PLANNING COMMISSION

Planning & Development Services Department • 201 N. Stone Ave. • Tucson, AZ 85701

DATE: **July 20, 2011**

TO: **Planning Commission**

FROM: **Ernie Duarte**
Executive Secretary

SUBJECT: **2012 Sunset Ordinances**

Issue – This item is for discussion by the Planning Commission in a Study Session.

Staff will give a brief presentation on the status of a group of Land Use Code (LUC) text amendments adopted in 2010. These ordinances were all given a sunset date of January 31, 2012. After this date, the ordinances will not be in effect unless the Mayor and Council re-adopts them permanently or creates a new sunset date.

Recommendation - Staff recommends that the attached ordinances regarding change of use and certificate of occupancy, development timeline expiration, urban overlay district and infill incentive district be set for public hearing to either make them permanent or set a new sunset date for January 31, 2015. Staff will return this item as soon as possible for Planning Commission action.

Background - On March 9, 2010, Mayor and Council gave direction on a series of Land Use Code text amendments known as the 'quick fixes'. Among these recommendations that were eventually adopted as changes to the LUC were the attached amendments. They are the following:

1) **Change of Use/Certificate of Occupancy** – This text amendment refers to a change of use on a non-residential site where the building footprint remains the same as that shown on the City's aerial maps dated May 1, 2005. If the current building has been permitted, the new use if permitted in the zone may be allowed without bringing the entire site up to current zoning standards.

2) **Development Expiration Dates** - This amendment extended approval periods for development plans and tentative plats from one year to three years.

3) **Urban Overlay District** - This amendment added an enabling ordinance to the LUC to allow the Mayor and Council to initiate a rezoning to a specified area that would then give a zoning option to the affected properties to pursue transit-oriented development. The option would require certain design considerations that support pedestrian and transit -oriented development.

4) **Infill Incentive District** – This amendment applies to a specified area of the City that was originally adopted by Mayor and Council in 2006. In 2009, a process was created

to allow flexible zoning standard options for designated infill uses within the area. In 2010 the flexible standards concept was refined and applied to two sub-districts called the Downtown Core Sub-district and the Greater Infill Incentive Sub-district. The goal remained to encourage transit and pedestrian-oriented design in exchange for zoning standards flexibility.

For your information, the subject ordinances are attached with a brief PowerPoint presentation on the ordinances and some background on the change of use/certificate of occupancy standards usage throughout the City up till now.

Attachments:
A - PowerPoint
B - Change of Use/C of O background
C - Adopted ordinances.

Land Use Code Amendments with January 31, 2012 Sunset Dates

July 20, 2011

Background

- 2010 Goal - Have more business friendly standards that are beneficial to the City.
- 2011 Goal – Make permanent or extend the sunset dates to allow continue use of the provisions.

Attachment A

2010 LUC Text Amendments

- Ord.#10835 Change of Use - C of O (Certificate of Occupancy) Jan.31, 2012 Sunset Date
- Ord.#10813 Development - Timeline Expirations Jan.31, 2012 Sunset Date
- Ord.#10832 Urban Overlay District (UOD) Jan.31, 2012 Sunset Date
- Ord.#10841 Downtown Area Infill Incentive District (IID) Jan.31, 2012 Sunset Date

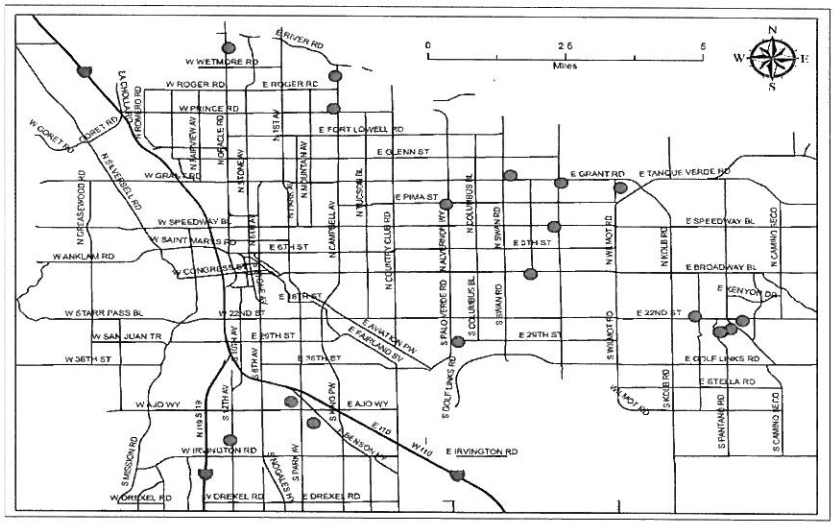
Change of Use/Certificate of Occupancy

- Applies to Certificate of Occupancy permits for a change of use on non-residential zoned properties, where the site may not satisfy Code 100%;
- Building and site footprints are the same as that of May 1, 2005 improvements;
- The site currently has permits;
- The new use is allowed in the zone with some exceptions.

Change of Use/C of O Update

Since its adoption in September 2010, 18 new businesses have been able to obtain a C of O, using its provisions.

Businesses using Change of Use/C of O's provisions



Development Expiration and Urban Overlay District Update

Development Expiration Extension -

Extends expiration dates on all approved tentative plats and development plans from 1 year to 3 years.

Urban Overlay District (UOD) -

Allows a zoning option to the underlying zoning *in exchange for* pedestrian and transit-oriented development.

Urban Overlay District Issues

- In March 2011, Mayor and Council initiated the first UOD for the Downtown Links Overlay.
- UOD is expected to be used in upcoming RTA Corridor Projects such as Grant Road.
- It may be used to address land use issues along the Modern Streetcar line.

The Downtown Infill Incentive District (IID) Issues

- Refined in 2010 to include two sub-districts, viz. The Downtown Core Sub-district (DCS), and the Greater Infill Incentive Sub-district (GIIS).
- Further refinement may occur as part of land use planning along the Modern Streetcar line.

Use of the Downtown Area Infill Incentive District (IID)

- Provisions of the IID were used in a student housing project located on 6th Street, west of 4th Avenue.
- The IID was also used to create flexibility for and outdoor patio area beside the Rialto Theater.

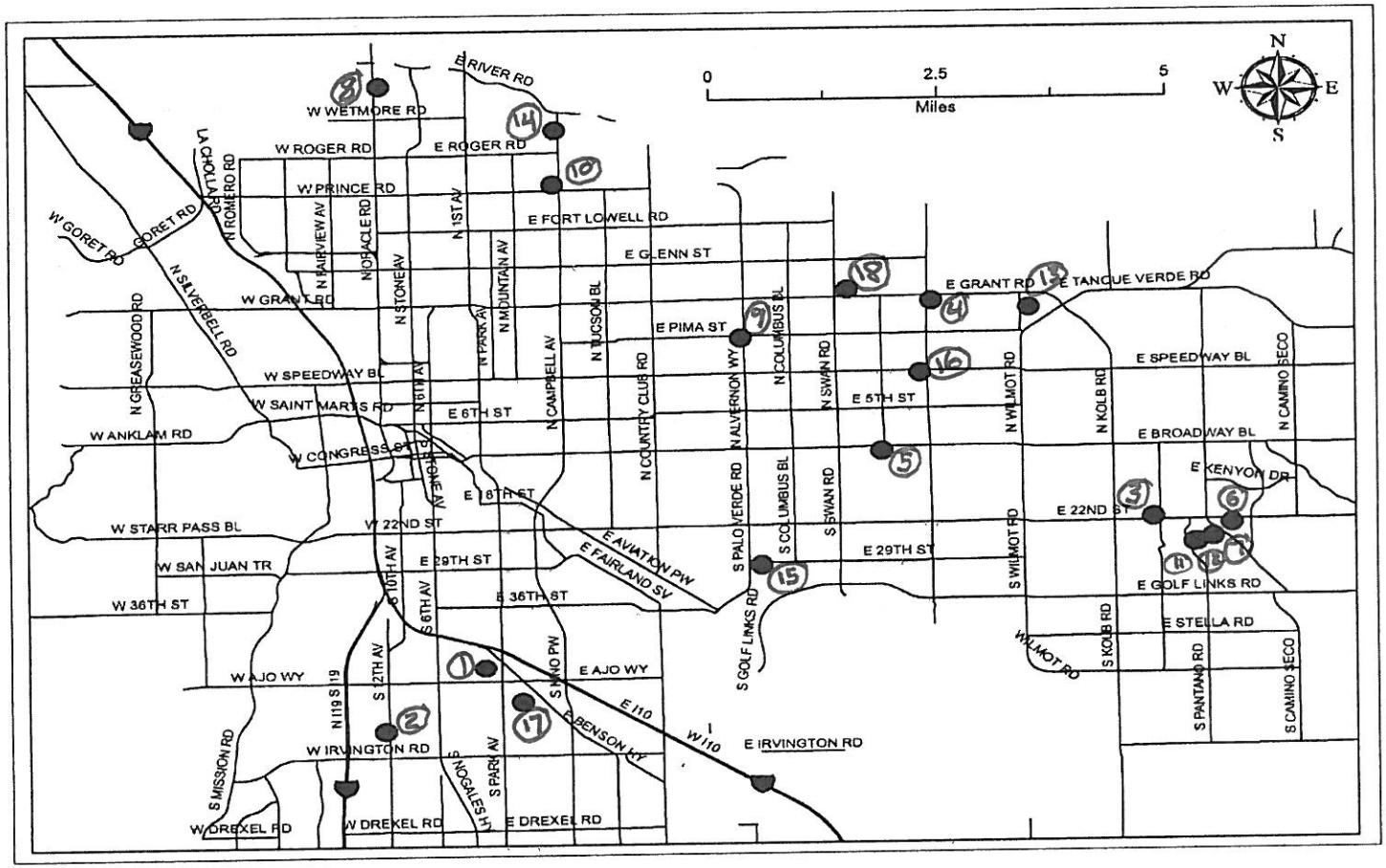
Recommendation

- Staff recommends setting the text amendments for public hearing to reset the sunset date or make the provision permanent.
- Make permanent Development Expiration Dates and Urban Overlay District
- Set new sunset date of January 31, 2015 – Change of use/Certificate of Occupancy and the Infill Incentive District.

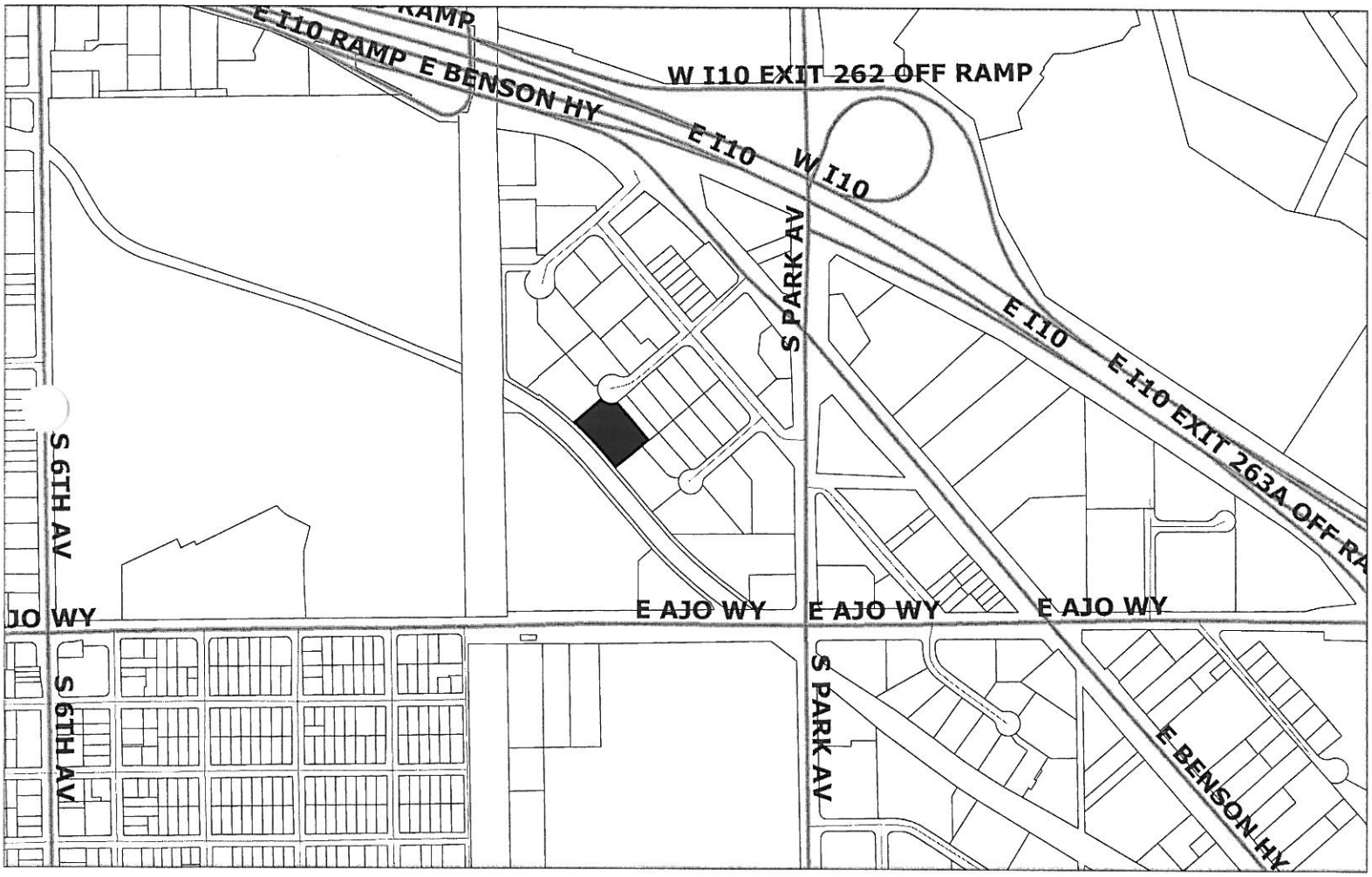
Attachment B

2010 LUC Text Amendment

Business sites with C of O's using provisions of Ordinance 10835



See attached parcel maps providing location of each business represented by the red dots.

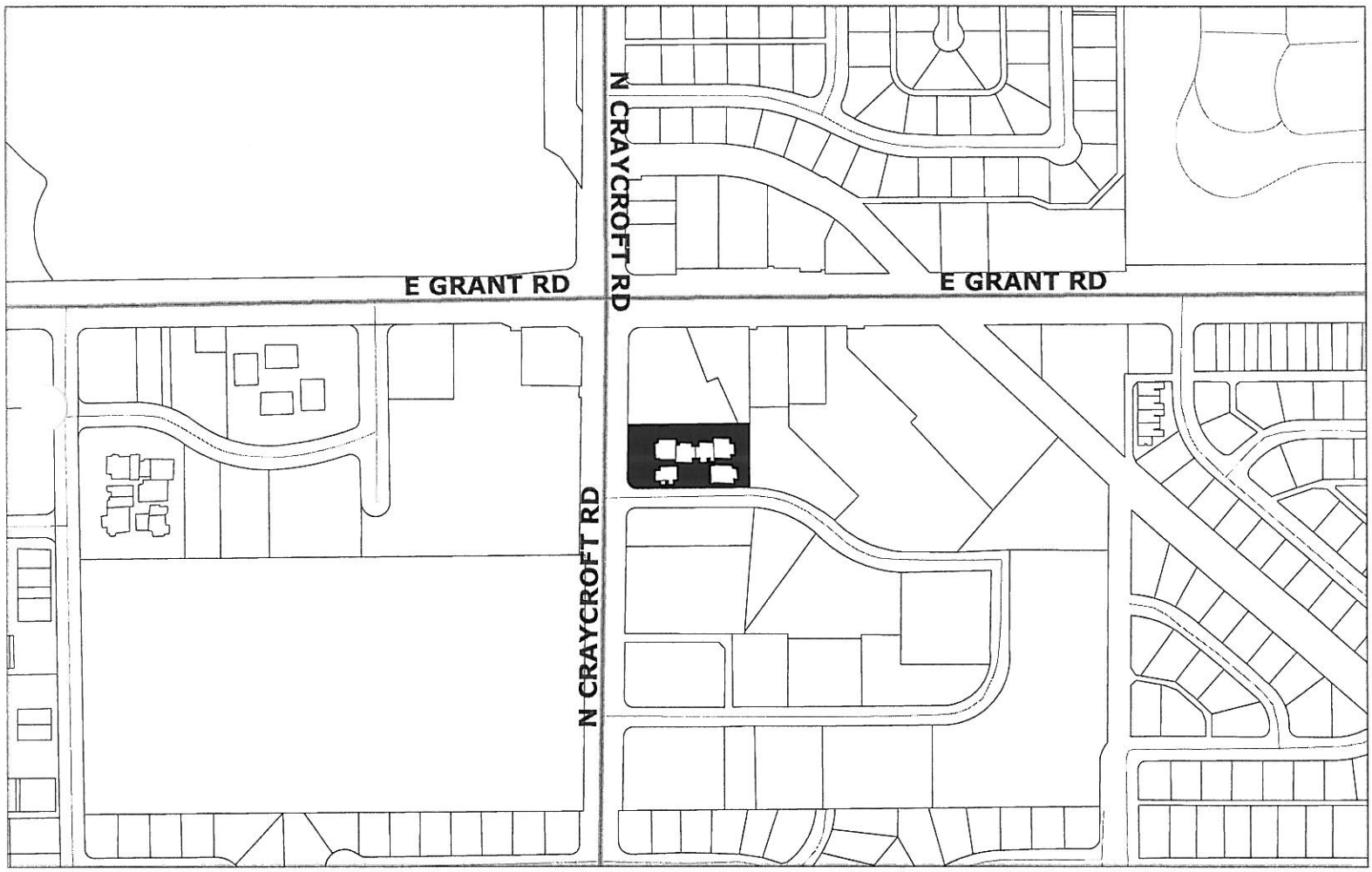

RAMP
E I10 RAMP
E BENSON HY
W I10 EXIT 262 OFF RAMP
E I10
W I10
S PARK AV
E I10
E I10 EXIT 263A OFF RA
S 6TH AV
JO WY
E AJO WY
E AJO WY
E AJO WY
S 6TH AV
S PARK AV
E BENSON HY

730 E. 46th ST.

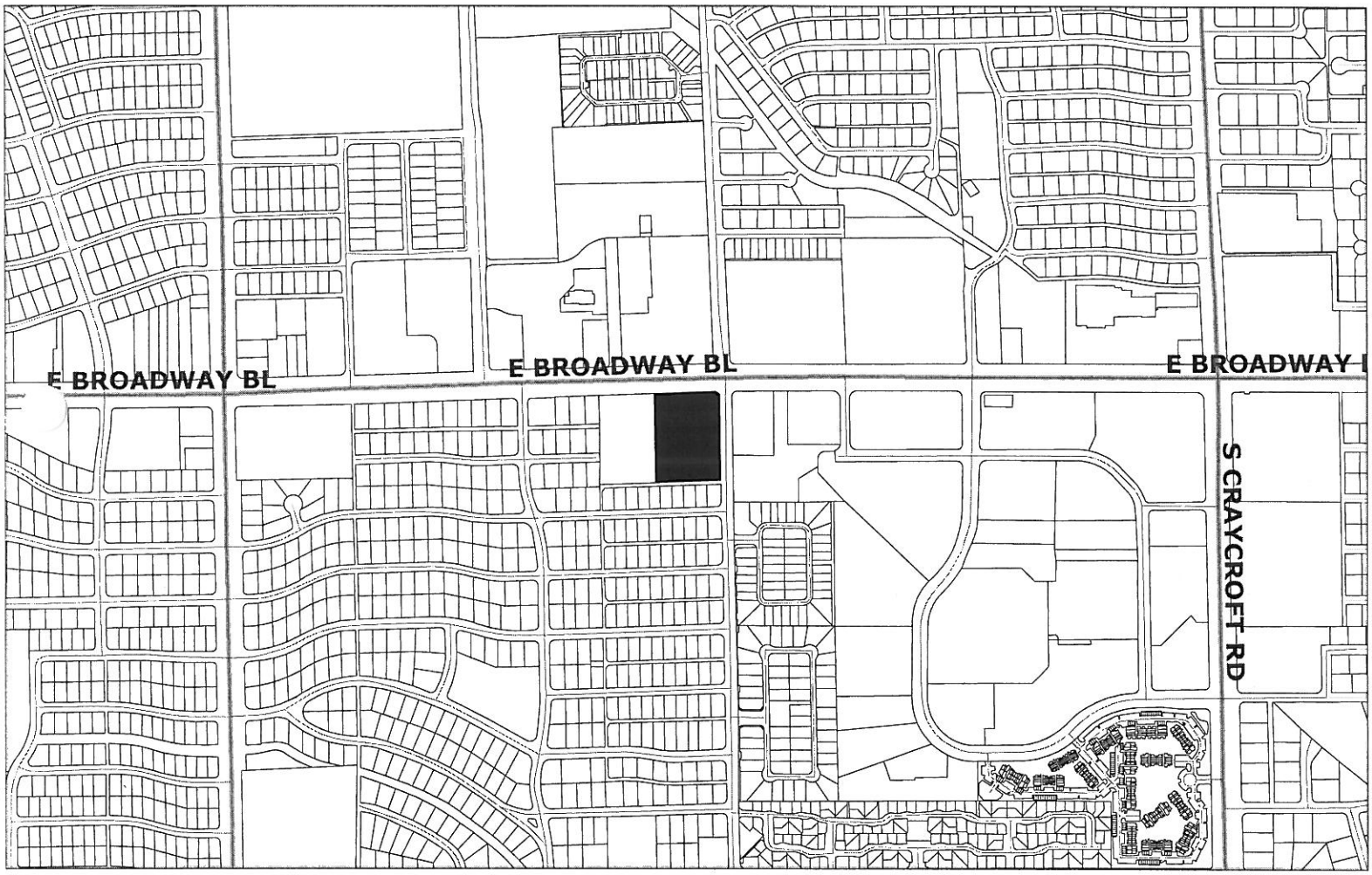
2

4567 S. 12th Ave

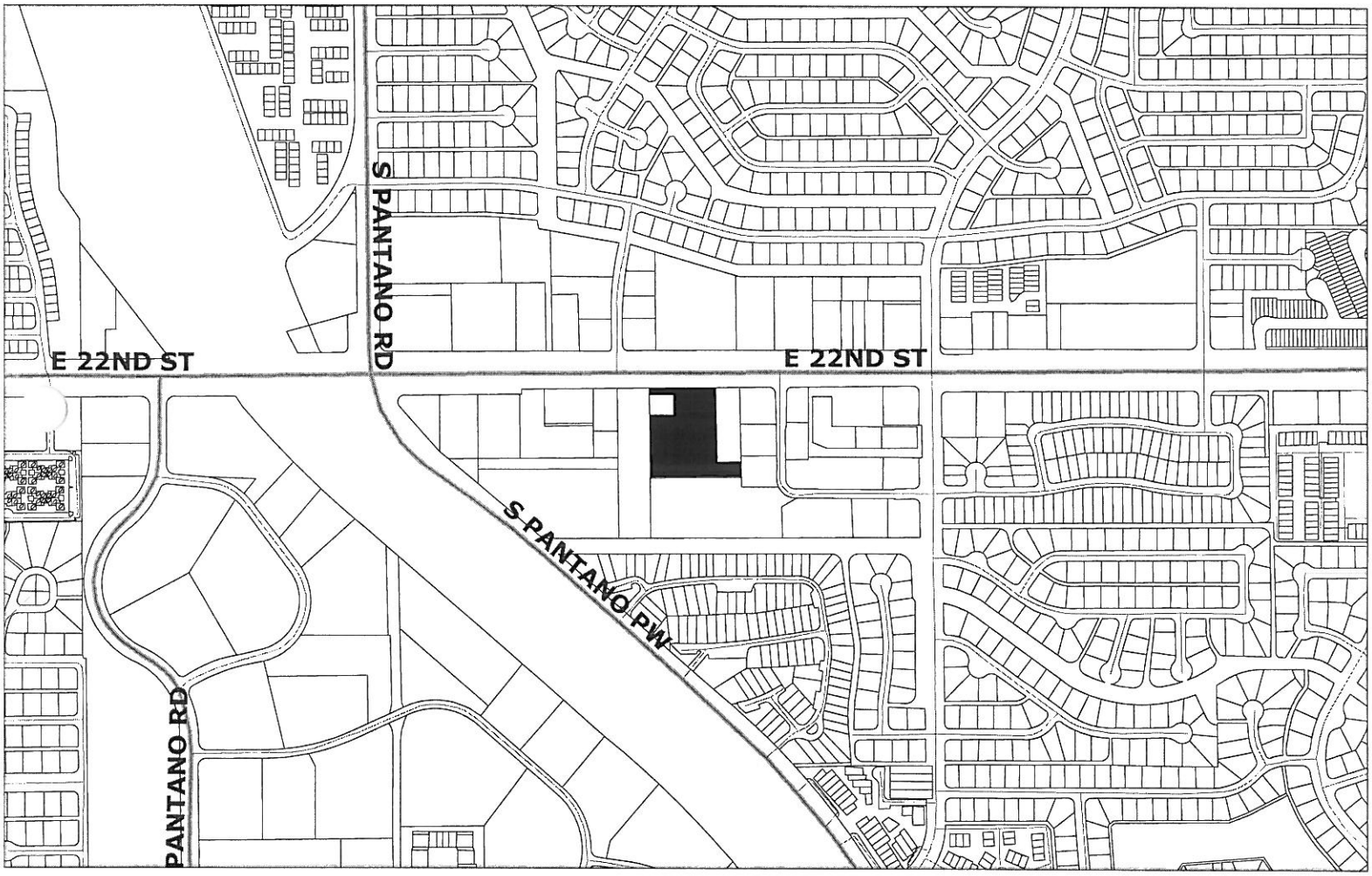
7427 E. 22nd ST.



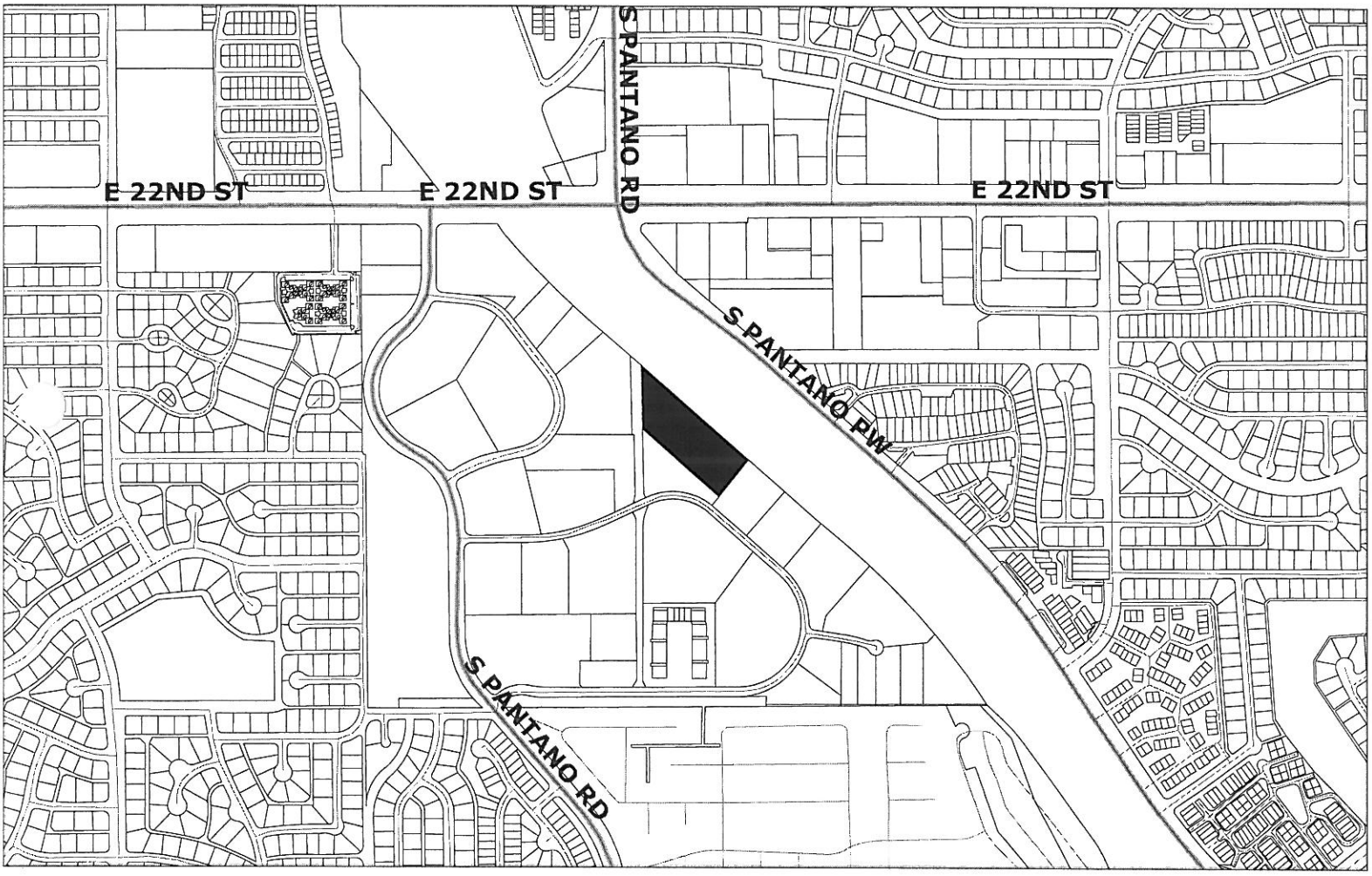
2300 N. Craycroft Rd.



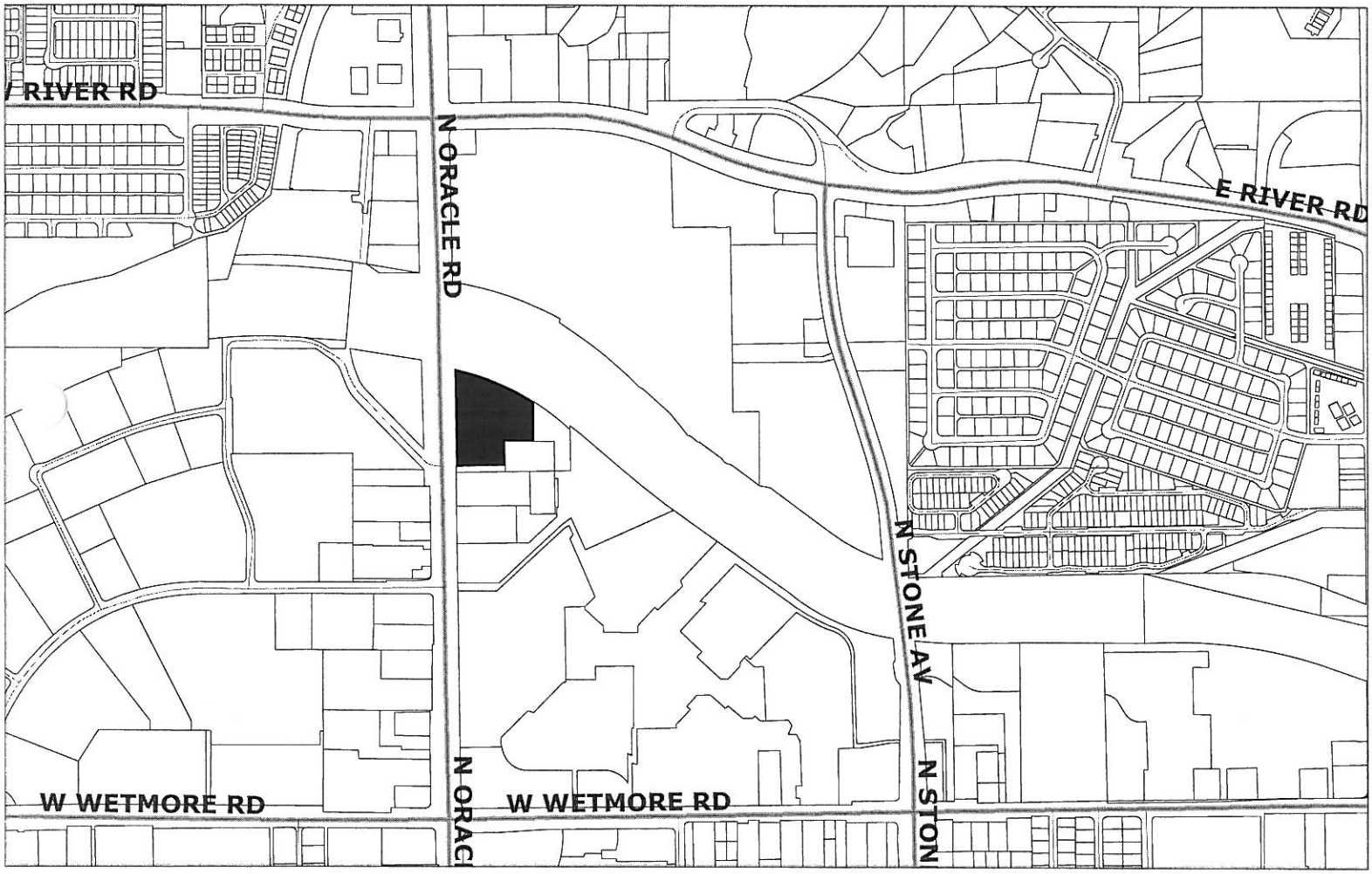
5056 E. Broadway Blvd.



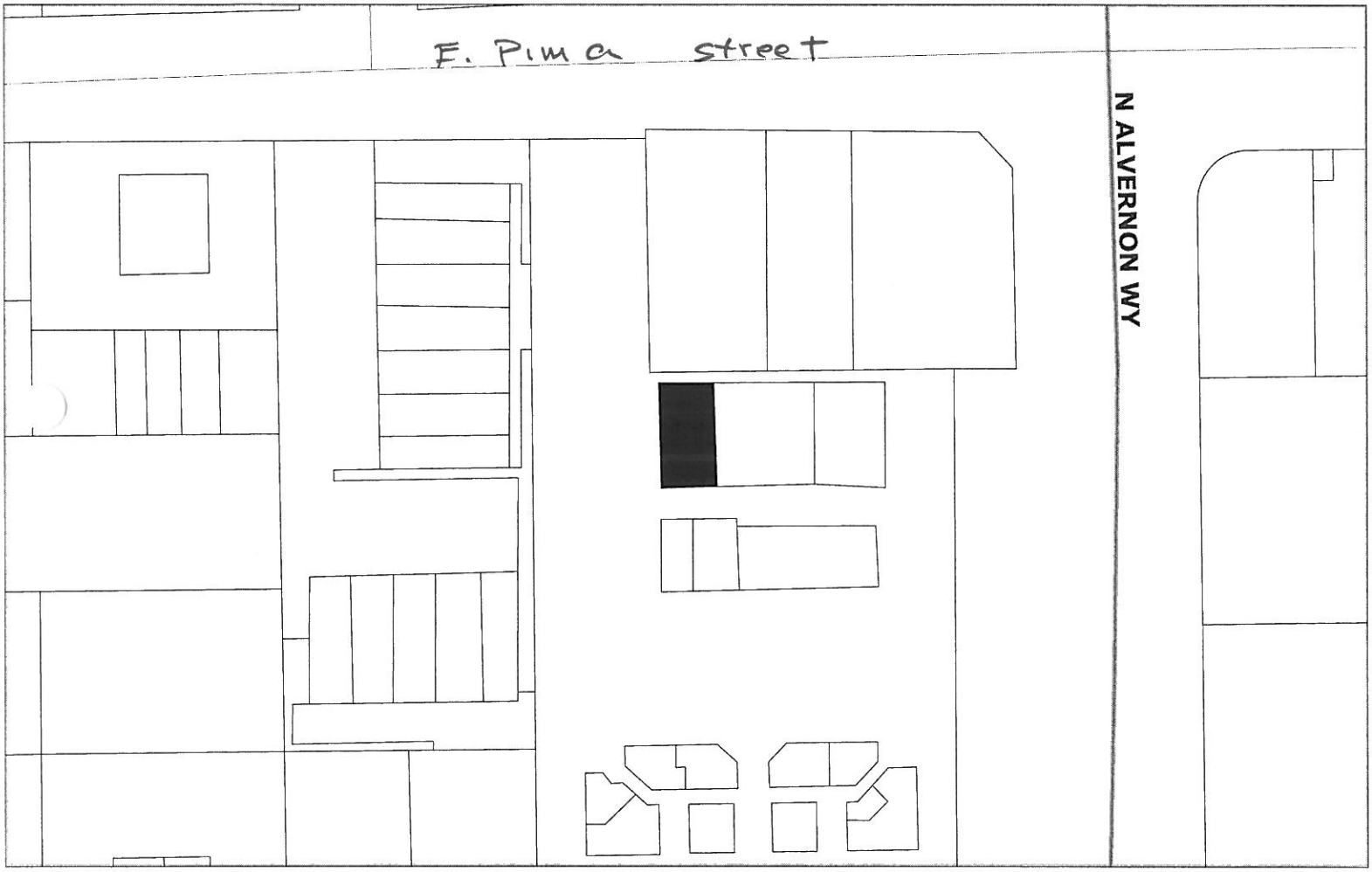
8150 E. 22nd ST.



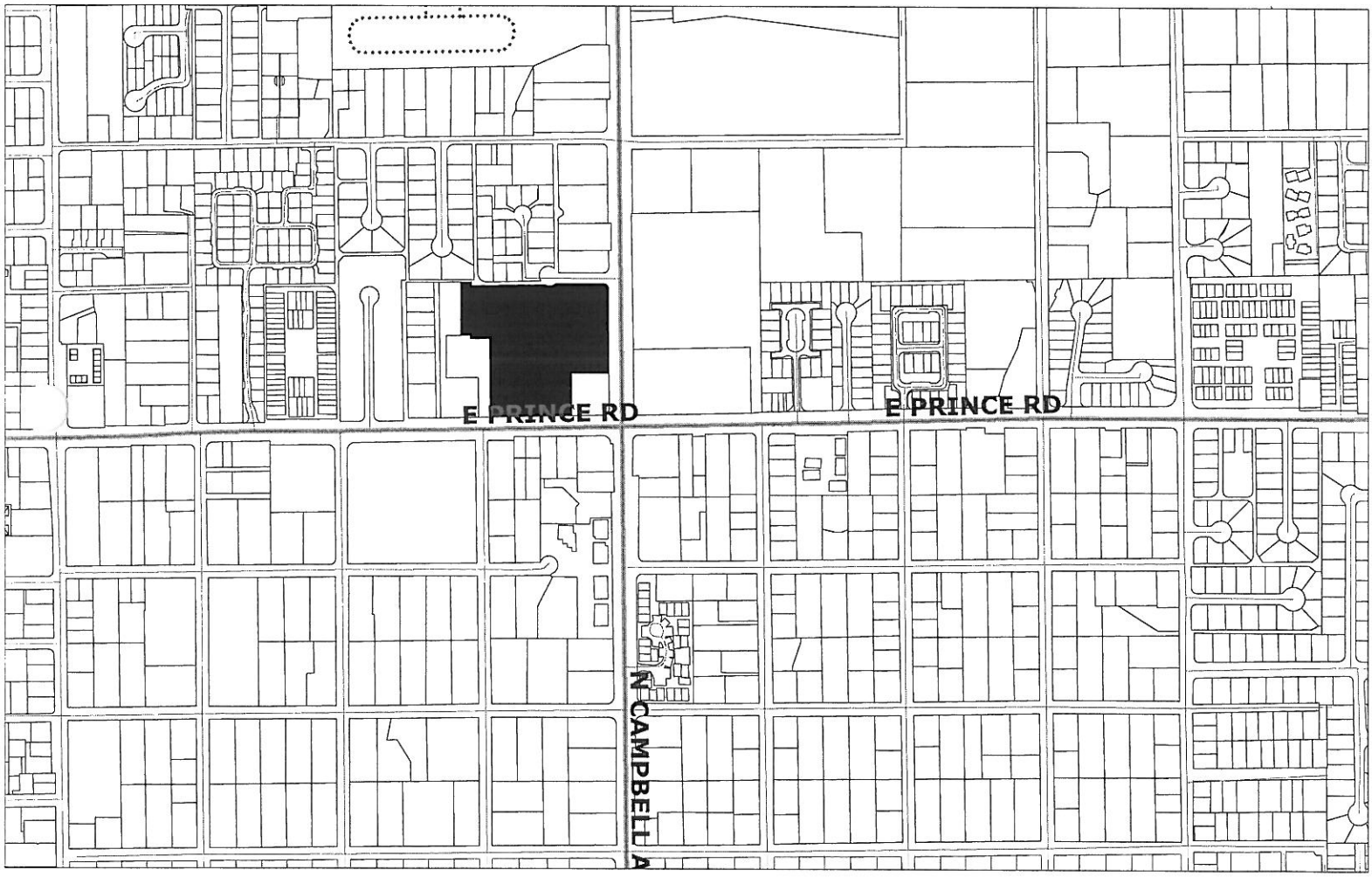
1671 S. Research Loop



4760 N. Oracle Rd.



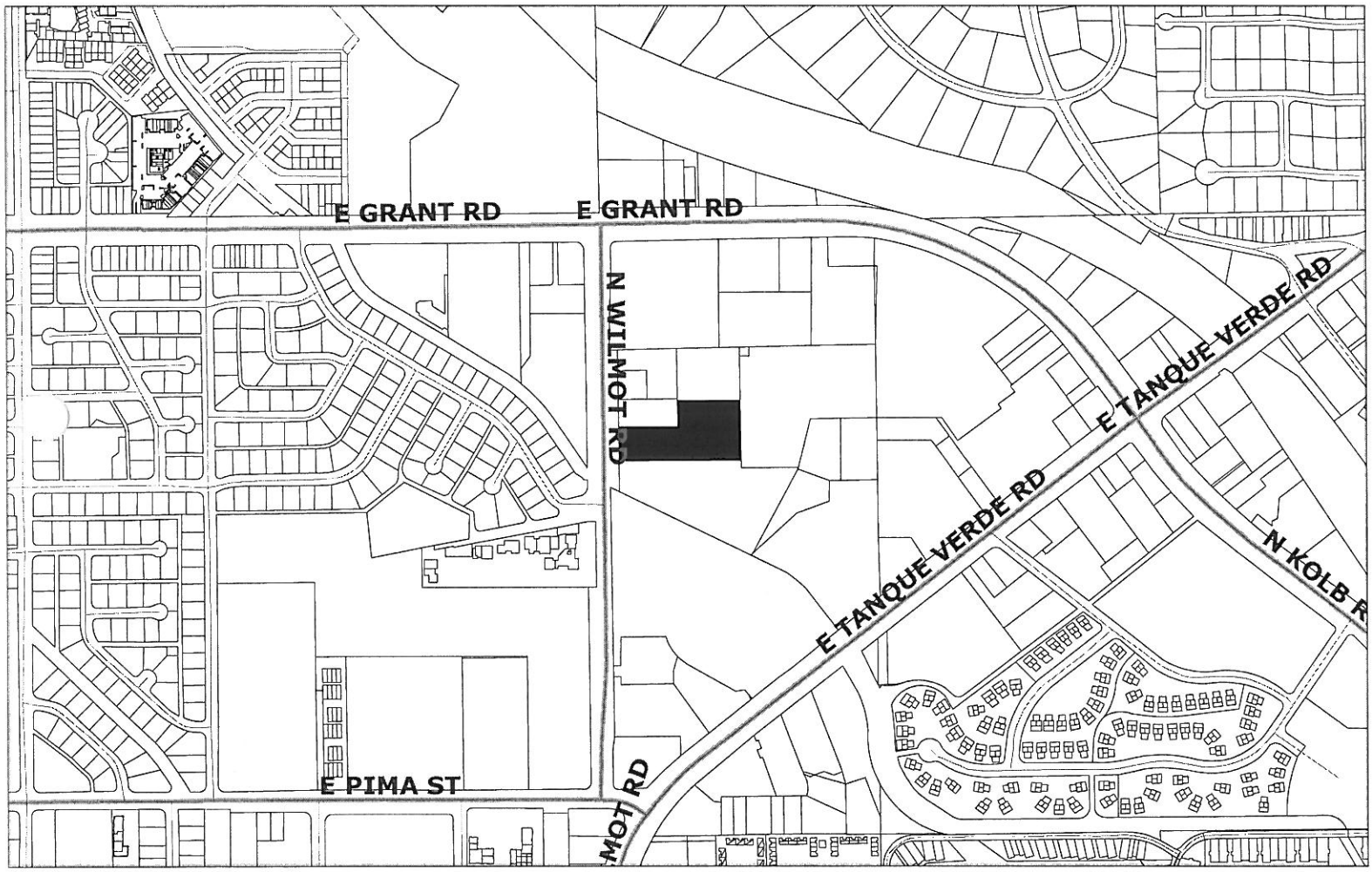
1647 N. Alvernon Way



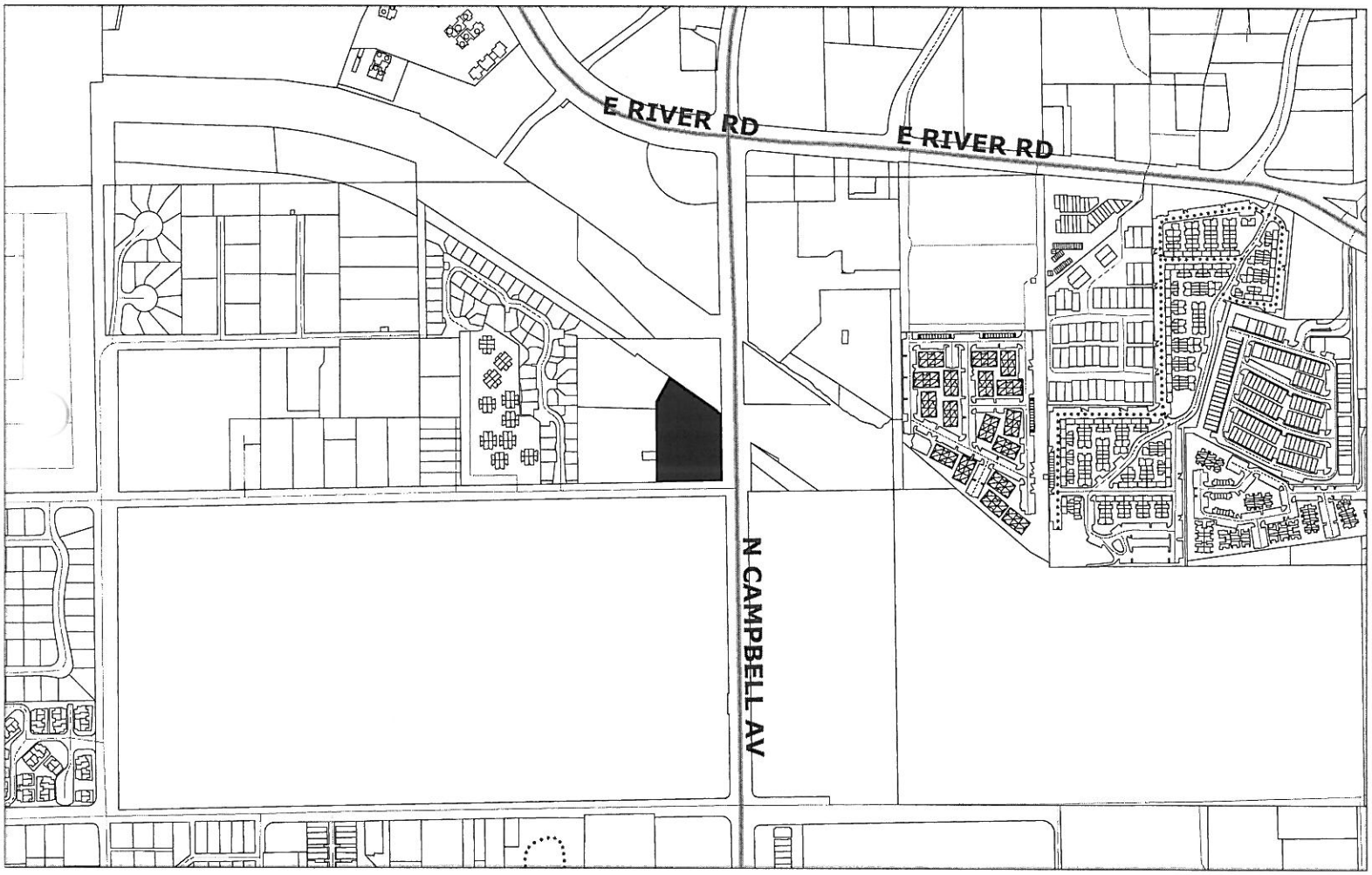
1763 E. Prince Rd.

1601 S. Pantano Rd.

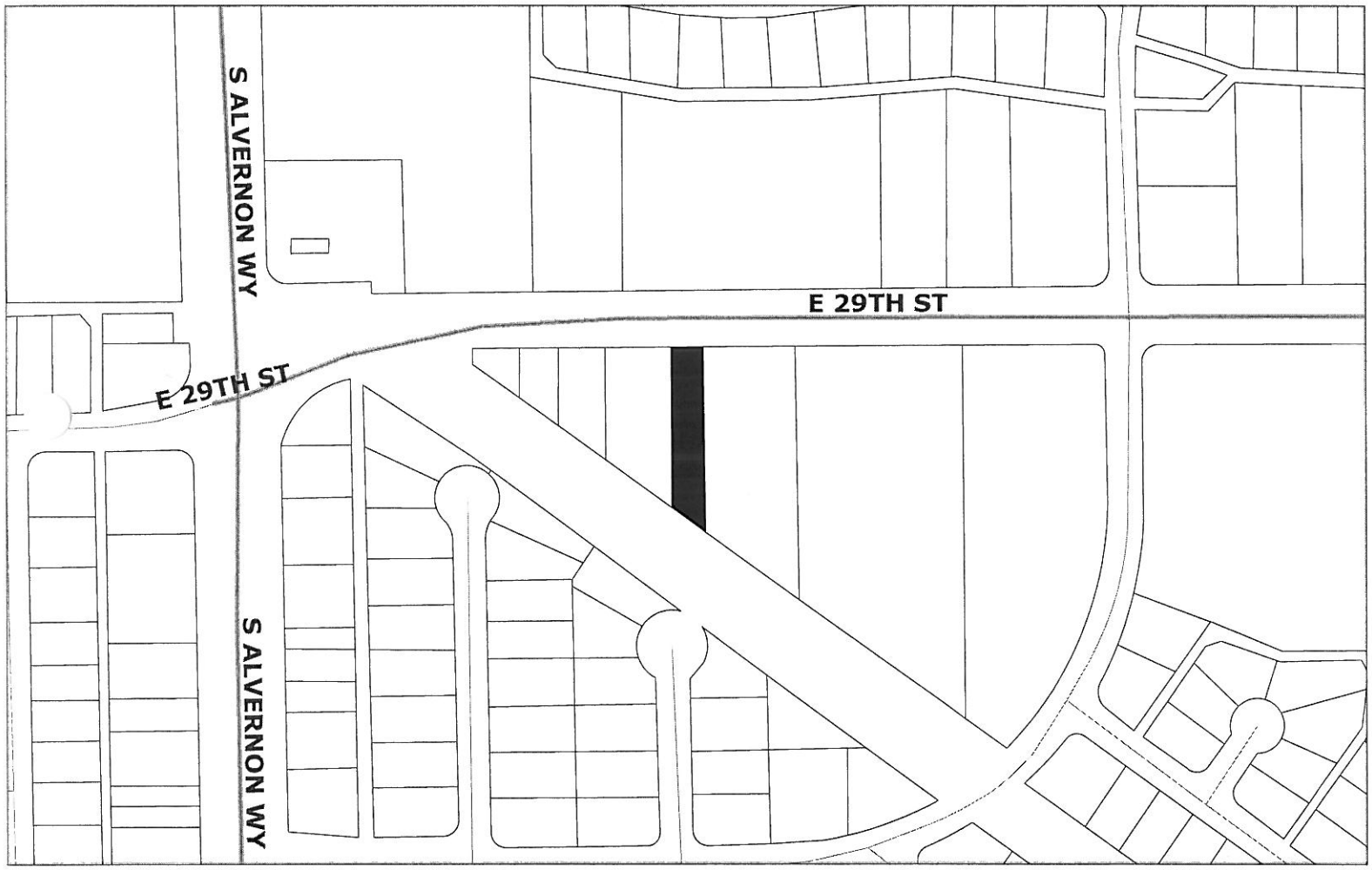
1601 S. Pantano Rd.



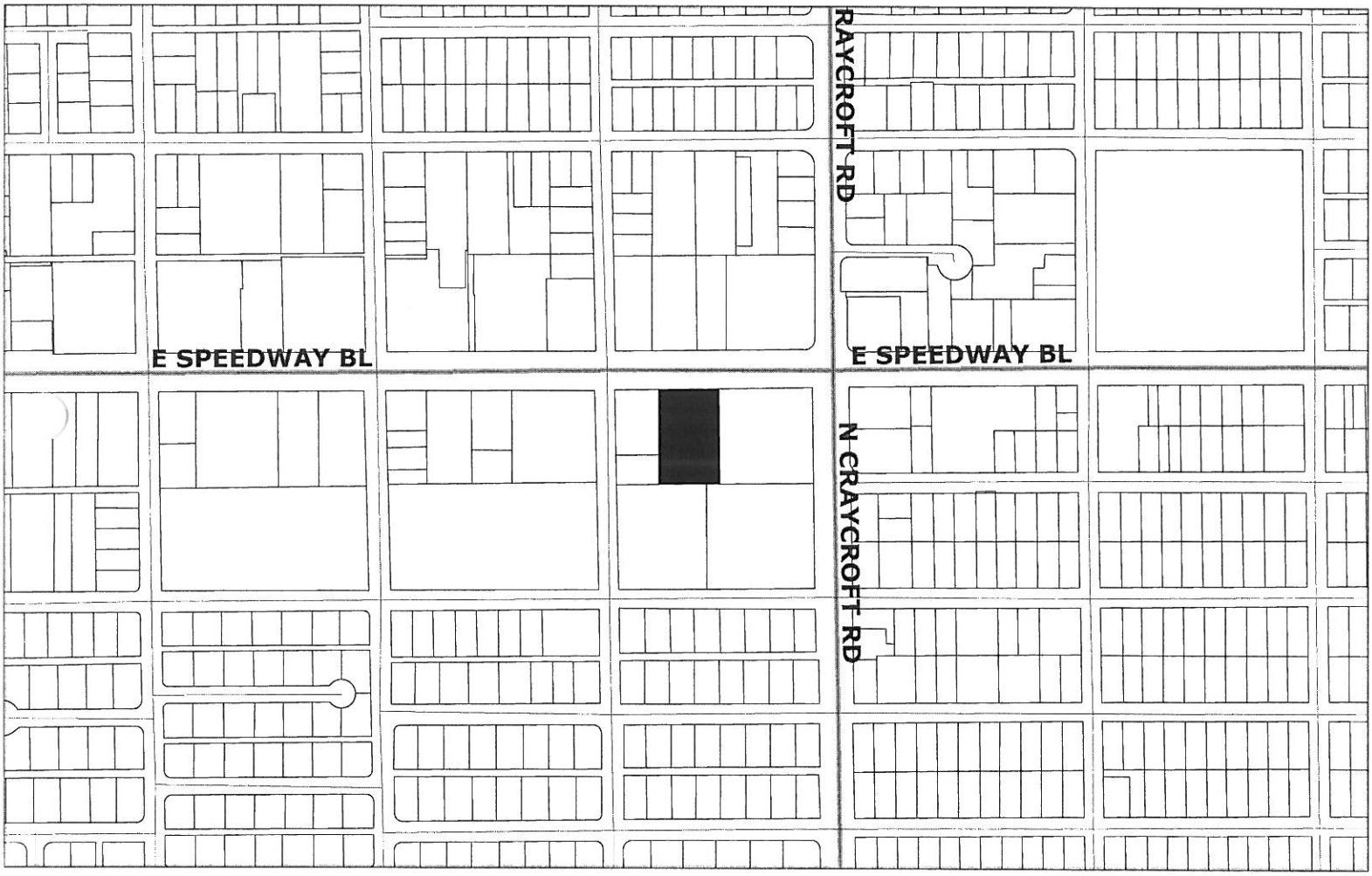
2100 N. Wilmot Rd.



4205 N. Campbell Ave.

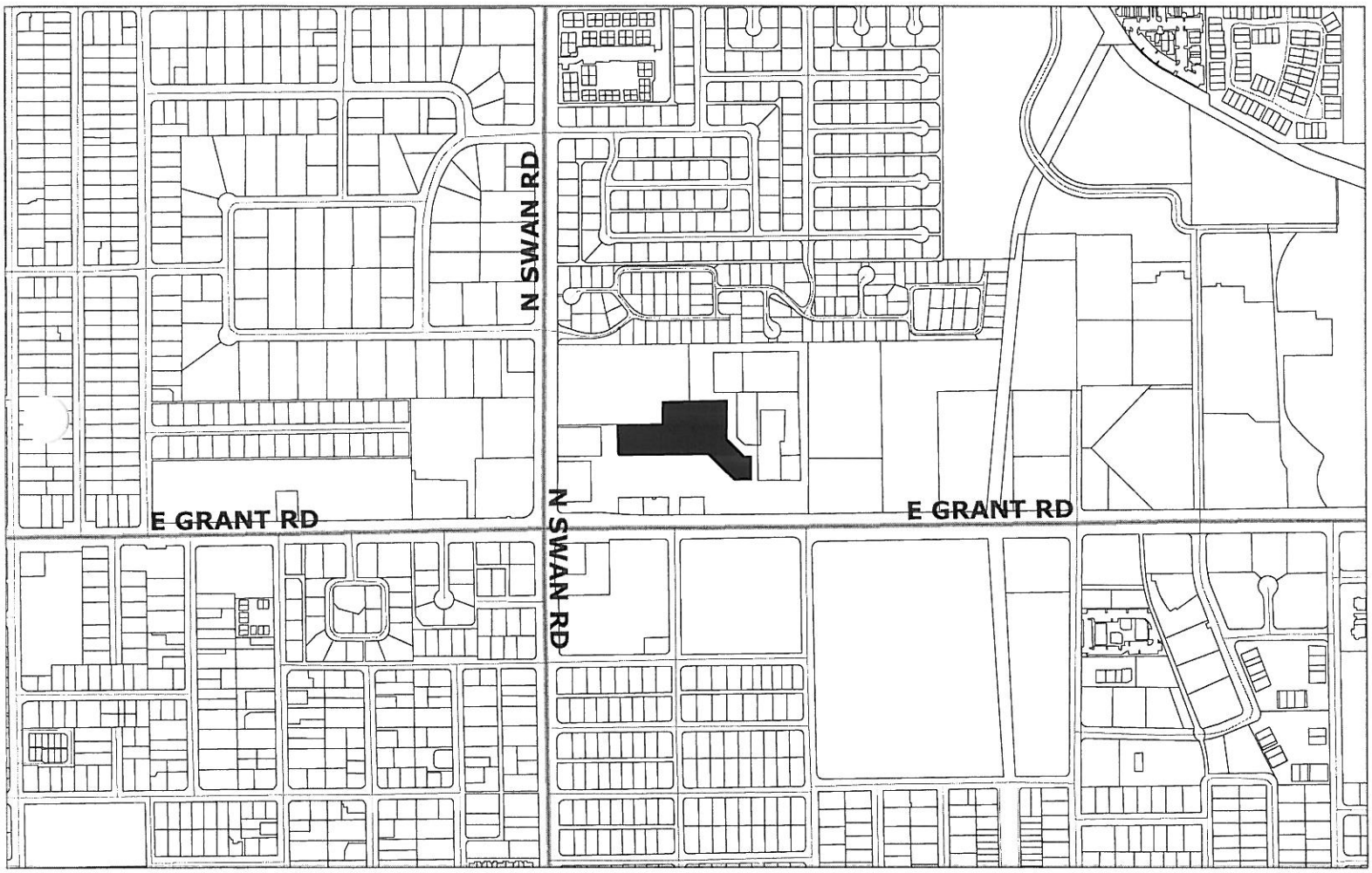


4000 E. 29TH ST.



5440 E. SPEEDWAY Blvd.

4277 S. Santa Rita Ave.



4811 E. GRANT Rd.

ZONE

NUMBER	COMP	STATUS	ISSUED	CoO10819		NBR	DIR	NAME	CITY	ZONE1	ZONE2
T11OT00157	C-OF-O	ZONECER	########	South	1.	730	E	46TH ST	TUC		
T11OT00268	C-OF-O	ZONECER	########	South	2.	4567	S	12TH AV	TUC		
T11OT00283	C-OF-O	ZONECER	########	EAST	3.	7427	E	22ND ST	TUC		
T11OT00285	C-OF-O	ZONECER	########	North/c	4.	2300	N	CRAYCRC	TUC		
T11OT00297	C-OF-O	ZONECER	########	East/c	5.	5056	E	BROADW/	TUC	C1	
T11OT00349	C-OF-O	ZONECER	########	EAST	6.	8150	E	22ND ST	TUC	C-2	
T11OT00352	C-OF-O	ZONECER	########	EAST	7.	1671	S	RESEARC	TUC	I-1	
T11OT00392	C-OF-O	ZONECER	########	North/c	8.	4760	N	ORACLE F	TUC	C-3	
T11OT00441	C-OF-O	ZONECER	########	North/c	9.	1647	N	ALVERNO	TUC	C-1	
T11OT00445	C-OF-O	ZONECER	########	North/c	10.	1763	E	PRINCE R	TUC	C1	
T11OT00468	C-OF-O	ZONECER	########	EAST	11.	1601	S	PANTANO	TUC	I-1	
T11OT00469	C-OF-O	ZONECER	########	EAST	12.	1601	S	PANTANO	TUC	I-1	
T11OT00491	C-OF-O	ZONECER	########	North/E	13.	2100	N	WILMOT F	TUC	C-2	
T11OT00580	C-OF-O	ZONECER	########	North/E	14.	4205	N	CAMPBEL	TUC	C-1	
T11OT00619	C-OF-O	ZONECER	########	Central	15.	4000	E	29TH ST	TUC	C-2	
T11OT00722	C-OF-O	ZONECER	########	East/c	16.	5440	E	SPEEDWA	TUC	C-2	
T11OT00851	C-OF-O	ZONECER	########	South	17.	4277	S	SANTA RI	TUC	I-1	
T11OT01010	C-OF-O	ZONECER	########	East/c	18.	4811	E	GRANT RI	TUC	C-2	

3 South
8 EAST
6 North
1 Central

ADOPTED BY THE
MAYOR AND COUNCIL ON

_____

ORDINANCE NO. 10813

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE, CHAPTER 23, ARTICLE IV, SUBDIVISIONS, DIVISION 1, GENERALLY, SECTION 4.1.7, EXPIRATION DATES; ARTICLE V, ADMINISTRATION, DIVISION 3, SPECIAL DEVELOPMENT APPLICATIONS, SECTION 5.3.8, DEVELOPMENT PLAN; AND AMENDING CERTAIN PORTIONS OF THE DEVELOPMENT COMPLIANCE CODE, CHAPTER 23A, ARTICLE II, REVIEW PROCEDURES, DIVISION I, GENERAL ZONING REVIEW PROCEDURE, SECTION 23A-33.1, SUBDIVISION PLAT PROCESS, AND SECTION 23A-34, DEVELOPMENT PLAN REVIEW; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 23, Land Use Code, Article IV, Subdivisions, Division 1, Generally, Section 4.1.7, Expiration Dates, is hereby amended to read as follows:

4.1.7 EXPIRATION DATES. Expiration dates for all platting applications are as follows:

* * *

4.1.7.2 Tentative Plat Approval Period. Approval of a tentative plat is valid for a period of three (3) years after the date of approval.

A. The expiration date for the approval of a tentative plat being platted and recorded in phases is subject to the same three (3) year period. Each phase shall be evaluated as per Sec. 4.1.7.4.

* * *

Attachment C

4.1.7.3 Final Plat Approval Period. A final plat must be approved and recorded within three (3) years of the tentative plat approval date.

4.1.7.4 Tentative Plat Approval Extension. A subdivider may request an extension of the tentative plat approval period. The extension may be granted based on the following:

A. Up to a one (1) year time extension to the three (3) year tentative plat approval period, provided there have been no changes in City regulations applicable to the proposed subdivision since the approval of the tentative plat; or

* * *

SECTION 2. The Tucson Code, Chapter 23, Land Use Code, Article V, Administration, Division 3, Special Development Applications, Section 5.3.8 Development Plan, is hereby amended to read as follows:

* * *

5.3.8 DEVELOPMENT PLAN. A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be developed in compliance with City ordinances and regulations. When a development plan is required to be processed in accordance with this Section, preparation, application, review, and approval shall be as follows.

* * *

5.3.8.2 Expiration Dates. Expiration dates for development plans are as provided below. For the purposes of Sec. 5.3.8, "construction or building permits" are those permits issued for the construction of the project, such as, but not limited to, infrastructure improvements, building foundations, buildings, paving of vehicular use areas, or similar types of improvements related to the construction and implementation of the project. Permits for: a) clearing, grubbing, and grading of a site; b) construction of a section of sidewalk; c) installation of screening; d) paving of an access driveway but not the parking associated with the use; or e) any similar type of work are not considered "construction or building permits" for purposes of this Section, unless specifically stated otherwise by this Section or the process requiring the applicability of this Section.

* * *

B. *Development Plan Approval Period.* Except in the case of a Protected Development Right Plan, Sec. 5.3.10, an approved development plan remains valid for a period of three (3) years from the date of approval.

1. If, at the end of three (3) years, building permits have not been obtained, a new development plan application, in compliance with regulations in effect at the time of its resubmittal, is required.

2. If the project is being developed in phases and permits have not been issued for all phases within the three (3) year period, developers of subsequent phases have one (1) additional year to obtain permits. If, at the end of the four (4) year period, permits have not been issued, review and approval of a revised development plan for the undeveloped portion, in compliance with all regulations and/or ordinances in effect at the time of resubmittal, are required prior to the issuance of building permits.

* * *

5.3.8.3 Issuance of Building Permits. Review and approval for the issuance of permits for development plans shall be as follows.

* * *

B. *Change From, or Expiration Of, an Approved Development Plan.* Building permit applications involving construction which changes from the approved development plan or if the approval has expired shall be accompanied by a copy of an amended development plan bearing the Planning and Development Service Department's approval.

1. The Planning and Development Services Department Director may approve minor changes from the approved plan without processing the plan through the entire review process. Determination as to whether the change is minor or major is made by the Planning and Development Services Department Director on a case-by-case basis. Changes in site design include, but are not limited to, building height, density, land use, parking, and traffic circulation.

* * *

SECTION 3. The Tucson Code, Chapter 23A, Development Compliance Code, Article II, Review Procedures, Division 1, General Zoning Review Procedure, Section 23A-33.1 Subdivision Plat Process, is hereby amended to read as follows:

Sec. 23A-33.1. Subdivision plat process.
The subdivision of land through the platting process as provided in LUC 4.1.6 shall be reviewed and approved as follows.

* * *

(2) *Final plat review.* All proposed subdivisions, including minor subdivisions, require the review and approval of a final plat. The final plat shall substantially conform to the approved tentative plat and be prepared in accordance with final plat requirements set forth in Development Standard No. 2-03.0.

* * *

c. *Review.* Final plats are reviewed by the community design review committee (CDRC) in conformance with Development Standards 1-03.0 and 2-03.0.

1. As provided by the Land Use Code (LUC), section 4.1.7, the applicant has three (3) years from the date of tentative plat approval to secure approval and have the final plat recorded. This time period provides the applicant three (3) years within which to complete the platting process under the regulations in place at the time of tentative plat approval. Should the approval not be secured within the required timetable, the tentative plat and final plat shall be revised to comply with regulations at the time of re-submittal. The re-submittal initiates a new one (1) year time period. Refer to the LUC, section 4.2.5, for expiration dates on minor subdivisions.

* * *

SECTION 4. The Tucson Code, Chapter 23A, Development Compliance Code, Article II, Review Procedures, Division 1, General Zoning review, Section 23A-34,

Development Plan Review, is hereby amended to read as follows:

Sec. 23A-34. - Development plan review.

A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be constructed in conformance with city ordinances and regulations. When a development plan is required to be processed in accordance with the Land Use Code (LUC), Chapter 23, Tucson Code, section 5.3.8, preparation, application, review, and approval shall be as follows.

* * *

3. *Review Procedure.* Review of development plans shall be as follows:

* * *

c. *Approval.* The Planning and Development Services Department (PDSD) director shall approve the development plan within five (5) days of receiving notification that all community design review committee (CDRC) members recommend approval, and it is confirmed that all conditions of approval as authorized by a rezoning, special exception land use, or other similar application have been met. This includes architectural review, dedication of right-of-way, building height, land use, or any other requirement pertinent to the individual case.

As provided by the Land Use Code (LUC), section 5.3.8.2.B, the approval is valid for three (3) years. The three (3) year time period provides the applicant the opportunity to secure permits and commence construction based on the regulations in effect during the review of the development plan. Expiration of the three (3) year time period prior to obtaining permits or commencing construction requires re-approval of the development plan based on regulations in effect at the time the development plan is resubmitted for review.

* * *

SECTION 5. The provisions of this ordinance amending Section 4.1.7 and 5.3.8 of the Land Use Code and Sections 23A-33.1 and 23A-34 of the Development

Compliance Code shall cease to be effective on January 31, 2012, unless extended by the Mayor and Council by a separate ordinance. If not extended, the sections shall revert to the language as it existed prior to this amending ordinance. The purpose of this sunset clause is to give the City the opportunity to decide whether to continue to implement the amended and added requirements or to revert to those existing prior to this ordinance.

SECTION 6. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 7. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona,_____.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY
TM/tl
6/7/10

REVIEWED BY:

_____
CITY MANAGER

ADOPTED BY THE
MAYOR AND COUNCIL

August 4, 2010

ORDINANCE NO. 10832

RELATING TO PLANNING AND ZONING; AMENDING THE TUCSON CODE, CHAPTER 23, LAND USE CODE, ARTICLE II, ZONES, DIVISION 8, OVERLAY ZONES, BY ADDING A NEW SECTION 2.8.13, "UOD" URBAN OVERLAY DISTRICT ZONE (UOD); AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 23, Land Use Code, Article II, Zones, Division 8, Overlay Zones, is hereby amended by adding a new Section "2.8.13" to read as follows:

2.8.13 "UOD" URBAN OVERLAY DISTRICT ZONE (UOD)

2.8.13.1 Purpose. The purpose of the Urban Overlay District (UOD) is to encourage:

A. Comprehensively planned, pedestrian and transit-oriented, urban infill and mixed use areas;

B. Site planning and architectural solutions consistent with the ambience of Tucson;

C. Safe urban neighborhoods;

D. Urban design features that include sustainable solutions and can accommodate both historical and contemporary design;

E. Transitions that are beneficial to new and existing developments; and,

F. Responsive development review processes that address flexible solutions for obsolete regulations and accommodate desired urban trends.

2.8.13.2 Initiation

A. An Urban Overlay District shall be initiated by the Mayor and Council.

B. Planning and Development Services Department shall process the application. The UOD boundaries may include rights of way within and adjacent to the proposed UOD.

2.8.13.3 Establishment

A. The overlay shall be established through the Zoning Examiner Legislative Procedure, Sec. 5.4.1 and 5.4.3. Subsequent rezoning will require Mayor and Council approval and adoption of a rezoning ordinance for an affected area.

B. Each Urban Overlay District shall be in compliance with the adopted General Plan and applicable sub-regional, area and neighborhood plans.

C. The Urban Overlay District shall be identified on the City Zoning Map by the prefix "U" followed by a sequential number and the assigned zoning designation, i.e., C-3 becomes U1C-3. The UOD may also be given a descriptive name associated with the subject area, e.g. Downtown District.

2.8.13.4 Development Regulations

A. The UOD may have land use regulations and procedures different from the zoning regulations applicable in another UOD or in the Land Use Code.

B. Adoption of a UOD does not restrict or eliminate the uses or development regulations of any underlying zone but provides a development option that encourages well-designed infill projects subject to the regulations and guidelines provided in the UOD's development document.

C. The UOD development document shall be adopted as part of the rezoning and govern development using the UOD development options instead of the regulations of the underlying zone.

2.8.13.5 Application. The applicant shall provide a development document that includes proposed regulations, modifications, maps, guidelines, and background materials sufficient to implement the proposed UOD. In addition, the Mayor and Council may require the development document to include a site analysis as provided for in Sec. 2.6.3.6 (Planned Area Development) where necessary or desirable to review UOD proposals such as form-based code districts or similar concepts.

2.8.13.6 Development Review

A. Unless a specific waiver procedure is approved as part of the rezoning, no development using the UOD regulations shall occur within a UOD unless or until a development plan or if applicable a subdivision plat is approved by the City.

B. The City may require financial and other assurances to assure the installation of required streets, sewer, electric, and water utilities, drainage, flood control and other improvements of a property owner using the UOD regulations.

2.8.13.7 Enforcement. Regulations adopted for each UOD are enforced in the same manner as provided in Article V, Administration, Division 5, of the LUC.

2.8.13.8 Interpretation. The Zoning Administrator shall interpret a UOD.

2.8.13.9 Amendment Procedures

A. The Mayor and Council may initiate an amendment to a UOD. A property owner or an owner's agent may submit a written request to the Mayor and Council to initiate an amendment to a UOD.

B. Planning and Development Services Department must determine if the amendment would result in a substantial change in the UOD. An amendment shall be determined to be a substantial change pursuant to the criteria set forth for Planned Area Development Districts in Section 2.6.3.11 or may be determined to be a special procedure contained in the UOD's development or urban design documents.

2.8.13.10 Waiver: Execution of a waiver is required for any property owner using the urban design option of a UOD, in conformance with A.R.S. §12-1134(1). The owner of property requesting to exercise the UOD design option will be required to waive any

and all claims for diminution of value that may be based upon action by the City in response to such a request by the Owner.

SECTION 2. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 3. If any provision of this Ordinance or the application to any person or circumstance is invalid, the invalidity shall not affect other provision or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 4. Whereas, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, August 4, 2010.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

For CITY ATTORNEY

TM/tt
7/16/10

REVIEWED BY:

CITY MANAGER

ADOPTED BY THE
MAYOR AND COUNCIL ON

September 8, 2010

ORDINANCE NO. 10835

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE,CHAPTER 23, ARTICLE V, ADMINISTRATION, DIVISION 3, SPECIAL DEVELOPMENT APPLICATIONS, ADDING SECTION 5.3.12, ZONING COMPLIANCE FOR SITE IMPROVEMENTS IN EXISTENCE ON MAY 1, 2005; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 23, Land Use Code, Article V, Administration, Division 3, Special Development Applications, is hereby amended to add Section 5.3.12, Zoning Compliance For Site Improvements In Existence on May 1, 2005, to read as follows:

5.3.12 ZONING COMPLIANCE FOR SITE IMPROVEMENTS IN EXISTENCE ON MAY 1, 2005.

The owner of property, at the time of a request for a Certificate of Occupancy may concurrently request that site improvements, including outdoor activity areas, in existence as of May 1, 2005 ("existing site improvements") be granted zoning compliance subject to the following:

5.3.12.1 This Section 5.3.12 shall only apply to developed property with nonresidential zoning that is not subject to Section 2.8.1, 2.8.2, 2.8.5, 2.8.6, 2.8.8, 2.8.9, 2.8.10, 2.8.11, or any change of zoning (rezoning), variance, or special exception approved subject to conditions, or the subject of an unabated zoning violation.

5.3.12.2 Existing site improvements shall be determined by referring to May 2005 aerial photography administered by the Pima Association of Governments (PAG) and available on the PAG website.

5.3.12.3 Existing site improvements are not subject to compliance with Section 3.2.3, 3.2.5, 3.2.6, 3.2.7, 3.2.8, 3.2.9, and 3.2.11; 3.3; 3.4; 3.7; and 3.8.

5.3.12.4 Properties granted zoning compliance under the provisions of this Section 5.3.12 may be used for all principal Permitted Land Uses based on the zoning of the site subject to the applicable General Restrictions in each zone, except for the following prohibited uses:

a. Section 6.3.4.4 Correctional Use
b. Section 6.3.5.6 Billboard
c. Section 6.3.9 Restricted Adult Activities Use Group
d. Section 6.3.5.3 Alcoholic Beverage Service uses unless continuously licensed through the Arizona Department of Liquor Licenses and Control from May 1, 2005, to the present.
e. Section 6.3.5.13 Food Service uses unless continuously licensed through the Pima County Health Department from May 1, 2005, to the present.
f. Section 6.3.8.2 Family Dwelling
g. Section 6.3.8.3 Group Dwelling
h. Section 6.3.8.4 Mobile Home Dwelling
i. Section 6.3.8.5 Residential Care Services

5.3.12.5 Required drop-off areas may not be deleted.

5.3.12.6 Use of the property shall be in compliance with all applicable performance criteria enumerated in Article III, Division 5 of the Land Use Code.

5.3.12.7 This Section 5.3.12 shall be applied to single or multiple parcels of land but may not be applied to partial parcels.

5.3.12.8 Changes to parking lot striping, maintaining the same number of parking spaces, or increasing the number of parking spaces, are permitted in compliance with Section 3.3.7 so long as no existing elements such as loading zones or dumpsters are deleted except as permitted under current regulations.

5.3.12.9 The owner of the property shall:

a. submit a sworn affidavit that the use of the property will be in compliance with this Section 5.3.12, or
b. include the following in any lease/rental agreement for the property: "Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation.

Notwithstanding any contrary provision of this lease agreement, any occupancy or use of the premises in violation of this paragraph shall constitute a material breach of this lease agreement entitling Lessor to invoke all remedies provided hereunder including termination."

5.3.12.10 A site inspection to verify that the use of the property is in compliance with this Section 5.3.12 may be conducted at the discretion of the Planning and Development Services Director.

5.3.12.11 Zoning compliance granted pursuant to this section shall be valid only so long as the property and site improvements thereon remain in the same condition as on the date zoning compliance is granted. Any subsequent development or modification to the property or site improvements will render zoning compliance under this section void and of no effect. Any modification or improvement not shown on May 2005 aerial photography administered by the Pima Association of Governments (PAG) will be considered a subsequent development of the property.

Requests for zoning compliance pursuant to this Section 5.3.12 must be submitted to the City of Tucson Planning & Development Services Department, and all applicable fees paid, prior to the expiration date of this Section 5.3.12, as provided herein.

SECTION 2. The provisions of this ordinance adding Section 5.3.12 of the Land Use Code shall cease to be effective on January 31, 2012, unless extended by the Mayor and Council by a separate ordinance. If not extended, the sections shall revert to the language as it existed prior to this amending ordinance. The purpose of this sunset clause is to give the City the opportunity to decide whether to continue to implement Section 5.3.12, as added or to revert to those provisions existing prior to this ordinance.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, September 8, 2010.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

TM/tl
8/16/10

ADOPTED BY THE
MAYOR AND COUNCIL ON

October 5, 2010

ORDINANCE NO. 10841

RELATING TO PLANNING AND ZONING; AMENDING CERTAIN PORTIONS OF THE LAND USE CODE,CHAPTER 23, ARTICLE II, ZONES, DIVISION 8, OVERLAY ZONES, SECTION 2.8.12, DOWNTOWN AREA INFILL INCENTIVE DISTRICT ZONE (IID); AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 23, Land Use Code, Article II, Division 8, Section 2.8.12 is hereby amended to read as follows:

2.8.12 DOWNTOWN AREA INFILL INCENTIVE DISTRICT ZONE (IID)

2.8.12.1 Purpose. The primary purpose of the Downtown Area Infill Incentive District (IID) is to encourage redevelopment in the following ways:

A. Encourage sustainable infill development that supports the creation of urban neighborhoods that are pedestrian and transit-oriented and benefits the IID, the major activity centers in the area, and the City as a whole; and,

B. Address barriers to infill development in the Downtown Area Infill Incentive District such as incompatible development standards and associated development issues; and,

C. Implement the IID purposes by offering development incentives permitting a modification of development regulations (MDR) as provided herein.

2.8.12.2 Establishment.

A. The Downtown Infill Incentive District (IID) is an optional overlay zone. Individuals may choose the pre-existing

underlying zone or the development options of the IID overlay zone. Plans submitted pursuant to the IID shall comply with the regulations herein.

B. The IID is comprised of two (2) subdistricts: the Greater Infill Incentive Subdistrict (GIIS) and the Downtown Core Subdistrict (DCS). The boundaries of the IID and subdistricts are described in Sec. 2.8.12.10 (*See Illustrative Map 2.8.12.10-I*). The exact boundaries of the IID overlay and subdistricts are identified on the official zoning map kept on file at the Planning and Development Services Department (PDSD) and the City Clerk.

C. Regulations specific to the GIIS and DCS are provided in Sections 2.8.12.4 (Greater Infill Incentive Subdistrict – Modification of Development Regulations) and 2.8.12.5 (Downtown Core Subdistrict), respectively. Regardless of subdistrict, individuals choosing the IID overlay options must comply with Sections 2.8.12.6 (Design Criteria), 2.8.12.7 (IID Plan Requirement), and 2.8.12.8 (Review and Approval Procedures) and submit an IID Plan.

D. An IID Plan cannot be used in conjunction with other waiver or modification provisions provided by the Land Use Code. Where the IID and Rio Nuevo and Downtown (RND) overlay zones overlap, applicants may select either the provisions of the IID or the RND Modification of Development Regulations, but not both.

E. Where the regulations of this section conflict with other sections of the Land Use Code, the regulations of this section shall control.

2.8.12.3 Applicability. The regulations of this ordinance apply to the following development types located on property, including public or private rights-of-way, any portion of which is located within the IID: a change of use; expansion of an existing use or existing structure; or new development or a redevelopment project.

2.8.12.4 Greater Infill Incentive Subdistrict – Modification of Development Regulations (MDR)

A. Development regulations may be modified within the GIIS subdistrict. This process shall be known as the Modification of Development Regulations (MDR).

B. Except as provided herein, the regulations in the following

sections of Article III (Development Regulations) of the Land Use Code may be modified up to twenty-five percent (25%) of the dimension or amount permitted by the underlying zoning: Division 1, General Provisions; Division 2, Development Criteria; Division 3, Motor Vehicle & Bicycle Parking Requirements; Division 4, Off-Street Loading; and, Division 7, Landscaping and Screening Regulations. The MDR process shall not be used to modify Division 8, Native Plant Preservation.

C. *Exceptions.* The following criteria may be modified in excess of twenty-five percent (25%) to the extent specified herein.

1. *Building height.* Building height may be increased up to sixty (60) feet unless the current zoning allows a greater height or where the IID Plan's Development Transition criteria requires less.

2. *Street perimeter yard.* Street perimeter yard requirements may be reduced or waived when PDSD determines that the request is consistent with the Major Streets and Route Plan, unless modified by the Director, and there is adequate sight visibility, no traffic safety issue is created, and complies with the requirements of Sec. 2.8.12.6.B (Development Transition) when applicable.

3. *Parking.*

a. Parking as required by Sec. 3.3.4 may be reduced up to twenty-five (25%) percent. Parking may be decreased by more than 25% per an agreement with the City's Parking Authority or through an Individual Parking Plan (Sec. 3.3.8.7) if the analysis and finding shows the proposed parking is adequate.

b. *Accessible Parking and Bicycle Facilities.* The number of accessible parking spaces required by the City of Tucson's adopted Building Code and bicycle facilities shall not be reduced or eliminated and shall be based on the number of motor vehicle parking spaces required prior to any modification.

c. Parking may be provided either solely by one of the following options or a combination of the following options:

i. On-site;
ii. Off-site within one-quarter (1/4) of a mile of the project site through a shared parking agreement with the City;
iii. On-street on the same side of the street as the proposed use up to five (5) spaces on a collector or arterial street per approval by the City's Transportation Department; and/or
iv. An in-lieu fee per an agreement with the City's Parking Authority.

4. *Loading.* Off-street loading zone requirements may be reduced or waived if PDSD determines that no traffic safety issue is created.

5. *Solid Waste Collection.* On-site refuse collection container requirements governing access, type, and location may be modified if the Department of Environmental Services determines that no public health or traffic safety issue is created.

6. Landscaping and Screening.

a. Except as required by Sec. 2.8.12.6.B (Development Transition), a complete or partial exception to the Landscaping and Screening Requirements (Sec. 3.7) may be granted when shade is provided for pedestrians and customers, such as along sidewalks, pedestrian circulation paths, and outdoor patios, consistent with Development Standard 9-10.4.3.B.1 (Pedestrian Pathways in the RND).

b. The following types of landscaping and improvements may be used to comply with Sec. 2.8.12.4.C.6.a (Landscaping and Screening):

i. Existing landscaping;
ii. Shade trees in the right-of-way;
iii. Green walls or green roofs; and/or
iv. Shade structures, such as awnings.

7. *Floor Area Ratio (FAR).* A complete exception to FAR requirements may be granted.

8. *Pedestrian Access.* Alternative pedestrian access that creates connectivity between public entrances to the project and abutting sidewalks may be allowed as long as no safety hazard is created. All pedestrian access must conform to the accessibility requirements of the City of Tucson's adopted Building Code.

D. *GIIS Land Uses.*

1. A proposed use must be permitted by the underlying zone and is limited to proposals with one or more of the following uses: Administrative and Professional Office; Alcoholic Beverage Service; Civic Assembly; Craftwork; Cultural; Educational Use: Instructional School; Educational Use: Postsecondary Institution; Entertainment; Attached Residential; Multifamily Residential; Food and Beverage Sales; Food Service; General Merchandise Sales; Mixed Use (a combination residential and other uses listed in this section); Personal Service; and Travelers' Accommodation, Lodging.

2. An IID proposal with a use not listed above may be allowed if the proposed use is permitted by the underlying zone and if the PDSD Director (Director) deems the proposed use to be in accordance with Sec. 2.8.12.1 (Purpose).

2.8.12.5 <u>Downtown Core Subdistrict (DCS)</u>.

A. *Requirements.* Development within the DCS shall comply with the following:

1. Permitted uses of the underlying zoning; and

2. Maximum building height may be increased up to sixty (60) feet unless the current zone allows a greater height or where the IID Plan's Development Transition criteria requires less; and

3. Demolition and façade alteration requirements of the Rio Nuevo and Downtown Zone (Sec. 2.8.10); and

4. When provided, landscaping shall be in accordance with the City's drought-tolerant plant list; and

5. Bicycle parking shall be provided when motor vehicle

parking is provided. The required number of bicycle parking spaces may be reduced when bicycle parking is required per this section; and

6. Where applicable, applicants are strongly encouraged to comply with Sec. 3.8 (Native Plant Preservation).

B. *Exemptions.* Except as provided in this section, development within the DCS is exempted from the following requirements unless the Director makes a finding that public safety and health will be jeopardized.

1. Sec. 2.8.3 (Major Streets and Routes Setback Zone)

2. Sec. 2.8.10 (Rio Nuevo and Downtown Zone), except as provided in Sec. 2.8.12.5 (DCS Requirements)

3. Sec. 3.2.6 (Perimeter Yards), except when required by Sec. 2.8.12.6.B (Development Transition)

4. Sec. 3.2.9 (Lot Coverage)

5. Sec. 3.2.10 (Residential Density Calculations)

6. Sec. 3.2.11 (Floor Area Ratio Calculation)

7. Sec. 3.2.14 (Lots)

8. Sec. 3.3 (Motor Vehicle and Bicycle Parking Requirements), except as provided in Sec. 2.8.12.5.A.5

9. Sec. 3.4 (Off-Street Loading)

10. Sec. 3.7 (Landscaping and Screening Regulations), except as required by Sec. 2.8.12.6.B (Development Transition criteria)

11. Sec. 3.8 (Native Plant Preservation), except when the property includes a drainage corridor where native plants are present or when the property is adjacent to a drainage corridor and remnant native plants are present on the project site

12. *Pedestrian Access.* Alternative pedestrian access that creates connectivity between public entrances to the project and abutting sidewalks may be allowed as long as no safety hazard is created. All pedestrian access must

conform to the accessibility requirements of the City of Tucson's adopted Building Code.

13. *Solid Waste Collection.* On-site refuse collection container requirements governing access, type, and location may be modified if the Department of Environmental Services determines that no public health or traffic safety issue is created.

2.8.12.6 Design Criteria. An IID Plan, regardless of subdistrict, must demonstrate compliance with the following:

A. Streetscape Design

1. *Pedestrian-orientation.* Projects shall be pedestrian-oriented and comply with all of the following criteria:

a. New construction shall have architectural elements/details at the first two (2) floor levels; and,

b. Buildings shall provide windows, window displays, or visible activity on the ground floor for at least fifty (50) percent of frontage; and,

c. A single plane of façade shall be no longer than fifty feet without architectural detail; and

d. Front doors shall be visible or identifiable from the street and visually highlighted by graphics, lighting, or similar features; and,

e. Parking areas for comprehensive development or redevelopment of a site shall be located at the rear or side of the building. Changes of use and expansion of existing structures may use the site's current parking configuration; and,

f. Parking structures shall be designed so that parked vehicles are screened from view at street level, through incorporation of design elements including, but not limited to, landscaping, pedestrian arcades, occupied space, or display space; and,

g. Existing sidewalk widths shall be maintained so as to provide effective, accessible, connectivity to adjoining properties. Sidewalks may be widened to

accommodate a project's design characteristics. Where no sidewalks exist, sidewalks shall be provided. Outdoor seating and dining areas and landscaping may be located in the sidewalk area where safe and effective sidewalk width around the design feature can be provided; and,

h. To the extent practicable, bus pull-outs shall be provided where bus stops are currently located; and,

i. If drive-through service is proposed, it may not interfere with pedestrian access to the site from the roadway.

2. *Shade.* Except as provided herein, shade shall be provided for at least fifty (50%) percent of all sidewalks and pedestrian access paths as measured at 2:00 p.m. on June 21 when the sun is eighty-two degrees (82°) above the horizon. Shade may be provided by trees, arcades, canopies, or shade structures. The use of plantings and shade structures in the City right-of-way is permitted to meet this standard. The shade provided by a building may serve to meet this guideline.

   Exception. The Director may approve an IID Plan providing less than fifty (50) percent shade where compliance is not feasible due to a project site's location and/or building orientation and the applicant has made a reasonable attempt to comply with this criterion.

3. Modifications to historic buildings shall complement the overall context of the historically designated buildings in the project's Development Zone and respect the architectural integrity of the historic façade. Historic replication is discouraged in favor of design inspired by traditional precedents such as scale, materials, and exterior openings;

B. *Development Transition.* The purpose of the Development Transition criteria is to mitigate excessive visual, noise, odor, and vibration intrusion and other similar public health and safety concerns that may be created by the proposed project.

1. *Applicability.* Developing sites that abut an affected residential property must comply with this section. For purposes of the IID, the following terms and examples

describe elements of applicable transitional areas:

a. "Affected residential property" refers to an existing residential site that is of a lesser intensity than an abutting developing site;

b. "High density residential" refers to residential development that is neither existing single family detached nor attached dwellings within a subdivision;

c. Examples of applicable transitional areas include a nonresidential developing site abutting existing single family detached or attached dwellings within a subdivision, or a developing high density residential site abutting existing single family detached or attached dwellings within a subdivision.

d. For projects within the DCS, the Development Transition criteria apply only to those projects abutting affected residential properties outside the DCS boundaries.

2. *Mitigation of Taller Structures.* Compliance with the following criteria are required where the developing site has taller buildings than abutting affected residential properties:

a. The maximum building height is twenty-five (25) feet within thirty (30) feet of the property line abutting an affected residential property. Proposed buildings may develop to the maximum height permitted by the underlying zone or by the IID, whichever is applicable, when the building is thirty (30) feet or more from the property line abutting an affected residential property; and,

b. Windows at or above the second story of a structure shall be located or treated to reduce views into adjacent affected residential property's buildings and yard areas; and,

c. Balconies shall be oriented away from affected residential property or use a screening device to reduce views onto the rear or side yards of affected residential property; and,

d. The developing site's buildings should be oriented so as to reduce views onto an affected residential property.

e. Buffers and/or screening consistent with the purpose of this section shall be provided between a developing site and affected residential properties and shall include features such as, but not limited to, landscaping, walls, and architecturally decorative features.

3. *Mitigation of Service Areas.* Potential nuisance or noisy areas shall be oriented away from affected residential property such as placing service areas for loading and garbage disposal between the developing site's buildings or behind opaque barriers; or use a similar design technique using a combination of architectural or landscaping treatments that can be shown to reduce nuisance impacts from service areas. The service area must be mitigated to reduce the noise and view of the service features, reduce the emission of odors so as not to be offensive to owners or occupants of adjacent properties or create a nuisance or hazard beyond the property lines of the project site, and prevent vibrations that are discernible beyond the property lines of the project site.

4. *Mitigation of Parking Facilities and other Areas.* Where the site has a parking areas or an area with noise and outdoor lighting features, the areas shall be screened from affected residential property by a combination of a wall or opaque non-chain link fence with a vegetative hedge or a row of trees that will be dense enough to screen views onto the developing site. An alternative treatment may be used such as using a combination of architectural or landscaping treatments that can be shown to reduce nuisance impacts from parking facilities and other areas. Where there is a finding that the vegetative screen will be opaque a masonry wall may not be required.

C. *Alternative Compliance.*

1. The Director may approve an urban design best practice option for compliance with Sec. 2.8.12.6.A (Streetscape Design) and Sec. 2.8.12.6.B (Development Transition).

2. For purposes of this section, urban design best practices may include urban design studies approved for the City of Tucson, adopted urban design standards for a downtown area in an Arizona city of comparable size or a city in the Southwest of comparable size, books written by urban design experts or endorsed by a professional organization, such as the American Institute of Architects, addressing downtown development, or any comparable report, study or standards recommended by the City's Design Professional and approved by the PDSD Director.

D. *Utilities.* Plans shall include information on the layout and demonstrate availability of utilities such as water, wastewater, natural gas, electric and telecommunication utilities.

2.8.12.7 IID Plan Requirements.

A. *Requirements.* Use of the regulations of the IID, as opposed to existing zoning, requires plan approval by PDSD regardless of IID subdistrict.

1. Applicants must submit an IID Plan in compliance with applicable IID and subdistrict regulations.

2. Except as provided herein, a Plan must be prepared in compliance with Development Standard 2-01.0.0 (Development Package). Additionally, applicants are required to provide elevations demonstrating compliance with Secs. 2.8.12.6.A and B.

B. *Revisions.* An applicant may request modifications to Plan submittal requirements, or that the Plan requirement be waived, subject to the following:

1. The applicant must specifically identify the submittal requirement(s) for which a modification or waiver is requested and provide a rationale for the request.

2. The Director shall determine whether to grant the request. In making this decision, the director shall consider the purpose statements of the Downtown Area Infill Incentive District, applicable General Plan, and Area Plan policies. The Director's approval of a request hereunder is not, nor shall it be construed as the, department's endorsement of a project.

C. *Exception.* A City-approved urban design plan, such as the

Downtown Links Plan, may substitute for an IID Plan for development within the IID. The Director may request additional information from an applicant where a conceptual plan is lacking sufficient detail to adequately review a project for compliance with Sections 2.8.12.6.A, B, and C.

2.8.12.8 Review and Approval Procedures. PDSD shall administer IID Plan review procedures.

A. *Procedure.*

1. For development within the GIIS, requests for MDRs shall be processed according to the Development Compliance Code, Sections 23A-50 (Application, notice, public comment and review) and 23A-51 (PDSD Full Notice Procedure).

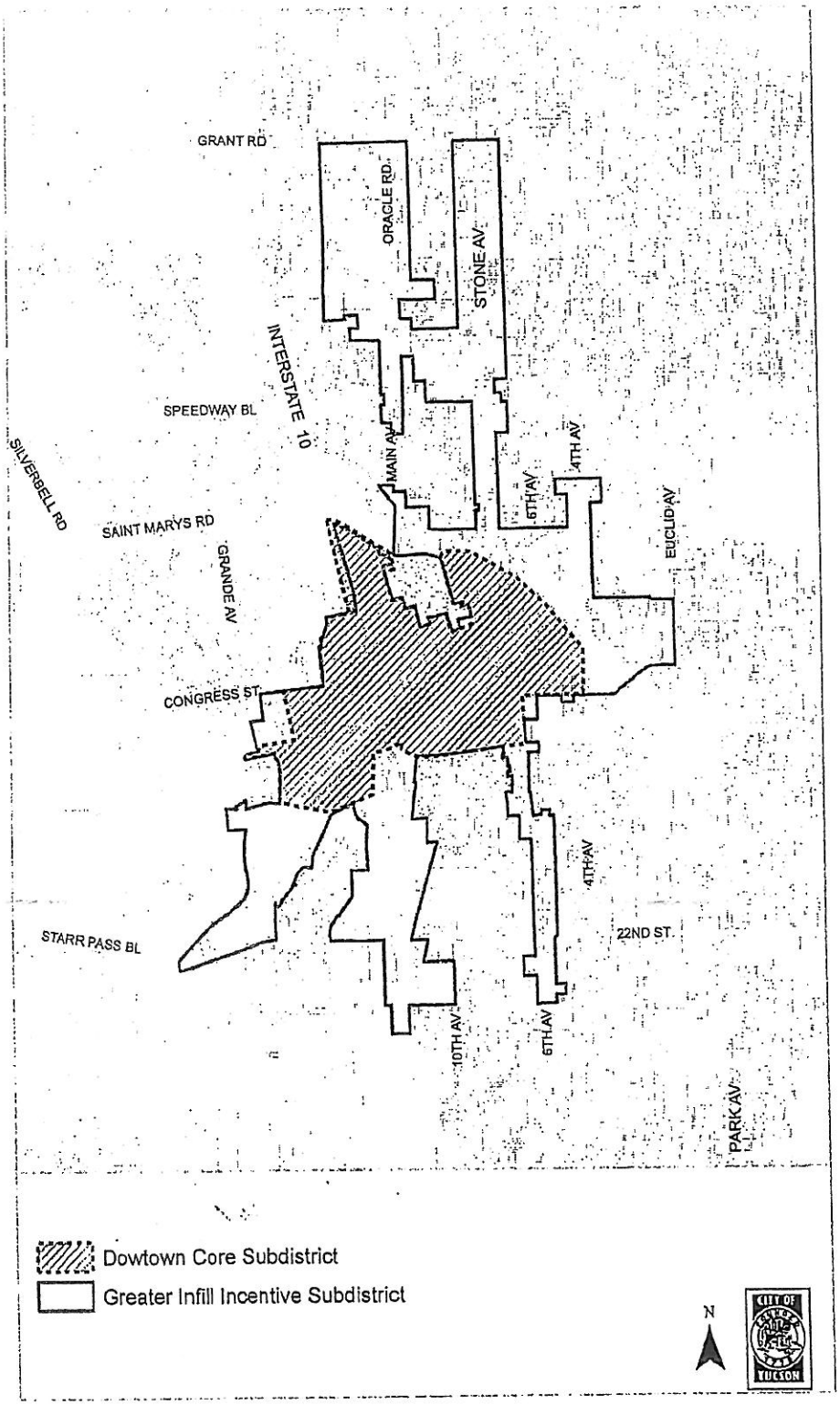
2. For development within the DCS, IID Plans shall be processed according to the Development Compliance Code, Sec. 23A-34 (Development Plan Review), with the exception that a pre-application conference is required. IID Plans within the DCS shall be reviewed and considered for approval within thirty (30) working days of PDSD accepting the application or approval of demolition and/or façade alteration plans when required of projects within the Rio Nuevo and Downtown Zone, whichever is applicable.

B. *Amendments.* An amendment or revision to an approved IID Plan shall be subject to the same procedure as the initial approval.

C. *Concurrent Review.* The City may accept a concurrent submittal of the IID Plan and corresponding development plan or subdivision plat.

2.8.12.9 IID District Termination. The provisions of LUC 2.8.12 Downtown Area Infill Incentive District shall end on January 31, 2012, unless Mayor and Council extend the date by separate ordinance.

2.8.12.10-I Illustrative Map.



SECTION 2. The map of the Downtown Area Infill Incentive District Zone (IID) overlay boundaries, attached as Exhibit A to this ordinance, is hereby adopted.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, October 5, 2010.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

TM/tl TMC
9/17/10

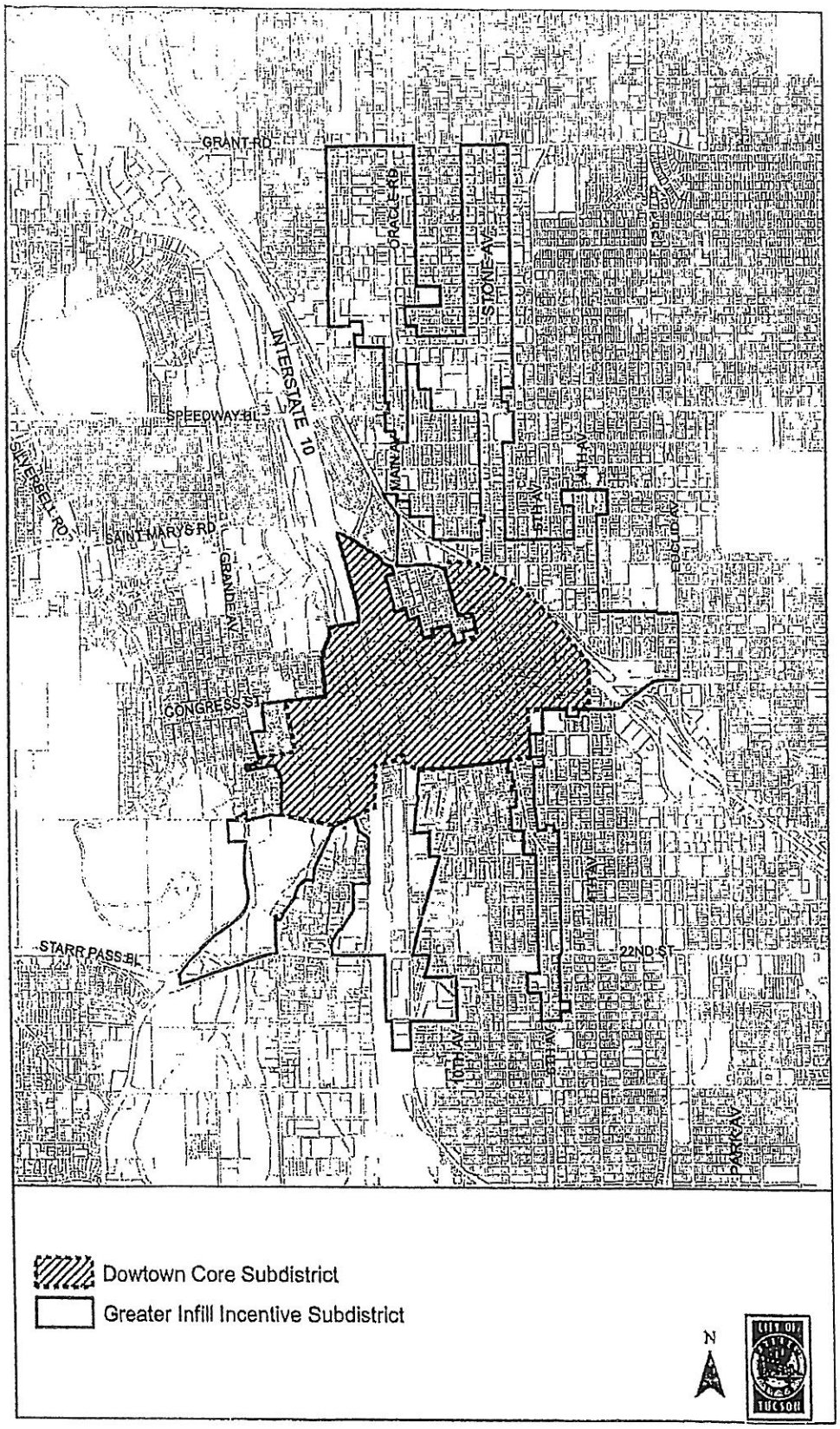


Exhibit A to Ordinance No. 10841