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WILLYN TINNELL
SUPERIOR COURT CLERK

1 Nancy Knight
1803 E. Lipan Cir.
2 Fort Mohave, AZ 86426
Telephone: (951) 837-1617
3 nancy@thebugle.com

4 Plaintiff Pro Per

5
6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MOHAVE**

8 NANCY KNIGHT
9
10 Plaintiff,
11 and
12 GLEN LUDWIG and PEARL LUDWIG,
Trustees of THE LUDWIG FAMILY TRUST;
13 FAIRWAY CONSTRUCTORS, INC.;
MEHDI AZARMI; JAMES B. ROBERTS and
14 DONNA M. ROBERTS, husband and wife;
JOHN DOES 1-10; JANE DOES 1-10; ABC
15 CORPORATIONS 1-10; and XYZ
PARTNERSHIPS 1-10.
16
17 Defendants.

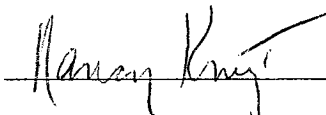
Case No.: **CV 2018 04003**

**Plaintiff's Reply to
Defendant's Response to
Plaintiff's Motion for
Leave to Amend Complaint**

Honorable Judge Carlisle

18
19 The Plaintiff's Reply to the Defendant's objections is supported by the Law of
20 Property for a Master Planned Community Subdivision and in Arizona Statutes including
21 Title 33 on Property and rules of civil procedure including Rule 59 and Rule 6.

22
23 **RESPECTFULLY SUBMITTED** this 19th day of November, 2018

24 
25 _____
26 Nancy Knight, Plaintiff Pro Per
27
28



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 A critical part of the Court’s analysis and decision for the Summary Judgment on
3 April 2, 2018 was the evaluation of all of the Plaintiff’s exhibits citing Desert Lakes as
4 one Subdivision. While there were multiple pages of exhibits where Mohave County
5 cited the Desert Lakes Subdivision, no one would have expected that the zoning history
6 would reveal the full disclosure of the master planned subdivision named Desert Lakes
7
8 Golf Course and Estates Tract 4076 (hereinafter “Desert Lakes”) created by Bella
9 Enterprises in 1988. The “New Evidence” exhibits where Planning and Zoning processed
10 requested setbacks by Mr. Passantino, that were less restrictive than the County setbacks
11
12 at the time, referenced the CC&Rs for Tract 4076. No reference was made for Tract
13
14 4076-A CC&Rs.

15 It is the one subdivision and master plan that is critical for the application of case
16 law and the Law of Property in this matter that supports justice in favor of the Plaintiff.

17 The provisions of ARCP Rule 59 and Rule 6 are appropriate if we consider the
18 Oral Arguments for the Defendant’s motion to dismiss the case in its entirety as a Trial.
19 Generally speaking, a trial ends all aspects of a complaint. The summary judgment did
20 not bring closure, as a Trial would have. Therefore the Plaintiff believes, given the
21 Court’s flexibility to weigh the circumstances and disregard the short time that a Trial
22 would have allowed for reconsideration of the judgments/Orders, as appropriate. But
23 even if that argument is refuted by the Court, then we look to Rule 6.
24
25
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27 Pursuant to Rule 6, the Court may for good cause extend the time when on motion
28 made after the time has expired if the party failed to act because of excusable neglect.

1 The Plaintiff respectfully requests that the judgments that favored the Defendants and
2 took all of the Plaintiff's rights to prosecution of Count 1 be set aside, not because of the
3 Plaintiff's own carelessness, inattention, willful disregard of the court's process, or any
4 other neglect, but because of the unexpected discovery on a chance request for the history
5 of how the lot on which the Plaintiff's home is now situated, was once zoned for multiple
6 family housing. **Exhibit 1** - County Request for Information form and email
7
8 correspondence. (The County answer to the Request is the 19 pages of evidence as
9 exhibit 1 in the motion for Leave to Amend the Complaint).
10

11
12 No one was more surprised than the Plaintiff to find out that Desert Lakes
13 Development, L.P. whose Tract CC&Rs are cited by Title Insurance Companies, was not
14 the original creator of Desert Lakes Golf Course and Estates and that it was Bella
15 Enterprises, Inc. who named the Subdivision Tract 4076. It was not the zoning that
16 created the 305 acre master planned community of over 700 lots with a golf course,
17 clubhouse, and even a private sewer treatment plant, but a Developer with a vision. A
18 vision that was intended to be protected from blight as all master planned community
19 subdivisions are protected under the Law of Property. A Master Planned Community is
20 broader in scope than a planned community of homes alone. Generally, it is defined in
21 real estate terms as a type of residential plan that includes an unusual number of
22 recreational amenities such as a golf course, clubhouse, lakes, etc. that clearly separates it
23 from a normal plan for a housing subdivision.
24

25
26 Pursuant to rule 6.2.(c), the Plaintiff seeks the extension of time required in Rule
27
28 59 to prevent prejudice from justice and prevent prejudice of her legal rights to

1 prosecution of Count One for the BOS Resolution. The Defendant's "attempted
2 violation", is a prosecutable offence as cited in the Complaint in Paragraphs 36, 37, 42,
3 43, 44, 53, 56, and Wherefore D. The Board of Supervisor's comments, as cited in the
4 Minutes of the meeting that was held on October 3, 2016, presented to the Court just how
5 egregious the lack of full disclosure in support of the Defendants were viewed by three
6 honorable members of the Board and how critical this Court's determination will be in
7 the interest of justice.
8

9
10 The Robert's home is not a critical cause of action in the Plaintiff's case; however,
11 the entire cause of the Complaint arose from the egregious attempt by Defendant Azarmi
12 to violate the CC&R setbacks in the entire Desert Lakes Subdivision. But for the BOS
13 Resolution, the Plaintiff would never have even come to know of the Robert's complicit
14 actions for the BOA variance that was successfully orchestrated by Mr. Azarmi for a ten
15 foot rear setback on the home under construction, owned and being developed by the
16 principals of Fairway Constructors (hereinafter "Fairway"). The complete dismissal of
17 Count One, with prejudice, does not serve justice.
18
19

20
21 For the most part, Title 33 has no basis in this matter as there exists no homeowner
22 association nor unincorporated association for the Master Planned Community. Some
23 language in Title 33 can be construed as applicable however. In Title 33-1815, we find
24 reference to commercial signage provisions whereby the Defendant's "Build to Suit" and
25 "Development Services" advertising signage is only appropriate on "properties zoned for
26 commercial use in the planned community..." Desert Lakes residential lots are not
27 commercially zoned lots. It is futile to pretend these signs are "For Sale" signs. Further,
28

1 this advertising attracts innocent victims to the Development Services of Fairway who
2 “Build to Suit” regardless of the CC&Rs. A case in point is that the lot that Broker Gina
3 Harris listed for sale that was sold and built to suit on Lipan Blvd. in May 2018 by
4 Fairway, did not have a Build to Suit sign on this lot prior to the sale. The Build to Suit
5 signage is on a lot further east on Lipan Blvd. as the Supra Exhibit of photographic
6 evidence shows. Advertising on any lot will attract potential clients to Fairway for
7 construction on any vacant lot in Desert Lakes. The Plaintiff has found no other
8 contractor competing against Fairway with business advertising signage on Desert Lakes
9 unimproved lots.
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13 In the opening Declaration of Tract CC&Rs, reference is made to the “said tract”.
14 Likewise in Article I regarding the Architectural Committee and its duties, reference is
15 made to the Tract number rather than to the subdivision as a whole.
16

17 The focus of Article II shifts to the subdivision as a whole for all 22 paragraphs as
18 if taken from a CC&R boilerplate for the entire Tract 4076 subdivision. Was a boilerplate
19 master plan CC&R document created? The answer is yes. Has the risk of reprisal from
20 the powerful political connections of the Defendants caused the informants to cease all
21 communication with the Plaintiff? The answer is yes. If the Court please, in the interest
22 of protecting the identities of those who provided the information, allow the Plaintiff to
23 disclose these identities to only the Court and on the Court’s request if necessary, to the
24 attorney for the Defendants, but allow the correspondence to be redacted from public
25 viewing. **Exhibit 2** is redacted communication for public viewing.
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1 In Article II, an exception occurs only when a Tract has a specific restriction that
2 is not uniformly applied throughout the master planned subdivision as a whole such as
3 paragraphs 4, 5.vi, and 6 for Tract 4076-B.
4

5 Pertinent is paragraph 21 in Article II regarding, at the time of the writing in 1989,
6 that "...the provisions of this Declaration... all of which are inserted conditionally on
7 their being held valid in law...". Clearly, the CC&Rs were written with knowledge of
8 law including the Law of Property.
9

10 Restatement of the *Law of Property*, Vol. V, Chap. 45, Sec. 537, p. 3224.

11 Where a tract of land is subdivided into lots and burdened with restrictive covenants,
12 real rights are created running with the land in favor of each and all of the grantees. The
13 basis of the creation of this right is the mutuality of burden and the mutuality of benefit as
14 between the grantees arising out of the imposition of such restrictions on the land itself.
15 This mutuality of burden and benefit constitutes reciprocal promises as between the
16 grantees, each supported by that of the other.

17 Article II cites that it is the General Purpose of the [Architectural] Committee to
18 provide for maintenance of a high standard of architecture and construction in such a
19 manner as to enhance the aesthetic properties and structural soundness of the developed
20 subdivision. It does not say for the developed "said tract". This grammatical language is
21 found consistently in every Tract CC&R for the entire Desert Lakes Subdivision. Every
22 property owner is imposed with the majority of provisions of the Declaration, therefore
23 the CC&Rs do not just apply to lot owners in various phases of development such as in
24 Tract 4076-A, 4076-B, etc. nor in Tract numbers such as Tract 4132 or 4159, but for the
25 entire 305 acre subdivision created by Bella Enterprises in 1988. Zoning did not create
26 the Desert Lakes Subdivision. Bella Enterprises created it and the zoning documents are
27
28

1 the evidence that supports the one subdivision argument. The consistently applied
2 boilerplate-style CC&R provisions applies to every lot and is a burden and benefit to all
3 property owners under the single master plan of development. In Title 33-1817
4 “Declaration amendment; design, architectural committees; review” it is cited that if there
5 is no association or board, “The declaration may be amended by, ... , the owners of the
6 property that is subject to the declaration...”. This is similar language in the Desert Lakes
7 CC&Rs for amendments (paragraph 18).
8

9
10 The Defendant’s claim that no enforcement has ever occurred in Tract 4076-A or
11 4076-B is refuted. The multifamily zoning in Tract 4076-B that is “expressly forbidden”
12 was enforced through a zoning change. The Plaintiff’s own case number 2016-04026 for
13 fence modifications made by an adjacent neighbor in violation of the CC&Rs resulted in
14 adjudicated rights for restoration enforcement for her own side yard fence and for her
15 adjacent neighbor’s rear yard fence through a binding mediated settlement in May 2017.
16 T&M Development was imposed with the 15 foot steel rail condition for side yard fences
17 adjacent to the golf course and this too was enforced in 2005 between T&M and the
18 block wall contractor whose plot plan permit was for a solid block wall design. All are
19 evidenced in public record and/or Supra Exhibits.
20
21

22
23 In Tract 4076-A, the plaintiff has been informed that even Fairway enforces
24 restrictions with a case in point of a property owner, Mr. Ritchie, who claims he had to
25 sell his home and move out of Fairway Estates due to his needed 22 foot long vehicle.
26 Fairway Estates is a subdivision within the Desert Lakes Subdivision and they have
27 created a homeowner association for enforcement of CC&Rs and restricted usage of their
28

1 private recreational facilities immediately adjacent to Tract 4076-B. From Paragraph 2 of
2 the CC&Rs, “No noxious or offensive activities shall be carried on upon any lot, nor shall
3 anything be done thereon which may be or may become an annoyance or nuisance to the
4 neighborhood.” This private recreational facility is another self-serving violation by these
5 Defendant developers. As in attorney Oehler’s words in his letter to the Plaintiff on
6 November 2, 2018, “A pending lawsuit is a continuum of moving parts... The law
7 contemplates that these moving parts ultimately for a trial”.

8 SUMMATION

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11 A preponderance of evidence exists that the Plaintiff will be harmed with
12 prejudice if her rights to prosecution of Count 1 is denied in its entirety. The Plaintiff was
13 put at risk for the attempted violation of setback reductions through the Defendant’s
14 proposed BOS Resolutions affecting the entire master planned subdivision. No Tract was
15 singled out. The Court has the discretion and authority under Rule 6 to set aside its
16 former judgments and orders in the interest of not prejudicing the Plaintiff’s rights. We
17 have a master planned community and the Law supports the Plaintiff’s rights to
18 prosecution on multiple levels. Refer to the Plaintiff’s citings of THE LAW beginning on
19 page 7 of her October 22, 2018 motion for Leave to Amend Complaint - New Evidence.
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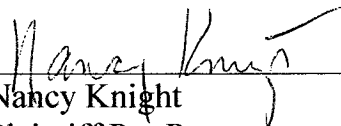
23 The matter of Count One should not be denied in its entirety.

24 Defendant’s attorney fees and costs should be denied.

25
26 Plaintiff should be awarded her costs, attorney consult fees, and paralegal fees
27 pursuant to A.R. S. 12-341.01 and A.R. S. 12-349.
28

1 Plaintiff should be awarded financial compensation for physical and emotional
2 stress, sanctions against the Defendants for stalling Disclosure resulting in a court threat
3 to dismiss the case due to late filing of the Joint Report and Proposed Scheduling Order,
4 and double damages not to exceed five thousand dollars knowing full well of their guilt
5 in violating the CC&Rs and their repeated attempts to take all rights away from the
6 Plaintiff for even Count 2 of her Complaint, for their repeated attempt at Court deception
7 including but not limited to claiming that their business advertising signs are “For Sale”
8 signs, claiming that no enforcement of the CC&Rs has existed since inception when the
9 record known by the Defendants and their attorney is well known and documented.
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13 RESPECTFULLY SUBMITTED this 19th day of November, 2018

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16 Nancy Knight
17 Plaintiff Pro Per

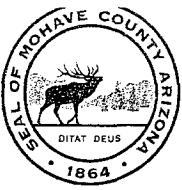
18 Original filed with the Clerk in Bullhead City, AZ

19 Copy of the foregoing emailed on November 19, 2018 to:
20 djolaw@frontier.net.net
21 Daniel J. Oehler, Attorney for the Defendants
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Exhibit 1

**Public Records Request Form on Zoning Parcel VV
Emails between Plaintiff and Theresa Shell
3 pages**



MOHAVE COUN DEVELOPMENT SERVICES

Attn:
T. Shell

P. O. Box 7000 Kingman, Arizona 86402-7000 3250 E. Kino Ave, Kingman www.mohavecounty.us Telephone (928) 757-0903 FAX (928) 757-3577

Timothy M. Walsh, Jr., P.E.
Department Director

Michael P. Hendrix, P.E.
County Administrator

PUBLIC RECORDS REQUEST FORM

I would like to request a copy of the following documentation (be specific) from the Mohave County Development Services Department pursuant to A.R.S. 39-121.01:

Zoning change from Multifamily housing to single family for Parcel VV in Desert Lakes Golf Course and Estates
<i>Who originally zoned this parcel Multifamily and when.</i>

According to A.R.S. 39-121.03A you must declare if the documentation provided to you will be used for commercial purposes and state that purpose.

- Information **will** be used for commercial purposes. (Define in detail on a separate sheet)
- Information **will not** be used for commercial purposes.

I certify that the information provided is true and correct. I understand there will be a charge of 25 cents per page, except for larger items (i.e. maps, plans, etc.) or where there is extensive staff time for copying of documents, and an additional charge for postage when applicable. I agree to pay the fee or deposit for these records (A.R.S. 39-121.01-D1).

Printed/Typed Name: Nancy Knight

Signature: *Nancy Knight* Today's Date: 10/3/2018

Contact Information: Phone: 928-768-1537
Address: 1803 E. Lipan Circle
Fort Mohave, AZ 86426

After completing form, sign and send to P.O. Box 7000, Kingman, AZ 86402-7000
ATTN: Mohave County Development Services, Theresa Shell, Office Supervisor
(email: theresa.shell@mohavecounty.us)

TO BE COMPLETED BY DEVELOPMENT SERVICES DEPARTMENT

Approved: [] Yes
[] No, for the following reason:

Development Services Director _____ / / _____
Date

Assigned to: _____

Total pages copied _____ @ .25 (general copies) = _____ Postage = _____
Total pages copied _____ @ 3.00 (large copies) = _____ Total Charge = \$ _____

Completed By _____ Date _____ Received By _____ Date _____

Nancy Personal Mail

From: "Nancy Personal Mail" <nancy@thebugle.com>
Date: Thursday, October 11, 2018 11:54 PM
To: "Theresa Shell" <Theresa.Shell@mohavecounty.us>
Subject: Re: Public Records Request dated Oct 3

Hello Theresa,
 I received your voice mail message regarding the question on parcel VV of Desert Lakes Golf Course and Estates.

Sometimes multifamily housing is originally a land use designation as part of a General Plan by the County. Whomever had the land designated as multifamily, it later did not fit the master plan for the Golf Course. Some time prior to December 1989 the 5 acre multifamily designation needed a land use change to something like private recreational as part of the golf course (Parcel VV) and later to 32 lots as single family residential around 2002.

In December 1989, Parcel VV is cited in the CC&Rs for Tract 4076-B. A re-subdivision into 32 lots for single family residential occurred around 2002 designated as Tract 4163 within Tract 4076-B.

My home is situated on two of the 32 lots. A portion of Parcel KK may also have been included in the zoning change from multifamily. The zoning change, or two zoning changes, if at first it was for private recreational and later to single family homes, may have been by a BOS Resolution or administratively by Planning and Zoning or both.

The 32 lots were subdivided for single family homes by a member of the Architectural Committee, Sterling Varner. I believe Sterling Varner included the setback restrictions for the 32 lots within this BOS Resolution.

The zoning had to have been changed prior to this BOS Resolution for the 32 lot subdivision. All of the information I have been able to glean together so far is sketchy which is why I need the County to fill in the missing information.

I think the lots are also designated as Special Development Residential by Planning and Zoning as a part of the Master Planned Community. To date I have been unable to identify the original developer or original owner of the 300 acres for the Master Planned Community.

The original owner of the 300 acres apparently sold the master planned community to Desert Lakes Development L.P. who in turn subdivided the Master Planned Community into lots for Tract 4076-A (Phase 1) and subsequently, about five other Tracts within the Master Plan.

I hope this helps.
 Nancy

From: Nancy Personal Mail
Sent: Thursday, October 11, 2018 7:27 AM
To: Theresa Shell
Subject: RE: Public Records Request dated Oct 3

Good morning Ms. Knight,

Your request was received and was submitted for processing.

Theresa Shell

Administrative Supervisor
Mohave County Development Services
Phone: 928-757-0903 | Fax: 928-757-0936
3250 E Kino Ave, Kingman, AZ 86409
Theresa.shell@mohavecounty.us

From: nancyknight [mailto:nancyknight@frontier.com]
Sent: Thursday, October 11, 2018 4:27 AM
To: Theresa Shell <Theresa.Shell@mohavecounty.us>
Subject: Public Records Request dated Oct 3

Hello Ms. Shell,

I am writing to verify that the Public Records form that I delivered to the Bullhead office on October 3 was received. I had written Attn: T. Shell on the top of the form so the courier service would deliver timely as requested.

A response to this email address is requested. An email address line was not available on the form.

Nancy

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Exhibit 2
**Redacted Email Correspondence regarding the
Master Plan CC&R Boilerplate**

We will have to meet one day!

Nancy

From: [REDACTED]

Sent: Thursday, June 28, 2018 4:25 PM

To:

Subject: RE: A Request for Help

Exhibit 2

Hello Nancy

I talked with Angelo. He said yes to your question. His secretary is out of town. When she returns he will try and find a copy. He also said it should be recorded.

I'll be back in touch

From: Nancy Personal Mail [mailto:nancy@thebugle.com]

Sent: Thursday, June 28, 2018 7:55 AM

To: [REDACTED]

Subject: A Request for Help

Dear [REDACTED]

Since Angelo Rinaldi is not opposed to talking to you, can you ask him if there was ever a Master Plan CC&R document that covered the entire 300 acre Desert Lakes Golf Course and Estates project?

Mr. Rinaldi claimed, in his Public Report to the Arizona Department of Real Estate for the small Tract that he subdivided, that Desert Lakes Golf Course and Estates was a Master Planned Community. He may know where I can find the CC&Rs that are for the entire Subdivision. He appears to have taken the master CC&Rs for use as the boilerplate for the CC&Rs that he used for his lots in that Tract (number 4132 I think it was).