TO: CASA GRANDE BOARD OF ADJUSTMENT

FROM: Paul Tice, Planning & Development Director

MEETING DATE: November 11, 2014

SUBJECT: DSA-14-00195

REQUEST

An Appeal by Judy Mulligan of an Administrative Decision requiring connection to the public wastewater sewer system for property located at 204 E. McMurray Blvd.

APPLICANT/OWNERS

Mrs. Judy Mulligan
204 E. McMurray Blvd.
Casa Grande, AZ 85122
Email: judy.mulligan@tlcscg.org

HISTORY

1959: House built on property (according to Pinal County Assessor Office records (Exhibit A).

5/13/14: Property purchased by Judy Mulligan.

7/21/14: Complaint received from neighbor indicating that the 204 E. McMurray was using a private septic wastewater system and requesting that City require connection to the public wastewater system as required by City Code (16.16.350).

9/22/14: Casa Grande Code Enforcement Specialist Rick Barnhart issues a letter to Judy Mulligan requesting connection to the City public wastewater system as required by Section 16.16.350 of the City Code (Exhibit B). Letter sent certified and signed for on Sept. 25th.

10/22/14: Judy Mulligan filed an Appeal of the Administrative Decision as allowed under sections 17.68.350 and 17.72.030 of the City Code.

11/11/14: Appeal scheduled for hearing at the Nov. 11, 2014 Board of Adjustment meeting.
Staff Analysis
As noted in History section of the staff report the fact that the 204 E. McMurray Blvd. property was using a private septic system, and not connected to the public wastewater system, was brought to the attention of the City by an adjoining property owner. This neighbor raised concerns due to the fact that the septic tank for the 204 E. McMurray Blvd. property was located underneath the common property boundary fence and a portion was encroaching into their property. Although staff made it clear that any such encroachment would be a private property matter that the City could not address the complainant requested that the City enforce the provision of the City Code (16.16.350-copy attached) that required that properties located with 300 feet of the public wastewater system connect to same.

16.16.350 Mandatory connection to public sewer system when.
If a public sanitary sewer is installed within three hundred feet of an individual lot, property, or sewer system, the owner thereof shall be required to connect to the sewer for the purpose of disposing of waste, and it is unlawful for any such owner or occupant to maintain upon any property the use of an individual sewage disposal system thereafter.

In response to this citizen complaint, Code Enforcement Specialist Rick Barnhart issued a letter to Judy Mulligan, owner of 204 E. McMurray Blvd., requesting that the property be connected to the public sanitary sewer (Exhibit B). Said public wastewater main exists in the alley located on the south side of McMurray Blvd. between N. Walnut Dr. and N. Center Ave. The distance from the public wastewater main to the southwest corner of the 204 E. McMurray Blvd. property is approximately 90 feet (Exhibit C).

Judy Mulligan filed an appeal of staff’s administrative decision requiring the septic system to be discontinued and the home to be connected to the public wastewater system. Said appeal was filed in accordance with sections 17.68.350 and 17.72.030 of the City Code (see below) which essentially any administrative decision or code enforcement action undertaken by staff to be appealed to the Board of Adjustment.

17.68.350 Application for appeal.
A. Any aggrieved person, property owner, or any officer or department of the city affected by a decision of an administrative officer, pertaining to this title, may appeal to the board of adjustment by filing an application with the zoning administrator. The board of adjustment shall serve as the city's hearing officer in appeals of required dedications and exactions. The application shall state the name and address (or city office) of the applicant and the reasons for filing the appeal. The application shall be made within thirty days of the date of the decision which is being appealed. The zoning administrator shall then transmit to the board the complete record of the action for which the appeal is made. Appeals to the board may be made only in conjunction with an action.

17.72.030 Right of appeal.
Decisions of the zoning administrator may be appealed to the board of adjustment in accordance with Article VI. of this chapter.
The City Code does not set forth specific review criteria, nor guidelines for the Board of Adjustment to follow, in the consideration of appeals of administrative decisions and code enforcement actions. However, the Arizona Revised Statues do contain provisions regarding the Board of Adjustment authority to consider appeals. These provisions are as follows:

9-462.06. Board of adjustment

A. The legislative body shall, by ordinance, establish a board of adjustment, which shall consist of not less than five nor more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise such other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds thereof. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief which has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.
2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

3. Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

In consideration of this appeal the Board should evaluate whether staff made any error in the application of City Code 16.16.350 to the 204 E. McMurray Blvd. property. Staff believes that no error did occur in the application of this Code as:

1) The code provision is clear that when “a public sanitary sewer is installed within three hundred feet of an individual lot, property, or sewer system, the owner thereof shall be required to connect to the sewer” and that once public sanitary sewer is located within 300 feet of a property “it is unlawful for any such owner or occupant to maintain upon any property the use of an individual sewage disposal system thereafter.”

2) Staff has confirmed that there is a public wastewater main in the alley that is located on the south side of McMurray Blvd. between N. Walnut Ave. and N. Center Ave. and that said public wastewater main is located approximately 90 feet from the southwest corner of the 204 E. McMurray Blvd. property.

3) The appellant, in her justification statement (Exhibit D), notes that prior to purchase of the 204 E. McMurray Blvd. property she checked with both Pinal County and Casa Grande staff to see if the septic system could remain in place and was told that it could remain as a “grandfathered” use as long as it was operating properly. Staff is not disputing that the appellant may have been given this information but unfortunately allowing the private septic system to remain in place as long as it is operating adequately is not what is required by section 16.16.350.

Another factor that the Board may want to consider in this matter is the legislative intent and public policy that is associated with the requirement for existing private sewage systems to be abandoned and connected to the public wastewater system when feasible. It is staff’s understanding that the following are likely the basis for said policy and code requirement:

1) The City has made a significant investment of public funds in the construction of facilities for the treatment and collection of wastewater. It is important to have as many connections to said system as possible to spread the costs of constructing and operating this system to make the system economically viable.

2) Individual private septic systems do not generally treat wastewater as reliably, nor as thoroughly, as a wastewater treatment plant. Private septic systems have a high potential for eventually failing and allowing untreated or partially treated wastewater to infiltrate into, and pollute, the groundwater. This is especially a
concern in Casa Grande where the source of the public water supplied by Arizona Water Company is groundwater extracted from wells located in various locations through-out the City.

PUBLIC NOTIFICATION/COMMENTS

Notification
Public hearing notification efforts for this request meet the requirements set out by City Code. They include:

- A notice of time, date, place, and purpose of the public hearing was published in the Casa Grande Dispatch on October 25, 2014. An affidavit confirming this newspaper notice is in the City file for this appeal.
- A notice was mailed by the City on October 23, 2014 to each owner of property situated within two hundred (200) feet of the subject property. An affidavit confirming this mailed notice is in the City file for this appeal.
- A notice was posted by the applicant on the subject site at least 15 days prior to the appeal hearing. An affidavit confirming this posting was supplied by the applicant and is in the City file for this appeal.

Inquiries/Comments
At the time of writing, Staff has received one (1) general inquiry regarding this project.

RECOMMENDED MOTION

The Board of Adjustment has the ability to reverse, affirm or modify staff’s decision and enforcement action in this matter. Staff recommends that the Board affirm staff’s decision that the individual septic system for 204 E. McMurray Blvd. be abandoned and the home connected to the public wastewater system.

Attachments
- Exhibit A – Property Data from Pinal County Assessor Office
- Exhibit B – Sept. 22, 2014 Letter from Rick Barnhart, Code Enforcement Specialist
- Exhibit C – Aerial photo depicting 204. E. McMurray Blvd. property and location of nearest public wastewater system main.
- Exhibit D – Appellant’s Justification documents
### Parcel Search

#### Parcel Details (506-05-028C)

Previous year valuations are subject to change as prescribed in the Arizona Revised Statutes. All changes in value may not be reflected in this data. For updated/correct figures, please refer to the Treasurer's Office website.

#### Parcel Number 506-05-028C shows the following information for Tax Year: 2015

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<td>20</td>
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<td>Map</td>
<td>View Parcel Map</td>
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<td>Property Description</td>
<td>BEG AT SW CR SE NW SEC 20; TH N-30'; TH E-52-50 TO TPOB; TH E-174'; TH N-163'; TH N-87 DEG 9' W-42'; TH S-66 DEG 11' W-37'; TH S-80 DEG 41' 50 W-30.06'; TH S-51 DEG 40' 22' 12 W-61.92'; TH S-140.0' TO TPOB SEC 20-05-65-6E .6920 AC</td>
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<td>Block</td>
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<td>Phase</td>
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### Links

- [Link to This Parcel](http://pinalcountyaz.gov/Assessor/Pages/ParcelSearch.aspx?b=506&m=05&p=028&s=C)
- [Print View](http://pinalcountyaz.gov/Assessor/Pages/ParcelSearch.aspx?b=506&m=05&p=028&s=C)

11/3/2014
September 22, 2014

Judy A. Mulligan
204 E. McMurray Blvd.
Casa Grande, AZ 85122

re: 204 E. McMurray Blvd. Casa Grande AZ 85122 Assessor's Parcel 506-05-028C

Dear Ms. Mulligan:

This letter is to advise you of an issue that's recently been brought to the attention of the City of Casa Grande. Your home has a septic system and part of that underground system appears to encroach onto neighboring properties. The City Code listed below, requires properties to be connected to the public sanitary sewer system, when that system is within 300 feet of said property.

16.16.350 Mandatory connection to public sewer system when.

If a public sanitary sewer is installed within three hundred feet of an individual lot, property, or sewer system, the owner thereof shall be required to connect to the sewer for the purpose of disposing of waste, and it is unlawful for any such owner or occupant to maintain upon any property the use of an individual sewage disposal system thereafter. (Ord. 1179 § 4.6(D))

The City of Casa Grande is requesting your cooperation to cause your property to be connected to the public sanitary sewer system. I've enclosed a plumbing permit and right-of-way use permit application. You will be required to use a licensed contractor familiar with connections to the public sanitary sewer system. Any questions you may have regarding this requirement may be directed to the Development Center located at City Hall 510 E. Florence Blvd.

If you have any questions of me, please call 520-421-8632 ext. 3160 or email rickb@casagrandeaz.gov

Sincerely,

Rick

Rick Bamhart
Code Enforcement
City of Casa Grande

CE-14-01655

City Hall: 510 East Florence Boulevard - Casa Grande, Arizona 85122
October 3, 2014
Dear Mr. Barnhart, and City Engineer.

This letter is in response to the letter I received on September 26, 2014 stating that my home has a septic system and part of an underground system which appears to encroach onto neighboring properties. The property located at 204 E. McMurray has recorded easements which existed at the time of development and subsequent sales of neighboring properties. Any “clean outs” of said septic tanks would occur on the 204 E McMurray Blvd. property line, not interfering with any neighbors.

Prior to me purchasing the house located at 204 E. McMurray I was advised of the ordinance that requires homes that are within 300 feet of a sewer connection to be connected, but that this was referencing any new construction. Pinal county environments services stated that if the pre-existing septic system was in good operating condition and is being maintained on a regular basis there was no need to change from septic to sewer. If the septic becomes an environmental nuisance or hazard, then there would be cause to comply with the city ordinance. They also stated that the county statue overrides the city ordinance when the septic system is in good operating condition. City officials and the County Supervisor stated there was no need for the owner of the property to change to a sewer connection unless it was personally desired.

Section 13.08.450 Private sewage systems allowed when-Compliance required.
A. Except as provided in this article, it is unlawful to contract or maintain with the City any privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
B. Where a public sanitary sewer is not available for a distance of three hundred feet within the City or in any area under the jurisdiction of the City, the building deer shall be connected to private sewer disposal system, which complies with the regulations of the State Depart. of Public Health. Such private sewage disposal system shall be contracted, maintained and operated at all times in a a sanitary manner. (prior code 13-4-5)

Prior to purchasing the property, I personally contacted the County Supervisor, Steve Miller and City Services Public Works, Jennifer and they reiterated the same information to me. It has also been explained to me that it has been the City's long standing rule that as long as a septic system stays functional, it would be grandfathered in.

I contacted the people who originally inspected the septic units and they also told me that the units were in good working condition and as long as I maintained them properly, I should not have any issues. When I moved in (July 2014), I purchased 12 monthly enzyme treatment packets and are using two each month as instructed. If you have any further questions regarding the condition of the units, please call George Allen at Desert Septic. 520-518-0179.

Had I been made aware that within 90 days of residence, I would have to then comply with ordinance 16.16.350, I may not have purchased said piece of property at that time or I would have requested it be complied with prior to escrow. To comply with connecting to the public sanitary sewer system would involve the excavation of McMurray Blvd. for access to the closest sewer main, please see attached photo, and would cause a great deal of burden to me at this time.

I am requesting at this time that the City of Casa Grande's City Engineer grant me permission to continue using the existing functioning septic system and not attach to the public sanitary sewer system. If a major problem occurs which then becomes an environmental hazard, then necessary steps will be taken to comply.

Thank you very much for your time.
Respectfully Submitted,
Judy Mulligan
Detached.. Pinal. and Located on a 2/3 Acre Parcel. This is a Completely Remodeled and Updated Gem. Casa...

Approx Lot Sqft: 30.144 / County
Apx Lot Size Range: 24.001 - 35.000
Subdivision: unknown
Tax Municipality: Casa Grande
Marketing Name: Planned Cnty Name: Model:
Builder Name: unknown
Map Code/Grid: X41
Bldg Number:

High School Dist #: 0082 - Casa Grande Union HS District - Pinal
High School: Casa Grande Union

Cross Streets: Jain Ave & McMurray Blvd Directions: From N Pinal Ave. Let on McMurray to the property.

Public Remarks: **COMpletely REMODELED** and Located on a 2/3 Acre Parcel. This is a Completely Remodeled and Updated Gem featuring a new roof, new windows, new flooring, new cabinetry and many other interior upgrades. Also featuring an open, bright and spacious floor plan with a fully finished Arizona Room, come see for yourself!!! All this, plus the Circular Driveway and the Extra Large Back Yard and Side Yard!

Features

Approx Sqft: 3.001 - 3.500
Garage Spaces: 2
Carport Spaces: 2
Total Covered Spaces: 2
Slab Parking Spaces: 12
Parking Features: Electric Door Gate
Pool - Private: No Pool
Swi: None
Horses: N
Fireplace: 1 Fireplace: Fireplace Family rm
Landscaping: Dn Back Desert
Front Grass: Front Grass Back Yrd
Wrrnng Sys: Front, Auto Timer H2O
Front Exterior Features: Patio, Circular
Drive: Pvt Yrd s, (Crdys)
Community Features: Tennis Court(s)
Flooring: Carpet: Tile
Windows: Dual Pane

Kitchen Features: Range/Oven
Elec: Disposal, Dishwasher, Built-in Microwave, Refrigerator, Walk-in Pantry; Granite Countertops; Kitchen Island
Mstr: Master Bedroom; Full Bath Master Bdr (#, Separate Shwr & Tub; Double Sink
Master Bedroom: Downstirs
Additional Bedroom: Other Bdrm
Dwnstirs: Separate Bdrm Ext; Mstr Bdr Walkin Cst; Other Bdr Walkin Cst
Laundry: Whr/Dry HookUp Only.
Inside Laundry
Dining Area: Eat-in Kitchen; Breakfast Bar; Dining in LR/GR
Basement YN: N
Srp Den/Office YN: N
Other Rooms: Great Room;
Brs/Gm Room; Arizona Room/Lanai
Items Updated: Floor Yr Updated: 2013; Roof Yr Updated: 2013; Kitchen Yr Updated: 2013; Bath(s) Yr Updated: 2013

Architecture: Ranch
Unit Style: All on One Level
Const - Finish: Painted; Stucco
Brick Trim/Veneer
Construction: Slump Block
Roofing: Comp Shingle
Fencing: Block
Cooling: Refrigeration: Evaporative
Heating: Gas Heat
Plumbing: Gas Hot Water Heater
Utilities: APS
Water: Pvt Water Company
Sewer: Sewer - Public
Services: City Services
Energy/Green Feature: Ceiling Fan(s): Multi-Zones

Features

Construction & Utilities

Country Code: Pinal
Legal Subdivision: AN: 505-05-023-C
Lot Number: See Parcel Map
Town-Range-Section: 056-C03-020
City Bk&Pg:

Plat:

Taxes/Yr: $1,335.18 2013
Ownership: Fee Simple

New Financing: Cash, VFA

Total Assm: $568,231

Conventional

Down Payment: 3%
Existing 1st Loan: Fees as
Free & Clear

Existing 2nd Loan:

Disclosures: Seller C Aut: Age
Agency 3. 1: Fee

Possession: Close of Escrow

Features

County, Tax and Financing

FAH YN: N

FAH 2 YN: //

FAH 3 YN: //

Association Fee Inc: No Fees
Assoc Rules/Info: None

Rec Center Fee YN: N
Rec Center Fee 2 YN: N
Land Lease Fee YN: N
Pad Fee YN: N

Sales Price: $249,900

Listed by Farhat & Associates (farh001)
RE: Septic/Sewar for 204 East McMurray Blvd, Casa Grande

Aziz Farhat <afarhat47@gmail.com>
To: Judy Mulligan <msjudy17@msn.com>, Judy.mulligan@tlcscg.org
Cc: Aziz Farhat <afarhat47@gmail.com>, Deborah Farhat <farhathomes.com@gmail.com>

Hello Judy,

I have attached all of the information we have on file regarding the septic easement, septic inspections, and our overall findings detailed on addendum #2:

1. At the time we had done our research with city, county and title co., the existing Casa Grande city ordinance was referencing any new construction was mandatory to connect to sewer if the building was going to be within 300 feet of the main sewer line.
2. Pinal county and Pinal county environmental services clearly told us that you are not required to change from septic to sewer if your pre-existing septic system was in good operating condition and is being maintained on a regular basis. If the septic becomes an environmental nuisance or hazard, then there would be cause to comply with the city ordinance. They told us that the county statute overrides the city ordinance when the septic system is in good operating condition.
3. The property easement is fundamentally giving you the right to access the neighbors lot to dig up and remove the septic tanks if there was ever a reason to do that, otherwise, the septic clean-outs are located within your property line, so there is never a need to go into the neighboring property for normal on-going maintenance.

For additional information and verification, please contact County Supervisor Steve Miller at (520)866-7400 and Pinal County Environmental Services Doug Sandstrom at (520)421-8696 (see addendum #1 for details).

All the best to you,
Aziz

Aziz Farhat, REALTOR® - CDPE

Farhat & Associates

Serving Chandler, Gilbert, Maricopa, Casa Grande, Scottsdale & Ahwatukee, Arizona
Direct: (602) 743-7306
E-Fax: 1 (877) 794-3379
Email: AFarhat47@Gmail.com
Web Site: www.FarhatHomes.com

*Ready to find your new home now? Search the MLS anytime using your Mobile Phone:
Text AZ46 to 32323

5 attachments

- Septic #1 Inspection Rpt 04-16-14.pdf
  711K
- Septic #2 Inspection Rpt 04-16-14.pdf
  702K
- Septic #1 and #2 Invoice 04-16-14.pdf
  239K
- Addendum #2 - Septic & Misc.pdf
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All work is complete!
Thank you for choosing DESERT SEPTIC.

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Total $48.02
Payments/Credits $0.00
Balance Due $48.02
ADDENDUM

1. This is an addendum originated by the: [ ] Seller [ ] Buyer [ ] Landlord [ ] Tenant.
2. This is an addendum to the Contract dated April 5, 2014 between the following Parties:
   [ ] Seller/Landlord: Aziz S. Farhat, Richard S., Brock, Ricardo M. Castro
   [ ] Buyer/Tenant: Judy A. Mulligan
3. Premises: 204 E. McMurray Blvd, Casa Grande, AZ 85122
4. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced Premises:
5. Addendum to the Seller Property Disclosure Statement:
6. The neighbor who has the easement on his property for the septic tank access contacted one of the sellers on 5/7/14 stating he had an issue with the easement and the tank being on his property. He stated there was a city ordinance that all homes in the area needed to be switched over to sewer.
7. The sellers have researched the neighbor's complaint and have found the following:
8. - there is a city ordinance that requires homes that are within 300 feet of a sewer connection to be connected.
9. - there is a statute that overrides this ordinance for our subject property as the septic tanks are fully operational without any issues. City officials and the County Supervisor stated there was no need for the owner of this property to change to a sewer connection unless it is personally desired.
10. We encourage the buyer to contact the following city and county officials to confirm this information. The neighbor has also been updated and provided with the number to call the County Supervisor for questions.
11. County Supervisor - Steve Miller - 520-866-7400
12. Environmental Services Pinal County - Doug Sandstrom - 520-421-8696
13. City Services Public Works - Jennifer in Finance - 520-421-8601 (billing of sewer services)

The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

[ ] Seller [ ] Buyer
[ ] Landlord [ ] Tenant

Signed by: ____________________________ 5/8/2014
Aziz S. Farhat

For Broker Use Only:
Brokerage File Log No.
Manager's Initials
Broker's Initials
Date