IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

ROOSEVELT ACTION ASSOCIATION, an Arizona non-profit corporation, Plaintiffs, vs. CITY OF PHOENIX BOARD OF ADJUSTMENT; MICHAEL LIEB; SHERYL JOHNSON; MICHELLE ALLEN; MICHAEL SCHROEDER; RAUL BARZA; SCOTT DAVIS; CLYDE ROUSSEAU AND JANE DOE ROUSSEAU, husband and wife, d/b/a/ ROUSSEAU DESIGN; CP ROUSSEAU 60 LLC, an Arizona limited liability company, Defendants,	No. 1 CA-CV 03-0013 Maricopa County Superior Court No. CV2002-000287

APPELLANT'S REPLY BRIEF

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In order to assess the merit of the City's position, one might look in the leading treatise on zoning law. One would find a statement of law that directly and unambiguously contradicts the City's position:

> An allegation that the development of property threatens the aesthetic or cultural value of a historic district is sufficient to confer standing if the plaintiff (or at least one member of a plaintiff-citizen group) resides or owns property in the district.[1]

This quotation was contained in the Opening Brief, and the City ignored it. Indeed, the appellees offer no response to all of these points in the opening brief.

- The courts have repeatedly recognized that damage to the interest of historic preservation is sufficient to confer standing. (pp. 20-21)
- The law has always regarded a negative impact on property value as sufficient aggrievement to confer standing. (pp. 19-20)
- The Phoenix Zoning Ordinance requires setbacks in order to protect property values. (pp. 26-28)
- The City's position contradicts the City's own General Plan, which trumpets the ability of neighborhood organizations to preserve and protect their own interests. (p. 30)
- Denying standing here does not advance, and is inconsistent with, the purposes behind the law of standing. (pp. 29-30.)

One thing the City *does* discuss in its brief is the affidavits submitted by RAA members. The City constantly describes them as

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[1] Rathkopf, *The Law Of Zoning And Planning* § 63:22 (2001).

conclusory, vague and a host of similar terms. The affidavits are attached hereto at tabs A through F.

This reply brief is organized around four errors in the appellees' briefs. For convenience, the City's arguments are addressed first, and the appellees are generally referred to collectively as the "City."

I. THE FIRST MISTAKE: THAT SPECIAL DAMAGE MEANS SPECIFIC TYPES OF DAMAGE.

A. The City's Novel Conception of "Special Damages."

The cases set forth a clear test: a plaintiff has standing if he alleges harm that is "peculiar to" himself or harm that is "more substantial" than that suffered by the general public.[2] An imaginary line divides those with standing and those without. On one side is the general public; they lack standing because everybody's stake is the same. On the other side are people whose interest is "peculiar to" themselves or "more substantial"; they have standing. A plaintiff crosses the line and gains standing – at least at the pleading stage – by distinguishing herself from the general public

No one can conclude that the interest of Larry Freedlund and Ian Cartwright is indistinguishable from the other 1.3 million residents of Phoenix. Unlike the general public, they live across the street. Unlike the general public, they are actively concerned with the historic integrity of the Roosevelt neighborhood. Unlike the general public, the value of their homes is impacted by the variances. These men have alleged an injury that is both "peculiar to" themselves and "more substantial" than that of the general public.

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[2] *Buckelew v. Town of Parker,* 188 Ariz. 446, 452, 937 P. 2d 368, 374 (App. 1997); *Blanchard v. Show Low Zoning and Planning Commission*, 196 Ariz. 114, 118, 993 P.2d 1078, 1082 (App. 1999).

Because it must lose under this traditional test, the City offers a totally different analysis. The City argues that only specific *types* of harm can ever qualify as special. The City thus constructs a different theory that does not divide people based on their interest, but rather categorizes types of harm.

In the City's system, "special" damage includes litter, noise, and traffic, plus an increased risk of fire and signs that reflect too much light. Everything else is "general" damage that isn't enough to confer standing: damage to historical integrity, aesthetic injury from living near an eyesore, and the resulting impact on property values.

TRADITIONAL TEST	
General Damage	**Special Damage**
general public	those with harm "peculiar to" themselves or "more sub-stantial" than general public

CITY'S TEST	
General Damage	**Special Damage**
· visual eyesores · property values · historic preservation	· traffic · noise · litter · fire hazard · shiny signs

The origin of the City's list is obvious. Not coincidentally, the City's list of "special damages" includes nothing but the precise types of harm alleged in *Armory Park*, *Buckelew* and *Blanchard*, plus the two hypotheticals the City has offered in this case. The City's list of losers includes every type of damage alleged by RAA members. In effect, the City offers a test that is custom-made to deny standing to the plaintiffs in this case.

B. The Case Law Does Not Support the City's Novel Theory.

The case law presupposes and reaffirms the existence of the imaginary line that separates those with standing from the general public. In

Armory Park the Supreme Court held that an entire a neighborhood crossed that line when a nuisance affected them more than Tucson's general public.[3] This court held that Mr. Buckelew crossed that line when the Town of Parker refused to abate a nuisance-like zoning violation that harmed Mr. Buckelew more than others.[4] The Blanchards stood out from the general public in Show Low because they lived only 750 feet from a proposed shopping center.[5] In *Perper* the court merely said in dictum that adjacent property owners do not necessarily cross that line.[6]

Neither the Supreme Court nor this court has ever implied that only a select list of harms qualified as special damages. The City's theory has been reverse-engineered by confusing facts with holdings. The major differences among these four cases make it impossible to construct a doctrine that goes beyond what the opinions said. None of the cases involved an appeal from a variance. *Blanchard* was the only appeal from a board of adjustment, and the decision in that case was a refusal to abate a zoning violation. *Armory Park* was a common law nuisance case. In *Perper* Division Two offered dictum in a case that involved no land use appeal of any kind.

The only time anyone has *actually* been denied standing was in *Blanchard*. Ms. Challis lacked standing when she lived 1,875 feet from a proposed store, did not live "in the neighborhood," hadn't attended the zoning hearings, and presented "no evidence" to the trial court that she was

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[3] *Armory Park Neighborhood Ass'n. v. Episcopal Community Services,* 148 Ariz. 1, 712 P.2d 914 (1985).

[4] *Buckelew v. Town of Parker,* 188 Ariz. 446, 452, 937 P. 2d 368, 374 (App. 1997).

[5] *Blanchard v. Show Low Zoning and Planning Commission*, 196 Ariz. 114, 118, 993 P.2d 1078, 1082 (App. 1999)

[6] *Perper v. Pima County,* 123 Ariz. 439, 600 P.2d 52 (App. 1979).

anything besides a member of the general public. For these reasons the court concluded that her damage was not special, but the court said nothing to suggest that "special damage" is a menu of qualifying types of harm. Moreover, the trial court required two evidentiary hearings to make its determination on Ms. Challis' standing, which undercuts the City's assertion that this issue can be resolved on the pleadings.

The City's theory finds no support in treatises and case law from other jurisdictions. The opening brief cited authority that damage to historic preservation interests is sufficient to confer standing, and that courts have always treated depreciation in property value as sufficient to confer standing. Indeed, many courts have equated special damage with economic harm.[7] The City's theory is utterly novel.

C. The City's Words and Phrases Do Not Support Its Analysis.

In order to claim the weight of history, the City says that courts have required proof of "special damage" for half a century, but this both understates and overstates the truth. Fifty years is an understatement because the Supreme Court used that phrase to limit standing in nuisance cases before Arizona statehood.[8] For purposes of a board of adjustment

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[7] *Sarda v. City/County of Durham Board of Adjustment*, 575 S.E.2d 829 (N.C. App. 2003) (defining special damage as a reduction in value of the plaintiff's property); *Ameijh v. Baycliffs Corporation*, 712 N.E.2d 784, 788 (Ohio App. 1998) (zoning case holding that "a diminished value of property is enough to demonstrate special damage.").

[8] *Arizona Copper Co. v. Gillespie*, 12 Ariz. 190, 100 P. 465 (1909) (standing only exists in a public nuisance case when a private party complains of special damages, which includes "personal inconvenience or annoyance").

appeal, however, fifty years is an overstatement because this court only grafted "special damage" onto the meaning of A.R.S. 9-462.06 in 1997.[9]

What is important is not the age of the phrase but the meaning of "special damage" in this particular context. The courts have been clear that it means damage that is "peculiar to" the plaintiff or "more substantial" than the general public. The City disagrees and argues that special damage means particular types of harm. Because that is wrong, the City's complaint that RAA members have failed to allege special damage is circular.

The City constantly uses the word "palpable" to support its theory, though that word has never been used in a land use case. Justice Powell coined the phrase "palpable injury" in the 1970s.[10] Our Supreme Court quoted him in *Sears v. Hull*,[11] where the court discussed standing in a non-land use context. The Supreme Court reaffirmed that standing cannot flow from an allegation of "generalized harm that is shared alike by all or a large class of citizens generally."[12] Rather, the Supreme Court reconfirmed the traditional view that the key comparison is between the plaintiff's interest and that of the general public.[13]

The City also argues that a plaintiff must show "actual" injury in order to gain standing. By this the City presumably means that damage must be extant rather than imaginary. But the word "actual" does not distinguish between the City's conceptions of special and general damage. Under the City's logic, even "actual" damage doesn't confer standing if that

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9 *Buckelew v. Town of Parker,* 188 Ariz. 446, 937 P.2d 368 (App. 1997) (equating a person aggrieved with someone who is specially damaged).

10 *Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197 (1975).

11 192 Ariz. 65, 961 P. 2d 1013 (1998)

12 192 Ariz. at 69, 961 P. 2d at 1017.

13 *Id*. at n. 6.

type of harm falls into the general category. Moreover, "actual" is misleading because every variance appeal takes place on a record that was created *before* any construction. Actual injury cannot mean "extant" injury, or no one would ever have standing.

D. The City's Analysis Leads to Absurd Results

- **Larry Freedlund's interest is not shared with the general public.**

The City's theory creates distinctions that defy common sense. According to the City, a plaintiff has standing if she alleges that a board of adjustment decision will affect her through increased traffic noise, littering, a fire hazard or a shiny sign. But she lacks standing if the board's decision will create an eyesore, ruin efforts at historic preservation, and reduce the market value of her home. In this the City sees a principled distinction.

This court concluded that Mr. Blanchard suffered special damage when he was concerned about increased traffic from a store that would be located across a state highway 750 feet from his home. Traffic is a mobile phenomenon, so Mr. Blanchard necessarily shared his concern with many others. But the court concluded that Mr. Blanchard was sufficiently special to have standing because the general public in Show Low would be less affected by traffic from the proposed store.

If Mr. Blanchard's case was "special," how can Larry Freedlund's be "general"? Mr. Freedlund is unique among the 1.3 million residents of Phoenix, because his front door faces the new development 60 feet away. The cases are clear that general damage *means* damage that is shared with the general public. Because it requires the pretense that Larry Freedlund's interest is the same as 1.3 million other residents, the City's analysis fails the test of common sense.

- **Visual aesthetics and auditory aesthetics.**

According to the City, a homeowner who must live with more traffic noise suffers special damage, but one who must live next to a historically-incompatible eyesore suffers only general damage. Traffic noise creates standing because it is somehow "actual" and even "palpable," while the building raises only "aesthetic" concerns.

This distinction collapses because noise *is* aesthetic harm. Hearing is no less sensory than seeing. Moreover, the homeowner wants to avoid traffic noise for the same reasons that he wants to avoid an offensive sign or building: it is unpleasant, and any future buyer of his home will dislike it too, thus reducing the home's market value. The City's argument thereby creates distinctions that don't exist (by classifying eyesores but not noise as aesthetic) and ignores distinctions that obviously do exist (such as that between Larry Freedlund and the general public).

- **The City's concession that visual aesthetic damage can sometimes be enough.**

The authorities cited in the opening brief recognize that aesthetic harm can create standing. Forced to bend by the weight of the case law, the City admits that harm to a purely aesthetic interest can *sometimes* supply standing, but only if an ocean view is impaired.

By opening this door, the City raises a host of questions, which collectively reveal that the City's "special damage" theory is a house of cards. If infringing on an ocean view confers standing, what about losing one's view of the desert, a nearby hill, or a pretty tree? Is it really possible to distinguish among types of aesthetic damage at the pleading stage? Since the plaintiff's subjective harm is what matters, doesn't the City err by imposing a "reasonable person" standard? Should the City Attorney's Office be the judge of whether a particular citizen's claim of aesthetic harm

is weighty enough to deserve a day in court? Did the Legislature really intend these complex nuances when it enacted § 9-462.06, or is the City making this up?

II. THE SECOND MISTAKE: THAT PLAINTIFFS MUST PROVE THEIR CASE IN ORDER TO WITHSTAND A MOTION TO DISMISS.

A. The Trial Court Properly Considered the Affidavits as Proposed Amendments to the Complaint for Purposes of Analyzing the Standing Issue.

The City agrees that this court must evaluate the standing issue based on the RAA members' affidavits. The RAA sought leave to amend its complaint so as to incorporate all the contents of the six affidavits. The trial court concluded that doing so would be futile, and the City adheres to that argument. The affidavits must be analyzed as proposed amendments to the complaint under Rule 15, in order to determine if the amendment was indeed futile.

Unlike the City, Rousseau argues that the RAA could not submit *any* affidavits, because this evidence was not presented to the Board of Adjustment. It is true that the merits of an appeal from a board of adjustment must be decided on the record. But this Court has expressly stated that "when jurisdictional issues are distinct from the merits" in an appeal from a board of adjustment, the trial court can consider affidavits and other materials to decide the jurisdictional questions.[14]

The Board of Adjustment does not consider the question of standing to appeal, an issue arises for the first time on appeal to superior court. Moreover, the Board of Adjustment does not even permit interested parties to "prove" their standing in the exhaustive way envisioned by the

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[14] *Buckelew v. Town of Parker*, 188 Ariz. 446, 937 P.2d 368 (App. 1997).

City. The Board gave each side ten minutes, to be shared by every person who spoke in opposition to the variance request.[15] RAA representatives focused their presentations on the merits, rather than making a record by detailing the value of their homes. Rousseau's argument is also inconsistent with the law from other jurisdictions.[16]

B. The RAA's Allegations Clearly Do Not Foreclose The Possibility That They Could Substantiate Their Injury.

On a motion to dismiss all of the RAA's allegations are assumed to be true, and are construed in the light most favorable to the plaintiff. A motion to dismiss cannot be granted unless it is "certain that the plaintiff would not be entitled to relief under *any set of facts* susceptible of proof under the claims stated."[17] The court can dismiss only if it is "clear that no relief can be granted under any set of facts that could be proved consistent with the allegations."[18] In considering a motion to dismiss the issue is "not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims."[19]

The City cannot seriously argue that the affidavits foreclose any and all possibility that RAA members might offer evidence that would substantiate their injury. At an evidentiary hearing, RAA members would

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[15] I.R. 21, Tab E.

[16] *E.g.*, *Sugarloaf Citizens' Assn. v. Dept. of Environment*, 686 A. 2d 605 (Md. App. 1996) (trial court can review additional evidence on appeal in order to decide standing).

[17] *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983) (emphasis added).

[18] *Swierkiewicz v. Sorema*, ___ U.S. ___, 122 S.Ct. 992, 998 (2002) (quoting *Hishon v. King & Spalding*, 146 U.S. 69, 73, 104 S. Ct. 22, 29 (1984)).

[19] 122 S. Ct. at 997.

obviously be entitled to elaborate on their allegations. Moreover, it takes little imagination to envision testimony from historic preservation and architectural experts, engineers, real estate appraisers and the City's own Historic Preservation Office.

These principles also dispose of the City's objection that RAA members sometimes refer to "the development" instead of the variances being appealed. Plaintiffs recognize that this case is only about the variances, and the record makes clear that plaintiffs' true concern is with the variances. Pleadings must be construed generously, especially on a motion to dismiss, and it is totally unfair to label any reference to "the project" as a fatal slip.

C. The City Cannot Secure The Advantages Of Filing A Motion To Dismiss, And Avoid The Burdens Of Moving For Summary Judgment, While Simultaneously Saddling The RAA With The Burdens Of Rule 56 And Denying Them The Presumptions That Apply On A Motion To Dismiss.

The City's argument relies on a procedural bait-and-switch. The City filed a motion to dismiss and insisted that it be treated as such. The City sought and obtained relief based on its representation that it was filing a motion to dismiss, rather than one for summary judgment. On appeal the City continues its argument that no summary judgment motion was ever filed.

But the City saddles the RAA with the burden of opposing the summary judgment motion that the City never filed. On a motion to dismiss, the pertinent question is "can one imagine the plaintiff presenting a state of facts that might entitle the plaintiff to relief?" The City instead argues that no evidentiary hearing is necessary because "no reasonable trier of fact would find on the basis of the evidence presented" that any RAA

member suffered damage.[20] The City even argues the facts as if to a jury. Larry Freedlund's affidavit stated that the variances would impair his aesthetic appreciation of his neighborhood and negatively affect the marketability of his home. The City pounces as one might attack the credibility of a witness during closing argument. The City argues that Mr. Freedlund's former view consisted of "two vacant lots, an alleyscape, a block wall and the unlandscaped Spaghetti Factory parking lot."[21] The insinuation is that Mr. Freedlund's allegations are not credible. But credibility is not an issue on a motion to dismiss.

The City argues about the "evidence presented," but all that has been "presented" is a complaint, not evidence of any kind. Given the City's insistence that its motion was not one for summary judgment, it is remarkable for the City to argue what "reasonable triers of fact" might decide.

As part of its jury argument, the City tries to argue that the variances are *de minimis*, but this is erroneous as well. The Board of Adjustment reduced the required front yard setback so that the owner of these lots can build with a 10-foot front yard setback. Separately, the Phoenix Zoning Ordinance allows a projection to intrude five feet into the otherwise-required front yard.[22] The City argues that because Rousseau proposes to build 12 feet from the property line, the "real" impact on the neighbors is only three feet. But that is untrue; the City confuses the structures with the variances.

Without any variance, part of a structure could be located 15 feet from the property line. With the variance, Rousseau or his successor

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[20] Answering Brief, p. 25.

[21] Answering Brief, p. 12.

[22] Zoning Ordinance § 701(A)(3)(a)(2).

can still construct a five-foot projection into the 10-foot setback. The variance therefore permits part of a structure to be built only *five* feet from the front property line. That perpetual risk is further proof of standing (and further shows on the merits that the variance request lacked the prerequisite of necessity.)

The City's other refrain is that plaintiffs' allegations are "conclusory." For one thing, reading the affidavits will prove that this isn't true. Twenty pages of explanation is probably too much under a regime of notice pleading. And what more could they say? Someone could write a lengthy narrative detailing their negative aesthetic perception of a building without setbacks. Such an essay would be ponderous, but not very helpful at the pleading stage. Explaining one's personal aesthetic sensibility is not helped by length.

The City's confusion of dismissal and summary judgment standards is unfair and contrary to law, because a plaintiff's burden to show standing is very different. The U.S. Supreme Court emphasized the difference in *Lujan v. Defenders of Wildlife*.[23] "At the pleading stage, general factual allegations of injury" are enough to show standing, because "on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim."[24] In contrast, on a summary judgment motion "the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts" that show the required elements of standing.[25]

Last year a unanimous U.S. Supreme Court emphasized the very minimal "specificity" a complaint must have in order to withstand a

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[23] 505 U.S. 555, 561, 112 S.Ct. 2130, 2137 (1992).

[24] 112 S. Ct. at 2137.

[25] *Id.* (quotation marks omitted).

motion to dismiss.[26] On a motion to dismiss it is no objection that a complaint is "conclusory" as long as it gives fair notice of the claim. "Under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case."[27] All a complaint must do is "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."[28]

Similarly, Arizona law does not require a complaint to detail, or even to summarize, his order or manner of proof. Ariz. R. Civ. P. 8(a) requires a complaint to be "short and plain." Our Supreme Court has emphasized that "extensive factual recitations are not required."[29]

III. THE THIRD MISTAKE: REFUSING TO ADMIT THAT THE CITY'S THEORY VIRTUALLY ELIMINATES THE RIGHT OF APPEAL.

The City's argument raises an important practical problem that transcends this appeal. Most variances in the "real world" involve setbacks, the height of fences and the size of signs. Almost without exception an objecting neighbor's concern is over visual appearance and property values. Variances hardly ever create the risks that appear on the City's list of special damages. If the City's theory were endorsed, it would jeopardize and arguably destroy the right of appeal.

The Opening Brief posed a simple hypothetical that challenged the City to explain how a meaningful right of appeal survived under the regime it advocates: a board of adjustment erroneously approves a variance

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[26] *Swierkiewicz v. Sorema*, ___ U.S. ___, 122 S.Ct. 992 (2002).

[27] 122 S.Ct. at 997.

[28] *Id*. at 998.

[29] *Anserv Insurance Services, Inc. v. Albrecht*, 192 Ariz. 48, 960 P.2d 1159 (1998).

that permits a sign far larger than the zoning ordinance allows. Can neighbors appeal if their only damage is aesthetic and pecuniary?

The City refuses to answer this simple question. It scoffs that the hypothetical is "devoid of any meaningful detail," but the hypothetical's simplicity is what makes it important. The City's response is carefully crafted to duck the question:

> Once again, nothing in the trial court's decision eliminates the potential for standing to assert aesthetic and economic damages where a plaintiff can allege and prove he has or will sustain actual injury. Such proof, however, is not present in the vague opinions and conclusory allegations of the affidavits appellants submitted to the trial court.

Answering Brief, page 33.

Do neighbors get standing to appeal run-of-the-mill variances if they avoid conclusory allegations, or will they still fail the City's test of "actual injury?" The City refuses to say because either answer is painful.

One answer is yes – the neighbor has standing if his complaint is very detailed. This answer is correct as to standing, but wrong on the Rules of Civil Procedure. If a neighbor has standing to appeal an oversized sign just because it is ugly and impacts his property values, it is sufficient for his complaint to allege (in legalese of course) "I live close enough that the sign will damage me because it is ugly and will depress my home's value." As discussed above, the complaint does not have to plead the plaintiff's order and manner of proof. Moreover, even if this hypothetical neighbor *did* need to plead all sorts of detail, then by definition the trial court's ruling in this case was error, because it is not "futile" for the RAA to amend its complaint.

The other answer – no, the hypothetical neighbor can't plead his way into standing – reveals the unprecedented and politically-explosive

consequences of the City's position. If aesthetic and economic damage from oversized signs are not enough, then the City is saying that *no one* has the right to appeal sign variances most of the time. The same goes for setbacks and wall height. That position is truly revolutionary, and the City's complaint about "conclusory allegations" is just an attempt to hide the revolution.

IV. MISTAKE NUMBER FOUR: ARGUING THAT §9-462.06 IS REDUNDANT BY PERMITTING AN APPEAL BY TAXPAYERS AFFECTED IN ADDITION TO PERSONS AGGRIEVED.

The RAA members also have standing under the "taxpayers affected" provision of A.R.S. § 9-462.06. The Enabling Act sets forth in disjunctive language two different groups of people who may have standing. The City maintains that "persons aggrieved" means the same thing as "taxpayers affected." This argument must be rejected for three reasons.

First, statutes must be construed so that no language is redundant or meaningless.[30] Under the City's interpretation, the grant of standing to "taxpayers affected" is redundant and meaningless. This language was promulgated in the Standard State Zoning Enabling Act in 1921. The City is suggesting that no one has noticed this redundancy for the past 82 years. This suggestion is not plausible, and the court should reject it.

Second, it is fundamental that different words should mean different things. Aggrieved and affected are different words, and every dictionary defines them differently. "Affected" casts a wider net than "aggrieved." While the City constructs an argument that the RAA members are not aggrieved by the damage to their homes and loss of historic integrity,

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30 *Welch-Doden v. Roberts*, 202 Ariz. 201, 4 D 2 P3d 1166 (App. 2002).

it is impossible to argue with a straight face that they are not "affected" by the Board of Adjustment decision.

Third, the City's argument leaves Arizona inconsistent with the other states cited in the opening brief in which the statute does indeed supply standing to different groups of individuals. *See* Opening Brief p. 32, n.95.

Rousseau cites cases dealing with the doctrine of "taxpayer standing," and argues that plaintiffs have no standing because no public funds are being expended on this project. But that doctrine applies only when no specific statute addresses the scope of standing, as in this case. Moreover, because no variance on private property *ever* necessitates an expenditure of public funds, Rousseau's interpretation would render meaningless the express grant of standing to "taxpayers" in § 9-462.06.

CONCLUSION

RAA members are unlike the general public in Phoenix for the obvious reason that this is *their* neighborhood. Plaintiffs have shown beyond a doubt that they have standing. The Court should therefore reverse the trial court's judgment, and either grant plaintiffs' motion for summary judgment due to the appellees' failure to respond to it, or remand for consideration of the merits. In the alternative, and at a minimum, the Court should reverse the judgment and remand for an evidentiary hearing on the issue of standing.

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CERTIFICATE OF COMPLIANCE

Pursuant to ARCAP 14, the undersigned hereby certifies that this brief was prepared in a proportionately spaced typeface (Times New Roman, in 14 point type) and contains a total of 4,863 words.

_____

CAMERON C. ARTIGUE

CERTIFICATE OF SERVICE

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, CAMERON C. ARTIGUE, as counsel for appellants do certify that on the ____ day of April, 2003, I caused delivery of this Opening Brief as follows:

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CAMERON C. ARTIGUE

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