

AGENDA



3:00 P.M.

CITY COUNCIL SPECIAL MEETING

WEDNESDAY, SEPTEMBER 29, 2021

NOTES:

- Meeting room is wheelchair accessible. American Disabilities Act (ADA) accommodations are available upon request. Please phone 928-282-3113 at least two (2) business days in advance.
- City Council Meeting Agenda Packets are available on the City's website at:

www.SedonaAZ.gov

GUIDELINES FOR PUBLIC COMMENT

PURPOSE:

- To allow the public to provide input to the City Council on a particular subject scheduled on the agenda.
- This is not a question/answer session.
- The decision to receive Public Comment during Work Sessions/Special City Council meetings is at the discretion of the Mayor.

PROCEDURES:

- **It is strongly encouraged that public input on agenda items be submitted by sending an email to the City Clerk at sirvine@sedonaaz.gov in advance of the 3:00 p.m. Call To Order.**
- Fill out a "Comment Card" and deliver it to the City Clerk.
- When recognized, use the podium/microphone.
- State your:
 1. Name and
 2. City of Residence
- Limit comments to **3 MINUTES.**
- Submit written comments to the City Clerk.

DUE TO CONTINUED PRECAUTIONS RELATED TO COVID-19, SEATING FOR THE PUBLIC WITHIN THE COUNCIL CHAMBERS IS LIMITED. THOSE WISHING TO COMMENT ON SCHEDULED AGENDA ITEMS MAY BE ASKED TO WAIT OUTDOORS OR IN AN ALTERNATE LOCATION IF THERE IS NOT ADEQUATE SEATING IN COUNCIL CHAMBERS. **COMMENTS IN ADVANCE OF THE 3:00 P.M. CALL TO ORDER ARE STRONGLY ENCOURAGED BY SENDING AN EMAIL TO [SIRVINE@SEDONAAZ.GOV](mailto:sirvine@sedonaaz.gov) AND WILL BE MADE PART OF THE OFFICIAL MEETING RECORD.** THE MEETING CAN BE VIEWED LIVE ON THE CITY'S WEBSITE AT WWW.SEDONAAZ.GOV OR ON CABLE CHANNEL 4.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE
2. ROLL CALL
3. SPECIAL BUSINESS

LINK TO DOCUMENT =

- a. AB 2718 **Public re-hearing/discussion/possible action** regarding a remand from the Coconino County Superior Court of an appeal to the Sedona City Council of the Planning and Zoning Commission's approval, with conditions, of a conditional use permit for the Arizona Water Company Water Tank Facility located at 55 Bell Rock Trail.
- b. **Discussion/possible action** regarding future meetings/agenda items.

4. EXECUTIVE SESSION

If an Executive Session is necessary, it will be held in the Vultee Conference Room at 106 Roadrunner Drive. Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

- a. To consult with legal counsel for advice regarding matters listed on this agenda per A.R.S. § 38-431.03(A)(3).
- b. Return to open session. Discussion/possible action regarding executive session items.

5. ADJOURNMENT

Posted: 09/23/2021

By: DJ

Susan L. Irvine, CMC
City Clerk

Note: Pursuant to A.R.S. § 38-431.02(B) notice is hereby given to the members of the City Council and to the general public that the Council will hold the above open meeting. Members of the City Council will attend either in person or by telephone, video, or internet communications. The Council may vote to go into executive session on any agenda item, pursuant to A.R.S. § 38-431.03(A)(3) and (4) for discussion and consultation for legal advice with the City Attorney. Because various other commissions, committees and/or boards may speak at Council meetings, notice is also given that four or more members of these other City commissions, boards, or committees may be in attendance.

A copy of the packet with material relating to the agenda items is typically available for review by the public in the Clerk's office after 1:00 p.m. the Thursday prior to the Council meeting and on the City's website at www.SedonaAZ.gov. The Council Chambers is accessible to people with disabilities, in compliance with the Federal 504 and ADA laws. Those with needs for special typeface print, may request these at the Clerk's Office. All requests should be made **forty-eight hours** prior to the meeting.

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.



**CITY COUNCIL
AGENDA BILL**

**AB 2718
September 29, 2021
Special Business**

Agenda Item: 3a

Proposed Action & Subject: Public re-hearing/discussion/possible action regarding a remand from the Coconino County Superior Court of an appeal to the Sedona City Council of the Planning and Zoning Commission’s approval, with conditions, of a conditional use permit for the Arizona Water Company Water Tank Facility located at 55 Bell Rock Trail.

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|-------------------------------|------------------------|
| Department | City Attorney’s Office |
| Time to Present | 45 minutes |
| Total Time for Item | 2 hours |
| Other Council Meetings | January 23, 2019 |
| Exhibits | A. Resolution |

| | | | |
|--------------------------------------|--|-----------------------------|-------------------------------------|
| City Attorney Approval | Reviewed 09/21/21 KWC | Expenditure Required | \$ 0 |
| City Manager’s Recommendation | Adopt a Resolution explaining and again granting, with conditions, case number PZ17-00001 (CUP, DEV), Arizona Water Company Water Tank and Booster Facility at 55 Bell Rock Trail. | Amount Budgeted | \$ 0 |
| | | Account No. (Description) | N/A |
| | | Finance Approval | <input checked="" type="checkbox"/> |

SUMMARY STATEMENT

Background: The Arizona Water Company, requested approval of a Conditional Use Permit (CUP) and Development Review to allow for a new public utility and public service substation water tank and pumping plant. The facility is proposed to include a new 1.5 million gallon, mostly subterranean, water tank and booster pump station to provide water to the properties along the State Route 179 corridor of Sedona.

Materials provided in conjunction with the August 21, 2018 and October 16, 2018 P&Z public hearings and the City Council hearing on January 23, 2019, and the subsequent Court Order are all appended to this Agenda Bill and incorporated herein by this reference and can be found at the following link:

[Arizona Water Company Storage Tank | City of Sedona \(sedonaaz.gov\)](http://sedonaaz.gov)

This matter now comes before the City Council for rehearing by order of the Coconino County Superior Court (Case No. CV 2019-00120) for the purpose of expressing in greater detail the requisite findings as described in the Sedona Land Development Code (LDC) to support the grant of a conditional use permit.

Because the application was filed in 2017, and before the December 2018 amendments to the LDC were adopted by the City Council, consideration for approval of the CUP by the Commission continues to be governed by the 2017 version of the LDC.

The Planning and Zoning Commission previously considered the application at a public hearing on August 21, 2018. At that time, the Commission determined that additional information and considerations by the applicant were necessary. Accordingly, the public hearing was continued to October 16, 2018. At the conclusion of the October 16, 2018, public hearing, in reliance on detailed analyses presented in the staff report the Commission voted to approve the conditional use permit (CUP) with the following motion:

“I move for approval of case number PZ17-00001 (CUP), Arizona Water Company Water Tank and Booster Facility based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code requirements and the conditions as outlined in the staff report.”

The foregoing form of motion for approving a CUP application was consistent with that used historically by the City of Sedona’s Planning & Zoning Commission for numerous prior CUP applications.

Appeal of Planning & Zoning Commission Recommendation

Following the Commission approval, a Sedona homeowner, Mr. Vincent McGeary, timely appealed the Commission’s decision because he alleged the Commission action did not comply with the specific “findings” required by the then existing Sedona Land Development Code (LDC). Under Section 402.06 of the relevant LDC, the following “findings” shall be made before granting a conditional use permit:

- A) That the proposed location of the conditional use is in accordance with the objectives of this Code and the purpose of the zoning district in which the site is located.
- B) That the granting of the conditional use permit will not be materially detrimental to the public health, safety or welfare. The factors to be considered in evaluating this application shall include:
 - 1. Property damage or nuisance resulting from noise, smoke, odor, dust, vibration or illumination;
 - 2. Any hazard to persons and property from possible explosion, contamination, fire or flood;
 - 3. Any impact on surrounding area resulting from unusual volume or character of traffic.
- C) That the characteristics of the use as proposed and as may be conditioned are reasonable compatible with the types of use permitted in the surrounding area.
- D) That the proposed use, as it may be conditioned, will comply with the applicable provisions of this Code, and other ordinances.
- E) That the proposed expansion or change of a nonconforming use (if applicable) is no more deleterious to other properties in the surrounding area than the existing use.

As a substantive matter, Mr. McGeary postulated that the scale of the proposed water tank as presented by the applicant was “industrial,” with a “chemical storage and feed system” that were not appropriate in a residential neighborhood.

The matter was appealed to the City Council, as per the review process established in the LDC. The City Council affirmed the Commission's action in approving the CUP.

Superior Court Special Action

Mr. McGeary then filed a special action complaint in the Coconino County Superior Court in which he alleged that the Commission and City Council decisions were arbitrary, capricious or contrary to law. Nearly 18 months after the case was fully briefed and submitted to the Superior Court judge for consideration, the Court found that there was insufficient information in the record of the Commission and Council proceedings from which to draw any conclusion as to the legal sufficiency of the Commission and Council actions.

The Court remanded the matter back to the Commission and City Council for further findings to be made from which any future legal challenge could be objectively analyzed. In short, the Court held that the motion made and passed by the Commission at the October 16, 2018, public hearing needs more detailed clarification.

The Court specifically held that the Commission and Council should "...explain their factual and legal basis for their decisions approving the subject CUP, to include reference to the applicable LDC provisions that they considered and based their decisions upon."

Planning and Zoning Commission Rehearing

On May 18, 2021, the Planning and Zoning Commission, pursuant to the Court Order, reheard case number PZ17-00001 (CUP). At the conclusion of the meeting, the Commission unanimously voted to approve the granting of the CUP with the following motion:

"I move that in case number PZ17-00001 (CUP), in consideration of the applicable goals, objectives and recommendations described in the Sedona Community Plan, the Commission find as follows:

1. That, pursuant to Sedona Land Development Code Section 402.06(b) and Sedona Land Development Code Section 605.01, the proposed location of the conditional use as requested by the applicant, Arizona Water Company, is in accordance with the objectives of the Sedona Land Development Code and the Single-Family Residential (RS-18(b)) zoning district in which the site is located and supports the overall purpose for promoting and preserving residential development within the community; that the use requested by the applicant is specifically allowed subject to a conditional use permit pursuant to Section 605.02(B)(6) of the Sedona Land Development Code; and, that after consideration of the potentially negative operational characteristics and impacts, the applicant's proposed use is appropriate subject to conditions of approval.
2. That, pursuant to Sedona Land Development Code Section 402.06(c), and based on the evidence presented in the staff report and through testimony at the public hearings during which the subject application was considered by the Commission, the use requested by the applicant is unlikely to result in property damage or nuisance resulting from noise, smoke, odor, dust, vibration or illumination; that the use requested by the applicant is unlikely to result in hazards to persons and property from possible explosion, contamination, fire or flood; and, that any impact on the surrounding area resulting from unusual volume or character of traffic can be effectively mitigated. Accordingly, and subject to the conditions of approval, the granting of the conditional use permit will not be materially detrimental to the public health, safety or welfare.
3. That, pursuant to Sedona Land Development Code Section 402.06(d), and based on the evidence presented in the staff report and through testimony at the public hearings during which the subject application was considered by the Commission, the applicant has designed the proposed water tank with sufficient consideration of the surrounding

residential properties so that the proposed use of a 1.5 million gallon, mostly subterranean water tank, subject to the conditions of approval, is compatible with the uses permitted in the surrounding area.

4. That, pursuant to Sedona Land Development Code Section 402.06(e) and Sedona Land Development Code Section 605.02(B)(6), the proposed use for a water tank, subject to the conditions of approval, complies with the provisions of the Sedona Land Development Code regulating the Single-Family Residential (RS-18b)) zoning district and other ordinances that may be applicable thereto.
5. That, pursuant to Sedona Land Development Code Section 402.06(f), the subject property is currently vacant land and, accordingly, there is no expansion or change of a nonconforming use associated with this conditional use permit application.
6. That approval of case number PZ17-0001 (CUP) is subject to the conditions for approval as outlined in the October 16, 2018 staff report.”

City Council Rehearing

To fully comply with the Court Order, City Staff requests that the City Council rehear case number PZ17-00001 (CUP).

Council Rules of Procedures, Rules 3.Q.4 outlines the procedure for Planning and Zoning Appeals and is made up of 4 parts: 1) 10 minute presentations by each party; 2) Public Hearing; 3) 5 minute rebuttal by each party; and 4) deliberation by City Council.

If the item before the City Council concerns an appeal of a planning and zoning issue, the appealing party and the party defending the prior decision will each be given ten (10) minutes to present their position and respond to questions from the Council. The Council will then allow public comment in accordance with the three-minute rule governing such comment. Following the public comment period, the appealing and defending parties will have five (5) minutes for rebuttal. The Council will then deliberate and reach a decision on the appeal.

If Council again determines to uphold the Planning and Zoning Commission’s decision to grant the CUP, City staff have prepared a recommended motion adopting the attached Resolution.

Community Plan Consistent: Yes - No - Not Applicable

Climate Action Plan/Sustainability Consistent: Yes - No - Not Applicable

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): Deny approval of case number PZ17-00001 (CUP) based on the following findings (please specify findings that support denial of the application).

MOTION

I move to: adopt Resolution 2021-___, explaining and again granting, with conditions, case number PZ17-00001 (CUP, DEV), Arizona Water Company Water Tank and Booster Facility at 55 Bell Rock Trail, to allow for a new public utility and public service substation, water tank, and pumping plant based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code and Community Plan requirements, including LDC Sections 402.06, 402.08, 605.01 and 605.02, and the conditions as amended by the Planning and Zoning Commission.

RESOLUTION NO. 2021-__

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING A CONDITIONAL USE PERMIT (PZ17-00001 CUP) FOR THE ARIZONA WATER COMPANY WATER TANK AND BOOSTER FACILITY AT 55 BELL ROCK TRAIL AND EXPLAINING PREVIOUS APPROVALS IN COMPLIANCE WITH COCONINO SUPERIOR COURT ORDER IN CASE NO. CV-201900120.

WHEREAS, on October 16, 2018, the Sedona Planning and Zoning Commission (“P&Z Commission”) approved the Conditional Use Permit PZ17-00001 (CUP) for the construction of a new 1.5 million gallon, mostly subterranean, water tank for the Arizona Water Company Water Tank and Booster Facility at 55 Bell Rock Trail, based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code requirements, including LDC 402.06, 605.01 and 605.02, as outlined in the Staff Report adopted by the P&Z Commission and incorporated as part of their findings.

WHEREAS, on January 23, 2019, the City Council of the City of Sedona (“City Council”) heard an appeal of the P&Z Commission decision to grant PZ17-00001 (CUP) and at the conclusion of the public hearing determined to uphold with conditions, case number PZ17-00001 (CUP) for the Arizona Water Company Water Tank and Booster Facility at 55 Bell Rock Trail, based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code requirements, including LDC 402.06, 605.01 and 605.02, as outlined in the Staff Report adopted by the P&Z Commission and incorporated as part of City Council findings and subject to the conditions as amended by the Planning and Zoning Commission; and

WHEREAS, on April 14, 2021, the Coconino County Superior Court ordered the City to explain the factual and legal basis for P&Z Commission decision to grant PZ17-00001 (CUP) and the City Council’s decision to uphold the CUP on appeal (the “Court Order”); and

WHEREAS, on May 18, 2021, the Planning and Zoning Commission, pursuant to the Court Order, reheard case number PZ17-00001 (CUP). At the conclusion of the meeting, the Commission unanimously voted again to approve the granting of the CUP based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code requirements, including LDC 402.06, 605.01 and 605.02, as outlined in the Staff Report adopted by the P&Z Commission and incorporated as part of their findings.

WHEREAS, pursuant to the Court Order, the City Council also needs to explain its factual and legal basis for upholding the granting of PZ17-00001 (CUP).

BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA AS FOLLOWS:

SECTION 1. That, pursuant to Sedona Land Development Code Section 402.06(b) and Sedona Land Development Code Section 605.01, the proposed location of the conditional use as requested by the applicant, Arizona Water Company, is in accordance with the objectives of the Sedona Land Development Code and the Single-Family Residential (RS-18) zoning district in which the site is located and supports the overall purpose for promoting and preserving residential development within the community; that the use requested by the applicant is specifically allowed subject to a conditional use

permit pursuant to Section 605.02(B)(6) of the Sedona Land Development Code; and, that after consideration of the potentially negative operational characteristics and impacts, the applicant's proposed use is appropriate subject to conditions of approval.

SECTION 2. That, pursuant to Sedona Land Development Code Section 402.06(c), and based on the evidence presented in the staff report and through testimony at the public hearings during which the subject application was considered by the Commission, the use requested by the applicant is unlikely to result in property damage or nuisance resulting from noise, smoke, odor, dust, vibration or illumination; that the use requested by the applicant is unlikely to result in hazards to persons and property from possible explosion, contamination, fire or flood; and, that any impact on the surrounding area resulting from unusual volume or character of traffic can be effectively mitigated. Accordingly, and subject to the conditions of approval, the granting of the conditional use permit will not be materially detrimental to the public health, safety or welfare.

SECTION 3. That, pursuant to Sedona Land Development Code Section 402.06(d), and based on the evidence presented in the staff report and through testimony at the public hearings during which the subject application was considered by the Commission, the applicant has designed the proposed water tank with sufficient consideration of the surrounding residential properties so that the proposed use of a 1.5 million gallon, mostly subterranean water tank, subject to the conditions of approval, is compatible with the uses permitted in the surrounding area.

SECTION 4. That, pursuant to Sedona Land Development Code Section 402.06(e) and Sedona Land Development Code Section 605.02(B)(6), the proposed use for a water tank, subject to the conditions of approval, complies with the provisions of the Sedona Land Development Code regulating the Single-Family Residential (RS-18) zoning district and other ordinances that may be applicable thereto.

SECTION 5. That, pursuant to Sedona Land Development Code Section 402.06(f), the subject property is currently vacant land and, accordingly, there is no expansion or change of a nonconforming use associated with this conditional use permit application.

SECTION 6. That approval of case number PZ17-0001 (CUP) is subject to the conditions for approval as outlined in the October 16, 2018 staff report.

SECTION 7. That these findings, in Sections 1-6, in addition to all of the Staff Reports and presentations provided to the P&Z Commission and City Council, each of which is incorporated by this reference, provided the factual and legal basis for considering and approving PZ17-00001 (CUP) by the P&Z Commission on October 18, 2018, complied with all applicable ordinance and LDC provisions, including LDC 402.06, 605.01 and 605.02, and provided the basis for City Council approval of PZ17-00001 (CUP) on January 23, 2019.

SECTION 8. That case number PZ17-00001 (CUP, DEV), Arizona Water Company Water Tank and Booster Facility at 55 Bell Rock Trail is hereby granted with conditions, to allow for a new public utility and public service substation, water tank, and pumping plant based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code and Community Plan requirements, including LDC Sections 402.06, 402.08, 605.01 and 605.02, and the conditions of approval as amended by the Planning and Zoning Commission.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 29th day of September, 2021.

Sandra J. Moriarty, Mayor

ATTEST:

Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney