



**ALPINE HEIGHTS**  
HOMEOWNERS ASSOCIATION

P.O. Box 355. Payson, AZ 85547

By: electronic mail

March 15, 2021

Ms. Sheila DeSchaaf  
Assistant Town Manager  
sdeschaaf@paysonaz.gov  
% Town of Payson  
303 N. Beeline Highway  
Payson, Arizona 85541

Re: Lot 147 Alpine Heights Subdivision

Ref: (1) Alpine Heights Memorandum of 24 September, 2020  
(2) Your October 28th, 2020 Letter

Dear Ms. DeSchaaf,

I am writing in response to your referenced letter which addressed multiple concerns of impropriety set forth in our Memorandum of September 24th, 2020. [1] New Council Members may not be aware of the actions taken previously with so little concern for the people living in Alpine Heights. Much of the delay in our response to you was caused by the sudden passing of our HOA President, Bob Graziano. As of March 4, 2021, I will be serving the remainder of Bob Graziano's term as President. This letter will explain the facts to create a mutual understanding between all parties involved, and serve as official notification that Alpine Heights Homeowners Association is not going away quietly in the night. Speaking for the entire Board of the Association, we are committed to our fiduciary duty to protect our community and enforce our Declaration of Restriction's to whatever degree deems necessary.

In your letter dated October 28th, 2020, [2] as an explanation/justification, you state that the Town Council is authorized to decide matters related to "boundary line adjustments." [3] This is normally the case between any two property owners, and often used to adjust or correct legal ownerships to conform a legal description to (for example) an existing wall or fence line. However, the process by which The Town and its collaborator, Tayco Properties, LLC (Tayco), "extinguished" Lot 147 in our subdivision was by no stretch of the imagination a "boundary adjustment." The Town of Payson deeded a portion of Lot 147 it owned to Tayco, and Tayco deeded other, separate, property of a like size to the Town. This is in substance, form and legal definition known as an **exchange of real estate** (and so described at Council Meeting discussions on June 27, 2019). [4]

The deed to Tayco for a portion of Lot 147 [5] clearly states, on its face, "**subject to all covenants, restrictions, zoning, etc. of record**"- in other words, all restrictions and limitations stay in place, (the same deed restrictions of record when the Town purchased Lot 147) and

continue to occupy the same geographic space (run with the land) regardless whether it is renamed or merged as a portion of some other description. Shortly after this exchange, two new legal descriptions were drafted and filed with the Gila County Recorder's Office, as modified by including the exchanged property with existing land owned by each party. **Given no other reasonable response it appears the term "boundary swap" was used as a pretense to avoid lot split regulations, zoning, deed restrictions, covenants, easements, etc.**

On July 12, 2019, you advised Ms. Cathy Hines by telephone that Mr. Cooper of Tayco became a HOA member at the time the Town deeded a portion of Lot 147 to Tayco, which is correct. However, Tayco's Attorney Jared Owens stated (incorrectly) this was not the case. [6] The Town apparently also supported the notion that by subsuming the two divided parts of Lot 147 into two newly created, recorded, legal descriptions, and describing this exchange as a "boundary swap" that all recorded, vested rights in Lot 147 would be eradicated when the lot was "extinguished" from public records. The absence of any restrictions or limitations (or zoning) on Lot 147 grants Tayco ingress and egress for their property through the middle of the Alpine Heights subdivision. **It is hard to imagine the Town has authority, in concert with a private developer, to "extinguish" a platted lot, open a hole in a platted subdivision for through traffic, and claim that all interests in that property (zoning, easements, encumbrances, covenants & restrictions, liens, mortgages, etc.) were voided [confiscated] when the property was redescribed. Under this theory, no secured rights and interests in land would be safe, and several hundred years of common law and statutes overturned. Consider how the mortgage industry, or anyone else relying on secured interests in property would view this absurd line of thought.**

Nevertheless, based on your "boundary swap" theory, you opine (in short) that, regardless of the actual facts and consequences, *everything is "OK, because the Council said it was OK."*

As a brief review: On March 28, 2019 the Town of Payson agreed to purchase Lot 147 in the Alpine Heights Subdivision for **\$95,000. The appraised value of this lot was \$61,000. The Town elected to pay the additional \$35,000 over market value** on the basis that this land was located next to the existing water facility and "the Water Department will have the ability to construct a secondary tank to enable fire flow storage during maintenance activities." Assuming an actual public need, the property could have been acquired for appraised value by eminent domain. Apparently, this was not considered. As well, a considerably less expensive option would have been to purchase the [later exchanged] Tayco property to the South.

**Article I (A) of the recorded Alpine Heights HOA DofR's dated March 20, 2009, provides that all lots shall be devoted exclusively to Single Family Use; Article II, section (I) provides "No machinery or equipment of any kind shall be placed, operated or maintained outside of a structure". Lot 147 was deeded to the Town subject to all covenants, restrictions and all matters of record on April 11th, and the Town of Payson thereby became a member of the Alpine Heights HOA by virtue of owning Lot 147.**

Shortly after the Town purchased this lot- described as fully capable of meeting the Water Department needs- discussions began with owners of adjacent undeveloped land which lacked adequate physical access. An exchange plan was negotiated with Tayco which divided Lot 147

into two parts, a new survey and two new legal descriptions were prepared and presented to the Council for approval on June 27<sup>th</sup>, 2019. [7]

The Town Manager advised Council Members: “the property owners to the South had approached the Town about trading some land to give more upper elevation in exchange (but often referred by the participants as “*a boundary swap*”) for access to Hillcrest Drive.” (the true purpose of the transaction- to benefit Tayco property owners). A survey of the land exchange boundaries was reviewed and approved by the Council. **There was no mention of the fact that dividing Lot 147 into two parts would be an illegal lot split (Town of Payson Lot Split Ordinance §154-06-001), nor that by this artifice the interests of anyone- including over 250 Alpine Heights homeowners- holding rights in that property would be wrongfully taken.**

The underlying justification or benefit to the Town (public purpose) was to provide “*more upper elevation*” (for a second water tank), which makes no sense. Topographical maps, including one prepared by the Town, indicate the elevation of the areas of exchanged Tayco land, and the general elevation of Lot 147 are substantially the same. And since the existing water tank base has been excavated to approximately 15 or 20 feet below natural grade (to street level) all the land in the area has a higher elevation than the existing water tank. [8]

The amount of land to be exchanged seemed equal (approximately 10,000 square feet). However, the relative values of the land exchanged was apparently not considered (there is no evidence comparative values were evaluated). The portion of land on Lot 147 exchanged had dedicated access, street infrastructure and is served by all utilities. **The vacant Tayco land it was exchanged for had no physical access, no utilities and zoning of a lesser value, which benefited only Tayco.**

Moreover, it is hard to imagine that the purchase of Lot 147 met all the Town’s needs in March, but a few weeks later, it didn’t. It is not difficult to infer that the **primary intent of the so called “boundary swap” was accommodate access for Tayco through the Alpine Heights subdivision** (an objective stated in the record) and thereby *knowingly* deny the vested rights of over 250 homeowners to regulate their neighborhood.

When the overall transaction is considered, the appearance, if not the fact, behind the “extinguishment” was to assist a potential private developer to improve access to his bordering land thereby improving marketability and value. The means to accomplish this was a “boundary swap” intended to eliminate a platted subdivision lot, and thereby the restrictions which would otherwise prevent a plan for through traffic from outside the subdivision. Apart from the “extinguishment” of Lot 147 and related issues, the Town’s stated *Public Purpose*, (which by law must underlie any public action) - to expand water services in this convoluted way was not the best course of action when serving the people, however, the Council approved these actions to be in the best interest of the Town based on the advise, expertise, and authority of the Town Manager, Town Attorney, and head of the Water Department. [9] [10]

On October 2, 2019 the land exchange is completed. Payson deeds a portion of Lot 147 (subject to all restrictions of record) to Tayco, retaining the balance of the lot which is adjacent to Town owned property (Tract “A”) [11]. 3. Tayco, in exchange for a portion Lot 147, deeds to the Town

an equal portion of their adjacent, vacant land. [12] A “revised” property map of 12/5/19 shows the new configurations for both “new” parcels of land and is referred to a “boundary swap.” [13] Lot 147 is thereby eliminated from the Gila County Assessor’s parcel map.

As a result of this land exchange between the Town of Payson and Tayco, both parties claim (1) that their ownership of Lot 147 (in whole or part) is now exempt from the Alpine Heights HOA DofR’s. This claim is based on the theory that somehow Lot 147 ceased to exist as a result of changing its legal description extinguishing it pursuant to their land exchange agreement. The scheme was simple, “but too clever by half.”

Mr. Jared Owens, attorney for Tayco, responded with a letter dated July 6, 2020 [14] to a lien filed by the Alpine Heights HOA on lot 147 for delinquent HOA assessments. In this letter claimed the lien was “groundless,” false, invalid, and referenced civil and criminal penalties for claiming otherwise. He proffered the following exercise in fallacious reasoning: *a) his client did not “purchased” Lot 147 [ignoring the definitions of applicability below, Article I]- his client “acquired” a portion of Lot 147 by a “boundary adjustment” with the concurrence of the then owner b) that portion of Lot 147 which was merged with his client's property outside the subdivision, which was not subject to the HOA, and c) therefore any restrictions related to that property evaporated when merged into land outside the subdivision.* Apparently, he did not read the recorded HOA regulations dated?? [15] nor familiarize himself with basic, well established real estate law regarding covenants that run with the land.

At a meeting in October with Town representatives to discuss the concerns described in our memorandum, one of our Board Members asked the Town Attorney, Mr. Pierce, if a Town had the authority to change the recorded rules and regulations of a home owners association in a platted subdivision. He thought the question amusing and replied, “of course not.” Obviously, that is the correct answer. However, in the matter of Lot 147, apparently, he believes (or would like us to believe) *eliminating* Lot 147 and it’s HOA regulations is somehow distinguishable from *changing* regulations; however, he offered nothing in defense of this theory.

This reasoning seems either grossly uninformed, naïve or a plan of deception. **Left unchallenged, virtually any lot or lots could, under this theory be “extinguished” and eliminated from any HOA regulations, which defeats the purpose of planned community restrictions.** Moreover, the adjacent landowner’s (Tayco) stated objective and motivation was to gain access to and through the Alpine Heights subdivision (by knocking a hole in the wall so to speak) - presumably to enhance the development potential (and therefore value) of its adjoining, undeveloped property, and thereby permit unfettered access through the Alpine Heights Subdivision to property that otherwise lacked physical access. In the process, single family home zoning is eliminated, along with all encumbrances on the land. This would increase traffic by creating a transit or short cut through the residential subdivision which was never envisioned by the (Town approved) subdivision design. The camouflage term “boundary swap” was used to evade Alpine Heights HOA restrictions, and Town of Payson regulations which would preclude splitting a platted subdivision lot, as well as, eliminating the zoning.

As a final step to confirm what we already knew to be true, we reviewed the “new” land descriptions/ parcel numbers prepared both by The Town of Payson and Tayco (302-75-259A and

302-40-222A) [16] with the Gila County Recorder's Office, and Pioneer Title Company. Both have unequivocally advised that these "recreated" parcels are **absolutely subject to Alpine Heights HOA restrictions.** [17] [18] Accordingly, the primary stated objective of the so-called "boundary swap"- to give Tayco the benefit of better physical access (and thereby improving land value) by "eliminating" Lot 147, and thereby wrongfully depriving rights in property attached to that lot, has failed. The integrity of Alpine Heights HOA DofR's must be defended, and we do not intend to permit an outside real estate interest (even with the Town's non-transparent assistance) to breach the long-established perimeter of our subdivision.

**The Arizona state and federal rules of law govern Payson. The Law in Payson is not "whatever the Town Council says it is." The Payson Town Council are supposed to be representing the voice of the people, not Tayco or any other private party. If towns are allowed to get away with this abuse of power, it undermines the fabric of our nation.**

**Summary:**

1. It is very difficult to imagine that Town Management (and even harder for Legal advisors) did not understand the net effect of this contrived, convoluted transaction with the adjacent land developer. While the reasoning between Tayco and the Town may not be as completely clear as sworn testimony would provide, the facts and applicable law are.
2. Lot 147 was purchased with taxpayer's money for \$95,000, which was \$34,000 over appraised value, despite the considerably less expensive options mentioned earlier.
3. Management advised the Town Council at the time of purchase that Lot 147 would meet whatever water requirements were needed. A few weeks later, it was not adequate.
4. Certainly, in appearance, if not fact, at the time the Town purchased Lot 147 management had in mind the land exchange ("swap") with adjacent land owned by Tayco, LLC that took place two months later.
5. The reason proffered for the Tayco exchange (apart from Tayco's need for access) was a need for higher elevation. However, surface grade elevations on the exchanged land were substantially the same as what the Town already had on Lot 147.
6. The exchange transaction was contrived to "extinguish" Lot 147 by defining the land exchange as a "boundary swap" wrongfully attempting to eliminate all secured property interests. ARS §33-420. The Town in collaboration with Tayco, chose to eliminate all HOA restrictions, zoning, easements, mortgages, avoid lot split ordinances and public attention in general.
7. Alpine Heights DofR's run with the land, regardless of how the land was acquired- purchase, exchange, inheritance, gifted, assigned, etc.
8. As confirmed by Pioneer Title and the Gila County Recorder, Alpine Heights HOA restrictions still apply to the geographic boundaries that originally described Lot 147, regardless how it is now described inside the two new exchanged parcels.
9. Both Tayco and the Town are, in substance, co-owners of Lot 147 and thereby members of the Alpine Heights HOA, regardless of how the property is now described. HOA restrictions are now of record on both properties and include persons or entities who are owners of all or any part of a lot, however acquired.

10. The Town of Payson Lot Split Ordinance was ignored, as well as the Town's zoning ordinances (Single family home zoning changed without benefit of a hearing). All public institutions are obliged to play by the rules, especially their own.
11. The circumstances related to the land "swap" as discussed above, suggest that its primary purpose was to accommodate the access needs of adjacent property.
12. Attempting to expunge and void all interests in recorded property interests by creating a new legal description (logically, even tenants and ownership) is a nullity; and the attempt to wrongfully eradicate rights in real estate can also be described in more unpleasant terms.
13. The area planned for a road from outside the Alpine Heights Subdivision (Tayco property) passing through Lot 147 to the public street is subject to all prior DofRs.
14. Regardless whether the "boundary swap" was a consequence of very badly informed participants, or an intentional act by the Town and Tayco to deprive all stakeholders with recorded interests in Lot 147 of important legal rights, a return to *status quo ante* is required.
15. Public Policy consequences. This contrived "boundary swap" between Tayco and the Town, by all appearances was an intentional effort to avoid lot split regulations (especially bad in a platted subdivision), "un-plat" a lot in a homeowners subdivision by means of a new legal description, in order to void HOA restrictions (and all other rights such as easements, liens) and provide better access to a developer, while violating the rights of 256 Alpine Heights homeowners. As a model for any bad actor (or badly misinformed person) looking for a clever way to deprive vested rights in property - HOA covenants & conditions, declarations of restrictions, mortgages, liens, easements, leases, zoning etc. and, carrying the logic forward, even property owners ("Sorry, the land you used to own or have rights in, no longer exists.")
16. Furthermore suggesting that any landowner abutting any subdivision can, under the "Payson Boundary Swap Theory" can change the description of a subdivision lot and extinguish all vested rights. With the defense: "*The Town did it, so it must be OK.*" sets illegal precedents.

### Going Forward.

The Alpine Heights Homeowner's Association is, for all the reasons mentioned, compelled to correct this attempt to circumvent the rights on behalf of our homeowners- and perhaps the rights of all other Homeowner Associations in our Town, the state of Arizona, and our entire country.

Fortunately, unlike many legal disputes, in this case, an agreement to simply correct the situation would not be complicated, nor expensive. For example, Lot 147 is reinstated into the Alpine Heights Subdivision Plat and Tayco and The Town are co-owners; or the land exchange is reversed to its former status; The Town sells Lot 147 to Alpine Heights HOA, and acquires that Tayco trade property; The Town keeps Lot 147 and requests to use a portion for an additional water tank (HOA regulations could be discussed in this case); Although our HOA has spent about \$5,000+ for costs and consulting advice which will be billed under provisions for reimbursing HOA enforcement expenses. **The Town and Tayco are also responsible for delinquent fees, and assessments.** This is but a small fraction of what will be billed in our full litigation of this matter.

The alternative, on the other hand, is much less agreeable. For one thing, since the Town has dedicated access to its property (Tract A in addition to Lot 147) and in any event has the ability to expand its utility when the time comes, a legal dispute would task the Town with defending the central objective of the “swap”- *Tayco’s right* to an easement over the (exchanged) Lot 147 area (which for all the reasons stated, **it does not have**). The search for a public purpose in this case would be challenging.

**This is the last attempt to avoid litigation of this matter. If the Town and Tayco still refuse to take action to correct the confiscation of Lot 147 within 10 days of this letter, then the Alpine Heights HOA must in its fiduciary duty enforce the law through litigation to affirm the powers of Home Owners Associations throughout the land.**

Sincerely,



---

Kim Nichols  
President, Alpine Heights HOA  
kim@infiniteimpressions.com

CC: Mayor Tom Morrissey, [tmorrissey@paysonaz.gov](mailto:tmorrissey@paysonaz.gov)  
Councilman Chris Higgins, [chiggins@paysonaz.gov](mailto:chiggins@paysonaz.gov)  
Councilwoman Barbara Underwood, [bunderwood@paysonaz.gov](mailto:bunderwood@paysonaz.gov)  
Councilman Jim Ferris, [jferris@paysonaz.gov](mailto:jferris@paysonaz.gov)  
Councilwoman Suzy Tubbs, [stubbs-avakian@paysonaz.gov](mailto:stubbs-avakian@paysonaz.gov)  
Councilman Scott Nossek, [snossek@paysonaz.gov](mailto:snossek@paysonaz.gov)  
Councilwoman Jolynn Schinstock, [jschinstock@paysonaz.gov](mailto:jschinstock@paysonaz.gov)  
Town Attorney, Justin Pierce, [justin@piercecoleman.com](mailto:justin@piercecoleman.com)  
Town Manager, Troy Smith, [TownManager@paysonaz.gov](mailto:TownManager@paysonaz.gov)  
Water Department Manager, Tanner Henry, [thentry@paysonaz.gov](mailto:thentry@paysonaz.gov)  
Mr. Cooper, Tayco Properties, LLC, % Jared R. Owens, Esq., [jowens@owenslawaz.com](mailto:jowens@owenslawaz.com)  
Berkshire Hathaway Home Services, Mac Feezor, [mac.feezor@rimhomes.com](mailto:mac.feezor@rimhomes.com)

## Addendum

Alpine Heights is a residential subdivision located in Payson Arizona, comprised of 257 lots. The Declaration of Restrictions and formation of the Homeowners Association was recorded July 27, 1978; on March 20, 2009 a Restatement of Declaration of Restrictions was recorded, which revised the provisions of Paragraph 27 thereof, defining the effect and enforcement of restrictions and covenants, all of which run with all lots, or any part thereof. A City water storage tank is sited adjacent to the subdivision on the South side of the subdivision, but not a part of it (referred to as “Area A).

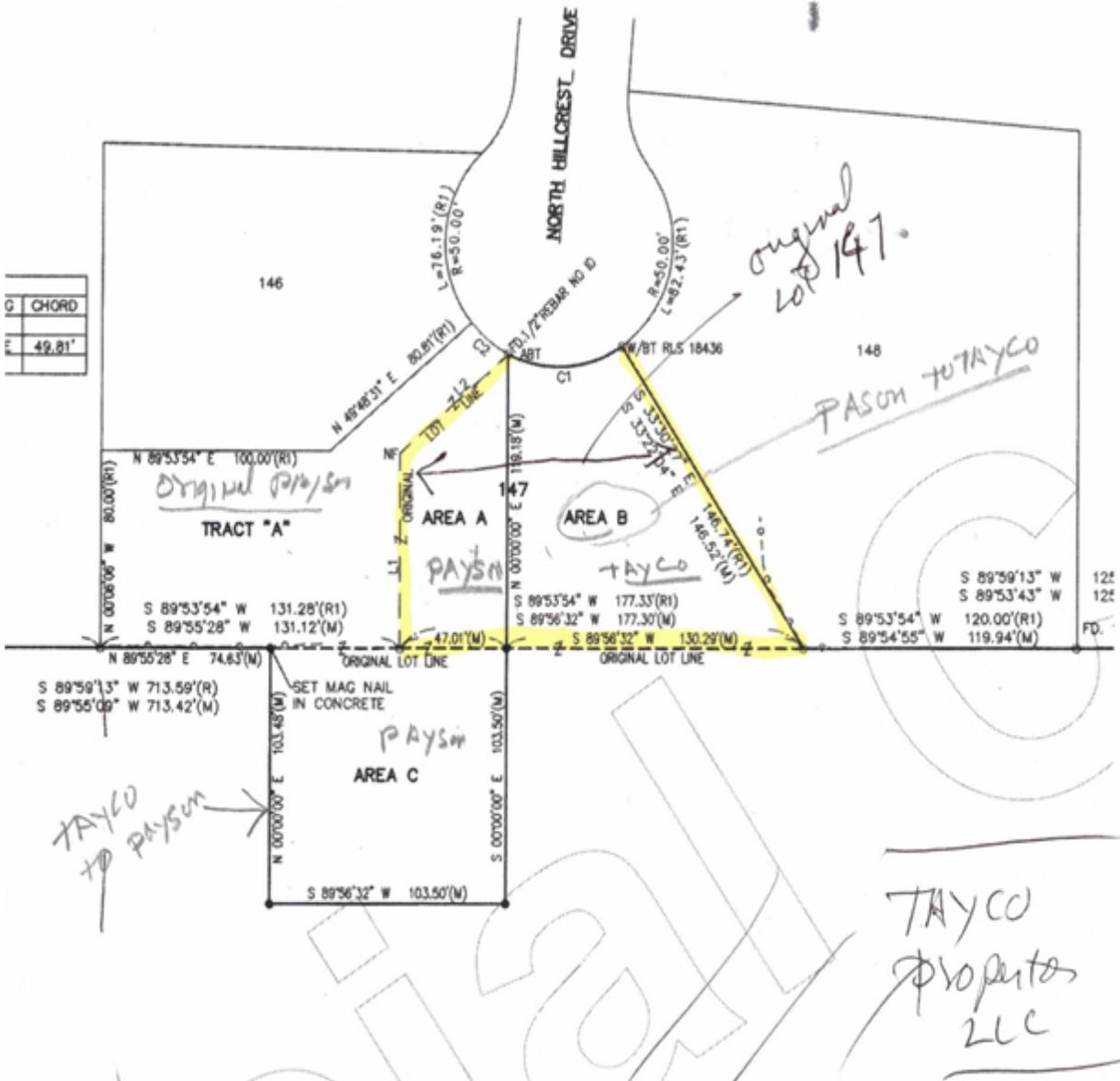
The Alpine Heights Restatement of Declaration of Restrictions 2009 provides:

1. Introduction: “...all properties described [in this Declaration] shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which run with the properties and be binding on all parties having any right, title or interest in the described properties, or any part thereof ...”
2. Definitions: Owner shall mean and refer to the owner of record whether one or more persons of equitable or beneficial title of any lot, Owner shall *include* [but not limited to] the purchaser of a lot under executory contract [contract of sale].
3. Article VI (B) provides means and remedies for enforcement of the covenants and restrictions, and recovering all costs, including attorney fees.
4. Article VIII Section 7 ...”by acceptance of a deed [which is how Tayco acquired its portion of Lott 147] or by acquiring any ownership in any of the real property included within this Restated Declaration, each person or entity, for himself or itself, his heirs, .... Successors, transferee and assigns, binds himself his heirs, representatives, transferees and assigns, to all the provisions, restrictions, covenants, conditions and regulations now or hereafter imposed by this Restated Declarations... each person hereby acknowledges that this Restated Declaration sets forth a general scheme for the improvement and development of the properties and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein **shall run with the land** and be binding on all subsequent and future Owners, grantees, purchasers, assignees and transferees thereof.”

City of Payson Lot Split Ordinance §154-06-001 “Applicability” ...” provisions shall apply to land splits – into two or three tracts... [based on] one of the following conditions: a. the property is less than 2.5 acres ..., **or c. The boundaries of such property have been fixed by a recorded plat**”. Regardless how a lot split might be accomplished, (form) in substance the division of a single residential lot into two parts

with two different owners cannot be disguised by calling it a “boundary swap”- (which argues the lot could not have been divided, because it was “extinguished”).

C	CHORD
E	49.81'



WARRANTY DEED 2015-000715  
 CURRENT A.P.N. 302-40-022G  
 301,720. SQ. FT. / 6.93 ACRES  
 BEFORE ADJUSTMENT  
 (REF. R.O.S. MAP NO. 3297)

**EXHIBIT "D"**  
**Parcel Adjustment Detail**

## REFERENCES:

1. <http://savepaysonaz.com/data/documents/Letter092320.pdf>
2. <http://savepaysonaz.com/data/documents/TOP001.jpg>
3. <http://savepaysonaz.com/data/documents/32819-ToP-req2-147.pdf>
4. <http://savepaysonaz.com/data/documents/Minutes-for-Regular-Town-Council-Meeting-June-27-2019.pdf>
5. [http://savepaysonaz.com/data/documents/2019\\_010789-Warranty-Deed-ToP-Tayco10219.pdf](http://savepaysonaz.com/data/documents/2019_010789-Warranty-Deed-ToP-Tayco10219.pdf)
6. <http://savepaysonaz.com/data/documents/Lien-Owens-7-6-20.pdf>
7. <http://savepaysonaz.com/data/documents/62710-ToP-Req-to-Swap.pdf>
8. <http://savepaysonaz.com/data/documents/elevation-of-lot-147.pdf>
9. <http://savepaysonaz.com/data/documents/ToP-Minutes-Mar282019.png>
10. <http://savepaysonaz.com/data/documents/Minutes-for-Regular-Town-Council-Meeting-June-27-2019.pdf>
11. <http://savepaysonaz.com/data/documents/HOABound-A.png>
12. <http://savepaysonaz.com/data/documents/Parcel-Original-B.png>
13. <http://savepaysonaz.com/data/documents/ParcelAdjst-C.png>
14. [savepaysonaz.com/data/documents/2020\\_007941-AHHOA-Lein-Tayco.pdf](http://savepaysonaz.com/data/documents/2020_007941-AHHOA-Lein-Tayco.pdf)
15. [savepaysonaz.com/data/documents/AHHOACC-DRs.pdf](http://savepaysonaz.com/data/documents/AHHOACC-DRs.pdf)
16. <http://savepaysonaz.com/data/documents/ParcelAdjDetail-D.png>
17. [savepaysonaz.com/data/documents/TAYCO-TITLE.pdf](http://savepaysonaz.com/data/documents/TAYCO-TITLE.pdf)
18. <http://savepaysonaz.com/data/documents/ToP-TITLE.pdf>

Other maps and documents supporting our case can be found here:

<http://savepaysonaz.com/hillcrest/>