

ATTACHMENT B



City of Phoenix
Planning and Development Department

CITY COUNCIL APPEAL SUMMARY – ABND 210015

The City Council, at the Formal Meeting on **October 6, 2021**, **APPROVED** the appeal to **OVERTURN** the Abandonment Hearing Officer's decision of the original abandonment request subject to Abandonment Hearing Officer's stipulations.

This abandonment request will NOT be complete until all the stipulations have been met and the request is formally adopted by City Council. It is the **APPLICANT'S RESPONSIBILITY** to ensure that all stipulations are satisfied. **Please contact Maggie Dellow at (602) 256-3487** for questions and notification of your completion of the stipulations.

Upon completion of the stipulations your request will be scheduled for final City Council action.

If the stipulations of abandonment are not completed within **two years** from the date of your conditional approval (**your expiration date is October 6, 2023**), this request will then expire. At that time a new submittal will be required along with the required payment for the abandonment process. A one time, **one-year** extension can be requested prior to the expiration date, with applicable extension fee due.



City of Phoenix

Planning and Development Department

October 6, 2021

ABND 210015

Project# 05-1208

CITY COUNCIL APPEAL SUMMARY

Hearing Date: October 6, 2021 (City Council Formal)

Agenda Item # 120

Abandonment # ABND 210015

Location: Calle Redonda, between 54th Way and 54th Court

Quarter Section: 16-40

Request to Abandon: The alley area between 54th Way and 54th Court, from Calle Redonda north to the corner of the second alleyway that provides access to 54th Court.

Applicant: Mike Ragland, 3823 North 54th Way

Representative: Himself

Appellant: Mike Ragland, 3823 North 54th Way

Representative: Himself

Ms. Maggie Dellow, the Abandonment Coordinator introduced the case by reading the abandonment case into the record by stating the applicant, location, abandonment request, and purpose of the request, as well as City staff research.

Mr. DePerro then started the discussion by asking the applicant if they would like to add any additional comments regarding the abandonment request.

Mr. Mike Ragland, the applicant explained that he is seeking the proposed abandonment to help with security. Mr. Ragland then stated that there has been a lot of illegal dumping taking place within the alley. Mr. Ragland shared that, to the best of his knowledge, all nine of the neighbors adjacent to the alley proposed for abandonment are in support of the request. Mr. Ragland also explained that the alley immediately across the street from his home was successfully abandoned. Mr. Ragland also explained that he received all of the necessary signatures for the application to be taken in for review and that he was interested in discussing the stipulations of approval.

Mr. DePerro then explained to those attending the hearing that abandonment staff reports are written to provide stipulations of approval if the case should be approved. And that the stipulations within the staff report are not final prior to the Abandonment Hearing and they are subject to change until the Abandonment Hearing Officer makes a decision on the case. Mr. DePerro also explained that the signatures on the petition are required simply for the application to be brought into the City. These signatures do not guarantee approval of the abandonment.

Mr. DePerro then opened the hearing to interested neighbors and community members to speak on the case.

Mr. Michael Messenger, resident at 3630 North 54th Court, stated although the applicant has specified that the abandonment request is to help with security, there has been no discussion of how this will be achieved, maintained or how the utility providers will be given access to the area.

Mr. DePerro then explained that maintenance of an alley, whether or not it has been abandoned, is the responsibility of the abutting property owner per City Code. Mr. DePerro also explained that the access for utility providers would be worked out following the abandonment and that only the utility providers would be granted access.

Ms. Kelly Messenger, resident at 3630 North 54th Court stated that the abandoned alley referenced by Mr. Ragland at the beginning of the hearing is now overgrown and is the site of some trash dumping, which raises concerns for her of what the state of the alley will be if it were to be abandoned.

Ms. Kathleen Raife, resident at 4012 North 52nd Street, expressed concern that abandoning the alley would lead to issues of access or damage to sewer lines, public utilities, and irrigation valves.

Ms. Laura Grisolano and Mr. David Hanselman, residents at 3901 North 54th Way, explained that they live at the home directly north of the applicant and are supportive of the application. Mr. Hanselman asked that the abandonment be extended to the edge of his property rather than stopping midway through.

Mr. DePerro replied by stating that this would not be possible because it would cut off alley connectivity and create a dead end portion of alleyway.

Mr. Tristahn Schaub resident at 3824 North 54th Court, asked Mr. DePerro if the only opinions that mattered in the hearing were those of the nine homeowners who are immediately adjacent to the alley.

Mr. DePerro replied with that he will take into account any opinion of a homeowner who is located within the notice area of that abandonment, not necessarily just those who are immediately adjacent.

Mr. Schaub asked about the process of the abandonment and if all nine adjacent homeowners would need to approve this request.

Mr. DePerro then explained that the signatures from the homeowners were required to bring the case to hearing only. If granted conditional approval by the Hearing Officer, homeowners in opposition would be able to appeal the decision to City Council and vice versa if the abandonment is denied.

Mr. Schaub asked if there was an opportunity for the case to be continued. Mr. Schaub expressed concerns about the irrigation lines, fearing that such an abandonment could result in damage to the irrigation lines that would result in possible flooding. Mr. Schaub expressed that he was supportive of Mr. Ragland's request to abandon the alley to achieve a greater lot coverage, rather than apply for a variance. As the President of the Arcadia Camelback Neighborhood Association, Mr. Schaub indicated that they will not support any variance for a home to exceed 30% lot coverage.

Mr. DePerro explained that he has not been a fan of using abandonments to increase a zoning entitlement when the variance process exists specifically for that purpose. Mr. DePerro invited the applicant to respond to any comments that he heard. Mr. Ragland reiterated that he spoke with many homeowners along the alleyway and in the area to answer any questions and garner support.

Ms. Grisolano asked how the abandonment would impact the homeowners' walls.

Mr. DePerro explained that the abandonment would not require any existing walls to be changed. Mr. DePerro also explained that in the portion of the alley that contains a sewer line, walls would not be permitted to be built in the area where a permanent footer would be over a sewer line.

Mr. Messenger asked if Mr. Ragland was planning to expand his home.

Mr. Ragland confirmed that his plan is to build a home expansion.

Mr. DePerro explained how the abandonment would impact the homeowners' properties if the abandonment were approved.

10/7

The Hearing Officer reviewed the recommended stipulations with the applicant.

The Hearing Officer asked the Abandonment Coordinator to share the staff reports with the neighbors in attendance.

The Hearing Officer took the case under advisement.

The Hearing Officer took the case out from under advisement June 2, 2021.

Hearing Officer Findings and Decision

This request is to abandon an alley dedicated to the public, which allows for access to rear yards of abutting lots. A public sewer line, which services the abutting lots, exists within most of the area requested for abandonment, as well as overhead utilities (electric and communications). The area requested for abandonment also falls within a designated floodplain, meaning that drainage studies would be required if any portion of the alley were to be further gated or fenced upon abandonment. Additionally, private irrigation lines are reported to exist within the alley, as well as irrigation facilities and control valves, for which access is required by residents who utilize irrigation water provided by said facilities.

City Code Section 31-64 states that the City Council, in its discretion, may approve the abandonment of a public roadway when it determines that it is no longer necessary for public use as a roadway. That is the criteria this Hearing Officer must also use to make a decision in this case. A roadway is defined in Section 31-63 as "All or part of any platted or designated public street, highway, alley, lane, parkway,

avenue, road, sidewalk, public utility easement, or other public way, whether or not it has been used as such.”

The testimony provided at the hearing was not universally supportive of the request. The applicant stated that the primary reason for requesting the abandonment was to result in additional lot coverage permitted for his lot, and if possible, a larger yard to fence in. While that is understandable, it is not the criteria stated in the City Code for approving an abandonment. Other means are also available to increase lot coverage (such as a zoning variance, if approved through a separate and different hearing process).

Neighbors within the vicinity expressed concerns with closing off or fencing off the alley if abandoned, primarily related to issues with accessing irrigation pipes and control valves. 24-hour access through the area requested for abandonment would also still be required by the City’s Water Services department, due to the sewer line; and by SRP and Century Link, due to the existence of overhead electric and communications lines.

In the Hearing Officer’s professional opinion, there is still a need for public access in this alley, as demonstrated by the utility comments and the testimony of neighbors who would be directly affected by this abandonment. In addition, there was a strong desire expressed in the hearing to fence the alley if abandoned, which would also cause potential issues with historic drainage, as the City’s Floodplain Division commented. This could be addressed by retaining the alley fully as a drainage easement, but that would prohibit any fencing, as structures are not allowed within drainage easements. **Given all of these considerations, this abandonment request has been DENIED.**

Stipulations of Conditional Approval

The request for abandonment has been granted conditional approval by the City Council. The following stipulations will need to be complied with prior to final approval by City Council: 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 right-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 25 feet of the monument line may be abandoned along Calle Redonda and 54th Court.

4. ~~Driveways along Calle Redonda and 54th Court shall be removed and replaced in kind with curb and gutter unless otherwise approved by the Street Transportation Department. **DELETED BY CITY COUNCIL on October 6, 2021.**~~
5. All work in public right-of-way is to be done in accordance with plans approved by the Planning and Development Department and at no cost to the City.
6. Either a or b shall be complied with:
 - a. Retain a drainage easement over the entire area to be abandoned.
 - b. Show that offsite flows within the alley will not impact others by changing the flow direction abruptly 90 degrees east in alley, 90 degrees south down 54th Court, 90 degrees west down Calle Redonda and another 90 degrees south down a 16ft drainage easement between 5401 & 5407 E Calle Redonda instead of natural offsite flows down the alley, across Calle Redonda to a drainage easement between 5401 & 5407 E Calle Redonda per Resolution 19121. Need to show positive drainage in the alley east to 54th Ct and capacity of the alley to carry additional offsite flows. Also show how 54th Ct positively drains to the south at the exit of the alley and capacity of the 54th Ct to carry additional offsite flows. Also show how the offsite flows are then carried to the drainage easement between 5401 and 5407 E Calle Redonda.
7. All stipulations must be completed within **two years** from the Abandonment Hearing Officer's decision.

This report has been reviewed and approved by the Abandonment Hearing Officer.

Hearing Officer Signature:  Date: 11/29/21

REPORT SUBMITTED BY: Alyssa Neitzel, Abandonment Secretary

cc: Applicant/Representative, Mike Ragland
Christopher DePerro, Abandonment Hearing Officer