



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
Gale L. Jamison, Assistant City Engineer
DATE: February 6, 2013
RE: Champaign Telephone Company, Inc. d/b/a SPOC, LLC,
Agreement for Use of Right-of-Way

INTRODUCTION

Champaign Telephone Company, Inc. d/b/a SPOC, LLC, of Champaign, Illinois proposes to install fiber optic cables below ground in conduits at multiple locations within the rights-of-way of the City to serve their clientele. In accordance with City policy a license agreement with the City is required for those installations. The proposed license agreement, with the routing of the proposed conduits and fiber optic cable depicted in Exhibit A, is attached for Council consideration.

FISCAL IMPACT

The proposed installation will be at no cost to the City. SPOC, LLC is a retailer of telecommunications services, as contemplated under the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5 – 1 et seq.) as amended from time to time, and collects the taxes provided for under that Act and any other taxes that it may be required by law to collect. Accordingly, the company is exempt from any licensing or right-of-way permit fees.

RECOMMENDATION

It is recommended that the City Council approve the attached ordinance entitled, “AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH CHAMPAIGN TELEPHONE COMPANY, INC., D/B/A SPOC, LLC, (Green Street between Gregory Street and Lincoln Avenue; California Avenue between Vine Street and Urbana Avenue; Philo Road between Florida Avenue and Colorado Avenue; Elm Street between Race Street and Cedar Street; Cedar Street between Springfield Avenue and Elm Street; Willow Road between the right-of-way north of Airport Road and Beeson Drive.)”

Attachments: Ordinance
Agreement

ORDINANCE NO. 2013-02-011

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH
CHAMPAIGN TELEPHONE COMPANY, INC., D/B/A SPOC, LLC

Green Street between Gregory Street and Lincoln Avenue
California Avenue between Vine Street and Urbana Avenue
Philo Road between Florida Avenue and Colorado Avenue
Elm Street between Race Street and Cedar Street
Cedar Street between Springfield Avenue and Elm Street
Willow Road between the right-of-way north of Airport Road and Beeson Drive

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana,
Champaign County, Illinois, as follows:

Section 1.

An Agreement for Use of Right-of-Way between the City of Urbana, Illinois, and
Champaign Telephone Company, Inc., d/b/a SPOC, LLC, in substantially the form
of the copy of said Agreement attached hereto and hereby incorporated by
reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized
to execute and deliver and the City Clerk of the City of Urbana, Illinois, be
and the same is hereby authorized to attest to said execution of said Agreement
as so authorized and approved for and on behalf of the City of Urbana,
Illinois.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

After recording return to:

City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801

AGREEMENT FOR USE OF RIGHT-OF-WAY

**Champaign Telephone Company, Inc., d/b/a SPOC, LLC
West Green Street between South Gregory Street and South Lincoln Avenue
East California Avenue between South Vine Street and South Urbana Avenue
South Philo Road between East Florida Avenue and East Colorado Avenue
West Elm Street between South Race Street and South Cedar Street
South Cedar Street between West Springfield Avenue and West Elm Street
Willow Road between the right-of-way north of Airport Road and Beeson Drive**

THIS AGREEMENT is made and entered into by and between the CITY OF URBANA, a municipal corporation of the State of Illinois ("City"), and Champaign Telephone Company, Inc., d/b/a SPOC, LLC ("Company"), and is effective on the last date signed by a party hereto. The City and the Company agree as follows:

1. **Right-of way.** The following streets ("right-of-way") are roadways of at least sixty feet of dedicated right-of-way, as shown in Exhibit A, attached hereto and made a part hereof: West Green Street between South Gregory Street and South Lincoln Avenue, East California Avenue between South Vine Street and South Urbana Avenue, South Philo Road between East Florida Avenue and East Colorado Avenue, West Elm Street between South Race Street and South Cedar Street, South Cedar Street between West Springfield Avenue and West Elm Street, and Willow Road between the right-of-way north of Airport Road and Beeson Drive.

2. **Grant of license.** The City hereby grants the Company a limited license to construct the following Facility ("Facility") within said right-of-way: 1 ¼" conduit and fiber optic cable with termini at 904 West Green Street (Hendrick House), 602 South Vine Street (Heartland Bank), 1812 South Philo Road (Heartland Bank), 301 West Springfield Avenue (First Federal Savings Bank), and 906 East Airport Road (Frasca International).

A. The license granted under this Agreement is wholly dependent upon the Company fully and faithfully performing and complying with all the terms, conditions, and covenants contained in this Agreement. This License is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements in and about the right-of-way.

- B. The license granted under this Agreement is immediately revocable at the option of the City in the event that the Company fails to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that the Company will have a period in which to cure any such failure as set forth in this Agreement.
- C. The license granted under this Agreement may not be transferred or assigned.
- D. The license granted under this Agreement does not convey any right, title, or interest in any right-of-way but is deemed a license only to use and occupy the right-of-way for the limited purposes and term stated herein. The license will not be construed as any warranty of title.
- E. The License granted under this Agreement is non-exclusive and at all times is subordinate to the City's and the public's use of said right-of-way for purposes normally associated with such a public right-of-way. Accordingly, the Company shall, at its sole cost, relocate or remove any portion of the Facility upon the written direction of the City's Director of Public Works ("Director") if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to the right-of-way.

3. ***Compliance with governmental requirements.***

- A. ***Right-of-way permit.*** The construction and installation of the Facility or any change thereof including without limitation extension, reduction, or removal of the Facility shall be subject to the issuance of a right-of-way permit therefore by the Director. No Facility shall be constructed in any streets, alleys or in, on, or over any other public way until a permit therefore is issued by the Director. Said permit will indicate the time, manner and place of constructing the Facility. The City will approve the permit if the proposed improvements are consistent with the use of the license granted by this Agreement. The Company shall comply with all conditions of permits issued to it. The application for a permit must be accompanied by prints, plans and maps showing the proposed location and design of the Facility to be constructed, the location of each conduit to be entered, and the number and placement of manholes or other openings to gain access to said conduit, along with the appropriate surety bond, insurance certificate, and permit fees required by the Urbana City Code. The Company shall use its best efforts to maintain contractors on any work project involving the Facility and to work toward its timely completion, barring inclement weather or other situations beyond the Company's control. In the event of an emergency which the Company believes poses a threat of immediate harm to the public or to any of the Company's facilities, the Company will be permitted access to the public way to mitigate the threatened harm without the benefit of a permit; provided, however, the Company shall advise the City of the emergency at the earliest reasonable opportunity and shall seek a proper permit within a reasonable period of time thereafter and in the manner as hereinbefore stated.
- B. ***Ordinances.*** The Company shall comply with all ordinances of the City, including without limitation all generally-applicable provisions regarding rights-of-way and their uses, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement.

- C. **Construction standards.** The Company shall comply with all construction standards contained in Exhibit B, attached hereto and made a part hereof.
4. **Plan submission.** The Company shall provide as built plans to the City upon completion of construction of the Facility in an electronic format compatible with the City's Geographic Information System.
5. **Simplified Municipal Telecommunications Tax.** The Company is a retailer of telecommunications services, as contemplated under the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 *et seq.*), as amended from time to time, and collects the taxes provided for under that Act and any other taxes that it may be required by law to collect. Accordingly, the Company is exempt from any licensing or right-of-way permit fees.
6. **Facility maintenance and repair.** The Company will be fully responsible and will bear all costs associated with any and all maintenance or repair of the Facility.
7. **Right-of-way repair.** After doing any work, the Company at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by the Company, including without limitation all sidewalks, parkways, or pavements, to the condition in which they existed before performance of the work.
- A. If any such sidewalk, parkway or pavement becomes uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Company, the Company, as soon as climatic conditions reasonably permit shall promptly, and no more than fifteen (15) days from receipt of notice from the City to do so, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by the Company. Such restoration shall be completed within ten (10) calendar days after the date of commencement of such restoration work. If the Company fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City has the right to but has no obligation to, perform such work and recover from the Company any costs and expenses the City incurs.
 - B. If such right-of-way or improvement cannot be so repaired, replaced or restored, the Company shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect or engineer mutually agreed upon by the parties.
 - C. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped, and then restored within a reasonable time thereafter to the original condition with sod or hydroseed in accordance with the applicable provisions of this Agreement. In the event any shrubs, bushes, or trees existing within the right-of-way are disturbed by reason of the construction, maintenance, or repair of the Facility, the Company shall repair or replace such shrubs, bushes, or trees as the case may warrant as determined by the Director.
 - D. The Company shall keep all structures constructed pursuant to this Agreement in a reasonably safe condition at all times and shall maintain such traffic control and protection during the construction, repair, or renewal work performed hereunder as will reasonably avoid danger to life, limb, and property.

- E. The Company shall promptly repair and restore at its own expense all damage it causes to any other utility, including but not limited to storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or facilities from any other utility company.

8. **Lapse and termination.** The License shall be limited solely to the construction, maintenance, and use of the Facility. Upon cessation of such use, as determined by the Director, this Agreement will immediately and automatically lapse and terminate. If the Director believes the Company is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Company in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice shall state that the Company has thirty (30) days in which reassert its rights under this Agreement and demonstrate that it has not in fact abandoned use of the license granted by this Agreement. If the Company demonstrates within the thirty (30) day period that it has not abandoned the Facility, this Agreement shall remain in force and effect according to its terms. If the Company does not demonstrate within the thirty (30) day period of the notice that it has not abandoned the Facility, this Agreement shall be deemed lapsed, terminated, and no longer in effect. Any additional use other than that specifically named herein, without the further express written consent of the City, shall be construed as a violation of this Agreement.

9. **Facility removal.** In the event of the existence of one or more of the following, the Company consents and agrees that the City or its duly authorized agent may remove the Facility, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Company:

- A. An emergency that presents imminent peril to person or property.
- B. Non-compliance with any term, provision, or covenant in this Agreement that is not cured within the time period provided herein following notice of such non-compliance tendered to the Company.
- C. The Director or other responsible City official, in good faith, deems the procedure in Paragraph 8 impracticable under the circumstances present.
- D. Termination of this Agreement for any reason.
- E. Abandonment of the Facility's use in accordance with the provisions in Paragraph 9 of this Agreement.
- F. Expiration of this Agreement in the absence of any renewal thereof.

Should the Contractor fail in any way to make timely payment to the City for such costs and expenses, the Contractor agrees to pay, in addition to any amount so owed, actual attorneys' fees and court costs incurred in the collection of such amount.

10. **Indemnity.** The Company, at its sole cost and expense, shall defend and indemnify the City from and against any and all claims, suits, actions, causes of actions, judgments, decrees, damages, rights, remedies, and/or liabilities, whether in law or in equity, for or in connection with the death or injury to any person or damage to any property, real or personal, brought against the City in connection with the Company's construction, maintenance, repair, use, or removal of the Facility, unless such claim, suit, action, cause of action, judgment, decree, damages, or liability arises solely and exclusively from a negligent or intentional act or omission by the City or any of its employees, agents or contractors.

11. **Term; termination.** This Agreement and the License granted to the Company hereunder shall commence as of the date of this Agreement and shall continue until March 1, 2018, unless sooner terminated in accordance with this Agreement. This Agreement may be terminated at any time without notice upon the express written consent of both parties. Either party may terminate this Agreement for cause by giving written notice to the other party at least forty-five (45) calendar days prior to the proposed termination. Such notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) calendar days after the date thereof in the event the reason or reasons for such notice of termination are not fully and completely cured.

12. **Entire agreement.** This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties, and may be changed, modified or amended only by mutual written agreement executed by them.

13. **Notices.** All notices required under this Agreement must be in writing. Notices must be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the respective party as shown below, or to any changed address either party may have fixed by notice. Notice will be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice will be deemed given on the date of the mailing.

To the City: Director of Public Works
City of Urbana
706 South Glover Avenue
Urbana, Illinois 61802

To the Company: Champaign Telephone Company, Inc.
d/b/a SPOC, LLC
Attention: Mike Vrem, Business Development
1300 South Neil Street
Champaign, Illinois 61820-6528

Either party may designate by written notice a different address to which notices must be sent.

14. **Non-waiver.** The Company will not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

15. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Illinois, and the parties agree that any action to interpret, construe, or enforce this Agreement shall be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois. Each party hereto acknowledges that this Agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this Agreement strictly construed against the other party as drafter of this Agreement by reason of the principles of evidence or contract law.

16. **Amendment.** This Agreement may be amended only by a writing which is fully and duly executed by the parties hereto.

17. **Due Authorization.** Each party hereto acknowledges that the individual who has executed this Agreement has the due and full authority to do so.

18. **Recording.** This Agreement will be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the City.

19. **Execution by counterpart.** This Agreement may be executed in counterparts, each of which will for all purposes be deemed to be an original and will together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement at Champaign County, Illinois, on the dates as stated below.

City of Urbana, Illinois:

Laurel Lunt Prussing
Mayor

Date

ATTEST:

Phyllis Clark
City Clerk

Champaign Telephone Company, Inc.:

Name

Date

Title

ATTEST:

Secretary (Signature)

Name (Printed)

Attachments: Exhibit A
 Exhibit B

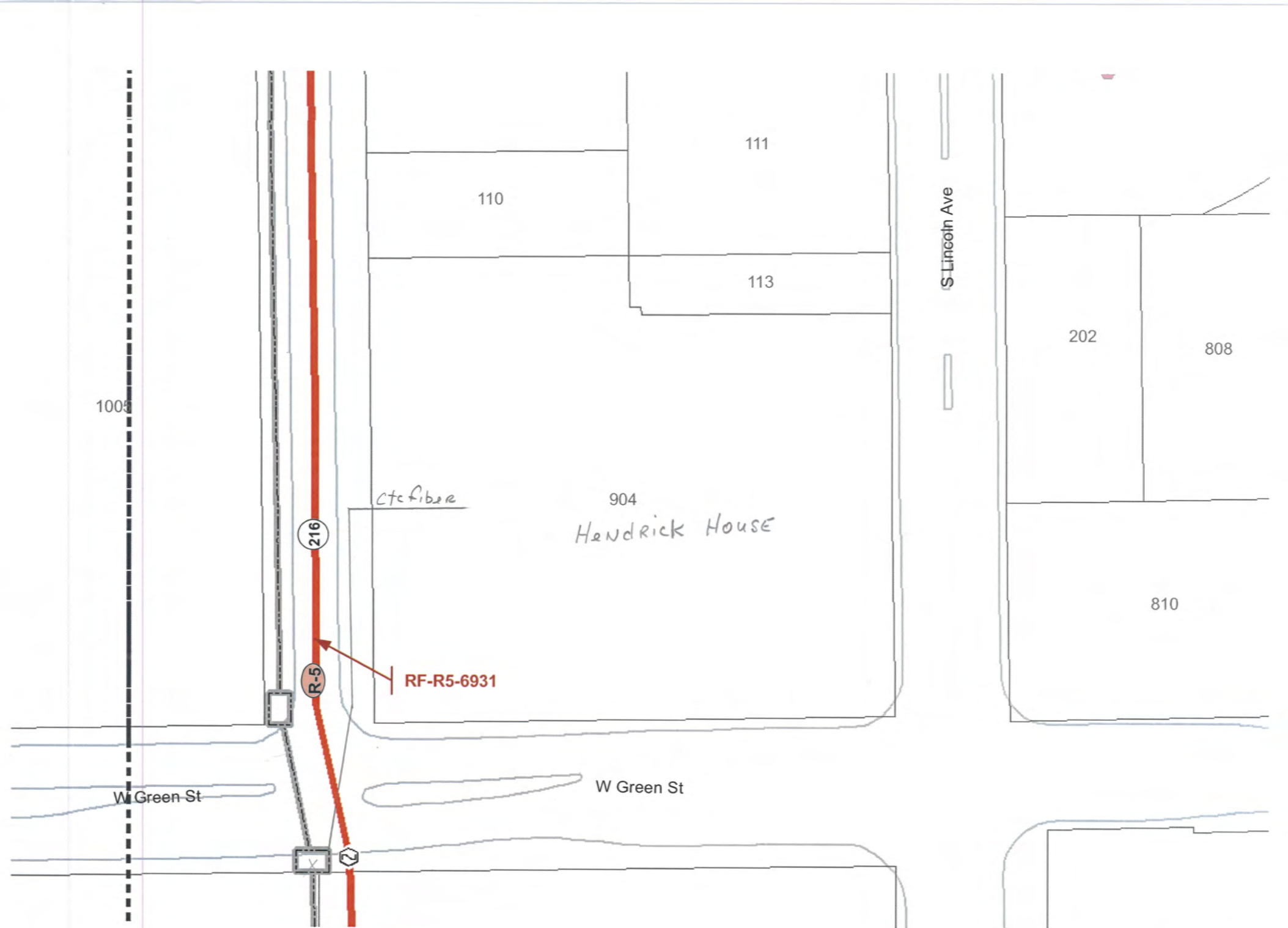


Exhibit A

904 W. GREEN



Google earth

feet
meters



Exhibit A

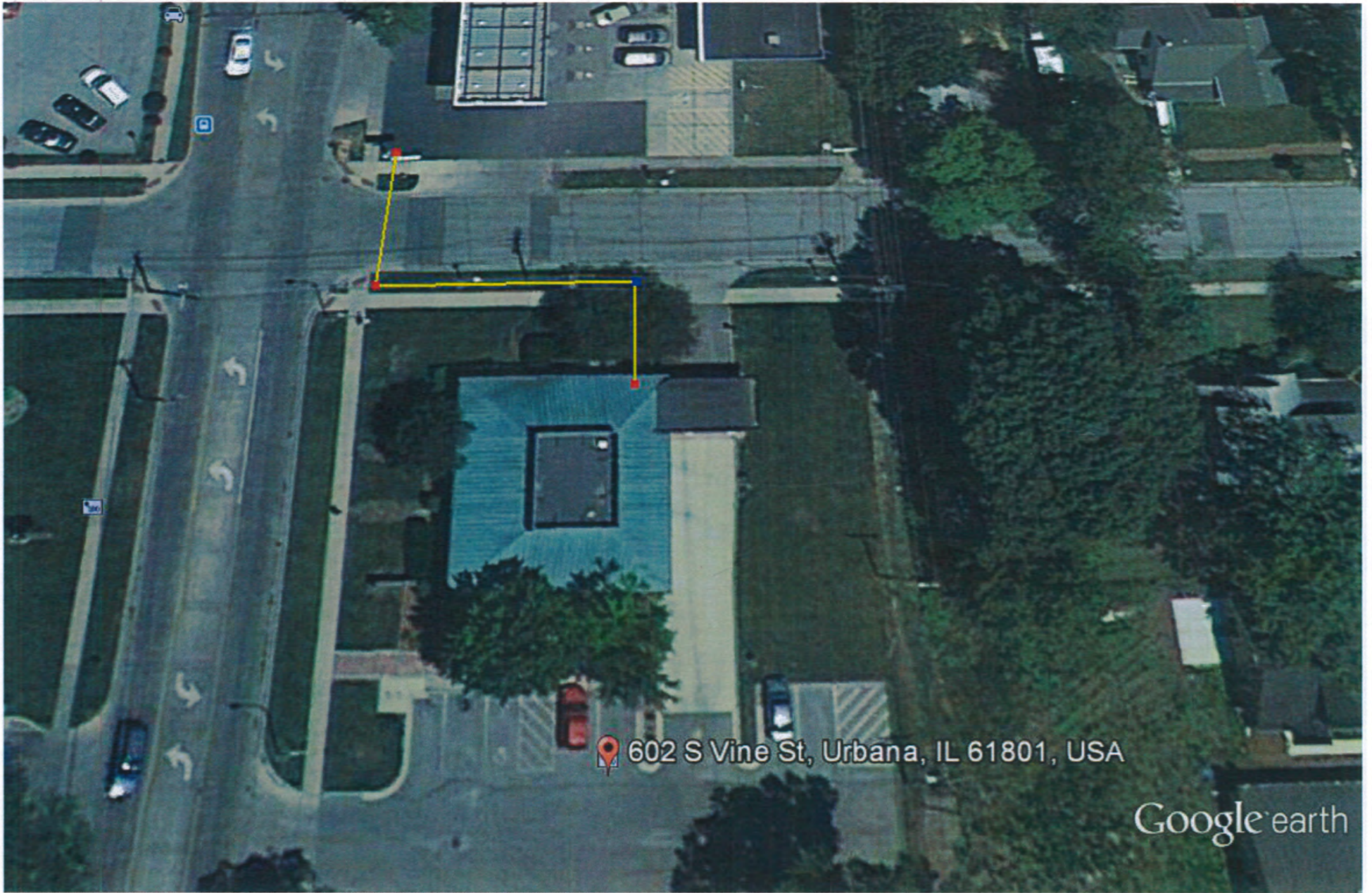
180 FT. LATERAL

904 W. GREEN



Exhibit A

602 S. VINE



Google earth



Exhibit A

110 FT. LATERAL

602 S. VINE

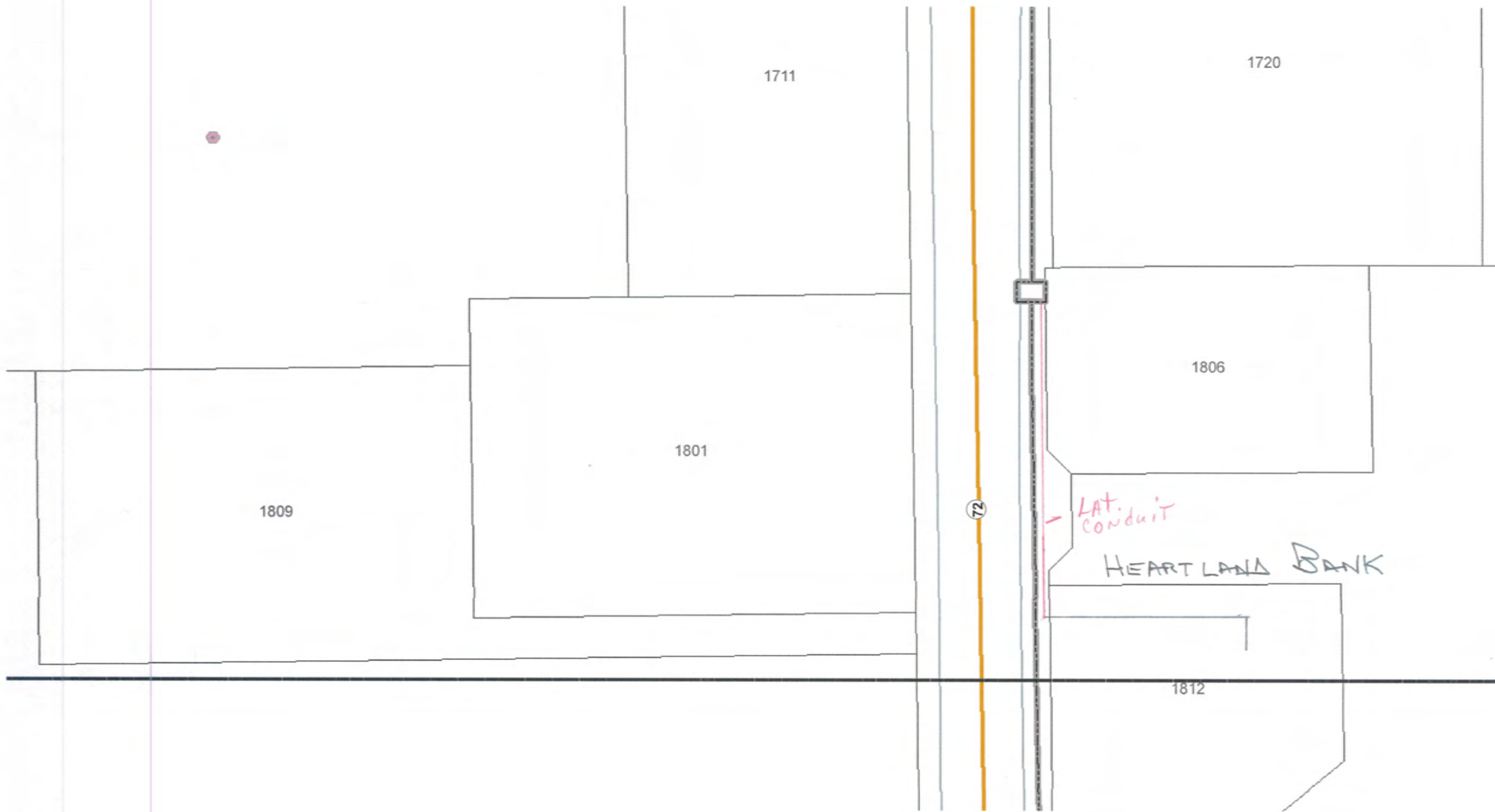


Exhibit A

1812 S. PHILO RD.



Google earth

feet
meters



170 FT. LATERAL
Exhibit A

1812 S. PHILO RD.

FIRST FEDERAL

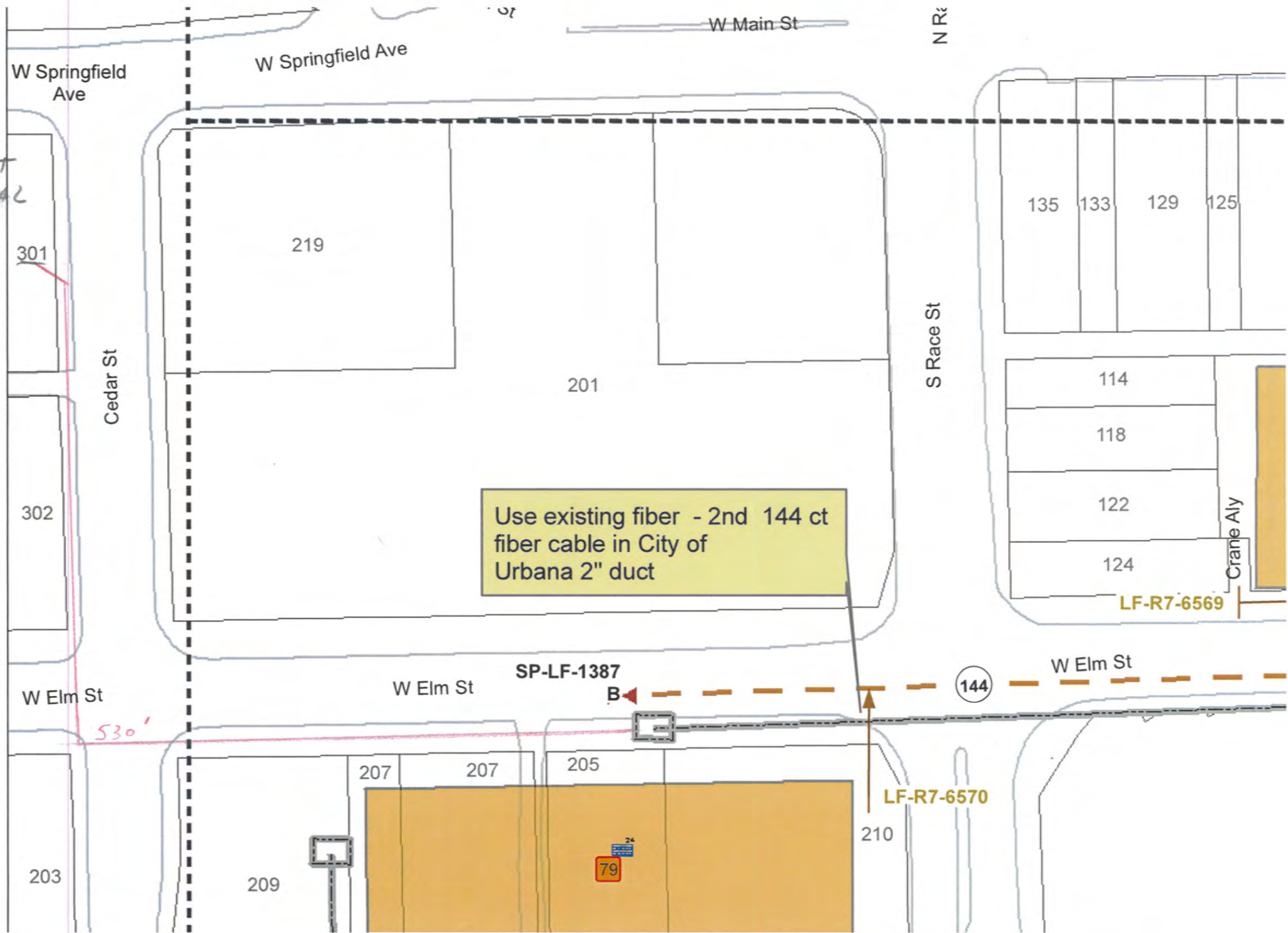


Exhibit A

301 W. SPRINGFIELD



Google earth



Exhibit A

530 FT. LATERAL

301 W. SPRINGFIELD

to FRASCA

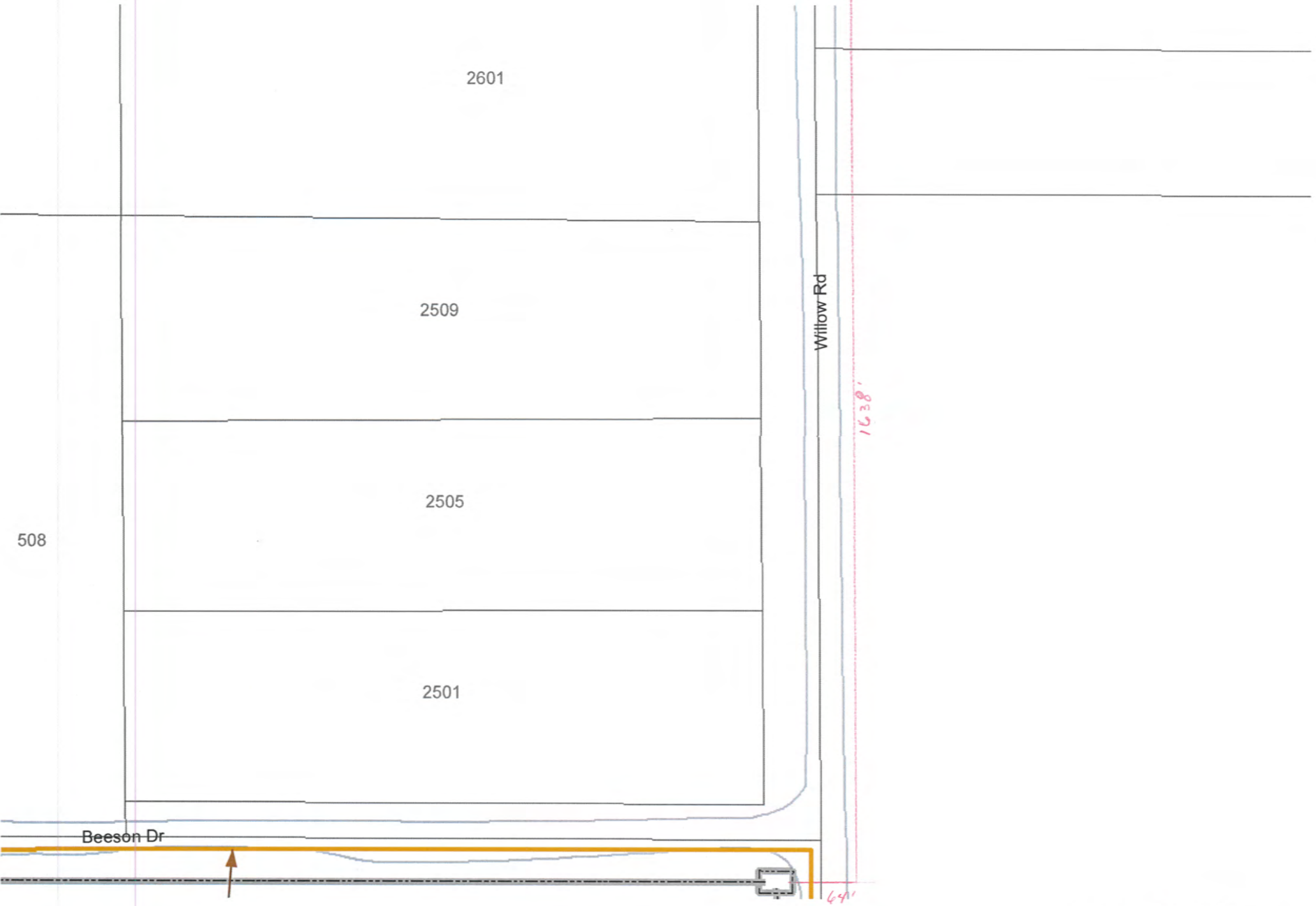


Exhibit A

1402 E. AIRPORT RD.



Google earth

feet
meters



Exhibit A

1,702 FT. LATERAL

1402 E. AIRPORT RD.

Exhibit B Construction Standards

Location of facilities.

1. General Requirements. In addition to location requirements applicable to specific types of user facilities, all user facilities, regardless of type, shall be subject to the general location requirements contained herein.

- A. No Interference with City Facilities. No user facilities shall be placed in any location if the City engineer determines that the proposed location will require the relocation or displacement of any of the City's user facilities or will otherwise interfere with the operation or maintenance of any of the City's user facilities.
- B. Minimum Interference and Impact. The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said right-of-way.
- C. No Interference with Travel. No user facility shall be placed in any location that unnecessarily interferes with the usual travel on such right-of-way, including vehicles, bicyclists, and pedestrians.
- D. No Limitations on Visibility. No user facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.
- E. Size of User Facilities. The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application.

2. Parallel Facilities Located Within Highways.

- A. Overhead Parallel Facilities. An overhead parallel facility may be located within the right-of-way lines of a highway only if:
 - (1) Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;
 - (2) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of two feet (0.6 m) behind the face of the curb to the face of the pole, where available;
 - (3) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of four feet (1.2 m) outside the outer shoulder line of the roadway to the face of the pole and are not within the clear zone;
 - (4) No new pole is located in the ditch line of a highway; and
 - (5) Any ground-mounted appurtenance is located within one foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line and does not obstruct with public sidewalk.

- B. **Underground Parallel Facilities.** An underground parallel facility may be located within the right-of-way lines of a highway only if:
 - (1) The facility is located as near the right-of-way line as practicable and not more than eight (8) feet (2.4 m) from and parallel to the right-of-way line;
 - (2) A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and
 - (3) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than five (5) feet (1.5 m) from the right-of-way line and any above-grounded appurtenance shall be located within one foot (0.3 m) of the right-of-way line or as near as practicable.
3. **Facilities Crossing Highways.**
- A. **No Future Disruption.** The construction and design of crossing facilities installed between the ditch lines or curb lines of City streets may require the incorporation of materials and protections (such as encasement or alternative fill materials) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.
 - B. **Cattle Passes, Culverts, or Drainage Facilities.** Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.
 - C. **90 Degree Crossing Required.** Crossing facilities shall cross at or as near to a ninety (90) degree angle to the centerline as practicable.
 - D. **Overhead Power or Communication Facility.** An overhead power or communication facility may cross a highway only if:
 - (1) It has a minimum vertical line clearance as required by ICC's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305);
 - (2) Poles are located within one foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and
 - (3) Overhead crossings at major intersections are avoided.
 - E. **Underground Power or Communication Facility.** An underground power or communication facility may cross a highway only if:
 - (1) The design materials and construction methods will provide maximum maintenance-free service life; and
 - (2) Capacity for the user's foreseeable future expansion needs is provided in the initial installation.

4. Facilities to be Located within Particular Rights-of-Way. The City may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.
5. Freestanding Facilities.
 - A. The City may restrict the location and size of any freestanding facility located within a right-of-way.
 - B. The City may require any freestanding facility located within a right-of-way to be screened from view.
6. Facilities Installed Above Ground. Above ground facilities may be installed only if:
 - A. No other existing facilities in the area are located underground;
 - B. New underground installation is not technically feasible; and
 - C. The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing user poles and light standards shall be used wherever practicable; the installation of additional user poles is strongly discouraged.
7. Facility Attachments to Bridges or Roadway Structures.
 - A. Facilities may be installed as attachments to bridges or roadway structures only where the user has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted as attachments to bridges or roadway structures.
 - B. A user shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the capability of the bridge or roadway structure to adequately support the installation and the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:
 - (1) The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;
 - (2) The type, length, value, and relative importance of the highway structure in the transportation system;

- (3) The alternative routings available to the user and their comparative practicability;
- (4) The proposed method of attachment;
- (5) The ability of the structure to bear the increased load of the proposed facility;
- (6) The degree of interference with bridge maintenance and painting;
- (7) The effect on the visual quality of the structure; and
- (8) The public benefit expected from the user service as compared to the risk involved.

8. Appearance Standards.

- A. The City engineer may prohibit the installation of facilities in particular locations in order to preserve visual quality.
- B. A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the right-of-way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed in the opinion of the City engineer.