MEMORANDUM

DATE: April 25, 2018
For May 10, 2018 Hearing

TO: Steven Shell
Zoning Examiner

FROM: Scott Clark
Planning & Development Services
Interim Director

SUBJECT: SPECIAL EXCEPTION LAND USE
PLANNING & AND DEVELOPMENT SERVICES REPORT
Zoning Examiner Special Exception Procedure
SE-18-18 Verizon – 29th Street, SR (Ward 4)

Issue – This is a request by Nancy Smith of Young Design Corporation on behalf of Verizon Wireless, for approval of a wireless communication facility (WCF). The special exception site is located approximately 400 feet south of 29th Street and 1,100 feet west of Old Spanish Trail (see Case Location Map). The preliminary development plan (PDP) proposes a wireless communication tower disguised as a pine tree (monopine), 50 feet in height, with six antennas. The monopine will be placed within a 289 square foot (17 feet by 17 feet) lease area near an existing ramada located in the central portion of a 9.90 acre parcel owned by Tucson Unified School District. The site is developed as a public school with multiple buildings and is currently in use as Dunham Elementary School. The ground equipment facility will be placed approximately 60 feet northeast of the monopine on the other side of the ramada, within a 408 square foot (12 feet by 34 feet) lease area.

A communications use of this type in the SR 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 & Development Services Department Recommendation – The Planning & Development Services Department recommends approval of the special exception request, subject to the attached preliminary conditions.

Background Information

Existing Land Use: Commercial storage.

Zoning Description:

C-1: This zone provides for low-intensity, commercial and other uses that are compatible with adjacent residential uses. Residential and other related uses are permitted.

Surrounding Zones and Land Uses:

North: Zoned R-2; Townhomes
South: Zoned R-1; Single-family residential
East: Zoned R-1; Single-family residential
West: Zoned R-1; Single-family residential

Previous Cases on the Property: None

Related Cases:

SE-16-61 Verizon– 29th Street, R-1 Zone – This was a request for approval of a wireless communication facility concealed within an artificial pine tree (monopine), 59 feet in height and associated equipment as a special exception land use. The site is located approximately 200 feet south of 29th Street and 50 feet east of Sahuara Avenue. On October 19, 2016, the Mayor and Council adopted Ordinance No. 11404, allowing the special exception.

SE-15-78 Verizon – Craycroft Road, SR Zone – This was a request for approval of a wireless communication facility concealed within an artificial pine tree (monopine), 70 feet in height and associated equipment as a special exception land use. The site is located 170 feet south of the Rillito River multi-use path and 520 feet west of Craycroft Road. On February 9, 2016, the Mayor and Council adopted Ordinance No. 11338, allowing the special exception.

SE-15-11 Verizon – Swan Road, C-1 Zone – This was a request for approval of a wireless communication facility disguised as an artificial pine tree (monopine), 60 feet in height and associated equipment as a special exception land use. The site is located approximately 300 feet south of Camp Lowell Road and 150 feet west of Swan Road. On September 9, 2015, the Mayor and Council adopted Ordinance No. 11301, allowing the special exception.

Applicant's Request – The applicant requests special exception approval for the placement of a 50-foot high wireless communications facility disguised as a pine tree (monopine) with associated ground equipment on an SR zoned parcel with educational uses.

Planning Considerations – Land use policy direction for this area is provided by the *Pantano East Area Plan (PEAP)* and *Plan Tucson*. The *PEAP* in the commercial policy section, provides direction for this site. It states commercial uses should be located at the intersection of major streets, or where commercial uses already exist. New commercial uses should be carefully integrated with surrounding areas.

Plan Tucson identifies this area in the Future Growth Scenario Map as an existing neighborhood. Existing neighborhoods are defined as maintaining the specific character of these neighborhoods, while accommodating some new development and redevelopment, and new services and amenities that contribute further to neighborhood stability. Policy LT28.1.2 requires that, if possible, wireless communication facilities be located, installed and maintained to minimize visual impacts and preserve views. *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. Policy LT28.1.3 calls for improving the appearance of above-ground utilities and structures and extending access to high-tech wireless communication facilities throughout the city. Visual impacts are a prime consideration during the review process

The proposal in general compliance with *Pantano East Area Plan* and *Plan Tucson*, 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 equipment will be screened from view by an 10-foot high masonry wall and the antennas will be concealed within the artificial branches of the monopine. The wireless communication facility will be set back from 29th Street by approximately 450 feet and from surrounding residential uses by approximately 250 feet or more.

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 monopine will include two antennas per sector with three sectors for a total of six antennas. The applicant has submitted photo-simulations of the monopine 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 development is a single-family subdivision, zoned R-1, located approximately 250 feet to the south. The monopine will be visible from surrounding residential neighborhoods and nearby streets.

Existing live trees near the proposed facility, as well as a new 24-inch box tree to be planted and maintained by the existing irrigation system, will provide context for the stealth monopine. Staff acknowledges that the proposed wireless communication facility will help improve telecom services to the established neighborhoods and businesses in the area.

The facility will be placed within two lease areas in approximately the center of the 9.90-acre school site. The monopine is to be located within a 289-square foot lease area to the west of an existing ramada, and the ground equipment within a 408-square foot least area to the east of the ramada. Ground equipment will be housed inside equipment cabinets, located on a concrete slab, and screened by a 10-foot tall masonry wall with a brick veneer to match the existing school buildings per the preliminary development plan. The proposal does not include a backup generator. Staff recommends that any graffiti be removed within 72 hours of observation.

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 monopalm at this location, the following standards should be incorporated into the conditions:

- The monopine 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 pine 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 from 29th Street through an existing curb cut and on-site parking area access lanes, and is identified by a 12-foot wide access easement. According to the *Major Streets and Routes Plan*, 29th Street is a local street and Old Spanish Trail is designated as a Scenic arterial 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 6, 2018 and the "shot clock" period will expire on August 3, 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/stealthing 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 pine tree (a stealth monopine).

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

   The proposed artificial pine 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 a 10-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 monopine is located approximately 250 feet to the north of the nearest residential/office zoned property.

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

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

Staff finds the proposal to be in compliance with the *UDC* Use-Specific Standards.

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 *Pantano East 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. Subject to compliance with the attached preliminary conditions, approval of the requested special exception is appropriate.

PROCEDURAL

1. A site plan in substantial compliance with the preliminary development plan dated February 23, 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 monopine, including attachments such as antenna panels and artificial branches and needles, 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 needles of the monopine.

9. The pole shall be covered with cladding (faux bark) wherever the pole is visible, and be painted to resemble a live pine tree.

10. Replacement of lost/damaged artificial branches/needles is to be completed within ten (10) working days of observation and artificial branches/needles shall be colored to match live branches/needles 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 23, 2018.

14. All walls visible from a public right-of-way and/or adjacent to existing residential development are to be covered with a brick veneer to match the existing onsite school buildings.

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 monopine.

17. Plans for future carriers must be approved through the special exception process.

AGREEMENT TO WAIVE ANY CLAIMS
AGAINST THE CITY FOR ZONING AMENDMENT

This agreement ("**Agreement**") is entered into between _____ _____, as the owner of the property described herein ("**Owner**") and the City of Tucson("**City**") to waive any and all claims for diminution of value that may be based upon action by the City in response to a request from the Owner. This Agreement is entered into in conformance with A.R.S. §12-1134(I).

The Owner is the holder of fee title to the property located at _____ _____, Tucson, Arizona, (the "Property") which is more fully described in the Owner's application to the City in Case SE-18-18 and incorporated herein. The Owner, or the authorized agent of the Owner, has submitted an application to the City requesting that the City grant a Special Exception Land Use for the Property. The Owner has requested this action because the Owner has plans for the development of the Property that require the Special Exception Land Use. The Owner believes that the Special Exception Land Use for the Property will increase the value and development potential of the Property, and that this outweighs any rights or remedies that may be obtained under A.R.S. §12-1134 et. seq.

By signing this Agreement, the Owner waives any right or claim that may arise under A.R.S. §12-1134, including any claim for the reduction in the value of the Property, as a result of the enactment of the Special Exception Land Use in Case SE-18-18.

The Owner understands that City staff may propose, the Zoning Examiner may recommend and the Mayor and Council may adopt conditions to the requested Special Exception Land Use that limit the potential development of the Property. The Owner acknowledges that the Special Exception Land Use and conditions are a single, integrated legislative approval. The Owner agrees and consents to all conditions that may be imposed. The Owner retains the right to withdraw the Special Exception Land Use application prior to a vote by the Mayor and Council or to decline to implement the necessary requirements to effectuate the Special Exception Land Use if the Owner disagrees with any conditions that are proposed or approved. If the Owner does not withdraw the application, the Owner shall be deemed to have accepted all adopted conditions to the requested Special Exception Land Use. If the Owner withdraws the application or does not effectuate the Special Exception Land Use, this Agreement is null and void.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. The Owner has agreed to the form of this Agreement provided and approved by the City Attorney. The Owner has had the opportunity to consult with an attorney of the Owner's choice prior to entering this Agreement and enters it fully understanding that the Owner is waiving the rights and remedies as set forth herein.

Upon execution, this Agreement shall be recorded in the Office of the Pima County Recorder.

The Owner warrants and represents that the person or persons listed herein as the Owner is/are the owner in fee title of the Property. The Owner further agrees to indemnify and hold the City of Tucson, its officers, employees and agents harmless from any and all claims, causes of action, demands, losses, costs and expenses based upon an alleged reduction of value of the Property as a result of the City's action in Case SE-18-18.

Dated this _____ day of _____, 20___.

Owner: _____
(Name of Individual, Corporation, Partnership, or LLC, as applicable)

By: _____
(Signature of Owner or Authorized Representative, if applicable)

Its: _____
(Title of Individual Signing in Representative Capacity)

Owner: _____
(Name of Individual, Corporation, Partnership, or LLC, as applicable)

By: _____
(Signature of Owner or Authorized Representative, if applicable)

Its: _____
(Title of Individual Signing in Representative Capacity)

State of Arizona)
)
County of _____)

On this _____ day of _____, 20____, before me personally appeared

_____ on the basis of satisfactory evidence to be the person who

he or she claims to be, and acknowledged that he or she signed the above/attached document.

_____
Notary Public

My Commission expires:

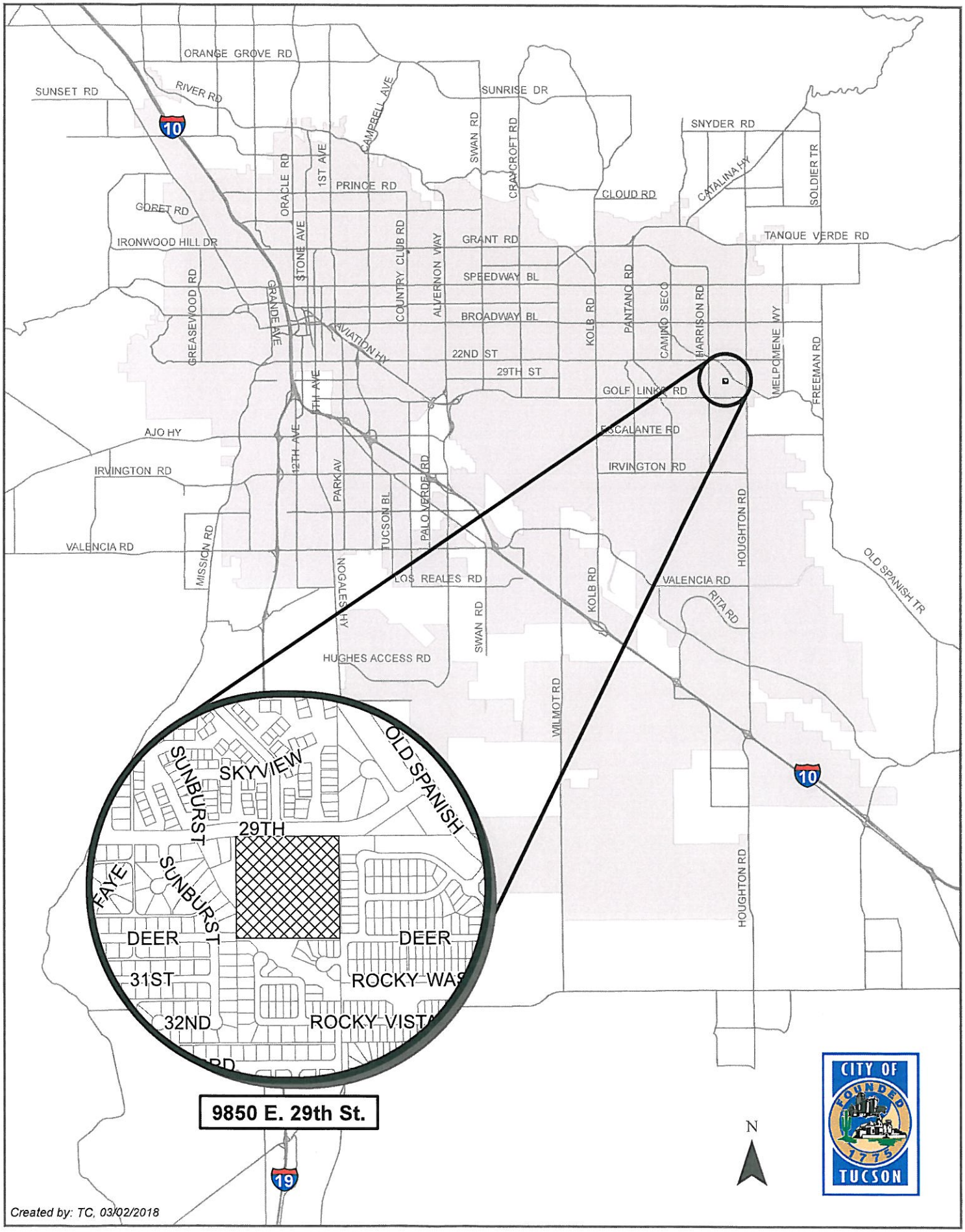
_____

City of Tucson, an Arizona municipal Corporation:

By: _____
Planning & Development Services Department

This form has been approved by the City Attorney.

SE-18-18
Verizon - 29th Street



SE-18-18
Verizon - 29th Street

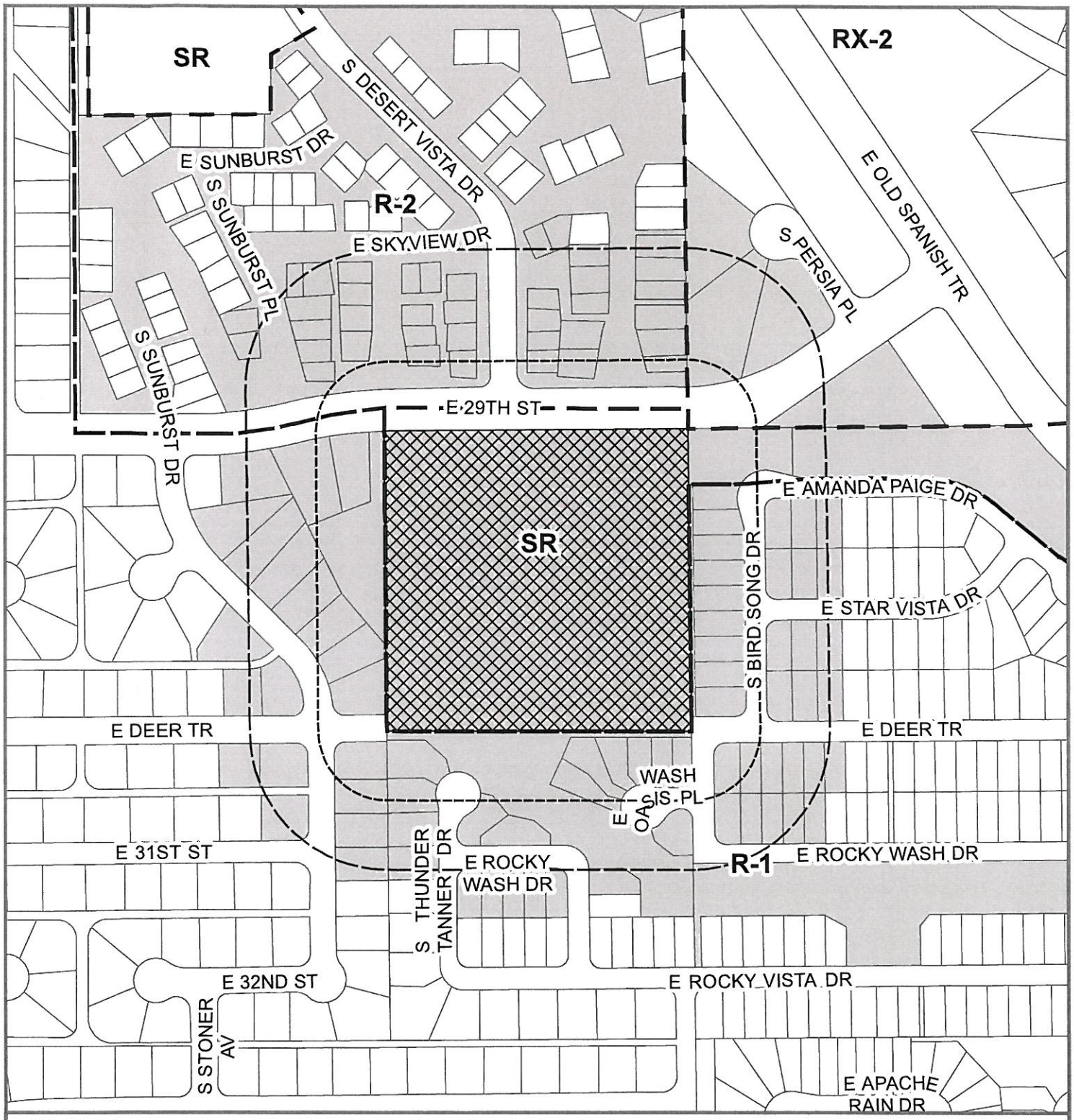
Area of Special Exception Request

Address: 9850 E. 29th St.
Base Map: Twp. 14S R. 15E Sec. 23
Ward: 4

N

Feet
0 100 200
1 inch = 200 feet

SE-18-18
Verizon - 29th Street



Subject Property

Notification Area (300-foot Radius)

Protest Area (150-foot Radius)

Zone Boundaries

Properties Notified

Address: 9850 E. 29th St.
Base Maps: Twp.14S Range15E Sec. 23
Ward: 4

N

Feet
0 150 300

1 inch = 300 feet

Created by: TC, 04/11/2018

Approval – Protest Form

If you wish to submit a written protest or approval, this form is provided for your convenience. Please print your comments below, sign your name, and mail to the Rezoning Section of the Planning & Development Services Department at the address on the reverse side (you will need to attach postage). The number of approvals and protests along with protest calculations will be reported at the Zoning Examiner's public hearing.

Approvals and protests <u>must</u> have an owner's signature to be recorded.

Case **SE-18-18 Verizon – 29th Street Ward #4**
C-1 Zone (Proposal for a 50-foot tall wireless communication tower disguised as a pine tree (monopine) with 3 sectors of antennas and associated ground equipment)

_____ I/We the undersigned property owners, wish to

☐ APPROVE the proposed rezoning.
☐ PROTEST the proposed rezoning.

Reason:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

PLEASE PRINT YOUR NAME	PLEASE PRINT MAILING ADDRESS	PLEASE PRINT LEGAL PROPERTY DESCRIPTION		
		Subdivision	Block	Lot

Owner's Signature: _____ Date _____

SE-18-18

City of Tucson PMc
Planning & Development Services
Rezoning Section
201 N. Stone Avenue
P.O. BOX 27210
Tucson, Arizona 85726-7210

SE-18-18
IMPORTANT SPECIAL EXCEPTION NOTICE ENCLOSED