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January 23, 2019

Mayor Palguta and Members
of the Town Council
Town of Prescott Valley
7501 E Skoog Blvd
Prescott Valley, AZ 86314

Re: Franklin Phonetic parking issues/Town of Prescott

Dear Mr. Mayor and Council Members:

I have been the attorney for Franklin Phonetic Elementary School, Inc. ("Franklin") since shortly after its obtaining a charter contract to operate as a public charter school. Franklin is an Arizona nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. I am very familiar with the issues that Franklin has had to deal with regarding the improvement district and the Town's continued attempts to obtain money from the school. the intent of this letter is to provide a history of the difficulties that Franklin has faced with the Town as a result the improvement district.

- 2002 The Town of Prescott proposed an improvement district along Highway 69 to develop the frontage road section adjoining the properties. To this effect, Mr. Richard Parker and representatives of the city approached Franklin with the concept and requested a letter to the Town in support of the project which Franklin wrote. (Attachment 1)
- 2003-04 Discussion and action by the Town continued on the project and my clients informed me that prices were obtained for its construction and development. It was relayed to Franklin that the cost to the school for the highway frontage would be about \$20-30,000. Initially, Franklin anticipated to obtain some type of loan to pay their obligation. However, members of Town administration relayed that it was the town's intent to obtain some type of long-term financing to cushion the effect on the property owners.

Franklin was asked to support the project and since this seemed to be a manageable amount the Board of Directors/Governing Board authorized the President, Ms. Cindy Franklin, to write the letters in support of the parkway project.

- 2004-05 For some reason, costs of the project increased dramatically. When one of Franklin's staff attended a meeting on September 27, 2004, she heard disturbing information that was contrary to what was represented initially. In fact, the cost to Franklin was anticipated to increase from the \$30,000 originally quoted to \$280,000, a \$250,000 increase. At the time, Franklin was leasing the space being occupied. On January 11, 2005, Tom and Cindy Franklin wrote a letter to the Town of Prescott Valley, attention to Mr. Richard Parker, which set out that if the price for Franklin's 200 foot of frontage would be \$250,000. If that was the case, Franklin could not participate. They expressed a sadness because they felt that in future years this parkway "*would be a great improvement to our town.*" (Attachment 2).
- 11/18/05 The process to have ALL property owners in the district pay for the development was tabled due to "*increasing construction costs and opposition by some owners.*"
- 2005 Discussions with owners continued throughout 2005 and on to October 27, 2005 when it was decided to give owners a choice on the financing – a special assessment district bond or a general obligation bond.
- My office became more involved in the discussion and analysis of this project at this time. The fact that Franklin was a nonprofit public school and pursuant to the laws would be exempt from taxation was clearly laid out to the Town's staff and attorneys working on financing this project.
- My associate at the time, Douglas Kunath, took the point on these issues. He spoke to Gwen Rowitsch with the Town of Prescott Valley and Michael Cafiso with Greenberg Traurig (the Prescott Valley attorney) regarding the Redevelopment project and the two different types of bond financing. Our firm advised Franklin to select the General Obligation Bonds as the financing option as its choice primarily because the bonds would not assessed against tax-exempt property. (Attachment 3) The firm also provided instruction on how Franklin should execute the ballot providing the property owner's preference. Franklin followed our advice. (Attachment 4)
- 2006 The bond process for general obligation bonds was pursued by the Town. Part of the bonding documents is an offering memorandum provided to potential purchasers of the bonds. It describes the project, the borrower, relevant facts about the project, and the source of income that bonds and interest will be paid from, among other important disclosures. The Final Limited Offering Memorandum issued on October 25, 2006 for \$3,425,000 notified potential bond investors that four charter school parcels were already tax-exempt and the owners of the two other parcels intended to re-categorize them as tax-exempt educational. The Offering Memorandum also stated that investors need to know that future property owners could also be nonprofits which in turn would eliminate those properties from the obligation of paying the assessment.

2007 There was no push back from the Town regarding this classification and there was no assertion from the Town's representatives that a future charge may be imposed upon Franklin and the other nonprofits.

8/20/07 Because the issue of cost was eliminated from Franklin's concerns and because the Town was looking for additional funding for the project, Franklin wrote a letter in support of the Town for an ADOT Transportation Enhancement Grant. Ms. Franklin stated in the letter to the Public Works Department that *"I feel that this project will be a great improvement to the appearance and cohesiveness of our community. We have appreciated the additional parking, . . . It is not only functional but aesthetically pleasing. . . . While our organization would not be able to fit additional assessments into our operating budget we fully support your efforts."* Attachment 5.

7/5/13 Over 6 years later, The Parkway Community Facilities Community Facilities District No. 1 Board adopted Resolution 17 asserting that nonprofits were not paying anything towards the district obligation because they were tax exempt so they should change the obligation to call it a "fee" and try to collect the amount the property owner would be allocated if it paid taxes. This is what I had termed at the time as the "Get Franklin Phonetic School to Pay Resolution."

November
2013

The District Manager, Larry Tarkowski, sent Franklin an Invoice dated November 4, 2013 for "Annual fee associated with non-taxable properties located within the District and their use of parking facilities" in the amount of \$40,742. (Attachment 6)

Franklin representatives and I met with Mr. Tarkowski to discuss this invoice. In a the letter that was sent with the invoice , Mr. Tarkowski stated that, despite having full knowledge of the tax-exempt status and non-obligation for the ad valorem taxes for six (6) years, he "(u)nexpectedly discovered that a number of businesses which do not pay property taxes have occupied buildings in the district (causing) the remaining businesses to shoulder more of the costs of those improvement which everyone uses." I told him that he was incorrect. This was supposed to be public parking with no "fee" attached to allow the adjoining business to grow. Further, I informed him that there was case law stating that one could change the nature of a prohibited tax by calling it something else. He stayed consistent with his position and requested a voluntary payment from Franklin to be "fair". I asked Mr. Tarkowski for the numbers that substantiated these charges as a whole and how they were appropriated to determine why Franklin owed this much money for its "fee". I never received any cost documentation until provided during the initial stages of the litigation following a Freedom of Information Request approximately three years later.

After the meeting, the stakeholders of Franklin met and discussed what they could afford to pay voluntarily. While the board opposed giving education money for this, they determined that \$500 per month could be accomplished, but if it would resolve all issues, they would be willing to raise it to \$1,000 per month, even though they had no obligation under the law. This was relayed to Mr. Tarkowski, who said it was too low and actually increased his request to \$60,000. I told him, that Franklin would pay nothing and if he tried to prevent parking in the area, I would file a lawsuit requesting an injunction and damages.

2013 –
2016

No further monetary demands were made on Franklin and no more issues arose until recently when the Town has denied building permits for the new building.

2016

On March 28, 2016, Franklin received a “Civil Citation and Complaint to Appear before an Administrative Hearing Officer on March 28, 2016 for violation of off-street parking requirements. The Town’s position was that Franklin could not count the parking spaces because Franklin was not paying for them. On, March 11, 2016, Ms. Franklin sent a letter to Mayor Skoog and the Prescott Valley Code Enforcement explaining that Franklin was not in violation and that permits were issued for new structures approving existing parking as being satisfactory. (Attachment 7)

2016 –
Present

The hearing officer found in favor of Franklin asserting that there was no violation of off-street parking requirements. The Town appealed to the Superior Court who reviewed the record and again ruled in favor of Franklin. This matter has gone to the Court of Appeals, sent back to review the standard applied by the Judge, another decision in favor of Franklin and now the threat of another appeal.

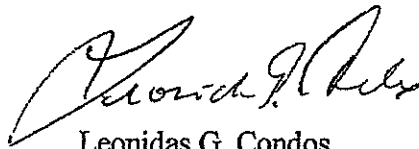
In the most recent decision, dated November 13, 2018, Judge Stevens found against the Town and in favor of Franklin Phonetic again. He specifically stated in his Order that **“To the extent necessary for issue preclusion, the Town is precluded from enforcing or relitigating the issue of whether off-site parking can be counted for compliance with on-site parking ordinances.”** (Attachment 8)

Franklin requested attorney fees to be awarded to it for the cost of defending this action. The Judge awarded fees and costs. Further pursuit in view of the Judge's order will clearly lead to additional fees being requested by Franklin since costs are coming from its income derived from equalization payments received for educating its students. Fairness has been a theme raised by the Town advocates. If anything, it is not fair for the students of Prescott Valley attending Franklin Phonetic are being deprived funds allocated to them for education because of the continued, spurious pursuit of this claim.

I hope that the Town Council exercises fairness and orders the Town Manager and the Town's attorneys to stop the litigation and the continued harassment of Franklin Phonetic Elementary School.

Should you have further questions, I am readily available to help.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leonidas G. Condos".

Leonidas G. Condos