INTERNATIONAL RIGHT OF WAY ASSOCIATION

Kachina Chapter 28
Phoenix, Arizona

Newsletter **www.irwaaz.com**

SEPTEMBER / OCTOBER, 2006

2006 Kachina Chapter Executive Board

President:
Michael "Doc" Sterling
623.546.8266 X211
doc51s.ent@cox.net

President Elect:
Caroline Tillman, R/W-RAC
623.516.1052
carolint@acqsl.com

Secretary:
Cate Chamberlain
catechamberlain@cox.net
602.367.9322

Treasurer:
Doug Estes
480.345.4111
dougest@hotmail.com

International Director:
Chris Banks, SR/WA
602.236.8175
cdbanks@srpnet.com

PDC Chair
Mike Wilson, SR/WA
602.506.4706
mdw@mail.maricopa.gov

Region 1 Vice Chair:
Chris Banks, SR/WA
602.236.8175
cdbanks@srpnet.com

NOVEMBER BOARD MEETING

Wednesday, Nov. 1, 2006

4:45pm

3rd Floor Conference Room

Az State Land

Confirm your attendance with Doc Sterling at doc51s.ent@cox.net

2006 CHAPTER AWARDS

The Nominations & Elections Committee proudly announces the recipients of the 2006 Chapter Awards. They are:

SPECIAL SERVICES:

Gayle Leonard, SR/WA

SPECIAL SERVICES:

Beverly Francy, SR/WA

PROFESSIONAL OF THE YEAR:

Chris Banks, SR/WA

EMPLOYER OF THE YEAR:

Acquisition Sciences, Ltd.

NOVEMBER Chapter Luncheon

DATE: Tuesday, November 7, 2006
TIME: 11:30am
PLACE: Double Tree Guest Suites / 320 North 44th Street
COST: $20.00 for members and guests
MENU: Fall Greens with Toasted Pumpkin Seed Vinaigrette or Orange Cranberry Dressing; Slow Roasted Turkey with Sage Dressing; Fresh Cream Mashed Potatoes and Gravy; Seasonal Green Beans; Holiday Pumpkin Mousse Coffee, Decaf and Iced Tea
SPEAKER: First American Data Tree will be talking about their online public land records and property data technology. See: www.datatree.com
RSVP DEADLINE: Thursday, November 2nd @ 5pm

PRESIDENT'S MESSAGE

Michael "Doc" Sterling, Chapter President

Well, summer has retreated early this year and so, the weather that we love living here for is now upon us!

The Kachina Chapter's Annual Fall Seminar went well indeed. I and other Board members have received kudos for its success. However, the success of the Seminar had many other contributing factors:

A blend of excellent speakers with topics geared to our theme of Detours and Roadblocks along the Road to Progress were well received.

The hotel assisted us in great style, as they have now for three years. However, the hotel has been sold and may not be within our economic reach next year. Thus, I ask all members to be on the lookout for an equally suitable venue for next year and let your Executive Board Officers and Committee Chairs know if you think you have found the 'next' place for us!

The attendees (mostly IRWA members and mostly local members at that) were active both in and outside of the meeting room and had great questions for the speakers – none of whom I perceived as dodging any issues, but answered competently and directly to all questions.

It was great to have T. D. Rice, Past Chapter President and SR/WA present for the opening of the Seminar.

It was unfortunate that due to ill health one of our grand members, Bev Francy, had to receive her Special Services Award over the telephone at the Seminar Luncheon. However, I have recently spoken with her quite recently and she seems to have her pizzazz back!

I look forward to seeing many of you at our Chapter Luncheon on November 7th! In the mean time have a great Columbus Day and a very HAPPY HALLOWEEN!

The election for your 2007 Chapter Officers was held on September 7th. Here are your incoming officers:

1 year Int'l Director: Michael 'Doc' Sterling
2 year Int'l Director & Chapter President: Caroline Tillman, R/W-RAC
President-Elect: Cate Chamberlain
Secretary: Doug Estes, MAI
Treasurer: Kathie Sholly, SR/WA
3 year PDC Member: Lisa Amos, SR/WA

The installation luncheon will be held on Tuesday, December 12th.

International Director and Region One Vice-Chair Reports

Chris Banks, SR/WA

My first meeting as Region One Vice-Chair will be at the Fall Forum on October 14 in Sacramento. I hope I can live up to everyone's expectations and do as good a job as Mark Keller and Carolyn Carrica did! Now on to business!

Region One Vice-Chair Responsibilities

International has given the International Region's Vice-Chairs the additional responsibility of making sure that the Chapters don't have conflicting schedules with their proposed classes. This has already given me heartburn because I had to be the "bad cop" and tell a chapter they couldn't present a class because another chapter in the region had it scheduled. There was a great outcry but it all worked out. However, this wasn't my idea of a fun way to start out a new position.

SR/WA Designations – a Helping Hand from International

Part of International's plan for the recruitment of new SR/WAs involves getting all of the Core classes presented every 3 years within the geographical reach of anyone who wants to attend. If a Chapter needs the class and can provide as few as 3 students, International will take on the financial responsibility to present the course if necessary. This is good news for all of the small chapters.

Local Elections Issues:

State Trust Land Propositions 105 and 106

There are 2 propositions on the ballot for November 5 regarding State Trust Land. I attended a luncheon last month where the issues were debated by two attorneys, Grady Gammage and Becky Burnham. The underlying issue is that these Propositions contradict each other meaning that if they both pass, it will be up to the attorneys and the Legislature to sort it all out.

Proposition 105 is a referendum put on the ballot by the Arizona Legislature and Proposition 106 is a citizen's initiative that everyone is calling "Conserving Arizona's Future". I asked someone who works at State Land how I should vote and I got the answer that even they didn't even know which was which. So if you need a little help deciding, I have asked both attorneys to provide us with their opinions to be included in this newsletter. If they don't get them to us in time, here is a synopsis of their arguments:

Proposition 105

The purpose of this proposition is to give local governments and citizens the responsibility to decide what State Lands should be set aside for local space. This would amend the State Constitution to conserve up to 400,000 acres in non-rural areas and ensure that any land that is sold brings the highest values possible to benefit state schools.

Proposition 106

This Proposition would create a seven-member Board of Trustees, the majority of who would have strong public school ties, to decide which lands should be sold or how it should be used in ways to best benefit schools.

Gammage rebutted Burnham's supporting arguments for Proposition 105 by saying it was "put on the ballot as a spoiler to confuse voters so that both propositions would fail".

Burnham argued that Proposition 106 was too complex. She said it strayed from the original intent of the State School Trust Fund, had negative economic affects and would hurt homebuilders and cattlemen.

Well, now that I have confused the issue even further, how will you vote?

No on Proposition 106
Yes on Proposition 105

Rebecca L. Burnham * August 28, 2006

Arizona holds approximately 9.2 million acres of land in trust, gifted to the state by the federal government at the time of statehood for the benefit of several designated beneficiaries, primarily our public schools. Most of this land is located in rural areas and is the subject of grazing leases. Nearly 1 million acres of state trust land, however, is now within the urban planning areas of Arizona's counties and municipalities. This land – which constitutes the most valuable land portfolio in the United States – represents the last significant source of undeveloped land in Arizona's urban planning areas. As such, the land is needed to support the extension of infrastructure and the growth we know is going to occur over the next 20 years. If properly planned and disposed of, this land also has the potential to funnel billions of dollars into the state land trust, the earnings from which go directly to Arizona's public schools.

This year, there are two competing measures on the ballot, both of which address trust land, Prop 106, also known as "Conserving Arizona's Future", and Prop 105, a legislative referendum. Prop 106 proposes to set aside approximately 700,000 acres of trust land in a conservation reserve and make sweeping changes to the legal framework governing state trust lands. These changes are unnecessary to achieve the stated goals of the backers of Prop 106 and, if implemented, would severely compromise the ability of the State Land Department (SLD) to effectively plan and dispose of the urban trust land portfolio while also depriving the public schools of the returns rightfully due to them. By contrast, Prop 105 provides for the designation of approximately 400,000 acres of trust land for conservation while making minimal changes to the legal framework governing state trust lands. These changes would strengthen the SLD's ability to meet the needs of growth and fulfill its obligations to the trust beneficiaries by focusing the SLD's planning efforts on the urban trust lands portfolio while also providing additional flexibility to plan for conservation and infrastructure.

In specific terms, Prop 106 would reverse existing law, under which the SLD determines when and where the interests of the trust beneficiaries will be best served by planning trust lands, and, instead, would allow Arizona's counties, cities and towns to dictate when and which of the remaining 8+ million acres of trust land would be planned, and what for. These "any time, anywhere" land plans would be permitted to designate unlimited amounts of trust land for conservation, with no requirement that price or terms of payment for the conservation land be established and no requirement that the conservation land ever be conveyed out of the trust. Instead, once the conservation designation attaches, Prop 106 would impose new active management obligations on the SLD (to "preserve" a laundry list of enumerated attributes including the "natural, cultural and historical" values of the land). Although Prop 106 would require that a new politically-appointed board approve the land plan designating conservation land, that approval seems a near-certainty in most cases given the likely composition of the board (virtually anyone would qualify as a board member), the likelihood that such designations would often be made prior to the time when infrastructure needs and development potential of the trust lands are known, and the near-certain political pressure to fulfill the new mandate of Prop 106, to "promote ... conservation and sound stewardship". Under Prop 106, therefore, a lot of trust land would be designated for conservation and most of it would remain in the trust indefinitely. Since Prop 106 includes no provision for infrastructure or public access, with respect to trust land designated for conservation while it remains in the state land trust, a lot of trust land would be effectively out of reach for these purposes irrespective of the impact on later-established infrastructure networks or public recreational needs.

Prop 105, meanwhile, would leave the SLD in charge of deciding when and where to plan state trust land which, in turn, would almost always result in planning to meet the needs of growth, including infrastructure, as that is where the value to the beneficiaries lies. Prop 105 would also restrict conservation planning to urban trust lands, since it is only when trust land is ripe for urban planning that infrastructure needs and development potential of the land can be known (and, by extension, the interests of the trust beneficiaries properly taken into account when making conservation designations). This also recognizes that, until trust land becomes urbanized, it is automatically conserved as it is subject to grazing leases and not threatened with development. Prop 105 would also require, concurrent with the conservation designation attaching, that the price and payment terms for any "extra" conservation land be established and that such land be conveyed out of the trust, the only meaningful way to protect the interests of

Continued on next page....

the beneficiaries, encourage thoughtful conservation designations and ensure meaningful public access. Prop 105 also expressly provides for infrastructure planning and installation notwithstanding a conservation designation so long as the conservation attributes of the land are not impaired (for example, most urban land designated for conservation is recreational open space, generally compatible with paths, trails, drainage areas and other rights-of-way).

Beyond the conservation planning provisions of Prop 106, the new board would be authorized to reserve a portion of trust land proceeds to fund activities of the SLD, instead of the proceeds going to the state land trust as they do now. Although the backers of Prop 106 imply that the additional resources would be used to plan (and add value to) urban trust lands, the most likely uses of such monies would be the expensive new cost centers that would be established by Prop 106, the new board and the new active management mandates. Indeed, these new costs could easily offset most, if not be significantly more than, the amount of funds diverted from the state land trust. Prop 105 would not authorize any diversion of trust land proceeds.

Prop 106 would also authorize the new board to "prescribe a method" whereby the highest and best bid at an auction of trust land would be determined, meaning the board could award trust land to a bidder other than the bidder who submits the highest bid at public auction. Prop 105 would not change existing law, which already allows the SLD to auction trust land subject to a participation interest but also requires the SLD to accept the highest bid, including whatever participation feature is included, submitted at an open public auction. Both measures would authorize the grant of public rights-of-way without auction, subject to appraisal, although Prop 106 would extend this authorization to private rights-of-way, as well.

In sum, there are a lot of myths about state trust land including that the SLD lacks the “tools” needed to plan properly. While additional discussion is beyond the scope of this article, the real impediments to more effective planning and disposition of state trust land, including for conservation, have been institutional and political and not the constitutional safeguards that protect the state land trust. Prop 106 would gut those safeguards, authorizing an unprecedented raid on the state land trust in the name of conservation while establishing a highly politicized new bureaucracy; the net result would be far greater constraints on the movement of urban trust lands into the market than exist under the present framework to the detriment of the beneficiaries and the state. By comparison, under Prop 105, there would be no expensive new bureaucracy and no expensive new management obligations foisted on the SLD; instead, the mission of the state land trust would remain intact while the SLD would be given added flexibility to plan the urban trust land portfolio to meet legitimate conservation goals while also satisfying our state’s need for infrastructure and land to serve the growth we know will occur.

Don't forget to vote.

November 7th

Vote No on Proposition 207

Grady Gammage, Jr.

(Article authored for ThinkAz, and will be published in an upcoming publication)

Proposition 207 is a red herring designed to fool Arizona's voters into passing a dangerous measure that will undo zoning laws, freeze water management statutes and stop all manner of normal and beneficial government regulation under the guise of "protecting homeowners".

In the wake of a controversial U. S. Supreme Court decision allowing the use of eminent domain by a town in Connecticut to take private property away from an owner for the purpose of generating economic benefit to the town, an eastern real estate developer named Howie Rich has funded initiatives all over the U.S. purporting to limit such actions. But the Arizona Supreme Court has already established far more restrictive rules for Arizona in *Mesa vs. Bailey*. Mr. Bailey won that case, and Mesa was not allowed to take his house. The provisions of 207 dealing with eminent domain are largely meaningless.

Buried deep in 207 is the real goal—to require payments to property owners for all effects of land use regulations. This would radically alter rules in effect since before Arizona became a state. Under existing law, planning, zoning, city ordinances and state statutes sometimes limit, or burden, property rights (like prohibiting you from starting a restaurant in your house) and sometimes benefit them (like restricting your neighbor from putting in a convenience market and devaluing your home). Prop 207 would end that practice—new statutes and ordinances could never add to existing regulations on property unless the government pays. The recently enacted Growing Smarter legislation would be largely undone; zoning regulations could never be changed; the Groundwater Management Act could not be amended; no regulation of wildcat subdivisions would ever be allowed.

If you think cities should use zoning powers to protect military airbases, limit density, control "big box" retail or make development conform to a general plan, then you should vote NO on 207, for it will undermine all those efforts. Should we try to limit development on hillsides, in washes or other sensitive areas? Most Arizonans think so, but if 207 passes those efforts will end.

A similar initiative, called Measure 37, was passed in Oregon, and nearly $3,000,000,000 in claims have been filed against the state. Prop 207 has some exceptions Oregon's measure didn't have, but make no mistake—it will cost us hundreds of millions of dollars, lead to endless litigation, and stop dozens of potentially important pieces of local regulation. Maybe the negative impact is only one billion, but that money will come from new taxes.

Arizona isn't Oregon, a state where growth management has often run over private property owners. Nor is it Connecticut, where the Town of New London condemned a house to make way for a factory. Arizona has done a good job of balancing private property rights with the need to protect the environment and regulate development. Proposition 207 is an effort by outsiders to undo that balance. Arizonans shouldn't be fooled. Arizonans should vote NO.

Yes on 106

Grady Gammage, Jr.

State Trust Land is one of Arizona's most important assets. We hold about nine million acres in trust for the express purpose of earning money to benefit our public schools. Some of this land is extraordinarily valuable for development, and some of it is best left alone. Unfortunately, for the last thirty years, this land has too often been treated as a political football to be fought over, rather than a resource to be managed.

This year's ballot unfortunately continues a heritage of divisive squabbling. Two measures on this ballot deal with trust land—Prop 106, "Conserving Arizona's Future"; and Prop 105, referred to the ballot by the legislature. Unfortunately, there will be an instinct on the part of many voters to say "no" on both because they seem confusing. Proposition 106 is by far the better choice.

We must do three important things with this land: make a lot of money for our schools; conserve important open space; release land to the market in a careful manner to achieve more sustainable development. Prop 106 was crafted by a broad based coalition of environmental, educational and business interests to achieve those goals.

Both propositions will go far to fix a problem that has bedeviled the State for decades—the inability of the Land Department to dedicate rights of way. There are dozens of roads—including Scottsdale Rd, that exist on old rights of way which were ruled illegal by the U.S. Supreme Court. 105 would make these automatically valid, while 106 would create an approval process to legalize them.

Unfortunately, that's about all 105 does of significance. 106 does far more, which is why I feel strongly that it is the better choice. First, 106 immediately preserves far more land as open space. Additional open space is identified and preserved by working with local communities. 105 requires individual actions by the legislature to conserve land. Second, 106 creates a Board of Trustees to oversee the State Land Department, insulating it from political and legislative interference in management that has plagued past decisions. Third, 106 provides a dedicated funding source for the Department from the revenues it earns.

As voters, we don't often get to make truly critical, long-term decisions about the future quality of life in our state. This year, we do. Proposition 106 is that opportunity.

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

Roger Ottaway

A little more than a year has gone by since the revised regulations for Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) for Federal and Federally-Assisted Programs went into effect (February 3,2005). Now that you've been working with the revised regulations, what are your thoughts on the changes that were implemented? This article is the first in a series of future articles that will review, discuss and provoke thoughts pertaining to some of the significant or important changes in the Uniform Act regulations.

Did you happen to notice the word (Revised) in parenthesis in the title above? That appears to be the most appropriate and best adjective to explain the changes to the Uniform Act. As stated in the introduction of the regulations the intent of the changes is to *"clarify present requirements, meet modem needs and improve service to individuals and businesses affected...* ". The introduction goes on to say that the regulation (Uniform Act) was not fully reviewed, updated or comprehensively revised since its publication in 1989. In other words some parts were changed and some parts stayed the same.

The Uniform Act applies to all acquisitions of real property or displacements of persons resulting ITom Federal or federally-assisted programs or projects and affects 18 Federal Agencies. Here are a couple of questions for you. Which agency is the designated "lead" agency to administer the Uniform Act? Which of the 18 Federal Agencies was most recently created?

The designated lead federal agency that was directed to coordinate the revisions and updates is the Federal Highway Administration (FHW A), Department of Transportation (DOT). Did you guess that Department of Homeland Security was the most recent Federal Agency created and is also required to comply with the Uniform Act?

Finally, you may be have wondered as to who participated in the review and revision of the current Uniform Act regulations. In addition to representatives ITom each of the 18 Federal Agencies serving on a task force to identify the need for revisions, the public and especially the stakeholders were given the opportunity to comment on proposed changes. A total of775 comments were received and reviewed by another task force made up of representatives of 12 of the 18 Federal Agencies. In summary, a significant nationwide and thorough process was completed in order to *clarify, update and improve services* required by the Uniform Act.

Here's the teaser question for the next article. Where do you find mention of the Federal statutes that prohibit discrimination on the basis of race, color, sex, age, religion, national origin or disability?

Is Eminent Domain Traveling Into A Brave New World?
Kelo Revisited

by Christina E. Koehn

A previous issue of Legal Perspectives contained an in-depth analysis of the United States Supreme Court decision of Kelo v. City of New London. Much hype surrounded the decision when it was first published. Many media pundits predicted that the Kelo decision would have a far-reaching effect on property rights throughout the country. But will the Kelo decision have the effect on Arizona as has been predicted?

Summary of Kelo

The Kelo case concerned the City of New London, Connecticut, which had been experiencing hard economic times. In 1990, a state agency designated the City of New London as a "distressed municipality." In addition, in 1998, New London's unemployment rate was almost twice that of the State of Connecticut. These economic conditions led New London to adopt a redevelopment plan to revitalize its economically distressed city. Through the plan, New London was going to acquire, through voluntary purchase or condemnation, property on which to build a hotel, retail stores, restaurants, and residences, all of which would be in close proximity to a new pharmaceutical research facility. The New London City Council approved the plan and authorized a development agency to acquire property via eminent domain in New London's name. The agency negotiated voluntary purchases of all but a few properties, which led to the agency filing condemnation proceedings.

The property owners whose properties were condemned consisted of people who lived on the properties as well as investors. One property owner was born and lived on the property her entire life.

At trial, the court issued a ruling that prevented New London from taking some of the properties, but allowed other properties to be acquired (mostly office space). Both sides appealed the decision. The Supreme Court of Connecticut held that New London's proposed acquisitions were valid takings. The court relied on a state statute and prior U .S . Supreme Court cases in rendering its decision that economic development qualified as a valid public use. The property owners petitioned the United States Supreme Court to hear the case.

The United States Supreme Court in a closely decided opinion (5-4 vote) affirmed the Supreme Court of Connecticut's decision. The Court held that "promoting economic development is a traditional and long accepted function of government," and therefore constituted a public purpose in eminent domain analysis. The Court deferred to New London's judgment regarding the implementation of a development plan through the acquisition of private property. Significantly, the Court relied on its previous cases in rendering its decision. Those opinions included:

* Berman v. Parker (a 1954 case that upheld the condemnation of a department store, which itself

was not blighted, in order to redevelop a blighted area of Washington D.C.);

* Hawaii Housing Authority v. Midkiff (a 1984 case that upheld a statute which allowed fee title to be transferred from landlords to tenants in order to spread ownership of land formerly held by only a few families);

* Ruckelshaus v. Monsanto, Co. (another 1984 case that upheld a law allowing the Environmental Protection Agency to consider data, including trade secrets, submitted by one applicant in evaluating an application by another applicant as long as the second applicant paid for the data).

The Court concluded by noting that its determination did not preclude the states from enacting more restrictive laws on the exercise of eminent domain.

Continued on next page....

What's All The Hype?

While much talk surrounding the Kelo case asserts that Kelo breaks new ground in the eminent domain area, this assertion is misplaced. In fact, the Kelo opinion reflects U.S. Supreme Court precedent and its policy of noninterference in legislative determinations, such as the City of New London's determination that economic conditions dictated the taking of private property for revitalization. One of the most relied upon eminent domain treatises, Nichols on Eminent Domain, discussed the Kelo court's consistency with precedent:

Although little in [New London's development] plan demonstrated any actual use by the public, the Court recognized that it had embraced a broader and more "natural" interpretation of public use as "public purpose" at least since the end of the Nineteenth Century and "we have repeatedly and consistently rejected that narrow [use by the public] test ever since." The Court found that this broad definition of public use accorded with its long-standing policy of deference to legislative judgments. The Court relied upon its decisions in Midkiff and Berman as demonstrations of deference to federalism and state decision making.

Many commentators have vilified the Kelo decision by emphasizing the transfer of property from one private entity to another private entity. What they failed to stress is that the City of New London's economic redevelopment plan went through several public hearings. In addition, the City of New London was going to retain title to the property and lease the property to the developer on a long-term basis. Further, New London's agreement with the developer required the developer to provide specific facilities and services according to New London's redevelopment plan.

The Kelo decision does not broaden eminent domain powers as they currently exist under Arizona law. In fact, Arizona revised its redevelopment statutes in 2003 by imposing several requirements on cities before they may exercise the power of eminent domain for redevelopment. In addition, a landmark Arizona Court of Appeals decision in 2003 (Bailey v. Myers) held that any public benefits from an acquisition through condemnation must "substantially outweigh" the private nature of the use. The Bailey court set forth the several factors to consider in a "public use" determination. The Bailey court further indicated that the federal constitution "provides considerably less protection against eminent domain than [Arizona's] Constitution provides."

However, the impact of the perception of the Kelo decision may be significant. Legislatures across the country, including Arizona, are proposing legislation to severely restrict the use of eminent domain not just for redevelopment projects but for other projects as well, such as for public transportation. These legislative changes, if made, will result either in higher costs for public projects or the abandonment of those projects. The effect of the Kelo decision could be the opposite of what many people predicted.

Christina E. Koehn is an Assistant City Attorney with the Litigation Section of the City Attorney's Office. She has been with the Law Department since 1991.

Christina Koehn
Assistant City Attorney
Phoenix Law Department - Civil Division
200 W. Washington St., Ste. 1300
Phoenix, Arizona 85003
fax: 602-534-2487
e-mail: chris.koehn@phoenix.gov

Historic Preservation Program

by Marsha Wright

The City of Phoenix has a Historic Preservation (HP) Program that is designed to identify and preserve certain historic properties within the City . Sections 44-801 through 44-812 of the Phoenix City Code establish a definition of "historic property" and set forth a specific procedure for identifying, designating and preserving some of those properties. Under this HP Ordinance, a property may be considered a "historic property" if that property

* serves as an important representation of broad patterns of history,
* is associated with the life of a historically important person ,
* conveys high architectural or artistic values, or
* offers certain archeological contributions.

The Ordinance also provides for the establishment of a Historic Preservation Office headed by an HP Officer, the establishment of an HP Commission comprised of nine citizens possessing HP knowledge and appointed by the City Council, and for a process for appealing certain HP related decisions.

An area such as a neighborhood or district may be awarded the designation "Historic District" if the properties in that area meet the above Ordinance definition of "historic property" and, with respect to significance, age, and integrity, also contain significance in local, regional, state or national history, architecture, archaeology, engineering, or culture. There are currently 35 residential and 10 non-residential Historic Districts in Phoenix.

Historic Landmark

In addition to providing for District designation, the HP Ordinance also allows an individual property, including those within Historic Districts, to be awarded the special designation of "Historic Landmark" if, in addition to meeting the Ordinance definition above, the site also contains an outstanding or unique example of an architectural style, is associated with a major historic event, has unique visual quality, or is a site of general historic or cultural recognition by the community. There are currently ten Phoenix properties with the HP-L designation.

The Historic District or the Historic Landmark designation process is begun by the filing of an application with the Phoenix Planning Department. The application process may be initiated by the property owner, the Historic Commission, the City Council, or by the Planning Department itself. After submittal, the application is forwarded to the Phoenix HP Office which researches the property and submits its staff recommendation to the Phoenix HP Commission. The HP Commission holds a public hearing on the application and then submits its recommendation to the Village Planning Committee for local area input. The Village Planning Committee then forwards its input to the Phoenix Planning Commission who considers the overall impact of the application and forwards its recommendation to the Phoenix City Council for Council approval or denial. If the City Council approves the designation of the property as either a Historic District or a Historic Landmark, the property will receive overlay zoning to reflect either "HP" or "HP-L" zoning, respectively. The term "overlay zoning" is used since the HP or HP-L zoning classification is in addition to any other zoning classifications already placed on that property. Properties that are awarded the HP or HP-L overlay zoning are then listed on the Phoenix Historic Property Register

Applications to Alter the Exterior of a Historic Property

Once a property is designated as Historic, the property owner may not make any alterations, additions or repairs to the exterior of the property unless and until the property owner first files an application with the Phoenix HP Office, requesting review of the proposed work and a permit to perform the proposed work. The HP Officer will review the application and may issue to the owner either a Certificate of No Effect indicating that the proposed work will have no effect on the historic character of the property exterior, or the HP Officer will set the matter for a public hearing. After considering the evidence presented at the hearing, the HP Officer may then deny the application or may grant the application and issue a Certificate of Appropriateness, either with or without stipulations or conditions. After the owner is issued the necessary Certificate, he may then apply for any building permits required for the proposed work..

Continued on next page....

If the property owner disagrees with the decision of the HP Officer, the owner may appeal that decision to the HP Commission, who will conduct its own public hearing on the matter. The HP Commission may affirm, reverse or modify the decision of the HP Officer. The HP Commission decision is appealable to the Phoenix City Council who will conduct a public hearing on the matter. Any review of the City Council decision is by way of a special action filed in the Maricopa County Superior Court.

Applications to Demolish a Historic Property

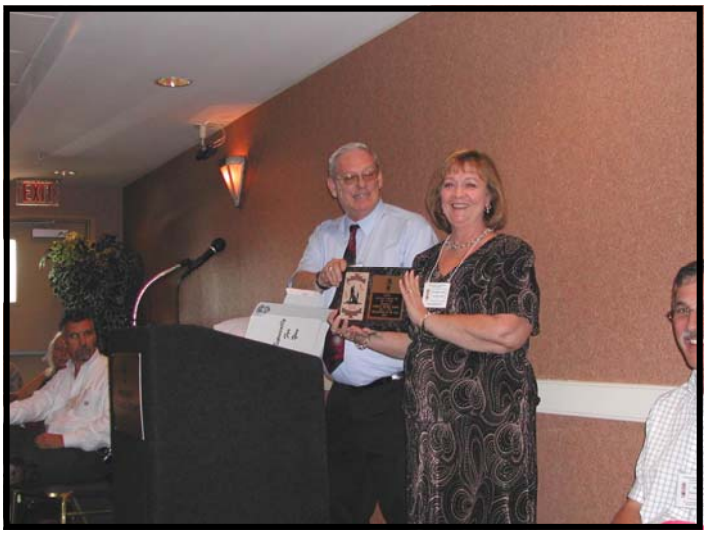
If an owner of a Historic property does not want to merely alter the property but instead wishes to demolish it, the owner must first apply to the HP Office for Demolition Approval. If the Demolition Approval is denied, the owner must wait one year for HP zoned property, or three years for HP-L zoned property, before beginning the demolition work.. The waiting period is designed to allow those interested in saving the property an opportunity to work with the owner to raise the funds to either repair or purchase the property, providing the property owner is willing.

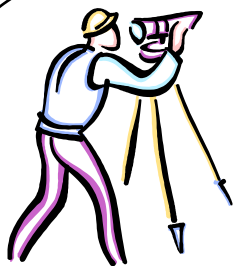
Once a property is zoned as Historic, the property owner may be eligible to take advantage of various City programs designed to aid in the preservation efforts. These City programs include education workshops, technical and design assistance, and enable owners of Historic property to apply for financial assistance from the Historic Preservation Bond Fund. In the second half of fiscal 2005, Phoenix invested approximately $839,000 in HP bond funds into private rehab projects, with the private property owners contributing matching funds in the amount of approximately $956,000. For additional information on the Phoenix Historic Preservation Program, visit www.phoenix.gov/historic.

Marsha H. Wright works in the Public Services, Land Use and Development Section of the Law Department.

Gayle Leonard, SR/WA
2006 Special Services Award presented by Chris Banks, SR/WA

Chris Banks, SR/WA
2006 Professional of the Year Award
presented by Mike Burns, SR/WA





Surveyor's Corner

Gregg Tuttle, Manager
SRP Land Department
Surveys Division

Question:

I work for a utility company. In many instances we acquire utility easements, (usually along one of the customers' property lines, say an eight-foot width strip from the street to the point of termination.) The thing that amazes me is that in what appears to substantially similar surveys, the costs can vary by as much as four times?!?!? Why is that?

Well, I think that the operative phrase is "*substantially similar*".
I am presuming that you are looking at the similarity in the layout configuration, and the overall distance, and **IF** that were all that determined the cost of the survey then your question would be spot on. Unfortunately, the shape and the length of the requested easement are only the beginning.

Many uninitiated individuals in the lay public believe that all the surveyor needs is a copy of the property's deed to perform a boundary survey, (of which an easement survey is a subset of boundary survey, by Arizona regulation and rules.) However, I would most certainly hope that the vast majority of the (professional R/W Association) readers of this column would know better.

The property's deed (and/or a (hopefully) recorded "Results-of-Survey" (ROS) drawing) are a good first place to begin the surveying exercise. Most lay persons who need to hire a professional land boundary surveyor usually have a copy of their deed and some may even have a copy of prior survey drawing. Some also have a copy of the County Assessor's map (*but, assessor's graphics should NEVER be used as the only determiner in a land boundary property survey.*)

The surveyor may choose to begin with just the deed (and drawings, if they are available).
The surveyor should start with the property itself, to determine if the parcel fits the supplied "legal" description, such as for the distances between the corner monuments found, and as to the shape and area of the parcel, as determined from such information as the bearings along the line and/or the angles between the lines of the property.

Presuming that the property and the found corner monumentation "fits" the description, AND, that there were no obvious, visible signs of encroachments (either ONTO or FROM the property), then the surveyor will use the given 'deed' information to work backwards to the "Point of Beginning" (POB) and (if different) the "Point of Commence" (POC) for the description.

Now, hopefully, the surveyor found "no problems" during the verification of the actual possessed and occupied property as related to the given / supplied deed and/or drawing information.
GOOD! NO – EXCELLENT!!
Now that surveyor can "*probably*" layout the proposed easement location, create either, (as appropriate), a ROS drawing or an exhibit sketch, and forward the graphical presentation to the company's friendly neighborhood land-agent, or land consultant, to complete the easement acquisition.

Unfortunately, in a non-trivial number of occurrences, the survey does always NOT unfold according to the hoped for and described game-plan. There can be an infinite number of possible scenarios that cause our "quick & low-cost" boundary survey to mutant into a long drawn out and (very) expensive exercise in futility, that is know as "*the boundary survey from hell*" (BSFH), (please pardon our *french*.)

While many books have been written covering a wide variety of BSFH scenarios, we will just focus on a couple of aspects. For this example we will concentrate on the situation where the preferred property boundary line for the easement appears to be in conflict with the adjoiner's (common) line.

Continued on next page....

Surveyor's Corner continued

Now sometimes the first thing a utility company might consider is: *"can we either increase the width of the easement (to get our physical facility further away from the problematical boundary line)? Or, can we relocate the proposed utility facility to another location on the property, thus avoiding having to participate in the resolution of the boundary line problem?"* For the sake of this article we will simply state that those options were not available, and, as such, the utility surveyors are now involved in determining the correct location of the boundary line from which the easement is to be referenced and co-located.

The field surveyors have discovered what apparently appears to be a serious overlap between the adjoiners, a lot the property boundary line in question. And, for the sake of brevity, we will stipulate that it has been determine that the problem is discovered to be one that may have been created when the adjoining parcels were created from a parent parcel.

Parcels of land created from a parent parcel, by a common grantor, are commonly know as *sequential conveyances*. Senior (prior or "superior") rights are determined by examining the deeds of ALL of the parcels created from the parent parcel with respect to the date that they were initially executed. The surveyor most now obtain an original chain of descriptions so as to be able to plot the parent parcel, and then create a "*deed-mosaic*" by plotting all the parcels created from the parent parcel, in chronological order. Once the "*deed-mosaic*" is completed and all the gaps and overlaps are discovered and displayed, the boundaries of the subsequent subject parcels *might* be resolved, (well, at least, initially, on paper.)

Surveyors and land professional (*should*) know that the first time a party conveys a portion of his or her land that *a senior right is created* ***in favor of the grantee***. That right insures the grantee, and the grantee's successors, heirs, and assignees, that they will always get whatever size parcel the first deed says that they will get, regardless of the dimensions of the parent parcel.
The grantor becomes junior and retains the remainder. (**NOTE** – one exception to the grantee becoming senior occurs when the deed from "A" to "B" reads: "*All of Lot 08 Excepting therefrom the Westerly 60 feet.*" Then, "A", the grantor, is senior, and is assured of a 60-ft parcel.)

Other than the exception note, what about parcels that were conveyed first that did *not* become senior, or have since 'lost' there senior status? Could something occur to change senior status of that parcel, now making it a junior parcel? Unfortunately, YES, there are various situations and scenarios that can or could have occurred to change the apparent seniority of a parcel from senior to junior OR from junior to senior. Several of the scenarios involved when the various deeds created got officially recorded, (for you land professionals, this entails knowing whether *Arizona* is a "*Pure Race*" or a "*Race Notice*" or a "*Pure Notice*" state as far as its state statutes involving the chronology of recorded (and unrecorded) documents of land transfer. Talk among yourselves. J)

These recordation determinations are different then discovering physical evidence that might indicate that the corner monument was established incorrectly, and, also different then situations involving acquiescence, prescriptive or adverse land rights. Something surveyors are (un)lucky enough to discover ALL of the problems mentioned, from senior/junior, to mis-monumentation, to adverse (unwritten) property rights which 'ripened' concerning the subject property boundary line. From a utility company's perspective, some creative solutions as far as easements are concerned involve many different approaches, from getting easements from both adjoining property owners, to blanket easements, to withholding utility infrastructure - until the adjoiners can work out a solution, in additional the those solutions mentioned early.

In any case, as you can (hopefully) understand, the cost, and especially the timelines and timeframes for easement acquisition, (surveying and land-agent work), can quickly escalate when such unexpected - (but unfortunately, not uncommon) - conditions are discovered during what was anticipated to be just another quick & low-cost acquisition assignment.

Well, that's it for this article from the "*Surveyor's Corner*."

If anyone has feedback or comments, please feel free to share them.
As always, I am interested in the opinions from, the readers of the Kachina Chapter 28 Newsletter. Please keep sending in those questions.
Until next time, Thanks for reading about land surveying & land surveyors. –
Gregg Tuttle, AZ/RLS # 11121; Manager, SRP LAND-Surveys Division