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Judge seeks closure to Section 16 case

'Did your client go back and do what the plaintiff asked for in the first place?'

By Linda Bentley

PHOENIX – U.S. District Court Judge Susan Bolton called a status conference on Sept. 19 for Save Our Sonoran (SOS) v. Robert B. Flowers, et al.

Bolton began by telling SOS Attorney Howard Shanker, U.S. Army Corps of Engineers (Corps) Attorney Richard Patrick and 56th & Lone Mountain, LLC (Lone Mountain) Attorney Norm James, "The reason I called you here today is I've been receiving these compliance reports for years now." The monthly compliance reports to which Bolton was referring were ordered by Judge Frederick Martone when he became aware Lone Mountain was continuing its de-vegetation and grading activities, after he ordered an injunction to halt the development of a 794-home gated community on the 608-acre parcel known as Section 16.

Section 16 is located in Phoenix at the northeast corner of 56th Street and Lone Mountain Road, although it is bounded primarily by rural residential land in unincorporated Maricopa County to the north, south and east, with a portion of the northern boundary abutting Scottsdale.

Shanker stated SOS was considering filing a motion for summary judgment since the Corps was currently in the process of preparing a supplemental Environmental Assessment (EA) on the entire parcel.

James said, "The Ninth Circuit has ruled and Mr. Patrick's client is doing a new Environmental Assessment," which was the basis of Martone's injunction.

Bolton looked at Patrick and asked, "Did your client go back and do what the plaintiff asked for in the first place?" Patrick responded, "Actually, my client is doing what Judge Martone recommended." Martone's recommendation, however, was made in June 2002, over three years ago.

According to Patrick, the Corps received approximately 100 responses to the Public Notice and expected to complete the new EA by mid to late September, although Patrick said he was waiting for a return call from Ron Fowler at the Corps for an update.

"I'm glad to see your client has decided to do what Judge Martone asked," said Bolton.



The development of Section 16 has been held at bay by an injunction ordered in June 2002. U.S. District Court Judge Susan Bolton is hoping to see the case brought to conclusion by the end of October.

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Patrick said the developer suggested some changes to the plan.

Based on the final ruling from the Ninth Circuit, the Corps was completing a new EA. SOS had basically won, which was why Shanker thought it was appropriate to file a motion for summary judgment, citing, "The target of the litigation has changed.

"We'd like to exonerate the bond, or at least replace it with a surety bond," said Shanker, "And, since my client is a 501(c) (3) nonprofit corporation, they are also entitled to attorney's fees." Bolton questioned whether the new EA would be the focus of litigation and said, "I'm not going to allow summary judgment on a superseded report," stating there was a possibility all parties involved would like the new EA.

"There are several things we need to do," said Bolton.

"The first is to see a copy of the new assessment." James said, "If the new EA were to come out within the next couple of weeks, what we anticipate doing is file a motion to eliminate the injunction." Bolton commented, "The current complaint may not address the new assessment," adding, "Let's wait until the Environmental Assessment comes out," after which she said the parties could deal with the bond, fees and the injunction.

Bolton ordered the parties to file a status report and a proposed schedule of events that would need to take place in order to conclude the case no later than Oct. 30, 2005.

James stated, "The only caveat is getting the injunction lifted." "My order does not suggest you not file any motions," Bolton responded, "You'll just have to proceed how you think best." Patrick said he expected to hear from Fowler the next day and would inform the other two attorneys of the updated status on the EA as soon as he heard from him.

After leaving the courtroom, James asked Shanker if SOS might want to stipulate to lifting the injunction and having the bond exonerated.

Shanker didn't understand why James was asking to have the injunction lifted since Lone Mountain can't proceed without permits.

SOS board members who attended the hearing said maybe Lone Mountain knows more about the status of the new EA than it's letting on.

The following day Patrick told Shanker that Fowler still didn't have an estimated completion date for the EA, and was hoping to have it completed by the end of the month.

However, that was more than two weeks ago and the month is over.

SOS President Ferrell Anderson said, "No news is good news," citing perhaps the changes suggested by the developer did not adequately address the myriad issues raised, and maybe this time around the Corps is analyzing the impacts as required, in accordance with the National Environmental Policy Act.

SOS is seeking contributions to assist with legal fees, bond interest and operational costs. As an all-volunteer organization, SOS depends on its membership and the community for support.

Donations are 100 percent tax-deductible and should be sent to SOS, PO Box 4348, Cave Creek, AZ 85327.

For more information, visit www.SaveOurSonoran.org.
