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SENT VIA EMAIL ONLY: richardggrady@gmail.com

To: Board of Directors
Tonto Hills Improvement Association

From: Beth Mulcahy, Esq.

Date: May 2, 2014

Re: Follow-up Questions from April Board Meeting

As you know, I am general counsel to Tonto Hills Improvement Association (“Association”). On April 24, 2014, I met telephonically with the Board of Directors (“Board”). The Board had some follow-up questions from that meeting which is addressed in this memo.

1. Set Back Requirements—Commercial Parcels

While the Association is located within the City of Cave Creek, the zoning codes applicable to the Association are the Maricopa County Zoning Codes. This was confirmed by speaking with the Planning Division of both Cave Creek and Maricopa County.

Please know that the set-back requirements can vary depending on the specific parcel. An Owner would need to confirm the specific set-back requirements for each specific parcel. I can also confirm that information at the Firm; however, before I undertook that expense I wanted to confirm that information with you. However, I have confirmed the ‘general’ set-back requirements for the commercial areas by confirming with the Maricopa County Zoning Ordinances (Chapter 8, Section 804.4) and by speaking with the Planning/Zoning Department at Maricopa County. However, as set forth above, each specific parcel could be different based on different factors such as proximity to residential parcel. However, the general Commercial Zoning setbacks for a property classified as C2 are as follows, which was confirmed by the County Planning Departments preliminary review of the area encompassing the Association:

- 10 foot setback on the front and side Lot
- 10 foot setback on the side of the Lot

2. Parking Requirements for Commercial Lots Pursuant to County Regulations

Pursuant to Maricopa County Regulations, the minimum required number of parking spaces will depend on the specific use of the building as well as the square footage of the building. Enclosed with this letter is the pertinent section of Chapter 11 of the Maricopa County Zoning Ordinance which addresses parking. Most likely, the commercial buildings that would be developed will fall under the Office and Commercial Uses of Section 1102.1.14 of the Ordinance which is parked on the enclosed documents. I've also enclosed the additional parking regulations set forth by Maricopa County Zoning Ordinances.

3. Potential Conflict of Interest

It is my legal opinion that it is a conflict of interest for a member of the Architectural Committee that owns Lots potentially being developed for commercial purposes to participate and vote in matters that would directly impact him personally. However, Arizona's Non-Profit Corporation Act would prohibit a Director from voting on the issue, but a Committee member is not a Director and therefore Statute does not prohibit the Committee Member from voting. However, I do not recommend a Committee member vote on issues that would impact his personal interests.

4. Ownership of Parcels 219-12-229 and 219-12-230A

The Maricopa County Assessor's Office shows both of the above parcels Owned by The Greenbelt at Tonto Hills, L.L.C. It is my legal opinion that ownership is determined by the recorded deed and therefore this L.L.C. is the legal owner of the parcels.

5. Complaint Procedure Clarification

The Board of Directors asked for clarification regarding complaint procedures/violation letter procedures in light of the fact that the Association is NOT a Planned Community. Unfortunately, Arizona's Non-Profit Corporation Act does not have specific provisions that would apply and therefore, the Association would need to adhere to any procedure that is set forth in the governing documents. I recommend the Association revise its documents to specifically allow for the Association to levy monetary penalties for violations of the governing documents.

6. Architectural Control Issues

The Association is concerned about eyesores developing at gates resulting from interior Lots developing access easements. It is my opinion that Section 1 of the Association's Declaration gives the Association broad authority in regulating any structure that is

commenced which would govern this situation. Section 1 states as follows: “No Structure of any kind shall be commenced, placed, or architecturally modified in Tonto Hills until the design, location and kind of materials to be used therein have been approved by a majority of the Architectural Control Committee.

7. Parking Allowances in Declaration

The Association’s Declaration was amended at Docket 3667, page 259, official records of Maricopa County. This Amendment addressed parking within the area that will be developed for commercial use. Paragraph 17(h) of the Declaration is amended as follows:

“ (h) The Sections created by the designated as Tracts F, G, H and J, are particularly restricted for use as driveways and parking areas for use in connection with the lots as follows:

Tract F for Lots 201 through 208 inclusive,
Tract G for Lots 209 through 212 inclusive,
Tract H for Lots 213 through 218 inclusive,
Tract J for Lots 219 through 223, inclusive,”

It is my understanding these Lots are not developed and therefore parking is not being utilized on these tracks and the Association would like to know how to interpret this provision. Specifically, whether the above referenced Tracts are designated parking for specific Lots or whether the Tracts can be utilized for parking by the community as a whole. It is my legal opinion that the parking on the Tracts is limited to the Lots set forth in the Amendment. For example, the only Lots that could utilize parking on Tract F are Lots 201 through 208.

Please know that any parking utilized by the commercial lots must also coincide with County restrictions.

8. Foreclosure

The Association requested to know if there was a specific statute that would allow for the Association to foreclose on its assessment lien. As the Association is not a Planned Community, there is NOT a specific statute that would address foreclosing on an assessment lien. However, Section 1(f) of the Declaration sets forth that the Association shall seek property liens to secure all delinquent payment of assessments but such liens shall be subordinate to existing mortgages.

As the right to place a lien is set forth in the Declaration it is my legal opinion the Association could also seek to foreclose the assessment lien. Prior to initiating any

foreclosure action we would request a Title company prepare a litigation guarantee to determine the Association's lien priority.

The more effective way to recover past due assessments will most likely be to initiate a breach of contract action and pursue the owner personally for the past due amounts owed the Association.

Please let me know if you have any questions; thank you for the opportunity to represent the Association.

MARICOPA COUNTY ZONING ORDINANCE

Chapter 11 – General Regulations

SECTION 1101. APPLYING GENERAL PROVISIONS

The regulations set forth in this Chapter qualify or supplement, as the case may be, the zoning district regulations appearing elsewhere in this Ordinance.

SECTION 1102. PARKING REGULATIONS^{*20, *31}

ARTICLE 1102.1. MINIMUM REQUIREMENTS: There shall be provided parking spaces for each use on a lot based on the following chart: ^{*8}

USE	MINIMUM PARKING SPACES
1102.1.1. - Residential Uses:	
1. Mobile Home and Travel Trailer/RV Park	One per approved space + spaces to meet the needs of any commercial, office or public assembly
2. Single-family (includes mobile homes on owned lots)	Two per dwelling unit
3. Multiple-family	Two per dwelling unit ^{1&2}
4. Fraternities and Sororities	One and one-half per each sleeping room ²
1102.1.2. - Public Assembly Uses: ²	
1. Schools, public, private and charter ^{*31}	One per 400 square feet of floor area
2. All other public assembly uses	One per 200 square feet of floor area
1102.1.3. - Hotels, Motels, Guest Ranches and Resort Hotels:	One per sleeping room + spaces to meet the needs of any commercial, office or public assembly ²
 1102.1.4. - Office and Commercial Uses:	One per 250 square feet of floor area + one per 5,000 square feet of outside display area; and + one per 100 square feet of outdoor seating area; and + four per golf course green ²
1102.1.5. - Industrial, Wholesale and Manufacturing Uses:	One per 600 square feet of floor area ²

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Chapter 11 – General Regulations

- 1102.7.2. For **one** single-family dwelling unit or **one** mobile home on a lot of record, any parking area must be paved or in the alternative surfaced with ABC material.
- 1102.7.3. Parking spaces, aisles, and driveways shall be so arranged as to require ingress and egress from the lot to a street by forward motion of the vehicle. ³
- 1102.7.4. Parking spaces shall be designed so that vehicles exiting there from will not be required to back onto or across any sidewalk or street. ³
- 1102.7.5. Adjacent to any rural or residential zone parking areas shall be screened from view, except when separated by a public street. ³
- 1102.7.6. Any lights used to illuminate parking spaces shall be so arranged and screened as to reflect the light away from adjoining lots in rural or residential districts and from streets or from any residential use in commercial zoned districts. Such lights shall be in accordance with any adopted County Outdoor Lighting Ordinance and shall have a maximum height of **18 feet**.
- 1102.7.7. Parking areas shall be visually screened from abutting road right-of-way (excluding alleys) by a building or structure or a strip of landscaping at least **five feet** in width.*³
- 1102.7.8. Either a wall or a minimum **six inches** high curb or bumper guard shall be installed to ensure that no part of a parked vehicle shall extend past any property line.* ³
- 1102.7.9. Parking spaces shall be designated by striping. ³
- 1102.7.10. The design of roads, pedestrian walks, and open spaces within parking areas are subject to approval by the Zoning Administrator and shall be arranged so that pedestrians are not unnecessarily exposed to vehicular traffic.³
- 1102.7.11. Paved and comfortably graded pedestrian walks shall be provided along lines of the most intense pedestrian use, particularly from building entrances to streets, parking areas, and adjacent buildings. ³
- 1102.7.12. Only **one** parking area entrance and **one** parking area exit; or **one** combined parking area entrance and exit is allowed for a lot or parcel along any **one** street unless otherwise approved by the County Engineer.

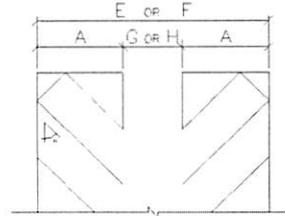
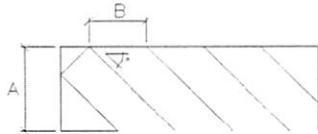
³ Requirement applies except for single-family dwellings, two-family dwellings, and individual mobile homes on a lot of record.

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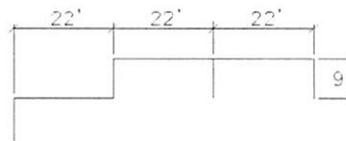
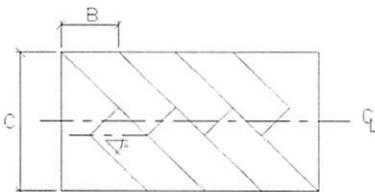
Chapter 11 – General Regulations

ARTICLE 1102.8. PARKING AREA DIMENSIONS: *34 Dimensions of parking spaces and access areas shall be in accordance with the following:

SEE PARKING LAYOUT GRAPHIC



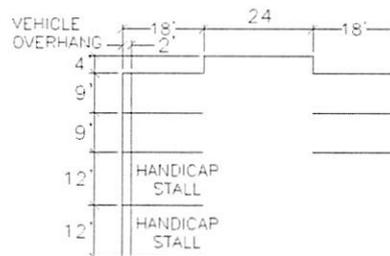
ANGULAR PARKING PATTERNS



PARALLEL PARKING

ANGLE PARKING

△	A	B	C	D	E	F	G	H
					ONE WAY AISLE	TWO WAY AISLE	ONE WAY AISLE	TWO WAY AISLE
30	16.8	18.0	25.8	12.9	45.6	51.6	12.0	18.0
45	19.1	12.7	31.8	15.9	51.2	58.2	13.0	20.0
60	20.1	10.4	35.7	17.8	58.2	62.2	18.0	22.0



90 DEGREE PARKING

ARTICLE 1102.9. ADDITIONAL PARKING REGULATIONS: In addition to the above parking requirements, the following requirements must be met:

- 1102.9.1. No Zoning Clearance shall be issued unless the required parking as indicated in this section is provided.
- 1102.9.2. Whenever a Zoning Clearance has been granted, the subsequent use of the property is conditioned upon the provision of the parking spaces contained in the approved plans.

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Chapter 11 – General Regulations

- 1102.9.3. No addition or enlargement of an existing building or use shall be permitted unless the parking requirements of this Ordinance are met for the entire building or use.
- 1102.9.4. The parking or storage of a non-accessory vehicle except for normal deliveries having a gross vehicle weight greater than **10,000 lbs.** on any lot in any rural or residential zoning district is prohibited. ^{*24}
- 1102.9.5. Not more than **three** unregistered or inoperable motor vehicles shall be stored on any lot or parcel of land within any rural or residential zoning district, and such unregistered or inoperable vehicles if stored out of doors shall be stored in other than the required front yard and such that it is visually screened by a solid wall or fence from any public or private street right-of-way unless stored within an attached carport. Such storage shall maintain a **five (5) foot** clear path around any structures. ^{*35}
- 1102.9.6. The use of any required parking area for motor vehicle repair work, or display, or sales of any kind is prohibited, and any required parking area shall be available for customer, patron, and employee parking at all time during normal business hours.
- 1102.9.7. Parking structures, which have no portion above grade, shall not be included in the calculation of lot coverage for the site.
- 1102.9.8. Off-street parking provided for employees of office or commercial or industrial uses requiring **50** or more spaces shall designate at least **10%** of the total number of parking spaces for use by car and/or van pools, and be clearly signed, reserved, and managed to that end.
- 1102.9.9. Off-street parking provided for employees of office or commercial or industrial uses requiring **100** or more spaces shall designate at least **15%** of the total number of parking spaces for use by car and/or van pools and be clearly signed, reserved, and managed to that end; and shall design and construct convenient facilities in order to secure bicycles; and shall design and provide for needed transit facilities, such as, but not limited to, park and ride parking spaces and transit stops and shelters as determined by the Regional Public Transit Authority; and shall provide to the Maricopa County Trip Reduction Office, plans and programs to reduce total vehicle trips in conformance with the State of Arizona and Maricopa County goals, policies, regulations, and plans.
- 1102.9.10. For those large scale developments that include one or more regulation golf courses and which propose to use golf carts to meet some of the transportation needs, **one** of the **two** required parking spaces for single-family and multiple-