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Saguaro Ranch: If You Care Get There On Feb. 3

Filed by [Mari Herrerias](#) @ 10:54 pm

If you're one of those hikers I've seen taking to the Tortolita Mountain Park by way of the mountain loop road that goes through Saguaro Ranch, then by all means get yourself to the Marana Town Council meeting on Feb. 3 at 7 p.m., at the Marana Municipal Center, 11555 W. Civic Center Dr. in Marana. This past month has been part of a long strange trip for Saguaro Ranch neighbors who filed a lawsuit against Saguaro Ranch developer Stephen Phinny, asking the court for a declaratory judgment regarding a public easement that Phinny built on and a prescriptive easement Phinny blocked (although residents in that area have rights to the road according to their deeds).

Yep, we've been writing about it a lot these days, but the past month has been particularly intriguing. The town administration is bringing before the Feb. 3 town council meeting two emergency abandonment proposals—one for a public right of way and another for a public easement that depends on the public right of way. What's particularly interesting about this is that the town took an early hands-off approach on this. When Phinny called the cops on neighbors who continued to use the road even after he blocked it with boulders, they told him it was a private matter. Then they encouraged those neighbors—upset that the county and town neglected to notice that Phinny was building and developing on a public easement—to get a declaratory judgment. That's why they headed to court back in June. The town's interest in abandoning the property took them by surprised, but perhaps it shouldn't have; the town has a vision for the area that is inspired by the Ritz Carlton Dove Mountain resort. Between Saguaro Ranch—with or without Phinny's money woes—there is another property nearby owned by an LLC (Tapestry) that is destined to be a resort. That's what Marana wants to see happen in this area, and it's part of their town planning. And perhaps these public easements, due to the efforts of those pesky neighbors, are just getting in the way of allowing business to continue for Phinny and any future buyer for the 1,035-acre property. Phinny's neighbors want to pack the house at the Marana town council meeting, and they hope anyone interested in everything from access issues to property rights and open spaces will show up. Calling the council members and FAXing in a statement of concern would probably help, too.

Tracy Chamberlain, who is one of the neighbors asking the courts to maintain the easements, has been outdoors much of this past week and weekend at information stations answering questions with her other neighbors. She's perplexed, especially after being told by town staff why they decided to get involved, and they told her pressure came from the town council members. But Chamberlain says council members she's talked to told her they didn't know anything about this decision or why the sudden rush to get these abandonments approved. The *Weekly* obtained a document included in the council members' packets (not in the public packet) that explains that the town is telling the public that this is just a preliminary meeting and that a decision won't be made, but that no, a decision will be made. The timing is strange, considering parts of Saguaro Ranch are going to auction in a few months and the development is in the early stages of foreclosure proceedings.

Chamberlain got to the heart of the craziness that is Saguaro Ranch in this latest e-mail to town and county officials:

This began with the Saguaro Ranch Developer obtaining plat approvals for his development. Which, as explained by development staff, are platted to include all recorded easements as shown on Schedule B of a title report. This approved plat included the recorded public easement for public access (7718), which is the southern portion of the dirt road that leads to the Tortolita Mountain Park, and has been used by the public for more than 70 years to access the Tortolita Mountains. 7718 has also been maintained by local residents for many years.

After receiving the first original approved plat; which clearly identified the easement for public access, it appears that the developer wanted to remove any further evidence of public access from future title reports in hopes of preventing the public easement from being platted into future plats for the development. To that end, the developer's legal counsel recorded a "Relocation of easement for ingress, egress and utilities" on March 30, 2004. (See Docket 12269, pages 466-488) which, on the surface seems quite innocuous. That appearance was deceptive. Anyone looking at the easement relocation document would have no reason to believe it was extinguishing a recorded public easement. Moreover, that it was legally insufficient to extinguish/abandon a "recorded" public easement. To abandon a recorded public easement they would be required to go to court and obtain a declaratory judgment, or the Town of Marana would have to take formal action to abandon following public hearing. Apparently the developer did not want the scrutiny of a public hearing. So the developer simply recorded the relocation document, and then proceeded to ignore the public easement and develop Saguaro Ranch, building a restaurant in the middle of the public easement.

This strategy was orchestrated by someone with legal sophistication, who knew without bringing any attention to what would result in a Title Report as an extinguishment/abandonment of the recorded public easement and

replace the original easement with their new easement recording. No one would see it as anything more than an easement that had been relocated and rights exchanged by all affected parties signed, notarized appearing quite valid. (See attached: 12269) By doing so, the developer and his attorney would be assured that any future title reports would never show the recorded public easement through the Saguaro Ranch Development. As such, the recorded public easement would be platted into any future development plats. Once successful in being able to obtain approved development plats without the public easement included, the developer then attempted to use the defense that the Town abandoned the recorded public easement by approving the Saguaro Ranch Development plats without the recorded public access.

Chamberlain says town officials keep reminding her that the development has paid almost \$1 million to the town in development fees - as if that's suppose to make everything OK - as if that's the price tag for a public easement - who knew?

"While it is a mess, it is not something that requires the forfeiture of public access to fix. The public does not have a debt to this development! Nor should the town be willing come to the defense of this developer in an effort to try to save him from himself and his own wrongdoing. Like many Town officials have so often stated: civil matters and personal matters are not the Town's place to be involved or responsible for resolving, that is the job of the courts," Chamberlain writes. ". If the Town of Marana votes to give away public access to public lands and to take away private property rights and access for neighboring landowners that means the price for Stephen Phinny's wrongdoing is being paid for by the public. Again, the public has no debt to this man, his business failings or deficiencies."

As we continue to wrestle with land use in our region, and towns like Marana grow, helping out the developer seems like a never-ending story around these parts. Where's Atreyu when you need him?