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PINAL COUNTY BOARD OF SUPERVISORS
POST OFFICE BOX 827, 135 NORTH PINAL STREET
FLORENCE, ARIZONA 85132

In the Matter of:

Case No. ZO22-0055

GLENN or LINETTE MCMINN, ROY G. or
JUDY MCMINN, and DONALD or MOLLIE
FRYE

MEMORANDUM ON APPEAL

RE: ZONING

Pinal County, by and through undersigned counsel, submits this Memorandum on Appeal in support of the decision made by the Pinal County hearing officer in Case No. BS-05-19-001.

I. FACTS

This is an abandoned plant nursery in a General Rural (GR) zone. The parcel size is approximately 15 acres. The owners walked away from the operation in 2017. The result is a dystopian scene of dilapidated structures, discarded nursery items and equipment, and degrading remnants of a nursery. At one time the parcel carried an agricultural ("Agg.") use status, but after ceasing nursery operations the parcel lost its "Agg." status and is under the established GR zoning.

The owners were cited into the Hearing Office with three violations.

1 **Count One:** 2.185.010 Violation of outside storage of the dilapidated greenhouses, potting
2 containers, nursery debris and corroding equipment. The property owners were found in
3 violation. At the hearing the property owner admitted: "But – so let's see, we got Count 1, the
4 potting containers, nursery debris, that's a problem." (Transcript, Page 11, Lines 9-10)

5 The property owner appeals this count alleging that a new owner will want the
6 property "as is" with the broken down nursery structures, and corroding equipment.

7 **Count Two:** 2.185.050. Storage of travel trailers. Several travel trailers are being stored on
8 the property. Initially there had been a couple of travel trailers being used during the Nursery
9 business stage (up to 2017) for caretaker/watchmen housing. Since then additional travel
10 trailers have been added. As the property owner said at the hearing: "There's some trailers out
11 there that friends and people, oh Glen can I put this here? And it's oh yeah, put it out back,
and we've gotten a couple of those out there . . ." (Transcript, Page 10, Lines 9 – 12)

12 The property owner appeals this count with the assertion the trailers are not being
13 actively lived in. He then admits; "The trailers were stored on the property for other owners
14 who have abandoned them" (Notice of Appeal, page 2, heading (2)).

15 **Count Three:** 2.160.020. Accessory structures of a mobile office and nursery accessory
16 structures without a primary use. Temporary use buildings and nursery shed/structures were
17 left at the site when the nursery was abandoned. A retention pond remains, unmaintained and
a problem with seasonal issues. The property has been stagnant for over five years now.

18 The property owner appeals this count with the claim that when the property is sold a
19 new owner will want the structures.

20 From the transcript and the admissions of the property owner there is no question the
21 violations are present and conspicuous on the parcel. The property owner had a full and fair
22 opportunity to present evidence. The property owner presented no evidence to controvert the
23 findings of the Hearing Office. The appeal as presented in the Notice of Appeal does not
24

1 claim any factual error by the Hearing Office or misinterpretation of the County Code. As
2 such there is no basis to overturn the Hearing Office decision.

3 Refreshingly the property owner was contrite at the Hearing about the citations: "I
4 understand that we shouldn't have let the place get into that condition" (Transcript, Page 15,
5 Line 4 – 6)

6 **II. LEGAL AUTHORITY**

7 Pursuant to A.R.S. § 11-815(E), a county has the authority to appoint a hearing officer
8 to hear and determine zoning violations, if the county has established a civil penalty for
9 violation of their zoning ordinance. The Pinal County Zoning Ordinance, at Section
10 2.160.140, establishes a civil penalty for any person who is in violation of the ordinance.
11 Rule 24 of the Pinal County Hearing Office Rules, gives the authority for a hearing officer to
12 impose a civil penalty. Ordinance No. 062211-HOROP-01. Pursuant to the authority granted
13 to any county in the state by A.R.S. § 11-815(E), Pinal County has appointed hearing officers
14 to hear and determine zoning violation, under A.R.S. § 11-815(E).

15 Based on A.R.S. § 11-815(F),

16 At the hearing the zoning inspector shall present evidence
17 showing the existence of a zoning violation and the alleged
18 violator's attorney or other designated representative shall be
19 given a reasonable opportunity to present evidence. The county
20 attorney may present evidence on behalf of the zoning
21 inspector. At the conclusion of the hearing, the hearing officer
22 shall determine whether a zoning violation exists and if a
23 violation is found to exist may impose civil penalties pursuant
24 to subsection D of this section.

19 Pinal County has also established Hearing Office Rules based on the statutory
20 authority of A.R.S. § 11-815(G). The hearing office rules mirror the state statute that a
21 hearing officer issues a written decision by making a finding whether a Respondent is or is
22 not in violation of the cited statute, code ordinance or resolution. Civil Hearing Office Rules,
23 Rule 24, Ordinance Number #062211-HOROP-01.

1 Arizona case law has described the level of discretion which may be exercised by a
2 hearing officer for the Industrial Commission of Arizona. An analysis of the level of
3 discretion for an Industrial Commission Hearing Officer is illustrative of the type of discretion
4 a Pinal County Hearing Officer likewise should have. Specifically, a hearing officer's
5 exercise of discretion must be measured against a standard of achievement of "substantial
6 justice". *Northern Arizona University v. Industrial Commission*, 123 Ariz. 407, 411, 599 P.2d
7 860, 864 (Ariz. App. 1979). The exercise of a hearing officer's discretion is devoid and not
8 bound by any rigid formula in order to allow for flexibility. *Dominguez v. Industrial*
9 *Commission*, 22 Ariz. App. 578, 586, 529 P.2d 732, 740 (1974). This is the same type of
authority and flexibility that should be afforded a Pinal County Hearing Officer in this matter.

10 **III. LEGAL ARGUMENT**

11 The Hearing Officer properly exercised their discretion when they decided that
12 Appellant violated PCDSC sections 2.185.010, 2.185.050, and 2.160.020. The evidence
13 presented at the hearing unequivocally demonstrated that Appellant was in violation. In
14 reviewing the Hearing Officer's decision, the Board of Supervisors must find an abuse of
15 discretion by the Hearing Office to modify or overturn the Hearing Office decision. There is
patently none here.


16 Given the evidence which was presented, the amount of time and effort expended by
17 the County's Code Compliance Office, the Hearing Officer did not abuse his discretion when
18 he issued her decision. Nothing was presented by Appellant to warrant waiver or reduction of
19 the fine or to support an allegation that she was not violating the zoning code as cited.

20 **IV. CONCLUSION**

21 Based on the cited authority and record before you, we request that the Hearing
22 Officer's decision and imposition of a \$2,250.00 fine be affirmed and to authorize counsel to
23 take all necessary action, including bringing an enforcement action in Superior Court, should
24 respondent fail to comply.

1 **RESPECTFULLY SUBMITTED** this 21st day of September, 2022.

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3 KENT VOLKMER
 PINAL COUNTY ATTORNEY

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5 
6 Craig Cameron
 Deputy County Attorney

7 ORIGINAL of the foregoing filed
8 this 21st day of September, 2022 with:

9 Pinal County Clerk of the Board
 P.O. Box 827
 Florence, AZ 85132

10 Pinal County Board of Supervisors
11 P.O. Box 827
 Florence, Arizona 85132

12 COPIES of the foregoing delivered/
13 mailed 21st day of September, 2022 to:

14 GUST ROSENFELD, PLC
15 ATTN: ANDREW MCGUIRE
 ONE EAST WASHINGTON ST; STE #1600
 PHOENIX, AZ 85004-2553

16 ENFORCEMENT OFFICER

17 GLENN MCMINN
18 464 S. MULESHOE
 APACHE JUNCTION, AZ 85119

19 By: 
20 CC/kp