

**Tonto Hills Improvement Association
42033 North Old Mine Road
Cave Creek, AZ 85331**

March 31, 2005

Tonto Hills Commercial Lot Owners

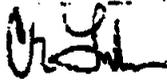
Gentlemen:

Construction was recently commenced on the first building on a commercial lot in Tonto Hills. The THIA Board of Directors would like to take this opportunity to remind all commercial lot owners of an amendment to the THIA Declaration of Restrictions (Docket 3667, Page 259) duly approved by the Association in 1988. This amendment, copy enclosed, particularly restricts Tract F (Lot 229), Tract G (Lot 230A & 230B), Tract H (Lot 231 A, C, D and E), and Tract J (Lot 232) for use as driveways and parking areas in connection with their specified lots.

It is the interpretation of the THIA Board of Directors and The Architectural Control Committee that this amendment confers the right of communal use of the designated driveways and parking areas by the adjacent lot owners on an equal basis.

This interpretation will be utilized in the evaluation of building plan approval by the ACC on commercial lots.

Yours sincerely,



Eric Luker, President
Tonto Hills Board of Directors

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April 13, 2005

LETTER HASNT BEEN
SENT

Mr. J. Richard Smail
P.O. Box 5102
Carefree, Arizona 85377

Re: Tonto Hills Improvement Association

Dear Richard:

At your request I have reviewed the Declaration of Restrictions and Amendment to Declaration, together with the March 31, 2005 letter from Mr. Eric Luker, President of the Tonto Hills Board of Directors.

You requested that I opine on that portion of Mr. Luker's letter that states:

" this amendment confers the right of communal use of the designated driveways and parking areas by the adjacent lot owners on an equal basis."

Mr. Luker's statement is not valid as a matter of law. The Amendment he refers to merely states that the Tracts are for use as driveways and parking in connection with designated lots that abut such tracts. There is no provision, express or implied, in either recorded document that the Tracts are to be utilized for the "communal" use of the various owners of the adjacent lots. Mr. Luker's desire to read this nonexistent provision into the recorded documents is not permitted under Arizona law.

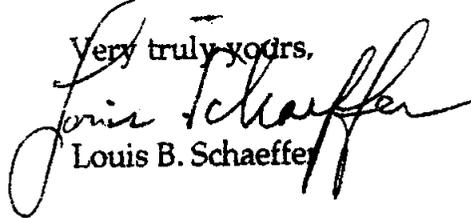
Furthermore, there are different owners of the commercial lots and the commercial tracts. It is incumbent upon each owner of a commercial lot to negotiate with the owner of the adjacent tract for ingress/egress, parking, and architectural conformity. The Tonto Hills Board of Directors is fully aware of this ownership disparity inasmuch as it collects assessments not only from each commercial lot owner but also imposes a separate assessment on each tract.

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Arizona case law is clear. Words in a restrictive covenant must be given their ordinary meaning. Words themselves, within a restrictive covenant, are the primary evidence of the meaning of such words. Absent ambiguity, restrictive covenants will be enforced according to their terms. Ambiguity in terms of restrictive covenant or intent of parties will be resolved against the restriction. (citations omitted).

The original grantor of the Tonto Hills subdivision did not provide a communal sharing of the tracts. Forty-four years later, the current Board cannot choose to restrict the use to be made of each tract. In other words, the Board cannot change the meaning of the Restriction on its own. Clearly, no court would accept the Board's interpretation.

Secondly, you asked if the Restrictions preclude parking on a commercial lot? The answer is clearly no. Nothing in the Restrictions precludes parking on any of the commercial lots.

Very truly yours,

Louis B. Schaeffer

LBS:gms