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GILA COUNTY COMMUNITY DEVELOPMENT

Robert Gould, Director

MAHAFFEY HEARING SUMMARY MINUTES 8/12/14 COMPLAINT# HCP1402-003

The Hearing took place in Yavapai County, in the Board of Supervisors Offices located at 1015 Fair St., Prescott, AZ.

PRESENT: The Honorable Peter Van Haren, Judge (appointed by the Gila County Board of Supervisors); Jake Garrett, Wastewater Dept. Manager for Gila County (plaintiff); Barbara Mahaffey, Kelly Mahaffey, and David Wicks (defendants).

OPENING STATEMENT: Judge Peter Van Haren stated that the court is prepared to hear the case brought over from Gila County.

PLAINTIFF, COUNTY OF GILA is the first party to testify in this matter.

Jake Garrett is the Wastewater Department Manager for Gila County and he describes in detail:

- Property location 4909 N German Rd., Strawberry, AZ
- Owner Barbara Mahaffey and address
- Occupants Kelly Mahaffey and David Wicks
- Existing septic system layout
- Violations
- Rules of Procedure (rule#21)
- Abate

and referenced written materials and pictures contained in an indexed binder given to the judge and defendants. In his presentation he requested fines in equal amounts for Defendants Kelly Mahaffey and David Wicks jointly and Barbara Mahaffey.

During Mr. Garrett's statement Judge Van Haren asked for clarification:

- Defendants Kelly Mahaffey and David Wicks are living on said property that has no Septic System
- Why septic system was capped

Mr. Garrett explained occupancy situation.

Mr. Garrett's Hearing Presentation is attached.

DEFENDANT BARBARA MAHAFFEY owner of the property 4909 N German Ranch Rd. Strawberry, AZ is the second party to testify in this matter. Mrs. Mahaffey states:

- Who the occupants are Kelly and David.
- They have lived there 15 years.
- They were supposed to move, but have not.
- They used to make payments.
- They have made no payments lately.
- She is not going to put in septic system.
- Husband wanted to evict them before he died.
- She would have pursued it, but her husband had dementia
- She would like them off the property

DEFENDANT DAVID WICKS occupant of the property 4909 N. German Ranch Rd. is the third party to testify in this matter.

Mr. Wicks states:

- They (David and Kelly) have lived on the property 16 years.
- Paid part of the property taxes, as Barbara asked them to pay half the taxes and homeowner's insurance.
- Their house is smaller, but they still were required to pay half.
- Barbara unjustly was enriched \$7,000.00 by the over payment of approximately \$500 and \$600 per year of the taxes.
- Barbara was to sign over property because they have made payments.
- It has been before Judge Little in Payson.
- Barbara stated the house was Kelly's.
- The original permits were for their address 4909 N. German Ranch Rd. and the septic system was for that address not the one next door.
- They have been in compliance 16 years.
- Kevin's significant other is the reason for this altercation.
- The county has never said the houses have to be separated.
- Mom should have signed over property to Kelly when she signed over other parcel to Kevin.
- Jake Garrett is biased.

At this time Judge Van Haren asked Mr. Wicks if he thought a port-a-potty and a hose are in compliance.

- Mr. Wicks stated that there are many port-a-potties being used in Gila County.
- Their situation is a unique situation.
- They have tried to stay in compliance.
- Kelly has been traumatized since her father died.
- 9/12/14 is unreasonable time frame for new septic system installation.
- They should be grandfathered in.

At this time Judge Van Haren stated you cannot be grandfathered in if you don't have legal access.

- Mr. Wicks states there is a suit in progress about the title or quick claim deed.
- We did not cause the violation to occur.
- The hose is for gray water.
- They have been gravely financially distressed.

JUDGE PETER VAN HAREN gives ruling. Judge Peter Van Haren states:

This is a tough case and obviously there is a family dispute. In any case there is a violation and finds in favor of the Gila County. Judge Van

Haren is taking this action now because it has been going on for 6 or 7 months. The neighbors and residents of Gila County are entitled to the proficient and prompt enforcement of health ordinances.

The following judgment shall be entered against the Defendant Kelly Mahaffey and David Wicks:

1. An immediate civil sanction in the amount of \$500.00 is imposed for said violation on David Wicks and Kelly Mahaffey. It is also ordered to vacate the property within 72 hours.

2. A daily civil sanction of \$500.00 a day is imposed until the property comes into compliance.

3. The defendants, Kelly Mahaffey and David Wicks are ordered to bring the violating property into compliance with the Gila County Wastewater and Building Ordinance by September 12, 2014.

This includes:

A. This structure shall not be occupied until an approved septic system is installed on this property and its use has been authorized.

No judgment was entered against the defendant Barbara Mahaffey.

Mahaffey Hearing Outline:

Case #: HCP1402-003
Hearing Date: August 12, 2014
APN #: 301-17-007Z

Property Owner: Barbara Mahaffey & Gerald Mahaffey (Deceased)
Site address: 4909 N. German Ranch Road, Strawberry, AZ
Mailing address: P. O. Box 1614
Pine, AZ

Occupants: Kelly Mahaffey & David Wicks
Mailing Address: P. O. Box 813
Pine, AZ 85544

NEW #10 TAB 3.

This case is very simple. There is a home being occupied on a property that 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.

There are numerous contentions by the defendants that will likely be brought up today, all of which are outside the scope of this case and are beyond the scope of this hearing. It is our intention to show the violation and that actions currently being taken of the lot are unlawful and do not meet the basic requirement of having an approved private sewage disposal system installed on this property as is required in order for the lot and home be occupied.

PARCEL HISTORY:

This parcel is zoned R1-D12, the most restrictive zoning district allowing single-family residential uses with a minimum of 12,000 square feet per dwelling. This is a legal property and is located in Strawberry, AZ. The property has a single family home with a small shed located on the east side of the home. It has been confirmed that Barbara Mahaffey is the current property owner of record and Kelly Mahaffey and David Wicks are occupants of the property.

TAB #1

#1 Handout: R1-D12 Zoning

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.

TAB #2

- #2 Handout: MLD Map
- #3 Handout: MLD Blowup
- #4 Handout: Ownership 007K
- #5 Handout: Ownership 007Y
- #6 Handout: Ownership 007Z
- #7 Handout: Septic Permit\
- #8 Handout: Property Line Waiver

COMPLAINT HISTORY:

NOTE: This property has not been before the Gila County court for violation enforcement in the past.

This violation is the result of a notification by Kevin Mahaffey, owner of 007Y, on the 26th 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.

TAB #3

- #9 Handout: IRC Building Code Chapters 1 & 3

On the 27th day of February, 2014, I 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.

- #10 Handout: NOV

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).

TAB #4

#11 Handout: Pictures 0-10

#12 Handout: 1st Inspection Statement

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.

Continuances were granted for various reasons for summons to the May 26, 2014 and June 12, 2014 Gila County Hearing Officer Court with the final hearing being moved to the August 12, 2014 Yavapai County Court due to a conflict of interest with the Gila County Hearing Officer.

On the 13th day of March 2014, the 20th day of May 2014, the 26th day of June 2014 and the 6th day of August 2014 research noted that there had not yet been any septic permit activity, that the property had not been vacated, and that the port-a-john with surface discharge of gray water continued to be present.

TAB #5

#13 Handout: Onsite System & 1.08

#14 Handout: Delegation Agreement

#15 Handout: 711 rule

#16 Handout: Violations of 49-141 & A309

#17 Handout: Diseases

Based on the 6th 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 discharge to the surface. I was however 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 is brought before the Hearing Officer for resolution.

RELIEF:

TAB #6

Rules of Procedure #21

The COUNTY would request 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 requests, pursuant to Rule 21 of the Gila County Rules of Procedure, a \$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 Item 3 under "TO ABATE" is completed within 14 days following the judgment of this court. The COUNTY further requests a sanction 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 12th day of September 2014.

TO ABATE:

- 1) OCCUPANTS ARE TO VACATE THE PROPERTY WITHIN 24 HOURS FOLLOWING THE JUDGMENT OF THIS COURT,
- 2) PROPERTY OWNER TO HIRE AN AUTHORIZED GILA COUNTY CONTRACTOR TO DESIGN A SEPTIC SYSTEM TO SERVE 301-17-007Z,
- 3) PROPERTY OWNER IS TO SIGN AND SUBMIT TO GILA COUNTY COMMUNITY DEVELOPMENT WASTEWATER DEPARTMENT, A NOTICE OF INTENT TO DISCHARGE ALONG WITH ALL REQUIRED DOCUMENTS AND THE PERMIT FEE OF \$475.00, REQUESTING SEPTIC PLAN APPROVAL AND ISSUANCE OF A CONSTRUCTION AUTHORIZATION,
- 4) PROPERTY OWNER IS TO HIRE A LICENSED CONTRACTOR TO INSTALL THE "APPROVED FOR CONSTRUCTION" SEPTIC SYSTEM,
- 5) PROPERTY OWNER TO OBTAIN A FINAL INSPECTION OF THE INSTALLED SYSTEM AND SUBMIT A REQUEST FOR DISCHARGE AUTHORIZATION ALONG WITH REQUIRED DOCUMENTS TO OBTAIN A DISCHARGE AUTHORIZATION FROM GILA COUNTY DEVELOPMENT WASTEWATER DEPARTMENT ; THEN,
- 6) PROPERTY OWNER TO REQUEST A CERTIFICATE OF OCCUPANCY FROM THE GILA COUNTY BUILDING OFFICIAL, AND THEN
- 7) PROPERTY MAY BE RE-OCCUPIED BY THE PROPERTY OWNER OR HER ASSIGNS.

TAB #7

Letters to all parties

