

**These are the facts as they were presented at the Plaintiffs' Motion for Summary Judgment
–Oral Argument heard March 3, 2011
(Yavapai County Superior Court Judge Kenton Jones, Case No. P13000CV201000036)**

I. Key Facts

A. On September 28, 2009, the District wrote to Yavapai County seeking a County imposed building permit moratorium. The District letter threatened, if the County wouldn't do it, the District would. The decision by the District to impose a moratorium was made as of this date without a public meeting, without any public discussion and without reference in any prior District minutes. This action was a violation of Arizona's Open Meeting Law.

B. On December 9, 2009, the District's agenda for its regularly scheduled meeting included reference to "Resolution No. 2009-01" under the heading "New Business". No other information was provided to the public. The District passed the Resolution without any proper public notice, without any public discussion at the meeting and without reference to planned adoption of the Resolution in any prior meeting minutes. In fact, those in the attendance at the December 9, 2009 meeting had to ask, during the final public comment portion of the meeting what the subject of the Resolution was and only then were they informed it was a moratorium.

C. On December 21, 2009, counsel for the Developers put the District on notice of their violations of the Open Meeting Law.

D. On January 6, 2010 the District attempted to approve and ratify the adoption of Resolution No. 2009-01. The entire proceeding was in violation of Arizona's Open Meeting laws. The agenda noticing the ratification was incomplete and was not timely published in advance of the meeting. Nevertheless, the Board tried to ratify their prior illegally adopted Resolution 2009-01 at this meeting.

E. On January 7, 2010, the District recognized they still had not complied with the law, and publicly noticed another meeting for January 13, 2010 for the re-ratification of Resolution No. 2009-01. The public notice stated that the public could obtain copies of the Resolution 2009-01 and all deliberations, consultations and decisions by the Board that preceded and related to the action to be ratified by making a written request 72 hours in advance of the meeting. The Developers requested copies of this material. The response from the District was to hand over useless information at the end of the January 13, 2010 meeting. This is documented by recordings of the meeting and in the minutes.

F. The January 13, 2010 re-ratification also failed to follow Arizona's Open Meeting Law. The ratification took place thirty days after the date which the District should have known they violated the law. The Board failed to timely provide the information required by the public notice and the content of the January 13, 2010 meeting minutes do not include any description

of the Board's prior deliberations, consultations and decision by member of the public body related to the ratified action.

G. No minutes of any of the meetings above were ever supplied within three days of the meeting as required by Arizona's Open Meeting Law.

II. Summary

- The Board's actions evidenced by the September 28, 2009 letter, and the December 9, 2009, January 6, 2010 and January 13, 2011 meetings violated Arizona's Open Meeting laws.
- This conduct in disregard of the law is supported by comments made by the Board members in their depositions. Confirming that conduct, during his deposition Board Chairman, Gene Leasure stated he had no understanding of how the public records laws of Arizona work and he has neither "the time to read it or the patience" and stated "it's too cumbersome to deal with."
- At the oral argument on the Developers' Motion for Summary Judgment, Doug Nelson (counsel for the Board) tried to down play these action when he stated that the Open Meeting Law violations were merely "technical" in nature and that the September 28, 2009 letter from the District demanding a building moratorium was merely "inartful drafting" on his part and was not an actual decision by the Board. Basically Mr. Nelson would have us believe he writes letters to the County about shutting down the District sewer service, without the Board reviewing them.

No other substantive defense was put forth at the oral argument and counsel for the District chose instead to revisit matters dating back to 2002 to attempt to justify the Board's conduct

- During the hearing, Doug Nelson had to be reminded repeatedly by the Judge and counsel for the Developers to stay on track with the matter before the court and to answer the questions asked by Judge Jones.
- At one point, the District's supporters were admonished by the Judge as well for their loud, disruptive outbursts during argument by the Developers' lawyer.