

October 21, 2014

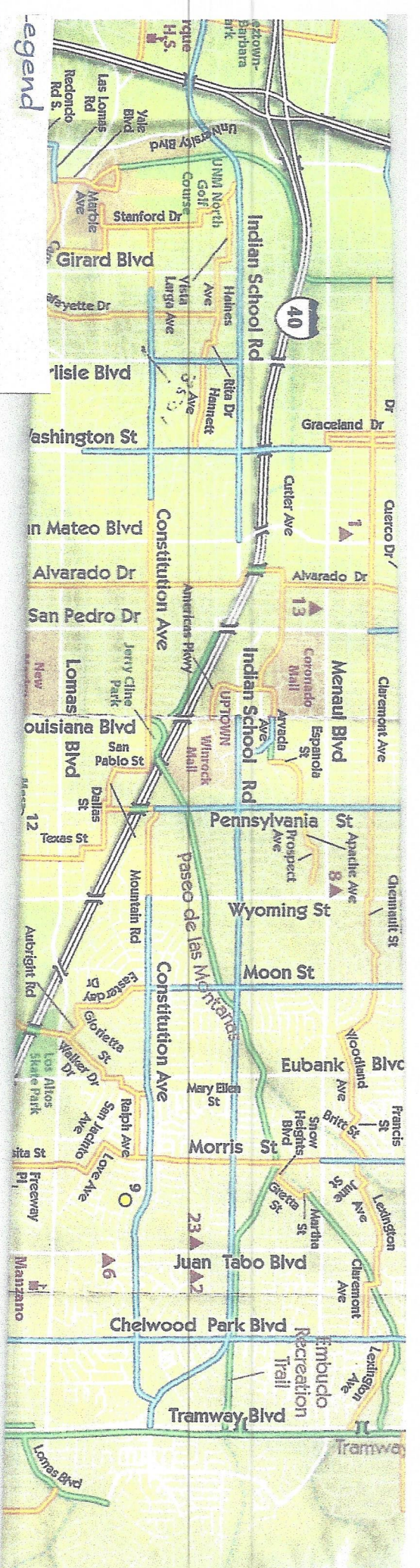
Albuquerque Bicyclists, Alert!

On **Friday, October 24, from 10 to 12 a.m.** the New Mexico Court of Appeals will hear final arguments regarding the Kroger/Smith's corporation's proposal to increase its annual pumping of gas at Constitution and Carlisle to 4.5 million gallons, 1.2 million more than its original permit had allowed. Fortunately the NM Court of Appeals building lies close by, on Tucker Avenue NE, right between the UNM Medical School, the UNM Law School, and the UNM's north golf course club house. **(See bottom of attached map, showing UNM campus.)**




Why is this important for Albuquerque cyclists? Constitution Avenue (together with Paseo de las Montanas, to which it connects) is a major cycling route for commuters riding from the university to the east side of the city. The intersection with Carlisle has always been a hurdle for cyclists, however, since five and a half streets intersect there (one of the streets only allows a single lane); moreover, Carlisle is six-lane arterial, and Constitution often has heavy traffic too. Actually the situation is worse than the **metro bicycle map** represents **(see top of attached map)**, since that map does not show that the bicycle lanes it promises stop some distance from the intersection. Moreover, with the construction of the new gas station in 2010 the space for bicycles to ride largely disappeared, since the city placed a long barrier between the auto lanes on Constitution, in order to accommodate the station's traffic patterns. What really messed up the intersection for cyclists, however, was that by 2011 Smith's was selling far more gas than its permit allowed, by pricing its gas below everyone else in the metro area, so that motorists (seeing this bargain on the "gas buddy" app) swarmed there from miles around. Cars lined up all down that block of Constitution to enter the station, so that for cyclists the area became a disaster zone. But when Smith's was fined for the violation, instead of cutting the volume of gas it merely applied for a larger permit, which the city approved.

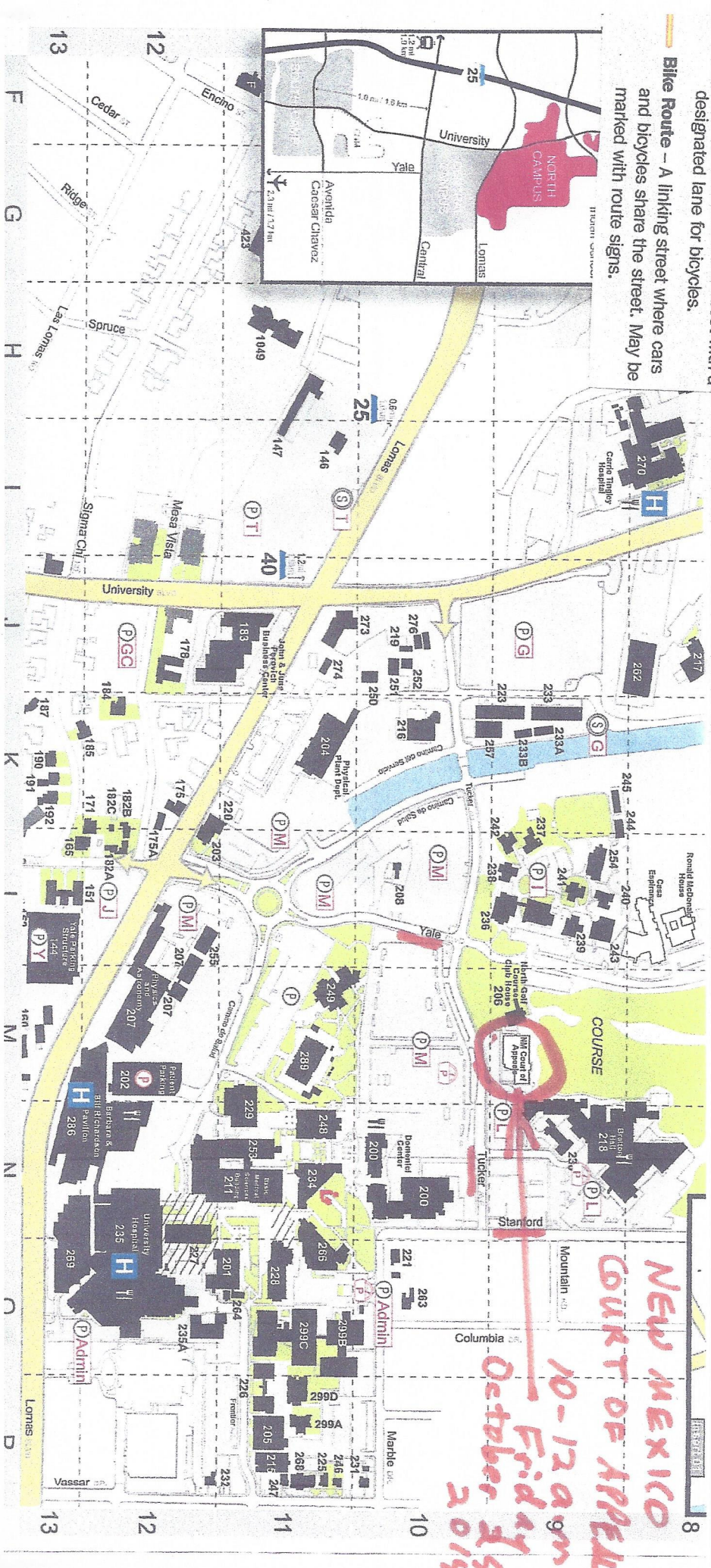
Then in August 2012 the Summit Park Neighborhood Association, in whose area the station is located, appealed to the city/county Air Quality Control Board the decision of the city to approve Smith's application for the revised permit **(see the attached statement from the Summit Park Neighborhood Association's president)**—and, to everyone's surprise, it won! By early January, 2013, the Board had reversed the city's approval of Smith's revised permit, thereby requiring the station to pump no more gas than its original permit allowed. Although Smith's and the city appealed this decision to the New Mexico Court of Appeals, that court stayed the city's approval of Smith's revised permit until it could rule on the merits of the case. Next Friday's hearing is where the NM Appeals Court will hear final oral arguments. The decision of the Court is crucial. **Please show the New Mexico Court of Appeals your concern for this issue by attending this hearing Friday at 10-12 a.m. If the court rejects Smith's revised permit, the situation at the station will remain as it is now; whereas if it approves that revised permit, the intersection will go back to the chaos we experienced in 2010-2012.**

(For more information, contact Pat Toledo, pinkopatrick@gmail.com, 256-0848)



Legend

-  **Recreation Trail** – A paved trail closed to automotive traffic.
-  **Bike Lane** – A portion of the street with a designated lane for bicycles.
-  **Bike Route** – A linking street where cars and bicycles share the street. May be marked with route signs.



NEW MEXICO
COURT OF APPEALS
 10-12 am
 Friday
 October 23, 2014

Summit Park Neighborhood Association
Judy Jennings, President
August 2012

The residents who live in close proximity to the Smith's Gas Station on Constitution and Carlisle are truly suffering as a result of the flawed permit process which enabled a 10-pump station to be built by the Kroger/Smith corporation. In addition, many non-residents are negatively affected by the noise, the traffic, the congestion, the odors, and the accidents.

Unfortunately, the Kroger/Smith corporation is behaving like the grand puppeteer, controlling the intersection and making fools of various departments within city government, including this board, by lowering and raising prices at will. When they knew a traffic count was going to be conducted for this hearing, they substantially raised the price of gasoline at the station, so that it was 20 cents higher than neighboring stations, and significantly higher than other Smith's gas stations, thereby manipulating the traffic count in their favor. As soon as the traffic count was completed, they lowered the price and continued to violate the terms of their permit.

In addition to their total disregard for the neighborhood or the residents, the Kroger/Smith corporation seems to enjoy laughing in the face of city government, defying the rules of the permit they should never have received, consistently selling as many gallons as they please. It must be enormously profitable for them, since they were fined \$38,000 the first time and close to \$100,000 the second time.

The Kroger/Smith corporate representatives have blatantly lied to the community and to this board. Several months ago, at a hearing, they denied knowledge of any accidents as a result of vehicles making illegal u-turns to get into the station. The fact is that accidents continue to occur over and over again, in the same spot, for the same reason - low prices, inadequate accessibility to the station, and illegal u-turns.

The corporate representatives have acknowledged that, due to the small size of the station, the inadequate intersection, and the limited maneuverability, smaller tankers must be used to deliver gas to this site. These tankers have a capacity of 7500 gallons. At 4.5 million gallons of gasoline per year (which does not include the diesel fuel which is also sold at the station), that equals 600 tankers per year, or an average of 1.6 deliveries per day, every day, 365 days per year. Yet the corporate representatives first claimed that the station received 1-2 deliveries per month, then revised the claim to 1-2 deliveries per week. The fact is the station receives 11.2 deliveries per week. If a consumer typically purchases 10-15 gallons of gasoline, that equals 822 - 1233 (or an average of 1025) cars per day, every day, 365 days per year. If one considers peak hours between 7 am and 7 pm, that translates to close to 100 cars per hour, every hour, for 12 hours, every day, 365 days per year. It is not possible for the air quality NOT to be affected under such conditions.

I pulled in to the station the other day for a closer look, having witnessed an accident there recently. Smith's had lowered its price significantly. Cars were moving in every direction; it was total chaos, with several near-accidents. My car windows were open. The stench of gasoline and exhaust was overwhelming.

It should be noted that, if the permit process had been followed correctly, a permit would never have been issued. The fire department, the police department, and the traffic department have all voiced their concerns. Kroger/Smith has openly stated that this is their most profitable gas station. They have repeatedly demonstrated that they will stop at nothing to make as much money as possible from this station. This permit needs to be revoked. This board, composed of city and county employees, has a responsibility to advocate for the residents of Albuquerque and behave in a manner which promotes quality of life for the people who live here. The purpose of this board is not to advocate for out-of-state, big businesses who care nothing for our community, when that advocacy hurts our neighbors.

Summit Park Neighborhood Association
Judy Jennings, President
August 2012

The city goofed when they short-circuited the permit process. Kroger/Smith benefited from this error. Rather than defend their erroneous actions, it would be refreshing to hear Mr. Tevarez and other city employees step up to the plate, acknowledge their error, and admit we need to begin the process again.

We have a multitude of laws and regulations on the books, which are intended to protect the citizens of this community. We are at this hearing today because existing laws and regulations were ignored and/or are inadequate, and the structure of our city government does not appear to include a department or agency which acknowledges having the authority to say anything of significance.

In her opening comments, the city attorney defended the actions of the Air Quality Board. Obviously. That's her job. She said that Mr. Tevarez' testimony is critical to this case. In my opinion, Mr. Tevarez' testimony is not critical to this case - it simply defines the limitations of the Air Quality Board. We already know about these limitations. What is critical to this case is that, if the city does not alter its course, the city will continue to demonstrate a wanton disregard for the citizens of this community.

As for Mr. Salazar's comments, Smith's did not reach out to the community. They invited neighborhood associations to an informational meeting after the permit had been issued. The reason the community did not complain sooner is because we did not know. We were blind sided. Mr. Salazar is also incorrect about past usage of that corner. He assertively stated that he lives or lived in that neighborhood and there has always been a gas station on that site. There has not always been a gas station on that corner. I do not know why he would say that, because it is simply not true. There was a very small 2-pump station there many years ago, but not in the recent past. As for his comment about employees wearing something around their necks with 'clean' results, that's about as convincing as the addict who knows he has to stay clean for a few days before he goes to court. As I said earlier, Kroger/Smith's blatant manipulation of emissions, traffic, etc. by jerking the price up and down influences the outcome of any monitoring that takes place. The fact that the station has ignored the terms of the current permit and continues to be fined speaks volumes.