

**From:** Erin McManis emcmanis@mulcahylawfirm.com  
**Subject:** RE: Tonto Hills  
**Date:** July 2, 2014 at 11:30 AM  
**To:** Richard Grady richardggrady@gmail.com  
**Cc:** Beth Mulcahy BMulcahy@mulcahylawfirm.com

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Hi Richard,

We will respond to your questions, but I wanted to clarify the question in our email. I meant that all Owners should be a current Owner at the time the ballots are submitted for final tabulation or when the vote closes –that should have been more clear. If someone submitted a vote 8 months ago, but the lot sold before voting closes/Declaration is recorded and they are no longer the current owner, it is our opinion that Owner should not be counted in the vote tabulation. However, the Association could try to obtain a vote from the current Owner.

We will make sure that any communication is directed to the Board, and we'll respond to your additional questions.

Sincerely,

Erin McManis, Esq.



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**From:** Richard Grady [mailto:richardggrady@gmail.com]  
**Sent:** Wednesday, July 02, 2014 9:50 AM  
**To:** Erin McManis  
**Cc:** Beth Mulcahy  
**Subject:** Re: Tonto Hills

From: **Erin McManis** emcmanis@mulcahylawfirm.com   
Subject: RE: Tonto Hills  
Date: July 7, 2014 at 2:18 PM  
To: **Richard Grady** richardggrady@gmail.com  
Cc: **Beth Mulcahy** BMulcahy@mulcahylawfirm.com

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Hello Richard,

In response to your additional questions, I believe it is fine to have a management company oversee the ballot count. However, just like any activity the Board delegates to a vendor, the Board is still ultimately responsible and there should be some oversight. For example, at the end of the ballot count/tabulation, the ballots/tally sheet should be made available to the Board for review.

Paragraph 1(h) of the Declaration does address voting rights and sets forth as follows:

“Any owner or co-owner of property for which full payment of assessment is delinquent shall be a member ‘not in good standing’ and shall be denied voting rights.”

However Paragraph 3 regarding Declaration amendment states as follows:

“These covenants and restrictions are understood to be for the benefit of all lot and tract owners in Tonto Hills. They may be changed in any way by votes of more than fifty percent (50%) of the property owners in Tonto Hills, allowing one vote for each lot and tract. Co-Owners may vote fractional votes if their written agreement on the fractional division is submitted to the Association in advance of the voting.”

The provision on amending the Declaration does not state the members voting must be in good standing. Therefore, it would be our opinion that in order to help protect the Association from a legal challenge the Association should allow all owners (whether delinquent or not) to vote on the Declaration amendment. Allowing all individuals to vote should also help the Association since the Association is having trouble obtaining enough return ballots.

If a Lot is owned in a Trust or corporate entity such as an LLC, that Lot is still entitled to a vote, so long as the person submitting a ballot has the proper authority. For example, in the case of an LLC or Corporation, the Firm would look up the corporation on the Arizona Corporation Commission to see if the person submitting a ballot was a Director/Manager/Officer, etc.

The properties owned by the Volunteer Fire Department are either Lots or Tracts that are being developed into Lots which is why we believe those Lots would be subject to the Declaration and entitled to vote. The Title company stated last week that it appears those Lots are subject to the Declaration; however, in order to be certain the Association would need to commission a Title Report from the Title Company which would cost approximately \$360. However, based on our analysis and the information from Title company, it is my opinion the Association should include the Volunteer Fire Department Lots in the Owner count.

If the Association would like for the Firm to verify the existing ballots please let me know. I recommend the Firm confirm that all individuals submitting a ballot are the current owner of a Lot (for example, the property may actually be owned only in the wife’s name but perhaps the husband submitted a ballot. In this case, the ballot would be invalid). This way the Association will know exactly how many additional

ballots are needed for the amendment to pass. Thank you.

Sincerely,

Erin McManis, Esq.



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**From:** Richard Grady [mailto:[richardggrady@gmail.com](mailto:richardggrady@gmail.com)]  
**Sent:** Wednesday, July 02, 2014 9:50 AM  
**To:** Erin McManis  
**Cc:** Beth Mulcahy  
**Subject:** Re: Tonto Hills

Thanks for the response. This brings up numerous questions, but to start I'd like to focus on some clarifications relative to the basis of the vote. Before we can decide where to go from here seems that should be the starting point.

- First no Management agreement exists between CES and THIA ( that I am aware of or have been shown ) we are a self managed association. So no discussion, questions etc to from the law firm should occur without copies to the the THIA President. CES is contracted to perform accounting work under the direction of the THIA Treasurer. CES was contracted to perform vote processing at the AGM and for this D&R vote. Which leads to this question:
- The vote process was handled with an assumption that no board member could be involved in handling of ballots, counting etc — is that the necessary and appropriate process?
- Even if that is the appropriate process does that extend to the responsibility to determine the basis i.e.. the number of eligible voters. In this process CES seems to have done that without any communication to the THIA Board, is there any reason the Board should not more actively oversee and approve steps taken by CES in the vote handling?
- I have highlighted in red two paragraphs in your memo that appear conflicting - specifically

There might be some paragraphs in your memo that appear concerning specifically is eligibility determined by ownership at the point the ballot is cast or some other time ( I noticed we had a vote from a person who is now deceased ) if this in fact can be a “moving” process how is it handled -ie lot 1 is voted by current owner then months later a new owner votes again?

- The D&R’s 1.h seems to exclude from voting and I assume therefore the basis any member not in good standing i.e. back dues — we have a number of the lots in that status but I see no reference to how those were handled.
- Since we have commercial owners, LLC owners, Trusts etc - why would they be allowed to vote but THVFD and THDWID who own lots be denied voting ?

In terms of going forward I’m not sure what we will do but clarification of these items would be helpful in making that decision.

Thanks.

On Jul 1, 2014, at 4:11 PM, Erin McManis <[emcmanis@mulcahylawfirm.com](mailto:emcmanis@mulcahylawfirm.com)> wrote:

Hello Richard,

We can offer you our preliminary analysis below, but please know that we need to confirm some additional information with a Title Company (as set forth herein) so our opinion may change, but we should have the information from Title later this week. However, it appears that the Association does not have more than a majority voting in favor of the amendment, but the Association can still solicit votes from the membership.

As you know, Pursuant to paragraph 3 of the Declaration, the Association needs the votes of more than 50% of the property owners within the Association. Paragraph 3 states as follows:

“These covenants and restrictions are understood to be for the benefit of all lot and tract owners in Tonto Hills. They may be changed in any way by votes of more than fifty percent (50%) of the property owners in Tonto Hills, allowing one vote for each lot and tract. Co-Owners may vote fractional votes if their written agreement on the fractional division is submitted to the Association in advance of the voting.”

The Association’s Declaration ( Recorded 1988-046577) sets forth the Association is comprised of the following: Lots 1 through 223, and Tracts A, B, C, D, E, F, G, H, and J. Additionally, the Association’s Plat Map (Recorded at Book 93, Maps page 5) depicts 223 individual Lots as well as Tracts.

The Association, through its management company had a record of 231 Lots within the Association which was the count used for the ballot. However, Maricopa County Assessor Office shows 240 Owners when you perform a search of the Association (printout attached). It is important to know how many Lots/Owners are in the Association to determine how many votes the Association needs to obtain more than a majority. (Please know that an amendment to the Association’s Declaration that was recorded at Document No. 2001-0617677 list there were 240 Owners but that does not appear to be accurate as set forth herein)

It appears that some of the Tracts within the Association were purchased and are currently being developed as Lots which is why there are more than 223 owners within the Association. Although there are 240 Owners listed on the Maricopa County website, we were able to determine that two of those listed are not actual Owners. There is a Water District and Utility district that is listed on the Maricopa County webpage that are not actually Owners. There are three Lots that are Deeded in the name of Tonto Hills Volunteer Fire Department that appear to actually be Lot Owners. However, I am confirming with a Title company whether these owners are subject to the terms of the Declaration. Therefore, based on our preliminary analysis, it appears there are 238 Owners within the Association. Therefore, to have more than a majority the Association needs to have 120 votes.

Last week, your manager asked the Firm's advice whether the Association can proceed with an amendment even though the ballots were initially distributed approximately two years ago. The Firm relayed that the passage of 2 years could give rise to a legal challenge (although very remote), but it was our opinion that all owners submitting a ballot must be current owners at the time the ballot is submitted.

Your management company conducted the voting process and collected 108 yes votes that were current owners. However, the management company identified an additional 8 ballots that voted yes but they were no longer current owners so they were excluded from the tabulations.

Please know that everything is very organized from your management company, but the Firm did not confirm the ownership of any of the ballots. In terms of the next steps proceeding forward, I recommend the Firm confirm that all individuals submitting a ballot are the current owner of a Lot (for example, the property may actually be owned only in the wife's name but perhaps the husband submitted a ballot. In this case, the ballot would be invalid).

Once we confirm all owners submitting a ballot we will be able to know exactly how many more votes are needed to reach more than a majority. It appears that the Association needs 120 votes to have more than a majority, but that information may change based on the information I receive from our Title Company.

The Firm would be able to have all ballots verified next week and then if the Association needs additional ballots returned, the Association could send the ballot/letter to those individuals that have not returned a ballot. It would appear the Association is very close to obtaining the requisite number of signatures so most likely with about reminder to the membership you will obtain the required amount.

I will contact you again once we have received the additional information from the Title company but please let me know if you have any questions.

Sincerely,

Erin McManis, Esq.

<image001.jpg>

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