

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

Meeting Date: 9/27/2016
Agenda Item: 4

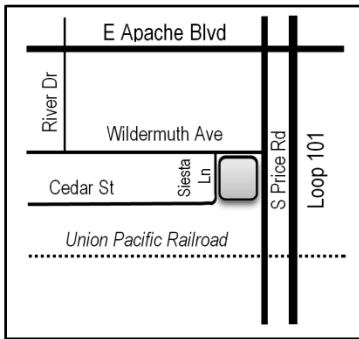
ACTION: Request for a Zoning Map Amendment from GID (TOD) to GID and a Use Permit to allow vehicle sales for DANARI TEMPE LLC (PL160239) located at 1401 South Siesta Lane. The applicant is Lewis Roca Rothgerber & Christie.

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

RECOMMENDATION: Approve, subject to conditions

BACKGROUND INFORMATION: The DANARI TEMPE LLC (PL160239) property consists of 1.48 acres, situated South of East Wildermuth Avenue between South Siesta Lane and South Price Road in the General Industrial District (GID) and in the Transportation Overlay District (TOD). The applicant, Michael J. Phalen of Lewis Roca Rothgerber & Christie PLLC, is requesting a Zoning Map Amendment to remove the property from the TOD with the GID to remain; and a Use Permit to allow vehicle sales in the GID. DANARI TEMPE LLC has leased the property to JSL Enterprises, Inc. to use for the storage, warehousing, distribution, wholesaling, and ancillary retail sales of automobiles. JSL Enterprises, Inc. has a long history of conducting vehicle sales at its current location at 1769 West University Drive in the GID; in compliance with the applicable zoning laws. The request includes the following:

1. Zoning Map amendment from GID, General Industrial District (Transportation Overlay District, TOD) to GID.
2. Use Permit to allow vehicle sales/rental (indoor or outdoor) in the GID, General Industrial District.



Existing Property Owner	Danari Tempe, LLC
Applicant	Michael J. Phalen, Lewis Roca Rothgerber & Christie PLLC
Zoning District (current/proposed)	GID (TOD, Corridor) / GID
Gross / Net site area	1.48 acres
Total Building Area	25,592 s.f.
Vehicle Parking	36 spaces (36 min. required per 8/7/96 Variance)
Bicycle Parking	0 spaces (4 min. required)

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Jeff Tamulevich, Interim Community Development Director
 Legal review by: N/A
 Prepared by: Lee Jimenez, Senior Planner
 Reviewed by: Suparna Dasgupta, Principal Planner

COMMENTS:

The DANARI TEMPE LLC property is located south of the Apache Boulevard Light Rail Corridor on the southeast corner of Wildermuth Avenue and Siesta Lane in the GID. The surrounding zoning consists of R-4 multi-family to the north and GID zoning to the south and west. East of the property is public right-of-way consisting of Price Road and the Loop 101 freeway. The existing 25,592 square foot office/warehouse building located on the property was constructed in 1997 and has been used for permitted office/warehouse uses ever since. According to Chapter 3 of the Zoning and Development Code (ZDC), office/industrial districts are designed to provide for office/industrial business involved in research, warehousing, wholesaling, and manufacturing. The facilities range from administrative and research institutions to assembly and production. Specifically, the GID permits office uses, warehousing, wholesaling, assembling and manufacturing of building materials, machinery and other commodities to provide employment centers and production.

The DANARI TEMPE LLC property is also located within the TOD which was adopted by City Council on November 17, 2005. Shortly after, the TOD boundary map was established by City Council on June 1, 2006. Property within the TOD is identified as any portion of a parcel or development that is adjacent to a public right-of-way located within 1,950 linear feet from the center of a light rail station platform, measured along the center of the public right-of-way; or along a corridor ranging in width up to 800 feet centered on the light rail line. The purpose of the TOD is to encourage appropriate land development and redevelopment that is consistent with the community's focused investment in transit, bicycle and pedestrian infrastructure in certain geographic areas of the City. The subject property is the only GID zoned property south of Wildermuth Avenue and east of River Drive that is located within the TOD. The public right-of-way adjacent to the property is approximately 1,875 linear feet from the center of the Price-101 Freeway / Apache Boulevard Station (see Attachment 3). For property located in the TOD with a GID underlying zoning such as the subject property, shipping or distribution, warehouse transport center, vehicle sales, and warehouse or other indoor storage uses are prohibited.

On September 8, 2016 a Zoning Administrator Opinion was issued to DANARI TEMPE LLC, per ZDC Section 6-301 Code Interpretations and Similar Use Rulings, who requested an opinion of a non-conforming use, seeking certain exemptions from the TOD for a site zoned GID and whether such uses are permissible by right for the intended use of the property. The use occupancy for the subject site has remained office/warehouse as identified on the property's certificate of occupancy issued on January 14, 1997. As a result, such defined use for general office, warehouse, storage and related distribution is permitted under the legal non-conforming use provisions pursuant to the ZDC, Part 3, Chapter 5, Non-Conforming Use or Development. The result of the allowed uses would also allow a business to warehouse vehicles for storage and distribution, so long as vehicle sales and/or rentals does not occur. "Vehicle Sales/Rental (indoor or outdoor)" is specifically identified within the GID as requiring a use permit. Such use would not be considered a legal non-conforming use and is prohibited within the TOD.

This request includes the following:

1. Zoning Map Amendment from GID, General Industrial District (Transportation Overlay District, TOD) to GID.
2. Use Permit to allow vehicle sales/rental (indoor or outdoor) in the GID, General Industrial District.

The applicant is requesting action for items one and two listed above. The applicant proposes the following uses of the site to allow: (1) internet vehicle sales, (2) wholesaling of vehicles, and (3) ancillary retail sales related to the permitted wholesale industrial use, not to exceed 15% of the total building area's primary industrial use (collectively "vehicle sales").

PUBLIC INPUT

- Neighborhood meeting required
- Neighborhood meeting held: August 17, 2016 from 6:00 p.m. to 7:00 p.m. at Tempe Police Department – Apache Substation, 1855 East Apache Boulevard.
- See attached summary of meeting provided by the applicant in the Public Involvement Plan Final Report, (Attachment 17-19).
- Community Development staff attended the meeting.

PROJECT ANALYSIS

ZONING

The property was originally developed as a single industrial warehouse building in 1997, consistent with the General Plan Industrial designation and the GID zoning at the time. On November 17, 2005 City Council established the TOD and subsequently established the TOD boundary map on January 1, 2006 which placed the DANARI TEMPE LLC property in the TOD. The building has been used for office and warehouse uses for almost 20 years. DANARI TEMPE LLC argues that there is little connection between the property and the Price-101 / Apache Boulevard Light Rail Station. In fact, the property narrowly falls within the 1,950 foot distance requirement to be designated within the TOD. Moreover, the light rail station is on the other side of the Loop 101 freeway which acts as both physical and psychological barriers to potential light rail users, at least from this property. The General Plan 2040, ratified by the voters on May 20, 2014, projects this site with a Projected Land use of "Industrial". This Zoning Map Amendment and Use Permit request for the subject property is consistent with the General Plan 2040 maps.

Section 6-304 C.2. Approval criteria for Zoning Map Amendment (*in italics*):

1. *The proposed zoning amendment is in the public interest.*

Although DANARI TEMPE LLC is supportive of the City's goal of encouraging use of the Valley Metro Light Rail System, the TOD Map designation makes it impractical, if not impossible; to use the property in the manner it was intended. The very nature of the property conflicts with the TOD Map designation. The warehouse use requires the product being warehoused on the property to be shipped in and out of the warehouse building by separate vehicles; therefore, the light rail system provides no commercial benefit to the property or its office and warehouse uses. The office and warehouse uses conducted on the property are not people or pedestrian oriented, so for commercial reasons, continuing to tie the property to the TOD provides no benefit to the City, the property owner or their tenant.

2. *The proposed zoning amendment conforms with and facilitates implementation of the General Plan.*

The TOD conflicts with the property's "Industrial" land use designation under the General Plan 2040, as well as the GID zoning on the property. Should the City approve the Zoning Map Amendment, the property will return to conformance with the City's General Plan 2040 and in conformance with ZDC Section 6-304C.

USE PERMIT

Should the Zoning Map Amendment request be approved, for further processing, the proposed use will require a Use Permit to allow vehicle sales/rental (indoor or outdoor) within the GID zoning district. DANARI TEMPE LLC's tenant intends to use the property to store and wholesale vehicles.

Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic.*

Vehicle storage is a permitted use under the GID zoning. It would follow that any traffic generated by the vehicle storage activity would fall within the scope of this permitted use. The tenant's proposed vehicle sales use will be limited in scope to internet and wholesale sales which require the use permit. Furthermore, the ancillary retail vehicle sales fall within the ZDC limits (15%) as a permitted use.

2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.*

The use will not generate any of the nuisance activities listed in the ZDC. The operations will be conducted exclusively inside the existing warehouse building. So no noise, dust, odor, etc. will be caused by the proposed use or generated from the property.

3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is*

not 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.

DANARI TEMPE LLC and its tenant's investment in property improvements will actually improve the surrounding property values and help stabilize the neighborhood.

4. *Compatibility with existing surrounding structures and uses.*

The property is located adjacent to the Price Road Freeway on the east and other warehouse/industrial uses on the south and west. The proposed use is consistent with and will not conflict with these surrounding industrial and freeway uses. Although the property is located adjacent to property zoned R-4 Multi-Family Residential on the north, the warehouse on the property has been located adjacent to these multi-family residential parcels for almost 20 years, so this proposed use will not change the neighborhood conditions, or the neighbor's expectations, that have existed over that same period of time. Further, the R-4 property are either underutilized, under developed, or are in transition, so the reinvestment triggered by this use will help improve the neighborhood.

5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

Contrary to certain preconceptions about vehicle sales businesses, the proposed use will be a fairly passive use. This is supported by the tenant's long history conducting internet vehicle sales at its current location. Because the proposed use will primarily involves internet sales and the wholesaling of vehicles, it will not attract the public and therefore will not result in an increase of traffic, noise, nor what is otherwise considered retail sales type of activity. For example, vehicles will not be on display on the property, no sales people will be walking around the property looking for or waiting on customers, and there will be no signs, banners, flyers or flags on the site. The proposed vehicle sales use will be conducted in conformity to any conditions, requirements, or standards prescribed therefore by the City Code, just as it has been conducted by tenants at its existing location for 9 years.

The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code.

REASONS FOR APPROVAL:

1. The project meets the General Plan Projected Land Use.
2. The project meets the development standards required under the Zoning and Development Code.
3. The proposed project meets the approval criteria for a Zoning Map Amendment and Use Permit.

Based on the information provided and the above analysis, staff recommends approval of the requested Zoning Amendment and Use Permit. This request meets the required criteria and will conform to the conditions.

ZONING MAP AMENDMENT CONDITIONS OF APPROVAL: EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The property owner(s) shall sign a waiver of rights and remedies form. By signing the form, the Owner(s) voluntarily waive(s) any right to claim compensation for diminution of Property value under A.R.S. §12-1134 that may now or in the future exist, as a result of the City's approval of this Application, including any conditions, stipulations and/or modifications imposed as a condition of approval. The signed form shall be submitted to the Community Development Department no later than 30 days from the date of City Council approval, or the Zoning Map Amendment approval shall be null and void.

USE PERMIT CONDITIONS OF APPROVAL:

1. This Use Permit is valid contingent upon City Council approval of the Zoning Map Amendment to remove the property from the Transportation Overlay District.

2. ~~If this Use Permit results in a change in occupancy, a building permit is required and the Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed, and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.~~
3. The Use Permit is valid for the plans as submitted within this application and is limited to (1) internet vehicle sales, (2) wholesaling of vehicles, and (3) ancillary retail sales not to exceed 15% of the total building areas primary industrial use. Any additions or modifications may be submitted for review during building plan check process.
4. All required State, County and Municipal permits shall be obtained or the Use Permit is void.
5. 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, which may result in termination of the Use Permit.
6. Any intensification or expansion of use shall require a new Use Permit.
7. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details ~~to be approved by Development Services Division resolved during Building Safety Plan Review.~~
8. Replace all dead or missing trees along all landscape areas and islands along with any other missing landscape material.
9. All rear exit doors require a ~~lexan security~~ vision panel. Details to be approved ~~through Building Safety Plan Review by Development Services Division.~~
10. Provide required bicycle parking spaces per City of Tempe Public Works Department bicycle rack detail T-578 standard.
11. Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within 14 days or by November 17, 2016.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

PARKING SPACES:

- Verify conformance of accessible vehicle parking to the Americans with Disabilities Act and the Code of Federal Regulations Implementing the Act. Refer to Building Safety ADA Accessible Parking Spaces Marking/Signage on Private Development details.
- At parking areas, provide demarcated accessible aisle for disabled parking.
- Distribute bike parking areas nearest to main entrance(s). Provide parking loop/rack per standard detail T-578. Provide 2'-0" by 6'-0" individual bicycle parking spaces. One loop may be used to separate two bike parking spaces. Provide clearance between bike spaces and adjacent walkway to allow bike maneuvering in and out of space without interfering with pedestrians, landscape materials or vehicles nearby.

ZONING AND DEVELOPMENT CODE: Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/zoning or purchase from Community Development.

SIGNS: Separate plan review process is required for signs in accordance with requirements of ZDC Part 4 Chapter 9 (Signs). Refer to www.tempe.gov/signs.

DUST CONTROL: Any operation capable of generating dust, include, but not limited to, land clearing, earth moving, excavating, construction, demolition and other similar operations, that disturbs 0.10 acres (4,356 square feet) or more shall require a dust control permit from the Maricopa County Air Quality Department (MCAQD). Contact MCAQD at <http://www.maricopa.gov/aq/>.

HISTORY & FACTS:

August 7, 1996	At the hearing held on August 7, 1996, the Hearing Officer approved a variance request to reduce the required on-site parking from 42 spaces to 36 spaces for EATON WAREHOUSE BUILDING (BA960191) located at 1401 South Siesta Lane in the GID.
January 14, 1997	Certificate of Occupancy (BP960713) granted for office/warehouse building located at 1401 South Siesta Lane in the GID.
November 17, 2005	City Council established Transportation Overlay District.
January 1, 2006	City Council established Transportation Overlay District boundary map.
September 8, 2016	Zoning Administrator Opinion defined uses for general office, warehouse, storage and related distribution permitted under the legal non-conforming use provisions pursuant to the ZDC, Part 3, Chapter 5, Non-Conforming Use or Development for DANARI TEMPE LLC (PL160239) located at 1401 South Siesta Lane in the GID (TOD).

ZONING AND DEVELOPMENT CODE REFERENCE:

Part 3 – Land Use, Chapter 3 – Permitted Uses in Office/Industrial Districts
Part 5 – Overlay Districts, Chapter 6 – Transportation Overlay District
Section 6-301 Code Interpretations and Similar Use Rulings
Section 6-304 Zoning Map Amendment
Section 6-308 Use Permit



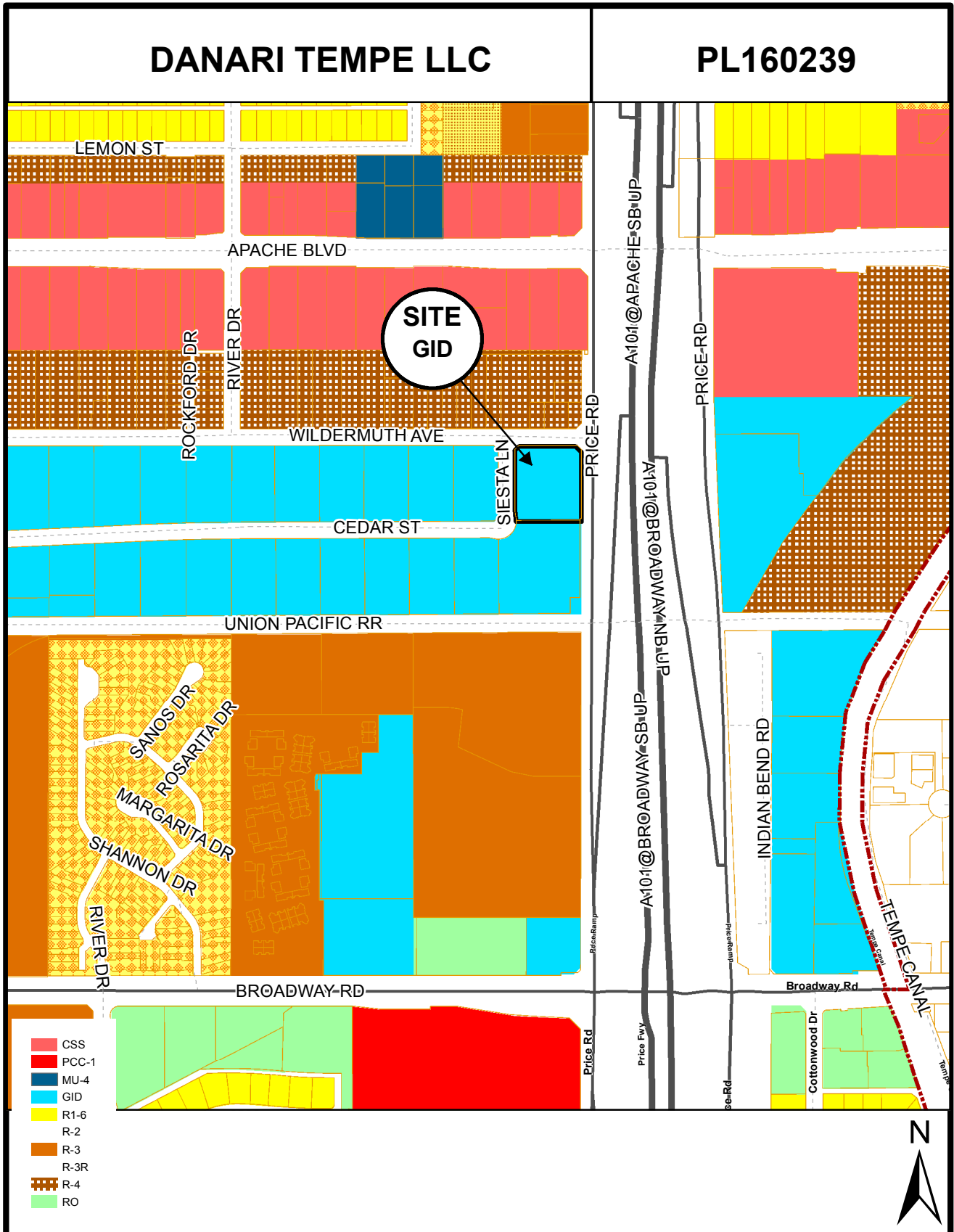
DEVELOPMENT PROJECT FILE

for

DANARI TEMPE LLC
(PL160239)

ATTACHMENTS:

1. Location Map
2. Aerial
3. ZDC Map Exhibit
- 4-8. Letter of Explanation for Zoning Map Amendment
- 9-13. Letter of Explanation for Use Permit
14. Site Plan
15. Floor Plan
16. Oblique Imagery of Site
- 17-19. Public Involvement Final Report Summary for Neighborhood Meeting and Correspondence



Location Map

DANARI TEMPE LLC

PL160239

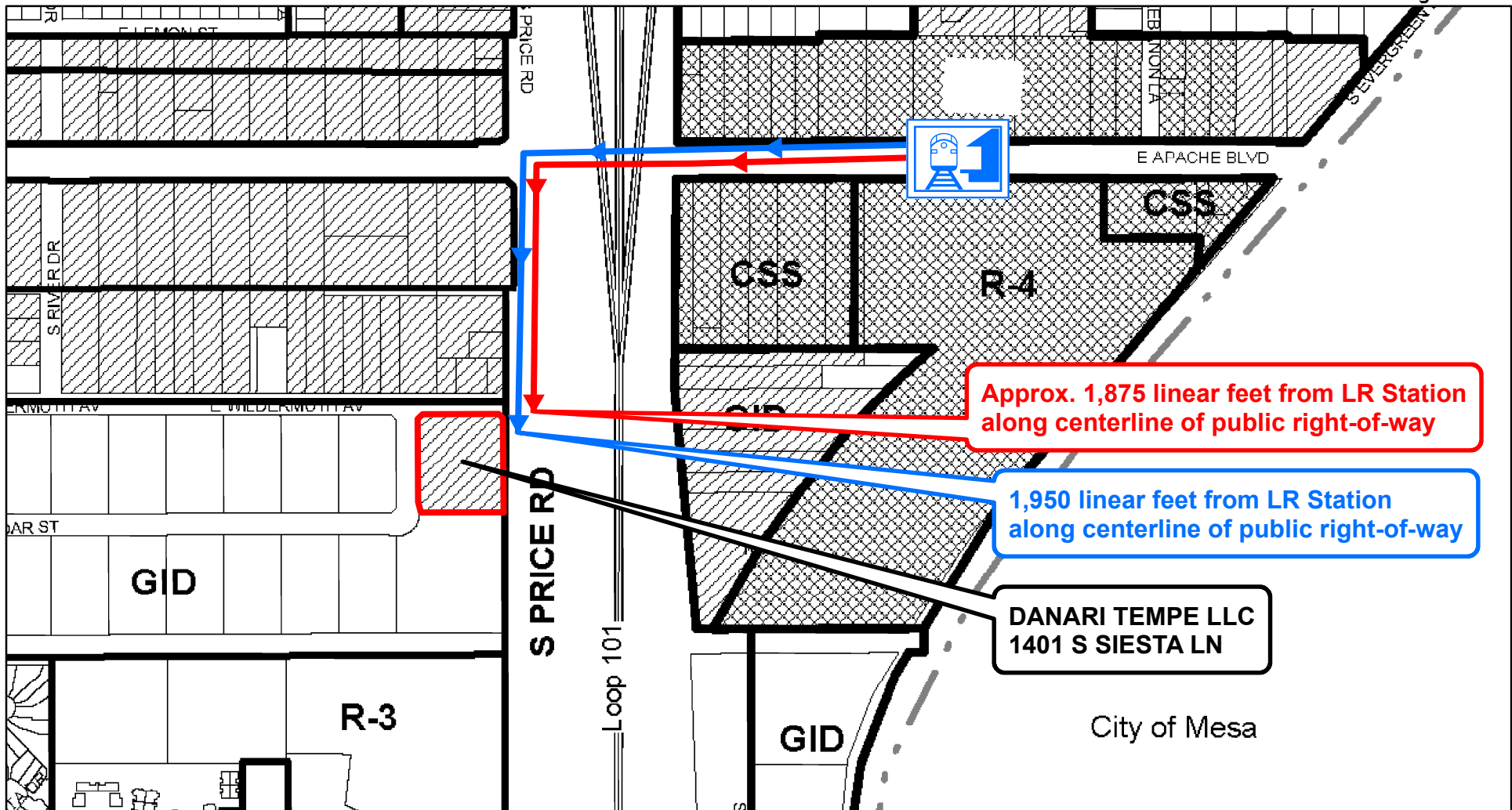


Maricopa County Assessor's Office

Aerials2016



Aerial Map



Approx. 1,875 linear feet from LR Station along centerline of public right-of-way

1,950 linear feet from LR Station along centerline of public right-of-way

DANARI TEMPE LLC
1401 S SIESTA LN

NOTE: This map represents the zoning related to a parcel or lot, but the City of Tempe is not responsible for situations requiring a field verification or legal description. This information should not be relied upon without staff verification.

ZONING MAP LEGEND

<p>RESIDENTIAL AG: Agricultural R1-4: Single-Family Residential R1-5: Single-Family Residential R1-6: Single-Family Residential R1-7: Single-Family Residential R1-8: Single-Family Residential R1-10: Single-Family Residential R1-15: Single-Family Residential R1-PAD: Single-Family Residential</p>	<p>R-2: Multi-Family Residential R-3R: Multi-Family Residential Restricted R-3: Multi-Family Residential Limited R-4: Multi-Family Residential General R-5: Multi-Family Residential High Density MHS: Manufactured Housing Subdivision RMH: Mobile Home Residence TP: Trailer Park</p>	<p>COMMERCIAL / MIXED USE R/O: Residential/Office CSS: Commercial Shopping and Services CC: City Center PCC-1: Planned Commercial Center Neighborhood PCC-2: Planned Commercial Center General RCC: Regional Commercial Center MU-1: Mixed Use, Low-Medium Density MU-2: Mixed Use, Medium Density MU-3: Mixed Use, Medium-High Density MU-4: Mixed Use, High Density MU-Ed: Mixed Use Educational</p>	<p>INDUSTRIAL LI: Light Industrial District GID: General Industrial District HID: Heavy Industrial District TOD Corridor TOD Station Area (PAD): Planned Area Development Overlay (H): Historic Property City Limits</p>
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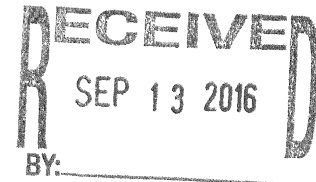
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Michael Phalen
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September 13, 2016

BY HAND DELIVERY

Ryan Levesque
Deputy Director - Planning
City of Tempe
Community Development Department
31 E. 5th Street
Tempe, AZ 85281



Re: Request for Zoning Map Amendment: Removal of Transportation Overlay District
Designation on 1401 S. Siesta Lane, Tempe Arizona

Dear Mr. Levesque:

Our firm represents the Danari Tempe, LLC (“Applicant”), the owner of the property located at 1401 S. Siesta Lane, Tempe, Arizona (“Property”). Danari has leased the property to JSL Enterprises, Inc. (“Tenant”) to use for the storage, warehousing, distribution, wholesaling, and ancillary retail sales of automobiles.

Request.

Please accept this letter as our client’s Application for a Zoning Map Amendment to remove the Property from the boundaries of City’s Transportation Overlay District (“TOD”). Section 6-304.C. of the City of Tempe Zoning & Development Code requires the Applicant to demonstrate that its request is consistent and in conformance with the City’s General Plan. This submittal will not only show that removing the Property from the TOD Map designation will put the Property back into conformance with the City’s General Plan, because the TOD map designation conflicts with the existing Industrial Use General Plan designation, but it will also demonstrate that the proposed map amendment will place the Property back in compliance with the current GID zoning, which permits Office/Warehouse uses. Further, with the proposed Zoning Map Amendment the Property will again comply with the historical and current use of the property as Office/Warehouse, and conform to the recently issued Zoning Interpretation finding the Property’s Office/Warehouse use to be a legal non-conforming use predating the City’s adoption of the TOD.

Pursuant to a separate filing with the City that we request be processed concurrently with this Application, Applicant has filed an Application for a Use Permit to allow vehicle sales to be conducted on the Property. As outlined in greater detail in the accompanying Use Permit Application, the vehicle sales will be limited to primarily wholesale vehicle sales transactions,

with ancillary retail sales of vehicles not exceeding 15% of the total building area of the Property, which is a permitted use for a use directly related to the primary industrial use under City of Tempe Zoning & Development Code, Table 3-302A.

The Property.

The property is located at the southeast corner of Wildermuth Drive and Siesta Lane south of Apache Boulevard and adjacent to Price Road which runs parallel to the 101 freeway in eastern Tempe. The General Plan designation for the Property is Industrial. It is zoned GID. The GID zoning district permits, among other things, office uses, warehousing, wholesaling, distribution, shipping, assembling, indoor storage, manufacturing, and accessory retail sales (the "Office/Warehouse Uses"). City of Tempe Zoning & Development Code §3-301 and Table 3-302A.

The 25,000+ square foot warehouse building currently located on the property was constructed in 1997. The property has been used for permitted Office/Warehouse Uses since it was constructed. As noted in the City Zoning Administrator's Zoning Interpretation letter, the Property's certificate of occupancy has listed the use as Office/Warehouse since 1997. See, copy of the Zoning Administrator's Zoning Interpretation letter dated September 8, 2016.

The Property is located within the TOD. The TOD was adopted by the Tempe City Council on November 17, 2005 and the TOD boundary map was established on June 1, 2006. City of Tempe Zoning & Development Code §5-602. The TOD conflicts with the General Plan Industrial Use designation and the GID zoning because it prohibits Office/Warehouse Uses within the TOD boundaries, prohibiting such uses as:

- 19. Shipping or distribution, warehouse transport center; ...
- 22. Vehicle sales, ...;
- 23. Warehouse or other indoor storage."

City of Tempe Zoning & Development Code §5-608B, 19, 22, and 23.

Non-Conforming Use.

Pursuant to our client's Application for a Zoning Interpretation letter, the City Zoning Administrator determined that the Office/Warehouse Uses are permitted as legal Non-Conforming Uses on the Property. The Zoning Administrator, however, determined that:

The result of the allowed uses would also allow a business to warehouse vehicles for storage and distribution, so long as vehicle sales and/or rentals does not occur. "Vehicle Sales/Rental (indoor or outdoor) is specifically identified within the GID, General Industrial District as requiring a use permit. This particular use would not be considered a legal non-conforming use. And as such, vehicle sales/rentals would be prohibited within the Transportation Overlay District.

In order for vehicle sales/rentals to occur on site or the city to authorize any required license for vehicles sales, the applicant may propose a zoning map amendment to remove the subject property from the Transportation Overlay District along with a request for a use permit to allow vehicle sales. (emphasis added).

Based on the forgoing Zoning Administrator determination, Applicant is submitting this Application for a Zoning Map Amendment and the accompanying Use Permit Application to permit vehicle sales on the Property.

Discussion.

Applicant seeks the City's approval of this Application for a Zoning Map Amendment because the Transportation Overlay District conflicts with the Industrial land use designation under the Tempe General Plan, as well as the GID – General Industrial Zoning on the Property. The City's approval of Applicant's proposed TOD Zoning Map Amendment Application will return the Property to conformance with the City's General Plan, in conformance with City of Tempe Zoning & Development Code 6-304.C. As noted herein, the Property was developed as a single building industrial warehouse building in 1997, consistent with the General Plan Industrial designation and the GID zoning. The building on the Property has been used for Office/Warehouse Uses for almost 20 years.

Although our client is supportive of the City's goal of encouraging use of the Valley's Light Rail system, the TOD Map designation makes it impractical, if not impossible, to use the Property in the manner it was intended. The very nature of Applicant's Property conflicts with the TOD Map designation. The warehouse use requires the product being warehoused on the Property to be shipped in and out of the warehouse building by separate vehicles. So the light rail system provides no commercial benefit to the Property or its Office/Warehouse Uses. The Office/Warehouse Uses conducted on the Property are not people or pedestrian oriented, so for commercial reasons, continuing to tie the Property to the TOD provides no benefit to the City, the Applicant or its Tenant.

We recognize that Tenant's employees could use the light rail to get to and from work. But retaining the TOD map designation on the Property will not necessarily encourage them to use the light rail any more than they otherwise would be motivated to use it. Retaining the TOD map designation will also not change their employee's behavior. The TOD map designation is not necessary to cause them to use the light rail system. In turn, the Tenant's operation employs very few employees, so the potential loss of their use of the light rail system will be inconsequential. The intent of the TOD Map Designation was to encourage land owners to change the underlying uses to more light rail friendly uses. Because of the way the Property was planned, zoned, developed and used, the TOD Map designation is not likely to ever have its desired effect. This is especially true now that Office/Warehouse Uses are recognized as legal nonconforming uses. Since the TOD map designation will not accomplish its intended purpose, it is time to remove the map designation to eliminate the cloud it creates on title and permit the Property to be used for its highest and best use.

In addition, there is little connection between the Property and the Price-101/Apache Blvd. Light Rail station. First, the Property just barely falls within the 1,950 foot distance requirement to be designated within the TOD on the City Zoning Map. Second, the light rail station is on the other side of the Price Road Freeway from the Property. The freeway acts as both a physical and psychological barrier to potential light rail users, at least from this Property. The distance and the difficulty of walking across an interstate-sized freeway to get to the light rail station are likely to keep a certain percentage of the Property employees from using the light rail station. As a practical matter, the Light Rail Station is too far away to justify the TOD map designation. The benefits of the TOD map designation offers to the Property are difficult to determine. But the burdens it places on the Property are great. The map designation is not, and should not change the fundamental Office/Warehouse use of the Property, but in fact it does. If it were not for the Zoning Administrator's recent ruling that the Office/Warehouse Uses are permitted as legal Non-Conforming Uses despite the TOD use restriction, the Property could not be used as a warehouse, even though it is zoned and developed for that use. Inexplicably, the TOD prohibits warehouse uses in a warehouse zoning district. These TOD provisions are expressly contrary to the City General Plan which calls for Industrial Uses on this Property. In order to bring the Property back into compliance with the City's General Plan, it is necessary for the TOD Map Designation to be removed from the Property. City of Tempe Zoning & Development Code 6-304.C.

Finally, as noted in our accompanying Use Permit Application, the Applicant's Tenant seeks to use the Property to store and wholesale vehicles. Wholesaling vehicles is prohibited under the TOD. Tenant has been wholesaling vehicles, pursuant to a Use Permit, at another location in Tempe for 9 years. Tenant's business has grown and it seeks to relocate its vehicle warehousing and wholesaling operations to the Property. In order to relocate, the TOD designation needs to be removed from the Zoning Map in order for the Applicant to obtain a Use Permit for vehicle sales.

Request.

Because the TOD use prohibitions directly conflict the City of Tempe General Plan, the GID Zoning designation, and the actual use and development of this Property as an Office/Warehouse building, we request that the City remove the TOD Map designation on the Property and bring it back into compliance with those land use regulations.

Thank you for the opportunity to submit these requests for your consideration. Please contact me with any questions or any requests for additional information.

Sincerely,



Michael Phalen
Lewis Roca Rothgerber Christie LLP

Attachments

cc: Alan Sher
Jim Lichty
Michael Fletcher

Lewis Roca Rothgerber Christie LLP
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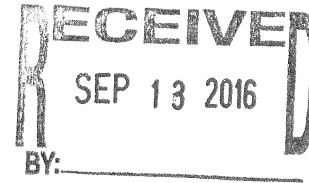
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September 13, 2016

BY HAND DELIVERY

Ryan Levesque
Deputy Director - Planning
City of Tempe
Community Development Department
31 E. 5th Street
Tempe, AZ 85281



Re: Application for Use Permit - 1401 S. Siesta Lane, Tempe Arizona

Dear Mr. Levesque:

Our firm represents the Danari Tempe, LLC (“Applicant”), the owner of the property located at 1401 S. Siesta Lane, Tempe, Arizona (“Property”). Danari has leased the property to JSL Enterprises, Inc. (“Tenant”) to use for the storage, warehousing, distribution, wholesaling, and ancillary retail sales of automobiles. Tenant has been operating this same business at its current location located at 1769 W. University in Tempe, pursuant to Use Permit No. PL070406 / ZUP07143. Tenant seeks to operate the business in the same manner on the Property.

1. Request.

Please accept this letter as our client’s Application for a Use Permit on the Property to allow: (1) internet vehicle sales, (2) wholesaling of vehicles, and (3) ancillary retail sales related to the permitted wholesale industrial use, not to exceed 15% of the total building area’s primary industrial use (collectively “vehicle sales”). City of Tempe Zoning & Development Code §3-301 and Table 3-302A.

Applicant has filed an Application for a Zoning Map Amendment to remove the Property from the map showing the properties located within the City’s Transportation Overlay District (“TOD”) pursuant to a separate filing with the City that we request be processed concurrently with this Application.

2. The Property.

The property is located at the southeast corner of Wildermuth Drive and Siesta Lane south of Apache Boulevard and adjacent to Price Road which runs parallel to the 101 freeway in eastern Tempe. The General Plan designation for the Property is Industrial. It is zoned GID. The GID zoning district permits, among other things, office uses, warehousing, wholesaling, distribution, shipping, assembling, indoor storage, manufacturing, and accessory retail sales (the

“Office/Warehouse Uses”). City of Tempe Zoning & Development Code §3-301 and Table 3-302A.

The 25,570 square foot warehouse building currently located on the property was constructed in 1997. The property has been used for permitted Office/Warehouse Uses since it was constructed. As noted in the City Zoning Administrator’s Zoning Interpretation letter, the Property’s certificate of occupancy has listed the use as Office/Warehouse since 1997. See, copy of the draft Zoning Administrator’s Zoning Interpretation letter dated September 8, 2016.

The Property is located within the TOD. The TOD was adopted by the Tempe City Council on November 17, 2005 and the TOD boundary map was established on June 1, 2006. City of Tempe Zoning & Development Code §5-602. The TOD conflicts with the General Plan Industrial Use designation and the GID zoning because it prohibits Office/Warehouse Uses within the TOD boundaries, prohibiting such uses as:

- 19. Shipping or distribution, warehouse transport center; ...
- 22. Vehicle sales, ...;
- 23. Warehouse or other indoor storage.”

City of Tempe Zoning & Development Code §5-608B, 19, 22, and 23. (emphasis added).

In addition, “Vehicle Sales/Rental (indoor or outdoor)” is specifically identified within the GID as requiring a Use Permit.

3. Non-Conforming Use.

Pursuant to our client’s Application for a Zoning Interpretation letter, the City Zoning Administrator determined that the Office/Warehouse Uses are permitted as legal Non-Conforming Uses on the Property. The Zoning Administrator, however, determined that:

The result of the allowed uses would also allow a business to warehouse vehicles for storage and distribution, so long as vehicle sales and/or rentals does not occur. “Vehicle Sales/Rental (indoor or outdoor) is specifically identified within the GID, General Industrial District as requiring a use permit. This particular use would not be considered a legal non-conforming use. And as such, vehicle sales/rentals would be prohibited within the Transportation Overlay District.

In order for vehicle sales/rentals to occur on site or the city to authorize any required license for vehicles sales, the applicant may propose a zoning map amendment to remove the subject property from the Transportation Overlay District along with a request for a use permit to allow vehicle sales. (emphasis added).

Based on the forgoing Zoning Administrator determination, Applicant is submitting this Use Permit Application to permit vehicle sales on the Property, along with the accompanying Application for a Zoning Map Amendment.

4. Discussion.

The Property is an industrial property under the City General Plan and the zoning code. A warehouse building was constructed on the Property almost 20 years ago and has been consistently used for Office/Warehouse Uses since then. In turn, Applicant has leased the Property to Tenant who seeks to use the property to store its vehicle inventory, which is a permitted use under the GID zoning and the recent ZA Interpretation letter, and to conduct the wholesaling of vehicles, internet vehicle sales, and ancillary retail vehicle sales, not to exceed 15% of the total building area.

In order to conduct the vehicle sale uses, Applicant must obtain City approval for its accompanying Zoning Map Amendment Application and this Use Permit Application. In the event the City approves Applicant's Zoning Map Amendment Application, Applicant requests approval of this Use Permit Application.

The City Zoning Code states that in order for a Use Permit Application to be granted, the City must find that:

the use covered by the permit, the manner of its conduct, and any building which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirements, or standards prescribed therefore by this Code.

City of Tempe Zoning & Development Code §6-308.E.1.

This Use Permit Application meets these City requirements. The proposed vehicle sales use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general. First, vehicle storage, which is a part of Tenant's use, is a permitted use under the GID zoning. It would follow that any traffic generated by the vehicle storage activity would fall within the scope of this permitted use. Tenant's proposed vehicle sales use will be limited in scope to internet and wholesale sales, which require the use permit. Arguably, the ancillary retail vehicle sales falls within the Code limits (15%) as a permitted use (City of Tempe Zoning & Development Code, Table 3-302A), but in the event Staff disagrees, Applicant includes its ancillary retail vehicle sales within the scope of this Use Permit Application. Second, Tenant has a long history of conducting vehicle sales at its current location located on the west side of the City at 1769 W. University, in compliance with the applicable zoning laws. Its current parcel is zoned GID and a Use Permit was issued permitting its vehicle sales activity. Tenant's business has outgrown that location and it seeks to relocate its operations to the Property. Third, the Property is located adjacent to the Price Road Freeway on the east and other warehouse/industrial uses on the south and west. The proposed use is consistent with, and will not conflict with these surrounding industrial and freeway uses. Although the Property is located adjacent to property zoned R-4 (Multi-Family Residential General) on the north, the warehouse on the Property has been located adjacent to these multi-family residential parcels for almost 20 years, so this proposed use will not change the

neighborhood conditions, or the neighbor's expectations, that have existed over that same period of time. Further, the R-4 properties are either underutilized, under developed, or are in transition, so the reinvestment triggered by this use will help improve the neighborhood.

The City of Tempe Zoning & Development Code goes on to list a number of factors to measure the Use Permit proposal. City of Tempe Zoning & Development Code §6-308.E.2. The factors includes such things as vehicular and pedestrian traffic, nuisances caused by odor, dust, gas, noise, vibration, smoke, heat, or glare, deterioration or degradation of the neighborhood, compatibility with surrounding structures and uses, and adequate control of disruptive behavior. The proposed vehicle sales use will not conflict with any of these factors. The proposed use will not generate additional traffic. Since the proposed use involves internet vehicle sales and the wholesaling of vehicles, the use will generate a minimal amount of traffic. The traffic will primarily be limited to employees and vehicle deliveries. Since vehicle storage is already a permitted use on the Property, the traffic generated by vehicle deliveries will not be altered by the issuance of the Use Permit. Any traffic generated by ancillary retail sales will be minimal.

The use will not generate any of the nuisance activities listed in the City of Tempe Zoning & Development Code §6-308.E.2. The operations will be conducted exclusively inside the existing warehouse building. So no noise, dust, odor, etc. will be caused by the proposed use or generated from the Property. In turn, that building has been there for almost 20 years, so its use for Office/Warehouse Uses is, and will continue to be compatible with the surrounding structures and uses. Furthermore, The R-4 properties to the north are in transition. Applicant's and Tenant's investment in property improvements will actually improve the surrounding property values and help stabilize that neighborhood.

Contrary to certain preconceptions about vehicle sales businesses, the proposed use will be a fairly passive use. This is supported by Tenant's long history conducting internet vehicle sales at its current location. Because the proposed use will primarily involves internet sales and the wholesaling of vehicles, it will not attract the public and therefore will not result in an increase of traffic, noise, nor what is otherwise considered retail sales types of activity. For example, vehicles will not be on display on the Property, no sales people will be walking around the Property looking for or waiting on customers, and there will be no signs, banners, flyers or flags on the site. The proposed vehicle sales use will be conducted in conformity to any conditions, requirements, or standards prescribed therefore by the City Code, just as it has been conducted by Tenant at its existing location for 9 years.

5. Request.

Because the proposed vehicle sales use conforms to the criteria and factors listed in the City of Tempe Zoning & Development Code, and because Tenant has a long history of operating its existing vehicle sales activities at another location in Tempe in compliance with the parcel's GID Zoning and its approved Use Permit, we request that the City remove approve a Use Permit for vehicle sales for the Property limited to internet sales, wholesaling of vehicles, and ancillary retail sales not to exceed 15% of the total building area's primary industrial use.

Thank you for the opportunity to submit these requests for your consideration. Please contact me with any questions or any requests for additional information.

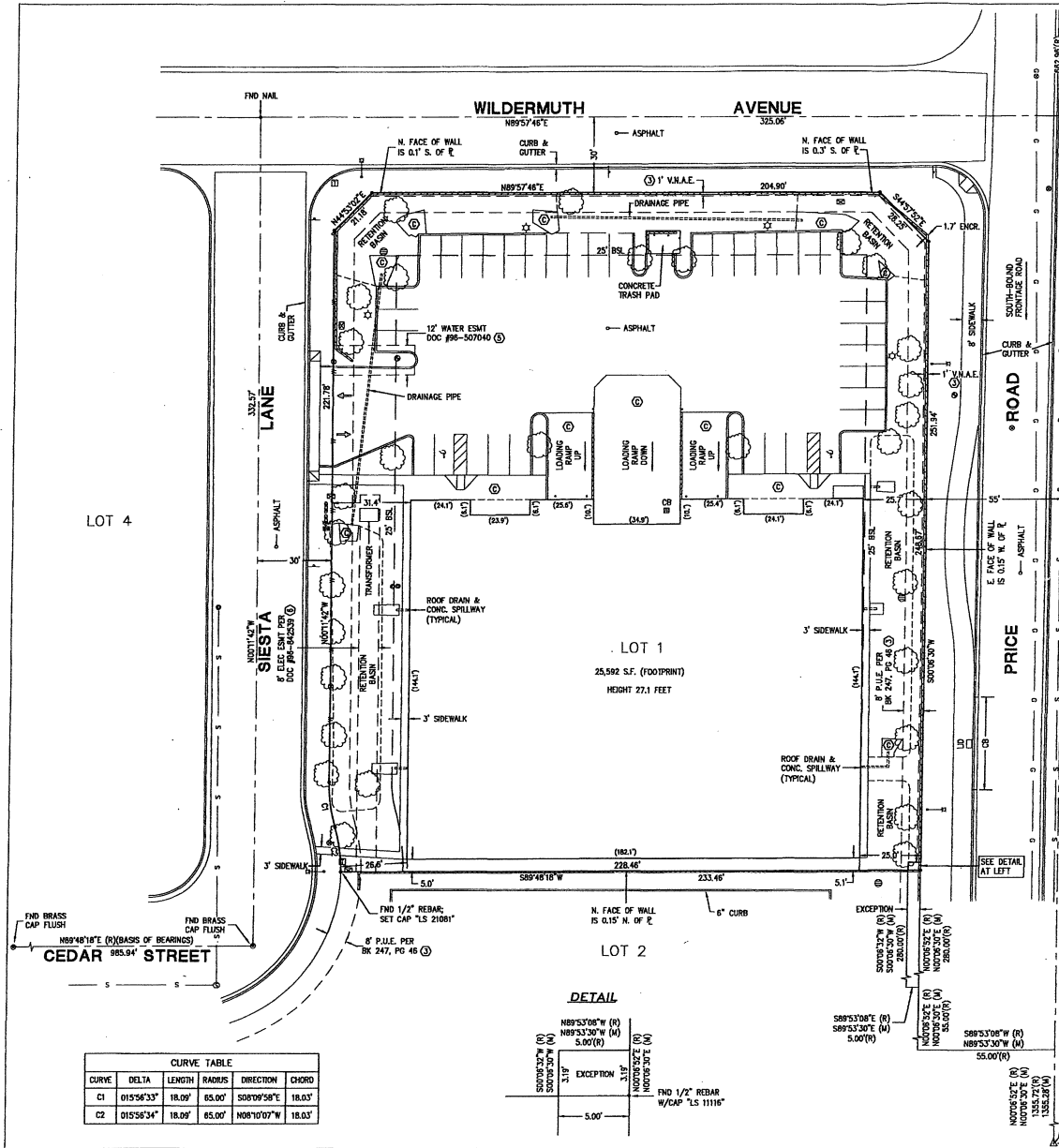
Sincerely,



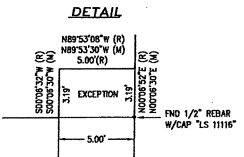
Michael Phalen
Lewis Roca Rothgerber Christie LLP

Attachments

cc: Alan Sher
Jim Lichy
Michael Fletcher



CURVE TABLE				
CURVE	DELTA	LENGTH	RADIUS	CHORD
C1	015°56'33"	18.09'	85.00'	S89°09'59"E 18.03'
C2	015°56'34"	18.09'	85.00'	N08°10'07"W 18.03'



LEGAL DESCRIPTION

Lot 1, PRICE ROAD BUSINESS PARK PHASE ONE, according to the plot of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 247 of Maps, page 41;

EXCEPT that portion donated to the State of Arizona, by and through its Department of Transportation, described as follows:

These portions of Lots 1 and 2, PRICE ROAD BUSINESS PARK PHASE ONE, according to the plot of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 247 of Maps, page 41, which lies within the following described tract of land:

COMMENCEMENT of the Southeast corner of Section 24, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE along the East line of said Section 24, North 0 degrees 06 minutes 52 seconds East, a distance of 1353.72 feet;

THENCE South 89 degrees 53 minutes 08 seconds West, 55.00 feet to the Southeast corner of said Lot 2;

THENCE along the East line of said Lot 2, North 0 degrees 08 minutes 52 seconds East, 55.00 feet to the TRUE POINT OF BEGINNING;

THENCE continuing along the East line of said Lot 2 and Lot 1, North 0 degrees 06 minutes 52 seconds East, 260.00 feet;

THENCE North 89 degrees 53 minutes 08 seconds West, 5.00 feet;

THENCE South 08 degrees 06 minutes 52 seconds West, 280.00 feet;

THENCE South 89 degrees 53 minutes 08 seconds East, 5.00 feet to the TRUE POINT OF BEGINNING.

APN: 133-01-423

SCHEDULE B EXCEPTIONS

- Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year 2014.
- The liabilities and obligations imposed upon said land by reason of (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner therein of the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purposes of obtaining water rights for said land.
- Easements, covenants, conditions and restrictions on set forth on the plot recorded in Book 247 of Maps, Page 41.
- Covenants, conditions and restrictions on set forth in Document No 83-110617, re-recorded in 83-14653, Amended in 84-277874, Second Amendment in 2004-1150159. Liens and charges set forth in the above mentioned documents, payable to Price Road Business Park Property Owners Association.
- Easement for water line and fire hydrant per Document No. 86-4507040.
- Easement for underground power per Document No 86-0842539.
- Resolution of Establishment per Document No 86-330699; 87-350447, and 87-742087. Reference is hereby made to said document for full particulars.
- An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document entitled Memorandum of Lease - Lease: D.F. Sauer Properties, LLC, an Arizona limited liability company Lease: Educational Sales Company, Inc. as of 10/01/2012, 10/02/2012; Recording No: Document No 2012-021111-3

NOTES

- This survey is based upon a title commitment prepared by Fidelity National Title Agency, Order No. 7100289-071-001, dated April 15, 2015.
- The Surveyor has relied on said title commitment to disclose all matters of record affecting the subject property. The Surveyor has made no investigation or independent search for encumbrances of record, encumbrances, restrictive covenants, ownership title evidence, or any other matters that may affect the property.
- This property lies in Flood Zone X-Dated according to FIRM No. 04012ZAR, as published by FEMA on October 18, 2013.
- This property is zoned General Industrial District (G.I.D.) by the City of Tempe.
- The Basis of Bearings shown hereon is the monument line of Cedar Street as taken from plot of said subdivision.
- © Copyright 2015. These drawings are an instrument of service and are the property of Land Survey Services, PLC. No reproduction or use of design concepts are allowed without written permission of Land Survey Services. Any Violation of this copyright shall be subject to legal action.

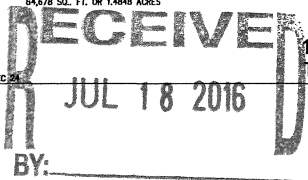
CERTIFICATION

To Fidelity National Title Agency, Ador Realty Investments, Inc. and Danari Temple, LLC:

This is to certify that this map or plot and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 7(a)(i), 8, 9, 11(a), 16, 19 and 20 from Table A thereof. The field work was completed on August 26, 2014.

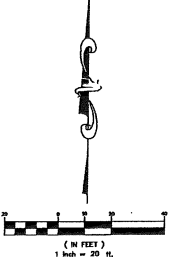
Thomas L. Rope, R.L.S., No. 21081

AREA
64,678 SQ. FT. OR 1,484.8 ACRES



LEGEND

- ▲ BRASS CORNER
 - BRASS CAP FLUSH
 - REBAR W/CAP "LS 11116"
 - SANITARY SEWER MANHOLE
 - SEWER CLEANOUT
 - WATER METER
 - WATER VALVE
 - FIRE HYDRANT
 - WATER CHECK VALVE
 - STREET LIGHT
 - LIGHT POLE
 - IRRIGATION CONTROL BOX
 - TELEPHONE BOX
 - DRY WELL
 - SIGN
 - DRIVEWAY ENTRANCE/EXIT
 - CONCRETE
 - SCHEDULE B ITEM NO.
 - V.M.A.E. *VEHICLE NON-ACCESST
 - ENCR. ENCROACHMENT
 - (B.D.) BUILDING DIMENSION
 - (M) MEASURED
 - (R) RECORD PER LEGAL DESC.
 - CB CATCH BASIN
 - MASONRY WALL
 - *BLDG SETBACK LINE
 - EASEMENT LINE
 - GAS LINE
 - SEWER LINE
 - WATER LINE
 - MISC. TREE
- *PER BK 247 MAPS, PG 41



G.I.D. ZONING STANDARDS

Max. Building Height:	35 feet
Maximum Lot Coverage:	No Standard
Minimum Landscape Area:	10%
Front Setback:	25 feet
Parking:	20 feet
Side Setback:	0 feet
Rear Setback:	0 feet
Side Street Parking:	25 feet
Parking:	20 feet

Land Survey Services PLC
 Thomas L. Rope, R.L.S.
 3160 North 302nd Lane
 Buckeye, AZ 85386-3186
 602.703.7010 Fax 623.243.4117

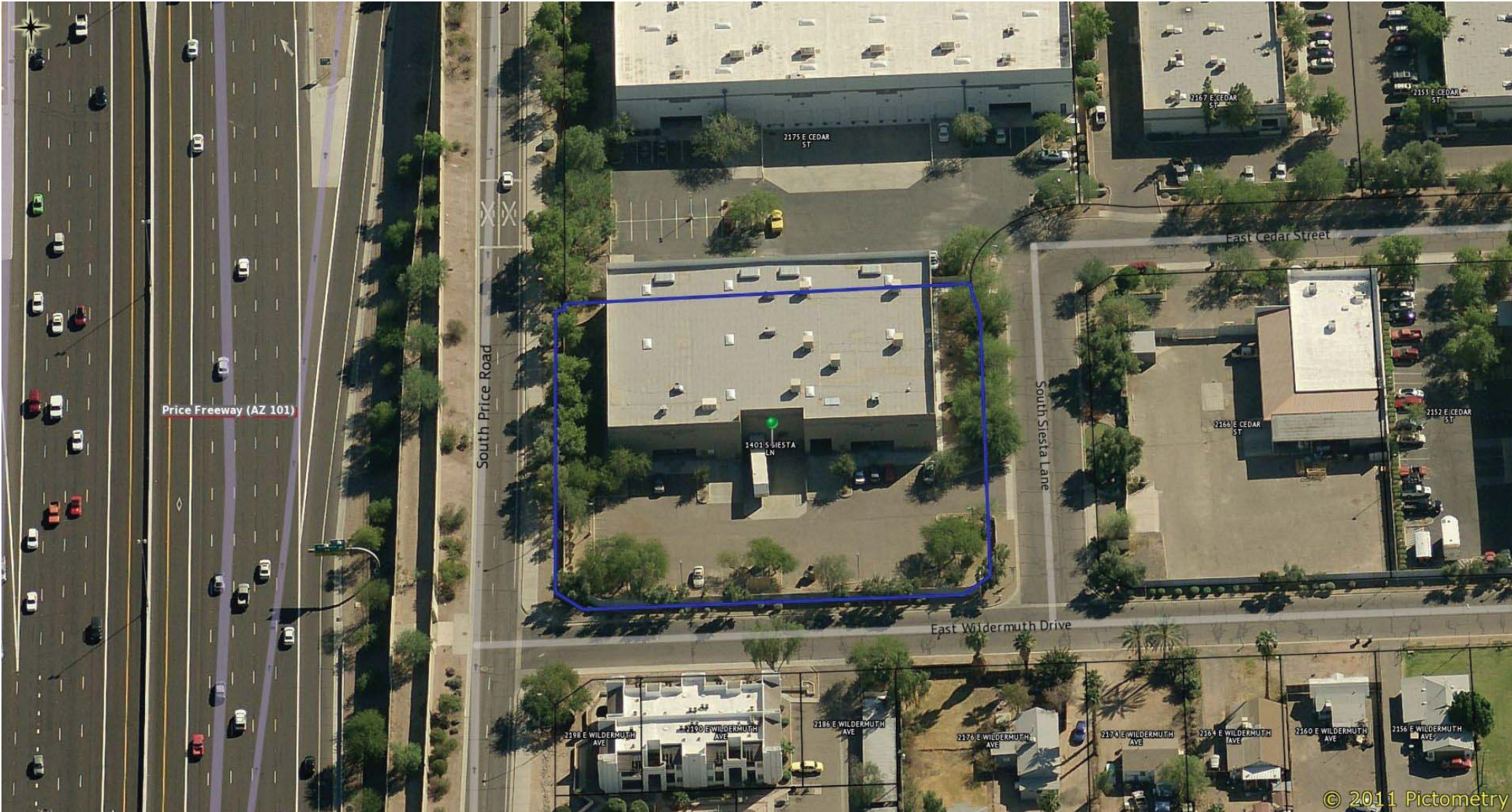
ALTA/ACSM LAND TITLE SURVEY
 A PORTION OF THE SOUTHEAST QUARTER OF SECTION 24,
 T1N, R4E, G.&S.R.B.M., MARICOPA COUNTY, ARIZONA

Revised 5/7/2015

Drawn by: Thomas Rope
 Expires: 3/31/2016

Date: AUG 2014
 Job No.: 14079
 Sheet No.: 1 of 1

Oblique Imagery of Site Looking South



Public Involvement Plan
Final Report

DANARI TEMPE LLC

Danari Tempe, LLC
1401 S. Siesta Lane
Tempe, AZ

Located on the south side of Wildermuth between Siesta Lane and the Price Road frontage road.

Case No. PL 160239



Michael J. Phalen
Lewis Roca Rothgerber Christie LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004-2595
mphalen@lrrc.com

Final Report

Lewis Roca Rothgerber Christie LLP (“Lewis & Roca”) mailed out its neighborhood notification letters on Monday, August 1, 2016 and provided the City with its affidavit on August 3, 2016 confirming the date the letters were mailed. The letters were mailed out to the property owners within 600 feet of the Property located at 1401 S. Siesta Lane (see map of notification area below) as well as to the representatives of the three registered neighborhood associations, homeowners associations and affiliate associations located within $\frac{1}{4}$ mile of the Property. The registered associations receiving the notice were based on the list provided to Applicant on July 26, 2016 by City of Tempe Senior Planner, Lee Jimenez.

In addition, Dynamite Signs posted two notification signs on the Property on Tuesday, August 2, 2016. Per Mr. Jimenez’s direction, one sign was placed at the northwest corner of the Property at Siesta Land and Wildermuth Avenue. The second sign was located at the northeast corner of the Property at the Price Road frontage road and Wildermuth Avenue.

As of this point in time, Lewis & Roca has not received any inquiries regarding the proposed project. However, Mr. Jimenez received one call on August 17th, the day of the neighborhood meeting, from Mr. Andrew Murch, the lessee of the Office/Warehouse parcel located to the west of the Property, across Siesta Lane, within the same Price Road Business Park as the Property.

The neighborhood meeting for the Danari Tempe Property took place as scheduled on Wednesday, August 17, 2016 at 6:00 pm at Tempe Police Department – Apache Substation, 1855 E. Apache Boulevard, Tempe, Arizona 85281. Michael Phalen from Lewis & Roca arrived at approximately 4:30 pm to meet with Police Department staff to open up the meeting room and set up the computer and projector for the PowerPoint presentation. The Applicant was represented by Mr. Jim Lichty, the lessee of the Property. Mr. Lichty arrived shortly before 6:00 pm.

One member of the public attended the meeting – Mr. Andrew Murch – who arrived shortly before 6:00 pm. Messrs. Lee Jimenez, Steve Abrahamson and Paul Hickey from the City of Tempe Community Development Department, Planning Division, also attended. They arrived at approximately 5:50 pm.

Mr. Murch asked a series of questions regarding why a Use Permit was necessary to permit vehicle sale on the Property. He also asked why the Use Permit could not be issued by the City without having to remove the Transportation Overlay District (TOD) designation on the subject Property. Messrs. Phalen, Lichty and Jimenez explained that the removal of the TOD overlay was necessary because the TOD prohibited a number of Office/Warehouse related uses otherwise permitted by the underlying General Industrial District (GID), and because the TOD not only expressly prohibited vehicle sales uses, it also did not offer the Use Permit alternative provided under the GID zoning district. So removal of the TOD overlay on the Property was necessary to remove the cloud the TOD created on Office/Warehouse uses adversely impacting the Property generally, and to allow the Applicant to apply for a Use Permit for vehicle sales under the provisions of the GID zoning district.

While Mr. Murch stated that he could support the Use Permit for Mr. Lichty’s proposed type of vehicle sales, he was concerned about how the next owner/lessee of the Property might operate its vehicle sale operation as a successor to the Use Permit. After much discussion, an understanding

was reached that the proper method for Mr. Murch to address that concern was to draft conditions, or stipulations, to the Use Permit that would limit the scope of the permit to the type of vehicle sale operation Mr. Lichty proposes. Specifically, it was agreed that the Use Permit conditions would be that the vehicle sales would be limited to (1) wholesale vehicle sales, (2) internet vehicle sales, and (3) ancillary retail sales of vehicles not exceeding 15% of the total building area of the Property (in conformance with Retail Use provisions of the Tempe Zoning and Development Code, Table 3-302A).

At the end of the meeting, Mr. Murch stated that he supported the removal of the TOD from the Property, and supported the Use Permit subject to the Conditions that would limit the vehicle sales to (1) wholesale vehicle sales, (2) internet vehicle sales, and (3) ancillary retail sales of vehicles not exceeding 15% of the total building area of the Property.

The meeting concluded and everyone left the meeting room at approximately 7:30 pm.