NANCY KNIGHT
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Plaintiff Pro Per

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT,

Plaintiff,

vs.

GLEN LUDWIG AND PEARL LUDWIG, TRUSTEES OF THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; MEHDI AZARMI; JAMES B. ROBERTS AND DONNA M. ROBERTS, HUSBAND AND WIFE; JOHN DOES 1-10; JANE DOES 1-10; ABC CORPORATIONS 1-10; AND XYZ PARTNERSHIPS 1-10.

Defendants.

CASE NO.: **CV 2018-04003**

MOTION FOR RECONSIDERATION OF DISMISSAL OF COUNT ONE BASED ON NEW EVIDENCE AND ADJUDICATE COUNT TWO BY AUTHORITY OF THE ARIZONA CONSTITUTION

(Assigned to Hon. Judge Jantzen)

COMES NOW Nancy Knight, Plaintiff Pro Per, pleading for the Court to Reconsider Dismissal of Count One of her January 2018 Complaint. Comprehensive new evidence supports the Plaintiff's ongoing arguments that Desert Lakes Golf Course and Estates Subdivision Tract 4076 (hereinafter "Desert Lakes") is the "Subdivision" referred to in the Declaration of Covenants, Conditions and Restrictions (hereinafter "CC&Rs"); that Desert Lakes was designed by Desert Lakes Development L.P. as a Master Planned Community; that the language of "said tract" used in the CC&Rs was not intended to

limit property owners' prosecution rights based on any alphabetical suffix associated with Subdivision Tract 4076.

Arizona Law Title 9 definitions supports the Plaintiff's rights, and all property owners' rights, to prosecute violations in any and all Desert Lakes tracts. Arizona Title 9 defines the "approved Preliminary Plat" that creates a subdivision. Also known as a "Preliminary Map" and was known as a "Preliminary Plan" by the County from 1976 – 1994. The Desert Lakes Subdivision Tract 4076 was created in 1988 based on the approved Preliminary Map. The alphabetical suffix used to identify a "said tract" such as Tract 4076-A, Tract 4076-B, et. al. are actually the identifiers for phases of development according to the Mohave County Land Division Regulations (Exhibit attached). Arizona Law Title 9 defines Preliminary Plats and also differentiates "approved plats" from "recorded plats" in support of the Plaintiff's ongoing argument. Title 9 text cited below.

MEMORANDUM OF POINTS AND AUTHORITIES

Tract 4163 is comprised of lots created from Parcel VV, where the Plaintiff's home is situated within Phase II of the Preliminary Plat. The Final Plat for this phase of development is identified with an alphabetical suffix as Tract 4076-B. **Exhibit 1** – 1988 Preliminary Plat (Map) with notations and arrows inserted by Plaintiff to identify Phase I, II, and III on this page with Parcel VV in Phase II.

Plaintiff has been adjudicated rights to prosecute violations in Tract 4076-B within her original Complaint dated January 2018 upon a Motion to Amend; however, that amended Complaint cannot proceed until the issue of the dismissal of Count One has

been fully vetted for understanding by the Court. The new evidence and case precedents should put to rest the unintended error made by the Carlisle Court in taking the Plaintiff's right to prosecute violations in Tract 4076-A and put to rest the issue of abandonment of the CC&Rs. During the April 2, 2018 oral arguments, Plaintiff was denied a continuance and denied submission of additional evidence before granting the Defendants' Dismissal of Count One with prejudice. Plaintiff was also denied a Stay of Execution of the pending Court Order that was being written by Mr. Oehler and would have provided the Plaintiff time to purchase a lot in Tract 4076-A; thereby, becoming a property owner with rights to prosecute in Tract 4076-A. The law now favors the Plaintiff's right to prosecute violations in all areas of Desert Lakes.

The Jantzen Court has an opportunity to set right an error in the Carlisle Court's perceived language interpretation that a "said tract" in the CC&Rs referred to the subdivision. Final Plats for Tract 4076-A, Tract 4076-B et. al. are not subdivisions. Mohave County Land Division Regulations explains the use of the alphabetical suffix used in the CC&Rs and in the Final Plats. **Exhibit 2** - Page 39 of the Land Division Regulations, 2 pages of an email correspondence sent to Christine Ballard of Development Services and County Deputy Attorney Taylor dated February 27, 2020, and 2 pages of the Land Division Regulations' definition for Preliminary Plan for the period of 1976-1994.

> **Mohave County Land Division Regulations: Final Plat**
> Final Plat Processing Section 3.8 (B)(5) reads as follows: "A final plat shall be submitted for each proposed phase. Each subdivision phase must be able to function independently when constructed according to

the Land Division Regulations. **Each subdivision phase shall be identified by an alphabetical suffix starting with the letter "A,"** and with each final plat using the basic, assigned tract number. Sub-phasing of the subdivision (and any submittal component thereof), e.g. "Tract 1234-A1," is prohibited by these regulations.". (Emphasis added)

Arizona Law, Title 9 supports all property owners' rights to prosecute violations in the entire Subdivision Tract 4076 of this Master Planned Community and not just within a "said tract" with an alphabetical suffix appended to Tract 4076. Desert Lakes Development L.P. used explicit language in the Declaration.

Arizona Laws Title 9, Chapter 4, Article 6
9-463 Definitions
6. "Plat" means 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. (Emphasis supplied)
(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.

10. "Subdivision" means any land or portion thereof subject to the provisions of this article as provided in Title 9-463.02.

Maricopa County Subdivision Regulation: Definitions
30. Plan, Development Master: A preliminary master plan for the development of a community or other large land area, the platting of which is expected to be undertaken in progressive stages. A Development Master Plan shall be subject to Commission and Board Approval. (Emphasis supplied)

Duffy v. Sunburst Farms E. Mut. Water & Agric. Co., 124 Ariz. 416, 604 P.2d 1124, 1127 (1979). "Words in a restrictive covenant must be given their ordinary meaning, and the use of the words within a restrictive covenant gives strong evidence of the intended meaning". "Unambiguous restrictive covenants are

> generally enforced according to their terms". Id. at 417, 604 P.2d at 1128.
>
> *Powell v Washburn*, 211 Ariz. 553, 125 P.3d 373 (2006). The Supreme Court unanimously vacated the decision of the court of appeals and affirmed the trial court's judgment. In so holding, the court adopted the approach of the Restatement (Third) of Property: Servitudes ("Restatement"), which provides that [a] servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created.

Desert Lakes Development L.P. created a Master Planned Community that was intended to be built in stages called Phases on their approved Preliminary Plat and all of the CC&Rs have differentiated language that separates the developer's intent for the rights to prosecution of violations within the "subdivision" from the intent for the conditions and restrictions for lots in "said tracts" that were built in phases. The developer's 1988 Preliminary Plat created the "subdivision", and as was already submitted to the Court, their 1989 Final Plat for Phase I Tract 4076-A incorporated the same Wordmark Logo used on the 1988 Preliminary Plat (Map). Also pointed out to the Court was the County Certificate on the Final Plat that was signed by three County officials after reviewing the "approved Preliminary Plat".

Property owners purchased homes in this master planned community with the expectations that they had a right to be protected from damages or blight through their right to prosecute violations in accordance with CC&Rs. A Home Owner Association (HOA) was never formed for this purpose. As has been submitted to the Court, evidence exists that the Plaintiff has gone to great expense to enforce her property's fence design,

fence height, and protected views of the golf course and surrounding area in accordance with the CC&Rs. All of these violations of the CC&Rs were modifications made by her adjacent neighbor. The remedy was the cutting away of cement blocks for fence height and the cutting away of cement blocks from both her own side yard fence and from her adjacent neighbor's rear yard fence with installation of the imposed upon wrought iron rail panels (Mohave County Superior Court case no. CV 2016 04026). Remedies exist for CC&R violations.

The Plaintiff's ongoing claim that the binding mediated settlement in that case was proof of enforcement is further supported by a letter from the Arizona State Bar Association that confirmed the Plaintiff's case CV 2016 04026 was a CC&R matter. Plaintiff's second attorney in the matter, Mr. Moyer of Lake Havasu City, is known for CC&R litigation cases. The imposed upon CC&Rs have not been abandoned nor disregarded by either the Plaintiff in 2016 nor by her home's developer, T&M Development in 2005, as has already been made a part of the record with block wall fence permits and photos. **Exhibit 3** – Letter from the Arizona State Bar Association regarding Plaintiff's prior CC&R enforcement case.

> In *Continental Oil v Fennemore,* Supreme Court of Arizona, May 27, 1931 38 Ariz. 277 (Ariz. 1931), the supreme court wrote: "The policy of the courts of this state should be to protect the home owners who have purchased lots relying upon, and have maintained and abided by, restrictions, from the invasion of those who attempt to break down these guaranties of home enjoyment under the claim of business necessities."

Defendants' business interests for their Mohave County defined illegal off-premises "Build to Suit" advertising violates the CC&Rs. The Defendant's attempt to

violate the CC&R building setback restrictions through BOS Res. 2016-125 and 2016-126 was also intended to support their business interests by providing a larger building footprint and therefore larger profits at the expense of existing property owner's views and property owner expectations for consistent development within the master planned community.

Regarding Count Two (Injunctive Relief) and the Defendant's advertising signs, according to the Arizona Constitution, the Court has powers to strike down any official act of the governor or other public official. The defendant's signs are not "for sale" signs and yet the Defendants have been able to avoid taking these dilapidated signs and sign riders down using A.R.S. § 33–441 as their cover with the Court. In order to determine if the legislature intended to put people in harm's way from the long-term exposure of weather elements with no maintenance for signs on unimproved lots, we turn to the plain language of the statute and thereby find cause for the Court to use its authority to declare the law "unconstitutional" for safety reasons or use its authority for ambiguous and capricious language that infers the law was intended only to apply to for sale signage on developed lots. It is impossible to have indoor signage on undeveloped lots.

> 33-441. For sale signs; restrictions unenforceable
> A. A covenant, restriction or condition contained in any deed, contract, security agreement or other instrument affecting the transfer or sale of any interest in real property shall not be applied to prohibit the indoor or outdoor display of a for sale sign and a sign rider by a property owner on that person's property, including a sign that indicates the person is offering the property for sale by owner..." (Emphasis supplied).
>
> In accordance with the Arizona Constitution, "whenever a statute, rule, ordinance, or governmental act is challenged on the ground that

> it conflicts with the state or federal constitution, the courts have the authority to declare the law or act "unconstitutional" (and therefore unenforceable)". *Understanding The Arizona Constitution* by Toni McClory. The University of Arizona Press © 2001, ISBN: 978-0-8165-2096-1, Bottom of page 120 and top of page 121, Chapter Six.

In regards to ordinances and the authority of the Court to strike down any act of a government official, the Mohave County Board of Supervisors, Deputy Attorney, and Development Services personnel have taken the position that Fairway Constructors' "build to suit" advertising is Real Estate signage. Attorney Robert Taylor stated that for the Plaintiff to see a definition of "Real Estate or Property for Sale, Rent, or Lease Sign", she should review Section 42 B of the Mohave County Zoning Ordinance. He claimed that provision defines such sign as "any sign pertaining to the sale, lease or rental of lands or buildings." Mr. Taylor contends that it is Development Services reasonable interpretation and application of the ordinance that a sign indicating that a lot is available and will be built to suit is a "real estate sign". The main problem with this argument is that no such language exists in the County Ordinance. Further, as has already been submitted to the Court, the Arizona Department of Real Estate has confirmed these signs are not for sale or for lease signs. County Supervisors continually refer the Plaintiff to County Deputy Attorney Taylor.

Plaintiff believes that any sheet metal sign on undeveloped lots that becomes rusted, wind twisted and torn from its sign rider, or its rider becomes uprooted from the ground, poses a risk to persons and property. Safety is a purpose of maintenance as cited in the Mohave County Ordinance on Signs (page 201 from Exhibit 4 below).

People who drive the streets in Desert Lakes should not have to wait for a jury to decide the issue of fact on the Defendant's development services advertising signage. The sign on Wishing Well in Tract 4076-B has now lost its sign and only the sign rider (structure) is left standing on the unimproved lot. The sign and rider on Lipan Blvd. in Tract 4076-B that was wind twisted and severely rusted has disappeared completely. As stated, and shown in photographic evidence, even real estate company "for sale" signs are a hazard to persons and property when they become rusted and uprooted from the ground. These signs sit for years on vacant residential property with no maintenance. The Mohave County Ordinance on Sign definitions begins in Section 42 B on page 182. **Exhibit 4** – Pertinent 8 pages from the Sign Ordinance (Emphasis supplied by encircling, underscoring, and written notes.)

Plaintiff follows Rule 11 regarding her signature on pleadings, motions, and other documents in lieu of an affidavit.

> Rule 11 (b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

There has never been an abandonment of the CC&Rs. Defendant's attorney Oehler did not claim an abandonment of the CC&Rs in 2016 where he served as the defense attorney in CV 2016 04026 - nor was it claimed in 2018 for the Defendant's first dispositive motion.

> "No failure of the Trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof."

All of the recorded versions of the CC&Rs for Desert Lakes Tract 4076 includes the non-waiver provision. The case of *Cundiff et. al v Cox* has many parallel issues that have been adjudicated by the Arizona Court of Appeals including abandonment, indispensable parties, and the non-waiver clause. **Exhibit 5** – *Cundiff et al v Cox* pages 1-19.

> *In Cundiff et al v Cox,* Arizona Appeals Court; CA-CV 15-0371 (2017). https://casetext.com/case/cundiff-v-cox, the Court concluded in a summary judgment matter that the defense of waiver and/or abandonment of the Declaration failed as a matter of law. Even despite prior violations of the Declaration, as long as the violations did not constitute a "complete abandonment" of the Declaration, the non-waiver clause was deemed enforceable.
>
> "Before trial the issue of indispensable parties arose regarding all persons who owned property affected by the Declaration must be joined because their legal rights could be substantially affected by the outcome of the case". Page 4, para. 9. "On remand, the trial court determined that the other property owners subject to the Declaration were indispensable parties..." It was ordered that the moving party for dismissal serve and join all necessary and indispensable parties. Page 5, Para. 13.

Similarly to the Plaintiff's case regarding business advertising signage, a business was objected to in the *Cundiff v Cox* matter.

> It was concluded, after the case of *Powell v. Washburn,* that "nothing in the Declaration suggests that any one type of business was intended to be excluded..." Page 5, Para. 11.

The Plaintiff argues that the overall character of the master planned golf course and estates community has not undergone the fundamental change required to constitute a legal abandonment. It is clear from Affiant Morse's photographic Exhibit D, that the golf course continues to provide enjoyment and views for property owners with lots adjacent to the golf course and the color of white for wrought iron rails is not a detriment to the aesthetic goals of the Declaration, nor can the golf ball safety barrier made of metal mesh be defined as a fence in the sense of the CC&R boundary fence conditioned to not be of chain link material. Property owners would not recognize the difference between a tempered glass window pane and one that is in violation of the CC&Rs. The number of 50-100 such violations for broken windows in Tract 4076-B claimed by Affiant Green is suspect given that the CC&R provision for tempered glass is only for homes adjacent to the golf course and Tract 4076-B only has about 149 improved lots per Affiant Weisz and not all are on the golf course nor do the protective barriers for errant balls fail to such a high degree that replacement windows are a common occurrence. Affiant Green may be confused unless he can provide the addresses where he claims to have replaced 50-100 broken windows in Desert Lakes Tract 4076-B. Gate access to the golf course is also not a detriment to the aesthetic goals of the Declaration and in accordance with law a prescriptive easement has most likely passed the ten year mark for most gates in Desert Lakes. In accordance with paragraph 21 of Tract 4076-B CC&Rs, in the event that a

provision becomes invalid, as may be the case for gate access as a prescriptive easement, "this agreement shall be construed as if such invalid provision had not been inserted". Here again gate access cannot be used as a calculation for the complete abandonment of the CC&Rs. Gate access as a trespass is another matter entirely but that is not a provision of the CC&Rs.

Affiant Stephan's aerial photographs demonstrates the aesthetic character of the community and shows how it would be very difficult for any layman or property owner to discern the footage of setbacks or a shortfall in the livable space within a completed home. For the most part, the community is unaware of violations. The majority of homes continues to be scrutinized by Development Services for the Special Development condition for 20' 5' 20' foot front, side, and rear yard setbacks that are also required to be compliant in the Declaration of the CC&Rs. But for the Defendant's refusing to accept permit denial from Development Services and the circumventing of this denial with a Board of Adjustment variance for the home eventually sold to the Roberts in Tract 4076-A, this home would have needed to be redesigned for compliance. The lot is over 8,000 sq. ft. which would accommodate a design in compliance for all setback restrictions. But for the one error admitted to by Development Services for a home in Tract 4076-B that has front and rear setback violations, this home would have most likely been redesigned to be in compliance as well. All of the 677 lot sizes in Tract 4076 are equal to or greater than the 6000 square foot minimum cited in Res. 88-175 with the exception of thirteen of the thirty-two lots in the Plaintiff's Tract 4163 that range from

4791.6 to 5662.8 square feet. Data was collected from the mailing list for the proposed BOS Res. 2016-125 and 2016-126 setback reductions that was denied by the Board of Supervisors and the Accessors website for the thirteen non-compliant lots. The removal of multifamily housing from the 88-175 resolution enforced the 1989 forbidding of multifamily housing in the CC&Rs (Res. 89-116). **Exhibit 6** – Two pages from cited Resolutions and one page from the Tract 4076-B Declaration.

Overall, Subdivision Tract 4076 violations do not constitute a "complete abandonment" of the Declaration and all violations have available remedies to bring the lots into compliance as the Plaintiff had to do pursuant to her binding mediated settlement in CV 2016 04026. The master planned community is aesthetically pleasing and home prices are rising. In fact, they have nearly doubled since the Great Recession of 2008 based on recent sales at 1762 and 1771 Lipan Circle in the Plaintiff's Tract 4163.

A lack of continued enforcement can lead to blight or fail to continue to provide the aesthetic goals intended by Desert Lakes Development L.P. As concluded in the *Cundiff v Cox* appeals case, despite prior violations, as long as a "complete abandonment" has not occurred, the non-waiver clause is upheld.

CONCLUSION

Plaintiff pleads with the Court to reverse the Dismissal of Count One of her Complaint.

As long ago as December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Article 3 of this

Declaration states, "Everyone has the right to life, liberty, and security of person." Published in 2003 by the President and Fellows of Harvard College in collaboration with JSTOR (www.jsfor.org).

Plaintiff pleads with the Court to exercise its authority to protect people's right to safety. Proceed with adjudication of Plaintiff's Count Two by ordering the removal of the Defendants development services signs from unimproved residential lots in Desert Lakes Golf Course and Estates Subdivision Tract 4076. Declare Statute 33-441 unconstitutional, ambiguous or capricious.

Plaintiff pleads for denial of Defendant's attorney fees in accordance with the provisions of §12-349 and §12-350 or any other statute regarding attorney fees.

Plaintiff pleads for all fees and sanctions as submitted to the Court by the Plaintiff in prior Motions to be approved. Plaintiff pleads for the Court to write the judgment and financial award to be paid in equal parts by the Defendants.

RESPECTFULLY SUBMITTED this 28th day of February, 2020.

NANCY KNIGHT
Plaintiff Pro Per

COPY of the foregoing emailed on this 28th day of February, 2020 to:

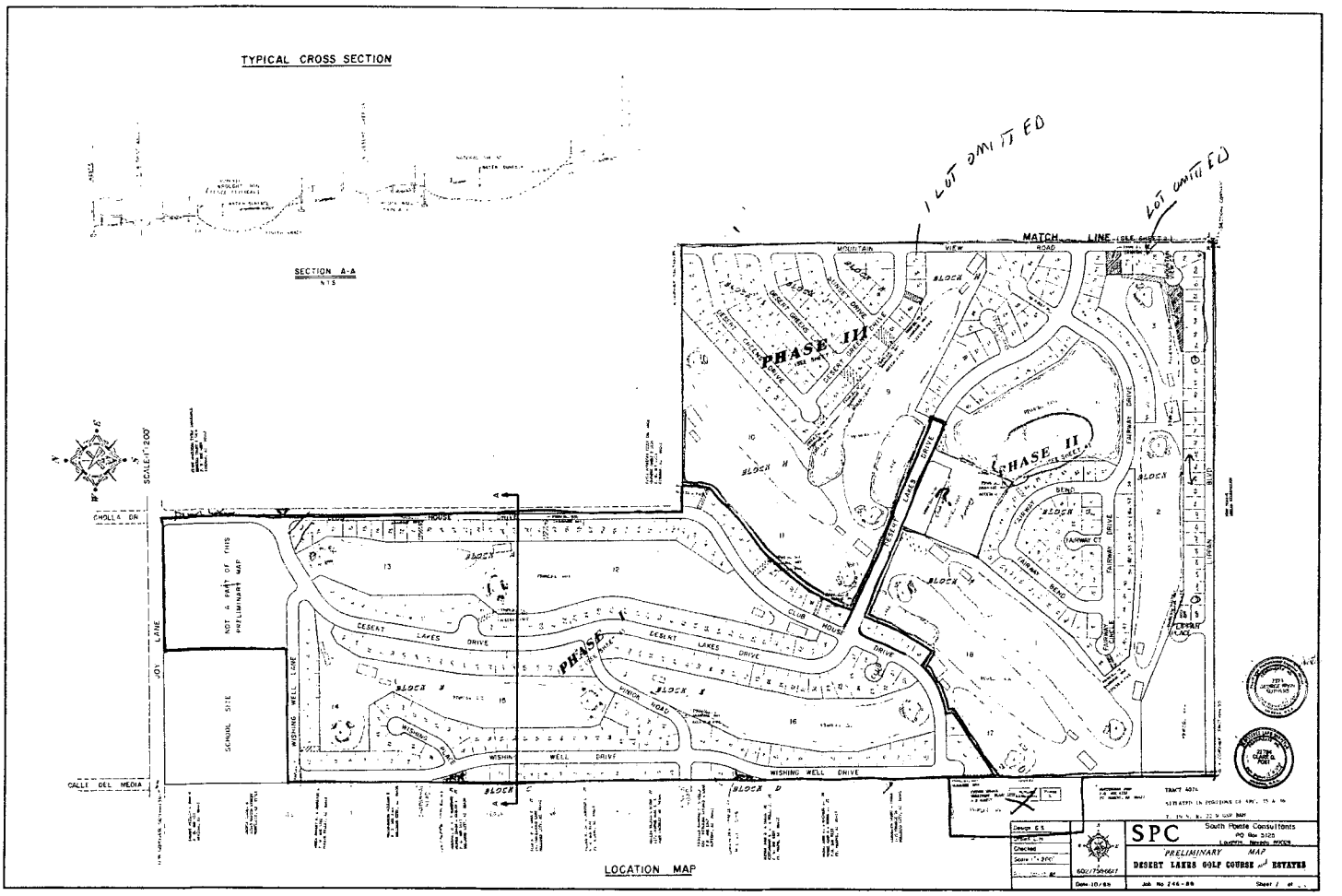
djolaw@frontiernet.net

Attorney for Defendants
Daniel J. Oehler, Esq.
Law Offices of Daniel J. Oehler
2001 Highway 95, Suite 15
Bullhead City, Arizona 86442

Exhibit 1
1988 Preliminary Plat.

Exhibit 1

Phase III



Phase I

Phase II & w/ Parcel VV in lower right corner of the map.

Exhibit 2
Regulations and email

Exhibit 2

Final Plat

pg 1 of 5 pages

3.8 Final Plat

A. Purpose.

The final plat serves as the legal document that, upon recordation, establishes the official survey and platting of a subdivision. The final plat shall include all detail necessary to accurately and completely establish the lots, parcels, rights-of-way, easements, common areas, street names and numbering, dimensions, bearings, and monumentation of all elements included in the subdivision design, and shall also effect the dedication of any public roadways or parcels, any private roadways or parcels, and the granting of any easements.

B. Final Plat Processing.

1. The initial submittal of a Final Plat of a subdivision, or Final Plats for phases thereof, and corrected Final Plats, must be submitted for processing within six (6) years following the approval of a preliminary plat by the Board of Supervisors. Additional extensions of time to submit the initial or corrected Final Plats will be based on the Approved Preliminary Plat period of approval, as it may be extended. This Paragraph does not apply to Type II, Condominium or Commercial subdivisions.

2. Final Plats shall be prepared by or under the direction and supervision of the project surveyor and project engineer, and shall be issued under their seals and signatures.

3. The layout and design of the subdivision final plat shall substantially conform to the approved preliminary plat. These may include the correction of dimensions, bearings, and other technical information; the addition to or the deletion from the plat of minor easements; or other similar minor adjustments, which in the determination of the Director do not adversely impact or materially affect the subdivision design.

4. For each proposed phase in an approved preliminary plat (tract), a separate final plat must be submitted for review and processing.

5. A final plat shall be submitted for each proposed phase. Each subdivision phase must be able to function independently when constructed according to the Land Division Regulations. Each subdivision phase shall be identified by an alphabetical suffix starting with the letter "A," and with each final plat using the basic, assigned tract number. Sub-phasing of subdivisions (and any submittal component thereof), e.g., "Tract 1234-A1," is prohibited by these regulations.

6. The final plat shall be prepared in accordance with these regulations and any other applicable regulation, ordinance, state, or federal law.

nancyknight

Ex 2 pg 2 of 5

From: "nancyknight" <nancyknight@frontier.com>
Date: Thursday, February 27, 2020 7:50 AM
To: "Robert Taylor" <Robert.Taylor@mohavecounty.us>; "Christine Ballard" <Christine.Ballard@mohavecounty.us>
Cc: <buster.johnson@mohavecounty.us>; "Jean Bishop" <Jean.Bishop@mohavecounty.us>; "Gary Watson" <Gary.Watson@mohavecounty.us>
Subject: Re: Knight Public Records Hyphen question also added herein Re: Preliminary Plat RFPI

Dear Ms. Ballard,
Please bear with me as this very long-winded response is necessary for the Court to understand what transpired in the development and approval stages of Desert Lakes Golf Course and Estates Subdivision Tract 4076 (hereinafter "Subdivision"). Three separate Courts have been misled for two years in my litigation for Breach of Contract.

A critical decision by the Court is pending in approximately the next 30 days that will determine if we progress to Appeal or finally to Trial or private Settlement.

Herein lies a need for some explanation related to the documents you have provided to me yesterday. It is very difficult to print or read a copy of the 1976 definitions; however, I can discern the language for the highlighted definition on page 12 is "Preliminary Plan". It appears that the next revision to the definitions occurred in 1991 with the definition on page 17 being identical to the definition in 1976. The confusion is that the Desert Lakes Subdivision Tract 4076 was created in 1988 based on the "Preliminary Plat" that you sent to me in response to a prior RFPI regarding Fairway Estates. This map supported your explanation that the Red Sharpie Pen outlined boundaries of two maps for my Subdivision were boundary outlined in error. Since the CC&Rs run with the land, Fairway Estates was added to my second Motion to Amend my Complaint for nuisance activities associated with their Clubhouse. Fortunately, the Court denied my Motion and subsequently, the Desert Lakes "Preliminary Plat" not only confirmed that an error had been made by Development Services but opened the door to the argument that Desert Lakes Tract 4076 was the Subdivision. The Court claimed my argument was not persuasive and I continue to battle for rights to prosecution within my entire Subdivision.

Since the PDF file with a definition from 1976 through 1994 for "Preliminary Plan" conflicts with the 1988 "Preliminary Plat" for my Subdivision and since I see that in 2001 the Mohave County Land Division Regulation definition changed to "Preliminary Plat", any clarification for the Current Court is appreciated for my oral arguments that is scheduled for March 30, 2020 in Kingman, AZ.

The Court does base decisions on Law and therefore the Arizona Law Title 9-463 definition for 6(a) "Preliminary Plat" is also being submitted to the Court along with 6(b) for the Final Plat conforming to the "approved preliminary plat" and 6(c) for "recorded plats" as final plats. Given, the Final Tract 4076-A plat in 1989 for my Subdivision used the words "approved plat" as referenced in the County Certificate signed by three County officials, the confusion of the Court in arguing that the Desert Lakes Preliminary Plat is not a "Recorded" plat and my argument that it never is can set aside this confusion and support my argument that Preliminary Plats are "approved plats" to be used for Board approval to proceed to development of phases in a Subdivision.

The Microsoft Word attached document file entitled LDR page 37.docx as taken from the Mohave County Land Division Regulation (hereinafter "LDR") page 37 is additional critical evidence for the current Court in regard to Tract 4076-A, Tract 4076-B, et. al. I am only able to provide the Court with hard copies of evidence and the Word Document's printed page does not have LDR nor the page number on the printed page; therefore, to prevent any challenge that I have created this document or revised the language in any way, I may need your support as an Affidavit to the Court that all language is true and correct per Section 3.8 paragraph B (5) as follows: "A final plat shall be submitted for each proposed phase. Each subdivision phase must be able to function independently when constructed according to the Land Division Regulations. Each subdivision phase shall be identified by an alphabetical suffix starting with the letter "A," and with each final plat using the basic, assigned tract number. Sub-phasing of the subdivision (and any submittal component thereof), e.g. "Tract 1234-A1," is prohibited by these regulations."

All of this information is critical for the current Court to fully understand the creation of my Desert Lakes Golf Course and Estates Subdivision Tract 4076 and the distinctions for my original Complaint for violations in Tract 4076-A that was erroneously dismissed by the Court with prejudice due to withholding of material facts by the Defendants who had knowledge, or should have had knowledge, based on years of experience in Mohave County Development. My rights to prosecute as originally filed may now be reconsidered and hopefully reversed based on Law.

At this time, I have been adjudicated rights to prosecute violations only in Tract 4076-B due to Parcel VV, where my home is situated, being a parcel of land in Tract 4076-B whose CC&Rs run with the land.

My original Complaint led the Defendants to file a Motion for Summary Judgment which I also challenged as rights to prosecute

based on my Subdivision being a Maste nned Community that could not be separ by Tract numbers. The Defense argued that Mohave County only has "Planned nunities".

Mohave County apparently only has "Planned Communities" defined; whereas, the more metropolitan area of our State, Maricopa County, has a definition for Master Planned Community. This distinction, that I have claimed for over two years, will also be addressed in my upcoming Motion for Reconsideration and may be something that Development Services should include in one of their Sections of Regulation definitions since so many of Mohave County Subdivisions are golf course communities with lakes, and other recreation facilities such as clubhouses and commercial development with a restaurant and retail store for sales of golf associated products. It is highly conceivable that some other litigant will need to defend their prosecution rights based on the definition of a Master Planned Community.

My CC&Rs provide property owners with rights to prosecute violations within the "Subdivision" whereas, the language of "said tract" for the hyphenated letter designations has appeared to confuse the Court in adjudication of these rights to prosecute violations. Hopefully, your response to my RFPIs will set aside any Court confusion and all property owners will be restored of their rights to prosecute within the Subdivision and not just within a "said tract".

Respectfully and in sincere appreciation for your quick response to two of my six February 18, 2020 RFPIs.

Nancy Knight

From: Robert Taylor
Sent: Wednesday, February 26, 2020 9:20 AM
To: nancyknight
Subject: FW: Knight Public Records Hyphen question

Ms. Night: Attached is a document responsive to one of your recent 6 public records requests.

From: Christine Ballard
Sent: Thursday, February 20, 2020 4:26 PM
To: Robert Taylor <Robert.Taylor@mohavecounty.us>
Cc: Tim Walsh <Tim.Walsh@mohavecounty.us>; Theresa Shell <Theresa.Shell@mohavecounty.us>
Subject: Knight Public Records Hyphen question

The document requiring the hyphen following the tract number is the Mohave County Land Division Regulation. The page number is Page 37; find that page attached.

Exhibit 2 pg 4 of 5

Mohave 1976 County Land Division Regulations

Preliminary Plan: The preliminary drawing or drawings and supporting data, indicating the proposed manner or layout of the subdivision prepared in accordance with these regulations.

Private Vehicle Access: A private street or a road in a rural subdivision development.

Property: Includes the land and/or air space, the buildings, improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Protective Covenant: A written agreement or promise usually between two or more parties especially for the performance of some action.

Public Hearing: Public meetings held under the conditions and for the purpose specified by Arizona Revised Statutes 11-829 and these regulations.

Public Improvement: Any drainage channel, roadway, parkway, sidewalk, pedestrianway, water system, sewer system, trees, lawn, off-street parking area, lot improvement, or other facility for which the County or special district may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which County or special district responsibility is established.

Public Roadway: All road classifications to include local streets, cul-de-sacs, frontage roads, and hillside roads.

Public Sites: Any parcel of land set aside for schools, parks, playgrounds, fire stations, public buildings, or other public purpose.

Public Utility: Private or municipal facility for distribution to the public of various services such as power, heat, light, water, television, telephone, sewage removal, communications, etc..

Registered Professional Engineer: An engineer registered in the State of Arizona.

Regulations: Mohave County Subdivision Regulations as contained herein.

Resubdivision: The changing of design, subdivision name, lot lines, size of lots, or road alignment of any recorded or approved subdivision in Mohave County.

Roadway: That area, whether public or private, between right-of-way lines, dedicated, reserved or provided for roadway purposes and other uses not inconsistent herewith to include in the general sense streets, avenues, alleys, highways, crossings, lanes, roadway easements, intersections, curbs, plazas, and grounds now open or dedicated or hereafter opened or dedicated to the public for use as public roadways.

Exhibit 2 pg 5 of 5

Preliminary Plan: The preliminary drawing or drawings and supporting data, indicating the proposed manner or layout of the subdivision prepared in accordance with these Regulations.

Private Vehicle Access: A private street or condominium or subdivision development.

1991-94 Mohave County Land Division Regulations

Property: Includes the land and/or air buildings, all other improvements located the easements, rights, and appurtenances belonging

Protective Covenant: A written agreement or p under seal between two or more parties especially for the performance of some action.

Public Hearing: Public Meetings held under the conditions and for the purpose specified by A.R.S. 11-829 and these Regulations.

Public Improvements: Any drainage channel, roadway, parkway, sidewalk, pedestrian-way, water system, sewer system, tree, lawn, off-street parking area, lot improvement, or other facility for which the County or special district may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which County or special district responsibility is established.

Public Roadway: All road classifications to include local streets, cul-de-sacs, frontage roads, and hillside roads.

Public Sites: Any parcel of land set aside for schools, parks, playgrounds, fire stations, public buildings, or other public purpose.

Public Utility: Private or municipal facility for distribution to the public of various services such as power, heat, light, water, television, telephone, sewage removal, communications, etc.

Reasonable Time: As set forth in Article(s) 3.3, 3.4, and 3.16 shall mean no more than forty-five (45) working days from the time that the application is deemed complete by the Director of Planning. Further, the applicant can appeal to the Planning Commission if he feels his project is being unduly delayed by staff.

Registered Professional Engineer: An engineer registered in the State of Arizona.

Regulations: Mohave County Subdivision Regulations as contained herein.

Exhibit 3

Letter from the Arizona State Bar Association

Exhibit 3

STATE BAR OF ARIZONA

Assistant's Direct Line: 602-340-7253

February 2, 2018

Nancy Knight
1803 E. Lipan Cir.
Fort Mohave, AZ 86426

Re: File No: 17-3879
Respondent: Paul Lenkowsky

Dear Ms. Knight:

I reviewed your submission regarding Mr. Lenkowsky. After speaking with both you and Mr. Lenkowsky, I have determined that further investigation is not warranted at this time and our file has been closed.

To the extent that you are alleging legal malpractice, which appears to be the bulk of the allegations set forth in the Complaint that you submitted to this Office, you will need to consult with an attorney because the State Bar does not handle such claims.

The Complaint makes numerous allegations against Mr. Lenkowsky. I will address a few of those here. The submission alleges that Mr. Lenkowsky refused to amend the Complaint to include a claim against the County. Mr. Lenkowsky states that he advised you at the inception of the representation that he would not pursue such a claim on your behalf.

The submission further alleges that Mr. Lenkowsky should have recorded a Lis Pendens upon learning that the subject real estate had been put up for sale. However, given that the underlying litigation deal solely with compliance issues related to the CC&Rs, Mr. Lenkowsky states that there would have been no legal basis to do so and may have exposed you to civil liability.

← Emphasis Supplied

Pursuant to Rule 70(a)(4), Ariz. R. Sup. Ct., the record of this charge will be public for six months from the date of this letter. Pursuant to Rule 71, Ariz. R. Sup. Ct., the State Bar file may be expunged in three years.

Sincerely,

Stacy L. Shuman

Stacy L. Shuman
Bar Counsel - Intake

SLS/sb

4201 N. 24th Street • Suite 100 • Phoenix, AZ 85016-6266
PH: 602.252.4804 • FAX: 602.271.4930 • WEBSITE: www.azbar.org

Exhibit 4

County Sign Ordinance Pages

Pertinent 8 pages - Emphasis supplied by encircling, underscoring, and written notes.

Last revised Jan 3, 2019
"Zoning Ord Master - 12 4 19 (1). pdf

Exhibit 4

Section 42. - SIGN ORDINANCE.

(As amended by BOS Resolution 2018-157)

A. Purpose. The purpose of this section is to provide fair, comprehensive, and enforceable regulations that will ensure the public health, safety and welfare; provide a good visual environment for Mohave County while providing for the advertisement of goods and services without encumbering free speech, Signs are regulated to:

1. Protect property values in the County;
2. Preserve the beauty and unique character of the County's scenic routes;
3. Provide an improved visual environment for the residents of, and visitors to, Mohave County;
4. Protect the motoring and pedestrian traffic from hazards due to distractions or obstructions caused by improperly located signs;
5. Promote travel and the free flow of traffic within the county;
6. Prevent undue visual competition;
7. Facilitate signs advertising businesses, goods and services, and signs containing other statements protected by the First Amendment to the Constitution of the United States.
8. Regulate the time, place and manner in which the sign can be displayed.

B. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abandoned Sign: A sign which no longer correctly advertises an ongoing business, a bona fide lessor or owner, an available product, or activity conducted or product available on the premises where such sign is displayed. Whether a sign has been abandoned, or not shall be determined by the intent of the owner of the sign.

Administrator: The Development Services Director of Mohave County or their designated representative.

Advertising Message: That copy on a sign describing products or services being offered to the public. This shall mean any writing, printing, painting, display, emblem, drawing, sign, or other device designed, used, or intended for outdoor display or any type of publicity or propaganda for the purpose of making anything known or attracting attention to a place, product, or service.

Advertising Sign: see "Sign."

Alter or Alteration: The changing in structural components or decrease or increase in size, height and location. It shall also mean any change in advertising content if such change causes the sign to change in classification from an on-premises sign to an off-premises sign or vice versa, or a change in electrical loads.

Animated Sign: A sign employing actual motion, the illusion of motion, or light and/or color changes achieved through mechanical, electrical or electronic means. Animated signs, which are differentiated from changeable signs as defined herein, include the following types:

Identification Sign: A sign which is limited to the name, address, and number of a building, institution or person, and to the activity carried on in the building or institution, or the occupancy of the person.

Incidental Sign: A sign pertaining to goods, products, services, or facilities that are available on the premises where the sign is located. See On-Premises Sign.

Indirectly Illuminated Sign: Any sign that reflects light from a source intentionally directed upon it; i.e., by means of floodlights or fluorescent light fixtures.

Individual Letter Sign: Any sign made of self-contained letters that are mounted on the face of a building, top of a parapet, roof edge of a building, or on top of or below a marquee.

Interior Property Line: Property lines other than those fronting on street, road, or highway.

Lintel: In this context, the line above the display windows and below transom windows (if any) on a store (usually approximately 9'0" from grade).

Lot: A legally defined and delineated parcel of land exclusive of easements for road purposes having direct access to a dedicated public road, or way.

Maintenance (Maintain): The replacing or repairing of a part or portion of a sign made unusable by ordinary wear, tear, or damage beyond the control of the owner. The word maintenance shall not include, however, any act that requires that a permit be obtained.

Message: The wording or copy on a sign.

Monument Sign: Freestanding signs with a maximum height of six (6) feet. The base of the sign is either placed entirely upon the ground or no more than twelve (12) inches above the ground.

Mural: Any picture, scene, or diagram painted on any exterior walls or fence. The area of a mural that does not contain copy mentioning or depicting a specific business is not a sign and shall not be considered in the calculation of sign area.

Nameplate: A non-electric sign identifying only the name and address of the occupant of the premises on which the sign is located.

Noncommercial Messages: Any noncommercial messages for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public; but not including any flag, badge or insignia of any government or governmental agency, or any civic, charitable, religious, patriotic, fraternal, or similar organization, and further, not including any lawful display of merchandise.

Nonconforming Sign (Legal): Any advertising structure or sign which was lawfully erected and maintained prior to such time as it came within the purview of these Regulations and any amendments thereto, and which fails to conform to all applicable regulations and restrictions of these Regulations, or a nonconforming sign for which a special permit has been issued.

On-Premises (On-Site) Sign: Any sign identifying or advertising a business, person, activity, goods, products, or services, located on the premises where the sign is installed and maintained.

Off-Premises (Off-Site) Sign: Any sign that advertises goods, products, entertainment, services, or facilities, and directs persons to a different location from where the sign is installed.

Owner: Any individual, firm, association, syndicate, co-partnership, corporation, trust, or any other legal entity having a vested or contingent interest in the property in question.

Parapet or Parapet Wall: That portion of a building wall that rises above the roof level.

Person: Any individual, corporation, association, firm, partnership, and the like, singular or plural.

Pole Sign: see "Freestanding Sign."

Portable Sign: Any sign not permanently attached to the ground or a building.

Premises: An area of land with its appurtenances and building which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

Projecting Signs: A sign, other than a wall sign, which is attached to and projects from a structure or building face. The area of double-faced projecting signs is calculated on one (1) face of the sign only, provided the same message appears on both sides.

Public Right-of-Way Width: The perpendicular distance across a public street, measured from property line to property line. When property lines on opposite sides of the public street are not parallel, the public right-of-way width shall be determined by the County Engineer.

Public Service Information Sign: Any sign intended primarily to promote items of general interest to the community such as time, temperature and date, atmospheric conditions, news or traffic control, etc.

Repair: see "Maintenance." Move to Real Estate Language

Roof Sign: Any sign erected upon, against or directly above a roof or on top of or above the parapet of a building. All support members shall be free of any external bracing, guy wires, cables, etc. Roof signs shall not include signs defined as wall signs.

Rotating Signs: Any sign or portion of a sign that moves in a revolving or similar manner.

Sign: Any identification, description, illustration or device illuminated or non-illuminated which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, services, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise; or any emblem, painting, banner, pennant, placard or temporary sign designed to advertise, identify or convey information, with the exception of window displays and national flags. For the purpose of removal, signs shall also include all sign structures.

Sign Area: The area of the largest single face of the sign within a perimeter which forms the outside shape, including any frame that forms an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. If the sign consists of more than one section or module, all areas will be totaled.

Sign Structure: Any structure that supports, has supported, or is capable of supporting a sign, including decorative cover.

Swinging Sign: A sign installed on an arm or spar that is not, in addition, permanently fastened to an adjacent wall or upright pole.

Temporary Sign: Any sign, banner, pennant, valance, or advertising display intended to be viewed for a period of time not exceeding ninety (90) days, or other time limit as specified by these Regulations.

Transom Windows: A window above a door or other window built on and often hinged to a horizontal crossbar.

Under Canopy or Marquee Sign: A sign suspended below the ceiling or roof of a canopy or marquee.

Unlawful Sign: A sign which contravenes these Regulations or which the Director may declare as unlawful if it becomes dangerous to public safety by reason of dilapidation or abandonment, or a nonconforming sign for which a permit required under a previous ordinance/regulation was not obtained.

Wall Sign (or Fascia Sign): A sign attached to or erected against the wall of a building with the face in a parallel plane to the plane of the building wall, and extending no further than six (6) inches from the wall.

Window Sign: A sign installed inside a window for the purposes of viewing from outside the premises. This term does not include merchandise located in a window.

C. Permits.

1. Requirements. Except as otherwise provided in these Regulations, it shall be unlawful for any person to erect, construct, enlarge, move, alter or convert any sign in the County, or cause the same to be done, without first obtaining a sign permit for each such sign from the County Development Services Department as required by these Regulations.
2. Routine Maintenance Exempt. A permit shall not be required for the change in copy or wording including the business and/or product advertised, provided that the change does not change the sign from an on-premises sign to an off-premises sign; the reprinting, cleaning and other normal requirements of maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign or sign structure is not modified in any way.
3. Expiration of Permits. Every sign permit issued by the Mohave County Development Services Department shall become null and void if construction is not commenced within one hundred eighty (180) days from the date approved, and if construction is not completed within two hundred forty (240) days.
4. Fees. At the time of application for a sign permit, the applicant shall pay the permit fee based on the then applicable fee schedule. In addition, when any sign is hereafter erected, placed, installed or otherwise established on any property prior to obtaining permits as required by these Regulations, the fees specified hereunder shall be doubled but the payment of such double fee shall not relieve any person from complying with other provisions of these Regulations or from penalties prescribed herein.

of said sloping roof, but the top of the sign must be a minimum of one (1) foot below the top of the roof line.

7. Other signs.

   a) Incidental signs. Up to two (2) incidental signs may be attached perpendicular to the wall. Such signs are restricted to credit cards accepted, official notices of services required by law, and/or trade affiliations. Area of each sign may not exceed five (5) square feet; the total area of all such signs may not exceed ten (10) square feet.

   b) Directional signs. One (1) such sign is permitted near each driveway. Area of each sign may not exceed twelve (12) square feet. Maximum permitted height shall be twelve (12) feet.

   c) Manual or automatic changeable copy signs. Any of the types of signs permitted in these Regulations may be permitted as manual or automatic changeable copy signs.

8. Every sign shall have the name of the maker, the date of the erection, and the permit number. Such information shall be clearly legible and in a conspicuous place on each sign installed.

I. Signs Permitted by Zoning.

1. Signs permitted in residential zones. The following on-premises signs are permitted in residential zones:

   a. Multi-family residential uses may have one (1) indirectly lighted or unlighted identification sign of a maximum of thirty (30) square feet in area, placed on a wall of the building containing only the name and address of the building and one monument sign not to exceed seventy-two (72) square feet at the entrance.

   b. Subdivision signs. Subdivisions and planned communities may have one monument sign not to exceed seventy-two (72) square feet at each entrance.

   c. Temporary signs as allowed in Section 42.E of these Regulations.

   d. Two (2) signs pertaining to a garage or yard sale, limited in area to four (4) square feet, and shall be allowed only during the sale, not to exceed five (5) days.

2. Signs permitted in a manufactured home park and RV Park. A manufactured home park shall be allowed one (1) sign.

3. Shadow lighted or unlighted identification signs, not exceeding thirty (30) square feet when erected parallel to the right-of-way.

4. Permitted on-premises signs in commercial and industrial zones.

   a. One (1) freestanding sign, that complies with Section 42.I.1, indicating the name, nature and/or products available on the developed parcel not to exceed one (1) square foot of sign area for each linear foot of street frontage abutting the developed portion of said parcel.

   b. Freestanding signs may be allowed to set back from the interior property lines a distance of one (1) foot. In no instance shall a sign be erected less than one (1) foot from any interior property line, nor shall any sign be erected in such a manner as to allow any portion of any sign to encroach upon or overhang above any adjacent property.

   c. No freestanding sign shall exceed the height or area established by Table 1, Section 42.I.1. No height limit is specified for signs placed flat against the wall of a building for other attached signs, provided all other provisions of these Regulations are complied with.

d. With the exception of a freestanding sign, a sign may be located within or project into a required front or street side yard setback area, if the setback area extends five (5) feet. However, no sign may project into or over an abutting public right-of-way except as otherwise provided for in these Regulations.

e. Freestanding signs shall be located so as to provide a clear view of vehicular and pedestrian traffic. However, no sign may project into or over an abutting public right-of-way except as otherwise provided for in these Regulations.

f. Animated and intensely lighted signs and moving signs may be permitted as one of the allowed on-premises signs in a commercial zone upon the approval of a Special Use Permit. However, these signs shall comply with the following:

1) Animated and intensely lighted signs and moving signs are prohibited along interstate, primary and secondary highways, including but not limited to, State Highways 95, 93, 68, 66, 389, Interstate 40 and Interstate 15.

2) All animated signs, intensely lighted signs and moving signs shall be located to comply with the front and side street yard setbacks required of a building on the same parcel or lot.

3) Signs shall not interfere with traffic, or distract drivers or pedestrians. Moving or flashing lights shall be white or clear.

4) Signs shall be a minimum of one hundred (100) feet from residentially zoned property or property used for residential purposes.

5) Signs shall comply with Section 38, Outdoor Light Control.

6) The zoning use permit application shall include a site plan showing the location of all signage on the lot or parcel; a rendering of the sign showing colors of sign and lights, areas of sign that will blink, move or flash shall be submitted.

J. Off-premises signs. The intent of this regulation is to permit off-premises signs within established commercial and industrial areas. The purpose of this regulation is to establish basic standards and criteria pertaining to manner, place, and maintenance of off-premises signs in Mohave County. Off-premises signs shall be permitted in accordance with the specific standards set forth in this section as well as to include the general provisions for freestanding signs which are intended to regulate on-premises signs.

1. Except as provided in these Regulations, it is the policy of the Board of Supervisors and Planning and Zoning Commission of Mohave County to permit off-premises signs to be located in viable commercial areas and to discourage the rezoning of lots and parcels for the sole purpose of installing off-premises signs. It is also understood that signs displaying noncommercial messages considered protected free speech shall not require placement in commercial areas as the intent of their installation shall be for the purpose of increased opportunities for public communication.

2. Required Special Use Permit and state approval. Sign locations for off-premises signs shall be allowed only with an approved Special Use Permit. For off-premises signs fronting State Highways (93, 68, 66, 95, Interstate 15 and Interstate 40), approval of sign locations by the Arizona Department of Transportation is required after the issuance of the Special Use Permit and prior to sign permit approval by the County.

3. Required zoning classifications. Off-premises signs shall be permitted only on lots and parcels properly zoned C-2H (Highway Commercial), C-M (Commercial Manufacturing), C-MO (Commercial Manufacturing/Open Lot Storage), M-1 (Light Manufacturing) M-2 (General Manufacturing), and M-X (Heavy Manufacturing). In addition, off-premises signs shall be permitted on lots or parcels properly zoned C-2 (General Commercial) along State Highways (93, 66, 95, 68, Interstate 40 and Interstate 15) unless the area has been designated as a sign free area as per Section 42.K.4.f of these Regulations. In the event that a lot or parcel fronts on more than one (1) public right-of-way, only one (1) off-premises sign shall be allowed on either street frontage.

4. Standards and criteria for off-premises signs. Off-premises signs proposed for installation shall conform with the standards and criteria set forth in the following:

   a. Sign area. In all cases, off-premises signs shall have a maximum sign area of two hundred fifty (250) square feet except on Highway 93, Interstate 15 and Interstate 40 and certain arterials where the Board of Supervisors designates a more restrictive maximum sign area. Off-premises signs with a total area not to exceed six hundred seventy-two (672) square feet or 14' x 48' may be allowed on Interstate 40, Interstate 15 and Highway 93, unless the Board of Supervisors has designated the area as a sign-free area as per Section 42.K.4.f. If a sign has two (2) sign faces, the total permitted sign area may not exceed twice the sign area permitted for one (1) sign face. If one (1) or more signs are combined into one (1) sign face, the maximum permitted sign area shall not exceed what is permitted for one (1) sign face in the specific location.

   b. Sign height. The maximum height for signs with a sign face measuring up to two hundred fifty (250) square feet is thirty-five (35) feet above the grade of the highway. The maximum height for signs with a sign face measuring up to six hundred seventy-two (672) square feet is forty-five (45) feet above the grade of the highway. The maximum sign height includes any portion of the sign structure, sign face, and any decorative embellishments attached to the sign structure.

   c. Setback and vertical clearance. The minimum setback of any portion of the sign area measuring up to two hundred fifty (250) square feet is ten (10) feet from the edge of the public right-of-way. These signs shall have a minimum eight (8) feet vertical clearance measured from the street grade of the nearest driving lane to the lowest line of the sign area. Except when a freestanding off-premises sign projects over a vehicular traffic area, such as driveway and parking lot aisles, the minimum vertical clearance shall be eighteen (18) feet. A minimum setback of any portion of the sign area or structure for 14' x 48' signs shall be twenty (20) feet from the edge of the public right-of-way. These signs shall have a minimum vertical clearance of eighteen (18) feet.

   d. Spacing. A minimum of five hundred (500) feet between off-premises signs facing the same traffic flow in the same street or freeway shall be required in all cases. At the intersection of two (2) streets, double-faced signs at right angles to and facing traffic at Street "A" may be situated closer than five hundred (500) feet to a similarly positioned sign across the street at right angle to and facing traffic on Street "B" (see Figure 3).

erected on the wall or roof of a building. The name of the maker, the date of erection, and the permit number shall be permanently affixed to each sign installation. Such information shall be clearly legible and located in a conspicuous place on each sign.

h. Maintenance. Every sign shall be maintained in a safe, presentable and good structural condition at all times, including the replacement of defective parts, repainting, cleaning and other acts necessary for the maintenance of the sign. Any sign or sign structure which is damaged or deteriorated to an extent that the replacement cost of repair equals fifty (50) percent or more of the replacement value of the sign if sound, shall either be rebuilt or replaced in conformance with the standards and requirements of these Regulations, or be removed all together. Any sign which is not maintained or replaced if damaged more than fifty (50) percent or more of the replacement value shall forfeit its Special Use Permit after thirty (30) days of written notice.

i. Sign removal. The Zoning Inspector shall cause the repair or removal of any sign that endangers the public safety, such as materially dangerous, electrically or structurally defective sign, or an abandoned sign. Should the Zoning Inspector determine that the sign or sign structure causes eminent danger to the public safety, contact shall be made with the owner to require immediate removal or correction.

j. Manual changeable copy signs are permitted.

k. Automatic changeable copy signs are permitted provided that no message on an electronic changeable copy sign shall blink, flash or simulate animation. Transition between messages is permitted but such transitions may only fade, scroll, or dissolve, and the transition shall not exceed a duration of two seconds. Messages displayed shall remain static for at least ten (10) seconds.

l. The intensity of the LED display shall not exceed the levels specified in the chart below:

Intensity Level (nits) *

Color	Daytime	Nighttime
Red Only	3,150	1,125
Green Only	6,300	2,250
Amber Only	4,690	1,675
Full Color	7,000	2,500

Prior to the issuance of a Sign Permit, the applicant shall provide a written certification from the sign manufacturer that the light intensity has been factory pre-set not to exceed the levels specified in the chart above, and the intensity level is protected from end-user manipulation by password-protected software or other method as deemed appropriate by the Director.

Exhibit 5

Cundiff et al v Cox: Copy of the decision.

(19 pages).

Exhibit 5

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust; JAMES VARILEK, as Joined Plaintiff property owner, *Plaintiffs/Appellees,*

v.

DONALD COX and CATHERINE COX, husband and wife,
Defendants/Appellants.

No. 1 CA-CV 15-0371
FILED 11-3-2016

Appeal from the Superior Court in Yavapai County
No. P1300CV2003-0399
The Honorable Jeffrey G. Paupore, Judge *Pro Tempore*
The Honorable Kenton D. Jones, Judge
The Honorable David L. Mackey, Judge

AFFIRMED

COUNSEL

J. Jeffrey Coughlin, P.L.L.C., Prescott
By J. Jeffrey Coughlin
Counsel for Plaintiffs/Appellees

Favour & Wilhelmsen, P.L.L.C., Prescott
By David K. Wilhelmsen, Lance B. Payette
Counsel for Plaintiff/Appellee James Varilek

Musgrove Drutz Kack & Flack, P.C., Prescott
By Mark W. Drutz, Sharon M. Flack, Jeffrey Gautreaux
Counsel for Defendants/Appellants

MEMORANDUM DECISION

Judge Lawrence F. Winthrop delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Justice Rebecca White Berch[1] joined.

W I N T H R O P, Judge:

¶1 Defendants Donald and Catherine Cox (collectively, "the Coxes") appeal the trial court's summary judgment in favor of Plaintiffs John B. and Barbara C. Cundiff; Elizabeth Nash; Kenneth and Kathryn Page, as Trustee of the Kenneth Page and Catherine Page Trust (collectively, "the Cundiffs"); and James Varilek (collectively, "Appellees") after a more than decade-long dispute over the Coxes' use of their property as a tree and shrub farm supporting their agricultural business in violation of an applicable Declaration of Restrictions ("the Declaration"). The trial court granted summary judgment in favor of Appellees after concluding the Coxes' defenses of waiver and/or abandonment of the Declaration failed as a matter of law. Raising several issues, the Coxes challenge the grant of summary judgment and the court's awards of attorneys' fees to Appellees. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[2]

¶2 The parties own property in a rural, residential subdivision known as Coyote Springs Ranch. The Coxes began using their property for growing and storing inventory for Prescott Valley Nursery and Prescott

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1 The Honorable Rebecca White Berch, Retired Justice of the Arizona Supreme Court, has been authorized to sit in this matter pursuant to Article VI, Section 3, of the Arizona Constitution.

2 We take a portion of the facts and underlying procedural history from our previous memorandum decision involving the Cundiffs and Coxes. *See Cundiff v. Cox*, 1 CA-CV 06-0165 (Ariz. App. May 24, 2007).

Valley Growers, the retail and wholesale nursery business they own in partnership with their two sons. Partnership employees work at the Coxes' property, but the property is not open to the public, and no sales are conducted on it. The Coxes also live on the property part-time.

¶3 In 2001, the Coxes applied for an agricultural use exemption for the property from Yavapai County. As part of the application for the exemption, Catherine Cox signed a Statement of General Agricultural Use and Affidavit, acknowledging that the primary use of the property is an "agricultural use"; "[a]ny residential use of this property is secondary."

¶4 Properties located in Coyote Springs Ranch are subject to the aforementioned Declaration. Section one of the Declaration provides that all included parcels "shall be known and described as residential." Section two provides that "[n]o trade, business, profession or any other type of commercial or industrial activity shall be [initiated] or maintained within said property or any portion thereof." Section nineteen contains a non-waiver clause that provides in part as follows:

> 19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. *No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. . . .*

(Emphasis added.)

¶5 In May 2003, the Cundiffs filed a complaint for injunctive relief against the Coxes, and later added a request for declaratory relief, alleging in part that the Coxes' use of the property violated section two of the Declaration. In response, the Coxes asserted the defenses of abandonment, waiver, estoppel, laches, and unclean hands.

¶6 The Cundiffs filed two motions for partial summary judgment – the first asserting the Coxes' waiver defense was precluded by

section nineteen of the Declaration, and the second arguing the Coxes' use of their property violated section two of the Declaration and that the Coxes could not prove their defenses of estoppel, laches, and unclean hands.

¶7 The trial court (Judge David L. Mackey) denied the motion for partial summary judgment as to the waiver issue after finding "a material factual issue regarding whether the restrictions . . . have been so thoroughly disregarded as to result in a change in the area that destroys the effectiveness of the restrictions, defeats the purposes for which they were imposed[,] and amounts to an abandonment of the entire Declaration of Restrictions." The court reasoned that, if the entire Declaration had been abandoned, section nineteen, on which the Cundiffs based their anti-waiver argument, would also have been abandoned.

¶8 As to the Cundiffs' second motion for partial summary judgment, the trial court granted the motion as to the Coxes' defenses of estoppel, laches, and unclean hands, but denied the motion to the extent it sought a summary declaration as to the enforceability of the Declaration. The court scheduled trial for August 2, 2005.

¶9 Before trial, the court denied a motion by the Coxes entitled "Motion to Join Indispensable Parties Pursuant to Rule 19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to Dismiss Pursuant to Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join Indispensable Parties." In the motion, the Coxes had argued that all persons who owned property governed by the Declaration must be joined because their legal rights could be substantially affected by the outcome of the case.

¶10 The Coxes also filed a motion for partial summary judgment, arguing the use of their property was "agricultural" and, therefore, did not violate section two of the Declaration—the restriction barring trade, business, professional, or other industrial or commercial activity. The trial court, after noting that "restrictions are not favored and [] must be strictly construed," granted that motion and entered partial judgment in favor of the Coxes on all counts in the complaint relying on the Coxes' alleged violation of section two of the Declaration. The parties agreed this ruling was critical to the remaining issues and agreed to a form of judgment that could be immediately reviewed on appeal.

¶11 Both parties appealed, and in a memorandum decision filed May 24, 2007, this court affirmed in part, reversed in part, and remanded. *See Cundiff v. Cox*, 1 CA-CV 06-0165. Noting that the trial court had interpreted existing Arizona case law to hold that restrictions are not

favored and must be strictly construed, but further noting that, at the time of its ruling, the trial court did not have the benefit of our supreme court's then-recent pronouncement in this area, *Powell v. Washburn*, 211 Ariz. 553, 125 P.3d 373 (2006)—which rejected the very rule of construction relied on by the trial court—we concluded that "[t]he Coxes' tree farm is clearly an agricultural business" and "nothing in the Declaration suggests that any one type of business was intended to be excluded from section two of the restrictions." *Cundiff*, 1 CA-CV 06-0165, at ¶¶ 13, 17. Accordingly, application of section two to the Coxes' use of their property was "consistent with the Declaration as a whole." *Id.* at ¶ 18. We further noted that both parties relied on the affidavit of Robert Conlin, an original grantor responsible for preparation and recording of the Declaration, and that as confirmed in Conlin's affidavit, the intent underlying the Declaration was to "ensure[] not only a rural setting, but a rural, residential environment." *Id.* at ¶ 20. Given that interpretation, we concluded "the Coxes' agricultural business use of the property violates section two of the Declaration," and we therefore vacated the judgment against the Cundiffs. *Id.* at ¶¶ 20-21.

¶12 As to the Coxes' appeal, we affirmed the trial court's grant of summary judgment regarding the defenses of estoppel, laches, and unclean hands, *id.* at ¶¶ 20-27, leaving only the defense of abandonment (of the Declaration and, accordingly, section nineteen's non-waiver clause) to be decided. Finally, in addressing the trial court's denial of the Coxes' motion for joinder, we noted that "[a] ruling in this case that the restrictions have been abandoned and are no longer enforceable against the Coxes' property would affect the property rights of all other owners subject to the Declaration." *Id.* at ¶ 32. We concluded "that the absent property owners are necessary parties given the issue to be decided in this case" and must be joined, and directed the trial court to "determine on remand whether these parties are also indispensable under Rule 19(b)," Ariz. R. Civ. P. *Id.* at ¶ 36.

¶13 On remand, the trial court determined that the other property owners subject to the Declaration were indispensable parties, and ordered the Cundiffs to serve and join all necessary and indispensable parties. The Cundiffs took substantial steps to do so, and in April 2011, filed a notice of compliance with the court's order.[3] The case was reassigned to Judge

[3] At a subsequent oral argument on February 13, 2013, counsel for the Coxes was asked by the court whether "all necessary parties have been joined as parties to this lawsuit," and counsel responded affirmatively, although he expressed concern that "no lis pendens was ever recorded" to

Kenton D. Jones on June 30, 2011, after Varilek filed a notice of change of judge pursuant to Rule 42(f), Ariz. R. Civ. P.[4]

¶14 Although the trial court had previously denied the Cundiffs' partial motion for summary judgment on the issue of waiver (after concluding a question regarding abandonment existed), the Cundiffs filed a new motion for summary judgment and supporting statement of facts addressing the only two issues remaining in the case: abandonment and waiver. In their motion, the Cundiffs argued that, at the time the trial court made its initial rulings, the court not only did not have the benefit of *Powell*, it also did not have the benefit of this court's decision in *College Book Centers, Inc. v. Carefree Foothills Homeowners' Association*, 225 Ariz. 533, 241 P.3d 897 (App. 2010), which the Cundiffs argued was analogous. Relying on *College Book Centers*, the Cundiffs maintained that because the Declaration contained a non-waiver provision in section nineteen, that non-waiver provision was enforceable, even despite prior violations of the Declaration, as long as the violations did not constitute a "complete abandonment" of the Declaration. *See* 225 Ariz. at 539, ¶ 18, 241 P.3d at 903. The Cundiffs argued the overall character of the development—which we had characterized in our 2007 memorandum decision as "a rural, residential environment"—had not undergone the fundamental change required to constitute legal abandonment.[5]

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put subsequent property owners on notice of the lawsuit "should they take ownership of the property."

[4] In 2009, Varilek filed a separate complaint seeking to enforce the restrictive covenants against another property owner, Robert Veres, and despite Varilek's objection, that case was consolidated with the Cundiffs' case against the Coxes upon motion by Veres after both Varilek and Veres were served and joined in this case. Varilek's 2009 case had originally been assigned to Judge Mackey, but Varilek had timely exercised his right to a change of judge in that case, and upon consolidation, he again filed a notice of change of judge. In February 2013, Varilek and Veres filed a stipulation to dismiss Varilek's 2009 complaint without prejudice, which the trial court granted. Varilek, however, continued to actively participate in this case.

[5] Section three of the Declaration restricts parcels in Coyote Springs Ranch to no less than nine acres. The Cundiffs attached to their "Statement of Facts in Support of Plaintiffs' Motion for Summary Judgment" an affidavit from John Cundiff stating that, to the best of his knowledge, lots

¶15 After responsive briefing by the parties[6]—including Varilek and Veres—the trial court heard oral argument on April 16, 2013, and took the matter under advisement.[7] In a detailed minute entry filed June 14,

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in the subdivision continued to contain no less than nine acres and that the three DVDs attached to his affidavit were video recordings that accurately depicted the appearance of the subdivision. Later, in their reply, the Cundiffs provided records from the Yavapai County Assessor's Office that indicated 280 of the 288 properties subject to the Declaration still consisted of at least nine acres.

[6] In addition to affidavits and other documents they had previously submitted, the Coxes responded with affidavits from their son and a licensed private investigator, Sheila Cahill, who they hired to search through the Coyote Springs Ranch development and document any uses or activities that arguably violated the deed restrictions. The Coxes' proof of abandonment largely consisted of photographs showing properties with any alleged or speculated violations, including but not limited to properties with a visible propane or water tank, a trash receptacle in open view, an "[e]xcessive amount of dogs," structures or sheds that "may not comply" with square footage requirements, multiple buildings, trash in the yard and/or overgrown weeds, and properties on which the residents had parked business vehicles, mobile homes, or trailers, or placed construction materials on the lots. The Coxes also presented evidence that some of the property owners had listed their Coyote Springs Ranch address when obtaining business and contractor's licenses, listing corporate addresses, etc., and asserted that some of the owners were likely operating small businesses out of their homes. (The Coxes had previously submitted the affidavit of Curtis Kincheloe, owner of Coyote Curt's Auto Repair, who affirmed that he operates his business on his residential property.) None of the purported or speculated home business uses, however, appeared to even remotely compare to the scale of the Coxes' commercial enterprise.

[7] Before the April 16 oral argument, the court issued a March 5, 2013 under advisement ruling involving several matters. In its ruling, the court noted that, at a previous oral argument held February 13, 2013, counsel for the Coxes had agreed with Varilek's assertion that the only remaining issue for trial was the Coxes' "affirmative defense that Paragraph 2 [of the Declaration] has been rendered unenforceable through *abandonment*." (Emphasis in original.) The court relied on the parties' representation in its subsequent rulings.

2013, the court granted summary judgment in favor of the Cundiffs, after concluding as a matter of law that Coyote Springs Ranch continued to be a rural, residential environment and, accordingly, the Declaration had not been abandoned.[8]

¶16 Both Varilek and the Cundiffs sought attorneys' fees and costs. In the meantime, the Coxes filed a motion for new trial. In a minute entry filed August 25, 2014, the court denied the motion for new trial, ordered the Coxes to pay Varilek attorneys' fees in the amount of $90,490.00 and costs in the amount of $118.00, and declined to address the Cundiffs' application for attorneys' fees and costs at that time.

¶17 On March 20, 2015, the matter was reassigned to Judge Jeffrey G. Paupore. In a judgment filed April 7, 2015, the trial court denied the Coxes' motion for reconsideration of the August 25, 2014 ruling awarding attorneys' fees to Varilek and awarded attorneys' fees in the amount of $258,986.52 and costs in the amount of $4,117.74 to the Cundiffs.[9] On May 5, 2015, the trial court entered a separate judgment in favor of Varilek, awarding him the amount of attorneys' fees and costs previously ordered, for a total judgment of $90,608.00 in his favor.

¶18 The Coxes filed a motion entitled "Motion for New Trial Re: Award of Attorneys' Fees to Cundiff-Plaintiffs Pursuant to Ariz. R. Civ. P. 59(a) and, in the Alternative, Motion to Alter or Amend Judgment Pursuant

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[8] At the same time, the court denied as moot a motion by Varilek to "Require Defendants Cox to Serve the Indispensable Parties with Documents Comporting with Due Process." Varilek had argued in the motion that some subdivision property owners might not have been joined as necessary, and their rights could be affected if the Coxes' abandonment defense proved successful, because the Declaration could be deemed to be abandoned as to all property owners.

[9] The court noted that the billing statements from attorney David K. Wilhelmsen, who originally represented the Cundiffs in this matter, referenced the Cundiffs as the clients, whereas the billing statements of attorney J. Jeffrey Coughlin, who substituted in as counsel for the Cundiffs in April 2009, "identified the client as Alfie Ware, Coyote Springs." The court stated that it "could find no reference in this lengthy civil litigation case where Mr. Ware was identified as a party Plaintiff. Therefore, Plaintiff's request for reasonable attorneys' fees under the Coughlin affidavit are denied."

to Ariz. R. Civ. P. 59(l)." The Cundiffs objected and also moved to amend the judgment.

¶19 In a minute entry filed June 10, 2015, the trial court granted the Coxes' motion to strike the Cundiffs' motion to amend the judgment, but also denied the Coxes' motions for new trial and to amend the judgment, explaining in part as follows:

> Coxes seek a new trial based upon alleged inconsistent findings of fact, namely: awarding the Wilhelmson attorneys' fees and costs [to the Cundiffs] but denying Coughlin's attorneys' fees and costs [incurred by the Cundiffs]. Cundiffs oppose a new trial and move the Court to amend the Judgment to allow Coughlin's attorney['s] fees and costs pursuant to Rule 59(l).
>
> . . . .
>
> Both parties freely acknowledge the awarding of attorneys' fees and costs is within the discretion of the Court.
>
> On April 7, 2015, the Court awarded Plaintiffs attorneys' fees and costs in the amount of $263,104.26 against Defendant Coxes. Plaintiffs were seeking an additional $93,944.50 for [] Coughlin's attorney['s] fees and costs. [] Coughlin's attorney['s] fees and costs were denied in part because "the client" was identified as Alfie Ware and because the Court determined the amount that was awarded was reasonable.
>
> Defendants Coxes['] position that the award was inconsistent is unfounded. The Court determined the award of attorneys' fees and costs based upon the totality of the case, including but not limited to[] the complexity of issues, the length of litigation, the pleadings, rulings, attorney's billing statements, affidavits, and previous awards of attorney fees. The fact that Alfie Ware advanced litigation costs was one factor in the Court's decision.

¶20 On June 30, 2015, a judgment submitted by the Cundiffs and entitled "Final Judgment Nunc Pro Tunc in Accordance with the Court's April 7, 2015 Ruling" was filed. The Coxes timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2016) and 12-2101(A)(1) (2016).

ANALYSIS

I. The Trial Court's Consideration of the Motion for Summary Judgment

¶21 The Coxes argue that, because Judge Mackey had already ruled on the issue of waiver/abandonment, the Cundiffs' new motion for summary judgment violated the doctrine of law of the case and constituted an impermissible horizontal appeal. Judge Mackey, however, did not have the benefit of this court's 2010 opinion in *College Book Centers* when he denied the Cundiffs' motion for summary judgment on the issue in April 2005. Further, after the court's ruling, the parties continued to gather evidence they argued either supported or refuted a finding of abandonment that was not presented to the court in 2005. The doctrine of law of the case is a rule of procedure, not of substance, and does not prevent a court from changing a ruling merely because the court ruled on a question at an earlier stage of the proceedings; "[n]or does it prevent a different judge, sitting on the same case, from reconsidering the first judge's prior, nonfinal rulings." *State v. King*, 180 Ariz. 268, 279, 883 P.2d 1024, 1035 (1994) (citations omitted). The trial court did not err in considering the Cundiffs' subsequent motion for summary judgment on the issue of abandonment. *See Dessar v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 353 F.2d 468, 470 (9th Cir. 1965).

II. The Trial Court's Grant of Summary Judgment on Abandonment

¶22 The Coxes argue the trial court erred in granting summary judgment because the court ignored evidence they presented in their response to the Cundiffs' motion for summary judgment that showed multiple violations of the Declaration by other property owners in Coyote Springs Ranch—violations the Coxes contend are sufficient to create a genuine issue of material fact on their affirmative defense of abandonment.

¶23 We review *de novo* a trial court's grant of summary judgment. *Salib v. City of Mesa*, 212 Ariz. 446, 450, ¶ 4, 133 P.3d 756, 760 (App. 2006). We view the facts and reasonable inferences therefrom in the light most favorable to the party against whom summary judgment was granted. *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003).

¶24 Summary judgment is proper when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). A trial court should grant summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the

proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The mere existence of a scintilla of evidence that creates the slightest doubt as to whether a dispute of material fact exists is insufficient to overcome summary judgment. *Id.* When material facts are not disputed, a trial court may decide the issue as a matter of law. *Ortiz v. Clinton*, 187 Ariz. 294, 298, 928 P.2d 718, 722 (App. 1996).

¶25 Absent an express non-waiver provision, deed restrictions may be considered abandoned or waived "if frequent violations of those restrictions have been permitted." *Coll. Book Ctrs.*, 225 Ariz. at 538-39, ¶ 18, 241 P.3d at 902-03 (quoting *Burke v. Voicestream Wireless Corp. II*, 207 Ariz. 393, 398, ¶ 21, 87 P.3d 81, 86 (App. 2004)). But when, as here, a Declaration contains a non-waiver provision, restrictions remain enforceable, despite prior violations, as long as the violations do not constitute a "complete abandonment" of the Declaration. *Id.* at 539, ¶ 18, 241 P.3d at 903 (quoting *Burke*, 207 Ariz. at 399, ¶ 26, 87 P.3d at 87). Deed restrictions are considered completely abandoned when "the restrictions imposed upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed." *Condos v. Home Dev. Co.*, 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954), *quoted in Coll. Book Ctrs.*, 225 Ariz. at 539, ¶ 18, 241 P.3d at 903.[10]

¶26 In evaluating the Cundiffs' motion for summary judgment on the issue of abandonment/waiver, the trial court applied the standard adopted by this court in *College Book Centers* to the intent behind the Declaration of ensuring "a rural, residential environment." The court noted that the Coxes had "based their assertion of the abandonment and waiver of the [Declaration] on 1) an affidavit of Defendant Cox, and 2) a survey of the subdivision properties by a private investigator, Sheila Cahill, and research done by Ms. Cahill through the records of government offices." In examining the evidence proffered by the Coxes, the court found the Coxes' "assessment of the Cahill determinations is troubling as many of the

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[10] The parties disagree as to the standard of proof for showing abandonment: Varilek argues the proponent of abandonment has the burden of proving it by clear and convincing evidence, and the Coxes maintain the proper burden is a preponderance of the evidence. Neither side points to controlling Arizona law on this issue, and, as the Coxes suggest, we simply apply the standards for determining summary judgment and abandonment as discussed above. In any event, we conclude that the record fully supports the trial court's decision to grant summary judgment.

notations of Cahill indicate conduct not 'intended' to be prohibited under the [Declaration]." The court also found numerous other claimed violations were unsupported and/or involved mere speculation. Although the court also found some observable violations of the Declaration, such as "bottled gas tanks not below ground and trash receptacles visible; in one instance a couch sitting outside, and in another some amount of construction materials located on properties where construction company owners reside," the court further found "no real debate that the property remains rural," and "the only portion of Coyote Springs [Ranch] that has been utterly given over to a non-residential use [with the exception of a church] is that of Defendants Cox; that being their use of their 19 acres for purely commercial purposes." In granting the motion for summary judgment, the court concluded that the items addressed by Cahill and upon which the Coxes relied "do not illustrate, in any fashion, a complete abandonment and thorough disregard of the intention of the Declarants that the property remain rural and residential."[11]

¶27 The trial court's findings and conclusions are overwhelmingly supported by the record. As the Cundiffs noted in their motion for summary judgment, the DVDs submitted by the Cundiffs reveal "acres and acres of land within the subdivision [that] consist of flat, grassy, fenced, rural, residential properties." The neighborhood continues to have narrow, often dirt, roads and the physical appearance of a rural, residential community. Although a few properties in the Coyote Springs Ranch subdivision apparently do house a small commercial enterprise, nothing in the record supports the conclusion that the fundamental character of Coyote Springs Ranch has changed from that of a rural, residential

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[11] The Coxes argue that the trial court erred in focusing solely on section two of the Declaration and overlooked their assertions and documentation of violations of other restrictions contained in the Declaration. The Coxes' argument appears to run counter to their previous concession that the only remaining issue for trial was their affirmative defense that section two of the Declaration had been rendered unenforceable through abandonment, and section eighteen of the Declaration, which provides that "[i]nvalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect." Moreover, the record is clear that the trial court carefully considered the Coxes' allegations of other violations of the Declaration before rejecting their defense of abandonment.

neighborhood.[12] The trial court correctly applied the standards adopted in *College Book Centers* and *Condos* to the intent behind the Declaration of ensuring "a rural, residential environment," and did not err in concluding as a matter of law that the Declaration had not been completely abandoned and in granting summary judgment in favor of the Cundiffs.[13]

III. Joinder of Indispensable Parties

¶28 The Coxes also argue that the trial court's entry of summary judgment should be considered "invalid" because not all Coyote Springs Ranch property owners had been joined in the litigation when summary judgment was granted, and pursuant to the trial court's prior order and Rule 19, Ariz. R. Civ. P., all necessary and indispensable parties were required to be included before entry of an order summarily disposing of the case.[14] The Coxes' argument ignores the record in this case—including the

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[12] Moreover, as the trial court correctly recognized, many of the violations of the Declaration as alleged by the Coxes involve speculation and/or do not appear to be prohibited by a careful reading of the Declaration. Also, as Conlin noted in his affidavit, "[t]he covenant against trade, business, commercial or industrial enterprises was not intended to prohibit against landowners or occupiers from maintaining a home-office in their residence, from parking or maintaining their business vehicles or equipment on their property, or from indicating to the public that they had a home office at their residence."

[13] Relying on section eighteen of the Declaration, the Coxes argue "complete" abandonment of the Declaration is not required to prove invalidation of section two of the Declaration. But nearly all of their evidence of violations consists of purported violations of sections other than section two, and thus, applying section eighteen would simply mean that if one of the other sections were found to be invalid through a judgment or court order, section two would continue to be valid. Moreover, to invalidate section nineteen of the Declaration—the non-waiver provision, which applies to all other sections of the Declaration—the Coxes still needed to show complete abandonment of the Declaration itself.

[14] The Coxes assert, without citation to the record, that "[m]any property owners in Coyote Springs [Ranch] who have an interest in this matter were never advised of the lawsuit [or] had the opportunity to appear and state their position"; however, the only property owner the Coxes identify as an "example" supporting their assertion is Jerry Carver, who

Cundiffs' efforts at joining all parties and the Coxes' subsequent representation to the court—as well as the court's correct finding that summary judgment in favor of the Cundiffs made the Coxes' argument moot.

¶29 The indispensability of parties is a question of law, which we review *de novo*. *Gerow v. Covill*, 192 Ariz. 9, 14, ¶ 19, 960 P.2d 55, 60 (App. 1998) (citations omitted).

¶30 In this case, on remand from this court's May 24, 2007 memorandum decision, the trial court found that all property owners subject to the Declaration were indispensable parties, and ordered the Cundiffs to serve those necessary and indispensable parties with a summons, a copy of the First Amended Complaint, and a notice approved by the court. As ordered, the Cundiffs filed with the court in both paper and electronic form the list of Coyote Springs Ranch property owners, sent requests to the property owners to accept service of the aforementioned documents, and filed all acceptances received with the court.

¶31 Next, as ordered by the court, the Cundiffs identified the property owners who refused to accept service, sent them the court-ordered documents by certified mail, and filed all signed return receipts received with the court. Then, as ordered, the Cundiffs identified any owners who had both refused to sign the acceptance of service and refused to claim or sign their certified receipts, delivered the service packets to a process server for personal service, and filed with the court the certificates of service for those property owners the process server was able to serve.

¶32 After exhausting the other methods of service, the Cundiffs requested permission to serve the remainder of the necessary and indispensable parties by publication. The court found the Cundiffs had

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appeared at the April 16, 2013 oral argument and advised the court he would not concede the court had jurisdiction over him. Carver was served, however, had notice of the proceedings, and was provided the opportunity to state his position at oral argument. The Coxes also rely on Varilek's "Motion to Require Defendants Cox to Serve the Indispensable Parties with Documents Comporting with Due Process," in which he argued in part that service on some property owners might be defective because it appeared to him that, in some instances, only one of two spouses had been served or property owners who had recently purchased property in the subdivision might not have been served. Varilek did not, however, specifically identify any such property owners.

taken substantial steps to join all of the necessary and indispensable parties in a timely manner, noted that there was a discrepancy between the clerk of the court's records and the number of owners the Cundiffs had served, ordered the Cundiffs' counsel to meet with the clerk to reconcile the differences, and granted the Cundiffs permission to serve the remaining property owners by publication. Counsel for the Cundiffs met with the clerk of the court, reconciled the differences, filed a revised property list, and ultimately filed a proof of service by publication on all remaining property owners with the court. The Cundiffs then filed a notice of compliance with the court's service order.

¶33 Later, when asked by the court if all necessary parties had been joined as parties to the lawsuit, counsel for the Coxes responded affirmatively. *See supra* note 3. Although counsel did express concern that no lis pendens had been recorded to warn subsequent purchasers of the lawsuit, the Coxes point to no subsequent purchasers who were not joined or otherwise put on notice. The record as provided this court does not support the Coxes' argument.

¶34 Moreover, even if some property owners were not joined, the court did not err in deciding the motion for summary judgment and concluding Varilek's motion was moot. Varilek had argued that property owners who had not been joined could have their property rights negatively affected if the Coxes' abandonment defense proved successful, because the Declaration could be deemed to be abandoned as to all property owners. Varilek's argument essentially echoed the concerns we identified in our previous memorandum decision. *See Cundiff*, 1 CA-CV 06-0165, at ¶¶ 32 ("A ruling in this case that the restrictions have been abandoned and are no longer enforceable against the Coxes' property would affect the property rights of all other owners subject to the Declaration."), 35 ("[E]ven if a ruling in favor of the Coxes on their affirmative defense of abandonment were to apply only to the Coxes' property, all property owners[']' rights would still be affected simply by the Coxes' continued use of their property, or by any future use adverse to the restrictions."). In this case, however, any concern about the erosion or loss of property rights is not implicated because the trial court concluded the Declaration had not been abandoned. Thus, the Coxes' reliance on *Karner v. Roy White Flowers, Inc.*, 527 S.E.2d 40

(N.C. 2000), is misplaced.[15] The elimination of the Coxes' abandonment defense rendered any argument regarding joinder moot.[16]

IV. The Trial Court's Awards of Attorneys' Fees

A. Award of Attorneys' Fees to the Cundiffs

¶35 The Coxes next argue that the trial court abused its discretion in awarding attorneys' fees to the Cundiffs for the legal services of Wilhelmsen because a nonparty, Alfie Ware, helped fund the Cundiffs' litigation, and the Cundiffs have no enforceable obligation to repay Ware.

¶36 A court has discretion in determining whether to award attorneys' fees pursuant to A.R.S. § 12-341.01. *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314, 327, ¶ 48, 283 P.3d 45, 58 (App. 2012). In general, we review an award of attorneys' fees under § 12-341.01 for an abuse of that discretion, and will affirm unless no reasonable basis exists for the award. *Hawk v. PC Vill. Ass'n*, 233 Ariz. 94, 100, ¶ 19, 309 P.3d 918, 924 (App. 2013). For a party to recover attorneys' fees, two specific requirements must be met: (1) an attorney-client relationship between the party and counsel, and (2) a genuine financial obligation on the part of the party to pay such fees. *Moedt v. Gen. Motors Corp.*, 204 Ariz. 100, 103, ¶ 11, 60 P.3d 240, 243 (App. 2002) (citing *Lisa v. Strom*, 183 Ariz. 415, 419, 904 P.2d 1239, 1243 (App. 1995)).

¶37 The Coxes do not dispute that the Cundiffs have maintained the necessary attorney-client relationship with their attorneys. Moreover,

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15 *Karner* held that "[a]n adjudication that *extinguishes* property rights without giving the property owner an opportunity to be heard cannot yield a 'valid judgment.'" 527 S.E.2d at 44 (emphasis added).

16 Further, contrary to the Coxes' suggestion, the ruling does not prevent any other property owners from attempting to show abandonment of the Declaration in the future. Also, we reject the Coxes' suggestion that property owners who wish to or currently use their property in ways that violate the language of the Declaration should be insulated from future lawsuits. We additionally reject the Coxes' argument that the doctrine of law of the case should have prevented the court from finding the issue of joinder moot. *See generally King*, 180 Ariz. at 279, 883 P.2d at 1035; *Dessar*, 353 F.2d at 470; *see also Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 279, 860 P.2d 1328, 1332 (App. 1993) (providing exceptions to law of the case doctrine).

the Cundiffs submitted an affidavit in support of their attorneys' fees request stating that, although Ware had helped to fund the litigation, the Cundiffs had entered an agreement in 2003 "to repay Alfie Ware for all of the attorney's fees and costs that he would pay for the litigation," and that they had in fact paid Ware a portion of the amount owed. Although the Coxes rely on *Lisa* for their argument that the Cundiffs' agreement with Ware renders the Cundiffs' obligation illusory, *Lisa* is distinguishable. In *Lisa*, the court noted that "the Lisas candidly admit that, although there was an oral fee agreement, neither Mrs. Lisa nor the community would reimburse either Mr. Lisa [an attorney] or Lisa & Associates for any time expended, absent an award of fees by the court." 183 Ariz. at 420, 904 P.2d at 1244. On this record, we are not presented with the same set of facts, and find no error in the trial court's decision to award attorneys' fees to the Cundiffs.

B. Reasonableness of the Fees Award

¶38 The Coxes also argue the amount of fees awarded to the Cundiffs was unreasonable because some of the work was unnecessary, duplicative, or for issues on which the Cundiffs did not prevail. We disagree.

¶39 Any attorneys' fees award must be reasonable. *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 185-86, 673 P.2d 927, 929-30 (App. 1983). In considering the reasonableness of a fee award, the court must determine whether the hourly rate is reasonable and whether the hours expended on the case are reasonable. *Id.* at 187-88, 673 P.2d at 931-32. "[W]here a party has accomplished the result sought in the litigation, fees should be awarded for time spent even on unsuccessful legal theories." *Id.* at 189, 673 P.2d at 933.

¶40 The record indicates the trial court fully and carefully considered the reasonableness of the Cundiffs' attorneys' fees request and, after such consideration, awarded only a portion of the amount requested. Further, the Cundiffs fully achieved the result they sought in the litigation. On this record, we find no abuse of the trial court's discretion.

C. Award of Attorneys' Fees to Varilek

¶41 The Coxes also argue the trial court erred in awarding attorneys' fees to Varilek because he asserted he was not a party to the case.

¶42 The record is clear, however, that after being served and joined in this case in 2010, Varilek specifically requested alignment with the

Cundiffs, and he actively participated throughout the remainder of the case, even after his lawsuit against Veres – which was consolidated into this case[17] – was dismissed without prejudice. Moreover, although the Coxes point out that Varilek argued at the February 13, 2013 oral argument that "it's our position that we are not a party" and "have simply aligned with the plaintiffs," the trial court rejected that position in granting dismissal of the consolidated case; instead, the court made clear in its March 5, 2013 under advisement ruling that it considered Varilek to be an active party to the litigation:

> WHILE THE COURT has received the[] "Stipulation to Dismiss Without Prejudice," filed by the Parties in *Varilek v Veres*[] (P1300 CV 2009 0822); that being separately filed litigation previously consolidated with *Cundiff v Cox* (P1300 CV 2003 0399), the Court does not interpret the dismissal of *Varilek*, [*id.*], as making moot Varilek's Response in regard to this immediate issue [allowing Conlin to testify as a witness for the purpose of interpreting the Declaration] or allowing Varilek and/or Veres to extricate themselves from this case, as Varilek and Veres remain necessary Parties to the *Cundiff v Cox*[] litigation.

¶43 The Coxes further argue Varilek was not eligible for an award of attorneys' fees because he never requested attorneys' fees in a pleading pursuant to Rule 54(g)(1), Ariz. R. Civ. P.[18] However, after Varilek filed his July 1, 2013 motion for an award of attorneys' fees, the Coxes did not assert in their response that Varilek had failed to comply with Rule 54(g). Instead, as they acknowledge, they raised this argument for the first time in their "Motion for Reconsideration Re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek." We generally do not consider arguments on appeal that were first raised in the trial court in a motion for reconsideration, *Evans Withycombe, Inc. v. W. Innovations, Inc.*, 215 Ariz. 237, 240-41 n.5, ¶¶ 15-16, 159 P.3d 547, 550-51 n.5 (App. 2006), and we decline to do so here.

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[17] Without record support, Varilek asserts that he requested attorneys' fees in his complaint against Veres. The Coxes do not dispute Varilek's assertion.

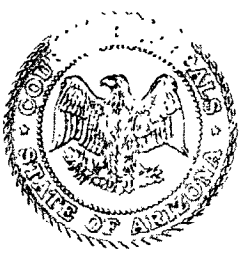
[18] Varilek first made a claim for attorneys' fees in his joinder to the motion for summary judgment filed by the Cundiffs.

V. Costs and Attorneys' Fees on Appeal

¶44 The parties request costs and attorneys' fees on appeal pursuant to A.R.S. § 12-341.01. The Coxes are not the prevailing parties, and their request is denied. Appellees are the prevailing parties; accordingly, in our discretion, we award taxable costs and an amount of reasonable attorneys' fees on appeal to Appellees, contingent upon their compliance with Rule 21, ARCAP.

CONCLUSION

¶45 The trial court's summary judgment and awards of attorneys' fees are affirmed.



AMY M WOOD • Clerk of the Court
FILED AA

Exhibit 6

P&Z Res. pages and page from the Declaration

from P&Z 88-175

Exhibit 6

WHEREAS, the notice for this public hearing was published in the Mohave Daily Miner, a newspaper of general circulation in the County Seat on September 21, 1988 and in the Mohave Valley News and was posted on September 26, 1988 as required by Arizona Revised Statutes and the Mohave County Zoning Regulations, and

WHEREAS, the applicant is Darrell Spence of Bella Enterprises, Inc. Information available to this Commission indicates that ownership is listed in the name of Bella Enterprises, Inc., and

WHEREAS, this proposed subdivision is located roughly one-half to one (1) mile east of Highway 95, is east of Mohave Mesa Acres, adjoins the new elementary school site and is between Joy Lane and Lippan Boulevard, and

WHEREAS, the primary access to this residential lots subdivision and public golf course is intended from Joy Lane, and

WHEREAS, the preliminary plan depicts roughly 305 acres subdivided into 707 residential lots, a four (4) acre parcel intended for multiple family development and an eighteen (18) hole golf course, and

WHEREAS, the minimum and typical lot sizes are 6,000 square feet, and

WHEREAS, sewage disposal is intended to be taken care of with a sewage treatment plant to be located on a five (5) acre parcel adjoining this subdivision in the SW¼ of Section 35 south of Mohave Mesa Acres, and

WHEREAS, the existing 305 acre site has a mixture of zoning classifications. The E½ of Section 35, together with the S½ SW¼ of Section 35 were zoned M (General Manufacturing) when zoning was extended to this area in 1968, and

WHEREAS, in April, 1987 the Planning and Zoning Commission recommended that the NE¼ and the N½ SE¼ of Section 35 be rezoned R-M/10A (Multiple Family Residential/Ten Acre Minimum Lot Size) but there be no change in the existing M (General Manufacturing) zoning in the S½ SW¼ or the S½ SE¼ of Section 35. This is to say that the N½ of this proposed subdivision is zoned R-M/10A (Multiple Family Residential/Ten Acre Minimum Lot Size), the S½ is zoned M (General Manufacturing), and

WHEREAS, the unsubdivided property west of and adjoining the proposed multi-family parcel is zoned M (General Manufacturing), and

WHEREAS, the lots to the west in Mohave Mesa Acres are zoned A-R (Agricultural-Residential), and

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RESOLUTION NO. 89-116

A RESOLUTION REZONING A PORTION OF E½ SECTION 35, AND A PORTION OF THE SE¼ OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 22 WEST, TO BE KNOWN AND SUBDIVIDED AS DESERT LAKES GOLF COURSE AND ESTATES, TENTATIVE TRACT 4076, FROM: R-O (SINGLE FAMILY RESIDENTIAL/MOBILE HOMES PROHIBITED) AND R-M (MULTIPLE FAMILY RESIDENTIAL) ZONES, PROPOSED TO BE: S-D/R (SPECIAL DEVELOPMENT/RESIDENTIAL) AND S-D/C (SPECIAL DEVELOPMENT/COMMERCIAL) ZONE, LOCATED IN THE SOUTH MOHAVE VALLEY AREA, MOHAVE COUNTY, ARIZONA

WHEREAS, at the regular meeting of the Mohave County Board of Supervisors held on December 4, 1989, a public hearing was conducted to determine whether approval should be granted to Frank Passantino, C.E.O., Desert Lakes, Fort Mojave, Arizona for a rezone from existing R-O (Single Family Residential/Mobile Homes Prohibited) and R-M (Multiple Family Residential) zones, to S-D (Special Development) zone, and

WHEREAS, a public hearing before the Mohave County Planning and Zoning Commission on November 8, 1989 did generate a recommendation of approval of this request with the following condition noted:

1. The owner accepts that whenever a S-D zone is granted, each phase or stage of development or building proposals shall be submitted to the Planning staff, to be evaluated and compared with the approved zoning plan before any permits may be granted;

2. Any significant change (as determined by the Planning Director, appealable to the Planning Commission) in the approved zoning plan shall require a rehearing on the change before the Commission, with a final determination to be made by the Board;

3. Staff will maintain the most current approved ZONING PLAN on file in the master zoning folder for reviews;

4. Such change shall not be effective for at least thirty (30) days after final approval of the change in classification by the Board, being January 3, 1990, as per A.R.S. 11-829E;

and

WHEREAS, this request by the owners comes after the first phase of the development has been sold and construction needed to commence. The CC&R's presented set the rear yard setbacks at twenty (20') feet when zoning for a R-O zone states twenty-five (25') feet and although public hearings identified commercial development, i.e., Club House with associated facilities and a golf course, and the resolutions identified the same, there was

and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last partners of Desert Lakes Development, or twenty-one (21) years after the death of the last survivor of all of said incorporators children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

22. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

No R-M → (multifamily)

B(1). Special Development Residential
SD-R Single Family Residential, Mobile Homes Prohibited
Land Use Regulations.

Uses Permitted:

Single Family dwelling and accessory structures and uses normally incidental to single family residences, MOBILE HOMES, MANUFACTURED HOMES AND PREFABRICATED HOMES PROHIBITED.

LAWYERS TITLE AGENCY, INC.,
as Trustee

By _____

Title: Trust Officer

DESERT LAKES DEVELOPMENT L.P.
a Delaware Limited Partnership

By _____

STATE OF ARIZONA)
) SS
COUNTY OF MOHAVE)

On this, the 6th day of December, 19 89, before me the undersigned officer, personally appeared ROBERT P. DOUGLASS, who acknowledged himself to be a Trust Officer of LAWYERS TITLE AGENCY, INC., an Arizona corporation, and that he, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Trust Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
MY COMMISSION EXPIRES MAY 30, 1990.

Notary Public

JUDY DIAZ NOTARY PUBLIC STATE OF ARIZONA