

My name is Brian Berardini. My wife Stephanie and I have been residents of Woodside since April of 2010. I retired in 2017 from the practice of law after 37 years and have been able to enjoy this community on a more full-time basis since then. I have been asked by the Woodside HOA for units 1-4 to prepare this statement with regard to the Park County Board of County Commissioners (BOCC) action on October 24, 2023, granting preliminarily approval to a Planned Unit Development (“PUD”) to allow an entity owned by Shirley Septic or its principals, ASKAG, LLC (“Askag”) to establish a septic and waste transfer station at 14097 Wandcrest, Pine, CO, located just off Highway 285 not too far west of the Pine Junction intersection of Highway 285 and Highway 126.

I first became aware of this matter at our annual Homeowners Association meeting on October 21, 2023, when members of the Wandcrest and Will-O-The-Wisp subdivisions gave a presentation of what had been transpiring. These two communities are adjacent to the proposed PUD, and many of the residents are strongly opposed to this development. There are two other subdivisions, Ponderosa Estates, and Silver Springs, which also border or are adjacent to the property. At that time, the Park County Planning Commission had given its approval to proceed to the Preliminary Approval stage with the BOCC, which hearing was conducted on October 24, 2023. Certain members of the board of the Woodside HOA attended. The hearing can be downloaded at the Park County website so that people can hear for themselves how that hearing transpired.

Askag purchased the subject property in 2022. At the time it was purchased the property was zoned residential, according to the BOCC Planning Department Staff Report dated October 19, 2023, (“BOCC Staff Report”) (which can also be downloaded from the Park County website). I have been advised but haven’t verified that the property was part of another phase for the subdivision of Will-O-The-Wisp which apparently did not get developed. Mr. Adam Shirley of Askag approached Park County last year with a proposal for “a waste transfer station” (Page 1 of BOCC Staff Report). To quote from the BOCC Staff Report,

“In an effort to accommodate the applicant’s need to serve a growing population and provide a growing and more efficient business, to comply with County Land Use Regulations, and to consider public health, safety and welfare it was suggested that ASKAG, LLC apply for a rezoning to Planned Unit Development.” (emphasis mine),

Askag started building a structure and a driveway on the property without permits. The BOCC Staff Report states that a Cease-and-Desist Order from the Park County Building Department was posted on the property on September 5, 2023. (Page 2 of BOCC Staff Report). Residents of the adjacent land have stated that there has been more than one Cease and Desist Order, but I have not verified that information. They have also alleged that Shirley has previously engaged in some illegal dumping of waste, but again, I don’t know this to be fact. The Staff stated, “County authorities want to provide a chance to Mr. Shirley to become compliant with the county regulations through these public hearings and rezoning.” (BOCC Staff Report, page 2).

Under Park County Land Use regulations (Section 5-313(B), a PUD zone district is used to uniformly plan residential use of property with a mix of related or supporting uses. Section 5-313 (A) (1) and (2) state that a PUD is to provide for necessary commercial, recreational, and educational and/or housing facilities conveniently located within the PUD; and to provide for a well located, clean, safe and pleasant light industrial sites involving a minimum of strain on transportation facilities. I would argue that this proposed PUD does not provide for recreational, educational or housing facilities, and, further, a septic and waste transfer facility hardly provides for a well located, clean, pleasant light industrial site. Land Use regulations also require that each PUD must include a park and/or open space plan. As I understand Mr. Shirley's proposal, he intends to set aside some acreage for his employees to eat lunch, but it doesn't appear that any park or open space use is actually proposed. One could also argue that rezoning an entire 58-acre parcel to a PUD when in actuality it has only one use, that of a septic and transfer and waste transfer station, does not fit the definition of a PUD and the PUD is being improperly used.

The BOCC Staff Report further notes that the PUD application must meet several conditions or circumstances, one of which is “The potential uses of the property within the proposed zone district are compatible with other properties within the immediately surrounding area”. With regard to this condition, the BOCC Staff Report states:

“The property is adjacent to commercial and residential uses. *Normally a heavy industrial use would not considered to be compatible with residential uses.*” (page 3 of BOCC Staff Report). (emphasis mine)

The BOCC staff, however, listed four factors it considered mitigating to that general rule:

1. That the proposed structures are 730 feet away from the nearest residence and not visible to any existing homes.
2. That all trash and waste would be contained within a structure. (Presumably the structure that was built before the County granted Mr. Shirley permits after the fact).
3. That because the zoning would be a PUD, any change proposed for the property would need to go through a public process for a PUD amendment; and
4. That the property is directly adjacent to a 35 acre commercially zoned property and bordered to the north by Highway 285, along which are most of the areas commercial and mixed-use properties.

The BOCC Staff Report further noted that there needed to be at least one further mitigating factor, and part of that noted that the rezoning, as proposed, is consistent with the advisory provisions of the Park County Strategic Master Plan (“SMP”). It is stated “One of the strategies listed for the development of the Pine Crow Hill sub area is to “encourage development, small scale, mountain style light industrial”. A waste transfer facility is not defined as light industrial, but it should be pointed out that heavy industrial is not mentioned anywhere in the SMP as a potential use that could be considered. It seems unrealistic to keep all heavy industrial operations out of Park County

on the basis that it is not listed as a potential use in the SMP. If it can be proved that the impacts of a proposed industrial use to the land, environment and surrounding property owners, property owners are minimal, staff suggest that it should be considered.”

Commissioner Elsner, during the October 24th hearing, seemed to reject the notion that a septic and waste transfer station was “heavy industrial use”. He further stated at that hearing that BOCC has never “adopted” the Park County Strategic Master Plan, but merely “accepted” it, so they aren’t bound by it, but use it for guidance. Based on the idea that this is not light industrial, and I challenge anybody to dispute that, it appears that the guidance provided by the Park County Strategic Master Plan is being ignored by the Board of County Commissioners. In addition, in one of the many written public comments submitted before the Preliminary Approval hearing, Kimberly Merriman, President of Will-O-The-Wisp, states that in speaking with Mr. Shirley, he stated that he plans to not only use the facility for his own business, but to expand to have other septic and trash companies use this facility. Ms. Merriman’s comments were well researched AND TOUCHED ON MANY AREAS, I WOULD URGE THOSE INTERESTED TO REVIEW ALL OF THE PUBLIC COMMENTS, BUT MS. MERRIMAN’S IN PARTICULAR.

The BOCC staff report goes on to note that approval criteria for a PUD sketch plan includes that the proposed PUD substantially conforms to the goals and policies of the Park County Strategic Master Plan. They go on to suggest that strategy L under Goal 7.1 of the 2016 Strategic Master Plan says to “Consider rezoning land to accommodate commercial, nonresidential uses if the proposed development includes adequate sewer and water, if it is proposed on a historic commercial/nonresidential site, if it supports the relevant goals and strategies in the master plan, and if impacts on nearby residential neighborhoods are adequately considered and mitigated”.

In response to these goals and strategies, the staff report, makes certain statements set forth below, with my comments regarding same in parentheses:

“1. Sewer and water are no required to be provided for this facility. (not certain this is accurate; Colorado Department of Health waste transfer regulations may require water facilities to wash down trucks and equipment depending on the amount of waste processed. I’m not certain a power washer (which is what Shirley has proposed for cleaning) is going to provide enough water to accomplish this.

2. This site is and always has been vacant. (yet the consideration in the SMP is not whether the land has been vacant, but whether it is proposed on a historic commercial/residential site, which this was not.)

3. This proposal neither supports nor goes against any goals or strategies in the Strategic Master Plan.(I would suggest that is also incorrect in that one of the goals of the Strategic Master Plan was to ensure that impacts on nearby residential neighborhoods are adequately considered and mitigated.)

4. This report endeavors to adequately consider impacts in nearby residential neighborhoods and the Planning Commission and the BOCC shall determine whether these impacts can be mitigated to an acceptable level. (I see nothing in the report that suggests that number four was considered by the staff and will suggest that the comments by two of the three commissioners at the October 24th hearing also failed to consider that issue.)

The BOCC staff report goes on to site approval criteria for the preliminary PUD plan and plat. One of those two criteria is that the preliminary PUD plan complies with applicable requirements of these land use regulations. The statement made by the staff is that the requirements that have not been met are in process and will be included in the final plan. Once again it suggests that the preliminary approval was based upon requirements that have not been met and may or may not be met in the future.

In their impact analysis, the BOCC staff report notes that a Road Improvement Plan agreed upon by CDOT and Park County Public Works will be presented with the application for final PUD approval. It has yet not been presented. Mr. Shirley testified that he didn't expect more than 24-30 truck trips in and out of the facility per day. However, it is my understanding that he also plans to have 18-wheelers transfer his waste to wherever it goes, and those may well be daily, depending upon the volume of waste.

On page 6 of the BOCC Staff Report it is noted further that the edge of a mapped wildlife moderate impact area runs through the southern half of the parcel. A request for review was sent to Colorado Parks and Wildlife, to which no answer was received. They go on to say this property does not impact any endangered or threatened species, but there is a recognized wildlife corridor for elk and mule deer crossing the highway in this vicinity. The report concludes "Potential impact to this movement corridor can be mitigated by a condition regarding fencing on the property." It should be noted that fencing on the property is mandated to be 42 inches or less depending on the slope by the Department of Parks and Wildlife. A 42-inch-high fence, in my opinion, is an inadequate height to keep the potential trash that is going to be transferred at this site from leaving the premises. That issue was not addressed by anyone. Mr. Shirley indicated he was working with Parks and Wildlife because bears were his biggest issue; my understanding is if a bear continues to bother this facility, Parks and Wildlife doesn't relocate the bear, they simply kill it.

As to the final impact analysis in the BOCC Staff Report, it is noted that the public has voiced significant concern over wildfires. It states that a condition of approval from the Planning Commission is that there be a plan for the suppression of fire within the building. It goes on to state that if such plan is not completed by the October 24th hearing, the staff suggested that the BOCC should decide whether to hear the case or continue it. No plan was presented yet the BOCC proceeded within the hearing.

Finally, the staff report noted regarding public comment that it had received many public comments against the proposed project. Concerns included possible wildfires starting within the

facility, odor, noise, traffic impacts, insects, toxic spraying, lighting, pollution of wells and aquifers, impacts to wildfire, decreased property values. Included in those public comments is the fact that Mr. Shirley has already put up the structure that will house the transfer station. It further notes there were also comments written in favor of the PUD, but in my review of those comments, a majority of them were not from the people in the immediate vicinity and tended to support the PUD on the basis that the Shirley family has been involved in Park County community matters for many years, contributed financially to numerous Park County events and were generally good people. These supporting comments do not, in my view, address the issues raised by the adjacent property owners.

One other comment regarding the BOCC Staff Report. It is noted that with regard to the septic waste on page 2: "The solids would then be transferred to outside waste treatment facilities, and the water would be piped down to the Will-O-The-Wisp water treatment facility. " However, the staff notes that this plan has not been agreed upon by the Will-O-The-Wisp Metropolitan District. It is my understanding from one of the public comments filed at the hearing, that the Will-O-The-Wisp Metropolitan District is currently servicing its neighborhood as well as the Lone Rock facility, which has plans for expansions of two additional sized parcels, which the Will-O-The-Wisp treatment facility will continue to take. Assuming that is done, and it's my understanding that Lone Rock has every intention of doing so, the Will-O-The Wisp treatment facility would not have enough capacity to accept the water from the proposed PUD development. Again, this was not addressed at the Preliminary Approval hearing.

There were many written public comments provided to the BOCC detailing a number of objections by the residents. I urge that you read all of those, as many of them are well researched and touch on issues which it does not appear that the Planning Commission, BOCC staff or BOCC adequately considered, including hydrogen sulfide exposure and damage therefrom.

There may also be issues with regard to compliance with The Colorado Department of Health regulations, regarding waste management, as it relates to compliance with "the Stormwater Rules of the Water Quality Control Commission, the Air Quality Control Commission, and all applicable local laws, ordinances and regulations." I have seen nothing that relates to these.

It may also be worthwhile, if you're interested, to review the actual application filed by Mr. Shirley and ASKAG, LLC. In reviewing same, there are certain requirements mandated, and there are quite a few requirements which are listed as blank, even though they appear in fact to be applicable. The statement from Mr. Shirley which accompanies the Application states that they seek this rezoning effort to "keep up with demand, control costs and prices, and limit some of the heavy trucking and disposal costs." He also states that they bought this property as Mixed Use/commercial, but at least according to the BOCC Staff Report, that's not correct, it was and is zoned as residential. In short, this rezoning does not truly appear to be submitted for the public good, but to decrease costs and therefore increase profits of Shirley Septic. I'm all for everybody

making a profit, but I don't see that the public good should suffer to make Shirley Septic a more profitable venture than it currently is.

The hearing on October 24th was well attended. Six people spoke in favor of the proposed plan, as well as Mr. Shirley, and 19 people spoke against the plan. After the initial public comments were closed, the Commissioners had some questions and discussion. Commissioner Mitchell voiced some concerns regarding noise, vermin control, and the number of truck passes. Commissioner Elsner, on the other hand, suggested noise shouldn't be an issue because of 285 and the CORE facility next to this property; and generally opined that this proposal was "great" for the community. He further stated that 30 truck trips a day isn't "heavy" industrial use, it's "light industrial use", and he had trouble understanding why this is considered heavy industry. In response to some of the comments regarding their concerns that Mr. Shirley hadn't complied with the law in erecting the structure and the county hadn't seemed interested in enforcing the law, Commissioner Elsner, stated, and I quote "We are a rural county. We can't enforce everything." That comment, in and of itself, should raise serious concerns; if the County was unwilling or unable to enforce permitting requirements when violated by the property owners, how can we believe they will be more diligent in enforcing regulations on a septic and waste transfer facility?

Needless, to say, I am adamantly opposed to a septic and waste transfer station at this site. While Woodside residents won't be as directly impacted as the adjoining subdivisions, in terms of noise, smells, and potential reduced property values, there is no question that it can impact us with the fire concerns, traffic, wildlife movement, and insects and vermin concerns. Fires, in particular, should be of grave concern for our area. According to research done by North Carolina-based Environmental Research & Education Foundation, approximately 390 fire incidents occurred at material recovery facilities (MRFs) in 2022 compared with 367 in 2021. Based on the number of MRFs, scrap yards and transfer stations in North America, the Foundation estimated that more than 30 percent of facilities in the U.S. and Canada suffered from a two-plus alarm fire in 2022. These facilities are fire prone. According to the National Fire Protection Association (NFPA), there were an average of 1,400 fires at waste transfer stations in the United States between 2014 and 2018. These fires caused an average of \$10 million in property damage each year.

If you've taken the time to read this very lengthy polemic regarding this septic and waste transfer station and wish to do your own research to form your own conclusions, I would urge you to download the recording of the hearing, as well as the documents that are listed on the Minutes, which are also available through the Park County website. If after reviewing all this information, you concur that a septic and waste transfer facility at this Wandcrest property is not in the best interest of our community, and the public health, safety and welfare, I would urge you to contact each of the commissioners to let them know of your position on this matter. This may still be stopped, but I believe it will require a great public outcry to convince at least two of the commissioners that this is a proposal that should not be approved in final form, or at all. I believe

that the Final Approval hearing may well be scheduled sometime in January 2024. The Information to contact the commissioners is as follows:

Amy Mitchell
Phone: 719-836-4210 Cell: 719-838-0340

Dick Elsner
Phone: 719-836-4209 Cell: 719-839-0466

Dave Wissel
Phone: 719-836-4211 Cell: 719-839-5787

You can also email them by going to the Park County website and clicking on the email tab for each of them. Finally, you can obtain the recording of the hearing, as well as the various documents which were submitted at the Preliminary Approval hearing by clicking on the Agendas & Minutes tab, and go to the October 24 2023 tab.