

1 **JACKSON WHITE**
2 **ATTORNEYS AT LAW**
3 *A Professional Corporation*

4 40 North Center, Suite 200
5 Mesa, Arizona 85201
6 (480) 464-1111

7 *Attorneys for Plaintiff*

8 By: Eric M. Jackson, No. 005449
9 Scott L. Potter, No. 025157

RECEIVED

DEC 10 2007

**CHEIFETZ IANNITELLI
MARCOLINI, P.C.**

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 APACHE WELLS HOMEOWNERS
13 ASSOCIATION, INC., an Arizona non-profit
14 corporation,

15 Plaintiff,

16 v.

17 DEPARTMENT OF FIRE, BUILDING AND
18 LIFE SAFETY; OFFICE OF
19 ADMINISTRATIVE HEARINGS, an
20 independent agency; WALTER A. STROMME
21 and JUDITH A. STROMME a married man,

22 Defendants.

Case No.: LC2007-000189

**RESPONSE TO DEFENDANTS
STROMMES' OBJECTION TO
FORM OF JUDGMENT**

AND

**OBJECTION TO DEFENDANTS
STROMMES' FORM OF
JUDGMENT**

(Assigned to the Honorable Margaret
H. Downie)

23 Plaintiff APACHE WELLS HOMEOWNERS ASSOCIATION ("Plaintiff"), by and
24 through counsel undersigned, hereby responds to Defendants Strommes' Objection to Form
25 of Judgment and moves this Court to deny such objection and enter judgment in favor of
26 Plaintiff according to the Form of Judgment submitted for the reason that said Form of
27 Judgment is consistent with and supported by this Court's November 2, 2007 ruling.

28 CALENDAR BY: JBm - 12/10/07
FOR: Swe/SFG/mcm/jlc 2330-4

Reply to Response OBJ to Form of
Judgment - 12/19/07

1 Additionally, Plaintiff further moves this court to reject Defendants Strommes' proposed
2 Form of Judgment as it fails to address the full ruling of this court dated November 2, 2007.
3 This Response does not address issues raised by Defendants Stromme in their Response to
4 Motion for Attorneys' Fees, which shall be replied to separately.

6 **I. Plaintiff's Form of Judgment Conforms to the November 2, 2007 Ruling**

7 In his Objection to Form of Judgment, Defendants Stromme argues that this Court did
8 not rule on the issues which Plaintiff has included in its proposed Form of Judgment.
9 Specifically, Defendants Stromme argues that 1) Plaintiff's "first requested ruling, that 'the
10 transfer fee is not a special assessment,' cannot be found anywhere in Judge Downie's Minute
11 Entry;" 2) this Court did not address whether Plaintiff violated the governing documents or
12 the Planned Community Act in approving the transfer fee; and 3) this Court "did not rule that
13 the transfer fee increase is 'valid and authorized' under the governing documents or the
14 Planned Community Act."

15 Contrary to Defendants Strommes' contention, each of the proposed findings in
16 Plaintiff's Form of Judgment is supported by this Court's November 2, 2007 Ruling.

17 **A. The Transfer Fee is not a Special Assessment**

18 In its November 2, 2007 Ruling this court held, "[Stromme] did not establish that the
19 transfer fee is a special assessment within the meaning of the bylaws. In fact, the evidence
20 was to the contrary." Ruling *at* p. 3. This Court further referenced a footnote expounding on
21 this statement.
22
23
24
25
26

27 Under the bylaws, a special assessment is enforceable by a lien on
28 the property and, like [a] general assessment, must be based on "the

1 Association's cost in obtaining and maintaining common areas,
2 property, facilities and service devoted to the common usage and
3 enjoyment of the membership at large." See Article X, Section 2.
4 Moreover, as discussed *supra*, the transfer fee is not assessed against
5 current property owners, but against buyers of property within the
6 community. Ruling *at n. 5*.

7 Clearly, the holding of the court was that the transfer fee was not a special
8 assessment, based on the evidence, and that Defendants Stromme failed to prove otherwise.
9 As such, the finding proposed in Plaintiff's Form of Judgment that "The transfer fee is not a
10 special assessment within the meaning of the governing documents," is proper as it is
11 supported by this Court's November 2, 2007 Ruling.

12 **B. Plaintiff did not Violate the Governing Documents or Arizona Statutes in**
13 **Approving the Transfer Fee Increase**

14 In its November 2, 2007 Ruling this court held, "As Stromme made clear below, he is
15 *not* challenging Apache Wells' ability to impose a transfer fee Stromme has not alleged
16 that Apache Wells violated any statutes by increasing the transfer fee." Ruling *at p. 2*.
17 Further, the court held that "Stromme did not prove that the Board violated either [the
18 planned community documents or Arizona statutes] in approving the transfer fee increase."
19 Ruling *at p. 4*.

20
21
22 Clearly, the holding of the court was that the evidence did not show that the transfer
23 fee increase violated the applicable provisions of the Declaration or Arizona law. As such,
24 the finding proposed in Plaintiff's Form of Judgment that "Plaintiff, by and through its Board
25 of Directors, did not violate the governing documents and Arizona statutes that regulate
26 planned communities in approving the transfer fee increase from \$300.00 to \$950.00," is
27
28

1 proper as it is supported by this Court's November 2, 2007 Ruling.

2 **C. The Transfer Fee Increase is Valid and Authorized under the Declaration**
3 **and Arizona Law**

4 In its November 2, 2007 Ruling this court stated as the final decision of the lower court
5 that, "[the ALJ] concluded that the increased transfer fee was unauthorized and must be
6 rescinded." Ruling *at* p. 2. In overruling the decision of the ALJ, this Court held "IT IS
7 ORDERED reversing the final decision of the Arizona Department of Fire, Building and Life
8 Safety. Plaintiff's requested relief is granted." Ruling *at* p. 4.

9
10 Clearly, this Court held that the ALJ's conclusion that "the increased transfer fee was
11 unauthorized" was incorrect. If such a ruling was incorrect, then the correct ruling was
12 obviously that the increased transfer fee *was* authorized, and therefore, valid. As such, the
13 finding proposed in Plaintiff's Form of Judgment that "The transfer fee increase from \$300.00
14 to \$950.00 is valid and authorized under the governing documents and Arizona statutes that
15 regulate planned communities," is proper as it is supported by this Court's November 2, 2007
16 Ruling.

17
18
19 **D. Attorneys' Fees and Recovery of the Filing Fee are Appropriate and**
20 **Should be Awarded to Plaintiff**

21
22 Defendants Stromme do not object specifically to the proposed orders awarding
23 Plaintiff its attorneys' fees and ordering them to refund Plaintiff the \$550.00 filing fee.
24 However, such orders are also proper as they are supported by this Court's November 2, 2007
25 Ruling. In the November 2, 2007 Ruling this court stated "Plaintiff's requested relief is
26 granted." Ruling *at* p. 4.
27
28

1 In its complaint for Judicial Review of Administrative Decision, Plaintiff asked for the
2 following relief (in pertinent part): "WHEREFORE, Plaintiff respectfully requests that this
3 Court issue the following orders: Reversing and/or remanding the decision regarding issue 2
4 of the Administrative Law Judge Decision and the order to pay \$550.00 to Defendant; ... For
5 reasonable attorneys' fees and court costs...." Because the court ruled that "Plaintiff's
6 requested relief is granted," Plaintiff is entitled to its attorneys' fees and a refund of the
7 \$550.00 filing fee.
8

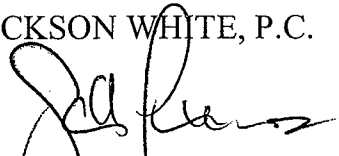
9
10 **II. Objection to Defendants Strommes' Proposed Form of Judgment**

11 For the reasons stated above, the Form of Judgment submitted by Plaintiffs is fully
12 supported by this Court's ruling. For the same reasons, Defendants Strommes' proposed
13 Form of Judgment is improper.
14

15 WHEREFORE, for the above stated reasons, Plaintiff respectfully requests this court
16 enter judgment in its favor consistent with the Form of Judgment submitted by Plaintiff and in
17 conformance with this Court's November 2, 2007 Ruling and reject Defendants Strommes'
18 proposed Form of Judgment.
19

20 RESPECTFULLY SUBMITTED this 7 day of December, 2007.
21

22 JACKSON WHITE, P.C.

23 

24 _____
25 Eric M. Jackson
26 Scott L. Potter
27 Jackson White, P.C.
28 40 N. Center St., Suite 200
Mesa, Arizona 85201
Attorneys for Plaintiff

1
2 ORIGINAL filed this 7th day of
3 December, 2007, with the Clerk
4 of the Court

5 A copy of the foregoing hand-delivered
6 this same day to:

7 Honorable Margaret H. Downie

8 Copy of the same mailed this
9 Same day to:

10 Department of Fire, Building and Life Safety
11 1110 West Washington, #100
12 Phoenix, AZ 85007
13 Defendant

14 Office of Administrative Hearings
15 1400 West Washington, #101
16 Phoenix, AZ 85007
17 Defendant

18 Steven W. Cheifetz, Esq.
19 Cheifetz, Iannitelli, Marolini, PC
20 1850 North Central Avenue, 19th Floor
21 Phoenix, AZ 85004
22 Attorneys for Walter A. Stromme

23
24
25
26
27
28
By: 