



MEMORANDUM

PUBLIC WORKS - DEVELOPMENT SERVICES

DATE: June 30, 2014

TO: BOARD OF ADJUSTMENT District #4

FROM: Tom Drzazgowski – Deputy Chief Zoning Inspector

SUBJECT: **Co10(4)14-06 KLEINMAN TR 50%, ET AL. – EAST PRINCE RD.**
Scheduled for public hearing on July 11, 2014.

LOCATION:

The subject site is located in eastern Pima County. The property is located on the south side of Prince Rd. The property is located to the east of Soldiers Tr. and Prince Rd. The property is undersized for SR (Suburban Ranch) zoning.

SURROUNDING ZONING / LAND USES:

North -	SR	Rural
West -	SR	Rural
South -	SR	Rural
East -	SR	Rural

PUBLIC COMMENT:

No public comment has been received on this case to date.

PREVIOUS CASES ON PROPERTY:

There are no previous cases on the property.

REQUEST:

The applicant requests the following variances:

1. **To reduce the minimum lot size and minimum area per dwelling unit from 144,000 square feet to 143,800 square feet.**

TRANSPORTATION AND FLOOD CONTROL REPORT:

The Department of Transportation will not review this project. The Flood Control District will review this project as needed during the permit process.

BACKGROUND:

This property appears to be part of a lot split done within the last few years. It appears based on the most recent information that parcel "A" is undersized by less than 200 feet. Since numerous individuals own parcels that were originally split. According to the owner's representative, some of the neighboring property owners that would need to provide property to correct the minimum lot size issue, refuse to take part. This leaves a variance as the only

option to correct the undersized lot issue. Substantial information has been provided by the owner's representative to support the case for the variance.

RECOMMENDATION:

Staff has **NO OBJECTION** to the variance request. Staff believes that some of the standards listed below are being met. The granting of the variance will not allow an additional parcel to be created or allow the increase in density of the parcel. It does not appear that the owner of the property created the hardship. Staff believes that standards 1 and 3-9 support in granting of the approval of the variance request.

Standards that must be considered by a board of adjustment when considering a variance request include:

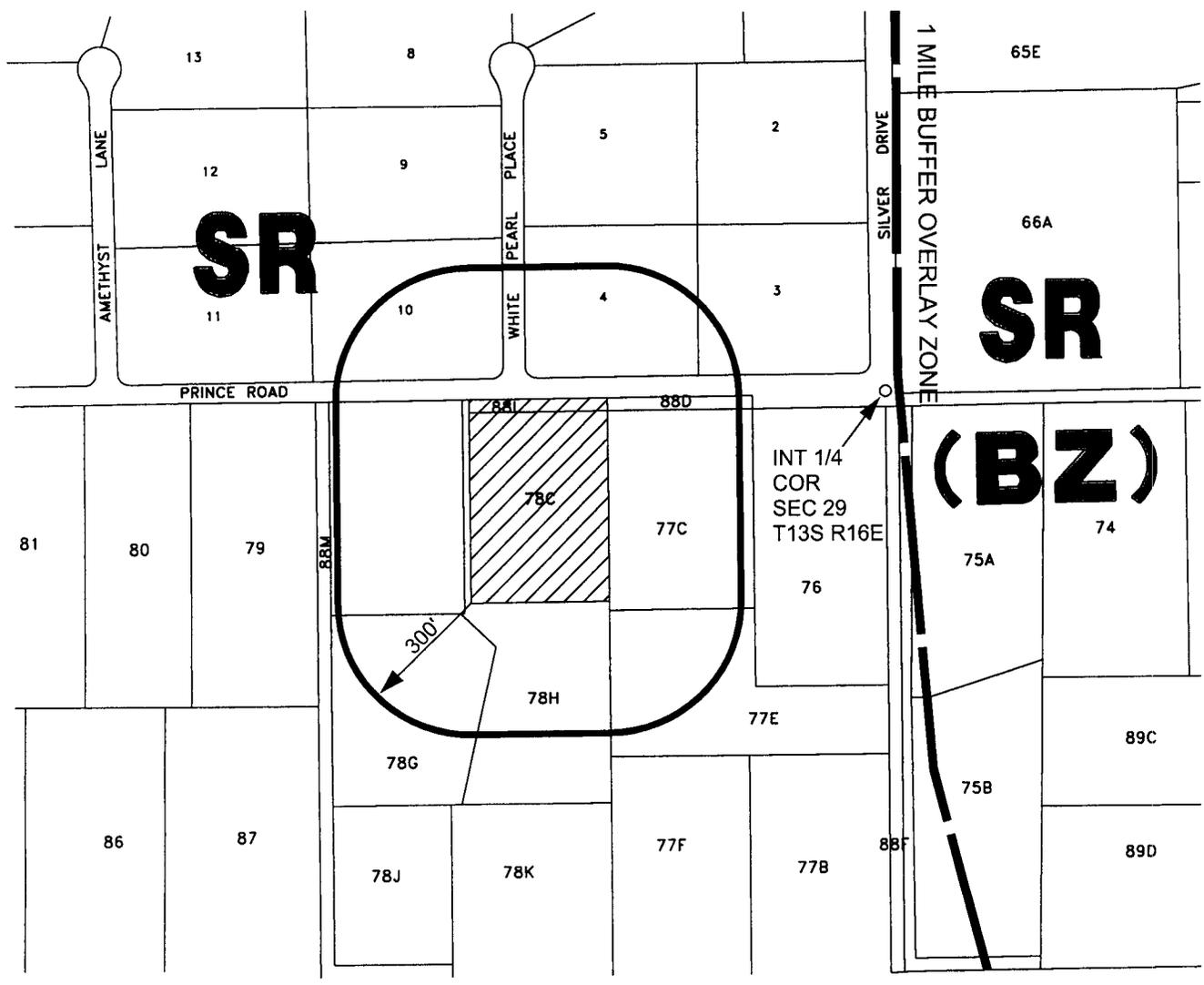
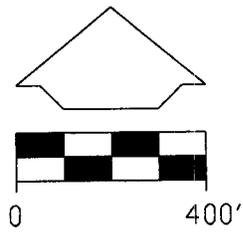
1. The strict application of the provision would work an unnecessary hardship;
2. The unnecessary hardship arises from a physical condition that is unusual or peculiar to the property and is not generally caused to other properties in the zone;
3. The unnecessary hardship does not arise from a condition created by an action of the owner of the property;
4. The variance is the minimum necessary to afford relief;
5. The variance does not allow a use which is not permitted in the zone by the Code;
6. The variance is not granted solely to increase economic return from the property;
7. The variance will not cause injury to or adversely affect the rights of surrounding property owners and residents;
8. The variance is in harmony with the general intent and purposes of the Code and the provision from which the variance is requested;
9. The variance does not violate State law or other provisions of Pima County ordinances;
10. The hardship must relate to some characteristic of the land for which the variance is requested, and must not be solely based on the needs of the owner;
11. If the variance is from a sign or advertising structure area limitation, no reasonable use of the property can be made unless the variance is granted;
12. If the variance is from a height limitation, no reasonable use of the property can be made unless the variance is granted.

Respectfully submitted,



Tom Drzazgowski
Deputy Chief Zoning Inspector

Co10(4)14-06 KLEINMAN TR 50%, ET AL. - EAST PRINCE RD. Udall Law Firm, for the property owner, Kleinman TR ET AL., on the property located at 12150 E. Prince Rd., in the SR zone, requests a variance to reduce the minimum lot size and minimum area per dwelling unit from 144,000 square feet to 143,800 square feet. Sections 18.17.040A and 18.17.040B of the Pima County Zoning Code requires a minimum lot size and minimum area per dwelling unit of 144,000 square feet.



Petition area 

Notification area 

BASE MAP 125

Notes _____

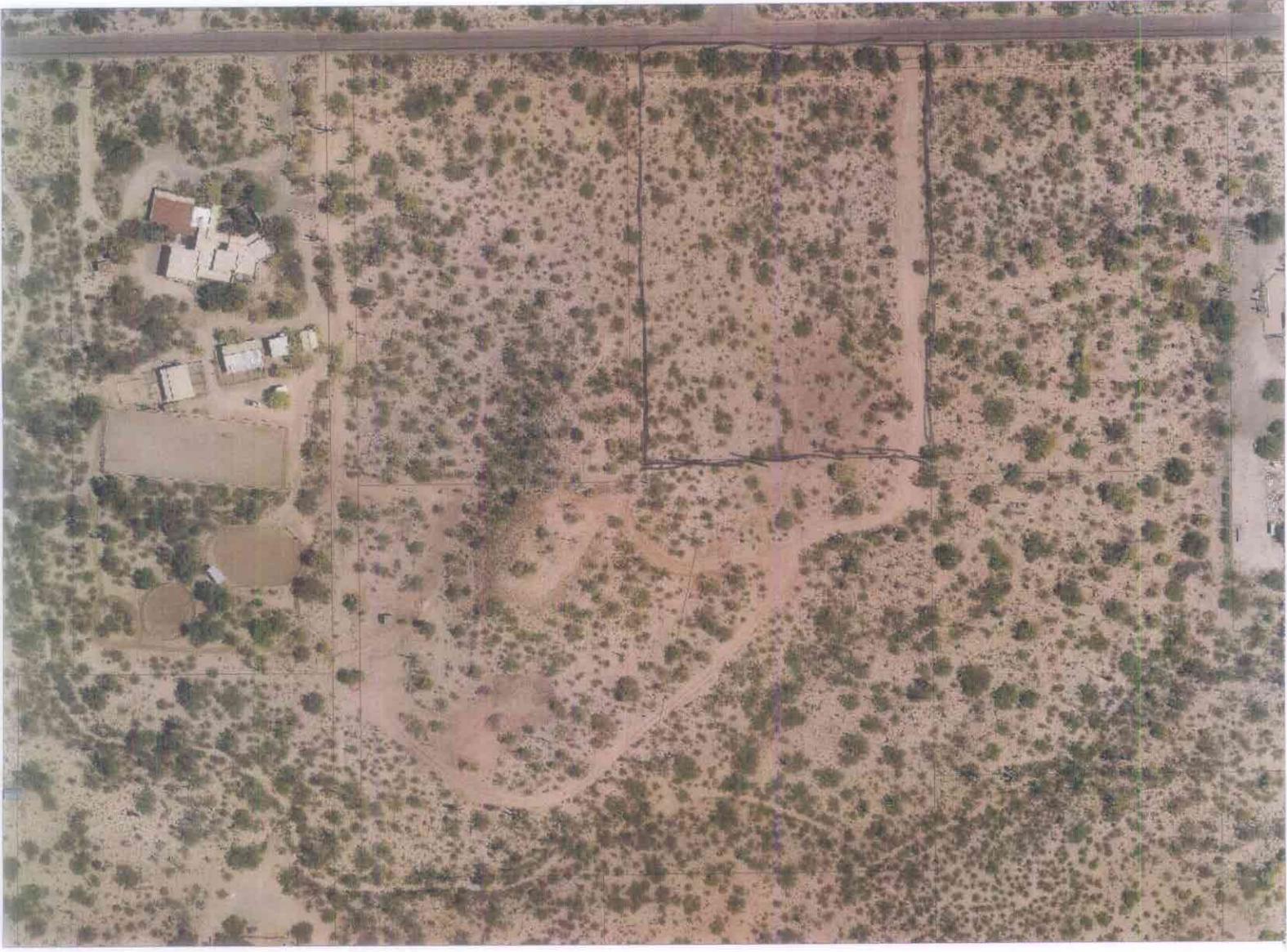
Tax codes 205-35-078C
& 205-35-088L

Date 06/16/14
Drafter DS

File no. CO10(4)14-06
KLEINMAN TR 50%, ET AL
EAST PRINCE ROAD

PIMA COUNTY DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION

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Variance Application

Neil O. Kleinman, Trustee of the Neil O. Kleinman Exempt Trust, as to an undivided 50% interest; and Ray Lopez, Trustee of The Atlantis Realty & Development Retirement Plan, as to an undivided 34.166% interest and Ray Lopez, Trustee of The Raymond J. Lopez and Joanne M. Lopez Trust, dated September 11, 1998, as to an undivided 15.834% interest

Property Owner: _____ Phone: 520 248-6984

Owner's Mailing Address: 6009 N. PLACITA PAJARO City: TUCSON Zip: 85718

Authorized Representative: MARC GOLDBERGER: UDALL LAW FIRM Phone: _____

Rep's Mailing Address: _____ City: TUCSON Zip: _____

Property Address: 12150 E. PRINCE RD. City: TUCSON Zip: _____

Tax Code Number(s): 205 - 35 - 078C Zone: _____

Does the subject parcel have an active building or zoning code violation? _____

Owner or Applicant's Email Address: NEILOKLEINMAN@YAHOO.COM

I, the undersigned, swear that all the facts in this application are true to the best of my knowledge, that I will appear in person at public hearing to present the request, that I have read and understood the board of adjustment guidelines and procedure for granting a variance, and that I am able and intend to apply for all necessary county permits for construction and use of the property within nine months of receiving an approval of my variance request.
Signature: Neil O. Kleinman Date: May 21, 2014

INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED

*****FOR OFFICE USE ONLY*****

Case Title: Kleinman/Atlantis Realty & Dev Plan - E Prince Road Co10(4) 14 - 06
OWNER'S NAME - STREET NAME (EX. JONES- E. SPEEDWAY BOULEVARD)

requests a variance(s) to Section(s) 10.17.040A + B of the Pima County Zoning Code which requires a minimum pta and lot area per dwelling unit to 144,000 square feet

REC'D AT DEVELOPMENT SERVICES - PLANNING DIVISION BY DM DATE 5/23/14



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May 20, 2014

Marc Cullen Goldsen
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Matter No. 54060-2A

Via Hand Delivery

Pima County Development Services
Planning Division
201 North Stone Avenue, 2nd Floor
Tucson, AZ 85701

**Re: Request for Variance / Parcel A at 12150 E. Prince Rd., Tucson, Arizona
Pima County Assessor Parcel No. 205-35-078C**

To Whom It May Concern:

My office represents the Neil O. Kleinman Exempt Trust (the "Kleinman Trust"), the Atlantic Realty and Development Retirement Plan (the "Atlantic Realty Plan") and the Raymond J. Lopez and Joanne M. Lopez Trust Dated September 11, 1998 (the "Lopez Trust"), as owners of a 50% interest, an undivided 34.166% interest and an undivided 15.834% interest, respectively, in the above-referenced Parcel A. By this letter, the Kleinman Trust, through Neil Kleinman as Trustee, the Atlantic Realty Plan, through Raymond Lopez as Trustee, and the Lopez Trust, also through Raymond Lopez as Trustee, by and through their legal counsel, are respectfully requesting a variance to permit said Parcel A to retain its designated Suburban Ranch Zoning, despite the fact that due to circumstances beyond the control of any and all owners of interests in Parcel A and any party affiliated with Parcel A, said Parcel A has been unwittingly reduced to slightly below the minimum site area of 144,000 square feet, *i.e.* 3.305 acres, required for Suburban Ranch Zoning under Section 18.17.040 of the Pima County Zoning Code.

Parcel A, which is the subject of this variance request, was originally part of a five-parcel split that Pima County Development Services approved on or about July 12, 2010, as an appropriate minor land subdivision under relevant Pima County Code provisions. The original split occurred based on a survey performed by Settlemeier LLC Land Surveying Services (“Settlemeier”), also approved by Pima County Development Services. The Settlemeier survey and legal description for Parcel A, dated May 3, 2010, enclosed herewith as Appendix 1 to this letter and incorporated herein by this reference, contains the proper legal description of Parcel A and confirms the proper site area of Parcel A at approximately 3.309 acres, well above the 3.305 acres, *i.e.* 144,000 square feet, required for the heretofore designated Suburban Ranch Zoning.

Donna Iman acquired Parcels B and C at the above-referenced address on or about May 16, 2011. At the time of such acquisition, Donna Iman informed the title company and all parties involved in such real estate transaction that she was a single woman, and the title documentation of record reflects this. This information proved to be false, as Donna Iman was, in fact, married at the time she acquired Parcels B and C, even though the record reflects that Donna Iman acquired Parcels B and C as sole Grantee and as an unmarried woman. In connection with such acquisition, Ms. Iman sought to place a well on Parcel B, where she intended to build a home. However, Ms. Iman discovered that a property fronting onto an established water line must hook up to that water line. As such, because Parcels B and C had such frontage on Prince Road, Ms. Iman insisted on reconfiguring the property to eliminate that frontage. In connection therewith, Ms. Iman retained her own surveyor, J.D. Stitzer (“Stitzer”) of S&S Surveys, Inc., to reconfigure Parcels B and C and to formulate new legal descriptions of those parcels, such that Parcels B and C would no longer contain such frontage on Prince Road.

In so doing, Stitzer erroneously and without authorization from anybody affiliated with Parcel A created legal descriptions for Parcels A, B and C, which purported to increase the area of Parcel C at the expense of Parcel A without consideration, and which left Parcel A at only 3.304 acres, which is 0.001 acres short of the minimum area required for Suburban Ranch Zoning under Section 18.17.040 of the Pima County Zoning Code.

Mr. Kleinman discovered such area shortage in connection with recent efforts by Messrs. Kleinman and Lopez to sell Parcel A. The proposed buyer has insisted as a condition of that sale that the Stitzer error somehow be corrected, such that Suburban Ranch Zoning remains in place for Parcel A. Accordingly, on or about March 24, 2014, I sent to Ms. Iman’s civil attorney, Steve Weiss, as well as the Trustee who currently controls Parcels B and C, Carol Severyn, a request that the Stitzer error be corrected, and that Parcel A be restored to its proper original area, legal description and configuration,

through a quit claim back to Parcel A of any interest in Parcel A that Stitzer erroneously attached to Parcel C. A copy of that request and its attachments are collectively enclosed herewith as Appendix 2 and incorporated herein by this reference.

The next day, Mr. Weiss confirmed that Ms. Severyn, as conservator, exclusively controlled the disposition of Parcels B and C. I responded with confirmation that Ms. Severyn had retained Joe Tarver to serve as legal counsel to address the requests made in my March 24th e-mail. The March 25th e-mail exchange with Mr. Weiss is enclosed herewith as Appendix 3 and incorporated herein by this reference. On or about April 4, 2014, Mr. Tarver reported that Stitzer's error was strictly in the context of Donna Iman's deed of Parcels B and C to her brother, Todd Iman, as a straw person, the creation of new Parcels B-1 and C-1 to adjust the lot line between the original Parcels B and C in order to serve Ms. Iman's above-referenced desires with respect to the well and water line, and the reconveyance of the newly reconfigured Parcels B-1 and C-1 from Todd Iman back to Donna Iman. The corresponding April 4, 2014, e-mail exchange is enclosed herewith as Appendix 4 and incorporated herein by this reference.

After a month's worth of work based on Mr. Tarver's April 4th report, a corrective recording package was prepared to correct Stitzer's erroneous legal description in connection with the conveyance of Parcels B and C from Donna Iman to Todd Iman and the re-conveyance of the newly reconfigured Parcels B-1 and C-2 from Todd Iman back to Donna Iman. Such corrective recording package and Mr. Tarver's May 7, 2014, presentation for approval of such corrective recording package are collectively enclosed herewith as Appendix 5 and incorporated herein by this reference.

In making final preparations to have Donna and Todd Iman execute the corrective documents and to have such documents recorded, a number of parties, most notably Jeffrey Malone at Title Security Company, the title company associated with both Ms. Iman's acquisition of Parcels B and C and with the pending sale of Parcel A, raised concerns that the corrective recording documents did not include an accurate description of Parcel A, as restored to its proper configuration, description and area prior to the erroneous Stitzer survey. In an e-mail dated May 14, 2014, Mr. Malone therefore suggested that the corrective recording documents include a proper description for the correctively restored Parcel A. See Mr. Malone's May 14th e-mail, together with its attachments, enclosed herewith as Appendix 6 and incorporated herein by this reference.

Unfortunately, despite pleas from several parties, and notwithstanding confirmation that Todd Iman would sign whatever is required for the correction, and despite no indication that Donna Iman had any objections, Mr. Tarver and Ms. Severyn

refused to include the resulting proper legal description for Parcel A in the corrective recording documents. *See* May 14, 2014, e-mail exchange and Mr. Tarver's response, enclosed herewith as Appendix 7 and incorporated herein by this reference.

Mr. Settlemyer then informed all involved that there were actually at least *two* Stitzer survey and legal description errors that resulted in Parcel A being shorted. The first occurred when Donna Iman acquired Parcels B and C, and this was followed by the above-described error related to the conveyance and re-conveyance between Donna and Todd Iman. *See* Mr. Settlemyer's May 14, 2014, e-mail, together with attachments thereto, enclosed herewith as Appendix 8 and incorporated herein by this reference.

I confirmed such multiple errors with Messrs. Settlemyer and Malone, and nobody disputes that such errors were made and without authorization by anyone affiliated with Parcel A. As such, on or about May 15, 2014, Mr. Malone reported that a corrective recording with respect to the original conveyance of Parcels B and C to Donna Iman would be required and should be performed, in order to restore Parcel A to its proper area (approximately 3.309 acres) and legal description. *See* Mr. Malone's May 15th report, together with the correspondence leading thereto and attachments thereto, enclosed herewith as Appendix 9 and incorporated herein by this reference.

Based on such report, I sent an e-mail on Sunday, May 18th, to all parties concerned, proposing that a corrective disclaimer deed be executed and recorded by Donna Iman in connection with her acquisition, as sole Grantee, of Parcels B and C, in addition to the corrective recording documents related to the conveyance and re-conveyance between Donna and Todd Iman. *See* May 18, 2014, e-mail correspondence enclosed herewith as Appendix 10 and incorporated herein by this reference.

Unfortunately, while no objection has been made by Donna or Todd Iman, or by their attorneys, Mr. Tarver and Ms. Severyn refuse to sign off on such corrective recordings. *See* May 18th e-mail exchange with Joe Tarver, enclosed herewith as Appendix 11 and incorporated herein by this reference. As confirmed by Ms. Iman's civil attorney, Steve Weiss, no solution to Mr. Stitzer's erroneous survey and legal description, and therefore no restoration of Parcel A to its proper legal description, configuration and area, is possible without the approval of Mr. Tarver and Ms. Severyn. *See* May 13, 2014 e-mail from Steve Weiss, enclosed herewith as Appendix 12 and incorporated herein by this reference.

Accordingly, due to Mr. Tarver and Ms. Severyn's failure to cooperate to effectuate an expedient and reasonable resolution, a stalemate has occurred with respect

to the proposed corrective recordings to undo Stitzer's survey and legal description errors and restore Parcel A to its proper legal description, configuration and area. Over a month's worth of hard work poured in by several parties, including Messrs. Kleinman, Lopez and Malone and me, have yielded no such correction or restoration. Given the recent resistance and then lack of responsiveness from Mr. Tarver and Ms. Severyn, any further efforts along those lines appear to be futile. As such, other than the variance requested in this letter, the only alternative to correct and restore Parcel A to its originally configured and approved subdivided Suburban Ranch parcel would be to litigate a quiet title action. Because Parcels B and C ultimately passed into Donna Iman's marital community, Donna Iman's ex-husband would have to be named and served as a defendant in such litigation. That is quite problematic, as Donna Iman's ex-husband is currently believed to be a fugitive in Mexico whose present whereabouts are unknown.

Based on the foregoing, the only remotely expedient and fair resolution to render Parcel A marketable and perhaps save the pending sale thereof is to obtain the herein-requested variance permitting Parcel A to retain its heretofore designated Suburban Ranch Zoning, despite the fact that due to circumstances entirely beyond the control of anyone affiliated with Parcel A, and notwithstanding extensive efforts by those affiliated with Parcel A to remedy such circumstances, said Parcel A has been unwittingly reduced to slightly below the minimum site area of 144,000 square feet, *i.e.* 3.305 acres, required for Suburban Ranch Zoning under Section 18.17.040 of the Pima County Zoning Code.

Without such variance, the strict application of the minimum area requirement of 3.305 acres to remove from Parcel A the heretofore designated Suburban Ranch Zoning, based on being a negligible amount of area short (just a few square feet) due entirely to wrongful actions of those not affiliated with Parcel A and circumstances beyond the control of anybody affiliated with Parcel A, would work an unnecessary hardship, particularly given the above-described extensive efforts of those affiliated with Parcel A to correct and remedy such circumstances. Such unnecessary hardship is unique to Parcel A (and possibly Parcel B, which was similarly shorted in Stitzer's reconfiguration of Parcel C) and as such arises from a physical condition that is unusual or peculiar to the subject property and not generally caused to other properties in the zone. Such unnecessary hardship, demonstrated above, also does not arise from a condition created by an action of any owner of any interest in Parcel A, but rather was caused by wrongful actions of those connected with Parcel C, as exacerbated by the refusal of certain third parties to cooperate in a reasonable manner to correct and remedy such wrongful actions. Moreover, such hardship relates to the characteristic of the land (an unintended and wrongful shortage of area of Parcel A by Stitzer and those affiliated with Parcel C) and not on the needs of the owner(s) of Parcel A, which have remained consistent.

UDALL LAW FIRM, LLP

Pima County Development Services Planning Division

Request for Variance / Pima County Assessor Parcel No. 205-35-078C

May 20, 2014

Page 6 of 6

The variance requested in this letter, which merely forgives an area shortage of 0.001 acres, *i.e.* just a small number of square feet, is the minimum action necessary to afford relief, will not impact the overall development of this Suburban Ranch Zone and certainly will not cause injury to or adversely affect the rights of surrounding property owners and residents. In fact, the alternative to such variance – litigation of a quiet title action – would tie up the surrounding property and/or affect its marketability in a way that would cause much more harm than the variance being sought.

Such variance would permit the precise use contemplated by the Zoning Code (Suburban Ranch), as opposed to one that is not permitted in this zone under the Zoning Code. Further, such variance would be in harmony with the general intent and purposes of the Zoning Code and Sections 18.17.010 through 18.17.060 thereof. Otherwise, Parcel A would have to be used for something other than Suburban Ranch development, despite being located within a Suburban Ranch Zone, thus making the variance necessary for harmony with the general intent and purposes of the Code and the provision from which the variance is being requested in this letter. Finally, the variance requested in this letter would not violate Arizona law or other provisions of Pima County ordinances.

For the foregoing reasons, I respectfully request, on behalf of the Kleinman Trust, the Atlantic Realty Plan and the Lopez Trust, as owners of the above-referenced Parcel A, that the County grant the variance requested in this letter. It is required in order to keep Parcel A useable and marketable as intended, while having no impact, or alternatively only positive impact, on the overall zone or development of Parcel A and surrounding lands as Suburban Ranches, as contemplated by the area's current zoning. The remaining required variance application documents are submitted with this letter.

Thank you for your consideration. If anyone has any questions or concerns, or if I can provide any further information or documentation in support of the herein-made variance request, please do not hesitate to contact me at your convenience.

Sincerely,

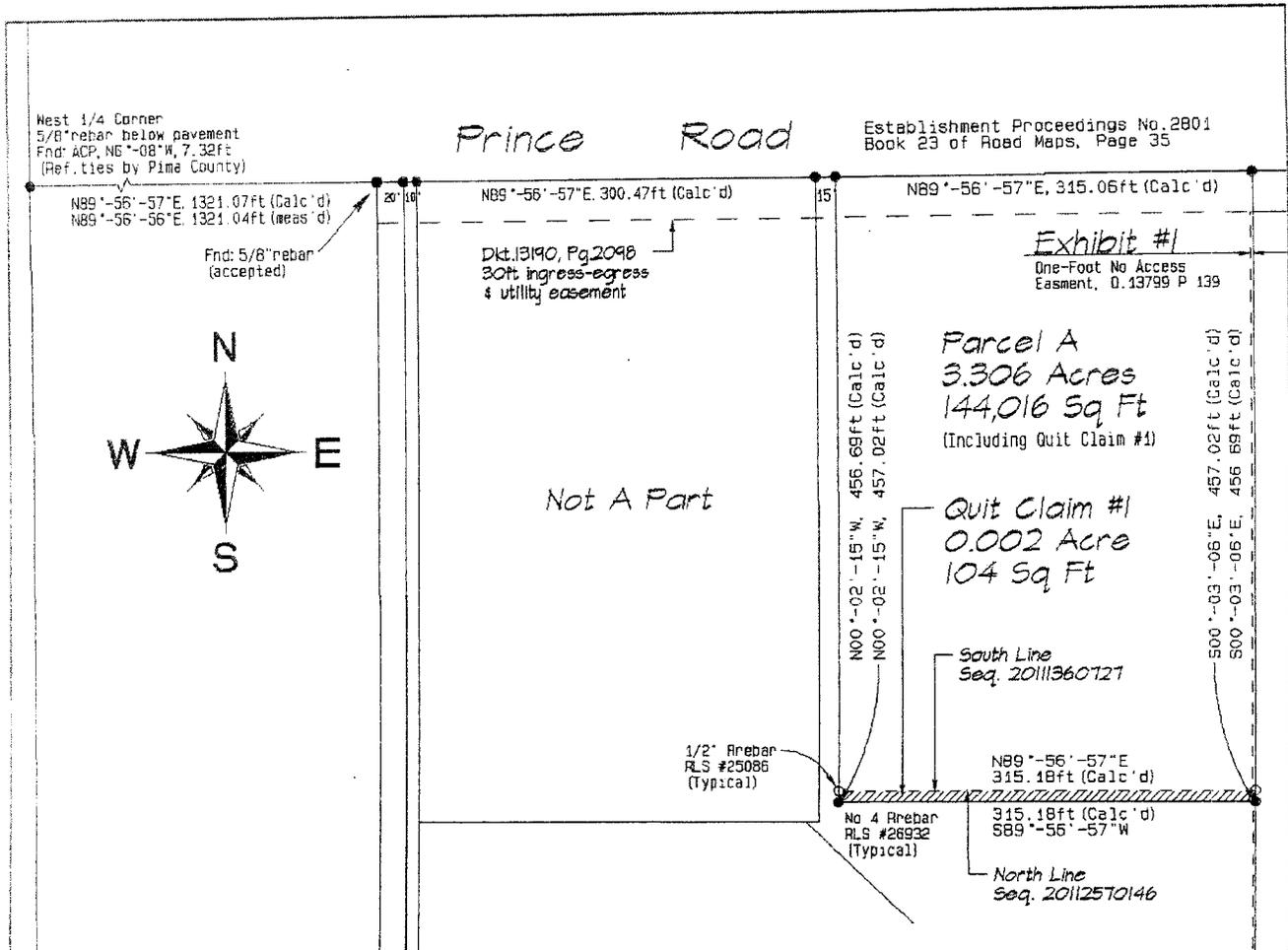
UDALL LAW FIRM, LLP



Marc Cullen Goldsen

MCG/km

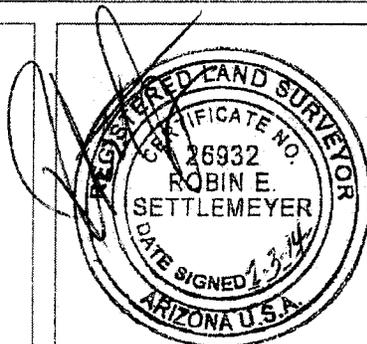
Quit Claim #1



Subject to and together with all matters of public record

Basis of Bearings:

The north line of the southeast quarter of said Section 29, N 89° 56' 32" E, as recorded in Book 3 of Surveys at Page 79 thereof, records of said Pima County



Expires: 3-31-2014

Date: February 3, 2014
Project: 4372 KL-6

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