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January 25, 2019

Sent via E-Mail

President Jolon Clark and City Council Members
Denver City Council
City and County Building
1437 Bannock St., Rm. 451
Denver, CO 80202

Re: Application 2017I-00162 (Application")

Dear Mr. President and Members of Council:

The undersigned represents Stonebridge Companies and its affiliates, which are owners and applicants ("Applicants") of the property located at 4885 and 4889 S. Quebec Street, Denver, CO 80237 ("Property") that is the subject of the above referenced Application. We have been asked to provide a written response to a January 18, 2019 letter from Foster Graham Milstein & Calisher, LLP ("Letter") who represents the Belleview Station Metropolitan District ("District").

The Letter argues that Development Planning Services did not adequately consider all adopted plans affecting the Property and that the Application does not further the public health, safety and general welfare of the area. Clearly, these objections are incidental to the real issues concerning the District: (1) the Property is not within the boundaries of the District (nor was it ever intended to be within such boundaries), and (2) the Property is not governed by the General Development Plan for Belleview Station ("GDP"). The Letter attempts to elevate the provision of utilities to a requirement of rezoning under the Denver Zoning Code ("DZC"), in order to mislead City Council and confuse the straight forward decision before you. The objections provided in the Letter are groundless and lack a basic understanding of City requirements to approve a rezoning application. The objections in the Letter are also diametrically opposite of express statements made on the record by individuals representing the District and the master developer of Belleview Station at the Planning Board Meeting of December 5, 2018, ("Planning Board Hearing")¹ further evidencing the disingenuous nature of the objections. As will be highlighted below, those statements clearly do not object to height, density and zoning.

The November 28, 2018 staff report ("Staff Report") correctly sets forth, the proper criteria used by the City Council in reviewing applications for rezoning include:

¹ The recorded Planning Board Hearing is available at http://denver.granicus.com/player/clip/12126?view_id=173

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Section 12.4.10.7 of the DZC

- A. Consistency with Adopted Plans- (see Staff Report at p. 15-18)
- B. Uniformity of District Regulations and Restrictions- (see Staff Report at p. 19)
- C. Public Health, Safety and General Welfare- (see Staff Report at p. 19)

Section 12.4.10.8 of the DZC

- A. Justifying Circumstances- (see Staff Report at p. 19)
- B. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements- (see Staff Report at p. 19)

The Staff Report provides a complete and thorough analysis of each one of the criteria listed above and the Applicant agrees with the analysis provided. Apparently, the District, save for two items also finds the analysis complete, as they do not object to any findings other than (1) failure to consider all adopted plans affecting the Property (DZC 12.4.10.7.A), and (2) the public, health safety and general welfare criteria (DZC 12.4.10.7.B). These objections are invalid for the following reasons:

Consistency with Adopted Plans

Section 12.4.10.7 of the DZC states that the “City Council may approve an official map amendment if the proposed rezoning complies with all of the following criteria:

- A. Consistency with Adopted Plans. The proposed official map amendment is consistent with the City’s adopted plans . . .

The Adopted Plans affecting the Property are Denver’s Comprehensive Plan 2000 and Blueprint Denver (2002). That is an undisputed fact. There are no other plans that include the Property. The Staff Report performs a robust analysis of the Application’s consistency with these Adopted Plans.² That is the analysis required by the Code. Notwithstanding the clear language of the Code, the Staff Report goes further and reviews the Application against the Transit Oriented Development Strategic Plan (“Strategic Plan”), finding consistency with use and density notwithstanding the fact that the Strategic Plan has never been formally adopted.³

² Staff Report at p. 15-18

³ Staff Report at p. 18

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The Letter proposes an unlawful, unilateral expansion the boundaries of the Bellevue Station General Development Plan, (“GDP”) to include the Property for purposes of additional Adopted Plan analysis. The undisputed facts say otherwise.

The Property is not within the GDP. It is therefore not subject to the GDP. A GDP is intended to bridge the gap between comprehensive planning and site development plans⁴. They are required for any development within the T-MU-30 zone district and are used to create a development program and infrastructure systems to support the conceptual development within the boundaries of the GDP. By its very nature the obligations of the GDP is limited to the boundaries that the GDP establishes. Notwithstanding the gymnastics used in the Letter to imply the appropriateness of a GDP analysis to the Application, it is inappropriate and is inconsistent with the Code.

Adverse Impact on Public Health, Safety and General Welfare

The Letter also suggests that the Application is incompatible with the GDP Property and the neighborhood context of the surrounding area because it allows incompatible height and density and does not require any open space dedication. Again, the Staff Report provides useful analysis. The maximum height of the proposed C-MX-20 is 250 feet in comparison to the 220 feet allowed in the T-MU-30 Zone District found in the Bellevue Station GDP. Based on the facts and circumstances, such height difference is de minimis. Trey Warren, the master developer of Bellevue Station stated on the record at the Planning Board Hearing that, “we don’t oppose the height or the density in that particular location . . .”⁵ Both the C-MX-20 and the adjacent T-MU-30 are dense zone districts with the similar intent to encourage density within urban centers and TOD sites. Since the adoption of the DZC in 2010, many station areas have adopted the C-MX-20 zone district as the appropriate zoning classification since the T-MU-30 zone category is no longer available. The C-MX-20 zone category is clearly appropriate in this locations and furthers the City’s goals of density at transit stations.

Regarding density, both of the Adopted Plans and the un-adopted TOD Strategic Plan encourages density since urban center stations like Bellevue Station are intended to be “mixed use, high density, grid and alley block pattern”⁶. . . Indeed, Scott Menefee from the Holland Group who spoke on behalf of Bellevue Station testified in front of the Planning Board: “we definitely support density, particularly at transit or development sites like this”⁷.

Finally, as to open space, the Letter raises feigned concern that the proposed zoning won’t be preserving open space at the same amount (10%) dedicated under the T-MU-30 Zone District.

⁴ General Development Plan Tab under Denver Community Planning website

⁵ Audio Transcript of Planning Board Hearing at approx. 2:36:00

⁶ Staff Report at p. 18

⁷ Audio Transcript of Planning Board Hearing at 2:38:33

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Changes with the 2010 DZC omitted the unobstructed open space requirement as required under the old T-MU-30. To argue that the Applicant should have proceeded under the T-MU-30 to demonstrate the open space commitment is purposefully misleading on the part of the District, since T-MU-30 is no longer available. As City Council knows, the location and amount of open space is properly reviewed as part of the Site Development Plan process, not as part of a rezoning application. Nonetheless, current design plans of the Property show the open space will be in excess of 10% of the site.

Conclusion

As is evident, the major thrust of the District's objections to the Application has nothing to do with the zoning or the proposed density, height and open space. Instead the District is using this opportunity to force the Property into the District and obligate the Applicant to participate in retiring debt that it never voted to incur and is not legally obligated to pay. In testifying before the Planning Board, Mr. Robert Warren, the President of the District, stated "all we want is our fair share of the infrastructure"⁸ somehow suggesting that it was always assumed that Property was to join the District and subject itself to the pro-rata cost of infrastructure. In contrast however, the City Council approved District Service Plan and the related District bond offering materials for the District makes it clear that this Property was excluded by the Service Plan and was never assumed to become part of the District in the future. What's "fair" in this instance is adherence to the underlying facts of the Service Plan and the District's treatment of the Property therein. There was never any indication that the Property would be part of the District nor required to be included into the District in the future. There are other surrounding properties outside the boundaries of the District that benefit, in varying degrees, from the public infrastructure initially constructed by the District, without financially participating in retiring the initial debt, as is being argued here. Who can and can't use public infrastructure installed by special districts seems like a rabbit hole that is best left alone by City Council in the context of rezoning or otherwise.

Development issues such as utilities and roads are part of the City's Site Plan procedures, not zoning. The Planning Board recognized this in its comments at the hearing for the Application: "the opposition isn't really opposed to what they're building or the height . . . they're obviously opposed to the infrastructure they had to put in."⁹ and "I don't see the issue at all tied to zoning"¹⁰.

At the time of Site Plan review the City will determine the services and connections necessary for the Property to be developed in accordance with the C-MX-20 zone district. Part of the process will necessarily include options for service. Before those discussions can occur, there must be a rezoning so that the appropriate parameters are known to all and the project can be designed. The

⁸ Audio Transcript of Planning Board Meeting at 2:40:58

⁹ Mr. Frank Shutz- Audio Transcript of Planning Board Hearing at 3:04:14

¹⁰ Ms. Susan Stanton- Audio Transcript of Planning Board Hearing at 3:06:39



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Planning Staff has provided all the evidence necessary for City Council to find that the owner has met every one of the objective criteria for rezoning. The objections raised in the Letter is an attempt to end run the process and trick the City Council into a debate about infrastructure design and cost allocation. The City Council should not be fooled, and like the Planning Board, remain focused on the elements of rezoning.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Jack E. Reutzel', is written over a circular blue stamp.

Jack E. Reutzel
Fairfield and Woods, P.C.

JER:te

cc: Navin C. Dimond
Howard J. Pollack