

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
REGULAR MEETING HELD ON
TUESDAY, APRIL 20, 2021**

A regular board meeting of the Cochise County Board of Supervisors was held on Tuesday, April 20, 2021 at 10:00 a.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Ann English, Chairman; Peggy Judd, Vice-Chairman; Tom Crosby, Supervisor
Staff Present: Richard G. Karwaczka, County Administrator; Sharon Gilman, Associate County Administrator; Christine Roberts, Chief Civil Deputy County Attorney; Kim Lemons, Clerk of the Board; Camila Rochin, Public Information Officer

Chairman English called the meeting to order at 10:11 a.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

CONSENT

Board of Supervisors

1. Approve the Minutes of the regular meeting of the Board of Supervisors of April 6, 2021.
2. Approve an application for a Temporary Extension of Premises liquor license submitted by Mr. Keith Wilson for American Legion Riders Post 52 located at 12 Theater Dr., Sierra Vista, AZ 85635.
3. Approve an application for a Permanent Extension of Premises liquor license submitted by Mr. Bobby Eugene Douglas, for Dusty's Chuckwagon Grill & Saloon, located at 13510 S Hwy 191, Elfrida, AZ 85625.

County Attorney

4. Approve the proposed settlement of the Tax Appeal in Southwest Gas Corporation v. Arizona Department of Revenue, et al., TX2020-001122, now pending in Arizona Tax Court, a division of the Superior Court of and for Maricopa County.

County Sheriff

5. Approve Governor's Office of Highway Safety (GOHS) Contract 2021-CIOT-006 providing the Cochise County Sheriff's Office with \$6,000 to cover overtime expenses, as well as employee-related expenses, to participate in the two-week "Buckle Up Arizona... It's the Law" program, effective May 24, 2021 through June 6, 2021.

Development Services

6. Approve the reappointment of Mr. Ray Klumb to the Cochise County Building Code Advisory and Appeals Board to fill the architect position for a three-year term to expire on September 25, 2023.
7. Approve the appointment of Mr. Mose Lee to the Cochise County Building Code Advisory and Appeals Board to fill the electrician position for a three-year term to expire on September 25, 2023.

Engineering & Natural Resources

8. Approve demands over six months to Arizona State Land Department in the amount of \$54.68 for penalty and interest on Lease No. 023-094344-05, Bella Vista grazing.
9. Adopt Resolution 21-05 to authorize the addition of a portion of Elmer Loop located in Hereford to the Cochise County maintained road system.

Finance

10. Approve demands and budget amendments for operating transfers.

Health & Social Services

11. Approve Amendment 2 to Intergovernmental Agreement (IGA) YH16-0018-13 between Cochise County and the Arizona Health Care Containment System (AHCCCS) for Cochise County Medicaid Eligible Inmates, to revise the rates and terms of the IGA.

Supervisor Crosby made a motion to approve items 1-11 on the Consent Agenda. Vice-Chairman Judd seconded the motion and it carried unanimously.

PUBLIC HEARINGS

Board of Supervisors

12. Approve a Series #3 (In State Microbrewery) liquor license application submitted by Mr. Salvatore Joseph Tirrito, for Tirrito Farms, LLC, located at 6150 S. Kansas Settlement Road, Willcox, AZ 85643.

Ms. Lemons presented this item. She stated that the application had been reviewed and recommended for approval by the appropriate departments; property taxes are current; there have been no formal protests; and, the applicant paid the \$100 processing fee. Board staff recommended approval.

Chairman English opened the Public Hearing. No one chose to speak and Chairman English closed the Public Hearing.

Vice-Chairman Judd made a motion to approve a Series #3 (In State Microbrewery) liquor license application submitted by Mr. Salvatore Joseph Tirrito, for Tirrito Farms, LLC, located at 6150 S. Kansas Settlement Road, Willcox, AZ 85643. Supervisor Crosby seconded the motion.

Vice-Chairman Judd spoke in support of the business opening.

Chairman English called for the vote and it was approved 3-0.

Development Services

13. Adopt Zoning Ordinance 21-05 to rezone parcel 302-28-003A from R-36 (one dwelling per 36,000 square feet) to RU-2 (one dwelling per two acres), pursuant to the application of Mr. George Lounsbury.

Mr. Robert Kirschmann, Planner II, presented this item using a PowerPoint presentation. This request is to rezone a parcel from R-36 to RU-2. He gave the property's location, total acreage, and the existing and proposed uses. The Planning and Zoning Commission recommended approval. He reviewed factors in favor of and against approval and the two standard conditions of approval.

Chairman English opened the Public Hearing and asked if any public comments were received. Ms. Lemons stated there were none. Chairman English closed the Public Hearing.

In response to the Board, Mr. Kirschmann stated that the applicant had previously indicated that pistachios would be the agricultural product.

Supervisor Crosby made a motion to adopt Zoning Ordinance 21-05 to rezone parcel 302-28-003A from R-36 (one dwelling per 36,000 square feet) to RU-2 (one dwelling per two acres), pursuant to the application of Mr. George Lounsbury. Vice-Chairman Judd seconded the motion.

Chairman English called for the vote and it was approved 3-0.

14. Adopt Zoning Ordinance 21-06, rezoning two parcels totaling 5.84 acres from SR-22 (Single-family Residential, one dwelling per 22,000 square feet) to RU-4 (Rural, one dwelling per 4 acres), pursuant to the application of Mr. Jarret Holland.

Mr. Dan Coxworth, Development Services Director, presented this item using a PowerPoint presentation. This request is for a rezoning from SR-22 to RU-4. He gave the property's location, total acreage, and proposed use. The Planning and Zoning Commission unanimously recommended approval. He reviewed factors in favor, noting that there were none against, and the recommended Conditions of Approval.

Chairman English opened the Public Hearing and asked if any public comments were received. Ms. Lemons stated there were none. Chairman English closed the Public Hearing.

Vice-Chairman Judd made a motion to adopt Zoning Ordinance 21-06, rezoning two parcels totaling 5.84 acres from SR-22 (Single-family Residential, one dwelling per 22,000 square feet) to RU-4 (Rural, one dwelling per 4 acres), pursuant to the application of Mr. Jarret Holland, with the conditions of approval. Supervisor Crosby seconded the motion.

Chairman English called for the vote and it was approved 3-0.

15. Approve or deny the La Sota appeal (SUA-21-01) of the Planning and Zoning Commission's March 10, 2021 approval of Special Use SU-21-000005 (MM Ft Grant Rd).

Ms. Roberts stated that this item and the next are appeals of an approval by the Planning and Zoning Commission (Commission) and the Board is either affirming or reversing the Commission's decision. The reason for the Board's decision needs to be land-use based and stated on the record.

Chairman English opened the Public Hearing.

Ms. Christine McLachlan, Planner II, presented this item using a PowerPoint presentation. She stated that the request for a medical marijuana cultivation and infusion facility was approved by the Commission by a vote of 5-2. She gave the property location, parcel number and total acreage. She reviewed the 10 factors used to evaluate Special Use proposals. As submitted, it complies with six factors, two with conditions, partially complies with one, and does not comply with one. There are two requirements that the Board must consider when evaluating appeals of Special Use proposals: all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion, and the written presentation of additional testimony and evidence, with an explanation of why it was not presented to the Commission. She gave the four points the appellant stated in the appeal, and provided staff's analysis of each. She reviewed two factors in favor of the appeal and three against. Staff recommends denial of the appeal.

Mr. Craig Boudle, Mr. Paul Smithers, Dr. Hope Jones, Mr. John Haugh, and the appellant, Mr. Timothy La Sota addressed the Board and discussed various reasons in support of the appeal.

Applicant representative Mr. Adam Baugh and property owner Mr. Kim Bennett addressed the Board and discussed various reasons in opposition to the appeal.

Mr. Dana Pack and Mr. John Chapman were called upon to speak but deferred their comments until the next agenda item.

No one else chose to speak and Chairman English closed the Public Hearing.

The Board and staff discussed cross-pollination, noting that it is not part of the Zoning Regulations and cannot be considered. The Board and staff also discussed the evaluation factor that was not met, odor; the appellant's characterization of the proposed use as a nuisance; and, staff's analysis that the Commission's decision was not erroneous. The Board discussed updating the Zoning Regulations to address areas pertaining to agricultural and cannabis-grow regulations.

Supervisor Crosby made a motion to deny the appeal, Docket SUA-21-01, upholding the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of an Appeal Denial constituting Findings of Fact. Vice-Chairman Judd seconded the motion.

Chairman English called for the vote and it was approved 2-1 (Judd opposed).

Vice-Chairman Judd stated that the reason for her vote is that there is a clear nuisance, though it is not codified. Supervisor Crosby stated that his reason is that the nuisance is upheld. Chairman English stated that there is no reason to feel that the Commission has not abided by the rules and that there is no new information proving that the Commission was incorrect.

16. Approve or deny the Holcomb appeal (SUA-21-02) of the Planning and Zoning Commission's March 10, 2021 approval of Special Use SU-21-000005 (MM Ft Grant Rd).

Chairman English opened the Public Hearing.

Ms. McLachlan presented this item using a PowerPoint presentation. She highlighted requirements that the Board must consider, and stated that the appellant believes that the decision by the Planning and Zoning Commission (Commission) was erroneous, arbitrary, capricious, or an abuse of discretion in that the applicant was deficient in the outdoor odor mitigation plan, and that the County needs to review the current cannabis regulations. She provided staff's analysis of the appellant's claims; staff believes that reviewing cannabis regulations is outside the scope of the Special Use Authorization and appeal. She reviewed the three factors in favor of and three factors against the appeal. Staff recommends denial of the appeal.

Mr. John Holcomb, appellant, addressed the Board and discussed various reasons in support of the appeal.

Applicant representative Mr. Adam Baugh, property owner Mr. Kim Bennett, Mr. Dana Pack and Mr. John Chapman addressed the Board and discussed various reasons in opposition to the appeal.

At the Board's request, Mr. Holcomb explained his claim that the applicant's staff statement that no cannabis odor would leave the property is false and misleading, and Mr. Pack provided information as to odor control and mitigation efforts. Ms. McLachlan confirmed that odor neutralization was a condition of approval. The Board and staff discussed odor neutralization in detail, and Ms. McLachlan clarified that the condition is odor neutralization, rather than no odor leaving the property.

No one else chose to speak and Chairman English closed the Public Hearing.

Supervisor Crosby made a motion to deny the appeal, Docket SUA-21-02, upholding the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of an Appeal Denial constituting the Findings of Fact. He noted that he does not think that odor neutralization can be complied with. Discussion ensued and Supervisor Crosby withdrew his motion.

Vice-Chairman Judd made a motion to approve the appeal for Docket SUA-21-02, overturning the March 10, 2021 approval by the Planning and Zoning Commission, the Factors in Favor of the Approval constituting the Findings of Fact. She noted that the motion is based on the nuisance of odor that cannot completely be controlled. Supervisor Crosby seconded the motion.

The Board and Ms. Roberts discussed this being the same establishment as the previous appeal; odor not being part of the first appeal while this appeal is based on odor; and, that the Commission included a condition that if the applicant does not comply with an odor mitigation plan, the Special Use Authorization can be pulled. Ms. Roberts stated that the Board is now looking to whether the Commission's decision was erroneous, arbitrary, capricious, or an abuse of discretion, rather than on the merits. The Board discussed in further detail. Ms. Roberts clarified that the Board can uphold, overrule, or modify the Commission's decision, but that it needs to be on a land-use basis. The Board discussed in detail.

Chairman English called for the vote and it was approved 2-1 (English opposed).

Vice-Chairman Judd stated that the reason is that staff did not find that the nuisance was appropriately handled, as odor mitigation could not sufficiently be done. Supervisor Crosby stated that the reason is due to the applicant's staff statement as to no odor leaving the property and that he feels that cannot be done. Chairman English stated the reason is that the Commission adhered to all rules set by the Board, and made the appropriate decision based on the rules.

ACTION

Board of Supervisors

17. Approve Community Enhancement Fund expenditures for District 3: Fence for Sunsites Dog Park at the not-to-exceed amount of \$6,440, per the attached information from Stronghold Area Recreational Park Association.

Vice-Chairman Judd presented this item. She provided background information. Mr. Anthony Crumly has provided free education to dog owners and put together a plan for the Dog Park. Mr. Crumly is asking for the County's support for a fence, in the amount of \$6,440; he is pursuing grant opportunities for other needed improvements.

Vice-Chairman Judd made a motion to approve Community Enhancement Fund expenditures for District 3: Fence for Sunsites Dog Park at the not-to-exceed amount of \$6,440, per the attached information from Stronghold Area Recreational Park Association. Supervisor Crosby seconded the motion.

Chairman English called for the vote and it was approved 3-0.

Development Services

18. Adopt Resolution 21-06 supporting efforts to transfer ownership of the Cochise County Airport to the City of Willcox.

Mr. Coxworth presented this item. He stated that the County is working with the City of Willcox and the Federal Aviation Administration (FAA) to transfer the Airport to Willcox. The FAA is looking to ensure that each jurisdiction has the political will for the transfer. The resolution does not require the County to give the Airport to Willcox.

The Board discussed their support of transferring ownership of the Airport to Willcox.

Supervisor Crosby made a motion to adopt Resolution 21-06 supporting efforts to transfer ownership of the Cochise County Airport to the City of Willcox. Vice-Chairman Judd seconded the motion.

Chairman English called for the vote and it was approved 3-0.

STATE & FEDERAL LEGISLATION

19. Discussion and possible action regarding state and federal legislative matters listed or described in the attached County Supervisors Association Legislative Policy Committee Agenda, the Arizona Association of Counties (AACo) Legislative Policy Committee Agenda, and the proposed State budget, and other matters related thereto.

Chairman English noted that election bills are not currently being discussed. The budget is a big topic that legislators are currently discussing. She noted that when the state lowers taxes, it places a burden on counties. There was brief Board discussion.

No Board Action was taken on this item.

REPORT BY RICHARD G. KARWACZKA, COUNTY ADMINISTRATOR -- RECENT AND PENDING COUNTY MATTERS

Mr. Karwaczka reported that the reconstruction of the Administration building in Bisbee is progressing. He recognized County staff Mr. Jason Faccio, Operations Superintendent; Ms. Judy Lynn, Emergency Services Director; and, Ms. Elda Orduno, Human Resources Director, for taking leadership courses through the County Supervisors Association.

SUMMARY OF CURRENT EVENTS

Report by District 1 Supervisor, Tom Crosby

Supervisor Crosby reported that he hopes to travel to Phoenix on Thursday.

Report by District 2 Supervisor, Ann English

Chairman English reported on ribbon-cutting ceremony she attended for the Bay Acres wastewater treatment plant expansion in Douglas.

Report by District 3 Supervisor, Peggy Judd

Vice-Chairman Judd reported on the Willcox Ranch Rodeo this weekend, and the addition of Love's Travel Stop in addition to the TA Truck Stop.

Chairman English adjourned the meeting at 12:16 p.m.

APPROVED:

Ann English, Chairman

ATTEST:

Kim Lemons, Clerk of the Board