

Date: June 20, 2022

Planning and Zoning Commission  
c/o Kurt W. Christianson  
City Attorney  
City of Sedona  
102 Roadrunner Drive  
Sedona, AZ 86336

Re. Opposition to East Sedona Water Facility Conditional Use Permit Application (CUP)

Dear Commissioners:

Please accept this letter in opposition to the above referenced application.

I. Introduction

The Commission should reject this application. The court has already vacated one permit because the City and Applicant attempted to push through an illegal approval. The City should not follow this path again. The City should place the proposed project on land zoned for such a use, and spread the cost of doing so to all its citizens. The scope and complexity of this project does not belong in a residential district. The City has district zoned for these types of projects. These zones are designated cope with the scope of the construction and to avoid diminished enjoyment and value to residential areas.

II. The Land Development Code (LDC)

The Applicant proposes to locate the project in a single-family residential zone (RS18). The purpose of the RS-18 is to accommodate and preserve lower-density single-family residential uses with limited community and educational uses and incidental or accessory uses. § 2.4. The only uses, other than some limited temporary uses, permitted as of right in an RS18 district are Single-Family Detached Dwelling, Park and Passive Open Space, Flood Control Facilities and Minor Public Utility. The LDC provides that Water Storage Tank may be conditionally permitted in an RS18 District. See § 3.2 at Table 3.1. Conditional uses must be approved pursuant to § 8.4B.

Water Storage Tank is defined as “[a] tower or other facility for the storage of water for supply to a water system. § 9.4.

The LDC provides that approval of a use authorizes that use only. Buildings and structures shall not be erected, altered, or enlarged except for a listed use. All uses not specifically listed are prohibited. § 3.2C. A conditional use application must proceed through a thorough and unbiased review process and the decision to approve an application must be based on competent evidence presented at a public hearing. § 8.3 E, F and G.

### III. The New Proposed Project

The Applicant's project includes 1) a water storage tank; 2) a booster pump station; 3) chemical feed system and 4) electrical station. The booster pump station and electrical station are housed in two separate buildings. Applicant proposes to bury the 1.5 million gallon tank.

The Application Package is generally devoid of particulars as to excavation, drainage, traffic, safety, adverse impact on property values and the like. Just for example, Applicant's previous application estimated extensive excavation and blasting with approximately 1800 round trip dump truck trips through Sedona. The current application fails to address the many issues previously raised. The record on Applicant's previous application, which raises these issues, the undersigned's objections, and the litigation record are incorporated by reference.

Applicant applies only based only the conditional use for Water Storage Tank, as defined above.

### IV. The Commission Must Reject the Application

#### 1. The Scope of the Project Includes Prohibited Uses

Applicant's project exceeds the scope of the Water Storage Tank conditional use. The LDC defines a Water Storage Tank as "[a] tower or other facility for the storage of water for supply to a water system. § 9.4. Applicant has defined its water storage tank as a "Buried water storage tank with 1.5-million-gallon (Mgal) storage capacity." The application further defines the booster station, chemical feed and electrical station as separate facilities housed in buildings. These facilities are not water storage tanks. Thus, the application exceeds the scope of the Water Storage Tank use.

Section 8.3 further provides that approval of a use does not and cannot extend to a use not specifically listed as a conditionally approvable use. All uses not specifically listed are prohibited and buildings shall not be erected except for a listed use. The code therefore prohibits the two proposed buildings in a residential area, and the application must be rejected.

#### 2. The Application Fails to Address the Approval Criteria of § 8.3E

The LDC set forth specific approval criteria. Applicant has not presented much, if any, of its own material with respect to these criteria, and has instead relied on the Staff Report. (It actually looks like the Applicant just recopied the Staff's table). Satisfaction of these criteria are presented in entirely conclusory fashion without supporting material. By way of example, for the requirement that the proposed development be consistent with prior approvals, Applicant states, "This Application is in compliance with prior approvals by City staff..." For the requirement that the project be consistent with the Community Plan, Applicant states, "This project is consistent with Sedona Community Plans..."

Another specific requirement—that the project shall not cause significant adverse impacts on surrounding properties—has been completely ignored. Applicant and the City have been advised that this project threatens to adversely and significantly impact surrounding property values. Two

properties on Mallard Drive resold for significantly under purchase price after Applicant made its first application. Public information indicates that the property at 99 W Mallard was purchased for \$120,000 in 2004 and sold for \$83,000 in 202. Likewise, the property at 97 Mallard was purchased for \$195,000 in 2005 and sold for \$100,000 in 2021. Drew Clark, a local realtor, wrote to Cari Meyer in 2018 that the project would adversely impact property values and that deals had by then already been negatively impacted. Despite the obvious and documented concern that this project will negatively impact surrounding property owners, Applicant states, “As indicated above, this project has minimal impact on surrounding properties.”

Many other objections and concerns were raised in the context of applicant’s prior application. Applicant claims that the building design and site arrangement was modified to address these concerns. But where is the evidence of that? What were the concerns? What in the design addresses them? Where does the application address the concerns over blasting, drainage, the enjoyment of the surrounding properties, the impact of 1800 dump truck trips?

The application and Staff Report are deficient and provide no basis for the Commission to conclude that the approval criteria have been met or even adequately addressed. If they were, the City and Applicant would squarely face the adverse impacts on the property values and the risks arising from the construction.

### 3. The Staff Evaluations Are Unreliable

This Commission is aware that a court reviewing the City’s prior approval vacated the permit. Both the Commission and the Mayor and Council followed the lead of the City Staff in evaluating the application, although the undersigned had shown that both were proceeding incorrectly and that the Department and Staff were biased to approve the project. This rendered their evaluations unreliable and unsupported. The court’s ruling that the Commission and the Mayor and Council failed to make any findings that would warrant upholding the permit should stop this Commission from traversing this path again.

The record of the Staff’s bias and neglectful treatment of the prior application are contained in the undersigned’s letters to the Commission, the Mayor and Council and in its submissions to the courts of Arizona. Space doesn’t permit revisiting them here in full; however, they are incorporated by reference. In addition to the Court vacating the prior approval, a few email exchanges make clear that the Department and Staff are biased in favor of the project and neglecting to provide adequate review.

The first involves an email exchange between Warren Campbell and Karen Osburn. When the undersigned appealed the prior approval to the Mayor and Council, Mr. Campbell undertook the primary responsibility to respond to the appeal. He sent his prepared presentation to Ms. Osburn for comment. Rather than addressing the merits and deep concerns raised in the appeal, he told her, “My strategy was to be brief and concise so as not to lend credence to appellants extensive arguments.”

Ms. Osburn didn’t suggest that the City shouldn’t be strategizing on behalf of a supposedly private applicant. Or tell Campbell that the Department’s job was to give the Council a full and fair evaluation of the issues rather than short shrift them in the hope the Council will not look too deeply. Or even ask him why he his spending his time working for AZ Water instead of other matters for the City. Instead,

Ms. Osburn wrote that it was a really excellent idea. She wrote, “Point, counterpoint, bamn!” See email exchange of Jan. 7, 2019. (In any private scenario, strategizing to avoid lending credence to important points a decision maker must consider would warrant removal from the project or at least some revised instruction. But in this case, it was considered excellent.)

Another set of exchanges showing the City’s bias occurred between Robert Spear, the Vice President and General Counsel of AZ Water, and the City Attorney’s Office. Mr. Spear in March of 2021 exchanged emails with the City Attorney office, urging the City to push the court for a ruling. Mr. Spear wrote to Katie Johnson asking her to call the court to find out when to expect a ruling. He also wrote to the City Attorney suggesting that calling the Chief Judge of the Court to push the decision for AZ Water. He wrote, “I wonder Kurt if we could have a quick call next week Kurt to talk about what we might do next week to break this case loose? I am beginning to wonder if we need to call the chief judge...” Ms. Johnson, incredibly, dutifully reported back to AZ Water on her efforts to reach the court clerk, and the City Attorney likewise scheduled the call with Mr. Spear as requested. (The City Attorney Office can provide the Commission with the emails).

AZ Water refers to it and the City as “we” and the City complies. There is no separation between the City and the Applicant on the project, and the Commission will not be receiving an unbiased Staff Report or unbiased legal advice. This Commission should be well aware of this since it was already led to re-approve the prior permit, only to have the court disallow it. Since the Land Development Code requires the unbiased review of the Staff, the Commission must reject the application. (And isn’t it time for the City to drop the neutrality charade and place on the record that it wants the tank and is working for and with the applicant to place it in the district?)

#### 4. The Forest Service Site Can Be Used

The Applicant and the City are incorrect that the Forest Service site is off-limits. The record in the prior approval shows that the Forest Service can be used if the project cannot be feasibly located in Sedona. The court has already vacated one approval. The Applicant and the City can reapproach the Forest Service and advise of the judicial decision. The history of the Forest Service is documented in the record of the first approval as is the Department’s telling the Forest Service—prior to any approval—that the project could be located in this district.

#### V. Conclusion

The Commission should reject the application. It is an unfair and inequitable cost shifting to expect a single district to bear the burdens of this project for an entire City, including the diminished value of property and enjoyment. Move the project to an industrial zone or on the Forest Service site. If the Applicant will suffer additional costs, these can be spread to all the City residents with increased water rates and/or through the City’s taxing power.

Respectfully submitted,

*Vincent McGeary*  
Vincent McGeary

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June 21, 2022

Planning and Zoning Commission  
City Of Sedona  
102 Roadrunner Drive  
Sedona, AZ 86336

Re: Opposition to East Sedona Water Facility CUP

Dear Commissioners:

I believe the Planning and Zoning Commission should deny the conditional use permit as the site chosen is not appropriate for such a project. The subject property lies within the Single-family Residential/Low Density designation in the Sedona Community Plan and is surrounded by no less than (6) residential lots, some with established homes. This fact alone should disqualify the property for consideration as industrial development is not an acceptable use under the Land Use Development within Sedona. And make no mistake, this is an industrial facility as evidenced by the 2500 amps of electrical power needed to operate the 3000 gallon per minute of pumps and the onsite use of a hazardous chemical that becomes chlorine gas when heated. In addition, the disruption to the neighborhood caused by two years of construction with the excavation of thousands of cubic feet of rock that must be blasted and then hauled away. Another issue is the seasonal flooding experienced at the west end of West Mallard Dr. A development of this size will only exacerbate the problem. Additional consideration should be given to the adverse effect on adjacent property values. Two of the above mentioned

lots have already sold in 2021 for 30-50% below their purchase prices. Building a water tank that will benefit the entire City of Sedona at the expense of adjoining and nearby property owners is unconscionable. I request that the commission reject the CUP.

Sincerely,

Kevin Brackin