

**EXPANDED AGENDA**  
**Board of Adjustment, District 2**  
**August 5, 2015; 6 P.M.**  
**Board of Supervisors' Conference Room**  
**1415 Melody Lane, Building G**  
**Bisbee, Arizona 85603**

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6:00 P.M. Call to Order

Roll Call (Introduce Board members, and explain quorum)

(Also explain procedure for public hearing, i.e., after Planning Director's Report, Applicant will be allowed 10 minutes; other persons will each have 5 minutes to speak and Applicant can have 5 minutes for rebuttal at end, if appropriate.)

Determination of Quorum

Approval of Previous Minutes

**NEW BUSINESS**

***Item 1 - Introduce Docket and advise public who the Applicants are.***

**Docket BA2-14-02 (Kimbrough):** The Applicant is requesting a Variance from Section 705 of the Cochise County Zoning Regulations requiring all Accessory Structures in an R-36 Zoning District to be incidental to and smaller than the Principal Structure. The Applicant intends to construct a 2,400 square-foot car barn, which is larger than the 2,216 square-foot home. The subject parcel (107-69-001A) is located at 4837 E. Camino Principal in Sierra Vista, AZ. The Applicants are V. Gene and Judy R. Kimbrough.

***Item 2 - Introduce Docket and advise public who the Applicants are.***

**Docket BA2-15-01 (Malone):** The Appellants wish to install a self contained ham radio facility, without a dwelling on the subject parcel which is zoned SR-12. The Appellants are appealing the County Zoning Inspector's determination that the facility is not a Utility Installation, and is therefore not a Principal Use. The subject parcel, 406-22-004, is located on N. Santa Paula Drive, in Douglas, AZ. The Appellants are Patrick and Alicia Malone.

- Call for PLANNING DIRECTOR'S PRESENTATION
- Declare PUBLIC HEARING OPEN
  1. Call for APPLICANT'S STATEMENT
  2. Call for COMMENT FROM OTHER PERSONS (either in favor or against)
  3. Call for APPLICANT'S REBUTTAL (if appropriate)
- Declare PUBLIC HEARING CLOSED
- Call for BOARD DISCUSSION (may ask questions of Applicant)
- Call for PLANNING DIRECTOR'S SUMMARY AND RECOMMENDATION
- Call for MOTION
- Call for DISCUSSION OF MOTION
- Call for QUESTIONS

- ANNOUNCE ACTION TAKEN (with Findings of Fact)

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***Item 3 - Call for Planning Director's Report***

***Item 4 - Call to the Public***

**ADJOURN**



# COCHISE COUNTY COMMUNITY DEVELOPMENT

*"Public Programs... Personal Service"*

**TO:** Board of Adjustment, District 2  
**FROM:** Peter Gardner, Planner I  
For: Beverly Wilson, Planning Director  
**SUBJECT:** Minutes of the Regular Meeting of June 4, 2014  
**DATE:** June 5, 2014

**Members Present:**

Patrick Green, Chair  
Albert Young, Vice Chair

**Staff Present:**

Peter Gardner, Planner I

**Others Present:**

V. Gene Kimbrough, Applicant

*These minutes for the BA2 meeting held on June 4, 2014, are complete only when accompanied by the memoranda for said meeting dated June 4, 2014.*

**Call to Order / Roll Call:**

Chair, Patrick Greene called the meeting to order at 6:00 p.m. at the Board of Supervisors' Executive Meeting Room at the County Complex in Bisbee. He noted that two Board members, himself and Mr. Young, were present, establishing that the Board had a quorum and could proceed. Mr. Young made a motion to approve the minutes of the February 5, 2014 special meeting. Mr. Greene seconded the motion, and the vote was 1-0 to approve the minutes of the February 5, 2014 meeting, with Mr. Young abstaining.

Chair Greene explained the procedures of the meeting to those present.

**NEW BUSINESS**

**Docket BA2-14-02 (Kimbrough):** The Applicant is requesting a Variance from Section 705 of the Cochise County Zoning Regulations requiring all Accessory Structures in an R-36 Zoning District to be incidental to and smaller than the Principal Structure. The Applicant intends to construct a 2,400 square-foot car barn, which is larger than the 2,216 square-foot home. The subject parcel (107-69-001A) is located at 4837 E. Camino Principal in Sierra Vista, AZ. It is further described as being situated in Section 30 of Township 22, Range 21 East of the G&SRB&M, in Cochise County, Arizona. The Applicants are V. Gene and Judy R. Kimbrough.

Chair Greene called for the Planning Director's presentation on the Docket.

Peter Gardner, Planner I, delivered the report on behalf of the Planning Director, illustrating the facts of the case, as well as the staff recommendation, utilizing photos, maps and other visual aids. He explained the background of the case and the circumstances surrounding the Variances requested under consideration.

Mr. Greene noted that the Applicant was present, and invited him to make a statement. Mr. Kimbrough explained the background and nature of his request. He also explained the requested Variance and the rationale behind them.

There being no other speakers present, Mr. Greene noted that there was no need for a public hearing, Mr. Greene asked for Staff's recommendation. Mr. Gardner offered factors in favor and against approval and indicated that Staff recommended Approval of the Variance requests. Mr. Young made a motion to approve the Variances as recommended by Staff. Mr. Greene seconded and the motion passed 2 – 0.

**Planning Director's Report:**

Mr. Gardner noted that there were no dockets on the agenda for July. Mr. Young made a motion to adjourn. Mr. Greene seconded, and the meeting was adjourned at 6:24 p.m.



# Cochise County Community Development

Highway and Floodplain Division

Public Programs...Personal Service  
www.cochise.az.gov

## MEMORANDUM

**TO:** Cochise County Board of Adjustment, District 2  
**FROM:** Peter Gardner, Planner I  
**FOR:** Mary Gomez, Interim Planning Director  
**SUBJECT:** Docket BA2-15-02 (Family Dollar Elfrida)  
**DATE:** July 23, 2015 for the August 5, 2015 Meeting

### REQUEST FOR A VARIANCE

The Applicant is requesting a Variance from Section 1907.2 of the Cochise County Zoning Regulations requiring all Signs in a GB Zoning District to be no larger than 80 square feet along an arterial road and no larger than 64 square feet along a collector road. The Applicant wishes to install signs of approximately 86 square feet along an arterial road and a collector road.

### I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

**Parcel Size:** 1.92 acres (83,418-square feet)  
**Growth Area:** C – Rural Community Area  
**Comprehensive Plan Designation:** Enterprise/Developing  
**Area Plan:** Elfrida Area Plan  
**Existing Uses:** Gas Station /Convenience Store  
**Proposed Uses:** Retail Establishment

### Surrounding Zoning and Uses

Relation to Subject Parcel	Zoning District	Use of Property
North	R-18	Single-family residences
South	County Maintained Road / GB	W. Jefferson Road / Tire Shop
East	GB/R-18	Vacant Building / Single-family residences
West	State Highway / GB	Highway 191 / Mixed Development

#### Highway and Floodplain

1415 Melody Lane, Building F

Bisbee, Arizona 85603

520-432-9300

520-432-9337 fax

1-800-752-3745

highway@cochise.az.gov

#### Planning, Zoning and Building Safety

1415 Melody Lane, Building E

Bisbee, Arizona 85603

520-432-9300

520-432-9278 fax

1-877-777-7958

planningandzoning@cochise.az.gov

## II. PARCEL HISTORY

- 1956– Gas station and store built.
- 2005 – Permits for single family residence and fence issued.
- 2011 – Violation issued for remodeling home into a restaurant and establishing a used car lot without permits.
- 2011 – Request for rezoning filed and withdrawn.
- 2012 – Permit issued for U-Haul rental business. Violation for a tire repair shop without a permit. Permit issued and withdrawn for tire repair.

## III. PROJECT DESCRIPTION

This is a request for a Variance to allow the permitting of one pole sign of approximately 97-square feet, and two wall signs of approximately 140-square feet each. In the General Business Zoning District, the one free standing sign and two wall signs are permitted, and the aggregate sign area is also compliant with the Zoning Regulations. The sizes of the individual signs are not compliant. The Regulations permit the pole sign and one wall sign, which face Highway 191, an arterial road, to be 80-square feet each, and the wall sign facing W. Jefferson Road, a collector road, to be 64-square feet. The Applicant is requesting the pole sign to be approximately 21% larger than permitted, the wall sign facing Highway 191 to be 75% larger than permitted, and the Wall sign facing Jefferson Road is approximately 118% larger than permitted.

## IV. ANALYSIS OF IMPACTS

The Applicant is requesting a Variance to install one ground mount and two wall mount signs, all three of which are larger than those permitted in the Zoning District. In addition, the signs are internally illuminated cabinets. Article 19 of the zoning regulations defines the purpose of the section as :

### ***1901 Purpose***

**1901.01** Signs are herein regulated in the interest of promoting traffic safety, safeguarding public health and comfort, facilitating police and fire protection, protecting scenic views and dark night skies, and preventing adverse impacts upon community appearance.

**1901.02** These Zoning Regulations are designed to prevent the over-concentration, improper placement, and excessive height, bulk, and area of signs in order to: promote an optimum level of signage consistent with the needs and character of different areas; to permit legible and effective signage of individual sites for the convenience of the public and in the interest of the full enjoyment of property rights, and to prevent the obstruction by sign clutter of traffic visibility, traffic signs and signals, neighboring uses and signs, and scenic views.

The proposed signs do not comply with these purpose statements, and are also out of character for the surrounding area. The neighboring businesses have primarily non-illuminated signs which are no greater than 80-square feet, and in many cases are significantly smaller. Elfrida is a small, rural community, with one

commercial strip. Large signs are not necessary to locate the property, nor to stand out from any existing or potential competitors.



*Above: Location Map, showing the commercial section of Elfrida, with the subject property highlighted.*

While Board of Adjustment decisions do not create legal precedent, especially across the three such Boards within the County, they may still provide guidance when similar situations arise. In 2011 a Family Dollar store located at 4155 S. Highway 92 just south of incorporated Sierra Vista installed a 138-square foot internally illuminated wall sign without a permit, was issued a Violation, and subsequently applied to the Board of Adjustment, District 1 for a Variance to permit the sign. At the Public Hearing, the Board of Adjustment voted 3-0 to deny the request for the 138-square foot sign, but did permit the store to re-install the previous 116-square foot sign that had previously been installed without a permit. This location is along a larger thoroughfare, in a much more dense urban area with a proliferation of large lighted signage, and the existing 116-square foot wall sign and 60-square foot pole sign constructed in 2014 provide ample opportunity to locate the store. The requested signage at this location is out of character, obtrusive, and unnecessary to meet the store's needs.

## V. PUBLIC COMMENT

The Department mailed notices to neighboring property owners within 300-ft. of the subject parcel. Staff posted a legal notice on the property on July 21, 2015 and published a legal notice in the Bisbee Observer on July 16, 2015. To date, the Department has received one letter of support from a neighboring property owner.



*Above: View of the existing pole sign, approximately 40-square feet.*

## VI. SUMMARY AND CONCLUSION

### **Factors in Favor of Allowing the Variance**

1. The County government has been engaged in an ongoing effort to make government operations, administration of Zoning and other regulations, and permitting requirements more “business friendly.” Allowing the signs would reinforce this effort; and
2. One neighboring property owner has supported the request in writing.

### **Factors Against Allowing the Variance**

1. The proposed signs do not meet the purpose of the Sign Code;
2. The proposed signs would not fit with the Rural Character of the local community and existing development;

- 3. Although Board of Adjustment cases are considered on a case by case basis and are not considered as “precedent setting,” a favorable ruling on this Docket could be taken as such by the public or business community; and
- 4. Smaller, compliant signs have proven adequate in areas with higher traffic and density of both buildings and signs.



*Above: View of the sign for the market across the street, approximately 30-square feet.*

**VII. RECOMMENDATION**

Based on the Factors in Favor of Approval as Finding of Facts, staff recommends **Denial** of the Variance request.

Sample Motion: *Mr. Chair, I move to approve Docket BA2-15-02, granting the Variance as requested by the Applicant, the Factors in Favor of approval constituting the Findings of Fact.*

**VIII. ATTACHMENTS**

- A. Variance Application
- B. Location Map
- C. Site Plan
- D. Public Comment



# COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

## APPLICATION FOR VARIANCE

DESIRING A VARIANCE FROM THE TERMS OF THE COCHISE COUNTY ZONING REGULATIONS:

TO THE HONORABLE BOARD OF ADJUSTMENT, DISTRICT 2

I (we), the undersigned, hereby petition the Cochise County Board of Adjustment, District 2

to grant a variance from the terms of the Cochise County Zoning Regulations as follows:

(Note: Complete all the following items. If necessary, attach additional sheets.)

1. Parcel Number: 403.23.008A & 403.23.0010A.
2. Address of parcel: 10387 US Highway 191
3. Area of Parcel (to nearest tenth of an acre): 1.90
4. Zoning District designation of Parcel: 6B (Arterial)
5. Describe existing uses of the parcel and the size and location of existing structures and buildings on it.

vacant lot

6. Describe all proposed uses or structures, which are to be placed on the property.

Family Dollar Retail

7. State the specific nature of the variance or variances sought.

Increase in size of exterior signs

8. A variance may be granted only when, due to any peculiar situation surrounding a condition of a specific piece of property, including unusual geographic or topographic conditions, strict application of the Zoning Regulations would result in an unnecessary hardship to the property owner. In granting variances, however, the general intent & purpose of the Zoning Regulations will be preserved (See attached Section 2103.02 on variances). Describe the reasons for requesting the variance and attach any documents necessary to demonstrate compliance with the provisions cited above.

The town could use the presence of some type of business - this appears to be the ONLY lit sign in the area - so an increase in sign size and illumination will add something to this area

9. State why the variance would not cause injury to or impair the rights of surrounding property owners. Identify conditions you propose, if any, to minimize the impact on surrounding properties. It shall be the responsibility of the Applicant to submit any studies and/or data necessary to demonstrate the effectiveness of the alternative conditions.

no injury - town would probably welcome some type of business - any type

- we would reduce the requested ground sign to 15' with a 15' set back -

10. List the name and address of all owners of the Parcel(s) for which the variance is sought.

PROPERTY OWNER

MAIL ADDRESS

Hutton Growth ONE, LLC 736 Cherry St. Chattanooga, TN 37402

The undersigned hereby certifies and declares that to the best of his/her knowledge and belief the data submitted on and attached to this application for a variance from the terms of the Cochise County Zoning Regulations are true and correct.

SIGNATURE OF PETITIONER

ADDRESS

DATE

Mark A. Byrnes

153 Pembroke Ct.  
Keller, TX 76248

6/10/15

APPLICANT'S PHONE NUMBER

888-349-4971 x 101

APPLICANT'S EMAIL ADDRESS

mkersey@sigbrand.com

Note: Each application shall be accompanied by an accurate site plan showing the parcel of land and the existing and proposed structures and buildings on it, and shall be accompanied by a check in the amount of three hundred dollars (\$300) payable to the Cochise County Treasurer. Return to the Cochise County Planning Department, 1415 Melody Lane, Building E, Bisbee, Arizona, 85603.

2103.02 Variances

The Board of Adjustment may grant a variance from the terms of these Zoning Regulations when, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting such variance the general intent and purposes of the Zoning Regulations will be preserved. It shall be the responsibility of the applicant to submit any studies and/or data necessary to demonstrate the effectiveness of the alternative conditions.

These zoning regulations are generally intended to yield results that are in compliance with all other applicable laws. A request for a "reasonable accommodation" in these regulations, pursuant to any federal or state housing law or other similar legislation, as may be necessary to afford an equal opportunity to housing under any such law, shall be considered to be an appropriate condition for a variance from the strict application of these zoning regulations. The Board of Adjustment is authorized to grant any such variance, to the extent that any such accommodation is required pursuant to any applicable state or federal law.

Any decision of the Board of Adjustment allowing a variance shall be considered for revocation by the Board of Adjustment if substantial construction, in accordance with the plans for which such variance was granted, has not been initiated within 12 months of the date of approval, building permit issuance, or if judicial proceeding to review the Board of Adjustment's decision has been instituted, 12 months from the date of entry of the final order in such proceedings, including appeals. Additionally, if any of the conditions of the variance approval are not complied with within 12 months or within the time period set by the Board, it shall be revoked after 30 days notice to the owner and applicant, unless a request for a review hearing before the Board of Adjustment is made by the applicant within this 30 day appeal period. The Board of Adjustment may grant reasonable extensions to the time limits upon a hearing pursuant to a timely written request by the applicant.



**Sign Submittal Package**

# 710995

10387 N. Highway 191  
Elfrida, AZ 85610

*Exterior Identification Signage*

**Date:**

7/16/14

9/28/14

12/14/14

4/29/15

**REVISION 6/17/15**



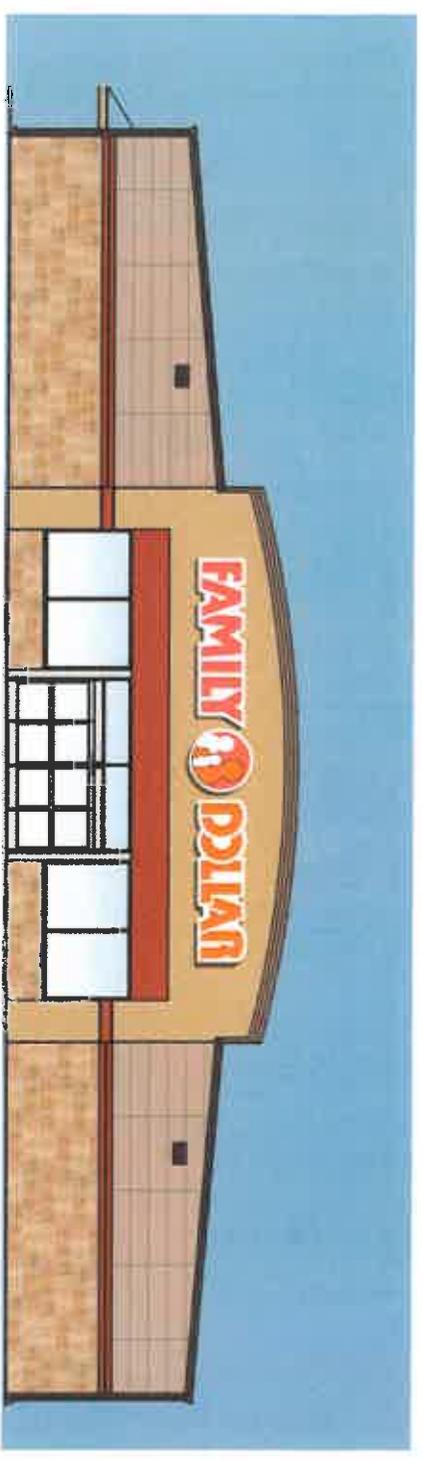
**signature**<sup>TM</sup>  
P. 888.349.4751  
[www.sigbrand.com](http://www.sigbrand.com)

10 A

**Description**  
 Entry & Building Identification Signage

**Sign Schedule**

- 1 "PS-1A" Pylon
- 2 "LCM-1A" Vacuum formed Faces and Cabinet w/Internal Galvanized Frame
- 3 "LCM-1A" Vacuum formed Faces and Cabinet w/Internal Galvanized Frame



BUILDING ELEVATION - Front View NTS.



NTS

Drawn By: /signdrawings  
**Revisions and Notes**

- 1) NOTE:  
 Wall sign (LCM-1A) and pylon (PS-1A) must have opaque backgrounds. Only the copy is allowed to illuminate-----7/16/14
- 2) Changed sign type names and change ground sign set back 9/28/14
- 3) Changed all sign type names 12/14/14
- 4) Changed ground sign height and changed plot maps -4/29/15

**Client Review Status**

- Approved
- Approved as Noted
- Revise & Resubmit

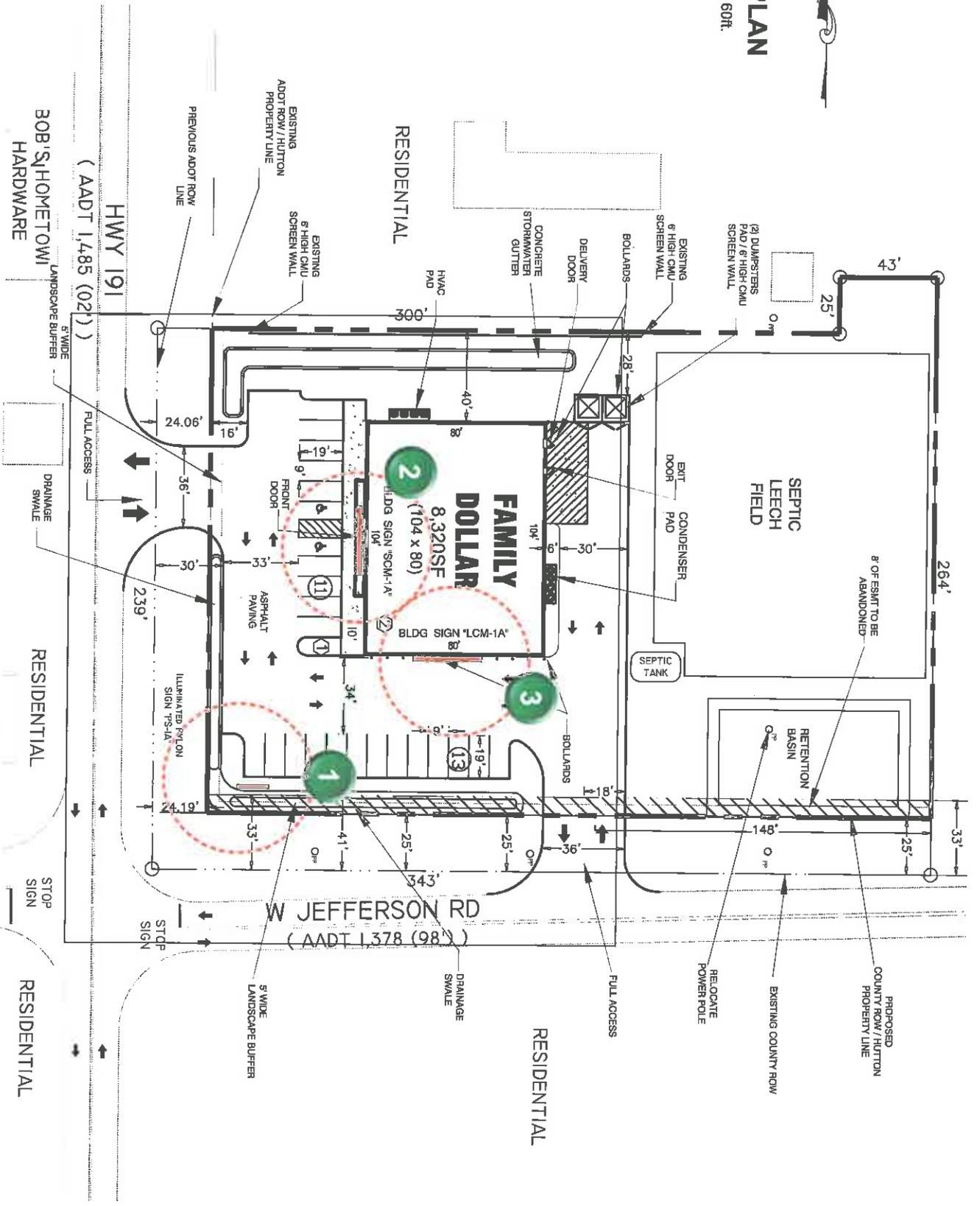
**Initial** \_\_\_\_\_  
**Date** \_\_\_\_\_





# SITE PLAN

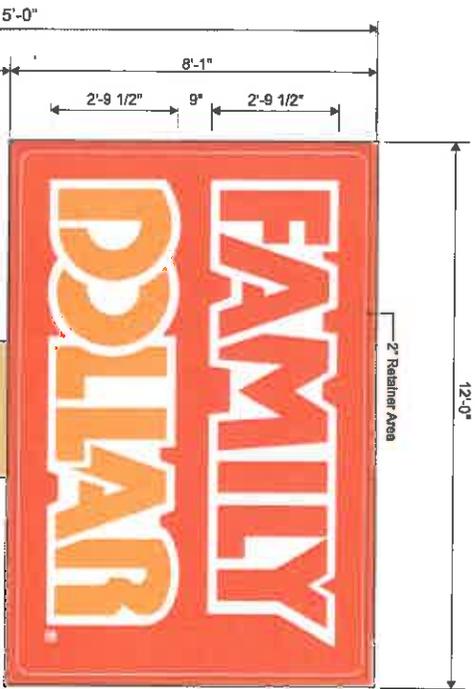
Scale: 1/4" = 60'



CLIENT NAME: Family Dollar  
 ADDRESS: 10387 N. Highway 191, Efrida, AZ 85610 (FD #710995)

PAGE NUMBER: 3 of 8  
 DRAWING NUMBER: 14-1097 R5

12 A



**1** PS-1A - D/F Pylon Elevation  
 QTY: 1 SCALE: 1/4" = 1'-0"

CLIENT NAME

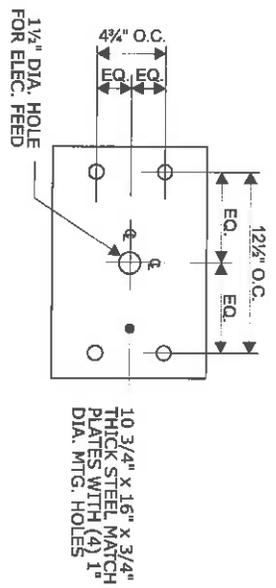
Family Dollar 10387 N. Highway 191, Elfrida, AZ 85610 (FD #710995)

ADDRESS

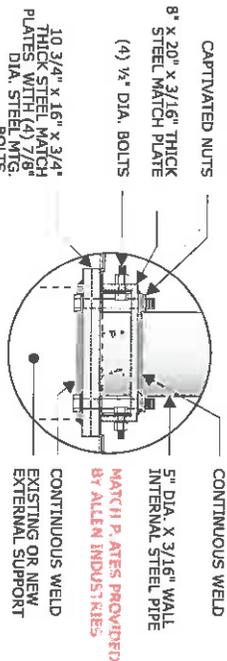
Sign MUST have opaque background only the copy is to illuminate at night

PAGE NUMBER DRAWING NUMBER

4 of 8 14-1097 R5



**TOP VIEW - MATCH PLATE**  
 N.T.S.



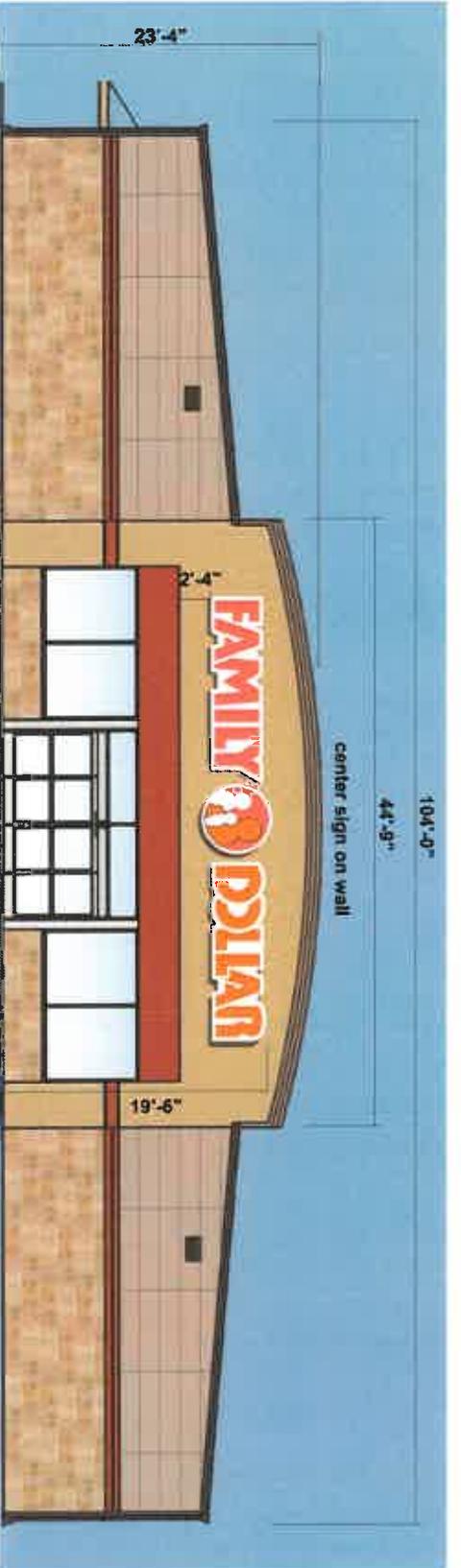
**MATCH PLATE SECTION DETAIL**  
 N.T.S.

NOTE: SUB-CONTRACTOR IS RESPONSIBLE FOR PROVIDING ALL MATCH PLATE HARDWARE

**GENERAL SPECIFICATIONS:**

- Sign Cabinet:** 8'-1" x 12'-0" (12" deep) double-face, illuminated sign cabinet manufactured from 12" deep aluminum cabinet extrusion & 2" aluminum retainer extrusion.
  - Illumination:** LED's powered with electronic power supply as required. Disconnect switch will be located at lower end side of cabinet.
  - Sign Face:** (2) pan formed 2" deep, .177" thick polycarbonate faces with 1/2" embossed "FAMILY DOLLAR" copy and 1/4" embossed copy border. Registered mark to be flat. (1) one side of face anchored into 2" retainer system and hinged for servicing.
  - Sign Colors:** Steel Pipe painted White Cabinet & Retainer = #02 UNIQUE RED (GRP GUARD) Face Colors = #437 UNIQUE RED (LACRYL), #165 ORANGE (PMS), WHITE
  - Installation:** Attachment and Foundation per Structural Engineer recommendation)
- \*NOTE\*** All components are U.L. Listed with U.L. Label.

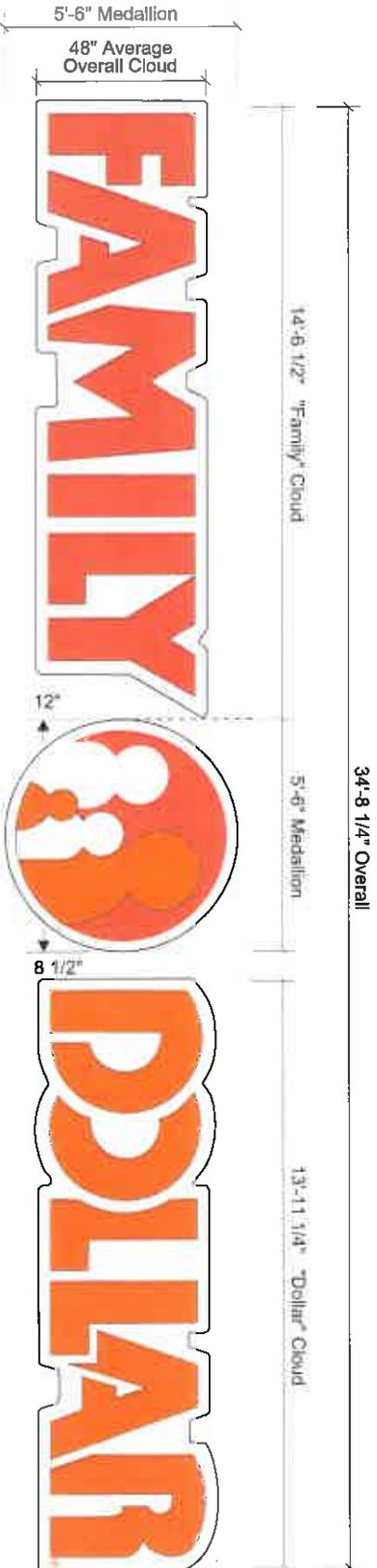
13 A



BUILDING ELEVATION - Front View - West Side

Scale: 5/64"=1'-0"

2



2 "LGM-1A" Vacuum formed Faces and Cabinet w/Internal Galvanized Frame

SCALE: 1/4" = 1' - 0"



Sign MUST have opaque background  
only the copy is to illuminate at night

CLIENT NAME

Family Dollar

ADDRESS

10387 N. Highway 191, Elfrida, AZ 85610 (FD #710995)

PAGE NUMBER DRAWING NUMBER

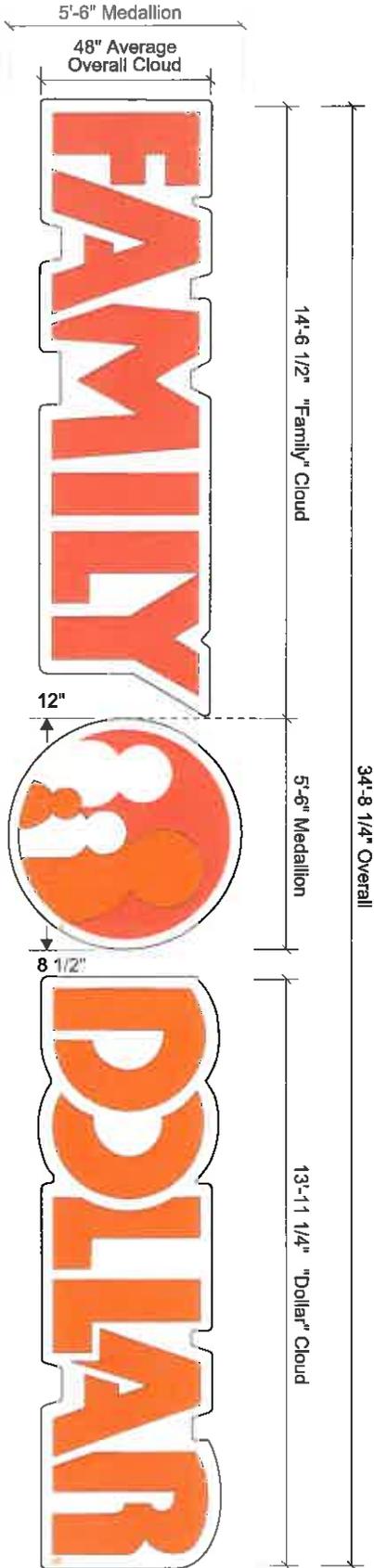
5 of 8 14-1097 R5



BUILDING ELEVATION - Right View - South Side

Scale: 5/64"=1'-0"

3



3

"LGM-1A" Vacuum formed Faces and Cabinet w/Internal Galvanized Frame

SCALE: 1/4" = 1'-0"



CLIENT NAME Family Dollar  
 ADDRESS 10387 N. Highway 191, Elfrida, AZ 85610 (FD #710995)

PAGE NUMBER 6 of 8  
 DRAWING NUMBER 14-1097 R5

See Face Mounting Detail

.177" Thk. Solar Grade Polycarbonate w/ Second Surface Painted Background Color and Graphics

.220" Thk. Formed ABS-Korad Backs (Smooth Finish)

2 1/2"  $\pm$  1/8"



Side View

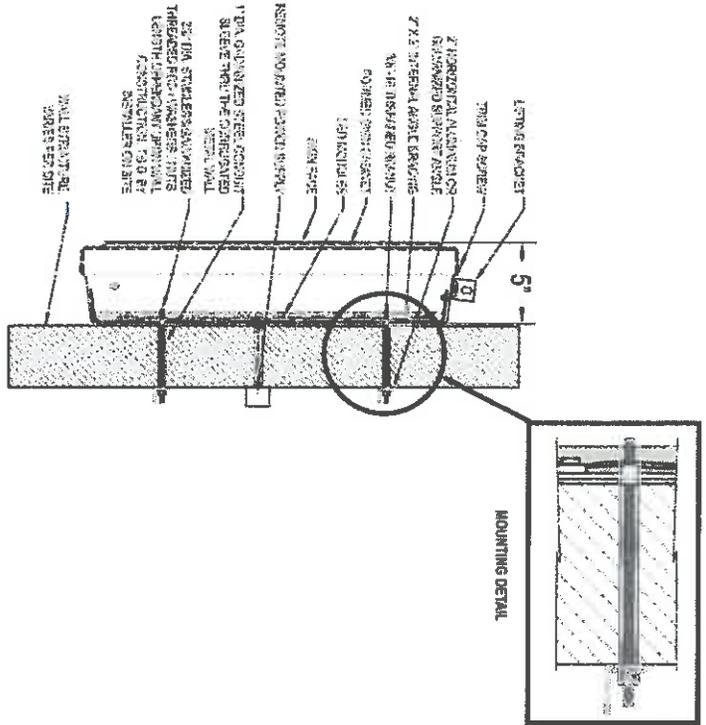
.177" Thk. Solar Grade Polycarbonate w/ Second Surface Painted Background Color and Graphics

1 1/2" Pan-head Machine Screws w/ Washer, Painted White Satin Finish

.220" Thk. Formed ABS/Korad Backs (Smooth Finish)

#47230 Aluminum Riv-nut

Face Mounting Detail



MOUNTING DETAIL

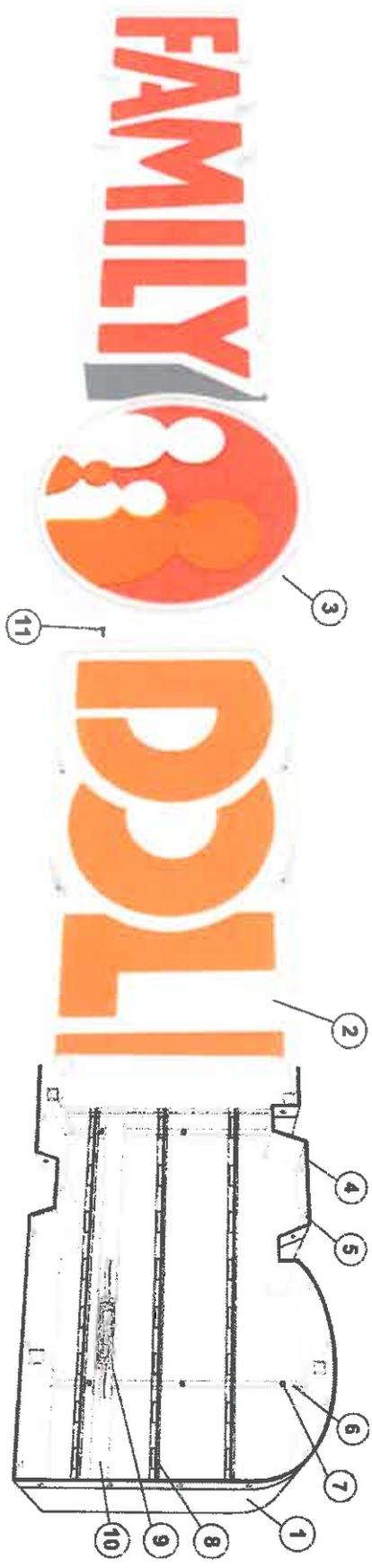
**MEDALLION & TEXT THRU-BOLT ATTACHMENT DETAIL**

CLIENT NAME: Family Dollar  
ADDRESS: 10387 N. Highway 191, Elfrida, AZ 85610 (FD #710995)

PAGE NUMBER: 7 of 8  
DRAWING NUMBER: 14-1097 R5

16 A

17 A

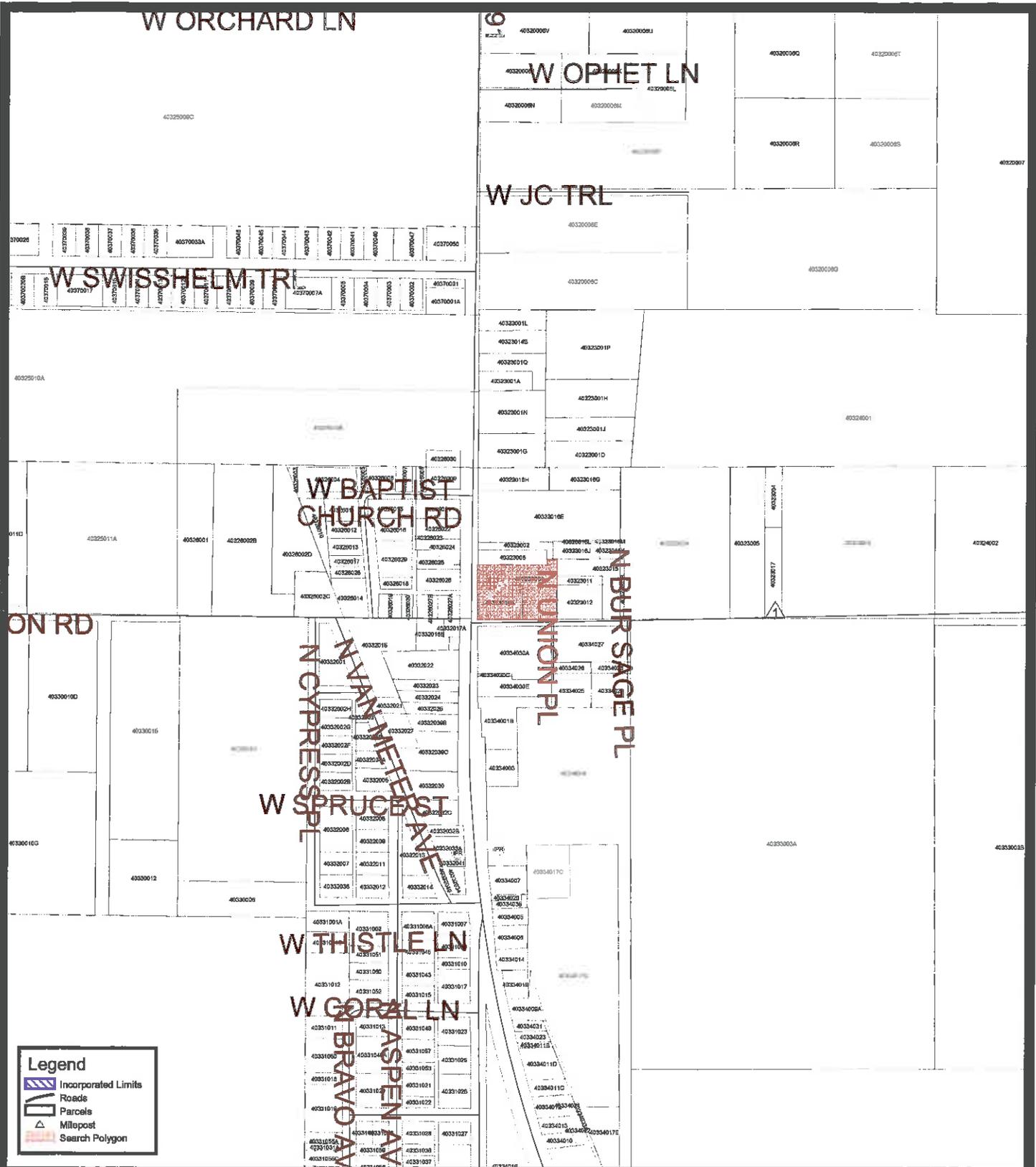


**NOTES AND SPECIFICATIONS**

- 1. .220" thick x 6" Deep, formed ABS/Korad Sign Cabinet (Smooth Finish) White
- 2. 2" Deep, .177 thick Solar Grade Polycarbonate Pan Formed Sign Face with 1/2" Embossed Letters and Second Surface Painted Background.
- 3. 1 1/2" Pan-head Machine Screws with Washer. Painted White Satin Finish.
- 4. Rubber Gasket All Around Perimeter of ABS/Korad Sign Cabinet
- 5. Aluminum Riv-nut
- 6. 1" x 1" x 1/8" Square Steel Tube Sign Frame
- 7. 1/2" Diameter Steel Thru Bolt
- 8. LED Illumination
- 9. 120V, 2.5 amp Ballast (one per cabinet)
- 10. UL Approved Extruded Aluminum Wireway
- 11. Primary Service Disconnect Switch (one per cabinet)

CLIENT NAME **Family Dollar** ADDRESS **10387 N. Highway 191, Elfrida, AZ 85610 (FD #710995)**

PAGE NUMBER **8 of 8** DRAWING NUMBER **14-1097 R5**



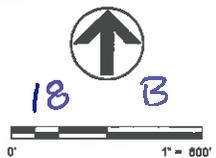
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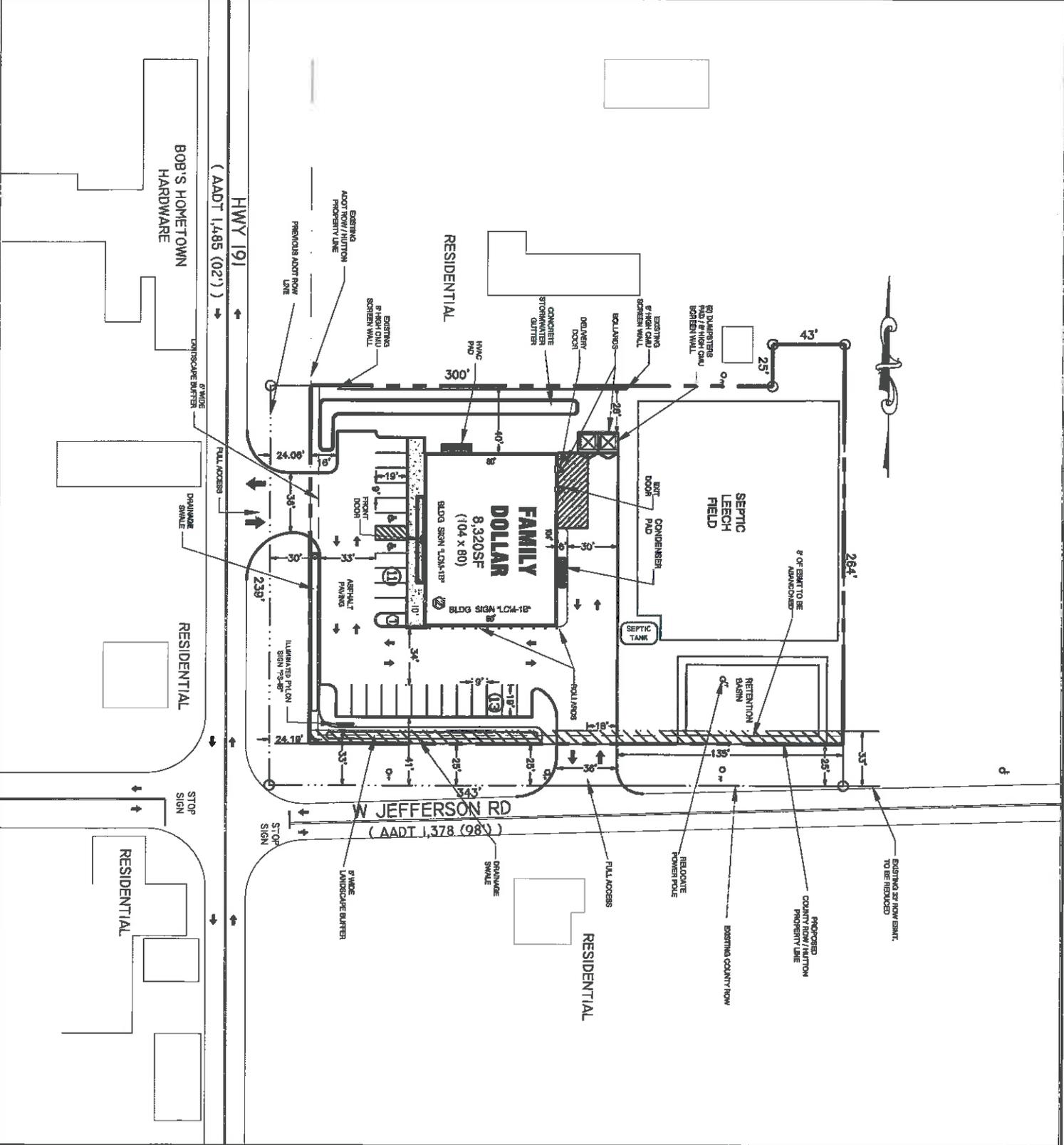
- Incorporated Limits
- Roads
- Parcels
- Milepost
- Search Polygon



-15-02 (Family Dollar El)

This map is a product of the Cochise County GIS Information Technology Dept.





FAMILY DOLLAR  
APPROVAL STAMP

**AZ - Elfrida**  
10387 & 10391 U.S. HWY 191  
(NEC HWY 191 & Jefferson Rd)

**SITE PLAN**

Existing Zoning: -

**Area Summary:**  
Total Site Area: 69,332 SF 1.59 AC  
Building: 8,320 SF  
Asphalt Paving: 18,893 SF  
Concrete: 1,624 SF  
Green Area: 40,495 SF

**Parking Summary:**  
Required: 24 Spaces (Ratio: 1/350SF)  
Provided: 24 Spaces  
Space Size: 9' x 19'

**Building Setbacks:**  
Front: 5 FT 92 FT  
Side: (North) 40 FT 40 FT  
Side: (South) 5 FT 70 FT  
Rear: 40 FT 171 FT

**Landscape Requirements / Notes:**  
1 Landscape Island.  
2 Hutton will pursue variance to achieve building sign LCM-1A and pylon sign PS-1A.

Date Prepared: 07/17/2014  
Rev #1: 09/11/2014  
Rev #2: 05/04/2015  
Rev #3: 00/00/2015

Drawn By: JF/VH

Prepared For:  
**FAMILY DOLLAR**

**Hutton**  
RESIDENTIAL PLANNING CONSULTING  
736 Cherry St.  
Chattanooga, TN 37402

N  
E  
W  
S  
SCALE: 1" = 80'

16

**Variance request Docket BA2-15-02 (Family Dollar Elfrida)**

**YES, I SUPPORT THIS REQUEST**

Please state your reasons:

*This can save us many miles of traveling to Douglas or Silver Vista. Some people in Elfrida have no transportation to travel to other towns to shop.*

**NO, I DO NOT SUPPORT THIS REQUEST:**

Please state your reasons:

(Attach additional sheets, if necessary)

PRINT

NAME(S):

*Donald Sieling*

SIGNATURE(S):

*Donald Sieling*  
*James P. Sieling*

YOUR TAX PARCEL NUMBER: *403-32-016B 8* (the eight-digit identification number found on the tax statement from the Assessor's Office)

Your comments will be made available to the Board of Adjustment District 2 on August 5, 2015. Upon submission this form or any other correspondence becomes part of the public record and is available for review by the applicant or other members of the public. This form is due to our Department by Monday, August 3, 2015.

**RETURN TO:** Peter Gardner – Planner I  
Cochise County Planning Department  
1415 Melody Lane, Building E  
Bisbee, AZ 85603



# Cochise County Community Development

Highway and Floodplain Division

Public Programs...Personal Service

www.cochise.az.gov

## MEMORANDUM

**TO:** Cochise County Board of Adjustment, District 2  
**FROM:** Peter Gardner, Planner I  
**FOR:** Mary Gomez, Interim Planning Director  
**SUBJECT:** Docket BA2-15-01 (Malone)  
**DATE:** July 23, 2015 for the August 5, 2015 Meeting

### APPEAL OF INTERPRETATION

The Appellants wish to install a self contained ham radio facility, without a dwelling on the subject parcel which is zoned SR-12. The Appellants are appealing the County Zoning Inspector's interpretation that the proposed private ham radio installation is not a Utility Installation, and is therefore not a Principal Use. The subject parcel, 406-22-004, is located on N. Santa Paula Drive, in Douglas, AZ. The Appellants are Patrick and Alicia Malone.

### I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

**Parcel Size:** 0.34 acres (15,000-square feet)  
**Growth Area:** D – Rural Area  
**Comprehensive Plan Designation:** Rural  
**Area Plan:** None  
**Existing Uses:** None  
**Proposed Uses:** Ham radio facility as a Principal Use

### Surrounding Zoning and Uses

Relation to Subject Parcel	Zoning District	Use of Property
North	SR-12	Single-family residences
South	SR-12	Single-family residence
East	SR-12	Single-family residences
West	County Maintained Road/SR-12	N. Santa Paula Rd/Single-family residence

### II. PARCEL HISTORY

None  
**Highway and Floodplain Planning, Zoning and Building Safety**

1415 Melody Lane, Building F 1415 Melody Lane, Building E

**III. PROJECT DESCRIPTION** Bisbee, Arizona 85603

520-432-9300 520-432-9300

520-432-9337 fax 520-432-9278 fax

1-800-752-3745 1-877-777-7958

highway@cochise.az.gov planningandzoning@cochise.az.gov

The Appellants wish to install a prefabricated container which will be fitted with private ham radio equipment, photovoltaic electrical generating equipment, and sanitary facilities. The Appellants contend that their project is a "Utility Installation" and therefore a Principal Permitted Use in the SR Zoning District. County Staff and the County Attorney have interpreted "Utility Installation" as not including a private ham radio installation. That installation does not fit in any other Principal Permitted Use and therefore is not allowed in the SR Zoning District.

#### IV. ANALYSIS OF IMPACTS

Section 2103.01 of the Zoning Regulations empowers the Boards of Adjustment to "*interpret any word, phrase, or section of [the] Zoning Regulations, when there is a dispute between the Appellant and the Zoning Inspector.*" In this case, the Appeal is based on the Appellants' argument over the meaning of the term "Utility Installation." The term is used in the definition of Communications Equipment, but is not itself defined within the Zoning Regulations. The purpose of the Definitions is "to clarify the meaning of any term used within these Zoning Regulations, or which is not a commonly used term outside of the context of these Zoning Regulations". Therefore, the common definition of Utility Installation must be applied. The common usage of Utility per Webster's Collegiate Dictionary is a public or private franchised utility, which provides a service such as electricity, water, natural gas, television, telephone, or internet to multiple consumers on a commercial basis. These are the Utility Installations referenced by the zoning regulations. A private facility for limited personal use, such as Appellant's private ham radio installation, is not included.

In all cases where Utility Installations are permitted as a Principal Permitted Use in the Regulations, the Use notes that the Use applies to those Installations not already exempted under Article 20. Section 2002.02 lists those exemptions, and exclusions from the exemptions as below:

- B. Transmission lines for the distribution of franchised public or private utilities, to include meter boxes, pipes, poles, wires, hydrants or similar installations necessary to distribute utilities such as water, gas, wastewater, electricity, telephone, telegraph, television and radio. More substantial structures with a potential to impact the surrounding community, such as substations, booster stations, buildings, water tanks, communication equipment, and communication towers, are not exempt and must be located so as to minimize any adverse impacts generated by that structure. All such structures, however, are exempt from minimum site area requirements of the applicable Zoning District, provided that there is an adequate site area to minimize any adverse impacts of such use. The County Zoning Inspector may waive or modify site development standards for more substantial structures approved as part of a subdivision review process provided that adverse impacts are minimized.

Note that this section explicitly references "franchised public or private utilities". The intention of these exemptions, and the status of Utility Installations as Permitted Principal Uses, is to permit infrastructure without facing neighbor opposition. In compensation for the impacts associated with such sites, neighbors receive a service, or the option to purchase such a service. The Appellants' proposal does not provide any service to the surrounding properties as intended by the Zoning Regulations.

These are utilities such as mentioned above, that are regulated by the Arizona Corporation Commission. The Appellants' request does not fall under the purview of the Commission. Under A.R.S. Title 40, which regulates Utilities, the definition of Utility is as follows,

“Utility” means any public service corporation, licensed cable television system, telephone line or telegraph line corporation or person engaged in the generation, transmission or delivery of electricity, gas, telephone, cable television, telegraph or water service, including this state or any political subdivision or agency of this state.”

Under Arizona Law, the request does not meet the definition of a Utility. Therefore, the Appellant’s proposed private ham radio installation cannot be deemed a Utility Installation under state law, which then prohibits County Zoning Regulations from recognizing it as such.



Above: Location Map.

The Federal Communications Commission (FCC) defines an Amateur Radio Service (HAM) as “a voluntary noncommercial communication service, used by qualified persons of any age who are interested in radio technique with a personal aim and without pecuniary interest”.<sup>[i]</sup> Note the FCC’s definition makes clear that HAM radio is of an “amateur nature with a personal aim” is a “noncommercial communication service” and is without a “pecuniary interest”.<sup>[ii]</sup> These facts further reinforce the Zoning Inspector’s interpretation that the requested facility is not a Utility Installation.

This information demonstrates that the FCC views it as no more than a hobby, but because it uses bandwidth they are regulated by the FCC. Amateur Radio operators must pass a test that they have basic

knowledge of radio technology and its operating principles, in order to get a license from the FCC to operate on radio frequencies known as the "Amateur Bands." These bands are radio frequencies allocated by the Federal Communications Commission (FCC) for use by HAM radio operators. Note again the term "amateur" which is at odds with the Commercial Service definition of Utility.

## **V. PUBLIC COMMENT**

The Department published a legal notice in the Bisbee Observer on July 16, 2015. To date, the Department has received one letter of support from a neighboring property owner.

## **VI. SUMMARY AND CONCLUSION**

### **Factors in Favor of Granting the Appeal**

1. None Found

### **Factors Against Granting the Appeal**

1. The proposal does not qualify as a Utility Installation under Arizona State Law;
2. The proposal does not meet the intent of Utility Installation in the Cochise County Zoning Regulations;
3. If permitted, the facility would create impacts for neighboring properties without providing service to them;
4. Although Board of Adjustment cases are considered on a case by case basis and are not considered as "precedent setting," a favorable ruling on this Docket could be taken as such by the public or business community.

## **VII. RECOMMENDATION**

Based on the Factors in Favor of Approval as Finding of Facts, staff recommends **Denial** of the Appeal request.

Sample Motion: *Mr. Chair, I move to approve Docket BA2-15-01, granting the Appeal as requested by the Applicant, the Factors in Favor of approval constituting the Findings of Fact.*

## **VIII. ATTACHMENTS**

- A. Appeal Application
- B. Location Map

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<sup>[1]</sup> Communications Commission (FCC). Amateur Radio Service  
[http://wireless.fcc.gov/services/index.htm?job=service\\_home&id=amateur](http://wireless.fcc.gov/services/index.htm?job=service_home&id=amateur) (Date Accessed: July 24<sup>th</sup>, 2015)

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<sup>[ii]</sup> Pecuniary interest in any class of equity securities means “the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.” (17 CFR 240.16a-1) <http://definitions.uslegal.com/p/pecuniary-interest/> (Date Accessed: July 24<sup>th</sup>, 2015)



# COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

## APPEAL TO THE BOARD OF ADJUSTMENT

DESIRING A REVIEW OF THE INTERPRETATION OF THE TERMS OF THE COCHISE COUNTY ZONING REGULATIONS RENDERED BY THE COUNTY ZONING INSPECTOR TO THE HONORABLE BOARD OF ADJUSTMENT DISTRICT 2.

I (We) the undersigned, hereby appeal to the Cochise County Board of Adjustment District 2 to review the decision of the County Zoning Inspector.

State the decision of the Zoning Inspector, the action that has been taken, and the grounds for appeal. Attach additional sheets if needed.

Zoning Inspector decided that a Communications Equipment facility or shelter is not a utility installation. Action taken was to deny a Permitted Principal Use building permit for a Utility Installation. section 903.02 Grounds for appeal is that Article 2 section 203 defines what a Communications Equipment facility or shelter is. Article 2 section 203 Communications Equipment further defines that it SHALL be considered a utility installation. Article 3 section 301.01 rules that the word SHALL in the ordinance is mandatory and not permissive. County zoning inspectors do not have the authority to re-define the Cochise County Zoning Ordinance definitions.

Parcel Number of the subject property: APN 406-22-004  
N. Santa Paula Dr. Douglas, AZ

Address of the subject property: No address because zoning inspector refused to issue address as stipulated in ordinance 044-12 Article 8 New Address section 3-b in order to apply for a state or federal license.

We the undersigned hereby certify and declare that to the best of my/our knowledge and belief, the data submitted on and attached to this form is true and correct.

Print Name of Appellant (s): Patrick Malone and Alicia Malone

Signature of Appellant (s): *Patrick Malone*

Date: May 11, 2015

Mailing Address of Appellant (s): 1869 E Seltice Way #228, Post Falls, ID 83854

Phone Number of Appellant (s): 208-629-8113

EMAIL Address of Appellant (s): nostalgia@hughes.net

Note: Each application shall be accompanied by a check in the amount of \$150 payable to the Cochise County Treasurer. Return application to the Cochise County Planning Department, 1415 Melody Lane, Building E, Bisbee, Arizona 85603.

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**Alicia Malone  
N. Santa Paula Dr.  
Douglas, Arizona 85607**

**Mailing address:  
1869 E. Seltice Way #228  
Post Falls, Idaho 83854**

**E-mail: [nostalgia@hughes.net](mailto:nostalgia@hughes.net)**

**To the Honorable Board of Adjustment District 2**

**On February 10th 2015 I entered the Cochise Planning and Zoning Department in Bisbee, Arizona to request a rural address on my property located on N. Santa Paula Dr. APN 406-22-004. I was informed that an address could not be assigned without the purchase of a building permit. The staff was very unprofessional including telling me that one of them had to live in a tent for nine years so had a good idea of living without basic services. That man further informed me that if I didn't like their rule that I needed to register to vote if I wanted the rules changed.**

**I followed up with a letter requesting a rural address issued for my property under the County Ordinance 044-12 Article 8 New Addresses section 3 exception B in order to apply for various State and Federal licenses Feb. 20,2015. Since verbal words cannot be proven attached is a copy of the request made to Planning and Zoning Department director. On or about Feb. 23, 2015 I received a telephone call from Beverly Wilson in response to my request for a rural address. Due to the unprofessional treatment by staff in the office on Feb. 10th I decided to record the conversation. At the point I informed Beverly Wilson that I was recording the conversation I was having with a public official she promptly hung up in mid word from me. I received an email response to my request Feb. 24, 2015 explaining that Ordinance 044-12 Article 8 section 3 B only refers to State Liquor Control board licenses regardless of the wording of the ordinance. Her response is attached. In that response I find that the department director appears to invent issues she has somehow perceived. I point out in example her reference in her response that she perceived that I stated in my written request " You had also interpreted several sections of the Zoning Regulations to mean that recreational vehicles could be placed on vacant**

land with no authorization” As is evident in the provided copy of my request there is no such reference to some phantom recreational vehicle to be parked on the property of which we are the sole owners. We do not own a recreational vehicle.

April 6, 2015 I submitted the required documents to purchase a building permit for a Permitted Principal Use for a Utility Installation section 903.02 which is defined in section 203-Definitions of the Zoning Ordinance as a Communications Equipment Facility licensed by the Federal Communications Commission (FCC) in order to transmit and/or receive wireless communications using an antenna array, connecting cables inside of the shelter of which everything is attached. The County ordinance does not define which type of FCC communications service so it must be considered that any communications service licensed and limited in use by the FCC. As such I included in the wording the type of communications service of which the Federal Communications Commission issued a license after meeting all of the examination and legal requirements. On my original building elevation plan submittal I did not include the antenna array since it will not be set in place until after the ISBU Steel Factory-Built Building is set on the concrete foundation fixed on the property. After the Planner II e-mailed me that it was required to show the antenna I sent another e-mail with an updated elevation drawing as she requested. I have included hard copies of those documents with this appeal to the decision made by the zoning inspector that this is not a utility and therefore cannot be considered a permitted principal use. The letter of denial of the permit is also included. The Zoning Inspector's remark in the letter of denial *“To be clear, the County Zoning Inspector is designated in Section 2-Definitions, as the Planning Director. You may appeal my decision”* indicates that the Zoning Inspector applies parts of the Cochise County Zoning Regulation as written which support the Zoning Inspector's agenda. While at the same time seems to make some sort of personal interpretation of other portions of the County Zoning Regulations which do not support whatever personal agenda the Zoning Inspector holds.

The County Zoning Regulations need to be applied as written.

Therefor I am appealing the County Zoning Inspector's failure to apply Article 9 Section 203-Permitted Principal Uses *The following uses shall be permitted in all SR Zoning Districts,* which defines one of the permitted

**principal uses Section-203.02 *Utility installations not otherwise exempted by Article 20, other than electric generation plants, regional sewage treatment plants, solid waste landfills or incinerators.***

**I am also appealing the Zoning Inspector's interpretation that this communications equipment facility or shelter is not a utility since Article 2 Section 203-Definitions Communication Equipment - *A facility or shelter used for housing equipment for switching, processing, transmission and/or reception of Federal Communications Commission (FCC) licensed wireless communications services involving the use of an antenna array, connection cables, and equipment shelters.***

***Communication facilities equipment shall be considered a utility installation.***

**This definition by the County Zoning Regulation clearly defines the proposed project of which I submitted plans for a building permit. Which is a structure specifically built and used for FCC licensed communications services involving the use of an antenna array, connection cables, and the shelter to house and protect the equipment.**

**Article 3 Section-301 General Rules**

**301.01-Language of Regulations**

***The word "shall" is mandatory.***

**Takes away from the County Zoning Inspector's authority to decide that this Communication Equipment Shelter is not a utility since**

**203-Definitions- Communication Equipment--**

***Communication facilities equipment shall be considered a utility installation.***

**The above is grounds for appealing the inappropriate action taken by the County Zoning Inspector of denial of a Permitted Principal Use building permit to be issued for a Utility Installation of a Communication Equipment Facility / Shelter on our SR zoned property.**

**Respectfully,**



**Alicia Malone**

**Subject: Rural Address Request**  
**From: Alicia <nastalgia@hughes.net>**  
**Date: 02/20/2015 11:04 AM**  
**To: planningandzoning@cochise.az.gov**

Director:  
Beverly Wilson,

In regard to a property I recently purchased under contract for deed of the property listed as tax ID 406-22-004 with all taxes paid current as per County Tax Assesor Kathleen Wilson

PARCEL: 406 22 004 00 7 YR: 2014 ROLL#: 01-05039  
LEGAL DESC: COCHISE COLLEGE PARK #6 LOT 454 10/99 LV AREA: 2700  
SEC CODE: BL4K32

On the 10th of February 2015 at 08:15 I arrived to the planning and zoning department in Bisbee and requested to have an address assigned to my property. The receptionist (a young lady in her twenties) told me the department would absolutely not issue an address without the purchase of a building permit first. This young lady as a county employee paid by my tax dollars was extremely confrontational and unfriendly besides being just rude. She would not give me her name when I asked nor could I see any visible name identification in order to document the encounter. During the exchange of words a Mr. Trevor Smith who was sitting behind another desk came over to the counter and in a rather confrontational manor wanted to know what the problem was. When I simply explained to him that I was seeking an address for the property I now own he told me that the department will not issue a rural address without purchasing a building permit and that only a licensed contractor could submit to buy a building permit. I find several problems with this encounter as I will explain.

First of all, all county employees are employed to serve the public. Especially those who pay the taxes from which these public servants derive their salary. To be confronted in a manor that is extremely confrontational is totally unacceptable. When I explained this to Mr. Trevor Smith his response was "if I didn't like it I needed to vote at the next election" I can assure both the County Commissioner and Mr. Trevor Smith that I will be voting in the next and each following election in Cochise County from this point until the day I die. Having been in elected office in the State of Idaho more years ago than Mr. Smith has years of age I fully understand the political and regulatory process. As a Certified Electrical Engineer in the State of Washington and a federally licensed Aviation radio operator I also well understand the process of public safety regulations extremely well. I also am well versed with ordinances from the lowest level of municipal governments to the various levels of federal ordinances.

As such it is very important to me that those who are tasked with enforcing and applying these many ordinances that we live in during this current evolution of our society to not

only read those ordinances but to understand each and every variance in those ordinances. These two people who I was confronted by in the department of which you are responsible for do not fall into this category. Had they simply taken the time to read a simple seven page ordinance in accordance with A.R.S. 11-251 and 11-251.05 Cochise County Ordinance 044-12 as signed and adopted 18 December 2012 they would have been less confrontational and given me the application and accepted my payment of fees to assign an address, I would not be writing this E-mail today.

I am as a result requesting the application from you so that I can pay the fee under your departments system of rural addressing for property in accordance with Cochise County: ordinance 044-12 page 5,item (8) New Addresses:  
(B) (3) address shall be issued for when it is needed to purchase a State or Federal License:

I together with my husband have a requirement to purchase new State Driving Licenses as well as to purchase new federal FCC licenses all of which require an address in order to process the applications.

I understand from your web site that these applications can be filed via e-mail and fees paid via internet using credit/debit cards. Please provide me with the appropriate documents via e-mail to this address [nostalgia@hughes.net](mailto:nostalgia@hughes.net).  
Thank you for your assistance,  
Alicia Malone  
480-241-0954  
208-629-8113

**Subject: Telephone Conversation****From: "Wilson, Beverly J" <BJWilson@cochise.az.gov>****Date: 02/24/2015 03:35 PM****To: "'nastalgia@hughes.net'" <nastalgia@hughes.net>**

Good Afternoon Ms. Alicia Malone,

To follow up on the recent telephone conversation which I terminated after being informed that you were recording me, I will again reiterate that we are not in a position to issue an address for your vacant parcel #406-22-004. I am also sorry that you feel staff is not responding appropriately to your inquires. However, staff is well trained in customer service and the regulations which are very clear when a vacant parcel of land, such as yours, is involved. We are unable to issue an address for a vacant parcel of land unless a building permit is being issued to establish a principal permitted use. As I tried to explain to you, this issue recently came up on another vacant parcel. In that incident, staff consulted with the County Attorney's Office, and confirmed that we do not have the authority to issue addresses for vacant land.

You interpret Section 8.B.3 of the Rural Addressing Ordinance as pertaining to routine documentation from government agencies such as a Driving License. The actual language reads "When necessary to file for a State or Federal license." This language was included in the RAD Ordinance to provide a physical address for the occasional applicant who hinges a land purchase/financial investment on obtaining a liquor license from the State of Arizona. These liquor license applications can take a long period of time, and if denied, may void the intentions of the business owner to construct a store, convenience market, restaurant, and/or bar. If the license is denied, the last sentence of Section 8.B.3 was included, which reads "If the requested license is not issued, the address shall be withdrawn." Staff cannot interpret this language to include a routine Driving License.

If you would like to petition the Board of Supervisors to change the wording and interpretation of the Rural Addressing Ordinance, please

provide such language, and staff will be more than happy to present it to the Board for their direction. However, please note that staff is unlikely to support such a request.

You had also interpreted several sections of the Zoning Regulations to mean that recreational vehicles could be placed on vacant land with no authorization. As I tried to explain to you, this is not the case, as each of your references included the language "Permitted principal use". The permitted principal uses are outlined for your parcel in Article 9, Section 903. They do not include recreational vehicles.

I do hope that you will be a happy resident of Cochise County. However, please know that staff is directed by the Board of Supervisors, who approve all Regulations. The staff consults with the County Attorney's Office if a discrepancy or question on interpretation of policy or language arises. I am confident that staff has attempted to convey the interpretations they were given, and that these interpretations are in-line with the policies set by the Board.

Sincerely,

**Beverly J. Wilson, RLA, ASLA**

Director

Planning, Zoning and Building Safety Division

Cochise County Community Development

1415 Melody Lane, Building E

Bisbee, AZ 85603

520-432-9300

520-432-9278 fax

***Public Programs...Personal Service***

[www.cochise.az.gov](http://www.cochise.az.gov)

RECORDING REQUESTED BY  
AND WHEN RECORDING MAIL TO:

Patrick and Alicia Malone  
1869 E. Seltice Way # 228  
Post Falls ID 83854

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### WARRANTY DEED

For the consideration of ten dollars, and other valueable considerations, I or we,  
Didi Freiman, an unmarried man.

Do/Does hereby convey to:

Patrick Joseph Malone and Alicia Renee Malone, husband and wife, as joint  
tenants.

The following real estate property situated in COCHISE County ARIZONA

APN 406-22-004 COCHISE COLLEGE PARK #6 LOT 454

**SUBJECT TO:** Current taxes and other assessments, reservations in patents and all easements, right of  
way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of  
record. And I or we do warrant the title against all persons whomever, subject to the matters set forth  
above.

SELLER: DIDI FREIMAN

4-8-2015  
Date

[Signature]  
Didi Freiman

A notary public or other officer completing this certificate verifies only the identity of the individual who  
signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of  
that document.

STATE OF CALIFORNIA COUNTY OF: SAN DIEGO

On April 8, 2015  
(Date)

before me.

Arturo Magana  
(Name and title of the officer)

A Notary Public

personally appeared

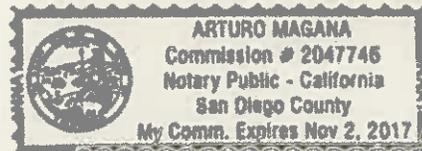
Didi Freiman

(Name of person signing)

, who proved to me on the basis of

satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me  
that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the  
entity upon behalf of which the person acted, executed the instrument. I certify under PENALTY OF PERJURY under  
the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

[Signature]  
Signature of Officer





**Cochise County**  
**Community Development**  
**Highway and Floodplain Division**

Public Programs...Personal Service  
www.cochise.az.gov

April 29, 2015  
Mr. Patrick J. Malone  
1869 E Seltice Way, #228  
Post Falls, ID 83854  
[nostalgia@hughes.net](mailto:nostalgia@hughes.net)

RE: Joint Permit Application for Parcel #406-22-004

Dear Mr. Malone,

We have received your application to install an ISBU utility amateur radio communication facility inside a Conex structure on your parcel which is zoned SR-12 (Single-Household Residential, one dwelling unit per 12,000-square feet). I am also in receipt of the email communications between you and Jesse Drake, Planner II. After consulting with our counsel, I must agree with all of Jesse's interpretations of the Cochise County Zoning Regulations, including the interpretation that this is not a 'utility', and there is no principle structure on this parcel.

A permit cannot be issued for the use you have applied for; however, in cases such as these there is a remedy. That remedy is found in Article 21 of the Zoning Regulations, in which the Board of Adjustment is given "... the power to interpret any word, phrase, or section of these Zoning Regulations, when there is a dispute between the Appellant and the County Zoning Inspector..." (2103.01). To be clear, the County Zoning Inspector is designated in Section 2-Definitions, as the Planning Director. You may Appeal my decision using the following procedures and information.

The Appeal will be heard as a Variance from our Zoning Regulations, and you will find the Variance application on the Planning Department's web-page. A fee of \$300 is also required. The schedule for these meetings is also found on our web-page, as well as the deadlines for the complete Application to be received in our department.

Please let us know if we can help you with this process. The Board of Adjustment for District 2 meets at the Melody Lane complex here in Bisbee. We will process your Appeal of my decision as soon as we receive it. If you have any further questions, please feel free to contact either Ms. Drake or myself. Thank you.

Sincerely,

Beverly Wilson, RLA, ASLA  
Planning Director

Cc: Britt Hanson, Chief Deputy Civil County Attorney

**Highway and Floodplain**  
1415 Melody Lane, Building F  
Bisbee, Arizona 85603  
520-432-9300  
520-432-9337 fax  
1-800-752-3745  
[highway@cochise.az.gov](mailto:highway@cochise.az.gov)  
[floodplain@cochise.az.gov](mailto:floodplain@cochise.az.gov)

**Planning, Zoning and Building Safety**  
1415 Melody Lane, Building E  
Bisbee, Arizona 85603  
520-432-9300  
520-432-9278 fax  
1-877-777-7958  
[planningandzoning@cochise.az.gov](mailto:planningandzoning@cochise.az.gov)

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**Malone Communication Equipment Facility Project  
Appeal to Board of Adjustment District II**

Our project is to install a factory built building on our property as part of radio communication equipment that will be operated automatically and/or remotely for the majority of the time. The only time when we will actually be at the facility once installation is complete will be to perform occasional maintenance or upgrades to the electronics and antenna installations on the structure. Firstly a little history. We hold several FCC issued licenses for wireless communication services under national and ITU international agreements. None of which the State of Arizona or the County of Cochise have any regulatory or legal authority over. No State or it's political subdivisions have any authority over wireless communications within the United States of America. That authority is reserved to the federal government and is under the complete control of the Federal Communications Commission. All wireless communications service in the U.S. is regulated by the Federal Government. Including wireless communication services used by Cochise County. None of this is interpretation, but is well documented and well enforced law.

During the past several decades we have been an integral part of emergency radio communications for the safety of land, sea and aviation users across North America. From our home located elsewhere, we are able to monitor and aid in the communications during disasters and aid in finding lost people, ships and aircraft throughout the region. We are a primary contact of the USCG in emergency location of ships, aircraft and personnel throughout the greater region. We also aid in providing emergency communications during hurricanes and other disasters both natural and man made. This is not a service provided by government. We operate radio communications in many frequencies all of which have vastly different range of communications during different times of the day and different times of the year.

All of that being said in order to describe the reason we purchased property at 4000 ft elevation in Southeast Arizona located well away from the Radio Frequency Static noises given off by large cities and communities which greatly hamper the ability to hear weak radio signals from people in great distress. Another description of that static noise could well be called RF interference or pollution. In searching for an ideal location to install a remote communications repeater facility we looked at many locations and finally decided on the area North of Douglas as a good location for our need. Prior to purchasing property we read the Cochise County Zoning Regulations to determine that we would be able to proceed with our plans. The latest adopted regulations also support our intention.

We even went so far as to acquire original blueprints of the recorded plat where our property is located as it was recorded in 1969 in the Cochise County Records office before they went digital and discarded so many hard paper blueprints of the recorded plat. With all of the information we acquired we purchased the property which our proposed communication equipment facility will be installed. With that in mind let us together look at the actual proposal.

A wireless communications equipment facility is comprised of a piece of land with little to no RF noise to interfere with reception of wireless communications. A structure to mount antennas, cables and electronics in order to accomplish the needed or desired communications. The energy to enable the connected equipment to function. Access in order to maintain the equipment. And in this case, sanitation devices for use during such maintenance. Our location North of Douglas is a perfect blend of the distance required to have communications with stations from 300 to 1100 miles of the region in which we provide emergency communication services in order to aid in the preservation of life and property. This location also has very low amounts of RF interference to communicate with weak stations as is often the case when the distressed station has low power capability due to the emergency at hand whether it is a downed aircraft, wrecked vehicle or sinking ship.

As such we purchased this property which is recorded with the Cochise County Clerk Recorders office and we are the sole owners of the property. All taxes are current as indicated in the Cochise County Treasures office APN 406-22-004.

The next step was to insure that we meet the requirements of the Cochise County Zoning Regulations which we did prior to purchasing the property. By any and all ways of looking at the project for which we submitted to purchase a permit, this is by every description within the zoning regulations a Communications Equipment Facility or Shelter as described in the Cochise County Zoning Regulations.

**Article 2 section 203 Definitions**

**Communication Equipment** - *A facility or shelter used for housing equipment for switching, processing, transmission and/or reception of Federal Communications Commission (FCC) licensed wireless communications services involving the use of an antenna array, connection cables, and equipment shelters.*

Whether we called it amateur radio, aviation radio, police radio, ship to shore radio, fire service radio or any other radio **service** it is still a Federal Communications Commission (FCC) licensed wireless communications service facility or structure.

**Article 2 section 201** stipulates the intent of article 203 is to bring clarity as to what communication equipment is and is not. To be clear, the definition clarifies precisely what communications equipment is. Our submitted building plans demonstrate beyond dispute that this is a communication equipment facility or shelter.

**Article 2 section 203- Communication Equipment** stipulates that *Communication Equipment Facilities shall be considered a utility installation.*

Since there can be no dispute whatsoever that the very nature and design of this structure with it's installed antenna and connecting cable and devices is communication equipment it shall be considered by the zoning regulations as a utility installation. Note the Arizona State Registered Engineer certification stamp on the plans. Which certify the project as a Communication Equipment Facility.

**Article 3 section 301**

**301.1 Language of Regulations**

*The word "shall" is mandatory and the word "may" is permissive.*

Since the word SHALL in Article 2 section 203- Communication Equipment is used in the language of the definition, that portion of the definition is mandatory. **Without dispute Article 2 section 202** stipulates this communication equipment facility is considered by the County Zoning Regulations as a utility installation.

Naturally since both myself and my wife have a college level education we have the ability to read a document written at a middle school level of the English language as the Cochise County Zoning Regulations is written. Which is only proper since regulations should and need to be written at a level of comprehension of those who are regulated.

Since the Cochise County Zoning Regulations have stipulated that our permit submittal plans are defined a Communication Equipment Facility and as such SHALL be considered a Utility Installation, let us look at the proposed structure itself. Again, this is already well defined by the Cochise County Zoning Regulations. Regardless of the word we choose to use it is defined within the County Zoning Regulations. Let us look at the various words to choose from.

**Article 2 section 203 Definitions**

**Building** - *A structure used for the shelter or accommodation of persons, animals, equipment, or goods having a roof which is supported by columns or walls.*

If we choose to use the word building we see the plans show a structure or shelter of equipment that has a roof which is supported by columns or walls. The definition does not specify what type of material is required to be used as a roof supported by columns or walls. Therefore it is understood that a roof of any material supported by columns or walls of any material is a building.

**Structure** - *Anything constructed or erected with fixed location on the ground, or attached to something having a fixed location on the ground, including, but not limited to buildings, towers, swimming pools carports, signs, and billboards.*

If we choose to use the word structure we see the plans show a building or shelter made of steel to be erected or attached to concrete fixed permanently in the ground on the site.

**Factory-Built Building** - *A residential or nonresidential building including a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site and placed on a permanent foundation. Factory-Built Buildings are constructed to Building Code standards and are regulated by the Office of Manufactured Housing. Factory-Built Buildings do not include manufactured homes, recreational vehicles, or mobile homes. A factory-built building used for residential purposes shall be considered a single-household dwelling unit.*

If we choose to use the word Factory Built Building we see the plans show a nonresidential building or structure with a roof supported by columns or walls which was substantially manufactured off site in another County or State or Country to be transported in two pieces to the site and placed on concrete foundations as a permanent installation. This building is substantially manufactured at another facility and final communication components installed once it has been delivered and placed on the concrete foundation.

**Dwelling**– *Any building intended primarily for residential occupancy by one or more households, containing sleeping, cooking, and sanitary facilities.*

We cannot choose to use the word Dwelling since this building has no cooking or sleeping facilities as it is proposed as an unmanned communication equipment facility or shelter.

The Cochise County Zoning regulations define without dispute that the proposed plans as submitted for a permit to install, is a building and that it is without dispute a Factory-Built Building as it is substantially manufactured at a site other than the location where it will be transported to and installed onto a fixed permanent concrete foundation fixed 3 feet into the soil of the site.

Since there can be no dispute that the proposal as submitted is a Factory-Built Building to be as zoning regulations define a Communication Equipment Facility or shelter the next step in the process is to clarify the permitted use of the site.

**Article 2 section 203 definitions**

*Use - The purpose for which land or a building is occupied, maintained, arranged or intended.*

According to the submitted plans there is no dispute that the intended use of this installation is a Communication Equipment facility or shelter. It is an engineered Communication Equipment Facility or shelter stamped by an Arizona State Registered Engineer.

*Use, Non-Residential - The use of land for a purpose other than single-household dwelling units.*

The building permit submittal shows a building with no cooking or sleeping facilities demonstrating there can be no dispute that this proposed installation is a Non-Residential use.

*Principal Use - The primary use and chief purpose of a lot or structure as distinguished from an accessory use or structure. A site may contain multiple "principal uses," each of which must meet the requirements of these Zoning Regulations, unless otherwise limited by individual Zoning Districts.*

The submitted permit plans show no structure or use other than that defined by County Zoning Regulations as a Communications Equipment Facility or shelter as defined in Article 2 section 203. The submitted site plan plainly shows that the communication equipment shelter is the only structure on the site so it cannot be defined as an accessory to a structure which does not exist on the site. By definition the plans are showing a communication equipment facility as the principal (or primary intended) use of the site at time of permit application.

**Article 9 section 903**

**Permitted Principal Uses**

*The following uses shall be permitted in all SR Zoning Districts, provided that they conform to the applicable site development standards for such uses set forth below, and meet any other requirements for such uses found in these Zoning Regulations, such as off-site road and drainage improvements.*

Permitted principal uses require the following uses SHALL be permitted in all SR Zoning Districts as a Permitted Principal Use. Since Article 3 section 301 requires the use of the word Shall in the language of the zoning regulations is mandatory there can be no dispute to what shall be a permitted principal use.

*903.02 Utility installations not otherwise exempted by Article 20, other than electric generation plants, regional sewage treatment plants, solid waste landfills or incinerators.*

Utility Installation cannot be denied as a permitted principal since it is one of the Permitted Principal uses stipulated in the Zoning Regulations, other than electric generation plants, regional sewage treatment plants, solid waste landfills or incinerators. The Cochise County Zoning Regulations require with the exceptions indicated that all utility installations SHALL be a Permitted Principal Use. A Permitted Principal Use is not an accessory to itself. It requires no other use to be valid. There can be no dispute to the wording as provided in the mandatory portions of the County Zoning Regulations. Otherwise we should simply ignore the entire County Zoning Ordinance.

As previously defined by the Cochise County Zoning Regulations this already defined Communication Equipment Facility or Shelter SHALL be considered a utility installation. The Cochise County Zoning Regulations prohibit disputing a mandatory language requirement as set forth in Article 3 section 301.

The permit application submitted simply was not well received and there were several requested revisions made by the County Zoning Planner in order to understand that the plans were without dispute for a communications equipment facility. Even after making the requested revisions to the submitted building plans the County Zoning Planner refused to accept that this set of building plans as submitted is a communications equipment facility. Bearing in mind that all documents were submitted in a digital format prior to May 11, 2015 with the various revisions in order to demonstrate to the county zoning planner this project is a Communications Facility. Due to the difficulties in submitting a set of plans in a digital format with an Arizona State registered engineers stamp all documents prior to May 11, 2015 were without the engineers stamp. On or about April 20th Beverly Wilson called my telephone and I explained that we will be in the planning department office after the first week in May and will bring official hard copy documents in order to properly process the application. We arrived to the office May 11, 2015 with a complete building permit application submittal including building plans for a Communication Equipment Facility which is stamped by an Arizona State registered engineer declaring this proposal to be a professionally designed and engineered communication equipment facility as well as declaring that under the Cochise County Zoning Ordinance it is certified as a utility installation with a registered engineer stamp on the building plans. The County Zoning Inspector has no standing to declare that an Arizona State Registered Engineer certification of a communication equipment facility is not a communication equipment facility. The County Zoning Inspector has no certification as an engineer issued as a result of the educational and registration requirements of professional engineers by the State of Arizona.

The Cochise County Zoning Inspector's denial of a permit for a non-residential utility installation of a communication equipment facility or shelter as a Permitted Principal use which is already defined by the County Zoning Regulations has no merit in that the County Zoning Inspector is disputing the County's own zoning regulations. The County Zoning Regulations is the authority to appoint a County Zoning Inspector therefor the County Zoning Inspector cannot dispute the very regulations which authorize the position of the County Zoning Inspector.

We as property owners within Cochise County District II do not dispute the County Zoning Regulations. Nor do we have a dispute with the County Zoning Inspector. In this case the County Zoning Inspector has a dispute with the County Zoning Regulations. To be clear, the County Zoning Inspector is not applying or enforcing the County Zoning Regulations as written.

As property owners wishing to improve private property along with the anticipated additional County revenue from increased property taxes resulting from improving private property we appeal to the Cochise County Board of Adjustment District II to instruct the County Zoning Inspector to issue a building permit for a Communication Equipment Facility as a Permitted Principal Use Utility Installation on lot 454 of Cochise College Park Unit Six platted and recorded with the Cochise County Clerk Recorder in 1969 as the original plat drawing we have indicate. This is APN 406-22-004 in the County Treasurer Archives.

Respectfully,

Patrick Malone

Alicia Malone

Cochise County Property Owners and Taxpayers



