Arek Fressadi

June 30, 2013
Via Hand-Delivery by Process Server

Rodney Glassman, Town Manager
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, Arizona 85331

Re: Updated Notice of Claim originally sent October 24, 2008
Parcels # 211-10-010, 211-10-003

Dear Mr. Glassman:

On or about January 8, 2013, I discovered that the Town of Cave Creek failed to comply with U.S. Supreme Court rulings as codified in A.R.S. § 9-500.13. *See* Case No. 4:12-CV-00876- FRZ, incorporated by reference herein.

Last month I discovered that Cave Creek failed to comply with due process as codified in A.R.S. § 9-500.12, so I sent the Town a letter on June 3, 2013 requesting that the Town comply with the statutory requirements of A.R.S. §§ 9-500.12 and 9-500.13. See Exhibit A, incorporated by reference herein.

I am submitting this letter and Notice of Claim in an attempt to reach an equitable resolution of the matters discussed below without additional litigation.[1] Should we be unable to amicably resolve these matters, I will pursue all remedies against the Town of Cave Creek (the "Town") and its state actors.

A. TIMELINE OF CAVE CREEK'S VIOLATIONS.

In 2001, I purchased 211-10-010 and the Cybernetics Group Ltd. purchased 211-10-003. Ian Cordwell recommended a series of lot splits in lieu of platting a subdivision as the most economical and efficient way to develop these parcels.

In October, 2001, I submitted an application to split parcel 211-10-010 into three lots. In violation of A.R.S. §§ 9-500.13, 9-500.12, 9-463 *et seq.* and the Town's Subdivision Ordinance, the Town converted my lot split application into an unlawful subdivision by requiring a fourth lot to be dedicated to the Town in order for the Town to approve the split.

Cordwell approved the division of parcel 211-10-010 into four lots on December 31, 2001. By the Town's own admission, the split of parcel 211-10-010 into four lots constitutes a subdivision, but unlawful as lots 211-10-010 A, B, C & D were not platted in conformance with A.R.S. § 9-463 *et seq.* or the Town's Subdivision Ordinance.

[1] A Notice of Claim is not required to be served upon the Town as a prerequisite to a lawsuit for declaratory relief, injunctive relief, or for claims based upon federal law. See, e.g., Mayer Unified School District v. Winkleman, 2008 WL 2128064 (Ariz. App. Div. 2); Morgan v. City of Phoenix, 162 Ariz. 581, 785 P.2d 101 (App. 1989). See 1 CA-CV 12-0258, *Cook v. Town of Pinetop-Lakeside*. Cave Creek failed to follow A.R.S. §§ 9-500.13 and 9-500.12 which materially affects the adjudication of CV2006-014822 and the title (i.e. Quiet Title) of the lots subject to the Covenant. I intend to amend the pleadings to conform to the evidence pursuant to ARCP Rule 15(a) & 15(b) and Cave Creek as an indispensible party. With caution, the Town should consider this Notice of Claim as may otherwise be required by A.R.S. § 12-821.01, in keeping with my arguments regarding discovery and equitable tolling as argued in CA CV 12-0238.

10780 S. Fullerton Rd., Tucson, AZ 85736 arek@fressadi.com **T 520.216.4103**

In addition, and unbeknownst to me at the time, Cave Creek's requirement for the creation of lot 211-10-010D landlocked lots 211-10-010 A, B, & C.

In February, 2002, I applied for permits to construct driveways for lots 211-10-010 B & C. I also asked Usama Abujbarah, the former Town Manager, to consider a development agreement to reimburse me for repairing and extending the sewer. The former Town Manager verbally agreed and the Town's counsel faxed my attorney a boilerplate development agreement to use as a template for constructing the sewer. In bad faith,[1] the Town fraudulently negotiated numerous drafts of a development agreement without execution knowing that the Town's requirement for a fourth lot converted my lot split into a subdivision precluding any prospect of reimbursement.

In March 2002, Cave Creek required my Registered Land Surveyor Arvel Jones to record the "split" of parcel 211-10-010 in order to permit the driveways. Cave Creek issued driveway permits #02-357 and #02-358 on March 12, 2002.

In order to issue permits to construct the sewer, the Town required easements. To prevent inquiry and exclude suspicion of violating A.R.S. § 9-500.12, the exactions of easements were classified as "corrections" to the legal descriptions. MCRD #2002-0576103, 4, 5. On July 3, 2002, Cave Creek issued permits 02-256, 02-260, 02-263, and 2002-031 for me to extend sewer to lots 211-10-010A, B, & C and repair the sewer in the right of way, even though the lots were not entitled to permits since they were not subdivided in conformance with the Town's Ordinance.

When Cave Creek denied the Cybernetics Group a lot split of parcel 211-10-003 in August 2002, Keith Vertes offered to buy the parcel contingent upon obtaining a lot split. If the Town did not issue a lot split, the property would revert back to the Cybernetics Group. On April 21, 2003, the Town indicated that the 003 lots would be required to hook up to my sewer. The Town also required a fourth lot to be dedicated to the town to approve the lot split. On September 18, 2003, Mayor Francia executed the survey of parcel 211-10-003 into lots 211-10-003 A, B, C & D where lot 211-10-003D blocked access to lots 211-10-003 A, B, & C.

The division of parcel 211-10-003 into four lots was not in conformance with A.R.S. § 9-463 *et seq*. or the Town's Subdivision Ordinance. Upon information and belief, the Town failed to comply with A.R.S. §§ 9-500.13 and 9.500.12 in requiring a fourth lot to approve the split of parcel 211-10-003.

Thinking the splits of parcels 211-10-010 and 211-10-003 to be lawful, Vertes and I entered into a reciprocal easement covenant on October 16, 2003 for shared access, maintenance and improvements to include related utilities, i.e. sewer, water, electric, gas, telephone. MCRD #2003-1472588. On October 22, 2003, I sold lot 211-10-010C subject to the Covenant with the understanding that the lot split was lawful and the lot had access via the required easement to approve the lot split.

Vertes made material misrepresentations upon execution of the Covenant. He warranted and represented that GV Group LLC owned lots 211-10-003 A, B, & C when GV Group LLC did not exist and sold lot 211-10-003A prior to executing the Covenant.

Vertes used the same engineered drawing to apply for permits to extend sewer from my property to lots 211-10-003 A, B, & C. Although the drawing showed the sewer extension outside the easement, Cave Creek issued permit #03-475 for lot 211-10-003A, permit #03-497 for lot 211-10-003C on November 25, 2003, and permit #05-095 for lot 211-10-003B on March 2, 2005.

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[1] *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.3d 12 (2002). (where one party "wrongfully exercises the contractual power for a reason beyond the risks that the [other party] assumed, or for a reason inconsistent with the [other party's] justified expectations")

On February 21, 2004, I submitted an invoice to the Town in the amount of $79,533.75 for repairing and extending the Town's sewer. In response, having first notified the Sonoran News, the Town placed me under investigation for an illegal subdivision on February 27, 2004, when it was the Town who had created the illegality by requiring a fourth lot to approve my lot split and the split of parcel 211-10-003. The Town "red-tagged" all open permits. Marshal Stein recommended that lots 211-10-010 A, B, & D be reassembled to close the investigation.

Although a combined legal description of lots 211-10-010A, B, & D was recorded, out of ignorance as to the true nature of the Town's wrongdoing, a quiet title action pursuant to A.R.S. §§ 12-1101 through 12-1104 was not initiated. The County Assessor created parcel 211-10-010E for tax purposes only.

Without complying with A.R.S. § 9-500.12, Cave Creek required utility and easement access from my property to issue permit #04-269 on March 26, 2004 to construct a single family residence on lot 211-10-003B; issued permit #04-655 on August 17, 2005 to construct a single family residence on lot 211-10-003C; and on December 13, 2006, Cave Creek issued permit # 06-225 to construct a single family residence on lot 211-10-010A. All of the plans to all of the above houses contained zoning violations for excessive disturbance (i.e. self-imposed hardships).

On or about October 25, 2005, the Covenant was rescinded as to the 003 lots. CV2006-014822 was filed October 2, 2006. Although lot 211-10-003D blocked legal and physical access to lots 211-10-003A, B, & C, Building Group constructed an elevated driveway over lots 003D, 003A, and 003B to access lots 003 B & C. The elevated driveway violated and continues to violate Section 5.11(G)(2) of the Town's Zoning Ordinance in effect at the time (January 6, 2003 edition incorporated by reference herein). On July 8, 2008, Cave Creek transferred building permit #04-655 to REEL, Inc. The permit relied on access from my property in violation of Section 5.1(C)(3) of the Zoning Ordinance rendering the permit void.

In violation of A.R.S. 9-462.06(H)(1)and (H)(2), the Town of Cave Creek Board of Adjustment exceeded its statutory authority and issued a variance for excessive lot disturbance for lot 211-10-003C on January 13, 2010. Relying on the variance issued for lot 211-10-003C, the Town of Cave Creek Board of Adjustment exceeded its statutory authority in violation of A.R.S. 9-462.06(H)(1)and (H)(2) by issuing a variance for excessive lot disturbance for lot 211-10-003B on November 16, 2010. The permit for lot 211-10-003B also relied on access from my property in violation of Section 5.1(C)(3) of the Zoning Ordinance rendering the permit void. See *Arkules v. Bd. Of Adjust. Of Paradise Valley*, 728 P.2d 657, 151 Ariz. 438 (1986) (any decision made by a board of adjustment beyond its restrictive powers as ultra vires and void).

In both instances, Ian Cordwell failed to transmit the plans and permits evidencing the self imposed hardships and the void status of the permits in violation of Section 2.3(E)(1) of the Town's Zoning Ordinance.

Adding insult to injury, Cave Creek issued a summons for my arrest for moving rocks on my own property on December 22, 2010. The Town converted the decorative rocks on the edge of my property into a "retaining wall system" for lots 211-10-003 A, B, & C. According to the Town's former Court Administrator, Yvonne Passey, the Towns' Prosecutor Mark Iacovino told Yvonne that he pursued this arrest to please Usama Abujbarah. The Sonoran News immediately published an article casting me in a false light but never published that the arrest was dismissed.

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B. CONTRARY TO THE CONDUCT OF PRIOR MANAGEMENT, CAVE CREEK IS NOT A SOVEREIGN ENTITY

"[T]he power to zone and regulate subdivisions exists by virtue of the state enabling legislation..." *Folsom Investments, Inc. v. City of Scottsdale,* 620 F. Supp. 1372 (D.C. Ariz. 1985); *Bella Vista Ranches, Inc. v. City of Sierra Vista,* 126 Ariz. 142,613 P.2d 302 (App. 1980). Since zoning and subdivision authority comes from the state, a city must exercise their power "within the limits and in the manner prescribed in the grant and not otherwise." *City of Scottsdale v. SCOTTSDALE, ETC.*, 583 P. 2d 891 - Ariz: Supreme Court 1978, quoting *City of Scottsdale v. Superior Court*, 439 P. 2d 290 - Ariz: Supreme Court 1968. "[A] municipal corporation has no inherent police power." *City of Scottsdale, supra.*, 439 P.2d at 293; *Scottsdale Associated Merchants, Inc.*, 120 Ariz. *4,* 583 P.2d 891 at 892 (1978). Cities must strictly comply with state enabling statutes because municipalities are not sovereign powers—they are an extension of state sovereignty. *City of Scottsdale v. Superior Court*, 103 Ariz. 204,439 P.2d 290 (1968).

THE STATE OF ARIZONA REQUIRES MUNICIPALITES TO COMPLY WITH U.S. SUPREME COURT RULINGS AS CODIFIED IN A.R.S.§ 9-500.13. TO INSURE DUE PROCESS, THE STATE REQUIRES MUNICIPALITIES TO COMPLY WITH A.R.S.§ 9-500.12.

Cave Creek violated A.R.S. § 9-500-13 by requiring a fourth lot to approve lot splits. Cave Creek has the burden but never established the nexus requiring a fourth lot to approve the split of parcels 211-10-010 or 211-10-003 per A.R.S. § 9-500.12(E).[2]

Cave Creek required an easement over lot 211-10-010D in order to permit sewer to lots 211-10-010 A, B, & C but failed to follow the requirements of due process as required in A.R.S. § 9-500.12. Cave Creek failed to follow A.R.S. § 9-500.12 because Cave Creek did not comply with A.R.S. § 9-500.13 by requiring the creation of lot 211-10-010D. *See* MCRD #2012-0377104 for revocation of easements and lot splits.

The State enabling statutes governing zoning and subdivision are A.R.S. §§ 9-462 and 9-463 *et seq*. A.R.S. §9-463.01 grants the legislative body of municipalities the power to regulate subdivision of lands within its corporate limits. A.R.S. §9-463.02 defines (A) subdivision: four or more lots the boundaries of which are fixed by a recorded plat.

A.R.S. §9-463(6) defines "plat" as a map of a subdivision, (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance. (b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute. (c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute.

MCRD # 2003-0481222 is not a "recorded plat" of a "final plat" that was vetted through the Town's subdivision ordinance per A.R.S. §9-463(6).

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[2] The Nollan / Dolan exaction process was addressed in Arizona by *Home Builders Association of Central Arizona* v. *City of Scottsdale*, 187 Ariz. 479,930 P.2d 993 (1997) and codified into law by statute in A.R.S. § 9-500.12 (E) that states "In all proceedings under this section the city or town has the burden to establish that there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development.. ."

Cave Creek claims that "any one property that is subdivided into four or more lots is defined as a subdivision under the Town's Subdivision Ordinance.[3]"

By requiring a fourth lot as a condition to approve the split of parcel 211-10-010 and 211-10-003 in violation of A.R.S. §§ 9-500.13 and 9-500.12, Cave Creek created unlawful subdivisions per their ordinance that did not comply with A.R.S. § 9-463 *et seq*. because the surveys of lot splits are not recorded final plats of preliminary plats that were vetted by the Planning Commission and Town Council per the Town's Subdivision Ordinance.

See MCRD #2003-0481222, MCRD #2003-1312578 and the County Assessor records for lots 211-10-010 A, B, C & D and 211-10-003 A, B, C & D.

Since the subsequent lots from parcels 211-10-003 and 211-10-010 do not comply with the Town's Subdivision Ordinance, the lots are unsuitable for building per Section 6.3(A) of the Subdivision Ordinance. *See also* Section 6.1(A)(7) of the Town's Subdivision Ordinance.

Section 5.1(B)(1) of the Town's Zoning Ordinance (1/6/03 incorporated by reference herein) indicates that: "No Zoning Clearance or Building Permit will be issued for any building or structure on any lot or parcel unless that lot or parcel has permanent legal and physical access to a dedicated Town right-of-way."

Lot 211-10-003D blocks legal and physical access to lots 211-10-003 A, B & C. Section 5.1(B)(4) indicates that: "The route of legal and physical access shall be one and the same." Current physical access across lot 211-10-003D is not permitted and is by permission—not easement.

Section 151.36(A) of Cave Creek's Building safety code requires all lots to have access for fire safety, etc. before issuing a building permit. "**If such access is not available, the Building Inspector shall not issue a building permit**." The building permits for lots 211-10-003 A, B, & C were issued with access for fire safety and utilities from my property via the Covenant, MCRD # 2003-1472588, which is the subject of CV2006-014822.

"[A] valid statute is automatically part of any contract affected by it, even if the statute is not specifically mentioned in the contract." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 298-99, ¶ 38, 257 P.3d 1168, 1178-79 (App. 2011) (quoting *Higginbottom v. State,* 203 Ariz. 139, 142, ¶ 11, 51 P.3d 972, 975 (App. 2002)). See *Havasu Heights II,* 167 Ariz, at 389, 807 P.2d at 1125 (laws of the state are a part of every contract).

The Covenant is unenforceable as a right arising from an illegal transaction as all of the lots governed by the Covenant are unlawful. *See Landi v. Arkules,* 172 Ariz. 126, 136, 835 P.2d 458, 468 (App.1992) *See Nat'l Union Indem. Co. v. Bruce Bros.,* 44 Ariz. 454, 467-68, 38 P.2d 648, 653-54 (1934) (where illegality of contract appears on face of contract or appears from evidence necessary to prove contract, court has duty to declare contract void); *see also Clark v. Tinnin,* 81 Ariz. 259, 263, 304 P.2d 947, 950 (1956) (waiver and estoppel cannot be invoked against void contract); *cf. Kaiser Steel Corp. v. Mullins,* 455 U.S. 72, 83 (1982) (federal court has duty to determine whether contract violates federal law before enforcing it).

It follows that superior court has a duty to determine whether the requirement of a fourth lot to split parcels 211-10-010 and 211-10-003 violated U.S. Supreme court rulings before enforcing the Covenant and to Quiet Title pursuant to A.R.S. §§ 12-1101 through 12-1104 accordingly.

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[3] CV2009-050821, Separate Verified Answer of Town of Cave Creek, 3/13/09, paragraphs 17, 18, 20, 21, 38. Cave Creek's Subdivision Ordinance, ~2003 is incorporated by reference herein.

C. CAVE CREEK IS FINANCIALLY LIABLE FOR ZONING VIOLATIONS CAUSED BY ISSUING VOID PERMITS

According to Section 1.7 of the Town's Zoning Ordinance: (A) "***any person*** (to include the Town of Cave Creek as a corporate person) who violates any provision of this Ordinance … ***shall*** be guilty of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law; and ***each and every day of continued violation shall be a separate offense***, punishable as described; (B) It shall be unlawful for any person to erect, construct … any building or land or cause or permit the same to be done in violation of this Ordinance…" [emphasis added]

Pursuant to the Town's Zoning Ordinance Section 1.4(A) in 2003: "Any permit issued in conflict with the terms or provisions of this Ordinance shall be void."[4]

Pursuant to Section 1.1(B) of the Town's Zoning Ordinance operational at the time, the Zoning Ordinance incorporated all adopted Town codes and ordinances as they relate to the development or construction of any building or parcel of land.

Pursuant to Section 1.1(C) of the Town's Zoning Ordinance operational at the time, wherever a conflict occurs between codes, rules or ordinances, the more restrictive shall govern. Further, where there is a conflict between general and specific requirements, the specific shall govern.

Pursuant to Section 1.7(C): "When any building or parcel of land regulated by this Ordinance is being used contrary to this Ordinance, the Zoning Administrator shall order such use discontinued and the structure, parcel or land or portion thereof vacated by notice served on any person cause such use to be continued. Such person shall discontinue the use with the time prescribed by the Zoning Administrator after receipt of such notice. The use or occupation of said structure, parcel of land, or portion thereof, shall conform to the requirements of this Ordinance."

None of these provisions are discretionary. Cave Creek must comply with A.R.S. §§ 9-500.13, 9-500.12, 9-463 *et seq.*, 9-462 *et seq.*, and the specific sections identified herein from its Subdivision and Zoning Ordinances.

There is no evidence that Cave Creek complied with A.R.S. §§ 9-500.13, 9-500.12 in requiring a fourth lot to approve the split of parcels 211-10-003 and 211-10-010. The consequence of requiring a fourth lot was to convert the lot split applications into unlawful subdivisions in violation of A.R.S. § 9-463 *et seq.* and the Town's Subdivision Ordinance rendering the lots unsuitable for building and not entitled to building permits. Given that none of the lots divided from parcels 211-10-010 or 211-10-003 comply with the Subdivision Ordinance, all of the lots are unsuitable for building and not entitled to permits per Section 6.3(A) of the Subdivision Ordinance.

Ergo, when the Town issued building permits and granted variances, it violated Section 1.7 of the Town's Zoning Ordinance for each permit and each variance. The maximum fine attributable to a corporation for a Class 1 Misdemeanor is $20,000 pursuant to A.R.S. § 13-803.

Per Section 1.4(A) of the Zoning Ordinance, the following permits and variances are void: #02-057, #02-058, #02-256, #02-260, #02-263, 2002-031, #03-475, #05-095, #03-497, #04-269, #04-655, #04-655, #06-225, and variances B-09-03, B-10-01. Void permits create no vested property right. See *Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, 1st Div., Dept. D 1996.

[4] Pursuant to Section 1.4(D) of the current zoning ordinance: "Any permit issued in conflict with the terms or provisions of this Ordinance shall be recognized by the Town as being null and void." http://www.cavecreek.org/DocumentCenter/View/994

The maximum penalty attributable to Cave Creek (a corporate enterprise), as of the date of this writing is a staggering Eight Hundred, Ninety-One Million, Seven Hundred Thousand Dollars ($891,720,000) based on the Zoning Ordinance effective January 6, 2003. Clearly someone in Cave Creek was cognizant that the Town could be liable for violating its own Zoning Ordinances and in a rather surreptitious manner, the Town adopted a new Zoning Ordinance effective December 22, 2011 removing the class 1 misdemeanor liability language from Section 1.4. If the Town's liability ceases as of December 22, 2011, the maximum penalty attributable to Cave Creek is Seven Hundred, Thirty Eight Million, Two Hundred Eighty Thousand Dollars ($738, 280,000). See attached Spreadsheets, Exhibit B.[5]

The Town could look to its attorneys for recompense since Mariscal Weeks is supposed to shield the Town from these liabilities, but this fraudulent scheme requires substantial municipal law expertise which no one in Town management possesses. A more likely explanation is that Mariscal Weeks orchestrated the violations at the request of the Town Manager who then instructed the Zoning Administrator and others to violate Federal and State law, and the Town's own ordinances to create an appearance of legitimacy that could be unraveled at any time based on case law as found in *Thomas and King, Valencia, and Rivera*.

Should the Town look to Sections 1.6 and Section 1.1(C) to circumvent liability, I will request the court to rule these provisions of the Zoning Ordinance invalid.

D. OFFER OF SETTLEMENT / CONCLUSION.

Cave Creek has previously declared that it can correct a mistake of law per *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., Dept. B 2, 2004, relying upon "*Valencia Energy v. Ariz. Dep't of Revenue,* 191 Ariz. 565, 576, ¶ 35, 959 P.2d 1256, 1267 (1998). In other words, Cave Creek can correct all its previous mistakes "by the book."

Cave Creek must comply with A.R.S. §§9-500.13, 9-500.12, and 9-463 *et seq*. and its own Subdivision and Zoning Ordinances.

Given that the lots do not comply with the subdivision ordinance and therefore are unsuitable for building, the permits issued for driveways, sewer, and single family homes are void, and the improvements ultra vires, According to Section 1.7(C), the Zoning Administrator must order the use of the single family homes on lots 211-10-010A, 211-10-003A, 211-10-003B, and 211-10-003C discontinued.

Other jurisdictions grant mandatory injunction to remove an offending structure, which Arizona could use as a guideline. For example:

> McCavic v. De Luca, 46 N.W.2d 873 , Minn.,1951, Where defendant had erected business building extending seven feet into space prohibited by setback provisions of city ordinance, owners of adjoining residence property were not required to accept money damages, but were entitled to mandatory injunction requiring removal of portion of building extending beyond setback line. Or see:
> Pinecrest Lakes, Inc. v. Shidel, 795 So.2d 191 , Fla.App.4.Dist.,2001
> Property owner was entitled to remedy of injunction and

[5] The Spreadsheets also look to establish personal liability to 003 lot owners and state actors within the Town of Cave Creek.

demolition of adjacent apartment development violating comprehensive land use plan, *notwithstanding the potentially inequitable loss to be suffered by the developer as compared to that of the property owner* (emphasis supplied) Or see:

Forest County v. Goode, 572 N.W.2d 131
Wis.App.,1997

After finding that residence on lakefront property had been built in violation of county ordinance setting minimum setback requirement, trial court was required to grant injunction compelling owner to relocate residence to comply with ordinance.

Although the language of the state enabling statute is permissive, it appears that the legislative intent was to allow municipalities to adopt mandatory language as found in the Town's ordinance: "If any **building** or structure is or is proposed to be erected, constructed, reconstructed, altered, maintained or used or any land is or is proposed to be used in **violation** of this chapter or any **ordinance**, regulation or provision enacted or adopted by the board under the authority granted by this chapter, the board, the county attorney, the inspector or *any adjacent or **neighboring** property owner who is specially damaged by the **violation***, in addition to the other remedies provided by law, may *institute **injunction**, mandamus, abatement or any other appropriate action or proceedings* to prevent or abate or **remove** the unlawful erection, construction, reconstruction, alteration, maintenance or use." (Emphasis supplied) A.R.S. § 11-808(D). Non conforming uses are addressed in A.R.S. § 9-462.02 and enforced via A.R.S. § 9-462.05.

Cave Creek approved the creation of two unlawful subdivisions by requiring a fourth lot with no nexus, resulting in lots unsuitable for building such that all the permits issued are void. Either the Town needs to appoint a new Director of Land Planning and Zoning Administrator, or Ian Cordwell needs to provide a sworn affidavit that he was forced to break the law and violate town ordinances by the Town Manager (and conceivably, the Town's Mayor, and/or the Town's Attorneys).

Alternatively, the Town can impose fines against Ian, Wayne, and others for issuing void permits and allowing the use of unlawful improvements. A quick read of the Town Council minutes of April 21, 2003, May 17, 2003 and July 21, 2003 will expose the Town's concern that Vertes and I were acting in concert. Obviously we aren't if we've been in litigation against each other for the last seven years but…

How clever a scheme Cave Creek devised by approving the split of 211-10-003 that illegally subdivided the parcel into four lots and required the lots to connect to an ultra vires sewer, then issue permits for houses where legal and physical access are not the same, where the houses have excessive lot disturbance, on lots unsuitable for building KNOWING that case law provides Cave Creek with a "remedy" per *Thomas and King / Valencia* and *Rivera* to order the use of the houses discontinued until the lots are properly split, the permits properly issued, and the resulting improvements in compliance with the Town's Zoning Ordinance.

It is hard to believe that a Town Manager and Zoning Administrator could devise such a cleverly crafted scheme of seemingly innocuous predicate acts to use the entitlement process to ruin a small builder perceived to be a threat to the political junta running the Town without the assistance of professionals who religiously work the labyrinth of zoning and subdivision jurisprudence. ***J'accuse***.

Either I'll request an order of Mandamus from Superior Court to fine Cave Creek for violating U.S. Supreme Court rules, state statutes and its own Subdivision and Zoning Ordinances or I'll settle for Seventy-Five Million Dollars ($75,000,000), roughly ten cents on the dollar of the Town's zoning violation penalties for screwing with me, my family and our businesses over the last twelve years.

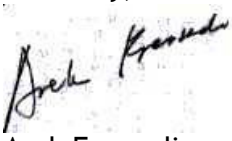
The Town can look to its lawyers or other state actors for financial remuneration. To increase the viability of this settlement offer, I'll accept payments in installments with One Million Dollars ($1,000,000) upon execution of a settlement agreement, another One Million Dollars ($1,000,000,000) ninety (90) days later, the balance amortized over 12 years at prevailing mortgage interest rates starting at 4.5% to be marked to market on a quarterly basis secured by a first lien against the Town's sales tax revenue and water and sewer infrastructure.

The Settlement Agreement would be stipulated to by all of the current and former property owners affected by the Town's malfeasance, and by the Attorney General for the State of Arizona due to the Town violating U.S. Supreme Court rulings and state statutes. This offer of compromise is submitted pursuant to Rules 408 of the Arizona and/or Federal Rules of Evidence.

I would be happy to meet with you and/or other representatives of the Town, in order to resolve these matters. Feel free to contact me should you have any questions or require additional information.

I reserve all rights, claims and remedies arising out of or in any way relating to this matter, and further reserve the right to present additional claims, arguments and/or evidence to the Town and/or in any subsequent litigation which may arise through further discovery.

Sincerely,



Arek Fressadi

cc: Notice, the Honorable Lisa Daniel Flores, presiding, CV2006-014822
The Sonoran Truth, www.sonorantruth.com

Enclosures

EXHIBIT A

Arek Fressadi

June 3, 2013

Town of Cave Creek
Attn: Mayor and Members of the Town Council
c/o Barbara Allen, Executive Assistant of the Town Manager
ballen@cavecreek.org
37622 N. Cave Creek Rd.
Cave Creek, AZ 85331

Dear Mayor Francia and Town Council Members:

In 2001, Ian Cordwell and Usama Abujbarah recommended a series of lot splits in lieu of subdivision to develop parcels 211-10-003 and 211-10-010. Accordingly, I submitted a survey to split parcel 211-10-010 into three parcels in October. Exhibit A.

Unbeknownst to me at the time, the Town made demands upon my engineer to create a fourth lot to be gifted to the Town of Cave Creek as a requirement for approving the lot split. In addition, a number of easements were requested by the town in order to permit the extension of sewer to lots 211-10-010 A, B, & C. See Maricopa County Recorded Documents (MCRD) #2002-0576103, #2002-0576104, #2002-0576105, #2004-553551, #2003-0481222 and # 2003-0488178.

I recently discovered that pursuant to A.R.S. § 9-500.13: "A city or town or an agency or instrumentality of a city or town shall comply with the United States supreme court cases of Dolan v. City of Tigard, _____ U.S. _____ (1994), Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, _____ U.S. _____ (1992), and First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987), and Arizona and federal appellate court decisions that are binding on Arizona cities and towns interpreting or applying those cases."

It appears that the Town's requirements for lot splits, easements and permits supra do not comply with U.S. Supreme Court rulings as codified in A.R.S. § 9-500.13, and other state statutes and Town Ordinances.

Pursuant to A.R.S. § 9-500.12(B): "The city or town ***shall*** notify the property owner that the property owner has the right to appeal the city's or town's action pursuant to this section and shall provide a description of the appeal procedure. The city or town shall not request the property owner to waive the right of appeal or trial de novo at any time during the consideration of the property owner's request." [emphasis added]

I hereby declare upon penalty of perjury that the Town never notified me that I had the right to appeal the Town's actions nor did the Town provide a description of the appeal procedure. It would appear that the Legislative intent of this statutory provision is to establish a date of accrual for discovery purposes in keeping with A.R.S. §§ 12-821, and 12-821.01.

Upon receipt of notice as required in A.R.S. § 9-500.12(B), pursuant to A.R.S. § 9-500.12(A)(1), a property owner may appeal the requirement of a dedication or exaction as a condition of granting approval for the use, improvement or development of real property.

10780 S. Fullerton Rd., Tucson, AZ 85736 **arek@fressadi.com** **T 520.216.4103**

Pursuant to A.R.S. § 9-500.12(C): "The appeal shall be in writing and filed with or mailed to a hearing officer designated by the city or town within thirty days after the final action is taken. The municipality shall submit a takings impact report to the hearing officer. No fee shall be charged for filing the appeal."

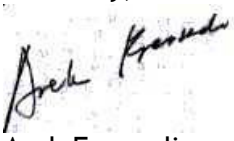
Once the Town complies with the statutory notice and appeal explanation requirements for ***all*** of its dedications and exactions associated with the split of parcels 211-10-010 and 211-10-003 and permitting of improvements to the subject lots thereto, I will file an appeal with the Town's designated hearing officer.

Pursuant to A.R.S. § 9-500.12(E): "In all proceedings under this section the city or town has the burden to establish that there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property in violation of section 9-500.13. If more than a single parcel is involved this requirement applies to the entire property."

In addition, please consider this letter a FOIA request to review each and every dedication, exaction or gift made to the Town of Cave Creek from 2000 to present.

I reserve all rights and claims.

Sincerely,



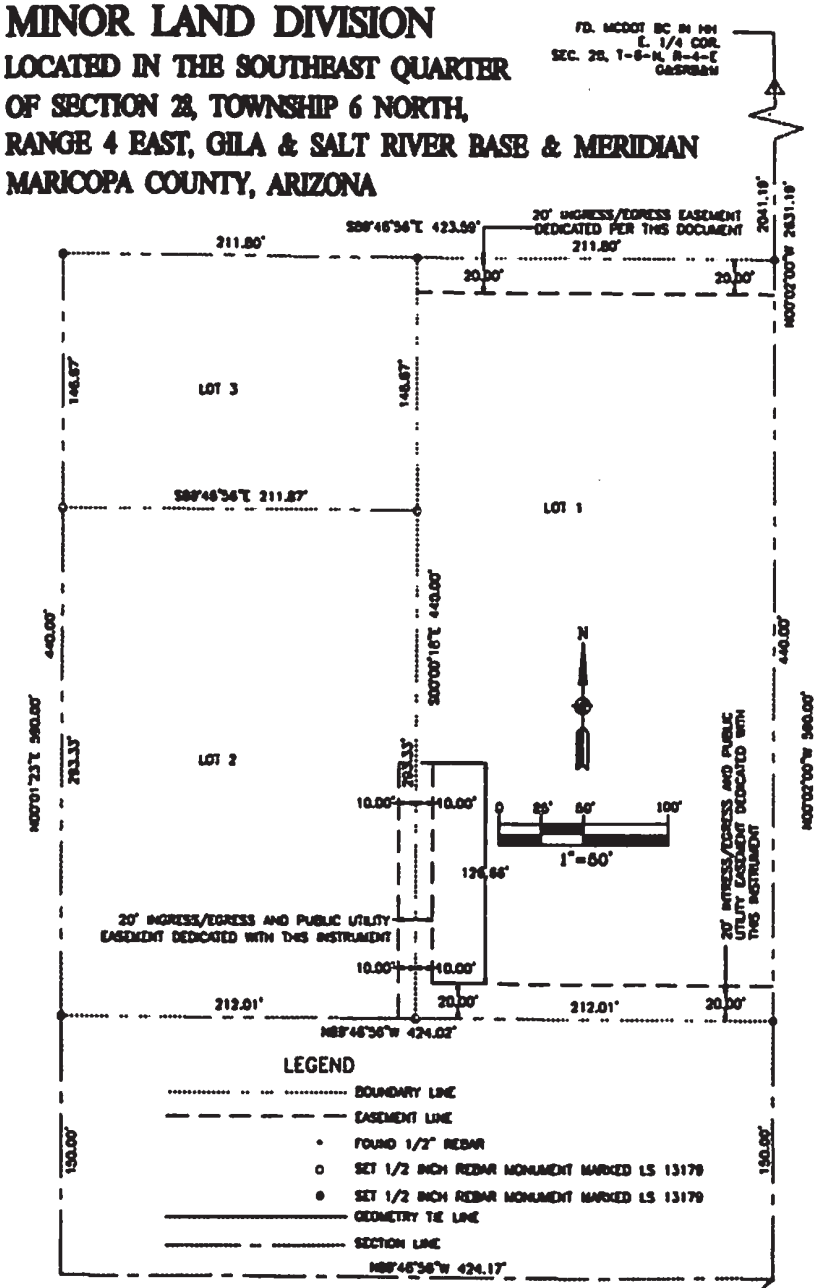
Arek Fressadi

Cc: Town Council members elect:
Adam Trenk, Esq.
Mike Durkin
Reg Monachino
Charles Spitzer

EXHIBIT A

MINOR LAND DIVISION

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA



AREAS		
LOT 1	LOT 2	LOT 3
93,237 SQ. FT.	62,160 SQ. FT.	31,000 SQ. FT.
2.14 ACRES	1.43 ACRES	0.71 ACRE

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'36"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'36"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'36"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 212.01' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'36"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.80' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28;
THENCE S00°02'00"E ALONG SAID EAST LINE A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT UNDER AND ACROSS THE NORTH AND THE SOUTH 20' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES UNDER AND ACROSS THE WEST 10' OF THE NORTH 126.665' OF THE SOUTH 146.665' THEREOF.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N89°46'36"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE 212.01' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'36"W ALONG SAID PARALLEL LINE A DISTANCE OF 212.01' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'36"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.87' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES UNDER AND ACROSS THE EAST 10' OF THE SOUTH HALF THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°46'36"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE, A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'36"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.80' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.67' TO THE POINT OF BEGINNING.

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS _____ DAY OF _____ OF 2001.

ATTESTED:

_____ _____
DIRECTOR OF PLANNING DATE

_____ _____
TOWN CLERK, TOWN OF CAVE CREEK DATE

CBR CONSULTANTS
CIVIL ENGINEERING AND LAND SURVEYING
700 E. MESQUITE, UNIT 0 212
TEMPE, ARIZONA 85281-1957
PHONE: (480) 377-1264
CELL: (480) 600-1123
FAX: (480) 377-1267
RALPH D. NEEDHAM, P.E.
ARCEL R. JONES, P.L.S.

THIS IS TO CERTIFY THAT I, ARCEL R. JONES AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION, DURING THE MONTH OF OCTOBER 2001, THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS NOTED AND THAT SAID SURVEY MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

13179 ARCEL R. JONES

JOB NUMBER: M1103
DWG NAME: School House
FILE LOCATION: C:\Land Projects\M1103 School House\Survey.dwg

CC0355

EXHIBIT B

Permit Variance	Issued Approved	Description	Today's Date	Count days	CC Fine amount	CC Fine per violation	Golec	Cordwell	BMO	REEL	Vertes
#02-057	3/12/2002	211-10-010 driveway	6/30/2013	4068	$20,000	$81,360,000		$10,170,000			
#02-058	3/12/2002	211-10-010 driveway	6/30/2013	4068	$20,000	$81,360,000		$10,170,000			
#02-256	7/3/2002	sewer lot 211-10-010 A	6/30/2013	3957	$20,000	$79,140,000		$9,892,500			
#02-260	7/3/2002	sewer lot 211-10-010 B	6/30/2013	3957	$20,000	$79,140,000		$9,892,500			
#02-263	7/3/2002	sewer lot 211-10-010 C	6/30/2013	3957	$20,000	$79,140,000		$9,892,500			
2002-031	7/3/2002	ROW sewer	6/30/2013	3957	$20,000	$79,140,000		$9,892,500			
#03-475	11/25/2003	sewer lot 211-10-003 A	6/30/2013	3455	$20,000	$69,100,000	$8,637,500	$8,637,500			$8,637,500
#05-095	3/2/2005	sewer lot 211-10-003 B	6/30/2013	2998	$20,000	$59,960,000	$7,495,000	$7,495,000			$7,495,000
#03-497	11/25/2003	sewer lot 211-10-003 C	6/30/2013	3455	$20,000	$69,100,000	$8,637,500	$8,637,500			$8,637,500
#04-269	3/26/2004	SFR lot 211-10-003 B	6/30/2013	3334	$20,000	$66,680,000	$8,335,000	$8,335,000			$8,335,000
#04-655	8/17/2005	SFR lot 211-10-003 C	7/7/2008	1040	$20,000	$20,800,000	$2,600,000	$2,600,000			$2,600,000
#04-655	7/8/2008	003C transfer to REEL	6/30/2013	1792	$20,000	$35,840,000				$35,840,000	
#06-225	12/13/2006	SFR lot 211-10-003 A	6/30/2013	2357	$20,000	$47,140,000		$5,892,500			
B-09-03	1/13/2010	variance 211-10-003 C	6/30/2013	1247	$20,000	$24,940,000		$3,117,500		$24,940,000	
B-10-01	11/16/2010	variance 211-10-003 B	6/30/2013	944	$20,000	$18,880,000		$2,360,000	$18,880,000		
						$891,720,000	$35,705,000	$106,985,000	$18,880,000	$60,780,000	$35,705,000

Grand total $1,149,775,000

Additional liability

Jeff Low
Wayne Anderson
Fred Mueller
George Ross
Pello
Usama
Francia

Permit Variance	Issued Approved	Description	12/22/2011 Date	Count days	CC Fine amount	CC Fine per violation	Golec	Cordwell	BMO	REEL	Vertes
#02-057	3/12/2002	211-10-010 driveway	12/22/2011	3520	$20,000	$70,400,000		$8,800,000			
#02-058	3/12/2002	211-10-010 driveway	12/22/2011	3520	$20,000	$70,400,000		$8,800,000			
#02-256	7/3/2002	sewer lot 211-10-010 A	12/22/2011	3409	$20,000	$68,180,000		$8,522,500			
#02-260	7/3/2002	sewer lot 211-10-010 B	12/22/2011	3409	$20,000	$68,180,000		$8,522,500			
#02-263	7/3/2002	sewer lot 211-10-010 C	12/22/2011	3409	$20,000	$68,180,000		$8,522,500			
2002-031	7/3/2002	ROW sewer	12/22/2011	3409	$20,000	$68,180,000		$8,522,500			
#03-475	11/25/2003	sewer lot 211-10-003 A	12/22/2011	2907	$20,000	$58,140,000	$7,267,500	$7,267,500			$7,267,500
#05-095	3/2/2005	sewer lot 211-10-003 B	12/22/2011	2450	$20,000	$49,000,000	$6,125,000	$6,125,000			$6,125,000
#03-497	11/25/2003	sewer lot 211-10-003 C	12/22/2011	2907	$20,000	$58,140,000	$7,267,500	$7,267,500			$7,267,500
#04-269	3/26/2004	SFR lot 211-10-003 B	12/22/2011	2786	$20,000	$55,720,000	$6,965,000	$6,965,000			$6,965,000
#04-655	8/17/2005	SFR lot 211-10-003 C	7/7/2008	1040	$20,000	$20,800,000	$2,600,000	$2,600,000			$2,600,000
#04-655	7/8/2008	003C transfer to REEL	12/22/2011	1244	$20,000	$24,880,000				$24,880,000	
#06-225	12/13/2006	SFR lot 211-10-003 A	12/22/2011	1809	$20,000	$36,180,000		$4,522,500			
B-09-03	1/13/2010	variance 211-10-003 C	12/22/2011	699	$20,000	$13,980,000		$1,747,500		$13,980,000	
B-10-01	11/16/2010	variance 211-10-003 B	12/22/2011	396	$20,000	$7,920,000		$990,000	$7,920,000		
						$738,280,000	$30,225,000	$89,175,000	$7,920,000	$38,860,000	$30,225,000

Grand total $934,685,000

Additional liability

- Jeff Low
- Wayne Anderson
- Fred Mueller
- George Ross
- Pello
- Usama
- Francia