



Jones Lang LaSalle
1225 17th Street, Suite 1900
Denver, CO 80202

May 2, 2022

City Clerk Dylan Gibson
City Council, City of Commerce City, Colorado
7887 E. 60th Avenue
Commerce City, CO 80022
Re: CanAm – Zoning Case #:Z-964-21-22

Dear City Clerk Gibson:

United Development Companies and QuikTrip, the joint applicants of the 37-acre site located at the SWC of Hwy 85 and 112th Avenue in Commerce City, Colorado, requested a write-up of my professional opinion regarding the retail development viability at said site.

In regards to full-service restaurants, unfortunately, due to construction costs, labor costs, supply costs, and available existing restaurant spaces, I do not expect many deals to occur in the full-service restaurant category. In addition to those macro factors, the industry continues to move toward quick casual and drive-thru formats, which make the real estate expansion even more difficult for developers in our industry. If there is full-service restaurant expansion in suburban trade areas, it will be in trade areas with major anchors, entertainment users such as movie theatres, hotels, and with much stronger demographics.

Grocery is going to be even more difficult. The grocer deals today are extremely difficult to get done due to the requirements that they have put in place. One real estate factor needed is immediate access to the neighborhood, which this site lacks. Another factor needed is a dense surrounding population, which again, unfortunately, this site does not have. Although the overall traffic is great, the two factors mentioned previously would be prohibitive enough to not get internal approval.

As a means of background, I started in Retail Commercial Real Estate in 2003. I currently oversee the Retail Division for the Rocky Mountain Region at Jones Lang LaSalle. Prior to joining JLL in 2020, I was a Partner at Legend Retail Group, and prior to that spent 7 years at the Staubach Co. Retail Division. I have been fortunate enough to assist notable groups with their first locations here in Colorado, as well as help roll out some of the largest publicly traded companies.

Please feel free to reach out to me with any questions.

Regards,

A handwritten signature in black ink, appearing to read "S. Zaitz", is located below the "Regards," text.

Sam Zaitz
Executive Vice President
Jones Lang LaSalle

May 13, 2022

City Clerk Dylan Gibson
City of Commerce City
7887 E. 60th Avenue
Commerce City, Colorado 80022

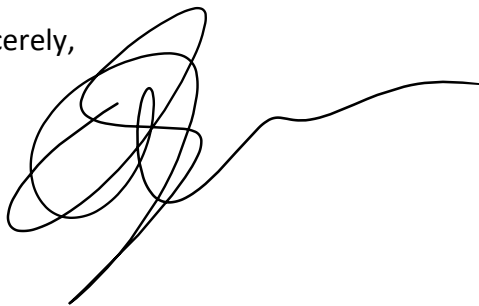
RE: CanAm – Zoning Case#: Z-964-21-22

Dear Clerk Gibson, Planning Commissioners, Mayor, and City Council Members:

My name is Omar Moreno. I am the Trucking Operations manager of Iron Woman Construction. We have a number of members doing business in Commerce City and member companies based out of the city. We appreciate the opportunity to be able to support projects and ventures that bring meaningful development to the city.

I am writing today to express support for the annexation and zoning case for the CanAm project at the southwest corner of 112th Avenue and Highway 85. The applicant has made a substantial effort to reach community and address concerns through a number of voluntary community meetings and continuous communication with neighbors. This will bring much needed retail and services to the area and will do so with consideration of adjacent neighborhoods. I believe the project is in line with the goals of the city's Comprehensive Plan and guidelines, as well as its' economic development goals.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Omar G. Moreno Gomez - Trucking Operations manager
Iron Woman Construction

Gibson, Dylan - CM

From: Emily Walsh <ewalsh.dunes@gmail.com>
Sent: Monday, May 16, 2022 7:59 AM
To: Gibson, Dylan - CM
Subject: Written Comments for RES 2022-30, AN-259-21-22, and Z-964-21-22

Good morning,

Please accept the following as my written comments on the matters of RES 2022-30, AN-259-21-22, and Z-964-21-22 for the 16 May 22 City Council meeting for Commerce City.

Good evening. Thank you for taking the time to consider the residents' concerns regarding the CANAM project at the corner of HWY 85 and 112th. I am a homeowner in the Dunes Park neighborhood across the street and have been actively engaged in neighborhood meetings as well as city planning commission meetings about this property.

We ask that you vote in alignment of the ruling of the planning commission and proceed with the annexations and development of the properties on the condition that fuel cells are removed from the acceptable uses list for these parcels.

The bottom line is that if you want people to live here and spend money here, give them something to spend money on other than the "fresh produce" at a gas station. THERE IS NO NEED OR WANT FOR A GAS STATION, regardless of fueling for large trucks. We as neighbors are concerned for our safety, our community, and for the future of our neighborhood if QuikTrip is allowed to proceed. **Quality community for a lifetime.**

Before I jump into some more specific things, I want to mention the quality of our community. If you want to continue to draw taxpayers to this area and make it more desirable to folks to come and live, work, and play - YOU DON'T DO THAT BY PUTTING IN GAS STATIONS. You do that by including ANY of the other amenities on the commercial use list. I recognize that a bit of my past life (former east coaster from over 10 years ago) is showing here, but do you realize what a good bagel place would do for this area?! We could really stand a place where we could walk to and grab a nice family meal. There is not much other than fast food available to us in this area. A hometown feel is sorely lacking for Dunes Park, River Run, and Belle Creek. There are so many things that this community could benefit from and what QT is proposing will be a detriment to the community, not a boost.

My neighbors and I have expressed many times that we are not in favor of a gas station or convenience store on that property. I will let my neighbors who are present tonight elaborate on the points below as well as surface myriad other concerns that we as a community have about the approval of a QT location. Our reasons include but are not limited to:

- traffic, danger
- traffic, congestion
- traffic, infrastructure redesign/cost to taxpayers
- pollution, light
- pollution, sound
- pollution, air quality

- pollution, trash
- safety, vandalism
- safety, theft
- safety, transient population
- community vitality, quality community for a lifetime
- community vitality, low amenities within walking distance
- community vitality, attractiveness of new and future families
- community vitality, property values
- usage, revenue
- usage, no need for gas

When an increase in traffic incidents and congestion begin to emerge at the intersection of 85/112th, will QuikTrip pay for the redesign and construction of the infrastructure? Conversely, are we as the taxpayers that have the foresight to recognize the issues with the QuikTrip location, come here and speak out about, and ask you to rethink this be forced to pay for it? I am referencing improvements beyond the lengthening of a turn lane and acceleration lane underway with public works. Make no mistake, larger adjustments are inevitable.

This proposal boasts a thriving commercial center. As far as I understand, a gas station is hardly a “commercial center.” We were told that there would be more mixed uses facilities than are being projected in the current version of the proposal and those opportunities are markedly absent.

Receptive and appreciative are the not the adjectives I would use to describe the tone of previous meetings between QuikTrip and my neighbors. In fact, the one participant that was happy about the addition was simply excited that she could remain a resident of Henderson and not Commerce City. It had nothing to do with the quality of bananas she could purchase at our very own QuikTrip. It is insulting to hear that QT is positing that neighbors were "receptive".

I want to advocate for our neighborhood as a whole as there are many neighbors that will not have the ability to attend or speak for themselves tonight. I am unfortunately out of town for my grandfather's funeral, otherwise I would be speaking before you tonight. Some of our neighbors are not able to attend as they have jobs or families that make it difficult for them to attend these meetings for such lengthy periods of time.

Thank you for your time and consideration.

Emily Walsh
9825 E 113th Avenue
Commerce City, CO 80640

--
Best,
-Emily

Emily Walsh | Board Member
Riverdale Dunes Metro District

Gibson, Dylan - CM

From: Stephanie Fernandez <stephanie.m.miller9191@gmail.com>
Sent: Monday, May 16, 2022 11:27 AM
To: CPDS Planning Dept VM 3772
Cc: Baker, Andrew - CD; Memmer, Katelyn - CD; Gibson, Dylan - CM
Subject: AN-259-21-22 & Z-964-21-22 Public Hearing Tonight

Dear Andrew Baker & Planning Committee/City Council,

My name is Stephanie Fernandez and I am emailing with regards to the public hearing meeting tonight concerning QuikTrip and their desire to build a gas station/convenience store on the corner of 112th and 85. I cannot physically come to the meeting tonight as I am pregnant in my third trimester with a high risk pregnancy, so I am hoping you take the time to read my comments on the issue and please take them into consideration.

I have been a resident living in the Riverdale Dunes community for almost 6 years and have watched as Commerce City continues to grow around us. Since hearing about QuikTrip so long ago I have been strongly opposed to them building by the intersection (as well as many fellow residents not just in Riverdale Dunes, but in neighboring Belle Creek), and have emailed and spoken out before on the subject at countless meetings.

After hearing all of the community input over months of meetings outlining all of the countless reasons that there should not be a gas station, I am asking for the City Council to please vote **YES to rezoning with the condition of NO GAS STATION.** I believe this would send a strong message to the surrounding residents that our voices DO matter, and that our thoughts are seriously considered.

Thank you kindly for your time,
Stephanie Fernandez.

-----Original Message-----

From: John Yelenick <yelenick@earthlink.net>

Sent: Wednesday, May 11, 2022 1:26 PM

To: Baker, Andrew - CD <abaker@c3gov.com>; hmiller@adcogov.org; ntapia@agclawfirm.com

Cc: maria.ruiz@coag.gov; Davis, Rick - CC <rdavis@c3gov.com>; cdphe_ej@state.co.us; sjaquith@earthlink.net

Subject: Public Comments for Commerce City PUD Case #Z-964-21-22 _ 9940 East 112th Ave., Henderson, CO_ CERCLA/SUPERFUND Site

Mr. Andrew Baker, Planner
Community Development
7887 E. 60thAve.
Commerce City, CO 80022
abaker@c3gov.com

May11, 2022 City of Commerce City

Case#Z-964-21-22; Annexation and Zoning Change Proposed Subdivision Name: CanAm (fka: Reisbeck Subdivision)

Location:9940-9982 E. 112th Ave., Henderson, CO 80640

Dear Mr.Baker,

The“Development Review Team Analysis” for the captioned case is flawed and sets a bad precedent. Staff Report to the City Planning Commission dated May 3, 2002,states: “The Land Development Code...sets out the specific criteria upon which such an application can be approved or denied. Therefore, the analysis and evaluation must be limited to those criteria; no outside considerations may be the basis of a decision of approval or denial.

Through out the staff report, reliance was placed upon the Commerce City “Comprehensive Plan” which, for the subject property, is contrary to the mandates of the State of Colorado’s “No Action Determination Approval for Property at 9940-9982 East 112th Ave” aka: VCUP: enforceable for the last 18years.

Staff makes the assertion that: c) The PUD: (i) Addresses a unique situation [per section21-4370 PUD Zone District] and represents an improvement in quality... (to) include“environmental protection”. Was Commerce City’s own Environmental Policy Advisory Committee [Res 2021-38] even consulted? If so, where are the committee findings?

As the property owner for Right-of-Way Tract #1 (E. 112th Ave.) and Tract#2 (Belle Creek Blvd.), I object to your Staff’s recommendation to approve the proposed PUD changing the current property use from “Industrial-1” (Light Intensity Industrial District Adams County/Commerce City (in current compliance with the State of Colorado VCUP) to Commerce City PUD “ High Intensity –Residential” – (not in compliance with the State of Colorado VCUP); the subject property currently defined as a United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (SUPERFUND) site.

Sincerely,
John Yelenick Realty
3650 South Dahlia St.
Denver,Colorado 80237

Attachments:

*VCUP Letter to Reisbeck Subdivision dated June 14, 2004 *John Yelenick Rocky Mountain Arsenal
5 Year Review Comments dated July 19, 2021 *Evidence of Ownership for ROW Tracts 1&2;
Reisbeck Subdivision

CC:

Heidi Miller_Adams County Attorney
hmiller@adcogov.org

Noel Tapia_Commerce City Attorney
ntapia@agclawfirm.com

Natalie Hanlon Leh_Chief Deputy Attorney General maria.ruiz@coag.gov

Rick Davis_Commerce City Councilman Ward 3 rdavis@c3gov.com

Colorado Department of Public Health & Environment % Tyson Johnston_Environmental Justice
cdphe_ej@state.co.us

Sandy Jaquith, Site Specific Advisory Board to State of Colorado sjaquith@earthlink.net

Mr. Andrew Baker, Planner
City of Commerce City
Community Development
7887 E. 60th Ave.
Commerce City, CO 80022
abaker@c3gov.com

May 11, 2022

Case #Z-964-21-22; Annexation and Zoning Change
Proposed Subdivision Name: CanAm (fka: Reisbeck Subdivision)
Location: 9940-9982 E. 112th Ave., Henderson, CO 80640

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Throughout the staff report, reliance was placed upon the Commerce City "*Comprehensive Plan*" which, for the subject property, is contrary to the mandates of the State of Colorado's "*No Action Determination Approval for Property at 9940-9982 East 112th Ave*" aka: VCUP: enforceable for the last 18 years.

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As the property owner for Right-of-Way Tract #1 (E. 112th Ave.) and Tract #2 (Belle Creek Blvd.), I object to your Staff's recommendation to approve the proposed PUD changing the current property use from "Industrial-1" (Light Intensity

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Sincerely,

John Yelenick Realty
3650 South Dahlia St.
Denver, Colorado 80237

Attachments:

- *VCUP Letter to Reisbeck Subdivision dated June 14, 2004
- *John Yelenick *Rocky Mountain Arsenal 5 Year Review* Comments dated July 19, 2021
- *Evidence of Ownership for ROW Tracts 1&2; Reisbeck Subdivision

CC:

Heidi Miller_Adams County Attorney
hmiller@adcogov.org

Noel Tapia_Commerce City Attorney
ntapia@agclawfirm.com

Natalie Hanlon Leh_Chief Deputy Attorney General
maria.ruiz@coag.gov

Rick Davis_Commerce City Councilman Ward 3
rdavis@c3gov.com

Colorado Department of Public Health & Environment
% Tyson Johnston_Environmental Justice
cdphe_ej@state.co.us

Sandy Jaquith, Site Specific Advisory Board to State of Colorado
sjaquith@earthlink.net

STATE OF COLORADO

Bill Owens, Governor
Douglas H. Benevento, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division
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Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado
<http://www.cdph.state.co.us>



Colorado Department
of Public Health
and Environment

June 14, 2004

Mr. John Yelenick
3650 South Dahlia
Denver, CO 80237-1002

Re: No Action Determination Approval for Property at 9940-9982 East 112th Ave., Henderson, CO

Dear Mr. Yelenick:

On April 8, 2004, a No Action Petition (the Petition) was submitted on behalf of the Reisbeck Subdivision LLC (the Applicant) to the Colorado Department of Public Health and Environment (the Department) pursuant to C.R.S. 25-16-307(2) of the Colorado Voluntary Cleanup and Redevelopment Act. The Petition was submitted for the property identified in the Petition and listed here generally as, the Reisbeck Subdivision, 9940-9982 East 112th Ave., Henderson, CO (the site).

The Department conducted a review of the environmental data collected on the above-referenced property. Based on this review and pursuant to C.R.S. 25-16-307(2), the Department approves the applicant's Petition and makes the following determinations:

- 1) The environmental assessment submitted by the applicant and performed by qualified environmental professionals indicates that there is no evidence of contamination released into the environment present from the applicant's operations on the property, which exceeds applicable promulgated state standards, or which poses an unacceptable risk to human health and the environment.
- 2) Contamination is present in the ground water (DIMP) for which there are applicable promulgated standards. The contamination appears to originate from a source upgradient of the site and the applicant is not responsible for this contamination.

Based on the information provided by the applicant concerning property identified in the Petition and listed here generally as the Reisbeck Subdivision, 9940-9982 East 112th, Henderson, CO, it is the opinion of the Colorado Department of Public Health and Environment that no further action is required to assure that this property, when used for the purposes identified in the No Action Petition (Adams County Industrial-1) is protective of existing and proposed uses and does not pose an unacceptable risk to human health or the environment at the site.

Mr. John Yelenick

June 14, 2004

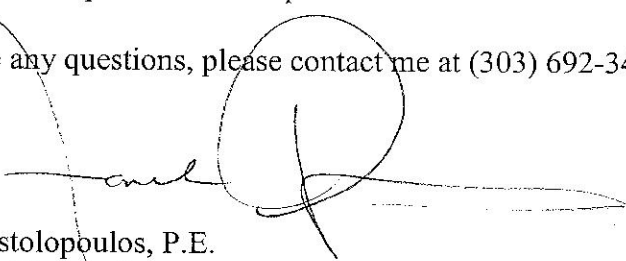
Page 2

The approval of the applicant's Petition by the Department applies only to conditions on the property and state standards that exist as of the time of submission of the Petition. In addition, this approval applies only for the land use specified in the application, which is Adams County Industrial-1. This approval shall be considered void if it is determined that materially misleading information has been submitted by the applicant. Nothing in this letter shall be construed to limit the Department's authority to take actions under existing statutes as necessary, should new information come to the attention of the Department.

Under the land uses proposed by this petition, the applicant shall comply with all applicable federal, state, and local laws or regulations and shall obtain all necessary approvals or permits to conduct all activities envisioned under the proposed land use. The Department makes no representation with respect to approvals of permits required by federal, state, or local laws or regulations, other than the Voluntary Cleanup and Redevelopment Act.

If you have any questions, please contact me at (303) 692-3411.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fonda', with a large, stylized flourish extending to the right.

Fonda Apostolopoulos, P.E.
Voluntary Cleanup Program

cc: RV040408-1

July 19, 2021

Ms. Patty Lee
Rocky Mountain Arsenal
6550 Gateway Road
Commerce City, CO. 80022
303_289_0300
Patty.l.lee6.civ@mail.mil

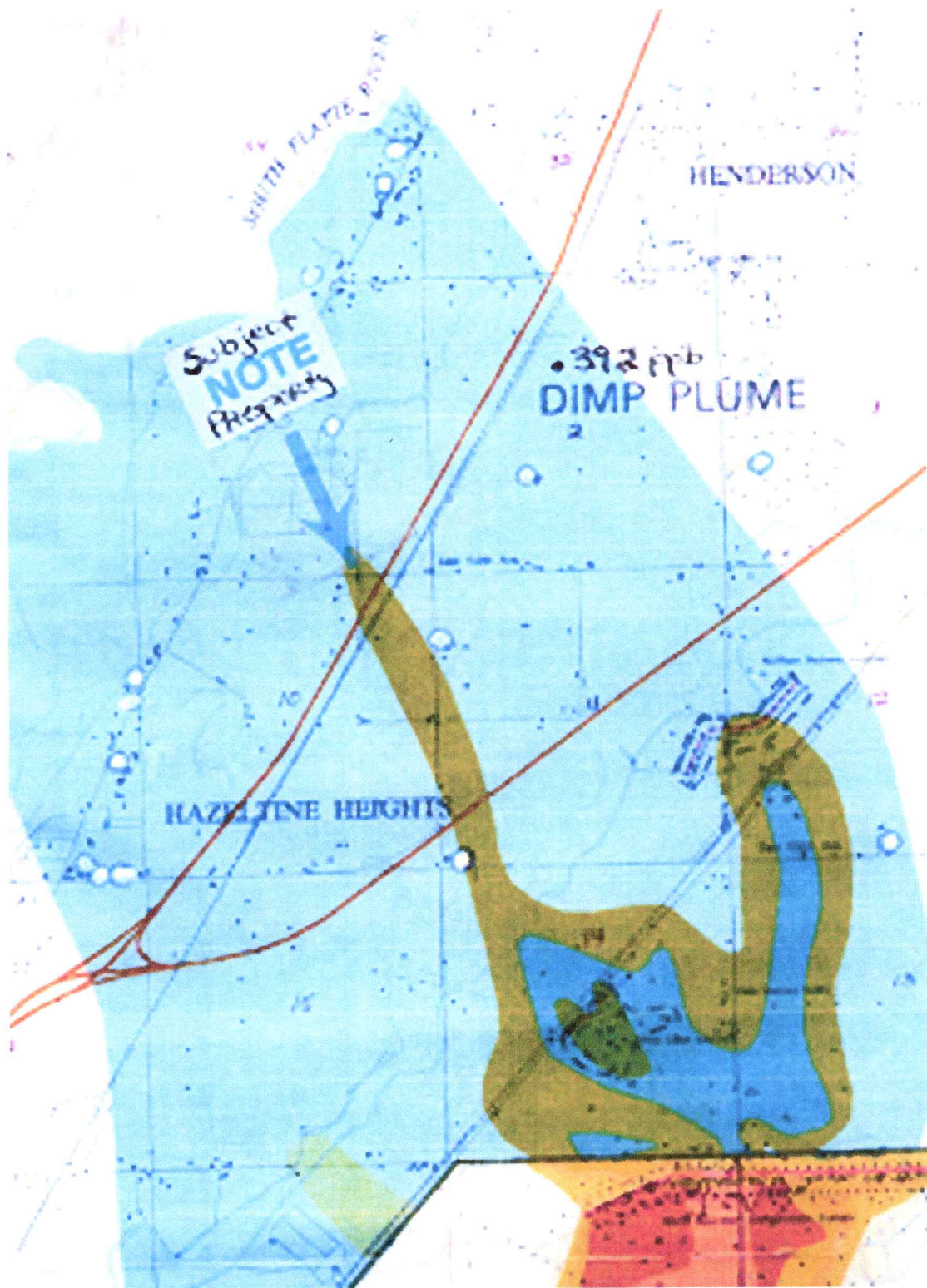
Re: Comments; 5th Five Year Review Period: April 1, 2015 – March 31, 2020

The Environmental Protection Agency (EPA) “considers the Five-Year Review (FYR) effort to be a critical element of the CERCLA process...to ensure that the Report adequately address the three fundamental questions posed by the Review. These questions are:

1. Is the remedy functioning as intended by the decision documents?
2. Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of the remedy still valid?
3. Has any other information come to light that could call into question the protectiveness of any of the remedies?”

Current and future land use of the Off-Post OU surface area has not been restricted, although groundwater use has been restricted in the Off-Post Record of Decision (ROD). Land use controls, in the form of institutional controls, were established as part of the selected remedy for the Off-Post ROD to prevent the future use of groundwater exceeding remediation goals.

“In 2011, the Off-Post Well Notification Program was modified to include both the potential Containment System Remediation Goals (CSRGs) exceedance area and the historic area of contamination as defined as the area of diisopropylmethyl phosphonate (DIMP) contamination based on the 0.392 parts per billion detection limits identified in the Off-Post ROD. These notification areas will be used until off-post groundwater is deleted from the NPL....



Any user of a domestic well within the Off-Post OU that contains groundwater contaminants derived from RMA at concentrations that exceed the

remediation goal or Applicable or Relevant and Appropriate Requirement (ARARs) will be provided an alternate water supply. This commitment applies to both users of existing domestic wells and users of wells that are lawfully drilled in the future." [2 (redacted)].

SACWSD was provided 4,000-acre feet of water valued (1995) at \$16 Million Dollars (ROD), and hook-ups to facilitate water- tap-connections to properties within the DIMP detection footprint – valued (1995) at \$28 Million Dollars. Pursuant to the *June 11, 1996* SACSWD, the U.S. Army, and the Shell Oil Company signed *Memorandum of Agreement Regarding a Supplemental Water Supply for SACWSD*: ...water tap recipients were to receive 2,000 gallons per month for \$7.00, with usage greater than 2,000 gallons charged at a rate of \$1.85 per additional 1,000 gallons. SACWSD failed to meet this obligation and assessed tap holders for water, in amounts greater than this commitment.

Request to Implement: Monitoring Sampling Accessibility

Monitoring Well

1 message

Greene, Scott E CIV USARMY USAG (USA) <scott.e.greene.civ@mail.mil>

Fri, Jan 10, 2020 at 4:35 PM

To: "johnyelenick@gmail.com" <johnyelenick@gmail.com>

Cc: "Carol Rieger [rieger@navarro-inc.com]" <rieger@navarro-inc.com>, Scott Ache <Ache@navarro-inc.com>

Hi John:

Thanks for the call earlier this week. We are still evaluating our off-post wells to determine which ones are necessary for us to retain in the program. My understanding is that the monitoring well on your property (37353) is currently only used for evaluating water elevations. Please clarify if that is the well that you are concerned about establishing an easement/access agreement for. The other well on your property (494c) is sampled by Tri-County Health Department (TCHD). My understanding is that well was not installed by the Army. We would need to coordinate with TCHD to determine if they would like to retain sampling capability for that well. I am out of the office for most of next week, but will touch base again later this month.

Thanks

Scott E. Greene
Environmental Engineer
Rocky Mountain Arsenal
(303) 289-0137

Commerce City, Colorado ROD violations

The ROD, the FFA, and the Refuge Act prohibit transfers of land outside the federal government other than the five land transfers specifically provided for in the Refuge Act. On August 20, 2007, the Federal government allowed to be transferred ownership of a portion of land in the northeast corner of the RMA (Section 20 Lands, 14.388 acres adjacent to 96th Avenue and Buckley Road) to Commerce City. The Federal government and Commerce City government failed to comply with the provisions of CERCLA 120(h), the Colorado Executive Order D-013-98 dated June 18, 1998, and the incorporated Colorado Statewide Defense Initiatives/CDPHE Joint Policy dated June 19, 1998, in transferring ownership without notifying the State of Colorado of the transfer, and without ensuring the appropriate remedial covenants appear on title.

Land use controls are applicable to property transferred from the Army to Commerce City (referencing its Prairie Gateway development) where the Army incorporated deed restrictions required by the Federal Facilities Agreement (FFA) and the ROD Land Use Controls. However, the Prairie Gateway Planned Unit Development (PUD) and Amendment #1 included development uses inconsistent with the residential/gardening deed restriction [3].

On March 31, 2016, the U.S. Army notified Commerce City of Land Use Control Violations of the "Refuge Act". On Sept. 14, 2017, the Colorado Dept. of Public Health and Environment files Civil Action No. 17CV2223 reading sale to Commerce City in violation of Rocky Mountain Arsenal Institutional Controls.

City of Commerce City, Colorado REISBECK SUBDIVISION violations

Reisbeck Subdivision (Reisbeck) was subdivided in Adams County in 1966 and zoned Industrial-1 in 1968 {Pursuant to C.R.S. 24-68-103 creating a vested property right} [4]. On November 10, 1982, the SACWSD District agreed to serve the Reisbeck property. On August 20, 1985, Reisbeck was included in the service area of the South Adams County Water and Sanitation District (SACWSD) recorded August 29, 1985, in Adams County Book 3042 at Page 529.

Notwithstanding C.R.S. 31-12-105, Commerce City illegally annexed the Reisbeck Subdivision rail-spur to facilitate a Commerce City 'residential' development north of Reisbeck upon the RMA Off-Post groundwater Superfund site. Commerce City alleges Reisbeck petitioned for annexation in Book 3412 Page 880 which was not true [5].

On November 15, 1996, the "Riverdale Dunes Metropolitan District No. 2", was created in conformance with the Service Plan and Resolution Approval of the City Council of the City of Commerce City, Colorado to be known as the "City of Commerce City Northern Infrastructure General Improvement District" [6]. This District PETITION incorporated the "District Improvements" of "Water improvements, including but not limited to transmission and distribution lines, reservoirs, hydrants, meters, pumping stations, water taps, and all necessary, incidental and appurtenant properties and facilities" which were provided by the Army under the Off-Post ROD dated December 19, 1995 [7].

On August 18, 1997, the City of Commerce City Northern Infrastructure General Improvement District incorporates Reisbeck under the false pretext of the Enterprise Corridor Land association ownership (Quit Claim Deed) of the Reisbeck "rail spur" [8].

On December 23, 1997, Reisbeck Subdivision was included in the service boundaries of the South Adams County Water and Sanitation District [9].

On February 19, 1998, the *ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS* confirms (document ODG/0114/98) that DIMP is a Scheduled 2 B chemical pursuant to the *Chemical Weapons Convention (CWC)* prohibiting release into the environment {Note: On December 22, 2003, Laura Williams, USEPA Region 8 Team Leader for RMA confirmed (Ref: 8EPR-F) that "... The Army did not identify the CDC as a consideration for development of the groundwater treatment requirements....".

On April 27, 1998, the Northern Infrastructure General Improvement District and South Adams County Water and Sanitation District agreed to a mandate of Commerce City Annexation for SACWSD service.

On May 22, 1998, Reisbeck applied (application 000241) for an Off-post ROD water connection with SACWSD as provided in the RMA Off-post ROD which was granted December 31, 1998 [10].

On July 19, 1999, "Dunes Development" petitions for residential development in Commerce City, utilizing the Northern Infrastructure General Improvement District for its improvements, 'abandoning' the use of the Reisbeck rail spur [11].

Upon the Commerce City municipal steps, post-election evening of April 3, 2001, where Scott Jaquith (Past RAB Chairwoman Sandy's Jaquith's brother) ousts Rene Bullock from the Commerce City Council, Larry Ford and Mayor Busby tells the undersigned that they will never let me develop Reisbeck Subdivision in Adams County – only in Commerce City. I asked if that was a threat and Larry responded: "No, a promise – your Title is already sullied".

On December 4, 2001, Reisbeck gives its "Notice of Intent to Preserve an (its) Interest in the aforementioned rail spur [12]. On October 9, 2002, SACWSD dedicated 54 "Equivalent Residential Units" (ERU's) to the Reisbeck property; 1.5 ERU's per each of Reisbeck's 36 "Industrial" acres.

On March 4, 2004, the City of Commerce City acknowledged that the Commerce City road construction supervision of June 23, 1997, and September 25, 2001 on 112th avenue, changed the 112th historical road grade – removing two (2) lanes of asphalt, without restoration, and thereafter negligently buried SACWSD installed fire hydrants (June-July 2004) creating major property drainage problems for Reisbeck.

On April 28, 2004, SACWSD and the City of Commerce City crafted an *Intergovernmental Agreement*, paragraph 13, wherein SACWSD agreed that: "City Approval of Development. South Adams hereby agrees that it shall only issue water and sewer taps to property within the GSA or the RMA Lands with prior City approval of development of those lands...."

On June 14, 2004, Reisbeck received its *"No Action Determination Approval for Property at 9940-9982 East 112th Avenue, Henderson, CO"* (VCUP) **requiring** "...this approval applies only for the land use specified in the application, which is Adams County Industrial-1...."[13]. On November 4, 2004, USEPA gives Notice to Reisbeck that EPA retains its "Statutory right of access" (3rd Party Access Easement) over Reisbeck.

Notwithstanding Reisbeck's VCUP requirements, on February 7, 2005, the City of Commerce City attorney Timothy J. Beaton advised Reisbeck that "... in any event, annexation of the property (Reisbeck) into Commerce City is required under the 2004 IGA between the District and the City" {Note: Mr. Beaton reaffirmed the City's position in its December 8, 2010, SACWSD Board meeting}.

Beginning January 11, 2006, SACWSD refers all Reisbeck development plans for any Adams County project(s) to Commerce City {See: Adams County Development Review Planner-i Abel M. Montoya letter dated October 6, 2004 regarding Reisbeck PRE2004-00091; and, SACWSD Minutes, Pg. 1 lines 29-31 and Pg 2 lines 1-2 and, City of Commerce City Regional Projects Manager Tom Acre letter dated May 10, 2006}.

Notwithstanding C.R.S. 31-12-115, on November 21, 2007, Commerce City Planner Brian Garner confirms that although the Reisbeck rail-spur was annexed, Commerce City refuses to apply its' city zoning designation to the Reisbeck parcel.

On March 24, 2008, Colorado Senate Bill 08-037 (SB08-037) passes, legalizing the application of "Notice of Environmental Use restrictions" in Colorado. During 2010 and 2011, ignoring SB08-037 and Reisbeck's VCUP , Commerce City revises its Comprehensive Land Development Plan identifying Reisbeck (Adams County I-1) as a "Residential-High" USE in Commerce City. On April 26, 2011, Commerce City Engineer Daren A. Sterling attempted to close 2 of the 3 Reisbeck property access points predicated upon the Commerce City annexation.

The City of Commerce City tortiously interfered (asserting jurisdictional USE control over Adams County) with Reisbeck negotiations regarding its real estate sales transactions, dismissing the Reisbeck VCUP requirement of Adams County I-1 zoning development, on the following occasions:

December 10, 2002	<i>KINGDOM HOMES</i> Adams Co. Permit BDP03-1798
April 20, 2018	SITE RECON
April 21, 2018	<i>MAVERIK</i>
July 10, 2018	<i>STINKER OIL</i>
June 6, 2019	<i>QUIK TRIP</i>

Generally, from Dec. 2002 through May 2021, over 3,681 real estate transactions valued at more than \$1,340,154,890, have occurred upon the RMA Off-post Superfund site, as annexed by Commerce City (Henderson). No disclosure was given to Grantee's (Buyers) regarding the RMA Off-post USEPA statutory right of access; undermining the transaction *Deeds* which covenant full-disclosure of any third-party access easement upon the Off-Post ROD properties; resulting in transaction fraud.

Specifically, the *Quik Trip* tortious interference by Commerce City, attempted to undermine Reisbeck's 54 ERU alternate water supply dedication as provided by the ROD; undermining the protections of Reisbeck by the State's VCUP; and costing Reisbeck \$150,000.00 in minimum damages.



John Yelenick <johnyelenick@gmail.com>

FW: File #NCS-965375-CO; 112th and Hwy 85, Henderson CP

1 message

Jordan C. May <jordan@frascona.com>

Mon, Sep 14, 2020 at 10:44 AM

To: Ron Wilcox <Ron@wilcox.legal>, John Yelenick <johnyelenick@gmail.com>

Fyi.

From: Thomas J. Wolf <TWolf@irelandstapleton.com>

Sent: Saturday, September 12, 2020 10:51 AM

To: 'Ron Wilcox' <Ron@wilcox.legal>; Jordan C. May <jordan@frascona.com>

Cc: James Silvestro <JSilvestro@irelandstapleton.com>

Subject: FW: File #NCS-965375-CO; 112th and Hwy 85, Henderson CP

Jordan and Ron:

See below. I advised Ron of this yesterday.

The 3rd contract amendment is attached. It contains a \$150,000 price reduction. QuikTrip learned that they needed to do a PUD for the back part of the property that might take another six months. QuikTrip offered to close without PUD approval for a \$480,000 price reduction. Ultimately, after negotiation, a \$150,000 price reduction was arrived at.

Let me know if you have any questions.

Sincerely,

Tom Wolf

Thomas J. Wolf
Attorney at Law

Ireland Stapleton Pryor & Pascoe, PC
[717 17th Street, Suite 2800](https://www.irelandstapleton.com)
Denver, CO 80202

Commerce City's June 2021 establishment of its *Environmental Policy Advisory Committee* [Res 2021-38] in tandem with its *Comprehensive Plan Update* [Pres 21-302] is suspect at best – given Commerce City's decades-long mis- behaviors of self-interest, and irresponsible decision-making, concerning the Rocky Mountain Arsenal Off-Post contamination pathways.

I seek a written response addressing the City of Commerce City's continual and willful violations of RMA Off-Post Institutional Controls which were implemented pursuant to Colorado Statutes and the RMA Off-post ROD.

Regards,
John Yelenick
Property Owner
Reisbeck Subdivision

Office Address:
3650 South Dahlia Street
Denver, Colorado 80237

- [1] Greg Hargreaves letter to Bruce Huenefeld dated September 26, 2005, EPA Ref: 8EPR-F;
- [2] Land Use Control Monitoring Report for Fiscal Year 2020, Revision1 dated February 11, 2021, U.S. Department of the Army/Shell Oil Company as prepared by Navarro Research and Engineering, Inc.
- [3] U.S. District Court for the District of Colorado, Civil Action 19CV1105 and U.S. Army RMA Program Manager C. Scharmann to Commerce City Manager B. McBroom dated March 31, 2016, Re: Prairie Gateway Planned Unit Development (PUD) Zone Document;
- [4] Reisbeck Subdivision Dedication per Adams County File 12 Map 37 and Zoning Map 19.
- [5] Commerce City Ordinance #827 as recorded in Book 3388 Page 109 [Section 2 "That the owners of 100% of the property described on attached Exhibit A have petitioned for annexation"], Annexation Map recorded November 12, 1987 at reception #B781151 (File 16 Map 679 Pgs. 5 & 6) and Ordinance 827 (AN-82-87) recorded February 2, 1988 in Book 3412 Page 880 [Section 2 "That the owners of 100% of the property described on attached Exhibit A have petitioned for annexation"];
- [6] Adams County District Court, Civil Action No. 96 CV 1413A, recorded in Book 4897 Pg. 0188-0193 dated 12/10/96 and Commerce City Resolution No. 96-25 dated August 19, 1996; and, Ordinance No. 1212, Series 1997 recorded in Book 5100 Page 0285-0315;
- [7] Commerce City Ordinance August 18, 1997 transmitted to Adams County for filing on August 29, 1997;
- [8] Adams County reception #C0316487;
- [9] Adams County reception #C0350418; as parcel 28 in District Court Civil Action No. 5750; recorded December 31, 1997;
- [10] Adams County reception #C0486762;
- [11] Commerce City case # Z-698-99;
- [12] Adams County reception #C0895212. {See: March 10, 2014 U.S. Supreme Court: The General Railroad R.O.W. Act gives railroads only a temporary right of easement with abandonment reversionary interest transferring to Landowner}. December 4, 2014, Colorado Court of Appeals 2014COA167 affirms Reisbeck ownership of the rail-spur;
- [13] EPA Registry Id. 110022512912.

**Summary of Annexation Requirements under Existing IGAs
Between Commerce City and South Adams County Water and Sanitation District**

Updated: April 8, 2016

The following is a summary of the circumstances under which properties are required to annex into Commerce City to receive water and wastewater services from the South Adams County Water and Sanitation District ("South Adams") under the provisions of existing Intergovernmental Agreements ("IGAs") between South Adams and Commerce City or a General Improvement District of Commerce City.

The requirements are different for specific geographical areas within the South Adams service area, depending in part on whether Commerce City or a General Improvement District of Commerce City helped finance infrastructure needed to provide the water and/or wastewater service. The geographical areas include:

- 1) General Service Area ("GSA") of South Adams
 - Generally areas north of Sand Creek to 112th Avenue and east of the South Platte River to that portion of Quebec Street extending north to 78th Avenue and then northerly along Highway 2 to 112th Avenue.
- 2) Rocky Mountain Arsenal property ("RMA Lands")
 - Approximately 917 acres located on the western tier of the Rocky Mountain Arsenal.
- 3) The Northern Range Area, also known as the inclusion area for the Northern Infrastructure General Improvement District ("NIGID").
- 4) The inclusion area for the E-470 Commercial Area General Improvement District ("ECAGID") or the E-470 Residential Area General Improvement District.

ANNEXATION REQUIREMENTS

1) Properties within General Service Area of South Adams or the RMA Lands

- *Annexation Requirements under the April 28, 2004 IGA between Commerce City and South Adams, as Amended by April 7, 2014 IGA for Implementation of 2004 IGA:*
 - All properties in the GSA and RMA Lands to be served with water or wastewater services by South Adams must be annexed into Commerce City, to the extent allowed by law.

• *Exceptions:*

- As to properties included into South Adams prior to April 28, 2004, but not annexed into Commerce City, application of the annexation requirement to such properties might "result in some cases which must be individually reviewed and determined by South Adams and Commerce City."
- Commerce City retains authority to make the final determination as to whether any particular property for which annexation is sought will be annexed
- Properties shall not be required to annex into Commerce City in order to receive water and wastewater services from South Adams if the proposed development is less than one acre in size or the new use, or expanded portion of the existing use, proposed would utilize four equivalent residential units ("ERUs") or fewer, provided that
 - South Adams shall not provide ERUs in excess of the City's standard allocation to such properties without the City's prior written consent regardless of annexation status.
 - If, in order to serve such properties, the use by South Adams of facilities financed by any General Improvement District ("GID Facilities") is required, the owner of such property enters into a reimbursement agreement with the applicable GID for use of the GID Facilities.

2) Properties within the Northern Range Area, also known as the inclusion area for the Northern Infrastructure General Improvement District.

- *Annexation requirements under the April 27, 1998 Agreement between NIGID and South Adams and its Enterprise for the Purpose of Construction, Installation and Maintenance of Water Lines, Wastewater Lines, Accessories and Appurtenances Thereof, including the June 12, 2013 Second Amendment*
 - No land may receive water or wastewater services from or through any facilities or capacity constructed as part of the Project (as defined in the Agreement) without approval by NIGID or the ECAGID and South Adams. The landowner must agree to be bound by the "Agreement Regarding Annexation and Rebate of Costs Expended for Water and Wastewater Main Extension Lines" between Commerce City and South Adams, dated January 10, 1996 (the "1996 Agreement").

- The 1996 Agreement provides that if Commerce City provides any financial consideration or credit enhancement for construction or installation of water or wastewater main extension lines to any property located within the boundaries of South Adams and within the Growth Area (as defined in the 1996 Agreement), and South Adams has agreed to serve that property with potable water and sanitary wastewater treatment, South Adams shall require annexation as a condition of the property receiving any water or wastewater service.

- *Exceptions:*

- Annexation is not required upon written notification from Commerce City to the landowner that Commerce City waives its right to require annexation under the 1996 Agreement.

3) Properties within the inclusion area for the E-470 Commercial Area General Improvement District or the E-470 Residential Area General Improvement District

- *Annexation Requirements under 2013 IGA among South Adams and its Enterprise, Commerce City, the ECAGID, and DIATC Metropolitan District*

- a. No land may receive water or wastewater services from or through any facilities or capacity constructed as part of the Project (as defined in the Agreement) without approval by ECAGID and South Adams.
- b. To receive approval, the landowner must agree to be bound by “[t]he terms and conditions required by the ECAGID and [South Adams] for such services, which may include, but not be limited to, payment of rebate and recapture costs to the ECAGID for construction and installation of the Project.” Annexation is not expressly required, but the ECAGID require annexation as a term and condition.

Electronically Recorded RECEPTION#: 202100057877
5/11/2021 at 4:15 PM 1 OF 2
REC: \$18.00 DocStamp: \$0.00
TD Pgs: 0 Josh Zygielbaum, Adams County, CO

RECEPTION#: 202200041905
5/10/2022 at 1:11 PM 1 OF 6
REC: \$38.00
Josh Zygielbaum, Adams County, CO

After Recording Return To: Wilcox Law Firm, LLC 383 Corona St. #401 Denver, CO 80218

RE: 9940-9982 East 112th Ave., Henderson, CO. 80640

BARGAIN AND SALE DEED

Reisbeck Subdivision LLC ("Grantor"), for the consideration of Ten and no/100 Dollars (\$10.00) in hand paid, hereby sell and **convey to John Yelenick, c/o Wilcox Law Firm, LLC 383 Corona St. #401 Denver, CO 80218 ("Grantee")**, any real property owned by Grantor **in Adams County, Colorado**. Grantor is not aware of any owned real estate in Adams County, Colorado and this deed expressly does not include any real property that Grantor previously transferred to QuikTrip Corporation.

Signed this 28th day of April, 2021.

GRANTOR:

Reisbeck Subdivision LLC

By Suzanne Lambdin
Suzanne Lambdin, Manager

By Mary Yelenick
Mary Yelenick, Manager

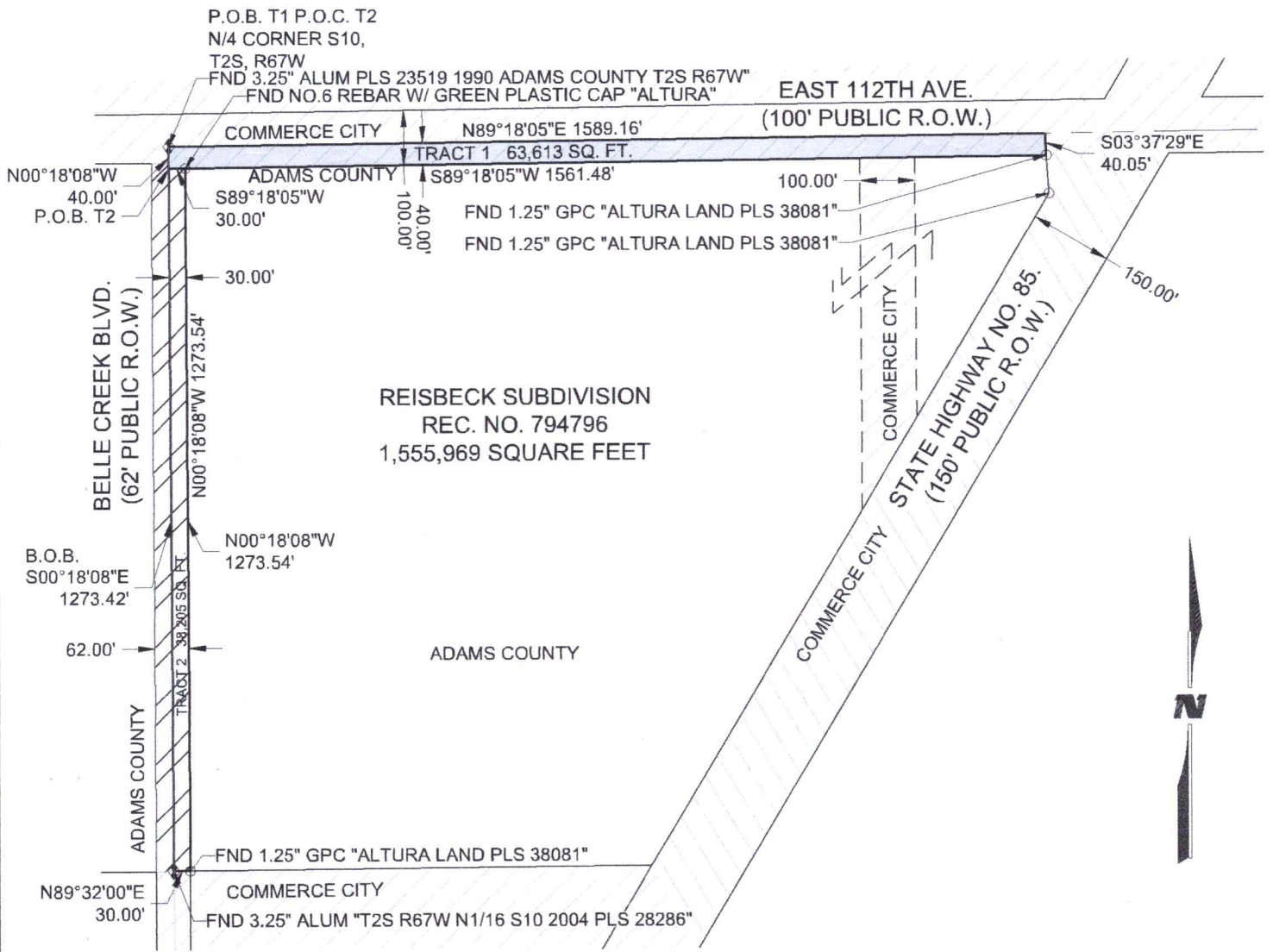
STATE OF Colorado)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 28th day of April, 2021, by Reisbeck Subdivision, LLC by Suzanne Lambdin, Manager.

WITNESS my hand and official seal. Judith de la Cruz
Notary Public

My commission expires: 01/12/2025

JUDITH DE LA CRUZ RODRIGUEZ
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214001466
MY COMMISSION EXPIRES 01/12/2025



BASIS OF BEARINGS: BEARINGS SHOWN HEREON ARE BASED ON THE WESTERLY LINE OF THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING N00°18'08"W, AS MONUMENTED ON THE SOUTH BY A 3.25" ALUMINUM CAP STAMPED PLS 28286 2004, AND ON THE NORTH BY A 3.25" ALUMINUM CAP STAMPED ADAMS COUNTY 1990.

COMMERCE CITY CORPORATE LIMITS

COMMERCE CITY RIGHT OF WAY

ADAMS COUNTY RIGHT OF WAY

SCALE: 1" = 300'
22-300-115

M:\SGR\22-300-115-002 - Disciplines\Survey\Drawings\22-300-115 commerce city annexation.dwg Plotted on: May 10, 2022 - 10:53am By: MJL\indquist

					SHT. NO: 3 OF 3	<p>990 South Broadway Suite 220 Denver, CO 80209 Phone: 303-297-2976 Fax: 303-297-2693</p>
					SCALE: 1" = 300'	
					DWN. BY: TJB	DATE: 5-09-2022
					CHK. BY:	
					PROJ. MGR: MJL	5-09-2022
					CLIENT APP:	5-10-2022
NO.	REVISION-DESCRIPTION	BY	DATE	CHKD	APP'D	REISBECK SUB R.O.W. ADAMS COUNTY / COMMERCE CITY STATE OF COLORADO

LAND DESCRIPTION
TRACT1

A TRACT OF LAND IN THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, LOCATED IN THE CITY OF COMMERCE CITY, ADAMS COUNTY, STATE OF COLORADO; BEING ALL OF THAT PART OF EAST 112TH AVENUE RIGHT OF WAY ADJOINING REISBECK SUBDIVISION LYING SOUTH OF THE NORTH LINE OF SAID SECTION 10, AS DEDICATED BY SAID PLAT UNDER RECEPTION NO. 794796, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 10, THENCE N89°18'05"E ALONG THE NORTH LINE OF SAID SECTION 10, A DISTANCE OF 1,589.16 FEET;

THENCE S03°37'29"E, 40.05 FEET TO A POINT ON THE WEST LINE OF U.S. HIGHWAY 85 AND THE SOUTH LINE OF EAST 112TH AVENUE;

THENCE S89°18'05"W ALONG SAID SOUTH LINE 1,561.48 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 10;

THENCE N00°18'08"W ALONG SAID WEST LINE A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 63,613 SQUARE FEET OR 1.4604 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS SHOWN HEREON ARE BASED ON THE WESTERLY LINE OF THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING N00°18'08"W, AS MONUMENTED ON THE SOUTH BY A 3.25" ALUMINUM CAP STAMPED PLS 28286 2004, AND ON THE NORTH BY A 3.25" ALUMINUM CAP STAMPED ADAMS COUNTY 1990.

LAND DESCRIPTION STATEMENT:

I, MICHAEL J. LINDQUIST, A LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.

MICHAEL J. LINDQUIST, COLORADO PLS 38666
WILSON & COMPANY
990 S BROADWAY, SUITE 220
DENVER, CO 80209
MJLINDQUIST@WILSONCO.COM
PH 303-501-1221



LAND DESCRIPTION
TRACT2

A TRACT OF LAND IN THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, LOCATED IN THE CITY OF COMMERCE CITY, ADAMS COUNTY, STATE OF COLORADO; BEING ALL OF THAT PART OF BELLE CREEK BLVD. RIGHT OF WAY ADJOINING REISBECK SUBDIVISION LYING EAST OF THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 10, AS DEDICATED BY SAID PLAT UNDER RECEPTION NO. 794796, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 10, THENCE S00°18'08"E ALONG SAID WEST LINE A DISTANCE OF 40.00 FEET TO A POINT ON THE SOUTH LINE OF EAST 112TH AVENUE AND THE POINT OF BEGINNING;

THENCE CONTINUING S00°18'08"E ALONG SAID WEST LINE, 1273.42 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF SAID NORTHEAST QUARTER;

THENCE S89°32'00"E ALONG SAID SOUTH LINE, 30.00 FEET TO A POINT ON THE EAST LINE OF BELLE CREEK BLVD.;

THENCE N00°18'08"W ALONG SAID EAST LINE A DISTANCE OF 1,273.54 FEET TO A POINT ON THE SOUTH LINE OF EAST 112TH AVENUE;

THENCE S89°18'05"W ALONG SAID SOUTH LINE A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 38,205 SQUARE FEET OR 0.8771 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS SHOWN HEREON ARE BASED ON THE WESTERLY LINE OF THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING N00°18'08"W, AS MONUMENTED ON THE SOUTH BY A 3.25" ALUMINUM CAP STAMPED PLS 28286 2004, AND ON THE NORTH BY A 3.25" ALUMINUM CAP STAMPED ADAMS COUNTY 1990.

LAND DESCRIPTION STATEMENT:

I, MICHAEL J. LINDQUIST, A LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.

MICHAEL J. LINDQUIST, COLORADO PLS 38666
WILSON & COMPANY
990 S BROADWAY, SUITE 220
DENVER, CO 80209
MJLINDQUIST@WILSONCO.COM
PH 303-501-1221



This is a legally binding contract, if not understood, consult an attorney.

REAL ESTATE SALE CONTRACT

This REAL ESTATE SALE CONTRACT (the "Contract") is made by and between REISBECK SUBDIVISION LLC, a Colorado limited liability company and R JERSIN LLC, a Colorado limited liability company ("Seller"), and QUIKTRIP CORPORATION, an Oklahoma corporation, or assigns ("Buyer").

Upon execution of this Contract by both Seller and Buyer, evidenced by their signatures hereto, a valid and binding contract of sale shall exist. The terms and conditions of the Contract shall be as follows:

- 1. TERM:** The "Effective Date" of this Contract shall be the date First American Title Insurance Company, 1125 17th St, Suite 500, Denver, Colorado 80202, Attn: John Huemoller (the "Escrow Agent") acknowledges, in writing, receipt of the Earnest Money (as defined below).
- 2. PROPERTY:** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the following described real estate, together with all appurtenances thereto and any improvements thereon containing approximately 1,499,770 square feet, in the City of Henderson, Adams County, State of Colorado, as more particularly described on Exhibit "A" and depicted on Exhibit "A-1" attached hereto (the "Property"). The exact size of the Property and legal description shall be determined from the Survey (as defined below) to be produced by Buyer prior to Closing in accordance with paragraph 8 below. Seller agrees to convey good and marketable title to Buyer upon Buyer's payment of the Purchase Price (as defined below) to Seller in accordance with paragraph 4 below.
- 3. TITLE:** The title to the Property shall be subject only to the Permitted Exceptions (as defined below), zoning ordinances and laws.
- 4. PURCHASE PRICE:** The total purchase price for the Property is Four Million Eight Hundred Thousand and NO/100 Dollars (\$4,800,000.00) (the "Purchase Price"), payable by Buyer to Seller as follows: within ten (10) days after this Contract is last executed, Fifty Thousand Dollars and No/100 (\$50,000) (the "Earnest Money") to be deposited in a non-interest bearing insured trust or escrow account at the Escrow Agent; the balance of the Purchase Price, in full, shall be paid to Seller at Closing in immediately available funds.
- 5. CLOSING DATE:** The closing of this Contract ("Closing") shall take place at the offices of the Escrow Agent within thirty (30) days after satisfaction of

EXHIBIT "A"
Property Description

The Property shall be conveyed to Buyer net of any right-of-way existing or required in the future for Buyer's development, and is generally described as follows:

SUB:REISBECK SUBD DESC: BEG AT NW COR N2 NE4 SEC 10/2/67 TH S 1313/84 FT TO SW COR SD N2 NE4 TH E 865/65 FT M/L TO PT ON WLY ROW US HIWAY 85 TH ALG SD ROW N 31D 96M E 1414/17 FT TH N 109/50 FT M/L TO PT ON N LN SD N2 NE4 TH W 1587/45 FT M/L TO POB EXC RDS AND EXC 1/29A ROW DESC AS BEG AT PT ON W LN OF NE4 NE4 WHICH IS 1318/85 FT W AND 30 FT S OF NE COR SEC 10/2/67 TH E 33/5 FT TH S 755/21 FT TO NWLY LN OF U P ROW TH S 31D 25M W A DIST OF 190/9 FT TH N ON A LN WHICH IS 66/5 FT W OF E LN NW4 NE4 A DIST OF 917/85 FT TH E 66/5 FT TO POB 34/43A



May 16, 2022

**City Clerk Dylan Gibson
City of Commerce City
7887 E. 60th Avenue
Commerce City, Colorado 80022**

RE: CanAm – Zoning Case#: Z-964-21-22

Dear Clerk Gibson, Planning Commissioners, Mayor, and City Council Members:

My name is Greg Fulton and I am the President of the Colorado Motor Carriers Association. We are proud to have many of our members based in Commerce City while many others conduct business with various companies in the city today. In that regard we always appreciate the opportunity to support those projects and business ventures that may bring meaningful development to the city.

I am writing today to express our support for the annexation and zoning case for the CanAm project at the southwest corner of 112th Avenue and Highway 85. In our eyes it appears that the applicant has made a substantial effort to engage the community through various community meetings and outreach. Further they have made a good faith effort to address the concerns of the community and neighbors proximate to the development. We believe that the project may provide valuable retail businesses and services to the area and the community at large. This project also seems to be in line with the goals of the community and complies with Commerce City's Comprehensive Plan.

On our association's behalf I wish to encourage your support for this project.

Thank you.

A handwritten signature in cursive script that reads "Gregory D. Fulton". The signature is written in dark ink and is positioned above the printed name and title.

**Gregory D. Fulton
President**

Written Comment for consideration by Anna Mariotti, Commerce City Resident

Z-964-21-22

I reached out to each City Councilmember regarding the Consent Agenda Item: Z-964-21-22 (the property on 112th and Highway 85 in Commerce City). I implored you each to vote "no" on the consent agenda item Z-964-21-22. I do not believe that an adequate public hearing was held for the application submitted on the property and am concerned that the City Council has not heard the voices or concerns of the impacted residents based on the information outlined below.

As you are aware, when this application was originally submitted in the fall of 2021, there was a large amount of community interest to participate in the decision making regarding this property. Hundreds of citizens signed a petition requesting that the fueling station not be allowed on the property due to the increased traffic, safety, and health concerns that it would present to the residents. In the fall many citizens (including myself) registered to speak at the public hearing and during the process of the hearings, the applicant withdrew their application. The community was so engaged at this time that the meeting even lasted until 11 pm (due to the amount of public comments registered at the meeting). At that time, citizens that had registered to speak were informed that if the public hearing was rescheduled they would be notified and could speak then (as they had already registered to speak on the file).

I was alerted on May 2 (via the neighborhood app) that the City Planning Commission had the file (Z-964-21-22) on the agenda for the Planning Commission meeting to discuss on May 3. I was unable to attend the Planning Commission meeting as it was extremely short notice, and the community was not informed of the application being brought forth again. I contacted Jason Rogers and was able to provide an email to the planning department, but did not see that email contained in the public comments from the Planning Commission on May 3 so am unsure if it was shared with Commission members. At a previous meeting, the Mayor brought up a concern with the lack of large, visible signage informing the community about the public process to comment on the proposed rezoning for the property. I believe that the Mayor raised the issue with City personnel and even provided an example of the large signage that would be preferred to allow community members to be better informed of things like this. It was requested that the City ensure that future bulletin boards be much larger and have large fonts (in English and Spanish).

The signage that the city posted on the property was not located anywhere near accessible pathways or sidewalks (all three posting locations were in the dirt and grass away from any sidewalks or shared use paths). This action by the city results in differently-abled residents not being aware of public meetings unless their safety is placed in jeopardy and they attempt to cross the street which could leave them stranded and unable to move. This is potentially a violation of rights under the Americans with Disabilities Act of 1990. I would presume that traffic and pedestrian safety as well as equal access for community members would be important to City Councilmembers to be aware of.

I recently met with the Community Development Director, Jim Tolbert, and he informed me that one of the main improvements he would like to make for future public meetings is to have larger,

more permanent signage as he has recognized that the current signage the city is utilizing is lacking. However, he has not implemented these changes yet and is working toward it for the future. It was reassuring to know that others had noticed the issue with signage, but also disheartening that it seems like this property would not be afforded the same opportunity as future properties will have to ensure community awareness.

Being unable to attend the Planning Commission meeting, I was awaiting the meeting minutes to be posted so that I could be informed of whether the application was passed through (or the status of the discussion). I had been monitoring the website every few days to see what the status was on the property so that I could attend a future meeting and provide comments. The meeting minutes were not posted for several weeks and through looking at other webpages on the website, I found that the file was brought up for public hearing on the City Council agenda for May 16. I was extremely disappointed that I missed a chance to provide public comment and listen to the discussion surrounding this topic. I feel like local government agencies typically try to engage with local citizens and believe this was a huge missed opportunity where a citizen is very engaged and interested and cannot get the information from the city to be able to participate in the decision-making. I even engaged with the city in the fall via phone and still was unable to obtain an invitation to the Neighborhood Meeting the applicant had in December.

In speaking with other residents, they were under the impression that because the Planning and Zoning Commission had approved the application with the condition that a fueling station not be built, that the community had their voices heard and everyone was celebrating the decision. The residents felt as though they were able to come together, voice their concerns to city decision-makers, and that their thoughts and opinions were taken into consideration in a way that they were able to impact their community in a positive way. Then, it was found out that at the City Council meeting on May 16, City Council members voted to approve the application and removed the condition that a fueling station not be placed on the property. The residents that I spoke with over the past two weeks were not aware that the City Council could remove the condition of not allowing a fueling station and felt ill-informed of the next steps following the Planning and Zoning Commission. In speaking with the Principal Planner for the city, I informed her that it was a missed opportunity to inform residents of what the next steps are following a Planning and Zoning Commission meeting. That residents should have been clearly informed that the City Council has the authority to not apply the recommendation of the Planning and Zoning Commission. I believe if that had occurred there would have been additional participation at the public hearing.

As an interested community member, I am hoping that you will vote "no" on the consent agenda item and that the City will hold a more robust public hearing where all citizens (regardless of ability) are appropriately informed of the meeting and can attend and express their opinions regarding the application and associated development of the property. As it currently stands, I am concerned that the City Council made a decision without hearing from the residents directly due to the lack of education provided to community members as well as the poor signage for the public meeting. I understand that at this stage, it is much easier to have the decision remain on the consent agenda and proceed with the administrative processes regarding the development plan for the property. But, I truly believe that if you hear from the residents that will be impacted by your decision to allow a fueling station at that intersection and the negative impact it will have on the families that your perspective may shift. I believe that as elected officials your desire is

to help residents and make decisions for the people you represent that increase their quality of life (not decrease it). Unfortunately, the decision made on May 16 to allow a fueling station on the property will have an extremely negative impact on the family's health and safety that reside in proximity of the property. I have emailed each City Council member individually and am hopeful that you will take a concerned resident's thoughts and perspective into consideration and vote "no" on the item. Thank you so much for your time.

Please see attached pictures that demonstrate the lack of accessible pathways to the public signage for pedestrians and differently-abled individuals. There would not be a safe way for those residents to view any public notices on the property.

Sidewalk ends at Belle Creek column with no ramp or sidewalk (represents a "sidewalk to nowhere" and the signage was posted on the property north of this with no way to – signage was on the vacant property and could not be accessed safely)



Northeast corner of the property where signage was posted. No accessible pathway or sidewalk available for pedestrians. The only sign you can see clearly is the "For Sale" sign which implies the property is for sale, not that there is a public hearing scheduled for the development of the property as it is not currently for sale (that I am aware of):



T-intersection of 112th and Belle Creek where there are no curb ramps or sidewalks or accessible routes:



East side of the property where signage was placed. There is not a safe place to even park a vehicle to read signage posted if someone wanted to read the details regarding the public meeting.



Another view of the T-intersection on 112th and Belle Creek. There is a sidewalk across the street, but no ramp to cross and no curb ramp or sidewalk near the property.

