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**From:** Reese Anderson <Reese.Anderson@pewandlake.com>  
**Sent:** Monday, July 11, 2016 12:56 PM  
**To:** Gordon Sheffield  
**Cc:** John Wesley; Charlotte McDermott; Jim Smith; 'Jeff Gross'  
**Subject:** RE: Code Interpretation for Red Mountain Ranch

Gordon,

Thank you for the answer below and for the anticipated 1989 site plan. We note the appeal deadline is Aug. 1<sup>st</sup> and the appeal fee is \$624 (not including the 4% tech fee). So the total would be \$648.96 – is that correct?

Also, thanks to John for letting me pester him with emails over the weekend. ☺

We will be in touch. Thanks again.

Reese L. Anderson  
Pew & Lake, PLC  
1744 S. Val Vista, Suite 217  
Mesa, Arizona 85204  
Office: 480-461-4670  
Facsimile: 480-461-4676  
E-mail: reese.anderson@pewandlake.com

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**From:** Gordon Sheffield [mailto:Gordon.Sheffield@mesaaz.gov]  
**Sent:** Monday, July 11, 2016 12:17 PM  
**To:** Reese Anderson <Reese.Anderson@pewandlake.com>  
**Cc:** John Wesley <John.Wesley@mesaaz.gov>; Charlotte McDermott <Charlotte.McDermott@mesaaz.gov>; Jim Smith <Jim.Smith@mesaaz.gov>; 'Jeff Gross' <JG@berryriddell.com>  
**Subject:** RE: Code Interpretation for Red Mountain Ranch

Reese,

I will send over a pdf attachment of the 1989 adopted site plan for the Red Mountain Ranch DMP to you later today. I wanted to get an answer to you regarding filing deadline and appeal application fee.

As far as the appeal deadline, it is close of business August 1, 2016 (a Monday). The 30-day appeal window would end on July 29, but that day is a Friday, a non-business day for the City of Mesa, so the appeal filing deadline is extended to the next business day.

As to the fee, the total fee is \$624.00. Formally, filing the appeal would be classified as a request for an interpretation from the Board of Adjustment.

Gordon Sheffield, AICP CNUa  
Zoning/Civil Hearing Administrator  
City of Mesa, Planning Division  
PO Box 1466, 55 N Center  
Mesa, AZ 85211-1466

T 480.644.2199

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**From:** John Wesley  
**Sent:** Monday, July 11, 2016 7:09 AM  
**To:** Gordon Sheffield <[Gordon.Sheffield@mesaaz.gov](mailto:Gordon.Sheffield@mesaaz.gov)>  
**Subject:** FW: Code Interpretation for Red Mountain Ranch  
**Importance:** High

We need to provide the information requested by Reese.

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**From:** Reese Anderson [<mailto:Reese.Anderson@pewandlake.com>]  
**Sent:** Friday, July 08, 2016 5:35 PM  
**To:** John Wesley <[John.Wesley@mesaaz.gov](mailto:John.Wesley@mesaaz.gov)>  
**Cc:** Jim Smith <[Jim.Smith@mesaaz.gov](mailto:Jim.Smith@mesaaz.gov)>; Charlotte McDermott <[Charlotte.McDermott@mesaaz.gov](mailto:Charlotte.McDermott@mesaaz.gov)>; 'Jeff Gross' <[JG@berryriddell.com](mailto:JG@berryriddell.com)>  
**Subject:** RE: Code Interpretation for Red Mountain Ranch

Sorry John, 1 more thing, on page 3 of the Sheffield 6-29-16 letter, he writes: "Attached to this correspondence is the 1989 Site Plan . . ." But, nothing was attached to the version I received via email. I believe I have a copy of Z89-36 site plan, but to make sure we are all operating from the same place, could you please send the referenced site plan from the letter?

So, the 3 questions pending are (1) need a copy of the Z89-36 site plan, (2) what is the correct appeal deadline, and (3) what, if any, is the appeal fee?

Thank you.

Reese L. Anderson  
Pew & Lake, PLC  
1744 S. Val Vista, Suite 217  
Mesa, Arizona 85204  
Office: 480-461-4670  
Facsimile: 480-461-4676  
E-mail: [reese.anderson@pewandlake.com](mailto:reese.anderson@pewandlake.com)

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**From:** Reese Anderson  
**Sent:** Friday, July 08, 2016 3:05 PM  
**To:** 'John Wesley' <[John.Wesley@mesaaz.gov](mailto:John.Wesley@mesaaz.gov)>  
**Cc:** 'Jim Smith' <[Jim.Smith@mesaaz.gov](mailto:Jim.Smith@mesaaz.gov)>; 'Charlotte McDermott' <[Charlotte.McDermott@mesaaz.gov](mailto:Charlotte.McDermott@mesaaz.gov)>; 'Jeff Gross' <[JG@berryriddell.com](mailto:JG@berryriddell.com)>  
**Subject:** RE: Code Interpretation for Red Mountain Ranch

John

Regarding the time period for the appeal deadline, could you or one of the City attorneys please clarify for us what the appropriate appeal period should be? Is it 15 days or 30 days?

We ask because we are looking at the very last sentence of Section 11-66-7(D) of the Zoning Ordinance, which reads: "Any person aggrieved by a decision of the Zoning Administrator may appeal this decision to the Board of Adjustment within a period of 30 days from the time that the decision is made in the manner specified in Section 11-67-11, and

Chapter 77.” This sentence appears to be exactly on point, but is also contrary to Section 11-77-3, which is discussed below.

Section 11-77-3 (Time Limits), states that “Unless otherwise specified in State or federal law, all appeals except of Board of Adjustment decisions shall be filed in writing within 15 calendar days after the date of the action being appealed. Appeals of Board of Adjustment decisions shall be filed within 30 calendar days of the Board rendering its decision. Calendar days are inclusive of all business days, non-business days, weekends and holidays. In the event the time limit for appeals ends on a non-business day, holiday or weekend, the time limit shall be extended to the close of business of the next business day.”

So, at first blush to us, they seem to be in conflict. But, in applying the statutory construction rule that the specific governs over the general, it seems to us that the 30 day deadline found in 11-66-7(D) is more on point and specific since it addresses ZA decions over the 15 day general deadline in 11-77-3.

Anyway, and simply put, the question we have is whether the appeal deadline should be 15 days or 30 days?

Finally, we note your office is closed today and that you will need to consult with the City Attorney’s office before answering. Accordingly, we look forward to hearing from you at your earliest convenience.

Thank you.

Reese L. Anderson  
Pew & Lake, PLC  
1744 S. Val Vista, Suite 217  
Mesa, Arizona 85204  
Office: 480-461-4670  
Facsimile: 480-461-4676  
E-mail: [reese.anderson@pewandlake.com](mailto:reese.anderson@pewandlake.com)

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From: Reese Anderson  
Sent: Friday, July 08, 2016 2:19 PM  
To: 'John Wesley' <[John.Wesley@mesaaz.gov](mailto:John.Wesley@mesaaz.gov)>  
Cc: Jim Smith <[Jim.Smith@mesaaz.gov](mailto:Jim.Smith@mesaaz.gov)>; Charlotte McDermott <[Charlotte.McDermott@mesaaz.gov](mailto:Charlotte.McDermott@mesaaz.gov)>; Jeff Gross <[JG@berryriddell.com](mailto:JG@berryriddell.com)>  
Subject: RE: Code Interpretation for Red Mountain Ranch

Thank you Sir. Sure appreciate it. Have a great weekend.

Reese L. Anderson  
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1744 S. Val Vista, Suite 217  
Mesa, Arizona 85204  
Office: 480-461-4670  
Facsimile: 480-461-4676  
E-mail: [reese.anderson@pewandlake.com](mailto:reese.anderson@pewandlake.com)

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From: John Wesley [<mailto:John.Wesley@mesaaz.gov>]  
Sent: Friday, July 08, 2016 1:41 PM  
To: Reese Anderson <[Reese.Anderson@pewandlake.com](mailto:Reese.Anderson@pewandlake.com)>  
Cc: Jim Smith <[Jim.Smith@mesaaz.gov](mailto:Jim.Smith@mesaaz.gov)>; Charlotte McDermott <[Charlotte.McDermott@mesaaz.gov](mailto:Charlotte.McDermott@mesaaz.gov)>; Jeff Gross <[JG@berryriddell.com](mailto:JG@berryriddell.com)>  
Subject: Re: Code Interpretation for Red Mountain Ranch

Reese,

Our office is closed today. Rather than speculate, I will verify the deadline for the appeal and the fee and will provide that information you on Monday when I am back in the office.

John

*Sent from my Sprint Phone.*

----- Original message-----

From: Reese Anderson

Date: Fri, Jul 8, 2016 1:27 PM

To: John Wesley;

Cc: Jim Smith;Charlotte McDermott;Jeff Gross;

Subject:RE: Code Interpretation for Red Mountain Ranch

Hello John,

I hope you are well. I have added the City Attorneys to this email for the obvious reasons.

My question is what is the appeal fee for this matter? I cannot locate a specific appeal fee in the Schedule of Fee and Charges. Of course, I find the ZA and BofA section, but I cannot locate a direct correlation for an appeal of the ZA Interpretation. I see other types of appeals, such as Building Board Appeals, but not this type. Could you please advise us. Perhaps there is no fee. I just want to make sure we get it correct.

Also, as I count the days, the appeal deadline is July 14<sup>th</sup>. Do you disagree?

Thank you.

Reese L. Anderson

Pew & Lake, PLC

1744 S. Val Vista, Suite 217

Mesa, Arizona 85204

Office: 480-461-4670

Facsimile: 480-461-4676

E-mail: [reese.anderson@pewandlake.com](mailto:reese.anderson@pewandlake.com)

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From: John Wesley [<mailto:John.Wesley@mesaaz.gov>]

Sent: Wednesday, June 29, 2016 2:15 PM

To: Reese Anderson <[Reese.Anderson@pewandlake.com](mailto:Reese.Anderson@pewandlake.com)>

Subject: Code Interpretation for Red Mountain Ranch

Reese-

Gordon Sheffield has prepared the attached code interpretation regarding converting the Red Mountain Ranch Country Club practice range to a residential use. He is out of the office today and asked that I send this interpretation to you for him.

Should you wish to appeal his decision you will need to consult and follow the requirements of the Zoning Ordinance in Chapters 67, Common Procedures, and 77, Appeals. Chapter 77 gives you the specific information about appeals, including the requirement that appeals must be filed within 15 calendar days of the action being appealed. Section 11-77-4 B provides a list of the information that should be included with the appeal.

Let me know if you have any questions.

John D. Wesley, AICP  
Planning Director  
City of Mesa  
480-644-2181

**From:** Gordon Sheffield  
**Sent:** Tuesday, September 13, 2016 5:08 PM  
**To:** Reese Anderson  
**Cc:** Jim Smith; Charlotte McDermott; MaryGrace McNear; John Wesley; Christine Zielonka; Lisa Davis; Kaelee Wilson; Rebecca Gorton  
**Subject:** Processing Information and Schedule for Appeal of Red Mountain Ranch DMP Interpretation  
**Attachments:** Neighbor notification letter.doc

Good afternoon Reese,

A few logistical items related to the appeal of the ZA interpretation:

- 1) Case number assigned to this appeal will be BA16-049.
- 2) The Board of Adjustment hearing date is set for October 26<sup>th</sup>, in the Upper Level of the City Council Chambers, 57 East 1<sup>st</sup> Street. The meeting start time will be set at 5pm.
- 3) The advertised address will be: *The 3600 through 4400 blocks of North Power Road - west side; the 5600 through 6800 blocks of East Thomas Road - north side; the 6000 through 6200 blocks of East Thomas Road - south side; the 3600 through 4400 blocks of North Recker Road - both sides, and the 5900 through 6700 blocks of East Viewmont Drive, both sides; 820 plus or minus acres (also known as the Red Mountain Ranch Development Master Plan(DMP), which is now referred to as a Planned Area Development(PAD)).*
- 4) The requested action of the Board of the Adjustment will be advertised as follows: *Consider an appeal of an interpretation of the Zoning Administrator regarding the method of processing a request to convert a portion of the Red Mountain Ranch Golf Course (the driving range) into a single residence subdivision. The Zoning Administrator's interpretation is that the request must be processed as a major modification to the Red Mountain Ranch Development Master Plan's '-PAD' overlay zoning district, as it is considered a significant change that requires the modification or removal of a condition of the zoning. Such requests require public hearings before both the Planning and Zoning Board and the City Council. The applicant believes their request requires only a Site Plan Review, which is typically a single public hearing process through the Planning and Zoning Board.*
- 5) I will act as the planner managing the Board of Adjustment case. For the purposes of the mailed notice (see number 5, below), please use my contact information below.
- 6) Notice must be sent by first class mail to all owners of property within the entire Red Mountain Ranch PAD area, plus the owners of property located within a 500-ft radius of the entire Red Mountain Ranch PAD area. The notice is required to be sent 14-days before the hearing date, which in this case translates to sending them by October

12<sup>th</sup>. We will therefore need the letters to be prepared in full (written, stuffed in envelopes, addressed, stamped and sealed) and then have the fully prepared letters delivered to this office by close of business on October 6<sup>th</sup>. This is as per the notice requirement of the Mesa Zoning Ordinance, Section 11-67-5.B. The letter will need to include at minimum the information contained in the attached sample notice letter. A copy of the notice letter is also needed for the case file, as is a complete list of notified property owners, the affected assessor parcel numbers, and the property owners' mailing addresses.

- 7) As is typical for Board of Adjustment appeals, the City will post notices on the site, and arrange for notice to be published in the Arizona Republic, both occurring a minimum of 15-days before the scheduled hearing date (on or before October 11<sup>th</sup>). Language for the notice published in the Republic will be sent to the newspaper on October 3<sup>rd</sup> for publishing on October 8<sup>th</sup> to comply with Mesa City Charter publishing requirements for legal notices (which requires Saturday or Wednesday for the day of publishing).
- 8) Any additional written information you wish to be conveyed to the Board, over and above the letter of appeal you filed on July 26<sup>th</sup> on behalf of your client, will need to be received by this office by close of business October 6<sup>th</sup>. I'll remind you that no new arguments may be included in this additional information, as your arguments had to be fully included in the July 26<sup>th</sup> letter of appeal.
- 9) The staff report with staff recommendation will be sent electronically to the Board of Adjustment members, and therefore become a public document, on or about close of business on October 13<sup>th</sup>, roughly two weeks in advance of the public hearing date. The staff report will be available publically after 5pm that same afternoon through the agenda posted on the City's Board of Adjustment webpage: <http://mesaaz.gov/city-hall/advisory-boards-committees/board-of-adjustment>
- 10) As a heads up, I will be out-of-office between October 3<sup>rd</sup> and October 6<sup>th</sup>. As always, City of Mesa offices are closed on Fridays. I'll be back at my desk on Monday, October 10<sup>th</sup>.

Please let me know if you have any questions.

Gordon Sheffield, AICP CNUa  
Zoning/Civil Hearing Administrator  
City of Mesa, Planning Division  
PO Box 1466, 55 N Center  
Mesa, AZ 85211-1466

T 480.644.2199

F 480.644.2757

Offices: Open M-Th, 7am-6pm, and Closed Fridays

September 16, 2016

**VIA FIRST CLASS MAIL AND EMAIL** [Gordon.Sheffield@mesaaz.gov](mailto:Gordon.Sheffield@mesaaz.gov)

Gordon Sheffield  
Zoning/Civil Hearing Administrator  
City of Mesa, Planning Division  
PO Box 1466, 55 N Center  
Mesa, AZ 85211-1466

Re: Red Mountain Ranch Interpretation

Dear Mr. Sheffield:

We are in receipt of your email dated September 13, 2016 to Reese Anderson of Pew & Lake, PLC, regarding the Board of Adjustment appeal in this case. We object to certain items in the email as being outside the terms of Arizona law and the City of Mesa Zoning Ordinance, and a blatant attempt to invent requirements and limitations to tip the playing field in violation of our client's due process rights. We request that the City of Mesa follow the terms of its own Zoning Ordinance and revise its procedures for this matter. Our more specific objections to Items 4, 6 and 8 in your email (reproduced in the boxes below) are as follows.

**I. ITEM 4 – DESCRIPTION OF APPEAL.**

4) The requested action of the Board of the Adjustment will be advertised as follows: *Consider an appeal of an interpretation of the Zoning Administrator regarding the method of processing a request to convert a portion of the Red Mountain Ranch Golf Course (the driving range) into a single residence subdivision. The Zoning Administrator's interpretation is that the request must be processed as a major modification to the Red Mountain Ranch Development Master Plan's '-PAD' overlay zoning district, as it is considered a significant change that requires the modification or removal of a condition of the zoning. Such requests require public hearings before both the Planning and Zoning Board and the City Council. The applicant believes their request requires only a Site Plan Review, which is typically a single public hearing process through the Planning and Zoning Board.*

This description is manifestly biased. It refers to your interpretation and the reasons for it in detail, calling the request a "major modification" resulting in a "significant change" that without question "require public hearings before the Planning and Zoning Board and the City



September 16, 2016

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Council.” The applicant’s position, in contrast, is portrayed as a mere “belief” that the request requires “only” Site Plan Review, and contains no explanation as to why the applicant takes that position.

Moreover, it is misleading to state that our client is trying to “convert” anything. We are asking the City to allow our client to do what the Zoning Ordinance expressly permits – develop the property consistent with the underlying residential zoning. Nor can you accurately state that it is our client’s position that this case should only be heard by the Planning & Zoning Board when we have consistently acknowledged that both the Planning & Zoning Board and City Council will hear this case. While you may disagree with our position, the description must be balanced and neutral, and it is not.

The City is not required (nor is it proper) to include any statement of positions in the advertisement, and you certainly cannot shape the language in the statement to your benefit. The way you have framed the issue on appeal looks to be more of an opening argument than a neutral statement. We believe the entire advertisement should consist of the following single sentence:

*Consider an appeal of an interpretation of the Zoning Administrator regarding the method of processing a request to develop a single family subdivision in the location of the driving range for the Red Mountain Ranch Golf Course.*

For the foregoing reasons, we request that you replace the biased and misleading description of the appeal in your Item 4 with the above proposed language.

## **II. ITEM 6 – MAILED NOTICE TO PROPERTY OWNERS.**

6) Notice must be sent by first class mail to all owners of property within the entire Red Mountain Ranch PAD area, plus the owners of property located within a 500-ft radius of the entire Red Mountain Ranch PAD area. The notice is required to be sent 14-days before the hearing date, which in this case translates to sending them by October 12<sup>th</sup>. We will therefore need the letters to be prepared in full (written, stuffed in envelopes, addressed, stamped and sealed) and then have the fully prepared letters delivered to this office by close of business on October 6<sup>th</sup>. This is as per the notice requirement of the Mesa Zoning Ordinance, Section 11-67-5.B. The letter will need to include at minimum the information contained in the attached sample notice letter. A copy of the notice letter is also needed for the case file, as is a complete list of notified property owners, the affected assessor parcel numbers, and the property owners’ mailing addresses.

The City of Mesa Zoning Ordinance has three (3) different notice provisions for Board of Adjustment hearings. The first provision, Section 11-66-3.D.4, which is the section that is directly applicable to appeals to the Board of Adjustment, provides:

The Board shall fix a reasonable time for the hearing of the appeal and give notice thereof to the parties in interest and the public by publication in a newspaper of general circulation at least 15 days prior to the public hearing and by posting the property which is the subject of the application, in conformance with ARS § 9-462.04, at least 5 days prior to the hearing. It shall be the responsibility of the applicant to maintain the posting once erected until after the hearing.

This provision is consistent with the controlling Arizona statute, A.R.S. § 9-462.06(F), which only requires posting and advertisement for appeals to the Board and reads as follows: "The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected."

The second provision of the Zoning Ordinance, Section 11-77-4.C, provides that notice of Board of Adjustment hearings shall be provided "in the same manner required for the action that was the subject of the appeal," and to all persons who spoke on the matter at any prior hearings on the same matter. The subject of the appeal is your interpretation, for which no notice and certainly no mailed notice to adjacent property owners, was given, and no one spoke at any prior hearing.

You suggest, however, that the general notice requirements in the third provision, Section 11-67-5.B, somehow control over the notice that is expressly required for Board of Adjustment appeals by Section 11-66-3.D.4. That is incorrect. Section 11-67-5.B only applies to variances, special use permits, development incentive permits, substantial conformance improvement permits, and "interpretations determined by the Zoning Administrator to require a public hearing." This matter does not involve a variance, SUP, DIP or SCIP. This is a Board of Adjustment appeal of an interpretation, not an interpretation determined by the ZA to require a public hearing. You did not determine that this matter required a public hearing; because all board of adjustment appeals require a public hearing this provision does not apply. The only time Section 11-67-5.B applies to interpretations is when the interpretation is being made by the ZA, and the ZA decides to have a public hearing on his or her own interpretation. There was no public hearing on your interpretation in this case. Board of Adjustment appeals of interpretations are governed by Section 11-66-3.D.4 or Section 11-77-4.C which, like the statute, do not require mailed notice.

Moreover, Section 11-67-5.B.2 only requires notice to properties within 500 feet of "the exterior boundary of the property that is the subject of the application." The only property that

September 16, 2016

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is the subject of the interpretation is the driving range, not the entire Red Mountain Ranch PAD. If any mailed notice were required – and we dispute that the plain language of the Zoning Ordinance requires any mailed notice – it would only have to be sent to property owners within 500 feet of the driving range.

These onerous requirements are patently meant to incite residents of Red Mountain Ranch and to impose overly oppressive procedures on our client to make the appeal process as difficult and as least likely to succeed as possible. To achieve that illegitimate result, the City is intentionally misreading its Zoning Ordinance and misapplying state law. If the City insists on continuing this wrongful conduct, our client's procedural and substantive due process rights will be violated.

Based on the foregoing and the unambiguous language of the Zoning Ordinance, we insist that you follow Section 11-66-3.D.4 and A.R.S. § 9-462.06(F), or Section 11-77-4.C, rather than Section 11-67-5.B.2.

### III. ITEM 8 – SCOPE AND SUPPLEMENTATION OF ARGUMENTS.

8) Any additional written information you wish to be conveyed to the Board, over and above the letter of appeal you filed on July 26<sup>th</sup> on behalf of your client, will need to be received by this office by close of business October 6<sup>th</sup>. I'll remind you that no new arguments may be included in this additional information, as your arguments had to be fully included in the July 26<sup>th</sup> letter of appeal.

There is nothing in the Mesa Zoning Ordinance supporting your statement that no new arguments may be included in the additional information we intend to supply to the Board. The relevant provisions in Section 11-77-4 only require the appeal to contain, in concise language, a description of the requested outcome if the appeal is granted and the grounds for appeal, if required by this Ordinance. There is no requirement we can find in the Zoning Ordinance for all arguments in appeals to the Board to be "fully included" in the letter of appeal. To the contrary, the Board is expressly authorized to consider all relevant information, including but not limited to "any additional materials as may be presented at the appeal hearing, and any written correspondence submitted after the appeal has been filed." Mesa Zoning Ordinance § 11-77-4.G.1 (emphasis added).

Furthermore, your interpretation would require planning staff to be the gatekeeper for what constitutes an "argument" and which "arguments" are "new." You do not have that discretion.

Once again, your application of the Zoning Ordinance to restrict our ability to present our case to the Board of Adjustment appears intended to unfairly favor the City's interests in maintaining your incorrect interpretation and to deprive our client of its due process rights. We intend to submit additional material to the Board prior to the hearing. We demand that our additional interpretation be provided to the Board in the exact form we submit it, regardless of whether you think it contains "new arguments."

**IV. APPEAL FILING FEE.**

Finally, our client paid the fee for the appeal as a matter of courtesy and to expedite the process. We note that under Section 11-77-4.B.1 of the Zoning Ordinance, an appeal may be brought "by filing a written appeal accompanied by the payment of the appropriate fee." However, Section 11-66-3.D.2 clearly states that "No fee is required for this appeal" to the Board. Therefore, the "appropriate fee" in this appeal is zero. Accordingly, we request a refund of the filing fee.


**V. CONCLUSION.**

Please let us know in writing by September 21, 2016 whether you will: (a) change the description in the advertising as requested; (b) withdraw the mailing requirement and only proceed with advertisement and posting; (c) agree to forward our additional information to the Board in its entirety; and (d) refund the appeal filing fee.

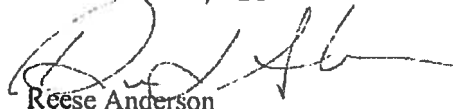
If you would like to discuss these issues, we would be happy to have that discussion in person or on the telephone. We look forward to hearing from you.

Very truly yours,

BERRY RIDDELL LLC

  
Jeffrey D. Gross

PEW & LAKE, PLC

  
Reese Anderson

JDG/lk



September 27, 2016

**VIA FIRST CLASS MAIL AND EMAIL**

Jeffrey D. Gross, Esq.  
BERRY RIDDELL LLC  
6750 E. Camel Back Rd., Ste. 100  
Scottsdale, AZ 85251  
jg@berryriddell.com

Reese Anderson, Esq.  
PEW & LAKE, PLC  
1744 S. Val Vista, Ste. 217  
Mesa, AZ 85204  
reese.Anderson@pewandlake.com

Dear Jeffrey and Reese,

I received your letter dated September 16, 2016. This letter addresses your four objections.

**I. Description of Appeal**

After reviewing your proposed language, it is a good starting point for the newspaper advertisement. Your proposed language, however, does not address the subject of the Zoning Administrator's interpretation. Therefore, language is added to your sentence that briefly summarizes the Zoning Administrator's interpretation and the fact that it is being appealed. To that end, the advertised language will be revised as follows:

*Consider an appeal of an interpretation of the Zoning Administrator regarding the method of processing a request to develop a single residence subdivision in the location of the driving range for the Red Mountain Ranch Golf Course. The Zoning Administrator's interpretation is that the request must be processed as a major modification to the Red Mountain Ranch Development Master Plan's '-PAD' overlay zoning district, as it is considered a significant change that requires the modification or removal of a condition of the zoning. The applicant is appealing this interpretation.*

**II. Mailed Notice to Property Owners**

Additionally, after reviewing the sections of Mesa's Zoning Ordinance referred to in your letter, my original position still stands. Mesa Zoning Ordinance, Section 11-67-5.B controls the minimum requirements for public notice in this case. This is consistent with how the Zoning Administrator has applied the public notice requirements in previous appeals of Zoning Administrator interpretations and it is consistent with the notice requirements for any matter that involves a public hearing before the Board of Adjustment.

Mesa Zoning Ordinance, Sections 11-66-3.D.4 and Section 11-77-4.C both describe the notice requirements when the Zoning Administrator is acting as a Hearing Officer, not when the Zoning Administrator is acting in an administrative capacity. When the Zoning Administrator issues an interpretation, the Zoning Administrator is acting administratively, therefore these sections do not apply.

Moreover, as stated previously, the subject of the Zoning Administrator interpretation is a modification/removal of a stipulation of the zoning for the entire Red Mountain Ranch area as well as a modification to the entire Red Mountain Ranch Planned Area Development (PAD) overlay zoning district (previously referred to as a Development Master Plan), therefore Mesa's Zoning Ordinance requires that an applicant notify all property owners within the Red Mountain Ranch PAD area as well as the owners of property located within a 500-foot radius of the entire Red Mountain Ranch PAD area.

If you disagree with this interpretation, you may appeal the interpretation to the Board of Adjustment as a separate action. If you do so, this interpretation would need to be decided first, as it affects the notice requirements for the Zoning Administrator's interpretation of your request to develop the driving range.

III. Scope and Supplementation of Arguments

Section 11-77-4 of Mesa's Zoning Ordinance does state that a written appeal must include the grounds for the appeal, "if required by this Ordinance." The intent of this provision is to make sure the grounds for an appeal are stated when the appeal is filed and not after the fact. Because the Zoning Ordinance does not make this clear, the point is conceded, and all additional materials submitted for your appeal will be forwarded to the Board. In future, the language in this section of the Mesa Zoning Ordinance will be amended to clarify that all grounds for an appeal must be filed at the time the written appeal is filed.


IV. Filing Fee

And lastly, your letter cites to Mesa Zoning Ordinance, Section 11-66-3.D.2 as grounds for not having to pay a fee to file your appeal. This section of the Zoning Ordinance, however, does not apply to decisions of the Zoning Administrator acting in an administrative capacity, it only applies to appeals filed when the Zoning Administrator is acting as a hearing officer, which is not the case. You are appealing an interpretation of the Zoning Administrator and these decisions are made by the Zoning Administrator while acting in an administrative capacity. The fee remains required, pursuant to Mesa Zoning Ordinance Section 11-77-4.B.1 and will not be refunded. As mentioned earlier, this determination that a fee is required may also be appealed to Board of Adjustment.

V. Conclusion

The advertisement for this case, assuming there is no appeal of the notice requirements as stated in this letter, will be sent to the newspaper on October 3<sup>rd</sup> for publishing on October 8<sup>th</sup>. If you do decide to appeal the notice requirement the City will have to continue the case until the Board of Adjustment rules on this issue.

Sincerely,



Gordon Sheffield, AICP, ONUa  
Zoning Administrator

October 4, 2016

**VIA FIRST CLASS MAIL AND EMAIL** [Gordon.Sheffield@mesaaz.gov](mailto:Gordon.Sheffield@mesaaz.gov)

Gordon Sheffield  
Zoning/Civil Hearing Administrator  
City of Mesa, Planning Division  
PO Box 1466, 55 N Center  
Mesa, AZ 85211-1466

Re: Red Mountain Ranch Interpretation

Dear Mr. Sheffield:

We are in receipt of your letter dated September 27, 2016, in which you continue to erroneously rely on § 11-67-5.B for your interpretation that we must mail notice. We request that you reconsider your decision that mailed notice is necessary for this appeal.

Your reasoning is that Sections 11-66-3.D.4 and 11-77-4.C of the Mesa Zoning Ordinance apply (and do not require mailed notice) only when the Zoning Administrator (ZA) is acting as a “hearing officer,” not when the ZA is acting administratively. This is incorrect under your own interpretation of the express terms of the Mesa Zoning Ordinance.

For purposes of this letter we will assume that the Zoning Ordinance separates the ZA into hearing officer and administrative roles. Under this assumption, Section 11-66-7 dictates the powers and duties of the ZA, and creates the processes that the ZA is obligated to follow. Section 11-66-7.D provides that any person aggrieved by “a decision of the Zoning Administrator may appeal the decision to the Board of Adjustment within a period of 30 days from the time that the decision is made the manner specified in § 11-67-11 [which does not apply] or Chapter 77.” Section 11-66-7 says nothing about § 11-67-5, nor draws a distinction between appeal of an administrative or hearing officer ZA decision.<sup>1</sup> In other words, appeals from any decision of the ZA, no matter in what capacity, are governed by Chapter 77.

In fact, Chapter 77 establishes “uniform” procedures for appeals from decisions by the ZA and the ZA Hearing Officer – both of the roles you claim to play. *See* § 11-77-1 (“This chapter establishes uniform procedures for appeals of final decisions by the Historic Preservation Officer, Planning Director, Zoning Administrator, Zoning Administrator Hearing Officer . . .”)

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<sup>1</sup> You have already agreed that § 11-66-7.D applies to this appeal in your email of July 11, 2016, in which you conceded the appeal submittal deadline was 30 days rather than 15 days. Thus, you cannot now decide that the notice requirements in this section are inapplicable.

(emphasis added). Section 11-77-4.C requires notice of an appeal to the Board of Adjustment from any entity listed in § 11-77-1, including either the Zoning Administrator or the Zoning Administrator Hearing Officer, to be given in the same manner for the action that is the subject of the appeal. You chose not to have a public hearing for your interpretation in this matter, so there was no mailing. By so doing, you also established the notice that must be given of the appeal to the BOA, which does not include mailing.

Although the Mesa Zoning Ordinance may have some internal inconsistencies in other respects, there is no way the provisions can be reasonably read to support your interpretation that § 11-67-5.B, rather than Chapter 77, applies here to create a requirement of notice to all of the Red Mountain Ranch subdivision plus an additional 500 feet. As we have explained, § 11-67-5.B only applies to “variances, [SUPs, DIPs, SCIPs], and *interpretations determined by the Zoning Administrator to require a public hearing*” (emphasis added). Because you did not require a public hearing with your initial interpretation, you cannot insist that § 11-67-5.B applies now. To do so would not only ignore Chapter 77, but would allow you to decide after the fact what notice is required to appeal your own interpretation. You do not get to dictate how notice must be given of an appeal from your decision by self-selecting the hat you supposedly were wearing when making your decision. That is not the express requirement or intent of Zoning Ordinance and is against basic premises of due process.<sup>2</sup>

Section 11-66-7 and Chapter 77 are clear and straightforward. The City clearly is intentionally misreading the notice provisions to make this as burdensome as possible, to create as many hurdles as possible, and to deprive our client of its due process rights.

Moreover, the one-sided description of the appeal still is biased and misleading, and the City illegally charged a fee for the appeal. We again request that the description we provided be used. With respect to the fee, you have conceded Chapter 66 applies to this appeal. Section 11-66-3.D.2 section states, unambiguously, “No fee is required for this appeal.”

Finally, your instruction that we must appeal your interpretation of the mailing requirement to the BOA is meaningless, and further violates our client’s due process rights. Based on your interpretation, we would have to mail notice of the appeal to the same recipients we claim do not need notice of your initial decision, which would defeat the entire purpose of avoiding the mailing requirement in the first place. Why should we appeal a decision that we have to mail notice when the appeal would require the very same mailed notice? We reserve all rights to challenge this facially incorrect and unfair decision without going through the exercise

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<sup>2</sup> Even assuming § 11-67-5.B applied here, which we dispute, the 500 foot notification radius can only apply to the area of the proposed project, *i.e.*, the driving range, since that is the “property that is the subject of the appeal.”



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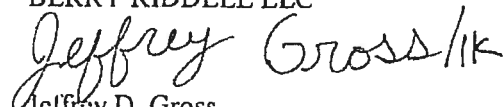
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of complying with notice requirements that we do not need to comply with in the first place. Indeed, this entire process as you have interpreted it is a due process violation.

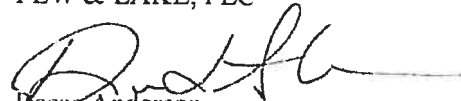
If you would like to discuss these issues, we would be happy to have that discussion in person or on the telephone. We look forward to hearing from you.

Very truly yours,

BERRY RIDDELL LLC

  
Jeffrey D. Gross

PEW & LAKE, PLC

  
Reese Anderson

JDG/lk



October 18, 2016

**VIA FIRST CLASS MAIL AND EMAIL**

Jeffrey D. Gross, Esq.  
BERRY RIDDELL LLC  
6750 E. Camel Back Rd., Ste. 100  
Scottsdale, AZ 85251  
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Reese Anderson, Esq.  
PEW & LAKE, PLC  
1744 S. Val Vista, Ste. 217  
Mesa, AZ 85204  
reese.anderson@pewandlake.com

Re: Zoning Administrator Interpretation – Minimum Mailed Notice Requirement for Red Mountain Ranch Interpretation

Dear Jeffrey and Reese,

I am in receipt of your letter dated October 4, 2016, in which you have asked me, as the Zoning Administrator (ZA), to reconsider my decisions regarding (1) the method and extent of public notice, (2) the wording of the public notice, and (3) the issue of payment of an appeal fee. My decision remains as stated in my letter dated September 27, 2016. This letter serves to further clarify my position on the minimum notice requirement and the language used to advertise/agendize the appeal.

**I. Notice Requirement**

Regarding public notice, aside from the state statutory notice requirements, Mesa's Zoning Ordinance requires mailing a written notice to certain property owners. Mesa Zoning Ordinance 11-67-5.B controls the mailed notice requirement for your case.

In your letter you argue that appeals from a Zoning Administrator's decision are governed by Chapter 77 of Mesa's Zoning Ordinance. I respectfully disagree with your position and analysis because it fails to recognize that the Zoning Ordinance must be viewed and applied as a harmonious whole.

The requirement for mailing notice is addressed in both sections 11-67-5.B (Notice of Public Hearings) and 11-77-4.C (Public Notice). Both sections are on point in this case. As the Zoning Administrator, I read both sections and analyzed them in terms of the intent of the code, the intent of the public notice requirement, and how Mesa's Zoning Ordinance has been historically interpreted and applied.

If Section 11-77-4.C governs, as you contend it does, no public notice would be required. As I stated in my previous letter, Section 11-77-4.C does not apply to Zoning Administrator interpretations. Section 11-77-4.C describes the notice requirements when the Zoning Administrator is acting as a Hearing Officer, not when the Zoning Administrator is acting in an administrative capacity. When the Zoning Administrator

issues an interpretation, the Zoning Administrator is acting administratively. It would be illogical, to apply Section 11-77-4.C and not require any public notice to an appeal of a Zoning Administrator decision or interpretation when completed as an administrative function. This would allow appeals of administrative Zoning Administrator interpretations to circumvent the notice requirements of Mesa's Zoning Ordinance, which is not the intent of the Zoning Code or the public notice requirement.

As the Zoning Administrator, I helped draft Mesa's Zoning Ordinance and know that the intent of the code is to require mailed notice to affected property owners. If a dispute arises regarding notice requirements, such as your appeal, the Zoning Administrator interprets the applicability of the notice requirements broadly and in a manner that is fair and transparent.

To take your position would require the Zoning Administrator to construe Mesa's code narrowly to avoid any notice requirement. That is not in keeping with the intent of the code and is not how the Zoning Administrator has historically interpreted the code.

As stated previously, Mesa Zoning Ordinance 11-67-5.B is on point in this case. This Section requires applications to the Board of Adjustment for interpretations determined by the Zoning Administrator to require a public hearing to provide notice to property owners within 500-ft of the exterior boundary of the property that is the subject of the application. This section controls the minimum requirement for public notice in this case. This is consistent with how the Zoning Administrator has applied the public notice requirements in previous appeals of Zoning Administrator interpretations and is consistent with the notice requirements for any matter that involves a public hearing before the Board of Adjustment. Mesa's Zoning Ordinance has always anticipated notice requirements for any requests requiring a hearing before the Board of Adjustment.

Additionally, Arizona's open meeting law favors open meetings and ample notice to ensure the public can attend and monitor the meetings.<sup>1</sup> That is why in 1978 the Arizona legislature enacted 38-431.09 which states:

It is the public policy of this state that meetings of public bodies be conducted openly **and that notices** and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings. (emphasis added)

The intent of public notice is to give those property owners that would be affected by a decision the opportunity to attend the hearing.<sup>2</sup> It is my job as the Zoning Administrator to construe any notice provisions in the Mesa City Code to favor open and public meetings. To take your approach would require me to narrowly apply the notice provision to your case. For me to come to the conclusion that Zoning Administrator interpretations are excluded from the minimum mailing notice requirements would be

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<sup>1</sup> *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 122-23, 912 P.2d 1345, 1351-52 (App. 1995).

<sup>2</sup> *East Camelback Home Owners Association v. Arizona Foundation for Neurology and Psychiatry*, 18 Ariz. App. 121, 127, 500 P.2d 906, 912 (1972).

contrary to the intent of the Mesa Zoning Ordinance, and would require me to narrowly construe Mesa's code in such a way as to not favor open and public meetings.<sup>3</sup>

In order to comply with Mesa's Zoning Ordinance, your appeal requires mailed notice to property owners within RMR PAD extending 500-ft from the boundaries of the Red Mountain Ranch DMP/PAD and compliance with the mailed notice requirement is a prerequisite to conducting the public hearing.

**A. Notice Requirement: 500-ft Notification Radius**

Additionally, your letter indicates that assuming Section 11-67-5.B applies, you dispute the boundaries of the 500-ft notification radius. It is your belief that notice should only be provided to property owners who live 500-ft from the driving range. My original position still stands on this issue. Mailed notice is required to each property owner within the Red Mountain Ranch Development Master Plan (RMR DMP), and to owners of properties within a 500-ft radius of the Red Mountain Ranch DMP/PAD. There are several reasons for this decision including the fact that your request effects the entire DMP/PAD, not just the driving range property, and the fact that you are appealing a Zoning Administrator interpretation regarding the requisite procedural processes for a modification to a DMP/PAD which again affects the entire RMR DMP. Assuming that the Board agrees with your determination of how a modification of the RMR DMP should be processed, such an interpretation could affect how any future request of the same DMP is processed, which in turn affects the entire DMP, not just the golf course driving range.

Compliance with Mesa's minimum requirements for notice of a public hearing is a prerequisite to holding the meeting. This means notice had to be sent by 1<sup>st</sup> class mail by October 13<sup>th</sup>, 14-days before the scheduled public hearing. Because no mailed notice was provided to the City by October 13, the Board of Adjustment cannot hear the appeal on October 26.

**II. Description of Appeal**

To satisfy the statutory notice requirements in A.R.S. § 9-462.04, and public advertising requirements of the Mesa City Charter, the advertisement for the October 26<sup>th</sup> Board of Adjustment meeting was sent to the newspaper on October 3<sup>rd</sup>, and this notice was published on October 8<sup>th</sup> in the Arizona Republic. In addition, four signs were posted in the Red Mountain Ranch DMP area, including one adjacent to the golf course driving range. The newspaper notice and posted signs both include the notice language as stated in the September 27<sup>th</sup> letter. My position on this issue has not changed.

Notice of a public meeting is an essential element of Arizona's public meeting law. Notice of a public hearing is "adequate if it affords an opportunity to any person, by the exercise of reasonable diligence, to determine if his property would be affected and to what extent."<sup>4</sup> As the Zoning Administrator, I believe the language is adequate and reasonable to afford the property owners in Red Mountain Ranch the opportunity to know if their property is affected by the interpretation and to what extent. The language

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<sup>3</sup> Exceptions to the open meeting law "should be narrowly construed in favor of requiring public meetings." *City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 484, 803 P.2d 891, 894 (1990); *Johnson v. Tempe Elementary School Dist.*, 199 Ariz. 567, 569-570, 20 P.3d 1148, 1150 - 1151 (App. 2000).

<sup>4</sup> *East Camelback Home Owners Association v. Arizona Foundation for Neurology and Psychiatry*, 18 Ariz. App. 121, 127, 500 P.2d 906, 912 (1972).

published in the newspaper and posted on the signs satisfies the requirements of due process and notice. I do not believe the language is biased, as you suggest. Rather, it simply states the Zoning Administrator's interpretation and that this interpretation is being appealed. Your suggested language is used, but if left alone, does not provide sufficient explanation of the request, so it creates a concern about being too vague and not providing adequate notice to property owners.

### **III. Appealing the Minimum Notice Requirements**

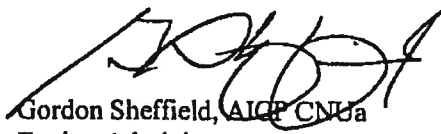
As I indicated previously, your client may appeal the question of how much notice is required. Doing so will stay all proceedings in the matter regarding the initial appeal.

The Board of Adjustment ("Board") is required to act in a public hearing forum. Because of Mesa City Charter requirements, and filing deadlines set by the City's contracted newspaper advertiser, it is past the date to sufficiently advertise a separate appeal of the notice requirements for an October 26<sup>th</sup> Board of Adjustment hearing in the newspaper. Staff can either cancel the meeting or proceed with the meeting on October 26 when staff will inform the Board that the case must be continued.

Additionally, I wanted to bring to your attention that your letter incorrectly states the notice requirements for the appeal of the minimum notice requirements. In your letter you state that the appeal of the notice requirement would require the same notice as the appeal regarding the determination of processing requirements for your client's request to build a single residence subdivision. This is incorrect. If you decide to appeal the Zoning Administrator's interpretation on the minimum public notice requirements, no additional mailed notice would be required. The appeal of the minimum notice requirements is not associated with a specific geographic territory or parcel -- the effect of the interpretation is City-wide and not limited to the area of Red Mountain Ranch DMP as is the case for your client's appeal filed on July 26<sup>th</sup>. Again, the question relates to overall process and procedure, and how public notice of an appeal of an administrative interpretation/action of the Zoning Administrator should occur.

If your client does decide to appeal the issue of public notice, a case could be advertised for the December 7<sup>th</sup> regular meeting of the Board, because the newspaper advertising deadline for the Board's November 2<sup>nd</sup> regularly scheduled meeting has also passed.

Sincerely,

  
Gordon Sheffield, AICP CNIA  
Zoning Administrator

October 19, 2016

**VIA EMAIL** ([gordon.sheffield@mesaaz.gov](mailto:gordon.sheffield@mesaaz.gov))

Gordon Sheffield, AICP CNUa  
Zoning/Civil Hearing Administrator  
City of Mesa, Planning Division  
PO Box 1466, 55 N Center  
Mesa, AZ 85211-1466

*Re: Notice of Appeal of the Notification Requirements Relative to Case No. BA16-049*

Dear Mr. Sheffield:

As you know, we represent Divot Partners, the owner of the Red Mountain Ranch Golf Course. We are writing for two reasons. First, through this letter, and under Sections 11-66-7(D)(5) and 11-77-4 of the Mesa Zoning Ordinance, we hereby give notice of our appeal of the Zoning Administrator Interpretation/ Decision received by this office and dated September 27, 2016 and October 18, 2016 relative to the Zoning Administrator's decision to require the Appellant to notify ALL of Red Mountain Ranch plus 500 ft. beyond such boundary. Second, we are writing in response to your October 18, 2016 letter and the unresolved issues therein.

**Notice of Appeal of Notification Requirements**

We further request a hearing before the Mesa Board of Adjustment relative to this decision reached by the Zoning Administrator in the September 27 and October 18 letters. As before, we reserve the right to supplement this appeal letter by submitting additional materials once the appeal hearing date has been set before the Board of Adjustment.

As required by Section 11-77-4(B), we provide the following information:

- a. The date of this appeal is the date of this letter: October 19, 2016.
- b. The name of person filing the appeal is: Reese L. Anderson. The individuals representing Divot Partners in this appeal are: Reese L. Anderson and W. Ralph Pew of Pew & Lake, PLC, and Jeffrey Gross, of Berry & Riddell, 6750 E. Camelback Rd., Scottsdale, Arizona 85251.

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- c. The address to which notices shall be sent is: Pew & Lake, PLC, Attn: Reese L. Anderson, 1744 S. Val Vista, Suite 217, Mesa, Arizona 85204, with copies in all cases to Jeffrey Gross, Berry & Riddell, 6750 E. Camelback Rd., Scottsdale, Arizona 85251.
- d. The contact information, telephone number and e-mail addresses of the appellant to be contacted regarding the appeal is:

Appellant: Reese L. Anderson or W. Ralph Pew  
Pew & Lake, PLC  
1744 S. Val Vista, Suite 217  
Mesa, Arizona 85204  
Office: 480-461-4670  
Facsimile: 480-461-4676  
Email: [reese.anderson@pewandlake.com](mailto:reese.anderson@pewandlake.com)

With a copy to: Jeff Gross at: [jg@berryriddell.com](mailto:jg@berryriddell.com)

- e. The action or decision being appealed is the Zoning Administrator's Interpretation dated September 27, 2016 and October 18, 2016 regarding the requirement to notify all of Red Mtn. Ranch plus 500 ft. from the exterior of such community.
- f. The Appellant's requested outcome is that the Board of Adjustment will agree with Appellant that no notice is required, and alternatively, that if notice is required, it would only be 500 ft. from the "subject property", which is the driving range portion of the golf course and not the entirety of Red Mtn. Ranch.
- g. The grounds for this appeal are that the Zoning Administrator is improperly interpreting the Mesa Zoning Ordinance by selectively choosing the more onerous provisions within the Ordinance in an attempt to cause unnecessary public opposition, violate the Appellant's due process rights, make appeal of the Zoning Administrator's own interpretation as difficult as possible, and cause additional and unnecessary expense to the Appellant.
- h. There is no assigned address for the subject property, but the property is generally described as the driving range of the Red Mtn. Ranch Golf Course. The case number involved and pending with the City of Mesa is BA16-049.
- i. Because your October 18, 2016 letter did not state an appeal fee was required, we did not include one. If you determine otherwise, we reserve the right to present our objections at that time.

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Under Section 11-77-4(D) of the Mesa Zoning Ordinance, we request that the Board of Adjustment conduct a public hearing *de novo*, and review all relevant information, including all prior interpretations of the Zoning Administrator and the notice requirements thereunder. As noted above, we reserve the right to present "additional materials as may be presented at the appeal hearing, and any written correspondence submitted after the appeal has been filed."

We look forward to hearing from you about a date for the appeal and presenting this appeal to the Board of Adjustment. If you have any questions or feel that this notice of appeal is deficient in any way, please inform us immediately so that we may remedy any such deficiency.

#### Unresolved and New Issues

As noted above, we are in receipt of your letter dated October 18, 2016, in which you continue to erroneously rely on § 11-67-5.B despite the clear language of the City's Zoning Ordinance. Your continued reasoning that Sections 11-66-3.D.4 and 11-77-4.C do not apply does not hold water when the specific Chapter for making appeals is Chapter 77, and is the one that you directed us to in prior communications. Accordingly, we again raise our objection and request that you reconsider.

We further object to notification signs placed by the City of Mesa within Red Mtn. Ranch. Specifically, we object to (1) the very fact that the signs are placed when you knew that we object to this notification requirement, (2) we object to the language used on the signs, which continues to be one-sided and clearly slanted in favor of the City of Mesa, and (3) we object to the size of the signs. As you know, the size of a typical Board of Adjustment notice sign placed on a property is 16" x 20". Yet, in this case, the City unilaterally elected, over our objects to place 4' x 4' signs throughout the entire community. This 720% increase in sign size and is unprecedented, unacceptable and without basis. It is a further violation of our client's due process rights and is exemplary of the lengths the City will go to slant the Board of Adjustment hearing to its side. We again renew our request to immediately remove the notice signs as this issue is clearly prejudicing the Appellant's ability to get a fair hearing and is a violation of due process.

#### Cancellation of October 26, 2016 BOA Hearing

Finally, this letter confirms that the Appellant is in agreement to cancel the October 26<sup>th</sup> Board of Adjustment Hearing. We further note that the first available hearing date on the appeal of the notice requirement is December 7<sup>th</sup>.

We reserve all rights to continue to challenge these facially incorrect and unfair decisions without going through the exercise of complying with notice requirements that we do not need to comply with in the first place. Indeed, this entire process as you have interpreted it is a due process violation.



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We further place the City of Mesa on notice that it seems highly improper that the same person whose decision is being appealed is still making the decisions as to what the notice language will be, the size of the signs, the amount of notice required, and on and on. We believe this arrangement is a clear conflict of interest and should be remedied immediately.

If you would like to discuss these issues, we would be happy to have that discussion in person or on the telephone. We look forward to hearing from you.

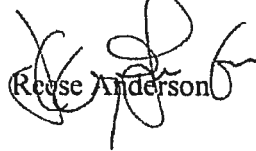
Very truly yours,

BERRY RIDDELL LLC



Jeffrey D. Gross

PEW & LAKE, PLC



Reese Anderson