



COAN, PAYTON & PAYNE, LLC

Bob Choate, Esq.

1711 61st Avenue, Suite 100
Greeley, CO 80634

103 W. Mountain Ave., Suite 200
Fort Collins, CO 80525

970-225-6700
rchoate@cp2law.com
www.cp2law.com

April 6, 2022

To the City of Greeley Zoning Board of Appeals

Ms. Becky Safarik
Interim Community Development Director
Deputy City Manager
City of Greeley
Via Email Only: Becky.Safarik@greeleygov.com

RE: Appeal of Administrative Decision; 8944 10th Street – Parcel No. 095907000075

Ms. Safarik:

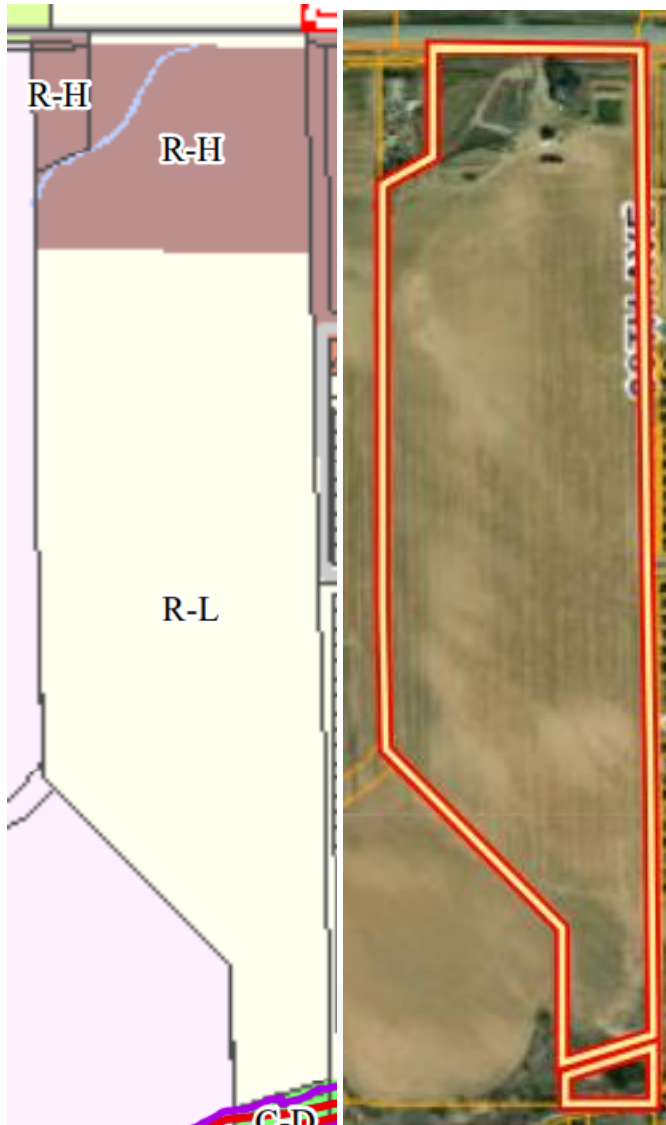
On behalf of Mr. Alan Wiedeman and Wiedeman Farms and Ranch LLC, we respectfully submit an appeal of the final decision to deny Mr. Wiedeman's building permit application, BRX2108-0102, pursuant to Greeley Municipal Code sections 24-103(e)(2), 24-201(i), and 24-210, and request a hearing before the City of Greeley Zoning Board of Appeals. For your convenience, a copy of the letter containing the administrative decision is attached.

The relevant portion of the City's letter states that

“the storage building you hoped to construct on the site is not allowed under the residential zoning on the property. You are entitled to the historic agricultural use of the property, but not allowed to expand that use under the changed residential zoning.”

We respectfully disagree with this legal interpretation of the City of Greeley's development code.

The site has split residential zoning, both RH (Residential High Density) and RL (Residential Low Density):



The City’s interpretation presumes that farming is a non-conforming use within a residential zone district. If that were the case, there could be no expansion of such non-conforming use, including the construction of accessory structures. However, under the code that existed at the time that the building permit application was submitted, Farming was a permitted use in most zone districts, including, as relevant here, the RH and RL zone districts. Please see the attached “Table of Principal Land Uses”. In fact, with the updated development code approved by the City Council last year (after the building permit application was submitted), Farming is still a permitted use in the RH and RL zone districts. Please see the attached “Table 24-4-2: Zoning Districts & Uses.”

A permitted land use is not limited to historical use of the property. Rather, it is a use which has been legislatively determined to be compatible with other permitted uses in the same zone district. Given the agricultural roots of our community, allowing Farming in a residential zone district is an appropriate legislative determination made by the Greeley City Council.

“Farming” is defined in the City’s current Development Code. It is substantively identical to how it was defined at the time that this building permit application was submitted:

Farming. The production of crops such as vegetables, fruit trees or grain; the growing of trees and shrubs for landscape purposes; and the raising of farm animals such as poultry or swine, as limited by the standards for accessory keeping of livestock. Farming shall not include the commercial raising of animals, commercial production of milk, commercial pen feeding (feed lots) or the commercial feeding of garbage or offal to swine or other animals.

Sec. 24-401 District Intent & Applicability – b. Description of Uses (Effective 10/01/2021).

Farming means the production of crops such as vegetables, fruit trees or grain; the growing of trees and shrubs for landscape purposes; and the raising of farm animals such as poultry or swine, which shall be limited to the animal unit capacity as determined in the definition of animal unit and the animal unit equivalency chart in these definitions. The term "farming" shall not include the commercial raising of animals, commercial production of milk, commercial pen feeding (feed lots) or the commercial feeding of garbage or offal to swine or other animals.

Sec. 24-5. Definitions. (Effective prior to 10/01/2021).

Mr. Wiedeman has farmed this property and many others in the area, both within and outside city limits, for many years. Until such time as this site is developed for residential purposes, he intends to continue to farm it. As such, after consultation with and initial agreement from City staff as early as February 2021, and after expending substantial funds to prepare for the building permit application, he is now faced with a denial of his application.

The structure Mr. Wiedeman desires to build is to be used for the storage of agricultural equipment that is used for farming this particular site and others in the vicinity. The structure is therefore clearly incidental to the primary, permitted use of Farming on site. As such, it is an accessory structure that is permitted under the Development Code that was in effect at the time he submitted his building permit application.

Prior to applying for this permit, Mr. Wiedeman met with City staff, who agreed with his plan to build this structure. Thereafter, he spent substantial funds to move an open ditch into an underground pipeline, build a dirt pad for the building site, and order the structure, which was delivered to the site in July of 2021.

Approval of a building permit application is a ministerial act. An applicant is either objectively entitled to it, or they are not. There is no discretion to be exercised in the approval or denial of a building permit, in contrast to (for example), a zoning permit. Mr. Wiedeman acted as any prudent landowner would in this instance before expending tens of thousands of dollars on site preparation. He applied for a building permit to which he was entitled, and he was denied his permit based on an incorrect legal conclusion.

Therefore, we respectfully request the Zoning Board of Appeals grant this appeal and approve the building permit application.

Respectfully,
Coan, Payton & Payne, LLC

Bob Choate

Bob Choate

cc: Alan Wiedeman





SENT VIA EMAIL ONLY

March 29, 2022

Alan W. Wiedeman
8944 10th Street
Greeley, CO. 80634
Wiedeman Farms
e_alnw@yahoo.com
Cell 970-301-0555

Re: 8944 10th Street – Parcel No. 095907000075

Mr. Wiedeman:

This letter is in response to your request to build a 20,000 square foot storage building (100' x 200') on the northeast side of the subject property in which you indicated you would intend to store tractor trailers and farming equipment to serve the adjacent agricultural property. As was explained to you in earlier meetings, your property is zoned Residential – High Density (R-H) and Residential – Low Density (R-L) and has been so zoned since April 2006. Our research indicates there is an existing principal structure (1,200 square feet), as well as four accessory structures (totaling approximately 3,535 square feet), as well as a detached garage on the site.

On August 6, 2021, a building permit for a 20,000 square foot storage building (Permit No. BRX2108-0121) was submitted. On November 8, 2021, you and Jay Pier met with Community Development staff, Mike Garrott, Michael Franke, and me to discuss your request for the storage building. We noted that the storage building you hoped to construct on the site is not allowed under the residential zoning on the property. You are entitled to the historic agricultural use of the property, but not allowed to expand that use under the changed residential zoning. Based upon our earlier discussion, we have again reviewed and discussed under what conditions the type of building you seek to build could be allowed and have identified two options, both of which would entail rezoning of the property and each carries some trade-offs:

1. Rezone the property to Holding Agriculture (HA): this zoning is contemplated with undeveloped parcels of land that have been used for agriculture and may have some structures on the site directly related to that historic use (e.g. single family home, corrals, barn, etc.). This zoning category would also allow an accessory building, but only up to

5,000 sq. ft in size. This category of zoning is considered transitional until a permanent use and zoning of the site is determined so may be considered acceptable under the City's Comprehensive Plan. So, while a large accessory use is possible to support the on-site agricultural use (only), it would be smaller than you had envisioned.

2. Rezone the property to Light Industrial (I-L): warehouses and industrial buildings are allowed in this zoning category at the size you seek, but would also include other site improvements such as paved parking, landscaping, etc. It could also render some of the existing uses on the site as lawfully non-conforming (e.g. the residential uses), which means they could continue to be used as historically developed but not expanded. Industrial zoning at this location has not been contemplated as desirable under our Comprehensive Plan so may not be easily supportable.

Rezoning applications involve review and analysis and public hearings before the Planning Commission and City Council, which makes the final decision. This process includes fees, required submittals usually prepared by a professional engineer or land planner, and can take 6-9 months to complete.

Based upon your description of your interest in the use of the large storage building at this property it seems the avenues open to you for this purpose may have some downsides to consider. Let me know if you have additional questions or if you would like to discuss or pursue the rezoning application process in further detail.

Sincerely,



Becky Safarik
Interim Community Development Director/Deputy City Manager
becky.safarik@greeleygov.com

cc: Mike Garrott, AICP, Planning Manager, mike.garrott@greeleygov.com
Carol Kuhn, AICP, Chief Planner, carol.kuhn@greeleygov.com

TABLE OF PRINCIPAL LAND USES

See article VI of chapter 8 of this title for further information on Zoning District Development Standards
 Infill sites require review of all land uses as Design Review Uses

<i>Uses/Districts</i>	<i>R-L R-E</i>	<i>R-MH</i>	<i>R-M</i>	<i>R-H</i>	<i>C-L</i>	<i>C-H</i>	<i>I-L</i>	<i>I-M</i>	<i>I-H</i>	<i>H-A</i>	<i>C-D</i>	<i>PUD*</i>
Residential												
Single-family dwellings—not permitted in PUDs as sole land use	P	--	P	P	S	S	--	--	--	P	--	*
Two-family dwellings	--	--	P	P	S	S	--	--	--	--	--	*
Multifamily dwellings	--	--	--	P	S	S	--	--	--	--	--	*
Townhouse dwellings	--	--	P	P	S	S	--	--	--	--	--	*
Mobile homes, mobile home parks, land lease communities	--	D	--	--	--	--	--	--	--	--	--	*
Boardinghouses and roominghouses, dormitories, fraternities, sororities, group quarters, SROs	--	--	--	P	S	S	--	--	--	--	--	*
Farming	P	--	P	P	P	P	P	P	P	P	P	*
Group homes (8 or fewer residents)	D	--	D	D	D	D	--	--	--	--	--	*
Group homes (more than 8 residents)	--	--	--	S	S	S	--	--	--	--	--	*
Group home, elderly (no more than 8 residents)	D	--	D	D	D	D	--	--	--	--	--	*
Mixed-use (must include residential)	--	--	--	D	D	D	--	--	--	--	--	*
Secondary dwelling	--	--	--	D	D	D	--	--	--	--	--	*
Institutional												
Cemeteries, columbariums	--	--	--	--	--	P	P	P	P	--	--	*
Childcare, day care centers, preschools	S	--	S	D	D	D	S	S	--	--	--	*
Churches	S	S	S	S	S	P	P	S	S	--	--	*
Correctional, jail, detention facilities	--	--	--	--	--	--	--	--	--	--	--	*
Emergency shelters, missions	--	--	--	S	S	P	S	--	--	--	--	*
Hospitals	--	--	--	--	S	P	--	--	--	--	--	*
Intermediate and long term care, assisted living units (8 or fewer residents)	--	--	--	D	D	D	--	--	--	--	--	*

Table 24-4-2: Zoning Districts & Uses

Use P = Permitted Use S= Use by special review blank = prohibited	Districts													
	R-E	R-L	R-M	R-H	R-MH	C-L	C-H	MU-L	MU-H	I-L	I-M	I-H	H-A	C-D
Residential Uses														
Single-family Dwelling	P	P	P	P		S	S	P	P				P	
Two-family dwellings			P	P		S	S	P	P					
Row House dwellings			P	P		S	S	P	P					
Multi-family Dwellings			P	P		S	S	P	P					
Mixed-use dwelling				S		P	P	P	P					
Established Residential (all types)						P	P			P	P	P	P	
Accessory Dwelling Unit (See 24-403.b)			P	P		P	P	P	P					
Mobile / Manufactured Home & Parks					P									
Boarding House & Single Room Occupancies				P		S	S	S	S					
Farming	P	P	P	P		P	P			P	P	P	P	P
Residential Care – Group Home	P	P	P	P		P	P	P	P					
Residential Care – Assisted Living			S	S		P	P	P	P	P				
Residential Care - General				S		S	P	S	P	P				
Residential Care - Institutional				S		S	P	S	P	P				
Public & Civic Uses														
Assembly – Limited (up to 499 occupancy)	P	P	P	P	P	P	P	P	P	P	P	P		
Assembly - General (500 – 1,500 occupancy)		S	S	S	S	S	P	S	P	P	P	P		
Assembly – Large (1,501+ occupancy; or outside)							P		P	P	P			
Cemeteries, Columbarium							P	P	P	P	P	P		