

**MINUTES OF THE PUBLIC HEARING AND
EXECUTIVE SESSION OF THE BOARD OF ADJUSTMENT
OF THE TOWN OF STAR VALLEY**

**Thursday, May 30, 2024 at 12:00 Noon
PUBLIC HEARING BEGINS AT 1:00 P.M.
4180 East Highway 260, Star Valley, AZ
(Rim View Community Church)**

The Agenda for the meeting is as follows:

- **CALL TO ORDER**

- **ROLL CALL:**

Chairman Vern Leis X, Member Pat Woolsey X, Member Christine Johnson X, Member Tony McNeeley X, and Member Mark Salem X.

- **ADJOURNED INTO EXECUTIVE SESSION**

- **MEETING CALLED BACK TO ORDER**

- **CONSENT AGENDA ITEMS**

1. **Approval of the minutes from the Board of Adjustment meeting held on April 4, 2024.**

A motion to approve the April 4, 2024 minutes as presented was made by Member Woolsey and was seconded by Member McNeeley.

A roll call vote was taken:

Chairman Vern Leis Yes, Member Pat Woolsey Yes, Member Christine Johnson Yes, Member Tony McNeeley Yes, and Member Mark Salem Yes.

The motion was voted on and passed 5 – 0.

- **DISCUSSION AND POSSIBLE ACTION ITEMS:**

1. **Public hearing, discussion and possible action regarding Zoning Appeal Case Z24-01, an appeal of the Zoning Administrator's decision related to two properties, 37 S. Sprague Drive, Star Valley, AZ (APN 304-41-026H) and Parcel 027B, Star Valley, AZ 85541 (APN 304-41-027B, which determined that the properties are currently zoned Rural Residential (RR) and that commercial firewood operations in not a permitted use.**

Chairman Leis explained that both sides will give a presentation. The purpose of this meeting is to make a valid, correct decision on the situation of the properties involved. The attorney for the Town of Star Valley, Kristin Mackin, began her presentation by explaining that everyone is here today on the appeal of a decision from

the Town of Star Valley on the enforcement of the town's zoning ordinance related to two properties, 37 South Sprague and the smaller, adjacent parcel referred to as 27B. She then provided a brief overview of the position she put forth. The town received its first complaint on the issue in July of 2023. The complainant will explain what that complaint was about and what led to the complaint. That complaint was related to the initiation of a new commercial venture wood cutting business on 37 Sprague and 27B that began in the spring of 2023. The town investigated and issued a notice of violation with thirty days to correct. Chairman Leis asked Attorney Mackin to be specific with the dates going forward to build a timeline that they can relate to. "Absolutely," responded Attorney Mackin. In response to the notice of violation, continued Attorney Mackin, the property owner's legal counsel provided a response and asserted that they had a continuing right to sell wood on the property. Eventually that led to the counterclaim that they had a "grandfathered" right, also referred to as a non-conforming use, a right to use the property for some purpose that is not consistent with the current zoning. The Board of Adjustment, by statute, is vested with the authority to hear the appeals from enforcement actions of decisions by the town regarding zoning. That is why we are here today, pointed out Attorney Mackin.

Under the town's zoning ordinance, explained the attorney for the Town of Star Valley, Kristin Mackin, a change in zoning shall not affect an existing lawful use of a property. If there is a zoning change, then that makes an existing lawful use of the property no longer lawful. That is then considered a non-conforming right. Subsection B of the town's ordinance, under the non-conforming use section 103.4, clarifies that a non-conforming business use within a district may not expand and that a six month discontinuance of the operation of a non-conforming use will be deemed an expiration. This is commonly referred to as an abandoned non-conforming use if it has not been in use for six months or longer. A non-conforming use is a vested property right that's lawful use maintained after the effective date of a zoning ordinance that prohibits the use. The key to that is that there must have been an existing lawful use of the property first and then it is made unlawful by a zoning change and then you are allowed to continue that lawful use provided that it doesn't expand or enlarge or change in its nature. The party asserting that right bears that burden of proof that they have a non-conforming right and that they have maintained it in much the same manner that it existed prior to the zoning change and that it hasn't been abandoned or its use hasn't been discontinued for six months or more. Generally, explained Attorney Mackin, non-conforming uses are disfavored in the law because they detract from the effectiveness of comprehensive land use regulation and often result in lower property values and blight. While zoning laws are strictly construed normally against a municipality, the non-conforming use is a little different because that affects all of the surrounding properties as well. So, concluded Attorney Mackin, the law favors the discontinuance of non-conforming rights.

The attorney for the Town of Star Valley, Kristin Mackin, explained that she will put on some witnesses to provide testimony about what the town has found and what was part of the investigation. The complainants will explain their observations about what's been happening at the property and how that has changed over time. She then provided a brief overview of the property history. In 1998, the parent parcel was split into two parcels. The owners at that time, Bill and Diane Armstrong, acquired Tract B in 1984 – before zoning was adopted. There was no zoning on the property before the county

adopted zoning on those parcels and Star Valley, in general, in May of 1985. Tract B was zoned R1L. 37 Sprague was zoned RR-Rural Residential, which it still is today. In 1993, Bill Armstrong and James Armstrong requested that the Tract B parcel be rezoned, as a corrective measure, to RR-Rural Residential. In the materials there is a note from the rezoning file from Gila County for Tract B in which Jim Armstrong requested the rezoning of Tract B that reads: *“We will use property for our residence and occasional storing and selling firewood.”* Attorney Mackin then referred to the county’s initial zoning ordinance, as it existed at the time, and updates that were made through 1989. She pointed to the zoning ordinance that was in effect at the time that the property was rezoned to RR because subsection “G” in the Rural Residential section, at that time, permitted the occasional sale of surplus firewood, dairy products, honey, eggs, etc. and found that those were not commercial uses. Which means if there was occasional sale and storing of firewood on either of those properties, as was mentioned in the note attached to the rezoning, it actually was a lawful use in the Rural Residential zoning at that time. At some point, explained Attorney Mackin, the county eliminated or deleted subsection “G” prior to the town’s incorporation. At which point, if there was occasional sale and storage of firewood on the property at the time, that’s the point that it would have become non-conforming to the extent that it continued after. Before and after is important, pointed out Attorney Mackin, when looking at non-conforming use. It’s important to know what the use was being made of the property before because that determines whether it was lawful at the time or unlawful and that helps us decide when the non-conforming use was. Paperwork from the property owner said that it’s been a non-conforming use for the sale and storage of wood on the property since before Gila County adopted zoning. She would suggest, from the zoning ordinance, it actually was a lawful use up until subsection “G” was removed from the county’s zoning.

The attorney for the Town of Star Valley, Kristin Mackin, stated she will bring up town representatives and the neighbors to explain from their perspective what they have seen at the property, how code enforcement actions are taken and what their investigation included. From that, she will be able to show that the commercial woodcutting operations that began on the property (37 Sprague and partially onto 27B) began in about March/April of 2023 for actually an entirely new and different use; and that there was no longer the occasional sale of firewood going on so that if there was any occasional sale of firewood going on that has been discontinued; and that the commercial operations were new and were not lawful at the time they began in 2023 so there is no non-conforming right to continue the commercial woodcutting operations.

The attorney for the Town of Star Valley, Kristin Mackin, called her first witness Edie Chapin. For the record, stated Attorney Mackin, please state your name and position with the town. Ms. Chapin responded Edie Chapin, Town Clerk. Attorney Mackin asked Ms. Chapin to name her particular job duties as Town Clerk. Ms. Chapin answered she attends meetings of the Town Council, the Planning & Zoning Commission and the Board of Adjustment; she prepares agenda packets for the meetings and takes meeting minutes; she fulfills public records requests; she maintains the town records; she is the designated election official for the town; and she also works in tandem with the Town Manager on code enforcement. Questioned Attorney Mackin – Could you tell us a little bit about code enforcement and what your responsibilities are when you receive a complaint about a potential code violation? Ms. Chapin explained that she reviews the

complaint; determines the zoning of the property where the complaint is occurring; reviews the code book and then determines if there are any code violations or not; she then reviews that information with the Town Manager and if he agrees she prepares a notice of code violation; that notice gets sent to the property owner by certified mail and they have thirty days from the date they receive the notice of violation to cure the violation. If the violation is cured, we are done. Before the notice of violation is sent out, added Ms. Chapin, we send our code enforcement officer Andrew out to document and take photos. If the violation is not cured, continued Ms. Chapin, we send code enforcement out to take photos to show that the issue is still on-going. A complaint is then prepared. The Town Attorney reviews and signs the complaint and it is filed with the Magistrate Court, concluded Ms. Chapin.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – In this case, did you receive any complaints for code violations related to 37 Sprague and the adjacent 27B parcel? “Yes,” answered Ms. Chapin. A total of seven complaints were received. The first one was received in July 2023. Another one was received in August of 2023. Three more in October of 2023 and two more in November of 2023. Questioned Attorney Mackin – What was the general nature of the complaints? The first complaint was about a woodcutting business that began earlier in the year. The complaint also mentioned that there were workers that would arrive before 5:00 a.m. and then they would start cutting wood about 5:15 a.m. Also in that complaint was a porta-potty that was placed near a bedroom window and two sheds on the corner of Sprague and Moonlight that were obstructing the view of traffic. Questioned Attorney Mackin – What steps did you take after receiving that complaint in July? I reviewed the complaint; determined the zoning of the property; reviewed the code book and determined what the zoning violations were; and reviewed the information with the Town Manager, responded Ms. Chapin. In this particular instance, added Ms. Chapin, it was before the town had Andrew on board for code enforcement, so the Town Manager inspected the property and determined that there were code violations. Questioned Attorney Mackin – What did you determine was the zoning of the properties where the violations were occurring? 37 Sprague was zoned RR-Rural Residential and according to her records at that time 27B was Zoned R1L. Questioned Attorney Mackin – Is commercial business permitted in either of those zones? “No, it’s not,” answered Ms. Chapin. Questioned Attorney Mackin – What happened next? A response was received from the Armstrong’s attorney saying that the woodcutting business had been going on for forty years, answered Ms. Chapin. Questioned Attorney Mackin – Do you remember when you received that response? It was the end of August, answered Ms. Chapin.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – You said you also received another complaint in August of 2023, is that correct? Yes, a second complaint was received, responded Ms. Chapin. Questioned Attorney Mackin – Once you received the notice from the property owner’s counsel about the prior wood sales that had been occurring on the property what steps did you take? The thirty days expired, explained Ms. Chapin, and our code enforcement officer Andrew was sent out to take photos. The photos showed that the code violations were still continuing. A complaint was filed with the Magistrate Court in early October. Questioned Attorney Mackin – Did you receive any response to that complaint from the property owner? “Yes,” answered Ms. Chapin. A counterclaim was received from Armstrong’s attorney stating that they

fell under the non-conforming use rights. Questioned Attorney Mackin – Did you conduct any additional research at that time? “Yes,” answered Ms. Chapin. She began with Gila County and some public records requests. One of the documents requested and provided by the county was the deed for the purchase of the property. It was the deed showing that Bill Armstrong purchased the property in November of 1980. Questioned Attorney Mackin – That was the 37 Sprague property? “Yes,” answered Ms. Chapin. There were other various public records requests. Staff was also looking for the zoning map from 1959 and the zoning map that was in place in 1980. Questioned Attorney Mackin – What is the reason you were looking for the zoning and when the properties were purchased? Staff was trying to make a determination about the non-conforming use claim, answered Ms. Chapin. Questioned Attorney Mackin – Do you know from your investigations and the research where the commercial woodcutting operations were being conducted? “Yes,” answered Ms. Chapin. Mostly on the 37 Sprague Drive property and it may overflow to the other parcel 27B. Questioned Attorney Mackin – Was there any other activity that was reported to you or observed by you or other members of the town on the 27B parcel or 37 Sprague? “Yes,” answered Ms. Chapin. Complaints were received about the 27B parcel complaining of what she would call a junk yard. There were abandoned/junked vehicles and at least five trucks with expired tags; also, a horse trailer and a travel trailer that in the complaints people were living in; and then tires and just a lot of junk. Questioned Attorney Mackin – I think you said you sent the code enforcement officer Andrew out to photograph that? “Right,” responded Ms. Chapin. She believes it was in September on the 22nd. Questioned Attorney Mackin – Did you find any evidence in your investigations about how long the woodcutting business had been operating on the properties? “No,” answered Ms. Chapin. The first time the town heard anything was when the first complaint was received in July of 2023.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – Did you conduct any additional research into the business that was operating on the properties? “Yes,” answered Ms. Chapin. She did an entity search with the Arizona Corporation Commission. Her findings for the 37 Sprague property were that the address was changed from where Mr. Armstrong had his pawn shop located on the highway to his home at 37 Sprague, which coincides with the conditional use permit that he obtained in 2021. For the James Armstrong parcel his address changed as well, from the business being located at 1719 Moonlight Drive to 37 Sprague Drive. Questioned Attorney Mackin – Do you recall when that address was updated? She believes in 2022 it showed 1719 Moonlight, stated Ms. Chapin, and then in 2023 it showed 37 Sprague. Questioned Attorney Mackin – In 2023 was the commercial woodcutting operation permitted in the Rural Residential district? “No,” answered Ms. Chapin. Questioned Attorney Mackin – Does the town’s zoning ordinance currently permit woodcutting operations in any residential district? “No, we don’t,” answered Ms. Chapin. That concluded Attorney Mackin’s questions for Ms. Chapin. She then asked Attorney Art Lloyd if he had any follow up questions.

The attorney for the Armstrong’s, Art Lloyd, then questioned Ms. Chapin. Questioned Attorney Lloyd – So you never did find out when the firewood business started, correct? “That’s correct,” answered Ms. Chapin. Questioned Attorney Lloyd – So you don’t know when it started and you are not going to put on any evidence from the town as to when it started, correct? Kristin Mackin is the attorney for the town, answered

Ms. Chapin, and she has the evidence for the town. Questioned Attorney Lloyd – From your investigation you couldn't find out when it started? “No,” answered Ms. Chapin. Questioned Attorney Lloyd – Didn't you get fifteen letters from citizens in this area saying that it had been going on for thirty and forty years? We did receive letters with your letter, answered Ms. Chapin. Questioned Attorney Lloyd – Did you follow up with any of those people? Some of whom are here today, added Attorney Lloyd. The attorney for the town may have, answered Ms. Chapin. You would need to check with her. Questioned Attorney Lloyd – You didn't follow up? “I did not,” answered Ms. Chapin. Questioned Attorney Lloyd – You would agree, that if the business was fully operational before there was ever any zoning out there, it's “grandfathered” in, wouldn't you? “No, I don't agree,” answered Ms. Chapin. That's right, stated Attorney Lloyd, you're the Town Clerk, not the Town lawyer. “That's correct,” answered Ms. Chapin. Questioned Attorney Lloyd – So it would be up to this board to decide that? “Yes,” answered Ms. Chapin. That concluded Attorney Lloyd's questions for Ms. Chapin.

The attorney for the Town of Star Valley, Kristin Mackin, called her next witness Andrew Ehrich and asked him to state his name and position with the town for the record. Mr. Ehrich responded Andrew Ehrich, Code Enforcement Officer. Attorney Mackin asked if he would briefly describe what he does as the code enforcement officer. He receives notification from either Edie or the Town Manager, explained Mr. Ehrich, letting him know that there is a possible code violation or a complaint of some kind. Edie gives him the information he needs to know about what he's looking for, what kind of code is being broken and then he goes to look for that evidence and takes photos of the properties. Questioned Attorney Mackin – Were you asked to investigate reports of code violations or potential code violations at 37 Sprague and 27B? “Correct,” answered Mr. Ehrich. Questioned Attorney Mackin – Do you recall when you went out there? He was first brought in around September, answered Mr. Ehrich, and he thinks it was sometime in mid-September when he took his first set of photos. He went again, he believes, in March. Questioned Attorney Mackin – When you went out there, did you visit with anyone regarding the complaint? “Yes,” answered Mr. Ehrich. He met Donna Hogue. She explained to him what was going on and reiterated the complaints with her neighbor at 37 Sprague. While he was there, there were two to three guys working and there were log splitters and chainsaws running. Definitely activity and stuff being worked on.

The attorney for the Town of Star Valley, Kristin Mackin, showed Mr. Ehrich a couple of photos from September 22, 2023 and asked if he recalled taking them. “Yes,” responded Mr. Ehrich. Those are photos he took. Attorney Mackin asked what he sees in the photos. The logs going and some were wrapped for sale, answered Mr. Ehrich, indicating to him that it may be a possible business because it was firewood that was now wrapped. Questioned Attorney Mackin – Did you observe any activity on the properties when you went to visit? “Yes,” answered Mr. Ehrich. The first time he went there were at least two to three guys working – that he could see from the neighboring property. He heard some chainsaws and machines running. Questioned Attorney Mackin – Did you observe a trailer or something on the property where someone might have been living? “Yes,” answered Mr. Ehrich. The first time visiting the neighboring parcel there appeared to be someone living in a travel trailer. He saw someone going in and out of it while he was there. He didn't want to take any pictures of people, so he tried not to do that. There were also about three to four junk trucks that he looked closer at that all had

expired tags. There was also a horse trailer that had clothing and junk inside of it. Attorney Mackin showed Mr. Ehrich more photos and asked if he took those as well. "Yes," answered Mr. Ehrich. Questioned Attorney Mackin – Where were you when you were taking these pictures? He was on Donna Hogue's property, answered Mr. Ehrich. There was wood under a tarp, lots of trailers and a porta-john on the property. Questioned Attorney Mackin – Where did you see the woodcutting business or the activity on the property? Most of the activity looked like it was on the 37 Sprague property, answered Mr. Ehrich, just from his general understanding of the property lines. Questioned Attorney Mackin – Where were the vehicles and trailers? Mostly on the other side of the creek, answered Mr. Ehrich, which he thinks is parcel B.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – You said you went back again in March? "Yes," answered Mr. Ehrich. He was asked to revisit to see if anything had changed or if things were the same. He neglected to mention before but in September there were some sheds on the road and in March the sheds were gone. Everything else looked essentially the same – there were still trucks, trailers and lots of firewood under tarps. When he was there in March he didn't see anybody working but that may have been due to the timing on his part. Attorney Mackin showed Mr. Ehrich more photos and asked if he had taken them. "Yes," answered Mr. Ehrich. That was the tarp with logs under it. As he was able to look closer he noticed they were bundled and wrapped. Questioned Attorney Mackin – Were you on Ms. Hogue's property when you were taking these pictures? "Yes," answered Mr. Ehrich. Attorney Mackin showed Mr. Ehrich more photos and asked if he took those as well. Yes, he did, answered Mr. Ehrich. Questioned Attorney Mackin – What are we seeing here? This was the trailer someone appeared to be living in, answered Mr. Ehrich, and then also the horse trailer. The trucks are still there as well as other junk yard types of stuff. Questioned Attorney Mackin – Do you still see the wood piles there? "Yes," answered Mr. Ehrich. Questioned Attorney Mackin – Just for clarity, the trailer there, which property was that on? The smaller parcel answered Mr. Ehrich, and not the 37 Sprague. Questioned Attorney Mackin – Were there any other observations about the activities that you wanted to share about the properties? Mostly the junk vehicles, the wood piles and all the stuff that was there, answered Mr. Ehrich. That concluded Attorney Mackin's questions for Mr. Ehrich.

The attorney for the Armstrong's, Art Lloyd, then questioned Mr. Ehrich. Questioned Mr. Lloyd – The two sheds were moved when you got there in March? By the time he went in March, answered Mr. Ehrich, they were gone. Questioned Attorney Lloyd – And in March you didn't see anyone living in that travel trailer, did you? The day he went, answered Mr. Ehrich, he did not see anyone enter or exit the trailer. But he did in September. Questioned Attorney Lloyd – So if that person was gone then that wouldn't have been a violation, correct? If someone wasn't living in there, maybe not, but there are still junk vehicles and abandoned vehicles. Questioned Attorney Lloyd – The travel trailer is a junk vehicle? All the tags, at least on the trucks, answered Mr. Ehrich, are all expired. In his opinion it looks like a junk yard. Questioned Attorney Lloyd – So you had to drive down Moonlight Drive to get there, didn't you? "Correct," answered Mr. Ehrich. Questioned Attorney Lloyd – Are you familiar with Moonlight Drive? A little bit answered Mr. Ehrich. Questioned Attorney Lloyd – Have you seen other places there with more stuff than this? Other people's driveways and properties

answered Mr. Ehrich. Questioned Attorney Lloyd – But it’s not your job to decide whether one man’s junk might be another man’s treasure, right? “Sure,” responded Mr. Ehrich. That concluded Attorney Lloyd’s questions for Mr. Ehrich.

The attorney for the Town of Star Valley, Kristin Mackin, called her next witness Tim Grier and asked him to state his name and position with the town for the record. Mr. Grier responded Tim Grier, he’s the Town Manager and Town Attorney for the Town of Star Valley. Also, the zoning administrator and other duties as assigned. Questioned Attorney Mackin – You mentioned the zoning administrator. Does that include code enforcement and zoning ordinance enforcement? It does, answered Mr. Grier. Questioned Attorney Mackin – We heard Ms. Chapin describe the process for code enforcement in the town. What role do you play in that process? Edie accurately described what her role is, answered Mr. Grier. A person comes in with a complaint – we ask them to file a written complaint. In this case, and in all cases, a person did file a written complaint. Edie starts doing research. She sells herself a little bit short. She’s been doing research on zoning and code enforcement issues for many years now and she is very good at that. She will do a lot of the leg work before it reaches him. After she has done some research, such as the zoning on the property, she will come to him with a written complaint, and he will weigh in at that point. In this case, he went down to the property himself to see what was going on and to see if there was in fact a code violation and whether or not the office would try to remedy it. The town is always about trying to cure the code enforcement violation. At that point, stated Mr. Grier, a letter to cure was sent to Bill Armstrong with the code violations that were happening. Staff waited for a response on that.

Questioned the attorney for the Town of Star Valley, Kristin Mackin, – After you went out there, what did you observe on the property and what were your next steps? He observed a huge commercial woodcutting operation, answered Mr. Grier. There were hundreds and hundreds of bagged commercial wood – the type of wood that you see in front of Circle K’s and at the campgrounds. There was a field of those that were stacked there. He was able to observe the horse trailer that somebody was living in and the trailers and junk vehicles. Questioned Attorney Mackin – Once you went out there you then conferred back with Edie and the thirty day notice was sent? Correct, answered Mr. Grier. The thirty day notice was sent by certified mail to Bill Armstrong. Questioned Attorney Mackin – Did you receive any response to that notice? At some point, answered Mr. Grier, a letter was received from Mr. Lloyd that he was representing Bill Armstrong with the non-conforming use argument. Questioned Attorney Mackin – Did you do any follow-up in response to Mr. Lloyd’s letter? He did, answered Mr. Grier. He read Attorney Lloyd’s response and his legal theory that it enjoyed a non-conforming use right. He first started to research all of the non-conforming cases from Douglas Jordan and Frank Cassidy who wrote the book on land use and all of the non-conforming cases. He spent a lot of time reading every case law so that he was sure he understood what Mr. Lloyd’s argument was and whether or not his argument was a valid, legal argument.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – Why was it important to you to vet that argument? An issue like this is a very important issue, answered Mr. Grier. It’s a property right issue. It’s a property right issue for the Armstrong’s. It’s a property right issue for the neighbors – they have a property right to be able to rely on what the zoning has told them and should be in place. As a prosecutor

for the town and when you're talking about a very important issue like property rights, it was important to him that he understood and got it right. And so, added Mr. Grier, he did a lot of research on it. Questioned Attorney Mackin – Were you able to find out or learn when Mr. James Armstrong started the commercial business? “Yes,” answered Mr. Grier. It started mid-summer of last year. The town started getting written complaints first. It wasn't limited to the written complaints. The complainants were coming in regularly – some of them almost every week. The town was also getting phone calls. It wasn't limited to the seven written complaints. It's a small town, stated Mr. Grier, and he learned that Jimbo (James Armstrong) and Dana got divorced. Staff even did the research to get the Divorce Decree and the judgment on the Divorce Decree from the Superior Court. Judge Wright awarded the house to Dana and the business to Jimbo. That was early-mid summer. That correlated with all of the complaints that the town received and the timing. Questioned Attorney Mackin – Where did you see the commercial woodcutting operation being conducted? It was being conducted at 37 Sprague, answered Mr. Grier, for the most part. It seemed like there were things related to the business that spilled over onto the other property. That property, noted Mr. Grier, never went through a Minor Land Division as required by the town. The town wasn't aware of that, stated Mr. Grier, and he is not going to take a position as to whether or not that was an illegal land division.

Questioned Attorney for the Town of Star Valley Kristin Mackin – Did you personally observe, when you went out there in August or September of 2023, any changes on those properties previous to that time frame? Did you notice activities that were occurring? Questioned Mr. Grier – Are you talking closer to the last two months? No, pre 2023, answered attorney Mackin. “Yes,” answered Mr. Grier. He goes down Moonlight probably not more than every two weeks or so. The 37 Sprague property can be seen from Moonlight, and it can be observed pretty well. He's been to Bill's Rodeo Appreciation Dinner consistently, not last year, but for years upon years. He's been on the Armstrong property and never observed any woodcutting operation at all going on at 37 Sprague. Questioned Attorney Mackin – Have you noticed any change in the past month or two? He has, answered Mr. Grier. There is still a lot of everything with the woodcutting operation going on down there. Sometime after the Board of Adjustment Hearing was set, reported Mr. Grier, the woodcutting operation then moved to two different places. One being the area owned by the Keith brothers behind the community garden and then – even as of today – the other down at the end of Pinon, just north of 521, which happens to be Mr. Lloyd's residential property. That is where it seems like Jimbo has moved the bulk, right now, onto the attorney's residential property on Pinon. So, the impact, in the last two months or so, has actually kind of decreased on 37 Sprague but that's only because it's moved to two different locations. It is no longer in that area behind the community garden, reported Mr. Grier, because the owner told Jimbo he had to move it. It is still alive and well on Mr. Lloyd's residential property on Pinon.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – Is the commercial business still being conducted, from what you have seen, on the 37 Sprague property? “Yes,” answered Mr. Grier. There are still cords and cords and cords of firewood. They were actually bagging it on Mr. Lloyd's residential property. He's not sure what their strategy is but there is still a commercial operation going on. He is sure that the neighbors will be better able to testify to that. Questioned Attorney Mackin – Is

commercial woodcutting permitted in residential zones? “No,” answered Mr. Grier. In Rural Residential a commercial woodcutting operation is not allowed. Specifically speaking, added Mr. Grier, he believes the storage and sales of wood requires a use permit on Rural Residential. 37 Sprague, pointed out Mr. Grier, does not have a permit for the commercial woodcutting operation. They do have a Conditional Use Permit. Questioned Attorney Mackin – Would you tell us what you mean about the Conditional Use Permit on 37 Sprague? “Sure,” answered Mr. Grier. Bill had his pawn shop on the Highway right across from Town Hall. Bill decided that he was no longer going to have his pawn shop on the Highway and so he applied for a Conditional Use Permit to move the pawn shop to 37 Sprague. The Planning & Zoning Commission recommended to the council to approve that use. It was approved by the council but with some very strict limitations – that only Bill Armstrong could do any of the work of the business; no employees could be associated with the business; and no living in RV’s. These were conditions that were all articulated and each and every condition was initialed by Bill Armstrong. Any sort of business activity on 37 Sprague would have to be done only by Bill Armstrong. That was fashioned by the council, tethered with some very strict restrictions, because that was kind of the way to have this die when Bill was no longer able to do the business. Questioned Attorney Mackin – Did that Conditional Use Permit include the business of commercial woodcutting? “No,” answered Mr. Grier. That concluded Attorney Mackin’s questions for Mr. Grier.

The attorney for the Armstrong’s, Art Lloyd, then questioned Tim Grier. Questioned Mr. Lloyd – You saw the fifteen letters that we attached. Did you call any of the people to verify that the woodcutting firewood business was in existence before there was ever any zoning out there? He did, answered Mr. Grier. He talked to several of them several different times including Roy Haught. He didn’t talk to Tony McDaniel. He didn’t talk to Dick Henry, who he noticed was in attendance. Questioned Attorney Lloyd – And they all told you that the business had been there since well before the town was ever incorporated? No, that’s not true, answered Mr. Grier. Roy Haught did not say that. Questioned Attorney Lloyd – What about Mr. Henry. Did he tell you that? He didn’t talk to Mr. Henry, answered Mr. Grier. Questioned Attorney Lloyd – What did Tony tell you? He didn’t talk to Tony, answered Mr. Grier. Tony is the father of a council member, so he was not going to ask him. Questioned Attorney Lloyd – Who did you talk to besides Roy Haught? He talked to Roy, answered Mr. Grier. Questioned Attorney Lloyd – So you decided not to talk to the other fourteen people? I did not talk to them personally, answered Mr. Grier. Questioned Attorney Lloyd – Your job as the Town Manager and Town Attorney is to enforce the laws equally, right? “Absolutely,” answered Mr. Grier. Questioned Attorney Lloyd – On 37 Sprague you filed a complaint in the Magistrate Court against Mr. Bill Armstrong, did you not? Yes, he did, answered Mr. Grier. Questioned Attorney Lloyd – You dismissed it? “Yes,” answered Mr. Grier. It’s dismissed, stated Attorney Lloyd. Questioned Attorney Lloyd – There is no complaint against Mr. Armstrong and anything going on at 37 Sprague in the Magistrate Court, correct? He believes the attorneys agreed to stay the different issues, answered Mr. Grier, because there was a split in which there is one case that got booted to Superior Court and the other two cases didn’t. The town gave the defendant the opportunity to have a Board of Adjustment so that we would be certain that all procedural rights had been safeguarded with this opportunity here today. That agreement was between you, the

town's attorney, and the town, added Mr. Grier. Questioned Attorney Lloyd – You filed a motion to dismiss without ever talking to anybody? You chose to dismiss it in the interest of justice, didn't you? We chose to dismiss it, answered Mr. Grier, because it really wasn't about Bill Armstrong. It was about Jimbo Armstrong moving his commercial business over to Bill's property. It's unfortunate that Jimbo did that.

Questioned attorney for the Armstrong's, Art Lloyd – And you know that while Jimbo and Dana Armstrong were married they were engaged in the firewood business down in the same spot that they've been doing it for twenty years or more? He didn't know that, answered Mr. Grier. Questioned Attorney Lloyd – But you go there every two weeks, don't you? “Yes,” answered Mr. Grier. But if you look from Moonlight to the property that they were doing the wood sales you can't see it. The fourth amendment doesn't allow him, as a code enforcement officer, to go onto private property so he is limited to public domain. You really can't see it plus there were no written complaints and it's pretty standard for the town to follow up on these with written complaints. The town never received a written complaint about that, and he imagines another reason is that there is all Armstrong's living around there. Maybe, added Mr. Grier, but maybe that is speculative. Questioned Attorney Lloyd – So it's true that the first complaint you actually received from anybody was in 2022 or 2023? 2023 is when they all started coming in, answered Mr. Grier. That's the time that Jimbo got the divorce with Dana and moved the woodcutting business over to 37 Sprague. Questioned Attorney Lloyd – Did you ever drive over onto the Patterson property right behind the Armstrong property? “No,” answered Mr. Grier. Questioned Attorney Lloyd – You've never been there? Questioned Mr. Grier – That's the horse property? Yes, answered Attorney Lloyd. He has been there, answered Mr. Grier. He attended a ribbon cutting there with Mayor Davis. He does not regularly drive onto that, nor would it be appropriate for him to do so. Questioned Attorney Lloyd – When you go down there across the creek you can see all of the property, can't you? He's never done that, answered Mr. Grier. He would guess he would have to cross private property to do that, which again, the fourth amendment doesn't allow him to do. Questioned Attorney Lloyd – To get to the Patterson property, which you've said you've been there, you have to cross the creek, don't you? “Yes,” answered Mr. Grier. He's crossed the creek. When crossing the creek, explained Attorney Lloyd, the property right next to the creek is 27B. That's the property that Jimbo and Dana had and on the other side of the creek is the property that Bill has. Questioned Attorney Lloyd – And you never saw, for the twenty five years or so that you've been with the town, you never saw that? Questioned Mr. Grier – Are you talking about where Jimbo and Dana had their business illegally on Moonlight? Whether it's illegal or not is something that the court or this board right here is going to decide, stated Attorney Lloyd, not you. “No,” answered Mr. Grier. He was not familiar with it there. It couldn't be seen from the street, and there were no written complaints. Dana and the others are still engaged in the firewood cutting business, stated Attorney Lloyd, and you've done nothing there. Actually, answered Mr. Grier, Dana applied and was issued a business license. There are several different conditions with it and the running of no chainsaws is one of those.

Questioned attorney for the Armstrong's, Art Lloyd – The issue here today in front of this board is whether or not the firewood business is “grandfathered” in, would you agree? He would agree, answered Mr. Grier. Whether or not it has a lawful non-

conforming use is the issue in front of the board today and whether or not, as the Zoning Administrator, he is correct in his decision that it does not and that it's an illegal use. Questioned Attorney Lloyd – Didn't we offer, at the very beginning of this, to work something out? You wanted to shut them down, period. That's the position you've taken. We offered to work with you for the length of time with the chainsaws, we kicked out the homeless guy that was temporarily staying in there and we moved the shed. We are doing everything we can to try to meet any of the ordinances, but your position is you want them out of business on that property, period, isn't it? I'm glad you admitted that you had a homeless person in the trailer, answered Mr. Grier. It's not my property right to give away. The neighbors have a reasonable reliance, that when they invest in their property, the use is going to be harmonious. For you to say let's wheel and deal and let's make some middle ground here and let the chainsaws run between ten and two instead of five o'clock in the morning, like they have been, he doesn't think it was his deal to give away. Questioned Attorney Lloyd – If you weren't really trying to put Jimbo out of business why did you complain when he moved some of his logs and materials behind the Circle K next to Hooter Haught's yard? Certainly, stated Attorney Lloyd, that's not zoned residential. But you called up and complained and asked Jim to get out of there. You called my neighbors when I let Jim bring some logs over there and you tried to get them to file a complaint. Nobody is cooperating with you, isn't that right? No, answered Mr. Grier, that's not really right. Your neighbor did file a written complaint just last week. He is certainly not here to put Jimbo out of business, stated Mr. Grier. The town would just like Jimbo to conduct his business in the proper zoning. We welcome his business as we do all businesses but not a commercial woodcutting business in a residential neighborhood. We all love Bill, and you know it's a shame that it's going on with Bill, but Bill hasn't been cutting firewood in the last five or six years. It was you on council, stated Mr. Grier to Mr. Lloyd, that had the abandonment clause minimized to six months. It's Bill's business, stated Attorney Lloyd. No, it's not, answered Mr. Grier.

They are going to show what evidence there is, stated the attorney for the Armstrong's, Art Lloyd, that the firewood business was conducted before there was ever any zoning on the property by Gila County or anybody else. Would you agree, Mr. Grier, that if there was no zoning on the property at the time that the firewood business commenced and it has remained in existence ever since, it's "grandfathered" in? Would you agree? It's not that simple of an analysis, answered Mr. Grier. Because if you're going to say that, queried Mr. Grier – Are you saying that it is the same scope of character today and in the last year as it was in 1980 or 1985 when the Rural Residential zoning was put in place? "No," answered Mr. Grier, he does not agree with that because certainly one legal analysis is if there is a change of scope then it is not a lawful non-conforming use. That's just one example, added Mr. Grier. There are other reasons why it's not a lawful non-conforming use as well. That will be up to the court to decide if it can't get it agreed upon here, stated Attorney Lloyd. Questioned Attorney Lloyd – You would agree that under the constitution, under the statutes and under the town code, a legal use is a use which was legal prior to the passing of a zoning remains legal? Would you agree? That town code that you are referring to also says that it can't be expanded, answered Mr. Grier, and if it's been discontinued for a six month period than that use is abandoned. You were on the council Mr. Lloyd, added Mr. Grier, so you're well aware of that. He would agree with that, stated Attorney Lloyd.

Questioned the attorney for the Armstrong's, Art Lloyd – You would agree that if there was a lawful use on that property prior to any zoning and that basic use continues and was not discontinued for six months and it has not been expanded beyond the boundaries of the property where it's conducted, it's "grandfathered" in? That's a bit short-sided of a legal analysis, answered Mr. Grier. You also have to look at the issues that the courts have considered in the past years to really get a good decision on that. It first has to be what was lawful. One thing the town asked for was uniform interrogatories that were served upon you for both Bill and Jimbo Armstrong. We asked for any evidence that there was a business that was being conducted; we asked for the business records; we asked for any tax records; we asked for any profit and loss statements; we asked for any incorporation documents. Anything that any businessperson would say there should be some evidence of. We asked for an employee list; we asked who they sold wood to. Queried Mr. Grier – What did we get in return Mr. Lloyd? "Nothing," stated Mr. Grier. The town has not received anything that proves that there was ever any business prior to 1985. The burden of proof is on the defendant in this case. Town staff has been diligent in researching this for the past year and a half, stated Mr. Grier. That concluded Attorney Lloyd's questions for Mr. Grier.

The attorney for the Town of Star Valley, Kristin Mackin, stated she has some follow up questions for Mr. Grier. She would like to add some specificity to the generalities they were talking about. Questioned Attorney Mackin – Is the commercial woodcutting that you observed on the 37 Sprague and 27B properties the same as the types of wood sales and storage that were referred to in the letters of support that were provided to the town by Mr. Lloyd in August of 2023? All the letters that he read were pretty much limited to knowing Bill for a bunch of years and he had sold firewood, answered Mr. Grier. One of the points in this is whether or not he would have been able to sell surplus firewood before that was amended. The letters all seemed limited to that. He didn't see any letter that said anything about Bill having a commercial woodcutting operation there that is selling wood from New Mexico to Sedona. Which is what he understands, added Mr. Grier, is the scope of this woodcutting business. Questioned Attorney Mackin – From what you did find in your research, is commercial woodcutting a new and different use than any occasional sales that we've heard existed on the property prior to zoning being adopted by the county? "Yes," answered Mr. Grier. He has never observed, and the town has never received any written complaint that there was a commercial woodcutting business. He has not observed Bill selling any firewood in the last seven or eight years and he doesn't think Bill is really up to it anymore. Pretty much after 2021, with the conditional use permit, the business there has been very limited. The tax records would support that. That concluded Attorney Mackin's follow up questions for Mr. Grier.

The attorney for the Town of Star Valley, Kristin Mackin, called her next witness Tristan Lloyd and asked her to state her name and where she lives for the record. Ms. Lloyd responded Tristan Lloyd and she lives at 48 South Sprague Drive. Questioned Attorney Mackin – How long have you lived at that property? Since June of 2020, answered Ms. Lloyd. Questioned Attorney Mackin – Are you from the area? She has been in the area for several years in various parts of the Payson community. She has had a horse over at Patterson training since October of 2006. Questioned Attorney Mackin – How regularly would you visit? A couple of days every week in the beginning, answered

Ms. Lloyd. More recently she is there almost every day. Questioned Attorney Mackin – What did you observe on the 37 Sprague property? Can you see 37 Sprague from either your property or by the barn area? They cannot see it from their property, answered Ms. Lloyd, and they cannot see it from the Patterson training property because it is up on an elevation. They can't see it, added Ms. Lloyd, but they can certainly hear it. Questioned Attorney Mackin – When did you begin to notice a difference that you can hear? It would have been spring of 2023 that they noticed it, answered Ms. Lloyd. All of last summer it started at 5:12 a.m. at least five and sometimes six days a week. Questioned Attorney Mackin – What specifically did you hear? The chain sawing answered Ms. Lloyd. Questioned Attorney Mackin – Was it just one chain saw? Sometimes it sounded like at least three, answered Ms. Lloyd. Questioned Attorney Mackin – Did that continue all day? “Yes,” answered Ms. Lloyd. All day into the evening. There were times she could hear it at one or two o'clock in the morning as well. Questioned Attorney Mackin – Did you notice anything else that was out of the ordinary as far as the traffic? There seemed to be employees coming in regularly because there were the same cars driving in and out and sometimes they would park up on the turn. Questioned Attorney Mackin – Did you see any of that before the spring of 2023? “No,” answered Ms. Lloyd, she did not.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – What kind of noises did you hear when you first moved into your property? Just normal rural residential agricultural type noises answered Ms. Lloyd. With the level of chain sawing that goes on, there would have had to have been documentation that she would have had to sign acknowledging that it was a noisy area before she bought her house. And she knows the people that she bought it from did not sign anything like that when they bought it in 2005. Questioned Attorney Mackin – Can you hear the chain saw activity at your home? “Absolutely,” answered Ms. Lloyd. Questioned Attorney Mackin – Can you hear it while you're out at the barn? “Yes,” answered Ms. Lloyd. Questioned Attorney Mackin – What is it like when you're out at the barn? They can't communicate with each other when they are at the barn, answered Ms. Lloyd. She thinks if someone tested it there would be some OSHA regulations there about the level of sound because it's very loud and they can't talk to each other. Questioned Attorney Mackin – Have you noticed any other changes on 37 Sprague or the adjacent parcel 27B since you've lived in the area? “Yes,” answered Ms. Lloyd. There was a road cut in along the side of the creek. On that road is parked a lot of what appears to be abandoned vehicles that haven't moved for a long time. The sheds were parked on the side of the road for quite awhile and she was concerned about emergency services being able to come in because of the sheds and other things that were parked on the side of the road. The sign that warned people that they are going over a one lane bridge and crossing the creek had been taken down. The sign is propped back up now but it's not really in. Questioned Attorney Mackin – How is this change in activity that you observed impacting you? They cannot have their windows open at night, answered Ms. Lloyd, because of the chainsaws that start at five o'clock in the morning. They have to keep everything shut up, even in the summer. That concluded Attorney Mackin's questions for Ms. Lloyd.

The attorney for the Armstrong's, Art Lloyd, then questioned Tristan Lloyd. Questioned Attorney Lloyd – You haven't heard any chainsaws at five o'clock in the morning for some time now, correct? She would say a couple of months, answered Ms.

Lloyd. Questioned Attorney Lloyd – You haven’t heard any chainsaws? Not at five o’clock in the morning, answered Ms. Lloyd. There have been chainsaws running though. Questioned Attorney Lloyd – So at five o’clock in the morning you haven’t heard chainsaws for quite a while, haven’t you? It’s been a couple of months, answered Ms. Lloyd. It’s been more than a couple of months, stated Mr. Lloyd. Questioned Mr. Lloyd – The barn is right behind Bill Armstrong’s house, correct? Up the hill, answered Ms. Lloyd. Questioned Mr. Lloyd – And the saws are down below in the wash? She doesn’t know where the saws are, answered Ms. Lloyd, but it’s very loud. Questioned Attorney Lloyd – When you couldn’t hear were you inside the barn? Inside or outside, answered Ms. Lloyd. Questioned Attorney Lloyd – So inside the barn, you can’t talk and hear somebody talking because of the chainsaws? That’s right, answered Ms. Lloyd. That concluded Attorney Lloyd’s questions for Ms. Lloyd.

The attorney for the Town of Star Valley, Kristin Mackin, called her next witness Bob Colabianchi and asked him to state his name and where he lives for the record. Mr. Colabianchi responded Bob Colabianchi and his address is 29 Sprague Ranch Road. Questioned Attorney Mackin – How long have you lived here? They bought their place in about November of 2009, answered Mr. Colabianchi. Questioned Attorney Mackin – What was the area like at the time that you bought it? It’s paradise, answered Mr. Colabianchi. There’s a beautiful creek that runs through the yard; there are more horses and animals than there are people; it’s just heaven; it’s beautiful; it’s quiet; you get all of the seasons. They fell in love and there is nowhere else they would rather be. Questioned Attorney Mackin – Did the conditions change in the past year or so that you noticed? From 2009 to 2023, answered Mr. Colabianchi, he doesn’t really know what happened on the 37 Sprague property. There were never employees coming and going; he never heard chainsaws; he didn’t really see anything that looked out of place. Everything changed in 2023 but before that there was really kind of no activity, it was very quiet. Questioned Attorney Mackin – When would you say you noticed a change in the activity? It was sometime around the spring of 2023 when things started to change on that property, answered Mr. Colabianchi. The property across the way was about three or four months later. Questioned Attorney Mackin – When you mean across the way you are talking about 27B? “Yes,” answered Mr. Colabianchi. Questioned Attorney Mackin – What did you notice about activity? The porta-potty showed up; lots of activity, traffic, people coming and going; trailers coming in with big logs; half cut down trees being dropped; and lots of chainsaws, answered Mr. Colabianchi. They wake up and jump out of bed at five or five-thirty in the morning because of the sound of chainsaws. On the property across the way a couple of sheds showed up and a bunch of vehicles showed up. At nighttime there would be generators that would run that would be pretty loud. That is what they saw, added Mr. Colabianchi, when it started to change in 2023.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – Could you tell how many chainsaws were running? It sounded like two to three chainsaws, answered Mr. Colabianchi. It was definitely multiple chainsaws, added Mr. Colabianchi, but he doesn’t know the exact count. Questioned Attorney Mackin – When did you hear the chainsaws? They would start at five or five thirty in the morning and they would run all day, answered Mr. Colabianchi. During the summer, when it’s hot, it would start very early. During the winter they have not heard chainsaws start as early. Questioned Attorney Mackin – Have you noticed any other activity that changed on 27B or 37

Sprague? 27B was just vacant land across from the creek, answered Mr. Colabianchi. A bunch of trees got cut down and now a bunch of stuff is parked there. He doesn't really know the extent of woodcutting on that property but there is a lot of storage that happens on that property and there were people living there. He has not heard the generators recently and he's not seen people directly living there recently. Questioned Attorney Mackin – How much of the property, before the spring of 2023, would you say that you saw any wood piles on? He never saw a wood pile before 2023, answered Mr. Colabianchi. His wife is in real estate. This is something that, if it continues, they will have to disclose, and it would have a huge financial impact on their property values. He didn't really know what happened on that property nor was it ever a concern before. Questioned Attorney Mackin – How much wood did you observe on the property? Was it in one area? How much of the property would you say it is taking up? It's a lot, answered Mr. Colabianchi. Right along the creek there are three big piles, and it looks like there are some piles over by the house itself. When you come in on Moonlight, you'll see them wrapping it. He's not exactly sure of the percentage. Questioned Attorney Mackin – Are there any other changes that you've noticed on the property that you can observe from the street or from your property? Just all aspects of a woodcutting business, answered Mr. Colabianchi. He's never heard chainsaws before; he can see the property and he never saw big stacks of wood; there were never generators running. Everything changed in 2023. Prior to 2023 there was no activity, and it was very, very quiet. Questioned Attorney Mackin – How has this change impacted you? It impacts him on many different levels, answered Mr. Colabianchi. The first way it impacts is the enjoyment of their property. He's a big believer that people should be able to do what they want on their property as long as they don't interfere with everybody else. He wants to enjoy his property. He wants to sit on his deck and be able to have a cup of coffee and not listen to chainsaws all day. He doesn't think that's right, and he doesn't think that anybody should have to go through that. He doesn't think there is anyone in this room, added Mr. Colabianchi, that would buy a piece of property next to a woodcutting operation. He is scared of the impact it's going to have on his property value. That concluded Attorney Mackin's questions for Mr. Colabianchi. The attorney for the Armstrong's, Art Lloyd, stated he had no questions for Mr. Colabianchi.

The attorney for the Town of Star Valley, Kristin Mackin, called her next witness Donna Hogue and asked her to state her name and where she lives for the record. Ms. Hogue responded Donna Hogue and she lives at 33 South Sprague Drive. Questioned Attorney Mackin – When did you buy your property? November of 2019 answered Ms. Hogue. Questioned Attorney Mackin – Were you new to the area? They were, answered Ms. Hogue. Questioned Attorney Mackin – What was your property like at the time that you bought it? They looked for three years for a property so that they could be closer to their family, answered Ms. Hogue. They found this little piece of heaven in the middle of the forest with the creek running. They didn't even have to see the inside of the house; they fell in love. They would sit down on their patio and just pinch themselves thinking how lucky they were. Then Jim brought in his business. Questioned Attorney Mackin – When did that happen? When did you notice a change? In the spring of 2023, answered Ms. Hogue. They dealt with it for a few months before they made any complaints. They tried to talk to him and work things out. Questioned Attorney Mackin – What did you notice on the property? What led to the complaint? All the wood and all the sawing that

was right by their front door, answered Ms. Hogue. Now they hear and see all of the woodcutting business from their patio. Then a porta-potty was dumped right under their bedroom window. It took them a long time, reported Ms. Hogue, but she believes Corky got it moved to the other side of the corral. Questioned Attorney Mackin – When did you notice the chain sawing? The cars came after four-thirty in the morning, answered Ms. Hogue, and then a little after five they started. Even if they closed their bedroom windows it’s still unbelievable. Questioned Attorney Mackin – How long would they go for? All day answered Ms. Hogue. Questioned Attorney Mackin – How often? When they first started it was every day all day, answered Ms. Hogue. She doesn’t think on Sundays.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – Is the video something you sent to the town? “Oh yeah,” answered Ms. Hogue. Attorney Mackin then played the video of the sound of the chain sawing. That’s what it is, stated Ms. Hogue, every morning. Questioned Attorney Mackin – What else did you notice, if anything changed, around that time? All of the wood answered Ms. Hogue. Huge lumber trucks came up the road and up the easement to their property. And all of the piles that Bob Colabianchi was talking about. Questioned Attorney Mackin – Did you see any piles of wood or any similar activity when you moved into the property? “Absolutely not,” answered Ms. Hogue. Questioned Attorney Mackin – How about in 2020? They saw no wood in 2020, answered Ms. Hogue. Questioned Attorney Mackin – You didn’t see any of this until the spring of 2023? It was sometime in the spring, answered Ms. Hogue. Attorney Mackin showed some photos and asked Ms. Hogue if she took them. “Yes,” answered Ms. Hogue. Questioned Attorney Mackin – Is this from your property? “Yes,” answered Ms. Hogue. That’s from our patio. Questioned Attorney Mackin – From the front patio? That’s what they get to look at now, answered Ms. Hogue. The trees were cut down so they could put that road to nowhere in. Now they see Moonlight when they never used to. They are in the middle of the forest, added Ms. Hogue, and they never used to see Moonlight. Questioned Attorney Mackin – What else do you see here? That is all the trashed trucks; the shed; and the travel trailer, which is still being lived in, on and off, answered Ms. Hogue. When the travel trailer was first brought there the generator went every night, all night long. every single day. The homeless guy lived in the horse trailer. He does not live there now and she doesn’t know where he lives. Questioned Attorney Mackin – Was any of that property on the property when you bought it? “Nothing,” answered Ms. Hogue. It was all forest.

The town received letters from Mr. Armstrong’s friends, acquaintances and people who purchased wood from his property in the past, stated the attorney for the Town of Star Valley, Kristin Mackin. Questioned Attorney Mackin – Did you see any activity of wood on the property when you moved in? “No,” answered Ms. Hogue. You mentioned the easement, stated Attorney Mackin. Questioned Attorney Mackin – Can you just explain to the board what you mean by the easement? Their property has an easement to the Armstrong’s, answered Ms. Hogue. That is where all of the wood comes. Questioned Attorney Mackin – That is their legal right of access, correct? “Yes,” answered Ms. Hogue. Questioned Attorney Mackin – You said you noticed large trucks coming in? “Oh yeah,” answered Ms. Hogue. Questioned Attorney Mackin – How often? They were coming all the time, answered Ms. Hogue. Maybe a few times a week with the large wood. Attorney Mackin showed some more photos and asked Ms. Hogue

if they were photos she had taken recently. “Yes,” answered Ms. Hogue. Questioned Attorney Mackin – Did you notice any other activity recently? What was the purpose of sending those pictures? Showing the dumping of more piles of wood getting ready for wrapping, answered Ms. Hogue That just happened last week. Questioned Attorney Mackin – And these were taken from your property? “Yes,” answered Ms. Hogue. They were taken from the hill. The wood now wraps all the way around the Armstrong property. Questioned Attorney Mackin – Previous to the spring of 2023 you didn’t see those types of wood piles? “No,” answered Ms. Hogue. Questioned Attorney Mackin – Did you see any wood piles? She knows Corky and Bill have wood because Bill likes his fireplace, so they’ve always had piles of wood. Questioned Attorney Mackin – Where was that? More in front of the house, answered Ms. Hogue. She never saw that either unless she was having a conversation with Corky. Questioned Attorney Mackin - Could you please discuss how this change in the use on that property has impacted you? She’s never had anxiety before, answered Ms. Hogue. She’s gone through anxiety, depression, and anger. It’s just a horrible thing. They bought heaven and now they don’t have it. Their property has been devalued because of it. They would never have bought that property with all that woodcutting, sawing and the trash. That concluded Attorney Mackin’s questions for Ms. Hogue.

The attorney for the Armstrong’s, Art Lloyd, then questioned Donna Hogue. Questioned Attorney Lloyd – You bought the house in 2019? “Yes,” answered Ms. Hogue. Questioned Attorney Lloyd – You don’t know what was going on there before? “No,” answered Ms. Hogue. Attorney Lloyd showed a plot map that Bill Armstrong had to make to give to Gila County when the property was part of Gila County. Questioned Attorney Lloyd – That’s the corral right there, correct? “Okay,” answered Ms. Hogue. Questioned Attorney Lloyd – Do you see that? What does it say right there? “Wood storage area,” answered Ms. Hogue. Wood storage area stated Attorney Lloyd, right where you see the wood. “No,” answered Ms. Hogue. Well, that’s in the corral, stated Attorney Lloyd. But that’s by the creek, stated Ms. Hogue. Where you’re pointing is where the corral is up by the house. “Right,” said Attorney Lloyd. This is when Bill asked for a permit from Gila County to build his little garage and the little office where he had his pawn shop and this is the corral and it shows wood storage, stated Attorney Lloyd. They don’t store any wood in there, stated Ms. Hogue. Questioned Attorney Lloyd – Would you agree that maybe twenty five or twenty years ago or whenever this was done, that was listed as a wood storage area? She can’t disagree with that, answered Ms. Hogue. It’s just not there now.

Questioned attorney for the Armstrong’s, Art Lloyd – Ever since the Armstrong’s found out about the complaints about chainsaws starting at five in the morning, that stopped, hasn’t it? It has for a while, answered Ms. Hogue. Questioned Attorney Lloyd – It hasn’t started up since it stopped, has it? She had not heard anything, answered Ms. Hogue. You said there were big trucks hauling in these logs, stated Attorney Lloyd. Questioned Attorney Lloyd – Were they big semi-trucks? With forty foot trailers? Big trailers answered Ms. Hogue, with big logs. Questioned Attorney Lloyd – You know what a semi-truck is? “Yeah,” answered Ms. Hogue. Questioned Attorney Lloyd – That’s the kind of truck you’re talking about that’s coming on the property? “Yeah,” answered Ms. Hogue. They also have their regular trucks with long beds. Questioned Attorney Lloyd – You’ve seen big logs being hauled by semi-trucks, right? Semi-trucks

can't get around that corner, can they? "Yes they can," answered Ms. Hogue. That concluded Attorney Lloyd's questions for Ms. Hogue. The attorney for the Town of Star Valley, Kristin Mackin, stated she has no more witnesses.

The attorney for the Armstrong's, Art Lloyd, began his presentation by stating he appreciates the opportunity to represent the Armstrong family. The Armstrong's have been residents of this area for fifty to sixty years. He stated he will provide a little bit of history, adding that he's been in the area since 1977. He's not going to testify because he has good people in attendance that will testify. In the early 1970's the Armstrong's lived in the valley. Sometime in the early 1970's Bill Armstrong married Cindy Haught, Roy Haught's sister. After they got married, Roy's father gave Cindy an acre, right where Roy Haught lives now. They moved up there and they bought a trailer. That marriage didn't last very long but we're not going to go into Bill's eleven different wives. After a while Roy's dad comes along and tells Bill he ought to leave because he's not married to his daughter anymore. Bill rented some property and had entered into some sort of agreement with Bert Sprague to buy the four acres. Somehow, and he doesn't know the details, they ended up in a lawsuit. Bill sued Bert Sprague to get the title of this property. This is a judgment in Bill Armstrong's favor, showed Attorney Lloyd, giving him title to this property free and clear. The second page is the most important part, pointed out Attorney Lloyd, because it will prove that Bill Armstrong was living down there before he ever bought it. Attorney Lloyd then read the paragraph on the second page – *That the defendant's H.Y. Sprague and Katherine Sprague take all necessary steps to have said property transferred to the plaintiff free and clear of any liens or encumbrances within thirty days of the signing of this judgment. That the defendant Sprague and each of them pay to the plaintiff the sum of \$1,697 as for attorney's fees and costs plus interest.* This, pointed out Attorney Lloyd, is the most important paragraph. Attorney Lloyd then read the paragraph – *It is further entered upon transfer of said property to plaintiff that the plaintiff pays to defendants Sprague the sum of \$6,900 plus any taxes paid to Sprague on said property during the time plaintiff has occupied the property. The amount of taxes will be determined by the accessor's office.*

The testimony will be that the Armstrong's lived there from approximately 1974, stated the attorney for the Armstrong's Art Lloyd, and they have been there ever since. The judgment was signed by the judge on the 15th of September of 1980 and the Sprague's conveyed the property to Bill Armstrong in November. The Armstrong's have legally owned this property since 1980 but they have occupied it since at least the mid-1970's. Queried Attorney Lloyd – Why is that important? Because as the town has admitted, stated Attorney Lloyd, there was no zoning on this property. That was in Gila County, Star Valley didn't even exist as a municipality and with four acres they could do basically what they wanted to do, and they did. They went into the firewood business. Bill Armstrong ended up leasing the Texaco on Beeline and he sold firewood out of there and he sold firewood out of his property. In 1984 the first deed he got was to 37 Sprague. This used to be one piece and Jimbo Armstrong got title to this in 1984. He and Dana lived there; they were in the firewood business. Jimbo will tell you that as a kid in high school he was helping his dad with the firewood business, and it was going from the time that he was a teenager. Dana and Jim operated this firewood business on the other side of the creek on parcels 27B and 27A, which at the time was just 27. There is no question

that the Armstrong's had title before there was ever any zoning on any of the properties and before Star Valley was ever incorporated.

Sometime well before the Town of Star Valley incorporated, stated the attorney for the Armstrong's, Art Lloyd, the Armstrong's wanted to add a garage. Bill was operating his pawn shop there first. The license for the pawn shop was at 37 Sprague then he moved it over to the trailer park. Then when the park was sold, and Bill had to move out, he moved it back to 37 Sprague. Because it had lapsed, and he hadn't been doing it there he went ahead and applied for a special use permit, and he got it. When Bill applied to Gila County to build his garage and little pawn shop he had to draw it out. This is in the 1990's and if you'll notice, pointed out Attorney Lloyd, this is the area where the corrals are, and he called it a wood storage area. The reason that's important is that's a big corral and that's just not occasional firewood. They were in the firewood business, and they were operating it on all of that property. Attorney Lloyd showed a photo of Bill Armstrong's house on 37 Sprague. He pointed out the firewood and stated the Armstrong's have a contract with Circle K to supply firewood. It's a seasonal business. It's really busy in the summertime and it drops off in the wintertime. They aren't doing much in the winter but it's never, ever ceased to exist. Attorney Lloyd showed another photo and described the process. They bring in the logs, they split the logs into sixteen inch lengths and then they wrap them. Attorney Lloyd then showed a photo that was taken just recently and stated he thinks it's an important photo. This is not the 27B property, pointed out Attorney Lloyd, this is the 27A property. This is where Dana and the other children are still operating their firewood business. You can see the wrapper, the rounds and a splitter. They are still doing that. The only thing that has changed is that they are not cutting it up there. That business is still there, and nobody is apparently complaining about it.

What is going on and has substantially increased over the last twenty years, stated the attorney for the Armstrong's, Art Lloyd, is the Patterson stables. There are sixty to one hundred horses that board there all of the time. People come up there all of the time, especially on weekends. When it comes to the complaints about the traffic, most of the traffic comes from the Patterson operation. It has nothing to do with the Armstrong's, but it is right in back of them. The Armstrong's acknowledge that the Town of Star Valley has the right to pass noise ordinances, stated Attorney Lloyd, every community has that right. They've conceded that and that would even effect "grandfathered" in property. But what the town wants to do is to take away their right to engage in the business they've been in for over forty years. The Armstrong's would ask this board to make the determination that the commercial firewood business is "grandfathered" in on 37 Sprague and 27B. Once it's determined that the town can't put them out of business the Armstrong's can certainly deal with the noise issues and any other complaints. On the first complaint that was filed, pointed out Attorney Lloyd, there were two sheds that were blocking the view. They are gone, they have been removed. He told Jim to get everything out of there that is violating those ordinances. The homeless guy that was living in the trailer that was running the generator, that stopped and that's not going to come back. Those are things the Armstrong's concede to the town and these people have every right to their peace and enjoyment. But don't put the Armstrong's out of business on something they have been doing for forty years.

The attorney for the Armstrong's, Art Lloyd, stated he is going to let people that have known the Armstrong's refute the claim that this business just started up a year and a half ago. Attorney Lloyd called his first witness Dr. Waitz and asked him to tell everyone who he is. Dr. Waitz responded Dr. Thomas C. Waitz, and he lives at the end of Moonlight Drive. Questioned Attorney Lloyd – How long have you lived at the end of Moonlight Drive? They bought the property in 1978, answered Dr. Waitz. Questioned Attorney Lloyd – How long have you actually been down there? They would spend weekends there for a long time, answered Dr. Waitz. He retired and moved up permanently in 2015. Questioned Attorney Lloyd – You've owned the property and lived there since 1978? "Yes," answered Dr. Waitz. Questioned Attorney Lloyd – Are you acquainted with Jimbo? The whole family answered Dr. Waitz. Questioned Attorney Lloyd – Have you seen evidence that they were engaged in the commercial firewood business from the time you bought your property? "Yes," answered Dr. Waitz. They drive by it, every day just about, to get to their place. Questioned Attorney Lloyd – You've seen piles of firewood stacked up? Everywhere, big ones, little ones, answered Dr. Waitz. Questioned Attorney Lloyd – You've heard chainsaws go off? "Yes," answered Dr. Waitz. Questioned Attorney Lloyd – How far back would you say that you observed that they were in this business? He can't tell for sure, but it seemed to him they knew it right from the beginning, answered Dr. Waitz. Questioned Attorney Lloyd – At least prior to 1985, would you agree? "Definitely," answered Dr. Waitz. That concluded Attorney Lloyd's questions for Dr. Waitz.

The attorney for the Town of Star Valley, Kristin Mackin, then questioned Dr. Waitz. Questioned Attorney Mackin – To be a little bit more specific, when you say they had a woodcutting business, which property did you see the wood on at the time that you are referring to? As far as he remembers it was on both sides of the creek and spread out all over the place, answered Dr. Waitz. Questioned Attorney Mackin – Was that at the southern portion where James and Dana lived together? "Yes," answered Dr. Waitz. He thinks it was on both sides of the creek as far as he remembers. Questioned Attorney Mackin – When you say the other side of the creek do you mean 37 Sprague where Bill Armstrong is? "Yes," answered Dr. Waitz. Questioned Attorney Mackin – What activity did you see on there before 1985? Big logs coming in answered Dr. Waitz. They had the men cutting them into the lengths; splitting them; and then packaging them a lot of times for sale at Circle K but also for direct sales as far as he knows. Questioned Attorney Mackin – They were selling them to Circle K before 1985? He doesn't know when that started, answered Dr. Waitz, but it seems like a long time ago. That concluded Attorney Mackin's questions for Dr. Waitz. The attorney for the Armstrong's, Art Lloyd, stated he had one more question for Dr. Waitz. Questioned Attorney Lloyd – You would agree that you saw them wrapping up the firewood and selling it well before 2023? "Oh god yes," answered Dr. Waitz. That concluded Attorney Lloyd's question for Dr. Waitz.

The attorney for the Armstrong's, Art Lloyd, called his next witness Rich "Dick" Henry and asked him to tell everyone who he is. Mr. Henry responded his name is Richard E. Henry and he is a resident of Payson. He moved the family there in 1970. He thinks he started doing business with Bill, out of his Texaco gas station, in 1983. Questioned Attorney Lloyd – You've been down to his property down on Moonlight Drive? "Yes," he has, answered Mr. Henry. Questioned Attorney Lloyd – Prior to 1985 did you observe a commercial firewood business being conducted on Bill's property

down on Moonlight Drive? He can't honestly say that, answered Mr. Henry. He bought wood from him, maybe six or eight cords at a time at that time. He did business with him at the Texaco station, and it was delivered to his home. My little girls can still remember piling that wood, added Mr. Henry. Questioned Attorney Lloyd – How long after you moved up here did you start buying firewood from Bill? “1980,” answered Mr. Henry. Questioned Attorney Lloyd – So by 1980 your testimony in front of this board is that you were buying firewood, commercially, from Bill Armstrong? “Yes,” answered Mr. Henry. Questioned Attorney Lloyd – And you've been out to his house, and you've seen piles of firewood, but you just don't remember the dates? “Yes,” answered Mr. Henry. Questioned Attorney Lloyd – And when you were out there did you see people working there cutting or splitting the wood? “Yes,” answered Mr. Henry. That concluded Attorney Lloyd's questions for Mr. Henry.

The attorney for the Town of Star Valley, Kristin Mackin, then questioned Mr. Henry. Questioned Attorney Mackin – When you were buying the wood from Bill Armstrong out of the Texaco did you visit the property at 37 Sprague at that time? “No,” answered Mr. Henry. He didn't have any business there. Questioned Attorney Mackin – Did you ever visit the property to purchase the wood at the property? Mr. Henry asked Attorney Mackin to state her question again clearly. Questioned Attorney Mackin – Did you ever go to the Armstrong's house to purchase wood? “No,” answered Mr. Henry. Questioned Attorney Mackin – So you are not familiar with what may or may not have been occurring on that property, is that correct? None of his business, answered Mr. Henry. That concluded Attorney Mackin's questions for Mr. Henry.

The attorney for the Armstrong's, Art Lloyd, called his next witness Victor Neese and asked him to state his name. Mr. Neese responded Victor Neese. Questioned Attorney Lloyd – How long have you known the Armstrong's? He met Bill in 1983 or 1984 answered Mr. Neese. Questioned Attorney Lloyd – When you met Bill did you ever have any opportunity to go out to his property? “Many times,” answered Mr. Neese. Questioned Attorney Lloyd – Have you ever done anything at Bill's property? He built the fence, the corrals, and everything else out there, answered Mr. Neese. Questioned Attorney Lloyd – When would that have been? Maybe 1985 or 1986, answered Mr. Neese, he doesn't remember the exact date. Questioned Attorney Lloyd – When you were out there working for Bill Armstrong did you have an opportunity to observe whether or not they were engaged in the firewood business? There has always been wood out there as long as he can remember, answered Mr. Neese. Attorney Lloyd asked him to tell the members of the board what he observed back in the mid-1980's. He remembers the black top road wasn't there then, answered Mr. Neese. There was all kinds of wood out there. He's been out there when people were coming to buy wood from Bill. Questioned Attorney Lloyd – Did you ever see the corral full of firewood? He never did, answered Mr. Neese. Questioned Attorney Lloyd – You did observe commercial firewood operation in effect back in the mid-1980's? “Yes,” answered Mr. Neese. That concluded Attorney Lloyd's questions for Mr. Neese

The attorney for the Town of Star Valley, Kristin Mackin, then questioned Mr. Neese. Questioned Attorney Mackin – Have you been out to the 37 Sprague property recently? Yes he has, answered Mr. Neese. Questioned Attorney Mackin – When was the last time? He was out there in September of last year, answered Mr. Neese, and the year before, and the year before. Questioned Attorney Mackin – What did you observe

on the property at that time? Did you see piles of wood? Last year he moved some wood so they could get to the stage, answered Mr. Neese. Questioned Attorney Mackin – Had you ever had to move the wood to get to the stage before? We’ve moved things around, answered Mr. Neese, yeah. Questioned Attorney Mackin – Would you say there was more wood taking up more area on the property last year than in previous years? There’s been wood here and wood there every time he’s been out there, answered Mr. Neese. That concluded Attorney Mackin’s questions for Mr. Neese.

The attorney for the Armstrong’s, Art Lloyd, called his next witness Dan Good. Dan corrected Attorney Lloyd and stated his name is actually Dan Curtis. Attorney Lloyd asked Mr. Curtis to tell the members of the board who he is. Mr. Curtis responded he is Dan Curtis and he’s been in the area since 1976. Questioned Attorney Lloyd – Where do you live? He lives at 2057 South Moonlight Drive, answered Mr. Curtis. Questioned Attorney Lloyd – Where is that in relationship to the Armstrong property? It’s almost towards the end of the road, answered Mr. Curtis. Not quite as far as Doc down there but about a block from Doc. Questioned Attorney Lloyd – So you pass the Armstrong’s property? “Yes,” answered Mr. Curtis, he lives past there. Before that he used to live next door on the same side of the creek. His dad had gone through the same legal procedure and sued Bert Sprague for his property the same time Bill had sued Bert Sprague. Questioned Attorney Lloyd – You guys had difficulty getting a deed out of Mr. Sprague? “Yes,” answered Mr. Curtis. He was really young at that time. He doesn’t know anything about it, but he knows it was a big deal. Questioned Attorney Lloyd – During the time that you have lived out there did you have an opportunity to go onto the Armstrong property? “Yes,” answered Mr. Curtis. He used to play with the younger kids, Jimbo’s younger brother Greg. There was always woodcutting going on out there. Attorney Lloyd asked him to tell the members of the board what kind of woodcutting activity he had observed prior to 1985. Before 1985 it was all just woodcutting for the sale of wood for people, answered Mr. Curtis. Then Jimbo was in a tree cutting business and he decided he could cut trees down and then sell the wood on top of it. Questioned Attorney Lloyd – So about in 1985 he started actually bringing in logs from the tree business that he was in? “Yes,” answered Mr. Curtis. Questioned Attorney Lloyd – The firewood business was still in operation and was commercially going prior to that time? “Yes,” answered Mr. Curtis. Back then it was just really residential firewood and none of the Circle K wrapped up wood. He came back to live in his dad’s home in 1996, explained Mr. Curtis. From that point, somewhere or pretty close to that, that is when he noticed they started doing commercial business. Questioned Attorney Lloyd – That was well prior to the time the town was incorporated? “Yes,” answered Mr. Curtis. That concluded Attorney Lloyd’s questions for Mr. Curtis. The attorney for the Town of Star Valley, Kristin Mackin, stated she does not have any questions for Mr. Curtis.

The attorney for the Armstrong’s, Art Lloyd, called his next witness Jim Armstrong and asked him to introduce himself. James Stewart Armstrong responded Mr. Armstrong. Questioned Attorney Lloyd – And you are one of Bill’s sons? His second son answered Mr. Armstrong. Questioned Attorney Lloyd – When did you first move up to the Star Valley area? 1972, answered Mr. Armstrong. Questioned Attorney Lloyd – Where did you live? On Roy’s dad’s property, answered Mr. Armstrong. Questioned Attorney Lloyd – How long did you live there before you moved down to Sprague? A year or a year and a half, answered Mr. Armstrong, he was pretty young. Questioned

Attorney Lloyd – How old were you in 1974? He thinks he was in third grade, answered Mr. Armstrong. “Young,” stated Attorney Lloyd. At some point you guys went into the firewood business. Questioned Attorney Lloyd – Can you tell us from your recollection when that started? He knows that Bill and Gary Hardt, when he actually owned the gas station, used to cut wood and bring it to the house and the gas station, so he thinks they started cutting wood in 1971 or 1972, answered Mr. Armstrong. As he got older he got to cut wood and he would haul wood either to the gas station or to the house. Questioned Attorney Lloyd – At some point the wood business grew where you are doing more of it there on the property? “Yeah,” answered Mr. Armstrong. As he got older he got to cut more wood and then he started selling wood. His dad let him sell wood on his property. His dad didn’t like it, but he let him do it. In those days, stated Mr. Armstrong, no one had LLCs in the wood business. It’s hard to show proof. Very few people dealt with checks even when it came to firewood. Everybody paid cash for firewood those days. He’s been in business cutting firewood for himself since he was sixteen.

Questioned the attorney for the Armstrong’s, Art Lloyd – When did you get title to that property on the other side of the creek that you and Dana ending up owning together? The mid-1980’s or somewhere right there, answered Mr. Armstrong. Questioned Attorney Lloyd – Were you conducting the firewood business on both sides of the creek? “Yes,” answered Mr. Armstrong. In those days if anyone was broke they would cut firewood. Everybody sold Bill firewood. Anybody who had a chainsaw would sell him firewood. Questioned Attorney Lloyd – That’s how it got started? “Yeah,” answered Mr. Armstrong. At some point you started bringing in logs, stated Attorney Lloyd. Questioned Attorney Lloyd – Can you tell us about that? He would do tree work, answered Mr. Armstrong. He went to work cutting timber for a man named Junior Haught. He would drive his truck to work, and he’d cut firewood after he got through cutting logs. He would bring firewood either to sell it to his dad or he would keep it and then process it and sell it himself. Questioned Attorney Lloyd – At some point you started wrapping it and selling it to the Circle K or other stores? Campgrounds, whatever, answered Mr. Armstrong. He doesn’t remember when because it was so long ago. Questioned Attorney Lloyd – Has it been more than twenty years ago? “Probably,” answered Mr. Armstrong. He can’t say one hundred percent but probably. Questioned Attorney Lloyd – During that time did you have people operating chainsaws and log splitters down there? “Yes,” answered Mr. Armstrong. When they are really busy it’s probably two guys and him. He has one guy that has worked for him for twenty five years and he still works for him. Another guy worked for him for twenty years but then he started his own business. Questioned Attorney Lloyd – You have an employee right now that’s been working for you in the firewood business for twenty five years? “Yes,” answered Mr. Armstrong. Questioned Attorney Lloyd – Longer than the Town of Star Valley has been incorporated? “Yes,” answered Mr. Armstrong.

You heard the witnesses, the neighbors, complain about the chainsaws, the trucks, the various complaints, stated the attorney for the Armstrong’s Art Lloyd. Questioned Attorney Lloyd – When you first became aware of these complaints did you make any changes? “Yeah,” answered Mr. Armstrong. Questioned Attorney Lloyd – What did you do? He believes Donna had come up and talked to Corky, she didn’t really talk to him in the beginning. He could be wrong. Donna then came to him, and he understood her concerns. The chainsaws started early because they wanted to get done as early as they

could. He didn't tell anybody to put the porta-potty close to Donna's house. As soon as he heard about the porta-potty he moved it. He doesn't know when it got said or how long it took for the complaint to get to him, but he moved it. He is definitely concerned about people's feelings. The things that he did do were big for him to do. Where those sheds are at, stated Mr. Armstrong, that is his property. He pulled up there and he could see in both directions. He knows they were an eyesore, and he is very sorry that happened. Questioned Attorney Lloyd – But you moved them? “Yes,” answered Mr. Armstrong. They got moved. He sold one to Shari Patterson and then he dragged the other one off.

There have been complaints about all the trucks and the traffic coming in there, stated the attorney for the Armstrong's Art Lloyd. Questioned Attorney Lloyd – What do you say to that? He has three guys that work for him that arrive in the morning, answered Mr. Armstrong. They don't ever drive fast. They might have once acknowledged Mr. Armstrong, but he told them they would lose their job if they ever did it again. He has his pickup and two dump trailers and those are the only two pickups that have ever come into that yard across the corrals. He has never taken a semi across that road because if he could of he would of. Questioned Attorney Lloyd – Where's most of the traffic coming from? “The Patterson's,” answered Mr. Armstrong. People come to ride their horses. Shari has been there almost thirty years, and nobody complains about their traffic. He wouldn't complain about it either because they've had horses up there and people have got to have a place to keep their horses. He doesn't know if Shari has a business license, stated Mr. Armstrong, but nobody has even mentioned the traffic that they bring when they have their horse shows. There are some things that he can fix, and he will fix. He felt he was being pushed. He respects everybody and he's never said a bad word to them. He's never yelled at them or glared his video camera at their place like they do his. He understands their concerns. Questioned Attorney Lloyd – What is it that you want this board to do? He wants to be fair to his neighbors, answered Mr. Armstrong, but he wants them to be fair and let him run his business out in the yard. He will work with a timeframe or whatever he needs to do but he needs to be able to work. It's your livelihood, stated Attorney Lloyd. Running chainsaws is all he's ever done his whole life, stated Mr. Armstrong. That concluded Attorney Lloyd's questions for Mr. Armstrong.

The attorney for the Town of Star Valley, Kristin Mackin, then questioned Mr. Armstrong. Questioned Attorney Mackin – You said in 1974 you were maybe about ten, like third grade, nine or ten? He honestly can't remember, answered Mr. Armstrong. Questioned Attorney Mackin – So in 1985 you were maybe like twentyish? Probably somewhere around there, answered Mr. Armstrong. You mentioned that you've been in the firewood business since you were sixteen, stated Attorney Mackin. Questioned Attorney Mackin – Were you hauling wood to your house or your dad's house at 37 Sprague? He bought the Moonlight property that they moved on from his dad. They worked both sides, even when his dad owned it. Questioned Attorney Mackin – That was maybe 1980? “No,” answered Mr. Armstrong. It was the mid-1980's. He was graduating from high school. He graduated in 1980, added Mr. Armstrong. Attorney Mackin referred to an exhibit of a deed. Questioned Attorney Mackin – Do you remember asking for that rezoning? “No,” answered Mr. Armstrong. He did not ask for it. He knows it said he did, but that is not his signature. He didn't sign the paperwork

and he doesn't remember. He doubts he would be the one to rezone the property. Questioned Attorney Mackin – At that time you were cutting wood on the property? He cut wood and logs, answered Mr. Armstrong. Questioned Attorney Mackin – In the spring of 2023 you moved a little more north on the property? “Yep,” answered Mr. Armstrong. He still had wood on both sides of the road. A lot of it came to 37 Sprague. Questioned Attorney Mackin – From the 1719 Moonlight? He didn't take wood off of there, answered Mr. Armstrong. He just started hauling wood over to 37 Sprague. Both places were being used.

Questioned the attorney for the Town of Star Valley, Kristin Mackin – So you'd say it increased after the spring of 2023? He wouldn't say that. It's busy in the summer and it's not busy in the winter. It may be busier in the spring, acknowledged Mr. Armstrong. In 2022, stated Attorney Mackin, the neighbors weren't hearing any chainsaws. Questioned Attorney Mackin – What is the difference there? He has no idea, answered Mr. Armstrong. All he can say about the noise is he can hear the cattle guard at his house when somebody pulls into Pete's Place. He doesn't know how they didn't hear him. Questioned Attorney Mackin – In March of 2023 you did move some business to the 37 Sprague? He's had the whole horse pen where he couldn't put another piece of wood in it and that's probably a quarter of an acre, answered Mr. Armstrong. Questioned Attorney Mackin – How long ago was it that you had all that wood in the corral? He does not have a clue, answered Mr. Armstrong. They move wood and he has wood everywhere. His business has always had wood and wherever he can get wood he gets it. Some people let him keep it on their place. Questioned Attorney Mackin – Are the abandoned vehicles somehow a part of the woodcutting business? When you've had a business for thirty five years you have equipment, answered Mr. Armstrong, you have broken down stuff. It got pushed from one side of the property, about thirty yards to the north from where it was. It moved thirty yards and that's when they complained. It moved from Dana's property, which used to be his, thirty yards from where it is sitting right now and now it's a problem. It never was a problem before that. It was never a problem when the wood yard was on 1719 Moonlight Drive with five or six guys cutting back then. Nobody ever said a word, stated Mr. Armstrong. That concluded Attorney Mackin's questions for Mr. Armstrong.

The attorney for the Armstrong's, Art Lloyd, showed Mr. Armstrong a deed from one of the exhibits. Questioned Attorney Lloyd – When did you get title to B from your father? What's the date? Mr. Armstrong did not have his glasses so Attorney Lloyd read that Tract B of Evergreen Trails was deeded to Jim and his dad on the 23rd of December of 1986. There was some talk about you cutting in a big road. Attorney Lloyd asked Mr. Armstrong to tell everyone what that was all about. On the road that they are talking about, stated Mr. Armstrong, he's never had to use that little easement. When he got divorced Dana wanted to fence it off and he said that's fine. That road was there except when the construction of the wet water crossing was done they put about thirty loads of dirt on there and widened the road out and he didn't say anything because he didn't need that road at that time. It is the only way he can get out of his property, but it was a road before. You reopened your road, stated Attorney Lloyd, because you fenced off the back between you and Dana's property. “Yes,” answered Mr. Armstrong. That concluded Attorney Lloyd's questions for Mr. Armstrong.

The attorney for the Armstrong's, Art Lloyd, stated he thinks they have shown clearly that the Armstrong's have been in the firewood business for a long, long, long time. Long before there was the Town of Star Valley. All he asks is that the board find that the business is "grandfathered" in. The Armstrong's will deal with the ordinances, and they'll try to make everybody happy. Please don't put him out of business, stated Attorney Lloyd. That concluded Attorney Lloyd's closing remarks.

The attorney for the Town of Star Valley, Kristin Mackin, stated she will take a couple minutes for a closing. What we've learned today is that there was definitely a shift in 2023 when operations moved from the 1719 to the 37 Sprague and the 27B parcels. There are a couple of points of law that she wanted to remind everyone of. If there was a non-conforming use, that use can't be expanded, and it can't be expanded onto another parcel. The area and the size and the scope can't be expanded, explained Attorney Mackin. Previous to 1985, if there were commercial woodcutting operations, it seems that wasn't anything like what's happening on the property beginning in the spring of 2023. There are individuals who have lived on, next to and adjacent to that parcel. In 2006 they weren't hearing and seeing what's going on now. In 2009 they were not hearing and seeing what's going on now. In 2019 somebody moved into the property and can observe everything from the front and side yards of their house, and they were not seeing then, the change and shift that occurred in 2023. That use of the commercial woodcutting business, if it existed previous to 1985, has far exceeded the scope of anything that's occurring in 2023. That, unfortunately, causes a non-conforming right if there was one, to be lost to that extent. That is just a matter of Arizona law, pointed out Attorney Mackin. The town is only trying to enforce its zoning ordinance. The business can continue in an appropriately zoned area anywhere else industrial or commercial that would fit it. The point is not to put someone out of business, concluded Attorney Mackin, it's to ensure that the residential area stays and remains residential in character. That concluded Attorney Mackin's closing remarks.

The attorney for the Town of Star Valley, Kristin Mackin, asked the board if they had any questions. The attorney for the Armstrong's, Art Lloyd, stated he would like two seconds since Attorney Mackin quoted some law. He stated he will read a statute from the *Watanabe v. the City of Phoenix* case. This is the Armstrong's position, added Attorney Lloyd, and they agree with it. Attorney Lloyd then read A.R.S. 9-462.03 – *Non-conforming uses are subject to reasonable police power and regulations through zoning ordinances including ordinances designed for the preservation of the environment and the protection of ecological values so long as the application of such regulation does not substantially impair the continued use of the property for the purpose used at the time the ordinance or regulation takes effect.* That is the Armstrong's position, concluded Attorney Lloyd. The Armstrong's are willing to work with the town to comply, but it can't substantially impair their ability to maintain their business.

Questioned Member Woolsey – Is there is a statute that states that? Is that what that is? "Yep," answered Attorney Lloyd. The attorney for the Town of Star Valley, Kristin Mackin, stated she wanted to make clear the town's position. What is happening on the 37 Sprague and 27B properties is not a continuation of what may have been happening on the property prior to 1985. There have been several events that have been kind of glossed over that really have impacted any non-conforming use right. The division of Tract B into the smaller parcels, 1719 Moonlight and 27B, that development

of the property causes a loss in any non-conforming use if it exists at the time. The change in the nature of the business and the change in the area that it's taking up. And, concluded Attorney Mackin, expanding onto or moving onto different parcels will cause a loss in that right.

Chairman Leis asked the board if they had any questions. Member Leis stated he had one question. In 2023 the Blattner Pit was opened up to substantially larger trees, stumps and logs. Because he is the treasurer of that group he sees all of the people that sign in and the increased activity. Questioned Chairman Leis – Is all of this additional noise, traffic and stuff a direct relationship to the fact that you are now bringing all your logs to your firewood place rather than hauling them to Pine, because of the additional cost, or taking them to the Blattner pit? Most of what he takes to the Blattner pit is fire wise jobs, answered Mr. Armstrong, which is small vegetation. His tree removal has been down, and he's actually had to buy wood. He's not been getting a lot of tree work in the last few years. Questioned Chairman Leis – Did the availability of dumping four miles away from your firewood place over the last twenty four months add substantial volume to what you're now cutting and selling and trying to find a place to stack? “No,” answered Mr. Armstrong, because in the last year he bought a lot of wood. He hadn't done a lot of tree removal jobs. Any big wood that has big knots he has to take to Blattner or Pine. Time wise and cost wise he would much rather take it to Blattner. That is the key point, stated Chairman Leis, that you used to take a major portion of that large stuff to Pine because the Blattner pit couldn't handle it. Depending on where the job was at, stated Mr. Armstrong. If the job was in Pine he would never haul it back to Star Valley. Questioned Chairman Leis – Do you have a higher percentage of the logs that you are now getting from your tree business coming back to your yard? “No,” answered Mr. Armstrong. In the last two years his tree work and fire wise business has really fallen off. For the benefit of the community, explained Chairman Leis, the Blattner pit has said that commercials that are doing work within the community, within the constraints of what they can or can't take in, can be brought to the pit. He was wondering, stated Chairman Leis, if Mr. Armstrong's volume was being increased by that open door that he doesn't have to haul it. And, wondered Chairman Leis, maybe that volume that he is dealing with could be done with electric chainsaws rather than gas. If you are cutting limbs, answered Mr. Armstrong, you could do that. Very seldom does he even cut a limb. He does very little of small diameter stuff. Chairman Leis stated he was looking to see if that particular activity that they are doing at the Blattner pit and what he is doing with his tree business would possibly have an impact on the number of log trucks coming in. Or if any of those had relationships to something else that could be looked at, stated Chairman Leis, to help reduce the traffic, reduce the chainsaw noise and still keep him in business. You can't run a commercial business and sell any kind of volume at all running an electric saw, stated Mr. Armstrong. He would be willing to open the door to anything that's reasonable but in his kind of business an electric saw is not the way to go.

Member Woolsey stated she has a question for Mr. Armstrong. Questioned Member Woolsey – As far as bringing in big giant logs and cutting them up on that property, is there a way that you can cut them up in smaller pieces out in the forest? The forest does not want him to do that, answered Mr. Armstrong. The noise is the same from a big log as it is a little log. She is just looking at trying to reduce the noise for the neighbors, stated Member Woolsey. Questioned Chairman Leis – Are you cutting

eighteen inch rounds? Lengthwise, answered Mr. Armstrong, sixteen and a half to seventeen inches. Questioned Member Woolsey – You start off with some big logs? “Yes,” answered Mr. Armstrong. A log to him is the length of a tree. Questioned Member Woosley – Can’t the large volume be done elsewhere? He bought sixteen cords of processed wood for \$4,000 so he could see if it would pencil out, explained Mr. Armstrong. He doesn’t think it’s going to because it doubled his cost. That wood was already processed and dropped off and then he hauled it from where it was dropped off. That concluded the board’s questions.

If the parties are done with their positions, stated the attorney for the Town of Star Valley, Kristin Mackin, the board can open the meeting up for public comment. Chairman Leis opened the meeting to public comments. Kevin Hogue of 33 South Sprague Drive stated he had asked Jim if he could start chain sawing at seven or eight. Jim told him he doesn’t think his men will go for that. The next day he started at five thirteen in the morning. It’s been like a vendetta ever since. Jim started putting junk up in front of his house. Jim’s had people living there, stated Mr. Hogue, that he thinks are doing drugs. One of them even broke into Jim’s son’s house. He doesn’t want to go anywhere, stated Mr. Hogue, because he’s afraid he will get ripped off too. Jim’s son has an attitude like you wouldn’t believe. Cussing at his wife and that kind of thing. Mr. Hogue then played an audio of the noise made by the chain sawing being done in the dark. Questioned Chairman Leis – You’re not getting that now, are you? “No,” answered Mr. Hogue, but the trucks still wake him up when they come in because they talk, yell and laugh. And this is before five o’clock in the morning. It just jars you awake. He’s retired and he’s worked hard all of his life as a roofer/contractor/carpenter and he’d like to sleep in once in a while. Even on Saturday’s it’s going. He used to visit Bill and Corky. It all changed when Bill brought Jim in. Even if he wanted to move, stated Mr. Hogue, he now has a junk yard in front of his house. Queried Mr. Hogue – Who is going to buy his house now? Questioned Member Salem – Is that still happening today? Not in the last couple of months, answered Mr. Hogue. Questioned Member Salem – Since the town’s gotten involved? He did hear a chainsaw the other day about ten o’clock at night from Jim’s son across the way, answered Mr. Hogue. He had some really good neighbors and now it’s really sad. He doesn’t want to move but he couldn’t sell it anyway. He is stuck, concluded Mr. Hogue. We hear what you are saying, stated Chairman Leis, and we appreciate it.

Bob Colabianchi of 29 Sprague Ranch Road thanked everyone for their time. He respects the Armstrong’s, stated Mr. Colabianchi. Jim’s worked on his backyard. He respects what they do, and he respects them in the community. It was asked if we have been hearing the chainsaws in the past couple of months. It has been quiet, but he can tell everyone that before 2023 he also never heard any chainsaws. Whatever was happening those twenty years we’ve been talking about, if we could go back to that, everything would be cool. It’s just the fact that the constant sound is not something that’s existed over the past couple of months. It also didn’t exist prior to 2023. If it did, there probably would have been a hearing in 2022 or 2020. Mr. Colabianchi stated he appreciates everybody’s commitment. He thanked everybody for their time and stated he appreciates it. That concluded the public comment portion of the meeting.

Chairman Leis stated he appreciates everyone’s input. Hopefully the board can make a decision that matches everybody’s needs and also stays within the guidelines of

the rules and regulations that exist. Chairman Leis asked the attorneys if they had anything else. Both stated they did not. Chairman Leis stated he would like to close the general portion of the meeting and go into Executive Session with the board to review what they've heard. He asked those in attendance to please vacate the building.

- **ADJOURNED INTO EXECUTIVE SESSION**
- **MEETING CALLED BACK TO ORDER**

The board has discussed the information that was given by both counsels, stated Chairman Leis, and the information in their book. The board has tried to determine what they feel is the best overall decision and they have come up with pretty much of a collective decision. Member Woolsey stated she would like to make a motion that they cannot have a commercial operation in an RR area. She says that only because she does know that it is "grandfathered" in because it's been there forever, but it changed. The attorney for the Board of Adjustment, Doug Jordan, stated he thinks the question is whether there is or is not a legal non-conforming use. That's the question in front of the board. At this time, responded Member Woolsey, "no." Questioned Attorney Jordan – You want the board to find that there is not a legal non-conforming use? "Correct," answered Member Woolsey. That is the motion then, stated Attorney Jordan. Questioned Attorney Jordan – Is there a second? Chairman Leis then seconded the motion.

The attorney for the Board of Adjustment, Doug Jordan, asked for discussion. We just don't think this is the right business for the neighborhood, stated Member Salem. We think there are problems that can be solved in other ways that don't involve the neighbors. We don't think the fact that they have been cutting wood in this place for the last ten, twenty, thirty, forty years means anything. This is a residential area, concluded Member Salem, it's not industrial and it's not commercial. That's what Member Salem thinks, stated Member McNeeley. He's been here since 1987, stated Member McNeeley, and he knows Bill really well. He sold him hundreds and hundreds of cords of wood in a two year period. He feels sorry for the neighbors, and everyone involved. The board tried to discuss it but there is no way to fix it. He knows for a fact that it was there since 1987, concluded Member McNeeley, and he believes it is "grandfathered" in. He does not believe that it is "grandfathered" in, stated Chairman Leis, because some specific documents that would show that are lacking. Mr. Armstrong hasn't turned in any sales reports or any substantiating things that are needed to be able to run a business in Star Valley. Mr. Armstrong is also in violation of numerous Star Valley guidelines. You don't just turn your cheek and let it keep going and say it's "grandfathered" in and it's okay. In his opinion, concluded Chairman Leis, it's not. Member Woolsey stated she has pretty much the same opinion. She does understand that it's been going on forever, but it has changed and that, according to what they have heard, makes what the Armstrong's are doing not lawful anymore. Time has changed it, stated Chairman Leis. It was then Member Johnson's turn to discuss. Member Johnson stated she has no comment. We all feel for the people that have homes up above, stated Chairman Leis. We feel for the Armstrong family and their business. Member McNeeley asked if they should do a vote. The board should call for the question, answered Attorney Jordan, and

then have a formal vote. Chairman Leis instructed Town Clerk Chapin to take notes for individual decisions. Chairman Leis stated his vote is no. Attorney Jordan reminded the board that the motion was that the legal non-conforming use no longer exists. A “yes” vote would be it no longer exists, explained Attorney Jordan. A “no” vote would be that it does exist. Member Woolsey thanked Attorney Jordan for the clarification. Town Clerk Chapin continued on with the vote beginning with Chairman Leis.

A motion that there is not a legal non-conforming use was made by Member Woolsey and was seconded by Member Leis.

A roll call vote was taken:

Chairman Vern Leis Yes, Member Pat Woolsey Yes, Member Christine Johnson No, Member Tony McNeeley No, and Member Mark Salem Yes.

The motion was voted on and passed 3 – 2.

• ADJOURNMENT:

A motion to adjourn the meeting was made by Member Woolsey and was seconded by Member McNeeley.

The motion was voted on and passed 5 – 0.

APPROVED:

_____ **DATED:** _____
Chairman Vern Leis

ATTEST:

Eddie Chapin, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Board of Adjustment and Appeals Meeting for the Town of Star Valley held on the 30th day of May 2024. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 17th day of June 2024.

Eddie Chapin, Town Clerk