



**PIMA COUNTY
DEVELOPMENT SERVICES DEPARTMENT**

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HEARING ADMINISTRATOR'S FINDINGS AND DECISION

P21-14-002

**HUNT — E. GILA MONSTER WAY
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 for a communications tower on property zoned RH (Rural Homestead). This particular conditional use permit request pertains to an existing eighteen foot (18') tall communications tower for internet service that was erected in unauthorized fashion and without the proper conditional use permit having first been obtained.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on May 1, 2014. The applicant (Simply Bits, LLC) and property owner (Gayle & Dawn Hunt) presented the conditional use permit request and answered the Hearing Administrator's questions.

Approximately a dozen members of the public attended the public hearing, eight (8) of whom chose to speak on the matter. Four (4) speakers spoke in objection to the request; concerns raised included a fear that approval of such a tower would lead to a proliferation of them throughout the area, the introduction of a commercial use into a residential area, the associated visual and view impacts of the tower, and a negative impact on property values. Two (2) speakers spoke in support of the request; points raised included the visually unobtrusive nature of the tower and the superior level of internet service that is provided by it compared to the other satellite providers in the area. Two (2) speakers (representing one [1] property) indicated neither support or objection, but asked that appropriate visual screening be provided in the event that the tower was approved.

After the public testimony, the applicant provided their rebuttal, wherein they indicated that they have no plans for any additional towers in the area and that the current tower could essentially serve the entire surrounding residential area. For proprietary reasons, the applicant declined to reveal the number of present or planned customers they serve, citing the competitive nature of the internet-service industry.

Staff indicated that it had received two phone calls on the case prior to the hearing. One letter of objection and one email expressing objection had also been received. Subsequent to the hearing, a letter was received from one of the speakers at the hearing, citing additional objections and facts pertinent to the case, as well as making certain claims as to this Hearing Administrator's conduct.

After hearing all of the above and after questioning the owner and applicant as to certain particulars of the new tower, the Hearing Administrator closed the public hearing.

Hearing Administrator's Comments

Communication towers often raise a variety of challenging issues for surrounding residents. The following comments are made on the issues itemized below so that readers can have a fuller idea as to the rationale underlying this Hearing Administrator's decision:

Proliferation of Towers. There is the understandable fear, held by some surrounding property owners, that approval of one tower will set a precedent that will unavoidably lead to the future approval of many towers. Conditional use permit applications are all evaluated on a case-by-case basis and no one approval does, in any way, represent a unilateral permission for any and all future tower applications. If approvals are granted, they are always done in conjunction with a set of special conditions that intend to address associated impacts. These special conditions are enforceable by Pima County and have the same force and effect as Zoning Code requirements. Any other tower applications in the surrounding area would have to go through the same public process and be fully evaluated at that time for their impact, appropriateness, etc.

Visual Impact. In this particular case, it is the position of the Hearing Administrator that the specific tower in question has minimal visual impact. It is constructed of small-diameter metal tubing and its height does not cause it to stand out appreciably from any other vertical elements, including telephone poles, that already exist in the area. That being said, further visual screening of the tower is still appropriate so as to maximize its concealment.

Deed Restrictions. A good deal of testimony was given at public hearing regarding deed restrictions that apply to the property and which were alleged to have been violated by the property owner. As stated then by this Hearing Administrator and as reiterated here, Pima County has no authority or place in stepping into private matters between private parties, and so no consideration will be given here to any allegations raised regarding non-compliance with any private deed restrictions.

Other Zoning Code Violations. Testimony was presented at hearing that multiple Zoning Code violations were alleged on the subject property and are still listed as pending in Pima County's computer permit files. The Deputy Chief Zoning Inspector stated, at hearing, that County Enforcement staff has inspected the property and has determined that only one (1) violation of the Zoning Code exists on the property, that being the unauthorized erection of the communications tower that is the subject of this conditional use permit case. The Hearing Administrator recognizes and respects this Code Enforcement evaluation.

Hearing Administrator Remarks at Hearing. It was alleged at public hearing by one of the speakers, as well as in follow-up written correspondence from the same individual, that this Hearing Administrator stated, during the hearing, that the speaker's testimony about multiple Code violations being present on the property was "absurd". I would normally not respond to such an allegation and let it simply stand on its own merits. In this case, however, it was not only stated at hearing by the speaker, but has now been formally placed into the written record. This being the case, I find it imprudent to let it stand, in that it is inaccurate and a misinterpretation of my remarks. My comments at hearing attempted to characterize the

speaker's own testimony, wherein it was my recollection from notes made at hearing that he implied it was absurd (or something similar) that Pima County's formal position held that there was one and only one zoning code violation on the property, that being the tower. I referenced the speaker's comments in this regard as the premise for then explaining that it was my intent to fully recognize the property's evaluation by Pima County's professional enforcement staff and that I would, therefore, accept their position that one and only one violation existed. I believe a listening of the audio recording from the May 1 public hearing will substantiate the content and intent of this Hearing Administrator's remarks as described above.

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 as *Resource Transition (RT)*, the purpose of which is to, "preserve the open space characteristics of development sensitive lands in the vicinity of public resource management units, to promote development that blends with the natural landscape, to extend visually the public land boundaries, and to protect wildlife habitat."

This application is like many that have been previously evaluated for cellular phone and data-transmission towers in similar rural areas, wherein there is the attempt to balance the provision of services against the larger development objectives for the area and the guiding Pima County comprehensive plan's policy objectives. In this particular application, the rolling nature of the surrounding topography, the relatively short height and visual unobtrusiveness of the tower, and the presence of other vertical elements already in the area allow it to be integrated into this setting with relatively minor visual impacts. Further visual screening is deemed appropriate only to maximize its concealment. For these reasons, the Hearing Administrator finds the proposed use to not be in serious conflict with the Comprehensive Plan designation for this property and surrounding area.

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.

There is no noise, traffic, etc. associated with this facility. Special conditions requiring the visual screening of the tower are viewed as sufficient to protect the surrounding neighbors.

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

The property is served by a rural dirt road. Access is found to be adequate, only because there is no material traffic to and from the site except for occasional maintenance purposes.

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

This is an unmanned wireless facility. Parking sufficiency will be 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. Standard code requirements shall serve to adequately address these issues.

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

This is an unmanned facility; no Special Conditions or other requirements are warranted.

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

Landscaping requirements, per the Special Conditions outlined below, will be verified at the time of permitting and during field installation.

Hearing Administrator's Decision

This application for a Type I conditional use permit for a communication tower, on property zoned RH, is hereby approved by the Hearing Administrator. This approval is subject to the *Standard Code Requirements* and *Special Conditions* as outlined below:

Standard Conditions & Code Requirements

The Pima County Zoning Code stipulates that Type I communication towers be no more than fifty feet (50') in height. The proposed tower is eighteen feet (18') tall.

Special Conditions

- 1) The height of the new tower shall be no more than eighteen feet (18') and shall be located where it presently exists and as shown on the submitted site plan materials.
- 2) Any increase in the height of the tower, or any relocation of it, will require a new conditional use permit application, public notice, public hearing, etc.
- 3) The tower shall remain painted green and shall be repainted as necessary in the future to keep it as such.
- 4) Additional plant materials shall be installed around the tower to help visually screen it from surrounding vantage points. A minimum of six (6) Ocotillo shall be planted around the tower so as to further conceal it on all sides except that as required for microwave transmissions.
- 5) The Ocotillo specimens will be a minimum of six feet to eight feet (6' – 8') tall at the time of planting and will be of nursery stock in 10-20 gallon containers.
- 6) The planted Ocotillo shall be maintained and irrigated as necessary for a minimum period of two (2) years so as to insure their establishment. Any specimens that dies within the two-year period shall be replaced with similar stock.
- 7) The Applicant shall coordinate with Pima County prior to any planting onsite. Pima County staff shall approve the placement of the individual specimens so as to insure accordance with Special Condition Nos. 4 & 5 above.

As is the case with all Type I conditional use permit 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.

Any party interested in filing an appeal should contact Mr. Tom Drzazgowski, Pima County Deputy Chief Zoning Inspector, at phone number 724.6675. 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:

A handwritten signature in black ink, appearing to read "Jim Portner", with a horizontal line extending from the end of the signature.

Jim Portner
Pima County Hearing Administrator

May 5, 2014
Date