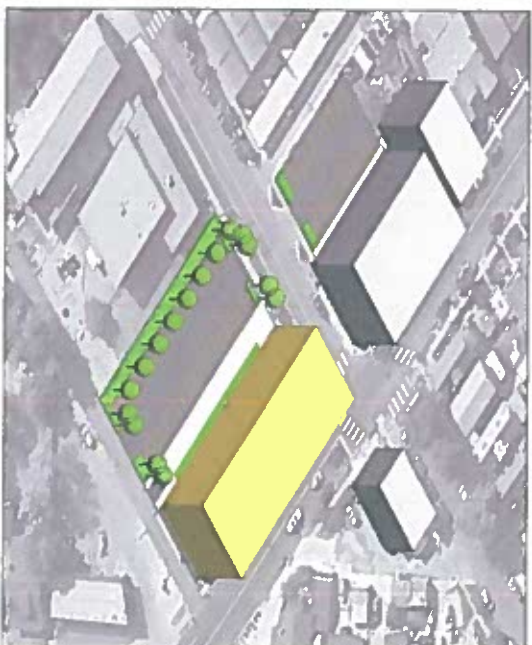
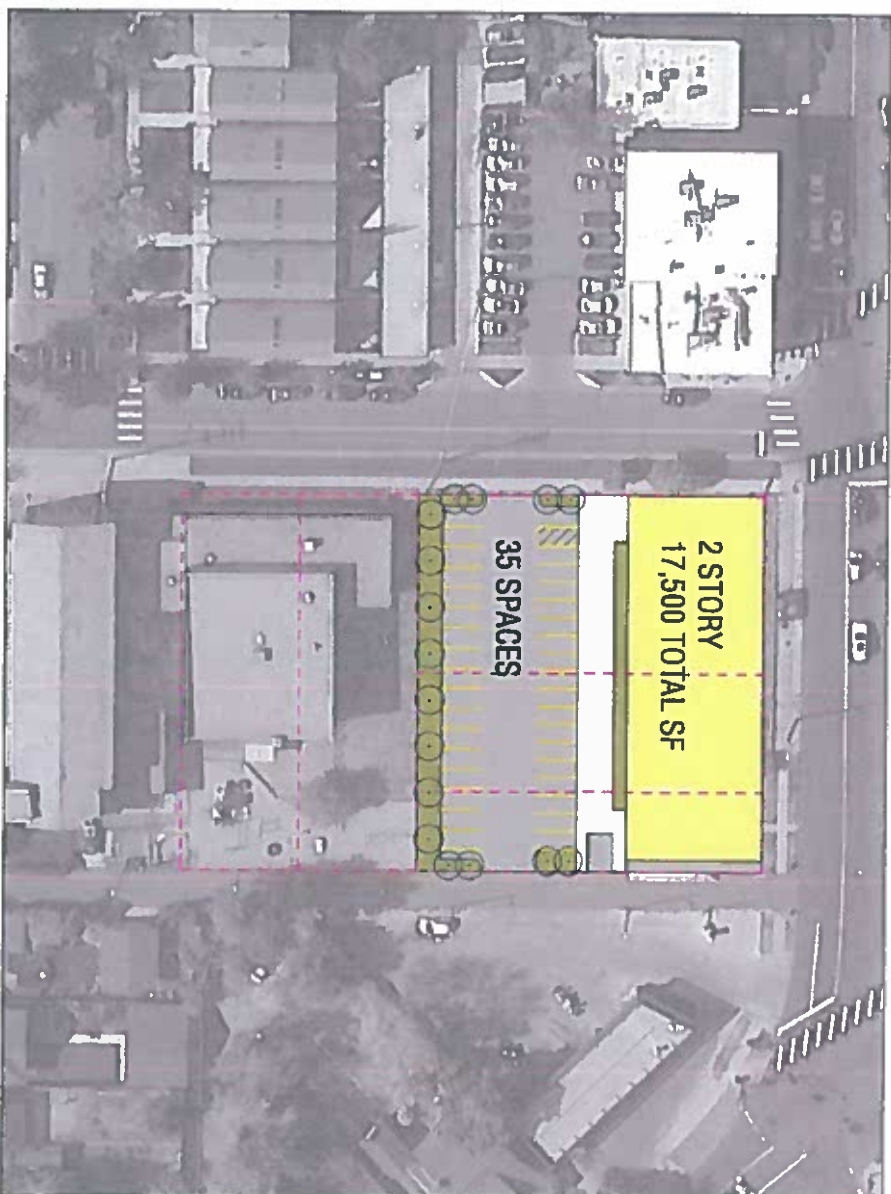
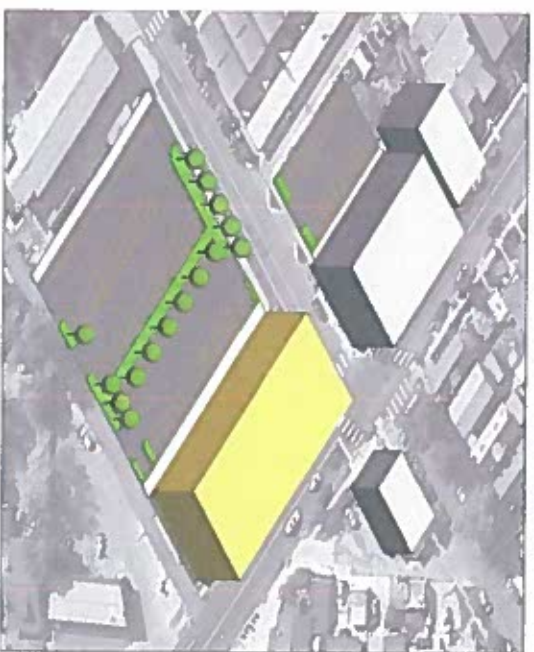


Building Footprint and Parking Studies



Scheme 1
Self Park
2 Spaces per 1,000 SF

Massing and Parking Studies



Scheme 2
Off Site Parking
3 Spaces per 1000 SF

WHAT MAKES A NEIGHBORHOOD

Walkable?



Density - Generally, the higher the concentration of residents, jobs, and shops within a given area, the more walkable that area is.

Mixed Uses - People walk more if they have a proper balance of uses (housing, shopping, work, recreation, etc.) within walking distance of each other.

Active Street Levels - Buildings that form an attractive, transparent (windowed), and engaging "street wall" with lots of shops, restaurants, and other "active" ground-floor uses encourage walking.

Traffic calming - Measures like raised crosswalks, traffic circles, and narrower lanes make drivers slow down and be more alert, thereby enhancing pedestrian and driver safety.

Transit - Walkability and transit go hand in hand. Transit vastly extends the range of people's walks, and it performs best in dense, walkable neighborhoods.

Sidewalks - The most walkable neighborhoods have wide, well-maintained sidewalks, preferably detached from the street curb and enhanced by amenities like benches, landscaping and pedestrian-scale lighting.

Crosswalks - Frequent and well-marked crosswalks increase pedestrian safety and convenience.

Trees - In addition to their environmental and economic benefits, trees help create pleasant, attractive streetscapes and serve as a barrier between pedestrians and traffic.

Parking - Allowing parking supply and prices to be determined by market demand (rather than excessive parking requirements) promotes walking, discourages driving, and creates more inviting pedestrian environments.



THE BENEFITS OF

Walkability

+ Health

Having shops and services within walking distance of one's residence has been found to be the **single best predictor of not being obese.**

Living in walkable neighborhoods is associated with **higher life expectancies**, lower blood pressures, lower heart disease risk, lower diabetes risk, and even **increased civic engagement and creativity!**

Residents of walkable neighborhoods perform **35-45 minutes more moderate physical activity per week** and are much less likely to be **overweight** than those who live in less walkable environments.

\$ Economy

A neighborhood with good walkability, on average, **generates 80 percent more retail sales** compared with a neighborhood with fair walkability, holding household income levels constant.

Economic output is positively correlated with **density and mix of land uses**, and is negatively correlated with **vehicle miles traveled** (a measure of how much people drive).

A study using WalkScore, a website that measures walkability, found every 1-point increase in WalkScore was associated with a **\$500 to \$3,000 increase in property values**, depending on the market.

Environment

Dense, mixed use, walkable neighborhoods are far more **energy and water efficient** than sprawling, auto-oriented neighborhoods.

Automobile use is the **single greatest contributor to a household's total carbon footprint**. Increasing walkability reduces dependence on automobiles, thereby reducing our contribution to climate change.

Fifty-four percent of trips in the Front Range are 3 miles or less. If all of these trips were made by walking or biking, we would collectively emit **1,770,141 fewer tons of greenhouse gases.**

= Equity

Walkability can significantly reduce living costs. Households in communities with more mixed land uses and more multi-modal transportation systems **spend 50% less on transportation** than households in automobile-dependent neighborhoods.

One third of the population does not or cannot drive an automobile and therefore relies on other transportation modes. Walking is the most affordable and accessible transportation option – after all, **people are pedestrians by design!**

Sources:

Health - Stehn (2004), Riggs & Gadenbom (2015), Speck (2012), Sallis, et al. (2004)
Economy - CEOs for Cities (2008), Brookings Institution (2012), Speck (2012)
Environment - Troy (2012), RTD, DRCOG
Equity - McCam (2000), Federal Highway Administration (2011)





May 4, 2015

Mr. David Hagan
HI Land, LLC
Via email

Re: Traffic Analysis Letter – Highlands Gateway Building
Southeast Corner of 32nd Avenue and Irving Street
Denver, Colorado

Dear Mr. Hagan:

At the request of the City and County of Denver, this study presents a trip generation, trip distribution, and traffic assignment for the proposed Highlands Gateway Building project to be located on the southeast corner of the 32nd Avenue and Irving Street intersection in Denver, Colorado. The site is proposed to be redeveloped with an approximate 25,000 square foot medical office building. With the completion of the project, the existing Emmaus Lutheran Elementary School will be removed. The Emmaus Lutheran Elementary School currently has enrollment of approximately 90 students, with a full capacity previously of 125 students. Along with this analysis, this letter provides a trip generation comparison between the existing Emmaus Lutheran Elementary School and proposed Highlands Gateway Office Building project to identify a true possible impact of this proposed project.

The Highlands Gateway Building redevelopment project is proposed at the existing site of the Emmaus Lutheran Elementary School, just north of the existing Emmaus Lutheran Church. The building is proposed along the south side of 32nd Avenue, east of Irving Street. It is proposed with this project that the Emmaus Lutheran Church will remain. The Highlands Gateway Building is proposed on the northern portion of the property along 32nd Avenue with a surface parking lot to the south. The parking lot provides 90 degree parking spaces with circulation from the east to and from the alley and west along Irving Street.

Regional access to the site is provided by Interstate 25. Primary access to the site will be provided by Speer Boulevard, 32nd Avenue, and Irving Street. Adjacent to the site, Speer Boulevard provides one through lane of travel each direction, northbound and southbound, with a posted speed limit of 30 miles per hour. To the north of the site, 32nd Avenue provides one through lane of travel each direction, eastbound and westbound, with a posted speed limit of 25 miles per hour. Directly adjacent to the site, 32nd Avenue is designated with a school zone that limits the speed to 20 miles per hour with school signage. 32nd Avenue provides on street parking west of Irving Street. To the west of the site, Irving Street provides one through lane of travel in each direction, northbound and southbound, with a posted speed limit of 25 miles per hour. In addition, Irving Street is restricted to 20 miles per hour with school signage adjacent to the site. On street parking is permitted along the west side of the roadway. To the south of the site, 31st Avenue provides one through lane of travel each direction, eastbound and westbound, with a posted speed limit of 25 miles per hour. Directly adjacent to the site, 31st Avenue allows on street parking. 31st Avenue also includes school zone signage with a 20 miles per hour speed limit.

The intersection of 32nd Avenue and Speer Boulevard is a signalized intersection. The northbound and southbound approaches contain designated left turn lanes with the left turn movements operating with permitted only left turn phasing. The eastbound approach consists of a shared left turn/through lane and a designated right turn lane, while the westbound approach consists of a shared left turn/through/right turn lane. The intersection of 32nd Avenue and Irving Street is also a signalized intersection. All approaches consist of a single shared left turn/through/right turn lane. The north and south legs of Irving Street are slightly (35 feet) misaligned. The intersections of 31st Avenue with

Irving Street are misaligned unsignalized “T”-intersections with stop control on the 31st Avenue approaches. These legs of 31st Avenue are misaligned by approximately 130 feet. **Figure 1** illustrates the existing lane configuration and traffic control.

Direct access will be provided by two driveways, one proposed along Irving Street and one along the one-way northbound alley adjacent to the site to the east. Currently, access to Emmaus Lutheran Elementary School is solely provided by the eastern alley with vehicles entering northbound from 31st Avenue and exiting to 32nd Avenue. Providing direct access to Irving Street will reduce the traffic volume along the alley which is anticipated to improve operations of the surrounding street network. Especially since the northbound exiting alley intersection is in close proximity to the 32nd Avenue and Speer Boulevard intersection (approximately 45 feet measured edge to edge). Both access driveways are proposed to allow full turning movements.

To identify the potential increase of traffic that the Highlands Gateway Office Building project will generate, trip generation fitted curve equations and average rates were used based on the ITE Trip Generation, 9th Edition (most current edition), for Private School (K-8) (ITE Land Use Code 534) and Medical-Dental Office Building (ITE Land Use Code 720). The trip generation for the existing Emmaus Lutheran Elementary School and proposed Highlands Gateway Building medical office project were compared to determine the difference in anticipated trips. As previously identified, the site is proposed to be redeveloped with an approximate 25,000 square foot medical office building with the elimination of the Emmaus Lutheran Elementary School. Previously the elementary school had approximately 125 students. The following table summarizes the trip generation comparison for the existing and proposed uses. Trip generation calculations are attached.

**Trip Generation Comparison
Highlands Gateway Medical Office Building**

Use and Size	Weekday Vehicle Trips					
	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Existing Elementary School Private School K-8, 125 Students	64	52	116	34	38	72
Proposed Highlands Gateway Building Medical-Dental, 25,000 SF	47	13	60	24	60	84
Net New Trips	-17	-39	-56	-10	+22	+12

As summarized in the table, the proposed Highlands Gateway Medical Office Building project is anticipated to generate 60 trips during the weekday morning peak hour and 84 trips during the weekday afternoon peak hour. Based on the existing Emmaus Lutheran elementary school, the proposed Highland Gateway Building project is anticipated to generate 56 less trips during the weekday morning peak hour and 12 greater trips during the afternoon peak hour than the previous school. In other words, this project is anticipated to fairly significantly decrease the morning peak hour traffic. During the midday afternoon peak hour, the traffic generation will be slightly greater with more traffic anticipated during the afternoon/evening rush hour than previously generated with the school day being completed already.

Distribution of site traffic on the adjacent roadways and through the key intersections and proposed project accesses was based on the area street system characteristics, adjacent roadway network, surrounding area development information, and the proposed access system for the project. The directional distribution of traffic is a means to quantify the percentage of site-generated traffic that

approaches the site from a given direction and departs the site back to the original source. It is believed that a majority of Highlands Gateway Building project traffic will be accessing the project from 32nd Avenue to the west, from Speer Boulevard to the northwest, and from Speer Boulevard (I-25) to the southeast. It is anticipated that 25 percent of the site generated traffic will enter and exit to the north along Speer Boulevard, 35 percent of the site generated traffic will enter and exit to the south on Speer Boulevard to Interstate 25, 25 percent of the site generated traffic will enter and exit to the west on 32nd Avenue, 5 percent of the site generated traffic will enter and exit to the east on Green Court, 5 percent of the site generated traffic will enter and exit to the east on 31st Avenue, and 10 percent of the site generated traffic will enter and exit to the south on Irving Street. **Figure 2** illustrates the expected project trip distribution for Highlands Gateway Building project.

Traffic assignment was obtained by applying the distribution of **Figure 2** to the estimated traffic generation of the project shown in the previous table. Highlands Gateway Building project traffic assignment is shown in **Figure 3**.

Based on these results, the Highlands Gateway Building project is anticipated to decrease the weekday morning peak hour trips generated with an increase expected during the afternoon peak hour. Overall, traffic patterns will remain similar with some traffic shifting from the Alley to Irving Street with the improved access. It is believed that this redevelopment will result in acceptable traffic operations. The proposed project development and expected traffic volumes resulted in the following recommendations:

- It is recommended that the project access approaches to Irving Street and the eastern Alley be stop controlled and allow full turning movements. It is recommended that R1-1 "STOP" signs be installed for the westbound approach to Irving Street and eastbound approach to the Alley exiting the property.
- For the eastbound approach exiting the property at the alley, it is recommended that a R3-1 No Right Turn sign be installed due to the alley serving one-way northbound traffic only. In addition, R6-1L "ONE WAY" signs could be installed above the STOP sign and advance to the access.
- It is recommended that a R1-1 "STOP" sign be installed for the northbound Alley street approach to 32nd Avenue.
- With completion of the Highlands Gateway Building project and the elimination of the Emmaus Lutheran Elementary School, it is recommended that all school related signage be removed. This includes the school zone sign assemblies and advanced school warning signs along 32nd Avenue, 31st Avenue, and Irving Street.

If you have any questions relating to this analysis, or require anything further please call me at (303) 228-2300.

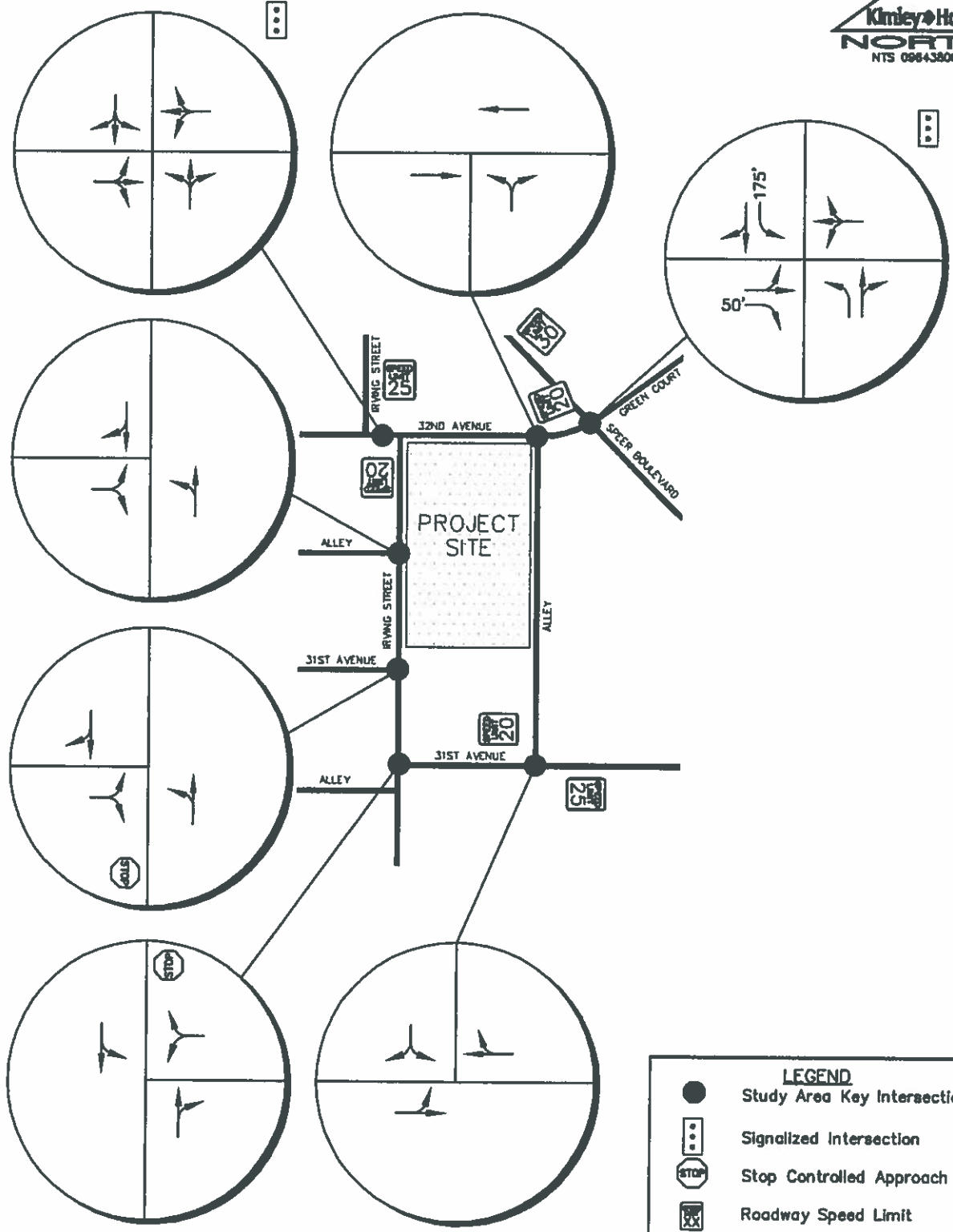
Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



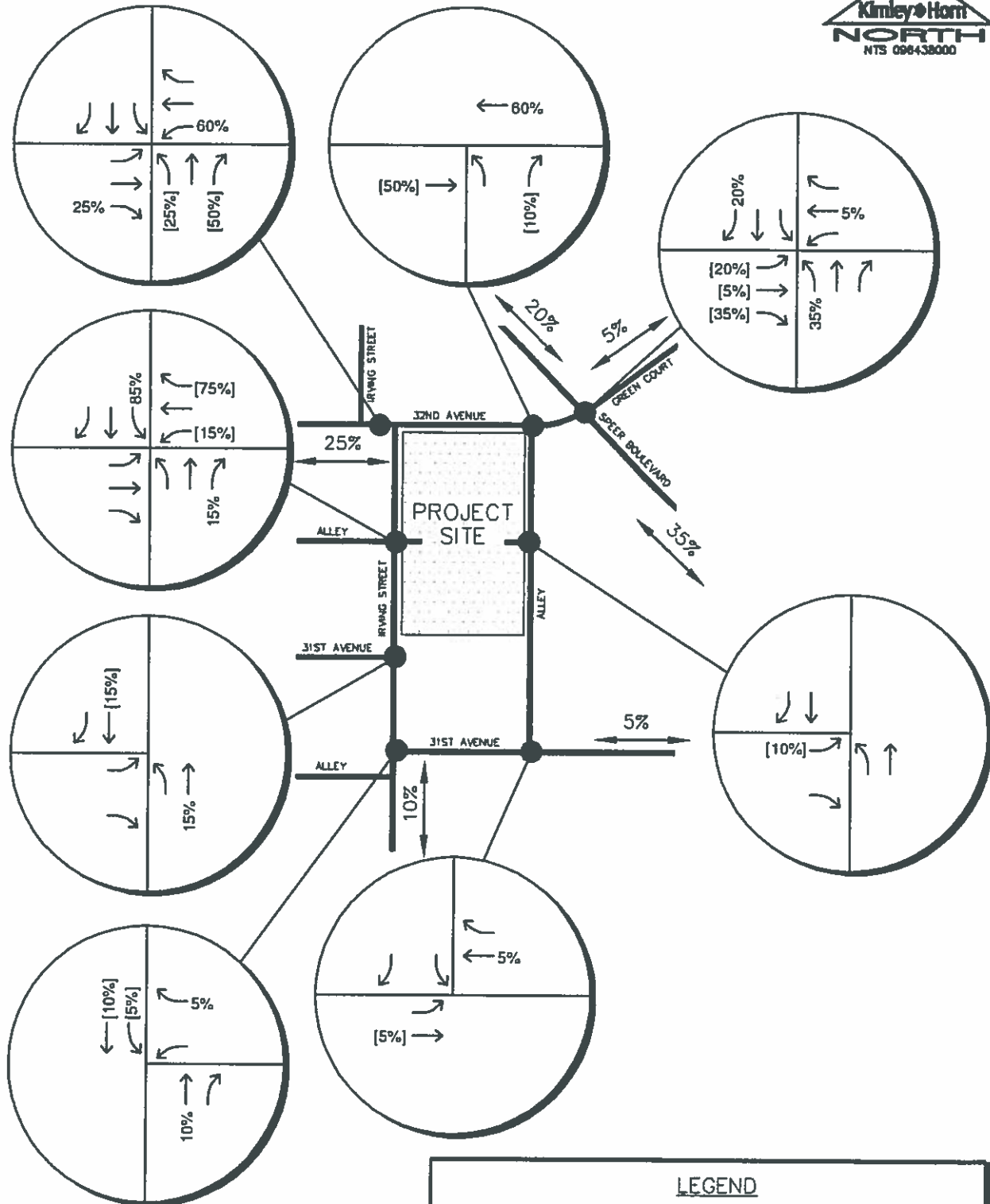
Curtis D. Rowe, P.E., PTOE
Vice President





HIGHLANDS GATEWAY BUILDING
 (SEC 32ND AVE & IRVING ST)
 EXISTING LANE CONFIGURATIONS

FIGURE 1

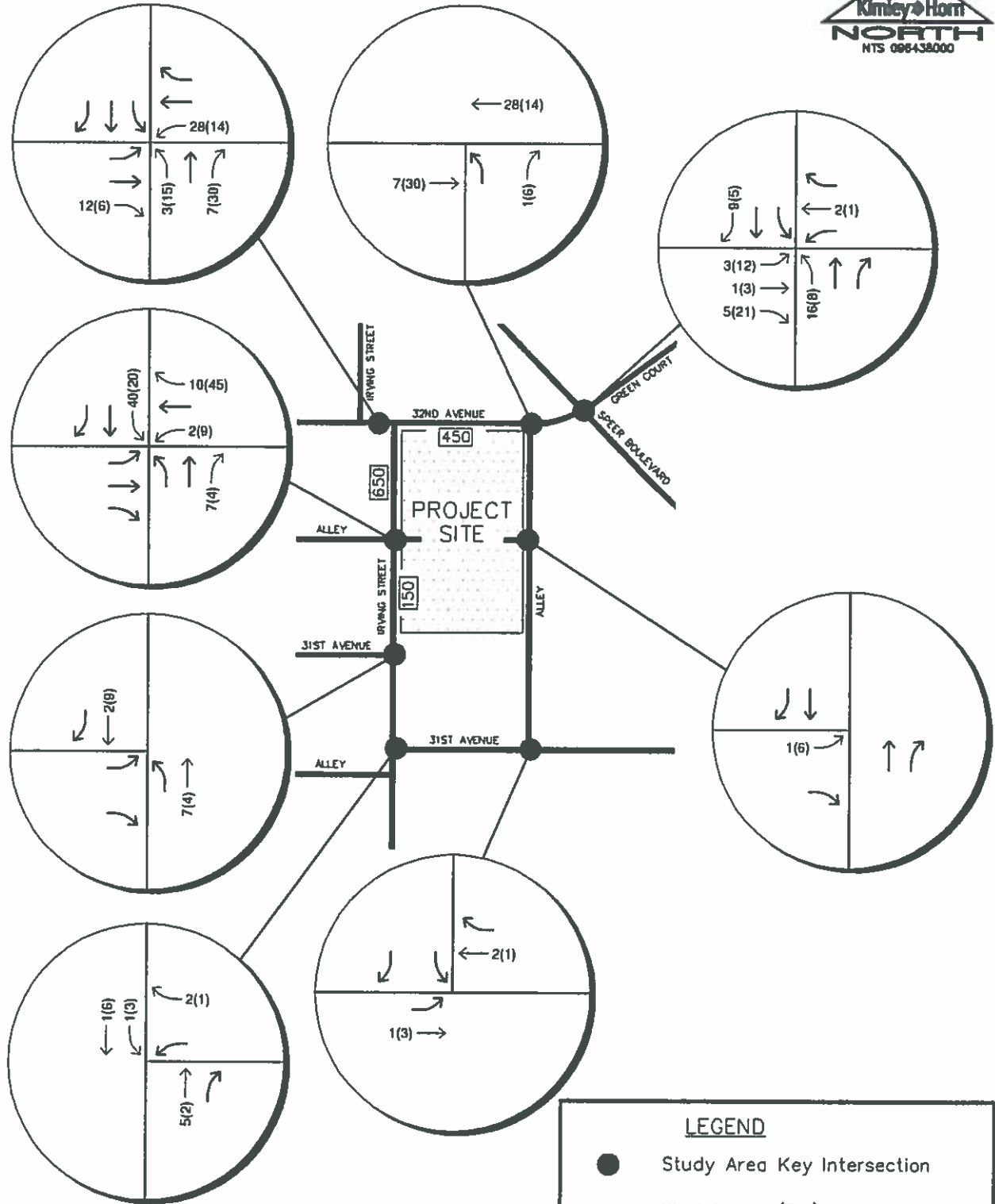


LEGEND

- Study Area Key Intersection
- XX%[XX%] Entering[Exiting] Trip Distribution Percentage

HIGHLANDS GATEWAY BUILDING
 (SEC 32ND AVE & IRVING ST)
 TRIP DISTRIBUTION

FIGURE 2



LEGEND

- Study Area Key Intersection
- XX(XX) Weekday AM(PM) Peak Hour Traffic Volumes
- XX,X00 Estimated Daily Traffic Volume

HIGHLANDS GATEWAY BUILDING
 (SEC 32ND AVE & IRVING ST)
 TRAFFIC ASSIGNMENT

FIGURE 3

Project Highlands Gateway Building
 Subject Trip Generation for Medical-Dental Office
 Designed by Matt Farnen Date May 04, 2015 Job No. 096438000
 Checked by Curtis Rowe Date May 04, 2015 Sheet No. 1 of 1

TRIP GENERATION MANUAL TECHNIQUES

ITE Trip Generation Manual 9th Edition - Fitted Curve and Average Rate Equations
 Land Use Code - Medical-Dental Office Building (720)

Independent Variable - 1000 Sq Feet Gross Floor Area

$$SF = 25,000$$

$$X = 25.000$$

T = Average Vehicle Trip Ends

Peak Hour of Adjacent Street Traffic, One Hour Between 7 and 9 a.m. (Page 1295)

$$\text{Average Rate (R)} = 2.39$$

$$T = R * X$$

$$T = 2.39 * 25.000$$

Directional Distribution: 79% ent. 21% exit.

T = 60 Average Vehicle Trip Ends

47 entering 13 exiting

$$47 + 13 = 60$$

Peak Hour of Adjacent Street Traffic, One Hour Between 4 and 6 p.m. (Page 1296)

$$\ln(T) = 0.90 \ln(X) + 1.53$$

$$T = 0.900 \ln(25.000) + 1.53$$

Directional Distribution: 28% ent. 72% exit.

T = 84 Average Vehicle Trip Ends

24 entering 60 exiting

$$24 + 60 = 84$$

Weekday (page 1294)

Average Weekday

$$T = 40.89(X) - 214.97$$

$$T = 40.89 * 25.000 - 214.97$$

Directional Distribution: 50% entering, 50% exiting

T = 808 Average Vehicle Trip Ends

404 entering 404 exiting

$$404 + 404 = 808$$

Project Highlands Gateway Building
 Subject Trip Generation for Private School (K-8)
 Designed by Matt Farnen Date May 04, 2015 Job No. 096438000
 Checked by Curtis Rowe Date May 05, 2015 Sheet No. 1 of 1

TRIP GENERATION MANUAL TECHNIQUES

ITE Trip Generation Manual 9th Edition

Land Use Code - Private School (K-8), (534)

Independent Variable - Students (X)

$$X = 125$$

T = Average Vehicle Trip Ends

A. M. Peak Hour (page 1030), Regression Equation

$$T = 0.90 (X) + 3.01$$

$$T = 0.90 * 125 + 3.01$$

Directional Distribution: 55% ent. 45% exit.

T = 116 Average Vehicle Trip Ends

64 entering 52 exiting

$$64 + 52 = 116$$

P.M. Peak Hour of Generator (page 1031), Regression Equation

$$T = 0.61 (X) - 4.70$$

$$T = 0.61 * 125 - 4.70$$

Directional Distribution: 47% ent. 53% exit.

T = 72 Average Vehicle Trip Ends

34 entering 38 exiting

$$34 + 38 = 72$$



NEIGHBORHOOD MEDICAL CARE

in west highland

Community Outreach & Engagement (pg 2)

April & May 2014 --- Emmaus hosted two community meetings; invitations were issued to neighbors living within 200 feet of the project; WHNA members who expressed interest (and lived beyond 200 feet) were also invited to attend

Summer 2014 --- Emmaus reached out to WHNA a number of times; WHNA indicated they wouldn't be able to meet again until early September

October 7, 2014 --- Emmaus was able to get on WHNA agenda and attended meeting; presented concept and shared rezoning intent; answered questions and participated in discussion

November 4, 2014 --- Emmaus attended WHNA meeting; gave update and answered questions

December 2, 2014 --- Emmaus attended WHNA meeting; gave update and answered questions

December 11, 2014 --- Emmaus participated in a meeting with interested community members at the project site; participated in discussion and answered questions

December 29, 2014 --- Emmaus hired Communications Director to provide assistance with community engagement and communications

February 2, 2015 --- Emmaus launched project website (<http://www.neighborhoodmedicalcare.org>); website includes:

- Comprehensive Frequently Asked Questions (FAQ) document
- History of project
- Documents as they become available (draft site plan, traffic study, vision document)
- "Contact Us" feature
- Sign-up form where community members can indicate support (currently around 80)

February 2, 2015 --- Emmaus established platforms for communication via social media

- Project Facebook page and Twitter feed, with opportunities for community members to ask questions and comment
- Posts and responses on Nextdoor
- Posts and responses on Highlands Mommies message board



NEIGHBORHOOD MEDICAL CARE

in west highland

Community Outreach & Engagement (pg 3)

February 3, 2015 --- Emmaus attended WHNA meeting; announced website and social media pages; provided handout with project information and website; provided Communication Director's contact information

February 2015 – present --- Emmaus' Communications Director has responded promptly to all email and phone questions/concerns about the project

February & March 2015 --- Emmaus sent initial and follow-up emails to the 20 RNOs in the northwest Denver area, asking to attend a meeting a present information about the project; Emmaus was invited to share information at SUNI, BRUN, JPUN, and LPNA; Emmaus attended meetings to provide information and answer questions

March 3, 2015 --- Emmaus attended WHNA meeting to give update and answer questions; WHNA Zoning Committee issued the following statement:

“The zoning committee is going to recommend the following three point action plan to the WHNA membership at the March 3 meeting. It reflects the committee's belief that the city is likely to grant some sort of re-zoning request and it is best to engage with the process to make the development as community friendly as possible. The zoning committee recommends WHNA membership:

1. Engage in the city rezoning process to make the final outcome as community-friendly as possible in terms of adequate parking, traffic flow, placement of buildings, wall treatments, landscaping, etc. Because zoning sets the requirements for what is allowed on a lot, engaging with the process is essential.
2. Engage with community input meetings the development team has agreed to. Discuss exterior appearance, landscaping, exterior lighting details.
3. Carry out a charrette (community planning process) to develop a West Highlands-wide plan (which might be an overlay).”

Attending WHNA members voted 28-0-3 in favor of items 1 & 2 and 23-0-8 in favor of item 3.

March 9, 2015 --- Emmaus sent an email to WHNA leadership to initiate discussion about logistics for a Design Workshop process

March 19, 2015 --- Emmaus sent second email to WHNA leadership to start process for Design Workshop, emphasizing that Emmaus is looking forward to working with WHNA; WHNA responded



NEIGHBORHOOD MEDICAL CARE

in west highland

- Emmaus asked WHNA which of the following two options they would prefer for a Design Workshop process: *(cont)*

Community Outreach & Engagement (pg 4)

- One meeting with unlimited capacity, during which community members could review and comment on a variety of design ideas
- Two meetings with a set capacity (around 12 people); participants would work closely with project architects to set a vision for the building's exterior appearance, lighting design, and landscaping
- WHNA leadership stated they would prefer the second approach
- Emmaus stated that WHNA could reserve 3 out of the 12 spots on the Design Workshop committee for their appointees; the remaining 9 spots would be filled by interested community members (who could also be members of WHNA)

March 23, 2015 --- Emmaus created a sign-up form on the project's website for interested community members who wished to participate in the Design Workshops; Emmaus advertised the Design Workshop and sign-up process through the project's mailing list and posts on social media platforms; this process was also discussed at the April WHNA meeting

April 7, 2015 --- Emmaus attended WHNA meeting to provide update and answer questions; Emmaus discussed the upcoming Design Workshops and encouraged everyone at the meeting to sign up if they were interested

April 27, 2015 --- First Community Design Workshop meeting, facilitated by AMD Architects

- Attended by 13 community members, including 3 WHNA designees
- WHNA's current president was not one of the designees, but she attended the meetings as a community member
- All community members who expressed interest were invited to attend
- AMD provided participants with photos from a variety of buildings in NW Denver and asked participants to identify features they did/didn't like
- AMD facilitated conversation about what participants would like to see in the new building, and how they thought the building could be incorporated into the existing neighborhood
- AMD's report from the first Design Workshop was posted on the project's website, shared through social media, and emailed to WHNA leadership

May 5, 2015 --- Emmaus attended WHNA meeting to provide update and answer questions; gave WHNA leadership hard copy of traffic study; traffic study also posted to project's website



NEIGHBORHOOD MEDICAL CARE

in west highland

Community Outreach & Engagement (pg 5)

June 3, 2015 --- Second Community Design Workshop meeting, facilitated by AMD Architects

- Attended by 12 community members, including the 3 WHNA designees
- AMD presented 20 sketches of building ideas; participants were given markers and encouraged to write on the sketches – to indicate what they liked, didn't like, thought should be different, etc.
- The Vision Statement from both workshops and the drawings (with community comments) were posted on the project's website, shared through social media, and emailed to WHNA's leadership

June 20, 2015 --- Emmaus operated an informational booth at the Highlands Street Fair, distributing project fact sheets and answering questions from community members

June 24, 2015 --- Emmaus emailed WHNA leadership, letting them know that Emmaus would be resubmitting a revised rezoning application

- Emmaus indicated that the revised application would have a reduction in building size and parking spaces, but consistency in parking ratio
- Emmaus invited WHNA leadership to let them know if they had any questions

June 29, 2015 --- Emmaus emailed WHNA leadership to offer to sit down with them and discuss the revised rezoning application at their convenience

July 23, 2015 --- Emmaus emailed WHNA leadership to let them know that the Planning Board hearing was set for August 19, 2015

August 4, 2015 – Emmaus attended WHNA meeting. WHNA voted on 4 possible positions regarding the Emmaus rezoning. The position that received the most votes is as follows:

"I move that the members of WHNA, having listened to the arguments and discussions over the past many months on this issue, are under the conclusion that the redevelopment of this site, other than single family which is unlikely, and what we believe is the best way to move forward, is to get something that we will be able to live with, which is a planned unit development (PUD) rezoning."

August 19, 2015 – Planning Board meeting. Planning Board passed along the Emmaus rezoning with a favorable recommendation.



NEIGHBORHOOD MEDICAL CARE

in west highland

Community Outreach & Engagement (pg 6)

September 16, 2015 – Neighborhoods and Planning City Council committee meeting. The committee voted unanimously to move the project through to the full Council. This is also the date Emmaus contacted the mediator to initiate mediation proceedings with neighborhood designees.

October 23, 2015 -- Mediation proceedings concluded.

October 26, 2015 – Emmaus submitted a request to revise their application in order to reduce the lot size from approximately 31,000 square feet to approximately 22,000 square feet, in order to respond to input from Councilman Espinoza, a couple members of Planning Board, and public comment.

Emmaus Re-zoning Request (3268 West 32nd Avenue)

October 26, 2015

At the request of Councilman Espinoza, Steve Charbonneau met with the Emmaus team, neighbors and City Planning in an attempt to mediate a resolution to the re-zoning conflict over 3268 West 32nd Avenue.

Steve Charbonneau met separately with;

- Tim Watkins, CPD senior planner assigned to the re-zoning,
- Keith Bushdiecker, Dave Hagan and Sundari Kraft form the Emmaus Project group,
- And a group of 13 neighbor who were selected through communication with Council, WHNA and self-selected. The neighbors were Al Martinez, Alexis Martinez, Bertrum Sanchez, Brad Marzullo, Brett Baldschun, Cindy Eby, Conor Farley, Harry Brick, Jackie Youngblood, Jenny Davies, Jerry Moline, Randy Mast, and Ray Defa. Out of this group a representative group of five were selected and asked to represent the immediate neighborhood.

On Monday, October 12th and Wednesday, October 21st, Steve met with the Emmaus Project group and the neighbors who were selected to represent the larger neighborhood, (Al Martinez, Cindy Eby, Conor Farley, Jerry Moline, and Randy Mast).

There were four significant initial points of conversation around the proposed rezoning. We were able to reach tentative agreement on the majority, but not upon all points. Without complete agreement on all four points we failed to come forward with a partial agreement. We do not have a mediated agreement to the rezoning proposal.

I believe everyone participated in good faith and were committed to reaching agreement. At the mediation, the parties agreed to keep the discussions confidential to encourage full and frank discussion. As a result, this summary does not include detail regarding the conversations that took place.

Sincerely,



Steve Charbonneau



Charles E. Feldmann, Esq.
Licensed in CO
David J. Nagel, Esq.
Licensed in CO and TX
Also a licensed C.P.A. in TX
Chasity J. Barker, Esq.
Licensed in CO
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January 25, 2016

Mr. Tim Watkins
Case Manager
Denver Community Planning and Development
timothy.watkins@denvergov.org

Ms. Kelly Velez
Council Secretary
kelly.velez@denvergov.org

Re: Petition of Protest of Council Bill # CB15-0625
Map Amendment #2014I-00033 – 3268 W 32nd Ave (as modified Nov 2nd 2015)

Dear Mr. Watkins and Ms. Velez,

Thank you for your e-mail of January 21, 2016, transmitting the Results of Calculation to Zone Map Amendment 14i-33 Protest submitted by Mr. Randy Mast, Mr. Connor Farley, and Ms. Cindy Eby under cover of correspondence dated January 15, 2016 (the "Petition").

On behalf of, the applicant in Council Bill # CB15-0625, we object to the review process, standards applied, calculations, and certification of the Petition.

As noted in correspondence dated January 20, 2016, which we incorporate herein and restate in its entirety, we carefully reviewed the Petition. The petition failed to meet the requirements of Denver Zoning Code (DZC) Section 12.4.10.5, including but not limited to the instructions for Protest Petition for Zone Map Amendment from the Department of Community Planning and Development rev. 11/2014, and standards.

Standards that the Manager applied to determine the adequacy of all protest petition signatures have been arbitrarily inconsistent with standards previously applied by the Department of Community Planning.

Prior petition reviews have disqualified name variations of different or missing middle initials. Prior petition reviews have disqualified and lack of proof of capacity to bind a corporate entity or trust. Failure to do so here is arbitrary and capricious.

A handwritten signature in dark ink, appearing to be 'DM' or similar initials, located at the end of the letter.

Re: Council Bill No. 0625, Series of 2015, Zone Map Amendment 2014 I-00033 (32nd and Irving)
January 25, 2016
Page 2

In the current case the Department invalidated the petition alleged submitted by Ms. Gloria Enger "on behalf of" Enger Properties LLLP, but certified Robert L. Grisenti signing "on behalf of" R.L.D. Grisenti, LLC. The Department accepted "Victoria Isherwood" for "Victoria L. Isherwood." Neither of these should have been certified.

Without the Grisenti and Isherwood petitions the 20% threshold is not met. And there are more.

The 20% threshold is not met. We respectfully request you rescind the certification issued January 21, 2016 prior to this evenings City Council hearing on this matter.

Thank you.

Very truly yours,
Feldmann Nagel, LLC


Daniel Markofsky, Esq.

cc: Emmaus Lutheran Church



Charles E. Feldmann, Esq.
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David J. Nagel, Esq.
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January 20, 2016

Mr. Tim Watkins
Case Manager
Denver Community Planning and Development
timothy.watkins@denvergov.org

Ms. Kelly Velez
Council Secretary
kelly.velez@denvergov.org

Re: Council Bill No. 0625, Series of 2015
Zone Map Amendment 2014 I-00033 (32nd and Irving)

Dear Mr. Watkins and Ms. Velez,

As previously conveyed, we are legal counsel to the applicant in Council Bill No. 0625, Series of 2015.

We have carefully reviewed the Petition of Protest for Zone Map Amendment (Denver Zoning Code Section 12.4.10.5) being submitted Council Bill No. 0625, Series of 2015 (the "Petition").

We respectfully submit the following analysis.

This analysis conclusively establishes the petition fails to meet the requirement for "the owners of 20 percent of more of ... (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." Denver Zoning Code (DZC) Section 12.4.10.5.

For this analysis we started with Denver Zoning Code (DZC) Section 12.4.10.5. We then turned to the instructions for "Protest Petition for Zone Map Amendment from the Department of Community Planning and Development rev. 11/2014 (the "Instructions") (this was the version accompanying some of the petitions). We also consider and apply the legal standards that the Manager, in his appropriate discretion, might properly apply to determine the adequacy of all protest petition signatures.

1. Incorrect Names / Signature does not match printed name / Date / Address:

1.1. 3301 W. 31st Avenue. 3301 W. 31st Avenue is owned by "Victoria L. Isherwood" per deed recorded August 6, 2012 at Reception Number 2012103760 of the real estate records in and for the City and County of Denver. Petition is signed "Victoria Isherwood". Not an "exact same manner" match as instructed. May not be the same person. This petition must be rejected and we request you do so.

1.2. 3300 West 32nd Avenue. 3300 West 32nd Avenue is owned by "Enger Properties, L.L.L.P." per deed recorded September 9, 2015 at Reception Number 2015126246 of the real estate records in and for the City and County of Denver. Petition is signed "Enger Properties LLLP". Not an "exact same manner" as instructed. May not be the same entity. This petition must be rejected and we request you do so.

1.3. 3300 West 32nd Avenue. As discussed further below, the name of the claimed General Partner for Enger Properties, L.L.L.P. does not match the name of the General Partner shown in the real estate records in and for the City and County of Denver. Not an "exact same manner" as instructed. May not be the same entity. This petition must be rejected and we request you do so.

1.4. 3215 Irving Street. The printed name "Robert G Fellows" does not match the deed. Title is in "Robert G. Fellows". The petition printed name lacks the period after the middle initial. The signature does not match the printed name. This petition must be rejected and we request you do so..

1.5. 3211 Irving Street. Signature does not match printed name and/or is illegible. The Date Signed seems to be Saturday January 16, after the petition was submitted. This petition must be rejected and we request you do so.

1.6. 3713 N. Speer Blvd. The address 3173 N. Speer Blvd does not exist in connection with the property legally described. The petition states the owner address is 3175 N. Speer, and this address matches the legal description. But the presentation of the property address and legal description, like all the information, must match exactly and be strictly construed. This petition must be rejected and we request you do so..

2. Entity Authority:

The parties attempting to sign petitions on behalf of the owner entities have failed to comply with legal requirements, technical requirements, and reasonable and accepted real estate standards.

For properties owned by other than an individual or individuals (e.g., a corporation, trust, partnership), "the petitioner must ensure that the person(s) signing the Petition is duly authorized to represent the property. This evidence includes Deeds of Trust, Powers of Attorney or other legal documentation declaring the signatory the appropriate representative for a property." (see

Instructions, Step 2.) A "Statement of Authority" for each entity pursuant to CRS 38-30-172 is the accepted standard for determining who has legal capacity to bind an entity in real estate.

Two entities have submitted petitions. Both fail to supply legal documentation declaring the signatory the appropriate representative for a property. There are other fatal deficiencies discussed below.

2.1. Entity 1 - Enger Properties, L.L.L.P.

2.1.1. *Inadequate Evidence of Authority*

"Enger Properties, L.L.L.P." owns 3300 West 32nd Avenue (see deed recorded September 9, 2015 at Reception Number 2015126246 of the real estate records in and for the City and County of Denver).

The petition for 3300 West 32nd is signed Gloria Enger "on behalf of" Enger Properties LLLP. Representative capacity is not shown or proven. Every principal must show their representative capacity. Every principal must then prove their representative capacity.

Even if we assume, which we should not, that "on behalf of" is demonstrating some representative capacity, the specific representative capacity must be shown and then proven with acceptable evidence.

Attempting to show representative capacity as a General Partner, the petition for 3300 West 32nd attaches a "Declaration of Gloria L. Enger". The Declaration is inadequate evidence that Gloria L. Enger has authority to bind the entity. The submitted "Declaration of Gloria L. Enger" is conclusory, self affirming, and would be considered inadequate under all customary circumstances to evidence signer authority. The cited certification to 28 United States Code Section 1746 under penalty of perjury has no effect in Colorado on proving a person's authority to take actions affecting business or real property. It voluntarily creates perjury liability for the signer, seemingly as way to induce reliance by the recipient, but is not recognized under Colorado law to serve as Prima Facie evidence (such as a Statement of Authority does). Further, a declaration under 28 USC § 1746 is by the language of § 1746 only for statements under a "law of the United States." Colorado has no similar statute.

To the contrary, the "Statement of Authority" established under Colorado law is acknowledged in front of a Notary in the same matter as a document affecting title to real property and similarly recorded in the real property records.

2.1.2. *Incorrect Name of Alleged General Partner with Authority to Bind the Entity*

The petition is signed "Gloria Enger" (no middle initial). The "Declaration" is signed "Gloria L. Enger". A Deed of Trust recorded four months ago, September 8, 2015, at Reception Number

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2015126247 of the real estate records in and for the City and County of Denver is properly executed by "Gloria J. Enger" claiming to be General Partner of Enger Properties, L.L.L.P.

With three different names, the petition and the Declaration are of no probative value. We have no credible information that the petition signer can bind the entity, and we have contrary evidence (though also not conclusive) from the recorded deed of trust that "Gloria J. Enger" is the General Partner of Enger Properties, L.L.L.P.

It is notable in the questions it raises that the alleged General Partner of a partnership who purchased the subject property for \$3,605,000.00 in September 2015 would use the unconventional fringe method of an "unsworn declaration" to show authority when they most certainly have Statements of Authority and other conventional legal documents to evidence authority.

2.2. Entity Z - R.L.D. Grisenti, LLC

All four of the petitions appearing in the name of R.L.D. Grisenti, LLC, for 3200 Irving, and 3215, 3221, and 3235 N. Speer fail to meet the requirements.

2.2.1. Inadequate Evidence of Authority

The alleged Operating Agreement of R.L.D. Grisenti, LLC, is inadequate evidence of authority and the signature on the Petition cannot be accepted. First, there is no basis to simply accept an operating agreement without more. The alleged Operating Agreement of R.L.D. Grisenti, LLC, presents only the cover and claimed pages 1, 4, 9, 32, 33, and Schedules I & II. Twenty seven pages are missing. This evidence would not satisfy any standard to show any authority to bind any real estate. For example, the apparent random presentation of select pages in a jumble of numbered and un-numbered pages also begs the question of whether these sheets are from the same document or whether problematic sheets were intentionally or negligently omitted.

No other evidence of authority is presented.

Even if we accept the pages presented as part of an actual operating agreement, there are problems.

The opening paragraph of the alleged Operating Agreement states that one party to the agreement is "Robert L. Grisenti, as the Trustee of the Robert L. Grisenti Revocable Trust, under the Trust dated November 23, 1983, as amended and restated by the Amended and Restated Trust agreement thereof dated March 31, 1997, and pursuant to the First Amendment thereto dated June 22, 2001, and the Second Amendment thereto dated February 10, 2010, and as subsequently amended ("the "Grisenti Trust")." All of this language is in the name and must be used to properly identify the trust."

In contradiction, section 5.1 of the alleged operating agreement states the Member is the "Robert L. Grisenti *Revocable Trust*." (emphasis added). Schedule I and Schedule II state the Member is the

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"Robert L. Grisenti Trust." A "trust" is referred to by three separate names. These may be the same or three separate trusts.

That these are not the same names presumes that they are not the same trust.

Further, the Grisenti Trust trust agreement would be reviewed by anyone seeking to confirm Mr. Grisenti's authority and should have been submitted here, or at least a Statement of Authority for the Trust.

2.2.2. incorrect Name of Alleged Person with Authority to Bind the Entity

Robert L. Grisenti signing "on behalf of" R.L.D. Grisenti, LLC does not comply with the terms of the operating agreement pages presented. Pursuant to section 4.1 of the alleged Operating agreement, "The business and affairs of the Company shall be managed by its Manager ... Except for situations in which the approval of the Members is expressly required by this Agreement" The Member is claimed to be the "Robert L. Grisenti Trust." Without the complete Operating Agreement there is no way to know whether Member consent is required.

Despite the similar names, it is not acceptable to bind property under a guess that all the Robert L. Grisenti's are the same person or each have authority to bind the LLC and the Trust. For example, it's quite common to have families name sons and grandson's after their fathers. We have no idea what is going on here.

A Bargain and Sale deed dated February 10, 2010, and recorded February 11, 2010, at reception number 2010016592 of the real estate records in and for the City and County of Denver show the property was conveyed from the "Robert L. Grisenti Trust, an inter vivos trust under Trust Agreement originally dated November 23, 1983, as subsequently amended"

Robert L. Grisenti's name is not printed on the petition as shown on the deed or indicating his representative capacity for the entity in title.

2.2.3. Delinquent Corporate Status

At the time of alleged execution of the petition, R.L.D. Grisenti, LLC, was not in good standing with the Colorado Secretary of State. While there are curative statutes that allow parties to enforce contracts and agreements entered into by delinquent entities, these are curative and lack of good standing would not be accepted. R.L.D. Grisenti, LLC, may not cure this defect since it is closer than seven days to the 12:00 noon seven days prior to the scheduled public hearing.

3. Failure to present owner's percentage of ownership interest:

DZC 12.4.10.5.A.2. states "For the purpose of defining owners and the area of land represented by the owner, land owned by more than one owner shall be divided to the extent of each owner's percentage of ownership interest in determining whether a protest has the required percentage of

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signatures." No owner submitted any information regarding their percentage of ownership interest. Without percentages specified, area represented by that owner is unknown, the area cannot be divided to extent of percentages.

While there is a legal presumption that absent language to the contrary in the conveying document, the interests between the joint tenants or tenants in common are presumed to be equal, the DZC specifically calls for division "to the extent of each owner's percentage of ownership." The presumption is rebuttable. See *Martinez v. Martinez*, 638 P.2d 834 (Colo. App. 1981). Therefore the specific percentage is required to be presented here, must be known, and not presumed.

3.1. 3225 West 31st Ave. – percentages not specified. Only Bertrum B. Sanchez signed. R. Ermemez Sanchez is also on title.

3.2. 3215 Irving Street – percentages not specified. Only Robert G. Fellows signed. Mary M. Fellows is also on title.

3.3. 3211 Irving Street – percentages not specified. Only Thomas De Miniac allegedly signed, and as noted above, his alleged signature is invalid. Thomas Paul Svaldi GST is also on title, as Joint Tenants. Thus in addition to the invalid signature, the petition is invalid for failure to specify the percentage ownership.

4. Legal Descriptions are inadequate:

In any legal transaction up to the standard of care of lender, title company, or reviewing attorney, the legal descriptions as provided from the City's online records and used on the petitions would be rejected. In litigation they would be similarly challenged. However, there is precedent that if a legal description identifies, or furnishes the means of identifying the property conveyed, it performs its function. In other words, a description may be sufficient when from it the property can be identified.

We have not had the time to scrutinize each description. Most are simple lot, block and subdivision. We reserve our rights to object.

However, one stands out. The 3206 N. Speer legal description from a deed recorded January 22, 2008 at Reception Number 2008008677 of the real estate records in and for the City and County of Denver is

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Exhibit A

That part of Lot 19 and 20, Block 27
Highland Park, described as follows:
Beginning on the Southwesterly line of said Lot 19 at a point
Which is 23.75 feet Northwesterly from the most Southerly corner
thereof; thence Southeasterly along the Southwesterly line 38.75
feet to a point which is 15 feet Southeasterly from the most
Westerly corner of said Lot 20; thence Northeasterly parallel
with the Northwesterly line of said Lot 20, 122 feet; thence
Northwesterly to a point on a line drawn Northeasterly from the
place of beginning and parallel with the Southeasterly line of
Lot 19; thence Southwesterly on a straight line 122 feet to the place
of beginning.

City and County of Denver
State of Colorado.

In the protest petition it is: "HIGHLAND PARK B27 FRONT 122FT OF E 23.75FT OF L19 & OF W 18.67FT OF L20." This one is inadequate.

5. Presentment of Instructions:

It is not apparent from the record that the instructions were presented fully and completely with each petitions as required.

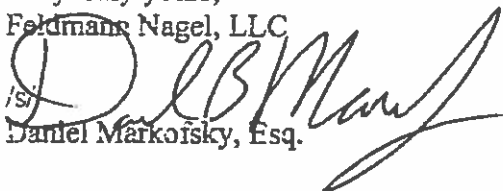
Conclusion

The Department has previously scrutinized petitions and rejected them for many reasons. Failure to do so here would be an arbitrary application of standards.

On consideration, the 20% threshold is not met. We respectfully request you invalidate these and any other petitions you find inadequate and as a result the percentages do not certify this petition.

We are available to meet or speak at your convenience.

Very truly yours,
Feldmans Nagel, LLC

/s/ 
Daniel Markoisky, Esq.

cc: Emmaus Lutheran Church

Emmaus Lutheran Church

Resolution

Whereas Emmaus Lutheran Church (Emmaus) is the owner of Lots 7 and 8, Lot 6 except the east 16' thereof; said exceptions conveyed to the City and County of Denver for alley purposes, Block 30, HIGHLAND PARK, City and County of Denver, State of Colorado ("Property"), and

Whereas Emmaus desires to develop this Property into a neighborhood medical office building to further its mission to serve its community, and

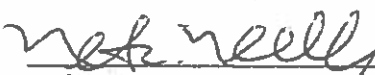
Whereas Emmaus recognizes the scale and context of the surrounding development.

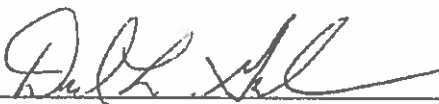
By a unanimous vote of the Emmaus Lutheran Church membership at its regularly scheduled meeting on January 24th, 2016, Emmaus resolves to restrict its planned development on the Property as follows:

1. Follow the guidelines and requirements of the City of Denver U-MX-2x zoning if approved by the City of Denver at its January 25, 2016 City Council meeting and subsequent vote, and
2. Restrict the Building Size to be constructed on the Property to no greater than 23,500 square feet of building area, and
3. Restrict the Parking for any building constructed on the Property to surface parking. Underground or above-ground structured parking shall not be allowed.

This Resolution is passed by Emmaus on a voluntary basis as a good faith effort to maintain the main street character of the neighborhood.

Emmaus Lutheran Church

By: 
Name: Neil A. Neudorff
Title: President
Date: 1-24-16

Attest: 
Name: DANIEL L. GRIESENAN
Title: Secretary
Date: 01-24-16