

PHOENIX

1400 E. Southern Ave.
Suite 400
Tempe, AZ 85282-5691
T 480-427-2800
F 480-427-2801

TUCSON

35 E. University Blvd.
Tucson, AZ 85705-7736
T 520-744-9480
F 520-744-9402

PRESCOTT

1550 Plaza West Dr.
Prescott, AZ 86303-0001
T 928-443-0775
F 928-445-9220

ADDITIONAL OFFICES

Albuquerque
Santa Fe

NATIONWIDE

T 800-743-9324
F 800-743-0494

ATTORNEYS

James D. Atkinson III
Joshua M. Bolen
Kellie J. Callahan*
Scott B. Carpenter
Javier B. Delgado*
Alexis G. Firehawk
Armistead W. Gilliam†
James H. Hazlewood
Mark A. Holmgren
Ritchie H. Lipson
Chad P. Miesen
Jason N. Miller
P. Michael Nagle‡
Nikita V. Patel
Mark K. Sahl
Jason E. Smith
Lindsey O. Stearns
Geoffrey B. Wilhelmy

* Also Licensed
In New Mexico

† Of Counsel, Admitted
in Ohio & District
of Columbia

‡ Of Counsel, Admitted
in Maryland & District
of Columbia



CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Bolen, PLC
ATTORNEYS AT LAW

e-mail: james@carpenterhazlewood.com
direct: 480.427.2842

September 29, 2013

BY EMAIL (Bryan.Palmaioli@tcpm.net)

Board of Directors
Greenfield Homeowners Association
c/o Tri-City Property Management
760 South Stapley Drive, #3
Mesa, Arizona 85204

RE: Opinion regarding Irrigation Lines and Equipment

Dear Board members:

You asked us to review available information and provide an opinion about the ownership and control of the irrigation lines and equipment located on irrigation easements over owners' lots as called out on the plats for Greenfield. The irrigation water is supplied by the San Tan Irrigation District (the "District") from the Central Arizona Project (CAP).

There has been some confusion about whether the District, the Association, or the lot owners own the irrigation lines and equipment. This issue arose recently because the District has been diverting CAP water through the Greenfield irrigation lines for convenience – a way to get water to other areas. This is happening at times when Greenfield is not receiving its own irrigation water. The Association believes that the additional water flow puts pressure on its system and causes damage to its lines and equipment. There is an "overflow box" located on lot 8. This box has periodic repair problems. The Association would like to be able to tell the District that they cannot have access through the Greenfield system as a convenient bypass.

As a secondary issue, an owner of property outside Greenfield was asking to tie in to your irrigation system. The Association would like to know if it can legitimately tell the owner "no".



In preparing this opinion we have reviewed:

1. Plat for Greenfield Acres (phase I) recorded in Book 463, Page 15 in Maricopa County (“Plat I”).
2. Plat for Greenfield Glen (phase II) recorded in Book 495, Page 43 (“Plat II”).
3. Plat for Greenfield Acres III (phase III) recorded in Book 536, Page 29 (“Plat III”).
4. The Declaration of Covenants, Conditions and Restrictions for Greenfield Acres recorded in No. 98-0223859; Declaration of Amendment recorded in No. 99-0432991; Declaration of Annexation recorded in No. 99-0224604; Declaration of Annexation recorded in No. 2003-0507679 (collectively, “Declaration”).
5. Articles of Incorporation of the Association. (Nothing of relevance was located in the Articles.)
6. Bylaws of the Association. (Nothing of relevance was located in the Bylaws.)
7. Resolution 98-04 of the District, recorded in No. 2000-0296682 (“District Resolution”). This was located through a title search for related documents. See copy attached/enclosed.
8. By-Laws of San Tan Irrigation District (2010) (“District Bylaws”). See copy attached/enclosed.
9. “Welcome to San Tan Irrigation District” document from District website. (“District Homeowner Information Document”). See copy attached/enclosed.

Please note that we also filed a public information request with the Maricopa County planning and zoning department for any documents related to the development of Greenfield and stipulations that may have involved irrigation and/or the San Tan Irrigation District. We received limited information back, with the response that all files were transferred to the Town of Gilbert in 2006. We will conduct further research if you believe it is warranted after this letter.

With respect to the District, we reviewed the governing statutes. Under general powers of the board at A.R.S. §48-2978, the board of a District has the power to establish rules and regulations for distribution of water on lands within the District, to make appropriations, and establish charges for irrigation service, among other things. It has exclusive control over “laterals, ditches, canals, rights-of-way and other property of the district”. Nothing we have seen indicates that the District owns the easements or the irrigation lines or equipment within residential developments like Greenfield. The District does have the general power to acquire real estate and personal property, including canals, ditches, and rights-of-way. It does not appear that they routinely acquire property within residential developments.

All three of the Plats show 10 foot “irrigation easements” running across the lots. There is no indication the easements are even expressly in favor of the District. They are more likely easements in favor of all other owners and the Association. There are separately located public utility easements on the lots. Plat II also has a note that says: “Irrigation berms are part of the infrastructures. These must be constructed prior to stem inspection.” This appears to indicate that the irrigation was installed by the builder/developer.

The District Bylaws do not appear to have any language that would indicate they claim ownership of irrigation lines or easements within residential subdivisions. Under Article XIII, Section 1, water is delivered to lands within the District in accordance with orders by customers. Under Sections 10 and 11, it is the duty of the water users receiving water through the same pipeline to take water, and close valves. Under Section 10, the District is only responsible for delivering to the “point of delivery”, the highest corner of each forty acre quarter-quarter section of land, or any other designated point. Under Article XIV, no one, without authority of the District Board or General Manager, can open/close any pipeline, valve, or other water delivery facility. If it causes water to be taken that is not authorized, the District can levy fines. Therefore, it appears that because the District is only concerned with unauthorized taking of water, the Association could cut off a valve where water enters Greenfield to prevent using Greenfield as a bypass. However, the District could take a contrary view.

Finally, with respect to the District, the District Homeowner Information Document says it is the responsibility of the homeowner to fix any break of a “band, handle, port” or something else. This clearly indicates the District does not own such equipment. Moreover, the recorded District Resolution says that developers need to attend a Board meeting to discuss plans so the District can adequately provide irrigation to residential owners, with “minimum standards for irrigation pipeline connecting with the established system of the District”, a system which was historically rural. Again, the clear inference is the developers were/are installing the irrigation pipeline and the District does not own it – it was simply establishing standards.

Finally, in reviewing the Greenfield Declaration, we find only one reference to irrigation, in Section 3.5, where it states:

The Homeowners Association shall have the right to fix an annual assessment not in excess of \$300.00 to be used exclusively for the upkeep, maintenance and improvement of the common areas defined as the drainage channel at the north entrance off Chandler Heights, the entry monuments and landscaping along 162nd Street, and the maintenance of the underground irrigation system which the declarant is obligated to maintain.

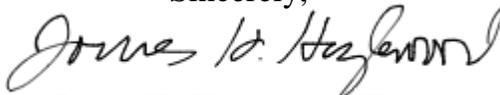
Based on the foregoing, the Association is clearly obligated to maintain the irrigation system located on the easements on the owners' lots. The owners own the land. To the extent there is personal property (e.g. equipment, pipes/lines, pumps, overflow box) within those easements, it is our opinion that such personal property is owned by the Association, because the Association took over from the declarant. The easement allows the Association to maintain the system.

In conclusion, it is our opinion the Association owns the irrigation lines and equipment – the system. It is also obligated to maintain it. Therefore, in our opinion the Association has the right to tell the District “no” to using the Greenfield irrigation system as a pass-through. Notwithstanding, we cannot guarantee how the District will respond. Although we are reasonably confident based on our review that the Association can shut off access that is unrelated to receiving irrigation water for Greenfield's use, it is possible the District would take a different legal position.

We also believe the Association has the right to tell the adjoining land owner “no” to a request to tie in to the Greenfield irrigation system. That owner can obtain water through the District by obtaining his own tie-in.

As stated earlier in this letter, although we do not believe it is essential, if you wish us to review records on file with the Town of Gilbert we will be happy to do so.

Sincerely,



James H. Hazlewood, Esq.

for

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC

JHH

Enclosures