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Ms. Kelly Velez  
Council Secretary  
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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. 31<sup>st</sup> 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 32<sup>nd</sup> Avenue is owned by "Enger Properties, 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.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 32<sup>nd</sup> 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 32<sup>nd</sup> 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

DM

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 2 - 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

“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

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 31<sup>st</sup> 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

**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,

Feldman Nagel, LLC

  
/s/ Daniel Markoisky, Esq.

cc: Emmaus Lutheran Church