

TOWN OF BLUFF RESOLUTION NO. 59

A RESOLUTION SETTING POLICY FOR TOWN ALLEYS AND RIGHTS-OF-WAY.

The following describe the intent and purpose of this resolution:

- a. The Town holds various rights of way as a result of dedication, conveyance, or operation of law. Some of these rights-of-way are constructed and used as public roads; others exist on paper and are unbuilt but still valid.
- b. As a Utah local government, the Town has the right and duty to maintain public rights of way within its boundaries in conformity with the public interest. It is in the public interest that every land parcel in Bluff have safe and adequate access to a public road for purposes of vehicle and pedestrian ingress/egress, emergency services, business development, and utility purposes. Additionally, it is in the public interest that pedestrian and bicycle access is developed within the Town. The Town receives Class C road funds from the State of Utah to defray some of the maintenance costs for public roads.
- c. Utah law provides that roads within platted subdivisions are dedicated with ownership vested in the local government for the use and benefit of the public. See U.C.A. § 10-9a-607. Additionally, roads may be established by conveyance of a deed to a local government or, absent a grant or deed, by use of a right of way by the general public for a period of ten years or more. See U.C.A. § 72-5-104.
- d. Utah law mandates that public roads may not be vacated or abandoned in the absence of a local government following statutory procedures and protecting the due process rights of interested persons. See U.C.A. § 10-9a-609.5 and U.C.A. § 72-5-105.
- e. There have been a number of instances where landowners have disputed Town rights of way or have asked that public rights of way be vacated or moved. In other situations landowners have requested that the Town or San Juan County vacate or abandon rights-of-way. It is in the public interest that the Town of Bluff establish policies governing right of way questions.
- f. The purpose of this resolution is to set general policy for the Town and provide information to the public as to Town right-of-way questions.

Therefore, the Town enacts the following:

1. **Retention of Rights-of-Way.** It is the general policy of the Town of Bluff that all public rights-of-way, however evidenced or established, shall be retained by the Town, and held for present and future public use, including pedestrian and vehicle ingress/egress, emergency access, non-motorized trail, and utility purposes. Public rights-of-way once established shall continue until lawfully abandoned by the Town.

a. **Inventory.** The inventory of existing public rights-of-way held by the Town is attached as **Exhibit 1**. The Town acknowledges that this depiction of public rights-of-way may be incomplete, and that there may be others.



2. **Rules and Regulations.** The Town may enact specific rules and regulations with respect to public rights-of-way which may include but are not limited to parking restrictions; speed limits; signage; full or partial closures; rules governing pedestrian or bicycle access, trail access, or motorized or non-motorized use; or the like. No person shall block or otherwise obstruct public rights-of-way without advance authorization from the Town, and any such actions blocking public rights-of-way in the absence of Town authorization are unlawful.

a. **Temporary Closure.** The Town may enact a temporary closure of a right-of-way as otherwise provided by law. A temporary closure shall be for such period as the Town deems necessary or it may be indefinite. A temporary closure is not an abandonment of a right-of-way, and the Town still retains all rights it otherwise possesses as to the subject parcel.

3. **Public Utilities.** In its discretion the Town may grant franchise or other authorizations to public utility providers to utilize public rights-of-way for domestic water pipelines, wastewater pipelines, telecommunications lines, electrical transmission lines, or the like. Wherever feasible, public utilities should be located within Town rights-of-way.

4. **Abandoning Rights-of-Way.** The abandonment of existing rights-of-way is discouraged. The Town will only undertake abandonment when a written petition is submitted by an interested party (including the Town itself), and only after written notice to affected persons, a public hearing, and enactment of an ordinance authorizing the abandonment, as otherwise required by law. The proponent of an abandonment bears the burden to show that proposal is in the public interest and that no person will be materially injured by the abandonment. The Town may grant the petition, deny the petition, or grant the petition in part or subject to specific conditions. The decision to abandon or retain a right-of-way is a legislative act.

a. **Factors to be Considered.** In ruling on an abandonment petition the Town will give due consideration to the following non-exclusive list of factors: i) the extent of historic use; ii) the potential for future development adjacent to the areas proposed for abandonment; iii) planned or future non-motorized trails, roads, or other transportation advisory documents; iv) terrain features; v) the existence or absence of public utilities; vi) proximity to open space or public lands; vii) the adequacy of alternative access to other land parcels; viii) the possibility that adjacent property will be landlocked or have access constrained; ix) and present or future needs for emergency access.

5. **Right-of-Way Disputes; Advisory Regarding Title Documents.** The Town acknowledges that landowners may occasionally dispute the existence or extent of public or private rights-of-way, and that those disputes may implicate the interests of the Town. It is the Town's policy that right-of-way disputes with landowners shall be resolved, to the extent possible, by dialogue or, if appropriate, by mediation. The Town will resort to court action to resolve right-of-way disputes only if dialogue is unsuccessful, or where immediate action is necessary to preserve public safety or the public interest.

a. **Title Advisement.** Landowners are advised that it is sometimes the case that the surveyed legal boundaries in a deed may encompass areas occupied by apparent public rights-of-



way. In many cases deeded legal descriptions are subordinate to existing public rights-of-way, which may be derived from written deeds or easements, plat documents, or as a result of statutory public use.

b. **Adverse Possession, Prescription, and Acquiescence Claims Barred.** Various legal doctrines, including adverse possession, prescription, and acquiescence allow landowners to acquire title to parcels of land by occupancy, provided certain elements are proven in court. However, by law a person may not acquire title to any real property held by a local government by virtue of adverse possession, prescription, or acquiescence. See U.C.A. § 78B-2-216. It is the policy of the Town that it will defend public rights-of-way against such claims based on purported possession by a private landowner.

Approved and authorized by a majority of the Bluff Town Council; this resolution shall take effect immediately upon execution.

By:                     *au*                    

Mayor Ann Leppanen

Attest:

By:                     *Linda Sosa*                    

Linda Sosa, Recorder

                    3-21-22                    

Date