FRANKLIN PHONETIC SCHOOL
6116 EAST HIGHWAY 69
PRESCOTT VALLEY, ARIZONA 86314

PHONE (928) 775-6747
FAX (928) 775-6740
E-MAIL nilknarf@cableone.net

Franklin Phonetic School – Board Meeting Agenda
Tuesday, January 8, 2019 @ 3:00

Call to Order

Approval of prior meeting minutes from December 6, 2018

Financial Report update from Alison Alva

New Business:

Prescott Valley Settlement Offer
Revised AFR's & Budgets for PV and Sunnyslope

Old Business:

- Sunnyslope Campus Update
- Prescott Valley Campus Update

Adjourn meeting

Next Meeting:

Franklin Phonetic School-Board Meeting Minutes
December 6, 2018

Meeting at: Franklin Phonetic Primary School, 6116 E. Hwy 69, Prescott Valley, AZ 86314

Call to order:
3:08
Present: Kelly Hawley, Becky Fitch,
Phone Participation: Alison Alva, Tom Franklin, Cindy Franklin, Audrey Wright, Melanie Franklin
Not Present: Traci Lira, Neil Wright, Christina Gabaldon

Approval of the prior minutes:
Motion to approve prior minutes by Kelly Hawley, seconded by Alison Alva, and passed unanimously.

Financial Report update for Sunnyslope and Prescott Valley:
We are still updating all the information into Sage. Our Audit was a couple days late with no findings. A requirement for the bonding company is to have 45 days cash on hand which we did. November was a 3 pay period month and after paying everything, Prescott Valley ended with a balance of $4700 and Sunnyslope ended with $1300. There is a call into the Department of Education to release monies for the IDEA grant which will be deposited into MOE.
Since we do not have a copy of the budget, approval of the budget has been tabled until the next board meeting.

Old Business:
We had another positive decision about the parking against the Town of PV but the town immediately filed another lawsuit the next day. The town still wants us to pay for parking. There is a mediation hearing set for 12-11-18 from 9AM-2:30 PM. Our lawyer has talked about settling due to the continual court fees. However, we do not believe we should give in considering we have won in court 3 times. It is agreed that we will not settle at this time.
The town is saying they did not need to let us know about the water main because it was registered with the original owner. It was suggested we work with the title company about this issue.

New Business:
Increase temperature for going out side
It was asked that we increase the temperature from 35 to 40 degrees when allowing children to be inside. There are several children who arrive to school improperly dressed for the weather. Becky made a motion to increase the temperature, it was seconded by Kelly Hawley and passed unanimously.
Safety Grant:
Mr. Bockman is working on getting a safety grant in order to get new fencing and gates for the campus.
Sunnyslope update
Enrollment is stable.
Prescott Valley update
We just had our 2nd-3rd grade musical and went great. There were rave reviews from parents.

Next meeting:
December 20 @3:00

Adjourn:
Motion to adjourn at 3:38 by Kelly Hawley, seconded by Audrey Wright, and passed unanimously.

From: Cathy Bowman <cmbowman@simsmurray.com>
Date: Monday, December 17, 2018 at 11:07 AM
To: Kory Langhofer <kory@statecraftlaw.com>
Subject: Franklin

Korey,

In response to Plaintiff's settlement offer, the Town makes the following proposal:

per Town Code 13-24-030(F) Franklin may count PCFD No. 1 spaces for zoning purposes for its current 186,000 square feet of property owned or leased for school purposes based on one space per 1,810 sq. ft. [103 spaces] as set forth in a development agreement.

- The parties will stipulate that the original citation will be withdrawn by the Town and the subsequent rulings of the Hearing Officer and Superior Court will be vacated.

- Franklin will dismiss its Complaint and the Town will dismiss its Counterclaim (both with prejudice) in Case No. P1300CV20180849

** the Town will issue construction permits based on Franklin's May 16, 2018 plan (subject to compliance with applicable Town Code provisions as set forth in the Public Works and Utilities' Dept comments dated Jun 6 and Sep 19, 2018, and May 24 and Sep 18, 2018, respectively), and also subject to the following:*

- The 33 future parking spaces shown on the east may be permanently deleted;

- The existing east-west utility easement may be vacated;

** in accordance with the development agreement, Franklin will pay $1,500 per month until Jul 1, 2031. Thereafter, the amount will be reduced to $100 per month.*

- The development agreement will provide that, in the event additional property in PCFD No 1 is purchased by Franklin for purposes that make it tax-exempt, the payment will increase to by the amount being paid at the time to PCFD No 1 for the property. At the same time, the number of PCFD No. 1 parking spaces which may be counted for zoning purposes will increase at the rate of one space per 1,810 additional sq. ft. (rounded up).

I believe this frees up more more of the property for development to meet the school's needs while also allowing for a reduced contribution for parking — which is a recognition that nothing in litigation is predictable for either side.

Please share these terms with Mrs. Franklin and let me know if you have any questions.

MEDIATION STATEMENT OF FRANKLIN PHONETIC PRIMARY SCHOOL, INC.

LISA HAUSER, MEDIATOR
2325 EAST CAMELBACK ROAD, SUITE 300
PHOENIX, AZ 85016

DECEMBER 11, 2018

INTRODUCTION

The objective of this mediation is to attain a global resolution of all matters in dispute between Franklin Phonetic Primary School, Inc. (the "School") and the Town of Prescott Valley (the "Town") in two ongoing civil actions, *Town of Prescott Valley v. Franklin Phonetic Primary School, Inc.*, Yavapai County Superior Court No. P1300CV20160034 (the "Parking Case") and *Franklin Phonetic Primary School, Inc. v. Town of Prescott Valley*, Yavapai County Superior Court No. P1300CV20180849 (the "Quiet Title Case").

To assist the Mediator in understanding the current procedural posture of the proceedings and the underlying claims and defenses, the School has provided below summaries of each case and brief statements of the School's positions with respect to disputed issues of fact or law. In addition, the School has outlined what it believes should constitute the general elements and parameters of a prospective settlement agreement.

OVERVIEW OF THE LITIGATION

I. The Parking Case

The crux of the case is whether the School may count certain parking spaces in the Town right of way (which will be referred to hereinafter as the "Parkway Land Strip Spaces") in the School's tally of available off-street parking for purposes of satisfying minimum parking quotas mandated by the Town Code. The School maintains—and a Town Administrative Hearing Officer and the Superior Court have

agreed—that the School may include the Parkway Land Strip Spaces in its off-street parking, pursuant to Section 13-24-030(F), which states:

> Other off-site parking in the Town right-of-way may be included for required parking if such parking and the use is part of an approved Improvement District or otherwise approved by a development agreement with the Town.

A. Factual Background

In June 2006, the Town created the Parkway Community Facilities District No. 1 ("PCFD1"), a municipal improvement district. Although the School is located within the PCFD1, the School property is not subject to property tax. *See* A.R.S. § 42-11104. When the PCFD1 began construction to create parking spots along the highway, the Town's property was not wide enough to add the necessary parking spaces. Consequently, the Town took a 10-foot wide strip of property from the School and its neighbors and built the Parkway Land Strip Spaces.

In 2013, the Town sent the Elementary School an invoice and letter demanding a "voluntary" annual payment of $40,742. This sum reflected the amount that the School would pay in *ad valorem* taxes if it were not a nonprofit organization. The Town attempted to characterize the assessment as a "fee" rather than a "tax." The School could not afford the assessment and did not remit payment.

B. Procedural History

The Town initiated an enforcement action against the Elementary School in early 2016, premised on an alleged parking shortage. Following an evidentiary hearing, the Town's Hearing Officer found in favor of the School. The Town thereafter appealed to the Superior Court, pursuant to A.R.S. § 12-124. The Superior Court affirmed the order of the Hearing Officer on March 10, 2017 and denied the Town's motion for reconsideration on August 11, 2017.

The Town then initiated a special action proceeding in the Court of Appeals, contending that the Superior Court had applied an unduly deferential standard of review in assessing the Hearing Officer's

factual findings, and had erroneously ruled against the Town on grounds of "estoppel" (although the Superior Court never used that term). The Court of Appeals granted special action relief and remanded the case to the Superior Court, instructing it to review the Hearing Officer's factual determinations *de novo*. The School then filed a Petition for Review in the Arizona Supreme Court, which was denied.

On November 13, 2018 a different judge of the Superior Court found in favor of the School, relying on the plain text of Town Code § 13-24-030(F).[1] The Town moved for reconsideration of the Superior Court's judgment on November 29, 2018.[2]

C. Statement of the School's Position

The Superior Court's November 13, 2018 judgment largely encapsulates the School's arguments; in the interest of efficiency, the School incorporates and adopts the Superior Court's reasoning as the statement of the School's position, unless otherwise indicated.[3]

The Town's motion for reconsideration simply repeats arguments that the Superior Court already carefully considered and ultimately rejected. Condensed to its essence, the motion seeks to negate the plain language of Section 13-24-030(F) by appeal to an extratextual ostensible "legislative intent" to limit use of the Parkway Land Strip Spaces only to entities that financially support PCFD1. The School believes this effort will fail (again) for at least three reasons. First, "it would be inappropriate for us to delve into the legislative history of a statute that is unambiguous on its face." *Hahn v. Indus. Comm'n of Arizona*, 227 Ariz. 72, 76, ¶ 17 (App. 2011). There is no genuine semantic or contextual ambiguity in Section 13-24-030(F); the meaning of the language is clear on its face. The School and the Parkway

[1] A copy of the Superior Court's November 13, 2018 judgment is attached as Appendix 1.

[2] A copy of the Town's motion for reconsideration is attached as Appendix 2.

[3] The School disagrees with the Superior Court's conclusion that the record does not support a finding of estoppel against the Town, but the School has consistently maintained—and continues to believe—that resolution of this case in its favor need not entail adjudication of any estoppel claims.

Land Strips are within an improvement district; the School therefore may use the spaces to satisfy the parking mandate. The case is that simple. The Town's invocation of "legislative intent" to supplement or supersede—rather than merely illuminate some element of uncertainty in—the plain text upends foundational rules of statutory construction.

Second, the Town does not even cite any actual legislative history, *i.e.*, councilors' statements, committee reports or other materials underlying the ordinance that codified Section 13-24-030(F). Rather, it relies primarily on an isolated phrase in a manual issued by the Town a year after the relevant ordinance was enacted, which notes in passing that businesses that financially support the improvement district will be able to utilize its off-street parking. The manual (which prescribes design standards for developing the parkway corridor) does not even indirectly purport to interpret Section 13-24-030(F), and certainly does not endorse the proposition that—contrary to the plain text of the Town Code—tax-exempt entities such as the School are ineligible use the parking spaces.

Third, even if resort to "legislative history" (defined broadly) is appropriate, the balance of these materials favors the School's interpretive position. As the Superior Court noted, the Town Council expressly and repeatedly acknowledged—in the context of enactments relating to parking—that the School's tax-exempt status insulated it from the assessments levied to fund PCFD1. Despite this awareness, the Town Council deliberately did not restrict use of the Parkway Land Strip Spaces exclusively to tax-paying entities—a substantial limitation that the Town asks the Court to unilaterally engraft onto Section 13-24-030(F). Simply put, the Town Council could have adopted the ordinance now envisaged by the Town's attorneys but chose not to do so. As the Court recognized, moralistic

appeals to putative "fairness" cannot license judicial revisions to plain statutory text.[4] For these reasons, we believe the Court will deny the Town's motion for reconsideration.

II. Quiet Title Case

At issue in these proceedings is whether, as the School alleges, a large underground water line that traverses several parcels of land owned by the School constitutes an impermissible trespass, private nuisance and/or unconstitutional taking of the School's property. The Town contends that it maintains a prescriptive easement for the water line or, alternatively, that the water line was the subject of a public dedication by the School's predecessor in interest.

A. Factual Background

In July 2017, the School purchased several parcels of land to expand its campus and provide additional facilities for its students. While preparing a site plan to support a municipal permit application in October 2017, the Elementary School discovered for the first time the existence of a large underground public water line that traverses the entire length of the Property in a north-south direction. It appears that this channel serves as a connector between two other public water lines, one located to the north of the property on county land and another located to the south of the property on municipal land. The water line has severely impeded the School's efforts to develop the parcels and has caused the School to incur substantial damages in the form of, *inter alia*, substantial revisions to the site plan, construction delays, increased holding costs, and diminishment of the property's value.

---

[4] The motion also combats the strawman notion that the School's tax-exempt status categorically immunizes it from any municipal assessment of any kind. The School never advanced, and the Court never adopted, such an argument. Rather, the Court observed that the Town's frustration with the School's tax-exempt status appeared to be animating its effort to circumvent the Town Code by unlawfully seeking to extract payments from the School. The Court never said that the Town could not restrict the School's use of the Parkway Land Strips, but only that it hasn't actually done so. In addition, the Town's argument that the Court should defer to its proposed interpretation of Section 13-24-030(F) conspicuously ignores that it was the Town's own Administrative Hearing Officer who adopted the same construction ultimately affirmed by the Court.

B. Procedural History

The School provided the Town with notice of its claims in a letter that was served on March 2, 2018 and subsequently supplemented to detail additional damages sought by the School. Having received no response from the Town, the School filed a verified complaint in the Yavapai Superior Court on September 18, 2018.[5] The Town filed an answer on November 20, in which it also asserted counterclaims alleging that the court should quiet title to the property occupied by the water line in the Town's favor.[6]

C. Statement of the School's Position

The School's position is set forth effectively in the complaint and need not be repeated here; it believes it will be able to sufficiently prove the factual allegations in the complaint and that these facts entitle the School to the relief sought. *See generally Hummel v. Rushmore Loan Mgmt., LLC*, 2017 WL 2484202, at *4 (D. Ariz. June 8, 2017) ("Arizona law imposes liability for trespass if a defendant intentionally enters land in the possession of the other or causes a thing or third person to do so."); *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Services in Arizona*, 148 Ariz. 1, 4 (1985) (defining a nuisance as "an interference with a person's interest in the enjoyment of real property"); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 434–35 (1982) (when there is "a permanent physical occupation of property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner").

The Town contends that it may permissibly maintain the water line by right of either (1) a prescriptive easement, or (2) a public dedication of the affected portion of the property. Both

[5] A copy of the School's complaint and accompanying exhibits is attached as Appendix 3.

[6] A copy of the Town's answer and counterclaim is attached as Appendix 4.

counterclaims are flawed. As to the alleged prescriptive easement, the Town has pleaded no facts indicating that the water line was installed under a claim of right, rather than with the permission of the then-owner. In addition, it is doubtful that the water line's existence was "open or notorious" for the ten-year period necessary to obtain a prescriptive easement. *See generally* Restatement (Third) of Property (Servitudes) § 2.17 (2000) ("Underground uses and slight intrusions on the surface, or above the ground, are not open unless a reasonably diligent landowner would become aware of them" and thus "seldom meet the 'open-or-notorious' requirement"); 25 Am. Jur. 2d Easements and Licenses § 42 ("Where pipes or other conduits as to which easements are claimed are buried underground and their presence is not physically apparent throughout the prescriptive period, it may be concluded that there is insufficient notoriety to permit a prescriptive easement to run against the servient estate."). In addition, even if the Town perfected an easement initially, the School—a subsequent purchaser for value lacking actual or constructive notice of its existence—acquired the parcels free of the encumbrance. *See* 25 Am. Jur. 2d Easements and Licenses § 81 ("[A] prescriptive easement is binding upon successors in interest only when they purchase with either actual or constructive notice of the agreement."); *Cont'l Telephone Co. of the West v. Blazzard*, 149 Ariz. 1, 5 (App. 1986) (purported easement permitting installation of underground telephone cable not binding on subsequent purchaser lacking notice).

At least two infirmities likewise afflict the Town's public dedication claim. First, the Town has pleaded no facts indicating that the School's predecessor in interest intended to make a public dedication of the land occupied by the water line. "Dedications being an exceptional and a peculiar mode of passing title to interest in land, the proof must usually be strict, cogent, and convincing, and the acts proved must not be consistent with any construction other than that of a dedication." *City of Scottsdale v. Mocho*, 8 Ariz. App. 146, 150 (1968). The Town speculates that the then-owner of the property must have been subjectively aware of the water line's installation, but even if that dubious supposition is

proved, mere passivity generally does not manifest the requisite intent to make a public dedication. *See* 26 C.J.S. Dedication § 63 ("An owner's mere permissive use of the land is not, however, admissible to prove an intent to dedicate the land."). Second, even if a public dedication had been validly offered and accepted at the time of the water line's installation, the School's lack of any actual or constructive notice of its existence precludes it from encumbering the School's title to the property. *See Lowe v. Pima County*, 217 Ariz. 642, 647, ¶¶ 19-21 (App. 2008) (finding that subsequent purchasers did not have actual or constructive notice of putative public dedication).

ELEMENTS OF POTENTIAL GLOBAL SETTLEMENT

The parties' initial settlement discussions have envisaged a global resolution of both proceedings that would consist of the following four facets:

1. **Termination of Both Cases:** The School believes that any settlement must provide that (1) the Town will withdraw its motion for reconsideration and otherwise agree not to pursue direct or collateral appellate proceedings (*e.g.*, special action relief) in the Parking Case; and (2) the parties will voluntarily dismiss the Quiet Title Case in its entirety.
2. **Building Permits:** The Town will approve the site plan and issue all permits or licenses necessary for the School to develop the parcels it purchased in 2017. The inclusion of such a provision is, from the School's perspective, an essential element of any acceptable settlement.
3. **Safety of Water Line:** The School will grant an express easement to the Town for use and maintenance of the water line. In return, the Town will provide for a thorough and comprehensive inspection of the water line by a disinterested third-party expert to ensure that it does not pose an unreasonable risk to the health or safety of the School's students. If the inspection reveals unreasonable health or safety risks, the Town must, at its own expense,

provide for all necessary and appropriate remedial measures (including, if necessary, relocation of the water line).

4. **Parking Enhancements or Voluntary Payments:** To address the Town's purported concerns that the School lacks sufficient parking capacity, the School is willing to consider either (a) modifying its site plan for the newly acquired parcels to provide for additional parking spaces, or (b) remit a modest voluntary payment to the Town in consideration of the School's use of the Parkway Land Strip Spaces. Given that the School has already obtained a final judgment in its favor in the Parking Case, the School does not believe that supplementation of its parking facilities or future payments to the Town should be a necessary element of a global resolution—and based on internal discussions to date, it is doubtful that the School's board of directors would approve a settlement that requires the School to pay payments to the Town. That said, the School is willing to consider in good faith the potential inclusion of such a provision in a final settlement agreement that otherwise adequately addresses the School's objectives.

DATED this 7th day of December, 2018.

STATECRAFT PLLC

By: */s/*
Kory Langhofer
Thomas Basile
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
Attorneys for Plaintiff Franklin Phonetic Elementary School Inc.

JR Accounting Solutions
PO Box 5641
Goodyear, AZ 85338-5641
January 5, 2019

Jim Hall
106640 N. 28th Drive
Suite C-205-3
Phoenix, AZ 85029

RE: Franklin Phonetic Primary School, Inc.
CTDS Number 138751000 Prescott Valley
Complaint Dated 11/30/2018

Dear Mr. Hall:

The above referenced charter school has retained my services to research the above referenced complaint submitted to the Arizona State Board for Charter Schools. In addition, they have authorized me to make any necessary changes to the FY 17-18 Annual Financial Report and the FY 18-19 Budget. As part of my review/research, I requested a list of both certified and non-certified teacher salaries per their FY 17-18 teacher contracts. I have completed my review of the FY 17-18 teacher salaries, FY 17-18 Annual Financial Report, and the FY 18-19 Budget and found the following items which will require changes to the FY 17-18 Annual Financial Report and the FY 18-19 Budget:

1). FY 17-18 AFR Page 7, Section F, Line 1; Two certified teachers were not included in the number of certified teachers. This has been changed to 28.
2). FY 17-18 AFR Page 7, Section F, Line 2; Noncertified teachers with multiple pay allocations were inadvertently counted more than once. The total number of noncertified teachers has been changed to 6.
3). FY 17-18 AFR Page 7, Section F, Line 3; There were no FTE contract teachers so this line has been changed to 0.
4). FY 17-18 AFR Page 7, Section G, Line 1, Certified Teachers; Two certified teacher salaries were inadvertently not included in the total and there was a math error in adding the total certified teacher salaries. This amount has been changed to $697,831.
5). FY 17-18 AFR Page 7, Section G, Line 1, Noncertified Teachers; Six part time noncertified teachers were inadvertently left out of the total. This amount has been changed to $232,401.
6). FY 18-19 Budget, Cover Page, Average Teacher Salary, Lines 1 and 2; Average salary of all teachers employed in budget years 2019 and 2018 were reported in total on lines 1 and 2 instead of the average salaries. These amounts have been changed on lines 1 and 2 to $37,490 and $34,082 respectively.

As stated above, I have made the necessary changes to the FY 17-18 Annual Financial Report and the FY 18-19 Budget. Franklin Phonetic Primary School, Inc. is out for the Christmas break through January 8th. They will have a Board Meeting after returning from the Christmas break to approve the Revised FY 17-18 Annual Financial Report and the Revised FY 18-19 Budget which will then be uploaded to the Arizona Department of Education through their common log on.

Yours Truly,

James R. Roberts, CPA

James R. Roberts, CPA

JR Accounting Solutions
PO Box 5641
Goodyear, AZ 85338-5641
January 5, 2019

Jim Hall
106640 N. 28th Drive
Suite C-205-3
Phoenix, AZ 85029

RE: Franklin Phonetic Primary School, Inc.
CTDS Number 078263000 – Sunyslope
Complaint Dated 11/30/2018

Dear Mr. Hall:

The above referenced charter school has retained my services to research the above referenced complaint submitted to the Arizona State Board for Charter Schools. In addition, they have authorized me to make any necessary changes to the FY 17-18 Annual Financial Report and the FY 18-19 Budget. As part of my review/research, I requested a list of both certified and non-certified teacher salaries per their FY 17-18 teacher contracts. I have completed my review of the FY 17-18 teacher salaries, FY 17-18 Annual Financial Report, and the FY 18-19 Budget and found the following items which will require changes to the FY 17-18 Annual Financial Report and the FY 18-19 Budget:

1). FY 17-18 AFR Page 7, Section F, Line 1; Two teacher aides were inadvertently included in the number of certified teachers. This has been changed to 5.
2). FY 17-18 AFR Page 7, Section F, Line 2; There was only one noncertified teacher. The total number of noncertified teachers has been changed to 1.
3). FY 17-18 AFR Page 7, Section F, Line 3; There were no FTE contract teachers so this line has been changed to 0.
4). FY 17-18 AFR Page 7, Section G, Line 1, Certified Teachers; Two teacher aides salaries were inadvertently included in the total certified teachers line. This amount has been changed to $135,000.
5). FY 17-18 AFR Page 7, Section G, Line 1, Noncertified Teachers; One noncertified teacher salary was inadvertently left out of the Noncertified Teachers column. This amount has been changed to $20,000.
6). FY 18-19 Budget, Cover Page, Average Teacher Salary, Lines 1 and 2; Average salary of all teachers employed in budget years 2019 and 2018 were reported in total on lines 1 and 2 instead of the average salaries. These amounts have been changed on lines 1 and 2 to $35,567 and $32,233 respectively.

As stated above, I have made the necessary changes to the FY 17-18 Annual Financial Report and the FY 18-19 Budget. Franklin Phonetic Primary School, Inc. is out for the Christmas break through January 8th. They will have a Board Meeting after returning from the Christmas break to approve the Revised FY 17-18 Annual Financial Report and the Revised FY 18-19 Budget which will then be uploaded to the Arizona Department of Education through their common log on.

Yours Truly,

James R. Roberts, CPA

James R. Roberts, CPA