



**PIMA COUNTY  
DEVELOPMENT SERVICES DEPARTMENT**

201 N. Stone Avenue, 1st Floor  
Tucson, Arizona 85701-1207

**CARMINE DeBONIS**  
Director

Phone: (520) 740-6520  
FAX: (520) 798-1843

June 26, 2018

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**HEARING ADMINISTRATOR'S FINDINGS AND DECISION**

**P18CU00005**

**CATALINA FOOTHILLS CHURCH — E. ORANGE GROVE ROAD  
(Kevin Dugan on behalf of Verizon Wireless – Applicant)  
Type I Conditional Use Permit — Communication Tower**

**Background/Authority**

Pima County Zoning Code Section 18.97, in accordance with Sec. 18.07.030.H.2.e.10, allows a **communication tower** of up to fifty feet (50') in height within the CR-1 Zone, subject to the Type I conditional use permit (CUP) procedure. This particular request is to construct a new monopole that will be camouflaged as a palm tree (i.e. be a "monopalm"). The height of structure is 45' to the top of the panel antennae array; the height of the faux palm fronds will extend above this height. The subject property is part of the Catalina Foothills Church holdings and is planned for additional future church parking. The applicant also proposes to plant two live palm trees in the immediate vicinity of the monopalm so as to better integrate it with its surroundings. Other existing palm trees are visible within the surrounding viewshed.

**Public Hearing**

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on June 21, 2018. The applicant (Kevin Dugan on behalf of Verizon Wireless) presented the case to the satisfaction of the Hearing Administrator and answered his questions. The applicant indicated that, several months prior, he had mailed informational packets to the surrounding property owners on the public-notification list generated by Pima County.

Five (5) members of the public attended the hearing, four (4) of whom chose to speak on the matter. Issues and concerns expressed by those who opposed the tower generally focused on perceived negative impacts on views and the character and ambiance of the surrounding area. One (1) of the speakers spoke in strong support of the tower's approval, based on the need for improved wireless service in the area. Staff reported that two (2) individuals had contacted them prior to the public hearing, one of whom was in support and the other of whom expressed concerns. Upon hearing all of the above testimony and allowing the applicant their rebuttal, the Hearing Administrator closed the public hearing.

### **Hearing Administrator's Considerations and Comments**

After giving due consideration to the facts of this case and the public testimony and materials presented, and being aware of the site particulars from having visited the proposed tower location and assessing its context, the Hearing Administrator offers the following comments underlying this decision:

- **Aesthetics and View Impacts.** This issue is raised by nearby property owners on nearly every application for a new communications tower. Case law has consistently held that views enjoyed by one party across an adjacent property are a privilege, not a legal right. No individual has any permanent or prescriptive claim on a view, or on an unfettered viewshed, simply because they have enjoyed one in the past. That being said, some measure of consideration to mitigate the aesthetic impacts of unsightly communication towers is a reasonable expectation. The Hearing Administrator finds that the faux palm tree camouflage, together with the planting of two live palm trees, demonstrates sufficient consideration in this regard on the part of the applicant.
- **Undergrounding of Utilities.** The private deed restrictions of Catalina Foothills Estates No. 8 may very well require their residents to underground all utilities. Firstly, the property in question is adjacent to, but not a part of, CFE No. 8. Secondly, wireless communication towers are not classified as a utility by the Arizona State Corporation Commission. Lastly, wireless communications facilities, by their very nature and function, require height to deliver service to their customers.
- **Impacts Upon Lifestyle and Neighborhood Ambiance.** Some of the speakers indicated that they had purchased their home in the nearby area due to its quiet, desert lifestyle, replete with wildlife and exceptional mountain views. They believe these intrinsic qualities must be maintained and that a new communications tower, even if camouflaged, would undermine them. The issue before the Hearing Administrator is not the maintenance of character and lifestyle for a given region or context, but whether or not the proposed use can be effectuated on a given property while still respecting the lawful and permitted uses of the surrounding property owners. As communities naturally grow and change, such issues are routinely encountered. It is essential to keep in mind that no property owner has some permanent or prescriptive claim upon a given preferred lifestyle, or on the character of their entire surroundings, simply because they may have experienced them in a certain way heretofore. Underlying such an expectation, at least in part, would be the assumption that one's property rights somehow extend beyond the limits of their own piece of private property.

### **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 places the subject property in the *Low Intensity Urban (LIU)* category, the purpose of which is “to designate areas for a mix of low density residential and other compatible uses ...”

It is found that the proposed use is not inconsistent with this purpose and that the proposed tower is compatible with the nearby church campus improvements, the public school across Orange Grove Road, and the established residential subdivision to the south as long as a reasonable measure of camouflage is used. The proposed monopalm and associated new live palm trees satisfy this standard. Numerous prior communications towers have been approved within the same *LIR* comprehensive plan district.

- 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 proposed use is found to not be in conflict with nor hinder any of the permitted legal uses of the surrounding properties. Public testimony objecting on the basis of view and lifestyle impacts has been addressed in the “Hearing Administrator’s Considerations and Comments” section above.

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

The site takes direct access from Camino La Zorra, which has direct connectivity to E. Orange Grove Road, the latter of which is designated as a “major street” by the County’s Major Streets & Routes Plan. 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.**

On-site parking, loading, etc. will be verified through the permitting process.

- 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. All applicable County standards regulating communication towers will be verified through the subsequent permitting processes.

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

There are no hours associated with the proposed tower; it is an unmanned facility.

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

Landscape requirements attendant to the proposed tower, if any, will be verified through the permitting process.

### **Hearing Administrator's Decision**

This application for a Type I conditional use permit to allow a **communications tower** within the CR-1 zone is hereby approved subject to the following standard conditions per the Pima County Zoning Code and the supplemental special conditions.

#### **Standard Conditions**

*The Pima County Zoning Code stipulates no standard conditions for this conditional use, other than the fact that the tower structure may not exceed fifty feet (50') in height.*

#### **Special Conditions**

1. The tower structure shall be no more than forty-five feet (45') in height (to the top of structure or antennae array) as shown in the submitted development plan materials.
2. The tower shall be camouflaged as a palm tree as shown on the submitted development plan materials. The palm fronds are allowed to extend to a height above 45'.
3. All cabling, etc. necessary to serve the antennae shall be placed internally within the monopalm "trunk" or be appropriately painted or otherwise camouflaged to visually integrate with the monopalm's aesthetics.
4. The tower shall be located on the property as shown on the submitted development plan.
5. Two (2) live palm trees shall be planted in the immediate vicinity of the proposed faux monopalm and shall be irrigated appropriately to fully establish them and ensure their viability.

### **Appeal Procedures**

The owner, applicant, or any owner-of-record within the legal notification area can appeal this decision, which will result in a subsequent public hearing on this matter before the Pima County Board of Supervisors. The appeal must be filed, in writing, within thirty (30) days of the Hearing Administrator rendering this decision.

Any party interested in filing an appeal should contact Mr. Tom Drzazgowski, Pima County Chief Zoning Inspector, at phone number 740.6675. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

A handwritten signature in black ink, appearing to read 'Jim Portner', with a period at the end.

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*Jim Portner*  
Pima County Hearing Administrator

June 26, 2018

*Date*