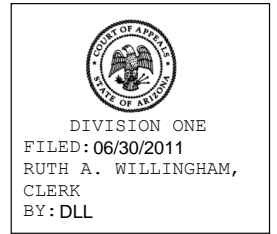


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



COLFRED RANCH, L.L.C. an) 1 CA-CV 10-0546
Arizona limited liability)
company,) DEPARTMENT E
)
Plaintiff/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
YUMA COUNTY BOARD OF SUPERVISORS,)
)
Defendant/Appellant.)
_____)

Appeal from the Superior Court in Yuma County

Cause No. S1400CV200801318

The Honorable Larry C. Kenworthy, Judge

REVERSED AND REMANDED

Jon R. Smith, Yuma County Attorney) Yuma
by Edward P. Feheley, Deputy County Attorney
Attorneys for Defendant/Appellant

P O R T L E Y, Judge

¶1 Yuma County by its Board of Supervisors ("Board")
appeals the superior court order vacating its decision that
affirmed a hearing officer's determination that Colfred Ranch
("Colfred") violated a Yuma County Zoning Ordinance

("Ordinance"). For the reasons that follow, we reverse and remand the case with instructions to affirm the fine against Colfred.

FACTS AND PROCEDURAL HISTORY¹

¶12 Colfred is a Yuma County ranch of approximately twenty acres. It was cited for failing to obtain grading and floodplain use permits in violation of Ordinance § 309.00(A) & (D). After a contested hearing, the hearing officer found that Colfred violated two provisions of the Ordinance and fined it \$10,000. Colfred appealed, and the Board affirmed. The superior court, however, vacated the decision and remanded it back to the Board. We have jurisdiction over the Board's appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 12-913 (2003).

DISCUSSION

¶13 The Board argues that the superior court erred because the hearing officer's decision was supported by substantial evidence. We agree.

¶14 On appeal from the superior court's review of an administrative agency's decision, we examine whether the agency's decision was illegal, arbitrary, capricious, or

¹ Colfred has not filed an answering brief. Although we may treat the failure as a confession of error, we choose to reach the merits of the case. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

involved an abuse of discretion. See A.R.S. § 12-910(E) (2003); see also *Koepnick v. Ariz. State Land Dep't*, 221 Ariz. 370, 374, ¶ 7, 212 P.3d 62, 66 (App. 2009). When reviewing the sufficiency of the evidence, we review the record and any supplementing evidence to determine whether substantial evidence supports the decision and whether the agency exercised its discretion reasonably and with due consideration, see A.R.S. § 12-910(A)-(B); see also *Callen v. Rodgers*, 216 Ariz. 499, 502, ¶ 9, 168 P.3d 907, 910 (App. 2007). But, we review interpretations of law de novo. *Forest Guardians v. Wells*, 201 Ariz. 255, 259, ¶ 9, 34 P.3d 364, 368 (2001).

¶15 To resolve this appeal, we examine whether Colfred is exempt from Yuma County zoning regulations under A.R.S. § 11-830(A)(2) (2001), and whether there was substantial evidence that Colfred violated Ordinance § 309.00(A) & (D).

¶16 Section 11-830(A)(2), and Ordinance § 306.02, provide that property is exempt from land use regulations if the property is larger than five contiguous acres. Ordinance § 306.03, however, states that "property is not considered exempt from the . . . Ordinance . . . unless and until the Yuma County Planning and Zoning Division has issued a Certificate of Exemption for that property." Additionally, before a landowner can obtain an exemption, the land must be classified as

agricultural by the Yuma County Assessor's Office or the Arizona Department of Revenue. See Ordinance § 306.03.

¶17 In *Raven Rock Construction, L.L.C. v. Board of Supervisors*, we found that A.R.S. § 11-802 (Supp. 2010) authorized a county's board of supervisors to "adopt and enforce such rules, regulations, ordinances and plans as may apply to the development of its area of jurisdiction." 207 Ariz. 135, 139, ¶ 17, 83 P.3d 613, 617 (App. 2004). Additionally, we held that counties may require classification of property because it is not a use restriction under A.R.S. § 11-830(A)(2), but merely a matter of procedure. *Id.* at 139-40, ¶ 19, 83 P.3d at 617-18. Consequently, landowners must comply with county ordinances to have land properly classified.

¶18 Although there was testimony that Colfred intended to use the twenty-acre plot as farmland and had been preparing the plot for farming, there was also testimony that Colfred had not applied for a Certificate of Exemption and that the plot had not been classified as agricultural. Because Colfred had not applied for a Certificate of Exemption as required by § 306.03, it was not exempt from Yuma County's zoning ordinances. See *Raven Rock*, 207 Ariz. at 140, ¶ 22, 83 P.3d at 618.

¶9 Because Colfred is not exempt from Yuma County ordinances, we must next determine if substantial evidence² existed to support the finding that Colfred violated two sections of the Ordinance. Ordinance § 309.00(A), entitled Permits, states in relevant part, that “[n]o grading, land leveling or excavation shall be commenced, . . . until application has been made and the proper permit has been obtained.” Moreover, the Ordinance provides that a floodplain use permit for any development within Special Flood Hazard Areas is required pursuant to Yuma County’s Floodplain Regulation. Ordinance § 309.00(D).

¶10 The senior civil engineer for the Yuma Flood Control District testified that a majority of the Colfred plot was in the floodplain and Colfred did not have a floodplain use permit. Although Colfred lacked a floodplain use permit, the deputy zoning inspector testified that he saw concrete and other material that had been dumped, buried with dirt, and leveled on the plot. Because the testimony was uncontroverted, there was substantial evidence to support the hearing officer’s finding that Colfred violated two provisions of the Ordinance.

² Substantial evidence is such proof that reasonable persons could accept as adequate and sufficient to support a finding that Colfred violated the Ordinance. See *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980)) (internal quotation marks omitted).

¶11 The superior court, however, vacated the decision, remanded it, and instructed the Board to hold a hearing to determine if the fine should be upheld or modified if Colfred applied for and obtained the Certificate of Exemption. There was no legal basis for the court to vacate the Board's approval of the hearing officer's findings and decision. Because "there is sufficient evidence in the record to support the findings of fact and judgment," *United California Bank v. Prudential Insurance Co. of America*, 140 Ariz. 238, 308, 681 P.2d 390, 460 (App. 1983), we reverse the superior court's order and affirm the fine against Colfred.

CONCLUSION

¶12 For the foregoing reasons, we reverse the superior court's order and remand with instructions to affirm the determination of the Board.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP Judge

/s/

ROGER BRODMAN, JUDGE*

* Pursuant to Article VI, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable Roger Brodman, Judge of the Maricopa County Superior Court, to sit in this matter.