



TO: Honorable Mayor and Council
FROM: Steve Kemp, City Attorney
RE: Triple J Armory Project
DATE: November 1, 2018

Pursuant to the Mayor and Council Member Elrod's request, I am outlining the city's actions regarding this project. Many of these items involve departments under the City Manager. I have worked with him and the staff to incorporate information into this report.

Prior to Triple J Armory (Triple J) entering into a contract with the property owner to locate at the subject site (8152 SouthPark Lane) in SouthPark, there have been assertions that the city facilitated or encouraged its location at that site. Such assertions are false. In late 2015, Triple J approached the city with an informal concept to develop a vacant parcel at 8029 SouthPark Circle. As the city does with any individual, upon their request, an informal meeting was held to provide general zoning and development information. No follow-up was ever received from Triple J regarding the vacant parcel. The city has provided no assistance to Triple J to facilitate locating this project at the subject location.

The subject property is located within a Planned Development District (PD) the SouthPark PD, part of which is designated Planned Development Residential (PD-R) and part of which is designated Planned Development-Industrial (PD-I). Unlike traditional zoning districts in the city, where the code specifies the allowed uses and standards, in the PD district, an applicant submits a plan that itemizes the list of allowed uses and standards for those uses.¹ The intent behind the PD district is to provide an applicant with more flexibility to develop the property than the traditional zoning code provides.

Many developments within a PD District have separate owners' associations. Some of these associations also have sub associations. (SouthPark Owners' Association has sub associations including one that covers the subject property.) The purpose of the owner's association is to enforce its codes, covenants and restrictions (CC&R's), which are contained in a recorded document and are binding on all the properties within the PD. These CC&R's may be more stringent than those of the city. The CC&R's are not enforced by the city, but are a private contract between the owners association and the individual property owners.

¹ See, Littleton City Code, Section 10-2-23.E. 2-3

There has been some assertion that the city failed to communicate with the SouthPark Owner's Association (SPOA) regarding this project. The assertion is false. The city did review uses contained in the SouthPark PD and recreational uses are a principal permitted use. Under the city code, an indoor recreational use is a conditional use in the B-2 and B-3 districts². If the PD plan specifies it as an allowed use, it becomes a permitted use in the PD district, as is the case in the SouthPark PD.

If a proposed project is making exterior changes to the grounds and is an expansion of the building, an amended site development plan is required to be submitted and approved by the city. If there are changes proposed only to an existing physical building then only a building permit is required to be submitted and approved by the city.

There are significant differences between the city's legal rights pertaining to a site development plan and issuing a building permit. In the case of a site development plan, a property owner must show that their request conforms to all of the city's guidelines and zoning requirements. The city may impose conditions to ensure that the development meets certain goals and objectives and is compatible with adjacent developments. In the case of a building permit, if a property owner submits building plans that conform to the adopted building code and the project is an allowed use per the zoning with no changes proposed to require an amended site development plan, the city must issue the building permit. A failure to issue the building permit would constitute a taking of the applicant's property without legal process and violate the United States and Colorado Constitutions.

The rezoning of property is quasi-judicial and requires the exercise of discretion by the city staff and council. Because of this exercise of discretion, notice and an ability to participate in the matter is provided to interested parties and the public. Unlike a rezoning, building permits are administrative and non-discretionary. Staff cannot grant variances or modify the code. Once a particular portion of the building code is complied with, the processing of the project must continue. Once all provisions of the code are complied with, the project must be issued a certificate of occupancy and be permitted to open.

The city received a single application for a building permit for a retail firearms sales location and phase one of a two-phase indoor firearms range from Triple J on May 10, 2018. Once the permit was received, the city began its verification of the zoning for the proposed use and building code requirements. The city received a copy of an email to Triple J from SPOA, with SPOA's assertion that the proposed retail store and indoor firearms range was an allowed use.

On June 13, 2018, after the building permit application was submitted, but prior to a building permit being issued, the city became aware of work being conducted at this address.

² B-2 and B-3 are general business districts under the City Code.

Immediately, the city issued a notice known as a “Stop Work Order” under the International Building Code. This order prohibits any further work on the project until a building permit is obtained. Simultaneously, the city notified Triple J of its intent to take appropriate action to enforce the Stop Work Order, including the imposition of civil penalties for subsequent building permits required for the project if a permit was not obtained. The purpose of such an order is to bring a project into compliance with the appropriate building codes. There is no legal authority for the city to refuse to issue a building permit due to the prior issuance of a stop work order. Triple J ceased work after receiving the Stop Work Order.

At the request of Triple J the project was separated into two distinct phases and as two permits, the retail shop and the indoor firearms range. Such a request is normal for purposes of building code review and the subsequent required building code inspections, particularly when a project contains different uses. The city did remind Triple J to obtain any additional approvals from SPOA to ensure all of their requirements were met.

The city determined that it needed specialized services to assist in the review of the plans for the proposed firearms range to ensure all applicable safety and code requirements were met. After evaluation, the city selected International Code Council (ICC) to assist in the plan review.³ The city also retained Code Consultants International (CCI) to assist with the plan review and the inspections, which will occur during construction of the range. While the review of a project is non-discretionary, the city wanted to have the highest level of expertise to assist staff in this process. The city issued the building permit for the retail portion of the project on July 19, 2018.

Plans for proposed the firearms range (the Plans) were provided to ICC and CCI as well as to city staff, including building and planning, fire, police and public works and other public entities for review.⁴ The initial review of the Plans was completed by ICC on July 31, 2018. ICC made 23 comments on the plans.⁵ CCI incorporated city comments and their comments, together with those of ICC for a total of 36 comments.⁶

Triple J's project team (consisting of the architect, engineer and contractor) responded on August 28, 2018 to the city, ICC and CCI comments. All 23 ICC comments were addressed by Triple J. CCI received an additional response from Triple J's project team on September 14, 2018 and determined that a number of comments were still not addressed. As city staff does with any

³ International Code Council is the developer of the International Codes used throughout North America to regulate the construction of buildings

⁴ For example, South Platte Water Renewal Partners must verify that there will be no prohibited discharges into the publically owned wastewater treatment system.

⁵ The Plan comments are a public record. In my experience 23 comments is not an inordinately high number of comments on a project

⁶ Again, CCI comments are a public record.

project, as requested by an applicant, a meeting was held with Triple J's project team to review comments.

On October 9, 2018, the city received a response from Triple J's project team addressing all outstanding comments. The city also required a certification from the architect that the proposed sound mitigation will meet the city's noise sound standards. Further, as part of the field inspections the city will require prior to the issuance of a certificate of occupancy, once the range is constructed, sound will be tested again based on the completed range, to determine compliance with the city noise standard. As of the writing of this memo, the building permit for the indoor firearms range has not been picked up and paid for by Triple J. Per the building code, an applicant has up to 180 days to obtain its building permit once the city has determined all applicable code requirements are addressed.

There have been some suggestions that the city has not followed its own permitting requirements for Triple J. These suggestions are absolutely false. First, when staff was approached about whether certain requirements pertaining to environmental requirements, lead remediation and sound mitigation could be phased, staff responded absolutely not. The code must be complied with in full, unless the code itself provides for phasing. Second, staff insisted on some additional requirements such as exterior lighting to enhance safety. Third, it has been suggested that staff has not required compliance with the parking provisions of the code. While parking in a PD is generally established in the approved PD Plan, staff required parking calculations be submitted for its review. The parking calculations submitted by Triple J met the city requirements.

Once Triple J picks up and pays for the building permit for the indoor firearms range and begins work, the city will be conducting field inspections to verify that the work is being completed as provided for in the approved plans. The city will have CCI assist with inspections for the indoor firearms range due to their expertise with these types of projects. If the work is not completed in accordance with the accepted plans, the work will be rejected and will need to be redone and brought into compliance. Staff has also made it clear to Triple J that any subsequent future phases will be subject to the city's codes in place at that time.

Currently, the retail phase of the project is complete in accordance with the code and is ready for occupancy. When the phase for the range is completed, it will undergo inspections prior to issuance of a certificate of occupancy. All of the inspections will need to be passed prior to the issuance of a certificate of occupancy.

There have been some suggestions that the city is less than diligent in protecting the public health and safety of the SouthPark community. Again, these suggestions are false. Once the issuance of the stop work order arose in June 2018, the City Attorney's Office, working with the

Community Development Department, commenced immediate research and analysis of the city's zoning codes and those of other jurisdictions relative to indoor firearm ranges.

Now based on that review, the first internal draft of revisions were provided to staff in August, with review continuing through the present. This item is scheduled to be discussed with the city council in a study session on November 27, 2018. Based on city council feedback and input, it will move forward for a review with planning commission. From there, a formal ordinance will be brought forward for consideration by planning commission for a recommendation, and to city council for final decision-making. Each stage of the ordinance process allows for public input.

All of the city departments, including police, community development and the city attorney's office are committed to working together with the City Manager to fully enforce the city's current rules and regulations, and recommend to the council those improvements that staff believes will enhance the health and safety of the Littleton community.