



**DRAFT MINUTES
TOWN OF CAMP VERDE
BOARD OF ADJUSTMENTS & APPEALS
473 MAIN STREET, SUITE 106, CAMP VERDE, AZ 86322
TUESDAY, MAY 9, 2023, AT 3:00 PM
REGULAR SESSION**

Zoom Meeting Link:

<https://us06web.zoom.us/j/85630748203?pwd=WnJySnV3WUFkajB2Q0dvQlB2WXZYUT09>

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Meeting ID: 856 3074 8203

Passcode: 050304

1. **Call to Order** Chairman BJ Davis called the meeting to order at 3:00PM
2. **Roll Call** – Chairman BJ Davis; Vice Chairman Buck Buchanan; Tanner McDonald; Jeremy Brady; Rodney Corbin, All Present.
3. **Pledge of Allegiance** Mr. Corbin led the Pledge of Allegiance.
4. **Consent Agenda** – All those items listed below may be enacted upon by one motion and approved as Consent Agenda Items. Any item may be removed from the Consent Agenda and considered as a separate item if a member of the Board so requests.

a. **Approval of Minutes** – April 11, 2023

b. **Set Next Meeting, Date and Time** – June 13, 2023, at 3:00 PM (currently no items to discuss)

Mr. McDonald **moved** to accept the consent agenda.

Second by Mr. Corbin.

Roll Call Vote-

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Aye

Tanner McDonald: Aye

Motion carries 5-0.

5. **Item Withdrawn by Applicant - Public Hearing followed by Discussion, Consideration and Possible Approval of a Variance to encroach into the rear yard setback from 25' to approximately 11'.** Staff Resource: John Knight

Applicant/Owner: Justin Chambers

Parcel: 404-13-383

Zoning: R1-10

Address: 4732 E Cripple Creek Drive

6. **Public Hearing followed by Discussion, Consideration and Possible Decision on a Zoning Interpretation from the Community Development Department regarding the transfer of animal points by lease, license, or any mechanism.** Staff Resource: John Knight

Applicant/Owner: Stephen Magoon and Jill Irvin

- Staff Comments

- Applicant Comments/Presentation
- Public Hearing Open
- Public Hearing Closed
- Applicant Comments or Questions
- Board Discussion

Staff Comments:

Chairman Davis shared that they held an Executive Session right before this session in order to consult their attorney on how to legally address this issue.

Additionally, Community Development Director John Knight made a few notes prior to the beginning of this discussion.

He explained that back in February they issued an interpretation regarding calculation of animal points. The board's decision this evening would be relevant to all properties, not just the properties brought up in the discussion.

The real question comes down to what is and how they count animal points? Can you use neighboring properties to increase animal points? The interpretation determined that you could use adjacent, or in this case contiguous properties to increase your animal points, if you have a legal instrument, such as a lease. Animal points are based on a table, included in the packet. This evening, the board has the authority to affirm the staff's decision, overturn the decision, or modify the decision if the board feels it's appropriate.

Applicant Comments/Presentation:

The applicant, Stephen Magoon, presented on behalf of himself and Jill Irvin. They reside at 3150 S. Sierra Ln Camp Verde, AZ 86322.

Mr. Magoon began by reading through his PowerPoint presentation.

The issue at hand is that Mr. Magoon's neighbor, Trampus Mansker, routinely exceeds the farm animal count at the Mankser property. Mr. Magoon and his wife Jill Irvin, in turn, have complained to the Town of Camp Verde on several occasions. Mr. Magoon feels that Camp Verde has taken no action to remedy Mr. Mansker's repeated violations.

As a result of Mansker's violations of the animal count limits contained in the Ordinance, Mr. Magoon and Ms. Irvin requested that Camp Verde issue a zoning interpretation to clarify how to calculate animal points under ordinance. Camp Verde issued its interpretation on February 9, 2023, concluding in part that, although a property owner such as Mansker could not exceed the animal count restrictions simply by obtaining permission to use the animal points appurtenant to and a contiguous parcel of property, the land owner could exceed the prescribed farm animal count in the Ordinance by leasing or licensing property from the owner(s) of contiguous property, and then using the lessor's animal points to house and care for the farm animals on the lessee's property.

This is significantly different from leasing a piece of property and then distributing animals across the properties, which is a long-standing practice in the farming and ranching community. If the intent of this Administrative Interpretation was to clarify that position, it does not. The interpretation asserts that it is now the animal points that transfer from one property owner to another not that the animals have been distributed across multiple lots. The interpretation concludes that the Mansker property has been out of compliance over the last 2 years.

For the reasons set forth herein, Mr. Magoon feels that Camp Verde and the Board of Supervisors should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a license or by leasing contiguous property of a neighboring landowner. He feels the interpretation is a rather bold attempt to circumvent the Town of Camp Verde's ordinance regarding prescribed animal densities in rural residential neighborhoods.

Mr. Magoon's attorney, John Browder, felt that Mr. Magoon did a great job flushing out the details of the case. He did emphasis a couple of points, speaking in favor of and giving more clarification to Mr. Magoon and Ms. Irvin's stance on the topic.

Chairman Davis opened the public hearing at 3:27.

Gail Pate, 3302 W Middle Verde Rd., spoke on this agenda item. In 1997 she drafted the current animal stocking recommendations for the Town of Camp Verde. She feels points have no inherent value. They are just a way to

help count animals in an equitable way because the intent is and has been for nearly 26 years in Camp Verde to use points to enforce town code. They cannot be re-interpreted to act as if they are tangible, tradeable assets.

Dave Grondin, 1903 Country Ln., spoke on this agenda item. He does not feel that Mr. Mansker should not be allowed to rope cows on his property. He does feel, however, that codes are ordinances applicable to this situation should remain as they are.

Michael Black, 1913 E Country Ln., spoke on this agenda item. He thinks the board should go to Mr. Mansker's place and look. He feels Mr. Mansker keeps a spotless place, and he hopes they look at the whole town when they decide to do something about this process.

David Dane, 1360 S Rio Verde Ln., spoke on this agenda item. He feels that Camp Verde town code allows more than twice the best practice of the state of Arizona for cows per acre. He feels this is a bad idea and should be discouraged in city limits. He feels there is no good reason why neighbors should be able to lease, loan, or trade unused animal points to one another.

Eileen Martin, 1733 N Aren Del Loma, spoke on this agenda item. When she and her husband were looking for enough land to house their horses, they specifically found 2 acres for their four horses. She doesn't feel as though everyone in Camp Verde follows the guidelines the way they're supposed to. She had many questions on how it's a good idea to have an animal point system, with the ability to transfer points to one another. She is requesting that the board reverse this zoning interpretation.

Sherry Wishchmeyer, 866 N. Garner Ln., spoke on this agenda item. She feels that animal points are not a commodity that can be traded or loaned. They are a mechanism the town has put in place to determine the number of farm animals, large or small, that can be housed on any parcel or lot of land within the town. She is not in favor of loaning, leasing, or transferring animal points. She is asking that they reverse the document, as it erodes the current animal code.

John Cox, 4641 E Canyon Dr., spoke on this item. He said he doesn't have anything to do with this item, but he does understand issues that are being faced, as for 10 years he has been trying to get codes enforced in his neighborhood. He would like to see the code changed, not amended.

Janet Anderson, 1587 S Rio Verde Ln., said she supports the Camp Verde animal count system. She feels points are not a commodity. They are not to be traded, bartered, given, or sold to adjacent property owners. She feels it negates the entire point of the point system, which is rational, thought out, and a fair way to manage animal numbers in residentially zoned properties within the town limits. She disagrees with the interpretation allowing points to be transferred.

Trampus Mansker, 2083 E Hardy Ln., spoke on this agenda item. He understands what the code says. He thinks the biggest hurdle is the nuisance, meaning the sight of animals. It can't be a cleanliness or maintenance thing because he's had zero violations in that area. He said the animal count was put in place a long time ago. He's not sure how it mathematically came up with, however, that's not important to him. What's important to him is the well being of the animal, if the property is being cleaned up, and that it's not creating a nuisance for a neighbor. He has several neighbors who are not bothered by this, but one that is. Do they really want to change the code that's been in place for a long time, and that's worked, to appease one person.

Christa Brunori, 1738 Arena Del Loma, spoke on this agenda item. She spoke on behalf of changing the animal count. She feels people manipulate the code in order to favor their own opinion. Ms. Brunori wonders what process is available that the town is willing to create or give as an opportunity for those who would like to apply to be able to do more for their own family. She feels it comes down to recognizing that this current point system is not working.

A letter was also read by Town Planner Cory Mulcaire from Morty and Leanne Stansbury 3575 S. Sierra Ln. In the letter, the Stansburys spoke in support of the arguments of Mr. Magoon and Ms. Irvin. They also believe that if this interpretation stands, it could create uncontrolled conditions on very limited spaces/lots within the community or Camp Verde.

Gail Metz, Que Paso Dr., spoke on this item and feels that even having two animals creates a bad smell in a confined area. As a result, they've opted to downgrade to one animal on their two acres. So, if they're allowing points to accumulate by one person, it leads to having excess animals on one property, likely creating bad smells. It's unfair to the other neighbors who maybe weren't in agreement of transferring their points.

Chairman Davis closed the public hearing at 3:55.

Applicant Comments or Questions:

Mr. Magoon spoke again and said the point of his appeal is whether the ordinances support, on any legal basis, the transferring of animal points via a lease or license or any other mechanism, which he holds that it is not. His attorney, Mr. Bowder, also spoke again, pointing out that it's important to pay attention to the words of Ms. Pate and the words of the interpretation. They have here the intent of who drafted it.

Board Discussion:

Mr. Corbin said he feels this needs to go back through the rest of the channels (P&Z, Council) and be put to bed. It must be explained and written down so that everyone has the same explanation for what it is.

Mr. McDonald said he thinks the point systems and how they stand don't apply very well to arena or other areas in rural communities. He knows there are community members who enjoy roping livestock. They're going to need to have more animals to do so. He wonders if that was even considered when they made the animal point system what it is. He's in agreement that it needs to go back to P&Z and Council

Mr. McDonald's biggest issue is that either way it impacts people significantly. This makes it very difficult to make a decision.

Mr. Buchanan said it was 10 or 12 years ago that this came up on Town Council. They hashed it out in multiple meetings, as it was on their agendas several times. Finally, it was decided on that the program they had been running was working fine. He has no idea why this issue is in front of them again because one man made a decision that is costing lots of dollars, and he shouldn't have ever been able to make that decision.

He hopes that the decision that comes out of this is that they get meeting times to be able to hash out.

He doesn't want to see it go back to Council. He doesn't feel like anything is going to change, as what they have right now is working.

Chairman Davis spoke in agreement with Mr. Buchanan. He feels that the basic animal count system they've had in place works and has worked for years. He agrees with Mr. Browder and Mr. Magoon's arguments. A lot is defined by a property line. He wants people to have a reasonable number of animals to enjoy their lifestyle, but they also need to control that so that it doesn't impact neighbors.

He feels Mr. Knight overstepped his boundary in writing his opinion as broadly as he did. However, he did commend him on limiting it to contiguous property and the suggestion he gave Mr. Mansker of applying for agritourism in order to increase animal count from the standard.

He also feels that it needs to go back to planning and zoning and through Council because of the issue of transferring by license or lease. He doesn't think that was ever anticipated and can create a huge problem. He also does not think they should walk away from it today entirely. He feels they need to give Mr. Knight and P&Z some direction today.

Chairman Davis made a **motion** that Mr. Knight's interpretation stands with the modifications that the words "or leases" be removed in two places so that the first sentence would read "the allowed livestock on a lot is only increased under section 305 where a property owner owns the contiguous area." Then, the first sentence in the second paragraph reads "Owners that wish to increase their number of animals have the options, including to purchase contiguous area or apply for an agritourism use permit." , adding also to the end of the second sentence in the first paragraph a limitation on transferring animal points by lease or license to read "it is not enough to have permission to use or temporarily move around animals on a neighboring lot nor to transfer animal points by lease or license from one lot to another." It will be sent back to planning and zoning to consider and modify the actual ordinance if they feel it is right to do so. Then it will be sent up to Council. Everyone here will have an opportunity again to make comments if they think it should be modified.

Second by Mr. Corbin.

His three essential points are 1. Remove "or lease" from Mr. Knight's interpretation two times. 2. They add a restriction on not being allowed to transfer animal points by lease or license from one lot to another 3. Send it back up to P&Z, in which they can modify it anyway they want and rewrite the ordinance and allow transfer if they feel it's proper. Because of the transfer by lease and license issue, he thinks it needs to go back to a public forum to be discussed and decided.

Mr. McDonald said he feels it needs to go up to P&Z, but isn't sure he agrees to the first part of the motion because in doing so, it will force people to move animals out, and those animals can likely be right back after it's sent to P&Z. He would like to see arenas with a different set of animal counts.

Chairman Davis asked Mr. Knight if there are several situations like Mr. Mansker, where there are occasions of being over animal count. He feels Mr. Mansker's situation would be perfect for agritourism.

Mr. Knight said there may be other operations, but they haven't had any requests or complaints about those. There are a lot of arenas in town. However, he's not sure about them being over on their animal counts.

Mr. Davis asked about temporary use permits for events where they will temporarily be over animal count. Mr. Knight said there's nothing under their temporary use permit process that would allow that.

Mr. Knight knows the code is not perfect. Most of it was adopted from the county over time. Their intent is to take it and do a comprehensive update. That has been the intent of P&Z and Council. This animal problem has been an issue for a long time. Half of the people are happy with it, half are not. They won't please everyone. It needs to be clarified to find a situation that works. He feels it comes down to the distribution of the animals. He feels it all boils down to whether the properties are contiguous or not. The Code isn't always agreed with, but they do their best to enforce it.

Mr. Corbin agrees that the code needs to be clarified.

Mr. Brady agrees that public input and going back up through the channels is a good thing.

Chairman Davis said if they removed his wording about the transfer of the animal count from this interpretation and just stayed silent on it because it's clear the board doesn't agree with the transfer of animal count by lease or license. So, that direction can be taken to P&Z and they can work around that issue. They're not here to cause further problems.

Roll Cal Vote-

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Nay

Tanner McDonald: Aye

Motion carries 4-1.

7. Board Informational Reports: Individual Board members may provide brief summaries of current events and activities. Summaries are strictly for the purpose of informing the public. The Board will have no discussion, consideration nor act on any such item, except an individual Board member may request an item be placed on a future agenda.

None

8. Staff Comments

None

9. Adjournment Chairman Davis adjourned the meeting at 4:22.

Mr. Brady **moved** to adjourn the meeting.

Second by Mr. Corbin.

Roll Cal Vote-

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Aye

Tanner McDonald: Aye

Motion carries 5-0.

Please note: Staff makes every attempt to provide a complete agenda packet for public review. However, it is not always possible to include all information in the packet. You are encouraged to check with Staff prior to a meeting for copies of supporting documentation that may have been unavailable at the time agenda packets were prepared.

Note: Pursuant to A.R.S. §38-431.03A.2 and A.3, the Board may vote to go into Executive Session for purposes of consultation for legal advice with legal counsel on any matter listed on the Agenda, or discussion of records exempt by law from public inspection associated with an agenda item.

The Town of Camp Verde Council Chambers is accessible to the Handicapped. Those with special accessibility or accommodation needs, such as large typeface print, may request these at the Community Development Office.

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the Town of Camp Verde and Bhasas on May 2, 2023 (date) at 12:00 (time).

(signed) _____ Cory L Mulcaire _____ (print name and title) Cory Mulcaire, Planner

Chairman BJ Davis

Community Development Director John Knight

CERTIFICATION

I hereby certify that the foregoing minutes are a true and accurate accounting of the actions of the Board of Adjustment and Appeals of the Town of Camp Verde, Arizona during the Regular Session held on the 9th day of May 2023. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 9th day of May 2023.

Mary Frewin
Mary Frewin, Recording Secretary



APPEAL OF ZONING RECORDING
INTERPRETATION 2023-01

Magoon- Irvin

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ My name is Stephen Magoon. My wife Jill Irvin and I reside at 3510 S Sierra Lane in Camp Verde Arizona.
- ▶ Leasing property on which to house or graze livestock is a long-standing practice in the farming and ranching communities.
- ▶ This appeal in no way attempts to challenge that practice.
- ▶ The Town of Camp Verde will argue that supporting that long held practice is the bases of their interpretation, it is not.
- ▶ Rather, the Interpretation is either a bold attempt to circumvent the Town of Camp Verde's ordinances regarding proscribed animal densities in rural residential neighborhoods, or it is so poorly conceived and written that it accomplishes exactly that.
- ▶ So, how did we get here?

As a result of Mansker's violations of the animal count limits contained in the Ordinance utilizing notes to transfer animal points, we requested that Camp Verde issue a zoning interpretation to clarify how to calculate animal points under the Ordinance. Camp Verde issued its Interpretation concluding in part that, although a property owner such as Mansker could not exceed the animal count restrictions simply by obtaining permission to use the animal points associated with a contiguous parcel of property, the landowner could exceed the prescribed farm animal count in the Ordinance by leasing or licensing property from the owner(s) of contiguous property and then using the lessor's animal points to quarter the farm animals on the lessee's Property. Stated differently, the Interpretation purports to authorize a scenario where a landowner such as Mansker makes an end run around the animal count limits in the Ordinance simply by obtaining a license from or leasing contiguous property and "using" that property's animal points to permit having an excessive number of farm animals on Mansker's own Property.

This is significantly different from leasing a piece of property and then distributing animals across the properties which is a long-standing practice in the farming and ranching community. If the intent of this Administrative Interpretation was to clarify that position it does not. This interpretation asserts that it is now the animal points that transfer from one property owner to another not that the animals have been distributed across multiple lots.

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ The Interpretation rightly concludes the Mansker property has been egregiously out of compliance over the last two years. Often exceeding his limit by as much as four times.
- ▶ The Town's Community Development Department (CDD) charged with enforcing those ordinances has utilized every contrivance possible to avoid enforcement including accepting handwritten notes portending to transfer animal points prompting our request for a formal Interpretation.
- ▶ The CDD attempted to formalize that dubious practice in this Interpretation.
- ▶ The primary mechanism the CDD chose in this Interpretation was to create a property right severable from the land and fully transferable. This would affectively create an animal point asset where none previously existed.

Furthermore, the Interpretation improperly purports to create a transferrable property right severable from the real property to which it is incidental. Preliminarily, the Interpretation provides no legal support whatsoever in favor of the proposition that animal points are an intangible property right that can be transferred via lease or license. Instead, it incorrectly reasons that, for the purpose of determining the number of animal points afforded a "lot," or the size of the "lot" is entirely irrelevant because the lot owner can mysteriously gain animal points by lease or license.

That proposition, however, fails to account for the fact that except for within the Agricultural District, "livestock activity" within the Town is an "accessory use to the principal use." This means the "livestock activity" (and the animal points scheme) are "incidental and subordinate to and [must be] **located on the same lot with the principal use.**" The Interpretation does violence to the terms and conditions of the Ordinance, ignoring the fact that "livestock activity" is an "accessory use" which under the terms and conditions of the Ordinance, must be located on the same lot as the principal use. There simply is no support for the Interpretation under the terms and conditions of the Ordinance.

The Interpretation leads to the absurd result that, under the Ordinance, Mansker or a

similarly situated landowner could obtain a license to quarter many more animals on a lot than would be allowed under the actual terms and conditions of the Ordinance. Put simply, if Mansker (a) had a neighbor who owned a contiguous parcel of property the size of which would permit the landowner to quarter, for example, a hundred head of cattle, and (b) Mansker obtained a license from said neighbor, Mansker could quarter an additional 100 head of cattle on Mansker's 4.7 acres of property. It is absurd to conclude the Interpretation contemplates such a result. But that is exactly the door the Interpretation has opened.

The Interpretation creates an asset that would be a transferrable property right severable from the real property to which it is incidental. The absurd result of this is that the property owner adjacent to Mansker could assign a monetary value to his animal points license and put that license up for bid. This would force Magoon-Irvin or other residents of the community into a bidding war in order to protect their property rights. Prior to this Interpretation those rights would have been protected by the Town's enforced zoning ordinances. Again, it is absurd to conclude the Interpretation contemplates the possibility of such a bidding war, but again that is exactly the door the Interpretation has opened.

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ While the Interpretation rightly concludes that casual notes may not be used to create such an asset it then portends that such an asset could be created as a result of a “license” and subsequently leased or otherwise transferred.
- ▶ The term “license” is never defined in the Interpretation and when we were asked for such a definition, we were told by the Director of the CDD that they were not obligated to define the term.
- ▶ All of us utilize licenses everyday and in the end they nothing more than a note just written in a more formal language.
- ▶ Our Town’s ordinances never intended for animal points to be turned into an asset, created out of thin air, potentially monetized and then transferred from one property owner to another via a lease, license or any other mechanism.

The intent of the Ordinance is not to permit landowners such as Mansker to make an end-run around the animal count limits contained in the Ordinance simply by entering into a lease with or obtaining a license from an adjacent landowner. This is especially true because, as analyzed in our brief, the plain terms of the Ordinance do not support the Interpretation.

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ This Interpretation provides no legal bases for creating such assets within the Town's codes, Arizona Statute or prevailing legal precedence.
- ▶ This Interpretation represents a gross bureaucratic overreach by the Community Development Department within the Town of Camp Verde. We feel certain that it will not survive scrutiny by the Superior Court of Arizona. Our legal analysis has been summarized and included in our packet for your review.
- ▶ For the reasons stated above, the part of the Interpretation authorizing a landowner to increase its animal count points by license or by leasing property from a contiguous landowner is unavailing, lacks serious merit, and is not supported by the relevant terms and conditions of the Ordinance. Camp Verde and the Board of Adjustment should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a lease or obtaining a license from a neighboring landowner.
- ▶ Land can be leased, and animals can be distributed across multiple properties. Animal points are not an asset and cannot be transferred from one property owner to another.

MAGOON-IRVIN
APPEAL OF ZONING RECORDING INTERPRETATION 2023-01
BASED ON LEGAL ANALYSIS PROVIDED BY JOHN J. BROWDER OF JHKM LAWYERS

I. INTRODUCTION

Stephen Magoon and Jill Irvin (collectively, “Magoon-Irvin”) live at APN 404-11-027A (“Magoon-Irvin Property”), which is across the street from two parcels Trampus Mansker owns: APNs 404-12-422D and 404-12-422C (“Mansker Property”). Mansker routinely exceeds the farm animal count at the Mansker Property. Magoon-Irvin, in turn, has complained to the Town of Camp Verde (“Camp Verde”) on several occasions, but Camp Verde has taken no action to remedy Mansker’s repeated violations.

As a result of Mansker’s violations of the animal count limits contained in the Ordinance, Magoon-Irvin requested that Camp Verde issue a zoning interpretation to clarify how to calculate animal points under the Ordinance. Camp Verde issued its Interpretation on February 9, 2023, concluding in part that, although a property owner such as Mansker could not exceed the animal count restrictions simply by obtaining permission to use the animal points appurtenant to and a contiguous parcel of property, the landowner could exceed the prescribed farm animal count in the Ordinance by leasing or licensing property from the owner(s) of contiguous property and then using the lessor’s animal points to house and care for the farm animals on the lessee’s Property. Stated differently, the Interpretation purports to authorize a scenario where a landowner such as Mansker makes an end run around the animal count limits in the Ordinance simply by obtaining a license from or leasing contiguous property and “using” that property’s animal points to countenance having an excessive number of farm animals on Mansker’s own Property.

This is significantly different from leasing a piece of property and then distributing animals across the properties which is a long-standing practice in the farming and ranching community. If the intent of this Administrative Interpretation was to clarify that position it does not. This interpretation asserts that it is now the animal points that transfer from one property owner to another not that the animals have been distributed across multiple lots.

For the reasons set forth herein, the part of the Interpretation authorizing a landowner to increase its animal count points by leasing property from a contiguous landowner or by obtaining a license is unavailing, lacks serious merit, and is not supported by the relevant terms and conditions of the Ordinance. Camp Verde and the Board of Supervisors should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a license or by leasing contiguous property of a neighboring landowner.

II. RELEVANT PROVISIONS OF CAMP VERDE’S PLANNING & ZONING ORDINANCE (THE “ORDINANCE”)

The following definitions and sections are relevant to the issue presented by the Interpretation.

LOT: A parcel of land established by plat, subdivision, or otherwise permitted by law, having its principal frontage on a dedicated street or street easement. A half-street dedicated from such parcel shall be qualification for street frontage.

-**AREA:** The total area within the lot lines of a lot, excluding any street rights-of-way.

LOT LINE: A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

LOT OF RECORD: A lot which existence and dimensions are acknowledged on a plat or deed at the County Recorder's Office.

PARCEL: Real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

ACCESSORY USE: A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal.

PRINCIPAL OR PRIMARY: The primary or predominant use of Lot or parcel.

SECTION 305 – ANIMALS: Keeping of farm animals in appropriate locations and circumstances is regarded as being consistent with the Town's rural character. However, the number, size, type or manner in which animals are maintained on any parcel shall not impair the enjoyment or use of nearby properties or violate other legal restrictions to which the properties are subject. Any lot where farm livestock are kept must be not less than one-half acre (21,780 sq ft.) in area. 87 Fowl (chickens, ducks, geese, turkeys, and peacocks) rabbits, and guinea pigs, which are cared for the by the property owner or occupant as prescribed in Section 305.C.3, are not limited to a maximum number of animals.

A. Allowed Livestock

Any of the species listed below which are cared for by the property owner or occupant according to the following Animal Points. All livestock activity within the Town limits will be considered an accessory use to the principal use on any parcel except in the Agriculture District.

1. Lots of one-half acre to one acre in area may maintain animals totaling up to 24 points as set forth below.
2. Lots of one acre or more may increase the allowable number of points by an increment of six points for each additional, contiguous quarter acre.

B. Animal Points Allowed per Acreage

The allowable type and number of animals permitted on a particular property is computed by the following allotment table:

SPECIES (or associated types)	POINTS	SPECIES (or associated types)	POINTS
Alpacas:	3 Points	Miniature Horses, Ponies and Sicilian Donkeys:	6 Points
Emus:	3 Points	Ostriches:	6 Points
Pygmy Goats:	3 Points	Cattle:	12 points
Sheep, Goats:	4 Points	Domestic Deer:	12 Points
Llamas:	6 Points	Horse, Mules and Donkeys`	12 Points

III. LEGAL ANALYSIS.

When construing a statute, a reviewing court's "goal is to find and give effect to" the drafter's intent. *Mail Boxes, Etc., U.S.A. v. Industrial Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The court looks "first to the plain language of the statute as the best indication" of the drafter's intent. *Id.* "Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial." *City of Phoenix v. Yates*, 69 Ariz. 68, 72, 208 P.2d 1147, 1149 (1949). Although a statute's language must be consulted first, uncertainty about the meaning of the statute's terms may require the court to apply "methods of statutory interpretation that go beyond the statute's literal language." *Estancia Dev. Assoc., L.L.C. v. City of Scottsdale*, 196 Ariz. 87, 90, ¶ 11, 993 P.2d 1051, 1054 (App. 1999). These methods must include "consideration of the statute's context, language, subject matter, historical background, effects and consequences, and spirit and purpose," *id.*, as well as "the evil sought to be remedied." *Scenic Ariz. v. City of Phx. Bd. of Adjustment*, 228 Ariz. 419, 426, 268 P.3d 370, 377 (Ct. App. 2011), quoting *McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290, 645 P.2d 801, 805 (1982).

By applying these principles to the Interpretation, it is amply clear that it is a fatally flawed analysis of the Ordinance's relevant terms. The first step in understanding why is to look at the pertinent language of the of the Ordinance itself:

1. Lots of one-half acre to one acre in area may maintain animals totaling up to 24 points as set forth below.

2. Lots of one acre or more may increase the allowable number of points by an increment of six points for each additional, contiguous quarter acre.

As the Interpretation acknowledged, the definition of “lot” is critical to the Interpretation. This is because the allowable number of animal points may increase by six (6) points for every contiguous quarter acre increase in the lot’s area, provided the lot is at least one acre in size.

The core premise of the Interpretation is that a lease or license of contiguous property increases the size or area of the “lot.” The premise is flawed. “Lot” is defined in pertinent part as “[a] parcel of land established by plat, subdivision, or otherwise permitted by law” It adds that the “area” within a lot is the “total area within the lot lines of a lot, excluding any street rights-of-way.” The definition of “lot line” is a “line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.” “Parcel,” in turn, is defined as “real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

Under these definitions, a “lot” is “real property with a separate or distinct number or other designation shown” on a “plan recorded in the office of the County Recorder,” or other otherwise delineated on a recorded “survey, parcel map or subdivision plat,” and a which abuts at least one public right of way. The “area” of the lot, which is necessary for computing the allowed number of animals on it, is the “total area” within its “lot lines,” or as defined by the Ordinance, “the line of record bounding a lot....”

Because the leasing or licensing of contiguous property does not increase the “area” of a “lot,” the Interpretation’s conclusion that owners may increase the number of animals by leasing or licensing contiguous areas is legally invalid. After a purported “lease” or “license” of the contiguous lot, the lessee’s “lot” has exactly the same “area” as it did before the purported lease or license. Concomitantly, the “area” of the lessor’s “lot” also is the exactly the same size as it was before the lease or license. In terms of the Ordinance’s definitions, the “area” of the lessee “lot” does not increase by leasing or licensing the contiguous property because the “line[s] of record” bounding it are exactly the same after the lease or license as they were before the lease or license. Leasing or licensing contiguous property is not legally sufficient to increase the lot’s “area” because leasing the ground does not increase the size of the lessee lot, i.e., its “area.” A review of the respective lots’ “line[s] of record bounding” at the County Recorder after the execution of any lease will reveal the exact same sized “lots” as they were before the lease of license of contiguous property. Because a lease of contiguous property does not enlarge the “lot” as the Ordinance defines that term, the Interpretation’s conclusion to the contrary is unavailing and contrary to the law. The “size” of “lot” for purposes of calculating animal points is not determined by a private lease. It is and must be determined by the size of the “lot” as defined by the recorded documents.

By contrast, if Mansker purchased property from a contiguous landowner and then adjusted his property’s “line of record bounding” his property, then Mansker’s “lot” would have increased in “area” such that he may be afforded additional animal points under the Ordinance. But “leasing” ground to

purportedly obtain animal points without actually increasing the “area” of the lot where the animals would be kept is not supported by the plain terms of the Ordinance.

Furthermore, the Interpretation improperly purports to create a transferrable property right severable from the real property to which it is incidental and appurtenant. Preliminarily, the Interpretation provides no legal support whatsoever in favor of the proposition that animal points are an intangible property right that can be transferred via lease or license. Instead, it incorrectly reasons that, for the purpose of determining the number of animal points afforded a “lot,” the size of the “lot” as indicated by the “plat,” “deed” or the “lot line” is entirely irrelevant because the lot owner can mysteriously transfer animal points by lease or license. That proposition, however, fails to account for the fact that except for within the Agricultural District, “livestock activity” within the Town is an “accessory use to the principal use.” This means the “livestock activity” (and the animal points scheme) are “incidental and subordinate to and [must be] **located on the same lot with the principal use.**” See definitions of “accessory use” and § 305 (emphasis added.); see also definition of Use (Accessory)(defining an “accessory use” as a “use incidental to the principal use on the **same lot**”(emphasis added.). The Interpretation does violence to the terms and conditions of the Ordinance, ignoring the fact that “livestock activity” is an “accessory use” which under the terms and conditions of the Ordinance, must be located on the same lot as the principal use. There simply is no support for the Interpretation under the terms and conditions of the Ordinance.

Besides the fact that the Interpretation is not supported by the relevant plain terms of the Ordinance, the Interpretation contravenes the purpose of the Ordinance. The purpose of the Ordinance is “to conserve and promote the public health, safety, convenience and general welfare, by guiding and accomplishing a coordinated and harmonious town development for future growth.” Ordinance, at § 101. Although the keeping of farm animals in “appropriate locations and circumstances” is consistent with Camp Verde’s nature, the “number, size, type or manner in which animals are maintained on any parcel shall not impair the enjoyment or use of nearby properties” Ordinance, at § 305.

The Interpretation, which acknowledges that it is an “expansive” reading, flies in the face of the stated purpose of the Ordinance. First, and significantly, the Interpretation does not analyze the effect that Trampus Mansker’s excessive animals have on the nearby properties, including the Magoon-Irvin Property. Indeed, the Interpretation concedes that Mansker’s “roping activities routinely exceed the allowable number of large animals,” with numbers “often” ranging from 15 to 34 animals. As such, Mansker has not complied (and is not complying with) the Ordinance. But instead of reigning in Mansker’s non-compliance, the Town appears ready and willing to reward him for violating the Ordinance based on the unavailing Interpretation. The message to the rest of the Town’s citizens is (1) their interests may not and, in the case of Magoon-Irvin, do not matter; (2) the Town would rather forgive and reward non-compliance instead of taking appropriate action to prevent the impairment of Magoon-Irvin’s right to use and enjoy their Property; and (3) the Town will justify its actions with the dubiously reasoned Interpretation.

Second, the Interpretation leads to the absurd result that, under the Ordinance, Mansker or a similarly situated landowner could enter into a lease to house many more animals on a lot than would be allowed under the actual terms and conditions of the Ordinance. Put simply, if Mansker (a) had a neighbor who owned a contiguous parcel of property the size of which would permit the landowner to

care and house, for example, a hundred head of cattle, and (b) Mansker leased the neighbor's contiguous property, Mansker could house and care for an additional 100 head of cattle on Mansker's 4.7 acres of property. It is absurd to conclude the Interpretation contemplates such a result. But that is exactly the door the Interpretation has opened.

Third, the Interpretation creates an asset that would be a transferrable property right severable from the real property to which it is incidental and appurtenant. The absurd result of this is that the property owner adjacent to Mansker could assign a monetary value to his animal points license and put that license up for bid. This would force Magoon-Irvin or other residents of the community into a bidding war in order to protect their property rights. Prior to this Interpretation those rights would have been protected by the Town's enforced zoning ordinances. Again, it is absurd to conclude the Interpretation contemplates such a result, but that is exactly the door the Interpretation has opened.

Ineluctably, the intent of the Ordinance is not to permit landowners such as Mansker to make an end-run around the animal count limits contained in the Ordinance simply by entering into a lease or license with an adjacent landowner. This is especially true because, as analyzed above, the plain terms of the Ordinance do not support the Interpretation.

For the reasons stated above, the part of the Interpretation authorizing a landowner to increase its animal count points by by license or by leasing property from a contiguous landowner is unavailing, lacks serious merit, and is not supported by the relevant terms and conditions of the Ordinance. Camp Verde and the Board of Supervisors should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a license or by leasing contiguous property of a neighboring landowner.



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occupant as prescribed in Section 305.C.3, are not limited to a maximum number of animals.

A. Allowed Livestock

Any of the species listed below which are cared for by the property owner or occupant according to the following Animal Points. All livestock activity within the Town limits will be considered an accessory use to the principal use on any parcel except in the Agriculture District.

1. Lots of one-half acre to one acre in area may maintain animals totaling up to 24 points as set forth below.
2. Lots of one acre or more may increase the allowable number of points by an increment of six points for each additional, contiguous quarter acre.

B. Animal Points Allowed per Acreage

The allowable type and number of animals permitted on a particular property is computed by the following allotment table:

SPECIES (or associated types)	POINTS	SPECIES (or associated types)	POINTS
Alpacas:	3 Points	Miniature Horses, Ponies and Sicilian Donkeys:	6 Points
Emus:	3 Points	Ostriches:	6 Points
Pygmy Goats:	3 Points	Cattle:	12 points
Sheep, Goats:	4 Points	Domestic Deer:	12 Points
Llamas:	6 Points	Horse, Mules and Donkeys:	12 Points

III. LEGAL ANALYSIS.

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Please do not hesitate to contact me with any questions.

JHKM

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Very truly yours,

/John J. Browder/

John J. Browder

JJB:rba

ATTACHMENT D

May 8, 2023

Subject: Appeal to Board of Adjustment and Appeals

RE: Animal Count Interpretation

We have lived in Camp Verde for six years on 2.5 acres We specifically looked for enough land to house our four horses because we were told we were allowed 1 horse per half acre. If we had to comply to zoning regulations, then we assumed others would have to do so as well. It made sense to us to keep flies and smell down to a minimum. It appears that not all property owners are treated equally, however. Not everyone in town is expected to comply with the existing codes.

We must question the legality and interpretation of this point system for animals. Has anyone looked into the future of what this could mean to the entire town of Camp Verde? If people start donating animal points arbitrarily to neighbors, do the points become "real transferable property"? Do they add value or devalue a person's land?

What about liability insurance? Who is responsible for the health and safety of the livestock and the people around it? If an animal contracts a contagious disease on somebody else's property and infects the others, who pays the vet bills? Who pays for carcass removal?

If somebody gets hurt from one of these animals, who pays the doctor bills? Where does the owner's responsibility begin and end?

When the property owner with the neighbors' points sells his property, does everyone get their points back?

What if the new buyers want to do something without any animals at all? What happens to the animals residing on the property?

Who cleans up after the livestock? The property owner or the livestock owners?

And lastly, who is going to enforce anything? The Zoning Department has not proven that they can enforce the existing zoning laws. How are they going to monitor what goes on if every neighborhood uses this animal point system? This sounds like an opportunity for a free-for-all that will destroy existing neighborhoods.

The failure to enforce the existing zoning regulations is creating havoc within our peaceful community. This point system encourages favoritism and lack of trust in our local government.

We request that the Board reverse this zoning interpretation as it will alter the intent of the existing animal code.

Jerry Martin

Eileen Martin

Handwritten signatures of Jerry Martin and Eileen Martin. The signature for Jerry Martin is written in a cursive style, and the signature for Eileen Martin is also in cursive, appearing below the first signature.

Wischmeyer Statement - BOA

Good Afternoon Mr. Chairman and Board Member

We are here today to discuss Zoning Interpretation 2023-01 that was issued by Community Development Director John Knight on February 9, 2023.

What we are not here to discuss is whether or not farm animals are allowed in Camp Verde or whether or not an individual can have a small roping arena on his property for the personal enjoyment of friends and family.

What we are here to discuss is whether or not the interpretation as written correctly mirrors the Town Code relating to Animal Counts, Animal Points, and Agritourism definition.

As has been pointed out by the documents you received from citizens and those who spoke today, Animal Points are not a commodity that can be traded or loaned. They are simply a mechanism the Town has put in place to determine the number of farm animals (large and small) that can be housed on any parcel or lot of land within the town. The number of animals is differentiated by the type of animal and is assigned points to help Town Staff in determining whether or not an individual is complying with the Animal Code. There is no other reason for the animal point than that.

The Animal Code was written to ensure that members of our community can enjoy our rural lifestyle in a reasonable and equitable manner. The notion that an individual can borrow, lease, license or purchase animal points from a neighboring property, to increase the animal count on their property is a fallacy.

There has been a long time practice of placing excess animals on our neighbor's property, and it has never required these legal documents. This is something that is coming from individuals who are not familiar with our neighborly ways in Camp Verde. In fact, there are documented instances within the complaint records of the Town, where our Community

Wischmeyer Statement - BOA

Development Department has even suggested this to individuals who had too many animals on their parcels. It was never suggested, "Why don't you borrow your neighbor's animal points?"

Additionally, the Zoning Interpretation is ambiguous; in one place it suggests placing animals on the neighboring property and in another location within the document it suggests borrowing animal points through a lease or license.

This document erodes the current Animal Code that is included within the Planning and Zoning Ordinance and was voted on by our Town Council. This document is the current law that should be enforced. If we don't like the Code, we shouldn't be making rash decisions on single instances that will have long term effects on our community, but rather we should be referring this issue to our Town Council for discussion and action that can be enforced throughout the community.

This document and the suggestions written within it should not be allowed to stand. They are both ambiguous and do not coincide with our existing ordinances.

Thank you for your time.

Good morning Stephen.

I have read the packet material and the statements in support of your claims. Very valid arguments in support of your position. Unless I missed it, there seems to also be a lack of understanding of what constitutes occupancy on lands harboring animals. Is it durationally or simply at a moment in time. These out of area participants bring with them their own support in the form of trailer(s), horses, feed, etc. This also adds numbers to the total.

I stand in support of the arguments and also believe that if this interpretation stands it has the ability to create uncontrolled conditions on very limited spaces/lots within the community of Camp Verde. At a minimum, Use Permit, contractual agreements and additional amendments to the Zoning Ordinance should be steps forward.

You are welcome to include this statement for the record regarding the appeal.

Monty & LeeAnne Stansbury
3575 S. Sierra Ln./Lot 17 Sierra Verde Estates, Camp Verde, AZ
P.O. Box 663, Yuma AZ 85366