

# Tonto Hills Improvement Association

President: Michael Jans  
Vice President: Nancy Nelson  
Treasurer: Kathleen Kuchta  
Secretary: Diana Cole

## **THIA ACC Meeting November 9th 2022 6:30 PM THVFD Firehouse & ZOOM**

### **I. Call to Order**

The ACC meeting was called to order at 6:44 PM on November 9th 2022. Bud Tolp called the meeting to order. Committee members present; Bud Tolp, Gil Stedman; Rick Nelson, Robyn Baker, Jim Gibbs and Mark Laliberte via ZOOM. Members present Steve Rensel, Robert Tattle, Via ZOOM; Nick Tilley, Pam Gutierrez, Kris Kiriazov, Keith Pierce, Deborah L, and BORK.

### **II. Opening Comments**

Mr. Tolp had no opening comments and asked if any member wish to address the Committee. Mr. Rensel requested an open forum to expressed a concern that litigation was threatened against the owners of Lot 54 because of additional liability to the community, the belief of previous variances granted, asked about the Association insurance coverage, ACC granting of variances, and other miscellaneous questions.

Mr. Tattle stated as a previous ACC member, he was not aware of any variances ever being granted. He also asked about the ACC's position on requirement to revegetate a lot if work is suspended? He also asked why, if County setback were the same as the DofRs. Mr. Tolp said the ACC hoped the Lot 54 issue could be resolved and that would not become an issue. He also stated the DoR setbacks were restrictions were more restrictive than the County's partly because of a corner lot.

Mr. Tolp reminded Mr. Rensel that the ACC cannot and does not grant variances. That is the Board's authority, the ACC only makes recommendations. He reminded Mr. Rensel the responsibilities and duties of the ACC. With respect to Mr Rensel's concern of community liability and insurance coverage, it was suggested that he address that concern to the Board of Directors.

In response to Mr. Rensel's claim that the ACC did not consider potential litigation risk, Mr. Nelson stated it was because of those concern a setback variance recommendation was not made. As just 6 months ago, another corner lot owner's put the lot up for sale and allowing Mr. Tilley's request would have exposed the Association to risk.

### **III. Approval of Consent Agenda**

Robyn Baker moved to accept the meeting agenda, Bud Tolp 2nd the motion passed 6-0-0.

Rick Nelson moved to accept the October 2022 meeting minutes held on 5th & 12th, Robyn Baker 2nd the motion passed 6-0-0

### **IV Old Business**

1. Response to Lot 54 claims of previous variances and out of compliance approvals.

- Mr. Tilley submitted examples suggesting claims of variances and violations at the August ACC meeting. Mr. Nelson read into the minutes ACC response and the Lot 54 summary timeline narrative from past meetings. See text at end of these minutes.

## 2. Addendum A Revision

- It was the opinion of the Committee that the revisions to Addendum A concerning Perc Test, Dark Sky, and Project Notice for Neighbors were ready to be submitted to the Board for review and consideration for approval.

## V, New Business

### 1. Complaint from Lot 125 against Lot 65

- A complaint, received by the Board and referred to the ACC, alleging a violation of DofR paragraph 6 concerning modular homes or construction. Mr. Laliberte, as the owner of Lot 65 has recused himself from this decision.

Mr. Nelson began by stating his opinion that paragraph 6 was intended to prohibit mobile homes, sometime referred to as ‘tornado magnets’, or multiple modular unit bolted together. The DofRs., written 40 years ago, in a time when multiple truck loads of construction lumber were placed on site for construction. The literal enforcement of this paragraph would require the ACC to declare homes construction after approximately 19900 to be in violation. Because they all were built with prefabricated roof truss competes and erected on site.

Mr. Tolp stated the processes of the construction industry have evolved and that the ACC has approved numerous projects that used prefabricated truss or wall panel components. The ACC reviewed the plans for Lot 65 and approved them. It was not a modular home. Unlike a modular home built offsite and trucked in, its has a foundation with retaining walls because of the challenging grade. He does not see a violation of the DofRs. The complaint seems frivolous and given the timing of the complaint, questionable.

Mr. Rensel asked if the DofRs refer to modular or temp? Ms. Baker read the paragraph for Mr.s Resell, “No residence shall be erected except by onsite construction; mobile home or prefabricated modules are prohibited.” She agreed with comments from previous Committee members that there was no violation. She also stated factor cut lumber, using laser measurement more accurately meets the tolerances of the plans. Because of the danger, no one wants extensive cut on site. She also stated the opinion that factor made pre-hung doors are no structural wall units and not a violation.

Mr. Nelson moved that the complaint by the owner of Lot 125 against Lot 65 concerning DofR paragraph 6A has no merit, Gil Stedman 2nd, motion passed 5-0-1.

Mr. Tattle suggested that the DofRs be amended to reflect current construction practices.

## 2. ACC funds, source and disposition

During the November THIA Board meeting the Treasurer stated there was \$2,000 in the ACC account. When the procedure requiring construction deposits were removed from Addendum A ,

all monies should have been returned to the property owners. The Treasure had no record of who was owed. She ask the ACC for help to identify the source of these monies.

3. Electronic storage of approved plans

Mr. Nelson suggested the Committee look into the feasibility and cost of storing approved plan electronically. The locker is full of paper plans and older previously approved plans are not currently held by the ACC.

4. Request from Mr. Englund, Lot 78, to be placed on the agenda for the next meeting for final approval of his plans.

**VI Project Tracking Sheet**

Mr. Gibbs reported the continuing effort to update the database,

VI. Adjourn

Rick Nelson moved to adjourn at 8:15 PM, Robyn Bake 2nd, motion passed 6-0-0.

**VII. Executive Session (If necessary) - None**

## ACC Response Concerning Lot 54 Claims of Past Variances and Violations

**Summary** - First, the Committee acknowledges Mr. Tilley's email of November 8th. He has stopped work on the lot and is asking for a delay in further action while his builder looks at ways to fit the design within his lot's required setback area.

However, Mr. Tilley continues to state; "many lots here in Tonto Hills (including past/present lots of THIA & ACC board members) are technically in violation of the setback requirements." There is no such thing a "technical violation". THIA either finds an owner is in compliance or in violation. There is no record of any past or current BoD or ACC member found to be in violation the setback requirements. **While individuals are free to claim what ever they wish, saying doesn't make it so.**

The situation between Mr. Tilley and THIA has attracted a lot of attention. I think it's important the Community be knowledgable of what has occurred. That includes Mr. Tilley's 5 terms as an ACC member enforcing at least 9 cases of the setback requirements he says discriminates against him, claims of variances granted, and the design choices he has made.

The following is a summary of ACC meetings with Mr. Tilley on his home design for lot 54. All the information provided are contained in minutes posted on the THIA web page.

First, the DofRs paragraph 9 states "No building of any kind shall be placed, erected, or permitted to exist within **fifty (50) feet of the front or street side** of any residential lot."

Second, the repeated efforts of the ACC to remind Mr. Tilley of the requirement and suggestions of possible alternatives.

Third, his assertions of bias or discrimination and misleading claims of variances or noncompliance using aerial photos home sites.

Finally, his choice of a building design which do not factor Tonto Hills DofRs and terrain.

## **ACC Meetings Minutes Summary on Lot 54**

**4 May 2022** - Pre-design meeting. Mr. Tilley stated he had a concept rendering of the new residence that he said would meet the DofR requirements.

**1 June 2022** - Initial preliminary design meeting. The initial site layout was presented. His plan showed the setbacks to be 40' on both LaPlata and E Quail Ln. Lot 54 is a corner lot and per the DofRs, the required street side setbacks are 50'. This is in accordance with paragraph 9 and records show approved plans on file for all corner lots built in the last 5 years meet the required setbacks.

**29 June 2022** - Second preliminary design meeting. Mr. Tilley stated the plans as shown, were the only way to fit the design to the lot. The front setback on LaPlata was very close to 50' but the setback on E Quail Ln was just over 40'. The Committee again reminded Mr. Tilley that the THIA DofRs require street side setbacks of 50' on a corner lot.

Mr. Tilley provided county aerial images that show corner lots where structures appear to intrude into the setbacks (see aerial photogrammetry discussion below). The Committee suggested Mr. Tilley consider changing the front to E Quail Lane, thus making the side setback (Cave Creek Rd) setback 25' thus space to move building east. Mr. Tilley said he would look one more time at alternatives but thought the costs would be too high. He anticipated he would request a variance to the setback requirement.

Note: Mr. Tilley subsequently asked the THIA BoD for a variance to paragraph 9 of the DofRs. The Board declined to grant variance.

**5 October 2022** - Mr. Tilley presented design plans approved by the County. The street side setbacks were now 50 and 40 feet. Mr. Tilley was again reminded of the DofR Paragraph #9 which states, "No building of any kind shall be placed, erected, or permitted to exist within **fifty (50) feet of the front or street side** of any residential lot."

Mr. Tilley also provided a brochure he characterized as examples of properties that are out of compliance or approved variances to the DofRs. Since Mr. Tilley said he was not lodging a formal complaint, per THIA Bylaws, the ACC could take no action. Mr. Tilley also claimed the DofRs are poorly written and vague. Mr. Nelson pointed out that amongst all the vague language, there is nothing more definitive than the wording of Paragraph 9. **Mr. Tilley was reminded that even if existing structures approved by previous ACC are out of compliance by accident or intent, Paragraph 4 of the DofRs state that the current Committee must follow the existing rules.**

**12 October 2022** - This is a continuation meeting of the October 5th ACC meeting. Bud Tolp reiterated the ACC process must follow its procedure detailed in the DofRs, Bylaws, and Addendum A of the Bylaws. Mr. Tilley's plans were again not in compliance with the setback requirements. The ACC voted not to approve the plans.

**Historical Record of ACC Paragraph 9 Decisions  
Taken from published and posted ACC minutes**

At various meetings, Mr. Tilley has stated that DofR paragraph 9 variances had been granted and made claims of bias and discrimination against him. Below is a list of ACC reviewed projects concerning setbacks. Published minutes show Mr. Tilley served 5 terms as a member of the ACC and was involved in these decisions. The Committee required each of the lot owners to adhere to the same requirement Mr. Tilley ignored.

March 2014	Lot 172 Owner told to change plans to conform to setbacks.
May 2014	Lot 172 Setback issue still needs to be changed.
August 2014	Lot 102 ACC stated the setback requirements.
September 2014	Lot 7 Change plans to conform to setback, 11/14 ok'd on 3rd try,
October 2014	Lot 41 Submitted plans had setback issues, no build.
December 2014	Lot 191 Adjust plans to meet setbacks, approved April 2015.
January 2015	Lot 172 Move retaining wall within setback, approved December 2019.
May 2015	Lot 57 Change plans to conform to front and side setback.
August 2015	Lot 57 Stop construction order, plans approved November 2015.
October 2015	Lot 174 Change plans to conform to setback ( <b>structure moved 5'</b> ).
November 2018	Lot 111/112 prospective buyer told no variance to setbacks allowed.
December 2018	Lot 152 corrected setback of 10' for setback, redesign approved.
February 2019	Lot 135 revise plans to conform with corner setbacks, approved March 2019.

The owners of the above lots submitted initial plans the ACC deemed not in compliance with Paragraph 9. They were told to fix and resubmit. All owners either resubmitted plans that complied, at considerable cost to them, and were approved or dropped the projects.

Although there are no minutes available, Lot 83 also could not meet the setback requirements and the owner sold the lot. Just this year, the owner of Lot 38 was told the setback requirements could not be varied. There is no ACC or THIA official record stating any variance granted for Paragraph 9.

As referenced earlier, Mr. Tilley twice suggested other properties were not in compliance with paragraph 9. He stated he was not filing a complaint of these examples so there can be no THIA action. However, a quick review of building plans available to the ACC showed the examples Mr. Tilley cited had all been approved with plans showing proper setbacks as per paragraph 9.

Mr. Tilley used the Maricopa County GIS site tools to estimate the set-back distance. Maricopa County's photogrammetry method is not always registered to a known fixed position and that induces just one of the potential errors in measurement. The errors can actually be many feet. The Committee contacted the Maricopa County GIS Applications Supervisor via email to understand the accuracy of the aerial photos. He stated: "Our parcel maps are a representation of the recorded deeds and plats and should not be deemed engineering accurate." The raw imagery error can be 10 feet. Depending on the processing and display tool it can be much larger. See the email response from the Assessor's Office below.

### **Conclusions of ACC**

Mr. Tilley has owned his lot for at least ten years. As an experienced past member of the ACC, he has always been aware of the design challenges of Tonto Hills lots. Most Tonto Hills lots, because of the hillsides, active washes, and constraints of the DofRs, require custom designs specifically tailored to each lot. This is the main reason almost all Tonto Hills homes are custom designs and uniquely individual.

Mr. Tilley chose a different path. The NEXTGEN company has a unique approach to home design / building for metro Phoenix. They developed a range of home designs, obtained county pre-approvals and provided them as a streamlined approach to a home build. This set design allows no flexibility to change any aspect of the design without restarting the County review and approval process. The selected design does not fit the unique terrain features of Tonto Hills and with the DofR requirements.

At every step in the process Mr. Tilley had a choice. He was reminded (even given his knowledge and history as an ACC member) of the setback requirements. He chose to ignore them. He chose a building plan that was not customized to the lot despite his familiarity with the challenges of building in Tonto Hills. And he knowingly chose to violate the DofRs despite the facts noted above.

RE: Photogrammetry Accuracy and GIS Measurement Accuracy  
Assessor PVP\_Help <PVP\_Help@maricopa.gov>  
To: You  
Cc: Assessor PVP\_Help

Thu 11/3/2022 9:09 PM

Hi Rick,

I don't know the exact specifications of the aerial photos but there are many factors that can affect the accuracy of the imagery. Each 5000' x 5000' tile is made up of multiple images which can be flown on different days depending on factors such as weather, shadows, flight planning, etc. Depending on location and available funding the images are captured at pixels size of 0.25 ft resolution to 0.80 ft resolution. These individual images are stitched together to form the delivered high resolution image. For display on the mapping website, we use a compressed image format which is then pre-rendered at 96 dpi. This can degrade the imagery from its native form. When the imagery is captured, the aerial vendor uses known control points to tie the images to the ground. In areas where ground control may be lacking, they can place GPS'd target panels to match up the images.

The flight capture specifies a 25-40% overlap between flight lines and as you move further out from the point directly under the camera it is possible for some distortion to occur. Most of this is corrected by sewing together the adjacent flight lines but it can still occur. Additionally, areas with severe elevation changes can cause distortion in the images.

The accuracy of the parcel lines can also depend on the age and accuracy of the survey, availability of control points, topography, and surrounding parcels. Our parcel maps are a representation of the recorded deeds and plats and should not be deemed engineering accurate. That said they tend to be accurate to a few feet in most areas. In some of outlying areas where the ground control may be less accurate, they can be off by 10 feet or more.

Regards,

David Minton, GISP  
Maricopa County Assessor's Office  
GIS Applications Development Supervisor  
<https://maps.mcassessor.maricopa.gov>