

OPEN MEETING ITEM



0000054271

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

EX-100

22

2006 JUL -6 P 1:17

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: July 6, 2006

DOCKET NO.: W-02074A-06-0095

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BEARDSLEY WATER COMPANY
(DELETION OF PORTION OF CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 17, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for Open Meeting to be held on:

JULY 25 AND 26, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 BEARDSLEY WATER COMPANY FOR
10 DELETION OF A PORTION OF ITS
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY.

DOCKET NO. W-02074A-06-0095

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: May 8, 2006
10 PLACE OF HEARING: Phoenix, Arizona
11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
12 APPEARANCES: Mr. Steven A. Hirsch and Mr. Stan Lutz, BRYAN
13 CAVE, LLP, on behalf of Beardsley Water Company;
14 Mr. Jeffrey W. Crockett, SNELL & WILMER, on
15 behalf of Intervenor, Lennar Communities
16 Development, Inc.; and
17 Mr. Jason Gellman, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation Commission.

18 **BY THE COMMISSION:**

19 On February 16, 2006, Beardsley Water Company ("Company" or "Applicant") filed with the
20 Arizona Corporation Commission ("Commission") an application for a deletion of a portion of its
21 Certificate of Convenience and Necessity ("Certificate") to provide public water utility service in
22 various parts of Maricopa County, Arizona.

23 On March 14, 2006, the Commission's Utilities Division ("Staff") issued a notice of
24 administrative completeness that the Company's application had met the sufficiency requirements of
25 A.A.C. R14-2-411(C).

26 On March 16, 2006, by Procedural Order, a hearing was scheduled for May 4, 2006, and other
27 procedural filing dates established for the proceeding.

28 On March 23, 2006, Staff filed a request to reschedule the proceeding due to the

1 unavailability of a Staff witness. In its request, Staff indicated that the Company had no objections to
2 the proceeding being rescheduled.

3 On March 24, 2006, by Procedural Order, the proceeding was rescheduled to commence on
4 May 8, 2006.

5 On April 19, 2006, Staff filed its Staff Report which recommends approval of the application
6 herein and also addressed several other concerns of Staff.

7 On April 20, 2006, Lennar Communities Development, Inc. ("Lennar") filed a Motion to
8 Intervene which was unopposed.

9 On April 21, 2006, the Company filed certification that it had provided notice pursuant to the
10 terms of the Commission's Procedural Order.

11 On May 2, 2006, by Procedural Order, the Commission authorized intervention by Lennar.

12 On May 8, 2006, a full public hearing was convened before a duly authorized Administrative
13 Law Judge of the Commission at its offices in Phoenix, Arizona. The Company, Lennar, and Staff
14 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement
15 pending submission of a Recommended Opinion and Order to the Commission.

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
18 Commission finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. Pursuant to authority granted by the Commission in Decision No. 40034 (May 26,
21 1969), the Company is an Arizona corporation which is engaged in the business of providing public
22 water service to various parts of Maricopa County and in parts of the City of Surprise, Arizona
23 ("City").

24 2. On February 16, 2006, the Company filed an application for a deletion of a portion of
25 its Certificate which encompasses an area of approximately 1,029 acres, a part of which is located in
26 unincorporated areas in Maricopa County and another part of which is located within the City, which
27 areas are described more fully in Exhibit A, attached hereto and incorporated by reference.

28 3. The area for which the Company is seeking a deletion from its certificated service area

1 is about to be developed by Lennar into what will be known as Asante, a master-planned community,
2 which will be located along Grand Avenue where it intersects with 163rd Avenue.

3 4. Applicant provided notice of the application and hearing thereon in the manner
4 prescribed by law.

5 5. The City, Lennar and the Company have entered into an agreement whereby the
6 Company is willing to delete the area described in Exhibit A from its Certificate in return for
7 reasonable compensation.

8 6. The City is willing to provide water service to the entire area described in Exhibit A
9 and will also provide wastewater treatment service to Asante, and in time, the entire project will be
10 annexed by the City.

11 7. Lennar supports the application by the Company in this proceeding.

12 8. A Lennar vice-president testified that Asante will be developed as a 3,600 acre
13 community over a period of 8 to 10 years. Asante will ultimately contain approximately 11,000 to
14 12,000 homes and house approximately 40,000 residents.

15 9. Presently, the Company has no customers or facilities in the area described in Exhibit
16 A.

17 10. The Company's service to its existing and future customers will not be affected by the
18 requested deletion herein.

19 11. The City's rates and charges for water service are presently lower than those of the
20 Company, and since it does not pay income taxes and has approximately 100,000 customers,
21 economies of scale should result in lower water rates for future customers in the area to be deleted
22 from the Company's certificated service area.

23 12. The Company presently provides customers on its various systems with water which
24 meets the requirements of the Safe Drinking Water Act and all of its water sources comply with the
25 new arsenic standard.

26 13. Applicant is current on the payment of its property and sales taxes.

27 14. The Company's manager indicated that the Company shortly expects to be in
28

1 compliance with certain issues identified in Decision No. 67160 (August 10, 2004).¹

2 15. Since the Commission's authorization in Decision No. 67160 is not to become
3 effective until the Company files documentation from the MCESD that it is operating its four public
4 water systems in total compliance with the department's requirements, the Company is not presently
5 serving any customers in the extension area authorized in Decision No. 67160.

6 16. On April 19, 2006, Staff filed a report recommending approval of the application for a
7 deletion of the area described in Exhibit A and believes it is in the public interest for the Commission
8 to approve the deletion requested herein.

9 17. In the Staff Report, Staff expressed its concerns that the Company had failed to
10 comply with Decision No. 67160 because it had not filed evidence from the MCESD that its systems
11 were in total compliance with its requirements. Because of this, Staff recommended that the
12 Commission authorize it to begin an Order to Show Cause proceeding against the Company if it did
13 not file CSRs from the MCESD in this docket as a required by Decision No. 67160 within sixty
14 calendar days of the effective date of this Decision. Staff also recommended that the Company
15 update its curtailment tariff to reflect a complete listing of the applicable public water system
16 numbers within forty-five calendar days of the effective date of this Decision.

17 18. After discussions between the parties, it was agreed that the Company would secure
18 the documentation necessary within the next several weeks that would enable the MCESD to issue
19 documentation which would indicate total compliance of the Company's operating systems to meet
20 the requirements of Decision No. 67160. The Company also agreed to file an updated curtailment
21 tariff within approximately one week of the hearing to address those concerns of Staff.

22 19. It was further agreed that Staff would then promptly file a memorandum or
23 amendment to its Staff Report which indicates that these concerns have been properly addressed by

24 ¹ Decision No. 67160 approved a Company request for an extension of its Certificate to provide water service to
25 approximately 160 acres of land being developed as a residential subdivision. At the time of that proceeding, the
26 Maricopa County Environmental Services Department ("MCESD") indicated in an April, 2004, Compliance Status
27 Report ("CSR") that all four of Applicant's systems had minor monitoring and reporting deficiencies, and the Company
28 was to late-file CSRs which would prove that the Applicant complied with the monitoring requirements of the MCESD.
Although the Company complied with Decision No. 67160 by timely filing all other documentation required such as
copies of its Maricopa County franchise for the extension area, an executed main extension agreement and the
developer's Certificate of an Assured Water Supply, documentation issued by the MCESD that were late-filed still
indicated some minor deficiencies with one of the Company's systems.

1 provide water service within the area described in Exhibit A.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the application of Beardsley Water Company to delete
4 the area described in Exhibit A is approved.

5 IT IS FURTHER ORDERED that the revised curtailment tariff filed by Beardsley Water
6 Company is hereby approved.

7 IT IS FURTHER ORDERED that Beardsley Water Company shall file, within 45 days of the
8 effective date of this Decision, as a compliance item in this Docket, a copy of its revised curtailment
9 tariff.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12
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14 CHAIRMAN

COMMISSIONER

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17 COMMISSIONER

COMMISSIONER

COMMISSIONER

18
19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
20 Director of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this ____ day of _____, 2006.

24 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

25 DISSENT _____

26
27 DISSENT _____

28 MES:mj

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SERVICE LIST FOR:

BEARDSLEY WATER COMPANY

DOCKET NO.:

W-02074A-06-0095

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Civil Engineering
Land Surveying
Project Management



W-02074A-06-0095

5 APRIL 2006
JOB NO. 03101

LEGAL DESCRIPTION
BEARDSLEY ABANDONED CC & N - 1

A PARCEL OF LAND LOCATED WITHIN A PORTION OF SECTION 2, SECTION 3 AND A PORTION OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 2, BEING AN ALUMINUM CAP, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 2, BEING AN ALUMINUM CAP, BEARS SOUTH 89 DEGREES 27 MINUTES 57 SECONDS EAST 5,269.57 FEET;

THENCE SOUTH 89 DEGREES 27 MINUTES 57 SECONDS EAST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 640.18 FEET, TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF GRAND AVENUE, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

THENCE NORTH 46 DEGREES 13 MINUTES 34 SECONDS WEST, DEPARTING SAID SOUTH LINE AND PROCEEDING ALONG THE NORTHEASTERLY RIGHT OF WAY OF GRAND AVENUE, A DISTANCE OF 7,002.58 FEET, TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3, SAID POINT ALSO BEING A COMMON POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 5 NORTH, RANGE 2 WEST;

THENCE NORTH 89 DEGREES 43 MINUTES 03 SECONDS EAST, DEPARTING SAID NORTHEASTERLY RIGHT OF WAY AND PROCEEDING ALONG THE COMMON LINE OF SAID SECTION 3 AND SAID SECTION 34, A DISTANCE OF 949.61 FEET, TO THE SOUTH QUARTER CORNER OF SAID SECTION 34;

THENCE SOUTH 89 DEGREES 42 MINUTES 25 SECONDS EAST, DEPARTING SAID SOUTH LINE OF THE SOUTHWEST QUARTER AND PROCEEDING ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 34, A DISTANCE OF 2,588.21 FEET, TO THE SOUTHWEST CORNER OF SECTION 35, TOWNSHIP 5 NORTH, RANGE 2 WEST;

THENCE SOUTH 89 DEGREES 41 MINUTES 53 SECONDS EAST, DEPARTING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 34 AND PROCEEDING ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 35, A DISTANCE OF 2652.91 FEET, TO THE SOUTH QUARTER CORNER OF SAID SECTION 35;

THENCE SOUTH 89 DEGREES 42 MINUTES 40 SECONDS EAST, DEPARTING SAID SOUTH LINE OF THE SOUTHWEST QUARTER AND PROCEEDING ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 35, A DISTANCE OF 2,653.20 FEET, TO THE SOUTHEAST CORNER OF SAID SECTION 35;

THENCE SOUTH 89 DEGREES 37 MINUTES 54 SECONDS EAST, DEPARTING THE SOUTH LINE OF THE SOUTH EAST QUARTER OF SAID SECTION 35 AND PROCEEDING ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, A DISTANCE OF 907.37 FEET, TO THE NORTHEAST CORNER OF SAID SECTION 2;

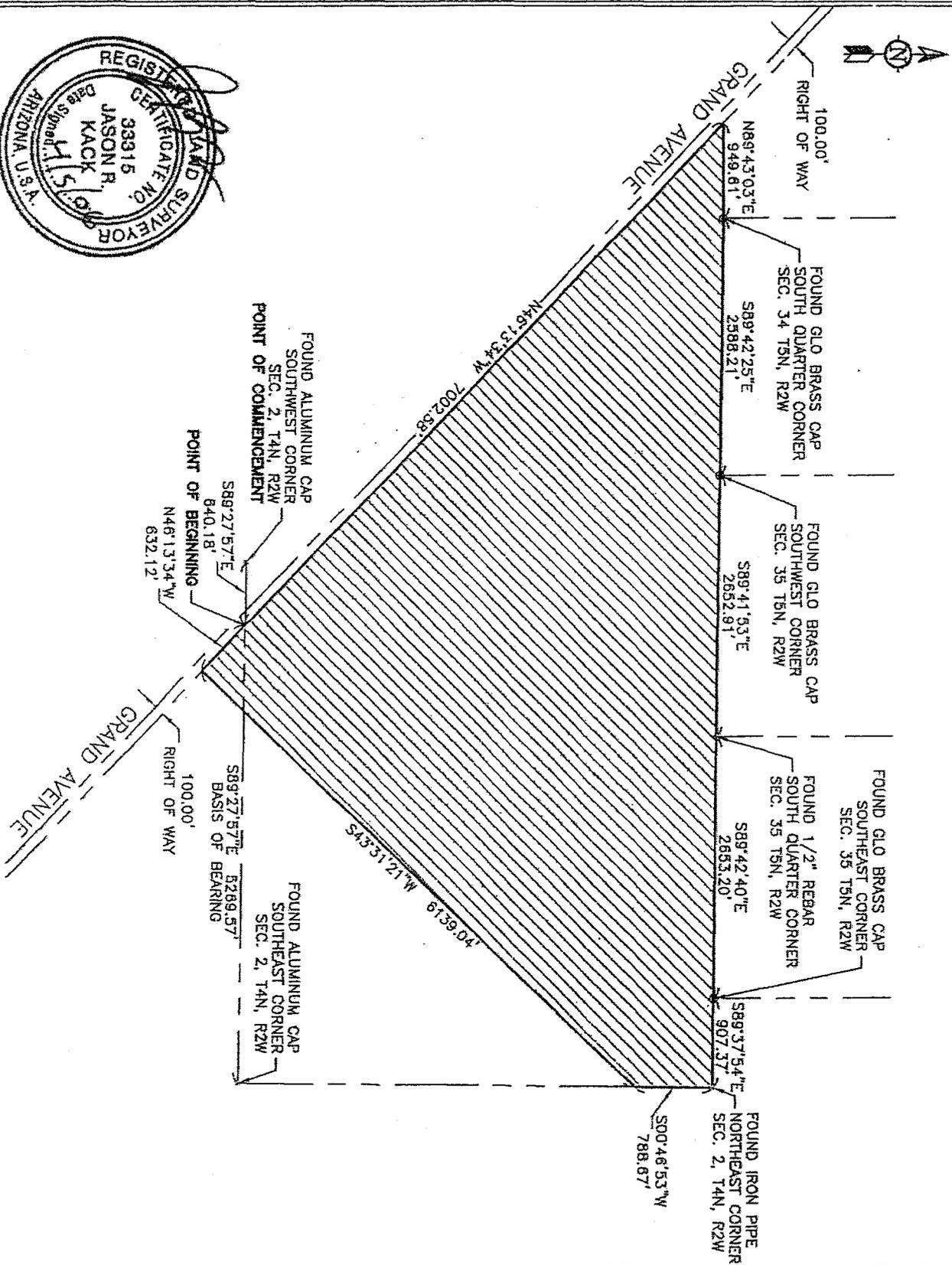
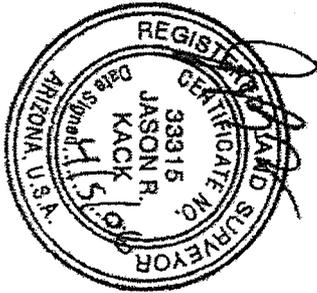
THENCE SOUTH 00 DEGREES 46 MINUTES 53 SECONDS WEST, DEPARTING SAID NORTH LINE AND PROCEEDING ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, A DISTANCE OF 788.67 FEET;

THENCE SOUTH 43 DEGREES 31 MINUTES 21 SECONDS WEST, DEPARTING SAID EAST LINE, A DISTANCE OF 6,139.04 FEET, TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF GRAND AVENUE;

THENCE NORTH 46 DEGREES 13 MINUTES 34 SECONDS WEST, ALONG SAID NORTHEASTERLY RIGHT OF WAY, A DISTANCE OF 632.12 FEET, TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN.

CONTAINING 27,326,398.284 SQUARE FEET OR 627.3278 ACRES, MORE OR LESS.





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**BEARDSLEY ABANDONED CC & N - 1
 WATER SERVICE PARCEL
 SURPRISE, ARIZONA**

DATE: 3/30/08 | SCALE: N.T.S. | PROJ. NO: 03101 | CAD FILE: 03101_EXHIBITS

EXHIBIT
A
 1 of 1

DECISION NO. _____



Civil Engineering
Land Surveying
Project Management



W-02074A-06-0095

5 APRIL 2006
JOB NO. 03101

LEGAL DESCRIPTION
BEARDSLEY ABANDONED CC & N - 2

A PARCEL OF LAND LOCATED WITHIN A PORTION OF SECTION 2 AND A PORTION OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 2, BEING AN ALUMINUM CAP, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 2, BEING AN ALUMINUM CAP, BEARS SOUTH 89 DEGREES 27 MINUTES 57 SECONDS EAST 5,269.57 FEET;

THENCE SOUTH 89 DEGREES 27 MINUTES 57 SECONDS EAST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1504.33 FEET, TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

THENCE NORTH 43 DEGREES 31 MINUTES 21 SECONDS EAST, DEPARTING SAID SOUTH LINE, A DISTANCE OF 5,547.05 FEET, TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2;

THENCE SOUTH 00 DEGREES 46 MINUTES 38 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 1,437.75 FEET, TO THE EAST QUARTER CORNER OF SAID SECTION 2;

THENCE SOUTH 00 DEGREES 46 MINUTES 22 SECONDS WEST, DEPARTING SAID EAST LINE OF THE NORTHEAST QUARTER AND PROCEEDING ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 2, A DISTANCE OF 2,619.91 FEET, TO THE NORTHEAST CORNER OF SECTION 11;

THENCE SOUTH 00 DEGREES 42 MINUTES 32 SECONDS WEST, DEPARTING SAID EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 2 AND PROCEEDING ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 2,644.69 FEET, TO THE EAST QUARTER CORNER OF SAID SECTION 11;

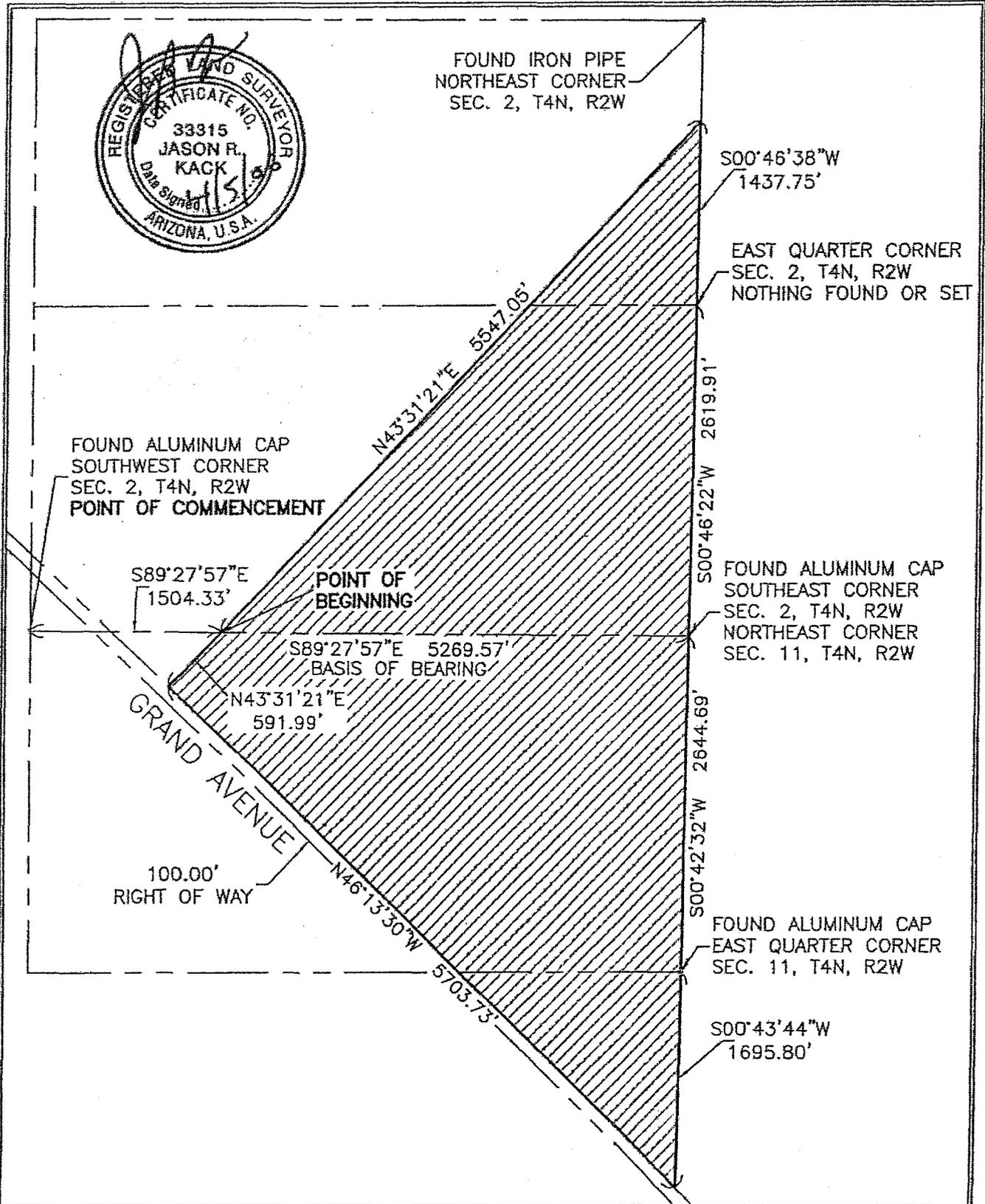
THENCE SOUTH 00 DEGREES 43 MINUTES 44 SECONDS WEST, DEPARTING SAID EAST LINE OF THE NORTHEAST QUARTER AND PROCEEDING ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 1,695.80 FEET, TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF GRAND AVENUE;

THENCE NORTH 46 DEGREES 13 MINUTES 30 SECONDS WEST, DEPARTING SAID EAST LINE AND PROCEEDING ALONG THE NORTHEASTERLY RIGHT OF WAY OF GRAND AVENUE, A DISTANCE OF 5,703.73 FEET;

THENCE NORTH 43 DEGREES 31 MINUTES 21 SECONDS EAST, DEPARTING SAID NORTHEASTERLY RIGHT OF WAY, A DISTANCE OF 591.99 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN.

CONTAINING 17,499,303.934 SQUARE FEET OR 401.7287 ACRES, MORE OR LESS.





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**BEARDSLEY ABANDONED CC & N - 2
 WATER SERVICE PARCEL
 SURPRISE, ARIZONA**

DATE: 3/30/06 SCALE: N.T.S. PROJ. NO: 03101 CAD FILE: 03101_EXHIBITS

EXHIBIT
A
 1 of 1

DECISION NO. _____