

GUNNISON COUNTY BOARD OF ADJUSTMENTS

AGENDA: February 8th, 2024

**Blackstock Government Center 221 N. Wisconsin, Suite D
In Person and Zoom**

- 9:00 a.m.**
- **Call to order; determine quorum**
 - **Election of officers for 2024**
 - **Adopt Bylaws**

Unscheduled citizens: A brief period in which the public is invited to make general comments or ask questions of the Board or Planning Staff about items which are not scheduled on the day's agenda. .

- 9:15 a.m.** **APPEAL-23-00001: Centennial Storage Interpretation Appeal** The applicant is appealing the Community Development Director's Interpretation of Setback Rule Pursuant to LUR Section-103.A.4

Join on Zoom:

https://us06web.zoom.us/j/86970942444?pwd=kV9BCuhVATYTH4DyTH1cEdGqAh3VeQ.HciwECstGjrF__jM

Adjourn

NOTE: Unless otherwise noted, all meetings are conducted in the Blackstock Government Center Meeting Room at 221 N. Wisconsin St. in Gunnison, across the street from the Post Office. This is a preliminary agenda; agenda times may be changed by the staff up to 24 hours before the meeting date. If you are interested in a specific agenda item; you may want to call the Planning Department (641-0360) ahead of time to confirm its scheduled time. Anyone needing special accommodations, please contact the Planning Department before the meeting.



Cathie Pagano, Assistant County Manager
Gunnison County Community & Economic Development Department

Phone: (970) 641-0360
Email: planning@gunnisoncounty.org
Website: www.GunnisonCounty.org

December 1, 2023

James R. Silvestro

Attorney at Law

303-628-3632

jsilvestro@irelandstapleton.com

Re: Centennial Storage Partners Request for Interpretation

Dear Mr. Silvestro,

We have received your request dated October 17, 2023 for an interpretation of certain sections of the Gunnison County *Land Use Resolution* on behalf of Centennial Storage Partners, LLC. On November 1, 2023, the request for interpretation was determined to be complete. My responses to the requests for interpretation align with numbering of your letter, with questions in bold.

II. 1. LUR § 13-104:

- a. Does LUR § 13-104 apply to a proposed outdoor vehicle storage facility that will be a fenced gravel parking lot and does not involve any non-fence structures?**

Yes, though I conclude that a gravel parking lot constitutes a non-fence structure and therefore disagree with the premise that a gravel parking lot “does not involve any non-fence structures.” Section 13-104: A. *Applicability* of the Gunnison County *Land Use Resolution* (LUR) states:

“Unless otherwise exempted by this Resolution, the following shall apply, all land use changes and approved Building Permit site plans shall meet property line setback requirements indicated in Table 7: Setbacks from Property Lines and Road Rights-of-Way. Other setback requirements, not directly related to property lines or road rights-of-way, are addressed in Table 3: Recreational Vehicle Park Property Line Setbacks, Table 4: Setbacks for Construction Materials Operations, and Table 5: Setbacks for Mining That Is Not a Construction Materials Operation.”

Section 13-104: B. *Measurement* of the LUR states, in relevant part:

“Front, rear and side setbacks shall be measured as the distance between the nearest lot line and the foundation of a structure, along a line at right angles to the lot line.”

Section 2-102 of the LUR defines “structure” as:

Structure means anything constructed or erected, that requires location on the ground, or is attached to something having location on the ground, including portable shelters for human habitation or use, recreational vehicles and tents, storage, transmission or distribution facilities or public utilities, but not including transmission lines of less than 45 kilovolt capacity, or fences.”

The creation of a parking lot requires construction to be built; a parking lot requires location on the ground; therefore, a parking lot is properly considered a "structure" under Section 2-102 of the LUR. Moreover, both recreational vehicles and storage qualify as a "structure" under the same definition, and it would be nonsensical to apply Section 13-104 only once a recreational vehicle is parked on the gravel parking lot.

I find that it is appropriate that setbacks, as described in Table 7, are maintained for the elements (vehicular storage and development of a parking lot) of the proposed commercial use.

Per Article 2: Definitions, “Land Use Change” means:

“any development, grading, construction, activity, or ongoing operation that changes the basic character, configuration, or use of the land or environment on which the activity occurs, including any division of land. The following activities are among those requiring the applicant to obtain a Land Use Change Permit pursuant to this Resolution:

BUILDING ACTIVITY: The construction, reconstruction, conversion, expansion, or structural alteration, relocation, or enlargement of structures, or accessory structures.

CHANGE IN USE: Any activity resulting in a change in use, or the intensity of use, or expansion of the sizes or numbers of structures or the amount of land affected by a use.

DRIVEWAY: The proposed or actual cutting or construction of a driveway that is determined by the Gunnison County Director of Public Works or the Community Development Department to require review pursuant to Section 3-111: B.1.: Additional Criteria.

MINING, DREDGING, DRILLING, GRADING OR DRAINING: The mining, dredging, drilling for gas or oil, or grading or draining activities.

ROAD CUTTING OR CONSTRUCTION: The cutting or construction of any road, including roads constructed by or for a governmental entity, or roads constructed pursuant to a permit issued by a state or federal agency. Agricultural roads that are part of an agricultural operation as defined by this Resolution are not land use changes and do not require a Land Use Change Permit.

SUBDIVISION: The subdivision of a parcel of land into two or more parcels or divisions, except for those divisions that are excluded from the definition of subdivision (see definition of “Subdivision”), or by Colorado statutes.”

b. If LUR § 13-104 applies to a use that does not involve any non-fence structures, what does the County consider to be “the foundation of a structure” that it uses to measure setbacks as described in LUR § 13-104.B?

Please see the above response 1.a. The proposed gravel parking lot constitutes a “structure” under the LUR.

- c. How is a setback measured in accordance with LUR § 13-104 for a use that does not involve any structures or foundations?**

Please see the above response 1.a. For clarity on the Land Use Change proposed by the Centennial Storage Partners, LLC, the setback shall be measured from the property line to the edge of the proposed parking lot.

- 2. a. How does the County determine the need for new landscaping for proposed commercial uses “[t]o the maximum extent feasible” as that phrase is used in LUR § 13-111.D?**

The burden is on the applicant to demonstrate what is and is not feasible on a given site and the Planning Commission and Board of County Commissioners shall consider and determine if the proposal meets this standard during Major Impact review.

Section 2-102 of the LUR defines the term “maximum extent feasible” as follows:

“Maximum extent feasible means that all practical efforts to comply with the regulations or minimize potential harm or adverse impacts have been undertaken and that no feasible and prudent alternative exists. Economic factors may be taken into account but shall not be the overriding or dispositive factor in determining whether no feasible and practical alternative exists in a particular situation.”

- b. If a proposed commercial use will occupy the majority of a site, is it possible that the County could determine that no landscaping is feasible and/or necessary such that a Landscaping Plan is not required under LUR § 13-111.D?**

No; this section applies to all land use change permits. Section 13-111: E. *Landscaping Plan* states, “Applicants for a land use change shall prepare a landscaping plan if the land use change is a...commercial, industrial, or other non-residential use that is classified as a Minor or Major Impact Project...”

- c. How does the County determine whether there is a “need to shield neighboring properties from any adverse external effects of a proposed land use change” such that buffering might be required in accordance LUR § 13-111.M?**

The applicant carries the burden to demonstrate how its proposed land use change complies with this standard, and the Planning Commission and Board of County Commissioners will make a determination during the review process and may consider factors such as public comment, comments from other governments (e.g., the City of Gunnison), view sheds, and a site visit.

Section 2-102 of the LUR defines as “adverse” as “unfavorable or harmful.”

- d. Can LUR § 13-111.M be satisfied without buffering if neighboring landowners agree that no screening is required?**

Staff would not recommend that the Planning Commission or Board of County Commissioners consider only current views of the neighboring property owners. The County shall also consider future impacts as ownership may change. The applicability of LUR Section 13-111: M is governed by subsection 1.

- e. If a proposed use is for the expansion of an existing approved use, how does the County determine whether the existing Landscaping Plan is sufficient and/or whether a new Landscaping Plan is required under LUR § 13-111?**

The County will review the standard and determine if it has been met; the burden is upon the applicant to provide evidence that the standard is met. The current landscaping plan on an existing use may be sufficient, and that same landscaping plan may be proposed for the Land Use Change Permit application. However, the relevant standards of 13-111 shall still apply to any Land Use Change.

Variance Request:

- a. Does LUR § 13-104.E provide the County with a basis to refuse to process a variance request seeking a variance from the County's setback rules?**

Contrary to the Factual Background laid out in Section I of the October 17, 2023 Request for Interpretation, the County did not refuse to process a variance request. An application for variance pursuant to LUR Section 13-104: E was not submitted. Should the County receive an application for a request for variance pursuant to LUR Section 13-104: E, it will process that request pursuant to LUR Sections 13-104: D and 3-110, consistent with any judicial orders then in effect.

- b. Does any other section of the LUR (or any other legal authority) provide the County with the authority to refuse to process a variance request seeking a variance from the County's setback rules?**

Please see the response under paragraph a above. Gunnison County did not refuse to process a variance request, an application was not submitted. Should the County receive an application for a request for variance pursuant to LUR Section 13-104: E, it will process that request pursuant to LUR Sections 13-104:D and 3-110, consistent with any judicial orders then in effect.

Sincerely,

Catherine A Pagano

Cathie Pagano, AICP CEP

Assistant County Manager for Community & Economic Development

cc: Hillary Seminick, Planning Director

Matt Hoyt, Gunnison County Attorney

Alex San Filippo-Rosser, Deputy County Attorney



JAMES R. SILVESTRO
ATTORNEY AT LAW

303.628.3632 (direct)
jsilvestro@irelandstapleton.com

October 17, 2023

SENT VIA E-MAIL

Hillary I. Seminick, ACP
Planning Director
Gunnison County, Community and Economic
Development Department
Hseminick@gunnisoncounty.org

Re: Request for Interpretation Pursuant to LUR § 1-114

Dear Director Seminick:

This law firm represents Centennial Storage Partners, LLC (“Centennial Storage”). Pursuant to Section 1-114 of the Gunnison County Land Use Resolution (“LUR”), Centennial Storage respectfully requests a written interpretation of the LUR as set forth herein.

I. Factual Background and Basis for the Request

On June 30, 2023, Centennial Storage submitted a major impact project application to the Gunnison County Community Development and Economic Department (“Community Development”) for the expansion of its existing outdoor vehicle, RV, and boat parking storage facility located at 1825 N. Highway 135, Gunnison, CO 81230. In response, on August 7, 2023, Community Development sent Centennial Storage a letter claiming that its major impact project application was incomplete. Among other things, this letter indicated that Centennial Storage would need to submit information related to the following sections of the LUR in order for its major impact project application to be considered complete and processed by the County:

- LUR § 13-104 – Setbacks from Property Lines and Rights of Way
- LUR § 13-111 – Landscaping and Buffering

After receiving this response, Centennial Storage informed the County on September 7, 2023, that it intended to seek a variance from setback, landscaping, and buffering requirements (to the extent that any of them might apply to this proposal). In response, you informed Centennial Storage on September 14, 2023, that the County is presently refusing to process any variance applications because the County is “in the process of revising the variance/Board of Adjustment sections of the LUR.” You indicated that you expected that this process would be completed by

the beginning of 2024, but there does not appear to be any guarantee that that will happen. In response to this, Centennial Storage asked you on October 6, 2023, whether “there any court order or other legal authority that the County is relying on by not processing variance applications that are currently permissible under the LUR.” To date, the County has not responded to this request.

II. Request for Interpretation

Pursuant to LUR § 1-114, Centennial Storage requests an interpretation of the following provisions of the LUR:

1. LUR § 13-104:

- a. Does LUR § 13-104 apply to a proposed outdoor vehicle storage facility that will be a fenced gravel parking lot and does not involve any non-fence¹ structures?
- b. If LUR § 13-104 applies to a use that does not involve any non-fence structures, what does the County consider to be “the foundation of a structure” that it uses to measure setbacks as described in LUR § 13-104.B?
- c. How is a setback measured in accordance with LUR § 13-104 for a use that does not involve any structures or foundations?

2. LUR § 13-111:

- a. How does the County determine the need for new landscaping for proposed commercial uses “[t]o the maximum extent feasible” as that phrase is used in LUR § 13-111.D?
- b. If a proposed commercial use will occupy the majority of a site, is it possible that the County could determine that no landscaping is feasible and/or necessary such that a Landscaping Plan is not required under LUR § 13-111.D?
- c. How does the County determine whether there is a “need to shield neighboring properties from any adverse external effects of a proposed land use change” such that buffering might be required in accordance LUR § 13-111.M?
- d. Can LUR § 13-111.M be satisfied without buffering if neighboring landowners agree that no screening is required?
- e. If a proposed use is for the expansion of an existing approved use, how does the County determine whether the existing Landscaping Plan is sufficient and/or whether a new Landscaping Plan is required under LUR § 13-111?

¹ Pursuant to LUR § 2-102, “fences” are exempt from the definition of “Structure.”

3. Variance Request:

- a. Does LUR § 13-104.E provide the County with a basis to refuse to process a variance request seeking a variance from the County's setback rules?
- b. Does any other section of the LUR (or any other legal authority) provide the County with the authority to refuse to process a variance request seeking a variance from the County's setback rules?

Pursuant to LUR § 1-114.B.2, Centennial Storage respectfully requests that the County make a determination as to the completeness of this request within 15 days. If this request is determined to be complete, please provide us with a written interpretation that separately addresses and answers each of the questions set forth above within 30 days of the completeness determination consistent with LUR § 1-114.B.3. To the extent that any of the County's interpretations involves consideration of the County's "legislative intent in adopting the provision," please also provide us with copies of all materials exhibiting or otherwise relating to such legislative intent.

Please let me know if you have any questions or would like to seek any clarification regarding any of the foregoing. If the County is represented by an attorney in connection with this request, please have him or her contact me directly as I am not permitted to communicate with represented parties absent further approval from counsel.

Sincerely,

IRELAND STAPLETON PRYOR & PASCOE, PC



James R. Silvestro

Cc: Michael O'Loughlin, Esq.
Ken Snyder

GUNNISON COUNTY, COLORADO

BOARD OF ADJUSTMENT AMENDED AND SUPPLEMENTAL ORGANIZATION AND PROCEDURAL GUIDELINES

SECTION I: ORGANIZATION

This organization is the Gunnison County Board of Adjustment for the County of Gunnison, Colorado, which is governed by and has those duties and responsibilities authorized by the applicable provisions of the Gunnison County Land Use Resolution, and shall have additional powers as the Board of County Commissioners may grant from time to time. To the extent any provision of these Organization and Procedural Guidelines conflicts with the Gunnison County Land Use Resolution, the Gunnison County Land Use Resolution shall control.

This organization is being referred to in these Organization and Procedural Guidelines as "the Board."

The Gunnison Board of County Commissioners is referred to in these Organization and Procedural Guidelines as "the Board of County Commissioners."

SECTION II: MEMBERSHIP AND RESPONSIBILITIES

- A. The Board is comprised of five regular members and not more than two alternate (or associate) members, all of whom are appointed by the Board of County Commissioners ("BOCC"). The regular membership of the Board consists of the three elected BOCC members and two appointed members, who may also be members of the Gunnison County Planning Commission,
- B. Board members are appointed to overlapping one-year terms by the Board of County Commissioners. Alternate members are appointed for one-year terms.
- C. A vacancy created by the resignation or termination of a member's term is filled by appointment by the Board of County Commissioners for the length of time remaining in the vacated term.
- D. Alternate members are expected to attend and fully participate in all regularly scheduled meetings, except that an alternative member may not vote on any matter before Board unless such alternate member fills the position of a regular member as provided in this Paragraph. In the event that any regular member is unable to act because of absence, illness, conflict of interest, or other cause as determined by the Board, the Board shall, by majority vote, appoint an alternate member to fill the absent Board member's position in the matter before the Board to act as a voting member during such period that such regular member is unable to act. The Board need not appoint such alternate member if the Board otherwise has a quorum to act on the matter before it.
- E. A Board member may be removed as provided in Section 1-116 of the Gunnison County Land Use Resolution.
- F. Compensation
1. Appointed at-large and alternate Board members may receive a nominal fee for each regular meeting, which is approved from time to time by the Board of County Commissioners. BOCC members of the Board are not eligible for such compensation.
 2. Board members may be reimbursed for necessary traveling and subsistence expenses related to occasional out-of-county workshops and meetings.

- G. Any member may resign from the Board by giving written notice to the Board chairperson and to the Board of County Commissioners.
- H. A Board member is responsible for the following:
1. Reviews all material received prior to meetings.
 2. Familiarizes him/herself with the applicable sections of the Gunnison County Land Use Resolution that detail responsibilities of the Board.
 3. Attends all meetings, insofar as possible, and notifies the Community Development Department of absences in advance of the meeting(s) to be missed.
 4. Reviews recommendations by the Community Development Department and makes decisions on matters presented to the Board.
 5. Evaluates each application for variance for its compliance or non-compliance with the Gunnison County Land Use Resolution and as necessary visit on-site the property for which the variance is requested, or which is the subject of an appeal, at the discretion of the Board.
 6. Decides all appeals made to the Board, applying the standards set forth in the Land Use Resolution.
 7. Assists new members of the Board as needed.
 8. Insofar as possible, attends other County meetings of interest to the Board.
 9. Refers inquiries about variances and appeals from the public to the Community Development Department.

SECTION III: OFFICERS AND DUTIES

- A. Officers of the Board are a chairperson, vice-chairperson, and any other officers as the Board deems necessary for Board business in the Board's discretion.
- B. Officers are elected annually by members and alternates at the Board's first meeting of the calendar year following appointment of members by the Board of County Commissioners, as applicable. The Board shall elect a chairperson and a vice-chairperson by majority vote.
- C. Each officer holds office for one calendar year after his/her election and may succeed him/herself if re-appointed by the Board of County Commissioners to the Board.
- D. The chairperson presides at all meetings of the Board. The vice-chairperson serves in the absence or incapacity of the chairperson, including in any event in which a conflict of interest prevents the chairperson's participation and vote; and completes all such duties as are defined in these *Organization and Procedural Guidelines* which are normally performed by the chairperson. The chair is also empowered to administer oaths and compel the attendance of witnesses by application to the district court, which application will be submitted by the County Attorney or his/her designee on behalf of the Board.

SECTION IV: MEETINGS

- A. The Board shall meet every first and third Mondays of each month as necessary, to determine matters brought before it. All Board meetings which are preceded by notice and held regularly and at specific times, are public meetings and open to the public at all times. By majority vote of members who are present, the

Board may go into executive session, as governed by the laws of State of Colorado (e.g., C.R.S. § 24-6-402(4)).

- B. Special meetings may be conducted at any time when called by the chairperson or at the request of three or more Board members. All members must be notified at least 48 hours in advance of a special meeting. Only items on the announced agenda are considered at a special meeting. Special meetings may be called in order to expedite action on a special review or an appeal application, or any other subject which requires review and recommendation or other action by the Board, but in no case shall a public hearing be conducted without the appropriate notice and procedure required by the *Gunnison County Land Use Resolution*.
- C. Work sessions may be scheduled as needed by the Board chairperson at least 48 hours in advance of any session, or as part of a regular meeting, to review an application prior to public hearing, and to encourage unstructured discussion of specific applications and special projects. No official action takes place at these sessions, and the Board need not take minutes at such meetings. Work sessions are public meetings and open to the public at all times.
- D. A quorum of the Board consists of three of the five members, unless the matter before the Board is an appeal pursuant to LUR Section 8-103 Appeals, in which case a quorum of the Board shall consist of four members. A concurring vote of three members shall be necessary to approve a variance or a special review application.
 - 1. For any appeal, the vote of four members of the Board is necessary to reverse any order, requirement, decision or determination of the Board of County Commissioners, the Gunnison County Planning Commission, the Gunnison County Community Development Director, or any other Gunnison County official, or to decide any appellate issue in favor of the appellant.
 - 2. The vote of three members of the Board is necessary to affirm any order, requirement, decision or determination of the Board of County Commissioners, the Gunnison County Planning Commission, the Gunnison County Community Development Director, or any other Gunnison County official, or to decide any appellate issue in favor of the appellee or Gunnison County.
- E. The Board shall keep a permanent, public record of all proceedings (except work sessions), as recorded in the usual form of minutes by a member of the Planning Department staff. Minutes shall not be construed to mean a transcript of a meeting. All meetings shall be taped or electronically recorded.
- F. The order of business for each regular meeting of the Board may include the following, so far as is applicable, and not necessarily in the order listed:
 - 1. Call to order, verify public notice of meetings & Public Hearings for individual scheduled appeals or special reviews, and determination of quorum.
 - 2. Minutes of previous meeting(s) for action.
 - 3. Individual scheduled special permit reviews and appeals
 - 4. Work sessions
 - 5. Reports by staff/Board members
 - 6. Adjournment
- G. At least three business days prior to a regular meeting, the Planning Department staff will have available in the Planning Department, by mail or e-mail to each Board member copies of applications, reports, draft recommendations and/or other materials related to agenda items scheduled for that meeting.

SECTION V: PUBLIC HEARINGS

A. Public hearings shall be noticed and conducted in the manner required by the applicable section(s) of the *Gunnison County Land Use Resolution*.

SECTION V: PUBLIC HEARINGS

A. Any member of the Board is considered in a position of conflict of interest if any of the following situations is in evidence relative to the application for variance, or other specified situation.

1. The member is:

- a. Seller of the subject property
- b. Broker or Realtor for the property.
- c. Applicant for a Variance.
- d. Owner, lessor, or lessee, adjoining the subject property; or

2. The member stands to be beneficially or detrimentally affected in a financial way by action taken on the property.

B. Any member who considers him/herself to be in a position of conflict of interest as defined in these *Organization and Procedural Guidelines* must declare such conflict and surrender the privilege of voting.

C. Questions of conflict of interest which fall outside the above-cited categories shall be referred to the County Attorney for evaluation. No action will be taken on the subject item, and any Board member whose relationship to the subject or application is in question must remove him/herself from any related discussion until a finding from the Attorney is received.

DRAFT

SECTION VII: AMENDMENTS

These *Guidelines and Procedures* may be altered and amended, and new ones adopted by a concurring vote of three members by three or more members of the Board at a regular meeting subsequent to notification of the proposed change.

SECTION IX: APPROVAL

By vote of the Board and the signature of the Board Chairperson, these procedures are considered approved.

These *Organization and Procedural Guidelines* were passed and adopted by the members of the Gunnison County Board of Adjustment this ____ day of _____, 20__.

NAME, Chairperson

Board of Adjustment, Gunnison County



JAMES R. SILVESTRO
ATTORNEY AT LAW

303.628.3632 (direct)
jsilvestro@irelandstapleton.com

December 15, 2023

SENT VIA E-MAIL

Hillary I. Seminick, ACP
Planning Director
Gunnison County, Community and Economic
Development Department
Hseminick@gunnisoncounty.org

***Re: Appeal from Community Development Director's Interpretation of Setback
Rule Pursuant to LUR § 8-103.A.4***

Dear Director Seminick:

This law firm represents Centennial Storage Partners, LLC (“Centennial Storage”). Pursuant to Section 1-114.D and Section 8-103.A.4 of the Gunnison County Land Use Resolution (“LUR”), please accept this letter as Centennial Storage’s formal appeal of the Gunnison County Community and Economic Development Department’s (“Community Development Department”) interpretation of LUR § 13-104 as set forth in the letter that Cathie Pagano sent to me on December 1, 2023 (attached hereto as **Exhibit 1**). More specifically, Centennial Storage is appealing the Community Development Department’s determination that a fenced gravel parking area, which does not have a “foundation,” is nevertheless subject to the County’s setback rules as set forth in LUR § 13-104 such that it must be setback at least 15 feet from adjoining non-residential parcels and at least 50 feet from adjoining residential parcels.

This interpretation by the Community Development Department is inconsistent with the plain meaning of the County’s land use rules, which expressly provide that the County’s setback requirements must be measured from structures that have a “foundation.” Moreover, this interpretation is a reversal of the County’s previously established interpretation and application of these rules with respect to Centennial Storage’s existing approved land use. If upheld, this interpretation will prevent Centennial Storage from expanding its operations and further investing in its location in unincorporated Gunnison County. In turn, this incorrect interpretation—if upheld—will prevent Centennial Storage from providing the community with a critical service that continues to be in high demand throughout the County.

I. Factual Background

Centennial Storage operates a secure self-storage and vehicle storage facility at 1825 N. Highway 135 in unincorporated Gunnison County. The current operation was most recently expanded in December 2018 when the Planning Commission unanimously approved Centennial Storage's request to add approximately 3 acres of secure and fenced gravel parking to its existing self-storage operation. (Gunnison County Certificate of Minor Impact Approval, Certification No. 10 Series 2018 (attached hereto as **Exhibit 2**.) In total, the County approved 134 new parking spaces for "the commercial storage of boats, r.v.'s vehicles, trailers, etc. in conjunction with the existing, permitted Discount Self-Storage facility." (*Id.*) The site plan for this approved expanded use is attached hereto as **Exhibit 3**. As shown on Exhibit 3, when the County approved this expanded use, it authorized Centennial Storage to construct a new fenced gravel parking area that was immediately adjacent to the lot lines surrounding the property with no required setback. Accordingly, at that time, the County determined that the County's setback requirements did not apply to the construction of a new fenced gravel parking area for the commercial storage of RVs, boats, and other vehicles.

Following the County's approval of this expanded use in 2018, Centennial Storage constructed this new fenced gravel parking area with no setbacks and has been providing the community with secure vehicle storage at this location since that time. However, demand within the community for this type of secure long term recreational vehicle storage has continued to outstrip available supply within the County. Centennial Storage maintains a waiting list for new customers at this location and regularly has to turn away customers because it does not currently have capacity to accommodate additional recreational vehicles in the existing parking area.

Accordingly, on June 30, 2023, Centennial Storage submitted a major impact project application to the Community Development Department for the further expansion of this fenced gravel parking lot so that it can accommodate additional vehicles. A copy of the site plan that was submitted with this most recent application is attached hereto as **Exhibit 4**. As shown on Exhibit 4, Centennial Storage has proposed to expand the existing fenced gravel parking lot by expanding it to the south, which will add 125 parking spaces on approximately 3.5 additional acres. As with the fenced commercial parking area that the County approved in 2018, this latest proposal also provides that this fenced parking area will be immediately adjacent to the surrounding lot lines with no setbacks from adjacent properties. Centennial Storage has discussed this proposal with all of its neighboring property owners and all of these adjacent neighbors have confirmed that they do not oppose this proposed additional use.

Nevertheless, on August 7, 2023, the Community Development Department sent Centennial Storage a letter claiming that Centennial Storage's major impact project application was incomplete (attached hereto as **Exhibit 5**). Among other things, this letter claims that the new gravel parking area proposed in Centennial Storage's application would need to comply with the County's setback requirements as set forth in LUR § 13-104. This letter does not explain how the County would measure a setback from a parking lot that does not contain a foundation in light of the requirement under LUR § 13-104.B that setbacks must be "measured as the distance between the nearest lot line and the foundation of a structure." Likewise, this letter does not explain why

the County believes that Centennial Storage’s current proposal is different from the fenced gravel parking area that the County approved at this location in 2018 with no setbacks from neighboring properties.

On October 17, 2023, Centennial Storage submitted a formal request for the County to interpret, among other things, whether the setback rules set forth in LUR § 13-104 “apply to a proposed outdoor vehicle storage facility that will be a fenced gravel parking lot and does not involve any non-fence structures.” (Oct. 17, 2023 Letter from J. Silvestro to H. Seminick (attached hereto as **Exhibit 6**.)

The Community Development Department responded to this request on December 1, 2023. (See Ex. 1.) As set forth in this letter, County staff’s current position is that the setback rules in LUR § 13-104 apply to a gravel parking lot that will be used for storing recreational vehicles because staff believes that such a use is a “structure” as that word is defined within the LUR. (*Id.* at 1-2.) Although a gravel parking lot does not have a “foundation,” staff has nevertheless taken the position that “the setback shall be measured from the property line to the edge of the proposed parking lot.” (*Id.* at 3.)

Centennial Storage now submits this appeal of that decision to the Board of County Commissioners for appellate review pursuant to LUR § 8-103.A.4.

II. Issue Presented on Appeal

Whether the Setback Rules in Section 13-104 of the Land Use Resolution Apply to a Fenced Gravel Parking Lot that Does Not Have a Foundation?

Colorado law provides that county land use rules must be interpreted in accordance with general canons of statutory interpretation. *Save Our Saint Vrain Valley, Inc. v. Boulder Cnty. Bd. of Adjustment*, 2021 COA 44, ¶ 29. Accordingly, if a land use rule is unambiguous, it must be interpreted and enforced in manner that is consistent with its “plain and ordinary meaning.” *Jefferson Cnty. v. Kiser*, 876 P.2d 122, 123 (Colo. App. 1994). Moreover, a provision “should be interpreted in such a way as to give sensible effect to all of its parts.” *Id.* A county government exceeds its authority and will be reversed on appeal if it interprets an unambiguous land use rule in a manner that is inconsistent with its plain meaning. See *Save Our Saint Vrain Valley, Inc.*, 2021 COA 44, ¶¶ 52-53.

Here, the Community Development Department determined that the County’s setback rules apply to all “structures” and that Centennial Storage’s proposed fenced commercial parking area constitutes a “structure” for three reasons in light of the LUR’s more general definition of “structure.”¹ First, the Community Development Department concluded that a gravel parking area is a structure because it “requires location on the ground.” Second, the Community Development Department noted that “recreational vehicles” are included in the definition of “structure” and the

¹ The County’s definition of “structure” is not specific to the County’s set back rules in LUR § 13-104, but is instead included in the definitions section—LUR § 2-102.

proposed parking lot will necessarily contain recreational vehicles. Finally, the Community Development Department also noted that “storage” is included in the definition of “structure” and the parking lot will be used for the storage of vehicles.

This reasoning by the Community Development Department completely ignores the more specific statutory language in the setback rules codified within LUR § 13-104. Specifically, LUR § 13-104.B expressly provides that “setbacks **shall**² be measured as the distance between the nearest lot line and **the foundation of a structure**, along a line at right angles to the lot line.” This more specific rule unambiguously provides that the County’s setback rules only apply to those structures that actually have foundations. Any other interpretation would be contrary to the Colorado caselaw cited above and the LUR’s express requirement that more specific land use rules necessarily control over more general provisions. *See* LUR § 1-111.B. Because the County’s setback rules only apply to structures with foundations, the interpretation by County staff—which is narrowly focused on the more general definition of “structure”—is wrong.

In this case, because Centennial Storage’s proposed gravel parking lot will not have a foundation, there is nothing that the County can use to measure a setback from and thus the County’s setback rules do not apply to this use. That is the same manner in which the County previously interpreted and applied these rules to Centennial Storage’s existing parking area when that use was approved with no setbacks in 2018. Colorado courts have confirmed that a County’s interpretation of its land use code should remain consistent and should not inexplicably change over time. *See, e.g., Eason v. Bd. of Cnty. Comm’rs*, 70 P.3d 600, 610 (Colo. App. 2003). Here, there is no reasonable basis for the County to depart from its past interpretation that LUR § 13-104 does not apply to a fenced gravel parking area which by definition does not have a “foundation” from which a setback can be measured. Accordingly, the Community Development Department’s misinterpretation of this unambiguous land use rule is arbitrary and capricious and, if not reversed, will be subject to reversal pursuant to C.R.C.P. 106.

For these reasons, the BOCC should reverse the Community Development Department’s erroneous and unsupported interpretation of LUR § 13-104.

* * *

Pursuant to LUR § 8-103.C.2, Centennial Storage respectfully requests that the Board of County Commissioners consider this appeal at a regularly scheduled meeting within 30 days of the date of this request. Please let us know if the County requires a fee for this appeal, and we will arrange for immediate payment.³

² LUR § 1-111.I.2 provides that “shall” means that a provision is “mandatory.”

³ Our understanding is that on December 14, 2023, you informed Mr. O’Loughlin’s assistant that the County does not currently have a posted fee for this type of appeal and that therefore we are not currently required to pay a fee for this notice of appeal to be considered timely and complete. Please let us know immediately if that is not correct.

On behalf of Centennial Storage, we thank County staff and the Board of County Commissioners for their careful consideration of this critically important issue. Please let me know if the County has any questions or if there is any additional information that we might be able to provide to assist the County in resolving this appeal.

Sincerely,

IRELAND STAPLETON PRYOR & PASCOE, PC

A handwritten signature in blue ink, appearing to read "J. R. Silvestro".

James R. Silvestro

Enclosures – Exhibits 1-6

Cc: Michael O’Loughlin, Esq.
Ken Snyder