

WATER SERVICE AREA REVIEW BOARD (WSARB)

Friday, February 13, 2015, 3:00 p.m.
City Hall, 1st Floor, East Conference Room
255 W Alameda, Tucson, AZ 85701



Legal Action Report (*Amended)

1. **Roll Call:** The meeting was called to order by Chairperson Ernie Duarte at 3:05 p.m. Those present were:

WSARB Members present:

Ernie Duarte	Director, Planning and Development Services (Chair)
Albert Elias	Assistant City Manager
Nicole Ewing-Gavin	Director, Office of Integrated Planning

Appellant:

Greg Mitchell	Parcel owner, 9011 and 9021 N. Scenic Dr.
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Representing Tucson Water:

Melodee Loyer	Chief Planner, Tucson Water
Richard Sarti	Engineering Manager, Tucson Water

* Others Present:

Mike Rankin	City Attorney, City of Tucson
Steve Arnquist	Council Aide, Ward 1
Tamara Prime	Council Aide, Ward 3
Amy Stabler	Council Aide, Ward 6
Christine McVie	Community Water Coalition
Andrew Greenhill	Management Coordinator, Tucson Water
Johanna Hernandez	Staff Assistant, Tucson Water
Kris LaFleur	Staff Assistant, Tucson Water

2. **Announcements:** There were no announcements.
3. **Review and Approval of LAR and Minutes from 2/5/2015:** Member Elias moved to approve the Legal Action Report and Meeting Minutes of February 5, 2015. The motion was seconded by Member Ewing-Gavin and carried by a vote of 3-0.
4. **Continuation of Water Service Request – 9011 and 9021 N. Scenic Drive:** Mr. Rankin presented a report from the City Attorney's Office. The CAO advised that it could not identify any legal options that would provide certainty in eliminating the possibility of allowing adjacent property owners from requesting or receiving water service from Tucson Water. The CAO recommended that the Board's consideration of water service to the parcels in question should not include a covenant or any other action that would burden the land or owner with additional legal obligations.

Mr. Sarti presented Tucson Water's report to the Board. Mr. Sarti indicated that the parcels are in unincorporated Pima county, outside of Tucson Water's service area, and outside of and directly adjacent to the Town of Marana. He indicated that water service was denied to the parcels because they do not meet Water Service Area Policy requirements. Specifically, the

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parcels are not 20 acres or less in size and/or are not currently bordered on three adjacent sides by parcels being served by Tucson Water.

Mr. Mitchell, owner of the above parcels, presented his case to the Board. In response to the CAO recommendation, Mr. Mitchell proposed subdividing his parcels as indicated in the presentation distributed to the Board. Mr. Mitchell further proposed that water service be provided only to the parcel at 9011 N. Scenic Drive, for the purposes of home fire protection.

Discussion ensued between Mr. Mitchell, the Board, and Tucson Water's representatives. Tucson Water staff indicated that the parcels, if subdivided as proposed, would still not meet Water Service Area Policy requirements for new service.

Member Elias inquired if Mr. Mitchell had the option of annexing into the Town of Marana and receiving water service. Mr. Mitchell indicated that this was possible, but that he objected to annexation by the Town. Member Ewing-Gavin indicated that she had discussed the case with Marana officials, who expressed interest in discussing annexation with Mr. Mitchell. In such a scenario, she indicated, Mr. Mitchell would become a Tucson Water customer receiving Marana's wheeled water. Members Ewing-Gavin and Elias encouraged Mr. Mitchell to consider this option.

Mr. Mitchell inquired about the status of the wheeling agreement between the City and Town. Tucson Water staff indicated that the agreement is in the process of being negotiated.

Mr. Mitchell, Board Members, and Staff continued to engage in discussion and debate.

Chairperson Duarte issued a Call to the Audience for comments specific to the case. No comments were made.

The Board began deliberation. Members asked Mr. Mitchell for further information about the fire protection requirements for his home at 9011 N. Scenic Drive. The Board and Mr. Mitchell engaged in additional discussion. Members noted that the parcel at 9011 N. Scenic Drive still does not meet the Water Service Area Policy requirement of existing water service on three sides.

Member Ewing-Gavin moved that the Board's only option would be to grant water service, subject to Mr. Mitchell's annexation into the Town of Marana. Member Elias seconded the motion.

Chairperson Duarte clarified the motion: The Board agrees to provide water service through Tucson Water, with the condition that Mr. Mitchell annex his parcels into the Town of Marana.

Mr. Mitchell asked the board for further clarification.

Chairperson Duarte indicated that Mr. Mitchell had means with which to get water. He indicated that Mr. Mitchell's was an acute situation requiring him to reach out to the Town of Marana. He stated that the easiest means for Mr. Mitchell to acquire water service would be to agree to annex into the Town of Marana.

Mr. Mitchell indicated his understanding.

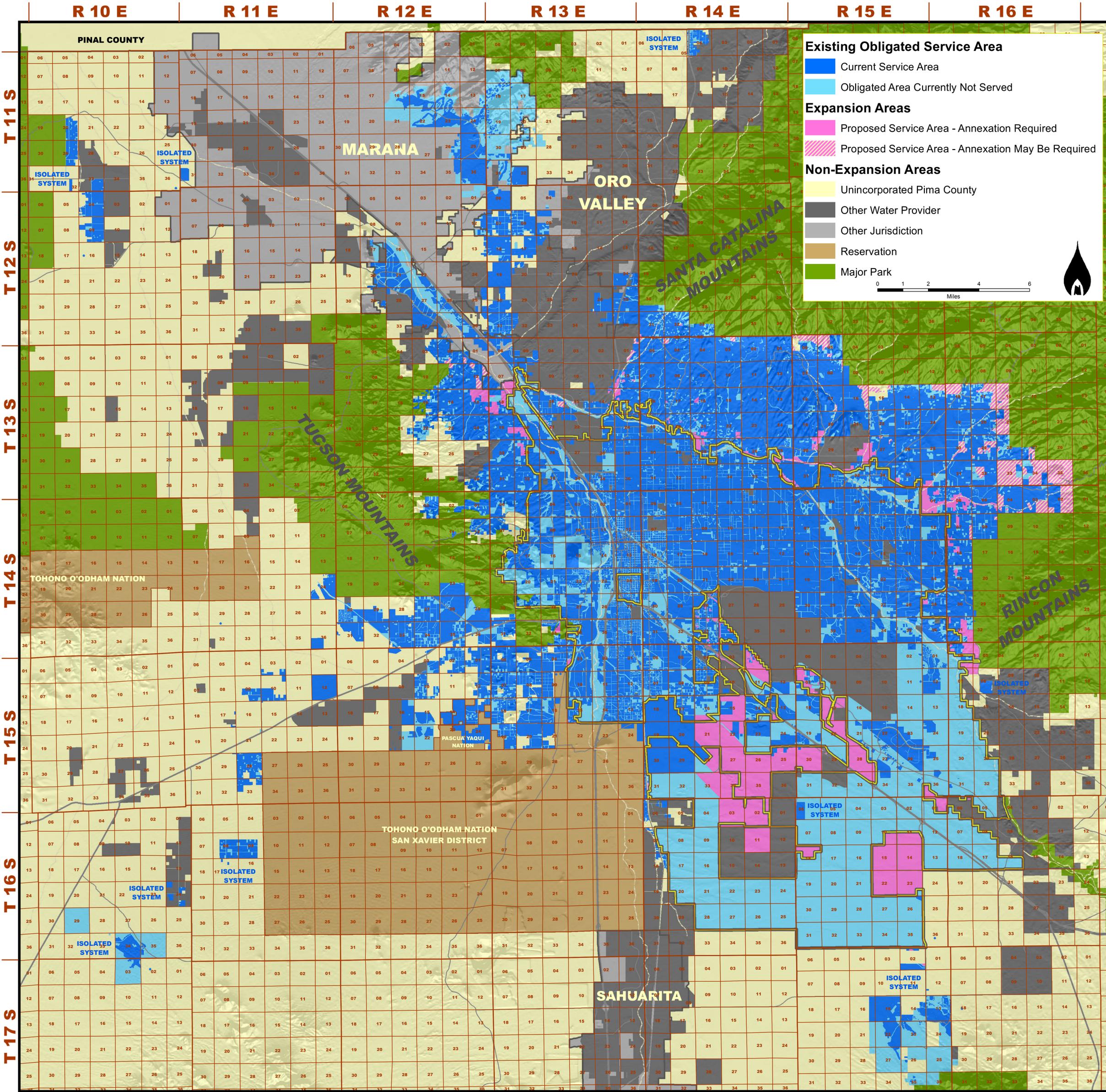
The Board voted and the motion carried, 3-0.

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5. **Call to the Audience:** There were no comments from the audience.
6. **Adjournment:** The meeting was adjourned at 3:46 p.m.



Existing Obligated Service Area

- Current Service Area
- Obligated Area Currently Not Served

Expansion Areas

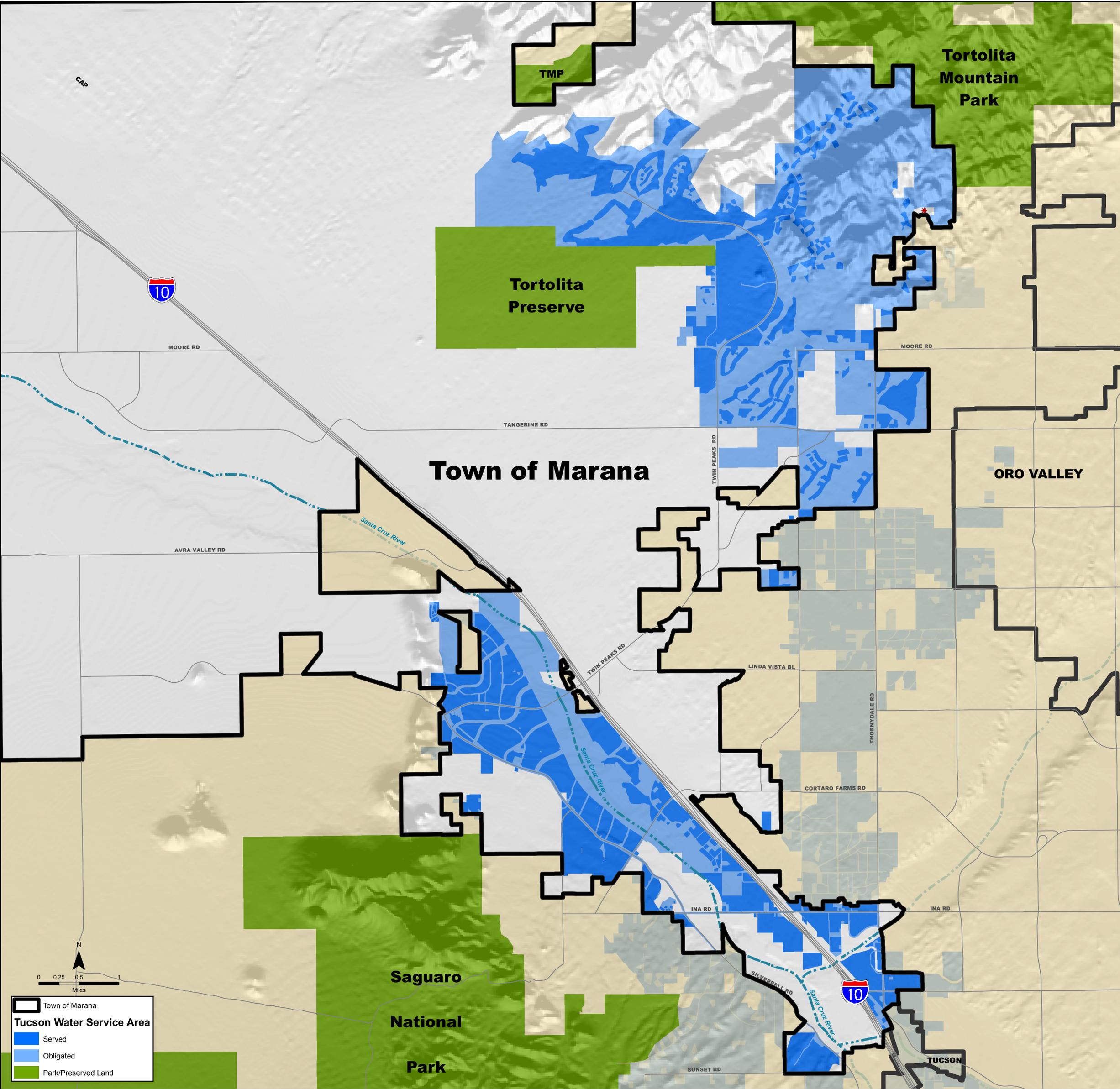
- Proposed Service Area - Annexation Required
- Proposed Service Area - Annexation May Be Required

Non-Expansion Areas

- Unincorporated Pima County
- Other Water Provider
- Other Jurisdiction
- Reservation
- Major Park

0 1 2 4 6 Miles

Tucson Water Potable Water Service Areas in Marana



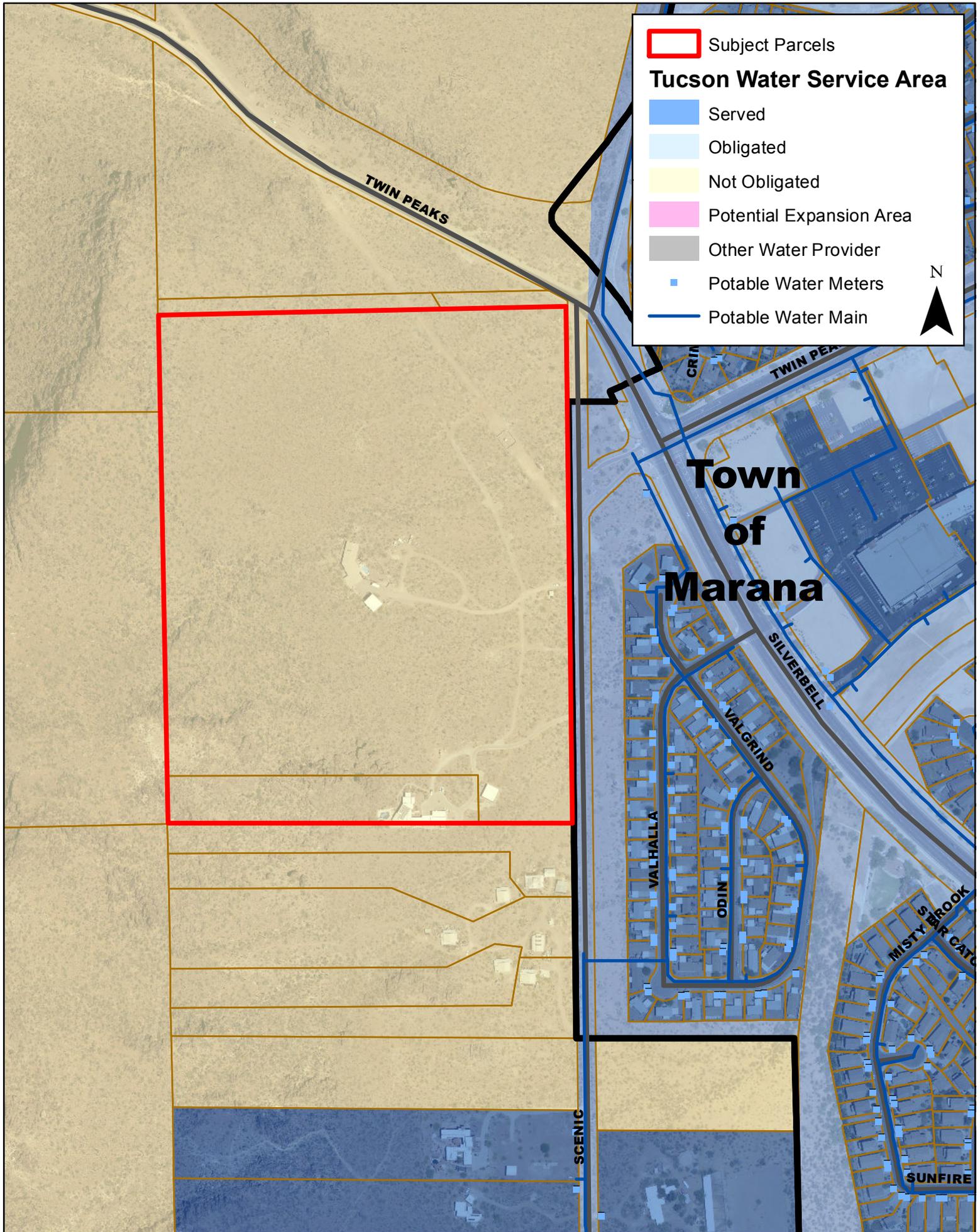
Town of Marana

Tucson Water Service Area

- Served
- Obligated
- Park/Preserved Land



9011 and 9021 N Scenic Dr





MEMORANDUM

OFFICE OF
THE
CITY ATTORNEY
CIVIL DIVISION
(520) 791-4221

DATE: February 4, 2015

TO: The Tucson Water Service Area
Review Board; Albert Elias, Nicole
Ewing Gavin, Ernie Duarte

FROM: Christopher Avery 
Principal Assistant
City Attorney

RE: Provision of Water Service to 9011 and 9021 N. Scenic Drive

During the Water Service Area Review Board hearing of December 4, 2015, the City Attorney's Office was asked to review whether there could be some legal action to be undertaken by the Applicant to ensure that any provision of water service to the two existing residences at 9011 and 9021 North Scenic Drive pursuant to the Tucson Water Service Area Policy would not result in any additional service in the future to new homes that might be built on the property at some future time and would not result in the provision of service to adjacent properties that would not otherwise be eligible for service under the Policy.

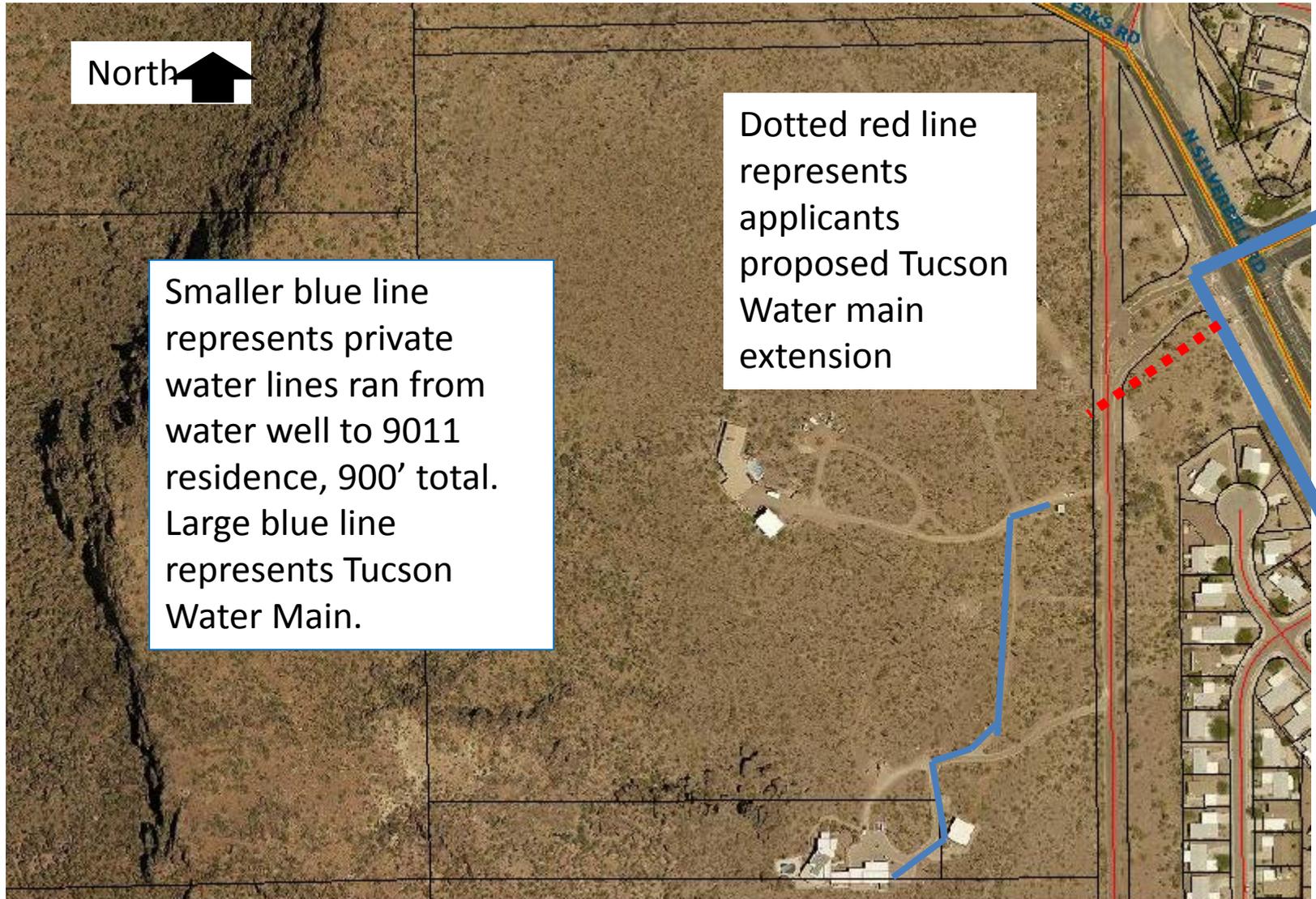
We have spent a considerable amount of time during the past 2 months discussing this issue and exploring a wide variety of options that might have proven to be feasible. Ultimately, it is our opinion that any legal options that we could present would be ineffective in reducing the future availability of service and present a substantial risk of future damage claims and transaction costs. Even if those options might bind the landowner, they would not appear to foreclose the possibility of allowing adjacent landowners to apply for service under the terms of the Policy.

It is the recommendation of the City Attorney's Office that the provision of water service to the above parcel be considered without any action relating to burdening the land or the owner with an additional legal obligation.

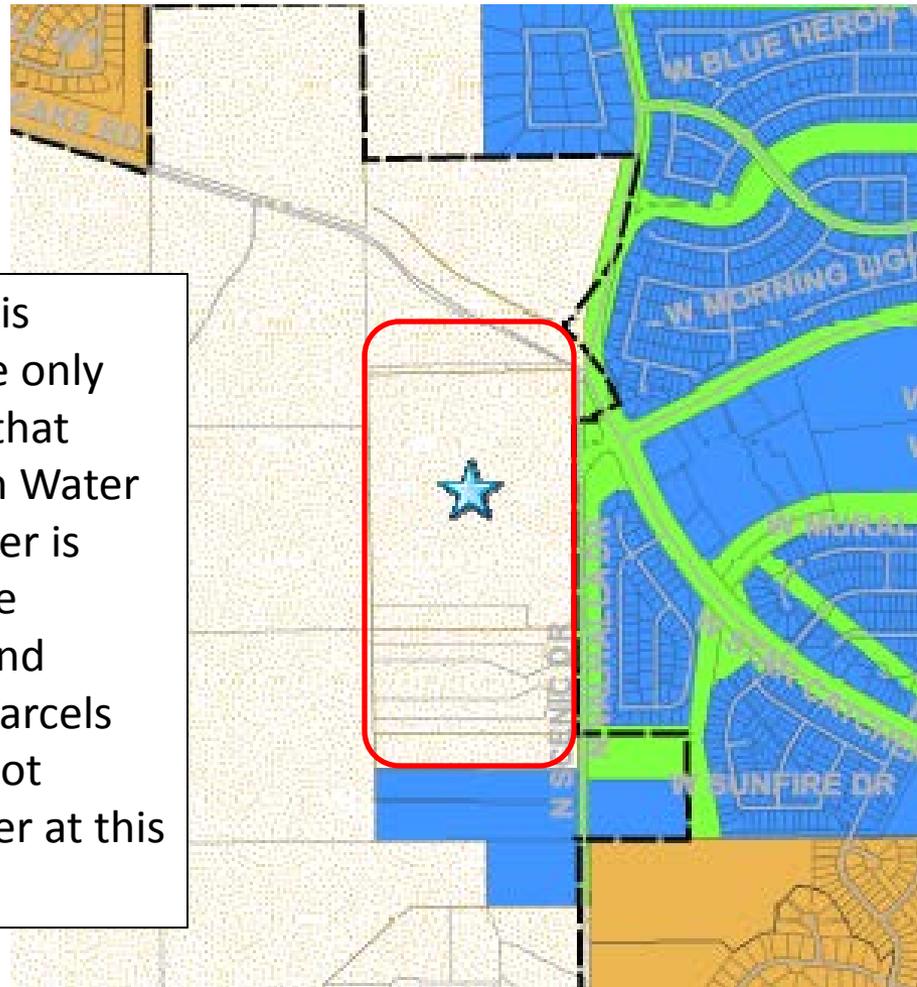
The Need for Water, 9011 & 9021 N. Scenic Drive

- The water well at 9021 N. Scenic Drive, installed in 1961, is on the verge of going dry, with the pump currently about 15' under water. The mandated water sprinkler system storage tank, a life saving safety requirement, must remain near full at all times to provide adequate fire protection for this residence.
- Once the aquifer water level drops below the residence's water well pump height, a safety of life concern is inevitable in the event of a fire.
- Due to the design of the mandated fire protection system, the domestic water supply and fire protection system cannot be separated.
- 9011 N. Scenic Drive has 900' of water line extending to the applicants shared well, with 300' of those lines under pavement, see next slide.

Existing Water Line Placements



Zoomed in map of area



Parcels within this rectangle are the only additional ones that might be Tucson Water customers if water is granted. Only the northern most and southern most parcels are vacant and not applying for water at this time.

Sustainable Water Supply

- The properties within the rectangle shown on the zoomed in map are last remaining properties that can ever be served by Tucson Water in this area bounded by the Tucson Mountains to the west. They are a “dead-end.”
- No additional water services can reasonably be requested of Tucson Water due to these several properties being served.
- These properties are already surrounded on three sides by Tucson Water customers. The fourth side is the Tucson Mountains and is undevelopable.
- Because this is a “dead-end” area, Marana Water will never have water mains in this area – it is already fully served by Tucson Water except for these few remaining properties.
- Marana Water’s two closest mains are 5000’ South and 6500’ to the north, per Jason Henshaw of Marana Water on 12/2/14. For the applicant to connect to Marana Water is both economically infeasible and physically impractical (why run parallel water mains in the same street by different municipal water suppliers?).

Impact of Lazy K Development

- 178 homes are currently proposed at Lazy K (Scenic Drive and Pima Farms)
- The Lazy K developer and the Town of Marana are redesigning and completely rebuilding Scenic Drive
- The Town of Marana places a five year moratorium against cutting the pavement on newly constructed roadways
- Applicant will not have access to extend the municipal water main again for at least five years after completion of the new Scenic Drive roadway

Summary

- Applicant understands the reason and implementation of the existing Tucson Water Service Area Policy
- This area is a “dead-end” to further development, and therefore does not expose Tucson Water to any additional demand on their limited resources
- Marana Water will never provide water mains in this area because Tucson Water has already done so
- Per Northwest Fire District, the applicant must have a reliable water source for the **Life and Safety** of the occupants of the dwelling (my family)
- Providing the applicant water will neither help nor hurt Tucson Water’s supply of resources

Developable Land Approach #1

~14 acres

The following is from Pima County's Zoning code for SR zoned land

18.17.040 - Development standards—General.

- A. Minimum site area: One hundred forty-four thousand square feet.
 - B. Minimum lot area per dwelling unit: One hundred forty-four thousand square feet.
 - C. Minimum setback requirements:
 - 1. Front: Fifty feet;
 - 2. Side: Ten feet each;
 - 3. Side, when adjacent to street: Twenty feet;
 - 4. Rear: Fifty feet.
 - D. Maximum building height: Thirty-four feet.
 - E. Maximum lot coverage by structures: Thirty percent.
 - F. Minimum distance between main buildings: Twenty feet.
- (Ord. 1986-66 § 1 (part), 1986)*

46 acres x .30 = 13.8 acres

Developable Land Approach #2

~17 acres

ACREAGE CALC
Total 42.33
25.82 @ \$8k/a = \$206,560 (SHADED)
16.51 @ \$30k/a = \$495,300
TOTAL LAND VALUE \$701,860 / \$16,581a

17 acres of developable land shown bounded by dotted red lines

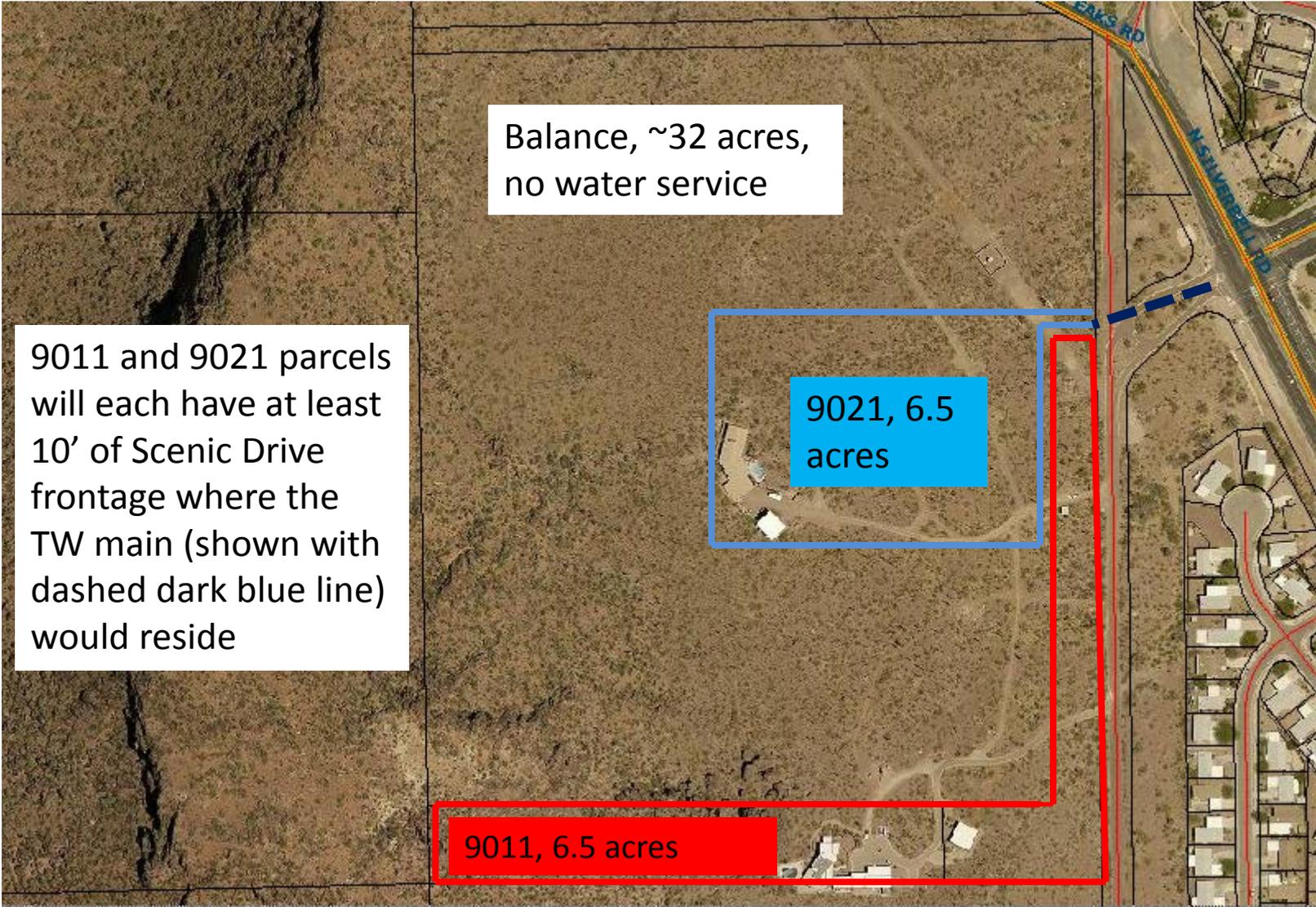


Pima County Assessor provided document, presented to the State Board of Equalization at my 2011 property tax appeal. The darkened area is considered undevelopable per the Pima County Tax Assessor's Office, hence the very low land valuation for that area.

WSARB Hearing (continued)

Applicant: Mitchell, February 5, 2015

- Did the City of Tucson Attorney's Office find that a covenant is not appropriate in this case?
- If so, the applicant proposes splitting the property as shown on the next page, thereby eliminating any need for a covenant.



Balance, ~32 acres,
no water service

9011 and 9021 parcels
will each have at least
10' of Scenic Drive
frontage where the
TW main (shown with
dashed dark blue line)
would reside

9021, 6.5
acres

9011, 6.5 acres

Life and Safety Consideration

- If the WSARB believes that providing water to both of my residences would “open the door to others,” then please consider my request of water service to only 9011
- 9011 requires a reliable water supply for fire protection sprinklers. Hence, this is a life and safety issue for my family. This article was in last week’s news:
- <http://www.foxnews.com/us/2015/01/29/deadly-maryland-mansion-fire-was-fueled-by-christmas-tree-authorities-say/>
- The article states: *The Pyles built the home in 2005, four years before the county began requiring sprinkler systems in new homes. Hoglander said he believes sprinklers would have made a difference. "I would say without a doubt," he said.*
- That house fire resulted in six deaths because the house was built 4 years before sprinklers were required in that county.
- Certainly providing water service to an existing residence with mandated fire sprinkler protection for life and safety of the occupants would not “open the door to others.”
- How many others have appealed to the WSARB for a single family home on an undividable lot with mandated fire sprinkler protection?