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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, et al.
13 vs.
14 TOWN OF MARANA, ARIZONA,
15 Defendant.

CASE NO. C2009-4273

MOTION TO AMEND COMPLAINT

HON. TED B. BOREK

16 Plaintiffs, by and through undersigned counsel, hereby submit their Motion
17 to Amend Complaint pursuant to Rule 15(a) Arizona Rules of Civil Procedures.
18 Pursuant to that Rule, Plaintiffs request leave to file an Amended Complaint adding
19 two claims. The first additional claim is based on Article IX, Section 7 of
20 Arizona's Constitution – the Gift Clause. The second claim is based on a violation
21 of Arizona's Open Meeting Laws as set forth in ARS 38-431 et seq.

22 Pursuant to Rule 15(a), Ariz.R.Civ.P., "Leave to amend shall be freely given
23 when justice requires."

24 This case challenges whether the Town of Marana's actions in attempting to
25

1 abandon a public easement, which is partially within the town limits, is valid or
2 void. The area the Town has attempted to give away rests entirely within a
3 development known as Saguaro Ranch. The attempted give-away was at the
4 request of, and solely for the benefit of, the Saguaro Ranch entities and its
5 developer, Stephen Phinny.
6

7
8 Included within the Saguaro Ranch properties is a restaurant known as
9 "McClintock's at Saguaro Ranch" (hereinafter "McClintock's"). A recent
10 deposition of the former manager at McClintock's is the support for this motion
11 and the additional claims.
12

13 **I. Factual Background**

14 **A. Litigation Background**

15
16 This is one case of several pending litigation matters involving these
17 Plaintiffs. The first lawsuit was a lawsuit against the Developer. After filing
18 Bankruptcy, the lawsuit was moved over to the Bankruptcy court as an adversary
19 proceeding and is inactive as to the other defendants in Superior Court. Recently
20 various creditors and entities have filed motions to dismiss or convert the
21 bankruptcy matter. If eventually granted, the original case may be remanded (and
22 potentially combined here).
23
24

25 This lawsuit was filed after the Town's vote to abandon the easement.

26 The Town of Marana also filed criminal trespassing charges against the

1 Plaintiff's Tracy Chamberlain, Steven Blomquist and Sharyl Cummings in May
2 and June 2009. The Criminal Court dismissed the charges with prejudice in an
3 order Dated October 14, 2009, handwriting onto the order that the Town of Marana
4 had "improperly used the criminal process" against these Plaintiffs.
5

6 On November 13, 2009, someone with authority to order the Chief of Police
7 to make arrests ordered Marana's Police Chief to order the incarceration of Steven
8 Blomquist, again for trespassing, but also for "Disorderly Conduct". When the
9 Chief of Police ordered the trespassing arrest and incarceration, he knew about the
10 October 14, 2009 order and its contents.
11

12 The Chief of Police, when he ordered Mr. Blomquist's incarceration had no
13 knowledge of any criminal conduct committed by Mr. Blomquist. Indeed, it
14 appears he was only following orders when he ordered the arrest and incarceration.
15 Audio and video recordings reveal that Mr. Blomquist ordered and was served a
16 beer at McClintock's, was respectful and polite with everyone he dealt, and was
17 never even asked to leave the premises before the incarceration (for which the
18 arresting police officer is on tape apologizing).
19

20 On December 1, 2009, the Town of Marana amended its Town Code to
21 permit the Chief of Police to ignore unconstitutional orders from town superiors.
22 Also on December 1, 2009 Steven Blomquist and his wife Sharyl Cummings filed a
23 civil rights lawsuit in Federal District Court arising from Marana's various attempts
24
25
26

1 to violate their constitutional rights.

2 Like the many-headed Hydra, every time an issue seems to be dealt with, two
3 more issues seem to pop into place. This leads us to the present motion where
4 recent testimony has revealed a violation of Arizona's Constitution and Arizona's
5 Open Meeting Laws.
6

7
8 **B. Mr. Boaro's Testimony.**

9 On January 7, 2010, McClintock's former manager, Denis Boaro was
10 deposed. Mr. Boaro testified that Stephen Phinny held multiple private meetings,
11 likely exceeding 50 hours of meeting time, with the following Town of Marana
12 councilmembers:
13

14 Mayor Ed Honea

15 Vice Mayor Herb Kai

16 Councilmember Jon Post

17 Councilmember Patti Commerford

18 Councilmember Carol McGorray

19 Councilmember Roxanne Ziegler

20 According to Mr. Boaro's testimony, Mr. Phinny treated these
21 councilmembers to unrestricted alcohol and fine dining at McClintock's.
22

23 Q. Okay. And during - - Would you say - - What percentage
24 of the meals were free for those individuals?
25
26

1 A. Everything.

2 Q. Everything. Every meal was free?

3
4 A. Every time that Stephen was asking them to come there
5 with Stephen Phinny. (45:15-20)

6 It is unclear, but quite likely, that thousands of dollars in alcohol and chef
7 prepared meals were given as a gratuity and or a quid pro quo for the
8 councilmembers' votes and or abstention (in the case of Councilmember Ziegler
9 who did not participate in the vote) to abandon the public's easement to the
10 developer.
11

12 According to Mr. Boaro's testimony, the meetings generally involved groups
13 of 1-3 councilmembers at a time, along with other town officials, including Town
14 Manager Gilbert Davidson and Town Attorney Frank Cassidy. Mr. Boaro testified
15 that while he did not have any personal knowledge of the actual contents of the
16 conversations with councilmembers, Mr. Phinny effectively bragged that he had
17 control over the town council.
18
19

20
21 Q. Okay. Do you know of any plans by Mr. Phinny to try to
22 bribe members of the Marana government to try to abandon
23 the public easement?

24 A. Not to me directly, no.

25 Q. Okay. Do you know of - - Did Mr. Phinny ever discuss
26 with you plans to try to influence the Marana government to
abandon the easement?

1 A. Yes.

2 Q. Okay. Tell me about the discussions he had with you.

3
4 A. He was just sharing that - - the connection that he had
5 with the Town of Marana. He had good connection where
6 the Town of Marana is on his side, and somehow he was
going to be able to get

7 Q. What he wanted?

8 A. His point accomplished. He was not very specific, you
9 know, how, in details, but yes.

10 Q. He figured he had a way to get the Town to do exactly
11 what he wanted?

12 A. Yeah, he was just spending a lot of hours on phone calls,
13 trying to get his point across.

14 Q. How many hours - - How many meals do you think were
15 spent dealing with this issue?

16 Mr. Andrus: Form.

17 By the Witness:

18 A. How many meals or . . . ?

19 Q. How many meals?

20 A. 20, 30.

21 Q. 20 or 30 meals?

22 A. Probably more than that.

23 Q. Probably more than that. And each meal lasting an hour
24 or two?
25
26

1
2 A. Yeah, average. Yes.

3 Q. Okay. So probably somewhere around at least 50 hours?

4 A. I would - - Yes.

5
6 Q. Probably more?

7 A. Probably more.

8
9 **C. Mr. Boaro's Documentation**

10 Mr. Boaro also provided copies of his personal emails, which he maintained
11 while employed at McClintock's. Included in the emails was an email from
12 Stephen Phinny to Mr. Boaro dated May 15, 2009, at 2:06 p.m. In that email,
13 Stephen Phinny bragged to Denis Boaro that he had obtained the abandonment and
14 that it would go into effect a week later, stating, "Thanks Denis! It is very busy! A
15 week from today the 'protesters' go away!" (Emphasis added). This email
16 establishes that Mr. Phinny knew that the Town had already voted in his favor and
17 was only awaiting a formal meeting to put the vote in the public record.
18
19

20 In other words, by May 15, 2009, Stephen Phinny had received confirmation
21 from his elected public servants that the Easement had been abandoned as a gift to
22 him. On May 15, 2009 there was no item on the Town's agenda to abandon the
23 Easement. On May 20, 2009, an item was added to the Town's Consent Agenda to
24 abandon the Easement. As Stephen Phinny announced a week earlier, on May 21,
25
26

1 2009, the Town Council voted to approve the "Consent Agenda" which included
2 the last minute abandonment addition.
3

4 II. Legal Argument

5 Arizona's Constitution prohibits the giving of special perks and benefits to
6 developers like Stephen Phinny. Article IX, Section 7 of the Arizona Constitution
7 provides:
8

9 **Neither the state, nor any county, city, town,**
10 **municipality, or other subdivision of the state shall ever**
11 **give or loan its credit in the aid of, or make any**
12 **donation or grant, by subsidy or otherwise, to any**
13 **individual, association, or corporation,** or become a
14 subscriber to, or a shareholder in, any company or
15 corporation, or become a joint owner with any person,
16 company, or corporation, except as to such ownerships as
may accrue to the state by operation or provision of law
or as authorized by law solely for investment of the
monies in the various funds of the state.

17 The abandonment of a public asset was a gift within the meaning of
18 Arizona's Constitution. Accordingly, the town's attempt to abandon the easement,
19 as a benefit to Mr. Phinny and his companies is void.
20

21 Under Arizona's open meeting laws, ARS 38-431 et seq., the Town Council
22 was prohibited from discussing public issues behind closed doors with a developer.
23 They did it anyway; and apparently, they did it with the full knowledge, consent
24 and participation of Town Attorney Frank Cassidy. Deposition at 43:2-47:15;
25 68:18-73:17.
26

1 The Plaintiffs seek to amend their complaint to allege violation of the open
2 meeting laws ARS 38-431 et seq. and a violation of Arizona's Constitution based
3 on the Gift Clause (Article IX Section 7). A violation of either renders the Town's
4 action void.
5

6 As these are additional, sole and separate, non-redundant bases for this Court
7 to rule in the Public's favor, and as the information supporting these claims was
8 only recently discovered, justice requires this Court permit amendment.
9

10 Attached hereto as Exhibit 1 is a copy of the proposed amended complaint.
11 Pursuant to Rule 15(a)(2), Arizona Rules of Civil Procedure, the additional
12 language added to the complaint is underlined.
13

14 DATED this 19th day of January, 2010.
15

16 WEEKS & LAIRD PLLC

17 

18 Stephen Weeks
19 Attorneys for Plaintiffs
20

21 Copy of the foregoing mailed this
22 ____ day of ____, 2010 to:
23

24 Frank Cassidy, Esq.
25 Town of Marana
26 Legal Department
11555 W Civic Center Dr.
Marana, AZ 85653

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2 Humphrey & Petersen
3 3861 E 3rd St
4 Tucson AZ 85716-4646

5 Eric Slocum Sparks
6 110 S. Church Ave. Suite 2270
7 Tucson Arizona 85701-1624

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Exhibit 1

Complaint

1 WEEKS & LAIRD PLLC
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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 and its councilmembers Ed Honea,
25 Herb Kai, Patti Comerford, Carol
26 McGorray, Jon Post and Roxanne Ziegler

Defendants.

CASE NO.

FIRST AMENDED COMPLAINT
(Declaratory Judgment Act Action,
Injunction requested)

HON.

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

29 **GENERAL ALLEGATIONS**

1. Plaintiff THERESA CHAMBERLAIN (“Chamberlain”) is a married woman and is a resident of Pima County, Arizona acting in her individual capacity and as a member of the public.
2. Plaintiffs STEVEN BLOMQUIST and SHARYL CUMMINGS are husband and wife and residents of Pima County, Arizona acting in their individual capacities and as members of the public.
3. Plaintiff TIMOTHY BLOWERS is a resident of Pima County, Arizona acting in his individual capacity and as a member of the public.
4. The TOWN OF MARANA (hereinafter the “Town”) is an Arizona municipality in Pima County, Arizona.
5. Ed Honea is the Mayor of Marana and acted within his official capacity when he violated Arizona’s Constitution and Open Meeting Laws.
6. Herb Kai is the Vice Mayor of Marana and acted within his official capacity when he violated Arizona’s Constitution and Open Meeting Laws.
7. Patti Comerford is a councilmember and acted within her official capacity when she violated Arizona’s Constitution and Open Meeting Laws.
8. Carol McGorray is a councilmember and acted within her official capacity when she violated Arizona’s Constitution and Open Meeting Laws.
9. Jon Post is a councilmember and acted within his official capacity when he violated Arizona’s Constitution and Open Meeting Laws.

- 1 10. Roxanne Ziegler is a councilmember and acted within her official capacity
2 when she violated Arizona's Open Meeting Laws.
3
- 4 11. The above named individuals will hereinafter be referred to as the
5 "Wrongfully Acting Councilmembers"
6
- 7 12. Councilmember Roxanne Ziegler did not take part in the vote which violated
8 Arizona's Constitution but did take part in the vote which violated Arizona's
9 Constitution.
10
- 11 13. The Wrongfully Acting Councilmembers regularly met with developer
12 Stephen Phinny who tendered them free drinks and chef cooked fine food at
13 his restaurant "McClintock's at Saguaro Ranch".
14
- 15 14. Stephen Phinny met with the Wrongfully Acting Councilmembers in
16 violation of Arizona's Open Meeting Laws.
17
- 18 15. The Wrongfully Acting Councilmembers agreed to "abandon" a public
19 easement that wound partially through Marana Town Limits in an effort to
20 give Stephen Phinny and his companies a valuable asset – exclusivity
21 without any public access.
22
- 23 16. Pursuant to ARS 38-431.05(A), "All ledgal action transacted by any public
24 body during a meeting held in violation oa any provision of this article is null
25 and void except as provided in subsection B."
26

- 1 17. On or about May 15, 2009, the Wrongfully Acting Councilmembers agreed
2 to “abandon” the public easement and informed Phinny of their decision.
3
- 4 18. On or about May 20, 2009, the Wrongfully Acting Councilmembers agreed
5 to place abandonment of the public easement on the consent agenda for the
6 May 21, 2009 meeting in an attempt to have the May 15, 2009 decision
7 appear legitimate (“The Amended Agenda Item”)
8
- 9 19. On or about May 21, 2009, the Wrongfully Acting Councilmembers, except
10 Councilmember Ziegler, voted for the consent agenda and “abandonment” of
11 the easement.
12
- 13 20. The Amended Agenda Item did not announce that the item was added to
14 ratify the May 15, 2009 decision or to otherwise try to comply with open
15 meeting law requirements in ARS 38-431.05(b)(1-4).
16
- 17 21. The vote constituted an unlawful gift in violation of Arizona’s Constitution.
18
- 19 22. Specifically, the vote violated Arizona Constitution Article IX, Section 7,
20 which provides,

21 Neither the state, nor any county, city, town,
22 municipality, or other subdivision of the state shall ever
23 give or loan its credit in the aid of, or make any
24 donation or grant, by subsidy or otherwise, to any
25 individual, association, or corporation, or become a
26

1 subscriber to, or a shareholder in, any company or
2 corporation, or become a joint owner with any person,
3 company, or corporation, except as to such ownerships as
4 may accrue to the state by operation or provision of law
5 or as authorized by law solely for investment of the
6 monies in the various funds of the state.

9 23.The free alcohol and chef cooked fine dining may have been a violation of
10 ARS 38-444, which provides,

11 A public officer who knowingly asks or receives any
12 emolument, gratuity or reward, or any promise thereof,
13 excepting those authorized by law, for doing any official
14 act, is guilty of a class 6 felony.

17 24.Pursuant to *Martineau v. Maricopa County* 207 Ariz. 332, 86 P.3d 912 (App.
18 2004) compliance with ARS §12-821.01 is not required as a pre-requisite to
19 this declaratory judgment claim.

21 25.On or about February 7, 1986, the fee simple owners of land located in the
22 Tortolita area of Pima County recorded an easement through their land in
23 favor of the public.

25 26.The docket and page number for the easement is Docket 7718 Pages 333-338
26 (hereinafter the “Easement”).

- 1 27.The Easement specifically states that the Easement's purpose is for ingress,
2 egress and utilities.
3
- 4 28.The Easement specifically conveys the rights to the "Public" with the words,
5 "DO HEREBY CONVEY TO THE PUBLIC" (All caps in the original).
6
- 7 29.The Easement specifically described a pre-existing roadway through the area
8 which had been in use since at least the 1960's.
- 9 30.On February 7, 1986 the Town's boundaries did not include any portion of
10 the Easement.
11
- 12 31.The Easement does not specifically state that the Easement is dedicated to
13 the Town.
14
- 15 32.The Easement does not specifically state that the Easement is dedicated to
16 and/or limited to the Town's members.
- 17 33.The Easement does not specifically state that the Easement is dedicated to
18 Pima County.
19
- 20 34.The Easement does not specifically state that the Easement is dedicated to
21 and/or limited to Pima County's members.
22
- 23 35.The Easement was not conveyed to particular abutting landowners.
- 24 36.The Easement was not conveyed to a particular community of landowners.
- 25 37.An easement, once recorded, runs with the land and is a burden on the
26 landowner's successors.

1 38.Easements are servitudes.

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

5 40. As applied to easements, the Restatement (Third) of Property, Servitudes
6 §4.1, requires the Easement to be interpreted to give effect to the intention of
7 the parties ascertained from the language of the instrument, or the
8 circumstances surrounding the servitude's creation and to carry out the
9 purpose for which it was created.
10

11 41.The intention of the parties was to grant the entire public, not just future
12 Town members, access to the Easement for ingress and egress.
13

14 42.The Restatement (Third) of Property, Servitudes §2.18(2) provides that the
15 right to control a dedicated public easement is vested in the State of Arizona.
16

17 43.The Easement is one such public easement.

18 44.Upon its recorded dedication, the right to control the Easement vested in the
19 State of Arizona.
20

21 45.Upon its recorded dedication, the right to control the Easement did not vest
22 in the Town.
23

24 46.At no time after its recorded dedication did the right to control the Easement
25 vest in the Town.
26

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

1 48. 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 49. 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 50. Beginning in or around May 2001, Stephen Phinny, began purchasing land
9 encumbered by the Easement.
10
11 51. When Stephen Phinny purchased such land, he received fee title "subject to"
12 the existing recorded Public Easement.
13
14 52. Stephen Phinny never owned the Easement; rather, Stephen Phinny only
15 owned the servient estate.
16
17 53. 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 54. 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 55. Stephen Phinny did not attain any rights to the Easement through adverse
25 possession.
26
56. There are two statutes that ostensibly allow a town to abandon an easement,
ARS 9-402(E) and ARS 28-7205.

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

3
4 58.Inherent in ARS 9-402(E) is a requirement that the town own the easement at
5 issue before it has a right to dispose of it.

6 59.Stephen Phinny did not transfer any ownership rights in the Easement to the
7 Town because Stephen Phinny did not have any ownership rights in the
8 Easement.

9
10 60.ARS 28-7205 only permits the Town to act on a roadway that is a Town
11 roadway.

12
13 61.The Easement is not now and never has been a Town roadway.

14 62.Arizona recognizes three types of roadways.

15 63.Arizona recognizes public roadways owned by a public authority.

16 64.Arizona recognizes private roadways owned by private individuals/entities.

17 65.Arizona recognizes public roadways owned/dedicated by private
18 individuals/entities.

19
20 66.The Easement falls into the third category – it is a public roadway
21 owned/dedicated by private individuals/entities.

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

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

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

1 70. On the agenda an item was listed to discuss and vote on abandoning the
2 Easement.

3
4 71. After hearing from numerous members of the public, the Town decided to do
5 a "three phase" study before taking any action.

6 72. No such study was ever conducted.

7
8 73. On May 20, 2009, the day after all incumbents were elected/re-elected and
9 just over 24 hours before a duly scheduled town meeting, the Town added an
10 item to its consent agenda purporting to abandon all rights the public has to
11 ingress or egress on the Easement.

12
13 74. On May 20, 2009 Stephen Phinny – individually – conveyed his knowledge
14 of the results of the upcoming vote, and that he knew the Town would vote
15 in his favor, to Sharyl Cummings and Steve Blomquist.

16
17 75. Mr. Phinny relayed that knowledge approximately 24 hours prior to the vote.

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

20
21 77. On May 21, 2009 a Town meeting was conducted.

22 78. The consent agenda was passed, which included a provision calling for the
23 abandonment of the public's ingress/egress rights.

24
25 79. The Town executed a quitclaim deed for its interest in the Easement to
26 Stephen Phinny.

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

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

5 Declaratory Judgment

6 Count I

7
8 82.All prior allegations are re-alleged as if fully set forth herein.

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

11
12 84.Plaintiffs are members of the public who have regularly made use of the
13 Public Easement and are interested in the Deed of the Public Easement.

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

16
17 86.The Town never obtained ownership rights in the Easement.

18 87.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
21 88.The Town is not the State of Arizona and does not have an inherent right to
22 harm or destroy a state asset.

23
24 89.To the extent the Restatement (Third) of Property, Servitudes §2.18(2) is
25 binding in Arizona, if any governmental entity has a right to dispose of the
26 Easement it would be the State of Arizona and not the Town.

1 90.The Easement is a publicly deeded private roadway that was permanently
2 and irrevocably vested in the public upon the original grantor's deeding of
3 individual parcels referencing the Easement in the respective deeds.
4

5 91.The only affect the Town's vacating/abandoning of the Easement would
6 have would be to preclude the Town from having maintenance duties over
7 the portion of the Easement running through the Town.
8

9 92.The Town is threatening to, and indeed has, cited members of the public for
10 trespassing on a public right of way.
11

12 Count II

13 Violation of Gift Clause

14 93.All prior allegations are re-alleged as if fully set forth herein.
15

16 94.The Wrongfully Acting Councilmembers violated Article IX, Section 7 of
17 Arizona's Constituion.
18

19 95.The vote in violation of Article IX, Section 7 is null and void.

20 Count III

21 Violation of Open Meeting Laws

22 96.All prior allegations are re-alleged as if fully set forth herein.
23

24 97.The Wrongfully Acting Councilmembers violated ARS 38-431 et seq.

25 98.Pursuant to ARS 38-431.05, the vote on May 21, 2009 did not ratify the vote
26 taken on or about May 15, 2009 where the Wrongfully Acting

1 Councilmembers agreed to act in secret with developer Stephen Phinny to
2 “abandon” the public easement.
3

4
5 Wherefore Plaintiffs’ pray for the following relief:

6 A. That this Court enter judgment determining and decreeing that the
7 Easement is still a valid public easement for ingress and egress by members
8 of the public.
9

10 B. That this Court enter a permanent injunction prohibiting the Town
11 from citing members of the Public for Trespassing as a result of an attempted
12 lawful exercise of the ingress and egress rights granted by the Easement.
13

14 C. That this Court enter judgment determining and decreeing that the vote
15 on MAY 21, 2009 violated Article IX, Section 7 of Arizona’s Constitution
16 and is void.
17

18 D. That this Court enter judgment determining and decreeing that the vote
19 on MAY 15, 2009 violated the open meeting laws and that the May 21, 2009
20 vote did not effectively ratify the wrongful action.
21

22 E. That this Court enter an award of such attorney’s fees and costs to
23 Plaintiffs as are reasonably justified by law.
24

25 F. That this Court order such further relief as may be just and
26 appropriate.

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DATED this ____ day of _____, 2009.

WEEKS & LAIRD PLLC

Stephen Weeks, Esq.
Attorneys for Plaintiffs

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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 ____ day of June, 2009 by
Steven Blomquist.

Notary Public / Notary Stamp/Seal:

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Exhibit 2

May 15, 2009 E-mail

From: [Stephen Phinny](#)
To: [Denis Boaro](#)
Subject: Re: meeting
Date: Friday, May 15, 2009 2:06:43 PM

Thanks Denis! It is very busy! A week from today the "protesters" go away!
We may have to try to talk on tuesday or wednesday?

Sent using BlackBerry

-----Original Message-----

From: Denis Boaro
To: Stephen Phinny
Sent: Fri May 15 13:57:12 2009
Subject: meeting

Hi Stephen when would like to meet? My list is ready

Just le me know at your convenient

Thanks

Saguaro Ranch

McClintock's
Restaurant General Manager
Denis Boaro
denis@saguaroranch.net

P.O.Box 70207
Tucson AZ 85737
Reservation (520) 579-2100
Fax Direct (520) 545-0545
Cell (520) 275-6138
www.mcclintocks-restaurant.com

Phone Main Office (520) 498-2300
Fax Main Office (520) 498-2311

www.saguaroranch.net

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Exhibit 3

Boaro Deposition Excerpts

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

 THERESA CHAMBERLAIN, a)
 married woman in her)
 individual capacity and as a)
 member of the public; STEVEN)
 BLOMQUIST and SHARYL CUMMINGS,)
 husband and wife, individually)
 and as members of the public;)
 TIMOTHY BLOWERS, a single man,)
 individually and as a member)
 of the public,)

Case No. 2009-4273

Plaintiffs,)

vs.)

TOWN OF MARANA, ARIZONA,)

Defendant.)

COPY

VIDEOTAPED DEPOSITION OF DENIS BOARO

Tucson, Arizona
 January 7, 2010
 2:31 p.m.

MELANIE J. BUILDER
 Certified Reporter #50143
 EATON, GREEN & WILLIAMS, INC.
 549 N. Sixth Avenue
 Tucson, Arizona 85705
 (520) 623-0593 800-759-9022

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EATON, GREEN & WILLIAMS, INC.

1 still pushing me to the edge to keep calling every day.

2 Q Okay. To your knowledge, does Mr. Phinny have
3 any personal contacts with any Marana government
4 officials?

5 A Yeah, he does.

6 Q Does he have -- Let me kind of go through
7 some names --

8 A Sure.

9 Q -- and maybe that will --

10 A Yes.

11 Q For example, is -- Does he know, personally,
12 the mayor, Ed Honea?

13 A Yes.

14 Q Does he know personally the vice mayor, Herb
15 Kai?

16 A Yes.

17 Q Does he know personally council member, Carol
18 McGorray?

19 A Yes.

20 Q Does he know personally council member,
21 Roxanne Ziegler?

22 A Yes.

23 Q Does he know personally council member,
24 Russell Clanagan?

25 A I'm not familiar with this name.

1 Q Okay. Does he know personally Patti
2 Comerford?

3 A Yes.

4 Q Does he know personally --

5 MR. WEEKS: Who am I forgetting?

6 MS. CUMMINGS: Jon Post.

7 BY MR. WEEKS:

8 Q -- Jon Post?

9 A Yes.

10 Q Okay. Does he know personally Gilbert
11 Davidson?

12 A Yes, that's the name that I couldn't remember.

13 Q Okay. And does he have a very friendly
14 relationship with these individuals?

15 A Yes.

16 Q Okay. Have these individuals ever dined at
17 his restaurant?

18 A Yes.

19 Q Have they ever received free meals?

20 A Yes.

21 Q Have they ever received free drinks?

22 A Yes.

23 Q Have they ever -- has it happened on more than
24 one occasion?

25 A Yes.

1 Q Would they be alone or in a group?

2 A Both, alone and in a group.

3 Q And if they were in a group, would it be a
4 group of three or more of the council members?

5 A Two or three.

6 Q Two or three. Any time where there might have
7 been four council members together?

8 A Not that I remember.

9 Q Okay. But at least, to your knowledge, there
10 were instances where there were two members together?

11 A Um-hum.

12 Q And there were also instances where three
13 members were together?

14 A Yes.

15 Q Okay. And during -- Would you say -- What
16 percentage of the meals were free for those individuals?

17 A Everything.

18 Q Everything. Every meal was free?

19 A Every time that Stephen was asking them to
20 come there with Stephen Phinny.

21 Q It was free?

22 A On other occasions they would come in with a
23 regular reservation and they were paying.

24 Q Okay. And who was paying?

25 A They were paying.

1 Q All right. Maybe I'm -- Phinny was paying?

2 A Okay.

3 Q Explain the situation.

4 A Yes. Some -- When Stephen wanted to talk to
5 them --

6 Q Um-hum.

7 A -- and he was requesting them personally to
8 come out for dinner --

9 Q Yes.

10 A -- or in the afternoon for lunch, because he
11 wanted to talk to them directly --

12 Q Um-hum.

13 A -- Stephen Phinny was telling me: I take care
14 of the tab and don't worry about it.

15 Q Okay.

16 A And most of those tabs have been documented by
17 me and I put down the name of each individual on the
18 receipt.

19 Q Okay. Was Frank Cassidy ever a guest?

20 A Yes.

21 Q And his dinner would also be free?

22 A Yes.

23 Q Okay. Gilbert Davidson's dinner would be
24 free, too?

25 A Yes.

1 Q Two days after Mr. Blomquist was hauled away
2 from McClintock's restaurant after being served a
3 Pacifico beer, Gilbert Davidson was greeted at the front
4 door with a champagne toast.

5 To your knowledge, while you were working
6 there how many guests were greeted at the front door
7 with a champagne toast?

8 A None.

9 Q Okay. And you worked there for how long?

10 A Three and a half years -- Three years.

11 Q Three years.

12 A Um-hum.

13 Q And not a single time was a guest greeted with
14 a champagne toast?

15 A Never.

16 Q Okay.

17 A May I ask when this toast was -- I mean, the
18 date, when that happened?

19 Q Sure. On November 13, 2005 (sic),
20 Mr. Blomquist was hauled away after ordering his
21 Pacifico and being served the Pacifico.

22 A November 2005?

23 Q No, November of 2009.

24 A Oh, 2009?

25 Q Yeah.

1 plan, to take care of my family, because the bottom line
2 is that Saguaro Ranch screwed up not only with me
3 personally but with my entire family.

4 MR. WEEKS: Okay. We have to switch tapes
5 real quick.

6 THE WITNESS: Sure.

7 MR. WEEKS: So we'll go off the record.

8 THE VIDEOGRAPHER: We are going off the
9 record. The time is 3:59.

10

11 (A recess was thereupon taken from
12 3:59 p.m. to 4:04 p.m., after which the
13 following further proceedings were had
14 herein:)

15 THE VIDEOGRAPHER: We are back on the record.
16 The time is 4:04. This is Tape Two.

17 BY MR. WEEKS:

18 Q Okay. Earlier in our discussion you mentioned
19 that the following Marana officials received free meals
20 and discussions with Stephen Phinny.

21 Those individuals were Gilbert Davidson,
22 correct?

23 A Um-hum.

24 Q Carol McGorray?

25 A Um-hum.

1 Q Jon Post?

2 A Um-hum.

3 Q Is that a yes?

4 A Yes. Sorry.

5 Q Yes on all three, correct?

6 A Yes. Then Kai.

7 Q Jon Post?

8 A Jon Post, but....

9 Q Jon Post and Herb Kai?

10 A Herb Kai.

11 Q And Ed Honea?

12 A Excuse me.

13 Q Ed Honea, the mayor?

14 A Yes.

15 Q And Frank Cassidy?

16 A Yes.

17 Q And all of these individuals actually had

18 meals with Stephen Phinny, and those meals were free?

19 A Yes.

20 Q To the individuals?

21 A Yes.

22 Q The Marana individuals?

23 A Yes.

24 MR. BLOMQUIST: Comerford.

25

1 BY MR. WEEKS:

2 Q Oh, and Patti Comerford?

3 A Maybe somebody else, but I don't remember the
4 name....

5 Q Patti Comerford?

6 A Yes, this one I remember, but....

7 MR. WEEKS: And who was Davidson's assistant?

8 MS. CUMMINGS: Deb Thalasisitis.

9 BY MR. WEEKS:

10 Q Deb Thalasisitis, does that ring a bell?

11 A I'm not quite sure. I know he came a couple
12 of times with other people, but....

13 Q It was a man?

14 A Yes.

15 Q Okay. But you don't really know? Okay.

16 A I'm not quite sure.

17 Q And a gentleman by the name of Russell
18 Clanagan, you do not recall?

19 A No.

20 MR. BLOMQUIST: Kevin Kish.

21 BY MR. WEEKS:

22 Q Kevin Kish, by chance?

23 A The name sounds familiar, but....

24 Q But you can't say, and I don't want you to
25 guess.

1 A I can't say. Yes.

2 Q Okay. Do you know if the discussions that
3 Mr. Phinny had with these individuals dealt with the
4 Town abandoning the public easement?

5 A No, not directly. I didn't know that.

6 Q Okay. Do you know of any plans by Mr. Phinny
7 to try to bribe members of the Marana government to try
8 to abandon the public easement?

9 A Not to me directly, no.

10 Q Okay. Do you know of -- Did Mr. Phinny ever
11 discuss with you plans to try to influence the Marana
12 government to abandon the easement?

13 A Yes.

14 Q Okay. Tell me about the discussions he had
15 with you.

16 A He was just sharing that -- the connection
17 that he had with the Town of Marana. He had good
18 connection where the Town of Marana is on his side, and
19 somehow he was going to be able to get....

20 Q What he wanted?

21 A -- his point accomplished. He was not very
22 specific, you know, how, in details, but yes.

23 Q He figured he had a way to get the Town to do
24 exactly what he wanted?

25 A Yeah, he was just spending a lot of hours on

1 phone calls, trying to get his point across.

2 Q How many hours -- How many meals do you think
3 were spent dealing with this issue?

4 MR. ANDRUS: Form.

5 BY THE WITNESS:

6 A How many meals or...?

7 BY MR. WEEKS:

8 Q How many meals?

9 A 20, 30.

10 Q 20 or 30 meals?

11 A Probably more than that.

12 Q Probably more than that.

13 And each meal lasting an hour or two?

14 A Yeah, average. Yes.

15 Q Okay. So probably somewhere around at least
16 50 hours?

17 A I would -- Yes.

18 Q Probably more?

19 A Probably more.

20 Q Okay. Are you aware that Saguaro Ranch --
21 that the Saguaro Ranch entities filed two \$135 million
22 claims against the Town of Marana and its officials
23 during the bankruptcy?

24 A Yes, I am aware.

25 Q What do you know about those claims?

1 A I don't know that much. I just -- What I
2 know is because I overheard while I was working, or
3 from, probably, inside information, some leaks that
4 people were talking from the office, or Stephen and, you
5 know, but....

6 Q Did Mr. Phinny ever discuss them with you?

7 A No.

8 Q Okay. Can you think of any reason why the
9 Town of Marana would owe Saguaro Ranch entities two
10 \$135 million debts?

11 A No.

12 Q It doesn't even make sense, does it?

13 A (No oral response.)

14 Q It's laughable?

15 A Yes. I'm sorry.

16 Q Its laughable, right?

17 A Yes, it is.

18 Q Okay. And, to your knowledge, Phinny never
19 discussed them directly, though?

20 A No, but now this brings back to my memory that
21 he clearly said one day, which, unfortunately, I don't
22 remember the date, but I can just -- sat in front of him
23 here, that a certain point he is going to get all his
24 money back from the Town of Marana. And he was talking
25 about a lot, a lot, of money. That's what I remember.