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Robson Communities

Master-Planned Resort Living For Active Adults



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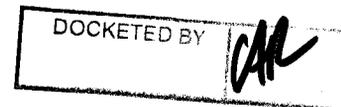
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AZ CORP COMMISSION
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May 19, 2005

Arizona Corporation Commission
DOCKETED

MAY 19 2005

Via Hand-DeliveryDocket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007Re: Opinion and Order dated April 6, 2004
Decision No. 66893
Docket No. W-01445A-03-0559

To Whom It May Concern:

I am writing this letter for and on behalf of Cornman Tweedy 560, LLC ("Cornman"), Picacho Water Company ("Picacho") and Robson Communities, Inc. ("Robson") in response to the proposed form of Order issued as a recommendation by Administrative Law Judge Amanda Pope in this matter. As noted in my initial correspondence dated April 7, 2005, Cornman and Picacho are each affiliates of Robson. Cornman is the owner of approximately 1138 acres of land included within the now-lapsed Certificate of Convenience and Necessity ("CC&N") that Arizona Water Company ("AWC") is attempting to resuscitate. Based on Cornman's request for water service from Picacho, Picacho has applied for a CC&N to cover a portion of the land previously covered by AWC's now lapsed CC&N; specifically the approximately 1138 acres owned by Cornman. Judge Pope's proposed order makes the following three Conclusions of Law to which Cornman takes exception:

3. Neither Robson nor Cornman have standing to object to AWC's Request.
4. Staff's recommendation in Findings of Fact No. 9 is not reasonable given Robson and Cornman's lack of standing and should not, therefore, be adopted.
5. AWC's Request was timely and is reasonable and should be granted."

For the reasons discussed below, I believe that because Cornman and Picacho are "directly and substantially affected" by the Arizona Corporation Commission's ("Commission") proceedings on whether or not to grant AWC's pending Request for Additional Time to Comply with Filing Requirement ("Request"), Cornman and Picacho have standing in this matter and their objections to AWC's Request should be heard by the Commission. As such, should the Commission determine that a hearing in this matter is appropriate, Cornman and Picacho should be permitted to participate.

There is no legal basis for AWC's position that only parties have the right to voice objections in procedural matters. Nor is there any legal basis for AWC's position that the Commission and its Utilities Division Staff ("Staff") have no *right to consider* objections from the public or changes in circumstances when evaluating requests for extensions. The Commission's administrative rules clearly provide that persons who may be adversely affected by an application before the Commission have a right to file a written protest or be heard orally as a protestant at a public hearing. *See* A.A.C. R14-3-106(I); *see also id.* at R14-3-105.c. (granting consumers a right to appear and provide a statement.). Cornman and Picacho clearly are directly and substantially affected by the Commission's decision with respect to AWC's Request. As noted in my letter dated April 7, 2005, by the express conditions of the Commission's Decision and Order No. 66893 (the "Decision" or the "existing Order"), the grant of AWC's CC&N extension for the Casa Grande system was conditioned on the satisfaction of certain conditions. The Order clearly provided that the Commission's Order granting the CC&N extension would be "null and void" if those conditions were not satisfied within 365 days. Thus, by operation of law the Commission's grant of the AWC's CC&N was automatically terminated on April 6, 2005. As an owner of land within the AWC's CC&N, Cornman is directly affected by whether or not the Commission permits AWC to reinstate the CC&N extension granted pursuant to the existing Order in Decision No. 66893. Picacho is directly affected because Cornman has requested that Picacho extend its CC&N to include all of the Cornman property and because Picacho has filed an application for such CC&N extension. Accordingly, Cornman and Picacho stand to be directly affected by the Commission's determination on AWC's Request, and therefore clearly have standing in this matter.

Notwithstanding Cornman's and Picacho's right to be heard, AWC incorrectly asserts that the Commission and its Staff have no right to listen. It should be noted that AWC's Request is a matter squarely within the discretion of the Commission. The granting of AWC's Request is not automatic, but must be considered and acted upon by the Commission, and as such it is a proceeding before the Commission. It would also be a poor policy for the Commission to take the position that if an application for extension of time is filed before the time period lapses, the Commission should automatically treat the request as being timely and grant the request. Such a position would contradict prior Staff testimony concerning the amount of time it needs to reasonably address such requests. In the past, Staff has testified that it takes at least thirty (30) days to review any such requests for time extensions. Consequently, AWC's Request could not be considered timely, as it did not provide sufficient time for the Commission to take action on the request before the automatic conditions contained within Decision No. 66893 rendered the Order granting the CC&N extension null and void. An automatic or perfunctory grant of the extension, without need to show substantial compliance or even substantial efforts at compliance, undermines the conditions contained in the original Order. A better policy is the one that has been applied by Staff to Robson-affiliated utility companies; that is, that in order to obtain an extension of time to satisfy conditions, the utility must demonstrate that substantial progress is being made in satisfying the conditions, and the request for extension must be submitted sufficiently early so that the request can be considered before the order becomes null and void.

Arizona Water Company's Response To Staff's Recommendation For Additional Evidentiary Proceedings:

Judge Pope's proposed form of order was prepared after consideration of the Response To Staff's Recommendation For Additional Evidentiary Proceedings filed by AWC on April 20, 2005 (the "Response"). The Response asserted that:

1. "The Staff Recommendation must be rejected because Robson and Cornman Tweedy have no standing to present any objections...";
2. "Robson's post-hearing, and post-final order letter can be given no weight whatsoever by the Commission";
3. "Robson's action clearly constitutes an unlawful collateral attack upon the Commission's final decision in this matter..."; and
4. Two water utility companies affiliated with Robson Communities have requested and received extensions under circumstances similar to those currently applicable to AWC.

AWC is incorrect on each of these points, and the differences between the current situation and those of the Robson-related water companies is instructive. Notwithstanding AWC's attempt to cloud the issue by raising claims of lack of standing and of alleged unlawful collateral attack, the following points are clear and not controversial:

- (a) AWC had the right to *request* an extension of time to satisfy conditions of the existing Order;
- (b) The ACC has the right and discretion to deny AWC's request for an extension;
- (c) Robson, Cornman and Picacho each have the right to send a letter to the Commission, to remind the Commission of the terms of the Decision and to explain why Cornman does not desire its property to be within AWC's CC&N;
- (d) Arizona Corporation Commission Staff has the right to recommend that AWC's request for an extension of time be scheduled for additional evidentiary proceedings on the merits. This recommendation may be based on changes in circumstances, events in the news, changes in the law, my prior letter, or anything else that is relevant to these proceedings. Much has happened over the past year. (For example, Cornman purchased the EJR Ranch property, including the portion that was used as the main basis of issuance of the existing Order granting AWC the CC&N; EJR Ranch received its PAD zoning from Pinal County; Picacho Sewer Company acquired the CC&N for sewer service for EJR Ranch; Picacho Water Company received the CC&N for water service for a large portion of EJR Ranch; the 480 acres for which Harvard Investments requested service from AWC and then withdrew that request was annexed into the City of Casa Grande; and, according to AWC, Harvard Investments has decided to delay development of its property within the lapsed CC&N area.) Staff's recommendation was just that – a recommendation. So long as it is not based on an improper motive (e.g. race, creed, color, national origin, collusion, bribery, etc.), Staff should be permitted to make its recommendation, which the ACC has the right to consider, ignore, approve or deny in its discretion;
- (e) The ACC has the right to hold an evidentiary hearing should it so desire and, as stated above, has the right and power to deny AWC's request for an extension of time.

AWC's claim that my prior letter constitutes an unlawful collateral attack on the CC&N is false. Although neither Cornman nor its predecessor in interest with respect to the Property desired to be within AWC's CC&N, Robson, Cornman and Picacho understood and acknowledged that the Decision had been

entered, respected the Decision and took no action to attack the Decision. Rather, when AWC failed to comply with the Decision and requested an extension, and the CC&N by its terms had lapsed, I merely sent the letter on Cornman's behalf explaining that AWC failed to satisfy the conditions, pointing out that the CC&N by its terms was null and void and explaining why Cornman did not desire to be within AWC's CC&N.

AWC's attempt to suggest that Robson-affiliated utility companies have requested and received similar extensions from the ACC fails and shows the weaknesses of AWC's position. In each of the two instances AWC refers to where Robson-affiliated utility companies requested and received extensions, the Robson-affiliated utility company filed its request for an extension sufficiently early such that the ACC could rule on the matter months before the applicable time period expired. In each of those circumstances, Staff required the Robson-affiliated utility company to demonstrate substantial progress in satisfying the conditions before Staff would recommend that the extension request be approved. In the current situation, however, AWC did not file its request for additional time until March 30, 2005, only one week prior to the deadline and did not show substantial progress. As stated above, it is worth noting that previously Staff has testified that it requires at least thirty (30) days to review any such requests for time extensions.

Notwithstanding AWC's attempts to focus on irrelevant matters, there is absolutely no question that, as a matter of law and of common sense, the Commission has the right to deny AWC's request for an extension in its sole and absolute discretion, whether before or after a hearing. For the above reasons, Cornman and Robson take exception to the specific Conclusions of Law in Judge Pope's proposed order, and object to the assertions set forth by AWC's regarding Cornman and Robson's right to have its objections heard. Although Cornman and Robson have not yet sought to intervene in this matter formally, believing that the written objections submitted with my April 7, 2005 letter would be considered by the Commission, should it be necessary we are prepared to seek leave to intervene in this matter formally as party. It is Cornman and Robson's intent that the Commission be permitted to consider their views and position regarding the automatic termination of Decision No. 66893 when addressing AWC's Request for Additional Time to Comply with the Filing Requirement.

Arizona Water Company's Request for an Extension

Cornman, Picacho and Robson also take exception to the Judge Pope's conclusion that the request for an extension was reasonable and should be granted. The CC&N granted by the existing Order covers 11 sections of land. There were two "projects" used to justify the existing Order granting the CC&N. The first was a request for service from Harvard Investments with respect to approximately 480 acres. That request for service was withdrawn prior to the issuance of the existing Order. The other was a request for service by Core Group Consultants, Ltd. for service to approximately 240 acres. That property that has since been purchased by Cornman, who desires service from Picacho. Thus, the possibility of a property owner developing less than one-half a section of land since purchased by a Robson-affiliate who does not desire service from AWC, and the possibility that another property owner who had withdrawn its request for service might develop 480 acres, has resulted in 11 sections being subject to a CC&N, even though the owners of those other sections may have had no interest in being included in AWC's CC&N area and never requested service from AWC.

The Core Group Consultants "project" is a classic example of what the ACC tries to avoid; that is, land speculators requesting service to get CC&Ns so they can flip the land at a profit, without regard to any public convenience and necessity of service. Granting AWC's Request for additional time without

requiring a demonstration of meaningful progress encourages land speculation by means of CC&Ns, rather than preventing it. Contrast this to the typical Robson-affiliated utility, which is based on development of all or substantially all of the property within its CC&N areas. In the case of the Robson-affiliated water companies who requested extensions of CC&Ns as discussed above, the property owner requested service, substantial development plans had been developed for *all* lands within the CC&Ns issued by the ACC, and the request for time extension was for the purpose of continuing those development efforts.

In its Request For Additional Time, AWC claims that "Harvard Investments and Core Group Consultants, Ltd., the developers for the expansion areas, have informed the Company that development in the areas they propose to develop will be delayed for another year." Any such statements by Core Group Consultants should not be relevant as Core Group Consultants, who are engineers, will not develop that property. Robson entered into escrow in July of last year to purchase the property purportedly being developed by Core Group Consultants, and Cornman closed on that property in December of last year.

At this time then, the apparent delay in the 480 acre Harvard Investments project for a year is being used by AWC in its Request to justify an extension of time to satisfy the CC&N conditions for an 11 section CC&N extension, even though Harvard Investments had withdrawn its request for service before the existing Order was even issued. Moreover, AWC's Request and the proposed Order are written as if Harvard Investments is the developer of the entire expansion area, rather than less than a single section. The status of development on these lands is undoubtedly of interest to the ACC, and a finding that the extension is reasonable without any investigation of the development status of these lands is questionable at best.

We also do not believe that the Request is reasonable because a provider that is better situated to serve, Picacho Water Company, has filed a request for a CC&N covering part of the land in question. An evidentiary hearing would allow us the opportunity to support this position.

It should be noted that the last sentence of AWC's Request For Additional Time states that "[t]his Request should not prejudice any other party, as [AWC] was the only applicant for a certificate of convenience and necessity for the areas to be served." That is no longer the case, as Picacho has now filed for an application for a CC&N for a portion of that area. Also, perhaps from AWC's perspective, only a water company can be prejudiced by a request for additional time to satisfy CC&N conditions, but AWC's approach does not take into account the significant interests of landowners, developers or the public.

Thirteen copies of this letter are being submitted to the Commission, along with this original. Thank you for considering these comments. Please contact me if you have any questions or need any additional information.

Sincerely,



Peter M. Gerstman

Docket Control
Arizona Corporation Commission
May 18, 2005
Page 6

Cc: Robert W. Geake, Arizona Water Company
Edward J. Robson
Steven M. Soriano
James Poulos