

Attachment A - Appeal Rationale and Additional Documents

Cathy Chapman

From: Jordan Greenman
Sent: Friday, May 25, 2018 12:55 PM
To: Christopher DePerro; Cathy Chapman; Amanda Murrietta; Robert Martinez
Subject: Fwd: Abdandonment Appeal Rationale
Attachments: Citrus Estates and Hilker Estates Subdivision Maps.pdf; ATT00001.htm; Lot 8 - Citrus Estates.pdf; ATT00002.htm; Lot 9 - Citrus Estates.pdf; ATT00003.htm

Jordan Evan Greenman
Urban Planner II / Abandonment Coordinator

Begin forwarded message:

From: Andrew Armstrong <aarmstrong@beusgilbert.com>
Date: May 25, 2018 at 12:50:43 PM MST
To: "'Amanda.Murrietta@phoenix.gov'" <Amanda.Murrietta@phoenix.gov>
Cc: Dennis Newcombe <dnewcombe@beusgilbert.com>, 'Jordan Greenman' <Jordan.Greenman@phoenix.gov>
Subject: FW: Abdandonment Appeal Rationale

Amanda,


I think Jordan will be able to include the following email and rationale (see below) for the listed appeal to an abandonment before he leaves the office today, but if not can you ensure this will make the file?

Thank you,

From: Andrew Armstrong
Sent: Friday, May 25, 2018 12:47 PM
To: 'Jordan Greenman'
Cc: Dennis Newcombe
Subject: Abdandonment Appeal Rationale

Jordan,

Please include the following information as our rationale for the subject abandonment appeal, thank you:

 Pursuant to our request of the appeal of Abandonment # V-180020A regarding the 16' alley abandonment abutting our client's property (5105 E. Lafayette Blvd.) we are appealing this decision for the following reasons:

1. The alley allows for access to existing utilities (e.g. electric, irrigation, and sewer manhole) and pool.
2. Provides a buffer and separation from the property to the south.

3. Grade change, sewer manhole, and location of utility poles makes it challenging to place a new solid block wall with footings (i.e., preferable), which will need to be in the resulting easement area (i.e., a block wall in the easement area will not be acceptable per city requirements).

Moreover, it is worth noting the following points:

1. The original Citrus Homes subdivision platted Lots 8 & 9, which is where the Hilker Estates subdivision was created.
2. Lots 8 & 9 were owned by Gordon and Ruth Hilker. (See attached mortgage and deed for these properties)
3. As the legal description describes, the Hilker Estates subdivision was created via Lot 8 and ½ of Lot 9 from the Citrus Homes subdivision (i.e., owned by Gordon and Ruth Hilker); hence the name (“Hilker Estates”).
4. The alley in question was dedicated at that time, as was 51st Street, by the Hilkers and thus created our client’s lot (i.e., 5105 E. Lafayette Blvd.).
5. It is worth noting that the lot numbering on the Hilker Estates subdivision plat goes from 2-18 with our client’s remaining lot (i.e., identified as an “exception”) clearly/logically being Lot 1 as it would make no sense to start with Lot 2 if our client’s lot was not include/created by this plat.
6. Our client’s lot configuration/dimensions (i.e., 5105 E. Lafayette Blvd) as created under the Hilker Estates subdivision and remains exactly the same today.

It is clear, based on these six (6) points that our client has rights to the alley as the Hilkers owned the land, subdivided the land, made the dedications (i.e., alley, streets, etc.) and the lot remains exactly as constituted when the Hilkers created it via their Hilker Estates subdivision and should not be excluded should an abandonment be approved by the Council.

Thanks you.

Andrew J. Armstrong
Assistant Planning Consultant

BEUS GILBERT PLLC

701 North 44th Street | Phoenix, AZ 85008-6504
Direct: 480.429.3060 | Main: 480.429.3000 | Fax: 480.429.3100
Email: aarmstrong@beusgilbert.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

57-50.

HILKER ESTATES

A SUBDIVISION OF LOT 8 AND THE E 1/2 LOT 9, CITRUS HOMES,
BEING PART OF SE 1/4 SW 1/4 SEC 20 AND NE 1/4 NW 1/4 SEC 29, T2N, R4E,
MARICOPA COUNTY, ARIZONA
SURVEY N-53-2°-09' BY HARRY E. JONES

Our client

DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Gordon R. Hilker and Ruth J. Hilker, his wife, have subdivided under the name of HILKER ESTATES, lot 8 and the E 1/2 of lot 9 of Citrus Homes as recorded in Book 7 of Maps of Page 40, Maricopa County Records, Maricopa County, Arizona, and hereby publishes this plat as and for the plat of said HILKER ESTATES, and hereby declares that said plat sets forth the location and gives the dimensions of the lots, streets, alleys and easement constituting same and that each lot and street shall be known by the number or name given to each respectively on said plat and we hereby dedicate to the public for use as such the streets and alleys and the use of the easement as shown on said plat and included in the above described premises.

In Witness Whereof, we have hereunto set our hands and seals this 16th day of November, 1953.

Gordon R. Hilker
Gordon R. Hilker
Ruth J. Hilker
Ruth J. Hilker

ACKNOWLEDGEMENT

STATE OF ARIZONA
County of Maricopa

On this 16th day of November, 1953, before me, the undersigned officer personally appeared Gordon R. Hilker and Ruth J. Hilker, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same for the purpose therein contained.

In Witness Whereof, I hereunto set my hand and official seal.
My commission expires July 24, 1954.

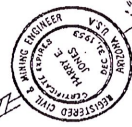
Robert Pugh
Notary Public

APPROVAL

Approved by the Board of Supervisors of Maricopa County, Arizona, this 20th day of December, 1953.

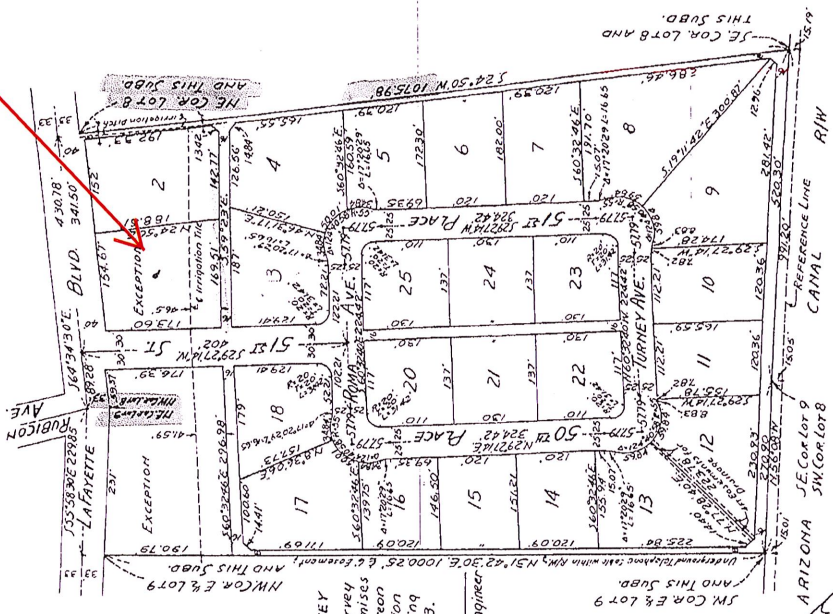
John W. Beatty
Chairman
John W. Beatty
Clerk

APPROVED AND FILED
COUNTY OF MARICOPA
ARIZONA
DEC 22 1953 900 A.M.
By *John W. Beatty*
Recorder and Official Seal
ROGER G. LAYEN
Recorder
COUNTY CLERK



CERTIFICATE OF SURVEY
This is to certify that the survey and subdivision of the premises as described and plotted hereon was made under my direction by James Roe Brown during February and August, 1953.

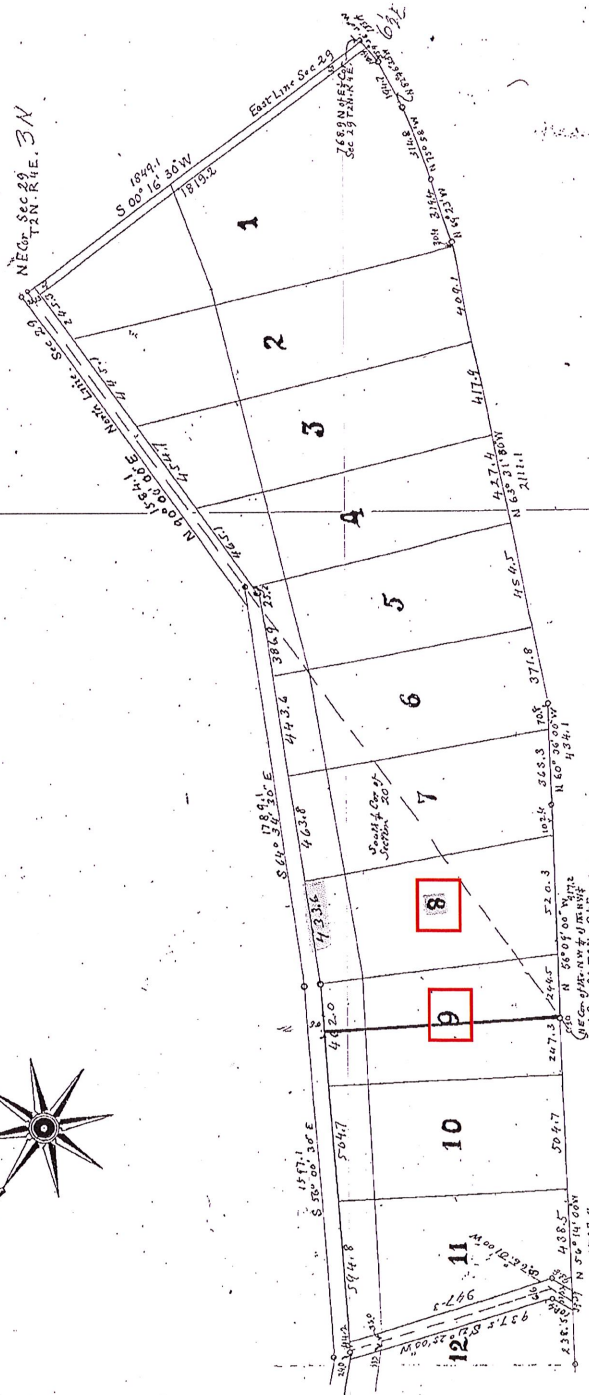
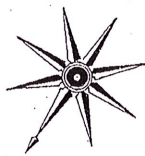
Harry E. Jones
Registered Civil Engineer



1-16-37-39

CITRUS HOMES.

Scale 300ft = 1 inch.



Document

STATE OF ARIZONA

County of Maricopa

I hereby certify that the within instrument was filed

APR - 2 1952 9-001 and indexed in dec

In DOCKET

90: 424

at the request of PHOENIX TITLE & TRUST CO.

When recorded, mail to:

GORDON HILKER 5239-E. LaFayette Blvd. Phoenix, Arizona

Witness my hand and off:

ROGER G. LAVEEN, County Recorder

By Ernest A. Morris Deputy Recorder

Photostated Fee: 42

INDEXED

Escrow #213642 VC/ew

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we, HUGO HILKER, FERNANDA KOEHLER, HARRIET RAYBERG and LUCILLE ROUT, also known as Lucille Routt do hereby convey to

GORDON HILKER and RUTH HILKER, his wife



the following real property situated in Maricopa County, Arizona:

Lot Eight (8), CITRUS HOMES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 7 of Maps, page 40 thereof.

SUBJECT TO: Second half 1951, and all subsequent taxes, which the Grantees herein assume and agree to pay; Easement for a ditch, as quit-claimed to the U. S. of A. by instrument rec. in Book 115 of Deeds, page 186; Easement for an anchor for tel. and tel. lines, as granted to The Mt. States Tel. and Tel. Co., by instrument rec. in Book 42 of Misc., page 350; Easement for electric power lines, as disclosed by instrument rec. in Book 44 of Misc., page 605; Easement for a ditch, as quit-claimed to the U. S. of A. by instrument rec. in Book 308 of Deeds, page 324; and Rights of way for canals, laterals and ditches. All recording data refers to the records in the office of the County Recorder of Maricopa County, Arizona.

Together with all rights and privileges appurtenant or to become appurtenant to said lands by virtue of the subscription of said lands for share of the capital stock of the Salt River Valley Water Users' Association, or by virtue of any Water Right Application for Water Rights for all or any portion of said lands in the Salt River Project of the United States Reclamation Service, and subject to all the terms, conditions and liabilities incident thereto, and subject to any liabilities or obligations imposed upon said lands by reason of the inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District.

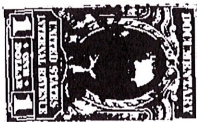
And I or we do warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 18th day of February, 1952.

Fernanda Koehler, Hugo Hilker, Lucille Routt, Lucille Routt

STATE OF Arizona County of Maricopa

This instrument was acknowledged before me this 18th day of March, 1952, by HUGO HILKER and LUCILLE ROUTT, also known as Lucille Routt



Marie L. Parker Notary Public

My commission will expire

STATE OF CALIFORNIA County of Los Angeles

This instrument was acknowledged before me this 20th day of MARCH, 1952, by FERNANDA KOEHLER

Notary Public

My commission will expire

(OVER)

Harriet Rayberg, Harriet Rayberg (Correct name)

STATE OF Cal County of Los Angeles

This instrument was acknowledged before me, this 24 day of March, 1952, by HARRIET RAYBERG.

My Commission Expires May 9, 1954

My Commission Expires:

Notary Public

24543

Realty Mortgage

STATE OF ARIZONA
 County of Maricopa
 I hereby certify that
 instrument was filed
 at request of
 PHOENIX TITLE AND
 APR - 2 1952
 In Docket
 on page 426 - 4
 Witness my hand on
 the day and year above
 ROGER G. LAVERN
 Recorder
 4-2-52

KNOW ALL MEN, That

GORDON R. HILKER and RUTH HILKER, his wife

of Maricopa County, Arizona, hereinafter referred to as MORTGAGOR, in consideration of

----- SIX THOUSAND FIVE HUNDRED AND NO/100----- DOLLARS,

in hand paid by **HUGO HILKER, a widower**

hereinafter referred to as MORTGAGEE, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to MORTGAGEE, and the successors, heirs and assigns of MORTGAGEE forever, the following real estate, lying and being in the County of Maricopa, and State of Arizona, known and described as

Lot Nine (9), CITRUS HOMES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 7 of Maps, page 40 thereof;

EXCEPT that part described as follows:

COMMENCING at the Northerly corner of said Lot 9 and running thence South 33 degrees 59 minutes West on the Northwest line of said Lot 9, which is the line between Lots 9 and 10 of said CITRUS HOMES, a distance of 1000.24 feet to the Westerly corner of said Lot 9; thence South 56 degrees 14 minutes East on the Southwest line of said Lot 9 a distance of 247.3 feet from which point the Northeast corner of the Northwest quarter of the Northwest quarter of Section Twenty-nine (29), Township Two (2) North, Range Four (4) East of the Gila and Salt River Base and Meridian bears West a distance of 20 feet; thence South 56 degrees 09 minutes East continuing on the Southwest line of said Lot 9 a distance of 23.6 feet to the Southerly corner of the Northwest half of said Lot 9; thence North 31 degrees 42 minutes East on the Southeast line of Northwest half of said Lot 9, a distance of 1000 feet to the Easterly corner of the Northwest half of said Lot 9; thence North 56 degrees 00 minutes 30 seconds West on the Northeast line of said Lot 9, a distance of 231 feet to the point of beginning; and

EXCEPT that part described as follows:

BEGINNING at the most Easterly corner of said Lot 9; thence South 29 degrees 25 minutes West along the Southeast line of said Lot 9, a distance of 150.00 feet; thence North 60 degrees 35 minutes West 139.00 feet; thence North 31 degrees 53 minutes 30 seconds East 160.70 feet to the Northeast line of said Lot 9, identical with the Southwest line of Lafayette Boulevard; thence South 56 degrees 0 minutes 30 seconds East along the Northeast line of said Lot 9 a distance of 132.27 feet to the point of beginning.

Together with all rents, issues and profits thereof and all rights and privileges appurtenant or to become appurtenant to said land by virtue of any application for water rights for all or any portion of said lands in the Salt River Project of the United States Reclamation Service.

Together with all the rights to the use of water and ditches for the irrigation of said premises to which MORTGAGOR or said premises are now or may hereafter become entitled; and also together with all the shares of, or subscription rights to, the capital stock of the Salt River Valley Water Users' Association appurtenant or to become appurtenant to said premises;

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TO HAVE AND TO HOLD the above described premises with all the privileges and appurtenances thereunto belonging including all rents, issues and profits thereof unto MORTGAGEE, and the successors, heirs, executors, administrators or assigns of MORTGAGEE forever. And MORTGAGOR hereby covenants that MORTGAGOR is well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and has good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered and that MORTGAGOR will forever warrant and defend the same to MORTGAGEE against all claims whatsoever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if MORTGAGOR shall pay to MORTGAGEE, the just and full sum of SIX THOUSAND FIVE HUNDRED AND NO/100 Dollars, with interest thereon, according to the terms and conditions of one certain promissory note bearing even date herewith in the amount of \$6,500.00, payable in annual install. of \$100.00 or more, on or before the 1st day of March of every year, beginning March 1, 1953, with interest on all unpaid principal at the rate of $\frac{1}{4}$ per annum, from March 1, 1952, payable annually and in addition to the principal payments, executed by MORTGAGOR

and payable to the order of said MORTGAGEE, and shall moreover pay to the proper officers all taxes and assessments, general or special, which shall be levied or assessed upon said real estate on or before the date when such taxes or assessments shall have become delinquent and insure and keep insured the buildings on said premises against loss or damage by fire, in the sum of NONE Dollars, in insurance companies to be selected by MORTGAGEE, and the policies of insurance assigned or made payable to MORTGAGEE as interest of MORTGAGEE may appear, and deliver the said policies to the MORTGAGEE, until payment in full of the said promissory note, and interest thereon, then these presents shall be null and void. But in case of the non-payment of any sum of money, either principal, interest, taxes, assessments, assessments and dues for irrigation water, power bills, or premiums of insurance, at the time or times when the same shall become due or delinquent as aforesaid, or upon the failure of MORTGAGOR to insure the buildings upon said premises and keep the policies assigned or made payable to MORTGAGEE, and deliver the said policies to the MORTGAGEE agreeable to the conditions of these presents, or of the aforesaid promissory note, or any part thereof, or in case of the failure of MORTGAGOR to keep or perform any other agreement, stipulation, or condition, herein contained, then in such case the whole amount of said principal sum shall be, at the option of MORTGAGEE, deemed to have become due, and the same, with interest thereon at the rate contracted, shall thereupon be collectible in a suit at law or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur, as aforesaid.

And MORTGAGOR further covenants and agrees, that in case of failure on the part of MORTGAGOR to pay any of said taxes, assessments and dues for irrigation water, power bills, or premiums of insurance, as above provided, MORTGAGEE may pay the same, and the amount so paid, together with interest thereon at the rate of eight per cent per annum, shall be a part of the debt secured by this mortgage and a lien on said premises immediately due and payable at the option of MORTGAGEE.

MORTGAGOR also covenants and agrees with MORTGAGEE that MORTGAGOR will, during existence of this mortgage, neither permit nor commit waste on said premises; and will purchase and

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use thereon the amount of water to which said premises are or shall be entitled; and will keep said premises in continuous cultivation and carefully irrigate the same; and will take the same care thereof that a prudent owner would take, and in any action to foreclose this mortgage a receiver shall, upon application of the plaintiff in such action and without notice to the defendants, be appointed by the Court to take charge of said property, to manage, carry on, protect, preserve and repair the same and receive and collect all the rents, issues and profits thereof, and apply the same to the payment of sums spent to protect, preserve and repair said property, the payment of taxes and other charges, including his own compensation, and to the payment of said note..... and interest, which may be due or become due during the pendency of the action until sale be finally made and deed made and delivered thereunder; and in case of such foreclosure MORTGAGOR will pay to MORTGAGEE in addition to the taxable costs of the foreclosure suit, a reasonable amount additional as attorney's fee, together with a reasonable fee for title search made in preparation and conduct of such suit, which shall be a lien on said premises and secured by this mortgage; and, in case of settlement after suit is brought but before trial, MORTGAGOR agrees to pay a reasonable attorney's fee, as well as all of the costs of such suit and the costs of the appointment of a receiver, if appointed, and any sums expended by such Receiver or the MORTGAGEE in the management, carrying on, protection, preservation and repair of said property.

Unofficial Document

The covenants and agreements herein contained shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties constituting MORTGAGOR have hereunto set their hand. this 18th day of February, A.D., 19 52.

Gordon Hilker
Ruth Hilker

State of Oregon
County of Marion ss.

On this the 17th day of March, 19 52

before me, the undersigned officer, personally appeared

GORDON R. HILKER and RUTH HILKER, his wife

known to me (or satisfactorily proven) to be the person whose name are subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.

(My Commission Expires July 31, 1953)

Notary Public