THE MANYA GROUP

February 8, 2012

To: Members of the Denver City Council

RE: Bill CB12-0043_A Bill for an ordinance amending Ordinance 333, Series of 2010.

As I previously stated in my letter dated January 9, 2012, I am opposed to this Bill being passed. I have had the opportunity to further educate myself on the proposed Bill and would like to submit my revised concerns for your consideration:

- **This is <u>not</u> just an administrative adjustment.**
  The fact that the marijuana lobby has been involved clearly indicates there are some vested interests that would be served by this amendment. At the very least, the City Council should know the honest motive for the requested amendment.
- **Why the rush?**
  This is a complicated issue with some serious legal implications for the City. As of the date of the first reading of the Bill, Councilman Nevitt did not have a clear understanding of the number of permits that were issued that would be impacted by the amendment. If permits that were issued during the relevant time period were reviewed, it is possible that only a handful would be impacted by the amendment. It would make sense that this amendment be given adequate time to compile relevant facts, understand the implications of the Bill and for Council Members to consider all information available.
- **What is the problem that the amendment is solving?**
  Councilman Nevitt has stated that this amendment is necessary to eliminate the "cloud" that is hanging over the use permits that were issued during this time period which might be contested. According to the City's website, "You must file an appeal within fifteen (15) days of the Zoning Administration's action, unless an extended filing period is specifically authorized by Zoning." Therefore, all of these permits that were issued December 31, 2010 or earlier have far surpassed the time limit for the use permits to be appealed so it does not seem that there is a "cloud" over them.
- **Will the amendment create more potential problems than it claims to be solving?**
  It is reasonable to consider this amendment as an "action" by the Zoning Administrator because it is making all of the use permits that were issued from June 30, 2010 to December 31, 2010 legal. If this is considered as an action by the Zoning Administrator then it could be argued by aggrieved citizens that their 15 day appeal period starts over regarding all of the newly legal permits.
- **What about the people that followed Ordinance 333?**
  The people or groups that chose to follow the ordinance as it was written, and not obtain use permits under the old zoning code, have no simple remedy to their situation. They would have to appeal to the BOA on the grounds that the people that were given the permits which were then deemed legal, by the amendment, are being given special preference over the people that legally followed the ordinance. To address this issue, it seems that if the amendment is approved it should require that a new "transition period" be provided for people in down-zoned areas to apply for use permits under the old zoning code. For instance, how would you feel if you followed the ordinance and didn't change your residence into offices because you thought it was no longer allowed only to find out later that the law was retroactively changed?

- **Was the overlap period actually intended for use permits?**
  As a member of the AIA Denver Board at the time of the zoning code adoption, I recall discussions regarding a grace period for new construction and major rehab of buildings because projects would be under development at the time of the transition to the new code. I do not believe that there is any clear evidence that use permits were also supposed to be included in the grace period. In fact, in a letter to City Council dated September 14, 2009, AIA Denver stated that "This grace period would allow architects and developers the opportunity to determine how the new code would impact the design, development and financing of their current projects."

  Further evidence that the ordinance was not intended to include use permits, is in the ordinance itself. The ordinance provides very specific requirements for zoning permits to rezone land (Section 2.b and 2.e) and to erect or alter a structure (Section 2.d) but does not provide for any requirements related to use permits. For example, it states that permits to alter or erect a structure will lapse if a building permit is not issued within 180 days but it does not provide for any similar requirement for use permits regarding any circumstances under which a use permit would become invalid. If it was truly just an oversight to only include language in Section 1 referencing Section 59 26(d) then you would expect to find evidence of requirements related to Section 59 26(e) and Section 59 26(f) in the body of the ordinance.

- **What about pending legal actions that will be impacted?**
  Currently, there is at least one case in circuit court that is specifically contesting the validity of a use permit during this time period. If this amendment is approved, then the case will be negatively impacted. Because the party that was issued the use permit has strong ties to the City and to Denver Road Home it is possible that some parties may feel that this amendment is intended to undermine the lawsuit that is pending. The rush to get it passed by City Council appears to support this opinion.

Thank you for taking the time to consider my concerns. If you would like to speak with me regarding any of the above noted items please do not hesitate to contact me at cgoldman@themanyagroup.com or at 303-809-8300.

Sincerely,

Cedra Goldman, AIA, LEED AP O+M
Managing Principal