



CITY OF
TUCSON
ZONING
EXAMINER'S
OFFICE

ZONING EXAMINER'S DECISION

May 24, 2018

Neal Talaske
Pinnacle Consulting
1426 N. Marvin Street, Suite 101
Gilbert, AZ 85233

SUBJECT: Special Exception Land Use
SE-18-16 Verizon – Fort Lowell Road (Ward 3)
Public Hearing: May 10 and 17, 2018

Dear Mr. Talaske:

SPECIAL EXCEPTION LAND USE REQUEST

Pursuant to the City of Tucson's Unified Development Code (UDC) and the Zoning Examiner's Rules of Procedures (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's findings and decision for the special exception case **SE-18-16 Verizon – Ft Lowell Road**.

PUBLIC HEARING

On May 10, 2018, a public hearing was held on this special exception land use request at City Hall, 225 West Alameda, Tucson, Arizona pursuant to UDC Section 3.4.3 (Zoning Examiner's Special Exception Procedure). At the May 10 Zoning Examiner's public meeting the Planning and Development Services Department (PDS) staff reported that there were two (2) written approvals and no (0) written protests at that time. The applicant failed to produce a 207 Waiver, so the case was continued to May 17; however, the Hearing Officer heard testimony. Only the applicant appeared to give testimony, and no one from the neighborhood appeared. The applicant provided the required Waiver at the May 17 meeting. At this Hearing, staff reported the same written approval and written protest figures. No one showed up to discuss the case.

In the testimony provided on May 10, the applicant described the overall need for this site to provide adequate service coverage

The applicant agreed with the recommended special conditions.

Issue

This is a request by Neal Talaske of Pinnacle Consulting on behalf of Verizon Wireless, for approval of a wireless communication facility (WCF). The special

exception site is located approximately 200 feet north of Fort Lowell Road and 300 feet west of Country Club Road (see Case Location Map). The preliminary development plan (PDP) proposes a wireless communication tower disguised as a broadleaf tree (monoelm), 50 feet in height, with twelve antennas. The WCF will be placed within a 502 square foot (20.5 feet by 24.5 feet) lease area in the northeastern portion of a 0.89 acre parcel. The facility will be placed within the parking area for a commercial retail center.

A communications use of this type in the C-1 zone is subject to Section 4.9.4.I.6.a of the Unified Development Code (UDC) and requires approval through a Zoning Examiner Special Exception Procedure, in accordance with UDC Section 3.4.3. A public hearing before the Zoning Examiner is required. The Zoning Examiner will render a decision to grant the use with or without conditions, or to deny the use. The Zoning Examiner may also forward the request to the Design Review Board (DRB) for design review and recommendation.

The proposed special exception is considered under the requirements of a Zoning Examiner Special Exception Procedure because the tower and antennas will not exceed 50 feet in height, the tower is concealed or disguised, and because the facility is setback at least two times the height of the structure from the boundary of any adjacent property zoned residential or office, as required by the UDC.

Planning Considerations – Land use policy direction for this area is provided by the *Northside Area Plan (NAP)* and *Plan Tucson*. Although the *NAP* does not have specific language for wireless communication facilities, it does support commercial development at this location.

Plan Tucson policies protect established residential neighborhoods by supporting compatible development, including non-residential uses, where the scale and intensity of use is compatible with adjacent uses. The special exception site is located within a Mixed-Use Center area as identified by the Future Growth Scenario Map. A Mixed-Use Center supports a variety of retail, services, office, and public gathering places, located close to each other, providing occupants of the center and the residents and workers in the surrounding neighborhoods with local access to goods and services. As it relates to a wireless communication facility, *Plan Tucson* provides direction in Chapter 3 – The Built Environment, under Guidelines LT28.1.2, LT28.1.3, stating that telecommunication facilities should be installed and maintained to minimize visual impact and preserve views, to improve the appearance of above ground utilities and structures, and extend access to high-tech wireless communication facilities throughout the City.

The proposal is in general compliance with *NAP* and *PT*, and does not require a plan amendment. The plan policies generally support new cell tower proposals when designed to minimize visual impacts on surrounding neighborhoods and when buffering is provided. The ground lease area is 16 feet by 17 feet with

ground level equipment that will be screened from view by an 8-foot high masonry wall textured and painted to match nearby existing walls of the adjacent commercial retail building.

The Pima Association of Governments - Transportation Planning Division (PAG-TPD) estimates that the proposed development will not generate additional measurable vehicle trips per day. Field inspection by staff indicates there are currently no billboards on the rezoning site.

Design Considerations

Land Use Compatibility – The proposed monoelm will include four antennas per sector with three sectors for a total of twelve antennas. The applicant has submitted photo-simulations of the monoelm showing the antennas concealed by artificial branches. The applicant has also provided radio frequency maps showing a gap in wireless communication coverage in the area and how this gap will be resolved by the proposed facility. The nearest residential developments are an apartment complex zoned C-1, located approximately 100 feet to the north, and a single-family home subdivision, zoned R-1, approximately 300 feet to the west. The monoelm will be visible from surrounding residential neighborhoods, commercial development, and nearby streets.

The facility will be placed within a 272 square foot lease area in the northeastern part of the subject parcel within the parking lot for the existing retail center. The applicant should be aware that, because the proposed WCF enclosure is removing vehicle parking, submittal of a development package meeting the requirements of Administrative Manual (AM) Section 2-06 is required prior to approval of the building permit for the WCF.

Ground equipment will be housed inside equipment cabinets, located on a concrete slab, and screened by an 8-foot tall masonry wall. The proposal does not include a backup generator. Staff recommends the masonry screen wall surrounding the lease area be painted in neutral desert colors to match the existing on-site development. Staff further recommends that any graffiti be removed within 72 hours of observation.

Staff acknowledges that the proposed WCF will help improve telecom services to the established neighborhoods and businesses in the area. The proposed WCF is setback 320 feet from the nearest residential unit to the northeast, 500 feet from nearby streets to the south and west, and is partially screened from adjacent developments by existing on-site commercial buildings. The facility will be set back from Fort Lowell Road by approximately 200 feet.

In terms of wireless communication facilities, a stealth application is one that disguises the appearance of the pole and antennas to look like an element of the built or natural landscape, which could typically occur at the chosen location. A

stealth application should be as close as possible in scale and appearance to the object it is disguised as, with no obvious unnatural elements. The success of a stealth application is dependent on the ability of the design and construction of the cellular site to fit into its surroundings to such a degree that it is not noticeable. Scale and proportion, site design, color, and materials, are particularly important in stealth applications insofar as they contribute, or do not contribute, to the ability of the facility to be as unobtrusive as possible. To ensure a successful stealth monoelm at this location, the following standards should be incorporated into the conditions:

- The monoelm shall not exceed 50 feet in height at top of the highest point;
- The pole shall be covered with cladding (bark) where visible, and painted to resemble a live tree;
- Replacement of lost/damaged branches to be completed within ten working days of observation;
- All cables shall be run inside the pole, with no foot pegs or other visible appurtenances;
- All wires, wire ports and equipment shall be concealed behind the artificial branches and leaves;
- Antenna panels shall be colored or provided with a sock in a light/shade pattern to better camouflage them;
- Ground equipment to be screened by a masonry wall.
- Any future collocated antennas shall be camouflaged and concealed by artificial branches and leaves.

Road Improvements/Vehicular Access/Circulation – No road improvements are proposed with the project. Primary vehicular access to the WCF will be through the existing curb cuts and on-site parking area access lanes, and is identified by a 12-foot wide access easement from Fort Lowell Road. According to the *Major Streets and Routes Plan*, Fort Lowell Road is designated as an arterial street with a future right-of-way of 100 feet.

Federal Regulations – Because this Special Exception application involves a wireless communication request, the Zoning Examiner’s consideration of the application is impacted by the application of federal laws specific to wireless communications. While federal law does not entirely preempt local decision-making authority based on legitimate zoning requirements, such as community aesthetics and compliance with stealthing requirements, it does impose the following limitations:

- 1) The decision on the application must occur within the “shot clock” period as provided under federal law, which for this type of application is 150 days. In this case, the application was accepted on March 2, 2018 and the “shot clock” period will expire on July 30, 2018. If a decision is not

rendered within the “shot clock” period, the review and consideration process is presumed to be unreasonable and affords the applicant the opportunity to file a lawsuit. If sued, the City would need to prove that it acted “reasonably” when it failed to act within the established “shot clock” period. This means that the Zoning Examiner should come to a decision on this application within two weeks of the public hearing.

- 2) The evaluation of the request cannot include consideration of potential environmental or health effects of radio-frequency (RF) emissions where, as here, the facility will comply with FCC regulations and standard on such emissions.
- 3) The decision on the application cannot unreasonably discriminate among providers of functionally equivalent services. A denial may be deemed to be “unreasonable discrimination” if the applicant is similarly situated to other prior applicants and the proposed facility is no more intrusive than other prior applications that have been approved.
- 4) The decision may not have the effect of prohibiting the provision of wireless services, or of causing a significant gap in the applying provider’s coverage. In this context, the relevant issues are: (1) whether the applicant has shown a significant gap in service coverage; and (2) whether the proposal to fill this gap is the least intrusive means of doing so, or whether there are alternative sites that would fill the gap.
- 5) In the event of a denial, that decision and its reasons must be delivered to the applicant in writing, and must be supported by substantial evidence.

Given these constraints, the Zoning Examiner’s consideration and decision on this application should focus on whether the applicant has demonstrated a significant coverage gap; whether that gap could be addressed through an installation at an alternative site; and whether the proposed concealment/stealth measures are sufficient to meet the City’s requirements. The Zoning Examiner should also consider how this application compares to other prior applications for similar facilities. In the event of a denial, the reasons for the denial must be stated so they can be incorporated into a written decision and captured in the meeting minutes.

Use-Specific Standards – The applicant’s proposal requires approval as a Zoning Examiner Special Exception Procedure and must meet the Use-Specific Standards of *UDC* Sections 4.9.13.O and 4.9.4.I.2, .3, and .6.a. The Zoning Examiner may forward the request to the Design Review Board for design review and recommendation. Use Specific Standards specified in the *Unified Development*

Code Section 4.9.I.6.a include the following items (in *italics*). A response follows each Use Specific Standard:

1. *The antennas are mounted on a new tower and the tower and antennas are concealed or disguised, or the antennas are collocated on an existing structure.*

The new wireless facility is a disguised as a broadleaf tree (a stealth monoelm).

2. *The tower and antennas are architecturally and/or environmentally compatible with the surrounding structure(s) and general area.*

The proposed artificial broadleaf tree is an effective method to mitigate visual impacts of the wireless facility on surrounding development. The associated ground equipment is to be located inside cabinets within a compound screened by an 8-foot masonry wall.

3. *The new tower is setback at least two times the height of the structure from the boundary of any property zoned residential or office.*

The 50-foot monoelm is located approximately 300 feet to the east of the nearest residential and office zoned property.

4. *The tower and antennas are fifty (50) feet or less in height.*

The proposal is for an artificial broadleaf tree (monoelm) of fifty (50) feet in height to the top of the highest point of the tower, including artificial branches and leaves. Staff's recommendation is that the overall height of the monoelm be no more than fifty (50) feet.

Conclusion – The proposal is in compliance with the performance criteria for a wireless communication facility. The special exception request is consistent with policy direction in the *Northside Area Plan* and *Plan Tucson*, which support development designed to be compatible with and sensitive to surrounding land uses. The proposed WCF has been designed to blend in with the surroundings and does not conflict with plan policies.

SPECIAL CONDITIONS

PROCEDURAL

1. A development package in substantial compliance with the preliminary development plan dated February 21, 2018, is to be submitted and approved in accordance with *Administrative Manual*, Section 2-06.

2. The property owner shall execute a waiver of potential claims under A.R.S. Sec. 12-1134 for this zoning amendment as permitted by A.R.S. Sec. 12-1134 (I) in the form approved by the City Attorney and titled "Agreement to Waive Any Claims Against the City for Special Exception Land Use".
3. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Archaeologist. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director of Arizona State Museum.
4. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
5. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of the special exception land use.
6. A copy of the Special Exception decision letter shall be included with the site plan at the time of permit application submittal.

LAND USE COMPATABILITY / CONCEALMENT MEASURES

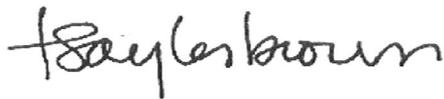
7. The wireless communication monoelm, including attachments such as antenna panels and artificial branches and leaves, shall not exceed fifty (50) feet in height from grade elevation.
8. The antennas shall be covered in camouflaged socks to blend with the colors of the artificial branches and leaves of the monoelm.
9. The pole shall be covered with cladding (faux bark) wherever the pole is visible, and be painted to resemble a live broadleaf tree.
10. Replacement of lost/damaged artificial branches/leaves is to be completed within ten (10) working days of observation and artificial branches/leaves shall be colored to match live branches/leaves as closely as possible.
11. Verizon shall routinely monitor the facility and repair/replace any artificial branches that may become worn or damaged through time.
12. All wire ports shall be concealed behind the antennas and all equipment shall be mounted behind the antenna panels.

13. Ground equipment to be located within lease area as depicted on the preliminary development plan dated February 21, 2018.
14. All walls visible from a public right-of-way and/or adjacent to existing residential development are to be painted with graffiti-resistant paint of an earthtone color.
15. Six-(6) inch wide fence block or greater shall be used for perimeter walls. Graffiti shall be removed from walls within seventy-two (72) hours of discovery or notification.
16. There shall be no exterior wiring, visible footpegs, portals, cabling or cable shrouds, or other unnatural appearing features on the monoelm.
17. Plans for future carriers must be approved through the special exception process.

DECISION

The Zoning Examiner's decision is to **approve** the special exception request subject to the special conditions.

Sincerely,



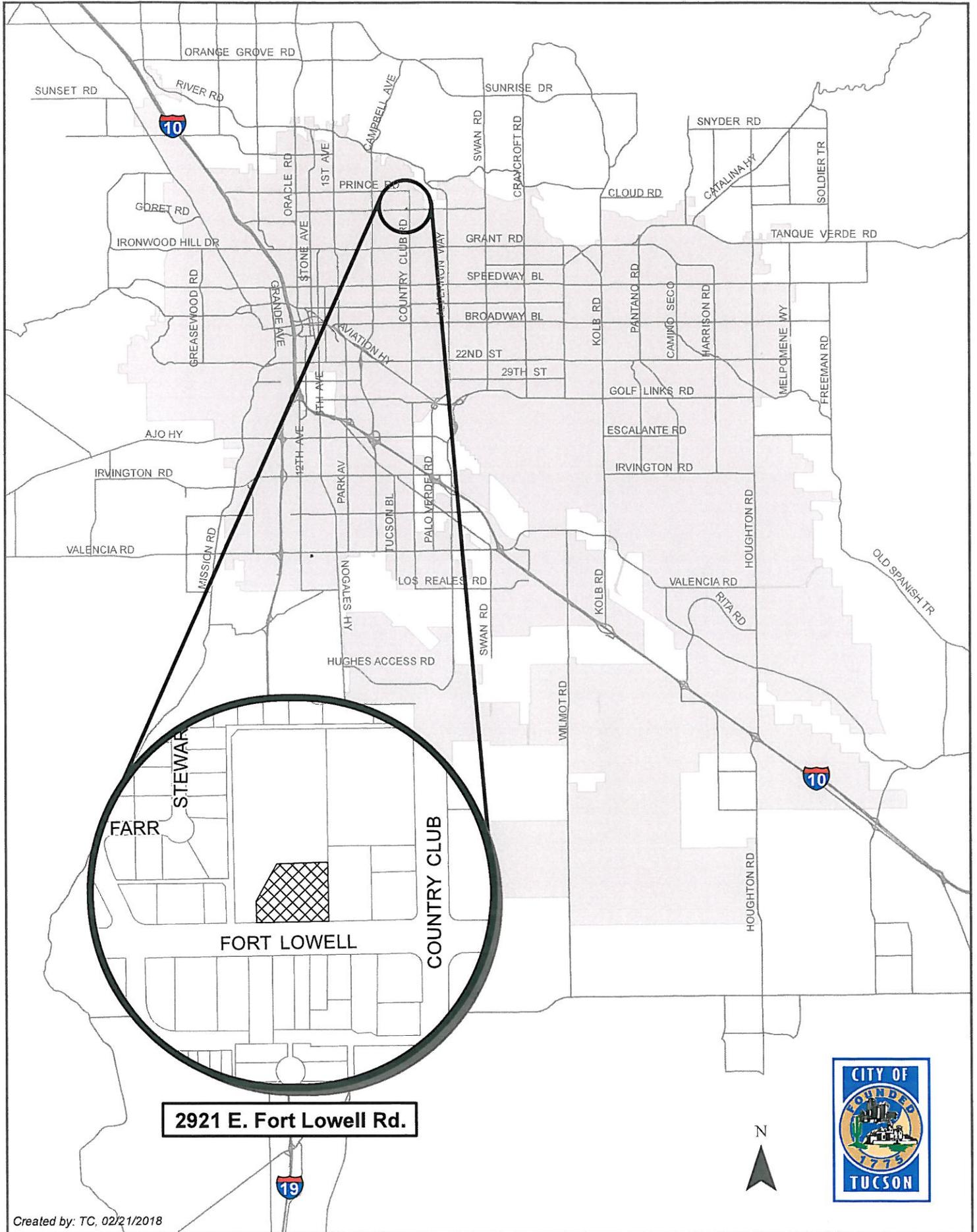
Thomas Sayler-Brown
Zoning Examiner

ATTACHMENTS:

Case Location & Special Exception Case Map

cc: City of Tucson Mayor and Council

SE-18-16 Verizon - Fort Lowell Road



2921 E. Fort Lowell Rd.



SE-18-16
Verizon - Fort Lowell Road



Area of Special Exception Request



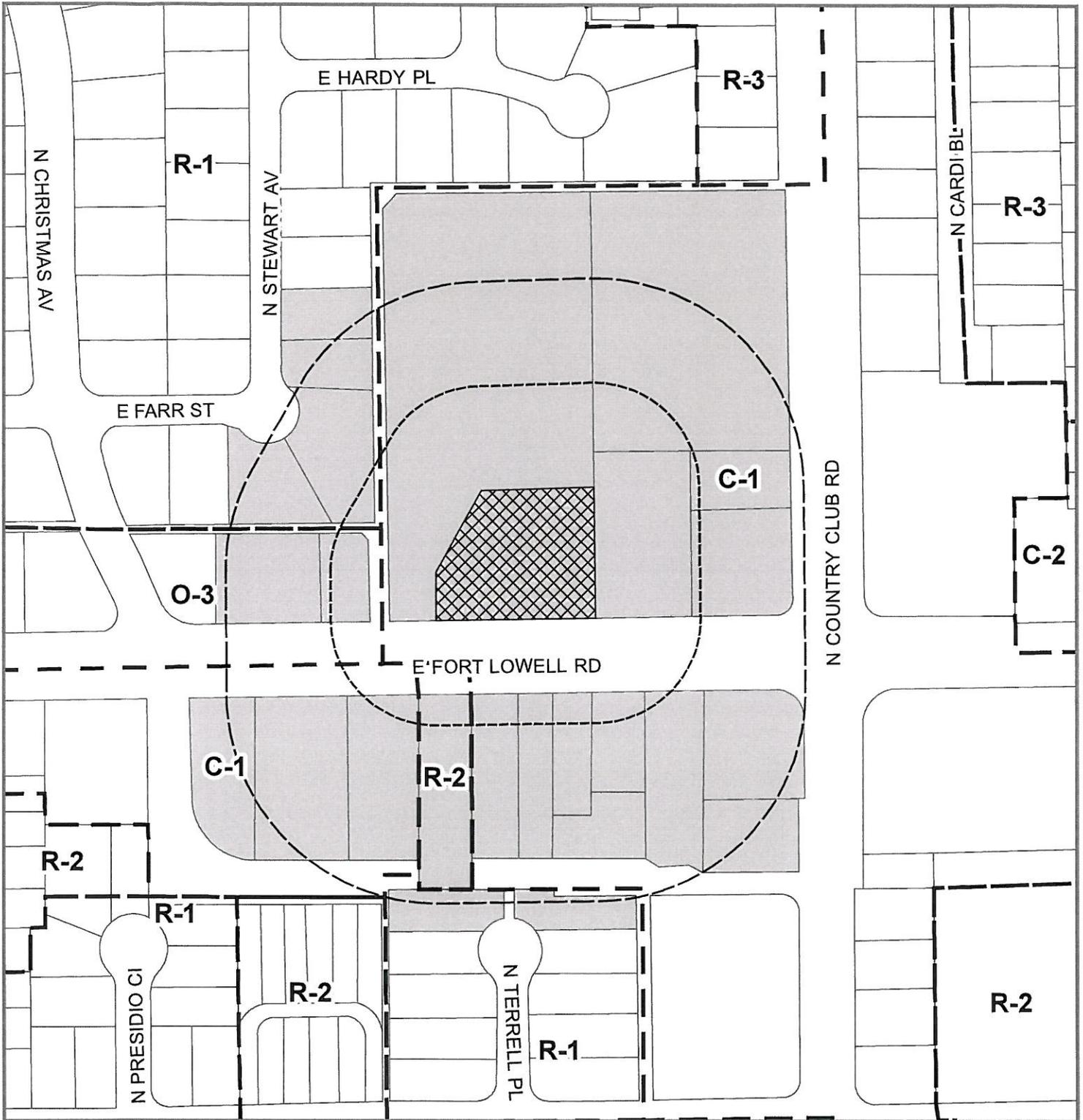
Address: 2921 E. Fort Lowell Rd.
Base Map: Twp. 13S R. 14E Sec. 29
Ward: 3

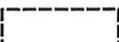


1 inch = 200 feet



SE-18-16
Verizon - Fort Lowell Road



-  Subject Property
-  Notification Area (300-foot Radius)
-  Protest Area (150-foot Radius)
-  Zone Boundaries
-  Properties Notified

Address: 2921 E. Ft. Lowell Rd.
Base Maps: Twp.13S Range14E Sec. 29
Ward: 3



1 inch = 200 feet

