

## Lebovitz, Brandon

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**From:** leon spiro [leon\_spiro@yahoo.com]  
**Sent:** Friday, July 22, 2011 1:06 PM  
**To:** dgonsalvas@notredamepreparatory.org  
**Cc:** leon\_spiro@yahoo.com; Washburn, Bruce; Ward, Kelly; Jagger, Carolyn; City Council; Padian, Connie; Meinhart, Dave; mflatten@goldwaterinstitute.org; Lane, Jim; Borowsky, Lisa; Robbins, Dennis E; Richert, David; Hadder, Don; Williams, Greg; john@reactionresearch.com; johnnorton@goldwaterinstitute.org  
**Subject:** Fw:Principal. RE: Patent Easement Abandonment Request #13-AB-2010

David Gonsalvas, Principal, Notre Dame Preparatory School, Scottsdale, Az.; Principal Gonsalvas: I reference Abandonment Request #13-AB-2010, submitted, I believe, for the Administration of Notre Dame Preparatory School. I feel it is my civic duty to inform you of what we believe to be an issue that is being overlooked in this request. There is "no dispute of the right of the City of Scottsdale to abandon its interest" in these Federal Patent Easements, originally sold by the Federal Government under the Provisions of the Small Tract Act of 1938, "if done by City Council Action at a property owners request". Up until March 1999, an exchange of an easement for an easement could be done administratively by the Engineering Services Director of the City of Scottsdale, ( Scottsdale Ordinance #1386 ). We believe that once abandoning its interest in these Patent Roadway Easements, these patent easements, then become "private roadway easements", as per the wording of the issued Federal Land Patent. And "any" encroachment upon these easements is a "private property right taking". May I say, I oppose the City of Scottsdale abandoning its interest in the Federal Patent Easements contained within the property to be sold, "prior to the sale of the property" to the Notre Dame Preparatory School. I believe, that the new owner should go through this "City policy of abandonment procedure", of these Federal Land Patent Roadway and Public Utility Easements. May I add, I believe, if we are correct, that Notre Dame Preparatory School has been encroaching upon these Federal Land Patent Roadway Easements, since its original purchase of this school property, that was once the Tesseract School? Your School Property was comprised of four (4), five (5) acre adjacent parcels, at time of purchase, I believe. We also believe that these four parcels were never legally assembled, nor were the "patent easements legally abandoned", under the provisions of Scottsdale City Ordinance #1386, which was in affect at that time. This issue, that I have called to your attention, is meant to protect the Church and School from possible legal action by "other parties of interest". Please note "Agreement Documents" that you will be required to signature by "owner and the lender and other parties of interest", that are intended to obsolev the City of Scottsdale of all responsibility. We view these required "Agreement Documents, that must be signed and notarized, to be an admission by the City Staff and City Council" that something is not legally correct when encroachment is permitted by the City? We have been saying repeatedly, that this question of an existing "perpetual roadway easement", can only be resolved by obtaining the "Legal Opinion from the Arizona Attorney General" to resolve this Federal Land Patent issue, for parcels sold by the Federal Government under the provisions of the Small Tract Act of 1938. once and for all. The parcels which now comprise the Campus of Notre Dame Preparatory School and with the proposed purchase of these new parcels to be purchased, were all sold under the provisions of the Act of Congress referenced. May I call your attention to Arizona Appellate Court Case, Bernal v. Loeks and Arizona Appellate Court Case Neal v. Brown, #1 CA-CV 06-0756. For the latter case, Neal v. Brown, please be sure that you read the "dissenting opinion of Judge Murray Snow". We have done our duty in informing the Administrative Members of Notre Dame Preparatory School of this "property right taking easement issue", now before the Church and School. St. Bernard Church of Clairvaux, if we are correct, may now have a similar encroachment problem? I believe in that case, it could have been easily avoided. "THEY LISTEN BUT DO NOT HEAR". This issue is a "Legal issue and not a judgement call". I await your acknowledgement of receipt of this E Mail. Leon Spiro, SFC-E7 ( Retired ) U.S. Army.

--- On Sun, 7/17/11, leon spiro <leon\_spiro@yahoo.com> wrote:

> From: leon spiro <leon\_spiro@yahoo.com>  
> Subject: Fw: RE: Patent Easement Abandonment Request #13-AB-2010  
> To: citycouncil@scottsdaleaz.gov, jlane@scottsdaleaz.gov,  
> sklapp@scottsdaleaz.gov, lborowsky@scottsdaleaz.gov,  
> rmccullagh@scottsdaleaz.gov, rlittlefield@scottsdaleaz.gov,  
> drobbins@scottsdaleaz.gov  
> Cc: drichert@scottsdaleaz.gov, leon\_spiro@yahoo.com,  
> cjagger@scottsdaleaz.gov, bwashburn@scottsdaleaz.gov,  
> sscott@scottsdaleaz.gov, jpadilla@scottsdaleaz.gov,  
> jmurillo@scottsdaleaz.gov, dhadder@scottsdaleaz.gov,  
> gwilliams@scottsdaleaz.gov, sam@samjwest.com,  
> john@reactionresearch.com, guyrphillips@gmail.com  
> Date: Sunday, July 17, 2011, 4:23 PM  
> Mayor and Council Members:  
> Patent Easement Abandonment Request Case #13-AB-2010, was approved  
> by the Planning Commission on 22 June 2010 by Planning Commission  
> action. It is now coming before the City Council for its approval, for  
> the "abandonment of the Cities interest". I repeat, "abandonment of  
> the Cities interest". I reference the attached E Mail below, in its  
> entirety. "SHOULD NOT THE APPLICANT AND/OR OWNER" be making this  
> request for this "patent roadway and public utilities easement  
> abandonment", after sale of the land owned by the City and sold by  
> the City of Scottsdale, rather than the City? Has City Attorney  
> Bruce Washburn "approved of this method of abandonment" change? Will  
> there be any "risk taking by the City"? Agreements? As you well  
> know, "we view any encroachment or blockage upon these Small Tract  
> Act of 1938 Patented Parcels", sold by the Federal Government,  
> results in "a  
> property right  
> taking", if  
> ever encroached upon. "Please read  
> carefully the wording of the issued United States Patent for each of  
> these  
> parcels sold by the Federal Government". Please be advised that  
> there is a difference between a "Federal Patented Roadway Easement"  
> and a "Federal Property Roadway Easement". Added to this, the  
> "City is only abandoning its interest" and not the patent easement in  
> "total"? The issue is this, is the "City and the Applicant,  
> "property right taking organizations"?  
> Leon Spiro, A Citizen of Scottsdale. PS: What ever happened  
> to Hulapai?

> --- On Wed, 6/22/11, Lebovitz, Brandon <BLEbovitz@Scottsdaleaz.gov>  
> wrote:

> > From: Lebovitz, Brandon <BLEbovitz@Scottsdaleaz.gov>  
> > Subject: RE: Patent Easement Abandonment Request  
> > #13-AB-2010  
> > To: leon\_spiro@yahoo.com  
> > Cc: "Murillo, Jesus" <JMurillo@ScottsdaleAz.Gov>,  
> > "Ruenger, Jeffrey" <JRuenger@scottsdaleaz.gov>, "Curtis, Tim"  
> > <tcurtis@scottsdaleaz.gov>, "Jagger, Carolyn"  
> > <cjagger@scottsdaleaz.gov>  
> > Date: Wednesday, June 22, 2011, 3:41 PM Mr. Spiro,

> >  
> > Thank you for your comments regarding case 13-AB-2010.  
> I  
> > have printed  
> > copies of this correspondence for insertion into the Planning  
> > Commissioner's dais packets, and by way of this e-mail  
> I am  
> > notifying  
> > City Clerk Jagger of your comments. However, I am the secretary to  
> > the Planning Commission, and responsible for the drafting  
> of  
> > Planning  
> > Commission's meeting minutes. Please note that your correspondence  
> > has been printed and saved as a part of the permanent  
> record  
> > for case  
> > 13-AB-2010.  
> >  
> > Best regards,  
> >  
> > Brandon Lebovitz  
> > Current Planning  
> > City of Scottsdale  
> > Phone: 480.312.4213  
> > blebovitz@scottsdaleaz.gov  
> >  
> > -----Original Message-----  
> > From: leon\_spiro@yahoo.com  
> > [mailto:leon\_spiro@yahoo.com]  
> >  
> > Sent: Wednesday, June 22, 2011 2:38 PM  
> > To: Projectinput  
> > Subject: Patent Easement Abandonment Request  
> #13-AB-2010  
> >  
> > Planning Commission Members: This is to advise you of  
> "my  
> > approval" of  
> > the  
> > Abandonment Request by Notre Dame Preparatory School  
> to  
> > abandon the  
> > "Cities Interest only" of Small Tract Act of 1938  
> Parcel  
> > Easements, for  
> > which they have obtainrd ownership. We believe,  
> that  
> > patented parcels,  
> > once abandoned of "Cities Interest", that these easements then  
> > become "private roadway" for all patented parcel owners to use. I  
> > "oppose the abandonment of the Cities Interest for "all parcels to  
> be  
> > sold by the  
> > City  
> > of Scottsdale" mentioned in this request for abandonment. The  
> > "obligatory Agreement Release" required of the City will then  
> > possibly put the City at "risk" should there ever be Legal

> Action  
 > > taken by others  
 > >  
 > > entitled to "dominant tenement easement rights"  
 > > to these patented  
 > > parcel  
 > > easements. It is our belief, that a denial of a  
 > "private  
 > > propety right"  
 > > is  
 > > in question when any "patent easement is encroached upon or  
 > > blocked".  
 > > It  
 > > appears that Planning Department Director, Connie  
 > Padian  
 > > ,Zoning  
 > > Administrator Tim Curtis have failed to seek the  
 > Legal  
 > > Departments  
 > > approval regarding this possible "risk taking" on the  
 > part  
 > > of the City?  
 > > And, before "approval of this request" suggest that  
 > the  
 > > Scottsdale City  
 > > Attorney approve of this action prior to " Planning Commissioners  
 > > approval". Leon Spiro, A Concerned Citizen. Please provide me a  
 > > copy of this correspondence. Thank you. Please forward this  
 > Comment  
 > > to City  
 > > Clerk  
 > > Jagger for insertion into Minutes of this meeting.  
 > >  
 > > leon spiro  
 > >  
 > > leon\_spiro@yahoo.com  
 > >  
 > >  
 > > This message was feedback from the following web page:  
 >  
 > >  
 > > 6/22/2011 2:37:48 PM  
 > >  
 > >  
 > > 97.117.248.197 Mozilla/4.0 (compatible; MSIE 8.0;  
 > Windows  
 > > NT 6.0; WOW64;  
 > >  
 > > Trident/4.0; GTB7.0; SLCC1; .NET CLR 2.0.50727; Media Center PC 5.0;  
 > > .NET CLR 3.5.21022; .NET CLR 3.5.30729; .NET CLR  
 > 3.0.30729;  
 > > .NET4.0C; yie8)  
 > > sessionID: 0  
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