

PRIVATE ROADWAYS:

A Discussion regarding Lewis Addition Issues & Options

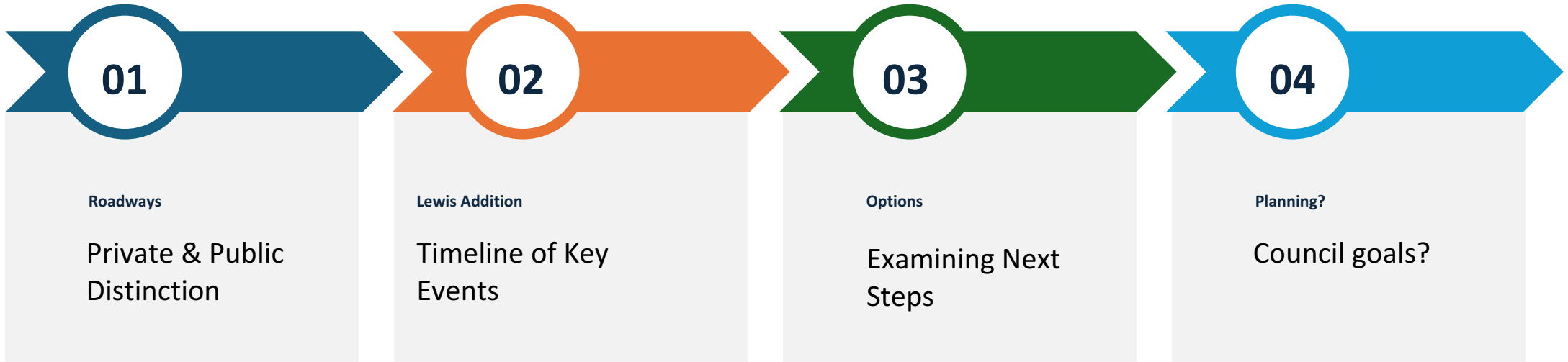
Presentation by:

Trish Stuhan, Town Attorney
Pierce Coleman PLLC



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Outline of Presentation



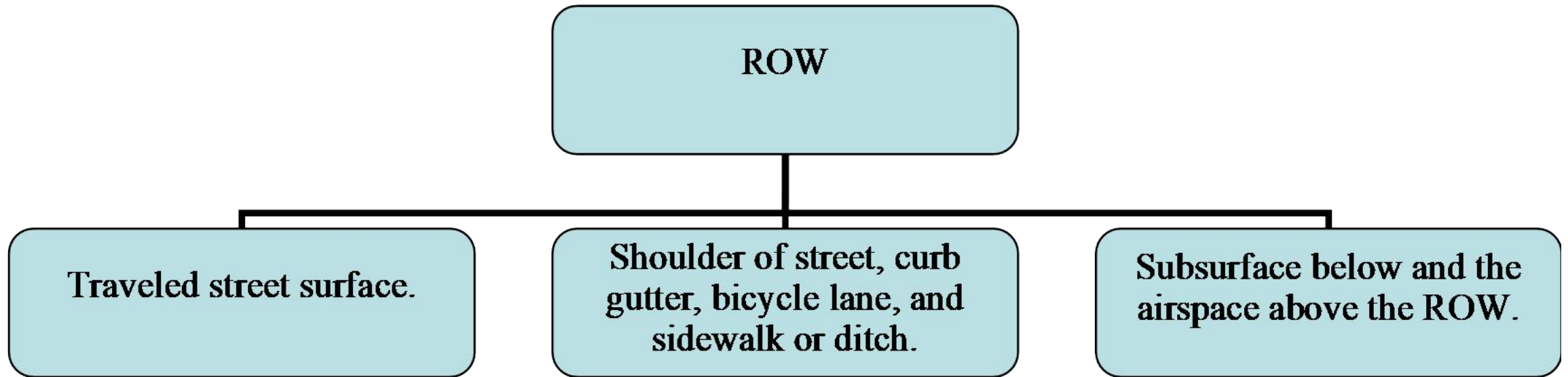
ROADWAYS

Summary of Acquisition
Process.

BACKGROUND: What is a Street or a Roadway?

- 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.

- What is the relationship between a street and ROW?
A street is *part* of the ROW.



ESTABLISHING A STREET: 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.

PUBLIC VERSUS PRIVATE ROADWAY DISTINCTION

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.

So how do you gain the right of access?

- The Town may acquire property by:
 - dedication,
 - purchase, or
 - condemnation.

IMPORTANT TERMS

- Dedication: The owner conveys the property to the Town without cost.
- Purchase: The Town buys the property from the owner pursuant to a purchase contract.
- Condemnation: The Town uses its government power to force the conveyance from the owner upon payment of fair market value. May involve a trial. 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.

IMPORTANT TERMS

- Fee: Owner has unrestricted rights to the real property.
- Easement: Owner has 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). Owner of the easement does not own the underlying property.

STANDARD ROW PRACTICES

- 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.

What should typically occur if there will be a public roadway?

- Zoning dedication requirements: The Town should include a stipulation in a re-zoning ordinance requiring dedication of ROW and/or easements as a condition of development.

Difficulties in Obtaining ROW

- 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.
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- 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.
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ROW ACQUISITION FLOW CHART

- 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 title is 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 title for the entire ROW.

Lewis Addition

Timeline



TIMELINE

Tracking the Lewis
Addition Key
developments

**Lewis Addition plat recorded but roads
never dedicated.**

2003 – Roadway safety and drainage assessment
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 process to obtain
title to the roadway and maintain. However, the roads
are never dedicated to the Town.

Access Agreements for temporary use.

2014 – The Town obtains temporary agreements for
limited, emergency repairs to portions of the roadway.

2017 – Access agreements expire.
Long-term solution sought.

2015 – Staff present Council with options to take over
roadway and maintain. No dedications have occurred.

1980s

2000s

2023

Direction from Council was to proceed with obtaining legal rights to roadway.

- Legal descriptions were obtained by a surveyor. Easements were collected, but title confirmation was not completed, and some easements are not in the correct legal form.
- Some specific issues include:
 - **Incomplete Grantor Information:** Some grantors lack details, such as how they hold title (e.g., as individuals or through a trust) and the names of trusts.
 - **Unclear Parties and Missing Notary Blocks:** The parties involved are not clearly identified, and notary acknowledgments are sometimes missing.
 - **Missing or Excessive Signatures:** Some easements lack required signatures, while others have unnecessary signatures.
 - **Failure to Disclose Trust Beneficiaries:** State law requires the beneficiaries of a trust to be disclosed, but this information is missing.
 - **Unexplained Included Documents:** Several additional documents are attached to the easements, but their relevance or purpose is unknown.

Recommendation

Move to Executive Session
for Legal Advice with Town Attorney under
A.R.S. § 38-431.03(A)(3)