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December 7, 2022

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at Law

TOWN OF ORO VALLEY
Board of Adjustment
Filed VIA Web Portal

Re: *Liodas/Catalina Towing*
APPEAL FROM ADMINISTRATIVE DECISION
7653 N. Village Drive

Dear Board Members:

I represent Nate and Jessica Liodas in this matter.

Notice of Appeal

This is an appeal from an Administrative Decision made by the Community and Economic Development Department on November 7, 2022. The decision concerns the presence emergency vehicles at the residence at 7653 N. Village Drive in Oro Valley. The decision was based upon an alleged anonymous hearsay telephone complaint made with Bayer Valle, so there is no first-hand witness to the allegations. The allegations, therefore, are unreliable. The department's decision is based upon the meritless allegation that Liodas is engaged in a home occupation. They are not.

This is also an appeal from the recent oral decision by the same department a few days ago not to allow additional shielding or a garage to park the emergency work truck.

Introduction

My clients, Nate and Jessica Liodas, own and operate a business known as "Catalina Towing & Recovery." It is under contract with the Town of Oro Valley and its Police Department and other entities to provide 24/7, 365-day emergency serve as well as other town towing. The business office and storage facility operate from 16005 N. Oracle Road in Catalina, Arizona. See, satellite photo, lease, and business license attached as Appendix A. See also, *catalinatowing.com*. The vehicle storage business is conducted at the North Oracle address and the towing business is at various locations on roadways in Southern Arizona.¹ Vehicles are stored *only* at the North Oracle

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address not at the residence as alleged by the department. Catalina Towing recently purchased property for its new location at 7045 N. Camino Martin in Marana. *See*, satellite photo, deed, and companion material attached as Appendix B.

The department nixed a couple of other locations for the new operation in Oro Valley ("OV"). The department is most unfriendly to new business and development. It has that reputation among brokers and developers.

Liodas Is Not Engaged In A Home Occupation

The Oro Valley Zoning code defines "Home Occupation" as a business or commercial activity that is conducted from residential property. Catalina's business is towing and vehicle storage. It is conducted from the licensed Oracle Road office and storage facility. *See*, Appendix A. Vehicles are stored at the North Oracle address. Towing occurs over the many roadways in Southern Arizona. Common sense demonstrates neither of those activities are conducted from the Village Drive address so there is no home occupation or business.

Mr. Bayer Valle, however, has argued the absurd suggestion that the "mere presence" of Mr. Liodas in one of his many tow trucks at his residence is conducting "business." *Even if Mr. Liodas has commuted home to have lunch or dinner with his family before going to a work site!* He further alleged that incidental phone calls at the home concerning his business is commercial activity that turns the home to a business. That over-regulation and overreaching is contrary to the spirit and fair application of the code. The town has no authority to over-regulate based upon incidental phone calls.

Catalina Towing owns eight tow trucks and one pick-up truck: 4 flatbeds (roll-backs), one heavy wrecker, one Landoll/Tractor, and two small wreckers. *See*, photos of various configuration at Appendix C. Those vehicles are kept with the employees at their homes or parked in the office. They are often used as emergency vehicles for the police and fire departments for clearing accident scenes on roadways. That is Catalina's contractual obligation with the town: 24/7, 365-day availability. Quick response is essential and required by the town's contract with Catalina. One

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or two trucks are usually parked at the yard and the Landoll/Tractor (the semi-truck) is parked at the Golder Ranch Fire Department.² Any tow trucks present at the Liodas residence are used to *commute* to emergency calls where the actual work is done at the business job site. Commuting is not a home occupation or business. Coming home to have lunch or dinner with family in a work truck is not a home occupation or business.

The Zoning Code does not prohibit parking emergency work vehicles at one's residence used to commute to work. Otherwise, all police or public service employees or tradesmen that bring their emergency work vehicles home after commuting would be in violation of the law. The notion is absurd and beyond any compelling interest of the town.

Catalina Towing is a public service company under contract with and authorized by the town and the Oro Valley Police Department, among others. It is on call to clear wrecked vehicles as a rescue vehicle at accidents on the roadway. As such, the tow vehicles are authorized emergency vehicles within the meaning of A.R.S. §28-101(4)(d). All Catalina Towing vehicles have the required emergency lighting. There is no zoning code section that prohibits emergency vehicles at OV residences.

Mr. Liodas rotates three emergency tow trucks to commute to the work sites or the business office: the black traditional wrecker (pictured in Appendix C); the white heavy wrecker pictured in photo three of the same appendix; and the flat-bed in photo two of Appendix C. (The department refers to the latter as a "rollback.") The small black wrecker is used the most.

The department alleges that the tow vehicles are stored. They are not. They are used to commute on a rotating basis throughout the day, to go home for lunch, dinner, to work emergencies, or to commute to the office in the morning.

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Commuting³ is not storage. Nor is parking on a temporary basis. Nor does it fit within the OV definition of “*vehicle storage facility*”: “a facility whose *primary* purpose is the temporary storage of motor vehicles, including parking garages.” Parking and storage are mutually exclusive. The department’s position also fails because there is no home occupation; without a “home business,” the parking requirements of OVZC25.2(E)(3)(e) do not apply and cannot be violated.

Moreover, the allegation of “*frequent operation of large diesel trucks*” vitiates the department’s allegation of “*storage*.” Stored vehicles are not operated on a frequent basis.

The department attempts to bootstrap code section 25.2(E)(3)(e) but that section does not apply unless there is a “home business.” Without the home business, the prohibition limiting work vehicles to a “passenger car, van or pickup truck” does not apply. 25.2(E)(3)(e)(ii)(b). Nor does the size limitation. ~~However, the department is incorrect in applying the size requirement:~~ code section 25.3(E)(3)(e)(ii)(c) dictates that a vehicle used in a home occupation may not exceed twenty-five (25) feet in length, and eight (8) feet in height; the black wrecker that Mr. Liodas drives most frequently, pictured in photo one of Appendix C and photo one of Appendix D, measures *twenty-four (24) feet long and seven and one-half (7 ½) feet tall*; clearly within the size limitation. Not what could be considered a “large diesel truck.” The department’s words. The small black wrecker could not be in violation even if Mr. Liodas was engaged in a home business.

The business of towing and storage is not conducted at the residence, so the Board should reverse the administrative determination made on November 7, 2022.

“Commuting” is travel to someone’s business between one’s home and place of work on a regular basis. “Parking” is to bring a vehicle to a halt and leave it temporarily, as in “he parked his truck outside his house.”

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The Use of the Emergency Tow Vehicles Have No Discernable Impact on the Character of the Neighborhood

Attached as Appendix F are a few of the many examples of large vehicles, work trucks, and such prevalent in the Suffolk Hills area. The Liодas vehicles create no discernable impact on the residential character of the neighborhood as provided by code section 25.2(E)(2)(a) because of those other commuting work vehicles. Everyone should be able to temporarily park work vehicles at their residence for commuting since parking is not storage nor a home business.

The Suffolk Hills Property Owners Association agreed with that conclusion by a unanimous vote of the Board. Mr. and Ms. Liодas' emergency work trucks are just one of many such vehicles but they have been unfairly singled out. Many home owners use their work vehicles. The emergency work trucks are not disturbing the neighborhood or the HOA.

The Board should overturn the department's refusal to allow emergency work trucks for commuting purposes.

There Is No Noise Offense

The department wrongly, and without authority, alleged a sound violation on the unsupported allegation of "*frequent* operation of large diesel trucks." There is no noise violation because there is no unreasonable noise. All the emergency vehicles owned by Catalina Towing are equipped with OEM federally-regulated mufflers in good working order to prevent excessive noise. In addition, each of Catalina's towing vehicles are equipped with enhanced California-regulated Navistar emissions filters that keeps them running quietly. All new diesel vehicles have this enhancement. They are not louder than any other vehicle. We will bring one of the vehicles to the Board meeting so you can listen for yourselves.

If there is unreasonable noise, it is exempt pursuant to Town Code 10-1-4(B) as an emergency activity necessary to restore property to a safe condition after an occurrence, or as an activity sanctioned by the Town Council, *i.e.*, the 24/7, 365-day a year towing contract.

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The department may attempt to bootstrap 10-1-4(B)(4) in support of its position but that provision only applies to "heavy equipment" during certain hours. "Heavy equipment" commonly refers to heavy-duty vehicles specially designed to execute construction tasks. Not to emergency tow vehicles.

The department's position on noise should be overturned as being without jurisdiction.

Shielding Or A Garage Solution

After reviewing the emergency vehicles at the Liodas residence from every angle that could be seen by neighbors and the traveling public, it was apparent that the unique location of lush vegetation shields nearly everything. *See*, panoramic photos attached as Appendix D. The black wrecker is barely a speck and it conforms to the 25/8 foot limitation. The other vehicle is mostly shielded from view. The obvious solution would be more shielding or a garage.

When these solutions were proposed to the department they were rejected out-of-hand. Code Section 25.2(E)(e)(ii)(d) and (iii) permits such screening from view by opaque landscaping, fencing or screening material.

Another solution, a garage, has already been employed on the same street. *See*, photo attached as Appendix E.

The Board should reverse the department's refusal to allow screening or a garage.

The Equal Protection Violation Negates Enforcement

The Liodas family and the Suffolk Hills Property Owners Association have both observed a neighborhood replete of work trucks, large RVs, boats, toy haulers, a limo, and other vehicles that have not been subject to any enforcement action by the department. Mr. and Ms. Liodas have been singled out for enforcement despite Bayer Valle's specific knowledge of the character of the neighborhood and alleged violations of which he seeks to enforce here. The department is charged with compliance and enforcement.

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Targeting the Liodas family for enforcement violates the Equal Clauses of the Federal and Arizona Constitution. *See*, Arizona Constitution, Article I, Section 13. The government is required to treat similarly situated individuals in a similar manner. The department has chosen not to do so. Mr. and Ms. Liodas should not be treated differently. Despite knowledge of other alleged violations, the department chose not to investigate or pursue violations of similarly situated homeowners by declining to take any action in similar cases.

As a result, the department's present action is unenforceable. Mr. and Ms. Liodas will be eligible for damages, punitive damages, and injunctive relief if this enforcement proceeds.

Reservation of Right

Appellants made a public record request for the complaint as well as investigative material used by the department. As of the filing of this Appeal, the department did not produce all the requested material.

Appellants reserve the right to supplement or amend their Appeal narrative and exhibits when those questions are answered and the public record request is filled.

Sincerely yours,

STEPHEN J. GONZALEZ

SJG:sb

Appendices:

- A: Satellite Photo, Business License for Catalina Towing & Lease
- B: Satellite Photo, Deed and Related Materials for New Location
- C: Tow Truck Configuration Photos
- D: Panoramic Views of the Tow Trucks at the Residence
- E: Garage Solution
- F: Commuting by Other Work Vehicles
- G: HOA Position of Desperate Treatment by OV

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