

Received from Kelly Pike

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**PINAL COUNTY BOARD OF SUPERVISORS**  
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**FLORENCE, ARIZONA 85132**

In the Matter of:

RUSSELL WEBBER

RE: ZONING

Case No. ZO022-0032

**MOTION TO STRIKE APPEAL**

Pinal County, by undersigned counsel, pursuant to Civil Hearing Office Rules 27.2, 27.4, 27.6, and 27.8, submits this Motion to Strike Appeal in response to the Notice of Appeal, the failure of the Appellant to file a memorandum on appeal, and the Letter filed in support of the property owner in Case No. CC-0747-21. This Motion is based upon the failure to identify an issue which the Board of Supervisors can review.

The Appellant clearly has a right to appeal the decision of the Hearing office, but it is limited to reviewing the hearing officer's decision for a mistake such as a clear mistake in interpreting the meaning of an ordinance, refusing to hear testimony, or accepting evidence that is not relevant. An appellant is obligated to identify an issue that the Board can review, not to rehear the entire case. Rule 27.2 of the Hearing Office Rules says the Notice of Appeal "shall specify the issues on Appeal" (emphasis added). The Appellant here only suggests there has been efforts made to abate the violation both before and after the hearing date of

1 October 13, 2022. The Appellant does not claim the violations were corrected before the  
2 complaint was filed with the Hearing Office (March 18, 2022), or completely removed prior  
3 to the hearing. As such there is no identified ruling by the Hearing Officer, no factual finding,  
4 or evidence either entered or refused that the appellant has directed the Board to look at, as  
5 wrong.

6 **I. PROPERTY OWNER ALLEGES NEW, POST HEARING OFFICE,**  
7 **EVIDENCE.**

8 The appeal to the Board of Supervisors *does not* claim the Hearing Officer erroneously  
9 found him responsible for the condition of his property on November 29<sup>th</sup>, 2021, or during the  
10 period of continuances of the Hearing on the violations. His appeal seeks to highlight his  
11 efforts to start correcting a longstanding issue. It does highlight the issue which has created  
the code violations; the property owner's history of not maintaining a junk free property.

12 Conversely, the property owner has had a significant amount of time to correct the  
13 violations, but has not done so. The hearing to address the violations was initially scheduled  
14 for April 14. The hearing was continued to June 9, then to July 14, and ultimately to October  
15 13, 2022. The Complaint clearly identifies the violations had existed on the date of the first  
16 inspection, November 29<sup>th</sup>, going forward. The initial hearing date was continued, specifically  
17 for the benefit of the appellant, to allow him to bring his parcel into compliance. It appears  
18 part of his argument is photos presented to the Hearing Officer were taken after this  
19 accommodation was made. His basis for appeal is that these photos, which supported a  
finding of a violation, also show that some effort was made to remove the scrap and debris.

20 Additional photographs were taken May 16, 2022, and August 22, which documented the  
21 violations. He implicitly identifies the photographs as being accurate on the dates they were  
22 taken. He now wishes to present additional evidence to the Board of Supervisors which was  
23 not presented to the hearing officer. The additional evidence consisting of photos, and a  
24 statement from a neighbor corroborating his incomplete efforts, are not properly part of the  
record on appeal, and cannot be considered.

1 Hearing office rules do not accommodate this pursuit. Rules 27.4, 27.6, and 27.8 prohibit  
2 the introduction of new evidence or argument not brought before the Hearing Office.

3 Hearing Office Rule 27.4 Record on Appeal:

4 “The Board of Supervisor’s review of the Hearing Officer’s Decision shall be limited to  
5 the record of proceedings before the Hearing Officer and *no new evidence may be*  
6 *introduced.*” (emphasis added)

7 Hearing Office Rule 27.6 Memoranda on Appeal:

8 “The Memorandum *shall not raise new facts or issues* that were not brought before the  
9 Hearing Officer.” (emphasis added)

10 Hearing Office Rule 27.8 Oral Argument:

11 “Oral Argument shall be based on the record and there *shall be no presentation of new*  
12 *evidence* on oral argument.” (emphasis added)

13 The property owner only claims he has made efforts to improve the conditions on his  
14 property after the hearing office decision as a basis for the Appeal. He claims items “have  
15 been removed” and there has been cleanup on a near daily basis. There has been no  
16 identification of error by the Hearing Officer in reviewing any of the photographs submitted,  
17 or that, for example, the photographs were not of his property. Without any of the references  
18 to the attempted progress on the violations, there is no stated basis for appeal. The only issues  
19 he wants the Board to consider are based upon new evidence. Without a colorable issue to  
20 address there is no appeal. The appeal should be stricken.

## 21 **II. The Letter From Stephanie Danielson was Received In Error.**

22 On the date the Memorandum on Appeal was due, correspondence from a non-party  
23 neighbor was accepted by the Clerk of The Board. The letter is personal testimony about the  
24 property, but, this person was not a witness at the Hearing on October 13, 2022. Since it is  
new evidence not contained in the record, it must be stricken. This letter truly embraces the  
essence of the “appeal”; There still is work to do but there has been some change to the

1 conditions on the property. Unfortunately that is not an issue the Board of Supervisors can  
2 consider.

3 Additionally, she cannot act as counsel or represent the property owner on appeal since  
4 there has been no designation of counsel by the Appellant. Rule 27.2.1 of the Hearing Office  
5 Rules, prohibits representation unless the counsel is designated at the time of filing the  
6 Appeal. No designation was made. Since she cannot act as a representative of the Appellant  
7 and the letter only provides witness statements which were not presented at the time of the  
8 hearing, the letter should not have been accepted, and should now be stricken from the record.


9 Since there is no Memorandum on Appeal submitted by the Appellant, the only offering  
10 which to divine an issue for the Board to consider is the Notice of Appeal submitted October  
11 27<sup>th</sup>, 2022.

### 12 III. CONCLUSION

13 For the above reasons, there is no issue for the Board of Supervisors to consider on  
14 Appeal and without any grounds for an appeal, the Appeal must be dismissed. Because a  
15 Notice of Appeal has been filed, jurisdiction is with the Board of Supervisors to enter an  
16 Order to dismiss this Appeal.

17 **RESPECTFULLY SUBMITTED** this 27th day of December, 2022.

18 KENT VOLKMER  
19 PINAL COUNTY ATTORNEY

20   
21 Craig Cameron  
22 Deputy County Attorney  
23  
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1 ORIGINAL of the foregoing filed  
2 this 27th 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 27th day of December, 2022 to:

11 GUST ROSENFELD, PLC  
12 ATTN: ANDREW MCGUIRE  
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15 ENFORCEMENT OFFICER

16 RUSSELL WEBBER  
17 PO BOX 14360  
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19 By:   
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