



**PIMA COUNTY
DEVELOPMENT SERVICES DEPARTMENT**

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HEARING ADMINISTRATOR'S FINDINGS AND DECISION

P19CU00001

LIN — N. QUARTZ HILL PLACE

Applicant: AT&T Mobility/Bechtel Corporation
Type I Conditional Use – Communications Tower

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 CR-1.

Particulars of the Request

This request is made by AT&T Mobility/Bechtel Corporation, which proposes to construct two (2) new thirty foot (30') tall communications towers which will be camouflaged as faux saguaros. The associated on-the-ground equipment will be housed internally within the property's existing residence.

The property in question is south of Snyder Road and west of N. Rockcliff Road. It is zoned CR-1, as are most of the surrounding residential properties, with the exception of two adjacent SR-zoned lots.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on February 27, 2019. The applicant's representative presented the conditional use permit request and answered the Hearing Administrator's various questions. The applicant's submittal package included narrative information and propagation maps in addition to the proposed development plan for the new towers.

Eight (8) members of the public attended the hearing, six (6) of whom chose to speak on the matter. Staff indicated that it had received one (1) letter of objection from the Rockcliff Homeowners Association.

After hearing from the applicant and from the public, the Hearing Administrator closed the public hearing.

Hearing Administrator's Remarks

The following comments are offered by the Hearing Administrator in response to issues raised in the written and verbal public testimony received in this case. These remarks are provided here so that all parties understand the rationale that underlies the final decision rendered below.

- **Legal Access.** Neighborhood residents and HOA leadership oppose this request on the premise that no legal access exists to the property for anything other than purely residential purposes. Testimony given at public hearing also asserted that no written documentation of the access agreement between the Rockcliff HOA and the property owners exists and that none such appeared as any recorded instrument in a recent title search. Documentary evidence submitted by the applicant following the hearing suggests that a 1992 unrecorded written agreement does, in fact, exist between the HOA and the original property owners. This instrument establishes a non-exclusive, irrevocable, and perpetual access easement for the subject property. In the event that the Rockcliff HOA chooses to pursue a legal challenge to the property's access for this communications tower, it is of course free to do so. For the purposes of this conditional use permit, the Hearing Administrator is satisfied that the access rights in force here are materially the same as that of any other residential property and would not preclude access for the proposed communications towers.
- **Negative Health Effects and Diminution of Property Values.** Concern as to these two issues was raised in verbal testimony at public hearing and in the letter of objection submitted by the Rockcliff HOA. As asserted at public hearing, the Hearing Administrator does not consider these items in rendering his decision in accordance with the prescriptions of federal law.
- **Negative Impacts on Views.** Concern with view impacts (and their effects on property values) was raised in the aforementioned Rockcliff HOA letter. Legislation has held repeatedly that one's enjoyment or benefit of a view across another's private property is a privilege and not a legal right, prescriptive or otherwise. With respect to communication towers, it is the Hearing Administrator's expectation that applicants make a clear good-faith effort to disguise or camouflage tower installations so as minimize their deleterious visual effects. That expectation has been satisfied here.

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 1.2 (LIU)*, the purpose of which is to provide areas for lower density residential development and other compatible uses.

Numerous communications towers have been approved in the past within the *LIU* comprehensive plan district. The proposed new communications towers are located within an existing residential property, which is a standard and precedent well established by numerous past cases.

It is the Hearing Administrator's position that placement of the new communications towers within the existing developed residential context can be effectuated without any material significant impact upon the surrounding property owners, as long as suitable camouflage of the towers is implemented.

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.

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

The property is located adjacent to an existing subdivision and has a suitable access arrangement in place with the HOA of that neighborhood. Access needs for such wireless facilities is minimal at best. Given the above, 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; special limits on hours of operation are not warranted.

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

Landscaping requirements, if any, 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 -- Zoning Code Basis

The Pima County Zoning Code allows communication towers of the proposed height (30') within the CR-1 zone, subject to the Type I conditional use permit process.

Special Conditions

- 1) The two (2) new tower installations shall be faux saguaros and shall be no more than the requested thirty feet (30') in height to the top of the faux structures.
- 2) All associated cabling and antennae arrays shall be wholly contained within the faux saguaro structures.
- 3) The proposed faux saguaro structures shall be located on the property as shown on the submitted drawings.
- 4) All ground equipment associated with the towers/antennae shall be located internal to the existing residence. No external/outdoor ground equipment is allowed, other than the required trenching and buried cable between the residence and the faux structures.

- 5) Trenching for the incoming fiber optic cable to the property for the proposed towers/antennae is expressly contemplated by this decision and found acceptable as an attendant component of this approval.

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.

Any party interested in filing an appeal should contact Mr. Nicholas Coussoulis, Senior Planner, 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

March 1, 2019
Date