ABANDONMENT REQUEST
FOR
DRAINAGE AND PUBLIC UTILITY EASEMENT ON LOT 71 OF CHAPARRAL PINES
1004 N. SCENIC DRIVE

**Overview**

The Chaparral Pines Phase 1 subdivision was recorded on February 27, 1998 as Map No. 668. The subdivision is a portion of the overall Chaparral Pines development. The recorded plat included all the property lines and easements that were determined to be necessary at the time of recording. The developer of Lot 71 has requested that the configuration of an existing public utility and drainage easement be modified with a portion of it being abandoned.

**Abandonment Request**

The requested abandonment affects two coincident easements on Lot 71 of the Chaparral Pines subdivision. The request is to abandon approximately 1,298 square feet on the north side of the existing easements.

**Drainage Easements**

The drainage easement was established for two uses: (1) there is an existing underground drainage conveyance system allowing water from an upstream effluent storage lake to drain; and (2) in a major storm event if the effluent storage lake overflowed, the drainage easement provided an overland route for the overflow.

**Public Utility Easement**

The original subdivision plat granted a public utility easement coincident with the drainage easement. Based on the responses to this request from the utility companies, there are no public utilities currently in this public utility easement.

**Abandonment Process**

In accordance with Town of Payson Ordinance No. 606, the abandonment process requires notification of the proposed abandonment to all utility companies, affected Town of Payson Department Heads, and property owners within 300 feet of the easements to be abandoned. A letter containing information concerning this request was either mailed or hand delivered to each of the required parties. This letter stated that a response was requested by June 22, 2015 and that if no comment was received by that date, it would be assumed that the particular entity was in favor of the abandonment.

**Responses to Request**

To date we have received responses from all of the affected utility companies and all required Town of Payson Departments. All responses received from the utility companies have supported the abandonment of the requested portion of the public utility and drainage easement.

Responses from the Public Works Department and the Town Engineer showed concern about abandoning that portion of the drainage easement since it was originally designed to accommodate any overland flows from the upstream effluent water storage lake. They recommended not moving forward with this abandonment until it was determined that this change would not negatively affect the drainage in the area.

A response was also received from the owner of the residential lot immediately south of Lot 71 (Lot 70). That property owner requests that the existing public utility and drainage be left as granted by the original subdivision plan. His concerns are with potential flooding issues should the effluent water storage lake over top and he does not like the building envelope moving closer to his property. A copy of his letter is attached.

**Recommendation**

After review of this Abandonment Request, Staff believes there are two options: (1) Recommend denial of the request to abandon the public utility and drainage easement; or, (2) Recommend approval of the abandonment request with a stipulation. The stipulation would be that the requestor provide sufficient engineering plans and documentation to show that the 100-year water surface elevation will not be increased by reducing the area of the drainage easement prior to the matter being submitted to the Town Council for a decision.

**Possible Motions**

I move to recommend to the Town Council denial of the abandonment request of the north portion of the public utility and drainage easement on Lot 71 of the Chaparral Pines subdivision:

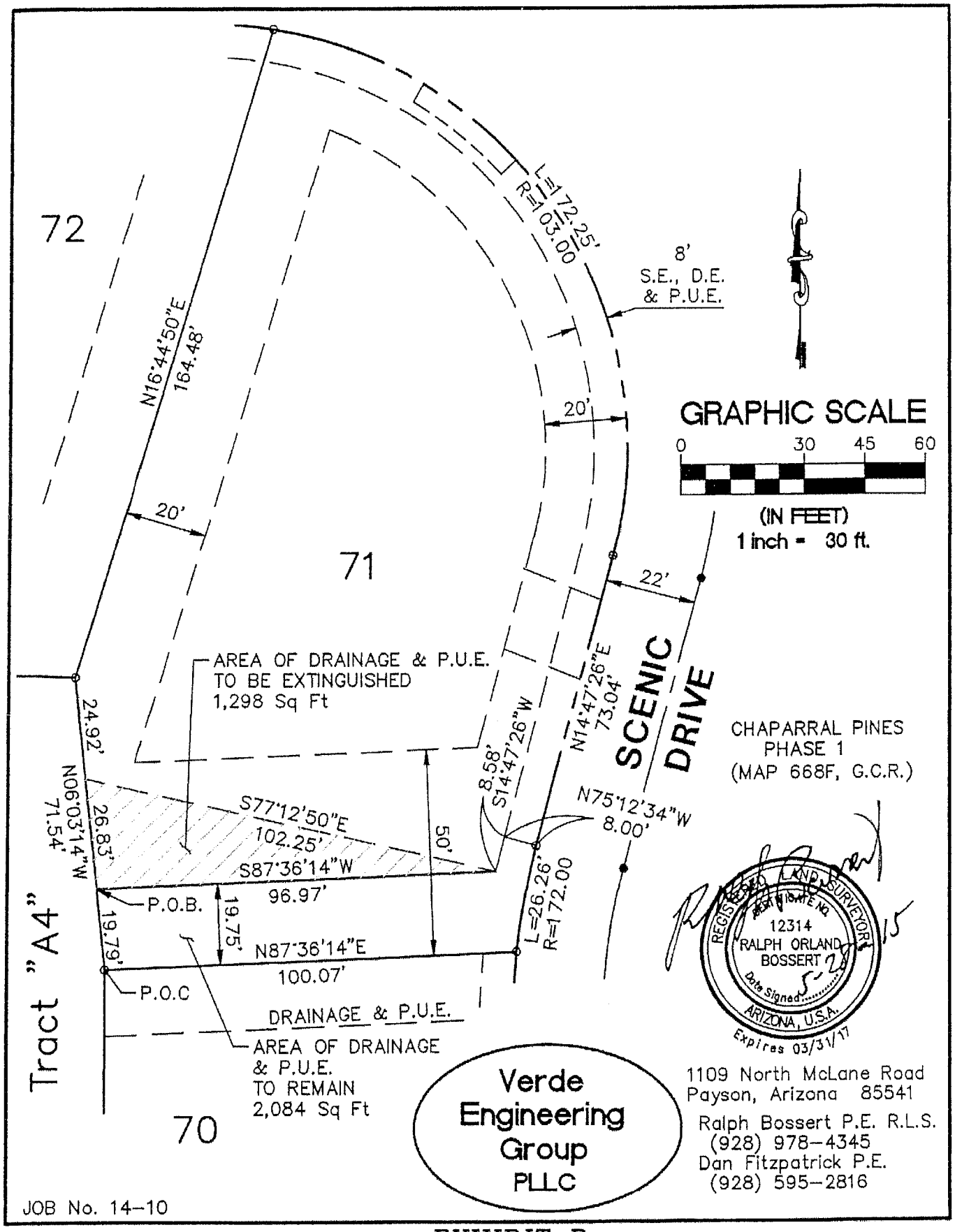
OR

I move to recommend to the Town Council approval of the abandonment request of the north portion of the public utility and drainage easement on Lot 71 of the Chaparral Pines subdivision contingent upon the requestor providing sufficient engineering plans and documentation to show that the 100-year water surface elevation will not be increased by reducing the area of the drainage easement prior to the matter being submitted to the Town Council for a decision

**Attachments**

The following items concerning this abandonment are attached:

Drawing showing easements recommended to be abandoned
Letter from the owner of Lot 70, Chaparral Pines




1004 N Scenic Dr

EXHIBIT B

# EXHIBIT "A"

LEGAL DESCRIPTION
DRAINAGE AND PUBLIC UTILITY EASEMENT TO BE EXTINGUISHED
CHAPARRAL PINES PHASE 1 LOT 71

A portion of a Drainage and Public Utility Easement located on Lot 71 of Chaparral Pines Phase 1, as shown on Map 668, Gila County Records, located in the Southwest ¼ of Section 25, T11N, R10E, G&SRM, Town of Payson, Gila County, Arizona. The said Public Utility Easement to be extinguished is more particularly described as follows:

Commencing at the southwest corner of Lot 71;
Thence N 06° 03' 14" W along the west line of Lot 71, 19.79 feet to the Point of Beginning;
Thence continuing N 06° 03' 14" W along said Lot line, 26.83 feet to the northwest corner of the said easement to be extinguished;
Thence S 77° 12' 50" E along the said easement line, 102.25 feet;
Thence S 87° 36' 14" W, along a line 19.75' normally distant north of the south line of Lot 71, 96.97 feet to the Point of Beginning;

Said Drainage and Public Utility Easement to be extinguished contains 1,298 square feet, more or less, as shown on attached Exhibit "B".

Project 14-10
May 28, 2015

LAND SURVEYOR
CERTIFICATE NO.
12014
RALPH ORLAND
BOSSERT
DATE SIGNED 5-29-15
ARIZONA U.S.A.
Expires 3/31/2017

George & Adrienne Bien-Willner
5580 E. Royal Palm Road
Paradise Valley, AZ 85253

June 12, 2015

VIA EMAIL AND U.S. MAIL

LaRon Garrett
Asst. Town Manager,
Community Development Director,
Public Works Director
Town of Payson
303 N. Beeline Highway
Payson, AZ 85541

Re: Chaparral Pines Lot #71, 1004 N. Scenic Drive (request to abandon PUE and relocate building envelope)

Dear LaRon:

Thank you for speaking with us this week regarding the above-referenced matter.

As we discussed, we recently became aware though a letter from the Chaparral Pines HOA that the owner(s) of the lot immediately adjacent to our home in Payson (Lot 70 at Chaparral Pines) seek to have the Town abandon a significant portion of a recorded public utility and drainage easement that for many years has run across Lot 71, and also to have the building envelope moved 30 feet closer to our lot and our home. Based upon the information available to us to date, we would strongly oppose this request.

First, we lack adequate information at this time to fully assess the impact of removing these easements. Nonetheless, we have reason to believe that the easements were imposed for good reason to begin with, and we've seen nothing to suggest that simply eliminating the easements to allow for a building setback advantage for the owner of lot 71 serves any purposes other than those of the owner(s) of lot 71. Indeed, these lots slope significantly and abut an artificial lake; to date, we have not experienced any drainage or flooding issues, but that could potentially change if this material change to the status quo were allowed. Given the history of the easements and the absence of any information tending to show that such a change would be prudent, without the possibility of material adverse consequences, or beneficial to anyone other than the owner(s) of lot 71, we cannot support such a proposal. Furthermore, it would seem against the public interest if the Town were to abandon property (easement) rights it currently enjoys without any reciprocal interest being returned to the public.

Separately, based upon our understanding of the exhibit we were provided, as situated now and for some time, the building envelope does not "touch" any part of the existing easements, whereas the proposal would call for the building envelope to run directly adjacent to the portion of the remainder of easement that owner(s) of lot 71 propose. This also concerns us. (We also note that the exhibit we have been presented with does not include topographical and other information – e.g., a report on drainage, etc. – that would seem to be relevant to this request).

We remain eager to learn more about these easements and this proposal so that we can better understand and evaluate the owner(s) of Lot 71's proposal; if there is any information that is available from the Town we would be interested in receiving it.

Last, although not directly related to the Town, we feel that it does deserve to be noted that we do not yet have clarity on the process or authority that the HOA is relying upon to entertain this proposal (although we do appreciate the information we have received to date). Other neighbors have shared the same concern with us. No one we have spoken with supports these proposed changes, and others have echoed concerns about how changing the building envelope from what was previously recorded may affect views and other property rights/interests. We are reaching out to the HOA simultaneous with this correspondence to request additional information, including on these points, and we would hope that the Town will not consider taking action on this proposal until those and all important matters have been fully considered and addressed.

LaRon, please let us know how we can stay informed of this issue as it is presented to the Town so that we and other members of the public may provide input on this proposal as appropriate. Thank you for making us aware of the July 6, 2015 Payson Planning Commission meeting – we plan to attend that meeting and please feel free to make this letter part of the record.

Thank you very much, as always, for your attention to these matters and for your time.

Respectfully,

George Bien-Willner

cc: Melissa Glinzak, Association Director for Chaparral Pines Community Association, Inc. (via Fax)