



STAFF REPORT

Planning Commission

CASE # CU-21-91-94-96-97-17

PC Date:	March 7, 2017	Case Planner:	Paul Workman
CC Date:	April 3, 2017		
Location:	7321 E. 88 th Avenue, Henderson, Colorado 80640		
Applicant:	L.G. Everist, Inc.	Owner:	Same as Applicant
Address:	7321 E. 88 th Avenue Henderson, CO 80640	Address:	Same as Applicant

Case Summary

Request:	L.G. Everist, Inc is requesting to amend and/or remove previous conditions associated with their Conditional Use Permit.
Project Description:	L.G. Everist, Inc received permission from City Council via a Conditional Use Permit in 1991 for a sand and gravel operation, rock crushing operation, concrete batch plant, and asphalt batch plant. This approval was granted subject to conditions, which have been amended twice over the last 26 years. The purpose of this application is to amend and/or remove certain conditions.
Issues/Concerns:	<ul style="list-style-type: none">• Compliance with the Comprehensive Plan.• Minimizing externalities.
Key Approval Criteria:	<ul style="list-style-type: none">• Compliance with the Comprehensive Plan.• LDC requirements.
Staff Recommendation:	Approval with amended Conditions
Current Zone District:	I-3 (Heavy-Intensity Industrial Zone District)
Comp Plan Designation:	Industrial Distribution

Attachments for Review: *Checked if applicable to case.*

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| <input checked="" type="checkbox"/> Applicant's Narrative | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> Air Permit | <input checked="" type="checkbox"/> Development Agreement (1991) |
| <input checked="" type="checkbox"/> Recommended Amended Conditions (Exhibit 1) | |

Background Information

Site Information	
Site Size:	40.53 acres +/-
Current Conditions:	The site is currently developed with the applicant's operations.
Existing Right-of-Way:	E. 88 th Avenue to the south.
Neighborhood:	Rolla
Existing Buildings:	There are several existing buildings on the subject property that allow the applicant to operate on the property.
Site in Floodplain	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Surrounding Properties

Existing Land Use		Occupant	Zoning
North	Public	South Adams County Water and Sanitation District	Public
South	Undeveloped/ Vacant	N/A	AG/ ADCO
East	Industrial	Union Pacific Railroad	I-3
West	Commercial	Mile-High Flea Market	PUD

Case History

The table below provides the relevant case history for this site.

Case	Date	Request	Action
AN-113-91	5/20/91	The City of Commerce City annexed the subject property.	Approved
Z-540-91	5/20/91	Zone the property that was annexed as part of AN-113-91.	Approved
CU-21-91	6/17/91	Conditional Use Permit for sand and gravel operations, rock crushing, a concrete batch plant, and an asphalt batch plant.	Approved with Conditions
S-175-91	7/1/91	Plat the subject property	Approved with Conditions
A-1081-91	7/2/91	A height variance of 25-feet.	Approved
CU-21-91-94	11/7/94	Allow an asphalt continuous mix plant that was not operated by L.G. Everist.	Approved with Conditions
Z-620-95	12/4/95	Rezone the Union Pacific Railroad adjacent to the subject property to I-3	Approved with Conditions
S-175-94-96	6/3/96	Amend the previously approved plat.	Approved with Conditions
CU-21-91-94-96	6/3/96	Amend nine of the original conditions and add one condition to the existing CUP.	Approved with Conditions
CU-21-91-94-96-97	7/7/97	Amend one of the conditions of the Conditional Use Permit to allow for a business that is not a wholly owned subsidiary of L.G. Everist.	Approved with Conditions

AN-113-91:

On May 20, 1991, the City Council approved the annexation of the subject property.

Z-540-91:

On May 20, 1991, the City Council approved the annexation zoning of the property to I-3 (Heavy-Intensity Industrial Zone District).

CU-21-91:

On June 17, 1991, the City Council approved a Conditional Use Permit to allow for sand and gravel operations, rock crushing operations, a concrete batch plant, and an asphalt batch plant subject to 18 conditions that would later be amended.

S-175-91:

On July 7, 1991, the City Council approved a plat for the subject property subject to conditions. The conditions included a variety of obligations that the applicant was required to meet prior to beginning their operations and are no longer relevant.

A-1081-91:

On July 2, 1991, the Board of Adjustment approved a height variance of 25-feet (75-feet tall) for a batch plant structure and a conveyor system.

CU-21-91-94:

On November 7, 1994, the City Council approved a request to allow an asphalt continuous mix plant that was not operated by L.G. Everist in compliance with Condition O (now Condition N).

Z-620-95:

On December 4, 1995, the City Council voted to rezone the Union Pacific Railroad property to the east of the subject property from I-1 to I-3 subject to conditions in order to allow rail service to the subject property. The conditions on the property are still enforceable.

S-175-94-96:

On June 3, 1996, the City Council approved a consolidation plat subject to conditions. The conditions were technical revisions to the plat document and are no longer relevant.

CU-91-94-96:

On June 3, 1996 the City Council approved amendments to nine of the original 18 conditions and added one condition to the property's Conditional Use Permit (19 total conditions).

CU-21-91-94-96-97:

On July 7, 1997, the City Council approved an additional use for a company that was not a wholly owned subsidiary of L. G. Everist and attached two additional conditions to the property's Conditional Use Permit (21 total conditions – currently attached to the Conditional Use Permit and provided as Exhibit 1).

Applicant's Request

History:

L.G. Everist is headquartered in Sioux Falls, South Dakota and has operations in 6 states (South Dakota, Minnesota, Iowa, Kansas, Colorado, and California). The Mountain Division of L.G. Everist is located within Commerce City where they operate sand and gravel related uses (importation, storage/stock piling, sales), a concrete batch plant, asphalt and concrete recycling, trans-load of materials (lumber, bulk flyash, lime, cement, de-icing salts, specialty sands), maintenance operations, fleet vehicle parking, antifreeze recycling and storage, and associated office related uses. L.G. Everist has been in operation at the subject property since the approval of the original Conditional Use Permit in 1991.

Request:

L.G. Everist is requesting to amend and/or remove certain conditions that are attached to their existing Conditional Use Permit. The initiation for the request is existing condition N, which requires the approval of City Council any time L.G. Everist wishes to lease a portion of their property to an entity that is not a wholly-owned subsidiary of L.G. Everist. At this time, L.G. Everist wishes to lease a portion of the property to a business that is not a wholly owned subsidiary of L. G. Everist. Therefore, L.G. Everist requests that Condition N and certain other conditions that have been completed, or have updated regulations associated with them, be amended or removed. The applicant states that the benefits of amending and/or removing these conditions are that it would reduce paperwork, it would reduce city staff review time, and it would reduce hearing burdens related to approving new lessees.

Development Review Team Analysis

The Development Review Team (DRT) began the review of this request by evaluating it against the city's adopted Comprehensive Plan. That analysis is provided in the table below.

Comprehensive Plan

The DRT recommendations for this case are supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 4a	Future Land Use Plan (FLUP) as a Guide for Employment. Use the FLUP to guide industrial and employment land patterns.
<u>Analysis:</u>	The site is currently used for heavy industrial uses with several employers on site. This is consistent with the FLUP.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development Strategies	ED 3a	FLUP to Guide Decisions. Use the FLUP to guide land use decisions.
<u>Analysis:</u>	The request in this application is being made by an existing industrial use. The approval of this CUP will help retain existing industrial businesses.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Fiscal Stability	FS 2a	FLUP Consistency. Retain, support, and expand the community's industrial base by approving development that is consistent with the FLUP and Economic Development Strategic Plan and modifying the LDC to reflect the FLUP.
<u>Analysis:</u>	The FLUP identifies the subject property for industrial type uses. The approval of the request will help to retain and support existing industrial uses.	

Site Layout:

The subject property's address is 7321 E. 88th Avenue. It is oval in shape and located north of E. 88th Avenue with the Union Pacific Railroad to the east and the O'Brian Canal to the west and north. Along the site's east property line are rail sidings that provide rail service to the property. The site is currently developed for L. G. Everist's operations with other tenants. The site was originally developed in the early 1990's with access from E. 88th Avenue leading to office buildings, outdoor storage, and accessory structures.

Condition History:

The original approval for the Conditional Use Permit was granted in 1991. At that time, Commerce City was operating under a zoning ordinance that did not have the development standards that are in place today. This resulted in Planning Commission and City Council placing development conditions on properties in order to ensure things like landscaping, public improvements, and screening that are now required by the Land Development Code (LDC). The existing conditions placed on the property were common conditions placed on properties that were developed at that time. The existing conditions were added at a time when the City was smaller, less complex, and did not have all of the processes and standards in place to ensure quality development. The DRT has reviewed the requested revisions to the existing conditions in detail as outlined in Exhibit 1 attached.

Analysis of the Request:

L. G. Everist wishes to lease a portion of their property to a business that is not a wholly owned subsidiary of their company that is a Use-by-Right in the I-3 zone district. In discussing the new tenant, it was determined that the City Council would need to approve the new tenant in accordance with existing Condition N. Due to the public hearing requirement, the applicant and staff discussed amending the existing conditions to eliminate those that are no longer relevant, update language to reflect current requirements, and to keep certain conditions. The DRT believes that the proposed changes are beneficial for L. G. Everist by unencumbering their property with use restrictions that are not found on any other property. A summary of the proposed amendments with the enforcement and/or maintenance responsibilities is provided in the following table.

Condition	Condition Summary	Proposed Update/Eliminate	Rationale	Enforcement/Maintenance
A	Striping and Traffic Management on E. 88 th Avenue	Yes - Eliminate	Improvements have been made	Commerce City Public Works
B	Landscaping along E. 88 th Avenue	Yes - Eliminate	Improvements have been made and LDC has landscape standards	Code Enforcement & LDC
C	25-foot landscaping along the O'Brian Canal	Yes - Eliminate	Improvements have been made	Code Enforcement & LDC
D	Hours of operation	No	Still necessary	Existing CUP
E	Evening and Sunday hauling	No	Still necessary	Existing CUP
F	Screening rock crusher	Yes - Eliminate	Improvements have been made and LDC has screening requirements	Code Enforcement & LDC
G	Noise and odor levels	No	Still necessary	Existing CUP
H	Air Quality Permit	Yes - Eliminate	Obtained and provided.	State – CDPHE
I	Stockpile location	No	Still necessary	Existing CUP
J	Traffic study requirement	Yes - Update	Update language for consistency with current standards.	Existing CUP
K	Development Agreement requirement	Yes - Eliminate	Development Agreement recorded 8/8/91.	N/A - Recorded
L	Screening outdoor storage	Yes - Eliminate	Improvements have been made and LDC has screening requirements	Code Enforcement & LDC
M	Signage on tower	No	Still necessary	Existing CUP
N	Council approval for new tenants not owned by L. G. Everist	Yes - Eliminate	Unnecessary to require Council approval for a use-by-right. Uses needing CUP approval are required to get it already.	LDC

Condition	Condition Summary	Proposed Update/Eliminate	Rationale	Enforcement/Maintenance
O	Review of operations after year 1	Yes - Eliminate	In operation for 26 years	N/A – In operation for 26 years
P	Oil spill requirements	Yes - Eliminate	There are state requirements for this	State - CDPHE
Q	Allowed uses	No	Still necessary	Existing CUP
R	HAZMAT policies and procedures	Yes - Update	Update language for consistency with current standards.	SACFD
S	Screening specific outdoor storage	Yes - Eliminate	Improvements have been made and LDC has screening requirements	Code Enforcement & LDC
T	Paving requirements	Yes - Eliminate	Improvements have been made and LDC has paving requirements	Code Enforcement & LDC
U	Landscape plan and installation timing	Yes - Eliminate	Submitted and installed.	Code Enforcement & LDC

Existing CUP Impacts:

L. G. Everist will still have an approved CUP to have sand and gravel operations, rock crushing operations, concrete batch plant operations, asphalt batch plant operations, and a variety of rail trans-load operations. Any new uses requiring a CUP by the LDC will still be required to obtain CUP approval through the Planning Commission and the City Council. It is important to note, that as currently stated in Condition N, the Planning Commission does not have the opportunity to review and make a recommendation for new uses requiring a CUP. Any new Use-by-Right proposals, as identified in the LDC, will be allowed like any other property with an I-3 zoning designation. One reason that the DRT is supportive of this request is that City Council has never denied a proposed Use-by-Right in the I-3 zone district on the subject property. L. G. Everist will still be accountable for the conditions related to things like hours of operations, stock pile locations, any oil spill clean-up, and having a HAZMAT plan. The proposed amendments will only remove those conditions that have been completed and/or are no longer necessary. This will help L. G. Everist operate more efficiently and it will make better use of staff time and resources.

Outside Agency Review:

As with all applications that are submitted for review, staff provided this request to a variety of outside organizations for their review and comment. No concerns or objections were received.

Summary:

L. G. Everist, LLC is requesting approval to amend and/or remove conditions attached to their approved CUP from 1991 in order to eliminate unnecessary conditions and update language to be consistent with current standards and requirements. The DRT is supportive of this request in order to eliminate requirements that have already been completed or are now required by the City's codes and ordinances or other State requirements. This will make efficient use of staff and applicant time in the future.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
<input checked="" type="checkbox"/>	The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they are envisioned to exist in any adopted City plan, program or ordinance;	The character of this area is industrial in nature and the existing use is considered an industrial use. Additionally, these operations have been in place at this site for 26 years with no recorded violations.
<input checked="" type="checkbox"/>	Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;	The applicant has provided documentation that their operations are compliant with the necessary regulating agencies and many of the existing conditions intended to minimize impacts have been satisfied.
<input checked="" type="checkbox"/>	The characteristics of the site are suitable for the proposed use;	This site has been in operation for 26 years and has adequately accommodated the use.
<input checked="" type="checkbox"/>	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents or the applicant has committed to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;	The subject property was developed in 1991 and is adequately served by the necessary utilities and infrastructure.
<input checked="" type="checkbox"/>	The applicant has provided adequate assurances of continuing maintenance;	The submitted application indicates continued maintenance for the existing operations and has a track record of compliance.
<input checked="" type="checkbox"/>	No evidence suggests that the use violates any federal, state, or local requirements.	There is no indication that the use violates any federal, state, or local requirements.
<input checked="" type="checkbox"/>	The proposed use complies with the general purposes, goals, objectives, policies, and standards of all City plans, programs, and ordinances	The request complies with the City's plans and ordinances.
<input checked="" type="checkbox"/>	The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the City.	The request is compliant with the purpose, goals, and objectives of the comprehensive plan as outlined above.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the request **meets** the criteria for a Conditional Use Permit set forth in the Land Development Code and recommends that the Planning Commission forward the Conditional Use Permit request to the City Council with a **favorable** recommendation, subject to conditions.

The DRT's Recommended Motion

To recommend approval subject to condition(s):

I move that the Planning Commission enter a finding that, subject to certain conditions, the request contained in this Conditional Use Permit for the property located at 7321 E. 88th Avenue contained in case CU-21-91-94-96-97-17 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit subject to the following amended conditions:

Condition A:

Hours of operation will be 6am to 6pm Monday through Saturday. Pre-loading materials (no concrete or asphalt) and access from the property for trucks carrying bulk materials (enclosed containment) shall be allowed between 4am to 10pm. Equipment repair and off-loading activities will be conducted as needed, provided that the noise levels of the operations do not exceed 75 decibels at property line from 7am to 10pm nor 70 decibels at property line from 10pm to 7am. The noise level limitation shall be valid at any part of the property boundary which is not adjacent to property zoned I-2 or I-3. This condition shall be subject to review and reconsideration by the City Council for good cause.

Condition B:

Evening hauling between the hours of 6pm and 6am and Sunday hauling shall be allowed only for public projects which require low traffic hours for completion, and only for a maximum of 36 evenings/Sundays per year. The operator shall maintain a copy of the hauling schedule and construction contract and submit the documentation to the Director of Community Development upon request.

Condition C:

Noise and odor levels will not exceed city or state standards for industrial areas, whichever is more stringent. The applicant will employ noise monitoring devices and remedy any violations of the noise limits within 60 minutes of the violation. Complaints of frequent violations of the noise standards or odors shall be cause for revoking the Conditional Use Permit.

Condition D:

The stockpiles of materials shall be stored within the footprint of the area labeled "aggregate stockpile areas" on the Conditional Use Map dated 10/19/95 updated to 1/16/96. The stockpiles next to the conveyor systems shall be no higher than 50 feet. Stockpiles south of that shall be no higher

than 25 feet. Complaints from neighboring properties about damage from blowing sand and gravel may result in further limits being imposed on the height of the stockpiles or mitigating measures.

Condition E:

The applicant shall prepare and submit a traffic study for the property based on the requirements of the City when more than two accidents per year occur as a result of the activities of the applicant at the intersection of the vacated Quince Street and E. 88th Avenue.

Condition F:

The applicant shall submit a sign package for review and approval by the Department of Community Development if signage on the tower is proposed. The signage on the towers shall be limited to one identification sign 32-square feet each in size with one sign authorized for each business identity. All signage shall be of earth-tone colors.

Condition G:

The uses allowed shall be stated on the Conditional Use Map submitted with the application and dated 10/19/95 and updated to 1/16/96. Only incidental railcar maintenance and repair facilities will be allowed on the property for maintenance and repair of the applicant's own railcars and equipment.

Condition H:

The applicant shall maintain a HAZMAT Policies and Procedures Manual with the South Adams County Fire Protection District.

Alternative Motions

To recommend approval:

I move that the Planning Commission enter a finding that the requested Conditional Use Permit for the property located at 7321 E. 88th Avenue contained in case CU-21-91-94-96-97-17 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit.

To recommend denial:

I move that the Planning Commission enter a finding that the requested Conditional Use Permit for the property located at 7321 E. 88th Avenue contained in case CU-21-91-94-96-97-17 fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny the Conditional Use Permit.

To recommend continuance:

I move that the Planning Commission continue the Conditional Use Permit for the property located at 7321 E. 88th Avenue contained in case CU-21-91-94-96-97-17 to a future Planning Commission meeting.