

**KENT VOLKMER**  
**PINAL COUNTY ATTORNEY**  
Craig Cameron (013176)  
Deputy County Attorney  
Post Office Box 887  
Florence, AZ 85132  
Telephone (520) 866-6466  
Fax: (520) 866-6521  
E-mail: craig.cameron@pinal.gov

*Attorney for Appellee*

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

In the Matter of:

RUSSELL WEBBER

RE: ZONING

Case No. ZO22-0032

**MEMORANDUM ON APPEAL**

Pinal County, by undersigned counsel, submits this Memorandum on Appeal in support of the decision made by the Pinal County hearing officer in Case No. CC-0747-21.

**I. FACTS**

This is the fourth case opened on this parcel and owner. On November 23, 2021, Code Compliance received a complaint about 2890 S. MARIPOSA RD, APACHE JUNCTION, AZ; PARCEL #102-27-0210 ("Property"). An inspection of the property six days later, November 29<sup>th</sup>, found scrap and debris along the front of the property. The scrap and debris included used tires, scrap wood and lumber. Additionally, interior furniture and appliances were present, such as dining and office chairs, an end table, book case, and a mini fridge. A demand notice was sent, which resulted in no change of the property. The three prior cases addressed the same issue of scrap and debris being stored in view of the neighbors, and from the roadway.

1           The case went before the Hearing Office on October 13, 2022. A finding of violation  
2 was confirmed on each of the two counts. The initial complaint into the Hearing Office was  
3 filed on March 18, 2022. The complaint alleged the violation existed on, and from the date of  
4 the first inspection, November 29, 2021, forward. Photographs from November 29, 2021, were  
5 submitted to the Hearing Office, and presented the front of the property. The date set for the  
6 hearing was initially April 14, 2022.

7           The hearing was continued three times. When the hearing was finally held, additional  
8 pictures of the property were presented. The first set, which formed the basis for the  
9 complaint, was from November 29, 2021 and showed the front of the property. A second set  
10 of photos were presented from May 16, 2022, which showed the density of scrap and debris  
11 being stored on the sides and back of the house. A third set of photos was provided from  
12 August 22, 2022, which again showed the acute density of scrap and debris collected around  
the home.

13           The second and third set of photographs of the sides and back of the property, were  
14 acquired after the Code Compliance Officer, Heather Wright, made a request of the property  
15 owner, Mr. Webber, who graciously accommodated the request after *clearing a pathway*  
16 *through the scrap and debris*. An outside agency had been contacted to help Mr. Webber.  
17 However, after evaluating the property, the agency declined because the property was  
18 dangerous and they were reluctant to place volunteers there. (See transcript of Hearing, Page  
3, line 23 to Page 4, line 3).

19           Mr. Webber appeals the decision of the Hearing Office but does not dispute the  
20 accuracy of the decision. Instead he claims progress on removing some of the offending  
21 items. The Complaint alleged a violation on November 29, 2021, and continuing forward. The  
22 violation continued through August 22, 2022, or 262 days. Progress, although encouraged,  
23 and appreciated, is not a defense to the decision of the Hearing Office, just as a claim a  
24 motorist is no longer driving recklessly is not a defense to a citation for causing an accident.  
Acts subsequent to the violation date are irrelevant. (Civil Hearing Office Rules, 27.6, 27.8)



## II. LEGAL AUTHORITY

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

Based on A.R.S. § 11-815(F),

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

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

Arizona case law has described the level of discretion which may be exercised by a hearing officer for the Industrial Commission of Arizona. An analysis of the level of discretion for an Industrial Commission Hearing Officer is illustrative of the type of discretion a Pinal County Hearing Officer likewise should have. Specifically, a hearing officer's exercise of discretion must be measured against a standard of achievement of "substantial justice". *Northern Arizona University v. Industrial Commission*, 123 Ariz 407, 411, 599 P.2d

1 860, 864 (Ariz App. 1979). The exercise of a hearing officer's discretion is devoid and not  
2 bound by any rigid formula in order to allow for flexibility. *Dominguez v. Industrial*  
3 *Commission*, 22 Ariz App. 578, 586, 529 P.2d 732, 740 (1974). This is the same type of  
4 authority and flexibility that should be afforded a Pinal County Hearing Officer in this matter.

### 5 **III. LEGAL ARGUMENT**

6 The Hearing Officer properly exercised their discretion when they decided that  
7 Appellant violated the two counts of; outside storage and debris, and outside storage of  
8 appliances and furniture. The evidence presented at the hearing clearly demonstrated that  
9 Appellant was in violation of the code, and the property owner's argument on appeal confirms  
10 the violations. The board only has authority to review the evidence presented to the Hearing  
11 Office. Evidence outside of the official record shall not be considered. (Civil Hearing Office  
Rule 27.4)


12 Given the evidence which was presented, the amount of time and effort expended by  
13 the County's Code Compliance Office, the context that this is the fourth time the property  
14 owner has had a case with the Code Compliance office, the Hearing Officer did not abuse  
their discretion when the officer issued the decision.

### 15 **IV. CONCLUSION**

16 Based on the cited authority and record before you, we request that the Hearing  
17 Officer's decision and imposition of a \$1500.00 fine be affirmed and to authorize counsel to  
18 take all necessary action, including bringing an enforcement action in Superior Court, should  
19 respondent fail to comply.

20 **RESPECTFULLY SUBMITTED** this 7th day of December, 2022.

21 KENT VOLKMER  
22 PINAL COUNTY ATTORNEY

23   
24 Craig Cameron  
Deputy County Attorney

1 ORIGINAL of the foregoing filed  
2 this 7th day of December, 2022 with:

3 Pinal County Clerk of the Board  
4 P.O. Box 827  
5 Florence, AZ 85132

6 Pinal County Board of Supervisors  
7 P.O. Box 827  
8 Florence, Arizona 85132

9 COPIES of the foregoing delivered/  
10 mailed 7th day of December, 2022 to:

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

15 HEATHER WRIGHT  
16 ENFORCEMENT OFFICER

17 RUSSELL WEBBER  
18 PO BOX 14360  
19 MESA, AZ 85216

20 By:   
21 CC/kp  
22  
23  
24