

PROCEDURES FOR THE
ABANDONMENT OF COUNTY LOCAL
HIGHWAYS, STREETS, AVENUES AND ALLEYS
AND
FOR THE EXTINGUISHING OF EASEMENTS



APPROVED AND ADOPTED
BY
THE APACHE COUNTY BOARD OF SUPERVISORS
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PROCEDURES FOR THE DISPOSAL (“ABANDONMENT”) OF COUNTY HIGHWAYS AND ROADS

GENERAL INTRODUCTION

This is a guide to the procedures for the Board of Supervisors to dispose of all or part of a public road that is no longer needed. As is described below, this process may be initiated by any citizen or the County staff.

Before any public road (or a portion) can be disposed of, the Board of Supervisors must find that the road is **NO LONGER NEEDED FOR PUBLIC USE**. The Board will take into consideration all relevant factors including the possible future need for the road as the area grows.

I. “PUBLIC” ROADS VERSUS “PRIVATE” ROADS.

A. **PUBLIC ROADS** are those that have been designated for use by the general public in a recorded document. The public’s rights are shown on a plat or map; in a dedication, deed or easement; in some other recorded document. A public road may be actually open and in use or may be merely a “paper road” that is shown on a plat or map but has never been used. The County has authority to abandon public roads in unincorporated areas. If a road has not been designated for use by the general public in a recorded document, however, it is generally not under the County’s control even though the public may be using it.

1. **COUNTY HIGHWAYS** are public roads that have been formally designated as County highways by the Board of Supervisors.
2. **COUNTY ROADS** are those public roads in the unincorporated areas which have been accepted by the County.
3. **PUBLIC WAYS** are all other roads in the unincorporated areas which have been dedicated for use by the general public and accepted by the public pursuant to Arizona law or the common law.

B. **PRIVATE ROADS** are roads that have not been designated for use by the general public in a recorded document or have not been accepted by the general public pursuant to Arizona law or common law. They are not controlled by the County or covered by these procedures. They include private ranch roads; subdivision roads that the developer chose not to make public; and dirt “roads” that have simply evolved over the years through vehicle use.

II. THE COUNTY’S RIGHTS IN PUBLIC ROADS.

- A. **The County may actually OWN the land for a highway or road.** The County may be the owner because it has condemned or purchased the land or because the land has been dedicated or donated to the County.
- B. **Or the County may merely have an EASEMENT.** An easement is a right to use someone else’s land for a roadway. The County does not own the land.

III. STATES STATUTES GOVERN THE DISPOSAL OF PUBLIC ROADS

- A. **Sections 28-7201 through 28-7215 of the Arizona Revised Statutes** govern the disposal of all public roads, regardless of whether they are County highways or County roads and regardless of whether the County owns the land or has an easement.
1. **The statutes govern all public “roadways.”** This is defined to mean “all or part of a platted or designated public street, highway, alley, lane, parkway, avenue, road, sidewalk or other public way, whether or not it has been used as such.” Thus, the statutes govern “paper roads” that have never been opened, as well as roads that are actually in use. **The term “roadway” will be used in these procedures.**
- B. **If the County has an EASEMENT:** The County does not own the land. All the County can do is extinguish (cancel) the easement or exchange it for a new easement over another portion of the same owner’s land. When the Board of Supervisors adopts and records a resolution extinguishing the easement, the person who owns the land will then own it free of the easement. No compensation must be paid by the owner.
- C. **If the County OWNS the land:**
1. **Generally, the County has THREE ALTERNATIVES:** The County can **sell** the land, **exchange** (trade) the land for another roadway, or **vacate** (abandon) the roadway and let the land return to the abutting owners.
 2. **However, there may be situations where the document by which the land was acquired restricts how it can be disposed of.** For example, a deed or dedication may say that the land “reverts to the owner if and when Apache County ever ceases to use it for a public roadway.” In these cases, we generally must abide by the conditions under which the land was acquired.
- D. **If the County decides to SELL the land:**
1. **A notice of sale must be posted** at least 60 days before the sale. The notice must be posted along the roadway (or affected portion) at intervals of no more than one mile. Regardless of the length of the roadway or portion, the notice must be posted in at least three places. The notice must refer to A.R.S. §28-7204, must state that anyone can submit a written purchase offer to the County Engineer before the proposed date of sale, and must state that certain abutting owners have preference rights (see paragraph 3 below)
 2. **The notice of sale must also be delivered or mailed to certain abutting owners** (see paragraph 3 below) if their addresses are known or can easily be discovered.
 3. **Certain abutting owners have preference rights to purchase the land for**

the same price originally paid by the County (which could be as little as \$0).

- A. These preference rights are available only to an abutting owner who is either **the person from whom the County originally acquired the roadway or an heir of this person**. For example, if Mr. Smith dedicated the roadway to the County in 1975 and sold his abutting land to Mr. Jones in 1985, Mr. Jones would not have preference rights because he is neither Mr. Smith nor an heir of Mr. Smith. Mr. Smith would not have preference rights because he is no longer an abutting owner. Mr. Jones and Mr. Smith would have to submit a purchase offer like anyone else.
 - B. **An abutting owner can exercise preference rights by written notice to the County Engineer before the proposed date of sale.** If the price originally paid by the County cannot be determined, the Board of Supervisors may set a fair price as described in paragraph 4 below.
- 4. **Except for the preference rights of certain abutting owners as described in paragraph 3, the County must receive fair value for the land.** This does not require a formal appraisal, and the Board of Supervisors can take into account the fact that a narrow strip of roadway may not be very marketable. The Board of Supervisors has complete discretion to determine the amount.
 - 5. **The purchaser will receive a Quit Claim Deed from the County.**
- E. **If the County decides to EXCHANGE the land:** The County can exchange the land for a new roadway with anyone who currently owns land abutting the roadway. This includes anyone who currently owns abutting land--not just those who have the preference rights described in paragraph E.3 above. The County will give the abutting owner a Quit Claim Deed to the old roadway, and the abutting owner will give the County a Quit Claim Deed to the new roadway.
 - F. **If the County decides to VACATE the roadway:** The Board of Supervisors can adopt and record a resolution vacating (abandoning) the roadway. The title to the land will vest in the manner set forth in A.R.S. § 28-7205 and § 28-7206 (described below). **The County must receive fair value for the land as described in paragraph D.4 above.**
 - 1. **The general rule is that the current abutting owners on either side take title to the vacated roadway from the edge of their parcels to the center line of the roadway.** Special circumstances (e.g., less than the entire width of the roadway is vacated, the roadway is curved or angled, etc.) are covered in the statutes.
 - 2. **EXCEPTION #1: If the vacated roadway is the exterior boundary of a**

subdivision or other tract, title vests in the abutting owners to the same extent that the roadway was originally part of the subdivision or tract. For example, if the developer of Shady Oaks Subdivision dedicated Northern Road along the northern boundary when the subdivision was created, the owners of the abutting lots along the northern boundary of the subdivision will take title to the entire roadway when Northern Road is vacated – the owners of the abutting property on the other side of the roadway (outside the subdivision) will take nothing.

3. **EXCEPTION #2: If the vacated roadway is in a planned development, such as a subdivision, the Board of Supervisors can vacate it to the Owners Association.** This can be done if (1) the Owners Association includes the owners of the land abutting the roadway; (2) the Owners Association has a legal right to maintain the road and assess the members for the cost; and (3) this is approved by $\frac{2}{3}$ of the members of the Owners Association and a majority of the owners of any abutting commercial property. It does not matter whether the roadway is an exterior boundary or an interior road.
4. **When a roadway is vacated the County will not become involved in resolving disputes as to who takes title.** It is not the County's responsibility to resolve title disputes.

- G. **UTILITY EASEMENTS are not affected by any disposal of the roadway.** They continue just as they were before. See A.R.S. § 28-7210. The Board of Supervisors' resolution disposing of the roadway may include provisions specifically concerning utilities and similar matters.
- H. **The roadway cannot be disposed of if any abutting land would be LANDLOCKED.** All adjoining land must be left with access to an established public roadway via an established public roadway. If this will not be the case, the Board of Supervisors may require a permanent easement for the benefit of the adjoining land. See A.R.S. § 28-7215.

IV. CITIZEN-INITIATED DISPOSAL

- A. **Any Citizen who believes that a public roadway is no longer needed for public use may bring this to the attention of the County through the Office of the County Engineer.**
- B. **The Citizen should submit a completed application (on the form provided by the County), together with the non-refundable application fee of \$500.00, to the County Engineer.** The application should identify whether the citizen is proposing a purchase, exchange or vacation, or the extinguishment of an easement.
- C. **The County Engineer's Office will complete its review of the application in a timely manner, generally within 12 weeks.** The time may be longer if the application is not complete or special circumstances require additional information. The review includes:
 1. **A determination by the County Attorney** as to the legal status of the

roadway and any special circumstances affecting the County's legal rights.

2. **An evaluation by the County Engineer** as to any transportation or public safety concerns raised by the application.
3. **An evaluation by the County Planning and Zoning Director** as to conformity with County Master Plan and anticipated future growth in the county.
4. **Notice to affected property owners and public utilities** for their comments.
 - a. **In the case of a proposed sale**, notice shall be given as described in paragraphs III.D.1 and III.D.2 above, together with such notice to public utilities as the County Engineer deems appropriate.
 - b. In the case of a proposed exchange or vacation, or the extinguishment of an easement, **Applicant shall give notice** by registered mail to all owners of property **and** public utilities affected by the proposed exchange, vacation or extinguishment of an easement at least 60 days before the matter will be heard by the Board of Supervisors. **The signed registered mail receipts and a completed Form 1A (attached to the application) for each property or utility owner shall be returned to the county engineer.** The failure of any person to receive notice shall not invalidate the Board's action.
 - (1) **Notice may be waived, or the time period may be shortened**, in the discretion of the County Engineer (with the concurrence of the County Attorney) in special circumstances - for example, when a platted subdivision is reverting to acreage, and all property surrounding the roadway(s) is still owned by the developer.
5. **A recommendation to the Board of Supervisors by the County Engineer.**

D. **The application will be heard and decided by the Board of Supervisors.**

1. If the Board approves a proposed sale, exchange or vacation, or the extinguishment of an easement, the approval may be conditioned on the applicant providing, at the applicant's expense, **an accurate legal description** of the roadway or affected portions. In the case of an exchange, the applicant may also be required to provide an accurate legal description of the new roadway, together with a title report or other evidence that the new roadway is free and clear of all liens. If the County initiated the matter, any legal description(s) shall be provided by the County.
2. If the Board approves a proposed sale, exchange or vacation, the approval may be conditioned on the applicant providing, at the applicant's expense, **a qualified appraisal** of the roadway or affected portion. In the case of an exchange, the applicant may also be required to provide a qualified appraisal of the new roadway. If the County initiated the matter, any appraisal(s) will be provided by the County.

E. Any action of the Board of Supervisors to abandon or extinguish under this procedure will be taken by resolution of the Board.