

Essential Design, LLC

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Sedona, AZ 86336
928 301-9238

City of Sedona
Attn: Community Development Director, Audree Juhlin
102 Roadrunner Drive
Sedona, AZ 86336



Re: Bryson Ranch, LLC dba Horsin' Around Sedona

Dear Ms. Juhlin, et all:

Please consider this letter as notification of the objection of the code, process and zoning interpretations presented in the Notice of Violation ("Notice") letter and Stop Work Order relating to Bryson Ranch, LLC dba Horsin' Around Sedona ("Horsin' Around Sedona"). In compliance with the provisions in the Sedona Land Development Code, this letter along with the accompanying fee are intended to establish the formal proceedings and review of this matter in front of the City of Sedona Board of Adjustments.

First of all, thank you for the letter addressing the concerns of my client, Bryson Ranch LLC dba Horsin' Around Sedona. I think we can all agree that when it comes to the interpretation of law and process and how its direct interpretation affects business, it is in everyone's best interest to have these matters in writing.

The contents of this letter refer to the Notice of Violation letter dated and postmarked January 7, 2015 attempts to answer of the initial questions asked by my client regarding municipal jurisdiction over a county or federal property within city limits. The letter further identifies several interpretations of the Sedona Land Development Code by the Director of the Community Development Department, Audree Juhlin.

After carefully reviewing the letter, there are areas of disagreement with the interpretation of and conclusions drawn by the Director. As such, please consider this letter as a part of the application to the Board of Adjustment as per the City Sedona Land Development Code.

The basis for the disagreement with the presented interpretation of the code is essentially threefold. Those objections include 1) the targeted application of the City's jurisdictional code enforcement towards Horsin' Around Sedona; 2) predetermination by the Director that a Conditional Use Permit would not be allowed for this project; and

3) the general plan amendment and zone change process proposed in the letter as the only path to compliance for this project.

In addition to these objections with the interpretations presented in the Notice of Violation, there are additional items that are contained within the Notice and within the interactions to date with the City regarding this project that are objectionable. Those items are identified at the end of this document.

Targeted Jurisdictional Code Enforcement

The Notice contains two different statements of interpretations of jurisdictional authority. The first statement presented is:

"It is the City's position that while the property is owned by Yavapai County and leased by the Sedona Airport Authority, any proprietary or non-aeronautical activity on the property, such as Horsin' Around is subject to the City's jurisdictional authority."

In the first statement, we object to the term "non-aeronautical activity." No interpretation of case law or precedence supports the non-aeronautical definition applied. While it may seem like minutia, it is in fact a clear indication that the City is overreaching in interpreting case law in an attempt to defend its selective enforcement actions against Horsin' Around Sedona. The City is currently ignoring the other **114 contract uses and businesses operating** at the airport property in its enforcement efforts. This statement tries to exclude some of these other businesses in an effort to defeat a selective application argument.

The second statement in the Notice is presented after a list of case law citations. This statement is:

"Therefore because your business is not acting "in a governmental capacity" or performing a "governmental function," and is acting in a "proprietary capacity" your business is subject to any and all City ordinances and regulations."

This statement is supported by the case law citations included within the Notice. We do not dispute the case law citations or the second statement (referenced above) that government uses are exempt from municipalities. Again, what we do dispute is the selective or targeted application of the enforcement of that jurisdiction to this project and this project only. No other use or business located and operating at the airport has received any similar enforcement action.

The Notice defines Horsin' Around Sedona as a "private commercial enterprise" and therefore by that definition is subject to municipal jurisdiction. All of the other businesses located at the airport property are private commercial enterprises and yet no

enforcement action has commenced. These businesses include as a small example, a restaurant, car rentals, jeep tours, and tour companies. None of these businesses are "governmental" in capacity or function.

It is because no code enforcement action has arisen previously that the SAA has been actively leasing portions of this property to businesses for its entire operational history without coordination or consideration of the City's Land Development Code. In this instance enforcement of the City's regulations has been completely nonexistent, so much so that the jurisdictional basis for municipal regulations was not known to the SAA or even to City Staff. It was only after the request by Horsin' Around Sedona for an explanation of jurisdiction in writing, that the case law and municipal jurisdiction were identified.

Further, the implication in the Notice that the municipal jurisdiction was so well established a fact that the actions of my client were in direct defiance of that jurisdiction is clearly not accurate and in fact attempts to establish an impression of the my client as intentionally noncompliant.

For the record upon the posting of the property with a stop work order, operations were immediately stopped. It was the City's misapplication of the enforcement process as will be described later in this document and the targeted or selective enforcement actions as described above that created confusion and animosity in this project to date.

Predetermination of project as not allowable under a Conditional Use Permit

The "Community Facility (CF)" zoning designation, for this property is singularly atypical for airports in the State of Arizona. All other airports in Arizona are zoned for industrial and commercial designations with the only exception being the Grand Canyon airport which is zoned a Transportation classification. We honestly question the wisdom in this zoning designation for the airport; however, my client does not have the legal standing to dispute or process that matter. A lease does not have the legal standing to apply for a change to the legal designation of property unless specifically authorized under the terms of the lease. The lease between the SAA and Bryson Ranch LLC dba Horsin' Around Sedona does not include such a provision. The lease that the SAA has consistently used for years does not include this ability. It should be noted that this has a direct impact on all on this property as under the zoning designation **all uses require a Conditional Use Permit.**

The Notice states that the Horsin' Around Sedona does not conform to the CF zoning designation and is there for unallowable. We dispute staff's interpretation of the zoning ordinance especially in light of the other active businesses at the airport.

The following is the full text section of the Sedona Land Development Code for Community Facility.

625 CF Community Facilities District.

625.01 Purposes. *This district is intended primarily for the accommodation of public/semi-public uses (other than street rights-of-way); the identification of public-accessible areas where all persons would have the opportunity to be involved in and enjoy civic, cultural and recreational pursuits; and the identification and preservation of areas of historic significance.*

625.02 Use Regulations. *Buildings, structures or premises shall be used and buildings and structures shall be erected, altered or enlarged only for the uses listed below. All other uses not specifically listed or determined to be similar to those described below shall be prohibited and unlawful.*

A. Uses Subject to Conditional Use Permit.

1. *Accessory uses and structures, located on the same site as a conditional use.*
2. *Cemeteries, columbariums and related facilities.*
3. *Commercial uses incidental and accessory to other listed uses (such as concession stands and small gift shops).*
4. *Cultural centers.*
5. *Educational institutions, including charter schools and private schools, provided they offer a curriculum of general instruction similar to public schools subject to the requirements set forth in SLDC 914.*
6. *Historical landmarks.*
7. *Libraries and museums.*
8. *Municipal golf courses.*
9. *Public buildings and grounds.*
10. *Public parks and parks maintenance facilities intended for regular parks and recreation maintenance purposes. On-site long-term storage of heavy earth-moving equipment and large trucks is prohibited.*
11. *Public or private nonprofit educational institutions.*
12. *Public and semi-public community centers and recreational facilities (such as swimming pools and youth activity centers).*
13. *Public utility and public service substations, water tanks, pumping plants and similar installations, including public utility repair and storage facilities. On-site long-term storage of heavy earth-moving equipment and large trucks is prohibited.*

14. Public utility offices.

625.03 Approvals Required. Prior to the construction of physical improvements and the issuance of a building permit for all uses, development review approval shall be obtained as outlined in SLDC 401. Where required, conditional use permits shall be obtained as outlined in SLDC 402 and temporary use permits shall be obtained as outlined in SLDC 407.

625.04 Property Development Standards. The following property development standards shall apply to the site of a permitted or conditional use; these requirements are minimums unless otherwise noted.

A. Lot Area. Each lot shall have a minimum lot area of 10,000 square feet.

B. Lot Dimensions.

1. All lots shall have a minimum width of 100 feet.

2. All lots shall have a minimum depth of 100 feet.

C. Lot Coverage. Maximum lot coverage shall not exceed 25%.

D. Floor Area Ratio. Floor area ratio shall not exceed 0.50.

E. Yards.

1. Front Yard. There shall be a front yard having a depth of not less than 30 feet.

2. Side Yard. There shall be a side yard of not less than 15 feet.

3. Rear Yard. There shall be a rear yard of not less than 20 feet.

F. Access. All lots shall have frontage on and vehicular access from a dedicated street unless other frontage and/or permanent vehicle access has been approved by the Director. Each building site shall have a minimum width easement or right-of-way for access of 20 feet.

G. Distance Between Buildings. There shall not be less than 10 feet between an accessory building and a main building or between 2 buildings.

H. Accessory Structures. Accessory structures and architectural features shall comply with the requirements of Article 9 SLDC.

I. Height and Screening Regulations. All buildings, structures, walls and fences shall comply with the provisions of Article 9 SLDC.

J. Color and Materials. The exterior color and materials of all buildings, structures, walls and fences shall comply with the provisions of Article 9 SLDC.

K. Utilities. Utilities shall be provided in compliance with the provisions of Article 9 SLDC.

L. Trees. Trees shall be preserved and planted to comply with the provisions of Article 9 SLDC.

M. Outdoor Lighting. Outdoor lighting shall comply with the provisions of Article 9 SLDC.

N. Landscaping. The landscaping provisions of Article 9 SLDC shall apply.

O. Off-Street Parking. Off-street parking shall comply with the provisions of Article 9 SLDC.

P. Signs. Signs shall comply with the provisions of Article 11 SLDC.

Q. Design Standards. The provisions of Article 10 SLDC shall apply as administered through the development review process of Article 4 SLDC.

There are three portions of this section that are important to note for correct zoning interpretations which were specifically not addressed or identified in the Notice.

The first portion is that all uses in this zoning require a Conditional Use Permit. The identified list of uses is only a basis for typical uses that would be approved under a Conditional Use Permit. Again, the project as portrayed in the Notice as being intentionally noncompliant is fictitious as all uses that are not inherently governmental are under the jurisdiction of the City as identified above. No enforcement action against any other use is in process. To be clear, we do not dispute the necessity of a Conditional Use Permit, we dispute the targeted application of these standards.

Being that it is now clear that the City has jurisdiction and we are aware that a Conditional Use Permit is required; my client has every intention of applying for a Conditional Use Permit. In the Notice it is stated that because the project is a private commercial enterprise, a Conditional Use Permit would not be approval by Staff. In the very next sentence it states that because a Conditional Use Permit was not applied for, the business is in violation. How can a business be berated for not applying for a Conditional Use Permit and then stated that a Conditional Use Permit is not

approvable? A path for compliance that is reasonable and actual needs to be identified.

The second portion of the ordinance that is not clearly identified by Staff is "...or determined to be similar those described below...". This portion is especially important as it identifies that there are uses that are not listed that still would be allowable under a Conditional Use Permit. This section identifies that there is flexibility in the uses and that the list provided is a just a base. For this project, we believe that Horsin' Around Sedona is similar to a recreational use. At a minimum, we believe that there is a right to apply for a Conditional Use Permit. Unfortunately, it appears that the Director has predetermined in writing and in verbal conversation that a Conditional Use Permit for this project would not be approved by Staff and it has even been stated by the Director "that a Conditional Use Permit isn't an option and wouldn't be approved." As I am certain the Board of Adjustments is aware, it is not the role of Staff to approve or disapprove an application for a Conditional Use Permit. The role of Staff is to review applications and projects and enforce codes without bias.

The third portion not addressed in the Notice is the purpose of the zoning designation which is:

"... the identification of public-accessible areas where all persons would have the opportunity to be involved in and enjoy civic, cultural and recreational pursuits."

While not specifically stated/addressed in the Notice, we believe that Staff is not correctly applying or considering that a private, horseback riding business is a cultural or recreational pursuit. Certainly, a private horseback riding business is a more cultural and recreational pursuit than a restaurant or the other active businesses currently active at the airport. What we ask for is the opportunity to apply for a Conditional Use Permit without predetermination of disapproval by the Director as has been voiced.

Resolution Path as Identified

The Notice identifies that a potential path to resolution would be a general plan amendment and zone change application. The Notice correctly identifies that the current general plan classification has the entire airport designated as public/semi-public. In point of fact, the Sedona airport property is the only airport in Arizona that a public/semi-public general plan classification has been established. All other airports in Arizona are classified as commercial or industrial.

The identified potential path to resolution indicated in the Notice is not applicable to this project as Horsin' Around Sedona is a leasee of the SAA. Horsin' Around Sedona does not have the legal authority to make the applications for the legal classification of

the property. Yavapai County would need to apply for those applications or in the alternative, specifically authorize the SAA to make such an application.

Therefore, the proposed resolution path is not applicable or achievable for this project. Again, the appropriate path for resolution as identified in the Sedona Land Development Code is a Conditional Use Permit for this current zone designation. My client is willing to apply for a Conditional Use Permit now that municipal jurisdiction has finally been established. Again, my client would request that the application process be not predetermined to be denied, but considered on its merits as any other application would be.

With the enforcement actions towards this project, the City of Sedona has forced the SAA and Yavapai County into a situation where they can no longer continue lease operations, as every lease is now subject to the approval of a Conditional Use Permit at the airport that is not governmental in nature. **The immediate and direct result of this enforcement is that all non-governmental uses currently operating at the airport property are in noncompliance.** Logically, the next question is when will the stop work orders for all of the other businesses operating at the airport will be issued?

Business Licensure

The Notice also includes identification that a business license may be revoked or suspended if the business is not in compliance with the City's regulations. While this statement is accurate; the reference has not correctly been applied to this project considering the project's status in code enforcement procedure. Revocation of licensure is a potential result of continued noncompliance throughout the code enforcement process. Again, my client immediately ceased activity onsite after the first written notification of violation was provided. It is procedurally inappropriate to cite as a violation "operating under a violation is an additional violation" in the first written communication from the City.

Fence Permit

Also included in the Notice was the identification of fence construction occurring that was not permitted. This violation certainly was not intentional. Again, my client up until this Notice was not informed of the legal authority of the City to require a permit for fencing. Additionally, my client considered the fencing as temporary as the corral fencing is movable and not permanent in structure. Again, the Stop Work Order followed immediately by the Notice was the first identification from the City that the fencing was not in compliance.

The Notice specifically states that the removal of the fencing must occur immediately. There are several procedural problems with that demand. First, any other fencing in the City that was installed without a permit is given the opportunity to apply for a permit for

the fencing after it has been identified to the installer that a fence permit is required. Secondly, per the City's building code a permit is required for the removal of a fence prior to its removal. So logically, if Horsin' Around Sedona removed the fencing as demanded in the letter would they be in immediate violation of the building code by not getting a permit to remove the fence?

For whatever reason, the Director has created a confusing situation with incorporating the fencing into the Notice and violation process for the business use.

My client is more than willing to apply for a fence permit, with the increased fee for not getting a permit prior to installation, again like any other person or business operating in Sedona would have been required to do. Clarification on the appropriate process for applying for the fence permit is requested from the Board of Adjustments as the demand and interpretation in the Notice is not procedurally supported.

Further, it should be noted that multiple fencing projects have occurred on this property that were not governmental in nature and were not subject to any fencing permit or enforcement.

Procedural Compliance

The City has a responsibility to follow its own process and procedures for code enforcement. To date, the City has not followed its own procedures regarding this project. No written notice was provided before Staff posted the property with a Stop Work Order. No written identification of jurisdiction or notice was provided before verbal interactions with the City. My client in good faith attempted to understand and to resolve the City's concerns, but was not successful in garnering a clear understanding of what regulations were applicable and what the appropriate process for resolution was. Again, my client was specifically told by the Director in these conversations that Conditional Use Permit was needed for this zoning and that a Conditional Use Permit was not an option for the project. The Director was not able to answer the very reasonable question of jurisdiction until the Notice now being objected to. Further, verbal communication from the Director was threatening and emotional. My client simply requested meeting and was denied. With the immediate Stop Work Order being posted before the Notice was even received the City started an adversarial/confrontational path. Refusing to meet and discuss, being verbally condescending and threatening is not appropriate or professional behavior for Staff. Again we disagree with the enforcement actions to date. Horsin' Around Sedona has not had any other infractions prior to this action and was, up until the stop work order, current on all tax revenue owed to the City.

Simply, my client requests that actions of the City comply with the standard processes and procedures that are in place for an unbiased review of the application for Conditional Use Permit and Fence Permit.

The standard process and procedure for the administration of code compliance, zoning interpretation, and development review simply have not occurred.

Unfortunately, the actions and comments from the Director to date indicate that this unbiased review of any application is unlikely to occur. To that end, my client requests that the Board of Adjustment recommend reassignment of the review of this project's applications to other appropriate Staff at the City.

Summary

In summary, the following are interpretations and actions of disagreement that we are requesting the Board of Adjustment to review or address:

1. That the City's jurisdiction over the airport property includes all uses, structures not governmental in nature as supported by case law.
2. That the City's current zoning designation of Community Facility requires that all uses are subject to a Conditional Use Permit.
3. That the City's enforcement towards Bryson Ranch LLC dba Horsin' Around Sedona is the only enforcement action to date at this property and that currently under the Community Facility zoning all uses are in noncompliance.
4. That the City's enforcement has been targeted and noncompliant with the City's standard code enforcement process and procedure.
5. That Staff's declaration that a Conditional Use Permit is not possible would be reversed, so that Bryson Ranch, LLC dba Horsin' Around Sedona can apply for a Conditional Use Permit without undue bias.
6. That Bryson Ranch, LLC dba Horsin' Around Sedona can continue to operate under the business license since the code enforcement was noncompliant.
7. That Bryson Ranch, LLC dba Horsin' Around Sedona may apply for a fence permit.

Conclusion

Thank you for your consideration on behalf of my client and myself. Please do not hesitate to contact me regarding any resolution or questions regarding this matter.

Sincerely,



Krista Cline

Agent for Bryson Ranch, LLC dba Horsin' Around Sedona