



# Request for Comments

Case Name: EA Towing Appeal  
Case Number: VSP2019-00002

February 21, 2019

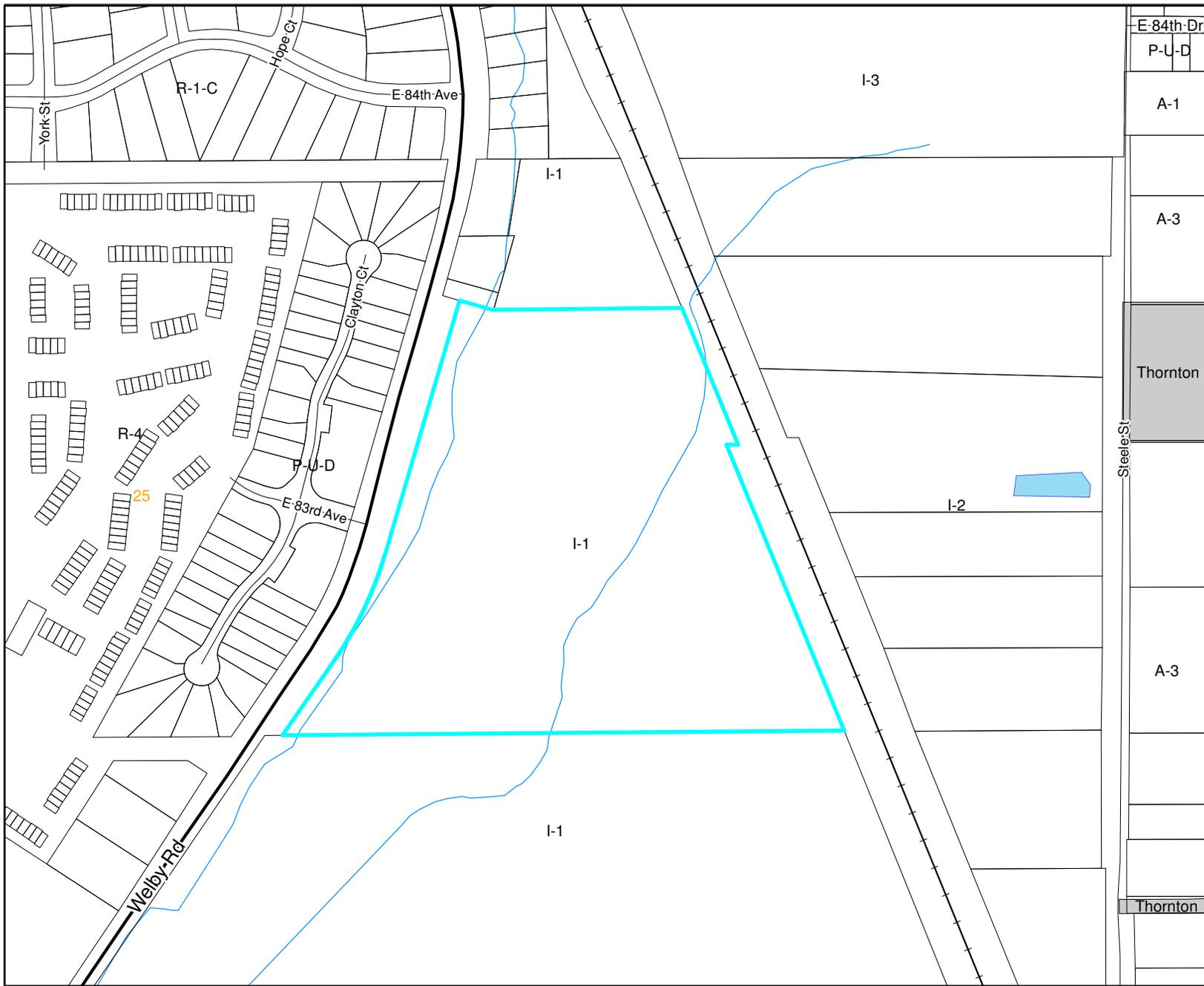
The Adams County Board of Adjustment is requesting comments on the following request: **an appeal of administrative decision in which a denial was issued on a change in use permit.** This request is located at 8280 Welby Rd. The Assessor's Parcel Number is 0171925305001.

Owner Information: York 80  
8791 Circle Drive  
Westminster, CO 80031

Please forward any written comments on this application to the Community and Economic Development Department at 4430 South Adams County Parkway, Suite W2000A Brighton, CO 80601-8216, or call (720) 523-6800 by 03/15/2019 in order that your comments may be taken into consideration in the review of this case. If you would like your comments included verbatim please send your response by way of e-mail to [GJBarnes@adcogov.org](mailto:GJBarnes@adcogov.org).

Once comments have been received and the staff report written, the staff report may be forwarded to you. The full text of the proposed request and additional colored maps can be obtained by contacting this office or by accessing the Adams County web site at [www.adcogov.org/planning/currentcases](http://www.adcogov.org/planning/currentcases). Thank you for your review of this case.

Greg Barnes  
Planner II



**Legend**

-  Railroad
-  Major Water
-  Zoning Line
-  Sections

E 84th Dr
P-U-D
A-1
A-3
Thornton
Steele St
A-3
Thornton

**EA Towing**  
**VSP2019-00002**



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This map is made possible by the Adams County GIS group, which assumes no responsibility for its accuracy



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February 15, 2019

Adams County  
Board of Adjustment  
4430 S. Adams County Pkwy  
Brighton, CO 80601

**RE: Board of Adjustment Appeal of Administrative Decision Regarding BDP18-6217 (the “Appeal”) - Written Submittal**

Dear Adams County Board of Adjustment:

Foster Graham Milstein & Calisher, LLP (“FGMC”) represents EA Towing, Inc. (“EA Towing”) and York 80, LLP (“York 80”) regarding the real property located at 8280 Welby Road, Adams County, Colorado (the “Property”). EA Towing is the current tenant using the Property and has been authorized by York 80, as the Property owner, to apply for land use applications for the Property.

### **Background**

EA Towing is a towing company that conducts business in several different states, including Colorado, and specifically operates in Adams County. EA Towing specializes in contracting with insurance companies who have a need for vehicles to be towed and temporarily stored while insurance claims are processed. EA Towing proposes to use the Property for specifically that business – towing vehicles and temporarily storing them in a storage yard on the Property while insurance claims are processed (the “Proposed Use”).

Seeking approval by the Adams County Community & Economic Development Department (the “County”) for the Proposed Use on the Property, EA Towing submitted a change in use application, which was labeled by County staff as “BDP18-6217” (the “Application”). EA Towing submitted the Application on December 12, 2018. On February 5, 2019, the County denied the Application based on a determination that a conditional use permit is required to conduct the Proposed Use on the Property (the “Denial”).

While the Denial is the subject of this Appeal, it is not in fact the beginning of EA Towing’s attempts to secure the appropriate permitting to conduct the Proposed Use on the Property. Rather, the Denial only comes after multiple attempts by EA Towing, since August

2018, to secure the proper permitting for the Proposed Use on the Property or get an appealable decision from the County denying EA Towing's permit applications.

In August of 2018, EA Towing researched the Property and learned that "auto towing and storage yards" are an allowed use by right on the Property and thus, began operating the Proposed Use on the Property. On August 23, 2018, the County issued a Notice of Violation Case Number VIO2018-00857 (the "NOV"), citing a violation of the Adams County Development Standards and Regulations ("Development Standards") for failure to obtain a change in use permit for conversion of the use of the Property from its then-Agricultural use for horse boarding to an industrial use – auto towing and storage yard (the "Change in Use").

In an effort to resolve the NOV, EA Towing engaged with the County Staff, who advised EA Towing that it must submit an application for conceptual review in order to have the Change in Use approved by the County. EA Towing hired an engineer and complied with the County's direction by submitting an application for conceptual review on August 27, 2018, labeled by the County as project number PRE2018-00108 (the "August Application"). In response, the County provided Development Team Review Comments on September 12, 2018 ("Review Comments") and held a conceptual review meeting on September 17, 2018. The Review Comments characterized the Proposed Use as "outdoor storage" and the County told EA Towing that the Proposed Use would require approval of a conditional use permit. Based on the Review Comments and after recognizing that the August Application requested a use of "Vehicular Storage Lot" which is not an identified use in the Development Standards, and which mischaracterized the Proposed Use, EA Towing ceased pursuing the August Application.

After additional conversations with County Staff regarding the proper characterization of the Proposed Use, County Staff advised EA Towing that if it wanted to pursue a change of use application rather than a conceptual review application, it should submit a new development application through the County's E-Permit online database.

EA Towing complied with the County's instructions and submitted another development application, this time properly designated as an application for a change in use from an agricultural use to an "auto towing and storage yard" use on November 14, 2018 through the E-Permit online database, recorded in Adams County as project number PRE2018-00137 (the "November Application"). However, the only development application submission option offered online for submitting the November Application that complied with the County Staff's instructions was once again for submission of a "conceptual review application." To avoid any confusion on the part of the County Staff, EA Towing specifically labeled the November Application as an application for a "change in use," not a "conceptual review application." Regardless, County Staff proceeded to process the November Application as a "conceptual review application" and notified EA Towing one week after submittal that its November

Application was rejected because it was duplicative of their August Application, for which the County had already determined a conditional use permit was required for the Proposed Use on the Property. On November 30, 2018, EA Towing submitted an appeal to the Board of Adjustment of the County's determination that a conditional use permit is required for the Proposed Use on the Property. On December 12, 2018, EA Towing was told that the County Staff's decisions to-date regarding the requirement for a conditional use permit were not appealable administrative decisions over which the Board of Adjustment had jurisdiction.

Therefore, and yet again, EA Towing communicated with County Staff requesting instruction on the exact steps to use the E-Permit online database system to file a "change in use" application not a "conceptual review application." Finally, County Staff instructed EA Towing that, despite the fact that Staff had previously instructed EA Towing to submit a "development application" via the E-Permit system, EA Towing's change of use permit application *actually* needed to be submitted as a "building permit application" via the same E-Permit system. Accordingly, and after undue delay that was not the fault of EA Towing, the Application, was submitted on December 12, 2018.

On December 26, 2018, EA Towing received comments on the Application from several County Departments and retained engineers and surveyors to assist in its response to these comments. One comment, however, under Planner Review, was a statement, by Ms. Anna Gibson, that the Application was "Rejected" with a comment that "[t]he proposed Change in Use is not allowed without an approved Conditional Use Permit." On January 23, 2019, in light of the County's previous position that determinations made by Ms. Gibson were not final appealable decisions, EA Towing requested guidance from the County as to how to obtain a "final order, decision or determination by an administrative official of Ms. Gibson's decision that the Application requires an approved conditional use permit which will then be appealable to the Adams County Board of Adjustment under Section 2-02-19 of the Code." In response to this request, the Adams County Director of Community and Economic Development provided the February 5, 2018 letter, which is the subject of this Appeal.

While EA Towing has endured months of frustrated attempts to come into compliance with the County's Change in Use requirements, EA Towing looks forward to a hearing and determination by the BOA that will finally resolve the issues surrounding the Proposed Use on the Property.

### **BOA Authority**

The Adams County Development Standards and Regulations ("Development Standards") grant the BOA five specific authorities: (1) the authority to grant variances; (2) the authority to grant special use permits; (3) the authority to hear and decide appeals of administrative

determinations; (4) the authority to impose reasonable conditions upon approvals; and (5) the authority to suspend or revoke permits.<sup>12</sup>

The Development Standards further define “hear and decide appeals of administrative determinations” as the authority to “[h]ear and decide appeals brought by an aggrieved person regarding allegations of error by an administrative official in the application or enforcement of these standards and regulations.”<sup>3</sup>

The Development Standards identify the following three directors as “Administrative Officials”: (1) the Director of Community and Economic Development; (2) the Director of Public Works; and (3) the Director of Long Range Strategic Planning.<sup>4</sup> Relevant to this case, the Director of Community and Economic Development has the authority to “[i]ssue written administrative decisions concerning the application of these standards and regulations to specific property or development applications” (“Official Determinations”).<sup>5</sup> Appeals of Official Determinations must be submitted to the BOA within ten (10) calendar days of the date of the determination or decision.<sup>6</sup>

### **The Basis for Appeal**

This Appeal is an appeal by EA Towing and York 80 of the Official Determinations contained in the letter from Kristin Sullivan, Director of Adams County Community and Economic Development (the “Director”) to FGMC dated February 5, 2019 (“February 5<sup>th</sup> Letter”). The February 5<sup>th</sup> Letter is attached to this Appeal as Exhibit A.

The February 5<sup>th</sup> Letter contains appealable Official Determinations because it is from Kristin Sullivan, who is the current Director, and who asserts the same in the February 5<sup>th</sup> Letter. As Ms. Sullivan states in the February 5<sup>th</sup> Letter, and as explained above, Ms. Sullivan, as the Director, is an administrative official under the Development Standards who has the authority to issue Official Determinations.<sup>7</sup> The Development Standards allow an aggrieved person to appeal an Official Determination to the BOA. EA Towing and York 80 are aggrieved persons to this appeal because EA Towing is the applicant of the Application and York 80 is the owner of the Property.

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<sup>1</sup> *Adams County Development Standards and Regulations* § 1-02-03-12.

<sup>2</sup> All cited sections of the Adams County Development Standards and Regulations are attached to this Appeal as Exhibit B.

<sup>3</sup> *Adams County Development Standards and Regulations* § 1-02-03-12-03.

<sup>4</sup> *Adams County Development Standards and Regulations* § 1-03.

<sup>5</sup> *Adams County Development Standards and Regulations* § 1-03-01-01-08.

<sup>6</sup> *Adams County Development Standards and Regulations* § 2-02-19-04.

<sup>7</sup> *Adams County Development Standards and Regulations* § 1-03-01-01-08.

The February 5<sup>th</sup> Letter contains two Official Determinations. Specifically, the February 5<sup>th</sup> Letter states: (1) that the Proposed Use “is not permitted in the I-1 Industrial zone district without an approved conditional use permit”; and (2) therefore, the Application “has been denied.”<sup>8</sup> Each of these determinations constitutes an error in the application and enforcement of the Development Standards by an administrative official. Accordingly, the BOA has the authority under the Development Standards to hear and decided this Appeal of each determination.<sup>9</sup> This Appeal is timely because February 15, 2019 is ten calendar days from February 5, 2019, the date of the Official Determinations.

### **Error Analysis**

The February 5<sup>th</sup> Letter is an error in the application of the Development Standards for each of the two Official Determinations contained therein.

#### **I. The Proposed Use Does Not Require an Approved Conditional Use Permit**

The Property is located in an Industrial-1 (“I-1”) Zone District of Adams County. The I-1 Zone District allows only one principal use per lot.<sup>10</sup> The current principal use of the Property is Agricultural. A change of use permit is required pursuant to the Development Standards Section 4-02-01 “whenever the essential character or nature of the activity conducted on a lot changes,” which includes when the “change is from one principally permitted use category to another.” The Application seeks to change the use of the Property from the current non-conforming Agricultural horse boarding use to the permitted principal Light Industry use of auto towing and storage yard.<sup>11</sup>

The Application therefore is for a change in use from one non-conforming use to one permitted principal use by right. Thus, the Director erred in concluding that the “use is not permitted in the I-1 Industrial zone district without an approved conditional use permit.”<sup>12</sup>

#### ***a. The Director Erred in Determining that the Proposed Use is Outdoor Storage***

While not stated in the February 5<sup>th</sup> Letter, starting with the Review Comments to the August Application<sup>13</sup>, the County has continually mischaracterized the Proposed Use as “outdoor

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<sup>8</sup> Exhibit A – February 5<sup>th</sup> Letter.

<sup>9</sup> *Adams County Development Standards and Regulations* § 1-02-03-12-03.

<sup>10</sup> *Adams County Development Standards and Regulations* § 3-24-02.

<sup>11</sup> *Adams County Development Standards and Regulations* § 3-24-02-04(10) (identifying Light Industry as a principal use in I-1); *Adams County Development Standards and Regulations* § 11-02-302 (identifying “auto towing and storage yard” as one type of Light Industrial use).

<sup>12</sup> Exhibit A – February 5<sup>th</sup> Letter.

storage.”, rather than as an “auto towing and storage yard”. This mischaracterization of the Proposed Use as “outdoor storage” is clearly the Director’s basis for the first Official Determination.

The Development Standards define “outdoor storage” as “the storage of materials or inventory naturally and normally *incidental* to the primary use of a property limited to the primary user of the property, and located on the same lot with the primary use.”<sup>14</sup> Under the facts of this case, the “storage” of vehicles “outdoors” is not an element of the use that is incidental to the primary use, here the “storage” of vehicles in an auto towing and storage yard is the primary use. In fact, the phrase “storage yard”, which is defined as “An outdoor area used for the keeping of possessions, belongings, goods, materials or other items in which the items are screened from view.”<sup>15</sup> is specifically included in and contemplated for an “auto towing and storage yard” use.

Put simply, the Proposed Use does not meet the definition of “outdoor storage” under the Development Standards because the storage of vehicles on the Property is not incidental to a different and distinct primary use. Furthermore, unlike an “outdoor storage” use, the Development Standards do not provide a maximum area allowed for storing vehicles based on the building area for an auto towing and storage yard use<sup>16</sup>, because, again, the storage of vehicles in a storage yard is an integral part of the primary permitted use of the Property.

EA Towing proposes to use the Property for towing vehicles and temporarily storing them in a storage yard on the Property while insurance claims are processed – as an auto towing and storage yard. The County’s characterization of this use of the Property as “outdoor storage.” is an error.

***b. The Proposed Use is a Use by Right***

The Development Standards designate “Light Industry” as a principal use by right in the I-1 Zone District, and therefore, Light Industry uses do not require an approved conditional use permit in the I-1 Zone District.<sup>17</sup> Further, the Development Standards’ definition of “Light Industrial” includes “auto towing and storage yard” as a type of permitted principal Light Industry use.<sup>18</sup> As explained above, EA Towing is a business that desires to use the Property for its “auto towing and storage yard.” Therefore, EA Towing’s intended use precisely meets the Development Standards’ definition of “auto towing and storage yard” because EA Towing

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<sup>13</sup> Adams County Development Team Review Comments dated September 12, 2018.

<sup>14</sup> *Adams County Development Standards and Regulations* § 11-02-394.

<sup>15</sup> *Adams County Development Standards and Regulations* § 11-02-516.

<sup>16</sup> *Adams County Development Standards and Regulations* § 11-02-394.

<sup>17</sup> *Adams County Development Standards and Regulations* § 3-24-02-04(10).

<sup>18</sup> *Adams County Development Standards and Regulations* § 11-02-302.

proposes to both tow vehicles to and then store vehicles on the Property, in a storage yard, which is a use by right<sup>19</sup>.

While “outdoor storage in excess of 100% of the building area” is a use that does require an approved conditional use permit to operate in the I-1 Zone District.<sup>20</sup>, an “auto towing and storage yard” use does not. Accordingly, EA Towing and York 80 respectfully request that the BOA reverse the Official Determination that the Proposed Use requires an approved conditional use permit.

## II. The Director Erred in Denying the Application

The Director made an Official Determination that the “change-in-use permit has been denied because the use is not permitted in the I-1, Industrial zone district without an approved conditional use permit.”<sup>21</sup> As explained above, the Proposed Use is allowed on the Property as a use by right without an approved conditional use permit and therefore, the denial of the Application was an error in the application of the Development Standards.

Accordingly, EA Towing and York 80 respectfully request that the BOA grant the appeal of this Official Determination and require County Staff to reverse its denial of the Application.

### **Conclusion**

For the foregoing reasons, EA Towing and York 80 respectfully request that the BOA reverse the Official Determination that the Proposed Use is not allowed on the Property without an approved conditional use permit. EA Towing and York 80 also respectfully request that the BOA reverse the Denial of the Application and require the Director and County Staff to continue to process the Application.

We look forward to a public hearing on this matter. Please do not hesitate to contact me with questions or concerns.

Sincerely,



Michelle L. Berger

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<sup>19</sup> Adams County Development Standards and Regulations § 11-02-516.

<sup>20</sup> Adams County Development Standards and Regulations § 3-24-04-03(1).

<sup>21</sup> February 5<sup>th</sup> Letter.