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SENT VIA EMAIL

Jeremiah Bebo
City of Arvada, Planner II
8101 Ralston Road
Arvada, CO 80002
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RE: Friends of Ralston Creek Neighborhoods – Opposition to Proposed Project No. DA2021-0146

Dear Mr. Bebo:

This law firm represents the Friends of Ralston Creek Neighborhoods (“**FRCN**”) in connection with its opposition to the “Golden RV Storage” proposal submitted on behalf of Carlson Associations, Inc. (“**Carlson**”) to redevelop the property located at 6800 Kilmer St. (the “**Site**”) and referred to by Arvada as Project No. DA2021-0146. FRCN is a Colorado non-profit that is dedicated to protecting the health, safety, and welfare of Ralston Creek and surrounding communities within the immediate vicinity of the Site.

Based upon its most recent submittals in connection with Project No. DA2021-0146 (the “**Development Application**”), Carlson seeks to develop the Site into 556 RV storage spaces and a 1,890-square foot office building. The purpose of this letter is to highlight some of the most pressing concerns that FRCN has with Carlson’s proposal for the Site.

At this point, FRCN’s primary concerns are twofold: (1) the major modification that Carlson seeks as part of its proposal with respect to outdoor storage is inconsistent with the Land Development Code (the “**LDC**”) and essentially seeks to rezone the site to allow for heavy industry without going through the necessary review and approval for such a rezoning; and (2) the environmental remediation that Carlson proposes for the Site is insufficient to ensure that the existing environmental contamination at the Site will not migrate into Ralston Creek and the surrounding community. Each of these issues is addressed in turn below.

1. Carlson’s Request to Nearly Double the Amount of Allowable Outdoor Storage Is Inconsistent with the IL Zoning of the Site.

One of the major modifications requested by Carlson seeks to increase the maximum outdoor storage allowed at the Site from 35 percent to 65 percent—or nearly twice the amount of allowable outdoor storage within the Site’s IL (Industrial Light) Zone. This would make “Outdoor Storage,” which is intended to be an accessory use within the IL Zone, the predominant and primary use at the Site. Because this proposed major modification directly conflicts with the purpose of IL zoning under the LDC, it must be denied. *See* LDC Div. 8-3-11-4(A) (“The Major Modification procedure is not intended to serve as a waiver of the intent of the LDC or to circumvent the variance procedure.”).

Under the LDC, the IL Zone is intended “to provide areas for light manufacturing, assembly and fabrication uses, office, research, food and beverage processing, packaging, or bottling, and compatible recreational activities.” LDC Div. 2-1-6-2(A). The LDC defines “Light Industry” as “[u]ses that involve research and development, assembly, remanufacturing, compounding, packaging, testing, or treatment of products, generally from previously prepared materials or components, **with limited outside storage and limited external impacts** or risks such that the use is not defined as heavy industry or heavy logistics center.” LDC Div. 2-11-3-1 (emphasis added). In other words, industrial uses within the IL Zone are primarily intended to be confined to the inside of warehouses or other buildings so as to limit the impact of such uses on neighboring properties—especially those which are zoned for non-industrial uses.

Consistent with this, Division 2-1-6-2(C) of the LDC limits outdoor storage within the IL Zone to no more than 35 percent of a parcel. Outdoor storage is defined as “[s]torage of materials, merchandise, stock, supplies, machines, **operable vehicles**, equipment, manufacturing materials, or chattels of any nature **that are not kept in a structure having at least four walls and a roof**, regardless of how long such materials are kept on the premises.” LDC Div. 11-3-3-1 (emphasis added). Moreover, Division 4-3-3-5(D) of the LDC expressly confirms that outdoor storage is not intended to be the primary use within the IL Zone as “[o]utdoor storage areas shall only be used for the storage of operable equipment or materials **used for the conduct of an approved use located on the same lot**.” (Emphasis added); *see also* LDC Div. 3-1-3-8(D) (providing that “Motor Vehicle Storage” should be “located **behind the principal building**” (emphasis added)).

Carlson’s request for a major modification to allow 65 percent of the Site to be used as outdoor storage is fundamentally incompatible with the definition and purpose of IL zoning. Accordingly, Carlson’s request is effectively a request to rezone the Site to IG (Industrial General) without actually going through the necessary steps to effectuate such a radical change. Unlike the Site’s existing IL Zoning, a “storage yard”¹ is a primary use within the IG Zone and the maximum amount of “outdoor storage” can occupy up to 90 percent of a parcel. Of course, the reason that Carlson has not formally sought to rezone the Site to IG is obvious—such a rezoning would almost

¹ Division 11-3-3-1 of the LDC defines a “storage yard” to include “[a] location for outdoor storage of operable equipment,” which is exactly what Carlson is proposing for the Site.

certainly be denied since the location of the Site and the existing surrounding uses, which include established residential subdivisions, Ralston Creek, the Ralston Creek Trail, and other open space are fundamentally incompatible with heavy industrial uses. But the same rationale dictates that Carlson's request for a major modification to squeeze an incompatible outdoor storage yard within the IL Zone must likewise be denied.

Carlson's proposed heavy industrial use is especially problematic at this Site for several reasons. For example, Carlson's plan provides that its proposed RV storage facility will require that significant volumes of flammable materials be stored onsite, including propane, gasoline, and industrial cleaning products. These combustible materials will be stored at the Site in close proximity to trees, shrubs, and native grasses that could provide further fuel in the event of an explosion or a fire and which could result in devastating consequences for all surrounding members of the community. Carlson's proposal could also create security issues for neighboring landowners, as a massive new parking lot may be difficult to secure and could invite opportunities for illegal squatting, theft, or vandalism. Finally, by proposing to pave over the vast majority of the Site, Carlson seeks to significantly add to the amount of impermeable surfaces in the area. This will create significant additional surface water runoff (which may be polluted by petroleum products and other contaminants that will leak from vehicles and collect on the parking surface) and further increase the heat island effect in this area of Arvada.

Each of these negative externalities will be difficult if not impossible to mitigate, and surrounding landowners will be harmed as a result. These negative impacts confirm the fundamental incompatibility of what is effectively a plan to convert the Site to a heavy industrial use with a proposed development that is presumptively not allowed within the IL Zone.

Pursuant to Division 8-3-11-4(D) of the LDC, a major modification may only be approved if the applicant can satisfy all five of the required criteria for approval. Here, Carlson cannot satisfy *any* of these requirements:

1. Carlson's outdoor storage proposal is inconsistent with the allowable uses within the IL Zoning at the Site because outdoor storage is only intended to be an accessory use within the IL Zone;
2. Carlson has not demonstrated any creativity with its plan to create what is essentially a large parking lot that would occupy nearly the entire Site;
3. The proposal will result in what is effectively a heavy industrial development (allowed only within the IG Zone) that is incompatible with neighboring residential subdivisions as well as Ralston Creek and the regional recreational amenity provided by the Ralston Creek Trail;
4. For many of the same reasons, the proposed use will negatively impact the health, safety, and general welfare of surrounding property owners as well as the general public; and

5. Carlson has not identified any way to satisfactorily mitigate against these substantial harms.

Ultimately, there is no basis to approve Carlson's major modification request to double the amount of allowable outdoor storage at the Site to allow for outdoor storage as the primary use at the Site in violation of the IL Zoning. Accordingly, FRCN respectfully requests that Arvada deny this request.

2. Given the Known Contamination at the Site, Carlson's Proposal Poses a Significant Threat to the Health, Safety, and Welfare of the Surrounding Community.

As Carlson and Staff have confirmed, the Site is presently contaminated due to the continued presence of a historic unpermitted and non-sanitary landfill at the Site. Although many of Carlson's application materials discuss the use of the Site as an unpermitted landfill by Jefferson County in the 1930's and 1940's, FRCN is also aware that the Site was used for illegal dumping for many, many years after the County landfill was officially closed in the 1940's.

Although the historic contamination at the Site has mostly remained buried, it has at times nevertheless caused pollution to move off of the Site, especially into Ralston Creek. For example, the 2013 floods and resulting erosion along the creek channel caused a portion of the historic landfill to be exposed and to dump unknown quantities of trash and other pollution into Ralston Creek:



The contaminated legacy of the Site is especially concerning to FRCN in light of Carlson's current proposal, and FRCN is not convinced that the contaminated legacy of the Site will be fully contained as a result of the pending voluntary cleanup ("VCUP") application that Carlson has submitted to the CDPHE. While CDPHE's voluntary cleanup program is intended to incentivize voluntary cleanup efforts where resources might not otherwise exist to remediate historic contamination, Carlson's proposal is a special case where its proposed future use threatens to expose an unknown volume of contaminants that have remained buried on site for more than a

generation To date, Carlson has only done very limited sampling of the Site and there is no telling what contamination might be unearthed from this historic, unpermitted landfill once Carlson begins excavating the Site.

While we understand that Arvada's general practice is to defer to the CDPHE when dealing with brownfields remediation, FRCN urges the City to take a more hands-on and proactive approach with Carlson's proposal, especially in light of the Site's proximity to Ralston Creek. Here, the CDPHE has not required Carlson to conduct extensive testing as a condition of issuing a VCUP. Similarly, it does not appear that there has been any recent groundwater testing at the Site to determine what impacts the abandoned landfill might be having and/or whether contaminants of concern are flowing off of the Site below the surface. The most recent geotechnical investigation of the Site is nearly 15 years old, and Carlson has not explained how it intends to address the many challenges with the geography of the Site that are identified in that report. Moreover, Carlson has not provided detailed engineering drawings to address the likely potential for compaction, subsidence, surface runoff, or subsurface flows. The proposal likewise does not include any engineering drawings or specifications for the proposed liner to be placed on top of the historic contamination or otherwise address how the proposed changes to the Site could change the levels of methane that are currently being released.

FRCN is especially concerned that CDPHE does not require a developer to post a bond to ensure that any cleanup is finished once it is started and to ensure that there are resources available to guarantee that ongoing monitoring (including methane monitoring within buildings) can continue into the future even after the developer moves on or potentially becomes defunct.

CDPHE's consideration of Carlson's VCUP application does not appear to consider all of the impacts that will occur at the Site as a result of Carlson's development. For example, CDPHE's comments on Carlson's VCUP application do not specifically consider any issues that might result from short-term or long-term soil compaction after several thousands of tons of recreational vehicles are planned to be moved onto the Site.

Again, however well-intentioned the CDPHE may be, its primary goal is to facilitate the approval of Carlson's proposed VCUP to leverage Carlson's private resources to clean up at least some of the historic contamination at the Site. But greenlighting Carlson's proposed development of the Site will result in numerous additional environmental challenges and concerns which have not been fully investigated or resolved through the VCUP process. FRCN and other neighboring landowners are much more concerned about the long-term environmental effects that could result if this cleanup is not completed properly and with a guaranteed long-term funding source to ensure that all required remediation and monitoring actually happen.

Accordingly, before approving any site plan for the Site, FRCN respectfully requests that the City require Carlson to: (1) complete a more robust investigation of the existing contamination at the Site; (2) provide for any and all necessary environmental remediation and mitigation in light of this complete investigation; and (3) post an environmental bond sufficient to cover all of these

long-term costs, so that the City or some other entity can step in to ensure that no aspect of this cleanup remains unfinished after Carlson exposes the long-buried contamination at the Site.

* * *

On behalf of FRCN, I thank you for your time and careful consideration of FRCN's significant concerns about this proposal. Please include a copy of this letter in the administrative land use file for Project No. DA2021-0146 and please let us know of any further developments related to Carlson's proposal, including but not limited to any subsequent submittals from Carlson, any responsive comments from the City to Carlson, any public meetings or hearings regarding any aspect of Project No. DA2021-0146, and/or any further opportunities for referral comments.

Please let me know if you have any questions regarding any of the foregoing. We thank the City and Staff for your time and careful consideration of these important matters.

Sincerely,



James Silvestro

Cc: Mayor Marc Williams
Mayor Pro-Tem David Jones
Randy Moorman
Lauren Simpson
John Marriott
Lisa Smith
Bob Fifer
Rachel Morris
Mark Deven
Ryan Stachelski
Harshwinder Badhesha