



OLIVE

REAL ESTATE GROUP, INC.

September 21, 2022

SENT VIA ELECTRONIC MAIL

Lori Seago, Senior Assistant County Attorney – loriseago@elpasoco.com

Kenny Hodges, County Attorney – kennyhodges@elpasoco.com

EL PASO COUNTY ATTORNEY'S OFFICE

200 South Cascade Avenue, Suite 150

Colorado Springs, CO 80903

Ryan Howser, Planner III – ryanhowser@elpasoco.com

Joe Letke, Code Enforcement Supervisor – joeletke@elpasoco.com

Kevin Mastin, Interim Executive Director – kevinmastin@elpasoco.com

EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT

2880 International Circle, Suite 110

Colorado Springs, CO 80910

RE: Request for Administrative Determination:

TSN: 54050-00-050 / Code Violation: CE-21-1097

TSN: 54050-00-055 / Code Violation: CE-21-211

Dear El Paso County Attorneys and Planning and Community Development:

Please consider this a formal request for an Administrative Determination on multiple issues prompted by two code violations issued by El Paso County In March 2021 (CE-21-211) and October 2021 (CE-21-1097).

I have been retained to provide real estate guidance and support pertaining to these violations by RK Family Investments, LLC (owner of Parcel 54050-00-050) and Rowley Ventures, LLC (owner of Parcel 54050-00-055), through brothers Todd and Greg Rowley, who manage the LLC-owners and also own and operate Warehouse Options, Inc. ("WareOps") on the subject parcels. For purposes of this letter, the parcel owners will be referred to collectively as the "Property Owner."

WareOps serves the logistical storage needs of a variety of industries to include construction, warehousing, manufacturing, defense contractors and local military bases, as well as national retail clients such as Ace Hardware and King Soopers. WareOps uses portable semi-trailers and shipping containers to expand storage options for clients who need on or off-site, long-term, or short-term storage options for materials and/or inventory to accommodate market fluctuations, seasonal products, or temporary uses. Numerous warehouses in El Paso County also use WareOps to manage temporary or seasonal supply surges (snow blowers, lumber, steel, etc.) that exceed their existing warehouse capacity. This has been WareOps primary business model for the past 20+ years. The Rowley brothers purchased the business and land from their father, Glenn Rowley, who started the business initially with other partners over 30 years ago, and who bought out the other partners in 2000 and continued WareOps on these parcels.

Two Early Assistance meetings have occurred and after extensive communication between the Property Owner and El Paso County, Attorney Seago recommended the Property Owner pursue dismissal of the

code violations and corresponding site development plan requirements and request additional clarification on the status of these violations through the Administrative Determination process. Therefore, the Property Owner hereby requests an administrative determination on the following issues:

Issue 1: South Parcel Code Violation –Conforming Use

Issue 2: North Parcel Code Violation – Conforming Use

Issue 3: Access to South Parcel and North Parcel

Issue 4: South Parcel Subdivision

Issue 5: Regional Drainage

Issue 1 – TSN: 5405000050 (“South Parcel”) Code Violation – Conforming Use

TSN:	5405000050
Address:	N Marksheffel Rd
Owner:	RK Family Investments, LLC
Code Violation #:	CE-21-1097
EA File #:	22-033
Date of Violation:	11/3/2021
Violation:	LDC Table 5-1 - Principal Uses
	5.2.9 - Automobile & Boat Storage Yards
	11.3.1 - Unlawful Acts
Purchase Date:	9/29/2006
Location:	N Marksheffel Rd
Zoning:	I-3 CAD-O
Size (AC):	30.88

Code Violation No. CE-21-1097 was issued on November 3, 2021, which referenced motorboat storage on a property that has been operated as an Outdoor Storage Yard for 20+ years. Unbeknownst to the Property Owner, a WareOps client who had access to the yard parked his recreational motorboat on the property for a few days. The Property Owner contacted the client and the motorboat was immediately removed. Therefore, the Property Owner contends the violation has been rectified and the code enforcement action should be dismissed.

A virtual Early Assistance meeting (EA-22-033) was held on March 30, 2022, wherein El Paso County Planning staff informed the Property Owner it was required to file a site development plan and to comply with extensive additional development requirements regarding the alleged change of use from ‘Outdoor Storage Yard’ to ‘Automobile and Boat Storage’. However, no land use change has occurred, and the motorboat issue was immediately resolved. The Parties met on June 9, 2022, to discuss the status of the South Parcel and the Property Owner explained the property has consistently been utilized as an Outdoor Storage Yard for over 20+ years.

Attorney Seago recommended the Property Owner pursue dismissal of the code violation and corresponding site development plan requirements through the Administrative Determination process by:

1. Providing substantial proof the Outdoor Storage Yard land use occurred prior to the Land Development Code change in 2007 (requiring a site development plan),

2. Demonstrating the property has consistently been used as an Outdoor Storage Yard with similar or decreasing intensity over the years, and
3. Demonstrating that no substantial modifications of the South Parcel have occurred.

The Property Owner seeks an Administrative Determination dismissing the code violation and a decision not to require the Property Owner to submit a site development plan for the South Parcel, based on the following evidence:

1. Outdoor Storage Yard Land Use for the South Parcel was established prior to 2007 Code Change.

Pursuant to the historical photos of the South Parcel attached hereto as *Exhibit 1*, an Outdoor Storage Yard was established between 2000 and 2002 and the property has consistently been used as an Outdoor Storage Yard since that time. The use of the property was clearly established prior to approval of the revised Land Development Code, which occurred on April 2, 2007, under Resolution No. 06-365, recorded at Reception No. 207056053, included herewith as *Exhibit 2*.

2. The South Parcel has Consistently Been Used as an Outdoor Storage Yard with similar intensity.

Exhibit 1 also illustrates the intensity of the use has remained steady, or even declined, after the Outdoor Storage use of the South Parcel commenced between 2000 and 2002. N.E.S., Inc. evaluated land use intensity of the South Parcel and concluded the general amount of land coverage and number of storage trailers has remained fairly constant, and the density and intensity of the use is the same in 2022 as it was in 2003 when quality aerial photography became available for the South Parcel. No gaps in use as an Outdoor Storage Yard from inception of such use to the present has occurred; use for outdoor storage has been continuous.

3. No Substantial Changes or Modifications Have Occurred to the South Parcel.

During Glenn Rowley's ownership of the South Parcel prior to 2006 and up through the continuing ownership by the current Property Owner, which acquired the South Parcel from Glenn Rowley in 2006, no substantial changes, expansions, or modifications have occurred to the South Parcel. The Property Owner has not built any structures, nor has it filed an application for a building permit since the current use was established between 2000 and 2002.

In summary, except for the brief incident that prompted the code violation, which was immediately resolved, the South Parcel has always been and remains an outdoor storage, semi-trailer parking yard for equipment and materials storage for WareOps clients. The Property Owner does not intend to develop the South Parcel at this time, change the existing I-3 Heavy Industrial zoning, or change the existing Outdoor Storage Yard land use of the property. Outdoor Storage Yard is an allowed use within the I-3 zoning and the Property Owner has consistently used the property for this purpose.

Recommended Findings for the South Parcel

Pursuant to the evidence presented herein illustrating the Outdoor Storage use on the South Parcel established between 2000 and 2002, and no changes or modifications have been made to the property, the Property Owner respectfully requests El Paso County dismiss the code violation # 21-1097 and rescind all requirements imposed by the code violation, to include submittal of a site development plan and corresponding development plan requirements. The Property Owner also requests El Paso County provide an administrative determination that the Outdoor Storage Yard on the South Parcel is a legal, conforming use established over 20 years ago, and such use may be continued if the use is not changed, expanded or modified.

Issue 2 – TSN: 5405000055 (“North Parcel”) Code Violation – Conforming Use

TSN:	5405000055
Address:	1816 N Marksheffel Rd
Owner:	Rowley Ventures, LLC
Code Violation #:	CE-21-211
EA File #:	21-120
Date of Violation:	4/1/2021
Violation:	LDC Table 5-1 - Principal Uses 11.3.1 - Unlawful Acts
Purchase Date:	7/15/2019
Location:	1816 N Marksheffel Rd
Zoning:	I-3 CAD-O
Size (AC):	5.14 AC

Code Violation No. CE-21-211 was issued on April 1, 2021 which referenced a violation of outdoor lighting on the 5.14 acre site known as TSN: 54050-00-055, located at 1816 North Marksheffel Road (the “North Parcel”), which Rowley Ventures, LLC, purchased in July 2019 from BAN Limited Liability Company (a/k/a Homestake Landscaping). The Property Owner purchased the North Parcel (used and categorized as Outdoor Storage Yard when it was acquired) to expand the existing Outdoor Storage Yard on its adjoining property located at 7765 Venture Street (TSN: 54050-01-004) located to the north of the North Parcel, which has been owned and used by the Rowley family for its WareOps business for many years.

In 2021, security lighting was installed on the North Parcel due to numerous nighttime theft issues. The code enforcement officer told the Property Owner the lighting violation was issued after one individual resident of Wilshire Ranch, residing west of the Sand Creek channel approximately 475 feet away from the North Parcel, complained a light was shining in their window. When the Property Owner was notified of the complaint, the lights were immediately adjusted and aimed straight down. The Property Owner made numerous good faith efforts through communications with the code enforcement officer to resolve the issue for the neighbor and ultimately terminated use of the security lights. However, in 2022, after several semi-trailers were stolen from the North Parcel (a police report was filed), the Property Owner resumed using one security light along Marksheffel Road.

A virtual Early Assistance Meeting (EA-21-120) was conducted on August 3, 2021, wherein El Paso County staff informed the Property Owner it would be required to submit a site development plan and corresponding development plan items stemming from the light complaint. However, pursuant to an Administrative Determination Letter from the El Paso County Attorney’s Office dated July 12, 2011, recorded at Reception No. 211096241, attached hereto as **Exhibit 3**, an approved site development plan already exists on the North Parcel for the continued use of the North Parcel as an Outdoor Storage Yard (see the last page of the letter attached as Exhibit 3). Moreover, the Property Owner relied on the approvals contained in the 2011 Administrative Determination Letter when it purchased the North Parcel in 2019 to use for outdoor storage. Since the time the Administrative Determination was issued in 2011, use of the property has consistently remained as an Outdoor Storage Yard and the Property Owner has no intention of changing that use at this time.

The Property Owner seeks an Administrative Determination dismissing the code violation on the North Parcel and the elimination of a requirement to submit a site development plan for the North Parcel, based on the following evidence:

1. Outdoor Storage Yard Land Use of the North Parcel was established prior to 2007 Code Change.

As shown by the historical photos of the North Parcel attached hereto as *Exhibit 4*, an Outdoor Storage Yard was established prior to 2000 and the North Parcel has consistently been used as an Outdoor Storage Yard since that time. Moreover, as shown in the historical photos, the longstanding use of the North Parcel as an Outdoor Storage Yard pre-existed the buildout of the Wilshire Ranch residential development by more than ten years. Use of the North Parcel as an Outdoor Storage Yard was established prior to approval of the revised Land Development Code which occurred on April 2, 2007, under Resolution No. 06-365, recorded at Reception No. 207056053, included herewith as *Exhibit 2*.

2. The North Parcel has Consistently Been Used as an Outdoor Storage Yard with similar intensity.

Exhibit 4 illustrates the intensity of the use has remained steady, if not declined, since the first aerial photograph became available in September 1999. N.E.S., Inc. evaluated land use intensity and concluded the general amount of land coverage and number of storage trailers and vehicles has remained fairly constant, and the density and intensity of the use is substantially the same in 2022 as it was in 2003-2005 when quality aerial photography became available for the North Parcel. No gaps in use as an Outdoor Storage Yard from inception of such use to the present has occurred; use for outdoor storage has been continuous.

3. No Substantial Changes or Modifications Have Occurred to the North Parcel.

Except for the light complaint from a neighbor residing 475 feet away from the North Parcel that prompted the notice of code violation, which was resolved shortly after the Property Owner received the complaint, the use and density of use of the North Parcel has been unchanged and has always been and remains an Outdoor Storage and equipment parking yard for WareOps clients. The Property Owner does not intend to develop the North Parcel at this time, change the existing I-3 Heavy Industrial zoning, or change the existing Outdoor Storage Yard land use of the property. Outdoor Storage is a permitted use within the I-3 zoning and the Property Owner has consistently used the property for this purpose. And, maintaining security lights for an Outdoor Storage Yard is clearly a reasonable and prudent component of the longstanding approved use of the North Parcel as an Outdoor Storage Yard, which use pre-existed the adjacent residential development by many years. A single complaint from a homeowner who chose to purchase a home near the industrial-zoned North Parcel should not outweigh the rights of the Property Owner to continue the lawful and longstanding use of the North Parcel for Outdoor Storage.

Recommended Findings on North Parcel Code Violation

The evidence presented herein illustrates the Outdoor Storage use on the North Parcel was well established prior to the 2007 code change. The evidence shows a Site Development Plan and Subdivision Exemption were approved by El Paso County in 2011 pursuant to an Administrative Determination. Since that time, no changes or modifications have been made to the North Parcel, other than installation of six light poles for security purposes, of which one near Marksheffel Road continues to be used to prevent theft. The Property Owner respectfully requests the dismissal of the code violation on the North Parcel and all corresponding development plan requirements for it. The Property Owner further requests that the Administrative Determination on the North Parcel confirm the fact the Outdoor Storage Yard was a pre-existing use of the Property that existed many years before the adjacent residential development was built. To curtail future residential complaints about security lighting on the North Parcel, the Property

Owner will agree to submit a photometric plan and/or come to an agreement with El Paso County as to the hours and location of security lighting to be used on the North Parcel, in an effort to appease neighbors across Sand Creek, yet afford the Property Owner the right to adequately provide security for its business operations on the North Parcel.

Issue 3 – Access to TSN: 5405000050 (“South Parcel”) & TSN: 5405000055 (“North Parcel”)

South Parcel Access

In 2004, the South Parcel was included within the Central Marksheffel Metropolitan District (the “District”) pursuant to Resolution No. 02-354, recorded at Reception No. 202169647, attached hereto as ***Exhibit 5***. In cooperation with the District and El Paso County in conjunction with the Marksheffel Road widening and corresponding Sand Creek drainage projects, the previous property owner (Advanced RV and Self Storage, LLP and Karst Bergsma) granted the County a 6.4-acre drainage easement over the South Parcel in January 2005, recorded at Reception No. 205006269, attached hereto as ***Exhibit 6***.

Prior to 2006, as illustrated on ***Exhibit 1***, the Property Owner had direct access to and from the South Parcel from Marksheffel Road. When Marksheffel Road was widened, this access was eliminated. On September 29, 2006, the Property Owner entered into an Easement Agreement with the neighboring property known as TSN: 5405000033 owned by RichFamFive, LLLP, recorded at Reception No. 206144701, attached hereto as ***Exhibit 7***, memorializing a 30’ non-exclusive, perpetual easement for access to the South Parcel from Marksheffel Boulevard. In exchange for the easement, the Property Owner’s predecessor (Advanced RV & Self-Storage, LLP) conveyed 18,263 SF to RichFamFive, LLLP, creating TSN: 54050-00-049. As illustrated on ***Exhibit 1 – Page 9***, a new access road was created to connect the South Parcel to Marksheffel Road. The Property Owner continues to rely on this easement for access to the South Parcel, with the potential obligation to relocate the easement once Colorado Tech Drive is completed, if relocation is necessary. Until then, the Property Owner has legal access through the adjacent owner’s property for access to and from Marksheffel Road.

North Parcel Access

The North Parcel has two access points – from the north, it has direct access to an adjacent parcel owned by the Property Owner and known as 7765 Venture Street. From the south, access to the North Parcel is through land owned by Marksheffel Business Center, LLC. For many years, the North Parcel had direct access to Marksheffel Road. When the County widened Marksheffel Road ten or more years ago, the direct access was eliminated. At the time, Grant Langdon, the principal of Marksheffel Business Center, LLC, authorized BAN, LLC, the then-owner of the North Parcel, to use the unimproved road adjacent to Marksheffel Road as access to and from the North Parcel, which access remains today. While the land owner’s authorization may not have been formalized at the time, access has never been denied by Marksheffel Business Center, LLC and is in the nature of a license granted for the benefit of the North Parcel.

The North Parcel’s existing use of the access across Marksheffel Business Center, LLC is likely explained by a series of transactions between Marksheffel Business Center, LLC, BAN, LLC and El Paso County. On December 14, 2010, the Property Owner’s predecessor (BAN, LLC) entered into a Vacant Land Exchange Agreement with El Paso County, recorded on December 27, 2010 at Reception No. 210131838, attached hereto as ***Exhibit 8***, detailing specific obligations of both El Paso County and BAN, LLC (the “Exchange Agreement”). Section 3 (b) of the Exchange Agreement provides for the County’s acquisition of a non-exclusive permanent access agreement from the adjacent property owner, Marksheffel Business Center,

LLC, apparently intended to benefit the North Parcel. Sections 3 (b) and (c) and 4 of the Exchange Agreement detail the terms of the access easement acquisition, the County's obligation to construct a full movement intersection at Marksheffel Road and Colorado Tech Drive, the County's obligation to provide temporary access to the North Parcel if required during construction, and the North Parcel owner's obligation to pay for any relocation of its access to public right of way at the intersection once the County completes the intersection. The Exchange Agreement was approved by El Paso County on December 16, 2010, by Resolution No. 10-538, recorded at Reception No. 210131837, attached hereto as **Exhibit 9**. This Resolution also references and approves a second Vacant Land Exchange Agreement between El Paso County and Marksheffel Business Center, LLC.

A Development Agreement, attached hereto as **Exhibit 10**, was recorded between the three parties above on October 3, 2011, at Reception No. 211096242, detailing access relocation. Paragraph 5 (A) of the Development Agreement imposed the obligation on Marksheffel Business Center, LLC to construct an extension of Colorado Tech Drive and upon such construction, BAN, LLC was responsible for paying the cost of relocating its access, which appears to be subject to the completion of construction of Colorado Tech Drive by Marksheffel Business Center, LLC and construction of the full movement intersection by El Paso County. As Marksheffel Business Center, LLC has not yet constructed Colorado Tech Drive, and El Paso County has not constructed the intersection, the Property Owner shall continue to use the existing permitted access across the Marksheffel Business Center, LLC property to Marksheffel Road.

These Agreements reference several El Paso County obligations, to include financial responsibility to install, construct, maintain and repair a drainage way slated to receive drainage from surrounding property owners; prepare and file a site development plan for the North Parcel (which it has done by issuance of the 2011 Administrative Determination Letter attached hereto as **Exhibit 3**); and construct a full movement intersection at Marksheffel Road and Colorado Tech Drive.

The Property Owner is not aware of the status of the defaulted development obligations by Marksheffel Business Center, LLC, Grant Langdon, the adjacent developer, or the Wilshire Ranch subdivision to construct Colorado Tech Drive. Over the past three years, on/off again work has occurred on construction of a bridge spanning Sand Creek but has not significantly progressed. El Paso County Planning requested the Property Owner to relocate access to the North Parcel, but until construction of Colorado Tech Drive is near completion, there is no other viable access to serve its business. And with the permitted access over Marksheffel Business Center, LLC property, the Property Owner has access over the current road until such time as Colorado Tech Drive and the intersection is completed by the County and Marksheffel Business Center, LLC.

Recommended Findings on Access to South Parcel and North Parcel

While the Property Owner does not intend at this time to develop either the South Parcel or North Parcel, it requests the County to confirm the Property Owner's continued legal access to the South Parcel via the RichFam Five easement from the intersection of Marksheffel Road and unbuilt Colorado Tech Drive, and the current authorized access to and from the North Parcel that is intended to remain in place until Colorado Tech Drive and the intersection is completed, as documented in the various agreements referenced above. The Property Owner will comply with the terms of the recorded instruments to relocate its access to both the North Parcel and South Parcel once Colorado Tech Drive and the intersection is completed by El Paso County and Marksheffel Business Center, LLC.

Issue 4 – South Parcel Subdivision

Prior to 2006, the 71.25-acre Outdoor Storage Yard South Parcel was owned by Advanced RV and Self Storage, LLP, WareOps' predecessor. On January 20, 2006, Advanced RV and Self Storage, LLP (predecessor in title to RK Family Investments, LLC) sold the western 40.37 acres adjacent to the South Parcel (TSN: 5405000039) to Cheyenne Heights, LLC (Grant Langdon). In September 2006, RK Family Investments, LLC, purchased the eastern 30.88 acres of the South Parcel from Advanced RV and Self Storage, LLP. The Outdoor Storage Yard land area decreased from 71.25 acres to 30.88 acres. Prior to the date the Property Owner purchased the South Parcel, ownership of the original 71.25-acre South Parcel was split, creating an illegal subdivision of the South Parcel under Senate Bill 35, C.R.S. 30-28-101.

Recommended Findings on South Parcel Subdivision

The Property Owner does not have a present intention to develop or entitle the South Parcel and intends only to continue the longstanding use of the South Parcel to operate WareOps as Outdoor Storage. Therefore, the Property Owner respectfully requests the Administrative Determination to state that no subdivision process will be required unless and until the Property Owner decides to subdivide the South Parcel into smaller lots or tracts. Depending on El Paso County's determination of this issue, the Property Owner would agree to convey the 6.4-acre Sand Creek drainage channel described in **Exhibit 6** to El Paso County, as the Property Owner has been paying property taxes on this unusable parcel for nearly 17 years.

Issue 5 – Regional Drainage

While the Property Owner is unaware of what drainage requirements El Paso County has imposed on the neighbors of the North Parcel and South Parcel, the Property Owner understands the neighboring residential development to the north and west has dried up the previously constructed detention pond in floodplain and erosion and changed the path of the Sand Creek channel. The Property Owner has witnessed extensive damage to previously installed improvements from flooding, erosion, runoff, etc. caused by the development of the surrounding residential subdivisions and offers photos of the current creek condition attached hereto as **Exhibit 11**.

The Property Owner received a letter from the Colorado Water Conservation Board dated April 19, 2022, attached hereto as **Exhibit 12**, regarding survey activities underway to develop data reflecting actual conditions of the area to apparently remap the floodplain. As such, the Property Owner does not believe retaining a drainage engineer is worthwhile until more information is known from this effort.

Under the 2010 Vacant Land Exchange Agreement between El Paso County and BAN, LLC relative to the North Parcel, attached hereto as **Exhibit 8**, the Property Owner agreed to grant a permanent drainage easement to El Paso County, as described on pp 18-19 of Exhibit 8. Section 2 (d) of the Vacant Land Exchange Agreement states as follows:

2. Identification of Grantor's Property

- d. The County desires to acquire the following part of the Subject Property as a non-exclusive easement appurtenant, which easement is described with more particularity on the legal description attached hereto as Exhibit A, Permanent Drainage Easement, and as illustrated on the engineered drawing attached hereto as Exhibit B, Permanent Drainage Easement. The easement shall be for the purpose of installing, constructing, inspecting, maintaining and repairing a drainage way, which drainage way shall not be limited to receive drainage only from the benefitted (appurtenant) estate, which benefitted estate may include an adjacent property, said adjacent property being referred to herein by its El Paso County tax schedule number 5405000048, but which may include drainage from other properties, provided that the drainage way shall be designed, installed, constructed, repaired and maintained so as to contain any such drainage arising from a 100-year event within the bounds of the easement. The easement shall contain a covenant that the owner of the servient estate shall not be responsible for the costs of installation, construction, inspection, maintenance and repair of the drainage way. However, such covenant shall not preclude the servient estate from incurring such obligations in the event the servient estate completes a land use process that requires the creation or dedication of an easement for similar purposes.

The 2010 Vacant Land Exchange Agreement makes it clear that until and unless the North Parcel is developed, the Property Owner is not responsible for participating in the design, installation, construction, inspection, maintenance, or repair of the drainage way.

Recommended Findings

A regional drainage solution for the southern heavy industrial and Highway 24 retail areas needs to be discussed and studied. While the Property Owner is willing to participate in a larger drainage discussion, as its properties will be impacted by any Sand Creek channel improvements done by El Paso County and developers, hiring drainage engineers for individual parcels without solving surrounding flows and resulting downstream problems is illogical. There have been communications between the surrounding property owners to begin conversations about a regional drainage solution, but no meeting has been scheduled to date. In addition, both the South Parcel and North Parcel are part of the Central Marksheffel Metropolitan District (CMMD) and were included in the District's previous improvements. The CMMD should play an active role in a regional drainage effort.

Conclusion

The Property Owner respectfully requests El Paso County find the following in its Administrative Determination:

- Issue 1: Dismiss the South Parcel Code Violation #CE-21-1097 and find the current use as an Outdoor Storage Yard is a legal Conforming Use under the previous Land Development Code.
- Issue 2: Dismiss the North Parcel Code Violation #CE-21-211 and find the current use is a legal Conforming Use under the site development plan approved in the Administrative Determination dated July 11, 2011. The Property Owner is willing to file a photometric plan overlay over the

existing site development plan and agree to specific hours of use for specific lights, but will not compromise the security of its property.

- Issue 3: Confirm the existing legal access to the South Parcel via the RichFamFive easement and to the North Parcel over the Marksheffel Business Center, LLC property. The Property Owner is agreeable to relocating the existing access points in accordance with the terms of the Exchange Agreement and Development Agreement when Colorado Tech Drive and the full movement intersection at Colorado Tech Drive and Marksheffel Road is completed.
- Issue 4: No subdivision process will be required for the South Parcel unless and until the Property Owner decides to subdivide the South Parcel into smaller lots or tracts.
- Issue 5: Acknowledge that the North Parcel and South Parcel are not the sole sources of the regionwide drainage problem in the Sand Creek channel, and that a regional drainage solution that places the responsibility for the current condition of the creek on the surrounding development will be necessary to resolve the longstanding drainage problem in the channel. The Property Owner is willing to participate in a regional drainage solution, subject to the agreements already reached with El Paso County and adjacent property owners, to include participation by the Property Owner if its properties are ever developed and /or used for other than Outdoor Storage.

The Property Owner, two family-held companies managed by brothers Todd and Greg Rowley, are portable storage experts with limited knowledge, financial means, or interest in real estate development. Unfortunately, the ongoing violations and convoluted development history of the surrounding area has caused the family to consider selling the business and closing operations in El Paso County after 20+ years. Heavy industrial, I-3 zoned property is becoming increasingly difficult to find and is required to support logistical, business-to-business operations like WareOps. In this case, residential subdivisions and commercial development have encroached on decades-old heavy industrial property. While rows of trailers and containers may be unsightly to some, WareOps is an important component of El Paso County's business community and vital supply chains. The 'Use by Right' of the Property Owner is evidenced by over 20+ years of use in a manner consistent with Outdoor Storage Yards, a permissible use within the I-3 Heavy Industrial zoning designation.

Should you have any questions or need more information, please contact me.

Sincerely,



Ingrid Richter, Broker
Olive Real Estate Group

cc: Todd and Greg Rowley
Jane B. Fredman

List of Exhibits:

<i>Exhibit #</i>	<i>Title</i>	<i>Reception No.</i>
1	Historical Photos – TSN: 54050-00-050	
2	Land Development Code Resolution No. 06-365	207056053
3	Administrative Determination letter dated July 12, 2011	211096241
4	Historical Photos – TSN: 54050-00-055	
5	Resolution No. 02-354 approving Central Marksheffel Metro District dated October 2, 2022	202169647
6	Sand Creek Drainage Easement dated November 12, 2004	205006269
7	RichFamFive, LLLP Access Easement dated September 29, 2006	206144701
8	Vacant Land Exchange Agreement with El Paso County dated December 14, 2010	210131838
9	Resolution No. 10-538 approving Exchange Agreement dated December 16, 2020	210131837
10	Development Agreement between El Paso County, Marksheffel Business Center, LLC and BAN, LLC	211096242
11	Sand Creek Drainage Photos	
12	Colorado Water Conservation Board letter dated April 19, 2022	