

Memorandum

To: City of Commerce City Planning Commission **VIA E-MAIL**
c/o Brayan Marin, Case Planner

FROM: Brian J. Connolly
Andrew L.W. Peters

DATE: June 22, 2020

RE: Case #CU-124-20, Conditional Use Permit ("**CUP**") for an Auto Salvage Yard Operation (the "**Project**") located at 9750 E. 96th Avenue Henderson, CO 80614 (the "**Property**")

Our firm represents Stadium Auto Parts, Inc. ("**Stadium**") with respect to Stadium's pending CUP application for the Project. Stadium looks forward to consolidating its business, presently located in Westminster and Denver, into a single location in the City of Commerce City (the "**City**"). Stadium further believes the Project is an ideal fit for the Property, which has proven difficult for other prospective users to develop, and appreciates City staff's recommendation of CUP approval. In connection with its planned move, Stadium asked our firm to review the conditions proposed in the "Staff Report Planning Commission" for the CUP (the "**Staff Report**") to ensure that they will operate as intended and will comply with legal requirements for such conditions. We understand that this matter will be heard by the City's Planning Commission on June 23, 2020.

Although our analysis identified some potential difficulties with the conditions as drafted, we believe it would be possible to modify them to respond to Stadium's legal and practical concerns, which we've identified below. To be clear, however, Stadium is willing to entertain modifications to the conditions that avoid those concerns and achieve the City's goals.

The conditions in question are as follows¹:

A. This Conditional Use Permit is for the storage and salvage of passenger vehicles and small shuttle buses only. No other types of vehicles, including but not limited to tractor trailers, semi-trucks, full size buses, boats, heavy construction vehicles, or mobile homes, is permitted. The storage or salvage of any other type of vehicle requires an amendment to this CUP.

¹ Condition B from the Staff Report does not present a concern and we have therefore omitted it here.

C. The conditional use permit will require review by Planning Commission and City Council on or before August 30, 2025.

Condition A

Condition A is generally acceptable but employs terms that do not appear in the City's Land Development Code (the "**LDC**") and therefore creates ambiguity that could be clarified (e.g., is a landscaping company's single-axle work truck a "passenger vehicle"?). The first condition could thus be simplified in a manner that allows Stadium to conduct its business—which does include at least some light truck (i.e. pickup truck or van) salvage, but not heavy truck salvage—while also reflecting the available definition of "truck" in the LDC, as follows:

This Conditional Use Permit is for the storage, dismantling and salvage of passenger cars, single-axle trucks (including sport utility vehicles), and small recreational vehicles and shuttle buses. Except as expressly permitted by the preceding sentence, no truck (as such term is defined in Section 21-11200(476) of the Land Development Code), large bus (including highway or school bus), boat, heavy construction vehicle, or mobile home shall be allowed to be stored, dismantled or salvaged on this lot. Any storage, dismantling, or salvage of trucks shall require an amendment to this CUP.

This modification does not change the effect of the proposed condition, and we believe, would capture City's staff goal for this condition: limiting salvage to smaller vehicles.

Condition C

The second condition, which requires "review" by August 30, 2025, is problematic in its current form but could also be modified to resolve the City's concerns while achieving Stadium's goals. Beyond the Property's purchase price, Stadium intends to spend millions of dollars developing the Project, and its relocation to the City is a long-term investment. The undefined and discretionary "review" contemplated in Condition C, which could occur at any time in the next five years and which further establishes no standards for such review, leaves Stadium without any certainty as to the long-term legality of its Project. The discretionary review process would also unnecessarily consume City resources in review and processing. Stadium understands and appreciates that the City wishes to exercise some continuing control over the Project, but Condition C permits the CUP approval to be changed at any time, and for any reason. That creates far too much risk for a multi-million dollar investment in the City.

Under Colorado law, local governments may not "impose any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner." C.R.S. § 29-20-203(2). Although the LDC includes a "lapse" provision for CUPs that are not commenced within a certain amount of time, or that are subsequently discontinued, none of its provisions supports an open-ended review period—much less one that does not specify any criteria for that review. The approval criteria require the applicant to mitigate impacts on the existing or planned

character of the neighborhood, but those are specific items that can be addressed today. Condition C, by contrast, appears to allow the City to modify, or even terminate, the use based on unknowable future conditions, and the LDC does not support it. What's more, Condition C does not include any review criteria, allowing the CUP to be modified or terminated for any reason, or no reason, thus creating a constitutional due process concern.

Stadium understands, however, that the City has an interest in ensuring the continued operation of the Project in accordance with the CUP and City codes—and Stadium is committed to operating a professional, compliant facility. Therefore, Stadium would entertain a condition allowing for administrative renewal of the CUP upon a finding that the owner has complied with the terms and conditions of the CUP, or a termination of the CUP in the event of noncompliance with its terms and conditions. Stadium would also entertain other ideas, including a reporting process whereby the owner is required to report any complaints and resolution of the same to City staff.

While we believe it is onerous to require the Stadium to undergo an unbounded, discretionary review at any time within the first five years of operation, there are several options to ensure that the City has sufficient oversight of the Project, and we would be happy to work with City staff to identify those which might work best for this particular application.

Conclusion

In light of the foregoing reasons, we respectfully request that the Planning Commission issue a recommendation of approval for the Project, subject to the modifications discussed above. We look forward to the opportunity to further discuss these matters at the hearing on June 23, 2020.