



# STAFF REPORT

## Planning Commission

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### CASE #CU-108-15-20

|                         |   |                      |                |
|-------------------------|---|----------------------|----------------|
| <b>PC Date:</b>         | March 03, 2020                                  | <b>Case Planner:</b> | Jennifer Jones |
| <b>CC Date:</b>         | April 06, 2020                                  |                      |                |
| <b>Location:</b>        | 9985 E. 104 <sup>th</sup> Avenue                |                      |                |
| <b>Applicant/Owner:</b> | RCI Investments LLC                             |                      |                |
| <b>Address:</b>         | 155 W. 62 <sup>nd</sup> Avenue Denver, CO 80216 |                      |                |

### Case Summary

|                               |  |
|-------------------------------|--|
| <b>Request:</b>               | Renewal of a Conditional Use Permit for a metal recycling facility.  |
| <b>Project Description:</b>   | RCI is an existing business which was originally annexed in to the City as part of the 2007 enclave annexation. The business operated as legal non-conforming from the time of annexation until 2015 when they were approved for a conditional use permit which allowed for the expansion of their business onto an adjacent lot. A condition of approval in 2015 was that the CUP was limited in duration and would require renewal. RCI is not proposing any changes to their current business, but is seeking a renewal to their CUP in order to continue operating in Commerce City. |
| <b>Issues/Concerns:</b>       | <ul style="list-style-type: none"><li>Continued Conformance with City Standards and Conditions of Approval</li></ul>   |
| <b>Key Approval Criteria:</b> | <ul style="list-style-type: none"><li>Compliance with the Comprehensive Plan</li><li>Conditional Use Permit Approval Criteria</li></ul>  |
| <b>Staff Recommendation:</b>  | Approval with Conditions   |
| <b>Current Zone District:</b> | I-3 (Heavy Intensity Industrial District)  |
| <b>Comp Plan Designation:</b> | General Industrial   |

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

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Applicant's Project Summary | <input checked="" type="checkbox"/> Exhibit A – Materials List |
| <input checked="" type="checkbox"/> Development Plan            | <input checked="" type="checkbox"/> Vicinity Map               |

## Background Information

### Site Information

|                               |   |
|-------------------------------|---|
| <b>Site Size:</b>             | Approximately 4.7 Acres   |
| <b>Current Conditions:</b>    | Existing metal recycling facility.  |
| <b>Existing Right-of-Way:</b> | East 104th Avenue to the south; Florence Street to the west; Havana Street to the east  |
| <b>Neighborhood:</b>          | Di Giorgio  |
| <b>Existing Buildings:</b>    | An Office Building, A Processing Building, A Storage Building, & A Maintenance Building |
| <b>Buildings to Remain?</b>   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                     |
| <b>Site in Floodplain</b>     | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                     |

### Surrounding Properties

| <u>Existing Land Use</u> |                | <u>Occupant</u>   | <u>Zoning</u> |
|--------------------------|----------------|---|---------------|
| <b>North</b>             | Public/Utility | South Adams County Fire Protection District, Fire Station No. 5 | PUBLIC , I-3  |
| <b>South</b>             | Industrial     | First Creek Business Center                                     | I-2           |
| <b>East</b>              | Industrial     | Aim High Equipment Rental & Sales                               | I-3           |
| <b>West</b>              | Industrial     | Groendyke Transport   | PUD           |

### Case History

There are three relevant cases in the history of the subject property, as shown below:

| <u>Case</u> | <u>Date</u>   | <u>Request</u>  | <u>Action</u>                   |
|-------------|---------------|---|---------------------------------|
| AN-220-07   | December 2007 | Annexation into Commerce City   | <b>Approval</b>                 |
| Z-876-08    | March 2008    | Annexation Zoning   | <b>Approval with Conditions</b> |
| CU-108-15   | December 2015 | Conditional Use Permit for expansion of existing metal recycling facility | <b>Approval with Conditions</b> |

Prior to its incorporation into Commerce City, the subject property was subdivided into two lots in the Marathon Subdivision. It was then annexed as part of the Northern Enclave Annexation in 2007, and zoned in 2008 to I-3 to match the previous Adams County Zoning and existing use. The metal recycling business operated as a legal non-conforming use until 2015 at which time a Conditional Use Permit was granted which allowed the operation to expand onto an adjacent vacant lot. A condition of approval in 2015 was that the CUP was limited in duration and would require renewal. RCI is not proposing any changes to their current business, but is seeking a renewal to their CUP in order to continue operating in Commerce City.

## Applicant's Request

### 2020 Renewal Request

At this time the applicant is requesting a renewal of the Conditional Use Permit issued in 2015 in order to continue operating the metal recycling business. No changes to the site or operation are proposed. The Conditional Use Permit approved in 2015 included the six conditions as outlined below. 2020 updates to each condition are provided in red text.

- A. The Conditional Use Permit will expire on December 21, 2018. A renewal of the conditional use permit in accordance with the Land Development Code will be required to extend the operations beyond this date. *The applicant reached out to City staff to discuss the process for renewal of the CUP in 2019. Following a meeting with City staff, the applicant hired Norris Design to update their submittal documents from 2015. Staff worked with the applicant and*

*their representative to compile the necessary documentation and a formal submittal of the CUP renewal was made later in 2019.*

- B. The materials accepted for recycling will be limited to those shown on the list included with the submitted narrative dated September 17, 2015. Any additional materials will require an amendment to the CUP. *RCI has continued to adhere to the list of acceptable materials. No changes are proposed to this list. Future additions to the approved materials list would require an amendment to the CUP.*
- C. Whole crushed cars can be stored on the site for no longer than 72 hours. No vehicle crushing will be allowed to occur on the site, and no storage of inoperable vehicles will be permitted. *RCI has continued to comply with this condition. No changes are proposed related to the storage of crushed cars or inoperable vehicles.*
- D. Except for landscaping, the site must be developed according to the approved development plan dated October 29, 2015, including fencing and paving, prior to commencement of the expansion to the east side of the property. Separate fencing and grading permits will need to be submitted, and final inspections approved, before such expansion can occur. *The site was developed in accordance to the approved development. The fence was originally listed as 9-ft in height on the approved development plan, however 9-ft fences are not allowed. Staff approved a permit for a 7-ft fence in the same location. The plan has been updated to reflect this minor correction. Final inspections were approved, as required.*
- E. Landscaping must be installed as shown on the approved landscape plan dated October 29, 2015, by September 21, 2016. *Landscaping was installed per the plan, as required. The applicant has committed to replacing any trees or shrubs that have died for any reason. The landscaping will be maintained according to the approved plan.*
- F. The applicant shall notify the Community Development Department in writing if the recycling facility is ever discontinued by Recycling Connections, Inc. *RCI continues to agree to notify the City if operations were to cease. The CUP is granted specifically to RCI and a change in the operator of the site would require an amendment to the CUP. RCI intends to continue to operate this existing facility in the same manner and capacity as it has operated since 2015.*

## Development Review Team Analysis

Originally developed in Adams County, the RCI site on 104<sup>th</sup> Avenue continues to operate as a successful business in Commerce City. Significant improvements to the site were made following the CUP approval in 2015 including landscaping and fencing. Staff confirmed with both Neighborhood Services and the Police Department that this site has not had major violations, generated excessive calls for service, or caused detriment to the surrounding properties. By all reasonable accounts, the property is kept in good condition, operations have followed the specified guidelines, and no negative impacts are known to have resulted from this operation.

**Comprehensive Plan:**

The Development Review Team (DRT) reviewed the Conditional Use Permit (CUP) request against the goals found in the City's Comprehensive Plan. That analysis from 2015 is provided below and remains applicable in 2020.

**Comprehensive Plan**

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

| <u>Section</u>   | <u>Goal</u>  | <u>Description</u>   |
|------------------|--|--|
| Land Use         | LU 1a  | Future Land Use Plan as Guide:<br>Use the Future Land Use Plan (FLUP) to guide development patterns and mix of uses and amendments to the Land Development Code (LDC). |
| <b>Analysis:</b> | The Future Land Use Plan identifies the subject property for General Industrial uses, which includes medium and heavy intensity industrial uses and production. As a recycling facility which processes scrap metal, the proposed use fits within the characteristics of the designated future land use. |  |

| <u>Section</u>   | <u>Goal</u>  | <u>Description</u>  |
|------------------|--|---|
| Fiscal Stability | FS 2.2   | Core Employment Uses:<br>Retain and strengthen the industrial and employment land base by ensuring that the new employment is consistent with the designations on the Future Land Use Plan map. |
| <b>Analysis:</b> | Recycling Connections is a successful existing business in Commerce City. The overall use is consistent with the Future Land Use Plan. The applicants have made significant investment in the property to ensure it is a safe and attractive facility. |   |

| <u>Section</u>                             | <u>Goal</u>  | <u>Description</u>  |
|--|--|---|
| Environmental Conservation and Stewardship | EC 5.2   | Partnerships with Private Companies to Reduce Waste:<br>Support partnerships with private companies to promote waste reduction, recycling, re-use, composting, and the overall goal of reducing solid waste disposal. |
| <b>Analysis:</b>                           | This recycling facility promotes environmental conservation and stewardship by diverting scrap metal from being disposed in a landfill and providing an alternative source of materials. |   |

The operation of the recycling business and the site layout will continue in the same manner as they have been operating since the CUP approval in 2015. All required site improvements have been completed. No additional site improvements are necessary at this time.

**Roadway Conditions:**

As an operation that generates regular customer traffic, the access and circulation were carefully reviewed in 2015. With the reconstruction of East 104<sup>th</sup> Ave in 2013/2014 (a principal arterial roadway), the access into the site from East 104<sup>th</sup> Ave was converted from a full movement access to a right-in right-out access to minimize conflicts with through traffic on the roadway. A new full movement access was provided along Florence Street, which has a signalized intersection at East 104<sup>th</sup> Ave. This allowed for better control of traffic entering and exiting the site. The roadways associated with this project are in conformance with the Master Transportation Plan of the City. Public Works has no additional requests or requirements for this 2020 CUP renewal.

**Approval Criteria:**

| <b>Criteria Met?</b>                | <b>Section 21-3230 Conditional Use Permits</b>   | <b>Rationale</b>   |
|-------------------------------------|--|--|
|                                     | (a) All of the following criteria are met:   |  |
| <input checked="" type="checkbox"/> | (i) 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 | <i>The continued operation of the existing RCI metal recycling business at this location will not result in a substantial or undue adverse effect on adjacent property, the character of the</i> |

|                                     |  |  |
|-------------------------------------|--|--|
|                                     | may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program or ordinance adopted by the city;   | <i>neighborhood, traffic conditions, parking, or public improvements as they exist today or as they may exist in the future. Review of the operation since its incorporation into the City in 2007 and more specifically since its CUP approval in 2015 have provided evidence that this use is not resulting in any adverse effects.</i>              |
| <input checked="" type="checkbox"/> | (ii) 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;  | <i>Screen style fencing and the addition of landscaping along public right-of-ways and detention pond have and will continue to mitigate any potential adverse effects and help to ensure harmony for adjacent properties.</i>   |
| <input checked="" type="checkbox"/> | (iii) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features;   | <i>With no proposed changes to the operation or site layout, the characteristics of the site continue to be suitable for this operation.</i>   |
| <input checked="" type="checkbox"/> | (iv) 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. Where any such improvements, facilities, utilities or services are not available or are not adequate to service the proposed use in the proposed location, the applicant shall, as a part of the application and as a condition of approval, be responsible for establishing an ability, a willingness, and a binding commitment to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use; | <i>The subject property is already developed, and will continue to be adequately served by existing City services. The amount of traffic expected will be reasonably accommodated by E 104<sup>th</sup> Avenue and Florence Street. The SACFD Fire Station No. 5 is located adjacent to this property and could serve the site quickly, if needed.</i> |
| <input checked="" type="checkbox"/> | (v) The applicant has provided adequate assurances of continuing maintenance;  | <i>The applicant has demonstrated that they will continue to maintain the site adequately and that they will adhere to the conditions of approval of the CUP.</i>  |
| <input checked="" type="checkbox"/> | (vi) There is no evidence to suggest that the use violates any federal, state, or local requirements; and  | <i>There is no indication that the use violates any federal, state, or local requirements.</i>   |
|                                     | (b) One of the following criteria is met:  |  |
|                                     | (i) There is a community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide and maintain a property mix of uses both within the city and the immediate area of the proposed use; or  |  |
| <input checked="" type="checkbox"/> | (ii) The use complies with the general purposes, goals, objectives, polities, and standards of the comprehensive plan and all other plans or programs adopted by the city.   | <i>As shown in the analysis above, the use complies with the general purposes, goals, objectives, policies, and standards of the Comprehensive Plan.</i>   |

Based on the information provided by the applicant as well as analysis of the Comprehensive Plan, the Land Development Code, and the Approval Criteria for Conditional Use Permits, the DRT recommends approval of the Conditional Use Permit.

**Conditions:**

Based on the DRT’s analysis of this case, staff is proposing four conditions which relate to certain limitations on the types of materials that can be accepted and the continued use of the subject site as a recycling facility. The proposed five-year expiration is consistent with the expiration timeframe approved for similar types of CUP renewals and allows for an additional review in five years to ensure

that the use is still appropriate for the location. The applicant is aware of and continues to agree to these conditions.

## Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application 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 renewal request to the City Council with a recommendation for approval, subject to the following condition(s):

### CONDITIONS:

1. The conditional use permit will expire on December 31, 2025. A renewal of the conditional use permit in accordance with the Land Development Code will be required to extend operations beyond this date.
2. The materials accepted for recycling will be limited to those outlined in Exhibit A – Materials List.
3. Whole crushed cars can be stored on the site for no longer than 72 hours. No vehicle crushing will be allowed to occur on the site, and no storage of inoperable vehicles will be permitted.
4. The applicant shall notify the Community Development Department in writing if the recycling facility is ever discontinued by Recycling Connections, Inc.

## \*Recommended Motion\*

### *To recommend approval subject to condition(s):*

I move that the Planning Commission enter a finding that, subject to certain conditions, the requested Conditional Use Permit for the property located at **9985 East 104<sup>th</sup> Avenue** contained in case **CU-108-15-20** 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 conditions:

1. The conditional use permit will expire on December 31, 2025. A renewal of the conditional use permit in accordance with the Land Development Code will be required to extend operations beyond this date.
2. The materials accepted for recycling will be limited to those outlined in Exhibit A – Materials List.
3. Whole crushed cars can be stored on the site for no longer than 72 hours. No vehicle crushing will be allowed to occur on the site, and no storage of inoperable vehicles will be permitted.
4. The applicant shall notify the Community Development Department in writing if the recycling facility is ever discontinued by Recycling Connections, Inc.

## 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 **9985 East 104<sup>th</sup> Avenue** contained in case **CU-108-15-20** 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 **9985 East 104<sup>th</sup> Avenue** contained in case **CU-108-15-20** 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 continue the case:*

I move that the Planning Commission continue the requested Conditional Use Permit for the property located at **9985 East 104<sup>th</sup> Avenue** contained in case **CU-108-15-20** to a future Planning Commission agenda.