

ZONING EXAMINER'S DECISION

September 6, 2018

CITY OF
TUCSON
OFFICE OF THE
CITY MANAGER

Declan Murphy
Coal Creek Consulting
2166 E University Drive, Suite 201
Tempe, AZ 85281

**SUBJECT: Special Exception Land Use
SE-18-39 T-Mobile – 22nd Street, C-2 (Ward 6)
Public Hearing: August 30, 2018**

Dear Mr. Murphy,

SPECIAL EXCEPTION LAND USE REQUEST

Pursuant to the City of Tucson's Unified Development Code (UDC) and the Zoning Examiner's Rules & Procedures (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's findings and decision for the special exception case **SE-18-39 T-Mobile-22nd Street**.

PUBLIC HEARING

On August 30, 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 August 30, 2018 Zoning Examiner's Public Hearing, the Planning and Development Services Department (PDSD) staff reported that there was one (1) written approval and no (0) written protests at that time. The applicant provided a 207 waiver. The applicant gave testimony at the public hearing and described the overall need for this site to provide adequate service coverage. The applicant agreed with the special conditions. No other person spoke at the public hearing.

Issue – This is a request by Declan Murphy of Coal Creek Consulting on behalf of Towercom and T-Mobile, for approval of a wireless communication facility (WCF). The special exception site is located approximately 300 feet north of 22nd Street and 1,000 feet east of Columbus Boulevard (see Case Location Map). The preliminary development plan (PDP) proposes a wireless communication tower disguised as a broadleaf tree (monoelm), 65 feet in height, with nine

antennas. The WCF will be placed within an 867 square foot (50 feet by 17 feet, 4 inches) lease area on the northeastern portion of a 2.05-acre vacant parcel.

A communications use of this type in the C-2 zone is subject to Section 4.9.4.I.6.b of the Unified Development Code (UDC) and requires approval through a Zoning Examiner Special Exception Procedure, in accordance with UDC Section 3.4.3. The proposed special exception is considered under the requirements of a Zoning Examiner Special Exception Procedure because the tower and antennas will not exceed 80 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 *Plan Tucson*. The site is also within the boundaries of the *Alvernon-Broadway Area Plan*, which supports commercial development at this location, but does not have specific language for wireless communication facilities. The *Alvernon-Broadway Area Plan* encourages development that creates attractive transitions between residential and commercial areas.

The rezoning site is located within a mixed-use corridor as identified on the Future Growth Scenario Map of *Plan Tucson*. Mixed-use corridors combine a variety of housing options, 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. *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 and when buffering is provided. Policies require that wireless communication facilities be located, installed and maintained to minimize visual impacts and preserve views, and call for improving the appearance of above-ground utilities and structures and extending access to high-tech wireless communication facilities throughout the city. The project is in general compliance with *Plan Tucson*. The ground lease area is approximately 50 feet by 17 feet with ground level equipment that will be screened from view by an 8-foot high masonry wall. The Applicant testified that the proposed WCF will help improve telecom services to the established neighborhoods and businesses in the area.

Design Considerations

Land Use Compatibility – The proposed monoelm will include three antennas per sector with three sectors for a total of nine 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 single-family homes, located approximately 400 feet to the north in R-1 zoning. The monoelm will be visible at a distance from residential neighborhoods, as well as from commercial development, and nearby streets. The facility will be set back from 22nd Street by approximately 300 feet and is partially screened from view by commercial buildings on adjacent sites.

The facility will be placed within an 867-square foot lease area in the south central part of the subject parcel, which is otherwise vacant. Ground equipment will be housed inside equipment cabinets, located on a concrete slab, and screened by a masonry wall eight feet in height. The proposal does not include a backup generator. Staff recommends the masonry screen wall surrounding the lease area be painted in neutral desert colors. Staff further 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 monoelm at this location, the following standards should be incorporated into the conditions:

- The monoelm shall not exceed 65 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 from 22nd Street by way of an existing public alleyway to the east of the site and a 12-foot wide access easement across the subject property. According to the Major Streets and Routes Plan, 22nd Street is designated as an arterial street with a future right-of-way of 150 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 July 2, 2018 and the “shot clock” period will expire on November 29, 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 standards 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.b. 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 set back at least two times the height of the structure from the boundary of any property zoned residential or office.*

The 65-foot monoelm is located approximately 175 feet to the south of the boundary of the nearest residential/office zoned property.

4. *The tower and antennas are eighty (80) feet or less in height.*

The proposal is for an artificial broadleaf tree (monoelm) of sixty-five (65) feet in height to the top of the highest point of the tower, including artificial branches and leaves.

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 *Plan Tucson*, which supports development designed to be compatible with and sensitive to surrounding land uses. The proposed WCF has a stealth design and does not conflict with plan policies.

SPECIAL CONDITIONS

PROCEDURAL

1. A site plan in substantial compliance with the preliminary development plan dated June 14, 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 the 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

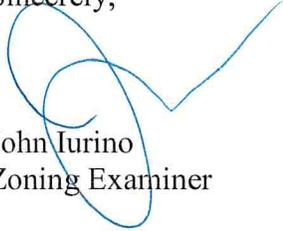
7. The wireless communication monoelm, including attachments such as antenna panels and artificial branches and leaves, shall not exceed sixty-five (65) feet in height from grade elevation.
8. The antennas shall be covered in camouflaged socks to blend with the colors of the artificial branches and leaves 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. T-Mobile 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 will be located within lease area as depicted on the preliminary development plan dated June 14, 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 approves the special exception request subject to the special conditions.

Sincerely,



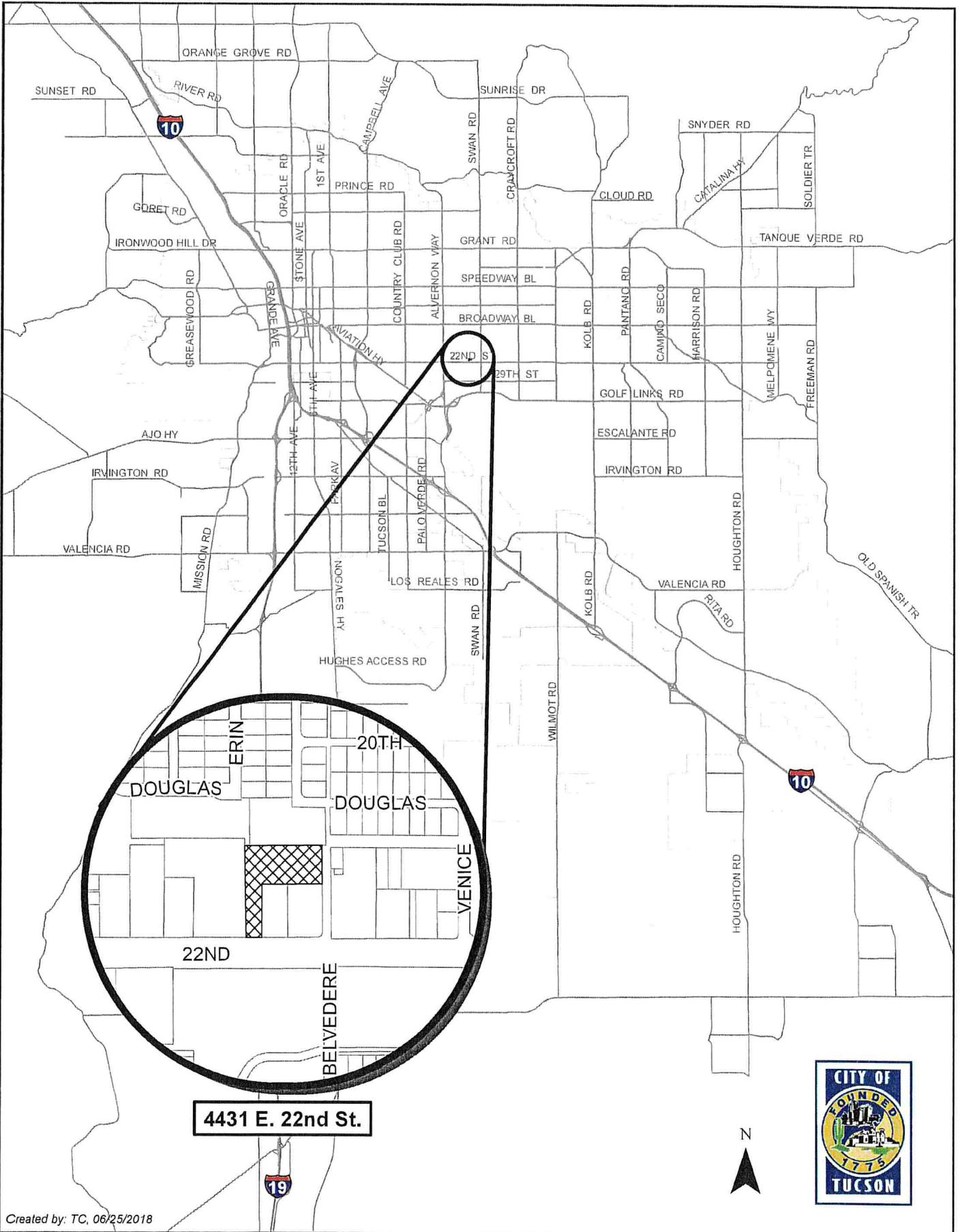
John Iurino
Zoning Examiner

ATTACHMENTS:

Case Location & Special Exception Case Map

cc: City of Tucson Mayor and Council

SE-18-39
T-Mobile - 22nd Street



4431 E. 22nd St.

SE-18-39
T-Mobile - 22nd Street



Area of Special Exception Request



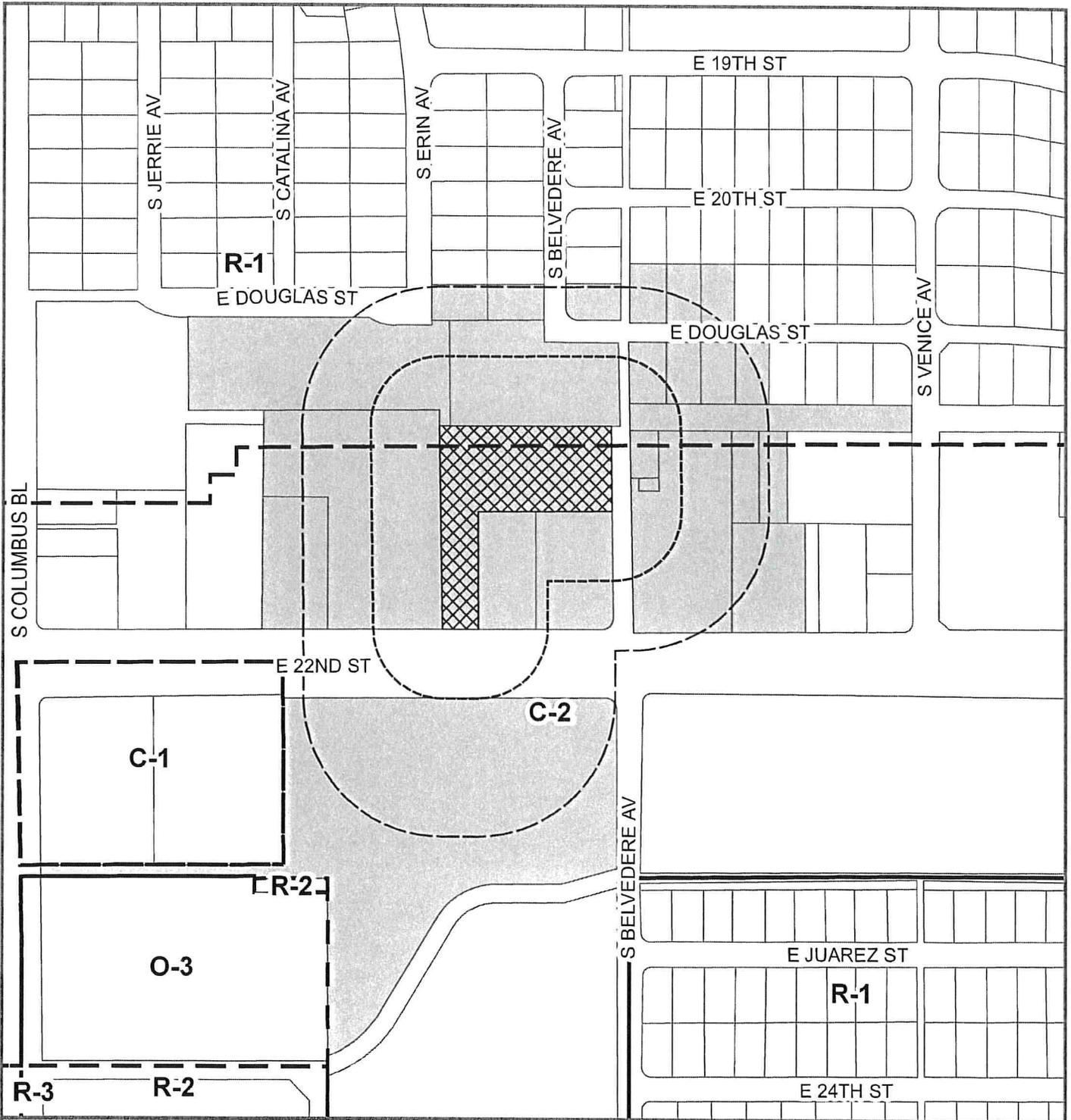
Address: 4431 E. 22nd St.
Base Map: Twp. 14S R. 14E Sec. 15
Ward: 6

0 150 300 Feet

1 inch = 300 feet

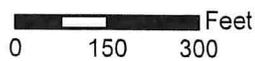


SE-18-39
T-Mobile - 22nd Street



Address: 4431 E. 22nd St.
Base Maps: Twp.14S Range14E Sec. 15
Ward: 6

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



1 inch = 300 feet

