

SPECIAL USE: Docket SUA-11-01 (Douglas)

 YES, I SUPPORT THIS REQUEST

Please state your reasons: _____

 NO, I DO NOT SUPPORT THIS REQUEST:

Please state your reasons: We have in our 40+ years in Ash Canyon have voted against commercial business in this area. Taxes are high due to our trees etc. A "bird a breakfast" that advertises a charges \$, trespasses & parks on private land ^{and block. road} ~~on~~ non public road is a "NO" for our area.

(Attach additional sheets, if necessary)

PRINT NAME(S): Cleo Bodenhamer & Howard Bodenhamer

SIGNATURE(S): Cleo Bodenhamer
Howard Bodenhamer

YOUR TAX PARCEL NUMBER: 10421016 (the eight-digit identification number found on the tax statement from the Assessor's Office)

Your comments will be made available to the Planning and Zoning Commission and Board of Supervisors or appropriate body. Upon submission this form or any other correspondence becomes part of the public record and is available for review by the applicant or other members of the public.

RETURN TO: Keith Dennis
Cochise County Planning Department
1415 Melody Lane, Building B
Bisbee, AZ 85603

COCHISE COUNTY

MAR 20 2011

PLANNING

SPECIAL USE: Docket SUA-11-01 (Douglas)

YES, I SUPPORT THIS REQUEST

Please state your reasons: _____

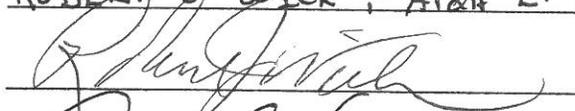
NO, I DO NOT SUPPORT THIS REQUEST:

Please state your reasons: Please refer to attached letter.

(Attach additional sheets, if necessary)

PRINT NAME(S): ROBERT J WICK & Aida E. Wick

SIGNATURE(S):




YOUR TAX PARCEL NUMBER: 104-21-019 7 (the eight-digit identification number found on the tax statement from the Assessor's Office)

Your comments will be made available to the Planning and Zoning Commission and Board of Supervisors or appropriate body. Upon submission this form or any other correspondence becomes part of the public record and is available for review by the applicant or other members of the public.

RETURN TO: Keith Dennis
Cochise County Planning Department
1415 Melody Lane, Building B
Bisbee, AZ 85603

MAR 23 2011

PLANNING

ROBERT J. & AIDA E.
WICK456 N. Wick Way
Bisbee, AZ 85603Phone: (520) 378-1090
Fax: (520) 378-1092
E-mail address: desertoasis456@gmail.com

March 25, 2011

Mr. Keith Dennis:

Estellean and I are opposed to granting a special use permit to Ash Canyon Bed and Breakfast opening up Mary Jo Ballator's property to public bird watching. Although we are living across the valley in the Mule Mountains at present, we still own the property at 5374 E. Spring Road.

My wife and I were unable to attend the meeting held February 9th. Upon our return, Estellean read an article in the local newspaper indicating that the special use permit had been approved by the Board of Supervisors despite objections expressed by some of the neighbors. In that same article it was mentioned that the Board of Supervisors were surprised that these objections/issues had not been addressed earlier during Ballator's initial request for the Bed and Breakfast. We remember when Mary Jo Ballator began her bed and breakfast. We do not recall being notified, as property owners and residents on Spring Road, by the Board of Supervisors or other governmental body for any input regarding special use permit nor were we given any particular notice for a meeting approving Ballator's property to become a bed and breakfast.

At that time, we had small children and were unable to acquire agreement for the traffic to slow down. Consequently, at our expense, it was necessary to pave the Spring Road in front of our home as well as have speed bumps in place to slow the traffic as they drove by our residence. It seemed to help. Slowly, over a period of time, Mary Jo Ballator made a presumption that she would bring in birders and charge them. To our knowledge it was not a formal business.

During this time we were building our present house, and concentrating and living on the Mule Mountain property, thus, we were not paying as much attention to the accumulating traffic during this period of time. Though I live at the Mule Mountain property, I still do sculpturing at my studio at 5374 Spring Road, and have recently become conscious of the increased traffic to Ms. Ballator's residence.

The result has been a desire by my wife and I not to have this birding business continue. Secondly, with nearly two million acres in Cochise County open to public birding, it certainly does not make sense to have this business in a private residential area. Third, I certainly dislike the idea of excessive feeding of birds

F

knowing that this can establish patterns which may over time be very destructive to the birds themselves.

My understanding is that our deed indicates that we have a private ingress-egress easement of 7.5 feet along with our neighbor. It is also my understanding that this road is intended for residential use only. This road has been used by paying guests to the Bed and Breakfast and is now being used by the general public who will be visiting the Ash Canyon Bed and Breakfast. This road at present does not safely support heavy traffic. The issue of dust, noise, road wear, etc., is also of concern. Who is responsible for the upkeep of the road? Furthermore, this may inhibit our ability to sell our home to a family with children because of the traffic safety issues.

In conclusion, I ask that the Planning and Zoning, Board of Supervisors and whatever governmental body that might be involved in this decision, reconsider and reject the special use permit to Mary Jo Ballator.

Sincerely,



Robert J. Wick and Aida E. Wick

The Honorable Pat Call
Cochise County Board of Supervisors
1415 Melody Lane
Bisbee, AZ 85603

Dear Supervisor Call:

I am writing to protest the zoning variance requested by Ms. Mary Jo Ballator to operate a public, for profit, bird watching enterprise on her property located on Spring Road. One parcel of my property shares a common boundary line with the west boundary of Ms. Ballator's property.

There are major safety issues with this operation. Spring Road is not in any way a "road" in the sense that one considers a public road, able to handle traffic. It is a narrow, unmaintained, two-rut track that runs from Turkey Track Road into my property and there it ends. There is no room for vehicles to pass, park or turn around.

Ms. Ballator lacks the necessary parking by her residence and The Ash Canyon Bed and Breakfast Inn to accommodate, vans, campers, buses, or multiple vehicles. It is reasonable to expect these conveyances will park along Spring Road, blocking access for emergency vehicles such as fire trucks and ambulances. Safety of life and property will be adversely impacted.

I am also very concerned about the impact of this operation on the quality of life for all the residents in the area. With the possible exception of Ms. Ballator every homeowner in the impacted area chose to buy their property and pay the premium property taxes assessed

COCHISE COUNTY

MAR 23 2011

PLANNING

F

on that property expressly for the privilege of living a rural life style.

From my personal perspective, I use my property (40 acres) west of Ms. Ballator as a wildlife sanctuary. I do not permit hunting, hiking or any activity which would adversely impact the indigenous wildlife on my property. I have posted, 'No Trespassing, No Hunting" signs along my property boundaries, yet seldom has a week gone by without me having to chase away people who ignore those signs. The customers who will patronize Ms. Ballator's enterprise, being for the most part city inhabitants, will find the plethora of wildlife impossible to resist trying to see up close. It will be a major, all daylight hours, challenge to keep people from tramping all over my property frightening the wildlife. Having to stand guard all day every day to keep trespassers off my property is certainly not the lifestyle I want.

Also, the closest parcel of my property to Ms. Ballator's property line contains what is apparently an irresistible magnet for trespassers – a one acre pond. It is a short walk from Ms. Ballator's property to my pond, straight west on Spring Road. The streams feeding the pond, and taking away the runoff are primary, sometimes the only, water sources for the wildlife in Ash Canyon. Hordes of people tramping around the watering areas talking, snapping photos, and frightening the wildlife will create a very real negative impact. Young fawns can be separated from mothers and baby turkeys can be frightened into flight. There is a clear risk to all the young animals because separated from the adults they are extremely vulnerable to predators and dying of thirst and/or starvation if they are unable to reunite with their mothers. I also have water fowl on the pond which

become very stressed when strangers come into their area.

In addition to all the above reasons for objecting to this latest incursion into my rural life style, I do not know how the bed and breakfast enterprise was established. I never received any notice of a proposed zoning change to permit that business nor was I ever informed that any hearings would be held on granting the zoning exception.

For the record, I am totally opposed to any expansion of Ms. Ballator's commercial enterprise in a rural residential area. I also question the continuation of the zoning exception to operate the bed and breakfast because clearly the zoning exception parameters are being violated with the current practice of having crowds of day bird watchers. It is my understanding that the zoning exception was granted on the basis of a maximum of two couples at the bed and breakfast at any given time. Allowing crowds of bird watchers on the property day after day clearly exceeds the parameters of the zoning exception granted for the bed and breakfast operation. I request the existing zoning exception for the bed and breakfast be reviewed.

Very truly yours,



Jan Guy
9990 Muffin Lane
Hereford, AZ 85615
Telephone: (520) 378-6405

CF: Mr. Keith Dennis

F

March 9, 2011

Mr. Pat Call
Board of Supervisors
1415 Melody Lane, Bldg. G
Bisbee, AZ 85603

Dear Mr. Call:

As a resident living on Turkey Track Road (Parcel # 104-21-002A), I would like to address the issue of the appeal for a Special Use Permit (Zoning Regulation 607.31: Cultural, Historic, and Nature Exhibits) to permit the public to view birds at Mary Jo Ballator's residence. Even though there is an appeal in place, this commercial venture is still going full force. Our objections to your issuing her the permit follow:

- 1) Turkey Track Road is a county-maintained road, and I do thank you that you have put some gravel down; however, it bothers me when I see a vehicle driving down Turkey Track Road at a high rate of speed, not aware that we residents know to go slowly to avoid hitting one of the deer, or turkeys, or other wildlife, . . . or pedestrians. The vehicles stir up dust that ultimately ends up in my lungs or my house.
- 2) Spring Road is definitely too narrow for motorhomes and tour buses. I will ask again, is the county planning to take over Spring Road? It is not a public road; it is just a 15-foot easement for the residents. I am aware that it does not meet county guidelines, but because of that, if you are going to deny the appeal and grant the permit, are you going to seek eminent domain and bring the road up to county standards?
- 3) We have vehicles coming into our property looking for the "bird-watching" place. This affects the maintenance of our driveway and will ultimately destroy some of our trees. There is an easement granted through our property to Steve Wilson, for ingress and egress only for him and his invited guests – never for the public. I dread thinking what would happen if the public decides they can use this private easement anytime they want to, and we find we have no recourse with the county.
- 4) Ms. Ballator has been working on a parking lot prematurely, but there is no way a tour bus or a motor home is going to be able to park there and turn around if there is another vehicle parked there.
- 5) Has anyone in your office looked into the issue that there are no public restrooms on Ms. Ballator's property? Has the health department been contacted in order to see what requirements are regarding this issue? She does use the restroom in her "Bed and Breakfast" if there are seminars (according to her advertisements), but what if someone is staying there? Has the health department been apprised of this fact? Is the septic tank adequate?
- 6) As I understand it, the Forest Service bans feeding wild animals including birds – for a very good reason. It is not good for the birds!
- 7) We were never given the opportunity to give our input regarding the permit issued for the Ash Canyon Bed and Breakfast. Why was a permit issued when you did not allow input from the surrounding property owners?
- 8) Adam Ambrose, 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."

COCHISE COUNTY

Thank you,

Donald F. Schoen *Laura F. Schoen*
Donald and Laura Schoen

MAR 23 2011

PLANNING

cc: Keith Dennis and Mike Turisk

9616 S. Turkey Track Road, Hereford, AZ 85615, 520-37806376/520-234-4095, caseysigma@q.com

F

March 9, 2011

Mr. Pat Call
Board of Supervisors
1415 Melody Lane, Bldg. G
Bisbee, AZ 85603

Dear Mr. Call:

As a resident living on Turkey Track Road (Parcel # 104-21-002A), I would like to address the issue of the appeal for a Special Use Permit (Zoning Regulation 607.31: Cultural, Historic, and Nature Exhibits) to permit the public to view birds at Mary Jo Ballator's residence. Even though there is an appeal in place, this commercial venture is still going full force. Our objections to your issuing her the permit follow:

- 1) Turkey Track Road is a county-maintained road, and I do thank you that you have put some gravel down; however, it bothers me when I see a vehicle driving down Turkey Track Road at a high rate of speed, not aware that we residents know to go slowly to avoid hitting one of the deer, or turkeys, or other wildlife, . . . or pedestrians. The vehicles stir up dust that ultimately ends up in my lungs or my house.
- 2) Spring Road is definitely too narrow for motorhomes and tour buses. I will ask again, is the county planning to take over Spring Road? It is not a public road; it is just a 15-foot easement for the residents. I am aware that it does not meet county guidelines, but because of that, if you are going to deny the appeal and grant the permit, are you going to seek eminent domain and bring the road up to county standards?
- 3) We have vehicles coming into our property looking for the "bird-watching" place. This affects the maintenance of our driveway and will ultimately destroy some of our trees. There is an easement granted through our property to Steve Wilson, for ingress and egress only for him and his invited guests – never for the public. I dread thinking what would happen if the public decides they can use this private easement anytime they want to, and we find we have no recourse with the county.
- 4) Ms. Ballator has been working on a parking lot prematurely, but there is no way a tour bus or a motor home is going to be able to park there and turn around if there is another vehicle parked there.
- 5) Has anyone in your office looked into the issue that there are no public restrooms on Ms. Ballator's property? Has the health department been contacted in order to see what requirements are regarding this issue? She does use the restroom in her "Bed and Breakfast" if there are seminars (according to her advertisements), but what if someone is staying there? Has the health department been apprised of this fact? Is the septic tank adequate?
- 6) As I understand it, the Forest Service bans feeding wild animals including birds – for a very good reason. It is not good for the birds!
- 7) We were never given the opportunity to give our input regarding the permit issued for the Ash Canyon Bed and Breakfast. Why was a permit issued when you did not allow input from the surrounding property owners?
- 8) Adam Ambrose, 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."

Thank you,

Donald F. Schoen
Donald and Laura Schoen

Laura F. Schoen

COCHISE COUNTY

MAR 20 2011

PLANNING

cc: Keith Dennis and Mike Turisk

9616 S. Turkey Track Road, Hereford, AZ 85615, 520-37806376/520-234-4095, caseysgma@q.com

F

9956 S. Deer Trail
Hereford, AZ 85615
March 7, 2011

Mr. Keith Dennis
Cochise County Planning Department
1410 Melody Lane
Bisbee, AZ 85603



Dear Mr. Dennis:

I am writing to address the Planning and Zoning's Decision to approve the commercial bird feeding and viewing station by Ms. Jo Ballator, known as the Ash Canyon Bed and Breakfast (Special Use Permit, Zoning Regulation 607.31: Cultural, Historic, and Nature Exhibits). I live within the area which is affected by this decision, parcels 104-21-017 and 104-21-018. I am opposed for the following reasons:

- 1) The feeding of wildlife is prohibited by Cochise County. (Ordinance 36-08) For someone to endanger the wildlife by providing sugar water and to be making a profit of an illegal operation, goes against all regulations set forth by any governing body.
- 2) Establishing an active business in a residential area without the approval of those affected, is unreasonable. In the summertime there is a constant flow of vehicles driving and exiting her place. As a result, the tranquility of the area is disturbed.
 - a. Until recently, Blair Peterson gave verbal permission for her Bed and Breakfast guests to park on his property. This has been rescinded since she has gone beyond the expectation of one vehicle per day, by allowing bus loads of individuals to view the birds.
 - b. I have maintained the Peterson property for 25 years by mowing the acreage to prevent the spread of wildfires. It is increasingly difficult to mow as visitors come and go at all hours. Last year a stone was hurled by my mower and broke out the driver's side window of a rental car. Even though the vehicle was parked on the Peterson's property, per Ms. Ballator, she absolved herself of responsibility.
- 3) Access to the property is by means of a private easement which is to be used only for the residents. This easement is only 15 feet wide and does not allow two vehicles to meet or pass.
- 4) There are no public restrooms to serve the multitude of visitors.
- 5) Some visitors leave her business and trespass on another's property.

Larry Kastens
Carolyn D. Kastens

Larry & Carolyn Kastens
larrykastens@hotmail.com

F

From: forgy1 [mailto:forgy1@juno.com]

Sent: Thursday, March 24, 2011 10:34 AM

To: Call, Pat

Subject: Turkey Track Bed & Breakfast issue

Hi! Pat

I think your doing a great job and I'm glad I'm not in your position.

I'm sure you have enough copies of the appeal letter regarding the B&B off of Turkey Track so I won't bore you with another one, but I own two properties near the business in question. (5300 and 5382 Brushy Oak)

My main concern is the additional traffic in the area and the confusion it causes. The signs to the B & B are not adequate and many times folks trying to find it stop at our place to ask for directions. I don't mind helping them but the traffic creates dust, pot holes, puts the children playing there and aged folks walking there at greater risk.

I don't believe residential areas should be affected in this way.

If you allow this to continue I ask that you please require the B&B to install better signs to the place and install speed limit signs to keep the traffic safer.

Thank you for your consideration on this issue.

Respectfully

Gayland Yarbrough

Comptron Data, Inc.

6164 South Hwy 92 Hereford, AZ. 85615

Phone (520) 803-0800 Fax (520) 803-0313

ForGY1@juno.com www.comptron.com

F

The Honorable Pat Call
Cochise County Board of Supervisors
1415 Melody Lane, Bisbee, AZ 85603

Date: March 31, 2011

Subject: SPECIAL USE: Docket SU-11-01 (Mary Jo Ballator, Parcel 104-21-022)

Dear Mr. Call:

We are very disappointed that we are unable to attend the April 12th meeting. Our father E. B. Peterson just passed away and we will be in South Dakota for his funeral and associated legal and personal issues.

However, below are our comments on the SPECIAL USE PERMIT from the Peterson Trust, owners of the adjacent property at 5306 S. Turkey Track Rd, Parcel 104-21-025. We opposed the original planning department action on the permit and were very disappointed in their decision. We, along with several property owners along Turkey Track and East Spring Rd, are the ones most directly affected by this permit. We believe that protecting our rural environment is critical and we want to ensure that our properties, roads and quality of life are not adversely affected by changes in use of adjacent properties. Specifically:

- 1) **Property Values.** We feel that while the use of the Ballator property as a one-unit bed and breakfast has no significant impact on the value of our property, the use of that property as a public access birding and viewing area will have a highly negative impact on the value of our adjacent property.
- 2) **Parking.** The verbal parking permission which was given to Ms. Ballator several years ago has been revoked due to increased use of our property for parking and turnaround by visitors to the Ballator property (and the increased liability risk inherent in that use). We feel that with this permit we will be forced to build a fence to prevent unauthorized "overflow" use of our property. Ms. Ballator has plans for enlarging the parking area on her property to accommodate large numbers of visitors but from what we understand, the plans do not seem adequate for large numbers of visitors, especially busloads of visitors.
- 3) **Liability Insurance.** However even with "private property, no trespassing signage", or a fence, there is no guarantee that people won't wander onto the adjacent property. If Ms. Ballator is using this as a birding/viewing area, she should be required to have liability insurance to cover potential injuries in such instances.
- 4) **Road Use and Maintenance.**
Use: Our understanding is that the road leading past Wicks to the Trust property, and the Douglas, Guy and Ballator properties, is not a public right of way but is a private road. It is also our understanding that public use of private roads with 7.5 ft. easements is illegal without permission of affected property owners. And if that is the case (and we believe it is) residents and their guests may use the roads but not the "paying public" unless they have landowners' permission. It does not seem reasonable (or an efficient use of taxpayer monies) to have affected property owners calling the County Sherriff regarding "trespassing" issues.

F

Maintenance: An increase in car, truck and bus traffic would negatively impact the already narrow and rough road. This raises the question of maintenance and dust control. We believe that if the county gives the public permission to use a private road they also assume responsibility for maintaining the road as a public right of way since it is the high volume bus and high volume car traffic that will be causing the damage. Or perhaps if Ms. Ballator is using her property as a birding area and charging people to use it, she should be required to pay for maintenance?

We appreciate your time and consideration of our opinions. We are very hopeful that our concerns and our appeal will be given serious consideration and that either the Planning Department will change their ruling or the Board will approve our appeal.

Beneficiaries of the EB Peterson Trust:

Daryl and Jackie Peterson, 170 Flynn Court, Lake Lure NC 28746

Darylandjackie@aol.com

Diane (Peterson) and Dale Aspengren, 2029 NW 20th Loop, Albany OR 97321

Ddaspen65@gmail.com

Greg and Cathy Peterson, 744 W. Via De Arboles, Queen Creek AZ 85242

Cgpeter@msn.com (Gregory is the newly appointed Trustee for the Trust)