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Our File No. 215083

September 15, 2015

Board of Adjustment
City of Casa Grande
510 E. Florence Boulevard
Casa Grande, AZ 85122

**Re: TC Paramount, LLC
420 North Florence Street, Casa Grande, AZ 85122**

Dear Board of Adjustment:

I represent Deborah Martin in relation to that citation for encroachment dated July 20, 2015.

My client has asked that I present my client's position in writing and for that purpose I am writing to you and have attached to this letter two sworn Declarations. The first is by Mr. Marvin Davis, who is a licensed surveyor who was hired by my client to conduct a survey of my client's property, including the area that is the subject of the City's citation. (See attached Exhibit A.)

As you can see from his sworn Declaration, in order to carry out his duties as surveyor he investigated the public record to determine the location of the right of way the City has alleged my client has encroached. Mr. Davis's investigation did not uncover any recorded instrument by which the City could claim a right of way in the specific area in question. Since surveyors need to be professionally adept at finding such instruments it appears that the public record does not disclose any right of way to the area in question.

The second Declaration is by my client, Deborah Martin, the owner of the property to which the air conditioner mentioned in the citation, is attached. As you can see, when my client purchased the building twelve years ago the stand upon which the air conditioner sits had already been in place for some years. My client has continuously maintained a locked fence which enclosed this area for all of that time period so, unless the City has some recorded right of way my client would at a minimum have ownership by adverse position to the enclosed parcel. In

addition to going to the expense of hiring the surveyor, Mr. Davis, my client has requested a title report from her title company but has not yet received it. (See attached Exhibit B.)

It is my understanding that as of the date of this letter the City has not found any recorded instrument which would grant an alley a right of way of the type allegedly encroached by my client. The ordinance my client is alleged to have violated is **17.72.010 Use of land in violation prohibited**, which simply states, "No person shall locate, erect, construct, reconstruct, enlarge, change, maintain, or use any building or structure, or use any land in violation of this title." The specifics of the violation state, "You installed an air conditioner in the alley for your building without obtaining the require [sic] Right of Way Encroachment permit." (See Code Violation Notice & Order is attached as Exhibit C.) As I am sure you are aware, pursuant to City ordinance, the City has the burden of proof on appeal City ordinance 17.68.380B. Since it appears that no such alley right of way exists it is my client's position that this matter must be dismissed.

Please consider this letter and the attached Exhibits and Declarations as my client's motion to dismiss this matter.

Very truly yours,

STOOPS, DENIOUS, WILSON & MURRAY, P.L.C.


Thomas A. Stoops

TAS/ddm
Attachments As Stated
cc: Client

DECLARATION OF MARVIN DAVIS

I, Marvin Davis, declare as follows:

1. I am over 18 years of age and make this Declaration of my own personal knowledge. I am a licensed surveyor in the State of Arizona who has been surveying in th Casa Grande are afor 26 years.

2. I was hired to survey the real property at 420 North Florence Street, Casa Grande, AZ 85122, and in particular, the area which is alleged to have been encroached in the citation which referenced an air conditioner in the alley.

3. As part of the survey process I have relieed on current title reports and my investigation of recorded maps and plats of the downtown Casa Grande area, and investigated the public record to determine the location of the public right of way for the alley which the City of Casa Grande alleges has been encroached.

4. After an extensive examination of the public record I found no document that dedicates private property as right of way has been granted which applies to the area in question. There is no record of compensation having been paid and no dedication by the owners of the property to the City.

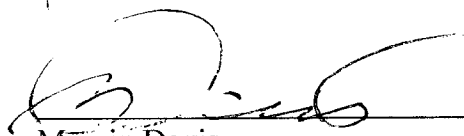
5. I noticed that the Johannessen and Girand show the first representation of alleys in the Downtown area mapping of the area were specific to note that it is "compiled" but not "certified" to be correct.

6. I understand that Deborah Martin has also asked that that the matter be investigated by her title company but I understand that there has been no report to date.

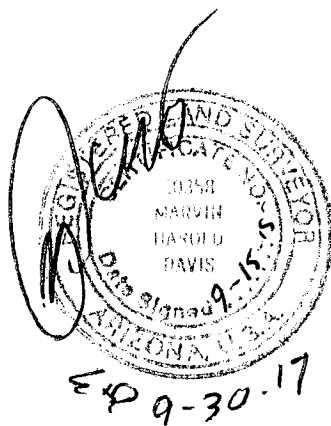
7. My conclusion is that there is no recorded instrument which purports to grant a public or private right of way for the area in question.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 15th day of September, 2015.



Marvin Davis



DECLARATION OF DEBORAH MARTIN

I, Deborah Martin, declare as follows:

1. I am over 18 years of age and make this Declaration of my own personal knowledge.
2. I am the owner of the property located at 420 North Florence Street, Casa Grande, AZ 85122.
3. I received a citation from the City of Casa Grande alleging that the air conditioner for the theater is located in an alley which encroaches on a right of way granted to the City of Casa Grande.
4. The air conditioner in question was there when I bought the property approximately 12 years ago.
5. The area in question has been fenced and the gate to the fenced area has been kept locked by me for that whole time.
6. When I bought the property I received title insurance which included insurance that the property did not violate any ordinances.
7. Since receiving the citation I have asked my title company to investigate whether the right of way I am alleged to have encroached exists but have not yet received any response.
8. I also engaged the services of a licensed surveyor, Mr. Marvin Davis, and asked Mr. Davis to investigate as part of this survey.
9. I am informed by Mr. Davis that he can find no record of a grant or dedication of a right of way, pertaining to the area I am accused of encroaching.

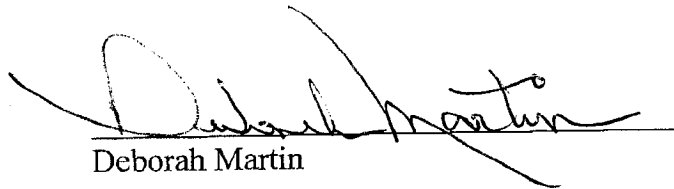
10. I have consulted with employees of the City of Casa Grande and have been informed that they have investigated the public record and to date they have not been able to locate any recorded instrument granting any alley right of way applicable to the area in question.

11. After the expenditure of quite a bit of time and money I have concluded that there is no right of way in the area which I am accused of encroaching.

12. While I fully understand that there has been a good faith misunderstanding by the City which simply assumed an alley right of way had been granted at some time in the past, this simply is not the case.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 15th day of September, 2015.


Deborah Martin



CODE VIOLATION NOTICE & ORDER

T C PARAMOUNT LLC
Attn: Deborah Martin (Trustee)
PO BOX 12586
Casa Grande AZ 85130

Ref: 420 North Florence Street

An inspection of the above-referenced property on **July 20, 2015** indicates that it is in violation of the following municipal code(s): **17.72.010 Use Of Land In Violation of Zoning**

Said violation is more specifically described as: **You installed an air conditioner in the alley for your building without obtaining the require Right of Way Encroachment permit. This is in violation of the Casa Grande City Code. I am directing you to contact City Planner Mrs. Blakeman to discuss this issue and to submit for the required Right of Way Encroachment Permit. Failure to comply by July 31, 2015 will result in me filing charges against you in the Casa Grande City Court.**

You are hereby ordered to take one of the following steps regarding this notice by **July 31, 2015**:

- 1) Remove the violation or otherwise bring your property into compliance.
- 2) Enter into an Agreement to Abate providing for additional time for compliance.
- 3) Apply for a variance if your violation involves a development standard (i.e., building setbacks, building height, number/dimension of parking spaces, etc.).
- 4) File an Appeal of this Notice to the Board of Adjustment.

Variance and Appeal applications may be obtained at the City Development Center or downloaded from the City website at <http://casagrandeaz.gov/dept/planning/planning-division/devforms/>

Failure to take one of the above referenced actions will result in additional code enforcement action, which may include:

- 1) Filing of criminal charges, which may result in fines/jail time.
- 2) Initiation of a civil lawsuit.
- 3) Direct abatement by the City which will involve the removal, or direct abatement, of the violation and billing the property owner or occupant for the costs involved.

Your cooperation in addressing this matter is appreciated. If you have any questions please feel free to contact me.

Jeffrey W. Palmer
Jeff Palmer, Code Compliance Specialist
jpalmer@casagrandeaz.gov
520.421.8637 x3180
Cellular: 520-251-3451

July 20, 2015 / 11:00 A.M.
Date/Time

Telephone: 520/421-8600 - Telefacsimile: 520/421-8602 - TDD: 520/421-8623
City Hall: 510 East Florence Boulevard - Casa Grande, Arizona 85122