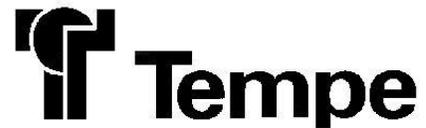


Staff Summary Report



Hearing Officer Hearing Date: **September 6, 2011**

Agenda Item Number: **8**

SUBJECT: This is a public hearing for a request by **AGAVE CENTER - CARL'S JR. RESTAURANT (PL090412)** located at 8825 South Jewel Street for two (2) variances.

DOCUMENT NAME: 20110906kko01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **AGAVE CENTER - CARL'S JR. RESTAURANT (PL090412)** (Nick Wood/Snell & Wilmer, L.L.P., applicant; Jason LeVecke, Attorney-in-Fact for CAJR, L.L.C., property owner) located at 8825 South Jewel Street in the PCC-1, Planned Commercial Center Neighborhood District and the SWOD, Southwest Tempe Overlay District for:

VAR11006 Variance to allow a drive-through lane on the street side of the building deviating from Zoning and Development Code Section 3-408, drive-through orientation requirements.

VAR11007 Variance to waive trees in the landscape islands for a portion of the parking area within the El Paso Natural Gas line easement.

PREPARED BY: Kevin O'Melia, Senior Planner (480-350-8432)

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

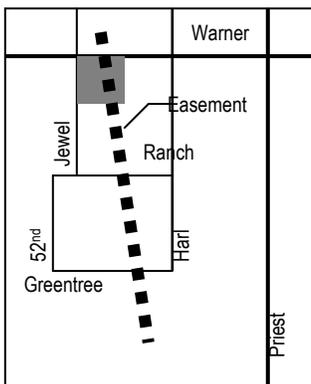
LEGAL REVIEW BY: N/A

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

FISCAL NOTE: There is no fiscal impact on City funds.

RECOMMENDATION: **Staff – Approval, subject to conditions**

ADDITIONAL INFO: Net site area 0.86 acre



The applicant requests re-approval of two variances in order to allow development of this lot for a restaurant with a vehicular drive-through for food pick-up. The first variance requests an exemption from the requirement to conceal the drive-through behind the building at the street frontages due to the presence of a natural gas line easement on site that limits building location. The second variance requests an exemption for the installation of trees in landscape islands where these islands are located over the gas line easement. Staff agrees with the applicant that the natural gas line easement limits the ability of site development with respect to the requirements of the Zoning and Development Code. Staff supports both variance requests, subject to conditions of approval.

A neighborhood meeting is not required for these variance requests since the site is remote from residential development. The case has been advertised in the newspaper, neighboring property owners have been notified of the Hearing by mail and the site has been posted. At the time of preparation of the report, staff has received no public input regarding the requests.

Two variances as described previously were requested and approved (VAR09018 and VAR09019). A development plan review for the building and site design was subsequently approved (DPR10007). The previous variance and development plan review approvals were allowed to expire for lack of a building safety plan check submittal within the allotted deadline.

- PAGES:**
1. List of Attachments
 - 2-3. Comments / Reasons for Approval
 4. Conditions of Approval
 5. History & Facts
 6. Description / Zoning & Development Code Reference

- ATTACHMENTS:**
1. Location Map
 2. Aerial Photo
 3. Cover letter for re-approval of Variance Requests, dated 08/16/2011
 - 4-7. Letter of Explanation –Variance Requests, dated 08/29/2011
 8. Neighborhood Meeting Requirement Applicability Letter, dated 07/26/2011
 9. Proximity of Site to Residential Development Map
 10. Site Plan (Bury + Partners) dated 07/18/2011
 11. Exhibit 'A' Gas Line Easement sheet 2 of 2, dated 03/03/2010
 - 12-16. El Paso Easement Information Letter, dated 01/08/2010 (1 page) and El Paso Natural Gas regulations regarding the use of the gas line easement (4 pages)
 - 17-24. Site Photographic Survey

COMMENTS:

Site Analysis:

In the northeastern portion of the Agave Center a series of lots have been subdivided for development. Recently, Jewel Drive has been extended into the Agave Center from Warner Road south to Ranch Road to assist with this development. The subject site is at the northeast corner of Warner Road and Jewel Drive. A row of three Phoenix Date palms in the right of way on the western edge of this site help define the Agave Center entrance on Jewel Street. Existing native and arid adapted landscape is located in the Warner Road right of way, including along the northern edge of this site. A bus stop is also located in this frontage, near the northeast site corner. The site is vacant with the exception of a roofless El Paso Natural Gas masonry equipment enclosure. Two concrete gas line valve vaults are located to the west of the enclosure. These structures are the surface component of buried regional gas lines that diagonally bisect the site. Also, a retention basin for storm water runoff from half of the Jewel Street extension is located on the west of the site near the palms.

Three easements currently impact the site. An 8'-0" wide public utility easement is located on the northern and western edges of the site. A 30'-0" wide Warner Road landscape easement is also located on the northern edge of the site. A separate 40'-0" wide utility easement for interstate transportation of natural gas cuts diagonally north-south through the eastern half of the site. These easements are indicated on the Subdivision Plat for Agave Center Amended II.

Position of drive-through:

In autumn, 2009 the applicant initiated a development process by submitting the restaurant concept for Preliminary Site Plan Review. During the interdisciplinary C.O.T. staff and development team review period which followed, it was determined by planning staff that a site design is available with a drive-through in the interior of the site, that is, oriented so it is partially shielded from the public streets by the building. The disadvantage of the staff scheme is that the bulk of the site parking is buffered from the building entrances by the drive-through. The opportunity of moving the building to the eastern part of the site and allowing the bulk of parking between the building and the street frontages in order to remedy this disadvantage is not allowed by the presence of the gas easement. This site planning limitation, where the building is forced to be located on the west of the site, is directly the result of the position of the gas line easement on the site. Staff agrees with the applicant that the most reasonable development for this site places the drive-through to the north and west of the restaurant and balances the following design determinants:

- The restaurant is positioned on the west half of the site, out of the way of the gas easement.
- For pedestrian paths that originate from the parking area, the dining room is easily accessible to patrons who drive to the site and walk to restaurant entrances without having to cross the drive-through or walk extensively around its edge.

Trees in Easement:

As indicated above, the limitation of the position of the building mandates the parking area location to the east of the site, including over the gas line easement. Landscape islands associated with parking may not have trees within the easement due to potential interference of mature root systems with existing subterranean gas line structures. The Zoning and Development Code does allow placement of trees for parking area shade in a flexible configuration which would allow minimum 20 percent shade at the summer solstice at 3:00pm. Staff observes that the easement's size precludes attainment of a minimum 20 percent solstice shade throughout the parking area. Shade canopies may be considered to attain the 20 percent goal but similarly, the foundations of canopies are excluded from the bulk of the parking area by the easement's location.

Variance Requests:

The Zoning and Development Code Section 3-408 requires that "New drive-through facilities shall be oriented toward side or rear yards and not placed between the street right-of-way and the primary customer entrance." The applicant requests exemption from this part of the ordinance due to a site-imposed limitation on the position of the building away from the easement. A building position on the east side of the site, which would allow the restaurant entrance to be oriented toward site parking and the street and allow the drive-through to be tucked behind the building, is denied for this development due to the presence of the easement.

The Zoning and Development Code Section 4-704 requires that "Parking lots shall have landscape treatments that provide shade and allow for natural surveillance. Two (2) options are provided for conformance." The applicant requests exemption from this part of the ordinance due to a site-imposed limitation on the position of the building away from the easement, which also mandates the position of a portion of the parking area over the easement. The applicant requests exemption from the two options due to the inability of placing landscape islands for canopy trees or shade structures at ends of or to the sides of parking rows that are over the easement. The applicant does not seek an exemption for parking area landscape that is outside of the easement, and the applicant does not seek to abolish landscape islands over the easement but to be allowed to not install trees in these islands.

Section 6-309 D Approval Criteria for Variances:

1. A special circumstance is applicable to the property in the form of a gas line easement which restricts the position of structures and trees on the property to a greater degree than that for a typical property. The gas provider has indicated that a structure, any part of a structure, or a tree is restricted from placement within the easement right of way.
2. The strict application of the Zoning and Development Code will deprive this property of privileges enjoyed by other property of the same classification in the same zoning district in that a circuitous parking to entrance pedestrian path would be established and the size of parking (and of restaurant) would be restricted on the property to a greater degree than that for a typical property.
3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity and zone in which such property is located. The adjustment is warranted due to allow the property owner to develop a project of size and quality similar to that for a typical property.
4. The special circumstance of the site (the presence of the gas line easement) is not self-imposed by the property owner, but is a pre-existing feature of the site. Refer to "Amendment to Right Of Way and Easement" M.C.R. 2010-0399969 and the Subdivision Plat for Agave Center Amended II for history and layout of the easement.

Conclusion

Staff recommends approval of each of the two (2) variances requested. Staff believes the applicant's site design solution successfully supports the approval criteria for the variances.

REASONS FOR APPROVAL:

1. A special circumstance applies to the land that will limit development on the eastern portion of the property, which in turn impacts development on the entire property.
2. Authorization of the variances is necessary for the preservation and enjoyment of substantial property rights for this property.
3. Authorization of the variances will not be materially detrimental to persons residing or working in the vicinity of the property, and is not materially detrimental to persons on adjacent properties, in the neighborhood or to the public welfare in general.
4. The adjustments authorized are not a grant of special privileges that are inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

**CONDITIONS
OF APPROVAL:**

1. Development Plan Review approval shall be obtained and construction documents for site development shall be submitted to the Community Development Building Safety Division for building permit by September 6, 2012 or the variance approvals shall be made void. Subsequently, expiration of the building plan check period or issued building permit will result in expiration of the variances.
2. Provide a continuous minimum 3'-0" high screen on the street side of the drive-through. The screen shall consist of a combination of landscape berm and masonry or concrete site wall. The landscape berm may not be less than 50 percent of the entire screen. Provide site wall of materials and finish that architecturally compliments the materials and finish of the building. Details of screen wall and landscape berm layout shall be approved during Development Plan Review process.
3. Modify the existing retention basin on the western edge of Lot 3 to coordinate with the development of Lot 3. The reconfigured basin is required to handle 100 year storm water runoff for Jewel Street (east half) extending from Warner Road south to Ranch Road. The reconfigured retention basin may be divided to include a portion of storm runoff on Lot 4, subject to agreement of adjacent property owner(s) and the C.O.T. Public Works Engineering Division.
4. The exemption of trees applies only to parking landscape islands or other landscape areas that are over the gas line easement. For each required tree that is exempted, install one additional tree (minimum 24" box installation size) on site or in one of the adjacent street frontages that otherwise would not be required by the Zoning and Development Code. Install trees so there is a continuous line of mature tree canopy along the street frontages opposite the drive-through. Details of tree selection and locations shall be approved during Development Plan Review process.
5. Install landscape islands over the gas line easement where planting in islands provides a 100 percent ground cover spread when plants are mature. Details of plant selection and layout shall be approved during Development Plan Review process.
6. Promptly repair damage to paving and landscape caused by periodic heavy maintenance to gas lines contained under the natural gas easement.
7. The site parking layout with dimensions as indicated does not meet the minimum standards of the Zoning and Development Code (ZDC) with respect to fire/refuse lane layout (item d. below) and landscape island size (item e. below). Incorporate the requirements of items a., b. and c. below and make adjustments to the site plan to correct the parking layout.
 - a. Minimum standard parking space is 8'-6" wide and 18'-0" long, but 2'-0" of parking space length may overhang adjacent paved walkway or landscape in accordance with ZDC Sec. 4-606(A.1.). At a walkway, provide minimum 4'-0" access width on paving outside of parking space overhang.
 - b. Minimum disabled van accessible parking space width is 8'-0" with an 8'-0" side aisle in accordance with COT Engineering Standard Detail T-360.
 - c. Maintain minimum 23'-0" wide two-way drive aisle width in accordance with ZDC Tab. 4-606A.
 - d. On the site plan indicate outline of 20'-0" wide fire and solid waste lane through parking lot in accordance with ZDC Fig. 4-502(G). Locate fire lane entirely in drive aisle. Maintain fire lane entirely clear of landscaped island curbs and parking spaces. Do not provide turn radius that is less than the minimum allowed.
 - e. Provide landscaped islands of minimum size and area in accordance with ZDC Sec. 7-704(C.2.).

HISTORY & FACTS:

- January 14, 1999 City Council approved the Final Plat of Agave Center (Formerly Known as Warner 10 Commerce Center).
Note: two parallel gas lines are located on sheet 2 of 2 of this plat with the following identification: "GASLINE EASEMENT PER BK 47 OF MISC PG 564 & BOOK 23 OF MAPS, PAGE 45 (NO DEFINED WIDTH)".
- January 7, 2010 City Council approved the Amended Subdivision Plat for the Sahara Agave Center located at 1780 West Ranch Road in the GID, General Industrial District, PCC-1, Planned Commercial Center Neighborhood District and SWOD, Southwest Tempe Overlay District.
- January 19, 2010 Hearing Officer approved the following requests for Carl's Jr. Restaurant located at 8825 South Jewel Street in the PCC-1, Planned Commercial Center Neighborhood District and the SWOD, Southwest Tempe Overlay District:
VAR09018: Variance to allow a drive-through lane on the street side of the building deviating from Zoning and Development Code Section 3-408, drive-through orientation requirements.
VAR09019: Variance to waive trees in the landscape islands for a portion of the parking area within the El Paso Natural Gas line easement.
Note: the variance approvals were allowed to expire. Development Plan Review approval was obtained but the project was not submitted to Building Safety Division for building permit by January 19, 2011.
- February 23, 2010 Development Review Commission approved the request by Agave Center-Carl's Jr. Restaurant for Development Plan Review (DPR10007) including site plan, building elevations and landscape plan for a single story 2,985 square foot restaurant on 0.86 net acres, located at 8825 South Jewel Street in the PCC-1, Planned Commercial Center Neighborhood District and the SWOD, Southwest Tempe Overlay District.
Note: this development plan review approval was allowed to expire when the project was not submitted to Building Safety Division for building permit by January 19, 2011.
- May, 2010 Two Amendment to Right of Way and Easement documents were completed concerning the natural gas easement through Lots 3 and 4 of the Agave Center (from Warner Road to Ranch Road), including the following: Establish the width of the natural gas easement (40'-0" wide), dedicate this easement by separate instrument and have the instrument recorded at the Maricopa County Recorder's office. Each document is acknowledged by the property owner of the respective property and the Attorney-in-Fact for El Paso Natural Gas Company on behalf of El Paso Natural Gas. The recordation No. for Lot 3 (the subject site) is M.C.R. 2010-0399969 and the recordation No. for Lot 4 (south of the subject site) is M.C.R. 2010-0415459.
- October 10, 2010 The City Council approved the Agave Center Amended II, an Amended Subdivision Plat consisting of eight (8) lots and dedication of Jewel Street on 17.46 acres. The 17.46 acres formerly included Lots 2, 3 and 4 of Agave Center and Lot 13 and 14 of Agave Center Amended. The 17.46 acres are located in the PCC-1, Planned Commercial Center Neighborhood District--Lots 1, 2, 3, 4 and 5, PCC-1 (PAD) and GID (PAD) Planned Commercial Center Neighborhood District, General Industrial District and Planned Area Development Overlay--Lot 6, and GID, General Industrial District--Lot 7 and 8. The entire area is also within the SWOD, Southwest Tempe Overlay District.

DESCRIPTION:

Owner – CAJR, L.L.C.
Attorney-in-Fact -- Jason LeVecke, Managing Member, MJKL Enterprises
Applicant – Nick Wood, Snell & Wilmer L.L.P.
Site Planning -- Mark Johnson, Bury + Partners, Engineering Solutions

General Plan 2030

Projected Land Use -- Commercial

Zoning

Existing zoning -- PCC-1, Planned Commercial Center Neighborhood District and SWOD, Southwest Tempe Overlay District

Site (Lot 3, Agave Center Amended II)

Net site area -- 0.86 acres (37,447 s.f.)

Project Data

Build'g area -- 2,715 sf. (note: the previously approved restaurant was 2,985 sf.)

Build'g/lot cover -- 7.25 % (50.0 % max. allowed)

Lndscp/lot cover -- 30.0 % (15.0 % min. allowed)

Build'g height -- 33.0 ft. (35.0 ft. max. allowed)

Setbacks:

Front (W) -- +32.0 ft. (0.0 ft. min. allowed)

Side (S) -- +45.0 ft. (30.0 ft. min. allowed)

Rear (E) -- +134.0 ft. (30.0 ft. min. allowed)

Street side (N) -- +55.0 ft. (0.0 ft. min. allowed)

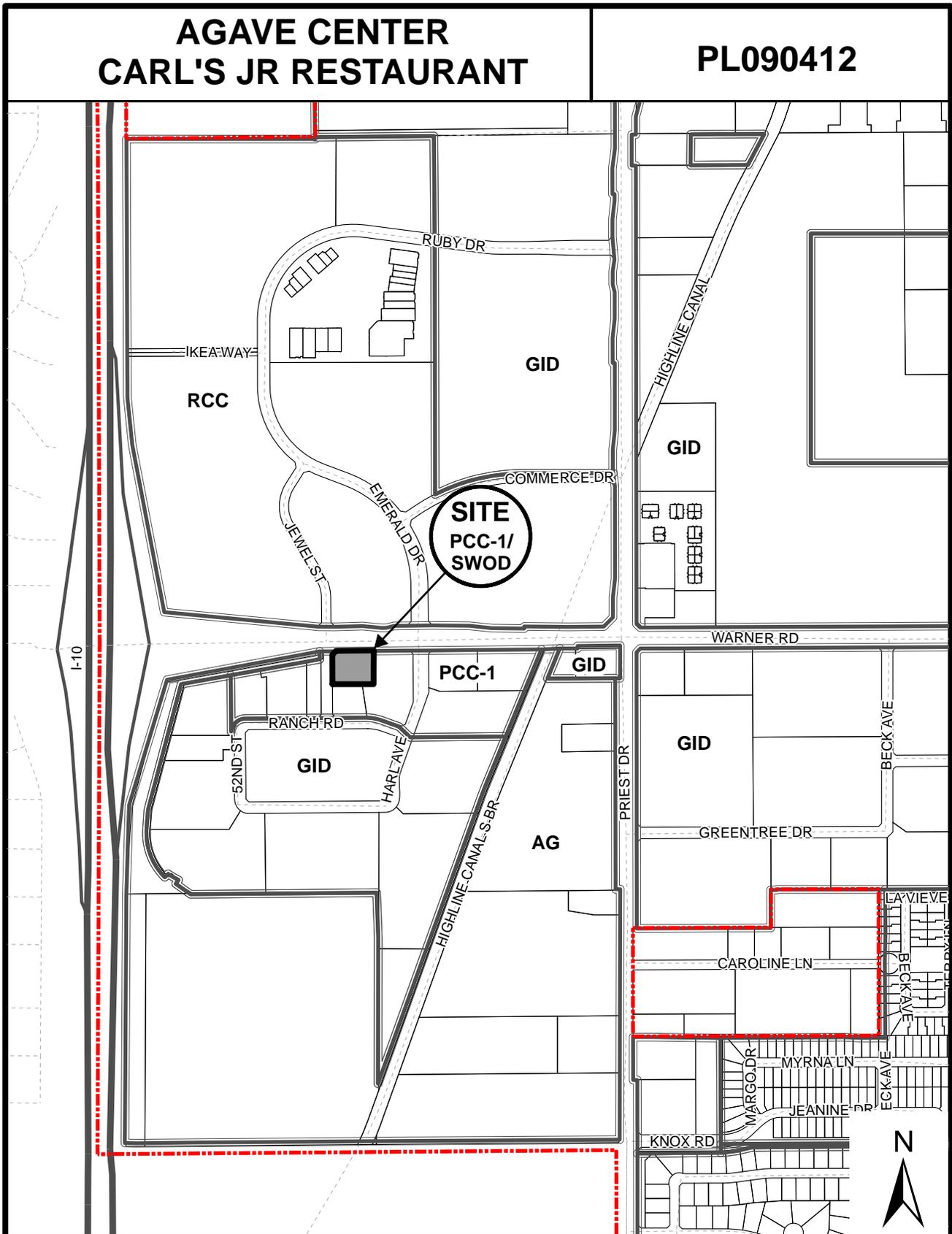
Vehicle Parking -- 40 spaces including two disabled accessible spaces (36 required)

Bike Parking -- 3 spaces (3 required)

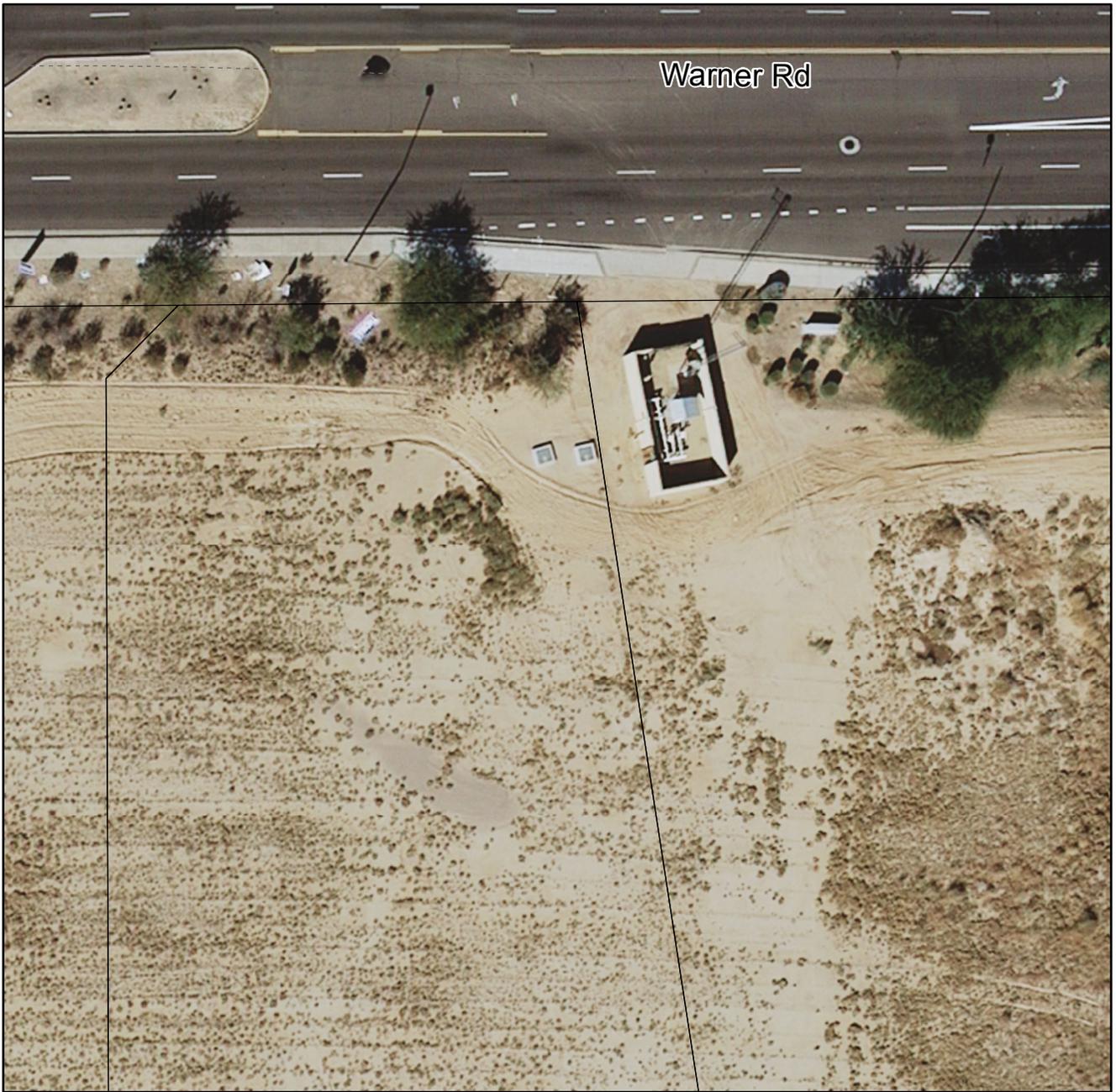
ZONING AND DEVELOPMENT

CODE REFERENCES:

Part 6, Chapter 3, Section 6-309 Variances
Part 4, Chapter 7, Section 4-704 Parking Facility Landscape Standards
Part 3, Chapter 4, Section 3-408 Drive-Through Facilities



Location Map



AGAVE CENTER - CARL'S JR RESTAURANT (PL090412)

One Arizona Center
Phoenix, AZ 85004-2202
602.382.6000
602.382.6070 (Fax)
www.swlaw.com

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

Nicholas J. Wood
602.382.6269
nwood@swlaw.com

August 16, 2011

Zoning Administrator
Development Services Department
City of Tempe
31 East Fifth Street
Tempe, AZ 85281

Re: 8825 South Jewel Street Variance Requests - "Carl's Jr"

Dear Zoning Administrator:

We represent CAJR, LLC, which is owner of the property known as 8825 South Jewel Street (APN 301-59-848). The property was the subject of two (2) variance requests, VAR09018 and VAR09019, both of which were approved on January 19, 2010, subject to seven (7) specific "conditions of approval".

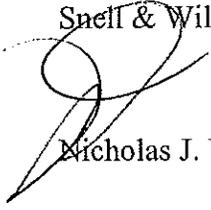
One of these, "Condition #1", required that "*Development Plan Review approval shall be obtained and construction documents for site development shall be submitted to the Development Services Building Safety Division for building permit by January 19, 2011 or the variance approval s shall be made void*".

Due to factors beyond the applicant's control, the deadline passed before the applicant could complete the requirements of Condition #1. At this time, the applicant is ready to move forward with development of the site. To permit the proposed project to move forward, the previously approved variances are required to be re-approved, hence the purpose of this request.

The project is consistent with the prior request and the facts of the circumstances around the variance request are the same as for the prior cases. Please see the enclosed materials for the supporting information associated with this variance request.

Respectfully submitted,

Snell & Wilmer



Nicholas J. Wood

NJW:NJG; dls
Enclosures

Snell & Wilmer
L.L.P.
LAW OFFICES

One Arizona Center
400 East Van Buren Street
Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000
602.382.6070 (Fax)
www.swlaw.com

Nicholas J. Wood
602.382.6269
nwood@swlaw.com

August 29, 2011

Via E-Mail

Kevin O'Melia
Senior Planner
Development Services Department
City of Tempe
31 East Fifth Street
Tempe, AZ 85281

Re: 8825 South Jewel Street Variance Requests - "Carl's Jr"

Dear Mr. O'Melia:

CAJR, LLC, is the owner of the property known as 8825 South Jewel Street. This property is planned for development of a "Carl's Jr" branded restaurant with associated drive-thru facility. Due to specific site conditions, deviation from the strict application of the City of Tempe Zoning and Development Code (the "Ordinance") is necessary to permit the project to proceed. Therefore, we are requesting two (2) variances from the Ordinance: (i) parking lot landscaping; and (ii) drive-through orientation for the restaurant. The purpose of this letter is to provide an overview of the requested variances and to analyze the property hardships that support approval of this request.

The property is located at the southeast corner of Warner Road and Jewel Street. It is a portion of the Agave Center Amended II (formally known as Agave Center and prior as the Warner 10 Commerce Center), which was last platted in 2011 (Maricopa County Recorder's Office Record: Book 1081, Page 3).

The property is generally flat, with no apparent unique geographic or hydrologic features. There is an existing easement to El Paso Natural Gas for a major natural gas underground pipe along the eastern half. This easement is 40 feet in width and originally dates back to 1933 (Maricopa County Recorder's Office Record: BK47 of Misc, PG564). As required by the prior variance approval, the easement was re-recorded in 2010 to establish a finite width of 40 feet (Maricopa County Recorder's Office Record: 2010-0399969 & 2010-0415459). The easement prohibits the construction of any structures upon it and El Paso Natural Gas does not permit the planting of trees in the easement area (to protect the pipelines and to ensure access to same).

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

Kevin O'Melia
Senior Planner
August 29, 2011
Page 2

There are two (2) sections of the Ordinance that require deviation because of the existence of the easement.

Request One: Deviation from Section 3-408, which states that “[n]ew drive-through facilities shall be oriented toward side or rear yards and not placed between the street right-of-way and the primary customer entrance. Minimum width of drive-through lane is nine (9) feet”.

The purpose of this development standard is to conceal the drive-through from view of the public right-of-way. The subject site “fronts” onto Jewel Street, which would require the drive-through to be located along Warner Road or behind the structure.

Along Warner Road, there is only about 100 feet of lot frontage between the mandatory landscape setback along Jewel Street and the gas pipeline easement. Therefore, we do not have adequate space to provide an ingress or egress driveway into the site at a safe distance from the intersection. Any drive-through located in this area would conflict with traffic safety and, as such, is not a viable design alternative.

We explored an alternative design with City staff. The alternative features a drive-through oriented to the rear of the building. Unfortunately, this design would require customers to either walk through the drive-through traffic lane or walk an extensive distance around the traffic lane to access the restaurant. Staff determined that this design is not practical (or desirable) because (i) pedestrians tend to walk in straight, direct routes (which will encourage crossing the traffic lane) and (ii) the parking spaces near the drive-through exit (numbers 21 to 32 and 11 to 20) would constantly conflict with existing vehicles (particularly when entering and exiting the parking stalls during peak business hours). Therefore, the alternative site layout is unsafe and not functional.

Conclusion: There is no viable alternative site design that will comply with Section 3-408 in the strictest sense. The gas pipeline easement prevents alternative site designs that are consistent with this requirement.

Request Two: Deviation from Section 4-704(A) which requires the provision of either standard or performance based shade provision for the parking lot area. Typically, this requirement would be met by planting shade trees in the landscaping planters adjoining the parking stalls.

However, because of the gas line easement, we are not permitted to install trees in any of the planters otherwise required within the easement area. This restriction on tree planting prohibits trees within the planting areas located in the center of the parking lot (as shown on the site plan).

Because of the required standard details for parking lot design (drive isle width, turn radii, etc), lot layout and landscaping requirements, there is no functional parking lot configuration that

Kevin O'Melia
Senior Planner
August 29, 2011
Page 3

will permit compliance with the shade provisions. The applicant will relocate the trees that would have been required to other locations on the property.

Conclusion: Today, parking lot design requires conformance to "best practices" of parking stall configuration, drive isle size/location as well as consideration for landscaping areas. Because of the no tree planting restriction over the gas line easement area, there is no possible way to accommodate the installation of shade trees.

Section 6-309.D contains four (4) findings that are required for the approval of a variance (also see A.R.S. § 9-462.06). The following is an assessment of those criteria in relation to these requested variances.

6-309.D.1: *"That special circumstances are applicable to the property, including its size, shape, topography, location or surroundings"*

The subject site has a unique special circumstance in that it is bifurcated by an easement that is 40 feet in width and runs from the south to the north boundary of the property, impeding the development of approximately 5,600 square feet of the site (about 15% of the net property).

Conclusion: The gas line easement is a special circumstance applicable to the subject property.

6-309.D.2: *"The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district"*

Because of the special circumstance of the gas line easement, the property is unable to be developed in a reasonable manner with a permitted land use as other PCC-1 zoned properties. The easement restricts the site design in a manner that will prevent the development of a permitted land use, a privilege enjoyed by other properties of the same classification and zoning district.

Conclusion: Strict application of Section 4-704 (Landscape) and Section 3-408 (Drive-Through Orientation) would deprive the ownership of the property the ability to develop a permitted land use on the subject site, a use right enjoyed by other similarly zoned properties in the area.

6-309.D.3: *"The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located"*

The requested deviation from the strict application of the Ordinance is not a grant of special privileges; this request will only permit the development of the site with an already permitted land use. The trees normally required are simply going to be relocated to other

Kevin O'Melia
Senior Planner
August 29, 2011
Page 4

landscaping areas on the site, resulting in an equivalent number of trees as would otherwise be required. The drive-through location is necessary to facilitate the development of the site with a restaurant with a drive-through component, a permitted land use in the PCC-1 District. By authorizing the variance to the drive-through location, no new or "special" privileges will be granted.

Conclusion: The requested deviations are minor in nature, will permit the development of the site with a permitted land use and will not grant any special privileges as this limitation, in its specific location and width, is unique to this site.

6-309.D.4: *"A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner"*

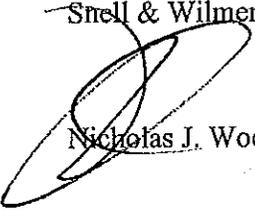
The gas line easement dates to 1933, well before the current ownership was involved with the property. The site cannot be designed to comply with Section 3-408 and 4-704(A) of the Ordinance because of the existence of the easement.

Conclusion: The special circumstances are not self-imposed by the property owner.

In summary, the requested variances are minor development standard deviations that will allow the development of the site as a permitted land use within the PCC-1 zone. Alternative designs were reviewed with City staff. There are no practical functional alternative designs for the proposed restaurant facility that will alleviate the need for the variances requested. By approving these variances, the intent of the Ordinance will be maintained.

Respectfully submitted,

Snell & Wilmer



Nicholas J. Wood

NJW:NJG; dls

One Arizona Center
Phoenix, AZ 85004-2202
602.382.6000
602.382.6070 (Fax)
www.swlaw.com

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

Noel J. Griemsmann, AICP
Sr. Urban Planner
602.382.6824
ngriemsmann@swlaw.com

July 26, 2011

City of Tempe
Development Services Department
31 East 5th Street
Tempe, AZ 85281

Re: Neighborhood Meeting Requirement Applicability

Dear To Whom It May Concern:

The variance request for the property located at the southeast corner of Jewel Street and Warner Road is not subject to the neighborhood meeting requirement as it is more than 300 feet from an adjoining residential use. The graphic attached demonstrates the approximate distance to the closest known residential land uses, which is approximately 1,065 feet to the southeast and 1,500 feet to the west.

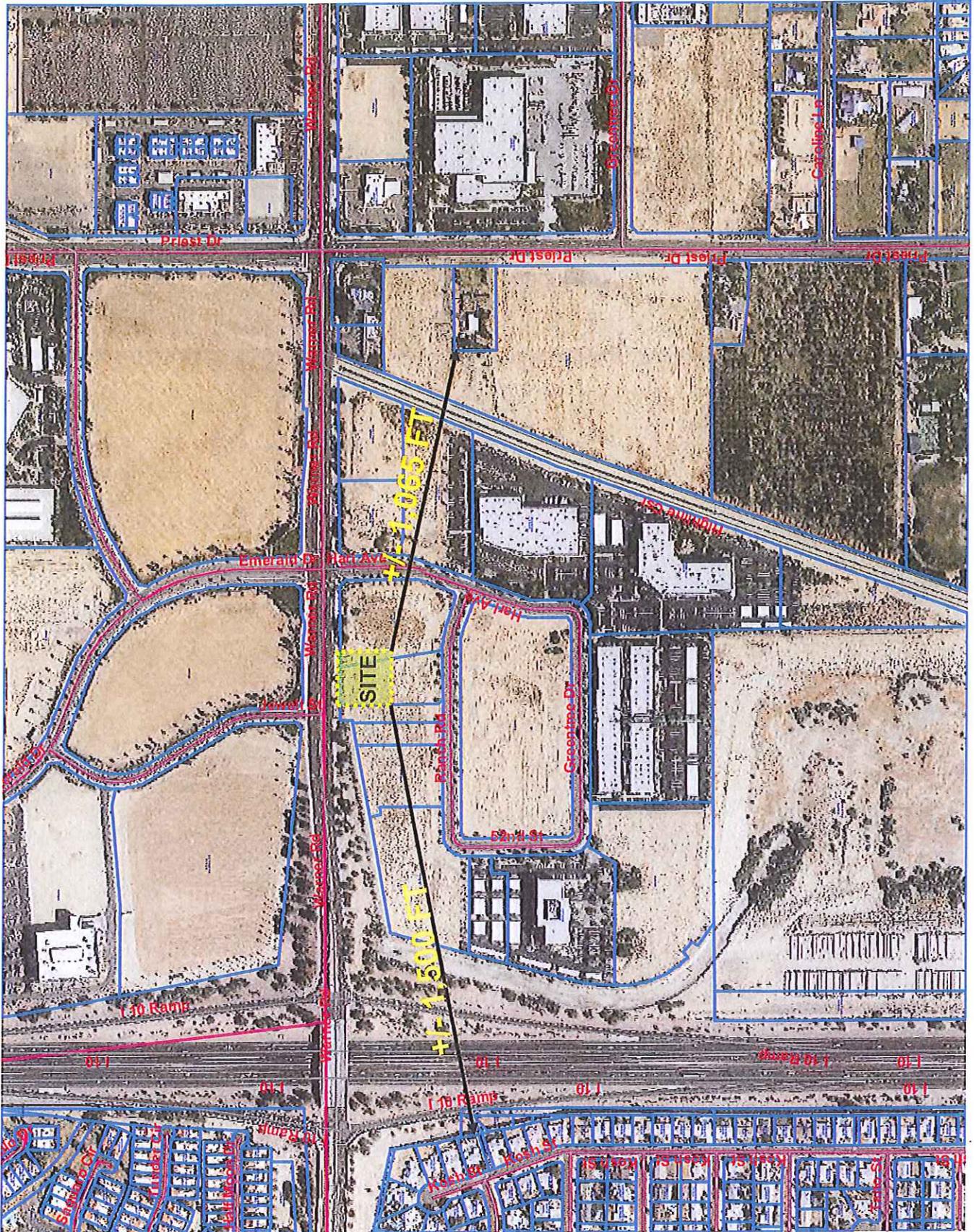
Since there are no residences within 300 feet of these variance requests, no neighborhood meeting is required under Section 6-402(B). Please consider this letter as documentation of compliance with the applicable requirements of Section 6.402 for the "Neighborhood Meeting".

Respectfully submitted,



Snell & Wilmer

Noel J. Griemsmann, AICP



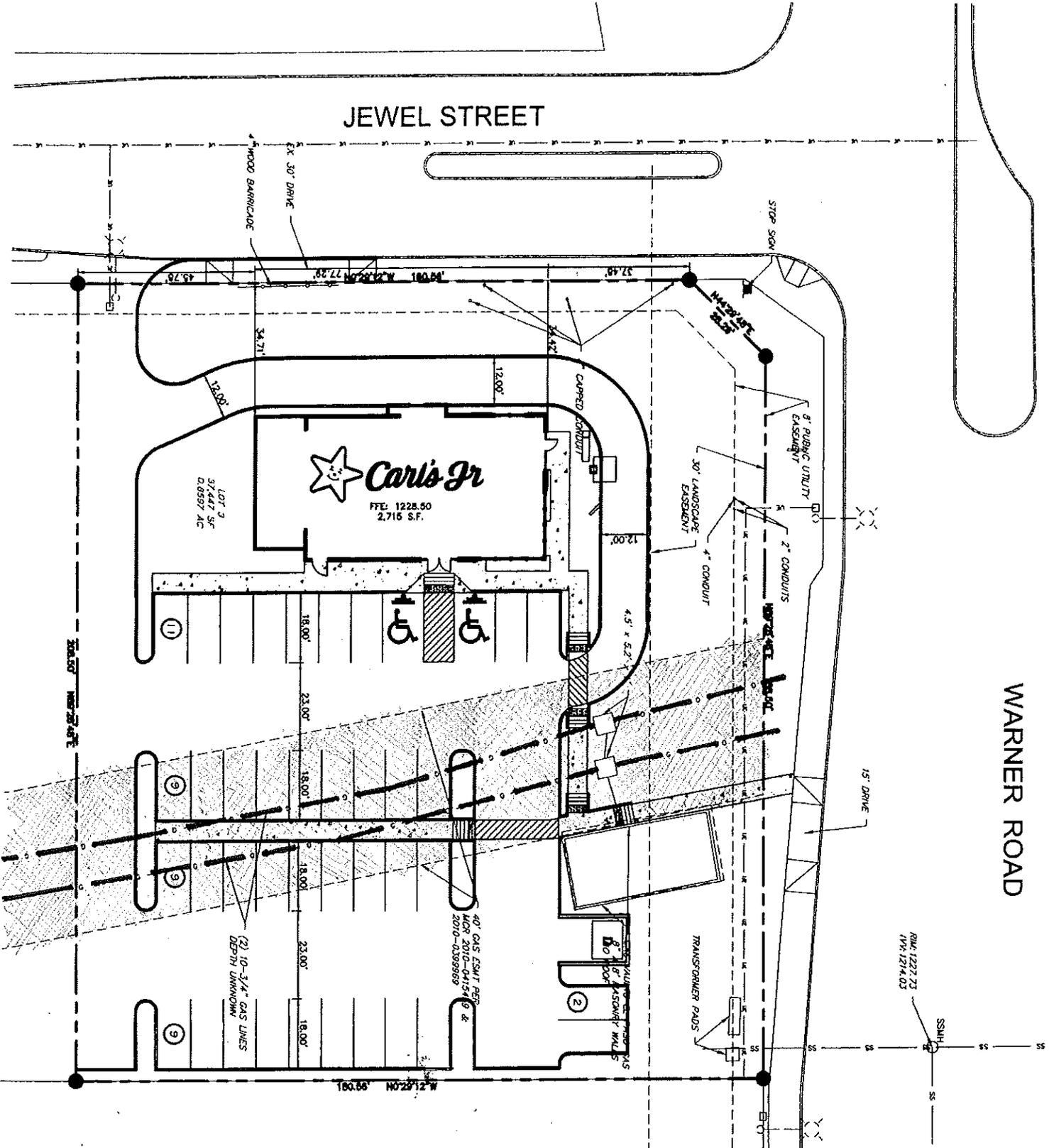
JEWEL STREET

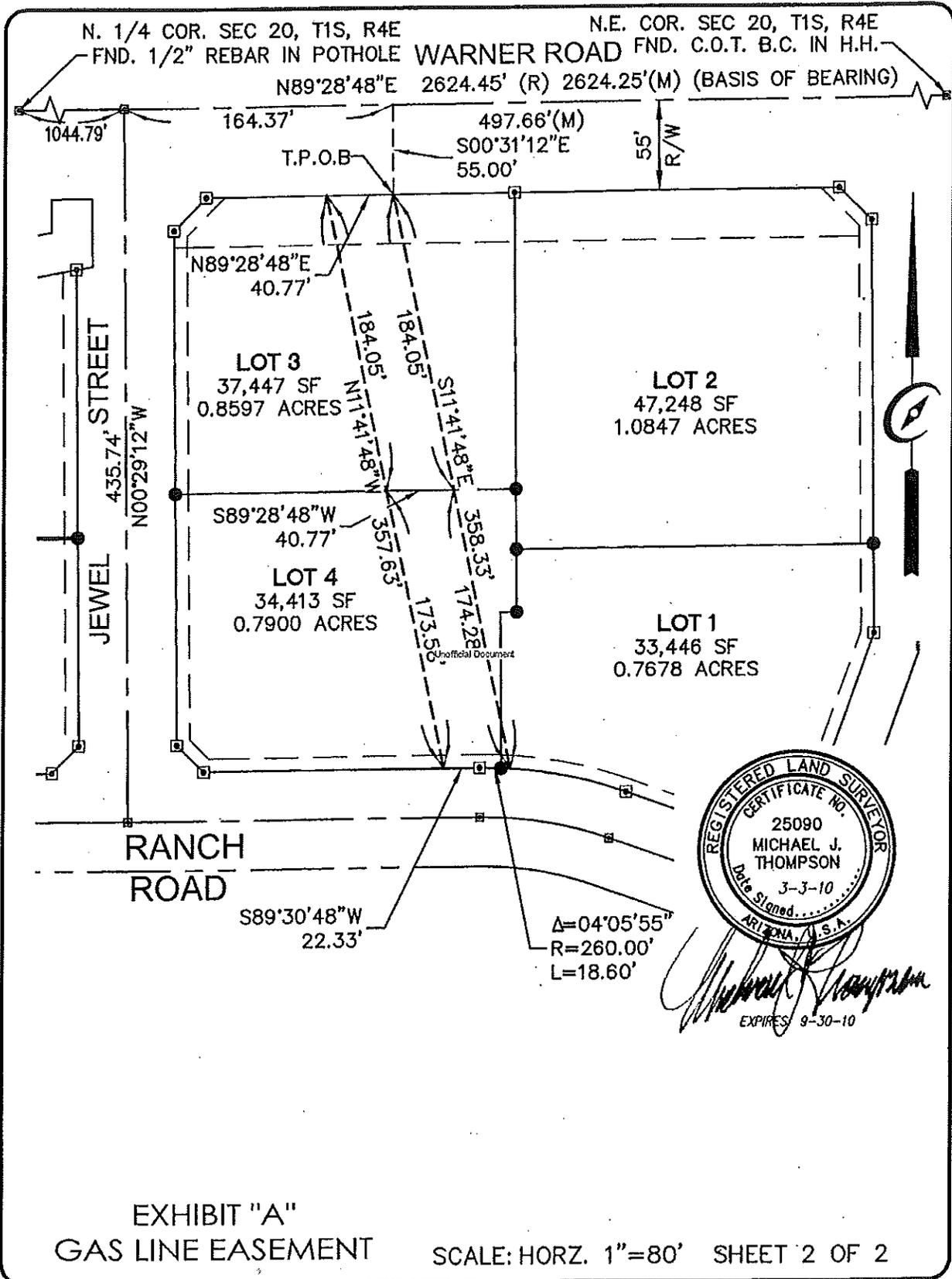
WARNER ROAD



FFE: 1228.50
2,715 S.F.

LOT 3
37,447 S.F.
D. 8597 AC





One Arizona Center
Phoenix, AZ 85004-2202
602.382.6000
602.382.6070 (Fax)
www.swlaw.com

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

Nicholas J. Wood
602.382.6269
nwood@swlaw.com

January 8, 2010

Kevin O'Melia
Senior Planner
Development Services Department
City of Tempe
31 East Fifth Street
Tempe, AZ 85281

**Re: 8825 South Jewel Street Variance Requests - "Carl's Jr"
El Paso Easement Information**

Dear Mr. O'Melia:

My request for variance for the Carl's Jr store to be located at 8825 South Jewel Street is the need to deviate from (i) parking lot landscaping standards and (ii) drive-through orientation standards because of the existing El Paso Gas easement and pipeline facilities that bifurcate the site.

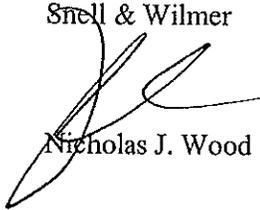
El Paso Gas will not permit the installation of trees or structures in the easement area. As noted in my narrative, this severely restricts design alternatives for the subject property. Enclosed you will find a copy of the El Paso Gas encroachment form that documents their policy regarding "surface alterations".

Please note that under "General Requirements for Surface Alterations" (Page 2), Item II.B clearly states that "no trees are allowed on the right-of-way". Additionally, the same section that the "Company's easement restricts the placement of a structure, or any part of a structure, within the right-of-way".

I respectfully request that this letter and documentation be added to the materials provided to the hearing officer for his/her review to document El Paso Gas' restrictions regarding use of the easement.

Respectfully submitted,

Snell & Wilmer



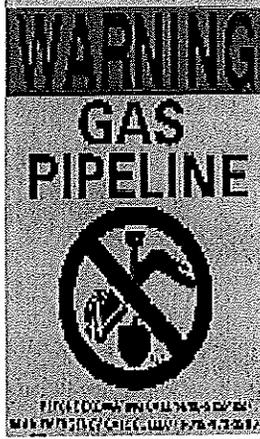
Nicholas J. Wood

NJW:NJG; dls
Enclosure

Revision Date: 5/01/03

Western Pipelines for:

- Colorado Interstate Gas Co.
- El Paso Natural Gas Co.
- Mojave Pipeline Operating Co.
- Wyoming Interstate Company



Permit Requested by _____
 Name _____
 Address _____
 Phone () _____

Your gas company representative is _____ Phone (Collect Calls Accepted)

ENCROACHMENT LOCATION					
SECTION:	TOWNSHIP:	RANGE:	COUNTY:	ST:	PM:
LATITUDE:	LONGITUDE:	LENGTH:	STATION NO:		
LINE LIST NO.:		ROW WIDTH:	ALIGNMENT SHEET NO.:		
ENCROACHMENT DESCRIPTION					

One Call number for your area is _____

_____ ("Grantor") hereby grants a permit to install, maintain and operate the above-referenced encroachment facilities ("Permitted Facility") on the above-referenced Company easement or other property ("the Property"). This permit is granted subject to the terms, requirements, and conditions shown below and strictly in accordance with the general requirements and item(s) _____ of the encroachment specifications shown on the following page(s).

DAMAGE PREVENTION: Permittee agrees that it shall not begin construction upon and along the Property until Permittee first provides Grantor with plans and specifications and until such plans and specifications have been approved by Grantor. Permittee further agrees to contact the following the statewide associations (One Call) within its area at least two working days prior to the commencement of construction on the property. Such construction shall be made only when a representative of Grantor is present at the time and place of construction. The instructions of such representative relating to the safety of the pipelines or other facilities of Grantor shall be followed by the Permittee, its agents and employees. Any damage done to Grantor's facilities incurred due to Permittee's failure to adhere to the state "CALL BEFORE YOU DIG" law, or incurred during construction of the Permitted Facility, shall be paid for or repaired at the expense of the Permittee.

This Permit shall be revocable in the event of noncompliance of any terms, requirements, conditions, and specifications hereof upon written notice given to Permittee and /or owner of record.

INDEMNIFICATION: Permittee covenants and agrees to at all times protect, indemnify, hold harmless, and defend Grantor, its officers, agents or employees, from any liability or expense, including attorneys' fees, arising from claims asserted by any person or persons for personal injuries, death or property damage including but not limited to employees of the Permittee or its contractors, subcontractors or their employees, arising from or growing out of the construction, existence, maintenance, operation or removal of the Permitted Facility.

ENVIRONMENTAL AND SAFETY LAWS: Permittee shall comply with all federal, state, and local laws, rules and regulations, agency policies, guidance documents or common law including, but not limited to, those related to safety or pollution or protection of the public health and the environment that govern the emission, discharge, release, manufacture, processing, distribution, use, treatment, handling, storage, disposal, or transportation of hazardous or non-hazardous substances, materials, pollutants, contaminants, chemicals, and/or waste.

COMPANY: _____

By: _____
 GRANTOR

I acknowledge that I am authorized to execute this Encroachment Permit for the above stated entity and that I have carefully read the requirements, terms and conditions of this Permit. I also understand the provisions and prescribed penalties as provided under the laws regarding excavation.

ENCROACHMENT REQUIREMENT

By: _____
PERMITTEE

Said company is an interstate transporter of natural gas and hazardous liquids and as such, is regulated by the Department of Transportation, Office of Pipeline Safety (OPS). In some cases state and local law may exceed the federal regulations. The general requirements listed below have been designed to comply with state and federal regulations as well as insuring the safety of the public and protecting the pipeline.

The following requirements have been developed to cover a wide variety of proposed uses that may run parallel with or encroach under, over or on the right-of-way easements or other property. These minimum requirements for most proposed encroachments are incorporated into this Permit to avoid conflict with existing easement rights. Additional requirements may be required depending upon the proposed encroachments. For a review of your individual situation, please contact the nearest _____ office at _____.

GENERAL REQUIREMENTS FOR SURFACE ALTERATIONS

- A. Many states have laws which require 48 hours notice be given to the operators of underground facilities prior to beginning excavation. This may be accomplished by contacting a One Call system (check your state).
- * B. Company's easement restricts the placement of a structure, or any part of a structure, within the right-of-way.
- C. An authorized Company representative must be on site during any work performed on or across the right-of-way, and will remain as long as power equipment is utilized.
- D. The Company representative will determine the amount of cover over the pipeline that may be required.
- E. Any change in the amount of existing material (soil) on and over the right-of-way must be approved in advance.

I. FENCES

- A. Fence posts shall not be installed within 5 feet of the center of the pipeline, and the first post either side of the pipe shall be set in hand dug holes.
- B. To perform normal maintenance, access through or around fences crossing the right of-way must be provided.
- C. Installer shall adhere to provisions A & C of GENERAL REQUIREMENTS FOR SURFACE ALTERATIONS

II. LANDSCAPING (plantings which require excavating beyond 1 foot in depth)

- A. Flower beds and shrubs are permitted within the right of-way but may be damaged by required annual surveys, if planted directly over the pipeline. Heavy maintenance may require total clearing of the right of way.
- * B. Lawns and vegetable gardens are acceptable uses. No trees are allowed on the right-of way.
- C. Provisions A & C of the GENERAL REQUIREMENTS FOR SURFACE ALTERATIONS pertain to this type of planting.

STREETS, ROADS AND DRIVEWAYS

- A. Residential or driveways intended for light vehicle access to a single family dwelling must have a minimum of 4 feet of cover over the pipeline. If heavy vehicles; such as semi trucks or construction equipment, will use the road, refer to Item E under this Section for additional requirements.
- B. Driveways shall not run lengthwise within the right-of-way and

must cross on an angle, which is not less than 45 degrees.

C. An opportunity for Company to make a pipe inspection must be given prior to the start of any construction.

D. Provisions A, C, D & E of the GENERAL REQUIREMENTS FOR SURFACE ALTERATIONS pertain to driveway crossings.

E. Highway, residential street or road construction requires a special encroachment agreement from the Land Department, and plans for such crossings should be submitted 90 days prior to work commencement to allow time for project impact review by the local Company office.

IV. TEMPORARY EQUIPMENT CROSSINGS

A. Normal loads acceptable to the state highway department may cross the pipeline where a minimum of 5 feet of cover is provided. Equipment such as construction, logging, etc., must cross the pipeline only at approved crossing locations where the cover has been checked and determined adequate to meet bearing load requirements.

B. Contractor shall also be required to meet Provisions, A, C & D of the GENERAL REQUIREMENTS FOR SURFACE ALTERATIONS.

V. OPEN WATERWAYS

A. Open waterways smaller than 3 feet wide at the bottom are defined as "ditches" and must have a minimum of 3.5 feet of cover from the top of the pipe to the bottom of the ditch, or the ditch must be lined using an approved method and material. Larger open waterways are defined as "canals" and are considered on an individual basis.

B. Anyone altering (clearing, regrading or changing alignment) a waterway must obtain approval from Company prior to making changes and shall meet Provisions A & C of the GENERAL REQUIREMENTS FOR SURFACE ALTERATIONS.

VI. EXCAVATION

A. Plans for any excavation on the right of way must be approved prior to commencing work. Excavating closer than 2 feet to the pipeline shall be done by hand until the pipeline is exposed and shall be done only under the supervision of an authorized Company representative.

B. When a backhoe is used, the bucket teeth should be curled under each time it's brought back into the ditch to reduce the chance of teeth contacting the pipe.

C. Any plowing or ripping of soil on the right-of-way, including agricultural, at depths greater than 1 foot will require specific authorization from the Company..

GENERAL REQUIREMENTS FOR BURIED LINE CROSSINGS

A. All buried lines crossing Company's right-of-way shall be installed adhering to all applicable codes and requirements governing such installations.

B. All buried lines crossing the right-of-way must cross on an angle at 90 degrees or as close to it as possible. This angle must be maintained across the entire width of the easement.

C. All buried lines should cross under the pipeline. However, when obstructions or unfavorable soil conditions are

encountered, or when the Company's pipeline is located at a depth greater than 4 feet, approval to cross over the line may be granted by said Company..

D. To avoid unexpected service interruptions of buried lines, crossing over Company's pipeline, a minimum of 24 inches of cover (or local minimum required depth) must be provided over the existing crossed line.

GENERAL REQUIREMENTS FOR BURIED LINE CROSSINGS CONT.

E. All buried lines crossing the pipeline shall maintain a minimum separation of 24 inches between the two lines, and shall remain level across the entire right-of-way.

F. No foreign appurtenances (meters, poles, drop boxes, collection basins, etc.) shall be located on the right-of-way.

G. A six inch wide vinyl burial warning tape shall be placed 12 to 18 inches above the crossing line and extend across the entire right-of-way, as a protective measure.

H. A joint trench is the recommended method for utilities to cross, and under normal circumstances only requires that one permit be obtained by the excavating company.

I. COMMUNICATION LINES (TELEPHONE, TV, OTHER DATA LINES)

A. Shall meet all provisions for GENERAL REQUIREMENTS - BURIED LINE CROSSINGS

B. Shall be encased in a rigid nonmetallic conduit across the full width of the right-of-way and buried at constant depth across the right of way(s).

C. Fiber optic lines must be encased in PVC or equal conduit and the conduit must be encased with a minimum 5 inch red dye concrete with minimum strength of 2,500 psi across the full width of the right-of-way.

D. There will be no intentional grounding within 200 feet of the pipeline.

II. BURIED POWER LINES

A. Shall meet all of the GENERAL REQUIREMENTS - BURIED LINE CROSSINGS, except for item E.

B. Shall have minimum clearances between lines of 24 inches for 0 to 600 volts; 30 inches for 601 to 22,000 volts; 36 inches for 22,001 to 40,000 volts; and 42 inches for 40,001 volts and above.

C. In the event an underground electric line crosses the pipeline, it will be necessary to install the crossing line in pvc or rigid heavy wall steel conduit with a minimum 5 inch red dye concrete with minimum strength of 2,500 psi across the full width of the right-of-way.

D. Signs should be placed at each edge of the right-of-way to mark the underground cable angle and path of crossing. If the underground cable crosses above the pipeline, the signs shall so indicate. These signs are to be furnished by the power company or the encroaching party.

III. SEWER AND WATER LINES

A. Shall meet all of the GENERAL REQUIREMENTS - BURIED LINE CROSSINGS.

- B. No manholes or other appurtenances shall be installed in the right of way.
- C. Septic tanks and drainfields are not permitted in the right of way.

IV. SUBSURFACE DRAINAGE TILE (NON-METALLIC)

- A. Shall meet provisions A, B, E, G & H of GENERAL REQUIREMENTS - BURIED LINE CROSSINGS.

V. METALLIC PIPE CROSSINGS

- A. All 4 inch and larger metallic pipes crossing Company's pipeline or any metallic pipe transporting potential hazardous material (petroleum, natural gas, etc.) shall have two corrosion test leads installed on Company's pipeline and two on the crossing pipe at the point of intersection.
- B. Company personnel must install the leads on company's Pipeline(s) and, if requested, will also install the leads on the crossing pipe.
- C. Metallic pipe crossings shall have an electrical insulation coating for the full width of the right-of-way.

ABOVE GROUND UTILITY LINE CROSSINGS

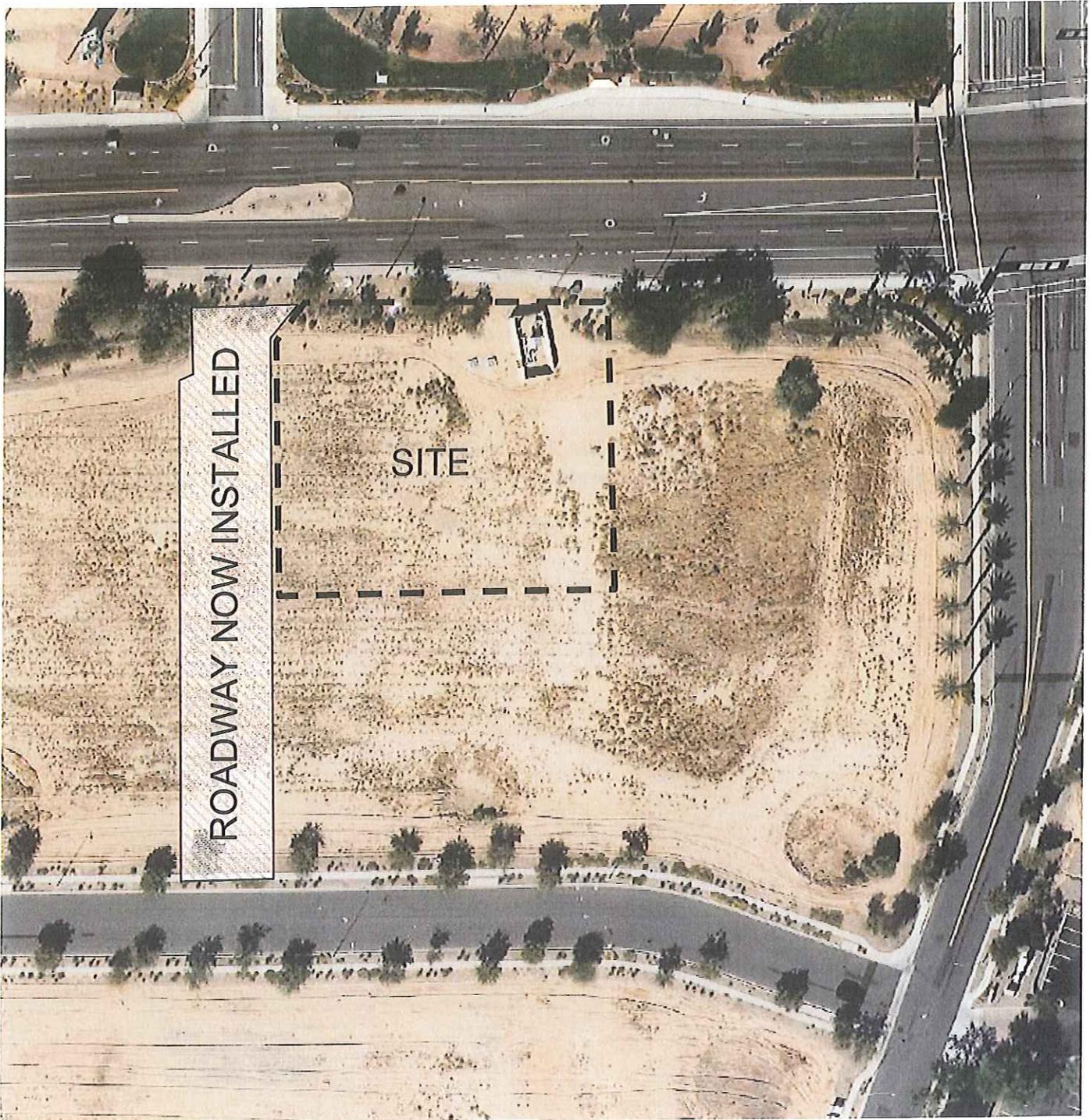
- A. Power lines shall maintain a minimum height of 30 feet of clearance over the right-of-way grade.
- B. Shall have no poles or appurtenances located on the right-of-way.
- C. Above ground crossings shall not be above or closer than 200 feet horizontally to any gas escape vent (e.g., relief valve vent, station blowdown vent).
- D. Any pot hole (bell hole) request shall be made through a Company's representative.
- E. Any facilities laying on or just above the surface on the right of way that would impede the access of company vehicles shall have a vehicular ramp installed over the facilities.

Special provisions not addressed in this document shall be listed below or as an attachment labeled as (EXHIBIT "A") attached to this form and initialed by the Permittee.

State One Call Contacts

- Arizona (800) 782-5348 www.azbsinc.com
Maricopa County (602) 263-1100
- California (800) 227-2600 www.digalert.org
- Colorado (800) 922-1987 www.uncc2.org
- Kansas (800) 344-7233 www.kansasonecall.com
- Nevada (800) 227-2600 www.usanorth.org

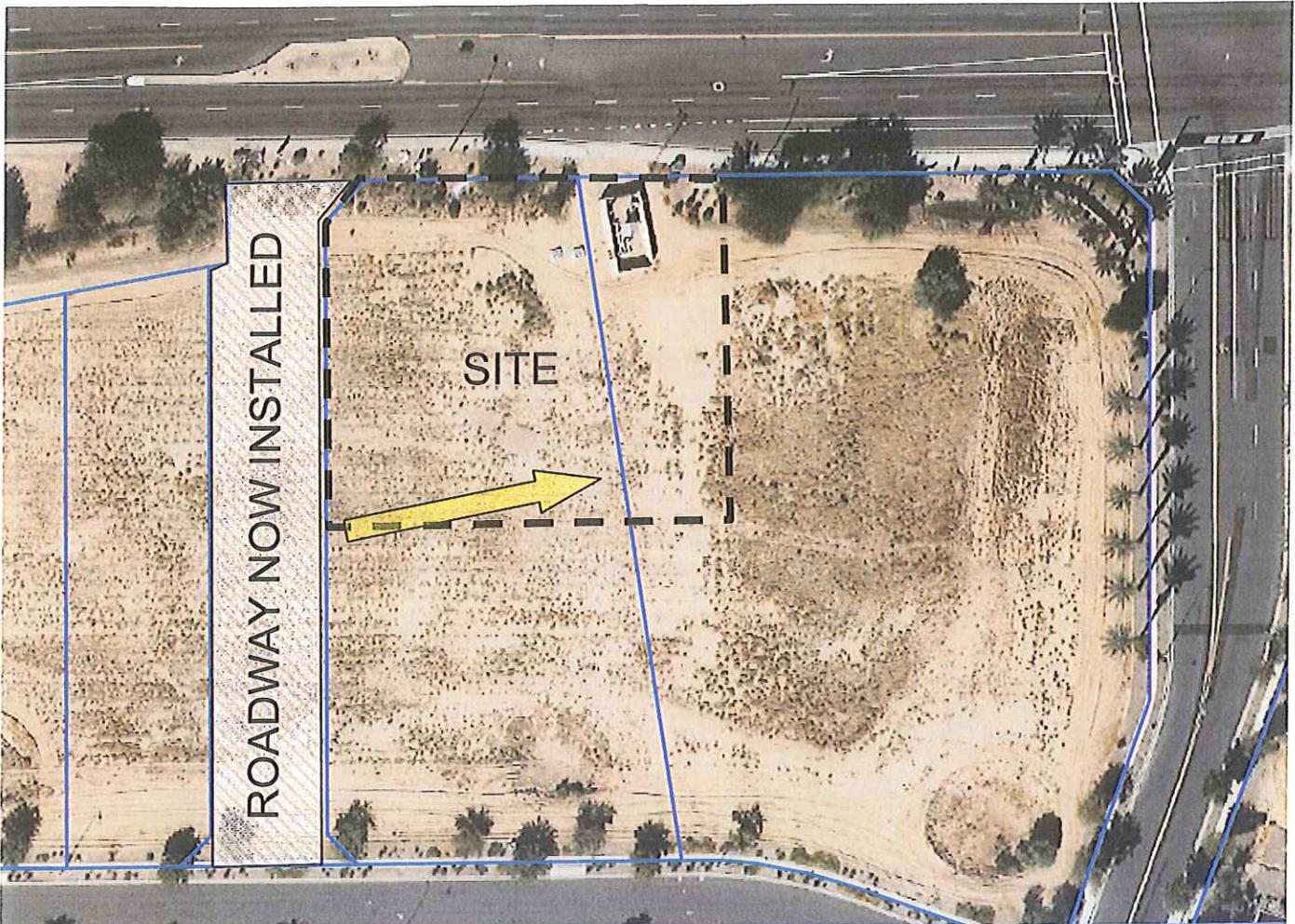
- New Mexico (800) 321-25378 (ALERT) www.nmonecall.org
- Oklahoma (800) 522-6543 www.callokie.com
- Texas Lone Star Notification (800) 669-8344
Texas Excavating Safety System (800) 344-8377
Texas One Call (800) 245-4545
- Utah (800) 662-4111
- Wyoming Wyoming One Call (800) 348-1030
Call Before You Dig of Wyoming (800) 849-2476

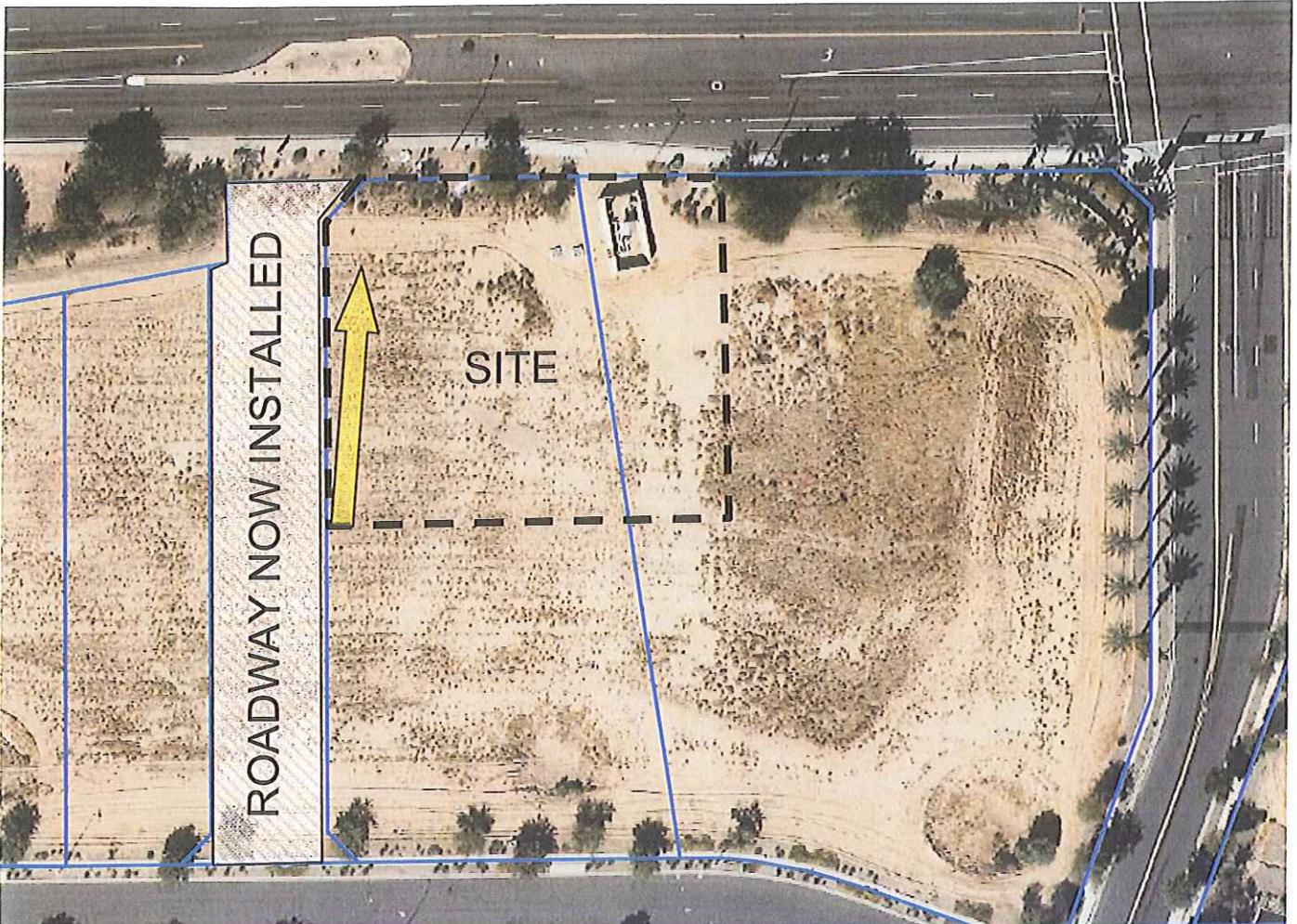


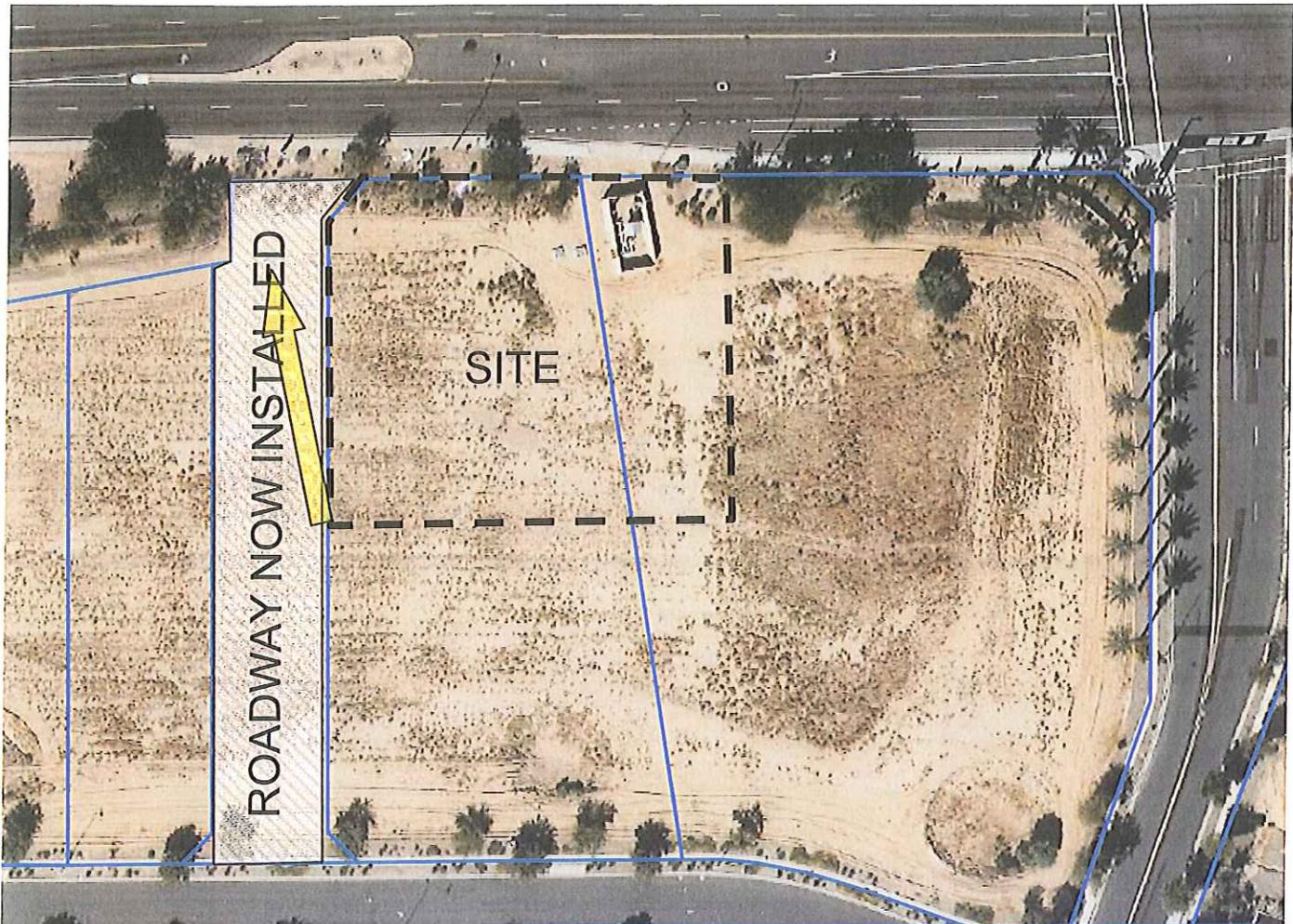
 = Direction of View

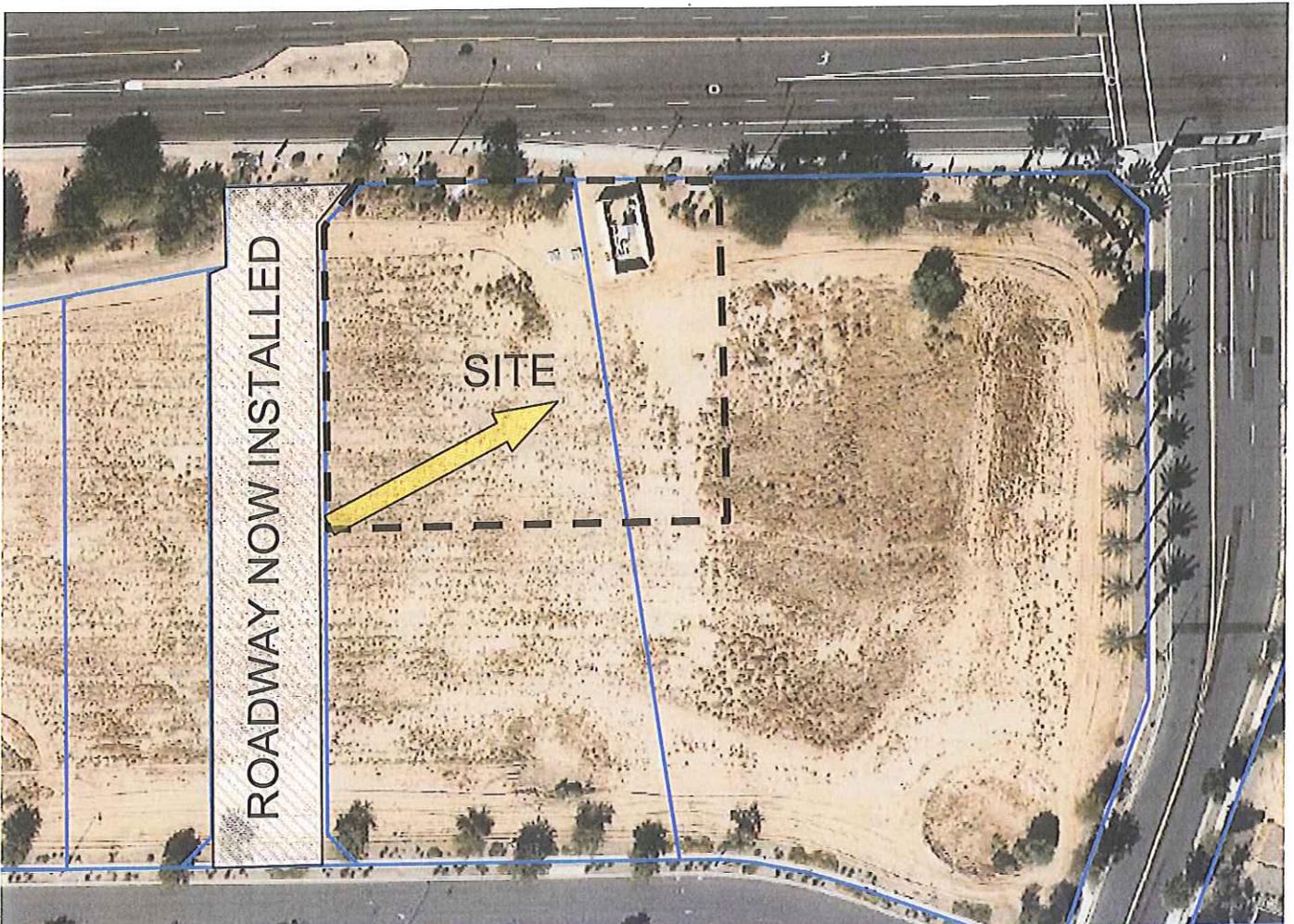


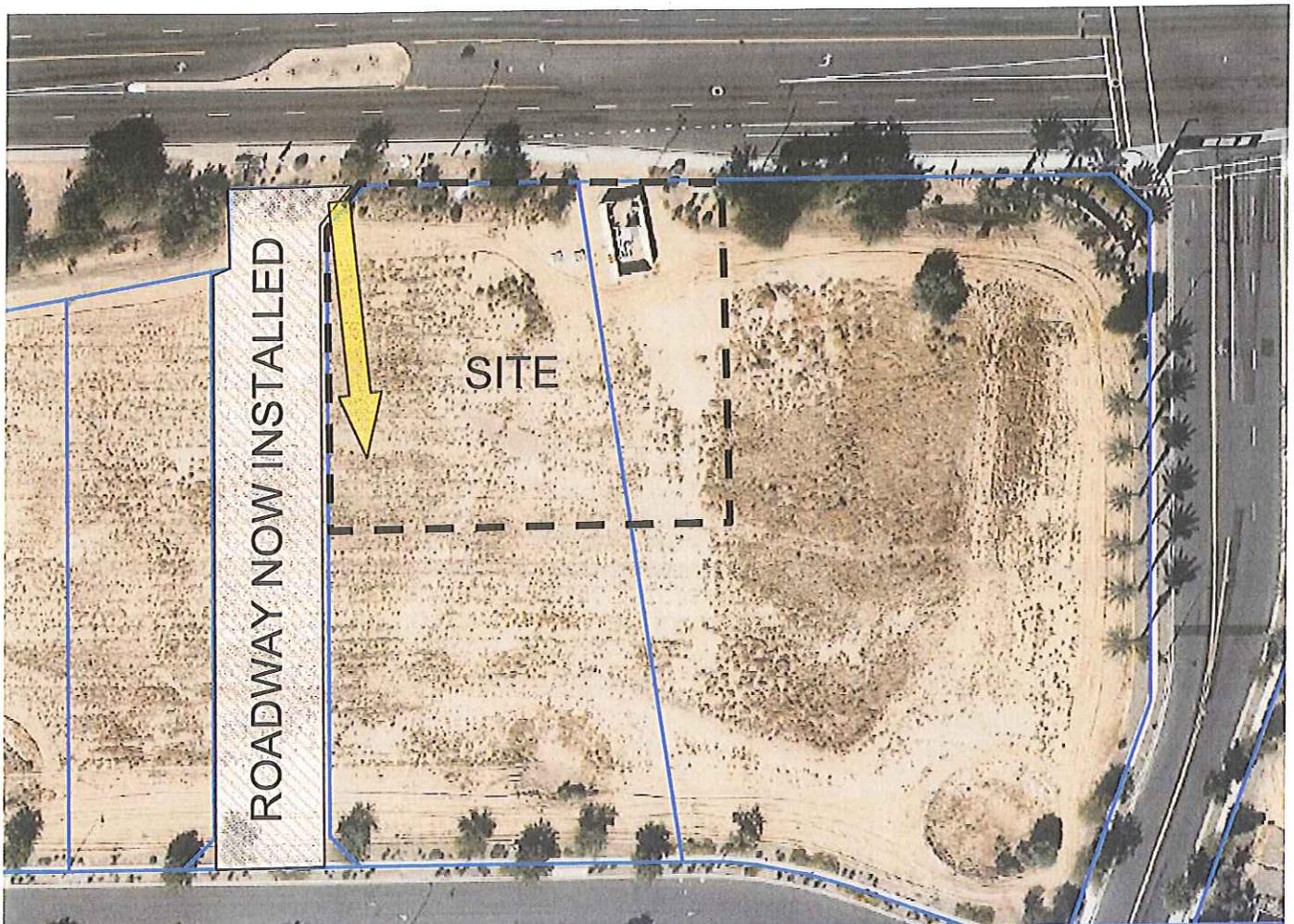
8825 S Jewel St – Site Photographs
Taken 01/11/10











ROADWAY NOW INSTALLED

SITE



