

Exhibit  
A

COMMERCIAL LOTS  
BOD INFORMATION

**TONTO HILLS HOMEOWNERS ASSOCIATION**  
**FACTORS TO CONSIDER**  
Commercial Property Development Proposals

At the 1995 annual meeting, the property owners of Tonto Hills voted by a wide margin that the ACC should not approve any proposals for development in the commercial area until and unless certain health, safety, economic, environmental, and lifestyle concerns were addressed. A number of the votes cast in favor of that particular motion were from owners of the commercial property. This vote put the elected officials of our subdivision on notice as to the desires of the property owners, and these officials (the ACC and the board) do have an obligation to honor those desires to the best of their ability.

There is no question that shoddy, uncoordinated, piecemeal development of the commercial area poses a considerable threat to Tonto Hills property owners...both residential and commercial. Such detrimental development can be avoided if our elected representatives (the ACC and the Board of Directors) will do only three things.

- A. Firmly and fairly enforce our existing Declarations of Restrictions
- B. Insist that any construction plans be in compliance with normally accepted practices for commercial development.
- C. Not approve any construction plans that do not meet county code.

The above three items are reasonable and certainly within the expectations of the property owners who cast their vote last month. In that spirit, the following paragraphs attempt to detail some of the concerns of the property owners and how those concerns might be reasonably addressed.

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**A FUTURE RESIDENTIAL SLUM:**

One overriding concern of the homeowners in Tonto Hills is that the commercial area will become little more than a slum housing area. C2 zoning allows structures that serve the dual purpose of housing and business...i.e., owners may build a structure out of which they operate a business and within which they live. Residential lots in Tonto Hills average well over one acre in size and cost from \$60,000 to \$200,000. Commercial lots are approximately one quarter of an acre and have been purchased recently for as little as \$6,000.

Since the commercial area currently has very little economic viability as a true commercial location, it will primarily attract those looking for a cheap way to live while also operating a small business from their "house." C2 zoning would allow, for instance, a 1,000 sq. ft. structure with tiny living quarters (i.e. the gate house). The end result of such development, if allowed, will most assuredly be an area of inexpensive housing (future residential slum), rather than a true commercial area.

Paragraph 17 of our Declaration of Restrictions specifically defines the intent of the commercial area to be "...designed, planned and laid out as a high class business section..."

To allow this area to be developed as a cheap housing area would be in direct conflict with that intent.

This development of an inexpensive housing area (future slum) at our entrance can be held partially in check by fair and aggressive enforcement of our square footage minimums for residential structures. In 1988 we amended our Declaration of Restrictions (Paragraph 6) to state that *"No residence shall be erected which provides less than two thousand (2000) square feet of living space area..."* In keeping with the spirit of that restriction, it should and must be applied universally to all residences within the boundary of Tonto Hills. That was the amendments original intent, that is how the amendment is written (the commercial lots are not excepted from the amendment as they are in other provisions of the restrictions that do not apply to them), and that is how it should be applied.

In view of this, the ACC/board of directors should not approve construction plans for any commercial lot unless the area that is designed for use as a residence (exclusive of that area logically to be used for commercial purposes) contains at least 2,000 square feet. To do otherwise would be in direct conflict with our duly adopted Declaration of Restrictions and would also be in direct conflict with the wishes of the majority of this community.

*(There will be some who will attempt to circumvent this restriction by building kitchen areas, full baths, and extra rooms in their "office" areas while professing that they have no intent of living there. Once the structure is built, they will move in and we will have little to say about it. The ACC must anticipate such deception in advance and take a hard stance against these type of facilities when reviewing plans.)*

**(Gate House Precedent:** Another concern that has been expressed by some homeowners and by members of the ACC is the existing gate house and the precedent it sets. Yes, the gate house does serve as a visual example of what this community does *not* want at its entrance, but, **no**, it is not a valid precedent that in any way restricts our ability to assure that future "gate houses" are not built. Both the structure and the current use of the gate house pre-dates our current Declarations of Restrictions and is, therefore, not a valid justification for others who might follow to construct similar buildings.)

## **PROTECTION OF PROPERTY VALUES IN TONTO HILLS:**

Another major (and valid) concern of property owners in Tonto Hills is that their properties will be devalued by certain uses or designs of commercial construction. This concern is especially acute among those who own property within close proximity to the commercial area. Paragraph 21 of our Declarations of Restrictions was enacted specifically to address this concern. It is an extremely powerful provision, and the property owners have every right to rely upon the fact that this provision will be used and used aggressively to protect their economic interests. Paragraph 21 states; *"No lot shall be used or allowed to become in such condition as to depreciate the value of adjacent property."* This provision gives our community great latitude and broad powers in approving or disapproving specific uses and construction techniques within the commercial area. Explicit within that provision is an obligation that our elected officials (the ACC and the Board) have to regulate commercial construction in such a manner as to assure that nearby properties (residential and commercial) are not devalued as a result of future construction. For instance:

1. Each grouping of commercial lots lies behind a tract of land that may be (if agreements are reached with the third party that owns the tracts) designated as parking. The "parking" areas, however, are quite limited, each one containing a finite number of potential parking spaces. Should one commercial owner develop in such a manner as to consume all (or the lion's share) of the available parking, the value of the adjacent land would certainly be decreased. **The ACC, therefore, should require any owner submitting a development proposal to show that his or her requirements for use of the parking area are not disproportional to the area available...i.e. that the remainder of the lots in the commercial group will have access to an equal area for use as parking.**

2. **Each grouping of commercial properties should be developed in accordance with an overall drainage plan that drains water from the area and away from adjacent properties.** That only makes good sense and is certainly in accordance with normally acceptable procedures for any commercial development. Any good developer/builder would expect such requirements. Owners wishing to develop their commercial lots, therefore, should be required to show such an overall drainage plan for the area in which their property lies and must be able to show that their lot is being graded and built in accordance with that plan.

3. **A reasonable sewage plan for the commercial area must be submitted prior to the approval of any individual building plans.** Since 26 individual septic systems in a ten acre area should never be allowed, it would be unfair to allow one lot owner an individual septic system with the knowledge that others who follow with building plans would not be allowed the same. If a septic treatment system for the entire commercial area is not feasible, individual septic holding tanks (requiring frequent pumping) is the only real alternative and should thus be required for each and every project.

4. In accordance with the intent of paragraph 21 of our Declaration of Restrictions, the ACC/board also has an obligation to consider the specific use proposed for any commercial lot and make a determination as to how that use will affect adjacent properties. If, for instance, a 24-hour convenience store or bar were to be proposed for lot #212, the value of lot #186 would most assuredly be devalued. Our elected officials would have the obligation, therefore, to disapprove that application. Should they not disapprove such an application, they (as well as the entire association) could potentially be incurring considerable liability from damage claims by the owner of lot 186.

In summary of section B above, the Tonto Hills property owners have every right to expect that paragraph 21 of the Declaration of Restrictions will be used and used aggressively to protect their economic interests. To do otherwise would be irresponsible and could cause grievous economic harm to property values in the community.

### **COUNTY REGULATIONS:**

Maricopa County has a number of zoning ordinances that govern C2 development. Those ordinances are there to protect us as citizens of Maricopa County. We (the association and the ACC) should become familiar with these ordinances and use them for protection whenever possible. For instance:

1 We are often in a position to catch potential violations that might slip through the County personnel unnoticed. One potential example of this is required parking. The

County requires that a certain number of parking spaces be available per square foot of construction, depending upon usage. County personnel may well assume from a developer's plat that the frontage property (normally referred to as the parking area) is currently and readily available for use by the lot owners, and thus might be inclined to approve a plat showing the required parking spaces as being in that area. We, however, are aware that the majority of the parking area is privately held by a third party and that any use of those areas will require a written agreement between the commercial lot owners and that third party. **No application for construction in the commercial area, therefore, should ever be approved by our ACC without proof that access to and use of the parking area shown on the developer's plat has been legally obtained.**

2. The County will, of course, assume that utilities are available to all of the commercial lots. We know that this is not necessarily the case. Very few of the commercial lots have direct access to the community's water system; i.e., the water company would have to obtain easements across private property in order to extend their lines to most commercial lots. **It would seem irresponsible to approve any application for construction unless the developer can show that easements for bringing in water lines have been negotiated and are in hand. That is simple, common sense.**

There are many other County requirements for construction in a C2 area. Our ACC/Board is not directly responsible for enforcing those requirements, but they are in a position to catch some violations that the county might not be able to see and they most certainly are expected to use the County ordinances as best they can to protect the other property owners. We should not and cannot rely solely upon the county personnel to protect the interests of property owners in Tonto Hills. To do so would be a huge mistake.

#### **SAFETY OF TRAVEL ON OLD MINE ROAD:**

Another matter of concern of the Tonto Hills property owners is the future safety of traveling on Old Mine Road. Ingress and egress to and from the commercial lots must be controlled and limited to assure safe travel on that road...i.e. 26 individual points of ingress and egress, each being directly from Old Mine Road to a particular commercial lot would create a severe safety hazard (not to mention a confused commercial development and an eyesore). Each of the four groupings of commercial lots should be limited to only one point of ingress and one point of egress. **The ACC would be doing this community a great disservice if they approved any building plans that did not conform to a preplanned, pre-approved, and well-controlled ingress and egress design.**

#### **TRASH PICK-UP/COMMERCIAL DELIVERIES:**

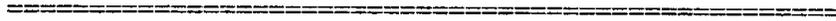
It is assumed by some that the thin strips of property along the side of and at the rear of each commercial grouping are available for use as alleyways for trash pickup and delivery. That assumption is incorrect, as that property is all privately owned by a third party, and any use of said property must be by virtue of a written agreement with that third party. The Tonto Hills ACC/Board should be aware of this and should not approve any construction proposals that do not either; a). have alternate plans for trash storage, trash pickup, and deliveries for their property, or; b). show written agreement for the use of those strips for that purpose.

Even if written agreement for the use of those strips as alleyways is provided, the ACC/Board should be aware that the side strips are only twenty feet wide and that such a narrow strip is more than likely insufficient to allow large delivery and trash vehicles to maneuver. Unless alternative

plans are made, garbage and delivery vehicles may be forced to back out of these alleyways onto the street. That is illegal and dangerous.

One more point about these narrow strips of land to the side and rear of each commercial grouping. They currently are unimproved, raw, dirt, immediately adjacent to eight of our residential lots. Even if the commercial owners reach an agreement for the use of these strips as alleyways, should not these alleyways be screened from view and paved before use? If that is not required, the value of the eight adjacent lots would certainly be reduced.

In short, the "alleyways" (or lack thereof) to the side of and behind the commercial lots are a catastrophe waiting to happen and could easily affect the viability of the commercial area as well as the health (dust), safety (ingress and egress to our subdivision streets) and lifestyle of others working and living in Tonto Hills. It would be irresponsible for the ACC/Board not to consider the use and improvement of these strips when reviewing building applications in the commercial areas.



The above are only a few of the steps that the Tonto Hills elected officials should be expected to take in order to protect themselves and the property owners who elected them. All that is being asked of these individuals (individuals in whom we all have placed our trust) is that they aggressively enforce the restrictions that the Association adopted, that they help assure that normally accepted construction techniques (i.e. overall drainage plans, controlled ingress and egress, etc.) be adhered to, and that county regulations be followed. That is not asking too much.

(It should be noted, however, that the owner of the yellow areas has no intent of landlocking any of the commercial properties. Upon request, access easements will be granted off of Kachina Road and La Plata Road to the back side of the commercial lots. This will be a restricted easement for ingress and egress only.)

NOTE: The above is a rough sketch of the commercial area. Those areas shaded in yellow are privately owned (by a third party who does not own any of the commercial lots) and are not available for use by the owners of the commercial lots unless and until written agreement is reached for such use.

