

ABANDONMENT REQUEST
TOWN OF PAYSON RIGHT OF WAY
NICKLAUS DRIVE FROM MADISON DRIVE
TO
THE TOWN BONDARY LINE

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.

A.R.S. Section 9-240(B)(3)(e) also requires retention of utility easements for existing utilities so the utilities “shall continue as they existed prior to the vacating, abandonment, or abolishment thereof.”

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 Country Club Vista Unit Two Subdivision Plat was approved by the Gila County Board of Supervisors in 1961 it contained a 40 foot wide right of way running between Madison Drive and the National Forest, which is also the Town Boundary line, known as Nicklaus Drive. This connection was not needed to access the forest land west of the Town Boundary at the time the subdivision was constructed. Currently there is no need for this access point and the Town has no plans to construct this portion of Nicklaus Drive and it is not included in any transportation studies. All properties in the area can be accessed without using the right of way requested for abandonment.

In June, 2013 we received a request to abandon the existing right of way for Nicklaus Drive from Madison Street to the National Forest Boundary. This is an area 40 feet wide and 100 feet deep. This right of way is located between 804 and 900 N. Madison Drive. The total area of the property requested for abandonment is approximately 4000 square feet. The applicants requesting the abandonment are the owners of 804 and 900 N. Madison Drive.

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. All responses have been favorable to the abandonment. However, the response from the Northern Gila County Sanitary District indicated this would be the ideal location for a gravity sewer line extension to the west, if it was ever needed. Therefore, if this abandonment is approved, staff recommends that a public utility easement be retained over the entire property. 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's on each side have indicated that they intended to purchase their half of this right of way if the abandonment is approved.

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 60 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 future utility lines.

Possible Motion

I move to recommend to the Town Council approval of the abandonment of the existing right of way for Nicklaus Drive from Madison Street west to the National Forest Boundary while retaining a public utility easement over the entire property.

Attachments

The following items concerning this abandonment are attached:

- Drawing showing the 300' notification limit and property requested to be abandoned including the Aerial Photo showing existing construction
- Abandonment Request Application

EASEMENT/RIGHT OF WAY
ABANDONMENT APPLICATION

Applicant:

Name: JONATHAN D. EGEN Address: 1610 E. PENNY DRIVE
Town: TEMPE State: AZ Phone: 602-615-1562

Item to be abandoned: Easement Right of Way

Detailed Description of Request: REQUEST THAT THE EASEMENT AND RIGHT OF WAY LOCATED BETWEEN LOTS 128 AND 250, COUNTRY CLUB VISTA UNIT TWO BE ABANDONED AND THE PROPERTY BE EQUALLY DIVIDED AND DEEDED TO THE OWNERS OF LOT 128 AND LOT 250.

Reason for Abandonment Request: THE EASEMENT AND RIGHT OF WAY IS FOR A FUTURE ROADWAY THAT WOULD DEAD END AGAINST A BOUNDARY FENCE FOR AN UNDEVELOPED AREA OF THE NATIONAL FOREST. IT HAS BEEN UNDEVELOPED AND UNUSED FOR OVER 20 YEARS, AND DIVIDES THE LOTS WHICH ARE OWNED BY DIFFERENT MEMBERS OF THE SAME FAMILY.

Property Owner's:
LOT 128 R+C RAMIREZ LIVING TRUST
Name: LOT 250 J & N EGEN LIVING TRUST Address: 1610 E. PENNY DRIVE
Town: TEMPE State: AZ Phone: 602-615-1562

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

JONATHAN D. EGEN
Printed Name

Jonathan Egen
Signature

5/17/13
Date

FOR TOWN USE ONLY:

<u>Items Submitted with Application:</u>	<u>Received By:</u>	<u>Date:</u>
Acceptable Legal Description (and Survey if Required):	_____	_____
Letters for 300' Radius Property Owners:	_____	_____
Stamped and Addressed Envelopes:	_____	_____
Application Fee of \$250:	_____	_____