

ATTACHMENT B



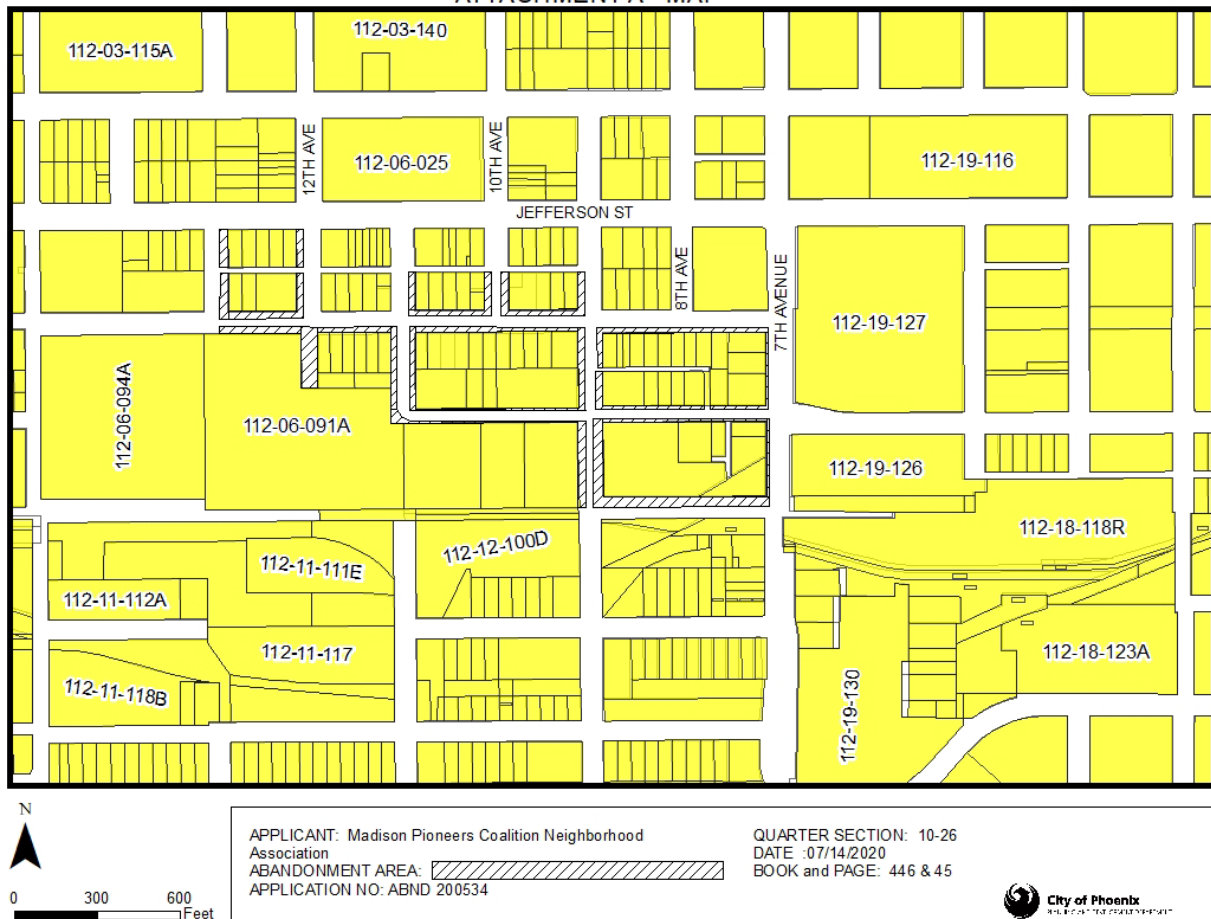
City of Phoenix

Planning and Development Department

December 8, 2020
City Council Abandonment Staff Report: **ABND 200534**
Project# **00-2009**
Quarter Section: **10-26**

<u>Location:</u>	South of Jefferson Street and East of 13 th Avenue
<u>Applicant:</u>	Madison Pioneers Coalition Neighborhood Association
<u>Request to abandon:</u>	To abandon several right-of-way and sidewalk easements, varying from 5-feet up to 30-feet adjacent to parcels identified on the map below.
<u>Purpose of request:</u>	Applicant states to reduce/eliminate a massive flux of violence, crime and unsanitary conditions accompanied with an influx of urban campers.
<u>Hearing date:</u>	September 10, 2020 TAKEN OUT FROM UNDER ADVISEMENT ON OCTOBER 6, 2020
<u>Hearing Officer decision:</u>	DENIAL
<u>Appeal hearing date:</u>	December 16, 2020 City Council Formal Meeting
<u>Appellant:</u>	Madison Pioneers Coalition Neighborhood Association

ATTACHMENT A - MAP



City Staff Research:

Staff research shows that the right-of-way was dedicated under Neahr's Addition, Book 002, Page 61 of the Maricopa County Recorder in 1897; Neahr's Addition Subdivision of Lots 1-8, Book 002, Page 28 of the Maricopa County Recorder in 1893; Evan's Subdivision of Block 29 Neahr's Addition, Book 002, Page 77 of the Maricopa County Recorder in 1900; Marshall's Subdivision of Lots 1-8 in Block 31 of Neahr's Addition, Book 003, Page 73 of the Maricopa County Recorder in 1909; Andre House of Arizona, Book 446, Page 45 of the Maricopa County Recorder in 1997; Jackson West, Book 810, Page 49 of the Maricopa County Recorder in 2006; Human Services Campus, Book 742, Page 25 of the Maricopa County Recorder in 2004. If abandoned, the right-of-way will be returned to the adjacent properties.

City Staff Comments

This request was routed to various City departments for their recommendations. Listed below are the responses from each department.

Street Transportation Department –Alan Hilty

"Recommend denial. The Street Transportation Department seeks resolution and clarity of the following items prior to consideration of the abandonment. The applicant is to coordinate and provide the following:

1. Applicant is to secure and provide to the City, approval from the Governmental Mall Authority and all stipulations resulting from their review for the abandoned area.
2. Applicant to identify and secure appropriate public and private easements for the continued use of existing public improvement. (i.e.) sidewalks, pedestrian ramps, streetlighting, etc., as well as private utilities that may be affected by such abandonment.
3. Applicant shall finalize an understanding with the City of Phoenix, regarding compensation for the abandonment area. Additionally, Applicant agrees to maintain a clean and sanitary public access easement, free from personal/human waste, drug paraphernalia, etc. at applicant's sole expense. Applicant acknowledges that the current weekly clean-ups performed by the City for the subject area would cease.
4. Applicant shall provide justification that their proposed reason for abandonment are legal, and if so, how the abandonment benefits the City.
5. Applicant is to coordinate with the City, on appropriate property restrictions to be applied to ensure no future modification, encroachment and or building occur in the subject abandonment areas.
6. Applicant to provide owner approval and identify appropriate public access easements to service APN 112-06-009A."

Street Transportation Utility Coordination Department- Rozanna Brown

No comments received.

PDD Traffic Department – Derek Fancon

"Recommend denial per Street Transportation's comments."

PDD Planning Department – Wendy Turner

"The proposed request will directly affect the zoning development standards for the affected properties. If abandoned, the right-of-way will be returned to the adjacent properties which will change how setbacks are applied to the parcels, allowing buildings to be located closer to the street. The Planning and Development Department is concerned about the unknown implications of how this abandonment can affect future development as well as if the additional entitlements will be amenable to the adjacent property owners outside of this request."

Street Lights – Jason Fernandez

"Recommend approval with the following stipulations or improvements that must be satisfied to complete this application for abandonment: All city owned streetlights within the proposed abandonment are to contain one of the following:

1. Contain a streetlight easement for both lights and power feed.
2. Transfer of ownership from a public roadway to privately owned including

maintenance responsibility."

Solid Waste - Robert Lopez

"Recommend approval with the following stipulations or improvements that must be satisfied to complete this application for abandonment: Abandonment must allow access for solid waste curbside service at: 724 West Jackson Street, 1010 West Madison Street, 1014 West Madison Street."

Floodplain Management Public Works – Tina Jensen

No comments received.

Water Services – Don Reynolds

"Not enough information showing which area is 5-feet or 30-feet for each property. Because there will be so many conflicts with water services, meters and water/sewer mains, WSD suggests that all requested abandonment areas to be changed to water and sewer easements which does not allow any structures within its boundaries."

PDD Village Planner – Samantha Keating

No comments received.

PDD Civil Department – Jason Ramirez

"Storm water retention of each lot must be retained on each lot in accordance with the City of Phoenix Storm Water Policies and Standards. If storm water is being designed to cross property lines a cross-drainage agreement will be required."

Neighborhood Services – Lynda Lee

No comments received.

Public Transit Department – Kathryn Boris

"The community's requested reduction or elimination of right-of-way (ROW) as indicated in case ABND 200534 may negatively impact pedestrian accessibility, and potentially the availability of ROW that may be needed for the future placement of transit amenities. The Public Transit Department is aware of a sizable Title VI-protected community in the affected areas. Such communities are transit-dependent and require the use of sidewalks to access nearby bus stops. It is for this reason that sidewalks within rights-of-way must be maintained to ensure adequate connectivity to nearby bus stops along Jefferson Street, Washington Street, 7th Avenue, and adjacent streets. Without sidewalks transit riders will be forced to walk in the street to access these stops, creating safety and traffic flow issues. The Public Transit Department submits this consideration as a General Comment for application ABND 200534.

Historic Preservation – Kevin Weight

"While Historic Preservation staff is neither recommending approval or denial of this case at the moment, our general comment is that there are several historic properties adjacent to the proposed abandonment that may be affected. We are still hoping to gain a clearer understanding of how these properties will be impacted by the proposal."

Utility Comments

The request was also routed to outside utility companies for their input. Listed below are the responses from each utility.

Cox – Kenny Hensman

"Recommend approval with the following stipulations or improvements that must be satisfied to complete this application for abandonment: Please forward to the requestor the below information.

Conflict Review:

Email to: natlconsttraffictgmtteam@cox.com

1. A Cover Letter for the Conflict Review.
2. A set of the Project's Site Plans, for the Construction Planner to Review to determine the possible work involved and possible costs for the COX Plant Relocation within the Site of the Project.
3. Include Zip Code for the Site Area for proper Construction Planner Assignment.

This area has an active plant that serves the AZ State Government Offices and would require a substantial amount of work to relocate those facilities that could run very high. A suggestion of replacing the right-of-way and sidewalk easements with a public utility easement to allow those Cox facilities to remain in place would be acceptable to Cox."

Southwest Gas – Nancy Almanzan

"Southwest Gas Corporation ("SWG") has reviewed the City of Phoenix request from Robert Martinez on behalf of Madison Pioneers Coalition Neighborhood Association to abandon the several referenced above locations.

After review, SWG has determined that there are existing or proposed facilities in all or a portion of the area proposed to be vacated and has no objection to the request for abandonment as presented; however, in order to protect these facilities, SWG requests a perpetual easement be saved and reserved to SWG as a condition of the Order of Abandonment.

Please reserve and except the following: An easement to Southwest Gas Corporation on, over, in, under, across, above and through "the area described" in ABND 200534.

Nothing in this vacation or response is intended or shall be construed to affect, reduce, or diminish any other existing property rights or easement SWG may have at this site or within the area affected. SWG retains the right to use any other reservations, easements, licenses or other property rights in which it may have an interest or that otherwise may be located within the area being vacated."

Arizona Public Service – James Generoso

"APS has existing overhead and underground electric infrastructure throughout the areas proposed for abandonment in ABND 200534. APS would be opposed to the application unless public utility easements are retained by the City to provide continued rights for the existing electric infrastructure"

CenturyLink – Mary Hutton

"Recommend approval with the following stipulations or improvements that must be satisfied to complete this application for abandonment: CenturyLink has active facilities within the project

limits, aerial cable, ducts, manholes, and cabinets within the Right-of-Ways. If owners would dedicate public utility easements or prescriptive rights easements over CenturyLink facilities, then the right-of-way abandonment would be considered. In the event CenturyLink facilities need to be removed, all associated costs will be at the expense of the sponsoring agency/owner."

Salt River Project – Sherry Wagner

"Salt River Project has no objection to the abandonments of the right of ways and easements as shown in your application ABND 200534 west of 7th Avenue south of Jefferson. This is in the Arizona Public Service serving area."

Abandonment Hearing Summary, September 10, 2020

Ms. Wendy Turner, the Abandonment Coordinator read the abandonment request, purpose and staff research into the record.

Mr. Christopher DePerro, the Abandonment Hearing Officer, then opened the discussion by asking the applicant if he would like to expand or present on the abandonment request.

Mr. Jordan Greenman responded by introducing himself and stating he was present representing his clients, the Madison Pioneers Coalition Neighborhood Association. Mr. Greenman opened with a presentation on the abandonment request and purpose, which is to privatize several rights of way, including sidewalks, in order to prevent urban camping, vandalism, and allow police enforcement and removal for trespassing on private property. Mr. Greenman presented evidence regarding how the urban campers have taken over the area, causing unsanitary conditions, crime, and violence. Mr. Greenman also stated how this abandonment request is a last resort and asked City of Phoenix for protection for the property owners and people in this area.

Mr. DePerro opened the hearing to those who requested to speak.

Ms. Angela Ojile, the chair for the Madison Pioneers Coalition Neighborhood Association, introduced herself and stated she been in the area about eight years. Ms. Ojile wanted to clarify that they are not anti-homeless, but the way things have been being handled in the area with the easements is no way to house homeless people. Ms. Ojile also stated there is so much illegal activity and nothing is being enforced and they do not have protection. Ms. Ojile stated basically this neighborhood is in a fight for its life and is trying to survive.

Bill Morlan, owner of Electric Supply Incorporated located at 10th Avenue and Madison, stated he has been in the neighborhood since 1985. Mr. Morlan went on to state the reason the neighbors have banded together is because it has never been as bad as it is now--they have, as a company, peacefully coexisted with the population down in this area for decades. The shelter has been down there, food services has been down there, for as long as he has been in the neighborhood. But the newer problems they have now are because the City has allowed tents to go up along the streets. Mr. Morlan also stated that these have become permanent camps, they have become living rooms, bathrooms, trash cans, bedrooms, and they are becoming little cities that encourage more people to come down there.

Mr. John Westerdale, property owner on Jackson Street and the Capital District, thanked Mr. DePerro, Ms. Turner, Mr. Alan Hilty of Street Transportation Department, along with the Planning and Development Department for hosting this hearing. Mr. Westerdale also stated he would like

to thank Mayor Gallegos Office for initially suggesting this abandonment as a solution. Mr. Westerdale then went on to reference the photos of the filth in the requested abandonment area that Mr. Greenman had shown during his presentation, stating how there is human excrement, drug paraphernalia, piles of garbage, and that it just keeps accumulating. He stated that there are people selling drugs and open prostitution, and open fires have been lit which could burn a building down. Mr. Westerdale then stated he had witnessed a violent fight recently in the intersection of 9th Avenue and Jackson. Mr. Westerdale also addressed how the property owners and neighbors have organized to clean up the area, but that it continues to become a unsafe, unsanitary place with crime and violence.

Ian Francis, business owner at 9th Avenue and Madison since 2012, stated the area is absolutely dangerous. Their lives, health and safety are at risk. Mr. Francis also stated how the property owners and neighbors are willing to make the investment in this area to make it better.

Mr. DePerro brought the hearing back to discussion with the applicant.

The Hearing Officer discussed the comments from various City departments with Mr. Greenman. Mr. Greenman stated that the applicants are willing to dedicate any easements required and work with departments and utility companies to make sure access is available.

Mr. Greenman then opened a short discussion regarding *Martin v. City of Boise*, a 9th Circuit case. The question posed in *Martin* was whether the 8th Amendment, which prohibits cruel and unusual punishment, barred a city from prosecuting people criminally for sleeping outside on public property when nearby shelters are full—and the 9th Circuit decided that, in the absence of other alternatives, that prosecution for being homeless was not allowed. Mr. Greenman then expressed his opinion that *Martin* would not apply to this abandonment request, since *Martin* applied to public property, not private property, which would be the result if this request were approved.

The Hearing Officer took the case under advisement.

The Hearing Officer took the case out from under advisement on October 6, 2020.

Hearing Officer Decision and Findings

The applicants have presented compelling evidence that urban camping, littering, vandalism, and loitering in the ROW have had negative effects on their neighborhood. These negative effects clearly motivated the filing of this abandonment request. The question this Hearing Officer must answer is whether abandonment of the ROW is the correct remedy for these issues. The City Code indicates that a decision to abandon public ROW is to be based on the requirements of Chapter 31, Article V: if the right-of-way is no longer necessary for public use as roadways. **I have concluded that the ROW requested for abandonment is still necessary for public use of the ROW as roadways, and therefore have DENIED this request.** Additional detail is provided below.

1. Requirements for Disposition of Public Rights-of-Way (ROW). In considering this request, this Hearing Officer has had to examine whether the ROW requested for abandonment is, in fact, no longer necessary for public use as roadways. The following two definitions in Section 31-63 of the City Code are important to this analysis:

- **Abandon, abandoning, and abandonment:** Any one of the methods set forth in Section 31-64 whereby the City Council may dispose of roadways or portions of roadways ***no longer necessary for public use as roadways***.
- **Roadway:** All or ***part*** of any platted or designated public street, highway, alley, lane, parkway, avenue, road, ***sidewalk, public utility easement, or other public way***, whether or not it has been used as such. (italics added for emphasis)

This request includes the public sidewalks and access between the back of curb and building entries, which is part of a “roadway” as defined. If this request were to be approved, many technical issues would need to be solved through the application of detailed stipulations. It is apparent from the review comments received from utilities and other City departments that virtually all of these technical stipulations would be for retention of access of some type (utility lines, sidewalk/pedestrian rights, trash collection, traffic signs and signals, streetlights, drainage, etc.). Since this access is currently provided as a function of being dedicated ROW, I have concluded that the ROW requested for abandonment is still necessary for public use as roadways.

And while it is true that the property would become private if it were abandoned, I do not believe that the necessary stipulations for access/easements would allow the objective clearly stated by the applicants during the hearing: prosecution of trespassers. In my professional experience, a public sidewalk easement or a public ingress/egress easement (which would be required if this abandonment request were approved) would specifically permit public use of the abandoned area, and that casts doubt on the assumption that trespassing charges could be levied.

2. Applicability of *Martin v. City of Boise*, 9th Circuit, April 2019. This case, although narrow in its scope, determined that homeless persons cannot be punished for sleeping outside on public property in the absence of adequate alternatives. The applicant has argued that prosecution of trespassers would not be prohibited by *Martin* if this abandonment request were approved, because approval would result in public property turning into private property, which was not the subject of the *Martin* case. While I appreciate the analysis provided by the applicant, I do not consider it relevant to this case at this time, since the request does not meet the base criteria stated in the City Code for abandonment of ROW.
3. Limited Jurisdiction. This Hearing Officer acknowledges the compelling evidence presented regarding urban camping, littering, vandalism, and loitering within the ROW in this neighborhood. Those issues, however, are not the result of surplus ROW. Based upon testimony provided in the hearing, it is my opinion that the primary motive for this application is to render the activities in the ROW criminal. That is not a stated reason in the City Code to permit abandonment of ROW.

In case of approval by the City Council, the following stipulations are recommended

The Abandonment Hearing Officer recommends **DENIAL**. However, if the City Council approves all or a portion of the abandonment request, then the following stipulations should be required to address utility and connectivity requirements in the area:

1. For the entirety of the area to be abandoned, the following public easements shall be retained:
 - a. A drainage easement.
 - b. A public utility easement.
 - c. A sidewalk easement.
 - d. A traffic control easement.
 - e. A streetlight easement.
 - f. A refuse collection easement.
2. No right-of-way shall be abandoned in the areas located between the back of curbs on both sides of all streets.
3. No right-of-way shall be abandoned between the back of curb and the existing ROW line where such areas will connect a street ROW to an existing dedicated alley.
4. Written approval from the Arizona Department of Administration stating that it approves the abandonment and all related stipulations, in accordance A.R.S. §41-1362, Legislative Governmental Mall, shall be provided prior to completion of the abandonment.
5. Consideration which provides a public benefit to the City is required in accordance with City Code Art. 5, Sec. 31-64 and Ordinance G-5332. Cost for abandoned Right-of-Way adjacent to property not zoned single family residential will be \$500 OR Fair Market Value whichever is greater. Cost for property zoned single family residential is \$1.00 a square foot for the first 500 square feet, \$0.10 a square foot thereafter; OR Fair Market Value at the option of the Planning and Development Director or designee. The applicant shall submit calculation and fee to Planning and Development Department. The applicant shall request a selection of approved appraisers from the current list maintained by the Real Estate division of the Finance Department.
6. All stipulations must be completed within **two years** from the Abandonment Hearing Officer's decision.

Abandonment Hearing Officer Signature: _____



Date: 12.8.2020

cc: Applicant/Representative, Madison Pioneers Coalition Neighborhood Association
Alan Stephenson, Planning and Development Department Director