

ABANDONMENT REQUEST
TOWN OF PAYSON RIGHT OF WAY
HILL STREET FROM CHERRY STREET
TO
100 FEET SOUTH OF CHERRY STREET

Process

The Arizona Revised Statutes (A.R.S) and Payson Town Ordinance No. 606 provide direction on the process to be followed when abandoning public rights of way.

A.R.S. Section 28-7202 states:

If a governing body determines that a public roadway owned by the city, town, county or state or a portion of the roadway is not necessary for public use as a roadway, the governing body may dispose of or use the roadway as provided in this article.

A.R.S. Section 28-7204 states:

The governing body may authorize the director to sell and convey the land within the roadway or portion of the roadway by quitclaim deed.

A.R.S. Section 28-7205 states:

If the roadway is a city, town or county roadway, the governing body may resolve that the roadway or portion of the roadway be vacated. On the making of the resolution, title to the roadway or portion of the roadway vests, subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues, as follows:

1. If a roadway that is the exterior boundary of a subdivision or other tract of land is vacated, title to the roadway vests in the owners of the land abutting the vacated roadway to the same extent that the land included within the roadway, at the time the roadway was acquired for public use, was a part of the subdivided land or was a part of the adjacent land.
2. If less than the entire width of the roadway is vacated, title to the vacated portion vests in the owners of the land abutting the vacated portion.
3. If a roadway bounded by straight lines is vacated, title to the vacated roadway vests in the owners of the abutting land and each abutting owner takes to the center of the roadway, except as provided in paragraphs 1 and 2. If the boundary lines of abutting lands do not intersect the roadway at a right angle, the land included within the roadway vests as provided in paragraph 4.
4. In all instances not specifically provided for, title to the vacated roadway vests in the owners of the abutting land, and each abutting owner takes that portion of the vacated roadway to which the abutting owner's land or any part of the abutting owner's land is nearest in proximity.
5. On vacation of a roadway no portion accrues to an abutting roadway.

A.R.S. Section 28-7208 states:

Notwithstanding any other law, except as provided in section 28-7215, vesting of title pursuant to sections 28-7205, 28-7206 and 28-7207 is subject to the giving of consideration from the owner of the abutting property to the governing body in an amount deemed by the governing body to be commensurate with the value of the abandoned roadway. The governing body shall give due consideration to its degree of fragmentation and marketability and any other public

benefit received by the governing body in return for the abandoned roadway in determining the amount of consideration.

and

A.R.S. Section 28-7210 states:

Rights-of-way or easements for the following continue as they existed before the disposal or abandonment of the rights-of-way or easements:

1. Existing sewer, gas, water or similar pipelines and appurtenances.
2. Canals, laterals or ditches and appurtenances.
3. Electric, telephone and similar lines and appurtenances.

Payson Town Ordinance 606 provides the process to abandon a right of way in Payson in accordance with the Arizona Revised Statutes. The process for Town staff to follow when an abandonment request is received is:

1. Notify all utility companies that may currently use or plan to use the property requested for abandonment for approval, conditional approval or denial.
2. Notify all affected Town Departments that may currently use or plan to use the property requested for abandonment for approval, conditional approval or denial.
3. Notify all property owners within 300 feet of the property requested for abandonment for any comments or concerns.
4. Provide a report to the Planning and Zoning Commission containing the findings concerning the abandonment request.

Background

When the Payson Townsite Map was approved by the Gila County Board of Supervisors in 1930 it contained a 30 foot wide right of way running between Frontier Street and Cherry Street known as Hill Street. Sometime after that Hill Street was constructed from Frontier Street to about 150 feet south of Cherry Street. It was not constructed past that point because of a sharp rise of about 10 feet immediately to the north. That sharp slope is not conducive to constructing a street from the end of the current Hill Street to Cherry Street. The Town has no plans to construct this portion of Hill Street and it is not included in any transportation studies. The right of way is not needed for access to any property. All properties in the area can be accessed without using the right of way requested for abandonment.

On September 6, 2012 we received a request to abandon the existing right of way for Hill Street from Cherry Street to approximately 100 feet south of Cherry Street. This right of way is between 809 and 811 W. Cherry Street. The total area of the property requested for abandonment is approximately 3001.2 square feet. The person requesting the abandonment is the owner of 811 W. Cherry Street.

All involved Town Departments, utility companies, and property owners within 300 feet of the requested abandonment area were notified of the request.

Current Status

Responses have been received from all of the Town Departments and the majority of the utility companies. During this process it was determined that there is a public water line and a gas line running the length of the property. Because of the existing utility lines on the property, A.R.S. Section 28-7210 requires that a public utility easement be retained for these facilities even if the property is sold. Structures, unless constructed by a utility company, are prohibited in a public utility easement. Wood, wire, or removable section-type fencing and surface improvements are normally allowed.

If the Town Council approves disposing of this property, A.R.S. Section 28-7210 requires that one half of the property be offered to each of the adjacent properties. The property owner on the west side (811 W. Cherry) is interested in obtaining the property since he is the one that filed the abandonment request. We have also received a letter from the property owner adjacent to the east side of this property (809 W. Cherry) that they are also interested in purchasing at least one half of the property if the Town Council decides to dispose of the property.

In accordance with A.R.S. Section 28-7208, the Town must receive just compensation for the property if ownership is transferred to a private party. The Town Council determines what this value is. Previously, the Town Council has used a value of \$1 per square foot as the minimum acceptable value of property such as this. If the disposal of the property is approved a Quit Claim Deed will be issued to the purchasers of the property.

Conclusion and Recommendation

Based on the fact that the right of way has been available, but unused, for over 80 years and is not currently in any plan for future construction, staff recommends supporting this request for abandonment while retaining rights to a public utility easement for the existing utility lines.

Attachments

The following items concerning this abandonment are attached:

- Drawing showing the 300' notification limit and property requested to be abandoned
- Aerial Photo showing existing construction
- Abandonment Request Application
- Letter from adjacent property owner on the east

EASEMENT/RIGHT OF WAY
ABANDONMENT APPLICATION

Applicant:

Name: STEPHEN DEMING Address: 811 W. CHERRY ST.
Town: PAYSON State: AZ. Phone: (602) 284-4277

Item to be abandoned: Easement Right of Way UNIMPROVED HILL ST.
Detailed Description of Request: RIGHT OF WAY E. SIDE OF PROPERTY

ACQUIRE ABANDONED PIECE OF PROPERTY

Reason for Abandonment Request: TO UTILIZE AREA FOR ACCESS

Property Owner:

Name: STEPHEN DEMING Address: 14811 S. 25TH ST.
Town: PHX State: AZ. Phone: (602) 284-4277

Certification:

I hereby certify that the above information and data submitted on or with this application is true and correct.

STEPHEN DEMING
Printed Name

[Signature]
Signature

9-6-12
Date

FOR TOWN USE ONLY:

Items Submitted with Application:
Acceptable Legal Description (and Survey if Required):
Letters for 300' Radius Property Owners:
Stamped and Addressed Envelopes:
Application Fee of \$250:

<u>Received By:</u>	<u>Date:</u>
_____	_____
_____	_____
_____	_____
_____	_____

9-25-12

Jose, Sandra Ramirez
P.O. Box 684
Artesia Ca. 90702

Town of Payson
Public Works Dept.
303 N. Beeline Hwy
Payson AZ.
attn Mr. LaRon G. Garrett P.E.

Re: Condemned road next to my property at 809 West Cherry St, Payson Az.

Dear Mr. Garrett

If you condemn the road next to my property at 809 W. Cherry St. Payson Az. What are you going to do with it. (after talking to you on the phone you made it clear that the new owners at 811 W. Cherry St. want it.) As I had said on my e-mail I bought my home because it had the street next to it. I knew no one would build a house, move in a travel trailer or park a car just outside of my bedroom window.

So my objection is that if the road were condemned and given to anyone other than my husband and I it would negate the thing I love about my home having space between us and our neighbor.

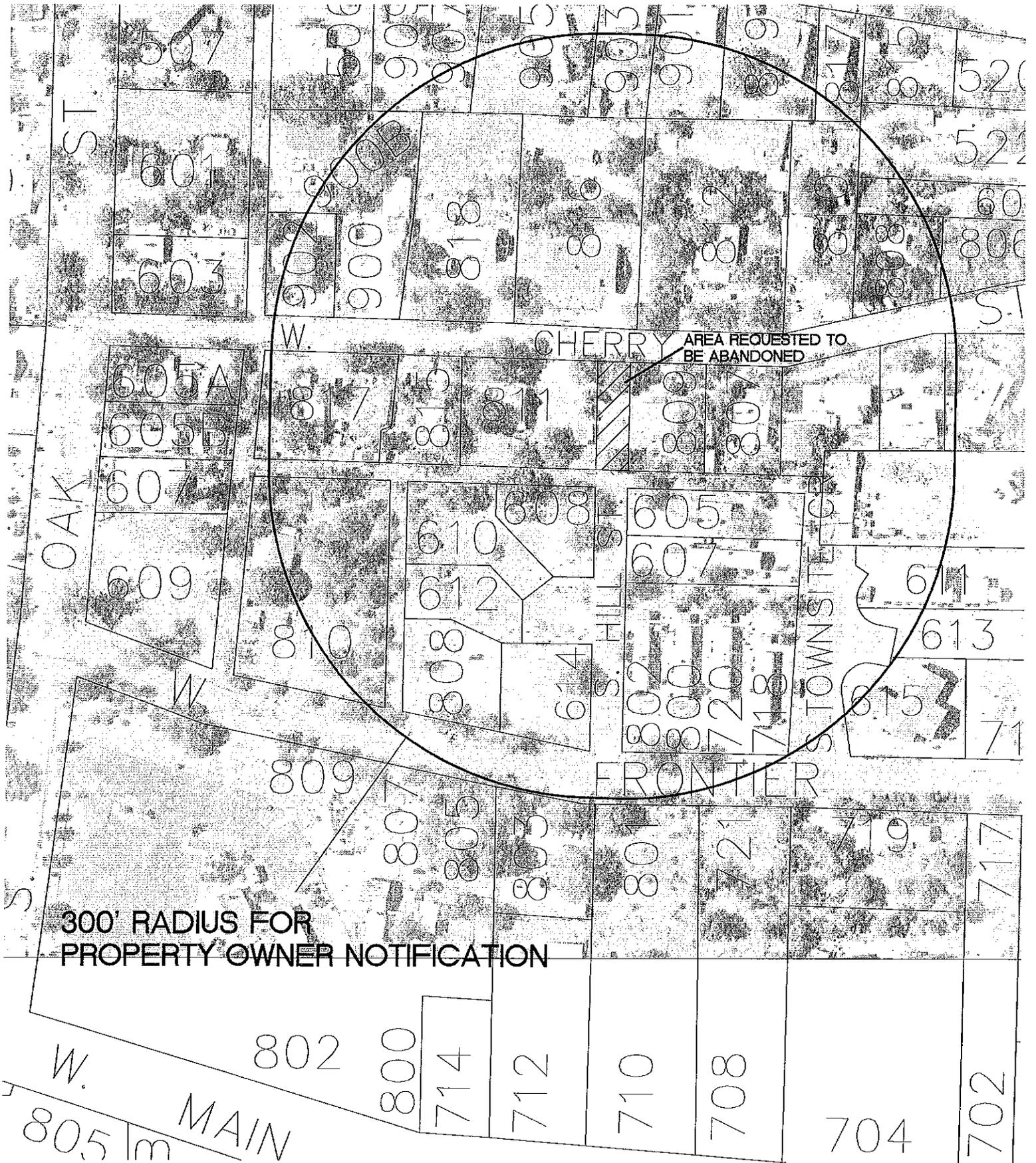
My concern is not unwarranted. In the past the property to the west had tenants who had an old travel trailer with several old cars parked in the lot creating a real eye sore. Thank goodness for the road or this would have been right outside my bedroom window.

So my objection to condemning the road is justified and the only way my husband and I could agree with it is if we receive property rights to this land because this is why we bought our home in the first place having that road in between.

After talking to you on the phone Mr. Garrett, my husband and I have decided that we are very much interested in the whole or half the property that is in question. Thank you very much for your time. Sincerely,

Jose and Sandra Ramirez
Homeowners of 809 W. Cherry St. Payson
sandratheherbalgal@hotmail.com

Sandra Ramirez
JR Ramirez



300' RADIUS FOR
PROPERTY OWNER NOTIFICATION

AREA REQUESTED TO
BE ABANDONED