



**PIMA COUNTY
DEVELOPMENT SERVICES DEPARTMENT**

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HEARING ADMINISTRATOR'S FINDINGS AND DECISION

**P16CU00008
3-D, LLC — E. SKYLINE DRIVE
Type I Conditional Use – Communication Tower**

Background & Authority

Chapter 18.97, in accordance with Section 18.07.030.H.2 .E of the Pima County Zoning Code, requires a Type I conditional use permit (CUP) for a communications tower on property zoned CR-1. This particular request is made by Steve Olson, of Bechtel Communications, on behalf of AT&T Mobility. The latter proposes to construct two (2) new twenty-eight foot (28') tall communications towers that will be wholly contained within two (2) separate faux saguaro cactus structures (with no saguaro "arms") to be located on the property. The associated on-the-ground equipment would be contained within a walled structure near the existing driveway into the property.

Particulars of the Request

The property in question has been the subject of prior CUP cases requesting new wireless improvements. This particular property was chosen because it is a hill-top lot and is essentially the high point of the entire area, making it an obvious location for facilitating maximum wireless coverage of the surroundings. A series of antennae arrays was originally approved with the first conditional use case and were integrated into the actual residential structure on the site; these remain in operation today. The arrays are hidden behind the roof parapets and the equipment is housed internally within the residence.

Subsequently, a second CUP request was made to address an expanding gap in data coverage. This request described the installation of taller and more powerful antennae arrays. These would be still be hidden behind the residential parapets, however the latter would have to be raised in height to provide the requisite visual screening. The taller parapets would visually increase the overall height of the structure, but still maintain its basic appearance as a residence. The approved improvements associated with this second CUP approval were never constructed.

The present CUP request is being made because the property owner desires to remove the current antennae improvements and equipment room from the residence so as to no longer physically encumber it, but to still maintain the current lease arrangement they have with AT&T Mobility. In essence, the two new faux saguaros and on-the-ground walled equipment structure requested with this current CUP request are intended to replace the larger antennae array that were approved with the aforementioned second CUP, but which were never constructed.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on November 9 2016. The applicant (Steve Olson of Bechtel Communications) presented the conditional use permit request and answered the Hearing Administrator's various questions. The applicant's submittal package was comprehensive and included photo simulations and coverage maps in addition to the proposed development plan for the property. The applicant also conducted a formal neighborhood meeting, to which all property owners within the statutory public-notice area were invited.

Approximately fifteen members of the public attended the 9 November public hearing, nine (9) of whom chose to speak on the matter. Staff indicated that it had received one (1) prior telephone inquiry on the case at the time the staff report was written; that individual was also present at the public hearing and indicated that he was the primary spokesperson on behalf of the surrounding neighbors. Several letters of objection and other materials were submitted by the neighbors, some prior to the hearing and some during it. A protest petition was part of these materials, containing approximately sixty signatures. The petition expressed numerous objections, including views, noise pollution, safety hazards, wildlife impacts, reduction in property values, and interference with property rights and planning/zoning regulations. In general, the public testimony presented at the hearing echoed these concerns, and contained a common theme that the surrounding area in question was of special aesthetic value and character.

Following the public testimony, the applicant was given the opportunity to respond to all that he had heard and to rebut the points raised as he saw fit.

After hearing all of the above, the Hearing Administrator and closed the public hearing.

Required Standards and Findings

Following are the Hearing Administrator's findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.

The Comprehensive Plan designates the subject site as *Low Intensity Residential (LIU)*, the purpose of which is to designate areas for the low density residential development and compatible uses.

Numerous communications towers have been approved in the past within the *LIU* district. This use is not inherently inappropriate within this district, as long as appropriate aesthetic considerations have been made to, as best as possible, address visual impacts.

For this reason and because of the volume of towers previously approved in the *LIU* district, the Hearing Administrator finds the proposed use to not be inherently in conflict with the above stated goals of the Comprehensive Plan.

2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.

The Hearing Administrator finds that considerations are required in this case based upon past CUP approvals, the issues that surrounded those cases, and the representations that were made.

3. It has adequate accessibility to the County road network.

The property has driveway access to Skyline Drive, a designated major street on the Pima County Major Streets & Routes Plan (MSRP). Access to such wireless facilities is minimal at best; access is found to be adequate.

4. It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.

Parking sufficiency and compliance with the Zoning Code in this regard is a matter always verified at the time of permitting.

5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.

The proposed use is found to not threaten the surrounding properties in any of the above ways. Neighbor concerns regarding noise and public safety are not found valid by the Hearing Administrator. For example, the noise readings taken and presented by the neighbors were of a non-enclosed wireless equipment facility. The proposed facility is a wholly walled structure that would contain no air conditioning units or generators.

6. Hours of operation will not be detrimental to adjoining residents.

This is an unmanned facility; hours of operation do not apply.

7. Landscaping will be fully in conformance with zoning code regulations.

Landscaping requirements, if any, are a matter always verified at the time of permitting.

Hearing Administrator's Additional Considerations

The following discussion is provided so that all parties to this CUP case have a clear understanding as to the basis and reasoning of the Hearing Administrator's decision. With that in mind, the following are offered:

- **Noise, Public Safety, Property Values.** The Hearing Administrator does not concur with these objections expressed at public hearing. The noise generated by wireless equipment is of no more magnitude than that of any occupied residence. There are no concerns as to public safety: 1) all

tower structures must meet stringent building codes to insure compliance with all wind load and seismic requirements, and 2) holding a cell phone to one's ear on a regular basis involves far more exposure than that of wireless tower. With respect to property values, the information presented from an empirical study in another country is still found to be anecdotal, at best, in terms of its applicability to this particular case. Real estate markets vary greatly from neighborhood to neighborhood and city to city, let alone from country to country or continent to continent.

- **Petition.** The submitted petition materials asserting strong neighborhood opposition have been given their appropriate weight in the Hearing Administrator's considerations. This consideration must take into account the fact that such petitions are typically circulated by one individual (or a very small number of individuals) and the signatures gained are influenced by whatever explanations are made by those individuals presenting the petition. In reviewing the petition form itself, the Hearing Administrator finds that it clearly provides a very detailed presentation of the preparer's personal viewpoints and reasons for opposing the application. It is not unreasonable to suspect that these feelings were further communicated and amplified verbally during whatever one-on-one canvassing discussions that occurred with each neighbor before they individually rendered their position/signature. In short, there is an underlying bias at play that insures skewed results.
- **Views.** Numerous communications towers have been sited within areas zoned CR-1 and within established residential neighborhoods. These cases have always involved a strong consideration of aesthetics and with finding solutions which attempt to, as best as possible, mitigate visual impacts in a considerate manner. That being said, it is paramount for all involved to understand that no individual has any sort of prescriptive right to, or guarantee of, a view across another's property simply because they may have enjoyed one theretofore. Views remain no more than a privilege; significant past case law has addressed this point and has repeatedly held that no legal *right* to a view exists.
- **Character of the Area; Prior Cases.** With all of the above being said, the Hearing Administrator's overriding consideration in this case does not rest upon the above points. It comes down to the character of the surrounding area and, just as importantly, the precedent that has been set for its treatment and protection in previous cases. The hill-top location of this particular property, chosen for obvious coverage reasons, has from the onset demanded an increased consideration of aesthetics due to its high degree of unobstructed visibility from such a large surrounding area. This heightened consideration was clearly demonstrated by the applicant, during the previously approved CUP's, in the form of the creative and intelligent design solutions that were promulgated. These solutions addressed the gap issue, while respecting the immediate and regional surroundings and, in the eyes of the Hearing Administrator, represented an implied commitment by both AT&T and the property owner. The current CUP request is fostered only by the fact that the property owner desires to no longer adhere to the original representations made by AT&T Mobile. While the proposed two faux-saguars are the only logical alternative if the original design solution is rejected, these would clearly introduce a far more obtrusive visual element into the area. Their girth and height would be significantly greater than any nearby natural specimens.

Hearing Administrator's Decision

This application for a Type I conditional use permit for a two new communication towers, on property zoned CR-1, is hereby **denied** by the Hearing Administrator.

AT&T Mobile has a previously-approved option for addressing the gap in question. This option considered the dominant character and aesthetics of its surroundings -- which are made even more relevant by the hill-top nature of the subject property -- and proposed a design solution which appropriately recognized these

considerations and which represented a tacit commitment to the surrounding property owners. The only element which has changed with the present CUP application is the property owner's desire to now no longer allow any wireless improvements on the actual residence, but to still otherwise maintain their lease arrangement with AT&T Mobility. The Hearing Administrator views that as a private matter between these two private parties, one that is insufficient to justify the approval of two new hill-top faux-saguaro structures.

In the event that the applicant and AT&T Mobile elect to proceed with the previously approved CUP (which granted the expanded wireless improvements integrated into the residence, further raised parapets, etc.), the Hearing Administrator advises staff as to his full support of reactivating this prior CUP approval without the requirement for any new public hearing. In the event the applicant wishes to proceed with this option, staff shall outline and facilitate the specific steps that would be required by the applicant to accomplish same.

Protest Period and Appeal Procedures

As is the case with all Type I conditional use applications, this decision is subject to a statutory 30-day protest period from the date of this decision. If a valid protest is received within the 30-day period, an appeal hearing will be scheduled before the Board of Supervisors, who shall then make the final decision on this conditional use permit.

Any party interested in filing an appeal should contact Mr. Tom Drzazgowski, Pima County Deputy Chief Zoning Inspector, at phone number 724.6675. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

Respectfully Submitted:



Jim Portner
Pima County Hearing Administrator

November 14, 2016
Date