

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

YUMA COUNTY, *Plaintiff/Appellant*,

v.

MARIO and ROSA VALENZUELA, et al., *Defendants/Appellees*.

No. 1 CA-CV 16-0535
FILED 12-28-2017

Appeal from the Superior Court in Yuma County
No. S1400CV201500951
The Honorable Lawrence C. Kenworthy, Judge

AFFIRMED

COUNSEL

Yuma County Attorney's Office, Yuma
By Edward P. Feheley
Counsel for Plaintiff/Appellant

Law Offices of Larry W. Suciu, PLC, Yuma
By Barry L. Olsen
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Randall M. Howe joined.

CATTANI, Judge:

¶1 Yuma County appeals from the superior court's ruling affirming the Yuma County Board of Supervisors' decision reversing a zoning enforcement hearing officer's order finding that Mario and Rosa Valenzuela had violated a zoning ordinance. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 The Valenzuelas purchased a residential property south of Yuma in 2013. At the time of the purchase, there was a residence as well as a large metal accessory structure on the property.

¶3 In mid-2014, the Valenzuelas applied for a building permit to construct detached bathrooms outside the residence. The County issued a building permit for the detached bathrooms, but a zoning inspector discovered no permits on file for the metal building. The County then sent the Valenzuelas a notice stating that they were required to obtain permits for the structure or remove it.

¶4 The Valenzuelas did not obtain permits or remove the metal building, and the County filed a single-count complaint alleging the Valenzuelas had violated Yuma County Zoning Ordinance ("Zoning Ordinance") § 1201.02, which provides that performing work without permits required under the county's building and related codes is unlawful. A zoning enforcement hearing officer found a violation as alleged and imposed a \$250 civil sanction, subject to review should the violation be remedied. The Valenzuelas moved for reconsideration, urging that as subsequent owners who had simply inherited a prior owner's unpermitted construction, they were exempt from obtaining a building permit for the metal structure unless it presented an actual public health or safety issue. *See* Ariz. Rev. Stat. ("A.R.S.") § 11-321(E). The hearing officer denied reconsideration and reaffirmed the violation, reasoning that § 11-321(E) did not support an exemption because permits required by the county's

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building (and related electrical, plumbing, etc.) codes necessarily related to health and safety.

¶5 The Valenzuelas appealed to the Yuma County Board of Supervisors, which reversed the hearing officer’s decision by a 3–1 vote. The County then filed a complaint for judicial review challenging the Board of Supervisors’ decision, *see* A.R.S. §§ 11-815(G), 12-901 to -914, and the superior court affirmed. The court reasoned that (1) the lack of a building permit was not in and of itself a public health or safety issue, so under A.R.S. § 11-321(E) the Valenzuelas were exempt from obtaining a building permit for the unpermitted metal building constructed by the prior owner and (2) in any event, the Valenzuelas had never unlawfully performed any work on the metal building in violation of Zoning Ordinance § 1201.02.

¶6 The County timely appealed, and we have jurisdiction under A.R.S. § 12-913. *See Svendsen v. Ariz. Dep’t of Transp.*, 234 Ariz. 528, 533, ¶ 13 (App. 2014).

DISCUSSION

¶7 The superior court must affirm a board of supervisors’ zoning enforcement decision unless the decision “is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion.” A.R.S. § 12-910(E); *see also* A.R.S. § 11-815(G); *Horne v. Polk*, 242 Ariz. 226, 230, ¶ 13 (2017). On appeal, this court independently reviews the record to determine whether a preponderance of the evidence supports the judgment. *Parsons v. Ariz. Dep’t of Health Servs.*, 242 Ariz. 320, 322, ¶ 10 (App. 2017). We review legal determinations de novo. *McGovern v. Ariz. Health Care Cost Containment Sys. Admin.*, 241 Ariz. 115, 118, ¶ 8 (App. 2016).

¶8 The County challenges the superior court’s application of A.R.S. § 11-321(E) to exempt a zoning violation premised on the lack of a permit required by the building code. We need not address this issue, however, because the County never showed that the Valenzuelas committed the alleged violation.

¶9 The single count of the County’s zoning enforcement complaint alleged that the Valenzuelas had “failed to obtain permits for accessory structures” on the property – the metal building – “in violation of Section 1201.02 of the Yuma County Zoning Ordinance.” Zoning Ordinance § 1201.02 provides:

It is unlawful *to perform any work* without the required permits under the provisions of the Building, Fire, Mechanical,

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Electrical and/or Plumbing Codes adopted by the Yuma
County Board of Supervisors.

(Emphasis added); *see also* Building Code of Yuma County § 105.1 (requiring a permit “to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done”); Residential Code for One- and Two-family Dwellings of Yuma County § 105.1 (same). Even assuming the Zoning Ordinance and building codes could require a permit for continued *use* of a structure constructed without a permit, *cf.* A.R.S. §§ 11-815(B), -861(A), the specific provision on which the County based its case only applies to someone *performing work* without a permit.

¶10 The County acknowledged that the Valenzuelas purchased the property after the metal building was constructed, and never alleged, much less proved, that the Valenzuelas had performed or directed any work on the metal building that would have required a permit. Because the only violation alleged was premised on “perform[ing] any work” without the requisite permits in violation of Zoning Ordinance § 1201.02, and absent any evidence that the Valenzuelas performed any such unpermitted work, the superior court did not err by affirming the Board of Supervisors’ decision.

CONCLUSION

¶11 The judgment is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: JT