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PINAL COUNTY BOARD OF SUPERVISORS
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In the Matter of:

ESTATE OF YVETTE COOK

RE: ZONING

Case No. ZO22-0060

MEMORANDUM ON APPEAL

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

On or about July 18, 2018, Code Compliance Officer Carrie Duncan ("Duncan") inspected the property located at 24929 BOONE DR, CASA GRANDE, AZ; PARCEL #503-42-0760 ("Property"). During Duncan's inspection of the Property she observed miscellaneous debris, appliances, tires, scrap metal, a trailer full of trash being stored on the Property in violation of Pinal County Zoning Ordinance Article 2.185, Section 010- Outside Storage and Parking. Additionally, it was observed that there were multiple inoperable and unregistered/expired resignation vehicles being stored on the Property. Article 2.185, Section 010 states:

1
2 A. It shall be unlawful and a violation of this title for any resident/occupant or owner
3 of record or both to leave or permit to remain outside any objects, scraps, appliances,
vehicles or any other materials...

4 B. It is unlawful for any person to stand, park or store a vehicle in violation of this
chapter.

5 C. It is unlawful for any resident/occupant to allow a vehicle to stand or be parked or
6 stored in violation of this chapter.

7 Pursuant to Duncan's observation of she found the Property to be in violations of Article
8 2.185, Section 010. Due to the violation Duncan found on the Property she issued and mailed a
9 courtesy letter on July 27, 2018. to Ms. Yvette Cook, the recorded owner of the Property at the
10 time of the violation informing of the issues on the Property and requesting that she abate the
11 violations. Duncan received no response to the courtesy letter. The first violation letter was
12 mailed on October 5, 2018. No response was received from the property owner so a demand
letter on mailed on December 10, 2021 but no response was received.

13 During that time frame code enforcement performed thirteen (13) inspection of the
14 Property, had four (4) telephone calls, and four (4) in-person meetings with the Property
15 owners. Despite all the efforts by code enforcement to work with the Property owners to bring
16 the Property in to compliance it continue to remain non-compliant with Article 2.185, Section
010.

17 On August 12, 2022, a Code Compliance Complaint and Summons was issued and
18 served on the Property Owner's Estate Representative, Ms. Suzette Cook ("Cook"), on August
19 28, 2022. On October 13, 2022, a civil hearing officer for the Community Development held a
20 code compliance hearing. Code Compliance Officer Jose Gaxiola ("Gaxiola") submitted a
21 hearing packet and testified at the hearing. Gaxiola testified that there was two violations of
22 Article 2.185, Section 010 (1) the outside storage and parking- vehicle parking as related to the
23 multiple inoperable and unregistered/expired resignation vehicles being stored on the Property
24 and (2) outside storage and parking- other items as related to the storage of tires, scrap metals
and other indiscernible inoperable items within view of the public roadways, right-of-ways,

1 easements, and contiguous properties. Gaxiola recommended that the Property owner should
2 be fined \$750.00 for Count 1 and Count 2.

3 Cook testified that the Property is currently occupied by a renter and that the renter is
4 responsible for the violations. Cook stated that she and the renter thought that violations were
5 resolved. Gaxiola stated that he offered to provide photographs to Cook so she knew where the
6 violations where and could coordinate with the renter to abate the violations. The photographs
7 were emailed to Cook. Gaxiola did acknowledge that the east side of the Property was cleaned
8 up but that did not resolve the remaining violations such as the items remaining under the
carport and violations at the rear of the Property.

9 After the testimony and photographic evidence had been presented and considered by
10 the hearing officer, he found the Property to be out of compliance and fined Cook \$750.00 for
11 each violation.

12 I. LEGAL AUTHORITY

13 Pursuant to A.R.S. § 11-815(E), a county has the authority to appoint a hearing officer
14 to hear and determine zoning violations, if the county has established a civil penalty for
15 violation of their zoning ordinance. Article 2.185, Section 010 of the Pinal County Zoning
Ordinance states:

- 16 A. It shall be unlawful and a violation of this title for any resident/occupant or
17 owner of record or both to leave or permit to remain outside any objects, scraps,
appliances, vehicles or any other materials...
- 18 B. It is unlawful for any person to stand, park or store a vehicle in violation of this
chapter.
- 19 C. It is unlawful for any resident/occupant to allow a vehicle to stand or be parked
20 or stored in violation of this chapter.

21 The Pinal County Zoning Ordinance, at Section 2.160.140, establishes a civil penalty
22 for any person who is in violation of the ordinance. Rule 24 of the Pinal County Hearing Office
23 Rules, gives the authority for a hearing officer to impose a civil penalty. Ordinance No. 062211-
24 HOROP-01. Pursuant to the authority granted to any county in the state by A.R.S. § 11-815(E),

1 Pinal County has appointed hearing officers to hear and determine zoning violation, under
2 A.R.S. § 11-815(E).

3 Based on A.R.S. § 11-815(F),

4 At the hearing the zoning inspector shall present evidence
5 showing the existence of a zoning violation and the alleged
6 violator's attorney or other designated representative shall be
7 given a reasonable opportunity to present evidence. The county
8 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.

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

13 Arizona case law has described the level of discretion which may be exercised by a
14 hearing officer for the Industrial Commission of Arizona. An analysis of the level of discretion
15 for an Industrial Commission Hearing Officer is illustrative of the type of discretion a Pinal
16 County Hearing Officer likewise should have. Specifically, a hearing officer's exercise of
17 discretion must be measured against a standard of achievement of "substantial justice".
18 *Northern Arizona University v. Industrial Commission*, 123 Ariz 407, 411, 599 P.2d 860, 864
19 (Ariz App. 1979). The exercise of a hearing officer's discretion is devoid and not bound by
20 any rigid formula in order to allow for flexibility. *Dominguez v. Industrial Commission*, 22
21 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.

22 **III. LEGAL ARGUMENT**

23 The Hearing Officer properly exercised his discretion when he decided that Appellant
24 had two (2) violations of Article 2.185, Section 010. The evidence presented at the hearing
clearly demonstrated that Appellant was out of compliance of Article 2.185, Section 010

1 because there were (1) multiple inoperable and unregistered/expired resignation vehicles being
2 stored on and at the back of the Property, and (2) the storage of tires, scrap metals and other
3 indiscernible inoperable items within view of the public roadways, right-of-ways, easements,
4 and contiguous properties.

5 In addition, at the hearing it was made clear that Appellee made every effort to work
6 with Appellant to abate the non-compliance without having to go through the formal hearing
7 process. This is evident because during the subject time frame Appellee performed thirteen (13)
8 inspection of the Property, had four (4) telephone calls with the renter/Property owner, and four
9 (4) in-person meetings with the Property owner(s). Despite all the efforts by Appellee to work
10 with the Property owners to bring the Property in to compliance they continued to remain non-
compliant with Article 2.185, Section 010.


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

14 **IV. CONCLUSION**

15 Based on the cited authority and record before you, we request that the Hearing Officer's
16 decision and imposition of a \$1,500.00 (\$750.00 for Count 1 and Count 2) fine be affirmed and
17 to authorize counsel to take all necessary action, including bringing an enforcement action in
18 Superior Court, should respondent fail to comply

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

20
21 KENT VOLKMER
PINAL COUNTY ATTORNEY

22 
23 Thaddeus Garlick
24 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 JOSE GAXIOLA
16 ENFORCEMENT OFFICER

17 ESTATE OF YVETTE COOK
18 ATTN: ANITA COOK
19 6726 W. DENTON LN.
20 GLENDALE, AZ 85303

21 By: 
22 TG:kp
23
24