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Suite 250, Scottsdale, AZ 85260

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Please include your name, address and phone number.

Please limit letters to 200 words and columns to 400 words.

What do you think?

What did you think of Mayor Mary Manross' State of the City speech? Did she paint a vision with which you agree?

Send e-mail to ne.letters@scottsdalerepublic.com, or fax to 602-444-8933

Send mail to Opinions, Scottsdale Republic, 8800 E. Raintree Drive, Suite 250, Scottsdale, AZ 85260.

Scottsdale Mayor Mary Manross gives her State of the City address on the Marshall Way Trolley Bridge over the Arizona Canal on Thursday.

soars

es and easing height re- at may be key in the something different ded in south Scottsdale. the speech missed op-

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e city needs to be cre- wing and paying for i, but offered no specif-

l any mention of the nsuring Scottsdale has achers, nurses, firefight- workers to live.

Manross credit for aspir- r vision. It opens the est of the council and ty to support her two l press our own larger

Cave Creek doing right thing the wrong way

What's in the water in Cave Creek?

The town manager, Usama Abujbarah, went to the Town Council this week seeking an emergency vote to pay \$1.2 million for private land on which the town had built a water storage tank. He told council members the town had a verbal agreement to build on the land and swap some property, but it hadn't worked out. The city needed to buy the full acre.

The meeting Monday was the first time the council had heard about this.

So did the council chastise the town manager for putting them in an untenable situation? Remind him he needs their OK before negotiating any agreement. Point out to him that verbal agreements are as solid as the wind.

Nope. The council voted 6-1 for the purchase, for which it saw no appraisal besides the county assessor's full cash value.

There is a right way and a wrong way to do business. Cave Creek's water system is a mess, and the 1.2 million-gallon tank is needed to fix it. That's how Abujbarah justified a verbal agreement and leaving the council in the dark.

Without the water tank, the town would have faced worse water shortages than it did last summer. "We can't wait a month or two. We can't go 100 percent by the book. We were facing a very aggressive schedule to complete the tank by May 1," he said.

But doing a right thing the wrong way is indefensible.

A town manager and council must be accountable in how they spend the public's money. That means jumping through inconvenient hoops, putting everything in writing, getting appraisals, avoiding the temptation to let expediency rule the day.

Abujbarah and the council failed to do any of that. They'll have the water tank, but at a cost greater than \$1.2 million. Residents will now wonder what other deals are being cut in back rooms, waiting to be sprung on the council as emergencies that must be approved without delay.

QUICK HIT

The Scottsdale City Council decided not to appeal a jury's verdict awarding Toll Brothers' \$82 million for a key part of the McDowell Sonoran Preserve the city said was worth \$34 million. It was a legally prudent decision. But we wonder if the city passed too quickly on a novel strategy: Telling Toll Brothers it could have the land, which would require a company struggling through the mortgage crisis to return the \$44 million already paid. It's fun to imagine the look on Toll leaders' faces. Oh, well, playing chicken on a city street is dangerous. So is playing games with the city's future.

April 9, 2008 • Vol. 6, No. 19

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Cave Creek buying land under wastewater tank

Town agrees to buy parcel on which water tank is encroaching

by Elizabeth Medora
Assistant Editor

CAVE CREEK - The Cave Creek Town Council voted 5-1 March 31 to purchase a private land parcel that a new 1.2 million gallon water tank is encroaching on.

The Council held a special meeting to approve buying property owned by Herb Thompson and Julie Kennedy-Thompson.

Construction on a water tank on the Neary site, the property at 6051 E. Hidden Valley Drive, has been ongoing and is scheduled to be completed by May 1, but the tank is partially on the Thompsons' land. They will sell the 0.948 acre parcel for \$1.2 million.

Councilman Dick Esser questioned Cave Creek Utilities Manager Jessica Marlow about the structure of the Neary tank, calling it "state of the art" and querying if it could have been smaller.

"We could have built a smaller rest of the story" behind how the

tank on that site, but then we'd have to purchase another tank on another site," Marlow said.

She added that the Neary site will provide needed supply storage as tools are currently kept in the Desert Hills office due to Cave Creek space limitations.

Meeting attendees differed in opinion over the Neary purchase. Nina Spitzer demanded "the

water tank was built partly on private property. "We're talking about the people of this town being saddled with a financial burden," Spitzer said.

"I think it's important that the citizens know what we have to look forward to," said David Phelps, requesting a public

More LAND, page 4

Fiesta time

Parade, rodeo, fun mark annual Cave Creek weekend celebration



Community News

Land from 1

of Desert Hills, technical chair of the WAC.

workshop for annexation of the town's areas. "The ends do not justify the means."

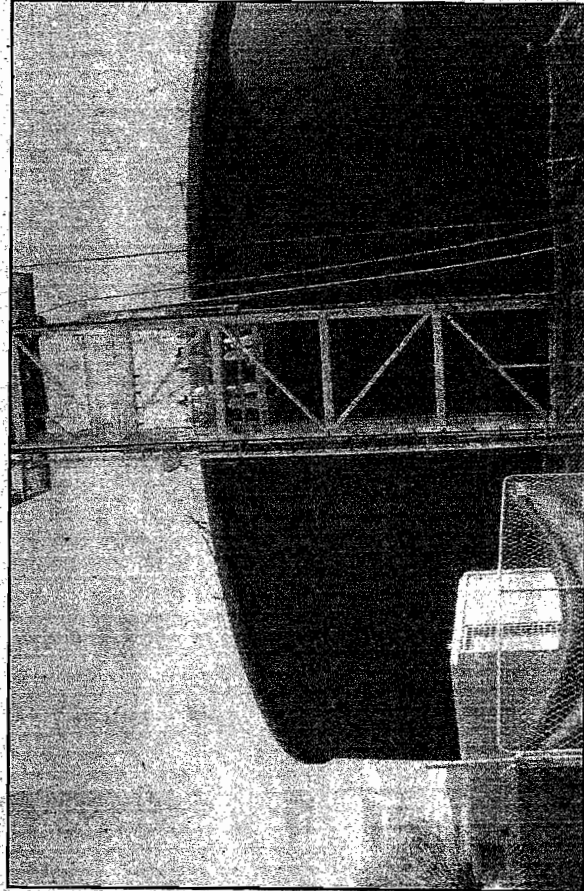
Two fire chiefs spoke about the need for available water as fire season intensifies, as did Councilman Thomas McGuire. The fire chiefs' consensus was the necessity of more water tanks and that the project needs to move forward.

Water Advisory Committee Chairman Ralph Mozilo said that the town had "bought a system with many problems."

"The town has spent the last year working very hard to get the system sufficient for next summer," he said. "It is very easy to be a Monday morning quarterback and criticize their actions."

Foremost in discussions was last year's water shortage that caused heightened fire danger and massive inconvenience and discomfort.

"This (Neary tank) will go a long way to help supply us with enough water," said Brian Moore



Submitted photo

The Cave Creek Town Council voted 5-1 March 31 to purchase adjoining property to their new wastewater treatment tank, currently under construction on the west part of town.

Due to decisions made before Cave Creek acquired the water company, capacity is far below that.

"Do whatever the hell you have to do to keep Harold's open," said Bill Vate, owner of Harold's Cave Creek Corral.

Vate said he had spent \$10,000 in shipping water to the restaurant last summer.

Councilwoman Kim Brennan did not vote on the issue to avoid any conflict of interest issues.

"Back in 2006, I was the listing agent on that property, well before there was a water tank project," Brennan said, adding that she had no financial stake in the current project, but felt that there was enough of a conflict of interest to voluntarily step out of the meeting.

When the purchase was brought to Council vote, town staff disclosure was discussed.

Councilwoman Grace Meeth

said she felt the town had no choice but to purchase the property.

"Why we have to buy it is a whole other issue, and I have a real problem with that," Meeth said. "There's too much going on behind the scenes."

Meeth declined to support the purchase until an appraisal of the property and an independent investigation had been conducted.

An examination of the

communication among town staff, citizens, and the Council may be forthcoming.

"I'm troubled by the way this came to us, and I'm troubled by the concerns and suspicions of our citizens," vice mayor Gilbert Lopez said.

The Thompsons were unavailable for comment.

Ultimately, the motion to purchase the property was carried 5-1, with Meeth dissenting.

Town manager's end-around play was bad move

An elected official is, above all else, a keeper of the public trust. That trust requires every issue be discussed and decided in an open, public meeting.

Councilman Thomas McGuire ("Cave Creek reacted appropriately to likely water crisis, April 9 My Turn) suggests that spending "many hours with our town manager questioning his strategies" is evidence of being a vigilant councilman.

Quite the opposite. Once an issue has been discussed behind the scenes, the open meeting is no longer a forum for creative solutions and coming to consensus. It is merely a formality to announce your conclusions. Debate and consensus building are no longer part of council meetings. As keepers of the public trust, this is anything but vigilance.

The town manager committed the town to a \$1.2 million expenditure by authorizing the town water tank being partially built on a neighboring proper-



SUZANNE STARR/THE REPUBLIC

Cave Creek built a water tank that spilled onto private property without a public hearing or Town Council action.

The public hearing process should have begun the moment the town manager realized there was a problem.

Instead, after the tank was built, the public hearing was held. No appraisal of the property was presented. No clear explanation of the events was given. The \$1.2 million impact on our budget

was not discussed. Accountability never came up. The expenditure was approved.

Health, safety and welfare are being touted as the reason for this quick and incomplete process. Our water system is desperately in need of storage and time is of the essence.

Therefore, according to some, it is OK to circumvent the public process and proceed as if nothing had happened.

The reality that the town manager was apprised of the problem before the tank was built, and only brought it to the council once the tank was built, is that health, safety and welfare does not apply here. An expedited public process exists for these reasons.

McGuire asserted, "If I am not aware of how our town is operating it is because I am not vigilant in my role as a councilman." That may be true in some municipalities, but in Cave Creek it is easy to be left unaware when the system of checks and balances are so clearly being ignored.

Vigilance is not discussing the people's business one-on-one with the town manager until there is no longer any need for public discussion. Vigilance would be to fix a system that is so clearly broken. The Town Council has the ability and the responsibility to do so.

Grace Meeth is a member of the Cave Creek Town Council.

Cave Creek to buy land where water tank was built

Beth Duckett
The Arizona Republic

Apr. 1, 2008 12:30 PM

CAVE CREEK - Despite criticism from residents, Cave Creek will spend \$1.2 million to buy land it encroached on to build a water storage tank.

The hurried land purchase got mixed reviews Monday at a Cave Creek Town Council meeting, when the Town Council voted 5-1 to approve the project.

Councilwoman Kim Brennan abstained from the vote.

Voting against the deal, Councilwoman Grace Meeth called Cave Creek's government "extremely backward and broken."

Meeth said the purchase was a done deal before the council could vote on it. "We should not be in this position."

The town, through the municipal Cave Creek Water Co., built a small part of the tank with verbal consent from property owner Herb Thompson, who bought the land last year off Hidden Valley Drive and Cave Creek Road. Thompson did not speak at Monday's meeting.

In exchange, the town paid to remove a power easement cutting the property in half.

The encroachment allowed the town to triple the tank's size, from 400,000 gallons to 1.2 million gallons.

The extra storage could come in handy if the town experiences water outages that hounded the area last summer, town staff said.

Cave Creek is spending millions to add more storage and update the aging system of the Cave Creek Water Co., which is bought last year.

Water from the local treatment plant will be stored in the new tank before it is distributed, said Cave Creek Utilities Manager Jessica Marlow.

"A 400,000-gallon tank is not nearly what we need to be able to provide reliable water service," Marlow said. "We could have built a smaller tank on that site, but we would have needed another site for another tank."

Some residents questioned the impromptu acquisition, chiding the town for spending taxpayers' money without more notice.

"The town's residents and taxpayers are about to be saddled with an unbudgeted and wholly unnecessary \$1.2 million," said resident Katya Kincel. "This is a simply outrageous and totally unacceptable abuse of fiscal and governmental responsibility."

Other citizens - fed up with the town's erratic water system - praised the deal.

"In the best interest of the town, the purchase is necessary," said former Cave Creek Vice Mayor Ralph Mozilo.

Time is of the essence and results are needed, he said.

Town Manager Usama Abujbarah said Thompson asked to keep the deal under wraps until an agreement was reached.

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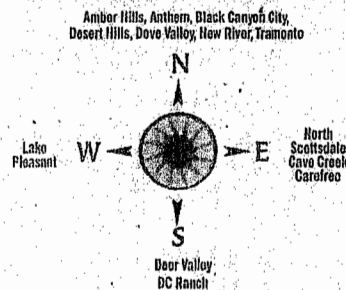
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DESERT ADVOCATE

Vol. 17, No. 43

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August 22, 2007



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ANTHEM McMOM COMMUNITY



Water tanks create controversy at council meeting

Council expediency, transparency questioned by residents

by Brian DiTullio

CAVE CREEK — Water tanks, WFA loans, Continental Mountain development and the topic of town council transparency made for a late night at Cave Creek Town Council.

The Aug. 20 regular meeting, which lasted until just after 11 p.m., became tense toward the end as the council discussed a contract for design services for various water system improvements—particularly those that could benefit Continental Mountain development.

Utilities Manager Jessica Marlow presented the item, which includes two concrete water tanks, one at the town's Neary site and one near Echo Canyon Drive and Rockaway Hills Road. Both locations currently house a water tank. The plan calls for the existing tanks to be demolished and replaced with larger ones. The design cost is listed as \$1,363,319.

Mike Worlton, water resources manager for the contracting firm RBF, presented the designs to council, noting the old tanks are in

need of repair and the town needs newer, larger tanks. The Neary site would hold a 1.1 million-gallon tank and the Rockaway Hills site a 2 million-gallon tank.

Worlton added the planned improvements would include upgrades to the town's water treatment plant, improving water quality, in addition to adding increased storage capacity.

Councilman Tom McGuire asked if those improvements would serve the town through build-out. "We're anticipating doubling Cave Creek's population," he said.

Marlow replied the tanks would meet build-out needs.

Councilwoman Grace Meeth then asked if the potential development at Continental Mountain had been considered in the plan, to which Marlow said "no," noting Rockaway Hills is the town's highest tank elevation and the site can support 70 percent of Cave Creek customers through simple gravity flow.

"The tank is necessary regardless of the development up there," Marlow said.

The discussion then was

opened to the public, and Cave Creek resident Terry Zerkle addressed council regarding the limited number of people notified about the project ahead of time, adding the potential development at Continental Mountain became public only because of a neighborhood meeting held by town staff. He stressed the council has not done enough to make the public aware of what's going on.

"This is a major, major policy action," he said.

Zerkle was followed by Nan Byrne, who said she wasn't invit-

ed to that neighborhood meeting, even though she lives nearby. Byrne expressed fears the town was negotiating a development deal without telling "anyone."

"I don't like negotiating with the county about using Cave Creek water," she said, also asking why town council hasn't been "open" about the discussions so far.

The Continental Mountain property in question lies outside the town of Cave Creek.

Water tank
please see page 4

Mayor Vincent Francia at that point said to Byrne in a loud voice, "Whoever it is who told you this is being untruthful. Anyone who told you this has their own agenda. If something happens, it'll come before council."

Byrne then asked Francia not to "scold" her. "I know nothing about that tank and I live right around the corner."

Zerkle told *The Desert Advocate* last week that Town Manager Usama Abujbarah revealed negotiations with Sienna Corporation about running water to the company's proposed development on Continental Mountain, which would fall under the county planning department.

Additionally, Susan Demmitt, a land-use consultant working with Sienna, said she is working on a pre-annexation agreement with Cave Creek in anticipation of potential annexation in the future.

Abujbarah confirmed discussions with Sienna last week as well, but said nothing was "a done deal" and that the matter would have to first come before town council.

On this point, Zerkle quoted town code in a letter to McGuire dated Aug. 14: "Section 31.25 (I) of the Town Code states: Policy-making prohibited. The Town Manager shall not exercise any policy-making or legislative functions nor attempt to commit or bind the Town Council to any action, plan, or program

the Town Council."

At the meeting, when finally brought back to council for a vote, McGuire's statement on the comments made was, "Other issues should be discussed if there's action in those areas."

Abujbarah said in the future he would attempt to include more residents in the neighborhood meetings, but that his staff was limited by time.

Vice Mayor Gilbert Lopez pointed out council knew the water system needed improvement when it was acquired, and noted the town hasn't tried to raise rates yet.

The vote to approve the water system improvements design was 7-0.

Council then turned to the actual construction contract, valued at an additional \$5.3 million.

After a brief discussion over how deep the tank could be buried to minimize its impact to the neighborhood, the discussion was again opened to the public.

"We're sacrificing transparency for expediency," Zerkle said. "That's not good public policy."

McGuire stated he doesn't see a problem at this point, while Councilwoman Grace Meeth gave "health, safety and welfare issues" as the reason for such quick action.

Councilman Dick Esser, however, indicated he would vote "no," citing the expediency factor.

"We limped along for years," Esser said. "We never had to turn the water off; it wasn't brown."

Esser pointed out the council had just approved a multi-million-dollar Water Infrastructure Finance Authority loan for the new wastewater treatment plant, plus \$6.6 million for these particular improvements, and noted the council has been told more money for repairs will be needed.

"I think we're running out of money," Esser said.

Francia then said three water outages this past summer that required the Town of Carefree to bail Cave Creek out created a sense of urgency and called for the vote. The issue passed 6-1, with Esser dissenting.

Reach the reporter at brian@thedesertadvocate.com.

Handwritten note: Never approved Council



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usama abujbarah

From: Tom.McLean@CH2M.com
Sent: Friday, February 23, 2007 1:28 PM
To: usama abujbarah; Wayne Anderson
Cc: fair.yeager@ch2m.com; Pamela.Carlson@CH2M.com
Subject: Cave Creek Water Company Master Plan

Usama and Wayne,

As we progress with the development of the Master Plan information for the Cave Creek Water Company I want to provide a preliminary summary of some of the major emerging issues that may require some immediate attention. These items have been developed as a result of reviewing the available data/system information, field reviewing the facilities, and discussions with the current Global operators. We will continue to review these items as we progress with the master planning efforts and update with further details. The items are summarized below.....

- The Water Treatment Plant is approaching its limitation on peak capacity of 3 mgd. Summer of 2006 peaked at over 2.7 mgd and the existing operations staff were concerned about the potential need for additional capacity by the peak season in year 2007 (this summer). There were some additional concepts being investigated that could potentially enhance the performance of the plant flow rate as an alternative strategy for this summer involving water process improvements associated with enhanced coagulation. As we know, activities related to working on continued improvements to the system have been discontinued by Global since December in anticipation of the ownership transition.
- Evaluation, design and installation of a 4th (and possibly 5th) treatment unit will need to be initiated immediately and planned for operation no later than the summer of 2008. The installation of the 3rd unit has completely occupied the existing structure housing the WTP, and, adding additional treatment units will involve reconfiguring the placement of the 4th unit on the site and associated piping connections.
- Increasing the capacity of the WTP will necessitate the evaluation of the capacity of the raw water conveyance system - more specifically the ability of the four booster stations to provide the proper flow rate of the water into town from the CAP canal.
- The CAP booster stations will require the purchase of at least one mobile emergency generator set that can be dispatched to any one of the booster stations in the event of power interruptions. Each of the stations are on different power grid sources which will reduce the probability of multiple failures, however, at least one backup power generator will need to be available. I would recommend that this be furnished by the new operator as soon as they are on board.
- As we have previously discussed, additional storage is critically needed for supply reliability and system pressure stability. The two current approaches being evaluated include, 1) the construction of storage at the Spur Cross site (phasing of 2 - 2 million gallon storage tanks) which will also require the installation of approximately 4400 feet of connecting pipeline, and, 2) the siting and construction of an approximately 1 million gallon storage facility immediately adjacent to the existing WTP site on a site yet to be acquired.
- As we move toward the summer demand season and consider transferring water supply from the CCWC system to assist the Desert Hills Water System, there will be the need to evaluate the current ordering schedule for the delivery of CAP water from the canal. The current ordering schedule was previously submitted to the CAP before the ongoing efforts to conclude the transfer of ownership and may not be on target for the combined system operational needs. The CAP allows changes to the ordering schedule but they are limited in number and follow a certain protocol. The operator will be involved with requesting any changes on behalf of the Town and we will assist with the planning projections relating to the water demand.

Please feel free to contact us with any questions regarding these issues. We are available to meet and discuss these items as we progress with the Master Plan effort.

3/2/2007

~~Water Master Plan~~

This packet contains:

1. Water Master Plan adopted by Cave Creek Town Council on April 16, 2007. While marked Draft, this is a copy of the actual WMP given to the Council in their agenda packet for the April 16, 2007 meeting and adopted by Council on that date. It is the only WMP version ever publicly vetted before the Council and the only one ever adopted/accepted by them.
2. Copy of the April 16, 2007 Council minutes showing adoption of the WMP.

Of particular note:

- Adopted WMP **does not** mention or call for a Gold Mountain tank to be built.
- Adopted WMP **does not** call for a tank to be built at the Rockaway Hills site. Calls for a tank to be built at the Spur Cross site also known as the Phoenix Mine site.
- First mention of the Gold Mountain tank was in the July 2007 version of the WMP. That was a major change and addition to the WMP having significant conflicting policy implications for the Town's 2005 Council adopted, publicly ratified General Plan. The July 2007 WMP version has never been vetted at a public meeting before the Council nor has it ever been adopted/accepted by the Council. Same for the Feb 2008, Mar 2008, and April 2008 versions.
- The non-publicly vetted, non-Council adopted/accepted July 2007 version of the WMP makes no mention of a tank being constructed at the Rockaway Hills site. July 2007 version still shows Spur Cross as the approved, planned for site location for the tank
- Spur Cross site had been cleared by the Arizona Department of Environmental Quality for construction of a water storage tank.

*USama
C. H. H. H.
7-2007
DIFFERENT
MATERIALS
FROM COUNCIL
ADOPTION
8-2007 - SUBMITTED TO
TOWN LOCATION STATE
NOTICE
SPUR CROSS ADMIT.*

**MINUTES
REGULAR TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, APRIL 16, 2007**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:00 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A. Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Dick Esser, Council Members Kim Brennan, Ernie Bunch, Thomas McGuire and Grace Meeth

Council Absent: Council Member Gilbert Lopez

Staff Present:	Town Manager	Usama Abujbarah
	Town Clerk	Carrie A. Dyrek
	Town Engineer	Wayne Anderson
	Director of Planning	Ian Cordwell
	Town Attorney	Cliff Mattice
	Town Marshal	Adam Stein

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS

Francia congratulated Councilman McGuire on the birth of his grand daughter.

Francia stated that he, along with **Abujbarah** and **Cordwell**, met with **Commissioner Mark Winkleman** at the State Land Trust for the purpose of moving the annexation forward. That will happen in two ways: 1) State Land Department will prepare a Development Agreement for Council's consideration and 2) **Commissioner Winkleman** will meet with Phoenix regarding any concerns they might have with Cave Creek's annexation. If they do, he will advise us and we will work with Phoenix regarding those concerns.

CALL TO THE PUBLIC

Gary Kierman, 6026 E. Tandem Drive, spoke once again regarding illegal alien day workers and their effect on Cave Creek. Since he spoke at the last meeting, there has been an influx of large white passenger vans cruising for illegal workers. The vans belong to Construction Staffing Services and have a long and detailed history for misdemeanors as well as felonies. He referenced ARS 9.240(B) 24. He provided Council a copy of that Statute and requested the Town to add to the agenda a full discussion and subsequent adoption of this Statute. He invited Council to join his group to protest at Good Shepherd of the Hills Church on Saturday.

Kierman stated that he had noted the Town's effort to have the zip code 85331 restricted to Cave Creek proper and is in favor of that action.

REPORTS None

ACTION ITEMS

1. CONSENT AGENDA

1. Approval of the March 19, 2007 Regular Council Meeting Minutes.
2. Approval of Lot Split; Case L-07-04 requested by Leonard and Diane Lai to split parcel 211-14-044H into 2 parcels located at East Skyline Drive and North Hidden Valley Drive.

M/Esser, S/McGuire to approve Consent Agenda as presented. M/C by voice vote 6-0 with Lopez absent.

I. GENERAL AGENDA ITEMS

1. PRESENTATION BY REPRESENTATIVES OF CH2M HILL ENGINEERING, COUNCIL DISCUSSION AND POSSIBLE ACTION TO ADOPT THE TOWN OF CAVE CREEK WATER MASTER PLAN.

Anderson introduced **Tom McLean** of CH2M Hill.

Tom McLean of CH2M Hill reviewed the process and gave an overview of the Town of Cave Creek Water Master Plan development process. Their efforts have been to transition from evaluating the water companies to looking at short and long-term needs they have, and move them toward a working department and operations for the community and the Town. He stated that this evening they would go through the major ingredients, talk about the approach of the Plan, some of the components featuring the water supply and its distribution aspects to the two systems and then leading up to the near-term improvements for the service structure capitol improvement program for the systems in the future.

A key aspect is development of a computerized hydraulic model of both water systems. This is the tool being utilized to help develop and structure the water master planning information and will also be passed on to the Town and its Engineering staff for their future use.

Fair Yeager, Professional Engineer with CH2M Hill, gave a demonstration of the water model and its capabilities utilizing a Power Point presentation.

- ✚ Existing CC&N (Certificate of Convenience and Necessity) of the Desert Hills area, Sabrosa Water Company, and the Cave Creek Water Company.
- ✚ City of Phoenix Municipal Planning area's recent update to their planning boundary, encompassing a portion of the Desert Hills system.

PUBLIC COMMENTS

Commissioner Ted Bryda asked if the model had been verified with actual field pressures, to which **Yeager** responded that the Cave Creek Water Company model received was already calibrated and field tested. And the Desert Hills water model that they developed, they received field pressures from Arizona American and compared those, which are presented in the Draft Report.

Ted Bryda asked about pressure regulators. Somehow we have to be careful because the pressure regulators in individual homes will not stop the air that is being pumped through the lines.

COUNCIL QUESTIONS None

McLean responded to **McGuire's** question on air in the water lines and **Bryda's** concern on excessive pressure on his line. It is possible that air can be in the water system depending on how it gets introduced. The function of the pressure regulator is to cut the pressure, to control it in a manageable range for the customers benefit and for the system as well.

McLean responded to **Esser** stated that they are taking input this evening and will incorporate the comments into the Final document

COUNCIL COMMENTS

M/Esser, S/McGuire to adopt the Town of Cave Creek Master Plan as presented this evening by CH2M Hill.

Esser stated he has personal experience with the old Cave Creek Water Company and he has every confidence in CH2M Hill, being as good as you can get. Plus we have very well-qualified people helping with this. It is time to move forward. This has been a very nice presentation.

McGuire said that considering the way that the Cave Creek Water Company and other nearby companies have grown over the years, it seems this kind of active approach to dealing with the present and future problems is very much in order.

Meeth commented that of all the presentations we've had over the years, this was probably the most complicated and most well presented. This makes so much sense and is really a well-done project.

Bunch thanked CH2M Hill for their fair presentation.

Francia agreed with **Meeth** and the other Council members. It's broken down in a language that we can understand and you are looking at Cave Creek's future. We appreciate that. It was a hard-fought battle to obtain the Water Company, we now own it and it is our responsibility and this draft is a good first step.

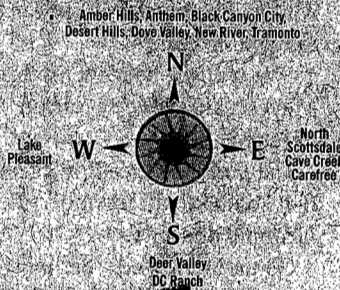
M/C 6-0 by voice vote with Lopez absent.

DESERT ADVOCATE

Vol. 17, No. 46

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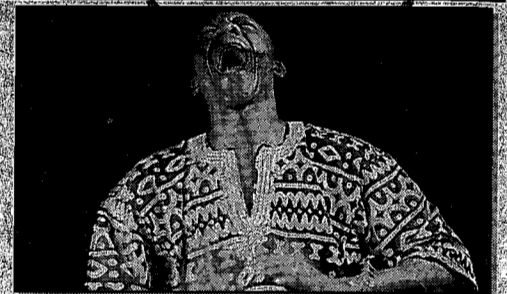
September 12, 2007



SPLASHDOWN SCHOOL & SPORTS



AMADOU'S CHOPS DESERT ARTS



Residents submit letter protesting water tank

Water service outside town boundaries questioned

by Brian DiTullio

CAVE CREEK — At least 92 property owners want to know why only seven people were personally notified of the town's plans to locate a 2-million gallon water tank in their neighborhood.

A letter delivered to Town Hall on Sept. 10 with 92 signatures asks Cave Creek Town Council to make full disclosure of all water project expenditures and debt, as

well as repayment schedules payable through local tax dollars. The council is also asked to "guarantee" the Cave Creek water system will not be extended to serve Continental Mountain or any other development outside the incorporated town limits.

Residents living around the planned water tank location off Echo Canyon Drive south of Rockaway Hills Road have

expressed outrage in the last few weeks over the size of the tank and the town's haste in pushing the project through with what is perceived as the bare minimum in public notification. A 100,000-gallon tank currently exists at the site.

The letter goes on to ask that town council meet with neighboring property owners on a regular basis during the tank design process "to assure that

neighborhood concerns are successfully addressed and mitigated, and to provide monthly updates on the construction and financial status of the Cave Creek water system projects."

According to former councilwoman Shea Stanfield, the water tank originally was planned for the town's Phoenix Mine site, adjacent to Spur Cross Ranch, behind some hills where it

wouldn't be generally visible.

"It's the highest point north of Cave Creek and would use a gravity feed," Stanfield said. "Plus, they could build a very large tank without obstructing any views."

The *Desert Advocate* attempted Monday to contact Town Manager Usama Abujbarah as to why the Phoenix Mine site was abandoned as a water tank location, but

Abujbarah did not return the call.

The residents' letter concludes with a request to halt all further proceedings regarding the water tank project until a meeting is held between town council and the affected residents.

Sienna Corp. confirmed to *The Desert Advocate* last month the developer was working on a

Tanks
please see page 3



EYESORE ...

\$156 million sought by district in override and bonds

by Brian DiTullio

CCUSD — Voters in the Cave Creek Unified School District now can obtain an informational pamphlet about the upcoming capital override and bond election.

The district recently released the pamphlet to answer questions about why CCUSD is seeking the extra money and what it will be

MINUTES

**REGULAR TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, AUGUST 20, 2007**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:07 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A. Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Kim Brennan, Ernie Bunch, Dick Esser, Thomas McGuire and Grace Meeth

Council Absent: None

Staff Present:

Town Manager	Usama Abujbarah
Town Clerk	Carrie A. Dyrek
Assistant Town Engineer	Souren Naradikian
Director of Planning	Ian Cordwell
Senior Planner	Larry Sahr
Associate Planner	Luke Kautzman
Town Accountant	Marian Groeneveld
Town Attorneys	Cliff Mattice & Scott Holcomb of Mariscal, Weeks

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS **Francia** announced an upcoming special session for Council, Executive Session only on September 5th, 2007.

CALL TO THE PUBLIC

Attorney Greg Robinson, 6040 7th Street #300, Phoenix represented the *Desert Advocate*. He stated that the *Desert Advocate* had an audit, the results of which are totally confidential until a public lien would be filed. That has occurred and now they are on the Council for collection action. They have asked the Town for terms and there shouldn't have to be a public display such as on a Consent Agenda for authorization to collect.

Dyrek presented students from the International Baccalaureate Program. **Ms. Henson** spoke on behalf of the International Baccalaureate Program students stating that the students would like to assist on various projects.

Lorelei stated they would like to help in any way they could in the community.

Fowler also spoke on behalf of the International Baccalaureate Program.

Greg spoke on the need for community service time within the area and hoped Cave Creek would be able to provide time for them.

Kirk spoke of the Arizona Heritage project where history is documented.

1052 M/C 7-0 by roll call vote.

1053

1054 **11. DISCUSSION AND POSSIBLE RATIFICATION AND AUTHORIZATION**
1055 **TO ENTER INTO A CONTRACT WITH SUNLAND ASPHALT TO MAKE**
1056 **REPAIRS TO MAJOR ARTERIALS DUE TO FLOOD DAMAGE.**

1057

1058 **Naradikian** stated that this is going to go on the roads after the temporary fix for permanent fix
1059 the public right of way and will be using the same contract that has been pre-approved so we
1060 don't have to go for bids

1061

1062 **COUNCIL QUESTIONS**

1063

1064 **McGuire** asked how will the permanent repair differ from the way that crossing is now.
1065 **Naradikian** responded that he would have to look more specifically to answer that question.

1066

1067 **Francia** asked that assuming Council approves this, with what we are planning to do here, will
1068 these crossings be able to withstand another 2 ½ inch storm. **Naradikian** stated that in the future
1069 we are working with Maricopa County Flood Control District to put all-weather crossings in five
1070 places in the Town, which will serve the public well.

1071

1072 **McGuire** asked if an all-weather crossing means that in general it would be passable even during
1073 rain. **Souren** agreed and stated they would be bridges.

1074

1075 **PUBLIC COMMENT NONE**

1076

1077 **COUNCIL COMMENTS**

1078

1079 **M/Lopez, S/Meeth to authorize and ratify the contract with Sunland Asphalt to purchase**
1080 **asphalt and repair various roadways due to recent flood storm damage in an amount not to**
1081 **exceed \$101,563.40.**

1082

1083 **Lopez** stated this is money required to complete the project that we just finished addressing on
1084 Item 10.

1085

1086 M/C 7-0 by roll call vote.

1087

1088 **12. DISCUSSION AND POSSIBLE AUTHORIZATION TO ENTER INTO A**
1089 **CONTRACT WITH RBF CONSULTING FOR DESIGN SERVICES FOR**
1090 **VARIOUS WATER SYSTEM IMPROVEMENTS PROJECT.**

1091

1092 **Jessica Marlow** reported that when the Town purchased the Water Company there were several
1093 deficiencies in the system that were identified. We are requesting to enter into a contract with
1094 RBF Consulting to address the first of these issues, which includes two new water storage tanks
1095 and upgrades to the existing Water Treatment Plant. RBF was selected because of their
1096 historical knowledge of the water system. They performed computer water modeling of the
1097 water system and prepared a Water Master Plan for previous water system. It was financially
1098 and timely beneficial for the Town to select them. **Mike Worlton** of RBF is present to talk
1099 about the scope of the project that would be completed under this contract.

1100
1101 **Mike Worlton** gave a Power Point presentation that gave some background on their company.
1102 RBF has been selected from among six very qualified contractors and we are very pleased with
1103 that. They specialize in water systems. **Worlton** gave an overview of Cave Creek and Desert
1104 Hills focusing on a couple of areas specifically. He gave historical background showing what
1105 has happened over the years. He pointed out some important goals.
1106 ✓ To improve the reliability of the system is high priority.
1107 ✓ Quality also a priority
1108 ✓ Improve operations and maintenance
1109 ✓ Increase all level of service
1110 ✓ Improve distribution between Desert Hills and Cave Creek – we want to join them as one
1111 system
1112 ✓ Increase overall storage
1113 ✓ Update and improve existing facilities that may include security improvements
1114 ✓ Increasing treatment compliant capacity
1115 ✓ Addressing security concerns
1116
1117 Treatment Plant:
1118 This is where all the wasted or backwash water is stored in two small tanks.
1119 Existing units and how they are treated
1120 Backwash attention
1121 120,000 gallon storage
1122
1123 New Plant:
1124 This will provide an additional 2 million gallons of storage and provisions for another 2 million
1125 gallons.
1126 There will be a new site well on frontage of Basin Road.
1127
1128 Main Improvements:
1129 Two million gallon treatment unit to be improved
1130 Adding additional clean water storage
1131 Utilize existing tank
1132 Removal of 1970 vintage tank – it is a maintenance concern
1133 Sidewall front Basin Road will tie into the back of Circle K – more pleasing view from the road
1134
1135 Existing Area Tank site:
1136 Chain link fence
1137 Additional storage and one is a pressure tank
1138
1139 Proposed Tank site:
1140 Demolition of existing equipment that is very old and undersized
1141 Add 1.18 million gallons of storage in a concrete tank that is long life span and low maintenance
1142 (Eight feet of that to be buried underground)
1143 Architectural treatments to blend better with the Town Core area
1144 Concrete wall around tank is very thick and secure. We will have a block wall along the front to
1145 minimize the use of block and the tank can be secure without the wall.
1146 Pumps and electrical equipment will be within that wall.
1147

1148 Rockaway Hills Site:
1149 Improvements include demolition of existing equipment
1150 Addition of a 2 million gallon concrete storage tank with provisions for a future larger size tank
1151 Eight foot buried, sixteen feet above
1152 Coronation system

1153
1154 **Worlton** pointed out that this site is much higher than the others and the majority of the system
1155 will be by gravity.

1156
1157 Summary:

- 1158 ✓ Improving operations and maintenance.
- 1159 ✓ Storage allows for system testing with enough water in the system to test for pressures
1160 etc. during the summer seasons.
- 1161 ✓ We will improve our overall level of service to the Town with more reliable supply to
1162 customers because of the gravity system with 2 million gallons of storage; more than
1163 triple what we have now.

1164
1165 **COUNCIL QUESTIONS**

1166
1167 **Lopez** asked how you would compare the gravity flow system pressure wise; 20 – 30 pounds.
1168 **Worlton** responded that the elevation is a rule of thumb: 2.31 foot of elevation equals just 1 psi.
1169 One of the provisions we are considering is putting in a small or a manual transfer switch that
1170 can transfer power to a generator to serve if needed.

1171
1172 **McGuire** had two questions. One of the objectives was to improve water quality. How would
1173 that impact the users? What improvements are needed? **Worlton** responded that they have
1174 looked at water usage. At the Water Treatment Plant we are going to be adding some units that
1175 will provide better treatment. Also we have been looking at water age to ensure that water that is
1176 up in this tank is fresh and we're working on keeping it fresh.

1177
1178 How do these improvements merge into future plans as the Town grows? **Marlow** responded
1179 that these improvements are the immediate improvements that were identified in the Master Plan
1180 that was prepared for the Town Water System by another consulting firm. And the
1181 improvements set forth in that Master Plan, these are included in that and it goes systematically
1182 all the way to build out. **Worlton** added to that as part of their plan they have expansion
1183 capabilities as shown, by 2 million gallons and over 3 million gallons at Rockaway Plant.

1184
1185 **Meeth** asked how the sites were chosen and in what order. Because there is some controversy
1186 about some development north of Rockaway Hills as far as getting on the water system.

1187
1188 **Marlow** responded that the sites were selected based on the water model and what was shown to
1189 provide the best water service to the entire distribution system. The Rockaway site particularly
1190 was chosen because it is the height and elevation that the Town has facilities on currently and
1191 can supply approximately 70% of the Town by gravity in the event of power outage. That tank
1192 is necessary regardless of any future development. It was decreased in size from 2.9 to 2 million
1193 gallons because of additional studies that were done showing it would take too long to fill and
1194 we really didn't need that much storage.

1195

1196 **Mattice** responded to **Brennan** that the entire contract was negotiated and that is why you see
1197 many deletions in the form contract provided by RBF on Page 258, Section B and page 274.
1198 **Mattice** responded that they do have a scope of services attached and that is why we added an
1199 addendum to provide extra protection. I think the idea is that they will prepare the design portion
1200 and the next item on the agenda will be the construction portion. But the scope of services will
1201 be worked out. Individual rates would be unforeseen situations.

1202
1203 **Marlow** responded to **Esser** that a portion of the funding is proceeds from the WIFA Loan from
1204 the purchase of the Desert Hills Water Company.

1205
1206 **Worlton** responded to **Francia** that they have some room with construction phasing that they
1207 will be working very closely with MGC to ensure that nothing is impacted. We want to come in
1208 early to prep the site and get some of the things that can be done without impacting the existing
1209 operations at all. We are trying to complete construction by May, 2008.

1210
1211 One of the things we will be doing for security is putting in block walls at the sites to make it a
1212 little more secure.

1213

1214 **PUBLIC COMMENT**

1215

1216 **Terry Zerkle**, 41200 N. Echo Canyon Drive, is one of the property owners adjacent to the tank
1217 site. We do have an interest in how and what the Town is going to do to mitigate the appearance
1218 of the tank to the neighborhood. He pointed out that there are more affected property owners up
1219 there than the seven property owners who received the notice from the Town Manager regarding
1220 this tank site. He encouraged Council to expand the number of property owners to be made
1221 aware of this tank. There are probably 15-20 owners that look down over this tank. He also
1222 encouraged Council to conduct a series of public meetings to explain what is actually proposed
1223 for this tank and for the extension of the water system to Continental Mountain. This is a major
1224 policy initiative and really necessitates a full hearing before the community. If the pipe on that
1225 site is asbestos it isn't covered and it's not secured in any way.

1226

1227 **Worlton** answered the pipe question. They did show in the graphic where the pipe is stored that
1228 it is an ACP asbestos concrete pipe. It is in a non-friable form, meaning it doesn't disperse into
1229 the air like what the risk would be like with asbestos where fibers would be in the air. This pipe
1230 is completely mixed into the concrete pipe.

1231

1232 **Nan Burne** lives in the neighborhood and community of the proposed new tank. It is going to
1233 impact me as well as others. There has to be a way to mitigate the tank appearance because it
1234 will affect us not just visually, but hopefully the Council will be forthcoming and letting us
1235 know. Are we just going to be taking care of the citizens of Cave Creek or have there been some
1236 negotiations with the two new subdivisions proposed on Continental Mountain? She feels very
1237 unsettled about the fact that maybe negotiations are going on with County development to share
1238 our water.

1239

1240 **Charlie Spitzer**, 6836 E. Continental Drive, stated that he looks at the tank from his back yard.
1241 I think it is going to be ugly and will take out the entire mountain range from my back yard.

1242

1243 **COUNCIL COMMENTS**

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M/Bunch, S/McGuire to authorize the Town to enter into a contract with RBF Consulting for Design Services for various Water System Improvements Project in an amount not to exceed \$1,363,319.

Bunch stated that our Town Charter is to be concerned with the health, safety and welfare of the citizens. We own the water company. As it currently stands we have picked up two water companies. One of them has far fewer customers than the Cave Creek area with much more storage. That's a problem. When we can't deliver water to households because of high demand periods, it's not because we have a system that needs improvement. We are working toward this and increasing the liability. It will also at some point generate the pressures that we need that maybe Rural Metro won't have the reputation of never losing a slab. Without water we can't put fires out. We need to improve the system.

McGuire stated that we're talking about improvements to the water system that will meet immediate needs of Cave Creek.

Meeth commented that we bought a system that has no storage.

Esser asked if there was room in the wording of this contract to allow those people who are directly impacted by these improvements to be given the opportunity for input. **Abujbarah** stated that at the first meeting we invited only the immediate neighbors and in the future we will expand that. Right now we don't have fire coverage, which would require about 1500 gallons per minute for 2 hours. It's not available right now. So the storage tanks have to be completed by May of 2008. With that in mind, we have to proceed with the construction so we can't delay and face the next summer without the storage tanks. We will deal in good faith to do everything possible to mitigate the impact on the neighborhood.

Meeth asked for a public forum to present some designs the team has come up with. **Abujbarah** responded that our experience with public meetings and neighborhood meetings is the concerned neighborhood and the home owners within the neighborhood pay more attention with a neighborhood meeting. The meeting can be held at Town Hall or in the neighborhood. We will consult with the neighbors about the time and place of the meeting.

M/C 7-0 by roll call vote.

13. DISCUSSION AND POSSIBLE AUTHORIZATION FOR THE TOWN MANAGER TO ENTER INTO A CONTRACT WITH MGC CONTRACTORS, INC. TO BE THE TOWN'S CONSTRUCTION MANAGER AT RISK CONTRACTOR FOR THE WATER SYSTEM IMPROVEMENTS PROJECT.

Jessica Marlow stated that this is the second portion of the Water System Improvement project. The previous agenda item was authorized for the design of the facilities and this is to authorize the contract with the contractor to construct the facilities and to also authorize the first GMP, which will include construction of the two water tanks and pre-purchase of the new treatment unit for the Water Treatment Plant.

1292
1293 MGC was selected from six submittals that were received by the Town. The requested
1294 qualifications were advertised. We short-listed to three and completed surveys of those three
1295 contractors. All contractors were qualified. MGC has a significant amount of experience in
1296 constructing water storage tanks, specifically these concrete storage tanks that we are designing
1297 and installing in our system.

1298
1299 The contract is being executed as a Construction Manager at Risk Contract, which means the
1300 contractors were brought in early in the design process to work with the engineer to work out
1301 constructability issues and engineering during the design phase so that the project is complete
1302 and cost effective.

1303
1304 The Contractor has been working with the Engineer since we notified them of selection about a
1305 month ago. They have been working diligently without a contract in order to facilitate the
1306 completion of this project in a timely manner.

1307
1308 The contract is being executed in two portions. The first contract before Council was for the
1309 construction of the two water storage tanks and pre-purchase of the water treatment unit for the
1310 Treatment Plant. A guaranteed maximum price was prepared and included in the packets for the
1311 construction of these portions of facilities without complete design plans because the Contractor
1312 has significant experience in designing these types of storage tanks.

1313
1314 The second guaranteed maximum price will be brought before Council at a later date that will
1315 include the remainder of facilities including booster pump stations and connecting pipelines, and
1316 additional work at the Water Treatment Plant to improve the operations there. Once the design is
1317 further along the Contractor is able to develop a price for that work.

1318
1319 **COUNCIL QUESTIONS**

1320
1321 **Bunch** went back to the question from before. Do we think bedrock is eight feet below grade?

1322
1323 **Randy Gates**, General Manager, MGC Contractors, responded that the design of the tank would
1324 be unaffected by the depth. The tank design will allow the tank to be buried completely without
1325 change of design. The only issue will be cost for extra excavation. The site exploration that has
1326 been previously done probably doesn't cover the depth to much deeper than it already is and in
1327 that area rock could be encountered, which would greatly increase the cost. And as to the
1328 impact of the hydraulics, I would let the Engineer speak to that.

1329
1330 **Worlton** went back to his rule of thumb of 2.31 feet in elevation. So if it's a 24-foot tank and
1331 we're 16 foot above ground, divide by 2.31 to get 5 or 6 psi drop in the pressure group you serve
1332 if you dropped it completely underground. So there wouldn't be a significant impact on the
1333 pressures. Five to six psi, which can eliminate areas that you could have served by gravity, it
1334 might reduce the number of 100 percentage of the system. If it's an economical feasible option
1335 then it's a possibility.

1336
1337 **Esser** asked if any bore testing has been done on that site. How far down? How many test
1338 holes?

1339

1340 **Marlow** responded to **Esser** that they did have a complete geotechnical investigation of the site
1341 done. She didn't recall how many test holes were dug, but possibly three throughout the site and
1342 they centered on where the new storage tank is proposed to be constructed. We requested them
1343 to go to a depth of ten feet and they did encounter hard dig/bedrock at approximately 6 to 7 feet
1344 below ground. So they didn't even complete the digging to the ten feet that we had requested.

1345
1346 **Esser** commented that then there were only 3 test bores at the current tank site and ran into rock
1347 at 5 to 6 feet, to which **Marlow** agreed.

1348
1349 **Brennan** asked about Page 337. Storage tank #1 is measured by outside diameter and storage
1350 tank #2 is measured by inside walls diameter. Is there a reason for that? She thought it would be
1351 uniform generally.

1352
1353 **Worlton** responded that there is a reason. We have a team of designers on this and one designer
1354 decided to use the inside diameter where the other decided to use the outside.

1355
1356 **Worlton** responded to **Brennan** that they would do one standard before construction. They will
1357 all look the same and we are working very closely with the Contractor to ensure that they are
1358 very clear on that. **Abujbarah** added that the Neary tank site was very important to measure
1359 from the outside because of the property size. It is so small, so limited. The new owner of that
1360 property agreed to give the Town some additional property so we can have the size of the tank
1361 we need. The Rockaway Hill site has no limitation but at the same time one of the objectives by
1362 minimizing the tank size from 2.9 million to 2 million gallon will give us additional area around
1363 the tank to berm around the tank. Only 8 feet of the 16 foot tank will be exposed. If there are
1364 additional improvements in the future we can berm the 8 feet and look at landscaping for the
1365 other 8 feet. We have good experience with the Waste Water Treatment Plant and will try our
1366 best to mitigate all impact on the neighborhood.

*Heh
Thompson
owner -
never
authorized!*

1367
1368 **PUBLIC COMMENT**

1369
1370 **Terry Zerkle**, N. Echo Canyon Road, spoke of the letter he had written to Council regarding
1371 transparency. What he has heard this evening is that we are sacrificing transparency for
1372 expediency. He suggested that is not good public policy. There are many people who aren't
1373 aware that this tank is going in their neighborhood...that's wrong.

1374
1375 **COUNCIL COMMENTS**

1376
1377 **M/Lopez, S/Bunch** to authorize the Town Manager to enter into a contract with **MGC**
1378 **Contractors, Inc.** as the Town's Construction Manager at Risk Contractor for various
1379 **Water System Improvements Project** and authorize the expenditure of funds for the first
1380 **Guaranteed Maximum Price in the amount of \$5,310,309.**

1381
1382 **Lopez** commented that it was obvious from discussion that the improvements are needed and
1383 feels they have professional people who know what they are doing and will expedite the project
1384 as much as possible and mitigate the issues that have been discussed tonight regarding the
1385 environmental esthetical impact.
1386

1387 **McGuire** stated he felt they are caught between public safety and the valid concerns from
1388 neighbors.

1389
1390 **Meeth** stated that there is a health, safety, welfare issue here that overrides other issues.
1391

1392 **Esser** stated he would vote no on this and explains that he was curious to know why there is such
1393 an expediency issue. Global Water and Cave Creek Water limped along for years without major
1394 storage problems. We knew going in that infrastructure was in bad shape but he doesn't
1395 understand the degree of urgency to build these new tanks. The Utilities Manager indicates there
1396 is more cost coming with another project. He thinks the Town is running out of money. It is a
1397 health, safety and welfare issue but he didn't feel that had been addressed.
1398

1399 **Francia** stated that this summer the community had experienced a number of emergency
1400 situations from the CAP line that brings the water up, to power failures, to tanks that had no
1401 water for our citizens, hence the sense of urgency. Council does not react or move quickly just
1402 to move quickly but there is reason for this as established this summer. We were bailed out by
1403 Carefree three times by putting water into our tanks. That is the reason for the urgency, to get
1404 the tanks built and the water in it.
1405

1406 **M/C 6-1 by roll call vote with Esser voting nay.**

1407
1408 **M/C to adjourn at 11:07 p.m.**
1409

1410	SUBMITTED BY:	APPROVED BY:
1411		
1412		
1413		
1414	_____	_____
1415	Carrie A. Dyrek	Vincent Francia
1416	Town Clerk	Mayor

1417
1418 **CERTIFICATION**
1419

1420 I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the
1421 Regular Session of the Town Council of Cave Creek held on the 20th day of August, 2007. I
1422 further certify that the meeting was duly called and held and that a quorum was present.
1423

1424 Dated this _____ day of _____ 2007
1425

1426
1427 **SEAL**

1428	_____
	Carrie A. Dyrek, Town Clerk

Terry Zerkle
Prepared Comments

~~9/17/2007 Council Meeting~~

My neighbors are going to speak to (spoke to) the flawed public process that resulted in the Town Council's decision and action to construct a 2.0 million gallon water storage tank in the middle of our neighborhood off N. Echo Canyon Drive without public involvement.

I wish to comment briefly on the consequences of that action.

Because the public process was flawed, the contract the Town Council awarded for the construction of the tank at the N. Echo Canyon site is tainted and possibly unlawful.

This is just one consequence of the Town's decision to sacrifice transparency for expediency in racing ahead with tank construction at this site.

A larger consequence is the disenfranchisement of an entire community in a public participation process to which they are entitled by law to engage in if they so choose.

Because the decision to move the tank site from Spur Cross to N. Echo Canyon was reached outside the view of the public behind closed doors without even the chance for public input, Cave Creek citizens were unilaterally, arbitrarily and systematically denied the opportunity to participate in the decision-making process, to become informed, and to offer comments.

I suggest to you:

This is not democracy.

This is not the law.

This is not good, responsible, representative open government.

We are asking you to make it right. Please grant and arrange for the public meetings with the Council requested in the letter dated September 6 delivered to you on September 10 signed by 90+ Cave Creek citizens.

**MINUTES
REGULAR TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, SEPTEMBER 17, 2007**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:03 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A. Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Ernie Bunch, Kim Brennan, Thomas McGuire and Grace Meeth. Council Member Dick Esser was absent but participated by telephone starting at 8:44 p.m.

Council Absent: None

Staff Present:

Town Manager	Usama Abujbarah
Town Clerk	Carrie Dyrek
Town Attorneys	Gary Birnbaum, Cliff Mattice & Scot Claus of Mariscal, Weeks

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS

Mayor Francia announced that the transformer had just blown out at the Water Treatment site causing tenants to be out of water for some time, but that APS was on its way. That is why **Marshal Stein** was absent from the meeting. **Town Manager Abujbarah** might also have to leave this meeting.

Francia stated that after the recent storms had done damage to School House and Spur Cross Road crossings they made application for monsoon emergency relief. Governor Napolitano has declared Cave Creek along with a Mohave County town to receive emergency funds.

Francia announced that there will be a blessing of animals on October 6, 2007 behind Mojo's in the parking lot. It will be performed by Rev. Hudson.

Ray Veres, 37211 N. Kohuana Place, was pleased to see the clean up along Cave Creek Road, but it still needs more work. Also, entering onto Cave Creek Road by the Bike Shop the streetscape makes it difficult to see oncoming traffic from Carriage Drive.

CALL TO THE PUBLIC

Gigi Peterson, 41770 N. Fleming Springs Road, addressed the Echo Canyon Water Treatment Tank's height and the issues surrounding that. She stated that her neighborhood had not been notified of this project. She spoke of her concerns of future water supply.

Janet Mohr, 7700 E. Arroyo Road, expressed concern that everyone is making this a Continental Mountain issue. If the Town doesn't provide water, developers could obtain water from another source. If the Town were to provide water to a development on Continental Mountain, it would be providing CAP water. If the Town decides not to provide water, a developer unable to obtain a 100-year assured water supply could easily obtain a 100-year assured water supply by simply paying to join a water replenishment district, whereas it could drill wells that deplete the Cave Creek aquifer while replenishing water somewhere else within the active water management area.

Nina Spitzer, 6836 E. Continental Mountain Drive, had many questions for the Council. She also spoke of her concern for the size of the tank, which is about the size of a Boeing 737, which will block out her view of the mountain at sunset.

Mike Shepston, 7140 E. Continental Mountain Drive, expressed concern over the proposed water storage tank at the Rockaway Hills site.

Bob Hughes, 41414 N. Echo Canyon Drive, expressed his concerns about the water tank. His home is about 200 yards from the site. There was not enough of an outreach to the neighbors informing them of the new tank going in. Noise and visual impact need to be mitigated. What happened to putting the tank at the Spur Cross site? What is the financial impact to homeowners on future water rates? He felt there should legally be an open public meeting for discussing the issues and questions everyone has.

Sandi Eppel, 41049 N. Echo Canyon Drive, stated this is affecting homeowners and showed photos of the view from her patio that she will lose. This is not in the Master Plan. How did this get approved? Citizens want to be involved.

Scott Haberman, 5797 E. Canyon Ridge, expressed concern over day laborer issues. He spoke on man's law vs. God's law. The flock of the Good Shepherd Hill's Church fails to understand that man's law is the law of the land. It does not give religious groups the right to make laws or pick and choose the laws they wish to obey.

Mark Lipsky, 6651 E. Tanya Road, spoke regarding an anonymously written and published letter to the Editor in the *Sonoran News* which he found repulsive. It is dangerous in this time of war to print letters written anonymously.

Katya Kincel, 41200 N. Echo Canyon Drive, stated that she and her husband decided to live in Cave Creek because they felt the Town championed preservation of its rural life style, protection of the natural environment and wild life habitat and protection of the mountain views, as expressed in the Town's 2005 General Plan. Allowing extension of the Town's water system to unincorporated areas will create precisely the opposite effect.

Sonja Lockman is building a home at 6770 E. Rockaway Hills Road and now she has found out about the new water tank.

Ancha Campangna, 6835 E. Continental Mountain Road, wants to know why she wasn't notified about the water tank. She has lived here for over 21 years.

Theresa Kirkham, 7134 E. Highland Road, felt they hadn't been given full information. Though she has a well she will be impacted by taxes. The tank should be buried or find some other way.

Babette Sandifer, 6914 E. Continental Mountain Drive, stated that her property backs up to the site. Her biggest concern is the noise when she has bed and breakfast guests and having to look at this huge project with an 8 foot berm of dirt surrounding it. How will you secure this berm? A rain could bring the dirt down to her pool and affect her business.

Terry Zerkle, 41200 N. Echo Canyon, spoke regarding the process on construction of the tank. One consequence of the Town's decision to sacrifice transparency for expediency with tank construction at this site might be that the public process is tainted and possibly unlawful. The decision behind closed doors to move the tank site from the Spur Cross site denies the public participation to which they are entitled to by law. Please make it right by holding a public process.

Gary Kiernan, 6026 E. Tandem Drive, stated he was puzzled by the No Parking Ordinance, and ambivalent about the resolution about Illegal Loitering. He would like to see a No Soliciting Ordinance, plus the implementation of Occupancy Limits that are already covered by the International Building Code to which we currently adhere. He is astounded at the lack of action or mention of Good Shepherd of the Hills Church illegal activities. Enforce the law now.

Glenn Rangitsch, 41620 N. Echo Canyon, is a 10-year resident of Cave Creek. The water tank site is a dirty rotten mess. Owners should have been notified.

Charles Spitzer, 6836 E. Continental Mountain said the Water Master Plan calls for the tank to be located at Spur Cross site. When was the Plan amended?

Glen Reickage, 41620 N. Echo Canyon, moved to Cave Creek for the peace and quiet. He has hiked around that tank many times and it is like a city dump. Why would we sell water and ask for increased traffic on Fleming Springs Road? Do we want another road like Rio Verde Drive with its heavy traffic? Owners should have been notified before the building of this tank.

Charles Fitzer, 6836 E. Continental Mountain Drive, had received information from CH2M Hill that the tank would be located at the Phoenix Mine Site at Spur Cross. He spoke of the large storage tank that has never been accomplished. He spoke of several other statements from various meetings and said that no records exist that indicate this version was adopted by the Town Council. There has been no indication that the tank site would be moved to another location. He and six others neighbors had a hand delivered letter on July 27, 2007 signed by the Town Manager requesting a meeting with my wife and me referring to the building of water storage tanks in the Rockaway Hills location. Questions: Who amended the Town Council approved Master Water Plan? When? Why is the Town using the July 2007 version as an approved document? Since the Town Engineer and CH2M Hill agreed that the storage tank should be at the Phoenix Mine Site why are you starting construction this week on a tank that is not in the Master Water Plan?

Bill Vale, owner of Harold's Restaurant, came with a specific request regarding the Town's water woes. The priority for future growth is to fix the infrastructure of the basic Town services.

A new Treatment Plant must be a priority for this Council and Staff. His restaurant has been out of water ten times since the Town took over the Water Company. He requested better communication from Town Hall.

Mike Durkin, 7139 E. Continental Mountain, learned about the tanks from neighbors. He is on a well. How is it the neighbors were not informed? You need to involve all the stakeholders. He expressed concern that the Town doesn't have the long view.

Linda Brockman, 6624 E. Willow Springs Lane, stated citizens need to be informed; a lot of information has not been in the newspapers. She thanked Council for answering her questions but expressed her concern that no one is working together.

Nan Byrne, 41001 N. Echo Canyon Drive said her home was built in 1960. What is the purpose of the location of this site? Is it for outside developments to be annexed to the Town later? She was not notified or invited to participate. Her hand delivered letter did not mention adjacent home owners were asked to attend a meeting.

Mayor Francia announced at 8:04 p.m. that he had just been informed that the water problem with the APS transformer that blew had been corrected and that water would be in service to all within 30 minutes.

Patti Windes, 5404 Morningstar, stated that the noise from mounted shooting has again become an issue at 38020 N. Vermeersch. She requested the Town Code be amended to restrict mounted shooting in Cave Creek. She would like it to be an agenda item for public hearing within the next month or so.

Herb Natker, 6850 E. Stevens Road stated the following:

1. Cave Creek Casita is still using the expired SUP. That is still not on an agenda. Please bring it forward.
2. Public involvement signs are posted but they are too small to read. Make signs larger.

Anna Marsolo, 418 N. Sierra Vista, is the owner of property at 40647 N. Fleming Springs Road. There used to be a newsletter "Cave Creek Connection," which would be a great communication tool.

COUNCIL COMMENTS

Meeth asked per A.R.S. 38-431.01 that the two issues heard tonight be put on immediate agendas. They are the mounted shooting issue and the water tank at Rockaway Hills issue.

REPORTS There are no reports this evening.

Terry Zerkle
41200 N. Echo Canyon Dr., Cave Creek

Comments

9/24/07 Council (Mtz)

Over the weekend I was copied on two emails from neighbors saying the Town Manager told them last week one of the main reasons the tank site had to be relocated from Spur Cross to Rockaway Hills is because the Spur Cross/Phoenix Mine site is contaminated with arsenic and wouldn't receive ADEQ approval for a water storage facility. Moreover, that it would take 2-3 years to clean up and remediate the site.

I've looked at four documents that say otherwise:

1. Most important. January 23, 2007 letter from the Manager of ADEQ's Voluntary Remediation Program to Town Engineer Wayne Anderson clearing the site for all uses except residential uses.
2. Excerpt from February 20, 2007 Council minutes at which the Council received a presentation from the Town's consultant on redevelopment planning for the Phoenix Mine site and ADEQ's clearance of the site:

QUOTE: Esser asked if there are any environmental issues because it was a mine site. Anderson responded that the Town has recently received the Declaration of Environmental Use Restriction (DOEUR) letter from ADEQ stating that **no further action is required**. The DOEUR restricts the site to only non-residential uses. **We have cleared our environmental requirements.**

3. Excerpt from May 2007 Cave Creek Museum Newsletter re Phoenix Mine Site Update:

QUOTE: Cave Creek Town Engineer Wayne Anderson spoke to those in attendance, and answered questions on the proposed development site. The Town acquired 38 acres adjacent to the preserve, where a visitor center and potentially the Museum and other non-profits might locate. He said, "The Cave Creek Museum is a major stakeholder in the development plan. **Now that the site has been cleaned up and is no longer an environmental hazard**, we can go to the next step of discussions."

4. April 16th adopted Cave Creek Water Master Plan which places the tank at Spur Cross. Why would the Town's engineering consultant for the Master Water Plan place the tank at Spur Cross if it was an environmentally challenged site? The answer is they wouldn't. Their professional reputation would be on the line. The site had been cleared for this type use.

What the Town Manager and the Town says is the reason for relocating the tank just doesn't have the ring of truth to it. While I'd really like to hear a sensible, defensible explanation, something actually grounded in science, defensible engineering, truth, fact and the product of open public involvement, at this point in time I'd just like the Council to 1) reconsider the actions taken at its August 20 meeting, 2) clean up the Rockaway Hills site, and 3) move the tank back to Spur Cross where it was supposed to be in the first place.

**MINUTES
SPECIAL TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
SEPTEMBER 24, 2007**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:00 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A. Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Kim Brennan, Ernie Bunch, Dick Esser and Grace Meeth

Council Absent: Councilman Thomas McGuire

Staff Present:	Town Manager	Usama Abujbarah
	Town Clerk	Carrie A. Dyrek
	Town Engineer	Wayne Anderson
	Assistant Town Engineer	Souren Naradikian
	Director of Planning	Ian Cordwell
	Utilities Manager	Jessica Marlow
	Assistant Utilities Manager	Mike Rigney
	Town Accountant	Marian Groeneveld
	Associate Planner/Trails Coordinator	Bambi Muller
	Town Attorney	Cliff Mattice

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS

Francia announced that members from the Emergency Management Team of Arizona had come to the office today regarding funding to repair School House Road and Spur Cross Crossings. The Town will receive 75% of costs for the repair, approximately \$160,000 in Emergency Funds signed by the Governor.

CALL TO THE PUBLIC

Mark Lipsky expressed disapproval of the Sonoran News printing of the anonymous hate speech. He urged the citizens of Cave Creek to hold the editor responsible for respectful and truthful reporting.

Terry Zerkle, 41200 N. Echo Canyon Drive, stated that he had been copied emails stating that the Town Manager had given two reasons for relocation of the water storage tank because the Spur Cross Phoenix Mine Site is contaminated with arsenic and wouldn't receive ADEQ approval for a large storage facility. Moreover that it would take 2-3 years to clean up and remediate the site. He has looked at four documents that say otherwise:

1. January 23, 2007 letter from the Manger of ADEQ's Voluntary Remedial Program to Town Engineer clearing the site for all uses except residential uses.

2. An excerpt from the February 20, 2007 Council Minutes in which the Council received the presentation from the Town's Consultant on Redevelopment Planning for the Phoenix Mine Site as well as information regarding ADEQ's clearance of the site. Upon asking if there were any environmental issues because it was a mine site, Anderson responded that the Town had recently received the Declaration of Environmental Use Restriction letter from ADEQ stating that no further action was required. The DEUR restricts the site to only non-residential uses. We had cleared our Environment requirements.
3. An excerpt from the May 7, 2007 Museum News Letter regarding the Site update: "Cave Creek Town Engineer spoke to those in attendance and answered questions on the proposed development site. The Town acquired 38 acres adjacent to the preserve where a Visitors Center and potential Museum and other non-profits might locate. The Cave Creek Museum is a major stake holder in the Development Plan. Now that the site has been cleaned up and no longer an environmental hazard, we can go to the next step of discussions.
4. On April 16, 2007 the Adopted Cave Creek Water Master Plan places the tank at Spur Cross.

Why would the Town's Engineering Consultant for the Master Water Plan place the tank at Spur Cross if it was an environmentally challenged site? They wouldn't; their professional reputation is on the line. The site had been cleared for this type of use. What we have been told by the Town that the reason for relocating the tank is that it just doesn't have the ring of truth to it. He would like Council to reconsider the actions taken at the August 20th meeting to clean up the Rockaway Hill site and move the tank back to Spur Cross.

Mike Shepston, 7140 E. Continental Mountain, read some quotes from the Town Manager and a letter from ADEQ that he felt might help the Council to reconsider the location of the tank site. He quoted from a CH2M Hill report to Town Staff stating that among other things the Spur Cross Phoenix Mine Site would also need approximately 4400 feet of connecting pipe line. The request for qualifications for various water system improvement projects, which was first published on June 4th was for various water projects. However in looking at the application it lists a new 750,000 gallon tank in the Town Core in addition to a 1.9 million gallon tank at Rockaway Hills site. There is a request for bid for 5,700 feet of 12 inch water transmission line. As it stands, the closest 12 inch water line is at the Carol Heights site, which is at Fleming Springs and School House. It already has a 12 inch pipe and only 90 feet lower in elevation yet it is not slated for the new tank. It is approximately 5,700 feet in the request for qualifications for the Rockaway Hill site. The Town Budget adopted on June 18, 2007 includes funds set aside for a 12 inch pipe to extend to the tank on Continental Mountain. The Town finally notified 6-7 homeowners on July 26 that the tank was going in on Rockaway Hills. Move the tank and take care of the Core with a 750,000 gallon tank in the meantime.

Herb Natker, 6850 E. Stevens Road, stated that the Thursday's published Hearing of the Planning Commission should be declared illegal. It was not an agenda item, only a definition, not the intent.

Bill Vale, owner of Harold's, recalled the water outages since the Town purchased the utility Sunday morning there was another outage. He has no sympathy for anyone who stands in the way of assuring a consistent water supply for this Town. We are in a crisis water situation.

Arizona Republic Sustainability Series
From: terryzerkle@aol.com
To: shaun.mckinnon@arizonarepublic.com; terryzerkle@aol.com
Subject: Arizona Republic Sustainability Series
Date: Fri Jun 27 2008 10:58 am

*Oval
extends
town's
water
supply
vs
not
sufficient
to
build
out.*

Greetings Shaun,

I've been following with interest the **Arizona Republic** series on sustainability. Your articles are exceptionally well researched, written, informative and provocative.

I have particular interest in water sustainability planning and its linkage to responsible land use planning, development, and growth, which, as Alan Stephens said in your Sunday article, is absolutely critical to the future of Arizona and its residents. There is a serious disconnect at all levels of government in Arizona concerning this linkage, and a frightening absence of enlightened elected official leadership from the state level right on down through the municipal level regarding the consequences that will come into play by not paying attention to these linkages and making the right, informed choices.

Consider the following example in Cave Creek where I live. Presently, the Town of Cave Creek is working with the State Land Department to annex several thousand acres of State Trust Land to the Town. The annexation agreement is nearing sign-off by the State Board that oversees these matters after which it will come back to the Town Council for final action. The timing is imminent.

The annexation is being sold to Cave Creek residents as a conservation/preservation measure since a large portion of the acreage would be held in a preservation category (which the Town will have x years to purchase at a price yet to be determined, so it is not free to Town residents). The agreement provides for density transfers that will enable the development that would have been built on the conservation portion of the acreage to be transferred to the acreage subject to development thereby increasing densities on that portion of the Trust Land, while ostensibly preserving the other portion assuming the Town purchases it.

The annexation will result in approximately 4,000 dwelling units being placed on that land and added to Cave Creek along with major new commercial development.

Under the agreement Cave Creek takes on the burden of servicing the State Trust Land and the development thereon with water out of the Town's current CAP allocation until such time as that allocation is exhausted.

The Town's current CAP allocation is approximately 2,600 acre feet of water. This allocation, I'm told, is not sufficient to get the Town to build-out in its current geographic configuration. Nor is the Town's 16" CAP water pipeline extending from the canal at Deer Valley up Cave Creek Road to Cave Creek's water treatment plant sufficiently sized to deliver water to meet Cave Creek's build out need. When the Town's current water build-out need is added to the State Trust Land obligation, it results in the Town having to firm up an additional 1,000 acre feet of permanent water supply. There is no more CAP water available to acquire, according to the Town's water attorney. He also said that whatever rights to water the Town is able to ultimately acquire will be incredibly expensive as will be the cost of getting that water to Cave Creek.

As relates to sustainability planning, all this raises five critically important and equally compelling questions:

1. Where is the Town going to get the additional water to service all this growth?
2. From where is the money going to come and how is the Town going to pay for the additional water, as the cost will run literally into the multiples of millions of dollars?
3. How is the Town physically going to get the additional water to Cave Creek?
4. How is the Town going to pay for the infrastructure and/or wheeling charges to get it here since, again, the cost will be in the multiples of millions of dollars?

5. And, how reliable are the Town's sources of water (CAP and other) likely to be in the future (and what is the back up plan if they are not) since there is a major difference between having a water allocation (s) and actually having wet water? With the drying of the West, this latter issue takes on increasingly important and relevant significance.

What makes the Cave Creek situation more interesting from a sustainability planning perspective is the Town appears hell bent on selling its existing limited, finite CAP water allocation as expeditiously as it can to facilitate and subsidize development outside Cave Creek's town boundaries instead of preserving this scarce resource to service future Cave Creek growth and resident needs when and as it is needed.

Consider the following two examples excerpted from the Cave Creek Water Master Plan updated final report dated April 2008 (Note: This plan has not been before the Town Council for approval, but it is nevertheless used by the Town as a policy document for decision purposes much to the chagrin of many Town residents who feel they have been completely closed out of the policy making process):

1. Page 3-6 referencing an interconnect to supply the Town's CAP water to neighboring Desert Hills, an unincorporated area outside the Town's boundaries. Referring to augmenting supply to the Desert Hills Water Company, the Plan states "...another option is for the Town to augment supply to DHWC via the existing connection to the CCWC system. The Town is also examining a second location to interconnect the systems. As noted in Figure 3-3, CCWC will have an excess of CAP water available to deliver to DHWC via the existing system connection." By virtue of the Town's own numbers above, in terms of the long haul, there is no excess CAP water to deliver to Desert Hills. Moreover, when the Town purchased the Desert Hills Water Company in 2006, Town residents were told the two systems – Cave Creek and Desert Hills – would remain entirely separate operationally and financially. Each would have to stand on its own with respect to supply, infrastructure, operations and paying its own way. Unfortunately, that's not happening, but that's a story for a different time.
2. Page 4-74, Table 4-8. Cave Creek Capital Improvements Program.
"Year 2010 Gold Mountain Development Add tank, piping, and pumps along Fleming Springs Rd NE of Echo Canyon Rd"
The development referred to here is outside the Town's boundaries on Continental Mountain. The development does not now exist and would have difficulty receiving Maricopa County subdivision approval but for the developer getting a commitment from the Town to service the development with water and sewer. Town staff, without this matter ever being brought before the Council at a public hearing, is negotiating a development agreement to service this area with Town water and sewer. These negotiations literally fly in the face of responsible sustainability planning. In addition, the Town's supplying services to this development would conflict with multiple major policy expressions contained in the Town's adopted 2005 General Plan.

At the risk of possibly being misunderstood, please know that I'm not unilaterally opposed to the State Trust Land annexation or to responsible development, and not at all opposed to conservation and preservation of scarce land resources. At the same time, elected officials and citizens should engage in these activities with their eyes open and get all the pertinent facts and information. Long term consequences and costs should be appropriately, carefully and fully assessed and quantified; impacts on resources identified, documented and made known. Elected officials have the responsibility for overseeing the assembling of this information and making sure it is made available to citizens in a complete and understandable form. That has not been done. To date the only part of this story that has been told to citizens is the preservation part. The impact on water and the costs to the Town's citizens have not been explained.

In matters related to water and linking it with responsible development, land use planning and growth decisions, sustainability planning and protecting the integrity and viability of Cave Creek's finite CAP allotment for use in Cave Creek should be at the forefront and an integral part of the Council's development

and land use decision-making, not done after-the-fact and as an afterthought to policy actions that drive up demand and overextend an already scarce resource.

I've spoken to several Town Council members regarding these matters. I have inquired where the Council as a policy body is on the issue of water sustainability planning now and for the longer term. I was told there is zero Council discussion on sustainability planning.

Currently the Town's focus is on growth, fixing up the old system, extending service inside and outside the Town's boundaries to facilitate, aid and encourage development, and selling as much water including CAP water as fast as the Town can to whoever wants to buy it regardless of whether they are in or outside the Town's boundaries.

I've also determined the Town doesn't have a clue where it's going to get water to firm up known future supply deficits, how they are going to get it to Cave Creek, or what it is going to cost. Yet the Town persists in its efforts to sell water as if there is no day of reckoning, no adverse consequences for the Town and its citizens now or in the future.

I suspect what is happening here is, in many respects, little different from what's taking place elsewhere in the State. Nonetheless, it reflects flawed public policy and is based on a strategy that runs counter to Cave Creek wanting to remain a small, unique western town touting its cherished cowboy heritage. It reflects a strategy destined to change the rural character of the town. It reflects a strategy totally devoid of resource sustainability planning and destined to vastly overextend scarce water resource capability. And, given the exorbitant costs of firming up the extra water needed to get the Town to build-out and the infrastructure to get the water to Cave Creek when coupled with how the Town is currently operating the water utility, it reflects a strategy destined to get and keep the Town in perpetual financial crisis.

In conclusion, I look forward to reading the remaining sustainability series articles. Good work. If I can answer any questions concerning my knowledge of the Cave Creek situation, please feel free to contact me.

Terry Zerkle
Tel: 480-437-9103

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Comments

Cave Creek Council Mtg

August 4, 2008

Water Master Plan

*Town staff -
strategic document*

Hon. Mayor and Council

Name *Terry Zerkle*

Address

- Speak to the issue of the Town's Water Master Plan
- Master Plans of whatever type are, by definition, policy documents requiring Council approval and adoption at a public meeting allowing for public comment and participation.

~~*~~ Please do not be confused. Policy making represented in the form of a master plan is the exclusive province of the Town Council.

- What you've heard tonight is intended to confuse the issue and obfuscate serious managerial misdeeds by Town staff as relates to misrepresenting the status of the Town's Master Water Plan to others.
- Most contemporary MWP adopted by Council – April 16, 2007
- At least 3 subsequent iterations of the Town's MWP **have not** been brought before or adopted by the Town Council, but have been submitted by Town staff to at least one other governmental agency (Maricopa County ESD), perhaps more, and represented as official Town policy. Also note these iterations have never been subjected to a public review and involvement process as required by law.

*Adopted =
Accepted*

~~*~~ Please note there are **major changes and additions** to the subsequent versions of the WMP from the version you approved on April 16, 2007.

- Town staff would have you believe they can make major changes and additions to the Council approved WMP without going back to Council. That is not only incorrect. It is disingenuous, contrary to state law, and an anathema to the practice and art of open, accountable, democratic local self government.

- ~~*~~ You are encouraged not to take my word for it. Consider enlisting expert help and advice from the ASU School of Public Affairs. The School of Public Affairs faculty are among the foremost educators, scholars and published writers nationally on the subject of city council policy-making.

- The Arizona State Constitution, the Arizona Revised Statutes and the Cave Creek Town Code all reside final policy-making and legislative responsibility of whatever nature exclusively in the Town's elected governing body, not the Town Manager or staff.
- It is important the Mayor and Council take control of its policy-making responsibilities and be the driver for energizing, reviewing, vetting, and adopting Master Plan and other policy documents. That's what you were elected to do. By Town Code and state law that's what you have a legal duty to do.
- In the interim, you need to clean up the MWP fiasco and make it right. The Council and the public have been seriously disenfranchised and kept in the dark about what has and is going on here. It's time to let the sunshine in.
- Thank you.

**MINUTES
REGULAR TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, AUGUST 4, 2008**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:05 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A. Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Kim Brennan, Ernie Bunch, Dick Esser, Thomas McGuire and Grace Meeth

Council Absent: None

Staff Present:	Town Manager	Usama Abujbarah
	Town Clerk	Carrie A. Dyrek
	Director of Planning	Ian Cordwell
	Senior Planner	Larry Sahr
	Utilities Manager	Jessica Marlow
	Utility Technical Assistant	Dave Adams
	Town Attorney(s)	Gary Birnbaum and Cliff Mattice
	Town Marshal	Adam Stein

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS None

CALL TO THE PUBLIC

Jim Peirce, 35849 N. 61st St. Carefree talked about Stagecoach Pass Estates. He went through some of its history and stated that it is a mess; it looks like a dump.

Terry Smith, 39825 N. 26th Street stated that real estate signs had popped up on many homes and businesses. He doesn't want to lose the Town to "sameness" one business at a time. He would like the Mayor and Council to meet and fund a publicist to promote the Town's character and uniqueness.

Ralph Mozilo, 41201 N. School House Road spoke as Treasurer of the Cave Creek Film and Arts Festival; a 501(C)(3) non-profit organization. The Town funds \$60,000 each year. He asked Council to amend Council Policy #42 to amend the policy to add their organization to the list of Community Contracted Services. He will make a written request to the Mayor.

Joe Dano showed his support for the Town.

REPORTS

the same is true with businesses. An interesting discussion followed on how to increase subscriptions for a blanket-type coverage. One of the main reasons for meeting was the decrease in subscriptions. The lower the subscription rate the less chance that Rural Metro will continue to provide fire coverage.

Bruce pointed out that Daisy Mountain Fire District is going to give their presentation in the near future. We've been invited by Rural Metro to visit the communications in both fire stations and we have been, invited up to Daisy Mountain to view their facilities. He is amazed at how all the fire people cooperate with each other and rely on each other, wanting to provide the best coverage for all the towns.

The next thing on the agenda making a decision on which is really the best way to go with fire coverage and how will it be paid for. He stated that this is going to take some time and he encouraged non-subscribers to get subscribed. This is not something that decisions will change the system. Once they made the decision on the best way to afford the system, we will come through with recommendations and leave it in the hands of the Council for their decision and votes.

COUNCIL QUESTIONS

Francis stated the preference would be for the committee to take the time that they need so that when it comes time to make recommendations to Council that they are the very best.

Bruce responded to **Esser** they hope that by the end of this year at the latest, the Committee would have a recommendation for Council.

Bruce responded to **Esser** that Phoenix is not in the mix since the Committee does not have much to offer them. We don't have our own fire stations built for them to use. Paradise Valley had a unique situation when they were surrounded going in and out of each others' territories all the time.

McGuire stated he was impressed with the way the Committee is functioning in leadership and cooperative effort and the open-mindedness.

PUBLIC COMMENT None

3. REPORT BY JESSICA MARLOW, UTILITIES MANAGER AND UTILITY DEPARTMENT STAFF AND COUNCIL DISCUSSION REGARDING THE STATUS OF THE TOWN UTILITY SYSTEMS.

Jessica Marlow reported on the status of the Town Utilities System. She stated she had been at every Council meeting last summer explaining the water outages and plans for improving the system so we wouldn't go through another summer like last summer. There were newspaper articles weekly with TV crews interviewing her and staff members and it was definitely not how she wanted to gain her 15 minutes of celebrity. This summer has been very quiet so she would like people to know what they have done.

Marlow gave an overview with a brief introduction to the newest water system employee.

MGC Contractors contracts were awarded at the August 20th Council meeting and that is when RBF started the design of the facility. MGC could not start construction until October because the Neary Tank sight had an existing tank that was ¼ storage for the Town that couldn't be taken out of service until the demand decreased. Between October and April 30th we put the Neary Tank on line and 3 weeks later we put the Rockaway Hills Tank on line. So we put 3.2 million gallons of storage in service within 6 months. Most of the contractors who bid on that project said, "There is no way. You're not going to get it done." But MGC was able to do it and they have done an amazing job.

✓ **Water Master Plan Information and Introduction**

The construction is still on-going at the Water Treatment Plant for probably another month or so. Most of the facilities are operating currently and they are working at site work finishing, wall up, and gates, etc. During the design of the facilities the County required a Master Plan update to include all these new facilities to ensure that everything would work as designed. That Master Plan update was submitted to the County so that we could move forward with construction of the project. The Master Plan update has raised some questions. Did we violate our Master Plan by building our Rockaway Hills Tank in a location that wasn't originally in the Plan? The answer is No. **Marlow** introduced **Larry Sahr** from the Planning Department, who has put together a great summary discussion on the difference between the Water Master Plan and the Town General Plan. How we present this to our Water Advisory Committee, Planning and Zoning, and the Town Council in the future will be in more detail. **Marlow** asked **Sahr** to give a summary of what he has put together on the improvements.

✓ **Site to Site Improvements**

Larry Sahr stated that recent on-going dialogue has taken place in the community related to the Town's Water Master Plan. Inevitably and understandably, the discussion has revolved around the General Plan process and how that process relates to the Water Master Plan. The reason being is that most people here are familiar with the General Plan process and have dealt with it over the years and understand how that process works. We're new to the water business and the Water Master Plan and the Waste Water Plan were both initiated for the first time in this last year. Staff is attempting to outline the similarities and the differences between the two types of plans and the issues to be presented in both the nature, purpose, and the process for the approval of the aforementioned plans.

A. Similarities between the Plans

Both plans are strategic plans. They are long term plans that look at goals, objectives, and options available to the community to implement the goals and objectives of the General Plan. The General Plan has within it a water element that states goals and objectives for the community related to water.

Functions of the Two Plans: Primarily we are talking about differences between the plans. The similarities between the plans were just that, both were strategic plans but how those plans evolved, how they are developed, and the approval process they go through are entirely different. The General Plan comes through a Statutory Requirement...State Law mandates the development of the Plan and how that Plan is to be put together and approved by the Town and

citizens of the Town. The Water Master Plan is required by a Regulatory Body that has the authority to approve construction of any significant extensions or improvements to the Water System or the Waste Water System within the community.

The function of the General Plan is to provide land use information or recommendations to assist Town decisions makers as they guide the Town into the future. The Plan contains the Town's goals and policies on development, its intensions and aspirations for the future, strategies for implementation to achieve future goals, and maps supporting the elements contained within the General Plan. The General Plan can be amended only by following the State mandated approval or endorsement process.

The function of the Water Master Plan is to provide a comprehensive vision for accommodating the long-term water supply needs of the community. The Plan evaluates strategy and efficient options for developing the needed water infrastructure while considering physical system characteristics. The Plan is based upon, and supplements the Town of Cave Creek's General Plan Water Element and utilizes the best growth and water use forecasts available. Those improvements are what trigger the submittal to the Maricopa County Environmental Service Department for approval to construct authorization and shall cause the most current version of the Water Master Plan to be re-evaluated by the County. The Plan may be amended administratively as is necessary to adapt to changing conditions and County requirements.

B. Contents of the Two Plans

Without going through item by item, one can see there is quite a difference between the contents of the Plans. Item #11 in the General Plan is the Water Resources Element. He urged Council to look at that. Within the Water Master Plan, issues such as supply require many evaluations such as resource evaluations, system assessments, and conclusions of the type of items that are listed within the Water Master Plan.

What mandates these Plans and where do they get their authority? The General Plan is mandated by Arizona State Statute RS9-461.05 and 06 and it is reviewed by the State of Arizona Department of Commerce. The Water Master Plan is required by the EPA Safe Drinking Water Act. It falls under the Arizona Administrative Code Titles 9, 12, and 18 and its administration is delegated to Maricopa County. Within the County it falls under Environmental Health Codes Chapters 1, 2, 4, 5, and 9. It's administrated by the Maricopa County Environmental Services Department, Waste Water and Waste Management Division, Subdivision Infrastructure and Planning Program for approval to construct/approval of construction plan submittals. The Master Plan Report is reviewed and approved as required to ensure that all relevant issues are addressed.

C. The Plan Approval or Endorsement Process

The General Plan requires mandated public participation, public hearings in front of the Planning and Zoning Commission for recommendations for the Council. It is adopted by the Town Council and ratified by the voters of the community. That is a Statutory Requirement.

The Water Master Plan is reviewed and recommended by the Water Advisory Committee. It is reviewed and accepted by the Town Council and reviewed and approved at time of Town

submittal for approval to construct from the Maricopa County Environmental Services Department.

D. How often are Plans Updated?

The General Plan should be updated every 5 to 10 years. Statutorily it is stated 10 years in fast growing communities such as Gilbert, Buckeye, or Surprise or where there is rapid growth within the community then five years is a better time line. The updates on the Water Master Plan need to be updated as necessitated by System improvements. The Water Master Plan background contains goals and objectives, the current status of the System, options to the Town for improving the System to meet the requirements of the General Plan and the Water Element of the General Plan, and it contains models. Models take those different options to be plugged into the existing system that we have, looking at growth patterns within the Town, water usage, anticipated growth within the Town, areas of the Town anticipated development and all together give a comprehensive overview of what the future improvements for the water infrastructure should contain. And when it is submitted to the County, the County looks at the Infrastructure Plans and at the Water Master Plan and they ensure there is a connectivity between the two so that the Improvement Plans that we are putting in place are meeting the goals and objectives and the underlying needs of the System in order to protect the public health, welfare and safety of the community.

It has been brought to the attention of Staff that questions have been raised concerning the Water Master Plan. Those questions were provided to Staff and we will address them here.

Questions:

1. Has Staff made revisions to the Water Master Plan? Yes, Staff was required to do so by Maricopa County and Environmental Services.
2. Did Staff obtain approval from Town Council prior to making revisions? No. Town Council does not approve the Plan. They review it, accept it, but the approval process rests with Maricopa County and Environmental Services.
3. Is Staff required by Statutory Code to get Town Council approval prior to making revisions? No. We are not.
4. Was the Rockaway Hills Tank Sites specified in the original Master Plan? No, it was not.
5. Did Staff meet with surrounding Rockaway Hills Tank Site property owners to explain the improvements to be undertaken? Yes, Staff did.
6. Is public property subject to Zoning Ordinance Regulations? The Town is exempt on public property.
7. Is the Water Master Plan a specific plan? No, it is a strategic plan, a long term plan with set goals and objectives.
8. Who has approval authority over the Water Master Plan? Maricopa County and Environmental Service Department have approval authority as their regulatory function.
9. How frequently will the Plan be brought before Town Council for review? The plan will be brought before Council as necessary based upon System needs.

Technology Improvements

Marlow gave an overview. The first set of improvements is of the Surface Water Treatment Plant showing a before aerial photo of the old plant and at the top of page the existing treatment

By design in Policy.

be a process with lots of improvements to be made. There are some fire hydrants now that provide plenty of flow and pressure just with the improvements that have been made.

Lopez wondered why people haven't had the answer before now as to why there were no fire hydrants in place.

Marlow stated that one other benefit of the storage capacity during the very hot part of the summer when it is over 110 for 2 – 3 weeks straight, we were using more water than we could make. We started out at the beginning of the summer and the tanks were full but when it got to the very hottest part of the summer each day the tank level peaks, goes down as it used, then it peaks, down and peaks. Those peaks get lower and lower every single day because we were unable to fill the tank to the previous level each day, which means we were using more water than we could put back in. Without this storage in place in that time frame, every single day the Town would have been without water in the morning for an unknown period of time. Given this additional storage we were able to make up that difference. We got down to about 60-70 percent of our storage still in the tanks and once it started raining we were able to fill everything again since the water usage went down.

Overall, the storage has allowed us to re-evaluate some of the improvements that need to be done to the system. The CAP improvements are still very important and they will need to be done in the relatively near future, but can be delayed in lieu of other improvements when more funding is available for those improvements.

She spoke on the problem at CAP 203 booster pump station causing one of the pumps to be out for five days. We allowed it to be off because we had the storage and nobody noticed. The exact same problem happened the first week she worked last year causing the first system water outage last summer. A seal blew, the vault flooded, the motor burned out, and one of the pumps went down. In that case we had to hire emergency work and probably spent three times as much money as this time because we were able to do it on a non-emergency basis because of the storage. Fire protection greatly increased in areas that are served by these tanks that have the fire hydrants available for use.

Marlow responded to **Lopez** that if there were a problem at the Neary Tank the system could be fed from the Rockaway tanks to make up the difference on a temporary basis. And we can also still use the Linda tank just south of Cave Creek Road on Linda Drive. We're just not using it now because the pumps are older and can't put out the same pressure that the new Neary tank pumps can.

McGuire stated he was aware of the questions regarding the lack of fire hydrants out of the Rockaway Hills but he didn't know why it didn't get out to the citizens.

PUBLIC COMMENTS

Terry Zerkle, 41200 N. Echo Canyon Drive spoke regarding the Town's Water Master Plan looking at it from a policy standpoint. Master Plans by definition are policy documents requiring Council approval and adoption at a public meeting, allowing for public comment and participation. Please do not be confused. Policy making represented in the form of a Master Plan is the exclusive province of the Town Council. What you heard tonight is intended to

confuse the issue and confuse serious managerial misdeeds by Town Staff as relates to misrepresenting the status of the Town's Master Plan to others and the actual actions that have taken place. The most contemporary Master Water Plan adopted by the Council was at the April 16, 2007 meeting. At least 3 subsequent iteration of the Town's Master Water Plan have not been brought before or adopted by the Town Council but have been submitted by Town Staff to at least one other governmental agency, the Maricopa County Environmental Services Department, perhaps, and represented as official Town policy. Also note these iterations have never been subjected to public review and involvement process. Please note that there are major changes and additions to the subsequent versions of the Water Master Plan from the version Council approved on April 16, 2007. Town Staff would have you believe they can make changes and additions to the Council approved Water Master Plan without going back to Council. This is not only incorrect but it is disingenuous, contrary to State Law, and an anathema to the practice and art of open, accountable, and democratic level of self-government. You are encouraged not to take my word for it. Consider enlisting expert help, advice, from the ASU School of Public Affairs. The School of Public Affairs faculty is among the foremost educators, scholars, and published writers nationally on the subject of City Council and policy making. The Arizona Sate Constitution and the Arizona Revised Statutes and Cave Creek Town Code all reside a final policy making and legislative responsibility of whatever nature, exclusively in the Town's elected governing body, not the Town Manager or Staff. It is important that the Mayor and Council take control of its policy making responsibilities and be the driver for energizing, review, abetting and adopting Master Plan and other policy documents. That's what you were elected to do. By Town Codes State Law that's what you have a legal duty to do. In the interim you need to clean up the Master Water Plan fiasco and make it right. The Council and the public have been seriously disenfranchised and kept in the dark about what has and is going on here. It's time to let the sunshine in.

Jim Peirce, 61st Street, a customer of the Cave Creek Water Company, commented that it was a pretty good presentation about the mechanics and what is going on with the Cave Creek Water Company. He would like to see a similar presentation of about as much detail on the financial aspects for the Cave Creek Water Company. He is a customer, appreciates the rates now and wants to find out as much as he can on how this money is coming in, current expenditures, what the balance sheet looks like, what projections are and find out what is going on from a financial standpoint.

Janet Mohr, 7700 E. Arroyo was very impressed with the presentation. She did a fabulous job and felt that the Town was really up against some really tough problems and many folks didn't think it could be pulled off and she knew it was a lot of work from everyone. They deserve a lot of credit for what you've done.

Nina Spitzer, 6836 E. Continental Mt. Road stated she was very impressed with the display, especially for the technology, but when she looked under the Improvements there were few too many exclamation points under Fire Protection. Our neighborhood in the Rockaway Hills Tank area continues to face increased risk in the event of fire. Why was there not a consultant for fire hydrants at the onset of the project? Not after the fact. Our neighborhood is 2000 feet away so as a result, when they built their house they put sprinklers in. The minimum requirement for psi for those sprinklers is 60 psi. Our psi ranges anywhere from 30 to 48 and has been all along. We were promised before the project even started that pressure would be increased when that tank was completed so at least we could count on protection of our sprinkler system. We can't

November 20, 2008

Hon. Vincent Francia, Mayor
and Members of Town Council
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

Re: State Trust Land Annexation

Dear Mayor Francia and Council Members:

Open space preservation is a noble goal. Cave Creek's historic commitment to preserving scenic mountain vistas, protecting the natural environment, and acquiring and preserving open space are among the main reasons many Creekers made the decision to live here.

That said, there are several aspects of the impending State Trust Land annexation, which the Mayor and Council are on record as touting as a visionary open space preservation initiative, that bear closer examination and an explanation to Cave Creek citizens prior to the annexation being consummated.

Not the least of these is the following:

1. **Water supply.** Since not all of the Trust Land acreage will be placed in a preservation status and considerable acreage will be developed resulting in a reported 4,000 additional dwelling units, where is the water going to come from to serve the developed portion and at what cost and impact to current Cave Creek residents?

Cave Creek's current CAP water allocation is approximately 2,606 acre feet. According to Town staff, that allocation is insufficient to take Cave Creek in its current geographic configuration to full build-out, not to say anything of serving the State Trust Land acreage.

At the April 9, 2008 Water Advisory Committee meeting, Utilities Manager Jessica Marlow reported that water to serve the State Trust Land annexation when added to the Town's current build-out water supply need would result in the Town having to secure an additional 1,000 acre feet of firm water supply, taking the total to in excess of 3,600 acre feet.

According to Town staff, the potential supply deficit resulting from the annexation alone approaches 1,000 acre feet. This deficit might be mitigated somewhat depending on who gets to the well first, development in current Cave Creek or State Trust Land development. However, under any scenario, the supply deficit resulting from the annexation will be significant and exceptionally costly to firm up.

Consider this. At the October 8, 2008 Water Advisory Committee meeting, Ms. Marlow reported that Payson had turned down a bid of \$36,000 an acre foot for rights to its CAP water. Assuming this is representative of what Cave Creek might have to pay to firm up water supply deficits brought on by the annexation (and there is ample reason to believe it won't be less than that number), **the cost could be as high as \$36,000,000 (perhaps even higher) for just the rights to water.** This says nothing of the multiples of millions of additional dollars it will cost in infrastructure and ancillary arrangements to physically get the water to Cave Creek. Contrast this with the \$123 an acre foot the Town is currently paying to receive its present allocation.

Who is going to be asked to pay for firming up this deficit and how is it going to be paid, i.e., where is the money going to come from?

When added to the \$39.5 million in debt the Town has already racked up on the water system and design of the new wastewater treatment plant with millions more yet to come (at least \$23.0 million for w/w treatment plant construction alone plus the millions that are in the revised Water Master Plan that has never been brought before the Council for action or revealed to the public), for a small town these numbers, to put it mildly, are through the roof.

2. **Cost to Creekers to purchase preservation acreage.** For years the preservation portion of the State Trust Land annexation was touted as a no-cost item to Cave Creek residents. That argument was given by the Council as one of the compelling reasons why residents should support the annexation. Many were surprised to learn this past spring, including some on the Council, there is going to be a cost, a fairly significant cost running into the millions of dollars to purchase the preservation acreage. What is that cost? \$5.0 million? \$10.0 million? \$15.0 million? \$20.0 million? More? And how is it going to be paid? Saying the community has 20 years to figure it out is pretty disingenuous given that the financial and service obligations incurred and placed on the backs of Cave Creek residents are immediate, significant, binding, and omnipresent at the time of annexation.

In an e-mail earlier this year to Shaun McKinnon, Environmental Reporter for the Arizona Republic, I wrote on the issue of responsible sustainability planning in relation to annexation. I wrote Shaun that I'm not unilaterally opposed to the State Trust Land annexation or to responsible development, and not at all opposed to conservation and preservation of scarce land resources. I said at the same time elected officials and citizens have a responsibility to engage in these activities with their eyes open and get all the pertinent facts and information. It is important that long term consequences and costs be appropriately, carefully and fully assessed and quantified; impacts on resources identified, documented and made known. I wrote that elected officials have the responsibility for overseeing the assembling of this information and for assuring it is made available to citizens in a complete and understandable form.

I wrote further that in matters related to water and linking it to responsible development, land use planning and growth decisions, sustainability planning and protecting the integrity and viability of Cave Creek's finite CAP allotment for use in Cave Creek should be at the forefront and an integral part of the Town Council's development and land use decision-making, not done after-the-fact or as an afterthought to policy actions that will assuredly overextend an already scarce resource.

To the Mayor and Council I offer this observation. To date the only part of the annexation story that has been told to the citizens is the preservation part, and then only an incomplete part of that story. The impact on the Town's scarce, finite CAP allocation, what it is going to cost to firm up the deficit in the Town's water supply created by the annexation, how it's going to be firmed up and who pays, and the costs to purchase the preservation acreage, how it is going to be paid for and the impact on Cave Creek citizens simply have not been explained.

So far, in terms of certainty as to who benefits from the annexation when all the rhetoric is stripped away, it appears to be the State and the developers who will buy the land from the State. In all other matters, it appears the Town's citizens will be left holding the bag figuratively and literally, with maybe a benefit down the road if they are willing to cough up the money to purchase the preservation acreage, maybe not.

Hopefully, you will provide a full and plausible written explanation to these issues prior to the vote to annex. In the interest of governmental openness and full disclosure, I respectfully suggest you, as the Town's elected leaders, have this duty, and that the Town's citizens deserve no less. Perhaps a referendum on the annexation would be a better way to go. Let the citizens decide directly.

May I have the courtesy of a written response?

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-437-9103

c. Carrie Dyrek, Town Clerk

November 24, 2008

Hon. Vincent Francia, Mayor
and Members of Town Council
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

~~Re: Cave Creek CAP Water~~

Dear Mayor Francia and Council Members:

The purpose of this letter is to request that the Town discontinue the practice of delivering Cave Creek's finite CAP water outside the historical Cave Creek Water Company CAP service area boundary, and that hereinafter Cave Creek's CAP water be retained for use exclusively in Cave Creek and the historical CCWC CAP service area, not sold or delivered outside of them.

The following is offered in support of this action:

1. Cave Creek's existing CAP water allocation is a **precious, finite resource** deserving careful protection from being overextended.
2. According to Town staff, Cave Creek's **existing CAP water allocation is insufficient** to take the Town of Cave Creek in its present geographic configuration to full build-out. It is an extreme **dereliction of the Council's sworn duty and obligation** to protect the best interests of Cave Creek and its citizens to knowingly and negligently overextend this precious, less expensive water supply resource by delivering it outside the historical service area boundary for the CCWC knowing that the supply deficit thus created will have to be firmed up with exceptionally more expensive alternatives, the high costs of which Cave Creek citizens will be asked to bear. Also, through this practice, **the Town is subsidizing developers and development in Desert Hills**, where the Town's CAP water is currently being delivered, at the ultimate expense to Cave Creek citizens and businesses. This is so because the water supply deficit created by delivering the Town's lower cost, finite CAP water to Desert Hills will eventually have to be firmed up at the expense of Cave Creek residents by procuring drastically more expensive alternatives for use in Cave Creek. In terms of rational public policy, this makes no sense and is an extreme disservice to Cave Creek citizens and taxpayers.
3. Prior to and at the time of purchase of the CCWC by the Town, the **Mayor and Town Council told Cave Creek residents** the existing **CAP water allotment would be retained for use in the Town**, and the Mayor and Council gave that reason to Cave Creek voters as one of the primary arguments why they should vote \$50 million in borrowing authority to help purchase and improve the CCWC and construct a new wastewater treatment plant. Retaining Cave Creek's CAP allotment for use in Cave Creek is a matter of keeping faith with the Cave Creek voters who voted the authorization.
4. Also at the time of purchase of the CCWC, the **Mayor, Council and Town staff told Cave Creek citizens** the Cave Creek water system and the Desert Hills water

system **would remain completely separate**, each responsible for being **100% self supporting financially, operationally** including water supply, maintenance and repair, and infrastructure improvements **and in all other matters**. Again, it is a matter of the Council keeping faith with Cave Creek citizens and living up to what you said you were going to do.

5. It is simply not in the best interest of Cave Creek citizens **nor in the interest of responsible land use planning, growth management and sustainable water resource planning** to deliver the Town's finite CAP water outside the historical CAP service area boundary.
6. My understanding of the law relating to the use of CAP water is that CAP deliveries cannot be made to or used for any purpose other than in a U.S. government approved CAP service area, the boundary of which is approved by and designated on an official U.S government map. **CAP deliveries outside the U.S. government approved service area boundary are unlawful**. This means that the Town's current practice of delivering Cave Creek CAP water to Desert Hills is of highly questionable legality and probably unlawful since Desert Hills is not in the U.S. government approved service area boundary for CAP deliveries. In an October 7, 2008 letter to CAWCD, I filed a formal complaint over this matter and asked them to investigate.
7. As noted in 2. above, the practice of delivering Cave Creek CAP water outside the historical service area boundary will dramatically overextend this scarce resource thus **creating an extraordinary and wholly unnecessary water resource deficit and financial burden of immense proportions for the citizens of Cave Creek**.

In view of the above, I respectfully ask that the Mayor and Council direct the immediate discontinuance of the Town practice of delivering finite Cave Creek CAP water outside the CCWC historical service area boundary, and further direct that hereinafter Cave Creek CAP water be retained for use exclusively in Cave Creek's existing town limits and historical service area boundary, not sold or delivered outside of them.

May I have the courtesy of a written response?

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-437-9103

- c. Sid Wilson, General Manager, CAWCD
David Smith, County Manager, Maricopa County
Joy Rich, Assistant County Manager, Maricopa County
Carrie Dyrek, Town Clerk

From: Kees Rietsema <krietsema@earthlink.net>

To: vfrancia@tur Paradise.net; glopezcasa@msn.com; kimberlybrennan@msn.com; ebb3@prodigy.net;
esserguich@msn.com; cavecreekdigital@msn.com

Subject: Water Issues

Date: Mon, Dec 1, 2008 9:21 pm

Mayor and Council,

Mr. Zerkle's 11/29/08 letter, Re: April 2008 Water Master Plan CIP Cost Estimate sheds light on an issue many of your citizens have been concerned about for some time.

Rather than assigning his comments to the "dark side", please consider them as shining the bright light of transparency and citizen's concern on the actions of the town's administration. This is not a matter of a political nature, but rather a matter that affects the financial viability of this town and your responsibility for it.

If in fact Mr. Zerkle's comments and conclusions are incorrect, then we ask that you publically provide the correct facts and interpretation. If on the other hand he has his facts right, then we should expect all of you to collectively act to provide the citizens of this town a solution to what appears to be a serious abrogation of your duties.

Either way, you owe us an explanation....and soon.

Regards,
Kees Rietsema

June 26, 2010

~~Mr. Richard Romley~~, Maricopa County Attorney
Maricopa County Attorney's Office
301 W. Jefferson Street
Phoenix, AZ 85003

Re: Town of Cave Creek/Maricopa County 2007 Stipulated Settlement
Agreement and Related Matters - Supplemental Information

Dear Mr. Romley:

Please reference the letter dated June 24, 2010 re Town of Cave Creek/Maricopa County 2007 Stipulated Settlement Agreement and Related Matters that I delivered to your office on June 24. That letter should have included the enclosure accompanying this letter as one of the numbered enclosures.

Subject enclosure is an email to me from Teresa Vine, Assistant to the Town Clerk dated September 1, 2009 responding to my written public records request dated August 18, 2009 to Town Clerk Carrie Dyrek for a copy of the Town of Cave Creek's Council approved multi-year Infrastructure Improvement Plan or multi-year Capital Improvements Plan, whichever applies.

Ms Vine's email is pretty self explanatory. She states that the Town does not have a Council approved multi-year CIP or IIP.

This is important because, according to David Smith, Ms. Rich and Mr. Power, MCESD in approving and certifying the April 2008 version of the Cave Creek Water Master Plan thought that the Council was aware of the magnitude and scope of the projects in the April 2008 WMP, that the Town had a Council approved multi-year CIP reflecting that awareness, and that the Council was fully committed to funding the projects in the WMP and in the Council approved multi-year CIP.

The Town not only doesn't have a Council approved multi-year CIP, but, as pointed out in my June 24 letter, the April 2008 version of the WMP presented to MCESD by Town staff was never taken before or presented to Council for adoption at an open public meeting allowing for citizen input. Nor for that matter was the February 2008 version or the July 2007 version (the July 2007 version being the one presented to MCESD by Town staff to satisfy one of the Stipulated Settlement Agreement requirements). Nor was the 2007 Stipulated Settlement Agreement taken to Council for authorization as required by law.

Please add this enclosure to those accompanying my prior letter to you. Please contact me at your convenience should you have questions.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-437-9103
Email: terrylzerkle@aol.com

Enclosure:

Teresa Vine 9/1/ 2009 email and Terry Zerkle 8/18/ 2009 public records request letter

From: Teresa Vine <tvine@cavecreek.org>
To: terryzerkle@aol.com
Cc: Carrie Dyrek <cdyrek@cavecreek.org>
Subject: FW: Public Records Request Information
Date: Tue, Sep 1, 2009 8:18 am

Mr. Zerkle,

I did not have your correct email so I apologize that you did not get the information you requested when I sent it to you last week.

If you have any questions please let us know.

Thank you,

Teresa Vine

From: Teresa Vine
Sent: Thursday, August 27, 2009 4:08 PM
To: terryzerkle@aol.com
Cc: Carrie Dyrek
Subject: Public Records Request Information

Mr. Zerkle,

In response to your public records request for a copy of the Town of Cave Creek's Council approved Multi-Year Financial Management Plan and a copy of the Town's Council adopted Multi-Year Infrastructure Improvement Plan or Capital Improvement Plan; none of these documents have been approved by council.

The TOCC annual operating budget for FY2010 was approved by Council on July 20th, 2009 and is available on our website. You can access directly by clicking on the link below. If you have any other questions please feel free to contact us.

<http://cavecreek.fileprosite.com/>

Click on Town Financial Information

Click on Budgets and then Fiscal Year 2010 Final Budget

Cave Creek Town Hall office hours will be Monday - Thursday, 8:00AM - 4:30PM.

Teresa Vine

COPY

August 18, 2009

Carrie Dyrek, Town Clerk
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

Re: Public Records Request

Dear Carrie:

Please consider this a written public records request for a copy of the Town of Cave Creek's Council approved Multi-Year Financial Management Plan and a copy of the Town's Council adopted Multi-Year Infrastructure Improvement Plan or Capital Improvement Plan, whichever applies.

Thank you for your attention to my request.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331

COPY

June 24, 2010

Mr. Richard Romley, County Attorney
Maricopa County Attorney's Office
301 W. Jefferson Street
Phoenix, AZ 85003

Hand delivered 6/24/10
at 2:10 pm approx. Given to
Fusca at reception.

Re: Town of Cave Creek/Maricopa County 2007 Stipulated Settlement Agreement
and Related Matters

Dear Mr. Romley:

I wish to bring a matter of import to your attention involving a legally questionable transaction that occurred between the Maricopa County Environmental Services Department and the Town of Cave Creek in 2007. The legal questionability involves the Town's actions more than the County's. However, the circumstances surrounding that transaction have significant ongoing ramifications for both the County and the Town, I feel.

In a nutshell the matter concerns the submittal to MCESD by Cave Creek Town staff in August 2007 of a Cave Creek Water Master Plan dated July 2007 that had never been seen or adopted by the Town Council. The submittal was done by Town staff to ostensibly satisfy a requirement of a Stipulated Settlement Agreement resulting from a Notice of Violation issued by MCESD involving Cave Creek's town-owned Desert Hills Water Company.

There are two main problems with what occurred back then. First, ***the Stipulation Agreement was never taken to the Council for settlement authorization as required by law.*** Second, ***the July 2007 version of the Water Master Plan that was submitted to satisfy the stip requirement had never been seen or adopted by the Council, and the July 2007 version of the WMP differed in key and material aspects from the only WMP ever adopted by Cave Creek's Town Council on April 16, 2007.***

As noted the only Water Master Plan ever adopted by the Council occurred April 16, 2007. The non-adopted July 2007 version submitted by Town staff to the County contained material changes and additions from the Council adopted version. Some of those changes and additions had then and continue to have significant cost and policy implications for the town, the town-owned Cave Creek Water Company, the town's citizens, and the town's General Plan particularly as relates to land use, transportation, protection of mountain views, preservation of desert landscapes and wildlife habitats, and extension of town services. One of the more notable additions to the July 2007 WMP version was the inclusion of a water storage tank outside the town's boundaries on Continental Mountain for Gold Mountain Development and the pumps to get the water there. Not only had those additions and changes not been adopted by the Council, they were never vetted before the Council at a public meeting allowing for public input and participation.

Nor has the Council ever made a decision in a public meeting to authorize the sale of water to Gold Mountain Development or authorize the extension of the town's water system outside the town's boundaries for that development or, for that matter, any other development outside the town's boundaries in that area.

There have been several iterations of the Cave Creek Water Master Plan produced by Town staff since submittal of the non-Council adopted July 2007 version to MCESD in August 2007. The other iterations were also submitted to MCESD. To my knowledge the latest was dated April 2008. None of them was ever seen or adopted by the Council or vetted at a public meeting before

that body. Yet they have been presented by Town staff to MCESD and, I suspect, to the state and other entities and represented as official policy of the town. And MCESD uses the non-Council adopted WMP for subdivision and water system approvals in Cave Creek and Desert Hills. Decisions incurring significant obligations for Cave Creek citizens and having significant policy and community impact have been and are being made regularly on the basis of the non-Council adopted Water Master Plan submittals.

Recently, via email, I had occasion to provide a relatively new Cave Creek Councilman with background information on this and other Cave Creek water matters at issue. For background information purposes and the benefit of your review, I've enclosed a copy of that email as part of the documentation packet accompanying this letter. The email provides background and context to the specific issues I'm attempting to bring to your attention, particularly as relates to the flawed Stipulated Settlement Agreement transaction and by extension the connection of that activity to the Water Master Plan changes and additions that were never taken to the Council for adoption. The storage tank for Gold Mountain Development, for example, is not in the Council adopted version of the Water Master Plan. Nor was there ever a decision made in public by the Council authorizing the sale of town water for that development or authorizing the extension of the town's water system outside the town's boundaries for that purpose.

The enclosed email is titled APS Poles. However, upon reading it, you will quickly ascertain that in addition to legitimate neighborhood concerns about aesthetic impacts associated with the new APS power pole/line under construction, what is driving considerable neighborhood angst about this construction was the Town staff's unilateral decision in 2007 to add the Gold Mountain Development water tank to the July 2007 version of the Cave Creek Water Master Plan after the WMP was adopted by Council in April. As noted earlier the Gold Mountain Development tank was not in the WMP version adopted April 16, 2007. Fast forward to June 2010, the present APS new pole and line construction is to get 3 phase electrical power to the Town's water tank site off Echo Canyon Drive (also known as the Rockaway Hills site) so that there is sufficient power at that location and elsewhere in that northeast vicinity of Cave Creek to power the pumps to move water uphill from the Echo Canyon site to the Gold Mountain Development tank and beyond.

I corresponded previously with County Manager David Smith in August and September 2008 concerning the WMP and Stipulated Settlement Agreement issues I'm bringing to your attention and met on October 3, 2008 with members of his staff, namely Assistant County Manager Joy Rich and MCESD Director John Power, along with two (now former) members of the Cave Creek Town Council to discuss this and other matters of concern involving Cave Creek water shenanigans. Enclosed, as part of the documentation packet, are copies of my correspondence with David and summary notes from the October 3, 2008 meeting with Ms. Rich and Mr. Power.

Ms. Rich was at first very skeptical and in disbelief of what she was hearing at our meeting, but as documentation was evidenced and the two Council members confirmed each shenanigan and town shortcoming, she became more and more concerned as to what was happening and how it might affect the County.

She left the meeting saying she would contact the County Attorney assigned to the Manager and Board of Supervisors and get back to us. In a subsequent telephone conversation, she told me she spoke with that attorney on her way back to the office the day she left our meeting, that he was equally concerned based on the brief conversation they had, and they were going to get together, review the issues and come up with a plan for correcting the situation. She said she would be back in touch. That was the last I heard. I assume the reason being that shortly after that the dispute erupted between the County Attorney and the Supervisors/Manager.

So, as far as I know, no corrective action was ever taken on these matters and the issues are still live, valid and in play. And that is why I'm bringing it to your attention. I don't know where else to turn.

I recognize what I'm bringing to your attention appears to be pretty bizarre, almost unbelievable. That was certainly Ms. Rich's initial reaction, and if I hadn't experienced and observed first hand what I'm writing to you about, that would be my reaction as well. For sure, I never experienced anything quite like this in my former 32-year career in local government management. And I had to deal with some pretty bizarre stuff as you can imagine, including public corruption.

The bottom line is ethically challenged, bad things are going on here. As you can see from the documentation I've enclosed, decisions and deals having major cost and policy implications for the town's citizens are being made behind closed doors outside the view of the public and at a venue other than an open, public meeting before the Council. And because those decisions are being made outside the view of the public and in a setting other than an open, public meeting, the town's citizens are closed out and denied access to participate in policy discussions and decision making to which they are otherwise entitled by law to participate in if they so choose. I submit that is wrong and contrary to basic principles of governmental transparency and democratic governance.

I feel an obligation to inform you of an Arizona Attorney General open meeting law investigation involving the Town of Cave Creek that spanned a 1 1/2 year period. I was the initial complainant. The investigation was closed down by the AG's office in May 2009 shortly after an Assistant Attorney General, who is a resident of Cave Creek and an ardent supporter of the Town Manager, was elected to the Cave Creek Town Council. Ms. Jennifer Pollock, the Assistant Attorney General presiding over the investigation, in a May 1, 2009 letter to the Town Attorney wrote that the AG's office was unable to substantiate a violation of the open meeting law. However, she acknowledged in her letter that, "During the course of the investigation, we learned that the Mayor and members of the Town Council may occasionally discuss issues that could potentially come before the Town Council at a future date." She went on to recommend that the Mayor and Council refrain from such discussions and "...refrain from engaging in any conversation between less than a quorum of the members regarding items that could foreseeably come before the Town Council because such actions could be perceived as an attempt to circumvent the Open Meeting Law."

I apologize for the length of this letter. However, there is a lot of background and a plethora of constantly moving interconnected parts. I look forward to hearing from you and am available at your convenience to meet, answer questions, or provide additional information. And please believe me, there is a lot more information. Most importantly though, I urge that appropriate corrective action be taken as respects the matters brought to your attention herein. Please let me know how I can help.

Respectfully,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-437-9103
Email: terrylzerkle@aol.com

Enclosures:

1. June 20, 2010 email to Cave Creek Councilman Adam Trenk providing background on Water Master Plan issues and explaining the connection of those issues to the APS Power Poles/Line currently being constructed in our north Cave Creek neighborhood. The email also recaps the 2007 Stipulated Settlement Agreement transaction involving the Town and MCESD and shows the relationship of that flawed transaction to the ongoing Water Master Plan issues and the APS Power Poles/Line.
2. Copy of my August 8, 2007 letter to the Cave Creek Mayor and Council that accompanied the June 20 email to Councilman Trenk speaking to the Town staff's surprise announcement of the sale and delivery of town water outside the town's boundaries for Gold Mountain Development.
3. Copy of my August 14, 2007 letter to the Mayor and Council saying that four Council Members had confirmed to me they were aware discussions were going on between Town officials and the developer of Gold Mountain Development for town water service, including substantive negotiations for same, and that the matter had not been made public, discussed by the Council in public or direction and authorization given to the Town Manager at a public meeting to negotiate such an agreement. This letter did not accompany the June 20 email to Councilman Trenk.
4. Copy of my August 17, 2007 letter to then Councilman Tom McGuire that accompanied the June 20 email to Councilman Trenk responding to Councilman McGuire's letter in which he acknowledged knowing about the Town Manager's water service negotiations with the developer of Gold Mountain Development.
5. Copy of my November 29, 2008 letter to the Mayor and Council that accompanied the June 20 email to Councilman Trenk speaking to the Stipulated Settlement Agreement issue and the costs of the projects in the April 2008 Water Master Plan that had never been seen or adopted by the Council or vetted at a public meeting before that body allowing for public input. The letter also speaks to additions and changes that were made to the WMP from what had been adopted by the Council.
6. Copy of Cost Estimate from the non-Council adopted April 2008 Cave Creek Water Master Plan that accompanied the June 20 email to Councilman Trenk.
7. Copy of August 2007 Stipulated Settlement Agreement between MCESD and the Town signed by Utilities Manager Jessica Marlow on behalf of the Town certifying that she was fully authorized to execute the agreement. That agreement was never taken to the Cave Creek Town Council for authorization as required by law. Two former Council Members who were on the Council at the time told me that and also confirmed that to Joy Rich, Assistant County Manager and John Power, MCESD Director at the October 3, 2008 meeting we had with them.
8. Copy of MCESD permit paperwork dated 8/20/2007 and 8/31/2007 under which the July 2007 Water Master Plan version that had never been seen or adopted by the Cave Creek Town Council was submitted by Ms. Marlow to satisfy one of the stip agreement requirements.

9. Copy of MCESD letter dated September 17, 2007 to Ms. Marlow documenting receipt of the July 2007 version of the WMP that had never been adopted by the Council as part of the Stipulated Settlement Agreement. The letter notes on p.4 that MCESD has some concerns about any proposed water system for the Gold Mountain project.
10. Copy of MCESD letter dated March 27, 2008 to Ms. Marlow acknowledging receipt and review of the Master Water Plan version dated February 2008 which was later changed to reflect April 2008.
11. Copy of MCESD Certificate of Approval for the April 2008 version of the Cave Creek Water Master Plan. To my knowledge this was the last version of the WMP to be submitted to MCESD by Town staff and is the version the County is currently using for subdivision and water system review and approvals in Cave Creek and Desert Hills.
12. Copy of my August 23, 2008 letter to County Manager David Smith giving him a heads up on the various issues surrounding the non-Council adopted Cave Creek Water Master Plan and the relationship of those issues to the County.
13. Copy of David Smith's September 8, 2008 reply to me saying the County didn't have a requirement that the WMP be adopted by the Council, only that the Council was prepared to fund the projects.
14. Copy of my September 12, 2008 letter to David underscoring the policy significance of a WMP and the fact that only an elected body can make policy, not staff, as was being done with the Cave Creek WMP.
15. Notes from October 3, 2008 meeting with Assistant County Manager Joy Rich and MCESD Director John Power summarizing the meeting and the issues discussed.
16. Copy of public comments I made at the August 4, 2008 Council meeting re WMP being policy and exhorting the Council to take charge of its policy-making responsibilities as relates to the WMP.
17. Copy of my October 1, 2008 letter with attendant packet to Ms. Jennifer Pollock, Assistant Attorney General apprising the AG's Office of a possible unconstitutional delegation of legislative authority to an administrative official by the Cave Creek Town Council on July 16, 2007 and speaking to the potential ramifications that could stem from that legally questionable delegation of authority.
18. Copy of May 1, 2009 letter from Ms. Jennifer Pollock, Assistant Attorney General closing down the open meeting law investigation. There was much, much more to this investigation than the two matters listed in the letter. During the span of the investigation, I brought numerous matters to the attention of the AG's Office in writing involving actions of questionable propriety on the part of the Town and Town staff. I was not interviewed or contacted by the AG's Office during the course of this investigation so I don't know whether these matters were looked into or not.

From: terryizerkle@aol.com

To: atrenk@amtenterprises.biz

Cc: annamarsolo@yahoo.com; charlie.spitzer@stratus.com; nina@amug.org; terryizerkle@aol.com

Subject: Re: APS Poles

Date: Sun, Jun 20, 2010 2:03 pm

Attachments: Cave_Creek_itr-tank_and_extension.doc (46K), McGuire_itr.doc (31K),
Cave_Creek_itr_re_WMP_costs_11_29_08.doc (39K), April_2008_WMP_AppendixD.pdf (136K)

Hi Adam,

Being a Councilman can be a tough, thankless job. I commend you for taking it on. I respect your comments wherein you take exception to my statement that it appears the town is helping foist this unconscionable APS power pole travesty on the neighborhood and saying that your perception is that at worst all the Town is doing is sitting idly by. If only it were that benign and simple.

Please allow me to offer a differing perspective and the basis for my contention the town is helping drive the power line/power pole fiasco that is adversely impacting this north Cave Creek neighborhood.

In an earlier email Charlie provided you some background on the water storage tank that was built in our neighborhood. He explained that about 3 years ago at a meeting in his living room prior to the tank being constructed the Town Manager and his staff told a very limited group of neighbors (6 property owners) that the tank wasn't going to cost the town anything because a developer of property on Continental Mountain was going to pay for it in exchange for the town allowing him to extend the town's water system to service his development on the top and sides of the mountain. The common name of that development is Gold Mountain Development.

Attached is copy of a letter dated August 8, 2007 I sent the Mayor and Council following that meeting inquiring as to the date of the public meeting at which the policy decision was made by Council to sell and authorize the delivery of the town's water outside the corporate limits of Cave Creek to facilitate and abet development on Continental Mountain. In the letter I point out that this action would be contrary to virtually every major policy expression in the Council adopted, publicly ratified General Plan 2005, citing the specific provisions of the Plan that would be violated. The letter speaks for itself so I'll not restate all of its main points here. The bottom line is there never was a public meeting at which the Council made that decision. So, if that decision was made by Council, and the town staff behaved then and continues to behave now as though it was, it was made behind closed doors outside the view of the public and without public participation.

I've also attached a letter dated August 17, 2007 to Councilman McGuire (copies went to the full Council) responding to his letter to me in which he acknowledged that he was aware the Town Manager was negotiating water service with the developer on Continental Mountain and that the Manager was following the policies established by the Council. I asked Tom in my August 17 letter when the Council authorized that negotiation and gave that policy direction and at what duly noticed and properly agendaed public meeting. I never received a response from him or any of the other council members. I was told by several Council members back then that the Manager was negotiating policy at his own initiative without direction from the Council, at least not direction given at a public meeting.

So, what does this background have to do with the new APS power lines and new poles currently under construction? The town needs 3 phase power to the water storage tank situated in our neighborhood off Echo Canyon Drive to power the succession of pumps that will be necessary to move the water up the hill outside Cave Creek. That is what this new build is all about. It is to get 3 phase power to the Echo Canyon tank and to the other points along the way north of that to power the pumps and service new development including in and around Continental Mountain and environs. It is not about "correcting flicker" or "updating the grid" as stated by the town and APS. That is just convenient and, I think, pretty disingenuous spin. It is about servicing new growth and development and selling more water that the town does not currently have a sufficient allocation of to get the town to build out. That in part is what makes this situation so egregious. *It is new electric utility construction having new and much bigger and more obtrusive poles, more lines, and more capacity and capability to service new development.* From what I see, know and have experienced from the Echo Canyon tank history, **the town is clearly helping drive this pole and line construction project**, not simply sitting idly by allowing it to happen. And, an existing residential neighborhood, rather than being protected by its town government, is being made to suffer aesthetically by that government in what seems the never ending quest for more development. I'm not anti-growth and development and believe in protecting private property rights. At the same time, I believe strongly that it is the responsibility of a municipal government to protect and safeguard the integrity of existing residential neighborhoods. I also believe it is the responsibility of a local government and its elected and appointed

leaders to adhere to fundamental policy expressions contained in the town's adopted General Plan and to not aid, facilitate or abet development that is entirely inconsistent with and contradictory of those expressions and policy provisions.

In your email you state that you are being told the town's hands are tied, that APS controls the easements, and therefore they can do whatever they want. I would point out that along the public rights-of-way, i.e., the roads, the easements are controlled by the town or at least they usually are. Use of those easements is negotiable within certain parameters and the town could exercise its negotiating prerogative to help safeguard the existing residential neighborhood if it so chose.

Consider also the following. **The only Water Master Plan ever adopted by the Council occurred on April 16, 2007.** The adopted WMP does not have or show a storage tank on Continental Mountain. For that matter the Council adopted WMP does not show a tank for the Echo Canyon site either; it called for the tank to be placed at the Spur Cross site. In July 2007 town staff produced a revised iteration of the Water Master Plan. That iteration, which was never taken to Council, contains a water storage tank on Continental Mountain for Gold Mountain Development. That iteration and all that have followed (and there have been several) have never been presented to the Council for adoption or been vetted before the Council at an open meeting allowing for public input. Yet town staff presented the July 2007 iteration and those subsequent to it to Maricopa County and, I suspect, the state and others and represented those plans as being official policy expressions of the town even though the Council had never seen or acted on them, to say nothing of the public being excluded from a public participation process they are entitled by law to partake in if they so choose.

In one instance town staff presented the un-adopted July 2007 WMP version (this is the first version showing the tank on Continental Mountain) to the Maricopa County Environmental Services Department as part of a Stipulated Settlement Agreement to satisfy a Notice of Violation involving the Desert Hills Water Company. This was done in August 2007. Town staff represented to Maricopa County they had proper authority from the town to enter into the stipulation agreement and to submit the July 2007 WMP to help satisfy one of the requirements of the agreement. That is problematic for two major reasons. First, the Stipulation Agreement was never taken to the Council for authorization as required by law. Second, the WMP that was submitted to satisfy the requirements of the agreement had never been acted on by the Council and that version of the WMP is materially different from the only version of the WMP ever adopted by the Council on April 16, 2007. Thus everything about this transaction was tainted, flawed and lawfully suspect as is potentially everything that has flowed from this transaction since.

As mentioned above, there have been several iterations of the Water Master Plan submitted to Maricopa County, the last one being April 2008. Again the only WMP ever adopted by Council was done April 16, 2007. The subsequent iterations contain material changes and additions having significant cost and policy implications to the town and for its citizens from what the Council adopted. As previously noted one of the major non-Council approved additions, at least not approved in an open, public meeting, is the tank for Gold Mountain Development including the pumps to get the water there. The schematic showing the water tank for Gold Mountain Development can be found in Figure 4-35 on p.4-76 of the April 2008 WMP version. It is identified as #17 on the schematic. While it appears the siting of the tank may have been cleverly shifted from what was in the July 2007 WMP version and is unsettled, it is still represented in the April 2008 version as being for Gold Mountain Development. The CIP detail showing the cost and timing (the timing having been obviously deferred) can be found in Table 4-8 on p. 4-74 of the April 2008 version. It is similarly identified as #17. Adam, my point here is that these major policy expressions, which have never been publicly adopted by the Council, have significant cost and land use implications for the community and its citizens. Moreover these policy representations are being used and relied upon by others to reach decisions and incur obligations for Cave Creek's citizens as though the Council has approved them. Add to that the fact the public has been completely closed out from having the opportunity to input the decision process. All this is simply wrong. And, ignoring these matters is not only flawed public policy, it will not make the issues go away.

Please make no mistake. Submittal of the non-Council adopted Water Master Plan versions to Maricopa County to be used for official purposes is a very big deal. County staff thought town staff had proper authority from Council to enter into the Stipulation Agreement referenced above and to submit what county staff thought was a Council approved WMP to help satisfy one of the requirements of the stip agreement. They also thought the Council was fully aware of the magnitude of the various capital projects contained in that and subsequent iterations of the WMP and committed to funding them as the need arose. They were quite surprised to learn that the WMP submitted to them had never been seen by the Council nor was the Council aware of the magnitude, scope and dollar costs of the projects contained in the April 2008 WMP version, let alone committed to funding them. They also thought the town had a multi-year Council approved Capital Improvements Program in place with various projects scheduled for construction accordingly and, again, were quite surprised to learn that was not the case. County staff was going to follow up on all this out of concern for legality and to protect the County, but apparently because of the dispute that broke out between the County Supervisors and the County Attorney in the fall 2008, they have not to my knowledge to date taken action to correct the matter. So, the issues are still alive and looming out there somewhere.

What is the significance of the Water Master Plan submittals to the County? The County Environmental Services Department uses the town's Water Master Plan for subdivision and water system approvals in Cave Creek and Desert Hills. They see the WMP as an official expression of town policy. The County grants development approvals under the belief and understanding that the Council is fully aware of and has committed to funding and constructing the various projects contained in the plan as they become necessary and has a Council approved multi-year Capital Improvements Program in place for doing that. Attached is a letter dated November 29, 2008 I sent to the Council speaking to the matter of County approvals, the financial obligations being incurred by the town and its residents as a result of those approvals, and to the subject of the estimated costs of the various projects contained in the non-Council adopted April 2008 WMP. The cost range is from \$50.5 million - \$108.3 million not including design, engineering, permitting, services costs, land acquisition and easements, and legal fees, which the estimate notes could add another 15% - 25% to the construction costs. I've also attached as a pdf file the actual Cost Estimate from the April 2008 WMP showing this information.

I'm concerned that at some point all this and other shenanigans the town has engaged in over the past 3 plus years is going to unravel and take a big bite out of the town's backside. Unfortunately it will be the ratepayers of the Cave Creek Water Company and the citizens of the town that will be left holding the bag and having to foot the bill to make it all right.

I apologize for this lengthy email. But it is important background, I feel, with several compelling and still live issues that have the potential to significantly change the physical character and look of the community, alter its social fabric and cohesiveness, and do long-term damage to the town's credibility and financial well being. There is also the potential of significant legal ramifications. All this is interrelated as I'm sure you understand. The town government is intimately involved in what is happening on the APS pole issue and certain officials have already demonstrated through prior statements and actions a vested interest in seeing it built.

Obviously there is much more but I will end at this point.

In your email you ask whether I can think of anything else that could be done to help bring about a satisfactory resolution of the power line/pole issue and some protection for the neighborhood. I've thought a lot about that since receiving your email. And, yes there is. Because it is a new line with new and much higher poles and new and expanded capabilities to service new development and because a public line siting meeting has not been conducted, the matter could be referred to the Arizona Corporation Commission for its review and possible investigation and action.

Again, thank you for taking the time to look into this matter on behalf of the neighborhood and for communicating the outcome of the meeting with the Mayor and Town Manager. Please let me know if you have questions or if I can provide additional information.

Terry

-----Original Message-----

From: Adam Trenk <atrenk@amtenterprises.biz>

To: terrylzerkle@aol.com

Cc: Anna Marsolo <annamarsolo@yahoo.com>

Sent: Thu, Jun 17, 2010 3:05 pm

Subject: Re: APS Poles

Terry,

I agree 100% with nearly everything you have said with the exception of "it appears the town is helping foist this unconscionable travesty on the neighborhood". It is my perception that at worst (or best) all the "Town" (as a collective, elected officials and staff) is doing is sitting idly by. Now as it was explained to me, that is because our hands are tied on the matter. That is not to say it is right, just means it may be too late or impossible to do anything about it. APS is in fact held to a different standard, because they are a different "animal" if you will. They are a public utility that must in compliance with state regulatory agency provide adequate service at fixed price and this is the way they have chosen to do it in a manner cost effective to them. Which, again, as it was explained to me, is their right to do on the easements they control.

With that said, I did what I know I can do, which is bring it before the mayor and the manager and see if I can coerce

some collective action on the issue. Whether or not we are unwilling or unable, is not the issue, we are willing, I am willing, it is a question of ability. Even if the town were to say "STOP, do it differently", they would say, "NO, this is the only way we can in order to provide the service energy users need and are entitled to receive, if you want it done differently then pay for it". Beyond this I don't have any other ideas.

With your experience working with local government if you can think of anything I can do, I would be happy to raise the issue again. Short of a citizen raising a grievance with APS either directly or through the courts, I can't think of anything else, because it does not appear Town Hall is going to be able to give us the answers we want to hear.

Let me know how I can be of further assistance and I will do my best.

-Councilman Adam Trenk

On 6/17/10 10:39 AM, "terrylzerkle@aol.com" <terrylzerkle@aol.com> wrote:

Hello Adam,

Thank you for copying me on your follow up email summarizing the meeting you had with the Town Manager and the Mayor on the APS power line construction impacting our neighborhood. And many thanks for looking into this matter.

I'm not a zoning expert. However, Sec. 5.18 of the zoning ordinance is silent on whether it applies to an individual property owner wishing to extend service to their own properties or to any entity, including utility companies, engaged in new power line construction. Seemingly, in the absence of having a clarifying caveat, it would apply to all.

In any event, this we know. Citizens look to their town government and elected leaders to protect the integrity of their residential neighborhoods from overpowering encroachments that have an extremely adverse aesthetic impact such as is happening in this instance. Neighborhood protection interests are not only not being serviced here (with you being the exception), it appears the town is actually helping foist this unconscionable travesty on the neighborhood. That, in part, is what makes this situation so unbelievable.

It also serves to demonstrate the town's hypocrisy in this matter. If Sec. 5.18, as claimed by the TM and Mayor, only applies to private property owners and not the electric utility or the town itself, then there is one standard a private property owner has to comply with and an entirely different standard for the utility and the town which essentially grants license to the latter to run rough shod over the neighborhood protection requirements otherwise embodied in ordinance. How much sense does that make?

Even if not required by ordinance (and I'm not yet willing to concede it isn't required either by Sec. 5.18 or some other code provision), there should have been and still should be a public participation process sponsored by and required by the town to explain this project, obtain citizen input, and negotiate acceptable safeguards with APS for the protection of the residential neighborhood being affected. It's a matter of doing the right thing. That is what responsible local government officials, appointed and elected, are supposed to do on behalf of their citizens. And that hasn't happened.

Again, thank you for taking the time to look into and try to help on this matter. To my knowledge, you are the only town official that has.

Terry

-----Original Message-----

From: Adam Trenk <atrenk@amtenterprises.biz>
To: Anna Marsolo <annamarsolo@yahoo.com>

Cc: terryzkerle@aol.com <terryzkerle@aol.com>; Spitzer, Charlie <Charlie.Spitzer@stratus.com>
Sent: Wed, Jun 16, 2010 5:34 pm
Subject: APS Poles

Hello Anna,

This email is follow up the "post meeting" conversation you and I had after I met with the Town Manager and the Mayor yesterday for over an hour to discuss the issue of new APS poles being installed in the Flemming Springs/Echo Canyon neighborhood area.

I am paraphrasing, but essentially what I learned yesterday was the following: APS in an effort to provide more reliable service to the neighborhood as energy needs grow in years to come, from increase needs of existing users and to meet the needs of new users from further development, old wooden poles whose lifespan is near expiration are being replaced by heavier duty steel poles (rust in color to respect the rural character of the community). These poles are indeed taller by approximately 5 feet, and wider at the base in order to support higher capacity power lines and sustain greater environmental challenges. As further explained to me (please do not quote me, as I have not yet done the requisite research to substantiate my own opinion on this matter) §5.18 of our Zoning Ordinance does not pertain to utility companies providing a public service, but to private property owners wishing to extend service on their own properties. Thus APS's upgrade is not in violation of town code requiring undergrounding of utilities and is permissible in accordance with APS's utility easements. Undergrounding of utilities may be required for new subdivisions so the cost is borne by the developers, but not for expansion of existing service which would require the cost be passed on to the community at large.

I hope this helps explain the facts surrounding this issue. I apologize that it seems for now I will be unable to effectuate any change on this matter, but I do pledge to continue to listen to your concerns and pursue the best interests of our community.

Sincerely,

Councilman Adam Trenk

COPY

2

August 8, 2007

Honorable Vincent Francia, Mayor
and Members of Town Council
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

**Re: Proposed Extension of Town Water System to Service Gold Mine Estates,
Continental Mountain and Environs**

Dear Mayor Francia and Council members:

The purpose of this letter is to voice concern and strong opposition to the prospect of the Town allowing its water system to be extended to service and facilitate development in Gold Mine Estates, Continental Mountain and environs.

On Thursday evening August 2, my spouse, Katya, attended a meeting at a neighbor's home where the Town Manager and Town staff met with a select few area property owners to explain the Town's plans for a new 2.9 million gallon water storage tank proposed to be constructed on the existing Town-owned well site located east of Echo Canyon Drive near our property. As a sidebar but closely related, the number of property owners in the vicinity who will be visually impacted and affected by this tank far exceed the seven owners who received the Town Manager's July 26 notice to contact him to set up a meeting to receive information about the tank. **These additional property owners need to be made aware of what is being planned by the Town and provided the opportunity to input the tank design and construction process.**

While we definitely have interest in the Town's plans for the water storage tank and wish to have input and involvement in its design and what will be done to mitigate its unsightly appearance and screen it from neighboring properties, the larger issue concerns what the Town Manager said about extension of the Town's water system. **The Town Manager announced to the group there would be no cost to the Cave Creek Water System for the tank because a developer farther up the hill in the unincorporated area was going to pick up the \$3.0 million tab for the Town's storage tank in exchange for getting the Town's water to service Gold Mine Estates, Continental Mountain and environs and to facilitate growth and development of the top and sides of the surrounding mountains.**

I was dumbfounded when my spouse shared this information with me. I thought surely there must be some mistake in what she heard. Subsequent conversations with other neighbors who attended the meeting confirmed that this is indeed what the Town Manager and staff said at the meeting. **By any reckoning, this is a momentous policy decision having significant implications and potential ramifications for the Town's future, its residents, its resident water customers, and the Town's water system. To you I ask, when was this policy decision made by the Town Council and at what duly noticed and properly agendaed public meeting? What was done by the Town in advance of reaching this decision to inform Cave Creek residents the Town was contemplating this action and to involve them and solicit public input into the decision process? Where does the decision stand currently? Is the Town so upside down and in such dire financial straights over the water company purchase, the unknown system maintenance and improvement costs at the time of purchase that are just now becoming known, and the rapidly escalating and what appear to be out-of-control estimated costs of the new Wastewater Treatment Plant, that it is now looking to engage in unholy financial and community interest defeating alliances with developers to bail the**

Town out? Is getting a few developer dollars into the Town's treasury worth selling out the community's future?

This action runs counter to everything Cave Creek stands for and touts as its mantra – public involvement, quality of life, sound planning, conservation of the natural environment, and preservation of spectacular mountain views, desert landscapes and wildlife habitats. Indeed, Cave Creek's Council adopted, publicly ratified 2005 General Plan in the Vision section on page 1 states in part:

“Our western, equestrian lifestyle, rural development patterns, dramatic views, trails, open spaces and wildlife habitats are the hallmarks of our quality of life.

Over the next decade and beyond, everything we do:

- **Shall contribute to our unique character and diverse lifestyles.**
- **Shall be within the carrying capacity of our land and resources.**
- **Shall conserve our rich, varied, self-sustaining natural environment.”**
(Emphasis added)

Elsewhere in the Cave Creek General Plan, the Plan speaks to establishing policies directed at preserving the spectacular views of surrounding mountains and desert landscapes, planning for sustainability, discouraging development that will have negative impact to the native habitat and natural environment, encouraging development that will conserve the Town's natural appearance, and protecting the Town from traffic and development impacts from outside Cave Creek. There is even a **General Plan Circulation Element policy amendment adopted earlier in 2007 to “Discourage the extension of ..., Fleming Springs ... and other roads that may have undesirable impacts on the visual quality and rural character of the Town.”** The extension of a municipal utility, such as a water system, that facilitates and abets undesirable impacts on the visual quality of the Town is no different from a road that does the same. Infrastructure extensions by whatever name and means, simply put, are tools to be used by elected and appointed Town officials for effecting the stated public policy goals, objectives, outcomes, and vision expressed in the General Plan. That is how they are intended to be used and, in the interests of progressive, responsible, sustainable community planning, this is how they should be used.

Allowing the extension of the Cave Creek Water System into the unincorporated area to serve Gold Mine Estates, Continental Mountain, and environs runs opposite to the Vision and virtually every major policy expression in Cave Creek's General Plan. Consider the following. It will facilitate development that will negatively impact the visual quality and rural character of the Town. By facilitating development of roads and residences on the tops and sides of surrounding mountains, it will dramatically impact in a negative way the spectacular mountain and desert landscape views currently enjoyed by Creekers throughout the community. It will negatively impact native wildlife habitats and disrupt the natural environment. It is antithetical to encouraging development that will conserve the Town's natural appearance. It is not based on sound sustainability planning, and it is not congruous with basic Smart Growth principles related to conserving sensitive natural habitat and making communities more livable and environmentally friendly. This action, if allowed to proceed to fruition, will compromise the fundamental integrity and credibility of the Town's adopted General Plan and render it essentially meaningless as an official statement of Town policy for guiding growth and development decisions. Equally and perhaps more importantly, because the 2005 General Plan was ratified by a vote of the people, the effect of this Council action would be to negate the public's will for what the Town should be and what it should look like as expressed in the Plan. Simply stated, if the Town Council allows this water system extension to go forward, Cave Creekers' interests and quality of life present and future will forever be compromised and irreversibly ill-served.

Needless to say, Katya and I are deeply distressed by what the Town is proposing to do in allowing the extension of the Town's water system to facilitate and abet development in the unincorporated area to our north and east. Nor, for us, would incorporation of this area make it any more palatable. The outcome would be the same – use of the Town's water system to facilitate and aid development on the sides and tops of the surrounding mountains thereby destroying wildlife habitat, disrupting the natural environment, and compromising the scenic beauty and serenity of surrounding mountain views. That the Town would even consider this came as a major and disappointing shock to us.

We chose Cave Creek to build our home and invest our future, in part, because of what we thought was the Town's uncompromising commitment to championing and preserving its rural lifestyle, protecting the natural environment and wildlife habitats, and protecting the surrounding scenic mountain views with which we are all blessed. We are confident many other Town residents selected Cave Creek for identical reasons. Allowing the extension of the Town's water system into the unincorporated area to serve Gold Mine States, Continental Mountain and environs will have precisely the opposite effect. What makes this potentially so egregious is that the Mayor and Town Council will be the main culprits in abetting this tragedy and enabling it to happen. The power to avoid this unconscionable community travesty, at least as involves the Town's complicity, rests exclusively in your hands as the Town's elected leaders and policy makers.

This being said, I repose confidence in the Mayor and Town Council to do the right thing. In the interest of transparency, full disclosure and public involvement, I ask you to conduct a series of public meetings to clarify and explain what is proposed for the water tank construction and system extension in north Cave Creek, to solicit input from Cave Creek citizens throughout the community concerning these issues, and then to act in the overall best interests of the community in concert with the Town's publicly ratified General Plan.

Katya and I respectfully request the courtesy of a reply from you concerning the matters addressed in this letter. Moreover, we are prepared to meet with any of you at any time to further discuss our concerns and have dialogue with you over these issues.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-518-6138
E-mail: Terry.Zerkle@aol.com

c: Usama Abujbarah, Town Manager
Carrie Dyrek, Town Clerk
Don Sorchych, Publisher & Editor, Sonoran News
Tom Seemeyer, Editor, The Desert Advocate
Jim Gold, Editor, Scottsdale Republic
Phil Boas, Editorial Page Editor, Arizona Republic

COPY

3

August 14, 2007

Honorable Vincent Francia, Mayor
and Members of Town Council
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

Hand Delivered to Town Hall

8/20/07 10:30 a.m. approx

Re: Concerns about Town's Financial Condition and Lack of Governmental
Transparency

Dear Mayor Francia and Council members:

Purpose

The purpose of this letter is to inquire about the Town's long-term financial planning, to raise concerns about the Town's financial condition, and to decry the lack of public transparency into official actions and policy decisions being undertaken by the Town's elected and appointed officials.

Background

Last week I sent a letter dated August 8, 2007 to the Mayor and Town Council voicing concern and strong opposition to the Town's announced intentions of allowing a private developer to extend the Town's recently acquired water system into the unincorporated area to the Town's north and east to service and facilitate development on the tops and sides of the mountains in Gold Mine Estates, Continental Mountain and environs contrary to the Town's Council adopted and publicly ratified 2005 General Plan. In that letter I pointed out that, by any reckoning, this was a momentous policy decision having significant implications and potential ramifications for the Town's future, its residents, its resident water customers, and the Town's water system. I inquired as to when this policy decision was made by the Town Council and at what duly noticed and properly agendaed public meeting. I also inquired as to what had been done by the Town in advance of reaching this decision to inform Cave Creek residents the Town was contemplating this action and to involve them and solicit input into the decision process. I also posed the following questions: Is the Town so upside down and in such dire financial straights over the water company purchase, the unknown system maintenance and improvement costs at the time of purchase that are just now becoming known, and the escalating and what appear to be out-of-control estimated costs of the new Wastewater Treatment Plant, that it is now looking to engage in unholy financial and community interest defeating alliances with developers to bail the Town out? Is getting a few developer dollars into the Town's treasury worth selling out the community's future?

Since sending my August 8 letter, I've spoken with four of you. All four confirmed you are aware discussions are going on between Town officials and a developer concerning the extension of the Town's water system into the unincorporated area to the north to serve and facilitate development on the tops and sides of Continental Mountain, although three of you said you had no details. All four confirmed that *this matter has not been made public by the Mayor and Town Council*, although two of you stated you had tried to impress upon your colleagues that as a matter of law and in the interest of transparency it needed to be. During these discussions I learned from one of you that substantive negotiations leading to an actual development agreement are currently being conducted between the Town and the developer for the provision of the Town's water to this area.

I have since learned that the name of the developer is the Sienna Corporation. Two of you said you had tried to express concerns to the Mayor, your Council colleagues and the Town Manager about this issue, the fact that it wasn't being made public, and to get information about where this matter stood, and, as a result, you have essentially been closed out of the information loop for not being seen as supportive of this action. Two of you confirmed you are aware and understood this is a policy issue of momentous import over which the Council has exclusive authority and one which has significant implications for the Town, its residents, the Town's future, and the Town's water system not the least of which is the question of sustainability and where the Town is going to get water to meet community growth demands and to sustain such extraterritorial water service commitments for the long term. In response to my comment that as an outside observer with some knowledge of municipal finance it appears the Town is upside down and in financial straights over the purchase of the water company and the escalating increased cost of the new wastewater treatment plant and is looking for revenue from virtually any source including extensions of the water system to serve unincorporated areas as well as approval of high volume retail sales tax generating developments such as Wal-Mart to cover these unanticipated increased costs, two of you said this is precisely the situation. You stated further that the Town is "out of control" and being driven by a policy agenda promoted surreptitiously by the Town Manager and some members of the Council that is deliberately "chipping away" at the sanctity and integrity of the Town's long cherished, closely held rural character and lifestyle.

Town Finances

In a March 6, 2007 letter to the Mayor and City Council, sent the day after the Council's March 5 vote to purchase the water company, I voiced support for the purchase, but also wrote I had continuing concerns and questions about the financial business model the Town was using to support this acquisition and about the acquisition process itself. I pointed out there was a lack of transparency into the purchase details and that there simply was no clearly written, authoritative documentation available to the public explaining the case and providing the technical and financial analysis upon which to base and support a purchase decision. I wrote that such documentation is necessary for transparency into governmental decision making, and it is necessary for accountability – two of the hallmarks of democratic governance, in the absence of which there is no democracy. I will say more about the lack of transparency into the Town government's official actions and decisions later in this letter.

Accompanying my March 6 letter to the Council was a copy of an analysis report I had prepared on the Town's water company purchase based on the very limited, disjointed information then available to the public from the Town. This analysis was prepared prior to the Town's purchase of the water company. I gave a copy to the Town Manager in a meeting I had with him on March 2 at which Councilman McGuire sat in. In this analysis report, I note that the actual costs of the purchase of the water company as then proposed and the extent of the obligations to the Town and its residents were unknown because the Town had no water system plan upon which to base upgrade and maintenance costs. Nor had the Town performed due diligence on the water system to ascertain definitively what condition it was in and to determine what maintenance and replacements to the system might be necessary to get it into an acceptable operating condition, and what the costs would be. The reason given me by the Town Manager for the Town not undertaking a due diligence inspection was that Global would not permit an inspection prior to the Town's purchase of the water company. My analysis report noted that once the Town has a water system plan in hand, the costs for upgrading the system are likely to be considerably higher than the \$2.0 million identified in the preliminary analysis report prepared for the Town by its engineering consultant, CH2MHill. The Town Manager assured me that all key upgrades needed for the system to function properly and safely had been identified and accounted for in the

Town's financial business model, that the Town had the money in place to pay for them. He said the assessment of what needed to be done had been performed by engineers retained by the Town independent of not yet having a water system master plan or having performed due diligence on the system. According to the Town Manager, this included, among other upgrades, two new storage tanks. He stated the General Fund's fund balance (\$5.0 million at that time) would cover any shortfall. He also confirmed for me that the cost of the new wastewater treatment plant was estimated at \$15.0 million and provided me with a spreadsheet showing this number. My analysis report noted that \$15.0 million would seem to be on the low side (for my analysis I had picked up this number from the CH2MHill preliminary analysis report), and I expressed this to the Town Manager. The Town Manager assured me that \$15.0 million was a good number and was based on solid preliminary engineering analysis. Imagine my surprise when I read the *Desert Advocate* article on July 18 reporting the estimated cost of the new wastewater treatment plant had risen to \$31.1 million, more than double the amount I was told less than five months earlier. Moreover, I learned last week the \$31.1 million number is for a facility that has been substantially reduced in treatment capacity size from that recommended by the Ad Hoc Citizens Advisory Group tasked last year with making a recommendation to the Town on the new Plant. Ostensibly this was done unilaterally by Town staff to reduce the Plant's cost, meaning the actual cost to build the plant to the recommended size is considerably higher than \$31.1 million. While I'm not advocating spending additional money, has an engineering value analysis been performed on the efficacy of this decision and its long term implications for the Town? I'm told this is the kind of decision that got the Town in the box on its current plant.

My March analysis report posed the question: How might the wastewater treatment plant obligation be impacted by the high and as yet unknown full cost of purchasing the water system. A more appropriate line of questioning at this time is: What is the full cost of the purchase, improvements, and maintenance to the water system as well as the cost of the new wastewater treatment plant and appurtenant facilities? What is the actual and projected level of debt for the water and wastewater systems at this point in time given these increases in cost? \$60.0 million? \$70.0 million? \$80.0 million? More? Do the Mayor and Council even know? You should. It's part of your oversight, financial management and budget approval responsibilities. What is the Town's plan for paying for all of these increased costs? Where is the revenue coming from? What is the potential impact of these increases on the Town's General Fund and the services that are funded from this source for both the short and long term?

My March analysis report also questioned the windfall profit the Town was paying Global to purchase the water company, which at the time was 4.2x the 5 year average (\$1,922) paid per account for any private water utility (2000-2005) in Arizona, according to information I obtained from the Town of Queen Creek. Cave Creek paid Global approximately \$8,000 per account. Recently the Town of Queen Creek purchased the Queen Creek Water Company for approximately \$4,000 per account. Thus, Cave Creek paid double what Queen Creek subsequently paid. Why this much difference? What's the justification for paying this kind of windfall profit? Where's the Council's fiscal prudence in managing the financial affairs of the Town on behalf of its residents? I'm advised by Queen Creek officials the system they purchased is in relatively good shape unlike the Cave Creek system which as it turns out is apparently going to cost millions of dollars in unanticipated, unbudgeted, unfunded upgrades, maintenance costs and repairs.

From the perspective of an outsider looking at the Town's water and wastewater situation, it appears the Town has a tiger by the tail and it's eating the Town's lunch financially, thus the Town's willingness and rush to compromise the General Plan's Vision for the community and the

integrity of the General Plan itself in exchange for \$3.0 million in developer dollars to fund the construction of the water storage tank in north Cave Creek east of Echo Canyon Drive.

It also appears the Town doesn't have a strategic approach and plan for operating and managing its enterprise activities for either the short or long term, that it is making up its game plan as it goes along. Am I incorrect in this assessment? Does the Town have a written Long Term Financial and Operations Plan for managing its water and wastewater utility systems? If it has such a plan, is it predicated on sound sustainability planning which in turn is based on rigorous written technical, engineering and financial analyses? Is there an overarching financial strategy at the plan's base? Are the necessary financial assumptions and policies in place? Have service levels been defined? Have reliable revenue and expenditure forecasts been prepared? What about debt analysis and debt service models? Have they been formulated? Are all necessary capital infrastructure projects accounted for, funded or programmed to be funded, and reflected in the plan? I submit that the Mayor and Council have a duty, in fact, a fiduciary responsibility to its citizens to make sure such a plan and analyses are in place and are being used in a methodical, responsible manner to guide and help make smart, informed, well reasoned decisions about the Town's water and wastewater systems. Moreover, you have a responsibility and legal duty to make sure this information is transparent and available to the community and the media. You are the ones to be held accountable if it is not.

Municipal water and wastewater utilities are big business involving big dollars. Responsible management of these assets requires that these activities be operated in accordance with sound business practices linked to a written integrated resource, financial, and infrastructure plan. Failure to operate these utilities in this fashion is a certain prescription for financial and operational disaster.

Transparency

The actions and decisions of the Town government are not transparent to its citizens. I pointed this out to the Mayor and Town Council in the letter I sent on March 6 concerning the water company purchase. I pointed this out again to you in my August 8 letter concerning the water system extension to serve Continental Mountain. There appears to be a blatant disregard by the Mayor and Council for Arizona's Open Meeting Law and a pattern of conducting the Town government's official business outside the view of the Town's citizens and the media and to conceal information from them.

Consider the following. During conversations with the four of you since sending my August 8 letter, one of you told me the Mayor had polled the Council, prior to the Council's meeting to oust Bob Moore from the Cave Creek Planning Commission, to line up votes to remove him from the Commission. Mr. Moore was subsequently removed by vote of the Council. By law, telephonic polling by and among elected officials concerning official actions is illegal. By any accounting, this is an Arizona open meeting law violation sufficient enough in and of itself to warrant an investigation by the Arizona Attorney General's Office.

Consider also the following conversation I had with one of the incumbent Cave Creek Council members at the polls this past Election Day. This Councilmember approached me after I had voted and said they had read my March 6 letter which this person considered as lambasting the Council. I told this Councilmember this was not my intent. Rather, I wanted to be on record with the Council regarding what I thought were legitimate concerns about the business model the Town was using to finance the purchase and operations of the system and about the acquisition process itself. I said it was my hope the Council would consider taking some corrective action. I

explained to this person that subsidizing the water company particularly the operating costs with General Fund tax money was not a sound business practice and that subsidizing non-resident customers, who comprise 25% of the total customer base, using the Town's General Fund tax revenues simply made no sense. I told this Councilmember that while I appreciated the Town Manager meeting with me and providing me verbal information about the Town's business model and technical reasoning for purchasing the system, the process, in my opinion, was lacking overall transparency. The information a citizen could access as to why the Town was paying so much more for the system than was originally told the residents, the technical analyses that had been performed to determine the condition of the system, and the financial model being used to cover the acquisition and operations cost of the water system was in bits and pieces, disjointed, lacking consistency, often contradictory, in some instances non-existent, and simply not readily available to the public. I explained that governmental transparency and accountability are two hallmarks of the democratic process in the absence of which we don't have democracy. I said that in a democracy the government's business is the people's business and citizens have a right to be informed, in fact have a duty to become informed about important public policy issues and decisions, and that the government has the duty to provide all relevant information necessary for citizens to be fully informed.

This Councilperson's retort was that the Town needed to be selective on the information it provided to the public because if the Town provided all the information it had on a given issue, the citizens may not agree with the Council's position and reasoning for making certain decisions. This person said determining what information to make available to the public is a political decision. This Councilmember also said that the principle of governmental transparency is just a theoretical concept, that it is politics which determines what information to provide. This Council member said we don't have democracy in this country, we have capitalism (as though capitalism is a form of government) and there is no such thing as equality. Admittedly, I'm paraphrasing the conversation here, but this is pretty close to what was actually stated.

On Wednesday March 14, 2007, I sent this Councilperson copies of the **Arizona Republic's** March 11 editorial titled "Let the sunshine in" and March 13 My Turn column by David Bodney titled "Property of the people."

At the time I didn't feel a majority of the Cave Creek Council members believed as this particular member apparently does. However, the general lack of transparency involving the Water Company purchase, the proposal and action to extend the Cave Creek water system into the unincorporated area to serve Continental Mountain, the failure to inform Cave Creek residents of this action and to involve them in the decision process, the compromising of the Town's publicly ratified 2005 General Plan that will result from this action, the ramifications for the Town's water system and its Town resident water customers that will result from this action, the apparent condition of the Town's finances, the polling of the Council by the Mayor to line up votes to oust Bob Moore from the Planning Commission, when all combined, lead me to conclude something approaching a majority of the Mayor and Council are engaged in conducting the Town government's business outside the view of the public and media and concealing information from them.. This is not a healthy situation and does not bode well for the future of the community.

The fact that the above has gone on begs the question: How much more of the Town's official business is being and has been conducted outside the view of the public and the media that we know nothing about? It also causes me to re-examine my original support for the Town's purchase of the water company and to ask whether Cave Creek citizens, WIFA, and the Arizona Corporation Commission were all duped at the time of purchase. Are there perhaps even some members of the Council who were duped?

Summary and Conclusion

As a Town citizen and a water system customer, I find all of this very troubling and unsettling. We look to our elected and appointed Town leaders to act honorably, ethically and with integrity and to provide a steady, responsible, guiding hand in looking out for the community's best interests, making sure that the Town is operated in a fiscally prudent and responsible manner, and assuring that the Town's business, which, by law, is the public's business, is conducted transparently and in open view to the public and the media. That this is not happening is of great concern to me, and I'm sure to many others. Perhaps, to even some of you on the Council.

In conclusion I ask the Mayor and Council to do three things:

1. As requested in my August 8 letter, in the interest of transparency, full disclosure and public involvement, conduct a series of public meetings to clarify and explain what is proposed for the water tank construction in north Cave Creek and the extension of the system into the unincorporated area to serve and facilitate development on Continental Mountain.
2. Convene and empower a Citizens Finance Advisory Committee to conduct an independent, impartial assessment of the Town's financial condition and report back to the Mayor and Town Council. Fund the Committee so that they can retain at their initiative, subject to appropriate State procurement laws and safeguards, a recognized municipal finance expert to assist with this independent analysis, or, alternatively, ask the State's Auditor General to perform this analysis for the Town. Since a State agency loan is involved, the State may have an interest in seeing an independent financial analysis performed to confirm that all is as it should be and that the State's investment is properly secured and being attended to.
3. Ask the Arizona Attorney General to conduct an inquiry to determine whether any Town elected and appointed officials have engaged in possible open meeting and public information law violations.

I'm available to meet with any of you at any time to further discuss the issues raised in this letter.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-518-6138
E-mail: TerryLZerkle@aol.com

- c. Usama Abujbarah, Town Manager
Carrie Dyrek, Town Clerk
Terry Goddard, Arizona Attorney General
Mike Gleason, Chairman, Arizona Corporation Commission
Brian C. McNeil, Executive Director, Arizona Corporation Commission
Stephen Owens, Chair, Water and Infrastructure Finance Authority of Arizona
Judy Navarette, Executive Director, Water and Infrastructure Finance Authority
Debra K. Davenport, Arizona Auditor General
Don Sorchych, Publisher & Editor, Sonoran News

Tom Seemeyer, Editor, The Desert Advocate
Phil Boas, Editorial Page Editor, Arizona Republic
Jim Gold, Editor, Scottsdale Republic
Brian DiTullio, Reporter, The Desert Advocate
Beth Duckett, Reporter, Arizona Republic

August 17, 2007

4

Thomas McGuire, Councilman
Town of Cave Creek
38846 North Spur Cross Road
Cave Creek, AZ 85331

Hand Delivered to Town Hall

8/20/07 10:30 a.m. approx

Dear Tom:

I read your letter. Thank you for responding. I'll be brief.

You admit in your letter that you are aware the Town staff is negotiating with the developer of Continental Mountain for water service. Your letter is strangely quiet on when this action was authorized by the Mayor and Town Council and at what duly noticed and properly agendaed public meeting. Your letter is also silent on what was done by the Mayor and Town Council in advance of this decision to inform Cave Creek residents the Town was contemplating this action and to involve them and solicit their input into the decision process. As I pointed out in my August 8 letter, this is a momentous policy decision having significant implications and ramifications for the Town, its water system and its residents. It will change the character of the Town forever. When did the Mayor and Council decide to do this and when was this direction given to the Town Manager?

If this direction was not given to the Town Manager by the Town Council, then what is he doing at his own initiative negotiating a development agreement which is by its very nature a major policy document? **Policy making and policy direction are the exclusive province of the Mayor and Town Council. In fact the Town Code prohibits the Town Manager from engaging in any policy making functions at his own initiative.**

*Section 31.25 (I) of the Town Code states: **Policy-making prohibited. The Town Manager shall not exercise any policy-making or legislative functions nor attempt to commit or bind the Town Council to any action, plan, or program requiring the official action of the Town Council.***

This is the law, Tom. This is a mandatory provision of the Town Code, not an advisory or discretionary expression. Again I ask, why is the Town Manager at his initiative negotiating a policy document to be brought before the Town Council if he has never been authorized and directed to do so by the Town Council? This is clearly a policy making activity. To do this without specific direction from the Mayor and Town Council is to contravene an express prohibition of the Town Code, which is grounds for severe disciplinary action up to and including dismissal. If he was authorized and directed, then at what duly noticed public meeting? Tom, you and the Council can't have it both ways.

As a Town Council member, your responsibility first and foremost is to the citizens of Cave Creek and not to outside developer interests. If you don't understand this, I question your fitness to serve on the Town Council.

Furthermore, the Town has no legal duty or obligation to use the community-owned water utility asset to serve this unincorporated area with water. Absolutely none. In fact quite the opposite. The fact that you try to imply in your letter that the Town has an obligation is, quite frankly, insulting. The Town's duty is to its citizens and to its Town resident water customers. This duty includes protecting the water utility asset and assuring water service delivery and sustainability to Town resident customers now and into the future. This also includes assuring that water demand is not extended beyond supply by running water service into unincorporated areas to facilitate and abet development there. You'll recall that Usama said, at a meeting you sat in on back in March, the 16" inch CAP water line currently supplying the Town's system is not capable of delivering sufficient supply to meet the Town's growth demand at build-out, let alone servicing unincorporated areas outside Cave Creek.

Concerning additional neighboring property owners, the water tank, and not hearing from them concerning the tank, how could you expect to hear from them? The Town has never let it be known to them that the Town is moving forward with building a 2.9 million gallon tank in their back yard. You can hardly expect to hear from them about something of which they have no knowledge. The burden to inform and notify them is the Town's. What the Town is doing is simply not transparent to its citizens.

By any reckoning the water system extension the Town Council has apparently surreptitiously condoned is in no way predicated on sound planning nor is it representative of responsible, accountable, transparent local self government. Moreover, it is probably illegal. It reflects a government that is out of control and in need of change.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-518-6138
E-mail: TerryLZerkle@aol.com

C: Mayor and Town Council
Usama Abujbarah, Town Manager
Carrie Dyrek, Town Clerk

November 29, 2008

Hon. Mayor and Town Council
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

5
Hand delivered to Town Hall
12/1/08

Re: April 2008 Water Master Plan CIP Cost Estimate

Dear Mayor Francia and Council Members:

At the November 24, 2008 Council Meeting, the Mayor accused Council Member Meeth of misleading the public when she mentioned the topic of the non-Council approved April 2008 Water Master Plan and the millions of dollars in estimated CIP construction costs contained in that document.

For your awareness, enclosed is the cost estimate summary page from the April 2008 Cave Creek Water Master Plan prepared for the Town by CH2MHill that has never been presented to the Council for review or adoption and which the Council majority apparently questions exists.

The enclosed WMP cost estimate summary reflects a range of \$50.5 million - \$108.3 million in estimated capital improvement project costs, calling \$72.2 million as the mid-range number for financial planning purposes. The \$72.2 million does not include Design, Engineering, Permitting, Legal fees, Land purchases, and Easement costs, which the plan notes is likely to add another 15-25% to the construction costs. Thus, **the \$72.2 million is closer to a range of \$83.0 million - \$90.2 million** when these costs are factored in, could be less or considerably more.

Even though never presented to Council or vetted at a public meeting before Council, the April 2008 WMP was submitted by Town staff to the Maricopa County Environmental Services Department on April 25, 2008 and represented as official policy of the Town of Cave Creek. It may have been presented to other governmental agencies at the state and federal levels and represented to them as official Town policy as well. (Need Council be reminded that Town Code Sec. 31.25 (I) prohibits staff from making policy or attempting to bind the Council to any **action, plan or program** [emphasis added] requiring the official action of the Town Council?)

MCESD used the WMP submitted by Town staff for review and approval of water systems and subdivisions in Cave Creek and Desert Hills. MCESD was of the belief the Mayor and Council were fully aware of and had committed to fund and construct the various projects contained in this plan as they become necessary. MCESD was also of the belief the projects contained in the plan submitted to them are reflected in an existing Council approved Capital Improvements Program. County approvals of development activity in Cave Creek and Desert Hills were predicated on that being the case.

As you know, none of that is the case. Neither the plan or the various policy expressions and capital projects contained in that plan have ever been brought forward to Council for consideration and action, nor has the Council requested the plan be brought forward.

What's happening here is policy-making by administrative fiat, and it is going to get the Town in hot water, if in fact it hasn't done so already.

Consider this. At least one stipulation agreement to resolve a major water system violation was entered into between the Town and Maricopa County last year (August 31, 2007). One of the agreement stipulations imposed by Maricopa County called for the Town to provide the County an authorized Water Master Plan within fifteen days. The WMP version (dated July 2007) submitted by Town staff to the County to comply with this stipulation requirement had never been presented to the Council for review or adoption. Nor had it been through a public hearing/public vetting process before Council as required by law. Moreover, it was materially different from the only Water Master Plan ever presented to and adopted by the Council on April 16, 2007.

Concerning the stipulation agreement, was that agreement ever brought to and authorized by Council at a public meeting? It should have been in order for it to be legal and binding, and to be presented to the County as properly authorized. County officials were operating under the belief the stipulation agreement was authorized by Town Council at a public meeting.

There have been several iterations of the WMP submitted to the County since the August 31, 2007 stipulation agreement, culminating in the version submitted on April 25, 2008. None of these was ever submitted to the Council for adoption or vetted at a public meeting before Council. For that matter, the Town's Water Advisory Committee was closed out from being engaged as well.

In view of these facts, I respectfully suggest you cut Council Member Meeth some slack in attempting to bring to your collective attention the seriousness of the WMP issues and the financial and legal consequences at stake. They're enormous, in the multiples of millions of dollars. Clearly, Ms. Meeth was not trying to mislead the public, rather trying to educate her fellow Council Members and the public of the enormity, gravity and seriousness of the matters involved, as is her responsibility as an elected official to do. Vice Mayor Lopez has tried to do the same. The rest of you should take note and follow suit.

The important point here is that the estimated dollar costs Ms. Meeth cited come directly from the Town Council's very own never approved April 2008 WMP, a policy document which apparently the Council majority for whatever reason has chosen not to see, make public, take action on and continues to question exists, even though it was presented by Town staff to at least one other governmental entity as official Town policy and used by that agency to process and approve development activity in Cave Creek. You should be outraged that this is happening rather than passively sitting by allowing it to happen.

The Town's non-Council approved WMP and the County development approvals occurring from using that plan incur and place enormous financial obligations on the backs of Cave Creek citizens, obligations which bind the Council to fund any given CIP project when the time comes because the development driving a project's need will have already taken place. The public has a right by law to the WMP information, to know what that document contains in policy expressions, projects and estimated costs, how it fits into the Town's overall financial picture and financial plan, and to expect that it will be appropriately considered and acted on at a properly agendaed public Council meeting.

Currently, Cave Creek citizens are ill-served by the Council majority either not knowing what its responsibilities are or knowingly, for whatever reason, shirking them. Either way, a major change in direction and behavior is warranted.

Do your jobs. Take ownership of the governing process, and take charge of your policy-making, fiduciary and oversight responsibilities. It is your elected sworn duty. Quit pretending everything is okay. It is clearly not. Get on top of the Town's finances, water planning, and other critical issues, and open them to the public and to the sunshine. Cave Creek's future and financial well-being depend on it.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331

c. Carrie Dyrek, Town Clerk