



**PIMA COUNTY
DEVELOPMENT SERVICES DEPARTMENT**

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January 16, 2018

Page 1 of 4

HEARING ADMINISTRATOR'S FINDINGS AND DECISION

**P17CU00015
SCHMIDT — S. SONOITA HIGHWAY
Type I Conditional Use – Communication Tower**

Background & Authority

Chapter 18.97, in accordance with Section 18.07.030.H.2.E of the Pima County Zoning Code, requires a Type I conditional use permit (CUP) for a communications tower on property zoned RH (Rural Homestead). This particular request is made by Nathan Kempton of Dakota Pro Internet Partners, on behalf of the property owner, Ralph Schmidt. Dakota Pro proposes to construct an approximately seventeen foot (17') tall communications tower, of lattice design, for high-speed internet services.

Particulars of the Request

The property in question is remote and rural in nature. The proposed tower will provide high-speed internet services to the rural residents in the surrounding area. The tower has been specifically sited in a location that sits below a hilltop residence so as to minimize its visibility and visual impact upon the surrounding properties. No particular form of specialized camouflage is proposed, given the tower's relatively short height, other than the intent to paint the structure in green and/or tan desert hues. The applicant cautions that certain aspects of the internet antennas themselves cannot be painted for technical reasons, but that this constitutes a very small portion of the overall structure.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on January 10, 2018. Two (2) members of the public appeared at the hearing, both of whom chose to speak on the matter. Neither speaker expressed any objection to the proposed tower and both were concerned with better understanding its specific location and in ensuring that its visual impacts would be negligible. The applicant provided additional information to each of the speakers, which appeared to fully address their concerns.

Staff indicated that it had received one (1) phone call on this request prior to the hearing date, which was mostly informational in nature. No other public comment or correspondence (electronic or otherwise) was received.

The applicant's submittal package was comprehensive and included photo simulations and a site plan for the property and proposed tower..

After hearing all of the above, the Hearing Administrator closed the public hearing.

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 designates the subject site as *Low Intensity Rural (LIR)*, the purpose of which is to provide areas for low-density rural residential development and other compatible uses.

Numerous other communications towers have been approved in the past within the *LIR* district. This use is not inherently inappropriate within this district, as long as appropriate aesthetic considerations have been made to, as best as possible, address visual impacts and protect the rural character of the area. For this reason, and given the applicant's sensitive siting of the proposed tower, the Hearing Administrator finds the proposed use to not be inherently in conflict with the above stated goals of 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 does not negatively impact the surrounding property owners or their ability to utilize their respective properties in any legally permitted way.

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

The property has driveway access via a dirt road that ultimately connects to Sonoita Highway, a designated major street on the Pima County Major Streets & Routes Plan (MSRP). As access to such internet transmitting towers is minimal at best; access is therefore 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, if any, are a matter always verified at the time of permitting.

Hearing Administrator's Decision

This application for a Type I conditional use permit for a new communication towers, on property zoned RH, is hereby **approved** by the Hearing Administrator, subject to the following:

Standard Conditions

The Pima County Zoning Code allows Type I communication towers of fifty feet (50') or less within the RH zone, subject to the conditional use permit process.

Special Conditions

- 1) The height of the new tower shall be no more than nineteen feet (19') from its base to the highest point of the structure. This maximum figure is two feet (2') more than the applicant has indicated for the tower height in their application and is stipulated here so as to provide some flexibility in final construction.
- 2) So as to ensure visual mitigation, the highest point of the tower structure (including the antennas) shall be no higher in elevation than the finished floor elevation of the existing on-site residence.
- 3) The tower shall be of lattice design and shall be painted green and/or tan desert colors, with the understanding that certain components of the actual antennas cannot be painted for technical reasons.
- 4) The tower and any associated on-the-ground equipment shall be located on the property as indicated on the submitted site plan sketches.
- 5) Any associated cabling and any on-the-ground equipment shall be painted to match the lattice tower.

Protest Period and Appeal Procedures

As is the case with all Type I conditional use applications, this decision is subject to a statutory 30-day protest period from the date of this decision. 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. Given that the decision on this case was verbally rendered by

the Hearing Administrator at the January 10, 2018 public hearing on this matter, it is hereby established that the 30-day protest period will commence from the public hearing date.

Any party interested in filing an appeal should contact Mr. Artemio Hoyos, Conditional Use Permit Planner & Coordinator, at phone number 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

January 16, 2018

Date



Board of Supervisors Memorandum

P17CU00016

Page 1 of 5

FOR BOARD OF SUPERVISORS MARCH 6, 2018 PUBLIC HEARING

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Jim Portner, Hearing Administrator

DATE: January 23, 2018

DOCUMENT: P17CU00016

CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:

Request of Post Land Company LLC, represented by Bill Mackey, on property located at 15401 W. Hardin Rd. (Tax Codes 208-12-001N, 208-12-001U, 208-12-001T and 208-12-001V), in the RH Zone, for a conditional use permit for an "other" conditional use which is similar in type, scale and intensity as other conditional uses listed (fairground, carnival, petting zoo, restaurant and retail). This proposal is for the relocation of the "Marana Pumpkin Patch". This conditional use permit is allowed in accordance with Section 18.13.030B of the Pima County Zoning Code as a Type II conditional use permit. (District 3)

CASE BACKGROUND AND PARTICULARS

The applicant's request is to establish a site for the relocation of the Marana Pumpkin Patch. The farm will grow, harvest, and sell pumpkins. Corn fields, fruit tree orchards, and support facilities for the public will also be included. Support facilities will consist of a pumpkin barn, pumpkin wagon, temporary play structures, restaurant, bakery, ramadas, country store, bathroom facilities, train and train depot, event hall, chapel, and admissions building. There will be festivals during the Spring, Fall, and Christmas seasons. An event hall and chapel will be available to the public for rent throughout the calendar year.

SUMMARY OF THE HEARING ADMINISTRATOR MEETING

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on January 10, 2018. The applicant's submittal package was extensive and contained a detailed concept for the project. The owner and applicant satisfactorily presented the case to the hearing administrator and answered all of his questions.

No (0) members of the public attended the hearing. Two (2) staff members from the Pima County Regional Flood Control District (RFCD) also attended the hearing to discuss certain particular flood control issues, together with matters pertaining to the regulated habitat areas on the property. A lengthy discussion ensued between the owner/applicant, the Hearing Administrator, and staff from both Development Services and RFCD.

Staff indicated that it had received no prior public comment on the case.

Upon hearing all of the above, the Hearing Administrator closed the public hearing, indicating his general support for the application and his intent to ultimately recommend approval of same to the Board of Supervisors. Based upon the discussion at the hearing, it was agreed upon by all that RFCD staff and the owner/applicant would meet subsequent to the hearing and jointly develop the language for special conditions that would address the remaining flood control and habitat issues to all parties’ satisfaction.

HEARING ADMINISTRATOR’S RECOMMENDATION

After visiting the subject property, after considering the facts and the testimony presented at the public hearing, and after receiving a subsequent memorandum from RFCD outlining language for special conditions agreed upon by them and the applicant, the Hearing Administrator recommends **APPROVAL** of this request for a Type II conditional use permit for the Marana Pumpkin Patch. The applicant is advised that this is a *recommendation* to the Board of Supervisors, who will make the ultimate and final decision on this CUP request.

Should the Board of Supervisors agree with the Hearing Administrator’s recommendation for approval, it is suggested that this approval be granted subject to the following special conditions:

Special Conditions

1. The owner/applicant shall adhere to the uses, the days & hours of operation, and the general construct of their special-events program as presented in their submitted materials.
2. An approved Development Plan is required for this project.
3. So as to preserve the rural/pastoral theme and character of the project, the parking areas shall not be of conventional asphalt paving and curbing. An alternative surface treatment shall be employed that is acceptable to the Department of Transportation.
4. Once annually, and prior to the scheduled Fall activities, the owner/applicant will apply an industry standard resin, or other dust palliative acceptable to the Department of Transportation, to the parking areas so to mitigate any dust issues.
5. Floodplain Use Permits are required for any development of the site.
6. A LOMR-FW/LOMA shall be submitted to the Regional Flood Control District for review and approval prior to submittal of the Development Plan.
7. Any development in the FEMA Floodway will require a no-rise certification, which demonstrates that there will be no increase in water surface elevation as a result of the development.

8. A Riparian Habitat Mitigation Plan (RHMP) is required and shall include enhancement and restoration of part of the existing RRH areas to create additional habitat for the area. The amount and location of the enhanced riparian habitat should be done considering the overall vision for the site as shown on the conceptual landscape plan and floodplain issues.
9. Site drainage, including first flush retention, shall be designed to support, and be enhanced with, native riparian restoration and amenity landscaping.

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 Pima County Comprehensive Plan designates this site and the surrounding private properties as *Low Intensity Rural (LIR)*, the purpose of which is to provide designated areas for the provision of low-density residential or other compatible uses. It is the Hearing Administrator’s finding that the Marana Pumpkin Patch’s proposed complement of uses are acceptable and compatible, as long as the facility is operated in accordance with the *Special Conditions* prescribed above. If so, it is hereby found to not be in conflict with the objectives of 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.**

It is the Hearing Administrator’s position that the proposed conditional use, if conducted in conformance with the *Special Conditions* prescribed above, will satisfactorily safeguard the adjacent properties and their permitted uses of same.

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

The site has direct access to Trico Road, which is a paved, private street that is a designated “major street” on the Pima County Major Streets & Routes Plan. Access is therefore found to be adequate.

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

Required parking shall be reviewed at the time of Development Plan processing.

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.

It is the Hearing Administrator’s finding that the new use poses no potential significant public threat in any of the above ways, except for dust. *Special Conditions* enumerated above address the dust issue.

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

Hours of operation are addressed in the proposed *Special Conditions*.

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

Designated landscape buffers, if any, shall be delineated on the required Development Plan.

SONORAN DESERT CONSERVATION CONCEPT PLAN/ENVIRONMENTAL ISSUES

Comprehensive Plan Regional Environmental Policies — Conservation Lands System

In December, 2001 the Board of Supervisors incorporated the Maeveen Marie Behan Conservation Lands System (MMB-CLS) into the Comprehensive Plan 2001 Update as the Regional Environmental Policies. The MMB-CLS is the heart of the Sonoran Desert Conservation Plan (SDCP). On June 21, 2005, the Board of Supervisors amended the Comprehensive Plan Regional Environmental Policies and the MMB-CLS to reflect recommendations from the SDCP Science Technical Advisory Committee that were based on new scientific and technical data. As adopted, Conservation Guidelines associated with the MMB-CLS establish conservation objectives for a variety of projects (e.g. rezoning actions, comprehensive plan amendments, Type II and Type III conditional use permits, etc.) that require a discretionary decision by the Board of Supervisors. Conservation objectives include:

1. Important Riparian Areas — 95% undisturbed natural open space
2. Biological Core Management Areas — 80% undisturbed natural open space
3. Special Species Management Areas — 80% undisturbed natural open space
4. Multiple Use Management Areas — 66-2/3% undisturbed natural open space

Portions of the subject property lie within the designated *Biological Core* and *Important Riparian Areas* of the MMB-CLS.

Staff Commentary on Biological Impacts

Staff has reviewed this application and finds that all matters related to the CLS (and to riparian areas regulated by the Regional Flood Control District), will be properly addressed during the formal Development Plan process and related Riparian Habitat Mitigation Plan. Subject to these

processes being successfully completed, staff concludes that approval of the proposed use: 1) can be effectuated without negative impact to any resources essential to Pima County's biological conservation priorities; and 2) it will not be in conflict with the Regional Environmental Policies of the 2001 Comprehensive Plan Update.

Facts Confirmed by the Pima County Geographic Information System (GIS)

The following facts are confirmed by the Pima County GIS and the Sonoran Desert Conservation Plan maps with respect to this conditional use permit request:

Cactus Ferruginous Pygmy Owl. The subject property is not located within the Priority Conservation Area (PCA) for this species. It is located within Survey Zone 2.

Western Burrowing Owl. The subject property falls within the Priority Conservation Area for this species.

Pima Pineapple Cactus. The subject property does not fall within the Priority Conservation Area (PCA) for this species.

Needle-Spined Pineapple Cactus. The subject property does not fall within the Priority Conservation Area (PCA) for this species.

DEPT. OF TRANSPORTATION & FLOOD CONTROL RECOMMENDATION:

The Department of Transportation and the Regional Flood Control District will further review the project as needed during the Development Plan process.

attachments

cc: Carla Blackwell, Director, Development Services
Dan Ice, Chief Building Official
Chris Poirier, Planning Official
Tom Drzazgowski, Chief Zoning Inspector
Jon Post, Post Land Company, LLC, Owner
Bill Mackey, Applicant