

Ron & Lynn Duff

Paradise Valley, Arizona 85253

August 16, 2019

Town of Paradise Valley Planning Commission
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

Re: Preliminary Plat for Lavitt Manor II—Two Lot Subdivision: 7525 N. Ironwood Drive

Dear Commissioners:

My wife Lynn and I are the owners of 7630 North Invergordon Road—the owners of the adjoining property to the proposed Lavitt Manor II subdivision. While we recognize the Planning Commission is not concerned about our personal loss of views or decrease in property value, the Commission should be concerned about the continued creation of new subdivisions and lot splits that harm the character, beauty, charm, and well-being of the Town of Paradise Valley. More importantly, it should be concerned about proposed subdivisions and lot splits that do not follow the Town Code, Zoning Ordinances, or the Storm Drainage Design Manual. All we can ask is that the Commission follow the documents, ordinances, and guidelines that are intended to keep Paradise Valley the special place that it is—and not let the concern of a developer or a potential delay in development persuade the Commission to stray from the established laws.

Based solely on the current Town of Paradise Valley Code and Storm Drainage Design Manual, the revised documents provided to this Commission by the Applicant for the proposed Lavitt Manor II subdivision have deficiencies requiring the Preliminary Plat be rejected:

1. The Paradise Valley Town Code section 3.6(A)(3) mandates that Town easements along Natural Wash corridors “**shall be maintained**” to preserve the natural environment and landscape features and “**shall include** a landscape buffer of at least 5 feet on each side, perpendicular from the **top of the bank.**”

The Applicant’s Preliminary Plat shows the existing Natural Wash traversing through Lot 1, as well as the proposed Drainage Easement being provided to the Town (See Exhibit 1). At least three of the proposed Drainage Easement boundaries cross directly into the existing wash and existing drainage easement (as highlighted in yellow).

Natural Wash Corridors “shall include a landscape buffer of at least five feet on each side, perpendicular from the top of the bank.” The Preliminary Plat does not show or set out the required landscape buffer, and there are multiple points on the proposed easement that violate

the Town Code requirement by crossing into the existing 40 foot drainage easement recorded with the Maricopa County Recorder at document 20040670528. Applicant’s Plat should not be approved until the mandated buffer and proper easement are provided to the Commission.

2. It is “the Town’s policy to encourage the protection of Natural Wash corridors and discourage constructed and piped stormwater conveyances whenever possible.” *Storm Drainage Design Manual*, Appendix 1-C. According to the Paradise Valley Town Code sections 5-10-7(C)(1) and 6-3-8(A) a “watercourse” means **any** creek, stream, wash, arroyo, channel or other body of water having historical **banks** and a bed at least two (2) feet deep and five (5) feet wide through which waters flow on a recurrent basis.” Similarly, the *Storm Drainage Design Manual* defines a Natural Wash as “A natural watercourse at least two feet deep **from the top of the bank** and measuring at least five feet wide **at the top of the bank**.”

The *Storm Drainage Design Manual* sections 1.5(A), 3.6(A)(2), 3.6(A)(3), all use “**top of the bank**” language. For example, section 1.5(A) states “A natural watercourse at least two feet deep from the **top of the bank** and measuring at least five feet wide at the **top of the bank**.” Obviously, to determine the width of a natural watercourse, measurements must be taken at the top of each bank, not just the top of the one bank—yet the Code only says top of the bank (singular), as opposed to banks (plural).¹ This same construction of “top of the bank” must therefore be used throughout the code to ensure the same meaning for each use because the same phrase cannot have conflicting meanings. So, when the Code requires the measurement of the depth of a natural watercourse, measurements should be taken from the “top of the bank” on both sides of the wash to determine the depth of the watercourse—not just one side.

With this understanding, the revised plat points provided by the Applicant on page C3 of 4 of the Preliminary Plat for the Southern Drainage Channel, demonstrate the southern wash meets the definition of a “watercourse” and “Natural Wash” (Exhibits 2-8). The Applicant only took measurements from the shallow side of the wash to reach his conclusion the wash does not require an easement be provided to the Town of Paradise Valley. But as we all know, a wash has two banks—not one. The Code and *Storm Drainage Design Manual* requires measurements from the “top of the bank, which as discussed above, means both banks. When the measurements are reviewed for both sides of the southern wash, it meets the definition of a watercourse and Natural Wash. Applicants must dedicate this wash to the Town.

Plat Points	Elevation Pt. 1	Elevation Pt. 2	Depth of Wash	Width of Wash
C3-7	1373.2	1369.8	3.4 feet	18.5 feet
C3-8	1373.0	1369.7	3.3 feet	8.5 feet
C3-9	1372.0	1369.6	2.4 feet	10.6 feet
C3-10	1371.0	1369.3	1.7 feet	12.0 feet
C3-11	1370.1	1368.2	1.9 feet	14.0 feet

¹ Similarly, the Town Code sections 5-10-7(C)(1) and 6-3-8(A) references defines watercourses having “**historical banks**”—plural.

3. According to the Town of Paradise Valley Code § 5-10-7(C)(2), “whenever any watercourse is located in an area being developed, provision **shall be made** for an adequate drainage easement along the main channel and each side of the watercourse.” Thus, if the wash is considered a “watercourse” or “Natural Wash,” an easement is mandated to be provided to the Town of Paradise Valley. Moreover, as discussed above, a landscape buffer **shall be included** for 5 feet on each side of the wash. Paradise Valley Town Code section 3.6(A)(3).

The *Storm Drainage Design Manual* Appendix 1-C defines the southern Natural Wash on Lot 1 as a Tier 3 (Protection of a Natural Wash). It “meets or exceeds the definition of a Minor Wash” The end of the first bullet point contains the words “**and/or.**” Because the wash exceeds the definition of a Minor Wash the “**or**” language will be utilized so the second bullet point becomes unnecessary. The third bullet is the Natural Wash “impacts less than 25% of the site’s buildable area.” The southern Natural Wash impacts far less than 25% of the site’s buildable area.

Based on these facts, the *Storm Drainage Design Manual* states “a Tier 3 modification requires the Developer to maintain the wash in its natural condition . . .” and must “maintain the locations of inflow onto the property.”

4. Finally, I believe the Commission must more closely scrutinize whether the requested subdivision meets the requirements of the Paradise Valley Town Code § 6-3-5(A) that states “the lot arrangement and design **shall be** such that all lots will provide satisfactory and desirable building sites, **properly related** to topography and **to the character of surrounding development** and will preclude unorthodox or unusually shaped lots.

The Applicant has stated the buildable area outside of the new wash and buffer in the northwest corner is about 12,000 sq. ft. without impacting the wash—this amount will further decrease if the required Landscape Buffer discussed above is enforced. To provide perspective, the Applicant further states “this is larger than the lots we are building on in projects that we get 4500 sq. ft. 3 car garage homes on. Which is what the first phase will be on this lot.” See Exhibit 1.

Therefore, the buildable area on Lot 1 for a primary residence is 0.275 acres (12,000 / 43,560). While the Applicant states it is larger than lots he is building on in other projects, I speculate those projects are not in Paradise Valley and question whether it is a satisfactory and desirable building site as mandated by the Paradise Valley Town Code to approve the subdivision. I also challenge that a property being forced to be built on approximately ¼ acre is “properly related to the topography and character of the surrounding development”—which are all approximately 2 acres in size. Please note these are mandatory requirements, not subjective requirements, as the word “**shall**” is used in the Town Code.

All my wife and I are asking is that the Planning Commission follow the Codes and Guidelines adopted by the Town of Paradise Valley. We have provided the Commission evidence that the

Landscape Buffer proposal from Applicant violates the Town Code requirements. We have provided the Commission evidence that the southern drainage wash is deeper than two feet and requires the dedication of an easement to the Town of Paradise Valley (with an additional Landscape Buffer on the southern wash), and we have supplied evidence that Lot 1 only has approximately ¼ acre that can be utilized for a main residence and is not properly related to the character of the surrounding development—as mandated with the word “**shall**” in the Town Code.

Rather than claim we are merely trying to delay matters, would it not be more appropriate to have the Town attorney review this correspondence, the exhibits, and the Town Code and Guidelines to see if our assertions are correct? It would seem to us the prudent move would be to obtain a legal opinion about the Landscape Buffer issue, the means by which a wash should be measured to avoid only getting half the story, the requirement to provide the Town a drainage easement, and whether certain types of lots meet the standard of “shall” language to be considered properly related to the surrounding development. Please allow the Town Attorney to provide his written opinion so the remainder of Paradise Valley residents and developers better understand the Town Code and Guidelines for future development. Depending on the results of the Town Attorney opinion, the subdivision can move forward, be modified, or be declined.

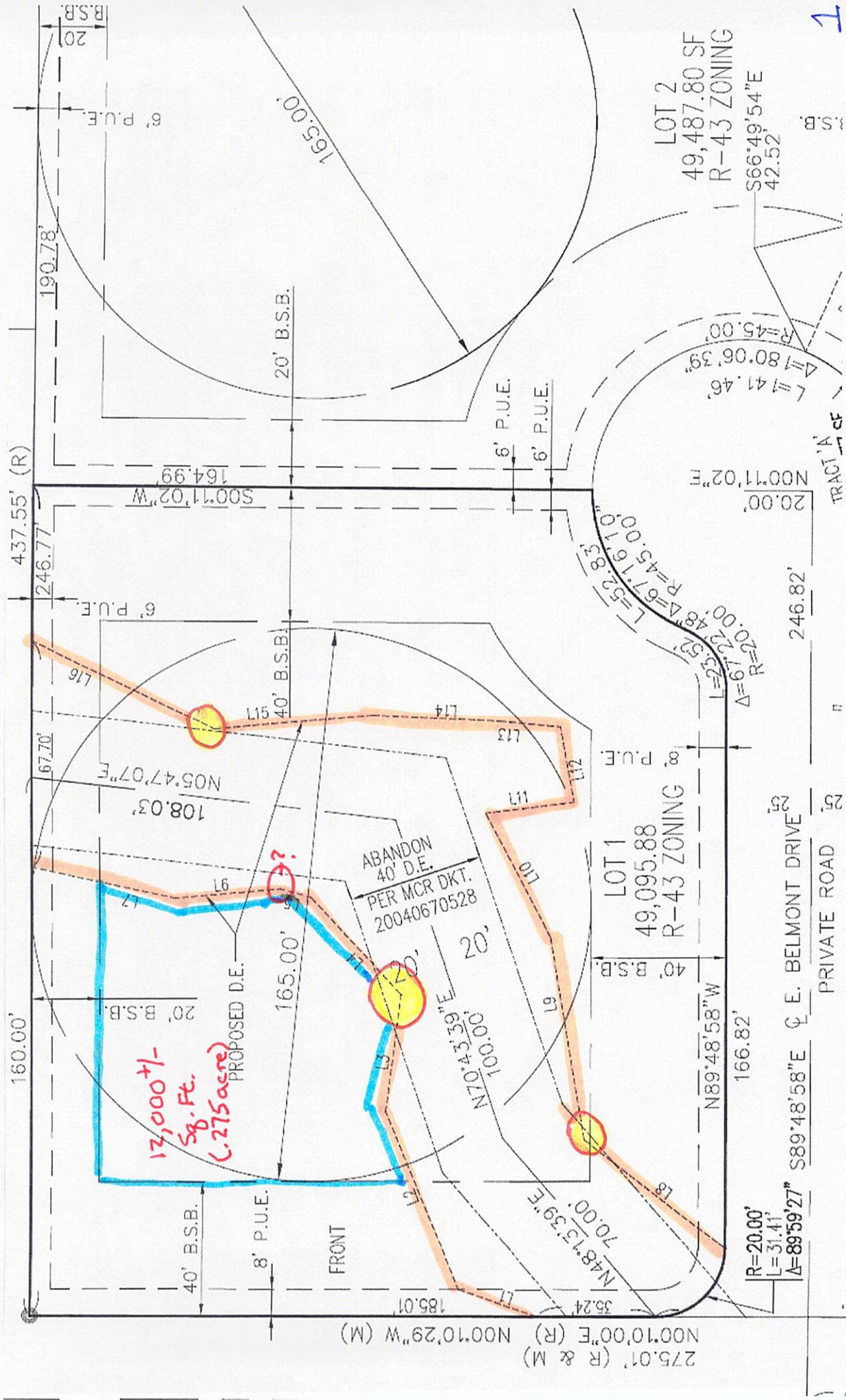
We thank you for your time and consideration. Unfortunately, like many other Paradise Valley residents, we have left Arizona for most of the summer and will not be able to attend the Planning Commission meeting on Tuesday. In our place, our legal counsel, Jim Kuntz, will be able to answer any questions you may have.

Sincerely,

Ron and Lynn Duff

Town Code 3.6(A)(3): Natural Wash Preservation: "Town rights-of-way and easements along Natural Wash corridors **shall be maintained** to preserve the natural environment and landscape features. Natural Wash Corridors **shall include** a landscape buffer of **at least 5 feet on each side**, perpendicular from the **top of the bank** and designed to protect the wash's functional and ecological integrity."

- Town of Paradise Valley is obtaining easement on Lot 1;
- Mandatory language ("shall") to have a 5 foot landscape buffer on each side of wash;
- Current easement points approaches or encroaches Natural Wash at 3 points thus the landscape buffer is not appropriate;
- Plan should not be approved as it violates the Town Code.



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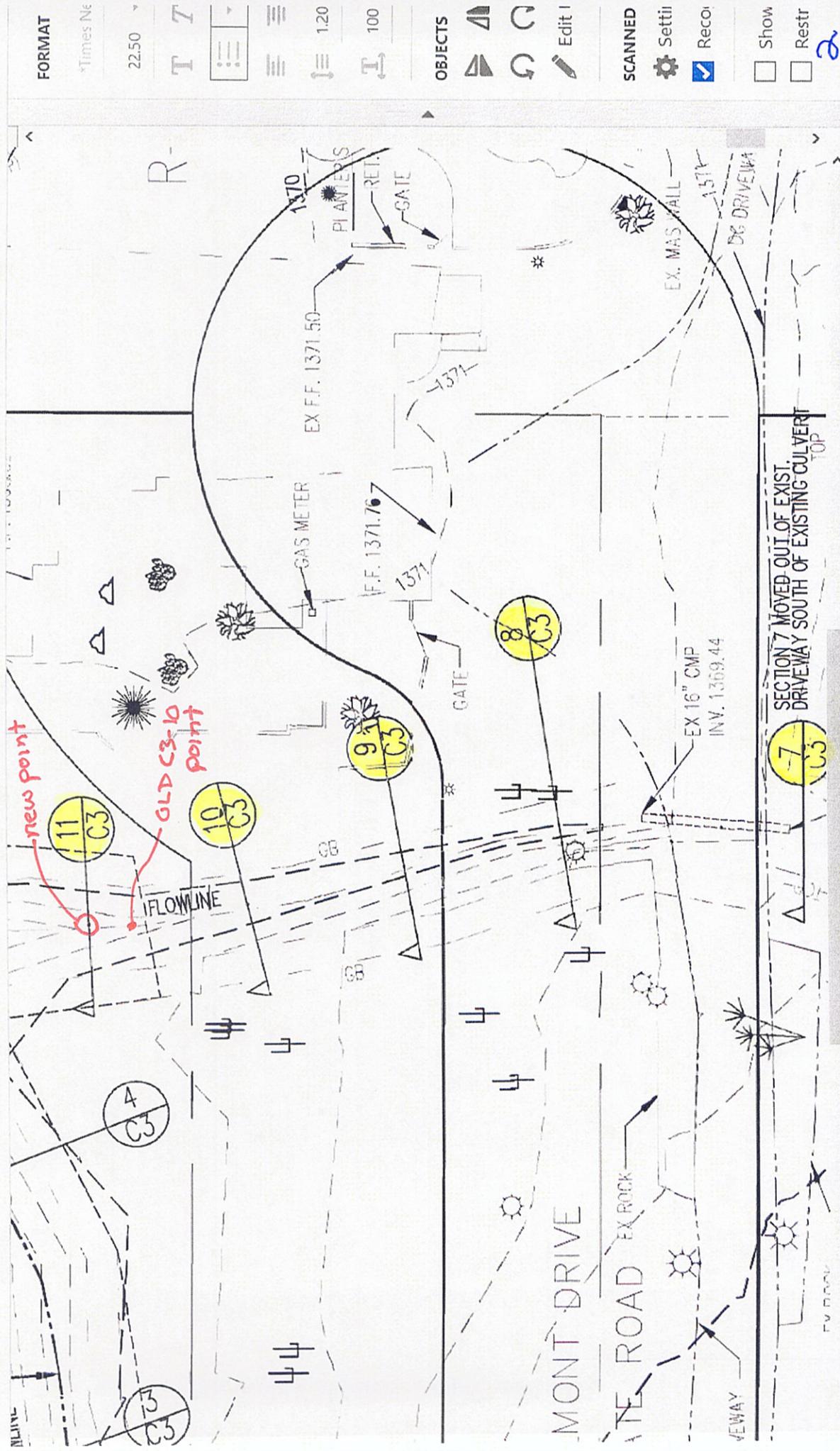
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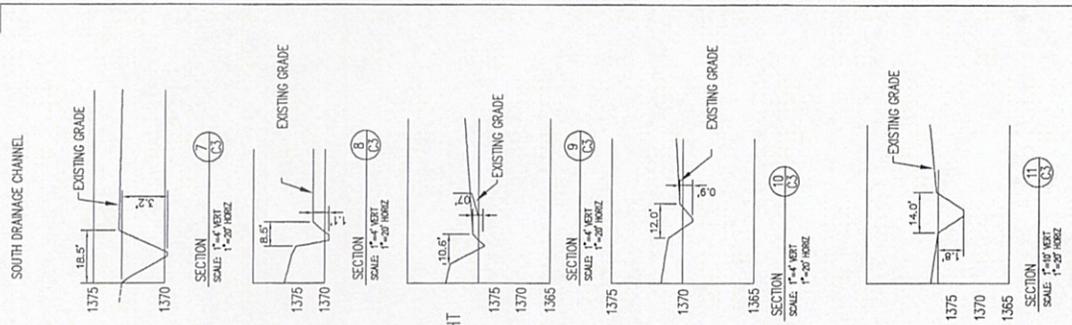
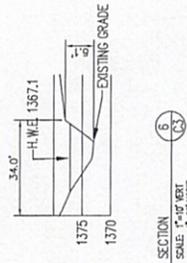
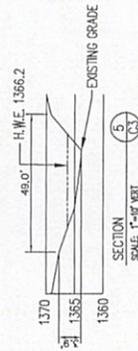
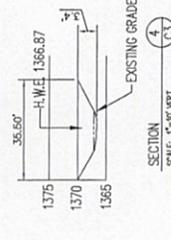
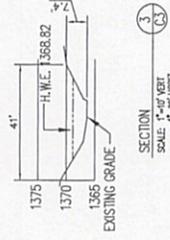
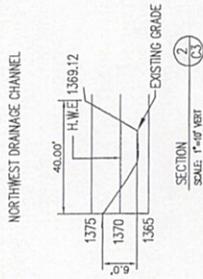
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PAVING GRADING PLAN LAVITT MANOR II



5 OF 5 > 2' VERT HEIGHT
5 OF 5 > 12" LENGTH
D.E. REQUIRED

4 OF 5 < 2' VERT HEIGHT
NO EASEMENT REQUIRED



REPLAT LAVITT MANOR II 7525 N IRONWOOD DR PARADISE VALLEY, AZ		SECTIONS & DETAILS REVISIONS AS NOTED PROJECT NO. 18029 DATE 7-23-19
MONTGOMERY ENGINEERING & MANAGEMENT, L.L.C. 16716 E. PARKVIEW AVE. SUITE 204 FOUNTAIN HILLS, ARIZONA 85268 (480) 837-1845 fax (480) 837-8668 e-mail: Dove@CIVILAZ.com		DRAWING NO. C30f4 DESIGNER: KM CHECKER: DRM PROJECT NO. 18029
NO. 1 DATE 12-6-18 DESCRIPTION WORK STREET	NO. 2 DATE 1-24-19 DESCRIPTION P.V. RECORDS	NO. 3 DATE 5-6-19 DESCRIPTION REVERSE LOT 1 BSB
NO. 4 DATE 7-23-19 DESCRIPTION REVERSE SECTIONS	NO. 5 DATE DESCRIPTION	NO. 6 DATE DESCRIPTION

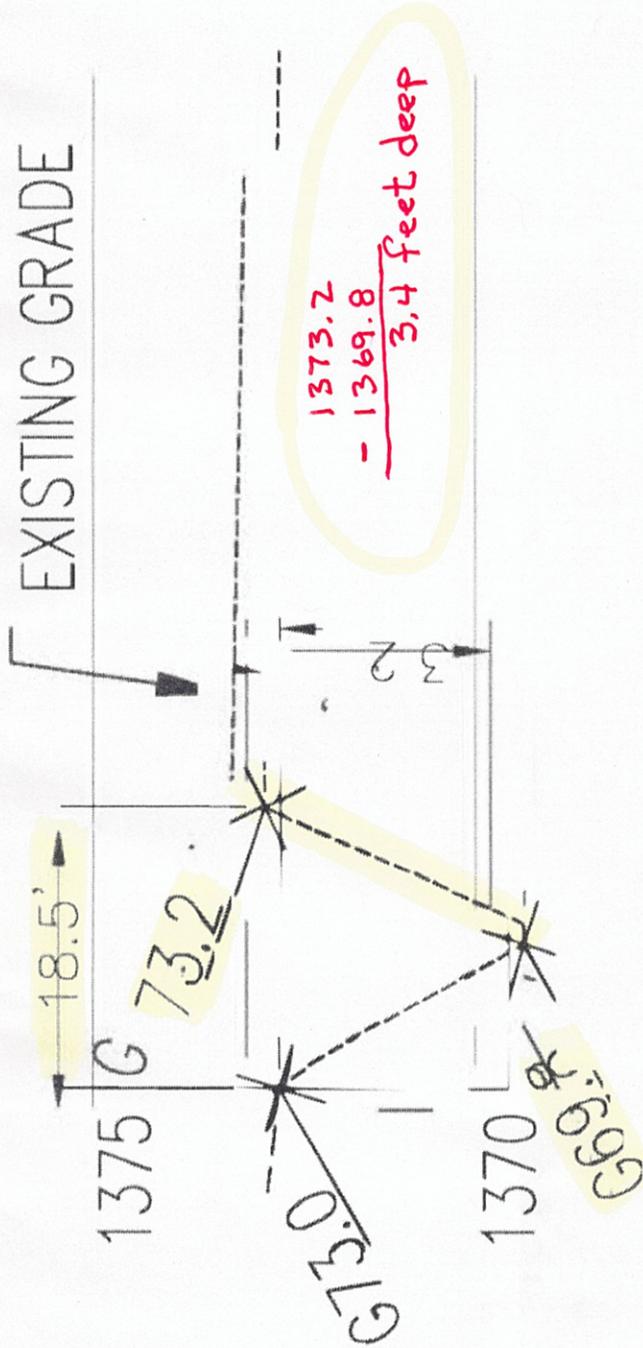
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1.0.1.1 Paradise Valley Code: §§ 5-10-7(C)(1) and 6-3-8(A): "For the purposes of this section, 'watercourse' means any creek, stream, wash, arroyo, channel or other body of water having historical banks and a bed at least two (2) feet deep and five (5) feet wide through which waters flow on a recurrent basis."

- Must consider both "historical banks" to determine depth;
- Nowhere does it say watercourse depth is taken from one bank, lowest bank, or existing grade of one bank.
- Width must be determined by taking a measurement at the "top of the bank";
 - Can only mean at the top of each bank, or one could not obtain a width measurement from one bank.
- Accordingly, to ensure the same "top of the bank" meaning throughout the provisions, "top of the bank" must mean top of each bank;
 - Depth measurements must be taken from the top of each historical bank of the wash.

3.6(A)(2): Natural Wash Corridors: "To determine if a wash meets the definition of a Natural Wash or Hillside Wash, five cross sections of the wash equally spaced across the property will be provided. If three or more of the cross sections are at least 2 feet deep from the top of the bank and 5 feet wide to the top of the bank, the wash is considered a Natural Wash or Hillside Wash."

- Width must be determined by taking a measurement "to the top of the bank";
 - Can only mean to the top of each bank, or one could not obtain a width measurement from one bank.
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 - Depth measurements must be taken from the top of each historical bank of the wash to determine if it is a Natural Wash.



SECTION

7
(C.3)

SCALE: 1"=4' VERT
1"=20' HORIZ

Lowland Paradise Valley Code: §§ 5-10-7(C)(1) and 6-3-8(A): "For the purposes of this section, 'watercourse' means any creek, stream, wash, arroyo, channel or other body of water having historical banks and a bed at least two (2) feet deep and five (5) feet wide through which waters flow on a recurrent basis."

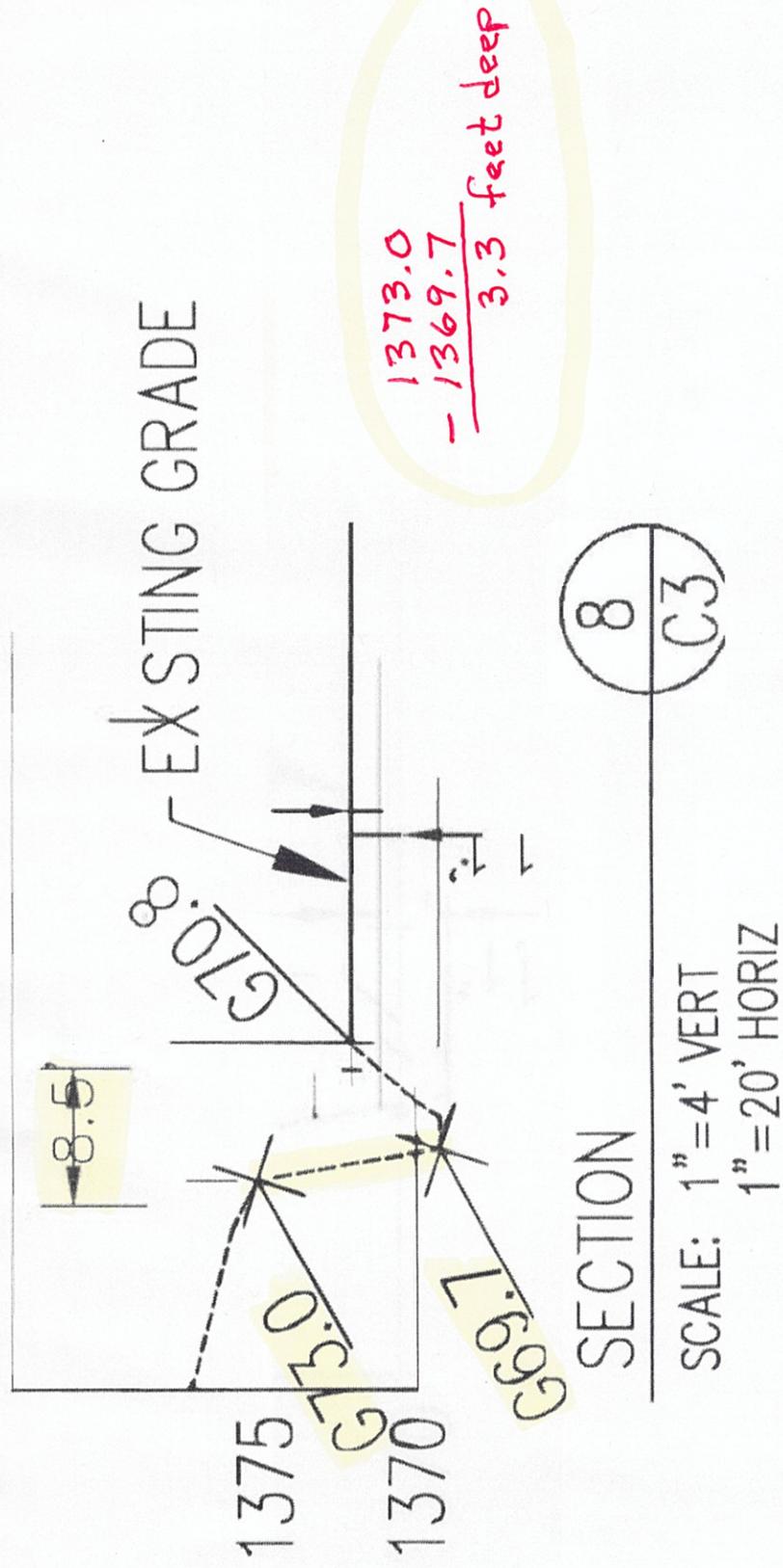
- Must consider both "historical banks" to determine depth;
- Nowhere does it say watercourse depth is taken from one bank, lowest bank, or existing grade of one bank.

Storm Drainage Design Manual: §1.5(A): Natural Wash: "A natural watercourse at least two feet deep from the top of the bank and measuring at least five feet wide at the top of the bank."

- Width must be determined by taking a measurement at the "top of the bank";
 - Can only mean at the top of each bank, or one could not obtain a width measurement from one bank.
- Accordingly, to ensure the same "top of the bank" meaning throughout the provisions, "top of the bank" must mean top of each bank;
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3.6(A)(2): Natural Wash Corridors: "To determine if a wash meets the definition of a Natural Wash or Hillside Wash, five cross sections of the wash equally spaced across the property will be provided. If three or more of the cross sections are at least 2 feet deep from the top of the bank and 5 feet wide to the top of the bank, the wash is considered a Natural Wash or Hillside Wash.

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- Accordingly, to ensure the same "top of the bank" meaning throughout the provisions, "top of the bank" must mean top of each bank;
 - Depth measurements must be taken from the top of each historical bank of the wash to determine if it is a Natural Wash.



Lower Paradise Valley Code: §§ 5-10-7(C)(1) and 6-3-8(A): "For the purposes of this section, 'watercourse' means any creek, stream, wash, arroyo, channel or other body of water having historical banks and a bed at least two (2) feet deep and five (5) feet wide through which waters flow on a recurrent basis."

- Must consider both "historical banks" to determine depth;
- Nowhere does it say watercourse depth is taken from one bank, lowest bank, or existing grade of one bank.
- Storm Drainage Design Manual: §1.5(A): *Natural Wash*: "A natural watercourse at least two feet deep from the top of the bank and measuring at least five feet wide at the top of the bank."
- Width must be determined by taking a measurement at the "top of the bank";
 - Can only mean at the top of each bank, or one could not obtain a width measurement from one bank.
- Accordingly, to ensure the same "top of the bank" meaning throughout the provisions, "top of the bank" must mean top of each bank;
 - Depth measurements must be taken from the top of each historical bank of the wash.

3.6(A)(2): *Natural Wash Corridors*: "To determine if a wash meets the definition of a Natural Wash or Hillside Wash, five cross sections of the wash equally spaced across the property will be provided. If three or more of the cross sections are at least 2 feet deep from the top of the bank and 5 feet wide to the top of the bank, the wash is considered a Natural Wash or Hillside Wash."

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