FOR BOARD OF SUPERVISORS OCTOBER 19, 2021 PUBLIC HEARING

TO: HONORABLE BOARD OF SUPERVISORS
FROM: Jim Portner, Hearing Administrator
DATE: August 16, 2021

DOCUMENT: P21CU00005

CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:

Request of Title Security Agency of AZ TR 201509, on property identified as Parcel Code #305-13-0700 thru 305-13-0810 in the Vail-Success Drive Commercial Lots 1-10 subdivision (Sequence #20152360510), in the RH (Rural Homestead) zone, for a Type II Conditional Use Permit for RV and boat storage, in accordance with Section 18.13.030.B.35 of the Pima County Zoning Code. (District 4)

CASE BACKGROUND AND PARTICULARS

The majority of the area proposed for outdoor recreational vehicle (RV) and boat storage is zoned CI-2 (General Industrial), whereon this intended use is already allowed by right. This conditional use permit request is for a smaller, interior portion of the overall/larger property (approximately one acre) that is still zoned Rural Homestead (RH) and which requires a conditional use permit for RV and boat storage. This interior portion abuts the adjacent Southern Pacific Railroad (SPRR) right-of-way and is remote from those overall project boundaries that adjoin Success Drive and the adjacent private properties.

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 August 11, 2021. The applicant presented the case to the hearing administrator and answered his questions. One (1) member of the public attended the hearing to
speak on the matter, this being the president of the homeowners association that adjoins the larger project to the immediate southeast. Upon hearing that this conditional use permit request pertained only to the smaller interior portion of the larger proposed project, the speaker indicated that he would express his comments on the larger project to the Board of Supervisors at its future hearing on this conditional use permit request.

Staff indicated that it had received written correspondence from the Vail Preservation Society. The concerns and requests stated therein pertain more to the overall larger project (rather than the interior conditional use permit portion), and specifically cite a desire for perimeter buffers and consultation with the Society on design and architectural matters.

Upon hearing all of the above and providing the applicant with the opportunity to respond to the public testimony, the Hearing Administrator closed the public hearing.

HEARING ADMINISTRATOR’S RECOMMENDATION

After visiting the subject property and after considering the facts, public testimony, and written correspondence on this request, the Hearing Administrator recommends APPROVAL of this request for a Type II conditional use permit for recreational vehicle (RV) and boat storage. 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:

1. The recreational vehicle (RV) and boat storage occurring on the conditional-use permit portion of the larger project shall be substantially consistent in its character, height and intensity with that occurring on the remainder of the larger/overall project.
2. Consultation by the owner/applicant with the Vail Preservation Society is encouraged with respect to the larger/overall proposed project during the permit process. In that this conditional use permit application applies only to a small, interior portion of the larger project, this comment is an advisory one only. The Hearing Administrator has no authority to mandate any requirements outside of the specific conditional use permit site. That being said, the applicant did state at public hearing their intent to pursue these discussions with the Society, and so it is the Hearing Administrator’s expectation that such good-faith interactions will occur as part of the final design and permitting process.

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 conditional use permit site and surrounding area as *Industrial (I)*, the purpose of which is to “provide designated adequate area for industrial uses that, if properly located and regulated, are compatible with certain types of commercial activities.”

   It is the Hearing Administrator’s finding that the proposed RV and boat storage is wholly consistent with the above objective. The Hearing Administrator finds that the proposed conditional use is not 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.**

   It is the Hearing Administrator’s position that the proposed conditional use is consistent with the planned surrounding RV and boat storage use (occurring on the industrially zoned property). Safeguards, to the extent needed, will be part of said larger project. The proposed RV and boat storage use is not found to negatively impact any legal permitted uses of the adjacent properties.

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

   The site has direct access to Success Drive, which is a paved public street. Access is found to be adequate, especially in light of the fact that this not a high-traffic use.

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 accordingly during the permitting 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.**

   It is the Hearing Administrator’s finding that the new use poses no significant public threat in any of the above ways.

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

   Limiting the hours of operation is not necessary. This is a quiet use with relatively little weekday or night-time traffic.

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

   Designated landscape buffers shall be finalized during the permitting process.
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

The majority of the conditional use permit site lies OUTSIDE OF the MMB-CLS, but a small portion of it (approximately 14,000 SF, or 1/3 of an acre) falls within the MULTIPLE USE MANAGEMENT AREA (MUMA) designation.

Staff Commentary on Biological Impacts

Staff has reviewed this application and finds that: 1) its approval is not expected to affect any resources essential to Pima County’s biological conservation priorities; and 2) it would not be in conflict with the Regional Environmental Policies of the 2001 Comprehensive Plan Update. The property possesses relatively little environmental resources. That portion of it that lies within the aforementioned CLS-MUMA designation is small and relatively isolated. The intended use will not alter the integrity of the biological resources in the area nor the viability of the CLS.

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 located within an area that was not designated as former critical habitat and is not part of draft recovery area. This site is not located within the Priority Conservation Area (PCA) for this species.

Western Burrowing Owl. The subject property is not located within the Priority Conservation Area (PCA) for this species.
Pima Pineapple Cactus. A small portion of the subject property is located within a Priority Conservation Area (PCA) for this species.

Needle-Spined Pineapple Cactus. The subject property is not 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 have reviewed this conditional use permit request and have no objection.

(attachments)

cc: Carla Blackwell, Director, Development Services
    Dan Ice, Chief Building Official
    Chris Poirier, Planning Official
    Tom Drzazgowski, Chief Zoning Inspector
    Tom Underwood, Applicant
    Title Security of Arizona Trust # 201509, Owner
FOR BOARD OF SUPERVISORS OCTOBER 19, 2021 PUBLIC HEARING

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Jim Portner, Hearing Administrator

DATE: August 16, 2021

DOCUMENT: P21CU00004

CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:

Request of Tradewind Land Services, LLC, on property identified as Parcel Code #215-31-029B, in the RH (Rural Homestead) zone, for a Type II Conditional Use Permit for a contractor’s yard in accordance with Section 18.31.030.B.22 of the Pima County Zoning Code (District 3)

CASE BACKGROUND AND PARTICULARS

The applicant’s request is to gain approval for a contractor’s yard that has already been fully constructed and has been in operation for more than a year. The entire property has been graded and cleared of all vegetation. No permits were obtained for any of the above. Further, the graded and utilized area encroaches significantly onto the adjacent property to the immediate south. For all of these reasons, the property is also subject to a separate Code enforcement case. This conditional use permit request is part of the owner/applicant’s attempt to resolve the matter and bring the property and its operation into compliance.

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 August 11, 2021. The applicant presented the case to the hearing administrator and answered his questions. Two (2) members of the public attended the hearing, both of whom spoke and were generally in opposition to the proposal. The second speaker indicated that, if the request was approved, adequate setbacks and buffers should be mandated.
Staff indicated that two (2) letters/emails of protest have been received. The Chief Zoning Inspector has also had on-going contact with the owner/applicant and also spoke at the public hearing so as to describe the nature and content of those interactions.

Upon hearing all of the above and allowing the owner/applicant to respond to the public testimony, the Hearing Administrator closed the public hearing.

HEARING ADMINISTRATOR’S COMMENTS

In querying the applicant at public hearing, it was found that their extent of due diligence extended primarily to consulting the Pima County Zoning Code to determine whether their intended use was a permitted one in the RH zone. Once concluding this in the affirmative, they proceeded to totally grade the property and open for business. This avoidance of all applicable regulations and attendant permitting requirements is beyond remarkable. The only explanations for same are wanton disregard or blatant ignorance, neither of which is defensible.

In evaluating this case, this Hearing Administrator temporarily set aside the fact that the use has already been effectuated, that the property has already been wholly impacted, and that the contractor’s yard continues in full operation. An assessment was instead done as to whether such a request would have been approved in the first place if the owner/applicant had correctly followed required procedure and had applied for a conditional use permit before ever commencing any activity on the site. In considering same, the following are relevant:

- The property is designated as Low Intensity Rural (LIR) by Pima Prospers, as is everything around it. The LIR category is intended for rural residential densities and other uses that can function in reasonable compatibility with same.
- The Code requirements for a contractor’s yard in the Rural Homestead Zone (RH) zone mandate that it derive its access from a paved public street with “collector” classification. Dally Road is an easement, not a public street, and is a dirt road. The nearest paved public street meeting the “collector” criteria is more than a mile away.
- The Code requirements for a contractor’s yard in the RH zone mandate a 100’ setback from all property boundaries. Satisfying this standard with the subject property would leave only a very small residual area available for the actual use.
- The entire property is within a FEMA sheet-flow floodplain, thereby mandating that a Floodplain Use Permit would be required for all structures and activities, together with whatever design features are necessary to ensure that sheet flow continues unimpeded.
- The entire property falls within the Multiple Use Management Area (MUMA) of the Conservation Lands System. The attendant CLS policies require the set-aside of 2/3 of the property as natural area or the provision of off-site mitigation policies.
- The general area and its surrounding properties are wholly rural in character. The introduction of a contractor’s yard of this intensity, with all of its incoming and outgoing of large commercial vehicles and transport trucks, and with all of its open storage, is wholly inconsistent with the general character of the area and wholly inappropriate for properties that are served by dirt-road easements.
Consideration of the above points alone makes the prospect of a contractor’s yard at this particular location a highly questionable proposition. Factoring in the present circumstances and taking into account the fact that all applicable rules and regulations have been wholly ignored, this Hearing Administrator finds no legitimate rationale for now granting approval after-the-fact. It is recognized that the owner/applicant has on-going business commitments and contractual obligations. Those hardships that befall them in this regard are of their own doing.

HEARING ADMINISTRATOR’S RECOMMENDATION

After visiting the subject property and after considering all the facts, history, and testimony presented at the public hearing on this request, the Hearing Administrator recommends that the Board of Supervisors DENY of this request for a Type II conditional use permit for a contractor’s yard. It is further recommended that the Board simply allow the pending code enforcement case on this property to proceed to its conclusion.

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.

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 surrounding area as Low Intensity Rural (LIR), the purpose of which is to “designate areas for residential uses at densities consistent with rural and resource-based characteristics”.

   It is the Hearing Administrator’s finding that the proposed contractor’s yard is principally in conflict with this objective. The fact that it is already operating without permits and negatively impacting the surrounding properties makes this conflict an egregious one.

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 cannot be effectuated with sufficient safeguards to protect the surrounding properties. Once again, the fact that it is already operating without permits and impacting these neighbors makes the situation a more egregious one.

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

   The site takes its access off of a dirt road within an easement. The Zoning Code requires that a contractor’s yard within the RH zone derives its access from a paved public street.
with “collector” classification. The nearest street meeting this requirement (Emigh Road) is more than a mile away. Access is found to be inadequate.

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

   Irrelevant. The Hearing Administrator is recommending denial of this use.

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 Hearing Administrator’s finds that this use poses various noise and dust hardships to the surrounding properties. The continued operation of the contractor’s yard will continue to exacerbate these conditions.

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

   Irrelevant. The Hearing Administrator is recommending denial of this use.

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

   Irrelevant. The Hearing Administrator is recommending denial of this use.

**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**
The entire property lies within the MULTIPLE USE MANAGEMENT AREA (MUMA) designation of the MMB-CLS.

**Staff Commentary on Biological Impacts**

The owner/applicant’s activities have already had a substantial negative impact upon the site’s biological resources, in that the entire site has essentially been cleared of all vegetation. These activities are 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 located within an area that was not designated as former critical habitat and is not part of draft recovery area. It does lies within Survey Zone 2 and is located within a Priority Conservation Area (PCA) for this species.

**Western Burrowing Owl.** The subject property is located within a Priority Conservation Area (PCA) for this species.

**Pima Pineapple Cactus.** The subject property is located within a general area that is outside of the known range for the Pima Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**Needle-Spined Pineapple Cactus.** The subject property is located within a general area that is outside of the known range for the Needle-Spined Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**DEPT. OF TRANSPORTATION & FLOOD CONTROL RECOMMENDATION:**

The Department of Transportation has reviewed this application and recommends denial. The Regional Flood Control District has reviewed the application and has no objection, subject to the applicant obtaining a Floodplain Use Permit for all improvements on the property.

attachments

cc: Carla Blackwell, Director, Development Services  
Dan Ice, Chief Building Official  
Chris Poirier, Planning Official  
Tom Drzazgowski, Chief Zoning Inspector  
John Kearns, Applicant  
Tradewind Land Services, LLC, Owner