

January 18, 2019

Via E-Mail

President Jolon Clark and Honorable City Council Members
Denver City Council
City and County Building
1437 Bannock St., Rm 451
Denver, CO 80202

Re: ***Rezoning of 4885 and 4889 South Quebec Street Application #2017I-00162***

Dear Mr. President and Honorable Council Members:

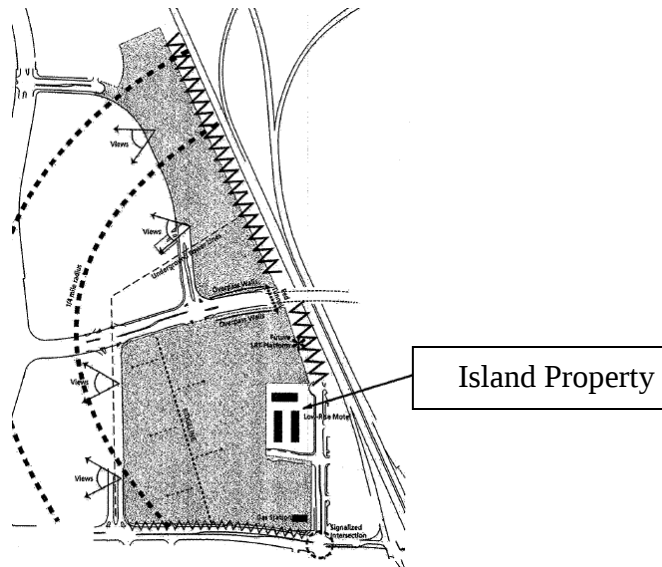
Foster, Graham, Milstein & Calisher LLP (“FGMC”) represents Bellevue Station Metropolitan District (the “District”) regarding Rezoning Application #2017I-00162 (the “Rezoning Application”) for the property located at 4885 and 4889 South Quebec Street (the “Island Property”).

The District has serious concerns with the Rezoning Application that should be considered before your public hearing on the Rezoning Application scheduled for January 28, 2019. Specifically, and as further explained below, it is the District’s position that the Rezoning Application does not meet the rezoning review criteria identified in the Denver Zoning Code (the “Code”) because: (1) the City and County of Denver (the “City”) has not considered all of the adopted plans affecting the Island Property, and the Rezoning Application is not consistent with the Bellevue Station Transit Oriented Development General Development Plan (the “GDP”); and (2) the Rezoning Application does not further the public health, safety and general welfare of the area. Additionally, and in agreement with the following analysis, 100% of the eligible surrounding property owners have filed a legal protest of the Rezoning Application.

Background

The Island Property is located in the Bellevue Station Transit-Oriented Development Area (“Bellevue TOD”) due to its proximity to the Regional Transportation District’s Bellevue Light Rail Transit Station (the “Bellevue LRT Station”). Adjacent property to the north, west and south of the Island Property is zoned T-MU-30 under the Former Chapter 59 Denver Zoning Code and is subject to the GDP (the “GDP Property”). Adjacent to the Island Property to the east is an RTD Park-Ride facility and Interstate Highway I-25 (“I-25”), most of which is located in unincorporated Arapahoe County.

As the map below indicates, the Island Property is surrounded by the GDP Property (dark gray shading):



The City-published Transit Oriented Development Strategic Plan (the “TOD Strategic Plan”) is a 2014 document intended to facilitate the implementation of then-existing recommendations and projects around and near transit-oriented areas.¹ The City staff cited the TOD Strategic Plan in its Rezoning Application Staff Report, dated November 28, 2018 (the “Staff Report”). Specifically, City stated that the TOD Strategic Plan is “not an adopted plan, but it does reflect the outcome of a multi-agency, mayor-led initiative to provide a foundation to guide public and private investment at rail stations” and concludes that the TOD Strategic Plan identifies the Island Property as within the Bellevue TOD, which, as an urban center station, is intended to be mixed use, high density, grid and alley block pattern.²

The City, however, failed to discuss in its Staff Report the fact that the TOD Strategic Plan identifies the Bellevue TOD as a development-ready area because of the City’s extensive planning of the Bellevue TOD during the creation and adoption of the GDP. Specifically, the TOD Strategic Plan states, “[the Bellevue TOD] has high development and market readiness and [is] essentially ‘TOD’ ready. These stations typically have had all the [C]ity intervention necessary to implement TOD.”³ Further, the City’s website for the Bellevue TOD cites two planning documents that apply to the Bellevue TOD: (1) **Bellevue Station General Development Plan**; and (2) **Blueprint Denver 2002**.⁴ Accordingly, it is clear that the City, when developing the TOD Strategic Plan, considered the GDP a governing document for the

¹ Transit Oriented Development Strategic Plan 2014, page 2.

² Rezoning Application Staff Report, page 18.

³ Transit Oriented Development Strategic Plan 2014, page 60.

⁴ See <https://www.denvergov.org/content/denvergov/en/transit-oriented-development/transit-corridors/southeast-corridor/bellevue-station.html>, last accessed January 17, 2019 (emphasis added).

Bellevue TOD and therefore, did not find it necessary to create another specific area plan for the Bellevue TOD.⁵

The GDP was approved by the City in February 2006, with the intent to create a transit oriented mixed-use development complementary to Bellevue LRT Station.⁶ Specifically, the GDP states that, “[t]he land plan has been developed to create an urban environment with a mix of uses including office, residential, ***hospitality***, retail, and entertainment.”⁷ The District is responsible for the cost of building infrastructure within the GDP Property, including, but not limited to, roadways, traffic safety signals and devices, storm drainage network, sewer outfalls, water delivery systems and open space. As individual parcels of land within the GDP Property are developed, the developers and/or property owners pay the District additional property taxes to repay the District for the cost of building the infrastructure required to support each individual developments’ share of the total infrastructure costs within the GDP Property. The District has issued over \$37 million of bonds to pay for infrastructure construction in the GDP Property and thus, the District has a financial interest in the Rezoning Application and ensuring future development of the Island Property is in accordance with all applicable plans, including the GDP. The Rezoning Application applicant is currently refusing to join the District and therefore, intends on benefiting from the District’s current infrastructure without paying its share of the necessary costs attributable to its proposed development as well as benefitting from the future costs of infrastructure and open space mandated by the GDP.

Rezoning Application and Approval Criteria

The Rezoning Application proposes to rezone the Island Property from its existing B-4 with waivers, which is a zone district under the Former Chapter 59 Code (the “Existing Zoning”) to the C-MX-20 zone district found in the current Code (the “Proposed Zone”).

The Code requires, as a condition of approval, that all rezoning applications are consistent with adopted plans.⁸ All rezoning applications must also be consistent with the neighborhood context description and the zone district purpose and intent statements.⁹ Lastly, all rezoning applications must further the public health, safety and general welfare of Denver.¹⁰

⁵ Other LRT stations have area specific plans, such as the Evans Station Area Plan and the Decatur-Federal Station Area Plan.

⁶ Bellevue Station Transit Oriented Development General Development Plan, Sheet 1.

⁷ Bellevue Station Transit Oriented Development General Development Plan, Sheet 1 (emphasis added).

⁸ *Denver Zoning Code* § 12.4.10.7(A).

⁹ *Denver Zoning Code* § 12.4.10.8(B).

¹⁰ *Denver Zoning Code* § 12.4.10.7(C).

A. Applicable Plans

The intent of the Code requirement that rezoning applications are consistent with adopted plans is to ensure that rezoning applications will result in development that is consistent and compatible with existing and future development in the specific area. One way to accomplish this compatibility is by adhering to a small area plan which has been adopted for a particular region by the City.¹¹ General development plans are also considered small area plans because general development plans have the same intent: to establish a framework for large phased development and ensure that development is compatible with existing and future development in a small area.¹² Because the Island Property is located within the Belleview TOD, all development of the Island Property must also look to the GDP as an applicable planning document.

The Rezoning Application only identified and analyzed conformity with the Denver Comprehensive Plan 2000 and Blueprint Denver 2002 as the “adopted plans” affecting the Island Property. As the Rezoning Application correctly identified, there are no small area plans affecting the Island Property, but what the Rezoning Application failed to consider is that pursuant to the Belleview TOD, the GDP is a planning document that affects the Island Property and given its proximity to the Belleview LRT Station, informs neighborhood context. Thus, the Rezoning Application should have, at a minimum, proven its consistency with the GDP and its failure to do so, and the City’s failure to require such, shows a violation of the Code’s rezoning review criteria.

B. The GDP’s Effect on the Island Property and Neighborhood Context

While the Island Property is not physically located within the GDP, it is surrounded by the GDP Property and thus, the Island Property’s development will impact the GDP Property in the same manner that individual development within the GDP Property will impact other parcels within the GDP. The only other property abutting the Island Property is the RTD Park-Ride facility and I-25. Unlike the GDP Property, neither the RTD Park-Ride facility nor I-25 are land uses that are sensitive to future development of the Island Property. Thus, future development of the Island Property will, from a neighborhood or surrounding area context, only impact the GDP Property. Therefore, the City erred in not contemplating or considering the GDP as a relevant plan affecting the Island Property and thus, not requiring review of the GDP during the Rezoning Application review process. Regardless of the TOD Strategic Plan, the Island Property’s sheer proximity to the GDP Property and disconnect to any other developable property also makes the GDP a relevant plan to a rezoning of the Island Property from the perspective of neighborhood context.

¹¹ Baker Neighborhood Plan, Alameda Station Area Plan and Cherry Creek Area Plan are all examples of Small Area Plans.

¹² Transit Oriented Development Strategic Plan 2014, page 46.

Moreover, when the GDP was created in 2006, the owners of the Island Property were invited to be included in the GDP Property and declined, likely because they had no infrastructure need at the time as the Island Property was fully developed. Regardless of its exclusion, because of its undisputed proximity and its inevitable impact on the GDP Property, the GDP specifically references the Island Property in several places. On sheet 4 of the GDP, under the description of “Existing Conditions” the GDP states, “[t]he existing low-rise hotel abutting the eastern boundary of the [GDP Property] is not controlled by the applicant. Current development plans **assume that this land use will remain**.”¹³ Again, on the Anticipated Development Map, the GDP identifies the Island Property as “Hospitality” in the same manner as it identifies other portions of the GDP Property as “Retail, Office” or “Residential, Retail, Office, Entertainment.”¹⁴ The GDP labeled the land use of the Island Property in the same manner as it labeled the GDP Property, because the Island Property **functions** as though it is within the GDP Property. Additionally, of the developable property directly adjacent to the Belleview LRT Station, the GDP Property accounts for approximately 93.5% of the total land and the Island Property accounts for the remaining 6.5%. Again, it was in error for the City to conclude that the City-adopted GDP that governs land use within 51 surrounding acres should not also govern or at a minimum inform the appropriate redevelopment of the 3.3 acres in the middle of and surrounded by the GDP Property.

Therefore, though the Island Property is not technically located within the GDP, the GDP specifically contemplated the future land use on the Island Property and in turn, the City should have, at the very least, considered the Rezoning Application’s compatibility with the existing GDP since there are no other small area plans and the development on the Island Property will inevitably affect the GDP Property.

C. The Rezoning Application’s Adverse Impact on Health, Safety and General Welfare

The Rezoning Application is incompatible with the GDP Property and the neighborhood context of the surrounding area because it allows incompatible height and density and does not require any open space dedication. The Rezoning Application also fails to further the public health, safety and general welfare of Denver. The incompatibility and issues related to health safety and welfare prove that the Rezoning Application has failed to meet the Code’s criteria required of all rezoning application approvals.

1. Density

The Rezoning Application would allow incompatible density that would adversely impact the health, safety and welfare of the Belleview TOD area. As explained above, when the GDP was created, the City went to great lengths to require master plans for each portion of infrastructure and identify where added densities could be accommodated. This thoughtful and thorough planning process ensured responsible development of the Belleview TOD area. Density is always a concern in large phased developments because of the adverse impacts of inappropriate density related to congestion, insufficient infrastructure and

¹³ Belleview Station Transit Oriented Development General Development Plan, Sheet 4 (emphasis added).

¹⁴ Belleview Station Transit Oriented Development General Development Plan, Sheet 5.

other land use impacts. The current use of the Island Property is approximately 16,270 square feet¹⁵ of a hospitality use. The Rezoning Application would change the Island Property to C-MX-20, and consequently allow density more than fifty (50) times greater than currently exists,¹⁶ yet the City has not considered whether this increase in density is consistent with the GDP. The GDP specifically identifies that the Island Property would remain the same land use and thus, did not plan for density 50x the current and of a different nature and thus, the burden of future impacts will shift to the surrounding property owners. Such an increase in density is not only inconsistent with the GDP but would negatively impact the health, safety and welfare of the Belleview TOD occupants by saddling them with the fallout, financial and otherwise, from unconsidered but known impacts.

2. Building Height

The Rezoning Application would allow inconsistent building height. The GDP Property is all zoned T-MU-30, which allows a maximum building height of 220'. The Rezoning Application, on the other hand, is requesting a C-MX-20 zone district designation, which has a maximum building height of 20 stories or 250' with no requirements or limitations on placement or density, such as the GDP contemplates. Further, the C-MX-20 zone district does not require a study of shadow impacts or the impacts of height on the usability of the aggregated open space contemplated in the GDP. The Island Property is currently developed with a two-story hotel and the Existing Zoning limits maximum building height to 50'.¹⁷ Rezoning the Island Property to a district that allows a 250' building when all of the adjacent and surrounding property is limited to development according to the specific GDP standards, and with a maximum height of 220', is incompatible with the surrounding area and detrimentally impacts the general health, safety and welfare of the Belleview TOD.

3. Open Space

If the Island Property is rezoned to C-MX-20, the Island Property will not be required to provide any open space which is not only inconsistent with the GDP and the surrounding Belleview TOD, but which would be detrimental to the health, safety and general welfare of the Belleview TOD. The GDP Property, on the other hand, is required to provide 10% open space and all open space must be large enough to provide a clear amenity, such as a park or plaza.¹⁸ In aggregate, the GDP Property is required to provide over 5 acres of open space. Open space is a very important element of all redevelopment. The importance of open space is evidenced by the GDP's requirements and the GDP maps and design plans that specifically identify

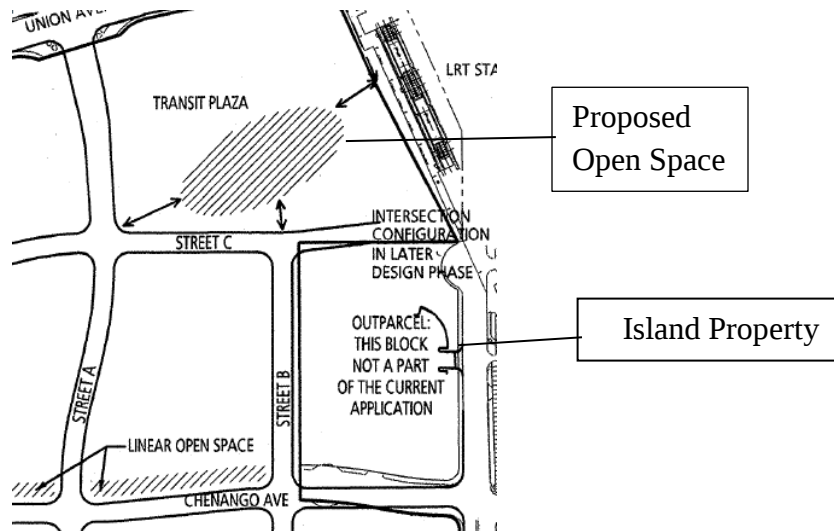
¹⁵ According to the City and County of Denver Assessor Records accessed on January 18, 2019.

¹⁶ In fact, the Rezoning Application applicants have represented to the District that they are proposing to build 871,000 square feet of development on the Island Property.

¹⁷ Rezoning Staff Report, page 6.

¹⁸ During the negotiation of the T-MU-30 zone district for the GDP Property, the City originally requested a 20% open space requirement but later agreed to a reduction to 10%, provided that the open space was aggregated into larger usable plazas and parks.

where open space should exist and how open space should be designed. Interestingly, the GDP identifies a large open space area very near the Island Property, as the following map reflects:



However, as explained above, the Island Property declined involvement in the GDP during its creation and now refuses to join the District; thus, the open space near the Island Property cannot now be considered open space that benefits the Island Property and obviates the need for the Island Property to meet its individual open space obligation. At the very least, the Island Property should be required to develop its own open space.

Preserving open space is just as important now as it was when the GDP was created, if not more so, and the Island Property should be required to provide open space in the same manner as the GDP Property on its own. The Rezoning Application contemplates **no** open space at all, not merely a reduction or decrease from the GDP Property's already negotiated reduction to a 10% requirement. The drastic difference between the GDP's open space requirements and no requirements in C-MX-20 is incompatible with the Bellevue TOD area, and the GDP, and ultimately is detrimental to the health, safety and general welfare of the area.

Legal Protest

The Code provides adjacent property owners to rezoning applications the right to a legal protest. Specifically, if "a protest to an official map amendment is signed by the owners of 20 percent or more either of (1) the area of the lots included in such proposed change; or (2) the total land area from the perimeter of the area proposed for change to a distance of 200 feet outside of the perimeter of the area proposed for

change . . . then the amendment shall not become effective except by the favorable vote of 10 members of the City Council.”¹⁹

On January 18, 2019, 100% of the eligible property owners of the total land area from the perimeter of the Island Property for a distance of 200 feet outside of the Island Property submitted a legal protest pursuant to the Code. The property owners are all members of the District and their filing of a legal protest underscores their extreme concern with the incompatibility of the Rezoning Application to the Belleview TOD and the GDP as well as the detrimental impacts the Rezoning Application will have on the health, safety and welfare of the area.

Conclusion

As stated above, of the area immediately adjacent to the Belleview LRT Station, 94.5% is zoned T-MU-30 and within the GDP Property and thus, for the foregoing reasons, the District believes that a rezoning of the Island Property, which accounts for the remaining 6.5% of property immediately adjacent to the Belleview LRT Station, to C-MX-20 would be incompatible with the GDP and detrimental to the health, safety and general welfare of the area. The District therefore requests that the City Council deny the Rezoning Application.

Thank you for your attention to this matter. Please do not hesitate to contact me with questions or concerns.

Sincerely,

FOSTER, GRAHAM, MILSTEIN & CALISHER LLP

A handwritten signature in dark ink, appearing to read 'David Wm. Foster', with a stylized flourish at the end.

David Wm. Foster

¹⁹ *Denver Zoning Code* § 12.4.10.5(A).