

In Opposition to Cochise County P&Z Opening Turkey Track and Spring Road to a Public Enterprise in a Secluded Residential Neighborhood.

Art Douglas

Howard and Cleo Bodenhamer

Jan Guy

Michael and Adelle Moore

Robert and Estellean Wick

Larry and Carolyn Kastens

Donald and Laura Schoen

Nathan Yarbrough

Gayland Yarbrough

Daryl and Jackie Peterson

Greg and Catherine Peterson

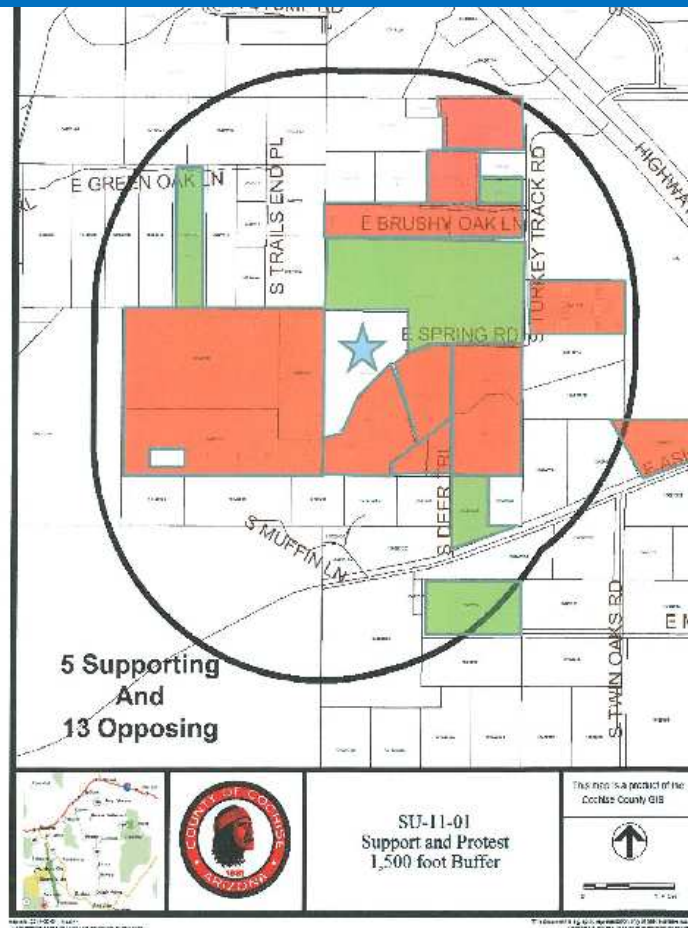
Shireen Truitt

Diane Apergren



TOTAL ASSESSED VALUES OF ALL PARCELS PROTESTING:
\$3,539,336

We Are the Voting Taxpayers of Cochise County
Not Birders from Millions of Miles Away



Private Ingress-Egress

E SPRING RD

Overflow
Parking 2X
larger than
new parking
areas.
Overflow lot
is Not seen in
MapGoogle

10421022

5255

10421019

5242

10421020

10421016

10421018

10421017

9956

9953

JOINT TENANCY DEED

Knight

For the consideration of Ten Dollars, and other valuable considerations,

Theodore R. Miller and Wilma G. Miller, his wife, joint tenants

hereafter called the Grantor, whether one or more than one, hereby conveys to

D. Manley Knight and Lavinia C. Knight, his wife

not as tenants in common and not as a community property estate, but as joint tenants with right of survivorship, the following described property situated in Cochise County, Arizona, together with all rights and privileges appurtenant thereto, to wit:

That part of the West 1/2 of the NW 1/4 of Section 32, Town 23 South, Range 21 East, G&SR, B&M, described as follows: BEGINNING at a point on the West line of Section 32, 313.06 feet North of the West 1/4 corner of said section; THENCE East 434.84 feet to the SW corner of a parcel of land conveyed to Larry J. Kastens by Deed recorded in Docket 567, Page 305; THENCE North along the said Kastens parcel 80.00 feet; THENCE North 55° 59' East along the said Kastens parcel 210.59 feet to the SW corner of a parcel sold to Thomas A. LeMon by an instrument recorded in Docket 750, Page 316; THENCE North 15° 45' West along said LeMon parcel 542.0 feet to the NW corner of said LeMon Parcel; THENCE South 58° 00' West 92.0 feet; THENCE South 40° 15' West 249.0 feet; THENCE South 28° 30' West 204.18 feet; THENCE South 71° 45' West 126.30 feet to a point on the West line of Section 32; THENCE South 253.79 feet along said West line to the point of beginning.

SUBJECT to a 7 1/2 foot easement along the Northerly boundary as part of a 15 foot private easement for road purposes of ingress and egress, to run with the land.

SUBJECT to the following restrictions to run with the land:

1. Land shall be used for residential purposes only.
2. Limited to two residences of not less than 1200 sq. ft. each, first floor area, exclusive of porches.
3. Residence shall be of standard construction, consisting of masonry footings and stem wall, frame or masonry sidewalls. Mobile homes or trailer units not permitted.
4. Yard lights shall be switched and not higher than first floor eaves of residence.

Subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

The grantees by signing the acceptance below evidence their intention to acquire said premises as joint tenants with the right of survivorship, and not as community property nor as tenants in common.

Dated this 6th day of March, 1972

Accepted and approved:

D. Manley Knight
Lavinia C. Knight
Grantees

Theodore R. Miller
Wilma G. Miller
Grantors

STATE OF *Arizona*

This instrument was acknowledged before me this 6th day of

Private Easement

STATE OF ARIZONA, County of _____; ss.
I do hereby certify that the within instrument was filed and recorded at request of _____
on _____ at _____ M., Docket _____
Page _____; Records of _____ County, Arizona.
WITNESS my hand and official seal the day and year first above written.

When recorded, mail to:
Thomas A. LeMon
P. O. Box 584B
Sierra Vista, Arizona 85635
_____, County Recorder,
By _____ Deputy

AGREEMENT *wicks*

THIS AGREEMENT entered into in triplicate January 25, 1972, between
THEODORE R. MILLER and WILMA G. MILLER, his wife, not as tenants in common and not as
a community property estate, but as joint tenants with right of survivorship,
as Seller, and
THOMAS A. LEMON and ANNABELLE L. LEMON, his wife, not as tenants in common and not as a community
property estate, but as joint tenants with right of survivorship, as Buyer

WITNESSETH:

That Seller, in consideration of the covenants and agreements of Buyer hereinafter contained, agrees to sell and convey unto Buyer, and Buyer agrees to buy, all that certain real property, together with all and singular the rights and appurtenances thereto in anywise belonging, situate in the County of Cochise, State of Arizona, described as follows:
Containing 7 plus or minus acres of land, subject to minor corrections
Description attached of bearings and distances between the mutually agreed upon and established traverse points.

Reserving unto the Grantors herein a 7 1/2 foot easement for private road purposes of ingress and egress along the Northerly boundary of above (description attached) parcel as one-half of a 15 foot easement.

SUBJECT TO: the following restrictions to run with the land:

1. Land shall be used for residential purposes only.
2. Limited to two residences of not less than 1200 square feet each first floor area, exclusive of porches.
3. Residence shall be of standard construction, consisting of masonry footings, and stem wall, frame or masonry sidewalls. Mobile homes or trailer units not permitted.
4. Yard lights shall be switched and not higher than first floor eaves of residence.

Seller agrees to provide formal survey at seller's expense.
Seller and Purchaser agree to vary total purchase price plus or minus 7 acres computed under formal survey at the rate of \$2,850.00 per acre.

1972 taxes to be paid by Purchaser apportioned from date of this instrument and also apportioned according to the value the above description bears to the total description as now assessed. Later taxes to be paid by Purchaser as assessed on above parcel.
for the sum of TWENTY EIGHT THOUSAND AND NO/100 _____ Dollars,
(\$ 28,000.00) lawful money of the United States, and Buyer agrees in consideration of the premises to pay said sum in the following manner:

To the Transamerica Title Insurance Company, an Arizona corporation, at Phoenix, Arizona, for the benefit of the seller, the sum of \$28,000.00 payable in the following manner: \$3,300.00 in cash upon the signing and sealing of these presents, the receipt of which is hereby acknowledged, and the balance of \$24,700.00 payable in regular annual installments of \$2,470.00 or more on or before the 25th day of January of every year, beginning January 25, 1973, with interest on all unpaid principal at the rate of 8% per annum from January 25, 1972, payable annually, and in addition to the payments upon principal.

Private
Easement

38007340

- Adam Ambrose, formerly with the County Attorney's Office, made a determination quoted in the March 11, 2009, Cochise County Planning and Zoning Commission Minutes: "Adam Ambrose, County Attorney's Office, stated that it is not the responsibility of the county to enforce a private agreement. However, if other residents object on the grounds of the covenant, then the policies are to be considered by the Commission."

There is no indication in any document from P&Z that they have addressed this major concern of private ingress-egress that the home owners have raised.

First Response to Receiving The P&Z Permit (Left) and After P&Z Visit (Right)



Expansion of Parking and Berm Originally Placed into the Easement

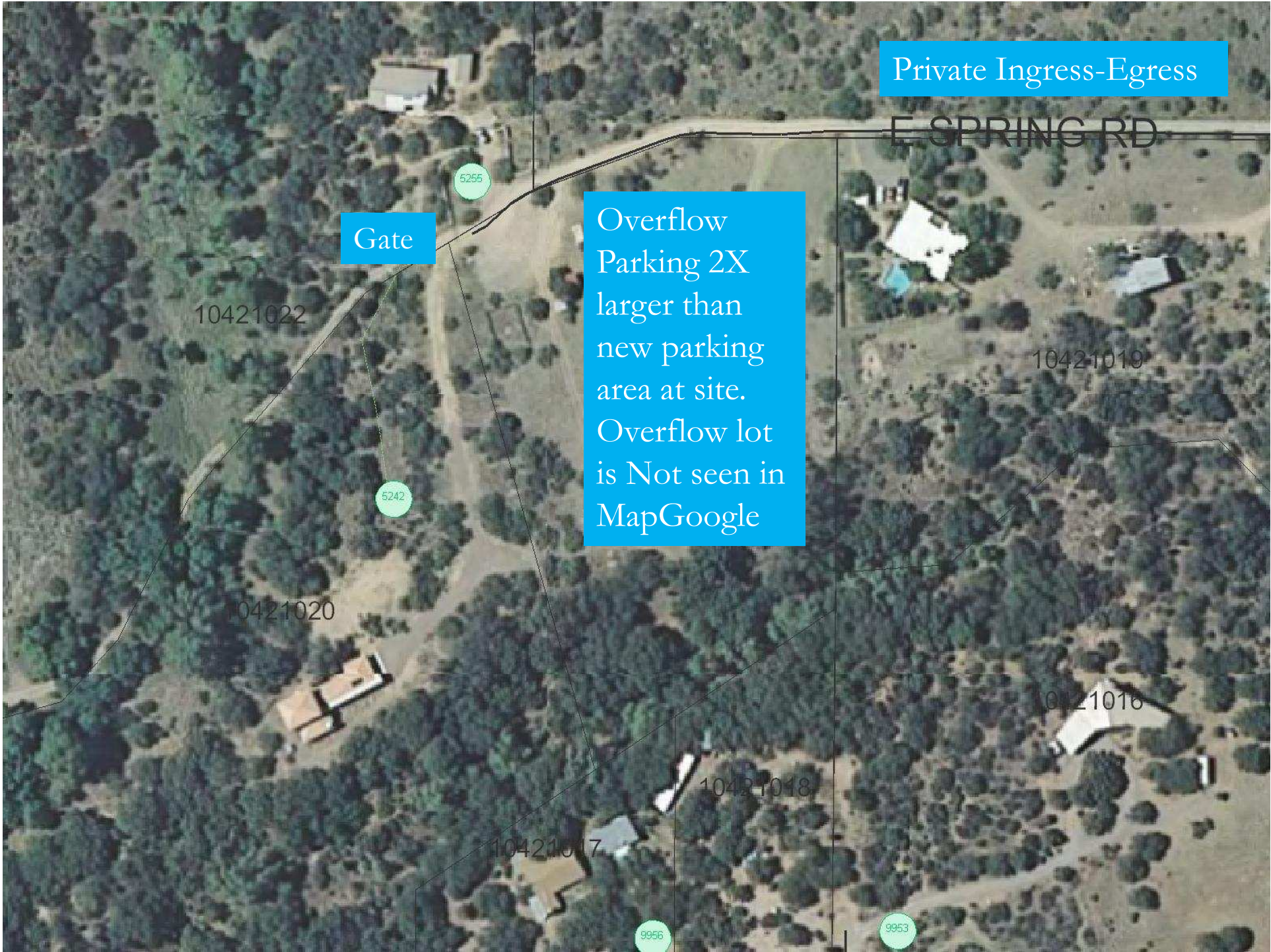


The Parking Lot

Does it Meet Traffic Demands, Required Emergency Vehicle Turn Around and Emergency Exit Down a Single Narrow Road with Only One Outlet?



Has a traffic plan
been submitted and
approved?
Is a final response
from the Sheriff and
Fire Department
required in this case?



Private Ingress-Egress

E SPRING RD

Gate

Overflow
Parking 2X
larger than
new parking
area at site.
Overflow lot
is Not seen in
MapGoogle

10421022

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10421019

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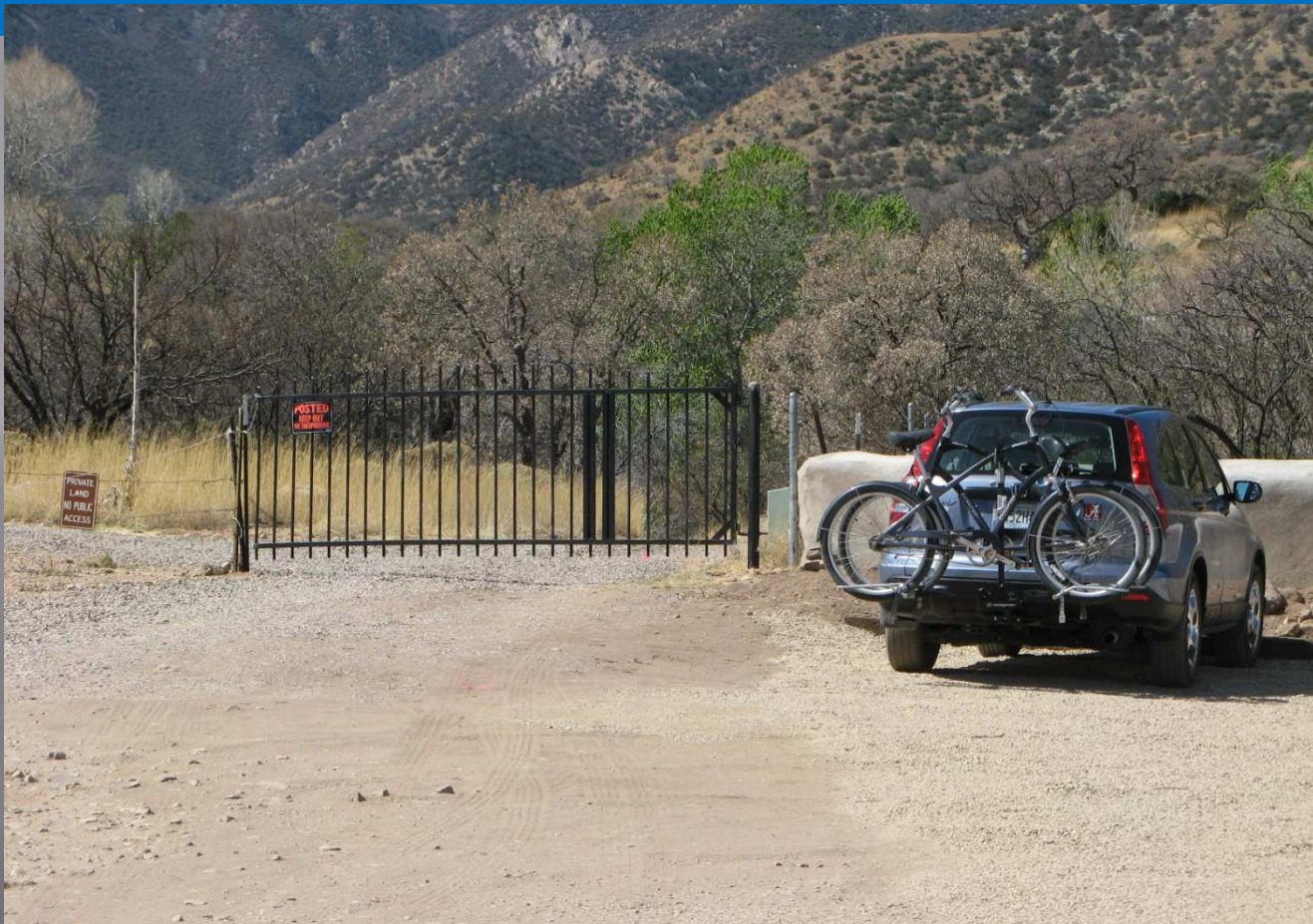
10421018

10421017

9956

9953

This past year Ms. Ballator approached me asking if I had given neighbors permission to open the gate and to continue to walk down Spring Road to view the turkeys. Later she asked my opinion about the Border Patrol using the road for their search operations. This is a private road both before and after the gate.




This is a Narrow Private Road with No Ability to Pass




Narrow Private Road, Waiting for Traffic to Pass with tours. The Wick's paved this portion of Spring Road in order to cut down on dust and erosion..... with speed bumps to slow the traffic. Five to ten fold increase in Traffic at times.....who is responsible for maintaining this paved section???





Turkey Track and Spring Road
are Subject to Severe Dust
Problems which should not be
occurring on a dead-end road
with a limited number of
homes.



DUST is a major concern of the Home
Owners but **NOT** the brief visitor who
drives in to check off a new species on
their bird list only to go to the next site.

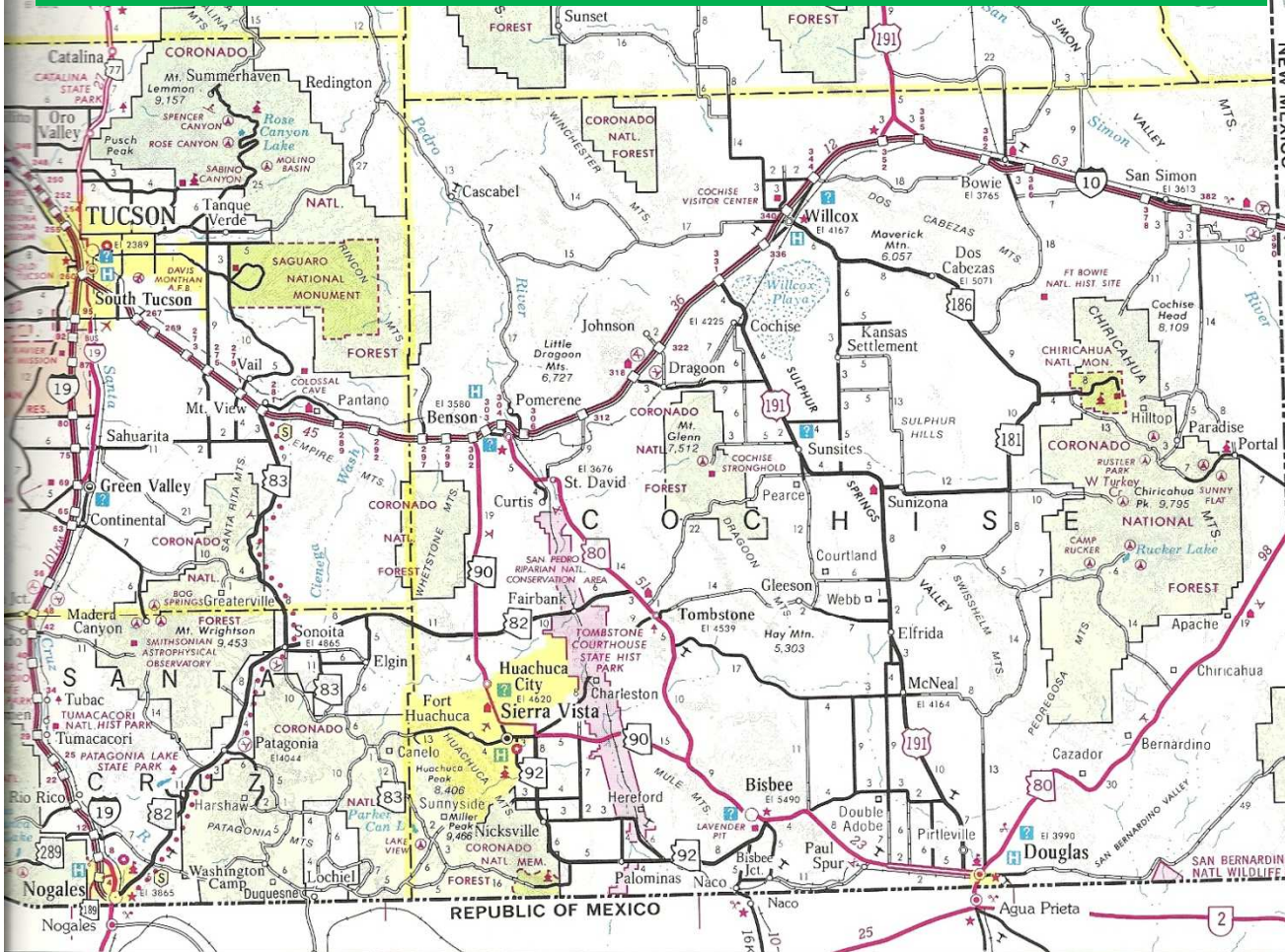
U.S. Tax Payers and Private Conservancy Groups are providing unique opportunities for bird watching in Southeast Arizona.....why impact a residential area with a 10 fold increase in traffic?

Coronado Memorial
4,750 acres

Coronado National Forest
178,000 acres

Ramsey Canyon Preserve
280 acres

San Pedro River Reserve
860 acres



Misconceptions arose at the P&Z Special Permit meeting that appeared to suggest that 2 hummingbird species were unique to the Ballator site. Per these “rare” birds the following comments are based on the Peterson Field Guide to the Hummingbirds of North America by Sheri Williamson.

- ❑ The Plain-capped Star throat is a vagrant bird in the Southwest and its occurrence here is well north of it’s normal range. This bird has been reported at isolated spots throughout Southeastern Arizona, including Tucson, and into the Hill Country of Texas. (Vagrants are wandering birds and are very unlikely to return to a site once they move on). Lucky once to see it no matter where you are!
- ❑ The Lucifer hummingbird is present in Ash Canyon (observation) but its largest breeding population is in the Chisos Mountains of Big Bend Texas. It also breeds in the Peloncillos, Guadalupe Canyon, Chiricahuas, Mule Mountains and the Santa Ritas. “...probably also Whetstone and Huachuca Mts.” Not that hard to find if you work at it.

A quote from a National Monument Home Page

- ▣ **“Protect Our Wildlife:** Help keep wildlife wild. Feeding wild animals within the Monument is prohibited. Ground squirrels, chipmunks, gray jays, and other wildlife lose their ability to forage when fed human foods, and become addicted to junk food like drug addicts. These animals often become a nuisance, and are usually very unhealthy (obese). In addition, many wildlife species will bite the hand that feeds them, and are known carriers of serious diseases. “

P&Z's Response to Wildlife Management Needs Under a Special Use Permit

- When Keith Dennis was asked if the P&Z Commission had considered the biological repercussions of granting a Special Permit for Nature Viewing and he said their office and the county were not equipped with personnel that could answer these questions which were outside their expertise.
- So.....Should there not be a policy on expected impacts before a special use permit is issued? Why are there no feeders at Coronado Memorial and why has Ramsey Canyon Preserve drastically reduced their feeders to half a dozen? The Desert Museum and the Omaha Wild Kingdom Zoo spend large sums of money each year to provide their caged hummingbirds with a balanced diet which includes proteins and other essential vitamins and minerals. Heavy concentrations of animals favor epidemic outbreaks including bird flu. A public permit sets an example and it should be soundly based.

From the Ash Canyon B&B Home Page

- ▣ Photography on other parts of the property may be arranged in advance by phone or e-mail. By appointment only – additional fees are required. Maximum of two pairs of photographers on the property at the same time. \$20 hour or \$90 full day over 4 hours.

At the P&Z Meeting Keith Dennis told the commissioners that this was going to be controlled public setting in a small portion of the yard near the road entrance and house. This statement does not appear consistent with the current web page statement or my own observations.

▣ Near Famous

▣ *Photography by Charles W. Melton Nature
Photography*



**Near Famous
Photography
by Charles W.
Melton *Nature
Photography***

A Link from
Ash Canyon
B&B
referring to
an upcoming
workshop on
site.

WORKSHOP INFORMATION

Thank you for your interest in my workshops. If you have any questions after reading the information, please contact me. I am a full-time professional nature photographer and spend much of the time traveling. If I do not respond quickly it means that I am traveling. I will respond as soon as I am able.

Hummingbird Photography Workshop

4-day workshop conducted each April

Learn how to freeze the motion of these feathered jewels in flight in the scenic mountains of southeastern Arizona. **Now being conducted at Ash and Miller**

Canyons in the Huachuca Mountains.

High speed flash equipment is provided for your use. For details, [click here](#)

Weekend Hummingbird Photography Workshop

Conducted at Ash Canyon Bed & Breakfast in southeast Arizona. [Details here.](#)

How many
businesses
can be run
out of one
location with
a Special Use
Permit?

Four Day Workshops on Site With No Bathroom Facilities?

- ▣ But the P&Z commission decided to strike down Keith Dennis's recommendation that there be restroom facilities on site. They indicated that the public was aware of how to prepare for this type of need ahead of time. Is this realistic with tours?
- ▣ Given that the traffic to the site over the past 5 years has increased greatly, if restrooms were provided what would the impact be on the septic field which was based on a single household? And what about down-gradient effects on private wells below the site?

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 I do hereby certify that the within instrument was filed and recorded at request of _____
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 Page _____; Records of _____ County, Arizona.
 WITNESS my hand and official seal the day and year first above written.

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 P. O. Box 584B
 Sierra Vista, Arizona 85635

_____, County Recorder,
 By _____ Deputy

wicks

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There is no indication in any document from P&Z that they have addressed this major concern of private ingress-egress that the home owners have raised.

Summary of Legal Counsel

- Regarding the public use of the private road with the 7.5' easements: use of the road by the public is not legal without permission of the property owners along the easement right of way. Residents and their guests have the right to use the road but not the paying public (bed and breakfast, bird watchers and photographers are "paying public").
- The county cannot grant permission to anyone to use the private land with specific private ingress and regress rights attached to the properties along the road. That would amount to a "taking" on the county's part and they must pay compensation and go through an eminent domain action to do such.

- ▣ Given that Cochise County is aware of the issues regarding the private ingress and egress rights of the private property owners along the route to the Ballator birding area (as stated in my letters and at the hearing), owners could initiate litigation against the county for their wrongful entice arising from the granting of the permit in full knowledge that paid visitors would have to enter along the private road.
- ▣ Keith Dennis acknowledged that the P&Z expected applicants for a Special Use Permit to address deed restrictions that might impact their planned activities and that it was the applicant's responsibility to resolve these issues prior to submitting their application. This was apparently neglected.

Summary

- This is a home owner protest to protect our neighborhood and quality of life. It is aimed at keeping down dust levels, reduce traffic congestion, and to ensure a quiet environment for all home owners. There are major liability issues when opening up a residential area to the public and this impacts and burdens us all.
- The deeds along Spring Road clearly indicate private ingress- egress rights only and public access is a major legal issue confronting the applicant and Cochise County. Even our water and electric companies have secured ingress-egress rights to use the road (2008).



Summary

- There need to be clear guidelines addressing wildlife management as part of a Special Use Permit for Nature Viewing.
- Since issuance of the Special Use Permit, activities at the site appear to go beyond those anticipated by the planning and zoning commission per their February meeting.
- Contrary to the opinion of the P&Z department, we as home owners have noted that this is an operation that has been steadily growing over the past 5 years and a proper assessment of the growth rate has not been made for planning purposes. The applicant claims minor impacts, yet the applicant also claims world wide support from hundreds of bird watchers. Where is the consistency on how big or small this operation really is?

