James R. Silvestro

Attorney at Law

303.628.3632 (direct)

jsilvestro@irelandstapleton.com

March 22, 2024

**SENT VIA EMAIL**

Jeremiah Bebo

City of Arvada, Planner II
8101 Ralston Road

Arvada, CO 80002

JBebo@Arvada.org

|  |  |
| --- | --- |
|  | RE: Friends of Ralston Creek Neighborhoods – Opposition to Development Application No. DA2024-0016 |
|  |  |

Dear Mr. Bebo:

This law firm represents the Friends of Ralston Creek Neighborhoods (“FRCN”) in connection with its opposition to the “RV Storage Arvada” project that has been proposed by Chelton, LLC to develop the property located at 6800 Kilmer St. (the “Site”) and now designated by the City as Project No. DA2024-0016. FRCN previously opposed a similar land use application for this same Site, which the City previously designated Project No. DA2021-0146. FRCN continues to vehemently oppose this overly intensive land use at a former unpermitted landfill site that remains heavily contaminated. The continued presence of environmental contamination at the Site[[1]](#footnote-2) makes this proposed use especially inappropriate at this location and uniquely threatens the adjacent Ralston Creek waterway, recreational trail, and all surrounding land owners.

The purpose of this letter is to set forth the many reasons why the City must deny this unlawful land use application. First and foremost, this proposal violates the existing zoning at the Site and thus cannot be lawfully approved. Second, the proposal violates the City’s setback rules for industrial storage near existing residential uses. Third, even if the proposed land use were permitted at the Site, the City should not bend its land use rules to permit the Site to be developed in violation of the City’s minimum setback and maximum outdoor storage rules. Fourth, there is no basis to amend the Comprehensive Plan to facilitate this private develop given the unique history of the Site and adjacent residential and recreational uses. Fifth, the current land use proposal is missing too many critical details to be considered complete and ripe for consideration by the City. Finally, given the legacy of environmental contamination at the Site, any proposed development at the Site should be considered by the full City Council as part of a public hearing and not pushed through by an opaque administrative process. Each of these concerns is address in turn herein.

1. **Outdoor Storage Is Not a Legally Permitted Primary Use within the IL Zone.**

The Site is located in the City’s IL Zone, which permits only light industrial uses. More specifically, 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 § 2-1-6-3. The LDC similarly 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 § 11-3-3-1 (emphasis added).

Chelton’s proposal for an RV storage yard does not fit within Arvada’s definition of “light industry” and therefore is not a legal land use at the Site. The predominant land use proposed by Chelton is outdoor storage. While the LDC provides that limited outdoor storage (totaling no more than 35 percent of a property) may be an ***accessory*** use within the IL Zone, the LDC does not identify outdoor storage as a permissible ***primary*** use in the IL Zone. *See also* LDC § 4-3-3-5.D (“Outdoor 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)); LDC § 3‑1‑3‑8.D (providing that “Motor Vehicle Storage” should be “located behind the ***principal*** building” (emphasis added)).

Chelton’s current proposal fits squarely within Arvada’s definition of a “storage yard” as “a location for outdoor storage of operable equipment.” LDC § 11-3-3-1. Under the LDC, a “storage yard” is only allowed as a primary use within Arvada’s IG (heavy industrial) Zone. LDC § 2‑1‑6‑4.A. This reality is further confirmed by the fact that all three of Arvada’s existing RV storage facilities are located in the City’s IG (heavy industrial) Zone.[[2]](#footnote-3)

Because Chelton’s proposed land use is not permitted within the IL Zone, none of Chelton’s land use requests can be approved without violating the LDC. If Chelton intends to operate a “storage yard” at the Site, then it must seek to rezone the Site to the IG Zone. Of course, given the existing surrounding uses in the vicinity of the Site, such a rezoning would not be appropriate and there is no lawful way for Chelton to operate its proposed storage yard at this location.

1. **The Proposal Violates the City’s Setback Rules for Outdoor Storage.**

Chelton’s current land use application ignores its previous admission that this proposed RV storage facility requires a minor modification to the City’s presumptive setback rules. (*See* Project No. PA2023-0055, May 2, 2023 Letter from K. Dean to J. Bebo.[[3]](#footnote-4)) More specifically, LDC § 5‑1‑6‑3.B.2 provides that outdoor storage shall not be located within 300 feet of adjacent residential zones. Here, Chelton’s current proposal provides that industrial storage would be located less than 150 feet from the neighboring residential property located at 6690 Kendrick Dr., Arvada, Colorado:



Unlike the other residential lots in the Forest Springs neighborhood, the residential lot for the home at 6690 Kendrick Dr., Arvada, Colorado extends north side of the irrigation ditch. Accordingly, although Chelton previously admitted that it would need a minor modification to allow for a 240‑foot setback from neighboring residential lots, the closest residential lot is actually much closer and this issue cannot be resolved through a minor modification. Perhaps that is why Chelton’s current application ignores the issue altogether.

 Regardless, the City cannot issue any of the approvals that Chelton is currently requesting for this illegal land use. Accordingly, the proposal must be denied.

1. **The City Should Not Waive Its Maximum Outdoor Storage Rules.**

Even if the City somehow determines that Chelton’s proposal is not illegal for the reasons set forth above, the City should nevertheless deny the proposal because there is no basis for the City to waive its land use rules regarding the maximum amount of outdoor storage. As confirmed by Chelton’s application, its proposal will violate LDC § 2-1-6-3A, which provides that the maximum amount of outdoor storage within the IL Zone shall not exceed 35% of lot area. Here, Chelton seeks to exceed this standard by at least 20 percent by developing approximately 42 percent of the Site as its storage yard. Accordingly, Chelton’s proposal cannot be approved without the City’s approval of its requested modification of this rule.

 As an initial matter, the City must deny this requested “minor modification” because LDC § 8‑3‑11‑3.C.2 provides that modifications cannot be administratively approved as “minor modifications” when they would result in “[a]n increase in permitted maximum development density or intensity,” “[a] change in permitted uses or mix of uses,” or “[a] decrease in the amount of common or dedicated open space required.” Here, Chelton’s requested modification to the City’s outdoor storage rules would violate all three of these principles by effectively allowing an unlawful “storage yard” in the IL Zone and without sufficient open space (i.e., setbacks) to protect surrounding residential uses.

 Even if the City could administratively approve this requested modification as a “minor modification,” the City should nevertheless deny this request pursuant to the approval criteria set forth in LDC § 8-3-11-3.D. By definition, Chelton’s requested modification would increase the intensity of development and change the uses that are permitted in the IL Zone within the vicinity of adjacent residential uses. The expansion of Chelton’s proposed use beyond what would otherwise be allowed under the LDC would result in a direct injury to neighboring land users, including a loss of property values and the loss of the quiet enjoyment of their properties. Expanded outdoor storage beyond what is presumptively allowed will result in additional traffic, surface water runoff, light pollution, and security concerns related to potential squatting, theft, and vandalism. The development rules in the LDC were put in place to protect neighbors’ interests and should not be ignored to benefit Chelton and to the detriment of all surrounding land owners.

1. **Chelton’s Proposal Is Not Permitted by the Comprehensive Plan, and There Is No Basis to Amend the Comprehensive Plan.**

Arvada’s Comprehensive Plan designates the Site for use as “Mixed-Use: Residential Emphasis.” This designation is consistent with the “Open Space and Parks,” “Suburban Residential,” and “Mixed-Use: Residential Emphasis” that the Comprehensive Plan also identifies for the residential and open space areas that already exist to the north, west, and south of the Site. The Comprehensive Plan provides that “Mixed-Use: Residential Emphasis” areas should be primarily developed “to promote neighborhoods which contain housing predominantly, but may also include retail, offices, and light trade.” Non-residential uses in these areas must be complimentary to the primarily residential uses.

As part of the preapplication process for this proposal, the City previously confirmed that Chelton’s application cannot be approved without the City first amending the Comprehensive Plan to allow for “Industrial” development at the Site. As relevant here, the “Industrial” designation under the Comprehensive Plan stands apart from the “Industrial/Office” designation because “outdoor storage is allowed” in the “Industrial” area whereas “outdoor storage is limited” in the “Industrial/Office” area. While the Comprehensive Plan does include a small area that has been designated as “Industrial/Office” to the east of the Site, there are no “Industrial” areas anywhere near the Site.

Given this context, there is no basis for the City to amend the Comprehensive Plan to allow for this objectively non-conforming land use. Consistent with its designation as “Mixed-Use: Residential Emphasis” under the Comprehensive Plan, any development at the Site must complement surrounding residential uses.

1. **Chelton’s Proposal Is Incomplete and Cannot Be Evaluated In Its Current Form.**

During the preapplication process, the City identified a number of critical details that Chelton would need to provide before the City could consider the merits of its application. Among other things, the City’s May 23, 2023 “Pre-Application Summary” provided that Chelton’s application would need to include: (1) hazard mitigation to prevent polluted runoff from the historic landfill, including potentially a geomembrane under the parking surface to prevent surface water from mixing with subsurface pollution; (2) an approved 404 permit from the U.S. Army Corps of Engineers to allow for the proposed infill of federally designated wetlands; (3) a complete copy of the Site’s VCUP application with all submittals; and (4) a plan to pave all fire lands and fire apparatus access roads with an all-weather surface to support an imposed load of 85,000.[[4]](#footnote-5) Chelton’s current application does not address any of these issues, and is therefore incomplete.

Beyond these requirements that were previously flagged by the City, the application also fails to address critical issues related to wildlife impacts, needed streambank stabilization, and the potential that storing 355 recreational vehicles on a historic landfill could cause significant geotechnical issues.[[5]](#footnote-6) Likewise, the application does not provide for any methane mitigation that might be needed once the historic landfill is sealed by a new parking surface. Chelton’s current submission also does not contain any evidence that this incompatible land use will be fully screened from surrounding residential and recreational areas and will not result in a significant increase in light pollution within the area.

The Ralston Creek is a critical wildlife corridor and recreational trail that links communities throughout Arvada. The City should proactively work to protect this vital public amenity. A fenced parking lot on an unreclaimed landfill is fundamentally incompatible with all surrounding land uses and should be rejected.

1. **Any Approvals Related to Chelton’s Proposal Must Be Considered by the City Council as Part of a Public Hearing.**

For all of the reasons set forth above, the City should deny Chelton’s proposal to convert this former unpermitted landfill into a non-conforming RV storage facility. If, however, Staff decides to administratively approve Chelton’s development application for a site plan and minor subdivision, the City Council should affirmatively “call up” this decision for a full public hearing before the full City Council. LDC § 8-2-3-11.J provides that any land use decision which might otherwise be permissibly made through administrative review by Staff can be brought before the full consideration of the City Council upon a motion and majority vote of Council. If an administrative decision is “called up” before City Council, the LDC provides that the development application shall then be processed through a public hearing before the City Council “as soon as practicable.”

Here, a full public review is warranted to ensure that all affected members of the public have a full and fair opportunity to weigh in on Chelton’s non-conforming land use proposal for the Site. Among other issues, Chelton’s request that the City should waive its outdoor storage rules as well as its failure to comply with the City’s setback rules should be considered by the City Council and not merely processed through a non‑public administrative review. For obvious reasons, Chelton’s controversial proposal has garnered significant public attention and neighborhood opposition. Both Staff and the City Council should welcome this public participation and ensure that all concerns are heard and resolved before any administrative approval might become final.

**\* \* \***

On behalf of FRCN, we thank you for your time and careful consideration of FRCN’s significant objections to this proposal. Please include a copy of this letter in the administrative land use file for Project No. DA2024-0016 and please let us know of any further developments related to Chelton’s land development proposal, including but not limited to any subsequent submittals from Chelton, any responsive comments from the City to Chelton, any public meetings or hearings regarding any aspect of Project No. DA2024-0016, and/or any further opportunities for public comment or participation.

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 issues.

Sincerely,

James Silvestro

Cc: Mayor Lauren Simpson

 Mayor Pro-Tem Randy Moorman

 Shawna Ambrose

 John Marriott

 Bob Fifer

 Lisa Feret

 Sharon Davis

 Rachel Morris

Jessica Garner

1. The Site was an unpermitted landfill for Jefferson County in the 1930’s and 1940’s and continued to serve as an illegal dumping ground for many years even after the 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. [↑](#footnote-ref-2)
2. All three of Arvada’s existing RV storage facilities are located in the IG Zone located south of West 60th Avenue and east of North Lamar Street: (1) Dodo’s RV Storage; (2) ATS RV Park; and (3) Ridge Valley Storage. [↑](#footnote-ref-3)
3. Please consider this to be a formal request to include all of the preapplication materials collected by the City in connection with this project (formerly known as Project No. PA2023-0055) as part of the administrative record for DA2024-0016. [↑](#footnote-ref-4)
4. The current proposal still provides that these emergency access routes will be unpaved. [↑](#footnote-ref-5)
5. Although the application includes a geotechnical report, that report does not include any detailed analysis of what additional stabilization might be needed to prevent the subsurface historic landfill material from shifting or collapsing when placed under significant weight for a prolonged period of time. [↑](#footnote-ref-6)