



Cochise County, Planning and Zoning Commission

MEETING MINUTES

April 11, 2012 at 3:00

Cochise County Complex
Board of Supervisors, Hearing Room
1415 W. Melody Lane, Building G
Bisbee, Arizona 85603

At 3:00 p.m. Mark Apel from the University of Arizona's Cooperative Extension presented a Renewable Energy Opportunity Analysis /Solar Facility Siting Analysis for Cochise County.

CALL TO ORDER

The regular meeting of the Cochise County Planning & Zoning Commission was called to order at 4:00 p.m. by Jim Lynch, Chair, at the Cochise County Complex, 1415 Melody Lane Building G, Bisbee, Arizona in the Board of Supervisors Board Room.

Mr. Lynch admonished the public to turn off cell phones, use the speaker request forms provided, and to address the Commission from the podium using the microphone. He explained the time allotted to speakers when at the podium. He then explained the composition of the Commission and asked the Commissioners to introduce themselves.

ROLLCALL

Chair Lynch noted the presence of a quorum, and called the roll; seven Commissioners (Martzke, Cervantes, Lynch, Sanger, Brauchla, Edie and Montano,) indicated their attendance, Bemis was absent.

APPROVAL OF PREVIOUS MONTH'S MINUTES

Mr. Lynch offered no corrections.

Motion: Approve the minutes of the March 14, 2012 meeting.

Action: Approve **Moved by:** Mr. Martzke, **Seconded by:** Ms. Edie

Vote: Motion passed (**Summary:** Yes = 6, No = 0, Abstain = 1)

Yes: Mr. Martzke, Mr. Cervantes, Mr. Sanger, Ms. Edie, Mr. Lynch, Mr. Brauchla

No: 0

Abstain: Mr. Montano

CALL TO THE PUBLIC

Chair Lynch opened the “Call to the Public.” Jack Cook spoke about various matters. Chair Lynch closed the “Call to the Public”

NEW BUSINESS

Item 1 – Docket SU-12-03 (DJMI, AZ)

This item is a request for approval of a Special Use Permit for guest lodging, on a 200-acre site per Section 607.01 of the Cochise County Zoning Regulations. The Applicant intends to establish and operate a religious retreat on the property (Parcel#401-01-071A).

The subject parcel is located off Robison Road, south of Parker Ranch Road and east of Kansas Settlement Road, in Cochise County, Arizona. The Applicant is the Disciples of Jesus and Mary, Inc. Senior Planner Beverly Wilson presented the Docket, explaining that DJMI has established a small prayer retreat center with a chapel, barn and shower house. It is on a 200-acre site and this request is to legitimize an existing shower house with guest lodging. She stated that Guest Lodging is permitted under section 607.01 of the Zoning Regulations. She showed photos of the site including the chapel and a building called the barn, as well as the two-story shower house with the two guest bedrooms on the second floor. She also showed pictures of the long driveway constructed by a contractor, and the gate that is kept locked. The driveway is 20-foot wide, but the site development standards require a 24-foot entry drive. She stated that the Applicant has requested a modification for the 20-foot driveway to be allowed to remain, as well as a waiver for the two-inch gravel required for the parking surface and entry drive. She presented four factors in favor of approval, the first being that an approved special use would legitimize the existing facility; guest lodging is an accessory to the church, which is a permitted use under the Zoning Regulations; the project would comply with six of the ten applicable special use factors which are used to analyze these requests; two of the factors would comply with conditions and modifications while the other two factors did not apply. Two neighboring property owners supported this request, and there is no expansion proposed as part of this special use request. Factors against approval include that the special use is being requested in order to avoid a violation of the zoning regulations and one neighboring property owner opposed that request. Ms. Wilson concluded and asked if there were any questions.

Mr. Lynch asked if the Applicant wanted to make a statement and Heidi Stamp of 8621 E. Weldon Ave. in Scottsdale, AZ spoke for the DJMI group. She stated that this property was purchased for the Disciples of Jesus and Mary, which is a group that seeking to deepen their prayer life and get away to a quiet place with nice surroundings. She stated that they thought they were doing everything correctly until they applied for another septic permit. Then they found they were in violation, and simply want to make their development right. They have about 20-30 people on average, with retreats about four times a year. The reason they built the guest lodging is for people who travel from Phoenix to these retreats who may not wish to travel back home on that same day, to be able to stay on site and enjoy the quiet.

Mr. Lynch stated that the public hearing was open and asked if any speakers would like to speak in favor of this project or any against; there being none, the public hearing was closed. He asked the Commissioners' if there was any discussion.

Mr. Lynch asked for the Planning Director's summary and recommendation. Ms. Wilson stated that Staff was recommending conditional approval and listed the four conditions recommended. The first condition was the standard acceptance of conditions form and waiver of claims form. On this particular docket Staff is recommending that within 60 days of approval, the Applicant will submit a completed joint permit application for the commercial use and that there will be a new site plan submitted in conformance with this approval, meeting all the site development standards except the modifications. Those modifications would allow the 20-foot driveway to remain and waiving the requirement for 2 inches of gravel. Staff asked that the permit be issued within 12 months of the special use instead of the 18 months normally given because the buildings are already there. The second condition is a requirement under the site development standards that the Applicant shall enter into a private maintenance agreement with the County at the time of commercial permitting to insure that the portion of Robison Road from Parker Ranch Road to the existing driveway is maintained in a safe and drivable condition. Ms. Wilson stated that she received a call from a neighbor living on the road and encouraged him to talk with Heidi and her group about making arrangements for mutually maintaining their road. The third condition is that it is the Applicant's responsibility to obtain any additional permits or meet any other conditions that might be applicable; and the final one is also a standard condition that any changes to the approved special use will be subject to review by the planning department and might require modification and another approval from the Commission.

Mr. Lynch asked if there were any questions, comments, discussion, and called for the motion.

Jim Martzke moved to conditionally approve the docket. Ms. Edie seconded, and the motion passed 7 – 0.

Motion: Motioned to approve the special use request.

Action: Approve **Moved by:** Mr. Martzke, **Seconded by:** Ms. Edie

Vote: Motion passed unanimously (**Summary:** Yes = 7, No = 0, Abstain = 0)

Yes: Mr. Martzke, Chair Lynch, Mr. Montano, Ms. Edie, Mr. Cervantes, Mr. Sanger, Mr. Brauchla.

Item 2 – Public Hearing Docket Z-12-04 (Doberstein): Senior Planner Keith Dennis presented the Docket, which is a request to rezone 5-acres in the Kansas Settlement area from RU-4 to Heavy Industry. The purpose of the request is to facilitate expansion of a use that has been on this property for six-years. Mr. Dennis stated the Applicant originally rented a building on this site and began his manufacturing operations there. He came to the County for a Special Use Permit for an existing business when he learned he needed to do so, which was docket SU-10-05. The special use permit was approved under the RU-4 zoning requirements which allow manufacturing in a rural district with a maximum of 5,000 square feet of activity area, including the interior of the building, and an outdoor storage area. Mr. Dennis stated that because the Applicant's business is doing very well, he has purchased the parcel and would like to expand. Mr. Dennis explained both the location of the site and the expansion concept plan. Mr. Dennis then presented a request for a waiver of the set-backs as the purchase of the parcel has changed the boundaries, forcing the existing shop to become non-conforming without a waiver.

Mr. Lynch asked if the Commissioners' had any questions and if the Applicant wished to make a statement. Mr. Ray Clump, an architect representing the Applicant, spoke and gave an explanation of the business operation and private maintenance of the Alamo Lane from Shelton Road to the Applicant's property.

Mr. Lynch asked if there were any questions and opened the public hearing. There being no one who wished to comment, he closed the public hearing and asked for Planning Director Summary and recommendations.

Mr. Dennis stated that Staff recommends that the Commission forward a recommendation for conditional approval to the Board of Supervisors including support for the requested waiver of setbacks. He also informed the Commission that this docket is scheduled to be heard by the Board on April 24, 2012.

Mr. Martzke moved to forward a recommendation of approval to the Board of Supervisors. Mr. Montano seconded the motion and it passed (7 – 0).

Motion: Forward Docket Z-12-04 to Board of Supervisors with a recommendation of conditional approval.

Action: Approve **Moved by:** Mr. Martzke, **Seconded by:** Mr. Montano

Vote: Motion passed unanimously (**Summary:** Yes = 7, No = 0, Abstain = 0)

Yes: Mr. Martzke, Mr. Montano, Chair Lynch, Ms. Edie, Mr. Cervantes, Mr. Sanger, Mr. Brauchla.

Item 3 – PUBLIC HEARING, Docket Z-12-03/SU-12-04 (G&M Propane): Senior Planner Beverly Wilson presented a request to down zone a parcel from R-36 to RU-2 and also a request for a Special Use authorization for a propane distribution facility and storage. The Applicant is Marshall Miles of G&M Propane, which is located north of Willcox on Joe Hines Road. Ms. Wilson gave a description of the site and the existing business, and stated that it is a 4.52 acre parcel. Ms. Wilson said that it is a combined docket because wholesaling warehousing distribution and storage of propane is only allowed in the RU district not in the current R-36 zoning district. A commercial LPG Tank permit has to be issued by the State Fire Marshall's Office and the electrical and all other site development standards will be inspected by the County.

Ms. Wilson stated that there are some modifications the Applicant has requested from the site development standards which include a waiver of the 6-foot screening requirement, a modification of the chip seal requirement to allow the 2" gravel to remain; and a waiver from the landscape requirement. Ms. Wilson explained the factors found in favor of approval, stating that the rezoning request is permitted within the growth Category B area on the Comprehensive Plan and meets the mandatory compliance for rezoning. There were two factors against approval, including the fact that the Applicant has operated this business without permits, and that there are no abutting RU-2 Zoning Districts.

Chairman Lynch asked if there were any questions from Staff and invited the Applicant to speak. Marshall Miles introduced himself and explained his request. Chairman Lynch opened the Call to Public. Mr. Spencer, a retired Law enforcement officer for ADOT, neighbor and friend of Mr.

Miles spoke in favor. Mr. Roger Barnett, of Sierra Vista spoke in opposition stating that it is not legitimized right now and Mr. Marshall has been prone to operating without permits in the past. He spoke of a past incident in Benson involving the Applicant and requested that the construction of the concrete supports be inspected before permit is issued.

Mr. Lynch asked if there were any other oppositions and being none the Public Hearing was closed and asked if Applicant would like to make a rebuttal to the opposition. Mr. Miles stated that with reference to the Benson incident, it was a portable tank which was on wheels and never was tried to put in service and was complete falsehood. He reiterated that he is trying to 'get righteous' with the County and has used the manufacturing specifications for installing the new tank in Willcox.

Mr. Lynch asked if there was any discussion from the Commissioners, and then called for the Planning Director's summary and recommendation. Ms. Wilson stated that Staff is recommending that Docket Z-12-03 be forwarded to the Board of Supervisors with a recommendation of conditional approval and that the Commission conditionally approve Docket SU-12-04. The conditions include the normal waiver of claims form being signed, that it is the Applicant's responsibility to submit a revised site plan; the Applicant must obtain any additional permits.

Mr. Martzke moved to forward Docket Z-12-03 to the Board of Supervisors with recommendation of conditional approval and conditions as listed in staff memorandum and further moved the approval of Docket SU-12-04 based on the five factors in favor of approval as findings of fact and with the conditions of approval recommended by staff and one additional condition that this approval be based on approval Docket Z-12-03 by the Board of Supervisors. Ms. Edie seconded, and the motion passed with a 7 – 0 vote.

Motion: Forward Docket Z-12-03 to Board of Supervisors with a recommendation of conditional approval and approve Docket SU-12-04.

Action: Approve **Moved by:** Mr. Martzke, **Seconded by:** Ms. Edie

Vote: Motion passed unanimously (**Summary:** Yes = 7, No = 0, Abstain = 0)

Yes: Mr. Martzke, Mr. Montano, Chair Lynch, Ms. Edie, Mr. Cervantes, Mr. Sanger, Mr. Brauchla.

Mr. Lynch called for a 10 minute break.

Mr. Lynch called reconvened the Commission and called for the next Docket.

Item 4 – PUBLIC HEARING, Docket SU-12-05 (Patten): This is a request for approval of a Medical Marijuana Cultivation Facility in the Douglas area.

The Chairman called for the Planning Directors report. Planning Manager, Michael Turisk presented the Docket, which is a request for a Special Use Authorization for a Medical Marijuana Cultivation facility near Douglas, and gave a brief background regarding the 2010 Medical Marijuana Act, proposition 203. The Applicant owns the 4.8 acre RU-4 zoned parcel near Douglas. The proposal includes a 3,000 sq. ft. greenhouse and a 600 sq. ft. accessory building for preparing the marijuana for transport off-site to sell at a different location in

Maricopa County. In July of 2011, this Applicant was denied her application for a medical marijuana facility on an adjacent parcel. The concept site plan submitted with that application was deficient and made a technical analysis very difficult.

Mr. Turisk then explained the current request including the surrounding areas and zoning. Much of the surrounding parcels are rural residential. This concept plan was complete and shows the location of the proposed use as being in the southeastern portion of the parcel. The Applicant owns the adjoining parcel. He then showed photographs of the surrounding area, explaining each to the Commission. Mr. Turisk explained that 5 of the 10 factors used for compliance; one factor complies with conditions and two factors do not comply. The application does not comply with the Traffic Circulation factor, as non-residential traffic is discouraged per the Zoning Regulations. The application does not comply with the factor on public input either, as there is significant neighborhood opposition. Mr. Turisk showed a map locating the 30 parcels surrounding Ms. Patten's property that are in opposition. One letter of support was received from the Applicant. The neighbor's concerns include poor condition of area roads; how much water will be used; the potential for flooding; impact on property values; and the crime potential. There were four factors in favor of approval including the agricultural nature of the request; the comprehensive plan allows this; the use will meet all applicable site development standards, and the use will not create off-site impacts. The three factors against include significant neighborhood opposition, the introduction of commercial traffic in the neighborhood, and the last includes a deed restriction in this area against offensive trade. He concluded his presentation and asked for questions from the Commission. Mr. Lynch asked if the deed restriction would be taken up in civil court. Mr. Hanson, County Attorney, answered in the affirmative.

There being no more questions from Staff, Mr. Lynch asked for the Applicant's statement. Mr. Brian Lockhart, Architect, represented Ms. Patten. He prepared the plans for the facility, which is permitted as a land use. He spoke to the two factors that do not comply – that Staff recommended a private maintenance agreement which Ms. Patten agrees with. She also agrees that Luna Lane should be brought to County standards, and a commercial driveway installed. Ms. Patten plans to hire two employees plus she will be working also. He reiterated that this will be a commercial cultivation site for a dispensary in Mesa with little to no contact with the County or the neighborhood. The two employees will live on the adjoining parcel, so commercial traffic will be minimal. Ms. Patten will transport her own product. Mr. Lockhart discussed the required security system, which will be approved by the State Department of Health. He discussed public input on dust, water use with a drip irrigation system using 10 gal per day; the flooding issue is not indicated as a major floodplain. Any issues with sheeting will be resolved by elevating the pre-manufactured greenhouse. It would not be a 'home-built' facility. He could not address the issues of crime but assured the Commission that Ms. Patten will be happy to work with law-enforcement to allay any neighborhood fears. He restated that as a commercial use, it is a very low commercial use. He closed by asking for questions – Mr. Sanger asked about the water quantity estimated. Mr. Lockhart stated that this was Ms. Patten's estimate and that the water is coming from a shared use well. Upon further questioning, Mr. Lockhart stated that with the drip system, even if it is more than 10 gpd, it would be significantly less than a 3-4 person family living on the site. He stated that at 50 gpd use per individual, a large family of nine or ten could use significantly more water than this proposed use. There were no more questions from the Commission.

Chair Lynch laid out some ground rules for the Public Comment. He asked that comments be kept in the area of land use only as the laws were passed at a State level.

Ms. Patten described how she arrived at the decision to grow marijuana. She stated that this is a health issue that 16 States have now passed laws on. She described the lack of State direction on this issue and the confusing issues surrounding it. It is planned that 126 dispensaries will be authorized throughout the State.

Chairman Lynch reiterated that State laws are not germane to the discussion and asked that all Speakers respect this.

Heather Fuegott was the first speaker in opposition – she cited the safety of her four children and herself, the increased traffic, and the unwanted crime. She purchased this property four months ago and if she had known, she would not have bought and moved into this neighborhood.

Leyland Frederickson spoke with the same issues: safety of family, the potential increase of crime, the loss of a quiet, rural life-style, strangers in the neighborhood. He questioned the water use estimate and the commercial use of the property in a residential area. He also is afraid of flooding on the existing infrastructure.

Patsy Gymont found misconceptions in the Staff memo and furnished photos to the Commission regarding the number of homes in the area. She had issues with the Staff photos and how they portray the neighborhood. Ms. Patten has owned the home for several years, but has never lived there and apparently feels that the neighborhood is substandard. Ms. Patten's arguments are just wrong – including the road conditions; the flooding; the drainage, and the amount of money needed to keep the roads passable. She would like to protect her own property and asked why the neighborhood would have to change their plans for Ms. Patten.

Kathleen Eisenbeis spoke of the 1975 restrictions placed on the property by Mr. Malloy. She stated that the survey of the neighborhood has issues with boundaries and came to a head when Ms. Patten brought in her utilities. Ms. Eisenbeis believes in the medical marijuana law and voted for it, but feels that a cultivation site so far away from a dispensary will fail to meet standards. She has returned home to Douglas and wants to allow her grandchildren to ride their ponies in the neighborhood. Her children want to move back to Douglas too, but wondered if it would be safe. She wants the County to be safe again and that this type of commercial venture shouldn't be located here where it endangers the surrounding neighbors. It should be located closer to cities where it can be protected.

Julie Comacho is absolutely opposed to someone growing pot in her backyard because of the violence it will bring. She believes in the medicinal uses of marijuana but that only reputable people should be allowed to grow it. She has an ongoing dispute with Ms. Patten regarding the survey of properties.

Jennifer Ariano believes in medical marijuana but does not believe this is the place for it. She mentioned an approved docket from last summer which had a warehouse and a secure area around it. Ms. Patten does not have that. She is married to law-enforcement and he should not

have to come home to find it in his back yard. She wants to know how she will be protected. Who designed the greenhouse and will it be secured? Is it environmentally sound with the high winds and the flood plain area? How will she be protected if the wind blows the greenhouse apart? She mentioned vectors and chain link fences—how can she be guaranteed that all the development standards will be met. She discussed discrimination referred to in a letter from Ms. Patten. She doesn't understand the purpose of this project in this neighborhood.

Maria Rochella does not agree with locating this project in the neighborhood with children. She expressed how her ability to live out there for the rural benefits will be taken away by this project. She is afraid of the violence that will come with the greenhouse. Her concerns are legitimate. The neighbors are against this project. Ms. Patten has options with many foreclosures and properties for sale that would be better suited for this use. She asked that this request be denied.

Ralph Adcock showed where his home is and that he also owns another rental. There are 28 homes in this area and everyone is overwhelmingly opposed. The photos were deceiving as to how close the homes are. He can already envision the 10-foot wall, the greenhouse, and the possibility of trying to sell his home someday. He is afraid of the bad guys that are going to come to a 3,000 sq. ft. greenhouse. If the greenhouse is too difficult for them to break into, then they will probably look in his yard. He is also concerned about the traffic that will be increased from law enforcement patrolling the site. He also is concerned about expansion of the greenhouse.

Bruce Skipper has a special request. He talked to Ms. Patten over the past days, and feels that he owes her an apology for things he has said. He spoke about a 20% rule that used to be in effect that allowed denial of a special use permit based on opposition in the neighborhood. He is concerned about his property values. What do we have to do as neighbors to convince the board that we don't want it? Crime is a real issue. He discussed street value of marijuana and how people kill for this. The Mexican Cartel will be involved. He questioned Ms. Patten's level of concern.

Jim Guymon was the final speaker. He recalled that his first encounter with Ms. Patten was pleasant and she had expressed the desire to live in the neighborhood for the quietness and view. She is now trying to destroy the same neighborhood with a large fence, security cameras, and barb wire. He asked that this board reject the application.

Chair Lynch then called on the Applicant to rebut – Mr. Lockhart addressed the issues brought up by neighbors. Four of the ten were in favor of medical marijuana, but not in their back yard. Ms. Patten has owned the property adjacent for some time and grew up in Douglas. Flood light issue is not valid as they would not be allowed under the Cochise County Light Pollution Code. The issue of a flimsy building that would blow over will be resolved by the Building Code which requires a building permit and inspections. The traffic concerns were addressed by the County Staff with conditions which Ms. Patten has agreed to. The issue of crime cannot be addressed. The State of Arizona will not approve this permit without the security being addressed. The State of Arizona is getting a lot of money out of the medical marijuana issue. Cochise County

will gain money from the permits, improvements to the roadway, and two gainfully employed people. The County has to approve any further expansion.

Ms. Patten then spoke about the petition that was handed out. She added the numbers in opposition differently than Mr. Skipper. Mesa has the same issues on zoning. There doesn't seem to be anywhere in Arizona that opposition wouldn't occur. She asked that the Commission consider the bigger picture.

Chair Lynch then closed the public hearing. There being no discussion from the Commission, he called for the Planning Director's summary and recommendation.

Mr. Turisk stated that this issue has generated a lot of emotion, but Staff did take a lot of time to technically analyze this proposal. Staff is recommending conditional approval with conditions including a private maintenance agreement for maintaining the road; a commercial apron built to County standards; this permit would be contingent upon State approval; the standard condition regarding time limits, the signing of required documents; and a condition regarding further expansion. If this docket is approved, Staff is recommending that the wall be allowed per State standards.

Chair Lynch asked if the roads were County maintained or if they were private. Mr. Turisk confirmed that the roads are private.

Ms. Edie asked if the private easement could restrict access. Mr. Turisk confirmed that on a private easement question, it would be resolved as a civil matter.

Chair Lynch asked for discussion. Mr. Martzke commented that there were a lot of people opposed, and that the State's uncertainty doesn't help. Fear of crime and affects on children seem to be the prevailing concern. He reaffirmed that there seems to be a lot of opposition. Chair Lynch agreed with him.

Mr. Sanger commented on the water use, flood plain, light pollution, and crime. He didn't think any of these questions were really answered. He is mostly concerned about crime being so close to the border.

Ms. Patten then came to the podium to speak about the crime in Colorado and California. There seems to be no increase in crime in Colorado.

Chair Lynch then asked if any other Commissioners had comments. He then stated that there are factors that the Commission can weigh when making these types of decisions. In his opinion, the opposition expressed was overwhelming.

He called for the motion – Mr. Martzke moved for approval of Docket SU-12-05. Ms. Edie seconded, there were no votes in favor and unanimous opposition.

Motion: Approve Docket SU-12-03 **Action:** Deny **Moved by:** Mr. Martzke, **Seconded by:** Ms. Edie

Vote: Motion failed unanimously (**Summary:** Yes = 0, No = 7, Abstain = 0)

Yes: Mr. Martzke, Chair Lynch, Ms. Edie, Mr. Cervantes, Mr. Sanger, Mr. Brauchla.

Mr. Turisk gave the Director's report – both zonings forwarded to the Board of Supervisors from last month's meeting were approved. Next month's meeting has four dockets.

Chair Lynch asked if the Commission had any comments and asked if there were any planned absences.

Carlos De La Torre, Director of community Development, added that per the Commission's request, a special work session with the Board of Supervisors is scheduled for 2:30 pm on May 9th. This work session is to discuss the requirements for the concept plans submitted with dockets.

Chair Lynch then inquired about the email problems. Mr. Turisk asked if anyone is having problems because he hasn't heard from anyone. Mr. De La Torre assured Chair Lynch that Staff would contact each member and resolve their issues.

Item 8 – ADJOURNMENT: Mr. Martzke moved to adjourn, Mr. Montano seconded, and the meeting was adjourned at 6:52 p.m.