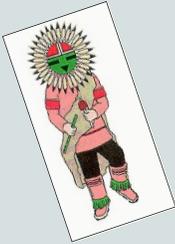


Kachina Chapter 28



INTERNATIONAL RIGHT OF WAY ASSOCIATION

Newsletter

SEPTEMBER, 2007

www.irwaaz.com

2007 Kachina Chapter Executive Board

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Mark Keller, SR/WA
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LOOK FOR PICTURES INSIDE!!!

2007 Award Winners

Special Services Awards ~

- Sharon Dyke of Empire Title
- Roger Ottaway of Move Cost Specialists

Professional of the Year ~

- Michael Burns, SR/WA of SRP

Employer of the Year ~

- City of Phoenix

October Board Meeting



Wednesday, Oct 3, 2007



4:45pm



3rd Floor Conference Room



Az State Land

Confirm your attendance with
Caroline at carolinet@acqsl.com

Thanks to everyone who sent in photos to be used in the newsletter. It is greatly appreciated.



This Super Bowl Jersey (donated by Kathie Sholly of the City of Glendale) was auctioned off for \$500 which will be donated to charity.

Thanks to everyone who bid and a big thank you to Bev Francy of Acquisition Sciences who had the winning bid.

PRESIDENT'S MESSAGE

Caroline Tillman, R/W-RAC, Chapter President

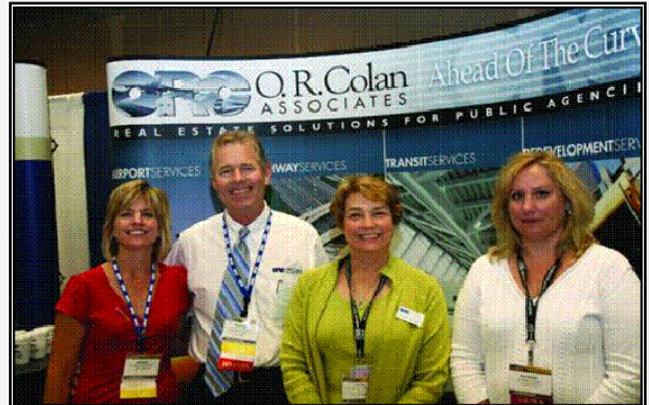
Where has the summer gone??? Here we are done with the fall seminar and planning for the installation luncheon in December. Congratulations to the new Executive Board!

The Educational Seminar was as hot as ever, maybe we were hotter than ever since we even had a fire alarm! Wow what an array of speakers, we learned all about what Glendale is doing to prepare for the Super Bowl, we even learned there is such a thing as the "½ time Flush"! Rest assured Glendale's water and sewer system is ready to handle anything flushed its way!



Recognize any of these folks at the International Conference?

How about some of these?



These folks? Don't let those soda bottles fool you!

Would you give \$7,000.00+ for the Struble bobble head?





Nominations and Awards

Chris Banks, SR/WA

If you attended the Annual Seminar on September 7, you participated in the election of your Chapter officers for 2008 and witnessed the presentation of the Annual Recognition Awards. The results of the elections and the presentation of the awards are as follows:

Chapter Officers 2008

1Year International Director: Caroline Tillman, R/W-RAC

President and 2 Year International Director: Cate Chamberlain

President-Elect: Doug Estes, MAI

Secretary: Kathie Sholly, SR/WA

Treasurer: Karen Williams, SR/WA

Your Chapter officers for 2008 will be installed at the December Luncheon. Please plan to attend to welcome them into office.

The winners of the Annual Recognition Awards are:

Employer of the Year, the City of Phoenix

Professional of the Year, Mike Burns, SR/WA

Special Services Award, Roger Ottaway

Special Services Award, Sharon Dyke

Congratulations to all recipients of these awards and to the newly-elected Chapter officers for 2008.



Mike Burns, SR/WA & Chris Banks, SR/WA

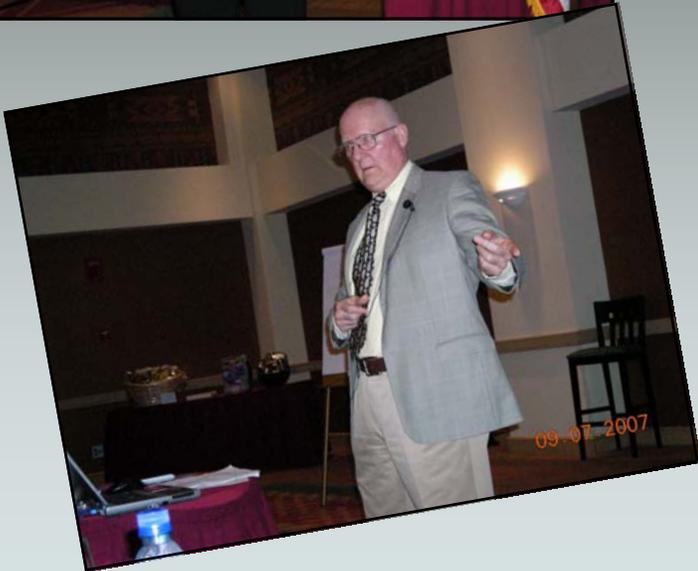


A representative from the City of Phoenix accepting the award for Employer of the Year



Sharon Dyke, Roger Ottaway & Chris Banks

Random Pictures from the 49th Annual Education Seminar



Random Pictures from the 49th Annual Education Seminar



What's it Worth To You?

Submitted by: Al Dickie, SR/WA

There is an on going debate as evidenced in current literature and in the regulatory siting process on the effects of location of new or expanded facilities. Arizona utility companies are confronted with this conundrum on a more regular basis now, as the explosive growth in Arizona has created demand. New or expanded power plants are especially vulnerable to challenge, with health issues and diminution in adjacent property values being the usual tools to challenge the proposed location. In this article, various attempts at valuation (or devaluation) will be discussed.

The literature is resplendent with various methods of how and when diminution should be calculated. The IRWA's periodical, the Right of Way Magazine, seems to have an article discussing various proposed methodologies in every issue. In light of recent court decisions on eminent domain, the arguments are rampant. Due to the issue of damages in condemnation, there have been significant studies done to try and establish some sort of metrics. Many studies have been done on power plants and to the best of my knowledge, there been not measurable diminution due to this sort of external influence to date. But as long as there is a possible argument, there's the possibility of money to be made.

There have been a number of proposed methods of trying to assess perception based impacts. These are based upon psychological and behavioral processes about perceived risks of adjacent supposed deleterious facilities. Psychometric Measures, is a field of psychological testing that has produced techniques for measuring opinions using survey and experimental approaches. In it, it asks individuals to rate to a degree of value to project by the degree by which the project should be avoided. One of my favorite articles on the subject is "The Psychometric Measures of Boredom". Some of you may think that I'm testing you now, but not so!

The next sort of study is a technique of asking people to place a monetary value on changes for which no market exists, such as how much would one be willing to pay for an improvement in environmental quality, or how much to accept for a perceived diminution in value. This is a sort of contingent valuation to measure the effects at a given distance from a respondent. It's called a Contingent Valuation.

Another proposed method is the Hedonic Model, or Hedonic Regression. Most of the Hedonic approaches assume that consumers perceive goods as bundles of features and all possible combinations are available in the market. Examples are lot size, garage, fireplaces, number of rooms, neighborhood characteristics and environmental conditions such as climate, crime rates, and access to amenities. The concept is that each of these can be measured by regression analysis of the estimation of price to the particular feature. These studies have been used on specific locations and may not be the same for a different locality. The studies do not use the comparative sales of similar properties reflected in the market.

All these studies that I have reviewed so far are anticipatory of the effects of a proposed facility. Studies on comparative sales after the placement of the facility are inconclusive as to the effect of the facility on the value of adjacent properties. One famous (or now infamous) "public official" once prophesized on the effects of an expansion of a power plant by definitively stating that residential property values would be depressed by as much as 15 percent and as many as 1,500 homes would be affected. Apparently the basis for this proclamation was an article published in 1974. The abstract of the article stated: It is found that in a residential community even a relatively small, clean power plant causes measurable damage over two miles away. The total damage is at least \$200 thousand and possibly as much as \$17 million. A power plant affects property values because people consider it a nuisance and require compensation for coping with its undesirable effects. The effect of a power plant on property value has been identified and measured. Within 11,500 feet of the power plant a typical property losses 0.9% for this value for each 10% move closer to the plant. If an electric utility company or government makes an estimate of the effect of the power plant on non-residential activity, then it will arrive at an estimate within the range. In this manner the location of the power plant can be selected so as to consider the social cost of the site, i.e., the cost on nearby property owners.

Continued on next page....

What's it Worth To You?

Submitted by: Al Dickie, SR/WA

At last, someone has found the answer! (Or so it appears at first blush). The gist of the argument is that the change in the property values measure the value of the disamenity associated with the power plant as long as 1), property is the immobile factor which absorbs the decline in value, and 2) everyone in the power plant area has the same demand for amenity. The article goes on to analyze the distance from the plant and recreate a model where the solution is explained as the property value calculation as a regression equation with various variables such as average number of rooms per house, the distance to the plant, the distance to Lake Michigan, the distance to railroad tracks, the distance to a park, distance to a commercial district and some others including an interesting category called BLK which I will discuss later.

"I'm flexible, what do you want the numbers to mean?" or as Mark Twain states, "There are lies, damn lies, and then there are statistics."

Rather than put you all to sleep, let me go to the crux of the matter. The basis for all the assumptions was from the 1970 U.S. Census Block statistics. They used property value figures that the property owner estimated and gave to the government, the entity that has the power to tax them. In addition, the author used the category BLK which was described as "percentage Negro". In short, he discounted values by the percentage of race as he stated that blacks in white suburbs break up social homogeneity, and therefore applied an arbitrary percentage as a deduction to be applied to a Census Block. In none of this did the author use the fundamental analysis used by appraisers in the Sales Comparison Approach by which most residential properties are valued.

The Sales Comparison Approach as stated in The Appraisal of Real Estate, 12th Edition from the Appraisal Institute: "A set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently..." In this manor, one can attempt to analyze what the market really says about the effects on value as it focus on similarities and differences that affect value. If two houses are exactly the same, then they should sell for the same amount. If the only difference is proximity to an external influence, then it can reasonably be assumed that there is a diminution in value because of its existence.

In tracking sales around the now expanded plant, there was no measurable difference in sales of residences in close proximity to the plant in the same subdivision compared to others farther away. There was no measurable difference in the percentage of value escalation in sales in subdivisions adjacent to the plant compared to subdivisions farther away from the plant. There were no differences in average days on market of residences and subdivisions adjacent to the plant and residences and subdivisions farther away. Is there a segment of the market that feels that close proximity to a power plant is repugnant? Indeed, but there is enough of the market that does not find it a factor, and that the differences in opinion do not show up as a quantitative factor.

Be careful what you conjure up on the internet. Best to read it carefully as it could be pretty bizarre after analysis.



What's in your neighborhood?



Gregg Tuttle, Manager
SRP Land Department
Surveys Division



Surveyor's Corner

“Gregg –

I was reviewing a situation, where, in the early 1950's there was recorded, (by the then landowner), a “QUITCLAIM DEED” purportedly transferring a strip of land, (40-ft wide for the length of the property), to a certain AZ County Highway Dept. Our assumption is that this was done in anticipation of the then existing county roadway ROW being widened so as to include that 40-ft strip.

BUT, we can NOT find any information that the County ever acknowledged and/or accepted that strip of land, and, also note that the roadway has never been widened, and also, that the County (now, the Department of Transportation) has no plans to ever do so.

HOWEVER, the County Assessor's documentation, (parcel map info), shows that strip of land identified as County property since the 1950's. (!?!?)

Question(s): Who owns the 40-ft strip? And, just how long is a “quit-claim” good for, supposing that parties being offered the quit-claim have never (yet) accepted?

*The property has been through several owners since the 1950s; are they, (subsequent owners), bounded by the quitclaim deed ****IF**** no others have ever accepted ownership (versus outright formal documented rejection of same)?”*

HUH?!? When did this column become the Kachina Chapter's “LAWYER'S CORNER”??

Seriously, isn't there someone more of a “legal” (expert) person to whom you could (should) have directed these questions? What?! They wanted a retainer?! Good-Grief! OK, I will give it a try.

Before I begin to discuss this topic, I MUST INCLUDE the following **CAVEAT / DISCLAIMERS**:

I am NOT an Attorney, nor am I offering any type of legal advice. If you think that you need such advise concerning your own situation, please, by all means, consult with a qualified AZ attorney.

The facts expressed below belong to everybody...

The opinions belong to me....

The distinction is yours to draw.....

The following expressed opinions are my own personal opinions, and as such, do not necessarily reflect those of my employer, (SRP).

There, now that I have gotten that out of my system; let's first list some standard reference definitions.

BLACK'S LAW DICTIONARY, (7th Edition, West Group, 1999): “quitclaim deed. A deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid. (Often shortened to quitclaim.)”

“A quitclaim deed purports to convey only the grant's present interest in the land, in any, rather than the land itself. Since such a deed purports to convey whatever interest the grantor has at the time, its use excludes any implication that he has good title, or any title at all. Such a deed in no way obligates the grantor. If he has no interest, none will be conveyed. If he acquires an interest after executing the deed, he retains such interest. If, however, the grantor in such deed has complete ownership at the time of executing the deed, the deed is sufficient to pass such ownership... A seller who knows that his title is bad or who des not know whether his title is good or bad usually uses a quitclaim deed in conveying.” (Robert Kratovil, Real Estate Law 49 (6th ed. 1974).

CLARK ON SURVEYING AND BOUNDARIES, (7th Edition, Lexis Law Publishing, 1997);

Chapter 18, “Reading Instruments of Conveyance” at § 18.03, page 601:

“Quit claim deeds are unique legal documents. They usually surface in odd situations and when examined usually do not have the hallmarks of a traditional real estate transaction; real consideration passing, a written contract, and a traditional formal presentation at a closing. They usually are used as a curative measure or for simplistic purposes. One will usually find a quit claim deed between individuals who have a close relationship.

“People will use a quit claim deed as a simple means of transferring an alleged, questionable or possibly illegal interest in property, because ‘someone told them it was the way to do it’, without going through the formalities of a true real estate transaction.

“Although courts have held a quit claim deed can transfer a valid interest in property, more often than not a quit claim deed will create legal problems, the greatest being the creation of a cloud of the title of a warranty deed. Many quit claim deeds are wild instruments that are prepared by friends, family members and even strangers to ‘boot-strap’ a questionable property interest.

“Since a quit claim grantor state, ‘Hey, I am not saying to you that I have any interest in this property, but to the limits or extent I do have an interest, I now give or grant, it to you.’

Continued on next page....

Surveyor's Corner continued

"This one statement can cause future legal problems in those states that have a Marketable Record Title Act, or that recognize the doctrine of after-acquired title, since both of these legal philosophies are based on a requirement of a legal root or base deed.

"Although courts will seek to convey the greatest estate possible if there is a question, when it comes to title or quality of title, they tend to support the least amount of warranty. If a deed fails to specify a warrant, the court will determine that the deed acts as a quitclaim deed.

"On the other hand, if there appears to be a question as to the amount of interest conveyed, the courts will look at the interest carried in the granting clause of the deed, because it is this granting clause that determines the interest conveyed.

"In a situation where the plain intent of the parties is determined, the courts will also examine the entire instrument in order to assure that innocent third parties will not have possible interests affected. This can occur when two parties signed a fee simple deed with a condition subsequent that encumbered a parcel of land neither party owned. The appellate court determined that as a matter of public policy, a condition subsequent in a deed involving one parcel of land may not place restrictions on another parcel of land. The court also addressed whether the time element relative to the power termination was valid. As a matter of law, the court determined that a party has a reasonable period of time in which to address a possible breach; otherwise, the power of termination will expire."

So, to review, from the subject set of questions that started this response, we have a recorded quitclaim deed purporting to transfer a strip of land to the (then) County Highway Dept.

But no one can find any supporting documentation (recorded or which any "quasi-public record sources) that confirms that the appropriate County authorities (in this case the County Board of Supervisors) ever (even acknowledged, much less) accepted the offer; nor, is there any evidence of any type of "consideration" having transpired between the 'quit-claimer' and the 'quit-claimee'. And, furthermore, we now have the County Dept. of Transportation, (successor agency to the Highway Dept.), disavowing any knowledge and/or desires concerning the strip of land in question.

Interesting!

NOTE: (Background info) - There are more recent (then the 1950s) circumstances, in which owners of (environmentally) "distressed" properties have attempted, via recordation, to 'quitclaim' said properties to certain governmental and/or quasi-governmental entities, (such as certain public-power companies). Said quasi-governmental entities have, as part of their defense, recorded affidavits of refutation and/or repudiation, documenting their denial of accepting any such quitclaimed properties for any reasons whatsoever. The last thing any of these companies want is for the County Assessor to note that the companies are now the (not so) proud owners of such "distressed" properties. OUCH!!!

In this subject case, we have no such records of denial, but then neither do we have any of the customary and required documents of formal acceptance and/or use of the parcel in question - - - except for the information to be gleaned from the County Assessor's public web-based GIS database. The Assessor's Office seems to have concluded that the County actual does own the strip-parcel in question.

That in turns raises questions, such as: Does the County Assessor have the legal authority to accept property on the behalf of the County government? If not, then does that mean that the County, through its Assessor's Office, is now owed 50+ YEARS of back property taxes on that strip of land? From whom?

My own PERSONAL Opinion is that the attempted quitclaim notwithstanding, the property never has left the chain of ownership of the parent parcel from which the strip was original described, and, that the current owners of the parent parcel still own that strip of land, - not the County.

(But, the contrary *may* still be shown by those with more (property law) knowledgeable that your friendly neighborhood survey; and even if my opinion is correct, it does not mean a court will necessarily agree.)

The only certain way to get this mess cleared-up and clean-up is to perform a QUIET TITLE ACTION with regards to that 40-ft wide strip, having the appropriate judicial district, with authority over that parcel, make a judicial declaration as to the current ownership, (*and then, someone, (please), remember to RECORD a copy of that official judicial action, - so that 50+ years hence some other poor land surveyor is not asked to figure it out all over again. Thank You!*)

As to the length of time before a "quit-claimed" interest expires, (i.e., the "termination"), as far as Arizona is concerned, I really don't have clue. The answer is one of law, (not facts), and, it probably varies on a "case-by-case" basis. Maybe someone knows of some AZ case law on this point.

Good Luck with that question! If anyone has an answer or even a guess, please let us know.