



## MEMORANDUM

September 15, 2014

To: Board of Supervisors

From: Margie Chapman  
Code Compliance Supervisor

Subject: County of Gila,  
Plaintiff,  
Vs.  
Kelly Mahaffey & David Wicks  
Occupant(s)  
Barbara Mahaffey-owner  
Defendant(s)  
Appeal on Final Judgment dated August 12, 2014

Complaint No. HCP1402-003 Tax Parcel No. 301-17-007Z

Violation Address: 4909 N German Ranch Rd, Strawberry, Arizona

### Property

This is a legal conforming property and is located in R1-D12 zoning in Strawberry, AZ. On 1/15/2008 a 1-acre parcel (007K) with two homes served by one septic system was divided into two ½-acre parcels (007Y and 007Z). Parcel 007Y had one home and the septic system physically within its bounds and 007Z had a home that shared the septic on 007Y. At the time of the split Barbara and Gerald Mahaffey owned 007K and subsequently 007Y and 007Z. On 1/6/2011 007Y was transferred to Kevin Charles Mahaffey with Barbara Mahaffey retaining title to 007Z. No easements or agreements regarding continued use of the septic system are recorded in any public record.

### Violation and Service Description

This violation is the result of a notification by Kevin Mahaffey, owner of 301-17-007Y, on the 26<sup>th</sup> day of February 2014 that he had hired a plumber who capped the sewer line leading from the home on 007Z to the septic system located on his property 007Y. In the month preceding the capping action the owners of 007Y and the occupants of 007Z both made personal inquiries of the Gila County Wastewater department regarding code requirements for sewage treatment facilities for homes. Both were informed of the IRC Building Code requirement to have all plumbing fixtures in a dwelling unit connected to an approved septic system.



The home on the property was at the time of disconnection and is currently being occupied by the defendants David Wicks and Kelly Mahaffey and has no approved private sewage disposal system as is required by the International Residential Code (IRC) 2003 edition. The building Official of Gila County is authorized and directed to enforce the provisions of this code and to require the removal or termination of the unlawful occupancy. This violation is not only a violation of the building code but presents a health hazard and violates portions of ARS 49-141 and AAC R18-9-Chapters 1 & 3. (See Attachments)

On the 27<sup>th</sup> day of February, 2014, Jake Garrett hand delivered a Notice of Violation and Summons (NOV) to both the property owner and the occupants of 007Z with a hearing date of May 16, 2014. This NOV declared the home to be uninhabitable due to the lack of approved septic facilities and directed that it be vacated within 24 hours and stated further that this structure was not to be occupied until an approved septic system had been installed on the property.

At the time of NOV delivery the occupant Mr. Wicks had moved a port-a-john onto the property and had routed the home plumbing fixtures out onto the yard. He was informed that port-a-johns are not an approved septic system, that kitchen sink and toilet water must be discharged into a septic system and that shower, hand sink and washing machine gray water can only be "beneficially reused" on the property after an approved septic system is installed with home plumbing being required to have the ability to be routed into the septic system. He was further informed that the use of these unauthorized devices and methods were not approved or authorized under the 2003 IRC adopted by Gila County and were a direct violation of the Arizona Administrative Code Title 18 Chapter 9 Environmental Quality Water Pollution for both black and gray water as stated in R18-9-A309(A) (1) and R18-9-711(A) (6) and (10).

Prior to and after the sewer disconnection the actions required to obtain a septic permit had been explained in depth to Mr. Wicks including those that must be taken by the owner of the property. After the disconnection it was explained to both Barbara Mahaffey (owner) and Mr. Wicks (occupant) that a septic permit could only be issued to the owner of the property and that all permitting activities must be conducted by the property owner or a person authorized to act in the property owners behalf through a notarized Power of Attorney.

#### Final decision to move forward with prosecution

Based on the 6<sup>th</sup> day of August 2014 research and site visit it was determined that the port-a-john is present and Mr. Wicks stated that there was no change in the sewer discharged to the surface. Jake Garrett was unable to enter the property to inspect for surface discharges or other changes as access to the property was not granted. Finding no change in status, this case was brought before the Yavapai Hearing Officer who had been retained by GilaCounty with approval of the Board of Supervisors to hear this case due to a defendant's conflict of interest with the Gila County Hearing Officer.



In the hearing the COUNTY requested that both DEFENDANTS (property owner and the occupants jointly) be found to have a violation and that a judgment be rendered in favor of the COUNTY. The COUNTY further requested that a fine of \$700.00 be imposed on both DEFENDANTS and that the occupants be ordered to vacate the property within 24 hours following the judgment of this court with the fine to be suspended if a completed septic system application was received by the Gila County Wastewater Department within 14 days following the judgment of this court. The COUNTY further requested a fine of \$500.00 per day be levied against both DEFENDANTS for every day that the property is occupied beyond 24 hours following the judgment of this court, with the fine to be suspended if the property is in compliance having an installed, approved septic system and with a Discharge Authorization for the septic system and a Certificate of Occupancy for the home being issued on or before the 12<sup>th</sup> day of September 2014.

On August 20, 2014 the defendants David Wicks and Kelly Mahaffey attempted to submit an application and engineered plans for a septic system on the property 007Z in an effort to comply with that portion of the order of the Hearing Officer. The application documents did not bear the authorizing signature of the property owner and co-defendant Barbara Mahaffey who will not sign the septic application documents and continues to express her desire that Mr. Wicks and Ms. Mahaffey remove themselves from her property 007Z.

#### Affirmation of Judgment Request

The Defendants were properly served according to the Gila County Hearing Officer Rules of Procedure creating personal jurisdiction over the Defendants. The Defendants David Wicks and Kelly Mahaffey, occupants of 007Z, and Barbara Mahaffey, owner of 007Z, appeared at said hearing. The Gila County Community Development Department recommends that the Gila County Board of Supervisors affirm the Judgment of the Hearing Officer dated August 12, 2014, except that it be requested, that the penalties assessed to Defendants Kelly Mahaffey & David Wicks, also be assessed to Defendant Barbara Mahaffey, as requested in the original hearing.

At the conclusion of the hearing several options are available to the Board of Supervisors:

- Increase, decrease or modify any penalty/assessment imposed by the Hearing Officer as long it follows the penalty amounts set by the applicable ordinance or resolution and may;
- Affirm the decision 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.