NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
COLORADO CHAPTER

June 30, 2016

Laura Brudzynski
Operations & Communications
Denver Office of Economic Development
201 Colfax Avenue
Denver, CO 80202

Re: NAIOP Colorado / Affordable Housing

Dear Laura:

Thank you for the opportunity to provide comments regarding the Denver Affordable Housing Task Force Process and Recommendations. This letter serves to follow up on discussions we have had regarding Denver's Affordable Housing Revenue Stakeholder meetings during the past several months. It also addresses the information provided to date regarding the selection and utilization of revenue sources that would provide funding to address the city's affordable housing needs.

I am writing in my capacity as Executive Director for NAIOP Colorado. As you may know, we are a chapter of NAIOP, the Commercial Real Estate Development Association. This association has chapters throughout North America including Canada and is devoted to the Commercial Real Estate Industry, including development, ownership and investment impacting Office, Industrial, Multi-Family and Mixed-Use products, including TOD projects.

In response to the rising cost of housing in Colorado and the negative impact that it is having on economic development, we established an Affordable Housing Task Force. This group has been asked to review the materials provided by the City and its Affordable Housing Task Force, as well as other sources available to it. We are fortunate in that we can draw on the experience and knowledge from other NAIOP chapters to help determine best practices and gain real-world insight into what works and doesn't work in other markets.

As mentioned above, NAIOP Colorado is concerned about the need for affordable housing in the Denver metropolitan area. Not only are we pricing ourselves out of the market for business relocation, but we are at risk of losing our highly educated and talented younger workforce. Affordable Housing is a community-wide, even a region-wide, issue that has concerns that span our entire society.

1720 South Bellaire Street, Suite 110, Denver, CO 80222 Tel: (303) 782-0155 Fax: (303) 820-3844

We applaud the City of Denver for taking on this issue. However, as with many such complex and impacting matters, the "devil is in the details". The desire to develop good public policy requires us to pursue with you several questions, requests for further information, and suggestions regarding how best to proceed with such important endeavors that will impact our city in many ways for years to come.

1. Revenue Sources - It seems to us that the city zeroed in on the mill levy piece, and particularly the impact fee piece, at the front end of this series of sessions. From the beginning, we did not see or have the chance to review any materials where the city looked at other potential sources of revenue that might be available. Nor did we see information that the city conducted appropriate reviews, comparable analysis, nexus or feasibility studies on other funding options.

For example, we look at this issue as one of a community-wide concern and, therefore, would hope and expect that the revenue sources for such solutions would come from a broad based allocation that reflects the community-wide nature of the issue.

We note that one of your operating premises was that you desire to avoid anything requiring a public vote. Although we understand the desire for expediency, it seems to us that one should look at the nature of the issue and then match the resources that make the most sense. In some cases, this will require public input and may take a bit longer. But isn't it better to have a system that industry and consumers are fully supportive of, even if it takes longer?

We submit that the solution to the affordable housing issue is not one that should be sourced only from one industry (the ownership and/or development of real estate properties) but from all who are impacted by the need for affordable housing. This would include all employers, employees and others who live in the city and those who come to the city and utilize its resources. This is more of a public policy issue that requires a broader discussion.

We encourage you to not simply choose funding sources that might be expedient but rather to look at those funding sources that are appropriate. Don't lose sight of the long term goal, by reaching for a quick solution that may not even get you what you need, and may have detrimental unintended consequences.

For example, if, as we have heard many times, this issue relates to jobs and job creation, there is certainly a clearer connection between the need for affordable housing for employees and solutions coming from those who create the jobs, our employers. Has this source been reviewed and fully vetted for possible allocation? We would argue that it has not.

We certainly do not want to be dismissed as an industry that does not want to do its part, we simply suggest that the source of the revenue be appropriately shared among the larger audience impacted by this issue.

Targeting the development community that is responsive to, but not responsible for, the demand for office space misses the mark. For example, employers create the demand for employees who, in turn, create the demand for housing and for office space. This is a direct nexus between the source of the issue (employers) and the potential solution. Developers only carry out the requirements resulting from the employer demands. The only direct job nexus that results from the development of a commercial building or from its daily management is to those construction workers or the maintenance employees. The employees who work in the offices are not a direct result of the existence of the office. Moreover, you are surely aware that any such fees will result in higher costs that must be assumed by the using/buying consumer, seemingly adding more cost to the affordability challenge.

Compromise: As a matter of compromise, we can understand your position with respect to the mill levy piece since it seems to get at all real estate ownership interests which are certainly a broader spectrum of the community. And this is a consistent source of funding, not subject to development cycles.

Of course, the result here is punitive to the commercial real estate ownership based on how that tax is allocated under our State's troubling "Gallagher" amendment. To then add to this disproportionate allocation to commercial property owners yet another layer of impact fees is an unjustified and certainly an unfair "piling-on".

The impact fee certainly needs to be re-visited in light of the alternative sources that we suggest have more of a direct nexus to the issue, particularly in the community-wide context. In order to comment further, we would want to review your complete Nexus study in detail. We feel it is impractical for us to comment on a study that we haven't seen. We would like to review the methodology and assumptions that were used as there is a question in our minds as to the nature of the fee, its appropriate nexus under our laws, and whether or not it is a tax, therefore requiring a public vote in any event.

2. Revenue amounts and applications – We have not yet seen anything that shows the relationship between the suggested amount for the fund and the application of those funds to an actual solution. In fact, it feels as though the $150 million dollar target was arbitrary. We would suggest that there should be a closer look at what the needs are. Then we could address how to meet those specific needs, including the revenue / fund(s) required. It appears that, while we all recognize a problem exists, this proposal attempts to throw a bunch of money at it without a plan or a process.

I refer you to the San Diego study entitled: "Addressing The Housing Affordability Crisis- Action Plan for San Diego" that looked at the larger picture first to define the parameters of the need and looked at specific action plans to address the defined need. Funding is certainly an important and a critical piece of the puzzle but, like the golfer on the tee without a green to target his shot, he has no guide from which to take aim.

Where did the $15 million per year for ten years come from, and what will it produce in relation to the need. What need is being addressed within the overall rubric of affordable housing? Is it adequate? If not, what is the plan to address the defined need and how? Does the revenue have the appropriate nexus to the demand and need?

For example, if one were to look at the most reliable sources of revenue with the least variance in terms of a consistent flow over time, then why not have the mill levy portion extend to twenty or even thirty years. This would create an opportunity to issue bonds in order to open up more possible solutions such as a P3 delivery model.

3. Nexus and Feasibility Studies – We have seen some preliminary numbers regarding the nexus and feasibility studies but as stated before, would request a copy of the full studies once available so that we can better understand both the methodology and the details of the resulting numbers. Once again, the "devil is in the details" and, until we see the entire study it is not possible to understand and provide commentary. As mentioned above, we remain skeptical regarding the alleged nexus that you have put forth and whether that nexus passes muster under our laws addressing such matters. It may be that your intended "fee" is, at law, a tax and we would want to be clear on this issue.

4. Governance and Accountability – Before we can support a revenue source that is to be directed toward a yet undefined set of criteria, we want to understand more about how and where the funds are to be used. As one of the city's "investors", we are entitled to understand, provide input to and agree with the deployment parameters, the governance structure for those funds, the ongoing process to monitor and measure the appropriate outcomes and the parameters for adjusting the fund as its use is tested against agreed measures. Again, to approve funding without specifics as to their use, governance and measurements is both irresponsible and will likely not be acceptable to the public. Moreover as you likely know, the political arena these days will not, and should not, allow for the "trust me" approach to work without specifics.

5. Alternatives – Some very initial concepts that might be explored as alternatives or supplemental to, the Mill Levy piece could include:

a. First, define the need, including the actual funding gap, and agree on the actual amount and scope of the funds needed to meaningfully address the defined and agreed need;
b. broaden the base to reflect the community-wide character of the issue being addressed (e.g.; occupational privilege tax, lodging tax, etc.);
b. let's call a tax a tax, and not try to avoid the reality;
c. longer term, reliable funding source for leverage of those revenues;
d. other measures that can result from meaningful and comparable research (e.g.; lessons learned from the San Diego approach and result)
e. with our history of regionalism, acknowledge that the issue is at least regional and bring in HUD, State Division of Housing, CHFA, DHA, the Metro Mayors Caucus and DRCOG as sources of information and resources.

6. Offsets – To provide some relief to the impacted parties and to help to keep the actual costs down to the resulting consumer, provide appropriate offsets to the impact of the new fees / taxes, such as:

a. density bonuses;
b. defer development fees;
c. use tax reduction;
d. lower parking requirements;
e targeted lower property tax;
f. Light Rail TOD waivers;
g. Other incentives/offsets that have worked in other jurisdictions that have similar issues and solutions.

7. Direction – In order to provide direction toward addressing this important issue, we would engage in efforts to:

a. define the targeted need and quantify the goal;
b. review potential and appropriately justified sources of revenue;
c. review feasibility and applicability of specified parameters for agreed targets/programs/projects; and
d. propose and agree upon a governance structure and accountability for the use of the agreed funds.

8. Recap – To recap our comments, here are our concerns:

a. We must see a defined need and purpose analysis along with a specific governance structure that includes significant representation from those groups providing direct funding;
b. We support the Mill levy increase as a sustainable secure source of funding from the commercial real estate industry;
c. We do not support the development impact fee for reasons stated above, not the least of which is the unpredictability of the development cycle thereby making the funding stream unreliable;
d. We support the investigation of other funding sources such as the occupational privilege tax which creates equality with our employers;
e. We cannot comment on the nexus study until we receive a full copy of the study and the feasibility analysis; and
f. We must have more time to appropriately review and comment on the above outlined items.

All of the above is an indication that this process is not ready to move to the ordinance stage. More time is needed to provide appropriate analysis and determine the actual need which can then direct the appropriate funding.

We honor the city's desire to address this critical issue and commit to be meaningfully engaged in an effort to realistically and thoroughly address appropriate solutions. We encourage you, however, to do so in the context of an acknowledged community-wide issue with solutions to be shared by the community-at-large. Otherwise, we create divisiveness that results from pursuing expediency at the expense of substantive and community-based solutions. The result can only be unfair, unjust and possibly create challengeable programs.

We look forward to partnering with you to address this critical issue.

Sincerely,

Kathie A Barstnar

Kathie Barstnar,
Executive Director
NAIOP Colorado

cc:
Kevin Kelley, President, NAIOP-Colorado
Mayor Michael Hancock
Janice Sinden, Chief of Staff
Evan Dryer, Deputy Chief of Staff
City Council Members
Kelly Brough, Denver Metro Chamber of Commerce
Tom Clark, MDEDC
Colorado Real Estate Roundtable
Blair Richardson, Colorado Concern Chairman
Ismael Guerrero, Denver Housing Authority
Cris A. White, CHFA
Irv Halter, Colorado Division of Housing