



Town of Wickenburg

MINUTES

WICKENBURG COMMON COUNCIL REGULAR MEETING

**Monday, May 15, 2023 - 5:30 P.M.
155 N. TEGNER - COUNCIL CHAMBERS
WICKENBURG, ARIZONA 85390**

A. CALL TO ORDER - Mayor Pereira called the meeting to order at 5:30 PM

B. PLEDGE OF ALLEGIANCE - Led by Deputy Town Manager Tim Suan

C. INVOCATION - Led by Pastor Monte Coffman, Community Alliance Church

D. ROLL CALL

Present:

Mayor Rui Pereira
Vice Mayor Kristi Henson
Councilmember Kristy Bedoian
Councilmember BG Bratcher
Councilmember Brian Jones
Councilmember Rebecca Rovey
Councilmember Art Rubash

Staff Present:

Stephen Erno, Town Manager
Trish Stuhan, Town Attorney
Tim Suan, Deputy Town Manager/Economic Development
Steve Boyle, Community Development Director
Amy Brown, Town Clerk
Les Brown, Police Chief
Tarah Mayerhofer, Human Resources Director
Ed Temerowski, Fire Chief
Stephanie Wojcik, Finance Director
Herschel Workman, Public Works Director

E. MAYOR & COUNCILMEMBERS REPORT ON CURRENT EVENTS

- Councilmember Kristy Bedoian congratulated Finance Director Stephanie Wojcik on 31 years with the Town of Wickenburg and thought she was the longest serving current employee.
- Councilmember BG Bratcher showed the new colored Downtown Merchant's Association map and read a letter from the association president to the town for the grant that made the maps possible. She attended a League of Arizona Cities and Towns meeting of their Transportation, Infrastructure and Public Works committee. She also attended the town's Community Programming Committee

Public Service (APS) on the boundaries for the town's electric grid. In the past the City of Gilbert tried to switch from APS to Salt River Project (SRP) for their electricity and were not able to go elsewhere.

JoAnn Zimpher, In-Town Resident, stated that her business and home are on the town's electric grid, and she has been told that she can't put up solar and didn't like the increase in the power supply adjuster.

Nohl Rosen, In-Town Resident, said that the people should have the freedom of choice to choose any service provider for their electric power.

Director Wojcik clarified that solar is allowed on the town electric power area, but residents must complete an application and apply for a permit. The town purchases electricity from Western Area Power Authority, Arizona Power Authority and Southwest Public Power Agency (SPPA). The town doesn't purchase electricity from APS; however the town does have a maintenance agreement with APS.

Mr. Curtis repeated that the Arizona Constitution established the Corporation Commission to issue CCN's and regulate all public service corporations. Each utility has a map showing their boundaries, which can't be changed.

3. Discussion and Direction to Staff Regarding the Maintenance of Private Roads including the area in the Town of Wickenburg referred to as the Lewis Addition

Herschel Workman, Public Works Director, reported that this item was requested by Councilmember Kristy Bedoian and seconded by Vice Mayor Kristi Henson.

Town Attorney Stuhan started her presentation with some definitions. A street typically consists of a traveled portion of blacktop or gravel and a larger area of land surrounding the street known as the street right-of-way, or ROW. The term street is often used synonymously with the term roadway or road. A ROW is usually defined by an easement, deed, plat or a combination of these documents. The ROW area generally includes the street and the area on either side of the street used to support the street. It also includes the area below and above the roadway. A street is part of the ROW as the ROW also includes the shoulder, curb gutter, bike land, sidewalk, and ditch.

The establishment of a street is a purely discretionary act by the Town Council. There is no legal obligation to establish a street. If established, it will be built to standards set by the town. It must be maintained in a non-negligent manner. The town is responsible for maintaining its public roadways while private roadways are maintained by private owners. The town must have the right to enter private property before maintaining it. Without authorization to enter private property, the town is trespassing.

The town may acquire property three ways: dedication, purchase, or condemnation. Dedication means the owner conveys the property to the town without cost. The town can purchase the property from the owner pursuant to a purchase contract. The last option is condemnation which means the town uses its government power to force the conveyance from the owner upon payment of fair market value which may involve a trial. The town must show that the town has considered alternatives available to it, has balanced the public good and the private injury resulting from the acquisition of the property, and has determined that locating the public improvements on the property results in the greatest public good and the least private injury.

Other important terms include a fee which means the owner has unrestricted rights to the real property. An easement means the owner has the right to use real property for specific purposes, such as utility, roadway, access, construction. May be perpetual or for a term (such as temporary construction easements). The owner of the easement does not own the underlying property.

The standard ROW practices include:

- No maintenance or construction activities until all property and easements are acquired.
- ROW acquisition is for fee interest, not roadway easement (although an easement can be approved on a case-by-case basis).
- Title insurance is obtained for acquisition of fee interests and is usually obtained for acquisition of easements.

Typically, to have a public roadway, there is a zoning dedication requirement that the town should include a stipulation in a re-zoning ordinance requiring dedication of ROW and/or easements as a condition of development. Acquiring ROW and easements can be more complicated than acquiring an entire parcel because with ROWs and easements only a portion of an owner's property is being acquired. The ROW acquisition flow chart describes the process of acquiring ROWs and easements: preparation of a parcel list, title reports, legal descriptions, appraisals, authorizing resolution, and escrow. The flowchart for ROW acquisition includes the following steps:

- The town needs a list of parcels from which the town will require ROW or easements. The town can use this list to engage owners.
- The town will need legal descriptions prepared for dedication documents or easements.
- Title reports will be ordered to ensure good titles are conveyed.
- Every owner must approve the acquisition of the ROW (or a condemnation may be required for the town to proceed).
- Council will need to approve the acquisition once all owners agree.
- The town will go through escrow to ensure good, clean titles for the entire ROW.

The timeline for the Lewis Addition show that the plat was recorded for the annexation, but the roads were never dedicated.

- 2003 – Roadway safety and drainage assessment was conducted.
- 2004 – Annexations occur- pre-annexation agreements contemplate that the town will own and maintain the roads within the Lewis Addition.
- 2007-2012 – The town considers the process to obtain title to the roadway and maintain, however, the roads are never dedicated to the town.
- 2014 – The town obtains temporary agreements for limited, emergency repairs to portions of the roadway.
- 2015 – Staff presented Council with options to take over the roadway and maintain, but again no dedications have occurred.
- 2017 – Access agreements expire.

The Council now has two options:

- Do nothing. The roads remain private and must be maintained by private owners.
- Work to obtain legal rights to roadway and maintain. The town could seek to obtain easements as contemplated a few years back to allow legal access and begin maintaining the roadway. All owners should be on board to proceed as this requires 100% participation.

The next steps for the town if there is a desire to take over the maintenance responsibilities is the following:



Bob Bandera, In-Town Resident, stated that this was a 20-year saga because when they voted for annexation, they wanted their roads maintained.

David Keen, In-Town Resident, stated that he would dedicate his part of the road and said that previous Town Manager Josh Wright tried to get the roads dedicated.

John Wemesfelder, In-Town Resident, stated that he considered the annexation through Ordinance 926 as a contract where the town agreed to maintain the roads.

Pat Wemesfelder, In-Town Resident, stated that some parcels might be split with the road dedication and didn't want to give up their ownership and divide their property.

Dave Darby, In-Town Resident, considered Resolution 1462 a contract for the maintenance of the roads and wondered why the town stopped in 2017.

Mayor Pereira stated that there was the same discussion for the Turtleback Mountain area as it took him two years to get all nine property owners to agree to sign the easements. This effort must have someone take charge as it needs 100% commitment. It can be done, but it will not be fast or easy.

MOVED BY Councilmember BG Bratcher to adjourn into executive session at 6:49 PM

SECONDED BY Mayor Rui Pereira

VOTE: 7 – 0 (Yes – Mayor Pereira, Vice Mayor Henson, Councilmembers Bedoian, Bratcher, Jones, Rovey and Rubash)

Council reconvened the meeting at 7:33 PM.

Mayor Pereira stated that the Council had the desire to make this right but needs the assistance of a group of residents in the area. There must be 100% commitment. Community Development Director Steve Boyle will be the lead staff person from the town to get a group together to start the process. The quickest way to accomplish this is for an easement for road maintenance that has the guidelines listed in the Town Code. There needs to be an application from the residents to start the process, which Director Boyle will provide. The residents must drive this process, or it won't happen. The town can assist but can't be the lead.

4. Discussion and Direction to Staff Regarding the Zoning Code and General Plan Update

Stephen Erno, Town Manager, introduced the item saying that this is regarding the zoning code and general plan update that the town has hired Matrix Design to do the research and public outreach portion of the updates. Director Boyle will give the presentation regarding the status of the updates and the timelines. Town Attorney Stuhan will address moratoriums.

Steve Boyle, Community Development Director, presented the information regarding the zoning code and general plan update stating that the most important reason to run these two together is so that the plans are cohesive as that is not the case right now.