

BEFORE THE BENTON COUNTY HEARING EXAMINER

<p>In re:</p> <p>APPEAL OF DREW LANDRUM AND STORAGELAND, LLC,</p> <p>APPELLANTS</p>	<p>No. 19-01</p>
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APPELLANTS' PREHEARING MEMORANDUM

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Drew Landrum and Storageland, LLC submit this Memorandum in support of their Notice of Appeal/Request for Review of the decision of the Planning Director dated October 18, 2019. *Attachment A.*

I. INTRODUCTION

This is a case involving an established nonconforming use. Drew Landrum has owned and operated the Storageland commercial storage facility and business at 108 West Columbia Drive, Kennewick, WA for approximately 25 years. The storage operation has historically included two components: (1) a 53,000 square enclosed mini-storage facility with approximately 450 rental units; and (2) a outdoor storage area consisting of approximately 2.5 fenced acres that utilized for storage of personal property, trailers, vehicles, materials and similar items (“outside storage area”).¹ The predominate method of outside storage was portable storage sheds, containers, truck trailers, vans and open area storage. All of the uses were legally established and the business conducted for 25 years without issue or incident. *Attachment B.*

This appeal does not involve the enclosed mini-storage building facility. It deals with the fenced outdoor storage area. The outside storage area was fully occupied by a combination of portable storage units, trailers, recreational vehicles, automobile/trucks and open storage area. The site has historically included a large number of portable wooden storage sheds, movable storage trailers, commercial truck trailers and similar units. Each unit or area was rented to third parties. In 2015, Storageland made a decision to significantly upgrade and modernize the outside storage area. The unsightly, dilapidated and obsolete storage components were removed and replaced with neatly placed portable container storage. City of Kennewick has defined these containers as “transportable units”. KMC 18.09.2095. They are also referred to as “cargo containers.” *Id.* The method, manner and storage area were unchanged but storage was consolidated in individual metal containers that were neatly organized in rows with fire code compliant access roads. The intent was to continue the historic use of the open storage area but do so in a neat, clean and secure manner.

¹ *Mini-storage* means a facility which provides storage spaces for the storage of domestic goods. Units may not be used for commercial or residential purposes. KMC 18.09.1290. Mini-storage is a listed land use in the Table of Non-Residential Uses. KMC 18.12.010B.1. *Outdoor Storage* means the keeping, in an unroofed area, of any goods, junk material, merchandise, vehicles in the same place for more than 24 hours. KMC 18.09.1450. The table of listed land uses does not, however, list “outdoor storage” as a specific land use.

City of Kennewick has recognized that the storage facility (both enclosed and outdoor storage) is a legal nonconforming use.² While recognizing the vested nonconforming use for the storage, the City contends that the use of “transportable units”³ is not permissible even though a majority were placed at times that KMC 18.12.270 allowed the permanent placement of cargo containers for ancillary storage use. The transportable units provided the functional equivalent to Storageland’s historic container and shed storage. At the time of initial placement of a majority of the transportable units, the zoning ordinance specifically allowed permanent placement and use of transportable units within the General Commercial zoning district.⁴

Transportable units may be used for storage purposes when ancillary to a permitted use in C, I, PF and OS zones, provided that all setbacks and access requirements are met.

KCC 18.12.270. The mini-storage facility was permitted and located in a “C” zone-Commercial General (CG) zoning district. The placement of transportable units was legal and authorized until October 26, 2017. At that time, City of Kennewick rezoned the property to Urban Mixed Use (UMU) and amended KMC 18.09.270 to remove the authorization for permanent placement of cargo containers. It was at that point that Storageland became a nonconforming use.

² The subject property was historically zoned Commercial General (CG) zoning district. The Commercial General zoning district allowed mini-storage facilities and the permanent placement of transportable units was authorized as an ancillary manner of storage. KCC 18.12.270. These ordinance provisions were amended through the simultaneous adoption of Ordinance No. 5712 (amending KMC 18.12.270 and eliminating permanent placement of transportable units within Commercial zoning districts) and Ordinance No. 5723 (rezoning the subject property from Commercial General to Urban Mixed Use (UMU)). The ordinances were adopted on October 17, 2017 and became effective on October 26, 2017.

³ KCC 18.09.2095 defines “transportable unit” as follows:

Transportable Unit (also referred to as a “cargo container”) means a standardized, reusable vessel that is or appears to be:

- (1) Originally, specifically or formally designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities; and/or
- (2) Designed for or capable of being mounted or moved on a railcar; and/or
- (3) Designed for or capable of being mounted on a chassis or bogie for movement by truck trailer or loaded on a ship.

The ordinance also includes a definition of “cargo container” in KMC 18.09.345. The definition of “cargo container” simply refers to the ordinance definition of transportable unit in KMC 18.09.2095. The ordinance does not establish a new land “use” category. Transportable units are not included in “Table of listed uses” in KMC 18.12.010.B.2.

⁴ City acknowledges that the Storageland property was zoned Commercial General until October 26, 2017. Mini-storage was a permitted use in the Commercial General zone and “...transportable units for permanent storage were allowed on Commercial Zoned property....” *City of Kennewick letter – October 18, 2019 (“Land Use Decision”)*. The transportable units replaced similar storage units (e.g. portable wooden units, movable storage trailers and similar units). The use was legally established and no new use was introduced by the upgrade of storage units on the property.

In the spring of 2019, City of Kennewick raised questions about the placement of transportable units. Storgeland provided a written response, addressed nonconforming use rights and offered cooperation in addressing the issues. **Attachment C.** At the City’s request, Storgeland also provided detailed site plan and landscaping alternatives.⁵ **Attachment D.** Shortly after receipt of the updated site plan, City of Kennewick issued a letter concluding that the outside container storage was not a legal nonconforming use and that “...the transportable units will need to be removed.” **Attachment A.** Storgeland filed a timely appeal and that matter is the subject of this open record proceeding. **Attachment E.**

II. CITY OF KENNEWICK LAND USE DECISION – APPEAL

City of Kennewick denied the use of transportable units as part of the mini-storage business by letter dated October 18, 2019 (“City Decision”). **Attachment A.** *City’s Decision* acknowledged that the mini-storage facility (both inside and outside areas) were legal nonconforming uses. The objection was to the use of cargo containers. The land use decision reached the following conclusions:

The City is treating your letter as a request from your client for the Planning Director to certify the transportable units as a “legal” non-conforming use. *See KMC 18.15.010.* Your letter characterizes the transportable units as being just another form of “outside storage”. *I cannot certify that these storage containers are a legal non-conforming use...* The main storage structure for Storgeland and the small sheds in the back are legal non-conforming. *However the transportable units are not a legal non-conforming.* As these transportable units are not a legal non-conforming and the UMU zone does not allow transportable units for permanent storage, the transportable units will need to be removed.

(Italics added). Planning Director acknowledged that the mini-storage use and permanent placement of transportable units were permitted under the zoning code until October 26, 2017.

The land use decision further stated:

The Storgeland property was zoned Commercial General up until 2017. Mini-storage was a permitted use in the Commercial General zone. Up until 2017 transportable units for permanent storage were allowed on Commercial zoned property with a

⁵ Storgeland outlined land use history, method and manner of storage and applicable authority regarding legal nonconforming use of the property. **Attachment B.**

permit. The roughly 100 transportable units are a non-conforming use as Mr. Landrum failed to obtain a permit for the containers when they were first placed on the property in 2016. The City has no record of a permit being issued for the transportable units prior to the adoption of Ordinance 5712 in 2017. This ordinance amended KMC 18.12.270 by removing the provision which allowed transportable units to be used for permanent storage in the commercial zone (with a permit).

The land use decision confirmed the placement of transportable units and the legal right to use cargo containers for permanent storage prior to the effective date of Ordinance 5712. The City's position, however, rests solely on a contention that Storageland failed to obtain necessary *permits* for placement of the cargo containers. No authority has been cited for the permit requirement.

The land use decision is also significant in several additional respects. The land use decision specifically recognized that "...[t]he main storage structure for Storageland and the small sheds in the back are legal non-conforming" and "storage in both the main storage structure and outside storage area – small sheds" were permitted uses within the Commercial General zone. City gave no consideration to established right to modernize, upgrade, improve or intensify legal nonconforming uses.

III. FACTUAL BACKGROUND

The facts pertinent to this appeal are straightforward and, for the most part, undisputed. Storageland will provide direct testimony and evidence at the open record hearing scheduled for March 9, 2020. This memorandum is intended to provide an overview of both the factual and legal issues pertinent to the appeal of the City's Decision.⁶

3.1 Storageland Property Has Been a Legally Established Storage Facility for More than 25 Years.

Drew Landram purchased the property in 1995. At the time of purchase, the property included a 53,000 square foot warehouse building with approximately 2.5 acres of outside storage area. The purchase price included both the building and outside storage area. The property had been utilized for an insurance liquidation business, school district storage, flea market and various

⁶ As of this writing, Storageland had not received a copy of the Hearing Examiner's packet or the administrative record.

businesses. Following the purchase, the existing tenancies were terminated and the large warehouse building was converted to an enclosed mini-storage building. There were 450 individual rental units. All construction was undertaken with the necessary permits for the mini-storage facility.⁷

In addition to the storage building, the property and storage area included approximately 2.5 acres of fenced open ground that had been historically utilized for additional storage of personal property, trailers, vehicles, materials and similar items (“outside storage area”). The storage facilities included portable sheds, trailers and recreational vehicle/automobile storage. There were outside storage areas that included eight 30’ x 80’ storage yards, each containing a 10’ x 20’ portable storage unit. The outside storage area had historically included a large number of portable wooden storage sheds. Each unit and storage area was rented to third parties. The outside storage area is clearly defined and fenced from the time of acquisition. All outside storage activities were contained within the fenced area. The use generated minimal traffic, noise or other external impact. There has been no change or interruption in the size or use of the outside storage area. Attached photographs of the prior outside storage areas. *Attachment F*.

Until October 26, 2017, the mini-storage land use was permitted in the Commercial General zoning district. Storageland had received all necessary permits for operation of the Storage facility. In October of 2017, City of Kennewick rezoned the property from Commercial General (CG) to Urban Mixed Use (UMU).⁸ *Attachment G*. Mini-storages were not permitted in the UMU zoning district. At the same time, the City of Kennewick amended KMC 18.12.270 to remove the authorization for permanent placement of “transportable units” in commercial zoning districts. *Attachment H*. (Ordinance 5712-redline copy). In its land use decision, City referenced the legislative amendments but recognized the existing mini-storage building and outside facilities as legal nonconforming uses.

The main storage structure for Storageland and the small sheds in the back are legal non-conforming. However the transportable units are not a legal non-conforming.

⁷ Ordinance 5712 was passed by Kennewick City Council on October 17, 2017. Section 10 of Ordinance 5712 states that “...[t]his ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law.” The ordinance was published on October 21, 2017. It became effective on October 26, 2017.

⁸ City Council adopted Ordinance No. 5723 on October 17, 2017. The rezone was effective October 26, 2017. The rezone created a new zoning district and the *Table of Uses – Non Residential* did not allow mini-storages. *Attachment G and H*. As a consequence, Storageland mini-storage became a nonconforming use.

City Decision – 2. There is no dispute that the outside storage area was a permitted land use and that the portable wooden sheds (of comparable size to transportable units) were authorized uses of the property. City of Kennewick did not, however, reference any legal authority, ordinance or adopted policy requiring permits for placement of cargo containers⁹

3.2 Storageland Site Improvements and Placement of Transportable Units.

Beginning in 2015, Storageland made a decision to significantly upgrade both the security, quality, safety and appearance of the outside storage area. Most of the storage units had grown old and storage was provided through a wide variety of storage sheds, truck trailers and vans, vehicles and unenclosed open areas. See *Attachment F*. There was also storage areas for automobiles, trailers and recreational vehicles. Outside storage also included areas for appliance and miscellaneous personal property.

The unsightly and dilapidated storage components were removed over time and replaced with neatly placed portable container storage. The improvements continued the historic use of the open storage area but did so in a neat, clean and secure manner. See attached “after” photographs. *Attachment I*. The containers significantly improve fire safety and control bug, rodent and dust infiltration. Perhaps the biggest improvement is security for the contents. All storage continued within the historic fenced storage area and there was no expansion of the outdoor storage beyond the original boundaries of the storage area. The transportable units are comparable size and dimension to the historic portable wooden storage units. Of significance, however, is the fact that the *land use* of the outside storage area has not changed in any manner. There has been no expansion or enlargement of either the mini-storage building or the outside storage area. The addition of the portable containers does not change the property use. It simply improves the method and manner of storage.

The timing of improvements is a significant issue in this case. Storageland began the conversion of portable wooden units and outside storage areas in early 2016. At the time of initial placement, the zoning code permitted *permanent placement* of “transportable units” provided they

⁹ Permits are required to establish the underlying land use for the property. City has acknowledged that both the mini-storage structure and associated outdoor storage were permitted uses. There is no separate land use approval required for transportable units. They were originally permitted within the Commercial General zoning district and are now allowed on a temporary basis within the Urban Mixed Use zoning district.

were ancillary to a permitted use within Commercial zones.¹⁰ KMC 18.12.270 provided as follows:

Transportable units may be used for storage purposes when ancillary to a permitted use in C, I, PF and OS zones, provided, that all setbacks and access requirements are met.

Attachment H. Storageland met the applicable zoning requirements for placement of transportable units. Mini-storage was a permitted use in the Commercial zone and the placement was for ancillary storage purposes. The placement did not require a separate permit or review process. Storageland placed approximately 200 transportable units within the preexisting storage area prior to October 26, 2017. Additional units were added as replacements after the effective date of Ordinance 5712. Despite inspection visits from city personnel and knowledge of cargo container placements, City of Kennewick raised no questions about the improvements until the Spring of 2019, nearly three years after the initial placement. Storageland promptly responded to the inquires.

It is apparent that the current condition and appearance of the property is significantly improved with the use of portable containers. The containers are uniformly painted and much cleaner and more attractive than the previous portable storage on the property. Stored materials are also more secure and safer in the containers. Security cameras are in place around the entire property and Storageland has been responsive and thoughtful regarding the needs of neighboring property owners.

IV. ISSUES ON APPEAL

This appeal presents several related issues based upon rules and regulations applicable to nonconforming use of property. The issues include the following:

Issue 1: Is the Storageland Mini-Storage structure and associated outside storage area a legal nonconforming use?

¹⁰ The City acknowledges that both the land use and placement of permanent transportable units were permissible under KMC 18.12.270.

Mini-storage was a permitted use in the Commercial General zone. Up until 2017 transportable units for permanent storage were allowed on Commercial zoned property with a permit... This ordinance [Ordinance 5712] amended KMC 18.12.270 by removing the provision which allowed transportable units to be used for permanent storage in the commercial zone (with a permit).

City Decision – 1. City cites no authority requiring a “permit” for placement of a transportable unit within the CG zoning district.

Issue 2: Was the addition of transportable units prior to October 26, 2017 permitted pursuant to KMC 18.12.270?

Issue 3: Is the improvement and upgrading of outdoor storage units utilizing transportable units a lawful modernization and/or intensification of the legal nonconforming use?

Issue 4: Does the substitution of transportable units for legally established storage within the outside storage area increase and impermissible change of use and increase in the degree of nonconformity under KMC 18.15.050?

V. STANDARDS FOR REVIEW

5.1 Standards of Review Governing Nonconforming Uses.

Nonconforming use rights are governed by both ordinance and applicable case law. “Nonconforming uses are allowed to continue because it would be unfair, and perhaps a violation of due process, to require the immediate cessation of such a use.” *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wn. App. 252, 268, 337 P.3d 328 (2014).” Legal, nonconforming uses are vested rights.” *McMilian v. King County*, 161 Wn. App. 581, 591, 255 P.3d 739 (2011). It is in the context of this legal doctrine that this appeal is considered.

(a) Nonconforming uses are recognized and protected under applicable case authority. The courts have developed a well-established body of authority governing nonconforming uses. “[A] nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance, although it does not comply with the [current] zoning restrictions applicable to the zoning district in which it is situated.” *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998). Stated in another way, a legal nonconforming use is one that “...does not conform to zoning law but which lawfully existed at the time the law went into effect and has continued to exist without abandonment since that time.” *Johnson v. City of Seattle*, 184 Wn. App. 8, 14, 335 P.3d 1027 (2014) (citing 8A McQuillin, *The Law of Municipal Corporations*, §24.189 (3d. ed. 2012)).¹¹ The mini-storage uses became nonconforming with the

¹¹ In *Johnson v. City of Seattle*, the municipality cited a resident for parking more than three cars on his property. The property owner argued that he had a legal nonconforming use. The property owner was a car collector and had historically utilized the property for storage of at least five (5) automobiles. The court found that there was a factual question and that legal nonconforming use was an appropriate consideration in the context of the municipal citations.

adoption of Ordinance No. 5712 (changes rules regarding transportable units) and Ordinance No. 5723 (rezoning the property from Commercial General (CG) to Urban Mixed Use (UMU)). Those amendments became effective on October 26, 2017. The point of measurement is October 29, 2017.

A legal nonconforming use is a vested right. *Johnson v. City of Seattle*, 184 Wn. App. at 14. Vested rights cannot be taken away once created. *Id.* Landowners have the right to continue their legal nonconforming uses, subject to proof of existence and reasonable government regulations. *Rhod-A-Zela*, 136 Wn.2d at 6. Proof of existence may include a showing that the use predated the current ordinance and comparing the scope of the prior and current uses. *McMilan v. King County*, 161 Wn. App. 581, 591, 255 P.3d 453 (2011); and *City of University Place v. McGuire*, 144 Wn.2d 640, 649, 30 P.3d 453 (“under Washington common law, nonconforming uses may be intensified, but not expanded.”). The use must be the same before and after the zoning restriction becomes effective, and this is usually a question of fact. *Johnson v. City of Seattle*, 184 Wn. App. at 14-15.

It is well-established that a property owner can modernize facilities and employ improved instrumentalities in connection with a nonconforming building or use. 8A McQuillian *Municipal Corporations* § 25:223 (3d ed. 2019). (“...the instrumentalities must be ordinarily and reasonably adapted to make the use in question available to the owner, and, moreover, the original nature and purpose of the undertaking must remain unchanged”). *McQuillan* set forth the general rule as follows:

Accordingly, one entitled to a nonconforming use has a right to repair, restore, and replace structures in connection with the use, to engage in uses normally incidental and auxiliary to the nonconforming use, and to modernize and employ improved instrumentalities in connection with such.

8A McQuillian *Municipal Corporations* § 25:209 (3d ed. 2019). These fundamental principles have been recognized by the courts of this state.

A nonconforming use of land ... is not likely to remain static [I]t may grow in volume or intensity These changes in the level of any use may have profound impact upon property in the areas where they are located, but the zoning regulations seldom include specific provisions for restricting this kind of growth.

Keller v. City of Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979) (holding that chlorine manufacturing facility may be modernized with addition of six new cells).¹² Under Washington common law, nonconforming uses may be intensified, but not expanded. *City of University Place v. McGuire*, 144 Wn.2d 640, 649, 30 P.3d 453 (2001). *Keller v. City of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979) (holding that addition of six cells to chlorine manufacturing plant within existing building was permissible intensification of the nonconforming use); and *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 268, 337 P.3d 328 (2014) (“as our Supreme Court noted, as time passes a nonconforming property use may grow in volume or intensity.”). Storgeland has not expanded or enlarged the outside storage area. The conversion of storage to transportable units is a permitted modernization of facilities that is consistent with the established nonconforming storage use of the property.

(b) City of Kennewick has adopted ordinances related to nonconforming uses. City of Kennewick has adopted ordinance provisions that are consistent with common law nonconforming use rights. The ordinance defines a nonconforming structure or use as follows:

Nonconforming Structure or Use means an existing structure or use that was in conformance with effective existing code at the time or annexed prior to the adoption, revision, or amendment of the comprehensive plan and/or this Title, but which now does not conform to the requirements of the comprehensive plan and/or this Title and/or to the requirements of the zoning district in which it is located.

¹² The court in *Keller* adopted the quoted language from 1 R. Anderson, *American Law of Zoning* §6.47 (2nd ed. 1976). The referenced authority was cited by the appellate court in *Keller v. City of Bellingham*, 20 Wn. App. 1, 11, 578 P.2d 881 (1978). In the appellate court, the following supplemental language was recognized by the court:

A nonconforming use of land, whether it is a dairy farm, manufacturing plant, or rooming house, is not likely to remain static. As the use is exploited and economic changes occur, it may grow in volume or intensity, and the periods of active use may become more frequent or of longer duration. These changes in the level of use may have a profound impact upon the property in the areas where they are located, but the zoning regulations seldom include specific provisions for restricting this kind of growth.

The Supreme Court recognized that “[...]although the Bellingham zoning ordinance could have specifically prohibited intensification of a nonconforming use by reference to a specified volume of such use, it did not do so.” *Keller*, 92 Wn.2d at 731. City of Kennewick did not prohibit either intensification or enlargement of a nonconforming use. It did recognize, however, that a “[...]nonconforming structure may be expanded up to 25% in building area, land area, and/or parking area, using the applicable review process.” KMC 18.15.060.

KCC 18.09.1380.¹³ “Any lawful use, including those allowed by permit but not yet completed at the time of zone change or annexation, *may be continued or completed, even though it does not conform with this Title and will be considered legal, nonconforming.* KMC 18.15.010 (Italics added). The ordinance provides protections for both nonconforming structures and uses. It allows for expansion of structures, replacement and repair of damaged or destroyed structures, change of nonconforming use, and termination on discontinuance of a nonconforming use. There are no prohibitions on use intensification, modernization, or ancillary uses.

The zoning ordinance also recognizes that a nonconforming use may be changed to another nonconforming use. KMC 18.15.050 provides as follows:

A nonconforming use may be changed to another use only if such use is not more nonconforming than the existing nonconforming use and provided the nonconforming use has not been discontinued as per Section 18.15.020 above. The new use *shall be approved* using the applicable review process.

(Italics added). Even if the substitution of transportable units is deemed to be a different “use” (which it is not), the ordinance recognizes that a valid nonconforming use may be converted to another nonconforming use provided that the new use “...is not more nonconforming than the existing nonconforming use.” The substitution of transportable units for existing storage units does not increase the degree of nonconformity.

5.2 Applicable Burden of Proof Governing Nonconforming Uses.

The courts have established a bifurcated burden of proof on matters concerning nonconforming uses. *McMilian v. King County*, 161 Wn. App. 581, 591-92, 255 P.3d 739 (2011). See also, *City of University Place v. McGuire*, 144 Wn. 2d 640, 647-48, 30 P.3d 453 (2001); and *Van Sant v.*

¹³ The ordinance definition is supplemented by various provisions relating to nonconforming uses and structures as set forth in KCC Ch. 18.15 – Structures and Lots. The ordinance recognizes and allows completion of lawful uses which have begun but are not yet completed at the time of a zone change or annexation. KMC 18.15.010. There is also a provision related to discontinuance of a nonconforming use or structure. KMC 18.15.020 provides:

No use or structure which has been made nonconforming may again be made nonconforming nor shall any nonconforming use which has ceased for six months be again resumed except in the event of death, legal incapacitation or physical disability, in which case the use will have one year to resume.

The ordinance also recognizes that a nonconforming structure may be expanded up to 25% in building area, land area, and/or parking area provided that there shall be no increase in the number of dwelling units or decrease in the number of off-street parking spaces. KMC 18.15.060. Provisions are also made for damage or destruction and replacement of structures. KMC 18.15.070 and .080.

City of Everett, 69 Wn. App. 641, 647-48, 849 P.2d 1276 (1993). The court in *McMilian* set forth the well-established standard as follows:

The landowner bears the burden of establishing that a valid nonconforming use exists. The landowner “asserting a prior legal, nonconforming use bears the initial burden to prove that (1) the use existed before the county enacted the [contrary] zoning ordinance; (2) the use was lawful at the time; and (3) the applicant did not abandon or discontinue the use for over a year [prior to the relevant change in the zoning code].” ... *However, once the landowner establishes that a legal nonconforming use existed, the burden shifts to the municipality asserting that the nonconforming use was abandoned to show that the landowner abandoned or discontinued the use after the enactment of the relevant zoning ordinance.*

In this case, the City has acknowledged that Storageland has an established nonconforming use right for a mini-storage facility that includes both indoor and outside storage areas. The issue presented is whether the nonconforming use may be updated and modernized with transportable unit storage.

VI. ARGUMENT AND AUTHORITIES

It is established that Storageland has a legal nonconforming use right with respect to a mini-storage facility including indoor and outdoor storage areas. The issues presented in this appeal include the following: (1) was the placement of transportable units in the existing outside storage area compliant with applicable ordinance provisions; (2) was the placement of transportable units a permitted modernization or intensification of the legal nonconforming use; (3) was there a “change of use” caused by the introduction of transportable units; and (4) if there was a change of use, did the change create a more nonconforming use of the property.

6.1 The Placement and Use of Transportable Units Prior to October 26, 2017 Established a Legal Nonconforming Use Right for Those Storage Units.

The placement of transportable units or cargo containers within the outside storage area prior to October 26, 2017 was legal and authorized by KMC 18.12.270. The ordinance is clear and unambiguous. In recognizing that nonconforming uses involve questions of fact, City of Kennewick has admitted several determinative facts with regard to the placement of transportable units prior to October 26, 2017: (1) The Storageland property was zoned Commercial General and mini-storage was a permitted use within the zone until October 26, 2017; (2) transportable units “...may be used for storage purposes” within all commercial zoning

districts pursuant to KMC 18.12.270; (3) the permissible use of transportable units for permanent storage was allowed until October 26, 2017; (4) Storageland placed approximately 200 transportable units within the existing outdoor storage area prior to October 26, 2017; and (5) the transportable units were placed for storage purposes and ancillary to the permitted mini-storage land use. City of Kennewick does not dispute any of these facts.

City of Kennewick takes the position, however, that the placement of the transportable units was not lawful because "...Mr. Landrum failed to obtain a permit for the containers when they were first placed on the property in 2016." No legal authority is offered for this position. And significantly KCC 17.12.270 did not require a permit for placement of the transportable units or cargo containers.¹⁴ A property owner was permitted to permanently place transportable units for "...storage purposes when ancillary to a permitted use ..." within a Commercial zoning district. Mini-storage was a permitted land use. City of Kennewick inspected the property at various times during the placement of cargo containers. At no time was the property owner advised that permits were required. The only advice related to adequacy of fire lanes and gates.

The clear and unambiguous language of KCC 17.12.270 is controlling. The courts interpret ordinances in the same manner as statutes. *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737, 743, 317 P.3d 1037 (2014). When an ordinance is plain on its face, the court or hearing examiner must give effect to the plain meaning as an expression of legislative intent. *Washington State Dept. of Transp. v. City of Seattle*, 192 Wn. App. 824, 838, 368 P.3d 251 (2016). It is well established that statutory interpretation "...must not add words where the legislature has chosen not to include them." *Washington State Dept. of Transp. v. City of Seattle*, 192 Wn. App. at 838. City of Kennewick asks the hearing examiner to add the *permit requirement* to the ordinance. KMC 18.12.270 does not include a permit requirement and specifically recognizes that the storage use is ancillary to the primary permitted land use. From a land use perspective, the use has already been determined and established with respect to the primary land use.

¹⁴ KMC 18.12.270 contains no reference to permit requirements for permanent placement of transportable units utilized for storage purposes when ancillary to a permitted use within the zoning district. The ordinance also allowed *temporary* placements of transportable units in subdivision sales yards, equipment yards and temporary construction areas. The only reference to *permits* is in KMC 18.12.270(1) which allows temporary placement of a transportable unit "...for storage during construction and/or remodeling after a *building permit* has been issued." That section provides that the units must be removed from the site "...once the permit [i.e. building permit] expires or at the end of 12 months, whichever occurs first." The ordinance does not reference either permit or a time limit on use and placement of transportable units for permanent storage purposes.

Second, “transportable unit” is not a “listed use” on the “Table of Non-Residential Uses” set forth in KMC 18.12.010 B.1.¹⁵ Unlike listed uses, the placement is not subject to either administrative or conditional use review and permit processes. It is ancillary or accessory to the primary use of the property which is mini-storage. *Accessory* mean a use, activity, structure or part of a structure that is subordinate and incidental to the main activity or structure on the subject property. KMC 18.09.020.¹⁶ Accessory or ancillary uses do not require a separate permit. This is consistent with established case authority allowing reasonable and normal accessory uses.

Although an incidental or accessory use cannot be the basis for establishing a nonconforming use, reasonable and normal accessory uses ordinarily are permitted in connection with nonconforming uses. . . . Generally, alterations of buildings, not structural in character, do not constitute enlargements of the use where they are made to permit normal incidents and collateral uses, where they are required to avoid unnecessary hardship, and where they do no harm to fundamental zoning purposes or the public welfare.

8A McQuillian, *Municipal Corporations* §25:222 (3d ed. 2019). Storgeland can find no ordinance provision requiring a permit for placement of transportable units for ancillary storage within permitted mini-storage facilities.

Finally, the courts have recognized that “...vesting procedures that are vague and discretionary cannot be used to deny and applicant vested rights. *WCHS, Inc. v. City of Lynnwood*, 120 Wn. App. 668, 876, 86 P.3d 1169 (2004).¹⁷ The courts have recognized that nonconforming uses are vested rights. *Supra* at *Section 5.1*. The court in *WCHS* found the local building code to be vague and unenforceable stating:

To the extent that state law authorizes a building official to require other data and information, *as a matter of due process such information must be reasonably set forth in the local ordinance governing the requirements for a complete application to avoid*

¹⁵ The Kennewick Zoning Ordinance includes two (2) tables with “list uses” allowed within the various zoning districts. KMC 18.12.010 A.1: Residential Use Table and KMC 18.12.010 B.1: Table of Non-Residential Uses. The applicable “use” is “mini-storage.” There is no separate “use” for “transportable units”.

¹⁶ *Accessory Use* means a use that is located on the same lot and incidental to a principle use. KMC 18.09.050.

¹⁷ In *WCHS v. City of Lynnwood*, the court reviewed a building permit application for completeness and vested rights. The city building official interpreted the building code to allow the city to require state certification as an element of a complete application for a treatment facility. The local ordinance did not specifically require this certification and took the position that it was within the building official’s discretion. The court held that such certification requirement was not supportable because the ordinance was vague.

being unduly vague. Vesting procedures that are vague and discretionary cannot be used to deny an applicant vested rights. The actual requirements for complete application cannot be vague and discretionary.

WCHS, 120 Wn. App. at 675-76. “The concept of unconstitutional vagueness simply means that no prohibition can stand or penalty attach where an individual could not reasonably understand that his contemplated conduct is proscribed.” *Grant County v. Bohn*, 89 Wn.2d 953, 955, 557 P.2d 138 (1978) (holding zoning ordinance provision to be unconstitutionally vague with respect to placement of mobile homes). The Kennewick zoning ordinances recognize the permitted placement of transportable units but do not include any ascertainable requirement for permits with regard to such placements. The use was ancillary to the primary use as mini-storage and otherwise compliant with the intent of KMC 18.12.270. Ordinances must be construed to “...give effect to the plain meaning [of the ordinance] as an expression of legislative intent.” *Supra*.

6.2 Storageland Is Entitled to Modernize and Intensify its Land Use Under the Established Nonconforming Use Right.

In addition to the clear placement rights under KMC 18.12.270, a property owner is entitled to modernize, upgrade and increase use intensity within an established nonconforming use. After twenty years of operation, Storageland determined that it was time to improve and replace obsolete, deteriorated and unsecure storage units and areas. Storageland had always utilized mobile, portable and transportable units to store personal property. The units spanned a wide range of storage vehicles from truck trailers to portable wooden storage sheds. There was no functional difference between the antiquated storage vehicles and transportable containers. The fact is that the purpose and use for which the storage units were applied was literally identical to prior storage activities with the exception that open outdoor storage areas were reduced and personal property contained within secure fire-proof units. There was no change in the size, area or location of the outside storage area. And there were no new uses of the property.

To begin, the City of Kennewick has codified the right to continue an existing nonconforming use.

Any lawful use, including those allowed by permit but not yet completed at the time of a zone change or annexation, may be continued or completed, even though it does not conform with this Title and will be considered legal, nonconforming.

Nonconforming use or structure must be certified by the Planning Department and be maintained and repaired as such in accord with all other applicable regulations, per the Kennewick Municipal Code and applicable building codes.

KMC 18.09.1380. The courts have consistently recognized that a nonconforming use may grow in volume or intensity.¹⁸ *Kitsap Rifle & Revolver Club*, 184 Wn. App. at 268. Stated in another way, nonconforming use may be “intensified” but it may not be “expanded”. *Id.*, 184 Wn. App. at 268; and *City of University Place v. McQuire*, 144 Wn.2d 640, 649, 30 P.3d 453 (2001)(“under Washington common law, nonconforming uses may be intensified, but not expanded.”). The distinction between intensification and expansion was explained as follows:

When an increase in volume or intensity of use is of such magnitude as to effect a fundamental change in a nonconforming use, courts may find the change to be proscribed by the ordinance. [citation omitted]. *Intensification is permissible, however, where the nature and character of the use in unchanged and substantially the same facilities are used. [citation omitted]. The test is whether the intensified use is different in kind from the nonconforming use in existence when the zoning ordinance was adopted.*

Keller v. City of Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979). The use (storage of personal property) remained unchanged and did not differ in any respect from the established use.

In *Keller*, the Supreme Court determined that a chlorine manufacturing company’s addition of six cells to bring its building to design capacity (which increased its chlorine production by 20-25%) constituted an intensification rather than an expansion, and thus was permissible under the company’s chlorine manufacturing nonconforming use status. *Id.* 92 Wn.2d at 727-28. The court based this determination, in part, upon a finding that the addition of the new cells “wrought no change in the nature or character of the nonconforming use” and had no significant effect on the

¹⁸ The court in *Keller* adopted the following statement regarding growth in volume or intensity of a nonconforming use.

A nonconforming use of land . . . is not likely to remain static. . . . [I]t may grow in volume or intensity. . . . These changes in the level of use may have profound impact upon property in the areas where they are located, but the zoning regulations seldom includes specific provisions for restricting this kind of growth.

Citing *I R. Anderson, American Law of Zoning Section 6.47 (2nd) Ed. 1976*. City of Kennewick has not adopted any provisions prohibiting intensification of a nonconforming use. In *Keller*, the absence of an ordinance prohibiting intensification was construed to mean that the property owner was allowed to increase the intensity and production in the manufacturing facility.

neighborhood or surrounding environment. *Keller*, 92 Wn.2d at 731-32. See also, *Kitsap Rifle & Revolver Club*, *supra* (shooting range expansion of hours did not fundamentally change the nature and character of the ranges use). The modernization of the mini-storage facility with addition of transportable units did not change the nature or character of the storage land use and had no effect on the neighborhood or surrounding environment. If anything, it improved the environment.

As noted above, "...it is the general rule that an owner can modernize facilities and employ improved instrumentalities in connect with a nonconforming building or use." 8 A. McQuillian *Municipal Corporations* §25:223. The court addressed a similar issue in *Gordon Paving Co. v. Blaine County Bd. Of County Com'rs*, 98 Idaho 730, 572 P.2d 164 (1977).¹⁹ In *Gordon Paving*, the court approved the modernization of an asphalt plant in the context of a nonconforming use of the property. The court summarized the applicable law as follows:

At the most this case involves a reasonable substitution of more modern facilities for obsolescent equipment. Generally, such substitution does not constitute an enlargement or extension. *Chilson v. Board of Zoning Appeals*, 344 Mass. 406, 182 N.E. 2d 535 (1972); *Eitnier v. Kreitz Corporation*, 404 PA. 406, 172 A. 2d 320 (1961); *E.C. Schnieder, Inc. v. Zoning Board*, 389 PA. 593, 133 A. 2d 536 (1956).

Gordon Paving, 572 P.2d at 165. See also *Eddins v. City of Lewiston*, 150 Idaho 30, 244 P.3d 174 (2010) ("furthermore, the reasonable substitution of equipment or materials used in a business that is protected as a nonconforming use does not generally constitute an impermissible expansion or enlargement as long as the fundamental or primary use remains the same."). These principles are consistent with Washington law.

In the present case, there has been no change in the nature or character of either the use or outside storage facilities. At best (or perhaps worst) it could be argued that there has been an intensification of the historic storage use. In applying the *Keller* test, the intensified use is not "different in kind" from the historic nonconforming use. There has not been a change in the storage area or type of business or land use. Storageland is entitled to update and modernize storage through the use of transportable units.

¹⁹ In *Gordon Paving*, the mining and processing owners sought to upgrade a rock crushing and asphalt plant operation. The court recognized that an increase in volume of use is not an enlargement or extension of a nonconforming use and that reasonable substitution of more modern facilities for obsolescent equipment is permissible and not detrimental to the validity of the nonconforming use.

As a practical consideration, the appearance and functionality of the outdoor storage area is significantly improved with the addition of portable containers. The access and lay out complies with fire code requirements for fire lanes and access. Unsightly accumulations of property and dilapidated storage facilities have been replaced with a clean and organized storage arrangement.

6.3 The City of Kennewick Nonconforming Use Ordinance Recognizes and Allows Changes of Use.

Even if the introduction of transportable units is a “change of use” (which it is not), City of Kennewick zoning ordinance recognizes that a nonconforming use may be changed to another use including another nonconforming use. KMC 18.15.050 provides as follows:

A nonconforming use may be changed to another use only if such use is not more nonconforming than the existing nonconforming use and provided the nonconforming use has not been discontinued as per Section 18.15.020 above. The new use shall be approved using the applicable review process.

(Italics added). This ordinance provision recognizes that a property owner may change from one nonconforming use to another nonconforming use provided that such change does not result in a greater degree of nonconformity than the prior use.

As a beginning point, “...not every change in the method of a nonconforming use or in equipment, objects, or processes in connection with the use constitutes an unauthorized change of use.” 8A McQuillian *Municipal Corporation* § 25:213. It has been stated as follows:

And while it is impossible to formulate a hard and fast rule to distinguish permissible alterations from unauthorized changes, it has been said that a change which is de minimis is not detrimental to the philosophy of containment of nonconforming uses. Indeed, ordinances may specifically permit changes of nonconforming uses, within limitations. Thus, some ordinances permit a change from one nonconforming use to another if no structural alterations are made; and in the application of such an ordinance, it is of no consequence that a new contemplated nonconforming use is less objectionable than the existing use. Some ordinances permit the change of an existing nonconforming use if the new nonconforming use is of the same or less restrictive class. A decrease is distinguished from an enlargement of a nonconforming use may be favored and permitted. A manufacturing use relative to one produce may be changed to the same use as to another product, although a lawful manufacturing use cannot be changed to a use that is forbidden everywhere within the municipality. Similarly, a storage use as to one commodity may be changed to such use to another commodity.

Id. In this case, City of Kennewick has chosen to allow a change of use provided that the new use "...is not more nonconforming than the existing nonconforming use...."

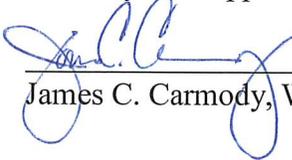
While Storgeland believes that there has not been a change in the nonconforming use, it is clear that the Kennewick ordinance is more liberal and provides additional flexibility for a land owner to change from one nonconforming use to another nonconforming use. The substitution of portable storage containers does not increase the nonconformity from established storage uses. The outside storage area has not been increased in size; loose and unsightly personal property has been enclosed; fire access has been improved; and the change does not increase external impacts from noise, light, glare or other use impacts.

VII. CONCLUSION

Storgeland requests the Examiner to confirm nonconforming use rights for mini-storage, including outside storage area, and placement of transportable units within the historic outside storage area.

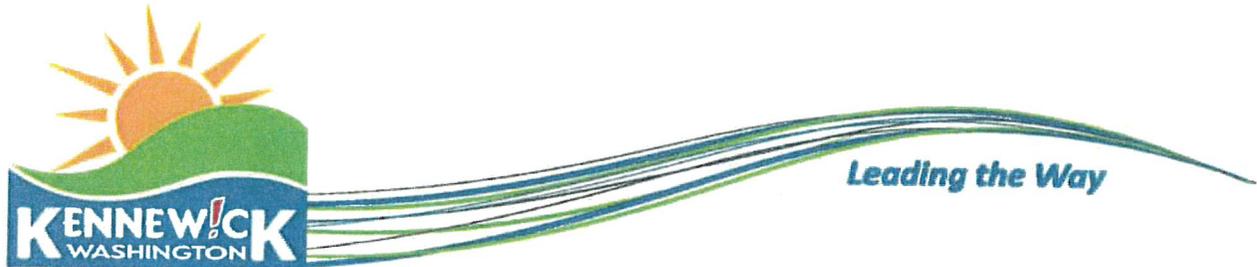
Dated this 2nd day of March, 2020.

MEYER, FLUEGGE & TENNEY, P.S.
Attorneys for Appellants



James C. Carmody, WSBA 5205

ATTACHMENT A



October 18, 2019

James Carmody
Attorney at Law
Meyer, Fluegge & Tenney, PS
230 South Second Street
Yakima, WA 98907

Re: Drew Landram and Storageland, LLC
108 West Columbia Drive
Kennewick, WA 99336

Dear Mr. Carmody:

Your client cannot proceed with the plans noted in your October 4, 2019 letter without submitting a formal site plan and obtaining site plan approval. However, a site plan would only be approved if the transportable units were a permitted use for your client's property. Your letter assumes the transportable units are a legal non-conforming use, but it is not as explained below.

The City is treating your letter as a request from your client for the Planning Director to certify the transportable units as a "legal" non-conforming use. *See* KMC 18.15.010. Your letter characterizes the transportable units as being just another form of "outside storage". I cannot certify that these storage containers are a legal non-conforming use. The Storageland property was zoned Commercial General up until 2017. Mini-storage was a permitted use in the Commercial General zone. Up until 2017 transportable units for permanent storage were allowed on Commercial zoned property with a permit. The roughly 100 transportable units are a non-conforming use as Mr. Landrum failed to obtain a permit for the containers when they were first placed on the property in 2016. The City has no record of a permit being issued for the transportable units prior to the adoption of Ordinance 5712 in 2017. This ordinance amended KMC 18.12.270 by removing the provision which allowed transportable units to be used for permanent storage in the commercial zone (with a permit). Ordinance 5712 added a new section



Leading the Way

which allowed transportable units to be used in the UMU zone for business activities other than storage. Also in 2017 the City adopted Ordinance 5723 which changed the zoning for this property from Commercial General to Urban Mixed Use. Mini-storage is not a permitted use in the Urban Mixed Use zone. The main structure for Storageland and the small sheds in the back are legal non-conforming. However the transportable units are not legal non-conforming. As these transportable units are not legal non-conforming and the UMU zone does not allow transportable units for permanent storage, the transportable units will need to be removed. As discussed in previous meetings with Mr. Landrum the City would be willing to enter into a Voluntary Correction Agreement with Mr. Landrum to allow time for removal.

The decision of the Planning Director may be appealed to the Hearing Examiner per KMC 18.54.020(2). The appeal must be submitted within 10 days of the Planning Director's decision.

Very Truly Yours,

Wes Romine for
Gregory McCormick
Planning Director

cc: Lisa Beaton, City Attorney
Evelyn Lusignan, Public Relations & Government Affairs Director

ATTACHMENT B



Google

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ATTACHMENT C

THE LAW OFFICES OF
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May 7, 2019

Via email

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Lisa Beaton
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Re: Drew Landram and Storageland, LLC
108 West Columbia Dr., Kennewick, WA 99336

Dear Ms. Beaton and Mr. Romine:

We look forward to meeting with you to discuss land use compliance for the Storageland storage facility located at 108 West Columbia Dr., Kennewick, WA. As you know, I represent Drew Landram and Storageland, LLC. We want to address issues related to container storage on the site and work toward an amicable resolution that furthers both parties' interests.

In anticipation of the meeting, we wanted to provide some preliminary thoughts, background and considerations with respect to both the historic and current property uses. It is our understanding that the City of Kennewick is of the opinion that the placement of storage containers within the outside storage areas is contrary to applicable municipal codes. After reviewing the property history, current use and applicable ordinance and case authorities, it is our opinion that the property and use is a legal nonconforming use of the property.

Issues Presented for Review.

Drew Landram has owned and operated a storage facility and business at 108 West Columbia Drive for approximately 25 years. The property is owned by Landram Living Trust and operated by Storageland,

LLC, a Washington limited liability company.¹ The property is zoned Urban Mixed-Use (UMU). The property has been historically and consistently utilized as an outside storage area for portable sheds, trailers, recreational vehicles and a variety of personal property items. There should be no question that the storage use and operation is a legal nonconforming use. The issue presented is whether the use of cargo containers for storage is an unlawful enlargement or change in the nonconforming use.

Factual Background on Storage Use History.

Drew Landram purchased the property in the mid-1990's and used the building and outside areas as a storage facility for third-party rental and storage of items of personal property. Following the purchase of the property, Landrum converted the building to a storage facility. All construction was undertaken with the necessary permits for the mini-storage facility.² The current building structure is 53,000 square feet and there are approximately 400 rental units. In addition to the storage building, the property and storage area includes approximately 2.5 acres of fenced open ground that has been historically utilized for additional storage of personal property, trailers, vehicles, materials and similar items ("outside storage area"). The storage facilities have included portable sheds, trailers and recreational vehicle/automobile storage. The outside storage area also includes eight 30' x 80' storage yards, each containing a 10' x 20' portable storage unit. The outside storage area is clearly defined and fenced. This use has been continuous for decades. I have attached photographs of the prior outside storage areas. *Attachment A.*

The outside storage area was fully occupied by a combination of portable storage units, trailers, recreational vehicles, automobiles/trucks and open storage areas. The site has historically included a large number of portable wooden storage sheds. Each unit was rented to third parties. The use generates minimal traffic, noise or other external impact. There have been no unaddressed code violations and the facility meets applicable code requirements. There has been no change in the size or use of the outside storage area.

Storageland made a decision to significantly upgrade both the security and appearance of the outside storage area. The unsightly and dilapidated storage components were removed and replaced with neatly placed portable container storage. The intent was to continue the historic use of the open storage area but do so in a neat, clean and secure manner. I have attached photographs of the current storage areas. *Attachment B.* A simple comparison of historic storage with current storage illuminates the significant site improvement. It is Storageland's intent to continue site improvements. Of significance, however, is that the *use* of the outside storage area has not changed in any manner.

The outside storage area remains identical to the historic storage areas for the facility. The manner of storage also remains the same with primary storage within portable containers. There has been no expansion or enlargement of either the mini-storage building or the outside storage area. The addition of the portable containers does not change the property use.

¹ Storageland, LLC ("Storageland") was formed on July 23, 2008. Andrew and Susan Landram are the "governors" or sole members of the limited liability company. Storageland manages the storage business and property.

² KMC 18.09.1290 defines "mini-storage" as "...a facility which provides storage spaces for the storage of domestic goods. Units may not be used for commercial or residential purposes."

Storageland has tried to have a good relationship with the city and has had minimal dealings with code enforcement over the last 25 years. Most of these dealt with screening the fence on the north end of the property. In all cases, Storageland has been cooperative with code enforcement. At no time during any code inspection visit or other communication with the City was there a question raised regarding the use of the property as an integrated storage facility. The most recent inspection confirmed adequacy of fire lanes and requested correction and improvement of a single gate area. Storageland fully complied with the request. Having said this Storageland is aware of the physical appearance of storage yards and has chosen to make a significant investment in improved storage units and facilities.

It is apparent that the current condition and appearance of the property is significantly improved with the use of portable containers. The containers are uniformly painted and much cleaner and more attractive than the previous portable storage on the property. Stored materials are also more secure and safer in the containers. Security cameras are in place around the entire property and Storageland has been responsive and thoughtful regarding the needs of neighboring property owners. To our knowledge, there have been no complaints.

Storageland Facility is a Legal Nonconforming Use.

There are three significant points with respect to historic and current usage of the property: (1) the use of the outside storage area has remained consistent over the past 25 years; (2) there has been no enlargement of the structural component of the storage facility; and (3) there has been no expansion or enlargement of the outside storage area. Stated in another way, there has been no structural or functional enlargement of the storage facility. The same parcel is being used in the same manner as it has been used over the past 25 years.

To begin, City of Kennewick recognizes and authorizes continuation of legal nonconforming structures and uses. The nonconforming use provisions apply to both “structures” and “uses”. A nonconforming structure or use is defined as follows:

Nonconforming Structure or Use means an existing structure or use that was in conformance with effective existing code at the time or annexed prior to the adoption, revision, or amendment of the comprehensive plan and/or this title, but which now does not conform to the requirements of the comprehensive plan and/or this title and/or the requirements of the zoning district in which it is located.

KMC 18.09.130. The ordinance definition is consistent with applicable case authority. See, e.g. *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 268, 337 P.3d 328 (2014). This case does not deal with a nonconforming structure. Rather, the issue relates to the scope and extent of established property *use* rights. The courts have allowed historic uses to continue as vested or grandfathered rights due to the fairness and due process concerns of the land owners. *Rhod-A-Zalea & 35th Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998). It is also clear that “[n]onconforming uses do not

always remain static.” *Meridian Minerals Co. v. King County*, 61 Wn. App. 196, 208, 810 P.2d 31 (1991); and *Keller v. Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979).

The City of Kennewick has codified the right to continue an existing nonconforming use.

Any lawful use, including those allowed by permit but not yet completed at the time of a zone change or annexation, may be continued or completed, even though it does not conform with this Title and will be considered legal, nonconforming. Nonconforming use or structure must be certified by the Planning Department and be maintained and repaired as such in accord with all other applicable regulations, per the Kennewick Municipal Code and applicable building codes.

KMC 18.15.010. A nonconforming use may be terminated under limited circumstances where there has been a cessation of use for a period of six (6) months. KMC 18.15.020. There are also limitations on expansion of “nonconforming structures”. KMC 18.15.060 (allowing a twenty-five percent (25%) increase in building area, land area, and/or parking area). In the present case, there is no increase in land area and/or parking area.

The Kennewick nonconforming use ordinance contains no provision prohibiting *intensification* of the nonconforming land use.³ The courts have recognized that “...zoning ordinances...are not to be extended beyond the clear scope of legislative intent as manifest in their language.” *Keller v. Bellingham*, 92 Wn.2d 726, 730, 600 P.2d 1276 (1979); and *State ex rel. Standard Mining & Dev. Corp. v. Auburn*, 82 Wn.2d 321, 510 P.2d 647 (1973). There has been no discontinuance or break in use of the property of a storage facility. More specifically, the outside storage area has always utilized portable storage containers for storage purposes. And there has been no expansion of a “nonconforming structure” under applicable ordinance provisions. KMC 18.15.060.

The courts have consistently recognized that a nonconforming use may grow in volume or intensity.⁴ *Kitsap Rifle & Revolver Club*, 184 Wn. App. at 268. Stated in another way, nonconforming use may be

³ A similar nonconforming structure and use ordinance was considered in *Keller v. Bellingham*, 92 Wn.2d 726, 600 P.2d 1276 (1979). In *Keller*, Georgia-Pacific corporation operated a chlor-alkali plant in Bellingham, Washington. The chlor-alkali facility was a legal nonconforming structure and use under the municipal zoning ordinance. Georgia Pacific sought to increase the scope and intensity of the production facility by adding six new cells which resulted in a 20-25% increase in production. The ordinance structure addressed limitations on enlargement of a nonconforming use but did not contain any prohibitions on “intensification” of the nonconforming use operation. *Keller*, 92 Wn.2d at 731. The court found that it was significant that “...[a]lthough the Bellingham zoning ordinance could have specifically prohibited intensification of a nonconforming use by reference to a specified volume of such use, it did not do so.”

⁴ The court in *Keller* adopted the following statement regarding growth in volume or intensity of a nonconforming use.

A nonconforming use of land ...is not likely to remain static....[I]t may grow in volume or intensity.... These changes in the level of use may have profound impact upon property in the areas where they are located, but the zoning regulations seldom includes specific provisions for restricting this kind of growth.

Citing *I R. Anderson, American Law of Zoning Section 6.47 (2nd) Ed. 1976*. City of Kennewick has not adopted any provisions prohibiting intensification of a nonconforming use. In *Keller*, the absence of an ordinance prohibiting

“intensified” but it may not be “expanded”. *Id.*, 184 Wn. App. at 268; and *City of University Place v. McQuire*, 144 Wn.2d 640, 649, 30 P.3d 453 (2001)(“under Washington common law, nonconforming uses may be intensified, but not expanded.”). The distinction between intensification and expansion was explained as follows:

When an increase in volume or intensity of use is of such magnitude as to effect a fundamental change in a nonconforming use, courts may find the change to be proscribed by the ordinance. [citation omitted].
Intensification is permissible, however, where the nature and character of the use in unchanged and substantially the same facilities are used. [citation omitted]. The test is whether the intensified use is different in kind from the nonconforming use in existence when the zoning ordinance was adopted.

Keller, 92 Wn.2d at 731 and *Kitsap Rifle & Revolver Club*, 184 Wn. App. at 269. The courts have held that an increase in volume of activity is an allowed intensification. See e.g., *Kitsap Rifle & Revolver Club, supra* (shooting range expansion of hours did not fundamentally change the nature and character of the ranges use); and *Keller, supra* (increase in plant production by between 20-25% and addition of six 50-foot long electrolytic cells was “...merely an intensification because it did not result in a use that was ‘different in kind’”).

In the present case, there has been no change in the nature or character of either the use or outside storage facilities. At best (or perhaps worst), it could be argued that there has been an intensification of the historic storage use. In applying the *Keller* test, the intensified use is not “different in kind” from the historic nonconforming use. There has not been a change in the magnitude of the use such as to effect a fundamental change in the land use.

The introduction of containers for storage is consistent with historic use of the outdoor storage area. Portable containers were always a component of the facility. There has been no change in the use of the property and, at best, the introduction of clean, neat and organized container storage is simply a permissible “intensification” of the nonconforming use.

As a final point, the City of Kennewick recognizes that a nonconforming use may be changed to another nonconforming use under certain circumstances. KMC 18.15.050 sets forth this rule:

A nonconforming use may be changed to another use only if such use is not more nonconforming than the existing nonconforming use and provided the nonconforming use has not been discontinued as per Section 18.15.020 above. The new use shall be approved using the applicable review process.

intensification was construed to mean that the property owner was allowed to increase the intensity and production in the manufacturing facility.

While Storageland believes that there has not been a change in the nonconforming use, it is clear that the Kennewick ordinance is more liberal and provides flexibility for a land owner to change from one nonconforming use to another nonconforming use. The substitution of portable storage containers does not increase the nonconformity from established storage uses. The outside storage area has not been increased in size; loose and unsightly personal property has been enclosed; fire access has been improved; and the change does not increase external impacts from noise, light, glare or other use impacts.

As a practical consideration, the appearance and functionality of the outdoor storage area is significantly improved with the addition of portable containers. The access and lay out complies with fire code requirements for fire lanes and access. Unsightly accumulations of property and dilapidated storage facilities have been replaced with a clean and organized storage arrangement.

Storageland Proposal for Outside Storage Area.

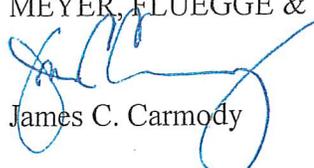
Having addressed the issue of nonconforming use continuation, Storageland is interested in reaching an amicable resolution for use of the area in a manner that further enhances the appearance of the property and functionality of the storage use. Storageland would propose the following:

- (1) Any container storage unit located outside of the historic outside storage area would be removed and placed within the outside storage area. This would specifically include removal of the container storage units adjacent to West Columbia Drive and Auburn Street.
- (2) All Fire Access roads and gates would be maintained in a manner consistent with instructions provided by the City Fire Department.
- (3) Areas between the fence and containers would be landscaped and maintained based upon a mutually acceptable landscape plan. Landscaping would also include the gravel area along Auburn Street and Entiat Street.
- (4) Any stored items placed on top of units would be removed.

We believe that this proposal goes beyond any legal requirements or responsibilities. It is and has been Storageland's intent to work with the City of Kennewick in a cooperative manner that recognizes nonconforming use rights but results in improved public appearance of the property. We understand that this is an area in transition and there may come a time when the highest and best use of the property is for something other than the historic nonconforming use.

We look forward to meeting with you.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.



James C. Carmody

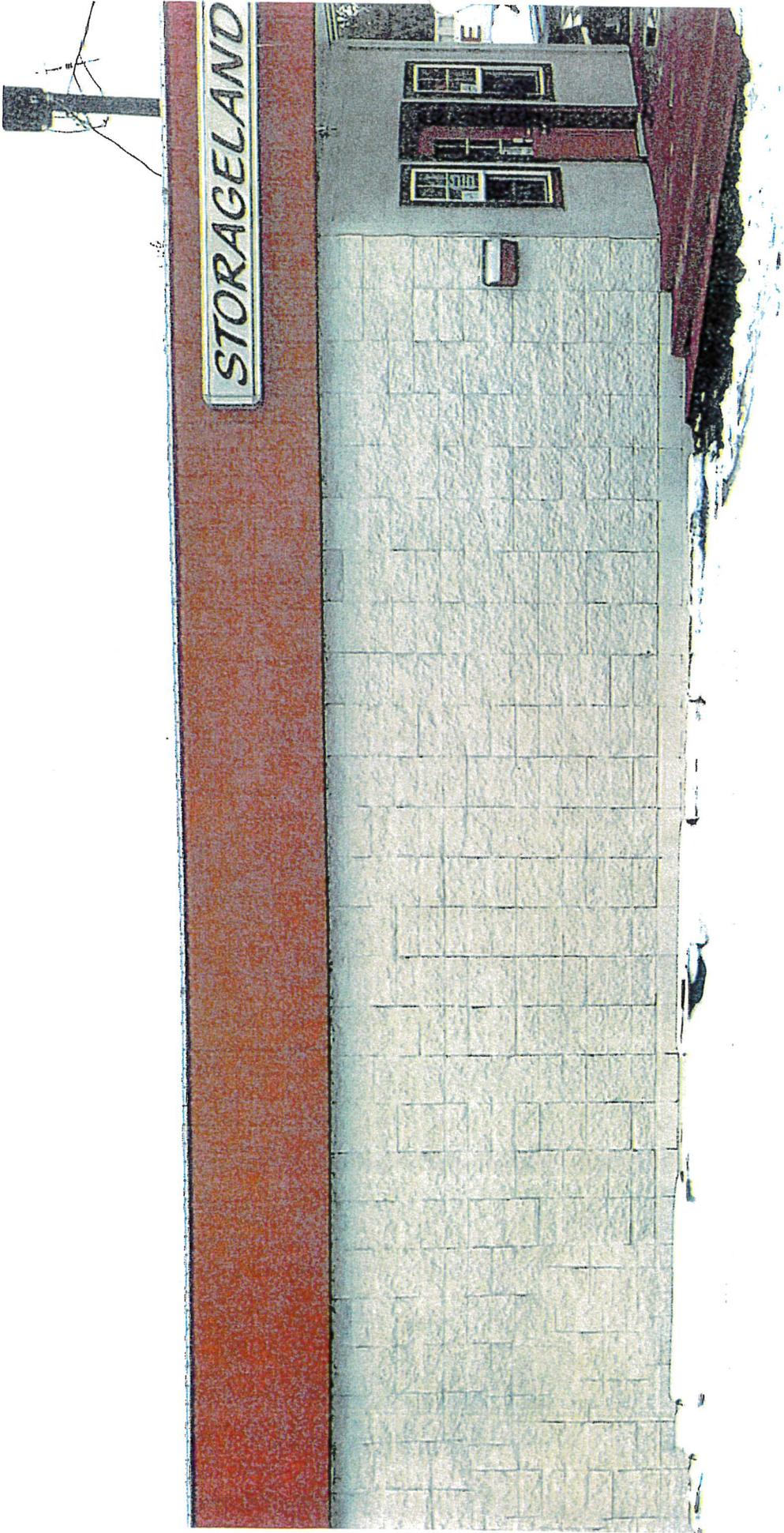
cc: Client (via email)

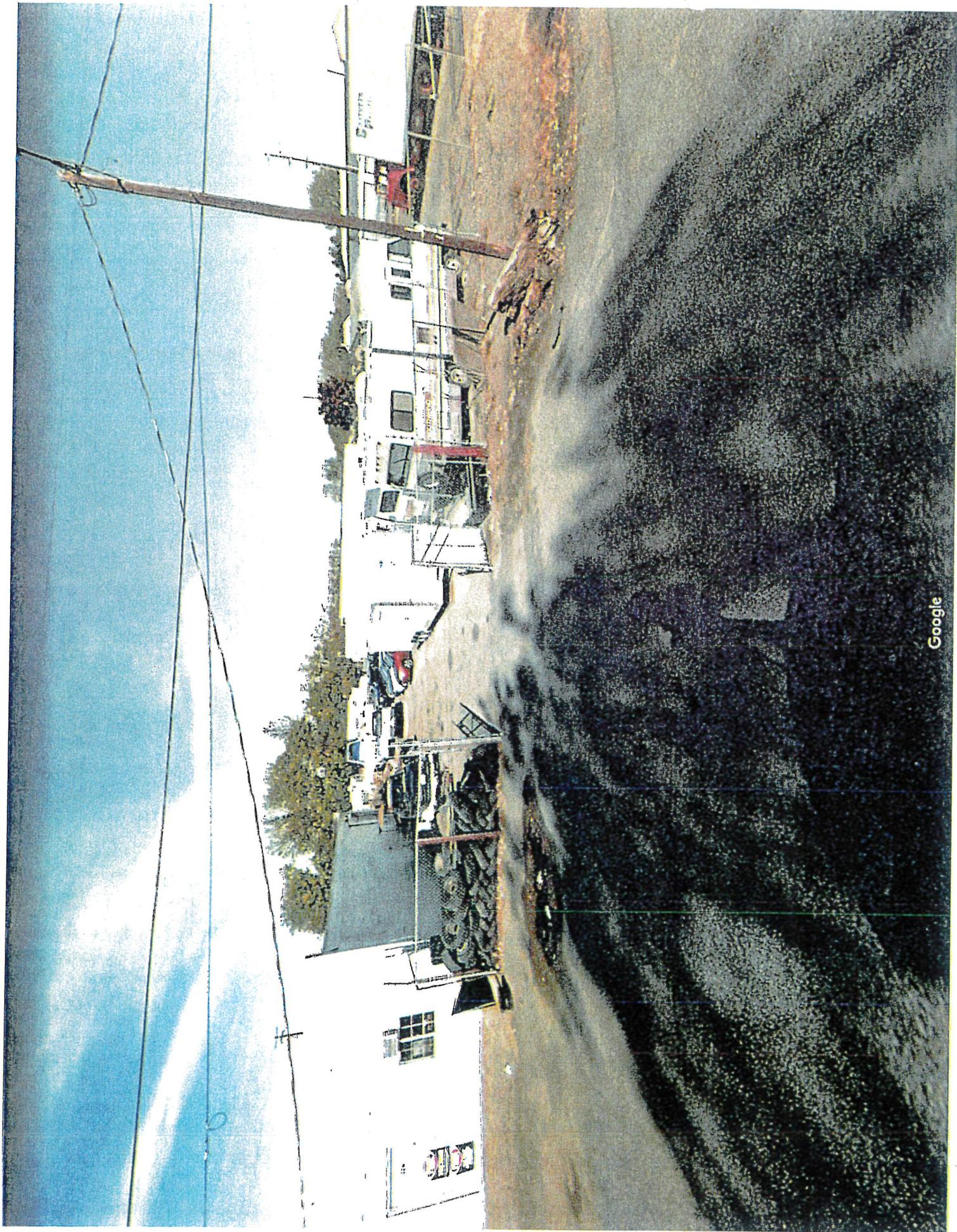
Attachment A: Photographs of prior outside storage area

Attachment B: Photographs of current storage area

ATTACHMENT A

STORAGELAND



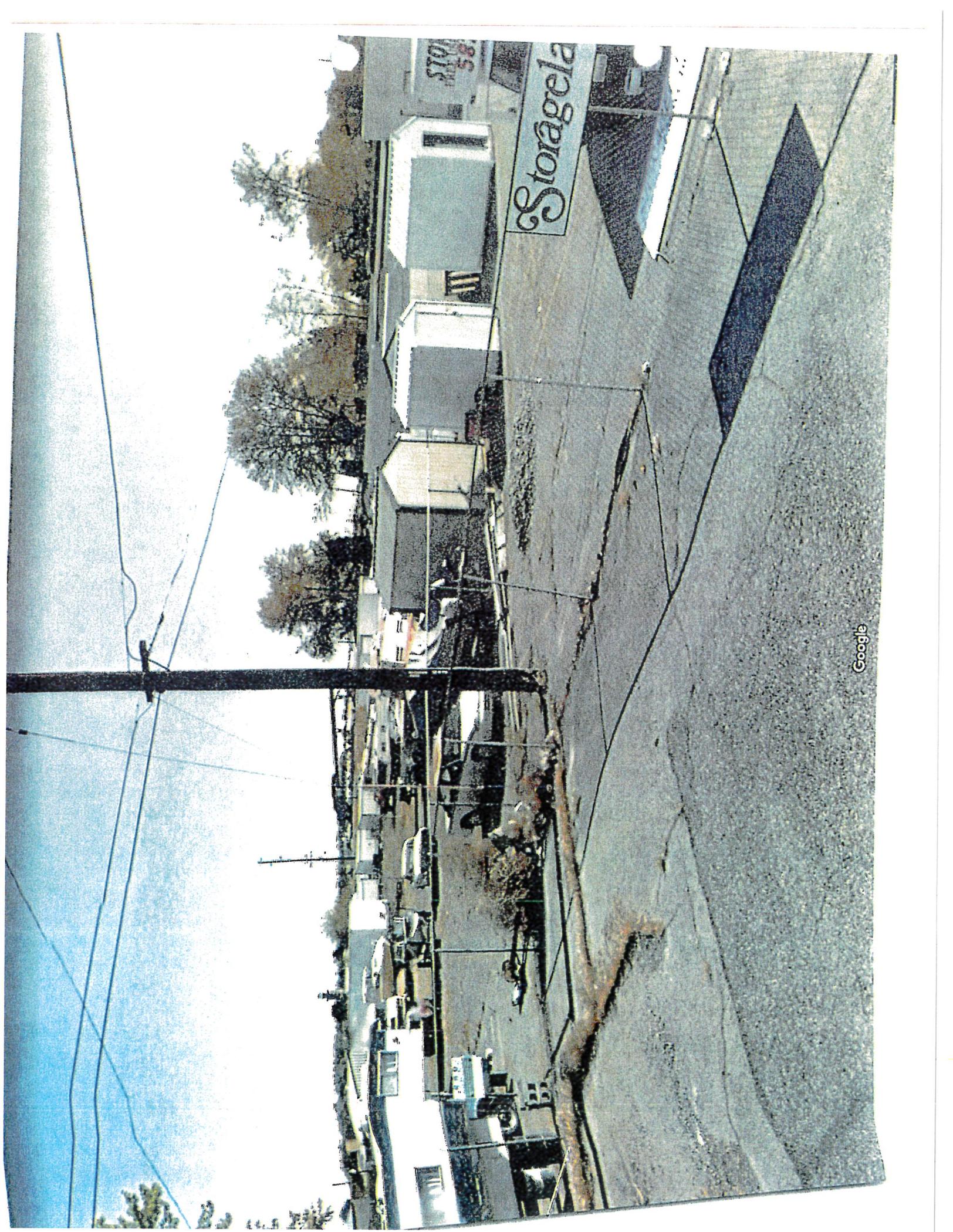


Google









Google



ATTACHMENT B

THANK YOU FOR
STORING WITH US

SLOW

SLOW

BC-20

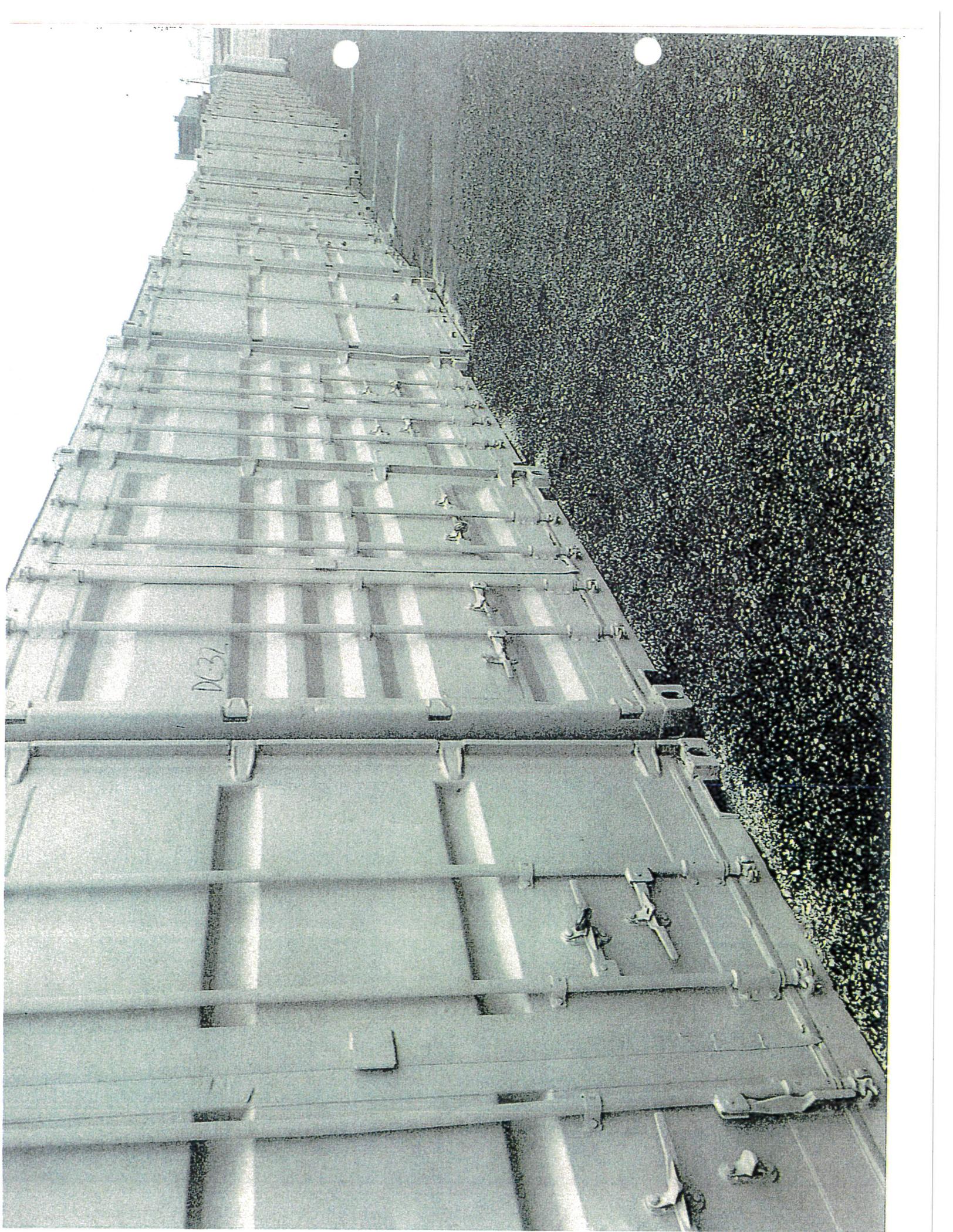
2/11





EC31

EC31



DC-37



ATTACHMENT D

THE LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.

230 South Second Street, Suite 101
P.O. Box 22680
Yakima, Washington 98907-2680

DENNIS L. FLUEGGE
ROBERT C. TENNEY
MARK D. WATSON*
JEROME R. AIKEN*
JOHN A. MAXWELL, JR.
PETER M. RITCHIE**
* Also admitted in Oregon
** Also admitted in Virginia

JAMES C. CARMODY
***GARY E. LOFLAND
SEAN M. WORLEY
JACOB A. LARA
*** Of Counsel

carmody@mftlaw.com

October 4, 2019

Lisa Beaton, City Attorney
City of Kennewick
210 West 6th Avenue
Kennewick, WA 99336

Wes Romine, Development Services Manager
City of Kennewick
210 West 6th Avenue
Kennewick, WA 99336

Re: Drew Landram and Storageland, LLC
108 West Columbia Drive
Kennewick, WA 99336

Dear Ms. Beaton and Mr. Romine:

We are writing to follow-up on our conversations regarding the Storageland, LLC (“Storageland”) property located at 108 West Columbia Drive, Kennewick, WA. The purpose of this letter is to set forth a plan for continued improvement of the property and use of the outside storage area portion of the property. As we discussed, the outside storage area has historically utilized portable sheds, trailers, recreational vehicles and a variety of other storage arrangements. The intent is to continue historic use but convert the manner of storage to a neat, organized and defined storage area with clear access, internal driveways and landscaping. The conversion will involve a significant investment by Storageland but will result in a substantial upgrade to the property. There will be no expansion or enlargement of the storage area and improvements will be consistent with legal nonconforming use rights and responsibilities.

Existing Mini-Storage and Outside Storage Areas.

Storageland property currently includes a 53,000 foot building structure containing approximately 450 rental units. In addition to the storage building, the property and storage area includes approximately 2.5 acres of fenced open ground that had been historically utilized for storage of personal property, trailers, vehicles, materials and similar items (“outside storage area”). The manner of storage included an inconsistent assemblage of portable sheds, recreational vehicles, vans, open storage and construction yards. The appearance was cluttered and inconsistent. The outside storage area was clearly defined and fenced. The current proposal utilizes only that area that had been historically utilized for additional storage. There is no enlargement or modification of the use area.

The storage plan does not change historic use. It simply organizes the manner of storage, defines fire access road, removes clutter and provides exterior landscaping. The outside storage area remains identical to the historic storage areas for the facility. The manner of storage also remains the same with primary storage within portable containers. There has been no expansion or enlargement of either the mini-storage building or the outside storage area. The addition of the portable containers does not change the property use.

Proposed Site Plan, Improvements and Landscaping.

Storageland proposes to remove remaining contractor yard storage facilities and continue conversion to uniform cargo containers. A site plan has been developed to identify the general layout, container configuration, access points and internal traffic flow. *Attachment A*. The redevelopment plan calls for storage units consisting of three primary sizes: (1) 8 foot x 20 foot storage container; (2) 8 foot x 40 foot storage container; and (3) smaller 5 foot by 8 foot wooden storage units to fill in smaller areas. The units are not intended for shipping or transportation of contents. With respect to the Site Plan, the following elements are incorporated.

1. The storage units will have a generally uniform appearance with consistent height dimensions. The existing contractor yards with open yard storage will be abandoned and vacated in favor of the uniformly painted containers. Pictures of the existing contractor yards are included. *Attachment B*. The sole on-site activity will be storage of personal property. There will be no active regular use of any portion of the storage area for tenant work areas.
2. All units will be neatly placed as depicted on the site plan. The units will be painted a uniform color. There would be no advertising or other signage contained on any individual unit other than storage unit number.
3. Any containers adjacent to the storage building along Columbia Drive and Auburn Street or placed outside of existing fenced areas would be moved into the interior storage area shown on the site plan.
4. All equipment, personal property, supplies, vehicles and other materials will be removed from the tops of storage containers.
5. All access would be through existing fire lanes as more particularly addressed in conversations with the fire department. Each fire lane would be 20 feet in width and meet International Fire Code (IFC) fire access road requirements. The appropriate turning radiuses are provided and shown on the Site Plan. There would be four (4) primary entrance locations on North Auburn Street, West Entiat Avenue and Benton Avenue. The locations are identified on the site plan.
6. All personal property shall be stored within the storage units. **There will be no storage allowed on top of the storage units or within open areas.** The storage area will be maintained in a neat and clean condition at all times.

Storageland will landscape the perimeter areas of the outside storage areas. Three different landscaping plans are attached for your consideration. *Attachment C*. The landscaping would include the following elements:

- (a) The options provide for either evergreen or deciduous trees. Plantings would require that focus trees would be at least six feet in height within three (3) years.
- (b) The landscaped area would be fertilized, irrigated and pruned in a regularly scheduled manner. The area would be kept free from debris and dead or diseased trees, shrubs or bushes would be removed and replaced within thirty (30) days.
- (c) The landscape area would be approximately five feet (5') in width and trees would be placed at a density of at least one tree every fifty feet (50'). At least two shrubs would be planted between trees. Vision triangles would be preserved at each intersection.

The site and landscaping plan will result in a significantly improved appearance of the outside storage area. It will provide a uniform streetscape, clean and unclutter storage area, elimination of construction yards and commercial work areas, remove unsightly open outside storage and add landscaping. In addition, fire access will be improved and fire risk reduced through use of containers with all property stored inside individual units. The project involves a substantial investment but results in a significantly improved property use and appearance.

Storageland is planning on beginning on the following on October 21, 2019, unless we here otherwise from you. The process would include the following:

- (a) Removal of all property and equipment from the tops of units;
- (b) Removal of all containers along Columbia Drive and Auburn Street (or any units placed outside of existing fenced areas) with placement into the interior storage area shown on the site plan;
- (c) Begin and complete landscaping of areas along Auburn Street and Entiat; and
- (d) Removal of all contractor yards and replacement with uniform painted containers.

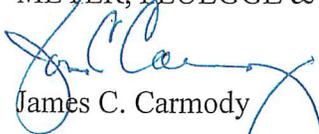
Storageland contemplates that this work can be completed by the end of the year. Some additional time may be required for relocation of tenants currently leasing the contractor yards. Storageland would, however, commit to work in a prompt and efficient way to accomplish the improvement of the property.

The use would be recognized as a legal nonconforming use that is subject to local regulation. We would be happy to discuss any aspect of the plan with you in order to reach a mutually acceptable structure for the nonconforming use.

If you have any questions regarding improvement plan could you please contact us by October 21, 2019, so we could address any of your concerns. When completed this will lead to a much improved neighborhood.

Thank you for your consideration.

Very truly yours,
MEYER, ELUEGGE & TENNEY, P.S.



James C. Carmody

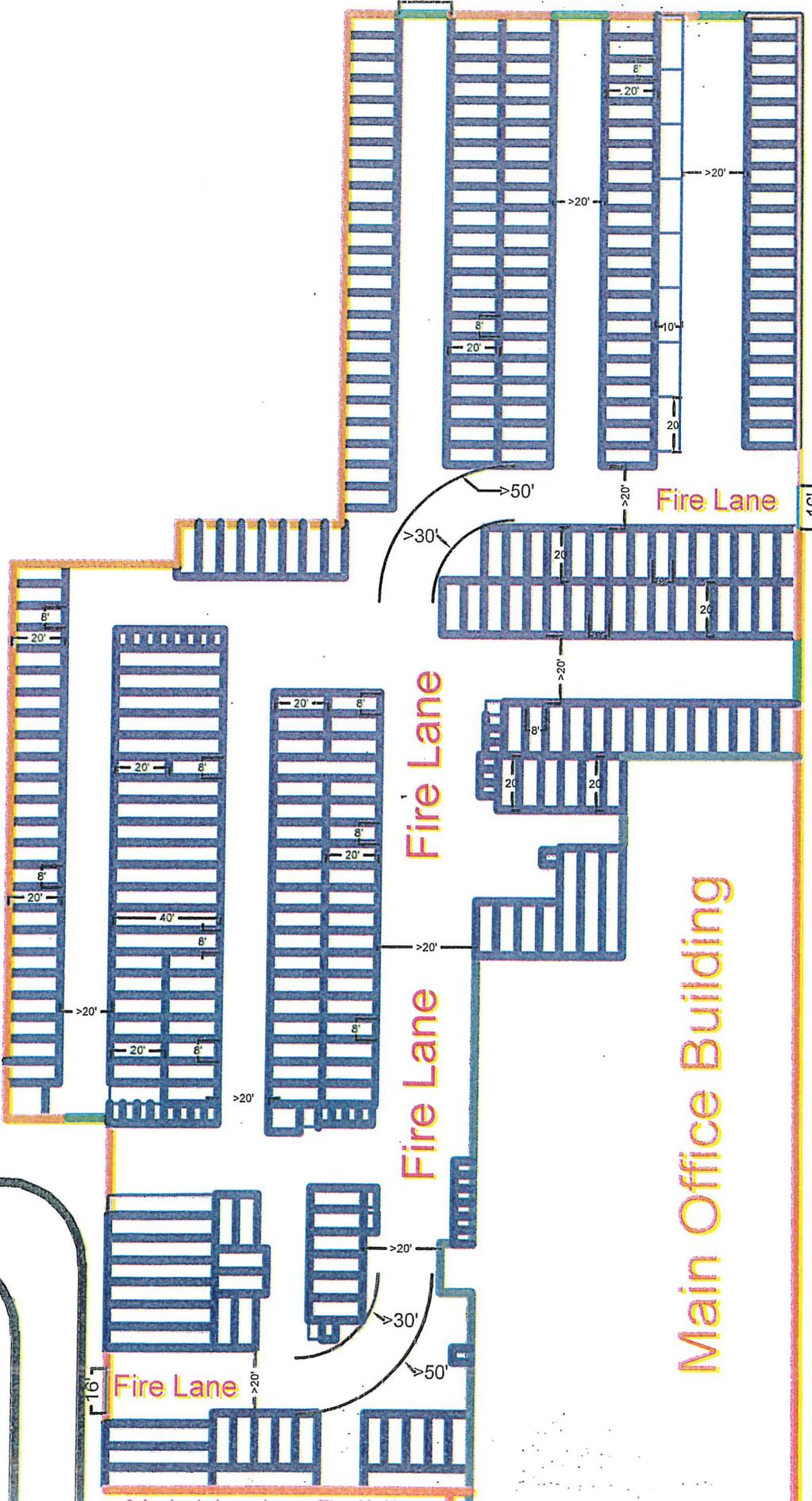
Enclosure: Attachment A – Site Plan
Attachment B – Landscaping Options

cc: Client

ATTACHMENT A

W Entiat Ave

N Auburn St



Fire Lane

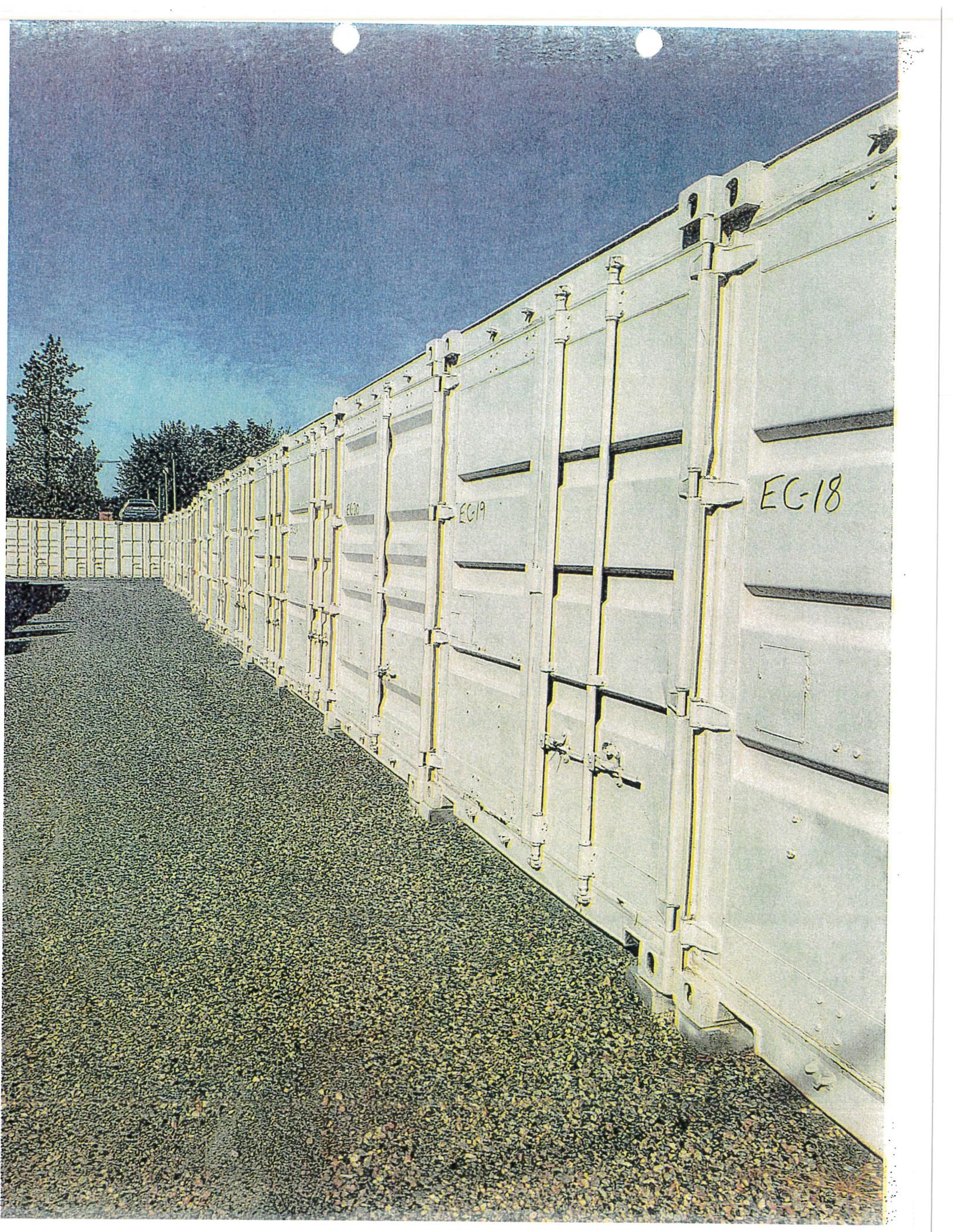
Fire Lane

Main Office Building

Fire Lane

Neighboring Building

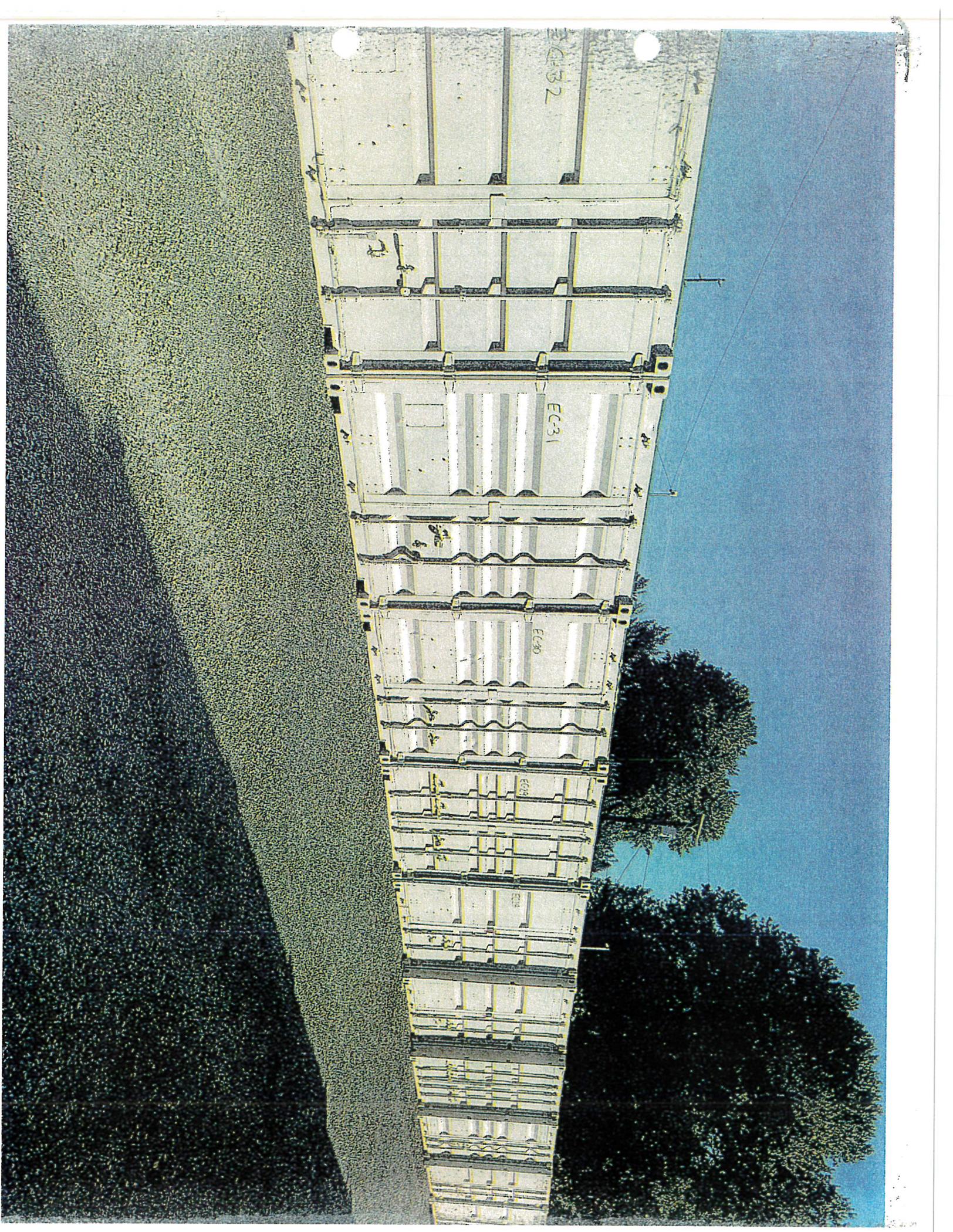
ATTACHMENT B



EC-18

EC-19

EC-20



EC-32

EC-31

EC-30

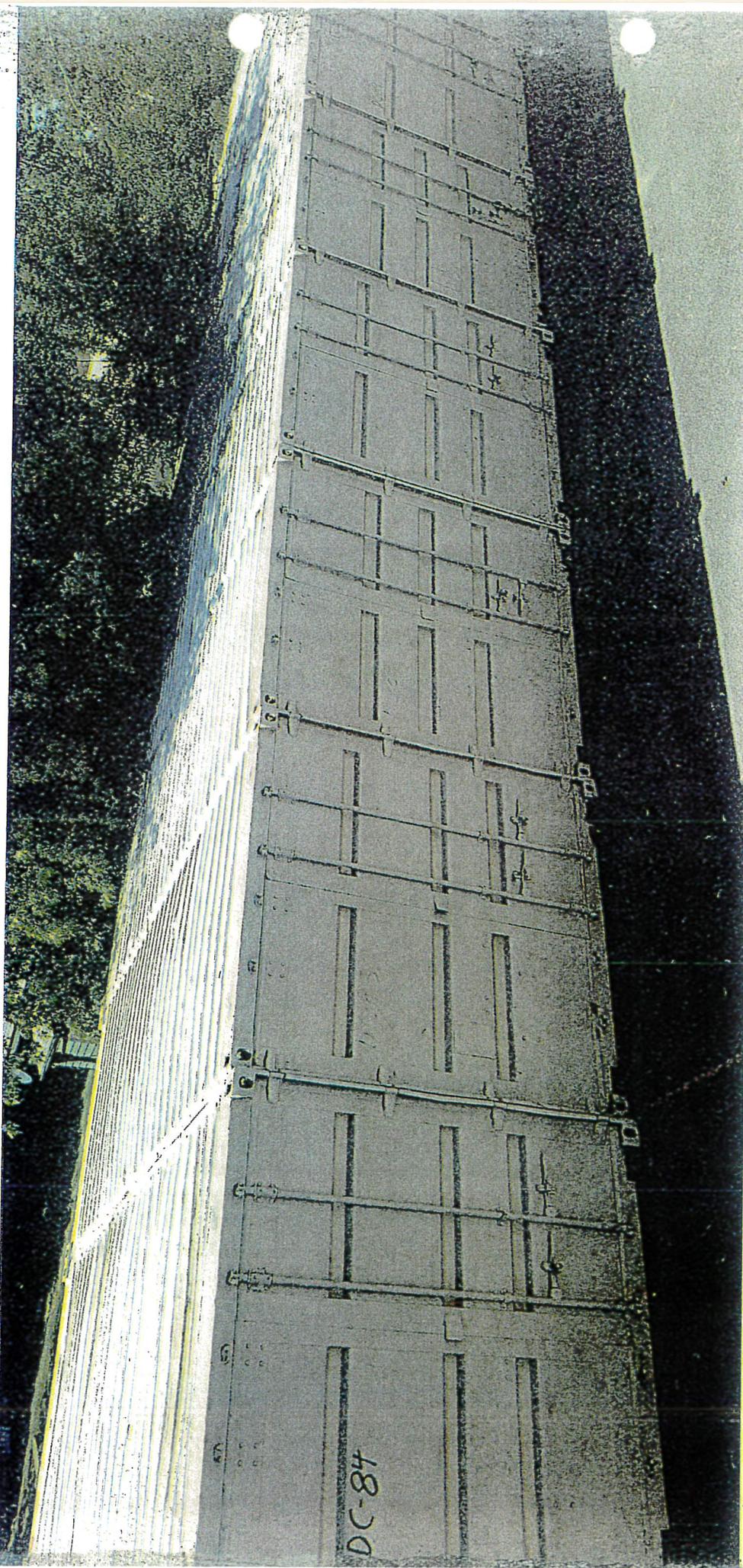
EC-29

EC-28

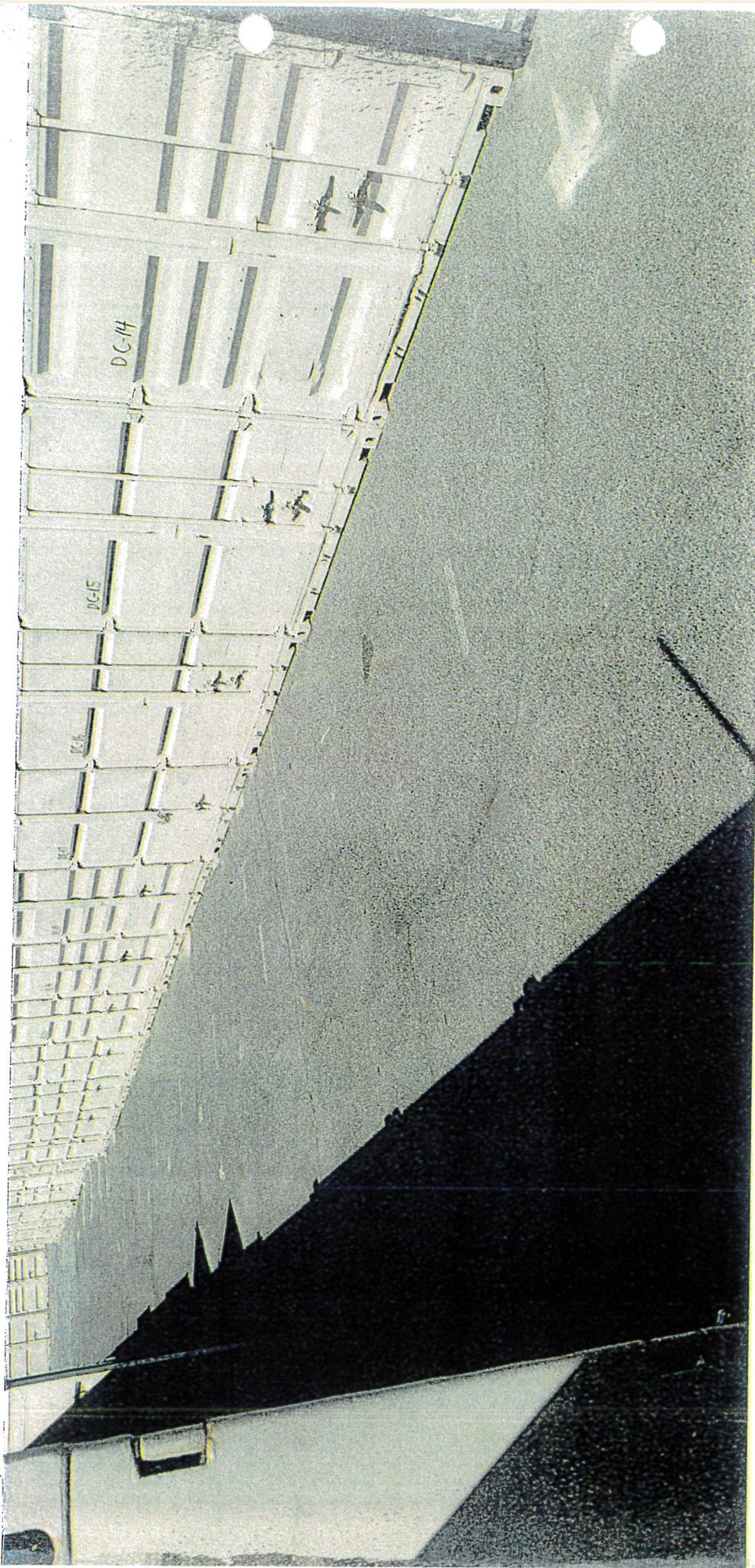
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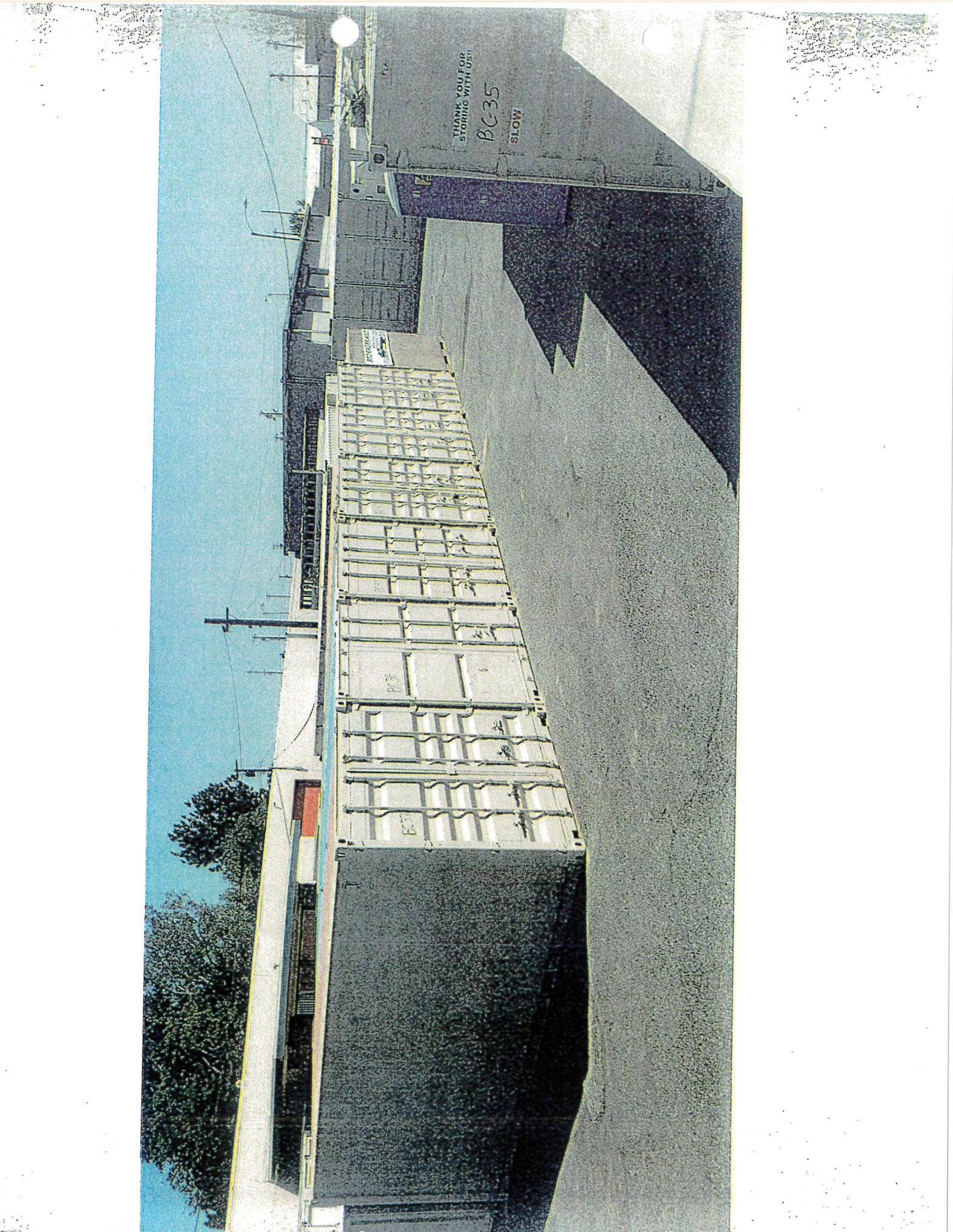
EC-26

EC-25



DC-84





THANK YOU FOR
STORING WITH US!!
BC35
SLOW

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P22

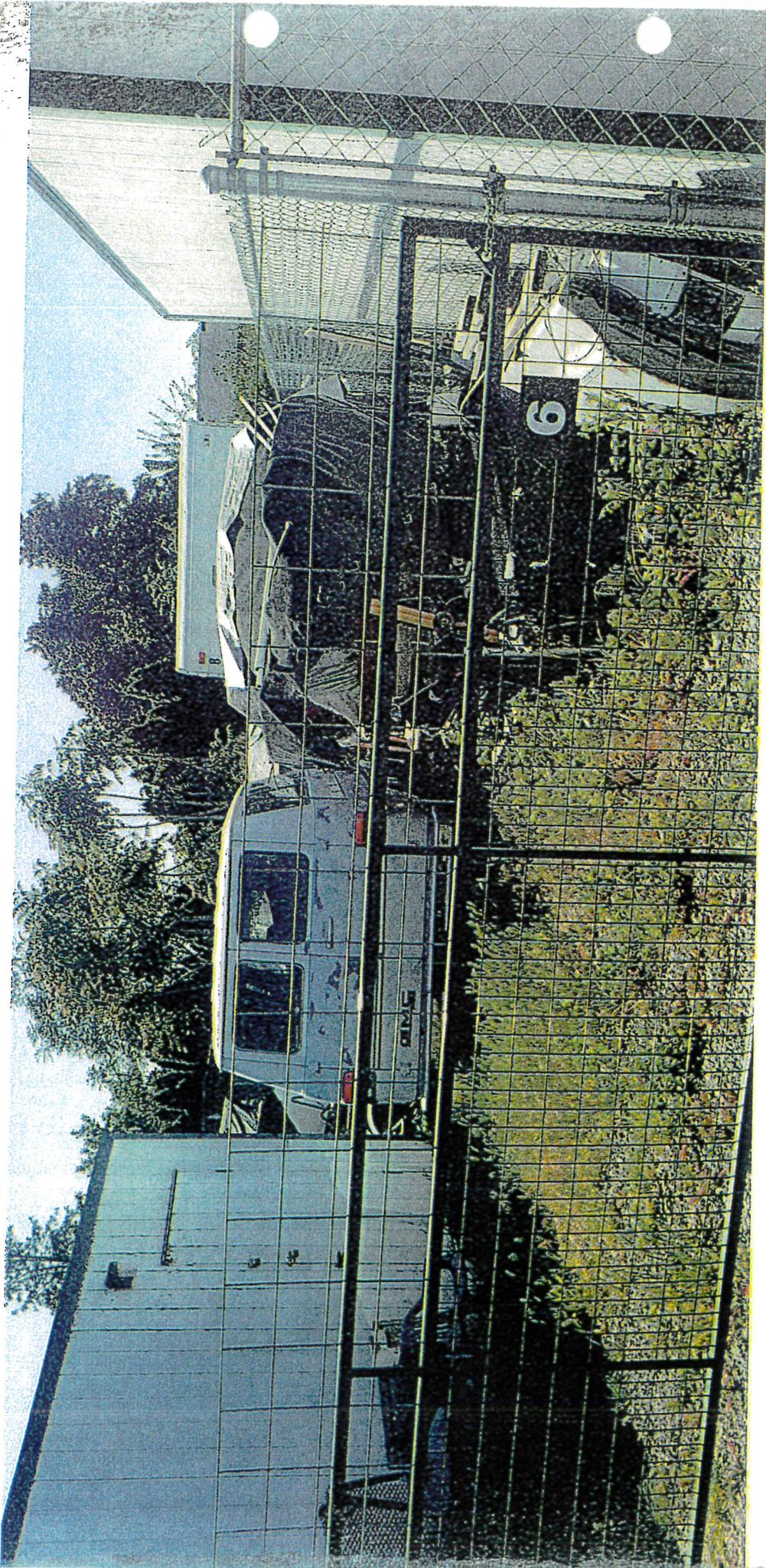
B37

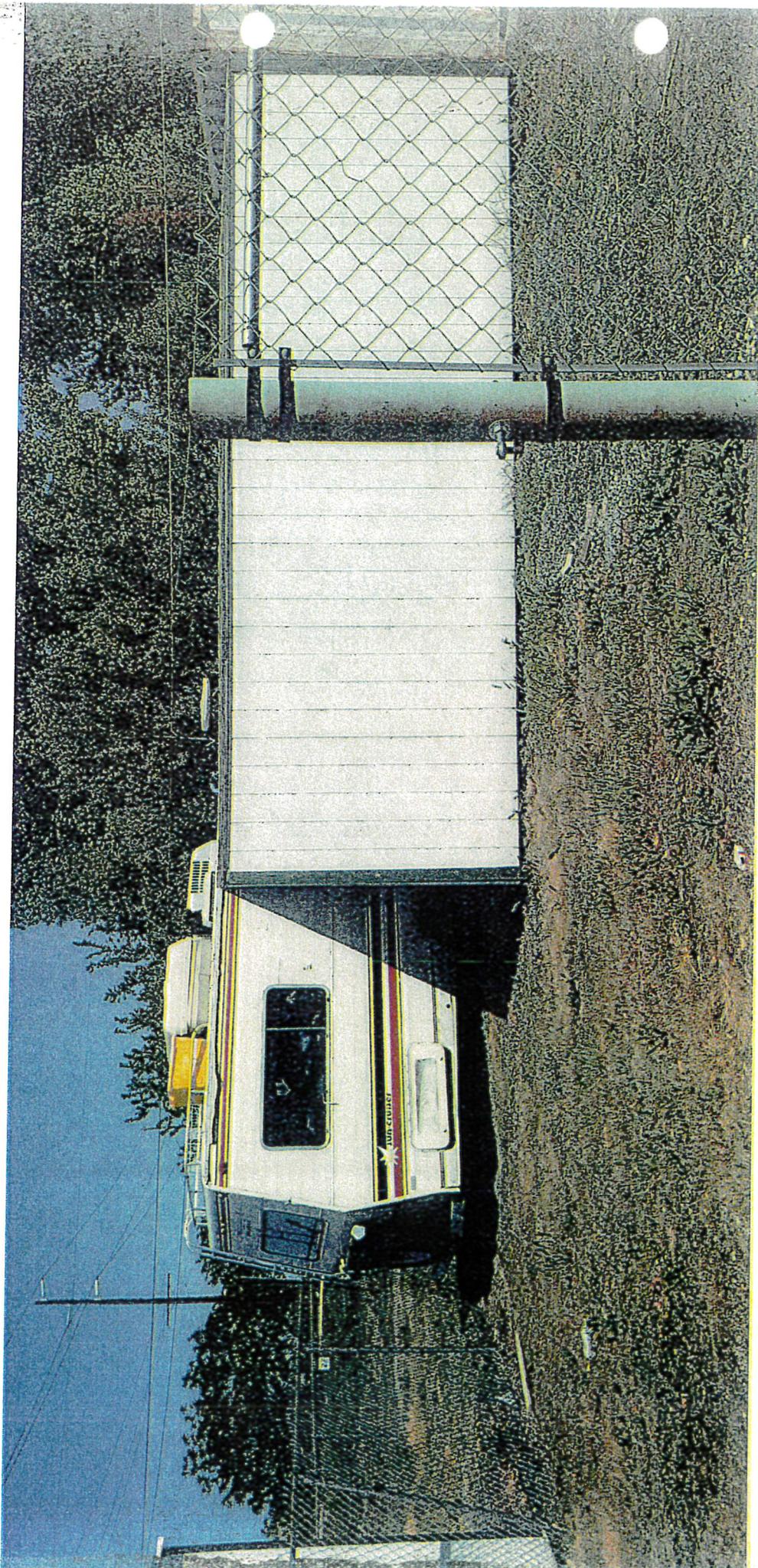


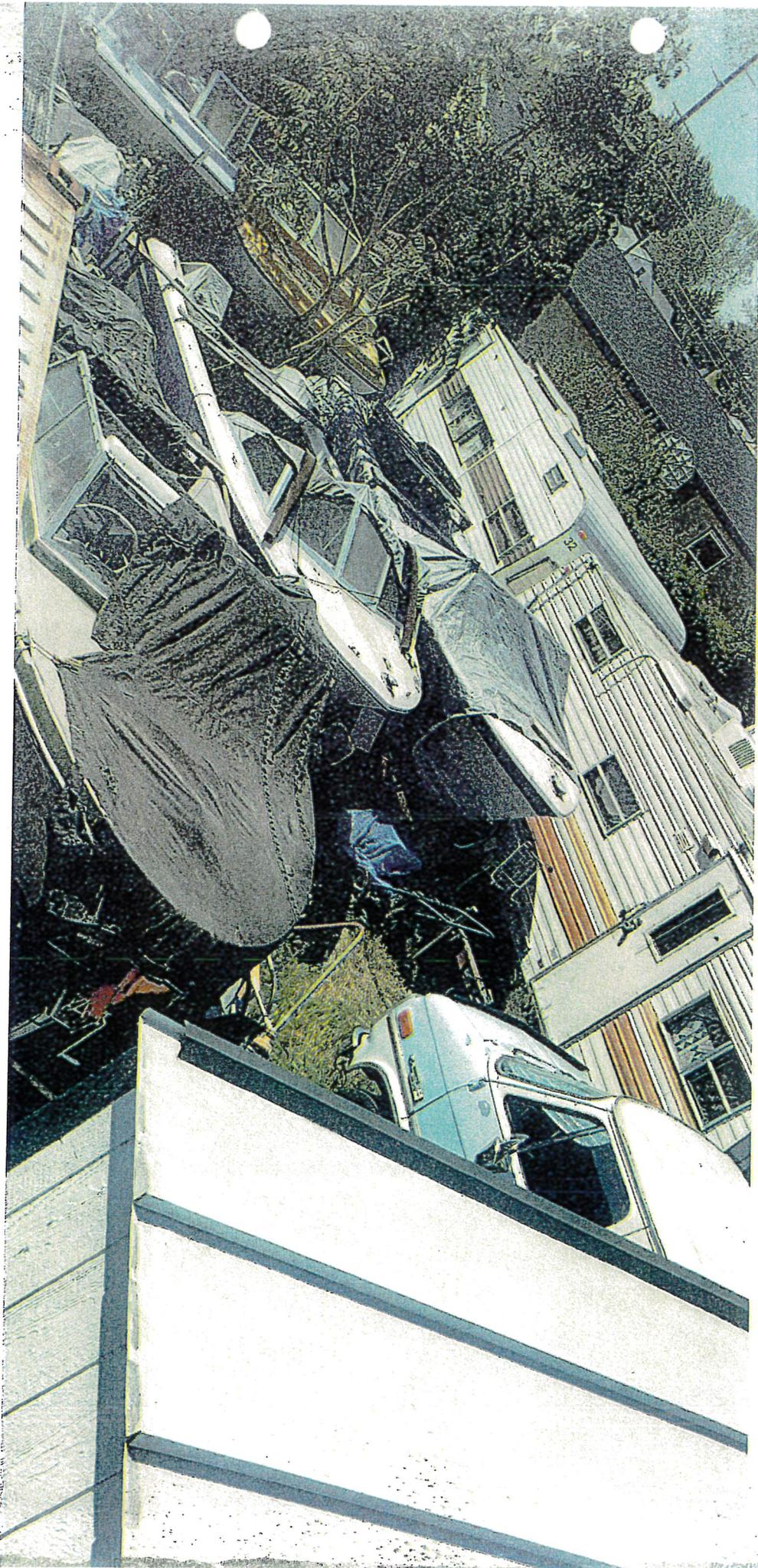




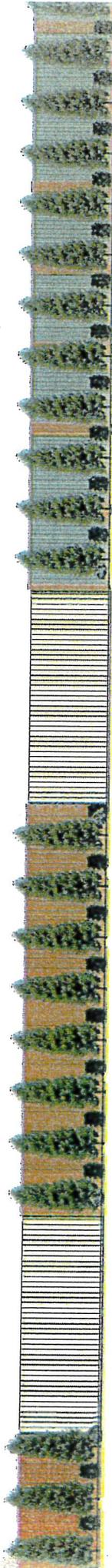








ATTACHMENT C



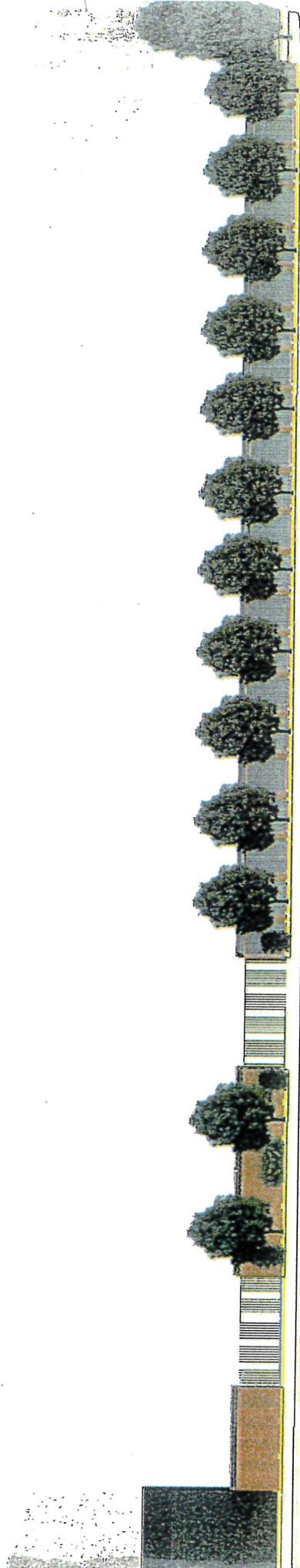
ARBORVITAE

AUBURN STREET, OPTION #1



FIR TREE

AUBURN STREET OPTION #2



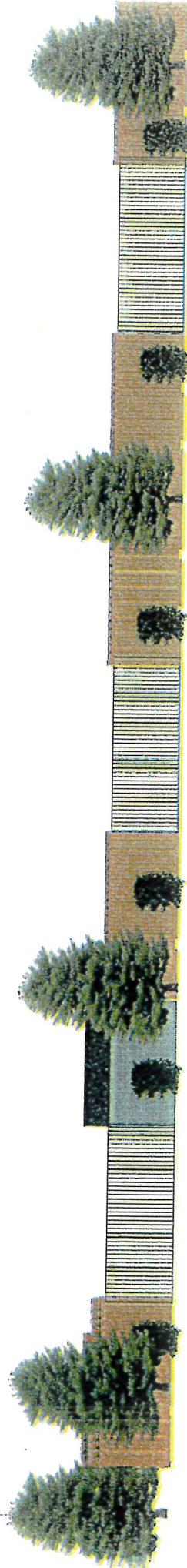
AUBURN STREET, OPTION #3

DECORATIVE MAPLE TREE



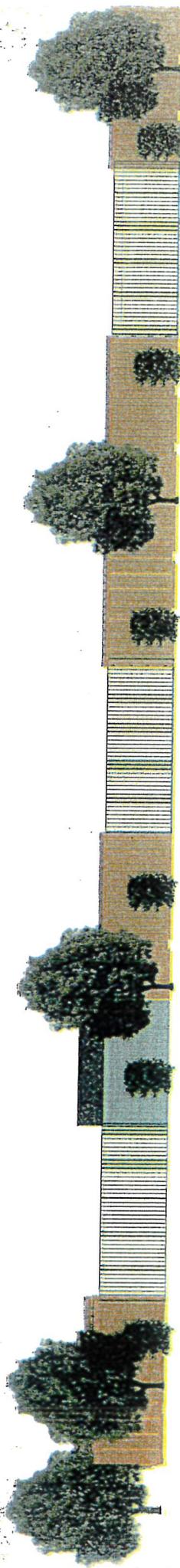
ARBORVITAE

ENTIAT AVE OPTION #1



ENTIAT AVE OPTION #2

FIR TREE



ENTIAT AVE OPTION #3

DECORITIVE MAPLE TREE

ATTACHMENT E

MEYER, FLUEGGE & TENNEY, P.S.

ATTORNEYS & COUNSELORS
230 SOUTH SECOND STREET, SUITE 101
P.O. BOX 22680
YAKIMA, WASHINGTON 98907-2680

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JACOB A. LARA
*** ERIC J. H. CHAPMAN
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JEROME R. AIKEN*
JOHN A. MAXWELL, JR.
PETER M. RITCHIE**
JAMES C. CARMODY

*Also admitted in Oregon

**Also admitted in Virginia

October 30, 2019

Notice of Appeal/ Request for Review

HAND DELIVERED

Gregory McCormick, AICP
Community Planning Director
City of Kennewick
210 W. 6th Ave.
Kennewick, WA 99336-0108
Gregory.McCormick@ci.kennewick.wa.us

Wes Romine, A.I.A.
Development Services Manager
City of Kennewick
210 W. 6th Avenue
Kennewick, WA 99336
Wes.romine@ci.kennewick.wa.us

Re: **Notice of Appeal/ Request for Review**
Drew Landrum and Storageland, LLC
108 W. Columbia Drive
Kennewick, WA 99336

Dear Mr. McCormick and Mr. Romine:

We represent Drew Landrum and Storageland, LLC and file this Notice of Appeal/Request for Review of the decision of the Planning Director dated October 18, 2019.¹ *Attachment A*. We are requesting review of the decision pursuant to KMC 18.54.020(2). It is our understanding that this matter will be referred to the Hearing Examiner for open record hearing.

¹ The decision is dated October 18, 2019. The decision was not, however, delivered or made available to Drew Landrum and Storageland, LLC until October 21, 2019. We identified the erroneous date by email to Wes Romine. Mr. Romine confirmed the mistake and advised that "...[t]he appeal period will end at the close of business day (4:30 p.m.) October 30, 2019. See *Attachment B*.

October 30, 2019

Page 2

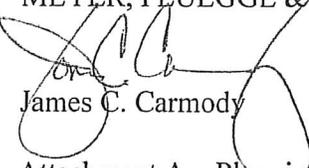
This appeal includes the following issues for determination: (1) appeal of Planning Director's denial of certification for outside storage containers as a legal non-conforming use; (2) determination that the method and manner of outside storage has been established as a legal non-conforming use; (3) there has been no change in use of the established storage area; and (4) there has been no structural expansion of the outdoor storage area. Appellant's reserve the right to amend or supplement this notice and statement of appeal issues.

At the instruction of Mr. Romine, we are directing this letter to him based on the fact that you are on vacation until November 4, 2019. I have included with this written request an application fee of *Five Hundred Thirty-Two Dollars (\$532.00)*.

We respectfully request that all correspondence and communication regarding the appeal be directed to the undersigned at the following:

James C. Carmody
Meyer, Fluegge & Tenney, P.S.
P.O. Box 22680
Yakima, WA 98907-2680
509.575.8500
carmody@mftlaw.com

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.


James C. Carmody

Attachment A – Planning Director Decision

Attachment B - Romine email

ATTACHMENT A



Leading the Way

October 18, 2019

James Carmody
Attorney at Law
Meyer, Fluegge & Tenney, PS
230 South Second Street
Yakima, WA 98907

Re: Drew Landram and Storageland, LLC
108 West Columbia Drive
Kennewick, WA 99336

Dear Mr. Carmody:

Your client cannot proceed with the plans noted in your October 4, 2019 letter without submitting a formal site plan and obtaining site plan approval. However, a site plan would only be approved if the transportable units were a permitted use for your client's property. Your letter assumes the transportable units are a legal non-conforming use, but it is not as explained below.

The City is treating your letter as a request from your client for the Planning Director to certify the transportable units as a "legal" non-conforming use. *See* KMC 18.15.010. Your letter characterizes the transportable units as being just another form of "outside storage". I cannot certify that these storage containers are a legal non-conforming use. The Storageland property was zoned Commercial General up until 2017. Mini-storage was a permitted use in the Commercial General zone. Up until 2017 transportable units for permanent storage were allowed on Commercial zoned property with a permit. The roughly 100 transportable units are a non-conforming use as Mr. Landrum failed to obtain a permit for the containers when they were first placed on the property in 2016. The City has no record of a permit being issued for the transportable units prior to the adoption of Ordinance 5712 in 2017. This ordinance amended KMC 18.12.270 by removing the provision which allowed transportable units to be used for permanent storage in the commercial zone (with a permit). Ordinance 5712 added a new section



Leading the Way

which allowed transportable units to be used in the UMU zone for business activities other than storage. Also in 2017 the City adopted Ordinance 5723 which changed the zoning for this property from Commercial General to Urban Mixed Use. Mini-storage is not a permitted use in the Urban Mixed Use zone. The main structure for Storageland and the small sheds in the back are legal non-conforming. However the transportable units are not legal non-conforming. As these transportable units are not legal non-conforming and the UMU zone does not allow transportable units for permanent storage, the transportable units will need to be removed. As discussed in previous meetings with Mr. Landrum the City would be willing to enter into a Voluntary Correction Agreement with Mr. Landrum to allow time for removal.

The decision of the Planning Director may be appealed to the Hearing Examiner per KMC 18.54.020(2). The appeal must be submitted within 10 days of the Planning Director's decision.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Wes Romine".

Wes Romine for
Gregory McCormick
Planning Director

cc: Lisa Beaton, City Attorney
Evelyn Lusignan, Public Relations & Government Affairs Director

ATTACHMENT B

Deborah Girard

From: James Carmody
Sent: Thursday, October 24, 2019 2:43 PM
To: Wes Romine
Cc: Deborah Girard
Subject: RE: Storgeland - 108 W. Columbia Drive

Thank you, Wes. I appreciate the clarification and accommodation. Jamie

From: Wes Romine [mailto:Wes.Romine@ci.kennewick.wa.us]
Sent: Thursday, October 24, 2019 2:41 PM
To: James Carmody <Carmody@mftlaw.com>
Cc: Lisa Beaton <Lisa.Beaton@ci.kennewick.wa.us>; Gregory McCormick <Gregory.McCormick@ci.kennewick.wa.us>; Deborah Girard <Girard@mftlaw.com>
Subject: RE: Storgeland - 108 W. Columbia Drive

James,

You are correct. The letter was not sent to you until October 21, 2019 via e-mail. I believe we can consider that the date the appeal period starts. The appeal period will end at the close of business day (4:30pm) October 30, 2019 and an appeal needs to be received by that time.

Appeals per KMC 18.54.040 can be filed via a written request with an application fee of \$532.00. Our Planning Director is on vacation until November 4, 2019 so please address any mail to my attention, City of Kennewick, 210 W. 6th Avenue, Kennewick, WA 99336.

Thank you,

Wes Romine, A.I.A
Development Services Manager

City of Kennewick
210 W. 6th Avenue
Kennewick, WA 99336
509-585-4558
wes.romine@ci.kennewick.wa.us

From: James Carmody [mailto:Carmody@mftlaw.com]
Sent: Thursday, October 24, 2019 1:58 PM
To: Wes Romine <Wes.Romine@ci.kennewick.wa.us>
Cc: Lisa Beaton <Lisa.Beaton@ci.kennewick.wa.us>; Gregory McCormick <Gregory.McCormick@ci.kennewick.wa.us>; Deborah Girard <Girard@mftlaw.com>
Subject: RE: Storgeland - 108 W. Columbia Drive

Mr. Romine:

I need to confirm the appeal date for this matter. The letter says that the appeal must be filed within 10 days of the date of the decision (which appears to be October 18, 2019. I was not provided a copy of the decision until October 21, 2019. The delivery date leaves only seven days for filing the appeal. It seems that the appeal should not begin to run until notice is provided to the property owner or his attorney. Would you let me know the appeal due date that you are using for this matter? Also, would you let me know the amount of any appeal fee and the address and place of filing.

Thank you for your consideration.

James C. Carmody

From: Wes Romine [<mailto:Wes.Romine@ci.kennewick.wa.us>]
Sent: Monday, October 21, 2019 9:15 AM
To: James Carmody <Carmody@mftlaw.com>
Cc: Lisa Beaton <Lisa.Beaton@ci.kennewick.wa.us>; Gregory McCormick <Gregory.McCormick@ci.kennewick.wa.us>
Subject: Storageland - 108 W. Columbia Drive

James,

I reviewed your October 4, 2019 letter regarding Storageland with our Planning Director and City Attorney and have the attached response. Our Planning Director is out of the office but I wanted to get this to you by your October 21, 2019 date that you were planning to start work on the property.

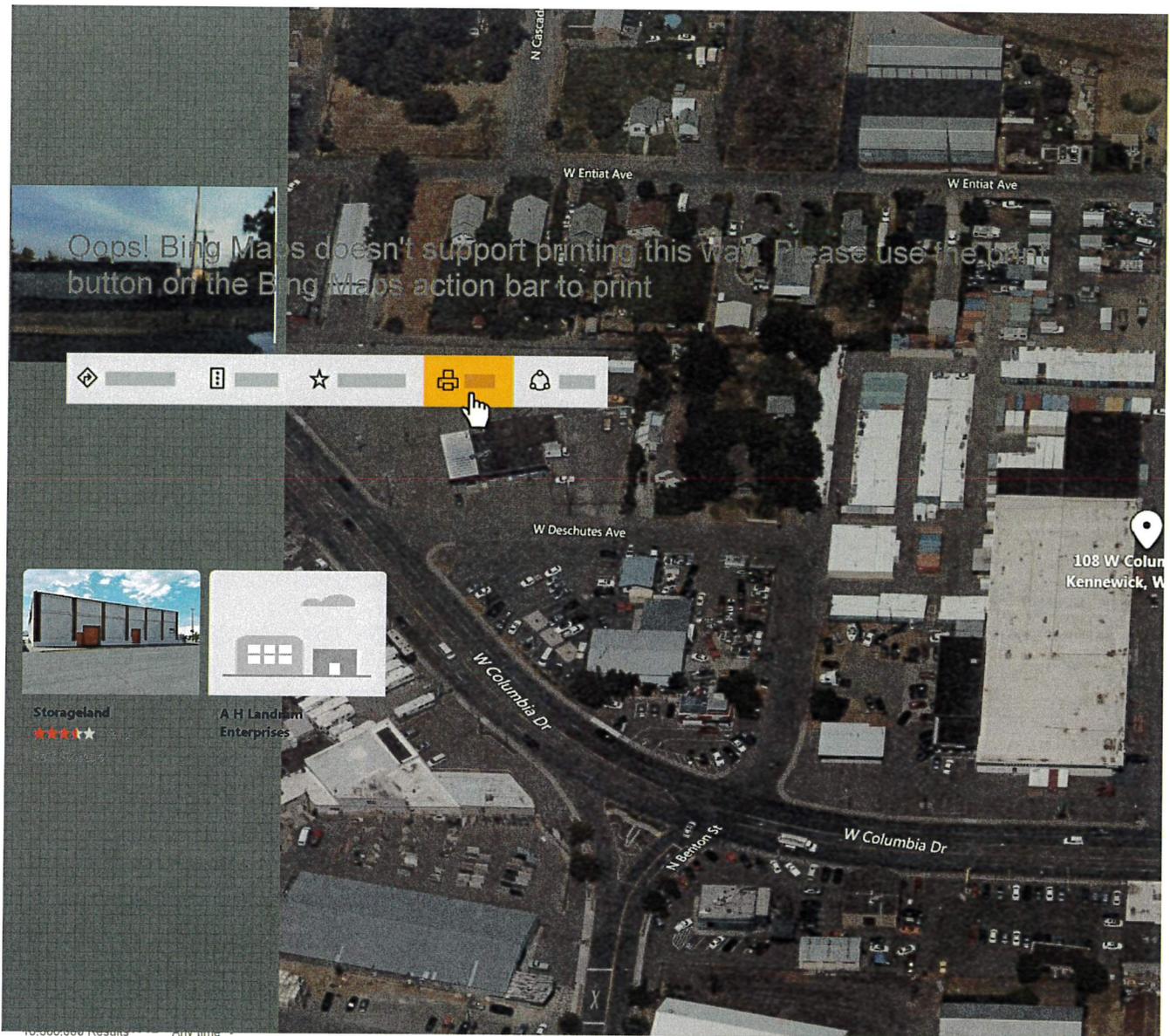
I will put a hard copy in the mail today.

Thank you,

Wes Romine, A.I.A
Development Services Manager

City of Kennewick
210 W. 6th Avenue
Kennewick, WA 99336
509-585-4558
wes.romine@ci.kennewick.wa.us

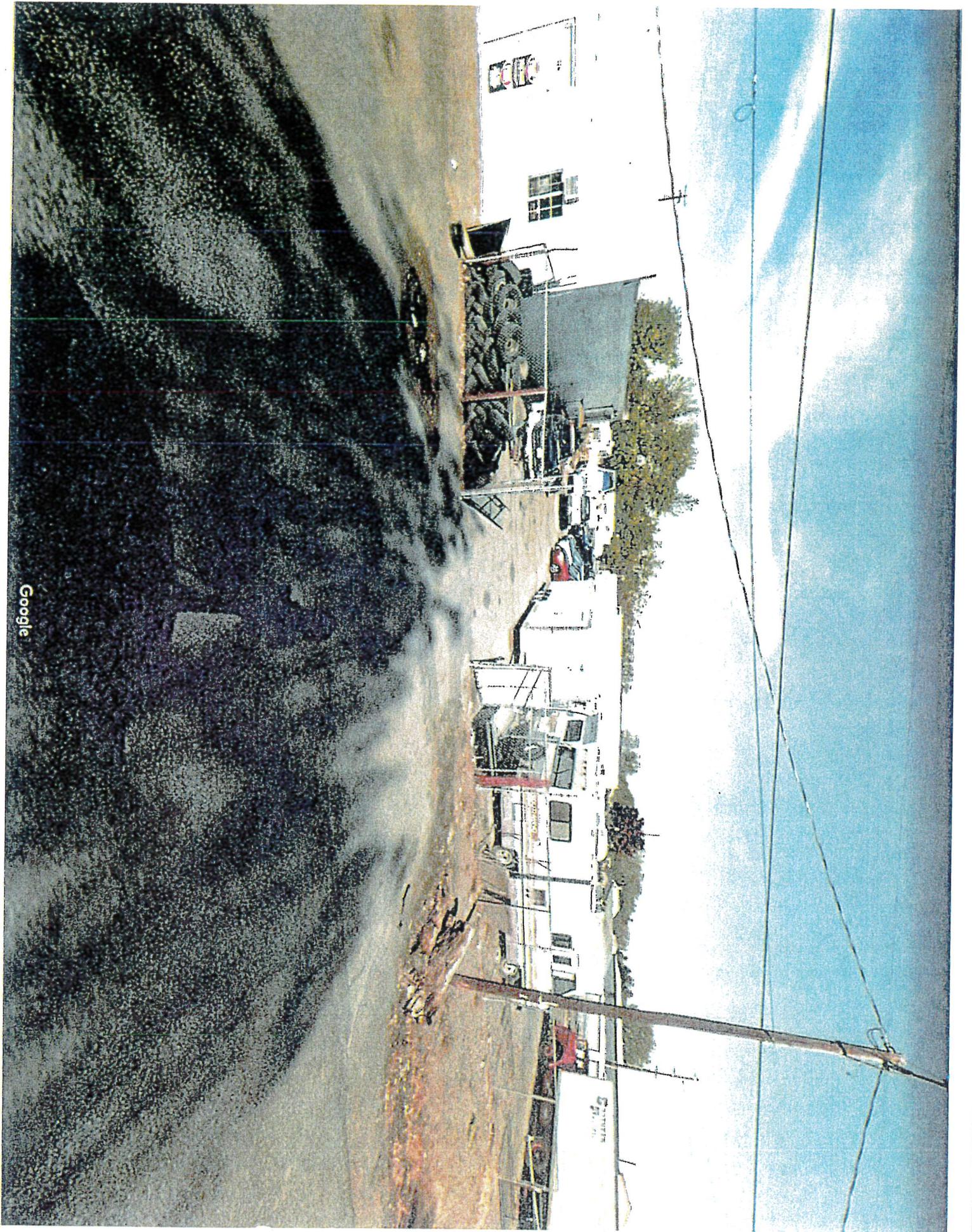
ATTACHMENT F

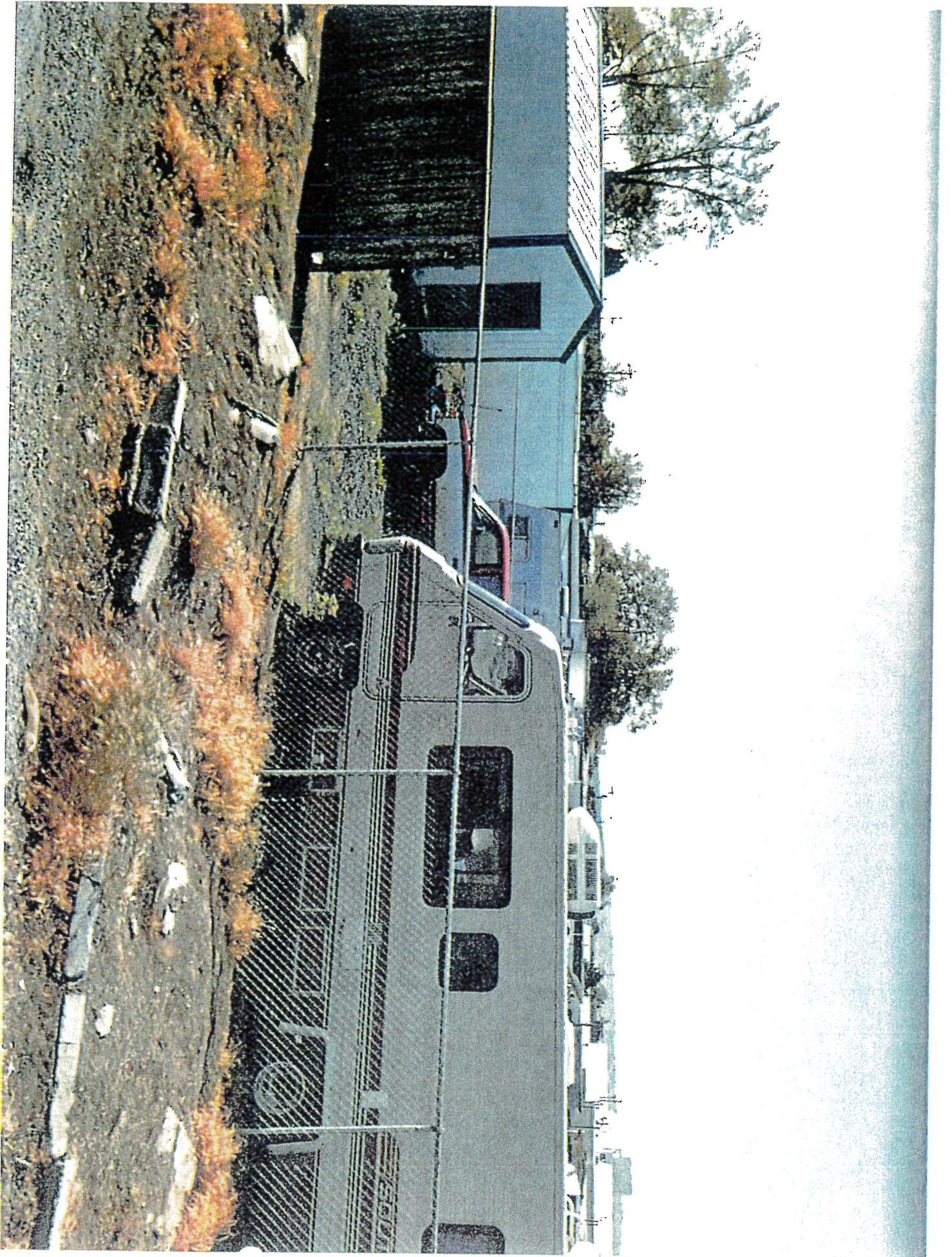


Feedback

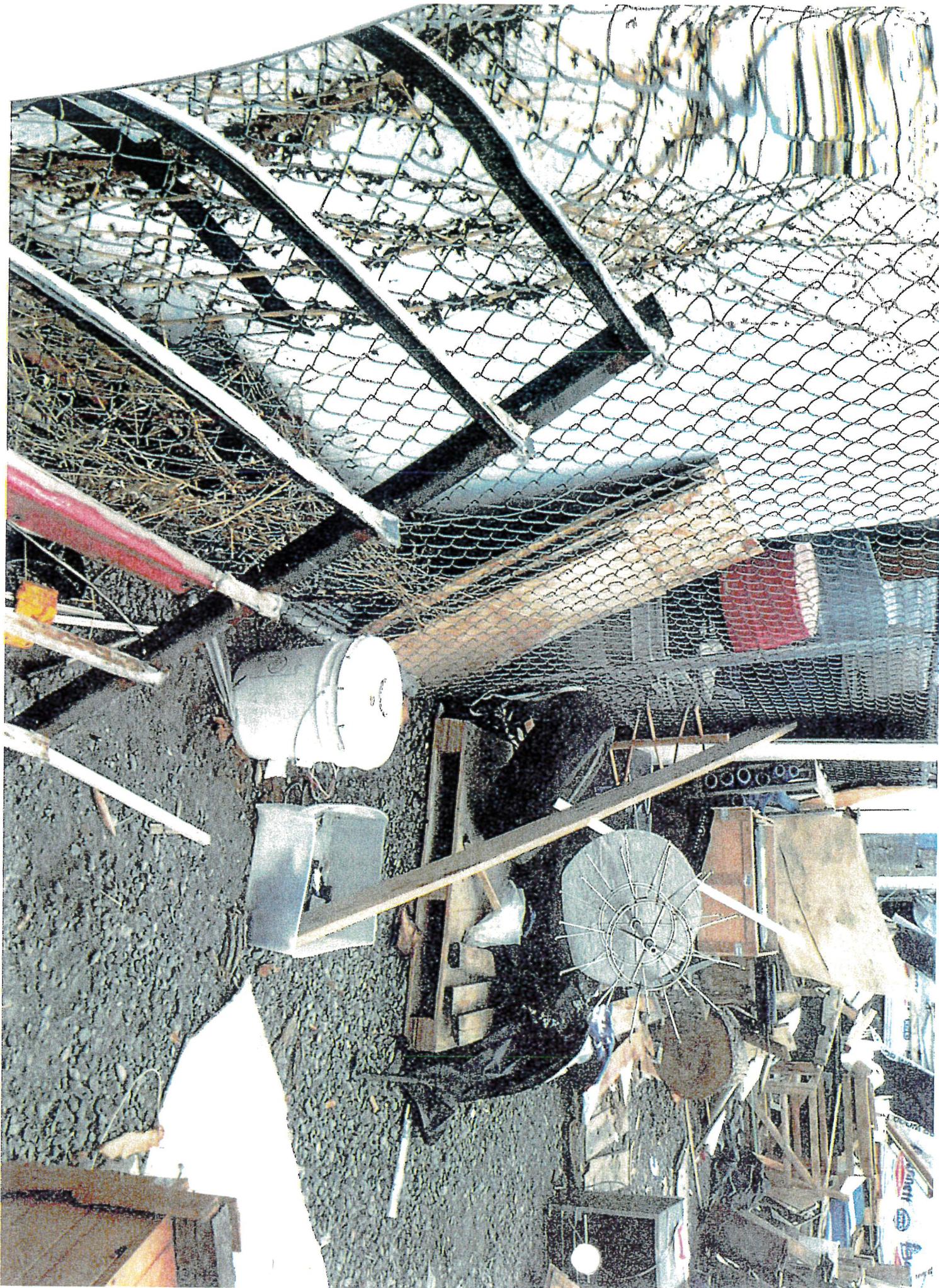


















ATTACHMENT G

CITY OF KENNEWICK
ORDINANCE NO. 5723

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY WITHIN THE CITY OF KENNEWICK BOUNDED BY THE COLUMBIA RIVER TO THE NORTH; GUM STREET (SR 397) ON THE EAST; BNSF RAILROAD RIGHT OF WAY TO THE SOUTH; AND US 395 (BLUE BRIDGE) ON THE WEST FROM COMMERCIAL, GENERAL (CG), COMMERCIAL, COMMUNITY (CC), INDUSTRIAL, LIGHT (IL) AND RESIDENTIAL, HIGH DENSITY (RH) TO URBAN MIXED USE (UMU); COMMERCIAL, GENERAL (CG), COMMERCIAL, COMMUNITY (CC) AND RESIDENTIAL, HIGH DENSITY (RH) TO COMMERCIAL, AUTO ROW (CAR); RESIDENTIAL, LOW DENSITY (RL) AND COMMERCIAL, GENERAL (CG) TO RESIDENTIAL, HIGH DENSITY (RH); AND COMMERCIAL, GENERAL (CG) TO COMMERCIAL, NEIGHBORHOOD (CN) (ZOA 17-05, BRIDGE-TO-BRIDGE/ RIVER-TO-RAILROAD AREA-WIDE REZONE)

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 3001, as amended, the zoning ordinance of the City of Kennewick and the accompanying zoning map of the City of Kennewick being part of said ordinance shall be and hereby is changed from Commercial, General (CG), Commercial, Community (CC), Industrial, Light (IL) and Residential, High Density (RH) to Urban Mixed Use (UMU); Commercial, General (CG), Commercial, Community (CC) and Residential, High Density (RH) to Commercial, Auto Row (CAR); Residential, Low Density (RL) and Commercial, General (CG) to Residential, High Density (RH); and Commercial, General (CG) to Commercial, Neighborhood (CN) as shown on Exhibit 1 which is attached hereto and by this reference incorporated herein.

Section 2. The City Council finds the amendments described in Section 1 above are in conformance with the Comprehensive Plan of the City.

Section 3. Severability Clause. If any provision of this amendatory ordinance or its application to any persons or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 4. The Responsible Official for the State Environmental Policy Act has determined that the proposal will not have a probable significant adverse impact on the quality of the environment.

Section 5. This ordinance shall be in full force and effect five (5) days from and after its approval, passage and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 17th day of October, 2017, and signed in authentication of its passage this 17th day of October, 2017.

STEVE C. YOUNG, Mayor

Attest:

LINDA C. SPIER, Deputy City Clerk

ORDINANCE NO. 5723 filed and recorded
in the office of the City Clerk of the City of
Kennewick, Washington this 18th day of
October, 2017.

Approved as to form:

LISA BEATON, City Attorney

LINDA C. SPIER, Deputy City Clerk

DATE OF PUBLICATION _____

EXHIBIT 1

COMMERCIAL, GENERAL (CG), COMMERCIAL, COMMUNITY (CC), INDUSTRIAL, LIGHT (IL) AND RESIDENTIAL, HIGH DENSITY (RH) TO URBAN MIXED USE (UMU):

BEGINNING AT THE INTERSECTION OF N. FRUITLAND ST. AND W. DESCHUTES AVE.; THENCE EAST ALONG THE CENTERLINE OF W. DESCHUTES AVE. TO THE INTERSECTION OF N. DAYTON ST. AND W. DESCHUTES AVE.; THENCE SOUTH ALONG THE CENTERLINE OF N. DAYTON ST. TO THE INTERSECTION OF W. RAILROAD AVE. AND N. DAYTON ST.; THENCE SOUTHEAST ALONG THE CENTERLINE OF W. RAILROAD AVE. TO THE INTERSECTION OF N. WASHINGTON ST. AND W. RAILROAD AVE.; THENCE SOUTH ALONG THE CENTERLINE OF N. WASHINGTON ST. TO THE INTERSECTION OF N. WASHINGTON ST. AND E. BRUNEAU AVE.; THENCE EAST ALONG THE CENTERLINE OF E. BRUNEAU AVE. TO THE INTERSECTION OF E. BRUNEAU AVE. AND N. GUM ST.; THENCE NORTH ALONG THE CENTERLINE OF N. GUM ST. TO THE UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE; THENCE WESTERLY ALONG THE UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE TO THE CENTERLINE OF N. FRUITLAND ST.; THENCE SOUTH ALONG THE CENTERLINE OF N. FRUITLAND ST. TO THE POINT OF BEGINNING;

TOGETHER WITH THAT LAND LYING SOUTH OF THE UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE, WEST OF THE CENTERLINE OF N. HARTFORD ST., NORTH OF THE CENTERLINE OF W. KLAMATH AVE. AND EAST OF THE EASTERN EDGE OF THE WSDOT RIGHT OF WAY; AND

TOGETHER WITH THAT LAND LYING SOUTH OF THE CENTERLINE OF W. KLAMATH AVE., WEST OF THE CENTERLINE OF N. KENT PL., AND NORTHEAST OF THE EASTERN EDGE OF THE WSDOT RIGHT OF WAY; AND

TOGETHER WITH NEELS ADDITION BLOCK 1, LOTS 1-6; AND

TOGETHER WITH HALLS ADDITION LOTS 2-7; AND

TOGETHER WITH HALLS ADDITION, LOT 1, TOGETHER WITH 25 FEET OF VACATED N KENT ST ON WEST AF# 368717 2-25-57. TOGETHER WITH LOT 2 AND THE EAST ONE-HALF OF LOT 13. ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE 65, RECORDS OF BENTON COUNTY, WASHINGTON. SWD, AF #2003-042494 (9/3/2003); AND

TOGETHER WITH KENNEWICK GARDENS, THE EAST 105 FEET OF THE NORTH 70 FEET OF TRACT 14. EXCEPT THE NORTH 10 FEET OF THE EAST 105 FEET, QUIT CLAIM DEED 12-5-56; AND

TOGETHER WITH KENNEWICK GARDENS, THE EAST 105 FEET OF THE SOUTH 30 FEET OF THE NORTH 100 FEET OF TRACT 14; AND

TOGETHER WITH DELMAR'S ADDITION TO KENNEWICK: LOT 4, PORTION OF LOTS 1, 2 AND 3 LYING SOUTHERLY OF A LINE WHICH LIES PARALLEL TO AND SOUTHERLY A DISTANCE OF 6 INCHES: WHEN MEASURED AT RIGHT ANGLE TO THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT ON THE WASHINGTON COORDINATE SYSTEM, S ZONE, THE Y COORDINATE BEING NORTH 325,606.71' AND THE X COORDINATE BEING EAST 2,347,804.23' (SAID POINT LYING APPROXIMATELY 309 FEET NORTH AND 133 FEET WEST OF THE SOUTHEAST CORNER OF SAID DELMAR'S ADDITION); THENCE NORTH 60 DEGREES 53'51.4' WEST, A DISTANCE OF 344.78 FEET TO POINT OF TERMINUS OF THE ABOVE DESCRIBED LINE: VACATED EAST ONE-HALF OF ALLEY, ORDINANCE #1751, 3-21-74. TOGETHER WITH PORTION OF VACATED NORTH GARFIELD STREET, ADJACENT 3-12-82: AND ORD. 2648; AND

TOGETHER WITH THAT PORTION OF YAKIMA IRRIGATION AND IMPROVEMENT COMPANY'S PLAT OF KENNEWICK LYING WEST OF THE WESTERN BOUNDARY OF BLOCK 4; AND NORTH OF THE

SOUTHERN LOT LINE OF LOT 4, BLOCK 3; AND SOUTH OF THE US ARMY CORP OF ENGINEERS TAKING LINE.

COMMERCIAL, GENERAL (CG), COMMERCIAL, COMMUNITY (CC) AND RESIDENTIAL, HIGH DENSITY (RH) TO COMMERCIAL, AUTO ROW (CAR):

BEGINNING AT THE INTERSECTION OF N. FRUITLAND ST. AND UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE; THENCE SOUTH ALONG THE CENTERLINE OF N. FRUITLAND ST. TO THE INTERSECTION OF N. FRUITLAND ST. AND W. GRAND RONDE AVE. THENCE WEST ALONG THE CENTERLINE OF W. GRAND RONDE AVE. TO THE WSDOT RIGHT OF WAY; THENCE NORTHEAST ALONG THE WSDOT RIGHT OF WAY TO THE CENTERLINE OF W. COLUMBIA DR.; THENCE EAST ALONG THE CENTERLINE OF W. COLUMBIA DR. TO THE INTERSECTION OF N. GARFIELD ST. AND W. COLUMBIA DR.; THENCE NORTH ALONG THE CENTERLINE OF N. GARFIELD ST. TO THE INTERSECTION OF N. GARFIELD ST. AND THE UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE; THENCE SOUTHEAST ALONG THE UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE TO THE INTERSECTION OF N. FRUITLAND ST. AND THE UNITED STATES ARMY CORP OF ENGINEERS TAKING LINE WHICH IS THE POINT OF BEGINNING;

TOGETHER WITH HALLS ADDITION, LOTS 8-28 AND THAT PORTION OF ADJACENT VACATED WEST JOHN DAY AVENUE PER ORDINANCE #5042 (AF#2004-034872); AND

TOGETHER WITH KENNEWICK GARDENS, TRACT 14, LESS THE WEST 323 FEET THEREOF, LESS STATE HIGHWAY AND LESS THE EAST 105 FEET OF THE NORTH 100 FEET 6-28-51. PUD EASEMENT 12-5-51 AND LESS PORTION TO CITY 4-21-55. ALSO EXCEPT THE SOUTH 220 FEET OF TRACT 14 OF KENNEWICK GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1, PAGE 16, RECORDS OF BENTON COUNTY, WASHINGTON, EXCEPT THE EAST 155 FEET AND EXCEPT THE WEST 323 FEET AND THE PORTION DEEDED TO THE STATE OF WASHINGTON FOR HIGHWAY PURPOSES. (per QCD for BLA, AF#97-25155, 10/1/97). ALSO EXCEPT A STRIP OF LAND SITUATED IN TRACT 14 OF KENNEWICK GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1, PAGE 16, RECORDS OF BENTON COUNTY, WASHINGTON, EXCEPT THE EAST 155 FEET AND EXCEPT THE WEST 323 FEET AND EXCEPT THE SOUTH 220 FEET (BLA per QCD AF#97-25156, 10/1/97); AND ALSO TOGETHER WITH THAT PORTION OF VACATED WEST JOHN DAY AVE PER ORDINANCE #5042 (Desc chng, AF#2004-034872, 9/30/04); AND

TOGETHER WITH NEELS ADDITION, BLOCK 1, LOTS 7-13 AND BLOCK 2, LOTS 1-14; AND

TOGETHER WITH YAKIMA IRRIGATION AND IMPROVEMENT COMPANY'S PLAT OF KENNEWICK, BLOCK 3, LOTS 5-16 TOGETHER WITH VACATED ALLEY LESS PORTION TO THE CITY OF KENNEWICK FOR STREET RIGHT OF WAY; AND

TOGETHER WITH DELMARS ADDITION TO KENNEWICK, LOTS 5-10.

COMMERCIAL, GENERAL (CG) TO COMMERCIAL, NEIGHBORHOOD (CN):

N.P.I. CO'S AMENDED PLAT OF KENNEWICK: LOT C, PORTION OF TRACT C DEFINED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF TRACT C: THENCE NORTH 210 FEET TO THE TRUE POINT OF BEGINNING: THENCE NORTH 210 FEET TO THE NORTHEAST CORNER: THENCE WEST 402.5 FEET: THENCE SOUTH 210 FEET: THENCE EAST 402.5 FEET TO THE TRUE POINT OF BEGINNING: EXCEPT THE EAST 100.625 FEET OF THE WEST 308.125 FEET OF THE NORTH 210 FEET: LESS PORTION DEFINED AS FOLLOWS: THE WEST 100 FEET OF THE ABOVE DESCRIBED PROPERTY (PLATTED SHORTPLAT #149). LESS PORTION TO STATE 8-20-81. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, 2-6-76.

**RESIDENTIAL, LOW DENSITY (RL) AND COMMERCIAL, GENERAL (CG) TO
RESIDENTIAL, HIGH DENSITY:**

BEGINNING AT THE INTERSECTION OF N. FRUITLAND ST. AND W. GRAND RONDE AVE.; THENCE WEST ALONG THE CENTERLINE OF W. GRAND RONDE AVE. TO THE WSDOT RIGHT OF WAY; THENCE SOUTH ALONG THE WSDOT RIGHT OF WAY TO THE INTERSECTION OF RAILROAD RIGHT OF WAY AND WSDOT RIGHT OF WAY; THENCE SOUTHEAST ALONG THE RAILROAD RIGHT OF WAY TO THE CENTERLINE OF N HARTFORD ST.; THENCE NORTH TO THE INTERSECTION OF W. DESCHUTES AVE. AND N. HARTFORD ST.; THENCE EAST ALONG THE CENTERLINE OF W. DESCHUTES AVE. TO THE INTERSECTION OF W. DESCHUTES AVE. AND N. GARFIELD ST.; THENCE NORTH ALONG THE CENTERLINE OF N. GARFIELD ST. TO THE INTERSECTION OF N. GARFIELD ST. AND W. ENTIAT AVE.; THENCE EAST ALONG THE CENTERLINE OF W. ENTIAT AVE. TO THE INTERSECTION OF W. ENTIAT AVE. AND N. FRUITLAND ST.; THENCE NORTH ALONG THE CENTERLINE OF N. FRUITLAND ST. TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS: N.P.I. CO'S AMENDED PLAT OF KENNEWICK: LOT C, PORTION OF TRACT C DEFINED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF TRACT C: THENCE NORTH 210 FEET TO THE TRUE POINT OF BEGINNING: THENCE NORTH 210 FEET TO THE NORTHEAST CORNER: THENCE WEST 402.5 FEET: THENCE SOUTH 210 FEET: THENCE EAST 402.5 FEET TO THE TRUE POINT OF BEGINNING: EXCEPT THE EAST 100.625 FEET OF THE WEST 308.125 FEET OF THE NORTH 210 FEET: LESS PORTION DEFINED AS FOLLOWS: THE WEST 100 FEET OF THE ABOVE DESCRIBED PROPERTY (PLATTED SHORTPLAT #149). LESS PORTION TO STATE 8-20-81. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, 2-6-76.

ATTACHMENT H

CITY OF KENNEWICK
ORDINANCE NO. 5712

AN ORDINANCE RELATING TO ZONING AND AMENDING SECTIONS
18.12.010 A.1, 18.12.010 A.2, 18.12.010 B.1, 18.12.010 B.2, 18.12.030,
18.12.040, 18.12.250, 18.12.270, AND 18.12.280 OF THE KENNEWICK
MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN
AS FOLLOWS:

Section 1. Section 18.12.010 A.1 of the Kennewick Municipal Code, be, and the same hereby
is, amended to read as follows:

18.12.010: Use and Standards Tables:

18.12.010 A.1: Residential Use Table: The following table lists uses allowed by zone and the applicable City review process as follows: Review Process I = Staff review, Review Process II = Conditional Use Permit. If a use is listed with a blank, it shall be prohibited in that zone. For certain categories of uses, additional requirements are also noted:

Residential Use Table	RMH	RS	RL	RM	RH	RTP	UMU	CN	CO	CBD	CC	CR	CAR	CG	CM	HMU	BP	IP	IL	IH	JF	PF	OS
Accessory Dwelling Units (See Title 18.12.020)	I	I	I	I	I		<u>I</u>			I						I							
Accessory uses and structures	I	I	I	I	I	I	<u>I</u>	I	I	I	I	I		I	I	I	I	I	I	I	I	I	I
Animal Keeping (See Title 18.12.040)	I	I	I	I	I	I										I							
Bed and breakfast inns (5 guest rooms or less)	I	I	I	I	I		<u>I</u>			II						I							
Churches or religious places of worship	II	II	II	II	II	II	<u>II</u>	I	I		I	I		I	I	II							
Day Care Centers (See Section 18.12.060)				II	I		<u>I</u>	I	I		I	I		I	I	I	I	I	I	I		I	I
Family Day Care Home (see Section 18.12.070 and footnotes)	(1)	(1)	(1)	(1)	(1)	(1)	<u>(1)</u>	(1)	(1)	(1)	(1)	(1)		(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Farm Animals (see footnote 9)																							
Group Living I (See footnote 5)																							
Group Living II (See footnote 6)				I	I			I	I		I	I		I									
Home occupation	I	I	I	I	I	I	<u>I</u>	I	I	I	I	I		I	I	I							
Mini-Day Care Center (Located in Family Abode – Section 18.12.060)	II	II	II	I	I	II	<u>I</u>	I	I	I	I	I		I	I	I	I	I	I	I	I	I	I
Mini-Day Care Center (Not located in Family Abode – See 18.12.060)				I	I		<u>I</u>	I	I		I	I		I	I	I	I	I				I	I
Mini Storage (See 18.12.130)					I						I	I		I						I			
Motels (See Title 18.12.140)					II					I	I	I		I	I								
Mixed Use (see footnote 11)								<u>I</u>															
Nursing homes and congregate care facilities (over 10 residents)				II	II			<u>I</u>															
Nursing homes and congregate care facilities (up to 10 residents)	II	II	II	II	II		<u>I</u>	I	I		I	I		I	I	I	I	I	I	I	I	I	I
Recreational vehicle park, transient (up to 30-day stay) (See Title 18.12.170, 180) (see also, footnote 7)																							
Residences, multi-family (see footnote 8)				I	I		<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>	<u>I</u>

Residential Use Table	RMH	RS	RL	RM	RH	RTP	UMU	CN	CO	CBD	CC	CR	CAR	CG	CM	HMU	BP	IP	IL	IH	JF	PF	OS
Residences, single-family (see footnote 8)	I	I	I	I	I	I	I	I (8)	I (8)		I (8)	I (8)		I (8)	I (8)	I (8)							
Rooming Houses and Boardinghouses (See Title 18.12.190)				II	II		I																
Swimming Pools (See Title 18.12.240) (see footnote 10)							I															I	I
Trailers, Boats, Camper Tops, Travel Trailers, Recreational Vehicles (See Title 18.12.260)	I	I	I	I	I																		

FOOTNOTES for Table 18.12.010 A-1 Residential Use Table:

- (1) No permit required for a family day care home (up to six charges). Per 18.12.070, if alterations are made a building permit will be required. A state license and city business license is required.
 - (2) Not used.
 - (3) Not used.
 - (4) Not used.
 - (5) Residential Care Homes, state or federally approved, with six (6) or fewer residents and any required on-site residential staff permitted by right; all larger group living uses prohibited.
 - (6) Residential Care Centers are permitted outright, subject to all of the applicable provisions of this title.
 - (7) Recreational vehicle storage in R districts shall refer to Title 18.12.180 and shall be subject to special provisions applicable to Master Planned subdivisions.
 - (8) ~~In Commercial zones residential use is not allowed on ground (grade-level) floor. Subject to KMC 18.42 and horizontal mixed use regulations contained in the Commercial Design Standards KMC 18.78.~~
 - (9) In "RS" zones, agriculture and animal husbandry are permitted including keeping of farm animals such as horses, cows, and sheep, but maintained only on lots of at least 30,000 square feet. The keeping of farm animals must not exceed one animal per half acre.
 - (10) Swimming pools considered an accessory use.
- ~~(11) According to Land Use Permits, KMC 18.42 and the mixed use design standards, KMC 18.78.~~ (Ord. 5712 Sec. 1, 2017; Ord. 5558 Sec. 2, 2014; Ord. 5528 Sec. 2, 2013; Ord. 5462 Sec. 3, 2012; Ord. 5434 Sec. 4, 2012; Ord. 5309 Sec. 8, 2010; Ord. 5262 Sec. 2, 2009; Ord. 5204 Sec. 5, 2007; Ord. 5180 Sec. 1, 2007)

Section 2. Section 18.12.010 A.2 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.010 A.2: Table of Residential Site Development Standards: Minimum and maximum residential standards are identified in the following table.

	RS ⁵	RL ⁵	RM ^{3, 4, 5, 6, 7}	RH ^{3, 4, 5, 6, 7}	RTP ^{3, 4, 5}	RMH ⁶	<u>UMU^{3,7}</u>
Max. Density ¹	N/A	N/A	13	27	13	4	<u>N/A</u>
Min. Lot Size	10,500	7,500	4,000	4,000	1 acre	7,500	<u>N/A</u>
Min. Lot Size (Rowhouse/ Townhouse)	N/A	N/A	1,800	1,600	N/A	N/A	<u>N/A</u>
Min. Lot Width ²	60'	60'	50'	N/A	N/A	60'	<u>N/A</u>
Min. Lot Width ² (Rowhouse/ Townhouse)	N/A	N/A	24'	24'	N/A	N/A	<u>N/A</u>
Min. Front Yard/ Street Setback ²	15'	15'	15'	15'	15'	20'	<u>See KMC 18.80</u>
Min. Garage Setback ²	20'	20'	20'	20'	20'	20'	<u>N/A</u>
Min. Side Yard Setback ²	5'	5'	5'	5'	5'	5'	<u>0'</u>
Min. Rear Yard Setback ²	15'	15'	15'	15'	15'	15'	<u>5'</u>
Max. Height	30'	30'	30'	45'	N/A	30'	<u>N/A</u>
Min. Lot Frontage ²	30'	30'	30'	30'	30'	30'	<u>20'</u>
Min. Lot Frontage ² (Rowhouse/ Townhouse)	N/A	N/A	20'	20'	N/A	N/A	<u>N/A</u>

FOOTNOTES for Table 18.12.010 A.2 Residential Standards Table:

(1) Maximum Density – The maximum permitted number of lots/units is determined by dividing the gross area of the parcel in square feet by 43,560 square feet, multiplied by the allowed maximum density under table 18.12.010. The closest whole number is the permitted maximum number of lots/units.

(2) Yards:

(a) Street: Building setback lines will be measured from the back of the sidewalk. Where no sidewalk exists and in the UMU district, building setback lines will be measured from the right-of-way line. (See fig.1a-b)

(i) For garages that face a no-street abutting property line (side-entry garages,) the garage setback may be reduced to 15' from the back of the sidewalk. The street facing façade of the garage shall be treated with windows, modulations and/or architectural design elements and

features that mimic the remainder of the house. Landscaping shall also be required along the street-facing façade. (See fig. 2a-b)

- (ii) In no instance shall a vehicle or any other object be allowed to obstruct a pedestrian walkway/sidewalk.
- (b) Rear: As measured from an existing lot line or alleyway.
- (c) Side: Shall be five (5) feet from the nearest side yard property line.
 - (i) Single-family attached and zero-lot line housing shall have no setback on the side where the property line follows a common or zero-lot line wall.
 - (ii) End units shall have a five (5) foot setback from the nearest side yard property line and no setback on the common wall side.
- (d) Lot Frontage: Lot frontage lines will be measured from the right-of-way line.
- (e) Where no street frontage exists, building setback and lot frontage lines will be addressed during the site plan or plat review process and must be approved by the Planning Director.

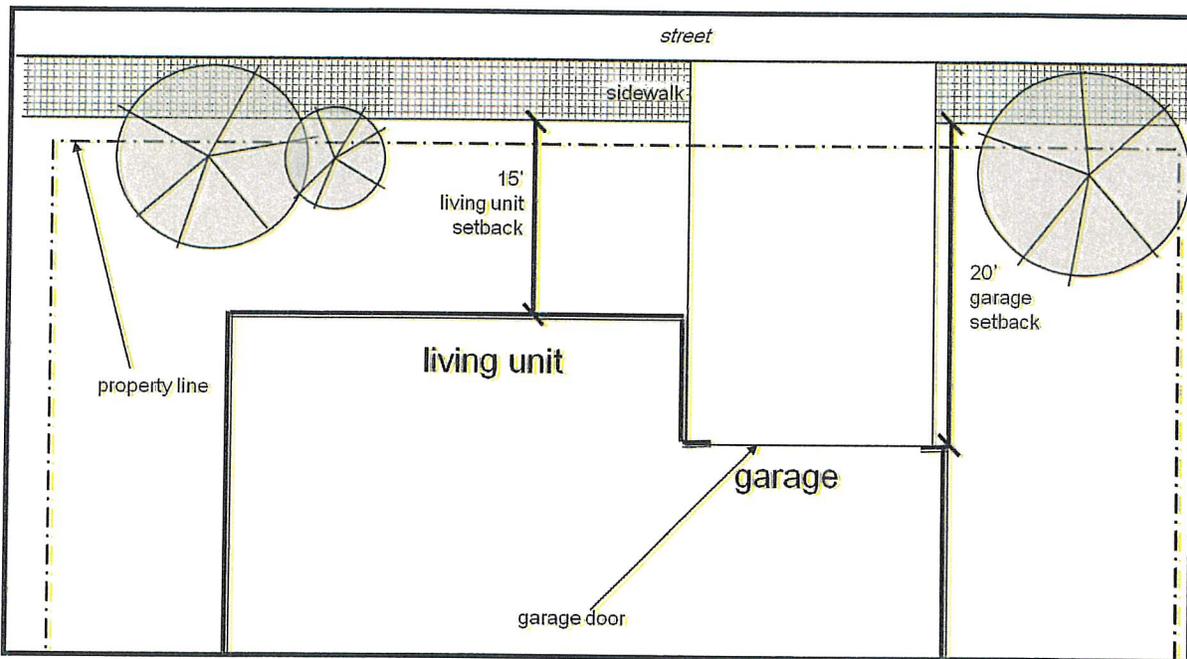


Fig. 1.a

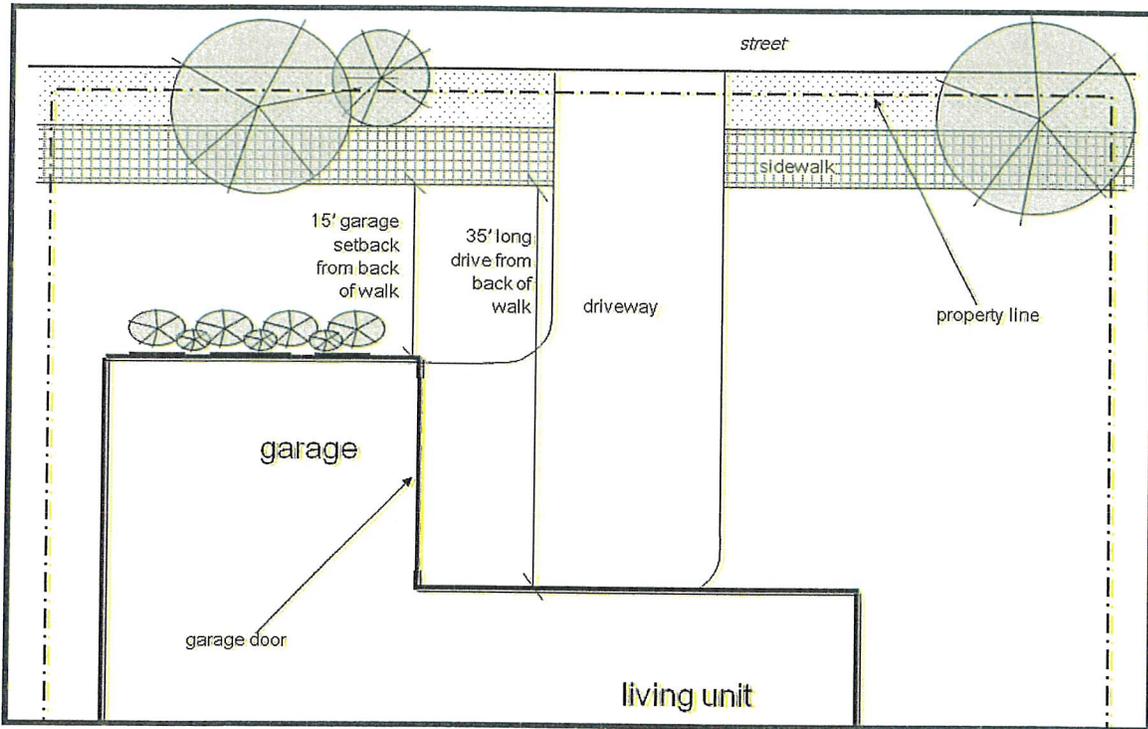


Fig. 2.a.

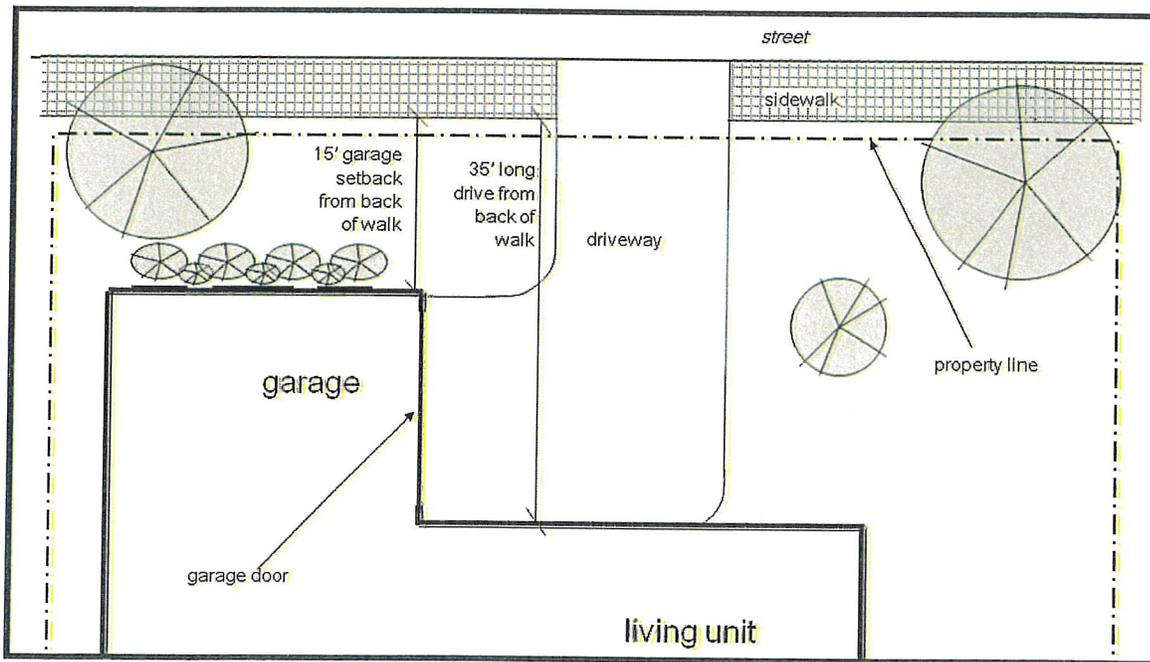


Fig. 2.b.

(3) Open space calculations.

- (a) In multi-family developments, where the density exceeds seven (7) units per acre, the amount of required common open space shall equal or be greater than the minimum aggregate area of provided bedrooms based on the following

formula: 300 square feet for the first bedroom and 200 square feet for each additional bedroom; exclusive of required street frontage setbacks and required parking areas. "Open area" is an area with average dimensions of not less than 15 feet by not less than 500 square feet. More than one open area may be provided in a given development. Any interpretation of this Section will be made by the Director.

(a) If a proposed project may have a significant adverse impact on the environment because of inadequate public park facilities in the area, and additional park land is required or indicated by an environmental impact statement, as a mitigating measure in lieu of an environmental impact statement, or by the Comprehensive Park and Recreation Plan, the developer must provide for parks in accord with Sections 17.100.010 to 17.100.040 inclusive. If the property is too small to accommodate adequate recreational facilities for the residents and the area has inadequate park facilities, the proposed development will, in most cases, be disapproved unless other measures, which will reasonably protect the public's needs for adequate recreational areas, can be agreed upon between the developer and the City. Such agreement may be cash in lieu of on-site facilities placed in a mitigation account established by the Parks Department for use toward a park or parks within walking distance (1/4 mile straight line) from said development. Under normal circumstances the City will not accept the dedication of a park site of less than five (5) acres.

(b) Within the UMU district, new developments with a lot area of more than 20,000 square feet shall provide a pedestrian-oriented space (plaza, courtyard or similar space) of at least 1% of the site area as described below. Buildings that front on a public sidewalk and have a pedestrian-oriented commercial use facing that sidewalk are exempt from this open space requirement.

(i) Pedestrian-oriented space must include:

- (A) Visual and pedestrian access including barrier-free access to the abutting structures from the public right-of-way or a non-vehicular courtyard.
- (B) Paved walking surfaces of either concrete or approved unit paving in areas intended for foot traffic.
- (C) On-site or building mounted lighting providing at least 0.6 foot-candles (average) on the ground.
- (D) At least 3 feet of seating area (bench, ledge, etc.) or one individual seat per 60 square feet of plaza area or open space.
- (E) Landscaping to enhance the area.
- (F) At least 25% of the plaza or courtyard must be shaded by structure or tree canopy (at least 10 years after planting)

(ii) Outdoor pedestrian-oriented space shall not include:

- (A) Asphalt or gravel pavement (Exception: decomposed granite & other architectural surface treatments).
- (B) Adjacent unscreened parking lots.
- (C) Adjacent chain link fences.
- (D) Adjacent "blank walls"
- (E) Adjacent dumpsters or service areas.
- (F) Outdoor storage or retail sales (shopping carts, potting soil

bags, firewood, etc.) that do not contribute to the pedestrian environment.

(iii) In-Lieu Provisions – Pedestrian-Oriented Space Requirement in Urban Mixed Use (UMU) District: Provided all of the following requirements are met, required publicly-accessible open space in the Urban Mixed Use (UMU) District will be provided on the site containing the permitted land use.

(A) The proposing owner or developer shall improve and may, at their and the city’s discretion, dedicate land to provide the pedestrian-oriented space requirement in accordance with the approval of the planning official, or shall pay a fee in lieu of such improvement and dedication if the planning official determines that the dedication and improvement of land is not feasible or desirable due to the physical characteristics of the site.

(B) The property owner or developer shall either:

1. Provide and construct (and optionally dedicate) the on-site pedestrian-oriented space requirement to city design and construction standards subject to city approval or:

2. Enter a voluntary agreement with the city to pay an amount equal to the city’s cost of acquiring and constructing the pedestrian-oriented space requirement in another location within the same UMU District as identified and approved by the planning official.

(4) Mobile Home Park Requirements:

(a) New Mobile Home Parks: For Residential Trailer Parks developed after January 1, 1998, the following spacing standards may be utilized:

(i) When each primary structure has a 20-foot front and rear yard (18.09.1950) or open space, the following spacing standards apply: side-by-side, end-to-end and parallel - 10 feet between each primary structure; accessory structures that meet provisions of the International Building Code must have a minimum four-foot setback between the primary structure unless attached to the primary structure, and must have a minimum six-foot setback between adjacent primary and accessory structures.

(b) 10 feet setback from all property lines; 20 feet from an existing right-of-way line or proposed right-of-way line whichever is greater.

(c) Spacing: 20 feet between mobile homes located side-by-side, end-to-end and parallel. End-to-end, 10 feet if the extended outside edge does not project beyond the extended centerline of the adjacent unit. There must be 20 feet between any mobile home and any permanent structure; 10 feet between any mobile home and any accessory structure unless attached to the mobile home in accord with the State of Washington and the International Building Code; 10 feet between any occupied travel trailer and any mobile home, accessory structure or permanent building. The average distance between adjacent, angular mobile homes must not be less than 20 feet with the closest point no less than 10 feet.

(d) Mobile Home Roadways: Each manufactured home must be served by at least one 30-foot wide roadway for two (2) moving lanes of traffic and a three (3)

foot delineated, pedestrian walkway. If on-roadway parking is allowed, the roadway width must be increased accordingly. All roadways must be improved with asphalt, bituminous surface treatment or an equivalent.

- (5) Single-Family Homes (attached and detached); Manufactured Homes:
 - (a) Intent: It is the intent of the section to set forth the terms and conditions under which single-family homes may be sited, and to ensure that manufactured homes as defined herein may be sited in any zone where single-family homes are permitted. These regulations apply to all zones where single-family homes are permitted.
 - (b) Minimum siting standards: The following standards apply to the siting of all single-family homes, whether site-built homes or manufactured homes. Where any conflict arises between these regulations and the adopted building code, the stricter standard shall apply.
 - (i) Foundation: all dwellings shall be placed on permanent foundations;
 - (ii) Minimum width: a dwelling shall not be less than 14 feet in width at the narrowest point of its first story;
 - (iii) Age of dwelling (for manufactured homes only): no manufactured home more than three years old on the date of installation or previously lived in shall be permitted on any lot;
 - (iv) Roof: minimum pitch for a roof on a dwelling shall either be flat or have a minimum four-inch vertical rise for each twelve inches of horizontal run (4:12 pitch);
 - (v) All units with a common wall must be constructed concurrently and be under the same ownership at the time of initial construction;
 - (vi) Common walls must follow property lines and have no openings.
- (6) Townhouse/Rowhouse Development:
 - (a) All townhouse or rowhouse development shall comply with the Residential Design Standards-Multi-Family;
 - (b) There must be at least 10 feet on end between groups. This space may either be end unit lots or common open space, and, if so, there may be openings in the end units;
 - (c) The number of connected units may not exceed eight;
 - (d) The Planning Director may approve up to a 10% deviation from all standards related to townhouse or rowhouse development.
- (7) Urban Mixed Use District:
 - (a) Legal lots of record existing as of June 1, 2017 shall be deemed to be in compliance with the lot size restrictions, however after June 1, 2017 no lot intended for single family use shall be created in excess of 5,000 square feet.
 - (b) Setbacks for all residential uses shall be measured from property lines.
 - (c) Building setback from front and side property lines are not required, except as mandated by the applicable local, state and federal codes. (Ord. 5712 Sec. 2, 2017; Ord. 5647 Sec. 1, 2016; Ord. 5542 Sec. 1, 2014; Ord. 5504 Sec. 1, 2013; Ord. 5407 Sec. 4, 2012; Ord. 5365 Sec. 3, 2011; Ord. 5309 Sec. 9, 2010; Ord. 5204 Sec. 6, 2007; Ord. 5180 Sec. 1, 2007)

Section 3. Section 18.12.010 B.1 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.010 B.1: Table of Non-Residential Uses: The following table list uses allowed by zone and the applicable City review process as follows: Review Process I = Staff review, Review Process II = Conditional Use Permit. If a use is listed with a blank, it shall be prohibited in that zone. For certain categories of uses, additional requirements are also noted.

NON-RESIDENTIAL USES	RS	RL	RM	RH	RMH	RTP	UMU	CN	CO	CBD	CC	CR	CAR	CG	CM	HMU	BP	IP	IL	III	JF	PF	OS
Academy																							
Adult Entertainment (1) (See Title 18.12.030)							I		I		I	I		I			I						
Adult Retail (1) (See Title 18.12.030)											II	II		II					II	II			
Agricultural Processing, heavy																				I			
Agricultural Processing, light																				I			
Airports and airfields																				I			
Alcoholic beverage sale (packaged)							I		I	I	I	I		I	I	I			I			I	
Accessory uses	I	I	I	I	I	I	I																
Art Gallery							I		I	I	I	I		I	I	I				I		I	I
Automobile-Oriented Uses (See Title 18.12.050)							I		I	I	I	I		I	I	I							
Auto-Wrecking Yard							I (6)							I	I	I							
Aviation Storage and Service																				I			
Bakeries, retail							I		I	I	I	I		I									I
Bakeries, wholesale										II													
Banks and financial institutions							I		I	I	I	I		I	I	I							
Barbers, beauty shops, and tanning salons							I		I	I	I	I		I	I	I							
Bars and taverns							I			II	I	I		I	I								
Battery Charging Station	I	I	I	I	I	I	I		I	I	I	I		I	I	I				I		I	I
Battery Exchange Station							I		I	I	I	I		I	I	I							
Boat building and repair, commercial														I	I								
Boat marinas														I	I								
Body Art Studios							I		I		I	I		I	I								
Brewpub							I			I	I	I		I									
Breweries, micro							I				I	I		I									
Business School							I		I		I	I		I									
Bus stations and terminals							II				II	II											
Car washes (See Title 18.12.050 and 18.12.055 if CN zone)							I (6)		I	II	I	I		I									
Casino and/or Cardroom														I									

NON-RESIDENTIAL USES	RS	RL	RM	RH	RMH	RTP	LMU	CN	CO	CBD	CC	CR	CAR	CG	CM	HMU	BP	IP	IL	IH	JF	PF	OS
Cemeteries	II	II	II																				
Clinics							I		I	I	I	I		I		I	I						
Commercial Amusement																							
Commercial amusement, recreation																							
Construction yards																							
Convenience stores							I	I	I	I	I	I	I	I					I	I			
Correctional institutions																							
Distilleries, craft							I		I	I	I	I		I					I				
Dry cleaners and laundries							I	I	II	I	I	I		I		II							
Energy facilities	II	II	II	II	II	II		II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II
Equipment Rental																							
Espresso stands							I	I	I	I	I	I		I		I	I						
Essential public facilities and utilities	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II
Event Center							I	II	II	II	II	II	II	I									
Gas stations							I	I	II	I	I	I	I	I					I	I			
Golf Course							I				I		I									I	I
Golf: driving range, miniature golf,							I				I												
Grocery stores							I	I	II	I	I	I		I									
Hardware stores							I	I		I	I	I		I									
Hazardous waste storage facilities – off site																							
Hazardous waste storage facilities – on site								II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II
Health Facilities, see 18.12.080			I	I			I	I	I	I	I	I		I									
Hospitals and sanitariums (except animal clinics, hospitals)			I	I			I	I	I	I	I	I		I								I	I
Industrial uses, heavy																							
Industrial uses, light																							
Junk (See Title 18.12.100)																							
Kennels (See Title 18.12.110)																							
Laboratories for research and testing							I	I	I	I	I	I		I					I	I			
Library	II	II	II	II	II	II	I	II	I		I	I	I	I	I	II	I					I	I
Lock and gunsmiths							I	I		II	I	I		I		I							
Lumber yards																							
Manufactured Housing Display Areas (See Title 18.12.120)																							

NON-RESIDENTIAL USES	RS	RL	RM	RH	RMH	RTP	UMU	CN	CO	CBD	CC	CR	CAR	CG	CM	HMU	BP	IP	IL	IH	JF	PF	OS
Mini-storage				I	I						I	I		I					I	I			
Fixed Use (See K44C-18.42 and 18.78)							I	I			I	I		I									
Museums	II	II	II	II	II	II	I	II	I	I	I	I		I	I	II	I						
Nursery											I	I		I									I
Offices, including professional offices, agencies and services											I	I		I									
Outdoor commercial driving ranges											I	I		I									
Parking garages and lots							I			II		I		I									
Pawnshop																							
Pet grooming							I	I	I		I	I		I									
Pharmacy, dispensing							I	I	I		I	I		I									
Photographic studios							I	I	I		I	I		I									
Plumbing shops and yards														I									
Printing, publishing and reproduction establishments							I	I	I		I	I		I									
Private gymsnasiums, fitness centers, dance studios, body building, and martial arts, etc.							I	I	I		I	I		I									
Public Parks (See Title 18.12.160)							I																
Public/quasi public facilities and services	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II	II
Radio, television and small electronics repair and service							I	I	I		I	I		I									
Radio, television broadcasting stations (excluding antenna)							I		II		I	I		I									
Rapid Charging Station	I	I	I	I	I	I	I	I	I	I	I	I		I									I
Recreational Vehicle Storage (See Note 4) (See Title 18.12.180)	I	I	I	I	I	I					I	I		I									
Recreational Vehicle Park																							
Recycling, high intensity																							
Recycling, low intensity							I												II	II			
Repair shops (not auto)							I																
Restaurants							I		II		I	I		I									
Restaurants, fast food							I	I	I		I	I		I									
Retail stores not otherwise named in this list including department stores.							I	II	II		I	I		I									
Satellite Dishes (See Title 18.12.200)							I	I	II		I	I		I									
Schools, private and public	I	I	I	I	I	I	II	I	I		I	I											
Second Hand/Consignment Store							I				I	I		I									

NON-RESIDENTIAL USES	RS	RL	RM	RH	RMI	RTP	UMU	CN	CO	CBD	CC	CR	CAR	CG	CM	HMU	BP	IP	IL	HI	JF	PF	OS
Sign manufacture, painting and maintenance														I					I				
Skating rink							II					I											
Stables, Corrals, Riding Academies (See Title 18.12.210)	II																						
Storing of Commercial Vehicles (See Title 18.12.220)												I	I				I	I	I				
Subdivisions, Sales Area, Equipment and Material Yards (See Title 18.12.230)	I	I	I	I	I	I																	
Temporary and Parking Lot Businesses (See Title 18.12.250)							I						I										
Theaters, movie							I	II	I		I	I											
Towers, antennas, and supporting structures, including amateur radio towers, 55 feet or less	II	II	II	II	II	II	I	II	I		I	I	I	I	I	I	I	I	I	I	I	I	I
Transient accommodations (including hotels and motels)				I			I	I	II		I	I				I	I						
Transferable Units (See Title 18.12.270)																							
Truck stops																							
Undertaking establishments (Mortuary)								I			I	I											
Vehicle sales, incidental repair and service											I	I											
Vehicle rental and leasing											I	I											
Vehicle repair and service, body and fender shops							I				I	I											
Veterinary Clinic or Hospital (See Title 18.12.290)							I	I	I		I	I											
Vocational School							I		II								I						
Volatile Toxic and Volatile Flammable Material Storage (See Title 18.12.300)																	I			II			
Warehousing																							
Wholesale, which may include incidental retail outlets for only such merchandise as is handled at wholesale																							
Wineries Type A (See Title 18.12.305)							I		I		I	I											
Wineries Type B (See Title 18.12.305)							I (5)				II	II							II				
Wineries Type C (See Title 18.12.305)																							
Wireless Communication Facilities (See Title 18.12.310)																							

FOOTNOTE for Table 18.12.010 B.1 Non-Residential Use Table:

- (1) For HMU see limitations at Title 18.12.335.
- (2) For the Clearwater Master Plan Area and BP zoning districts see Title 18.12.340.

(3) For Rental Equipment, all items must be contained within a completely enclosed building or screened from view by a sight-obscuring fence or wall.

(4) Allowed in RS, RL, RM, RMH, and RTP only as part of a planned development or subdivision and only for the use by residents of the development consistent with Recreational Vehicle Storage provisions and limitations of the Kennewick Residential Design Standards KMC 18.75.

~~(5) Winery Type B under 50,000 case annual production and located within a structure less than 20,000 square feet in size are allowed outright. The Conditional Use Process identified in Title 18.42.100 is applicable to Winery Type B uses exceeding either the 50,000 case annual production or 20,000 square foot structure size threshold.~~

~~(6) Not Allowed in the Bridge-to-River-to-Rail area, but prohibited in the Vista Field area. (Ord. 5670 Sec. 1, 2016; Ord. 5572 Sec. 1, 2014; Ord. 5542 Sec. 2, 2014; Ord. 5462 Sec. 4, 2012; Ord. 5434 Sec. 5, 2011; Ord. 5309 Sec. 10, 2010; Ord. 5262 Sec. 3, 2009; Ord. 5244 Sec. 3, 2008; Ord. 5204 Sec. 7, 2007; Ord. 5180 Sec. 1, 2007)~~

Section 4. Section 18.12.010 B.2 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.010 B.2: Table of Non-Residential Site Development Standards: Minimum and maximum non-residential use standards are identified in the following table. Additional site design standards are included under 18.12.340, below and in the *Site Design Guidelines for Commercial, Office and Industrial Uses*:

Table of Commercial/Industrial Standards	Maximum District Size	Maximum Minimum Parcel District Size	Yards	Maximum Building Height	Maximum Lot Coverage	Outdoor Storage
<u>UMU – Urban Mixed Use District</u>	<u>None</u>	<u>40 acres</u>	<u>See KMC 18.80</u>	<u>None</u>	<u>None</u>	<u>None</u>
CN- Commercial – Neighborhood District	5 Acres	None	See (1) Below	45'	None	See (2) Below
CO-Commercial – Office District	None	None	See (3) Below	None	None	See (4) Below
CBD-Commercial-Central Business District	None	None	See (16) Below	<u>None</u>	<u>None</u>	None
CC- Commercial – Community District	None	None	See (3) Below	None	None	See (4) Below
CR-Commercial – Regional District	None	None	See (3), (15) Below	None	None	See (4) Below
<u>CAR-Commercial, Auto Row District</u>	<u>See (17) Below</u>	<u>20 acres</u>	<u>See (17) Below</u>	<u>None</u>	<u>None</u>	<u>See (18) Below</u>
CG-Commercial – General District	None	None	See (3) Below	None	None	See (4) Below
CM-Commercial – Marina District	None	None	See (3) Below	See (14) Below	None	None
HMU-Historic, Mixed Use District (See Title 18.12.335 & 18.12.010(5))			See (6) Below	30'	45%	
BP-Business Park District	5 Acres	None	See 18.12.340	35'	50%	<u>See 18.12.340</u>
IP-Industrial Park District	20 Acres	None	See (7) Below	None	None	See (8) Below

Table of Commercial/Industrial Standards	Maximum District Size	Maximum Minimum Parcel District Size	Yards	Maximum Building Height	Maximum Lot Coverage	Outdoor Storage
IL-Industrial, Light District	None	None	See (9) Below	None	None	See (10) Below
IH-Industrial, Heavy District	None	None	See (9) Below	None	None	See (10) Below
JF-Justice Facilities	None	None	See (11) Below	85'	None	None
PF-Public Facilities District	None	None	See (12) Below	None	None	See (13) Below
OS-Open Space District	None	None	See (12) Below	None	None	See (13) Below

NOTE: *Additional site design and building standards may be included in the *City of Kennewick Commercial Design Standards manual*

FOOTNOTES for Table 18.12.010 B.2 Non-Residential Standards Table:

- (1) Street frontage: 20 feet, except for fuel island canopies, which may encroach up to five feet from the street property line with the outer edge of the canopies, provided that the canopy support pillars are at least 15 feet from the nearest street property line.
 - (a) Non-street frontage: None; unless the use abuts an R or HMU district, in which case 20 feet.
- (2) All activity, other than off-street parking, loading, or gasoline sales must be kept within a completely enclosed building. However, live plant material may be stored outside if parking is not affected.
- (3) Street Frontage: Only that necessary to comply with Chapters 13.12, 18.21, and 18.27. The right-of-way is determined in accord with Section 5.56.51.
 - (a) View obstruction setbacks must be improved with asphalt, concrete, or some other comparable dust-free and weed free material, or landscaped to prevent dust and weeds with adequate irrigation or otherwise maintained to prevent weeds, dust and rubbish.
 - (b) Side and Rear: None; but 20 feet on sides abutting R or HMU districts.
- (4) All service, processing and storage areas abutting any R district at ground floor level or within 20 feet and visible from a street, must be within a completely enclosed building or screened from view by a permanently maintained, sight-obscuring fence at least six feet high. Except for vehicles, no storage shall extend above the fence.
- (5) HMU-Historic, Mixed Use District Development Standards:
 - (a) Floor area ratio (the amount of building surface expressed as a ratio to lot surface) is a maximum of .45;
 - (b) New construction of dwellings, business buildings, and exterior remodeling of existing structures (including re-roofing, re-siding, additions and similar exterior changes) require conformance with the following criteria:
 - (i) Maximum building height - 30 feet;
 - (ii) Roof pitch - not less than 4:12;
 - (iii) Orientation - main entranceways oriented directly or as near directly to the street as possible;
 - (iv) Openings - blank walls must be avoided. A combination of windows, doors, balconies, alcoves, bay windows, porches or similar architectural features must comprise a minimum of 25% of the total street wall area and a minimum of 20% of the total area of each of the remaining walls, with the exception of the rear wall;
 - (v) Windows - mirror or mirror-like composition or exterior finishes are prohibited;
 - (vi) Siding and roofing - metal, vinyl or plastic siding or roofing is allowed, provided the finish is not reflective, and in the case of metal, is anodized;
 - (c) The structure shall be similar in character to the surrounding residential structures.
 - (d) Yards:
 - (i) Street frontage - (see 18.12.335);
 - (ii) Side yards - (see 18.12.335);
 - (iii) Rear yards - None, provided that the Floor Area Ratio ("F.A.R.") and other setbacks are observed;
 - (e) Accessory structures must conform to 18.27.030;
 - (f) Signage shall conform with Section 18.24 with the following changes:

- (i) A maximum height limit of 15 feet for freestanding signs;
 - (ii) The maximum sign area for all signs is 24 square feet. Included in this total is an eight square foot maximum for signage that is attached, drawn, or installed on the structure or any portion of the structure;
 - (iii) Internally lit signage and signage utilizing flashing lights is prohibited. Lighting shall be by indirect methods;
 - (iv) Non-conforming signs having a replacement value of less than \$2,500 shall be made conforming by June 30, 2000;
 - (v) Multi-tenant businesses are permitted 24 square feet of signage for the initial business and eight (8) square feet per additional business to a maximum of 48 square feet;
- (g) Parking requirements in this district shall conform with Section 18.36, with the following exceptions:
- (i) Parking requirements for unlisted uses is one space per 250 square feet of building space devoted to business activities. This formula takes into account space used for retail activity, record storage, office and clerical space, or other areas normally and primarily used for business purposes;
 - (ii) Total number of off-street parking stalls required may be reduced one space for each 20 feet of linear frontage along a public street that is legal for parking purposes;
- (h) Landscaping requirements in this district shall conform with Section 18.21, with the following exceptions:
- (i) Landscaping must incorporate street frontage setback landscaping per the design requirements of Section 18.21.060(1)(a); this requirement does not use side and rear yard ratios in its calculation;
- (i) Public hours of operation for commercial uses must begin at or after 7:00 a.m. and end at or before 8:30 p.m., with the exception of Bed & Breakfasts, which by nature require 24-hour service.
- (j) Retail sales incident to the uses listed in 18.12.010 B-1: Table of Non-Residential Uses are permitted, provided that such incidental sales do not occupy more than 25% of the gross street floor area of the primary structure. For purposes of this calculation, retail activity is that portion of the gross street floor located in one designated area of such street floor used for goods transactions. It does not include storage or record keeping space.
- (6) Yard requirements: (see Section 18.12.330 for City location-related standards).
- (a) Front: 15 feet;
 - (b) Corner/flanking street: 10 feet;
 - (c) Side: 0 feet for the interior non-perimeter lot lines of a parent parcel. Once a parent parcel is platted or subdivided, only the internal lot lines shall be allowed to have zero foot side yards. All perimeter lot lines of the parent parcel have a ten-foot side yard setback requirement. Buildings constructed with side yards less than 10 feet shall not be longer than 300 feet. A property owner's association must be formed and a maintenance agreement executed, as approved by the Planning Director, providing for perpetual maintenance common of landscaped areas for developments with buildings with side yards of less than 10 feet. The maintenance agreement shall be recorded and run with land and shall provide for the City of Kennewick to arrange for maintenance of landscaped or common areas in the event the property owners fail to maintain

- these areas or their association dissolves. The agreement must be recorded prior to the land division;
- (d) Side yards abutting R or HMU zones must be a minimum of 20 feet;
 - (e) Rear: 10 feet, unless abutting an R zone, in which case the minimum setback is 25 feet;
 - (f) Minimum street frontage: 30 feet.
 - (7) Yards: (see Section 18.12.330 for City location-related standards).
 - (a) Street frontage yards: 15 feet. View obstruction setbacks must be improved with asphalt, concrete, or some other comparable dust-free and weed-free material, or landscaped to prevent dust and weeds with adequate irrigation or otherwise maintained to prevent weeds, dust and rubbish.
 - (b) Side and rear yards: 25 feet.
 - (8) All service, processing and storage areas abutting any R district at ground floor level or within 20 feet and visible from a street, must be within a completely enclosed building or screened from view by a permanently maintained, sight-obscuring fence at least six feet high. Except for vehicles, no storage shall extend above the fence.
 - (9) Street Frontage: Only that necessary to comply with Chapter 13.12 and Section 18.12.010 A-2 and B-1. The right-of-way is determined in accord with Section 5.56.51.
 - (a) View obstruction setbacks must be improved with asphalt, concrete, or some other comparable dust-free and weed-free material, or landscaped to prevent dust and weeds with adequate irrigation or otherwise maintained to prevent weeds, dust, and rubbish.
 - (b) Side and Rear: None; but 25 feet on sides abutting R or HMU districts.
 - (10) All service, processing, and storage areas abutting any R or HMU districts at ground floor level must be within a completely enclosed building or screened by a permanently maintained sight-obscuring fence at least six feet high.
 - (11) All yards must be a minimum of 20 feet, unobstructed by structures or accessory uses.
 - (12) Street frontage: 20 feet if adjacent to an R District; Non-street frontage: none unless the use abuts an R or HMU district or use, in which case, 20 feet.
 - (13) All storage areas visible from any street abutting a site or from any abutting R district at ground floor level, must be within a completely enclosed building or screened from view by a permanently maintained sight-obscuring fence at least six feet high. Except for vehicles and rolling equipment, no storage shall extend above the fence.
 - (14) Building heights in the CM district shall be 35 feet except for the height limits provided in Chapter 18.68, Appendix A-6-3, Clover Island – Height Limitation Exhibit.
 - (15) Aviation uses shall be no closer than seventy-five (75) feet from the curblines of West Rio Grande Avenue or West Grandridge Boulevard.
 - (16) Development in the Central Business District (CBD) zoning district is subject to the following development standards:
 - (a) A single architectural style is not required for new or remodeled buildings, but a building's style shall be consistent throughout; details from different eras shall not be mixed on a single building. Traditional detailing is required.
 - (b) A building's elevation and mass must be modulated to match or replicate the narrow commercial façades typical of original development, and give a sense of human scale. Reuse original façades where possible and economically feasible.
 - (c) New construction shall be consistent with the height, scale, setbacks or massing of nearby historic buildings.

- (d) Appropriate building facing materials include: brick, wood, stucco, stone, and cast iron storefronts. Building materials for new buildings shall support the existing character of older buildings, by having a projected physical life cycle of 100+ years.
- (e) The following street front siding materials are prohibited:
 - (i) Plain concrete masonry unit;
 - (ii) Unfinished tilt-up concrete slab;
 - (iii) Corrugated metal; or
 - (iv) Vinyl or plastic siding.
- (f) Unpainted brick may not be painted, except for clear graffiti preventing finishes.
- (g) Building entries shall be located on the street side of the building. If the building does not front on a public street then the entry must be visible from a public street.
- (h) Buildings located on street corners shall have additional architectural detailing to emphasize the street corner, which may include, for example: corner entry, balcony, integrated signage, public art, and pedestrian amenities. Buildings or public amenities located on corners shall abut the property line on each side of the corner.
- (i) Blank façades shall not be visible to public spaces or rights-of-way. Treatments to alleviate blank façades may include windows, architectural detail, or materials with texture (e.g. brick, siding, etc.) or artwork such as sculpture.
- (j) Vestibules, entries, windows, and other architectural features shall provide further visual definition and reduce the visual mass of larger buildings. Façades shall reflect the scale and massing of historic structures and achieve proportions that give a sense of human scale.
- (k) First floor ceiling heights shall be taller than upper stories to reflect the historical pattern of construction. (First floor ceiling heights are a minimum of 10 feet to accommodate transom windows.)
- (l) Awnings create visual interest and protect pedestrians from sun and rain and are encouraged in the CBD district subject to the following:
 - (i) Awnings may be provided along the entire frontage of commercial buildings. They shall be of a size, scale and shape appropriate to the specific building, window and door trim. The underside of all awnings shall be enclosed to prevent birds from roosting or nesting.
 - (ii) Awnings or canopies shall be supported solely by the building and be hung above the display window space at least eight (8) feet above the public walkway.
 - (iii) Awnings may extend four (4) feet over the walkway from the building's face provided there is no obstruction of street trees and/or street lights as approved by the City.
- (m) Windows provide a visual entry into a business and the goods and services offered while providing security. Windows shall meet the following standards:
 - (i) Display windows on the ground floor of retail and commercial buildings shall be the predominant surface on the first story, typical of original downtown Kennewick commercial buildings.

- (ii) New commercial construction shall provide a minimum of fifty percent (50%) of the first floor wall surface in windows that face the street based upon a minimum of ten (10) feet of first floor height.
- (iii) No more than twenty-five percent (25%) of the gross square footage of display windows may be used for temporary or permanent signage for advertizing, promotion or community service announcements.
- (iv) Windows shall not be permanently darkened by use of applied films at street level. First story windows shall not be covered but shall provide visual access from street and sidewalks. Windows located above the street level may be covered by curtains, shades, or other temporary coverings that do not distract from the historic relevance of the area.

(17) Commercial, Auto Row District

(a) Yards

(i) Front: 25 feet

(ii) Side: None, unless abutting an R district, then 10 feet

(iii) Rear: None, unless abutting an R district, then 10 feet

(b) All service, processing and storage areas abutting any R district at ground floor level or within 20 feet or visible from a street, must be within a completely enclosed building or screened from view by a permanently maintained, sight-obscuring fence at least six feet high. Except for vehicles, no storage shall extend above the fence. (Ord. 5712 Sec. 4, 2017; Ord. 5542 Sec. 3, 2014; Ord. 5434 Sec. 6, 2012; Ord. 5366 Sec. 2, 2011; Ord. 5309 Sec. 11, 2010; Ord. 5212 Sec. 3, 2008; Ord. 5180 Sec. 1, 2007)

Section 5. Section 18.12.030 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.030: Adult Concessions (Entertainment and Retail):

(1) Adult Entertainment and Retail taken together as “Concession,” and defined by Section 18.09.070, are recognized as being uses that may prove detrimental in certain circumstances to its surrounding neighborhoods and thereby the following regulations are imposed:

(2) No adult concessions, shall be located:

(a) Within 500 feet of any Residential or Urban Mixed Use zone;

(b) Within 500 feet of any public or private school, or any trade or vocational school that on a regular basis has at least one student under the age of eighteen (18) years;

(c) Within 500 feet of any church or other religious facility or institution;

(d) Within 500 feet of any park or any public facility or open space zone;

(e) Within 1500 feet of another adult concession.

(3) No person owning, operating or managing an adult concession or their employee or agent shall invite, allow, or permit any person under the age of 18 years to enter or remain on the premises of any adult concession.

(4) There shall be no window, marquee, or other display of any matter depicting or portraying specified anatomical areas, or specified sexual activities.

(5) Violation of the use provisions of this section is declared to be a public nuisance perse, which shall be abated by a civil action only and not by criminal prosecution.

(6) Adult Retail establishments shall be identified on the exterior of the establishment with a sign baring text only and using such terms as would be expected among

the general public. No advertising, text, pictures or depictions shall be permitted anywhere in the windows, on the street (tent signs), store-front, marquee, or anywhere else other than on the approved signage. Terms such as “sale” etc. and other such advertising, as associated with mainstream advertising, will be accepted, subject to the interpretation of the Planning Director or an appointed official.

(7) Nothing in this section is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building or use which violates any ordinance or statute of the City of Kennewick, County of Benton, State of Washington or the United States. (Ord. 5712 Sec. 5, 2017; Ord. 5180 Sec. 1, 2007)

Section 6. Section 18.12.040 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.040: Animal Keeping: In R, ~~and~~ HMU ~~and~~ UMU districts, dogs and cats of the age of 10 weeks or older, rabbits, guinea pigs, fowl, pigeons, chickens (excluding roosters) and similar small animals may be kept so long as no more than three of each kind or a combined total of six are kept. All cages, pens, and runs must be maintained in a clean and sanitary condition and meet setbacks. Animals and birds must not roam or fly to adjacent properties. Animals and birds and their surroundings must be maintained to prevent a nuisance due to noise or smell. An increase in the allowable number will be permitted upon issuance of a Land Use Permit in accord with Section 18.42. (Ord. 5712 Sec. 6, 2017; Ord. 5542 Sec. 4, 2014; Ord. 5180 Sec. 1, 2007)

Section 7. Section 18.12.250 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.250: Temporary and Parking Lot Businesses:

- (1) General requirements:
 - (a) A City of Kennewick business license is required;
 - (b) The use of City property requires approval of a lease, background check, a hold harmless agreement and an insurance policy naming the City of Kennewick as an additional insured in the amount of one million dollars; or
 - (c) The use of City property requires approval of a lease, background check, a hold harmless agreement, and an insurance policy naming the City of Kennewick as an additional insured in an amount approved by the City Attorney;
 - (d) Operation in a city park also requires approval of a concessionaires permit;
 - (e) Any business-related discharge into the sanitary or storm sewer systems requires the written approval of the Public Works Director;
 - (f) Written approval from the Benton-Franklin County Health District is required if food is served or if restrooms are required;
 - (g) Buildings must be on a permanent perimeter foundation or otherwise fastened and designed to secure the structure for a minimum of a 70-mile per hour wind load;
 - (h) The Fire Marshall must review and approve the use of a tent for applicable requirements of the Uniform Fire Code;
 - (i) No structure or temporary use may be within five feet of any right-of-way. Sight distance triangles must be observed;

- (j) There must be adequate off-street parking provided in accord with KMC 18.36. The site must be paved or graveled;
- (k) If on the same parcel as an existing business the minimum off-street parking for the primary business must be maintained;
- (l) The temporary business must submit an accurate site plan drawn to scale depicting the following:
 - (i) The parcel lines and right-of-way lines;
 - (ii) The boundaries of the portion of the property to be used by the temporary business;
 - (iii) The parking area, which is to be used by the temporary business and the driveways to be used for access;
 - (iv) Drive areas must remain open and all pedestrian walkways must remain passable;
 - (v) The location and dimension of existing structures as well as the location and dimension of all structures, vehicles, and signs to be used by the temporary business;
 - (vi) How any temporary on-site residency and sanitation is to be accommodated;
 - (vii) Proposed operating hours.
- (m) The business license must list the Washington state tax number including the City's location code number;
- (n) All signs, circulars, and other advertising material must be removed within three days of the termination of the business;
- (o) There must be adequate provisions made for dust and litter control;
- (p) The applicant must submit the property owner's written consent for the use of premises;
- (q) All electrical facilities must be inspected and approved by the Washington State Department of Labor and Industries;
- (r) Temporary businesses must conform to the noise standards set forth in KMC 9.52;
- (s) The applicant must show evidence of any required State licenses with the application for a business license;
- (t) No business shall be located in the parking area immediately adjacent to the entrance to another business without the written permission of the affected business owner;
- (u) All temporary and parking lot businesses that cannot demonstrate legal non-conforming status must be in compliance with the requirements of the section within one year from the date of adoption;
- (v) No vision obstructions within the vision clearance triangle are permitted.
- (2) Permanent small building businesses:
 - (a) Must meet all applicable regulations including but not limited to: parking, landscaping, and signage;
 - (b) Businesses with drive through windows must have a minimum of six (6) stacking stalls per KMC 18.36.060;
 - (c) Businesses with outdoor (or under-tent) seating must meet the applicable requirements of the International Building Code for employee and customer restrooms;
 - (d) The business must be connected to public water and sewerage systems.
- (3) Long term temporary stands:

- (a) Shall locate in Kennewick for a maximum of 180 consecutive days annually;
- (b) The structure used must be removed within 10 days of the business closing for the year;
- (c) The business must operate from a structure;
- (d) Shall locate only in the CC, CAR, CG, CR, UMU and IL zoning districts.
- (4) Short term temporary stands:
 - (a) The business must operate from a structure;
 - (b) The structure used must be removed within three days of the business closing for the year;
 - (c) The business shall locate for no more than two non-consecutive 30-day periods within one calendar year at any one location;
 - (d) All short term temporary businesses must be on the same parcel and secondary to a principle permitted use, locate within a zone that allows public and quasi-public uses and must comply with all regulations, including permitted use, appertaining to that district except as modified by this section.
- (5) Vehicle based food businesses:
 - (a) Allowed in CO, CBD, CC, CAR, CG, CM, CR, UMU, BP, IL, IH, OS, and PF zoning districts;
 - (b) Standing. No vehicle based business operator shall stand or allow their vehicle to stand upon any public way for more than one hour in any one place, except as otherwise permitted;
 - (c) Outdoor seating is not permitted, except as stated in subsection (f) below;
 - (d) Except as stated in subsection (f) below, a vehicle based business shall operate in the same location for a maximum of 30 days in addition to the requirements of subsection (b) above;
 - (e) The business shall not function as a drive-through.
 - (f) The following standards apply to operation within the Bridge to Bridge River to Rail subarea.
 - (i) Vehicle based food businesses may operate without a maximum time limit and have outdoor seating;
 - (ii) In determining whether or not the proposed location would be permitted, the following criteria shall be considered:
 - (A) The type and intensity of the proposed use and the type and intensity of existing uses;
 - (B) The width of the sidewalk, pedestrian plaza or parking lot in which it is to be located;
 - (C) The proximity and location of existing street furniture, including but not limited to signposts, lampposts, bus shelters, benches, phone booths, trees, newsstands, as well as the presence of bus stops and truck loading areas;
 - (D) Established or proposed pedestrian and vehicular traffic patterns;
 - (E) The number of vehicle based food businesses in a given area;
 - (F) Other factors deemed relevant by the approving authority, consistent with the purpose of this chapter and intent of the subarea zone proposed for the use.
 - (G) The vehicle based food business shall be placed in a parking area that must be surfaced with asphalt or Portland cement binder pavement to provide a durable and dustless surface.

- (iii) In addition to the requirements to establish compliance with KMC “Temporary and Parking Lot Business” General Requirement 18.12.250(1) and other codes as applicable, the following items specific to Vehicle Based Food Businesses are required:
 - (A) Site plan including outdoor seating layout.
 - (B) Restroom agreement.
 - (C) Discharge plan for used oils and graywater.
 - (iv) Vehicles must be currently licensed, operable, and able to leave a site at any time under their own power.
 - (v) No vehicle based food vendor shall locate his or her vehicle or other conveyance in such a manner as to cause a traffic hazard.
 - (vi) No vehicle based food vendor shall obstruct or cause to be obstructed the passage of a sidewalk, street, avenue, alley or any other public place by causing people to congregate at or near the place where food is being sold or offered for sale.
 - (vii) The vending site shall be kept clean and orderly at all times, and the vendor must provide a refuse container and is encouraged to provide containers for recycling. Refuse, debris, and liquid spills by any person using the business location shall be cleaned up daily, and refuse containers emptied on a regular basis.
 - (viii) Support equipment and accessories shall generally be self-contained within the vendor unit and site. Support equipment and accessories, including accessory seating and tables, must not be placed so as to impede pedestrian or vehicular traffic or distract from the pedestrian experience.
 - (ix) Outdoor equipment shall be low maintenance and cleanable, durable, and preferably painted or of noncorrosive metal.
 - (x) No portion of a vendor’s inventory, sales equipment, or any other structure or equipment used in the sales or solicitation process shall be left overnight upon any unenclosed portion of any lot or site within the City, nor upon any public street or right-of-way.
 - (xi) The City reserves the right to limit the number of vehicle based food vendors in any given area of the Bridge to Bridge River to Rail Subarea. City review may consider the needs of the public, diversity of products offered for sale, the smooth flow of pedestrian and vehicular traffic, number of complaints, and locations where vendors are located.
 - (xii) At the conclusion of business activities at a given location, the vehicle, ancillary equipment, and debris generated by the vendor’s business activities shall be removed and the site and public area surrounding it cleaned.
- (6) Cart businesses:
 - (a) The cart must be stored indoors or off-site when not open for business;
 - (b) Allowed in CN, CO, CBD, CC, CAR, CG, CM, CR, UMU, BP, IL, IH, OS, and PF zoning districts;
 - (c) Operation in a city park also requires approval of a concessionaires permit;
 - (d) Standing. No cart-based business operator shall stand or allow their vehicle to stand upon any public way for more than two hours in any one place;
 - (e) The business shall not function as a drive through.

(7) Trade shows, circuses, carnivals, outdoor concerts, bazaars, festivals, or similar temporary uses including religious meetings, rallies, and revival tents must obtain a permit in accord with Chapter 6.47. The use must comply with the following:

- (a) The use will be allowed for no more than two non-consecutive ten (10) day periods annually;
- (b) No structure or activity shall be within 300 feet of a residential district. The activity must not seriously interfere with traffic, emergency services, or other normal City operations. Adequate off-street parking as well as access must be provided;
- (c) Residential districts must be shielded from disruptive sounds and noises;
- (d) Provisions must be made for the control of dust and litter;
- (e) Parking Facilities. The applicant shall submit a plan showing adequate parking facilities on or adjacent to the location where the event is to be held. At least one (1) parking space for every four (4) persons expected to attend shall be provided. All parking facilities shall be off the public right-of-ways and adequate ingress and egress shall be provided to and from the area to facilitate the movement of vehicles. If non-adjacent parking facilities are approved, the permittee shall provide shuttle bus service on a no-charge basis;
- (f) Traffic Control. The License Officer shall ensure that adequate traffic and crowd control has been provided.
- (g) Traffic and crowd control personnel shall be approved by the License Officer. One (1) traffic control officer and one (1) crowd control officer may be required if more than two hundred (200) people can reasonably be expected to attend the event, and more may be required if conditions warrant. The cost of crowd and traffic control must be borne by the permittee. If at any time the size of the crowd exceeds by twenty percent (20%) the number of people represented by the permittee to be in attendance, the License Officer may require the permittee to limit further attendance;
- (h) Temporary Accommodations. If temporary campsites, trailer parks, or other accommodations are provided, adequate sanitary facilities must be provided and minimum fire safety standards must be met. Adequate access and parking must be established, and provisions made for the maintenance of order and security at all times; and
- (i) No outdoor musical assembly or similar activity shall be conducted between the hours of 12:00 A.M. and 9:00 A.M., nor circus or carnival between 2:00 A.M. and 9:00 A.M., and permittee shall clear the licensed area no later than 1:00 A.M. or 3:00 A.M. respectively.

(8) Seasonal and non-seasonal merchandise in conjunction with an existing business:

- (a) Outdoor display and sales of general merchandise are allowed for no more than three non-consecutive ten (10) day periods annually when conducted in the parking area;
- (b) Outdoor display and sales of automobiles, recreational vehicles, boats, and similar vehicles are allowed for no more than twelve (12) non-consecutive five (5) day periods annually when conducted in the parking area;
- (c) Where vehicles are displayed for sale the transaction must occur within the City of Kennewick;
- (d) Outdoor display and sales of seasonal merchandise is allowed for a maximum of 90 consecutive days annually; and

- (e) Merchandise display areas must meet minimum required setbacks in conformance with the Uniform Fire Code. (Ord. 5712 Sec. 7, 2017; Ord. 5671 Sec. 1, 2016; Ord. 5663 Sec. 1, 2016; Ord. 5434 Sec. 7, 2012; Ord. 5431 Sec. 1, 2012; Ord. 5180 Sec. 1, 2007)

Section 8. Section 18.12.270 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.270: Transportable Units: ~~Transportable units may be used for storage purposes when ancillary to a permitted use in C, I, PF, and OS zones, provided, that all setbacks and access requirements are met.~~

(1) Transportable units that are uniformly painted and in good repair may be used for temporary storage in subdivision sales areas and equipment yards (18.12.270) and in C, I, PF, and OS zones for storage during construction and/or remodeling after a building permit has been issued. The units shall be removed from the site once the permit expires or at the end of twelve months, whichever occurs first. Screening is not required in these instances.

(2) Transportable units may ~~also~~ be used for temporary storage in “R” and “HMU” zones for new residential construction or remodeling after a building permit has been issued. The units shall be removed from the site at the expiration of the building permit. In no case shall the units remain on the site for more than twelve months. (Ord. 5180 Sec. 1, 2007)

(3) Transportable units, railroad boxcars and freight cars in “R” districts that are visible and less than 125 feet from a public street must be completely surrounded by a sight-proof fence and/or landscaping (18.21.060(2)) or removed before October 31, 2004.

~~(4) Transportable units that are in good repair may be utilized for business activities, other than storage, in the UMU zone.~~ (Ord. 5712 Sec. 8, 2017; Ord. 5180 Sec. 1, 2007)

Section 9. Section 18.12.280 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

18.12.280: Trash Containers: All garbage cans, bins, dumpsters, containers and other garbage receptacles within UMU, C, I, BP, PF, and OS Districts or serving multi-family dwellings must be within a completely enclosed building or screened from view by a sight-obscuring wall or fence at least six feet high and with a gate or door or similar sight-obscuring material to provide access. All enclosures must be at least 20 feet from any residential use. No garbage, trash, waste or other refuse may be allowed to accumulate around or within the enclosure. (Ord. 5712 Sec. 9, 2017; Ord. 5309 Sec. 14, 2010; Ord. 5180 Sec. 1, 2007)

Section 10. This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 17th day of October, 2017, and signed in authentication of its passage this 17th day of October, 2017.

Attest:

STEVE C. YOUNG, Mayor

ORDINANCE NO. 5712 filed and recorded
in the office of the City Clerk of the City of
Kennewick, Washington this 18th day of
October, 2017.

LINDA C. SPIER, Deputy City Clerk

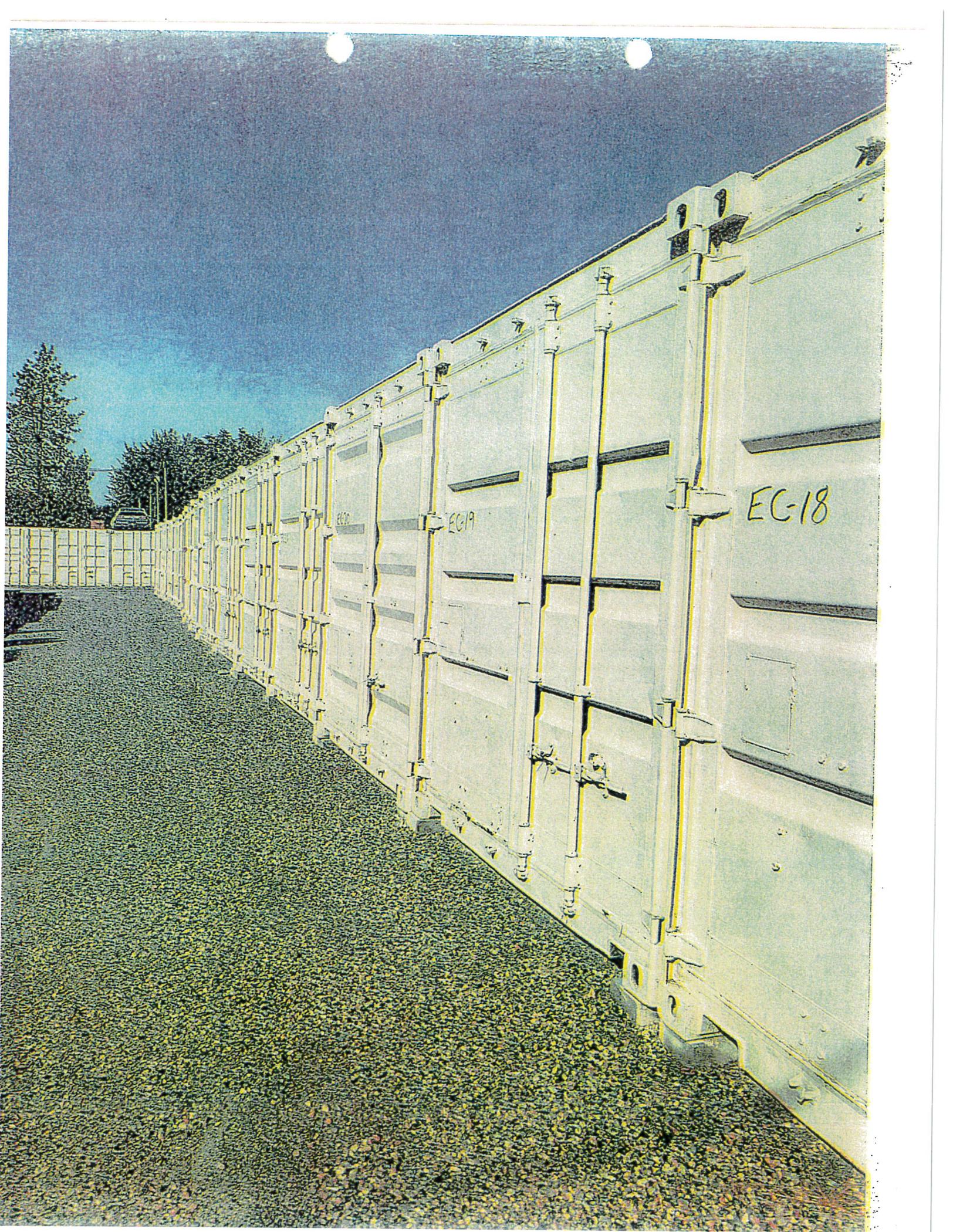
Approved as to Form:

LISA BEATON, City Attorney

LINDA C. SPIER, Deputy City Clerk

DATE OF PUBLICATION _____

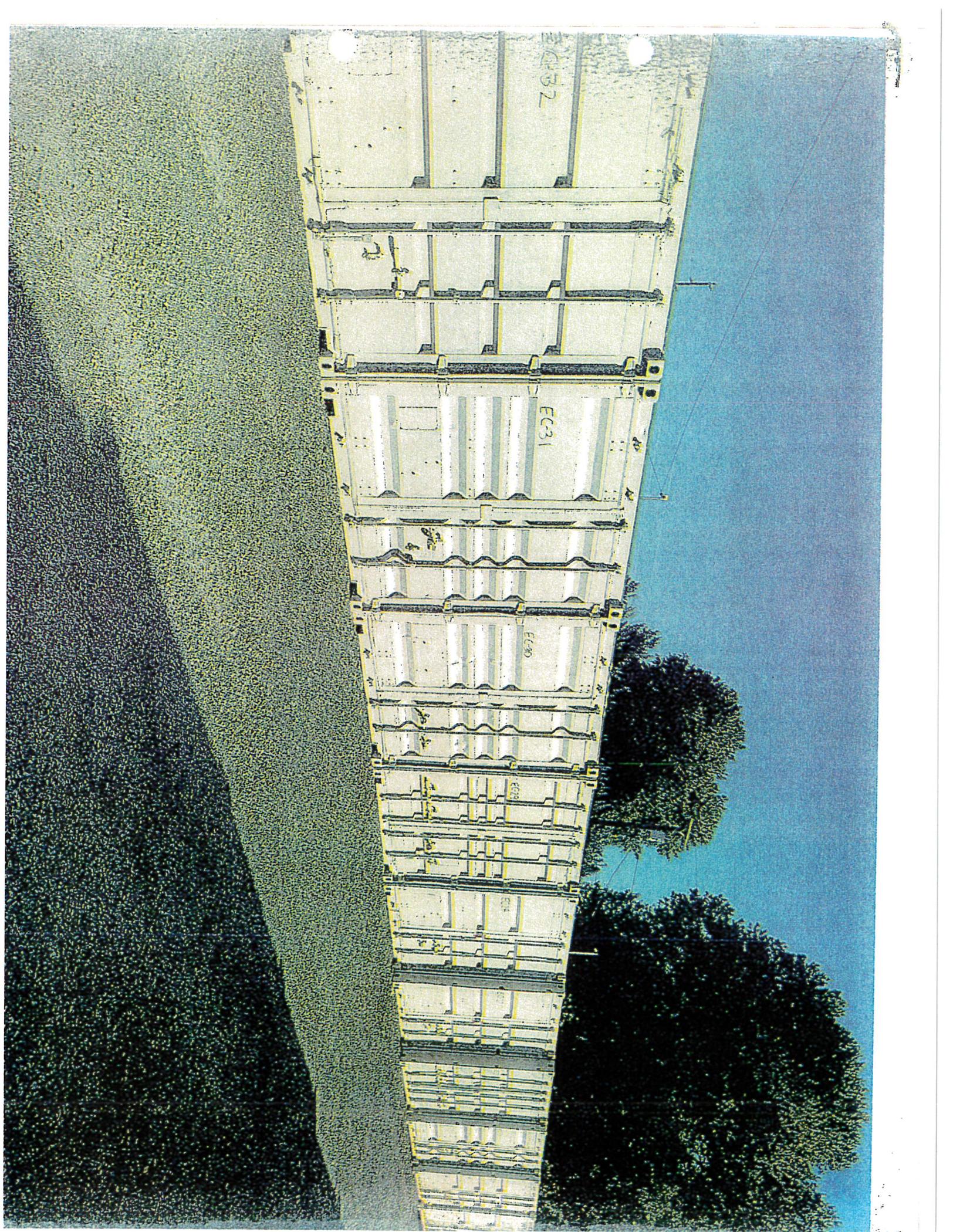
ATTACHMENT I



EC-18

EC-19

EC-20



EC32

EC31

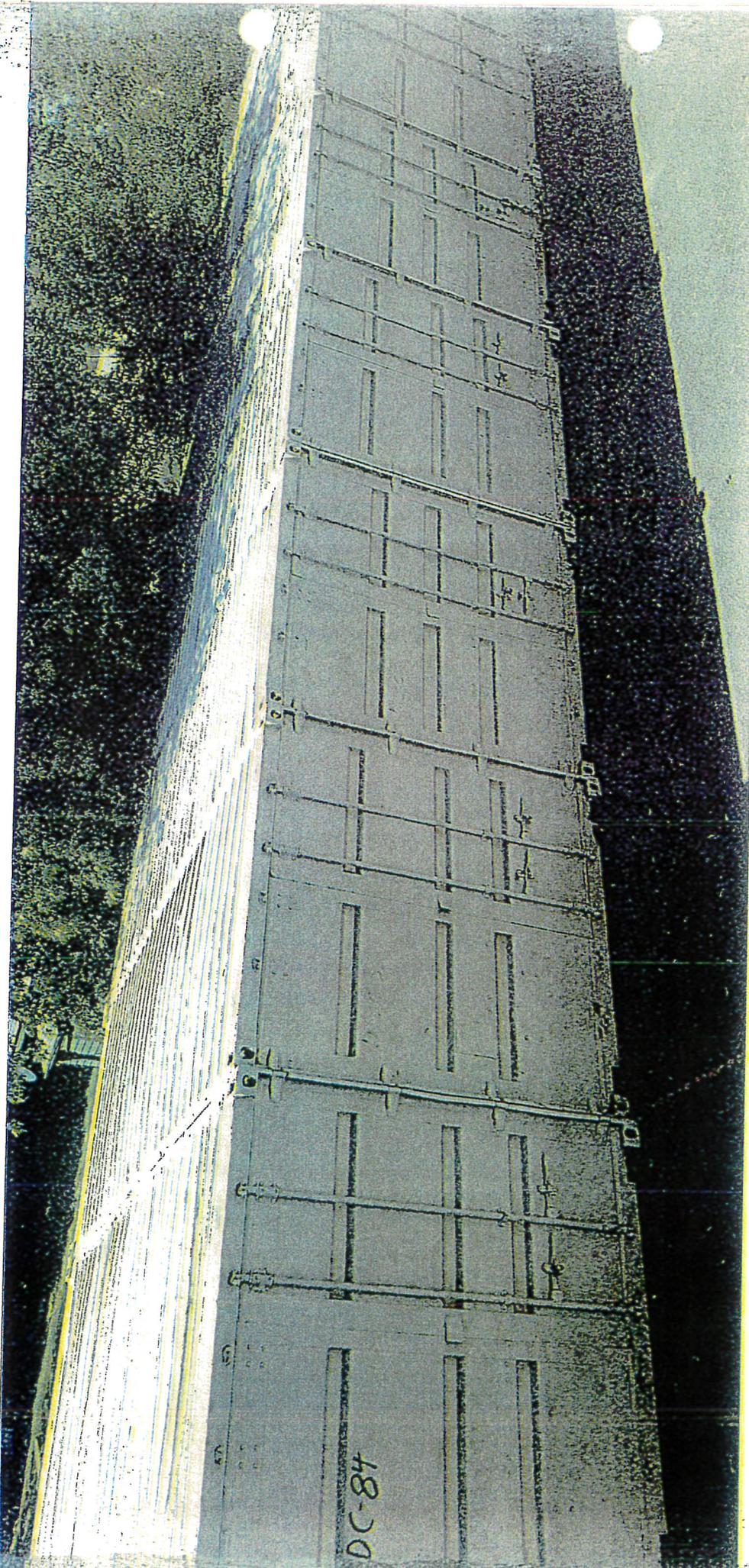
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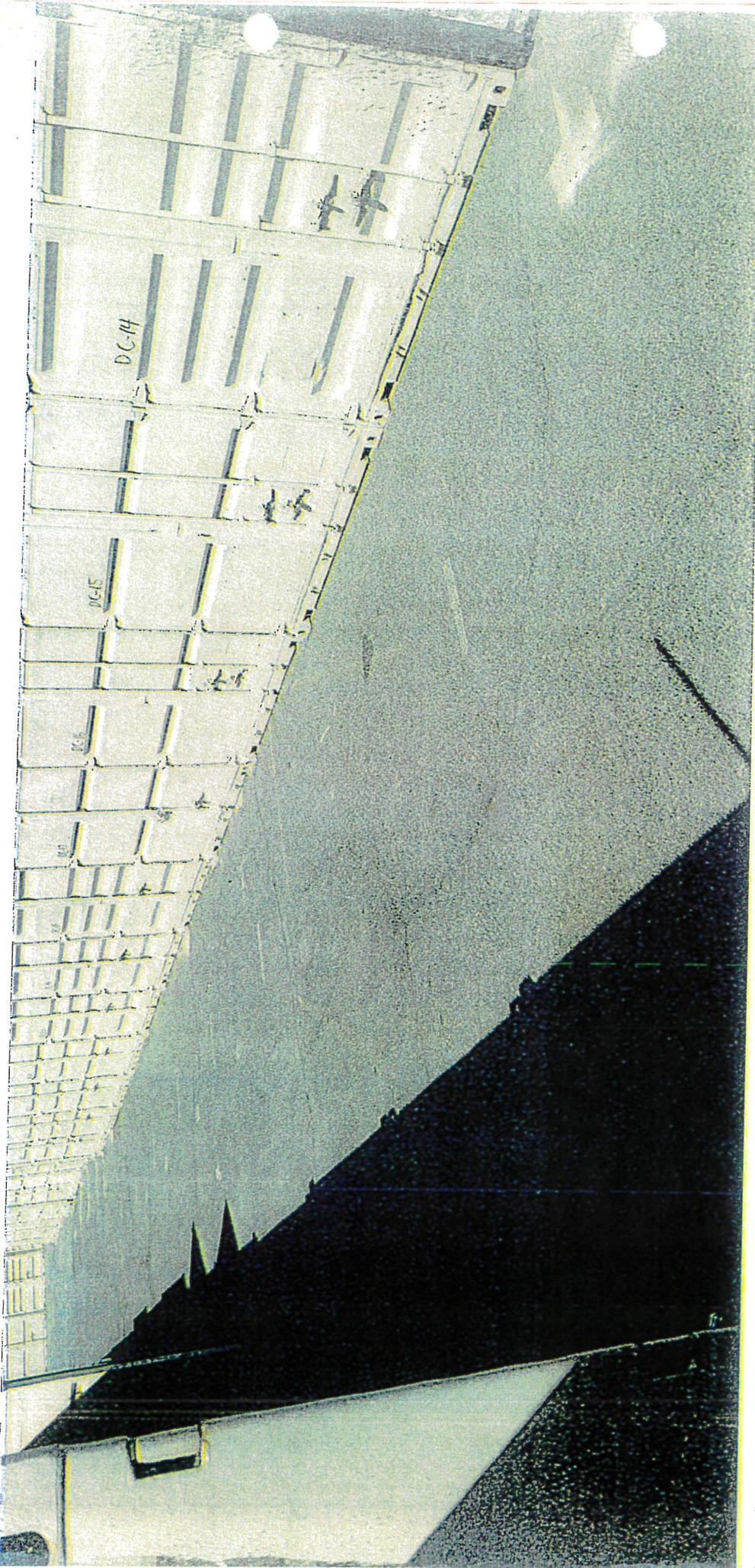
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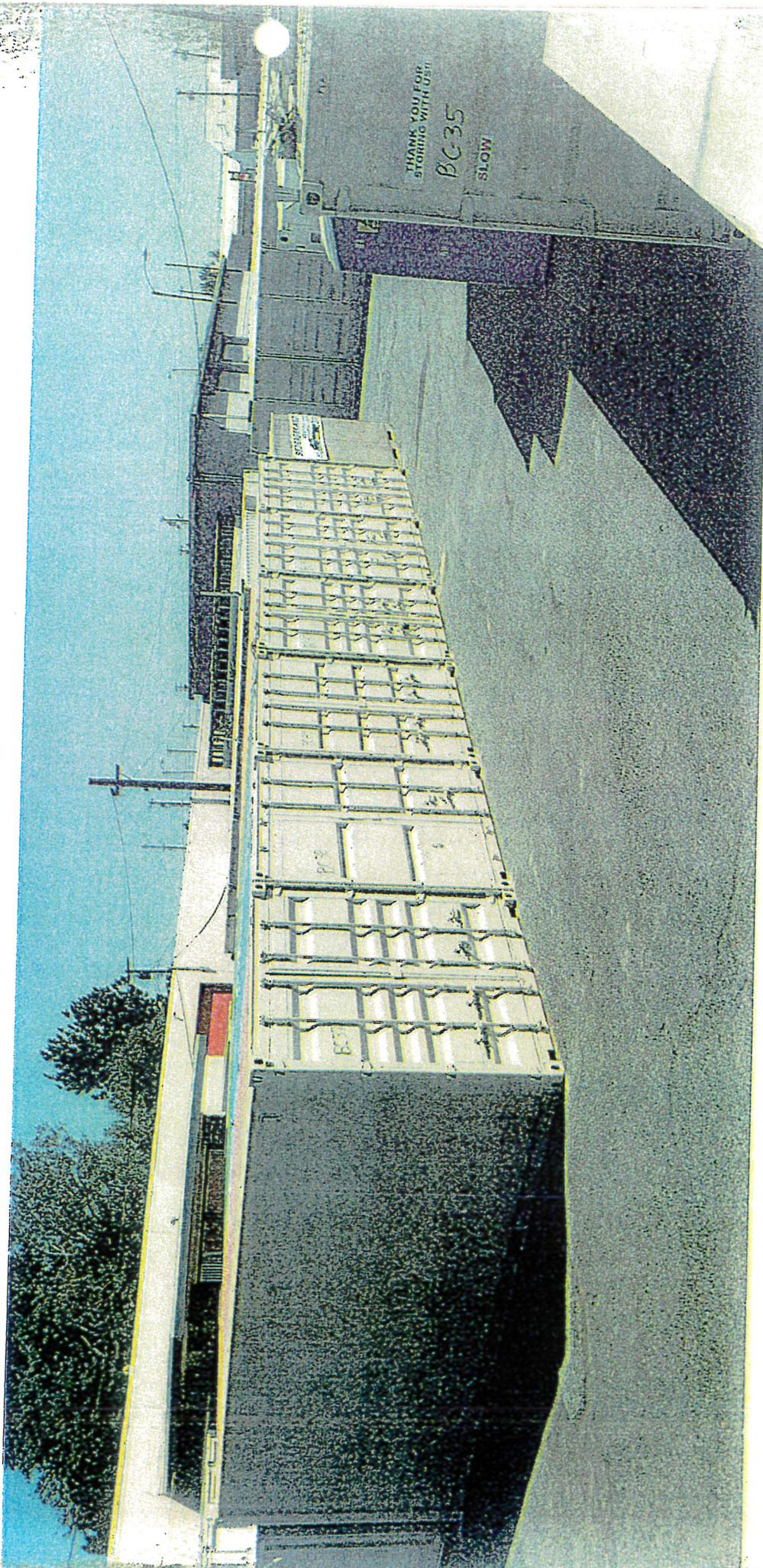
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DC-84





THANK YOU FOR
STOPPING WITH US!
BC 35
SLOW



EC-31

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