

Victoria J. Burch

President

Colorado Realty Advisors, LLC

www.coloradorealtyadvisors.com

719-377-7715

August 14, 2020

Mr. & Mrs. Stephen Smith
16625 South Peyton Highway
Colorado Springs, CO 80928

RE: Special Use Variance / File Number AL-29-028 / Applicant Childers

Via Email: smithjt1j@gmail.com

Dear Mr. & Mrs. Smith;

You have requested my professional assessment as to the suitability of a proposed development project, location: 16810 S. Peyton Hwy, Colorado Springs, CO 80928.

I have carefully reviewed and analyzed the proposed project with the documents available to me from the EDARP website, from you, and your personal account of two conversations with the Childers in the past as to their plans for the property.

I have reviewed Chapter 6 of the Land Development Code for El Paso County.

I have reviewed the South Central Comprehensive Plan (SCCP) to better determine suitability of the project relative to its consistency with the Master Plan and the SCCP.

As you know, I have been a real estate developer for over 20 years. The most essential part of my job includes site analysis and site acquisition for any project contemplated. My bio is available on my website, www.coloradorealtyadvisors.com.

The County has provided guidelines as to how a Special Use Variance may be obtained. I have several concerns about the project proposed by Mr. Childers. With the information available to me, which appears **not to be accurate or current**, I have been forced to speculate as to the actual intentions of the Applicant. **I do not have a scaled site plan of the project. I do not have a current description of the project from the Applicant (typically noted as a "Letter of Intent").**

The Type C Application Form (1-2B) specifically states under "Owner/Applicant Authorization", *"the information on this application and all additional or supplemental documentation (site plan, Letters of Intent) is true, factual and complete."* It further states and by their signature, the Childers covenant *"I verify that I am submitting all of the required materials as part of this application and as appropriate to this project, and I acknowledge that failure to submit all of the necessary materials to allow a complete review and reasonable determination of conformance with the County's rules, regulations and ordinances may result in my application not being accepted or may extend the length of time needed to review the project"*.

It is my understanding that within the purview of the Planning Commission, they may "approve" the project subject to approval by the Board of County Commissioners in spite of the Applicants non-

compliance with statements on Type C Application Form (1-2B). While it seems odd for the Planning Commission to bypass the simple request for a scaled site plan and accurate description of the project, it seems discourteous of the Applicant to surrounding land owners as no one, including other property owners and the Planning Commission, can understand what the project entails at its elementary level.

Nonetheless, per research completed in the Land Development Code and the South Central Comprehensive Plan, I find the following:

(At the onset, please understand that a development project is typically analyzed during the “feasibility period” (4-6 mos) while under contract, but not yet closed on the property. It appears the Applicant did not negotiate such a period while under contract to purchase, and therefore, purchased the property on speculation that their approvals would be forthcoming post-closing. This is highly inadvisable for a property purchaser for reasons obvious).

1. Reviewing the three (3) “Letter of Intent” documents written by the Applicant, (source: EDARP) there are glaring inconsistencies as to their intention of use and scope of use. While on the one hand, the project is described as a minor change in use of land and resources (water, sanitation, area of disturbance, ingress, egress, number of participants, etc.), on the other hand, we find a description of what, in my professional opinion, amounts to a major change of use for the property significantly impacting not only the Applicant’s property, but those adjacent and surrounding. **The County has specific requirements by which any application will be considered. My findings are based upon these requirements (Land Development Code, the South Central Comprehensive Plan and standard development processes).**

2. Chapter 6 of the Land Development Code

- 2.1 Land Development Code, Chapter 6, page 35: As caretakers of disabled people in your home directly across the road from the project, Operational Standards to which the Applicants are subject require their project be designed to limit or eliminate conditions that may negatively impact the environment and use of surrounding properties.

It is my understanding that people suffering from mental impairment have a need for calm and peaceful surroundings to enjoy not only a quality of life, but improvement over time. Your rural location is a significant reason you can offer services.

It is imperative that the lives of these individuals be highly considered as worthy of all efforts to secure their best. You have mentioned there is a shortage of people willing to provide such services, and do not wish to risk abandoning your efforts by the potential impact of such a drastic change across the road from you.

- 2.2 Chapter 6 of the code, Page 35, discusses noise and noxious odors emanating from the proposed project. With multiple cars, buses, people visiting throughout the week, week in/week out, the noise level undoubtedly will rise considerably. Your area is very rural, and quiet. This is the reason you purchased there 16 years ago; and one of the main reasons you have been a successful caretaking home for the disabled.

- 2.3 Development Code Chapter 6, page 37, 38 and 42, the size, height, and maximum square footage of the Identification Sign to Muddy Little Cowboys Ranch which is allowed. The sign is already installed and therefore a permit should be produced by the Applicant to confirm compliance with the Development Code.
- 2.4 Development Code Chapter 6, page 59 discusses air quality requirements. We do not know if this would be an issue, however, the Applicant should confirm that the porta-potties used on a permanent basis a) do not produce wafting noxious odors off their property and b) there are no waste spills as the units are switched out from time to time. What is the plan to mitigate odors and spills? How will people wash their hands? With COVID in our midst, that is more essential than ever. A review of the Air Quality Plan should be done by the County.
- 2.5 Development Code Chapter 6, pages 60 and 79 discuss nuisance conditions. Any land disturbance during or after construction is required to comply with the Applicants emission control plan (dust is the primary problem).
- 2.6 Development Code Chapter 6, page 61 discusses the drainage study required. A significant amount of earth moving, grading, cut and fill (per civil engineer's plan) should include details regarding management of dust. Will ditches, swales or berms be graded? Will erosion control blankets be used? Your property is at a lower elevation than the Applicants and proper drainage is essential so that you do not suffer damage. Water naturally flows your direction. The Applicant is responsible for keeping any water on their property, excepting the current amount of natural run off to the road.
- 2.7 Development Code Chapter 6, page 65, 67. Will a fire cistern be required? The Fire Marshal needs to indicate requirements, if any. Page 69 states *"The following minimum standards shall apply to emergency vehicle lanes, driveways, and parking lot drive lanes serving as emergency vehicle lanes. (a) Emergency Access Provided El Paso County, Colorado Land Development Code General Development Standards – Chapter 6-Page 70 Effective 01/09/2018 Access for emergency responders, ingress, egress, and evacuation shall be provided for all buildings. (b) Driveways Required Where any point of a building is greater than 150 feet from a road, a driveway meeting these standards shall be provided to within 150 feet of the furthest point on the building. (c) Emergency Vehicle Lanes Required Emergency vehicle lanes shall be provided as required by the Fire Marshal. (d) Emergency Access Lane Design An emergency vehicle lane shall be designed and constructed to enable fire-fighting apparatus to maneuver broadside or directly forward within a minimum of 5 feet and a maximum of 25 feet of structures. (e) Width of Driveway and Emergency Vehicle Lanes Where the driveway is greater than 150 feet in length, it shall be not less than 10 feet in unobstructed width. Emergency vehicle lanes providing one-way travel shall be a minimum of 16 feet in width, and fire lanes with two-way travel shall be a minimum of 24 feet in width. (f) Vertical Clearance At least 13 feet 6 inches of vertical clearance shall be provided and maintained over the full width of an emergency vehicle lane or driveway. (g) Turns Required driveways shall be*

designed, constructed, and maintained to accommodate the turning radius of the largest apparatus typically used to respond to that location. A turn in an emergency vehicle lane shall be constructed with a minimum radius of 25 feet at the inside curb line and a minimum radius of 50 feet at the outside curb line”.

3. To assess the special use variance request, there are essential questions to answer using the County’s criteria (**Master Plan, South Central Comprehensive Plan**).
 - 3.1 Is the project generally consistent with the Master Plan, particularly, the South Central Comprehensive Plan (SCCP) in the which the property is situated;
 - 3.2 Is the special use generally in harmony with the character of the neighborhood and compatible with existing and allowable land uses surrounding;
 - 3.3 does the special use impact and overburden or exceed the capacity of public facilities and services;
 - 3.4 does the applicant demonstrate it will provide adequate public facilities (water, sanitation, ingress, egress);
 - 3.5 will the special use create unmitigated (unmanaged, unaddressed) traffic congestion or hazards in the surrounding area; e) will there be adequate and legal access;
 - 3.6 will the special use company with all applicable local, state and federal laws & regulations regarding air, water, light, or noise pollution;
 - 3.7 will the special use be detrimental to public health, safety and welfare of the present and future residents of EPC; and
 - 3.8 does the special use confirm or will conform to all other applicable County rules, regs, or ordinances.
4. **From the unscaled site plan submitted, it is impossible to understand the actual area of disturbance.** The Applicant states that no more than ½ acre will be used for their business. In fact, it will be far more than ½ acre because there are now going to be four (4) ingress/egress points versus the current and typical one (1) point of entry/exit for residential properties (current zoning). This would include one dedicated to parking, ingress and egress for buses and large vehicles (south of the existing barn/workshop building); one (1) for their residence and two (2) for access to the Muddy Little Cowboy Ranch.

As well, from your conversations with the Applicant in the past, they have expressed their intention to build a wedding facility in the future which will put additional property within the development footprint; and additional stresses on utility and other services (water, sanitation, traffic, noise, lights, signage, etc.).

5. Given this is a business application, whether “non-profit” or “profit” enterprise, it is reasonable to assume the Applicant will need to generate substantial revenue to pay the overhead and staffing required. The pressure to generate revenue is likely to increase the number of Staff and Volunteers, along with attendees, further exacerbating noise, traffic, and general activity on the property.

6. The South Central Comprehensive Plan (SCCP) makes special note of a) Extraction of Commercial Mineral Deposits (page 16) and land is found to contain commercially extractable deposits, land uses which would interfere with the extraction of the deposit must not be approved. There is a blanket Mineral Rights Easement owned by Phillips 66 (or subsequent owner(s)); therefore the easement must be cleared prior to development.
7. The South Central Comprehensive Plan discusses the limited existing water resources (page 24). The project will likely demand more than the standard 1 ac foot per year usage (domestic well). Therefore a commercial well may be required. The SCCP makes special note of this issue and care should be taken to confirm water usage on the subject property for the proposed development. A professional can be consulted to confirm one way or another; and their findings documents in the file. The unscaled site plan and Letters of Intent do not adequately address the large increase in water usage. Their new use may require the installation of a commercial well. They will have animals (petting zoo) and water needed for crops/plantings for their instructional use as well as a farm stand for retail sales of produce, as well as water needs of any visitors and staff.

You have stated you are very careful to use only your **water allotment of 1 ac foot per year** for your well. The applicant's well is under the same requirements as all others in the area; but their use would dramatically increase utilize precious water resources and diminish the same resource for neighbors. **In this case, a commercial well may be required.**

8. The South Central Comprehensive Plan, on page 42, provides a good illustration of the effect of development and things to pay attention to so that good development is done. "Development should minimize disturbance to the natural environment" and of particular interest is "Fugitive Dust Control" and "Erosion Control". Earth movers will be used to clear the multiple drive entrances and drives in preparation for asphalt (or selected material) to be installed. The ground cover in the area is shallow and disturbance creates a lot of dust; a good civil engineer would recommend proper erosion control to mitigate soil loss during construction, and ongoing.
9. Traffic counts (ADT, "average daily trips) closest to the subject property site show at Station 103947 from the CODOT website, there are 3200 ADT's per day. **It is unreasonable to assume that the Muddy Little Cowboys project would add a mere 8 ADT's as noted on the Letter of Intent submitted.** (Two ADT's is one car entering, and same car exiting the property). My best estimate, assuming between 100 and 200 people visiting the property on a weekly basis (attendees, staff, volunteers, parents), ADT's are likely to increase from their current level of 3200, to 3300-3400, although this should be confirmed by a Traffic Engineer. Peyton Hwy is a two-lane State Highway with a 60' R/W (30' either direction from the Center Line). Those attempting to turn left into the Applicant's property will be forced, at some point, to **require "stacking" of cars behind the left-turn driver. This can result in rear end collisions over time.** As well, those attempting to turn left from the property on to Peyton Hwy will create an additional hazard for possible accidents given the increased number of drivers accessing the circular ingress/egress from the Applicant's property. A Traffic Engineer should weigh in on

possible hazards and determine whether a left turn lane is recommended given the increase in traffic, and proximity to your property across the road (drives are directly across the road).

10. The circular drive drawn on the site plan does not note the type of drive material required. It should be asphalt however, in the absence of that, the Development Code allows for rock, block pavement, or the equivalent. It is my experience that rock will not last (requiring reapplication on a regular basis) and a dirt drive is completely unacceptable due to drainage issues, and muddy conditions. For safety, a fire truck must be able to enter/exit for emergencies or fire protection with minimally 13'6" height. (See Item 8). See also Development Code, Chapter 6, page 24.
11. Development Code Chapter 6, Page 24 discusses the road access points approvals required by the County and the State.
12. There is a power line running from the main transformer on Peyton Highway to the property's home. It runs over the entry drive of the Applicant's land. This must minimally be 13'6" above grade to allow a fire truck to safely enter/exit. This can be confirmed by a civil engineering firm. If not 13'6" above grade, the line must be raised.
13. The **County reviewer, Mr. Rad Dickson on two occasions made notations on two of the Letters of Intent requesting additional information** regarding "car parking, attendees/frequencies and hours of operation, details on wastewater and water...traffic [impact] indicating the average daily trips (ADT) that the proposed use will generate; **and he requested a scaled site plan.** I assume Mr. Dickson requested the site plan and clarifying information in preparation for the Planning Commission meeting as well as the BOCC meeting. We have yet to see any additional documents from the Applicants. **I am unable to find the Applicant's full and complete response to the reviewer's notations requesting clarifications/information.**

A Letter of Intent that is full and complete and accompanied by a scaled and professionally drawn site plan is in order. **It is the only way, fairly, that adjacent property owners or any other interested parties can evaluate the request and its impact upon their property.**

14. RE: Impact to value of your property. It is my Broker's Price Opinion that your property would likely suffer 7-10% reduction in value due to your proximity to the Applicant's property and assuming the project is built as described by them. You are in a very rural setting and buyers move there to enjoy the quiet and peaceable use of multiple acres of land for small setting ranching, farming, and living. Given that the Applicant's property is directly across the highway, buyers will hesitate to buy at all (a smaller pool of buyers available to you); and if/when a buyer is willing to purchase, it will be at a reduced price because of the nuisance business/entity across the street).
15. The "Special Use" is not in harmony with the character of the neighborhood. You have been in your home for 16 years and moved to this location for the quiet character it provides to your family. Having a busy petting zoo, wedding/social venue, gardening, farmer's market sales, a

picnic area, school bus guests by the multiple dozens, the owners actually residing on the property, a lack of proper sanitation and waste control, composting livestock manure and gardening waste, a retail operation, the additional stress imposed upon the water table (the well is for “domestic use” only), the resultant reduction in your property value are all just some of the negative attributes for which you are concerned. The “Special Use” is NOT supposed to overburden or exceed the capacity of public facilities and services, nor the facilities already on their property and intended for residential use only.

16. RE: Sanitation. Since there is only 1000-gallon septic tank/system on the property, this is inadequate to service the needs of the many guests anticipated on the property. Their solution of having one-two porta-potties is unacceptable. Those are meant for very short duration use (a construction project for a period of months only is the typical use). They should not be considered a long-term solution to people’s bathroom needs. How is sanitation maintained? People cannot readily wash their hands after using the bathroom. A larger septic tank and leech field and standard restrooms for public use should be constructed. Over time, multiple spills from “permanent” porta-potties will occur thereby creating a hazardous waste problem, the possibility of disease carrying substances to those on the property. COVID is with us now and may be for some time in the future. Porta-potties are an unacceptable solution to permanent sanitation needs.

17. I have given you a lot of information, but it is not a comprehensive list of concerns regarding the contemplated development of the Applicant’s site. **The improper site plan and “Letters of Intent” do not meet the bar to properly describe the scope of the development indicated in the initial Applications promise to provide. It does not meet the Land Development Code requirements; it does not meet the criteria set forth in the SCCP, and does not meet standard development practice for an approval by a governmental body.**

In my opinion the proposed project variance request should be denied. The request should not be considered adequate by the County to support the variance request before the Planning Commission. Moreover, the documents submitted should not be considered adequate to support the variance request before the Board of County Commissioners. It is my professional opinion that the project is fraught with difficulties that cannot reasonably be overcome. The site is wholly unsuitable for the Applicants intended use.

Please feel free to contact me with questions.

Sincerely,

Victoria J. Burch

Real Estate Broker, Developer