

CITY COURT: PROSECUTORS PUSH JAIL FOR DISABLED VIETNAM VETERAN OVER ZONING VIOLATIONS

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Robert Stapleton of Phoenix learned the hard way you can't fight city hall, at least not in city court.

Stapleton, a disabled Vietnam combat veteran, lived quietly for more than 30 years on his small farm property in north Phoenix, working as a blacksmith, raising horses, and doing odd jobs.

When he moved there in 1971, the property was still in unincorporated Maricopa County. Even after the City of Phoenix annexed the area a year later, no one from the city bothered him.

"I came home from a war," Stapleton said. "I just wanted some peace and quiet. I tell people, 'I'd like some peace of mind without a piece of somebody else's.'"

The trouble started in 2005 when the city received anonymous complaints that Stapleton's property was out of compliance with Phoenix neighborhood zoning codes.

It got ugly in early 2006. By then, a developer had assembled the land next to Stapleton's for a planned condominium project at the corner of 7th Street and Roberts Road.

It wasn't just any developer. It was Paul Johnson, the former mayor of Phoenix, and a close friend and political ally of Phil Gordon, who was the city's mayor at the time.

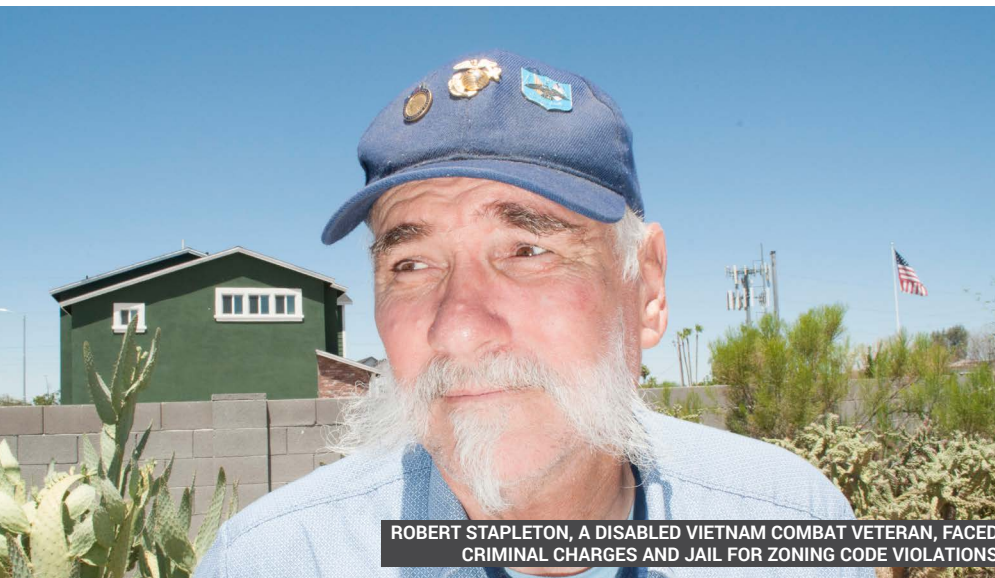
A man who identified himself as a representative of Johnson's company approached Stapleton, offering to buy his land at what Stapleton considered cut-rate prices. Several offers were made, but Stapleton turned them all down.



Finally, the man warned Stapleton that **"a stone wall is going to fall on you"** if he continued his refusal to sell, Stapleton said. **It did.**

Stapleton was hit with six criminal charges for zoning violations on his property a short time later. Each of those charges carried penalties of up to six months in jail and \$2,500 in fines.

Among his crimes, according to the charges, was having a five-foot, steel-rail fence in front of his house, which exceeded the maximum height allowed by the city. Stapleton also was charged with having vehicles improperly stored on his lot and for violating "vegetation standards"—all on a property that was zoned for farming.



At one point, the prosecutor warned Stapleton that he would likely go to jail if he did not back down, Stapleton said. But Stapleton, a former Marine, refused to quit, telling the prosecutor:

“What you’re doing to me is wrong and I know you are doing it to other people. Somebody just needs to stand up and say it’s wrong.”

Stapleton was eventually convicted on five of the six charges in Phoenix Municipal Court. The judge put him on probation for three years and fined him \$15,000. Terms of his probation included abiding by city zoning codes. If he failed to do so, he could go to jail.

City prosecutors subsequently sought repeatedly to have Stapleton locked up. They convinced the city judge to issue a series of orders beginning in 2008 to have him jailed for 60 days. However, due to his ill health he did not serve any jail time.

Stapleton finally paid off the debt in December 2015 through \$500 monthly installments.

As the city was prosecuting Stapleton for having weeds in his yard and vehicles improperly parked on his property, Johnson’s development companies next door were having nothing but success with the city. More than a dozen use permits and variances to zoning requirements were approved by the city, including one allowing Johnson’s company to build a six-foot block fence around its property.

Last year, the Phoenix City Council approved the final plat for the development. Johnson had by then scrapped his initial plans for the 47-unit condominium project, which would have included three buildings three stories in height, and three more that were two floors tall.

Now Johnson-related companies are building 29 detached single-family homes on the 2.9 acres he managed to assemble on the corner.

Stapleton has long maintained he was targeted for particularly harsh treatment by Phoenix zoning officials and prosecutors because he spurned early attempts by Johnson’s representatives to buy his property, and because he was a vocal critic of Johnson’s housing development next door.

“I really believe that this is what puts ‘malicious’ in malicious prosecution,” Stapleton said of the fight with city hall that has now dragged on for more than a decade. “We’re going to beat you because you’re not going to beat us.’ That’s the mentality.



“I think they did what was familiar to them, except my response was not the familiar response.” ~Robert Stapleton

Judicial Enforcement

City courts are the primary enforcers of city decrees. In Stapleton’s case, he was battling the allegations of city zoning inspectors and city prosecutors in front of a city judge in pressing his claims that he did not violate the city zoning codes passed by the city council.

City court judges have primary jurisdiction over violations of city ordinances and zoning codes, as well as misdemeanors and traffic offenses committed within city boundaries.

City councils routinely designate even minor violations of their ordinances as criminal violations. For instance, such things spitting on the sidewalk, littering, failing to return a library book, smoking in a restricted area, and having weeds taller than six inches on a property are designated as criminal offenses in various city codes in Arizona.

All of those violations wind up in city court.

All six of the criminal zoning charges Stapleton faced were Class 1 misdemeanors, meaning each carried a penalty of up to six months in jail and \$2,500 in fines.

The Goldwater Institute reported in July that city court judges are particularly vulnerable to political pressures to raise revenue, to sign off on questionable city policies, or give favored treatment to city insiders. That’s because they are appointed and retained by the city council, the political branch of government that can fire them at any time with sufficient cause, or simply not retain them when their term ends even without cause.



As a result of that limited protection, city judges face being out of a job if they go against the priorities of the city council, prosecutors, police, or budget officials, the Goldwater Institute found in its investigative report [*City Court: Money, Pressure and Politics Make It Tough to Beat the Rap.*](#)

Phoenix officials deny there was any political pressure exerted in Stapleton's case, which was handled according to standard practice when a property owner refuses to remedy zoning code violations.

Johnson denies he had anything to do with the city's prosecution of Stapleton, and says he did not make any of the complaints to the city that led to the charges.

A Stone Wall

When Stapleton left the Marines and moved to the isolated patch of desert north of the Phoenix city border, nothing was there except a few scattered homes and a nursing care facility on the corner next to his property.

The nursing home eventually closed and was torn down, leaving a vacant patch of land that remained for years separating his property from 7th Street.

Stapleton said he was drawn to the area for the solitude.

"I don't relish getting into a fight with anybody," he told the Goldwater Institute. "I came out here in the country to get away from people. That was the whole idea and I seriously meant it, and I still do."

In 2005, a zoning inspector showed up at Stapleton's door and issued him three citations for zoning violations, including fading paint on his house and failing to park vehicles on a dust-proof surface. All were civil citations, much like a traffic ticket, rather than criminal misdemeanors the city could have charged. Stapleton had been cited for similar violations a year earlier, and paid a \$500 fine.

Stapleton was not told who complained, but at one point city officials implied it was a nearby developer, according to court documents.

The civil citations were issued in February 2005. The case went to Phoenix Municipal Court, where Stapleton demanded his case be decided by a jury. The judge refused.

Stapleton was found responsible, the equivalent of guilty, and fined \$400 in May 2005.

Jury trials are not available to defendants when civil citations are issued. Nor are they available for most criminal misdemeanor cases because the maximum penalty is six months in jail, which the Arizona courts have ruled is not a serious enough punishment to warrant a jury trial.

Instead, the defendant's guilt or innocence is determined by the judge.

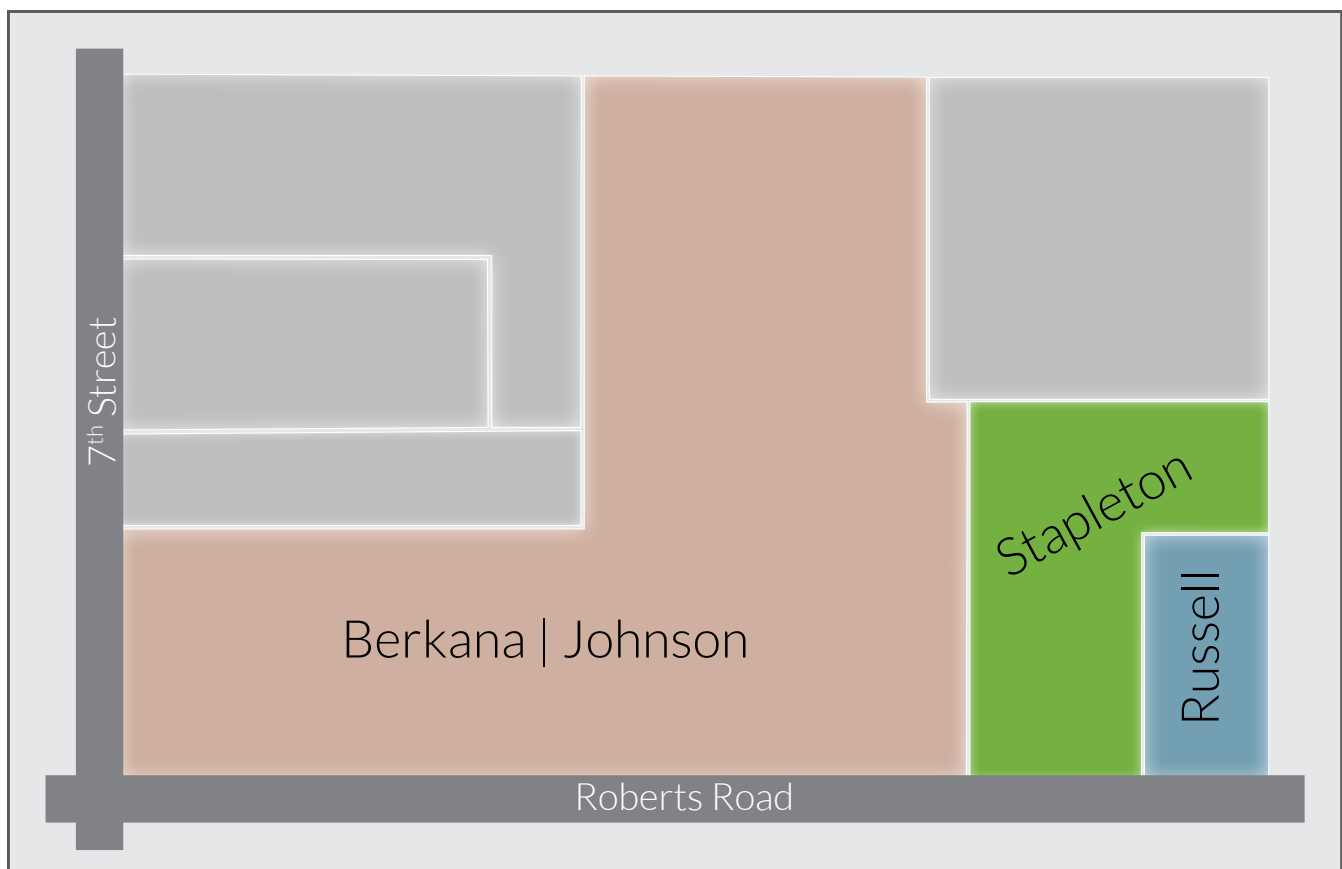
Stapleton remained puzzled by the city's interest in his property until he was approached in early 2006 by Larry Herring, who identified himself as the representative of a developer who was assembling properties around the old nursing home site. The developer had already reached agreements with the owners of that property, and with the owner of the land immediately northwest of Stapleton's. That gave the builder about 2.9 acres shaped like a reverse "L." Herring said he wanted Stapleton's land to create what would look like an inverted "T" shape.

The initial offer was \$125,000. Stapleton was familiar with another property in the area, about the same size as his, which had recently sold for \$500,000, and declined to sell.

Herring increased the offer several times, eventually reaching \$225,000, which he said was the maximum amount he was allowed by his client to offer, according to Stapleton.

Herring, who could not be reached for comment, offered some "friendly advice" when Stapleton would not sell. If Stapleton took the offer, he could have a cashier's check for \$225,000 that afternoon.

"But if you don't, bad things are going to happen to you," Herring warned, according to Stapleton. "A stone wall is going to fall on you."



Stapleton still was not interested in selling, but he did ask to meet the developer Herring worked for. A meeting was arranged at a nearby coffee shop.

That was the first time Stapleton learned the developer was Johnson, who had served as Phoenix mayor from 1990 to 1994 and had been the Democratic nominee for Arizona governor in 1998.

Johnson told Stapleton that the condominium development he was planning would be “good for the city,” but he did not make any threats or inappropriately pressure Stapleton to sell.

Stapleton pressed his civil case, appealing the city court’s judgment first to the Maricopa County Superior Court, which upheld the verdict in March 2006, and later to the Arizona Court of Appeals.

Since he had no money to hire a lawyer, Stapleton represented himself. The court of appeals unanimously decided that Stapleton had no right to a jury trial because he was only charged with civil violations.

It upheld the [city court’s verdict](#) in January 2007.

By then circumstances had changed.

In August 2006, responding to an anonymous complaint, the city filed six new charges against Stapleton alleging violations of zoning ordinances. This time they were criminal misdemeanors, meaning he could go to jail.

Stapleton unsuccessfully sought to have the court of appeals reopen his case since he was now being charged with crimes.

Negotiations Paying Off

As Stapleton was fighting in city court, Johnson’s negotiations with other area landowners were paying off. The land deals involved a complex network of limited liability companies controlled by Johnson.

The main one was Berkana on 7th Street LLC, created in January 2006, which acquired the old nursing home site between Stapleton’s property and 7th Street.

By April 2006, Berkana on 7th controlled the old nursing home site, and another property immediately north of it, creating the backward “L” shape abutting Stapleton’s land.

Berkana was still trying to get Stapleton’s property, though it had backed off approaching him directly, [according to an affidavit](#) signed by Stapleton’s neighbor, Gary Russell.

Russell, who confirmed the assertions of the affidavit to the Goldwater Institute, owns a smaller notch of land immediately east of Stapleton's.

In the spring of 2006, a man who said he represented Berkana sought Russell's aid in forcing Stapleton to sell by asking Russell to contact the city with new zoning complaints against his neighbor, according to the affidavit.

"If as a consequence Berkana was able to acquire the neighbor's (Stapleton's) property at a price most favorable to the developer, that they would also purchase our property at the then market value which was high, to finish out the square," Russell said in his affidavit.

The Berkana representative also said that obtaining Russell's and Stapleton's property was "required to accomplish their total objective."

Russell acknowledged that, at Berkana's behest, he and his wife did make the new zoning complaints against Stapleton, which led to the criminal charges.

"We did make those complaints but the neighbor, Mr. Stapleton, absolutely refused to sell and the proposed Berkana development did not proceed and we did not sell our property to them," Russell said in the affidavit. "I did not know the lay of facts or this aspect initially and would not have acted as we did had I known."

Stapleton only learned later that Russell filed the complaints that led to the criminal charges, since the city had refused to disclose his identity.

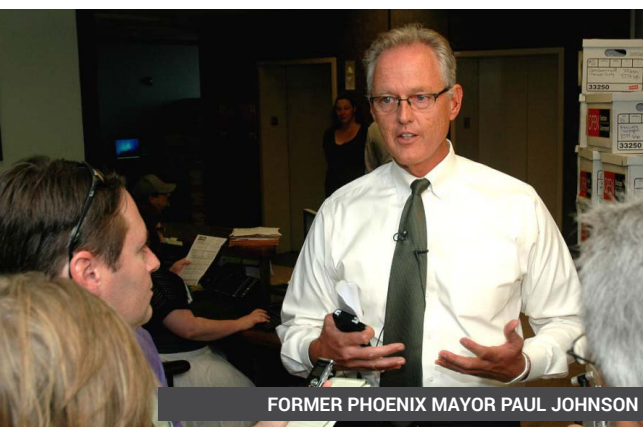
'Self-Imposed Hardship'

Beginning in 2006, Johnson began to seek zoning approval from the city for his 47-unit condominium project on the properties he had by then assembled. The plan was for six buildings as tall as 40 feet, which would not be permitted with existing zoning rules. So Johnson needed to obtain what are called "variances" from the city, basically exceptions to the standard zoning rules.

Berkana officials cited the property's odd shape and different zoning classifications in seeking the variances.

"The irregular shape of this site presents significant challenges for the use proposed and creates a hardship condition for the site," a Phoenix zoning adjustment hearing officer found in 2007 as the justification for approving a series of variances dealing with building heights and the distance the buildings would have to be from surrounding property owners and public streets. "The final site configuration was not within the control of the applicant and not a self-imposed hardship."

Stapleton, as representative of an area homeowners' advocacy group, delivered a petition with 23 signatures of surrounding property owners opposed to the variances.



Johnson maintained close ties to city hall even after his term as mayor ended, most notably through his longtime friendship with Phil Gordon, who was mayor at the time Berkana was assembling land for its development and Stapleton was being hit with criminal charges.

By late 2007, Johnson had nearly everything he'd asked for from the city, and it appeared the condominium development was about to be built.

Then the Great Recession hit in December 2007, crippling the real estate market and forcing Berkana to put its plans on hold, according to a letter sent to the Phoenix Board of Adjustment in 2015 by company lawyers recounting the project's history.

Neighborhood Eyesore

Johnson told the Goldwater Institute he never did anything to cause any problems for Stapleton, including filing zoning complaints or enlisting others to do so. Nor did he lobby Gordon or make any attempts to pressure Phoenix zoning officials to go after Stapleton, Johnson said.

As far as he knows, no one connected with Berkana did either.

In fact, Johnson maintains he never made any attempts to purchase Stapleton's property, at any price, because it was not needed for the development next door.

"As God is my witness, I never tried to force him out," Johnson said, adding he has offered to pay to have someone clean up Stapleton's property and to build a block fence in front of his house to eliminate the neighborhood eyesore. "I didn't make phone calls to have people call and complain. I don't want his property."

Johnson said he vaguely remembers the name Larry Herring, but says Herring was never authorized to contact property owners in the area on his or Berkana's behalf. It is possible one of the other partners in Berkana made attempts to buy Stapleton's land on their own, Johnson said, but he is not aware of any such efforts. It is even possible some



"As God is my witness, I never tried to force him out."

~ Paul Johnson, former Phoenix Mayor

other real estate broker unconnected to Berkana was trying to put together a deal on his own, he said.

“Did somebody go offer him money in my name? I don’t know,” Johnson said. “How would I know that? I can tell you I never authorized anybody to. I didn’t want anybody to. But the idea that a broker showed up and tried to get him to sell his property, did that happen? I don’t know.”

Johnson said it’s also possible he met with Stapleton in 2006, as he would with any neighboring property owner, but does not specifically recall the meeting.

Gordon could not be reached for comment.

Ratchet to Criminal

Though Johnson’s development was put on hold by the recession, the case against Stapleton in city court was not.

Glen Hammond, the prosecutor originally assigned to the case, told the Goldwater Institute he was uncomfortable that Stapleton was being prosecuted so aggressively for what amounted to minor zoning code violations. But the problem was not that Stapleton was singled out. Rather it was that the city routinely sought criminal charges against people who had minor violations of zoning codes. Those cases frequently were the result of anonymous complaints from neighbors, including developers using city zoning violations to bully surrounding landowners, Hammond said, adding he doesn’t know if that’s what happened in Stapleton’s case. Prosecutors typically did not know who made the complaints, much less their motives, he said.

In a typical case, the city’s neighborhood services department, which enforces zoning codes, would respond to an anonymous complaint and, if inspectors found code violations, they would issue civil citations. If those violations were not remedied, the standard practice was to seek criminal charges in city court.

“You know those abuses were going on,” said Hammond, now a lawyer in private practice in Prescott. “I hated it when any neighbor in these civil violations ratcheted up to criminal.



“In one sense Bob was absolutely the average person out there that is in this mix.”

Hammond added he was especially troubled by cases like the one Stapleton claims, “when it’s the little guy, and the complaint is being brought by the contractor or developer next door.”

Though he does not know whether Stapleton is correct in his assertions that Johnson or his associates were behind the complaints, Hammond did say, “I take Bob as a man of his word.”

Hammond said he was never pressured to single out Stapleton for aggressive prosecution by higher-ups in the city. He resigned from the city to take a job with the Yavapai County Attorney’s Office shortly after the criminal charges were filed.

Hammond was replaced by his supervisor, Kevin Solie, who took over Stapleton’s case.



Public Defense

Now facing six criminal charges, Stapleton continued representing himself in city court because he could not afford an attorney. Again, he demanded his case be tried by a jury rather than by the city judge, an issue that tangled court proceedings and led to a long delay in the case.

In the months leading up to the trial, Stapleton said he was told by Solie that he could go to jail if he continued to fight and lost.

Later, Solie seemed to take on a more friendly tone and suggested Stapleton might qualify for a public defender paid for by the city to handle his defense. Solie even brought the forms Stapleton would need to apply, Stapleton said.

That in itself could signal that prosecutors were planning to put Stapleton in jail.

Public defenders are normally available to defendants only if they are facing jail time. If the court finds a defendant is both unable to afford an attorney and facing the prospect of jail, the judge will appoint a public defender paid for by the city or county bringing the charges.

During his trial, Stapleton testified that the items the city considered junk, such as used tires and extra fencing, were things he regularly used to run his horse ranch.



Judge Sallie Gaines of Phoenix Municipal Court refused to allow Stapleton to testify about why he believed he was being unfairly targeted by the city. **She found him guilty on five of the six charges in May 2007.**

Gaines sentenced Stapleton to three years on probation, meaning he did not face jail right away but could be locked up if he failed to comply with the terms of his probation. Among the conditions was that he correct the zoning violations and bring his property up to city standards.

The judge also imposed financial sanctions of \$15,000, which amounted to \$3,000 for each count for which he was convicted. City court judges have the power to impose up to \$2,500 in fines on each count. But that cap does not include court fees and state surcharges, which nearly doubled the amount of Stapleton's base fine.

Stapleton, again representing himself, appealed to Maricopa County Superior Court, where challenges to municipal court verdicts are heard. Stapleton claimed he was entitled to a jury trial, and that he did not have a fair chance to present his case.

Judge Margaret Downie, clearly frustrated at Stapleton's sometimes rambling, non-lawyerly arguments in written pleadings, [dismissed the appeal](#) in January 2008, finding that he did testify at his trial and was not entitled to a jury.

Not 'All Crimes'

Arizona is one of 11 states in which a defendant who is facing up to six months in jail is not guaranteed a jury trial. In those cases, the judge makes a determination as to the defendant's guilt.

One other state has a minimum jail threshold of 90 days.

The rest guarantee defendants the right to face a jury either in all criminal cases or in any case that carries the possibility of jail time, according to Internet research done by the Goldwater Institute.

Both the U.S. and Arizona constitutions guarantee the right of defendants in criminal cases to have juries determine their fates.

The Sixth Amendment to the U.S. Constitution [reads in part](#):

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

Misdemeanors, including the zoning charges Stapleton faced, are considered criminal charges in Arizona.

But the U.S. Supreme Court has ruled in a series of cases that not all criminal prosecutions require a jury. Only serious crimes warrant a jury, the court held in a 1968 case, [*Duncan v. Louisiana*](#). Crimes deemed “petty offenses” do not.

In 1970, the court reaffirmed its decision in another case, [*Baldwin v. New York*](#), and specified that only those cases in which the defendant faces more than six months in jail are serious enough to justify a jury.

Two of the justices in the 1970 case, Hugo Black and William Douglas, agreed with the majority opinion that the particular defendant in that case, who was facing a year in jail, was entitled to a jury. But they disagreed with the notion that those facing no more than six months in jail do not have a right to a jury trial.

“The Constitution guarantees a right of trial by jury in two separate places but in neither does it hint of any difference between ‘petty’ offenses and ‘serious’ offenses,” the two justices wrote in a concurring opinion. “Thus the Constitution itself guarantees a jury trial ‘in all criminal prosecutions’ and for ‘all crimes.’”

In previous decisions, the Supreme Court “decided that ‘all crimes’ did not mean ‘all crimes,’ but meant only ‘all serious crimes,’” the two justices continued. “Today three members of the Court would judicially amend that judicial amendment and substitute the phrase ‘all crimes in which punishment for more than six months is authorized.’ This definition of ‘serious’ would be enacted even though those members themselves recognize that imprisonment for less than six months may still have serious consequences.”



Inviolate with Caveats

Arizona's Supreme Court did even more legal hairsplitting in deciding when defendants qualify for a jury trial. The U.S. Supreme Court's decision essentially sets minimum standards for the states. That means no state can deny a defendant facing more than six months in jail the right to a trial by jury.

But individual state constitutions can afford defendants greater protections than the federal constitution.

Arizona's Constitution would seem to do that. It has two provisions guaranteeing a jury trial to defendants in criminal cases.

"The right of trial by jury shall remain inviolate," [one section](#) of the state constitution says.

A [different section](#) says that "in criminal prosecutions," defendants are entitled to, among other things, "a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed."

But the Arizona Supreme Court has interpreted that language as protecting only those rights as they existed when the state constitution was adopted, just prior to statehood in 1912. It did not create any new rights, the court reasoned. So a jury trial is only required if the defendant is facing prosecution for misdemeanor crimes that existed during territorial days. New crimes that have no similarities to territorial law do not qualify, the Arizona court ruled.

"We have consistently held that the phrase 'shall remain inviolate' preserves the right to jury trial as it existed at the time Arizona adopted its constitution," the Arizona Supreme Court [wrote in a case](#) decided in 2005.

There is another quirk in the state Supreme Court's reasoning. It relied on the common law definition of what constitutes a "petty offense," meaning one that is not serious enough to warrant a jury. Common law is the part of English law that relies on custom and judicial precedent rather than statutes.

Citing a previous case, the Arizona court said:

"We now expressly adopt the Blanton presumption and hold that when the legislature classifies an offense as a misdemeanor and punishable by no more than six months incarceration, we will presume that offense to be a petty offense that falls outside the jury requirement" of the state constitution. "By adopting that approach, we leave to the legislature primary responsibility for determining, through its decision as to the penalty

that accompanies a misdemeanor offense, whether the offense qualifies as a ‘serious offense.’”

While the [Arizona criminal code](#) adopted by the legislature does not define what constitutes a “serious” crime, it does define a “petty offense” as a criminal charge that carries only a fine as a penalty without the possibility of any jail.

Fighting On

The bottom line for Stapleton was he did not qualify for a jury trial, and the criminal convictions against him would stand. But the ex-Marine fought on.

In April 2008, he filed a lawsuit in U.S. District Court in Phoenix claiming his civil rights had been violated, in part because the city was using its enforcement powers to benefit Johnson, and in part because Stapleton continued to maintain he had the right to a jury trial. Again, Stapleton could not afford an attorney and represented himself.

But the city was not done fighting either.

In August 2008, Solie, the city prosecutor, claimed in court documents that Stapleton was violating the terms of his probation because he’d failed to remedy all of the zoning violations. Judge Gaines of Phoenix Municipal Court granted the motion to revoke Stapleton’s probation and ordered him jailed for 60 days.

Since he was again facing jail time, Stapleton was again entitled to a court-appointed attorney. The private lawyer who represented Stapleton, Laurie Herman, [appealed the probation revocation](#) and jail sentence on the grounds that the city code was too vague, and following it would make it impossible to run a ranch or farm, for which the property was zoned.



One of the criminal charges Stapleton was convicted on was based on the zoning inspector’s finding that Stapleton had bales of hay and a wooden workbench on his property, both of which are essential to running a horse ranch, Herman argued.

“A horse ranch is not a neat and tidy suburb,” Herman wrote in appealing the revocation of Stapleton’s probation. “A working ranch such as (Stapleton’s) includes the very items the inspector said were zoning violations.”

The Phoenix zoning codes Stapleton was convicted of violating “are so broad that they can criminalize the normal use of a ranch or farm,” Herman added. “This sentence is the result of using his land as an active horse ranch. Also, the probation term delegates to its enforcers—the zoning inspector and city judge—unfettered discretion as to what is or is not a violation, but has no objective standards or guidelines.”

A Maricopa County Superior Court judge [rejected the argument](#) and affirmed the judgment of the Phoenix Municipal Court. What follows in court records is a confusing series of orders from Phoenix municipal court judges ordering Stapleton to jail and motions from Herman to block imposition of the sentence.

Jail Time

In November 2009, Stapleton was ordered by Judge Gaines to serve 15 days in Maricopa County jail. In January 2010, he was again ordered to spend 15 days in jail and 45 days in home detention. There also are orders issued by the city court in April 2010 ordering him to serve 30 days of home detention and 60 days in county jail.

Stapleton said he reported to the county jail to serve his sentence in 2010, but was turned away because he’d recently suffered a stroke and had other serious medical problems. That is [consistent with motions](#) filed by Herman to suspend his jail sentence because his medical issues disqualified him from county detention.

In an interview with the Goldwater Institute, Herman said Phoenix city prosecutors clearly treated Stapleton more harshly than they should have, both in bringing criminal charges and later for trying to put him in jail for failing to knuckle under to their demands.

“He was treated unusually harshly because he didn’t cave,” Herman said. “And because he didn’t submit to the authority, that really irked them.”



“I think they wanted him to do time to make their point, and they kind of lost sight of what their point was. **Their point was, ‘Do what we say, regardless of how unjust it may be. We’ve told you and told you and since you’re not doing it, we’re going to hit you with our big stick.’** That’s the way municipal courts like to exercise their authority.”

~ Laurie Herman, court-appointed attorney who represented Stapleton

Stapleton had no better luck in federal court than he did with the city, county, and state courts. In November 2008, the federal district court dismissed Stapleton's claims that the city violated his civil rights by maliciously prosecuting him while denying him a jury trial. He appealed to the 9th U.S. Circuit Court of Appeals, which in March 2010 [ruled against him](#). The 9th Circuit judges agreed with the Phoenix district court that Stapleton's motions failed to state a clear claim for relief, and did not comply with the clerical requirements for filing court documents, such as the use of short and concise statements in numbered paragraphs.

New Plans

After that, things were quiet for a while. Stapleton grudgingly paid off his debt to the city, and Johnson's companies weathered out the recession.

In 2015, Berkana came out with new plans to build 29 single-family homes on the 2.9 acres it had acquired.

To do that, it would need more variances.

City zoning officials complied.

In March 2015, a city zoning officer approved nine zoning variances and two use permits to allow the project to go forward despite conflicts with zoning rules. The variances allowed the developer to build the houses closer to the street, closer to the property line, and at greater densities than would otherwise be permitted.

In January 2016, the Phoenix City Council unanimously approved the final plat for the Berkana property, now called Encanto Moon Valley.

Many of the homes are finished.





Stapleton is still causing problems for Johnson, claiming the plans approved by the city will lead to flooding of his and other properties in the neighborhood.

No new zoning charges have been brought against Stapleton. However, emails in city zoning files indicate Justin Johnson, Paul's son who is now the developer of the Berkana property, recently tried to get the city to take action against Stapleton.

In March 2017, Justin Johnson sent photographs of Stapleton's property in an [email to city zoning officers](#) stating, "I am happy to follow up with Neighborhood Services if you can give me a contact over there with which to follow up."

Bob Lozier, code compliance manager for the city, responded to other city officials on the email chain 10 days later, suggesting new charges might be forthcoming against Stapleton.

"You can send him my way," Lozier wrote to his colleagues in the city in response to Justin Johnson's email. "We are continuing

to stand by while the prosecutor's office tries to work out an agreement with the disabled veteran."

Another [email in the chain](#) from Lozier, apparently to the city prosecutor's office, has been completely redacted by the city.

Justin Johnson told the Goldwater Institute that he was not lodging a complaint against Stapleton or trying to get the city to take action. Rather, he had been contacted by neighboring property owners who wanted to know the status of an ongoing city enforcement case against Stapleton, and was just trying to get them the information.

"I've never officially filed a complaint," Justin Johnson said. "That wasn't my intent. I had some neighbors that were frustrated that were just asking how the existing complaint was moving forward. I sent her pictures saying this is the site I was talking about."

Standard Practice

The Goldwater Institute requested interviews with officials in both the Phoenix prosecutor's office and the city zoning department to discuss Stapleton's case. No one from either office would agree.

The city did issue a [five-page written response](#) to questions submitted by the Goldwater Institute insisting Stapleton was not singled out for aggressive prosecution, and that city officials followed standard procedures for when people fail to clean up their properties.

If city zoning officials get complaints about a property and find it in violation of city codes, the property owner is contacted and ordered to remedy the violations. If that fails, a notice of violation is issued, then civil complaints and, finally, criminal charges.

That's exactly how the Stapleton case was handled, according to the city. Enforcement records show the city had received complaints about the condition of Stapleton's property going back to 2001, years before Johnson was involved in the property next door. That case was closed when the property was brought into compliance.

The city has filed criminal charges for zoning code violations against 10 individuals and the owners of an apartment complex in the past five years.

The city's statement, drafted by both the prosecutor's office and various zoning departments, says they were never contacted by Johnson, Mayor Gordon, or anyone on the mayor's staff about the criminal case against Stapleton.

"The Prosecutor's Office did its job by examining the evidence, including photographs of the property, and filed charges based on the evidence," the city statement reads. "Every court that has reviewed this case (and there have been several) concluded that the evidence established the violations charged and for which Mr. Stapleton was convicted."

Paul Johnson said he cannot explain why the city chose to file criminal charges against Stapleton, and the first he heard about the charges was when the Goldwater Institute contacted him. Johnson said he was on the Phoenix City Council when the zoning code that was used to prosecute Stapleton was passed. The intent was to clean up neighborhoods, not put people in jail, he said.

"From my standpoint, somebody going to jail for zoning violations isn't what we ever intended when we passed the rules," he said.

Stapleton concedes there is not much left he can do. Neither Johnson nor Berkana representatives have tried to buy his land since his criminal case ended. He doesn't know whether the city pursued the case so aggressively because Johnson still hoped to get his land at some point, or because city officials were just unwilling to back down once the fight began.

Despite the time, trouble, and expense, Stapleton said he did not quit because it's not in his nature.



“I really do believe in the system the way it was meant to be, it's a continuing thing we do in order to preserve what it is we have. I don't question it. **They think they got me whipped. I don't know, maybe they do. I think they'll remember me now.**”

~ Robert Stapleton

Click the cover below to read the first installment of City Court.

