

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.



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