



## 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.

**Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration except when addressing the City Council during Section 12 of the agenda.**

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
  - A. Constitution Week Proclamation
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. PVC Water Pipe Purchase
  - B. 2010 Ambulance Purchase
  - C. Fleet Maintenance Cumulative Purchases of Over \$50,000
  - D. Second Reading of Councillor's Bill 25 re Budget Transfer from Utility Capital Project Reserve
  - E. Second Reading of Councillor's Bill 26 re Police Department Supplemental Appropriation – CAPTA Grant
  - F. Second Reading of Councillor's Bill 27 re 2009 2<sup>nd</sup> Quarter Budget Supplemental Appropriation
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Public Meeting on 2010 Adopted City Budget
  - B. Public Hearing re CLUP and PDP re The Registry PUD (12000 Zuni Street – Cornerstone Christian Academy)
  - C. Councillor's Bill No. 28 re CLUP Amendment for an Approximately 10.5 Acre Property at 12000 Zuni Street
  - D. Second Amended Preliminary Development Plan to The Registry Planned Unit Development
  - E. Public Hearing re Amended PDP re Westminster Village Addition to add "Thrift/Used Merchandise"
  - F. First Amended Preliminary Development Plan for Westminster Village Addition (5880 W. 88<sup>th</sup> Avenue)
  - G. Public Hearing re Appeal of the Amended ODP for Westminster Village Addition PUD
  - H. Appeal of the First Amended Official Development Plan for Westminster Village Addition PUD
  - I. Resolution No. 42 re Competitive State Historic Fund Grant Application for Bowles House Repairs
  - J. Councillor's Bill No. 29 re 2009 CDBG Fund Appropriation for American Recovery and Reinvestment Act Grant
  - K. Councillor's Bill No. 30 re Amending Title V, Chapter 14 re Art Gallery Permits
  - L. Councillor's Bill No. 31 re Lease for Dry-Land Farming on Strasburg Natural Resource Farm
  - M. Councillor's Bill No. 32 re Creating the Orchard Park Place North General Improvement District
  - N. Legal Expenses to Create the Orchard Park Place North General Improvement District
  - O. Councillor's Bill No. 33 re Temporary Moratorium on Business Licenses for Medical Marijuana Retail Establishments
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
  - A. City Council
13. Adjournment

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**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.

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, AUGUST 24, 2009 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Chris Dittman, and Councillors Bob Briggs, Mark Kaiser, Mary Lindsey, Scott Major, and Faith Winter were present at roll call. J. Brent McFall, City Manager, Jane Greenfield, Assistant City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Kaiser, to approve the minutes of the regular meeting of August 10, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that City Council planned a community service day on September 12 to do some trail completion and open space cleanup in the McKay Lake area. Staff would participate also. The next City Council meeting would be on September 14, as August 31 was the fifth Monday of the month and the following Monday, September 7, was Labor Day. City Hall would close for Labor Day. In conclusion, Mr. McFall noted that following adjournment of this meeting, the Westminster Economic Development Authority and the Westminster Housing Authority would meet.

CITY COUNCIL COMMENTS

Mayor McNally thanked those who had helped to make the Westminster Faire a resounding success. The weather had cooperated and all of the activities provided a wonderful family day. The final Movie in the Park would be on Friday night and everyone was encouraged to attend. After many years of work and collaboration, the US 36 Coalition recently celebrated completion of the EIS. The effort would conclude with a Record of Decision to be issued in December. Mayor McNally estimated 150 to 175 people had attended the celebration.

PRESENTATIONS

Mayor McNally welcomed members of the Employee Advisory Committee and the Employee Recognition Action Team and read a proclamation declaring September 7 through 11, 2009 to be City of Westminster Employee Appreciation Week. The Mayor asked that committee members convey Council's sincere thanks to the City's 995 full-time employees and gratitude for the high-quality services they provided every day. Various activities would occur throughout the week, beginning with the annual Employee Appreciation Breakfast cooked by the City Manager, Municipal Judge, City Attorney, and Department Heads. She presented the proclamation to the representatives, asking that they share it with all City employees.

CITIZEN COMMUNICATION

Lori Sennet of the Second Wind Fund explained the mission of the organization, the help it had provided to Westminster youth, and the upcoming annual fund-raising event—a Fun Walk/Run and day-long special event with bands, food vendors, and lots of fun activities for the entire family. She invited participation in this worthwhile cause.

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: acceptance of the July 2009 Financial Report; acceptance of the first and second quarter 2009 Insurance Claim Reports; based on the report and recommendation of the City Manager, find that the public interest would best be served by authorizing the negotiated purchase from the sole source provider, Lee Mathews Equipment Company, of two new 500-gallon-per-minute water pumps and various utilities system equipment in an amount not to exceed \$80,000; based on the report and recommendation of the City Manager, find that the public interest would best be served by authorizing the negotiated purchase from the sole source provider, National Meter & Automation, Inc., of new water meters, replacement transponders, chambers and disc assemblies, and various associated parts in the amount of \$318,225; authorize the City Manager to execute contract Change Order No. 3 with Asphalt Specialties Company, Inc. in the amount of \$122,500 for water main replacement trench patching; authorize the City Manager to execute an \$86,800 contract with Levi Contractors, Inc. to complete wastewater collection system repairs and authorize a 10% contingency budget of \$8,680; authorize the City Manager to enter into an agreement with Smith Partners, LLC regarding share distribution in the Harris Park Irrigation Company; determine the public interest would be best served by ratifying and approving Utilities Operations Division cumulative purchases in 2009 with various waterworks supply vendors that may exceed the \$50,000 limit for the year 2009, authorize cumulative purchases from Dana Kepner Company, HD Waterworks Ltd. and Ferguson Waterworks in amounts not to exceed \$100,000 for each vendor for 2009; authorize the City Manager to sign a Memorandum of Understanding for Prequalified Building Departments for Public School Construction with the Colorado Department of Labor and Employment, Division of Oil and Public Safety; authorize the City Manager to execute an Intergovernmental Agreement with the Urban Drainage and Flood Control District for the construction of drainage improvements on Airport Creek at the confluence of Big Dry Creek; authorize the City Manager to execute a \$243,869 contract with Front Range Roofing Systems, LLC for the roof replacement at the City's Municipal Court Complex contingent upon City Council authorization of the 2008 carryover appropriation, and authorize a \$36,580 (15%) contingency; final passage of Councillor's Bill No. 23 appropriating FY2008 carryover funds into the FY2009 budgets of the General, General Reserve, General Fund Stabilization Reserve, Fleet, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Golf Course, Sales & Use Tax, General Capital Outlay Replacement and Debt Service Funds; and final passage of Councillor's Bill No. 24 appropriating 2009 Community Development Block Grant funds in the amount of \$559,370.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. There was no request. Councillor Major moved to approve the consent agenda as presented. The motion was seconded by Mayor Pro Tem Dittman and carried.

### PUBLIC HEARING ON FUNDING FOR RECLAIMED WATER TREATMENT

At 7:20 p.m. the Mayor opened a public hearing to provide opportunity for public input on an application to pursue funding for expansion of the Reclaimed Water Treatment Facility through the Colorado Water Resources and Power Development Authority loan program and/or City-issued revenue bonds. The expansion was planned in two phases with Phase 1 to begin this fall and Phase 2 in the spring of 2010. Council had approved debt financing of approximately \$15.5 million in the 2009-2010 budget. Staff intended to finance the project through the most cost-effective manner. Funding options included federal stimulus funds and state revolving funds. If those funding sources were not obtained, Staff would pursue funding through other lending agencies. Staff was present to answer any questions. There were none. Mayor McNally opened the hearing for public comment. There was none. At 7:21 p.m. the hearing was closed.

### AUTHORITY GRANTED TO PURSUE FUNDING FOR RECLAIMED WATER TREATMENT EXPANSION

Councillor Kaiser moved, seconded by Major, to authorize Staff to pursue funding for expansion of the Reclaimed Water Treatment Facility through the Colorado Water Resources and Power Development Authority loan program and/or City-issued revenue bonds. The motion carried with all Council members voting affirmatively.

RECLAIMED WATER INFLUENT STORAGE TANK AND PUMP STATION

Mayor Pro Tem Dittman moved to find, based on the City Manager's report and recommendation, that the public interest would best be served by authorizing the City Manager to execute an agreement with Overland contracting, Inc., as the sole source for construction of the reclaimed water influent storage tank and pump station in an amount not to exceed \$6,490,196 and authorize a 10% contingency for a total expenditure of \$7,140,196. Councillor Kaiser seconded the motion and it passed unanimously.

COUNCILLOR'S BILL NO. 25 TRANSFERRING UTILITY CAPITAL PROJECT RESERVE FUNDS

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Kaiser, to pass Councillor's Bill No. 25 on first reading transferring \$7,390,196 from the Utility Capital Project Reserve Fund in accordance with City Council's adopted budget authorization. At roll call the motion passed unanimously.

COUNCILLOR'S BILL NO. 26 RE SUPPLEMENTAL APPROPRIATION TO POLICE DEPARTMENT

It was moved by Councillor Major and seconded by Councillor Lindsey to pass Councillor's Bill No. 26 on first reading authorizing a \$47,604 supplemental appropriation reflecting the Police Department's receipt of Colorado Auto Theft Prevention Authority Grant funds. At roll call, the motion carried unanimously.

AUTOMATED LICENSE PLATE READER TECHNOLOGY EQUIPMENT PURCHASE

Upon a motion by Councillor Major, seconded by Mayor Pro Tem Dittman, the Council voted unanimously to determine that the public interest would be best served by approving the Police Department's purchase of Automated License Plate Reader Technology equipment from ELSAG North America up to a maximum of \$61,425.

COUNCILLOR'S BILL NO. 27 RE 2009 2<sup>ND</sup> QUARTER BUDGET SUPPLEMENTAL APPROPRIATION

Councillor Winter moved to pass Councillor's Bill No. 27 on first reading providing for supplemental appropriation of funds to the 2009 budget of the General, Parks Open Space & Trails, and General capital Improvement Funds. Councillor Kaiser seconded the motion, and it passed unanimously on roll call vote.

RESOLUTION NO. 38 RE 1<sup>ST</sup> AMENDMENT TO MANDALAY GARDENS URBAN RENEWAL PLAN

Clerk's Note: Mayor McNally announced a potential conflict of interest due to employment, passed the gavel to the Mayor Pro Tem, and left Council Chambers for this item and consideration of Resolution No. 39.

It was moved by Councillor Briggs, seconded by Councillor Kaiser, to adopt Resolution No. 38 approving the First Amendment to the Mandalay Gardens Urban Renewal Plan. At roll call, the motion passed by a 6:1 margin with Mayor McNally abstaining.

RESOLUTION NO. 39 APPROVING DOCUMENTS TO REFUND 2006 BONDS FOR MANDALAY URA

It was moved by Councillor Major and seconded by Councillor Kaiser to adopt Resolution No. 39 approving documents for refunding of the Westminster Economic Development Authority (WEDA) Series 2006 Bonds, to which the City is a party, including the Replenishment Resolution, the City Cooperation Agreement with WEDA and the Letter of Credit Reimbursement Agreement. At roll call, the motion passed on a 6:1 vote with Mayor McNally abstaining.

Clerk's Note: Mayor McNally returned to Council Chambers, reclaimed the gavel, and presided over the remainder of the meeting.

RESOLUTION NO. 40 RE REIMBURSEMENT OF CIP EXPENSES BEFORE 2010 DEBT FINANCINGS

Upon a motion by Councillor Kaiser, seconded by Mayor Pro Tem Dittman, the Council voted unanimously on roll call vote to adopt Resolution No. 40 permitting reimbursement to the City's Water and Wastewater Utility Enterprise of soft and hard costs incurred for capital projects from the proceeds of bond issuance, loans, or other forms of indebtedness that the utility anticipated undertaking in 2010.

RESOLUTION NO. 41 RE 2009 PRIVATE ACTIVITY BOND ALLOCATION TO THE WHA

It was moved by Councillor Winter and seconded by Councillor Kaiser to adopt Resolution No. 41 authorizing the assignment of \$4,843,305 of the City's private activity bond allocation for 2009 to the Westminster Housing Authority for the qualified purposes set forth in the resolution and authorize the Mayor to execute the necessary document. The motion passed unanimously at roll call.

ADJOURNMENT

It was moved by Councillor Kaiser, seconded by Mayor, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:28 p.m.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor



## Agenda Item 6 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
September 14, 2009



**SUBJECT:** Constitution Week Proclamation

**Prepared By:** Mary Joy Barajas, Executive Secretary

### Recommended City Council Action

Councillor Briggs to proclaim September 17-23 as Constitution Week in Westminster in recognition of the two hundred twenty-second anniversary of the drafting of Constitution of the United States of America.

### Summary Statement

- Thursday, September 17, 2009 begins the national celebration of Constitution Week.
- Joyce Thomas, member of the Daughters of the American Revolution, chairperson for Constitution Week recognition activities, and Federal Heights Mayor will be in attendance at Monday night's meeting to accept the proclamation.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

This yearly observance was started by the Daughters of the American Revolution (DAR). In 1955, the Daughters petitioned Congress to set aside September 17-23 annually to be dedicated for the observance of Constitution Week. The resolution was later adopted by the U.S. Congress and signed into Public Law #915 on August 2, 1956 by President Dwight D. Eisenhower.

The aims of the celebration are to (1) emphasize citizens' responsibilities for protecting and defending the Constitution, preserving it for posterity; (2) inform the people that the Constitution is the basis for America's great heritage and the foundation for our way of life; and (3) encourage the study of the historical events which led to the framing of the Constitution in September 1787.

The United States of America functions as a Republic under the Constitution, which is the oldest document still in active use that outlines the self-government of a people. This landmark idea that men had the inalienable right as individuals to be free and live their lives under their own governance was the impetus of the American Revolution. Today, the Constitution stands as an icon of freedom for people around the world.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Proclamation

**WHEREAS,** It is the privilege and duty of the American people to commemorate the two hundred twenty-second anniversary of the drafting of the Constitution of the United States of America with appropriate ceremonies and activities: and

**WHEREAS,** Every American shares in this legacy of liberty, and we are grateful for the courage, conviction, and sacrifice of all those who have helped preserve and uphold the principles of a free society. As we remember the enduring importance of the Constitution we also recognize our responsibility as citizens to respect and defend the values of our founding, and participate in the unfolding story of freedom.

**WHEREAS,** In celebration of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of August 2, 1956 (36 U.S.C., 108, as amended), requests the proclamation that the week of September 17 and ending September 23 of each year as “Constitution Week.”

**NOW, THEREFORE I, Nancy McNally, Mayor of the City of Westminster, CO do hereby proclaim on behalf of the entire City Council and Staff the week of September 17 through the 23 to be**

### **CONSTITUTION WEEK**

and urge all citizens to study the Constitution and reflect on the privilege of being an American with all the rights and responsibilities that privilege involves.

Signed this 14<sup>th</sup> day of September, 2009.

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Nancy McNally, Mayor



## Agenda Item 8 A

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** PVC Water Pipe Purchase

**Prepared By:** Richard A. Clark, P.E., Utilities Operations Manager  
Andy Mead, Utilities Operations Coordinator

**Recommended City Council Action**

Award the bid for the purchase of PVC water line pipe to Mountain States Pipe and Supply in the amount of \$91,990.

**Summary Statement**

- The Purchasing Division issued formal bids through Demand Star for the purchase of PVC water line pipe on August 17, 2009.
- There were four bids received and opened on September 1, 2009, with the lowest responsive bid received from Mountain States Pipe and Supply.
- Adequate funds were budgeted in the Utilities Operations Budget and are available for this purchase.

**Expenditure Required:** \$91,990

**Source of Funds:** Utility Fund - Public Works and Utilities Department, Utilities Operations Division Operating Budget

**Policy Issue**

Should the City accept the bid submitted by Mountain States Pipe and Supply for the 8-inch and 4-inch PVC water line pipe?

**Alternative**

The alternative would be not to purchase the PVC water pipe at this time, and potentially delay needed water line replacements. This could increase the risk of pipe failures and increase customer water supply interruptions and is not recommended.

**Background Information**

The PVC water pipe will be utilized by the Utilities Operations Division Construction Crew for the water line replacement program. The Utilities Operations Division construction crew replaces approximately 18,000 feet (3.4 miles) of deteriorated ductile and cast iron pipe per year with the PVC pipe in order to reduce the frequency and number of water line failures that customers experience.

The 2009 PVC Pipe purchase bid included 15,500 feet of PVC water pipe, which included 15,000 feet of 8-inch and 500 feet of 4-inch PVC pipe. The cost per foot for the 8-inch pipe is \$6.07 and for the 4-inch pipe is \$1.88. The cost for PVC pipe is partially based on the price of oil and the fluctuating oil prices in the market. In 2008, the cost for 8-inch pipe was \$7.35 per foot, and the cost for 4-inch pipe was \$2.22 per foot.

Bids were received from four vendors. These vendors/bids included:

<u>VENDORS:</u>	<u>H.D. Supply Waterworks</u>	<u>Dana Kepner</u>	<u>CPS Distributors Inc.</u>	<u>Mountain States</u>
<b>Total Bid Price:</b>	\$101,210	\$ 101,660	\$110,199	\$91,990
15,000 ft. 8-inch PVC pipe	\$100,200	\$100,650	\$109,105	\$91,050
500 ft. 4-inch PVC pipe	\$1,010	\$1,010	\$1,094	\$940

This purchase helps achieve the City Council’s Strategic Plan Goal of “Financially Sustainable City Government” by contributing to the objective of well-maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** 2010 Ambulance Purchase

**Prepared By:** Rick Spahn, EMS Field Coordinator

**Recommended City Council Action**

Based on the recommendation of the City Manager, the City Council finds that the public interest will be best served by a negotiated contract with a single vendor, Front Range Fire Apparatus, for the purchase of a replacement ambulance; and, award the contract to Front Range Fire Apparatus, authorize the City Manager to execute the contract in an amount not to exceed \$118,500.

**Summary Statement**

- City Council has allocated \$130,000 in the 2010 General Capital Outlay Replacement Fund (GCORF) for the replacement of one ambulance.
- The new ambulance will replace a 2004 Ford Road Rescue ambulance (unit #5210), currently in reserve status, which has over 70,000 miles. This purchase is consistent with the replacement schedule as defined by Fleet Maintenance and the Fire Department. The new ambulance will be placed in a front line status and tentatively slated for Fire Station 6.
- Front Range Fire Apparatus has offered \$13,000 as the trade-in value for unit #5210. The requested expenditure includes the deduction of this trade-in.
- The vendor agrees to deliver and accept payment for the ambulance after January 1, 2010, when budget funds are available. Delivery is promised 180 days after the signing of the contract.
- Ordering the ambulance now and taking delivery in 2010 will save approximately \$8,000 in engine cost increases that will be taking place industry-wide in 2010 due to a third and final emissions requirement for diesel truck engines sold in the United States.
- Front Range Fire Apparatus has been awarded the past three ambulance bids due to highly competitive pricing, with exceptional customer service, and providing a high quality product. The purchase of the ambulance will move the department closer to ambulance standardization, which increases efficiency.

**Expenditure Required:** \$118,500

**Source of Funds:** 2010 General Capital Outlay Replacement Fund

**Policy Issue**

Should the City enter into a single vendor agreement with Front Range Fire Apparatus, accepting the ambulance purchase proposal of \$118,500?

**Alternatives**

1. Direct Staff to conduct a formal bid process. This is not recommended because Staff does not feel a bid process will generate a lower purchase price and that the proposal offered by Front Range Fire Apparatus is timely and cost effective. Staff also believes that it is in the City's best interest to accept the proposal offered by Front Range Fire Apparatus that is a substantial cost savings.
2. Direct Staff to delay the purchase of this ambulance. Staff does not recommend this alternative. Delayed approval will result in an increase in pricing and reduced chassis availability. The purpose for seeking approval at this time is to take advantage of the availability of a 2009 engine on a 2010 chassis. Changes to the automotive emissions standards are expected for the coming year. The purchase of a 2010 engine/chassis would increase cost by approximately \$8,000.

**Background Information**

The projected life expectancy of an ambulance in Westminster has been five to six years, with three to four years of front-line service and two years as a reserve unit. A Fire Department ambulance will typically have 70,000 to 100,000 miles on them and each will have responded to over 7,000 calls by the time they are replaced.

Ford Motor Company has indicated that they will no longer produce the E450 series chassis; therefore, availability is in limited supply. Front Range Fire Apparatus has indicated that they have a limited supply of the 2009/2010 Ford E450 series and have included one of these chassis in their proposal.

Front Range Fire Apparatus is the regional distributor of MEDTEC ambulances and Pierce fire apparatus. They are designated as the sole vendor of all major fire apparatus purchased by the City of Westminster. City Staff enjoys a long-term positive relationship with Front Range Fire Apparatus due to exceptional customer service, quality products and competitive pricing. Past purchases have demonstrated that Front Range Fire Apparatus continually meets or exceeds all specification requirements. In addition, they were the low bidder in the 2007 and 2008 bid process. MEDTEC ambulances continually demonstrate high quality manufacturing by holding up to the day-to-day wear and tear associated with providing emergency medical services. Front Range Fire Apparatus keeps Staff apprised of industry trends, manufacturing changes and continually works closely with Staff to ensure superior value in fire apparatus and ambulances purchases. Staff continues to strive for standardization of the ambulance fleet and the purchase of this ambulance supports this endeavor. Significant savings in personnel training, equipping the ambulances and Fleet maintenance costs are reduced through a standardized program.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 C

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Fleet Maintenance Cumulative Purchases of Over \$50,000

**Prepared By:** Jeffery Bowman, Fleet Manager

**Recommended City Council Action**

Determine that the public interest will be best served by approving Fleet Maintenance cumulative purchases in 2009 with Detroit Transmission Company and TCI Tire Centers for purchases not to exceed \$75,000 for each of the two vendors.

**Summary Statement**

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- The Fleet Maintenance Division uses a number of vendors to provide parts and/or services required to maintain City of Westminster vehicles. Total aggregate purchases from two of these vendors, Detroit Transmission Company and TCI Tire Centers, will likely exceed \$50,000 each during 2009. Staff is asking for approval of purchases not to exceed \$75,000 for each of the two vendors through 2009.
- Adequate funds were previously appropriated in the 2009 Fleet Maintenance Commodities Fund and are available for the needed purchases.

**Expenditure Required:** \$150,000

**Source of Funds:** 2009 Fleet Maintenance Fund

**Policy Issue**

Should Council approve the cumulative purchase of vehicle parts and services from various vendors that total over \$50,000 per vendor, but not to exceed \$75,000 in 2009?

**Alternative**

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more prudent approach is to treat the smaller transactions as cumulative larger purchases with the vendors that are subject to Council approval.

**Background Information**

The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000. Fleet Maintenance has identified two vendors where the total cumulative purchases or expenses will likely exceed \$50,000 for the year 2009 and thus require Council authorization. Staff is seeking approval for these expenditures for the calendar year 2009. Funds are available in the Fleet Maintenance Commodities accounts.

Fleet Maintenance uses a variety of part and service vendors to provide maintenance and repair on City vehicles by Fleet personnel. The 2009 Fleet Maintenance Commodities budget contains \$1,153,376 in line items for vehicle fuel, parts, tires and repair services. These on-going purchases include routine, competitively bid parts and services. Some are sole-source purchases since the needed item(s) are only stocked by limited or sole vendors in our area.

To date, Fleet Maintenance has identified two vendors that are used on a regular basis that may accumulate over \$50,000 in orders during 2009. These vendors are: Detroit Transmission Company and TCI Tire Centers. Detroit Transmission Company frequently provides the best bid for automatic transmission rebuild work on both light and heavy duty vehicles. Their services during 2009 have been predominately related to repairs on Police patrol vehicles and large Fire Department apparatus. TCI Tire Centers has the State Bid on tires used for the City's Fire apparatus and is the most frequently used vendor for recap tires for heavy duty trucks.

At this point in the year, neither vendor has exceeded the \$50,000 purchasing threshold. However, Staff anticipates that it will be purchasing additional materials and services from these vendors in the remainder of the year that could surpass \$50,000 each, but not exceed \$75,000 each. The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified in advance and brought to City Council for approval.

This approach helps achieve the City Council's Strategic Plan Goals of "Safe and Secure Community" and "Financially Sustainable City Government" by meeting the following objectives: the timely response to emergency calls; and maintenance and improvement of neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Second Reading of Councillor’s Bill No. 25 re Budget Transfer from Utility Capital Project Reserve

**Prepared By:** Kent W. Brugler, Senior Engineer, Capital Projects and Budget Management

**Recommended City Council Action**

Pass Councillor’s Bill No. 25 on second reading transferring \$7,390,196 from the Utility Capital Project Reserve Fund in accordance with City Council’s adopted budget authorization.

**Summary Statement**

- Councillor’s Bill No. 25 was passed on first reading by City Council on August 24, 2009.
- At the August 24, 2009 City Council meeting, Council authorized the City Manager to execute an agreement with Overland Contracting, Inc. as the sole source for construction of the reclaimed water influent storage tank and pump station in an amount not to exceed \$6,490,196, and authorized a 10% contingency in the amount of \$650,000 for a total expenditure of \$7,140,196.
- A new covered influent storage tank and pump station are required to adequately and reliably supply current and future reclaimed water demands from the Big Dry Creek Wastewater Treatment Facility to the Reclaimed Water Treatment Facility.
- City Council approved \$15,575,000 in funding for the design and construction of these projects in the 2009/2010 budget, with the costs to be funded through a debt issue in 2010. The approved 2010 budget for the construction of these improvements is \$14,186,000. Since it was planned to debt finance these improvements in 2010, City Council needs to appropriate the funds for this phase of the construction costs at this time.
- Due to the current favorable construction climate and the desire to start the construction of the storage tank and pump station in 2009 for use during the 2010 reclaimed water season, City Staff recommends that the construction costs be funded in 2009 from the Utility Capital Project Reserve Fund and be reimbursed by the debt funding later in 2010.
- To assist staff with the construction management of this project, the City will also contract with a firm to provide Owner’s Representative services at an estimated cost of \$250,000. This contract will be presented to City Council for award at a later date, but these costs have been included in this \$7,390,196 request for the supplemental appropriation.

**Expenditure Required:** \$7,390,196

**Source of Funds:** Utility Fund Capital Reserve Fund  
Utility Fund Capital Improvements  
- Reclaimed Water Treatment Facility Expansion Project

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **25**

SERIES OF 2009

INTRODUCED BY COUNCILLORS  
Dittman - Kaiser

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE WATER AND UTILITY  
RESERVE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE  
2009 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the Water and Utility Reserve Funds initially appropriated by Ordinance No. 3432 is hereby increased by \$14,780,392. This appropriation is due to the transfer of reserve funds.

Section 2. The \$14,780,392 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 C&D, dated August 24, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Water Fund	\$7,390,196
Utility Reserve Fund	\$7,390,196
Total	<u>\$14,780,392</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 24th day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 14<sup>th</sup> day of September, 2009

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



WESTMINSTER  
COLORADO

Agenda Item 8 E

Agenda Memorandum

City Council Meeting  
September 14, 2009



**SUBJECT:** Second Reading of Councillor's Bill No. 26 re Police Department Supplemental Appropriation

**Prepared By:** Lee Birk, Chief of Police

**Recommended City Council Action**

Pass Councillor's Bill No. 26 on second reading authorizing a supplemental appropriation in the amount of \$47,604 reflecting the Police Department's receipt of the Colorado Auto Theft Prevention Authority Grant funds.

**Summary Statement**

- City Council action is requested to adopt the attached Councillor's Bill on second reading authorizing a supplemental appropriation to the 2009 Police Department General Fund operating budget.
- City Council authorized the Police Department to pursue a 2009 Multi-Jurisdictional Colorado Automobile Theft Prevention Authority Grant (CATPA). The department received notification on June 23, 2009 that the grant was approved for the total amount of \$47,604 and stipulates that the funding for the Automated License Plate Reader equipment is by reimbursement only. The police department is requesting approval to pre-appropriate the grant funds to the appropriate expenditure account.
- This Councillor's Bill was passed on first reading August 24, 2009.

**Expenditure Required:** \$47,604

**Source of Funds:** 2009 General Fund - Police Department Operating Budget

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **26**

SERIES OF 2009

INTRODUCED BY COUNCILLORS  
**Major - Lindsey**

**A BILL  
FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE GENERAL FUND AND  
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED  
REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$47,604. This appropriation is due to the receipt of a Colorado Auto Theft Prevention Authority Grant.

Section 2. The \$47,604 increase in the General Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 E&F dated August 24, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$47,604</u>
Total	<u>\$47,604</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 24<sup>th</sup> day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14<sup>th</sup> day of September, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



## Agenda Item 8 F

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Second Reading of Councillor's Bill No. 27 re 2009 2<sup>nd</sup> Quarter Budget Supplemental Appropriation

**Prepared By:** Gary Newcomb, Accountant

**Recommended City Council Action**

Pass Councillor's Bill No. 27 on second reading providing for supplemental appropriation of funds to the 2009 budget of the General, Parks Open Space & Trails, and General Capital Improvement Funds.

**Summary Statement**

- City Council action is requested to adopt the attached Councillor's Bill on Second reading authorizing a supplemental appropriation to the 2009 budget of the General, Parks Open Space & Trails, and General Capital Improvement Funds.
  - General Fund amendments total: \$63,700
  - Parks Open Space & Trails Fund amendments total: \$142,996
  - General Capital Improvement Fund amendments total: \$224,128
- This Councillor's Bill was passed on first reading August 24, 2009.

**Expenditure Required:** \$430,824

**Source of Funds:** The funding sources for these expenditures include grants, program fees, reimbursements, transfers, cash-in-lieu, code settlement, and tap fee credits.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **27**

SERIES OF 2009

INTRODUCED BY COUNCILLORS  
**Winter - Kaiser**

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE GENERAL, PARKS OPEN SPACE & TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General, Parks Open Space & Trails, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$430,824. This appropriation is due to the receipt of funds from grants, program fees, reimbursements, transfers, cash-in-lieu, code settlement, and tap fee credits.

Section 2. The \$430,824 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 G dated August 24, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$63,700
Parks Open Space & Trails Fund	142,996
General Capital Improvement Fund	<u>224,128</u>
Total	<u>\$430,824</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 24<sup>th</sup> day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14<sup>th</sup> day of September, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



## Agenda Item 10 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
September 14, 2009



**SUBJECT:** Public Meeting on 2010 Adopted City Budget

**Prepared By:** Barbara Opie, Budget & Special Projects Manager

#### **Recommended City Council Action**

Hold a public meeting on the 2010 Adopted City Budget and receive citizen comments.

#### **Summary Statement**

- The 2010 Budget was adopted in October 2008 with the official adoption of the two-year budget by City Council. As part of the two-year budget process, the public is provided an opportunity to receive a financial update and make requests prior to moving into the second year of a two-year adopted budget. At Monday night's meeting, Staff will present a brief update on the City's finances and an overview of the 2010 Adopted Budget to be followed by any citizen comments and/or requests.
- Public meetings regarding the 2009 and 2010 Budget were held on June 9 and July 28, 2008. A public hearing on the 2009 and 2010 Budget was held on September 8, 2008.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

Council officially adopted the 2009 and 2010 Budgets in October 2008. As part of the two-year budget process, a financial update/budget review is to be conducted in September 2009 to review any recommended modifications to the 2010 Adopted Budget, review any new citizen requests, and address any miscellaneous financial issues that Staff or Council wishes to raise.

City Council is scheduled to hold a public meeting to receive input on the 2010 Adopted Budget at the Monday, September 14, City Council meeting. Staff will make a brief presentation at Monday night's City Council meeting on the 2010 Adopted Budget and the City's current financial status. This public meeting is intended to receive citizen requests, comments and suggestions for 2010.

In April 2008, City Council identified the goals for 2009 and 2010; these goals were revisited and re-confirmed by City Council in April 2009. The City Council Goals are listed below:

- Financially Sustainable City Government Providing Exceptional Services
- Safe and Secure Community
- Vibrant Neighborhoods and Commercial Areas
- Strong, Balanced Local Economy
- Beautiful and Environmentally Sensitive City

The direction provided by City Council through these goals assisted City Staff when they prepared the 2009 and 2010 City Budget. Other considerations that go into developing a comprehensive budget are department priorities that strive to maintain existing service levels and citizen/neighborhood input.

In November of 2000, Westminster voters approved a City Charter amendment that allows the City Council to adopt a formal two-year budget. Staff prepared a two-year budget for several years prior to this Charter amendment; however, City Council could only officially adopt the first year of the two-year budget. With the adoption of the 2003/2004 Budget, City Council officially adopted the City's first two-year budget. The 2009/2010 Adopted Budget represents the City's fourth officially adopted two-year budget.

The 2009/2010 Adopted Budget document has been available to the public in the City Clerk's Office since January 1, 2009. Monday's public meeting was advertised in the *Westminster Window*, *Westsider*, *City Edition*, and *Weekly Edition*; on cable Channel 8 and the City's website; and at various public meetings. Public meetings regarding the 2009 and 2010 Budget were held on June 9 and July 28, 2008. A public hearing was held on September 8, 2008.

Any requests submitted at Monday's public meeting on the 2010 Adopted Budget will be reviewed and researched by Staff. Staff will return with follow up and recommendations at the City Council Budget Review on September 21. Any proposed amendments that result from City Council's Budget Review on September 21 will be presented to City Council for final consideration at the October 12 City Council meeting.

**SUBJECT:** Public Meeting on 2010 Adopted City Budget

Page 3

Staff will make a brief presentation at Monday night's City Council meeting on the 2010 Adopted Budget and provide an update on the City's current financial status.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Councillor's Bill No. 28 re a Comprehensive Land Use Plan Amendment Designation Change from Business Park to Public/Quasi-Public and Second Preliminary Development Plan Amendment to The Registry Planned Unit Development

**Prepared By:** Patty McCartney, Planner III

**Recommended Planning Commission Action**

1. Hold a public hearing.
2. Pass Councillor's Bill No. 28 on first reading approving the Comprehensive Land Use Plan Amendment requesting a change in the land use designations from "Business Park" to "Public/Quasi-Public" for an approximately ten and one-half acre property located at 12000 Zuni Street on the northeast corner of 120<sup>th</sup> Avenue and Zuni Street. This recommendation is based on a finding that the proposed amendment will be in the public good and:
  - a) The proposed amendment is in need of revision; and
  - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
  - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
  - d) The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
3. Approve the Second Amended Preliminary Development Plan to "The Registry" Planned Unit Development. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.
  - a) The proposed land use for a private school (Parcel C) and mapping revisions in the Planned Unit Development are compatible and harmonious with existing public and private development in the surrounding area.
  - b) The proposed land use for a private school within the Planned Unit Development and mapping revisions have no significant adverse impacts upon existing or future land uses nor upon future development of the immediate area.
  - c) The proposed land use for a private school on an existing developed site provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.

**Summary Statement**

- The Purebred Arabian Trust, Nancy Ciancio Trustee, and the City of Westminster are property owners of the Preliminary Development Plan (PDP) area.
- The Comprehensive Land Use Plan (CLUP) designation for the site is Business Park. The CLUP amendment would change the "Business Park" designation to "Public/Quasi-Public" for approximately 10.5 acres (of the 40 total acres in the PDP) generally located at the northeast corner of 120<sup>th</sup> Avenue and Zuni Street.
- The Preliminary Development Plan (PDP) for "the Registry" PUD was approved in 1979. The First Amended PDP for "The Registry" PUD and Official Development Plan (ODP) for the Arabian Horse Center were approved in 1981.

- The currently approved PDP area is approximately 40 acres in size. The proposed Amended PDP includes a mapping correction that would reduce this area to approximately 32.3 acres to remove the open space and Federal Parkway right-of-way that was purchased by the City of Westminster in 2006.
- The First Amended PDP allows Light Industrial/Office use for approximately 20 acres and Office, Library, Museum, Exhibition Ampitheatre, and Exhibition Housing – (20 Horses) on the remaining 20 acres for the Arabian Horse Office Park.
- The proposed private school parcel (Parcel C) is approximately 10.5 acres of the original Arabian Horse Office Park and would change allowed uses in the PDP from Office to Private School. The remaining portion of the Arabian Horse Office Park parcel (Parcel B) would only allow Office use. Parcel A would be reduced to approximately 12.3 acres and would continue as Light Industrial/Office uses.
- The applicant has requested a CLUP Amendment to change designation from “Business Park” to “Public/Quasi-Public” and a PDP Amendment to allow a private school at the existing Arabian Horse Center property. The private school would have a maximum of 600 students for preschool and K-12<sup>th</sup> grades.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

### **Planning Commission Recommendation**

The Planning Commission reviewed this proposal on August 25, 2009, and voted unanimously (7-0) to recommend that the City Council approve the following:

- 1) A Comprehensive Land Use Plan Amendment requesting a change in the land use designation from Business Park to Public/Quasi-Public; and
- 2) The Second Preliminary Development Plan Amendment to "The Registry" Planned Unit Development.

One citizen spoke in support of the proposal and one citizen was concerned with traffic issues without a traffic signal at the intersection of 120<sup>th</sup> Avenue and Zuni Street. Staff informed the Planning Commission that a traffic signal for this intersection has been warranted and approved by the Colorado Department of Transportation.

### **Policy Issue**

Should the City Council deny the Comprehensive Land Use Plan amendment and Second Planned Development Plan amendment for a private school use? Denial would retain the current commercial development for office and exhibition horse related uses allowed for the existing Arabian Horse Center building and property.

### **Alternative**

Deny the CLUP amendment and Second PDP amendment for "The Registry" Planned Unit Development.

### **Background Information**

#### Nature of Request

The applicant, Cornerstone Christian Academy, would like to relocate its private school into the existing Arabian Horse Center building and property. The applicant is proposing a CLUP amendment to change the land use for Parcel C only from "Business Park" to "Public/Quasi-Public" and PDP amendment to allow the private school use. The use for Parcel C would change from Office and Library, Museum, Exhibition Ampitheatre, and Exhibition Housing – (20 Horses) for the equestrian center to Private School only. With the exception of removing the equestrian center related uses on Parcel B, uses will remain the same on the other parcels in the PDP. The proposed private school will have an initial enrollment of 225 students and a maximum enrollment of 600 students for preschool and kindergarten through 12<sup>th</sup> grade. The current CLUP designation and amended PDP does not allow the private school use.

#### Location

The site is generally located at the northeast corner of 120<sup>th</sup> Avenue and Zuni Street and continues north to Federal Parkway. (Please see attached vicinity map.)

#### Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires the owner of the property requesting an amendment to the CLUP to prove that the amendment is in the public good and is in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must, "Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed." The proposed change from "Business Park" to "Public/Quasi-Public" at this location would provide additional educational opportunities for surrounding residential neighborhoods, commercial developments and the City of Westminster. The CLUP amendment and revision to "Public/Quasi-Public" would allow the private school.

2. The proposed amendment must, "Be in conformance with the overall purpose, intent, goals, and policies of the Plan." Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:

- Goal B2 – Preserve existing neighborhoods, revitalize declining neighborhoods, and develop new neighborhoods that are safe and attractive, and served by public facilities and convenient commercial uses.

The City's goal to preserve existing neighborhoods and develop new neighborhoods is to encourage educational facilities that are permitted as a public/quasi-public use that enhance residential neighborhoods and mixed-use developments.

- Policy B2b - Promote neighborhood revitalization through creative infill and mixed-use development.

The City is encouraging creative redevelopment that retains the character of unique existing developments with educational facilities that provide elementary and secondary educational opportunities to surrounding residential neighborhoods, commercial and office park developments.

Based upon these goals and policies, staff has found this proposed amendment to be in conformance with the overall purpose, intent, goals, and policies of the Plan.

3. The proposal must, "Be compatible with existing and surrounding land uses." The proposal is compatible with existing and surrounding land uses in that it will provide an educational facility and opportunity for surrounding residential uses immediately to the west and south and is compatible with adjacent office and commercial uses.

4. The proposal must, "Not result in detrimental impacts to the City's existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City." While the development will have impacts, they will be minimized with the use of an existing facility and impacts have been mitigated to the satisfaction of City Staff on the proposed Administrative Amended ODP.

#### 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 of the City Council hearing was published in the Westminster Window on September 3, 2009.
- 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. Three signs were posted on the property on September 4, 2009.
- 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 September 4, 2009.

#### Applicant/Property Owner

Applicant:

Cornerstone Christian Academy

12460 1<sup>st</sup> Street

Eastlake, Colorado 80614

Developer:  
Carlson Associates  
Mr. Blake Carlson  
12460 1<sup>st</sup> Street  
Eastlake, Colorado 80614

Owners:  
Nancy Ciancio  
1257 Pontiac Street  
Denver, Colorado 80220

Purebred Arabian Trust  
c/o Shaw Management  
99 University Avenue  
Atlanta, Georgia 30315-2204

City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031

Surrounding Land Use and Comprehensive Land Use Plan Designation

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: City of Westminster Open Space/ Major Creek Corridor (not subdivided)	PUD	Business Park	Open Space
West: Country Club Highlands	PUD	R-3.5 Residential and Retail/Commercial	Residential and Commercial
East: Park Centre and Northridge at Park Centre	PUD	Business Park	Office and Business Park
South Across 120 <sup>th</sup> Avenue: Front Range Country Club/Ranch Subdivision	PUD	R-3.5 Residential	Residential

Site Plan Information

The applicant has submitted an ODP amendment for the Arabian Horse Center that is concurrently being reviewed by staff for administrative approval. The ODP amendment will provide: additional landscaping; adequate pedestrian connections and vehicular circulation; buffering from adjacent office uses; parking; and playground area.

- **Traffic and Transportation:** The change of use from office to private school reduces the overall vehicular traffic for the site. However, the school use may create increased vehicular peak trips for school start and release times than the current office building. The Colorado Department of Transportation (CDOT) has approved a warrant study and traffic signal at the intersection of 120<sup>th</sup> Avenue (State Highway 128) and Zuni Street. The City will proceed with design and permit requirements for the approved signal at this intersection. The applicant has agreed to pay 25% of the cost for this signal. It will take until approximately mid to late March 2010 (about 30 weeks) to have the signal designed, ordered and installed.

Service Commitment Category

Not applicable

Referral Agency Responses

A copy of the proposed plans was sent to the following agencies: Colorado Department of Transportation (CDOT), Xcel Energy and Comcast. Staff received responses from these agencies and the minor concerns they identified will be addressed on the amended ODP.

**SUBJECT:** Councillor's Bill re CLUP Change and PDP Amendment to The Registry PUD Page 6

Neighborhood Meeting and Public Comments

A neighborhood meeting was held on July 14, 2009 with three neighbors attending. The main concerns were traffic impacts and safety issues at the intersection of 120<sup>th</sup> Avenue and Zuni Street that currently does not have a traffic signal. Staff has received correspondence from three neighbors regarding this concern (attached). All three homeowners expressed safety concerns about the 120th Avenue and Zuni Street intersection and the need for a traffic signal.

One Ranch resident commented that an eastbound, right turn lane into the Ranch subdivision would be helpful. While this is unrelated to the subject agenda item, Staff did determine that a right turn lane would cost approximately \$80,000. At this time, the City does not have money budgeted for this specific improvement.

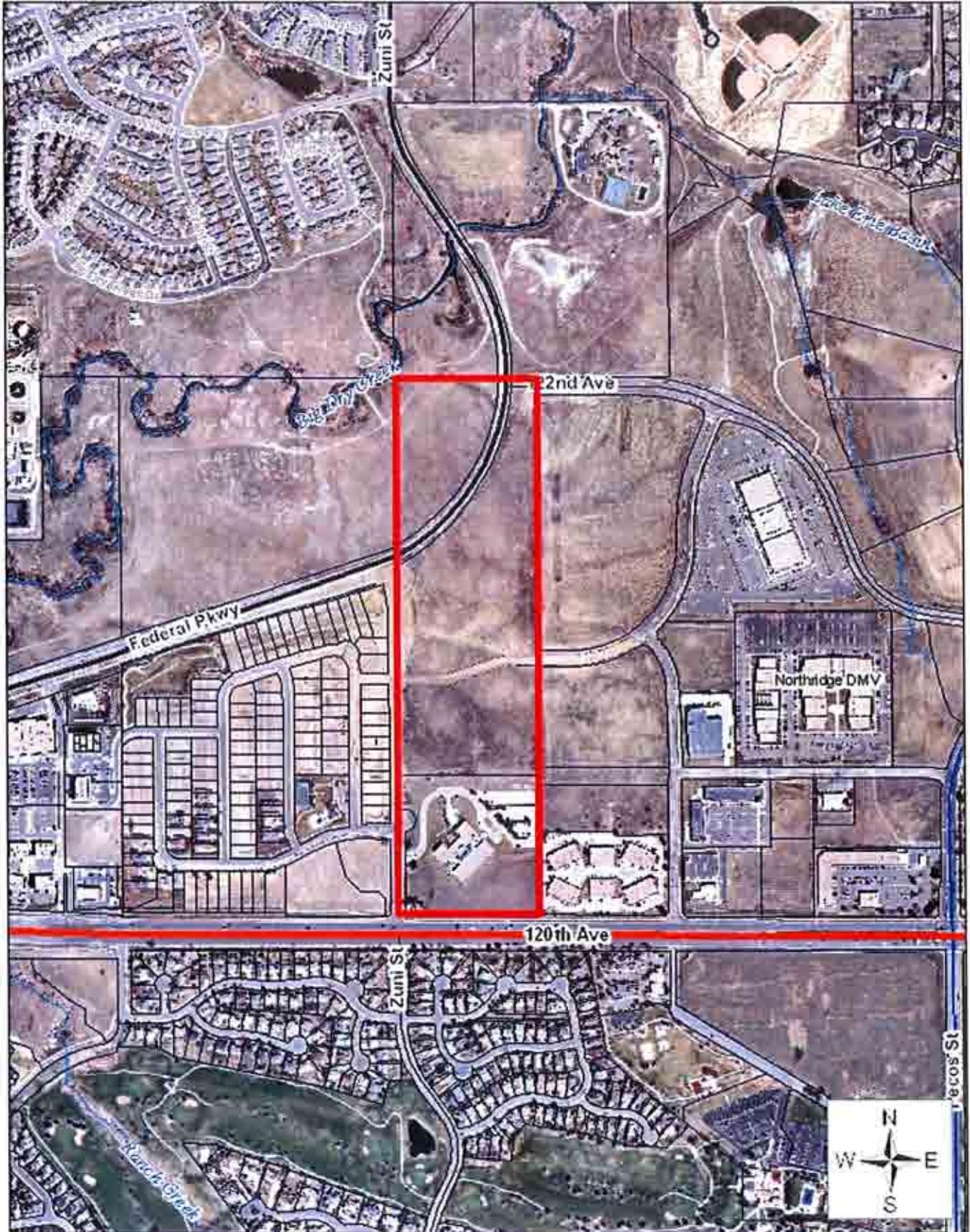
Respectfully submitted,

J. Brent McFall  
City Manager

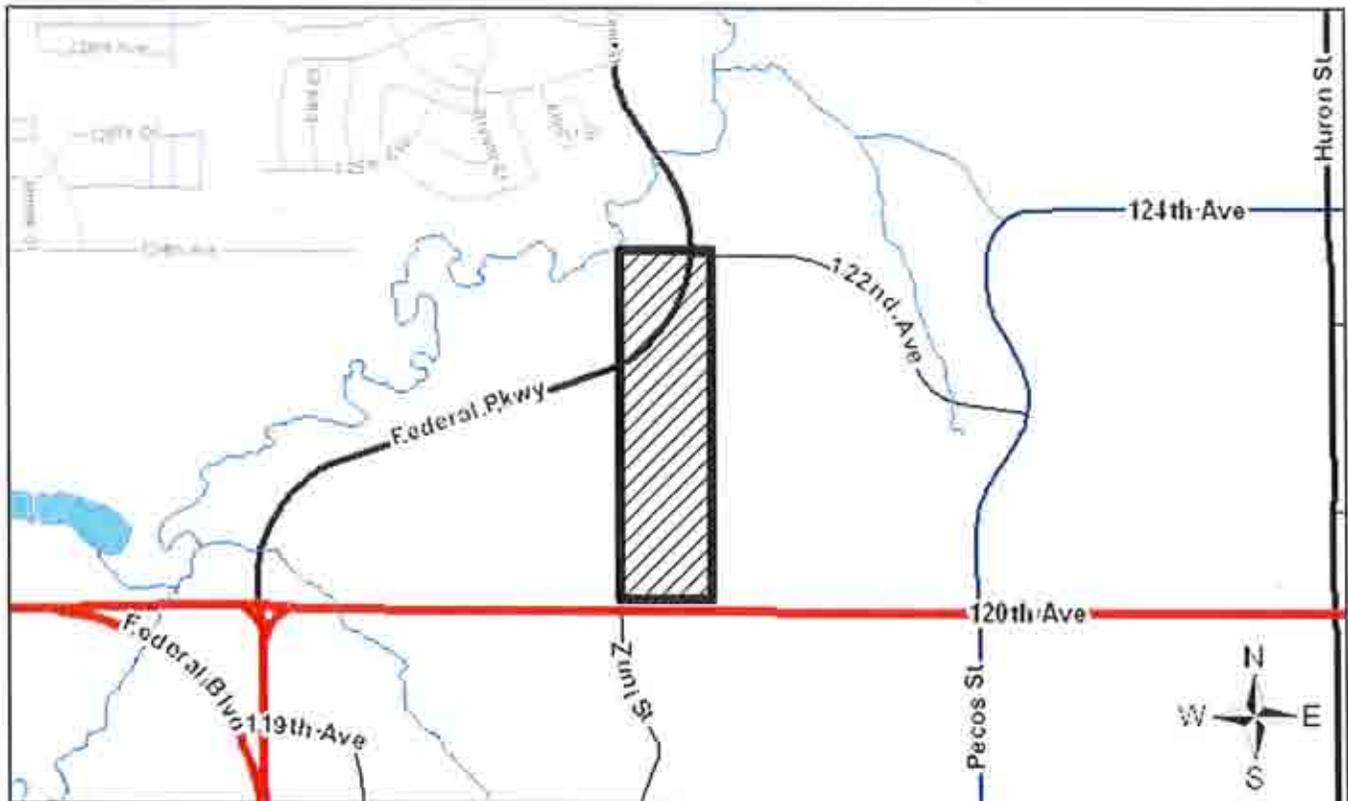
Attachments

- Attachment 1 - Vicinity Map
- Attachment 2 - Boundary Map for The Registry Preliminary Development Plan
- Attachment 3 - Neighborhood Correspondence
- Attachment 4 - Criteria and Standards for Land Use Applications
- Ordinance (Comprehensive Land Use Plan)
- Exhibit A -Comprehensive Land Use Plan Map

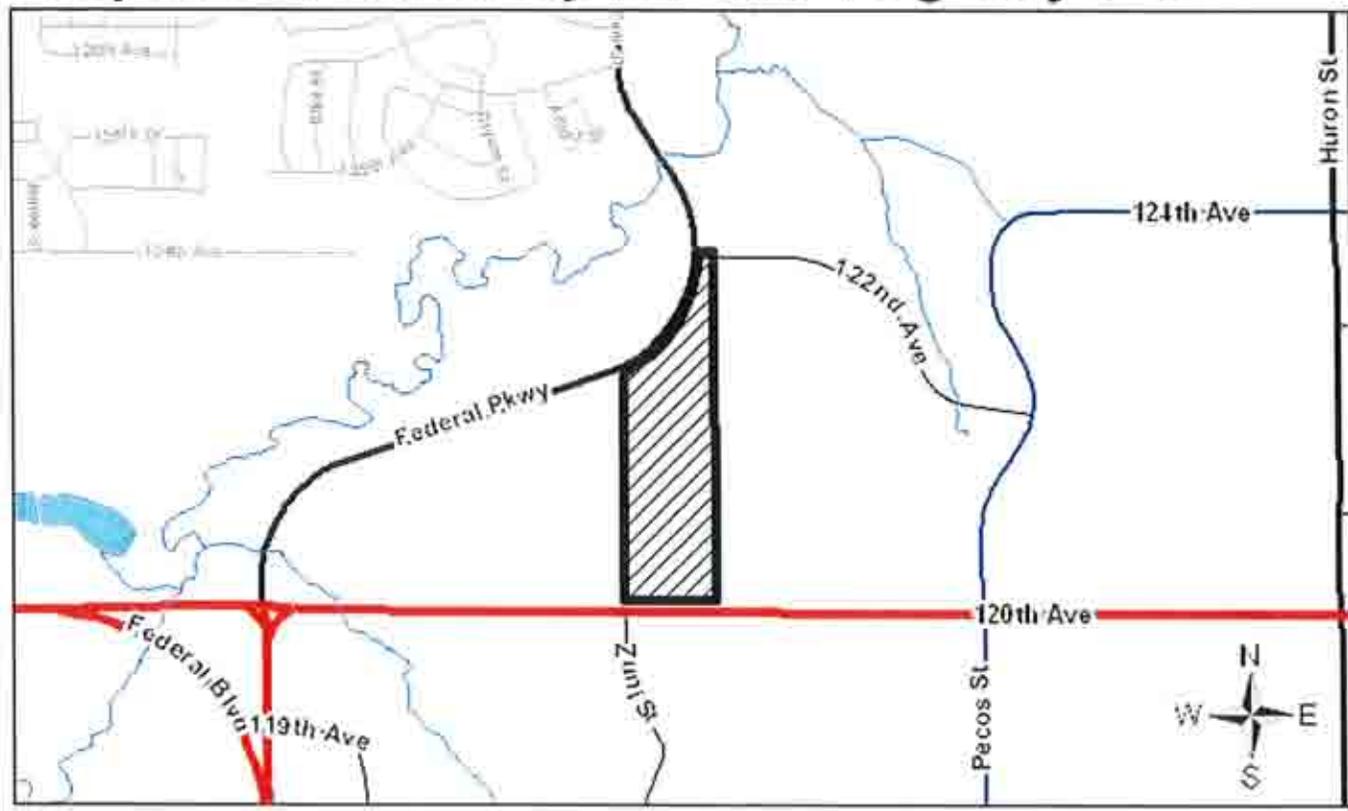
# Vicinity Map for The Registry



## Current Boundary for The Registry PDP



## Proposed Boundary for The Registry PDP



**McCartney, Patty**

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**From:** LYNN ENSOR [lyensor@msn.com]  
**Sent:** Thursday, July 30, 2009 12:29 PM  
**To:** McCartney, Patty  
**Subject:** intersection of 120th & Zuni

Dear Ms. McCartney,

I am a homeowner in the Ranch Development. We have one ingress and egress to this entire neighborhood, that is at the intersection of 120th Avenue and Zuni. In order to go West on 120th we need to approach it on Zuni, wait for EB traffic to clear, pull into the center of the intersection, wait for the WB traffic to clear and then pull out into the street.

If we are going to continue North on Zuni, we must do the same, wait for traffic to clear before crossing 120th. If it is a busy time of day, and people are approaching from all directions, it's confusing to some and maddening to others. Not to mention how dangerous this particular maneuver is to everyone.

It's my understanding that the Arabian Horse Ranch has plans to bring in many more people from that street. I cannot imagine how that will work without traffic lights! It's next to impossible.

We were unable to attend the meeting as we were out of town on vacation; however, I would appreciate if you would consider this letter in your decisions.

Sincerely,

Lynn Ensor  
2676 West 119th Avenue  
Westminster, CO 80234

7/30/2009

**McCartney, Patty**

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**From:** ensor, thomas [thomas.ensor@judicial.state.co.us]  
**Sent:** Monday, July 13, 2009 1:41 PM  
**To:** McCartney, Patty  
**Cc:** 'Karen Alter'; 'LYNN ENSOR'  
**Subject:** Traffic control light at Zuni and 120th

Ms. McCartney

I understand that there is to be a meeting on July 14 regarding the proposed re-zoning of the intersection of 120<sup>th</sup> and Zuni for the Cornerstone Christian Academy at the former location of the Arabian Horse Center. Although I cannot attend the meeting (that is my 25<sup>th</sup> wedding anniversary), I have serious concerns due to the traffic issues at that intersection.

I don't think there is a more dangerous intersection, not controlled by traffic lights, in the county. 120<sup>th</sup> is a high-volume, high-speed roadway, and Zuni is the main entrance into The Ranch subdivision. For cars on Zuni the line of sight both west and (particularly) east is obscured by the topography. In order for traffic on Zuni to either cross 120<sup>th</sup> or to make a left-hand turn onto 120<sup>th</sup> it is generally necessary to cross the street in "stages", pulling up to the center median and then completing the turn/ traffic maneuver when traffic going the other direction has cleared. This is dangerous enough if there is just one car involved, but it becomes MUCH more difficult and dangerous if there is both north and south bound traffic on Zuni, or if there are cars on 120<sup>th</sup> attempting a left hand turn at Zuni. It is literally possible to have 8 cars going 8 different and conflicting directions at the same time. This is why I call it "kamizazi corner".

The need for a traffic control device at this intersection exist now. Allowing this re-zoning without providing a traffic control device will greatly increase the potential for a serious accident, and is not acceptable.

Thank you for your consideration,  
Tom Ensor,  
2676 W. 119<sup>th</sup> Ave  
Westminster, CO 80234  
(303) 466-3483

8/14/2009

**McCartney, Patty**

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**From:** CHERYLBURNSIDE@aol.com  
**Sent:** Sunday, July 12, 2009 11:17 PM  
**To:** McCartney, Patty  
**Cc:** alterteach@comcast.net  
**Subject:** 7/14 meeting

Patty,

I cannot be at the neighborhood meeting on Tuesday evening, but wanted to communicate my sentiments to you in advance of the meeting.

I am a resident of The Ranch, and appreciate your consideration of our neighborhood's comments on the proposed change.

In connection with the effort to rezone the Arabian Horse Center for use as a school, the long-overdue necessity of a traffic light at 120th and Zuni is critical. The danger of that intersection has been demonstrated time and time again, and includes the death of my former next-door neighbor, Alan Gray, in March of 2002.

Along with adding a traffic light, I encourage/implore/beg the City to work with the Highway Department to re-design (i.e., simply re-paint the lane-line and add a sign to) the southern-most eastbound lane approaching that intersection to be a right-turn-only lane. Right turns onto southbound Zuni from eastbound 120th are terrifying because of the speed of the vehicles using that lane as a through lane.

Regardless of the outcome of the zoning decision, the City's attention to the safety of the intersection at 120th and Zuni is sorely needed, has been delayed long enough, and will be appreciated immeasurably by The Ranch residents and their guests, and the owners/tenants of the Arabian Horse property, no matter who that may include.

Thank you for your time and consideration.

Sincerely,  
Cheryl Burnside  
11322 Quivas Way  
Westminster, CO 80234  
Telephone: 303.465.5091

---

Looking for love this summer? [Find it now on AOL Personals.](#)

8/14/2009

## Criteria and Standards for Land Use Applications

### *Comprehensive Land Use Plan Amendments*

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

### *Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)*

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **28**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

---

**A BILL  
FOR AN ORDINANCE AMENDING THE WESTMINSTER  
COMPREHENSIVE LAND USE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described below, incorporated herein by reference, requesting a change in the land use designations from "Business Park" to "Public/Quasi-Public" for an approximately ten and one-half acre property located at 12000 Zuni Street on the northeast corner of 120<sup>th</sup> Avenue and Zuni Street.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on August 25, 2009, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C. §11-4-16(D).

d. That 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. That 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 Land Use Plan, particularly in providing an educational facility that will serve surrounding existing residential and new neighborhoods and promotes neighborhood revitalization through creative infill development.

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 Land Use Plan to change the designation of the property more particularly described as follows:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 33, THEN N00°20'00"E ALONG THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 33 A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WEST 120<sup>TH</sup> AVENUE, SAID POINT BEING THE POINT OF BEGINNING; THENCE N00°20'00"E AND ALONG THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 33 A DISTANCE OF 679.89 FEET; THENCE S89°29'30"E AND ALONG A LINE OF 729.89 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 33 A DISTANCE OF 676.37 FEET; THENCE S00°20'00"W AND ALONG A LINE 676.37 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 33 A DISTANCE OF 679.89 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WEST 120<sup>TH</sup> AVENUE; THENCE N89°29'30"W AND ALONG A LINE 50.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 33, ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF WEST 120<sup>TH</sup> AVENUE, A DISTANCE OF 676.37 FEET TO THE POINT OF BEGINNING, CONTAINING 10.5568 ACRES.

to “Public/Quasi-Public”, as depicted on the map attached as Exhibit A.

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 14<sup>th</sup> day of September, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of September, 2009.

ATTEST:

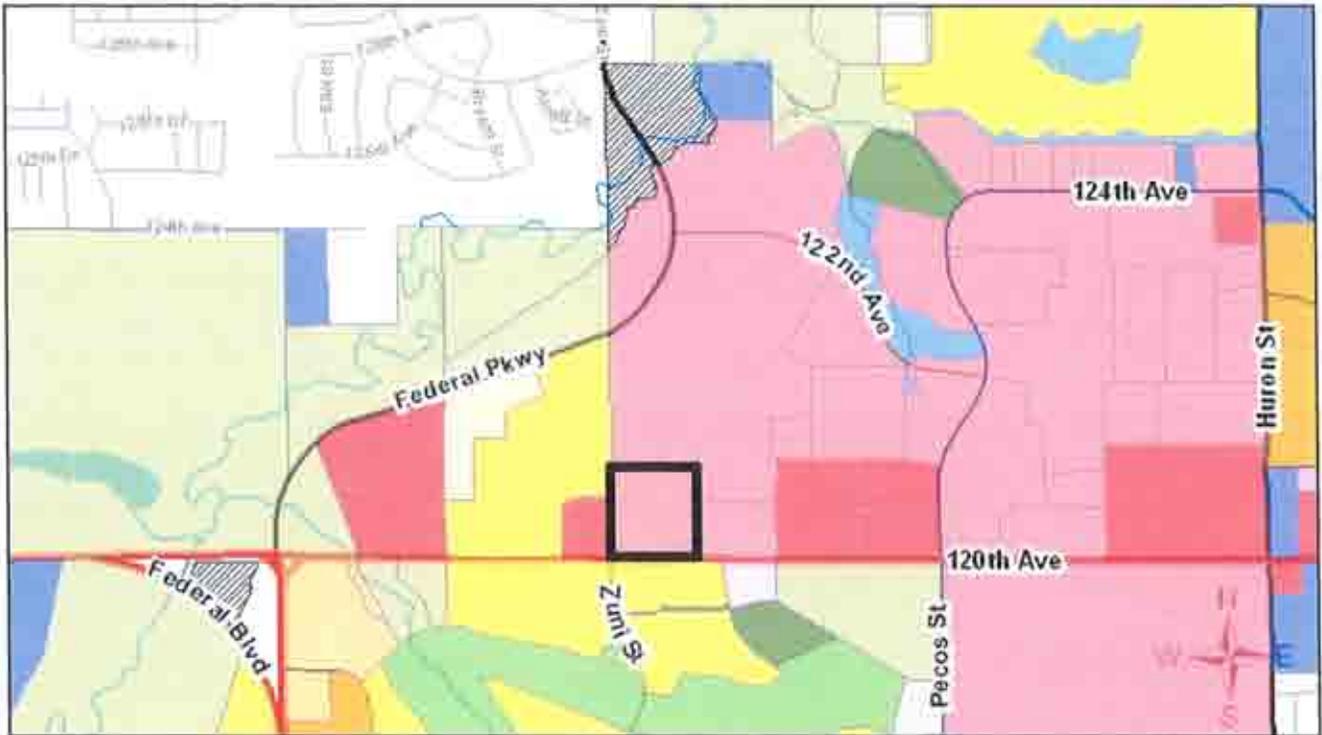
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

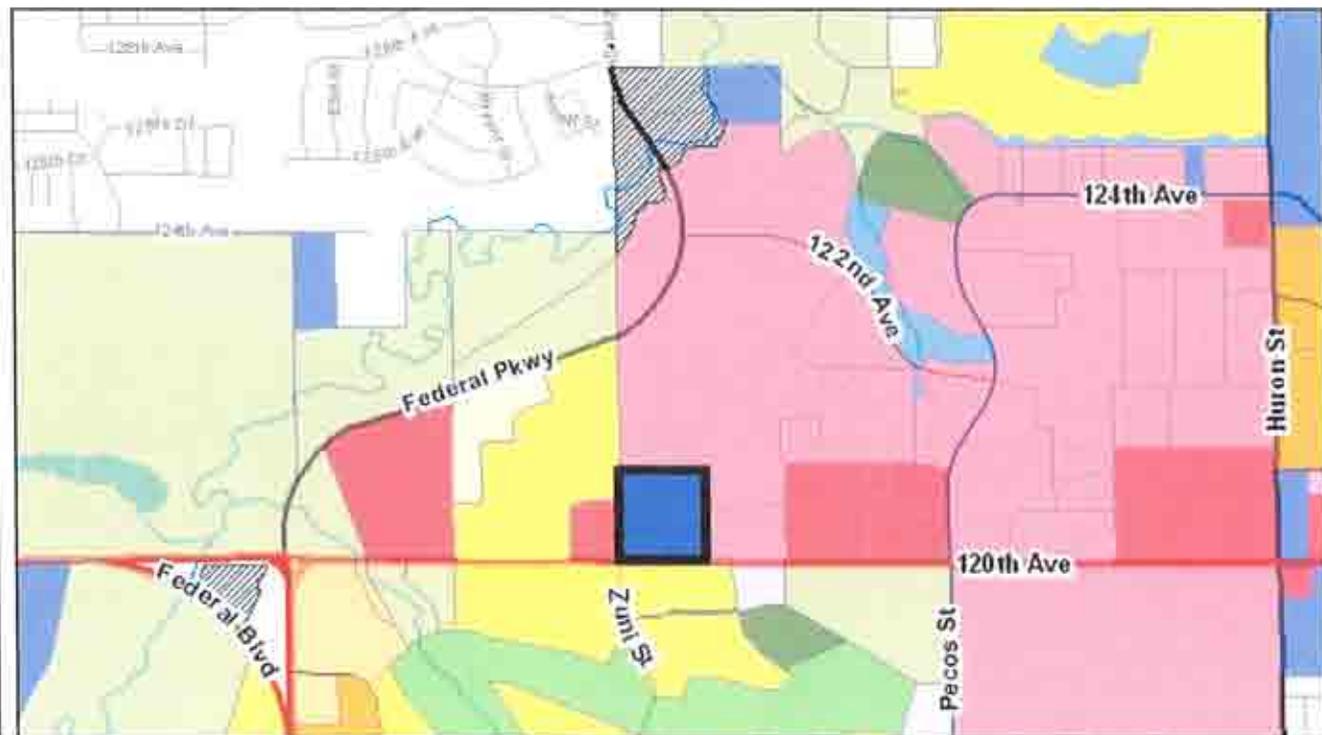
\_\_\_\_\_  
City Attorney’s Office

# Change from Business Park to Public/Quasi-Public



**Legend**

<b>CompPlan_Layer</b>	R-35	Retail Commercial	Office/Residential	Public Parks	NE Comprehensive Land Use Plan
<b>CP_DESIG</b>	R-6	Office	District Center	Private Parks/Open Space	Major Creek Corridor Non Public
R-1	R-8	Industrial	Traditional Mixed Use	Golf Courses	
R-25	R-18	Business Park	City Owned Open Space	Public/Quasi Public	





**WESTMINSTER**  
**COLORADO**

**Agenda Item 10 E&F**

**SUBSTITUTE**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Public Hearing and Action on an Amended Preliminary Development Plan for Westminster Village Addition to add "Thrift/Used Merchandise"

**Prepared By:** Michele McLoughlin, Planner III

**Recommended City Council Action**

1. Hold a public hearing.
2. Deny the First Amended Preliminary Development Plan for Westminster Village Addition. This recommendation is based on a finding that criteria set forth in Section 11-5-14(1), (4), (5) and (6) of the Westminster Municipal Code have *not* been met.
  -

**Summary Statement**

- MGAC Associates are the owners of the property where the former Linens N Things building is located, at 5880 W. 88<sup>th</sup> Avenue Westminster Village Addition.
- The parcel is approximately 2.81 acres in size.
- The parcel was rezoned from Industrial (M-1) to Planned Unit Development (PUD) in 1994 and an Official Development Plan (ODP) was approved in 1994 for the Linens N Things building. The Comprehensive Land Use Plan (CLUP) designation is Retail Commercial.
- The owners are proposing to lease the building to a thrift store company out of Ventura, California; however, used merchandise/thrift is not an allowed use on the Preliminary Development Plan (PDP).
- Staff is not in support of the proposed changes as they are not in compliance with the goals and policies of the City with regard to commercial development/uses in this area of Westminster.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

|

### **Planning Commission Recommendation**

The Planning Commission reviewed this proposal on August 25, 2009, and voted 4-3 (Mayo, McConnell, Litzau, Boschert – yes) (English, Alengi, Anderson - no) to recommend that the City Council approve the Amended PDP for Westminster Village Addition. The Planning Commission also approved an Amended Official Development Plan for Westminster Village Addition contingent upon City Council approving the Amended PDP for Westminster Village Addition.

In their rationale for voting in favor of allowing the use, several commissioners indicated they did not believe the redevelopment of the mall site would happen anytime soon, if at all. Some reasoned that an occupied building would be better than a vacant building, regardless of the user. Other commissioners, who voted against the use, relayed personal experience of thrift store donation areas where items are dropped off at all times of the day and night, often in undesignated areas. One commissioner mentioned that thrift stores were often located in areas that were run down and wondered what that said of this site and the area in general.

### **Policy Issue**

Should the City Council deny the Amended PDP?

### **Alternative**

Approve the Amended Westminster Village Addition PDP. Approval of the Amended PDP would allow a “thrift/used merchandise” use in a location across the street from The Westminster Center Urban Reinvestment Project (WURP). The entire WURP area is proposed to be redeveloped into a new high-density, pedestrian-oriented, urban center of regional scope to include entertainment, office, residential, and cultural uses, along with a strong retail component.

### **Background Information**

#### Nature of Request

The owners of the Westminster Village Addition property are interested in leasing the vacant Linens N Things building to a “thrift/used merchandise” business. The current PDP does not list “thrift/used merchandise” as an allowable use on the property.

#### Location

The site is located on the south side of 88<sup>th</sup> Avenue in the old Linens N Things building, approximately 625 feet to the east of Harlan Street. (Please see attached vicinity map.)

### **Evaluation Criteria for Approval/Denial of ODP/PDP Amendments**

Section 11-5-14 of the Land Development Code calls out eleven specific criteria that must be met in order to approve a PDP amendment. Failure to meet any one of the criteria may be grounds for denial of an application. Based on the analysis of the use and review of the application and related materials, staff has determined that several criteria would not be met. These include:

1. Conformance with the Comprehensive Land Use Plan (CLUP). The CLUP gives the authority to limit certain uses in “Retail Commercial” areas. The site is located within a Retail Commercial area as designated by the CLUP. These areas may include retail stores, eating establishments, banks, supermarkets, and business and professional offices. Other uses, such as thrift stores and self-storage facilities, may be limited or not allowed depending on the potential impact on nearby areas, on efficient pedestrian and vehicular circulation, or on a comfortable pedestrian environment. Uses that create more intense levels of truck traffic than traditional retail, restaurant or office uses are generally not compatible in Retail Commercial areas. Thrift stores, including those without designated donation areas for the public, routinely accept deliver trucks with used merchandise for distribution.

With the business' permission, Staff made site visits to two other thrift stores operated by the proposed tenant, in Commerce City and southwest Denver. Staff does not believe that the proposed use is appropriate for the area. The proposed land use of "used merchandise/thrift" is not in conformance with the Retail Commercial uses contemplated for this area according to the CLUP; therefore, this criterion has not been met [Section 11-5-14(1)].

2. Compatibility with existing and future land uses in the area. This site is located adjacent to the Westminster Center Urban Reinvestment Project (WURP), which anticipates the Westminster Mall being redeveloped into a high-density, mixed-use, pedestrian-oriented urban center. The Request for Proposal has already been issued for the mall site, and proposals are due back September 15. Thrift stores are not typically part of mixed-use, urban environments, but rather are often located in struggling strip malls awaiting redevelopment. The WURP area will be redeveloped in the near future, and having this type of truck-related use, with an outdoor collection/sorting area nearby, would not improve the character of the area or be compatible with future redevelopment of the mall site. It could also negatively impact the shopping area to the east. New uses in the area should be compatible with a vibrant, high-density, pedestrian-oriented corridor. The used merchandise/thrift use is not compatible and harmonious with existing public and private development or the proposed future uses in the area. The request does not meet this criterion [Section 11-5-14(4)].
3. Protection of the surrounding areas from potentially adverse influence from within this development. The Amended PDP will not provide for the protection of the surrounding area from potentially adverse influence from within the development. Existing and previous used merchandise facilities have been known as locations for drop-offs of unwanted merchandise (furniture, mattresses, appliances, and other large and small items), having trucks parked overnight, and/or staging trucks for pickup and delivery, which would be a potential detriment to the WURP and surrounding area. The request does not meet this criterion [Section 11-5-14(5)].
4. No negative impact upon future development of the immediate area. The original PDP included the following language:

"The project concept is basically to change the existing industrial zone, with all of its incompatibility of uses with the surrounding area, to a retail/commercial use that compliments the mall and the strong commercial center of activity that the City has encouraged. The developers of this parcel are strongly committed to the character of the City center retail with their successful development next door to this one – Westminster Village Shopping Center, including a "Toys R Us" anchor and the wide variety of retail shops.

"It is envisioned that this building will provide other anchor and thereby finish the statement started by Westminster Village by The Mall. The specific use for this building will be a 34,000 square foot "Linens N Things" store. We feel that this use will be a great compliment to the mall as well as Westminster Village Shopping Center."

Allowing a use contrary to the original PDP's vision for the area as a high-quality shopping area, as well as the WURP's vision for redevelopment into a high density, urban center of regional scope, would have the result of reverting the site back into one incompatible with the area.

Further, there is an existing used merchandise/thrift store within walking distance of the proposed location at the southwest corner of 88<sup>th</sup> Avenue and Sheridan Boulevard. This use is not conducive to higher density development or a walkable urban center, and having two such uses on a signature corridor where there will be many future reinvestment/redevelopment opportunities is not desirable or needed. The existing thrift store at 88<sup>th</sup> Avenue/Sheridan Boulevard received a Special Use Permit in 2005 and is located in a C-1 zoning district. [Section 11-5-14(6)]

Public Notification

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

- **Published Notice:** Notice of public hearings shall be posted at least four days prior to City Council public hearings. Notice was published in the Westminster Window on September 3, 2009.
- **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 September 4, 2009.
- **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 August 24, 2009.

Applicant/Property Owner

MGAC Associates  
c/o Costa Land Company  
600 Grant Street  
Suite 3010  
Pittsburgh, Pennsylvania 15219

Surrounding Land Use and Comprehensive Land Use Plan Designation

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: Westminster Mall	PUD	District Center	Mall Retail Commercial
West: Aspen Arbor Animal Hospital	M-1	Retail Commercial	Veterinary Clinic/Hospital
East: Westminster Village	PUD	Retail Commercial	Retail Commercial
South: Burlington Northern Santa Fe Railroad; City of Arvada	N/A	N/A	Single-Family Residential

Site Plan Information

The following site plan information provides examples of how the proposal complies with the City’s land development regulations and guidelines and the criteria contained in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

- **Traffic and Transportation:** The site is accessed from 88<sup>th</sup> Avenue at an entry drive approximately 625 feet to the east of Harlan Street that is a shared access between this property and Westminster Village Filing 1.
- **Site Design:** The existing building is located at the west side of the site with the parking to the east.
- **Landscape Design:** The site is landscaped around the perimeter and within the parking islands.
- **Signage:** There is a monument sign located at the northeast corner of the site, near the entry drive from 88<sup>th</sup> Avenue. There are existing wall signs on the east, west, and north.
- **Lighting:** Standard parking lot lights are dispersed within the parking area.

Service Commitment Category

Not applicable

Neighborhood Meeting and Public Comments

A neighborhood meeting was held on August 5, 2009, with two adjacent neighbors attending. The main concerns were that the building might come down at some point in the future to make room for a FasTracks Station and that bags/boxes of used merchandise would be left on-site.

A letter from the Vietnam Veterans of America (VVA) was received by Planning Staff expressing their support of this proposal. The letter explained that the VVA's major source of funding is through the solicitation and resale of donated household items to thrift stores. VVA does not own retail outlets thus their involvement with M&M Management Company.

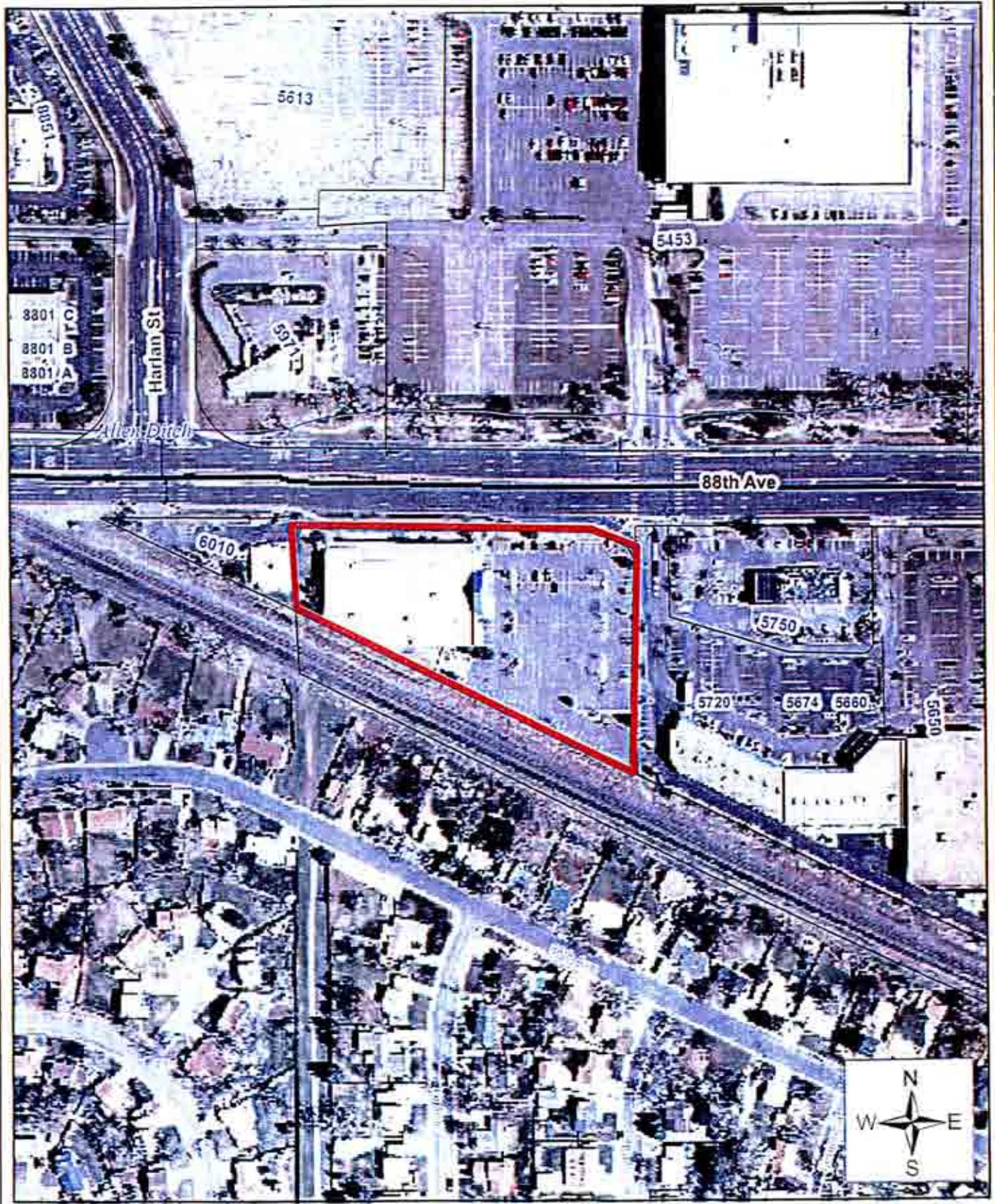
Respectfully submitted,

J. Brent McFall  
City Manager

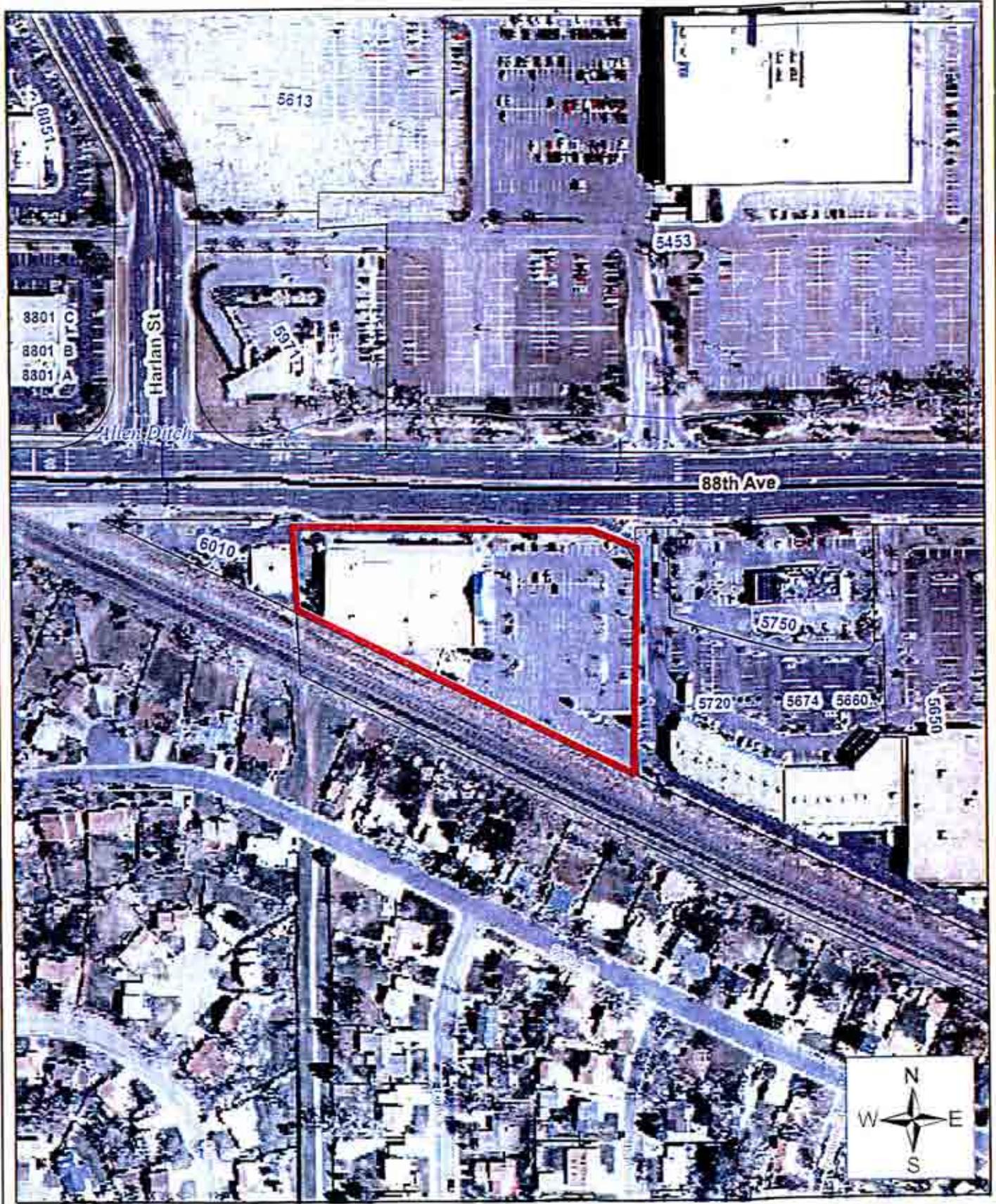
Attachments

- Attachment 1 - Vicinity Map
- Attachment 2 – Correspondence – Vietnam Veterans of America
- Attachment 3 - Criteria and Standards for Land Use Applications

# Vicinity Map for Westminster Village Addition Former Linens N Things Building



# Vicinity Map for Westminster Village Addition Former Linens N Things Building





## *Vietnam Veterans of America*

8605 Cameron Street, Suite 400 • Silver Spring, MD 20910 • Telephone (301) 585-4000  
Main Fax (301) 585-0519 • Advocacy (301) 585-3180 • Communications (301) 585-5245 • Finance (301) 585-5542  
World Wide Web: <http://www.vva.org>

*A Not-For-Profit Veterans Service Organization Chartered by the United States Congress*

To Whom It May Concern:

Vietnam Veterans of America (VVA) is a national veterans' service organization serving the needs of all of our nation's veterans. VVA is recognized by the IRS as a 501(c) 19 organization enabling tax deductible donations to the organization. VVA is funded primarily by various fund-raising activities and its membership. VVA's major source of funding is through the solicitation and resale of donated household items. VVA's household donation program has consistently provided nearly eighty percent of VVA's annual income for over the past twenty years when the program began. The other benefit of the household donation program has been its ability to reduce the amount of landfills by remerchandising items that would have otherwise been discarded.

VVA solicits these household donations by various marketing techniques and profits from the donations by selling them to qualified retailers. VVA does not own retail outlets for the sale of the donations to the public. Instead of owning and operating retail outlets VVA has found it most effective to sell the donations wholesale to privately owned thrift stores. In your community VVA has contracted with M&M Management Company.

We are requesting that you consider the allowance of M&M Management to build or lease a thrift store in your community. VVA has contracted with M&M Management for over twenty five years in our household goods donation program. VVA's relationship with M&M Management has enabled us to fulfill our mission of serving our nations veterans. Our service is both national and local. The inclusion of this program in your community will enable funding directly to our veteran services in your community.

Thank you for taking the time to consider this opportunity. If you would like addition information on VVA please visit our website at [www.vva.org](http://www.vva.org). I can be reached at (301) 585-4000 extension 123 if you would like to discuss this program and its benefits further.

Respectfully,

Quentin Butcher, Business Manager, Vietnam Veterans of America

## **Criteria and Standards for Land Use Applications**

### ***Comprehensive Land Use Plan Amendments***

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

### ***Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)***

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

***Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)***

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

***City Initiated Rezoning***

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

***Official Development Plan (ODP) Application***

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.

4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.



**WESTMINSTER**  

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**COLORADO**

**Agenda Item 10 G&H**

**SUBSTITUTE**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Public Hearing and Action on an Appeal of the Amended Official Development Plan for the Westminster Village Addition Planned Unit Development

**Prepared By:** Michele McLoughlin, Planner III

**Recommended City Council Action**

1. Hold a public hearing.
2. Deny the First Amended Official Development Plan for Westminster Village Addition based on a finding that the criteria set forth in Section 11-5-15(5), (6), (7), (8), and (14) of the Westminster Municipal Code have *not* been met

**Summary Statement**

- MGAC Associates are the owners of the property where the vacant Linens N Things building is located, at 5880 W. 88<sup>th</sup> Avenue, Westminster Village Addition.
- The parcel is approximately 2.81 acres in size.
- The parcel was rezoned from Industrial (M-1) to Planned Unit Development (PUD) in 1994 and an Official Development Plan (ODP) was approved in 1994 for the Linens N Things building.
- The Comprehensive Land Use Plan (CLUP) designation is Retail Commercial.
- The owners are proposing to lease the building to a thrift store company out of Ventura, California. However, used merchandise/thrift is not an allowed use on the Official Development Plan (ODP).
- Staff is not in support of the proposed Amended ODP, as it is not in compliance with the goals and policies of the City with regard to commercial development/uses in this area of Westminster.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

### **Planning Commission Recommendation**

The Planning Commission reviewed this proposal on August 25, 2009, and voted (4-3) (Mayo, McConnell, Litzau, Boschert – yes) (English, Alengi, Anderson - no) to approve the Amended ODP for Westminster Village Addition contingent upon the City Council approving the Amended PDP for Westminster Village Addition.

In their rationale for approving the ODP, several commissioners indicated they did not believe the redevelopment of the mall site would happen anytime soon, if at all. Some reasoned that an occupied building would be better than a vacant building, regardless of the user. Other commissioners, who voted against the use, relayed personal experience of donation areas having items dropped off at all times of the day and night, often in undesignated areas. One commissioner mentioned that thrift stores were often located in areas that were run down and wondered what that said of this site and the area in general.

### **Policy Issue**

Should City Council deny the First Amended Official Development Plan for Westminster Village Addition?

### **Alternative**

Approve the Amended Westminster Village Addition ODP. In the event the City Council approves the Amended ODP, Staff requests that the following conditions be placed on the Amended ODP:

1. No donation bins shall be allowed in the parking lot or any sidewalk, including the sidewalk in front of the building;
2. Delivery trucks used in the operation of the business shall be limited to making two deliveries per day, during business hours;
3. Delivery trucks shall not be parked or stored on site, except to deliver merchandise;
4. Outside storage of merchandise shall not be permitted on site;
5. All merchandise, whether delivered to the store or dropped off by the public, shall be immediately removed from any outdoor area. Employees shall regularly inspect the site for merchandise and ensure the site is kept free from dropped off items.
6. In no event shall merchandise be displayed or sales be conducted outside of the store, including in any sidewalk or parking lot area.

### **Background Information**

#### Nature of Request

The owners of the Westminster Village Addition property want to lease the vacant Linens N Things building to “thrift/used merchandise” business. The current ODP does not list “thrift/used merchandise” as an allowable use on the property. In addition, the request includes the construction of a new block wall and gate to screen the loading dock area, which is located at the southeast corner of the building.

#### Location

The site is located on the south side of 88<sup>th</sup> Avenue in the former Linens N Things building, approximately 625 feet to the east of Harlan Street. (Please see attached vicinity map.)

**Evaluation Criteria for Approval/Denial of ODP/PDP Amendments**

Section 11-5-15 of the Land Development and Growth Management procedures calls out seventeen specific criteria that must be met in order to approve an ODP amendment. Failure to meet any one of the criteria may be grounds for denial of an application. Based on the analysis of the use and review of the application and related materials, staff has determined that several criteria would not be met. These include:

1. Compatibility with existing and future land uses in the area. This site is located adjacent to the Westminster Center Urban Reinvestment Project (WURP), which anticipates the Westminster Mall being redeveloped into a high-density, mixed-use, pedestrian-oriented urban center. The RFP has already been issued for the mall site, and proposals are due back the middle of this month. Used merchandise stores are not typically part of mixed-use, urban environments, but rather are often located in struggling strip malls awaiting redevelopment. The WURP area will be redeveloped in the near future, and having this type of truck-related use, with an outdoor collection/sorting area, would not improve the character of the area or be compatible with future redevelopment of the mall site. It could also negatively impact the shopping area to the east. New uses in the area should be compatible with a vibrant, high-density, pedestrian-oriented corridor. The used merchandise/thrift use is not compatible and harmonious with existing public and private development or the proposed future uses in the area. The request does not meet this criterion [Section 11-5-15(5)].

2. Protection of the surrounding areas from potentially adverse influence from within this development. The Amended ODP will not provide for the protection of the surrounding area from potentially adverse influence from within the development. Existing and previous used merchandise facilities have been known as locations for drop-offs of unwanted merchandise (furniture, mattresses, appliances, and other large and small items), having trucks parked overnight, and/or staging trucks for pickup and delivery, which would be a potential detriment to the WURP and surrounding area. The proposed Amended ODP indicates:

“As a part of this use, we also propose to erect a fence (as detailed on Page 5) around the loading dock area, the purpose being to ensure that the public does not have access to the area.”

The site plan indicates an 8-inch CMU block wall, 8 feet high, and gate. The location of the new wall and gate would be adjacent to the parking spaces along the southern edge of the site, rendering several of the spaces unusable. Staff believes this use and related site improvements would be a detriment to the area and, therefore, the request does not meet this criterion [Section 11-5-15(6)].

3. No negative impact upon future development of the immediate area. The Amended ODP would allow a ‘used merchandise/thrift’ use and related improvements on the site, which would not be in the best interest of the City or nearby area, which according to the WURP project description is to be redeveloped as a high density, urban center of regional scope. Having used merchandise being dropped off or sold in this location could negatively impact the interest of redevelopment in the area.

Further, there is an existing used merchandise/thrift store within walking distance of the proposed location at 88<sup>th</sup> Avenue and Sheridan Boulevard. This use is not conducive to higher density development or a walkable urban center, and having two such uses on a signature corridor where there will be many future reinvestment/redevelopment opportunities is not desirable or needed. The existing store received a Special Use Permit in 2005 and is located in a C-1 zoning district. [Section 11-5-15(7)]

4. Safe, convenient and harmonious grouping of structures, uses and facilities; sound design practices. The proposed 8-foot high CMU wall would be painted to match the existing structure, according to the building elevation plans. The wall and gate would have the effect of extending the loading area into the parking area, thus creating potential truck/vehicle/pedestrian conflicts. The request does not meet this criterion [Section 11-5-15(8) and (14)].

Public Notification

- **Published Notice:** Notice of public hearings shall be published at least four days prior to City Council public hearings. Notice was published in the Westminster Window on September 3, 2009.
- **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 appeal sign was posted on the property on September 4, 2009.

Applicant/Property Owner

MGAC Associates  
 c/o Costa Land Company  
 600 Grant Street  
 Suite 3010  
 Pittsburgh, Pennsylvania 15219

Surrounding Land Use and Comprehensive Land Use Plan Designation

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: Westminster Mall	PUD	District Center	Mall Retail Commercial
West: Aspen Arbor Animal Hospital	M-1	Retail Commercial	Veterinary Clinic/Hospital
East: Westminster Village	PUD	Retail Commercial	Retail Commercial
South: Burlington Northern Santa Fe Railroad; City of Arvada	N/A	N/A	Single-Family Residential

Service Commitment Category

Not applicable

Neighborhood Meeting and Public Comments

A neighborhood meeting was held on August 5, 2009, with two adjacent neighbors attending. The main concerns were that the building might come down at some point in the future to make room for a FasTracks Station and that bags/boxes of used merchandise would be left on-site.

A letter from the Vietnam Veterans of America (VVA) was received by Planning Staff expressing their support of this proposal. The letter explained that the VVA’s major source of funding is through the solicitation and resale of donated household items. VVA does not own retail outlets thus their involvement with M&M Management Company.

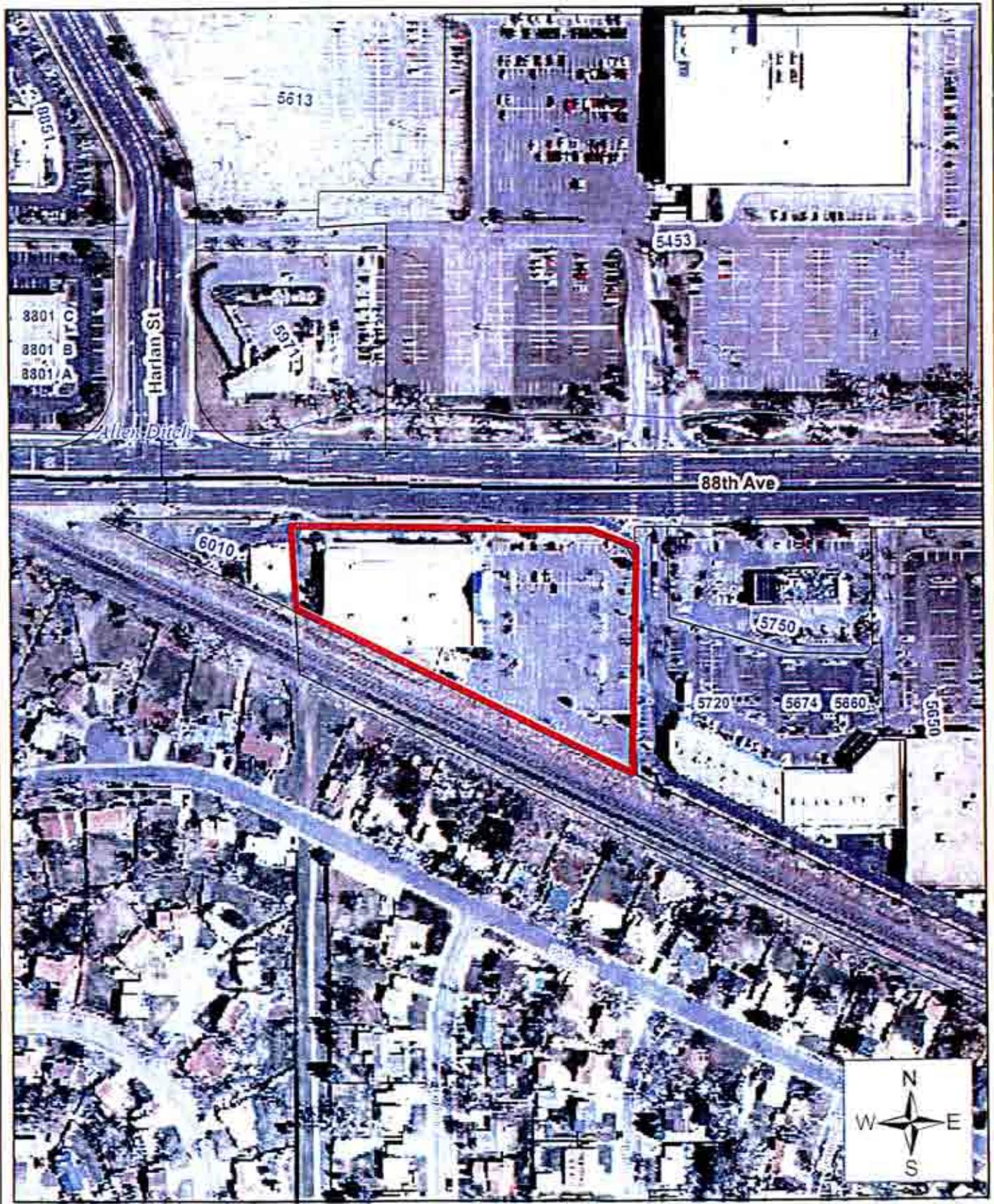
Respectfully submitted,

J. Brent McFall  
 City Manager

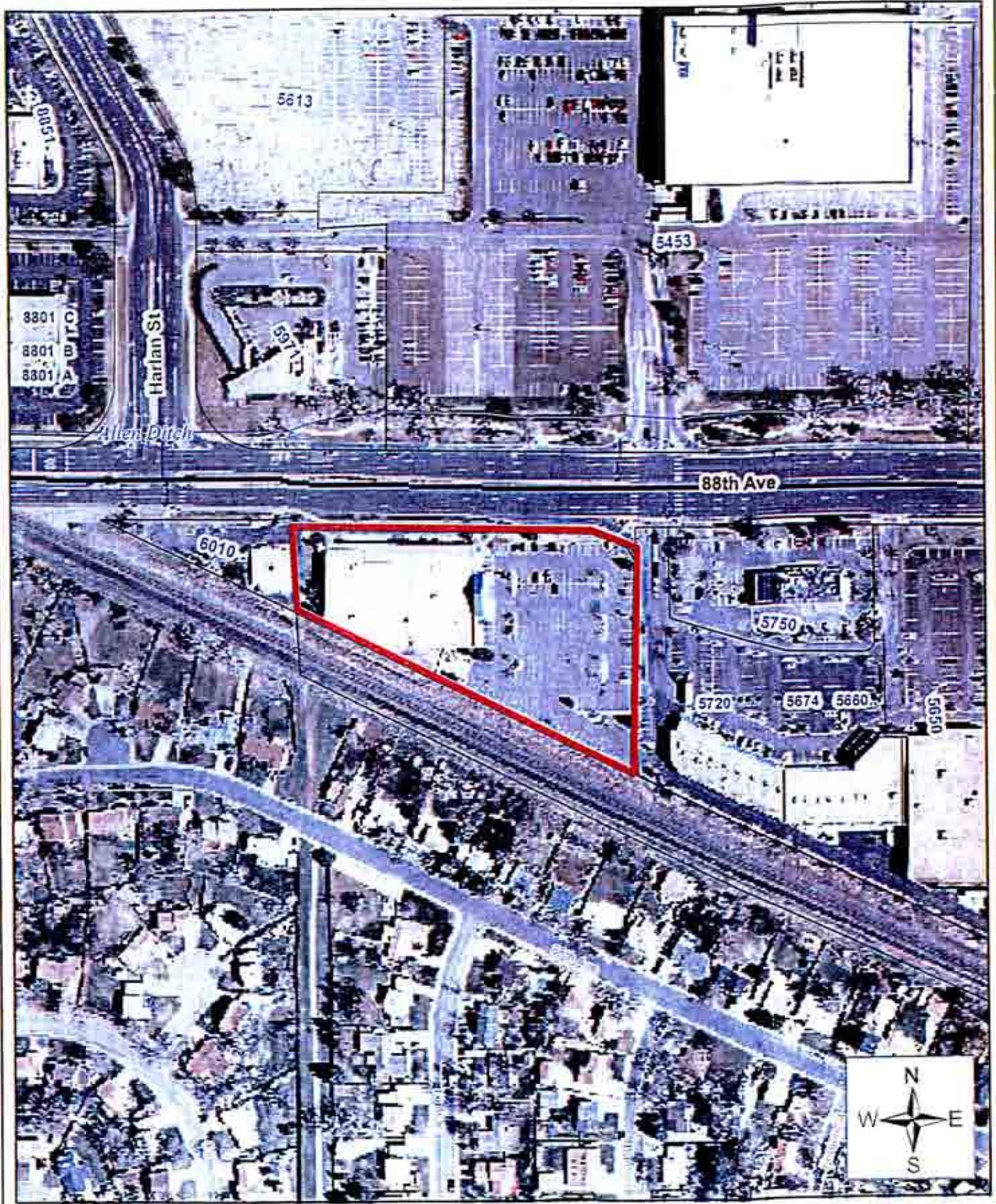
Attachments

- Attachment 1 - Vicinity Map
- Attachment 2 – Vietnam Veterans of America
- Attachment 3 - Criteria and Standards for Land Use Applications ODP

# Vicinity Map for Westminster Village Addition Former Linens N Things Building



# Vicinity Map for Westminster Village Addition Former Linens N Things Building





## *Vietnam Veterans of America*

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8605 Cameron Street, Suite 400 • Silver Spring, MD 20910 • Telephone (301) 585-4000  
Main Fax (301) 585-0519 • Advocacy (301) 585-3180 • Communications (301) 585-5245 • Finance (301) 585-5542  
World Wide Web: <http://www.vva.org>

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*A Not-For-Profit Veterans Service Organization Chartered by the United States Congress*

To Whom It May Concern:

Vietnam Veterans of America (VVA) is a national veterans' service organization serving the needs of all of our nation's veterans. VVA is recognized by the IRS as a 501(c) 19 organization enabling tax deductible donations to the organization. VVA is funded primarily by various fund-raising activities and its membership. VVA's major source of funding is through the solicitation and resale of donated household items. VVA's household donation program has consistently provided nearly eighty percent of VVA's annual income for over the past twenty years when the program began. The other benefit of the household donation program has been its ability to reduce the amount of landfills by remerchandising items that would have otherwise been discarded.

VVA solicits these household donations by various marketing techniques and profits from the donations by selling them to qualified retailers. VVA does not own retail outlets for the sale of the donations to the public. Instead of owning and operating retail outlets VVA has found it most effective to sell the donations wholesale to privately owned thrift stores. In your community VVA has contracted with M&M Management Company.

We are requesting that you consider the allowance of M&M Management to build or lease a thrift store in your community. VVA has contracted with M&M Management for over twenty five years in our household goods donation program. VVA's relationship with M&M Management has enabled us to fulfill our mission of serving our nations veterans. Our service is both national and local. The inclusion of this program in your community will enable funding directly to our veteran services in your community.

Thank you for taking the time to consider this opportunity. If you would like addition information on VVA please visit our website at [www.vva.org](http://www.vva.org). I can be reached at (301) 585-4000 extension 123 if you would like to discuss this program and its benefits further.

Respectfully,

Quentin Butcher, Business Manager, Vietnam Veterans of America

## Criteria and Standards for Land Use Applications

### *Official Development Plan (ODP) Application*

#### 11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Resolution No. 42 re Competitive State Historic Fund Grant Application for Bowles House Porch and Wall Crack Repair

**Prepared By:** Patrick Caldwell, Planner II

**Recommended City Council Action:**

Adopt Resolution No. 42 authorizing the Department of Community Development to apply for a competitive grant from the State Historic Fund by October 1, 2009, for 75% of the cost to repair the east porch and a cracked wall at the Bowles House located at 3924 West 72<sup>nd</sup> Avenue.

**Summary Statement**

- The Bowles House has been owned by the City since the mid 1970's and has been maintained by the City's Building Operations and Maintenance Division in the Department of General Services.
- In 1988, the Bowles House was listed on the National Register of Historic Places. The State Historic Fund offers competitive grants for repair and maintenance of such historically designated structures.
- The competitive grants are available to Certified Local Governments (CLG), and the City of Westminster is a qualified CLG. The Department of Community Development is the designated entity in the City to coordinate CLG items.
- The Department of Community Development and the Department of General Services wish to pursue a grant for general repair of the east porch and repair of a significant crack in the northeast wall of the Bowles House.
- The competitive grant provides up to 75% (\$71,000) of the funding for repairs. The City would need to match the remaining 25% (\$24,000) of the total cost estimated at \$95,000. Funds are available in the General Capital Improvement Fund – Building Operations and Maintenance Major Maintenance Account to cover this expense.
- The Historic Structure Assessment of the Bowles House, completed in February, 2009, identified the east porch and the cracked wall at the northeast corner as the primary items in need of repair.
- The City's Historic Landmark Board considers the Bowles House repairs a high priority and strongly recommends support of the competitive grant application.

**Expenditure Required:** \$24,000 (City matching funds at 25% of the total)

**Source of Funds:** General Capital Improvement Fund - BO&M Major Maintenance Capital Account

## **Policy Issue**

Should the City authorize staff to apply for a competitive grant that exceeds \$50,000 from the State Historic Fund for repairs to the Bowles House east porch and for a cracked wall at the northeast corner of the house?

## **Alternative**

Council could choose not to authorize staff to apply for the grant. The City would need to fund the full cost of repairs to the Bowles House or choose to not do the repairs at this time. Staff does not recommend this alternative as these are critical repairs to a key historic structure in the City.

## **Background Information**

The Bowles House was built between 1871 and 1876 by Edward and Mahalia Bowles, early settlers in the area that became the City of Westminster. The Bowles raised 9 children in the house and were active in the early life of Westminster. The Bowles were influential in convincing the railroad to come through the area in 1881. The railroad right-of-way touches the northeast corner of the Bowles property.

The house is located at the southwest corner of 72<sup>nd</sup> Avenue and Newton Street. The Bowles family owned the house until the 1930's. After its sale, the house deteriorated and was converted to apartments. The City purchased the house in the mid 1970's and, in 1979, intended to use the house for a practice burn by the fire department. The Westminster Historical Society, neighbors, and children at the nearby Vista Grande Elementary School rallied to convince the City to preserve the house. The City decided to save the house and invested in restoring the exterior of the house to its original appearance. The front porch had been removed in the 1940's. Bowles family photos were used to reconstruct the front porch. The east porch was cleaned up and now serves as the primary entrance to the house. The roof was replaced and the one-half acre lot was landscaped with plants that were common as residential landscape in the late 1800's. The interior of the house was repaired, and heating, plumbing and electric systems were upgraded. A parking area for 12 cars was installed on the south part of the lot. The house was used for City offices for a few years. The Bowles House is now leased to the Westminster Historical Society. It operates a house museum to display artifacts that interpret life of Westminster in the late 1800's.

The main part of the house is constructed of sand brick on a shallow foundation. There is no basement, but a small cellar is located below the middle part of the house. This provides existing access and visibility to the interior of the foundation walls. At the northeast corner of the house, the foundation has settled, and the north wall has pulled away from the east wall at the corner. The crack is almost one-half inch in width at the foundation and narrows as it approaches the second floor of the house. The grant would provide funds to stabilize the foundation and to reattach and pin the north wall back into position. The repair would retain the original bricks and look of the house.

The enclosed, but unheated, east porch of the house is approximately 16 feet by 8 feet. Wood framed windows are positioned above a brick half wall. The east porch is believed to have been built in the 1920's to replace a smaller service porch in that location. The east porch bricks are a similar red color to the sand bricks on the main house, but are a kiln fired brick with a more durable glazing. The east porch serves as the primary entrance to the Bowles House because of its proximity to the parking lot and because it opens into a large service room that easily accommodates small tour groups. This service room was the original kitchen area of the Bowles House. The foundation of the porch has settled inconsistently and the interior porch floor slopes considerably. The brick porch walls are not tied to the brick walls of the original Bowles House and have pulled away and settled with offsets and large cracks. The porch roof remains attached to the main house, but is proposed to be slightly raised as a part of the repairs to the foundation. The grant would provide funds to rebuild the east porch foundation. The brick walls would be repaired, reset and tuckpointed as needed. The exterior stone stairs would be reset. Wood surfaces would be sanded and repainted as needed. A short section of flagstone walk would be reset. All repairs would retain the character of the 1920's period porch.

**SUBJECT:** Resolution re State Historic Fund Grant Application for Bowles House Repairs Page 3

All landscaping near the foundation would be protected as needed. The wild yellow rose that is said to date from the Bowles family will be protected to assure continued longevity. All damaged landscaping will be replaced and the foundation plantings will be replaced as needed with historically appropriate plantings.

The State Historic Fund provided grant funds, at no cost to the City, for a Historic Structure Assessment of the Bowles House. The assessment was completed in February, 2009. The east porch and the cracked wall at the northeast corner were identified as the primary items in need of immediate repair. In May 2009, Planning Division Staff met on site with Department of Parks and Recreation and Libraries Staff, Building Operations and Maintenance Staff, a contractor and an architect to discuss coordination of the repairs to the Bowles House east porch. The contractor and architect have provided the cost estimates for the repairs that are referenced in this memo. The costs are in line with costs identified in the recently completed Historic Structure Assessment.

In summary, the total cost of the repairs is estimated at \$95,000. The City's match at 25% would be \$24,000. The grant would provide 75% funding at \$71,000. The grant would be managed by staff in the Department of Community Development with ongoing coordination with the Building Operations Division in the Department of General Services and with the Parks Services Division in the Department of Parks, Recreation and Libraries.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **42**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**A RESOLUTION AUTHORIZING  
A COMPETITIVE STATE HISTORIC FUND GRANT APPLICATION  
FOR BOWLES HOUSE PORCH AND WALL CRACK REPAIR**

WHEREAS, the Bowles House has been owned by the City since the mid 1970's and has been maintained by the City's Building Operations and Maintenance Division in the Department of General Services, and;

WHEREAS, in 1988 the Bowles House was listed on the National Register of Historic Places and the State Historic Fund offers competitive grants for repair and maintenance of such historic designated structures, and;

WHEREAS, the competitive grants are available to Certified Local Governments (CLG), and the City of Westminster is a qualified CLG. The Department of Community Development is the designated entity in the City to coordinate CLG items, and;

WHEREAS, the Department of Community Development and the Department of General Services wish to pursue a grant for general repair of the east porch and repair of a significant crack in the northeast wall of the Bowles House, and;

WHEREAS, the competitive grant provides up to 75% (\$71,000) of the funding for repairs. The City would need to match the remaining 25% (\$24,000) of the total cost estimated at \$95,000, and;

WHEREAS, the City's Historic Landmark Board considers the Bowles House repairs a high priority and strongly recommends support of the competitive grant application, and;

WHEREAS, the Historic Structure Assessment of the Bowles House completed in February 2009, identified the east porch and the cracked wall at the northeast corner as the primary items in need of repair.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO that Staff shall submit a grant application to the State Historic Fund by October 1, 2009, requesting funding for general repair of the east porch and repair of a significant crack in the northeast wall of the Bowles House.

PASSED AND ADOPTED this 14<sup>th</sup> day of September, 2009.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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City Clerk

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City Attorney's Office



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Councillor's Bill No. 29 re 2009 Community Development Block Grant Fund Appropriation for American Recovery and Reinvestment Act Grant

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

**Recommended City Council Action**

Pass Councillor's Bill No. 29 on first reading appropriating funds received from the United States Department of Housing and Urban Development, Community Development Block Grant program, in the amount of \$150,438, which was awarded under the American Recovery and Reinvestment Act.

**Summary Statement**

- City Council action is requested to pass the attached Councillor's Bill on first reading appropriating the City's 2009 Community Development Block Grant – Recovery Act (CDBG-R) funds in the amount of \$150,438, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2009 CDBG-R allocation was designated to fund Lowell Boulevard enhancements and CDBG-R program administration pursuant to City Council approval on May 18, 2009.
- This funding was granted by HUD pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act).

**Expenditure Required:** \$ 150,438

**Source of Funds:** 2009 Community Development Block Grant Funds (CDBG-R)

**Policy Issue**

Should the 2009 CDBG-R funds in the amount of \$150,438 be appropriated to the Lowell Boulevard enhancements and CDBG program administration as previously approved by City Council on May 18, 2009?

**Alternative**

Do not appropriate the 2009 CDBG-R funds in the amount of \$150,438. This alternative is not recommended because this funding is needed for the Lowell Boulevard enhancements that are now underway.

**Background Information**

The City was notified in May 2009 that it was eligible to prepare a Substantial Amendment to its 2008 CDBG Action Plan and propose a use for a \$150,438 grant to be made through the CDBG program pursuant to the Recovery Act. The Recovery Act was enacted in February 2009, which was within the 2008 CDBG fiscal year. Therefore, HUD directed the City to treat it as a 2008 project.

The projects approved by City Council on May 18, 2009, and by HUD are as follows:

<b>Project</b>	<b>Amount</b>
Program Administration (10% - Salaries)	\$ 15, 043
Lowell Boulevard Corridor Enhancements	\$135,395
<b>TOTAL</b>	<b>\$150,438</b>

**2009 CDBG Program Administration \$15,043**

The Recovery Act allows grantees to utilize up to 10% of the CDBG-R funding for administration and planning expenses. It is proposed to use this amount to pay part of the salary of the full-time CDBG Technician, who is performing most of the tasks related to this grant.

**Lowell Boulevard Streetscape Improvements \$135,395**

The amount of \$135,395 has been approved to help pay for this long-term project from 77<sup>th</sup> Avenue to Turnpike Drive, including street-lawn area improvements, landscaping, undergrounding of overhead utilities, decorative lighting, new sidewalk/bicycle trail construction, and repaving the street. The remainder of the project is being funded with 2009 CDBG money and the City General Fund.

This appropriation will amend CDBG Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Block Grant-CDBG	7600.40610.0025	\$0	<u>\$150,438</u>	\$150,438
Total Change to Revenues			<u>\$150,438</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Salaries	76030350.60200.0000	\$0	\$15,043	\$15,043
CDBG-R(Recovery Act)	80976030945.80400.8888	0	<u>135,395</u>	135,395
Total Change to Expenses			<u>\$150,438</u>	

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **29**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE COMMUNITY  
DEVELOPMENT BLOCK GRANT FUND AND AUTHORIZING A SUPPLEMENTAL  
APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$150,438. This appropriation is amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2009.

Section 2. The \$150,438 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item ###, dated September 14, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$150,438</u>
Total	<u>\$150,438</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 14<sup>th</sup> day of September, 2009

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28<sup>th</sup> day of September, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



# Agenda Item 10 K

## WESTMINSTER C O L O R A D O

### Agenda Memorandum

City Council Meeting  
September 14, 2009



**SUBJECT:** Councillor’s Bill No. 30 Amending Title V, Chapter 14, re Art Gallery Permits

**Prepared By:** Linda Yeager, City Clerk  
Martin McCullough, City Attorney

### Recommended City Council Action

Pass Councillor’s Bill No. 30 on first reading amending Title V, Chapter 14, to allow the issuance of art gallery permits to qualifying entities in the City per State law and to set local fees for the permits.

### Summary Statement

- The Colorado Liquor Code was amended in July 2008 to create art gallery permits that allow qualifying entities to offer complimentary alcoholic beverages for consumption on premise. Qualifying entities include establishments whose primary purpose is to exhibit and offer for sale works of fine art or precious or semiprecious metals or stones, as defined in State Statutes. The permit allows alcoholic beverages to be served for a period not to exceed four hours each on 15 dates during each permit year.
- The owners of recently established art galleries in South Westminster have inquired about serving complimentary wine on special occasions, such as evening showings and gallery walks. In addition to art galleries, these permits can be issued to qualifying jewelry stores, although no local interest has been expressed to date.
- As stated in the City’s open container law, it is unlawful for any person to drink, possess or have under his/her control any alcoholic beverage in an open container in any public place, which includes private property open to the general public, without a license or permit to do so. State law prohibits consumption of malt, vinous, or spirituous beverages in any public place except a premise licensed or permitted for said purpose.
- State and local approval of the permit is required, as is annual renewal. The combined fee for the permit is \$175.
- The proposed ordinance also includes miscellaneous technical clean up amendments to this section of the Code. Art gallery permits were discussed with City Council at the August 17, 2009 study session.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should art gallery permits be issued to Westminster qualifying entities?

**Alternative**

Council could decide not to have art gallery permits available to local businesses, as the State law is permissive rather than mandatory. Staff does not support this alternative, as it might restrict the ability of Westminster businesses to compete with similar businesses in neighboring communities.

**Background Information**

During the 2008 legislative session, House Bill 1105 created an art gallery permit so that persons operating an art gallery might be able to offer complimentary malt, vinous or spirituous liquors on premise 15 times annually for periods no longer than four hours each. This permit does not allow the sale of alcoholic beverages and, if issued, the art gallery cannot charge an entrance fee or a cover charge in connection with offering alcoholic beverages to customers. For purposes of this permit, art gallery means an establishment whose primary purpose is to exhibit and offer for sale works of fine art or precious or semiprecious metals or stones, as defined in state statute.

Applications require State and local approval and annual renewal and may be rejected if the applicant fails to establish that he or she is able to offer complimentary alcohol beverages without violating the liquor code or creating a public safety risk to the neighborhood. The local fee is \$103.75 and the State fee is \$71.25. The Colorado Liquor Code does not require that a hearing be held to grant issuance of an art gallery permit, and applications will be reviewed and approved by the Special Permit and License Board.

Art gallery permittees are subject to all requirements and restrictions of the liquor code. Any violation of the State or local liquor codes would be subject to action of the Special Permit and License Board.

The City's open container law prohibits consumption or possession of open containers of alcoholic beverages in public places that are not properly licensed or permitted for such consumption or possession. The definition of public places includes private property open to the public. Additionally, State law prohibits consumption of malt, vinous, or spirituous beverages in any public place except a premise licensed or permitted for said purpose. Without art gallery permits, the owners of these businesses would not be able to serve complimentary alcoholic beverages to customers and advertise the special event to the public.

The availability of art gallery permits would promote City Council's Strategic Plan goal of Vibrant Neighborhoods and Commercial Areas by providing tools to businesses that enhance Westminster's development as a cultural arts community and the Strategic Plan goal of a Strong, Balanced Local Economy by supporting a healthy retail base that is regionally competitive.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – proposed ordinance

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 5-14-4 AND 5-14-5 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING FERMENTED MALT BEVERAGE AND ALCOHOLIC BEVERAGE LICENSE AND SPECIAL EVENTS PERMITS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-14-4, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-14-4: LICENSE APPLICATIONS:

(A) The following licenses and permits may be issued by the Licensing Authority in accordance with the provisions of the Colorado Beer Code and the Colorado Liquor Code;

(1) Fermented malt beverage licenses:

- (a) Sales for consumption off the premises of the licensee;
(b) Sales for consumption on the premises of the licensee;
(c) Sales for consumption both on and off the premises of the licensee.

(2) Malt, vinous and spirituous liquor licenses:

- (a) Retail liquor store;
(b) Liquor-licensed drugstore;
(c) Beer and wine;
(d) Hotel and restaurant;
(e) Tavern;
(f) Brew Pub
(g) Club;
(h) Arts;
(i) Racetrack;
(j) Optional premises.
(k) Optional premises permit for a hotel and restaurant license; and
(l) Vintner's restaurant.

(3) Other licenses and permits:

- (a) Bed and breakfast permit;
(b) Art gallery permit;
(c) Special event permit;
(d) Transfer of ownership;
(e) Consent to changing, altering or modifying any licensed premises.

(4) Administrative Approvals. The City Clerk is authorized to administratively approve the following applications in accordance with the provisions of the Colorado Beer Code and the Colorado Liquor Code:

- (a) Temporary permit pending the approval of applications for transfers of ownership

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(e) . Temporary License for the continuance of the sale of fermented malt beverages by a licensee whose license has expired where the licensee has applied for a permanent license;
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12. . Temporary License for the continuance of the sale of alcoholic beverages by a licensee whose license has expired where the licensee has applied for a permanent license;¶
13. . Special events permit;¶
14. . Brew Pub License;¶
15. . Bed and Breakfast Permit, and¶
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(b) Transfer of ownership, unless the City Clerk determines in the Clerk's discretion that there is probable cause to believe that grounds exist for denying the transfer under C.R.S. section 12-47-303, as the same may from time to time be amended or recodified

(c) Waiver, for good cause, of the time requirement for the filing of an application for renewal of an existing license

(d) Renewal of an existing license, unless the City Clerk determines in her reasonable discretion that there is probable cause to believe that grounds exist for denying the application for renewal under C.R.S. section 12-47-307, as the same may from time to time be amended or recodified

(e) Consent to changing, altering or modifying any licensed premises, unless the City Clerk determines in the Clerk's discretion that the premises, as changed, altered or modified, will not meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and the regulations promulgated thereunder, including, but not limited to, those requirements set forth in C.C.R. 203-2, Regulation 47-302, as the same may from time to time be amended or recodified

Section 2. Section 5-14-4, W.M.C., subsections (I), (J), and (K), are hereby REPEALED IN THEIR ENTIRETY.

Section 3. Section 5-14-5, subsection (A), W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (9) to read as follows:

**5-14-5: FEES:**

(A) Each application for a license or transfer of a license shall be accompanied by the following application fees:

(9) Art gallery permit, one hundred three and 75/100 dollars (\$103.75).

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. 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 14th day of September , 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of September, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney's Office



## Agenda Item 10 L

WESTMINSTER  
COLORADO

### Agenda Memorandum

City Council Meeting  
September 14, 2009



**SUBJECT:** Councillor's Bill No. 31 re Lease for Dry-Land Farming on Strasburg Natural Resource Farm

**Prepared By:** Mike Happe, Water Resources and Treatment Manager  
David Meyer, Water Quality Specialist

### Recommended City Council Action

Adopt Councillor's Bill No. 31 as an emergency ordinance, authorizing the City Manager to enter into a one-year lease, renewable annually for four additional one-year terms, for dry-land farming of the Strasburg Natural Resource Farm for one third of the gross revenue of the crop sales.

### Summary Statement

- The City grows crops on the Strasburg Natural Resource Farm under a lease agreement with a local farmer as part of its wastewater biosolids application program.
- Under this lease agreement, the farmer will pay the City one third of the revenue from the sale of the crops produced as payment for use of the land. Rates of payment from one quarter to one third of crop revenue are typical for the area.
- The City has been applying biosolids to Gregory Schoonveld's fields in Arapahoe County since early 2009, and Staff has been very pleased with his farming practices. Based on this positive experience and the demonstrated farming success with Gregory Schoonveld, Staff selected him to lease the City's property for dry-land farming.
- This bill is proposed as an emergency ordinance due to timing requirements to secure Gregory Schoonveld as a tenant and allow him to commence work under this lease on September 15, 2009, in order to meet planting schedules for the current crop season.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should Council pass an emergency ordinance to lease the dry-land farm fields on its Strasburg Natural Resources Farm for one third of the revenue generated by the sale of the crops grown?

**Alternative**

City Council could decide not to lease the dry land farm fields at this time. This alternative is not recommended. By leasing the land for crop production the City will gain revenue from the sale of the crops, continue to provide a beneficial option for the use of the City's wastewater biosolids and continue to support local agriculture.

**Background Information**

Biosolids are the processed solids generated by municipal wastewater treatment that are beneficially used as an agricultural fertilizer. The growing and harvesting of crops on land the City uses for the application of biosolids is critical for the uptake of the nutrients supplied by the biosolids. The cycle of fertilization with biosolids, crop growth and harvest provides for the sustainability of the biosolids program. The City has leased its crop land to local farmers in exchange for a portion of the revenue from the crop sales since 1999.

Approving this lease supports City Council's goals of Financially Sustainable City Government Providing Exceptional Services and Beautiful and Environmentally Sensitive City by generating revenue and providing for the beneficial use option for its wastewater biosolids.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **31**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN EMERGENCY ORDINANCE APPROVING A LEASE AGREEMENT FOR CITY-  
OWNED PROPERTY KNOWN AS THE STRASBURG NATURAL RESOURCE FARM**

WHEREAS, the City owns property in central Adams County for the purpose of applying biosolids; and

WHEREAS, it is in the City's interest to maximize the income generated from such operation by collecting rental income from use of the land and improvements.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager is hereby authorized to execute a lease with the following party as summarized below:

<u>Lessee:</u>	<u>Land:</u>	<u>Rent:</u>	<u>Term:</u>
Gregory Schoonveld	2182 acres dry farmland	Revenue of 1/3 of grain produced	One-year, renewable annually for 4 additional one-year terms

Section 2. Emergency. Because the failure to timely enter this lease may result in the loss of the proposed tenant and associated revenue, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on September 14, 2009, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 14th day of September, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney's Office



**WESTMINSTER**  
**COLORADO**

**Agenda Item 10 M&N**

**Agenda Memorandum**

City Council Meeting  
September 14, 2009



**SUBJECT:** Councillor’s Bill No. 32 re Creating the Orchard Park Place North General Improvement District

**Prepared By:** Tammy Hitchens, Finance Director

**Recommended City Council Action**

1. Adopt Councillor’s Bill No. 32 as an emergency ordinance creating the City of Westminster Orchard Park Place General Improvement District.
2. Authorize legal expenses with the law firm of Sherman and Howard LLC in an amount not to exceed \$5,000.

**Summary Statement**

- On April 14, 2008, City Council passed Councillor’s Bill No. 16 on second reading that approved an Economic Development Agreement (EDA) for the Orchard View development between the City, Westminster Economic Development authority (WEDA), Centura Health Corporation (Centura) and AZG Westminster, LLC (AZG). The primary purpose of the EDA was to secure the Centura Health Corporation’s planned 40 acre medical complex at the southwest corner of I-25 and 144<sup>th</sup> Avenue.
- The Orchard View development is roughly 56 acres. Over the entire 56 acres, there are over \$8.4 million of cost recoveries and assessments due. As part of the negotiations, it was agreed that \$3,854,549.40 of the recoveries could be financed by setting up a General Improvement District (GID) and taxing the property 10 mills until the principal amount plus 6% interest was paid back to the City. Three (3) additional mills were put in place and will continue indefinitely to compensate the City for maintenance of the new public infrastructure and administrative services.
- The first step in the creation of a GID is for petitioners to file a Petition for the Organization of a General Improvement District with the City Clerk. The petition must meet all legal requirements as set forth in the appropriate sections of the Colorado Revised Statutes. The required petition to form a GID has been properly filed with the City Clerk by the petitioners. 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, appropriate ballot questions for the GID debt issue have been prepared. If the action above is approved by City Council, the ballot language approval is presented for the GID Board’s (City Council will sit as the Board) consideration.
- Staff will be recommending an amendment to the EDA to include an additional \$300,000 for improvements to Huron Street as well as some other items. If the amendment is approved, the total reimbursement to the City would be \$4,154,549.40.
- The legal expenses will cover the cost of the legal work necessary to create the GID. These funds will be paid for by the GID mill levy.

**Expenditure Required:** Not to exceed \$5,000

**Source of Funds:** Orchard Park Place North General Improvement District Mill Levy

**Policy Issue**

Should City Council approve the formation of the Orchard Park Place General Improvement District?

**Alternatives**

1. Do not form the GID. This is not recommended as City Council has already approved an EDA that included the formation of the GID.
2. Delay the formation of the GID. This is not recommended as the next time an election could take place is November 2010 and it would delay the receipt of the revenue that will be generated from the 13 mills.

**Background**

Orchard Park Place North is located on the south side of 144<sup>th</sup> Avenue at the I-25 interchange. Centura will develop a 40 acre medical complex that will employ up to 800 people at build-out. AZG is a retail developer from Arizona, which currently owns the remaining 16 acre parcel.

This project is important to the City's economic development efforts because:

- A new major medical complex and employer for the City is being provided.
- It will provide daytime population to support the retail development occurring in the North I-25 area (i.e. the Orchard and Westminster Crossings areas).
- It will help jump start the vision of having a significant business park/employment center along I-25, north of 136<sup>th</sup> Avenue.
- The medical industry is a growing sector of the economy and this project will have a positive affect on the City's long-term economic outlook.
- The project gets the road and utility infrastructure in place that will facilitate future business development in the area.

The City entered into an EDA with Centura and AZG in April 2008. Over the entire 56 acres, there are over \$8.4 million of recoveries and assessments due. This includes \$4.9 million for a portion of 144<sup>th</sup> Avenue interchange cost. The developers requested that the City either waive or allow the financing of the recoveries.

In response, the EDA provides for the following:

- Total recoveries and assessment to be financed through a GID: \$3,854,549 (inclusive of \$2.4 million for a portion of the interchange recovery).
- The General Improvement District will be set up to reimburse the City for recoveries due. The terms of the financing are as follows:

City Recovery Mill Levy: 10 mills will go toward payment of the \$3,854,549.40 recoveries and assessments. This mill levy will end once the principle and interest is paid to the City.

City Maintenance Mill Levy: 3 mills will be put in place and will continue indefinitely to compensate the City for maintenance of the new public infrastructure built for the development and the City's standard administrative service fee.

Interest Rate: This will be assessed at 6% per annum against the principal balance of the recoveries and assessments.

The proposed GID would levy a property tax of 13 mills, which would be assessed in addition to the ad valorem property taxes levied by other taxing districts, effective with the first year of partial property assessment, with taxes to be collected the following year. The proceeds would be used to repay the City for the public improvements.

Staff will be recommending an amendment to the EDA to Council at a later date. Among other items, the amendment will increase the reimbursement to the City to \$4,154,549 to cover costs of Huron Street and other improvements.

Staff is recommending this be passed as an emergency ordinance in order to assure that GID election timeframes are met.

Staff will be present at the City Council meeting on Monday, September 14<sup>th</sup> to answer questions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **32**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE DECLARING THE WESTMINSTER ORCHARD PARK  
PLACE NORTH GENERAL IMPROVEMENT DISTRICT ORGANIZED;  
PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND  
DECLARING AN EMERGENCY**

WHEREAS, the City of Westminster (the "City"), is a municipal corporation duly organized and existing as a home-rule municipality under Article XX of the State Constitution (the "Constitution") and laws of the State of Colorado; and

WHEREAS, the members of the City Council of the City (the "Council") have been duly elected and qualified; and

WHEREAS, the City Clerk of the City has received a petition (the "Petition") stating that it has been signed by one hundred percent of the owners of certain taxable real property within the City described in Exhibit A hereto (the "Property") and requesting that the Westminster Orchard Park Place North General Improvement District (the "District") be created; and

WHEREAS, it appears that the Petition has been duly signed and presented in conformity with Part 6 of Article 25 of Title 31, C.R.S., and that the allegations of the Petition are true; and

WHEREAS, the Petition sets forth: (a) the name of the District; (b) a general description of the improvements to be acquired, constructed, installed, operated, or maintained within and for the District (the "Improvements"); (c) the estimated cost of the proposed Improvements; (d) a general description of the boundaries of the District or the territory to be included therein with such certainty as to enable a property owner to determine whether or not his or her property is within the District; (e) the names of three persons of the District who shall represent the petitioners and who have the power to enter into agreements relating to the organization of the District; (f) a request for the organization of the District; and (g) a statement that the Petition is signed by one hundred percent of the owners of the Property; and

WHEREAS, the Petition additionally requests that: (a) the Council waive all of the requirements for notice, publication, a hearing, an election and the filing of a bond set forth in Sections 31-25-605, 31-25-606 and 31-25-607, Colorado Revised Statutes ("C.R.S."); and (b) the Council adopt an ordinance declaring the District organized without such notice, publication, hearing, election or filing of a bond; and

WHEREAS, the interest of the City and the District and the public interest and necessity demand and require the provision of the Improvements within the District, at an estimated cost of \$4,154,549.40 plus 6% interest and an estimated annual cost of \$60,000 for the maintenance of the Improvements and the administration of the District.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Council hereby makes the following findings:

a. The signatures upon the Petition are genuine. Pursuant to Section 31-25-607(3), C.R.S., such determination and all matters of fact incident thereto shall be final and conclusive on all parties in interest, whether appearing or not.

b. As ascertained from the Petition, the tax rolls of Adams County, the last official registration list, and such other evidence as has been adduced, the total number of Electors is two, and the total valuation for assessment of the real and personal property in the District is \$330,930; and

c. The Improvements will confer a general benefit on the District and the cost of the Improvements will not be excessive as compared with the value of the property in the District.

Section 2. The Council hereby waives all of the requirements for notice, publication, a hearing, an election and the filing of a bond set forth in Sections 31-25-605, 31-25-606 and 31-25-607, C.R.S with respect to the Petition and the District.

Section 3. The Council hereby declares the District organized. The corporate name of the District shall be “Westminster Orchard Park Place North General Improvement 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 of Article 25 of Title 31, C.R.S.

Section 4. The District lies within the City in the County of Adams, State of Colorado and its boundaries shall consist of the Property as described in Exhibit A.

Section 5. All actions heretofore taken (not inconsistent with the provisions of this ordinance) by the City and the officers thereof, directed towards the organization of the District and the objects and purposes herein stated are hereby ratified, approved and confirmed.

Section 6. The officers of the City and the District are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance.

Section 7. 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, the intent being that the same are severable.

Section 8. 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 9. In order to organize the District in a timely manner sufficient to hold an election within the District on November 3, 2009, to finance the costs of the Improvements, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on September 14, 2009, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 10. This ordinance shall be published in full within ten days after its enactment.

Section 11. Within thirty (30) days after the effective date of this ordinance, the City Clerk shall transmit to the County Clerk and Recorder of Adams County a copy of this ordinance for recording.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY  
ORDINANCE this 14th day of September, 2009.

( S E A L )

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Office of the City Attorney

Exhibit A

Legal Description of Property within the District

THE NORTH ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 68 WEST, OF THE 6<sup>TH</sup> P.M., COUNTY OF ADAMS, STATE OF COLORADO, EXCEPT THAT PORTION CONVEYED TO THE FARMERS RESERVOIR AND IRRIGATION COMPANY IN DEED RECORDED MAY 16, 1910 IN BOK 47 AT PAGE 72, AND THAT PORTION CONVEYED TO THE DEPARTMENT OF HIGHWAYS IN DEED RECORDED AUGUST 24, 1953 IN BOOK 473 AT PAGE 187 AND DEED RECORDED MARCH 1, 1956 IN BOOK 597 AT PAGE 367, AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEED RECORDED FEBRUARY 21, 2006 AT RECEPTION NO. 20060221000169780 AND DEED RECORDED FEBRUARY 21, 2006 AT RECEPTION NO. 20060221000169800, COUNTY OF ADAMS, STATE OF COLORADO.

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

I, 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 (the “Council”) of the City at a regular meeting of the Council held at the City Hall on September 14, 2009.

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

3. The passage of the Ordinance as an emergency 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
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

4. That notice of the meeting of September 14, 2009, in the form, attached hereto as Exhibit A, was duly given to the Council members and was 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.

5. That the ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on \_\_\_\_\_, 2009. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this \_\_\_\_\_ day of September, 2009.

(SEAL)

\_\_\_\_\_  
 City Clerk

**EXHIBIT A**  
(Attach Notice of September 14, 2009 Meeting)

**EXHIBIT B**  
(Attach Affidavit of Publication)



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
September 14, 2009



**SUBJECT:** Councillor’s Bill No. 33 re Temporary Moratorium on Business Licenses for Medical Marijuana Retail Establishments

**Prepared By:** Walt Mathews, Assistant City Attorney  
Mac Cummins, Planning Manager

**Recommended City Council Action**

Adopt Councillor’s Bill No. 33 as an emergency ordinance imposing a 90-day moratorium on the submission, acceptance, processing and approval of any application to the City of Westminster for any permit, license, plan approval, or other type of approval related to the operation of a business that acquires, processes, cultivates, manufactures, produces, uses, sells, distributes, dispenses or transports medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution, to allow for the review and development by City Staff of possible amendments to the City’s Business License process and criteria.

**Summary Statement**

- Particular actions or activities involving medical marijuana were authorized and limited by Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000. Recently, the City Council has been made aware that various departments of the City have received inquiries and/or applications from individuals or entities interested in opening and operating a business within the City that would acquire, possess, cultivate, manufacture, produce, use, sell, distribute, dispense, or transport medical marijuana.
- Title V, Section 5-2-2 of the Westminster Municipal Code (“W.M.C.”) states that it shall be unlawful for any person to establish any place of business in the City without first obtaining a license to conduct such business. There has not been a comprehensive review and update of the City’s business licenses process and criteria since its enactment in August of 1998. The Community Development Department and the City Attorney’s Office are recommending a comprehensive review and update of the City’s business license process and criteria of Title V, Chapter 2 of the Westminster Municipal Code pertaining to the issuance of business licenses to medical marijuana dispensaries.
- Currently, the City has no specific land use or business regulation governing the operation of a business growing, selling, or otherwise engaged in actions or activities involving medical marijuana within the City of Westminster. Based upon information obtained by the Community Development Department and the City Attorney, it appears that such businesses may present unique regulatory issues that the City’s current laws, ordinances, rules and regulations do not adequately address. The City Attorney is of the opinion that the City’s land use and business license process and criteria need to be updated and reconciled with current federal and state laws and regulations concerning the issuance of any permit or license related to the operation of a business that sells medical marijuana.
- A moratorium of 90 days would allow City Staff time to review and develop proposed amendments to the City Code to bring consistency between local, state and federal requirements.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City temporarily suspend the processing of applications for business licenses to create a reasonable opportunity for City Staff to review and update the City Code concerning such uses?

**Alternative**

Do not pass a moratorium on business licenses, or enact a moratorium of a shorter duration. Staff believes that a 90-day moratorium is necessary given the complexity of the review and development of Code amendments being proposed by City Staff.

**Background Information**

Section 14 of Article XVIII of the Colorado State Constitution (“Amendment 20”) creates limited exceptions to the criminal laws of this State for patients, primary caregivers, and physicians concerning the medical use of marijuana by a patient to alleviate an appropriately diagnosed debilitating medical condition. It removes state-level criminal penalties on the use of, possession and cultivation of marijuana by patients who possess written documentation from their doctor affirming that he/she suffers from a debilitating condition and advising that they might benefit from the medical use of marijuana. In addition, patients diagnosed with certain documented illnesses are afforded legal protection under Amendment 20.

Patients (or their primary caregivers) may legally possess no more than 2 ounces of usable marijuana, and may cultivate no more than 6 marijuana plants. Patients cannot use marijuana in “plain view of, or in a place open to the general public.” The term “medical marijuana dispensary” is not used in Amendment 20. The dispensaries that currently operate in Colorado do so as “Primary Caregivers,” as defined in Amendment 20. The State has a confidential state-run patient registry that issues ID cards to qualifying patients. Patients who do not join the registry or possess greater amounts of marijuana than allowed by law may argue the “affirmative defense of medical necessity” if they are arrested on marijuana charges.

Currently, medical marijuana dispensaries are not regulated by the State. The Colorado Department of Public Health and Environment (“CDPHE”) is designated to implement the confidential registry of authorized patients and enact rules to administer the program. None of the current rules concern medical marijuana dispensaries or primary caregivers.

In a land use context, many Colorado local governments treat medical marijuana dispensaries as general retail establishments. However, more Colorado local governments are considering amendments to their zoning codes that would limit the location of these facilities to industrial districts, prohibit certain advertising and require the establishments to maintain a minimum amount of security.

If the moratorium were enacted, it would be Staff’s intention to bring back to City Council for its consideration a comprehensive proposed set of revisions to the City’s business license process and criteria that address all of the concerns outlined in this memorandum. City Staff will certainly provide City Council with periodic updates on this project, should City Council decide to implement the proposed moratorium.

Staff is recommending that the moratorium include those applications received less than 30 days prior to the effective date of this ordinance. Staff is proposing that this be passed as an emergency ordinance because the City’s current process and criteria could result in the approval or denial of such uses contrary to state and federal law.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment - Emergency Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN EMERGENCY ORDINANCE ESTABLISHING A 90-DAY MORATORIUM UPON THE SUBMISSION, ACCEPTANCE, PROCESSING AND APPROVAL OF ANY APPLICATION TO THE CITY OF WESTMINSTER FOR ANY PERMIT, LICENSE, PLAN APPROVAL, OR OTHER TYPE OF APPROVAL RELATED TO THE OPERATION OF A BUSINESS THAT ACQUIRES, POSSESSES, CULTIVATES, MANUFACTURES, PRODUCES, USES, SELLS, DISTRIBUTES, DISPENSES, OR TRANSPORTS MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE 18, SECTION 14 OF THE COLORADO CONSTITUTION; DECLARING THE INTENTION OF THE CITY COUNCIL TO CONSIDER THE ADOPTION OF APPROPRIATE CITY REGULATIONS WITH RESPECT TO SUCH BUSINESS; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds as follows:

A. The City Council has been made aware that various departments of the City have received inquiries and/or applications from individuals or entities interested in opening and operating a business within the City that would acquire, possess, cultivate, manufacture, produce, use, sell, distribute, dispense, or transport medical marijuana.

B. Particular actions or activities involving medical marijuana were authorized and limited by Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000.

C. Section 5-2-2 of the Westminster Municipal Code ("W.M.C.") states that it shall be unlawful for any person to establish any place of business in the City without first obtaining a license to conduct such business.

D. There has not been a comprehensive review and update of the City's business licenses process and criteria since its enactment in August of 1998.

E. The City currently has no specific land use or business regulation governing the operation of a business growing, selling, or otherwise engaged in actions or activities involving medical marijuana within the City of Westminster.

F. Based upon information provided to the City Council, it appears that such businesses may present unique regulatory issues that the City's current laws, ordinances, rules and regulations do not adequately address.

G. City Charter section 4.16 authorizes the City Council to establish procedures and requirements for the use, division, and development of land, and the pattern, location, and rate of growth of the community, all for the general purpose of protecting the public health, safety, and welfare;

H. Pursuant to City Charter Chapter XI.V, City Council has the responsibility to take appropriate action to mitigate potentially adverse effects of land development and to promote coordinated, innovative, high-quality planning to produce a well-balanced, technologically advanced City;

I. The City Attorney is of the opinion that the City's land use and business license process and criteria need to be updated and reconciled with the current federal and state laws and regulations concerning the issuance of any permit or license related to the operation of a business that sells medical marijuana;

J. City Staff is recommending a 90-day moratorium on the receipt and processing of applications for permits or licenses related to the operation of a business that sells medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution, in order to have adequate time to develop, for City Council consideration, a comprehensive proposed set of regulations; and

K. City Council finds that the public health, welfare, and safety of the citizens of the City of Westminster would be best served by the enactment of a 90-day temporary moratorium for the purpose of providing a reasonable period of time for the development and enactment of appropriate regulations for medical marijuana dispensaries within the City limits.

Section 2. For a period of time commencing on the effective date of this ordinance, and continuing for a period of 90 days thereafter, no application for a permit or license related to the operation of a business that sells medical marijuana within the City shall be accepted or processed.

Section 3. Applications for permits or licenses related to the operation of a business that sells medical marijuana submitted less than thirty (30) days prior to the effective date of this ordinance shall be subject to and processed in accordance with the provisions of the Westminster Municipal Code in effect at the conclusion of the moratorium established by this ordinance.

Section 4. Nothing in this ordinance shall be deemed or constructed as affecting any legally vested rights pursuant to City Code or state law.

Section 5. Because the approval or denial of permits or licenses related to the operation of a business that sells medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution under the City's current process and criteria could result in the approval or denial of such uses contrary to federal or state law, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public welfare, peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on September 14, 2009, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 6. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 14<sup>th</sup> day of September, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney's Office

**WESTMINSTER HOUSING AUTHORITY**  
**WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE**  
**MONDAY, September 14, 2009**  
**7:00 P.M.**  
**REVISED AGENDA**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 24, 2009)
- 3. New Business**
  - A. Resolution No. 35 re South Westminster Arts Group Lease of Rodeo Super Market Building, 3715 West 73<sup>rd</sup> Avenue
  - B. Resolution No. 36 re Declaration of Intent to Issue Multifamily Housing Revenue Activity Bonds
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY  
MONDAY, AUGUST 24, 2009 AT 7:30 P.M.

ROLL CALL:

Present at roll call were Housing Authority Chairperson McNally, Vice Chairperson Dittman and Authority members Briggs, Kaiser, Lindsey, Major, and Winter. Also present were J. Brent McFall, Executive Director, Jane Greenfield, Assistant Attorney for the Authority, and Linda Yeager, Secretary.

MINUTES OF PRECEEDING MEETING:

Member Major moved, seconded by Kaiser, to accept the minutes of the meeting of February 23, 2009 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 34 RE PRIVATE ACTIVITY BOND ALLOCATION FROM THE CITY

It was moved by Member Briggs, seconded by Dittman, to adopt Resolution No. 34 accepting the assignment from the City of Westminster of \$4,843,305 of private activity bond allocation for 2009 for the qualified purposes set forth in the assignment, and authorize the Chair to execute the necessary documents. At roll call, the motion passed unanimously.

ADJOURNMENT:

There being no further business to conduct, it was moved by Kaiser, seconded by Major to adjourn. The motion carried and the meeting adjourned at 7:32 p.m.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

# WHA Agenda Item 3 A

## Agenda Memorandum

Westminster Housing Authority Meeting  
September 14, 2009



**SUBJECT:** Resolution No. 35 re South Westminster Arts Group Lease of Rodeo Super Market Building, 3715 West 73<sup>rd</sup> Avenue

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

### Recommended Board Action

Adopt Resolution No. 35 authorizing the Chairperson to execute a one-year lease for the South Westminster Arts Group to occupy the Rodeo Super Market building, located at 3715 West 73<sup>rd</sup> Avenue.

### Summary Statement

- The Board of Commissioners is requested to approve a lease between the Authority and the South Westminster Arts Group (SWAG) to occupy the Rodeo Super Market, located at 3915 West 73<sup>rd</sup> Avenue. SWAG will use the space to facilitate cultural activities such as art shows, meetings and programming that support the growth of non-profit cultural activities and arts businesses in South Westminster. The lease amount is proposed to be \$1.00 per year.
- The City will assist with the expense of utilities and minor repairs not to exceed a total of \$5,000 in 2010 for both WHA buildings leased by SWAG.
- A restoration of the historic façade and repairs to the building were completed in 2009.
- The lease agreement would be for one year, with one-year extensions thereafter.

**Expenditure Required:** \$5,000

**Source of Funds:** General Fund, Community Development operating budget

## **Policy Issue**

Should the Westminster Housing Authority lease the Rodeo Super Market building, a Westminster historic landmark, to the non-profit South Westminster Arts Group (SWAG) for \$1.00 per year and provide water, sewer, heat, electrical utilities and minor maintenance to the leased premises not to exceed \$5,000 in 2010 for both this building and the WHA-owned building at 7287 Lowell Boulevard?

## **Alternatives**

1. Do not lease the premises to SWAG. This alternative is not recommended because a good opportunity to support cultural activity in the South Westminster revitalization area would be missed.
2. Lease the premises to SWAG with different financial terms. This alternative is not recommended because SWAG is attempting to establish a higher level of cultural activity using only existing minimal resources. If it is required to pay higher rent, a lease would be financially infeasible at this time.

## **Background Information:**

In an effort to increase non-profit arts-related activity in the City, staff has worked to create arts business incubator opportunities by identifying potential spaces in which arts activities could be conducted on a temporary or permanent basis. City staff has also worked with local artists to incorporate the South Westminster Arts Group (SWAG), a community-based arts network. The goals of SWAG include:

- Establishing a network of artists, arts supporters and art supportive businesses for communication, advocacy, and identification of needs, and progress toward solutions for the creative community.
- Promoting and fostering a population of creative workers by encouraging them to reside or work in the historic, established South Westminster neighborhood, in order to better meet mutual goals.
- Focusing on diversity, tolerance and inclusiveness in order to strengthen the arts community and help it to serve the needs of its supporters and audience, and providing an influential voice for all facets of the community.
- Maintaining a commitment to public service through education, outreach, public artistic endeavors and other means of connecting with the larger community.
- Showcasing the strength and diversity of the arts community.

Local artists are very enthusiastic about the potential for using the Rodeo Super Market as a center for art shows, classes and meetings, and community studio space.

The Westminster Housing Authority acquired the property at 3915 West 73<sup>rd</sup> Avenue in 2005 with the proposed concept of establishing a community arts center. It is zoned C-1, which zone permits the uses proposed by SWAG. Occupancy of the building would not only support the arts efforts, but would also discourage vandalism of an otherwise vacant building. The City has been paying for utilities for the building since its acquisition. In 2010, it is proposed that the City pay utility and minor repair expenses not to exceed \$5,000 for both this building and the community theatre building at 7287 Lowell Boulevard, which was leased to SWAG in January 2008.

SWAG has been operating for two years and has been instrumental in bringing a community theatre to the neighborhood and organizing an artist cooperative that has hosted seven shows since September 2008. Now that two new art galleries have opened nearby, the new galleries and the SWAG artist cooperative have initiated the City's first monthly "art walks," which started on September 4<sup>th</sup> this year. SWAG has filed with the Internal Revenue Service for its tax-exempt status and has had some success writing grant applications to fund some of its activities. Its board of directors has been working to build its organizational capacity.

Given the opportunity to use this large vacant space for neighborhood arts activities and as a possible arts business incubator, SWAG requested use of the building. SWAG proposes to be responsible for scheduling and operating the building and to provide interface between neighborhood users and the Housing Authority and City of Westminster.

The Westminster Presbyterian Church has been monitoring the progress of the improvements at the Rodeo Super Market and the development of arts activities on 73<sup>rd</sup> Avenue. The Church has offered use of its parking lot for arts programming at the Rodeo Market and pedestrian connections between the Church parking lot and 73<sup>rd</sup> Avenue are underway. Former City employee Ron Hellbusch serves as a liaison between the church and SWAG.

The proposed lease is similar to that used by the Westminster Housing Authority for SWAG's lease of the community theatre building at 7287 Lowell Boulevard. The building has been included in the WHA's insurance coverage with CIRSA since its acquisition. SWAG carries its own liability insurance as required by the existing lease at 7287 Lowell Boulevard. This proposed lease and activity do not increase the insurance costs. The City has been paying utilities and maintenance costs at the Rodeo Market and at the community theatre building. It is proposed that this expense be limited to \$5,000 in 2010 and the balance of these expenses would be SWAG's responsibility.

It is proposed that SWAG's lease payment be \$1.00 per year. As a start-up non-profit organization, SWAG has few sources of revenue and hopes to use this collaborative use of local resources in order to generate arts activities, volunteerism, and programs that will lead to successful grant applications and revenue generation in the future. It is essentially a proposal to "bootstrap" local arts activities into being, so that a basis can be established for generating revenue and programming in the future.

The \$5,000 cost for utilities and minor repairs will be absorbed in the Community Development operating budget in the General Capital Improvement Fund.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachments

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **35**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

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**A RESOLUTION  
APPROVING A LEASE BETWEEN THE WESTMINSTER HOUSING AUTHORITY AND THE  
SOUTH WESTMINSTER ARTS GROUP FOR THE RODEO SUPER MARKET, LOCATED AT  
3915 WEST 73<sup>RD</sup> AVENUE**

WHEREAS, the Westminster Housing Authority owns property located at 3915 West 73<sup>rd</sup> Avenue (“the Premises”); and

WHEREAS, the South Westminster Arts Group is a non-profit organization dedicated to promoting community arts activities and providing an incubator for artists’ businesses; and

WHEREAS, the South Westminster Arts Group proposes to use the Premises to promote community arts activities, including art shows, meetings, classes and programming that support the growth of non-profit cultural activity and artists’ businesses; and

WHEREAS, the attached Lease Agreement has been proposed to allow the South Westminster Arts Group to lease the Premises.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the Chairperson is hereby authorized to execute and the Authority Clerk to attest the attached Lease Agreement, or a substantially similar form of Lease Agreement as approved by the Authority Attorney.

PASSED AND ADOPTED this 14th day of September, 2009.

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Nancy McNally, Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

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Secretary

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Authority Attorney

## **LEASE AGREEMENT**

This **Lease** is made between the **WESTMINSTER HOUSING AUTHORITY**, a Colorado public housing authority (hereinafter called "Lessor" or "Authority"), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called "Lessee" or "SWAG").

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the Premises described in Paragraph 1 below, subject to the terms, conditions, and agreements set forth hereinbelow:

- 1. Premises.** The Premises consist of the building located at 3915 West 73rd Avenue.
- 2. Term and Rent.** Lessor demises the above Premises for a term of one year, commencing 12:00 p.m. on \_\_\_\_\_, 2009, terminating 12:00 p.m. on \_\_\_\_\_, 2010, or sooner as provided herein (hereinafter, the "Term"), for a nominal rent payment for the Term in the sum of One Dollar (\$1.00), and for other good and valuable consideration described below and in Exhibit 1.
- 3. Use.** Lessee shall use and occupy the Premises for activities and functions specifically related to the purpose and mission of the South Westminster Arts Group. The Premises shall be used for no other purpose unless approved in writing by the Lessor.
- 4. Utilities, Care and Maintenance of Premises.**
  - a. Lessee's responsibilities: Lessee acknowledges and accepts the Premises in their as-is condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for the routine care and maintenance of the interior of the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the Premises by the Lessee.
  - b. Lessor's responsibilities: The Lessor shall be responsible for utilities as defined in item 8, not to exceed a \$5,000 budget in 2010. This budget shall be spent for utilities at the Premises and at the building leased by SWAG at 7287 Lowell. When the \$5,000 budget is exhausted in 2010, all expenses related to utilities at both locations shall become the Lessee's responsibility. The Lessor shall be responsible for all general repairs relative to the principal structure of the Premises, including roofing, plumbing, mechanical and electrical equipment. Minor interior repairs, not to exceed \$500 in cost can be submitted to the City of Westminster Building Operations and Maintenance Department and will be handled subject to the availability of City staff.
- 5. Alterations.** Lessee shall not, without first obtaining the prior written consent of Authority staff, make any interior alterations, additions, or improvements to the principal structure of the Premises. Lessee shall not make any changes to the exterior of the Premises. In particular, the south elevation is a historic restoration funded in 2009 by the State Historical Fund. As a result of this funding and the local historic landmark designation, no alterations, including signage, may be made to any part of the exterior of the building without permission from both the Westminster Historic Landmark Board and the State Historical Fund.
- 6. Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.
- 7. Assignment and Subletting.** Lessee shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall be granted or refused in Lessor's sole discretion. Any such assignment or subletting without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's forthwith termination of this Lease.

**8. Utilities.** The Lessor shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the 2010 year only as outlined in section 4.b. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

**9. Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

**10. Possession.** If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby.

**11. Indemnification of Lessor.** Lessor shall not be liable for any damage or injury to any person or property occurring on the Premises during the Term of this Lease. Lessee agrees to indemnify and save and hold Lessor harmless from any claims for such damage or injury, no matter how caused, except to the extent such damage or injury was the direct and proximate result of Lessor's negligent act or omission, provided, however, that nothing herein shall be deemed or construed as a waiver by Lessor of any of the protections or limitations against liability to which Lessor may be entitled under the Colorado Governmental Immunity Act. Lessee may satisfy its obligations pursuant to this paragraph by assuming the defense of and liability, if any, for any such claim brought against the Lessor, and retaining for such defense qualified legal counsel reasonably acceptable to the Authority.

**12. Insurance.**

a. Lessee, at its expense, shall maintain comprehensive commercial liability insurance, including coverage for bodily injury and property damage, insuring Lessee and naming Lessor as an additional insured with minimum coverage as follows: \$1,000,000 per occurrence. The insurance shall include coverage for contractual liability. Additional insurance shall be obtained in the event any aggregate limitations result in per occurrence coverage of less than \$1,000,000.

b. Prior to taking possession of the Premises pursuant to this Lease, Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies that may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation that might otherwise exist.

**13. Eminent Domain.** If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking.

**14. Destruction of Premises.** In the event that the Premises or any part of the building in which the Premises may be situated is damaged or destroyed by any cause to an extent that renders the Premises unsafe or unusable for Lessee's purposes, either Lessee or Lessor may terminate this Lease forthwith. In no event shall the Lessor have any obligation to repair or replace the Premises in the event of any such damage or destruction and Lessee's sole and exclusive remedy in the event of such damage to or destruction of the Premises or the building in which it is located is the termination of this Lease.

**15. Lessor's Remedies on Default.** If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than twenty (20) days' notice to Lessee. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, without extinguishing Lessee's liability. If this Lease shall have been so

terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any Term shall be deemed a waiver.

**16. Taxes.** Lessee shall be solely responsible for the payment of any property or other taxes that may arise as a result of Lessee's use of the Premises. The Lessee covenants and warrants to Lessor that Lessee is exempt from all federal, state and local taxes and further, that Lessee shall take no action to cause the loss of its exemption from said taxes. Lessee further covenants and agrees with the Lessor that in the event Lessee shall lose its exemption from taxes for any reason, Lessee shall timely pay all and any taxes accruing as a result thereof. Lessee further covenants and agrees to indemnify and hold Lessor harmless against any claims or judgments for unpaid taxes resulting from Lessee's use of the Premises.

**17. Attorneys' Fees.** In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. For any controversy or claim arising out of or relating to this Lease, or the breach thereof, the parties agree to attempt to mediate any such disputes in good faith prior to filing any action against the other.

**18. Waiver.** No failure of Lessor to enforce any Term hereof shall be deemed to be a waiver.

**19. Heirs, Assigns, Successors.** This Lease is binding upon and shall inure to the benefit of the heirs, assigns and successors in interest to the parties.

**20. Subordination.** This Lease is and shall be subordinated to all existing and future liens and encumbrances against the premises.

**21. Entire Agreement.** This Lease constitutes the entire agreement between the parties concerning the Premises and may be modified only by a written amendment signed by both parties.

**22. Survival.** Paragraphs 8, 11, and 15 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this \_\_\_ day of \_\_\_\_\_, 2009.

**WESTMINSTER HOUSING AUTHORITY**

**SOUTH WESTMINSTER ARTS GROUP**

By: \_\_\_\_\_  
Nancy McNally, Chairperson

By: \_\_\_\_\_  
Debbie Teter, Chair

Attest: \_\_\_\_\_  
Authority Clerk

Attest: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Authority Attorney

As further consideration for the use of the Premises, SWAG agrees to operate the building pursuant to the following public purposes:

1. The Premises are located in a low and moderate-income neighborhood, in which revitalization activities and projects are a City priority. The Westminster Housing Authority is permitted by state law to own a community center that supports its affordable housing goals. SWAG is expected to operate the Premises for the benefit of the neighborhood, keeping in mind the diversity of the neighborhood, including incomes, ethnicity, age and abilities.
2. Goals for use of the Premises may include:
  - a. Community use and access.
  - b. Providing resources and programming to support the careers of emerging creative professionals.
  - c. Providing opportunities for users of the building to engage in volunteerism and community service.
  - d. Educational opportunities for both youth and adults
  - e. Promotion of a variety of cultural and creative activities including, but not limited to, visual arts, music, digital art and video, historic preservation, ethnic cultural programming and other projects and activities of interest to the inhabitants of the neighborhood.
3. SWAG is expected to coordinate its events and activities with neighboring landowners and businesses in order to manage parking and other impacts efficiently and with consideration of all concerned.
4. SWAG is expected to keep the exterior of the Premises clean and free of weeds, including the plaza area to the east of the building. The exterior grounds for which SWAG is responsible is shown below.



Exhibit 1

# WHA Agenda Item 3 B

## Agenda Memorandum

Westminster Housing Authority Meeting  
September 14, 2009



**SUBJECT:** Resolution No. 36 re Declaration of Intent to Issue Multifamily Housing Revenue Activity Bonds.

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

### Recommended Board Action

Adopt Resolution No. 36 declaring the Westminster Housing Authority's intent to issue multifamily housing revenue activity bonds.

### Summary Statement

- The Westminster Housing Authority accepted the assignment of the City of Westminster's 2009 private activity bond (PAB) allocation in the amount of \$4,843,305 on August 24, 2009.
- The Colorado Department of Local Affairs requires that the Authority approve a resolution declaring the Authority's intent to issue multifamily housing revenue activity bonds.
- The attached Resolution has been reviewed and approved by the Authority Attorney's Office and is ready for the Board of Commissioners' formal action.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the Authority declare its intent to issue multifamily housing revenue bonds?

**Alternative**

Take no action, and refuse to declare this intent. This option is not recommended, as the State Department of Local Affairs instructs issuers to declare such intent when private activity bond capacity is accepted.

**Background Information**

Staff has been studying various means of financing reinvestment in Westminster Commons and private activity bonds will most likely be a part of the financing solution. Therefore, the Authority is in need of PAB capacity assigned by the City. The Authority has accepted the assignment of the City's 2009 PAB capacity and is required to declare its intent to issue multifamily housing revenue activity bonds.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **36**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

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**A RESOLUTION DECLARING THE INTENT OF THE WESTMINSTER HOUSING AUTHORITY TO ISSUE MULTIFAMILY HOUSING REVENUE ACTIVITY BONDS FOR THE WESTMINSTER COMMONS PROJECT.**

WHEREAS, the Westminster Housing Authority (the “Authority”) is authorized and empowered pursuant to Part 2, Article 4, Title 29, Colorado Revised Statutes (the “Act”), as from time to time supplemented and amended, to issue revenue bonds for the purpose of providing dwelling accommodations for persons of low income; and

WHEREAS, the Authority expects to select a private entity (the “Borrower”) interested in acquiring, rehabilitating and equipping the 130-unit rental housing project known as Westminster Commons, located at 3180 West 76<sup>th</sup> Avenue, in Westminster (the “Project”), subject to the financing by the Authority of the Project by the issuance of its multifamily housing revenue bonds pursuant to the provisions of the Act and the Supplemental Public Securities Act, constituting Part 2, Article 57, Title 11 of Colorado Revised Statutes, as amended (the “Supplemental Act”); and

WHEREAS, the Project is within the boundaries of the Authority; and

WHEREAS, the Project will qualify as a “project” within the meaning of the Act; and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has concluded that the Project is consistent with the goals and objectives of the Authority; and

WHEREAS, the Board desires to indicate its intent to proceed with the financing of the Project through the issuance of such multifamily housing revenue bonds.

NOW, THEREFORE, BE IT RESOLVED BY BOARD OF COMMISSIONERS OF WESTMINSTER HOUSING AUTHORITY:

Section 1. In order to induce the Borrower to undertake the Project, the Authority shall, subject to the provisions hereof, take all necessary and advisable steps to effect the issuance of multifamily housing revenue bonds (the “Bonds”) in one or more series pursuant to the Act and Supplemental Act in the maximum aggregate principal amount not to exceed \$10,000,000, or such other amounts as shall be determined and agreed upon by the Borrower and the Authority to finance the Project. The Bonds shall never constitute the debt or indebtedness of the Authority, nor any multiple-fiscal year direct or indirect debt or other financial obligation of the Authority whatsoever, within the meaning of any provision or limitation of the Constitution or statutes of the State of Colorado, and shall not constitute nor give rise to a pecuniary liability or financial obligation of the Authority, nor shall the Bonds ever be deemed to be an obligation of any officer, agent or employee of the Authority in such person’s individual capacity, and no such person shall be subject to personal liability by reason of the issuance of the Bonds. The Bonds shall be special, limited obligations of the Authority and payable solely from and secured by a pledge of revenues derived from and payable by the Borrower pursuant to financing agreements with the Authority. No Board member, officer, official, employee or agent of the Authority shall be subject to any personal liability in connection with the Bonds or the provisions of this Resolution.

Section 2. The Board hereby finds, determines, recites and declares the Authority’s intent that this Resolution constitute an official indication of the present intention of the Authority to issue the Bonds as herein provided, subject to: (a) the delivery of an approving opinion of Bond Counsel to the Authority, (b) the Borrower obtaining sufficient debt and equity financing acceptable to the Authority, (c) the execution and delivery of indemnity agreements and payment or reimbursement of costs and expenses, all to the satisfaction of the Authority, and (d) the adoption of a final bond resolution by the Board. The

Authority's discretion to accept or not to accept items relating to the Project or additional financing therefor or relating to credit, security, sale or marketing aspects of the Bonds is intended for the protection of the Authority's interest, and any such acceptance shall not be construed to impose upon the Authority any duties to, nor to confer any rights against the Authority upon, any bondholders, investors or other third parties.

Section 3. Prior to any execution of any financing agreements, mortgages, indentures of trust, bond purchase agreements or any other necessary documents and agreements in connection with such Bonds, such documents and/or agreements shall be submitted for approval to the Authority, and, if satisfactory to the Authority, their execution shall be authorized by resolution of the Board pursuant to law.

Section 4. All commitments of the Authority contained herein are subject to the condition that within 12 months of the date hereof, or such shorter period of time available under applicable law, unless otherwise extended by agreement between the Authority and the Borrower, the Bonds to be issued pursuant hereto shall be issued and sold. In the event that the Bonds to be issued pursuant hereto are not issued within 12 months, or such shorter period of time available under applicable law, the Authority shall be under no obligation to perform any of the terms and conditions contained herein.

Section 5. All resolutions or parts thereof concerning the subject matter hereof in conflict with this Resolution are hereby repealed to the extent of such conflict. This repealer shall not be construed to revive any resolution or part thereof, heretofore repealed.

Section 6. The agreements of the Authority set forth above are expressly conditioned upon the ability and willingness of the Authority to issue the Bonds as tax-exempt obligations under the Internal Revenue Code of 1986, as amended. Nothing contained in this Resolution shall be construed as requiring the Authority to issue the Bonds and the decision to issue the Bonds shall be in the complete discretion of the Authority.

Section 7. If any section, paragraph, clause or provision of this Resolution, with the exception of any section, paragraph, clause or provision limiting the Authority's financial obligation, shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. This Resolution shall take effect immediately upon its introduction and passage.

PASSED, ADOPTED AND APPROVED this September 14, 2009.

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Chair

APPROVED AS TO LEGAL FORM

Attest:

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Secretary

**ORCHARD PARK PLACE NORTH  
GENERAL IMPROVEMENT DISTRICT  
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE  
MONDAY, September 14, 2009  
7:00 P.M.**

1. Roll Call
2. New Business
  - A. Resolution No. 1 re Ballot Language for Special Election on November 3, 2009
3. Adjournment

# Orchard Park Place North GID Agenda Item 2 A

## Agenda Memorandum

Orchard Park Place North General Improvement District Meeting  
September 14, 2009



**SUBJECT:** Resolution No. 1 re Orchard Park Place North General Improvement District Ballot

**Prepared by:** Tammy Hitchens, Finance Director

### Recommended Board Action

Adopt Resolution No. 1 approving the ballot language for the special election for the Orchard Park Place North General Improvement District (“GID”) to be held on November 3, 2009.

### Summary

- By adopting the attached Resolution approving the ballot language for the November 3, 2009 special election regarding the establishment of the GID, City Council, sitting as the GID board, will authorize the election for mill levy approval.
- The ballot language to be approved includes three questions summarized below and further detailed in the attached resolution:
  - Question 1: allowing the GID to levy property taxes against the property owners at an agreed-on levy not to exceed 3 mills, “to pay the annual expenses to operate and maintain capital improvements and to administer the district.”
  - Question 2: allowing the GID to issue up to \$4,154,549.40 in debt to be paid by the property owners in the GID at an agreed-on levy not to exceed 10 mills “for the purpose of paying, reimbursing or financing all or any part of the costs of acquiring, constructing, relocating, installing, completing and otherwise providing, within or without the boundaries of the district, street, water, sewer and storm drainage improvements.”
  - Question 3: allowing the GID to “collect, keep and spend all revenues it receives as a voter approved revenue change per article X, Section 20 of the Colorado Constitution.”

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Does the GID Board want to proceed with a ballot issue on the November ballot and approve the specific language to be voted on by the GID electors?

**Alternative**

Do not approve the ballot language. This is not recommended, as this will prevent the questions from appearing on the Year 2009 ballot.

**Background Information**

On September 14, 2009, City Council approved the formation of the Orchard Park Place North General Improvement District.

The use of special district financing and taxation for this project is appropriate, as it allows the City to accomplish a project that will significantly enhance the development within the northeast portion of the City. The mill levies will be assessed with the district to pay for construction and maintenance of public improvements as well as pay for services within the district.

The property taxes will be paid by owners of property to be developed in this area, the same property owners who will benefit from the construction of the improvements in the area.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment

RESOLUTION

RESOLUTION NO. 1

INTRODUCED BY DIRECTORS

SERIES OF 2009

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A RESOLUTION SUBMITTING TO THE ELECTORS OF THE DISTRICT QUESTIONS REGARDING THE IMPOSITION OF AD VALOREM TAXES, THE INCURRENCE OF INDEBTEDNESS, AND THE APPROVAL OF A REVENUE CHANGE AUTHORIZING THE RETENTION AND SPENDING OF DISTRICT REVENUES; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, pursuant to an emergency ordinance adopted by the City Council of the City of Westminster, Colorado (the "City"), the Westminster Orchard Park Place North General Improvement District (the "District") was declared organized on September 14, 2009; and

WHEREAS, the members of the City Council of the City, sitting as the ex officio Board of Directors of the District (the "Board"), have been duly elected and qualified; and

WHEREAS, Article X, Section 20 of the Constitution ("TABOR") requires the District to obtain voter approval for the imposition of new taxes, the incurrence of indebtedness, and the spending certain moneys above limits established by TABOR; and

WHEREAS, Section 31-25-611(n), C.R.S. authorizes the District to conduct an election in accordance with Title 31, Article 10, C.R.S. (the "Municipal Election Code") for any purpose the Board deems necessary or required; and

WHEREAS, TABOR requires that ballot issues (as defined in TABOR) be submitted to the electors of the District (as so defined in Section 31-26-602(2), the "Electors") on limited election days before action can be taken on such ballot issues; and

WHEREAS, November 3, 2009, is one of the election dates at which ballot issues and spending questions may be submitted to the Electors pursuant to TABOR; and

WHEREAS, the Board has determined that it is necessary to submit to the Electors, at an independent mail ballot election to be held on November 3, 2009 (the "Election"): (i) an election question regarding the imposition of ad valorem taxes on the taxable property within the District to maintain the improvements set forth in the petition submitted to the City requesting the creation of the District (the "Improvements") and to pay the annual administrative expenses of the District; (ii) an election question regarding the incurrence of debt and to finance or reimburse the costs of the Improvements and the imposition of taxes to pay such debt; and (iii)

an election question regarding the retention and spending of certain moneys above the limits established by TABOR; and

WHEREAS, it is necessary to set forth certain procedures concerning the conduct of the Election.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WESTMINSTER ORCHARD PARK PLACE NORTH GENERAL IMPROVEMENT DISTRICT:

Section 1. All actions heretofore taken (not inconsistent with the provisions of this ordinance) by the District and the officers thereof, directed towards the Election and the objects and purposes herein stated are hereby ratified, approved and confirmed. Unless otherwise defined herein, all terms used herein shall have the meanings defined in Part 6 of Article 25 of Title 31, C.R.S., the Municipal Election Code, Article 7.5 of Title 1, C.R.S. (the "Mail Ballot Election Act"), and TABOR.

Section 2. The Board hereby provides that the District shall utilize the requirements and procedures of the Municipal Election Code and the Mail Ballot Election Act with respect to the Election.

Section 3. Pursuant to the applicable laws of the State of Colorado, the Board hereby determines that the Election shall be held on November 3, 2009. At the Election there shall be submitted to the Electors the following questions:

QUESTION NO. 1

SHALL CITY OF WESTMINSTER ORCHARD PARK PLACE NORTH GENERAL IMPROVEMENT DISTRICT TAXES BE INCREASED \$100,000 ANNUALLY IN THE FIRST YEAR OF COLLECTION OR BY SUCH OTHER AMOUNT AS IS COLLECTED IN THE FUTURE FROM A MILL LEVY OF NOT TO EXCEED 3 MILLS (WITH THE ACTUAL MILL LEVY RATE FOR ANY FISCAL YEAR TO BE ADJUSTED DOWNWARDS OR UPWARDS BY THE BOARD OF DIRECTORS IN ITS DISCRETION) TO PAY THE ANNUAL EXPENSES TO OPERATE AND MAINTAIN CAPITAL IMPROVEMENTS AND TO ADMINISTER THE DISTRICT (AS SPECIFIED IN THE ECONOMIC DEVELOPMENT AGREEMENT ENTERED INTO APRIL 14, 2008 AMONG THE CITY, THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, AZG WESTMINSTER, LLC, AND CENTURA HEALTH CORPORATION); AND SHALL THE REVENUES FROM SUCH TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES BE COLLECTED AND SPENT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND NOTWITHSTANDING THE 5.5% REVENUE LIMIT OF SECTION 29-1-301, C.R.S. OR THE LIMITS OF ANY OTHER LAW?

QUESTION NO. 2

SHALL CITY OF WESTMINSTER ORCHARD PARK PLACE NORTH GENERAL IMPROVEMENT DISTRICT DEBT BE INCREASED \$4,154,549.40 WITH A REPAYMENT COST OF \$50,000,000; AND SHALL THE DISTRICT TAXES BE INCREASED \$400,000 ANNUALLY IN THE FIRST YEAR OF COLLECTION OR BY SUCH OTHER AMOUNT AS IS COLLECTED IN THE FUTURE FROM A MILL LEVY OF NOT TO EXCEED 10 MILLS TO PAY THE DISTRICT DEBT; SUCH DEBT TO CONSIST OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF WESTMINSTER FOR THE PURPOSE OF PAYING, REIMBURSING OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, STREET, WATER, SEWER AND STORM DRAINAGE IMPROVEMENTS (AS SPECIFIED IN THE ECONOMIC DEVELOPMENT AGREEMENT ENTERED INTO APRIL 14, 2008 AMONG THE CITY, THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, AZG WESTMINSTER, LLC, AND CENTURA HEALTH CORPORATION), TOGETHER WITH ALL NECESSARY, INCIDENTAL AND APPURTENANT FACILITIES, EQUIPMENT, LAND AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES; SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 6%; SUCH DEBT TO BE TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND NOTWITHSTANDING THE 5.5% REVENUE LIMIT OF SECTION 29-1-301, C.R.S. OR THE LIMITS OF ANY OTHER LAW?

QUESTION NO. 3

SHALL CITY OF WESTMINSTER ORCHARD PARK PLACE NORTH GENERAL IMPROVEMENT DISTRICT BE AUTHORIZED TO COLLECT, KEEP AND SPEND ALL REVENUES IT RECEIVES AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

Section 4. The Board hereby appoints the City Clerk, ex officio Secretary of the District, as the designated election official for purposes of performing acts required or permitted by law in connection with the Election.

Section 5. If a majority of the votes cast on the questions to authorize general obligation indebtedness and the levy of ad valorem property taxes submitted at the election shall be in favor of incurring general obligation indebtedness and levying ad valorem property taxes as

provided in such questions, the District acting through the Board shall be authorized to proceed with the necessary action to incur general obligation indebtedness and levy ad valorem property taxes in accordance with such questions.

Section 6. Any authority to contract general obligation indebtedness or to levy ad valorem property taxes, if conferred by the results of the election, shall be deemed and considered a continuing authority to contract the general obligation indebtedness and levy the ad valorem taxes so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.

Section 7. Pursuant to Sections 31-10-1308(2) and 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

Section 8. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED September 14, 2009.

WESTMINSTER ORCHARD PARK PLACE  
NORTH GENERAL IMPROVEMENT  
DISTRICT

(SEAL)

\_\_\_\_\_  
President

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Attorney for the District

STATE OF COLORADO )  
 )  
 COUNTY OF ADAMS ) SS.  
 )  
 WESTMINSTER ORCHARD PARK PLACE )  
 NORTH GENERAL IMPROVEMENT DISTRICT )

I, Linda Yeager, the City Clerk of the City of Westminster, Colorado, ex officio Secretary of the Westminster Orchard Park Place North General Improvement District (the “District”), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the Board of Directors of the District (the “Board”) at a meeting held on September 14, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of September 14, 2009, by an affirmative vote of a majority of the members of the Board as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

3. The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor of the City, ex officio President of the District, sealed with the City seal, attested by me and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the meeting of September 14, 2009, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the District affixed September \_\_\_\_, 2009.

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Secretary

(SEAL)

Exhibit A  
(Form of Notice of Meeting)