



COUNCIL DECISION REQUEST

SUBJECT: Sale of Surplus Property in Highlands at the Rim Subdivision

MEETING DATE: 1-8-15

SUBMITTED BY: LaRon Garrett, Asst. Town Mgr. 

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

AMOUNT BUDGETED: \$0

EXPENDITURE REQUIRED: \$0

EXHIBITS (If Applicable, To Be Attached): Letters requesting the sale of the Property, Email explaining property sale process, and a Map of the property

POSSIBLE MOTION

I move to declare Tracts E, G, H, I, J, & K of the Highlands at the Rim Subdivision as surplus property and direct staff to advertise for bids to sell said properties as one package with a minimum acceptable bid of \$1,000 for the package of six property tracts.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

The Highlands at the Rim Subdivision plat was recorded in 2002. The single family portion of the subdivision contained 37 lots and 8 tracts. At that time all the tracts were owned by the Home Owners Association (HOA). The developer was to manage the HOA until there were enough different lot owners to take over the association. During the recession the developer stopped paying taxes on 7 of the 8 tracts. He continued to pay the taxes on the tract that contained the private roadways. One tract was purchased through a tax lien. The remaining 6 tracts were assumed by Gila County for non-payment of the taxes. Arizona Revised Statutes §42-18303(E) allows the County to sell parcels with taxes that are delinquent for seven years to other government agencies. The Town purchased the six tracts having unpaid taxes from Gila County for \$1 each in 2012. If the Town had not purchased these six tracts the ownership would have been transferred to the State of Arizona. Five of the six tracts range in size from 1,742 square feet to 3,485 square feet. The sixth one is a little larger at 7,841 square feet. The six tracts owned by the Town are encumbered by restrictions placed on them by the subdivision plat such as drainage easements, utility easements, and the requirement to remain as open space. None of the tracts have buildable area.

Since the Town purchased this property the lot owners within the single family portion of the Highlands at the Rim Subdivision have formed the Highlands at the Rim Community Association (HATRCA). Over the past few months the Town staff has had several conversations with the officers of the HATRCA concerning the ownership of these tracts. The HATRCA desires to provide the open space promised to the lot owners when they purchased their property and to see that the property is adequately maintained. They have submitted a written request to the Town to purchase these six tracts.

There is minimal, if any, value to the Town in retaining these tracts of land. Arizona Revised Statutes §9-402 requires that the sale of Town property must be advertised to the public and the Town must receive bids for the property. Previously when the Town has sold property the Council has set a minimum acceptable value of \$1.00 per square foot. At \$1 per square foot the minimum value for these 6 tracts is

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\$21,344.40. However, due to the small size of these individual tracts and the restrictions they have on them, I believe the minimum price of \$1,000, as offered by the HATRCA, is a reasonable value. Therefore, staff recommends that the Council declare these tracts as surplus property and direct staff to advertise the six tracts for an open-bid sale as a package for a minimum bid of \$1000.

PROS:

This will allow the property owners to have the open space for their use and to be responsible for the maintenance.

CONS:

None

FUNDING:

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

FM: _____ Date: _____



SHAW & LINES, LLC
COUNSELORS TO COMMUNITY ASSOCIATIONS

RECEIVED

DEC 16 2014

TOWN CLERK
TOWN OF PAYSON

Attorneys

Augustus H. Shaw IV*†
Mark E. Linst†
Lydia P. Linsmeier
Barrett Lindsey
*Also Licensed in Nebraska
† Member, College of Community Association Lawyers

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Phoenix, Arizona 85040

Phone/Fax/Web

p 480-456-1500
f 480-456-1515
www.shawlines.com

Route
to
LaRon
Ret Orig for
File

December 15, 2014

**VIA U.S. MAIL AND
EMAIL TO LGARRETT@PAYSONAZ.GOV**

Town Council
Town of Payson, AZ
c/o LaRon Garrett
Assistant Town Manager
303 N Beeline Hwy
Payson, AZ 85541

RE: REQUEST TO CONVEY COMMON AREA TO THE ASSOCIATION

Dear Members of the Town Council:

I have the privilege of representing the Highlands at the Rim Community Association (hereafter, the "Association"). This letter serves as a request for the Town of Payson to convey Gila County Tax Parcel #304-61-131; Gila County Tax Parcel #304-61-133; Gila County Tax Parcel #304-61-134; Gila County Tax Parcel #304-61-135; Gila County Tax Parcel #304-61-136; and Gila County Tax Parcel #304-61-137 (together, the "Property") back to the Association.

Due to the negligence of the original developer of the Highlands at the Rim subdivision, the Property fell in delinquency regarding the property taxes. Gila County foreclosed the unpaid tax liens and subsequently sold the Property to the Town of Payson.

The Highlands at the Rim Community Association is an Arizona Non-Profit corporation whose members are property owners in the Highlands at the Rim subdivision. All property within the Highlands at the Rim subdivision, including the Property, is subject to restrictive covenants known as the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Highlands at the Rim, recorded at recording number 2003-019923, records of Gila County, AZ (hereafter, the "CC&Rs") and the Final Plat of the Highlands at the Rim, recorded in the office of the County recorder of Gila County, AZ, recorded in Maps(s) No. 737A-737E and Affidavit of Correction recorded in the office of the County Recorder of Gilas County, Arizona as Instrument No. 2003-019027 (hereafter, the "Plat").

Pursuant to Section 1.2 of the CC&Rs, "Common Elements" shall mean that portion of the Project that is made subject to the Master Declaration including, but not limited to those portions of

the Project which are designated as private streets, common parking space and common landscape areas, which Common Elements shall be owned in fee by the Master Association.

Pursuant to the Plat, the Association “will govern the use and maintenance of all areas, Tract C, Tract D, Tract E, Tract F, Tract G, Tract H, Tract I, Tract J, and Tract K.” The Plat also dedicates said Tracts as “open spaces”

Therefore, pursuant to the CC&Rs and the Plat, the Property was intended to be owned by the Association and designated as Common Elements.

Arizona Statutory Law¹ and Arizona Case Law² assert that community associations, like the Association, have a duty to protect and properly maintain the Common Elements. The duty to maintain the safety of Common Elements applies not only to physical conditions on the land but also to dangerous activities on the land.³ Thus, the Board of Directors of the Association have a duty to ensure that the Property is owned by the Association and that the Property is being properly maintained.

The Association is concerned that the Property is not being properly maintained by the Town of Payson and desires to alleviate the maintenance burden the Town of Payson may have concerning the Property. Moreover, the Board of Directors desires to fulfill the duties of the Association in regards to the Common Elements.

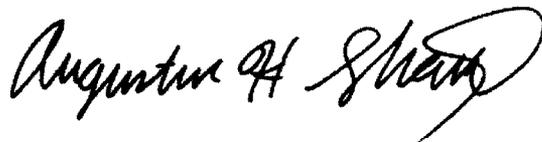
Therefore, the Association respectfully requests that the Property be conveyed back to the Association. The Property, pursuant to the CC&Rs and the Plat, will be used for community open space and recreation. The Property will be properly protected and maintained and the Association will provide the Town of Payson with any desired easements.

To compensate the Town of Payson for the Property, the Association is willing to pay \$1,000.00. Please note that the Association is a non-profit corporation and has limited funds and limited sources for income. The amount offered is all the Association can afford to offer.

The Association is hopeful that the Town of Payson will convey the Property back to the Association. Please note that the Association has authorized me to attend any Town Council Meeting to discuss this matter further.

If you have any other questions, please feel free to contact me. I look forward to hearing from you.

Sincerely,



Augustus H. Shaw IV, Esq.
For the Firm

¹ A.R.S. §33-1802(1)

² See Martinez v. Woodmar IV Condominiums Homeowners Ass’n, Inc., 189 Ariz. 206, 941 P. 2d 218 (Ariz. 1997).

³ Martinez v. Woodmar IV Condominiums Homeowners Ass’n, Inc., 189 Ariz. 206, 941 P. 2d 218 (Ariz. 1997).



LaRon Garrett

December 19, 2014

Assistant Town Manager

Town of Payson, Arizona

LaRon

Having received your email outlining the process to convey the listed Tracts E, G, H, I, J & K to Highlands at the Rim Community Association (HATRCA), the Executive board would like to proceed per your email.

Please send future communications to the HATRCA board via email to Ronn Chase, President at ronnjc@junopro.com, USPS at Highlands at the Rim PO box 3057 Payson, AZ 85547 or by telephone 928-951-1016.

If at all possible, I would like to meet with you January 5th or 6th to discuss the process you outlined and any paperwork that the HOA may need to provide as well as the bid process (open or sealed), payment type (HOA check or cashier) etc. Please let know if either of these dates are convenient for you and a time of day to meet.

The property owners of the HATRCA would like to thank you for your assistance in this matter and look forward to a smooth process as we move forward.

Respectfully,

Ronn Chase – President HATRCA

From: Garrett, LaRon [mailto:LGarrett@paysonaz.gov]

Sent: Thursday, December 18, 2014 5:02 PM

To: ashaw@shawlines.com

Cc: cjchase66@junopro.com; Daniel Poty; Jeff Limebeer; Phillip & Debra Poty ; Wilfong Randy & Bev ; Ronn

Subject: RE: REQUEST TO CONVEY COMMON AREA TO THE ASSOCIATION

Mr. Shaw,

We received your letter requesting the Town of Payson convey Tracts E, G, H, I, J, & K of the Highlands at the Rim Subdivision to the recently formed Highlands at the Rim Community Association. After internal review, the Town staff is in support of this action following the provisions of ARS 9-241 and 9-402. These provisions require the following: (1) any sale must be approved by the mayor and council at a regular council meeting; (2) notice of a potential sale must be posted in 3 or more places within the Town; and (3) an invitation for bids shall be made. Previously, we have used a sealed bid process. However, the statutes do not specify what type of bid, just that it is a bid process.

Practically, the process could move forward as follows: (a) based on your letter, I could submit a Council Decision Request (CDR) to the Council asking if they would like to potentially sell these parcels, and if yes, have them establish a minimum price; (b) if the answer is yes, post the notices and do an invitation for bids (the invitation for bids would describe the parcels as to their building ability, property restrictions, state the minimum price, and state that the purchaser would pay all costs associated with any sale); (c) go through either a sealed or open bid process to determine the highest bidder; and (d) have the Council approve the winning bid and authorize the mayor to sign the Quit Claim deed.

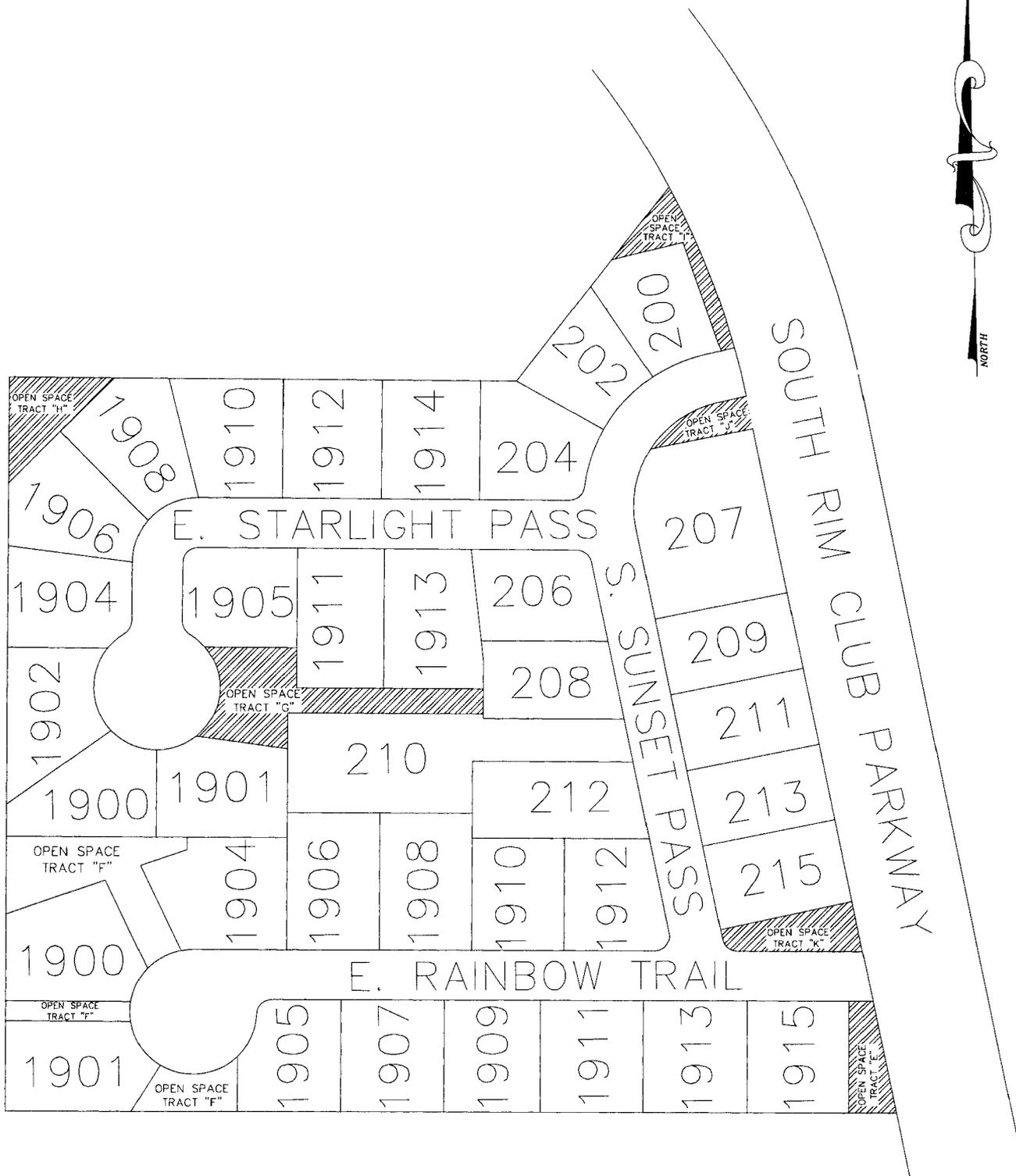
Previously the minimum acceptable bid for property has been set by the Council at \$1 per square foot. However, due to the size of these tracts, and the encumbrances that are currently on them, I would recommend the Town Council set \$1,000 as the minimum price for all six parcels as a package deal.

If your client desires to move forward under these conditions, I would submit the initial CDR to the Council at their January 8, 2015 meeting. The bidding could be in the last week of January and if payment from the high bidder is received promptly, we could go back to the Town Council at their February 5th or 19th meeting for final approval.

Please let me know if your client would like the Town to proceed on this matter.

Sincerely,

LaRon G. Garrett, P.E.
Assistant Town Manager
Town of Payson



Highlands at the Rim Open Space Tracts