MEMORANDUM

Date: November 7, 2013

To: Chairman and Members
Pima County Bond Advisory Committee

From: C.H. Huckelberry
County Administrator

Re: **Rillito Park Improvements**

The County Attorney received the enclosed letter dated October 21, 2013 from Mr. Edwin R. Moore regarding Rillito Park. The County Attorney's October 31, 2013 response is also enclosed for your information.

The next phase of Rillito Park improvements will begin after the end of the 2014 County Fair Horseracing season, or in March of that year. These improvements will include additional soccer field improvements, removal of existing horse barns, and other modifications necessary for this phase of Rillito Park improvements.

The improvements anticipated to begin after March 2014 are related to a bond amendment requested by the City of Tucson that has yet to be processed by the Bond Advisory Committee. The City of Tucson originally asked that funds for Rillito Park be utilized to construct a recreation center. Lacking funding to operate and maintain such a center, the City of Tucson has now requested the funds be used for development of athletic fields, which will be maintained by the County.

A bond amendment will be processed at your meeting of February 21, 2014 to implement the request from the City of Tucson and to allow the County to proceed with the contemplated athletic field improvements.

CHH/anc

Enclosure

c: Nanette Slusser, Assistant County Administrator for Public Works Policy
Nicole Fyffe, Executive Assistant to the County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator

Edwin R. Moore
P.O. Box 36077
Tucson, AZ 85740

October 21,2013

Barbara LaWall,Esq.
Pima County Attorney
1400 Legal Services Building
32 N. Stone Ave.
Tucson, AZ 85701-1412

Re: NOTICE OF TAXPAYER CLAIM AND REQUEST FOR ACTION PURSUANT TO A.R.S. 11-641

Dear Ms LaWall,

I am a citizen of the United States, and a resident and property taxpayer of Pima County, Arizona. Pima County borrowed money by issuing bonds to buy land and develop a park to be turned over to the City of Tucson. The publicity pamphlet for the bond issue submitted to the voters must contain, among other things, a "complete list of each proposed capital improvement that will be funded with the proceeds of the bonds". A.R.S. 15-491(H)(6).

The voters approved general obligation bonds for $5,500,000 to build a park. Of those funds my information is that Pima County has expended approximately $200,000 or more for project and matters not included within the taxpayer approval for issuance of the bonds. The Arizona Constitution art.7. 13 requires voter approval of all bond issues. The Arizona Statutes prohibit use of bond proceeds for purposes other than those approved by the voters. A.R.S. 15-491(J). There are exceptions authorized by 2010 Sessions Laws 34 that do not apply in this case. Use of funds for matters not approved by taxpayers is in violation of the Arizona Constitution and law.

I am informed that Pima County intends to utilize a portion of said bond proceeds for removing barn improvements at the Historic Rillito Racetrack. The Rillito Race Track initiative provides that, "In the event a petition, if filed seeking to have Rillito Race Track designated a national historic site, Pima County hereby declares its full support of that petition". A copy of the Initiative is included herewith. The proposed destruction of the barns and other improvements at the Race Track are in violation of Pima County obligations and duties under the Initiative (there is no expiration for that and other obligatory provisions binding upon Pima County of the Initiative).

It is clear that the County Administrator and Staff well know the limitations of the uses of bond proceeds. Recently it was reported that Mr. Huckelberry would not allow the County to participate in the use of bond funds desired by the City of Tucson because the proposed use was not legal as the voters had not approved it in the bond election. A copy of the newspaper article on that matter is also included herewith.

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A copy of this letter is being sent to the County Attorney with the request that it bring action enforcing the rights of the taxpaters pursuant to A.R.S. 11-641. It is my understanding that Pima County has improperly amended or attempted to amend the ordinance approved by the voters. Any such action(s) are and were contrary to law and are null, void or voidable.

At a minimum, it appears to me that you have violated the Opening Meeting Law, A.R.S. 38-431 et. Seq. And 11-251. As I am sure you are aware, any legal action transacted by you in violation of the Open Meeting Law is null and void. A.R.S. 38-431.05A. The reference to particular statutes is not intended to be all inclusive. I reserve, and do not waive, the right to raise any applicable law, rule, or regulation that you have or may in the future violate with respect to this matter. In the event that I bring an action against you, I may seek such damages for wrongful expenditure of public funds as have been expended on this matter, attorney fees, costs, and such other relief as may be just proper and appropriate.

Your prompt attention to these matters is appreciated. It is my hope that you will act to protect the interests of the Pima County taxpayers.

Sincerely,

Edwin R. Moore

cc:
Barbara LaWall, Esq.
Pima County Attorney
Tom Horn, Esq.
Arizona Attorney General
Pima County
Pima County Board of Supervisors
Ramon Valadez, Chairman
Ally Miller, Supervisor
Sharon Bronson, Supervisor
Ray Carroll, Supervisor
Richard Elias, Supervisor
c/o Robin Brigode,

C.H. Huckelberry
Pima County Administrator
Local and National Media
Arizona Quarter Horse Association
American quarter Horse Association
Clint Bolick
Christina Sandefur
All members of the State Legislature

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO ELECTORS

A full and correct copy of what is proposed to be initiated is as follows:

AN ORDINANCE

Be it enacted by the People of the State of Arizona, County of Pima:

TITLE - AN ORDINANCE ADOPTING AN OFFICIAL PLAN PROVIDING FOR THE USE, ACTIVITIES AND STATUS OF THAT CERTAIN LAND AND IMPROVEMENTS OWNED BY PIMA COUNTY, CONSISTING OF APPROXIMATELY EIGHTY-EIGHT (88) ACRES, GENERALLY KNOWN AS "RILLITO RACE TRACK."

SECTION 1. PIMA COUNTY HEREBY DECLARES THAT SAID LAND SHALL BE UTILIZED FOR RECREATIONAL AND HISTORIC USES, INCLUDING HORSE-RACING APPROVED BY THE ARIZONA STATE RACING COMMISSION, FOR THE BENEFIT OF THE CITIZENS OF PIMA COUNTY.

RILLITO RACE TRACK SHALL BE ADMINISTERED UNDER THE PIMA COUNTY PARKS AND RECREATION DEPARTMENT.

SECTION 2. PIMA COUNTY SHALL LEASE RILLITO RACE TRACK, PURSUANT TO A.R.S. 11-256. THE LEASE PROVISIONS SHALL PROVIDE, AT LEAST, THAT COMMERCIAL HORSE RACE MEETS, HORSE SHOWS, RUGBY, SOCCER, SOFTBALL, ENTERTAINMENT, COMMUNITY AND CHARITABLE ACVITIVITIES, RESTAURANTS, AND ALL FORMS OF LEGAL COMMERCIAL ACTIVITIES MAY BE CONDUCTED ON THE PREMISES BY THE LESSEE FOR A PERIOD OF TWENTY-FIVE (25) YEARS COMMENCING JANUARY 1, 1985.

SECTION 3. PIMA COUNTY HEREBY DESIGNATES RILLITO RACE TRACK AS THE OFFICIAL PIMA COUNTY RACE TRACK FOR COUNTY HORSE RACE MEETS FOR A PERIOD OF AT LEAST TWENTY-FIVE (25) YEARS FROM JANUARY 1, 1985.

SECTION 4. PIMA COUNTY HEREBY DECLARES ITS FULL SUPPORT OF THE PETITION FILED WITH THE ARIZONA STATE HISTORIC PRESERVATIONS OFFICE, SEEKING TO HAVE THE RILLITO RACE TRACK DESIGNATED A STATE HISTORIC SITE.

IN THE EVENT A PETITION IS FILED SEEKING TO HAVE RILLITO RACE TRACK DESIGNATED A NATIONAL HISTORIC SITE, PIMA COUNTY HEREBY DECLARES ITS FULL SUPPORT OF THAT PETITION.

IN FURTHERANCE THEREOF, THE IMPROVEMENTS ON THE LAND SHALL BE MAINTAINED.

SECTION 5. THE PIMA COUNTY BOARD OF SUPERVISORS DOES NOT HAVE THE RIGHT, POWER OR AUTHORITY TO CHANGE OR AMEND THIS ORDINANCE.

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TUCSON & REGION

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Editor: Hipolito R. Corella / 520-573-4101 / metro@azstarnet.com

Broadway-widening funds threatened

County wants it built as voters intended, or $25M will be pulled

By Darren DeFonco and Joe Ferguson
ARIZONA DAILY STAR

Pima County is threatening to pull its funding from an increasingly controversial road project if the city doesn't build it as originally planned.

County Administrator Chuck Huckelberry said it's becoming clear that the city might not fully implement the Broadway-widening project voters approved in two separate bond elections.

And if the city fails to build a full six-lane, median-divided roadway between Country Club Road and Euclid Avenue, the county won't contribute its $25 million share to the $71 million project and instead will put the money toward county roads.

In addition, the county would also seek a refund of the $1.3 million it already has spent on the early stages of the project.

City officials say the county is prematurely placing an ultimatum on a project that is still being planned, and by doing so is undermining a citizens panel designed to find a workable solution for the Broadway corridor.

Huckelberry said the county's hands are tied because of language in a 1997 voter-approved bond.

"The whole context of that bond was adding road capacity. And that means widening the road in most cases," Huckelberry said. "If (the city) doesn't meet the terms of the bond ordinance, we can't spend money on it."

He decided to send an internal memo to his staff earlier this week as way to start planning for the future, just in case folks against any expansion of Broadway win out.

"We keep hearing some people saying no widening at all," Huckelberry said. "We're saying no widening is not an option."

If the county pulled its money, the city would have to cover the difference.

For years, residents and government officials sparred over the proposed Broadway project. The idea was to expand Broadway, beginning in 2016, extending eastward from downtown to ameliorate future traffic congestion.

But what infuriated residents was that the plan would destroy more than 100 homes and businesses along the corridor.

The city put together a citizens task force last year where neighbors, traffic consultants and city officials could hash out some of their differences. The group is scheduled to continue working on the Broadway plan until next summer.

Some fear Huckelberry's plans could sabotage the entire effort.

"These people have been told up until now all options are on the table," said Councilman Steve Kozachik, who was instrumental in forming the committee. "And after a year, some administrator comes in and says, 'This is what we're doing or I'm pulling the plug.' All this does is further erode what little trust people have in their government. If (Huckelberry is) trying to run citizens out of these types of processes, he's succeeding."

Assistant City Manager Albert Elias said it's too early to tell where the citizens panel is headed, and it should be left unfettered.

Elias said the intention was to allow the committee to reach a conclusion and then bring in officials from the city, the county and

See BROADWAY, C2

Barbara LaWall
Pima County Attorney

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32 N. Stone Avenue
Suite 1400
Tucson, AZ 85701

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www.pcao.pima.gov

October 31, 2013

Via First Class Mail

Mr. Edwin R. Moore
P.O. Box 36077
Tucson, AZ 85740

Re: Notice of Taxpayer Claim and Request for Action

Dear Mr. Moore:

This will respond to your letter dated October 21, 2013, in which you allege that Pima County has violated its bond ordinance and the Arizona Open Meeting Law and in which you request that I take action against the Pima County Board of Supervisors pursuant to A.R.S. section 11-641. Following a careful review of the present circumstances regarding Rillito Park, I have concluded that there is no factual or legal basis to take the action that you have requested, for the reasons stated below.

The November 6, 1984 initiative which you contend imposes continuing obligations upon Pima County relating to Rillito Park expired by its terms on December 31, 2009. Notwithstanding the expiration of the initiative, which was intended to continue horse racing at Rillito Park for a twenty-five year period, Pima County has continued to lease portions of Rillito Park for horse racing and plans to continue to do so for at least the near future.

The voter-approved general obligation bonds to which you refer relate to the improvement of Rillito Park for not only horse racing, but also the provision of recreational activities such as soccer fields. The recreational use of the property by the community may be further accommodated by the current proposal to remove and relocate the older and dilapidated barns from the west end of the park to the east end of the park.

The proposal for removal and replacement of the barns is presently in the planning stage and has not resulted in any expenditure of Pima County bond funds except as has been previously approved by the voters. As plans for removal and replacement of the barns are finalized, a specific proposal for the further expenditure of Pima County bond funds for these park improvements will be considered first by the Pima County Bond Advisory Committee and then by the Pima County Board of Supervisors. The Pima County Bond Ordinance would need to be duly amended before any bond funds could be committed to the project. County administration projects that this might occur at the earliest in 2014.

This proposal, and any necessary amendments to the Pima County Bond Ordinance, will be considered publicly by both the Bond Advisory Committee

and the Board of Supervisors as part of properly noticed public meetings in full compliance with the Arizona Open Meeting Law.

There is one barn structure at the west end of Rillito Park that has been significantly damaged by a monsoon several years ago. That structure is not fit for occupancy or rehabilitation and may be demolished earlier at the direction of Pima County Risk Management. The demolition of that structure would be accomplished with Pima County general funds in the event it becomes necessary to perform the demolition in advance of any approval of bond funding for demolition and relocation of the barns.

While Rillito Park is listed on the National Registry of Historic Places, there is no law that prohibits the demolition or relocation of contributing or other structures by the owner of a historic property. See, *A Comparison of the National Register of Historic Places with Local Historic Landmark and District Designations*, http://www.hpo.ncdcr.gov/compare.htm. Pima County would be within its legal rights in demolishing the unsafe barn structure and eventually moving, demolishing and replacing the remaining barn structures. Despite the fact that there is no legal requirement to do so, Pima County has carried out this planning process in consultation with the Arizona State Historic Preservation Office. That office has interposed no objections to the barn relocation proposal to date.

For all of the foregoing reasons, there is no basis for me to take any action against the Pima County Board of Supervisors or any other Pima County official pursuant to A.R.S. section 11-264 or any other statute with regard to the proposal to relocate the barns at Rillito Park.

Sincerely,

Barbara LaWall
Pima County Attorney

/tr
cc: Pima County Board of Supervisors
C.H. Huckelberry, Pima County Administrator