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\*ADMITTED TO PRACTICE  
IN STATE OF COLORADO

May 22, 2020

VIA E-MAIL and US MAIL

Board of Directors  
BEAVER VALLEY IMPROVEMENT ASSOCIATION  
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Payson, AZ 85547  
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RE: Update -- BEAVER VALLEY IMP. ASSOC. v BEAVER LAND, LLC et al.

Directors:

We hope that this letter finds that the current COVID-19 pandemic has had limited impact on the health and safety of the Beaver Valley community. As you can imagine, it has directly impacted our Court System and we believe it will continue to do so for some time. The current Administrative Orders issued by the Arizona Supreme Court call for a phased re-opening of the Court System beginning on June 1, 2020. It is our understanding that pending criminal cases will take the Court System's priority and slowly the courts will be working towards the backlog of the civil cases. With that said, we are currently scheduled to have a telephonic Status Conference with Judge Wright on May 26, 2020. We will amend this letter with the results of that hearing for your advisement.

We fully understand that the issue of the claim of ownership of the Community Building and property by Beaver Valley Water Company and Beaver Land LLC and their demand to either tear it down or allow the Water Company to use the building and pending court case has divided the community on multiple levels. As Directors for the Association (BVIA), you have a fiduciary (legal) duty to protect the assets of the Association to include the common areas – community building & property. Additionally, you also have a duty to uphold and enforce the Conditions, Reservations, & Restrictions (1966); their amendments or restatements (“CC&R’s”) and the by-laws of the Association. Failure to do so, may subject the Association, Board and each Director to additional court proceedings from any member of the Association.

If you will recall how we got here. The Beaver Valley Water Company, under “new” ownership, in late 2018 began to claim ownership of the Community Building through several reports and applications to State of Arizona government bodies, specifically the Arizona Department of Environmental Quality and the Arizona Corporation Commission. These claims continued with governmental bodies in Gila County, to include filing a false application for demolition permit of the Community Building. In addition, the water company caused damage to



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the Community Building and property from a landslide of pond sludge and unauthorized exploratory excavation under the building and termination of water service to the building for several months.

In August 2019, the Board of Directors authorized our office to file a civil complaint and an application for preliminary injunction in Gila County Superior Court. The Beaver Valley Water Company to date has not filed an answer to the complaint or application for preliminary injunction, but after the first attorney hired withdrew from the case, due a potential conflict of interest, Beaver Valley Water Company hired a second law firm out of Phoenix, Osborn Maledon. In October of 2019 the Board of Directors voted to proceed with mediation to solve the issues. On November 7, 2019, the Board of Directors made the following settlement offer to Beaver Valley Water Company through our office:

- The Association would file a new service application and pay the appropriate charges.
- The Association would pay for the Water Company concrete cutting and excavation costs and pay to repair the building.
- The Water Company would abandon the water line under the Community Building and the Association would pay for the relocation of the line, but the line would not be located upon the Association property and BVIA would not provide any easements across its property.
- Beaver Land, LLC would remove and clean-up the accumulated pond sludge landslide from the Association property.
- The Water Company/Beaver Land, LLC would quiet their claim to the Association property including the 246.96 square feet lot line adjustment recorded upon the Official Records of Gila County and would forever restrain from making or setting up to assert any right in or to the Association property.

On December 20, 2019, the Water Company and Beaver Land, LLC finally responded to the offer made by the Association. Their counter-offer was:

- The Water Company would provide water service, at the Association's expense, so long as the Association; 1) ceases all interference with the Water Company's easements and rights-of-way (which there are none – see the Title Litigation Packet attached to the complaint) and 2) cease seeking any adjustment to the original boundaries of Tracts B and D.
- If the Association will not allow the Water Company to use the abandoned fire department building for a water treatment facility, then the 2005 addition to the building will need to be demolished, as well as any portion or the rest of the building that interferes with the Water Company's easements and rights-of-way.



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- The Water Company will clean up any pond sludge from their operations that have migrated onto Tract B.

It should be noted that the Board of Directors could not have agreed to the offer, even if they wanted to, as the recorded (Official Records of Gila County at Instrument # 2014-01555) Amended and Restated By-laws of the Association dated 12/12/2014 in Article VIII, Section 3 (page 10) states:

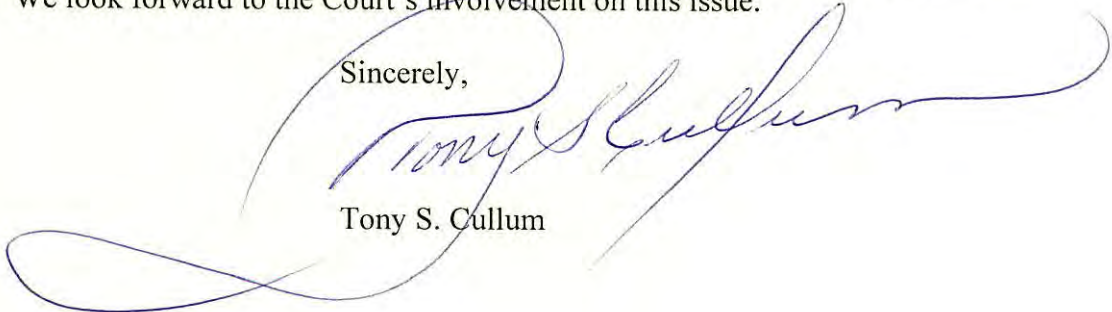
The Board of Directors **shall not have the power** to dispose of Common Area through sale, trade or any other method without the written approval of eighty percent (80%) of the Members in Good Standing. Notwithstanding the forgoing, the Board of Directors may grant easements over the Common Area to any **public** agency, authority or utility and enter into temporary leases, rentals or licenses for the Common Area without the approval of members. (Emphasis added)

The Beaver Valley Water Company is not a “public” utility, instead is a private for-profit entity.

The Association attempted several times to identify a mediator that the Water Company and their counsel would agree to. On February 20, 2020 the parties finally agreed upon a mediator, but the Water Company would not commit to date to proceed with mediation. To date they still have not committed to a date. (See attached April 20, 2020 letter to Counsel for timeline). To date, the opposing counsel has not even responded to our letter or to the mediator’s office. On May 20, 2020 our office released a previously reserved June 4, 2020 mediation date due to Beaver Valley Water Company’s failure to agree to the date and in order to not incur charges from the mediator.

Our office will continue to work to set a date for mediation with the Water Company, but as you understand, it is impossible to negotiate with a party that will not respond to multiple requests. We look forward to the Court’s involvement on this issue.

Sincerely,



Tony S. Cullum

TC:rs:tw

Enclosures