

SUA-16-04

REQUEST TO DENY APPEAL OF SPECIAL USE PERMIT GRANTED FOR
THE CULTIVATION & INFUSION OF MEDICAL MARIJUANA AT
6950 S COVERED WAGON ROAD, WILLCOX, AZ
NGK ENTERPRISES, LLC
June 14, 2016



Board of Supervisors

- **MERITS OF THE SUP APPLICATION**
- **APPEAL SHOULD FAIL**
 - **PROCEDURALLY**
 - **SUPPORT FROM THE COMMUNITY**
 - **SUBSTANTIVELY**
- **REQUEST THAT YOU DENY THE APPEAL, AFFIRMING THE UNANIMOUS DECISION OF THE COUNTY'S PLANNING COMMISSION**

SUBJECT PROPERTY

- GOOD CLIMATE
- GOOD SOIL
- LOCATED IN RURAL AGRICULTURAL AREA, ZONED RU-10

SAME OWNERSHIP

SITE

SAME OWNERSHIP



- SPARSELY POPULATED AREA

- Grazing land to north under same ownership
- Vacant to east
- Bordered in part to the south by 20 ac. of grazing land under same ownership and winery

E Cattle Dr

E Cattle Dr

E Cattle Dr

E Cattle Dr

S Governor Wagon

S Governor Wagon

Bascom Trail

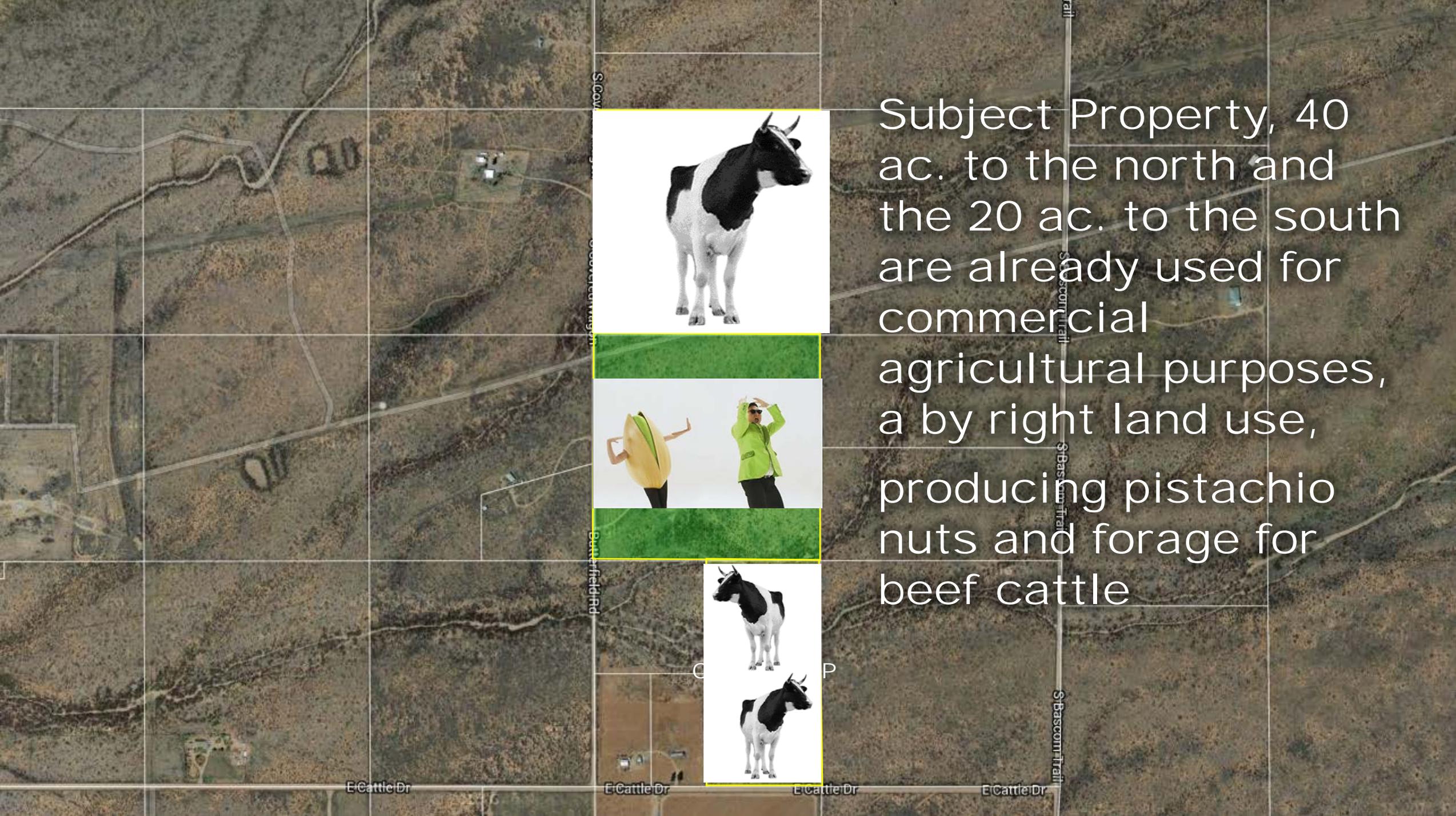
S Bascom Trail

S Bascom Trail

S Bascom Trail



Subject Property, 40 ac. to the north and the 20 ac. to the south are already used for commercial agricultural purposes, a by right land use, producing pistachio nuts and forage for beef cattle





1

2

1





1

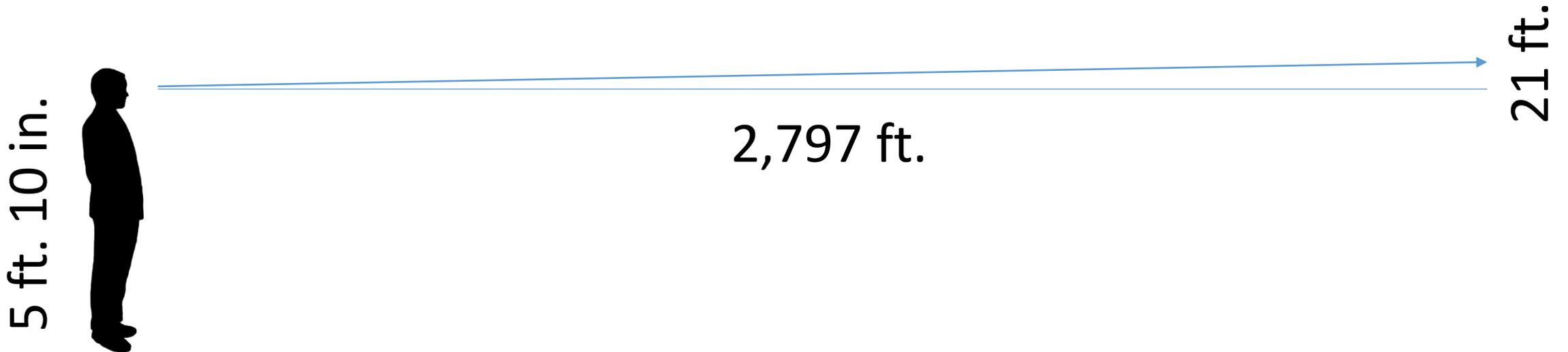


2



2

From 2,797 feet away, a 21 ft. tall building is perceived to be just 0.0074 in. tall



Merits of SUP Application

- Application meets or exceeds all SUP Approval Criteria
Confirmed by the Cochise County Planning Department & Planning Commission
 - Compliance with duly adopted plans
 - Compliance with zoning district purpose statement
 - Development along major streets and traffic circulation factors
 - Adequate services and infrastructure
 - Significant site development
 - Public input
 - Off-site impacts & hazardous materials
 - Water Conservation

Merits of SUP Application

Applicant

- **NGK Enterprises, LLC**
 - **Affiliate of Encanto Green Cross**
 - **Family owned and operated business**
 - **Operated for more than three years in Phoenix in conformity with all State and local laws and regulations.**

Merits of SUP Application

Applicant

- **Applied for the SUP in furtherance of establishing an off-site cultivation facility in conformity with all applicable State laws to allow Encanto Green Cross to meet market demand**

Community Support

- More than 200 Cochise County residents have signed letters and petitions in support of the Applicant's proposed project
- This support comes from an understanding of the County's regulations and an appreciation that every resident and business owner should be held to the same OBJECTIVE standards.
 - Award of the SUP was NOT the establishment of a new policy, it was the implementation of an existing policy

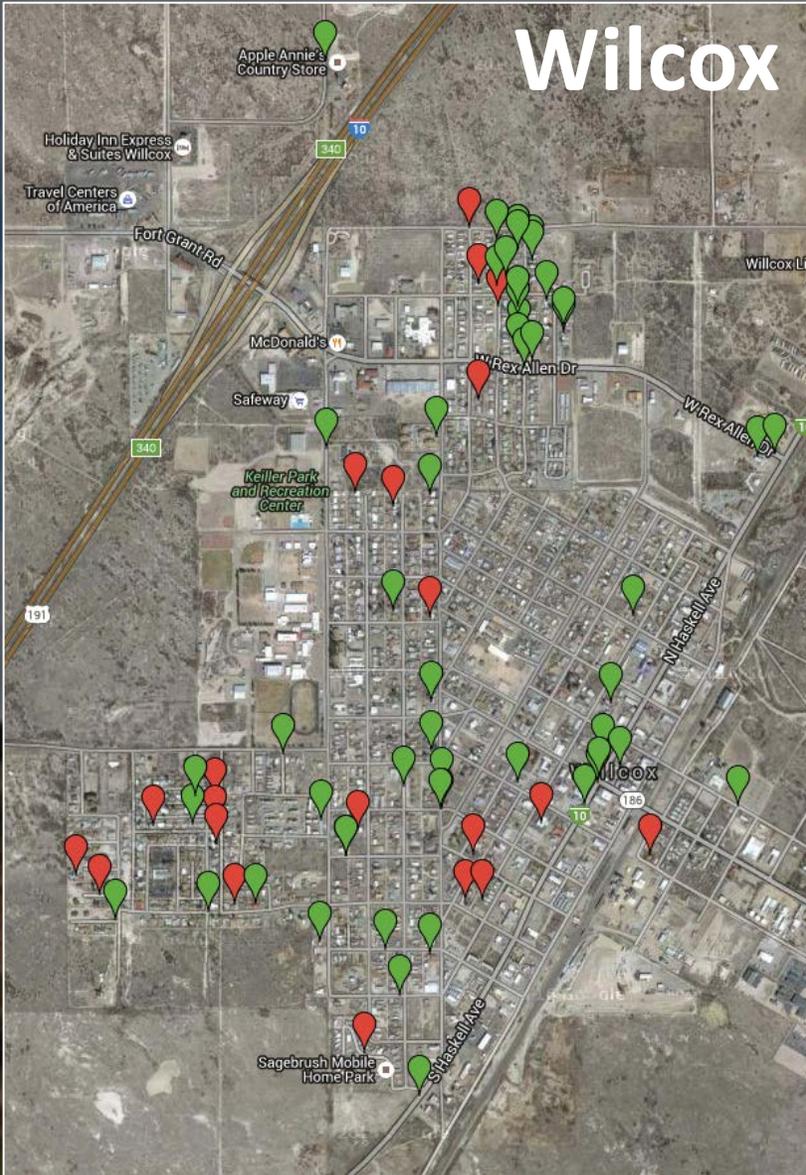
Community Support

The background of the slide is a landscape photograph. The top portion shows a bright blue sky with wispy white clouds. Below the sky is a vast, open field with dry, brownish-yellow grass and scattered dark green shrubs. The horizon is low, showing distant hills or mountains under a slightly overcast sky. The overall tone is natural and somewhat somber due to the dry vegetation.

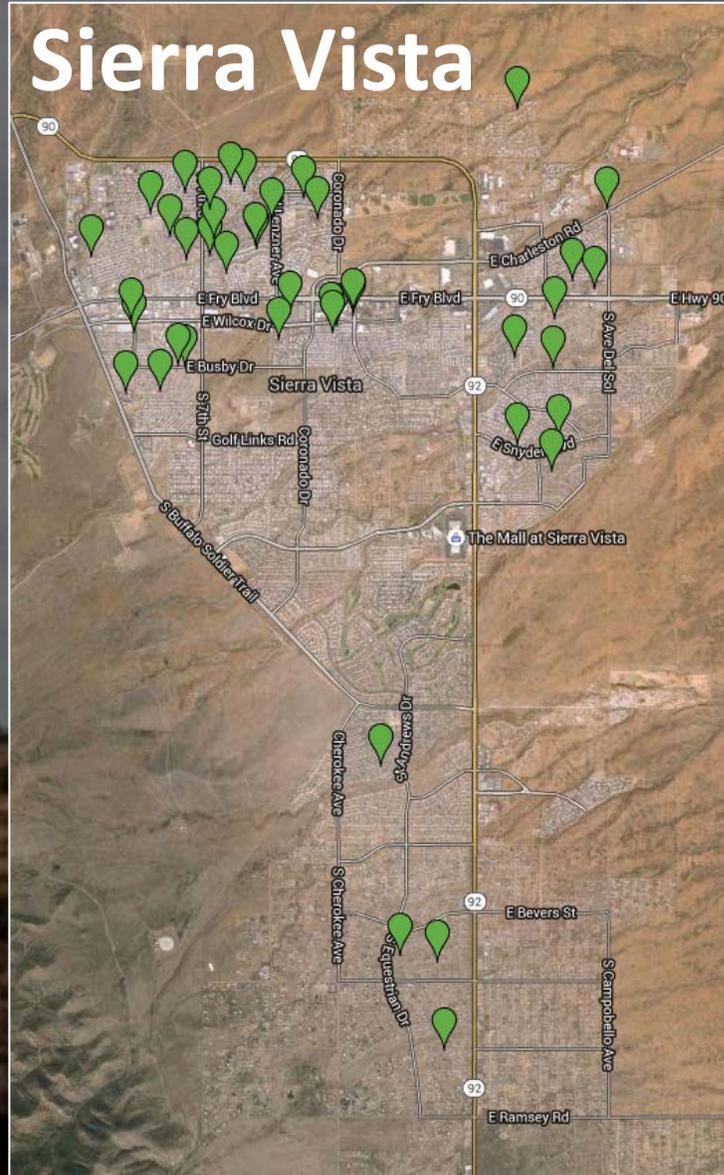
Every person who signed supporting the Applicant's use knew exactly what they were signing.

Community Support

Wilcox



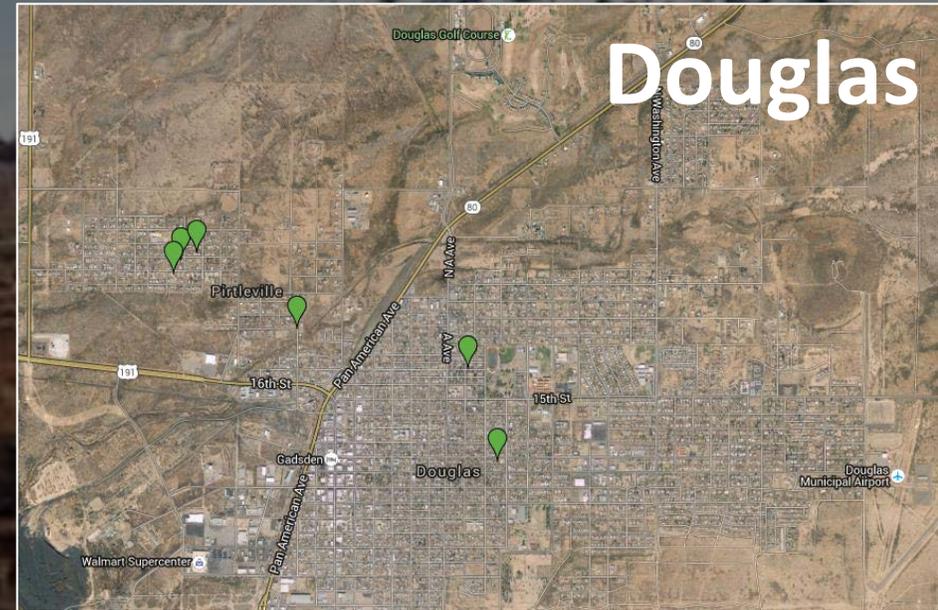
Sierra Vista



Bisbee



Douglas



Procedural Failings of Appeal

Cochise County Planning & Zoning Regulations detail the procedure for SUP appeals.

- **Sec. 1716.14(B)(2) requires “a complete statement of all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.”**
- **The appellants wrote:**
 - **“The decision to allow this facility was based on an incomplete and erroneous understanding of the community for which this facility is proposed and the facility’s impact upon the lives of the residents.”**

Procedural Failings of Appeal

This assumes that the seven members of the Planning Commission, who

- a) Studied the application for the SUP
- b) Reviewed the Memorandum prepared by the County's Community Development Department, and
- c) Heard the testimony of the Community Development Department, the applicant, and several area residents,
- d) Failed to understand the nature of the application and the true potential impacts the anticipated operations permitted by this SUP could have on the surrounding area.

For this to be true, it would have to mean that every member of the Planning Commission, lacked the will or the capacity to serve their main function as your appointees in that role. This is very difficult to accept.

Procedural Failings of Appeal

- Sec. 1716.14(B)(3) requires the appeal to include “written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.”
 - New information not presented to the Planning Commission
 - Explanation of why it was not presented previously

MOST IF NOT ALL OF THE GROUNDS FOR THE APPEAL WERE IN FACT PRESENTED AT THE PLANNING COMMISSION HEARING UPON REVIEW OF THE MINUTES

Procedural Failings of Appeal

- Sec. 1716.14(B)(3) requires the appeal to include “written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.”
 - New information not presented to the Planning Commission
 - Explanation of why it was not presented previously

THERE IS NO RATIONAL BASIS FOR WHY THIS “NEW INFORMATION” WAS NOT PRESENTED TO THE PLANNING COMMISSION. NEIGHBORHOOD MEETINGS AND THE COMMISSION HEARING WERE NOTICED IN ADVANCE AND WELL ATTENDED.

Substantive Failings of Appeal

“The proposed facility is in the midst of a residential area whose residents are retirees and working people and who are being caused both emotional and financial distress as they foresee declining property values and rising costs associated with providing themselves significant protection from perceived dangers associated with living in close proximity to this facility.”

- **The Subject Property is located in an area zoned RU-10.**
- **Though sparsely populated by residences pursuant to the County’s Planning and Zoning Regulations many other uses are allowable by right,**
 - **Agricultural Production & Processing, Commercial Stables, Grocery Stores, etc.**
- **The appellants offer no evidence, such as comparative market analyses or appraisals, to support fear of declining property values, and admit that dangers are “perceived.”**

Substantive Failings of Appeal

“Lack of policing should be considered as a major safety factor. There are no Sheriff’s patrols in this area. In fact, should a call be placed, the minimum response time would be one half hour.”

- **The absence of Sheriff’s patrols was not caused by nor is it affected by the award of the SUP.**
- **The Sheriff’s response times are not impacted by the award of the SUP.**
- **Based on unsubstantiated theory that close proximity of a regulated and surveilled medical marijuana facility creates danger, is intended to arouse emotion and create fear**
- **A review of the minutes from the April 13, 2016 hearing will reveal that this point was already considered by the Planning Commission.**

Substantive Failings of Appeal

“This facility would be policing itself with a heavily armed potentially violent private security force which is antithetical to the serenity of a residential area.”

- **A.A.C. regulations require certain security measures to be taken on site, which will be imperceptible to anyone passing by or residing on neighboring properties.**
- **Baseless statement, again effective inasmuch as it rouses emotions to rally support for the appeal, but it is a delusion and should not be persuasive to policy makers educated on the subject.**

Substantive Failings of Appeal

“A marijuana facility would create an "attractive nuisance" by its very presence. There is already a security problem in this area with migrating illegals and already a drug problem in this area as it has been used in the recent past as a "drop zone." The facility and its vehicles would not be anonymous even though they would not be signed so that any criminal element would be attracted to the area. Should that element come into the area looking for the facility, it would put the nearby residences in jeopardy.”

- **Security measures mandated by the relevant provisions of the A.A.C. are intended to serve as an active deterrent to crime. Crime statistics show they are effective in that regard.**
- **Statements about illegals and an area’s drug problem is alarmist, and is completely unrelated to the SUP.**
- **A review of the minutes from the April 13, 2016 hearing will reveal that this point was already considered by the Planning Commission.**

Substantive Failings of Appeal

“Lack of fire protection should also be considered as a major safety factor. The all-volunteer Chiricahua Trails Fire Department, 6475 S. Jeffords Trail is composed of several pieces of older equipment. Some of the personnel work in Willcox and are not readily available during the day. In most cases, if the firefighters are at home, they are upwards of a half hour in reaching the equipment and then it is about another half hour to reach the facility because the roads are so poor. There is no aerial ladder truck or pumper, just a small tank truck. The winds are generally steady, the land dry and fire can spread quickly. Willcox Rural Fire Department is anywhere from a half to an hour away.”

- Patently False Statement**
- Response times to the neighborhood are approximately ten minutes, and the district has adequate resources to fight fires in the area.**

Substantive Failings of Appeal

“Lack of fire protection should also be considered as a major safety factor. The all-volunteer Chiricahua Trails Fire Department, 6475 S. Jeffords Trail is composed of several pieces of older equipment. Some of the personnel work in Willcox and are not readily available during the day. In most cases, if the firefighters are at home, they are upwards of a half hour in reaching the equipment and then it is about another half hour to reach the facility because the roads are so poor. There is no aerial ladder truck or pumper, just a small tank truck. The winds are generally steady, the land dry and fire can spread quickly. Willcox Rural Fire Department is anywhere from a half to an hour away.”

- Lack of adequate fire protection, perceived or real, would not be caused nor affected by the award of the SUP, and thus is not a factor.**
- A review of the minutes from the April 13, 2016 hearing will reveal that this point was already considered by the Planning Commission.**

Substantive Failings of Appeal

“During the first three days of drying, the cannabis produces a very strong, noxious odor. Scrubbers and filters do not completely remove this smell. The lingering smell of the cannabis will be prevalent and unpleasantly noticeable to the neighbors.”

- **Air filtration and scrubbing systems are designed to completely prevent any odor from escaping the facility.**
- **Subject Property consists of Forty Acres, surrounded largely by vacant land, most of which is of common ownership creating no detriment to neighboring residents.**
- **Any intrusion of odors on neighboring properties would be subject to the County’s code enforcement as a nuisance.**
- **A review of the minutes from the April 13, 2016 hearing will reveal that this point was already considered by the Planning Commission.**

Substantive Failings of Appeal

“Another consideration is water consumption. Each mature plant uses about 6 gallons per day. This factors out for 10,000 plants to be 60,000 gallons of water daily. It is unknown how many plants this facility plans to put into its greenhouses and outdoor acreage.”

- **Statement is demonstrative of how little the appellant actually bothered to learn about the SUP before drumming up opposition based on fallacy.**
- **Water consumption is projected to be a max of 1,000 gallons per day.**
- **This issue was thoroughly vetted by Community Development Department.**
- **Total water consumption for the cultivation operation will be less than if the Subject Property were developed to its full residential capacity.**
- **The Subject Property is served by its own wells.**

Substantive Failings of Appeal

“South Covered Wagon Road is a dirt lane which is maintained at irregular intervals by the residents of the road. The monsoon season and other rains wreak havoc. This road has few cars travelling on it as it is not a through thoroughfare and is used only by the residents. Additional traffic will not help the condition of this road and the statutes cannot make the owner of this facility make road improvements despite his contention that he will maintain the road. Increased traffic will also add to the dust problem that already exists from the road.”

- As a condition of the SUP’s approval the applicant has agreed to enter into a Private Maintenance Agreement and help maintain the access roadways.
- Subject Property and connecting parcels of common ownership could be developed to accommodate up to ten (10) residences, grocery stores, farmers markets, or churches, **all of which would generate significantly more traffic than the use contemplated by the SUP.**

Substantive Failings of Appeal

“South Covered Wagon Road is a dirt lane which is maintained at irregular intervals by the residents of the road. The monsoon season and other rains wreak havoc. This road has few cars travelling on it as it is not a through thoroughfare and is used only by the residents. Additional traffic will not help the condition of this road and the statutes cannot make the owner of this facility make road improvements despite his contention that he will maintain the road. Increased traffic will also add to the dust problem that already exists from the road.”

- **A review of the minutes from the April 13, 2016 hearing will reveal that this point was already considered by the Planning Commission.**

Substantive Failings of Appeal

“A marijuana farm must necessarily use pesticides to combat rats, insects, molds and fungi which will eventually migrate into the environment. There are vineyards in fairly close proximity whose crops potentially could be endangered by both the pesticides and the reasons for their use.”

- **Any non-organic agricultural operation would be objectionable by this logic.**
- **This argument is based on an unsubstantiated assumption that the applicant will not responsibly process chemicals in the conduct of its business**
- **Statement offered for no reason other than to arouse emotion and create fear.**

Substantive Failings of Appeal

“Light pollution is another concern. Although the growing and security lights are planned to aim downward in order to protect the night sky, there will still be a huge amount of light emanating from the facility that will impact the close neighbors.”

- Any and all structural improvements, including light fixtures, will be developed in accordance with the County’s Planning and Zoning Regulations and applicable building codes, which includes the Cochise County Light Pollution Code.**
- The appellants have no basis for this statement, simply more hysterics.**

Substantive Failings of Appeal

“The first greenhouse to be built will straddle an existing large wash. Although the facility proposes to re-channel the wash, the potential for flooding exists on adjacent properties and on the road.”

- **Any and all structural improvements will be developed in accordance with the County regulations, which includes Cochise County’s Building Safety code.**
 - **This means that the Building and Safety Division and the Floodplain Division of the County’s Community Development Departments will review and approve any and all plans prior to construction.**
- **No basis for this statement, simply more hysterics.**
- **A review of the minutes from the April 13, 2016 hearing will reveal that this point was already considered by the Planning Commission.**

Substantive Failings of Appeal

“Raising cannabis violates both Federal and Arizona laws.”

- **False. The use contemplated does not violate Arizona Law**
- **Federal Government does not prosecute actors such as the applicant who are operating in clear and unambiguous compliance with applicable State and Local law .**
- **This is not relevant in the context of whether or not the SUP was duly awarded under the purview of the County’s land use code. This is not a referendum on medical marijuana, it is a land use issue.**

Substantive Failings of Appeal

“If this facility is approved, it will lead to the proliferation of these marijuana facilities in any part of the county that they wish to go.”

- **False. Any and all such facilities, as a pre-requisite to operating legally in Cochise County, would need to go through the public process required to ensure the scope of its operations met a multitude of criteria before a special use permit could be granted.**
- **This statement serves no purpose other than to stoke the flames of fear.**

DENY THE APPEAL

- **The Appeal Should Fail by Any Objective Measure.**
 - **The Appeal is both Procedurally and Substantively Deficient.**
 - **Reasons given for why the appellant believed that the Planning Commission's unanimous decision was erroneous do not hold water.**
 - **The appellant has not presented any relevant new "evidence."**
 - **Most of the alleged "reasons" to grant the appeal had been heard by the Planning Commission, lack substance, and are predicated on fear.**

DENY THE APPEAL

- Granting this Appeal sets bad precedent.
- This appeal is distinguished from previous marijuana cultivation appeals:
 - Applicant firmly established in the industry;
 - All criteria met;
 - **Enormous community support for the use.**

DENY THE APPEAL

- There has been overwhelming support from over 200 Cochise County Residents.
- The SUP meets or exceeds all criteria for approval.
- Unanimously approved by *your* appointees on the Planning Commission.
- The establishment of this agribusiness operation will create jobs, and bring revenues into Cochise County.
- Cathy's Compassion Center was approved for cultivation and dispensary and has been operating without incident.
- Affirm the SUP

THANK YOU

