

SEP 18 2015
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DAY OF
DONNA McQUALITY
Clerk of Superior Court
By: J. YOUNT
Deputy

**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**

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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

JENNIFER MCDONALD; RICHARD
PLOUGH; NORDIC PROPERTIES, LLC; and
HERMANOS GILLENWATER, L.P.,

Plaintiffs/Petitioners,

vs.

TOWN OF JEROME, a municipal corporation;
and AL SENGSTOCK, in his official capacity as
the Zoning Administrator for the Town of
Jerome,

Defendants.

Case No.: P13000U201500853

**COMPLAINT for Special Action and
Declaratory and Injunctive Relief**

I. Introduction

1. Plaintiffs Jennifer McDonald, Richard Plough, Nordic Properties, LLC, and Hermanos Gillenwater, L.P., Jerome homeowners, bring this complaint for declaratory and injunctive relief challenging the Zoning Administrator's arbitrary, illegal, and unconstitutional Interpretation of the Zoning Code ("Interpretation"), which effectively declares, without passing an ordinance, that "vacation rentals" – previously permitted in Jerome – are now illegal.

2. On its face, the Town of Jerome's Zoning Ordinance ("Zoning Ordinance") does not exclude "vacation rentals" from the R1-5 zoning district. For years, Jerome property owners have opened their beautiful, historic homes to interested renters, with the Town's knowledge and approval. Now, the Zoning Administrator has changed the rules in the middle of the game, suddenly declaring that

“vacation rentals” are banned in the Town of Jerome by issuing a new Interpretation of the Zoning Ordinance without the approval of the Town Council that is required to enact or amend ordinances.

3. By effecting a zoning change without passing an ordinance, the Zoning Administrator’s new Interpretation is ultra vires and violates Plaintiffs’ due process and equal protection rights.

4. Plaintiffs seek a declaratory judgment that the challenged Zoning Administrator Interpretation is invalid, unenforceable, and void, and permanently enjoins against any further enforcement of the challenged Interpretation.

II. Parties, Jurisdiction, and Venue

5. Plaintiff Jennifer McDonald is a United States citizen and resident of the Town of Jerome in the State of Arizona. Jennifer McDonald owns a home located at 37 Paradise Lane, Jerome, Arizona, 86331 (Yavapai County Parcel Number 401-06-174). Jennifer McDonald’s home is located in the Town of Jerome’s R1-5 zoning district.

6. Plaintiff Richard Plough is a United States citizen and resident of the City of Sunnyvale in the State of California. Richard Plough owns a home located at 208 Fifth Street, Jerome, Arizona 86331 (Yavapai County Parcel Number 401-07-029). Richard Plough’s home is located in the Town of Jerome’s R1-5 zoning district.

7. Plaintiff Nordic Properties, LLC (“Nordic Properties”) is a Limited Liability Company formed under the laws of Arizona, with its principal place of business in Maricopa County, Arizona. Nordic Properties owns a home located at 34 Magnolia Avenue, Jerome, Arizona, 86331 (Yavapai County Parcel Number 401-06-170). Nordic Properties’ home is located in the Town of Jerome’s R1-5 zoning district.

8. Plaintiff Hermanos Gillenwater, L.P. (“Hermanos Gillenwater”) is a Limited Partnership formed under the laws of Arizona, with its principal place of business in Maricopa County, Arizona. Hermanos Gillenwater owns a home located at 659 Clark Street, Jerome, Arizona, 86331 (Yavapai County Parcel Number 401-08-009). Hermanos Gillenwater’s home is located in the Town of Jerome’s R1-5 zoning district.

9. Defendant Town of Jerome is a municipal corporation organized under the laws of the State of Arizona.

10. Defendant Al Sengstock is the Zoning Administrator for the Town of Jerome and is responsible for enforcement of the zoning ordinance. He issued the Interpretation of Jerome's Zoning Ordinance challenged by this lawsuit. He is sued in his official capacity only.

11. The claims in this action arise from Defendant Sengstock's ultra vires action and arise under the due process and equal protection clauses of the Arizona and United States constitutions. This Court has jurisdiction over this action and its claims for declaratory and injunctive relief under A.R.S. §§ 12-123, 12-124, 12-1831, and 9-462.06; Rule 4, Ariz. R. P. for Spec. Actions; and Rule 57, Ariz. R. Civ. P.

12. Upon agreement of Plaintiffs and Defendants (See Letter Agreement attached hereto as Exhibit #1), Plaintiffs bring this challenge to the Zoning Administrator's Interpretation of the Zoning Ordinance directly before this Court. Although under A.R.S. § 9-462.06, Zoning Administrator Interpretations are typically appealed first to the Town Board of Adjustment, the Parties have agreed to bring the Plaintiffs' appeals in a single action before this Court because three members of the Jerome Board of Adjustment declared conflicts of interest pursuant to A.R.S. § 38-503, and the Board is unable to hear the appeals.

13. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b), Ariz. R. P. for Spec. Actions. Venue is proper in this Court because this action concerns private property located in Jerome, Arizona, and an Interpretation of Jerome's Zoning Ordinance, all of which are within the jurisdiction of the County of Yavapai.

III. Facts

The Pink Lady

14. Jennifer McDonald purchased 37 Paradise Lane, Jerome, Arizona, 86331 ("The Pink Lady") on September 13, 2002.

15. The Pink Lady is approximately 1,700 square feet.

16. On the second floor, it has a spacious master bedroom as well as a bathroom with a clawfoot tub.

17. The Pink Lady's main floor includes several common areas including a parlor, formal dining room, kitchen, full bathroom, and a laundry room with a washer and dryer.

18. The main floor also includes a bedroom and a sleeping porch.

19. Built in 1898, the Pink Lady had fallen into disrepair by the time Jennifer McDonald purchased it.

20. After spending years restoring the Pink Lady into pristine condition, Jennifer McDonald meticulously decorated her home with period furniture, draperies, and unique art.

21. Jennifer McDonald's efforts in restoring and decorating the Pink Lady earned it a spot in the Jerome Historic Home Tour.

22. In 2012, Jennifer McDonald decided to offer the Pink Lady for rent.

23. Jennifer McDonald checked both the Town Code and the Zoning Ordinance to ensure rentals were not prohibited.

24. Jennifer McDonald found nothing prohibiting the rental of her home in the Town Code or the Zoning Ordinance.

25. Jennifer McDonald also applied for a business license before offering the Pink Lady for rent. The Town provided her a license for 2012, 2013, 2014, and 2015.

26. Since 2012, Jennifer McDonald has been renting the Pink Lady for varying durations of time.

27. Renters occupy the Pink Lady exclusively.

28. Renters use the Pink Lady exclusively for residential purposes.

The Zamar House

29. Richard Plough purchased 208 Fifth Street, Jerome, Arizona, 86331 ("The Zamar House") on July 26, 2012.

30. The Zamar House is approximately 2,200 square feet.

31. The upper level of the Zamar House has one bedroom, a sleeping porch, a bathroom with full size shower, full gourmet kitchen, living room, and dining room.

32. The lower level has two bedrooms and common areas including an activity room and two bathrooms.

33. One lower level bathroom has a full capacity state-of-the-art washer and dryer and the other offers a clawfoot tub.

34. At the time he purchased the home in 2012, neither Richard nor his family intended to live in the Zamar House full time.

35. Richard Plough purchased the Zamar House in order for his family to have a place to stay in Jerome when they visit Richard's daughter, Gretchen Groseta.

36. Richard Plough intended to offer the Zamar House for rent during periods when he and his family were not living there.

37. Gretchen Groseta resides in Cottonwood, an adjacent community to Jerome.

38. Built in 1902, the Zamar House needed extensive repairs and restoration when Richard Plough purchased it.

39. Richard Plough spent over 20 months restoring the Zamar House, being careful to respect his home's historic integrity and character.

40. During the renovation of the Zamar House, Gretchen Groseta had eight meetings with Town officials and attended one appeal hearing to obtain all of the necessary approvals to allow Richard Plough to complete his extensive renovation of the Zamar House.

41. Richard Plough checked both the Town Code and the Zoning Ordinance to ensure rentals were not prohibited.

42. Richard Plough found nothing prohibiting the rental of his home in the Town Code or the Zoning Ordinance.

43. Gretchen Groseta, on behalf of her father, applied for a business license before offering the Zamar House for rent. The Town provided him a license for 2013, 2014, and 2015.

44. Since 2013, Richard Plough has been renting the Zamar House for varying durations of time.

45. Renters occupy the Zamar House exclusively.

46. Renters use the Zamar House exclusively for residential purposes.

The John Riordan House

47. Through his company, Nordic Properties, Glenn Odegard purchased 34 Magnolia Avenue, Jerome, Arizona, 86331 ("The John Riordan House") on June 12, 2012.

48. The John Riordan House is approximately 1,000 square feet with 2 bedrooms, one bathroom, and common areas including a parlor, and a kitchen with an eating area.

49. The John Riordan House also has 1,200 square feet of wood deck and flagstone patio overlooking the center of the Town of Jerome and the entire Verde Valley.

50. Although the house is over 118 years old, it features all new plumbing, electric, gas furnace, air conditioning, and a stacked washing machine and gas dryer.

51. The John Riordan House is furnished with many interactive historical artifacts including a 1917 Victrola record player with several 78 discs, an 1881 Charter Oak wood burning stove with cast iron pots, an 1898 Underwood and Underwood Stereo viewer with over 100 1880's-era 3D slides, a Royal 10 double bevel 1915 typewriter, an 1880 replica front doorbell, a 1908 Waterbury "Festus" mechanical wind up clock with hourly bells, an authentic functioning hand water pump, an antique drum clothes washer, an antique clothes wringer and drying rack, and a fully functioning 1910 Beckwith reed "pump" organ.

52. In addition to the Victrola and the pump organ, the parlor also has a plaque on the wall indicating how far mud traveled up the wall when the house was nearly destroyed in a mudslide.

53. Built in 1898, the John Riordan House was occupied until 1953.

54. On July 18, 1953, the John Riordan House was struck by a mudslide caused by a clog and break in a concrete water culvert above the house.

55. The entire rear of the John Riordan House absorbed over 12 feet of rock and mud along the back walls, severely damaging the house.

56. For over 59 years, the John Riordan House was completely abandoned. The roof was open to the elements and trees and plants could be seen growing in the interior through the roof's holes. Between 2 and 7 feet of mud and rocks covered all the floors.

57. From June 2012 to July 2013, Glenn Odegard painstakingly restored the John Riordan House from its vacant and abandoned state.

58. Glenn Odegard communicated with Town officials every step of the way to ensure he received all necessary approvals. This includes 3 separate building permits, 3 separate Design Review Board approvals signed by a former Zoning Administrator, two Planning and Zoning approvals signed by a former zoning administrator, and a final Certificate of Occupancy signed by a former Zoning Administrator.

59. In order to comply with the Town's requests, Glenn Odegard realigned 120 lineal feet of the Town of Jerome's main 8-inch domestic water line, which supplies half of the business and residences of Jerome, to comply completely with zoning parking regulations at his own expense.

60. Glenn Odegard's efforts in resurrecting the John Riordan house earned it both a spot on the Jerome Historic Home Tour and a feature in Arizona Highways Magazine.

61. Glenn Odegard purchased and restored the John Riordan House to live in part-time and offer for rent during periods he is not living there.

62. Glenn Odegard checked both the Town Code and the Zoning Ordinance to ensure renting the John Riordan House was not prohibited.

63. Glenn Odegard found nothing prohibiting the rental of the John Riordan House in the Town Code or the Zoning Ordinance.

64. In purchasing and restoring his home, Glenn Odegard worked with Town officials to comply with all of the Town's relevant rules and regulations over the course of 122 separate emails, 6

written letters, and 60 in person meetings with 3 successive Town of Jerome Zoning Administrators. Never once did a Town official inform Glenn Odegard, orally or in writing, that the Town regulated or prohibited “vacation rentals.”

65. Glenn Odegard applied for a business license before offering the John Riordan House for rent. The Town provided Nordic Properties a license for 2013, 2014, and 2015.

66. Renters occupy the John Riordan House exclusively.

67. Renters use the John Riordan House exclusively for residential purposes.

The Top-of-the-Town Penthouse

68. Powell (Gil) Gillenwater purchased 659 Clark Street, Jerome, Arizona, 86331 (“The Top-of-the-Town Penthouse”) in 1983.

69. With his brother Troy Gillenwater, Gil Gillenwater has continuously rented out the Top-of-the-Town Penthouse since 1983.

70. In 1990, Gil Gillenwater transferred ownership of the Top-of-the-Town Penthouse to Troy Gillenwater.

71. Later that year, Troy Gillenwater sold the Top-of-the-Town Penthouse to Hermanos Gillenwater L.P., a limited partnership he manages along with Gil Gillenwater.

72. The Top-of-the-Town Penthouse is approximately 1,700 square feet, divided and zoned as a duplex—each level can accommodate one family.

73. Gil and Troy Gillenwater purchased and restored the Top-of-the-Town Penthouse to live in part-time and offer for rent during periods they are not living there.

74. Built in 1889, Troy and Gil Gillenwater have taken great care to maintain the Top-of-the-Town Penthouse and keep it in beautiful condition.

75. Upon the purchase of the home in 1983, Gil and Troy Gillenwater made extensive improvements to enhance the rental potential of the property, including elevating and re-establishing the foundation of the home, installation of a new roof, construction of a dormer, remodeling the downstairs bathroom and kitchen, enlarging the upstairs and downstairs balconies including wrap-around porches on the south side of the home and additional smaller improvements.

76. Most recently in 2008, Troy and Gil Gillenwater began a 2-year process of extensively remodeling and restoring the home.

77. Gil and Troy Gillenwater spent \$255,806.00 on the remodeling effort.

78. Troy and Gil Gillenwater spent an additional \$8,768 on furnishing both units, mixing beautiful contemporary and period furnishings to create a unique living experience.

79. Troy and Gil Gillenwater's efforts in restoring and decorating the Top-of-the-Town Penthouse earned it a spot in the Jerome Historic Home Tour.

80. The top level has two bedrooms and common areas including a full kitchen, a living room, and two bathrooms—one with a clawfoot bathtub.

81. The top level unit has large windows as well as an oversized deck that provides a view of the entire Verde Valley.

82. Troy and Gil Gillenwater checked both the Town Code and the Zoning Ordinance to ensure rentals were not prohibited.

83. Gil and Troy Gillenwater found nothing prohibiting the rental of their home in the Town Code or the Zoning Ordinance.

84. In 2011, Troy and Gil Gillenwater applied for a business license since the Town requested they do so to rent their home.

85. The Town provided Hermanos Gillenwater a license for 2013, 2014, and 2015.

86. Troy and Gil Gillenwater have been renting both units of the Top-of-the-Town Penthouse since 1983.

87. Renters occupy each unit the Top-of-the-Town Penthouse exclusively.

88. Renters use the Top-of-the-Town Penthouse exclusively for residential purposes.

Zoning Administrator's April 1, 2015, Interpretation

89. The Town of Jerome Zoning Ordinance was passed in February 1997 ("Zoning Ordinance").

90. The Zoning Ordinance does not define "rental" or "rent."

91. The Zoning Ordinance does not include the term "vacation rental."

92. The Zoning Ordinance does not distinguish or otherwise prohibit classes of rentals.
93. The Zoning Ordinance does not restrict the duration that a dwelling may be rented in an AR, R1-10, or R1-5 zoning district.
94. Plaintiffs each received a letter from the Zoning Administrator dated February 17, 2015, ("Letter") (attached hereto as Exhibit #2).
95. Addressed to each Plaintiff but otherwise identical, the Letter states the following:
- a. The recipient is operating a "short-term rental business."
 - b. The only "allowed use" in the R1-5 zoning district of "this type" is a "Bed & Breakfast."
 - c. A "Bed & Breakfast" must be considered via the Use Permit process.
96. The Letter does not define "short-term rental."
97. The Letter does not define "short-term rental business."
98. The Letter does not define "vacation rental."
99. On April 1, 2015, after the letters were sent to the Plaintiffs, the Zoning Administrator issued an Interpretation of the Zoning Ordinance ("Interpretation") (attached hereto as Exhibit #3) declaring that "vacation rentals" are prohibited in AR, R1-10, and R1-5 zoning districts.
100. Plaintiffs each received the Interpretation as an attachment to a Notice from the Zoning Administrator dated April 6, 2015 ("Notice") (attached hereto as Exhibit #4).
101. Addressed to each Plaintiff but otherwise identical, the Notice states the following:
- a. The only "short-term rental" in the R1-5 zoning district permitted is a "Bed & Breakfast."
 - b. A "Bed & Breakfast" must be considered via the Use Permit process.
 - c. The attached Interpretation is the "official interpretation regarding short-term rentals."
 - d. The Interpretation can be appealed to the Board of Adjustment.
102. The Notice does not define "short-term rental."
103. The Interpretation does not define "vacation rental."
104. The Interpretation does not include the term "short-term rental."

105. The Interpretation does not define “short-term rental.”

106. Pursuant to A.R.S. § 9-462.06(c), Plaintiffs each duly filed an application to appeal the Interpretation to the Board of Adjustment on May 6, 2015.

107. On or about May 22, 2015, counsel for Defendants notified counsel for Plaintiffs that because three members of the Board of Adjustment separately declared conflicts of interest pursuant to A.R.S. § 38-503, the Board of Adjustment could not hear Plaintiffs’ appeals.

108. Upon agreement of the parties, Plaintiffs now bring this matter directly to this Court through this Complaint.

IV. Count One—Ultra Vires

109. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 110, as though fully set forth herein.

110. Defendant Sengstock’s authority is limited to enforcement of the Town of Jerome’s Zoning Ordinance. A.R.S. § 9-462(A)(4).

111. Zoning ordinances, being in derogation of common law property rights, must be strictly construed and any ambiguity or uncertainty decided in favor of property owners. *Kubby v. Hammond*, 68 Ariz. 17, 22, 198 P.2d 134, 138 (1948).

112. On its face, the Town of Jerome’s Zoning Ordinance does not exclude “vacation rentals” from AR, R1-10, and R1-5 zoning districts.

113. On its face, the Town of Jerome’s Zoning Ordinance does not exclude rentals from AR, R1-10, and R1-5 zoning districts.

114. Prior to Defendant Sengstock’s April 1, 2015 Interpretation of the Zoning Ordinance, Jerome property owners rented their homes with the Town’s knowledge and in accordance with all relevant laws and regulations.

115. Defendant Sengstock’s April 1, 2015 Interpretation of the Zoning Ordinance is unsupported by the plain language of the Zoning Ordinance, prior enforcement of the Zoning Ordinance, or prior interpretations of the Zoning Ordinance.

116. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance declaring that "vacation rentals" are unlawful in the Town of Jerome amounts to a change in the Town's Zoning Ordinance without the approval of the Town Council that is required to enact or amend ordinances. A.R.S. § 9-462.06(h)(1).

117. For all of those reasons, the Interpretation of the Zoning Ordinance exceeds Defendant Sengstock's authority and jurisdiction and is therefore invalid.

V. Count Two—Due Process of Law

118. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 110, as though fully set forth herein.

119. The 14th Amendment to the United States Constitution states in relevant part that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law."

120. Article II, section 4 of the Arizona Constitution provides, "No person shall be deprived of life, liberty, or property without due process of law."

121. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance is unsupported by the plain language of the Zoning Ordinance, prior enforcement of the Zoning Ordinance, or prior interpretations of the Zoning Ordinance.

122. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance deprives Plaintiffs of their previous rights to use, divide, sell, or possess private property and diminishes the values of those properties.

123. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance is arbitrary and capricious.

124. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance prohibiting the use of "vacation rentals" in AR, R1-10, and R1-5 zoning districts is vague and ambiguous because it does not sufficiently provide a person of ordinary intelligence with a reasonable opportunity to know what types of property use or rental activities are prohibited.

125. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance lacks clear standards of application that would prevent arbitrary and discriminatory enforcement.

126. For all of these reasons, Defendants' actions and omissions violate Plaintiffs' due process rights under the U.S. and Arizona constitutions.

VI. Count Three—Equal Protection

127. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 110, as though fully set forth herein.

128. The 14th Amendment to the United States Constitution states in relevant part that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

129. Article II, section 13 of the Arizona Constitution provides, "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."

130. Defendant Sengstock's April 1, 2015 Interpretation of the Zoning Ordinance purports to prohibit in AR, R1-10, and R1-5 zoning districts "vacation rentals" while allowing in AR, R1-10, and R1-5 zoning districts other rentals (presumably of longer duration).

131. By prohibiting Plaintiffs' rentals while allowing other rentals, Defendant Sengstock, acting under color of state law, is irrationally and arbitrarily discriminating against Plaintiffs in violation of their right to equal protection of the law.

132. For all of these reasons, Defendants' actions and omissions violate Plaintiffs' equal protection rights under the U.S. and Arizona constitutions.

REQUEST FOR RELIEF

To serve the interests of equity and justice, Plaintiffs request that this honorable Court award the following relief:

- A. Declare that the Zoning Administrator's April 1, 2015, Interpretation of the Zoning Code exceeds the Zoning Administrator's lawful authority and is null and void;
- B. Declare that the Zoning Administrator's April 1, 2015, Interpretation of the Zoning Code deprives Plaintiffs of liberty and property without due process of law in violation of the due process clauses of the Arizona and United States Constitutions;
- C. Declare that the Zoning Administrator's April 1, 2015, Interpretation of the Zoning Code deprives Plaintiffs of the equal protection of the laws in violation of the equal protection clauses of the Arizona and United States Constitutions;
- D. Permanently enjoin Defendants and their agents and employees from enforcing the Zoning Administrator's April 1, 2015, Interpretation of the Zoning Code.
- E. Award costs and attorney fees pursuant to A.R.S. § 12-341, Rule 4(g) of the Arizona Rules of Procedure for Special Actions, and the private attorney general doctrine.
- F. Order such additional relief as may be just and proper.

RESPECTFULLY SUBMITTED this 18th day of September, 2015 by:



Christina Sandefur (027983)

Jared Blanchard (031198)

**Scharf-Norton Center for Constitutional Litigation
At the GOLDWATER INSTITUTE**

Attorneys for Plaintiffs

Exhibit 1

SIMS ■ MURRAY

2020 North Central Avenue
Suite 670
Phoenix, Arizona 85004
P: 602-772-5500 F: 602-772-5509

William J. Sims III
Direct Line: 602-772-5501
wjsims@simsmurray.com

August 12, 2015

Jared Blanchard
Christina Sandefur
Goldwater Institute
500 E. Coronado Road
Phoenix, AZ 85004

Re: Procedural Agreement

Dear Jared and Christina:

This Letter Agreement documents the understanding that we have reached in connection with the following appeals (collectively, the "**Appeals**") of a decision by the Town of Jerome Zoning Administrator ("**ZA**"):

- Hermanos Gillenwater, 659 Clark St., 401-08-009 HA2015001
- Jennifer McDonald, 37 Paradise Ln., 401-06-174, HA2015002
- Nordic Properties, 34 Magnolia Avenue, 401-06-170 HA2015003
- Richard Plough, 208 5th St., 401-07-029, HA2015004

As I explained to you, three members of the Town of Jerome Board of Adjustment ("**BOA**") have each, separately declared a conflict of interest pursuant to A.R.S. § 38-503. As a result, the BOA is unable to meet to hear the appeals. You, on behalf of all of your four clients noted above (the "**Appellants**"); and me, on behalf of the Town of Jerome, agreed to the following:

1. In light of the inability of the BOA to meet and hear the Appeals, the decision of the ZA that is the subject of the Appeals is neither affirmed nor overturned by the BOA and may now be appealed by special action directly to the Yavapai County Superior Court. For the purposes of computing the thirty day period for filing such appeal, the date of this letter shall commence such thirty day period.
2. All four of the Appeals will be consolidated into one appeal (the "**Superior Court Appeal**") that is taken to the Yavapai County Superior Court. The parties agree to file the attached "**Proposed Scheduling Order**" promptly following the filing of the Superior Court Appeal. During the pendency of the Proposed Scheduling Order and until the Yavapai Superior Court has rendered a determination upon the Superior Court Appeal, the Town shall leave the current stay in place regarding enforcement of the Zoning Administrator's April 1 Interpretation of the Zoning Ordinance that is the subject of the Appeals.

August 12, 2015

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3. Recognizing no factual determinations have been made by the Board of Adjustment, the parties agree that the Superior Court will hear and decide this matter *de novo* and conduct formal discovery pursuant to the Arizona Rules of Civil Procedure and the Proposed Scheduling Order. To the extent the parties intend to submit pre-hearing memoranda, the parties agree to work cooperatively and in good faith to stipulate to a set of facts and the applicable law.
4. The parties acknowledge that implementing the procedures set forth above satisfies all procedural due process and exhaustion of administrative remedy requirements as related to the process for appealing the Zoning Administrator's Interpretation to the Board of Adjustment. Plaintiffs do not waive their rights to challenge the Zoning Administrator's Interpretation on due process and other grounds.

Sincerely,



William J. Sims III
Jerome Town Attorney

ACCEPTED AND AGREED

On behalf of Richard Plough, Jennifer McDonald,
Nordic Properties and Hermanos Gillenwater



Jared Blanchard and Christina Sandefur, attorneys for Appellants

cc: Mayor and Council, Town of Jerome
Candace Gallagher, Town of Jerome Manager

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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

JENNIFER MCDONALD, RICHARD PLOUGH,
NORDIC PROPERTIES, LLC, and HERMANOS
GILLENWATER, L.P.

Appellants,

vs.

TOWN OF JEROME,

Appellee.

Case No.

**[PROPOSED] SCHEDULING
ORDER**

IT IS ORDERED entering the following schedule as set forth unless the parties
obtain written modifications by the Court:

1. Initial disclosures shall be exchanged not later than 30 days after the Town files its Answer.

2. All written discovery responses shall be due not later than 30 days after receipt of the discovery requests. Written discovery requests served via electronic mail shall not provide the recipient with the additional time provided pursuant to Rule 6(e), Ariz.R.Civ.P.
3. All written discovery shall be completed not later than 120 days after the parties exchange initial disclosures.
4. Any and all written discovery requests shall be served not later than 90 days after the parties exchange initial disclosures.
5. All depositions shall be completed not later than 80 days after the parties exchange initial disclosures.
6. Should any discovery disputes arise, prior to filing discovery motions, the parties shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P., then telephonically contact the Court to set up a telephonic conference to discuss any remaining issues.
7. The parties anticipate that the case is appropriate to be resolved on summary judgment. Any Motion for Summary Judgment or other dispositive motions shall be filed not later than 30 days after close of discovery.
8. If the case is not decided on a dispositive motion, the parties shall meet and confer regarding a proposed schedule to disclose witnesses and other matters prior to this Court's scheduling of an evidentiary hearing.

IT IS ORDERED setting a Status Conference in this matter on the _____ day of _____, 2015 (time allotted: 15 minutes), in this Division.

Dated this _____ day of _____ 2015.

[Hon. Judge]
Judge of the Superior Court

Exhibit 2



Founded 1876
Incorporated 1899

TOWN OF JEROME, ARIZONA

POST OFFICE BOX 335, JEROME, ARIZONA 86331
(928) 634-7943 FAX (928) 634-0715
a.sengstock@jerome.az.gov
Celebrating our 116th anniversary
1899 – 2015

Sent by Certified and First Class Mail
Certified # 7009 1680 0000 6163 5804

Jennifer A & Myles C McDonald JT
PO Box 331
Jerome, AZ. 86331

February 17, 2015

RE: 37 Paradise Lane, Jerome, AZ

APN 401-06-174

Zone: R1-5

Dear Mr. & Ms. McDonald:

It has come to our attention that you are operating a short-term rental business, often referred to as a "Vacation Rental," known as "The Pink Lady," from the home located at the above referenced address. Please be advised that the only "allowed use" of this type within the R1-5 zoning district is that of a "Bed & Breakfast," which must be considered via the Use Permit process.

Please contact me at your earliest convenience to discuss your alternatives, options and rights as described within the Jerome Zoning Ordinance.

We value your contribution to the Town of Jerome. Please know that we will do all that we can to work with you in navigating this issue, and to reach an outcome that will be acceptable to all.

Thank you, and I look forward to speaking with you soon.

Respectfully,

Al Sengstock,
Zoning Administrator
Historic Preservation Officer
Town of Jerome, AZ

CC: Candace Gallagher, Town Manager/Clerk
Bill Sims, Town Attorney

Exhibit 3

VACATION RENTALS

Interpretation/Analysis

April 1, 2015

Al Sengstock, Zoning Administrator

Notwithstanding past actions, interpretations and opinions, I offer what I consider to be an interpretation supported and inferred by our **current** Zoning Ordinance. However, this interpretation is not intended to dissuade or object to possible alternative methods of mitigating this issue via negotiation, Resolution and/or Ordinance amendments.

Vacation Rentals in the R-1 or C-1 Use Districts.

First, "**SECTION 502. GENERAL PROVISIONS B. USE RESTRICTIONS**" states, "**1. PRINCIPAL USES:** Only those uses and groups of uses specifically designated as "Permitted Principal Uses" in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses, except as otherwise provided herein." Subsequently, any use not "listed" as "allowed" is prohibited. As such, any "Vacation Rental" or other use not specifically listed as permitted, established within any R-1 Zoning District following the adoption of the current Zoning Code, would be considered to be in violation of our Zoning Ordinance.

Additionally, it is my interpretation that, when a specific use or a closely similar use first shows up as "permitted," or "permitted" with a Use Permit, within a commercial use district, then that use is considered "prohibited" within the preceding more restrictive use districts. This means that although vacation rentals could be considered as an "allowed use" with a Use Permit within the C-1 Use District, as similar to a "Boarding or Rooming House," they would be prohibited in the preceding more restrictive AR, R1-10 and R1-5 use districts.

Conclusion:

Our current ordinance clearly prohibits **any use** not listed as "permitted" in **any** zoning district. This would include vacation rentals. However, a vacation rental could be permitted within the C-1 Use District with a Use Permit.

Options available to current owners of unpermitted vacation rentals:

- Enter into an agreement with the Town to phase out and stop using the home as a vacation rental.
- Appeal the Zoning Administrator's interpretation to the Board of Adjustment, and if the appeal is unsuccessful, appeal the BOA's decision to Superior Court.
- Consider other alternatives as may be recommended by owner's legal counsel.

Exhibit 4



TOWN OF JEROME

POST OFFICE BOX 335, JEROME, ARIZONA 86331
(928) 634-7943 FAX (928) 634-0715
a.sengstock@jerome.az.gov

Founded 1876
Incorporated 1899

Sent by Certified and First Class Mail
Certified # 7010 3090 0000 9063 9913

SECOND NOTICE

Gillenwater Hermanos Limited Partnership
PO Box 2335
Carefree, AZ 85377

April 6, 2015

RE: 659 Clark St, Jerome, AZ.,

APN 401-08-009

Zone: R1-5

To Whom It May Concern:

As of this date, you have not responded to our last letter of 2/19/2015, pertaining to your short-term rental, located at the above referenced address. As explained in our earlier correspondence, the only short-term rental "permitted" within a R1-5 zoning district is a "Bed & Breakfast," which must be considered via the Use Permit process.

I have attached our official interpretation regarding short-term rentals, which includes an explanation of the options available to you at this time. Please note that, if you choose to appeal this interpretation to the Board of Adjustment, you must file a written notice of appeal with the Zoning Administrator not more than thirty (30) days from the date of receipt of this Notice.

As requested in my previous letter, please contact me as soon as possible to discuss your alternatives, options and rights as described within the Jerome Zoning Ordinance.

We value your contribution to the Town of Jerome. Please know that we will do all that we can to work with you in navigating this issue, and to reach an outcome that will be acceptable to all.

Thank you, and I look forward to speaking with you soon.

Respectfully,

Al Sengstock,
Zoning Administrator
Historic Preservation Officer
Town of Jerome, AZ

CC: Candace Gallagher, Town Manager/Clerk
Bill Sims, Town Attorney