



**Cochise County**  
**Community Development**  
**Planning, Zoning and Building Safety Division**

*Public Programs...Personal Service*  
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MEMORANDUM

TO: Cochise County Board of Supervisors  
THROUGH: James Vlahovich, County Administrator  
FROM: Jesse Drake, Planning Manager  
FOR: Paul Esparza AICP, Planning Director  
SUBJECT: Docket SUA-15-18 (Sonoran Care) Appeal  
DATE: December 18, 2015 for the January 5, 2016 Meeting

I. APPEAL OF THE PLANNING AND ZONING COMMISSION DENIAL OF SU-15-18 (SONORAN CARE)

The Planning and Zoning Commission voted in a public meeting on November 18, 2015 to deny Special Use, SU-15-18 (Sonoran Care), a request for approval of a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4, Rural zoned property. The subject parcel, APN 404-26-001 is located 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ. It is further described as being situated in Section 03 of Township 21 South, Range 26 East of the G&SRB&M, in Cochise County, Arizona. The use is considered a Special Use in RU-4 Rural Zoning Districts under Sections 607.26 and 607.55 of the Zoning Regulations. The original Applicant, and Appellant, for the medical marijuana cultivation and dispensary facility is Sonoran Care LLC.

II. NATURE OF APPEAL REQUEST

This is an Appeal of the Planning and Zoning Commission denial of Special Use of SU-15-18 (Sonoran Care), a request for approval of a facility for personal services and the cultivation and dispensing of medical marijuana.

The approved minutes from the November 18, 2015 public meeting recount that the six residents in attendance who spoke in opposition to the Special Use request voiced concerns about water and pesticide contamination, the broad accessibility of marijuana, about schools within several miles of the site and about the general desire to avoid having marijuana in Cochise County. The applicant rebutted with statements that, the facility would use hauled water and no well would be drilled, that there would be no pesticide usage, about the stringent State regulations for the industry, and that it is more difficult for students to purchase marijuana from a dispensary than to buy it on the black market. The applicant also noted that there is no evidence that dispensaries attract crime or increase drug use.

In the Commission discussion following the public hearing Commissioner Edie raised concerns about traffic safety at the proposed location, Commissioner Gregan stated that the Commission should not be considering water and security issues since those items are regulated by the State. Commissioner Miller spoke about the agricultural nature of the County and her concerns about water issues and private property rights. Commissioner Martzke readdressed that water issues were not an issue for the Commission and that the Commission was considering only the land use. The motion for approval failed 2-

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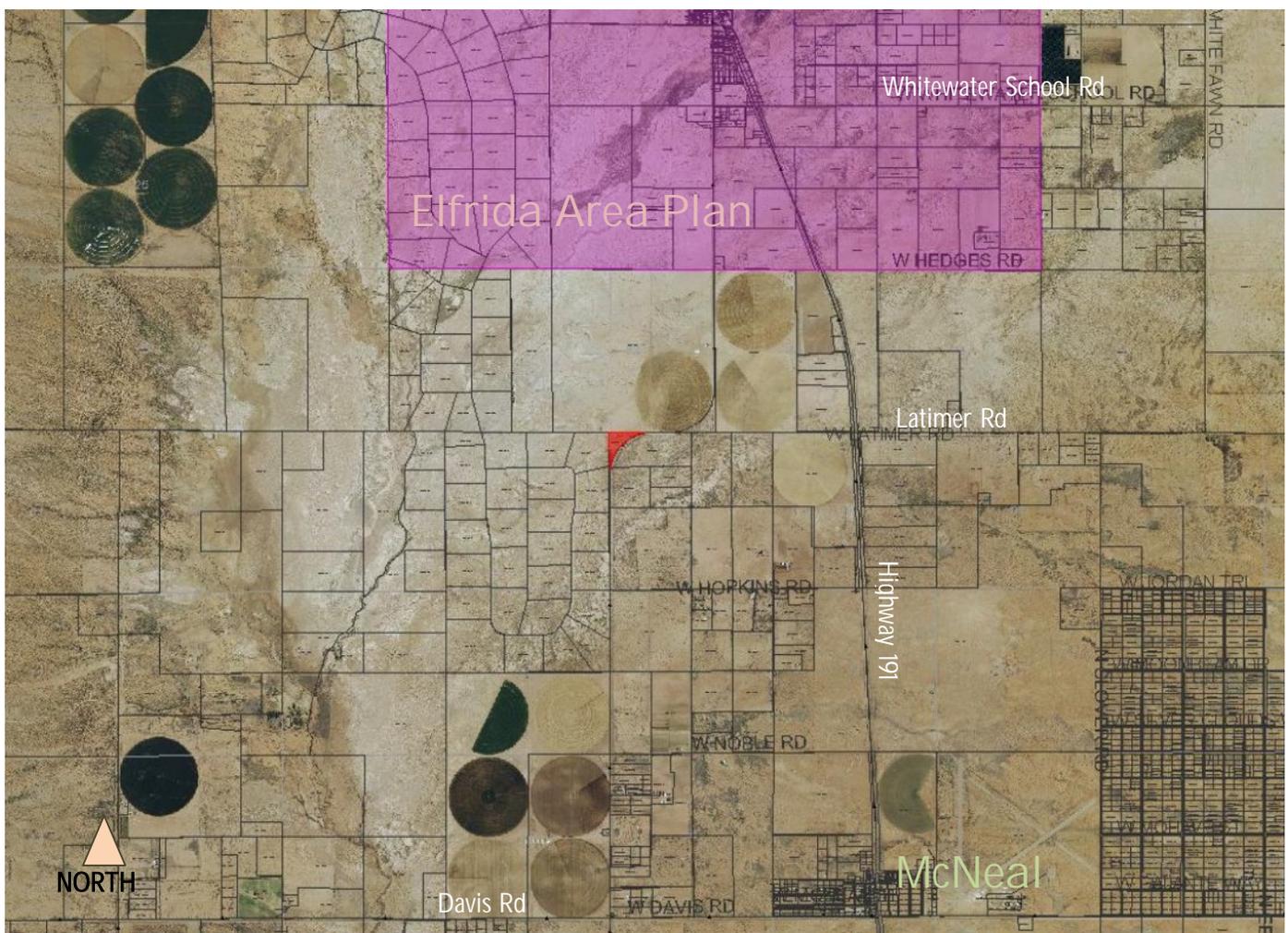
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3 with Commissioners Miller, Brauchla and Edie in opposition.

The applicant filed an application to appeal the denial on December 1, 2015. Section 1716.04 of the Zoning Regulations governs the Appeal of Special Use Authorization Decisions. 1716.04.B. states the appeal shall include:

1. An identification of the decision being appealed;
2. 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; and
3. 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.



*Location Map*

Sonoran Care LLC believes that the Cochise County Planning and Zoning Commission acted in error, arbitrarily, capriciously and contrary to law in denying its request for a Special Use authorization for SU-15-18. The basis for this claim is that the staff report indicated that the applicant's request complied with eight of the ten factors used to analyze Special Use requests. The ninth factor, concerning Hazardous Materials was not applicable.

The tenth and last factor, Traffic Circulation Patterns, could comply with conditions. The staff Memo analysis of traffic circulation based on the October 22, 2015 Transportation Memo states that

“as a growing operation only the requested use is unlikely to alter the type or volume of traffic. However, once the personal services component of the clinic is added, the higher end of the estimated trip generation is more likely but the traffic pattern in the area is unlikely to change or negatively impact Central Highway or surrounding property owners.”

The applicant agreed to work with a traffic engineer to address concerns raised by the County Transportation Planner regarding the design, placement and construction of the proposed driveway.

The staff Memo presented to the Planning and Zoning Commission recommended Conditional Approval of the request.

In their Appeal application the appellant, Sonoran Care LLC, state that they believe that in making their decision the Planning and Zoning Commission took into consideration criteria other than the Cochise County Zoning Regulations and that the Commission based their denial on three basic factors:

1. Opinions about Arizona's marijuana laws;
2. Speculative and personal opinions raised as objections made by persons residing more than a mile from the proposed site; and
3. Bias against the applicants raised by persons in the audience during the public hearing who objected to the applicants because they reside outside Cochise County.

Sonoran Care LLC believes that basing their consideration of the application on these three factors rendered the Commission's decision erroneous, arbitrary, capricious, and an abuse of discretion.

Licenses for medical marijuana dispensaries and cultivation areas are issued by the Arizona Department of Health Services. Permits are issued after proper security and containment measures are approved by the State. Cochise County reviews these types of dockets items for land use issues only.

### III. PUBLIC COMMENT

Planning Department staff mailed notices to neighboring property owners within 1,500-feet of the subject property, posted the property, and published a legal notice on the County web page and in the *Bisbee Observer* on December 17, 2015. In response the Planning Department received four letters in opposition to medical marijuana at this location.

### IV. SUMMARY AND CONCLUSION

This is an Appeal of the Planning and Zoning Commission denial of SU-15-18 (Sonoran Care), a request for approval of a facility for personal services and the cultivation and dispensing of medical marijuana. Factors in Favor of Approving the Appeal to overturn the Planning and Zoning Commission decision.

1. Medical marijuana cultivation and dispensary facilities are authorized by the State of Arizona;
2. Medical marijuana land uses are allowed as Special Uses in the Rural Districts in Cochise County;
3. The proposal meets minimum site development standards for Special Uses in the Rural Zoning District, as well as those standards specific to medical marijuana uses; and
4. Sonoran Care LLC submitted an application that was in major conformance with the criteria used by the County to evaluate these requests.

Factors in Favor of Denying the Appeal to overturn the Planning and Zoning Commission decision.

1. Staff has received twelve letters in support of the denial.

#### V. STAFF RECOMMENDATION TO THE BOARD

Staff recommends conditional approval the Special Use Appeal to overturn the November 18, 2015 Planning Commission denial, thereby granting conditional approval of SU-15-18, with the conditions of approval as follows:

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 (except as modified) 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. 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;
3. Prior to or concurrent with the first Commercial Permit application the applicant will provide a Basic Traffic Report to the County Transportation Department that will include an assessment of the most suitable location for the driveway location and the design criteria of the driveway;
4. Prior to or concurrent with the first Commercial Permit application the applicant shall obtain a Cochise County Right-of-Way/Encroachment Permit;
5. The applicant shall design and construct any access from Central Highway to a commercial driveway standard per the Cochise County Roadway Design Standards or as approved by the County Engineer.

#### VI. ATTACHMENTS

- A. Appeal application
- B. October 29, 2015 Staff Memo to the Planning and Zoning Commission.
- C. Final Minutes of the November 18, 2015 Planning and Zoning Commission meeting pp 1-4.
- D. Public comment.