

INTERNATIONAL RIGHT OF WAY ASSOCIATION

Kachina Chapter 28

PMB #428

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MAY, 2003

EXECUTIVE BOARD MEETING

The next Executive Board and will be held on Wednesday May 7th @ 4:45pm in the 3rd floor Conference Room at Az State Land. Additional information can be found on the Chapter website.

→MAY CHAPTER LUNCHEON←

DATE: Tuesday, May 13th @ 11:30 am

PLACE: SRP PAB Facility (See website for address & map)

MENU: Burritos (Cheezy Chicken; Salsa Chicken; Chalupa; Red Chile; Steak & Potato; & Veggie); Fiesta Rice with shrimp; Refried Beans with cheese; salad mix with dressing; Chips & Salsa; Texas Sheet Cake; and a selection of Beverages

COST: \$15.00 for members and guests. Please have exact change or your check made out to IRWA Chapter 28.

GUEST SPEAKER: The Luncheon will feature a panel of appraisers and attorneys discussing current issues in the Right of Way field.

Panel Members:

- Jan Sell, MAI of Sell & Associates
- Donald Duncan, ASA of First Appraisal Services
- Dennis Lopez, MAI of Dennis L. Lopez & Associates
- Linda Latz, Attorney for City of Phoenix
- William Riske, Attorney for Maricopa County

--Sue Klein, Attorney for the US Attorneys' Office

Moderator: Brett Smith of IRWA Kachina Chapter 28

RSVP: Deadline for reservations is 5:00 pm, Thursday, May 1st. Please RSVP through the Chapter website at www.irwaaz.com or call Pam Hicks @ 602.236.5948.

JOB BANK

For current job openings, please visit the Chapter website: www.irwaaz.com/jobbank_openings.

Please visit www.irwaaz.com/region1 for current information on Region 1 activities. You can also contact Mark Keller, SR/WA at 602.236.8164 or makeller@srpnet.com for Region information.

PRESIDENT'S MESSAGE

Melita Hillman, SR/WA

Tax day already! It's hard to believe this year is already one-fourth over. Tax day also reminds us that tight budgets are affecting IRWA in Arizona. We have had reduced attendance at our classes and luncheons. It is important for you to register early for classes so the class coordinator knows how many to expect. If registration is too low the class may be cancelled – the last thing you want is to have a class cancelled when

you planned to attend and especially if your registration would have made the difference in holding or canceling the class.

Our annual joint luncheon with appraisers will be expanded even further this year. For our event in May, Doug McLaughlin and Brett Smith have put together a mini-seminar on appraisal and eminent domain. We have invited the local appraisal organizations and attorneys to join us at our Fiesta Luncheon at SRP. The special program panel of three appraisers and attorneys will address current issues in eminent domain and appraisal as they affect us in right of way and redevelopment projects. Given space constraints, we must cap attendance at 80. Please RSVP as soon as possible so you won't be left out. Submit your questions for the panel to Doug or Brett.

We are proud to announce that our own Professional of the Year for 2002 Mark Keller is one of the finalists for the Balfour Award, the Professional of the Year for the International Organization. Congratulations to Mark for being a finalist. Though he will be up against other strong candidates, he has our support to win in Kansas City.

Planning continues for the Educational Seminar in September with the theme of "Doing More with Less." The Seminar is also the election of officers and presentation of Employer and Professional of the Year awards as well as any Special Service Awards. Be thinking of those you will nominate for awards. Also if you are interested in service on a committee or as a committee chair next year, please contact Doug McLaughlin to let him know.

Quote for the Day

No act of kindness, no matter how small, is ever wasted.

REGION ONE FORUM

Melita Hillman, SR/WA,

The Region One Spring Forum, held March 28-29 in Ventura, California, was well attended by Chapter 28. In addition to Mark Keller as Region One Vice-Chairperson, Mike Burns, Ron Hill, Gary Patchett and I attended the right of way class on Friday and the business meeting on Saturday.

The Friday class entitled "Steering Through the Obstacles – A Right-of-Way Acquisition Seminar" covered a variety of topics including Federal and California procedures and requirements for acquisition and relocation, Utility coordination and clearance processes (from a pipeline company) to minimize costs and delays to projects, a wireless communication facility case study and an update and procedures in Californian eminent domain law.

On Saturday, Chapter 28 was honored with the Best Newsletter in Region for chapters with over 100 members. Tucson Chapter 73 won the competition for chapters with less than 100 members. Congratulations to Cate – our Newsletter Queen - and all of you who submitted articles. Not only is it interesting reading for us, but award-winning. Keep up the good work.

Chapter 28 presented a check for \$1,000 for the Educational Foundation to be combined with those from other Region One chapters and donated to the Education Foundation at the Seminar in Kansas City in June.

CHAPTER 28 SCHOLARSHIPS

For the past two years, Chapter 28 has presented two \$250 scholarships to students at Arizona State University. Last month, a representative of ASU attended our Board meeting to both thank us for prior support and to solicit additional funds. The Board voted to increase the scholarships to \$500 each. These scholarships are awarded annually to two upper-class students – one in the Business/Real Estate School and one in the Engineering School. In both the past two years, at least one of the recipients has attended our Seminar in September.

INTERNATIONAL NEWS

Melita Hillman, SR/WA

International has proposed a new category of membership – Agency memberships. Certain agencies, primarily Federal government, do not pay dues for individual employees who are members of organizations like IRWA. The creation of this new category would allow the agency to join with a number of "slots" and designate employees to fill those slots. To encourage the agencies to take advantage of this, there will be educational incentives in the form or

vouchers or credits that can be redeemed for classes or class days. The earliest the agency membership could be available would be 2004. In addition, there is some discussion of creating a similar "corporate" membership if this is successful.

The benefit to IRWA is an expected increase in membership and broadening of the membership base. This new membership category will require a by-law change at the International and will be submitted for approval at the annual meeting in Kansas City in June. If you would like more information or have thoughts as to how you would like Chapter 28 to vote, please contact Gary Patchett or me.

Please consider submitting an article for publication in the Chapter newsletter. The deadline for submission is the 15th of each month for the following month.

REGION ONE NEWS

Mark Keller, SR/WA, Region 1 Vice-Chair

On March 29, 2003, Region 1 held its Spring Forum in Ventura, CA and thirteen of the fourteen Chapters were present. Also, the International Committees were present and included Environment, Local Public Agency, Nomination & Election, Transportation, Professional Development, and Relocation and Wireless. Several other International Committees which were not in attendance sent their written reports to us, and were posted on our Region 1 website. Our International Executive Committee representative, Howard Armstrong, SR/WA, provided a report on the status of the Association.

The action items from our business meeting are as follows:

1. Region 1 accepted the International Executive Committees request that Region 1 appoint a task force on the possible realignment of Region 1 and 9. Ronn Carlentine, SR/WA and Mark Keller, SR/WA will co-chair the task force and Carol Brooks, SR/WA (Chapter 11, San Diego) and Keith Shorey, SR/WA (Chapter 27, Sacramento) will assist with the coordination of other interested Chapters in their respective area.
2. Region 1 Elections: The region nominated Ronn Carlentine, SR/WA as Region 1 Chair and Mark Keller, SR/WA as Region Vice Chair. Region 1 Newsletter award for best Newsletter with over 100 members was awarded to Chapter 28, Phoenix, AZ, and the best Newsletter with less than 100 members was awarded to

Chapter 73, Tucson, AZ. The Region 1 Professional of the Year was presented to Mike Pattison, SR/WA, Chapter 28, Sacramento, CA.

3. Chapter 28, Phoenix, Chapter 50, Fresno, and Chapter 57, San Bernardino presented donations to the Right of Way International Education Foundation (RWIEF) and all of the Region 1 donations will be presented to the Foundation in June 2003 at the Annual Education Conference in Kansas City.

During the Region 1 Spring Forum business meeting our Region 1 website was used for most of the presentations. The use of the website has replaced the expensive binders and paper notebooks. The use of the website has greatly reduced the cost associated with the meeting. Please look for additional information in upcoming months.

REGION 1 and 9 REALIGNMENT PROJECT

Mark Keller, SR/WA, Region 1 Vice-Chair

As we move closer to the Annual Conference in Kansas City, Ronn Carlentine and I are requesting your participation in the Region 1 and 9 Realignment assignment given to us from the International Executive Committee (IEC) at our Spring Forum.

As Presidents, we are asking you to present the Region 1 and 9 Realignment task to your Chapter officers and members. After your Chapter explores this item, each Chapter is afforded the opportunity to prepare a written Region 1 and 9 Realignment proposal, which will include a recommendation. The Chapter recommendation may be as simple or as complex as you choose. The criteria used in connection with your proposed realignment may consist of but not limited to; membership numbers, travel distance, geography, issues, etc.

Now, to assist Ronn Carlentine and me with this effort, Carol Brooks, SR/WA Chapter 11, and Keith Shorey, SR/WA Chapter 27, have volunteered to be available to your Chapter in this process. Please contact Carol or Keith with any questions you may have on this assignment.

Each Chapter President will be required to submit their Region 1 and 9 Realignment proposal at the Region 1 Caucus Meeting in Kansas City. Your Chapter's realignment proposal may be as simple as: do nothing, redistrict Region 1 and 9, or a comprehensive

redistricting of Region 1, 7, and 9. Carol Brooks, Keith Shorey, Ronn Carlentine, and I will review each Chapter proposal. Your proposal may be used as one of our recommendations to the IEC. Your Chapter proposal must be in writing and include a recommendation, statement of criteria used, and any other supportive information. Ronn and I believe that your involvement with the Region 1 and 9 Realignment assignment is essential and extremely valuable to the final Region 1 and 9 Realignment Report submitted to the International Executive Committee (IEC).

Your early submittal of your Chapter recommendation will allow the team to draft a report for the Region 1 Fall Forum. During our Region 1 Fall Forum a draft report will be available, and a final report will be delivered to the IEC on or before December 31, 2003.

Thank you for your attention on this assignment, and again, if you have any questions contact any of the members on the team.

MARKETING AND PUBLIC AWARENESS COMMITTEE

Mark Keller, SR/WA, Region 1 Vice-Chair

Kachina Chapter 28 initiated contact with Arizona State University in 2001. Its mission was to promote awareness about the International Right of Way Association and the right of way profession as a potential career choice for graduating students. Through several meetings with the ASU College of Business, the School of Engineering, and Del E. Webb School of Construction, Kachina Chapter 28 established two \$250 scholarships. During the 2001 and 2002 annual seminars, scholarship recipients were present and recognized. At the recent 2003 April Board meeting, the scholarships were increased to \$500 each for a total of \$1,000 annually.

The W. P. Carey School of Business at Arizona State University extended an invitation to Kachina Chapter 28 to attend an awards luncheon on April 11, 2003 and an awards dinner on April 21, 2003. Kachina Chapter 28 was recognized as a donor at both events. Brett Smith, Melita Hillman, and I represented the chapter. Mike Birgen, Associate Director of Marketing for the College of Business has been very helpful with our chapter and will keep us informed on upcoming career days in the College of Business. The students at ASU are very appreciative of organizations like IRWA Kachina 28 for

financial support. Truly a worthwhile educational endeavor for Kachina Chapter 28.

SURVEYORS CORNER

Gregg Tuttle, Survey Chair

In the April 2003 issue of this Newsletter we presented the "facts" about a ROW Quandary. For those who did not see that presentation, please review the copy of the newsletter in the archives on the IRWA Kachina Chapter website (<http://www.irwaaz.com/>). At the end of last month's column we asked the question "What would you do?" We did receive various responses, (all from Land Surveys ! - what happened to you Land Agents?)

We will share our compilation of those responses.

CAVEATS:

1. Remember that the question originates from a situation in Orange County, California, and the responses are all from Arizona surveyors, and as the statutes and common laws vary from jurisdiction to jurisdiction, and are dynamic in their fluidity, the information presented herein may not be applicable to the CA jurisdiction.
2. This article/column is in not, under any circumstances, to be construed as providing legal advice. Prior to relying on any information provided, the reader is encouraged to research laws, methods, and requirements that in exist in the reader's own jurisdiction, AND to seek legal advice from a qualified attorney licensed to practice in the reader's jurisdiction.

And, now the responses, insights, comments and feedback:

Several Arizona surveyors, (including Kevin Burke, and Jeremiah Teague, both from Pima County), suggested even more questions that should be asked and answered before we can form a definite concluding opinion.

Jeremiah asks: Are there fences? Is the road being used? Does it have a history of use? Are there any surveys of the lots in question? Is this road the only access for interior lots? How do the adjacent owners perceive the situation? Does any municipality grade or perform any type of upkeep? Is there a history of a municipality performing any kind of maintenance? Are there any other easements on Parcel A? How close is the nearest bar and do they have a decent selection of good beer?

Kevin inquiries: Did the county maintain or improve the road? If the county maintained the road, that is acceptance of the dedication? Was Lot "A" ever used as a private highway by the adjoiners? If that has happened then fee title may have

ripened under adverse possession adverse to the original owners but each adjoiner would have a common interest to the highway easement over Lot "A".

Kevin then would ask the following to a land lawyer:

- 1) Since the lot owners adjoining to Lot "A" have been paying taxes on Lot "A", has the fee title ripened under adverse possession by recorded deed and paying taxes? Or has the original owners given a license or a easement in gross to the lot owners to use Lot "A" for highway purposes, and the original owners maintained the fee interest? Any encroachments on Lot "A" would be adverse to the common interest of the lot owners as to the highway easement and action would be needed to seek legal relief by individual lot owners.
- 2) If the fee interest to Lot "A" has ripened to the adjoiners, and if the highway easement is vested in the adjoiners, but the highway easement was not utilized by the adjoiners, by what method could the adjoiners extinguish (quitclaim by all Lot owners perhaps?) the highway easement of Lot "A". The disposition to each adjoiner should be in proportion to the taxes paid by each adjoiner as to the whole of the taxes paid for Lot "A".

Kevin concludes with the following insights:

If the easement could be extinguished and fee title is vested in the adjoiners, then the setback line would be determined from the non-adjoining line of Lot "A". If the county attempts to define the setback from the common line, then the county would need to be estopped from asserting any interest to Lot "A" by the lot owners.

Once Lot "A" has been divided equitably to each adjoiner and the lines protracted based on equal shares of Lot "A" as determined by the taxes paid, then each adjoiner could quit claim to his/her adjoiner any encroachments that have ripened. If the highway easement vests in the county or to the adjoiners and cannot be extinguished then the setback is from the non-adjoining line of Lot "A".

Then, Kevin donned his flak jacket and awaited responses to his suggestions.

Dave Preisch, also of Tucson, noted:

If the governing board approved the Plat, but did not accept the right of way, and the road way was dedicated by the owners of the property to the owners of Lots in the subdivision it is a private road. Especially since taxes are being assessed to each adjoiner.

Harold Baldwin of Phoenix, (and formerly with Navajo County, AZ), notes:

These situations exist in AZ, today. Counties are faced with this issue on a daily basis. How "we" handled it in Navajo County:

1. If the county "accepts" this grant, they are responsible for it. Maintenance, Zoning, Public Safety and all the other liabilities.
2. If the county does not act on it, the grant itself is usually made to the "Public" and as trustee for the interest of the public, the governmental entities must defend the right of the public to use this strip. This doesn't mean expend monies to improve it, that is a whole other set of requirements.
3. The governmental entities are never afforded the option of acceptance or rejecting, the grant is made and recorded without review. Much like the large number of 40 acre splits going on now. The "public" has rights to use these corridors for access, utilities etc., but the governmental agencies never see these until someone complains about the "road" not being useable... So it is for all intents, a public easement. For it to ripen in to a Public Roadway, it has to meet many other criteria. Brian probably can cite Maricopa considerations in these situations.

Helmuth Hack, of Phoenix, opines:

The taxes being paid by adjacent owners makes them entitled to the land. Currently, and assuming there are no improvements within the 10 foot strip, the land belongs to the lot owners. The city, (including town/county), has yet to accept the dedication, which per Government Code Section (GCS) 66475-xx, they can do at any time after the map has been filed with the county recorder (1929). To accept, they would have to file a document with the recorder.

Is it a private road? It seems when the subdividers dedication was turned down, he acknowledged on the map that subdivision owners can in turn use it for such, maybe hoping others would follow. Are the owners using it for vehicular purposes? If not, then it isn't a private road. Being that the map dates back to 1929, other laws or ordinances may tell a different scenario.

What do the adjoining owners think about the strip? Are they using for personal use? Does the city want and need the strip? Beyond the subdivision in question, what are the right-of-way widths? Are they consistent with the subdivision without including the strip?

From the GCS, if the land is reconfigured in any way, which means getting approval, the offer of dedication is gone. Per the GCS, with the exception of code that were in place at the time of acceptance of map, the city can accept the dedication at any time. There is no need for abandonment (except if utilities are present), because it is not a right-of-way (with the exception as to its current use, which cannot be seen from the board). As it stands, all lots extend their lot lines to opposite side of the strip. That line is where setbacks are measured from, if they need a lot line to measure from. Maricopa county, for an example, will take the set back from the section line, if no easement exists, or from an easement

line that does exist on record. The strip could also belong to the subdivider, which would be the first in line, then the adjacent land owners of that subdivision that created the strip, and could be all erased if the city acted and accepted and recorded their acceptance of the dedication of 1929. Again, a lot rest on what the parties want. If the city won't publicly accept the dedication, then its up to the original owner or the adjacent land owners. To get clear title, may require a courts approval.

And, finally, from Stuart Lane, (from Mohave County, AZ): In answer to the first part of the question "What is the status of this right-of-way?" As you mentioned, it was not accepted by the board of supervisors which means (*under Arizona law*) that the property remains in the ownership of the one making the offer. The original subdivider has a parcel of land with a road on it.

However, the statement "...and we hereby dedicate the use of the owners of this subdivision Lot "A" for highway purposes." clouds the issue. One wonders if they meant to say "As owners of this property, we hereby dedicate the subdivision Lot "A" for highway purposes." In that case, Lot "A", after not being accepted by the county, would have reverted to the original owners of the subdivision, not to the adjoining Lot owners. This is due to the fact that at the time of the offer, the sole owners of the property were those creating the plat.

The county assessor has further clouded the issue by taxing the individual lot owners for that portion of Lot "A" abutting their property. They have, in effect, been paying taxes on property upon which they do not have clear title. You have to admire the assessor's brass and what the heck, the owners have been paying the taxes without complaint.

The information provided hints that Lot "A", has in fact been used by the landowners and the public as a road for access to these lots. This further clouds the issue as to any prescriptive rights that may have been acquired by individuals using the road. Note: In Arizona anyway, only individual citizens could acquire such rights, not a government entity.

A fine mess this is, eh? How would I address it? One way would be to write each of the current property owners and explain, (LOL, - laughing out loud), the situation. I would then ask them to quit claim any interest they may have in said Lot "A" to the county. (I would only do this with the knowledge that the current board of supervisors would be willing to formally accept the property)

Perhaps, a better method would be to provide a title company with a description of Lot "A" and request a title commitment to insure the county's interest. This would expose any hidden owners, liens, encumbrances, etc. and

would assure that the county acquired clear (or at least insured) title to the right-of-way. With this in hand, you could then contact the parties referenced in the title commitment to obtain the necessary conveying documents.

Conversely, if the county wants to be rid of the roadway, it could (by board action) quit claim any and all interest in said Lot "A" to the adjoining landowners. This would not clear up the question of what interests, if any, were still held by the original subdivider but at least the county would be out of it. As to lot lines and setbacks, I would hold the original lot lines and consider Lot "A" to not be a part of any of them. It is being used as a roadway, it is a separate parcel, and they couldn't build anything in it anyway due to possible prescriptive claims and uncertain title.

WOW! Some great feedback from the land surveyors. Interesting insights. Good suggestions on additional questions to be answered, and some ideas on how to process. Not all the same, but similar in their approaches. Again, please review our CAVEATS as the beginning of this article.

My personal THANKS! to all of those who were willing to share their insights and their personal/professional opinions on the ROW Quandary problem. We hope that this format proved useful to the CA land agent who originated the questions.

I apologize that this article was somewhat lengthy, for our local IRWA newsletter, but I hope it served its goal of sharing the professional land surveyors' points of view about an interesting and complicated R/W inquiry.

Well, then, until next time, Thanks!

Now is the time to start thinking about the Special Awards that will be given out at the Educational Seminar in September. The criteria is posted on the Chapter website under the Seminar section which can be accessed from the index page of the site.

We are also seeking candidates for the 2004 Chapter Officers. If you have any desire to serve your Chapter, please contact Paul Herndon at 623.932.6729 or paul.herndon@aps.com.