MARICOPA COUNTY, ARIZONA
Board of Adjustment
Minutes
February 15, 2018

CALL TO ORDER: Member Riddell called meeting to order at 10:05 a.m.

ROLL CALL/
MEMBERS PRESENT:
Mr. Jason Morris, Vice Chairman (10:10 a.m.)
Mr. Craig Cardon
Mr. Greg Loper
Ms. Wendy Riddell

MEMBERS ABSENT: Mr. Abe Harris, Chairman

STAFF PRESENT:
Mr. Darren Gerard, Planning Deputy Director
Ms. Rachel Applegate, Senior Planner
Mr. Glenn Bak, Planner
Mr. Eric Smith, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:
Mr. Wayne Peck, Senior County Counsel
Mr. Robert Swan, County Counsel
Ms. Della Davis, Code Compliance Officer
Mr. Eric Misiaszek, Intern
Mr. Michael Schwartz, Intern

ANNOUNCEMENTS: Member Riddell made all standard announcements.

APPROVAL OF MINUTES: December 21, 2017

AGENDA ITEMS: V201701264, V201701342, TU2017035, BA2017052, BA2017056, BA2018001, TU2018005

Member Riddell requested a motion for approval of the December 21 minutes.

BOARD ACTION: Member Cardon motioned to approve the December 21, 2017 minutes. Member Loper second. Approved 3-0.

Member Riddell requested to move agenda item #5 – BA2017056 to the end of the agenda, since she has a conflict with the case.

BOARD ACTION: Member Cardon motioned to move item #5 – BA2017056 to the end of the agenda. Member Loper second. Approved 3-0.

Mr. Gerard noted there are two representatives from the County Attorney's office today, Mr. Robert Swan representing the Board and Mr. Wayne Peck representing staff.

Member Riddell noted there is a time limit with a maximum of 10 minutes or discretion of the Board. Member Loper asked is it 10 minutes in favor or opposed. Member Riddell said 10 minutes per side total.

CODE COMPLIANCE REVIEW

V201701264	**Code Compliance Review**	**District 2**
Respondent:	David W. Lunn for Bart M. & Cheryl Shea	
Location:	22741 E. Pleasant View Road, Ft. McDowell, AZ 85264 (Parcel 219-16-113K)	
Request:	Appeal of the Hearing Officer's Order of Judgment	

Mr. Gerard presented V201701264 and noted this violation case was opened July 25, 2017 due to citizen's complaints regarding construction without benefit of permits and clearances, and construction permits that have expired without completion. This was verified through staff research of the permit history and inspection conducted August 22, 2017. An administrative hearing was held on December 12, 2017, the hearing officer found the respondent responsible and the respondent did attend the hearing. He was ordered to pay a $750 non-compliance fine, and daily fines of $75 are accruing, and as of today no fine amount has been paid. The respondent appealed for code enforcement review with oral arguments. The Board may not hear new substantive information as this a review of the record. If the Board has a determination that is not pleasing to the appellant, he has the opportunity to go to superior court. The hearing officer made a finding of fact and reached his conclusion pursuant to Section 1502 of the Maricopa County Zoning Ordinance. Pursuant to Article 1504.3.2, the Board may either affirm the hearing officer's order of judgment, or remand it back to the hearing officer due to finding of a procedural error. Staff's review of the record supports the decision of the hearing officer. Staff has found no administrative or procedural errors, and recommends the Board affirm the hearing officer's order of judgment and deny this appeal.

Vice Chairman Morris joined the hearing.

Mr. David Lunn, attorney for the respondent asked that Member Riddell recuse herself from the case.

Vice Chairman Morris asked if Mr. Lunn and Mr. Shea will both be presenting on this item. Mr. Lunn said he is succeeding his time to Mr. Shea to present, and he is raising a point of order that there is a conflict of interest, and asked Member Riddell to remove herself from these preceding's.

Vice Chairman Morris asked if Mr. Shea is going to be making the presentation today. Mr. Lunn said yes.

Mr. Swan said it is his judgment we do not need to deal with a perceived conflict of interest for this type of an action. It is very limited in nature and it's an evaluation whether a procedural error was made by the administrative law judge. We are not getting into the substance of it, and it seems it is inapplicable. There is a later case on the agenda, and Member Riddell has already alerted she has a conflict of interest in that case with similar parties involved. The case has been moved to the end of the agenda and she will excuse herself at that time. Member

Riddell said she believes she does not have any conflict of any kind in relation to this action, and Mr. Shea is likely to want to litigate this and to avoid that argument.

Member Riddell asked if it would be prudent to recuse herself. Mr. Swan said he wanted to be clear that she would not need to do that, but perhaps in the best interest of the Board to go ahead and do so.

Member Riddell recused herself from V201701264.

Mr. Shea said the entire case is retribution against him personally for appealing the last decision that was made here on February 2017. He has gone through four or five different times where the County attorney tried to get the case thrown out of court, and this is a direct relationship to all of that. There was an anonymous call made and he's not being fined for that, he is being fined for never finishing a house fourteen years ago. He is being told they do not have finals on a house, and procedurally we shouldn't even be here. The records have been lost or they have been expunged, the County made a mistake and gave him a meter without a final which they can't do. The County attorney accused him of plugging in his own meter, which is impossible. He cannot get his own electric meter, the only one that could do that is the municipality in charge which is Maricopa County Development Services. They don't do that according to their own rules and regulations, unless they finaled the house completely. There isn't any other way to get a meter.

Mr. Lunn requested that Mr. Peck recuse himself since he is part of the retaliatory action.

Vice Chairman Morris said we take these charges seriously and take this appeal seriously. We gave Mr. Lunn some leeway to make a record, we will let the County do the same.

Mr. Peck said each of the arguments Mr. Shea has advanced to you was a substantive issue and not a procedural one. Each of them were raised before the hearing officer, and the hearing officer never found them to be respondent and asks they be stricken. As Deputy County Attorney he represents the County and all code enforcement matters, and does not initiate them he prosecutes them. He also represents the Board in pending litigation, and has no idea the point Mr. Lunn is attempting to make.

Vice Chairman Morris asked if Mr. Peck has any intention of recusing himself. Mr. Peck said none whatsoever.

Member Cardon said he understands the respondent feels that we shouldn't even be at this point. Ultimately in order for us to proceed, and for them to have the ability to adjudication on the merit, he does not find a procedural error and this will allow him to continue with the superior court.

BOARD ACTION: Member Cardon motioned to affirm V201701264. Member Loper second. Affirmed 3-0-1.

Member Riddell rejoined the hearing.

V201701342 **Code Compliance Review** **District 1**
Respondent: Christopher J. Charles for Sean B. & Cynthia L. Cooke
Location: 13827 E. Ray Road, Gilbert, AZ 85296 (Parcel 304-43-112A)
Request: Appeal of the Hearing Officer's Order of Judgment

Mr. Gerard presented V201701342 and noted the case was opened August 3, 2017 due to citizen complaints regarding the operation of an event venue without benefit of proper zoning entitlement. It went to hearing December 12, 2017, the hearing officer found the respondent responsible. The respondent attended the hearing along with their attorney and were ordered to pay a $750 non-compliance fine and a daily non-compliance fine of $75 to accrue but no fine amount has been paid to date. The respondent appealed for code enforcement review with oral arguments. Review of the case finds no procedural errors, the hearing officer found a finding of fact and reached his conclusion pursuant to Section 1502 of the Maricopa County Zoning Ordinance and pursuant to Article 1504.3.2. The Board may either affirm the hearing officer's order or remand it to the hearing officer due to finding of procedural error. A review of the record shows no evidence or support that there's been a procedural error and it does support the decision of the hearing officer. Staff recommends the Board affirm the hearing officer's order of judgment.

Mr. Christopher Charles, the respondent's attorney said he prepared a memorandum for the Board. The decision of the hearing officer simply cannot stand, and the procedural irregularities including due process violation resulting in fundamental fairness and depravity of reasonable notice simply prevent this decision from standing, and require that the matter be remanded and dismissed. The Cookes use of the property is in compliance and there is no use violation, their compliance is authorized under Arizona's vacation rentals statutes. The Cookes received a notice dated September 7, 2017, a notice in order to comply regarding the violation case number. The law requires that the respondent be given a reasonable notice and opportunity of the charges. The violation alleges operation of a business in Rural-43 zoned property without an approved entitlement, it also mentions a pool barrier issue that was dismissed voluntarily by the County. The notice then gives direction as to what is the legal violation that occurred and cites the textbook of Rural-43 zoning section 501, everything in that section is about 15 pages. Here are examples of what he was alleged to have violated: use regulations regarding single family dwelling, church house of worship, gardens, golf courses, library, museums, home occupations, corrals for the keeping of horses, constructed walls on the property, guest houses, accessory buildings and it goes on and on that he violated this whole chapter. Then it generally says he's in violation for conducting a business without giving any specific definition, reference to any code section or what that may be. No direction on how he is to correct that and when the violation occurred, other than the only notice he has suggests September 1, 2017. The notice alleges a staff person confirmed the violation without giving any identification of who the accuser is and some staff person confirmed it.

Member Riddell asked doesn't it specifically state at the bottom the code compliance officer and her name. Mr. Charles said that's what the County would have you believe, this letter is drafted by Della Davis, Code Compliance Officer, but nowhere on here does it say that she confirmed these violations and instead it says vaguely at the top some staff person.

Member Riddell asked why disclosing who the specific staff person is relevant to notice. Mr. Charles said because under due process concerns and the law, the respondent is given an opportunity to confront his accuser and to know who it is that is alleging the violation so they

could adequately prepare for the hearing for cross examination or for any pre-hearing discovery. On this basis alone, the citation has to be dismissed.

Vice Chairman Morris asked if he made this argument with the hearing officer. Mr. Charles said not only did they make this argument at the actual hearing, but they filed a motion to dismiss in a pre-hearing memorandum asserting these exact concerns, and they accepted it as part of the record and made a verbal motion to dismiss at the hearing which was denied.

Mr. Charles said the hearing officer's detailed three-page decision doesn't give any further light as to what the charge is and what the actual violations are, and what he actually did wrong to correct that. The Cookes are good neighbors they want to be in compliance, their position is they are in compliance. If the County thinks they are not in compliance they want some direction, guidance and due process so they could fix the problem. In the hearing officer's three-page decision alleges specific charges which were not part of the notice. On page three it says based on the evidence, and the hearing officer goes on to identify a number of alleged violations, yet these alleged violations provide no specifications, no identification of when the violations occurred, who did them, how they were done, and where they were at. For example, undersigned concludes the respondents offered their urban residence as a wedding venue, when was this done? Even the hearing officer's decision highlights and underscores the challenges with the lack of notice he was given, because the finding of fact is very vague and he was not given any notice to these issues to prepare for at the hearing. The Cooke's use of the property is in compliance with the use requirements, it is a lawful use as a vacation rental.

Vice Chairman Morris said we are essentially rearguing this case. Procedurally the second point doesn't have any bearing on what occurred. Is there an error you see? We are extraordinarily limited in our jurisdiction. Mr. Charles said procedurally in regards to the vacation rentals, the hearing officer applied the wrong law to this case. The Cookes are also scheduled here today for a hearing on their Special Use Permit. They did submit a request yesterday by e-mail for a continuance after reviewing the staff report we noted a number of concerns, and a request for a continuance of 30 days to address those concerns.

Vice Chairman Morris asked staff if they have a copy of their request for continuance. Mr. Gerard said yes, with a response they would need to make their request verbally here today. Mr. Gerard noted it's a different agenda item and staff is not in support of a continuance because the Cookes have four scheduled wedding events before the next Board of Adjustment date in March, and we have evidence that they continued to operate since the hearing officer's order. Staff cannot support a continued operation without proper zoning entitlement.

Member Cardon said in the notice of order to comply in parenthesis where it talks about cease and desist the operation of business, it has wedding venue. You should have had an idea that there was an issue that relates to a wedding venue as to why they were going to the hearing officer. Mr. Charles said he agrees the notice does reference wedding venue, but doesn't reference any code section or ordinance section or definition, and how it is wrongful, and what he can do to correct that, and when that alleged violation occurred.

Vice Chairman Morris asked if it's your contention your client doesn't know what the County is alleging and what the violation is? Mr. Charles said no we do not understand what the charge is and how he can respond to that.

Member Cardon said certainly you will have disagreements when things don't go the way you'd hope. He is hearing there's a lack of notice to what is going on, but does not see there's a procedural error.

BOARD ACTION: Member Cardon motioned to affirm V201701342. Member Loper second. Affirmed 4-0.

REGULAR AGENDA

TU2017035	**Carranza Property (cont. from 12/21/17)**	**District 5**
Applicant:	Elida Carranza	
Location:	5816 S. 107th Ave. – Southern Ave. & 107th Ave. in the Tolleson area	
Zoning:	Rural-43	
Request:	Temporary Use Permit (TUP) to allow for a temporary events days on 4/1/18 & 5/28/18	

Mr. Smith presented TU2017035, and noted there is 29 signatures of support and 41 signatures in opposition. In December the Chairman asked for the building permit to be completed by this hearing date, and that has not happened.

Member Riddell asked if there was any further dialogue between the neighbors. Mr. Smith said yes.

Vice Chairman Morris asked if the applicant was present. Mr. Smith said he did hear from the applicant and they were asking for another continuance, but they did not provide a date. They said they were going to send the exact dates but it was never received, and they also said someone was going to be here today.

Vice Chairman Morris asked if there is anyone from the Carranza family or a representative of the property owner here to speak for item #3. No one responded.

Ms. Ina Daly lives next door to the Carranzas, and said she had to take time off work to attend this hearing and the other neighbors had to do the same. In the past with the Carranza's rodeo business they did the same thing asking for a continuance after continuance until everyone stopped showing up. Her opposition is based on their past history of being rodeo producers for the past 20 years. They were extremely loud, drunk driving, trash everywhere, paid admission, and would go on until 2:00 in the morning. They purchased the property from her family, and she built her dream home on what's left of her family's property. Ms. Daly said she has a right to enjoy her home is just as important as the Carranza's dream to have a rodeo at their property. The application said two events for friends and family, this is not what they've done before. A few years ago the Carranzas called her over and asked her support to build an arena and she told them she couldn't. They told her their dream is to have weekend events there and she told them no and the neighbors won't have this. They proceeded without the concern for the neighbors. There's shootings and crime associated with these type of rodeos, and when you let these things continue it is hard to get them stopped. What the Board does is

so important, but when she read the ordinance the words intent and purpose were used a lot, and she really doesn't think the intent and purpose of a Rural-43 property is for a nightclub style rodeo in a residential area.

Vice Chairman Morris said we have a sense on where you stand, and you have given us some grounds to think about, but we have staff to help us with the ordinance and we have experience with it. The Board appreciates the time you have taken off of work to come down here and express your feeling on this case. Ms. Daly said Maricopa County Department of Transportation (MCDOT) is requiring the Carranzas to pave the driveway, and to lower their block wall for a site visibility triangle. They built a block buffer wall that runs right beside her driveway to protect her from the noise of the rodeo, and it is a six or seven feet solid block wall. She gave the Carranzas $4,000 so they would put the metal inserts in there, and told them not to block her view. When she exits her driveway she cannot see the road to the south and her house faces south, and doesn't think the block wall is in compliance with the zoning. The adverse impacts are impactful on her and not just the neighbors.

Vice Chairman Morris asked staff when working in conjunction with MCDOT, are they aware of the planning and zoning requirements. Mr. Gerard said Planning and Development engineering does the reviews for MCDOT for entitlement cases. The ordinance requires a clear site visibility triangle of 25' x 25' at street intersections and at commercial driveways. There is a different treatment at residential driveways in Rural-43 and nothing is required, you can have an eight foot high wall up to the street-line.

Member Loper said the proposed use is not out of character with what happens there with arenas and equestrian uses and other similar type uses. Normally they happen in this area, and he wouldn't have an issue with the proposal, but he has a few concerns. The applicant isn't here, and even though they made additional outreach to the neighbors, it doesn't appear it's been appeasing. Most importantly the staff report notes a couple of issues from engineering where they need a flood plain use permit and also have incomplete construction permits. He is not in favor of granting the Temporary Use Permit or a continuance.

Member Riddell said the neighbors have been put out enough coming down here to make their points heard. It's been made very clear that it's not just about two events, so if this is a use that the applicant is determined to pursue, it is more appropriate for a Special Use Permit before the Board of Supervisors and not before the Board of Adjustment. She is not in favor of this application or a continuance.

BOARD ACTION: Member Loper motioned to deny TU2017035. Member Riddell second. Denied 4-0.

BA2017052 **Hoo Property** **District 1**

Owner: Louis Hoo

Location: 21632 S. 140th St. – 140th St. & Ocotillo Rd. in the Chandler area

Zoning: Rural-43

Requests:

1) A street side (north) setback for an existing barn of 29.43' where 40' is the minimum permitted and;
2) A street side (north) setback for an existing detached structure of 32.07' where 40' is the minimum permitted and;

3) A side (south) setback for an existing horse shade/shed of 1.74' where 3' is the minimum permitted and;
4) An existing rear (west) setback from an existing horse shade/shed of 2.33' where 3' is the minimum permitted and;
5) An existing rear yard coverage (aggregate area under roof) of 47% maximum permitted is 30%

Mr. Smith presented BA2017052, and noted there is an open violation V201600710 on the property since May 27, 2016 for construction without a building permit. The applicant was to meet three critical deadlines which were not met. There are four letters of opposition and the property is being used for ongoing equestrian events. There is a Special Use Permit (SUP) category for this type of equestrian business that better suits the use. The subject variance case is not relevant to the use but to the setbacks and area coverage. The applicant has failed to demonstrate there's a peculiar condition, the alternatives available are to reduce the size of the structures, move them or remove them so the variance is not warranted. Staff is not in support.

Member Loper asked if the Special Use Permit process would be a more appropriate mechanism for what they are trying to do, and if they were successful they could call out their own setbacks. Mr. Smith said the area and setbacks could be addressed through the Special Use Permit process.

Mr. Gerard said what is before the Board is the setback and the rear yard coverage variances. We do not see justification for those because the structures can be relocated. It has cascading inter-dependency, because of the size of the one structure and if it were to be relocated to the south center of the property, a lot of these variances will go away with minor adjustments. This is due to unpermitted construction.

Vice Chairman Morris said that's on the development standards side. Mr. Gerard said yes, the violation is from unpermitted construction, and it has not addressed the use at this point and it has come to our attention there is a website. If they were to seek some type of SUP for that type of operation, it is possible to vary development standards and that's not the same process as going through the variance, it's a legislative process. We still believe there would be opposition to that.

Vice Chairman Morris asked how staff became aware of this. Mr. Gerard said citizen complaint of the unpermitted construction spurred a need for a compliance agreement to remedy either removing the unpermitted construction or obtaining the construction permits.

Ms. Janet Hoo, the applicant said the property was purchased in May 2016, the initial violation they received was dated May 2016. The violations against all the property was filed prior to us purchasing the property. We were not involved in the building, and the property was sold free and clear of title with no building issues. We have the front part of the property that is completely clear, we have the barn, the mare motel and the hay structure which are the three structures that are under question. The first violation refers to the barn, it's a 12 stall permanent barn structure consisting of a foundation, steel structure, metal roof and panels. Moving this barn is physically impossible and the only option is to tear the entire barn down and rebuild it. It was built between October 2007 and November 2008, it's been used for this purpose for 10 years with no violation ever filed against it. The barn structure is not visible from the front or the

back of the property. In 2007 there was no barn and the hay structure and the mare motel were present at that time. On November 6, 2008 the barn and mare motel were put up in the same location they are now. From the front of 140th Street, the house blocks the view of the barn and the majority of the mare motel and the back of the property is completely blocked, it does not impact the neighbors in any way. We have three utility poles on our property, those poles cross between the house and the barn, the back corner of the property, and the front corner of the property. Any movement of any structure will require movement or adjustment of those utilities and it's a major issue. If we had to tear down the barn it would cost $25,000, and to rebuild it would cost over $75,000 and that's not including the utilities. That's a quarter of what we paid for our property. This property was advertised as a horse property with the structure in place free and clear title, no notification until after they bought and now they are being asked to decrease their property value, decrease the purpose it's legally used for, and not be able to do anything with. There is no way financially and some undue hardship they'll lose the value of their property that they purchased. Violation two is a hay structure, it is a solid steel structure and it's been in place since 1996. It has not been modified in the last 20 years. It is blocked in the back by oleander trees, and it's blocked in the front by the barn. There is no way to see the hay structure unless you are physically on either side of the property, and those neighbors did not complain.

Mr. Gerard said on page four there is an aerial and he believes the delineated lot line is erroneous, if those are the existing structures dating pre-2000 those would be considered legal non-conforming and that may address all of the issues other than the barn setback.

Ms. Hoo said they had a site survey done, and we know our lot lines and they are correct. She grouped violation three and four together, since they are both dealing with the mare motel one on the south side and one on the east side. It is a seven stall mare motel, and it's been there since 1996 and in 2008 they extended the front part of the coverage and it is concreted into the ground. Why can't we move this mare motel or cut this shrub, our property is lined by 18 to 20 foot oleander trees, and we have a letter from our veterinarian that they are extremely toxic to horses and they will kill them. We cannot use the hay structure to store hay, because those leaves blow over into the yard and if it gets into a horses water or food it will kill them. We asked our neighbors to pull the trees down and trim them, but there has been no acceptance to that. They have put up shade barriers behind those stalls and tarps to keep the leaves from blowing into the stalls. The stalls have been there before 1996, and that entire tree line in the back is oleanders 10 feet above the stalls. If she uncovers those stalls there is no way for her to prevent leaves from getting in those stalls making her property useless for horse care. She would lose her ability to use her property for equine facilities as it's been used for 20 years. This puts a completely undue hardship on her and her family, we bought the property clear and bought it for the amenities that is has. We have worked with the County continuously and this was not the first issue and they have filed numerous variations of what we needed to do. We asked about a Special Use Permit but were told we needed to do this first. Number five has to do with the amount of lot coverage, if you look at all of our neighbors, our coverage is actually less or equivalent to everyone around us and we are not adding or taking away from anything. The property is maintained and the property is clean. We do not do public boarding, we do not do public events and we do not charge admission to our property. Everything she does is one on one, and she is working on a Special Use Permit for that.

Vice Chairman Morris asked about the activities, the people that get lessons or the training. Ms. Hoo said it is all special needs coming in.

Vice Chairman Morris asked if there were any other comments from staff to address the existing violations and the potential grandfathered nature. Mr. Gerard said staff provided a less than optimal aerial on page four and it may be the structures on the west end identified as horse shade, shed, and hay shed, if they existed prior to 2000 and the property hasn't changed then its legal non-conforming. It does appear the property was split in 2001, which negate legal non-conforming and believes this needs to be researched. It talks about a road split but if essentially this is the same property it hasn't been split to create a new rear west lot line and those conditions previously existed as a legal non-conforming condition. He sees nothing that addressed the substantial barn that is encroaching between 10 and 11 feet.

Member Riddell asked if this property is eligible for an agricultural exemption. Mr. Gerard said no, it does not meet the five commercial acre size, and he does not know if it qualifies as a commercial agricultural operation or a horse rescue operation, but it appears to be something different all together. The use of riding lessons and things at less than 24 persons in Rural-43 can be an accessory use to a single family residence.

Vice Chairman Morris said this leaves the Board with the additional research for staff, but there are obviously some issues that still would be requiring variances. Some of the points raised with the visibility really doesn't impact our analysis, whether it can be seen or not there are development standards for a reason on this property. Every property is subject to those same development standards, there are other properties I'm sure in your neighborhood and other parts of the County that are similarly situated. The County does not go around looking for violations, and they are typically driven by complaints rather than just looking for violations on properties. There may be neighboring properties where there had been no complaints and it's gone on for a number of years. Also purchasing a property and changing a title does not absolve you of these things, it's always incumbent of the person purchasing the property to make sure any structure is a legal structure on the property.

Member Cardon asked does there need to be more time to figure out the legal non-conforming issues. He was hoping to hear what the peculiar condition on the property is that would necessitate the variance.

Member Riddell asked if the rear buildings were found to be legal non-conforming what does that mean for the overall lot coverage. Mr. Gerard said if they are legal non-conforming and were on the property prior to 2000 that would also cover the rear lot coverage unless there was an expansion post 2000.

Member Riddell said let's assume if nothing has changed from the moment it became legal non-conforming, are any variances still needed. Mr. Gerard said not for the hay shed, and the horse shade shed.

Member Riddell asked if it is needed for lot coverage. Mr. Gerard said no, if there's been no change it's not needed, then the only variance would remain is the street-side north setback for the existing barn.

Member Loper said they took ownership clearly after these structures were on the site, and although it is the responsibility for due diligence to see if they have permits and if they meet code. If there was a motion to continue he would be in favor of that.

Member Cardon said he understood the barn was built in 2006, and the issue of maximum lot coverage, and asked if that would or would not be an issue if the barn was built in 2006. Mr. Gerard said the barn is outside the required rear yard. We're not talking about lot coverage, we are talking about maximum rear yard coverage. You're permitted to have 30 percent of the required rear yard or required side yard covered under roof, so it's only the required rear yard.

Vice Chairman Morris said the question earlier from Member Riddell was whether the grandfathered structures would count against that overall coverage in the rear yard. Mr. Gerard said it does, but the rear yard coverage could also be grandfathered.

Vice Chairman Morris asked for those items prior to 2000. Mr. Gerard said correct, it there has been an addition to those structures that would trigger a need for a variance since they would no longer be grandfathered.

Vice Chairman Morris said there is some confusion but he does not want to prolong this. There are letters from those opposed and he strongly suggests that they be made available to Ms. Hoo so she can have some dialogue with these neighbors. She can work with staff since there were some miscommunication and mistakes made by what the actual violations are which will work to her benefit. Even the best case scenario, she would be looking at a variance and a Special Use Permit depending on what she wants to do with her property.

Member Riddell asked if the barn is considered an accessory structure. Mr. Gerard said yes.

Member Riddell asked what the setback is for an accessory structure. Mr. Gerard said since the north is a frontage it is a street side, it is required to be 20 feet from that street line.

Member Riddell asked because it's the driveway. Mr. Gerard said correct, that easement backs to the other lots.

Member Riddell asked if it wasn't a dedicated easement would a variance be necessary. Mr. Gerard said it appears were talking less than a foot. If there was not an easement going back to the properties to the west then it would not be a frontage, then a three foot setback would be permitted. He corrects his previous statement, because there's a 20 foot wide ingress/egress easement, and there is actually a 40 foot setback and they're at 29.4, so they are encroaching 11 feet into the setback.

Member Riddell asked why they need the recorded driveway as it appears to be one parcel. Mr. Gerard said it is an ingress/egress easement and he doesn't know how many parcels it serves, but it certainly serves the property to the west. That can be abandoned, but it is separate from anything Planning and Development would work on. If that was not there the setback changes.

Member Cardon asked to clarify that easement cannot be abandoned because it serves the property to the west. Member Riddell said it does not appear to be used to access the property to the west.

Member Riddell said she initially didn't see a hardship, but the fact that it is a driveway easement that is not really functioning as a frontage is a different condition. The specific

findings would be related to the driveway easement that is really not functioning as a driveway easement and also the non-conforming nature of the structures.

Vice Chairman Morris asked if we are addressing all of the variances requested or just the variances concerning violations. Member Cardon said he is making a motion intending to address all.

BOARD ACTION: Member Cardon motioned to approve BA2017052 with conditions 'a'-'d'. Member Loper second. Approved 4-0.

a) General compliance with the site plan stamped received January 17, 2017.

b) All required building permit(s) for existing development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit(s) within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.

c) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.

d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2018001	**Lopez Property**	**District 5**
Applicant:	Carlos Grijalva	
Location:	3919 W. Carver Road – 40th Ave. & Carver Rd. in the Laveen area	
Zoning:	Rural-43	
Request:	A proposed single-family residence to setback 40 feet from the front (south) property line where 65 feet is the minimum required	

Mr. Bak presented BA2018001 and noted there is no known opposition.

Mr. Curtlin Johnson said he lives across the street and he came down to understand what the request is about. Now that he knows he has no objection.

Vice Chairman Morris asked if he is supportive of the request. Mr. Johnson said yes he is supportive, it is a very unique lot and the geometry is very different and he can see why the setback was requested.

Vice Chairman Morris asked if there has been any communication with the applicant prior to the hearing. Mr. Bak said yes there has been, he sent the staff report to the applicant last week and then he called the owner to remind him that the hearing takes place today.

Member Loper said there is a hardship with a triangular shaped lot which pinches the setbacks, and the setback variance is an alignment for a roadway which the roadway takes a turn to the north. Mr. Bak said yes that's correct, it corresponds to the south with that alignment only and then terminates a short distance to the east.

BOARD ACTION: Member Loper motioned to approve BA2018001 with conditions 'a'-'c'. Member Cardon second. Approved 4-0.

a) General compliance with the site plan stamped received January 16, 2018.

b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.

c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

TU2018005	**Cooke Property**	**District 1**
Owner:	Sean Cooke	
Location:	13827 E. Ray Rd. – Gilbert Rd. & Ray Rd. in the Gilbert area	
Zoning:	Rural-43	
Request:	Temporary Use Permit (TUP) for a special event / a wedding reception venue on 2/17, 2/24, 3/10, 3/17, 3/24, 4/7, 4/14, 4/21, 4/28 and 5/5/18	

Mr. Smith presented TU2018005 and noted a violation on the property. There are five letters of support and 29 letters of opposition. An administrative hearing was held on December 12, 2017 for V201701342 and the public was there. On February 1, 2018, staff was contacted by the Maricopa County Sheriff's Office (MCSO) and were advised that Mr. Cooke held an event on January 5 and December 2. The MCSO informed staff they received eight complaints from different streets and the music was loud. There is a history of wedding receptions and events at Modern Farm without the proper zoning entitlement, and staff believes the proper category would be a Special Use Permit under MCZO Article 1301.1.11. The applicant requests a continuance, but the subject temporary use includes event dates of February 17, February 24 and March 10 all prior to the next Board of Adjustment hearing date of March 15. Staff is not in support of the continuance request since the property continues to operate without the proper entitlement after being ordered to cease and desist. Staff recommends the Board to deny this request.

Mr. Gerard said earlier on this agenda the Board affirmed the hearing officer's order of judgment for a violation case. There was a request for a continuance and Mr. Smith indicated there are three event dates prior to your next available Board of Adjustment hearing. Staff does not support continuing an item that we know has a continued operation without proper zoning entitlement. They operated after the hearing officer's judgment and staff recommends denial. This use is inappropriate in this residential neighborhood, and there are a number of people here to speak in this case.

Vice Chairman Morris advised the Board that we have 13 speaker cards all in opposition, and two have indicated that they wish to speak, Mr. Miles and Mr. Cantino. He asked if anyone else wishes to speak. Ms. Medrano said she filled out a card and wishes to speak.

Mr. Christopher Charles with Provident Law said although he represents the Cookes, Mr. Cooke will be speaking on his own behalf, and he has requested a continuance.

Vice Chairman Morris asked Mr. Cooke if he is requesting a continuance. Mr. Cooke said yes.

Vice Chairman Morris asked if he is agreeing to not hold any events during the continuance. Mr. Cooke said there are two different issues arising, one is the application for the Temporary Use Permit and the other is the violation they addressed earlier. It is his understanding and his attorney's understanding that contractually the way they lease their property is in accordance with the Arizona Revised Statute in regards to vacation rentals, so those lease agreements have been executed for those upcoming rental dates.

Mr. Cooke said he has prepared the best he can to proceed today. He did receive the report on Thursday of last week which has not given him ample time to address some of the issues with the neighbors that might be here today, and this is the reason for the continuance.

Member Cardon said he is not inclined for a continuance, and would like to hear what the neighbors have to say. It seems a lot of people have traveled here today. Member Riddell said she agrees.

Vice Chairman Morris said we are going to proceed with the presentation.

Mr. Wayne Peck, the County attorney said because of the interplay and the violation request, the County attorney's office has reason to believe that this case will proceed beyond the Board of Adjustment, and asked the Board to consider waiving the 10 minute limitation subject to the ability of the Chair to control the hearing. He wants to obviate any argument down the road that the applicant was cut off and denied due process because of a time limit.

Mr. Sean Cooke, the property owner said he would like to address the letters of opposition that he's had a chance to review. He said the three letters with the last name Reidlinger own a wedding venue on the opposite corner of Gilbert and Ray Road, and they do not live in the neighborhood and considers these three letters fraudulent. He asked the Board to take that into consideration and to remove it from the file.

Vice Chairman Morris said what we are looking at now is a wedding venue owned by the Riedlinger's. Mr. Cooke said yes, they wrote letters in opposition claiming to be his neighbors.

Vice Chairman Morris stated you are advising the Board that it's actually competition. Mr. Cooke said it's not factual information and they are not neighbors. He's not going to say if they are competition or not, but they own Shenandoah Mill which is a wedding venue less than one mile away from his property.

Mr. Cooke said the letter from Christy Karstetter, she lives a couple blocks south of his property. In the letter she gives no reason why the application should be denied. He can't address any of her concerns since they weren't listed in her letter. Mr. Larry DiVito lives on the north side of Ray Road and is approximately 350 feet away, and his letter concerns him because he mentions his wife with health concerns, and having to take care of her. He says the music and loud noise are emanating from his property. Mr. Cooke said he employs professional security, and they would testify to the fact that there is another property located to the west who does also hold parties that goes late at night. Mr. Cooke played a video for the Board showing a leaf blower across the street with vehicles passing. The average decibel that produces noise - heavy traffic is 80 to 89 decibels, a chain saw and leaf blower is 106 to 115, and at that noise level it is damaging to a person's ears. It is unreasonable to think the music would emanate

from his property much further back, and would be at a level that could travel that distance and surpass the traffic noise and then reach Mr. DeVito's house. There is a letter in the packet from his house sitter /nanny who also witnessed on several occasions that there are other parties on the other side of Ray Road. Mrs. Rotenberger wrote a letter in opposition, and she is well over 550 feet away from his property. He never personally met her, but in her letter she takes stabs at his character and claims he is arrogant and threatening. He's never come in contact with her and is not sure how she can make these claims. She also talks about his past legal issues and questions his professional ability. Mr. Cooke said he is a licensed insurance agent and a licensed real estate agent, and his licenses are in good standing. He is also a professional pilot, he has a master's in aeronautical science, and is an instructor at the university. In addition to his professional life and personal life, he volunteers on a regular basis at his church, and volunteers to fly doctors into Mexico. The only reason he is bringing it up is because in the letter of opposition it mainly attacked his character and wanted the Chair to take in consideration of who he is as a person. He received a text message from a neighbor Bob Miles who lives directly south of his property. The message shows he does communicate with his neighbors, and shows he does not have a problem with rental tenants that take possession of his property. He also has a letter of support from Nicki Kearn, she is a neighbor living directly southwest of Mr. Miles and her property touches his property line. Mr. Cooke said there's a message from an unknown lady that states "it wouldn't matter how loud it is, the frequency and the fact that she doesn't want the homes on the Ray Rd. side to be rezoned as commercial." The Board needs to take that under consideration because anytime there is change in community and recently there's been a lot of rezoning and construction. They live in a rural area in Gilbert where we have to take in account there will continue to be zoning changes, and growth and it's not a valid reason because somebody doesn't want that growth to occur. Mr. Cooke said his security has a decibel meter which measures sound volume, and security is on their property anytime there is a tenant. He played a video of the ambient noise level on Ray Road with nothing going on, it showed 55-60 decibels with the traffic noise a hundred feet away. Then he plays a video of music playing and it is between 59-62 decibels with music on his patio, so the music that is playing is not much louder than the traffic noise in front of his property. If the decibel meter was closer to Ray Road you would not be able to hear the music emanating from the back yard. He then plays a video of music playing inside of the barn, where you can't hear the music playing until the camera was right next to the doors of the barn. Next he has the decibel meter from the southeast corner of the property in the parking area, and it is reading louder at 65-68 decibels hearing music playing in the background. Very similar to the traffic noise on the front side of Ray Road and this is about as close as you can get without actually being in the yard. Then on 138th, you can hear some people in the background, and it's about 300-350 feet away and it is registering 55 decibels. It is the same as the traffic noise, and you can hear periodic laughter and neither is overbearing. Mr. Cooke said in several of the letters of opposition, there have been accounts for noise, cussing, and beer bottles. One of the letters specifically states another property has rodeo events and this can be the source of several of the neighbors' complaints. This is on Shannon Street, 400 feet west of 138th Street and 700-800 feet from his property. They host events/rodeos on a weekly basis, and the noise level was tested from the frontage of their property about 150 feet away, and the decibel meter was reading 65. The noise volume emanating from that property is much louder. When the MCSO came out they discussed with him that there was another event going as well, and Mr. Miles can testify that people have been urinating in yards, and there's drunken behavior coming from that property. He showed a text message from Nikki Kearn from October 28, 2017, the weekend when all of this started to spiral downhill. She said someone else was having a wedding on 138th and Galveston. There were complaints that

night, but not necessarily with his property. It is a rural area, and there are several families with similar type events. Next he shows a video of Sandra Cantino blowing an air horn towards his property, the video shows the hostile tendencies of his neighbor's towards him. No music was heard but you can hear her air horn. He called the Sheriff and they spoke with Ms. Cantino, and an injunction of harassment was issued against Ms. Cantino. Mr. Cooke addressed the parking on 138th Street, showing a picture of a horse trailer, and commercial construction equipment owned by other property owners on the west side of 138th Street with minimal parking available. He does not see why people complain when people park their vehicles there on a daily basis. Ms. Cantino has parked her own vehicle and barricaded the public easement, and another neighbor has put boulders on the side of the road. It is not their property and they do not have a legal right to do that, so parking is not an issue now since they have taken matters into their own hands. The Department of Air Quality came out and have no issues with the compacted granite they have for parking at his property and he can fit 16 vehicles in that area. In the front of the property there is covered parking, a driveway with additional parking for six vehicles, so they can park a total of 22-24 vehicles. County engineering recommendations said the capacity could be up to 100 guests. Their property could facilitate that assuming people are carpooling, which at weddings most people do with three to four family members per vehicle. The Planning staff mentioned it was not appropriate for a rural area, and Shenandoah Mills is right in the middle of a residential neighborhood and their proximity to those properties is much closer than his proximity to the neighbors that are in opposition. The neighbor directly to his west and east, and Nicole and Jason have all given letters of support and their properties all touch his property. Elegant Barn is located in Val Vista Lakes, it's a wedding venue in a residential neighborhood. They took the property out of foreclosure and it's been renovated and it's added value to that neighborhood in Gilbert. Portico is located in his neighborhood and it's on the opposite side on Williams Field in Gilbert, zoned Rural-43 and it's a similar lot size, same proximity to the neighbors and they are operating as a wedding venue. Bob Miles the neighbor directly to the south is here to not speak in support, but he would like the Board to take in consideration the private communications that he had with Mr. Miles and had never showed any opposition. Mr. Cooke said he has always tried to be communitive with his neighbors and those that do want to talk to him can speak with him anytime. He is a hundred percent open to talking with any of his neighbors' to address their concerns but he needs to be given the opportunity. Nine letters of opposition were received, and three of the nine were from another wedding venue and one didn't give any reasons why she was opposed. This only leaves him with five letters that he was able to address. Maricopa County Engineering and Environmental Services does not object to the proposed use and he knows the temporary use is not a permanent solution. In November he had a pre-application meeting for a Special Use Permit and he met with the Engineering Department, the Planning Department, and the Environmental Services Department where he was made aware he'll need a topographical survey, and a drainage review plan completed. He's already paid for a survey of the property so a civil engineer can figure out what drainage he has to have on the property. He has a written service agreement with Judd Engineering Services to complete that report, but he cannot submit a completed application until that is done.

Vice Chairman Morris asked so you are going through the SUP process. Mr. Cooke said yes, and he's already completed a pre-application meeting.

Vice Chairman Morris asked so your intent is to make this a permanent business at that location if the SUP is granted. Mr. Cooke said he still plans to reside there with his family as his primary residence.

Mr. Cooke said they are living on the property and would not have any more than 20 to 30 events per year. In the previous two years, there's been a total of 30 rental periods. March, April, October and November are the nicest months in Arizona, and it is going to seem the property is rented very frequently but given 365 days a year, they'll have tenants 20 to 30 days. He is not asking for this to be a weekly occurrence.

Vice Chairman Morris said the presentation given will be an excellent presentation for your Special Use Permit because that is potentially what you are presenting to us. The first word in your application is temporary and there's very little that is temporary about your current application. From your presentation this is a professionally run operation, but a Temporary Use Permit is typically utilized for other types of uses that are truly temporary. You are well on your way on getting this entitled properly which the Board appreciates. Mr. Cooke said he was advised by Mr. Gerard, Ms. Della Davis and one of the planners to apply for the temporary use so he can continue and be in compliance without having to inconvenience people who are planning to rent their property. Then at the same time continue with the special use process since it could take up to six to nine months. This is temporary with the end goal to be the special use.

Mr. Peck said the County would move to strike the presentation because it did not address a single issue that's required for an applicant to obtain a Temporary Use Permit. None of the criteria in the ordinance was addressed in anyway, and if that's denied he requests permission to ask questions of the applicant. Vice Chairman Morris said they are not going to rule on something to be struck, and certainly will not allow questioning.

Member Cardon was wondering if there is anyone else to speak in support because once they hear all the testimony in support, he may have a comment. Vice Chairman Morris said he does not have any speaker cards of anyone in favor of this application, and asked if there was anyone from the public that wishes to speak in favor of this application. No response.

Member Cardon said he believes this is an ongoing special event and a Temporary Use Permit is not appropriate for this property. He is willing to make a motion to that effect to deny this Temporary Use Permit for those reasons and reasons numerated in the staff report, and it might save so many people coming up to speak, but if they'd like to speak he is open to hearing it.

Member Riddell said she echoes Member Cardon's comments and she is troubled that there are unpermitted structures on the property, and allowing events to occur with no permits isn't something this Board would endure.

Member Loper said he agrees with what's been said.

Member Cardon asked should we check if someone wants to speak in opposition or do we move forward with a motion. Vice Chairman Morris said he has three cards to speak in opposition, and we have a pretty good sense of what that opposition is unless there is someone with a burning desire to speak on the record. Mr. Cantino said he has a burning desire to speak.

Mr. Lindy Cantino said he has resided at his property since April 1995, and their lot is on the northeast corner of Shannon Street and 138th Street and Mr. Cooke has owned his property since January 2015. The distance between the backyard of the wedding event area and their

living room is 400 feet. Mr. Cooke has rented the property Modern Farm for outdoor weddings, receptions, baby showers and other events by advertising on the internet via Yelp, Facebook, and in the past had a website named Modern Farm. They have been complaining to the Maricopa County Sheriff's Office from the beginning about the loud amplified music, DJ announcements, and crowd noise from hundreds of intoxicated people. Also there's 30 to 40 cars parked in the easement along 138th Street and the very narrow 140th Street since Mr. Cooke has limited parking on his property and there's no parking on Ray Road. They also had sanitation issues next to where the cars are parked by some of the attendees, and they hear the noise from inside their house which prevents the family from enjoying their house, their backyard, and they cannot have normal volume conversations. Mr. Cooke has received three criminal citations for loud neighbor disturbances from the MCSO on the November 18, 2017 and currently has a case in the justice court JC217-15701. He also received a citation on December 2, and one on January 5 for the same offenses. Even after Mr. Cooke was cited and found responsible with the hearing officer's judgment on December 20, 2017 for violating the Maricopa County Zoning Ordinance he still continues to be defiant for the express purpose of outdoor weddings. He had events on December 20, January 15, January 20, February 11, and he has another one scheduled for February 17. He has no regard for his neighbor's, the law, Maricopa County Zoning Ordinances, unless Maricopa County polices him he'll have more ungoverned outdoor events than stated on his TUP application because he has proven not credible. One of the letters of support JC Steakhouse should not be considered in the decision of the TUP entitlement because it is a quarter mile away from the Cooke's property and has a financial interest in his business by providing the catering. This illegal wedding business is unfair to the legal wedding businesses in the area that have paid commercial property taxes, paid for a business license, have higher operating costs due to overhead and not able to use it as a residence. Mr. Cantino asked to please help us bring the peace and quiet back to our homes by stopping this neighborhood nuisance by not allowing this TUP entitlement.

BOARD ACTION: Member Cardon motioned to deny TU2018005. Member Riddell second. Denied 4-0.

BA2017056	**Appeal**	**District 2**
Appellant:	Bart M. Shea	
Location:	22607 E. Pleasant View Rd. in the Goldfield Ranch area	
Site Size:	Approximately 91 acres	
Zoning:	Rural-70 RUPD	
Request:	Interpretation and Appeal with regard to the enforcing officer's determination that branding and cutting practice is part of an equine and cattle agricultural operation and such activity is not a zoning violation on a property subject of an agricultural exemption to the county's zoning authority	

Member Riddell recused herself from the case.

Mr. Gerard presented BA2017056, and noted the staff interpretation is that the agricultural exemption confirmed per LU20160047 is correct pursuant to the zoning ordinance making Arizona Revised Statute 11-812 applicable to the property in question. The operation on the property is an agricultural operation for the breeding, raising, boarding, and training of equine and cattle. The department found that branding and cutting practice is a valid component of the agricultural operation that is statutorily exempted from the county zoning authority. The

appellant's proposed interpretation is the activity that occurred on October 7, 2017 was a public assembly event and not part of the agricultural operation, and such events require a legislatively approved Special Use Permit. Staff recommends for the reasons outlined in the analysis section of the report that the Board deny this appeal BA2017056.

Mr. Peck asked the Board to waive the 10 minute period to obviate any claims of lack of due process.

Mr. Bart Shea, the appellant said over a year ago they came to the Board to contest the administrative right of the Development Services Department to enhance the rights under state statute for equine events. Under that statute the only thing commercially viable inside the statute is commercial breeding. All other things underneath that - boarding, pasturing and everything else is considered uses to the commercial breeding of cattle or horses. We presented to the Board and the Board found staff correct and they could have a riding stable, and do pretty much what they wanted to do. One of the things he brought up in that original meeting the Board actually questioned the Ombudsmen of what else is allowed, can they have events, could they do different things. A previous statement from Ms. Pokorski said some of the activity occurring at their site in Scottsdale cannot occur at this site unless different zoning entitlement is obtained such as a Special Use Permit. Mr. Shea said Darren Gerard drafted the memos for all of the items that were stipulated, and that cutting, penning, and other ancillary arenas were not allowed, and if it did happen they would need a Special Use Permit. Also, Member Loper stated if they go into these special things they will need a Special Use Permit. The basic concept coming back from the Board was none of this occurred, none of this is going to happen, and we are projecting what will happen in the future. The Board actually told him if there's a problem, the neighbors will keep an eye on it and they'll tell us if there's an event, and there was an event on October 7. Mr. Shea said he has pictures of 28 different vehicles arriving, and eight of them with horse trailers bringing in people to come to the event. In a letter of support from Judge Haines, he actually stipulated it was an event which was private in his view. Randy Haines is actually a client, he boards a horse there and takes riding lessons from the Wilms. Some of the letters say the cattle are pastured and they were all helping out at the branding and cutting event which took place in a separate cutting arena. It wasn't in the main arena, not inside where the cattle are kept, and they are not pastured they are kept in a pen and fed daily with about 75 in that pen right now. A total of 150 plus animals on the property right now. Not sure how they qualify for an event and how they get to an event, and Mr. Gerard said the cap was 24 people or less which meets the criteria to be okay for a farm or ranch. There were 28 vehicles with multiple people in every vehicle and a neighbor that went to go watch. Events are held at public businesses, this wasn't done at their house, and their house is 500 yards from where this took place. When we were here the first time, they said it was just going to be a couple people, train a couple horses and maybe a couple of boarders, but it has turned into a 24/7 ongoing operation with water trucks and tractors at 6 a.m., seven days a week. The tractor goes out to feed the cattle twice a day, morning and night and if they're not fed on time they are crying within 300 feet from our bedroom window. If it walks like a duck, acts like a duck, and it quacks like a duck it's got to be a duck.

Ms. Mary Laney said at the last meeting in February, the Board said we would have to be the neighbors that police the Wilms, and to submit the information, and would need to make an informed opinion related to an actual event that has occurred, and that's all been done. It's not relevant to have a paying client of the Wilms opinion like Mr. Haines, he lives miles away on

the other side of Beeline Highway. This business does not affect him on a daily basis or any of the other neighbors on the other side of Beeline in any way, they don't live where it's at, and don't have the traffic, and experience the daily horse trailers or the clients going in and out. The Haines provided a letter to Mr. Gerard with a wordy and fluffy depiction of what a real working ranch is like. Ms. Laney said she has worked a real working ranch for more than13 years and we never needed 30 plus people to work them and it would be reckless and dangerous with that many inexperienced people working and sorting cattle unless you're a spectator at an event. The Wilms cattle are kept in a small portion of their land and they are not pastured because there are no pastures as they stated on their application for the exemption. It is desert and the cattle are group fed because they would not be able to sustain themselves even on the Wilms land. The cows pictured by Mr. Haines do not appear to be calves as he noted. Jeff and Randy both called this a branding event, but it looks like a team roping and penning event with more than 24 cars and eight horse trailers going to the property between 7 a.m. and 4 p.m. It was suggested by the County employees in e-mails to change our CC&R's to prevent these events from happening. When this was tried she was personally threatened with two law suits if she proceeded with trying to change them, two were from the Wilms and the other from the office of Ms. Riddell. It was made clear that anyone else that tried to change the CC&R's in phase 5 was threatened with a law suit. They are trying to make us fearful of them. On October 7, Amy Wilms drove by her house that afternoon and took pictures and drove away. She is personally fearful of her actions because we oppose their business use of the property underneath this exemption.

Mr. David Lunn said he is back here today because they were here a year ago talking about the agricultural exemption whether or not it should be granted and the purpose of the agricultural exemption they find in the statute. The issues that were discussed before were the uses on the property, and this Board specifically said they don't know what those uses are, it's not before us and it hasn't been shown. The event that is before the Board right now is an exact type of use we are talking about, it is a commercial use and the agricultural exemption doesn't cover that use. They contacted the Sheriff and they decided not to cite them because it was the wrong decision based on the wrong factors. The agricultural exemption does not cover all uses, it's not a blanket exemption as the Wilms declare. We support the petition and object to these commercial uses on the property not provided under the agricultural exemption. It should be enforced specifically and if these types of events are to occur there's a provision for that called a Special Use Permit. If they want to have commercial activities like this event a Special Use Permit should be required.

Mr. Bart Shea said they called the Maricopa County Sheriff's Office since that's what they were instructed to do. The deputy decided not to cite, so we went through the process with the compliance officers and through the complaint process. We could never get an exact answer from anybody until Paul McNeil, the compliance officer sent us an e-mail telling us that people are taking their horses there because they need a place to run them, like NASCAR needs to go to a track to race their cars. Mr. Shea said how ironic you can't have a race track anywhere without it being permitted, but the compliance officer said this is something they can do since they are agricultural exempt. When he asked for the ordinance he was in contact with Charles Hart the chief compliance officer, and he was instructed to have my attorney call their attorney. We're not a private industry, the County attorney is supposed to be representing everybody, so it is a bit of a conundrum where we are instructed by the Board to do these things and the compliance officer tells us it doesn't matter because it's a race track and they

can do that, and when asked for the ordinance or code that allowed this, the chief compliance officer said to have my attorney contact their attorney.

Mr. Cameron Artigue said he is here on behalf of Amy and Jeffrey Wilms the property owners. They are here on a complaint from activities that took place at an agricultural exempt property on October 7. Everybody that attended this event had a preexisting relationship with the Wilms, and the invitations were extended by personal phone calls on a one-to-one basis, no tickets, no money changed hands, this was a branding social event. Mr. Artigue asked the nature of what the Board is being asked to do. As a citizen he can initiate all sorts of compliance type complaints. He can call county health when there's a restaurant issue, and can call the revenue authority if someone is not paying their taxes properly, he can complain to a licensing board about my cosmetologist or my lawyer. Every time this is done it is handed off to the enforcement authorities who use their judgment about whether to the close the matter or proceed with the matter. He is not aware of any process out there where as a citizen can appeal the judgment of the authorities for closing an enforcement action, it's just unthinkable where you could appeal a decision of a licensing board or appeal the revenue departments decision to reach an agreement with a tax payer. It's a vehicle for harassment, you actually win for losing when you phone in a zoning violation and the zoning inspector says there is nothing here. Then you can appeal and force people to drive an hour to downtown Phoenix, and bring their friends, and bring their lawyer. Mr. Artigue asked the Board to deny the appeal and to clarify that this process is not welcome.

Mr. Randy Haines said he personally participated at the Wilms ranch branding on October 7. He is here to address the facts that occurred that day based on his personal knowledge and to suggest all the facts compelled denial of this appeal. The Sheriff, the hearing officer, and the staff have it exactly correct that all of the activities of that day were consistent with the Wilms exempt cattle operation. They are all correct that there are no facts presented that any cutting event, penning event or public event of any kind occurred. His photos show the sole function of the day's activities was the branding of calves, and it's a traditional activity on cattle ranches, and it is required by Arizona law. It does take a number of people to rope, herd and restrain to brand a large calf, and you don't see any kind of competition, no cutting, no penning, and no rodeo event. The work done on the Wilms ranch was real work that had to be done and nothing more. The branding of calves is essential to the cattle business and at the very heart of the cattle based agricultural exemption that the Wilms ranch has. The exemption for the cattle operation alone is sufficient to compel denial of the appeal. Any cutting or roping practice on real cows is essential to the training of cow horses, and have been a significant part of the Wilms equine training operation for more than a quarter century with most of that in Scottsdale. He knows how essential the training of real cows is for cutting horses because his horse is a cutting horse and his horse is trained by Jeffrey Wilms, and he is a client of the Wilms. There was no cutting that went on that day, and he did not take his horse out of the stall, and it was not a cutting event and there's no pictures of any cutting going on. Cutting would be entirely inconsistent with what you see in any of the pictures, and you don't see people on the ground with ropes around calves. The branding of calves is a lot simpler way to deny this appeal, and there's no facts to support this on the equine training either.

Mr. Peck said staff is concerned that the record is clear and it is clear to what is going on here today. There's an anomaly in the statutes that allows what attorneys would consider unusual appeals to the Board of Adjustment. Keep in mind what happened here, the code enforcement officer went out and conducted an investigation and based on that evidence a

decision was made that there was insufficient evidence to proceed with a code enforcement action. Under the statutes, anybody that disagrees with a decision by the code enforcement official has the right to appeal to the Board of Adjustment, and that is why we are here today. The only question for you decide is when the code enforcement officer determined what went on, was the property within the definition of an agricultural use which is outside the scope of our zoning ordinance, was that decision correct. You have to decide if there was evidence presented today to demonstrate that the decision was incorrect, then you reverse and uphold the appeal. If you decide the decision of the department was correct, then you deny what's before you and affirm the appeal.

Vice Chairman Morris asked if we were to reverse the decision what the implications would be. Mr. Peck said it would go back to the code enforcement official and we would proceed with a hearing before a hearing officer on the complaint that triggered the entire thing. Without the support of the code enforcement officer, I would present the case and the only witness we would present were those of the complaining party to prove the case.

Vice Chairman Morris asked if we uphold the decision the result would be this complaint would disappear. Mr. Peck said yes it would be closed.

Vice Chairman Morris asked if we were to reverse the decision below there would be a hearing on the substance of the complaint. Mr. Peck said that is correct.

Member Cardon asked what would make the hearing officer's decision incorrect, can you give us an idea what would make it incorrect. Mr. Peck said in this case the hearing officer has not made a decision. It never made it to a hearing officer, our code enforcement official is Carol Johnson the Director of Planning and the head of code enforcement. It was her determination that there was insufficient evidence to demonstrate what went on, the only issue brought to the department that what went on was not within the agricultural classification for the property. If it went to a hearing officer they would have to decide what went on fell outside of an agricultural use and therefore was a violation because it would be a use not permitted under the zoning ordinance.

Vice Chairman Morris asked if there was a disagreement with that decision either side could appeal the hearing officer's decision. Mr. Peck said your review would be limited to procedural mistakes.

Mr. Gerard said the decision for closing a violation case and what's been presented today. Staff considers castration activity and branding activity as clearly an agricultural operation and believes a cutting practice is part of equine training. There's nothing that's been presented today that would change staff's opinion on that.

Vice Chairman Morris said there is clearly an agricultural exemption on this property and that agricultural exemption was put in place to allow certain activities. In any other exemption there are limits to an exemption and at some point an exemption becomes a different type of operation depending on the substance to what's going on, and the intensity of that operation. The only way a neighbor can ever challenge these exemptions is because the County is not going to police the property or station people on the property. The only indications of what's occurring on the property is going to be through either immediate observation of somebody from the County, which won't occur, or reporting from a neighbor. This Board did when we

were discussing the agricultural exemption admonish the neighborhood to watch the property. The ranch that enjoys the benefit of an agricultural exemption should never fault the neighbors for using the process, because as far as he can tell there is no other process available to these neighbors. They are forced to go through this process if they believe that somebody is going beyond the agricultural exemption. Both sides are doing exactly what they should be doing and neither side should be criticized for doing just that process. The agricultural exemption does permit various activities, but you cannot go beyond those activities and the only people able to show that are the neighbors for being diligent.

Member Cardon said it seems by approving the appeal you are allowing for a case on the merits of what's at issue. Vice Chairman Morris said you're allowing it essentially to proceed to a fact find stage rather than dismissing it without the hearing. We also heard the opinion of staff to how broad an exemption is, and clearly there is conflict with the operation and the surrounding property and there is support for both arguments. Regardless, we are going to be hearing this again until one side wears down or one side decides to entitle it in a different manor that makes things more concrete.

Member Loper said at the time when the Board talked about it before there were no activities yet occurring, the appeal was for the agricultural exemption and we said they would be the eyes and ears if this performs correctly or not. Today he did not hear or see anything that would sway the interpretation of County staff.

BOARD ACTION: Member Cardon motioned to grant the appeal BA2017056. Vice Chairman Morris second. Member Loper dissenting. Appeal granted 2-1.

Adjournment:
Vice Chairman Morris adjourned the meeting of February 15, 2018 at 12:54 p.m.

Prepared by Rosalie Pinney
Recording Secretary / Administrative Assistant
February 15, 2018