

# ATTACHMENT B

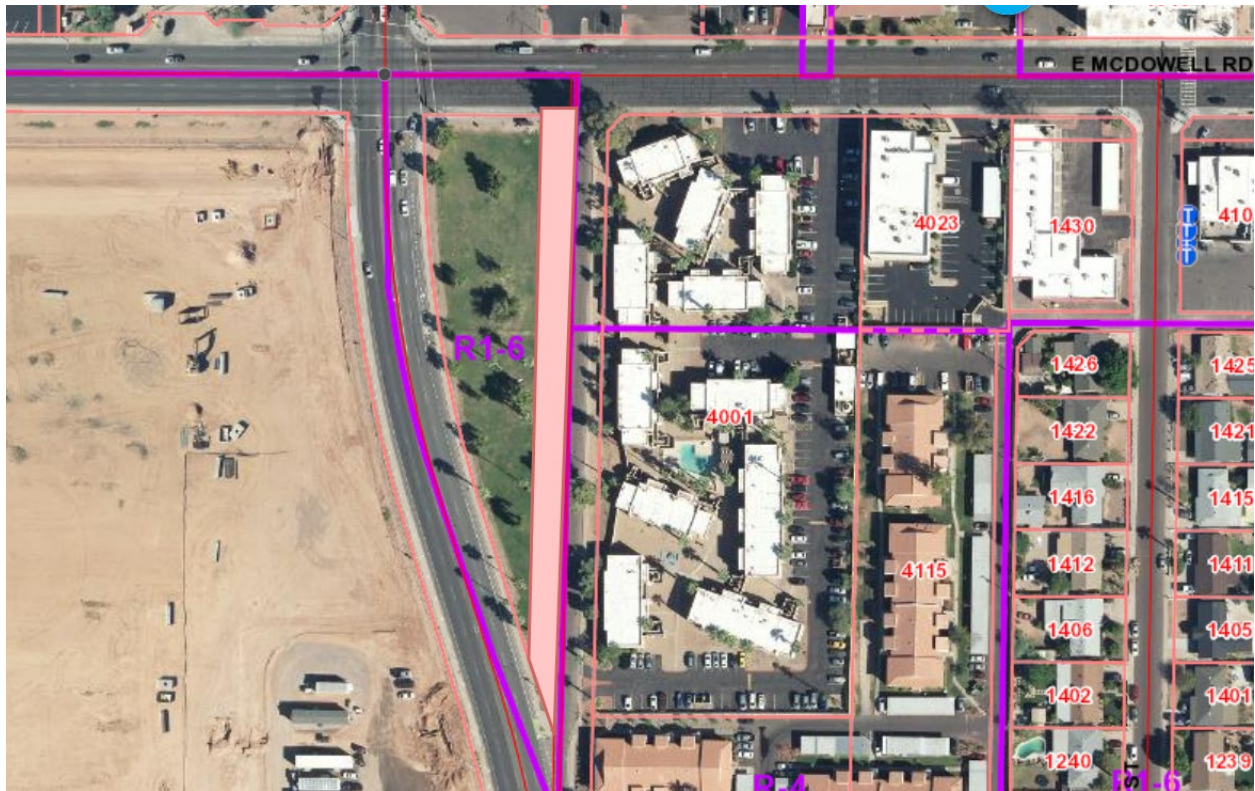


## **City of Phoenix**

Planning and Development Department

October 12, 2023  
Preliminary Abandonment Staff Report: **ABND 230046**  
Project# **23-221**  
Quarter Section: **12-37**  
District#: **8**

<b><u>Location:</u></b>	Southeast Corner of 40 <sup>th</sup> Street and East McDowell Road
<b><u>Applicant:</u></b>	40 McDowell LLC
<b><u>Request:</u></b>	To abandon the right of way along the east side 40th Street.
<b><u>Purpose of request:</u></b>	The applicant states to increase the buildable area of the property.
<b><u>Hearing date:</u></b>	<b>October 12, 2023</b>



## **Hearing Summary**

Ms. Alyssa Neitzel, Abandonment Coordinator, introduced abandonment ABND 230046 and read the case into the record by stating the applicant, location, and purpose of the request, as well as City staff research.

Mr. Christopher DePerro, the Abandonment Hearing Officer, asks the applicant if they would like to add any additional comments regarding the abandonment request.

Mr. Benjamin Graff clarified that he was there to represent the owner. He went on to thank staff for their help with the abandonment process. He then explained that the property is oddly shaped and that it makes it difficult to develop and that their team architect's analysis yielded that to make the development work for high density multifamily residential that the abandonment is necessary to increase the buildable area.

Mr. Graff had questions for Streets. His first question was asking Street to clarify the width of the abandonment area.

Mr. Joshua Rogers with Streets said that Streets was requesting an amendment to the 40<sup>th</sup> Street bypass by allowing the City to keep a minimum of 10-feet. He went on to explain that when 40<sup>th</sup> Street was subdivided there were an eastern and western monument line. So, the City needs to ensure that the right-of-way extends to the back of curb from eastern monument line. For street maintenance reasons the back of curb needs to stay within the right-of-way and 10-feet encompasses what Streets Department needs.

Mr. Christopher DePerro stated that he was confused on what Mr. Rogers explained.

The Hearing Officer says the eastern monument line is 5.54 linear feet and thus there is 4-feet from the other monument line. He then says, it looks like it is barely getting to back of curb and asked if that worked for Streets.

Mr. Rogers confirmed that worked for them as long as the entire curb remains in the right-of-way.

The Hearing Officer says okay.

Mr. Rogers says as he noted within his comments there are times due to special circumstances such as size, shape, and/or topography that the Streets Department will accept sidewalk easements in-lieu of right-of-way; and Streets has determined that the property does qualify for that. This is why Streets has requested for the applicant to dedicate a sidewalk easement in-lieu of right-of-way even through it extends over the proposed sidewalk by 2'-6" feet.

The Hearing Officer asks Streets to confirm that we are not stipulating a sidewalk easement at this time because the sidewalk doesn't currently exist and the City will obtain that as part of the development project.

Mr. Rogers says correct.

Mr. Graff says but stipulation number 5 does require a sidewalk easement.

The Hearing Officer asks Mr. Rogers to speak to that and if it should be done as part of the abandonment. He goes on to say he can go either way and he understands it replaces the right-of-way, but it isn't an existing sidewalk, and we don't have to catch it now.

Mr. Graff says he is in favor of stipulation number 5 because they have negotiated it with the Streets Department. He then asked Mr. Rogers to clarify the new width for the record.

Mr. Rogers says 23-feet and they are in favor of it.

Mr. Graff wanted confirmation that the comment from CenturyLink that belong to a different project was removed from the report and if there wasn't a comment from CenturyLink.

The Abandonment Coordinator confirmed that as of the hearing date that she had not received an updated comment from CenturyLink.

Mr. Graff then asked if that was the case for Southwest Gas Company.

The Abandonment Coordinator confirmed yes and that she was still waiting to hear from Southwest Gas Company.

Mr. Graff continued by asking if stipulation number 4 was consistent with the mapping. He explained that he was concerned because he didn't want the abandonment to be cut off.

The Hearing Officer interjected and stated that is exactly how he intended for the stipulation to be written because he wanted the abandonment to be located north of the north of the driveway

on the eastside. He continued by explaining that it was drafted that way in case the Streets Department needed to do anything that cuts it off and to go straight into 40<sup>th</sup> Street.

Mr. Graff then asked if that modification would convert their abandonment into a rectangle.

Mr. DePerro confirmed by saying yes it would because if Streets ever decided to remove the bypass that the driveway would need to connect to 40<sup>th</sup> Street and the City cannot have a condemnation in order to get a tiny piece of land. He completed his statement that he was looking ahead into the future and that the City should keep that portion of the right-of-way.

Mr. Graff asked if Christoff Kaiser, team architect, could speak about if and how what Mr. DePerro said would impact their project's site plan.

Mr. Kaiser said that they were currently working on two alternative site plans, and that the modification to the abandonment area is workable.

Mr. DePerro said he was happy the design would work with the modification because the City would not budge on the modification of the abandonment area.

Mr. Graff continued by thanking Mr. DePerro for clarifying for the record.

Mr. Graff went on to say that their project design included a perimeter wall would be constructed within the abandonment area. He then said he believes that they would be able to work something out with the Water Services Department (WSD) as it relates to constructing a wall within the abandonment area.

Mr. DePerro said that based upon the stipulations it says either relocate or retain a public utility easement. He further explained that there was a sewer line at the back of curb on the east side and what they abandon will be retained as a public utility easement. He then stated that meant the applicant would need to get authorization not just from WSD but from all utility companies if they encroached into the PUE area with a wall.

Mr. Graff stated that made sense.

The Hearing Officer said they may be able to just retain it as a sewer easement if we receive all comments and it confirms there are no other utilities in the area, but he is wondering if they would be instructed to dedicate a PUE on the edge for the project. He ultimately decided not to weight in on it now but instead chose to retain what is abandoned because of the sewer line on the edge of the property to the east. He did clarify it didn't have to be a PUE if it was only sewer in the area and instead could be a sewer easement, at that point the applicant would only need WSD to authorize the wall.

Mr. Graff stated that made sense.

Mr. Graff asked the Hearing Officer if he could unmute their teams civil engineer.

Mr. DePerro agreed and unmuted Nick B.

Mr. Nick said his preference is always to dedicate an easement as opposed to right-of-way and that he had no issues with what was stated.

Mr. DePerro asked Ms. Neitzel if there were any other comments that needed to be addressed.

Ms. Neitzel stated there were no other comments to address.

Mr. DePerro read over stipulations 1 through 7 and made modifications to stipulation number 5 verbiage. Stipulation number 5 to "A sidewalk easement shall be dedicated to encompass all sidewalk areas, including a minimum 2.5-foot buffer from back of sidewalk".

Mr. DePerro then asked Mr. Rogers if stipulation number 6 was warranted.

Mr. Rogers said he was fine with removing it.

Mr. DePerro said stipulation number 6 would be removed but clarified with the applicant that the City still expects to get it, but it just wouldn't be a condition of the abandonment.

Ms. Graff said he agreed with it.

Mr. DePerro asked the applicant if stipulation 7 two-year requirement was fine.

Ms. Graff asked for 3 years instead of two years.

Mr. DePerro said okay.

The Hearing Officer granted conditional approval for abandonment 230062 subject to stipulations in staff report with modifications to the verbiage of stipulation number 5, modifications to remove stipulation number 6, to modify the number of years the applicant has to meet stipulation requirements of stipulation number 7, and to renumber stipulation number 7 to be the new stipulation number 6."

### **Recommended Stipulations of Approval**

The request of abandonment, if approved by the Abandonment Hearing Officer, will be subject to the following stipulations:

1. Either a or b shall be complied with:
  - a. All utilities shall be relocated to locations approved by each affected utility company. All work is to be done by each affected utility company at no expense to the affected utility company. An appropriate performance agreement, in an approved form and cost amount, must be posted with the Planning and Development Department to guarantee the improvements.
  - b. All rights-of-way shall be retained as a public utilities easement with 24-hour vehicle maintenance access.
2. 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.

3. No right-of-way within 10-feet of the eastern most monument line on the 40th Street bypass may be abandoned.
4. No part of the 40th Street bypass right-of-way may be abandoned further south than the southern boundary of the property abutting the west side of the abandonment area.
5. A sidewalk easement shall be dedicated to encompass all sidewalk areas, including a minimum 2.5-foot buffer from back of sidewalk.
6. All stipulations must be completed within **three years** from the Abandonment Hearing Officer's decision.

**This conditional approval has been reviewed and approved by the Abandonment Hearing Officer.**

Hearing Officer Signature:  Date: 5.6.2024

REPORT SUBMITTED BY: Alyssa Neitzel, Abandonment Coordinator.

cc: Applicant/Representative, 40 McDowell LLC  
Christopher DePerro, Abandonment Hearing Officer

If the area to be abandoned is within or adjacent to a redevelopment area established pursuant to A.R.S. §36-1471 ET. SEQ., Consideration may be given to the restrictions upon the property and the covenants, conditions and obligations assumed by the redeveloper in the determination of fair market value.