



COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

MEMORANDUM

TO: Cochise County Board of Supervisors
Through: Michael J. Ortega, County Administrator

FROM: Keith Dennis, Planner II *KD*
For: Beverly J. Wilson, Planning Director *BW*

SUBJECT: Docket SUA-13-14 (West Edge Appeal)

DATE: October 22, 2013, for the November 5, 2013 Meeting

APPEAL OF A SPECIAL USE AUTHORIZATION

Docket SUA-13-14 (West Edge Appeal): Appellant John Curran, Jr. has filed an appeal against a decision made by the Cochise County Planning and Zoning Commission on Wednesday, September 11, 2013. On a 5–3 vote, the Commission approved a request by Applicant West Edge, LLC for Special Use authorization to establish a Medical Marijuana Cultivation and Infusion operation. The Parcel subject to the appeal (201-20-001B) is located at 5900 W. Greenhouse Road in Willcox, AZ. Section 1716.04 of the Zoning Regulations provides that appeals of Special Use decisions shall be heard by the Board of Supervisors at a duly noticed public hearing.

I. NATURE OF THE APPEAL/PLANNING AND ZONING COMMISSION MEETING

At their regular meeting of September 11, 2013, the Planning Commission held a public hearing to consider authorization of a Special Use for a Medical Marijuana Cultivation and Infusion facility on the subject property. The business would operate within the Willcox Greenhouse, a 7.5-acre structure that has historically been used to grow tomato and specialty food crops. The Applicant, West Edge LLC, represented by Adam Baugh of Withey Morris PC, a Scottsdale law firm, intends to use the structure to cultivate and infuse medical marijuana for distribution to markets state wide.

At the September 11 Commission hearing, two individuals objected to the project on the grounds that the operation would have far more capacity than the Arizona medical marijuana market could absorb, now or in the future. The fact that the Applicant declined to indicate which or how many dispensaries in Arizona would be served by the proposed growing operation was also discussed. Mr. Bill Brothers, who spoke in opposition to the request, suggested that the operation would be a target for criminal activity, and the ultimate aims and business model of the proposed operation were in question.

The Commission expressed some level of agreement with the concerns raised by those who opposed the use. Commission Chairman James Lynch reminded Commissioners that the chief concern of the Commission was to evaluate the compatibility of a given land use in a given location. Other issues, such as those raised by those opposed to the request, were beyond the purview of the Commission's scope of authority, and, he suggested, more properly considered by the Board of Supervisors on appeal. In the end, the Planning Commission approved the land use on a 5 – 3 vote.

Appellant John Curran Jr. has appealed the decision of the County Planning and Zoning Commission on Docket SU-13-14. In the Appeal documents, he states that the decision “should be overturned because the decision was based on erroneous information. The review of the Planning Board was capricious in its oversight as it failed to investigate the facts associated with the application or act in a responsible manner.” Mr. Curran provides a number of points to illustrate this contention, including calling into question the true identity of the corporation seeking to cultivate Medical Marijuana in the greenhouse, whether or not such entity is able to be licensed to conduct Medical Marijuana-related business within the state, and whether the company is recognized by the State of Arizona. Many of the concerns raised at the hearing also appear in the Special Use Appeal documents (see Attachment A).

II. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Parcel Size:	311.12-Acres
Zoning:	Rural (RU-4; one home per 4-acres)
Growth Area:	Category D (Rural)
Comprehensive Plan Designation:	Rural
Area Plan:	None
Existing Uses:	Greenhouse; Agriculture

Zoning/Use of Surrounding Properties

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-4	Agriculture, Rural Residential
South	RU-4	Agriculture
East	RU-4	Agriculture
West	RU-4	Fort Grant Road, Agriculture

III. PARCEL HISTORY

1994 – Permit issued for construction of four-acre “agricultural exempt hydroponic greenhouse” and two manufactured homes on Parcel 201-20-001. Those portions of the site which included the dwellings were later split from the parent Parcel.

1997 – Permit issued for 3.75-acre greenhouse expansion.

2001 – Permit issued for 3,600-square foot addition to the greenhouse sorting area along the west side of the structure.

IV. NATURE OF SPECIAL USE REQUEST

The project site is home to the Willcox Greenhouse, a 7.75-acre greenhouse superstructure built in the 1990s. It has historically been used to grow tomatoes and assorted other vegetable crops. The owner of the greenhouse was approached by West Edge with a proposal to purchase the greenhouse and use a portion of the space as a medical marijuana growing and infusion facility. The Applicants have no intention of opening a dispensary at this location, and no business transactions involving medical marijuana would be conducted at the site. The proposal is to use the greenhouse for cultivation and infusion, with the products being transported to licensed

dispensaries elsewhere within the state. If the Board of Supervisors allows the Special Use to proceed, the owner of the greenhouse would split the parcel on which the greenhouse is located into a separate parcel which he would sell to the Applicants. He would also continue to grow tomatoes and other crops in the greenhouse under a lease agreement.



The project site is within an existing 7.75-acre greenhouse superstructure, on a 311-acre parcel.

The medical marijuana facility would initially occupy about one-quarter of the space within the greenhouse—approximately 85,000-square feet, though the Applicants may decide to expand the growing area in the future. The infusion business, in which medical marijuana is rendered into food-grade consumable products, would also be located within the greenhouse interior.

For security purposes, the Applicants intend to construct a separate entrance for the business, at the east end of the greenhouse, so that the conventional agriculture operations are kept separate from the Special Use area. Currently, the entrance is at the west side of the greenhouse. A fence would also be constructed along the growing area within the greenhouse for security reasons.

At the Commission hearing, and in the Appeal documents, concerns were raised regarding the viability of the business model, and whether or not the Applicant had complied with, or could comply with state laws as they apply to the proposed land use. Staff's analysis of this Special Use Docket, as with others, was concerned with the compatibility of the proposed use of land, within the context of the surrounding area, the availability of adequate services and infrastructure, and the ability of the Applicant to mitigate off-site impacts. Staff recommendations for Special Use Dockets always include approval conditions obligating the Applicant to comply with all local, state, and federal laws and conditions as applicable (See Condition #3).

V. ANALYSIS OF IMPACTS – COMPLIANCE WITH SPECIAL USE FACTORS

Section 1716.02 of the Zoning Regulations provides a list of the 10-factors used to evaluate Special Use applications. Staff uses these factors to help determine the suitability of a given

Special Use request, whether to recommend approval for a Special Use Permit, as well as to determine what Conditions and/or Modifications may be needed. Seven of the 10 criteria apply to this request. The project as submitted complies with four of the seven applicable Special Use factors, as submitted. If the Conditions of Approval recommended by staff are applied, the project would comply with each of the seven applicable Special Use factors.

A. Compliance with Duly Adopted Plans: Not Applicable

The project site is not within the boundary of any master development plan, transportation or other area plan.

B. Compliance with the Zoning District Purpose Statement: Complies

Section 601.03 of the Zoning Regulations establishes that the Rural Districts are intended to “*preserve the agricultural character of those portions of the county capable of resource production.*”

C. Development Along Major Streets: Not Applicable

Greenhouse Road is a named, paved road which serves this Parcel only—the greenhouse and nearby farm fields. It functions, therefore, as a driveway for the greenhouse. It connects to Fort Grant Road, a Rural Minor Collector.

D. Traffic Circulation Factors: Complies (Subject to Condition #2)

The proposed use would utilize the existing transportation network in a manner consistent with, and with a lower anticipated impact, than what has historically been the case. The produce from the greenhouses is often shipped to market on semi-trucks, for example, while the cultivation operation would utilize smaller vehicles for market transport, such as vans and medium trucks.

The apron connecting Greenhouse Road with Fort Grant Road is in need of repair. Condition #2 would require the Applicant to obtain a right-of-way permit and make repairs to the apron, ensuring that the latter meets with County standards.

E. Adequate Services and Infrastructure: Complies

The site is served by an on-site agricultural well and septic system. The site has electric power service from the Sulphur Springs Valley Electric Co-operative, natural gas service through Southwest Gas, and is within the service area of the Willcox Rural Fire Department. The site also features paved internal driveways (Greenhouse Road) which accesses the County road maintenance system at Fort Grant Road.

F. Significant Site Development Standards: Complies

The Applicants intend to meet all required site development standards. A revised site plan would be required at the commercial permit stage, per Condition #1.

G. Public Input: Complies

The Applicant completed the Citizen Review process and received no response.



Views of the Willcox Greenhouse: exterior (above) and interior (below).

H. Hazardous Materials: Complies

The Special Use application provided a list of fertilizers, pesticides and other inputs that are currently used at the greenhouse. The medical marijuana business will likely also employ fertilizers and pesticides. While the greenhouse activities have historically been exempt from permitting requirements as an ag-exempt use, the proposed medical marijuana operation is not eligible for such exemptions. Condition #3 is a standard condition requiring compliance with all other permit requirements and conditions during the resulting permit process. As part of the non-residential permit requirements, the Applicants will submit an inventory of all such chemical inputs proposed for use as part of the operation, submit material safety data sheets for all applicable products, and confer with County staff with as to protocols for the safe handling, use and disposal of the same.

I. Off-Site Impacts: Complies

Off-site impacts associated with this project would be primarily traffic-related, but, as stated above, traffic is likely to be lower and consist of smaller transport vehicles than the conventional greenhouse operations. The greenhouse is in the center of a 311-acre agricultural property,

surrounded by similar uses. It is anticipated that the impact of the business would result in a site that is essentially unchanged from its present condition.



Above: View of the proposed initial cultivation/infusion area. The entrance to this area would be in the background at left. Below: South view along Fort Grant Road. The apron here is in need of repair (Condition #2).



J. Water Conservation: Complies

The business would utilize the existing water distribution system within the greenhouse. The application describes the capacity of the agricultural well serving the site, but does not specify the estimated water budget for the project. It is anticipated that the proposed medical marijuana business would result in about half the water usage as would be the case if the space were to continue under tomato cultivation.

VI. PUBLIC COMMENT

The Department mailed notice of this Appeal to neighboring property owners within 1,500-feet of the subject property. Staff posted the property on October 21, 2013, and published a legal notice in the *Bisbee Observer* on October 17, 2013. Staff has to date received correspondence from 10 neighbors expressing support for the proposed medical marijuana operation.

VII. SUMMARY AND CONCLUSION

The Appellant's objections to allowing this use of land in Cochise County are predicated upon issues which may or may not have any bearing on the ultimate viability of the business as proposed. For example, some of the objections to the use listed in the Appeal deal with what is described as the Applicant's lack of authority to operate a medical marijuana business in Arizona. However, without local zoning approval, the Applicant cannot complete the process of obtaining the appropriate licensure from the State Department of Health Services. In other words, the Special Use permit is a necessary step towards obtaining legal authority to operate this business under state law. As to the corporate status of West Edge under statute, specifically whether West Edge is authorized to conduct business within the state of Arizona, staff considers such concerns beyond the scope of a land use analysis. The position of the Community Development Department is that, because Special Uses attach to the land itself, rather than an Applicant, questions as to the domestic or foreign status, identity, or ownership of West Edge are less relevant than whether or not the technical analysis of the land use meets with the provisions of the Zoning Regulations, and whether the County zoning authorities regard the project as worthy of approval.

Medical marijuana land uses are allowed as Special Uses in the Rural Districts. While some jurisdictions in Arizona include a maximum cultivation area as part of their respective zoning standards for medical marijuana uses, Cochise County does not. This proposal would be for a significant cultivation and infusion operation within the interior of an established agricultural greenhouse superstructure, in an agricultural production area of the County. The products of this enterprise would be brought to licensed dispensaries off-site; no end-user transactions would take place on the property. The Special Use is anticipated to use less water, and produce off-site traffic impacts that are diminished relative to the traffic generated by the produce business existing on-site. The project enjoys the support of local residents, is likely to result in employment opportunities for the County workforce, and, the use was approved by the Planning and Zoning Commission.

Factor in Favor of Granting the Appeal

1. One concerned citizen has expressed opposition to the request in writing.

Factors in Favor of Denying the Appeal

1. On a 5–3 vote, the Planning Commission approved Docket SU-13-14;

2. With the recommended Conditions of Approval, the proposed use would comply with each of the eight applicable Special Use factors used by staff to analyze such requests;
3. Per Section 601.03 of the Zoning Regulations, the proposed use is appropriate in the Rural Districts and one that would be in keeping with the agricultural character of the area;
4. The proposed use can meet the minimum site development standards for the Rural Zoning Districts as well as those dedicated to medical marijuana uses per Article 18;
5. The proposed use would generate no appreciable off-site impacts;
6. The proposed use would use existing agricultural land, structures, and infrastructure; and
7. 10 neighboring property owners have indicated support for the project.

VIII. RECOMMENDATION

Based on the factors in favor of denying the appeal, Staff recommends that the Board of Supervisors **deny** the Special Use Appeal, and uphold the September 11, 2013 decision of the Planning Commission to authorize Special Use Docket SU-13-14. Should the Board authorize the Special Use, staff recommends the use be subject to the following Conditions:

1. Within 30-days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12-months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18-months of the Special Use approval, otherwise the Special Use may be deemed void upon 30-day notification to the Applicant;
2. As part of the commercial permit process, the Applicant shall obtain a right-of-way permit from County staff, and work to bring the apron at the Fort Grant Road access into compliance with County Highway Department standards;
3. It is the Applicant's responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations; and
4. Any changes to the approved Special Use shall be subject to review by the Planning Department and may require additional Modification and approval by the Planning and Zoning Commission.

IX. ATTACHMENTS

- A. Appeal Documents and Special Use Application
- B. Location Map
- C. Concept Plan
- D. Agency Comments
- E. Citizen Review and Public Comment
- F. Legal Notice