

OTTENJOHNSON
ROBINSON NEFF + RAGONETTI_{PC}

April 30, 2021

BRIAN J. CONNOLLY
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VIA E-MAIL

Hon. Members of the City Council
City and County of Denver
1437 Bannock Street, Room 451
Denver, CO 80202

Re: Council Bill No. 21-0437—123 Speer Boulevard (the “**Property**”)—Application for Landmark Designation (the “**Application**”)

Dear Honorable Council Members:

Enclosed please find the following written materials, which are submitted on behalf of the owner of the above-referenced Property:

1. Memorandum regarding the approval criteria applicable to the above-referenced Application, which was previously distributed to members of the Land Use, Transportation, and Infrastructure Committee.
2. Summary of public outreach conducted to date by the landowner team.
3. Written responses to questions raised by City Council members at the LUTI Committee hearing on April 20, 2021.
4. Addendum to the report prepared by Heritage Consulting Group regarding the historic merit of the subject Property.
5. Analysis of improvements that would be required to the existing structure in any reuse scenario.

We look forward to discussing these matters, and the Application, with you at the public hearing on May 10, 2021.

Very truly yours,



Brian J. Connolly
For the Firm

City Council
April 30, 2021
Page 2

BJC/abm

cc: Zach Rothmier (via email)
Kirsten Crawford (via email)
Adam Hernandez (via email)
Kara Hahn (via email)
Mike Epstein (via email)
Dean Littleton (via email)
Eben Clark (via email)

Memorandum

TO: Denver City Council VIA E-MAIL
FROM: Brian J. Connolly
CC: City Attorney's Office
DATE: April 19, 2021
RE: 123 East Speer Boulevard—Review Criteria for Landmark Designation

Our firm is working with the landowner and contract purchaser of the property located at 123 East Speer Boulevard, which is the subject of an owner-opposed landmark designation application. Below, we discuss the approval criteria that City Council is required to consider in its action on the application.

Section 30-4(10) of the Denver Revised Municipal Code provides that the “City council may approve the designation of property. . . after considering the recommendations of the [Landmark Preservation Commission], the written views of owners of affected property, and any other comments received at the public hearing; *and city council may deny the designation based on any of the considerations above*” (emphasis added). Thus, City Council is required to consider three things: (1) the recommendations of the LPC, (2) the written views of the property owner, and (3) public comments. **The Landmark Ordinance, D.R.M.C. Chapter 30, purposefully gives the City Council a much broader purview than the LPC in reviewing designation applications.** And unlike, say, a rezoning, the criteria that City Council must consider in a landmark designation are much broader and less restrictive.

The City Council's purview in analyzing the application is not limited to the designation criteria considered by the LPC. Under D.R.M.C. § 30-4(8), the LPC “shall consider the criteria in Section 30-3 in making” its recommendation. Thus, the LPC must find that the criteria in Sections 30-3(1) and 30-3(2), as well as three of the ten criteria in Section 30-3(3) are met in order to recommend approval of a landmark application. The LPC is not permitted to consider any criteria beyond those set forth in Section 30-3. In contrast, under D.R.M.C. § 30-4(10), the City Council is not bound by the recommendation of the LPC (and in fact, the City Council is not even required to consider the same criteria that the LPC considers), can determine on its own that the designation criteria set forth in Section 30-3 are not met, and must evaluate the written views of the property owner.

In this case, the property owner has submitted written statements expressing its views on the Application, including the following items:

- A March 23, 2021 statement from Dean Littleton, Vice President and General Manager of Denver7 KMGH-TV. This statement addresses, among other things, Denver7's position that designation would

impede its ability to grow its local journalism business; thwart the creation of a lively, pedestrian-oriented, mixed-use area envisioned in the City’s adopted plans; and—because the applicants appear to be using the designation process to influence redevelopment—undermine the credibility of the City’s otherwise-laudable landmark preservation process.

- A March 22, 2021 letter from Mike Epstein, Vice President, Risk Management and Business Continuity for Scripps Media, Inc. This letter identifies several designation-imposed limitations on both employee safety and building maintenance that would create a risk of loss of service to viewers and compromise building security.
- A March 22, 2021 report prepared by Heritage Consulting Group, Inc. (“HCG”). This report concluded that the designation criteria set forth in D.R.M.C. § 30-3 are not met in this case.

The owner anticipates submitting additional information prior to the public hearing before the City Council, which will include: (1) a summary of the owner’s community outreach efforts relating to its request for a certificate of demolition eligibility; (2) a description of the application’s relationship to City Council-adopted plans; and (3) a supplemental report from HCG addressing matters asserted by the applicants in the April 6, 2021 LPC hearing.

Pursuant to D.R.M.C. § 30-4(10), the City Council is required to consider these materials in its evaluation of the application. Moreover, it is the landowner’s position that the information contained in these materials demonstrates that the application fails to meet the criteria in D.R.M.C. § 30-3 and that the application should be denied based on the City Council’s review criteria.

123 Speer Blvd. Outreach Summary

The following summary outlines outreach to the applicants and the community with respect to the owner-opposed application for landmark designation and proposed redevelopment of the property located at 123 Speer Blvd.

Initial Outreach

1. Early Outreach to Historic Denver

- a. On November 24, 2020, before submitting the application for a Certificate of Demolition Eligibility, land use counsel Brian Connolly of Otten Johnson Robinson Neff + Ragonetti, P.C., called Annie Levinsky, Executive Director of Historic Denver, to understand Historic Denver’s position on the application and any interest Historic Denver had in the building. Ms. Levinsky requested that we delay submitting the application to allow Historic Denver time to research the building’s history and architecture, and to allow for consultation with the organization’s board. We obliged. Approximately a week later, on December 2, 2020, Ms. Levinsky confirmed via email that Historic Denver would not seek designation of the building, but offered to assist in any efforts to save the building or incorporate it into a future project. In her email, Ms. Levinsky noted the importance of design quality at the site’s location—due to its adjacency to Speer Boulevard and the Cherry Creek—but observed that the building was not a highly significant example of Brutalist architecture. Ms. Levinsky also supplied Mr. Connolly with some of the findings of Historic Denver’s research on the history of the building.

2. Denver7 research

- a. Denver7 also engaged consultants to research the building’s history, architecture and potential for adaptive reuse. Similar to Historic Denver, these consultants concluded that, based on the City’s approval criteria and several functional and aesthetic considerations, the building did not merit Landmark designation. Following this analysis, we submitted the application for CDE.

Discussions with Applicants Following Submittal of the Application for CDE

3. City Posting Period

- a. Following our submittal of the application for CDE, the City posted notice of the application on the Property on December 18, and sent a report of its initial findings to more than 13 different RNOs and others. With the exception of the three applicants, to our knowledge, no RNOs or other individuals contacted our team or expressed any interest in filing a landmark application.

5. Pre-Application Meetings

- a. Our team was initially contacted by applicants Brad Cameron and Michael Henry on December 23, 2020. In their email, they stated “we are hoping that you would have the time to talk with a few of us concerning, in particular, the Application for Non-Historic status, and, in general, the plans for the entire property.”

- b. On December 31, 2020, four members of the Denver7 team met with Messrs. Cameron and Henry to discuss the CDE application. Denver7 discussed its interest in selling the building in order to facilitate its relocation to studio space that would allow for more growth and collaboration, and further discussed its process for identifying a buyer for the property. In that initial meeting, the prospective applicants indicated some interest in the building as well as interest in any prospective redevelopment of the property.
- c. On January 6, 2021, the Denver7 and applicant teams met, joined by representatives of Property Markets Group, the prospective purchaser of the subject property. PMG introduced its representatives and prospective project, and its architect described concepts for the project. Messrs. Cameron and Henry were joined by prospective applicant David Wise. Mr. Wise indicated that the landmark process was the only meaningful way in which the applicants could participate in redevelopment of the property.
- d. On January 29, 2021, the Denver 7, PMG, applicant, and Historic Denver teams met as part of the City-required mediation process, led by Steve Charbonneau, the City's mediator. Each team stated its position on the building. The applicants' representative, Mr. Cameron, specifically indicated that landmark preservation of the building was not their goal, but that they wished to see an adaptive reuse of the building. Ms. Levinsky stated on behalf of Historic Denver that Historic Denver would be willing to facilitate any agreement between the parties. Alternative uses, tax credits, and other matters were discussed among the teams. PMG's architect, Andy Rockmore of Shears Adkins Rockmore Architects, stated that the building was evaluated from four perspectives: Blueprint Denver compliance, the building's skeleton and usability for any redevelopment, building systems, and the building's skin. Based on these limitations, PMG determined that the building should be demolished. PMG offered a good neighbor agreement to the applicants that contemplated collaboration on any redevelopment. The parties agreed to a design charrette. The good neighbor agreement was shared with the applicants following the mediation.

6. Design Charrette with Historic Denver

- a. On January 11, Historic Denver, through Ms. Levinsky, confirmed that they were going to be neutral on any landmark application, but that they were interested in working with the parties on adaptive reuse to the extent ownership was interested.
- b. On February 10, 2021, the parties—including Historic Denver—held a design charrette to discuss the redevelopment of the property. In preparation for this meeting, the Denver 7 team did a thorough building assessment regarding:
 - i. Adaptive reuse of the Denver7 building specifically (introducing a new use, existing and future codes analysis, implications of landmark guidelines or preservation)
 - ii. Quantitative and qualitative metrics of how adaptive reuse of the building would influence the remainder of the site and project / design.

7. Follow-up after Design Charrette

- a. After the design charrette, the applicants suggested employing a “Tavern Uptown” model of preserving the building and rezoning the balance of the property for added density.
- b. On March 30, 2021, the Denver7 and PMG teams met with Mr. Charbonneau and members of City staff. The goal of this discussion was to review re-zoning opportunities as a compromise to keep the current building in place. All parties agreed at this meeting that a rezoning of the property to increase building height would potentially result in neighborhood opposition. Following this meeting, the Denver7 team has remained in continued communication with Mr. Charbonneau as various compromises have been discussed.
- c. The Denver7 team has continued to evaluate this alternative, and held a pre-application meeting with City staff on April 28, 2021 in furtherance of this alternative. In this evaluation, we have determined that this option presents several challenges as follows:
 - i. The Tavern Uptown was originally built for a tavern and will remain a tavern, which is fundamentally different than converting a purpose-built TV studio to a wholly different use.
 - ii. The Denver7 Building, a taller more confined structure, would require an extraordinary amount of exterior and interior reconstruction to bring it to current accessibility and safety standards. The building would need all new systems, redesigned interior and exterior circulation space, modern life safety, completely new HVAC systems, etc.
 - iii. Blueprint Denver calls for a 12-story, *but no higher*, mixed use structure on this site as the Future Place of "Community Center" states: *“Heights can be generally up to 12 stories in the taller areas and should transition gradually within the center’s footprint to the surrounding residential areas.”* The Regional Center place designation within Urban Center carries the higher height recommendations, but this site is not one of them.
 - iv. RNOs in the area have indicated opposition to any additional building height at 123 Speer Boulevard. In essence, the applicants—all of whom live over a mile from the property—are asking other neighborhood organizations to accept additional building height in exchange for their preservation of the existing building. The applicants will be largely unaffected by a taller structure at the property.

8. Good Neighbor Agreement

- a. On January 28, 2021, before the mediation with Mr. Charbonneau, Denver7 offered the applicants a Good Neighbor Agreement whereby the owner, developer and design team would be bound to work collaboratively with the applicant group and neighborhood stakeholders on the site planning and design process. Denver7 committed to a six to twelve month process that would include regular communication, concrete deliverables, and opportunities for neighborhood input and ideas. The applicants rejected this Good Neighbor Agreement structure. Denver7 and PMG remain committed to working through this process.

Engagement with Other Neighbors

9. Engagement with RNOs

- a. The Denver7 team has met or spoken with representatives of the following RNOs in the area surrounding the property: Capitol Hill United Neighbors (“CHUN”), Baker Historic Neighborhood Association, Beautiful Speer Neighborhood Organization, Lincoln/Broadway Corridor RNO, and others. The team has also met with the Save Governor’s Park neighborhood group. While not all of these groups have taken positions on the application, most have indicated opposition to any rezoning of the subject property for additional building height.
- b. On April 27, 2021, the Denver7 team met with CHUN to discuss a potential of signing a Memorandum of Understanding (“MOU”) whereby the owner, developer and design team would work collaboratively with CHUN on the site planning and design process. The Denver7 Team is continuing to engage in ongoing dialogue with CHUN regarding this potential MOU.

10. Engagement with Neighborhood Businesses and Residents

- a. The Denver7 team has made contact with more than 200 businesses and residents in the Golden Triangle, Baker, Capitol Hill, and surrounding neighborhoods.
- b. On April 28, 2021, the Denver7 team met with Citizens to Save Governor’s Park about ideas, comments, and concerns for the area and discussed ways in which the Denver7 team can be a good neighbor and partner in community development.

123 SPEER BOULEVARD
LUTI COMMITTEE QUESTIONS AND LANDOWNER RESPONSES

On April 20, 2021, the application for landmark designation of the Channel 7 Building, located on our property at 123 Speer Boulevard, went before the City Council's Land Use, Transportation and Infrastructure Committee. Several questions were asked of City staff, the landowner, and the applicants. We are providing written responses to several of these questions for the benefit of the City Council members who were not present at the LUTI Committee meeting on April 20, 2021.

Councilwoman Black

- *What are the owner's views on the designation application?* As has been noted in our submissions to the Landmark Preservation Commission and the City Council, Denver7 is opposed to this application for a number of reasons. Our position on the application is set forth in the materials that we submitted to the LPC.
- *What are the criteria for approval?* Our legal counsel has provided a memorandum discussing the approval criteria, attached here as **Exhibit 1**. As that memo discusses, the City Council is required to consider the views of the landowner in its review of the application.
- *Is an unwelcoming nature a feature of Brutalist architecture?* Brutalist architecture can be characterized as unwelcoming due to its incorporation of cast-in-place concrete, lack of windows, and fortress-like relationship to surrounding public spaces. The Channel 7 Building has some of these qualities, although it is not completely Brutalist. We believe there is an opportunity for a better-designed project on this Property that provides more welcoming design, engages the public realm, provides greater activation and public access, and encourages additional mobility options.

Councilwoman Torres

- *What was the rationale of the one Landmark Preservation Commission member who voted against the application?* LPC member Gassman did not find that three of the 10 criteria for designation had been met. He specifically questioned the basis of the application and City Staff's findings on historical significance, the recognition of its architects, its Brutalist bona fides, whether it is appropriately characterized as a prominent feature of the landscape, and its promotion of an understanding of the urban setting.
- *Does this require designation of all of the buildings on the site, including the studio building?* The applicants have requested designation of all of the buildings.
- *Did LPC consider revising the designation to limit the area to the tower?* No.
- *Are the buildings internally connected?* Yes.
- *Does red rock modify the style intention of Brutalism?* Yes. Brutalism generally incorporated gray concrete.

Councilwoman Sandoval

- *What were the sticking points in the mediation process? What was the facilitation like? What were the conversation topics? Are the parties will to go back to mediation?* We have attached a public outreach summary as **Exhibit 2**, which discusses our meetings with the applicants and others. As noted in that attachment, among other discussion topics, we offered the applicants a good neighbor agreement to facilitate their participation in our efforts to design a new project on the Property. Unfortunately, the applicants did not accept our offer. We have discussed other approaches, such as architectural treatments that honor the existing structure and design, the incorporation of signage and other features that educate the public about the Channel 7 Building's history and broadcast journalism in Denver, and other options. At this point, we have worked with and met the applicant group on several occasions over the past five months, and we do not anticipate that further mediation will yield different results; however, we are continuing to explore other compromise ideas that have been suggested and meet with neighbors and groups closer to the actual site. We will continue to do everything we can to pursue a reasonable compromise.
- *What do the neighborhood plans recommend? Is there plan support for increased density?* Blueprint Denver recommends 12 stories, Urban Center context, Community Center place type. The other adopted plans for the neighborhood do not specifically express support for increased density on this Property.
- *Does Blueprint's flexibility provide a path for taller building heights at the site?* Blueprint allows limited building height flexibility where community benefits are provided. In some circumstances, community benefits may include historic preservation. Nevertheless, we understand that several of the nearby neighborhood groups do not support a building height increase at the Property and have voiced their concerns in writing.

Council President Gilmore

- *How much housing could the property support under C-MX-12 zoning? How much housing could it support with an additional four stories if the building is preserved?* The proposed development project envisioned more than 600 units of housing on the Property under the C-MX-12 zoning designation. If the building is preserved, at least 100 units would be lost.

Councilman Kashmann

- *Is the scope of the designation application the entire western half of the block? Yes.*
- *If anything were to be built on the unbuilt portion of the western half of the property, would it need to be built in a Brutalist style? What would the review process be?* Upon designation, any modifications to the existing structure would require the owner to submit plans to the Landmark Preservation Commission for review and approval.

Chairman Herndon

- *Has the City designated other TV stations as landmarks?* No.
- *Why did mediation fail?* From our perspective, there are significant costs and challenges involved with the reuse of the existing building and/or zoning to build higher. We have worked from the outset of this process to evaluate reuse alternatives, but we have concluded that, from the perspective of both design quality and functionality, the existing building does not achieve the attributes that the community deserves. Based on our understanding that nearby neighbors oppose additional building height, we are disinclined to pursue a potential year-long rezoning for a height increase, as we believe the voices of our immediate neighbors should be given as much or more weight than the voices of three individuals who live between one and three miles from the Property.
- *What was the thought process behind applying for designation of both studio and tower? Would it have been feasible just to apply for designation of the tower?* This question was asked of the applicant team. The landowner has no response.
- *Is Historic Denver part of the application process? What did Historic Denver tell the LPC?* This question was asked of Historic Denver. The landowner has no response.

Councilwoman Sandoval

- *Have you reached out to any developers who are known to do historic preservation? Or have you only spoken to market-rate developers?* Denver7 undertook a lengthy vetting process to find a developer that it believed would be a good partner and respect the community in any redevelopment. All of the developers with whom Denver7 spoke proposed residential uses and tearing down the Channel 7 Building. Our current partner, Property Markets Group, has experience developing unique mixed-use and residential projects in urban environments around the country. PMG has experience with historic preservation and adaptive reuse, and supports its use where preservation achieves good design outcomes and makes economic sense. Denver7 and PMG have explored the use of historic preservation tax credits to facilitate saving the building, but these credits are of relatively limited value on this Property due to the fact that credits may only be used for the designated structure and would not support the significant building modifications needed to incorporate the structure into a new project. These credits also do not make up for the loss of value and missed opportunity if the full Property cannot be used for housing.
- *What kind of product does PMG build?* PMG focuses on residential and residential mixed-use projects. PMG's goal for the subject Property is to construct residential units that will be attainable to young professionals in the Denver community along with some supportive commercial and/or retail to make a complete neighborhood.
- *Where has the majority of PMG's work been built?* PMG has worked in urban areas throughout the United States, including Miami, Orlando, New York City, Chicago, and Phoenix.

Councilman Flynn

- *Would landmark designation allow the studio building to have windows added?* Any building modifications would require LPC approval and generally the landmark design guidelines are quite strict on adding or changing windows based on a desire to maintain consistency with a building's original style.
- *How repurpose-able are the tower and the studio building?* They are not easily repurposed, as discussed in the attached **Exhibit 3**. We have spent the past five months exploring options from many perspectives. The existing design features of these buildings make them difficult to incorporate into a new project—and incorporating them would likely undermine the very design that the applicants find unique, as Brutalist architecture is generally intended to stand apart from its surroundings.

Councilwoman CdeBaca

- *What project is X Denver?* The project is located at 3100 Inca Street. It was developed by a former partner of PMG's.

EXHIBIT 1

MEMO RE: CITY COUNCIL DESIGNATION REVIEW CRITERIA



Memorandum

TO: Denver City Council **VIA E-MAIL**
FROM: Brian J. Connolly
CC: City Attorney's Office
DATE: April 19, 2021
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EXHIBIT 2

PUBLIC OUTREACH SUMMARY

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8. Good Neighbor Agreement

- a. On January 28, 2021, before the mediation with Mr. Charbonneau, Denver7 offered the applicants a Good Neighbor Agreement whereby the owner, developer and design team would be bound to work collaboratively with the

applicant group and neighborhood stakeholders on the site planning and design process. Denver7 committed to a six to twelve month process that would include regular communication, concrete deliverables, and opportunities for neighborhood input and ideas. The applicants rejected this Good Neighbor Agreement structure. Denver7 and PMG remain committed to working through this process.

Engagement with Other Neighbors

9. Engagement with RNOs

- a. The Denver7 team has met or spoken with representatives of the following RNOs in the area surrounding the property: Capitol Hill United Neighbors (“CHUN”), Baker Historic Neighborhood Association, Beautiful Speer Neighborhood Organization, Lincoln/Broadway Corridor RNO, and others. The team has also met with the Save Governor’s Park neighborhood group. While not all of these groups have taken positions on the application, most have indicated opposition to any rezoning of the subject property for additional building height.
- b. On April 27, 2021, the Denver7 team met with CHUN to discuss a potential of signing a Memorandum of Understanding (“MOU”) whereby the owner, developer and design team would work collaboratively with CHUN on the site planning and design process. The Denver7 Team is continuing to engage in ongoing dialogue with CHUN regarding this potential MOU.

10. Engagement with Neighborhood Businesses and Residents

- a. The Denver7 team has made contact with more than 200 businesses and residents in the Golden Triangle, Baker, Capitol Hill, and surrounding neighborhoods.
- b. On April 28, 2021, the Denver7 team met with Citizens to Save Governor’s Park about ideas, comments, and concerns for the area and discussed ways in which the Denver7 team can be a good neighbor and partner in community development.

EXHIBIT 3

CHALLENGES TO ADAPTIVE REUSE



Challenges to Adaptive Reuse of Building at 123 Speer Boulevard

Due to its existing conditions, adaptive reuse of the building located at 123 Speer Boulevard presents many challenges. Such challenges include:

- The existing stairways do not meet width requirements for required means of egress. A new stair core(s) is required, and the existing shafts are not wide enough. Providing new stair cores within the existing floor plate will require structural assessment and may not be achievable without significant modification to the existing lateral and vertical support system.
- The existing elevator cab size does not meet current code requirements to accommodate an ambulance stretcher. Furthermore, the existing elevator shafts are too narrow to accommodate these larger elevator cabs and would therefore need to be rebuilt. Providing new elevator shafts within the existing floor slabs will require structural assessment and may not be achievable without significant modification to the existing lateral and vertical support system. An alternative to providing new elevator shafts and cabs would be to create a connection from the existing building to a new building. Connection at each level is significantly challenged because floor-to-floor heights of the existing building and a new building would not align. The connecting elevation on each level is unique and vertical differential varies from 1'-6" to 3'-6". Accessible connection and means of egress will be required with significant floor area for ramps and steps.
- Many areas on levels 2, 3 and 4 on the east side would be facing the parking levels of a new building with no view.
- If developing residential units, it would be necessary to install new windows in the exterior skin of the building to provide for daylight.
- The exterior skin of the building would need to be modified to meet current IBC energy code, including exterior wall thermal performance and glazing performance; modification and replacement may be required.
- A new mechanical system would need to be provided throughout the entire building, including exterior wall penetrations as required (horizontal dryer and unit exhaust, at a minimum).

- A new sprinkler system would be required throughout building.

New slab cores would be required throughout the building to provide for new plumbing, mechanical and electrical chases. Providing new cores would be challenging in coordination with existing post-tension structural slab tendon layout.

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- Many areas on levels 2, 3 and 4 on the east side would be facing the parking levels of a new building with no view.
- If developing residential units, it would be necessary to install new windows in the exterior skin of the building to provide for daylight.
- The exterior skin of the building would need to be modified to meet current IBC energy code, including exterior wall thermal performance and glazing performance; modification and replacement may be required.
- A new mechanical system would need to be provided throughout the entire building, including exterior wall penetrations as required (horizontal dryer and unit exhaust, at a minimum).
- A new electrical and low voltage system required throughout building.

- A new sprinkler system would be required throughout building.
- New slab cores would be required throughout the building to provide for new plumbing, mechanical and electrical chases. Providing new cores would be challenging in coordination with existing post-tension structural slab tendon layout.