



**PIMA COUNTY
DEVELOPMENT SERVICES DEPARTMENT**

201 N. Stone Avenue, 1st Floor
Tucson, Arizona 85701-1207

CARLA BLACKWELL
Director

Phone: (520) 740-6520
FAX: (520) 798-1843

April 16, 2018

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HEARING ADMINISTRATOR'S FINDINGS AND DECISION

**P18CU00003
VERIZON WIRELESS — E. SUNRISE DRIVE
Type I Conditional Use – Communications Tower**

Authority

Chapter 18.97, in accordance with Section 18.07.030.H.2.e.10 of the Pima County Zoning Code, requires a Type I conditional use permit (CUP) for a communications tower on property zoned CR-1.

Particulars of the Request

This request is made by Pinnacle Consulting on behalf of Verizon Wireless. Verizon proposes to construct a new forty-nine foot (49') tall communications tower, specifically a metal monopole with a multi-panel antennae array. This facility will replace certain existing nearby Verizon antennae located on a TEP utility pole that is being removed. The associated on-the-ground equipment for the new monopole will be contained within a masonry walled structure. The applicant proposes to construct the wall to match the style and color of the other decorative walls in the area and proposes to camouflage the tower and antennae by painting them a mohave-green color.

The property in question is on the south side of E. Sunrise Drive, within the public street right-of-way, just east of its intersection with Hacienda del Sol Road. It is zoned CR-1. The properties to the immediate south are subdivided single-family residences, to the west is the La Paloma resort and golf course property, and to the north (across Sunrise Drive) is an established commercial & medical office complex.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on April 11, 2018. The applicant's representative presented the conditional use permit request and

answered the Hearing Administrator's various questions. The applicant's submittal package included photo simulations and narrative information, in addition to the proposed development plan for the new tower.

Three (3) members of the public attended the hearing to speak on the matter. Concerns expressed by the speakers included: 1) aesthetic objections and the negative impacts on existing views; 2) an expected reduction in residential property values due to the view impacts; 3) potential subsidence due to construction of the new wall & tower at the base of a nearby slope; and 4) potential safety hazards due to the new structures impeding sight visibility at the Sunrise Drive/Hacienda del Sol intersection.

Staff indicated that it had received two (2) telephone inquires on this application.

After hearing all of the above and further questioning the applicant regarding aspects of the public testimony, the Hearing Administrator closed the public hearing.

Hearing Administrator's Considerations and Comments

After giving due consideration to the facts of this case and the public testimony and materials presented, and being aware of the site particulars from having visited the proposed tower location and assessing its context, the Hearing Administrator offers the following comments underlying this decision:

- **Aesthetics and View Impacts.** This issue has been raised routinely by nearby property owners on similar applications for new communications towers. Case law has consistently held that views enjoyed by one party across an adjacent property are no more than a privilege, not a legal right. No individual has any permanent or prescriptive claim on a view, or on an unfettered viewshed, simply because they may have enjoyed one in the past. That being said, some measure of consideration to mitigate the aesthetic impacts of new communication towers is a reasonable expectation and is routinely addressed via *Special Conditions* attached to the approval of conditional use permits.
- **Impacts on Property Values.** The Federal Telecommunications Act of 1996 specifically instructs local zoning authorities that they may not consider anecdotal information regarding perceived impacts on property values when rendering their decisions on communications towers. Beyond this restriction, it is the Hearing Administrator's position that, since no party has a perpetual legal right in the first place to a view across another's adjacent property, it naturally follows that there can be no injury or legitimate financial claim simply because a change in that viewshed might occur.
- **Potential Subsidence.** The Hearing Administrator makes no finding on this issue and gives it no weight in this decision due to the fact that the subsidence alleged in the public testimony can be the result of multiple causal factors and variables, not the least of which may simply be the inherent instability of the slope in question.
- **Traffic Safety.** The Department of Transportation (DOT) will routinely review this application during the right-of-way permitting process to ensure that adequate sight distance is maintained for all motorists. The Hearing Administrator leaves this matter to DOT.

Required Standards and Findings

Following are the Hearing Administrator's findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

1. **It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

The Comprehensive Plan (Pima Prospers) designates the subject site as *Low Intensity Urban (LIU)*, the purpose of which is to provide areas for low density residential and other compatible uses.

Numerous communications towers have been approved in the past within the *LIU* comprehensive plan district and within Pima County rights-of-way. Recently passed State legislation further promotes the establishment and permitting of such towers within public rights-of-way and limits the authority of local zoning authorities to regulate same.

The proposed new communications tower is located on the south side of Sunrise Drive and will sit a minimum of sixteen feet (16') south of the existing roadway curb. Final approval of this placement will be subject to meeting all applicable clear zone requirements of the Pima County Department of Transportation (PCDOT) as part of reviewing the right-of-way permit for the installation.

Finally, it is the Hearing Administrator's position that placement of the new communications tower within the existing context can be effectuated with due consideration given to surrounding property owners as long as appropriate aesthetic accommodations are made. Requirements for same are included in the *Special Conditions* attached to this decision. While the applicant indicated at public hearing their position that painting the proposed tower and antennae would constitute a sufficient method of camouflage, the Hearing Administrator does not concur. The surrounding area is characterized by residences of high quality and an adjacent resort environment. It is appropriate that the new tower be more substantially concealed using commonly employed faux camouflage methods.

Based upon all of the above considerations, the Hearing Administrator finds the proposed use to not be in conflict with the Comprehensive Plan.

2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.

The Hearing Administrator finds that the proposed tower will have no significant impact upon any of the surrounding properties in a way that prohibits their legal or permitted uses. As discussed above, views are not a protected right of the adjacent property owners.

3. It has adequate accessibility to the County road network.

The property lies within the right-of-way of E. Sunrise Drive, a designated major street on the Pima County Major Streets & Routes Plan (MSRP). Access needs for such wireless facilities is minimal at best; access is found to be adequate.

4. It has sufficient off-street parking and loading facilities that will be developed in accordance with County engineering standards.

Parking sufficiency and compliance with the Zoning Code in this regard is a matter always verified at the time of permitting.

5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.

The proposed use is found to not threaten the surrounding properties in any of the above ways.

6. Hours of operation will not be detrimental to adjoining residents.

This is an unmanned facility; hours of operation do not apply.

7. Landscaping will be fully in conformance with zoning code regulations.

Landscaping requirements, as applicable, are a matter always enforced at the time of permitting.

Hearing Administrator’s Decision

This application for a Type I conditional use permit for a new communication tower, on property zoned CR-1, is hereby **approved** by the Hearing Administrator, subject to the following *Standard & Special Conditions*:

Standard Conditions & Code Requirements

The Pima County Zoning Code allows communication towers of the proposed height (49’) within the CR-1 zone, subject to the Type I conditional use permit process.

Special Conditions

- 1) The height of the new tower structure shall be no more than the requested forty-nine feet (49’) to the top of the antennae.
- 2) The tower and antennae will be camouflaged as a faux palm tree (i.e. a monopalm). The “fronds” of the faux palm are allowed to extend above the forty-nine foot (49’) height.
- 3) All associated cabling necessary to service the antennae shall either be concealed within the base of the monopalm or be appropriately camouflaged to blend in with the faux palm’s aesthetics.
- 4) The tower will be located as per the submitted site plan; final setback from curb shall be in accordance with the Department of Transportation’s clear zone requirements and all other applicable safety criteria.
- 5) The wall surrounding the on-the-ground equipment area shall be of substantially the same design and be painted and textured to generally match that of the other decorative masonry walls in the area.

Protest Period and Appeal Procedures

As is the case with all Type I conditional use permit applications, this decision is subject to a statutory 30-day protest period. If a valid protest is received within the 30-day period, an appeal hearing will be scheduled before the Board of Supervisors, who shall then make the final decision on this conditional use permit. In that the Hearing Administrator announced his decision to approve this request at the April 11, 2018 public hearing on this matter, the 30-day protest period shall commence from that date.

Any party interested in filing an appeal should contact Mr. Artemio Hoyos, Senior Planner, at phone number (520) 724-9000. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

Respectfully Submitted:



Jim Portner
Pima County Hearing Administrator

April 16, 2018
Date



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HEARING ADMINISTRATOR'S FINDINGS AND DECISION

P18CU00004

**GREEN VALLEY RECREATION, INC. — S. CAMINO DE LA CANOA
Type I Conditional Use – Pickleball Center & Park Site**

Authority

Chapter 18.97, in accordance with Section 18.13.030.B of the Pima County Zoning Code, allows for the proposed use on property zoned RH (Rural Homestead), subject to the Type I conditional use permit (CUP) procedure.

Particulars of the Request

This request is made by Green Valley Recreation, Inc. (GVR) to construct a new pickleball complex on currently vacant property; the complex will comprise of a developed area of approximately four (4) acres. The facility would contain twenty-four pickleball courts together with a central building, several shade structures, and a paved parking lot of approximately one hundred (100) spaces. Due to restrictions of Pima County's Outdoor Lighting Code (OLC), there will be no night-time lighting for pickleball play; only minimal security lighting will be allowed.

The property in question is located in Green Valley on the east side of Interstate 19, on S. Camino de la Canoa, approximately one mile south of Whitehouse Canyon Road. Camino de la Canoa is a low-volume paved roadway that also provides access to Canoa Preserve Park further south. Subdivided single-family residential lots exist on the higher ridge-top areas located north and east of the proposed pickleball complex; these residences also gain their access from S. Camino de la Canoa.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on April 11, 2018. The applicant and their architect presented the conditional use permit request and answered the Hearing Administrator's various questions. The applicant's submittal package included photo simulations of the proposed complex, supporting narrative information, documentation from neighborhood outreach, and a conceptual development plan for the project.

More than one hundred members of the public attended the hearing. Seven (7) individuals elected to speak. Four (4) of the speakers expressed their opposition to the request, while the remaining three (3) expressed their support. On a requested show of hands from the Hearing Administrator, four (4) individuals were in opposition and the overwhelming majority of the remaining attendees were in support.

Concerns expressed by the speakers in opposition included: 1) perceived negative effects on the nearby property owners and on the public infrastructure; 2) altering the quiet and rural character of the surrounding area; 3) the poor condition of the Camino de la Canoa pavement and the inability of its intersection with Whitehouse Canyon Road to handle additional traffic; 3) noise from the new facility; 4) safety hazards for both residents and wildlife from increased traffic on Camino de la Canoa.

Points stressed by the speakers in support generally reinforced the tremendous popularity of pickleball throughout Green Valley, the strong need for additional courts, and the reality that pickleball play typically occurs on a drop-in basis throughout the day, without there being any "peak hours" where traffic and activity might spike. The facility would be available to all residents within the district boundaries of Green Valley Recreation, Inc., including those nearby subdivisions in the immediate area.

Staff indicated that it had received nearly one hundred letters and/or emails on the case at the time of the hearing, with those in support outnumbering those in opposition by a significant ratio.

After hearing all of the above and further questioning the applicant regarding aspects of the public testimony, the Hearing Administrator closed the public hearing.

Hearing Administrator's Considerations and Comments

After giving due consideration to the facts of this case and the public testimony given at hearing, after reading the submitted letters both in support and opposition, and being aware of the site particulars from having visited the proposed location and assessing its context, the Hearing Administrator offers the following comments underlying this decision:

- **Noise.** The Hearing Administrator finds that noise is not a significant consideration in this decision. Firstly, the complex is simply not seen as an inherently high noise generator. Secondly, the topography of the surrounding area works against any significant noise migration to the nearby residences. The proposed complex effectively sits in a hole compared to the residences, which occupy the higher ridge-top areas. The potential for upward acoustical migration is small.
- **Traffic Impacts.** Traffic impacts and required remedies, if any, are routinely considered as part of the Department of Transportation's (DOT's) review during the formal *Development Plan (DP)* process. From the best available data, it appears that Camino de la Canoa is well under capacity. While those who reside in the area might have become accustomed to little traffic on it, this does not mean that an increase in volume automatically constitutes a traffic problem or obstacle. At the time

of DP review, it is the Hearing Administrator's expectation that due consideration will be given to this matter by DOT and that a determination will be made as to any improvements that might be required to effectuate safe movement to and from the new complex.

- **Lifestyle Impacts.** Some of the speakers indicated that they had purchased their home in the nearby area due to its quiet and essentially rural lifestyle, and that they believe these qualities should be maintained. The issue before the Hearing Administrator is not the maintenance of character and lifestyle, but whether or not the proposed use can be effectuated on a given property while still respecting the lawful and allowed uses of the surrounding property owners. As communities naturally grow and change, such issues are commonly encountered. It is essential to keep in mind that no property owner has some permanent or prescriptive claim upon a given preferred lifestyle, or the character of their entire surroundings, simply because they may have enjoyed them in a certain way heretofore. Underlying that expectation, at least in part, would be the assumption that one's private property rights somehow extended beyond the limits of their own private property. The Hearing Administrator's objective with this decision is to craft appropriate special conditions that permit the proposed use while still respecting the lawful rights of the existing owners.

Required Standards and Findings

Following are the Hearing Administrator's findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

- 1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

The Comprehensive Plan (Pima Prospers) designates the subject site as *Low Intensity Rural (LIR)*, the purpose of which is to provide areas for low density residential and other compatible uses.

It is the Hearing Administrator's position that the new complex, while not residential in nature, is nonetheless wholly compatible with residences, especially given the linear distance between it and the latter. The proposed use is not a high noise generator and the surrounding topographic character further insulates the nearest residences from any noise migration. In addition, no night-time pickleball play is being requested, so there will be no night-time illumination of the courts or parking lot, other than minimal/required security lighting.

With the above considerations in mind, the Hearing Administrator finds the proposed use to not be in conflict with the Comprehensive Plan and to be one that can co-exist peacefully with the existing nearby residential areas.

- 2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.**

The Hearing Administrator finds that the proposed use will not have significant impact upon any of the surrounding properties in a way that prohibits their legal or permitted uses.

- 3. It has adequate accessibility to the County road network.**

The property lies along Camino de la Canoa, a paved street that has direct connectivity to Whitehouse Canyon Road and Continental Road, both of which are designated as "major streets" on the Pima County Major Streets & Routes Plan (MSRP). Access is found to be adequate.

4. It has sufficient off-street parking and loading facilities that will be developed in accordance with County engineering standards.

Parking sufficiency and compliance with the Zoning Code in this regard is a matter that will be verified during the *Development Plan* process.

5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.

The proposed use is found to not threaten the surrounding properties in any of the above ways, including noise, which has been previously discussed above.

6. Hours of operation will not be detrimental to adjoining residents.

Hours of operation will be during daylight hours only. Special Conditions address this issue.

7. Landscaping will be fully in conformance with zoning code regulations.

Landscaping requirements will be enforced at the time of *Development Plan* review.

Hearing Administrator's Decision

This application for a Type I conditional use permit for a new pickleball complex, on property zoned RH, is hereby **approved** by the Hearing Administrator, subject to the following *Standard & Special Conditions*:

Special Conditions

- 1) The pickleball complex shall be in substantial conformance with that as shown on the conceptual site plan submitted with this conditional use permit application. Any expansion of the use onto the adjacent property to the north will require a new conditional use permit application and public process.
- 2) No other non-residential uses shall be inferred or complied by this approval. The property is limited to use as a pickleball center and those customary related activities that would routinely attend same.
- 3) A formal *Development Plan* is required for this use, subject to review and approval by Pima County staff.
- 4) There shall be no encroachment into the established natural drainage channel traversing the northern portion of the property.
- 5) All operations of the facility and all pickleball play shall occur during daylight hours. No night-time play is permitted.
- 6) No night-time lighting is permitted other than that as necessary for security purposes. Even in the event of any future changes to the Pima County Outdoor Lighting Code (OLC) that might allow for night-time lighting and play, none shall be permitted or sought by the applicant.
- 7) At the time of *Development Plan* review, the applicant shall be responsible for providing detailed traffic-related data on the proposed complex and its traffic-generation characteristics to the Department of Transportation (DOT). DOT shall evaluate the proposal against the existing transportation characteristics of Camino de la Canoa and its intersection with Whitehouse Canyon Road. DOT shall define any street improvements that may be necessary to facilitate the proposed use and to ensure safe maneuvering to and from it.

Protest Period and Appeal Procedures

As is the case with all Type I conditional use permit applications, this decision is subject to a statutory 30-day protest period. If a valid protest is received within the 30-day period, an appeal hearing will be scheduled before the Board of Supervisors, who shall then make the final decision on this conditional use permit. The 30-day protest period shall commence from the date of this written decision.

Any party interested in filing an appeal should contact Mr. Artemio Hoyos, Senior Planner, at phone number (520) 724-9000. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

Respectfully Submitted:



Jim Portner
Pima County Hearing Administrator

April 16, 2018
Date