

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
SPECIAL MEETING HELD ON
TUESDAY, MAY 23, 2023**

A special meeting of the Cochise County Board of Supervisors was held on Tuesday, May 23, 2023 at 2:30 p.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Peggy Judd, Chairman; Tom Crosby, Vice-Chairman; Ann English, Supervisor

Staff Present: Richard G. Karwaczka, County Administrator
Sharon Gilman, Deputy County Administrator
Christine Roberts, Chief Civil Deputy County Attorney
Tim Mattix, Clerk of the Board
Lara Loewenheim, Deputy Clerk of the Board

Attendees: Owen T Lonsdale, Elquen LLC, Appellant
Paul Correa, Civil Deputy County Attorney

Chairman Judd called the meeting to order at 2:30 p.m.

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

ACTION

Board of Supervisors

1. Conduct a review, and affirm, modify, or reverse the Hearing Officer's Order regarding zoning violation case number V-22-004343 (ELQUEN, LLC), pursuant to the appeal of Mr. Owen T Lonsdale.

Chairman Judd stated that today's meeting is an appeal of the Hearing Officer's Order (Order) in case 22-004343, regarding zoning violation number V-22-004343. The Board will follow the Cochise County Hearing Officer Rules of Procedure on Zoning and Building Code Violations, as adopted by Ordinance 021-95. A request for review of the Order by the Board was timely filed. The appellant is appealing the Hearing Officer's Finding of Fact, Item 2 of the Hearing Officer's Conclusions of Law, and Item 3 of the Hearing Officer's Order. The Board received the record of the proceedings before the Hearing Officer. Neither the appellant nor the Zoning Inspector provided a written memorandum, pursuant to Rule 22.

Chairman Judd stated that the parties are Appellant Elquen, LLC, Owen Lonsdale, and Zoning Inspector Dan Coxworth, who has delegated to Mr. Correa and Christine McLachlan, should the Board have any questions regarding Development Services.

Chairman Judd read Rule 24 in its entirety, as follows:
Rule 24. Disposition of the Board of Supervisors

The defendant and Zoning Inspector, or their designated representatives, will have an opportunity to present oral arguments to the Board of Supervisors. Each party will be given not more than ten minutes to present their oral arguments.

After consideration of an appeal, the Board of Supervisors may increase, decrease, or modify any sanction imposed by the Hearing Officer and may:

- 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.

Written notice of the formal action by the Board of Supervisors shall be delivered or mailed by certified mail to all parties within ten days of their decision. All decisions shall be final.

Chairman Judd stated that today's order of business is as follows: Mr. Lonsdale, Appellant, will have ten minutes to present his argument; Mr. Correa, on behalf of the Zoning Inspector, will have ten minutes to present his argument; and, members of the public will have three minutes each to address the Board. Chairman Judd noted that, pursuant to Rule 20, the Board's review is limited to the record of the proceedings before the Hearing Officer and no new evidence may be introduced.

Chairman Judd called on Mr. Lonsdale to present his argument.

Mr. Lonsdale stated that a major part of the basis of his appeal is because the gallery effectually controlled the hearing proceedings, including interrupting, supplying questions for the court, and testifying without being witnesses. He stated that the proceedings were tainted and requested that today's hearing be closed, or that the gallery be admonished to maintain proper decorum. He stated that the members of the gallery at the March 30 hearing do not have the operational capacity or clearances to hear testimony involving operational security, and since the essence of the hearing affects national security, requested that the hearing be closed. He stated that at the last hearing, the gallery also made statements on behalf of the Department of Defense (DOD) concerning military training without having the authority or expertise to speak factually on the matter, resulting in their statements being conjecture.

Mr. Lonsdale stated that he has an expert on military training, and requested, at the witness's request, that if the Board wishes to hear from the witness, the hearing be closed for the purpose of maintaining national security. Mr. Lonsdale requested the Board close the hearing to the public, after which he will finish his opening statement.

In response to the Board, Ms. Roberts stated that it is a public hearing and will not be closed. In response to Mr. Lonsdale, Ms. Roberts restated that the public hearing cannot be closed.

Mr. Lonsdale continued with his argument. He stated that reasons for appealing the Hearing Officer's decision include being denied the opportunity to examine the gallery; the gallery becoming a form of undisclosed witness; and individuals making exaggerated claims that were taken for the truth. He stated that one undisclosed witness claimed that firing occurred daily from sunup to sundown; he stated that this is demonstrably false as evidenced by the zoning report. He stated that the gallery became a spectacle at the original hearing, yelling disagreement with his statements and asking questions for the administrative law judge [Hearing Officer] to ask of Mr.

Lonsdale. Mr. Lonsdale stated that this is a violation of Rule 9 of the Cochise County Hearing Officer Rules of Procedure, which states who may ask questions. He stated that the judge [Hearing Officer] adopted their questions, demonstrating bias against the defense. He stated that the original hearing had the strong appearance of impropriety, and that only those in the gallery opposed to Mr. Lonsdale were given the right to speak.

Mr. Lonsdale stated that evidence was disclosed to him on March 30, the morning of the hearing, resulting in trial by surprise, which is not allowable and inappropriate. Mr. Lonsdale discussed his concern of the difficulty of presenting a case that had already been decided against him. He stated that the only real witness stated that he never went down to the ranch or heard a single shot. Mr. Lonsdale stated that it seemed that the decision was made before he got to the hearing.

Mr. Lonsdale stated that at the least, he is asking the Board to remand the case back to the lower court, providing Mr. Lonsdale with an opportunity to examine the people and the alleged witnesses properly. He asked the Board to provide proper relief by overruling the Hearing Officer and reviewing the actual evidence; he stated that if the Board does this, the Board will see that it is in his favor, and allow his ranch to maintain its activities, which are not in violation of zoning, are not the primary purpose of his ranch, and are permissible by law.

Chairman Judd called on Mr. Correa to present his argument.

Mr. Correa stated that the Board is sitting in a quasi-judicial appellate body. The question before the Board is whether the record that presented on appeal, which shows everything the Hearing Officer had to consider, supports his decision.

Mr. Correa stated that the Hearing Officer received a memorandum from Development Services about 15 days before the hearing, and then very close to the hearing, another memorandum from Mr. Correa that set out the enforcement letters and complaint alleging violations of the Zoning Ordinances (Regulations). The evidence includes statements by Chris Saylor, Inspector, who visited the property and collected information, as well as statements from the neighbors. Mr. Correa stated that the neighbors were given the opportunity to speak at the hearing. The Hearing Officer, acting as an administrative law judge, has discretion to accept evidence and consider what he believes is relevant. Mr. Correa stated that, even if taken out of the room, there was sufficient evidence for the Hearing Officer to properly find that Mr. Lonsdale and his entity are required to apply for a Special Use Authorization Permit (Permit) under the County's Regulations, for the activities on Mr. Lonsdale's property.

Mr. Correa stated that there is no dispute from Mr. Lonsdale regarding the sorts of activities that have occurred and that Mr. Lonsdale wishes to continue to occur, including live firing exercises by law enforcement and possibly DOD personnel. There was no evidence at the hearing showing contracts with DOD personnel; while it may be an issue, it is not an issue before the Board today. Mr. Correa stated that the question is whether shooting is occurring and there is a shooting range; the zoning ordinance requires a Permit. Mr. Correa provided copies of Regulations, Section 607, to the Board, which contains a list of things that require a permit. Mr. Correa stated that a Permit is required for firearms and educational operations. Mr. Correa detailed the Permit application process, by which applicants can ask for special permission to engage in these types of activities. Applicants work with Development Services throughout the process, and a presentation and the application are then presented to the Cochise County Planning and Zoning Commission (Commission). Mr. Correa stated that frequent neighbor concerns are traffic, unknown people coming in and out

of the neighborhood, and road conditions. Mr. Correa stated that a benefit of the Permit process is that it facilitates cooperation and compromise among neighbors. The Commission mostly approves Permit applications as the County wants people to use their property. The Permit process also gives a process for proper planning in the County, helps maintain property values, and protects the quiet use and enjoyment of neighboring properties. The Permit process gives Development Services an opportunity to make sure people are complying with the Regulations and state statutes if applicable.

Mr. Correa stated that the Hearing Officer ordered the appellant to submit a Permit application for the operations that they have been engaging in, including educational operations, a shooting range, and some apparent aircraft operations. Mr. Correa discussed a video of a Black Hawk helicopter doing some sort of operations around the area that he believes may involve some sort of DOD training exercise. He discussed the concern to the neighbors of this type of activity, and stated that the Regulations require a Permit for these activities. Mr. Correa stated that the information provided was enough for the Hearing Officer to make his finding of fact.

Mr. Correa stated that the Order has three things: first, to require Mr. Lonsdale to apply for and obtain a Permit for a shooting range, subject to conditions required by the Commission and in compliance with state law; second, to apply for and obtain a Permit for any educational operations, with there being evidence of the shooting range being used as an educational opportunity for law enforcement and hunters; and third, to cease and desist all non-permitted operations identified in the complaint, including: any shooting range activities and any shooting within a mile of any occupied structure; any training or educational operations; and, any handling of any aircraft of any kind on the property. Mr. Correa stated that the Order requires the appellant to take a pause while going through the proper procedure to get a Permit, if it can be obtained. Mr. Correa stated that there is a penalty provision for non-compliance; however, that is not before the Board today.

Mr. Correa stated that the material included screenshots of pages advertising the Appellant's property, which show the Board the type of operations. He stated that the record is enough for the Board to affirm the Hearing Officer's Order.

Vice-Chairman Crosby discussed phrases such as "any educational operations" being broad and asked if any of the activities under Section 607 of the Zoning Regulations are further defined. Mr. Correa responded that there is no definitional section that defines every one of the terms, and stated that this is by design to allow flexibility. He discussed the Commission Permit review process, noting that the Permit process allows conditions to be worked out, and noted that there are frequently educational operations that impact neighborhoods.

Vice-Chairman Crosby discussed item 3 in the Order, to "cease and desist...any shooting of any kind within a mile of any occupied structure...", and asked if the Appellant can comply with that restriction. Mr. Correa stated that he does not know the answer; however, the Permit process would allow that to be looked at.

Chairman Judd stated that, if the Board upholds the Hearing Officer's decision, the Appellant will need to apply and obtain a Permit; the Board is not ending anything today. Mr. Correa confirmed.

Supervisor English discussed the Permit rules and the list of activities requiring a Permit having been approved by the Board. She discussed challenges of certain activities being able to be done by right and others that require authorization. She

noted that the Board, not the Hearing Officer, decided on the activities requiring a Permit. She discussed the Appellant working towards obtaining a Permit; what the Appellant wants to do is on the list and therefore a Permit is required.

Mr. Correa stated that Mr. Lonsdale expressed displeasure with the way the original hearing was conducted, with the animation of the neighbors. While Mr. Correa does not think it resulted in an unfair hearing, he recommended the Board maintain order today and admonish the public to remain polite and not shout or interrupt proceedings.

Chairman Judd admonished those in attendance to remain civil and listen to one another, with no applause or anything of that nature.

Chairman Judd stated that the item will now be opened to the public for public comment. She reiterated that the Board's review of the matter is limited to the record of the proceedings before the Hearing Officer, and no new evidence may be introduced.

John Herrick Smith addressed the Board and stated that it is not true that the Appellant has a contract with the DOD. He expressed concerns over not having any warning; military helicopters buzzing houses; a fire that started in July; disruptions to neighbors and animals; and shooting and concerns of property damage.

In response to an objection voiced by audience member, Chairman Judd stated that this is Mr. Smith's time to speak.

Mr. Smith continued, and expressed additional concerns regarding traffic; decreased property values; and the impacts of lead bullets in the ground and endangerment to people and wildlife and environmental issues. He stated that the Appellant was told to stop all activity but continues shooting, and expressed concerns of retaliation, and lack of consideration and respect for rules.

Patricia Ann Smith addressed the Board and expressed concerns of the disruption of peace and quiet and detailed an incident with the Appellant and a survey crew regarding an easement through her property. She discussed a neighborhood meeting with the Appellant and the County. She expressed concerns regarding helicopters buzzing houses; being told by the Sheriff's Office that there was nothing they could do due to it being military; concerns of fire danger; the DOD contract; and, various business websites.

Chairman Judd admonished those present to not bring up new evidence at today's hearing.

Robert Wright addressed the Board and expressed concerns with disruption of peace and quiet; loud noise and its impact to people and animals; placement of targets on a hill and not knowing where the lead will go; fire danger; property damage and who will pay for damage; impacts to new people, kids and houses coming into the neighborhood; damage to the water supply from lead being in the ground; and, impacts to property values.

Matthew Alexander Ludwig addressed the Board and stated that he had nothing additional beyond comments he made at the original hearing. He discussed the Appellant acknowledging commercial activities and the intent to expand commercial activities; community angst; and, the Appellant's property bordering a number of other individuals' parcels and residences.

Tricia Gerrodette addressed the Board and stated that she had nothing to add.

Keila Watsey addressed the Board and stated that she was unaware of the gun range when she purchased the property. She stated she has heard shooting on every occasion that she has visited her property, and that she is looking forward for the opportunity for a meeting on a Permit application to discuss options.

Chairman Judd stated that one individual signed in as opposed to the item but did not wish to speak.

Ms. Roberts stated that the Board may close the public hearing unless the Board has additional questions. Chairman Judd closed the public hearing.

Vice-Chairman Crosby asked Mr. Lonsdale if he can comply with Order item 3, regarding not shooting within a mile of an occupied structure. Mr. Lonsdale stated that the Order has misinformation and conflicts with many of the Arizona Revised Statutes (Statutes), which grant uses and allowances, and mandate that municipalities cannot negate those. He stated that he is confused about the Order's meaning, and that he does not know if he can answer the question 100% unequivocally.

Chairman Judd asked Mr. Lonsdale if he has additional information. Mr. Lonsdale stated that he is confused regarding the order of proceeding. Ms. Roberts stated that the procedure for today's hearing is that Mr. Lonsdale present his argument, followed by Mr. Correa; Mr. Lonsdale does not get another chance to present. Chairman Judd clarified that the Board may ask questions, and Ms. Roberts confirmed.

Chairman Judd asked Mr. Lonsdale about his familiarity with the County's Zoning Regulations and why he does not need to following the Zoning Regulations as others do. Mr. Lonsdale stated that he thought the basis and purpose of the appeal was to determine whether the lower court [Hearing Officer] made an error in its ruling. He stated that the error is completely apparent as the Hearing Officer allowed the gallery to control the questions, and bias was introduced.

Chairman Judd asked Mr. Lonsdale why he does not need to follow the County's Zoning Regulations and why he is exempt. Mr. Lonsdale stated he is specifically exempt under statutes and Regulations and listed them as follows: A.R.S. §§ 11-811, 11-812, 13-3107, 17-601, 13-3108, 32-214, and Regulations 1704 and 1705. He read A.R.S. § 13-3108(D) in its entirety as follows: "A political subdivision of this state shall not enact any rule or ordinance that relates to firearms and is more prohibitive than or that has a penalty that is greater than any state law penalty. A political subdivision's rule or ordinance that relates to firearms and that is inconsistent with or more restrictive than state law, whether enacted before or after July 29, 2010, is null and void."

Chairman Judd stated that the Board is not allowed to take new evidence and discussed her familiarity with the statutes. In response to Chairman Judd, Mr. Lonsdale stated that this is not as clear as the narrative and documentation state. Chairman Judd stated that this argument should be made in front of the Commission when Mr. Lonsdale applies for his Permit. Mr. Lonsdale stated that he tried working with Mr. Coxworth before he received the rulings. He stated that the military is allowed to conduct their training under federal and state exemptions and that he is not military and does not own or operate a Black Hawk helicopter.

Chairman Judd reiterated that this argument needs to be made in front of the Commission. Mr. Lonsdale stated that there was an error and bias in the initial hearing. He stated that he was not afforded the proper procedure for cross-testimony of the witnesses.

Supervisor English made a motion to affirm the actions of the Hearing Officer.
Vice-Chairman Crosby seconded the motion.

Vice-Chairman Crosby stated that he thinks the word "any" is too broad, as to how it applies to Regulations, Section 607. He stated his desire for Mr. Lonsdale to be able to use his property as he sees fit. He does not expect everyone to know all of the County regulations. Mr. Lonsdale is still able to pursue obtaining the Permit.

Chairman Judd called for the vote and the motion was approved unanimously, 3-0.

Chairman Judd stated that written notice of the formal action by the Board of Supervisors shall be mailed by certified mail to all parties within ten days of today's decision.

Chairman Judd adjourned the meeting at 3:20 p.m.

APPROVED:

Peggy Judd, Chairman

ATTEST:

Tim Mattix, Clerk of the Board