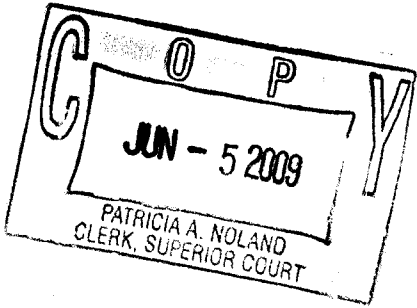


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3 Tucson, AZ 85719
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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF PIMA**

12 THERESA CHAMBERLAIN, a
13 married woman in her individual
14 capacity and as a member of the
15 public, STEVEN BLOMQUIST and
16 SHARYL CUMMINGS husband and
17 wife, individually and as members of
18 the public, TIMOTHY BLOWERS a
19 single man, individually and as a
20 member of the public,

21 Plaintiffs,

22 vs.

23 TOWN OF MARANA, ARIZONA,
24 Defendant.

CASE NO. **C20094273**

COMPLAINT
(Declaratory Judgment Act Action,
Injunction requested)

HON.
JAVIER CHON-LOPEZ

25 **NOW COME** the Plaintiffs, by and through Counsel, and for their claim for
26 relief allege and aver as follows upon information and belief:

GENERAL ALLEGATIONS

- 1 1. Plaintiff THERESA CHAMBERLAIN (“Chamberlain”) is a married woman
2 and is a resident of Pima County, Arizona acting in her individual capacity
3 and as a member of the public.
4
- 5 2. Plaintiffs STEVEN BLOMQUIST and SHARYL CUMMINGS are husband
6 and wife and residents of Pima County, Arizona acting in their individual
7 capacities and as members of the public.
8
- 9 3. Plaintiff TIMOTHY BLOWERS is a resident of Pima County, Arizona
10 acting in his individual capacity and as a member of the public.
11
- 12 4. The TOWN OF MARANA (hereinafter the “Town”) is an Arizona
13 municipality in Pima County, Arizona.
14
- 15 5. Pursuant to *Martineau v. Maricopa County* 207 Ariz. 332, 86 P.3d 912 (App.
16 2004) compliance with ARS §12-821.01 is not required as a pre-requisite to
17 this declaratory judgment claim.
18
- 19 6. On or about February 7, 1986, the fee simple owners of land located in the
20 Tortolita area of Pima County recorded an easement through their land in
21 favor of the public.
22
- 23 7. The docket and page number for the easement is Docket 7718 Pages 333-338
24 (hereinafter the “Easement”).
25
- 26 8. The Easement specifically states that the Easement’s purpose is for ingress,
egress and utilities.

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9. The Easement specifically conveys the rights to the "Public" with the words, "DO HEREBY CONVEY TO THE PUBLIC" (All caps in the original).

10. The Easement specifically described a pre-existing roadway through the area which had been in use since at least the 1960's.

11. On February 7, 1986 the Town's boundaries did not include any portion of the Easement.

12. The Easement does not specifically state that the Easement is dedicated to the Town.

13. The Easement does not specifically state that the Easement is dedicated to and/or limited to the Town's members.

14. The Easement does not specifically state that the Easement is dedicated to Pima County.

15. The Easement does not specifically state that the Easement is dedicated to and/or limited to Pima County's members.

16. The Easement was not conveyed to particular abutting landowners.

17. The Easement was not conveyed to a particular community of landowners.

18. An easement, once recorded, runs with the land and is a burden on the landowner's successors.

19. Easements are servitudes.

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20. In *Powell v. Washburn* 211 Ariz. 553, 125 P.3d 373 at ¶14, the Arizona Supreme Court adopted Restatement (Third) of Property, Servitudes §4.1.

21. As applied to easements, the Restatement (Third) of Property, Servitudes §4.1, requires the Easement to be interpreted to give effect to the intention of the parties ascertained from the language of the instrument, or the circumstances surrounding the servitude's creation and to carry out the purpose for which it was created.

22. The intention of the parties was to grant the entire public, not just future Town members, access to the Easement for ingress and egress.

23. The Restatement (Third) of Property, Servitudes §2.18(2) provides that the right to control a dedicated public easement is vested in the State of Arizona.

24. The Easement is one such public easement.

25. Upon its recorded dedication, the right to control the Easement vested in the State of Arizona.

26. Upon its recorded dedication, the right to control the Easement did not vest in the Town.

27. At no time after its recorded dedication did the right to control the Easement vest in the Town.

28. Stephen Phinny is a principal in multiple Arizona companies.

1 29. During the relevant timeframe, most, if not all, of Mr. Phinny's companies
2 appeared to be completely and totally controlled by Mr. Phinny.
3

4 30. The web of Saguaro Ranch companies and/or Mr. Phinny will be referred to
5 herein as Stephen Phinny, as the acts all appeared designed to further Mr.
6 Phinny's personal decisions, ambitions and/or goals.
7

8 31. Beginning in or around May 2001, Stephen Phinny, began purchasing land
9 encumbered by the Easement.
10

11 32. When Stephen Phinny purchased such land, he received fee title "subject to"
12 the existing recorded Public Easement.
13

14 33. Stephen Phinny never owned the Easement; rather, Stephen Phinny only
15 owned the servient estate.
16

17 34. Stephen Phinny had no right under Arizona law to sell or otherwise transfer
18 the portion of the Easement that ran through his servient estate lands.
19

20 35. Stephen Phinny had no right under Arizona law to destroy the public's rights
21 in the Easement running through his servient estate lands except through
22 adverse possession, if any.
23

24 36. Stephen Phinny did not attain any rights to the Easement through adverse
25 possession.
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37. There are two statutes that ostensibly allow a town to abandon an easement,
ARS 9-402(E) and ARS 28-7205.

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38.ARS 9-402(E) permits a Town to deed over its interest in an easement to the adjacent land owners for no consideration.

39.Inherent in ARS 9-402(E) is a requirement that the town own the easement at issue before it has a right to dispose of it.

40.Stephen Phinny did not transfer any ownership rights in the Easement to the Town because Stephen Phinny did not have any ownership rights in the Easement.

41.ARS 28-7205 only permits the Town to act on a roadway that is a Town roadway.

42.The Easement is not now and never has been a Town roadway.

43.Arizona recognizes three types of roadways.

44.Arizona recognizes public roadways owned by a public authority.

45.Arizona recognizes private roadways owned by private individuals/entities.

46.Arizona recognizes public roadways owned/dedicated by private individuals/entities.

47.The Easement falls into the third category – it is a public roadway owned/dedicated by private individuals/entities.

48.The Easement is not a public roadway owned by the Town.

49.The Easement has never been a public roadway owned by the Town.

50.A regular Town meeting was scheduled on February 3, 2009.

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51. On the agenda an item was listed to discuss and vote on abandoning the Easement.

52. After hearing from numerous members of the public, the Town decided to do a “three phase” study before taking any action.

53. No such study was ever conducted.

54. On May 20, 2009, the day after all incumbents were elected/re-elected and just over 24 hours before a duly scheduled town meeting, the Town added an item to its consent agenda purporting to abandon all rights the public has to ingress or egress on the Easement.

55. On May 20, 2009 Stephen Phinny – individually – conveyed his knowledge of the results of the upcoming vote, and that he knew the Town would vote in his favor, to Sharyl Cummings and Steve Blomquist.

56. Mr. Phinny relayed that knowledge approximately 24 hours prior to the vote.

57. The only way Mr. Phinny could have obtained such knowledge was through a violation of the open meeting laws.

58. On May 21, 2009 a Town meeting was conducted.

59. The consent agenda was passed, which included a provision calling for the abandonment of the public’s ingress/egress rights.

60. The Town executed a quitclaim deed for its interest in the Easement to Stephen Phinny.

1 61.The quitclaim deed facially only transfers the rights actually owned by the
2 Town.

3
4 62.The quitclaim deed is ineffective to transfer rights the Town did not possess.

5
6 Declaratory Judgment

7
8 Count I

9
10 63.All prior allegations are re-alleged as if fully set forth herein.

11 64.This action is brought pursuant to the Uniform Declaratory Judgments Act,
12 ARS §§12-1831 et seq.

13 65.Plaintiffs are members of the public who have regularly made use of the
14 Public Easement and are interested in the Deed of the Public Easement.

15 66.The Town has declared the public easement to be no longer valid and has
16 arrested several of the plaintiffs for trespassing.

17 67.The Town never obtained ownership rights in the Easement.

18 68.No statute authorizes a town to dispose of property it does not own, and
19 indeed such would be a taking in violation of Constitutional protections.

20 69.The Town is not the State of Arizona and does not have an inherent right to
21 harm or destroy a state asset.

22 70.To the extent the Restatement (Third) of Property, Servitudes §2.18(2) is
23 binding in Arizona, if any governmental entity has a right to dispose of the
24 Easement it would be the State of Arizona and not the Town.
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71. The Easement is a publicly deeded private roadway that was permanently and irrevocably vested in the public upon the original grantor's deeding of individual parcels referencing the Easement in the respective deeds.

72. The only affect the Town's vacating/abandoning of the Easement would have would be to preclude the Town from having maintenance duties over the portion of the Easement running through the Town.

73. The Town is threatening to, and indeed has, cited members of the public for trespassing on a public right of way.

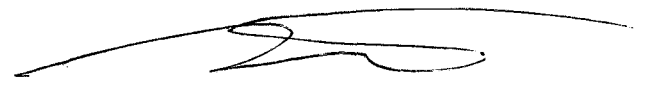
Wherefore Plaintiffs' pray for the following relief:

- A. That this Court enter judgment determining and decreeing that the Easement is still a valid public easement for ingress and egress by members of the public.
- B. That this Court enter a permanent injunction prohibiting the Town from citing members of the Public for Trespassing as a result of an attempted lawful exercise of the ingress and egress rights granted by the Easement.
- C. That this Court enter an award of such fees and costs to Plaintiffs as are reasonably justified by law.
- D. That this Court order such further relief as may be just and appropriate.

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VERIFICATION

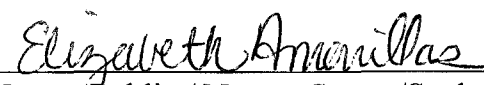
I, STEVEN BLOMQUIST, under oath do hereby swear that I have read the foregoing Verified Complaint and believe the contents of the same to be true and correct to the best of my knowledge.



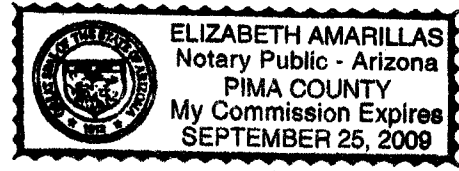
Steven Blomquist

SUBSCRIBED AND SWORN TO before me this 5th day of June, 2009 by

Steven Blomquist.

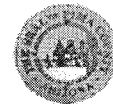


Notary Public / Notary Stamp/Seal:





**Pima County Clerk of Superior Court
Tucson, Arizona**



| | | | |
|------------------|------------------------|-----------------|-----------|
| Received for: | THERESA CHAMBERLAIN | Receipt Number: | 1216097 |
| Received from: | HELP FOR WEEKS & LAIRD | Date: | 6/5/2009 |
| Amount Received: | \$ 236.00 | Case Number: | C20094273 |
| | | Clerk Number: | 380 |

Caption: THERESA CHAMBERLAIN ET AL. VS. TOWN OF MARANA, ARIZONA

Cash: \$0.00 Check: \$0.00 Charge: \$236.00 ACH: \$0.00

Begin Financial Docket



Civil Complaint

\$236.00 PAID

End Financial Docket

Change Returned: \$0.00

Amount Refunded: \$0.00



* 1 3 6 8 0 6 1 0 *

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THIS IS A SPECIAL!
Complete by: 06/05/2009 5:00 pm

SmartForm#: 20090602211
Firm Name: 4523 WEEKS & LAIRD, PLLC
Your Name: Elizabeth Amarillas
Attorney: Stephen Weeks
Address: 2223 E. SPEEDWAY

City: TUCSON, AZ 85719
Phone: (520) 318-1209 Ext: Fax: (520) 327-3118
Email: weeks_lairdpllc@hotmail.com

06/05/2009 14:56
Service Level: THIS IS A SPECIAL!
Attorney for: Plaintiff
Bar#: 020726
File#: 4523
Hearing Date:
Statue Date:
Office: T
Route #: 15

| Case Information | Documents Attached |
|--|---|
| County: PIMA Court: ARIZONA SUPERIOR COURT Case Number: Case Title: Plaintiff: THERESA CHAMBERLAIN ET AL Defendant: TOWN OF MARANA, ARIZONA | CIVIL COVER SHEET, COMPLAINT, CERTIFICATE OF COMPULSORY ARBITRATION, CIVIL SUMMONS (JOCELYN BRONSON, TOWN CLERK). |

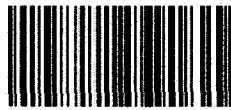
COURT FILING
File Today! File, Issue, Conform and Return, Serve, (see special instructions),
Please Advance Filing Fees in the Amount of .

COURT SPECIAL INSTRUCTIONS
Please file original complaint & certificate, return conformed copies, issue & serve summons, and return a copy of the issued summons. Thank you.

SERVICE OF PROCESS
Person Entity to be Served: TOWN OF MARANA, ARIZONA
Agent for Service: JOCELYN BRONSON, TOWN CLERK

| | |
|------|---|
| HOME | BUSINESS MARANA MUNICIPAL COMPLEX 11555 W CIVIC CENTER DRIVE MARANA AZ 85652 |
|------|---|

Service of Process Instructions
Please serve summons with copy of complaint and certificate to Jocelyn Bronson, Town Clerk. Thank you.
Please Advance Witness Fees of .



OUT OF SERVICE

| | Attorney Service | Court Filing | Court Research | Service of Process | Spec. Delivery |
|--------------------------|---------------------------|--------------|---------------------|--------------------|--------------------|
| Tucson Office: | 65 E. Pennington Street | | Tucson, AZ 85701 | 520.623.8436 | 520.624.1819 (fax) |
| Phoenix Office: | 1209 E. Washington Street | | Phoenix, AZ 85034 | 602.258.8081 | 602.258.8864 (fax) |
| Flagstaff Office: | 201 East Birch Avenue #12 | | Flagstaff, AZ 86001 | 928.226.7221 | 928.226.7243 (fax) |