

June 25, 2024

City Plan Commission
414 East 12th Street
Kansas City, MO 64106

Re: **Urbavore Urban Farm Legal Use of Fremont Avenue ROW**– CD-ROW-2023-00053

RE: CD-ROW-2023-00053

Dear Commission Members:

Thank you for your thoughtful consideration of Urbavore's previous letter, exhibits, and comments related to the June 5 hearing of this matter. My prior letter contains everything you need to make your recommendation on the right of way (ROW), and I repeat the request to dismiss this petition. However, in preparation for the continued hearing scheduled for July 3, 2024, this letter responds to your requests for more detail regarding my client's property; corrects misinformation from the applicants or City staff; and clarifies in no uncertain terms that a vote to vacate the ROW would be against the law.

While the attached appendix gives more detail on each topic, here's a quick summary:

- 1. Urbavore has personally used Fremont Ave since 2010, a full decade before any of the applicants owned their properties.** The ROW has existed and been in use since the 1960s. Both Urbavore and the City legally relied on use of this entrance in developing the property. Therefore, the City cannot now abandon Urbavore's legal use of Fremont Avenue.
- 2. All of Urbavore's uses of its property are allowed under R-80 zoning, including composting.** City Planning expressly approved composting up to and even above the capacity of the existing structures. As such, **all vehicles using the right of way are related to legal use of the north-adjacent property.** Driving on the public streets is legal use of the ROW.
- 3. Urbavore has responded to neighbor concerns and actively and considerably manages traffic** for its weekly CSA pick up to minimize congestion and disruption on the residential street. Through operational changes in the 2024 season, Urbavore has already reduced the number of vehicles by 20%.
- 4. Harassing and retaliatory behavior by the applicant neighbors has increased since the June hearing, based on their misunderstanding of the legal status of the ROW.**

Urbavore using Fremont Ave continues to be a valid and legal use of a public street, regardless of any misunderstanding. Please disapprove the petition to send a clear signal to the applicants that the City will not undermine Urbavore's legal use of Fremont Avenue and the public streets.

Thank you for considering,

Stinson LLP



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APPENDIX

1. Legal use of the ROW began decades before any of the applicants took ownership interest in their parcels, and must continue for north-adjacent property access.

The ROW was dedicated and legal use began in the 1960s.¹ Brooke & Dan have personally used the ROW since 2010 to haul water and other agricultural materials onto their property. The City has also relied on Fremont Avenue to approve building permits, including the 2012 permit for residence. Relying on that approval, concrete trucks and other construction vehicles used Fremont Avenue to pour the foundation of the home, and begin developing the site in 2012. The developed portion of the 13-acre property can be accessed only through Fremont Ave.

While use and zoning of the north property has changed since original dedication of ROW, this does NOT impact the assessment of use of the ROW. Use of public streets, including the ROW for property access remains valid and legal, as the petition itself acknowledges.

Further, each of the applicants was aware of the farm's use of Fremont Avenue when they first took ownership interest in their properties. The applicants first took legal interest in the west-adjacent property in 2020, 2021, and 2023; more than a decade after the north property owners' personal use for access, and more than 60 years after the street was originally dedicated and used to access the driveway of 6400 E 55th Street.²

2. Unique R-80 zoning permits agricultural use including accessory composting and sale of farm produce through Community Supported Agriculture (CSA) (88-312), so all traffic using the ROW is related to permissible uses of the property.

Urbavore is one of Kansas City's model urban farms that has created and used compost on the property since 2010 (instead of chemical fertilizers) to enrich the soil. Composting has always been allowed. Urbavore approached City Planning in 2021 to discuss expanding its compost infrastructure and received a letter approving composting up to 1,500 cubic yards as an accessory use on its farm.³ Relying on that approval, Urbavore invested substantial resources, time, and energy to purchase a compost collection business and build out its infrastructure within the approved capacity. The composting area occupies a very small quarter-acre portion in the central part of the 13-acre property. Current operation does not exceed 1,048 cubic yards,⁴ and is well under the permissible capacity limitation. All compost is currently used as enriched soil on-site or given away as donations.

In the June 5, 2024, hearing Ms. Nanoski gave you the impression that composting is not allowed, but it is. A zoning appeal is pending with the Board of Zoning Adjustments because the City staff has falsely assumed that Urbavore is exceeding the approved capacity and relied on observations from the adjacent

¹ See Exhibits FN1– Plats for Country Aire Estates (August 1963) and Blue Vista (July 1966).

² See Exhibits FN2– Property deeds showing transfer of ownership to current owners in 2020 (south-adjacent, Suttington); 2021 (west-adjacent Moultrie); and 2023 (east-adjacent Walker). Note: The beneficiary deed transferring ownership to Ms. Walker did not take effect until the death of the prior owner in 2023, though recorded in 2019.

³ See Exhibits FN3-- 3/24/21 letter from City Planner Jared Clements.

⁴ See Exhibit FN4 – Measurements of Accessory Composting Area by architect Charles Vega showing maximum capacity at 1,048 cubic yards.

properties to "calculate" the capacity. It's simply not true or possible based on the size of the composting infrastructure as it exists.

Urbavore further worked with the City in response to receiving the notices of violations to create the MPD, which was submitted pursuant to the agreed schedule on Monday June 17. While the MPD would approve expansion of the composting facility and allow future sale of the compost, (as well as incorporating unrelated minor zoning/use changes),⁵ the MPD rezoning is not required for Urbavore to comply with the City's 2021 expanded composting approval letter. Urbavore's composting is a permissible accessory use.

3. Urbavore thoughtfully manages actual traffic flow for its weekly CSA pickup, composting collection pickup trucks, and occasional bulk deliveries.

Urbavore has heard and responded to the concerns of neighbors regarding traffic on 55th Terrace and has implemented operational controls to minimize disturbances. Daily use of the ROW occurs for personal use and composting collection vehicles leaving site in the morning (they are parked there overnight in lot) then returning in the afternoon. Compost Collective has 5 pickup trucks; some use trailers.

Weekly, the farm hosts a Community Supported Agriculture (CSA) customer share pick up and on-line orders. Customers drive their personal vehicles to the farm to get produce and leave within a 30-minute window, for which they sign up in a dedicated slot on Thursday evenings between 4-7 pm. On Thursday evenings, each half hour slot has a maximum of 20 personal vehicles entering and leaving the site to manage traffic. Urbavore has notified its customers to be respectful of the residential street and follow traffic laws, and because they do, the coming and going is actually very orderly, organized, and minimizes disruptions. Further, in the 2024 season, Urbavore has implemented an operational change to offer an alternate pick up location in North Kansas City, which reduces the number of cars by 20%. Urbavore also added a Friday morning pick up for 10 customers between the hours of 9 and 11 am, further reducing the number of cars on Thursday evening.

Each month, Urbavore receives 5-6 large vehicle deliveries (typically within the same day) related to its agricultural business and composting. These deliveries include brown carbon materials (e.g., broken down leaves, sticks, grass – yard waste) that is used to cover the composting food waste and minimize odors and vectors. Other large vehicle deliveries may occur related to construction, but are not a regular or on-going occurrence.

4. Other Access points do not exist.

The applicants falsely represented that there is access from the northwest corner of the farm. There is no such access. Rather, the property is landlocked on that corner from two other private properties and does not abut a public ROW.

While the property does front Bennington Avenue and has a very small parking lot entrance on the east side, this access is not developed for traffic and is disconnected from any other access road on the property such that it does not connect to the home, the developed parking area, or businesses. While farm

⁵ Other uses addressed by the MPD include a commercial building, retail sales, paving, and use of recycled shipping containers for equipment storage.

vehicles drive around on the farm without roads, customers and delivery vehicles require access through the ROW and gravel or paved roads.

Urbavore cannot just "gravel out" to Bennington, as the applicants suggested. It's not that simple. The property is developed with established farm fields and orchards on the eastern portion, which prevent access. Additionally, through the MPD process, Urbavore and BNIM evaluated alternative routes and learned that the topography of the land does not allow for a gravel or paved driveway in any location except potentially extending the Bennington parking lot along the southern fenceline, which would be adjacent to the back yards of residents of 55th Terrace and would not meet setbacks required for utility easements. Any such potential alternative access is not currently developed and it remains to be determined whether development is even possible. Development of a private driveway requires City processes for approval.

5. A few neighbors have misunderstood the legal status of and do not like the use of the ROW; this is not sufficient ground to vacate a valid and legal street that is in use.

The application itself calls this a "dead end." It is not. Another ROW exists extending East 55th all the way to 56th Street that crosses through Ms. Moultrie's property, as shown on the plats and the City's official map. Interestingly, the applicants have not sought to abandon this portion of the ROW, but have focused only on the portion that would cut off access to the north property because they do not like the legal use of the streets by Urbavore for legal use of its property. The application and this hearing itself are evidence of harassing and retaliatory behavior from a few neighbors.

Physical intimidation and harassment of the farmers and guests of the farm has continued since at least early 2023 and increased since the June 2024 CPC hearing. On CSA pick up days, Ms. Suttington and Mr. Norton are parking all of their vehicles in the street to obstruct access to the farm and create the bottleneck they have depicted in their presentation. Coupling this with standing outside during CSA pick up with a barking dog, spraying cars with a garden hose, and yelling at visitors, they have escalated the situation such that conversation about any underlying disagreement is no longer possible. I alerted the City staff of these concerns by email and requested that the staff consider revising its recommendation based on the additional information provided in the hearing and this behavior.⁶

As shown on the map I provided, most of the neighbors on 55th Terrace actually support the use of the farm, as they have done continuously since 2010. Brooke and Dan have maintained good relationships with most neighbors and are responsive to feedback. I hope they are able to attend the continued hearing and that you are able to hear directly from some of them in public testimony. However, attempts to speak directly with the applicant neighbors have resulted in more threats and intimidation. No one should have to tolerate threats, intimidation, and harassment regarding legal use of public streets.

Please end this today with a decision to dismiss the petition and recommend that City Council disapprove the vacation. Your recommendation must be based on the information presented and the legal status of the right of way as it exists today, not on potential future developments. As it exists, Fremont Avenue is a gravel road, currently in use.

⁶ See Exhibits – Email 6/21/24 to Matthew Barnes and Ahnna Nanoski with two photo attachments showing vehicles parked to create single lane bottleneck, including the regularly parked truck and trailer plus a new trailer parked in the middle of the street at the end of 55th Terrace right in front of Fremont Avenue.

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Vacating the ROW would immediately injure my clients rights and cause public inconvenience by cutting off access to the residence, farm, and legal use of the north-adjacent property.