



CITY COUNCIL AGENDA

NOTICE TO READERS: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given. Many items have been previously discussed at a Council Study Session.

Citizen Communication is limited to five minutes; however, the Mayor may limit comments to a lesser amount of time depending on the number of individuals who wish to speak.

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings** (July 27, 2015)
4. **Report of City Officials**
 - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
 - A. Recognition of Lao Buddhist Temple Dragon Boat Festival
 - B. Proclamation Recognizing Local Top Spin Group
7. **Citizen Communication (5 minutes or less)**

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. **Consent Agenda**
 - A. Second Intergovernmental Agreement Regarding Inmates in the Adams County Jail
 - B. 120th Avenue & Federal Blvd. Intersection Improvement Project – Construction Engineering Services Agreement
 - C. Ranch Creek Underpass and Trails Project – Amended Construction Engineering Contract
 - D. Fleet Maintenance Cumulative Purchases Over \$75,000 for Freeway Ford
 - E. Second Reading of Councillor's Bill No. 37 Appropriating RTD Funds to Westminster Station Phase 1 Infrastructure
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
 - A. Public Hearing on Revesco USA Properties Special Use Permit Application, Lot 2, La Belles Plaza
 - B. Action on Revesco USA Properties Special Use Permit Application, Lot 2, La Belles Plaza
 - C. Councillor's Bill No. 40 Organizing City of Westminster Downtown General Improvement District
 - D. Councillor's Bill No. 41 Organizing City of Westminster Park 1200 General Improvement District
 - E. Resolution No. 26 re Amended IGA for HOME investments Partnerships Program Consortium with Adams County
11. **Old Business and Passage of Ordinances on Second Reading**
 - A. Special Legal Counsel Services for Drafting of Collective Bargaining Ordinance (Tabled 10-27-14)
 - B. Remove Councillor's Bill No. 18 Updating the Comprehensive Plan from the Table (Tabled 04-13-15)
 - C. Councillor's Bill No. 18 Updating the Comprehensive Plan
 - D. Second Reading of Councillor's Bill No. 36 re Westminster Promenade West Comprehensive Plan Amendment
 - E. Second Reading of Councillor's Bill No. 38 Amending Title VI, W.M.C., re Beekeeping and Chicken Husbandry
 - F. Second Reading of Councillor's Bill No. 39 Appropriating FY2014 Carryover to FY2015 Budget
12. **Miscellaneous Business and Executive Session**
 - A. City Council
13. **Adjournment**

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (Separate Agenda)

NOTE: Persons needing an accommodation must notify the City Clerk no later than noon on the Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. You can call [303-658-2161](tel:303-658-2161)/TTY 711 or [State Relay](tel:303-658-2161) or write to lyeager@cityofwestminster.us to make a reasonable accommodation request.

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.



2015 CITY OF WESTMINSTER STRATEGIC PLAN



VISIONARY LEADERSHIP, EFFECTIVE GOVERNANCE AND PROACTIVE REGIONAL COLLABORATION

The City of Westminster has articulated a clear vision for the future of the community. The vision is implemented through collaborative and transparent decision making. Westminster is proactively engaged with our partners to advance the common interests of the region.

- Develop communication, management and planning tools that move the City toward its vision while providing excellent government.
- Collaborate with state agencies, counties, school districts, neighboring cities and other governmental and non-governmental entities.



VIBRANT, INCLUSIVE AND ENGAGED COMMUNITY

Westminster provides options for an inclusive, demographically diverse citizenry in unique settings with community identity, ownership and sense of place, with easy access to amenities, shopping, employment and diverse integrated housing options. Members of the community are empowered to address community needs and important community issues through active involvement with City cultural, business and nonprofit groups.

- Advance strategies that demonstrate Westminster is a regional leader in providing affordable/workforce housing.
- Develop programs and strategies that build a unique sense of community in Westminster.
- Lead the development of cultural opportunities in Westminster.
- Identify the distinct neighborhoods of Westminster and help them begin to work together, as neighbors, to grow the sense of place and community in their neighborhoods.



BEAUTIFUL, DESIRABLE, SAFE AND ENVIRONMENTALLY RESPONSIBLE CITY

Westminster thoughtfully creates special places and settings. The City is an active steward, protecting and enhancing natural resources and environmental assets. The City promotes and fosters safe and healthy communities.

- Make a Citywide commitment to sustainability.
- Promote ongoing excellent management and maintenance of the City's parks and open space system.
- Provide opportunities for residents, visitors and employees to improve their personal wellness – physically, emotionally and intellectually.



DYNAMIC, DIVERSE ECONOMY

Westminster is a local government that fosters social, economic and environmental vitality and cultivates and strengthens a wide array of economic opportunities.

- Develop an economic development strategy that contributes to City vision attainment and is executed through collaborative work between the City of Westminster, the business community, residents and other partners of Westminster.



FINANCIALLY SUSTAINABLE GOVERNMENT PROVIDING EXCELLENCE IN CITY SERVICES

Westminster leads the region in a culture of innovation that exceeds expectations in providing value in all city services – the city shall be known for “the Westy Way.”

- Develop and maintain comprehensive municipal capital infrastructure master plan and financing strategy.
- Promote the organizational culture of Service, Pride, Integrity, Responsibility, Innovation and Teamwork.
- City Manager will develop an annual program of specific department business process improvement reviews.



EASE OF MOBILITY

Westminster pursues multi-modal transportation options to ensure the community is convenient, accessible and connected by local and regional transportation options through planning, collaboration, advocacy and execution. Transportation objectives include walkability, bike friendly, drivability, and mass-transit options.

- Improve the walkability and bikeability of Westminster.
- Improve mass-transit options throughout Westminster.

VISION:

Westminster is the next Urban Center of the Colorado Front Range. It is a vibrant inclusive, creative, and well-connected City. People choose Westminster because it is a dynamic community with distinct neighborhoods and a resilient local economy that includes: a spectrum of jobs; diverse, integrated housing; and shopping, cultural, entertainment, and restaurant options. It embraces the outdoors and is one of the most sustainable cities in America.

MISSION:

Our job is to deliver exceptional value and quality of life through S-P-I-R-I-T (Service, Pride, Integrity, Responsibility, Innovation, Teamwork).

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JULY 27, 2015, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor Atchison led the Council, Staff, and audience in the Pledge of Allegiance.

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Bob Briggs and Councillors Bruce Baker, Maria De Cambra, Alberto Garcia, and Anita Seitz were present at roll call. Councillor Emma Pinter was absent. Also present were City Manager Donald M. Tripp, Deputy City Attorney Hilary Graham, and City Clerk Linda Yeager.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of July 13 22, 2015, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. Tripp reported that Council action scheduled on tonight's agenda pertained to projects of interest and of significance to the City's future. They ranged from beekeeping and chicken husbandry to redevelopment of a portion of the Westminster Promenade, to adoption of a new Strategic Plan, to a commuter rail station, to a new section of Little Dry Creek Trail from Federal to Lowell, to recognition of a pool of long-term employees with more than 1,000 combined years of service to the City. It was an exciting night to celebrate the achievements of a team that included City Council, employees, and citizens working toward a common vision. Action on these topics would move the City closer to achieving Strategic Plan Goals.

COUNCIL REPORTS

Mayor Atchison announced a change to the order of business on the agenda. Item 10 C-D would be considered before Item 10 A-B so that all business concerning the Westminster Promenade West would be considered consecutively.

Councillor Seitz reported having attended the Volunteer Barbecue at City Park to honor the individuals who so generously gave their time, skills, and strength to help with City operations, as well as maintenance of the City's assets. Their 5,000 hours of work resulted in approximately \$1.4 million in savings to the City. It was a pleasure to recognize their service and contributions. Additionally, tonight the adoption of the Strategic Plan would be presented for City Council's consideration. Development of the plan had engaged not only City employees at every level, but also the citizenry. Goals reflected the desires of a united community whose shared values would help achieve success.

Mayor Pro Tem Briggs promoted two upcoming events: National Night Out on August 4 and the groundbreaking for the Westminster Station parking structure on August 5. National Night Out provided an opportunity to celebrate community with Police and Fire officers attending gatherings in neighborhoods throughout the City. Without the parking structure at the Westminster Station, the horizontal space for parking would have to be constructed on flat surfaces and consume valuable property needed for other uses. He urged citizens to get involved in both important community events.

Councillor Garcia urged participation on the Holy Cow Stampede; the Westy Fest, and the Westy Craft Beer Fest and Concert being held from morning to night on August 8 at City Park. There would be activities geared to provide fun for all ages, and another opportunity to celebrate community. Further, tonight's agenda was comprehensive and reflected the culmination of many issues that had been repeated topics of discussion at community meetings, at Study Sessions, and at Council Outreach events. Many issues had been discussed at length and the resulting best scenario for Westminster was on the agenda for Council's consideration. He thanked those in the community that had participated and those on the Staff that had listened and captured everyone's ideas and concerns to craft meaningful solutions.

Councillor Pinter urged anyone who had not viewed it to watch the Westminster Station video on the City's website. Further, she reported having had an opportunity a week earlier to speak with other elected officials from around the United States who described their experiences following recent tragic events that involved their Police Departments and citizens. Being deeply affected by their accounts of these events, she had kept in her thoughts the remarks made by Police Chief Lee Birk at the Police Officers' Memorial Ceremony in May and was proud that Westminster's Police Officers understood how to protect and serve even the most vulnerable in society. She thanked them for their service.

EMPLOYEE LENGTH OF SERVICE AWARDS

City Council was honored to present length of service awards to employees celebrating from 20 to 40 years of service to the City. Councillor Seitz presented plaques and 20-year service pins to Cherie Sanchez and Mikele Wright. Mayor Atchison presented plaques, 25-year service pins, and checks for \$2,500 each to John Carpenter and Douglas Tiller. Councillor Baker presented a plaque and 30-year service pin to Eric Sisler. Councillor Garcia presented 35-year pins and plaques to Lisa Chrisman, Jinny Jasper and Matt Rippey; and Mayor Pro Tem Briggs recognized Mike Lynch for 40 years of service and presented him with a plaque and service pin.

PRESENTATION

Councillor Seitz accepted two 2015 Colorado Government Association and Information Technology (CGAIT) Awards from Kevin Beach, Chairman of CGAIT. The awards recognized the successes that the Information Technology Department had achieved in improving internal operations and in providing exceptional customer service. Participating in acceptance of the awards were Information Technology Director David Puntteney, Mobile Software Engineer Randy Land, Software Engineer Manager Art Rea, and Information Systems Manager Scott Rope.

CITIZEN COMMUNICATION

Theresa Breazeale, 7900 Raleigh Street, asked that Council members vote no on Councillor's Bill No. 38 to allow beekeeping and chicken husbandry within the City. Her neighbors currently had chickens even though they were not allowed in Westminster, and she had experienced increased raccoons, rats, and coyotes all seeking the eggs laid by the chickens. Chickens belonged on farms, not in the backyards of City residential properties.

Jeremy Rodriguez, Constituent Services Representative in the Office of Congressman Ed Perlmutter, updated Council on upcoming events the Congressman would host, which included: 1) Government in the Grocery at the ARC Thrift Store on August 1; 2) Telephone Town Hall on August 3; 3) STEM Competition at Northglenn High School on November 7; 4) Senior Resources Fair, November 20, location to be determined; 5) Academy Interviews Day for students seeking nomination for admission to attend military academies; and 6) December 5 Open House at the Congressman's office.

Rex Bevins, 9071 Garrison Street, questioned the City's role as developer of the former Westminster Mall site, and the plan for block-by-block development to include 4,500 new housing units. He wondered where everyone would park and who would be paying for structured or underground parking should either be planned.

CONSENT AGENDA

The following items were submitted on the consent agenda for Council's consideration: accept the June 2015 Financial Report as presented; accept the Second Quarter 2015 Insurance Claims Report; based on the recommendation of the City Manager, find that the public interest would be best served by authorizing the City Manager to execute a contract with Chandler Asset Management to provide investment advisory services to the City; authorize the City Manager to award the bid and execute a contract with the lowest and most qualified bidder, Maintenance Connection, Inc., in the amount of \$95,704 for the purchase and implementation of a Computerized Maintenance Management System for the Building Operations and Maintenance Division and authorize a contingency of 10% or \$9,570, bringing the total authorized expenditure for this project to \$105,274; final passage

on second reading of Councillor's Bill No. 32 vacating the entire final plat for Westminster Center Subdivision, Filing No. 1 and any streets dedicated by this plat; final passage on second reading of Councillor's Bill No. 33 appropriating a total of \$4,055,525 to the Westminster Station Garage/Grove Street project from the Regional Transportation District per the Intergovernmental Agreement between the City and the District, executed in June 2012; final passage on second reading of Councillor's Bill No. 34 making revisions to Title VI, Chapter 7 of the Westminster Municipal Code; and final passage on second reading of Councillor's Bill No. 35 authorizing the execution of a lease agreement in substantially the same form as the attached agreement for property located at 7225 Bradburn Boulevard, Westminster, CO 80021, to the South Westminster Arts Group.

Mayor Atchison advised that Councillor Baker had requested the removal of Agenda Item 8C from the consent agenda for individual consideration.

Councillor Baker moved to approve the consent agenda excluding Agenda Item 8C. Councillor De Cambra seconded the motion, and it carried with all Council members voting affirmatively.

INVESTMENT ADVISOR SERVICES CONTRACT

It was moved by Councillor Garcia and seconded by Councillor Seitz to find, based on the recommendation of the City Manager, that the public interest would be best served by authorizing the City Manager to execute a contract with Chandler Asset Management to provide investment advisory services to the City. The motion passed by a 6:1 margin with Councillor Baker voting no.

PUBLIC HEARING ON FOURTH AMENDED PDP FOR THE OLSON TECHNOLOGICAL PARK

At 8:02 p.m., the Mayor opened a public hearing to consider the Fourth Amended Preliminary Development Plan (PDP) for Olson Technological Park. Mac Cummins, Planning Manager, entered the agenda memorandum and attachments, noting that provisions for legal notification of this public hearing, as dictated by the Westminster Municipal Code, had been fulfilled. The Olson Technological Park was located at the northeast corner of Wadsworth Parkway and 108th Avenue. Proposed was the addition of Studios as an allowed land use for lots 2A, 3A, 4A, 5A and 5B. Studio was defined as a small, single purpose facility, containing no more than 4,000-square feet, for activities such as dance, martial arts, visual arts or calisthenics for improving strength and circulation or other similar uses as deemed appropriate by the City. The requested use was allowed as a secondary use per the property's Comprehensive Plan designation of Flex/Light Industrial. Based on Staff's analysis, the requested amendment to the PDP to add the Studio use complied with criteria set forth in the Westminster Municipal Code. The Planning Commission had reviewed this request on June 23 and had recommended approval. Mr. Cummins responded to questions from Councillors about noise impacts to existing businesses and the standing of Lots 4B and 5C condominium owners relative to changing their expectation at purchase of allowed uses within the development. Noise levels were not thought to be problematic in a light industrial zone development. Condominium owners of adjacent lots within the development had received legal notice of the purpose of this hearing and had the right to appear and voice their concerns, if any.

The Mayor opened the hearing to public comment. Ryan McBreen of Norris Design, the applicant's representative, stated that Staff had aptly presented the proposal. He was available to answer any questions. Steve Rasmussen, property owner, stated that the applicants also owned similar property in Golden where several design studios and a Karate studio were located with varied tenants. Light industrial property ranged from office uses to manufacturing uses, and tenants understood the potential mix.

There were no others who wanted to speak, and Council members had no questions. The Mayor closed the public hearing at 8:16 p.m.

FOURTH AMENDED PDP FOR THE OLSON TECHNOLOGICAL PARK

Mayor Pro Tem Briggs moved, seconded by Councillor Seitz, to approve the Fourth Amended Preliminary Development Plan for Olson Technological Park based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code had been met. The motion carried by a 6:1 margin. Councillor Baker voted no.

PUBLIC HEARING ON THIRTEENTH AMENDED PDP FOR NORTHPOINT CENTER

At 8:17 p.m., Mayor Atchison opened a public hearing to consider the Thirteenth Amended Preliminary Development Plan (PDP) for Northpoint Center, also known as Westminster Promenade West. Mr. Cummins entered the agenda memorandum and its attachments, as well as evidence that public notice requirements of the Westminster Municipal Code had been satisfied. This City-initiated application would remove from the Northpoint Center land to be included in the Westminster Promenade West Subdivision Preliminary Development Plan, also to be considered on this agenda. The Thirteenth Amendment would keep the boundaries between developments simplified and enable the redevelopment of the Promenade. Revitalization of the area being excluded from the Northpoint Center would facilitate a framework for a mixed-use development to include residential, commercial and office uses in an urban setting. Before the public hearing was opened for public input, Mr. Cummins clarified the boundaries of the proposed Thirteenth Amended PDP for the Northpoint Center.

Mayor Atchison opened the hearing to public input. No one wished to speak, and he closed the public hearing at 8:25 p.m.

THIRTEENTH AMENDED PDP FOR NORTHPOINT CENTER

Councillor Seitz moved to approve the Thirteenth Amended Preliminary Development Plan for Northpoint Center based on a finding that the criteria set forth in Sections 11-5-9(A)(2)(b) and 11-5-14 of the Westminster Municipal Code had been met. Mayor Pro Tem Briggs seconded the motion, and it carried on a 6:1 vote with Councillor Baker dissenting.

PUBLIC HEARING ON WESTMINSTER PROMENADE WEST SUBDIVISION

At 8:26 p.m., the Mayor opened a public hearing to consider the Westminster Promenade West Subdivision Preliminary Development Plan (PDP), Master Official Development Plan (MODP), Comprehensive Plan Amendment for Blocks 1A, 1B, and 2, and a request for a ten-year vesting of a Site-specific Development Plan consisting of the PDP and the MODP. Mr. Cummins entered the agenda memorandum and its attachments. Legal notification to the public of this hearing and its purpose had been provided in accordance with Westminster Municipal Code requirements. In addition to providing a history of the Westminster Promenade, Mr. Cummins summarized the proposal to revitalize the development and enhance the original vision for the area. In response to Council's questions, based on Staff's evaluation of the application, there might be interim strategies associated with the requested change in land use designation from Mixed Use Center to Mixed Use. The MODP contemplated three blocks of residential development, equating roughly to 500 units based on acreage and the allowed density requested. MODP Guidelines for development were specific, but the Planning Manager was granted authority by the Westminster Municipal Code to make an analogous finding relative to synonymous materials or color if supplies changed in the next ten years. Staff could not recall granting a ten-year vesting right previously; however, if the vesting request were granted and a market change occurred, the applicant could request a change in the PDP or MODP to address the situation. The Planning Commission had considered this proposal and recommended approval.

There were no further questions, and Mayor Atchison opened the podium for public comment.

Rich Kraus of Acumen Development, represented the property owners. The PDP and MODP were the exciting culmination of eight months of work to accommodate interim uses thought to be available now. The entire concept was based on providing flexibility to the project to meet demands for different product types at certain times.

Residential units would be dense and likely rental properties initially. The change from Mixed Use Center to Mixed Use was responsive to demands for retail development that needed to be established to provide the amenities that would attract residential development. It was agreed at the Planning Commission meeting that efforts would be to increase density in later development stages. Mr. Kraus thanked Staff for their collaboration and understanding of the goal to provide flexibility to respond to market conditions throughout the ten-year development period.

Rex Bevins, 9071 Garrison Street, thought it was commendable that the developer was proposing these changes. Heidi Anderson, 3321 Kassler Place, was excited by the plans described and that the City was moving in a productive, progressive fashion. Kelly Porter, 10861 Otis Circle, inquired about traffic studies and mitigation planned to address increased traffic in the vicinity. Staff responded that traffic studies showed a need for additional deceleration lanes westbound on 104th Avenue. A new road running from south to north in front of the AMC Theatre would make the site more permeable and help with traffic flow. There was adequate capacity on Westminster Boulevard up to 112th Avenue. North of that intersection was shared jurisdiction between Westminster and Broomfield where additional work would probably be needed in the future.

No others wished to speak. Responding to questions from Council, Mr. Kraus reported that persons familiar with the Rocky Mountain Airport navigation easement had voiced no concerns about the plans to construct residential units in the flight path. Mr. Cummins confirmed that if vested rights for ten years were granted and the City's policies changed during that time, the standards approved with this recommended action would be those applicable to the developer.

There were no other questions, and Mayor Atchison closed the public hearing at 8:55 p.m.

COUNCILLOR'S BILL NO. 36 – WESTMINSTER PROMENADE WEST CP AMENDMENT

Councillor Garcia moved to pass on first reading Councillor's Bill No. 36 approving a Comprehensive Plan Amendment from Mixed Use Center to Mixed Use for Blocks 1A, 1B, and 2 (approximately 12.147 acres) of the Promenade West Subdivision (32 acres total), based on a finding that the criteria set forth in Section 11-4-16(D)(4), W.M.C., had been met. Councillor Seitz seconded the motion and at roll call, the motion passed by a 6:1 vote with Councillor Baker dissenting.

WESTMINSTER PROMENADE WEST SUBDIVISION PRELIMINARY DEVELOPMENT PLAN

It was moved by Councillor Garcia and seconded by Mayor Pro Tem Briggs to approve the Westminster Promenade West Subdivision Preliminary Development Plan, based on a finding that the criteria set forth in Section 11-5-14, W.M.C., had been met. The motion carried by a 6:1 margin with Councillor Baker voting no.

WESTMINSTER PROMENADE WEST MASTER OFFICIAL DEVELOPMENT PLAN

Upon a motion by Councillor Garcia, seconded by Mayor Pro Tem Briggs, the Council voted 6:1 to approve the Westminster Promenade West Subdivision Master Official Development Plan, based on a finding that the criteria set forth in Section 11-5-15, W.M.C., had been met. Councillor Baker voted no.

VESTED RIGHT FOR WESTMINSTER PROMENADE WEST SUBDIVISION SITE-SPECIFIC PLAN

Councillor Garcia moved and Mayor Pro Tem Briggs seconded to approve a vested right, pursuant to Section 11-5-18, W.M.C., for a Site-Specific Development Plan consisting of the Preliminary Development Plan and the Master Official Development Plan for the Westminster Promenade West Subdivision for a period of ten years. The motion carried by a 6:1 vote with Councillor Baker voting no.

BILL NO. 37 APPROPRIATING RTD FUNDS TO WESTMINSTER STATION PHASE I

It was moved by Mayor Pro Tem Briggs to pass on first reading Councillor's Bill No. 37 appropriating a total of \$3,136,237 received from the Regional Transportation District to the Westminster Station Drive North Infrastructure project per the Intergovernmental Agreement between the City and the District. Councillor Baker seconded the motion, and on roll call vote, it passed unanimously.

WESTMINSTER STATION PHASE I INFRASTRUCTURE PROJECT CONSTRUCTION CONTRACT

It was moved by Mayor Pro Tem Briggs and seconded by Councillor Pinter to authorize the City Manager to award the bid and execute a contract with Concrete Express, Incorporated, in the amount of \$6,722,509.15 for the construction of the Westminster Station - Phase 1 Infrastructure project; and authorize a construction contingency of \$670,000 which may include the bid alternates such as a snow melt system in the North Station Plaza, concrete wall finish or a stone veneer on the retaining walls for a total authorized expenditure of \$7,392,509.15. The motion passed by a vote of 6:1 with Councillor Baker dissenting.

WESTMINSTER STATION PHASE I INFRASTRUCTURE PROJECT DESIGN SERVICES CONTRACT

Mayor Pro Tem Briggs moved, seconded by Councillor Seitz, to authorize the City Manager to execute a contract amendment with Martin/Martin, Inc. in the amount of \$36,453 for the Westminster Station - Phase 1 Infrastructure project design services. The motion carried unanimously.

WESTMINSTER STATION PHASE I INFRASTRUCTURE PROJECT CONSTRUCTION ENGINEERING

Mayor Pro Tem Briggs moved to authorize the City Manager to execute a contract with Martin/Martin, Inc. in the amount of \$255,033 plus a contingency of \$25,503 for a total of \$280,536 for the construction engineering services for the Westminster Station - Phase 1 Infrastructure project. The motion passed by unanimous vote.

Clerk's Note: At the request of Council, Mayor Atchison called a five-minute recess at 9:04 p.m. The meeting reconvened at 9:09 p.m. with all Council members present.

COUNCILLOR'S BILL NO. 38 AMENDING W.M.C., TITLE VI, TO ALLOW BEEKEEPING & CHICKENS

It was moved by Mayor Pro Tem Briggs, seconded by Councillor Seitz, to pass on first reading Councillor's Bill No. 38 updating animal regulations in Title VI of the Westminster Municipal Code concerning beekeeping and chicken husbandry. Following brief discussion, the roll was called and the motion carried by a 5:2 vote with Mayor Atchison and Councillor Baker casting the dissenting votes.

COUNCILLOR'S BILL NO. 39 APPROPRIATING FY2014 CARRYOVER TO FY2015

It was moved by Councillor Garcia and seconded by Councillor Seitz to pass on first reading Councillor's Bill No. 39, appropriating FY2014 carryover funds into the FY2015 budgets of the budgets of the General, General Reserve, General Fund Stabilization Reserve, General Capital Improvement, Fleet, Sales and Use Tax, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement, and Golf Course Funds. At roll call, the motion passed by a 6:1 margin with Councillor Baker voting no.

RESOLUTION NO. 23 ADOPTING THE 2015 STRATEGIC PLAN

Councillor De Cambra moved to adopt Resolution No. 23 officially adopting the 2015 Strategic Plan. After being seconded by the Mayor Pro Tem, the motion passed 6:1 on roll call vote with Councillor Baker opposed.

RESOLUTION NO. 24 APPROVING IGAs WITH CDOT FOR LDC TRAIL FEDERAL TO LOWELL

Upon a motion by Councillor Pinter, seconded by Mayor Pro Tem Briggs, the Council voted unanimously at roll call to adopt Resolution No. 24 authorizing the City Manager to execute an Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the receipt of \$324,000 from the State of Colorado for the construction of a concrete trail and a 160-foot long pedestrian bridge along Little Dry Creek at Westminster Station.

LOCAL MATCH FOR CDOT FUNDING OF LDC TRAIL FEDERAL TO LOWELL PROJECT

It was moved by Councillor Pinter, seconded by Mayor Pro Tem Briggs, to authorize the payment of \$81,000 toward the Little Dry Creek Trail Federal to Lowell Project in 2016 as part of the Local Agency Matching Funds requirement. The motion carried unanimously.

RESOLUTION NO. 25 APPROVING FALL 2015 ADAMS COUNTY OPEN SPACE GRANT APPLICATIONS

Councillor Seitz moved to adopt Resolution No. 25 authorizing the Parks, Recreation, and Libraries Department to pursue two grants from the Adams County Open Space grant program during the 2015 fall cycle in the amount of \$1,100,000 for the LongsView Trail project, which included trail upgrades and new trail connections along the Big Dry Creek Trail from 120th Avenue to 128th Avenue, and \$290,000 for the reimbursement of a portion of the acquisition of property at 6950 Lowell and for the demolition of structures at 6930, 6940, 6950, and 6960 Lowell Boulevard for the Little Dry Creek Park project. Mayor Pro Tem Briggs seconded the motion, and it passed unanimously at roll call.

ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, the Mayor adjourned the meeting at 9:32 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Recognition of the Lao Buddhist Temple Dragon Boat Team

Prepared By: Ryan Hegreiness, Parks, Recreation & Libraries Operations Manager

Recommended City Council Action

Mayor Atchison has requested to recognize the Lao Buddhist Temple Dragon Boat Team for their success in the 2015 Colorado Dragon Boat Festival. The team took first place in the 125 Meter Sprint Races, first place in the Competitive 250 Meter Races and second place in the Competitive 500 Meter Races.

Summary Statement

- The City of Westminster sponsored the Lao Buddhist Temple Dragon Boat Team in the 2015 Colorado Dragon Boat Festival.
- There are a total of 22 crew members; 10 women and 12 men, ages ranging from 13 - 36 years of age, who put a lot of time and effort into training and preparing for the races.
- The Colorado Dragon Boat Festival was held on July 18-19, 2015, at Sloan's Lake Park in Denver.
- The Mayor, City Manager, members of Council and other City Staff joined friends and family of the Lao Buddhist Temple Dragon Boat Team to cheer them on at the event.
- The Westminster Lao Buddhist Temple team took two gold medals and one silver medal at this year's event.
- The City desires to recognize the Lao Buddhist Temple Dragon Race Team for their hard work and dedication, which led to three medals at the Colorado Dragon Boat Festival.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Dragon Boat Festival's roots go back thousands of years in China, as the Duanwu Festival, which remains a traditional holiday in mainland China and Taiwan. Today, it has spread all over the globe. It is a sports competition with 54 corporate and community teams comprised of some 1,350 competitors plus 80,000+ spectators. These hardy boaters clamber aboard intricate and colorful dragon boats and race their way across Sloan's Lake in a thrilling race. There's nothing quite like it in all of Colorado.

Beyond the competition, the Dragon Boat Festival serves as an ethnic celebration of Colorado's rich Pan Asian American heritage, showcasing diverse Asian cuisine and performing artists. Attendees can also spend time browsing the unique arts, crafts and vendors that are more likely to be found in the markets of Hong Kong, Tokyo or Manila.

The Lao Buddhist Temple is located at 10685 Dover Street. They will be present Monday night to receive recognition from the Mayor and City Council.

Respectfully submitted,

Donald M. Tripp
City Manager



Agenda Item 6 B

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Proclamation Recognizing Local Top Spin Team - National Tournament Champions

Prepared By: Alexa Priddy, Communication and Outreach Coordinator

Recommended City Council Action

Mayor Atchison is requested to present a proclamation in recognition of the Dab Ntxaug Top Spin team for their success in winning the July 4, 2015, 35th Annual National Tournament in St. Paul, Minnesota.

Summary Statement

- Nearly seven years after the top spin field was built at Skyline Vista Park, the team Dab Ntxaug won the first place in the St. Paul, Minnesota, 35th Annual July 4th Tournament of 2015 in the Top Spin category. The July 4th Tournament is one of the largest Asian festivals in America, and Dab Ntxaug won over 22 other teams over the course of eight games of two rounds each.
- The top spin field in Westminster, Colorado, is the first built in the United States for the community. Westminster City Council and staff worked with Hmong community leaders to develop the park, which is the first of its kind in the country.
- Some of the best top spin players in the United States live in the Westminster area. They travel to compete against other teams nationally.
- Some members of the championship Dab Ntxaug Top Spin Team along with the President and members of the Hmong American Association of Colorado, Xue Lor, Teng Vue, Travis Xiong, and SomXai Vue, will be present to accept the proclamation. Championship team members include Bi Lor, Sue Lao, Fong Lao, Neng Lor, Nhia Her Lor, and Xao Lai Vue.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified.

Alternative

None identified.

Background Information

The top spin is one of the world's oldest crafted toys, found in all cultural circles of the world, mostly in Asia. The top might be slightly different from others, in term of the shapes of the top and how it's played. For the Hmong, top spin is played during the New Year Festival as part of the celebrations after the harvest. Now, top spin is being played year round as a recreational sport.

The top spin field in Westminster, Colorado, is the first community field built in the United States. Westminster City Council and staff worked with Hmong community leaders to develop the park. This court is truly one-of-a-kind and is a major improvement over the plastic or wooden boards that the game has historically been played on.

Top spin is played with two teams with six players on each side. The first part of the court consists of a launching area from where the players release the tops. Next, there is a square, called step or station 1, where each defensive player spins a top that is hit by an offensive player's top. Whoever's top spins the longest scores a point. The final portion of the top spin court looks like a long jump platform and consists of nine different steps. Teams score points by hitting tops at each of these steps. Each step has a different configuration and a different number of tops. For the 1st and 2nd steps, the tops are actually spinning. At the other steps, the tops are static. For many players, the last step provides a significant challenge.

Top spin is played by adults and youth. Future top spin aces are getting their start in Westminster, not only building skills, but also carrying the sport and tradition forward.

This proclamation supports City Council's Strategic Plan goal of a Vibrant, Inclusive and Engaged Community through public recognition of an activity that promotes teamwork, community gathering and a rich cultural diversity in the City of Westminster.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment - Proclamation

WHEREAS, the Dab Ntxaug Top Spin Team won the 35th Annual July 4th Tournaments in the Top Spin category, in St. Paul, Minnesota during July 4-5, 2015; and

WHEREAS, Dab Ntxaug played eight games with two rounds each to win the championship; and

WHEREAS, Dab Ntxaug competed in a tournament of 22 teams representing communities across the nation; and

WHEREAS, top spin is a team competition that helps build character through teamwork, communication, hard work, perseverance and good sportsmanship; and

WHEREAS, top spin is a game rich in history and culture; and

WHEREAS, the City of Westminster is committed to supporting and recognizing the tradition and success of our local top spin teams and competitors.

NOW, THEREFORE, I, Herb Atchison, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby recognize

DAB NTXAUG TOP SPIN TEAM

as Champions in the City of Westminster.

Signed this 10th day of August, 2015.

Herb Atchison, Mayor



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Second Intergovernmental Agreement Regarding Inmates in the Adams County Jail

Prepared By: Hilary Graham, Deputy City Attorney
Debbie Mitchell, General Services Director
Carol Barnhardt, Court Administrator

Recommended City Council Action

Authorize the City Manager to enter into the Second Intergovernmental Agreement (IGA) with the cities of Arvada, Aurora, Brighton, Commerce City, Federal Heights, Northglenn, Thornton, and the Town of Bennett (the “Adams County Municipalities”) regarding municipal non-domestic violence inmate bed space allocations and a per diem fee assessment process for use of the Adams County Detention Facility in substantially the form presented here.

Summary Statement

- Beginning in at least October 2011, the use of bed space at the Adams County Detention Facility (ACDF) has been a Staff concern. At that time, the Adams County Sheriff began imposing limits on the number of municipal prisoners allowed in the jail at any point in time.
- The cities of Aurora, Commerce City, Federal Heights, and Northglenn initiated a lawsuit on the matter in early 2014.
- As part of a temporary negotiated resolution to the lawsuit, all of the Adams County Municipalities worked out among themselves, in the form of an IGA, a process for fairly allocating the total bed space (the “Cap”) allowed by the Sheriff for non-domestic violence related prisoners, and a mechanism for applying the per diem fee (\$45 per day) that the Sheriff charges for municipal inmates in excess of the Cap.
- The first IGA was approved by City Council on September 8, 2014, and allocated to the City of Westminster ten (10) of the sixty-five (65) total municipal inmate beds within the Cap.
- This second IGA, if approved, will allow for final resolution of litigation, to which the City is not a party, on the matter of municipal access to and use of the Adams County Detention Facility. This second IGA will accommodate a higher municipal inmate cap (80), a higher bed allocation for Westminster (12), and will continue to provide the certainty created by first IGA on this topic, allowing the Adams County Municipalities to work together to ensure continued municipal access to the Adams County Detention Facility.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

Should the City enter into the second IGA with the Adams County Municipalities to ensure bed space for Westminster Municipal Court prisoners?

Should the City continue to authorize incurring the per diem charge of \$45 per day, when and if needed within the discretion of Staff, to assure continued housing of prisoners in excess of the City's allocated bed space?

Alternatives

Do not authorize approval of the second IGA. This is not recommended as it could jeopardize the final settlement of the lawsuit between the cities of Aurora, Commerce City, Federal Heights, Northglenn, and Thornton. Moreover, not entering into the second IGA could jeopardize the City Municipal Court's ability to sentence individuals to be housed in the Adams County Detention Facility (ACDF) and could create uncertainty as to the per diem rate the Sheriff would impose on Westminster inmates separately, if they are permitted at all. That said, the City has established alternative access to the Jefferson County and Gilpin County jails by IGA, if needed, at a similar per diem rate.

Authorize approval of the IGA, but do not approve incurring the per diem charges as needed when both the total Cap and the City's individual cap of twelve (12) beds is exceeded. This is not recommended because the time constraints for release of inmates and imposition of per diem charges as set forth in the IGA under Section I (A)(6)(d) and (f) will make it very challenging for Court staff to avoid per diem charges.

Background Information

The full history of this jail access dispute is set forth in the September 8, 2014, Agenda Memorandum by which Staff sought approval of the first IGA. That memo is attached here for reference. For Council's consideration of the second IGA, it is important to note that, during operation of the first IGA, the per diem charge was never incurred by Westminster.

The first IGA expired on its own terms on May 31, 2015, and the temporary stay in the lawsuit expired at the end of July 2015. As part of reaching final settlement of the lawsuit, the new Adams County Sheriff, Michael McIntosh, has agreed to increase the ACDF Cap to eighty (80) for non-domestic violence related prisoners while keeping the per diem charge, if the cap is exceeded, at \$45 per day.

The first IGA worked well, and all parties wish to formalize final resolution of the matter by approval of this second IGA. This second IGA uses the same terms and adopts the same mechanism for applying the same per diem fee (\$45 per day) if the Cap is exceeded. Yet, this second IGA acknowledges the Sheriff's agreement to increase the Cap from sixty-five (65) to eighty (80) municipal inmate beds and allocates twelve (12), up from ten (10), of those beds for the City of Westminster's use. Sentencing records show that the Municipal Court can generally operate within the twelve (12) bed limit and would only need to exceed that limit on occasion, at which time Staff could consider the other municipalities' use of the total Cap, and determine whether keeping a particular inmate in custody merited incurring the per diem charge.

Unlike the first IGA, this second IGA will be of ongoing duration unless termination is agreed to by all parties in writing.

Approval of the second IGA supports the City's Strategic Plan Goal of Financially Sustainable Government Providing Excellence in City Services by ensuring that the City's Municipal Court has access to ACDF. It

SUBJECT: Second IGA Regarding Inmates in the Adams County Jail

Page 3

also supports the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration, as approval of this second IGA would further collaboration with the Adams County Sheriff and the surrounding cities in Adams County.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Second IGA
September 8, 2014, Agenda Memorandum re: Approval of First IGA

**SECOND INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF
ARVADA, AURORA, BRIGHTON, COMMERCE CITY, FEDERAL HEIGHTS,
NORTHGLENN, THORNTON, AND WESTMINSTER, AS WELL AS THE TOWN OF
BENNETT, COLORADO
REGARDING MUNICIPAL NON-DOMESTIC VIOLENCE INMATE
ALLOCATIONS AND PER DIEM FEE ASSESSMENT PROCESS
FOR THE ADAMS COUNTY DETENTION FACILITY**

THIS SECOND INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Thornton, and the City of Westminster, Colorado, all Colorado home rule municipalities, and the Town of Bennett, a Colorado statutory town, collectively sometimes referred to herein as the “Cities” or “Parties” and individually as “City or Party.”

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and C.R.S. § 29-1-201 authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, pursuant to C.R.S. § 31-15-401(k), municipalities may use the county jail for confinement or punishment of offenders “with the consent of the board of county commissioners”; and

WHEREAS, pursuant to a prior Settlement Agreement entered in connection with litigation pending in Adams County District Court captioned: *CITY OF AURORA; CITY OF COMMERCE CITY; CITY OF FEDERAL HEIGHTS; CITY OF NORTHGLENN; and CITY OF THORNTON, Colorado, municipal corporations, v. DOUGLAS N. DARR, in his official capacity as Adams County Sheriff, State of Colorado; and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS*, Civil Action No. 2014CV30353 (“Action”), the municipalities named in said litigation were subjected to a flexible (“soft”) cap of 65 non-domestic violence related municipal prisoners (aka “inmates”) who may be held at the Adams County Detention Facility (“ACDF”) solely for municipal charges; and

WHEREAS, pursuant to the Settlement Agreement, the Sheriff could have charged said municipalities in Adams County a per diem fee of up to \$45 for any such municipal inmate held at the ACDF in excess of the 65 cap; and

WHEREAS, pursuant to a new Settlement Agreement in the Action, the municipalities named in the Action are now subjected to a flexible (“soft”) cap of 80 non-domestic violence related municipal prisoners (aka “inmates”) who may be held at the ACDF solely for municipal charges; and

WHEREAS, pursuant to the new Settlement Agreement in the Action, the Sheriff may charge said municipalities in Adams County a per diem fee of up to \$45 for any such municipal inmate held at the ACDF in excess of the 80 cap; and

WHEREAS, the Sheriff and the Cities recognize that the Jail Cap applies to all the Cities; as such Cities are authorized to use the ACDF pursuant to C.R.S. §31-15-401(k); and

WHEREAS, it is in the best interests of the Cities to agree among themselves on a process for allocating the 80 beds available without charge in the ACDF for municipal inmates and for determining which of the Cities will be responsible for paying per diem fees the Sheriff may impose for their municipal inmates in the event the 80 cap is exceeded.

NOW, THEREFORE, in consideration of the promises and conditions contained herein the Cities hereto agree as follows:

I. PROCESS FOR THE PAYMENT OF PER DIEM FEES WHEN MUNICIPAL INMATES EXCEED THE ABOVE 80 CAP AND THE ALLOCATION OF BED SPACE AMONGST THE CITIES.

A. The Cities agree to the process for payment of fees as follows:

1. Each City must provide the Sheriff with the email address of each person to whom the Sheriff should send the daily municipal inmate count. The Sheriff has agreed to provide the Cities with the email address(es) to which the Sheriff wants the emails noted below to be sent.

2. The Sheriff will email the municipal inmate count by 9:00 a.m. each day of the week (including weekends and holidays) to the Cities.

3. Each City will review the list on at least each business day verifying its inmates listed are accurate in terms of names, holds, charges, and individual municipal inmate count. If any discrepancies are found, that City will notify the designated staff persons at the ACDF and all other Cities via email no later than 5:00 p.m. on the second business day following the Sheriff's publication of the list.

4. If the total number of municipal non-DV inmates is 80 or less, no additional action is necessary by any City.

5. If the total number of municipal non-DV inmates exceeds 80, any City that has not exceeded its individual allocation (as shown in Table A below) need not take any action and will not ultimately be subject to any per diem fees for this day (see paragraph A.6.f.). Each City must specify on all applicable paperwork (including but not limited to: in-custody booking forms, jail mittimus forms, warrants, and other correspondence) whether or not an inmate is being held on a DV charge. If any City's paperwork contains an error, that City will be responsible for any per diems assessed because of that error, unless such City notifies the Sheriff of such error by 5:00 p.m. on the second succeeding business day following the Sheriff's publication of the list of municipal inmates.

6. If the total number of municipal non-DV inmates exceeds 80, any City that has exceeded its individual allocation (as shown in Table A below) will have **12 hours from the time the Sheriff sent the daily email or 9:00 p.m., whichever is later**, to either release one or more of its non-DV inmates and/or risk being assessed a per diem fee for one or more of its non-DV inmates. If any such City's decision is to release one or more of its inmates, it must notify the Sheriff by email as noted above, to avoid any per diem liability for such inmate(s). Any such City's email should also be sent to all Cities to ensure all are kept informed of each City's decisions regarding its municipal inmates.

a. If the total number of municipal non-DV inmates exceeds 80, the City that has exceeded its individual allocation by the greatest number of inmates will first be assessed a per diem fee if it has not released one or more inmates by the established deadline. In the event more than one City has exceeded their allocation by the same number of inmates, and a per diem fee results for such inmate(s), such fee will be split equally among these Cities.

b. Step "a" above will be repeated until the remaining municipal non-DV inmate count for that day either by release and/or by commitment to pay a per diem fee(s) is at or below 80. See examples below.

c. Any City that notifies the Sheriff to release all of its inmates that were over its individual allocation on any given day by the established deadline for such day will not ultimately be subject to any per diem fees for this day (see paragraph A.6.f.).

d. For any day for which a per diem is to be assessed, the Sheriff must be sent an email **by 5:00 p.m. on the second business day** following the Sheriff's email containing the daily municipal inmate count for that day by each City that details the amount to be billed for each such day(s). Any such City's email should also be sent to all Cities to ensure all are kept informed of each City's decisions regarding its municipal inmates. If the Cities fail to provide such information to the Sheriff by the established deadline, the Sheriff will bill the per diems for any excess inmates on a last-in, first-charged basis.

e. Adams County will bill the appropriate Cities monthly and payment is due to the County within 30 days of receipt of such invoice.

f. If a City fails to notify the Sheriff as provided for in paragraph A.6.d. above, and as a result the Sheriff assesses a per diem charge on a "last-in, first-charged" basis, the City assessed such per diem charge may invoice the City(ies) that failed to notify the Sheriff in a timely manner and such City(ies) shall reimburse the City charged on the "last-in, first- charged" basis for all such per diem charges within 30 days of receipt of such invoice.

B. The Cities agree to the following allocation of beds in ACDF for municipal inmates:

1. The Cities individual bed allocations are set forth below in Table A.

TABLE A

| Municipality | 80 Bed Allocation |
|-----------------|-------------------|
| Arvada | 2 |
| Aurora | 14 |
| Bennett | 1 |
| Brighton | 7 |
| Commerce City | 12 |
| Federal Heights | 4 |
| Northglenn | 7 |
| Thornton | 21 |
| Westminster | 12 |
| | |
| Total | 80 |

2. The following reflect examples of how the above-stated process would work in practice.

Example #1. In the example below even though several Cities are over their allocation, since the total number of inmates is 80 or less, no action needs to be taken and no per diem fees will accrue.

| Municipality | Proposed 80 Bed Allocation | # of Municipal Inmates at Count | # Over/Under Individual Allocation | Result |
|-----------------|----------------------------|---------------------------------|------------------------------------|------------------|
| Arvada | 2 | 1 | -1 | No Action Needed |
| Aurora | 14 | 15 | +1 | No Action Needed |
| Bennett | 1 | 0 | -1 | No Action Needed |
| Brighton | 7 | 5 | -2 | No Action Needed |
| Commerce City | 12 | 13 | +1 | No Action Needed |
| Federal Heights | 4 | 4 | 0 | No Action Needed |
| Northglenn | 7 | 5 | -2 | No Action Needed |
| Thornton | 21 | 23 | +2 | No Action Needed |
| Westminster | 12 | 12 | 0 | No Action Needed |
| | | | | |
| Total | 80 | 78 | -2 | Under Soft Cap |

Example #2. In the example below the total number of inmates is over 80 by two inmates so those three Cities that are over their allocation may be at risk. Since Thornton is over its allocation the most (2 over) it would be the first to decide whether to release an inmate or be charged a per diem. Following this action, there are three Cities that are each one

over (Aurora, Commerce City, and Thornton). Each of these Cities would be faced with the decision to either release an inmate or risk being charged up to 1/3 per diem.

So to recap, if all occurred as described above, Thornton would either be charged 1 1/3 per diem (if it did not release its first inmate and none released another inmate) or 1/3 per diem along with Aurora and Commerce City if Thornton did release its first inmate, but none released another inmate.

| Municipality | Proposed 80 Bed Allocation | # of Municipal Inmates at Count | # Over/Under Individual Allocation | Result |
|-----------------|----------------------------|---------------------------------|------------------------------------|------------------|
| Arvada | 2 | 0 | -1 | No Action Needed |
| Aurora | 14 | 15 | +1 | At Risk |
| Bennett | 1 | 0 | -1 | No Action Needed |
| Brighton | 7 | 7 | 0 | No Action Needed |
| Commerce City | 12 | 13 | +1 | At Risk |
| Federal Heights | 4 | 4 | 0 | No Action Needed |
| Northglenn | 7 | 7 | 0 | No Action Needed |
| Thornton | 21 | 23 | +2 | At Risk |
| Westminster | 12 | 12 | 0 | No Action Needed |
| | | | | |
| Total | 80 | 82 | +2 | 2 Over Soft Cap |

Example #3. In the example below the total number of inmates is over 80 by three inmates so those three jurisdictions that are over their allocation may be at risk. Since Commerce City is over its allocation the most (5 over) it would be the first to be charged a per diem if one of its inmates were not released. After Commerce City decides whether to release or risk paying a per diem for the first inmate over its individual allocation, it remains most over its allocation (4 over), so it would again be faced with either releasing an inmate or paying another per diem. Commerce City remains the most over its allocation (3 over), so it would again be faced with either releasing an inmate or paying another per diem.

So to recap, if all occurred as described above, Commerce City would be faced with either releasing up to three inmates or being charged up to three per diems. Even though Aurora and Thornton were also over their allocations, they would not be impacted because Commerce City remained the most over its allocation.

| Municipality | Proposed 80 Bed Allocation | # of Municipal Inmates at Count | # Over/Under Individual Allocation | Result |
|--------------|----------------------------|---------------------------------|------------------------------------|------------------|
| Arvada | 2 | 2 | 0 | No Action Needed |
| Aurora | 14 | 15 | +1 | At Risk |

| | | | | |
|-----------------|----|----|----|------------------|
| Bennett | 1 | 0 | -1 | No Action Needed |
| Brighton | 7 | 5 | -2 | No Action Needed |
| Commerce City | 12 | 17 | +5 | At Risk |
| Federal Heights | 4 | 3 | -1 | No Action Needed |
| Northglenn | 7 | 7 | 0 | No Action Needed |
| Thornton | 21 | 22 | +1 | At Risk |
| Westminster | 12 | 12 | 0 | No Action Needed |
| | | | | |
| Total | 80 | 83 | +3 | 3 Over Soft Cap |

II. TERM.

This Agreement shall be in effect until otherwise agreed to by all the Cities in writing.

III. NONAPPROPRIATIONS CLAUSE.

The Cities herein acknowledge and agree that each has every intention of carrying out and performing the provisions of this Agreement for its entire term. Each City agrees it shall make every reasonable effort to ensure the continued appropriation of funds for the payments referenced in this Agreement. In the event that any of the respective City Councils fail to appropriate funds for the continuation of this Agreement for any fiscal year past the first fiscal year, the Cities may, at the beginning of the fiscal year for which the City Councils do not appropriate such funds and upon thirty (30) days prior written notice, terminate this Agreement without penalty and thereupon be released of further obligations pursuant thereto.

IV. PROVISIONS CONSTRUED AS TO FAIR MEANING.

The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attributes to such Party as the source of the language in question.

V. NO IMPLIED REPRESENTATIONS.

No representations, warranties, or certifications, express or implied, shall exist as between the Parties, except as specifically stated in this Agreement.

VI. NO ORAL OR COLLATERAL AGREEMENTS OR UNDERSTANDINGS.

This Agreement may be amended only by an instrument in writing signed by the Parties.

VII. INTEGRATED AGREEMENT.

This Agreement is an integration of the entire understanding of the Parties with respect to the matters stated herein.

VIII. WAIVER.

The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

IX. UNCONSTITUTIONALITY.

The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement, and each and every provision thereof, are declared to be severable.

X. GOVERNMENTAL IMMUNITY.

The Parties hereto understand and agree that the Parties, their officers and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time-to-time amended, or otherwise available to the Parties their officers, or their employees.

XI. NOTICE.

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other Party or City. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Arvada
City Manager
8101 Ralston Rd
P.O. Box 8101
Arvada, CO 80001-8101

City of Aurora:
City Manager
City of Aurora
15151 East Alameda Parkway
Aurora, CO 80012

Town of Bennett
Town Administrator
355 Fourth Street
Bennett, CO 80102

City of Brighton
City Manager
Brighton City Hall
500 South 4th Avenue
Brighton, CO 80601

City of Commerce City
City Manager
7887 E. 60th Avenue
Commerce City, CO 80022

City of Federal Heights
City Manager
City of Federal Heights
2380 W 90th Avenue
Federal Heights, CO 80260

City of Northglenn
City Manager
11701 Community Center Drive
Box 330061
Northglenn, CO 80233

City of Thornton:
City Manager
City of Thornton
9500 Civic Center Drive
Thornton, CO 80229

City of Westminster
City Manager
4800 West 92nd Avenue
Westminster, Colorado 80031

XII. APPLICABLE LAW AND VENUE.

This Agreement shall be interpreted and enforced pursuant to the laws of the State of Colorado. In the event of litigation concerning this Agreement, the Parties agree that proper venue shall be the District Court, Adams County, Colorado.

XIII. LITIGATION.

Each Party hereto shall be responsible for any suits, demand, costs or actions at law resulting from its own acts or omissions.

XIV. EFFECTIVE.

This Agreement shall supersede and replace the First Intergovernmental Agreement entered between the Parties in conjunction with the initial Settlement Agreement entered in the Action and will become effective as of the last date of execution by the Parties hereto, subject to the full execution of the New Settlement Agreement in the Action.

XV. EXECUTION

This Agreement may be executed in counterparts. Each of which shall be considered an original and all of which together shall constitute one and the same interests and any facsimile or electronic signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, The Cities have caused this Agreement to be duly executed as of the day and year below written.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK

(SIGNATURES FOLLOW ON NEXT PAGE)

CITY OF ARVADA, COLORADO

By: _____ Date: _____

Marc Williams, Mayor
City of Arvada
8101 Ralston Road
P.O. Box 8101
Arvada, Colorado 80001

ATTEST:

City Clerk

APPROVED AS TO FORM:

Christopher K. Daly, City Attorney

CITY OF AURORA, COLORADO

By: _____ Date: _____

Stephen D. Hogan, Mayor
Aurora Municipal Center
15151 East Alameda Parkway
Aurora, Colorado 80012

ATTEST:

Janice Napper, City Clerk

APPROVED AS TO FORM:
Michael J. Hyman, City Attorney

Teresa L. Kinney, Senior Assistant City Attorney
Daniel L. Money, Assistant City Attorney II

TOWN OF BENNETT, COLORADO

By: _____ Date: _____
Sue F. Horn, Mayor

ATTEST:

Lynette F. White, Town Clerk

APPROVED AS TO FORM:
Light Kelly, PC

Samuel J. Light, Town Attorney

CITY OF BRIGHTON, COLORADO

By: _____ Date: _____
Richard N. McLean, City Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

CITY OF COMMERCE CITY, COLORADO

By: _____ Date: _____

Brian K. McBroom, City Manager
Commerce City Civic Center
7887 East 60th Avenue
Commerce City, Colorado 80022
Telephone: (303) 227-8808
Facsimile: (303) 289-3688
bmcmbroom@c3gov.com

ATTEST:

Laura Bauer, City Clerk

APPROVED AS TO FORM:

Robert Gehler, City Attorney

CITY OF FEDERAL HEIGHTS, COLORADO

By: _____ Date: _____

Joyce Thomas, Mayor
City of Federal Heights
2380 W. 90th Ave.
Federal Heights, CO 80260

ATTEST:

Patti Lowell, CMC, City Clerk

APPROVED AS TO FORM:

William P. Hayashi, City Attorney

CITY OF NORTHGLENN, COLORADO

By: _____ Date: ____
Joyce Downing, Mayor

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CITY OF THORNTON, COLORADO

By: _____ Date: _____
Jack Ethredge, City Manager

ATTEST:

Nancy Vincent, City Clerk

APPROVED AS TO FORM:
Margaret Emerich, City Attorney

Gary Jacobson, Deputy City Attorney

CITY OF WESTMINSTER, COLORADO

By: _____ Date _____
Donald M. Tripp, City Manager

ATTEST:

Linda Yeager, City Clerk

APPROVED AS TO LEGAL FORM:

David Frankel, City Attorney



Agenda Item 8 I

Agenda Memorandum

City Council Meeting
September 8, 2014



SUBJECT: Intergovernmental Agreement (IGA) with Municipalities Regarding Housing Inmates in the Adams County Jail

Prepared By: Hilary Graham, Acting City Attorney
Debbie Mitchell, General Services Director
Carol Barnhardt, Court Administrator

Recommended City Council Action

Authorize the City Manager to enter into an Intergovernmental Agreement (IGA) with the cities of Arvada, Aurora, Brighton, Commerce City, Federal Heights, Northglenn, Thornton and the Town of Bennett (the "Adams County Municipalities") regarding municipal non-domestic violence inmate bed space allocations and a per diem fee assessment process for use of the Adams County Detention Facility.

Summary Statement

- Since October 2011, the use of bed space at the Adams County Detention Facility (ACDF) has been a Staff concern. Beginning in 2011, the Adams County Sheriff began imposing limits on the number of municipal prisoners he would allow in the jail at any point in time.
- The cities of Aurora, Commerce City, Federal Heights, and Northglenn initiated a lawsuit on the matter earlier this year.
- As part of a negotiated resolution to the lawsuit, all of the Municipalities are required to work out among themselves a process for fairly allocating the 65 beds allocated by the Sheriff for non-domestic violence related prisoners (the "Cap").
- The municipal parties to the lawsuit have prepared the attached Intergovernmental Agreement (IGA) to establish a process for allocating beds and also to establish a mechanism for applying the per diem fee (\$45 per day) that the Sheriff will charge for municipal inmates in excess of the Cap.

Expenditure Required: To be determined

Source of Funds: General Fund Contingency/Carryover

Policy Issues

1. Should the City enter into an Intergovernmental Agreement (IGA) with the Adams County Municipalities to ensure bed space for Westminster Municipal Court prisoners?
2. Should the City Council approve a policy or procedure that the City will pay the per diem charges (or be at risk of being charged) if both the total Cap and the City's allocation of ten (10) beds is exceeded?

Alternatives

Do not authorize approval of the IGA. This is not recommended as it could potentially jeopardize the settlement of the lawsuit between the cities of Aurora, Commerce City, Federal Heights, Northglenn and Thornton. Moreover, not entering into the IGA could potentially jeopardize the City's Municipal Court's ability to sentence individuals to be housed in the Adams County Detention Facility (ACDF) at all and could create uncertainty as to the per diem rate the Sheriff would impose on Westminster inmates if they are permitted.

Authorize approval of the IGA but do not approve a policy or procedure that the City will pay the per diem charges (or be at risk of being charged) if both the total Cap and the City's individual cap of ten (10) beds is exceeded. This is not recommended because the time constraints for release of inmates and imposition of per diem charges as set forth in the IGA under sections and A(6)(d) and (f) will make it very challenging for Court staff to avoid per diem charges.

Background Information

There is a long history of bed space issues at ACDF, but for the purposes of this proposed IGA, it is sufficient to go back to 2011. On July 29, 2011, Sheriff Darr sent letters to all the municipalities indicating that there was no statutory requirement to incarcerate defendants for municipal offenses and imposed a bed space restriction specifically directed to municipalities for the housing of municipal inmates. The Sheriff's correspondence indicated that the bed space restriction for municipal inmates was to be implemented on August 15, 2011, which was later extended to September 1, 2011.

The Adams County Board of County Commissioners ("BOCC") became involved and on January 1, 2012, the BOCC implemented a cap of thirty (30) municipal inmates and a charge of forty-five dollars (\$45.00) per day for each municipal inmate against the municipality that sought to use the ACDF when the cumulative number of municipal inmates exceeds the imposed cap. This cap was characterized by the BOCC as a "soft cap," meaning that the restriction on the number of municipal inmates was cumulative; only when and if the cumulative number of all municipal inmates housed in the County Jail exceeded thirty (30) would the municipality seeking to use the ACDF be charged for housing its municipal inmates.

This initial cap of thirty (30) municipal inmates was meant to be a short-term solution to allow the Sheriff time to hire more deputy sheriff positions, thereby increasing staffing levels at the ACDF and accommodate more inmates. The BOCC did provide the Sheriff with funding support for these steps. The Municipalities responded, in turn, by adjusting sentencing policies and reserving jail time for the most serious of offenders.

In light of progress on the issue among the Municipalities and the Sheriff, by April of 2013, the BOCC rescinded any and all BOCC restrictions upon which the Sheriff could rely in limiting or rejecting any municipal inmates at the ACDF. The BOCC specifically indicated that municipal inmates may be housed in the County Jail without additional costs and waived any fees incurred by municipalities to date for the housing of municipal inmates.

In spite of the BOCC's April 2013 action, the Sheriff then sent out correspondence to the representative Municipalities indicating that the Sheriff would unilaterally resume imposition of the cap of thirty (30) municipal inmates and would retain it indefinitely. In actions the Municipalities characterize as contrary to law, the Sheriff, without the consent of the BOCC, began refusing to accept lawfully sentenced Aurora municipal inmates committed to the ACDF by the Judges of the Aurora Municipal Court. The Municipalities were very concerned about the possibility of more inmate refusals and ACDF; as such, Westminster formalized alternative bed space arrangements.

On May 20, 2013, an Agenda Memo containing an IGA with Clear Creek County Jail was approved by Westminster City Council as an alternative jail facility to be used by the Westminster Municipal Court if/when the Adams County Sheriff refused to provide bed space for Westminster prisoners. This IGA with Clear Creek has not been invoked to date.

As concerns about being denied use of the ACDF mounted, on February 19, 2014, the cities of Aurora, Commerce City, Federal Heights, Northglenn, and Thornton filed a lawsuit in Adams County District Court, in part, seeking to determine the parameters of the Sheriff's legal authority to determine the number of municipal inmates he will accept at the ACDF. In an apparent attempt to defend the lawsuit, on February 24, 2014, the BOCC re-established a cap of 30 non-domestic violence municipal inmates at the ACDF, which superseded all previous resolutions.

The parties to the lawsuit participated in mediation sessions in an attempt to resolve the lawsuit and have developed a formal Settlement Agreement. The agreement includes terms that increases the cap on municipal inmates to a soft cap of 65 non-domestic violence municipal inmates (the "Cap"), provided that the County would receive a per diem fee of \$45 for every municipal inmate above the 65 on one given day, and mandated that a jail staffing study would be conducted and completed by March 1, 2015. The agreement also provides that in the event the Cap is exceeded and none of the cities in Adams County notifies the Sheriff within a certain time period, the Sheriff will charge the per diem fee on a "last-in first-charged basis," meaning that the last city to send an inmate to the ACDF over the Cap will be the first to be charged the per diem fee.

Final court approval of the Settlement Agreement, which obviously could create billing conflicts among the Sheriff and the Municipalities, has been tied to the Municipalities' approval of the IGA that is before Council now for consideration. The IGA has been drafted to reduce the possibility of billing conflicts and to flesh out the details of how the Cap will be administered. The current Sheriff's term in office expires in January of 2015. As drafted, both the Settlement Agreement and the IGA will be in effect until May 15, 2015, after which time the newly elected Sheriff will have had an opportunity to evaluate the inmate situation at the ACDF and determine a new policy concerning municipal inmates at the ACDF.

The other Municipalities are in the process of approving, or have already approved, the IGA.

Since October 2011, the practice has been that the Court Administrator (who was appointed by the City Manager as the Court's contact person for all inmate notifications and/or jail issues) reviews the daily bed report and verifies that the inmates and the information on the ACDF report are correct and accurate. This review is completed on a daily basis during the Monday through Thursday work week. The reports are reviewed on Mondays for Friday through Sunday (or Tuesdays if there is a holiday). If there are any issues, the Court Administrator contacts the Adams County assigned Jail Sergeant to resolve the issues. During 2014, the Court Administrator trained the Court's three supervisors to assist her with coverage and to understand the process of the daily bed verifications.

It is recommended by Staff that the City approval of the IGA that would allow for the effective resolution of the on-going uncertainty as to use the City's use of ACDF by ensuring a coordination process among the Municipalities both as to use of and charges for bed space.

It is recommended by Staff that City Council approve the IGA and, in addition, agree to pay the per diem charges (or be at risk of being charged) outlined in the IGA at Sections A(6)(d)-(f). The IGA requires inmate release or per diem fees any time the Cap is exceeded, including Fridays through Sundays (and on City holidays). Since the City and Municipal Court is closed at those times, the City will either incur the cost of the per diem fees or the cost of staffing court seven days a week.

If Council does not approve the above recommendation to pay per diem charges, in order to cover the weekends and holidays, it will be necessary for Court staff to create an on-call schedule for the a judge, administrative and limited clerk staff to review the jail bed list specifically for the weekends and holidays. If a determination is made that an inmate(s) is to be released, then proper Jail Orders must be prepared and sent to ACDF to release the inmate(s). While the IGA refers to emails being sent to the jail as being an avenue of communication, the proper requirements and procedures are for the Court to send an Amended Jail Order signed by the judge with the new jail stipulations clearly defined and made part of the defendant's Court file. Staff would intend to follow the proper requirements and procedures. This on-call process will be costly to the City. In terms of potential on-call and overtime funds, this alternative would likely far exceed the \$45 per diem contained within the IGA and the Settlement Agreement.

At this time, Staff is uncertain of what the per diem reimbursement costs due to the Sheriff will be. Staff will come back to Council with a contingency or carryover request, if needed.

This recommended IGA supports the City's Strategic Plan Goal of Excellence in City Service by ensuring that the City's Municipal Court has access to housing individuals sentenced to the ACDF. This recommended IGA also supports the City's Strategic Plan goal of Proactive Regional Collaboration by collaborating with the Adams County Sheriff and the surrounding cities in Adams County to reach this agreement.

Respectfully submitted,



Stephen P. Smithers
Acting City Manager

Attachment – IGA

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF ARVADA,
AURORA, BRIGHTON, COMMERCE CITY, FEDERAL HEIGHTS, NORTHGLENN,
THORNTON, AND WESTMINSTER, AS WELL AS THE TOWN OF BENNETT,
COLORADO
REGARDING MUNICIPAL NON-DOMESTIC VIOLENCE INMATE
ALLOCATIONS AND PER DIEM FEE ASSESSMENT PROCESS
FOR THE ADAMS COUNTY DETENTION FACILITY**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Thornton, and the City of Westminster, Colorado, all Colorado home rule municipalities, and the Town of Bennett, a Colorado statutory town, collectively sometimes referred to herein as the "Cities" or "Parties" and individually as "City or Party."

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and C.R.S. § 29-1-201 authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, pursuant to C.R.S. § 31-15-401(k), municipalities may use the county jail for confinement or punishment of offenders "with the consent of the board of county commissioners"; and

WHEREAS, pursuant to a Settlement Agreement entered in connection with litigation pending in Adams County District Court captioned: *CITY OF AURORA; CITY OF COMMERCE CITY; CITY OF FEDERAL HEIGHTS; CITY OF NORTHGLENN; and CITY OF THORNTON, Colorado, municipal corporations, v. DOUGLAS N. DARR, in his official capacity as Adams County Sheriff, State of Colorado; and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS*, Civil Action No. 2014CV30353, the municipalities named in said litigation are now subjected to a flexible ("soft") cap of 65 non-domestic violence related municipal prisoners (aka "inmates") who may be held at the Adams County Detention Facility ("ACDF") solely for municipal charges; and

WHEREAS, pursuant to the Settlement Agreement, the Sheriff may charge said municipalities in Adams County a per diem fee of up to \$45 for any such municipal inmate held at the ACDF in excess of the 65 cap; and

WHEREAS, the Sheriff and the Cities recognize that the Jail Cap applies to all the Cities; as such Cities are authorized to use the ACDF pursuant to C.R.S. §31-15-401(k); and

WHEREAS, it is in the best interests of the Cities to agree among themselves on a process for allocating the 65 beds available without charge in the ACDF for municipal inmates and for determining which of the Cities will be responsible for paying per diem

fees the Sheriff may impose for their municipal inmates in the event the 65 cap is exceeded.

NOW, THEREFORE, in consideration of the promises and conditions contained herein the Cities hereto agree as follows:

I. PROCESS FOR THE PAYMENT OF PER DIEM FEES WHEN MUNICIPAL INMATES EXCEED THE ABOVE 65 CAP AND THE ALLOCATION OF BED SPACE AMONGST THE CITIES.

A. The Cities agree to the process for payment of fees as follows:

1. Each City must provide the Sheriff with the email address of each person to whom the Sheriff should send the daily municipal inmate count. The Sheriff has agreed to provide the Cities with the email address(es) to which the Sheriff wants the emails noted below to be sent.

2. The Sheriff will email the municipal inmate count by 9:00 a.m. each day of the week (including weekends and holidays) to the Cities.

3. Each City will review the list on at least each business day verifying its inmates listed are accurate in terms of names, holds, charges, and individual municipal inmate count. If any discrepancies are found, that City will notify the designated staff persons at the ACDF and all other Cities via email no later than 5:00 p.m. on the second business day following the Sheriff's publication of the list.

4. If the total number of municipal non-DV inmates is 65 or less, no additional action is necessary by any City.

5. If the total number of municipal non-DV inmates exceeds 65, any City that has not exceeded its individual allocation (as shown in Table A below) need not take any action and will not ultimately be subject to any per diem fees for this day (see paragraph A.6.f.). Each City must specify on all applicable paperwork (including but not limited to: in-custody booking forms, jail mittimus forms, warrants, and other correspondence) whether or not an inmate is being held on a DV charge. If any City's paperwork contains an error, that City will be responsible for any per diems assessed because of that error, unless such City notifies the Sheriff of such error by 5:00 p.m. on the second succeeding business day following the Sheriff's publication of the list of municipal inmates.

6. If the total number of municipal non-DV inmates exceeds 65, any City that has exceeded its individual allocation (as shown in Table A below) will have **12 hours from the time the Sheriff sent the daily email or 9:00 p.m., whichever is later**, to either release one or more of its non-DV inmates and/or risk being assessed a per diem fee for one or more of its non-DV inmates. If any such City's decision is to release one or more of its inmates, it must notify the Sheriff by email as noted above, to avoid any per diem liability for such inmate(s). Any such City's email should also be sent to all

Cities to ensure all are kept informed of each City's decisions regarding its municipal inmates.

a. If the total number of municipal non-DV inmates exceeds 65, the City that has exceeded its individual allocation by the greatest number of inmates will first be assessed a per diem fee if it has not released one or more inmates by the established deadline. In the event more than one City has exceeded their allocation by the same number of inmates, and a per diem fee results for such inmate(s), such fee will be split equally among these Cities.

b. Step "a" above will be repeated until the remaining municipal non-DV inmate count for that day either by release and/or by commitment to pay a per diem fee(s) is at or below 65. See examples below.

c. Any City that notifies the Sheriff to release all of its inmates that were over its individual allocation on any given day by the established deadline for such day will not ultimately be subject to any per diem fees for this day (see paragraph A.6.f.).

d. For any day for which a per diem is to be assessed, the Sheriff must be sent an email **by 5:00 p.m. on the second business day** following the Sheriff's email containing the daily municipal inmate count for that day by each City that details the amount to be billed for each such day(s). Any such City's email should also be sent to all Cities to ensure all are kept informed of each City's decisions regarding its municipal inmates. If the Cities fail to provide such information to the Sheriff by the established deadline, the Sheriff will bill the per diems for any excess inmates on a last-in, first-charged basis.

e. Adams County will bill the appropriate Cities monthly and payment is due to the County within 30 days of receipt of such invoice.

f. If a City fails to notify the Sheriff as provided for in paragraph A.6.d. above, and as a result the Sheriff assesses a per diem charge on a "last-in, first-charged" basis, the City assessed such per diem charge may invoice the City(ies) that failed to notify the Sheriff in a timely manner and such City(ies) shall reimburse the City charged on the "last-in, first-charged" basis for all such per diem charges within 30 days of receipt of such invoice.

B. The Cities agree to the following allocation of beds in ACDF for municipal inmates:

1. The Cities individual bed allocations are set forth below in Table A.

TABLE A

| Municipality | 65 Bed Allocation |
|-----------------|-------------------|
| Arvada | 1 |
| Aurora | 11 |
| Bennett | 1 |
| Brighton | 6 |
| Commerce City | 10 |
| Federal Heights | 3 |
| Northglenn | 6 |
| Thornton | 17 |
| Westminster | 10 |
| | |
| Total | 65 |

2. The following reflect examples of how the above-stated process would work in practice.

Example #1. In the example below even though several Cities are over their allocation, since the total number of inmates is 65 or less, no action needs to be taken and no per diem fees will accrue.

| Municipality | Proposed 65 Bed Allocation | # of Municipal Inmates at Count | # Over/Under Individual Allocation | Result |
|-----------------|----------------------------|---------------------------------|------------------------------------|-----------------------|
| Arvada | 1 | 0 | -1 | No Action Needed |
| Aurora | 11 | 12 | +1 | No Action Needed |
| Bennett | 1 | 0 | -1 | No Action Needed |
| Brighton | 6 | 4 | -2 | No Action Needed |
| Commerce City | 10 | 11 | +1 | No Action Needed |
| Federal Heights | 3 | 3 | 0 | No Action Needed |
| Northglenn | 6 | 4 | -2 | No Action Needed |
| Thornton | 17 | 19 | +2 | No Action Needed |
| Westminster | 10 | 10 | 0 | No Action Needed |
| | | | | No Action Needed |
| Total | 65 | 63 | -2 | Under Soft Cap |

Example #2. In the example below the total number of inmates is over 65 by two inmates so those three Cities that are over their allocation may be at risk. Since Thornton is over its allocation the most (2 over) it would be the first to decide whether to release an inmate or be charged a per diem. Following this action, there are three Cities that are each one over (Aurora, Commerce City, and Thornton). Each of these

Cities would be faced with the decision to either release an inmate or risk being charged up to 1/3 per diem.

So to recap, if all occurred as described above, Thornton would either be charged 1 1/3 per diem (if it did not release its first inmate and none released another inmate) or 1/3 per diem along with Aurora and Commerce City if Thornton did release its first inmate, but none released another inmate.

| Municipality | Proposed 65 Bed Allocation | # of Municipal Inmates at Count | # Over/Under Individual Allocation | Result |
|-----------------|----------------------------|---------------------------------|------------------------------------|------------------|
| Arvada | 1 | 0 | -1 | No Action Needed |
| Aurora | 11 | 12 | +1 | At Risk |
| Bennett | 1 | 0 | -1 | No Action Needed |
| Brighton | 6 | 6 | 0 | No Action Needed |
| Commerce City | 10 | 11 | +1 | At Risk |
| Federal Heights | 3 | 3 | 0 | No Action Needed |
| Northglenn | 6 | 6 | 0 | No Action Needed |
| Thornton | 17 | 19 | +2 | At Risk |
| Westminster | 10 | 10 | 0 | No Action Needed |
| | | | | |
| Total | 65 | 67 | +2 | 2 Over Soft Cap |

Example #3. In the example below the total number of inmates is over 65 by three inmates so those three jurisdictions that are over their allocation may be at risk. Since Commerce City is over its allocation the most (5 over) it would be the first to be charged a per diem if one of its inmates were not released. After Commerce City decides whether to release or risk paying a per diem for the first inmate over its individual allocation, it remains most over its allocation (4 over), so it would again be faced with either releasing an inmate or paying another per diem. Again, Commerce City remains the most over its allocation (3 over); so it would again be faced with either releasing an inmate or paying another per diem.

So to recap, if all occurred as described above, Commerce City would be faced with either releasing up to three inmates or being charged up to three per diems. Even though Aurora and Thornton were also over their allocations, they would not be impacted because Commerce City remained the most over its allocation.

| Municipality | Proposed 65 Bed Allocation | # of Municipal Inmates at Count | # Over/Under Individual Allocation | Result |
|--------------|----------------------------|---------------------------------|------------------------------------|------------------|
| Arvada | 1 | 1 | 0 | No Action Needed |
| Aurora | 11 | 12 | +1 | At Risk |
| Bennett | 1 | 0 | -1 | No Action Needed |
| Brighton | 6 | 4 | -2 | No Action Needed |

| | | | | |
|-----------------|-----------|-----------|-----------|------------------------|
| Commerce City | 10 | 15 | +5 | At Risk |
| Federal Heights | 3 | 2 | -1 | No Action Needed |
| Northglenn | 6 | 6 | 0 | No Action Needed |
| Thornton | 17 | 18 | +1 | At Risk |
| Westminster | 10 | 10 | 0 | No Action Needed |
| | | | | |
| Total | 65 | 68 | +3 | 3 Over Soft Cap |

II. TERM.

This Agreement shall be in effect until and including May 15, 2015, unless otherwise agreed to by all the Cities in writing.

III. NONAPPROPRIATIONS CLAUSE.

The Cities herein acknowledge and agree that each has every intention of carrying out and performing the provisions of this Agreement for its entire term. Each City agrees it shall make every reasonable effort to ensure the continued appropriation of funds for the payments referenced in this Agreement. In the event that any of the respective City Councils fail to appropriate funds for the continuation of this Agreement for any fiscal year past the first fiscal year, the Cities may, at the beginning of the fiscal year for which the City Councils do not appropriate such funds and upon thirty (30) days prior written notice, terminate this Agreement without penalty and thereupon be released of further obligations pursuant thereto.

IV. PROVISIONS CONSTRUED AS TO FAIR MEANING.

The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attributes to such Party as the source of the language in question.

V. NO IMPLIED REPRESENTATIONS.

No representations, warranties, or certifications, express or implied, shall exist as between the Parties, except as specifically stated in this Agreement.

VI. NO ORAL OR COLLATERAL AGREEMENTS OR UNDERSTANDINGS.

This Agreement may be amended only by an instrument in writing signed by the Parties.

VII. INTEGRATED AGREEMENT.

This Agreement is an integration of the entire understanding of the Parties with respect to the matters stated herein.

VIII. WAIVER.

The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

IX. UNCONSTITUTIONALITY.

The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement, and each and every provision thereof, are declared to be severable.

X. GOVERNMENTAL IMMUNITY.

The Parties hereto understand and agree that the Parties, their officers and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time-to-time amended, or otherwise available to the Parties their officers, or their employees.

XI. NOTICE.

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other Party or City. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Arvada
City Manager
8101 Ralston Rd
P.O. Box 8101
Arvada, CO 80001-8101

City of Aurora:
City Manager
City of Aurora
15151 East Alameda Parkway
Aurora, CO 80012

Town of Bennett
Town Administrator
355 Fourth Street
Bennett, CO 80102

City of Brighton
City Manager
Brighton City Hall
500 South 4th Avenue
Brighton, CO 80601

City of Commerce City
City Manager
7887 E. 60th Avenue
Commerce City, CO 80022

City of Federal Heights
City Manager
City of Federal Heights
2380 W 90th Avenue
Federal Heights, CO 80260

City of Northglenn
City Manager
11701 Community Center Drive
Box 330061
Northglenn, CO 80233

City of Thornton:
City Manager
City of Thornton
9500 Civic Center Drive
Thornton, CO 80229

City of Westminster
City Manager
4800 West 92nd Avenue
Westminster, Colorado 80031

XII. APPLICABLE LAW AND VENUE.

This Agreement shall be interpreted and enforced pursuant to the laws of the State of Colorado. In the event of litigation concerning this Agreement, the Parties agree that proper venue shall be the District Court, Adams County, Colorado.

XIII. LITIGATION.

Each Party hereto shall be responsible for any suits, demand, costs or actions at law resulting from its own acts or omissions.

XIV. EFFECTIVE.

This Agreement shall become effective as of the last date of execution by the Parties hereto.

IN WITNESS WHEREOF, The Cities have caused this Agreement to be duly executed as of the day and year below written.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK

(SIGNATURES FOLLOW ON NEXT PAGE)

CITY OF ARVADA, COLORADO

By: _____ Date: _____

Marc Williams, Mayor
City of Arvada
8101 Ralston Road
P.O. Box 8101
Arvada, Colorado 80001

ATTEST:

City Clerk

APPROVED AS TO FORM:

Christopher K. Daly, City Attorney

CITY OF AURORA, COLORADO

By: _____ Date: _____

George K. Noe, City Manager
Aurora Municipal Center
15151 East Alameda Parkway
Aurora, Colorado 80012
Telephone: (303) 739-7010

ATTEST:

Janice Napper, City Clerk

APPROVED AS TO FORM:
Michael J. Hyman, Interim City Attorney

Teresa L. Kinney, Assistant City Attorney

TOWN OF BENNETT, COLORADO

By: _____ Date: _____
Sue F. Horn, Mayor

ATTEST:

Lynette F. White, Town Clerk

APPROVED AS TO FORM:
Light Kelly, PC

Samuel J. Light, Town Attorney

CITY OF BRIGHTON, COLORADO

By: _____ Date: _____
Manuel Esquibel, City Manager

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

CITY OF COMMERCE CITY, COLORADO

By: _____ Date: _____

Brian K. McBroom, City Manager
Commerce City Civic Center
7887 East 60th Avenue
Commerce City, Colorado 80022
Telephone: (303) 227-8808
Facsimile: (303) 289-3688
bmcbroom@c3gov.com

ATTEST:

Laura Bauer, City Clerk

APPROVED AS TO FORM:

Robert Gehler, City Attorney

CITY OF FEDERAL HEIGHTS, COLORADO

By: _____ Date: _____
Joyce Thomas, Mayor
City of Federal Heights
2380 W. 90th Ave.
Federal Heights, CO 80260

ATTEST:

Patti Lowell, CMC, City Clerk

APPROVED AS TO FORM:

William P. Hayashi, City Attorney

CITY OF NORTHGLENN, COLORADO

By: _____ Date: _____
Joyce Downing, Mayor

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CITY OF THORNTON, COLORADO

By: _____ Date: _____
Jack Ethredge, City Manager

ATTEST:

Nancy Vincent, City Clerk

APPROVED AS TO FORM:
Margaret Emerich, City Attorney

Gary Jacobson, Deputy City Attorney

CITY OF WESTMINSTER, COLORADO

By: _____ Date _____
J. Brent McFall, City Manager

ATTEST:

Linda Yeager, City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: 120th Avenue and Federal Boulevard Intersection Improvement Project - Construction Engineering Services Contract

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to sign a contract with RockSol Consulting Group, Inc. for construction engineering services for the 120th Avenue and Federal Boulevard Intersection Project in the amount of \$339,529, and authorize a contingency of \$40,000.

Summary Statement

- In September 2010, the City Council authorized the submission of an application for a federal grant for improvements to the intersection of 120th Avenue and Federal Boulevard. A total amount of \$3,421,000 in federal funding was awarded for the construction costs. Local matching funds of \$1,043,000 were required to secure the federal grant. In addition, the Colorado Department of Transportation (CDOT) is preparing the design of the improvements and will contribute \$200,000 toward the construction of the project. Design, plan approval and administration of the federal funding are performed by CDOT under the terms of the intergovernmental agreement.
- The construction of the project is now scheduled for the spring of 2016. The City will be administering the project during construction with CDOT oversight on behalf of the federal government. Because of the requirement of the federal-aid process to have full time inspection of the project, it is necessary to hire an outside consultant to perform this work. Staff solicited proposals from six different firms for this assignment. Both CDOT staff and City staff reviewed the proposals and agreed that RockSol Consulting Group, Inc. is the firm with the best approach to this particular project.
- RockSol's fee of \$339,529 is 8% of the expected cost of constructing this project, which is very favorable based on comparisons with past projects constructed by the City.

Expenditure Required: \$379,529

Source of Funds: General Capital Improvement Fund – 120th Avenue and Federal Boulevard Project

Policy Issue

Should the City enter into an agreement with RockSol Consulting Group for construction engineering services related to the construction of the 120th Avenue and Federal Boulevard project?

Alternative

RockSol is recommended for this task since this company is preferred by both CDOT and City staff as the firm with the most comprehensive proposal and the best approach to the project. In addition, RockSol previously worked for the City on the 112th Avenue Traffic Signal Project and provided the City with excellent service at that time.

Background Information

In September 2010, the City Council approved the submission of an application for federal funding to assist in the design and construction of improvements to the 120th Avenue and Federal Boulevard intersection. In May 2012, DRCOG staff made a request to the City to postpone the construction of this project. City staff agreed with this request and took advantage of this delay by proceeding with the design and construction of the Ranch Creek Underpass project, which geographically overlaps the intersection project. This underpass is currently under construction and will be completed in September 2015 in order to avoid conflicts with the construction of the 120th Avenue and Federal Boulevard Intersection Project, the construction of which will begin in early 2016.

The intersection project provides accommodations for six through lanes on 120th Avenue, four through lanes on Federal Boulevard, double left turn lanes for all directions and right turn lanes at all legs of the intersection. The existing eastbound to southbound sweeping right-turn lane will be removed along with one bridge on this “ramp” to provide for an expansion of the abutting Big Dry Creek Open Space and the construction of a pedestrian connection to the Big Dry Creek Trail from the west side of the creek. Curb, gutter, sidewalks and roadway lighting will be installed on both sides of 120th Avenue and Federal Boulevard along the west, south and east legs (i.e. the federal highway legs of the project) within 1,600 feet from the actual intersection. No street lighting will be provided along the north leg (i.e. the City street leg) of the project due to the lack of a “finished edge” along this leg, but curb, gutter and sidewalk improvements will be included to make the transition to the two-lane Federal Parkway cross-section to the north of the intersection. The roadways will also be re-surfaced within the project limits, and sidewalks will be installed where none currently exist adjacent to the roadways.

Design, plan approval and administration of the federal funding are performed by CDOT. Administration of the construction contract is the responsibility of the City. As such, staff solicited proposals from engineering firms to assist in the daily inspection and preparation of all of the federally required paperwork for the project. Six proposals were received and reviewed by City staff and CDOT. Both City staff and CDOT agree that the proposal submitted by RockSol is the most comprehensive and thorough of the proposals submitted. Based on this, both staffs are recommending RockSol for this assignment.

In addition, staff reviewed the fees submitted by the proposers after the recommendation to hire RockSol was determined, and the fees submitted were as follows:

| <u>FIRM</u> | <u>FEE</u> |
|--------------------------------|--------------|
| RockSol Consulting Group, Inc. | \$339,528.77 |
| HDR, Inc. | \$350,000.00 |
| Bowman Consulting | \$424,720.00 |
| Felsburg, Holt & Ullevig | \$524,407.00 |
| JR Engineering | \$549,050.00 |
| Jacobs | \$676,996.00 |

Subject: 120th & Federal Intersection Improvements Construction Engineering Contract Page 3

The fee of \$339,528.77 proposed by RockSol is 8% of the anticipated cost of construction. This percentage is very comparable to percentages of construction engineering fees paid by the City on past projects. It is also well below the CDOT Construction Engineering “pool” rate of 26%. CDOT uses a pool rate to determine construction engineering fees for their projects which is based on averages for these services for all of the “pool” of projects throughout the State.

The selection of RockSol is based on the contents of the company’s proposal which both CDOT and City staff agreed was the best of those submitted. In addition, RockSol has worked on the 112th Avenue Traffic Signal Project for the City, which was a federal-aid project. For this past project, RockSol provided the City with excellent service and exceptional documentation.

This project meets Council’s Strategic Plan goals of *Excellence in City Services, a Dynamic, Diverse Economy* and *Ease of Mobility* by providing an improved transportation system utilizing outside funding sources.

Respectfully submitted,

Donald M. Tripp
City Manager



Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Ranch Creek Underpass and Trails Project – Amended Construction Engineering Services Contract

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to sign an amended Construction Engineering Services contract with Felsburg, Holt & Ullevig, Inc. in the amount of \$89,255.93, and authorize a construction engineering contingency of \$15,000.

Summary Statement

- In November of 2014, the City completed the design and began the construction of a pedestrian underpass under 120th Avenue, located just east of the existing Ranch Creek crossing of the street, which is approximately 600 feet east of Federal Boulevard.
- This project includes the construction of an underpass under 120th Avenue, modification of an existing drainage culvert under Federal Boulevard and the installation of approximately 4,800 lineal feet of concrete trail and sidewalk linking the Big Dry Creek Trail to trails on the south side of 120th Avenue as well as other trails in the vicinity of the 120th Avenue and Federal Boulevard intersection (see attached map).
- During the construction of this project several unforeseen utility conflicts were encountered which required the contractor to focus on other portions of the project instead of the actual underpass while these utilities were relocated. This conflict extended the completion of the project by approximately three months because the efficiencies in constructing the project were lost. In other words, each element of the project had to be constructed separately, limiting the ability to construct the underpass and trails approaching the underpass at the same time.
- This inefficiency in constructing the project substantially increased the time that Felsburg, Holt & Ullevig Inc. (FHU), the construction engineering firm hired for this project, needed to be working on the project. The additional three months added to FHU's current contract equates to \$89,255.93 in additional construction engineering fees, which brings the contract total to \$204,740.93.

Expenditure Required: \$104,255.93

Source of Funds: General Capital Improvement Fund and Storm Water Utility Fund

Policy Issues

Should the City amend the current contract with Felsburg, Holt & Ullevig, Inc. to continue providing construction engineering services on this project?

Alternatives

An alternative to amending the contract with FHU would be to complete the project without FHU providing daily oversight on the project. This alternative is not recommended because the daily full-time inspection of this project is required by CDOT under the terms of the construction permit issued to the City. Given the number of projects currently being constructed throughout the City, City staff cannot inspect this project on a full-time basis, so it is recommended that the City retain FHU for the remaining duration of the project.

Background Information

This 120th Avenue pedestrian underpass has been a desire of the City for many years. This underpass will serve a large residential population to the south of 120th Avenue and provide a safe, grade-separated crossing of a major highway (120th Avenue), thus allowing these citizens access to the Big Dry Creek Trail system, Metzger Farms Open Space and the many businesses located on the north side of 120th Avenue. A secondary but equally important benefit of this underpass is that it will pass residual 100 year storm flows from Ranch Creek that cannot be passed through the existing box culvert under 120th Avenue without causing the overtopping of the roadway. While providing major flood prevention benefits, the box will be designed to keep water out of the pedestrian cell during minor storm events. The timing of the construction of this underpass has become critical due to the schedule for the 120th Avenue and Federal Boulevard Intersection improvement project. This federal-aid intersection project is currently under design and is scheduled for bidding in 2015 and construction in 2016. It is desirable to construct the 120th Avenue pedestrian underpass prior to the commencement of the construction of these intersection improvements.

The underpass project is currently being built and includes the construction of the underpass under 120th Avenue; the modification to the south cell of the existing box culvert under Federal Boulevard, north of 120th Avenue; a low water crossing of Ranch Creek; a concrete trail between the two underpasses; and a concrete ramp on the south side of the underpass to connect to the sidewalk along the south side of 120th Avenue.

The amendment to FHU’s contract in the amount of \$89,255.93 is recommended since it is reasonable and necessary for the completion of the project in accordance with the terms of the City’s construction permit with the Colorado Department of Transportation.

City Council action on this item meets elements of two goals in the City’s Strategic Plan: *Dynamic, Diverse Economy* and *Vibrant Neighborhoods in One Livable Community*.

Respectfully submitted,

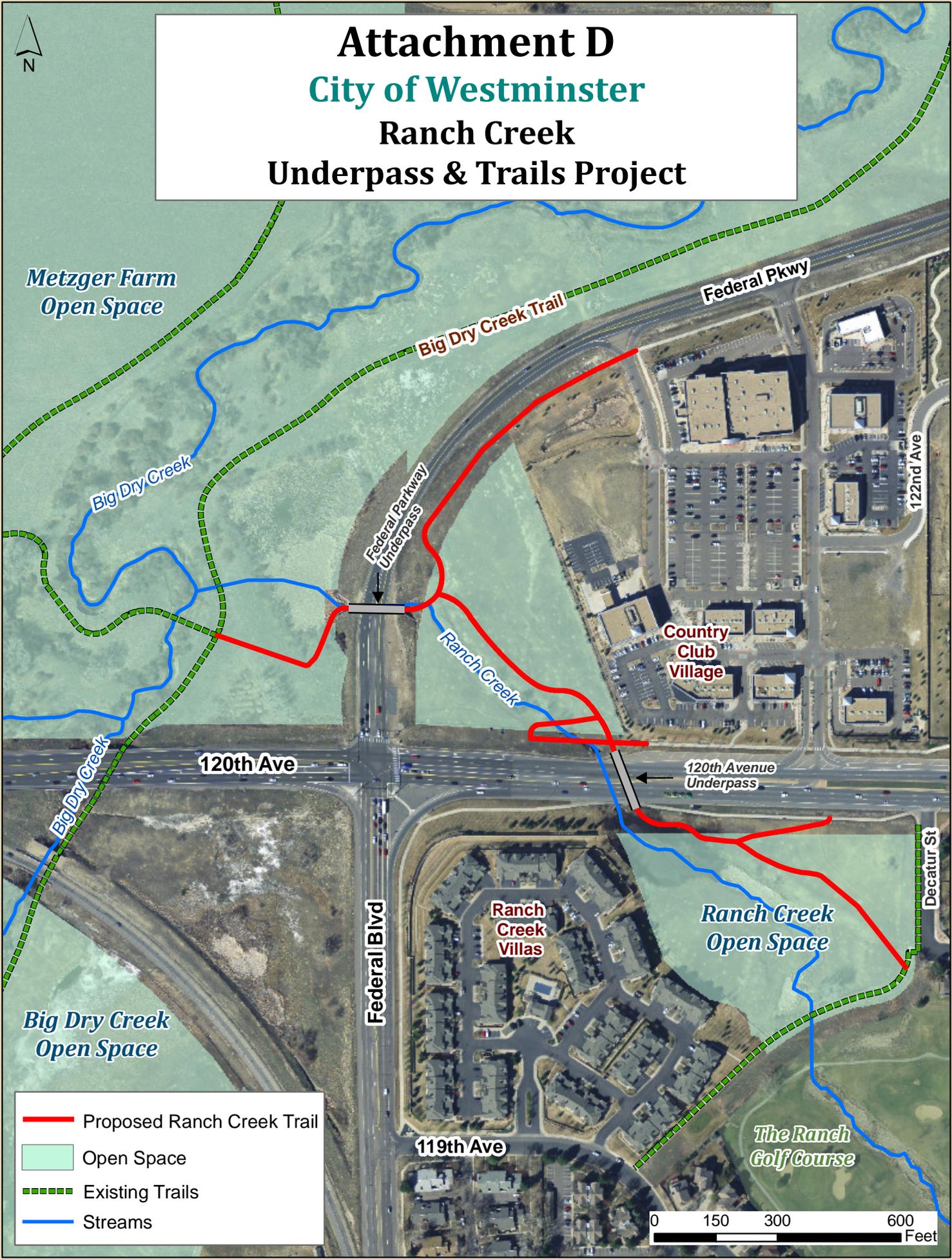
Donald M. Tripp
City Manager

Attachments: Vicinity map

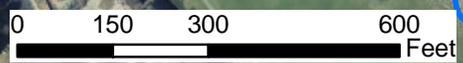
Attachment D

City of Westminster

Ranch Creek Underpass & Trails Project



-  Proposed Ranch Creek Trail
-  Open Space
-  Existing Trails
-  Streams





Agenda Item 8 D

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Fleet Maintenance Cumulative Purchases Over \$75,000 for Freeway Ford

Prepared By: Jeffery Bowman, Fleet Manager

Recommended City Council Action

Based upon the recommendation of the City Manager, determine that the public interest will be best served by approving Fleet Maintenance cumulative purchases in 2015 with Barbee's Freeway Ford Inc. for remanufacturing services not to exceed \$130,000 through year end.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$75,000 be brought to City Council for approval. Staff has taken a conservative approach interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$75,000.
- The Fleet Maintenance Division uses Barbee's Freeway Ford Inc. to remanufacture City of Westminster Ford Crown Victoria patrol cars. Total aggregate purchases from Barbee's Freeway Ford Inc. will likely exceed \$75,000 during 2015, as five rebuilds are scheduled to replace worn out patrol cars. Staff is asking for approval of purchases not to exceed \$130,000 for five patrol car remanufactures.
- Adequate funds are budgeted and available in the 2015 Public Safety Tax General Capital Outlay Replacement Fund for this expense.

Expenditure Required: Not to Exceed \$130,000

Source of Funds: Public Safety Tax General Capital Outlay Replacement Fund

Policy Issue

Should Council approve the cumulative purchase of remanufactured services for City of Westminster Police vehicles from Barbee's Freeway Ford Inc. that total over \$75,000, but do not exceed \$130,000 in 2015?

Alternative

Do not approve the expenditures as recommended. Five Ford Crown Victoria patrol cars would not be rebuilt, as only one qualified vendor; Barbee's Freeway Ford Inc., is able to rebuild per the City of Westminster's requirements. Staff does not recommend this alternative.

Background Information

The Westminster Municipal Code requires that all purchases over \$75,000 be brought to City Council for approval. Fleet Maintenance has identified Barbee's Freeway Ford, Inc. as a vendor where the total cumulative purchases or expenses will exceed \$75,000 for the year 2015 and thus require Council authorization. Staff is seeking approval for this expenditure for the calendar year 2015. Adequate funds are available in the 2015 Public Safety Tax General Capital Outlay Replacement Fund account

Fleet Maintenance uses one vendor to provide the unique service of remanufacturing Ford Crown Victoria patrol cars. Beginning with the test phase of police car remanufacturing in 2012, two vendors were used to provide the remanufacturing service; Longmont Ford and Freeway Ford. These are the only two automotive vendors in the State of Colorado that offer the specific services received by the City. When comparing side-by-side work that included body and paint, interior, mechanical, decal, emergency lighting, and communication. Barbee's Freeway Ford Inc. is the provider that best meets the requirements to extend the life of Westminster's Ford Crown Victoria patrol cars for an additional 110,000 miles. Staff is confident that the City will receive quality, competitively priced work from Freeway Ford.

To date, Fleet maintenance has identified Barbee's Freeway Ford Inc. as a vendor that will produce over \$75,000 in orders during 2015, as current remanufactured work is nearing \$62,000. Staff anticipates working with Barbee's Freeway Ford Inc. to remanufacture five cars during the remainder of the year that will not exceed \$130,000.

The City's approach to these types of collective purchases from any single vendor such as Barbee's Freeway Ford Inc. assures that purchases in excess of \$75,000 are identified in advance and brought to City Council for approval and helps to achieve City Council's Strategic Plan Goal of "Financially Sustainable Government Providing Excellence in City Services" by spending tax dollars in a responsible manner.

Respectfully submitted,

Donald M. Tripp
City Manager



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Second Reading of Councillor’s Bill No. 37 Appropriating Funds from the Regional Transportation District

Prepared By: John Burke, Senior Projects Engineer
Seth Plas, Engineer

Recommended City Council Action

Pass Councillor’s Bill No. 37 on second reading appropriating a total of \$3,136,237 received from the Regional Transportation District to the Westminster Station North Infrastructure project per the Intergovernmental Agreement between the City and the District.

Summary Statement

This Councillor’s Bill was passed on the first reading on July 27, 2015.

The City and the Regional Transportation District (RTD) entered into an intergovernmental agreement (IGA) pertaining to the Northwest Rail Electrified Segment - Westminster Station in June 2012. The IGA allows the City to implement an alternative approach to RTD's originally proposed base plan for the design and construction of commuter rail and bus access, parking and pedestrian areas that will support the Westminster Station. Per the IGA, the City is responsible for providing streets and utility infrastructure sufficient to support station operations. This project extends Hooker Street from south of 71st Avenue to the proposed North Station Plaza at Westminster Station Drive.

Council action is requested to appropriate funds received from RTD per the IGA between the City and RTD for this project.

Expenditure Required: \$3,136,237

Source of Funds: General Capital Improvement Funds – Westy Station Drive/North Plaza Project

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Councillor’s Bill
Vicinity Map

BY AUTHORITY

ORDINANCE NO. **3792**

COUNCILLOR'S BILL NO. **37**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Briggs - Baker

A BILL

FOR AN ORDINANCE AMENDING THE 2015 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3737 is hereby increased by \$3,136,237. This appropriation is due to payments which will be received by the City of Westminster from the Regional Transportation District as the result of an Intergovernmental Agreement regarding the Westminster FasTracks Rail Station project.

Section 2. The \$3,136,237 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 J-M, dated July 27, 2015, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

| | |
|----------------------------------|--------------------|
| General Capital Improvement Fund | <u>\$3,136,237</u> |
| Total | <u>\$3,136,237</u> |

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of August, 2015.

ATTEST:

Mayor

City Clerk

Irving St

W 71st Ave

Hooker St

WEST 71st AVE

Grove St

 Unincorporated
 Westminster City Limit

Project Area

Hooker St

PARKING STRUCTURE

PERMANENT BUS TRANSFER FACILITY

Grove St

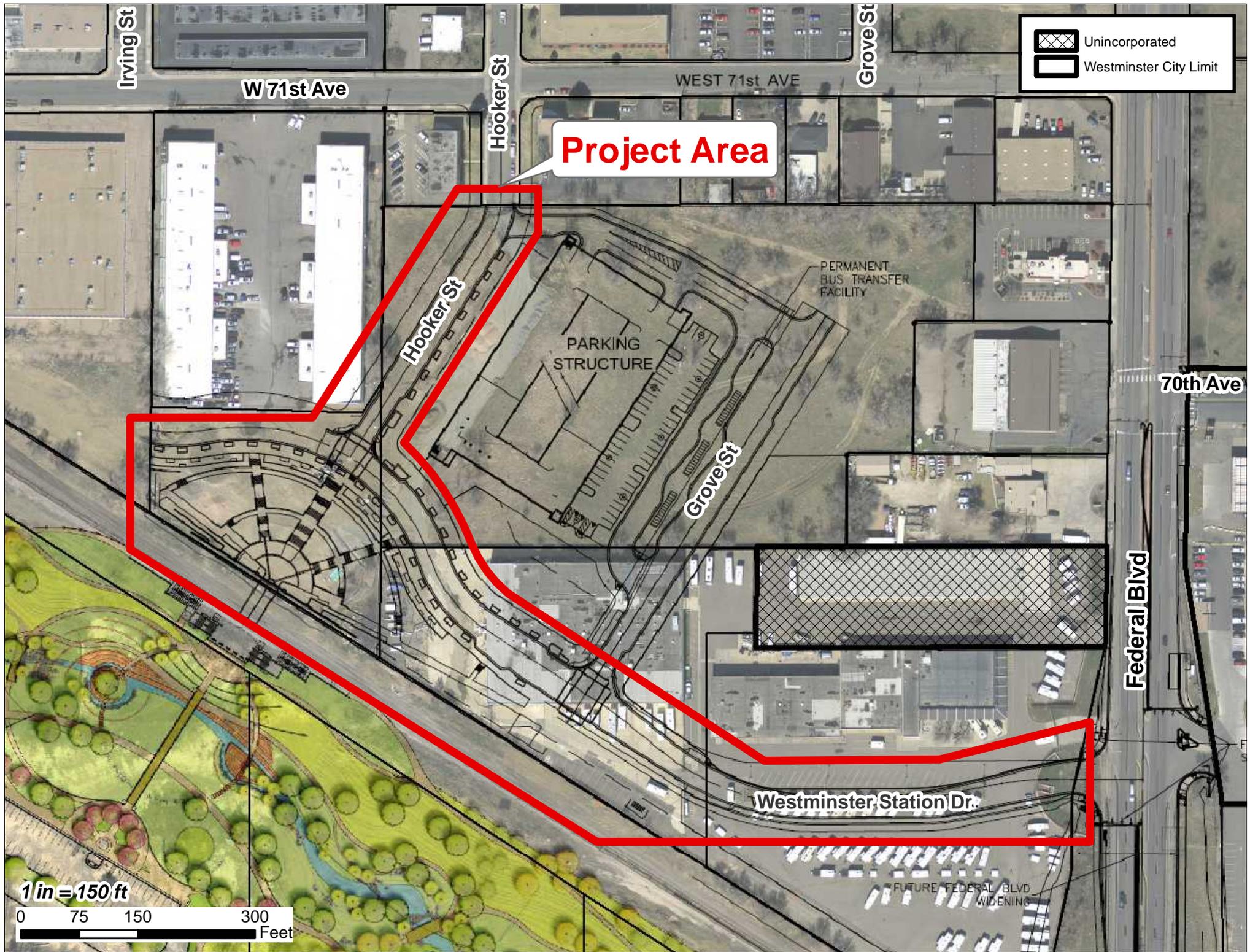
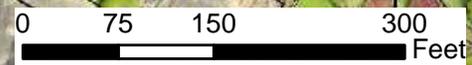
70th Ave

Federal Blvd

Westminster Station Dr.

FUTURE FEDERAL BLVD WIDENING

1 in = 150 ft





Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Public Hearing and Action on Revesco USA Properties Special Use Permit Application for Lot 2 at La Belles Plaza

Prepared By: Stephanie Ashmann, Planner

Recommended City Council Action

1. Conduct a *de novo* public hearing on the request by Revesco USA Properties of Sheridan, LLLP (“Revesco”) for a Special Use Permit for a thrift store over 5,000 square feet to be operated by the Salvation Army.
2. Determine if the requirements for perfecting an appeal of the Planning Commission’s decision have been met; giving due consideration to the criteria in Section 11-4-8(F), W.M.C., approve or deny the application based on the standards of review in Section 11-4-8(G), W.M.C.; and direct staff to prepare written findings for Council’s adoption, which are to be brought back for future consideration on August 24, 2015.

Summary Statement

- The proposed location for the Use by Special Permit (SUP) is 8601 Sheridan Boulevard within the La Belles Plaza, Lot 2. The zoning for this property is C1 (Commercial District). A thrift store over 5,000 square feet is required to apply for an additional level of review by Planning Commission through the Special Use Permit process.
- The Special Use Permit request was denied by Planning Commission June 9, 2015, with written findings of fact approved on June 23, 2015. The applicant has since appealed and requested a *de novo* hearing before City Council.

Expenditure Required: \$0

Source of Funds: N/A

Background Information

The La Belles Plaza is a retail commercial shopping center located west of Sheridan Boulevard at 87th Avenue and is zoned C1 (Commercial District). The plaza is divided into Lots 1 and 2. The center has a variety of inline retail uses including restaurants and shops. Along Sheridan Boulevard are restaurant pads (Reference Attachment A – Zoning Map). A thrift store operated within the plaza on Lot 1 as an anchor tenant for ten years under a special use permit granted by the Special Permit and License Board in 2005. That store, operating under the name Unique Thrift, vacated the space in late fall 2014 and formally relinquished their SUP with the City of Westminster on May 29, 2015 (Reference Attachment B – TVI Inc. – SUP Termination Letter).

Planning Staff received two applications seventeen days apart from the Arc Thrift Store organization and the Revesco property owners both requesting SUPs in two locations that are about 120 feet apart from one another. Staff advised both applicants that at the time the prior SUP had not been terminated pursuant to the City's Code; and thus Planning had to recommend denial of both applications to the Planning Commission. Both Special Use Permit applications were scheduled for public hearing before the Planning Commission the same night on April 28, 2015, since under the Code's standards prescribing a distance limitation, both could not be approved even if the prior existing SUP was terminated. Public hearings were held and continued to June 9, 2015. The reason for the continuance was because City staff received additional information regarding the validity of the Special Use Permit for the prior thrift store on Lot 1, but did not have time to evaluate or verify the information prior to the April 28th hearing.

On June 9, 2015, Planning Commission approved a Special Use Permit for an Arc Thrift Store, a thrift store over 5,000 square feet on Lot 1, approximately one hundred twenty feet away from the proposed location for Revesco's application for a Salvation Army thrift store on Lot 2 in La Belles Plaza.

On June 9, 2015, Planning Commission denied the Salvation Army application, and directed staff to prepare written findings of fact that were officially approved by Planning Commission on June 23, 2015.

On July 2, 2015, the City Clerk's Office received an appeal of the denial by Planning Commission to City Council from the Revesco USA Properties legal representative. (Reference Attachment E - Appeal of Denial of Special Use Permit – Revesco USA Properties of Sheridan, LLLP). Pursuant to Section 11-4-9(H), an applicant may appeal to the City Council any final decision of the Planning Commission regarding a special use permit. An appeal shall be taken by filing a written notice of appeal of the decision of the Planning Commission with the City Manager within ten (10) days of such decision. Such notice shall include the following:

1. The action of the Planning Commission that is the subject of the appeal.
2. The date of such action.
3. The name, address, and telephone number of the appellant.
4. A statement setting forth the basis of the appellant's appeal.

Nature of Request

Revesco USA Properties of Sheridan, LLLP, owner of Lot 2 at the La Belles Plaza has filed an appeal with the City Council requesting a *de novo* hearing be held to review their Special Use Permit application (Reference Attachment C –Thrift Store SUP Location – Revesco USA Properties of Sheridan, LLLP). The request also includes building and site modifications to accommodate for donation drop off and semi-truck loading.

Location

The site is located at 8601 Sheridan Boulevard, which is at the southwest corner of 88th Avenue and Sheridan Boulevard. (Reference Attachment C –Thrift Store SUP Location – Revesco USA Properties of Sheridan, LLLP).

Public Notification

Westminster Municipal Code Section 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published and posted at least 4 days prior to the public hearing. Notice was published in the Westminster Window on July 30, 2015.
- **Property Posting:** Notice of public hearings shall be posted on the property at least 10 days prior to the date of the public hearing with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on July 30, 2015.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the City shall mail individual notices by first-class mail to property owners within 300 feet of the subject property. The notice included 29 properties adjacent La Belles Plaza. The required notices were mailed on July 28, 2015.

Applicant/Property Owner

Revesco USA Properties of Sheridan, LLLP
 5291 East Yale Avenue
 Denver, CO 80222

Surrounding Land Use and Comprehensive Land Use Plan Designation

| Development Name | Zoning | Comprehensive Plan Designation | Use |
|--|-------------------------|---------------------------------------|------------------|
| West: Lowes of Westminster, West | PUD | Retail Commercial | Big Box Retail |
| East: Westpark Center – Filings 03 and 04 | PUD | Retail Commercial and Office | Hotel and Office |
| South: City of Arvada – Single Family Homes | Low Density Residential | Suburban Residential | Residential |
| North: Westminster Center Subdivision, Filing 01 | Specific Plan District | Mixed Use Center and Public Parks | Retail, Office |

Special Use Permit Criteria - Section 11-4-8(F)

City Council will review the application giving due consideration to the criteria listed below, insofar as each is relevant, to make their decision.

Please reference Attachment D – Applicant’s Submittal for site plan details.

1) Impact of Character on the Neighborhood

The neighborhood is currently characterized by non-residential uses of retail and office, including the office to the east across Sheridan Boulevard, and a detention pond and retail (Lowe’s) to the west. The future Downtown Westminster project will be located across 88th Avenue to the north. To the south and southwest is a railroad corridor with single-family homes beyond that. The applicant has proposed to add a porte-cochere to the west side of the building and a loading dock with a roll-up door to the front of the building. The adjacent residential areas is about 120 feet from the proposed porte-cochere and loading dock, with a roll-up door on the west side of the building. Currently, on the south service side of the building, truck activity is minimal due to the size of the service alley and utility poles running along the property line. The site’s orientation, small service alley, railroad, property line, and proximity to residential precludes the relocation of the porte-cochere and loading dock with roll-up door. After full review, staff has concluded that the addition of the proposed thrift store use could have negative impacts to the adjacent single family residential neighborhood within the City of Arvada due to increased

automobile traffic from the porte-cochere activity and new loading dock with door. In addition, staff has concerns that moving a service alley function to the front of a retail center has adverse impacts on the character of the plaza and neighborhood.

2) Compatibility of the Proposed Use with Existing and Planned Uses on Adjacent Properties

The proposed thrift store use is compatible with existing retail uses in the shopping center. However, the addition of the proposed thrift store use could have negative impacts to the adjacent single family residential neighborhood within the City of Arvada. The proposed use would add a loading dock with roll-up door and porte-cochere function that is not currently on site. These new functions will have noise impacts with increased deliveries occurring twice daily from semi-truck and multiple occasions where people will be donating used goods to the business. Staff is not in support of creating a potential burden on a neighboring City's residential community due to increased semi-truck and automobile traffic.

3) Activities or Uses on the Site Generate Potential Adverse Impacts or Nuisance Effects, Such as Visual Impacts, Noise, Vibrations, Light Intensity, Odors, Loitering, or Level of Police

The applicant has proposed to locate a porte-cochere on the west side of the building. They are also proposing the addition of a service loading dock with roll-up door on the north elevation of the building. Currently, all of the service areas for tenants are located on the rear of the building with alley access. Staff believes that the addition of a loading dock with roll-up door and an area for semi-trucks to park in the front of the building would deviate from the retail commercial nature of the center. The addition of the loading dock door will have a negative visual impact on the center by changing the design character from commercial retail to a more industrial nature. The added semi-truck parking station will have a visual impact in the same manner. Staff is also concerned with potential noise impacts to the surrounding commercial tenants because of the increased large truck and automobile traffic located within the front of the building.

4) Amount or Degree of Outdoor Activity

The addition of a thrift store with a porte-cochere and loading dock with a roll-up door in this location as proposed, will ultimately cause an increase in outdoor activity within the plaza. There will also be an increase in truck traffic to the front of the building because of the proposed dock door and semi-truck parking location. The applicant is also proposing to add a porte-cochere to the west side of the building. At this location there will be an increase in automobile traffic. Staff believes this increased activity will be a detriment to the center's pedestrian and vehicular circulation.

5) Hours of Operation and Deliveries

The hours of operation for the proposed tenant will be from 9 a.m. to 8 p.m. Monday thru Saturday and on Sundays from 12 p.m. to 6 p.m. The frequency of truck deliveries will be around one to two per day. Donation hours are from 10 a.m. to 7 p.m. with the donation area always being staffed by one or two people.

6) Location and Intensity of Storage, Loading, and Delivery Areas

As previously mentioned, the applicant is proposing to add a roll-up dock door and semi-truck parking, loading, and unloading within the front of the building. They are also proposing to add a porte-cochere to the west side of the building for the donation location. Donation hours are from 10 a.m. to 7 p.m., with the donation area always manned by one or two employees.

The *Site Planning* section of the City's *Retail Commercial Design Guidelines*, states that service areas and docking facilities should be located away from public streets and main circulation and drives when possible. Therefore, staff is not in support of this proposed design.

7) Adequacy of Parking and Access and Circulation

Approximately 350 parking spaces are available within Lot 1 of La Belles Plaza. The existing site provides more than adequate parking per the City's parking standards for commercial development.

The design proposes a loading dock with roll-up door and truck docking station within the front of the building. After review, staff believes that this location will cause traffic circulation issues. Typically, the location of a dock door is placed away from patron traffic circulation. In the proposed design, semi-trucks will likely block the main drive-aisle circulation as they back into the docking area. The hours of operation indicate that deliveries will occur around two times a day. As semi-trucks back up into the loading dock, they will block traffic circulation to the vehicles using the porte-cochere. Vehicles using the porte-cochere will stack into the main drive-aisle of the center that directly abuts the front of the retail buildings.

8) Traffic Volume Generated by the Proposed Use

Traffic volume on the adjacent streets of Sheridan Boulevard and West 88th Avenue is high, which is typical of arterial streets. The volume of traffic generated by thrift store patrons will be accommodated on these adjacent major arterials. After review, staff concludes that this location will cause traffic circulation issues. Typically, the location of a dock door is placed away from patron traffic circulation. In the proposed design, semi-trucks will likely block the main drive-aisle circulation as they back into the docking area. The hours of operation indicate that deliveries will occur around two times a day. As semi-trucks back up into the loading dock, they will block traffic circulation to the vehicles using the porte-cochere. Vehicles using the porte-cochere will stack into the main drive-aisle of the center that directly abuts the front of the retail buildings.

9) Pedestrian Safety

Pedestrian safety is adequate within the vicinity of the proposed thrift store. Sidewalks exist along the public street surrounding the shopping center where the thrift store is proposed to locate, and several of these external sidewalks connect to the interior of the shopping center. However, staff is concerned with the location of the dock doors for semi-truck traffic loading and unloading. The location of the dock and truck parking is unsafe for pedestrian crossing between Lots 1 and 2. The *Site Planning* section of the City's *Retail Commercial Design Guidelines* states that service areas and docking facilities should be located away from public streets and main circulation and drives when possible. The *Site Planning* section of the City's *Retail Commercial Design Guidelines* also states that pedestrian safety is to be enhanced and made attractive to the patron. The addition of semi-truck to the pedestrian corridor of the building will decrease the feeling of being safe as a pedestrian as they traverse the plaza, as well as decrease the attractiveness of the walkability of the existing plaza.

Standards of Review – Section 11-4-8 (G)

The Council must determine if the following standards are met in order to approve the application:

1) The Proposed Use will be Reasonably Compatible with the Surrounding Neighborhood

The neighborhood is mostly characterized by non-residential uses of retail and office, including office to the east across Sheridan Boulevard, and a detention pond and retail (Lowe's) to the west. The future Downtown Westminster project will be located across 88th Avenue to the north. To the south and southwest is a railroad corridor with single-family homes beyond that. The applicant has proposed to add a porte-cochere to the west side of the building and a loading dock with roll-up door to the front of the building. Staff has concerns that moving a service alley function to the front of a retail center has adverse impacts on the character of the plaza. The addition of the proposed thrift store use could have negative impacts to the adjacent single family residential neighborhood within the City of Arvada due to increased automobile traffic from the porte-cochere activity and new loading dock with door. The proximity of the adjacent residential to the proposed porte-cochere and loading dock, with roll-up door on the west side of the building, is about two-hundred feet.

Currently, on the south service side of the building, truck activity is minimal due to the size of the service alley and utility poles running along the property line. The site's orientation, small service alley, rail road, property line, and proximity to residential precludes the relocation on the porte-cochere and loading dock with roll-up door to the south side of the building. As a result,

staff has concluded that there will be impacts to character of the surrounding neighborhood and therefore the use is not reasonably compatible with the surrounding neighborhood.

- 2) That the Proposed Use will not be in Conflict with the Policies of the Comprehensive Plan
The Comprehensive Plan land use designation for the La Belles Plaza is Retail Commercial. The proposed thrift store use is compatible with the land use designation.
- 3) That the proposed use will not meet the following distance limitations:
The location of any other thrift store within one 1,000 feet of another such use shall preclude approval of the special use permit. As the City (Planning Commission) has recently approved the Arc Thrift Store application, in this same shopping center there is another 5,000 square foot thrift store within one hundred twenty feet of the proposed Salvation Army thrift store location. Therefore, the Municipal Code precludes of this application at this location. The distance separation requirement of 1,000 feet is intended to prevent a proliferation of negative impacts commonly associated with thrift stores over 5,000 square feet. Such negative impacts might include dumping, loading and unloading vehicles, collection bins and storage trailers.

Based on the foregoing analysis, Planning Staff recommends denial of this application.

Written Findings

After reaching its decision on this appeal, it is appropriate for Council to direct staff to prepare written findings based upon the evidence and testimony presented, stating in what respects the application meets or fails to meet the above standards. Staff will then return the matter to Council for adoption of the written findings and final approval or denial of the SUP at its next public meeting.

Staff's denial recommendation supports the City of Westminster's Strategic Plan goal of providing *Visionary Leadership, Effective Governance and Proactive Regional Collaboration* by applying the Code in an equitable and consistent manner through the Special Use Permitting Process. The proposed building and site modifications do not satisfy eight of the nine SUP criteria.

Respectfully submitted,

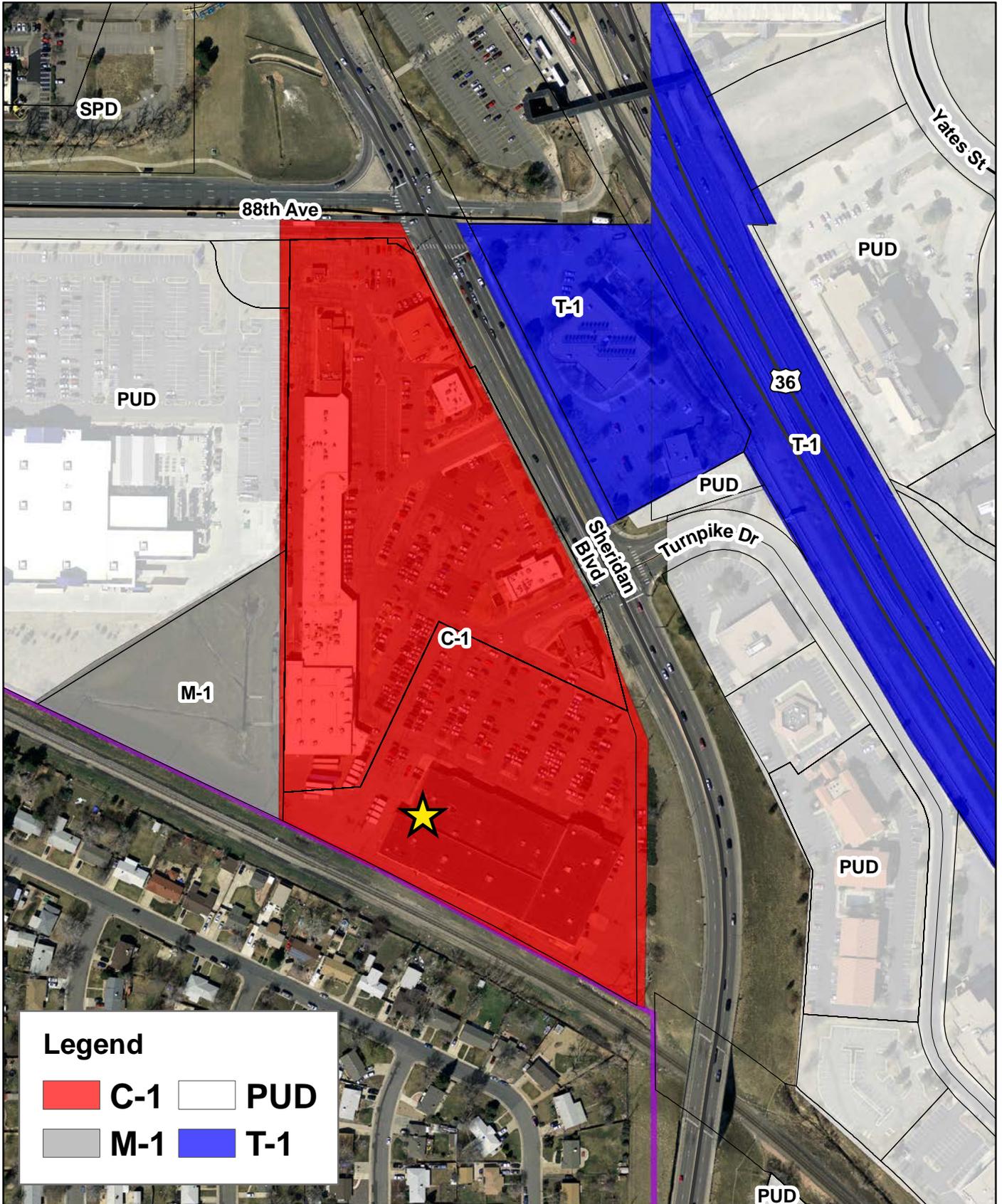
Donald M. Tripp
City Manager

Attachments

- Attachment A – Zoning Map
- Attachment B – TVI Inc. – SUP Termination Letter
- Attachment C - Thrift Store SUP Location – Salvation Army
- Attachment D – Applicant Submittal
- Attachment E – Appeal of Denial of Special Use Permit – Revesco USA Properties of Sheridan, LLLP

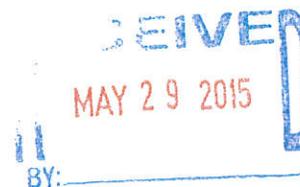
ZONING MAP

ATTACHMENT A



LaBelles Plaza
C1 - Commercial District





Doing Business As
ValueVillage
savers
Village-Valeurs
savers Recycling Inc.
UNIQUE THRIFT STORE
VALU THRIFT STORE

Corporate Offices:

11400 SE 6th Street
 Suite 220
 Bellevue, WA 98004

P.O. Box 808
 Bellevue, WA 98009

P: 425-462-1515
 F: 425-451-2250

www.savers.com

U.S. Store Operations:

TVI, Inc.
 Apogee Retail, LLC

11400 SE 6th Street
 Suite 220
 Bellevue, WA 98004

P.O. Box 808
 Bellevue, WA 98009

P: 425-462-1515
 F: 425-451-2250

www.savers.com

Canadian Store Operations:
 Value Village Stores, Inc.

7350 Edmonds Street
 Burnaby, BC V3N 1A8

P: 604-540-4916
 F: 604-540-6478

www.valuevillage.com
www.villagedesvaleurs.com

Australian Store Operations:
 Savers Australia Pty Ltd.

330 Sydney Road
 Brunswick, Victoria, AU 3056

P: 011-61-3-9381-2800
 F: 011-61-3-9381-2700

www.savers.com.au

Savers Recycling, Inc.

4101 K Industry Drive E.
 Fife, WA 98424

P: 253-896-0055
 F: 253-896-0160

Stephanie Ashmann
 Associate Planner
 City of Westminster Planning Division
 Community Development Department
 4800 W. 92nd Avenue
 Westminster, Colorado 80031

Re: Formal Notice from Apogee Retail, LLC, a Delaware limited liability company (assignee of MAPA, Inc., a Colorado corporation) relinquishment of all land use rights at 8657 Sheridan Boulevard, Westminster, Colorado ("Premises")

Dear Ms. Ashmann:

I am the Associate General Counsel of TVI, Inc. parent company of Apogee Retail, LLC, and Apogee Retail, LLC itself.

Please let this letter serve as formal written notice that Apogee Retail, LLC has ceased all operations at the Premises, has surrendered possession of the Premises, has terminated its lease of the Premises and hereby fully relinquishes any and all land use rights to the Premises, including any continuing rights under the Special Use Permit that had been granted by the City of Westminster for its former thrift shop operations at the Premises.

Any previous correspondence with anyone from Apogee Retail, LLC or TVI, Inc. shall be disregarded and only this notice shall be binding and enforceable as to the intent and status of Apogee Retail, LLC's full and final relinquishment of all land use rights at the Premises.

Thank you,

Bradley R. Whiting
 Associate General Counsel
 TVI, Inc.
 Apogee Retail, LLC



Thrift Store SUP Location - Salvation Army



Special Use Permit 8601 S. Sheridan Blvd.

LOT 2, A REPLAT OF LA BELLE'S
PLAZA SUBDIVISION
Westminster, CO



job no. 1502
drawn: GMH
issued: 1-19-14
revised:

Special Use Permit
8601 S. Sheridan Blvd.
Westminster, CO

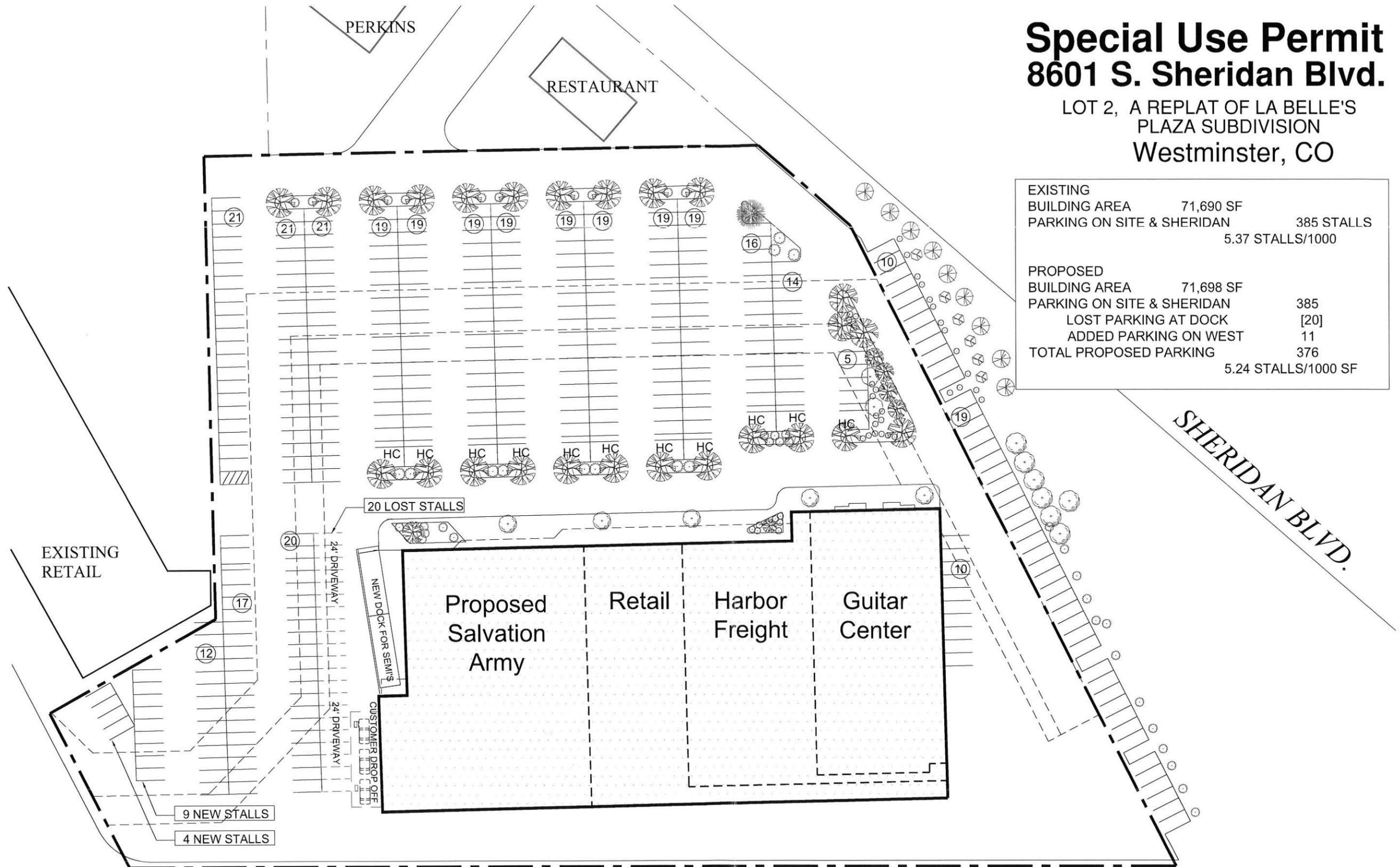
Revesco Properties, USA, LLC
5291 E Yale
Denver, CO

Concepts West
Architecture, Inc.
Principal: Gary M. Harrison
631 South Nevada Avenue - Suite 100 Colorado Springs, CO 80903 (719) 576-1555

SITE
STUDY

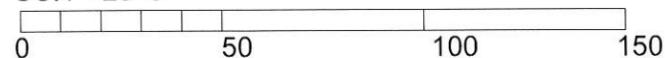
sheet
SUP

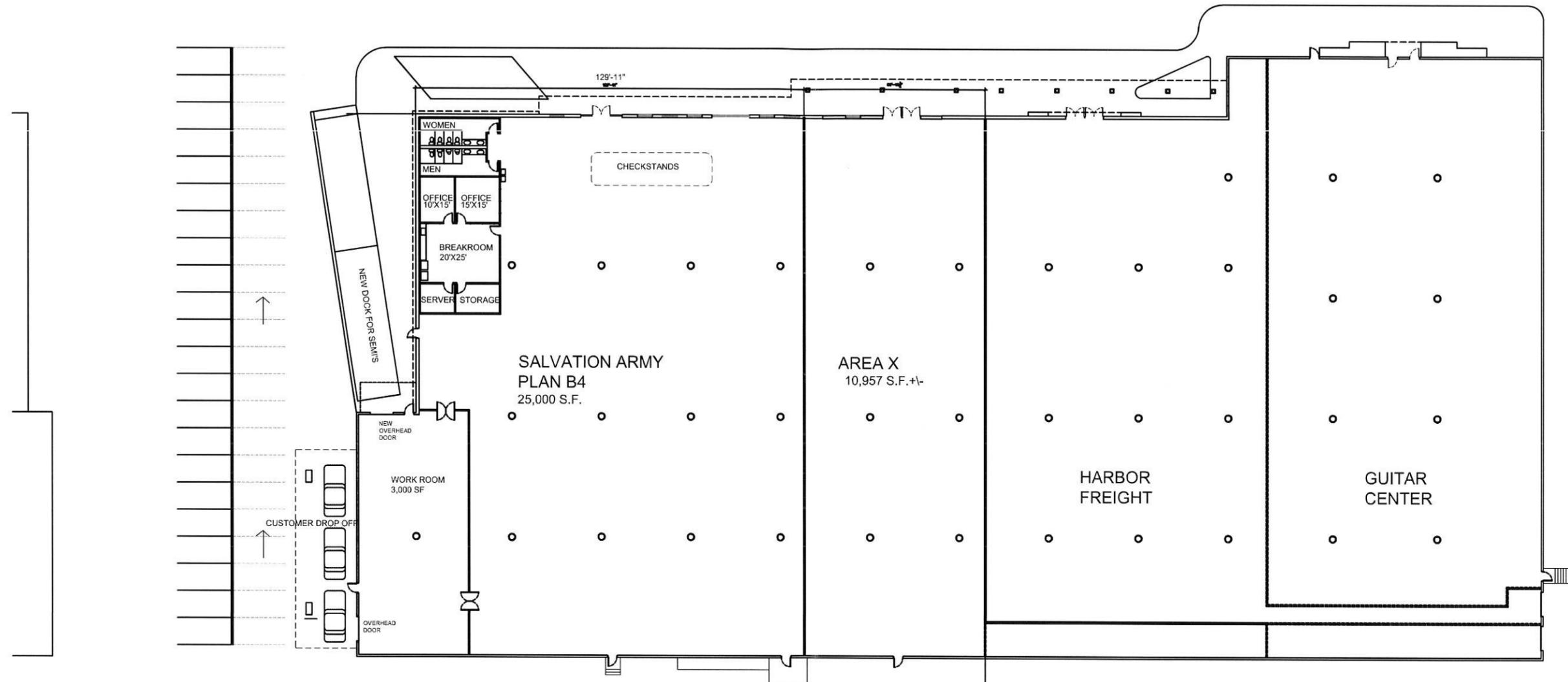
| | |
|----------------------------|---------------------|
| EXISTING | |
| BUILDING AREA | 71,690 SF |
| PARKING ON SITE & SHERIDAN | 385 STALLS |
| | 5.37 STALLS/1000 |
| PROPOSED | |
| BUILDING AREA | 71,698 SF |
| PARKING ON SITE & SHERIDAN | 385 |
| LOST PARKING AT DOCK | [20] |
| ADDED PARKING ON WEST | 11 |
| TOTAL PROPOSED PARKING | 376 |
| | 5.24 STALLS/1000 SF |



SITE PLAN

SC: 1"=20'-0"





8601 SHERIDAN BLVD.
WESTMINSTER, CO

Salvation Army Study B.4

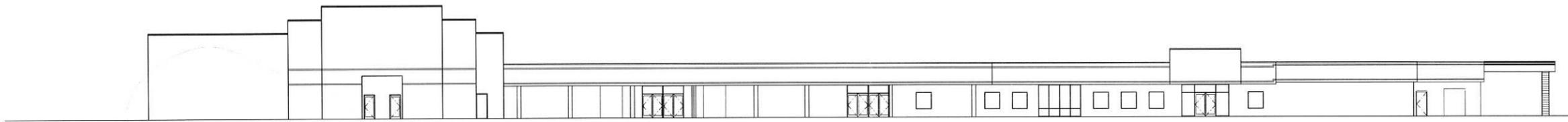
for RPM Management, Inc.
5291 E Yale Ave
Denver, CO.

CONCEPTS WEST ARCHITECTURE, INC.
COLORADO SPRINGS, CO.

REV 12-22-2014
1005/Sal Army B

Special Use Permit 8601 S. Sheridan Blvd.

LOT 2, A REPLAT OF LA BELLE'S
PLAZA SUBDIVISION
Westminster, CO



| | |
|----------|---------|
| job no. | 1502 |
| drawn: | GMH |
| issued: | 1-19-14 |
| revised: | ... |

Special Use Permit
8601 S. Sheridan Blvd.
Westminster, CO

Revesco Properties, USA, LLC
5291 E Yale
Denver, CO

Concepts West
Architecture, Inc.
Gary M. Harrison
Principal
831 South Nevada Avenue - Suite 100
Colorado Springs, CO 80903 (719) 576-1555

SITE
STUDY

sheet
SUP



FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

Denver

360 South Garfield Street
6th Floor
Denver, CO 80209
T 303-333-9810
F 303-333-9786

Colorado Springs

102 South Tejon Street
Suite 1100
Colorado Springs, CO 80903
T 719-602-6117
F 719-602-6127

fostergraham.com

July 2, 2015

Original Sent Via Electronic Mail

Members of City Council
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

Don Tripp, City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

Re: *Appeal of Denial of Special Use Permit Application for Lot 2 at LaBelles Plaza – 1st Replat – Salvation Army – 8601 Sheridan Blvd, Westminster*

Dear Councilors and Mr. Tripp:

This Firm represents Revesco USA Properties of Sheridan, LLP (“Revesco”), owner of Lot 2 at LaBelles Plaza – 1st Replat – 8601 Sheridan Blvd, Westminster (the “Revesco Property”); and co-applicant, with the Salvation Army (“SA”), for a Special Use Permit for the operation of a thrift store over 5,000 square feet at the Revesco Property (the “SA SUP”). At the June 23, 2015 Westminster Planning Commission hearing, the SA SUP was denied. By this letter, and in accordance with Westminster Municipal Code (“WMC” or the “Code”) Section 11-4-8(H), Revesco is hereby appealing the denial of the SA SUP.

By this letter Revesco is also requesting that, in accordance with WMC §11-4-8(H) and/or WMC §11-4-8(I), either the City Manager and/or the City Council initiate an appeal of the Special Use Permit for Lot 1 at LaBelles Plaza – 1st Replat – 8657 Sheridan Blvd, Westminster for the operation of a thrift store over 5,000 square feet (the “ARC SUP”), which was approved at the June 23, 2015 Planning Commission. Given the murky history of the previous special use permits at 8657 Sheridan Blvd; the timing of the filing of the SA SUP application, followed by the filing of the ARC SUP application over two weeks later; the 1000 foot minimum spacing limitation on the location of thrift stores over 5,000 square feet in the City of Westminster (the “City”); and the fact that the number one reason for the Planning Commission’s (the “Commission”) denial of the SA SUP was the Commission’s prior approval of the later-filed ARC SUP, that very same night, it is Revesco’s opinion that the ARC SUP and the SA SUP are so inextricably interrelated, that a review of and ruling by the City Council (the “Council”) on the SA SUP cannot be made without a review of and ruling by the Council on the ARC SUP.

History of the Special Use Permits and Applications

The tale of the SA SUP and the ARC SUP is really a tale of two well-intentioned entities, either one of which would make a valuable addition to the City, but which due to limitations in the Code on the spacing of thrift stores in the City, only one of which can

Members of City Council - City of Westminster

Don Tripp, City Manager - City of Westminster

Re: *Appeal of Denial of SUP Application for Lot 2 at LaBelles Plaza – 1st Replat – Salvation Army – 8601 Sheridan Blvd, Westminster*

July 2, 2015

Page 2

prevail. The question is how, using the provisions of the WMC and the requirement that the Commission and the Council refrain from acting in an arbitrary and capricious manner, does the City determine in a fair and equitable way who will be the winner of the golden ticket and who will be the loser.

As mentioned above, the history of Special Use Permits (“SUPS”) at Lot 1 at LaBelles Plaza – 1st Replat – 8657 Sheridan Blvd, Westminster, which is owned by Rocky Mountain Properties (“RMP”) (the “RMP Property”) and the authorized use of the RMP Property for a greater than 5,000 square foot thrift store is murky at best, and arguably a criminal violation of the Code.

On July 6, 2005, Mapa, Inc. (“Mapa”) dba Unique Thrift Store was issued a SUP for a thrift store over 5,000 square feet at the RMP Property. Mapa was incorporated on March 3, 1984¹; however, there are no records filed with the Colorado Secretary of State (the “CO SOS”) indicating that Mapa ever filed for registration of the trade name “Unique Thrift Store.” Mapa voluntarily dissolved on March 16, 2009.²

At the April 28, 2015 initial Commission hearing on the ARC SUP, Ms. Nancy Rodgers, legal counsel for Arc, stated that sometime prior to its dissolution, Mapa transferred its lease rights to Apogee Retail, LLC (“Apogee”). Apogee did file a registration for the trade name Unique Thrift Store with the CO SOS³. However, since WMC §11-4-8(J) specifically prohibits the transfer of a special use permit to “another person, business, or location,” there was no valid mechanism, within the WMC for Mapa to have assigned its SUP to Apogee. Further, since there is no evidence that Apogee ever received its own SUP, it’s clear that Apogee was operating its thrift store in violation of WMC §11-4-8(9). For its own self-serving reasons, which will be explained in more detail below, Arc, through Ms. Rodgers, admitted that Apogee operated its thrift store without a valid SUP.

Just as important as Apogee’s blatant disregard of its duty to obtain a SUP for the operation of its Unique Thrift Store is the fact that RMP, as the owner of the RMP Property, disregarded its separate and distinct duty to ensure that its tenants complied with Title XI of the Code by obtaining a SUP. Specifically, WMC §11-1-3(A), provides “it shall be unlawful for any person to: (2) ... authorize or permit the use ... of any land or building except in conformance with all applicable requirements and/or restrictions, including, but not limited to: (a) any zoning district requirements.”⁴

Obtaining a SUP for a thrift store over 5,000 square feet in size is a “zoning district requirement.” RMP’s failure to ensure that Apogee had a valid SUP was a violation of

¹ See Exhibit A – Mapa, Inc. - Articles of Incorporation.

² See Exhibit B – Mapa, Inc. – Articles of Dissolution.

³ See Exhibit C – Apogee Statement of Trade Name.

⁴ See Exhibit D – WMC §11-1-3 - Violations.

WMC §11-1-3(A)(2)(a), which is a criminal misdemeanor,⁵ punishable by imprisonment for up to one (1) year and a fine of \$2,500.00.⁶ Each day that RMP allowed Apogee to operate without a SUP was a separate offense subject to a separate penalty⁷. Apogee terminated its lease with RMP on December 31, 2014. Based on the date of Mapa's dissolution, March 16, 2009 and assuming Apogee began operating its thrift store at the RMP Property no earlier than that date, RMP was in violation of WMC §11-1-3(A)(2)(a) for 2116 consecutive days, which equates to a fine of \$5,290,000.00.

Perhaps, like the City's staff planners, RMP incorrectly thought *it* was the holder of the SUP for the RMP Property.⁸ However, this could not have been possible because, again the Mapa SUP was individual to Mapa, and under the Code, Mapa could not have assigned its SUP to RMP any more than it could have assigned its SUP to Apogee. More likely, as an out-of-state owner RMP was either confused as to its obligations under the Code, which is not a defense, or it just didn't care about complying with the Code. Either way, RMP should not be rewarded with the grant of a SUP to a new tenant, Arc, whose SUP application was second in time to the SA SUP.

Once it became clear to Revesco that Apogee had ceased operations at the RMP Property, Revesco approached SA about whether it was interested in submitting a SUP application for a thrift store at the Revesco Property. Over two (2) years prior, SA had approached Revesco about leasing the Revesco Property, however, to Revesco's knowledge, there was already a valid SUP for a thrift store within 1000 feet of the Revesco Property, which prohibited SA from obtaining a SUP for a thrift store at the Revesco Property. Little did Revesco and SA know that Apogee didn't have a valid SUP.

In December 2014, Mr. Brian Cuje, Revesco's Executive Vice President began outreach to the City's planning staff regarding the process for obtaining a SUP for SA at the Revesco Property, since Apogee had ceased operations at the RMP Property. Initially, Ms. Stephanie Ashmann, Westminster Associate Planner worked with Revesco on the process for submitting a SUP application for the Revesco Property. In January 2015, however, Ms. Ashmann advised Mr. Cuje that despite the fact Apogee had vacated the premises and terminated its business license on November 23, 2014, since RMP was the holder of the SUP for the RMP Property; the space occupied by Apogee would need to be vacant for one (1) year before the SUP could be automatically terminated.⁹ Therefore, the Planning Division would be unable to take in and process an application for a SUP by Revesco.

⁵ See Exhibit E - WMC §11-1-5 – Penalties and Remedies.

⁶ See Exhibit F - WMC §1-8-1(A) – Penalties.

⁷ See Exhibit F – WMC §1-8-1(c).

⁸ See Exhibit G – January 12, 2015 email correspondence from Stephanie Ashmann to Brian Cuje.

⁹ See Exhibit G, *supra*.

Undaunted by this incorrect interpretation of the validity of any SUP for the RMP Property, Revesco filed its SUP application on January 20, 2015. On February 5, 2015, RMP and Arc filed their SUP application for the RMP Property which was accepted by the City with no qualms. Given the City's previous position that RMP was actually the holder of the SUP for the RMP Property, this filing and its acceptance was curious, at best.

On March 5, 2015, Ms. Ashmann emailed Mr. Cuje regarding a change to the City's position on the SUP for the RMP Property and its effect on the SA SUP application.¹⁰ In that email, Ms. Ashmann stated that the City had "concluded that the special use permit holder is Mapa, Inc. d/b/a Unique Thrift Store. Unique Thrift Store vacated the property and ceased doing business there in November 2014. The special use permit is automatically terminated when the use is inactive for a period of one year. Since Unique Thrift could re-occupy the space up until November 2015 and then continue into the future doing business under the existing permit, the City would need to receive an unconditional written document from Unique Thrift Store that it has giving (sic) up any and all rights to its special use permit, in order to consider another thrift store locating within 1000 feet."

As a reminder, Mapa never legally conducted business as Unique Thrift Store. They just used the Unique Thrift Store name, and that name somehow was reflected on their SUP. Further, Mapa could not have assigned, sold or given its SUP to Apogee, which was legally doing business as Unique Thrift Store, even if they shared the same trade name. At this juncture, the City Planning staff had yet again incorrectly interpreted the status of any SUP for the RMP Property by attributing ownership of the Mapa SUP to Apogee through some magical, sleight of hand, transfer of the Mapa SUP to Apogee based on the alleged use of the same trade name, and by maintaining that Apogee had the right to reappear at any moment and begin to operate its thrift store, despite Apogee's *voluntary relinquishment of its business license*.

Ms. Ashmann went on to state in her March 5th email that "It is inappropriate for the City to become involved in the relationship between private parties, such as the landowner and the tenant. Thus, discussions about the leasehold arrangement are not relevant to the City's obligation vis-a-vis the permit holder." Interestingly, that is exactly what Ms. Ashmann did when she called Mr. David Cree with Savers Village, the parent company of Apogee "concerning a store that we operated in Westminster."¹¹ Apparently, Ms. Ashmann had contacted Mr. Cree to inquire as to whether Unique Thrift would voluntarily terminate its SUP. It's unclear as to Ms. Ashmann's motivation for reaching out to Mr. Cree, but based on his response it is clear that Savers/Apogee thought the outreach was on behalf of Arc, when Mr. Cree stated in his email response to Ms. Ashmann that Savers/Apogee was "not inclined to assist any competition ... in their application for a location that I am stuck paying rent on." Savers/Apogee was a tenant of RMP, not Revesco, so Mr. Cree could only have

¹⁰ See Exhibit H – March 5, 2015 email correspondence from Stephanie Ashmann to Brian Cuje.

¹¹ See Exhibit I – March 30, 2015 email correspondence from David Cree to Stephanie Ashmann.

been referencing assisting Arc in its application, not SA in its application. So the question remains as to why Ms. Ashmann would tell Mr. Cuje that the City could not intervene with Apogee on behalf of the SA SUP, but apparently did intervene on behalf of the ARC SUP.

With a clear misunderstanding of the validity of any SUP purportedly held by Apogee, and without an imminent resolution of the Apogee SUP relinquishment, both the SA SUP and the ARC SUP were placed on the April 23, 2015 Commission agenda for public hearings. The Planning staff's recommendation was for denial of both the SA SUP and the ARC SUP based on the fact that pursuant to WMC §11-4-8(G)(3)(d), "The location of any other Thrift Store within one thousand feet (1000') of another such use shall preclude approval of the special use permit." In both the SA SUP and the ARC SUP recommendation, the Planning Staff went on to state that "No additional SUP criteria were reviewed for this proposal."¹²

At the April 28, 2015 Commission Public Hearing on Agenda Items 3A and 3B, testimony was taken by the Commission. Interestingly, at this hearing, the ARC SUP had been assigned Agenda Item 3A and the SA SUP had been assigned Agenda Item 3B, despite the fact that the SA SUP had been filed sixteen days before the ARC SUP. At the hearing for Agenda Item 3A, the Commission moved to continue the hearing on the ARC SUP to June 9, 2015, stating that the continuance was necessary,

[B]ecause of the multiple and conflicting testimony regarding the lease termination of the Unique Thrift Store Special Use Permit (SUP); questions regarding the language and meaning of the Code; ownership and transfer issues; time needed for City Staff to investigate the issues brought up; time for staff to receive legal recommendations and guidance; and time to review and make a recommendation to the Planning Commission.¹³

For Agenda Item 3B, the Commission similarly moved to continue the hearing to June 9th. When Commissioner Carpenter asked how the staff would determine the order of the agenda for the next meeting, Mr. Mac Cummins, Westminster Planning Manager, stated that "there is no guidance in the Municipal Code and no traditional City practice on that." Mr. Cummins however went on to assure the Commission that "they (Planning Commission) will be weighing the value of each application on its own merits based on the evidence entered into the record. And who goes first or second will be less important than how you [the Commission] look at the findings that are required for approval and how you [the Commission] assess each application."¹⁴ Little did Revesco and SA know that their application's order on the Commission's agenda would make all the difference in the world.

¹² See Exhibit J - April 28, 2015 Planning Commission Meeting Agenda and Staff Recommendations for Agenda Items 3A and 3B.

¹³ See Exhibit K - April 28, 2015 Planning Commission Meeting Minutes at page 3.

¹⁴ See Exhibit K, supra, at page 5.

On May 29, 2015, Ms. Ashmann received a letter from Bradley R. Whiting, Associate General Counsel for Apogee Retail, Inc. stating, among other things that Apogee Retail, LLC “hereby fully relinquishes any and all land use rights to the Premises [the RMP Property], *including any continuing rights under the Special Use Permit that had been granted by the City of Westminster for its former thrift shop operations at the Premises.*” (emphasis added).¹⁵

At that point, any lingering ambiguity as to any rights Apogee may have had to continue operations under a SUP at the RMP Property was laid to rest, and the City Planning Staff could get on to the business of reviewing the SA SUP and the ARC SUP on their merits. Which brings us to the real issue at hand. Based on the Code and the City’s duty to refrain from enforcing the Code in an arbitrary and capricious manner, how should the Planning staff have presented its findings to the Commission so that the Commission, not the Planning Staff, was the body “weighing the value of each application on its own merits based on the evidence entered into the record”¹⁶, and so that “who goes first or second [would] be less important than how the Commission look[ed] at the findings that are required for approval”¹⁷, and to determine which entity is rightly entitled to an SUP, Revesco/SA or RMP/Arc.

Analysis of the SUP Applications

Under WMC §11-4-8(F), when considering a SUP application, the Commission is required to consider nine (9) specific criteria; (1) Impact on the character of the neighborhood; (2) Compatibility of the proposed use with the existing and planned uses on adjacent properties; (3) Activities or uses on the site that generate potential adverse or nuisance effects, such as visual impacts, noise, vibrations, light intensity, odors, loitering, or level of police activity; (4) Amount or degree of outdoor activity; (5) Hours of operation; (6) Location and intensity of storage, loading, and delivery areas; (7) Adequacy of parking and vehicular access and circulation; (8) Traffic volume generated by the proposed use; and (9) Pedestrian safety.

Based on its analysis of the SUP application vis-à-vis those nine (9) criteria, WMC §11-4-8(G), states that the Commission **will** grant the SUP if it finds that the application meets three (3) standards of review; (1) that the proposed use will be reasonably compatible with the surrounding neighborhood; (2) that the proposed use will not conflict with the policies of the Comprehensive Plan; and (3) that the proposed use meets certain distance limitations. For the RMP and Revesco Properties, this last criteria is a minimum of 1000 feet between thrift stores of greater than 5,000 square feet, as provided for in paragraph 11-4-8(G)(3)(d).

¹⁵ See Exhibit L – Undated letter from Mr. Bradley R. Whiting to Ms. Stephanie Ashmann.

¹⁶ See Exhibit K, supra at page 5.

¹⁷ See Exhibit K, supra at page 5.

On June 9, 2015 at the continued Commission hearing on Agenda Items 3A and 3B, the City's Planning staff presented its staff report and recommendation on both the ARC SUP and the SA SUP to the Commission. Before discussing the staff reports and recommendations, it should be noted that the two applications are so similar as to be nearly identical. The only major difference between the ARC SUP and the SA SUP is that Arc intends to provide for large item drop off and pick-up at an existing loading dock at the back of the RMP Property, with smaller donations being made at a manned drop off location on the front side of the RMP Property near the sidewalk and parking lot, while SA intends to build a new loading dock for large item drop off and pick up on the west side of the Revesco Property with smaller donations being made at a manned, covered drive-up drop off area (the "Porte-Cochere"), which is also located on the west side of the Revesco Property.

Since the ARC SUP had become Agenda Item 3A, this item was the first staff report and recommendation presented to the Commission. In its report the Planning Staff analyzed each of the nine (9) criteria and found that criteria number (1), (4) through (7) and (9) were all satisfied without any conditions or modifications to the ARC SUP.

For criterion (2), Compatibility of the proposed use with the existing and planned uses on adjacent properties, staff specifically found that "The previous thrift tenant was sent an enforcement letter from the City on March 13, 2014, regarding the amount of trucks and trailers being permanently parked on the paved lot to the south of the building." The staff report went on to say that "Also, on multiple occasions over those fifteen years, Staff observed the rear service and loading dock in disarray with debris scattered about the rear of the building." Despite a clear pattern of RMP as the property owner, and the City failing to enforce provisions of the Code, staff merely recommended adding a condition to the ARC SUP that the drop-off location, service areas and loading docks be kept free of donated materials or debris and that failure to do so could result in revocation of the ARC SUP.

Staff had similar concerns with criterion (3), Activities or uses on the site that generate potential adverse or nuisance effects, such as visual impacts, noise, vibrations, light intensity, odors, loitering, or level of police activity, as related to the accumulation of donated items at the drop off area at the front of the building. Staff's solution to this concern was to provide another condition regarding acceptable hours for donations.

Finally, staff had concerns with criterion (8), Traffic volume generated by the proposed use. Once again, the focus was on the front drop-off area and the potential to block traffic and hinder traffic flow in the drive aisle in front of the RMP Property. Staff felt that this concern could be addressed with "minor site plan modifications ... to accommodate traffic circulation," and a requirement that the drop-off area be striped.

Based on this analysis, and despite the recommended conditions, staff found that (1) the proposed use would be reasonably compatible with the surrounding neighborhood, since the primarily non-residential neighborhood would not be adversely impacted by a single thrift store in this location; (2) that the proposed use would not conflict with the policies of the Comprehensive Plan since a thrift store is an allowed use in this zone district; and (3) that the proposed use met the 1000 foot distance limitation to any other thrift store since Unique Thrift Store had recently terminated its SUP. Based on this analysis, staff recommended that the ARC SUP be approved with the stated conditions.

Staff's analysis, report and recommendation on the SA SUP was markedly different than its analysis of the ARC SUP. While the ARC SUP was found to satisfy six (6) of the criteria outright, and the other three (3) with minor conditions, staff found that the SA SUP, a nearly identical application met only one (1) of the criteria outright and none of the remaining eight (8) criteria could be met, even with conditions.

The main point of contention staff had with the SA SUP was the new loading dock and Porte-Cochere donation drop off on the west side of the Revesco Property. Time and time again, as staff reviewed the nine (9) criteria, they incorrectly stated that the SA SUP constituted a "new" thrift store use in this location, as opposed to calling it what it really was, a relocation of a thrift store use from the RMP Property to the Revesco Property.

As an example, while the ARC SUP was allowed to meet criterion (2) Compatibility of the proposed use with the existing and planned uses on adjacent properties, by adding a condition that the SUP could be terminated if Arc didn't keep the drop-off location, service areas and loading docks free of donated materials or debris, in analyzing the SA SUP, staff found that this application constituted "the addition of" a proposed thrift store, as opposed to the relocation of a thrift store use, and that there were no conditions staff could recommend to abate "new" noise impacts to the adjacent residential community caused by the twice a day deliveries via semi-truck, which was the same frequency of deliveries as for the ARC SUP, whose loading dock is on the back side of the RMP Property, and arguably nearly as close to this residential neighborhood as the Revesco loading dock.

Another example of the uneven, unfair and inequitable way in which the SA SUP was reviewed by the Planning staff is evidenced in its analysis of criterion (3), Activities or uses on the site that generate potential adverse or nuisance effects, such as visual impacts, noise, vibrations, light intensity, odors, loitering, or level of police activity. The ARC SUP was allowed to add a condition regarding acceptable hours for donations as a way to mitigate the accumulation of unsightly debris and abandoned, after-hours donations. For the SA SUP, on the other hand, staff could not find any condition that would help alleviate the perceived visual impact of a loading dock with roll-up door that could be seen from the front of the Revesco Property.

The most egregious example of the arbitrary and capricious manner in which the SA SUP was reviewed was staff's analysis of criteria (8), Traffic volume generated by the proposed use. Staff found that both the ARC SUP and the SA SUP had the potential to cause traffic circulation issues based on the respective locations of their drop-off donation areas. For the ARC SUP, this criterion was met with "minor site plan modifications ... to accommodate traffic circulation," and a condition that the drop-off area be striped. For the SA SUP, once again, staff could find no condition for the permit that would address their concern regarding vehicle stacking in the main drive aisle for vehicles waiting to drop off donations at the Porte-Cochere, the identical issue identified with the front donation drop off area at the RMP Property.

Staff ultimately determined that while the SA SUP met standard of review (2) in that the proposed use would not conflict with the policies of the Comprehensive Plan since a thrift store is an allowed use in this zone district; and standard of review (3) in that the proposed use met the 1000 foot distance limitation to any other thrift store since Unique Thrift Store had recently terminated its SUP. However, due to staff's overarching and misplaced concerns about the "new" impacts to the residential neighbors caused by the Porte-Cochere, which according to staff could not be adequately alleviated with any conditions, the SA SUP would not be reasonably compatible with the surrounding neighborhood, and therefore did not meet standard of review (1).

The Commission's Actions on the SUP Applications

On June 23, 2015, the Commission took action as recommended by staff, approving the ARC SUP and denying the SA SUP. While many promises were made to Revesco about the lack of importance associated with the SA SUP being assigned Agenda Item 3B, its clear from the statement in paragraph 3.a. of the staff's findings of fact on the SA SUP that the relative order of the applications was critical. In finding 3.a., staff found,

After consideration of the Special Use Permit Criteria in §11-4-8(F), W.M.C., the Application does not meet the Standards of Review in §11-4-8(G), W.M.C., as follows: (a) There cannot be two thrift stores located within one thousand (1000) feet of each other and the Commission has approved a special use permit for a thrift store that will be located within approximately one hundred twenty (120) feet of the proposed use, so this use does not meet the distance limitation required by the Code.

Members of City Council - City of Westminster

Don Tripp, City Manager - City of Westminster

Re: *Appeal of Denial of SUP Application for Lot 2 at LaBelles Plaza – 1st Replat – Salvation Army – 8601 Sheridan Blvd, Westminster*

July 2, 2015

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Curiously, staff made this finding of fact before the Commission had taken any action on the ARC SUP, the “special use permit for a thrift store that will be located within approximately one hundred twenty (120) feet of the proposed use.” Either staff was clairvoyant when writing this finding of fact, or staff had already made the decision as to which SUP should be approved and the Commission was expected to merely rubber stamp staff’s “recommendation.”

Conclusion

There’s been much to do made by the City Planning Staff that the order of receipt of applications is irrelevant as each application is reviewed based on the merits of the application. Based on the summary of staff’s actions provided above, clearly this is not an accurate statement. While the Code does not provide any guidance as to how to handle multiple applications for the same limited, allowable use, a first in time, first in right approach clearly seems to be a fair and equitable approach. This approach has been applied in many contexts not only in Colorado, most notably in the water rights arena, but also by many other states and Federal government agencies when administering various administrative code provisions, specifically zoning provisions and limited rights thereunder. Based on this approach, the SA SUP should have been reviewed and presented to the Commission for its decision, first with appropriate recommended conditions to address staff’s concerns.

If the City refuses to use a first in time, first in right approach to reviewing land use applications, then the City needs to find another mechanism for avoiding arbitrary and capricious decisions of the Commission based on foregone conclusions that the staff report and recommendation should be adopted carte blanche. The Commission’s mission is to “balance the interests of the development community with the interests of the residents and the neighborhoods to create a city the citizens can be proud of into the future.” This mission requires the Commission, not staff to balance these interests.

The inherent nature of a SUP is that it is a “special” grant of authority that comes with a heightened level of review. The SA SUP should have been reviewed and presented to the Commission with any conditions that would alleviate staff’s concerns with the Porte-Cochere, and then the Commission should have decided between granting the SA SUP to Revesco, a longstanding, contributing member of the Westminster community, or granting the later-filed ARC SUP to RMP, an out-of-state owner who allowed a long-term unpermitted use to exist at the RMP Property in a manner that resulted in an enforcement letter from the City. Does rewarding such a bad actor create a city the citizens can be proud of into the future.”? We think not.

It is our client’s position that due to the long-standing violations of the Code by Rocky Mountain Properties, the owner of the RMP Property, and its tenants; the fact that the SA SUP was filed sixteen days before the ARC SUP and was thus first in time; and the

Members of City Council - City of Westminster

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Page 11

fact that the denial of the SA SUP was nearly entirely based on the prior approval of the ARC SUP with no opportunity for Revesco to amend its application to address staff's stated concerns with the impact of the Porte Cochere, the Council should conduct a de novo hearing on the merits of both the SA SUP and the ARC SUP.

Revesco's address and phone number are 5291 East Yale Avenue, Denver, CO 80222; phone number: (303) 551-7750. For purposes of this appeal, Revesco can be reached by contacting the undersigned at the address and phone number listed above.

Sincerely,

FOSTER GRAHAM MILSTEIN & CALISHER, LLP



David Wm. Foster

Sincerely,

FOSTER GRAHAM MILSTEIN & CALISHER, LLP



Michelle L. Berger

MLB/cw

Attachments

cc: Kenneth S. Fellman, Esq. – Kissinger & Fellman, P.C. (kfellman@kandf.com)
Linda Yeager, City Clerk – City of Westminster (lyeager@cityofwestminster.us)

EXHIBIT A

FILED
CO. DEPT. OF STATE
564300 #298

ARTICLES OF INCORPORATION
OF
MAPA, INC.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned incorporator, being a natural person of the age of eighteen (18) years or more, and desiring to form a corporation under the laws of the State of Colorado, does hereby sign, verify and deliver in duplicate to the Secretary of State of the State of Colorado these ARTICLES OF INCORPORATION.

ARTICLE I

NAME

The name of the corporation shall be: MAPA, INC.

ARTICLE II

PERIOD OF DURATION

This corporation shall exist perpetually unless dissolved according to law.

ARTICLE III

PURPOSE AND POWERS

The purpose for which this corporation is organized is to transact any lawful business or businesses for which corporations may be incorporated pursuant to the Colorado Corporation Code.

Except as restricted by these Articles of Incorporation, the corporation shall have and may exercise all powers and rights which a corporation may exercise legally pursuant to the Colorado Corporation Code.

COMPUTER UPDATE COMPLETE
AC

ARTICLE IV

CAPITAL

The aggregate number of shares which this corporation shall have the authority to issue is 50,000 shares, each without par value, which shares shall be designated common stock. No share shall be issued until it has been paid for, and it shall thereafter be nonassessable.

ARTICLE V

PREEMPTIVE RIGHTS

A shareholder of the corporation shall be entitled to a preemptive right to purchase, subscribe for, or otherwise acquire any unissued or treasury shares of stock of the corporation, or any options or warrants to purchase, subscribe for or otherwise acquire any such unissued or treasury shares, or any shares, bonds, notes, debentures, of other securities convertible into or carrying options or warrants to purchase, subscribe for or otherwise acquire any such unissued or treasury shares.

Preemptive rights shall also exist:

A. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such vote of shareholders; or

B. To acquire any shares issued for consideration other than cash.

ARTICLE VI

CUMULATIVE VOTING

The shareholders shall not be entitled to cumulative voting.

ARTICLE VII

SHARE TRANSFER RESTRICTIONS

The corporation shall have the right to impose restrictions upon the transfer of any of its authorized shares or any interest therein. The board of directors is hereby authorized on behalf of the corporation to exercise the corporation's right to so impose such restrictions.

ARTICLE VIII

REGISTERED OFFICE AND AGENT

The initial registered office of the corporation shall be at 1901 Kipling, No. 3, Lakewood, Colorado 80215, and the name of the initial registered agent at such address is Walter Ellison. Either the registered office or the registered agent may be changed in the manner provided by law.

ARTICLE IX

INITIAL BOARD OF DIRECTORS

The initial board of directors of the corporation shall consist of three (3) directors, and the names and addresses of the person who shall serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are as follows:

| <u>Name</u> | <u>Address</u> |
|----------------|---|
| Walter Ellison | 450 Carr Street Lakewood, Colorado 80226 |
| Orlo Ellison | 1675 Garland Street Lakewood, Colorado 80215 |
| O. T. Ellison | 0067 Royal Red Bird Drive Dillon, Colorado 80435 |

The number of directors shall be fixed in accordance with the bylaws. So long as the number of directors shall be less than three (3), no shares of this corporation may be issued and held of record by more shareholders than there are directors. Any shares issued in violation of this paragraph shall be null and void. This provision shall also constitute a restriction on the transfer of shares and a legend shall be conspicuously placed on each certificate preventing transfer of the shares to more shareholders than there are directors.

ARTICLE X

INDEMNIFICATION

(A) The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation), by reason of the fact

that he is or was a director, officer, employee, fiduciary or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interest of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith in a manner which he reasonably believed to be in the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe his conduct was unlawful.

(B) The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the corporation; but no indemnification shall be made in respect of any claim, issue, or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such court deems proper.

(C) To the extent that a director, officer, employee, fiduciary or agent of a corporation has been successful on the merits in defense of any action, suit, or proceeding referred to in (A) OR (B) of this Article X or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith.

(D) Any indemnification under (A) or (B) of this Article X (unless ordered by a court) and as distinguished from (C) of this Article shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, fiduciary or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in (A) or (B) above. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding; or, if such a quorum is not obtainable or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders.

(E) Expenses (including attorney fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding as authorized in (C) or (D) of this Article X upon receipt of an undertaking by or on behalf of the director, officer, employee, fiduciary or agent to repay such amount unless it is ultimately determined that he is entitled to be indemnified by the corporation as authorized in this Article X.

(F) The indemnification provided by this Article X shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, and any procedure provided for by any of the foregoing, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, fiduciary or agent and shall inure to the benefit of heirs, executor, and administrators of such a person.

(G) The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under provisions of this Article X.

ARTICLE XI

RESTRICTIONS ON PURCHASES OF SHARES

The corporation shall have the rights to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares in accordance with the Colorado Corporation Code.

ARTICLE XII

CONSIDERATION FOR NO PAR SHARES

The shareholders of the corporation shall have the rights, upon a vote by the holders of a majority of all shares entitled to vote thereon, to fix the consideration to be received for no par shares.

ARTICLE XIII

STOCK RIGHTS AND OPTIONS

The corporation may create an issue, rights or options entitling the holders to purchase shares of the corporation of any class.

ARTICLE XIV

QUORUM OF SHAREHOLDERS

Fifty percent (50%) of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

ARTICLE XV

AMENDMENTS TO BYLAWS

The power to alter, amend or repeal the bylaws or adopt new bylaws shall be reserved to the directors who may approve such alterations, amendments or repeal of the bylaws by a majority vote.

ARTICLE XVI

DIVIDEND RESTRICTIONS

The corporation may pay dividends in cash, property, or its own shares, except when the corporation is insolvent, and subject to the provisions of the Colorado Corporation Code.

ARTICLE XVII

TRANSACTIONS WITH INTERESTED DIRECTORS

No contract or other transaction between the corporation and one (1) or more of its directors or any other corporation, firm, association, or entity in which one (1) or more of its directors are directors or officers or are financially interested shall be either void or voidable solely because of such relationship or interest, or solely because such directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or solely because their votes are counted for such purpose if:

(A) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(B) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(C) The contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorized, approves, or ratifies such contract or transaction.

ARTICLE XVIII

VOTING OF SHAREHOLDERS

With respect to any action to be taken by shareholders of this corporation, a vote or concurrence of the holders of fifty percent (50%) of the outstanding shares of the shares entitled to vote thereon, or of any class or series, shall be required.

ARTICLE IX
INCORPORATOR

The name and address of the incorporator is as follows:

Bruce G. McLellan
7475 West Fifth Avenue, Suite 100
Lakewood, Colorado 80226.

IN WITNESS WHEREOF, the above named incorporator signed these ARTICLES OF INCORPORATION on March 29, 1984.



STATE OF COLORADO)
County of Jefferson) ss.

I, the undersigned, a notary public, hereby certify that on March 29, 1984, the above named incorporator personally appeared before me and being by me first duly sworn declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

WITNESS my hand and official seal.

My Commission Expires: April 21, 1985


Notary Public
6343 Upham Street
Arvada, Colorado 80003

EXHIBIT B



Colorado Secretary of State
Date and Time: 03/16/2009 10:55 AM
ID Number: 19871564306
Document number: 20091154759
Amount Paid: \$25.00

Document processing fee
If document is filed on paper \$125.00
If document is filed electronically \$ 25.00
Fees & forms/cover sheets
are subject to change.

To file electronically, access instructions
for this form/cover sheet and other
information or print copies of filed
documents, visit www.sos.state.co.us
and select Business Center.

Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Dissolution

filed pursuant to §7-90-301, et seq. and §7-114-103 of the Colorado Revised Statutes (C.R.S)

ID number: 19871564306

1. Entity name: MAPA, INC.

2. Principal office mailing address: 7175 W 16th Ave
(Street name and number or Post Office Box information)

Lakewood CO 80214
(City) *(State)* *(Postal/Zip Code)*
United States
(Province - if applicable) *(Country - if not US)*

3. The corporation is dissolved.

4. (Optional) Delayed effective date: _____
(mm/dd/yyyy)

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.

5. Name(s) and address(es) of the
individual(s) causing the document
to be delivered for filing:

Ellison Walter
(Last) *(First)* *(Middle)* *(Suffix)*
14326 W Exposition Dr.
(Street name and number or Post Office Box information)
Lakewood CO 80228
(City) *(State)* *(Postal/Zip Code)*
United States
(Province - if applicable) *(Country - if not US)*

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box and include an attachment stating the name and address of such individuals.)

Disclaimer:

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form 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. Questions should be addressed to the user's attorney.

EXHIBIT C



Colorado Secretary of State
Date and Time: 03/09/2007 01:34 PM
Id Number: 20071088790

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

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

\$1.00

Document number: 20071123236

To access other information or print
copies of filed documents,
visit www.sos.state.co.us and
select Business Center.

ABOVE SPACE FOR OFFICE USE ONLY

Statement of Trade Name of a Reporting Entity

filed pursuant to §7-71-103 and §7-71-107 of the Colorado Revised Statutes (C.R.S)

1. For the reporting entity delivering this statement, its ID number, true name, form of entity and the jurisdiction under the law of which it is formed are

| | |
|----------------|--|
| ID Number | <u>20071088790</u> <small>(Colorado Secretary of State ID number)</small> |
| True name | <u>APOGEE Retail, LLC</u> |
| Form of entity | <u>Foreign Limited Liability Company</u> |
| Jurisdiction | <u>Delaware</u> |

2. The trade name under which such entity transacts business or conducts activities or contemplates transacting business or conducting activities in this state is

Unique Thrift Store

3. A brief description of the kind of business transacted or activities conducted or contemplated to be transacted or conducted in this state under such trade name is

retail thrift store

4. (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.

5. (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 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 such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S. and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such 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 identified in this document as one who has caused it to be delivered.

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

| | | | |
|--|--------------------------------------|----------------------------------|-------------------------|
| <u>Kloeber</u> | <u>David</u> | <u>N.</u> | <u>Jr.</u> |
| <small>(Last)</small> | <small>(First)</small> | <small>(Middle)</small> | <small>(Suffix)</small> |
| <u>3080 Centerville Road</u> | | | |
| <small>(Street number and name or Post Office Box information)</small> | | | |
| <hr/> | | | |
| <u>Little Canada</u> | <u>MN</u> | <u>55117</u> | |
| <small>(City)</small> | <small>(State)</small> | <small>(Postal/Zip Code)</small> | |
| <u>United States</u> | | | |
| <small>(Province – if applicable)</small> | <small>(Country – if not US)</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).

EXHIBIT D

1/13

CHAPTER 1

GENERAL PROVISIONS, ADMINISTRATION AND ENFORCEMENT

11-1-1: PURPOSE

11-1-2: GENERAL AUTHORITY

11-1-3: VIOLATIONS

11-1-4: INTERPRETATION

11-1-5: PENALTIES AND REMEDIES

11-1-6: LAND USE AND DEVELOPMENT REVIEW FEE SCHEDULE

11-1-1: PURPOSE: (2534 3497) This Title is enacted to preserve and promote the public health, safety, and welfare of the inhabitants of the City of Westminster and of the public generally and to encourage and facilitate the orderly growth and expansion of the City. This Title combines the provisions more commonly found in separate zoning, subdivision, growth management, building, floodplain, and numerous other ordinances into a single land use and development code that will cover all phases of development from annexation through certificate of occupancy. The intent of the unified approach is to:

(A) Address the changes in the way land development occurs. Current land development practices blur the traditional distinctions between zoning, plan approval, and subdivision and, typically, contain a variety of residential and non-residential uses in a single development plan.

(B) Include all types and stages of development under one Title and provide for the convenience of those using the development process.

(C) Avoid overlapping, conflicting, or inconsistent Code provisions.

11-1-2: GENERAL AUTHORITY: (2534) This Title is enacted pursuant to the home rule provisions of Article XX of the Colorado Constitution and the authority and powers contained in the City Charter of the City of Westminster including, but not limited to, Chapters 2, 4 and 11.5 thereof.

11-1-3: VIOLATIONS: (2534 2797 3491 3497 3634 3664)

(A) Unless otherwise permitted by this Code, it shall be unlawful for any person to:

(1) Use, occupy, or sell any land or building, or authorize or permit the use, occupancy, or sale of any land or building under the person's control except in conformance with all applicable provisions of this Title.

(2) Use, occupy, or sell any land or building or authorize or permit the use, occupancy, or sale of any land or building except in conformance with all applicable requirements and/or restrictions, including, but not limited to:

(a) any zoning district requirements and restrictions, including PUD (Planned Unit Development) zones,

(b) the contents of any Preliminary Development Plan (PDP), Official Development Plan (ODP), or Final Plat.

(c) the contents of any approved engineering construction drawings, engineering drawings, building construction drawings, and any public or private improvement drawings,

(d) the terms, conditions and covenants of any annexation agreement, public and/or private improvements agreement, development agreement, or any agreement entered into pursuant to the provisions of this Title,

(e) the contents of any approved drainage, traffic, or utility study, and

(f) the terms and conditions of any approved variance or exception.

EXHIBIT E

(3) Construct, reconstruct or alter any building or structure, authorize the construction, reconstruction or alteration of any building or structure under the person's control except in conformance with all applicable provisions of this Title and with all applicable requirements and/or restrictions, including, but not limited to:

- (a) any zoning district requirements and restrictions, including PUD (Planned Unit Development) zones,
- (b) the contents of any Preliminary Development Plan (PDP), Official Development Plan (ODP), or Final Plat,
- (c) the contents of any approved engineering construction drawings, building construction drawings, and any public or private improvement drawings,
- (d) the terms, conditions and covenants of any annexation agreement; public and/or private improvements agreement, development agreement entered into pursuant to the provisions of this Title,
- (e) the contents of any approved drainage, traffic, or utility study, and
- (f) the terms and conditions of any approved variance or exception.

(4) Utilize any yard or other open space provided about any building for the purpose of complying with provisions of this Title to provide a yard or other open space for any other building. No yard or other open space on one (1) lot shall be considered as providing a yard or open space for a building on any other lot.

(5) Construct, reconstruct, alter, or change the use of any building or other structure, including signage, within the City without obtaining a building permit from the Building Official or his authorized representative. No permit shall be issued unless the plans of and for the proposed construction, reconstruction, alteration, demolition, or use fully conform to the zoning regulations then in effect. No business license shall be issued by the City Clerk without being furnished a written notice from the Planning Manager and Building Official, or their designees, that the use of the premises proposed is in conformance with the requirements of the provisions of this Title.

(6) Use, occupy or authorize the use or occupancy of any land or building for any use that is unlawful under any state or federal law; provided, however, that this provision shall not apply to uses within any residential zoning district deemed to be permitted under Article XVIII, Section 14 or 16, of the Colorado Constitution.

(B) For purposes of this Section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

11-1-4: INTERPRETATION: (2534 3497) The provisions of this Title shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this Title are at variance with any other provision of this Code, any other duly adopted City ordinance, or any duly promulgated rule or regulation of the City, the more restrictive, or that imposing the higher standards, shall govern. Any action or approval authorized in this Title to be taken or granted by the City Manager may be taken or granted by the City Manager's designated representative.

11-1-5: PENALTIES AND REMEDIES: (2534)

(A) Any person, either as owner, lessee, occupant, or otherwise, who violates any of the provisions of this Title, or any amendment thereof, or who interferes in any manner with any person in the performance of a right or duty granted or imposed upon him by the provisions of this Title, shall be deemed guilty of a criminal misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 1-8-1, W.M.C.

(B) Any building or structure that is, or is proposed to be, constructed, reconstructed, altered, maintained, or used and any land that is proposed to be used in violation of any provision of this Title or any amendment thereof is hereby declared to be a public nuisance, and the City, or any owner of real estate within the City, in addition to other remedies provided by law, may institute injunction, mandamus,

EXHIBIT F**CHAPTER 8****PENALTIES AND INTEREST****1-8-1: PENALTIES****1-8-2: INTEREST****1-8-3: DISHONORED CHECK; PENALTIES****1-8-1: PENALTIES:** (1256 1563 1595 1699 1803 1869 2000 2086 2239 3564 3705)

(A) All violations of any provision of this Code are hereinafter deemed noncriminal offenses and are civil matters, except those violations that are expressly designated as criminal offenses or which are punishable by imprisonment under this Code or under any counterpart state statute. Trial of noncriminal offenses shall be to the Court. No defendant found civilly liable for a noncriminal offense shall be punished by imprisonment for said offense. Any person convicted of a noncriminal violation of any section of this Code shall be fined an amount not to exceed two thousand five hundred dollars (\$2,500). ~~Any person convicted of a criminal violation of any section of this Code shall be imprisoned for a period not to exceed three hundred sixty-five (365) days or fined an amount not to exceed two thousand five hundred dollars (\$2,500) or both; provided, however, that a person under the age of eighteen (18) years as of the date of the offense for which he is convicted shall not be subject to the imposition of a jail sentence of more than ten (10) days, except in the case of a conviction of a criminal traffic offense.~~

(B) The penalties provided in subsection (A) of this Section shall be applicable to every section of this Code the same as though it were a part of each and every separate section.

~~(C) A separate offense shall be deemed committed upon each day such duty or obligation remains unperformed or such act continues, unless otherwise specifically provided in this Code.~~

(D) Any person found to have committed a violation of a noncriminal traffic infraction, as designated in Section 10-1-3 of this Code, shall be punished by a fine of not more than five hundred dollars (\$500).

1-8-2: INTEREST: (1699)

(A) Any amount due to the City that is not paid within sixty (60) days shall be assessed an interest charge of one-half percent (1/2%) per month for each month past due in excess of sixty (60) days unless otherwise provided for by Charter, Code, statute, or contract.

(B) Interest shall be compounded by adding the prior month's interest charge to the amount due and calculating the current month's interest based on the total original amount due plus prior accumulated interest.

(C) When amounts due are paid, the payment will first be applied against interest due, then against penalties and other service charges, and finally against the original amount due, unless otherwise provided for by Charter, Code, statute, or contract.

(D) The provisions of this Section shall become effective for all amounts becoming due on or after June 1, 1987.

1-8-3: DISHONORED CHECK; PENALTIES: (1354 1699 2422 3521)

(A) Any payment received by the City that is subsequently returned from the bank will be subject to a service fee and any other applicable collection charge or fee as may, from time to time, be imposed by the City.

(B) Any amount due to the City that is paid by any payment type and is subsequently dishonored by the bank will not be considered paid until the funds are collected. Such liabilities will be subject to any late

EXHIBIT G

From: "Ashmann, Stephanie" <sashmann@CityofWestminster.us>
Date: January 12, 2015 at 2:23:10 PM MST
To: "'bcuje@revescoproperties.com'" <bcuje@revescoproperties.com>
Subject: Use By Special Permit - Salvation Army Land Use Question

Hello Brian,

Thank you for your patience. Planning Staff required some clarification on the Uses by Special Permit code language from the City Attorney's Office. The Assistant City Attorney and Planning Manager have determined that pursuant to Section 11-4-8(G)(d) of the Westminster Municipal Code (W.M.C.) (copied below), the Planning Division will not be able to take in and process an application for a special use permit at this time.

Code:

11-4-8(G)(d) : The location of any other Thrift Store within one thousand feet (1,000) of another such use shall preclude approval of the special use permit.

Currently, Rocky Mountain Properties has a special use permit for a thrift store at 8657 Sheridan Blvd. within 1,000 feet of your proposed thrift location. Pursuant to Section 11-4-8(K)(1) of the W.M.C., the existing thrift use will need to be vacated from the space for one (1) year to automatically terminate the special use permit. At that time, Planning Staff can take in an application for review. According to our City Clerk records, Unique Thrift Store sent a notice of business license termination on 11/23/2014.

My apologies for the inconvenience. Please contact me if you have any questions.

Regards,

Stephanie Ashmann
Associate Planner
City of Westminster Planning Division
Community Development Department
4800 W. 92nd Avenue
Westminster, Colorado 80031
303-658-2097

City Hall is open Monday – Thursday from 7:00am to 6:00pm
CLOSED ON FRIDAYS

EXHIBIT H

From: "Ashmann, Stephanie" <sashmann@CityofWestminster.us>
Date: March 5, 2015 at 5:23:07 PM MST
To: ""bcuje@revescoproperties.com"" <bcuje@revescoproperties.com>
Subject: Special Use Permit Application Status

Good afternoon Mr. Cuje,

We have briefly spoken about this before, but staff has established the following position regarding the relinquishment of Unique Thrift's special use permit.

After reviewing the Code, the findings of fact and conclusions of the Special Permits and Land Use Board for the Special Use permit itself and the application process therefore, we have concluded that the special use permit holder is Mapa, Inc. d/b/a Unique Thrift Store. Unique Thrift Store vacated the property and ceased doing business there in November 2014. The special use permit is automatically terminated when the use is inactive for a period of one year. Since Unique Thrift could re-occupy the space up until November 2015 and then continue into the future doing business under the existing permit, the City would need to receive an unconditional written document from Unique Thrift Store that it has giving up any and all rights to its special use permit, in order to consider another thrift store locating within 1000 feet.

It is inappropriate for the City to become involved in the relationship between private parties, such as the landowner and the tenant. Thus, discussions about the leasehold arrangement are not relevant to the City's obligation vis-a-vis the permit holder.

Please provide staff with direction regarding how you desire to proceed with your submitted Special Use Permit application. You are welcome to provide staff with the aforementioned document from Unique Thrift, so that we can evaluate your proposal and make a recommendation to Planning Commission. Alternatively, Planning staff will be obligated to forward a recommendation of denial to the Planning Commission based upon the existence of a thrift store within 1000 feet of your proposed thrift store (pursuant to section 11-4-8(C)(12) of the Westminster Municipal Code). If you choose not to move forward with your application, please notify staff of your intent as soon as possible.

Regards,

Stephanie Ashmann

Associate Planner

City of Westminster Planning Division

Community Development Department

4800 W. 92nd Avenue

Westminster, Colorado 80031

303-658-2097

City Hall is open Monday – Thursday from 7:00am to 6:00pm

CLOSED ON FRIDAYS

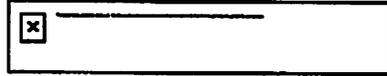


EXHIBIT I

ATTACHMENT C

Transcribed voicemail from Savers, Inc. (Owner of Unique Thrift) commercial real estate representative David Cree

Received On 3/30/15 at 7:38 AM

Hey Stephanie, this is David Cree with Savers Value Village returning your call. You had left a message concerning a store that we operated in Westminster, the Unique Thrift...and...regarding our conditional use permit or something to that effect. We have been in communication with the Landlord, while we have closed the store, unfortunately we still have a lease agreement in place and we are in fact paying monthly rent on that location, so I am not in a position that I can waive or terminate our CUP as it...applies to us...because, unfortunately....while we are not open we are obligated under the lease terms and we are paying rent...so...I am not so inclined to assist any competition...from...in their application for a location that I am stuck paying rent on. I know you're kind of stuck in the middle on this one, but...we have been in communication with the landlord and we are trying to negotiate a reasonable termination and obviously the minute the deal terminates we would waive any such ...well right to that CUP as applies to us, but...I really just can't help you now until we get this...till we get this...termination resolved with the landlord so be patient, we are working through it, but have not heard anything just yet.

Thank you.

EXHIBIT J



WESTMINSTER

Agenda Memorandum

Agenda Item 3A

Planning Commission Meeting
April 28, 2015



SUBJECT: Public Hearing and Action on a Special Use Permit for Lot 1 at LaBelles Plaza – 1st Replat – Arc Thrift Store

Prepared By: Stephanie Ashmann, Associate Planner

Recommended Planning Commission Action

- 1) Hold a public hearing.
- 2) Deny a Special Use Permit for Arc Thrift, a thrift store over 5,000 square feet.

Summary Statement

- Thrift stores 5,000 square feet or greater may apply for a Uses by Special Permit by making an application to the Planning Commission pursuant to Section 11-4-8 of the Westminster Municipal Code.
- The Special Use Permit application request is located at 8657 Sheridan Boulevard, Westminster Colorado 80003.

Expenditure Required: \$ 0
Source of Funds: N/A

Policy Issue

Should the City permit a Use by Special Permit for Arc Thrift, a thrift store over 5,000 square feet, within 1,000 feet of another existing permitted thrift store based upon Section 11-4-8(G)(d) of the Westminster Municipal Code (Reference Attachment A – Thrift Store Vicinity Map – Arc Thrift)?

Alternative

Planning staff cannot recommend an alternative because allowing this proposed thrift store is in direct violation of *Section 11-4-8(G)(d)* of the Westminster Municipal Code.

11-4-8(G)(d): The location of any other Thrift Store within 1,000 feet of another such use shall preclude approval of the special use permit.

Background Information

Mapa, Inc. d/b/a Unique Thrift Store obtained a Special Use Permit (SUP) from the Special Permit and License Board on July 6, 2005, to have a store over 5,000 square feet in the LaBelles Plaza – 1st Replat. Unique Thrift vacated the building in late November of 2014, and cancelled their business license with the City Clerk's office. Although Mapa, Inc. d/b/a Unique Thrift Store is not located in the space at this time, they still possess the right to reestablish the thrift store use until November, 2015, as termination of a SUP does not occur until one year of inactivity has occurred per §11-4-8(K)(1), of the Westminster Municipal Code (WMC). The store representative David Cree expressed to staff that they are not inclined to waive or terminate their SUP to assist any competition in their application for a location that they are paying rent on. The only other ground for termination of a SUP in the City's Code is a termination for cause, which being a violation of the conditions of approval, and the 2005 permit did not have any stated conditions of approval (Reference Attachment C for a transcribed message from Unique Thrift's development/property advisor).

The LaBelles Plaza is divided into Lots 1 and 2. Rocky Mountain Properties owns Lot 1 and Revesco USA Properties of Sheridan, LLLP owns Lot 2. Mapa, Inc. d/b/a Unique Thrift Store is located on Lot 1 and still has an active SUP based upon Section 11-4-8(K)(1) of the Westminster Municipal Code.

11-4-8(K)(1): A Special Use Permit shall terminate automatically whenever their permitted use is inactive for a period of one (1) year or more.

Nature of Request

Arc Thrift and Rocky Mountain Properties, owner of Lot 1 at the LaBelles Plaza, submitted an SUP application for a 21,600 square foot thrift store, located within the same tenant space as the existing SUP for the Unique Thrift Store (Reference Attachment A – Thrift Store Vicinity Map – Arc Thrift).

Location

The proposed Arc Thrift Store location is addressed at 8657 Sheridan Boulevard which is at the southwest corner of 88th and Sheridan Boulevard. (Reference Attachment B– Vicinity Map/Zoning).

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on April 16, 2015.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on April 16, 2015.

- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on April 16, 2015.

Applicant/Property Owner

Rocky Mountain Properties
 500 Washington Avenue S., Suite 300
 Minneapolis, MN 55415

Surrounding Land Use and Comprehensive Land Use Plan Designation

| Development Name | Zoning | Comp Plan Designation | Use |
|--|-------------------------|-----------------------------------|---------------------------|
| West: Lowes of Westminster | PUD | Retail Commercial | Big box retail |
| East: Westpark Center – Filings 03 & 04 | PUD | Retail Commercial and Office | Hotel and office |
| South: City of Arvada – Single Family Homes | Low Density Residential | Suburban Residential | Residential |
| North: Westminster Center Subdivision, Filing 01 | Specific Plan District | Mixed Use Center and Public Parks | Big box retail and office |

Special Use Permit Criteria

No additional SUP criteria was reviewed for this proposal because the applicant does not meet the SUP Standard of Review, Stating “11-4-8(G)(d): *The location of any other Thrift Store within 1,000 feet of another such use shall preclude approval of the special use permit.*”

As previously referenced, Mapa, Inc. d/b/a Unique Thrift Store has not yet terminated their SUP with the City. Therefore, Arc Thrift’s SUP application for a thrift store does not meet the aforementioned distance limitation.

Strategic Plan

Staff’s denial recommendation supports the City of Westminster’s Strategic Plan goal of providing *Visionary Leadership and Effective Governance* by applying the Code in an equitable and consistent manner.

Respectfully submitted,

Mac Cummins, AICP
 Planning Manager

Attachments

- Attachment A - Thrift Store Vicinity Map – Arc Thrift
- Attachment B – Vicinity/Zoning Map
- Attachment C - Transcribed Email from David Cree – Savers Representative



Thrift Store Vicinity Map - Arc Thrift





LaBelles Plaza
C1 - Commercial District





WESTMINSTER

Agenda Memorandum

Agenda Item 3B

Planning Commission Meeting
April 28, 2015



SUBJECT: Public Hearing and Action on a Special Use Permit for Lot 2 at LaBelles Plaza – 1st Replat – Salvation Army

Prepared By: Stephanie Ashmann, Associate Planner

Recommended Planning Commission Action

- 1) Hold a public hearing.
- 2) Deny a Special Use Permit for The Salvation Army, a thrift store over 5,000 square feet.

Summary Statement

- Thrift stores 5,000 square feet or greater may apply for a Uses by Special Permit by making an application to the Planning Commission pursuant to Section 11-4-8 of the Westminster Municipal Code.
- The Special Use Permit application request is located at 8601 Sheridan Boulevard, Westminster Colorado 80003.

Expenditure Required: \$ 0
Source of Funds: N/A

Policy Issue

Should the City permit a Use by Special Permit for The Salvation Army, a thrift store over 5,000 square feet, within 1,000 feet of another existing permitted thrift store based upon Section 11-4-8(G)(d) of the Westminster Municipal Code (Reference Attachment A – Thrift Store Vicinity Map – Salvation Army)?

Alternative

Planning staff cannot recommend an alternative because allowing this proposed thrift store is in direct violation of Section 11-4-8(G)(d) of the Westminster Municipal Code.

11-4-8(G)(d): The location of any other Thrift Store within 1,000 feet of another such use shall preclude approval of the special use permit.

Background Information

Mapa, Inc. d/b/a Unique Thrift Store obtained a Special Use Permit (SUP) from the Special Permit and License Board on July 6, 2005 to have a store over 5,000 square feet in the LaBelles Plaza – 1st Replat. Unique Thrift vacated the building in late November of 2014, and cancelled their business license with the City Clerk's office. Although Mapa, Inc. d/b/a Unique Thrift Store is not located in the space at this time, they still possess the right to reestablish the thrift store use until November, 2015, as termination of a SUP does not occur until one year of inactivity has occurred per §11-4-8(K)(1), of the Westminster Municipal Code (WMC). The store representative David Cree expressed to staff that they are not inclined to waive or terminate their SUP to assist any competition in their application for a location that they are paying rent on. The only other ground for termination of a SUP in the City's Code is a termination for cause, which being a violation of the conditions of approval, and the 2005 permit did not have any stated conditions of approval (Reference Attachment C for a transcribed message from Unique Thrift's development/property advisor).

The LaBelles Plaza is divided into Lots 1 and 2. Rocky Mountain Properties owns Lot 1 and Revesco USA Properties of Sheridan, LLLP owns Lot 2. Mapa, Inc. d/b/a Unique Thrift Store is located on Lot 1 and still has an active SUP based upon Section 11-4-8(K)(1) of the Westminster Municipal Code.

11-4-8(K)(1): A Special Use Permit shall terminate automatically whenever their permitted use is inactive for a period of one (1) year or more.

Nature of Request

The Salvation Army and Revesco USA Properties of Sheridan, LLLP, owner of Lot 2 at the LaBelles Plaza, submitted an SUP application for a 25,035 square foot thrift store. The new location is within 1,000 feet of the old Unique Thrift Store that has not terminated their SUP (Reference Attachment A – Thrift Store Vicinity Map – Salvation Army).

Location

The site is located at 8601 Sheridan Boulevard, which is at the southwest corner of 88th and Sheridan Boulevard. (Reference Attachment B – Vicinity Map/Zoning Map).

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on April 16, 2015.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on April 16, 2015.

- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on April 16, 2015.

Applicant/Property Owner

Revesco USA Properties of Sheridan, LLLP
 5291 East Yale Avenue
 Denver, CO 80222

Surrounding Land Use and Comprehensive Land Use Plan Designation

| Development Name | Zoning | Comprehensive Plan Designation | Use |
|--|-------------------------|---------------------------------------|---------------------------|
| West: Lowes of Westminster, West | PUD | Retail Commercial | Big Box Retail |
| East: Westpark Center – Filings 03 & 04 | PUD | Retail Commercial and Office | Hotel and Office |
| South: City of Arvada – Single Family Homes | Low Density Residential | Suburban Residential | Residential |
| North: Westminster Center Subdivision, Filing 01 | Specific Plan District | Mixed Use Center and Public Parks | Big Box Retail and Office |

Special Use Permit Criteria

No additional SUP criteria was reviewed for this proposal because the applicant does not meet the SUP Standard of Review, Stating

“11-4-8(G)(d): The location of any other Thrift Store within 1,000 feet of another such use shall preclude approval of the special use permit.”

As previously referenced, Mapa, Inc. d/b/a Unique Thrift Store has not yet terminated their SUP with the City. Therefore, The Salvation Army’s SUP application for a thrift store does not meet the aforementioned distance limitation.

Strategic Plan

Staff’s denial recommendation supports the City of Westminster’s Strategic Plan goal of providing *Visionary Leadership and Effective Governance* by applying the Code in an equitable and consistent manner.

Respectfully submitted,

Mac Cummins, AICP
 Planning Manager

Attachments

- Attachment A - Thrift Store Vicinity Map – Salvation Army
- Attachment B - Vicinity Map/Zoning Map
- Attachment C - Transcribed Email from David Cree – Savers Representative



Thrift Store Vicinity Map
Salvation Army



VICINITY / ZONING MAP

ATTACHMENT B



LaBelles Plaza
C1 - Commercial District



Transcribed voicemail from Savers, Inc. (Owner of Unique Thrift) commercial real estate representative David Cree

Received On 3/30/15 at 7:38 AM

Hey Stephanie, this is David Cree with Savers Value Village returning your call. You had left a message concerning a store that we operated in Westminster, the Unique Thrift...and...regarding our conditional use permit or something to that effect. We have been in communication with the Landlord, while we have closed the store, unfortunately we still have a lease agreement in place and we are in fact paying monthly rent on that location, so I am not in a position that I can waive or terminate our CUP as it...applies to us...because, unfortunately....while we are not open we are obligated under the lease terms and we are paying rent...so...I am not so inclined to assist any competition...from...in their application for a location that I am stuck paying rent on. I know you're kind of stuck in the middle on this one, but...we have been in communication with the landlord and we are trying to negotiate a reasonable termination and obviously the minute the deal terminates we would waive any such ...well right to that CUP as applies to us, but...I really just can't help you now until we get this...till we get this...termination resolved with the landlord so be patient, we are working through it, but have not heard anything just yet.

Thank you.

EXHIBIT K

CITY OF WESTMINSTER
PLANNING COMMISSION
Meeting Minutes
April 28, 2015

1. ROLL CALL:

Present at roll call were Commissioners Anderson, Boschert, Carpenter, Dunn, Litzau, Mayo, McConnell, and Welch. Also present were staff members, Stephanie Ashmann, Mac Cummins, Grant Penland, Jane Greenfield and Betty LoSasso.

2. CONSIDERATION OF MINUTES:

Commissioner Boschert made a motion to approve the minutes from the April 21, 2015 Planning Commission meeting. Commissioner Dunn seconded the motion. The minutes were unanimously approved (7-0).

3. CONSIDERATION OF NEW BUSINESS AND PUBLIC HEARINGS:

A. Public Hearing and Action on a Special Use Permit for Lot 1 in the LaBelle's Plaza – 1st Replat – Arc Thrift

Mac Cummins, Planning Manager, gave an introductory statement regarding the two agenda items to be presented at this Planning Commission hearing. Staff recommended denial of both applications based on the Westminster Municipal Code criteria that requires a separation of 1,000 feet from any existing thrift store use. In staff's opinion, as they evaluated the existing use permit for the space formally occupied by the Unique Thrift Store, the Planning Commission would be precluded from approving either proposed application, as this use permit was still valid at this location. On Friday, the City Attorney's office received information that the Unique Thrift Store space may not be in the same status as what staff previously represented to the Commission in the agenda memos. That is only two business days, as the City is closed on Friday's. That information could fundamentally change the outcome and the ability to recommend something on either or both of these applications and staff has not had enough time to evaluate that information and what it means for the Unique Thrift location and the status of their use permit. Staff is recommending that the Commission open the public hearing, take testimony from anyone that is here that would like to enter testimony tonight, and then continue the hearing to June 9, 2015.

The public hearing was opened at 7:04 p.m. with three individuals speaking in regards to the proposal.

Ms. Nancy Rodgers, the Attorney for Arc Thrift, started her briefing by stating that the Code says that a Special Use Permit cannot be transferred to any person, business, or entity. This Special Use Permit was given to Mapa Inc. in 2005. Mapa Inc. was a dissolved entity. They dissolved in 2009 after transferring their lease rights to Apogee LLC and it is Apogee Retail LLC that was operating as Unique Thrift Store up until November 2014. Arc's position is that Apogee Retail was operating without a permit and it is definitely a separate entity, it was a Delaware entity. Mapa Inc. was a Colorado incorporated entity. This information was found in public records from the Secretary of State documents. Ms. Rodgers continued by stating that Arc knows that Apogee Retail, right after the lease transfer, registered their name as Unique Thrift Store. She stated that it was not an entity, it just registered the name. Therefore there could not be a transfer of the Special Use Permit. Ms. Rodgers, on behalf of Arc, commented that they would like the Planning Commission to look at the substance of their request and not summarily deny it. They know for certain that Apogee Retail, assuming that they had a valid special use

permit to operate a thrift store for the last few years, did not have the right to have that use on their property. Ms. Rodgers stated that she has a lease termination that has been signed by Apogee Retail and the landlord representative from CSM. Arc knows that Apogee Retail vacated and has no intent to reestablish their right as of November 2014. Apogee Retail paid a large sum of money to get out of their lease early, established by the lease termination agreement. Ms. Rodgers stated that they have a statement from the landlord, the owner of the property saying there is no way that Apogee Retail could come back in and establish that use. Arc believes that even if Apogee Retail had a special use permit to operate a thrift store on this site, they could not come back in any time before the year period of abandonment would expire in November 2015. Ms. Rodgers stated that when Arc started looking at the site it discussed with staff and actually talked initially about the concept of transfer. She stated that the special use permit could be transferred, this was in January and February and then in March staff let Arc know you can't transfer special use permits because it is in the Code. Arc continued with this application and worked very closely with the landlord to make sure every piece was in place to ensure Apogee Retail definitely had no ability to come back in.

Mr. Brad Kettelson the Vice President from CSM (parent company that owns and manages Rocky Mountain Properties Limited Partnership, which in turn owns the Rocky Mountain Shopping Center located on the southwest corner of Sheridan Boulevard and 88th Street), spoke and confirmed that Apogee has absolutely no right to the space whatsoever. The original lease was going to terminate October 31, 2015, but when they chose to close the doors to the store and leave, CSM was led to believe that it would be possible to take the special use permit and transfer it to another user for the same type of store. Knowing that they had entered into negotiations with Apogee, they entered into the business of terminating their lease early. Mr. Kettelson stated that in this business this is called a haircut. CSM took a major hit. By terminating Apogee's lease early, December 31, 2014, CSM was out 10-months of rent. Apogee did agree to pay a portion of that in a termination fee. But it was CSM's intent to enter into a lease with Arc which they did do. Mr. Kettelson stated that CSM is here today fully negotiated and ready to go with Planning Commission's approval this evening, Arc could be in to City Hall next week asking for work permits for tenant improvements and they could potentially be ready to go within 90 days. Mr. Kettelson stated that right now there are 8 vacant spaces of the same size in the City of Westminster. He conveyed that he would like to get this space off the vacancy list, become productive, paying taxes, adding value to the shopping center. Providing employment and a very worthwhile cause in Arc's mission. Mr. Kettelson asked that the Commission grant the Special Use Permit to Arc this evening.

Ms. Rodgers concluded by stating that they have a substantive presentation, however considering the situation with a possible continuance, they would like to reserve the right to either continue the hearing or if the Commission decides not to continue, they are prepared to show their presentation.

Mr. David Foster, Attorney for Revesco, stated his client is troubled by the information brought forward tonight because Revesco has been trying for the past two and a half years to place a Salvation Army store on their property which is right next store to the vacant Unique Thrift space. He conveyed that had they known that somebody was operating without a special use permit, they would have been before the Planning Commission two and a half years ago. Mr. Foster stated that they were denied a special use permit because of a space limitation in City Code. He asserted that this is a legal nuance that is very important and the Code is not great in terms of giving directions to property owners in terms of termination of special use permits. He stated that Revesco's first issue is how a special use permit gets terminated. He conveyed that as Revesco made their application, which was two and a half weeks before the other application being heard, they were told that it probably couldn't be considered because there is a special use permit and the only way it is terminated is for cause, which they probably have a good reason for that tonight,

or by time, 12 months. He continued on to state that there is no abandonment, no intent to leave, that would cause a special use permit to terminate in Westminster and that is a modification to Code that the Commission should consider. Mr. Foster asserted that in this case, this issue is a catch 22, quagmire - 2 competing thrift stores to occupy space within 1,000 feet of each other and seemingly everybody being held hostage by someone who may or may not have a special use permit. Mr. Foster suggested that the resolution is, per Code criteria (11-4-8(G)(3)(d), the location of any other Thrift Store within one thousand feet (1,000') of another such use shall preclude approval of the special use permit. He further asserted that when Revesco made their application on January 20, 2015, there in fact was no other thrift store within 1,000 feet. Mr. Foster conveyed that there may have been an approved special use permit for that site but the way the criteria reads, there was in fact no thrift store per the pictures he submitted to the Commission. He stated that the pictures are self-explanatory, there is no thrift store and the space is vacant. He continued on to state that the testimony that the Planning Commission heard is that they had vacated the store in October or November and ended their business license with the City in November. Mr. Foster stated that when Revesco submitted their application, and if the City Planning staff had reviewed their application, they would have recognized Revesco met the criteria. Mr. Foster stated that the 12 month standard is easily resolved, in that if Revesco meets the criteria and there is a special use permit that may or may not exist for another space, the Planning Commission has it within their power to conduct a hearing for cause to terminate the special use permit. He asserted that what the Planning Commission shouldn't be doing is having two applications side by side for the same space being held hostage by someone who has moved out and is holding up the process. He stated that the only thing worse is having the Code read in the way that gives a lessee an opportunity to hold the City hostage. Mr. Foster submitted the Findings and Facts of the Special Permit & License approval in which the applicant is stated to be Mapa, Inc. d/b/a Unique Thrift Store. Mr. Foster stated that Revesco is also prepared to make a presentation if the Commission decides to continue the hearing tonight, or continue it to a date certain.

Commissioner Anderson made a motion to continue this hearing to June 9, 2015 because of the multiple and conflicting testimony regarding the lease termination of the Unique Thrift Store Special Use Permit (SUP); questions regarding the language and meaning of the Code; ownership and transfer issues; time needed for City staff to investigate the issues brought up; time for staff to receive legal recommendations and guidance; and time to review and make a recommendation to the Planning Commission. Commissioner Boschert seconded the motion. This motion pass unanimously (7-0).

Commissioners Anderson, Litzau, Dunn, and Carpenter agreed with the motion made by Commissioner Anderson and the reasons he stated in determining his motion.

B. Public Hearing and Action on a Special Use Permit for Lot 2 in the LaBelle's Plaza – 1st Replat – Salvation Army

Commissioner Anderson, per the previous conversation, opened the public hearing (7:37 p.m.) and took testimony from anyone who wished to speak on the request for a Special Use Permit for the Salvation Army.

David Foster, representative for Revesco, would like his previous comments applied to this hearing. His response to Commissioner Dunn's comment, in Mr. Foster's opinion, it is clearly difficult and he appreciates the need for the Planning Commission to continue this hearing, first of all it will give City staff an opportunity to fully vet the applications because they have not had a sufficient opportunity to do so. What this Planning Commission should be doing, they should be looking at Code, but what they shouldn't be doing is they shouldn't be looking at lease terminations and private agreements between partners. That isn't in the Planning Commission's purview to know when someone has terminated or not. Likewise, the Salvation Army facility is available, will be available,

and that's certainly not anyone's business what the lease arrangements are with a tenant. Revesco has been trying to put Salvation Army in to this facility for nearly 2½ years, and had respected the fact that the Code would not have allowed 2 thrift stores to exist within such close proximity to one another. Mr. Foster believes that the same owners of Unique Thrift Store were in fact the owner at the time that Mapa was approved for their permit. He doesn't believe the ownership has been transferred. The transferable clause in the Code, which isn't hard to read, which is clear, you cannot transfer a special use permit to another person or entity. It is somewhat troubling, because for the last 2½ years his client has struggled to keep a tenant in this space, waiting for the moment when they could put Salvation Army in this space. It would have been nice to know that their wasn't potentially, if they are to understand that there wasn't a valued special use permit in the Unique Store for the past 2½ years or maybe even longer. That's disappointing and no one would have been in a better position than the owners of that parcel site to know when the tenant was moving out in order to make a new special use permit application. Mr. Foster's clients, who are local, have been watching the site for years, knew exactly when Unique was vacating and came in and made an application 2½ weeks before Arc. This is a real testament that they are committed to putting Salvation Army into their facility. How does the Planning Commission weigh two competing applications for thrift stores for really the same space? Mr. Foster presented an email from David Frankel, City Attorney, who confirmed that the Arc application was submitted on the 5th of February 2015. Only after Arc learned of the Salvation Army's submittal did they put an application in. I am advocating for my client who is ready to go and move in. At what point do we get priority in the City's process to have our application reviewed first and have our public hearing first. Mr. Foster suggests whether it is 1 day, 10 days, 2 weeks, or 2 months the Salvation Army should be first. They will be ready June 9th to go first and present their application for Salvation Army to occupy the space that they have been waiting for for 2½ years.

Ms. Rodgers, representing Arc, spoke and stated that she wanted to address some of the issues brought up by Mr. Foster. The first issue was the lease termination, she believes is important because it goes to his (Mr. Foster) argument which she agrees with, that the Code speaks to use. The Code is very specific that the 1,000 foot requirement is for a use. While they can tell City staff and the testimony that the building is abandoned and not being used right now, the lease termination is really good evidence that there is no use. Ms. Rodgers challenged Mr. Foster's statement that Arc didn't start preparing its application until it found out or heard of Salvation, she stated that they actually had been working with staff on this issue and addressing a transfer of the special use permit starting in January 2015, and actually the discussion about an Arc in Westminster started even before that and they were looking at another property and then it got moved over to this property. So it's not accurate that Arc submitted because it heard of Salvation Army it had planned on submitting an application and a transfer when it found out that wasn't going to happen, it then moved forward with the formal application and Bruce Stahlman is here from Arc who can talk to those conversations if the Commission would like more explanation on it. As to the issue of priority to review, Ms. Rodgers stated she hasn't seen anything in the Code or anything for that matter that offers that type of priority in this circumstance. Ms. Rodgers thinks Planning Commission is in a really tough situation where it has to determine how you decide about 2 competing applications for 2 really close sites. That's the challenge in the next stage of these proceedings once we address some of the permit issues. Ms. Rodgers wanted to point out that these close facilities they're not the same site. The Arc site was used as a thrift store, it is set up as a thrift store, already there and there is very little that Arc needs to do to get this prepared. There is a current tenant in that site even though they are willing to work that out, but they still have a few more steps and Arc is ready to go, and as the landlord mentioned, Arc is ready to go pretty quickly once they have authority.

Commissioner Litzau made a motion that this hearing be continued until the Planning Commission meets on June 9, 2015. Commissioner Boschert seconded the motion.

Commissioner Carpenter asked how staff determines the order of the agenda for the next meeting. Mr. Cummins responded by saying that as has been so eloquently articulated, there is no guidance in the Municipal Code and no traditional City practice on that. In Mr. Cummins opinion, they (Planning Commission) will be weighing the value of each application on its own merits based on the evidence entered into the record. And who goes first or second will be less important than how you look at the findings that are required for approval and how you assess each application.

Commissioner Boschert stated that after all the testimony this evening, it seems to him that the crux of this matter is whether or not the special use permit was in effect or null and void. And that's what has to be decided by City staff. Until that is cleared up we cannot make a decision on this.

The Commission voted unanimously (7-0) to continue this hearing until June 9, 2015.

4. OLD BUSINESS:

5. MISCELLANEOUS BUSINESS:

6. ADJOURNMENT:

The meeting was adjourned at 8:52 p.m.

THE WESTMINSTER PLANNING COMMISSION

Donald Anderson, Chairman

EXHIBIT L



RECEIVED
MAY 29 2015
BY: _____

Doing Business As
**Value Village
Savers
Village - Valeurs
Savers Recycling Inc.
UNIQUE THRIFT STORE
VALU THRIFT STORE**

Stephanie Ashmann
Associate Planner
City of Westminster Planning Division
Community Development Department
4800 W. 92nd Avenue
Westminster, Colorado 80031

Corporate Offices:

11400 SE 6th Street
Suite 220
Bellevue, WA 98004

P.O. Box 808
Bellevue, WA 98009

P: 425-462-1515
F: 425-451-2250

www.savers.com

U.S. Store Operations:
TVI, Inc.
Apogee Retail, LLC

11400 SE 6th Street
Suite 220
Bellevue, WA 98004

P.O. Box 808
Bellevue, WA 98009

P: 425-462-1515
F: 425-451-2250

www.savers.com

Canadian Store Operations:
Value Village Stores, Inc

7350 Edmonds Street
Burnaby BC V3N 1A5

P: 604-540-4916
F: 604-540-6478

www.valuevillage.com
www.vilagedesvaleurs.com

Australian Store Operations:
Savers Australia Pty Ltd

330 Sydney Road
Brunswick Victoria AU 3056

P: 011-61-3-9381-2800
F: 011-61-3-9381-2700

www.savers.com.au

Savers Recycling, Inc

4101 K Industry Drive E
Fife, WA 98424

P: 253-896-0055
F: 253-896-0160

Re: Formal Notice from Apogee Retail, LLC, a Delaware limited liability company (assignee of MAPA, Inc., a Colorado corporation) relinquishment of all land use rights at 8657 Sheridan Boulevard, Westminster, Colorado ("Premises")

Dear Ms. Ashmann:

I am the Associate General Counsel of TVI, Inc. parent company of Apogee Retail, LLC, and Apogee Retail, LLC itself.

Please let this letter serve as formal written notice that Apogee Retail, LLC has ceased all operations at the Premises, has surrendered possession of the Premises, has terminated its lease of the Premises and hereby fully relinquishes any and all land use rights to the Premises, including any continuing rights under the Special Use Permit that had been granted by the City of Westminster for its former thrift shop operations at the Premises.

Any previous correspondence with anyone from Apogee Retail, LLC or TVI, Inc. shall be disregarded and only this notice shall be binding and enforceable as to the intent and status of Apogee Retail, LLC's full and final relinquishment of all land use rights at the Premises.

Thank you,

Bradley R. Whiting
Associate General Counsel
TVI, Inc.
Apogee Retail, LLC



Agenda Memorandum

City of Westminster General Improvement District Meeting
August 10, 2015



SUBJECT: Councillor's Bill No. 40 re Organizing the City of Westminster Downtown General Improvement District and Calling a TABOR Election.

Prepared By: Tammy Hitchens, Finance Director
Robert Byerhof, Treasury Manager
Karen Creager, Special District Accountant

Recommended Board Action

Pass Councillor's Bill No. 40 on first reading creating the City of Westminster Downtown General Improvement District.

Summary Statement

- General Improvement Districts (GIDs) are a financing tool utilized to help fund improvements and operational costs within certain developments to ensure financial sustainability.
- Under a GID structure, a property tax mill levy is assessed on owners within the GID boundaries as they are the primary beneficiaries of public improvements, such as streets, lights, parks, parking improvements, etc. to be built and maintained for the benefit of the users.
- The GID would be a component unit of the City of Westminster (City). In accordance with Governmental Accounting Standards Board Statement (GASB) No. 14, *The Financial Reporting Entity*, and as amended by GASB Statement No. 61, *The Reporting Entity: Omnibus*, component units are legally separate entities for which the City is considered to be financially accountable. Financial accountability means that the City appoints a voting majority to the governing board and has the ability to impose its will upon the entity and/or accepts potential responsibility for the entity's financial benefits and burdens.
- The first step in the creation of a GID is for owner(s) of taxable real property to file a Petition for the organization of a GID with the City Clerk. The petition must meet all legal requirements as set forth in the appropriate sections of the Colorado Revised Statutes.
- Such petition to form the City of Westminster Downtown GID has been properly filed with the City Clerk by the petitioners (copy attached).
- The next procedural step requires that the City Council adopt an ordinance creating the GID. If the GID is created, the Council will become the ex-officio Board of the GID. To comply with deadlines set forth in State law, the appropriate ballot question for voter acceptance of the proposed mill levy and subsequent tax increase has been drafted. If the above action is approved by City Council, approval of the ballot language will be presented at the August 24, 2015, meeting for consideration by the GID Board (City Council will sit as the Board).

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council approve the formation of the City of Westminster Downtown General Improvement District?

Alternatives

1. Do not form the GID. This is not recommended for the following reasons:
 - a. The GID is a revenue generating district, which will defray City capital improvement and operational costs associated with public infrastructure within the Downtown Westminster boundaries.
 - b. Market research by Staff and consultants indicates that a GID tax levy of up to 50 mills can be imposed on the property owners in the Downtown area and such 50 mill levy combined with the overlapping tax levies still remain competitive with other redevelopment areas in the region.
 - c. Property owners within the boundaries of the proposed GID directly benefit from the City's investment of public improvements and the GID is a prudent financing tool to ensure the owners are paying for the capital and maintenance costs of public improvements within the district.
2. Delay the formation of the GID. This is not recommended for the following reasons:
 - a. With the Westminster Economic Development Authority (WEDA) intending to sell the bulk of the property within Downtown Westminster, it is critical that the formation of the GID be completed in a timely fashion so that property tax collections are available to fund operating and capital costs at the earliest possible date.
 - b. Staff has negotiated a property sale within Downtown Westminster conditional upon the buyer petitioning to establish the GID and meet the formation deadlines prior to elections to be held this November. Delay in establishing the GID will jeopardize the efficiency to create the GID as more property sales are anticipated within the coming months.

Background Information

The City currently has seven GIDs, such as the Mandalay Gardens and 144th Avenue GIDs, which provide a prudent stable revenue stream to fund public infrastructure costs within specific development boundaries. The revenue derived from the GID offsets the expenses associated with constructing and maintaining the public improvements. The mill levy level assessed on the property owners within the district is derived on market research of comparable developments as a means to provide competitive overlapping tax level so as not to overburden the owners with a high level of taxes.

Staff recommends a GID mill levy for Downtown Westminster be set at 50 mills. This levy produces an overall millage of approximately 130 mills for property owners, which is a little above the current average of 123 mills of comparable GIDs researched by Staff. It should be noted that the current mill levy applied in Downtown Westminster is the lowest level on the survey and the proposed 50 mill GID rate results in a total rate well below the highest rate in the survey applied at Broomfield's Arista development. The Arista mill levy is just over 173 mills. Please see the Downtown Westminster Comparison of PTX Mill Levies attachment for further details.

The recommended 50 mill assessment rate for the Downtown GID is based on the estimated capital costs totaling \$60 million at build-out for public improvements as well as the estimated annual cost to provide operations and maintenance on the proposed improvements, which Staff estimates will exceed \$3 million

annually. At build-out, the total estimated commercial and residential assessed value is approximately \$113 million resulting in projected revenues of \$5.88 million to provide funding for both capital expenditure and annual operation and maintenance costs. Phase I of the project will produce revenues in the neighborhood of \$500,000. It should be noted that this estimate is subject to change given the dynamics of the uncertainty of the development timeline and final property composition; however, it is a reasonable estimate based on the long-term vision and master plan of Downtown Westminster.

If Council adopts the ordinance creating the Downtown GID, then after approval of the ordinance at second reading, Council acting as the ex-officio Board of the GID, will then be requested to approve the ballot language in essentially the same language as drafted below to be brought before the property owner(s) within the district at an election in November 2015. This is a necessary step to be in compliance with the State's Taxpayers Bill of Rights (TABOR) Amendment, which requires a vote of the constituents on tax related issues.

SHALL CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT TAXES BE INCREASED \$1,500,000 ANNUALLY (FIRST FULL FISCAL YEAR), AND BY WHATEVER AMOUNTS AS MAY BE GENERATED ANNUALLY THEREAFTER BY THE IMPOSITION OF A MILL LEVY OF NOT TO EXCEED FIFTY (50) MILLS AS MAY BE NECESSARY TO PAY THE COST OF SUCH IMPROVEMENTS AND SERVICES AS THE DISTRICT IS AUTHORIZED TO PROVIDE BY LAW; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON AND ANY OTHER REVENUES BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE IN 2016 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR ANY OTHER LAW?

The action requested in this agenda memorandum relates to the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and to a Financially Sustainable Government Providing Excellence in City Services by creating a governmental entity to oversee the ongoing needs to fund a financially sustainable Downtown Westminster development.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Councillor's Bill
City of Westminster Downtown General Improvement District Petition
Mill Levy Survey

BY AUTHORITY

ORDINANCE NO. _____

COUNCILLOR’S BILL NO. **40**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE ACCEPTING A PETITION FOR THE ORGANIZATION OF A GENERAL IMPROVEMENT DISTRICT IN THE CITY OF WESTMINSTER AND MAKING CERTAIN FINDINGS AND DETERMINATIONS; WAIVING ALL REQUIREMENTS FOR NOTICE, PUBLICATION AND A HEARING AS PERMITTED BY STATUTE; DECLARING THE NECESSITY OF THE FORMATION OF THE GENERAL IMPROVEMENT DISTRICT; ESTABLISHING AND CREATING THE CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT; PROVIDING OTHER DETAILS RELATING THERETO

WHEREAS, a Petition for the organization of a general improvement district in the City of Westminster, Colorado (the “Petition”) has been filed in the office of the City Clerk of the City of Westminster (the “City”); and

WHEREAS, the Petition has been reviewed by the City Clerk; and

WHEREAS, the Petition has been signed by one hundred percent of the owners of taxable real property to be included in the proposed district and contains a request, pursuant to Section 31-25-607 (3.5), Colorado Revised Statutes, for waiver of all requirements for notice, publication and a hearing set forth in Sections 31-25-606 and 31-25-607, Colorado Revised Statutes, and of the organizational bond set forth in Section 31-25-605, Colorado Revised Statutes.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. FINDINGS AND DETERMINATIONS. The City Council hereby accepts the Petition for Organization of a General Improvement District in the City of Westminster, Colorado (the “Petition”), which requests the formation of a general improvement district to be known as “City of Westminster Downtown General Improvement District.” The Council hereby finds that the signatures on the Petition are genuine, that the Petition is signed by one hundred percent of the owners of taxable real property of the proposed district, and that the Petition contains a request for waiver of all requirements for notice, publication and a hearing set forth in Sections 31-25-606 and 31-26-607, Colorado Revised Statutes, and of the organizational bond set forth in Section 31-25-605, Colorado Revised Statutes.

The Council does hereby determine that the proposed improvements and facilities do not duplicate or interfere with any municipal improvement already constructed or planned to be

constructed within the limits of the proposed district. The Council finds that the creation of the district and proposed improvements therein will confer a general benefit on the district and that the costs of the improvements will not be excessive as compared with the value of the property in the district. The Council hereby finds, determines and declares that the organization of the district will serve a public use and will promote the health, prosperity, security and general welfare of the inhabitants of the City and the district. The Council hereby determines to grant such request for waiver and finds that the allegations of the Petition are true and that the district should be established.

Section 2. ESTABLISHMENT OF DISTRICT. It appearing that the Petition has been duly signed and presented in conformity with Colorado law and that the allegations of the Petition are true, the Council, by this ordinance, hereby finds that it has full jurisdiction under the law to adopt this ordinance, that the district for which the Petition has been filed is hereby declared organized, and that the district shall be known as the City of Westminster Downtown General Improvement District (the "District"), by which, in all proceedings, it shall hereafter be known. The District shall be a public or quasi-municipal subdivision of the State of Colorado and a body corporate with the limited proprietary powers set forth in Part 6, Article 25, Title 31, Colorado Revised Statutes.

Section 3. DISTRICT BOUNDARIES. The District is located entirely within the boundaries of the City and the legal description of the District boundaries is as follows:

**DOWNTOWN WESTMINSTER
PARCEL 6
LEGAL DESCRIPTION
SHEET 1 OF 2**

A 10' BY 20' PARCEL OF LAND WITHIN A PORTION OF BLOCK A-2 OF WESTMINSTER CENTER SUBDIVISION, FILING NO. 1 AS RECORDED AT RECEPTION NUMBER 2015002087, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 69 WEST, OF THE 6TH PRINCIPAL MERIDIAN; CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 24; THENCE S89°17'30"E A DISTANCE OF 334.92 FEET ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 24; THENCE DEPARTING SAID SOUTHERLY LINE, N00°42'30"E A DISTANCE OF 746.02 FEET TO THE EASTERLY MOST CORNER OF SAID BLOCK A-2 BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK A-2, S58°10'03"W A DISTANCE OF 20.00 FEET; THENCE N31°49'57"W A DISTANCE OF 10.00 FEET, THENCE, N58°10'03"E A DISTANCE OF 20.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK A-2; THENCE ALONG SAID NORTHEASTERLY LINE S31°49'57"E A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.005 ACRES (200 SQUARE FEET), MORE OR LESS.

BASIS OF BEARING

BEARINGS ARE BASED ON THE CITY OF WESTMINSTER GIS HORIZONTAL CONTROL NETWORK. BEARINGS HAVE BEEN ROTATED 00°08'32" COUNTERCLOCKWISE FROM THE PLATTED BEARINGS FOR WESTMINSTER MALL AMENDMENT PLAT, RECORDED AT RECEPTION NO. 86016236.

Section 4. DISTRICT IMPROVEMENTS AND SERVICES. A general description of the improvements to be acquired, constructed and installed within the District and the services to be provided are as follows:

IMPROVEMENTS generally to be acquired, constructed, installed, operated, and/or maintained may include but are not limited to public roadways, including road and pedestrian underpasses, site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site and traffic lighting, drainage improvements, site amenities such as benches, fountains, required signage, and relocating businesses.

SERVICES generally to be provided may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide.

Section 5. FILING OF ORDINANCE. Within thirty days after Council action on this ordinance, the City Clerk shall transmit to the County Clerk and Recorder of Jefferson County a copy of this ordinance.

Section 6. ORDINANCE CONCLUSIVE. This ordinance shall finally and conclusively establish the regular organization of the District against all persons unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adoption of this ordinance. Thereafter, any such action shall be perpetually barred.

Section 7. REPEALER CLAUSE. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 8. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this ordinance.

Section 9. CHARTER CONTROLS. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 10. EFFECTIVE DATE, RECORDING AND AUTHENTICATION. This ordinance shall take effect upon passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ARE ORDERED PUBLISHED THIS 10th day of August, 2015.

PASSED, ENACTED ON SECOND READING, AND THE FULL TEXT OF THIS ORDINANCE ORDERED PUBLISHED THIS 24th day of August, 2015.

CITY OF WESTMINSTER, COLORADO

Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DATE

STATE OF COLORADO)
)
 COUNTIES OF ADAMS) SS.
 AND JEFFERSON)
)
 CITY OF WESTMINSTER)

I, Linda Yeager, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the “City”), do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City (the “Council”) at a regular meeting of the Council held at the City Hall on August 10, 2015.

2. The passage of the Ordinance on first reading on August 10, 2015, was duly moved and seconded and the Ordinance was approved by vote of a ___ of ___ of the members of the Council as follows:

| Name | “Yes” | “No” | Absent | Abstain |
|-----------------|-------|------|--------|---------|
| Herb Atchison | | | | |
| Bob Briggs | | | | |
| Bruce Baker | | | | |
| Maria De Cambra | | | | |
| Alberto Garcia | | | | |
| Emma Pinter | | | | |
| Anita Seitz | | | | |

3. The passage of the Ordinance on second and final reading, was duly moved and seconded at a regular meeting of the Council on August 24, 2015, and the Ordinance was approved on second and final reading by a vote of a ___ of ___ of the members of the Council as follows:

| Name | “Yes” | “No” | Absent | Abstain |
|-----------------|-------|------|--------|---------|
| Herb Atchison | | | | |
| Bob Briggs | | | | |
| Bruce Baker | | | | |
| Maria De Cambra | | | | |
| Alberto Garcia | | | | |
| Emma Pinter | | | | |
| Anita Seitz | | | | |

4. The members of the Council were present at such meeting and voted on the passage of the Ordinance as set forth above.

5. The Ordinance has been signed by the Mayor, sealed with the corporate seal of the City, attested by me as Secretary, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

6. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance.

7. Notices of the meetings of August 10, 2015 and August 24, 2015, in the forms attached hereto as **Exhibit A**, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

8. The ordinance was published by title after first reading and published in full after adoption on second reading in the Westminster Window, a newspaper of general circulation within the City on _____, 2015. The affidavits of publication are attached hereto as **Exhibit B**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this _____ day of July, 2015.

(SEAL)

City Clerk

EXHIBIT A

(Attach Notices of Meetings)

EXHIBIT B

(Attach Affidavits of Publication)

STATE OF COLORADO)
)
COUNTY OF ADAMS)
)
CITY OF WESTMINSTER)

**PETITION FOR IMPROVEMENTS
AND CREATION OF A GENERAL
IMPROVEMENT DISTRICT**

The undersigned owners (the "Owners") of taxable real or personal property within the following described area of the City of Westminster, Colorado (the "City"), hereby petition the City Council of the City (the "Council") of the City for the creation of a General Improvement District (the "District") and for the construction, installation, and/or acquisition of certain improvements (the "Improvements") and/or services (the "Services") in the proposed District. In accordance with that statute, the petitioners state:

1. The General Improvement District petitioned for shall be known as CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT.

2. A general description of the Improvements to be acquired, constructed, installed, operated or maintained, and/or the services to be provided within and for the District are as follows:

IMPROVEMENTS generally to be acquired, constructed, installed, operated, and/or maintained may include but are not limited to public roadways, including road and pedestrian underpasses, site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site and traffic lighting, drainage improvements, site amenities such as benches, fountains, required signage, and relocating businesses.

3. A general description of the Services to be provided are generally as follows:

SERVICES generally to be provided may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide.

4. An estimate of the total costs of the proposed Improvements is \$60,000,000 and an estimated annual cost of providing the proposed services is \$3,000,000. The total cost of the Improvements and Services may be paid and/or repaid by ad valorem property taxes to be imposed against all taxable real property within the District pursuant to Section 31-25-612, C.R.S. Any ad valorem property tax mill levy shall not exceed 50 mills.

5. The legal description of the territory to be included in said District is described on the attached **Exhibit A**, Legal Description of CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT, attached and incorporated herein.

6. The Petitioner hereby names the following three persons to represent it in the organization of the District and to enter into agreements relating to the organization of the District (which agreements shall be binding on the District, if created):

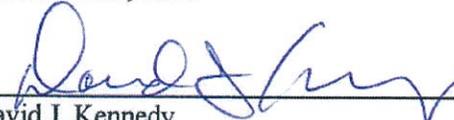
1. Timothy Reed
2. David J. Kennedy
3. Tom Defrancia

7. This petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed District.

8. The Petitioner is not a natural person but owns 100% of the taxable real property located in the proposed District. The Petitioner hereby authorizes and designates the elector who signed the signature page of this petition as the person designated, pursuant to Section 31-25-602(2)(b), C.R.S., to vote for the undersigned Petitioner.

WHEREFORE, we request that the above-described CITY OF WESTMINSTER, DOWNTOWN GENERAL IMPROVEMENT DISTRICT be organized in accordance with Part 6, Article 25, Title 31, C.R.S., and all other statutes and laws of the State of Colorado amendatory thereof or supplemental thereto, and ask the City Council to take all steps and procedures required by law for the organization of said District, and request that, pursuant to Section 31-25-607(3.5), C.R.S., the City Council waive all the requirements for notice, publication and a hearing set forth in Sections 31-25-606 and 31-25-607, C.R.S., and for the organizational bond set forth in Section 31-25-605, C.R.S., and adopt an ordinance declaring the District organized.

Alamo Westminster, LLC

By: 
David J. Kennedy

Title: Sole Member

Date: 8/6/15

Address of Property Owner:

612A E. 6th Street
Austin, TX 78701

BY: 
Appointed Elector: David J. Kennedy

VERIFICATION

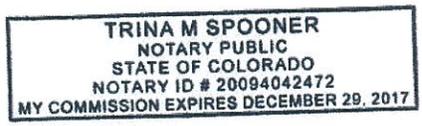
STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

I, David Kennedy, hereby certify that I have read the attached PETITION FOR IMPROVEMENTS AND CREATION OF A GENERAL IMPROVEMENT DISTRICT in the City of Westminster, Colorado. I further certify that I am an owner of real property within the area to be included in the District and I consent to the Petition and formation of the CITY OF WESTMINSTER, DOWNTOWN GENERAL IMPROVEMENT DISTRICT

[Handwritten Signature]
Signature

Subscribed and sworn to before me this 6th day of August, 2015 by David Kennedy.

WITNESS my hand and official seal.
My commission expires:



[Handwritten Signature]
Notary Public (Signature)

Trina M Spooner
Notary Public (Name - please print)

11086 Sunset Blvd.
Boulder, CO 80304
Address

EXHIBIT A

LEGAL DESCRIPTION

**DOWNTOWN WESTMINSTER
PARCEL 6
LEGAL DESCRIPTION
SHEET 1 OF 2**

A 10' BY 20' PARCEL OF LAND WITHIN A PORTION OF BLOCK A-2 OF WESTMINSTER CENTER SUBDIVISION, FILING NO. 1 AS RECORDED AT RECEPTION NUMBER 2015002087, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 69 WEST, OF THE 6TH PRINCIPAL MERIDIAN; CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 24; THENCE S89°17'30"E A DISTANCE OF 334.92 FEET ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 24; THENCE DEPARTING SAID SOUTHERLY LINE, N00°42'30"E A DISTANCE OF 746.02 FEET TO THE EASTERLY MOST CORNER OF SAID BLOCK A-2 BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK A-2, S58°10'03"W A DISTANCE OF 20.00 FEET; THENCE N31°49'57"W A DISTANCE OF 10.00 FEET; THENCE, N58°10'03"E A DISTANCE OF 20.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK A-2; THENCE ALONG SAID NORTHEASTERLY LINE S31°49'57"E A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.005 ACRES (200 SQUARE FEET), MORE OR LESS.

BASIS OF BEARING

BEARINGS ARE BASED ON THE CITY OF WESTMINSTER GIS HORIZONTAL CONTROL NETWORK. BEARINGS HAVE BEEN ROTATED 00°08'32" COUNTERCLOCKWISE FROM THE PLATTED BEARINGS FOR WESTMINSTER MALL AMENDMENT PLAT, RECORDED AT RECEPTION NO. 86016236.

Downtown - Comparison of PTX Mill Levies

Summary

Updated 6.11.15

| County | City | Area | Tax Area | Business Used | Address Used | Parcel # | Mills |
|--------------|-------------|-------------------------|----------|--------------------------------|----------------------------|------------------|----------|
| 1 Jefferson | Arvada | 5 Parks | 1038 | Steamers Coffee Shop | 8565 Five Parks Dr | 29-301-09-001 | 137.247 |
| 2 Jefferson | Arvada | Old Town | 1209 | Knit Knack | 7505 Grandview Ave | 39-114-18-026 | 109.747 |
| 3 Broomfield | Broomfield | Interlocken | 0084 | Omni Interlocken Hotel | 500 Interlocken Blvd | 157533110001 | 126.572 |
| 4 Broomfield | Broomfield | Flatirons | 0070 | Dick's Sporting Goods | 31 W Flatiron Crossing Dr | 157529104009 | 93.072 |
| 5 Broomfield | Broomfield | Arista | 4019 | Loftea | 11542 Colony Row | 171702314001 | 172.143 |
| 6 Jefferson | Lakewood | BelMar | 7809 | Target | 460 S Vance St | 49-141-09-007 | 127.483 |
| 7 Jefferson | Lakewood | Colorado Mills | 7116 | Target | 14500 W Colfax Ave | 49-062-04-040 | 137.569 |
| 8 Adams | Thornton | Larkridge (1) | 923 | Sears | 16395 Washington St. | 0157303101002 | 146.892 |
| 9 Adams | Thornton | Larkridge (2) | 924 | Costco | 13675 N Washington St. | 0157303401005 | 135.239 |
| 10 Adams | Thornton | Cabela's | 919 | Cabela's | 14050 Lincoln St. | 0157322101027 | 110.392 |
| 11 Boulder | Boulder | Pearl St. | 000017 | Boulder Bookstore | 1107 Pearl St. | 146330322005 | 95.289 |
| 12 Larimer | Loveland | Centerra | 2223 | Macy's | 5995 Sky Pond Dr. | 85101-13-003 | 117.796 |
| 13 Denver | Denver | Stapleton | 4251 | Bass Pro | 7970 Northfield Blvd. | 01215-01-034-000 | 139.04 |
| 14 Douglas | LoneTree | Park Meadows | 3101 | Dillard's | 8415 Park Meadows Ctr. Dr. | 2231-032-05-012 | 91.04 |
| 15 Jefferson | Westminster | Westmoor | 0079 | KBS SOR Westmoor Center LLC | 10155 Westmoor Drive | 29-091-01-012 | 133.442 |
| 16 Jefferson | Westminster | Northwest Business Park | 0050 | Circle Point Properties | 11080 Circle Point Road | 29-111-05-024 | 135.361 |
| 17 Arapahoe | Centennial | Streets of Southglenn | 1048 | Grapes Wine Market & Spirits | 6853 S York St 122 | 25921-70615-001 | 160.546 |
| 18 Adams | Westminster | The Orchard | 726 | Orchard Town Center c/o Vestar | 14697 Delaware Street #850 | 80028425 | 120.173 |
| 19 Jefferson | Westminster | Downtown | 0090 | McMurtrey and Bench Grp | 9111 Benton Street | 29-244-02-014 | 85.739 |
| 20 Jefferson | Westminster | Downtown | 0089 | WEDA (Olive Garden) | 9111 Benton Street | 29-244-02-014 | 80.361 |
| | | | | | | MAX | 172.143 |
| | | | | | | MIN | 80.361 |
| | | | | | | AVG | 122.7572 |

Downtown - Comparison of PTX Mill Levies
Breakown of mill levy by taxing district
 Updated 6/11/15

| | Arvada | Arvada | Broomfield | Broomfield | Broomfield | Lakewood | Lakewood | Thornton | Thornton | Thornton | Boulder | Loveland | Denver | Lonetree | Westminster | Westminster | Littleton | Westminster | Westminster | Westminster |
|-----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|---------------|----------------|-------------------------|-----------------------|----------------|----------------|----------------|
| | 5 Parks | Old Town | Interlocken | FlatIrons | Arista | BelMar | Colorado Mills | Larkridge (1) | Larkridge (2) | Cabela's | Pearl St. | Centerra | Stapleton | Park Meadows | Westmoor | Northwest Business Park | Streets at Southglenn | Orchard | Downtown | Downtown |
| County | 25.846 | 25.846 | 15.261 | 15.261 | 15.261 | 25.846 | 25.846 | 27.042 | 27.042 | 27.042 | 24.794 | 22.459 | * | 19.774 | 25.846 | 25.846 | 15.950 | 27.042 | 25.846 | 25.846 |
| Metro Dist | 36.000 | 0.000 | 33.500 | 0.000 | 77.475 | 25.000 | 42.000 | 36.500 | 46.000 | 0.000 | 0.000 | 42.600 | 55.986 | 8.387 | 53.081 | 55.000 | 60.000 | 0.000 | 0.000 | 0.000 |
| Social Services | 0.000 | 0.000 | 2.250 | 2.250 | 2.250 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 1.763 | 5.630 | 0.000 | 0.000 | 0.000 | 1.000 | 0.000 | 0.000 | 0.000 |
| Lib Dist | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 3.659 | 3.659 | 3.659 | 0.000 | 0.000 | 0.000 | 4.032 | 0.000 | 0.000 | 4.794 | 0.000 | 0.000 | 0.000 |
| RTD | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| School Dist | 50.165 | 50.165 | 47.569 | 47.569 | 50.165 | 50.165 | 50.165 | 68.781 | 47.628 | 68.781 | 47.569 | 40.268 | 49.299 | 48.277 | 50.165 | 50.165 | 56.601 | 68.781 | 50.165 | 50.165 |
| City | 4.310 | 4.310 | 11.457 | 11.457 | 11.457 | 4.711 | 4.711 | 10.210 | 10.210 | 10.210 | 11.981 | 9.564 | 27.425 | 0.000 | 3.650 | 3.650 | 5.015 | 3.650 | 3.650 | 3.650 |
| URA/BID | 0.000 | 8.500 | 0.000 | 0.000 | 0.000 | 5.720 | 0.000 | 0.000 | 0.000 | * | 4.466 | ** | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| Fire Dist | 14.848 | 14.848 | 14.903 | 14.903 | 14.903 | 13.595 | 13.595 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 9.319 | 0.000 | 0.000 | 7.678 | 0.000 | 0.000 | 0.000 |
| Urban Drainage.NoCo | | | | | | | | | | | | | | | | | | | | |
| Water/Southgate Water | 0.700 | 0.700 | 1.632 | 1.632 | 0.632 | 2.446 | 1.252 | 0.700 | 0.700 | 0.700 | 1.632 | 1.000 | 0.700 | 1.251 | 0.700 | 0.700 | 0.700 | 0.700 | 0.700 | 0.700 |
| GID/Hlth Svc Dist/Pest Ctrl | | | | | | | | | | | | | | | | | | | | |
| Dist/Park&Rec Dist | 5.378 | 5.378 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 4.847 | 0.142 | 0.000 | 0.000 | 0.000 | 0.000 | 8.808 | 20.000 | 5.378 | 0.000 |
| TOTAL | 137.247 | 109.747 | 126.572 | 93.072 | 172.143 | 127.483 | 137.569 | 146.892 | 135.239 | 110.392 | 95.289 | 117.796 | 139.040 | 91.040 | 133.442 | 135.361 | 160.546 | 120.173 | 85.739 | 80.361 |
| PIF Rate | 0 | 0 | 0 | 0.01 | 0.2 | 2.5 | 1.4 | 0 | 0 | 0 | 0 | 1.25 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| School detail | Jeffco Schools | Jeffco Schools | Boulder Valley | Boulder Valley | Jeffco Schools | Jeffco Schools | Jeffco Schools | Adams 12 | Brighton | Adams 12 | Boulder Valley | Thompson | Denver | Douglas | Jeffco Schools | Jeffco Schools | Littleton | Adams 12 | Jeffco Schools | Jeffco Schools |

* = Denver reports City and County together. It is listed in the City column.

** = in a URA but amount is 0.



Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Councillor’s Bill No. 41 re Organizing the City of Westminster Park 1200 General Improvement District

Prepared By: Jason Genck, PRL Director
Tammy Hitchens, Finance Director

Recommended Board Action

Pass Councillor’s Bill No. 41 on first reading creating the City of Westminster Park 1200 General Improvement District.

Summary Statement

- General Improvement Districts (GIDs) are a financing tool utilized to help fund improvements and operational costs within certain developments to ensure financial sustainability.
- Under a GID structure, a property tax mill levy is assessed on owners within the GID boundaries as they are the primary beneficiaries of public improvements, such as streets, lights, parks, parking improvements, etc. to be built and maintained for the benefit of the users.
- The proposed GID would be a component unit of the City of Westminster (City). In accordance with Governmental Accounting Standards Board Statement (GASB) No. 14, *The Financial Reporting Entity*, and as amended by GASB Statement No. 61, *The Reporting Entity: Omnibus*, component units are legally separate entities for which the City is considered to be financially accountable. Financial accountability means that the City appoints a voting majority to the governing board and has the ability to impose its will upon the entity and/or accepts potential responsibility for the entity’s financial benefits and burdens.
- The first step in the creation of a GID is for owner(s) of taxable real property to file a Petition for the organization of a GID with the City Clerk. The petition must meet all legal requirements as set forth in the appropriate sections of the Colorado Revised Statutes.
- Such petition to form the City of Westminster Park 1200 GID has been properly filed with the City Clerk by the petitioners (copy attached).
- The next procedural step requires that the City Council adopt an ordinance creating the GID. If the GID is created, the Council will become the ex-officio Board of the GID. To comply with deadlines set forth in State law, the appropriate ballot question for voter acceptance of the proposed mill levy and subsequent tax increase has been drafted. If the above action is approved by City Council, approval of the ballot language will be presented at the August 24, 2015 meeting for consideration by the GID Board (City Council will sit as the Board).
- City Council will be considering approval of the Park 1200 Development documents at a later date, but prior to the TABOR election. If the Park 1200 Development is not approved by City Council, the GID will be dissolved.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council approve the formation of the City of Westminster Park 1200 General Improvement District?

Alternatives

1. Do not form the GID. This is not recommended for the following reasons:
 - a. The GID is a revenue generating district, which will defray operational costs associated with public infrastructure within the Park 1200 Westminster boundaries from the City.
 - b. Property owners within the boundaries of the proposed GID directly benefit from the City's investment of public improvements and the GID is a prudent financing tool to ensure the owners are paying for the capital and maintenance costs of public improvements within the district.
 - c. Property owners within the boundaries of the proposed GID support this financing tool to provide public benefit within the district.

2. Delay the formation of the GID. This is not recommended for the following reasons:
 - a. Property owners within the boundaries of the proposed GID would like to see a public park within the GID in the future and would like to use this financial tool to provide and sustain this public benefit. While a specific decision on a public park within the GID has yet to be determined, without this funding, it is possible that a public park will not be built on the site due to other City priorities.
 - b. Staff has negotiated a proposed development agreement with the property owners contingent upon the creation of a GID. The Official Development Plan for the project, tentatively scheduled for Council review in October, will also be conditioned upon the creation of a GID.

Background Information

Park 1200 has submitted a rezoning request, including a Preliminary Development Plan (PDP) and an Official Development Plan (ODP) to develop a 320-unit, multi-family development at the northeast corner of 116th Avenue and Pecos Street. If this development is approved by City Council, the applicants would like to provide a park on the site. As part of the discussions, property owners within the boundaries of the proposed GID have been working with the City on the possibility of a future park on this site. The property owners would like to help support the maintenance and operating costs of the park. While a specific decision on a public park within the GID has yet to be determined, without this funding, it is possible that a public park will not be built on the site due to other City priorities. It should be noted that GID fees will be limited to the extent of the direct maintenance and operating costs of the park and future capital replacement within the boundaries and aligned with the timing of site improvements.

If Council does not approve the Park 1200 development, the GID would be dissolved.

When new park requests are received, staff utilizes the criteria established in the Parks and Recreation Master Plan 2010-2014:

1. The date when the site was acquired
2. The size and estimated population area that the park will serve
3. Adequate funding to develop the park
4. The estimated cost to maintain the park once it is developed
5. Adequate funding available for ongoing maintenance of the park
6. The need to serve our various user groups

For reference, staff prepared an area specific map to become familiar with nearby parks (attached).

The City currently has seven GIDs, such as the Mandalay Gardens and 144th Avenue GIDs, which provide a prudent stable revenue stream to fund public infrastructure costs within specific development boundaries. The revenue derived from the GID offsets the expenses associated with constructing and maintaining the public improvements.

Staff recommends a GID mill levy for Park 1200 Westminster be set at 10 mills. The recommended 10 mill assessment rate for the Park 1200 GID is based on the estimated operating costs totaling \$50,000 annual cost to provide operations and maintenance on the proposed improvements. At completion, the total estimated residential valuation is \$36,000,000 and applying the associated assessment rate for the varying property types, the projected revenues total \$28,656. It should be noted that this estimate is subject to change given the dynamics of the uncertainty of the development timeline and final property composition.

If Council adopts the ordinance creating the Park 1200 GID, then after approval of the ordinance at second reading, Council acting as the ex-officio Board of the GID, will then be requested to approve the ballot language in essentially the same language as drafted below to be brought before the property owner(s) within the district at an election in November 2015. This is a necessary step to be in compliance with the State's Taxpayers Bill of Rights (TABOR) Amendment, which requires a vote of the constituents on tax related issues.

SHALL CITY OF WESTMINSTER PARK 1200 GENERAL IMPROVEMENT DISTRICT TAXES BE INCREASED \$50,000 ANNUALLY (FIRST FULL FISCAL YEAR), AND BY WHATEVER AMOUNTS AS MAY BE GENERATED ANNUALLY THEREAFTER BY THE IMPOSITION OF A MILL LEVY OF NOT TO EXCEED TEN (10) MILLS AS MAY BE NECESSARY TO PAY THE COST OF SUCH IMPROVEMENTS AND SERVICES AS THE DISTRICT IS AUTHORIZED TO PROVIDE BY LAW; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON AND ANY OTHER REVENUES BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE IN 2016 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR ANY OTHER LAW?

The action requested in this agenda memorandum relates to the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and Dynamic, Diverse Economy by setting forth the policies and procedures by which the City's component units operate to ensure that their resources are used for the purposes intended.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments – City of Westminster Park 1200 General Improvement District Petition
Councillor's Bill
Development Agreement
Map of Area Parks

STATE OF COLORADO)
)
COUNTY OF ADAMS)
)
CITY OF WESTMINSTER)

**PETITION FOR IMPROVEMENTS
AND CREATION OF A GENERAL
IMPROVEMENT DISTRICT**

The undersigned owners (the "Owners") of real property within the following described area of the City of Westminster, Colorado (the "City"), hereby petition the City Council (the "Council") of the City for the creation of a General Improvement District (the "District") and for the construction, installation, and/or acquisition of certain improvements (the "Improvements"), and for providing certain services (the "Services") in the proposed District. In accordance with that statute, the petitioners state:

1. The General Improvement District petitioned for shall be known as CITY OF WESTMINSTER PARK 1200 GENERAL IMPROVEMENT DISTRICT.

2. A general description of the Improvements to be acquired, constructed, installed, operated or maintained, and/or the services to be provided within and for the District are as follows:

IMPROVEMENTS generally to be acquired, constructed, installed, operated, and/or maintained may include but are not limited to site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site lighting, drainage improvements, site amenities such as benches, fountains, and required signage.

3 A general description of the Services to be provided are generally as follows:

SERVICES generally to be provided may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide.

4 An estimate of the total costs of the proposed Improvements is \$5,000,000 and an estimated annual cost of providing the proposed Services is \$50,000 per year. The total cost of the Improvements after the initial Improvements and any maintenance thereof and the Services are expected to be paid and/or repaid by ad valorem property taxes to be imposed against all taxable real property within the District which will not exceed 10 mills.

5. The legal description of the territory to be included in said District is described on the attached Exhibit A, Legal Description of CITY OF WESTMINSTER PARK 1200 GENERAL IMPROVEMENT DISTRICT, attached and incorporated herein.

6. The Petitioner hereby names the following three persons to represent it in the organization of the District and to enter into agreements relating to the organization of the District (which agreements shall be binding on the District, if created):

- 1. Wilford M. Farnsworth, III
- 2. Mark Berry
- 3. Brian C. Mott

7. This petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed District.

8. The Petitioner is not a natural person but owns 100% of the taxable real property located in the proposed District. The Petitioner hereby authorizes and designates the elector who signed the signature page of this petition as the person designated, pursuant to Section 31-25-602(2)(b), C.R.S., to vote for the undersigned Petitioner.

WHEREFORE, we request that the above-described CITY OF WESTMINSTER, PARK 1200 GENERAL IMPROVEMENT DISTRICT be organized in accordance with Part 6, Article 25, Title 31, C.R.S., and all other statutes and laws of the State of Colorado amendatory thereof or supplemental thereto, and ask the City Council to take all steps and procedures required by law for the organization of said District, and request that, pursuant to Section 31-25-607(3.5), C.R.S., the City Council waive all the requirements for notice, publication and a hearing set forth in Sections 31-25-606 and 31-25-607, C.R.S., and for the organizational bond set forth in Section 31-25-605, C.R.S., and adopt an ordinance declaring the District organized.

IBC DENVER VIII LW IV LLC

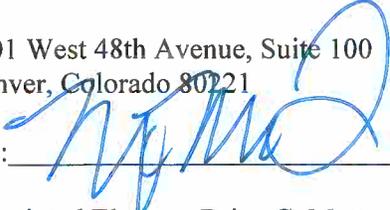
By: 

Title: Authorized Signatory

Date: 7-30-2015

Address of Property Owner:

1101 West 48th Avenue, Suite 100
Denver, Colorado 80221

BY: 

Appointed Elector: Brian C. Mott

VERIFICATION

STATE OF ~~COLORADO~~)
Arizona) ss.
COUNTY OF ~~ADAMS~~)
Maricopa

I, Wilford M. Farnsworth, III, hereby certify that I have read the attached PETITION FOR IMPROVEMENTS AND CREATION OF A GENERAL IMPROVEMENT DISTRICT in the City of Westminster, Colorado. I further certify that I am an authorized signatory of the owner of real property within the area to be included in the District and I consent to the Petition and formation of the CITY OF WESTMINSTER, PARK 1200 GENERAL IMPROVEMENT DISTRICT.

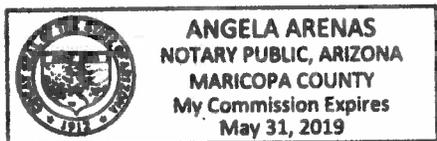
[Handwritten Signature]

Signature

Subscribed and sworn to before me this 30 day of July, 2015 by
Wilford M. Farnsworth, III

WITNESS my hand and official seal.

My commission expires:



Angela Arenas

Notary Public (Signature)

Angela Arenas

Notary Public (Name – please print)

8925 E Pima Center Pkwy, #200
Scottsdale, AZ 85258

Address

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF LOT 1C OF THE SECOND REPLAT LUCENT TECHNOLOGIES RECORDED AT RECEPTION NO. 2014000081836 IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER, SITUATED IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 4, AND CONSIDERING THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 4 TO BEAR NORTH 00°19'13" WEST, WITH ALL BEARINGS HEREON RELATIVE THERTO;

THENCE NORTH 61°15'23" EAST A DISTANCE OF 71.64 FEET TO A POINT ON THE THE WESTERLY LINE OF SAID LOT 1C AND THE **POINT OF BEGINNING**;

THENCE NORTH 00°19'13" WEST ALONG THE WESTERLY LINE OF SAID LOT 1C A DISTANCE OF 963.77 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 1C; THENCE NORTH 89°55'45" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1C A DISTANCE OF 545.13 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 376.20 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 148.27 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 91.00 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 622.36 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 33.70 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 270.50 FEET;

THENCE NORTH 00°04'15" WEST A DISTANCE OF 33.70 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 227.59 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 475.86 FEET;

THENCE SOUTH 89°16'26" WEST A DISTANCE OF 1,809.77 FEET TO THE **POINT OF BEGINNING**;

SAID PARCEL CONTAINS AN AREA OF 1,138,994 SQUARE FEET, OR 26.15 ACRES, MORE OR LESS.

BY AUTHORITY

ORDINANCE NO. _____

COUNCILLOR’S BILL NO. **41**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE ACCEPTING A PETITION FOR THE ORGANIZATION OF A GENERAL IMPROVEMENT DISTRICT IN THE CITY OF WESTMINSTER AND MAKING CERTAIN FINDINGS AND DETERMINATIONS; WAIVING ALL REQUIREMENTS FOR NOTICE, PUBLICATION AND A HEARING AS PERMITTED BY STATUTE; DECLARING THE NECESSITY OF THE FORMATION OF THE GENERAL IMPROVEMENT DISTRICT; ESTABLISHING AND CREATING THE CITY OF WESTMINSTER PARK 1200 GENERAL IMPROVEMENT DISTRICT; PROVIDING OTHER DETAILS RELATING THERETO

WHEREAS, a Petition for the organization of a general improvement district in the City of Westminster, Colorado (the “Petition”) has been filed in the office of the City Clerk of the City of Westminster (the “City”); and

WHEREAS, the Petition has been reviewed by the City Clerk; and

WHEREAS, the Petition has been signed by one hundred percent of the owners of taxable real property to be included in the proposed district and contains a request, pursuant to Section 31-25-607 (3.5), Colorado Revised Statutes, for waiver of all requirements for notice, publication and a hearing set forth in Sections 31-25-606 and 31-25-607, Colorado Revised Statutes, and of the organizational bond set forth in Section 31-25-605, Colorado Revised Statutes.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. FINDINGS AND DETERMINATIONS. The City Council hereby accepts the Petition for Organization of a General Improvement District in the City of Westminster, Colorado (the “Petition”), which requests the formation of a general improvement district to be known as “City of Westminster Park 1200 General Improvement District.” The Council hereby finds that the signatures on the Petition are genuine, that the Petition is signed by one hundred percent of the owners of taxable real property of the proposed district who own real property in the proposed district, and that the Petition contains a request for waiver of all requirements for notice, publication and a hearing set forth in Sections 31-25-606 and 31-26-607, Colorado Revised Statutes, and of the organizational bond set forth in Section 31-25-605, Colorado Revised Statutes.

The Council does hereby determine that the proposed improvements and facilities do not duplicate or interfere with any municipal improvement already constructed or planned to

be constructed within the limits of the proposed district. The Council finds that the creation of the district and proposed improvements therein will confer a general benefit on the district and that the costs of the improvements will not be excessive as compared with the value of the property in the district. The Council hereby finds, determines and declares that the organization of the district will serve a public use and will promote the health, prosperity, security and general welfare of the inhabitants of the City and the district. The Council hereby determines to grant such request for waiver and finds that the allegations of the Petition are true and that the district should be established.

Section 2. ESTABLISHMENT OF DISTRICT. It appearing that the Petition has been duly signed and presented in conformity with Colorado law and that the allegations of the Petition are true, the Council, by this ordinance, hereby finds that it has full jurisdiction under the law to adopt this ordinance, that the district for which the Petition has been filed is hereby declared organized, and that the district shall be known as the City of Westminster Park 1200 General Improvement District (the "District"), by which, in all proceedings, it shall hereafter be known. The District shall be a public or quasi-municipal subdivision of the State of Colorado and a body corporate with the limited proprietary powers set forth in Part 6, Article 25, Title 31, Colorado Revised Statutes.

Section 3. DISTRICT BOUNDARIES. The District is located entirely within the boundaries of the City and the legal description of the District boundaries is as follows:

A PARCEL OF LAND BEING A PART OF LOT 1C OF THE SECOND REPLAT LUCENT TECHNOLOGIES RECORDED AT RECEPTION NO. 2014000081836 IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER, SITUATED IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 4, AND CONSIDERING THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 4 TO BEAR NORTH 00°19'13" WEST, WITH ALL BEARINGS HEREON RELATIVE THERTO;

THENCE NORTH 61°15'23" EAST A DISTANCE OF 71.64 FEET TO A POINT ON THE THE WESTERLY LINE OF SAID LOT 1C AND THE **POINT OF BEGINNING**;

THENCE NORTH 00°19'13" WEST ALONG THE WESTERLY LINE OF SAID LOT 1C A DISTANCE OF 963.77 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 1C; THENCE NORTH 89°55'45" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1C A DISTANCE OF 545.13 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 376.20 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 148.27 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 91.00 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 622.36 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 33.70 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 270.50 FEET;

THENCE NORTH 00°04'15" WEST A DISTANCE OF 33.70 FEET;

THENCE NORTH 89°55'45" EAST A DISTANCE OF 227.59 FEET;

THENCE SOUTH 00°04'15" EAST A DISTANCE OF 475.86 FEET;

THENCE SOUTH 89°16'26" WEST A DISTANCE OF 1,809.77 FEET TO THE **POINT OF BEGINNING**;

SAID PARCEL CONTAINS AN AREA OF 1,138,994 SQUARE FEET, OR 26.15 ACRES, MORE OR LESS.

Section 4. DISTRICT IMPROVEMENTS AND SERVICES. A general description of the improvements to be acquired, constructed and installed within the District and the services to be provided are as follows:

IMPROVEMENTS generally to be acquired, constructed, installed, operated, and/or maintained may include but are not limited to site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site lighting, drainage improvements, site amenities such as benches, fountains, and required signage.

SERVICES generally to be provided may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide.

Section 5. FILING OF ORDINANCE. Within thirty days after Council action on this ordinance, the City Clerk shall transmit to the County Clerk and Recorder of Adams County a copy of this ordinance.

Section 6. ORDINANCE CONCLUSIVE. This ordinance shall finally and conclusively establish the regular organization of the District against all persons unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adoption of this ordinance. Thereafter, any such action shall be perpetually barred.

Section 7. REPEALER CLAUSE. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 8. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this ordinance.

Section 9. CHARTER CONTROLS. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 10. EFFECTIVE DATE, RECORDING AND AUTHENTICATION. This ordinance shall take effect upon passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ARE ORDERED PUBLISHED THIS 10th day of August, 2015.

PASSED, ENACTED ON SECOND READING, AND THE FULL TEXT OF THIS ORDINANCE ORDERED PUBLISHED THIS 24TH day of August, 2015.

CITY OF WESTMINSTER, COLORADO

Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DATE

STATE OF COLORADO)
)
 COUNTIES OF ADAMS) SS.
 AND JEFFERSON)
)
 CITY OF WESTMINSTER)

I, Linda Yeager, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the "City"), do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City (the "Council") at a regular meeting of the Council held at the City Hall on August 10, 2015.

2. The passage of the Ordinance on first reading on August 10, 2015, was duly moved and seconded and the Ordinance was approved by vote of a ___ of ___ of the members of the Council as follows:

| Name | "Yes" | "No" | Absent | Abstain |
|-----------------|-------|------|--------|---------|
| Herb Atchison | | | | |
| Bob Briggs | | | | |
| Bruce Baker | | | | |
| Maria De Cambra | | | | |
| Alberto Garcia | | | | |
| Emma Pinter | | | | |
| Anita Seitz | | | | |

3. The passage of the Ordinance on second and final reading, was duly moved and seconded at a regular meeting of the Council on August 24, 2015, and the Ordinance was approved on second and final reading by a vote of a ___ of ___ of the members of the Council as follows:

| Name | "Yes" | "No" | Absent | Abstain |
|-----------------|-------|------|--------|---------|
| Herb Atchison | | | | |
| Bob Briggs | | | | |
| Bruce Baker | | | | |
| Maria De Cambra | | | | |
| Alberto Garcia | | | | |
| Emma Pinter | | | | |
| Anita Seitz | | | | |

4. The members of the Council were present at such meeting and voted on the passage of the Ordinance as set forth above.

5. The Ordinance has been signed by the Mayor, sealed with the corporate seal of the City, attested by me as Secretary, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

6. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance.

7. Notices of the meetings of August 10, 2015 and August 24, 2015, in the forms attached hereto as **Exhibit A**, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

8. The ordinance was published by title after first reading and published in full after adoption on second reading in the Westminster Window, a newspaper of general circulation within the City on _____, 2015. The affidavits of publication are attached hereto as **Exhibit B**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City
this _____ day of July, 2015.

City Clerk

(SEAL)

EXHIBIT A

(Attach Notices of Meetings)

EXHIBIT B

(Attach Affidavits of Publication)

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2015 by and between the City of Westminster, a Colorado home rule municipality ("City"), and IBC DENVER VIII LW IV LLC, a Delaware LLC (herein referred to as "Park 1200").

RECITALS

- A. Park 1200 has submitted an application for approval by the City of an Official Development Plan ("ODP") for the development of an approximately 26.15 acre parcel of property situated at approximately the northeast corner of 116th and Pecos St. ("Development").
- B. The Development anticipates the construction of an unspecified number of units of multifamily residential apartments.
- C. For the benefit of the Development and its future residents, Park 1200 desires that the City construct an approximately 7.62 acre park adjacent to the Development ("the Park").
- D. To incentivize the City's construction of the Park, Park 1200 has agreed to petition for the organization of a General Improvement District ("GID") pursuant to the provisions of CRS sections 31-25-601, et seq., for the purpose of funding future maintenance and capital replacement expenses related to the Park.
- E. Through this Agreement, Park 1200 and the City wish to establish their respective agreements and obligations related to the operation and maintenance of the Park and the operational and financial parameters of the GID.

AGREEMENT

1. It shall be a condition of approval of Park 1200's ODP that 100% of the owners of the Development will have submitted a petition for the establishment of a General Improvement District covering the property

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

2. The City will terminate any proceedings in progress to create the GID or to establish a mill levy against the Development, or, in the event the GID has been previously created, to take any and all actions necessary to dissolve the GID pursuant to CRS 31-25-625 if either:
 - a. Park 1200 does not receive approval of an ODP for the Development by March 31, 2016; or
 - b. The required land for the Park has not been dedicated by March 31, 2016.
3. Upon approval of Park 1200's ODP and the establishment of the GID, Park 1200 shall be entitled to provide input and participate in the development of the GID's annual budgets.
4. The City agrees to act in good faith to assure that the GID's annual mill levy is limited to such amount to meet the GID's expense for the projected cost of maintaining the park in the following year, plus an amount to fund the reasonable projected cost of replacing any improvements or equipment installed as part of the original design and construction of the park. Notwithstanding the foregoing, in no event shall the GID's mill levy exceed 10 mills, nor shall the City refer to the ballot a measure to increase the mills beyond 10 mills without the express written consent of the owner of the Development.
5. Park 1200 agrees to vote in favor of the ballot issue required by Colo. Const. Article X, section 20 (aka TABOR) to approve a mill levy not to exceed 10 mills.
6. The City shall maintain or cause to be maintained the Park, including but not limited to landscaping, irrigation, playground equipment and picnic facilities, to at least the same standards the City uses in maintaining the City's neighborhood park facilities.
7. The City shall be solely responsible for maintaining the Park and assuring user safety. However, nothing herein shall be deemed or construed as a waiver by the City of any provision of the Colorado Governmental Immunity Act.

8. This Agreement shall be deemed a covenant running with the land described on Exhibit A hereof and binding on the heirs, successors, transferees and assigns of the City and Park 1200.

Park 1200:

IBC DENVER VIII LW IV LLC

By: 

Its: Authorized Signatory

Date: 8-3-15

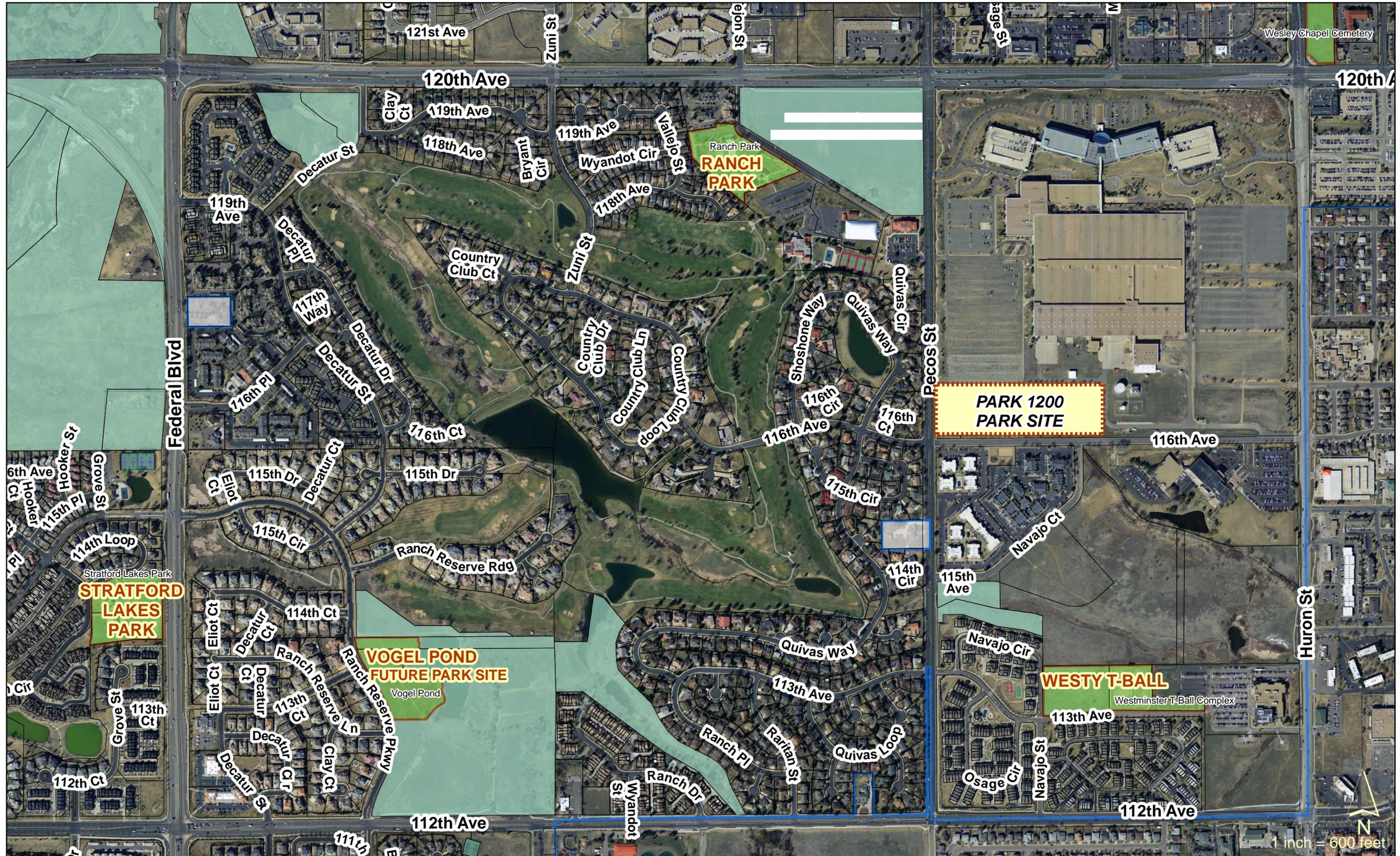
City of Westminster

By: _____

Its: _____

Date: _____

PARK 1200: NEARBY PARKS AND OPEN SPACE





Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Resolution No. 26 re: Amended Intergovernmental Agreement for HOME Investment Partnerships Program Consortium with Adams County

Prepared By: Heather Ruddy, Community Development Program Planner

Recommended City Council Action

Adopt Resolution No. 26 authorizing the Mayor to sign an amended intergovernmental agreement in substantially the same form as the attached agreement with Adams County, amending the City's Intergovernmental Agreement approved by City Council on June 8, 2015 for participation in the HOME Investment Partnerships Program Consortium with Adams County for three years.

Summary Statement

- The City Council approved an Intergovernmental Agreement between the City and Adams County on June 8, 2015 regarding the HOME Investment Partnership Program Consortium with Adams County. Upon Adams County's submittal to the U.S. Department of Housing and Urban Development (HUD) of the intergovernmental agreement (IGA), it was found that certain clarifying language regarding the federal government's fiscal years and the City's agreement to affirmatively further fair housing were missing from the IGA. This language has been added to the amended IGA for City Council's consideration and does not change the intent of the agreement.
- The amended IGA will be in effect for a period of three years from March 1, 2016 through February 28, 2019.

Expenditure Required: \$200,000 annually (estimated)

Source of Funds: HOME Funds

Policy Issue

Should the City Council continue to access approximately \$200,000 annually in HOME program funding by entering into an amended IGA with Adams County?

Alternative

The City Council could choose to not enter into the amended IGA with Adams County. Staff does not recommend this alternative because this would result in the City not receiving a direct appropriation of HOME funds on an annual basis. HOME funds have provided benefits to low- and moderate income Westminster residents including the acquisition and rehabilitation of the Westminster Commons Senior Apartments and construction of affordable senior apartments at Panorama Pointe.

Background Information

The City Council approved an IGA between the City and Adams County on June 8, 2015 regarding the HOME Investment Partnership Program Consortium with Adams County. Upon Adams County's submittal to HUD of the IGA, it was found that certain clarifying language regarding the federal government's fiscal years and the City's agreement to affirmatively further fair housing were missing from the IGA. This language has been added to the amended IGA for City Council's consideration and does not change the intent of the agreement.

Per HUD regulations, the City is not eligible to receive a direct allocation of federal HOME Program funds because the City's housing stock does not meet the required thresholds for funding. The amended IGA between the City and Adams County will allow the City to continue to access approximately \$200,000 annually in federal HOME program funds from HUD for eligible affordable housing related programs and projects.

Approval of the amended IGA meets the following City Strategic Plan goals: *Visionary Leadership, Effective Governance and Proactive Regional Collaboration; Dynamic, Diverse Economy; and Financially Sustainable Government Providing Excellence in City Services.*

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Resolution
Amended IGA for HOME Consortium with Adams County

RESOLUTION

RESOLUTION NO. **26**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

A RESOLUTION AUTHORIZING AMENDMENT OF THE INTERGOVERNMENTAL AGREEMENT REGARDING THE HOME INVESTMENT PARTNERSHIPS PROGRAM CONSORTIUM WITH ADAMS COUNTY

WHEREAS, the City of Westminster (City) and Adams County (County) entered into an Intergovernmental Agreement (IGA) regarding the HOME Investment Partnerships Program (HOME) Consortium approved by the City Council on June 8, 2015 for a three year period from March 1, 2016 through February 28, 2019; and,

WHEREAS, the City and the County desire to amend this Intergovernmental Agreement (IGA) to add certain clarifying language.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

1. To authorize the Mayor to sign the amended Intergovernmental Agreement (IGA) for the HOME Investment Partnerships Program (HOME) Consortium with Adams County for a three year period from March 1, 2016 through February 28, 2019 in substantially the same form as attached.

PASSED AND ADOPTED this 10th day of August, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

**AMENDED INTERGOVERNMENTAL AGREEMENT
HOME INVESTMENT PARTNERSHIPS PROGRAM
CONSORTIUM - CITY OF WESTMINSTER**

THIS AMENDED INTERGOVERNMENTAL AGREEMENT (HEREAFTER, "Agreement") is made and entered into this ____ day of _____, 2015, between the BOARD OF COUNTY COMMISSIONERS, COUNTY OF ADAMS (HEREAFTER "COUNTY"), a political subdivision of the STATE of COLORADO, located at 4430 South Adams County Parkway, Brighton, Colorado, 80601-8205, and the CITY of WESTMINSTER (HEREAFTER "CITY"), a home-rule municipality, located at 4800 West 92nd Avenue, Westminster, Colorado 80031. The COUNTY and the CITY may be referred to collectively as "Parties," and individually as "Party."

RECITALS

WHEREAS, the United States Government, through the National Affordable Housing Act of 1990 (the "ACT"), has established the HOME Investment Partnerships Act Program ("HOME"), administered through the U.S. Department of Housing and Urban Development ("HUD") and has designated Adams County as a Participating Jurisdiction ("PJ") to administer such Federal funds, subject to certain conditions, for the purpose of expansion and rehabilitation of the supply of decent, safe, sanitary, and affordable housing and to strengthen partnerships among all levels of government and the private sector; and

WHEREAS, 24 Code of Federal Regulations (CFR), 92.101 Consortia of the ACT provides that a consortium of geographically contiguous units of general local government can be considered to be a unit of general local government for the purposes of receiving an allocation and participation in the HOME program, and a determination has been made by HUD that the CITY and COUNTY are geographically contiguous and are eligible to participate in a HOME Consortium; and

WHEREAS, HUD rules and regulations governing HOME funds, as published in 24 CFR, Part 92 ("HOME Regulations"), provide that a county is eligible to receive HOME funds as a "Participating Jurisdiction," as defined therein, and must submit to HUD an annual request for funding in the form of an Annual Action Plan ("AAP"). The cities and units of local government within a county may be included in the Participating Jurisdiction by intergovernmental or cooperative agreement and may thereby be included in the Participating Jurisdiction's HOME; and

WHEREAS, the CITY and COUNTY recognize the need to address the community issues of homelessness, deteriorating housing stock, increase the supply of permanent affordable housing for lower-income households, and affordable and supportive housing for persons and families residing or wishing to reside in the CITY and have determined that it will be mutually beneficial and in the public interest to enter into an Intergovernmental Agreement regarding participation in HOME; and

WHEREAS, the CITY desires to enter into an Intergovernmental Agreement with the COUNTY to participate in a consortium for the purpose of using HOME funds in the city, as authorized by Title II of the ACT to enhance cooperation between jurisdictions and to maximize the use of resources available by local governments to affect the housing-related problems of lower-income persons; and

WHEREAS, the COUNTY has elected to administer such Federal funds for its HOME Consortium through the Adams County Community Development Division; and

WHEREAS, the CITY and COUNTY are authorized to enter into cooperative agreements pursuant to the Colorado Constitution, Article XIV, § 18, and § 29-1-203, CRS; and

WHEREAS, the CITY will remain its own Entitlement for the direct receipt and administration of Community Development Block Grant ("CDBG") funds from HUD; and

WHEREAS, on June 23, 2015, the CITY and COUNTY entered an Intergovernmental Agreement concerning the Home Investment Partnership Program that was substantially similar to this Amended Intergovernmental Agreement; and,

WHEREAS, this Amended Intergovernmental Agreement is intended to fully supersede and replace the previous Agreement between the Parties.

NOW THEREFORE, in consideration of the premises and the cooperative actions contemplated hereunder, the CITY and COUNTY agree as follows:

I. GENERAL PROVISIONS

A. CITY and COUNTY Cooperation. The CITY and COUNTY will cooperate on the HOME projects and activities conducted with the CITY's HOME funding allocation during the Federal Program Years identified in this Agreement.

B. Representative Appointment. The COUNTY is designated as the "Lead Entity" of the Adams County HOME Consortium ("Consortium") and will act in the representative capacity for all member units of general local government for the purposes of HOME per 24 CFR Part 92. As the Lead Entity, the COUNTY may add new members to the Consortium at qualification periods.

C. Program Year/Term of Agreement. The Parties agree that beginning with Program Year ("PY") 2016, the HOME Consortium PY start date shall be March 01, 2016, and the PY end date will be February 28, 2017. The three federal fiscal years for which the consortium is receiving HOME funding is FY 2016 to FY 2018. Both the CITY and COUNTY agree that the duration of this Agreement shall cover funding for HOME PYs 2016, 2017, 2018, beginning on March 01, 2016 and ending on February 28, 2019. No Consortium member may withdraw from the Consortium while the Agreement is in effect. The Agreement remains in effect until the expenditures of HOME PYs 2016, 2017 and 2018 funds for eligible activities and all HOME funds are closed out in HUD's Integrated Disbursement and Information System ("IDIS"), pursuant to 24 CFR 92.507.

D. IGA Renewal and Amendments. The COUNTY and the CITY can renew this agreement for any successive qualification periods. Each such period will last for three federal fiscal years. The County shall notify the CITY in writing by the date specified in HUD's most current Consortia Designation Notice or HOME Consortia web page of the CITY's right to decide whether to continue to participate in the Consortium for the next qualification period. The COUNTY shall send a copy of the written notification provided to the CITY to the HUD field office. The CITY will respond with its decision whether to renew its participation in the Consortium for the next qualification period through a signed City Council resolution; this will be provided to the COUNTY at least 15 days prior to the COUNTY's deadline to notify HUD of the Consortium participants for the new qualification period.

Any programmatic, administrative, or operational changes to this Agreement shall be made by written amendment to this Agreement, which shall be mutually agreed upon and executed by both the CITY and COUNTY. Amendments shall be made pursuant to HUD's most current Consortia Designation Notice.

E. Distribution of Funds. The allocation of HOME funds earmarked for the CITY shall be determined by HUD through the HOME Consortia Participating Members Percentage Report (also called the Consortia Share Report) that is posted on HUD's website. The CITY shall determine how the CITY's HOME allocation will be used on an annual basis and this will be authorized through the passing of a City Council Resolution.

The COUNTY will retain up to ten percent (10%) of the total HOME annual allocation of the Consortium for program administration and other expenses related to program operations, in accordance with HUD regulations. The COUNTY will notify the CITY of its Total Gross HOME allocation, which will identify the breakdown of Administration set-aside for the COUNTY and the CITY's net allocation of HOME funds. Such allocations shall not be modified or withdrawn unless mutually agreed upon in writing by both parties.

F. Program Income. Should any CITY HOME-funded projects generate Program Income ("PI"), the Parties agree that the income shall go towards CITY HOME-funded projects and/or be used specifically for CITY residents through other approved HOME-funded projects, unless such projects are unavailable and HUD commitment and/or expenditure deadlines are threatened. The CITY agrees and understands that ten percent (10%) of all PI received from CITY HOME-funded projects shall be retained by the COUNTY for program administration costs. The PI will be calculated in accordance with 24 CFR, including 92.207, 92.503, and 92.504.

G. Designated Project Representatives. Parties agree that the designated representatives for the purposes of administering this Agreement are:

CITY of Westminster
Community Development Department
Division Manager of Record
4800 W. 92nd Avenue
Westminster, Colorado 80031
303.658.2111
hruddy@cityofwestminster.us

And

Adams COUNTY
Community Development Division
Division Administrator of Record
4430 South Adams County Parkway
Suite C1900
Brighton, Colorado 80601-8205
720.523.6054
JGreenland@adcogov.org

Either Party may change its Designated Representative through written notice to the other Party, as provided in Paragraph H. Notices, below.

H. Notices. The Parties agree that any notices permitted or required by this Agreement shall be deemed delivered when personally delivered or upon deposit in the United States Postal Service, fully pre-paid, certified, return receipt requested, and addressed to the Designated Representative identified in Paragraph I or via electronic mail (email) when delivery verification is provided through email delivery notification methods. Either Party may change its address by notice issued in accordance with this paragraph.

I. Conflict of Interest. In accordance with 24 CFR Part 92.356, no employee official, agent, or consultant of the CITY or COUNTY shall exercise any function or responsibility in which a conflict of interest, real or apparent, would arise.

II. RESPONSIBILITIES OF THE COUNTY

A. Administrative Oversight. The COUNTY, as a designated Urban County and Participating Jurisdiction, is ultimately responsible for the administrative oversight and supervision of all HOME funds allocated to the Consortium and its members, per 24 CFR Part 92. As such, the COUNTY is responsible for ensuring that all HOME funds allocated to the CITY are expended in accordance with the Consolidated Plan/AAP, sub-recipient agreements, resolutions and all Federal, State, and local regulations and notices pertaining to HOME. Per HUD's Consortia Designation Notice, the COUNTY shall be responsible for renewing the IGA and submitting amendments to the IGA to the HUD field office. The COUNTY is responsible to provide no less than forty-five (45) days notice to the CITY of any deadlines that would require CITY Council action.

B. Legal Liability and Responsibilities. Parties recognize and understand that the COUNTY is the lead governmental entity for the Consortium and, therefore, shall be held by HUD to be legally liable and responsible for the execution of the HOME Program. The COUNTY assumes overall responsibility for ensuring the Consortium's HOME Program is carried out in compliance with the requirements of HOME, including requirements concerning a joint Consolidated Plan, as set forth in HUD regulations 24 CFR Parts 91 and 92, circulars promulgated by the Federal departments, agencies, and commissions related to the HOME Program.

C. Sub-Recipient Agreements. The COUNTY shall create and enter into sub-recipient agreements for all the HOME-funded projects and activities of the Consortium. Sub-recipient agreements for CITY HOME-funded projects will be executed on an annual basis, providing that HOME-eligible projects are developed and authorized through a Westminster City Council Resolution. The COUNTY will provide the CITY with a copy of all fully executed sub-recipient agreements and amendments for Westminster HOME-funded projects within 30 days of their execution. The COUNTY shall take all actions reasonably required to comply with the applicable provisions of the sub-recipient agreements.

D. Eligibility Review and Compliance Monitoring. The COUNTY shall be responsible for confirming eligibility and compliance of the CITY's HOME projects and activities with all applicable Federal, State and local regulations. Also, the COUNTY shall be responsible to provide monitoring of all HOME-funded projects to ensure compliance with applicable regulations associated with the HOME Program, including, but not limited to, Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Uniform Federal Accessibility Standards

(UFAS), Americans with Disabilities Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992, and Uniform Relocation Act (URA).

E. Reporting Requirements. The COUNTY shall report on HOME funds and activities through IDIS and close out projects within a timely manner. The COUNTY shall provide the CITY with quarterly HOME activity reports and close out reports for any HOME-funded CITY projects and activities and separate reports for CITY Program Income funded activities. Also, the COUNTY will file all standard and required HOME reports with HUD as necessary to comply with applicable Federal regulations. The COUNTY shall further be responsible for maintaining proper documentation of the COUNTY's administrative expenses.

F. Public Participation. The COUNTY shall adhere to HUD requirements regarding public notification and public hearing processes necessary to receive HOME funds.

III. RESPONSIBILITIES OF THE CITY

A. Eligibility Review. The CITY will work with agencies eligible to use HOME to evaluate needs in the low-income community and identify potential projects that could be funded through the HOME Program. The CITY will provide guidance to agencies on applying for HOME funds and evaluate the potential projects for initial eligibility.

B. Action Plan/CAPER Submissions. The CITY, as an Entitlement Community, prepares its own AAP and CAPER each year for the CDBG program. The CITY will refer to the COUNTY's AAP and CAPER for information related to Westminster HOME-funded projects. The CITY shall provide the COUNTY with a CITY Council Resolution on these documents so the COUNTY can incorporate the project description into the COUNTY'S AAP.

IV. MUTUAL RESPONSIBILITIES

A. Consolidated Plan. During the years that the entitlement communities in Adams County prepare and submit a joint Consolidated Plan, the CITY and COUNTY will collaborate on the development of the Plan. As the lead entity of the HOME Consortium, the COUNTY is responsible for the completion and submission of the Plan. The CITY is responsible for completing the sections required for the CITY's CDBG program and funding allocations. The COUNTY is responsible for the sections related the funding received directly by the COUNTY, which includes HOME funds.

B. Fair Housing. Parties hereto collectively and individually agree to affirmatively further fair housing, in accordance with all Federal rules, regulations, and requirements. Each Party shall be responsible for compliance with HUD Fair Housing regulations. Both the CITY and the COUNTY shall prepare and submit their own Analysis of Impediments to Fair Housing and be responsible for performance measures established in their respective Analysis of Impediments report.

C. Indemnification. The Parties agree that, to the extent possible, the COUNTY and the CITY shall indemnify and hold the other, its officers, agents, and employees harmless from and against any and all claims, actions, liabilities, costs, including attorney fees, and other costs of defense, arising out of or in way related to any act or failure to act by each other and each other's officers, agents, and employees, and contractors, in connection with this Agreement.

D. Venue. The laws of the State of Colorado shall govern as to the interpretation, validity and

effect of this Agreement. The Parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with the District Court of Adams County, Colorado.

E. Modification. This Agreement contains the entire understanding of the Parties and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived, except by instrument in writing signed by all Parties.

IN WITNESS WHEREOF, the Parties have caused their names to be affixed hereto and in agreement thereof, this ____ day of _____, 2015.

CITY OF WESTMINSTER,
A Colorado Municipal Corporation

Herb Atchison, Mayor
4800 W. 92nd Avenue
Westminster, Colorado 80031

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO FORM:

Westminster City Attorney's Office

COUNTY OF ADAMS, STATE OF COLORADO
BOARD OF COUNTY COMMISSIONERS

Charles "Chaz" Tedesco, Chairman
Board of County Commissioners
4430 S. Adams County Parkway
5th Floor, Suite C5000A
Brighton, CO 80601-8204

ATTEST:

Stan Martin, CLERK & RECORDER

Deputy Clerk

APPROVED AS TO FORM:

Adams County Attorney's Office



Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Councillor’s Bill No.18 Adopting Amendments to the 2013 Comprehensive Plan

Prepared By: Sarah Nurmela, AICP, Principal Planner

Recommended City Council Action

1. By motion, remove Councillor’s Bill No. 18 Updating the Comprehensive Plan from the table.
2. Pass Councillor’s Bill No. 18 on first reading adopting amendments to the 2013 Comprehensive Plan.

Summary Statement

- The current Comprehensive Plan was adopted in November, 2013, and last updated in 2014.
- A public hearing was held on April 13, 2015, on the proposed update to the Comprehensive Plan, which included:
 - minor text and graphics edits;
 - a terminology change in all of the Development Standards tables in the land use classifications from “Primary” to “Allowed” and “Secondary” to “Limited;”
 - additional edits to the Plan reflect the adoption of the Downtown Specific Plan, new open space, and minor text edits and updates to several chapters; and
 - an amendment of the current land use designation of a developable portion (approximately 1.8 acres) of a property in the proximity of Westminster Boulevard and 104th Avenue from “Major Creek Corridor on Non-Public Land” to “Retail Commercial,” due to a mapping error relative to the location of the adjacent flood plain.
- City Council expressed concern over the application of the terminology change in the R-3.5 Residential classification where staff classified “Duplexes” as “Limited” based on the existing caveat in the Comprehensive Plan that they “may be allowed depending on location and design.” Coupled with a change in the descriptive text of the classification, City Council was concerned that the combined changes proposed within the R-3.5 classification implied duplexes would be discouraged.
- The public hearing was closed and no action was taken on the entirety of the Comprehensive Plan update at the April 13, 2015, meeting. Councillor’s Bill No. 18 was tabled.
- A study session with City Council was held on July 8, 2015, to review the application and existing terminology of the R-3.5 land use classification. The outcome of the study session identified an alternative proposal for the classification that would keep the existing descriptive language and location of “Duplexes” in the Development Standards table.
- A list of the proposed changes as previously presented at the April 13, 2015, public hearing is provided in *Attachment A* and actual changes are highlighted in red (for text) or included (for updated graphics) in *Attachment B*. Page 7 of *Attachment B* has been amended to reflect the direction provided by City Council at the July 8, 2015, study session.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Council approve the proposed changes to the 2013 Comprehensive Plan?

Alternatives

1. The Council could choose to conduct a public hearing on the proposed update to the 2013 Comprehensive Plan as submitted to the City Council on April 13, 2015 and again with this agenda item. Staff does not recommend holding an additional hearing since the issue of concern highlighted at the April 13, 2015 hearing has since been addressed in study session (July 8, 2015) with a clear direction for resolution by City Council.
2. The Council could choose to not support all or some of the revisions to the Comprehensive Plan. There are several types of changes proposed that include minor word edits, map and table edits, and clarifications and terminology for land use classifications and calculations. If the proposed changes do not move forward, retaining the Plan as is will have varying impacts, which include the following:
 - Minor Text Edits: These edits will not significantly impact the document, although a few could impact the clarity or intent of the information being presented;
 - Map and Table Edits: These edits are primarily to update Figure 2-2: Land Use Diagram with open space purchases, adoption of the Downtown Specific Plan and amendments or annexations already adopted by Council, so the impact of not completing these will mean the document does not reflect existing conditions accurately; and
 - Clarifications to Land Use Terminology: All of the proposed edits do not change the existing information or policies existing in the Comprehensive Plan. They do, however, provide greater clarity on how development intensity and density are calculated and on the understanding of land uses appropriate within each classification. In not approving the clarification of the intensity and density terms, applicants may not understand how to calculate these standards, particularly if the concepts of gross acreage and minimums and maximums are not more clearly spelled out.

In not approving the change in terminology and the accompanying new definitions for the land use Development Standards tables from “Primary” and “Secondary” to “Allowed” and “Limited,” there may be misinterpretation of what the existing terms mean, since it is not clear whether these terms denote preference versus a spatial or other limitation. An additional alternative would be to keep the “Primary” and “Secondary” terms but provide the proposed definitions in order to ensure clarity in their interpretation.
 - Amendment of Land Use for Portion of RDHI Parcel: This edit is to amend the designation of a developable portion of the property that was designated as Major Creek Corridor on Non-Public Lands to Retail Commercial. If this amendment is not approved, the property owner can work with the City to amend the land use as a separate effort from this Update. Additionally, an alternative land use designation for the portion of the property could be determined. However, the site has many physical constraints, including issues of slope stability due to proximity to the floodplain and creekway of Little Dry Creek, drainage, and dedication of right-of-way along Westminster Boulevard. As a result, more intense use of the land, particularly with higher intensity uses like Mixed Use Center is not recommended and may not be physically achievable.
3. The City Council could also propose alternative solutions to individual suggested changes to the Plan. The impact will likely depend on a few key factors: the significance of the proposed change (whether a word or clarification edit or a major policy change) and general consistency with the policies and direction of the adopted Comprehensive Plan.

Background Information

The current Comprehensive Plan was adopted in 2013 and last updated with minor text and graphic changes in 2014. The proposed changes associated with the 2015 Update to the Comprehensive Plan were first brought to City Council at a study session on March 2, 2015. A public hearing was

subsequently held on April 13, 2015. Based upon concerns over the implication of changes proposed for the R-3.5 Residential land use classification, City Council tabled the Councillor's Bill No. 18 to a date uncertain, until such time as a study session to address the concerns could be held. Specific issues that were brought to the attention of City Council during the public hearing and later discussed after closure of the hearing included the classification of "Duplexes" as "Limited" (based on the existing caveat in the Comprehensive Plan that they "may be allowed depending on location and design") and a change in the descriptive text of the classification (where the term "primary" was added to describe single family detached dwellings and the term "duplexes" was removed). City Council was concerned that the combined changes proposed within the R-3.5 classification would imply that duplexes were discouraged.

A study session with City Council was held on July 8, 2015, to review the application and terminology of the R-3.5 land use classification. The outcome of the study session identified an alternative proposal for the classification that would keep the existing descriptive language and location of "Duplexes" in the Development Standards table. The terminology change from "Primary" and "Secondary" to "Allowed" and "Limited" would still be implemented. *Attachment B* reflects this proposed change on page 7.

Proposed 2015 Update to the Comprehensive Plan

The 2015 update comprises minor edits and clarifications that have been identified over the course of the past year. The edits and proposed changes to the Comprehensive Plan are described below, outlined in *Attachment A*, and shown in redline form (for text changes) in *Attachment B*.

Map and Table Edits

Map edits to the Comprehensive Plan are made in two places—first in the City's GIS database after changes to the Plan have been adopted, and second, in the Comprehensive Plan document in concert with periodic updates. The map edits proposed are within the Plan document and include new open space acquisitions, and two changes in land use approved over the last year by City Council (for Circle Point and the Moorings annexation). All maps will be edited as appropriate, depending on the information shown (the open space/parks layer is included in the base layer of many of the maps in the document). Table edits reflect open space acquisitions and new parks as adopted by the Downtown Specific Plan.

Text Edits

The text edits proposed for this update include minor word edits distributed throughout several chapters as well as more targeted edits reflecting the adoption of the Downtown Specific Plan and refinement of definitions and terminology within Chapter 2: Land Use. The changes in Chapter 2 are focused in Section 2.2 Land Use Framework. The intent of the proposed changes in this section is to eliminate ambiguity for (1) calculation of density and intensity (floor area ratio, or FAR), and addition of associated graphics, and (2), terminology within land use classification descriptions. (It is important to note that the latter changes do not represent a new interpretation by staff; the changes below are consistent with implementation and interpretations since the terminology was introduced in the 2004 Comprehensive Land Use Plan when adopted.)

(1) Density and Intensity: Although the terms of density and intensity were defined and illustrated in the original adopted Comp Plan, more guidance on how these measures are calculated has been provided. An additional text sidebar and graphic explain and illustrate "gross" site acreage and area as well as applicability of minimum and maximum density and intensity measures, when and if prescribed as part of a land use classification.

(2) Land Use Classification: In this subsection, the terminology used to describe allowances for land use within each classification is modified. The adopted plan uses "*Primary*" and "*Secondary*" to describe land uses that are allowed on all sites or that may be limited by the development review process. However, the meaning of these original terms has also been construed as "*Primary*" uses being preferred and "*Secondary*" uses being acceptable alternatives or allowed as a portion of a project. In order to better clarify the intent of the classification of uses, the "*Primary*" and "*Secondary*" uses are replaced by "*Allowed*" and "*Limited*." As a result, the changes proposed in this subsection include an expanded explanation in the introduction to further clarify these new terms as well as changes to the

Development Standards table in each of the land use classifications, where the terms are replaced. The new introductory text is quoted below:

“This section describes each of the land use classifications shown in Figure 2-2: Land Use Diagram. Each classification is described by representative images and text, with a “Development Standards” table that addresses land use and development characteristics. Within the table, land uses are listed as:

- ***Allowed.*** *Uses that are permitted on all sites designated with such classification.*
- ***Limited.*** *Uses that are permitted but limited, such as in overall building area or proportion of a project, or by the development review process.*
- ***Potentially Prohibited.*** *Uses that may or may not be permitted, depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the development review process.*

Development characteristics in the table include maximum and minimum densities and/or floor area ratios (FARs), minimum lot size (for residential uses), and distribution of uses.”

An additional caveat added to this introductory text includes: *“Land uses may also be subject to additional review or permitting processes as required by the Zoning Code.”*

This new introductory text allows for the elimination of a footnote in several of the tables that describes *“Potentially Prohibited”* uses, which was already a term used in the Plan. Additionally, those tables that referenced *“Potentially Prohibited”* commercial uses as part of a footnote were amended to list the uses directly, in order to eliminate ambiguity caused by the reference. This change is made in the tables for: Mixed Use, Mixed Use Center, Office, Office/R&D Low Intensity, Office/R&D High Intensity, and Flex/Light Industrial. Finally, the *“Site Characteristics”* description was removed from the Development Standards table for the Retail Commercial and Service Commercial classifications. (The descriptive text was moved to the description for Retail Commercial and was already in the Service Commercial description.)

Amendment of Land Use for Portion of RDHI Parcel

Upon notification from the property owner (R. Dean Hawn Interests, Inc., or RDHI) of the land near the southwest corner of the Westminster Boulevard and 104th Avenue intersection, City staff have corroborated the fact that a portion of the 8.1-acre area at the northwest corner of this property designated as Major Creek Corridor on Non-Public Lands is outside of the 100-year floodplain. Since the Major Creek Corridor designation is specifically meant for “flood corridors within the 100-year floodplain located on private land,” designation of area outside of the floodplain is inconsistent with the land use classification. After analysis of the site, City staff have determined that approximately 1.8 acres is outside of the 100-year floodplain and could potentially be developed. The site is physically constrained, however, and is subject to dedication of land for the Westminster Boulevard right-of-way and potential additional setbacks or reduction in density due to slope stability along the eastern edge of the site in proximity to the Little Dry Creek floodplain and creek way. With these constraints in mind, as well as the existing uses to the north and west (public/quasi-public and a service commercial use, respectively) and the Mixed Use Center designation of the rest of the RDHI property, City staff propose a change in designation from “Major Creek Corridor on Non-Public Lands” to “Retail Commercial.” See **Attachment C** for the area proposed to be designated “Retail Commercial.”

The Comprehensive Plan update specifically supports City Council’s Strategic Plan goals of *Visionary Leadership, Effective Governance and Proactive Regional Collaboration; Vibrant, Inclusive and Engaged Community; Beautiful, Desirable, Safe and Environmentally Responsible City; Dynamic, Diverse Economy; and Financially Sustainable Government Providing Excellence in City Services.*

SUBJECT: Comprehensive Plan Update

Page 5

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Attachment A – Summary of Proposed Update Changes to 2013
Attachment B – Proposed 2015 Update Changes to Comprehensive Plan
Attachment C – RDHI Parcel Proposed Land Use Designation
Councillor's Bill with Exhibit A

| | |
|---|---|
| 8/1/15 | Appendix A |
| Summary of Proposed Changes to 2013 Comprehensive Plan | |
| <i>Type of Change</i> | <i>Description</i> |
| <i>Text Changes/Clarifications</i> | |
| 1-13 | Update text regarding NAMS, as the study has been completed and add findings from the study. |
| 2-8 | Adding additional text and graphics to explain and clarify the calculation of gross density and FAR. |
| 2-11 | Adding additional general description of what each land use classification provides; and clarifying text addressing approval of public/quasi-public uses in second paragraph. |
| | Adding text to explain development standards table contents. |
| 2-12 to 2-27 | Change "Primary" and "Secondary" uses to "Allowed", "Limited" and "Potentially Prohibited". Removed references to other land use classifications for Potentially Prohibited uses in order to provide greater clarity. Both changes result in redlines to the Development Standards table and corresponding footnotes. |
| 3-8 | Update text for Westminster Station amend dates. |
| Chapter 5 | Update text in planned improvements. Anything else? |
| 6-9 | Removed "high-intensity" from description of Brookhill Shopping Center to be consistent with land use designation. |
| Chapter 7 | update Table 7-1 and corresponding text with 15.3 acres added by the Specific Plan |
| | Update Table 7-3 and corresponding text with 20 acres of added open space |
| | minor word edits. |
| 8-3 | minor word edits. |
| 9-6 | Add "Adopted Specific Plans include: Downtown Specific Plan" |
| <i>Land Use Designation Edit</i> | |
| Figure 2-1 | Edit to amend designation of the developable portion of the R. Dean Hawn Interests property from Major Creek Corridor on Non-Public Lands to Retail Commercial. |
| <i>Drawing Edits</i> | |
| All maps | Update parks & open space layer, if shown, to reflect open space added since the 2014 update and new streets, parcels, and platted (undeveloped) park space in the downtown; revised city boundary. |
| Figure 2-1 | Updating with Moorings project and annexation and showing addition of new parks within the Downtown area. |
| pages 3-10 and 3-11 | replacing images with more updated graphics from the Downtown Specific Plan and the Westminster Station plaza and Little Dry Creek Drainage and Open Space projects. |
| Appendix C maps | Updated to match 2-1 Land Use Diagram |

ATTACHMENT B

IS IDENTICAL TO

COUNCILLOR'S BILL NO. 18 EXHIBIT A

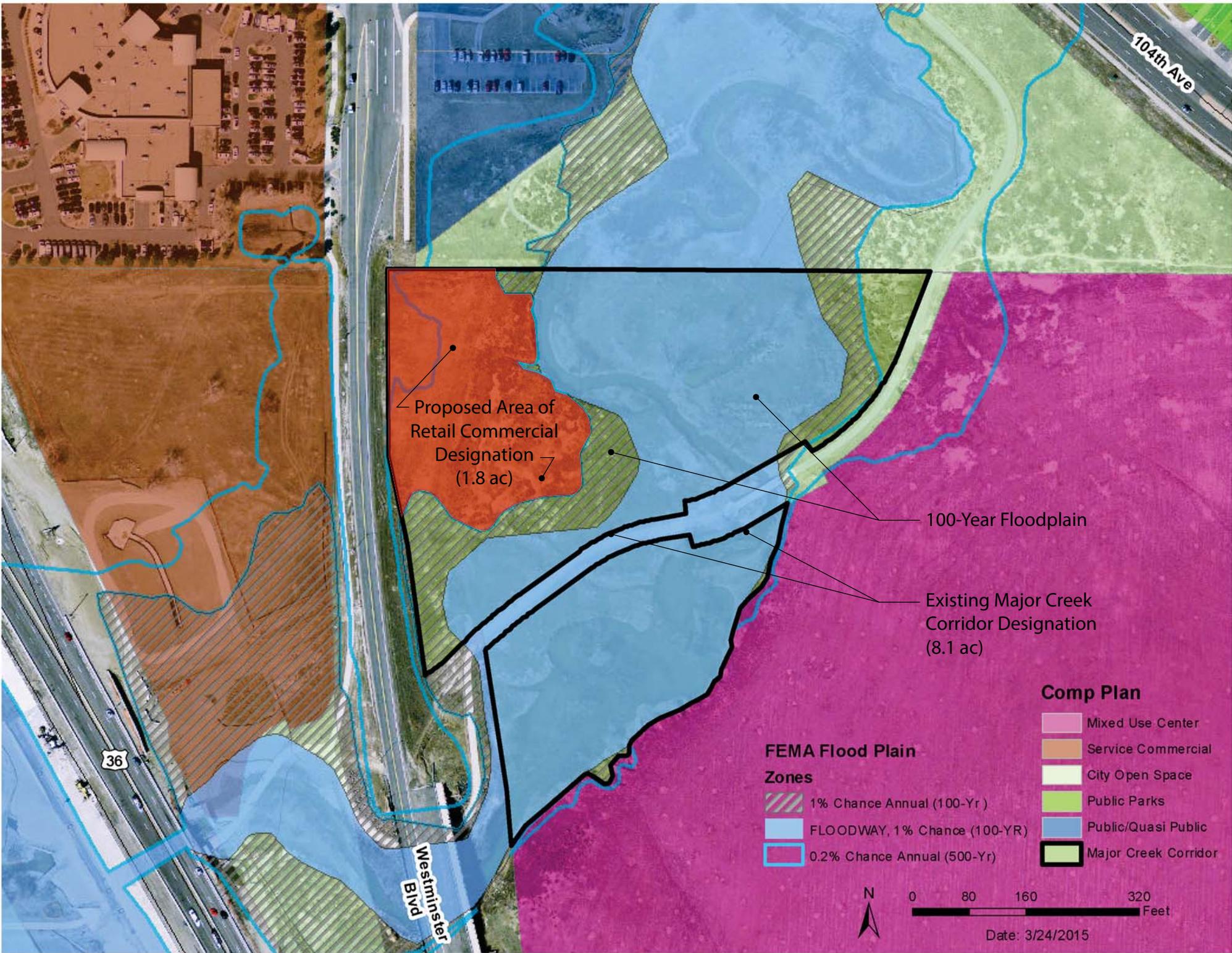
AND WAS NOT REPRODUCED

IN THE AGENDA PACKET.

SEE **EXHIBIT A** FOR ALL

REFERENCES TO

ATTACHMENT B.



Proposed Area of
Retail Commercial
Designation
(1.8 ac)

100-Year Floodplain

Existing Major Creek
Corridor Designation
(8.1 ac)

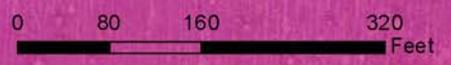
FEMA Flood Plain

Zones

-  1% Chance Annual (100-Yr)
-  FLOODWAY, 1% Chance (100-YR)
-  0.2% Chance Annual (500-Yr)

Comp Plan

-  Mixed Use Center
-  Service Commercial
-  City Open Space
-  Public Parks
-  Public/Quasi Public
-  Major Creek Corridor



Date: 3/24/2015

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **18**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL
FOR AN ORDINANCE ENACTING AN UPDATE TO THE 2013 WESTMINSTER
COMPREHENSIVE PLAN

Whereas, City Council finds that the City Charter and state statutes authorize City Council to adopt a comprehensive plan for the use, division and development of land for the purpose of protecting the public health, safety and welfare and accomplishing the harmonious development of the City; and

Whereas, City Council further finds that the proposed changes and updates to the 2013 Westminster Comprehensive Plan ("Plan") were preceded by appropriate and focused community outreach efforts and consultation with the City Council; and

Whereas, City Council further finds that the notice requirements of Section 11-4-16 (D)(1), W.M.C. have been met; and

Whereas, City Council further finds that the Planning Commission conducted a public hearing on March 24, 2015, and has considered the attached updates to the Plan and recommended their adoption to the City Council.

Whereas, City Council further finds that the changes and updates to the 2013 Plan are consistent with the overall Plan, enhance understanding and explanation of policies and concepts presented in the Plan, ensure that the information and data reflect current conditions in the City and the Denver Metropolitan area, protect the public health, safety and welfare, and guide and accomplish the coordinated, adjusted, and harmonious development of the City, and meet all of the stated objectives of Section 11-4-16, W.M.C., related to the adoption of a comprehensive land use plan for the City.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The amendments to the City of Westminster's 2013 Comprehensive Plan, as set forth in Exhibit "A" attached, are hereby adopted.

Section 2. Compliance with said Plan, as amended, and as provided in Section 11-4-16, W.M.C., shall be mandatory upon the effective date of this ordinance.

Section 3. Land use designations shown in the Plan may be affected by pre-existing vested rights or contractual development commitments. The applicability and scope of such vested rights or contractual developments, if any, will be reviewed and determined at the time of development plan approval.

Section 4. If a provision of the Plan conflicts with a provision of any policy, standard, or regulation adopted by the City, the more strict provision shall prevail.

Section 5. Staff is directed to prepare and make available to the public, on request, copies of the 2013 Comprehensive Plan, as amended hereby.

Section 6. This ordinance shall take effect upon its passage after second reading.

Section 7. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 10th day of August, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 24th day of August, 2015.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

WESTMINSTER



Comprehensive Plan

November 11, 2013

Amended ° ° , 2015



Church Ranch just north of the Shops at Walnut Creek. Westminster Station is funded as part of RTD's Eagle P3 project and will be an end-of-line station until funding/financing becomes available for the remainder of the Northwest rail corridor. Commuter rail service to this station is anticipated to begin in 2016. The City of Westminster will continue to aggressively pursue efforts to extend the commuter rail line through downtown Westminster and Church Ranch.

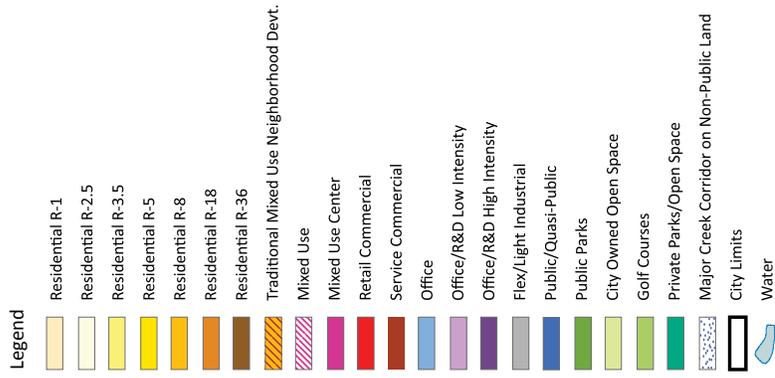
~~The improvements to the US 36 Corridor (commuter rail and BRT) will be refined and prioritized upon completion of the Northwest Area Mobility Study (NAMS). The study's goal is to develop represents~~ consensus between RTD, CDOT, corridor stakeholders and local jurisdictions on short and long-term transit improvements in the corridor. ~~Specific timing for completion of these improvements will be based on priorities identified by NAMS, which will be finalized in early 2014.~~ The document identifies five major priorities, including: completion of US 36 Bus Rapid Transit (BRT) service; planning and design for BRT service along Colorado 119 and US 287; development of strategies to address reverse commute solutions between Denver Union Station and Pecos Street along I-25; annual evaluation of strategies to accelerate implementation of the Northwest Rail line; and study of further implementation of BRT on other arterial corridors.

Rocky Mountain Metropolitan Airport and Master Plan

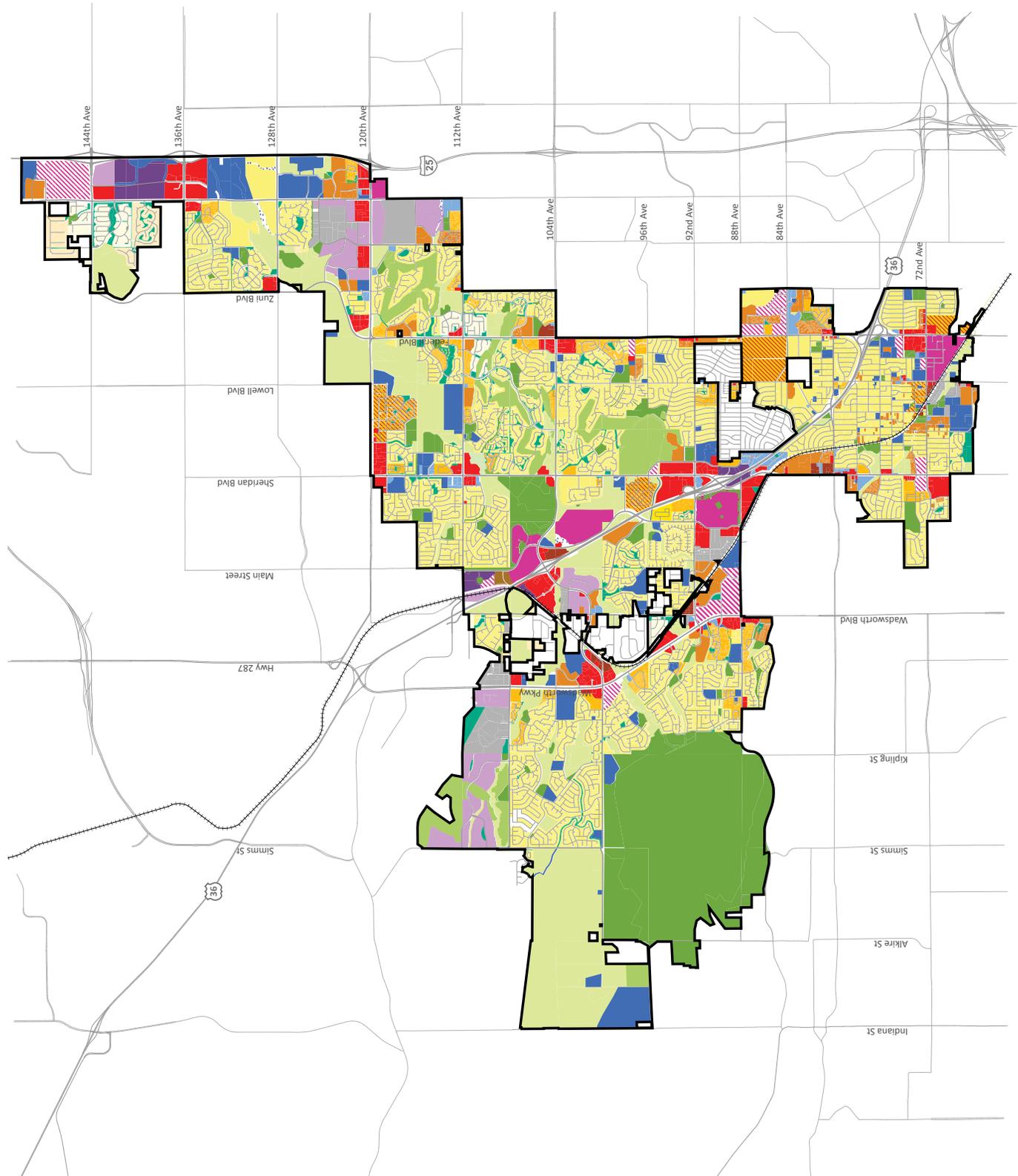
The Rocky Mountain Metropolitan Airport is located in Jefferson County just northwest of Westminster's city limits, between Simms Street and Wadsworth Parkway. Jefferson County owns and operates the airport, and recently completed an update to the airport's master plan in 2011. The master plan is an advisory document for local municipal jurisdictions within the Airport Influence Area. The master plan provides projections for airport operations and development on airport-owned land as well as land use guidance for lands within its Airport Influence Area, and most importantly, within its Instrument Critical Zone. The City of Westminster will continue to work with Jefferson County as land use decisions are made for property within the Instrument Critical Zone (see Figure 1-2).

The airport's master plan projects an annual 1.8 percent increase of airport operations through 2030. The increased activity will be coupled with slightly larger aircraft utilizing the airport. With this increased activity, the master plan proposes approximately 180-220 acres of development of airport-related commercial and industrial uses to the southwest of the existing runways. The master plan also identifies the need for an expanded terminal, airport operation facilities and improved circulation with a redirection of Simms Street and an extension of Jefferson Parkway along the northwest portion of the airport.

Figure 2-2: Land Use Diagram



Updated 2/4/15



Calculation of Density & FAR

Calculation of both density and FAR is based on the gross site. See graphic below.

The calculation of FAR only includes gross building area; parking structure area is excluded.

Minimum Densities & FARs

Where required, the overall density or FAR of a site must meet the minimum. If a phased project, the first phase must meet the minimum; subsequent phases must maintain the minimum across all phases.

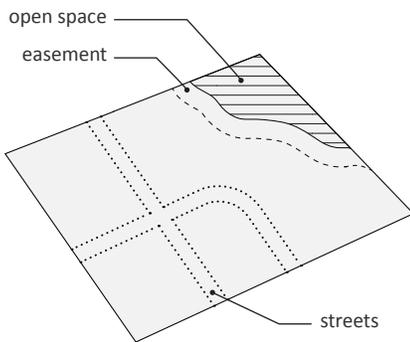
Maximum Densities & FARs

The maximum density or FAR may not be achievable on all sites due to site constraints such as topography or site area.

Density and Intensity

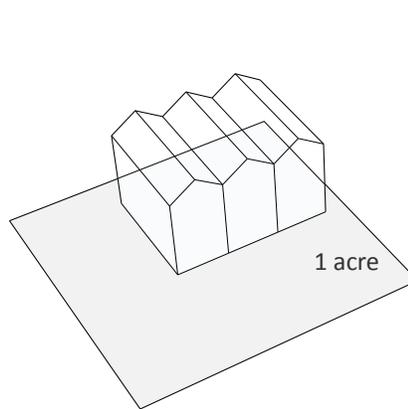
The Comprehensive Plan establishes density and intensity standards for each type of land use. Residential densities are expressed as dwelling units (du) per gross acre (ac), including land for public streets, storm drainage and other rights of way or dedications. This does not include land located within a designated 100-year flood plain (designated as Major Creek Corridor on Non-Public Land). It should be noted that maximum density may not be achievable on all sites due to specific site constraints such as topography, drainage patterns, floodplains, wetlands, required rights-of-way, the city’s adopted design guidelines, public land dedication, or other public improvements. Thus, the maximum density listed for each category is not “guaranteed.” The permitted density will be determined during the development review process taking into consideration the above constraints and enforcing the city’s residential design guidelines for each residential type.

A maximum permitted floor area ratio (FAR) is specified for mixed use and non-residential uses. FAR expresses the ratio of total building square footage to land square footage. For example, an FAR of 2.0 means that for every square foot of land, a developer may build two square feet of building space. Where an FAR is specified for mixed use classifications, the FAR applies to both residential and non-residential building space, excluding structured or surface parking. Similar to residential densities, maximum FARs may not be achievable due to site constraints.



Gross Site Acreage/Area

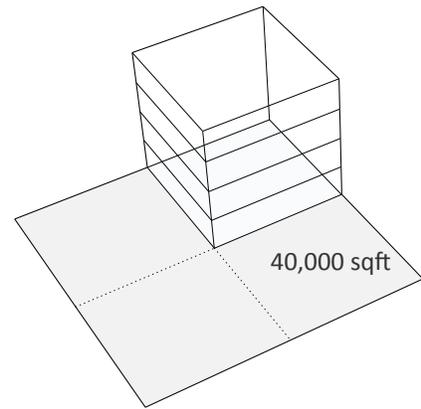
The gross site acreage (or area) encompasses the entire site, including area dedicated for open space, streets, and public easements, as illustrated above. The full acreage of the site (gray area above) is used in the calculation of density or FAR.



Density

$$\frac{\text{Dwelling Units}}{\text{Total Site Acres}} = \frac{3 \text{ du}}{1 \text{ acre}}$$

Shown above, 3.0 du/acre, where 3 dwelling units (du) sit on one acre of gross site acreage.



Floor Area Ratio (FAR)

$$\frac{\text{Total Building Area}}{\text{Total Site Area}} = \frac{40,000 \text{ sqft.}}{40,000 \text{ sqft.}}$$

Shown above, an FAR of 1.0, where a building with 4 floors of 10,000 sqft. each (40,000 sqft. total) sits on a parcel of 40,000 sqft. gross site area.



Land Use Classification

Land use designations are the tools used to define the city’s vision and intent for development throughout the city. They provide overarching direction for land use on a specific site. For the majority of the city’s land area, more specific uses are delineated on a property’s approved Planned Unit Development (PUD), which must be consistent with the property’s Comprehensive Plan land use designation. For properties that are straight zoned (such as Commercial C-1, Business B-1, etc.), the Municipal Code provides greater detail on specific uses permitted within each zoning district. In order to develop, all properties, whether zoned by PUD or **straight individual zoned** district, must be developed in accordance with the Comprehensive Plan.

This section describes each of the land use classifications shown in Figure 2-2: Land Use Diagram. Each classification is described by representative images and text, with a “Development Standards” table that addresses land use and development characteristics. Within the table, land uses are listed as:

- **Allowed.** Uses that are permitted on all sites designated with such classification.
- **Limited.** Uses that are permitted but limited, such as in overall building area or proportion of a project, or by the development review process.
- **Potentially Prohibited.** Uses that may or may not be permitted, depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the development review process.

Development characteristics in the table include maximum and minimum densities and/or floor area ratios (FARs), minimum lot size (for residential uses), and distribution of uses.

In addition to the uses described in each classification to follow, public/quasi public uses—including government offices, police and fire stations, public schools and places of assembly—are permitted in all land use classifications except for park and open space classifications, subject to **the development review process**. Land uses may also be subject to additional review or permitting processes as required by the Zoning Code.



New high density residential and mixed use categories create opportunity for transit-supportive development and vibrant, mixed-use districts.



New office development categories create opportunity for higher intensities of employment development in key areas in the city.



Service, flex and light industrial uses are designated throughout the city in areas of greatest compatibility and synergy.

R-1 Residential
Under 1.0 Dwelling Unit per Acre



This designation is intended to provide for single family detached residences developed at densities lower than typically found in urban areas. R-1 Residential is generally appropriate in areas distant from activity centers where development characteristics are more rural.

| Development Standards | |
|------------------------------------|--|
| | <i>Requirement</i> |
| Land Use | |
| Allowed Primary Uses | Single Family Detached Residences |
| Limited Secondary Uses | Non-commercial Recreational Uses |
| Development Characteristics | |
| Density | Maximum 1.0 du/acre |
| Minimum Lot Size | 17,500 square feet |
| Distribution of Uses | 30% of overall site must be preserved as common open space |



R-2.5 Residential
Up to 2.5 Dwelling Units per Acre



This designation is intended to provide for single family detached residences located away from activity centers where land use and development characteristics are suburban or in areas that serve as a transition between rural and urban areas.

| Development Standards | |
|------------------------------------|-----------------------------------|
| | <i>Requirement</i> |
| Land Use | |
| Allowed Primary Uses | Single Family Detached Residences |
| Limited Secondary Uses | Non-commercial Recreational Uses |
| Development Characteristics | |
| Density | Maximum 2.5 du/acre |
| Minimum Lot Size | 10,000 square feet |

R-3.5 Residential

Up to 3.5 Dwelling Units per Acre



This designation is intended to provide for single family detached residences and duplexes. This category is generally appropriate in locations outside urban activity centers in areas where development characteristics are suburban.

| Development Standards | |
|------------------------------------|---|
| | <i>Requirement</i> |
| Land Use | |
| Allowed Primary Uses | Single Family Detached Residences Duplexes (may be allowed depending on location and design) |
| Limited Secondary Uses | Non-commercial Recreational Uses |
| Development Characteristics | |
| Density | Maximum 3.5 du/acre |
| Minimum Lot Size | 7,000 square feet (for single family detached dwellings) |



R-5 Residential

Up to 5.0 Dwelling Units per Acre



This designation is intended to provide for single family residences (detached and attached), duplexes, patio homes, townhomes and condominiums. This category is generally appropriate outside of urban activity centers in areas of moderate density.

Development Standards

| | <i>Requirement</i> |
|---|--|
| Land Use | |
| Allowed Primary Uses | Single Family Detached Residences Single Family Attached Residences Duplexes Patio Homes Townhomes Condominiums |
| Limited Secondary Uses | Non-commercial Recreational Uses Senior Housing Facilities (1) |
| Development Characteristics | |
| Density | Maximum 5.0 du/acre |
| <i>(1) For facilities with beds rather than dwelling units, 2.5 beds shall equal one dwelling unit for purposes of calculating density.</i> | |

R-8 Residential

Up to 8.0 Dwelling Units per Acre



This designation accommodates a mix of housing types from single family residences (attached and detached) and duplexes to townhomes, condominiums and walk-up apartments. This designation is appropriate in close proximity to activity centers and to areas that can be served by transit.

Development Standards

| | <i>Requirement</i> |
|---|--|
| Land Use | |
| Allowed Primary Uses | Single Family Detached Residences Single Family Attached Residences Duplexes Patio Homes Townhomes Condominiums |
| Limited Secondary Uses | Non-commercial Recreational Uses Senior Housing Facilities (1) |
| Development Characteristics | |
| Density | Maximum 8.0 du/acre |
| <i>(1) For facilities with beds rather than dwelling units, 2.5 beds shall equal one dwelling unit for purposes of calculating density.</i> | |



R-18 Residential

Up to 18.0 Dwelling Units per Acre



This designation accommodates a mix of higher density housing types including townhomes, apartments and condominiums. R-18 Residential shall be located along arterial streets, near transit centers or available transit, and within or near activity centers with a mix of supportive uses.

Development Standards

| | <i>Requirement</i> |
|---|---|
| Land Use | |
| Allowed Primary Uses | <ul style="list-style-type: none"> Apartments Condominiums Townhomes Single Family Residences |
| Limited Secondary Uses | <ul style="list-style-type: none"> Non-commercial Recreational Uses Senior Housing Facilities (1) |
| Development Characteristics | |
| Density | Maximum 18.0 du/acre |
| <i>(1) For facilities with beds rather than dwelling units, 2.5 beds shall equal one dwelling unit for purposes of calculating density.</i> | |

R-36 Residential

18.0 to 36.0 Dwelling Units per Acre



This designation accommodates a range of higher density housing types from townhomes to apartments, condominiums and similar higher density typologies. R-36 Residential shall be located along arterial streets near transit and activity centers, where supportive neighborhood-serving uses and transit are within a 5- to 10-minute, or half-mile, walk.

Development Standards

Requirement

Land Use

| | |
|-----------------------------------|---|
| Allowed Primary Uses | Apartments, Condominiums, Lofts and Townhomes |
| Limited Secondary Uses | Non-commercial Recreational Uses |
| | Senior Housing Facilities (1) |

Development Characteristics

| | |
|---------|----------------------|
| Density | Minimum 18.0 du/acre |
| | Maximum 36.0 du/acre |

(1) For facilities with beds rather than dwelling units, 2.5 beds shall equal one dwelling unit for purposes of calculating density.



Traditional Mixed Use Neighborhood Development (TMUND) Up to 18.0 Dwelling Units per Acre and 1.0 Commercial FAR



This designation is intended for inclusive neighborhoods with a mix of residential and supportive non-residential uses in a walkable, pedestrian-oriented, urban village development pattern. Housing types could range from medium and small-lot single family homes to multifamily apartments and lofts. Mixed or non-residential uses could include offices, personal/business services, retail and live/work development. An interconnected grid of streets, pedestrian connections and parks is emphasized. The maximum density and intensity for this designation may be applied to the entire TMUND master planned development as opposed to specific sites.

All new development shall be consistent with the TMUND Design Guidelines, which provide greater detail for site, building and landscape design. (Bradburn Village is an example of a successful TMUND project.)

Development Standards

Requirement

Land Use

Allowed Primary Uses Apartments, Condominiums, Lofts and Townhomes
Single Family Residences (attached or detached)
Offices, Personal Services, Retail Commercial, Live/
Work

Limited-Secondary Non-commercial Recreational Uses
Uses Senior Housing Facilities (1), Child Care

Limited or Potentially Pawn shops, car sales, massage parlors, tattoo parlors,
Prohibited Uses (2) video and other arcades, night clubs, off-track betting,
auction houses, thrift stores, used merchandise sales,
billiard parlors, gun shops, adult businesses, check
cashing offices and day labor services

Development Characteristics

Density Maximum 18.0 du/acre (23)

Floor Area Ratio Maximum 1.0 for Commercial uses

(1) For facilities with beds rather than dwelling units, 2.5 beds shall equal one dwelling unit for purposes of calculating density.

(2) Uses may be limited or prohibited depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the city.

(23) Greater densities may be allowed if approved by the Planning Commission and City Council.

Mixed Use

8.0 to 36.0 Dwelling Units per Acre and Maximum Combined FAR of 1.5



This designation is intended to foster development with a mix of residential and commercial uses. Stand-alone commercial use or a combination of residential and commercial use is permitted. Where residential development is proposed, a vertical mix of uses (such as residential or office use above ground floor retail) is required with a minimum 0.10 FAR of commercial use (retail, offices or personal/business services). Parking should be located behind buildings, below grade or in structures to ensure active uses face onto public streets. Auto-oriented uses and drive-throughs are strongly discouraged as part of residential mixed-use projects.

Development Standards

| | <i>Requirement</i> |
|--|---|
| Land Use | |
| Allowed Primary Uses | Apartments, Condominiums, Lofts and Townhomes Offices, Personal Services, Retail Commercial (1) , Live/Work (1) |
| Limited or Potentially Prohibited Uses (12) | Auto-oriented uses Stand-alone uses with vehicle drive-throughs |
| Potentially Prohibited Uses | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |
| Development Characteristics | |
| Density | Minimum 8.0 du/acre, when provided Maximum 36.0 du/acre, when provided |
| Floor Area Ratio | Minimum 0.10 Commercial when Residential is provided Maximum 1.5 Combined Residential and Commercial |

(1) Uses may not be permitted as part of a mixed-use project that includes both residential and commercial uses. Specific Retail Commercial uses may be limited or prohibited depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the city. See the Retail Commercial classification for a list of Limited or Potentially Prohibited Uses.

(2) Applicable to mixed-use projects with both residential and commercial uses.



Mixed Use Center

Minimum FAR of 0.75 and Maximum Combined FAR of 2.0*



This designation establishes key activity centers in the city, typically to be located with access to transit. Uses may include a mix of residential, retail, office and hotel uses. Along pedestrian-oriented street frontages, ground floor uses should be active, such as retail stores, restaurants and cafes. A vertical mix of uses is encouraged with retail at the ground level and office, hotel and/or residential on upper floors. Parking is strongly encouraged to be structured or below grade, with minimal surface parking—which should be located away from public view. Auto-oriented uses and new standalone uses with drive-throughs are not permitted.

Development Standards

| | <i>Requirement</i> |
|------------------------------------|---|
| Land Use | |
| Allowed Primary Uses (1) | Apartments, Condominiums, Lofts and Townhomes Offices, Personal Services, Retail Commercial (1) , Live/Work (1) |
| Potentially Prohibited Uses | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |
| Development Characteristics | |
| Density | Minimum 18.0 du/acre, when provided |
| Floor Area Ratio | Minimum 0.75 Combined Residential and Commercial (23) (34) Maximum 2.0 Combined Residential and Commercial (23) (34) (45) |

(1) Auto-oriented uses and stand-alone uses with vehicle drive-throughs are prohibited. However, formerly-established drive through uses may be permitted as a component of new development, subject to the development review process. Specific Retail Commercial uses may be limited or prohibited depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the city. See the Retail Commercial classification for a list of Limited or Potentially Prohibited Uses.

(2) The Combined Floor Area Ratio (FAR) is calculated with both residential and commercial building area.

(3) Calculation of FAR for master planned developments excludes rights-of-way.

(4) Greater Maximum FAR may be permitted if otherwise determined by preliminary development plan (PDP) or other regulatory plan.

Retail Commercial

Maximum FAR of 0.35



This designation serves a variety of neighborhood and regional commercial needs and can be comprised of retail stores, eating establishments, banks, supermarkets and business and professional offices. **Retail commercial uses are generally limited to arterial street intersections at one or two corners. Neighborhood commercial development is allowed on collector streets.** Auto service stations, convenience stores, drive-through facilities and other similar uses may be limited and may not be allowed in areas that directly abut residential districts, public/quasi-public or institutional uses or public space. When permitted, such facilities shall use enhanced architectural design to be compatible with surrounding uses. Design of all retail commercial development must be consistent with the Retail Commercial Design Guidelines.

Development Standards

| | <i>Requirement</i> |
|---|---|
| Land Use | |
| Allowed Primary Uses | Retail stores, eating establishments, banks, supermarkets, and business and professional offices |
| Limited Uses | Auto-oriented uses Stand-alone uses with vehicle drive-throughs |
| Limited or Potentially Prohibited Uses (1) | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |

Development Characteristics

| | |
|--|--|
| Floor Area Ratio | Maximum 0.35 |
| Site Characteristics | Generally limited to arterial street intersections to one or two corners. Neighborhood commercial development is allowed on collector streets. |

(1) Uses may be limited or prohibited depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the city.



Service Commercial

Maximum FAR of 0.35



This designation accommodates auto-oriented and general commercial uses including auto sales and service, nurseries and wholesale establishments. Retail commercial uses may also be located within this designation. Development is generally limited to arterial streets away from major intersections.

Development Standards

Requirement

Land Use

Allowed Primary Uses Auto-related sales and services, convenience stores, wholesale, nurseries
Retail stores, eating establishments, banks, supermarkets, and business and professional offices

Development Characteristics

Floor Area Ratio Maximum 0.35

Site Characteristics ~~Generally limited to arterial street intersections to one or two corners. Neighborhood commercial development is allowed on collector streets.~~

Office

Maximum FAR of 0.35



This designation accommodates offices for medical, legal, banking, insurance and similar professional office uses. This designation is intended to be compatible with abutting residential and other sensitive uses. A limited amount of retail uses integrated into the office building is permitted as a portion of the project gross floor area, or GFA (see below for requirements).

Development Standards

| | <i>Requirement</i> |
|--|---|
| Land Use | |
| Allowed Primary Uses | Professional and commercial offices (medical, business, real estate, law and consulting offices) |
| Limited Secondary Uses | Support Commercial including eating establishments, pharmacies, personal business services, office supply (1)(2) |
| Potentially Prohibited Uses | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |
| Development Characteristics | |
| Floor Area Ratio | Maximum 0.35 |
| Distribution of Uses | Maximum 15% of GFA Support Commercial or 10,000 sqft, whichever is less (23)(34) |

(1) May be allowed through the city's development review process when developed in conjunction with, and accessory to, office buildings.

(2) Specific Retail Commercial uses may be limited or prohibited depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the city. See the Retail Commercial classification for a list of Limited or Potentially Prohibited Uses.

(~~3~~) Commercial building area shall not exceed 50 percent of the ground floor of any one building.

(~~34~~) Support commercial uses may be further constrained by parking availability.



Office/R&D Low Intensity

Maximum FAR of 1.0



This designation is intended for campus-like development with offices, research and development facilities, medical facilities and supportive uses. Manufacturing and mass production space is limited to less than 30 percent of gross floor area on a lot. Accessory or small-scale supporting retail or personal/business services integrated into office buildings are also permitted up to 10 percent of gross floor area. Strategically located hotel uses that support employment uses may be permitted by PUD.

Development Standards

| | <i>Requirement</i> |
|------------------------------------|---|
| Land Use | |
| Allowed Primary Uses | Professional offices, research and development labs, medical facilities |
| Limited Secondary Uses | Hotel Manufacturing, warehouse, production Support Commercial including eating establishments, pharmacies, personal business services, office supply (1)(2) |
| Potentially Prohibited Uses | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |
| Development Characteristics | |
| Floor Area Ratio | Maximum 1.0 |
| Distribution of Uses | Maximum 10% of GFA Support Commercial or 15,000 sqft, whichever is less (23) Maximum 30% of GFA Manufacturing, Warehouse and/or Production use |

(1) May be allowed through the city's development review process when developed in conjunction with, and accessory to, office/R&D buildings.

(2) Specific Retail Commercial uses may be limited or prohibited depending on their proximity to residential, public, or quasi-public uses or for other reasons as determined by the city. See the Retail Commercial classification for a list of Limited or Potentially Prohibited Uses.

(3) Support commercial uses may be further constrained by parking availability.

Office/R&D High Intensity

Minimum FAR of 0.30 and Maximum FAR of 2.0



This designation identifies areas where higher-intensity employment uses are appropriate. These areas are located along major transportation corridors with high visibility and accessibility. Employment uses are emphasized, including high-rise or campus-like office developments and supportive research and development uses. Manufacturing and mass production space is limited to less than 10% of gross floor area. Accessory or small-scale supporting retail or personal/business service uses integrated into office buildings are also permitted up to 10% of gross floor area. Strategically located hotel uses are permitted by PUD. The desired type of development is multistory buildings served by a mix of structured and surface parking.

Development Standards

| | <i>Requirement</i> |
|------------------------------------|---|
| Land Use | |
| Allowed Primary Uses | Professional offices, research and development labs, medical facilities |
| Limited Secondary Uses | Hotel Manufacturing, warehouse, production Support Commercial including eating establishments, pharmacies, personal business services, office supply (1)(2) |
| Potentially Prohibited Uses | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |
| Development Characteristics | |
| Floor Area Ratio | Minimum 0.3 Maximum 2.0 |
| Distribution of Uses | Maximum 10% of GFA Support Commercial use, or 15,000 sqft, whichever is less (23) Maximum 10% of GFA Manufacturing, Warehouse and/or Production use |

(1) May be allowed through city's development review process when developed in conjunction with, and accessory to, office/R&D buildings.

(2) Support commercial uses may be further constrained by parking availability.



Flex/Light Industrial

Maximum FAR of 0.5



This designation is intended to provide and protect land for flexible employment uses, including manufacturing and assembly, research and product development, warehousing and distribution facilities, and supportive office space. Flexible spaces may include storefront space for offices, sales and customer service. Auto-related service and self storage uses are also permitted. Uses that create objectionable levels of noise, vibration, odor, glare or hazards are not permitted. Outdoor storage must be screened from public right-of-way and non-industrial uses. Support commercial uses integrated into flex/light industrial buildings are also permitted up to 10% of gross floor area. In general, light industrial uses should be located away from residential areas and adequately buffered from other land uses. The city may impose a stricter standard for more intense industrial uses.

Development Standards

Requirement

Land Use

| | |
|------------------------------------|---|
| Allowed Primary Uses | Flex office space including professional office, research and development labs Warehousing, fabrication facilities, repair shops, wholesale distributors and light manufacturing |
| Limited Secondary Uses | Support Commercial including eating establishments, pharmacies, personal business services, studios, office supply (1)(2) |
| Potentially Prohibited Uses | Pawn shops, car sales, massage parlors, tattoo parlors, video and other arcades, night clubs, off-track betting, auction houses, thrift stores, used merchandise sales, billiard parlors, gun shops, adult businesses, check cashing offices and day labor services |

Development Characteristics

| | |
|----------------------|---|
| Floor Area Ratio | Maximum 0.5 |
| Distribution of Uses | Maximum 10% of GFA Support Commercial use, or 15,000 sqft, whichever is less (23) |

(1) May be allowed through the city's development review process when developed in conjunction with, and accessory to, office/R&D buildings.

(2) Support commercial uses may be further constrained by parking availability.

3.1 DOWNTOWN WESTMINSTER FOCUS AREA

Downtown Westminster is a 105-acre area that constitutes the site of the former Westminster Mall. The area is bounded by Sheridan Boulevard/US 36 and Harlan Street to the east and west, and 92nd and 88th avenues to the north and south. Approximately 95 percent of the site is owned by the Westminster Economic Development Authority (WEDA), which worked to purchase the mall after years of significant vacancy and neglect. Although a few individual buildings remain, most of the mall structures were demolished by the end of 2012 in order to ready the site for redevelopment.



Left: Looking southwest into the site from the northeast corner. Middle: Cottonwoods and Allen Ditch along 88th Avenue. Right: Existing JCPennneys building at the south end of the focus area.

The site is strategically located in the heart of Westminster just 10 miles from Denver's central business district and 15 miles to Boulder. Development in the immediate area is primarily commercial, with some office and industrial flex space to the west. Residential development borders the area to the north, with US 36 and Sheridan Boulevard creating the eastern edge. Also bordering the site to the east is one of the most active RTD park-and-ride bus facilities within RTD's service area. A future RTD FasTracks commuter rail station is planned to the south of the site across 88th Avenue and just east of the Harlan Street alignment. Almost the entire focus area is located within a 10-minute walk of the planned station.

Westminster Mall was once a significant regional and citywide destination as well as an important gathering place for the Westminster community. In keeping with its original role as a community and regional destination, the City of Westminster envisions the focus area as a new downtown and regional hub (Figure 3-2). **As adopted in the Downtown Specific Plan, a high intensity mix of office, retail, residential and hotel uses will serve as the foundation for activity, to be enhanced by an interconnected network of plazas, parks and linear greens. A safe, walkable pedestrian environment will be emphasized along with clear navigation for bicyclists, vehicles and transit throughout the downtown area. A new street grid enhancing connectivity will be implemented, with maximized views to the mountains and downtown Denver. Finally, access and connectivity to existing and future transit will be a focus of future planning—ensuring** that employment and residential uses are connected to the larger metropolitan area.

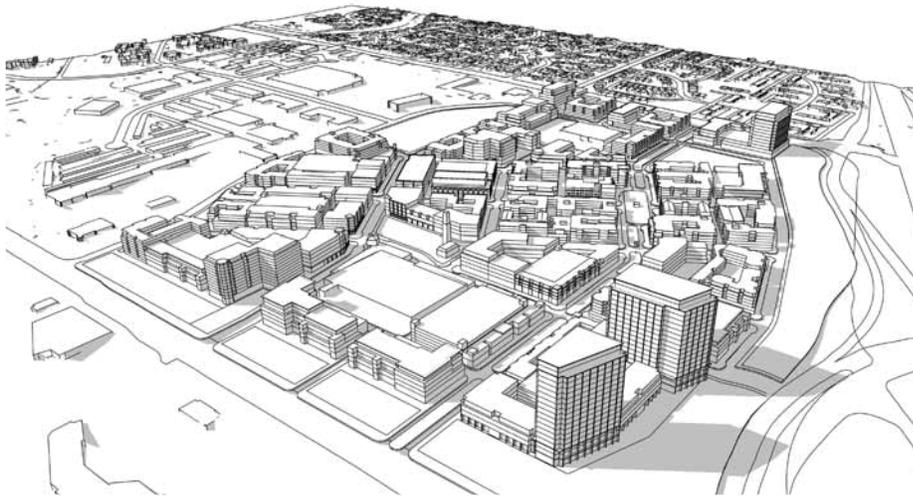


Figure 3-2: Downtown Specific Plan Illustrative Concept





GOALS

- F-G-1** Establish the Downtown Westminster Focus Area as the city's new downtown.
- F-G-2** Create a vibrant destination that serves as a cultural center for the community and as a regional hub and destination.

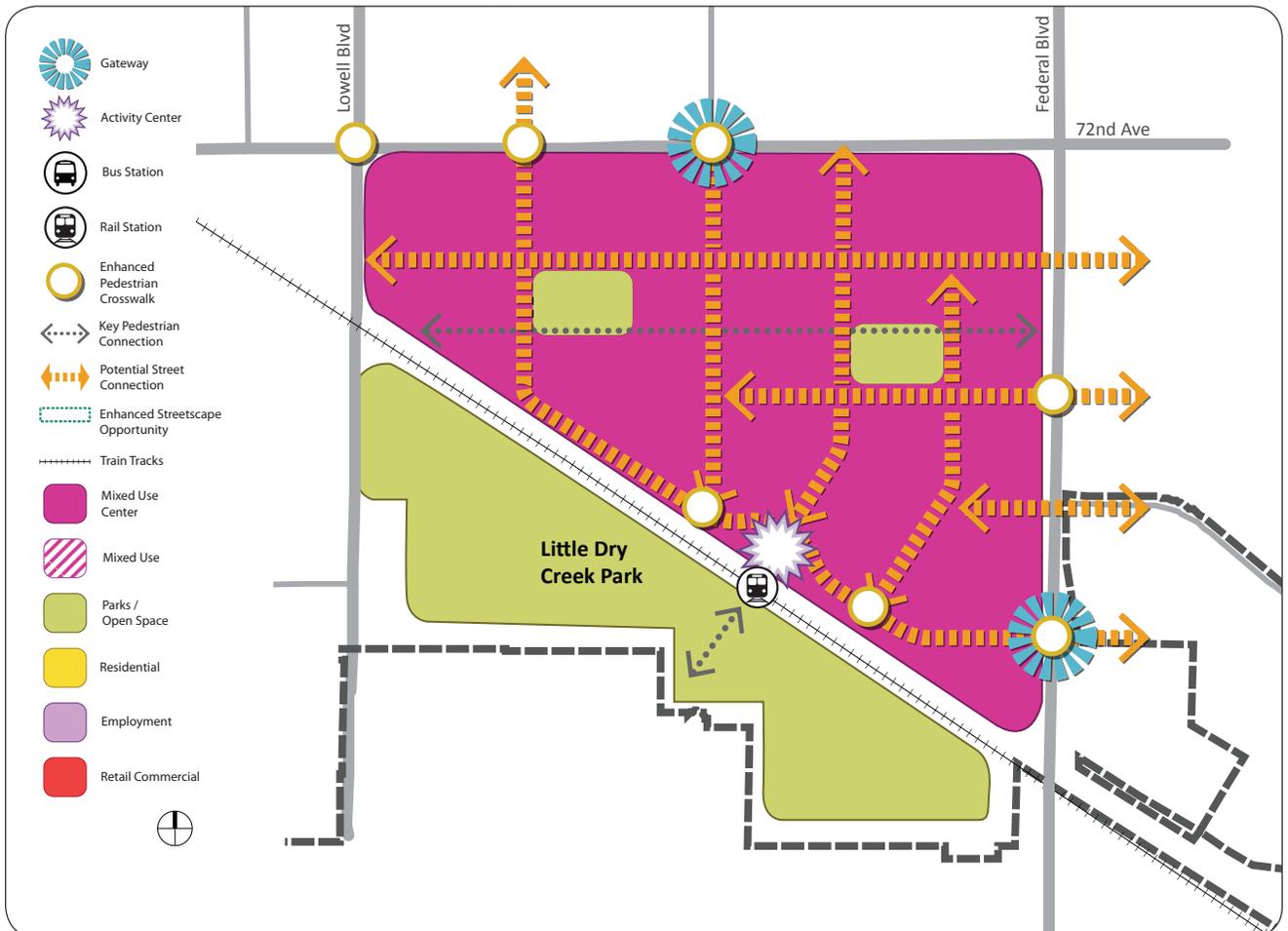
POLICIES

- F-P-1** Foster a synergistic mix of uses that will support transit and an active environment for retail, office and residential uses. **Ensure land uses are consistent with the Comprehensive Plan Land Use Diagram and Downtown Specific Plan Regulating Plan.**
- F-P-2** Encourage a vertical mix of uses throughout the focus area, with ground floor commercial uses and office, residential or hotel uses on upper floors.
- F-P-3** Ensure all development presents an “active frontage” to the street edge, with ample window area, frequent entries and enhanced façade articulation.
- F-P-4** Develop a vibrant public realm with a variety of experiences, public spaces and parks. Various plazas and parks should be designed as unique spaces that create distinct settings and environments throughout the area.
- F-P-5** Provide ample public and green space that will accommodate the needs of new residents, provide venues for community events and gathering, and establish identity for the downtown area.
- F-P-6** Design the street grid to foster connectivity for all modes of travel, with an emphasis on safe and comfortable pedestrian circulation.
- F-P-7** Facilitate direct, convenient access to transit with enhanced pedestrian crossings and connections.
- F-P-8** Ensure the downtown area is easy to access by all modes of transportation. Parking should be easy to find and allow visitors to park once and walk to key activity nodes.
- F-P-9** Enhance and complete trail connections to and within the downtown area, such as the Allen Ditch Trail and US 36 Commuter Bike Trail.





Figure 3-3: Westminster Station Focus Area Illustrative Concept





Above, an illustrative view of the station looking south into the planned Little Dry Creek Drainage and Open Space. Transit riders will need to cross south through the tunnel in order to access the train ticketing and platform. Below, an illustrative view of the north transit plaza that will become a community gathering and event space.



Above, an illustrative view showing conceptual development facing onto the north plaza and along Westminster Station Drive and Hooker Street. Below, an illustrative view showing the relationship of the north and south plaza areas.



Wadsworth Parkway

Wadsworth Parkway, State Highway 121, extends south to Highlands Ranch and to the north as US 287. As a true regional connection, Wadsworth Parkway (Wadsworth Boulevard south of 92nd Avenue) has a significant role in many of the cities it passes through. In Westminster, the character of the street is primarily commercial, with some residential development. Commercial development along the corridor is primarily larger in scale than along Federal or Sheridan boulevards. Retail centers include mid- and large-box anchors that provide both community- and regional-serving retail. Many of these centers are older, have limited visibility due to variations in grade and have persistent vacancies.

The Comprehensive Plan looks to encourage redevelopment of many of these centers with mixed-use or new commercial development. As described in Chapter 2: Land Use, the vision for the 80-acre Brookhill Shopping Center is of a ~~high-intensity~~ mixed-use district with a range of residential and commercial uses. The physical presence of development along the corridor will be emphasized along the street edge, along with unified landscaping and connections to open space, trails and sidewalks. Although a newer street, the corridor could also benefit visually from streetscape improvements like a raised landscaped median and street trees that are closer to the right-of-way. A key opportunity for right-of-way landscape improvements is the west side of the street between 94th and 98th avenues.



Although development along Wadsworth Parkway is relatively newer than that along Sheridan and Federal boulevards, some centers are beginning to show their age. Others will benefit in the future from improvements or infill.



The city's expansive network of open space and parks includes Margaret's Pond, above, and the 205-acre City Park, below.

Overview

Over the past 40 years, the city has acquired or built four award-winning recreation centers, over 50 parks including the 205-acre City Park, two new libraries, two award-winning golf courses, an extensive 100-mile trail system and ~~over 3,000 thousands of~~ acres of open space throughout the community. Today (2013), this system of parks, recreation and open space occupies approximately 32 percent of the city's land area (Figure 7-1). As a result, most residents can easily access the city's network of trails, parks and open spaces within a ten-minute, or half-mile walk. In fact, the Big Dry Creek Trail, one of the most popular trails in the system, is used by an estimated 100,000 people annually. Likewise, recreational, learning and library services are also a key component of city life. In 2012 alone, over 4528,000 patrons visited one of the Westminster library facilities and over 6103,000 people participated in recreation classes.

This update to the Comprehensive Plan marks an important paradigm shift for parks and recreation planning. As the city becomes more densely developed, there will be significantly fewer opportunities to physically expand the park and open space network. Instead, optimizing the use of the city's existing parks, recreation facilities and open spaces will be emphasized. Planning will be focused on improving access, maintaining and improving existing facilities, and enhancing the quality and number of active recreation opportunities in the city. Additionally, the city will identify opportunities for providing high quality, well-designed parks and plazas to serve new residents in higher-intensity, mixed-use urban environments like downtown Westminster and the Westminster Station Area. The Plan provides a framework for ensuring that the city's existing and future parks and open spaces continue to provide a high quality of life and experience in the city.

7.1 PARKS AND RECREATION

Parks and recreation facilities provide opportunities for leisure, informal sports and gathering as well as formal recreation, sports activities and programs. Well-designed park spaces can contribute significantly to a city's identity and sense of place. However, these spaces must be accessible, safe and well-maintained, and must meet the needs of the city's changing demographics, activity trends and expectations for quality programming. As the city shifts its focus from expansion to maintenance of the city's parks, recreation facilities and open space these elements of design and function will be increasingly more significant.



Existing Parks and Recreation

The city currently maintains and operates 53 neighborhood, community and citywide parks, ranging in size from 1.4 to 200 acres and comprising almost 600 acres in total. The city also owns 4560 acres of undeveloped parkland. In addition to the city’s neighborhood and community parks, the city operates the 2,327-acre Standley Lake Regional Park and multiple recreation and sports facilities. Westminster’s Parks and Recreation Master Plan provides a complete inventory of the city’s parks and community facilities, which is summarized in Table 7-1. **The Parks, Recreation, and Libraries Department’s mission for delivering exceptional services focuses on nature, wellness, and literacy.** A major element of the city’s parks and recreation system is the programming of sports and activities for youth, adults, and families. **These Key programs areas include sports leagues, trips for seniors, swimming, arts and crafts, preschool and fitness programs, wellness, outdoor, educational enrichment, swimming, and sports activities.**

Parks and community facilities are classified based on size, function and characteristics, as described in Table 7-2. Aside from the Standley Lake Regional Park, located at the western edge of the city, the majority of park space in the city is classified as neighborhood and community parks. These parks are an integral part of the city’s high quality of life and are utilized by approximately 75 percent of the city’s residents on a daily basis.



Existing parks include the regional Standley Lake Park, above, and neighborhood parks like Faversham Park, middle, and Bishop Square Park, bottom.

Table 7-1: Parks, Recreation and Open Space Inventory

| Facility Type | Quantity | Total Acreage |
|---|----------|-------------------|
| Parks | 54 | 2919.4 |
| Neighborhood Parks | 45 | 259.5 |
| Community Parks** | 7 | 160.0 |
| Citywide Park | 1 | 205.0 |
| Regional Park | 1 | 2327.0 |
| Undeveloped Parklands | | 4560.36 |
| Special Use Facilities | 15 | 484.0 |
| Recreation Centers** | 5 | 30.0 |
| Sports Facilities | 2 | 10.0 |
| Golf Courses | 2 | 414.0 |
| Other Special Use*** | 6 | 30.0 |
| Conservation & Open Space | | 30792.1 |
| Subtotal Public Parks, Open Space and Golf Course Lands | | 6,4682.3 |
| Non-City Owned Golf Courses | 2 | 291 |
| Total Parks, Open Space and Golf Course Lands | | 6,81147.81 |

***Includes the 205-acre City Park facility.*

***City Park recreation and fitness facility acreage is included in the total 205-acre City Park acreage. An additional 11 acres is undeveloped at the Park Centre/Northeast Resource Center.*

**** Refer to the City’s Parks and Recreation Master Plan for more detail.*



The Jessica Ridgeway Memorial Park is one of the city's most recent park renovations, completed in 2013.



A rendering of the planned Little Dry Creek Park pond, looking east from the south station plaza area towards Federal Boulevard.

Proposed Parks and Improvements

Although the Comprehensive Plan does not specifically designate new parkland, the city will identify sites for potential new parks as part of new and infill development. Provision of well-designed and strategically located new park space ~~will be~~ is a specific focus for the downtown Westminster and Westminster Station areas ~~planning processes~~. Introduction of smaller pocket parks, squares and plazas will be focused in these higher-intensity, more urban areas in order to provide new residents a range of active and passive outdoor spaces within easy walking distance. ~~The Downtown Specific Plan, adopted in 2014, designates 15.3 acres of new parks and public spaces.~~

The most significant parks improvement underway is the new Little Dry Creek ~~Park Drainage and Open Space, which will be a~~ that encompasses 37.5-acres ~~community park~~ just south of the Burlington Northern Santa Fe rail corridor between Federal and Lowell boulevards. Additional new parks and improvements to existing facilities are outlined in the Parks and Recreation Master Plan, which is slated to be updated in 201~~4~~6. Specific improvements to park facilities currently under study include increased native planting areas and reduced potable and reclaimed water consumption. Use of reclaimed water to serve the city's public realm is a priority for the city.

Needs Assessments

In addition to planning for new facilities as development occurs, the city conducts periodic surveys and needs assessments to ensure that trends in active and passive recreation uses in the city are met by its parks and recreation system. The most recent Parks, Recreation and Libraries survey, conducted in April of 2013, indicates that the Westminster community prioritizes:

- Protecting the natural environment and promoting environmental sustainability
- Creating and maintaining a more beautiful community
- Providing green, natural spaces within the community with parks, open space and golf courses
- Providing trails and paths for residents to use for exercise and non-motorized transportation
- Providing opportunities for residents to maintain or improve physical health
- Helping revitalize areas of the community through new or enhanced facilities

To complement the survey, ~~a more thorough needs assessment is planned for 2015, which will help identify opportunities for improvements and optimization of the city's parks and recreation system.~~ an additional Community Survey will be implemented for Parks, Recreation, and Libraries. A more thorough needs assessment will be completed in 2016.



7.2 COMMUNITY FACILITIES AND LIBRARIES

Year-round access to recreation and library services is a key amenity for the Westminster community. The city's active population has a range of indoor and outdoor opportunities for sports and fitness activities as well as educational and enrichment programs. As the city's population increases, maintaining the city's recreational offerings and availability will be essential for ensuring the continued high quality of life that current residents enjoy.

Recreation Facilities

Recreation and Sports Centers

The city operates five recreation centers with a range of uses, including the City Park Recreation and Fitness centers, Swim and Fitness Center, Westview Recreation Center and the MAC Center. These facilities are available to residents and non-residents. Additionally, the city has two sports centers, the Westminster Sports Center indoor soccer facility and the Ice Centre at the Westminster Promenade. The city also has agreements with other organizations and districts to provide residents additional recreational options. These organizations include the Hyland Hills Park and Recreation District, the Adams and Jefferson County Open Space Programs and Great Outdoors Colorado Trust Fund, the Butterfly Pavilion, and the North Metro Arts Alliance to provide recreational and cultural amenities for its citizens and visitors.

Golf Courses

Three public golf courses are located within the city. These include the Heritage at Westmoor Golf Course (18 holes), Legacy Ridge Golf Course (18 holes) and Hyland Hills Golf Course (27 holes). The City of Westminster and Jefferson County developed the Heritage at Westmoor Golf Course in the Westmoor Technology Park, north of 108th Avenue between Wadsworth Parkway and Simms Street in 1999. Development of this course provided a golf amenity in the western portion of the city and accelerated the development of the Westmoor Technology Park as a new major employment center. The Legacy Ridge Golf Course, located south of 104th Avenue between Sheridan and Federal boulevards, provides a high quality golf facility with a regional draw. This course was developed in 1994. Together, these courses comprise 414 acres in the city and accommodate over 7264,000 rounds of golf annually.

Finally, the 230-acre Hyland Greens Golf Course, located at approximately 96th Avenue and Sheridan Boulevard, is owned and operated by the Hyland Hills Parks and Recreation District and open to the Westminster public. Additional private golf courses are located in the city, including the Ranch Country Club and Stoney Creek courses.



Community facilities include the Westview Recreation Center, top; City Park Recreation Center, middle; and the Legacy Ridge Golf Course.



Irving Street Library, above, is the most recent addition to the city's library system. College Hill Library, below, is a shared facility with the Front Range Community College.

Libraries

The city operates two libraries—Irving Street Library and College Hill Library, constructed in 2004 and 1998, respectively. The Irving Street Library is located in South Westminster, adjacent to the Irving Street Park on Irving Street at 74th Avenue. The College Hill Library on 112th Avenue is a joint public and academic facility for the city and Front Range Community College. Both libraries offer a variety of services in addition to media rental, including free wifi, computer access, and a variety of youth and adult services and events. These services reflect the ever-evolving technology and cultural needs of the Westminster community. **Together, these Libraries serve over 420,000 visitors a year.**

Planned Improvements

Planned improvements to city recreational facilities are outlined in the Parks and Recreation Master Plan. Facility improvements are focused on renovation and repair of older facilities, such as the recent improvements to the Swim and Fitness Center in 2012. These improvements included a complete renovation of the locker rooms with the addition of family changing rooms; improved handicap accessibility; improvements to the hot tub and sauna; and the addition of an outdoor patio area and splashpad. Future improvements to existing facilities will be similarly focused, and potentially more frequent as use of the facilities increases with new population.

In order to accommodate future population growth in the city, there may be need for an additional recreation facility to maintain the city's existing level of service for recreational facilities and programs. Likewise, new library or event space may be needed, as trends in technology, media and community meeting space evolve. Assessment of the location and timing of new facilities will be conducted in concert with planning for parks and programming to ensure that adequate space is available to serve the city's recreational needs.



7.3 OPEN SPACE AND TRAILS

Westminster's extensive open space system is a key element of its unique setting and identity as a Front Range community. The city has made preservation and protection of natural environments and habitats a priority, integrating their conservation into the physical development of the city. As a result, Westminster's visual landscape is rich with a variety of open spaces, trails, preserved historic sites and scenic vistas.

The city's extensive open space system began with authorization of an open space sales tax in 1985 to purchase land for preservation and natural habitat protection. Westminster was only the second city in Colorado to enact a sales tax for an open space acquisition program (after Boulder). As part of this effort, the city set a goal of preserving 15 percent of the city's overall land area as open space. With over 14 percent of the city's land area preserved as of 2013, the city has begun to transition efforts from acquisition to ~~the development of an open space~~ management and operations ~~plan~~ that will ensure this vital resource will be preserved and maintained into the future. A more limited open space acquisition program will still continue.

Existing Open Space and Trails

Since 1985, the city has acquired 3,0792 acres of open space to be preserved for passive recreational use and protection of natural wildlife habitat. These open space areas can be found throughout the city, as shown in Figure 7-1, but are concentrated in the city's western area near Standlee Lake and along drainage ways and irrigation ditches that cross the community, including Walnut Creek, Big Dry Creek, the Farmers' High Line Canal and Little Dry Creek. Preserved open space by creek and natural corridors is summarized in Table 7-3.

Existing open space in the city provides for protection of sensitive habitat areas and wildlife movement corridors, view corridors and preservation of open and rural landscapes. Additionally, the city's open space system provides recreation opportunities such as hiking, biking, fishing, horseback riding and nature study. Many of the city's open spaces are linear connections that follow major creek corridors or serve as buffers between developments. These linear connections allow for an extensive network of trails that play a vital role in the city, linking neighborhoods, parks, schools and employment areas to a citywide and regional trail system. In all, Westminster currently has over 1065 miles of trails, as shown on Figure 7-1.

The city's open space and trail systems also connect to the larger regional system, particularly to the west of the city where vast areas of open space are preserved in the City of Boulder, Boulder County, Jefferson County and the Rocky Mountain National Wildlife Refuge.



The city's open spaces are a major asset for the community, providing trails (Big Dry Creek, top), wide open spaces for recreation and passive use (Hyland Ponds) as well as habitat for wildlife (Loon Lake, bottom).



Maintenance and improvements to the city's highly-used trail system are a key focus of the open space program.

Table 7-3: Preserved Open Space by Corridor

| Corridor | Acres |
|--|-----------------|
| Big Dry Creek | 970:382.8 |
| Little Dry Creek | 76:38.5 |
| Walnut Creek | 187.2 |
| Farmers' High Line and Niver Canals | 147:750.3 |
| Westminster Hills | 1,029.2 |
| McKay Lake | 134.6 |
| Hyland Ponds and South Hylands Creek | 69:18.8 |
| Wadsworth Wetlands | 19.3 |
| Vogel Pond | 44.7 |
| Natural Areas, Water, Trees & Wildlife | 284.2 |
| Other Areas | 109:512.5 |
| Total Preserved Open Space | 3,0792.1 |

Source: City of Westminster, ~~October 2013~~ February 2015.

Planned Improvements

~~Two master planning efforts serve the open space system—an Open Space Master Plan, which will be developed in 2014, and the city's Trails Master Plan. The Open Space Master Plan will be periodically updated and In 2014, the City completed the Open Space Stewardship Plan. This plan identifies~~ priorities for land acquisition and open space management. Future acquisitions will be limited and focused on protecting view sheds, preserving unique natural areas and purchasing properties that will improve trail access throughout the city. Enhancement of the city's open spaces will also be pursued including trail improvements and addition of educational areas in order to attract greater use of the system. However, maintenance and operations of the city's existing open space system will be the primary focus of future iterations of this plan, particularly as use of open space and trail facilities will only increase with the city's projected residential and employment population growth.

The Trails Master Plan identifies trails and connection points along the main trail corridors of Walnut Creek, Big Dry Creek, the Farmers' High Line Canal and Little Dry Creek. This plan was last updated in 2011 and provides a basis for trail connections in both open space and new development in the city. Almost 5960 miles of new trail are proposed as part of this plan, as shown in Figure 7-1. These new trail alignments include completion of the Little Dry Creek Trail and other connections to facilitate the Refuge to Refuge Trail. Improvements to the open space and trails system are outlined in these master plans. ~~This plan will be updated in 2014.~~



Provision of sports courts and other active uses will be a focus of the city's needs assessment to ensure that residents have access to a wide range of activities and that parks spaces are maximized.

Parks and Recreation

- PRLO-P-8** Promote the development of park facilities that encourage pedestrian and bicycle access, provide a range of services and meet the needs of a variety of all ages and abilities.
- PRLO-P-9** Plan for new parks near downtown Westminster and Westminster Station that support redevelopment efforts and add to the image of the city.
- PRLO-P-10** Pursue updated master plans for City Park and Standley Lake Regional Park.
- PRLO-P-11** Pursue park landscaping and planting schemes that will reduce water consumption.

Community Facilities

- PRLO-P-12** Review infrastructure needs for recreation, and where appropriate, identify required improvements or new facility needs in the city's Capital Improvement Program.
- PRLO-P-13** Integrate mixed-use library facilities into high-intensity development areas, which should include library functions as well as cultural programs, event and meeting space. Evaluate the opportunity to locate such a facility within the downtown Westminster site.
- PRLO-P-14** Evaluate the possible alternative of locating library kiosks throughout the city to increase library access to all residents.

Open Space and Trails

- PRLO-P-15** Enhance and fund the city's open space properties to provide unfettered public access while preserving the environmental and wildlife integrity of the property.
- PRLO-G-6** Direct more resources to the management and operation of open space, reducing resources to acquisitions.
- PRLO-P-16** ~~Develop an~~ Utilize the 2014 Open Space Stewardship Master Plan for Operations and Maintenance.
- PRLO-P-17** ~~Update and~~ Utilize the Trails Master Plan to develop connections between open space areas.
- PRLO-P-18** Work with proposed development projects to provide new linkages to existing trails and create new trails where feasible.
- PRLO-P-19** Work with the Adams County Open Space Program, the City and County of Broomfield Open Space and Trails Program, Jefferson County Open Space Program and Great Outdoors Colorado Trust Fund as partners in open space programs.



The city will continue to add to the city's open space network. One of the most recent purchases of open space property include a 9.9-acre area south of Big Dry Creek on the southeast corner of 112th Avenue and Sheridan Boulevard.



8.1 WATER SUPPLY

Water supply, treatment and distribution are essential elements of the city’s high quality of life and services. Ensuring that all residents and businesses in the city have access to high quality water service, even in periods of drought, is a necessity for both existing and future development in the city. As the city intensifies and builds out, and water costs continue to rise, maintaining a water supply to meet demand will be a key focus of land use and water supply planning.

Water System

The city’s water supply is composed of a system of raw water, potable water and reclaimed water (treated recycled water). The water supply system is centered on Standley Lake, which receives raw (untreated) water from several sources including Clear Creek, Coal Creek, and the West Slope via the City of Denver’s raw water system. Currently, approximately 23,000 acre-feet of water is diverted to the city’s water supply system each year. This **potable** water is treated at one of the city’s two **potable** water treatment facilities and then distributed as potable drinking water throughout the city. The city’s raw water supply is designed to meet the demand of the city in a drought equal to the most severe recorded drought. With Colorado’s arid environment, the city aggressively works to protect existing water supply and ensure sufficient supply to meet future needs.

Reclaimed Water

The city complements its raw water supply by using highly-treated waste water, or “reclaimed water”, for use as an irrigation source, while preserving potable drinking water for human consumption. During peak irrigation season, the city’s Reclaimed Water Treatment Facility treats up to 10 million gallons per day of waste water from the Big Dry Creek Waste Water Treatment Facility with additional filtering and disinfection. This high quality reclaimed water currently provides an estimated 1,600 acre feet to **99110 permitted** reclaimed water customers, including golf courses, parks, commercial properties, rights-of-way, and common areas of homeowners’ associations. By 2035, a projected 3,500 acre feet will be treated and distributed to reclaimed water customers through separate reclaimed water distribution mains during summer irrigation months, significantly reducing the burden on the city’s potable water system.



Standley Lake is the primary storage facility for the city’s water supply, top. Bottom, the Labrynth Spillway, which is part of Standley Lake Dam.

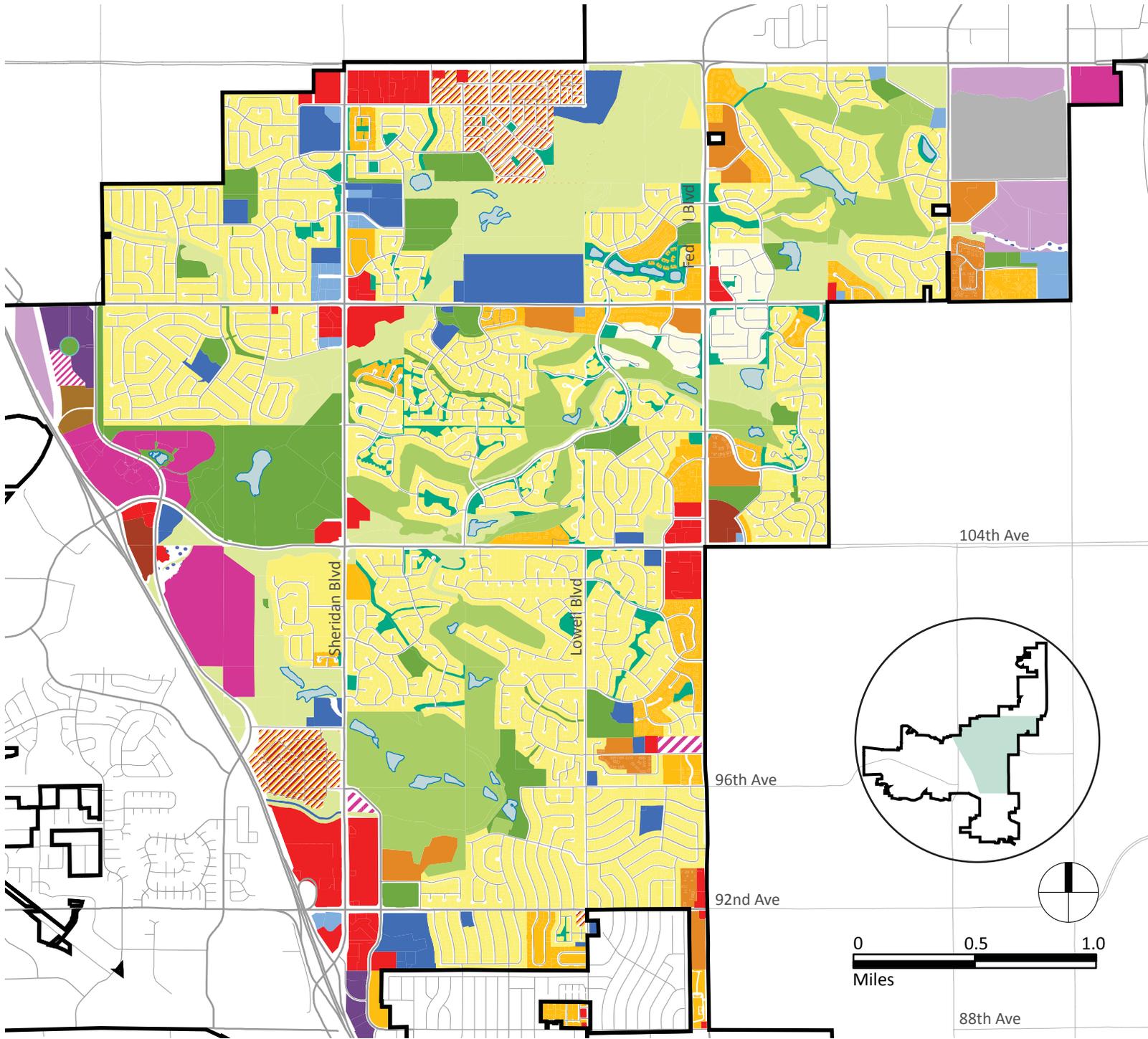
9.3 FOCUS AREA SPECIFIC PLANS

Specific plans for focus areas identified in this Comprehensive Plan will be completed to provide more detailed direction for future development. The purpose of these plans is to ensure that development is planned and designed cohesively with a synergistic mix of uses; connected, multimodal circulation system; access to transit and public amenities; and adequate provision of public utilities and services. The location and boundaries of each focus area are identified in Figure 3-1. These areas include downtown Westminster, Westminster Station, North I-25, Church Ranch and Brookhill.

Implementation

The City of Westminster will coordinate planning efforts for each focus area and determine the appropriate time for plan preparation. A work program will be prepared to complete the plan, including a schedule for preparation and a program for public outreach. The plans at a minimum will include a cohesive vision for land use, urban design, multimodal circulation, public amenities and adequate utilities and services. Upon completion, each specific plan with associated rezoning or updates to the Comprehensive Plan, if applicable, will be adopted by City Council and incorporated by reference into the Comprehensive Plan. **Adopted Specific Plans include the Westminster Downtown Specific Plan, adopted in 2014.**

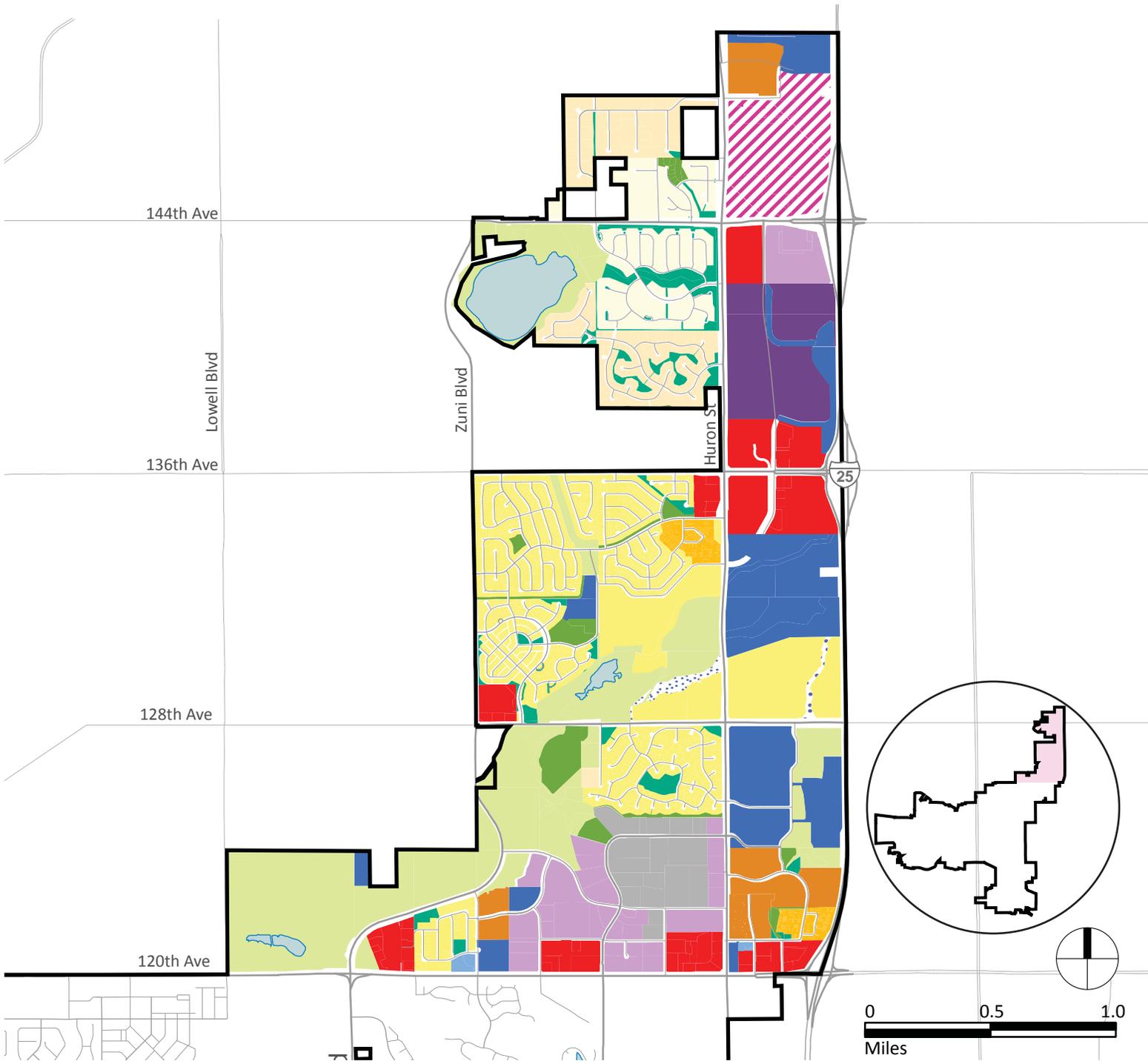
Figure C-1: Central Area Land Use Diagram



- | | | |
|--|---|---|
|  Residential R-1 |  Mixed Use |  Public/Quasi-Public |
|  Residential R-2.5 |  Mixed Use Center |  Public Parks |
|  Residential R-3.5 |  Retail Commercial |  City Owned Open Space |
|  Residential R-5 |  Service Commercial |  Golf Courses |
|  Residential R-8 |  Office |  Private Parks/Open Space |
|  Residential R-18 |  Office/R&D Low Intensity |  Major Creek Corridor on Non-Public Land |
|  Residential R-36 |  Office/R&D High Intensity |  City Limits |
|  TMUND |  Flex/Light Industrial |  Water |

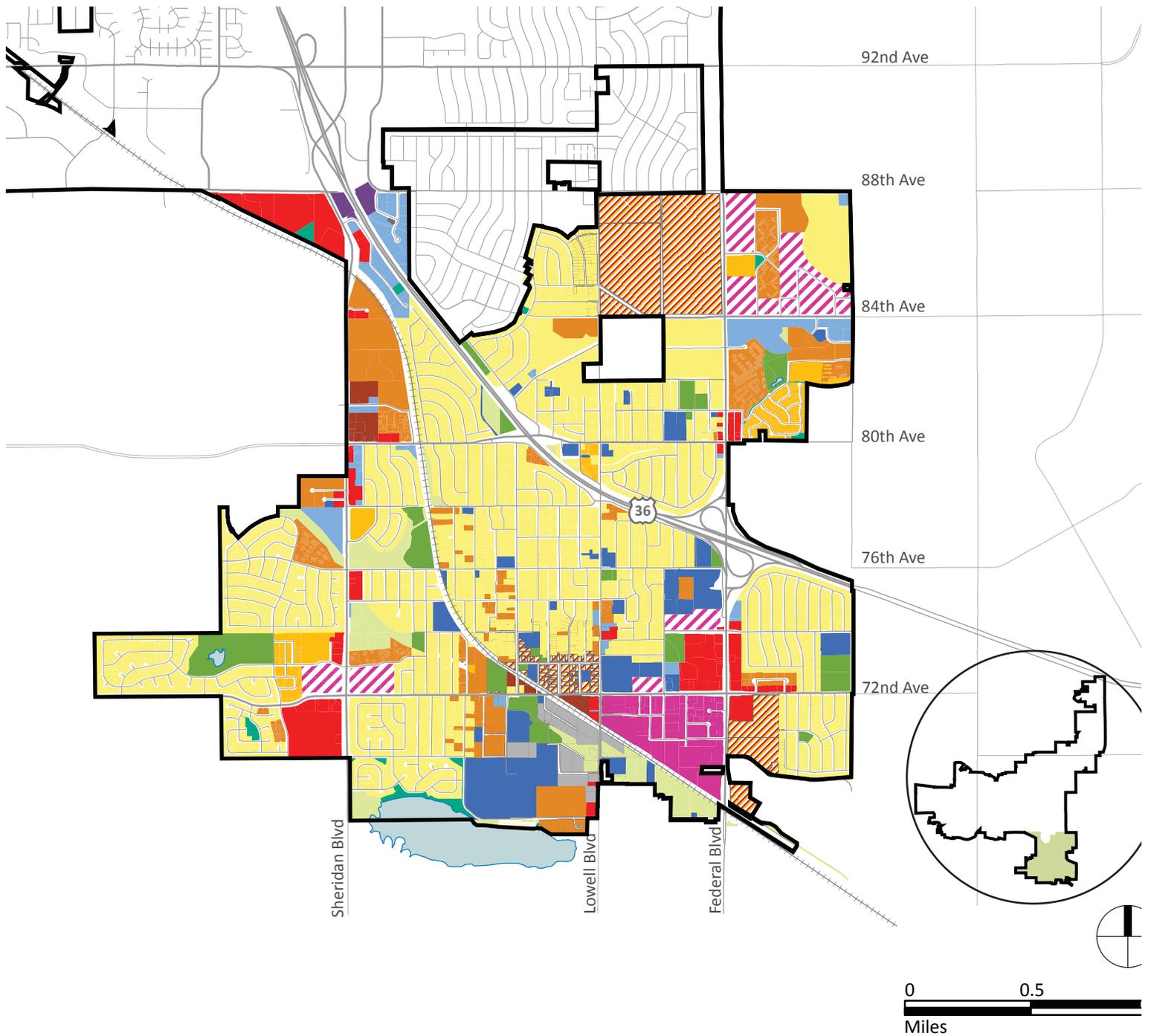
Updated 2/4/15

Figure C-2: Northeast Area Land Use Diagram



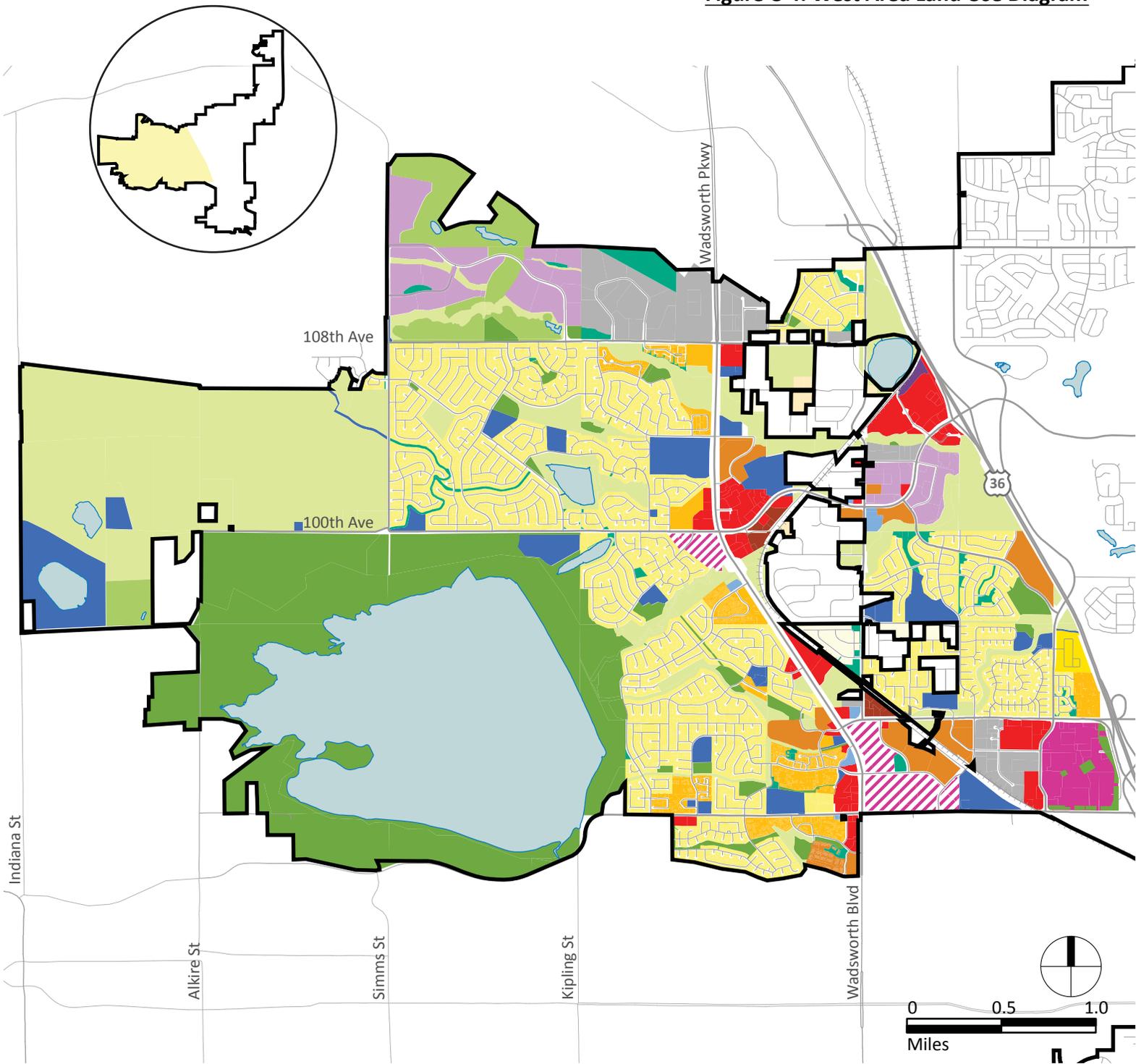
- | | | |
|--|---|---|
|  Residential R-1 |  Mixed Use |  Public/Quasi-Public |
|  Residential R-2.5 |  Mixed Use Center |  Public Parks |
|  Residential R-3.5 |  Retail Commercial |  City Owned Open Space |
|  Residential R-5 |  Service Commercial |  Golf Courses |
|  Residential R-8 |  Office |  Private Parks/Open Space |
|  Residential R-18 |  Office/R&D Low Intensity |  Major Creek Corridor on Non-Public Land |
|  Residential R-36 |  Office/R&D High Intensity |  City Limits |
|  TMUND |  Flex/Light Industrial |  Water |

Figure C-3: Southeast Area Land Use Diagram



- | | | |
|---|---|---|
|  Residential R-1 |  Mixed Use |  Public/Quasi-Public |
|  Residential R-2.5 |  Mixed Use Center |  Public Parks |
|  Residential R-3.5 |  Retail Commercial |  City Owned Open Space |
|  Residential R-5 |  Service Commercial |  Golf Courses |
|  Residential R-8 |  Office |  Private Parks/Open Space |
|  Residential R-18 |  Office/R&D Low Intensity |  Major Creek Corridor on Non-Public La |
|  Residential R-36 |  Office/R&D High Intensity |  City Limits |
|  TMUND |  Flex/Light Industrial |  Water |

Figure C-4: West Area Land Use Diagram



- | | | |
|--|---|---|
|  Residential R-1 |  Mixed Use |  Public/Quasi-Public |
|  Residential R-2.5 |  Mixed Use Center |  Public Parks |
|  Residential R-3.5 |  Retail Commercial |  City Owned Open Space |
|  Residential R-5 |  Service Commercial |  Golf Courses |
|  Residential R-8 |  Office |  Private Parks/Open Space |
|  Residential R-18 |  Office/R&D Low Intensity |  Major Creek Corridor on Non-Public Land |
|  Residential R-36 |  Office/R&D High Intensity |  City Limits |
|  TMUND |  Flex/Light Industrial |  Water |



Agenda Item 11 D

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Second Reading of Councillor’s Bill No. 36 Amending the Comprehensive Plan from Mixed Use Center to Mixed Use for Blocks 1A, 1B, and 2 of the Promenade West Subdivision

Prepared By: Michelle N. Stephens, AICP, Senior Planner

Recommended City Council Action

Pass Councilor’s Bill No. 36 on second reading approving a Comprehensive Plan Amendment from Mixed Use Center to Mixed Use for Blocks 1A, 1B, and 2 (approximately 12.147 acres) of the Promenade West Subdivision (32 acres total), based on a finding that the criteria set forth in Section 11-16(D)(4), W.M.C., have been met.

Summary Statement

- The Westminster Promenade West Subdivision Preliminary Development Plan (PDP), which includes the entire area proposed to be removed from the Northpoint Center PDP (see City-initiated Northpoint Center PDP Amendment), facilitates the redevelopment of this important focus area by providing a framework for a mixed-use development that includes a combination of residential, commercial, and office uses in an urban setting.
- The Westminster Promenade West Subdivision Master Official Development Plan (ODP) provides a comprehensive structure to guide future development by outlining the design and land use parameters for future phases of development. Future phases include retail, mixed-use, residential, commercial, and entertainment uses. Detailed architectural and urban design guidelines are also included both on the Master ODP and in separate Architectural and Urban Design Standards and Guidelines document.
- The project site is currently designated in the Comprehensive Plan as Mixed Use Center. It is proposed that Blocks 1A, 1B, and 2 instead be designated Mixed Use in order to increase the economic viability of the site while still planning for a mixed-use, pedestrian-friendly urban environment.
- The applicant has requested and staff supports granting a vested right to develop the project site under the approvals for the Westminster Promenade West Subdivision PDP and Master ODP for a period of
- This Councillor’s Bill was approved on first reading by City Council on July 27.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

Donald M. Tripp
City Manager

BY AUTHORITY

ORDINANCE NO. **3793**

COUNCILLOR'S BILL NO. **36**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Garcia - Seitz

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds that:

a. An application for an amendment to the Westminster Comprehensive Plan has been submitted to the City for its approval pursuant to Section 11-4-16(D), W.M.C., by the owners of the properties described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from "Mixed Use Center" to "Mixed Use" for a 12.147 acres portion of the 32 acre parcel bounded on the west by US Highway 36, to the south by West 104th Avenue, and to the east by Westminster Boulevard.

b. Such application has been referred to the Planning Commission, which body held a public hearing thereon on November 11, 2014, after notice complying with Section 11-4-16(B), W.M.C., and has recommended approval of the requested amendments.

c. Notice of the public hearing before Council has been provided in compliance with Section 11-4-16(B), W.M.C., and the City Clerk has certified that the required notices to property owners were sent pursuant to 11-4-16(D), W.M.C.

d. Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. The owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Plan. The change from the Mixed Use Center land use designation to the Mixed Use land use designation will increase the economic viability of the site while still planning for a mixed-use, pedestrian-friendly urban environment envisaged by the Comprehensive Plan.

Section 2. The City Council approves the requested amendments and authorizes City staff to make the necessary changes to the map and text of the Westminster Comprehensive Plan to change the designations of the properties more particularly described on attached Exhibit A to Mixed Use which is incorporated herein by reference.

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 10th day of August, 2015.

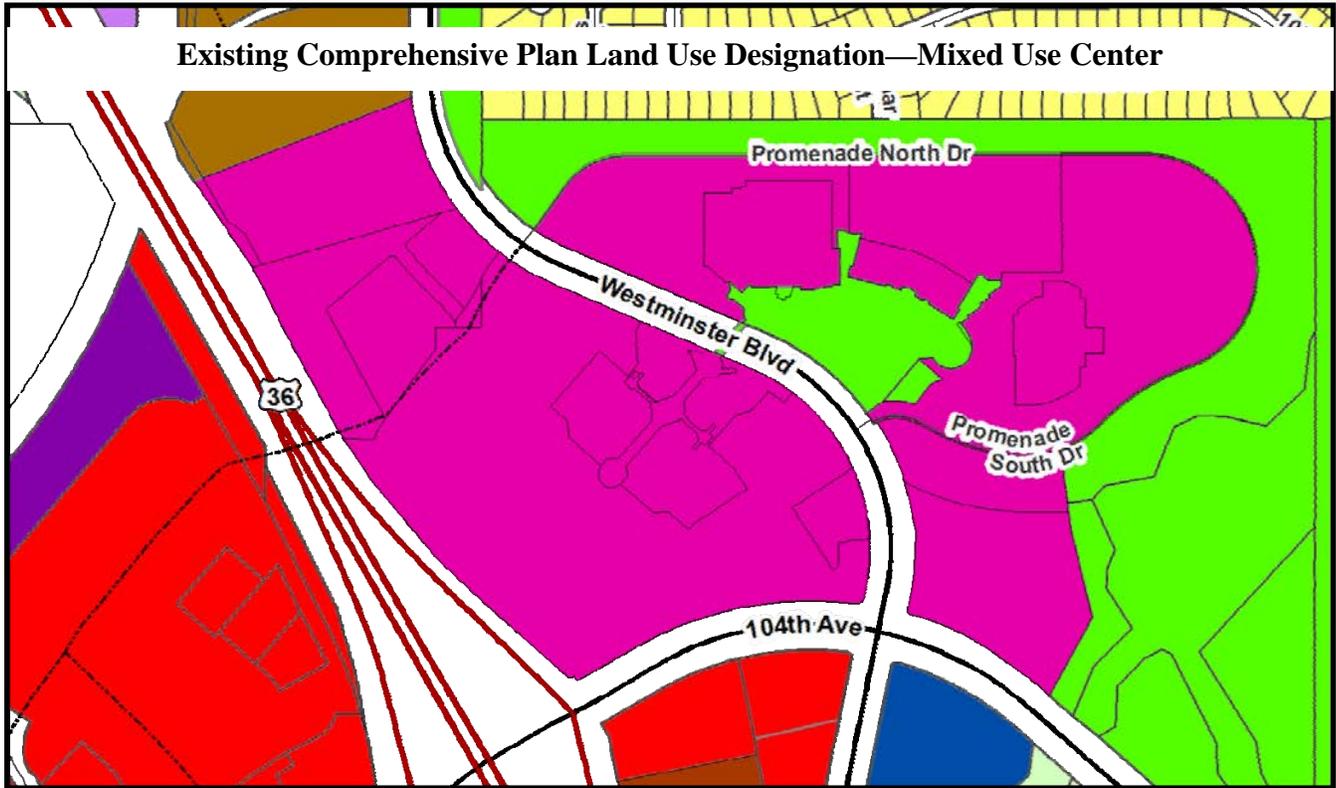
ATTEST:

Mayor

City Clerk

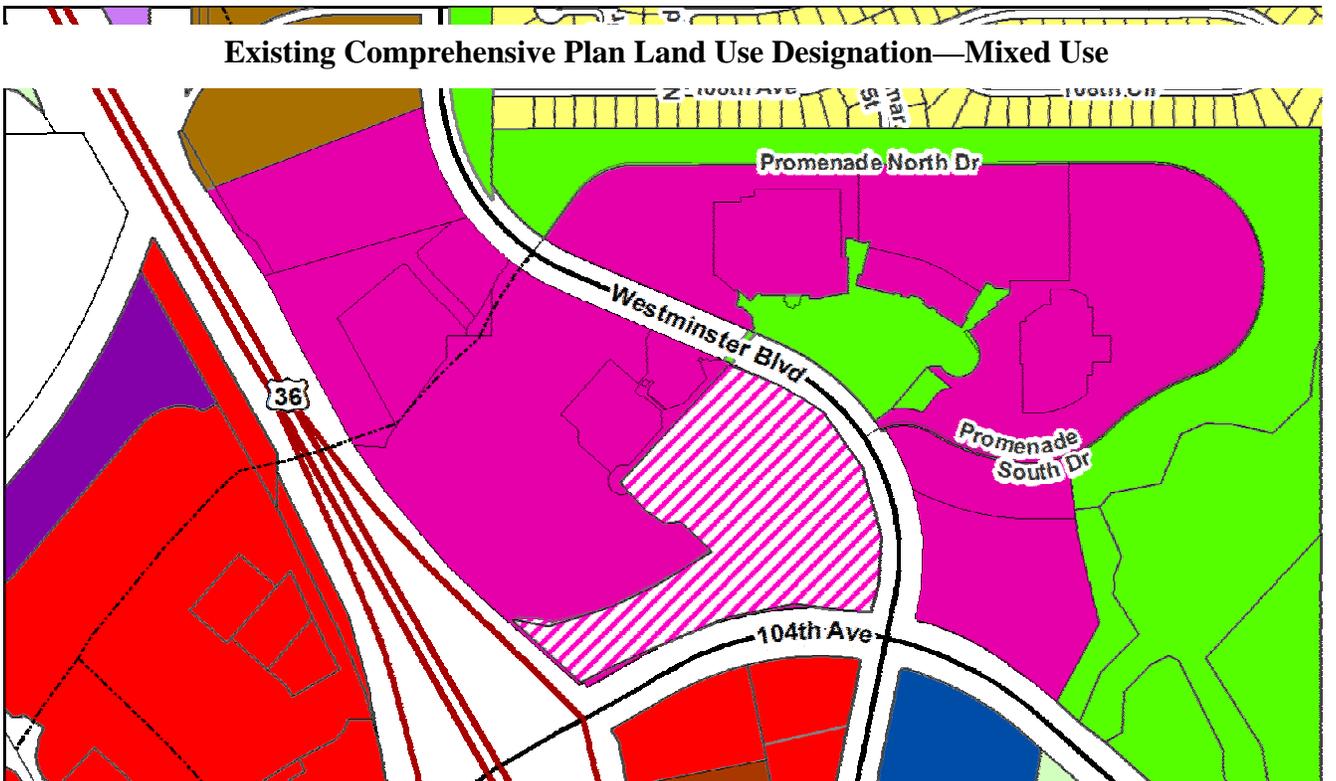
APPROVED AS TO LEGAL FORM:

City Attorney's Office



LEGEND

| | | | |
|-------|--------------------|-----------------------|-----------------------------------|
| R-1 | R-36 | Office | Private Park / Private Open Space |
| R-2.5 | TMUND | Office/RD Low | Golf Courses |
| R-3.5 | Mixed Use | Office/RD High | Public/Quasi Public |
| R-5 | Mixed Use Center | Flex/Light Industrial | Major Creek Corridor |
| R-8 | Retail Commercial | City Open Space | RxR ROW |
| R-18 | Service Commercial | Public Parks | |





Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Second Reading of Councillor's Bill No. 38 re Updates to Section 6-7 of the Westminster Municipal Code Regarding Beekeeping and Chicken Husbandry on Single-Family Detached Residential Properties

Prepared By: Grant Penland, Principal Planner
David German, Associate Planner
Kim Barron, Police Commander

Recommended City Council Action

Pass Councillor's Bill No. 38 on second reading updating animal regulations in Title VI of the Westminster Municipal Code.

Summary Statement

- The City Code currently prohibits beekeeping and chicken husbandry on residential properties.
- Staff has carefully reviewed the existing Animal Code and has drafted proposed revisions to the regulations that will allow for the keeping of bees and chickens on single-family detached residential properties.
- The proposed regulations are intended to provide safe, humane, and well-managed environments for bees and chickens, to promote healthy honey and egg production, to promote and support urban agriculture, and to provide sustainable alternative food supply options.
- Staff discussed possible regulations for beekeeping and chicken husbandry with the City Council at the August 4, 2014, and the April 6, 2015, Council Study Sessions, and at the May 11, 2015, Council Post Meeting. Staff has also conducted public outreach meetings for the topics and prepared a draft ordinance for review by the City Council.
- At the May 11, 2015, City Council Post Meeting, Council instructed Staff to make minor changes to the proposed new Municipal Code Amendment, including that renters should be allowed to keep bees and chickens, and that the ordinance would take effect ninety days after the second reading of the ordinance to allow for adequate implementation timing. Council also wanted to explore what other communities are doing in terms of noticing requirements. This information has been ascertained and incorporated into this memorandum.
- This Councillor's Bill was approved on first reading by City Council on July 27.

Expenditure Required: \$54,244 Annually (Estimated by the Animal Management Staff in the Police Department, but not currently budgeted.)

Source of Funds: TBD

Respectfully submitted,

Donald M. Tripp
City Manager

BY AUTHORITY

ORDINANCE NO. **3794**

COUNCILLOR'S BILL NO. **38**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Briggs - Seitz

A BILL

FOR AN ORDINANCE AMENDING TITLE VI, CHAPTER 7, OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING BEE KEEPING AND CHICKEN HUSBANDRY ON SINGLE-
FAMILY DETACHED RESIDENTIAL PROPERTIES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 6-7-1, W.M.C., is hereby AMENDED by the addition and revision of definitions to read as follows:

6-7-1: DEFINITIONS: (1463 1890 1973 2066 2576 3062 3288) The following words, terms, and phrases, when used in this Title, shall have the following meaning unless specifically defined in another Chapter:

“Bee” shall mean the hymenopterous insects in the genus *Apis*, especially *Apis mellifera*, primarily distinguished by honey and wax production in colonial, perennial, docile hives, when the hives are intentionally initiated and maintained on residential property for honey production. Bee shall not refer to naturally occurring bee colonies, mason bees, or other bee species that are not intentionally kept for honey production.

“Chicken” shall mean a domestic fowl kept for its eggs or meat, excluding ducks, geese, pigeons, turkeys, pea fowl, and guinea hens.

“Domestic Animal” shall mean domesticated or household dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and invertebrates, commonly found in a pet store and intended to live and breed in a tame condition. It shall also include pot-bellied pigs and expressly does not include Bees or Chickens.

“Fowl” shall mean ducks, geese, pigeons, turkeys, pea fowl, guinea hens, and the like. For purposes of this Title, Fowl expressly does not mean Chickens.

“Livestock” shall mean any animal commonly kept or harbored, as a source of food, hides, income through agricultural sale, as a pack animal or draft animal or for use as transportation. Livestock includes, but is not limited to, horses, mules, sheep, goats, cattle, swine, ducks, geese, pigeons, turkeys, pea fowl, and guinea hens. In the event of uncertainty concerning whether a particular animal is a species of livestock, the presumption shall be that such animal is a species of livestock until the owner of such animal proves by a preponderance of the evidence to the satisfaction of the Municipal Court that the animal is not a species of livestock.

Section 2. Section 6-7-12, subsection (A) sub-subsection (1), W.M.C., is hereby AMENDED to read as follows:

6-7-12: RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS: (1463 1890 1973 2066 3062 3288)

(A): ANIMALS IN RESIDENTIAL DISTRICTS:

(1) It shall be unlawful for anyone to knowingly possess, harbor, keep, maintain, or permit on any property within the City zoned for residential use more than ten (10) domestic animals, of which no more than three (3) shall be a combination of dogs or cats over the age of four (4) months; or more than the number of bee hives allowed in Section 6-7-12(H), W.M.C.; or more than the number of female chickens allowed in Section 6-7-12(I), W.M.C.

Section 2. Section 6-7-12, subsection (B), W.M.C., is hereby AMENDED in the title and by the addition of sub-subsection (2) to read as follows:

(B) ANIMALS LIMITED:

(1) It shall be unlawful to keep or maintain livestock in residential, business, commercial, and industrial zoned districts, and Planned Unit Developments unless specifically allowed in the PUD, excepting that livestock shall be permitted in parcels zoned 0-1 or in parcels of ten (10) acres or more in size in all zoning districts prior to commencement of construction on the parcel. In any case, the number of animals kept in a PUD shall not exceed the number permitted by the provisions of the Official Development Plan. Livestock, excluding fowl, shall have one-half (1/2) acre of pasture available for each animal.

(2) It shall be unlawful to keep or maintain bees or chickens within the City except in lots zoned 0-1; or in lots of ten (10) acres or more in size in all zoning districts prior to commencement of construction; or in single-family detached residential lot pursuant to the requirements of Section 6-7-12(H) and Section 6-7-12(I), W.M.C., unless specifically prohibited by the lot's applicable Official Development Plan. In addition to being a violation of this Chapter, the keeping of bees or chickens in violation of this Chapter is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

Section 3. Section 6-7-12, W.M.C., is hereby AMENDED by the addition of new subsections (H) and (I) to read as follows:

(H) BEES: It shall be unlawful for any person to possess, harbor, keep, maintain or permit on his property within the City bees or bee hives, unless the owner or occupant of the property complies with the requirements of this Chapter. It shall be unlawful to fail to comply with these requirements.

(1) The intentional keeping of bees shall require a permit issued pursuant to this Chapter, and such permit shall be issued only to the owner or occupant of the property where the bees are to be kept.

(2) Bees may only be kept in a hive located in the rear yard of a single-family detached property with an existing residence.

(3) The maximum number of hives per single-family detached lot shall be allowed as follows:

(a) One-quarter (1/4) acre or less: two (2) hives;

(b) More than one-quarter (1/4) acre up to and including one-half (1/2) acre: four (4) hives;

(c) More than one-half (1/2) acre up to and including three-quarters (3/4) of an acre: six (6) hives;

(d) More than three-quarters (3/4) of an acre: eight (8) hives.

(4) At all times, bees must be provided with a properly designed beehive meeting the following requirements:

(a) All hives shall provide a secure design, sufficient to protect the bee colony from predators;

(b) All hives shall provide adequate shelter from inclement weather conditions, including protection from sun, wind, rain, snow, hail, and extreme temperatures;

- (c) Each hive shall not exceed a maximum gross floor area of nine (9) square feet;
- (d) Each hive shall not exceed six (6) feet in height, as measured from the ground, excluding the roof element, which may cause the hive's total height to measure not more than seven (7) feet from the ground;
- (e) Each hive shall be set back from all rear yard property lines by a minimum of ten (10) feet;

(6) A six-foot tall flyaway barrier or privacy fence within the rear yard shall be erected and maintained in good condition at all times.

(7) A fresh water supply for the bees shall be maintained in the rear yard of the property at all times, in a location readily accessible to all bees kept in the rear yard of the property.

(8) Honeycomb that is removed from a hive must immediately be moved away from the hive and enclosed in a bee-proof and predator-proof location, building, or storage container.

(9) Unused hive components, beekeeping equipment, and supplies associated with beekeeping must be enclosed in a bee-proof location, building, or storage container and inaccessible to bees.

(10) Aggressive or Africanized bees are prohibited.

(11) In addition to being a violation of this Chapter, the keeping of bees in violation of this Chapter is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

(I): **CHICKENS:** It shall be unlawful for any person to possess, harbor, keep, maintain or permit on his property within the City any chickens, unless the owner or occupant of the property complies with the requirements of this Chapter. It shall be unlawful to fail to comply with these requirements.

(1) The keeping of chickens shall require a permit issued pursuant to this Chapter, and such permit shall only be issued to the owner or occupant of the property where the chickens are to be kept.

(2) Chickens may only be kept in the rear yard of a single-family detached property with an existing residence and with a proper chicken coop meeting the following requirements:

- (a) A coop shall be fully enclosed, having floors, walls, and roofs sufficient to protect the chickens from predators;
- (b) Each coop shall provide a minimum of six square feet of living space per chicken;
- (c) A coop shall provide adequate shelter from inclement weather conditions, including protection from sun, wind, rain, snow, hail, and extreme temperatures;
- (d) Each coop shall not exceed a maximum gross floor area of one hundred twenty (120) square feet;
- (e) A coop shall not exceed six (6) feet in height as measured from the ground;
- (f) A coop shall be set back from all rear yard property lines by a minimum of ten (10) feet;
- (g) Only one (1) coop is allowed per rear yard;

(3) Only hens (female chickens) are permitted.

(4) The maximum number of chickens per single-family detached lot shall be as follows:

- (a) Lots up to two (2) acres: six (6) chickens;
- (b) Lots more than two (2) acres: twelve (12) chickens.

(6) Chickens shall be securely kept within a coop in the rear yard from dusk until dawn. If allowed to roam within the enclosed rear yard at any time from dawn until dusk, chickens shall be rendered unable to fly.

(7) A rear yard with chickens shall be fully screened by a privacy fence a minimum of six (6) feet in height located on or inside all property lines of the rear yard; except that lots opening to City-owned open space are not required to erect a privacy fence along the property line shared with the City.

(8) Animal excrement shall be properly disposed of, and sanitary conditions maintained in order to minimize the presence of flies and other insects, and to minimize odor and potential for disease.

(9) A fresh water supply for the chickens shall be maintained in the rear yard property at all times, in a location readily accessible to all chickens.

(10) Chicken feed shall be enclosed in a re-sealable, airtight, vermin-proof container.

(11) The slaughtering of chickens is permitted only indoors and slaughtering shall be limited only to those chickens allowed by permit for the specific property. Entrails and remains shall be disposed of properly. The slaughtering of chickens outdoors is prohibited.

(12) In addition to being a violation of this Chapter, the keeping of chickens in violation of this Chapter is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

Section 4. Section 6-7-13, subsections (C) and (D), W.M.C., are hereby AMENDED to read as follows:

6-7-13: CARE AND TREATMENT: (1463 1973 2576)

(C) **NEGLECT OF ANIMALS:** It shall be unlawful for the owner or any person entrusted with the care of any animal or bees to deprive or fail to provide such animal or bees of adequate and wholesome food, water, or protection from the weather as shall be consistent with the keeping of the species, breed, and type of animal or bees involved; to fail to provide the animal with proper protection from extremes in temperatures; to fail to provide the animal with an opportunity for exercise; to fail to provide the animal with adequate veterinary care; or to otherwise neglect the animal or bees in such a manner as to endanger its health or cause it to suffer.

(D) **SANITATION:** It shall be unlawful for the owner of any animal or bees to fail to maintain the premises upon which animals or bees are kept in a clean and sanitary condition, which premises shall be subject to inspection at all reasonable hours by City representatives.

Section 5. Section 6-7-15, W.M.C., is hereby AMENDED and a new subsection (C) is ADDED to read as follows:

6-7-15: FEES: Fees for permit, license, impound, adoption, and other services rendered under this Chapter shall be as listed below. Fees are in addition to any fines or penalties imposed in Court proceedings. (1463 1890 1973 2576)

(C) The fee for a bee permit, a chicken permit, or a pot-bellied pig permit shall be set by the City Manager or his designee in an amount to cover the costs of administering the permit program.

Section 6. Section 6-7-17, W.M.C., subsection (F) sub-subsection (1), is hereby AMENDED and a new subsection (G) is ADDED to read as follows:

6-7-17: PENALTIES: (3288 3345)

(F) RECOMMENDED MINIMUM FINES: Recommended minimum fines upon conviction may be imposed as listed below:

(1) First Offense – recommended fine of not less than seventy-five dollars (\$75). Second and subsequent offenses – recommended fine of not less than one hundred dollars (\$100):

| | |
|-----------|--|
| 6-7-2(B) | Refusal to Provide Proof of Vaccination |
| 6-7-2(C) | Harboring Unvaccinated Dogs and Cats |
| 6-7-2(D) | Non-Transferability - Vaccination Certificates or Tags |
| 6-7-3(A) | Duty to Report Animal Bite |
| 6-7-3(C) | Failing to Report Suspected Rabies |
| 6-7-3(D) | Refusal to Produce Animal |
| 6-7-3(E) | Removal of Animals from Confinement |
| 6-7-4(B) | Failure to Display Dog License Tag |
| 6-7-5(B) | Failure to Confine |
| 6-7-6(A) | Removal of Animal Excrement |
| 6-7-6(B) | Damage to Property |
| 6-7-7(A) | Disturbance |
| 6-7-7(C) | Failure to Exercise Control |
| 6-7-10(E) | Failure to Care for Animals |
| 6-7-11(D) | Failure to Care for Animals |
| 6-7-12(F) | Potbellied Pig Requirements |
| 6-7-12(H) | Bee Keeping Requirements |
| 6-7-12(I) | Chicken Husbandry Requirements |
| 6-7-13(D) | Sanitation |
| 6-7-13(F) | Confinement of Animals |
| 6-7-19 | Bee Permitting |
| 6-17-20 | Chicken Permitting |

(G) An Animal Management Officer may, in his or her professional judgment, determine that bees are aggressive or Africanized, as prohibited by Section 6-7-12(H)(10), and may pursue summary abatement of a hive or bees to prevent imminent danger of serious injury to persons or property, as authorized by Section 8-4-4, W.M.C.

Section 7. Chapter 7 of Title VI, W.M.C., and the index therefor, is hereby amended BY THE ADDITION OF TWO NEW SECTIONS, 6-7-19 and 6-7-20 to read as follows:

CHAPTER 7

ANIMALS

| | |
|----------------|--|
| 6-7-1: | DEFINITIONS |
| 6-7-2: | RABIES CONTROL |
| 6-7-3: | REPORTING ANIMAL BITES |
| 6-7-4: | DOG LICENSING |
| 6-7-5: | ANIMALS RUNNING AT LARGE |
| 6-7-6: | REMOVAL OF ANIMAL EXCREMENT; DAMAGE TO PROPERTY |
| 6-7-7: | DISTURBANCE; PUBLIC NUISANCE |
| 6-7-8: | VICIOUS ANIMALS AND POTENTIALLY DANGEROUS ANIMALS |
| 6-7-9: | IMPOUNDED ANIMALS |
| 6-7-10: | KENNELS |
| 6-7-11: | PET SHOPS |
| 6-7-12: | RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS |
| 6-7-13: | CARE AND TREATMENT |
| 6-7-14: | CAPTURING ANIMALS |
| 6-7-15: | FEES |
| 6-7-16: | INTERFERENCE |

6-7-17: PENALTIES

6-7-18: GUARD DOGS

6-7-19: BEE PERMITTING

6-7-20: CHICKEN PERMITTING

Section 8. Title VI, Chapter 7, W.M.C., is hereby AMENDED by the ADDITION of a new Section 6-17-19, "Bee Permitting," which shall read as follows:

6-7-19: BEE PERMITTING

(A) BEE PERMIT REQUIRED. It shall be unlawful for any owner or keeper of bees to fail to obtain a permit as required by this Chapter prior to the arrival of the bees on the property. It shall be unlawful to own, keep, maintain or allow on property within the City bees in a manner that violates the provisions of this Chapter.

(B) PERMIT REQUIREMENTS. At the time of applying for a permit, an owner or occupant of qualifying residential property, as defined in Section 6-7-12(B)(2), W.M.C., shall provide the following to the City in such form as may be reasonably required by the City:

- (1) Permit fee;
- (2) Complete permit application;
- (3) Rear yard plot plan showing location of setbacks, fencing, fly away barriers, water supply, and hives;
- (4) The owner or occupant's signed acknowledgement that he or she shall be the permit holder and acknowledgement that the permit holder shall be responsible to reimburse the City for bee-related nuisance abatement costs as may be assessed pursuant to Section 8-4-4, W.M.C.;
- (5) The permit holder's signed consent to the City's, or an agent of the City's, entry into and inspection of the rear yard at all reasonable hours to confirm compliance with this Chapter;
- (6) The permit holder's signed acknowledgement of his or her personal liability for injury or damage to persons or property caused by the permit holder's bees;
- (7) If the permit holder is the occupant of rental property, the permit holder shall provide the name and contact information of the property owner; and
- (8) Such other information as may be reasonably required by the City.

(C) PERMIT REVOCATION. A bee permit may be denied, cancelled, or revoked for any violation of the provisions of this Chapter related to the keeping of bees.

Section 9. Title VI, Chapter 7, W.M.C., is hereby AMENDED by the ADDITION of a new Section 6-17-20, "Chicken Permitting," which shall read as follows:

6-7-20: CHICKEN PERMITTING

(A) CHICKEN PERMIT REQUIRED. It shall be unlawful for any owner of a chicken to fail to obtain a permit as required by this Chapter prior to the arrival of a chicken on the property. It shall be unlawful to own, keep, maintain or allow on property within the City a chicken in a manner that violates the provisions of this Chapter.

(B) PERMIT REQUIREMENTS. At the time of applying for a permit, an owner or occupant of qualifying residential property, as defined in Section 6-7-12(B)(2), W.M.C., shall provide the following to the City in such form as may be reasonably required by the City:

- (1) Permit fee;
- (2) Complete permit application;
- (3) Rear yard plot plan showing location of setbacks, fencing, coop, and water supply;
- (4) The owner or occupant's signed acknowledgement that he or she shall be the permit holder;
- (5) The permit holder's signed acknowledgement of owner's personal liability for injury or damage to persons or property caused by the permit holder's chickens;
- (6) The permit holder's signed consent to the City's, or an agent of the City's, entry into and inspection of the rear yard at all reasonable hours to confirm compliance with this Chapter;
- (7) If the permit holder is the occupant of rental property, the permit holder shall provide the name and contact information of the property owner; and
- (8) Such other information as may be reasonably required by the City.

(C) PERMIT REVOCATION. A chicken permit may be denied, cancelled, or revoked for any violation of the provisions of this Chapter related to the care, keeping or maintenance of animals.

Section 10. This ordinance shall take effect ninety (90) days after its passage on second reading.

Section 11. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of August, 2015.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Item 11 F

Agenda Memorandum

City Council Meeting
August 10, 2015



SUBJECT: Second Reading of Councillor's Bill No. 39 re FY2014 Carryover Appropriation into FY2015

Prepared By: Barbara Opie, Assistant City Manager
Steve Smithers, Deputy City Manager

Recommended City Council Action:

Pass Councillor's Bill No. 39 on second reading, appropriating FY2014 carryover funds into the FY2015 budgets of the budgets of the General, General Reserve, General Fund Stabilization Reserve, General Capital Improvement, Fleet, Sales and Use Tax, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement, and Golf Course Funds.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill on second reading, which authorizes the proposed carryover items and appropriate FY2014 carryover funds into the FY2015 budgets of the General, General Reserve, General Fund Stabilization Reserve, General Capital Improvement (GCIF), Fleet, Sales and Use Tax, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement (GCORF), and Golf Course Funds.
- This Councillor's Bill was passed on first reading on July 27.

Expenditure Required: \$12,264,525

Source of Funds: 2014 Carryover from the General, General Capital Improvement (GCIF), Fleet, Sales and Use Tax, Utility, Storm Drainage, General Capital Outlay Replacement (GCORF), and Golf Course Funds

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3795**

COUNCILLOR'S BILL NO. **39**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Garcia - Seitz

A BILL

FOR AN ORDINANCE AMENDING THE 2015 BUDGETS OF THE GENERAL, WATER, WASTEWATER, LEGACY RIDGE, STORM DRAINAGE, FLEET, GENERAL CAPITAL OUTLAY REPLACEMENT, SALES AND USE TAX, AND GENERAL CAPITAL IMPROVEMENT FUNDS, AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the General, Water, Wastewater, Legacy Ridge, Storm Drainage, Fleet, General Capital Outlay Replacement, Sales and Use Tax, and General Capital Improvement Funds initially appropriated by Ordinance No. 3737 is hereby increased in aggregate by \$21,451,331. This appropriation is due to the appropriation of 2014 carryover.

Section 2. The \$21,451,331 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 O dated July 27, 2015 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

| | |
|---|---------------------|
| General Fund | \$4,121,819 |
| Water Fund | 1,218,228 |
| Wastewater Fund | 909,054 |
| Legacy Ridge Fund | 24,286 |
| Storm Drainage Fund | 44,204 |
| Fleet Fund | 128,974 |
| General Capital Outlay Replacement Fund | 599,537 |
| Sales & Use Tax Fund | 7,037,908 |
| General Capital Improvement Fund | <u>7,367,321</u> |
| Total | <u>\$21,451,331</u> |

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of August, 2015.

ATTEST:

Mayor

City Clerk

AGENDA

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING**

MONDAY, AUGUST 10, 2015

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (July 27, 2015)
- 3. Public Hearings and New Business**
 - A. Public Hearing re: Supplemental Appropriation to the 2015 budget
 - B. Resolution No. 164 Authorizing Supplemental Appropriation to 2015 Budget
 - C. J.C. Penney Lease Amendment to Accommodate Road and Infrastructure Construction for the Downtown Westminster Project
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JULY 27, 2015, AT 9:32 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Bob Briggs, and Board Members Bruce Baker, Maria De Cambra, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were Donald M. Tripp, Executive Director, Hilary Graham, Deputy City Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Vice Chairperson Briggs moved, seconded by Board Member Baker, to approve the minutes of the meeting of April 27, 2015, as written. The motion carried unanimously.

CONTRACT AMENDMENT WITH TORTI GALLAS AND PARTNERS

Board Member Seitz moved, seconded by Vice Chairperson Briggs, based on a recommendation from the Executive Director, to find that the public interest would best be served by authorizing the Executive Director to execute an amendment of \$42,850 to an existing contract of \$32,000 with Torti Gallas and Partners for revisions to renderings and graphics for the Downtown Specific Plan and a three-dimensional video illustration of the plan vision. The motion carried on a 6:1 vote with Board Member Baker voting no.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 9:35 p.m.

ATTEST:

Chairperson

Secretary

WEDA Agenda Item 3 A-B

Agenda Memorandum

Westminster Economic Development Authority Meeting
August 10, 2015



SUBJECT: Public Hearing and Resolution No. 164 re: Westminster Economic Development Authority Supplemental Appropriation to the 2015 budget

Prepared By: Karen Creager, Special Districts Accountant

Recommended Board Action

1. Hold a Public Hearing on the budget amendment for the Westminster Economic Development Authority.
2. Adopt Resolution No. 164 authorizing a supplemental appropriation to the 2015 Westminster Economic Development Authority budget.

Summary Statement

- When necessary, City Staff (Staff) prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Typically, supplemental appropriations are prepared on a periodic basis for the Westminster Economic Development Authority (WEDA) to simplify administrative procedures and reduce paper work.
- This supplemental appropriation covers activity for the 1st and 2nd Quarter 2015.
- 2015 Amendments:
 - North Huron Urban Renewal Area (URA)
 - \$124 Interest earnings
 - \$653,011 Carryover
 - Westminster Center Urban Reinvestment Plan (WURP) Area URA
 - \$680,000 Transfer from City of Westminster (City) Sales Tax Fund
 - \$200,000 Transfer from City General Capital Improvement Fund (GCIF)
 - \$192,592 Rents
 - \$86,655 Carryover
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

Expenditure Required: \$1,812,382

Source of Funds: Carryover from prior years, interest earnings, transfers and rent revenue

Policy Issue

Should the WEDA Board appropriate funds as set forth in the attached Resolution?

Alternatives

1. In accordance with the Compass Mortgage Corporation Loan Agreement, use of the loan proceeds is to be applied solely to capital expenditures in the North Huron URA. Interest earnings on the unspent loan proceeds carry the same restriction. Alternatively, the Board could decide to appropriate the interest earnings to a different project in the North Huron URA instead of Orchard Parkway. This alternative is not recommended at this time as this is the best method for tracking the interest earnings to ensure compliance with the loan covenants.
2. The Board could decide not to appropriate carryover in the amount of \$653,011 in the North Huron URA to be transferred to the City to reimburse costs the City incurred for improvements to 128th Avenue at I-25. This alternative is not recommended as use of prior year excess revenues to reimburse these costs is an appropriate use of the funds currently available at the Trust and shifts the burden of costs in the URA to the area benefitting from the improvements as contemplated when the intergovernmental cooperation agreement (ICA) between WEDA and the City was approved.
3. The Board could decide not to appropriate the rent revenue, transfers and carryover to the WURP City Participation project. Although the rent revenues and carryover are not restricted in their use, Staff recommends continuing to use the rents from the remaining tenants at the former Mall site as well as carryover from prior year sales tax increment to cover costs associated with providing service to the tenants and the continued redevelopment at that site. Additionally, the transfers received from the City's Sales Tax Fund and General Capital Improvement Fund were authorized by City Council for specific purposes associated with the redevelopment of the site.

Background Information

North Huron URA

Carryover

The North Huron Urban Renewal Plan ("Plan"), approved by the City on January 26, 2004, includes as one of its primary objectives providing an efficient system of streets, roads and other transportation facilities necessary to support urban development within the URA. The Plan provides for WEDA to undertake certain actions that would make the URA more attractive for private investment and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects. In recognition that the City incurs costs for maintenance and other contractual obligations associated with improvements located within the North Huron URA, on December 9, 2013 WEDA and the City entered into an ICA that provides for WEDA to reimburse the City for costs the City incurred related to improvements made within the URA. In accordance with the ICA, Staff has determined that payment to the City for costs incurred for 128th Avenue improvements is an allowable use under the loan agreement of excess incremental revenues held in the North Huron Supplemental Reserve Trust account. Therefore, Staff is requesting appropriation of prior year excess revenues to fund the payment to the City of \$653,011.

Interest Earnings

The unspent project funds for Orchard Parkway continue to earn interest until spent. Interest earned on project funds for the 1st and 2nd quarter totals \$124. The loan agreement specifies that the interest earned on the project funds must be spent on projects in the North Huron URA; therefore, the interest earned in the 1st and 2nd quarter is requested to be appropriated to the Orchard Parkway project to ensure proper tracking for compliance purposes.

Westminster Center Urban Reinvestment Plan Area URA

Carryover

In 2014, incremental sales tax receipts in the URA were over the established base sales tax receipts by \$86,655. These funds were intentionally not appropriated in 2014 as the plan in the area was not finalized. Therefore at the end of 2014, these incremental revenues were part of the WURP URA's ending fund balance. Staff is requesting that the prior years' revenue be appropriated as carryover to the WURP City Participation project.

Rental income

Although only a few tenants continue to operate at the Mall site during the redevelopment, monthly rents are received from those tenants. There are unappropriated rents totaling \$192,592 received in 2015. Therefore, Staff is requesting that the rents be appropriated to the WURP City Participation project to continue to provide services for the tenants and the redevelopment efforts.

Transfers

The City and WEDA continue to work cooperatively to redevelop the former Westminster Mall site. As one of City Council's highest Strategic Plan priorities, funding was provided in the GCIF 2015 budget for ongoing WURP activities and obligations that are the responsibility of WEDA. Per historical practice, clear reporting and financial tracking, City Staff proposed to transfer this \$200,000 from the City's GCIF to WEDA. This funding provides for a 0.5 FTE for administrative support and a .5 FTE temporary maintenance worker position for upkeep of the WURP site. Additionally, these funds will address planning, architectural services, other consulting contracts and administrative costs related to the WURP Project. The transfer of \$200,000 was approved by City Council on second reading on June 8, 2015. The action included in this supplemental appropriation is to appropriate the funds to the WURP City Participation project as intended when the funds were transferred.

On July 27, 2015, City Council approved on first reading a transfer of \$680,000 to the WURP City Participation project in the WEDA Fund from 2014 carryover funds in the City's Sales Tax Fund. These funds are intended to fund the acquisition (including closing costs) of the JC Penny leasehold interest in land needed to build Westminster Boulevard. As the land and associated lease are held by WEDA, it is appropriate that these funds be appropriated directly into WEDA for use in this manner. The appropriation of these funds to the WURP City Participation project is being requested in anticipation of City Council approving the appropriation of these funds on the City side on second reading at the City Council meeting held prior to this WEDA meeting.

The amendments listed in the attached resolution will bring WEDA's accounting records up-to-date to reflect the various detailed transactions.

The action requested in this agenda memorandum relates to City Council's Strategic Plan goals of Dynamic, Diverse Economy and Financially Sustainable Government Providing Excellence in City Services. These goals are met by ensuring revenues are appropriated to expenditure accounts so the funds can be utilized as intended including continued improvements in the North I-25 development area and the redevelopment efforts at the Downtown Westminster site.

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment: WEDA Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **164**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2015

**2015 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2015 budget on October 13, 2014; and

WHEREAS, proper notice for this amendment was published on August 6, 2015, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on August 10, 2015, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2015 budget; and

WHEREAS, the revenue adjustment consists of an increase of \$1,812,382; and

WHEREAS, the expense adjustment consists of an increase of \$1,812,382.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

Section 1. The \$1,812,382 increase shall be allocated to WEDA Revenue and Expenditure accounts as described below:

REVENUES

| Description | Account Number | Current Budget | Amendment | Revised Budget |
|--------------------------|-----------------|----------------|--------------------|----------------|
| Carryover – No Huron | 6800.40020.0183 | \$(740,334) | \$653,011 | \$(87,323) |
| Interest | 6800.42520.0183 | 0 | 124 | 124 |
| Rents | 6800.40900.0191 | 0 | 192,592 | 192,592 |
| Carryover - WURP | 6800.40020.0191 | 0 | 86,655 | 86,655 |
| Transfers Sales Tax | 6800.45000.0530 | 0 | 680,000 | 680,000 |
| Transfers GCIF | 6800.45000.0750 | 0 | <u>200,000</u> | 200,000 |
| Total Change to Revenues | | | <u>\$1,812,382</u> | |

EXPENDITURES

| Description | Account Number | Current Budget | Amendment | Revised Budget |
|--|------------------------|----------------|--------------------|----------------|
| Appropriation Holding - City Participation | 80968005952.80400.8888 | \$1,130,607 | \$1,159,247 | \$2,289,854 |
| Transfers General Fund | 68010900.79800.0100 | 0 | 653,011 | 653,011 |
| Appropriation Holding-Orchard Pkwy | 81268030997.80400.8888 | 147,597 | <u>124</u> | 147,721 |
| Total Change to Expenses | | | <u>\$1,812,382</u> | |

Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 10th day of August, 2015.

ATTEST:

Chairperson

Secretary

JCPenney store #2160
Westminster, CO

Nothing herein contained or attached hereto shall be considered an offer, nor shall J.C. Penney Corporation, Inc., J.C. Penney Properties, Inc. or any of its affiliates be bound or obligated hereby. J.C. Penney Corporation, Inc., J.C. Penney Properties, Inc. or its affiliates shall not be bound or obligated unless and until internal corporate approvals have been obtained and final negotiated documentation have been fully executed and delivered by all parties thereto and then only to the extent provided in such final documents.

LEASE AMENDMENT AGREEMENT

This LEASE AMENDMENT AGREEMENT (this "Amendment") is dated effective as of _____, 2015 (the "Effective Date"), by and between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a _____, having an address of 4800 W. 92nd Avenue, Westminster, CO 80031 (hereinafter called "Landlord"), and J. C. PENNEY PROPERTIES, INC., a Delaware corporation having a mailing address of P. O. Box 10001, Dallas, Texas 75301-1104 Attn: Real Estate Counsel (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, Westminster Mall Company (Landlord's predecessor in title), as landlord, and Tenant entered into a certain lease dated as of February 13, 1986, which was filed for record on February 18, 1986 in the Jefferson County, Colorado records as Reception No. 86016388, and which lease has been amended and supplemented by the following:

Term Agreement dated June 18, 1993; and
Letter dated February 6, 2015

(which lease, as so supplemented and amended, is hereinafter referred to as the "Lease"); and

WHEREAS, pursuant to the Lease there was demised and leased to Tenant a certain premises (the "Demised Premises") being a part of the land which was formerly occupied by Westminster Mall (the "Entire Premises" as defined in the Lease) situated in Westminster, Jefferson County, and State of Colorado, as more particularly described therein, for a term which commenced on February 19, 1986 and continuing until the last day of February, 2021 unless extended or sooner terminated as provided therein; and

WHEREAS, Landlord is now the fee owner of the Demised Premises and the Entire Premises; and

WHEREAS, the parties hereto desire to amend the Lease as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Landlord and Tenant do hereby covenant and agree as follows:

1. COVENANT OF TITLE: Landlord represents and warrants that: (i) Landlord has title to the Entire Premises (including the Demised Premises) in fee simple; and (ii) the Lease has not been assigned by Landlord, nor have the rentals payable under the Lease been assigned. Landlord further covenants and warrants that Landlord has full right and lawful authority to enter into this Amendment and to perform Landlord's obligations under the Lease and this Amendment for the term of the Lease and all extensions thereto, if any, of the Lease and that no consents of any nature whatsoever are required for Landlord to enter into this Amendment or for this Amendment to be enforceable against Landlord or any successor Landlord.

Tenant represents and warrants that the Lease has not been assigned by Tenant (other than as permitted in Section 5.2(1) of the Lease as to licensees and concessionaires). Tenant further covenants and warrants that Tenant has full right and lawful authority to enter into this Amendment and to perform Tenant's obligations under the Lease and this Amendment for the term of the Lease and all extensions thereto, if any, of the Lease and that no consents of any nature whatsoever are required for Tenant to enter into this Amendment or for this Amendment to be enforceable against Tenant, any successor Tenant or any mortgagee of Tenant (as defined in Section 5.5 of the Lease). Tenant represents and warrants that it either has obtained the consent and approval of this Amendment by its mortgagee Goldman Sachs Bank USA or no such consent is required under the terms of the Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing recorded on July 15, 2013 at Reception No. 2013085525 in the Office of the Clerk and Recorder of Jefferson County Colorado (the "Leasehold Deed of Trust") and the Credit Agreement defined in the Leasehold Deed of Trust.

2. SURRENDER PARCEL: As of the Effective Date, and contingent upon Tenant's receipt of the Surrender Payment, as defined below, the Lease is hereby amended to delete from the definition of the Demised Premises all of the land described on Exhibit A-1 attached hereto (the "Surrender Parcel"). The Surrender Parcel is hereby excluded and released from the Demised Premises, as described on "Exhibit A – Part IV" attached to the Lease, and is surrendered by Tenant to Landlord in order for Landlord to construct a road thereon (the "Roadway"). Landlord hereby accepts the Surrender Parcel in its AS IS, WHERE IS condition, and releases Tenant from any responsibility for the condition thereof. Upon its surrender, the Surrender Parcel is no longer part of the Demised Premises and any payments or calculations under the Lease which are made based upon the square footage or area of the Demised Premises or attributable specifically to the Surrender Parcel will also be adjusted to exclude the area of the Surrender Parcel.

All activities conducted by or on behalf Landlord in connection with the construction of the Roadway on the Surrender Parcel will be done in a good and workmanlike matter and will be conducted so as to minimize in a commercially reasonable manner the interference with Tenant's ongoing business in the Demised Premises. Specifically, and without limiting the foregoing, Landlord agrees that it will not commence any work of a disruptive nature on the Roadway on the Surrender Parcel until after August 15, 2015. Tenant will have access to and use of parking in the Parking License Area, defined in paragraph 3 below after the date on which the foregoing work is commenced, and no such work of a disruptive nature will be conducted during the period commencing on November 15 of any year and January 1 of the immediately succeeding year. Nothing herein will be construed as Tenant's approval of any improvements to be constructed by

Landlord. Tenant specifically waives any other approval rights related to the Roadway which Tenant may have under the Lease

3. PARKING LICENSE AND LICENSE FOR TRUCK TURNAROUND AND LOADING/UNLOADING: Beginning on the Effective Date and continuing until the completion and opening of a parking garage on Parcel C-2 as set out on the Site Plan for Downtown Westminster dated June 2, 2015, Landlord grants to Tenant a license to use portions of the areas designated collectively as the "Parking License Area" on Exhibit A-2 attached hereto and made a part hereof, which will contain not less than 115 parking spaces, for use as a parking field for its store. The parties acknowledge that Landlord may shift the location of such surface parking as construction progresses on the individual Parcels making up the Parking License Area. Upon completion of construction of the Roadway, Landlord further grants to Tenant a license to use a portion of the Roadway for purposes of truck access and turnaround, and loading and unloading its merchandise, from and to the truck dock areas serving its store. The Parking License Area will be paved, striped, lighted and maintained in good condition by Landlord, and will be used exclusively for the parking of Tenant's customers, employees and invitees. Landlord will grant to Tenant any necessary signage rights or other rights which may be necessary in connection with Tenant's access to and use of the Parking License Area as the parties may mutually agree.

4. SURRENDER PAYMENT: On or before five business days after Tenant signs and delivers both this Amendment and its wire instructions to Landlord, Landlord will pay to Tenant the amount of \$671,087.79 (the "Surrender Payment") in exchange for Tenant's surrender of the Surrender Parcel. Landlord and Tenant acknowledge that the Surrender Payment was calculated using a certain valuation of the Demised Premises; however, that valuation is for the purposes of this Agreement only, and will not be binding upon the parties in any subsequent condemnation or litigation proceedings.

The Surrender Payment will be forwarded to J. C. Penney Corporation, Inc., Controllers Shared Services, Building A, Floor 3, Attn: Roy Reed, Mailstop 2123, 6501 Legacy Drive, Plano, Texas 75024 if paid by check (also, please note on check name of Shopping Center, JCPenney Store #2160 and nature of payment) or if Landlord pays by wire transfer instead of a check then Landlord shall wire the funds pursuant to wire instructions to be provided by Tenant. If such money is wire transferred then simultaneously therewith Landlord shall telephone Roy Reed at 972-431-2271 of the placement of the wire transfer, together with the Federal Reference Number. In the event Landlord shall not have paid Tenant such amount within the time frame set forth herein, Tenant, in addition to any other rights and remedies Tenant may have available at law or in equity, shall have the right (without risk of forfeiture) to deduct such amount plus interest thereon at the highest interest rate permitted under applicable law, from the date due until paid to, or recouped by, Tenant, from all rents and other charges then due or thereafter coming due under the Lease, and irrespective of who may own or have an interest in the Demised Premises at the time such deduction(s) are made.

5. NOTICES: As of the Effective Date, all provisions of the Lease relating to giving, sending, delivering, or receiving notices shall be deleted from the Lease, and the following shall be substituted in its place and stead:

“Any notice, demand, consent, approval, request, statement, document or other communication required or permitted to be given to or served upon either party hereto pursuant to this lease or applicable law shall be in writing and shall be by United States certified mail, return receipt requested, or by a method which confirms delivery (or refusal of delivery) by either the United States Postal Service or a recognized national courier service (such as, but not limited to, Federal Express or United Parcel Service), postage prepaid, addressed:

(a) If to Landlord:

Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, CO 80031

Emergency Email: _____

With a duplicate copy to:

The City of Westminster
Office of the City Attorney
4800 W. 92nd Avenue
Westminster, CO 80031

(b) If to Tenant:

(if by certified mail)
J.C. Penney Properties, Inc.
P.O. Box 10001
Dallas, Texas 75301-1106
Attn: Real Estate Counsel

(if by overnight mail)
J.C. Penney Properties, Inc.
6501 Legacy Drive
Plano, Texas 75024-3698
Attn: Real Estate Counsel MS 1106

Emergency Email: _____

with a duplicate copy to:

J.C. Penney Properties, Inc.
P.O. Box 10001
Dallas, Texas 75301-2104
Attn: Property Manager for Store #2160; Westminster, CO

[NOTE: Need alternate street address here for overnight courier]

with a duplicate copy to the Demised Premises, marked for the attention of "Store Manager"; provided, however, in the case of the need for emergency repairs, Landlord or Tenant may give the other party notice by email (with no duplicate copies to be required) to be followed by an original written copy of the notice (including the duplicate copies) sent by one of the above prescribed methods. All such communications mailed or transmitted in accordance with the foregoing provisions shall be deemed to have been given or served as of the third business day after such mailing or on the next business day after such delivery by overnight courier or on the date of such transmittal by email in the case of emergency. Either Landlord or Tenant may, by ten (10) days prior notice to the other as aforesaid, designate a different address or different addresses to which communications intended for it are to be sent, such addresses to be within the United States and to include a physical mailing address in addition to any P.O. Box address”

6. AGREEMENT TO BE RECORDED: Landlord shall, at its cost and expense, record a fully executed original of a separate memorandum of this agreement. Landlord will deliver to Tenant a copy of the file-stamped recorded memorandum within 15 days of Landlord’s receipt thereof. Landlord shall pay for any and all real estate transfer fees assessed in connection with this Amendment or assessed in connection with the recording of the memorandum thereof.

7. RELEASE OF DEED OF TRUST: On or before August 15, 2015, Tenant shall deliver to Landlord an original Request for Partial Release to the Public Trustee, requesting the release of the Surrender Parcel and executed by any “mortgagee” as defined in Section 5.5 of the Lease in connection with its deed of trust now encumbering the Demised Premises, including but not limited to the Leasehold Deed of Trust.

8. AGREEMENT BINDING UPON HEIRS, ETC.: This Amendment shall extend to and be binding upon the heirs, devisees, executors, administrators, successors in interest and permitted assignees of both Landlord and Tenant.

9. DEFINITIONS; TERMS MODIFIED; MISCELLANEOUS: Unless otherwise defined in this Amendment, terms used in this Amendment but not otherwise defined but defined in the Lease shall have the definitions ascribed to such terms in the Lease. Except as expressly modified herein, all the terms, provisions and conditions of the Lease shall remain in full force and effect. This Amendment forms a part of the Lease. If any provisions of this Amendment are inconsistent with the provisions of the Lease, the terms of this Amendment shall prevail. This Amendment contains the entire understanding and agreement of the parties with respect to the subject matter hereof, supersedes all other written or oral exchanges, agreements, or negotiations between them or their representatives, and cannot be amended orally, but only by instrument in writing signed by both parties. This Amendment may be executed in two or more counterparts and each counterpart shall be deemed to be one and the same agreement. Scanned signatures of this Amendment delivered by facsimile, electronic mail, or other electronic means will be as valid as ink-signed originals. This Amendment will be governed by the laws of the State of Colorado.

[Remainder of Page Intentionally Left Blank - Signature Page Follows.]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be duly executed as of the Effective Date.

LANDLORD:

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Name: _____
Its: _____

TENANT:

J. C. PENNEY PROPERTIES, INC.,
a Delaware corporation

By: _____
Name: _____
Its: _____

ATTEST:

Assistant Secretary

| |
|----------|
| APPROVED |
| |
| ATTORNEY |

| |
|-------------|
| APPROVED |
| |
| REAL ESTATE |

EXHIBIT A-1

DESCRIPTION OF THE SURRENDER PARCEL

DOWNTOWN WESTMINSTER

PARCEL 4

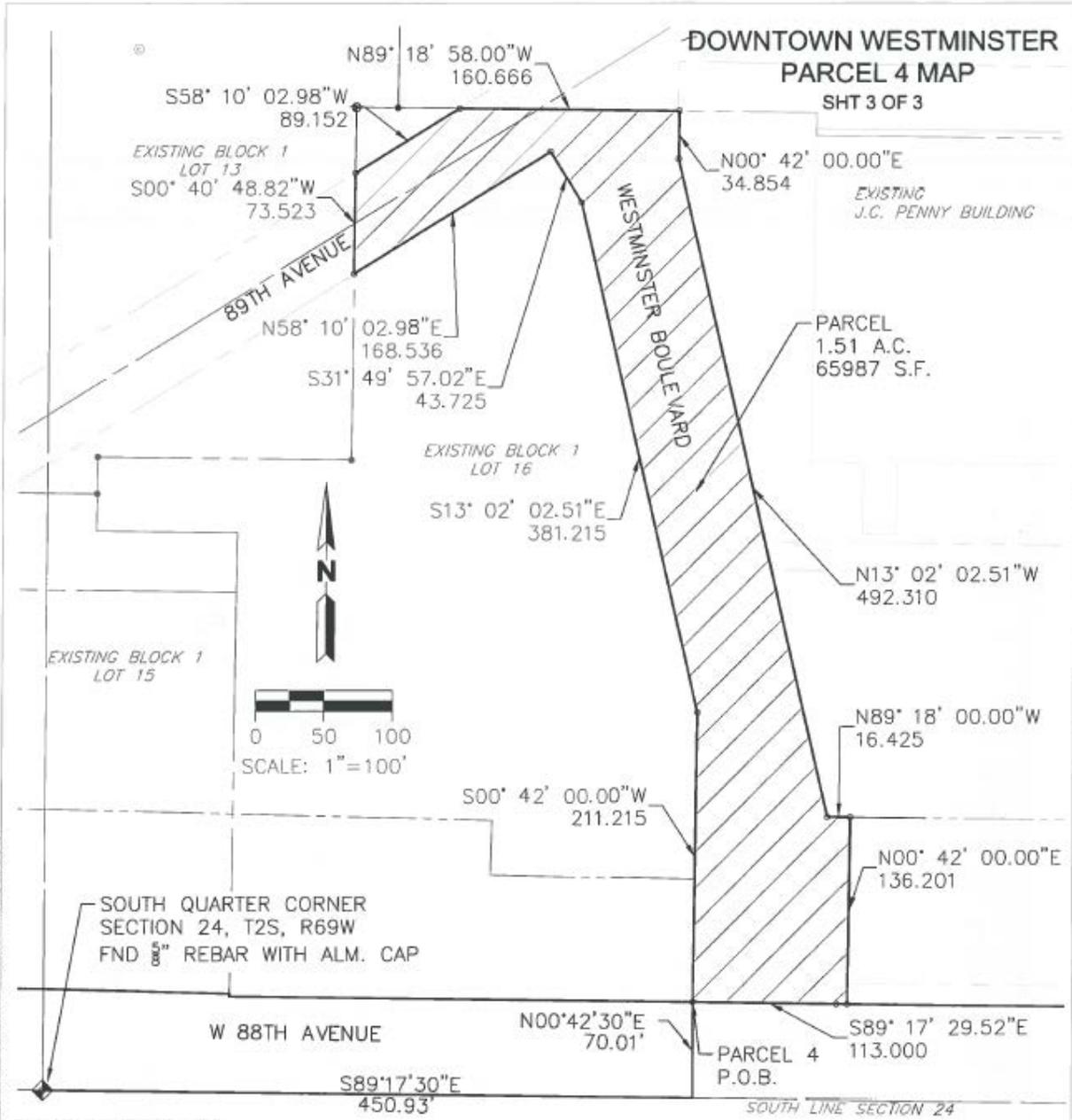
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOT 16, BLOCK 1 , WESTMINSTER MALL 2ND AMENDED PLAT AS RECORDED AT RECEPTION NUMBER 86016236, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 69 WEST, OF THE 6TH PRINCIPAL MERIDIAN; CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 24; THENCE S89°17'30"E A DISTANCE OF 450.93 FEET ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 24; THENCE DEPARTING SAID SOUTHERLY LINE, N00°42'30"E A DISTANCE OF 70.01 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 88TH AVENUE AND A POINT ON THE PROPOSED WESTERLY RIGHT-OF-WAY LINE OF WESTMINSTER BOULEVARD BEING THE POINT OF BEGINNING; THENCE DEPARTING THE NORTHERLY RIGHT-OF-WAY LINE OF SAID WEST 88TH AVENUE, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED WESTMINSTER BOULEVARD THE FOLLOWING THREE (3) CONSECUTIVE COURSES AND DISTANCES: 1) N00°42'00"E A DISTANCE OF 211.21 FEET; 2) THENCE N13°02'03"W A DISTANCE OF 381.21 FEET; 3) THENCE N31°49'57"W A DISTANCE OF 43.72 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF PROPOSED 89TH AVENUE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, S58°10'03"W A DISTANCE OF 168.54 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 16, THENCE ALONG SAID WESTERLY LINE, N00°40'49"E A DISTANCE OF 73.52 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PROPOSED 89TH AVENUE; THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PROPOSED 89TH AVENUE, N58°10'03"E A DISTANCE OF 89.15 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 16; THENCE DEPARTING THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PROPOSED 89TH AVENUE ALONG THE NORTHERLY LINE OF SAID LOT 16, S89°18'58"E A DISTANCE OF 160.67 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PROPOSED WESTMINSTER BOULEVARD; THENCE DEPARTING THE NORTHERLY LINE OF SAID LOT 16, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED WESTMINSTER BOULEVARD THE FOLLOWING FOUR (4) CONSECUTIVE COURSES AND DISTANCES: 1) S00°42'00"W A DISTANCE OF 34.85 FEET; 2) THENCE S13°02'03"E A DISTANCE OF 492.31 FEET; 3) THENCE S89°18'00"E A DISTANCE OF

16.43 FEET; 4) THENCE S00°42'00"W A DISTANCE OF 136.20 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID WEST 88TH AVENUE; THENCE DEPARTING THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED WESTMINSTER BOULEVARD ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID WEST 88TH AVENUE, N89°17'30"W A DISTANCE OF 113.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1.515 ACRES (65,987 SQUARE FEET), MORE OR LESS.



BASIS OF BEARINGS

BEARINGS ARE BASED ON THE CITY OF WESTMINSTER GIS HORIZONTAL CONTROL NETWORK. BEARINGS HAVE BEEN ROTATED 00°08'32" COUNTERCLOCKWISE FROM THE PLATTED BEARINGS FOR WESTMINSTER MALL 2ND AMENDMENT PLAT, RECORDED AT RECEPTION NO. 86016236.

NOTES:

1. THIS EXHIBIT DOES NOT CONSTITUTE A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



**MARTIN / MARTIN
CONSULTING ENGINEERS**

12499 WEST GOLFAX AVE.
LAKEWOOD, CO 80215
303.431.6100
FAX 303.431.4028

05-27-15

DRAWING LOCATION: G:\Tulika\13.0403-Downtown Westminster\ENG\LEGAL\EXHIBIT\PARCEL 4_05-27-15.dwg

EXHIBIT A-2

DESCRIPTION OF THE PARKING LICENSE AREA

Parcels A-1, B-1, and C-1

as set forth on the Site Plan for Downtown Westminster dated June 2, 2015

WEDA Agenda Item 3 C

Agenda Memorandum

Westminster Economic Development Authority Meeting
August 10, 2015



SUBJECT: J.C. Penney Lease Amendment to Accommodate Road and Infrastructure Construction for the Downtown Westminster Project

Prepared By: Jody Andrews, Deputy Executive Director

Recommended Board Action

Authorize the Executive Director to execute a Lease Amendment Agreement with J.C. Penney, in substantially the same form as attached, to accommodate road and infrastructure construction for the Downtown Westminster project, including authorization for funding the lease surrender payment in an amount not to exceed \$680,000.

Summary Statement

- The Authority, as successor in interest to the Westminster Mall Company, and J.C. Penney (JCP) are parties to a lease dated February 13, 1986 (the "Lease").
- The current Lease runs through February 28, 2021, with four renewal options to extend the Lease through February, 2040.
- The acquisition of public right of way from JCP is needed in order to accommodate the extension of Westminster Boulevard from 92nd Avenue to 88th Avenue and the installation of related utilities for the Downtown Westminster project.
- The proposed Lease Amendment Agreement releases the area needed for the road and infrastructure improvements from the current lease in exchange for a surrender payment of \$671,087.91.
- The Lease Amendment also provides JCP with temporary, substitute parking until such time as structured parking is constructed for the project.
- Adequate funds are available in the Westminster Center Urban Reinvestment Project (WURP) account for this expense.

Expenditure Required: \$ 680,000

Source of Funds: Westminster Economic Development Authority Capital Improvement Project - WURP City Participation Account

Policy Issue

Should the Authority authorize the Executive Director to execute a lease Amendment Agreement with JCP for the construction of Westminster Boulevard and other improvements related to the Downtown Westminster project?

Alternatives

- The Authority could opt not to authorize this amendment. This alternative is not recommended as it would require an eminent domain action to acquire JCP's interest in the right of way area.
- The Authority could direct Staff to negotiate different terms for the acquisition. This alternative is not recommended as it would delay the construction of the Downtown infrastructure and further negotiations would not likely result in a more favorable agreement with JCP.

Background Information

The Westminster Center Urban Reinvestment Project (Downtown Westminster Project) was approved in April 2009. Since that time, the Authority and the City have been working on implementing the Project and have made significant investments in the site. The Downtown Westminster Specific Plan was adopted in November 2014. The Authority now owns the property necessary to implement the Project and has awarded a contract to Hammerlund Construction to install Phase 1 roads and related infrastructure. However, JCP has a leasehold interest in part of the site that conflicts with the road and related infrastructure improvements for the Project. It is necessary to amend the JCP lease in order to proceed with these improvements.

Staff has been in negotiations with JCP for several months concerning a limited amendment to accommodate the construction of Westminster Boulevard and related infrastructure.

JCP and the Authority staff have reached agreement for JCP to surrender to the Authority its leasehold interest in the property required for the portion of Westminster Boulevard and related infrastructure passing through the JCP leasehold area. The Authority would submit to JCP a surrender payment based on an agreed value of \$10.17 per square foot for 65,987 square feet, totaling \$671,087.91. The recommended Lease Amendment Agreement is attached. Staff is requesting a total budget of \$680,000 for this purpose, including closing costs, source of funds to be the Westminster Economic Development Authority Capital Improvement Project - WURP City Participation Account.

JCP and Authority staff have also been negotiating the terms for a new, long term agreement that would facilitate JCP and the Authority's desire to have JCP remain as a major retail presence in the Downtown Westminster project.

Staff is working with JCP to present the Authority with a long term lease agreement in the not too distant future. In the interim, the proposed lease Amendment Agreement represents a positive step in establishing this longer term relationship and reflects both parties' interest in JCP remaining an integral part of the Downtown Westminster project.

The approval of this Lease Amendment Agreement serves the furtherance of the City's goal to make Westminster a Dynamic, Diverse Economy by allowing the Authority and the City to retain an existing business and continue to redevelop the site of the former Westminster Mall into the new Downtown Westminster.

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment: Lease Amendment