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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. CC-0251-21
LINDA OLSON,	)	
	)	<b>MEMORANDUM ON APPEAL</b>
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. CC-0251-21.

**I. FACTS**

On March 30, 2021, Code Compliance Officer Heather Wright (“Wright”), received a complaint regarding the outside storage of scrap, and debris at the property of 6179 East Shiprock Street, in Apache Junction, Pinal County, Arizona. (Record on Appeal, “ROA,” transcript (“Transcript”) of a hearing before the Pinal County Hearing Office held on January 13, 2022, Pg. 3, Ln. 20-21). Appellant Linda Olson owns this property. The zoning code classifies this property as CR-1A – residential.

1 During an initial inspection on May 10, 2021, Wright observed the outside storage of scrap  
2 and debris to include a large storage container. (ROA, Transcript, Pg. 3, Ln. 22-25; Pg. 4, Ln. 1-5).  
3 A subsequent inspection took place on June 14, 2021 during which Wright observed the same scrap,  
4 debris, and storage container (ROA, Transcript, Pg. 4, Ln. 8-16). During re-inspections on October  
5 4<sup>th</sup> and November 8<sup>th</sup> of 2021, Wright observed no change in the condition of the property other  
6 than an additional white car on a trailer (ROA, Transcript, Pg. 4, Ln. 17-25). On January 10, 2022,  
7 Wright performed a pre-hearing inspection. In addition to observing the same scrap, debris, and  
8 storage container on the property, Wright also noticed an inoperable RV and a large dump truck  
9 (ROA, Transcript, Pg. 5, Ln. 3-13).

10 On January 13, 2022, Wright presented the case to Pinal County Hearing Officer Arlene  
11 Kile. During the hearing, neighbor Mark Kessler testified to the same observations as Wright, and  
12 explained the harmful effects on the esthetic and property values of the homes in the community  
13 (ROA, Transcript, Pg. 6, Ln. 4-20). Appellant, through her husband (unidentified), essentially  
14 admitted to the violations and agreed to come into compliance (ROA, Transcript, Pg. 12, Ln. 18-23;  
15 Pg. 13, Ln. 9-21; Pg. 14, Ln. 16-25).

16 After the hearing and considering all of the evidence, Hearing Officer Arlene Kile found the  
17 Appellant in violation as cited, and imposed a fine of \$750.00 per count (ROA, Transcript, Pg. 19,  
18 Ln. 24-25; Pg. 20, Ln. 2-3).

## 19 **II. LEGAL AUTHORITY**

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



1 Pinal County has also established Hearing Office Rules based on the statutory authority of  
2 A.R.S. § 11-815(G). The hearing office rules mirror the state statute that a hearing officer issues a  
3 written decision by making a finding whether a Respondent is or is not in violation of the cited  
4 statute, code ordinance or resolution. Civil Hearing Office Rules, Rule 24, Ordinance Number  
5 #062211-HOROP-01.

6 Arizona case law has described the level of discretion which may be exercised by a hearing  
7 officer for the Industrial Commission of Arizona. An analysis of the level of discretion for an  
8 Industrial Commission Hearing Officer is illustrative of the type of discretion a Pinal County  
9 Hearing Officer likewise should have. Specifically, a hearing officer's exercise of discretion must  
10 be measured against a standard of achievement of "substantial justice". *Northern Arizona*  
11 *University v. Industrial Commission*, 123 Ariz 407, 411, 599 P.2d 860, 864 (Ariz App. 1979). The  
12 exercise of a hearing officer's discretion is devoid and not bound by any rigid formula in order to  
13 allow for flexibility. *Dominguez v. Industrial Commission*, 22 Ariz App. 578, 586, 529 P.2d 732,  
14 740 (1974). This is the same type of authority and flexibility that should be afforded a Pinal County  
15 Hearing Officer in this matter.

### 16 **III. LEGAL ARGUMENT**

17 "The board of supervisors of a county, in order to conserve and promote the public health,  
18 safety, convenience and general welfare....shall....adopt and enforce those rules, regulations,  
19 ordinances and plans as may apply to the development of its area of jurisdiction." Ariz. Rev. Stat. §  
20 11-802. Under Pinal County Development Services Code (PCDSC) 2.185.010: "A. It shall be  
21 unlawful and a violation of this title for any resident/occupant or owner of record or both to leave or  
22 permit to remain outside any objects, scrap, appliances, vehicles, or any other materials, except as  
23 provided by this chapter. B. It is unlawful for any person to stand, park or store a vehicle in  
24 violation of this chapter. C. It is unlawful for any resident/occupant to allow a vehicle to stand or be  
25 parked or stored in violation of this chapter". Pinal County Development Services Code § 2.185.010  
26

1 (2022). In Count 1 of this case, Appellant violated subsection A by keeping scrap metal and wood  
2 on the property. Wright and Kessler testified to observing the scrap piles since at least May 10,  
3 2021 with no change throughout the process. Appellant also admitted to the scrap piles (although he  
4 claimed it was art), and agreed to clean it up and come into compliance. Photo evidence of the scrap  
5 and debris was included in the record. In Counts 2 and 4, Appellant violated subsection B by  
6 parking and/or storing an inoperable RV and dump truck on the property. This was substantiated by  
7 witness testimony (including Appellant's admission) and photo evidence.

8 Under PCDSC 2.150.160 (F): "Containers formerly used for transporting sea-going cargo,  
9 railroad cars, cabooses, semi-trailers, shipping containers, camper shells, or other units which slide  
10 off a chassis or frame including a body, box or unit which is removed from a chassis are prohibited  
11 as storage facilities or accessory buildings in the following zones: CR-1A..." Id. 2.150.160. In  
12 Count 3, Appellant violated subsection F by keeping a large storage container on the property. This  
13 was substantiated by witness testimony (including Appellant's admission), and photo evidence.

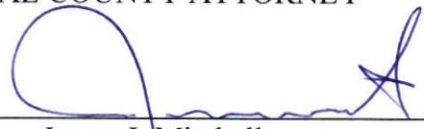
14 The Hearing Officer properly exercised her discretion when she decided that Appellant  
15 violated the Zoning Ordinance.

#### 16 **IV. CONCLUSION**

17 Based on the cited authority and record before you, Appellant was properly found to be in  
18 violation of the code, there were no statutory exceptions to the violations, and at no point did  
19 Appellant make any concerted efforts to come into compliance. Therefore, the County respectfully  
20 requests the Board affirm the decision of the Hearing Officer.

1 RESPECTFULLY SUBMITTED this 27 day of April, 2022.

2  
3 KENT VOLKMER  
PINAL COUNTY ATTORNEY

4  
5 By:   
6 James I. Mitchell  
Deputy County Attorney

7  
8  
9 ORIGINAL of the foregoing filed  
10 this 27 day of April, 2022 with:

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

13 Pinal County Board of Supervisors  
14 P.O. Box 827  
Florence, Arizona 85132

15 COPIES of the foregoing delivered/  
16 mailed this 27 day of April, 2022 to:

17  
18 Gust Rosenfeld, PLC  
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19 One East Washington St; Ste #1600  
Phoenix, AZ 85004-2553

20  
21 Heather Wright  
Code Compliance Officer  
22 Pinal County Code Compliance Division

23 Linda Olson  
24 6179 East Shiprock  
Apache Junction, AZ 85119

25  
26 By: 