

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-012503

09/18/2008

HONORABLE J. KENNETH MANGUM

CLERK OF THE COURT  
D. Glab  
Deputy

SUNRISE DESERT VISTAS PROPERTY  
OWNERS ASSOCIATION INC

DENNIS L HALL

v.

DIANE L KNELSON, et al.

CHAD ROBERT KAFFER

MINUTE ENTRY

Both sides have moved for Summary Judgment over the appropriateness of a five acre plot of land being subdivided into three lots for homes. Each lot has 71301 square feet, or 699 square feet less than the designated minimum of 72,000 (approximately 1 2/3 acres) required by the Homeowner's Association and the Declarations. When the Defendants learned of the deficiency, they went to the developers and obtained a signed "variance" that allowed the deviation. The explanation by the realtor is that the project provided for the sale of 16 parcels of 40 acres each, with the exception that the eastern most four parcels and westernmost four parcels each gave up 55' along the outer edge for the county roads (136<sup>th</sup> and 144<sup>th</sup> Streets).

Defendants' rely on the apparent or implied authority of the signatories to the variance to approve the deviation even though they no longer had authority to amend the Declarations because they had sold all of the 16 parcels and because they failed to follow the formalities of the Homeowner's Association meeting requirements. Plaintiffs also argue that it was not reasonable for Defendants to rely on the actions of the two developers instead of the vote of all the homeowners.

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The Court finds the actions of the Defendants were reasonable and that the variance was sufficient to validate the lot split. For example, the failure to maintain HOA meetings does not invalidate the actions of the signatories, as head of the HOA. Indeed, Plaintiffs do not object to the developers having authority to turn over the HOA to their successor as they did. The Court also finds that the intent of the developers was to allow the minor deviation of square footage and that the meaning of "easement" was subject to interpretation. Similarly, the fact that the variance is signed by the "Developer" as opposed to the "HOA" is not significant.

Accordingly,

IT IS ORDERED granting (by stipulation) so much of Plaintiff's Motion for Summary Judgment as seeks \_\_\_\_\_ of the validity of sec. 23 of the Declarations regarding excessive clearing as being neither too vague or ambiguous to be unenforceable.

IT IS FURTHER ORDERED denying the balance of Plaintiff's Motion for Summary Judgment.

IT IS FURTHER ORDERED granting Defendants' Motion for Summary Judgment but denying Defendants' request that Plaintiff's filing be disallowed for not being efiled.