



**TO:** Denver Planning Board  
**FROM:** Ryan Winterberg-Lipp, AICP, Senior City Planner  
**DATE:** May 10, 2016  
**RE:** Official Zoning Map Amendment Application #2015I-00194  
16161 East 40<sup>th</sup> Avenue  
Rezoning from Gateway with Waivers and Conditions to S-MX-8

### Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2015I-00194 for a rezoning from Gateway with Waivers and Conditions ("W/C") to S-MX-8.

### Request for Rezoning

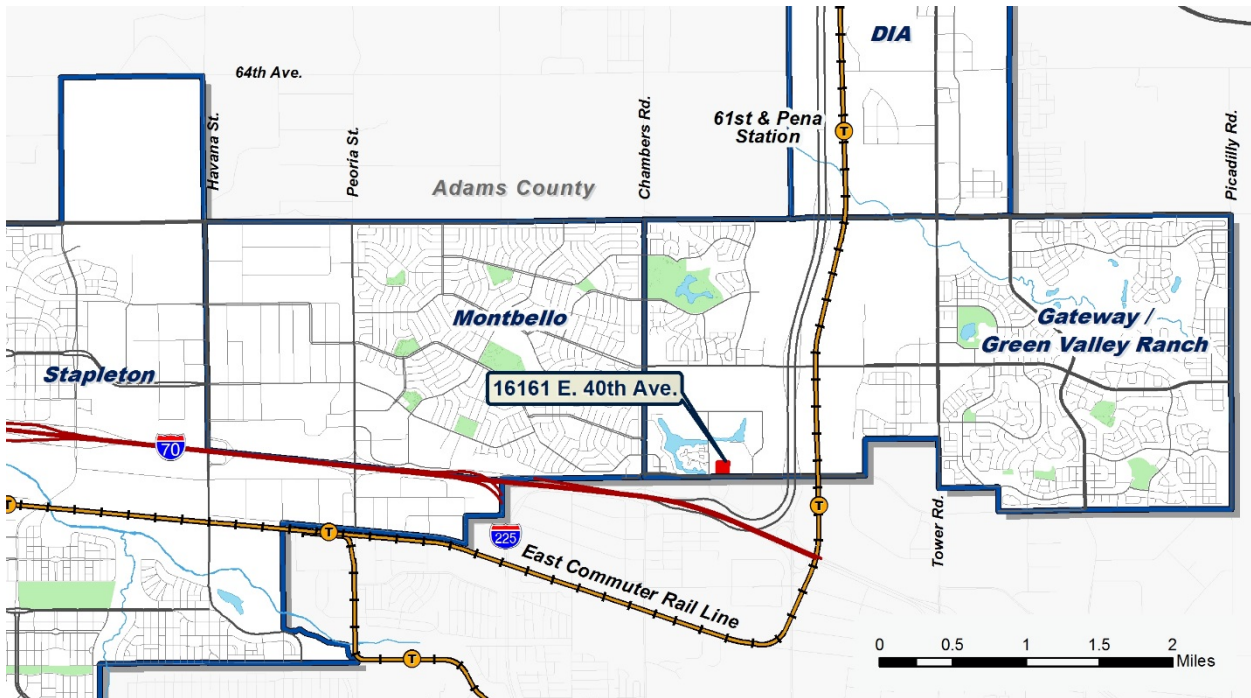
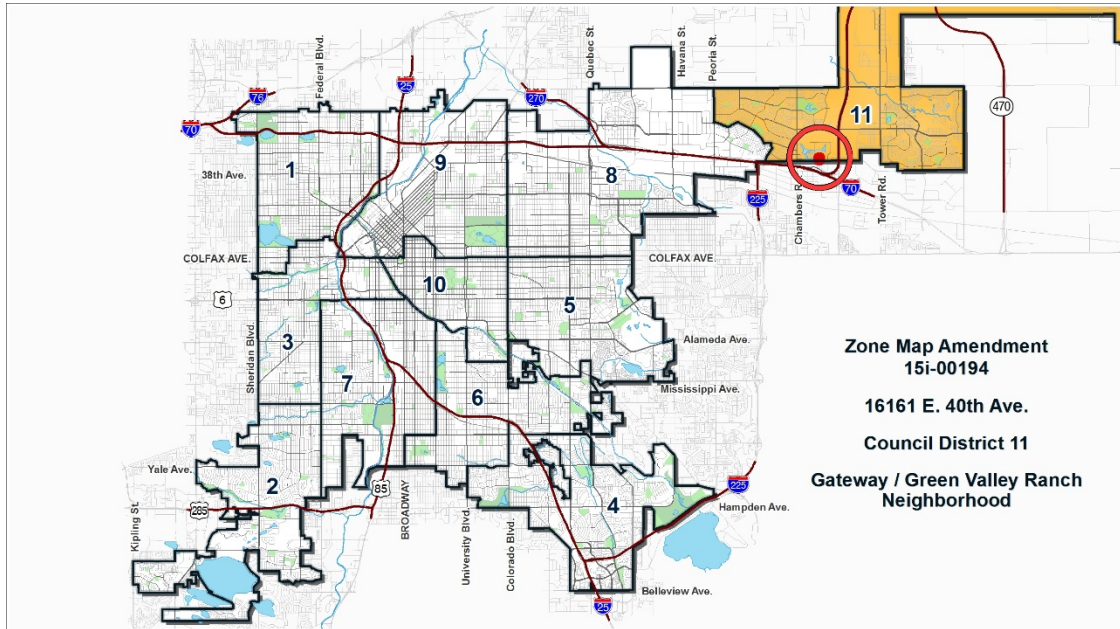
Application: #2015I-00194  
Address: 16161 East 40<sup>th</sup> Avenue  
Neighborhood/Council District: Gateway – Green Valley Ranch / Council District 11  
RNOs: Denver Neighborhood Association, Inc.; Far Northeast Neighbors, Inc.; Inter-Neighborhood Cooperation; Montbello 20/20; Northern Corridor Coalition  
Area of Property: 4 acres  
Current Zoning: Gateway with Waivers and Conditions (W/C)  
Proposed Zoning: S-MX-8  
Property Owner(s): WPB Hospitality LLC  
Owner Representative: Will Rogers

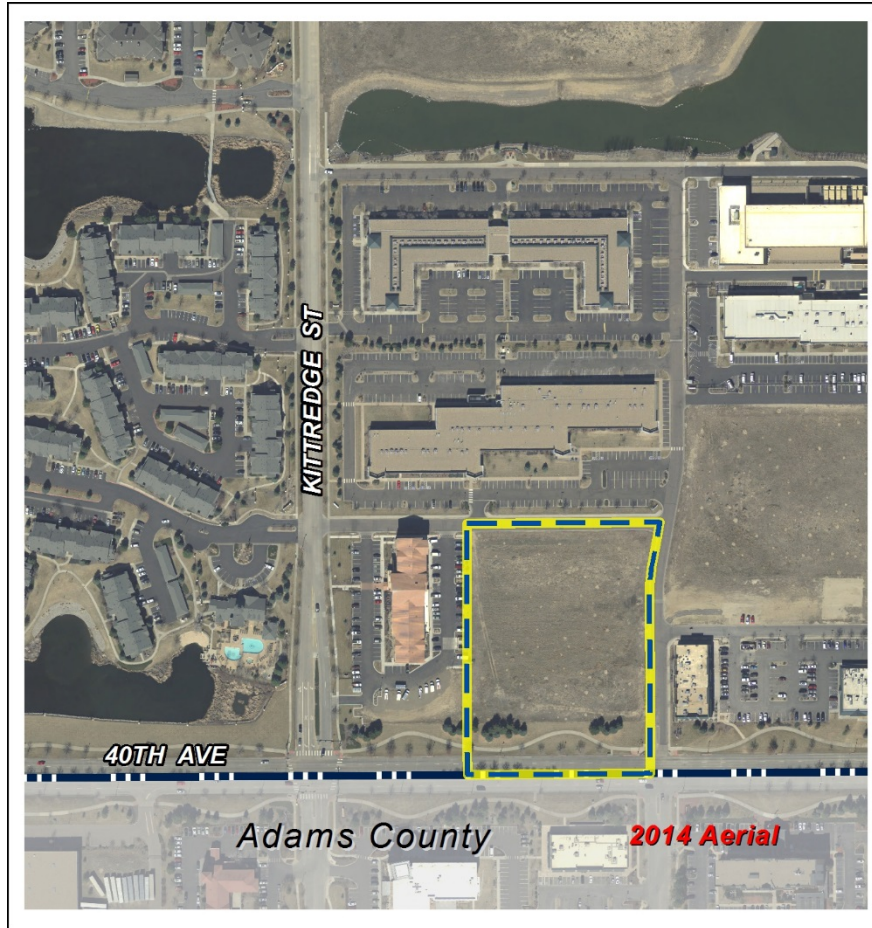
### Summary of Rezoning Request

- The subject property is located in the Gateway – Green Valley Ranch statistical neighborhood, at the intersection of Memphis Ct. and E. 40<sup>th</sup> Avenue. East 40<sup>th</sup> Ave. is the boundary with Adams County to the south.
- The site is comprised of one parcel owned by WPB Hospitality LLC. The site is currently vacant with an approved Site Development Plan permitting the construction of a six-story hotel. The owners are intending to proceed with construction soon.
- The site is currently zoned Gateway W/C. The Gateway zone district is a Former Chapter 59 (FM CH 59) zone district that applies to lands in the Gateway district. More details can be found in Section 59-341 of FM CH 59 and in ordinance 801 of 1999 for specific waivers and conditions.
- The property owners are requesting a rezoning to S-MX-8 in order to bring the approved Site Development Plan into compliance with zoning standards and allow the project to proceed with construction. The Site Development Plan approved for 16161 E. 40<sup>th</sup> Ave. does not comply with the current Gateway W/C zoning standards as a result of an unintentional error in development

review. The rezoning will result in a conforming site, if approved. A similar error occurred at the adjacent site, 4100/4050 Kittredge, recently rezoned to the S-CC-5x zone district to bring the site into zoning compliance.

- The requested S-MX-8 zone district is in the Suburban neighborhood context, allowing Mixed uses, up to 8 stories in height with a maximum height of 110 feet. Further details of the zone district can be found in Article 3 of the Denver Zoning Code (DZC).





### Existing Context

The following table summarizes the existing context proximate to the subject site:

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	Gateway W/C	Vacant	None	Immediate vicinity is suburban and auto-oriented in nature with larger, generally regularly-shaped blocks.
North	Gateway W/C	Office, vacant, and stormwater detention	Generally large, one-story office structures with surface parking in an auto-oriented configuration	
South	Adams County	Lodging accommodations, office, restaurant	Low and mid-rise commercial, office, and retail structures with surface parking in an	Commercial and retail lots are generally large, and alleys are not present. Some

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
			auto-oriented configuration	smaller pad sites are oriented to E. 40 <sup>th</sup> Ave.
East	Gateway W/C	Office, warehouse, lodging accommodations, restaurant, and vacant	Low and mid-rise lodging, office, warehouse, and retail structures with surface parking in an auto-oriented configuration	Interstate 70 and Peña Boulevard intersect to the south and east of the site.
West	Gateway	Lodging accommodations, multi-family residential, and stormwater detention	Mid-rise structure with surface parking between the building and the street with large landscaped setbacks, low-scale multifamily with interior streets	

## 1. General Development Plan

The Gateway Park IV West Kittredge East General Development Plan (GDP) currently applies to the subject property. The GDP area is 96 acres, bound by the Peña Blvd. corridor, E. 40<sup>th</sup> Ave., N. Kittredge St., and E. Bolling Dr. The GDP sets forth general use areas, vehicular access points, pedestrian circulation, general locations of future roadways, and residential densities. The GDP also duplicates the waivers and conditions included in the Gateway W/C zoning that apply to the subject site and the larger area rezoned under ordinance 1999-801.

The infrastructure surrounding and accessing the subject site, including regional stormwater detention, has already been constructed in accordance with the GDP. Therefore, if the requested map amendment for the subject site is approved, the General Development Plan will no longer serve a development or planning purpose for the site. Accordingly, the subject site will be removed from the GDP's applicability through the rezoning, and the GDP will not be used in further consistency analysis. The GDP will remain for the remainder of the area within the Gateway W/C zoning.

## 2. Existing Zoning

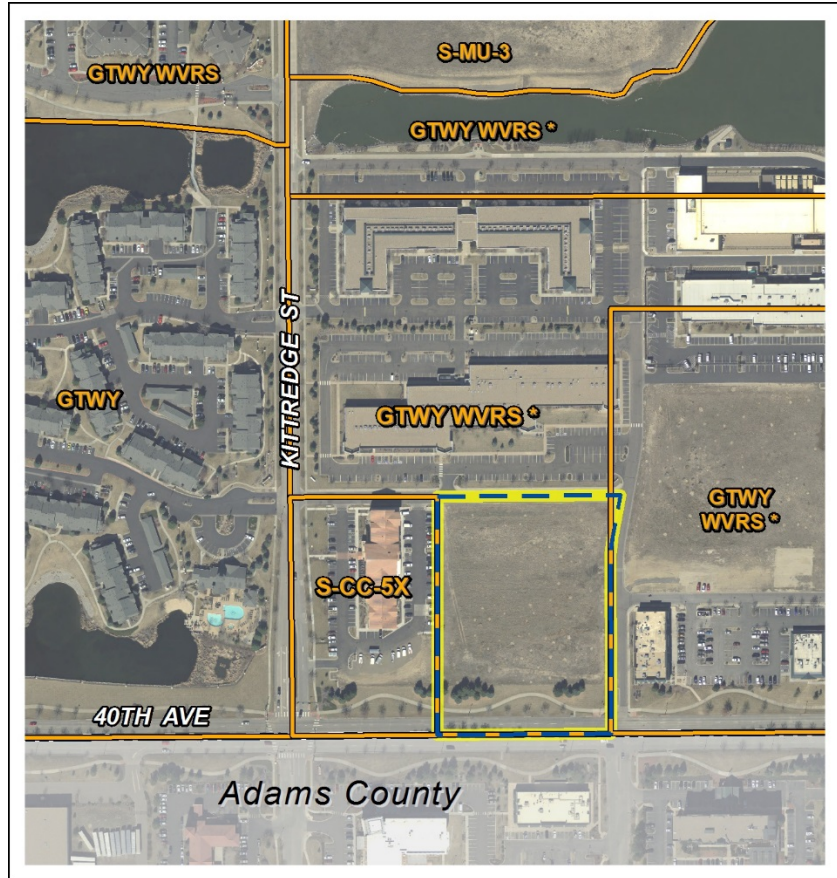
The site is currently zoned Gateway with Waivers and Conditions, a custom Former Chapter 59 zone district. The Gateway zone district applies to areas generally within Denver's Gateway area and includes various "use areas" that dictate the appropriate mix and intensity of uses. The subject site is located within the "MU2: Mixed Use 2" use area, described as "a general purpose, lower scale, mixed use area to accommodate office uses, office uses in combination with research, storage, distribution uses, research and development uses, and assembly/light manufacturing uses. [...] Smaller freestanding retail

uses are allowed only in specified locations, and accessory retail uses are allowed on the lower floors of some multi-story buildings in some areas to serve on-site uses” (Sec. 59-343 (2)). The MU2 use area includes a maximum Floor Area Ratio (FAR) of 0.6 with the possibility to increase the FAR to a maximum of 1.2 with density bonuses. Building massing and bulk are restricted by bulk planes where contiguous to residential use areas; however, the subject site is not contiguous to a residential use area, so the bulk plane does not apply.

The waivers and conditions approved by ordinance 801 of 1999 were customized for a specific development concept across the 96 acres of property,

vacant at the time of approval. The waivers and conditions specify use areas and building heights as measured in feet without maximum stories. The use area for the subject site is MU2: Mixed Use 2, and the maximum specified building height is 75 feet. The use areas and building heights map included in the waivers and conditions generally show an increase in both use intensity and building heights moving west to east. As the subject site is on the eastern edge of the MU2 use area, the requested S-MX-8 zone district acknowledges and responds to these standards through a mix of permitted uses with a maximum permitted building height of 110 feet. The MU1 use area, a moderate-scale mixed-use area, with a maximum permitted building height of 125 feet is adjacent to the subject site to the east. Additionally, 4100/4050 Kittredge, the site located immediately to the west, was rezoned in May 2016 to S-CC-5x, further implementing the gradient in use intensities and heights. The requested S-MX-8 zone district provides an appropriate transition in intensity and height to multi-family uses to the west of N. Kittredge St.

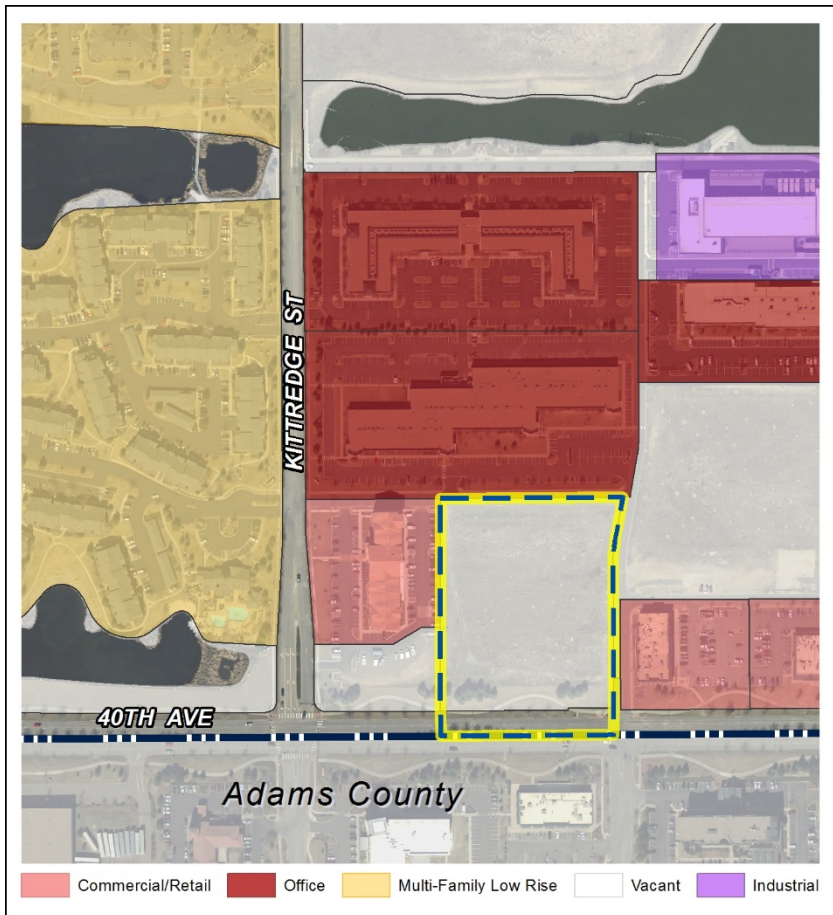
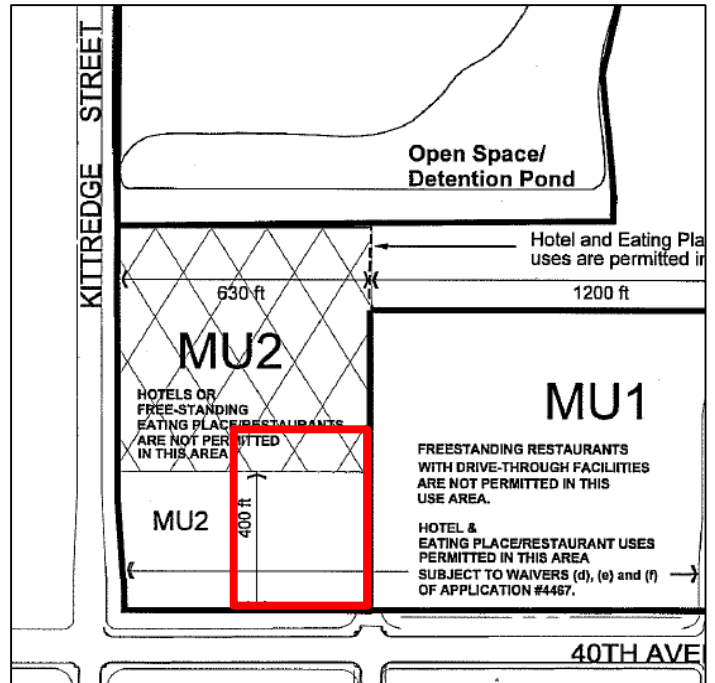
The applicable waivers include highly customized use restrictions corresponding to blocks that would be later defined by the construction of the street network. The anticipated street alignment did not materialize as planned, but these use restrictions remain, based upon dimensions that do not align with the constructed streets. The waivers also eliminate certain permitted uses, establish special review processes, limit the number of restaurants fronting on certain streets and impose separation requirements, and limit the gross floor area of restaurants accessory to hotels. Conditions also include building form and site design standards that correlate to the specific development plan.



The Site Development Plan approved for 16161 E. 40<sup>th</sup> Ave. does not comply with these highly customized and inflexible Wwaivers and conditions due to unintentional errors in reviewing the development against these standards. Specifically, the hotel use was permitted in an area where the lodging accommodation use was not permitted by the custom zoning as shown in the graphic to the right. Additionally, the permitted hotel does not comply with setback requirements and standards regarding the location of surface parking.

**3. Existing Land Use Map**

As seen in the Existing Land Use Map, the area to the north and east includes office, commercial, and warehousing uses with stormwater detention and substantial vacant parcels. The area to the west is a large, internally-oriented multi-family residential area. The area to the south in Adams County is a similar auto-oriented, commercial and office context.



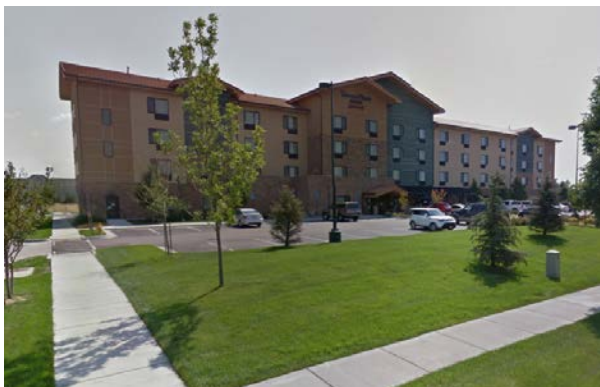
**4. Existing Building Form and Scale**



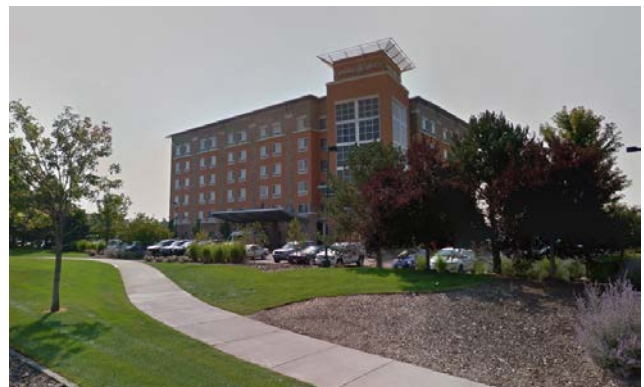
Subject site at the corner of E. 40<sup>th</sup> Ave. and Memphis Ct. looking northwest



Subject site at Andrews Way looking southeast



Mid-rise lodging to the west of the site



Mid-rise commercial to the south of the site

### Summary of City Agency Referral Comments

As part of the DZC review process, the rezoning application is referred to potentially affected City agencies and departments for comment. A summary of agency referral responses follows:

**Asset Management:** Approved – No Comments

**Development Services – Project Coordination:** Approved – No Comments

**Denver Fire Department:** Approved – No Comments

**Development Services – Wastewater:** Approved – No Comments

**Parks and Recreation:** Approved – No Comments

**Public Works – City Surveyor:** Approved – No Comments.

**Environmental Health:** Approved – No Comments.

**Development Services – Transportation:** Approved – No Comments

### Public Review Process

- CPD staff provided Informational notice of receipt of the rezoning application to affected members of City Council and registered neighborhood organizations (RNOs) on March 17, 2016.
- The property has been legally posted for a period of 15 days announcing the May 18, 2016, Denver Planning Board public hearing, and written notification of the hearing has been sent to all affected registered neighborhood organizations and City Council members.
- Following Planning Board review, the rezoning application will be referred to the Neighborhoods and Planning (PLAN) Committee of the City Council for review at a public meeting. The PLAN Committee meeting is tentatively scheduled for June 22, 2016.
- Following the Neighborhoods and Planning Committee review, the rezoning application is typically referred to the full City Council for final action at a public hearing.
- The RNOs identified on page 1 were notified of this application. At the time of this staff report, no public comment has been received.

### Criteria for Review / Staff Evaluation

The criteria for review of this rezoning application are found in DZC, Sections 12.4.10.7 and 12.4.10.8, as follows:

#### **DZC Section 12.4.10.7**

1. Consistency with Adopted Plans
2. Uniformity of District Regulations and Restrictions



3. Public Health, Safety and General Welfare

**DZC Section 12.4.10.8**

1. Justifying Circumstances
2. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

**1. Consistency with Adopted Plans**

The following adopted plans apply to this property:

- *Denver Comprehensive Plan 2000*
- *Blueprint Denver (2002)*
- *The Gateway Concept Plan (1990)*

**Denver Comprehensive Plan 2000**

Denver's *Comprehensive Plan 2000* identifies a set of broad guiding principles that unite to form a coherent and compelling vision of a livable city. The S-MX-8 map amendment proposal is consistent with and positively addresses many Denver Comprehensive Plan concepts, including:

**Opportunities**

**Development areas** ■ A decade ago, when it was a landlocked center city surrounded by suburbs, Denver's growth opportunities appeared severely limited. In a reversal of fortune, Denver's major new development areas — Lowry, DIA/Gateway, Stapleton and the Central Platte Valley — offer about 12,000 acres, more than 50 years of build-out potential (pg. 127).

**Mixed-use development** ■ Integration of housing, retail, services, recreation and employment uses is increasing. New development in and around Downtown and at Lowry, Stapleton, Gateway and the Platte Valley will create the potential to live near work and use alternative transportation to reach destinations conveniently (pg. 128).

The subject site is located in the Gateway Park sub-area of the DIA/Gateway Development Area, a substantial redevelopment opportunity integrating both residential and mixed-use development (pg. 52)

The proposal is consistent with many *Denver Comprehensive Plan 2000* strategies, including:

- Neighborhoods, Strategy 1-E: Modify land-use regulations to ensure flexibility to accommodate changing demographics and lifestyles. Allow, and in some places encourage, a diverse mix of housing types and affordable units, essential services, recreation, business and employment, home-based businesses, schools, transportation and open space networks (pg. 150)

*Denver Comprehensive Plan 2000* includes specific objectives that encourage the streamlining of the development review process and the improvement of the regulatory climate to reduce delays. The proposed map amendment furthers these goals by rezoning complicated, obsolete waivers and conditions to a more predictable, standard Denver Zoning Code zone district that brings the existing condition into conformance.

- Environmental Sustainability Strategy 2-F – Conserve land by: promoting infill development with Denver at sites where services and infrastructure are already in place (pg. 39)
- Land Use Strategy 3-B – Encourage quality infill development that is consistent with the character of the surrounding neighborhood; that offers opportunities for increased density and more amenities; and that broadens the variety of compatible uses. (pg. 60)
- Mobility Strategy 4-E – Continue to promote mixed-use development, which enables people to live near work, retail and services. (pg. 78)

The proposed map amendment will enable mixed-use development consistent with the character of surrounding areas at an infill location where services and infrastructure are already provided, consistent with *Comprehensive Plan 2000*. The S-MX-8 zone district broadens the variety of uses as compared to the now arbitrary and complex current custom zoning. The rezoning is consistent with these Plan recommendations.

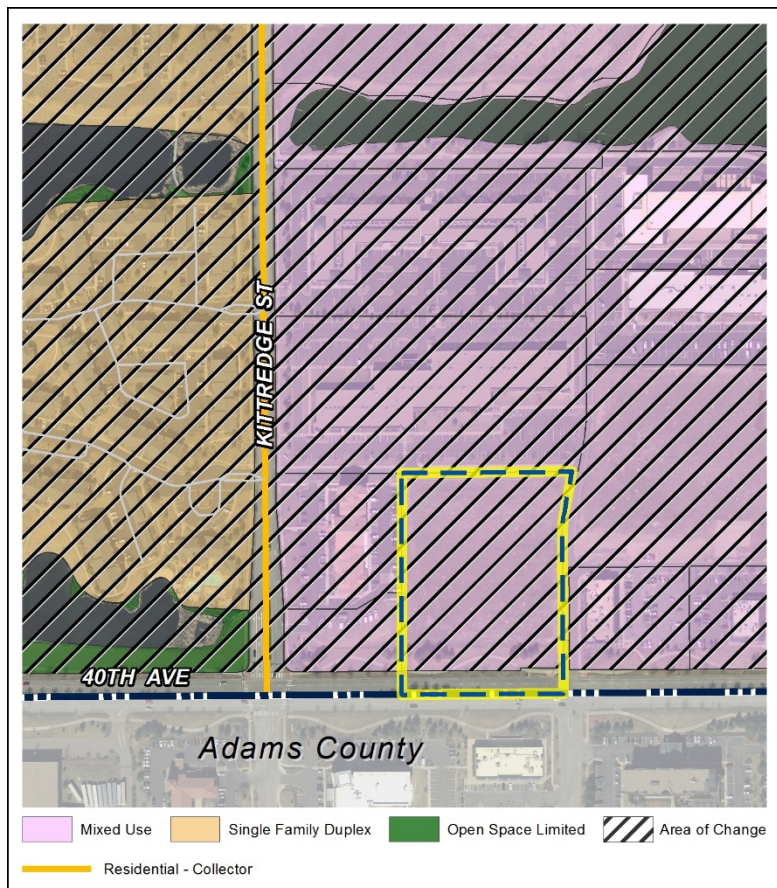
### Blueprint Denver

According to the 2002 Plan Map adopted in *Blueprint Denver*, this site has a concept land use of Mixed Use and is located within an Area of Change.

### Future Land Use

According to *Blueprint Denver*, the site is designated with a concept land use of Mixed Use. Mixed Use areas “have a sizable employment base as well as housing. Intensity is higher in mixed-use areas than in other residential areas. Land uses are not necessarily mixed in each building or development or even within each block. [...] The proportion of residential to commercial uses varies considerably from one mixed-use district to another” (pg. 41).

The proposed map amendment supports the *Blueprint Denver* Mixed Use concept land use designation by allowing for a mix of uses within a larger mixed-use context, the Gateway area. The current



Gateway W/C custom zoning limits the mixed-use potential and does not provide the flexibility to adapt over time.

### **Area of Change / Area of Stability**

The subject site is located within an Area of Change. In general, “the goal for Areas of Change is to channel growth where it will be beneficial and can best improve access to jobs, housing and services with fewer and shorter auto trips.” Areas of Change provide Denver with the opportunity to focus growth in a way that benefits the City as a whole (pg. 127). Specifically, the Gateway is called out as a particular focus for new development as a large Area of Change site. *Blueprint Denver* offers the potential to create new neighborhoods while also recommending a level of trails, services, and jobs to support the needs of residents in this area (pg. 22).

Overall, the rezoning application is consistent with the *Blueprint Denver* Area of Change recommendations by allowing for mixed-use development at an appropriate location, improving access to jobs, housing, and services contemplated in the vision for the Gateway. The redevelopment of the Gateway area is critical in achieving this *Blueprint Denver* vision for appropriate growth.

### **Street Classifications**

*Blueprint Denver* classifies East 40<sup>th</sup> Ave. as an Undesignated Local; however, it was most likely omitted as the boundary with Adams County. In its built condition, E. 40<sup>th</sup> Ave. is a divided, four-lane, commercially-oriented street with dedicated turn lanes at intersections. According to the Public Works street classification, E. 40<sup>th</sup> Ave. is an Arterial, lending insight into the appropriate mix of uses along E. 40<sup>th</sup> Ave. Arterial streets are “designed to provide a high degree of mobility and generally serve longer vehicle trips to, from, and within urban areas” (pg. 51). The S-MX-8 zone district proposed for the subject site is an appropriate zone district for this mixed-use, higher-capacity street context through the allowance of a mix of uses. As a private street, Memphis Court is not given a street classification.

### **Small Area Plan: Gateway Concept Plan**

The *Gateway Concept Plan* was adopted by City Council in 1990 and applies to the subject property. The Plan sets forth a goal to create a community that exemplifies the best of Denver’s traditions in a number of different ways:

- **Quality, Economically Successful Developments**  
Market studies indicate that the best way for the Gateway to succeed in the long run is to emphasize quality. The plan encourages high quality, economically profitable developments in a number of ways:
  - Highly flexible planning areas that apply to over half the Gateway allow a wide range of uses, including airport-related businesses, office/Warehouse facilities, research and light industrial, hotel, office, and residential -- thus permitting quick response to changing market conditions (pg. 1).

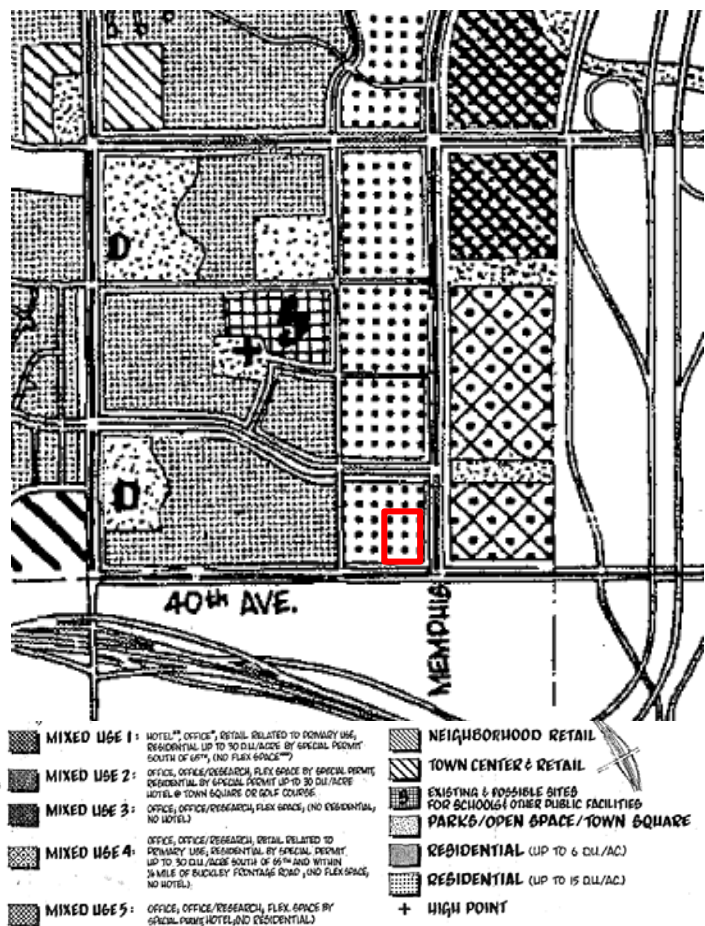
- **Activity Centers**

Each neighborhood and business area will have a focal point to create a sense of liveliness.

- Larger-scale hotel and office developments (no more than 150 feet high) will be clustered around interchanges and major intersections, not spread out along arterials (pg. 2).

The proposed rezoning is consistent with these plan goals through the elimination of inflexible, obsolete waivers and conditions and the introduction of a predictable, standard Denver Zoning Code zone district that can adapt to changing market conditions. The requested S-MX-8 zone district will allow a mix of uses as described in the *Gateway Concept Plan* at an identified appropriate location near the intersection of I-70 and Peña Blvd., a major interchange.

While the Land Use Concept Plan to the right indicates that the subject site is appropriate for medium-density residential, and the building heights map indicates a maximum height of 35 feet, the 1999 rezoning to Gateway W/C included a new land use and building heights map. This land use and building heights map updated the site to Mixed Use 2 with a maximum height of 75 feet, extending the adjacent planned mixed-use area adjacent to Peña Blvd. As shown in the 1999 maps, use intensities and building heights increase with proximity to Peña Boulevard, and the requested S-MX-8 zone district responds to this gradient by permitting a mix of uses with a maximum building height of 110 feet as a transition to the adjacent S-CC-5x zone district to the west.



Given the long-term development horizon contemplated in the *Gateway Concept Plan*, the Plan acknowledges the need for flexibility in allocating appropriate land uses. “The lines [...] depicting various land uses have not been drawn with mathematical precision. They are subject to adjustment in future phases of the Gateway development process (pg. 67).” Regarding implementation of the Plan’s vision, “any development and zoning regulations must also recognize the long projected buildout period—40 to 50 years or more. The regulations must be flexible and responsive to market forces. No one can tell what new and desirable land uses will be common fifty years from now” (pg. 76). As the Gateway Concept Plan acknowledges the inherent need for new, flexible zoning standards and future map amendments, the requested map amendment to a Denver Zoning Code zone district is appropriate.

The *Gateway Concept Plan* also calls for “moderate-scale densities and heights [that] do not compete with the high-rise image of downtown” within a suburban context (pg. 27 and 76). The requested S-MX-8 zone district with its Suburban Neighborhood Context and mid-rise scale is consistent with this recommendation. Overall, the map amendment is consistent with the *Gateway Concept Plan*.

## **2. Uniformity of District Regulations and Restrictions**

The proposed rezoning to S-MX-8 will result in the uniform application of zone district building form, use, and design regulations. Additionally, the rezoning request will bring the approved Site Development Plan into conformance with zoning standards.

## **3. Public Health, Safety and General Welfare**

The proposed official map amendment furthers the public health, safety, and general welfare of the City primarily through implementation of the City’s adopted land use plans including *Comprehensive Plan 2000*, *Blueprint Denver*, and the *Gateway Concept Plan*.

## **4. Justifying Circumstance**

The application identifies changed or changing conditions as the Justifying Circumstance under DZC Section 12.4.10.8.A.4, “the land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area.”

Several changed or changing conditions apply to the site and surrounding area. As discussed above, several adopted plan recommendations state that mixed-use development of the area is desired, and the adopted plans recognize that the character of the area is evolving into a mixed-use area. Large office, hotel, and commercial development in the area signals the evolution in the surrounding area into a mixed-use node, the long-term progression envisioned by the *Gateway Concept Plan*.

The adoption of the Denver Zoning Code in 2010 introduced new zoning tools to implement the flexible, responsive regulatory recommendations from the *Gateway Concept Plan* that the current Gateway W/C zoning fails to achieve. Additionally, the S-MX-8 zoning regulations will bring the existing entitlement into conformance with zoning standards.

## **5. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements**

### Neighborhood Context Description

The proposed S-MX-8 zone district is within the Suburban Neighborhood Context. The neighborhood context generally consists of multi-unit residential, commercial strips and centers, and office parks. The Suburban Neighborhood Context consists of an irregular pattern of block shapes surrounded by curvilinear streets within a modified or non-existent grid, with cul-de-sacs and typically no alleys. Block shapes and sizes vary. The typical block pattern includes attached sidewalks (though sidewalks may be detached or nonexistent), street and surface parking, and generous landscaping between the street and

buildings. Commercial buildings may have varying orientation and typically have deep front and side setbacks to accommodate landscaping and parking. The Suburban Neighborhood Context is characterized by low scale buildings except for some mid- and high-rise multi-unit residential and commercial structures, particularly along arterial streets (DZC, Division 3.1). It is appropriate to apply zoning within the Suburban Neighborhood Context at this location through the recognized built environment and existing context. The proposed rezoning to S-MX-8 will recognize the existing built character and lead to development that is consistent with the neighborhood context description.

#### Zone District Purpose and Intent

According to DZC 3.2.3.2.A, the general purpose of the S-MX zone districts is to promote safe, active, pedestrian-scaled, diverse areas and enhance the convenience and ease of walking, shopping, and public gathering. The Mixed Use districts are appropriate along corridors, for larger sites, and at major intersections. The building form standards of the Mixed Use Zone Districts balance the importance of street presence and provision of adequate parking through build-to requirements, Street Level activation, and parking lot screening along the right-of-way. Standards offer predictable flexibility consistent with the variety of mixed use development found in the Suburban Neighborhood Context. The rezoning to S-MX-8 is consistent with the zone district general purpose, and the applicable zoning standards reflect the existing site-specific and neighborhood development patterns.

S-MX-8 applies to areas or intersections served primarily by arterial streets where a building scale of 1 to 8 stories is desired. East 40<sup>th</sup> Ave. is functionally classified as an arterial, and the 1990 building heights map recommends a transition in heights from east to west with the highest heights appropriate with closer proximity to Pena Boulevard. The street classifications and desired building heights in this area are consistent with this intent statement.

#### **Staff Recommendation**

Based on the analysis set forth above, CPD staff finds that the application for rezoning the property located at 16161 E. 40<sup>th</sup> Ave.. (#2015I-00194) to the S-MX-8 zone district meets the requisite review criteria. Accordingly, staff recommends approval of the rezoning.

#### **Attachments**

1. Application
2. Ordinance 1999-0801 for waivers and conditions

## Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION		<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name		Representative Name	
Address		Address	
City, State, Zip		City, State, Zip	
Telephone		Telephone	
Email		Email	
<p><b>*If More Than One Property Owner:</b>            All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>		<p><b>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</b></p>	
<p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p>			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):			
Assessor's Parcel Numbers:			
Area in Acres or Square Feet:			
Current Zone District(s):			
PROPOSAL			
Proposed Zone District:			
Does the proposal comply with the minimum area requirements specified in DZC Sec. 12.4.10.3:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

REVIEW CRITERIA	
<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<p><input type="checkbox"/> Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan.</p> <p>Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.</p> <p><input type="checkbox"/> Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.</p> <p><input type="checkbox"/> Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.</p>
<p>Additional Review Criteria for Non-Legislative Rezoning: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8</p>	<p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <p><input type="checkbox"/> The existing zoning of the land was the result of an error.</p> <p><input type="checkbox"/> The existing zoning of the land was based on a mistake of fact.</p> <p><input type="checkbox"/> The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage.</p> <p><input type="checkbox"/> The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area.</p> <p><input type="checkbox"/> It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code.</p> <p>Please provide an attachment describing the justifying circumstance.</p> <p><input type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.</p> <p>Please provide an attachment describing how the above criterion is met.</p>
REQUIRED ATTACHMENTS	
Please ensure the following required attachments are submitted with this application:	
<input type="checkbox"/> Legal Description (required to be attached in Microsoft Word document format) <input type="checkbox"/> Proof of Ownership Document(s) <input type="checkbox"/> Review Criteria	
ADDITIONAL ATTACHMENTS	
Please identify any additional attachments provided with this application:	
<input type="checkbox"/> Written Authorization to Represent Property Owner(s)	
Please list any additional attachments:	



**PROPERTY OWNER OR PROPERTY OWNER(S) REPRESENTATIVE CERTIFICATION/PETITION**

We, the undersigned represent that we are the owners of the property described opposite our names, or have the authorization to sign on behalf of the owner as evidenced by a Power of Attorney or other authorization attached, and that we do hereby request initiation of this application. I hereby certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate. I understand that without such owner consent, the requested official map amendment action cannot lawfully be accomplished.

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement (must sign in the exact same manner as title to the property is held)	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Property owner representative written authorization? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith Josie Q. Smith</i>	01/01/12	(A)	NO
<i>WPB HOSPITALITY LLC Wanda Bertoin MANAGER</i>	16161 E. 40th Ave. Denver, CO onedabw@gmail.com	100%	<i>WPB HOSPITALITY, LLC Wanda Bertoin managers</i>	<i>3-9-2016</i>	<i>(B)</i>	YES



Colorado Secretary of State  
 Date and Time: 05/21/2009 02:19 PM  
 ID Number: 20091280213  
 Document number: 20091280213  
 Amount Paid: \$50.00

Document must be filed electronically.  
 Paper documents will not be accepted.

Document processing fee  
 Fees & forms/cover sheets  
 are subject to change.

\$50.00

To access other information or print  
 copies of filed documents,  
 visit [www.sos.state.co.us](http://www.sos.state.co.us) and  
 select Business Center.

ABOVE SPACE FOR OFFICE USE ONLY

### Articles of Organization

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

WPB Hospitality, LLC

*(The name of a limited liability company must contain the term or abbreviation "limited liability company", "Ltd. liability company", "limited liability co.", "Ltd. liability co.", "limited", "L.L.c.", "llc", or "Ltd.". See §7-90-601, C.R.S.)*

*(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the limited liability company's initial principal office is

Street address

5466 S. Hannibal Ct.

*(Street number and name)*

Aurora

*(City)*

CO

*(State)*

80015

*(ZIP/Postal Code)*

United States

*(Country)*

*(Province – if applicable)*

Mailing address

**(leave blank** if same as street address)

*(Street number and name or Post Office Box information)*

*(City)*

*(State)*

*(ZIP/Postal Code)*

*(Province – if applicable)*

*(Country)*

3. The registered agent name and registered agent address of the limited liability company's initial registered agent are

Name

(if an individual)

Bergstrom

*(Last)*

Jeff

*(First)*

*(Middle)*

*(Suffix)*

**OR**

(if an entity)

*(Caution: Do not provide both an individual and an entity name.)*

Street address

1515 Arapahoe Street

*(Street number and name)*

Tower I, Suite 530

Denver

*(City)*

CO

*(State)*

80202

*(ZIP Code)*

Mailing address  
(leave blank if same as street address) \_\_\_\_\_  
(Street number and name or Post Office Box information)  
\_\_\_\_\_  
\_\_\_\_\_  
(City) CO (State) (ZIP Code)

(The following statement is adopted by marking the box.)

The person appointed as registered agent has consented to being so appointed.

4. The true name and mailing address of the person forming the limited liability company are

Name  
(if an individual) Bertoa Wanda  
(Last) (First) (Middle) (Suffix)

**OR**

(if an entity)  
(Caution: Do not provide both an individual and an entity name.) \_\_\_\_\_

Mailing address 5466 S. Hannibal Ct.  
(Street number and name or Post Office Box information)  
\_\_\_\_\_  
Aurora CO 80015  
(City) (State) (ZIP/Postal Code)  
United States  
(Province – if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in

(Mark the applicable box.)

one or more managers.

**OR**

the members.

6. (The following statement is adopted by marking the box.)

There is at least one member of the limited liability company.

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_  
(mm/dd/yyyy hour:minute am/pm)

**Notice:**

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

<u>Bergstrom</u>	<u>Jeff</u>		
<small>(Last)</small>	<small>(First)</small>	<small>(Middle)</small>	<small>(Suffix)</small>
<u>1515 Arapahoe St</u>			
<small>(Street number and name or Post Office Box information)</small>			
<u>Tower I, Suite 530</u>			
<u>Denver</u>	<u>CO</u>	<u>80202</u>	
<small>(City)</small>	<small>(State)</small>	<small>(ZIP/Postal Code)</small>	
	<u>United States</u>		
<small>(Province – if applicable)</small>	<small>(Country)</small>		

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

- This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

# WPB Hospitality LLC

Wanda Bertoia  
WPB Hospitality, LLC  
5466 S Hannibal Court  
Aurora, CO 80015

Feb. 23, 2016

City of Denver  
Community Planning & Development  
Planning Services  
201 W. Colfax Ave Dept 205  
Denver, CO 80202

Attn: Ryan J Winterbert-Lipp  
Associate City Planner

Re: Resolve 400" zoning setback Best Western 16161 E 40<sup>th</sup>. Denver, CO DIA Case # 2015-00194

Dear Ryan:

I hereby authorize Will Rogers, Architect with Associated Architects, Ltd., to represent me to rezone the above referenced property to S-MX-8, in order to alleviate the set back problem.

Should you have any questions or need additional information please contact me.

Sincerely,

  
Wanda Bertoia

## SPECIAL WARRANTY DEED

THIS DEED, dated this 29th day of May, 2009, between Indano Holdings, LLC, a Colorado limited liability company of the County of Arapahoe and State of Colorado, grantor(s) and WPB Hospitality, LLC, a Colorado limited liability company whose legal address is 5466 So. Hannibal Court, Aurora of the County of Arapahoe and State of Colorado, grantee(s):

WITNESS, that the grantor(s), for and in consideration of the sum of TWO MILLION NINE HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED TWENTY FOUR AND 36/100 DOLLARS (\$2,969,824.36), the receipt and sufficiency of which is hereby acknowledged, has/have granted, bargained, sold and conveyed, and by these presents do(es) grant, bargain, sell, convey and confirm unto the grantee(s), its heirs and assigns forever, all the real property, together with improvements, if any, situate, lying and being in the County of Denver and State of Colorado, described as follows:

A PARCEL OF LAND BEING A PORTION OF PLOT 1, BLOCK 1, GATEWAY PARK IV - DENVER FILING NO. 7, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 25, 2002 IN PLAT BOOK 33 AT PAGES 95 AND 96, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PLOT 1;  
THENCE NORTH 89 DEGREES 52 MINUTES 08 SECONDS EAST ALONG THE NORTH LINE OF SAID PLOT 1 A DISTANCE OF 295.63 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 52 MINUTES 06 SECONDS EAST ALONG THE NORTH LINE OF SAID PLOT 1 A DISTANCE OF 398.64 FEET TO THE NORTHEAST CORNER OF SAID PLOT 1;

THENCE THE FOLLOWING THREE (3) COURSES ALONG THE EAST LINE OF SAID PLOT 1;

1. THENCE SOUTH 10 DEGREES 26 MINUTES 16 SECONDS WEST A DISTANCE OF 95.82 FEET TO A POINT OF CURVE;

2. THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 10 DEGREES 34 MINUTES 10 SECONDS, A RADIUS OF 315.00 FEET AND AN ARC LENGTH OF 58.11 FEET;

3. THENCE SOUTH 00 DEGREES 07 MINUTES 54 SECONDS EAST A DISTANCE OF 307.25 FEET TO THE SOUTHEAST CORNER OF SAID PLOT 1;

THENCE THE FOLLOWING FOUR (4) COURSES ALONG THE SOUTH LINE OF SAID PLOT 1;

1. THENCE SOUTH 89 DEGREES 52 MINUTES 08 SECONDS WEST A DISTANCE OF 100.00 FEET;

2. THENCE SOUTH 00 DEGREES 07 MINUTES 54 SECONDS EAST A DISTANCE OF 5.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 40TH AVENUE AS DEDICATED BY 40TH AVENUE, CHAMBERS ROAD-PENA BOULEVARD SUBDIVISION RECORDED MAY 6, 1997 IN PLAT BOOK 31 AT PAGES 52 THROUGH 64 OF SAID CITY AND COUNTY OF DENVER RECORDS.

3. THENCE SOUTH 89 DEGREES 52 MINUTES 06 SECONDS WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID 40TH AVENUE A DISTANCE OF 250.09 FEET;

4. THENCE SOUTH 89 DEGREES 52 MINUTES 04 SECONDS WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID 40TH AVENUE A DISTANCE OF 23.63 FEET;


THENCE NORTH 00 DEGREES 07 MINUTES 54 SECONDS WEST A DISTANCE OF 464.23 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE LEGAL DESCRIPTION WAS CREATED BY CREIGHTON R. MOORE, PLS NO. 10945.

also known by street and number as: Pt of Plot 1 Block 1 Gateway Park IV, Denver, CO 80239  
assessor's schedule or parcel number:

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor(s), either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances,

 File No.: F223256  
SPECIAL WARRANTY DEED

**SPECIAL WARRANTY DEED**  
(Continued)

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee(s), its heirs and assigns forever. The grantor(s), for its heirs, personal representatives, successors and assigns, do(es) covenant and agree that its shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of the grantee(s), its and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the grantor(s), except:

See Exhibit "A" attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, the grantor(s) has/have executed this deed on the date set forth above.

Indano Holdings, LLC, a Colorado limited liability company, its Exchange Accommodation Titleholder

By: Finney Investments, LLC, a Colorado limited liability company, its sole member

By:   
Gary R. Gorman, Manager

STATE OF Colorado

COUNTY OF

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 2009 by

Gary R. Gorman, Manager

Witness my hand and official seal



Notary Public

**BRIDGET QUANDT**  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 05/14/2011

My Commission Expires:

05/14/2011

Name and Address of Person Creating Newly Created Legal Description (§ 38-35-106.5, C.R.S.)

After Recording Return to:

File No.: F223256  
SPECIAL WARRANTY DEED

Title Data, Inc. SW SKL11034 DV 69767-2009.002

EXHIBIT "A"

1. Taxes due and payable; and any tax, special assessments, charge or lien imposed for water or sewer service, or for any other special taxing district.
2. The right of the proprietor of a vein or lode to extract or remove his ore, should the same be found to penetrate or intersect the premises thereby granted and rights-of-way for ditches and canals as reserved in United States Patents recorded November 30, 1889 in Book A25 at Page 225 and March 12, 1892 in Book A24 at Page 172, and any and all assignments thereof or interests therein.
3. One-half of all oil and mineral rights as reserved by Anna Richards in Deed recorded June 27, 1945 in Book 307 at Page 469, and any and all assignments thereof, or interests therein.
4. Reservation by the Union Pacific Land Resources Corporation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to said Union Pacific corporation, but without entering upon or using the surface of the lands, and in such manner as not to damage the surface of the lands or to interfere with the use thereof, as contained in General Warranty Deed recorded December 28, 1984 at Reception No. 58078, and any and all assignments thereof or interests therein.
5. Terms, conditions, provisions, agreements, covenants, restrictions and obligations specified under the General Warranty Deed, which was recorded December 28, 1984 at Reception No. 58078.
6. Reservation by the Union Pacific Land Resources Corporation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to said Union Pacific corporation, but without entering upon or using the surface of the lands, and in such manner as not to damage the surface of the lands or to interfere with the use thereof, as contained in General Warranty Deed recorded December 5, 1985 at Reception No. 225, and any and all assignments thereof or interests therein.
7. Terms, conditions, provisions, agreements, covenants, restrictions and obligations specified under the General Warranty Deed, which was recorded December 5, 1985 at Reception No. 225.
8. Reservation by the Union Pacific Land Resources Corporation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to said Union Pacific corporation, but without entering upon or using the surface of the lands, and in such manner as not to damage the surface of the lands or to interfere with the use thereof, as contained in General Warranty Deed recorded December 4, 1986 at Reception No. 58432, and any and all assignments thereof or interests therein.
9. Terms, conditions, provisions, agreements, covenants, restrictions and obligations specified under the General Warranty Deed, which was recorded December 4, 1986 at Reception No. 58432.
10. Reservation by the Union Pacific Land Resources Corporation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to said Union Pacific corporation, but without entering upon or using the surface of the lands, and in such manner as not to damage the surface of the lands or to interfere with the use thereof, as contained in General Warranty Deed recorded December 17, 1987 at Reception No. 217775, and any and all assignments thereof or interests therein.
11. Terms, conditions, provisions, agreements, covenants, restrictions and obligations specified under the General Warranty Deed, which was recorded December 17, 1987 at Reception No. 217775.
12. Terms, conditions, provisions, agreements and obligations specified under the Non-Drilling Agreement, which was recorded July 19, 1995 at Reception No. 9500085835.



13. Reservation by the Union Pacific Land Resources Corporation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to said Union Pacific Corporation, but without entering upon or using the surface of the lands, and in such manner as not to damage the surface of the lands or to interfere with the use thereof, as contained in Special Warranty Deed recorded July 19, 1995 at Reception No. 9500085838, and any and all assignments thereof or interests therein.
14. Terms, conditions, provisions, agreements, covenants, restrictions and obligations specified under the Special Warranty Deed, which was recorded July 19, 1995 at Reception No. 9500085838.
15. The effect of the inclusion of the subject property in the Gateway Park Metropolitan District, as disclosed by the Instrument recorded March 8, 1996 at Reception No. 9600030501.

Note: A Notice changing the name to the Sand Creek Metropolitan District recorded March 25, 1996 at Reception No. 9600039036. A Second Amendment to the Service Plan for said District recorded January 8, 1997 at Reception No. 9700003234. Notices of Special District Authorization or Issuance of General Obligation Indebtedness recorded July 15, 1997 at Reception No. 9700091152; July 22, 1998 at Reception No. 9800116369; November 18, 1998 at Reception No. 9800193552; December 13, 2002 at Reception No.'s 2000181262 and 2000181263; January 31, 2001 at Reception No. 2003017893; March 25, 2004 at Reception No. 2004078051 and April 5, 2004 at Reception No. 2004083205.

16. Covenants, conditions, lien rights and restrictions, (but omitting therefrom any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin, if any) which do not include a forfeiture or reverter clause, and any and all supplements, amendments, and annexations thereto, set forth in the Declaration recorded June 4, 1996 at Reception No. 9600076399.  
  
Note: Amendment of said covenants, conditions and restrictions (but omitting therefrom any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin, if any), by an Instrument recorded March 13, 2002 at Reception No. 2002049650.
17. Terms, conditions, provisions, agreements and obligations specified under the Reuse Agreement, which was recorded August 12, 1997 at Reception No. 9700105655.
18. Terms, conditions, provisions, agreements and obligations specified under the Covenant and Permit, which was recorded February 6, 1998 at Reception No. 9800018524.
19. All items as set forth and shown on the Site Plan of Gateway Park IV West Streetscape, recorded April 13, 1998 at Reception No. 9800056144, and any and all supplements and amendments thereto.
20. All items as set forth and shown on the General Development Plan of Gateway Park IV West Kittredge East, recorded November 8, 1999 at Reception No. 9900193507, and any and all supplements and amendments thereto.
21. Terms, conditions, provisions, agreements and obligations specified under the Covenant and Permit, which was recorded July 31, 2001 at Reception No. 2001125115.
22. Terms, conditions, provisions, agreements, easements and obligations specified under the Declaration of Easement, which was recorded October 23, 2001 at Reception No. 2001179891, and Amendment thereto recorded November 20, 2001 at Reception No. 2001196014.
23. An easement for one or more water pipelines and incidental purposes granted to the Denver Board of Water Commissioners by the Instrument recorded November 16, 2001 at Reception No. 2001194997, together with the terms, conditions, stipulations, provisions and obligations as contained therein.
24. An easement for one or more water pipelines and incidental purposes granted to the Denver Board of Water Commissioners by the Instrument recorded December 11, 2001 at Reception No. 2001210989, together with the terms, conditions, stipulations, provisions and obligations as contained therein.

25. Terms, conditions, provisions, agreements, easements and obligations specified under the Wastewater Easement and Indemnity Agreement, which was recorded April 2, 2002 at Reception No. 2002061126.
26. Terms, conditions, provisions, agreements, easements and obligations specified under the Declaration of Easement, which was recorded April 17, 2002 at Reception No. 2002071341.
27. Terms, conditions, provisions, agreements, easements and obligations specified under the Declaration of Easement, which was recorded October 28, 2002 at Reception No. 2002203306.
28. Terms, conditions, provisions, agreements, easements and obligations specified under the Wastewater Easement and Indemnity Agreement, which was recorded November 19, 2002 at Reception No. 2002219036.
29. Terms, conditions, provisions, agreements, easements and obligations specified under the Declaration of Easement, which was recorded May 21, 2004 at Reception No. 2004111743.
30. All items as set forth and shown on the Plats of Gateway Park IV - Denver Filing No. 5, recorded April 12, 2000 at Reception No. 2000051305, and of Gateway Park IV - Denver Filing No. 7, recorded January 25, 2002 at Reception No. 2002017281.

## **REVIEW CRITERIA**

### **Re: 16161 E. 40<sup>th</sup> Avenue, Denver, Colorado**

The subject property is currently zoned Gateway with Wavers and Conditions. A hotel is in the process of being constructed on this property pursuant to City approvals under the current zoning, since 2009. Re-zoning to S-MX-8 will permit the hotel with restaurant and meeting rooms to operate within the new zoning code. There are no proposed exterior modifications to the property or any proposed changes to its use.

### **General review Criteria**

- **Consistency with Adopted Plans**
  - Highly flexible planning areas, providing a wide range of uses, including hotels, has been important to the success of the Gateway Concept and development of the area. Mixed use development under S-MX-8 further enhances the concept in permitting quick response to changing market conditions.  
*(Gateway Concept Plan, Aug 1990, Page 1)*
  - The 1999 re-zoning to Gateway W/C introduced more commercial users, attractive to hotels, allowing for earlier development than most other properties in the airport area, with lodging among the earliest type of development, expanding the Mixed-Use area to include 16161 E. 40<sup>th</sup> Ave.  
*(Gateway Concept Plan, Aug 1990, Pages 13, 14, 32, & 40)*
  - The Plan encourages use of the area as an economic asset to the city of Denver, encouraging a wide range of business uses with flexibility to adapt to changing market demands.  
*(Gateway Concept Plan, Aug 1990 Page 21)*
  - Non-residential uses, particularly larger hotels and offices should orient around major intersections and interchanges in the Gateway, as reflected in the cluster of hotel/businesses and restaurants in and around the Pena Boulevard and I-70 intersection.  
*(Gateway Concept Plan, Aug 1990, Page 25)*
  - The Gateway area should not compete with the heights and densities of the high-rise image of downtown Denver and the S-MX-8 zone district provides for moderate-scale development.  
*(Gateway Concept Plan, Aug 1990, Page 27)*
  - Denver supports the development of Gateway, identifying it as one of the areas of Change for mixed land uses, providing goods, services and employment for local residents. The new hotel when operational, will provide such services and employment opportunities.  
*(Blueprint Denver, Pages 20-22)*
- **Uniformity of District Regulations and Restrictions**
  - The rezoning to S-MX-8 will result in the uniform application of zone district regulations and restrictions across the City and County of Denver.

- **Public Health, Safety and General Welfare**
  - The proposed official map amendment furthers the public health, safety and general welfare of the City.

### **Additional Review Criteria for Non-Legislative ReZonings**

- **Justifying Circumstances**
  - The current zoning and approved General Development Plans that led to the issuance of a building permit are at odds. The underlying zoning should have been amended at the time of the GDP approval to provide consistency in the approved plans and the underlying zoning.
  - The adoption of the new Denver Zoning Code in 2010 introduced new zoning tools to encourage development consistent with the Gateway's existing context that would not have been available at the time of the site's rezoning to Gateway with Waivers and Conditions in 1990.
- **The proposed official map amendment is consistent with the applicable neighborhood context**
  - The proposed rezoning to S-MX-8 is consistent with the suburban neighborhood context and development pattern prevalent in the Gateway.
- **Zone District purpose and intent**
  - The mixed Use Zone Districts are intended to promote safe, active, pedestrian-scales, diverse areas and enhance the convenience and ease of walking, shopping and public gathering within and around the city's neighborhoods.
  - The Mixed Use Districts are appropriate along corridors, for larger sites and at major intersections.
  - The Mixed Use Zone District standards are also intended to ensure new development contributes positively to established residential neighborhoods and character, and improves the transition between commercial development and adjacent residential neighborhoods.
  - S-MX-8 applies to areas or intersections served primarily by arterial streets where a building scale of 1 to 8 stories is desired.

ORDINANCE NO. 801  
SERIES OF 1999

BY AUTHORITY

COUNCIL BILL NO. 718  
COMMITTEE OF REFERENCE:

\_\_\_\_\_  
LAND USE  
\_\_\_\_\_

ORD 801 + CB 718-99

A BILL

FOR AN ORDINANCE RELATING TO ZONING, CHANGING THE ZONING CLASSIFICATION FOR A SPECIFICALLY DESCRIBED AREA, GENERALLY DESCRIBED AS A PARCEL BOUNDED BY 40<sup>TH</sup> AVENUE, BOLLING DRIVE, KITTREDGE STREET AND AIRPORT WAY, RECITING CERTAIN WAIVERS PROPOSED BY THE OWNER FOR THE ZONING CLASSIFICATION, RECITING CERTAIN REASONABLE CONDITIONS APPROVED BY THE OWNER FOR THE ZONING CLASSIFICATION AND PROVIDING FOR A RECORDATION OF THIS ORDINANCE.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That upon consideration of a change in the zoning classification of the land area hereinafter described, Council finds:

1. That the land area hereinafter described is presently classified as part of the Gateway District;
2. That the owner proposes that the land area hereinafter described be changed to Gateway with reasonable waivers and with reasonable conditions which it has approved;
3. That in its application the owner has represented that if the zoning classification is changed pursuant to its application, the owner:
  - (a) waives the right to use the subject property for hotels and restaurants except as shown and limited by the land use map filed in the Office of the City Clerk on the 29th day of September, 1999, in City Clerk Filing No. 99-868;
  - (b) waives the right to use the subject property for the following uses contained in Section 59-535.04(2) (primary uses) of the Gateway zone district:
    - i. Assembly, Light Manufacture;
    - ii. Entertainment, Outdoor;
    - iii. Storage and Distribution;
    - iv. Parking of Vehicles;

- v. Repair, Rental and Servicing, Not Enclosed;
  - vi. Retail, Not Enclosed;
  - vii. Special Trade Contractor;
  - viii. Auto Rental Facility with storage of more than 5 vehicles to be rented; and
  - ix. Research, Development and Technological Services, Not Enclosed;
- (c) waives the right to use the subject property for the following uses, except that, said uses shall be permitted only by the special review procedure contained in Section 59-535.11(4) (requests for uses by special review) of the Gateway zone district:
- i. Church, larger than 10-acres; and
  - ii. Club/Lodge;
- (d) waives the right to use the subject property for freestanding restaurants with drive-through facilities in the MU1 use areas as shown and limited by the land use map filed in the Office of the City Clerk on the 29th day of September, 1999, City Clerk Filing No. 99-868;
- (e) waives the right to use the subject property for free-standing restaurants in the area beginning 400 feet north of 40<sup>th</sup> Avenue and within 630 feet east of Kittredge Street;
- (f) waives the right to use the subject property for more than two restaurants fronting on 40<sup>th</sup> Avenue being contiguous to each other and any third restaurant fronting on 40<sup>th</sup> Avenue shall be separated from the aforementioned two contiguous restaurants by a different permitted use on a separate zone lot of at least 250 feet in width; and
- (g) waives the right to use the subject property for the gross floor area of restaurants accessory to a hotel or office use to be calculated as part of the total gross floor area permitted for all permitted accessory uses, and instead, restaurants accessory to a hotel or office use shall be limited to a total of 10% of the total gross floor area of the hotel or office use.

4. That the owner hereby approves and agrees to the following reasonable conditions related to the development, operation and maintenance of the land area hereinafter described:

- (a) Restaurant and hotel uses within 300 feet of the intersections of 40<sup>th</sup> Avenue and Kittredge Street, and 40<sup>th</sup> Avenue and Airport Way, shall comply with the following conditions:

- (i) structures shall be located within 10 feet of the streetscape setback spaces depicted in the Gateway Park IV West Kittredge East General Development Plan ("GDP") on file at the office of the Zoning Administration Department, except structures located on the MU2 use area adjacent to 40<sup>th</sup> Avenue shall be located at the streetscape setback line depicted in said GDP;
  - (ii) parking shall not be permitted between the structure or permanent, delimited outdoor seating areas and the streetscape setback spaces depicted in said GDP; and
  - (iii) an access drive 30 feet in width between the structure and the streetscape setback spaces depicted in the said GDP to serve a portico or fire lane at the entry shall be permitted for hotel uses.
- (b) Building heights shall be limited in accordance with the maximum building height map as filed in the Office of the City Clerk on the 29th day of September, 1999, City Clerk Filing No. 99-868-A.

Section 2. That the zoning classification of the land area in the City and County of Denver described as follows or included within the following boundaries shall be and hereby is changed from Gateway to Gateway with waivers and conditions which waivers are set forth in Subsection 3 of Section 1 hereof and with certain reasonable conditions approved by the owner which reasonable conditions are set forth in Subsection 4 of Section 1 hereof:

A PARCEL OF LAND BEING A PART OF SECTION 20, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 20; THENCE NORTH 00°07'55" WEST A DISTANCE OF 105.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°52'04" WEST A DISTANCE OF 265.27 FEET; THENCE NORTH 00°07'54" WEST A DISTANCE OF 96.66 FEET; THENCE NORTH 05°56'45" WEST A DISTANCE OF 240.55 FEET; THENCE NORTH 00°07'54" WEST A DISTANCE OF 1906.51 FEET; THENCE NORTH 89°40'01" EAST A DISTANCE OF 1927.59 FEET TO A POINT ON THE WEST, RIGHT-OF-WAY LINE OF PEÑA BOULEVARD; THENCE SOUTH 00°15'15" WEST ALONG THE WEST RIGHT-OF-WAY LINE OF SAID PEÑA BOULEVARD A DISTANCE OF 1899.99 FEET; THENCE SOUTH 89°52'06" WEST A DISTANCE OF 555.00 FEET; THENCE SOUTH 00°1.3'15" WEST A DISTANCE OF 350.00 FEET TO A POINT

105.00 FEET NORTH OF THE SOUTH LINE OF THE NORTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 20; THENCE SOUTH 89°52'06" WEST, ALONG A LINE 105.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 20 A DISTANCE OF 1279.47 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 4,187,119 SQUARE FEET OR 96.125 ACRES, MORE OR LESS.

in addition thereto those portions of all abutting public rights-of-way, but only to the centerline thereof, which are immediately adjacent to the aforesaid specifically described area.

Section 3. That the foregoing change in zoning classification is based upon the representations by the owner that it will waive those certain rights available to it, and, in lieu thereof, agrees to certain limitations which limitations are set forth in Subsection 3 of Section 1 hereof, and is also based upon the reasonable conditions approved by the said owner which reasonable conditions are set forth in Subsection 4 of Section 1 hereof; and no permit shall be issued except in strict compliance with the aforesaid waivers and the aforesaid reasonable conditions. Said waivers and said reasonable conditions shall be binding upon all successors and assigns of said owner, who along with said owner shall be deemed to have waived all objections as to the constitutionality of the aforesaid waivers and the aforesaid reasonable conditions.

Section 4. That this ordinance shall be recorded by the Department of Zoning Administration among the records of the Clerk and Recorder of the City and County of Denver.

PASSED BY THE COUNCIL November 1 1999

Happy Haynes - PRESIDENT

APPROVED: Bill Winters ACTING MAYOR - MAYOR November 3 1999

ATTEST: Gregory C. Bode - CLERK AND RECORDER, EX-OFFICIO CLERK OF THE CITY AND COUNTY OF DENVER

PUBLISHED IN THE DEN. ROCKY MTN NEWS Oct. 8, 1999 Nov. 5, 1999

PREPARED BY: Karen Aviles ASSISTANT CITY ATTORNEY 9/22/99

REVIEWED BY: [Signature] - CITY ATTORNEY 9/30 1999

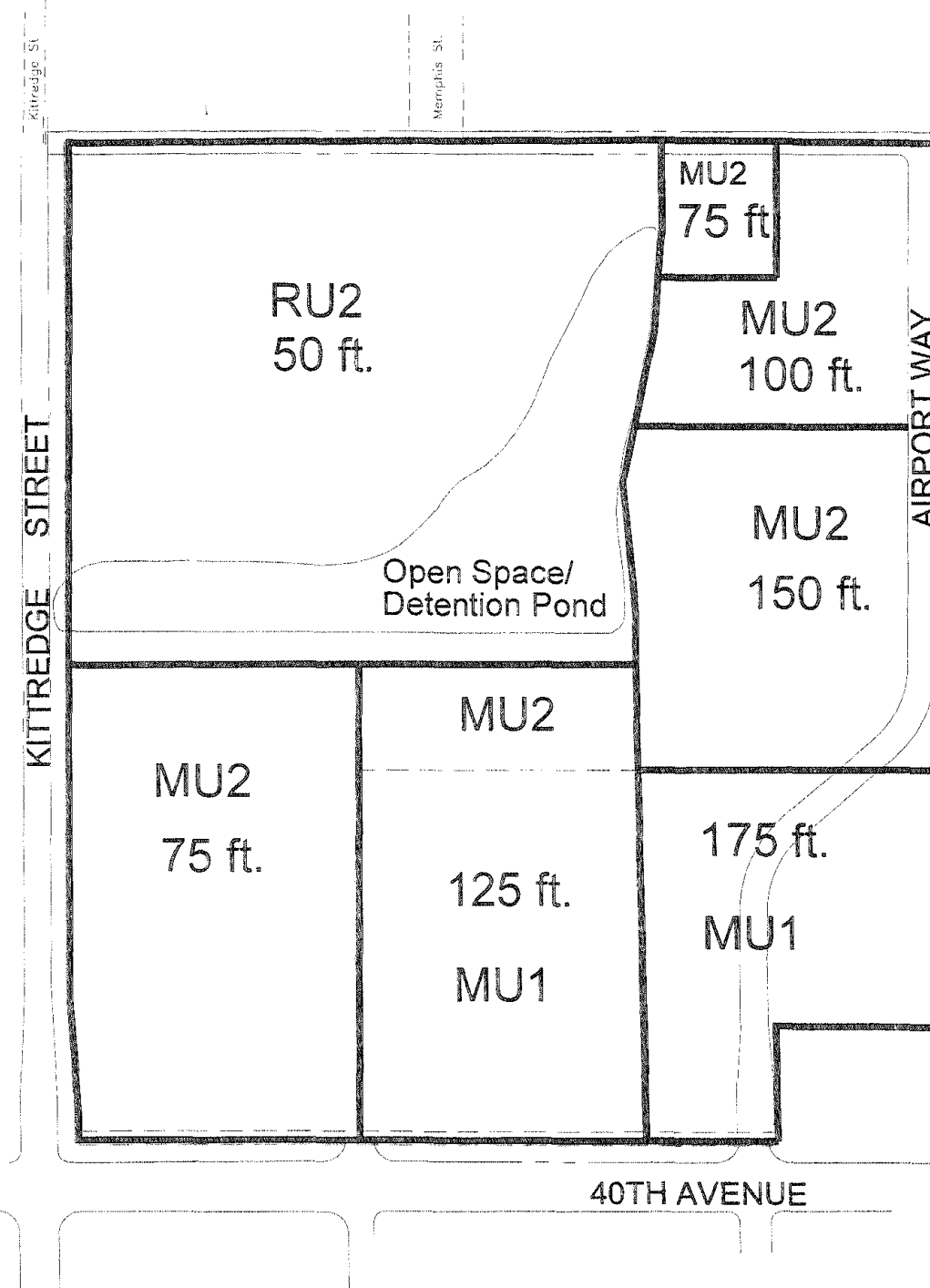
SPONSORED BY COUNCIL MEMBER(S) \_\_\_\_\_





# Maximum Building Heights

## Application # 4467



99-868-A Ord 801 + CB 718-99

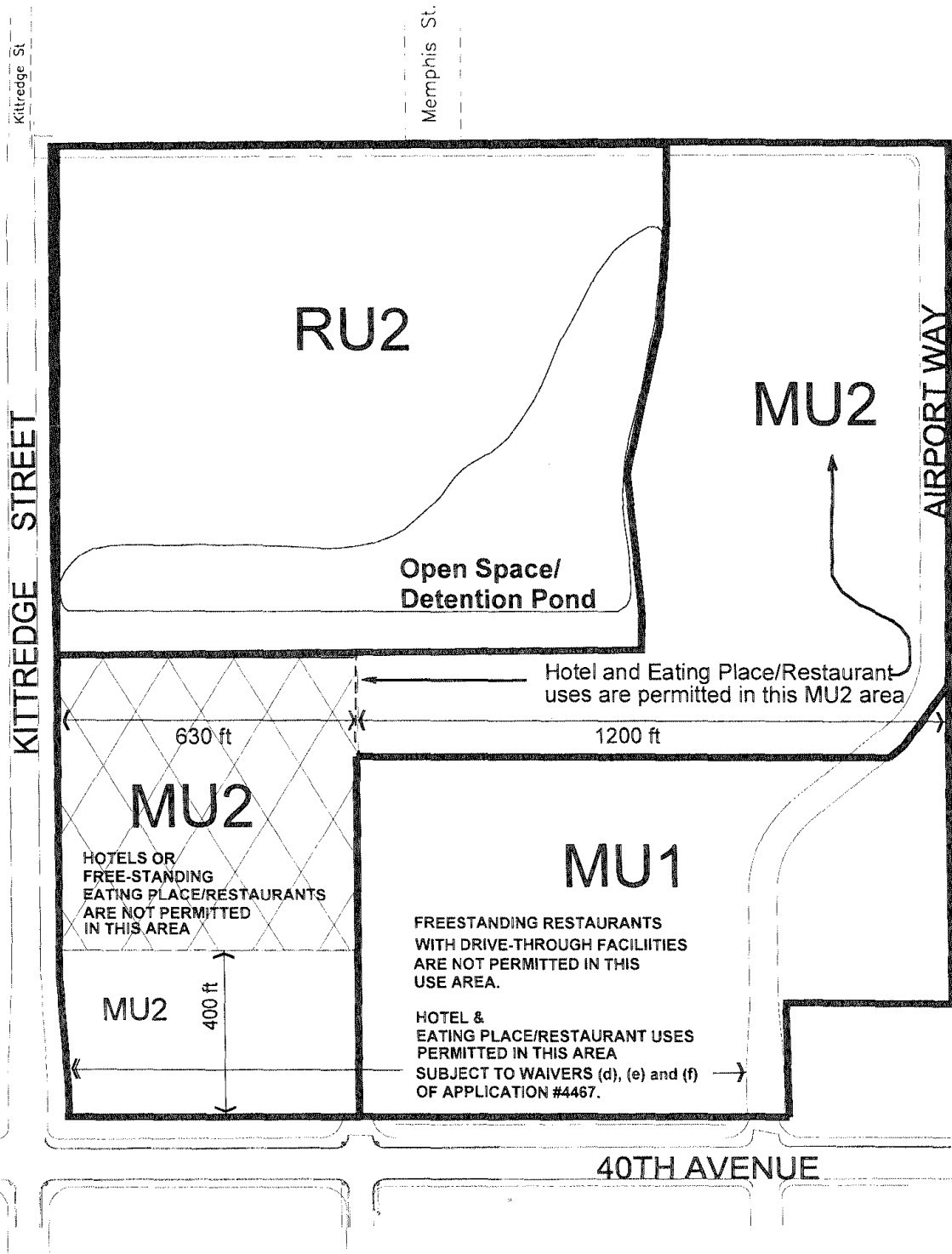
99-868-A

— Height Limit Lines

# REZONING APPLICATION #4467

## LAND USES

898



898-66