



Office of the Town Attorney

February 11, 2025

Via Certified Mail & First Class Mail
Receipt No. 7021-1970-0001-6985-1719

Berkenkotter Motors LLC / Berkenkotter Holdings LLC
11 South Wilcox Street
Castle Rock, CO 80104

RE: Legal Notice of Ongoing Violation
Case No. ZCE2406-021

Subject Properties: 11 South Wilcox Street
15 South Wilcox Street
200 South Street
2505-113-02-003
2505-113-02-004

Mr. Berkenkotter:

Due to an ongoing failure to address multiple notices of violation from the Town of Castle Rock's Zoning Division regarding the Right of Way ("ROW") obstruction and Nonconforming Use on the aforementioned subject properties (the "Properties"), this matter has been referred to the Office of the Town Attorney for legal review. The Office of the Town Attorney finds the Property to be in continuing violation of the Castle Rock Municipal Code (the "Code"), and requires immediate resolution of these violations in order to avoid our office's pursuit of legal remedies.

This letter constitutes legal notice of failure to comply with § 12.16.030(D) of the Code, pursuant to the requirements of § 12.16.110 of the Code as well as failure to comply with § 17.16.040 and § 17.42.050 of the Code.

Factual Background

The Town performed numerous site visits on the Properties from 2019 to 2024, including visits on April 25, 2019, May 5, 2020, September 24, 2020, July 7, 2021, April 1, 2022, and May 19, 2023. Multiple vehicles parked in the Town ROW on the Properties as well as nonconforming use of the Properties were observed on multiple occasions.

The Zoning Division delivered a Notice of Zoning Violation dated June 11, 2024 (the “June Notice”) to the Property and requested that all violations be rectified and brought into compliance within fifteen (15) days of the letter. The June letter also stated that if no other arrangements are made with the Town staff, the Town would have “no choice but to conclude that you have no interest in resolving the matter in a reasonable and amicable fashion and, the Town will be forced to proceed in accordance with the remedies it has available.” As of the date of this letter, no action has been taken by you regarding the aforementioned violations.

Legal Analysis

1. Parking in the Town Right of Way.

Relevant Statutes.

Section 12.16.030(D) of the Code states:

It shall be the further responsibility of all property owners in the Town to maintain all curbs, gutters and sidewalks on or adjacent to their property free from all obstructions, snow and other hazards.

The Code goes on to establish the notice required to be provided in the event of a failure to comply with § 12.16.030(D):

All notices required to be given in accordance with this Chapter shall be made in written form ... Notice shall be further deemed given and effective as of three (3) working days following the mailing of such notice, by certified mail, return receipt requested, to the legal owner of the property as shown on the records of the County Assessor’s office for Douglas County.

The final section of the Code relevant to this matter, § 12.16.120, lays out the penalties for any person found to be in violation of the ordinance:

Any person found to be in violation of the ordinance codified in this Chapter, after the completion of property notice, may be charged under a municipal summons and complaint, and upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not to exceed ninety (90) days, or by such fine and imprisonment. Any person may be found guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter is committed or continued.

Legal Notice of Violation.

It is clear from documentation provided by the Zoning Department, including photographs taken of the Property on multiple occasions, that the Town ROW is not free from all obstruction as there are vehicles parked in the ROW. The Property is therefore in violation of the Code. Notice of said violation is hereby provided pursuant to § 12.16.030(D) of the Code. If the obstructions on the ROW is not cleared within **fifteen (15) days** from the date of this notice, the Town has the right to pursue further legal remedies.

2. Continuance of Nonconforming Use.

Relevant Statutes.

Section 17.16.040 of the Code states:

A nonconforming use is a use that once met applicable land use regulation, but no longer does, due to a later change of the land use regulations. A use which was nonconforming at its inception is unlawful and is not allowed under this Chapter.

Further, Section 17.42.050 of the Code states:

The following uses are not permitted in the DOD [Downtown Overlay District] even if permitted in the underlying Zoning District...

C. Vehicle, RV, Boat and equipment sales and leasing.

D. Automobile body shop/Vehicle, RV, boat and equipment service.

The final section of Chapter 17.42 lays out the violation and penalties for individuals who violate any of the provisions of the ordinances of the Town.

Section 17.42.130 of the Code states:

A. No person shall violate any of the provisions of the ordinances of the Town, including the provisions of this Chapter. Except in cases where a different punishment is prescribed by any ordinance of the Town, any person who violates any of the provisions of the ordinances of the Town or this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

B. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by any such person, and he or she shall be punished accordingly.

Legal Notice of Violation.

All of the Properties are located in the Downtown Overlay District. Thus, pursuant to Section 17.42.050, vehicle and RV sales on the Properties – with the exception of 11 South Wilcox Street (2505-113-02-009) – are not allowed under the Code. The Town recognizes that 11 South Wilcox is exempt from Section 17.42.050 as vehicle and RV sales were conducted on this property prior to the adoption of the Downtown Overlay District. The other properties, however, are subject to Section 17.42.050 and in violation of the Code.

The Zoning Division received communication from you indicating your plans to move the vehicle sales operation to the address located at 1100 Caprice Drive in Castle Rock; the Town is also aware that this move may take a few months at a minimum. This timeline, however, is not acceptable to the Town and steps must be taken immediately to clear the Town ROW of any obstructions. Please be advised that vehicle and RV sales at the new proposed address will not be permitted without a Pre-Application and a Use By Special Review process.

It is clear from documentation provided by the Zoning Department, including photographs taken of the Property on multiple occasions, that the Properties are in violation of the Code. Notice of said violation is hereby provided. If the nonconforming use of the Properties are not halted within **fifteen (15) days** from the date of this notice, the Town has the right to pursue further legal remedies.

Conclusion

Failure to bring the Property into compliance with the Code may result in further legal action being taken against you, including criminal citation and prosecution. If the Town’s ROW obstruction is not cleared from the Properties and the vehicle and RV sales continue on the Properties (with the exception of 11 South Wilcox) within fifteen **(15) days** from the date of this notice, the Town has the right to pursue further legal remedies.

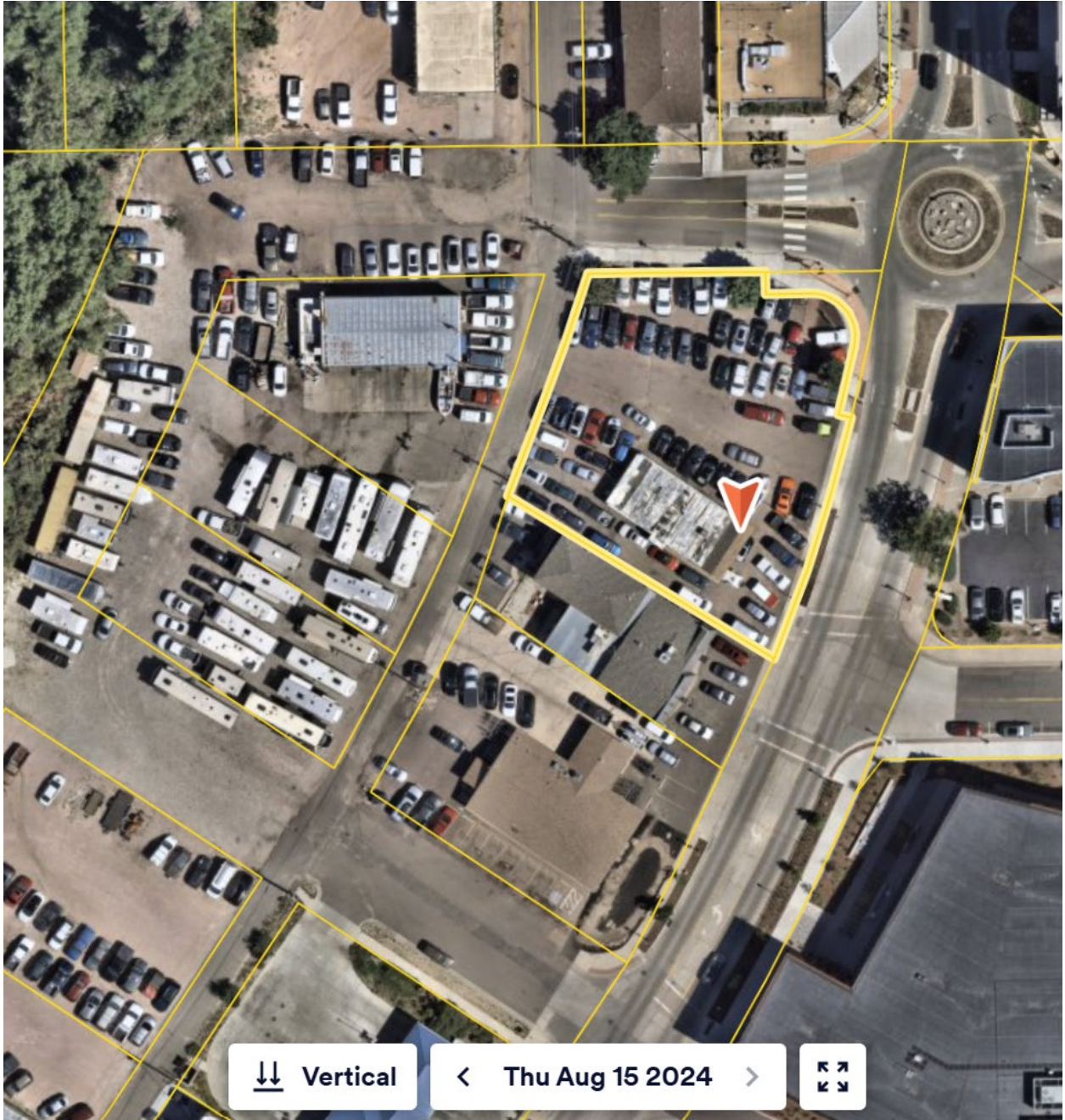
If you have any questions, please contact the Zoning Division. Scott Seubert, Zoning Inspector, is available via email at sseubert@crgov.com, or at (720) 73-2212; and Tammy King, Zoning Manager, may be reached via email at tking@crgov.com, or at (720) 733-3557. Thank you for your prompt attention to this matter.

Sincerely,

s/ Stacey Song
Assistant Town Attorney

Encl./ Photographs of Property
Cc: Scott Seubert, Zoning Inspector
Tammy King, Zoning Manager

11 S WILCOX STREET
2.10.2025
ZCE2406-021



NEAR MAP



DC MAPPING



Castle Rock
Feb 10, 2025 at 1:27:22 PM



Castle Rock
Feb 10, 2025 at 1:26:58 PM



Castle Rock
Feb 10, 2025 at 1:28:32 PM



Castle Rock
Feb 10, 2025 at 1:28:00 PM



Castle Rock
Feb 10, 2025 at 1:27:19 PM



Feb 10, 2025 at 12:11:37 PM



Feb 10, 2025 at 12:11:42 PM



Feb 10, 2025



Feb 10, 2025 at 12:12:40 PM



Feb 10, 2025 at 12:12:53 PM



Feb 10, 2025 at 12:12:43 PM