

*Read via  
fax 8/13/16*

1 Law Offices of  
2 **E. HARDY SMITH**  
3 7887 W. Pima Farms Rd.  
4 Tucson, AZ 85743  
5 (520) 403-8786  
6 FAX: 1-(877) 572-9876  
7 Hardy@AzLawSmith.com  
8 E. Hardy Smith, AZ Bar No. 010463  
9 *Attorney for Respondents*

6 **COCHISE COUNTY HEARING OFFICER**  
7 **1415 MELODY LANE, BLDG. E**  
8 **BISBEE, ARIZONA 85603**

9 COUNTY OF COCHISE,

10 Complainant

Case No.: V-15-358

11 vs.

**APPEAL MEMORANDUM**

12 DAVID R. RUOZI, SR., and DIANE M. RUOZI,  
13 Respondents,

14  
15 **I. Issues on Appeal**

16 The issue is whether the County Hearing Officer incorrectly ruled that Mr. and Mrs. Ruozi  
17 violated County Zoning Regulations 1811 regarding Outdoor Storage and 2301, declaring the  
18 violation a nuisance. The decision is in error because the Ruozis' use is not contrary to the  
19 Outdoor Storage provisions of Section 1811 in this Category D Rural Growth Area property.

20 Further, the Ruozis' right to the Outdoor Storage was reserved and "grandfathered" by the  
21 CC&Rs recorded when their subdivision, Sunsites Unit No. 7, was created in 1962. The recording  
22 of the subdivision and its CC&Rs predate Cochise County's adoption of a zoning code. The  
23 CC&Rs permit the type of outdoor storage for which the Ruozis were cited.

24 Moreover, the County's enforcement of this alleged violation appears to be selective and  
25 biased, carrying out the retaliatory scheme of a neighboring landowner whose own violations  
26 were not fully remediated and prosecuted by the Planning, Zoning and Building Safety  
27 Department.

28

1 **II. Location of Subject Property**

2       Sunsites Unit No. 7 lies immediately west of the Apache Generating Station and south of  
3 its settlement ponds. It is north of Dragoon Road, east of North Cochise Stronghold Road and  
4 west of Highway 191. The Ruozis own 3 adjacent one-acre lots fronting Sandal Street, which  
5 forms the subdivision's southern boundary.

6 **III. History of Development of Subject Property**

7       In 1962, when the Horizon Corporation platted and recorded the subdivision, Cochise  
8 County had no zoning code. The County allowed the developer to plan the future use, and  
9 limitations to use, of land within the subdivision. As shown on the recorded plat,<sup>1</sup> the developer  
10 established all boundaries surrounding and within the subdivision, laid out all streets, established  
11 easements, determined lot sizes and setbacks, and designated lots for both commercial and  
12 residential uses. The developer recorded two sets of Restrictive Covenants, applicable to  
13 residential and commercial lots respectively,<sup>2</sup> by which the developer further defined and limited  
14 permitted land uses. In the absence of county zoning requirements, the recorded plat and the  
15 restrictive covenants became the governing documents for the subdivision.

16 **IV. Facts of Alleged Violation**

17       The zoning violation cites the Ruozis for the presence of utility trailers, tractors, a fuel  
18 tank and "metal"<sup>3</sup> on the property. The Ruozis admit the described materials were on their  
19 property<sup>4</sup> but assert that they were neatly situated and unobtrusive and were necessary for  
20 maintenance of the property, including weed and fire hazard control, and grading of the private  
21 roads that are their sole ingress and egress. It is noteworthy that Cochise County formally  
22 abandoned Sandal Street, leaving it to the Ruozis, or others within the subdivision, to maintain  
23  
24

25 <sup>1</sup> Attachment 2 to Answer.

26 <sup>2</sup> Attachment 3 to Answer.

27 <sup>3</sup> The tractors are a small backhoe/front-end loader and small bulldozer. The reference to "metal" is unclear. The  
28 Ruozis did not store any scrap metal on the property. They did have "metal" implements for the tractors, which they  
used for grading, mowing, fire suppression and property maintenance. They also had a small gasoline generator to  
operate their well pump and other small tools used for maintenance of the property and their equipment.

<sup>4</sup> The materials have been removed in compliance with the Hearing Officer's Order.

1 this primitive dirt road and keep it passable. In addition, the Ruozis use their equipment on behalf  
2 of Sunsites Unit No. 7 Homeowners Association for road maintenance and fire suppression.

3 **V. Application of Zoning Code to Alleged Violation**

4 The citation charges violation of Zoning Code Section 1811. Section 1811.01,  
5 "Residential Uses," provides: "It shall be the intent of this Section to provide acceptable limits of  
6 outdoor storage accessory to residential uses based upon the Comprehensive Plan Growth  
7 Category Area in which located." The Sunsites Unit No. 7 recorded plat and CC&Rs, as well as  
8 the County's subsequently adopted SR-22 zoning, limit the Ruozis' property to residential use  
9 and, in fact, the Ruozis are developing the land for their residence. Toward that goal, they have  
10 fenced their property, installed a well and planted trees for landscaping and shade.

11 The zoning citation relies on Section 1811.01(A), which states: "Accessory Use Outdoor  
12 Storage and parking which is permitted under this Section is an accessory use only and shall not  
13 be permitted unless a primary residential use of the property has been established." Although the  
14 Ruozis do not yet have a house on their property, their use is solely and directly related to their  
15 goal of living there. Thus, their primary use of the property is residential, for purposes of  
16 applying Section 1811. The Ruozis' ability to achieve their goal is, ironically, forestalled by the  
17 unavailability of electric service, despite the close proximity of the Apache Generating Station  
18 and the fact that AEPSCO and SSVEC both have transmission lines bisecting the subdivision.

19 Section 1811.01(D) provides, in relevant part: "The outdoor storage or parking of ... any  
20 construction equipment (except as provided on a temporary basis in Section 1811.01.B.2, above)  
21 such as bulldozers, graders, ... and back hoes shall not be permitted in any residential Zoning  
22 Districts in a Category A (Urban) Growth Area." The County agrees that Sunsites Unit No. 7 is a  
23 Category D Rural Growth Area. Section 1811.01(D) allows equipment such as the Ruozis had on  
24 their property. The Hearing Officer's ruling should be reversed and the citation dismissed.

25 **VI. Inconsistency of SR-22 Zoning with Recorded Plat and CC&Rs**

26 With no Zoning Code existing in 1962, the recorded subdivision plat and CC&Rs became  
27 the sole documents governing property use and development. The subdivision promoted a rural  
28

1 lifestyle with 1-acre minimum lots for residences and smaller commercial lots along a designated  
2 commercial corridor.

3 In contrast to the recorded plat, the subsequently adopted Cochise County Zoning Code  
4 classified all land within Sunsites Unit No. 7 as SR-22, which is strictly an urban residential  
5 zoning that allows a minimum 22,000 square foot lot (one-half acre) per single residence. In the  
6 blanket application of SR-22 to Sunsites Unit No. 7, no apparent consideration was given to its  
7 rural character, location, the sizes of the lots or the distinction between the commercial and  
8 residential uses in the recorded plat and CC&Rs.

9 **VII. The CC&Rs, as Pre-existing Governing Documents, "Grandfathered" the Usage**  
10 **Rights Exercised by the Respondents.**

11 As noted above, the platting and recordation of the subdivision with its CC&Rs predates  
12 both the County's Comprehensive Plan and its Zoning Code. The development plan for all of the  
13 property within the subdivision was permanently established by the original documents that  
14 created Sunsites Unit No. 7. The Ruozis' parking of equipment on their property did not violate  
15 the subdivision's CC&Rs. The later adoption of the County's Comprehensive Plan and Zoning  
16 Code should not be interpreted as altering a legally binding, fully enforceable land use plan and  
17 covenants already in place. The fact that only minimal development has occurred does not change  
18 the terms and conditions by which the land was subdivided and sold, and upon which the  
19 developer and subsequent purchasers have relied. Those recorded covenants and conditions bind  
20 not only the landowners but also Cochise County.

21 Although the county clearly should enforce codes for building standards, wastewater  
22 treatment and other public sanitation and safety issues, with respect to actual use and  
23 development of the subdivision land, the recorded plat and CC&Rs should be recognized as  
24 controlling. In fact, the Respondents are aware of at least one prior occasion where the County  
25 declined to prosecute a nuisance complaint within a planned community,<sup>5</sup> deferring resolution to  
26 the governing homeowners association. Such an approach conserves county resources and allows

27 \_\_\_\_\_  
28 <sup>5</sup> The Respondents are aware of the County having declined to prosecute a nuisance complaint within the High  
Lonesome subdivision and deferring to the local homeowners association for enforcement.

1 subdivision property owners to resolve disputes in accordance with the CC&Rs that govern their  
 2 subdivision or, alternatively, to turn to the courts for prosecution of nuisance claims. The  
 3 County's response to the present complaint should have been to decline prosecution, in deference  
 4 to the CC&Rs governing the subdivision.

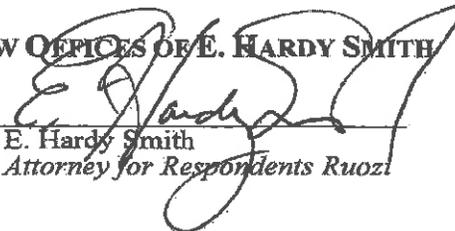
5 **VIII. Prosecution of the Ruozis Suggests Selective Enforcement.**

6 The Board of Supervisors should be concerned that the County's prosecution of the  
 7 Ruozis suggests selective enforcement initiated as retaliation by another property owner who  
 8 bears them a grudge. The Ruozis reported to the Cochise County Sheriff's Office, the County  
 9 Highway and Floodplain Department and the State Brand Inspector that Complainant Dennis  
 10 Clark had illegally fenced off roads within the subdivision so he could lease to others cattle  
 11 grazing rights on private subdivision land he did not own. Although its officials knew of the  
 12 violation, the County made no effort to prosecute Mr. Clark for his numerous, obvious violations  
 13 of not only zoning but also criminal law. The Ruozis also complained to Planning and Zoning of  
 14 Mr. Clark's multiple unpermitted septic systems on his subdivision property but saw no action by  
 15 the County. The County's refusal to act on the Ruozis' complaint, coupled with its enthusiastic  
 16 prosecution of the Clark complaint against the Ruozis, strongly suggests bias. Even if unintended,  
 17 prosecuting Clark's retaliatory complaint against the Ruozis makes the County a willing tool of  
 18 Clark's retribution – not an appropriate use of county resources.

19 **IX. Conclusion**

20 For the foregoing reasons, the decision of the Hearing Officer should be reversed and the  
 21 zoning violation issued to the Respondents should be dismissed.

22 Respectfully submitted August 11, 2016.

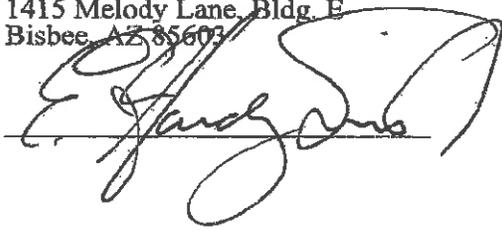
23 **LAW OFFICES OF E. HARDY SMITH**  
 24 By:   
 25 E. Hardy Smith  
 26 Attorney for Respondents Ruozis

Served by email and by mail on 8/12/16 as follows:

Clerk, Cochise County Board of Supervisors (original and 3 copies mailed)  
1415 Melody Lane  
Building G  
Bisbee, AZ 85603

Britt W. Hanson  
Cochise County Attorney's Office  
Civil Division  
150 Quality Hill Road  
PO Drawer CA  
Bisbee, AZ 85603

Chris Saylor, Enforcement Officer  
Cochise County Community Development  
1415 Melody Lane, Bldg. E  
Bisbee, AZ 85603



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28