No. 2
 Section 30
 Township 14 Range 16

Owner Hort Calvert PH. AK80173
 Address Ht. 3 Box 317
 Builder Same
 To Permit Add Ramada 10 x 20
Store room 10 x 10
300 sq. ft. (Frame)

Est. Cost (Labor & Material) 1000
 Date Issued 4-16-62
 Date Expires 1-16-63

Inspection Date _____
 Conditions Imposed by B/A Case _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: Owner Builder Agent

Zoning Inspector _____
 Sanitary Facilities: Sower Septic

Remarks: _____

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		<u>8-7-62</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>	<u>[Signature]</u>

PERMIT: BUILDING USE OCCUPANCY

3700 37 Pima County, Tucson, Arizona No. 38271

3700 ~~3700~~ ~~Old Spanish Trail~~ FEE \$ 2.00

Street & No. _____ (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone _____

Subdivision _____ Parcel No. _____

Section _____ 30

Township _____ 14 Range _____ 16

Owner Bert Calvert PH# X80173

Address Rt. 8 Box 317

Builder Same

To Permit Add 2 bedrooms to cottage fl.

260 sq. ft.

(Block)

Est. Cost (Labor & Material) 2000

Date Issued 9-14-61

Date Expires 6-11-62

Inspection Data _____

Conditions Imposed by B/A Case _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant
 Owner Builder Agent

Zoning Inspector _____

Sanitary Facilities: Sewer Septic

Remarks: _____

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		12-27-61			<i>[Signature]</i>	<i>no stop</i>
		3-17-62	✓		<i>[Signature]</i>	<i>Complete</i>

PERMIT: BUILDING USE OCCUPANCY
 Pima County, Tucson, Arizona
 Map No. 88 No. 41502
3700 B. Old Spanish Trail FEE \$ 6.00
 Street & No. (NEW CONSTRUCTION)
 Lot No. Block No. Zone
 Subdivision: Parcel No. 30
 Section 14 Range 16
 Township
 Owner Bert Calvert PH AK60173
 Address Rt. 8 Box 317
 Builder SAMO
 To Permit Add bedrooms to cottages B.C.M.
225 sq. ft. each
(Block)
 Est. Cost (Labor & Material) 3200
 Date Issued 6-15-62
 Date Expires 3-15-63
 Inspection Date
 Conditions Imposed by D/A Case

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.
 Applicant
 Owner Builder Agent
 Zoning Inspector H. Miller
 Sanitary Facilities: Sewer Septic
 Remarks:

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		<u>7-18-62</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>	<u>[Signature]</u>

PERMIT: BUILDING USE OCCUPANCY C
 Pima County, Tucson, Arizona No. **62327**
 Map No. **68** FEE \$ **2.00**
 Street & No. **3700 S. Old Spanish Trail**
 (NEW CONSTRUCTION)
 Lot No. _____ Block No. _____ Zone **SR**
 Subdivisions: **apartment E** Parcel No. **2**
 Section **30**
 Township **14** Range **16**
 Owner **Saguaro Corners Rentals** PH. _____
 Address **R. R. 8 Box 317** **887 3080**
 Builder **Smith Bros Fences-1760 N. Wetmore**
 To Permit: **Fence**
230 lin. ft. x 4' (Frame)
7 lin. ft. x 5' side/rear only
 Est. Cost (Labor & Material) **504**
 Date Issued **6-27-68**
 Date Expires **3-27-69**
 Inspection Date _____
 Conditions Imposed by B/A Case _____
 This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.
 Applicant: Owner Builder Agent
 Zoning Inspector _____
 Sanitary Facilities: Saver Septic
 Remarks: _____

0402297

ZONING INSPECTION RECORD

	Date Requested	Date Inspected	Conform		Inspector's Initials	REMARKS
			Yes	No		
FOUNDATION SET BACKS	7-22-68	-	-	-	PH	no start
	9-5-68	-	-	-	PH	complete
	10-22-68	-	-	-	PH	complete

PERMIT BUILDING USE OCCUPANCY
 Pima County, Tucson, Arizona
 No. **34828**
 5700 ~~Franklin Blvd~~
 2 Old Spanish Trail
 FEES: 2400
 700

Street & No. ~~Franklin Blvd~~
 (NEW CONSTRUCTION)
 Lot No. _____ Block No. _____ Zone **RR**
 Subdivision _____ Parcel No. **30**
 Section **11** Township **11** Range **16**
 Owner **East Calport** PH# **20173**
 Address **Rt 0 Lot 317**
 Builder **East**
 To Permit **ALTA**
Houses for rent
2 x 10' (Pratio)

Est. Cost (Labor & Material) **35**
 Date Issued **9-12-00**
 Date Expires **9-12-01**
 Inspection Data _____
 Conditions Imposed by B/A Case _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.
 Applicant: Owner Builder Agent
 Zoning Inspector _____
 Sanitary Facilities: Sewer Septic
 Remarks: _____

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		10/5/00	✓		J. J. [Signature]	

PERMIT: BUILDING USE OCCUPANCY

38 Pima County, Tucson, Arizona No. 19563
 3700 S. ~~Spanish Trail~~ *Old Spanish Trail* FEE \$ ~~27.00~~ 21.00

Street & No. ~~3700 S. Spanish Trail~~ (NEW CONSTRUCTION)

Lot No. _____ Block No. _____ Zone **SR**

Subdivision: **6600' x 2000' etc.** Parcel No. _____
 Section **30** Township **11** Range **16**

Owner **Bart Calvert** PH. **4209900**
 Address **Box 317**
 Builder **T. B. Mills 2723 N. Campbell 4406172**
 To Permit **Swimming pool (private)**
618

Est. Cost (Labor & Material) **5,000**

Date Issued **1-2-79**

Date Expires **1-2-80**

Inspection Date _____

Conditions Imposed by BIA Case _____

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: Owner Builder Agent

Zoning Inspector _____

Sanitary Facilities: Sewer Septic

Remarks: **PRIVATE POOL**

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		4-11-79	✓		BCE	80 ft
		6-24-79	✓		W	Completed

FORM 100

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. SARAH R SIMMONS

CASE NO. C20153647

COURT REPORTER: Autumn Person
Courtroom - 808

DATE: December 07, 2015

EL CORTIJO LLC
Plaintiff

G Lawrence Schubart, Esq. counsel for Plaintiff

VS.

PIMA COUNTY BOARD OF ADJUSTMENT,
DISTRICT 4 and PIMA COUNTY
Defendants

Lorna Marie Rhoades, Esq. and Lesley Lukach,
Esq. counsel for Pima County Board of
Adjustment, District 4 and Pima County

MINUTE ENTRY

DEFENDANT'S MOTION TO DISMISS

Both parties are present.

J. Peter Lasher and Kelley Matthews are present for Plaintiff.

Thomas Drzazgowski, Chief Zoning Inspector, Pima County, is present for Defendant.

Ms. Rhoades and Mr. Schubart argue to the Court.

The Court declines to exercise jurisdiction at this time.

IT IS ORDERED that the Motion is Dismiss is GRANTED.

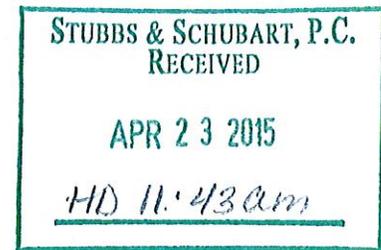
IT IS FURTHER ORDERED that the case is DISMISSED without prejudice, subject to a return to the Board of Adjustment for consideration of the guest ranch use exception.


HON. SARAH R. SIMMONS
(ID: 127440e8-e26b-42dc-8640-18a10b30d0b1)

cc: Hon. Sarah R Simmons

G Lawrence Schubart, Esq.
Lesley Lukach, Esq.
Lorna Marie Rhoades, Esq.
Case Management Services - Civil
Clerk of Court - Civil Unit

Juliet Luiks
Deputy Clerk



April 21, 2015

Stubbs & Schubart P.C.
Attn: Larry Schubart
340 N. Main Av.
Tucson, AZ 85701

RE: 3700 S. Old Spanish Trail - Interpretation

Dear Mr. Schubart:

I have provided a brief history of staff's interactions with the current property owner and have outlined my interpretation regarding the nonconforming status of 3700 S. Old Spanish Trail.

In early 2014, Development Services had numerous discussions with your clients, the owners of 3700 S. Old Spanish Trail. The original scope of the discussion with your client, included remodeling and expansion of the existing residences. At the time of this discussion, staff was supportive of the proposed changes. Over the next months, the scope of the project changed from minor expansions of the existing rental homes to building a 50 to 100 unit resort for bicyclists. The project included other uses such as a restaurant, bike barn and training facility. Ultimately your clients decided to pursue a conditional use for a minor resort to allow 50 units plus other amenities. The result of the conditional use permit hearing was a recommendation of denial by the Hearing Administrator. The applicant requested the project be withdrawn the day before the Board of Supervisors was to hear the case.

After reviewing the information you provided in your letter dated March 25, 2015, staff agrees with portions of the history and exhibits that were provided. At one point in time, there was a non-conforming use permit issued for "1 gas station, 1 café and 1 motel with six dwelling units". We do not dispute the non-conforming uses that previously existed on the property. However, the uses have long since been brought into conformance with the zoning code, changed or discontinued.

On September 9, 1960, Pima County issued a permit as requested by the owner, Bert Calvert, for a sign "Houses for Rent". This permit clearly demonstrates that the "motel" use was discontinued and the property was used for traditional rental homes. The gas station and café were part of a rezoning submitted in 1988 that was approved to expand the restaurant. The gas station use was discontinued per a condition of the rezoning. At that time, the rental homes were severed from the restaurant use that was made conforming through the approved rezoning.

Rental homes that meet the minimum area per dwelling unit are permitted and have been permitted since the adoption of the Pima County Zoning Code in 1953. Suburban Ranch (SR) requires a minimum area per dwelling unit of 144,000 square feet. Your client's property, at approximately 45 acres, would permit

13 rental homes. At this time, your clients are under the maximum allowed and in compliance with the Pima County Zoning Code.

Lastly, the size and configuration of the property has changed numerous times since the non-conforming use permit was approved in the 1950's. The southeastern property which contains the now conforming restaurant has been split from the original property. In addition, changes have been made to northern and western boundaries of the property, which have changed the size and configuration from what it was in the 1950s as reflected in a rezoning submitted by the owner in the early 1970's. These changes have altered the property which eliminated the previous nonconforming status

In conclusion, staff has determined that any non-conforming uses have been either discontinued, severed or brought into compliance.

If you have any questions, please call me at (520)-724-6675

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Drzazgowski', with a stylized, cursive script.

Tom Drzazgowski
Deputy Chief Zoning Inspector

c: C. H. Huckelberry, County Administrator

STUBBS & SCHUBART, P.C.

ATTORNEYS AND COUNSELLORS AT LAW
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(1927 - 2012)

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*Also admitted in Pennsylvania

February 19, 2016

BY HAND DELIVERY

Tom Drzazgowski
Deputy Chief Zoning Inspector
PIMA COUNTY DEVELOPMENT SERVICES
201 North Stone Avenue
Tucson, AZ, 85701-1207

Property: El Cortijo, LLC / South Old Spanish Trail
Boad of Adjustment #: P16VA0003

Dear Tom:

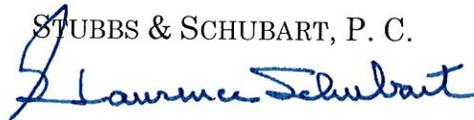
You indicated by the first of next week you would be mailing our request, the Staff Report, and other information to the Board of Adjustment members for the forthcoming hearing. Robert Johnson, the former Director of the Planning & Zoning Department, is submitting his testimony by Affidavit. The original of the Affidavit, signed in the presence of a Notary Public in California, is in the mail and the one provided with this letter was returned by e-mail. The original will be filed subsequently.

Please include this Affidavit with the other information being sent to each Board Member, I have included additional copies for the Board Members.

Thank you.

Very truly yours,

STUBBS & SCHUBART, P. C.



G. Lawrence Schubart

GLS/bmmh
Enclosure

2/18/16 Affidavit of Robert C. Johnson (Including 5 copies)
cc: El Cortijo, L.L.C. (With Attachment)

STATE OF CALIFORNIA)
 :SS
COUNTY OF ORANGE)

AFFIDAVIT OF ROBERT C. JOHNSON

I, Robert C. Johnson, upon my oath depose and state:

1. Presently I am retired after 40 years of experience in management and consulting in public, private, and not-for-profit organizations. My work has primarily been for government in the area of planning, development, and community development.

2. My educational degrees are several fold, a Bachelor of Science in Natural Resources and, thereafter, both a Master and a Doctorate from the University of Arizona, both in the School of Renewable Natural Resources.

3. Because I now reside in California, after retiring as the City Manager for the City of Temecula, I will not be attending your Board of Adjustment meeting but offer this as my sworn testimony.

4. Of primary importance to this Board of Adjustment, I was a Principal Planner employed by the Pima County Planning & Zoning Department from 1974 through 1979, thereafter, I was a sitting member of the Pima County Planning & Zoning Commission, and was appointed by the Pima County Board of Supervisors as the Director of the Pima County Planning & Zoning Department, where I served from 1985 through 1989.

5. I was the first successor to Alex R. Garcia, who served as Director from the early-1960's through 1985. Why I point this out is not only because of my extensive experience in interpreting and applying the Pima County Zoning Ordinance (the "Zoning Code") but also the changes that were implemented in the Zoning Code, pertinent to this appeal, were done at my direction, as the Director.

6. The Guest Ranch definition is one example of the liberal definitions that existed in the Zoning Code. From the time the Zoning Code was first adopted, until amended in 1985, by Ordinance No. 1985-153, the Zoning Code allowed a group of residential dwellings to be denominated as a guest ranch. The definition read as follows:

Sec. 433 GUEST RANCH: A resort hotel and/or group of buildings containing sleeping units, having a building site of not less than four commercial acres.

The term "commercial acre" was also defined in the initial Zoning Code as one having 36,000 square feet of land, exclusive of streets and utilities. A commercial acre was presumed to be the net useable area when acreage was divided for residential development, after deducting the area necessary for streets or utilities.

7. Over time many properties, especially those in the Suburban Ranch (SR) Zone were identified as guest ranches. The Ranch House Lodge at 4531 North Caminito de la Puerta, north of River Road and east of Campbell Avenue, was a guest ranch yet only had dwelling units and a swimming pool.

8. Eleven Arches on North Hacienda del Sol was denominated as a guest ranch and, again, only had residential dwelling units and a common swimming pool.

9. La Tierra Linda on Wade Road and Wild Horse Guest Ranch on Camino Verde are also guest ranches with sleeping quarters and swimming pools, respectively. They do also have conference rooms for special events.

10. In the 1990's Pima County issued permits to allow the Tira Mira Guest Ranch at 3130 West Rock Hill Road to expand as a non-conforming guest ranch. The neighbors appealed to the Pima County Board of Adjustment the interpretation that this was a guest ranch, arguing there was only residential sleeping quarters, with a common swimming pool, but did not offer any of the attributes normally associated with tourism. They also argued leases were for longer terms in duration, month-to-month or even year-to-year, and it was just the rental of separate structures on a common parcel of land.

11. Both the Pima County Superior Court and, ultimately, the Arizona Court of Appeals, concluded those activities constituted a Guest Ranch use under the term of how it was defined by the Zoning Code from 1952 through 1985. Attached is an aerial photograph of Tira Mira Guest Ranch, as it appears and, separately, an aerial photograph of El Cortijo, showing its 8 residential units and common swimming pool. A copy of the Court of Appeals decision is attached.

12. I have inspected both of these properties, among others, and I can say, without equivocation, that the identity of the structures, the common swimming pool, and the activities conducted on each are virtually identical and both constitute a Guest Ranch use in the SR Zone as it was defined at the time the properties were each developed. Each should be denominated as a non-conforming Guest Ranch use under the Zoning Code. It would be inconsistent and illogical to designate Tira Mira as a Guest Ranch use, and conclude El Cortijo is something else – they are the same.

13. The reason they are non-conforming is because the change that I initiated as the Director was to delete the "Guest Ranch" definition and substitute in its place a definition of a "Minor Resort." The purpose of that change is to overcome some of the objections that have been raised in litigation, such as leases of longer terms. Now any Minor Resort established after 1985 must meet the lodging, convention, and recreational need of short-term visitors and is not intended to allow for the development of residential units for permanent or long-term residential use. That was the change implemented in 1985, but which does not apply to uses established before 1985, such as Tira Mira, the Ranch House Lodge, or the El Cortijo property. Thus, they are non-conforming uses under the present Zoning Code.

14. The property owned by El Cortijo, L.L.C. at 3700 South Old Spanish Trail should be properly denominated as a non-conforming Guest Ranch.

Further, Affiant sayeth not.

Robert C. Johnson

SUBSCRIBED AND SWORN to before me on February _____, 2016.

Notary Public
My Commission Expires:

CALIFORNIA STATE

DEPARTMENT OF REVENUE

I hereby certify that the within and foregoing are true and correct copies of the original as they appear to me, and that the same are true and correct copies of the original as they appear to me, and that the same are true and correct copies of the original as they appear to me.

WITNESSETH my hand and seal of office this _____ day of _____, 19____.

[Signature]

Commissioner of the Department of Revenue

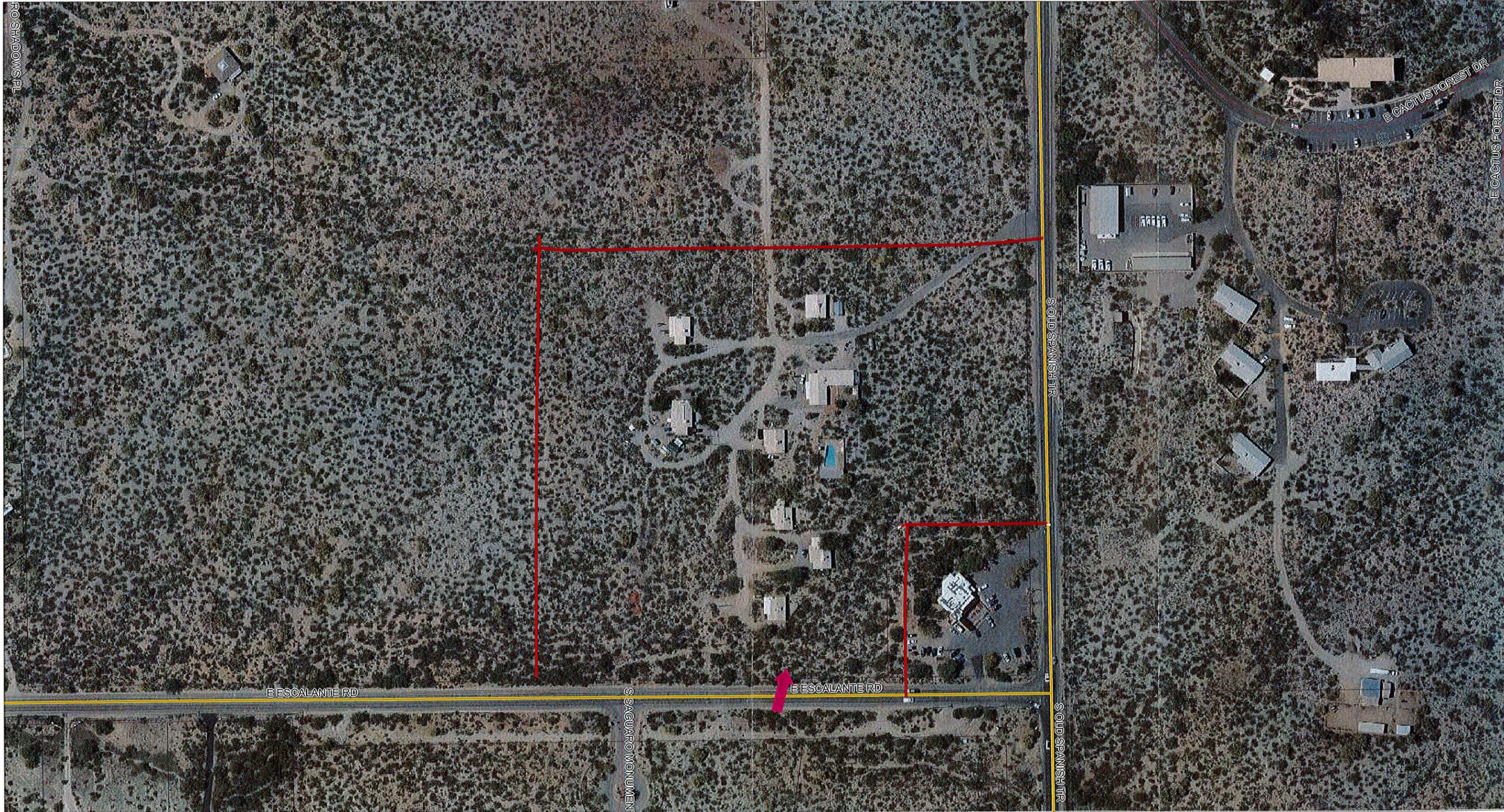
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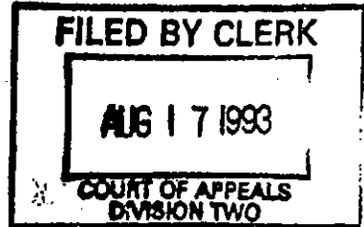
Amount of Interest or Dividend _____
Type of Tax _____
Name of Taxpayer _____
Date of Payment _____



Tira Mira Guest Ranch
3180 West Rock Hill Road



El Cortijo
3700 S. Old Spanish Trail



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO RECEIVED

AUG 18 1993

STUBBS & SCHUBART, P.C.

ALEXANDER T. WILSON, an)
unmarried man,)
)
Plaintiff/Appellee/)
Cross-Appellant,)
)
v.)
)
PIMA COUNTY, ARIZONA, a body)
politic; ALPHUS R. CHRISTENSEN,)
SUSAN ADLER, HELEN WILSON,)
GEORGE BIDWELL, BECKY HISER,)
duly appointed members of the)
Pima County Board of Adjustment,)
District 5,)
)
Defendants/Appellants/)
Cross-Appellees.)

2 CA-CV 92-0238

DEPARTMENT A

MEMORANDUM DECISION
Not for Publication
Rule 28(a)(2),
Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 281853

Honorable Lawrence H. Fleischman, Judge

AFFIRMED

Stubbs & Schubart
by G. Lawrence Schubart

Tucson

Attorneys for Plaintiff/Appellee/
Cross-Appellant

Raven, Kirschner & Norell
by Karen B. Tavolaro and S. Leonard Scheff

Tucson

Attorneys for Defendants/Appellants/
Cross-Appellees

L I V E R M O R E, Presiding Judge.

In 1980 appellee Alexander T. Wilson purchased a 5.31-acre parcel with four separate houses divided into five rental units. At that time the property was classified in the Pima County Zoning Code (Code) as a guest ranch. In 1985, when the Code was amended and guest ranch deleted as a permitted use, the guest ranch use was "grandfathered" as a non-conforming use.

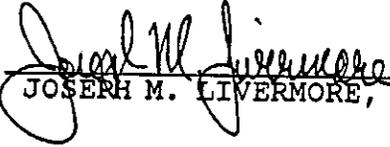
In 1986 Wilson obtained a zoning permit for the expansion of the facilities, but failed to use the permit before it expired. In 1990 he again obtained a permit allowing 100% expansion of "an existing guest ranch" as a "non-conforming business use." At the request of a neighboring landowner, the decision granting the permit was reviewed by the Board of Adjustment, which determined that the property was not a non-conforming business use and thus not entitled to expansion. Wilson appealed the decision to the superior court, which granted his motion for summary judgment after finding that the property had been continually operated as a guest ranch and was therefore a non-conforming business use. The Board of Adjustment appeals from that decision and Wilson cross-appeals from the court's denial of attorney fees. We affirm.

A.R.S. § 11-830(B) allows a non-conforming business use to expand by up to 100% of the business's original area. It is the Board of Adjustment's contention that Wilson's use of the property is a residential use, not a business use, and therefore is not entitled to expansion. Section 18.01.030(D)(1)(c) of the Code, however, specifically defines "business use" to include those uses listed in § 18.31.010(B), the first of which is "Guest ranch." The Board's further contention, that the property is not a guest ranch,

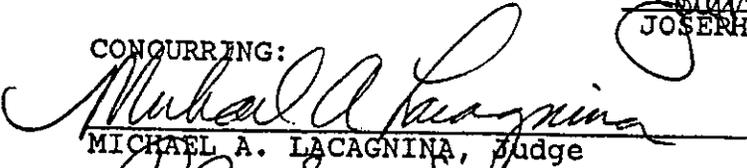
is equally without merit given the Code's definition of guest ranch, as it appeared in § 18.03.020(G)(8) prior to amendment, as "[a] resort hotel or group of buildings containing sleeping units, having a building site of not less than 4 commercial acres." It is uncontested that the property in question meets this criteria. That it does not look like a guest ranch ought to look in the eyes of the Board is irrelevant. At the time of its purchase, the property was treated for zoning purposes as a guest ranch and its use since that time has not changed. See *Kubby v. Hammond*, 68 Ariz. 17, 23, 198 P.2d 134, 138 (1948) ("Once a use is established prior to the adoption of a zoning ordinance or an amendment thereof, it may continue"). Its grandfathered status as a business use, after the code was amended to eliminate the guest ranch category, was recognized by the Pima County Planning and Zoning personnel entrusted by statute with making such decisions. See A.R.S. § 11-808(A). Under these circumstances, we find no error in the trial court's granting of summary judgment.

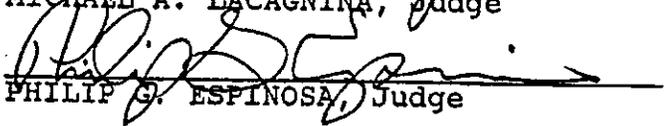
On cross-appeal Wilson argues that the trial court erred in failing to grant him attorneys' fees. On this issue we defer to the discretion of the trial court and, finding no abuse of that discretion, affirm.

Affirmed.


JOSEPH M. LIVERMORE, Presiding Judge

CONCURRING:


MICHAEL A. LACAGNINA, Judge


PHILIP G. ESPINOSA, Judge