

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
SPECIAL MEETING HELD ON
Tuesday, September 13, 2016**

A special meeting of the Cochise County Board of Supervisors was held on Tuesday, September 13, 2016 at 2:00 p.m. in the Board of Supervisors' Executive Conference Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Richard R. Searle, Chairman; Patrick G. Call, Vice-Chairman; Ann English, Supervisor

Staff Present: James E. Vlahovich, County Administrator

Edward T. Gilligan, Deputy County Administrator

Britt W. Hanson, Chief Civil Deputy County Attorney

Arlthe G. Rios, Clerk of the Board

Paul Esparza, Planning & Zoning Director, Community Development

Chris Saylor, Community Development

Peter Gardner, Community Development

Dora Flores, Community Development

Attendees: Diane Ruozzi

David Ruozzi

E. Hardy Smith

Peggy Judd

Kit Judd

Chairman Searle called the meeting to order at 2:00 p.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

ACTION

Board of Supervisors

1. Uphold or deny the appeal of David R. and Diane M. Ruozzi for the Hearing Officer's decision regarding zoning violation number V-15-358.

Chairman Searle had everyone introduce themselves.

Chairman Searle went over the disposition of the board according to Rule 24.

Mr. Hanson said that everything presented had to be restricted to the record.

Chairman Searle said that each side would have ten minutes to present their oral argument.

Mr. Smith asked if Supervisor English would consider recusing herself since her husband works for Sulphur Springs Valley Electric Cooperative (SSVEC).

Supervisor English said that she did not see a conflict since her husband is on the board of trustees of SSVEC, not an employee.

Chairman Searle asked Mr. Smith, the appellant's attorney, to give his oral argument first and noted that he would be limited to ten minutes.

Mr. Smith referenced to the map shown by the Planning & Zoning Division. He said that there was very little on the property and pointed out the relationship, in distance, between the property and SSVEC. He added that the property was zoned as SR-22, single house residential, and the storage unit on the property was an accessory to the owners using the property for a residential use. He noted that although the owners were not living on the property currently, the plan was to prepare the property to eventually build a residential unit and live on the property, which is already fenced, has a well, has trees, and is maintained, clean and neat. Mr. Smith stated that the property was also in compliance with the Covenants, Conditions, and Restrictions (CC&R) put into place before the County's Zoning Regulations, which he felt superseded the zoning regulations being used for the violation. He added that the zoning did not contain specifics regarding the use of the property and that the Board was free to interpret if the property was being used as a primary residential use. He reiterated that although the Ruozis do not have a house on the property, they do have the intent to build a home and that is why there was equipment stored on the property, to keep the lot clean, as well as the road. He clarified that the property was not being used as a junk yard and noted that parking functioning equipment was not prohibited in that area. Mr. Smith finished his argument with three points: property was in existence before zoning regulations and use should be grandfathered, the violation is the result of a neighborhood squabble, and the appellants are not doing anything wrong or malicious. He also asked that the Board consider waiving the \$300 fine.

Chairman Searle thanked Mr. Smith and asked Mr. Hanson to give his oral argument.

Mr. Hanson began by explaining that the term "grandfathering" applied to uses before the County Zoning Regulations were in existence and did not apply to uses that came after that. He said that although the plat for this subdivision was created before the County's zoning regulations, the subdivision failed and "grandfathering" did not apply to failed subdivisions. He noted that the zoning regulations supersede any Covenants, Conditions, and Restrictions (CC&R) that a subdivision would have in place. He stated that although the appellants plan to build a home on the property, the zoning regulations clearly state that residential use can only be considered if there is a residence currently on the property. He said that even if the complaint was done in retaliation by a neighbor, it was not the County's policy to ignore violations due to the manner in which the complaints were made. Mr. Hanson said he was sympathetic to the appellant's situation, but the County's job was to follow up on zoning complaints and enforce zoning regulations if necessary.

Supervisor English said that she did not like that most zoning violations began as neighborhood complaints, but understood that due to the size of the County it was impossible for one inspector to go through every neighborhood. She added that some zoning violations did not fit with the "rural" parts of the County and that although it was clear a violation occurred, she did not think the regulation should apply to areas like the one the appellants have property in.

Chairman Searle asked if the County enforced or acknowledged CC&Rs.

Mr. Hanson said that he was not aware of enforcement of CC&Rs or acknowledgement as the County does not get involved with them.

Chairman Searle asked what the difference was between storage and maintenance.

Mr. Hanson said that it was his understanding that the equipment that was on the property was mainly used for maintenance of the road, not the property itself.

Mr. Searle said that in order to maintain most rural properties, citizens needed equipment and he did not feel like that fell under the storage category.

Supervisor English agreed with Chairman Searle and said that the equipment was not junk, but being used to keep up the property.

Chairman Searle asked if a solution had ever been presented by the County.

Mr. Smith said that the issue had been focused on the enforcement of the zoning violation.

Chairman Searle said that the zoning was very specific to residential areas, but this area was rural. He asked if rezoning was possible.

Mr. Ruozi said that he had discussed rezoning with the planner, but had never formally made a request.

Mr. Gardener said that an application had not been submitted and even if there was a rezoning, outdoor storage is not permitted unless there is a primary use.

Supervisor English asked Mr. Hanson what the Board's options were.

Mr. Hanson said that they could affirm the action of the hearing officer; affirm in part and reverse in part and, if necessary, remand for further proceedings; or reverse the action of the hearing officer, and if necessary, remand for further proceedings.

Chairman Searle said he understood that it is difficult for staff to interpret the zoning regulations and their job is to enforce when they see an issue. However, he does not feel like the appellants were doing anything wrong, the equipment being stored was not junk, it was being used to keep the property in good shape.

Vice-Chairman Call said that he agrees with the other Board members, but does not want to change regulations based on one situation. He asked that a discussion be set up with the Board to ensure staff gets direction.

Mr. Gilligan said that the easiest fix would be to define the term "residential, primary use". He added that maintaining property is the most fundamental residential use.

Supervisor English said that people take steps to build and do things as they can afford them.

Mr. Vlahovich said that he would work with staff to bring these changes before the Board in a formal setting.

Vice-Chairman Call moved to uphold the appeal of David R. and Diane M. Ruozi for the Hearing Officer's decision regarding zoning violation number V-15-358. Supervisor English seconded the motion.

Mr. Hanson clarified that upholding the appeal nullified the fine associated with the violation.

Chairman Searle called for the vote and it was approved 3-0.

Chairman Searle suggested that the owner apply for a rezoning of the property for the time being.

Chairman Searle adjourned the meeting at 2:56 p.m.

APPROVED:

Richard R. Searle, Chairman

ATTEST:

Arlenthe G. Rios, Clerk of the Board