

Gila County Planning and Zoning Commission

Gila County Payson Complex
608 E. Hwy 260, Payson, AZ.
July 16, 2009

1. **Call to order/Pledge of Allegiance**

Planning and Zoning Commission meeting was called to order by Chairman, Don Ascoli at 10:03 am.

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| 2. Roll Call- Chairman | Don Ascoli |
| Vice Chairman | Lori Brown |
| Members | Jack Larimore |
| | Mickie Nye (via telephone) |
| | Renee Zeising |
| | Ron Christensen (absent) |
| | Rose Harper (absent) |
| | Jay Spehar (absent) |
| | Travis Williams |

3. Minutes from May 21, 2009. Motion made by Commissioner Renee Zeising, seconded by Commissioner Jack Larimore-unanimously approved.
4. Director/Commission Communications: Director of Community Development addressed the commission, he stated that Gila County has submitted an application for rezoning and will probably be on the agenda in August or September.
5. CUP-09-01, filed by Jeff Johnson, authorized agent for Gary Binder the property owner: Application is a request to utilize an existing amateur radio tower to provide commercial communication services to neighboring properties and emergency service providers from the subject site in the East Verde Estates Community, which is 3 miles north of Payson, Arizona. The subject property is addressed as 234 W. Kings Drive and has tax parcel number 302-31-136A. The subject site is a consolidation of Lots 3, 4 and 5 in the Kings Addition Subdivision and Lots 1 and 11 in the Orloff Palisades Subdivision.

Mr. Gould addressed the commission and stated that Mr. Johnson wants to add an antenna onto an existing tower to provide internet service. Zoning for the property is zoned R1-D12 and is approximately 1 ¼ acres. Variance (V-08-03: request to construct a proposed 45' amateur radio tower) was heard by the Board of Adjustment on December 17, 2008. At the time of the variance issuance, there were no concerns expressed. There was discussion with Mr. Johnson at that time regarding commercial purposes and we suggested that it go through the Conditional Use Permit process, but Mr. Johnson for some reason at that time did not want to go through that process.

There is one letter of concern and the resident is stating that we are not listening to what they want. He believes that the tower is not sufficient for cell service (but owner does not intend to put cell service), they are going to pursue an injunction against this and there is other providers that could provide a more reasonable price for this service. He stated that he's not sure that those are all issues that we can take into consideration but they are concerns. After looking at everything we have recommended approval; the reason is that the 45' tower is already there and all they're adding to it is a small antenna. He stated that he did come in the back door on this and he should have gone through the C.U.P process to begin with. One issue we are concerned with is that the tower does need to be an engineered commercial tower and public safety requirements are required to receive a building permit.

Mr. Gould stated conditions suggested are:

1. Tower meet all the requirements of a commercial tower
2. No change in height
3. FCC, FAA requirements and any state and federal agency regulations
4. Engineer will submit a sealed and signed letter to us stating that everything meet the intent of the engineering for the tower
5. Tower will not be utilized for any advertising

Mr. Jeff Johnson stated that there is an internet antenna on the tower and is set up to receive but hardware to transmit is not in place at this time. He further stated that at the time of the variance he had no intent to commercialize. He stated that he's been approached by the Sheriff's Department and they are interested in putting something out there for emergency purposes. Until the permit is issued and the engineers come out it is not known what they will want to put on it. It will not be any larger than what is currently on it. He continued by stating that this tower has never been pursued for profit and is simply a thank you to the community for letting him put it up; it will not cost the community a dime, it is not for profit and does not want the county assuming that it is a profit venture.

Chairman Ascoli stated that the commission does not make decisions on business ventures and the commission's purpose is to determine if the request meets code.

Mr. Gould stated that Consultant, Rudy Frost, believes that the application should go through the variance process again because it is a commercial tower but Mr. Gould stated that he believes that since it is the same tower making him go through the process again is just bureaucratic.

Commissioner Zeising asked if we had anything from the Sheriff's Office in writing. Bob Gould stated that staff does not. Mr. Johnson stated that he had interoffice emails and he could let the commission and/or staff read the emails. He stated that he will provide them access with no compensation and stated that if the sheriff's office wants power he will provide it to them, and continued by stating that in all honesty they will probably come back and offer something to offset the cost.

Public comment was open and Steve Connolly said he resides at 260 W. Kings Drive and is probably the most adverse to the tower. He stated that the tower was an amateur ham radio tower but the internet has worked since day one. The backdoor, the fibbing and the lying is what upsets him the most and he would also like it to be painted brown or green.

Mr. Gould stated that he sent an inspector out there and that's when Mr. Johnson showed up requesting a conditional use permit. He stated that we will continue to check and if there is anything else that goes on the owner/applicant will have to comply.

Commissioner Renee Zeising stated that she does not see Mr. Johnson aggressively advertising internet service and if he wants to add another antenna he has the right to so.

Mr. Ed Eckhardt resides at 176 W. Mary Patricia and asked if the property is sold does the conditional use permit continue with the property; answer by Mr. Gould was yes. Mr. Gould stated that if the intensity of the use on the tower is extreme, staff would recommend that it not be allowed. Mr. Eckhardt stated that he would like something in the motion that whatever activity occurs here that it will not change the character of the single family zoning designation.

Mr. Johnson stated that this tower is for internet and first responder's service. Chairman Ascoli asked if internet service would be for sale; Mr. Johnson replied that it would not be from him. Mr. Johnson stated that the internet service provider will probably charge.

Mr. Gary Binder, owner of the property, stated that they will not be putting anything on the tower. He continued by stating that they were contacted by people and stated the organizations will have to go through the procedures.

Mr. Gould stated that commercial towers are permitted in all zoning districts with a conditional use permit unless the use is currently allowed in that particular zoning district.

Commissioner Travis Williams asked who owned the tower; Mr. Johnson stated that he paid for it but it is on Mr. Binder's property so by law Mr. Binder owns it.

Mr. Patrick Millette resides at 6722 S. Fawn Avenue in Gilbert, AZ and was asked to attend the meeting by Steve Connolly. His company took over for Canyon Broadband 18-20 months ago. He asked if the intent of the tower was to communicate with Diamond Pt.; Answer by Mr. Binder was that it receives from Diamond Pt. Second question was why was the tower removed; Answer: tower wasn't moved; there was a tower that was on another property and because of zoning issues that tower had to come down and it just so happens that he (Jeff Johnson) contacted the person that took down that tower and hired that person to put his up. Jeff Johnson stated that for the record he was a licensed ham operator and forfeited the license.

Bob Gould read from the Zoning Ordinance:

103.14 Commercial Communication Towers

A. Communication Towers

1. Communication towers are permitted in all zoning districts with a conditional use permit unless the use is currently allowed in that particular zoning district.

He continued by stating that it means whether it is a commercial or a private tower, it is permitted if they get a conditional use permit. It doesn't matter whether they are making money or not.

Director of Community Development, Bob Gould, stated that *if* Mr. Johnson is operating commercial activities off of that tower, he is illegal.

At this time, Mr. Connolly showed the commission pictures of the tower from his camera.

After much discussion, Chairman Ascoli summed up the situation and stated that an amateur radio tower was granted a variance for the fall zone issue before it was installed and now have found the three foot antenna attached to it (so Mr. Johnson could have internet). Mr. Gould stated that if he (Mr. Johnson) were to attach one just for his own internet use they would probably not require a conditional use permit; but if he's providing service to everyone else he has to get one. Chairman Ascoli continued and stated the owner is now trying to obtain the conditional use permit so that he can contact whomever to provide the service properly and legally.

Mr. Gould asked Mr. Johnson "So what are you saying, there's no activity and no one else is getting any services whatsoever from this tower right now." Mr. Johnson stated that he was the only one. Chairman Ascoli asked Mr. Binder if anyone was getting service or paying for services; answer from Mr. Binder was not that he knew of but that was why Mr. Johnson was speaking for him.

Mr. Johnson stated for the record that the engineer that he uses is the same person that the county uses for their radio services.

Bob Gould asked if there was anyone getting service from that tower or internet service at this time; Answer from Mr. Johnson: to his knowledge nobody was getting service.

Vice Chairperson Lori Brown asked Mr. Binder if he was making money on this or not. Mr. Binder stated he didn't know then said that he did receive something for rental space.

Bob Gould recommended an additional condition; no additional antenna's or dishes or any other uses shall be added to this tower without prior commission review.

Commissioner Renee Zeising suggested that the condition read: only the equipment that be added to this tower shall be specifically for the purposes of emergency services.

Mr. Johnson stated that the tower does not even clear the tree line and asked if he paints the tower who determines the color? Mr. Gould stated that he would have Rudy Frost, consultant for Gila County, make the suggestion on the color.

Chairman Don Ascoli closed the public comment session.

Commissioner Renee Zeising made the motion to the recommend approval to the Board of Supervisors application CUP-09-01 with the following conditions:

1. The applicant must abide by all the requirements of the FCC, FAA and any other federal, state, County or agency having jurisdiction over it.
2. Sealed statement from the qualified engineer that the placement of the antenna will have no ill affect on the tower
3. The antenna and the tower will not be utilized for signage or advertising unless seeking approval first from the Board of Supervisors
4. That the tower be painted a color to blend in with the surrounding area (consult Rudy Frost)
5. No additional antennas or dishes shall be added to the tower except those used solely for emergency services unless they receive prior approval from the commission and/or the Board of Supervisors

Chairman Ascoli suggested adding:

It may not be used for commercial purposes until all these are met.

Chairman Ascoli requested they contact the provider to confirm no commercial activity is going on now.

Commissioner Renee Zeising suggested tabling the item until they get the information from Michael Day, structural engineer and the Sheriff's office.

Bob Gould stated that it was always the county's intention to make sure that this was going to be the appropriate activity on this parcel and not going to interfere with the rights of people in the neighborhood.

Commissioner Travis Williams stated that if they voted today he would vote against it.

Commissioner Mickie Nye motioned to table the item until further information could be obtained.

Commissioner Renee Zeising added to the motion that Point Wireless would not be able to re-sell internet service. It was stated (not identified) that that was the whole purpose of being there. Commissioner Zeising continued by stating that her suggestion was that they approve it specifically for emergency services and receiving his monthly internet service but not go beyond that to allow Point Wireless to re-sell. Chairman Ascoli stated that he thought that was out of their purview.

Bob Gould stated that the Board of Supervisors would make the final decision.

Commissioner Renee Zeising withdrew her motion due to the commission not being comfortable making the decision; motion to table was made by Commissioner Mickie Nye and seconded by Commissioner Renee Zeising until August 20th, 2009. Motion tabled with a vote of 4 ayes and 2 nays.

The commission requested that staff provide the additional information:

1. Contact Michael Day
2. Contact Sheriff's Office
3. Contact neighbors to find out if they're receiving services & if it's an eyesore

Robert Gould, Director of Community Development stated that he would contact each commission member to determine what additional information they wanted.

Vice Chairperson Lori Brown motioned to adjourn.

6. Zoning Ordinance Update by Rudy Frost – tabled until August 20, 2009

Meeting adjourned at 12:06 pm.

7. Date & time for the next scheduled meeting.

Regularly scheduled meeting is set for August 20th, 2009 and will be held at the same location due to the items being tabled.

8. Meeting adjourned at 12:06 pm.