

Staff Summary Report



Hearing Officer Hearing Date: November 4, 2008

Agenda Item Number: 3

SUBJECT: This is a public hearing for a request by **ITS ALL GOODZ (PL080382)** located at 933 East University Drive for one (1) use permit.

DOCUMENT NAME: 20081104dssd01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by **TEMPE TOWNE PLAZA – BROKEN INDUSTRIES LLC d.b.a. ITS ALL GOODZ (PL080382)** (Michael Moore, Esquire, applicant; Tempe Towne Associates, property owner) located at 933 East University Drive in the CSS, Commercial Shopping and Services District for:

ZUP08161 Use permit to allow a tobacco retailer.

PREPARED BY: Shawn Daffara, Planner II (480-858-2284)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

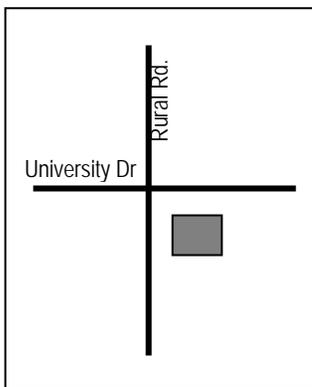
A handwritten signature in black ink, appearing to read 'SEA'.

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval, subject to Conditions

ADDITIONAL INFO: The applicant is before the Hearing Officer to request approval of a use permit to allow a tobacco retail store. The business will involve the sale of cigars, cigarettes, chewing tobacco, cigarette tobacco, pipe tobacco, pipes, lighters, clothing, jewelry, novelty goods and other tobacco-related products. There has been no public input to date regarding this request. Staff recommends approval of the request as submitted.



PAGES:

1. List of Attachments
2. Comments;
3. Reasons for Approval; Conditions of Approval; History & Facts
4. Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Site Plan
6. Floor Plan
- 7-8. Letters from State of Arizona Attorney General(s); Janet Napolitano (2002) and Terry Goddard (2008)
9. Staff Photograph(s)

COMMENTS:

The applicant is before the Hearing Officer to request approval of a use permit to allow a tobacco retail store. The business will involve the sale of cigars, cigarettes, chewing tobacco, cigarette tobacco, pipe tobacco, pipes, lighters, clothing, jewelry, novelty goods and other tobacco-related products.

The proposed store will be located within the Tempe Towne Plaza at 933 East University Drive at the southeast corner of the intersections of University Drive and Rural Road. The balance of the shopping center is a mix of retail, restaurants and services. To the south is the abandoned Union Pacific Railroad; beyond the railroad is Eight Street. To east is also zoned CSS, "Maloney's Bar", to the north is University Drive and to the west is Rural Road.

The City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, prohibit a tobacco retailer from locating within 1,320 feet of a school. This proposal is not within 1,320 feet of a school, thus a tobacco retailer may be allowed subject to an approved use permit.

If the business owner(s) of "Its All Goodz" are to allow smoking inside their business; they will be required to meet the 2003 International Mechanical Code which requires a "smoking lounge" to meet outside air and ventilation requirements. Mr. Sayegh and Mr. Moore was made aware of this regulation and has stated their will be "No Smoking inside the premise."

To date, staff has received no public input concerning this request.

Use Permit

The Zoning and Development Code requires a Tobacco Retailer to obtain a use permit in the CSS, Commercial Shopping and Services District. This use permit request meets all applicable tests in the following manner:

Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - This is a retail use, similar to others within the shopping center; there should be no nuisances.
- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d. Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses.

Conclusion

Staff recommends approval of the use permit subject to the attached conditions of approval.

REASON(S) FOR APPROVAL:

1. Traffic generated by this use should not be excessive.
2. There will be no apparent damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
3. The use appears to be compatible with the building, site and adjacent properties.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

1. The use permit is valid for Its All Goodz and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Should smoking be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. All rear exit doors require a lexan vision panel or a 180 degree rotatable viewer. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
7. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
8. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
9. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Contact Crime Prevention at (480) 858-6330 within 30 days of this approval by December 4, 2008.

HISTORY & FACTS:

August 22, 2008

CM081179: Complaint about a Tobacco Retailer without a use permit.

DESCRIPTION:

Owner – Tempe Towne Associates
Applicant – Michael Moore, Esquire
Existing Zoning – CSS, Commercial Shopping and Services District
Total site area – 73,688 s.f. / 1.69 acres
Total building area – 23,906 s.f.
Proposed tenant lease space – 1,480s.f.
Total site parking required – Parking by Demand
Total site parking provided – 116 spaces

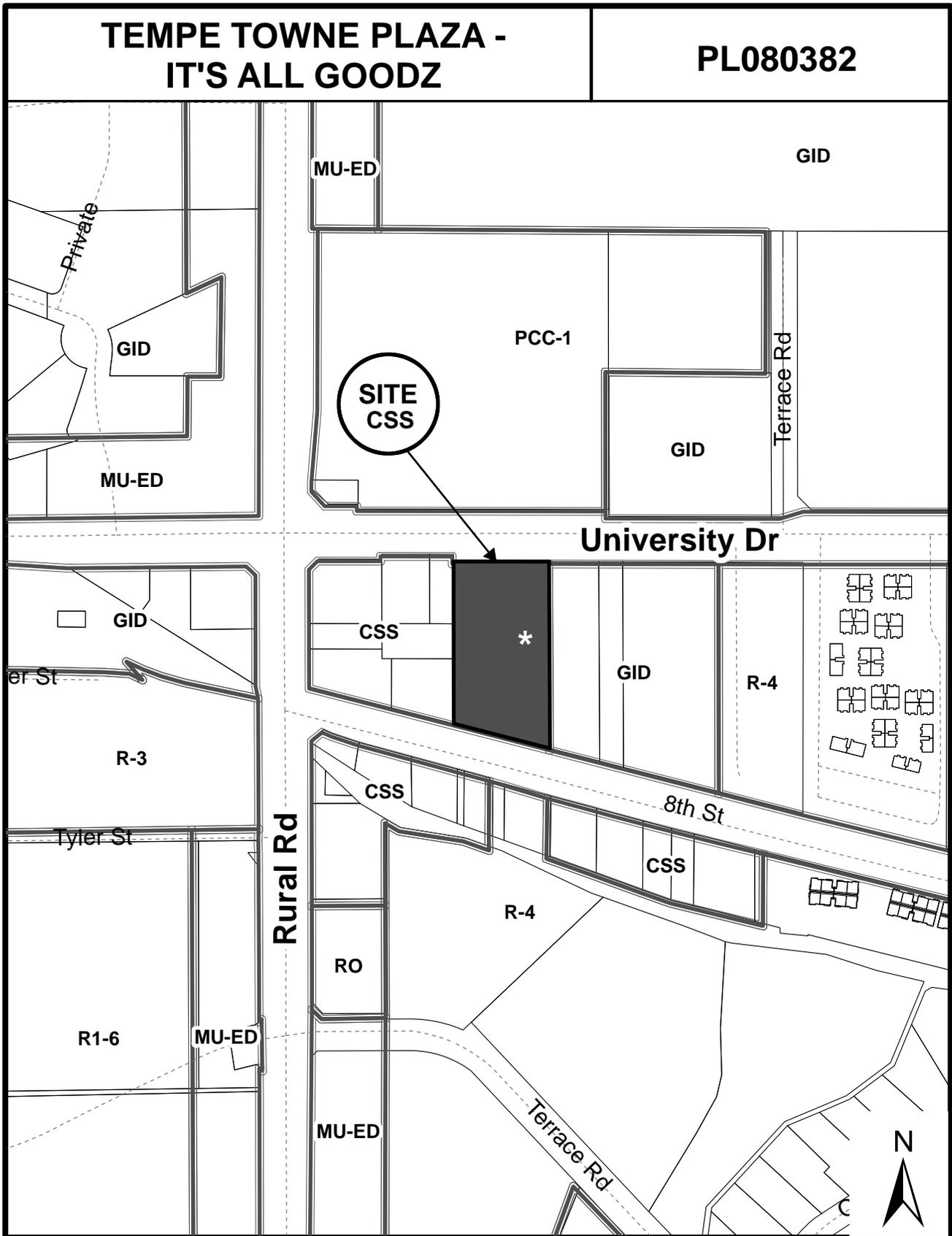
**ZONING AND
DEVELOPMENT**

CODE REFERENCE:

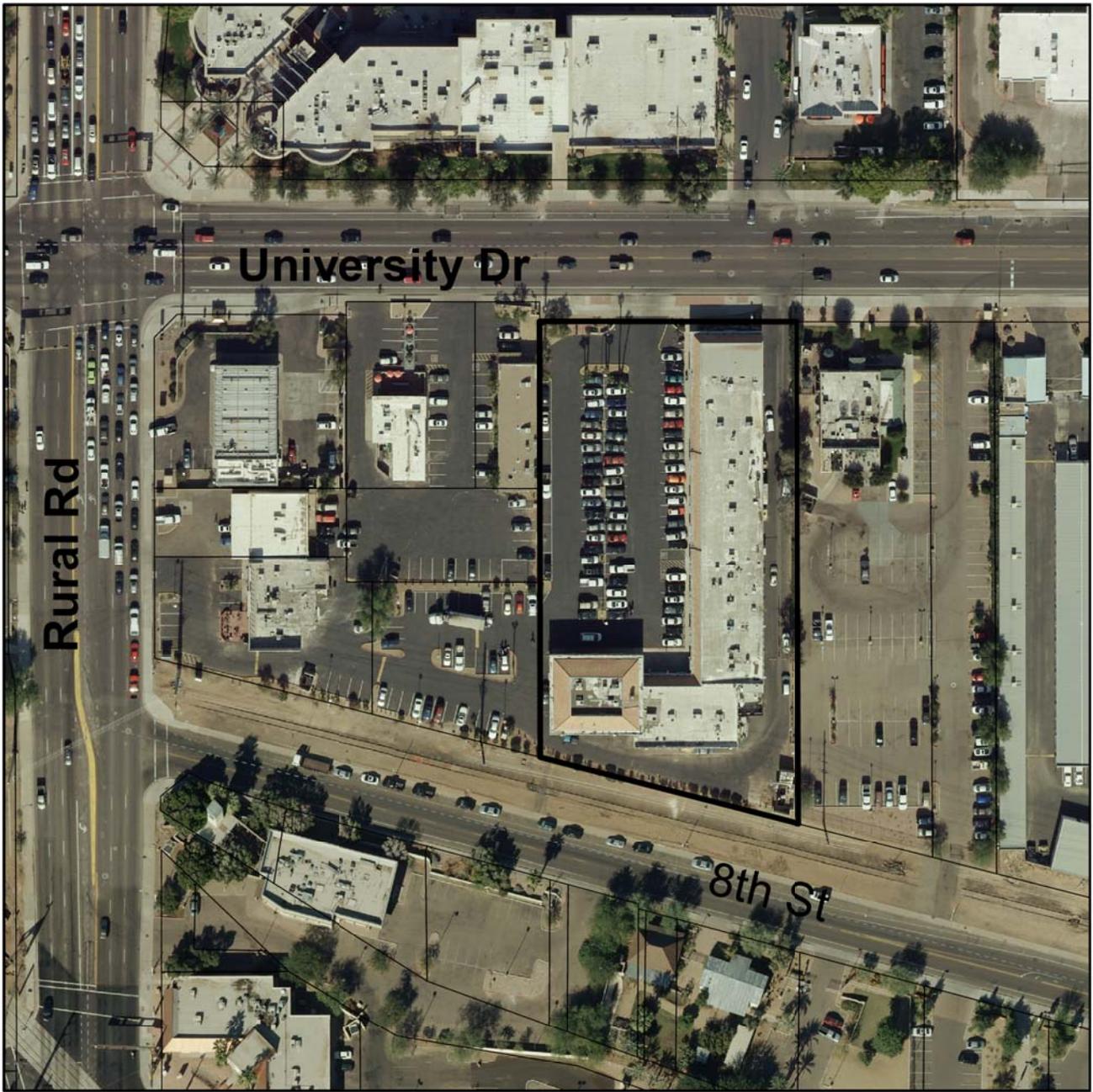
Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts

Part 6, Chapter 3, Section 6-308 – Use Permit.

Part 6, Chapter 3, Section 6-313 – Security Plan



Location Map



TEMPE TOWN PLAZA - ITS ALL GOODZ (PL080382)

Law Offices of Michael V. Moore

11811 N. Tatum Blvd., Suite 3031
Phoenix, Arizona 85028-1621

Telephone: (602) 953-7787
Fax: (602) 953-7789

October 6, 2008

Shawn Daffara
Planning Division
City of Tempe
31 E. 5th Street
Tempe, AZ 85281

Re: Its All Goodz -- 933 E. University Drive, Suite 109, Tempe, AZ

Dear Mr. Daffara

I represent Broken Industries, LLC, dba Its All Goodz, with respect to the matter of applying for a use permit that will allow my client to engage in retail sales of cigarettes and tobacco products. This letter of explanation is enclosed with and accompanied by the following documents:

- Project Submittal Application, which my client has signed
- Planning Application Form, which my client and the property owner have signed
- The Architectural Site Plan
- The General Plan of Development for Tempe Towne Plaza
- Photographs of Retail Store
- Check No. 1403 for \$1,099.00 payable to City of Tempe
- Letters of commendation from State of Arizona -- Its All Goodz, Phoenix location
- Drawing of store layout

Its All Goodz is a retailer of cigarettes, tobacco, tobacco-related products, clothing, jewelry, and novelty goods. It is located at 933 E. University Drive, Suite 109, Tempe, Arizona, where it leases its premises and has been operating for approximately 2.5 years. Its All Goodz has maintained since inception a duly authorized business license from the City of Tempe, wherein it disclosed the nature of its products and product line. Its All Goodz has an excellent relationship with the City of Tempe, the owner of the retail center in which it operates, and with its neighboring businesses. Its All Goodz operates from 11:00 a.m. to 12:00 p.m., seven days a week.

On or about August 27, 2008, the City of Tempe cited Its All Goodz for not having special use permits to sell tobacco and to manufacture goods. Having been previously unaware of the need for such permits, Its All Goodz is applying for a use permit that will allow it to retail cigarettes and tobacco products. With regard to an application for permit to manufacture goods, Its All Goodz believes the City of Tempe may not have known at the time of the citation that substantially all of the manufactured products sold at the Tempe store are manufactured at Its All Goodz's Phoenix location and shipped to the Tempe store. The manufactured products include glass pipes, glass jewelry and glass artifacts. Its All Goodz conducts occasional glass-blowing demonstrations at the Tempe location, which, although important for promotional purposes,

Shawn Daffara
October 6, 2008
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result in the production of only a small fraction of the product sold at the store and are ancillary to the main operation of the business. Its All Goodz would prefer to continue the ancillary glass-blowing demonstrations without applying for a manufacturing use permit at this time, unless the City of Tempe nevertheless requires it under the circumstances.

A list of neighboring businesses follows:

Nhat Vietnamese and Chinese Restaurant
933 E. University Drive, Suite 116, Tempe, AZ 85281 (480) 967-1888

Indian Bazar
933 E. University Drive, Suite 115, Tempe, AZ 85281

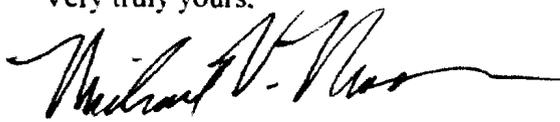
Blue Nile Restaurant
933 E. University Drive, Suite 112, Tempe, AZ 85281 (480) 377-1113

Pita Fresh Mediterranean Rotisserie
933 E. University Drive, Suite 108, Tempe, AZ 85281 (480) 968-5050

Euporia
829 S. Rural Road, Tempe, AZ 85281 (480) 557-9075

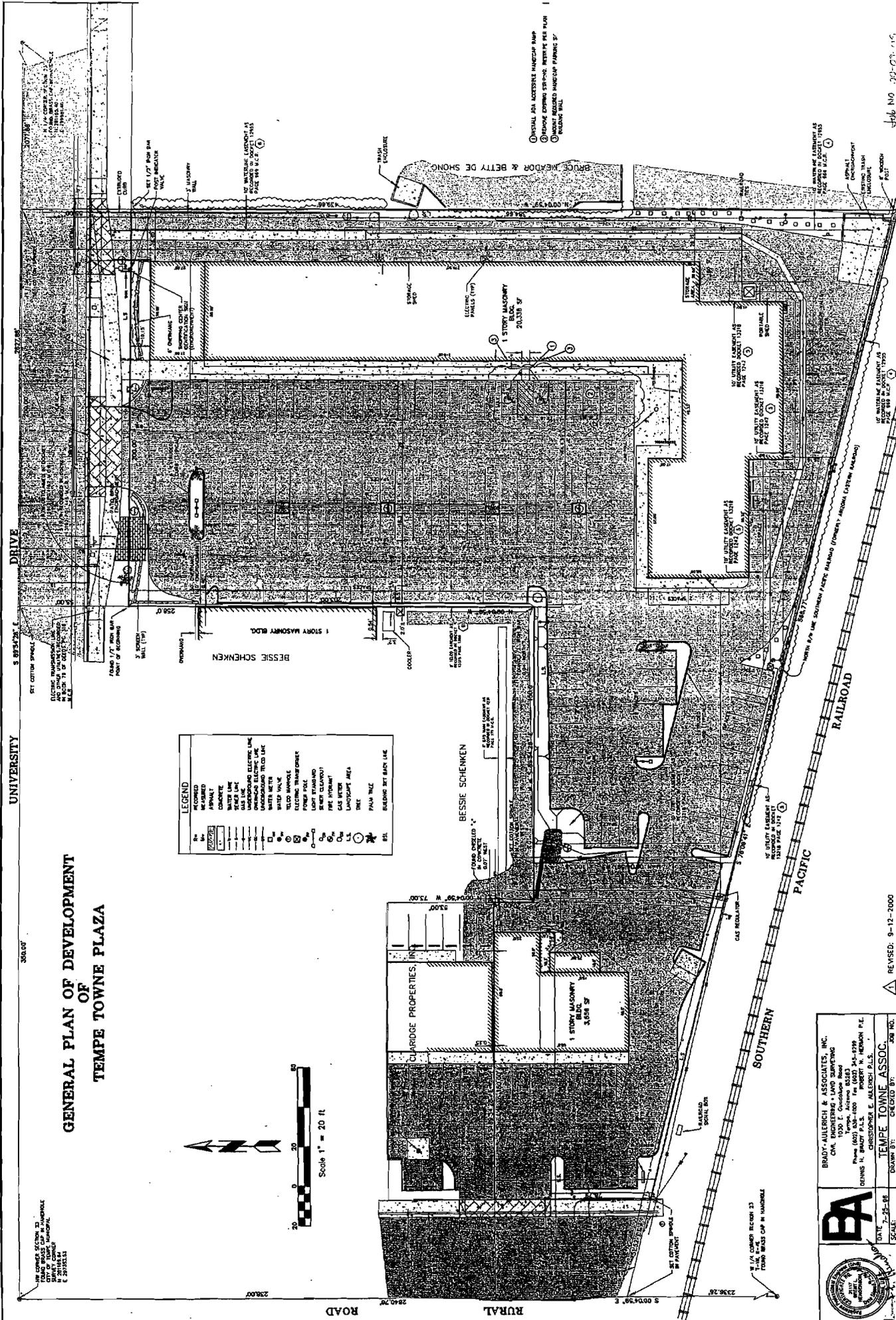
Once you have had opportunity to review the enclosed materials and if you have questions, comments or require further information, I kindly request that you contact me.

Very truly yours,



Michael V. Moore

Cc: Juan Mark Sayegh
Enclosures



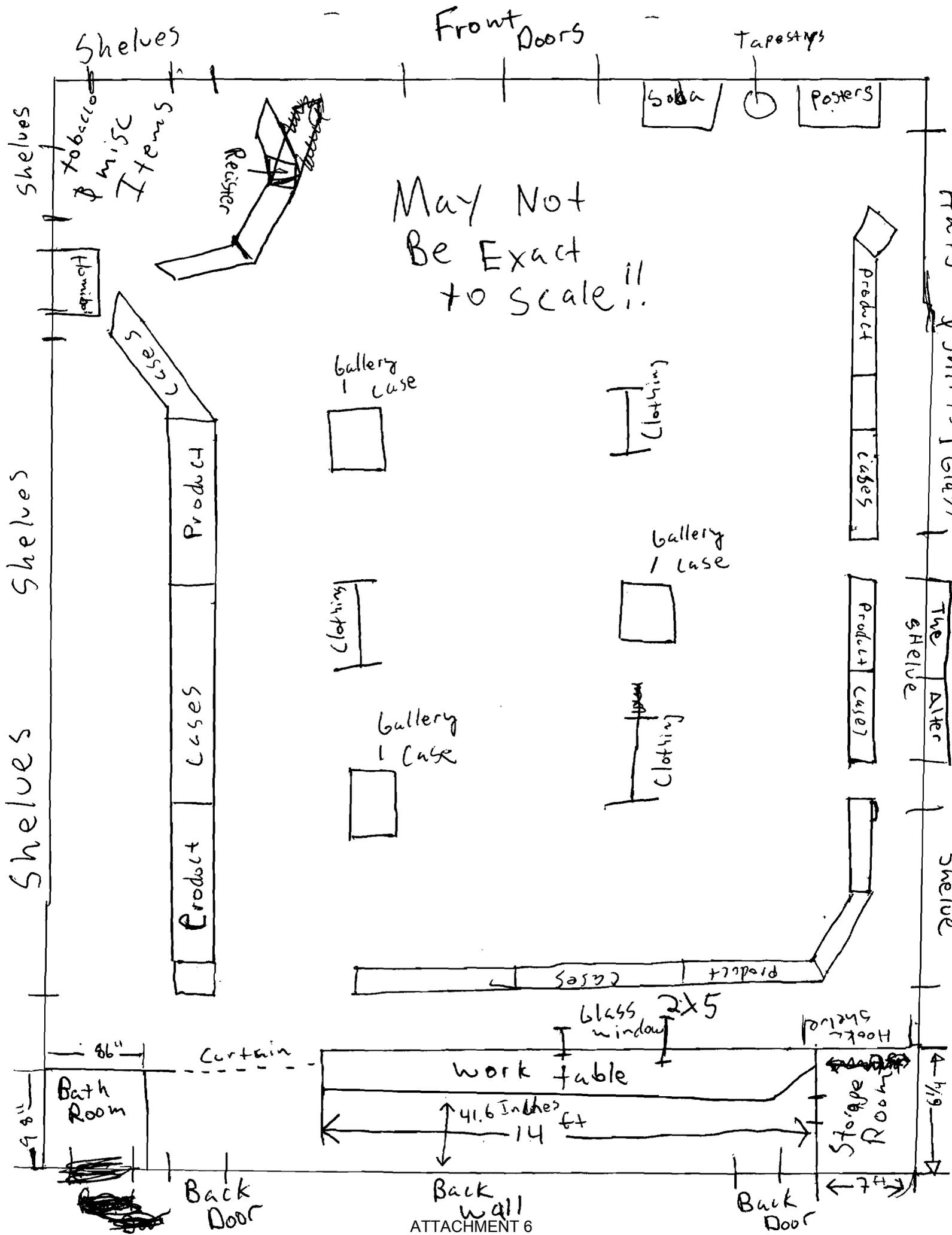
**GENERAL PLAN OF DEVELOPMENT
OF
TEMPE TOWNE PLAZA**

LEGEND

- ASPHALT
- CONCRETE
- WATER LINE
- SEWER LINE
- UNDERGROUND ELECTRICAL LINE
- UNDERGROUND TELEPHONE LINE
- UNDERGROUND GAS LINE
- WATER METER
- WATER VALVE
- ELECTRIC TRANSFORMER
- POWER POLE
- LIGHT STAND
- SEWER ISLAND
- LANDSCAPE
- LANDSCAPE AREA
- TREE
- PALM TREE
- BUILDING SET BACK LINE
- STL



BRADY-AULERICH & ASSOCIATES, INC.
 CIVIL ENGINEERING & LAND SURVEYING
 1000 E. Camelback Road
 Suite 100
 Phoenix, AZ 85014
 Phone: (602) 438-1000 Fax: (602) 244-1999
 DEBRA H. BRADY P.E. ROBERT H. AULERICH P.E.
 CHRISTOPHER E. ALBERT P.E.
TEMPE TOWNE ASSOC.
 DATE: 7-25-98
 SCALE: AS SHOWN
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 REVISED: 9-12-2000



May Not Be Exact to Scale!!



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

Special Investigations Section

It's All Good
12306 N. 32nd St.
Phoenix, AZ 85032

April 4, 2008

Dear Tobacco Retailer:

The Arizona Attorney General's Office, in conjunction with local law enforcement, is vigorously enforcing Arizona's youth tobacco laws and continues to monitor tobacco retailer compliance with those laws. All tobacco retailers are subject to inspection by local law enforcement officers and/or special agents who accompany undercover youth volunteers as they attempt to purchase tobacco products. On February 12, 2008, an agent of our Office inspected your business. A minor, under the agent's supervision, attempted to purchase a tobacco product and your employee properly refused to sell the tobacco product. I write to commend your demonstrated compliance with Arizona's law prohibiting the sale of tobacco to minors.

Your efforts to ensure that the youth of our State do not have access to tobacco not only improve the health of our children but also help to enforce our existing tobacco access laws. We appreciate your vigilance in keeping tobacco products out of the hands of our youth.

Information from this inspection will be provided to the Arizona Department of Health Services' Tobacco Education and Prevention Program for statistical purposes. Our Office will continue to inspect and monitor Arizona tobacco retailer compliance. We wish you continued success in future inspections. Again, thank you for helping to protect Arizona's children from the dangers of tobacco.

Yours very truly,

Terry Goddard
Arizona Attorney General



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

JANET NAPOLITANO
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

MAIN PHONE : (602) 542-5025
FACSIMILE : (602) 542-4085

June 14, 2002

"It's All Good"
12306 North 32nd Street
Phoenix, AZ 85032

Dear Sir or Madam:

I write to commend your demonstrated compliance with Arizona's laws that prohibit the sale of tobacco to minors. On May 25, 2002, a local law enforcement agent inspected your business. A minor, under the agent's supervision, attempted to purchase a tobacco product and personnel at your store properly refused to sell the tobacco product.

I encourage you to continue to follow the law and thereby help reduce youth access to tobacco products in Arizona. Such efforts not only improve the health of our kids but also greatly impact our State's ability to receive vital federal funding. As you may know, Arizona risks losing nearly \$11 million in federal block grant funding for substance abuse and treatment programs if its youth buy rate exceeds 20%. Law enforcement authorities will therefore continue to conduct tobacco compliance inspections to help keep Arizona's youth tobacco buy rate as low as possible.

Again, I applaud your compliance with the law and thank you for contributing to the health and well-being of our State. With your help, Arizona can meet its goal of 100% retailer compliance, protect its children from the hazards of smoking, and continue to receive its full share of federal block grant money.

If you would like further information or have any questions about responsible retail practices, please contact your local Tobacco Education and Prevention Program at (602) 372-7272. To report illegal tobacco sales to minors, please call the Attorney General's Complaints line at (602) 542-5763 or 1-800-352-8431.

Yours Very Truly,

A handwritten signature in cursive script that reads "Janet Napolitano".

Janet Napolitano
Arizona Attorney General



**TEMPE TOWNE PLAZA – BROKEN
INDUSTRIES LLC d.b.a. ITS ALL GOODZ**

933 EAST UNIVERSITY DRIVE

PL080382

FRONT OF BUSINESS

