



TO: Denver City Council
FROM: Courtney Levingston, AICP, Principal City Planner
DATE: June 15, 2023
RE: Official Zoning Map Amendment Application #2023I-00075

Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, staff recommends **approval** of proposal #2023I-00075 to rezone the property at 4141 E. 35th Ave. back to OS-B.

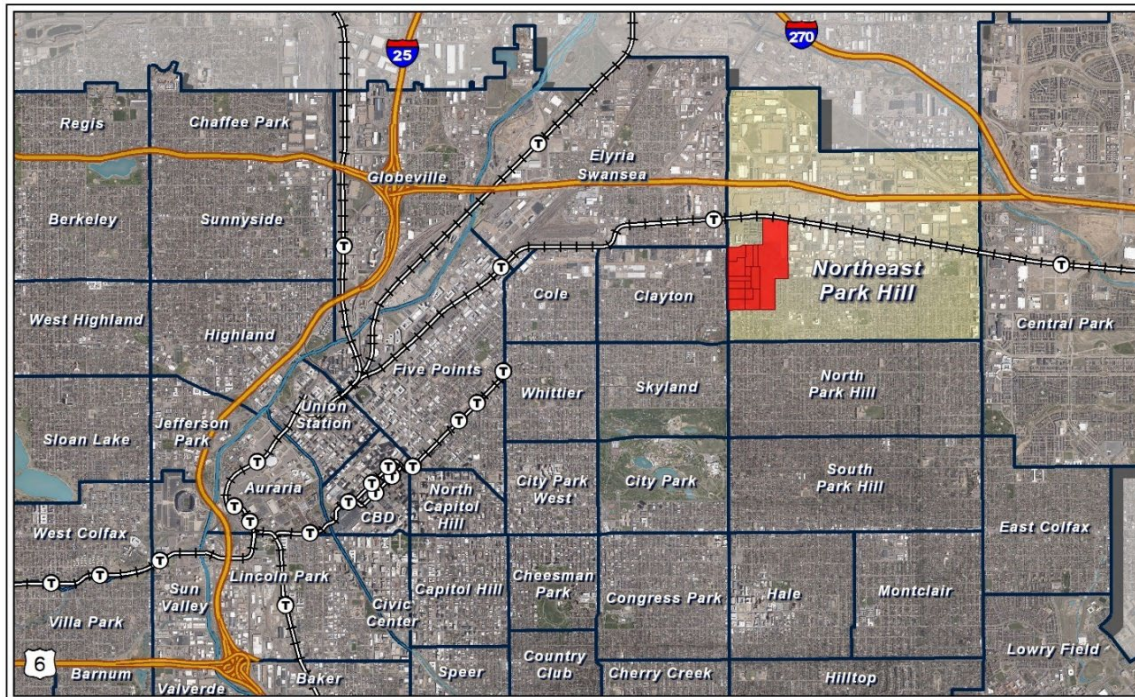
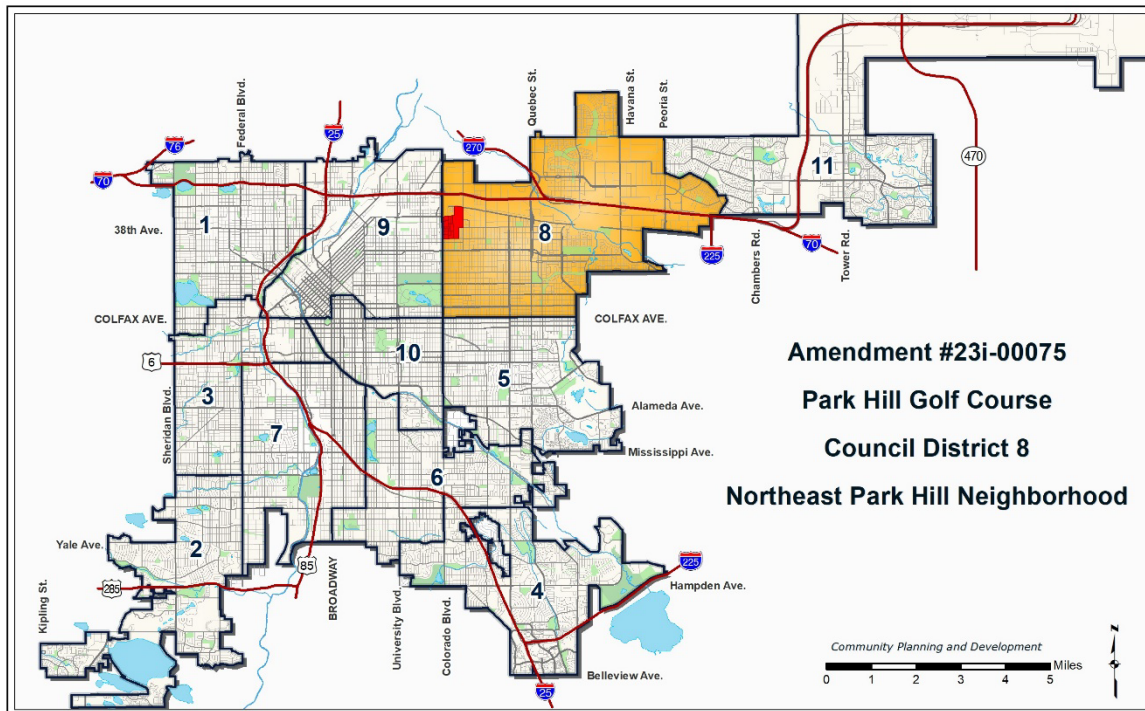
Proposal for Rezoning

Address: 4141 E. 35th Ave.
Neighborhood/Council District and CM: Northeast Park Hill / Council District 8, CM Herndon
RNOs: Elyria and Swansea Neighborhood Association, Park Hill Village Neighborhood HOA, Overlook at Park Hill Neighborhood Association, Denver North Business Association, Greater Park Hill Community, Inc., Clayton United, Opportunity Corridor Coalition of United Residents, United Community Action Network (UCAN), United Northeast Denver Residents, Northeast Park Hill Coalition, East Denver Residents Council, Reclaim the Eastside, Unite North Metro Denver, Inter-Neighborhood Cooperation (INC)
Area of Property: 6,729,836 square feet or approx. 154.5 acres
Current Zoning: OS-A, C-MS-5 w/DO-8, C-MX-12, C-MX-8, C-MX-5, C-MX-5 w/waivers, G-RX-5, G-RX-5 w/waivers
Proposed Zoning: OS-B
Property Owner(s): ACM Park Hill JV VII LLC

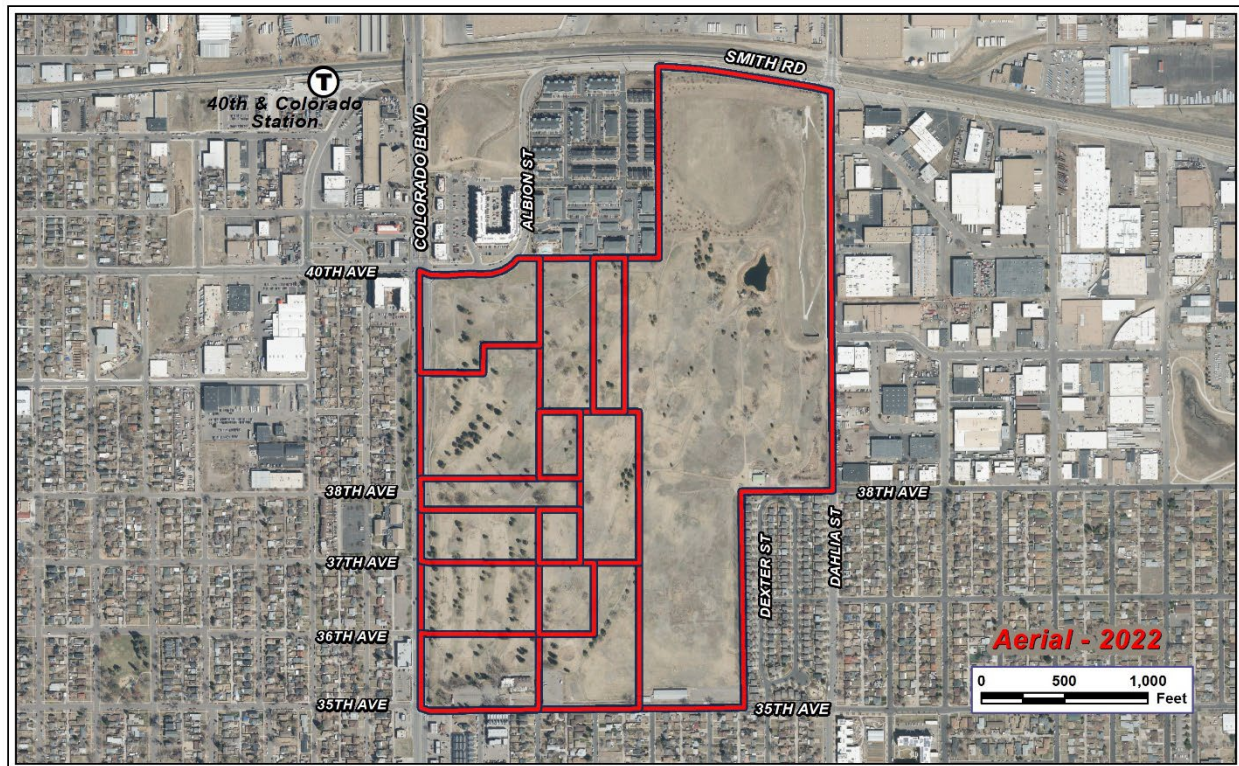
Summary of Rezoning Proposal:

- Under the Charter process (DZC 12.4.10.4.A.2 and the City Charter Sec. 3.2.9), Councilmember Christopher Herndon is moving forward a proposal to rezone the Park Hill Golf Course back to OS-B, consistent with the development agreement associated with the subject property, and approved by City Council on January 23, 2023.
- The property remains subject to a conservation easement, which restricts the subject property's use to a privately-owned, 18-hole daily fee public golf course and certain ancillary uses if those uses don't prevent the land from being used as a golf course. The conservation easement on the property can only be lifted by an affirmative citywide vote of eligible voters.
- In December 2022, the *Park Hill Golf Course Area Plan* was adopted after two-year community process to bring together a vision for the property that reflected the needs and desires of the surrounding communities.
- In January 2023, a rezoning from OS-B to OS-A, C-MS-5 w/DO-8, C-MX-12, C-MX-8, C-MX-5, C-MX-5 with waivers, G-RX-5, G-RX-5 with waivers and a development agreement was approved.

- On April 4th 2023, the citywide ballot measure to extinguish the conservation easement on the subject property failed.



Existing Context



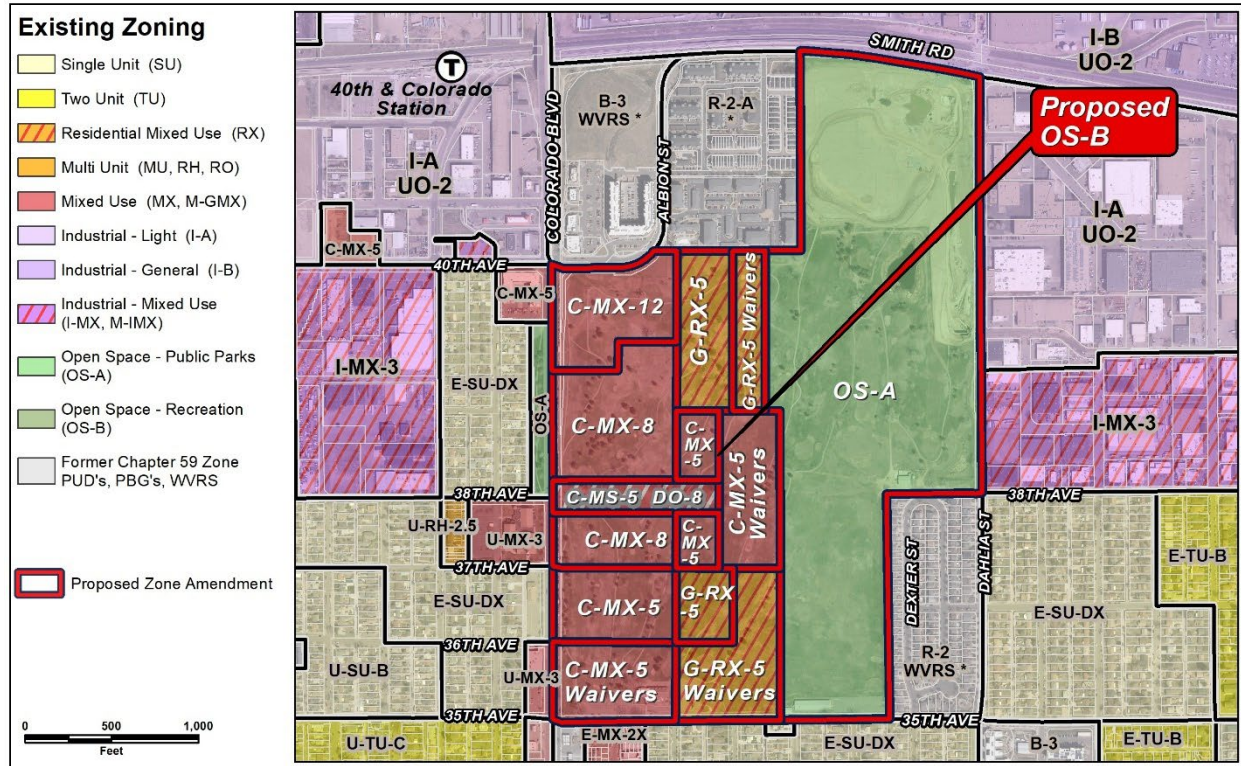
The subject property is in the Northeast Park Hill neighborhood, south of interstate 70 and east of Colorado Blvd. The RTD A Line route passes just to the north of the property, and the nearest stop is the 40th and Colorado Station, less than a half mile from the property.

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	OS-A, C-MS-5 w/DO-8, C-MX-12, C-MX-8, C-MX-5, C-MX-5	Vacant golf course	1 story club house and vacant golf course	There is generally a pattern of rectangular blocks and orthogonal street south of 38 th

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
	w/waivers, G-RX-5, G-RX-5 w/waivers			Ave. North of 38 th Ave is mostly large industrial sites with curvilinear streets and irregular block patterns.
North	I-B, UO-2, B-3 w/waivers, and R-2-A w/conditions	Industrial, multi-unit residential, commercial/retail	RTD A Line tracks, 3 and 4 story apartment buildings, 1 story drive-thru restaurants	
South	E-SU-Dx and E-SU-D1x, E-MX-2x, and PUD 22	Single- and two-, and multi-unit residential, commercial/retail	1 and 2 story homes with attached sidewalks, 1 story gas station with convenience store	
East	R-2 w/waivers, I-MX-3, and I-A, UO-2	Single-unit residential, Industrial	2 story homes with detached sidewalks and curb cuts, 1 story industrial warehouses and outdoor storage	
West	C-MX-5, OS-A, U-MX-3, and E-SU-Dx	Multi-unit residential, public park/open space, public/quasi-public, commercial/retail	4 story apartment building, Colorado Boulevard Park, 1 and 2 story churches, and 1 story retail structure with surface parking lot	

1. Existing Zoning



The subject property is zoned OS-A, C-MS-5 DO-8, C-MX-12, C-MX-8, C-MX-5, C-MX-5 w/waivers, G-RX-5 and G-RX-5 w/waivers.

2. Parkway

Colorado Blvd. is a designated parkway from the south city limits at Hampden Ave. to Dartmouth and then from Interstate-25 to 44th Ave (Denver Revised Municipal Code Section 49-16). Any proposed structure on the subject property will be required to have a 20-foot setback from the property line.

3. Large Development Review

The intent of the Large Development Review process is to implement adopted plans that provide guidance for future land use and development. In 2022, the property and associated development proposal was determined to be subject to the Large Development Review (LDR) process outlined in Section 12.4.12 of the Denver Zoning Code and required the creation of a Large Development Framework (LDF). A LDF for this property was created and recorded in November 2022. An application to withdraw the current LDF has not been initiated by the property owner nor the city.

As the conservation easement was not lifted via a citywide election in April 2023, there is currently not a development proposal associated with rezoning the subject property back to the OS-B zone district. As such, additional LDR review is not necessary.

4. Conservation Easement

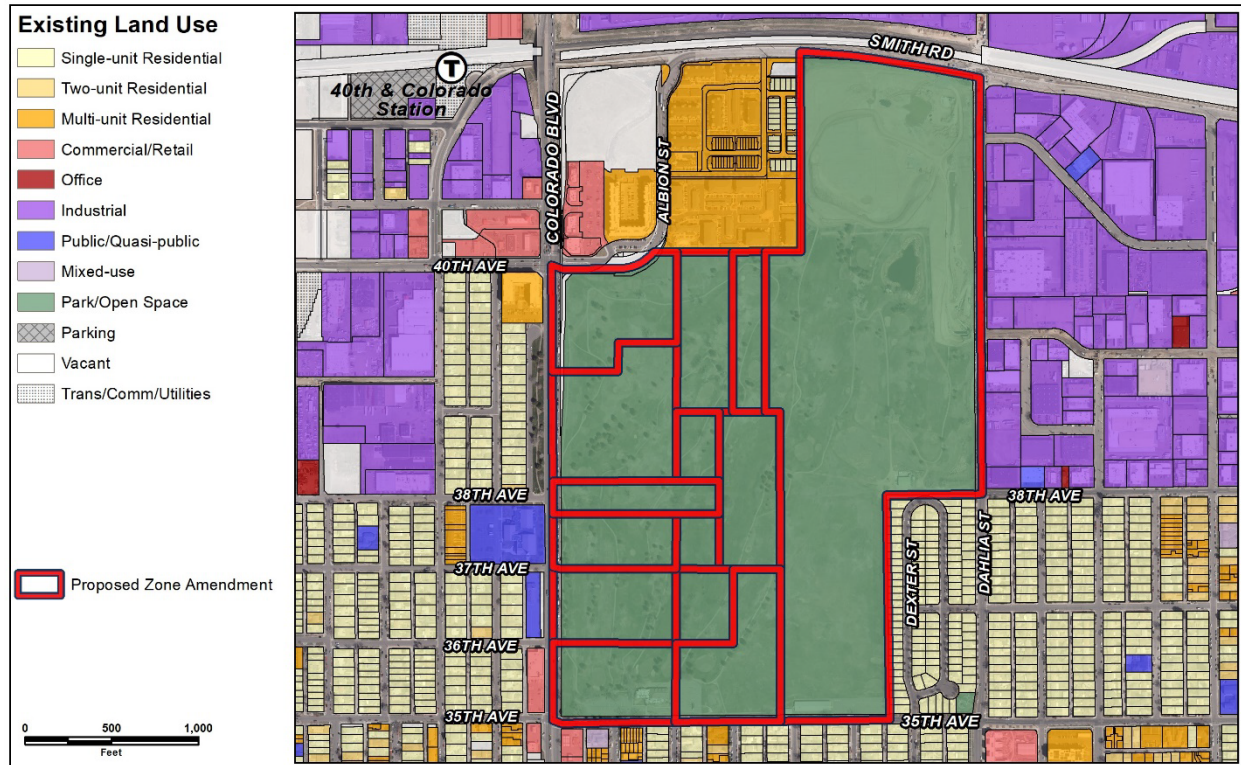
In 1997, the city paid The George W. Clayton Trust (the golf course's owner at that time) \$2 million to acquire a set of use restrictions on the Park Hill Golf Course limiting the use of that land to a regulation-length 18-hole public golf course with a daily fee. To the extent that any other uses are permitted, under the conservation easement such uses must be either (1) accessory or incidental to the golf-related use, or (2) unrelated recreational uses which cannot be detrimental to the golf-related use. The use restrictions represent a private restrictive covenant and a real property interest owned by the city. A citywide vote of eligible voters is required to remove the easement.

In April 2023, a citywide vote of eligible voters was held regarding the lifting of the conservation easement on the subject property. The voters did not approve the lifting the conservation easement and it remains in place on the property.

5. Development Agreement and Large Development Framework

Earlier this year, the property owner formalized a development agreement with the city that required the property to be rezoned back to OS-B in the event of the failure of the ballot measure to lift the existing conservation easement on the property. The large development framework set out for this property included the development agreement's intent that the property should be rezoned back to OS-B if the conservation easement remained in place. This rezoning is applying the steps laid out by the large development framework.

6. Existing Land Use Map



Until 2018, the site was used as a private golf course. There is no current use on the property.

7. Existing Building Form and Scale (images from Google)



View of the subject property looking east from Colorado Blvd. (left) and subject property looking north from E. 35th Ave. (right).



Multi-unit residential directly north of subject property, looking north from the internal private roadway serving the development.



Industrial warehouses east of subject property, looking east.



Single-unit homes directly east of the subject property, looking west.

Proposed Zoning

The proposal is to rezone the property back to the OS-B zone district. OS-B stands for the **Open Space Recreation** zone district, and is a district for privately owned parks and open space. It allows for community and public serving uses (community center, day care center, postal facility), cultural and special purpose uses including a library, cemetery, museum, and open space, school, public and religious assembly, arts, recreation, and entertainment uses including indoor recreational services, stadium and parking garage. OS-B allows only the General building form with a maximum height of 40 feet or 3 stories. Structures require a 20-foot setback from the primary street, street, interior side lot line, and rear. For additional details of the zone district, see DZC Section 9.3.3.2. The existing conservation easement remains in place and will continue to limit of the the property beyond the allowances of the zone district.

Public Review Process

Councilmember Christopher Herndon is moving this proposal forward under the Council Powers provisions outlined in the Denver Revised Municipal Code (DRMC 3.2.9). In terms of notification and process, the Denver Zoning Code states,

“The City Council or individual City Council member may, but is not required to, follow the public notice or procedures in Section 12.4.10.4. However, the City Council or any City Council member shall comply with the public notice and process provisions required by the Charter for an official map amendment (rezoning)” (DZC 12.4.10.4.A.2.a).

The Charter requires written notification to all registered neighborhood organizations (RNOs) within 200 feet of the property upon receipt of the proposed action (DRMC 12-96) and that the City Council public hearing time and date be published in an official publication of the City and County of Denver (Sec. 3.2.9

of the Charter of the City and County of Denver). The compliance with the Charter requirements is outlined below:

	Date
Ordinance Request Filed with City Council Offices	5/1/23
CPD informational notice of the receipt of proposed action to all registered neighborhood organizations within 200' of the subject property (DRMC 12-96)	5/2/23
Land Use, Transportation and Infrastructure Committee of the City Council:	5/9/23
City Council First Reading	5/22/23
Hearing date and time published at least 15 days prior in the Daily Journal, an official publication in the City and County of Denver (DRMC 3.2.9)	5/26/23
City Council Public Hearing	6/20/23

Criteria for Review / Staff Evaluation

Staff has reviewed the proposed rezoning according to the criteria 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 2040* (2019)
- *Blueprint Denver* (2019 and updated through adoption of the Park Hill Golf Course Area Plan in early 2022)
- *Park Hill Golf Course Small Area Plan* (2022)

Denver Comprehensive Plan 2040

The proposed rezoning is consistent with many of the adopted *Denver Comprehensive Plan 2040* strategies, which are organized by vision element.

The proposed map amendment would allow for a golf course and open space use, consistent with the following strategies from the Environmentally Resilient vision element:

- Environmentally Resilient Goal 6, Strategy C – Maintain and expand the citywide tree canopy (p. 54).
- Environmentally Resilient Goal 6, Strategy A – Recognize parks, public space, trees and plans as vital elements of green infrastructure and ensure that the provision of these elements keeps pace with Denver’s growth (p. 54).

The proposed rezoning would allow for a golf course and open space use, consistent with the following strategy in the Health and Active vision element:

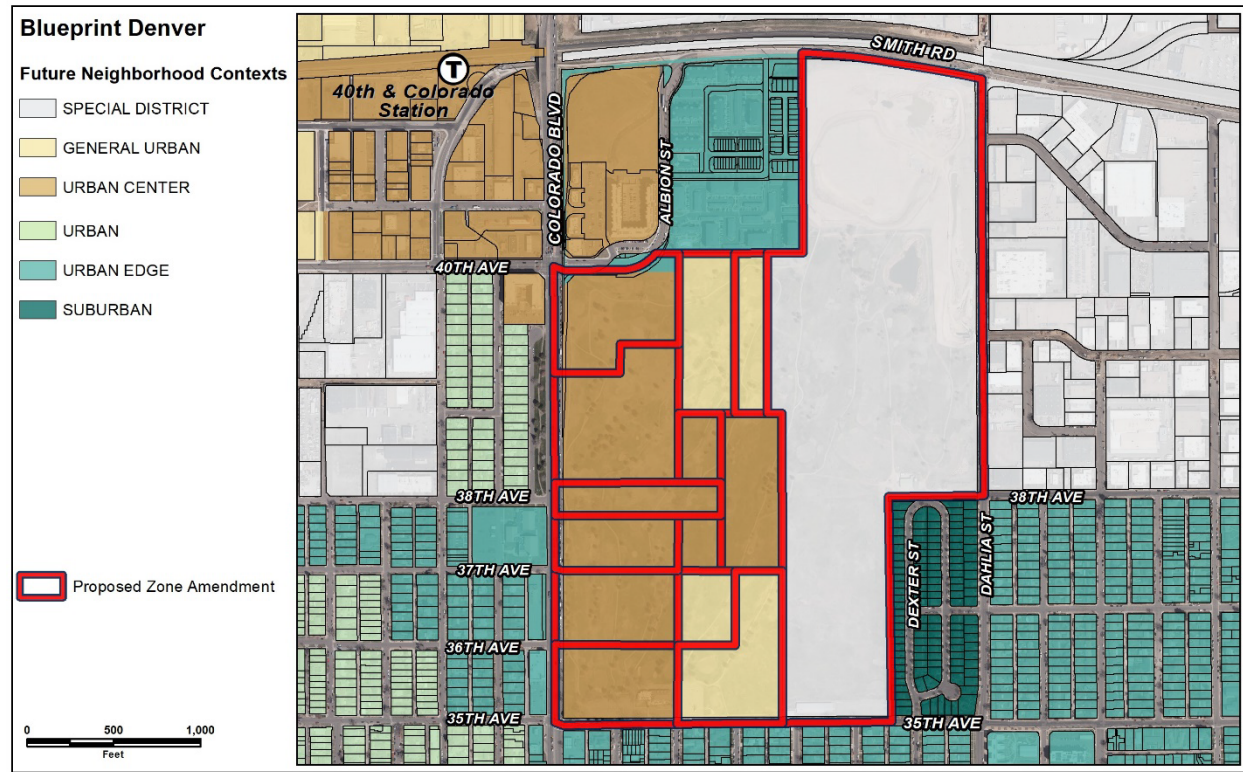
- Healthy and Active Goal 2, Strategy C – Expand the supply of parks, recreational facilities and programs relative to Denver’s population growth (p. 58).

The proposed OS-B district allows for a variety of park, open space and recreational use options consistent with the strategies in *Comprehensive Plan 2040*.

Blueprint Denver

Blueprint Denver was adopted in 2019 as a supplement to *Comprehensive Plan 2040* and establishes an integrated framework for the city’s land use and transportation decisions. With the adoption of the *Park Hill Golf Course Small Area Plan* in December 2022, the *Blueprint Denver* future context, place, growth strategy, and street type designations for the subject property identified in the small area plan updated *Blueprint Denver*. The subject property is designated as the Urban Center, General Urban, and Districts contexts and Community Center, Residential High-Medium, and Regional Park place types. *Blueprint Denver* acknowledges the presence of parks and open space throughout all contexts and places as described below; therefore, the proposed OS-B district is consistent with plan guidance.

Blueprint Denver Future Neighborhood Context



In *Blueprint Denver*, future neighborhood contexts are used to help understand differences in things like land use and built form and mobility options at a higher scale, between neighborhoods. The future neighborhood context for the subject property was recently updated with the adoption of the *Park Hill Golf Course Small Area Plan*. The subject property is shown on the context map as Districts, General Urban, and Urban Center.

District Neighborhood Context

The OS-B zone district is consistent with the District, General Urban and Urban Center contexts because the zone district allows for a variety of uses, like privately owned open spaces and recreational uses, that can be found in all neighborhood contexts.

The Districts future context, “serve a specific purpose, usually highly specific based on uses, such as education, industry or healthcare” (p. 137). The proposed OS-B district will allow for a private recreational and open space use consistent with the Districts context purpose because it serves a specific purpose.

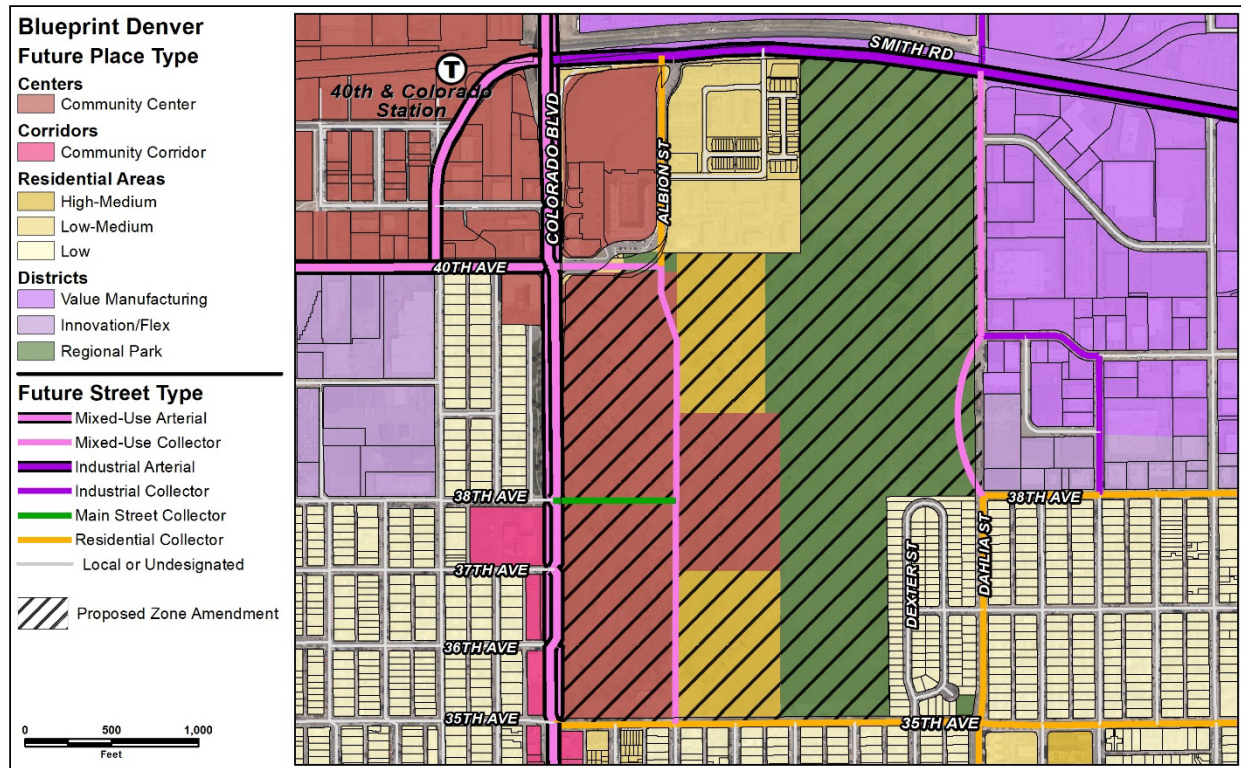
Urban Center Neighborhood Context

The future context for the western portion of the subject property is the Urban Center context. This context includes “smaller public parks and privately owned, publicly accessible outdoor spaces and plazas” (p. 137). The proposed OS-B district is consistent with the Urban Center future context because this district allows for privately owned outdoor space.

General Urban Neighborhood Context

The future context of the northern and southern sections of the central portion of the subject property is General Urban. This context includes “parks of various sizes and privately owned publicly accessible outdoor spaces and plazas.” (p. 136). The proposed OS-B is consistent with the proposed General Urban future context because it will allow for a privately owned outdoor space.

Blueprint Denver Future Places



The Future Places Map shows the subject property as Community Center, High-Medium Residential, and Regional Park future place.

Regional Park Place

The future place type for the eastern portion of the site is Regional Park. In *Blueprint Denver*, the Regional Park place type “individual and group recreation activities occur on most days throughout the year. Specific uses include zoos, museums, golf courses recreation centers and water related activities” (p. 293). The proposed rezoning of the eastern portion to OS-B is consistent with the Regional Park future place type because it will allow for the previous use of a golf course to be restored.

Community Center Place

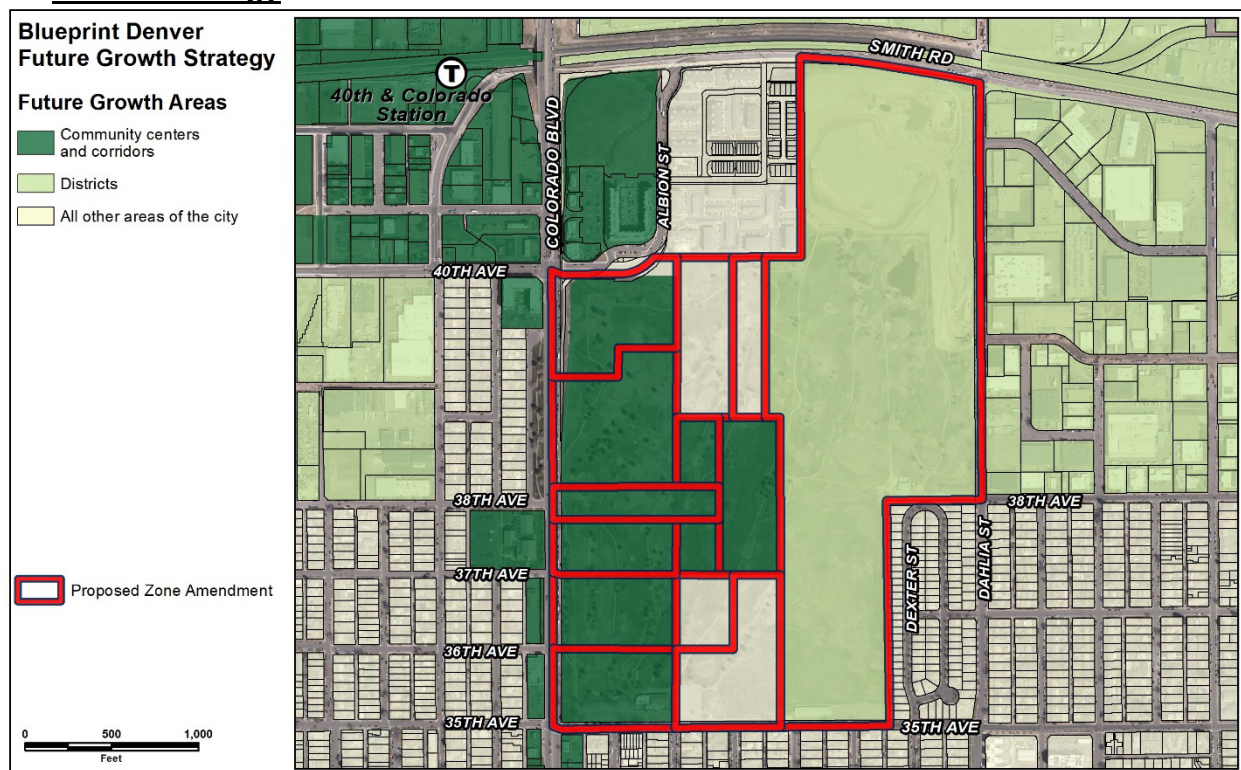
The future place for the western portion of the site is identified as Community Center. Community Centers within the Urban Center context is described as, “Provides a mix of office, commercial and residential uses....Open spaces promote social interaction and respond to the distinct uses within the

center. Green Infrastructure includes trees and often serves the needs of larger areas. Public spaces are flexible to benefit different types of users and daily activities throughout the year.” (p. 256). The proposed OS-B district is consistent with the Community Center future place type because it allows for a variety of community and public serving uses and recreational and open space uses.

High Medium Residential Place

The future place designation for the central and southern portions is High-Medium Residential. The High-Medium Residential place type in the General Urban context has “access to parks and outdoor spaces of various sizes” (p. 246). The proposed OS-B district will allow for access to outdoor spaces consistent with the future place type.

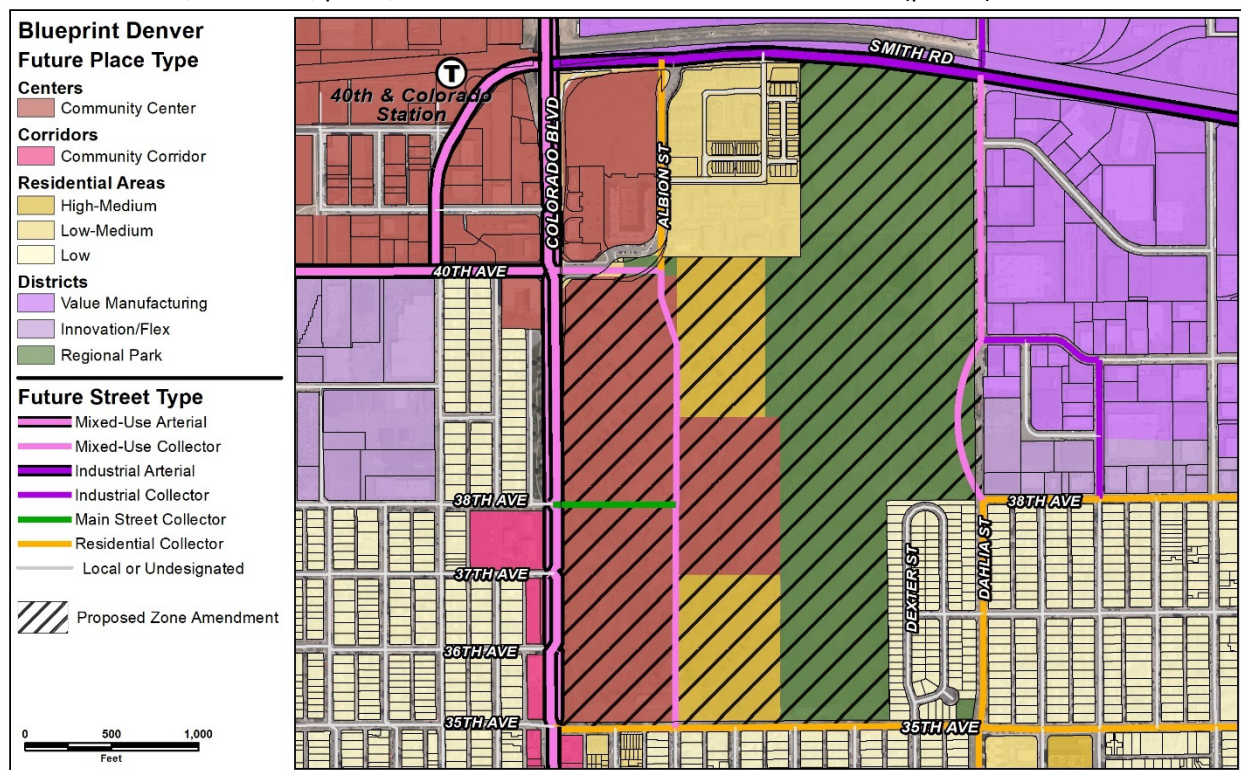
Growth Strategy



Blueprint Denver's growth strategy map is a version of the future places map, showing the aspiration for distributing future growth in Denver (p. 51). The growth strategy shows the property as having a districts, community centers and corridors and all other areas of the city growth strategy. The future growth area percentages indicate the projected amount of new jobs or new housing across all areas in the city with that place designation. Each place may have a unique ratio of new jobs and housing different that what the place designation captures across the entire city (p. 51). The OS-B zone district allows for a variety of community and public serving uses and recreational and open space uses. Some of these uses could create employment opportunities. As such, the OS-B zone district is consistent with the intent of the growth strategy map.

Blueprint Denver Future Street Types

In *Blueprint Denver*, street types work in concert with the future place to evaluate the appropriateness of the intensity of the adjacent development (p. 67). *Blueprint Denver* classifies Colorado Blvd. as a Mixed-Use Arterial and Smith Rd. as an Industrial Arterial. “Arterial streets are designed for the highest degree of property access and the lowest amount of through movement” (p. 154). East 35th Ave. and Albion St. (north of 40th Ave.) are classified as a Residential Collectors and Dahlia St., E. 40th Ave., and a new street connection between Ash and Albion are classified as Mixed-Use Collectors, and a new connection at E 38th Ave. is classified as a Main Street Collector. “Collector streets are in between a local street and an arterial street; they collect movement from local streets and convey it to arterial streets” (p.159). Mixed-use streets include a “varied mix of uses including retail, office, residential and restaurants.” (p. 159). Blueprint describes Industrial streets as “characterized by manufacturing but may contain other uses” (p. 160). Conversely, Residential streets are “primarily residential uses, but may also include schools, civic uses, parks, small retail nodes and other similar uses” (p. 160).

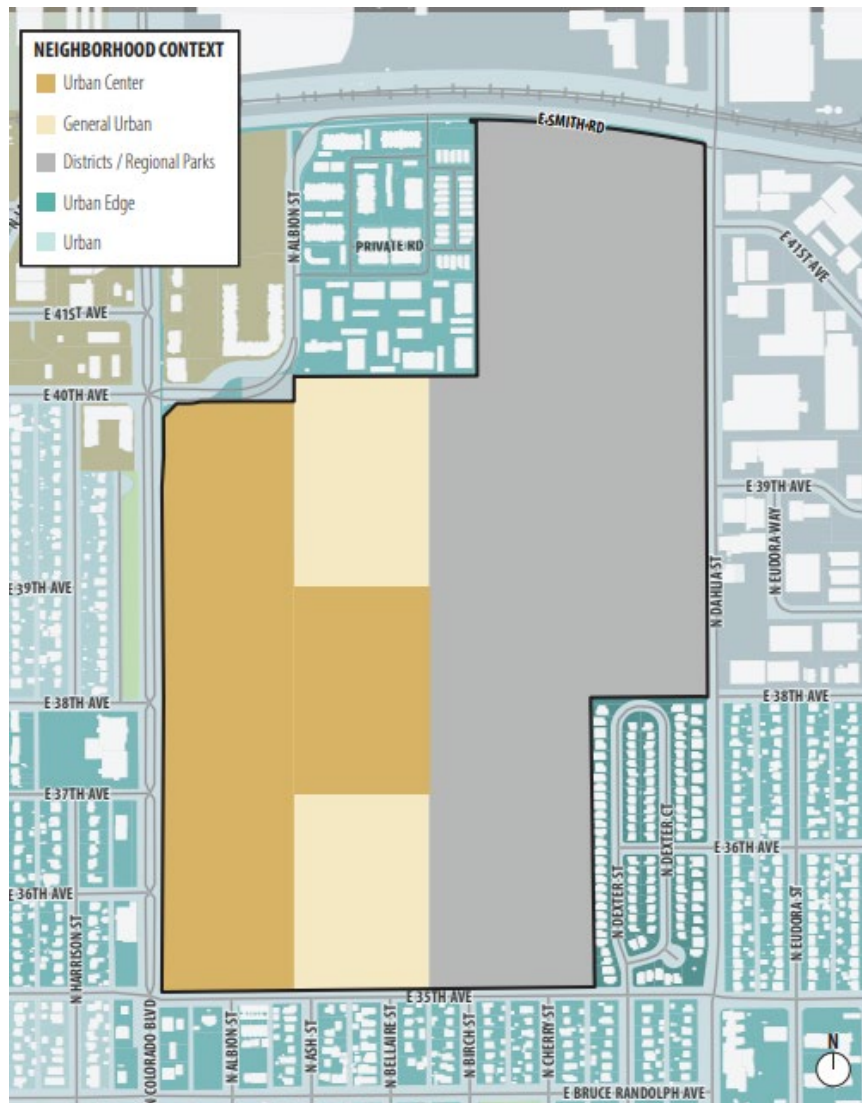


The proposed OS-B district is restoring the previous zone district and the surrounding street types can support and are consistent with the district’s allowed uses.

Park Hill Golf Course Small Area Plan

The *Park Hill Golf Course Small Area Plan (PHGC Area Plan)* was adopted in December 2022 and is consistent with many citywide goals and policies.

Future Neighborhood Context



The neighborhood context designation is Urban Center, General Urban, and Districts. In addition to the guidance for contexts in *Blueprint Denver* described above, the *PHGC Area Plan* provides additional guidance for the contexts.

Districts Neighborhood Context

The *PHGC Area Plan* describes the Districts context as an area with “a specifically designed purpose, such as regional parks or industrial areas. Although they have a strong primary purpose, these places can offer a diverse range of amenities and complementary services to support the district’s primary function” (p. 40). The OS-B district will allow for the restoration of a golf course use and other complementary services and amenities and is consistent with the district context.

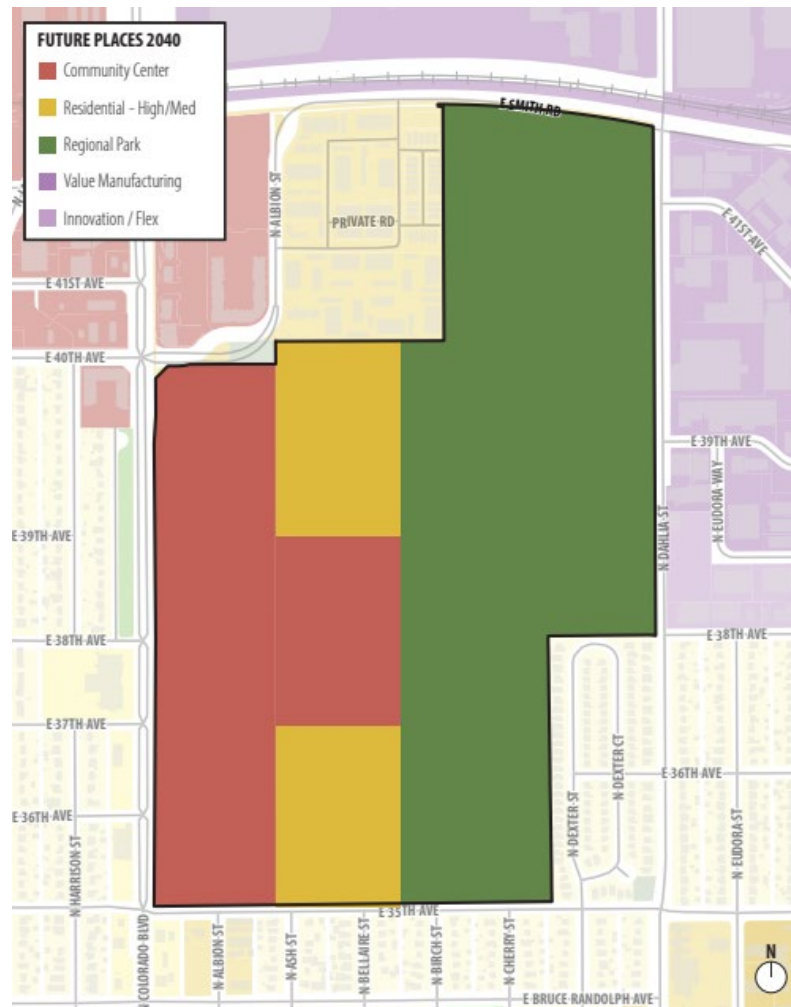
Urban Center Neighborhood Context

The *PHGC Area Plan* describes the Urban Center context as “featur[ing] a high mix of uses where the highest densities are planned on the Park Hill Golf Course site.” (p. 40). The OS-B district will allow for the restoration of a golf course use and other complementary services and amenities, which contribute to a mix of uses.

General Urban Neighborhood Context

The *PHGC Area Plan* describes the General Urban context as “consist[ing] of higher-density development like larger multi-story residential buildings. This context serves as a transition between the urban center and district context” (p. 42). Parks and open spaces can be found in all contexts, and, therefore, the proposed OS-B zone district is consistent with plan guidance.

Future Places



The future places map in the *PHGC Area Plan* identifies three future places for the subject site: Community Center, Residential – High/Medium, and Regional Park place type.

Regional Park Place

The *PHGC Area Plan* describes this place as areas “provide large scale public open space, recreation and event locations” (p. 42), which is consistent with the proposed OS-B zone district.

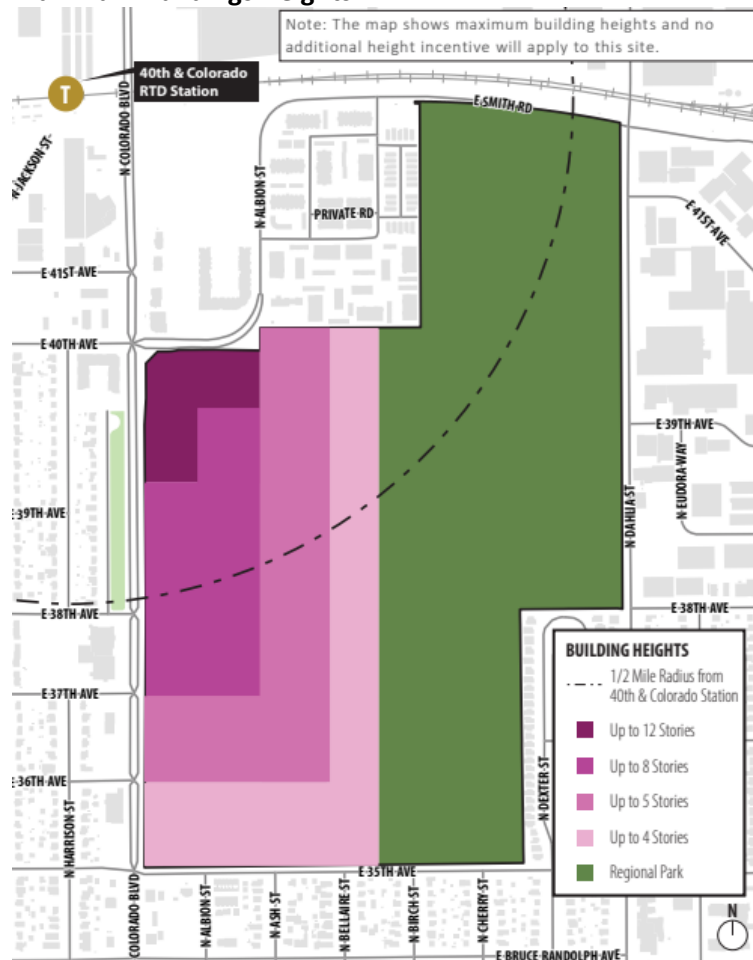
Community Centers Place

“Community Centers are mixed-use places typically oriented around a shared space or set of spaces. People often go to centers to engage in social activities and entertainment...” (p. 42). The OS-B zone district will allow for private open space that could be used for social activities and entertainment, therefore supporting a use envisioned in the Community Centers Place.

Residential Areas

The PHGC Area Plan describes the Residential High/Medium areas as “the predominant use is residential. This includes other uses needed for a complete neighborhood such as parks, recreation and nodes of commercial/retail uses” (p. 42). The OS-B zone district will allow for privately-owned open space, therefore supporting a use envisioned in the residential areas.

Maximum Buildings Heights



The *PHGC Area Plan* recommends maximum building heights for the property. The OS-B zone district has a maximum height of 3 stories or 40 feet, which does not exceed the maximum heights shown on the map and is consistent.

The area-wide framework recommendations of the *Park Hill Golf Course Small Area Plan* are grouped under three main topics: Quality of Life, Land Use and Built Form, and Mobility. The proposed OS-B district would facilitate the restoration of a golf course use and further Policy Q2: “Include a variety of active recreational opportunities for the community” (p. 34).

On balance, OS-B will be consistent with the contexts, place types and framework recommendations of the *Park Hill Golf Course Small Area Plan*.

2. Uniformity of District Regulations and Restrictions

The proposed rezoning to OS-B will result in the uniform application of zone district building form, use and design regulations.

3. Public Health, Safety and General Welfare

The proposed official map amendment furthers the public health, safety, and general welfare of the city through allowing for a recreational open space use. This rezoning may facilitate the restoration of a golf course use, and according to the Centers for Disease Control and Prevention “having access to places for physical activity, such as parks and trails, encourages community residents to participate in physical activity and do so more often” (Parks, Trails and Health: <https://www.cdc.gov/healthyplaces/healthtopics/parks.htm>).

4. Justifying Circumstance

The proposal was determined to be a non-legislative rezoning and a justifying circumstance code criteria applies. Changed or changing conditions is warranted as a Justifying Circumstance under DZC Section 12.4.10.8, “Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such a change may include: Changed or changing conditions in a particular area , or in the city generally....”

The recent municipal election that did not approve lifting of the conservation easement on this property serves as the justifying circumstance for the rezoning.

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

The requested OS-B zone district is within the Open Space Context, which “consists of all forms of public and private parks and open spaces. The context accommodates sites ranging from very active to completely passive, and from those embedded in a neighborhood to sites that are large enough to stand alone. Active sites may include high use areas such as ball fields, while passive areas focus

on resource protection, trails, walking and biking” (DZC 9.3.1). The OS-B zone district allows for active and passive recreation opportunities and is consistent with the Open Space context.

Open Space Public Park District (OS-B) “is intended to protect and promote open space and parks not otherwise owned, operated or leased by the City, and generally intended for active or passive recreation use.” (DZC 9.3.2.1.B). The property is privately owned former golf course and is consistent with the OS-B purpose and intent statement.