

TOWN OF PAGOSA SPRINGS, COLORADO

**ORDINANCE NO. 773
(SERIES 2012)**

**AN ORDINANCE VACATING THE ASPEN PARK CIRCLE PUBLIC
RIGHT-OF-WAY, WITHIN THE CORPORATE LIMITS OF
THE TOWN OF PAGOSA SPRINGS**

WHEREAS, the Town of Pagosa Springs (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003 as amended in 2012 (“Charter”); and

WHEREAS, pursuant to Sections 43-2-303(1)(a) and 43-2-303(2)(c), C.R.S., the Town may divest itself of all of its right, title or interest in and to any roadway upon the vacation of such roadway by ordinance; and

WHEREAS, on April 6, 2012, the Town’s planning department received an application for Vacation of Public Right-of-Way and Public Utility Easements (the “Application”) from Wal-Mart for the vacation of the Aspen Park Circle cul-de-sac; and

WHEREAS, pursuant to Section 2.4.3.D.2.a(i) of the Land Use Development Code (“LUDC”), the Planning Commission held a public hearing on the Application on March 22, 2012; and

WHEREAS, the Town Council hereby finds that pursuant to Section 2.3.6 of the LUDC, all public notice requirements for the May 22, 2012 public hearing before the Town Planning Commission, were met, as follows:

- a. Public Notice was published in the Sun Newspaper, a newspaper of general circulation in the Town, on May 3, 2012, which was at least 15 days prior to the scheduled hearing.
- b. Written notice of the hearing was mailed to the record owners of land immediately adjacent to Aspen Park Circle, property owners within 300 feet of Aspen Park Circle, and any other person who made a written request for such notice, on April 26, 2012, which was no less than 15 days prior to the public hearing.
- c. On May 7, 2012, Public Notice was physically posted at the southeast corner of Alpha Drive and Aspen Village Drive and the southwest corner of Aspen Village Drive and Aspen Park Circle, and remained on the property for a period of at least 15 days prior to the public hearing. The posting was witnessed by Planning Commissioner Cameron Parker.

d. Public notice was also posted at Town Hall on April 30, 2012; and

WHEREAS, Section 2.3.7.F of the LUDC requires the applicant to provide written notice of the Application to all mineral estate owners and lessees by certified mail, return receipt requested, not less than 30 days prior to the initial public hearing; and

WHEREAS, on April 4, 2012, the Applicant provided written notice to all mineral estate owners of a Planning Commission meeting to be held on May 8, 2012, although no public hearing on the Application was scheduled for the May 8th meeting; and

WHEREAS, no mineral estate owners or lessees appeared at the May 8, 2012 Planning Commission meeting where an agenda item was included to announce receipt of the Application; and

WHEREAS, Town Staff published a Public Notice in the Sun Newspaper on May 10, 2012, clarifying the public hearing date as May 22, 2012; and

WHEREAS, on May 22, 2012, the Planning Commission approved a recommendation to the Town Council to “approve an ordinance vacating the Aspen Park Circle Public Right-of-Way, contingent on an approved final plat for lot consolidation for Lots 1 through 6 of Block 3 in the Aspen Village Subdivision and current Town Land Use Development Code ROW Vacation Plat requirements;” and

WHEREAS, pursuant to Section 2.4.3.D.2.a(ii) of the LUDC, a public hearing before the Town Council on the Application was held on June 21, 2012 at noon; and

WHEREAS, the Town Council hereby finds that pursuant to Section 2.3.6 of the LUDC, all public notice requirements for the June 21st public hearing before the Town Council, were met, as follows:

- a. Public Notice was published in the Sun Newspaper, a newspaper of general circulation in the Town, on May 31, 2012, which was at least 15 days prior to the scheduled hearing.
- b. Written notice was mailed to the record owners of land immediately adjacent to Aspen Park Circle, property owners within 300 feet of the subject property, and any other person who made a written request for such notice, on June 1, 2012, which was no less than 15 days prior to the public hearing.
- c. On June 6, 2012, Public Notice was physically posted on the property at the northeast corner of Alpha Drive and Highway 160 and the northwest

corner of Aspen Village Drive and Aspen Park Circle and remained on the property for a period of at least 15 days prior to the public hearing. The posting was witnessed by Pagosa Springs Police Officer Tony Kopp.

- d. Although not required by the LUDC, public notice was also posted at Town Hall on June 1, 2012; and

WHEREAS, on June 1, 2012, the Applicant provided written notice via certified mail, return receipt requested, to all mineral estate owners and lessees of the public hearing before the Town Council; and

WHEREAS, the June 1, 2012 notice to mineral owners and lessees incorrectly identified July 2, 2012 as the date of the first reading of this Ordinance and the Applicant subsequently provided a correct notice via Federal Express to the sole mineral owner who is not selling his property to Wal-Mart; and

WHEREAS, Section 2.3.7.(G) states that “minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements....Failure of a party to receive written notice shall not invalidate subsequent action”; and

WHEREAS, the Town Council hereby finds and determines that the written notices of the Application provided to mineral estate owners and lessees provided constructive notice of the Application and the public hearings, that none of the mineral estate owners or lessees were injured by any defects in the notices, and that such notices substantially complied with the requirements of the Land Use Development Code; and

WHEREAS, the Town Council hereby finds that the criteria of Section 2.4.3.D.2.b(ii) of the Town’s Land Use Development Code for vacation of a right-of-way have been met, as follows:

- a. *The vacation is consistent with the Comprehensive Plan and other adopted Town policies and plans, including any adopted transportation plan or streets/roadway plan.* Aspen Park Circle is located within an area identified on the Comprehensive Plan as Mixed Use Corridor, which defines the primary uses as “Commercial uses...including Retail, Offices, Hotels, and tourism related business.” Vacation of the Aspen Park Circle right-of-way and utility easements will not negatively affect vehicular transportation, public safety, public services, or accessibility in the surrounding area. Pedestrian sidewalks and trails are planned in the proposed development plans from Wal-Mart, and the Applicant is required to relocate utilities already placed within the Aspen Park Circle right-of-way.

- b. *The land to be vacated is no longer necessary for the public use and convenience.* The Applicant has also applied for a lot consolidation of Lots 1 through 6 of Block 3 in the Aspen Village Subdivision. The portion of Aspen Park Circle that will be vacated only provides access to Lots 1 through 6, and upon consolidation of Lots 1 through 6, Aspen Park Circle will no longer be needed for public use or convenience and will have no beneficial public use.
- c. *The vacation of a roadway that exists by right of usage shall occur only if the land adjoining said roadways is left with an established public road or private access easement connecting said land with another established public road.* Alpha Drive and Aspen Village Drive will remain as public rights-of-way and upon consolidation of Lots 1 through 6, access to the property currently adjacent to Aspen Park Circle will be available from both Alpha Drive and Aspen Village Drive.
- d. *The vacation will not leave any land-locked parcels.* Upon consolidation of Lots 1 through 6, no parcels will be land-locked and all parcels will have access to a public right-of-way.
- e. *The vacation will not adversely impact the health, safety and/or welfare of the general community, or reduce the quality of public facilities or services provided to any parcel of land, including but not limited to police/fire protection, access, and utility service.* The Applicant will be required to work with the utility providers to relocate all utility easements currently within the Aspen Park Circle right-of-way. No building permits will be issued until the utility easements are relocated to the satisfaction of the Town and the utility providers. Upon consolidation of Lots 1 through 6 and relocation of the utilities, the right-of-way and utility easement vacation will not adversely affect or impact the health, safety, or welfare of the general community, or the quality of public facilities or services provided, and there will be no adverse effect to police/fire protection or access; and

WHEREAS, the Town wishes to formally and expressly vacate such roadway and utility easements within the corporate limits of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, as follows:

SECTION 1 – Incorporation of Recitals and Findings. The above Recitals and Findings of the Town Council are hereby incorporated into this Ordinance.

SECTION 2 – Vacation of Roadway and Utility Easements. Pursuant to Sections 43-2-303(1)(a) and 43-2-303(2)(c), C.R.S., the Town hereby divests itself of all of its right or interest in and to the public right-of-way in Aspen Park Circle and the utility easements therein, within the corporate limits of the Town.

SECTION 3 – Withholding of Building Permits. No Building Permits for Lots 1 through 6, Block 3, Aspen Village Subdivision, will be issued until the Town has approved a Final Plat for consolidation of such Lots, and utility easements have been relocated to the satisfaction of the affected utility providers and the Town.

SECTION 4 – Vesting of Title. In accordance with the provisions of Section 43-2-302, C.R.S., title to the lands included within the roadway hereby vacated shall vest in the owner of the abutting property or properties, subject to the same encumbrances, liens, limitations, restrictions, and estates as the land to which it accrues.

SECTION 5 - Recording. In accordance with the requirements of Section 43-2-303(2)(f), C.R.S., this ordinance vacating the roadway designated herein shall be recorded in the office of the Clerk and Recorder of Archuleta County.

SECTION 6 – Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

SECTION 7 – Effective Date. This Ordinance shall become effective and be in force immediately upon final passage at second reading.

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INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3.9, B) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE ____ DAY OF _____, 2012.

TOWN OF PAGOSA SPRINGS,
COLORADO

By: _____
Ross Aragón, Mayor

Attest:

April Hessman, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3.9, D) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE ____ DAY OF _____, 2012.

TOWN OF PAGOSA SPRINGS,
COLORADO

By: _____
Ross Aragón, Mayor

Attest:

April Hessman, Town Clerk

CERTIFICATE OF PUBLICATION

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 773 (Series 2012) was approved by the Town Council of the Town of Pagosa Springs on first reading at its regular meeting held on the ____ day of _____, 2012, and was published by title only, along with a statement indicating the effective date of the Ordinance and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on _____, 2012, which date was at least ten (10) days prior to the date of Town Council consideration on second reading.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this __ day of _____, 2012.

April Hessman, Town Clerk

(S E A L)

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 773 (Series 2012) was approved by the Town Council of the Town of Pagosa Springs on second reading, at its regular meeting held on the ____ day of _____, 2012, and was published by title only, along with a statement indicating the effective date of the Ordinance and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on _____, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this __ day of _____, 2012.

April Hessman, Town Clerk

(S E A L)