

CITY COUNCIL REPORT



Meeting Date: April 16, 2024
General Plan Element: *Land Use*
General Plan Goal: *Coordinate Planning to Balance Infrastructure*

ACTION

Pencek Abandonment 10-AB-2023

Request to consider the following:

1. Adopt Resolution No. 13056 to abandon the western 8-foot-wide portion of a 33-foot-wide GLO Patent Easement along the eastern property boundary and the 33-foot-wide GLO Patent Easement along the southern property boundary and the 25-foot-wide Roy Rogers Drive Right-of-Way along the southern property boundary, of a property with Single-Family Residential Environmentally Sensitive Lands Foothills Overlay (R1-70 ESL FO) zoning located at 28848 N 79th Street. Owner to dedicate property interests to the City.

Goal/Purpose of Request

This request is to abandon the 33 feet of Government Land Office (GLO) easements along the perimeter of two 2.32 +/- acre parcels located at the southeast corner of E. Roy Rogers Drive and N. 79th Street (more specifically the east and south sides of APN 216-69-72) and the abandonment of approximately 305 feet of the north 25 feet of E. Roy Rogers right-of-way west of N. 79th Street, consistent with the city's Transportation Master Plan and Desert Foothills Local Area Infrastructure Plan. The proposed abandonments will accommodate a single-family residence on the subject property.

The applicant's abandonment request is to remove these encumbrances on the property.

Key Items for Consideration

- Access not impacted by this proposed abandonment
- Conformance with the Transportation Master Plan and Local Area Infrastructure Plan
- No public input received regarding the proposed abandonment
- Planning Commission heard this case on March 13, 2024 and recommended approval with a 7-0 vote.

OWNER

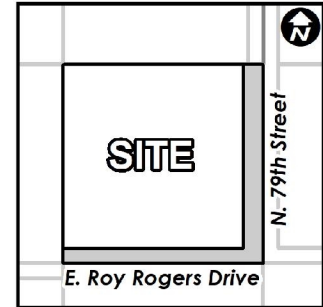
Tyler Pencek
(602) 818-2269

APPLICANT CONTACT

Tyler Pencek
(602) 818-2269

LOCATION

28848 N 79th St



BACKGROUND

General Plan

The General Plan Land Use Element designates the subject property as Rural Neighborhoods. This land use category includes relatively large lot single-family neighborhoods. Densities in Rural Neighborhoods are usually one house per one acre (or more) of land.

Character Area Plan

The subject property falls within The Desert Foothills Character Area. The Desert Foothills Character Area Plan is intended to preserve the natural desert, promote connected areas of desert open space and trails, and seeks to balance rural lifestyle with the unique and fragile upper Sonoran Desert.

Zoning

The subject property is zoned Single-family Residential District Environmentally Sensitive Lands and Foothills Overlay (R1-70 ESL FO). The R1-70 ESL FO zoning district allows for single-family dwellings and uses incidental or accessory thereto together with required recreational, religious and educational facilities. The surrounding properties are also zoned Single-family Residential district Environmentally Sensitive Lands and Foothills Overlay (R1-70 ESL FO).

Context

The subject property is located at the northeast corner of E. Roy Rogers Drive and N 79th St. The site is generally located west of N. Hayden Road and north of E. Dynamite Boulevard. Please refer to the context graphics attached.

The subject 33-foot General Land Office Patent Easement (GLO) located along the eastern and southern boundaries of 28848 N 79th Street was dedicated in June, 1938, through patent serial number 1189408. The subject GLO roadway easement was reserved on the original patent deed to assure legal access. Currently the affected GLO easements are unimproved.

The subject portion of Public Right-of-Way (ROW), located along the southern boundary of the parcel, was dedicated in September 1995, through recorded document number 1995/0751518. Currently that portion of ROW is unimproved. The corresponding 20-feet of that ROW on the lot to the south of the subject property was never dedicated to the City.

General Land Office Patent Easements (general information)

- Within the City of Scottsdale there are General Land Office (GLO) lots or parcels of various sizes created by the Federal Small Tract Act. This act was passed in 1938 and repealed in 1976.

- Most GLO lots were patented with 33-foot (or sometimes 50-foot) roadway and public utility easements typically “as near as practicable to the exterior boundaries” of the GLO lot.
- The City has viewed these patent roadway and utility easements as assured access for these lots, at least until a local circulation plan is established.
- As GLO lots come in for development (i.e., lot splits, subdivisions or requesting building permits) staff requires city right-of-way dedications per city circulation plans. The City’s transportation plan establishes a street system to replace the grid pattern created by the GLO easements.
- Any patent easements may be requested to be abandoned if it is in excess of the current requirements of the City’s circulation plans (including trails) or City roadway standards, and not required to ensure access to any other lot.
- On 1981, City Ordinance 1386 was adopted delegating the authority for the release of GLO easements to the Engineering Services Director.
- On March 2, 1999, the City Council repealed Ordinance 1386 and adopted Ordinance 3219 which requires the abandonment of the GLO patent roadway easements to go through the same public hearing process currently used for all rights-of-way, alleys, and roadway easements. The City Attorney’s office has concluded that this process for consideration of GLO roadway abandonment satisfies legal requirements.
- On August 12, 2005, Arizona Revised Statute section 9-500.24 became effective. This provision gives the local municipality the right to abandon GLO patent easements and concurs with the City’s position on abandonment of GLO patent easements.

Related Policies, References:

2008 Scottsdale Transportation Master Plan

Desert Foothills Area: Local Area Infrastructure Plan (LAIP)

IMPACT ANALYSIS

Land Use

This property is zoned for single-family residential use and will continue to function as a single-family residence.

Traffic/Trails

Access to the subject property will continue to be provided by N. 79th Street from E. Via Dona Road. East/west trail alignments in the area are intended to be accommodated within the public right-of-way along E. Via Donna Road to the north and E. Dale Lane to the south, north/south alignments are intended to be accommodated along N. Hayden Road to the east and along N. 78th Street to the west.

Emergency/Municipal Services and Utilities

All existing emergency and municipal access will be provided to the properties surrounding the abandonment area and maintained through existing and newly dedicated public right-of-way along N. 79th St. No impacts are anticipated.

Public Utilities

The public utilities have been notified of the applicant's request. The utility companies have indicated that there are no conflicts with the proposed abandonment and support the abandonment. A water and sewer facilities easement will be retained over the southern 10-feet of E Roy Rogers Drive alignment abandonment area.

Community Impact

No community impacts are anticipated as a result of the requested abandonment. The applicant agrees to pay \$6,232.91 as compensation to the City for the value of the abandonment area at the standard \$0.50 per square foot rate for this circumstance.

OTHER BOARDS & COMMISSIONS

Planning Commission:

Planning Commission heard this case on March 13, 2024 and recommended approval with a 7-0 vote.

Staff's recommendation to Planning Commission:

Staff recommended that the Planning Commission make a recommendation to City Council for approval to of the abandonment request, finding that the proposal is consistent with and conforms to the adopted General Plan, subject to the following:

1. The property owner dedicates a 25-foot-wide right-of-way for N. 79th Street
2. The property owner dedicates a 10-foot-wide water and sewer facilities easement
3. The property owner pay the combined total amount of \$6,232.91 as compensation to the city for the abandonment of right-of-way.

RECOMMENDATION

Recommended Approach:

Adopt Resolution No. 13056 to abandon the western 8-foot-wide portion of a 33-foot-wide GLO Patent Easement along the eastern property boundary and the 33-foot-wide GLO Patent Easement along the southern property boundary and the 25-foot-wide Roy Rogers Drive Right-of-Way along the southern property boundary, of a property with Single-Family Residential Environmentally Sensitive Lands Foothills Overlay (R1-70 ESL FO) zoning located at 28848 N 79th Street. Owner to dedicate property interests to the City.

RESPONSIBLE DEPARTMENT

Planning and Development Services

Current Planning Services

STAFF CONTACT

Jason Katz

Planner

480-312-2542

E-mail: jkatz@scottsdaleaz.gov

APPROVED BY



Jason Katz, Report Author

3/18/2024

Date



Tim Curtis, AICP, Current Planning Director
Planning Commission Liaison
Phone: 480-312-7713 Email: tcurtis@scottsdaleaz.gov

3/27/2024

Date



Erin Perreault, AICP, Executive Director
Planning, Economic Development, and Tourism
Phone: 480-312-7093 Email: eperreault@scottsdaleaz.gov

03-28-2024

Date

ATTACHMENTS

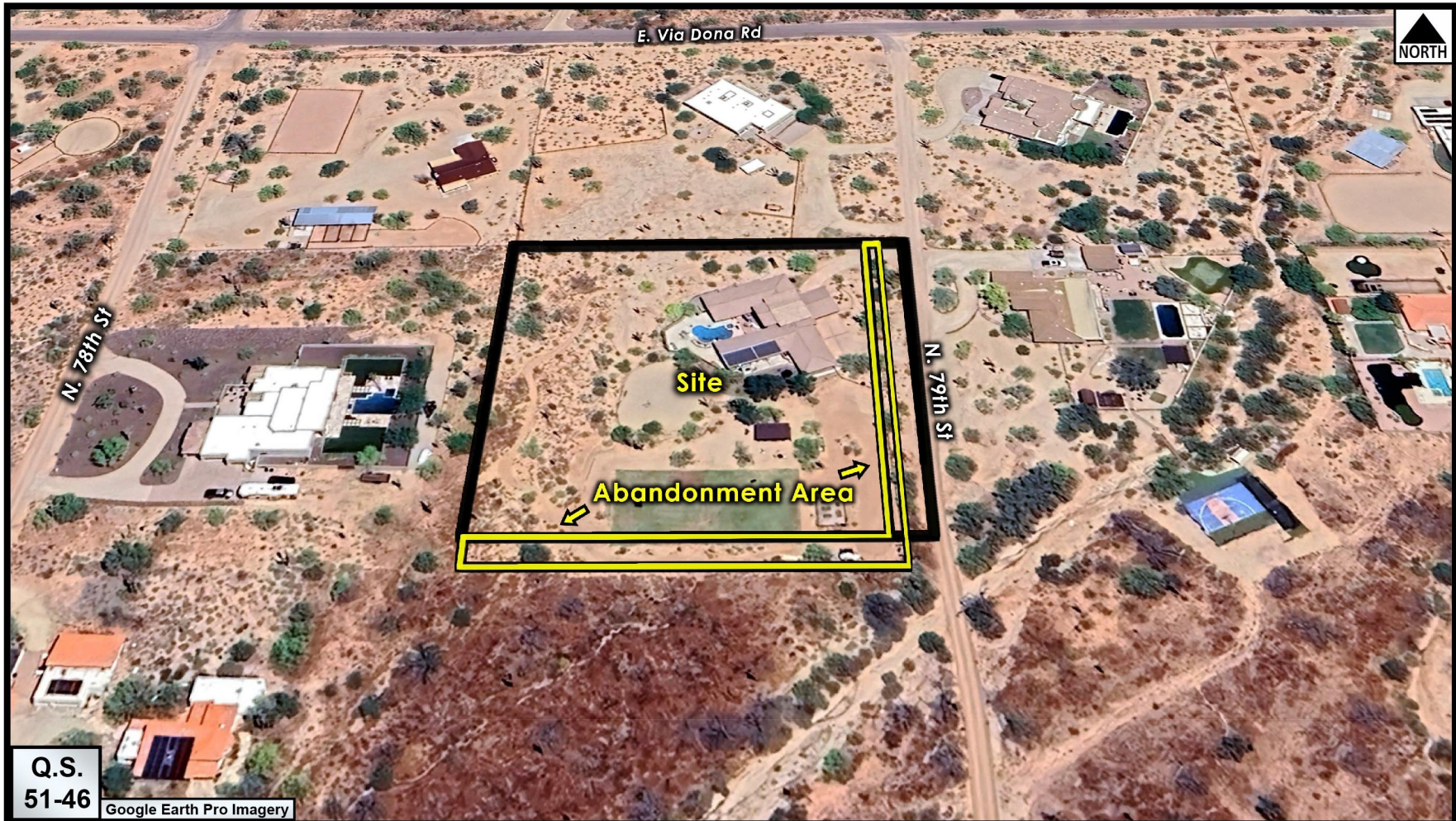
1. Context Aerial
- 1A. Aerial Close-Up
2. Resolution No. 13056
 - Exhibit A: Legal Description GLO Abandonment
 - Exhibit B: Legal Graphic GLO Abandonment
 - Exhibit C: Legal Description ROW Abandonment
 - Exhibit D: Legal Graphic ROW Abandonment
 - Exhibit E: Depiction of subject parcel
3. Applicant's Narrative
4. Zoning Aerial
5. Dedications Graphic
6. Neighborhood Outreach
7. City Notification Map
8. March 13, 2024 Draft Planning Commission Meeting Minutes



Context Aerial

ATTACHMENT #1

10-AB-2023



Close-up Aerial

ATTACHMENT #1A

10-AB-2023

RESOLUTION NO. 13056

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA ABANDONING, SUBJECT TO CONDITIONS AND RESERVATIONS, CERTAIN INTERESTS IN A PORTION OF THE PUBLIC RIGHTS-OF-WAY FOR PROPERTY LOCATED AT 28848 N. 79TH ST.

(10-AB-2023)
(Pencek Abandonment)

WHEREAS:

A. A.R.S. Sec. 28-7201, et seq. and A.R.S. §9-500.24 provide that a city may dispose of a public roadway or portion thereof that is no longer necessary for public use.

B. Scottsdale Revised Code §2-221 and other applicable laws provide that the City may dispose of other real property interests.

C. After notice to the public, the City of Scottsdale Planning Commission and City Council have held hearings on the proposed abandonment of a certain portion of the street right-of-way and other interests (collectively the "Abandonment Rights-of-way").

D. The Abandonment Government Land Office Patent Easement ("GLOPE") is legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto and comprise an area of approximately 12,465.82 square-feet. The Abandonment Rights-of-way are legally described on **Exhibit "C"** and depicted on **Exhibit "D"** attached hereto and comprise an area of approximately 7,641.5 square-feet.

E. The Abandonment GLOPE and Rights-of-way fall within, serve, affect or are near a parcel comprising approximately 2.32 acres ("Owner's Parcel"), as depicted on **Exhibit "E"** attached hereto.

F. The Council finds that, subject to the conditions, requirements, reservations and limitations of this resolution, the Abandonment Rights-of-way are no longer necessary for public use.

G. The Council has considered the City expenditure, if any, authorized by this resolution and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure, if any, and that City will receive direct consideration substantially equal to its expenditure.

H. The Council finds that consideration and other public benefit commensurate with the value of the interests in the Abandonment Right-of-way being abandoned, giving due consideration to its degree of fragmentation and marketability, will be provided to City by the owners of the abutting property.

NOW, THEREFORE, BE IT RESOLVED by the city council of the City of Scottsdale, Arizona, as follows:

1. Abandonment. Subject to the reservations and conditions below, City's interests comprising the Abandonment Rights-of-way are hereby abandoned.

2. Reservations. City reserves to itself and excludes from this abandonment all of the following cumulative, perpetual interests:

2.1 Any and all interests in the Abandonment Rights-of-way that any related application, zoning case, plat, lot split, use permit, or other land use regulatory process or requirements may require to be dedicated to City.

2.2 Any of the following in favor of City that may already have been imposed on the Abandonment Rights-of-way prior to this resolution, if any:

2.2.1 Any V.N.A.E. or other vehicular non-access easement or covenant.

2.2.2 Any N.A.O.S. or other open space or similar easement or covenant.

2.2.3 Any drainage or flood control easement or similar easement or covenant.

2.2.4 Any public non-motorized access easement or trail easement or similar easement or covenant.

2.2.5 Any scenic corridor, setback or similar easement or covenant.

2.3 An easement for all existing utilities, if any.

2.4 Such rights and interests, if any, as are required to be reserved by A.R.S. Sec. 28-7210 and A.R.S. Sec. 28-7215.

3. Effective Date. This resolution shall not be recorded or become effective until the Zoning Administrator determines that all of the following conditions (the "Conditions") are satisfied in accordance with all applicable laws, regulations and policies and at no expense to City:

3.1 The owner of the parcel shall pay to City the total amount of Six Thousand Two Hundred Thirty-two Dollars and 91/100 (\$6,232.91) as compensation to the City for the Abandonment GLOPE and Rights-of-way, in addition to any application fees or other amounts related to this resolution and in addition to any other amounts payable to City.

3.2 The owner has delivered to City a deed, plat or other instrument that dedicates to City, in accordance with City specifications, a 10-foot-wide water and sewer facilities easement over the southern portion of Owner's parcel.

3.3 The owner has delivered to City a deed, plat or other instrument that dedicates to City, in accordance with City specifications, a 25-foot-wide Right-of-way over the eastern portion of Owner's parcel, along 79th Street alignment.

3.4 As proof of satisfaction of the conditions set forth in Section 3, The Zoning Administrator shall execute the certificate at the bottom of this resolution indicating that the Conditions have been satisfied.

4. Administration of Conditions. If the foregoing Conditions are not all satisfied prior to the second annual anniversary of this resolution, the Zoning Administrator shall report the same to the City Clerk and then the City Clerk shall mark this resolution to indicate that this resolution is void.

5. Exhibit Labeling. The text of this resolution controls any conflict with the exhibits as to the nature of the interests created, reserved or otherwise affected by this resolution. For example, if the text of this resolution indicates that City is reserving a particular type of easement, but the exhibit text or labels indicate a different type of real estate interest, then the text controls.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this ____ day of _____, 2024.

CITY OF SCOTTSDALE, an Arizona municipal corporation


David D. Ortega, Mayor

ATTEST:

By: _____
Ben Lane, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Joe Padilla, Deputy City Attorney

CERTIFICATE

I am the zoning administrator of the City of Scottsdale. I certify that I have confirmed that the conditions stated in paragraph 3 of the abandonment resolution above have been fulfilled and the resolution is ready to be recorded and become effective.

DATED this ____ day of _____, 20____.

Signature

name printed

EXHIBIT A
LEGAL DESCRIPTION
FOR
ROADWAY AND PUBLIC UTILITY EASEMENT ABANDONMENT

A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, PER PATENT NO. 1189408 AND FILED IN DOCKET 2714, PAGE 545, RECORDS OF SAID MARICOPA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 33.00 FEET AND THE EAST 33.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA;
EXCEPT THE EAST 25 FEET THEREOF.

THE ABOVE EASEMENT ABANDONMENT DESCRIPTION CONTAINS A COMPUTED AREA OF 12,466 SQ. FT. MORE OR LESS AND BEING SUBJECT TO ANY EXISTING EASEMENTS, RESTRICTIONS, RIGHTS-OF-WAY OF RECORD OR OTHERWISE.

PREPARED BY: GLOBAL LAND SURVEYING LLC
 P.O. BOX 2132
 PEORIA, AZ 85380
 PROJECT NO. 2307004A



EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR
ROADWAY AND PUBLIC UTILITY EASEMENT
ABANDONMENT

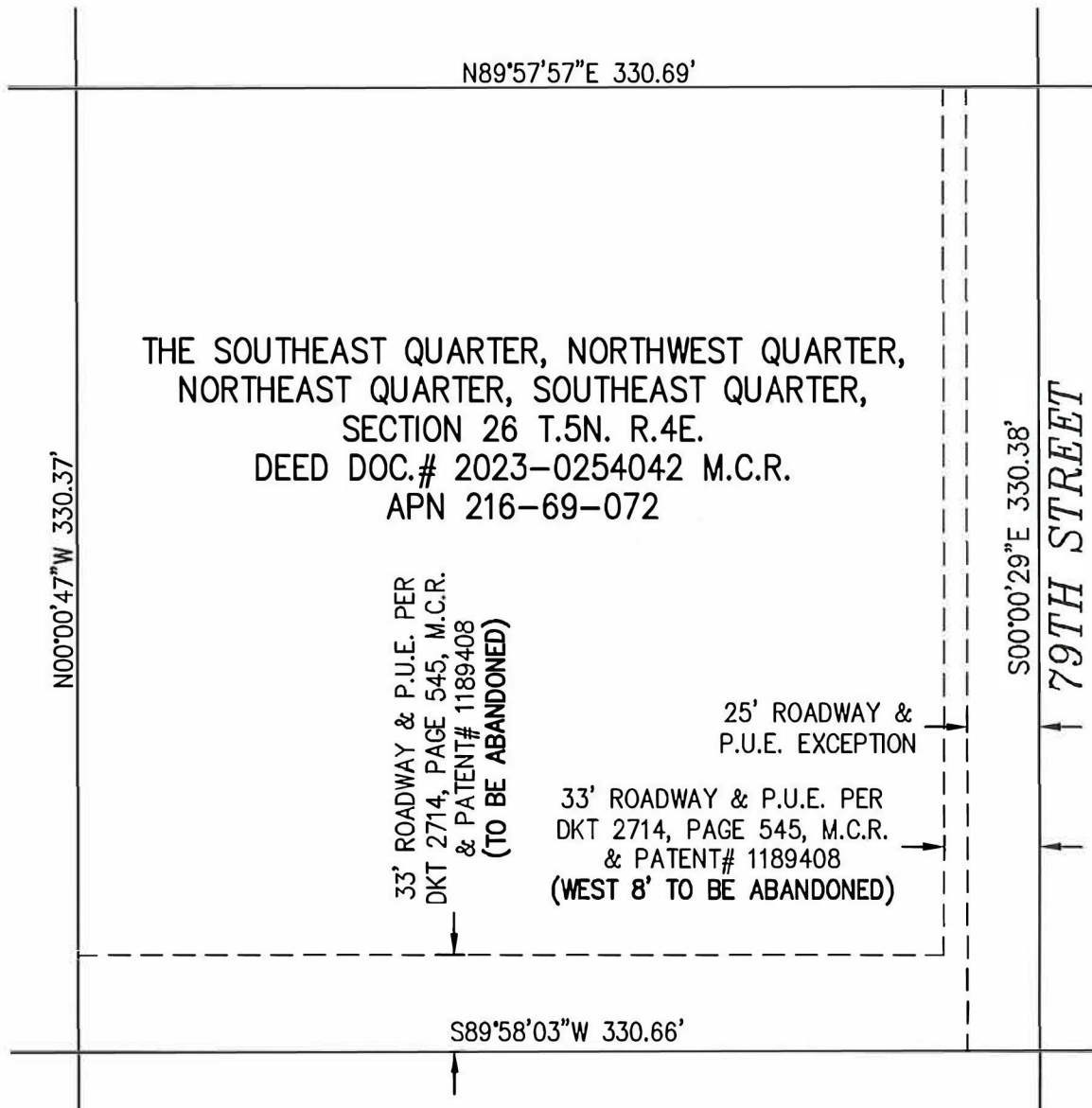


Exhibit B
Resolution No. 13056
Page 1 of 1

Global Land Surveying LLC
P.O. BOX 2132
PEORIA, ARIZONA 85380
623 328-9424
JOB# 2307004A



SCALE 1" = 60'



EXHIBIT C
LEGAL DESCRIPTION
FOR
RIGHT-OF-WAY ABANDONMENT

A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, PER DOCUMENT NO. 1995-0751518, RECORDS OF SAID MARICOPA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 25.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

THE ABOVE RIGHT-OF-WAY AREA DESCRIPTION CONTAINS A COMPUTED AREA OF 8,267 SQ. FT. MORE OR LESS AND BEING SUBJECT TO ANY EXISTING EASEMENTS, RESTRICTIONS, RIGHTS-OF-WAY OF RECORD OR OTHERWISE.

PREPARED BY: GLOBAL LAND SURVEYING LLC
 P.O. BOX 2132
 PEORIA, AZ 85380
 PROJECT NO. 2307004A



EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR
RIGHT-OF-WAY ABANDONMENT

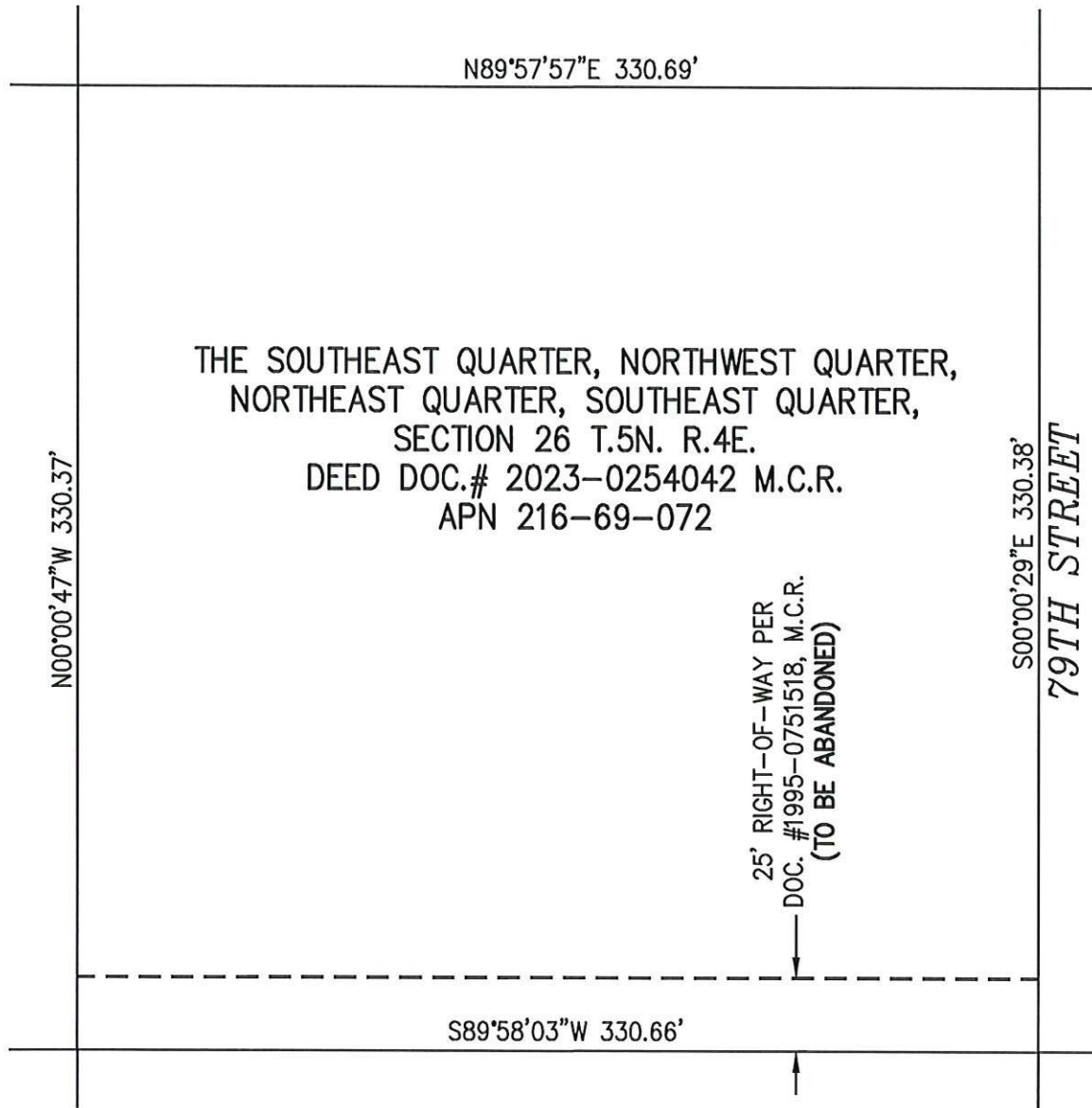


Exhibit D
Resolution No. 13056
Page 1 of 1

Global Land Surveying LLC
P.O. BOX 2132
PEORIA, ARIZONA 85380
623 328-9424
JOB# 2307004B



SCALE 1" = 60'



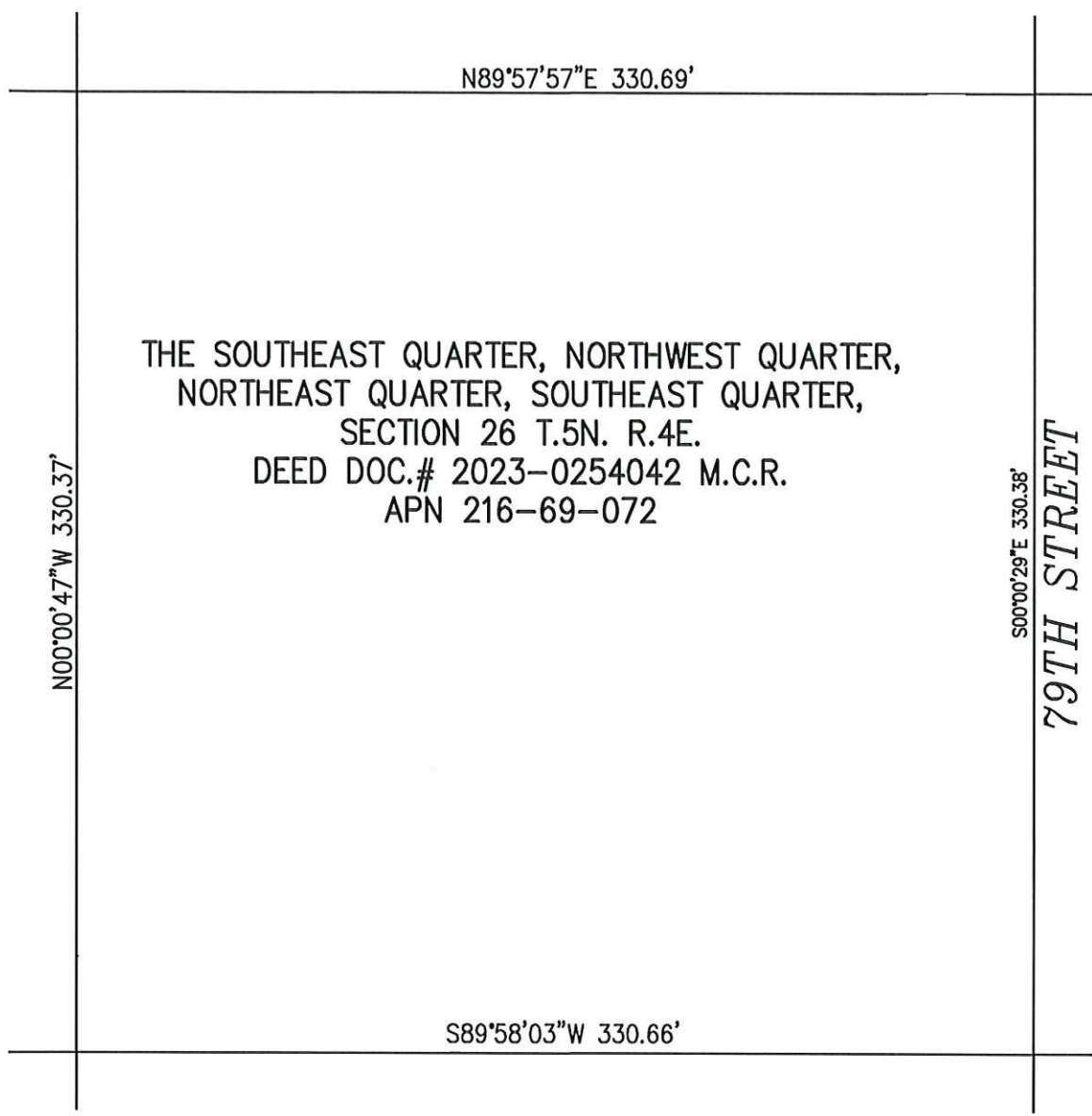


Exhibit E
Resolution No. 13056
Page 1 of 1



SCALE 1" = 60'

Application Narrative

To whom it may concern,

My reason for this package is to dedicate NAOS, abandon a Right of Way (Roy Rodgers Rd) south of my property, and submit for a guesthouse/gym/barn building. I just purchased this property in spring of 2023 and the previous owner had not dedicated NAOS, or handled the ROW topic. In order to open the building envelope, the abandonment of Roy Rodgers is needed.

I'm really looking to handle all these topics in one package, so the property is in good hands if/when I ever decide to sell. BUT MOST IMPORTANTLY, I need to have a place for my parents as they get older, and this option is best for them to be closest to their grand babies.

Semper Fidelis,

Tyler Pencek USMC (Ret)

602-818-2269

ATTACHMENT #3



Zoning Aerial

ATTACHMENT #4

10-AB-2023



Dedications

ATTACHMENT # 5

10-AB-2023

Public Participation

Project Request and Description: This notification is regarding a public hearing case for the abandonment of Roy Rogers Dr. 25' Right of Way along the southern property boundary and 33' Government Land Office Patent Easements (G.L.O.P.E. #1189408) along the eastern and southern property boundaries. In addition, in good faith to the City's request/requirement to build, we are also dedicating 79th St. 25' Right-of-way along the east property boundary and 29670sqft of Natural Area Open Space (NAOS). Ultimately this request will lead to future development on the property while observing all required development standards for the zoning district and Foothills Overlay.

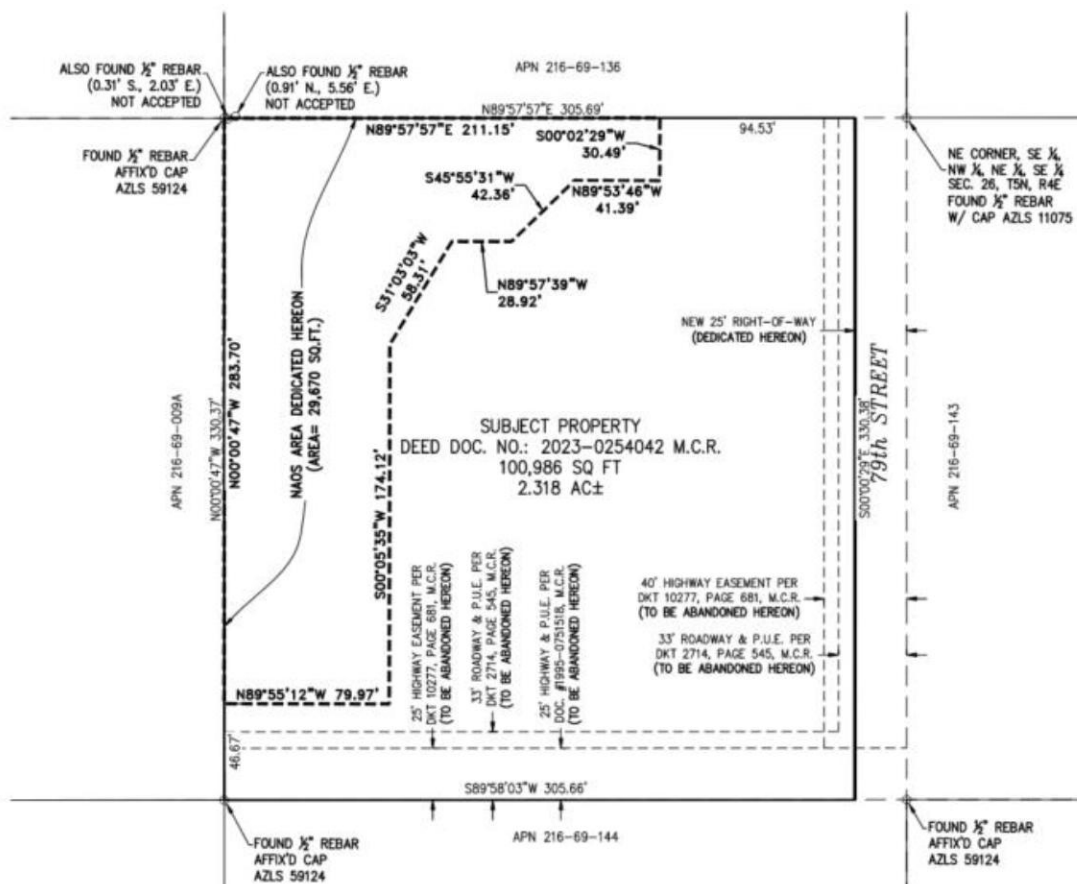
Pre-Application #: 332-PA-2023

Project Location: 28848 N. 79th St Scottsdale AZ 85266

Size: 2.3 Acres

Zoning: R1-70

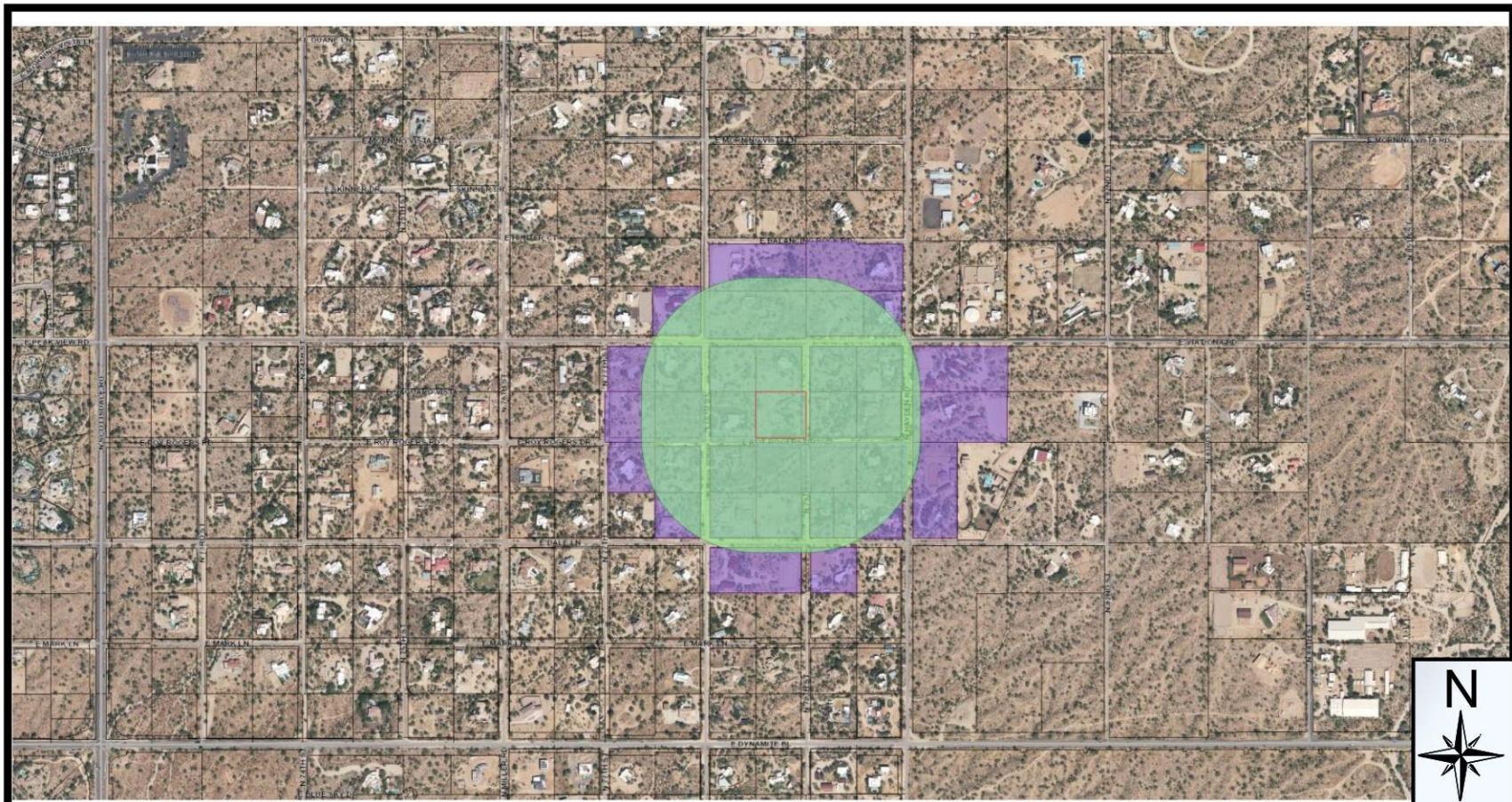
City Contact: Jason Katz 480-312-2542, jkatz@scottsdaleaz.gov



ATTACHMENT # 6

City Notifications – Mailing List Selection Map

Pencek Abandonment



Additional Notifications:

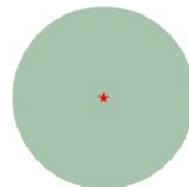
Interested Parties List
 Adjacent HOA's
 P&Z E-Newsletter
 Facebook
 Nextdoor.com
 City Website-Projects in the hearing process

Pulled Labels
 January 12, 2024

Map Legend:



Site Boundary



Properties within 750-feet

Postcards: 65

10-AB-2023



**SCOTTSDALE PLANNING COMMISSION
KIVA-CITY HALL
3939 DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA**

WEDNESDAY, MARCH 13, 2024

DRAFT SUMMARIZED MEETING MINUTES

PRESENT: Renee Higgs, Chair
Joe Young, Vice Chair
Barney Gonzales, Commissioner
Diana Kaminski, Commissioner
George Ertel, Commissioner
Christian Serena, Commissioner
William Scarbrough, Commissioner

ABSENT: None

STAFF: Tim Curtis
Eric C. Anderson
Chris Zimmer
Jason Katz
Sandra Childers
Becca Cox
Jason McWilliams
Karissa Roderigo

CALL TO ORDER

Chair Higgs called the regular session of the Scottsdale Planning Commission to order at 5:01 p.m.

ROLL CALL

A formal roll call was conducted confirming members present as stated above.

MINUTES REVIEW AND APPROVAL

1. Approval of the February 28, 2024 [Regular Meeting Minutes](#).

Vice Chair Young moved to approve the February 28, 2024 Regular Meeting Minutes, Second by Commissioner Scarbrough, the motion carried unanimously by a vote of seven (7) to zero (0) by Chair Higgs, Vice Chair Young, Commissioner Gonzales,

* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Planning Commission page on ScottsdaleAZ.gov, search "Planning Commission"

Commissioner Kaminski, Commissioner Ertel, Commissioner Serena and Commissioner Scarbrough.

CONSENT AGENDA

2. [3-AB-2023 \(Quail Track Easement\)](#)

Request by owner to abandon 25-foot-wide of right-of-way on N. 58th Street, adjacent to parcel 212-11-009Q with Single-Family Residential, Environmentally Sensitive Lands, Foothills Overlay (R1-43/ESL/FO) zoning designation, located at 5790 E Quail Track Dr. Owner to dedicate property interests to the City. Staff contact person is Chris Zimmer, 480-312-2347. **Applicant contact person is Viorel Bilauca, (480) 577-4135.**

3. [10-AB-2023 \(Pencek Abandonment\)](#)

Request by owner to abandon the western 8-foot-wide portion of a 33-foot-wide GLO Patent Easement along the eastern property boundary and 33-foot-wide GLO Patent Easement along the southern property boundary and the 25-foot-wide Roy Rogers Drive Right-of-way along the southern property boundary, of a property with Single-Family Residential Environmentally Sensitive Lands Foothills Overlay (R1-70 ESL FO) zoning located at 28848 N 79th Street. Owner to dedicate property interests to the City. Staff contact person is Jason Katz, 480-312-2542. Applicant contact person is Tyler Pencek, (602) 818-2269.

4. [7-UP-2018#2 \(Verizon PHO Pima & McDonald\)](#)

Request by owner for approval of a Conditional Use Permit for an existing Type 4 Alternative Concealment Wireless Communication Facility (WCF), concealed within a 60-foot-tall artificial broadleaf tree, with associated ground mounted equipment, located at 8465 E. McDonald Drive (A.P.N. 173-75-004L) with Highway Commercial (C-3) zoning. Staff contact person is Sandra Childers, 480-312-4214. Applicant contact person is Greg Heisser, 623-363-4561.

Items 2,3 & 4 Commissioner Scarbrough made a motion for recommendation of approval to City Council for cases 3-AB-2023, 10-AB-2023 and 7-UP-2018#2 per the staff recommend stipulations and after finding that the abandonments are consistent and conform with the adopted General Plan and the conditional use permit criteria have been met. Second by Vice Chair Young. The motion carried unanimously by a vote of seven (7) to zero (0) by Chair Higgs, Vice Chair Young, Commissioner Gonzales, Commissioner Kaminski, Commissioner Ertel, Commissioner Serena and Commissioner Scarbrough.

ADJOURNMENT

With no further business to discuss, the regular session of the Planning Commission adjourned at 5:07 p.m.

* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Planning Commission page on ScottsdaleAZ.gov, search "Planning Commission"