



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is 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.

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. Employee Service Awards
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. Designation of Official Places to Post Public Notices
 - B. 2012 Asphalt Pavement Crackseal Project Contract
 - C. Second Reading of Councillor's Bill No. 43 re Amend WMC re Special Event Permits & Optional Premise Licenses
 - D. Second Reading of Councillor's Bill No. 44 re 2nd Amendment to the EDA with the Church Ranch Hotel Companies
9. Appointments and Resignations
 - A. 2012 Appointments to the Rocky Flats Stewardship Council
10. Public Hearings and Other New Business
 - A. Find Requirements for Appeal are Met and Notice Adequate re 2nd Amended ODP for Westcliff Subdivision
 - B. Public Hearing re 2nd Amended ODP for Westcliff Subdivision Filing Nos. 1-5
 - C. Request to Deny 2nd Amended Official Development Plan for Westcliff Subdivision Filing Nos. 1-5
 - D. Councillor's Bill No. 1 re Right-of-Way Vacations within Semper Gardens Subdivision
 - E. Resolution No. 1 re Use of Adams County Detention Facilities for Municipal Inmates
 - F. Resolution No. 2 re Triennial Renewal of the Rocky Flats Stewardship Council and IGA
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
 - B. Executive Session - Discuss South Westminster redevelopment strategy, including potential property acquisitions, and provide direction and instructions to the City's negotiators, as allowed by WMC section 1-11-3(C)(2) and (C)(7) and C.R.S. section 24-6-402(4)(a) and (4)(e).
13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

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.



WESTMINSTER
Strategic Plan
2011-2016
Goals and Objectives

FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Institutionalize the core services process in budgeting and decision making
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



STRONG, BALANCED LOCAL ECONOMY

- Maintain/expand healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Develop business-oriented mixed use development in accordance with Comprehensive Land Plan
- Retain and expand current businesses
- Develop multi-modal transportation system that provides access to shopping and employment centers
- Develop a reputation as a great place for small and/or local businesses
- Revitalize Westminster Center Urban Reinvestment Area



Use

SAFE AND SECURE COMMUNITY

- Citizens are safe anywhere in the City
- Public safety departments: well equipped and authorized staffing levels staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own safety and well being
- Manage disaster mitigation, preparedness, response and recovery
- Maintain safe buildings and homes
- Protect residents, homes, and buildings from flooding through an effective stormwater management program



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

- Develop transit oriented development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Have HOAs and residents taking responsibility for neighborhood private infrastructure
- Develop Westminster as a cultural arts community
- Have a range of quality homes for all stages of life (type, price) throughout the City
- Have strong community events and active civic engagement



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

- Have energy efficient, environmentally sensitive city operations
- Reduce energy consumption citywide
- Increase and maintain greenspace (parks, open space, etc.) consistent with defined goals
- Preserve vistas and view corridors
- A convenient recycling program for residents and businesses with a high level of participation



Mission statement: We deliver exceptional value and quality of life through SPIRIT.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, DECEMBER 19, 2011, 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 Faith Winter, and Councillors Herb Atchison, Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Carla Koeltzow, Deputy City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Atchison, to approve the minutes of the regular meeting of December 12, 2011, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that tonight's meeting was the last regularly scheduled meeting of City Council for 2011. City Hall would be closed on December 26 in observance of the Christmas holiday. Further, there would be no study session on Monday, January 2, as City Hall would be closed in observance of the New Year's holiday. The next expected meeting of City Council would be on Monday, January 9, 2012.

Mr. McFall expressed that 2011 was a fun centennial year for the City with many successful events. He also thanked the Council for their hard work this past year and expressed his appreciation for a Council, who as a whole and individually, has the City's best interests at heart. He is looking forward to working with the Council in 2012 and begin the next 100 years for the City.

Mr. McFall reported that following adjournment of the four meetings tonight, City Council would meet in the Council Board Room to have a discussion about 2012 Community Outreach Events and potential funding for the 92nd Avenue and Federal intersection improvements. At the conclusion of that discussion, the WEDA Board will convene in executive session to review and discuss strategy and progress on negotiations related to an exclusive negotiating agreement for the Westminster Urban Center Redevelopment project and provide instructions to the Authority's negotiators as authorized by CRS 24-6-402(4)(e) and consultation with the Authority's legal counsel concerning status of the *Sears* litigation and settlement negotiations, as authorized by CRS 24-6-402(4)(b) and (e).

CITY COUNCIL COMMENTS

Council had nothing to report.

CITIZEN COMMUNICATION

No one present wished to speak.

CONSENT AGENDA

The following actions were submitted for Council's consideration on the consent agenda: accept the November 2011 financial report as presented; authorize a supplemental assessment payment of \$63,250 to Foothills Animal Shelter for the City's 2011 shelter services; based on the report and recommendation of the City Manager, determine that the public interest will be best served by ratifying past purchases and approving any additional 2011 Street Division expenses from Premier Paving, Inc. for asphalt, not to exceed \$108,500, and services from A. Moot Point Construction Co., Inc. for drainage channel repairs not to exceed \$56,625; based upon the recommendation of

the City Manager, determine that the public interest will be best served by ratifying past purchases and approving any additional 2011 Police Department expenses with Precinct Police Products up to a maximum of \$95,000 and Citywide expenses with Frontier Radio Communications up to a maximum of \$220,000; based upon the recommendation of the City Manager, determine that the public interest will be best served by ratifying past purchases and approving an additional \$2,060 for the purchase and up-fit of five of the fifteen vehicles from the State of Colorado light duty vehicle bid, as the amount for five vehicle purchases exceeded the original costs previously presented to City Council; authorize the City Manager to sign a five year contract with the low bidder, UMB Bank Colorado, National Association for lockbox services to process utility bill and sales tax payments with the total cost not to exceed \$65,000 per year; approve the revised Council assignments list as discussed at the November 21st Study Session meeting and prior to tonight's meeting; ratify the contracted purchase for 210,000 gallons of unleaded, E-10 gasoline from Chief Petroleum to be delivered to City sites for a cost not to exceed \$610,000; based on the recommendation of the City Manager, determine that the public interest will be best served by awarding a one year contract with two additional one year renewals for Municipal Court Security Services to G4S Secure Solutions (USA) Inc. (formerly known as The Wackenhut Corporation); authorize the City Manager to execute a one year contract with two one year renewal options with Allied Waste Services of Colorado, Inc., in the amount of \$50,080 for the City's solid waste and recycling services and in addition, authorize a contingency amount of \$5,000 for a total contract amount of \$55,080; deny extending the existing Category B-2 Service Commitment award for Planning Area 4A of the Walnut Grove single family attached residential project through December 31, 2012, based on the findings that it is unlikely that a developer will be able to proceed with the development of the project within the extended time period, that the extension is not needed to avoid undue or inequitable hardship that would otherwise result if the extension were not granted and it has not met the conditions of Resolution 46, Series of 2010, Subsection 2(i), (1)-(3); and authorize the City Manager to execute the Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority, the City of Westminster and the City of Westminster Orchard Park Place North General Improvement District for the release of unpledged property tax increment collections to the District for payment to the City of assessments, recoveries, interest, maintenance and administrative costs associated with the Orchard View Property and the Centura Orchard View Property in substantially the same language as presented.

There were no items removed from the consent agenda and Councillor Major moved to approve the consent agenda as presented. Councillor Kaiser seconded the motion, and it carried.

COUNCILLOR'S BILL NO. 45 RE FUNDS TRANSFER FOR 2011 CUMULATIVE FUEL PURCHASES

Councillor Briggs moved, seconded by Councillor Lindsey, to pass Councillor's Bill No. 45 as an emergency ordinance transferring \$100,000 in energy savings from the 2011 Building Operations and Maintenance Division in the General Fund to the 2011 Fleet Maintenance Fund. The motion passed unanimously on roll call vote.

2011 CUMULATIVE FUEL PURCHASES

It was moved by Councillor Briggs, seconded by Councillor Lindsey, to authorize an additional \$100,000 beyond the \$916,680 previously authorized for fuel purchased from Chief Petroleum, Gray Oil and Hill Petroleum for the purchase of fuel through year-end 2011. The motion carried with all Council members voting affirmatively.

ADJOURNMENT

There being no further business to come before the City Council, Councillor Atchison moved, seconded by Mayor Pro Tem Winter to adjourn. The motion carried and the meeting adjourned at 7:07 P.M.

ATTEST:

Mayor

Deputy City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, Director of General Services
Dee Martin, Workforce Planning & Compensation Manager

Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20 or more years of service with the City and in five year increments thereafter.

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the first grouping of 2012, employees with 20, 25, 30, and 35 years of service will be celebrated tonight.
 - Presentation of 20-year certificates and pins - Councillor Herb Atchison
 - Presentation of 25-year certificates, pins and checks - Mayor Nancy McNally
 - Presentation of 30-year certificates and pins - Councillor Bob Briggs
 - Presentation of 35-year certificate and pin – Mayor Pro Tem Faith Winter

Expenditure Required: \$ 10,000

Source of Funds: General Fund

- Police Department (\$2,500)
- Fire Department (\$7,500)

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with a certificate and service pin:

Bruce Black	Fire Lieutenant	Fire
David Carter	Laboratory Services Coordinator	Public Works & Utilities
Jeff Heineman	Fire Engineer	Fire

The following 25-year employees will be presented with a check, certificate and service pin:

Tim Carlson	Deputy Police Chief	Police
Kevin Dooley	Fire Engineer	Fire
David Sagel	Fire Captain	Fire
Mark Van Den Abbeele	Fire Paramedic	Fire

The following 30-year employees will be presented with a certificate and service pin:

Stephan Norwood	Fire Engineer	Fire
Joseph Hastings	Senior Police Officer	Police

The following 35-year employee will be presented with a certificate and service pin:

David Marquez	Plant Operator IV	Public Works & Utilities
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On January 11, 2012, the City Manager will host an employee awards luncheon. During that time, 3 employees will receive their 15 year service pin, 4 employees will receive their 10 year service pin, and 12 employees will receive their 5 year service pin. Recognition will also be given to those celebrating their 20th, 25th, 30th and 35th anniversaries. This is the first luncheon in 2012 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the first luncheon is 400 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens.

The recognition of employee’s years of service addresses Council’s Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Designation of Official Places to Post Public Notices

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the City Council, the Westminster Housing Authority, the Westminster Economic Development Authority, Special and General Improvement Districts, and the City's Boards and Commissions pursuant to §24-6-402 (2)(c) C.R.S. of the Colorado Open Meetings Act.

Summary Statement

- The referenced section of the Colorado Open Meetings Act provides that the places where notices of official public meetings are posted shall be designated annually by the governing body at its first regular meeting of each calendar year.
- The City Council is the governing body of the City, and is also the governing body of the City's Special and General Improvement Districts (pursuant to CRS section 31-25-609), the Westminster Housing Authority (pursuant to CRS section 29-4-205), and the Westminster Economic Development Authority (pursuant to CRS section 31-25-114).
- City Staff posts all notices of City Council meetings and study sessions, all Special and General Improvement Districts, all WEDA meetings, all WHA meetings, and other official public meetings on the bulletin board across from the cashiers' counter in the lobby of City Hall. Identical notifications are posted on the City's website.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council concur with the designation of the City Hall lobby bulletin board and City of Westminster website as the locations for posting public notices for official meetings?

Alternative

Identify other locations for posting public notices. This is not recommended as the City Hall bulletin board and City website serve the purpose of providing public notice.

Background Information

The Open Meetings Act, more commonly called the Colorado Sunshine Act, provides that the public place or places for posting public notice of meetings shall be designated annually at the local governing body's first regular meeting of each calendar year. Historically, notices have been posted in paper format on the City Hall lobby bulletin board and electronically on the City's website. This process appears to work well as a means of providing public notice of upcoming agenda items, and the Staff recommends the continuing designation of these locations.

Remaining compliant with State statutes is key to our strategic objective of being a financially sustainable city government providing exceptional service.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: 2012 Asphalt Pavement Crackseal Project Contract

Prepared By: Rob Dinnel, Street Project Specialist
Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the City Manager to execute a contract for the 2012 Asphalt Pavement Crackseal Project with the low bidder, A-1 Chipseal Company in the amount of \$142,680 and authorize a contingency of \$2,320 for a total project budget of \$145,000.

Summary Statement

- City Council approved adequate funds for this expense in the 2012 Department of Public Works and Utilities, Street Operations Division budget.
• Formal bids were solicited in accordance with City bidding requirements for the 2012 Asphalt Pavement Crackseal Project. Requests for bids were sent to the five contractors in the metropolitan area who do this type of pavement preventative maintenance treatment with four responding.
• The low bidder, A-1 Chipseal Company meets all of the City bid requirements and has successfully performed this process in the City of Westminster, as well as the Denver Metro area the past ten years.
• Twenty streets totaling 56 lane miles will receive the crackseal preventative maintenance treatment on streets earmarked for roadway surface improvements in 2012 and 2013. In addition, 7 City facility parking lots will be cracksealed as well (see attached location list and map).
• Contracting this work early in the year allows the material to fully cure, before resurfacing and will reduce asphalt preparation work for the Street Division crews.

Expenditure Required: \$145,000

Source of Funds: General Fund
Public Works and Utilities 2012 Street Operations Budget \$111,544
General Capital Improvement Fund
City Facility Parking Lot Maintenance \$ 33,456

Policy Issue

Should this bid for 2012 Asphalt Pavement Cracksealing be awarded to the low bidder, A-1 Chipseal Company?

Alternatives

One alternative is to discontinue the practice of cracksealing these streets prior to resurfacing. Water would be allowed to penetrate the pavement’s subgrade and reduce the life expectancy of the resurfacing projects by 50%. Staff does not recommend elimination of cracksealing prior to resurfacing applications.

A second alternative is to crackseal these streets and parking lots in-house. Staff does not recommend this alternative. City crews would fall behind with scheduled pavement preservation and the combined use of contract/in-house labor for this service has maximized the use of annual street maintenance funds.

Background Information

The low bidder, A-1 Chipseal Company meets all of the City bid requirements and has successfully completed this process for the City of Westminster, as well as cities in the Denver Metro area for the past ten years.

The 2012 Asphalt Pavement Crackseal Project represents a total of 56 lane miles of asphalt pavement preventative maintenance at 20 street locations and 7 City facilities parking lots (see attached location list and map). This contractual cracksealing accomplished on streets and parking lots earmarked for 2012 and 2013 improvements allows Street Division crews to concentrate their pavement preservation maintenance efforts on roadways where improvements will not be scheduled for several years.

The following sealed bids were received:

A-1 Chipseal Company	\$142,680
Coatings, Inc.	\$162,400
Precise Striping, LLC	\$198,650
Foothills Paving & Maintenance, Inc	\$224,750
Staff Estimate	\$145,000

The 2012 low bid crackseal application price of \$0.984 per pound is a increase of 1.6% above the 2011 price for cracksealing performed in early 2011. This increase is attributed to fluctuating oil and fuel prices at this time.

This contract helps achieve the City Council’s Strategic Plan Goals of “Financially Sustainable City Government, Safe and Secure Community, and Vibrant Neighborhoods and Commercial Areas” by meeting the following objectives: well maintained city infrastructure and facilities, safe citizen travel throughout the city, maintain and improve neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Project Map
- Location List

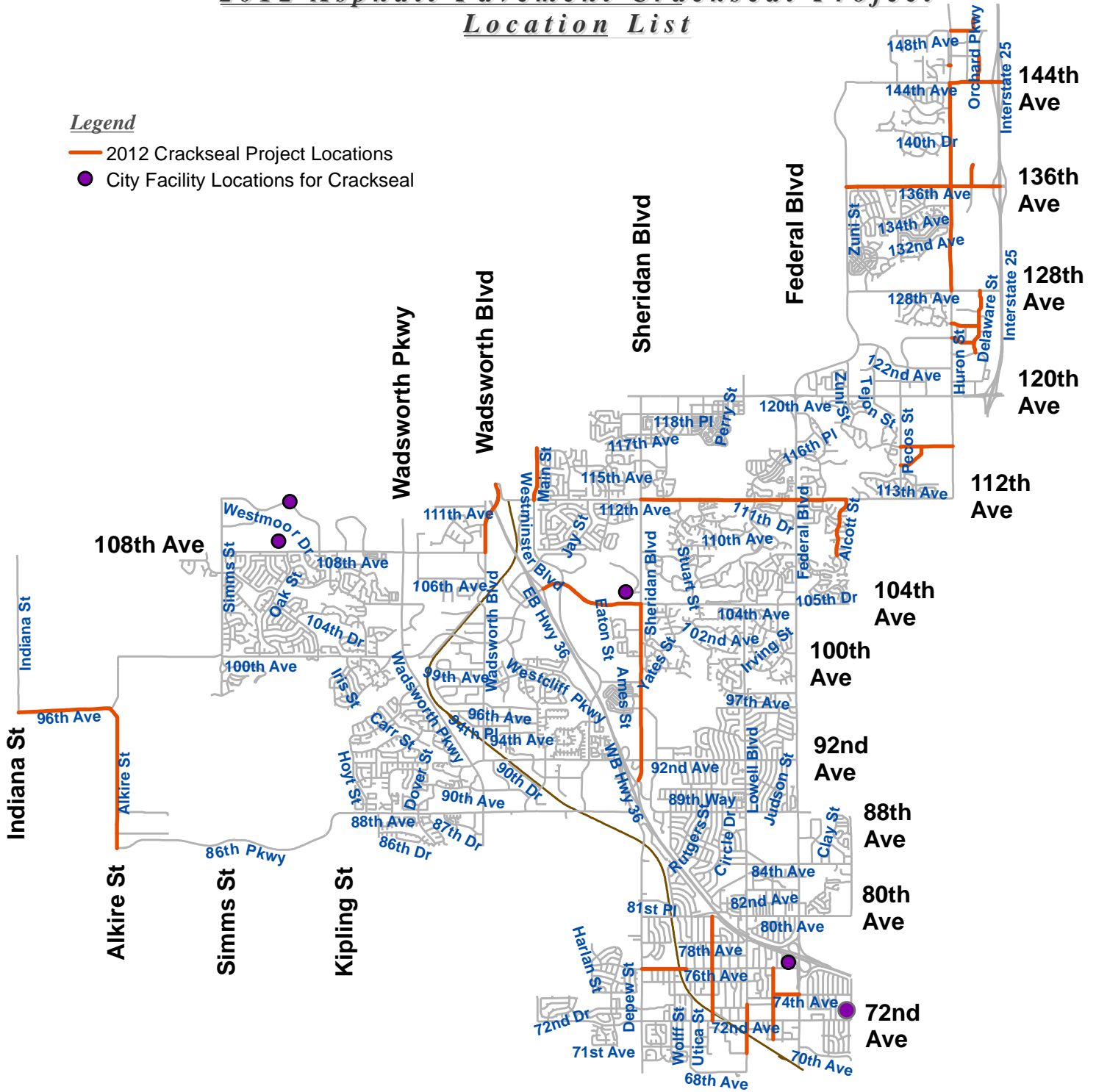


WESTMINSTER

2012 Asphalt Pavement Crackseal Project Location List

Legend

- 2012 Crackseal Project Locations
- City Facility Locations for Crackseal





Department of Public Works & Utilities
Street Operations Division
2012 Crackseal Location List

	Location	From:	To:
1	Irving Street	76th Avenue	71Street Avenue
2	76th Avenue	Sheridan Boulevard	RxR Tracks
3	Sheridan Boulevard	88 th Place	96th Avenue
4	96th Avenue	Alkire Street	Indiana Street
5	Alkire Street	96th Avenue	South City Limits
6	Wadsworth Boulevard	108th Avenue	North City Limits
7	Main Street	112th Avenue	North City Limit
8	Alcott Street	112th Avenue	Bruchez Parkway
9	115th Avenue	Pecos Street	Navajo Court
10	Navajo Court	115th Avenue	116th Avenue
11	116th Avenue	Pecos Street	Huron Street
12	74th Avenue	Federal Boulevard	Irving Street
13	Lowell Boulevard	69th Avenue	73rd Avenue
14	Bradburn Boulevard	72nd Avenue	Turnpike Drive
15	112th Avenue	Sheridan Boulevard	Alcott Street
16	Sheridan Boulevard	96th Avenue	104th Avenue
17	104th Avenue	Sheridan Boulevard	U.S. 36
18	124th Avenue	Delaware Street	Huron Street
19	125th Avenue	Huron Street	Delaware Street
20	Delaware Street	123rd Avenue	128th Avenue
21	*136th Avenue Eastbound only	Zuni Street	Kalamath Street
22	*136th Avenue Both sides of roadway	Kalamath Street	Huron Street
23	136th Avenue	Huron Street	I-25
24	Orchard Parkway	136th Avenue	North Pavement End
25	144th Avenue	Huron Street	I-25
26	148th Avenue	Huron Street	Fox Street
27	Fox Street	148th Avenue	North End
28	Huron Street	144th Avenue	400' North of 128th Avenue

City Facilities

- 1 Westview Recreation Center - 10747 W. 108th Avenue
- 2 Heritage Golf Course - 10555 Westmoor Drive
- 3 Westminster Municipal Court - 3030 Turnpike Drive
- 4 Westminster City Park - 10455 Sheridan Boulevard
- 5 Skyline Vista Park- 2595 w 72nd Avenue



Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Second Reading of Councillor's Bill No. 43 re Amend Title V, Chapter 14, WMC, Concerning Special Event Permits and Optional Premise Licenses

Prepared By: Linda Yeager, City Clerk
Hilary Graham, Assistant City Attorney

Recommended City Council Action

Pass Councillor's Bill No. 43 on second reading amending Title V, Chapter 14, of the Westminster Municipal Code concerning special event permits and optional premise licenses.

Summary Statement

- Changes made by the 2011 Legislature to Title 12, Article 48, Colorado Revised Statutes, allow local licensing authorities to assume full responsibility for approval and issuance of special event permits without approval of the state licensing authority. Councillor's Bill No. 43 removes language in the Westminster Municipal Code that requires the City Clerk to submit approved special event applications and fees to the state licensing authority and replaces it with new language to fully empower the City to exercise total responsibility for the approval and issuance of special event permits, comporting with the changes in state law.
- Further, the attached Councillor's Bill recognizes a local optional premise license and allows it to be issued by the City. This proposed change is in response to a request from Richard Fuller, legal counsel for Hyland Hills Parks & Recreation District. The optional premise license allows the service of malt, vinous, and spirituous liquor on specific dates and times and at specific locations on an outdoor sports and recreational facility that charges a fee for use. This type of license is permitted under state law, but requires the local governing body to enact legislation to opt-in before the license can be granted.
- This Councillor's Bill was approved on first reading on December 12, 2011.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO. **3609**

COUNCILLOR'S BILL NO. **43**

SERIES OF 2011

INTRODUCED BY COUNCILLORS
Briggs - Kaiser

A BILL

FOR AN ORDINANCE AMENDING PORTIONS OF TITLE V, CHAPTER 14, OF THE WESTMINSTER MUNICIPAL CODE REGARDING SPECIAL EVENT PERMITS AND OPTIONAL PREMISES LICENSES, WHICH REGULATE THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-14-10(B), W.M.C., is hereby AMENDED to read as follows:

5-14-10: SPECIAL EVENT PERMIT:

(A) Definition: A special event permit is a special license which authorizes a qualified organization or political candidate to sell, by the drink only, malt beverages or malt, spirituous or vinous liquors. A qualified organization is an organization which has been incorporated under the laws of this State for purposes of social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain; a regularly chartered branch, lodge or chapter of a national organization or society organized for such purposes which is not for profit; a regularly established religious or philanthropic institution; or a municipality owning arts facilities at which productions or performances of an artistic nature are presented.

(B) Application Procedure:

...

(6) Upon approval of the application and within ten (10) days after issuing the permit, the City Clerk shall submit the approved application and fees to the state licensing authority at least ten (10) days prior to the date of the special event in the form required by state law.

Section 2. Section 5-14-11, W.M.C., is hereby AMENDED to read as follows:

5-14-11: OPTIONAL PREMISES LICENSES AND PERMITS

(A) An annually renewable optional premises license for the sale or service of alcoholic beverages may be issued by the local licensing authority for one or more optional premises within an outdoor sports and recreational facility that charges a fee for the use of such facility.

(1) An application for an optional premises license shall be accompanied by the fees required by this Title.

(2) An optional premises license shall allow the licensee to sell and serve alcoholic beverages by the drink only to customers for consumption on the optional premises and for storage of alcohol beverages in a secure area on or off the optional premises for future use on the optional premises.

(3) An optional premises license application shall be reviewed and approved or denied according to Section 15-1-4 herein, and all other provisions of this Title shall apply.

~~(AB) Meals shall be served whenever and wherever alcoholic beverages are sold, served or consumed between the hours of 8 A.M. and 11 P.M. weekdays, and 8 A.M. and 8 P.M. Sundays and Christmas. No alcoholic beverages may be sold, served or consumed outside the designated areas. An annually~~

renewable optional premises ~~license permit for a hotel and restaurant license -the sale or service of alcoholic beverages~~ may be issued by the local licensing authority for ~~any an~~ outdoor sports and recreational facility ~~which that~~ charges a fee for the use of such facility ~~so long as if~~ such facility is ~~part of an existing or a new hotel and restaurant license and the optional premises is located~~ on or adjacent to ~~the hotel and restaurant premises, an existing or a new hotel and restaurant license~~. Any optional premises ~~license permit~~ shall ~~permit allow~~ the licensee to sell or serve alcoholic beverages only on the optional premises specified in the ~~license permit~~.

(1) An application for an optional premises permit for a hotel and restaurant license shall be made by the applicant for hotel and restaurant license or by the hotel and restaurant licensee.

(2) Meals shall be served whenever and wherever alcoholic beverages are sold, served or consumed between the hours of 8 A.M. and 11 P.M. weekdays, and 8 A.M. and 8 P.M. Sundays and Christmas. No alcoholic beverages may be sold, served or consumed outside the designated areas.

(3) An application for a new hotel and restaurant license with optional premises permit shall be processed in the same manner as any other hotel and restaurant license application. If an application to permit an optional premises is filed in connection with an existing hotel and restaurant license, the application shall be processed in the same manner as an application to modify or expand licensed premises. No local fee shall be required in connection with an application for an optional premises permit for an existing hotel and restaurant license.

(4) In addition to or in lieu of any enforcement actions the authority takes against the hotel and restaurant license for violations of this Code or the Colorado Liquor Code and regulations adopted pursuant to such Codes, the authority may decline to renew the optional premises permit for good cause shown, subject to judicial review. In addition, the authority may suspend or revoke the optional premises permit in accordance with the procedures specified in Colorado Liquor Code Regulation 47-110.1, as the same may be amended from time to time, and upon consideration of the criteria specified in this Title.

(5) Nothing contained in this Section shall preclude the local licensing authority, in its discretion, from denying an application for an optional premises permit or imposing conditions, restrictions or limitations on any optional premises permit in order to serve the public health, safety and welfare. Any such conditions may be imposed when the permit is initially issued or should any specific event or use of the optional premises so warrant.

(C) Unless otherwise permitted by law, it shall be unlawful for any person to sell or dispense alcoholic beverages at an outdoor sports and recreational facility without having first obtained a valid optional premises license or optional premises permit or in violation of any provision, restriction or limitation of such a license or permit.

(D) Definitions: The following terms shall be defined as provided below. Terms not defined in this subsection (D) shall be defined consistent with state law.

(1) "Ancillary Facility" shall mean a permanent, temporary or moveable structure or vehicle located on optional premises and used to dispense alcoholic beverages.

(2) "Outdoor Sports and Recreational Facility" shall mean a facility which consists of a golf course or tennis facility or both.

~~(E) Nothing contained in this Section shall preclude the local licensing authority, in its discretion, from denying an application for an optional premises license or imposing conditions, restrictions or limitations on any optional premises license in order to serve the public health, safety and welfare. Any such conditions may be imposed when the license is initially issued or should any specific event or use of the optional premises so warrant.~~

(F) No one licensee or permittee shall have more than five optional premises within an outdoor sports and recreational facility. No optional premise may include a parking lot.

(G) Application for an optional premises license or an optional premises permit as part of a hotel and restaurant license shall be made to the City Clerk ~~by an applicant for hotel and restaurant license or a hotel and restaurant licensee~~, upon forms to be furnished by the City Clerk for that purpose, which forms shall require the following information in addition to any information required by the state licensing authority and this ~~Chapter~~Title:

(1) A detailed diagram of the outdoor sports and recreational facility indicating:

- (a) The location of the outdoor sports and recreational facility;
- (b) The location of all proposed optional premises;
- (c) The proposed locations of the ancillary facilities which are proposed to be used for the sale or service of alcoholic beverages;
- (d) The seating, if any;
- (e) Restroom facilities, if any;
- (f) Restrictions, if any, to access to the optional premises; and
- (g) Location of secured area or areas for use in storing malt, vinous and spirituous liquors for future use on the optional premises.

(2) A written statement setting forth what will be done to secure the optional premises and storage area or areas and the reason the Licensing Authority should grant the license or permit; and

(3) Such other information as reasonably may be required to satisfy the local licensing authority that control of the optional premises will be assured, and that the health, safety and welfare of the neighborhood and outdoor sports and recreational facility users will not be adversely affected should the license or permit be issued.

(H) If the applicant does not own the proposed optional premises, it shall submit to the City Clerk a written statement by the owner of the premises approving the application sought.

(I) The applicant shall provide the City Clerk with evidence that the state licensing authority has approved the location proposed to be optional premises, as required by the Colorado Liquor Code.

~~(J) — An application for a new hotel and restaurant license with optional premises shall be processed in the same manner as any other hotel and restaurant license application. If an application to use optional premises is filed in connection with an existing hotel and restaurant license, then the application shall be processed in the same manner as an application to modify or expand licensed premises. No fee shall be required in connection with an application for an optional premises license relating to an existing hotel and restaurant license.~~

~~(K)~~(J) It shall be unlawful for any alcoholic beverages to be served on a licensed or permitted optional premises without the licensee or permittee having first provided written notice to the City Clerk and the state licensing authority no less than forty-eight (48) hours prior to such service of alcoholic beverages. Such notice shall contain specific days and hours on which the optional premises are to be used for the sale or service of alcoholic beverages. Nothing contained in this Section shall preclude written notice, submitted within the time limits set out above, from specifying that an optional premises may be utilized for a continuous or extended period of time. However, should any special or unusual event be anticipated to occur during any extended period of time, no less than forty-eight (48) hours written notice should be given to the City's Chief of Police, or his designee, who shall have the authority, on behalf of the local licensing authority, to impose any conditions reasonably related towards serving the public health, safety and welfare. The licensee or permittee may file more than one notice during a calendar year.

~~(L) — In addition to or in lieu of any enforcement actions which the authority takes against the adjacent hotel and restaurant license for violations of this Code or the Colorado Liquor Code and regulations~~

~~adopted pursuant to such Codes, the authority may decline to renew the optional premises license for good cause shown, subject to judicial review. In addition, the authority may suspend or revoke the optional premises license in accordance with the procedures specified in Colorado Liquor Code Regulation 47-110.1, as the same may be amended from time to time, and upon consideration of the criteria specified in Chapter 1 of this Title.~~

Section 3. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of December, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of January, 2012.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Second Reading for Councillor’s Bill No. 44 re 2nd Amendment to the Economic Development Agreement with the Church Ranch Hotel Companies

Prepared By: Susan Grafton, Economic Development Director

Recommended City Council Action

Pass Councillor’s Bill No. 44 on second reading authorizing the City Manager to modify the start of construction date for the Hyatt Place Hotel from October 1, 2012 to October 1, 2014.

Summary Statement

- This Councillor’s Bill was passed on first reading on December 12, 2011.
- The Church Ranch Hotel Company is finalizing plans now to start construction on the full service Marriott Hotel in June 2012.
- They are unable to fund construction of the Hyatt Place at this time.
- The Church Ranch Hotel Company LLC is requesting that the construction commencement date articulated in the current Business Assistance Agreement for the Hyatt Place Hotel be extended from October 1, 2012 to October 1, 2014.
- The extension of the Hyatt Place agreement will be conditioned upon the commencement of construction of the full service Marriott Hotel on or before October 1, 2012.
- No other requirements of the agreement will be changed.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully Submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Exhibit A – 2nd Amendment BAA

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

Lindsey - Major

A BILL

**FOR AN ORDINANCE AUTHORIZING THE SECOND AMENDMENT TO THE 2009
AMENDED AND RESTATED BUSINESS ASSISTANCE AGREEMENT FOR THE
COOPERATIVE DEVELOPMENT AND CONSTRUCTION OF A FULL SERVICE MARRIOTT
HOTEL AND A HYATT PLACE HOTEL**

WHEREAS, the successful attraction of new businesses in the City of Westminster provides increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for new businesses to locate in the City; and

WHEREAS, The White Etkin Church Ranch Hotel Company I, LLC, and White Etkin Church Ranch Hotel Company III, LLC are moving forward with the construction of the Full Service Marriott Hotel prior to the October 1, 2012 deadline but cannot build the Hyatt Place Hotel prior to the October 1, 2012; and

WHEREAS, The Church Ranch Companies have requested an extension of the start of construction deadline for only the Hyatt Place Hotel; and

WHEREAS, the City approved the 2009 Amended and Restated Business Assistance Agreement for The Marriott Hotel and the Hyatt Place Hotel on September 30, 2009; and

WHEREAS, the proposed Second Amendment to the 2009 Amended and Restated Business Assistance Agreement between the City and the White Etkin Church Ranch Hotel Company I, LLC, and White Etkin Church Ranch Hotel Company III, LLC, is attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into the Second Amendment to the 2009 Amended and Restated Business Assistance Agreement between the City and the White Etkin Church Ranch Hotel Company I, LLC, and White Etkin Church Ranch Hotel Company III, LLC in substantially the same form as the one attached as Exhibit A, and upon execution of the Agreement to fund and implement said Agreement.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. 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 12th day of December, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of January, 2012.

ATTEST:

Mayor

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**SECOND AMENDMENT TO THE
2009 AMENDED AND RESTATED BUSINESS ASSISTANCE AGREEMENT FOR THE
COOPERATIVE DEVELOPMENT AND CONSTRUCTION OF A FULL SERVICE
MARRIOTT HOTEL AND A HYATT PLACE HOTEL**

This Second Amendment to the 2009 Agreement (the "Second Amendment") is made and entered into this _____ day of _____, 2011 by and between the CITY OF WESTMINSTER, a Colorado home-rule municipality ("City"), WHITE ETKIN CHURCH RANCH HOTEL COMPANY I LLC, an Indiana limited liability company ("WE I"), and WHITE ETKIN CHURCH RANCH HOTEL COMPANY III LLC, an Indiana limited liability company ("WE III").

WHEREAS, WE I, WE III and the City entered into the 2009 Amended and Restated Business Assistance Agreement for the Cooperative Development and Construction of a Full Service Marriott Hotel and a Hyatt Place Hotel, dated September 30, 2009 (the "2009 Agreement"); and

WHEREAS, the 2009 Agreement has a commencement of construction date of March 1, 2011, for the Marriott Hotel and Hyatt Place Hotel; and

WHEREAS, the 2009 Agreement was amended by the parties on February 28, 2011, for the purpose of amending the construction and completion dates and initiation of operations of the Marriott Hotel and Hyatt Place Hotel ("First Amendment").

WHEREAS, the parties now desire to amend the construction commencement and completion dates and initiation of operations of the Hyatt Place Hotel.

NOW THEREFORE, the Parties agree as follows:

1. Section 3.10.1 of the 2009 Agreement and the First Amendment is amended to read as follows:

This Assistance Agreement shall terminate and become void and of no force or effect upon the City as to the Marriott Hotel if (1) WE I fails to commence construction of the Marriott Hotel on or before October 1, 2012, or, (2) WE I and has not completed construction and initiated operation of the Marriott Hotel by October 1, 2014. This Assistance Agreement shall terminate and become void and of no force or effect upon the City as to the Hyatt Place Hotel if (1) WE I has not satisfied both the prior noted conditions relative to the Marriott Hotel, or (2) WE III fails to commence construction of the Hyatt Place Hotel on or before October 1, 2014, or (3) WE III fails to complete construction and initiate operation of the Hyatt Place Hotel by October 1, 2016. In addition, in the event WE I or WE III, at any time prior to completing their respective Projects, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator, liquidator of all or a substantial part of their respective assets; or, a petition of relief is filed by either WE I or WE III under federal bankruptcy, insolvency, or similar laws; or, a petition in a proceeding under any

bankruptcy, insolvency, or similar laws is filed against either WE I or WE III and not dismissed within sixty (60) days, then in that event this Assistance Agreement shall terminate and become void and of no force or effect with respect to the Marriott Hotel and the Hyatt Place Hotel, if any of the foregoing described actions are taken by or on behalf of WE I. If any of the foregoing described actions are taken by or on behalf of WE III, this Assistance agreement shall become void and of no force and effect with respect to the Hyatt Place Hotel, and any assistance received previously for the Hyatt Place Hotel shall be refunded to the City within sixty (60) days of written request by the City.

2. The first paragraph of Section 3.10.3 of the 2009 Agreement and the First Amendment is amended to read as follows:

If WE I fails to commence construction of the Marriott Hotel on or before **October 1, 2012**, WE I agrees to (i) transfer to City its interests in Lot 1 and Tract B of the Final Plat free and clear of liens and encumbrances, except for the then current property taxes and (ii) transfer to City its interest in any and all plans, specifications or drawings for the Marriott Hotel. If WE III fails to commence construction of the Hyatt Place Hotel on or before October 1, 2014, WE III agrees to (i) transfer to City its interest in Lot 2 of the Final Plat free and clear of liens and encumbrances, except for the then current property taxes and (ii) transfer to City its interest in any and all plans, specifications or drawings for the Hyatt Place Hotel. In addition, Church Ranch Hotel Company I LLC and/or WE I agree to pay the City additional applicable non-refundable extension fees upon City Council approval of this Second Amendment per the following schedule:

3. A new subsection 3.10.3 (viii) is added to the 2009 Agreement and the First Amendment to read as follows:

Ninth extension payment of \$50,000.00 shall be paid to City by either Church Ranch Hotel Company I LLC, WE I or WE III on or before December 15, 2011. The total of \$425,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by WE I pursuant to this Agreement if construction of the Marriott Hotel commences before October 1, 2012.

4. Except as amended above, all terms and conditions of the 2009 Agreement and the First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be effective on the day and year first above written.

[signatures are on the following pages of this Second Amendment]

CITY OF WESTMINSTER, a
Colorado home-rule municipality (“City”)

By: _____
J. Brent McFall, City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

Adopted by City Ordinance No. _____ **WHITE ETKIN CHURCH RANCH HOTEL
COMPANY I LLC,**
an Indiana limited liability company (“WE I”)

BY: BW Westminster, LLC, an Indiana limited
liability company, Manager

By: White Lodging Services Corporation,
an Indiana corporation, Manager

By: _____
Lawrence E. Burnell
Chief Operating Officer

ATTEST:

By: _____
Printed Name: _____
Title: _____

BY: Church Ranch Hotel Company I, LLC, a
Colorado limited liability company, Manager

By: Church Ranch Land Company, LLC, a
Colorado limited liability company, Manager

By: Etkin Church Ranch Land Company, LLC, a
Colorado limited liability company, Manager

By: _____
Bruce H. Etkin, Manager

ATTEST:

By: _____
Printed Name: _____
Title: _____

BY: Pappilon Church Ranch Land Company, LLC, a
Colorado limited liability company, Manager

By: _____
Gregg A. Bradbury, Manager

ATTEST:

By: _____
Printed Name: _____
Title: _____

By: _____
Charles C. McKay, Manager

ATTEST:

By: _____
Printed Name: _____
Title: _____

WHITE ETKIN CHURCH RANCH HOTEL COMPANY III LLC,
an Indiana limited liability company (“WE III”)

BY: BW Westminster, LLC, an Indiana limited
liability company, Manager

By: White Lodging Services Corporation,
an Indiana corporation, Manager

By: _____
Lawrence E. Burnell
Chief Operating Officer

ATTEST:

By: _____
Printed Name: _____
Title: _____

BY: Church Ranch Hotel Company I, LLC, a
Colorado limited liability company, Manager

By: Church Ranch Land Company, LLC, a
Colorado limited liability company, Manager

By: Etkin Church Ranch Land Company, LLC, a
Colorado limited liability company, Manager

By: _____
Bruce H. Etkin, Manager

ATTEST:

By: _____
Printed Name: _____
Title: _____

BY: Pappilon Church Ranch Land Company, LLC, a
Colorado limited liability company, Manager

By: _____
Gregg A. Bradbury, Manager

ATTEST:

By: _____
Printed Name: _____
Title: _____

By: _____
Charles C. McKay, Manager

ATTEST:

By: _____
Printed Name: _____
Title: _____



Agenda Item 9 A

Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: 2012 Appointments to the Rocky Flats Stewardship Council

Prepared By: Mary Fabisiak, Water Quality Administrator
Mike Happe, Utilities Planning & Engineering Manager
Dave Cantu, Acting Director of Public Works and Utilities

Recommended City Council Action

Reappoint City Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council and Water Quality Administrator Mary Fabisiak as alternate representative to the Rocky Flats Stewardship Council.

Summary Statement

- The Intergovernmental Agreement establishing the Rocky Flats Stewardship Council (RFSC) was entered into on February 13, 2006 and renewed on February 9, 2009.
- The Intergovernmental Agreement requires that each participating local government appoint or reappoint a representative and alternate representative annually.
- Council previously appointed City Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council Board of Directors and appointed Water Quality Administrator Mary Fabisiak as the alternate representative for the one year term. This City Council action would reappoint Bob and Mary for another one year term.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City continue to participate in and support the Rocky Flats Stewardship Council by authorizing reappointments to the board of directors for the year 2012?

Alternative

The City of Westminster could determine that it is not in the best interest of the city to reappoint representatives to the Rocky Flats Stewardship Council (RFSC). This alternative is not recommended as the City would lose an opportunity to continue to work with the other local governments that are contiguous to Rocky Flats in order to “speak with one voice” to the Department of Energy (DOE), State and Federal Governments and elected delegations on issues related to the long-term stewardship of the Rocky Flats Environmental Technology Site.

Background Information

The Rocky Flats Stewardship Council (RFSC) is made up of elected officials and staff representing ten local governments, three community organizations and one individual. The ten local governments include the cities of Westminster, Arvada, Boulder, Golden, Northglenn, Boulder County, Jefferson County, the City and County of Broomfield, and the Town of Superior. The City of Thornton requested membership and was approved by the RFSC Board on September 12, 2011. The League of Women Voters, Rocky Flats Cold War Museum, Rocky Flats Homesteaders and an individual complete the membership.

The RFSC was formed in February 2006 to meet the mandates of Congressional legislation that requires that all former DOE facilities once closed must have a Local Stakeholders Organization (LSO) to provide environmental oversight, communication and advocacy between the DOE and nearby communities on any issues involving the retained DOE lands. It provides oversight of the ongoing ground and surface water monitoring programs, maintenance activities and serves as an advocate for the surrounding communities with state and federal agencies.

This action helps achieve the City Council’s Strategic Plan Goal of a Safe and Secure Community by overseeing the City’s interests and ensuring long-term stewardship of the Rocky Flats Environmental Technology Site. This action also supports City Council’s Strategic Plan Goal of a Beautiful and Environmentally Sensitive City by providing oversight of the post-closure management of the Rocky Flats National Wildlife Refuge.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 10 A-C

Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Public Hearing and Action on the Second Amended Official Development Plan for Westcliff Subdivision Filing Nos. 1-5

Prepared By: Patty McCartney, Planner III

Recommended City Council Action

1. Find that the requirements have been met for perfecting an appeal of the Planning Commission decision, and that the notice was adequate.
2. Hold a public hearing.
3. Deny the Second Amended Official Development Plan for Westcliff Subdivision Filing Nos. 1-5 allowing setback reduction from 20 feet to 15.2 feet for the property located at 6567 96th Drive based on a finding that criteria 1 through 6, 8 or 9 of Section 11-5-15 of the Westminster Municipal Code have not been met. Further, the existence of a disability has not been proved, and reasonable accommodation is not required under Federal law.

Summary Statement

- The Planning Commission voted 4 to 3 to deny the Official Development Plan (ODP) Amendment at a public hearing held on November 29, 2011.
- Pursuant to Section 11-5-13 (B) of the Westminster Municipal Code (WMC), Mr. Tom Wiles filed a timely Notice of Appeal on December 8, 2011.
- Notice was correctly posted at the property; notice was correctly published in the Westminster Window; and notice was mailed by the applicant in a timely manner to properties within 300 feet. However, the applicant's notice contained errors regarding the year of the hearing and stated that the public hearing would be held by the Planning Commission rather than the City Council. Pursuant to WMC §11-5-13(A)8., City staff and the City Attorney's Office concur that notice of the public hearing was adequate.
- The proposed amendment to the Westcliff Subdivision Filing Nos. 1-5 ODP would allow a proposed home addition at Lot 8 in Block 6 to encroach 4.8 feet into the 20-foot rear setback.
- The applicant has requested the reduced setback to allow the construction of an enclosed swim spa addition to an existing residence. The applicant has provided a physician's statement recommending swimming in a swim spa as exercise to treat obesity.
- This request could be considered as a request for "reasonable accommodation" under the Americans with Disability Act. Staff has provided analysis of this issue within this agenda memo.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Decision

This request was considered by the Planning Commission on November 29, 2011. No one spoke in favor of or in opposition to the proposal. The Planning Commission voted 4-3 to deny the Second Amended Official Development Plan for the Westcliff Subdivision Filing Nos. 1-5 allowing a setback reduction from 20 feet to 15.2 feet based on a finding that certain criteria set forth in Section 11-5-15 of the Westminster Municipal Code have not been met and a reasonable accommodation under Federal law is not required.

Policy Issue

Should the City Council deny the request for an amendment to the ODP in the Westcliff Subdivision Filing Nos. 1-5, for Lot 1 Block 27, to allow a rear setback reduction from 20 feet to 15.2 feet?

Alternative

Support an amendment to the ODP in the Westcliff Subdivision Filing Nos. 1-5, for Lot 1 Block 27, to allow a rear setback reduction from 20 feet to 15.2 feet. This alternative is not recommended as Staff believes that eight of the eleven applicable criteria of Section 11-5-15 have not been met, and no reasonable accommodation is necessary under Federal law.

Background Information

Nature of Request

The request is for an ODP amendment for one lot in Westcliff Subdivision to allow a rear setback reduction from 20 feet to 15.2 feet for the construction of a home addition to enclose a swim spa. The applicant has submitted the attached narrative letter and doctor’s prescription as part of the request.

Location

The subject site is located at 6567 96th Drive in the Westcliff Subdivision with private park/open space area adjacent to the west and north property lines. The Westcliff Subdivision is located generally to the south of Westcliff Parkway and east of Pierce Street.

Surrounding Land Use and Comprehensive Land Use Plan Designations

Development Name	Zoning	CLUP Designation	Use
North: Westcliff Subdivision Filing Nos. 1-5	PUD	Private Park/Open Space	Park/Open Space
West: Westcliff Subdivision Filing Nos. 1-5	PUD	Private Park/Open Space	Park/Open Space
East: Westcliff Subdivision Filing Nos. 1-5	PUD	R-3.5	Single Family Detached
South: Westcliff Subdivision Filing Nos. 1-5	PUD	R-3.5	Single Family Detached

Site Plan Information

- Traffic and Transportation: There is no impact to traffic or transportation from this request.
- Site Design: The property contains a single family home on a lot in the Westcliff Subdivision Filing Nos. 1-5. No additional site changes are proposed with this amendment.
- Landscape Design: There is no impact to landscape requirements from this request.
- Architecture/Building Materials: The proposed addition would match the materials and colors of the existing single family structure.

Municipal Code Criteria

Section 11-5-15: Standards for Approval of Official Development Plans and Amendments to Official Development Plans.

(A) In reviewing an application for 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.
Staff Comment: The plan is not in conformance with the existing ODP. The plan is requesting a deviation from the required 20-foot rear setback as required in the ODP.
2. The plan is in conformance with an approved Preliminary Development Plan (PDP) or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
Staff Comment: The plan is not in conformance with the approved PDP. This document also lists the required rear setback as 20 feet.
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
Staff Comment: The proposed amendment does not exhibit sound or efficient planning. The proposed encroachment into the existing 20 foot setback requirement would utilize 24 percent of the required setback on the northern end of the existing residential structure. An encroachment of this magnitude, in a neighborhood where all setbacks are the same for all lots and visible from private open space, should be considered as a community-wide modification and not specific to one lot.
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.
Staff Comment: The Westcliff ODP required a 20-foot rear yard setback to create an adequate rear buffer between homes and still maintain the design and density desired for the neighborhood and adjacent open space. Lot 1, Block 27, of Westcliff is not significantly different from other lots in the subdivision. There is nothing unique to this lot that would warrant a 4.8 foot encroachment into the setback.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
Staff Comment: The proposed plan is not harmonious with other private development in the Westcliff Subdivision as homes in the area and adjacent to open space are meeting the minimum 20-foot rear setback.
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.
Staff Comment: The proposed plan does not protect the surrounding area from potential adverse influences from within the development. Approval of this plan could potentially set a precedent for additional setback reduction requests which could alter the overall character of the subdivision and surrounding open space area.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
Staff Comment: The immediate area is currently fully developed.
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.
Staff Comment: The building addition does not provide for harmonious grouping of structures as the residential structure is not meeting the minimum rear yard setback requirement.

9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.

Staff Comment: A setback encroachment of 4.8 feet for a lot with no unique or unusual characteristics, would not be in accordance with sound design principle and practice.

10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.

Staff Comment: The proposed addition design would match the material and color of the existing structure.

11. The 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.

Staff Comment: This criterion is not applicable.

12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.

Staff Comment: Required landscaping is not affected by this amendment.

13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.

Staff Comment: This criterion is not applicable.

14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner that 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.

Staff Comment: This criterion is not applicable.

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.

Staff Comment: This criterion is not applicable.

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.

Staff Comment: This criterion is not applicable.

17. The applicant is not in default or does not have any outstanding obligations to the City.

Staff Comment: This criterion is not applicable.

(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.

Other Applicable Criteria

In addition to Westminster Municipal Code requirements, Federal law requires the City to make modifications to land use regulations when those modifications are reasonable and necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling. Fair Housing Act, 42 U.S.C. § 3601, et seq. (the “FHA”); Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (the “ADA”).

The evaluation of what is reasonable requires a balancing of the cost to the City in undermining its zoning policies against the potential benefit to the applicant and a consideration of whether alternatives exist for the applicant. The evaluation of what is necessary considers whether, without the requested accommodation, the applicant will be effectively denied meaningful use of the housing and whether the requested accommodation will affirmatively enhance the applicant’s quality of life by reducing the effects of the disability.

It is staff's position, after consultation with the City Attorney's Office, that the requested accommodation is not required under the FHA or ADA. The information provided does not prove the existence of a disability - a legally defined term - because, other than the physician's reference to obesity, there is no information about what major life activity is substantially limited. Similarly, there is no explanation of the relationship between the applicant's alleged disability and the need for the requested modification. Further, denial of the request will not deny the applicant the right to live in the residence and neighborhood of her choice. This request appears to be one more of convenience than necessity, as the applicant has successfully lived in the home without the modification and has multiple less expensive alternatives available to her for treatment of obesity, which alternatives do not require the City to compromise its zoning regulations. Lastly, the requested accommodation would come at a particularly high cost to the City in that it is a permanent and significant alteration to a rear setback, and it is not the type of accommodation that can be limited to the applicant's occupancy of the property.

Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before the City Council shall be published and posted at least 4 days prior to such hearing. Notice was published in the Westminster Window on December 29, 2011.
- **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 December 29, 2011.
- **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 December 27, 2011.

The notice mailed by the applicant stated "...that a public hearing will be held by the *planning commission* of the city hall of Westminster on Jan 9th, 2011 at 7 pm...." [Emphasis added to indicate incorrect information.] Pursuant to WMC § 11-5-13(A) 8., "Any person with actual notice of the public hearing shall have no standing to object to the commencement or conduct of the public hearing, even if such person failed to receive one or more of the forms of notice prescribed above."

Applicant/Property Owner

Jacqueline Churchill
6567 W. 96th Drive
Westminster, Colorado 80005

Service Commitment Category – not applicable

Referral Agency Responses – not applicable

Building permits are required for new structures in order to meet the City Council's Strategic Plan goal of "Safe & Secure Community." Minimum setbacks are established in order to meet the City Council's goal of "Vibrant Neighborhoods in One Livable Community."

Respectfully submitted,

J. Brent McFall
City Manager

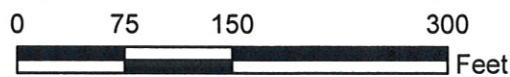
Attachments

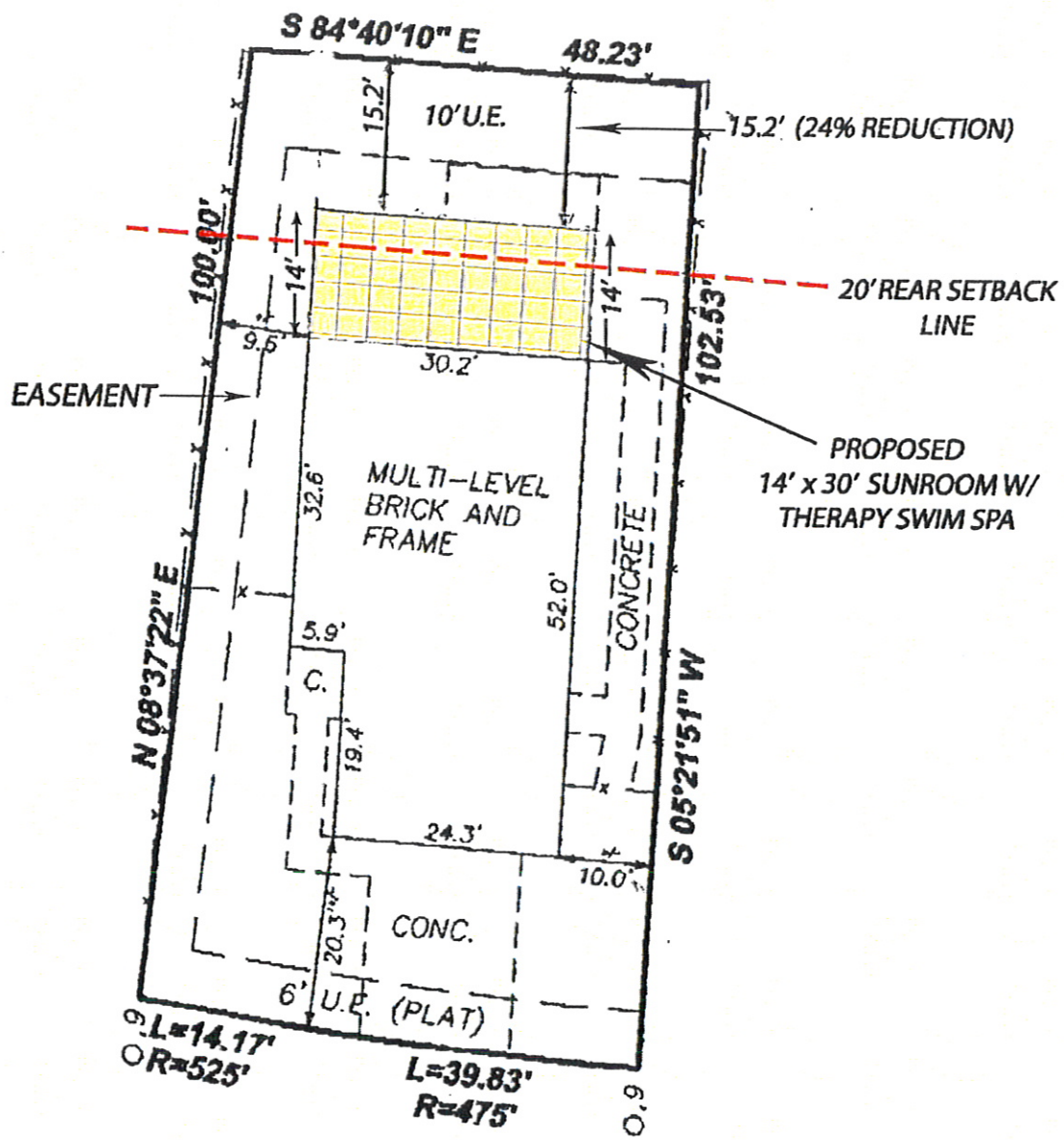
- | | |
|----------------------------------|--|
| A – Vicinity Map | E – Medical Prescription |
| B – Survey Map/Year Yard Setback | F – Building Addition Elevation Drawings |
| C – Notice of Appeal | G – Westcliff Homeowner's Association Letter |
| D – Narrative | H – Criteria and Standards for Land Use Applications |

Vicinity Map



6567 W. 96th Drive





6567 WEST 96TH DRIVE (50')

20' REAR YARD SETBACK



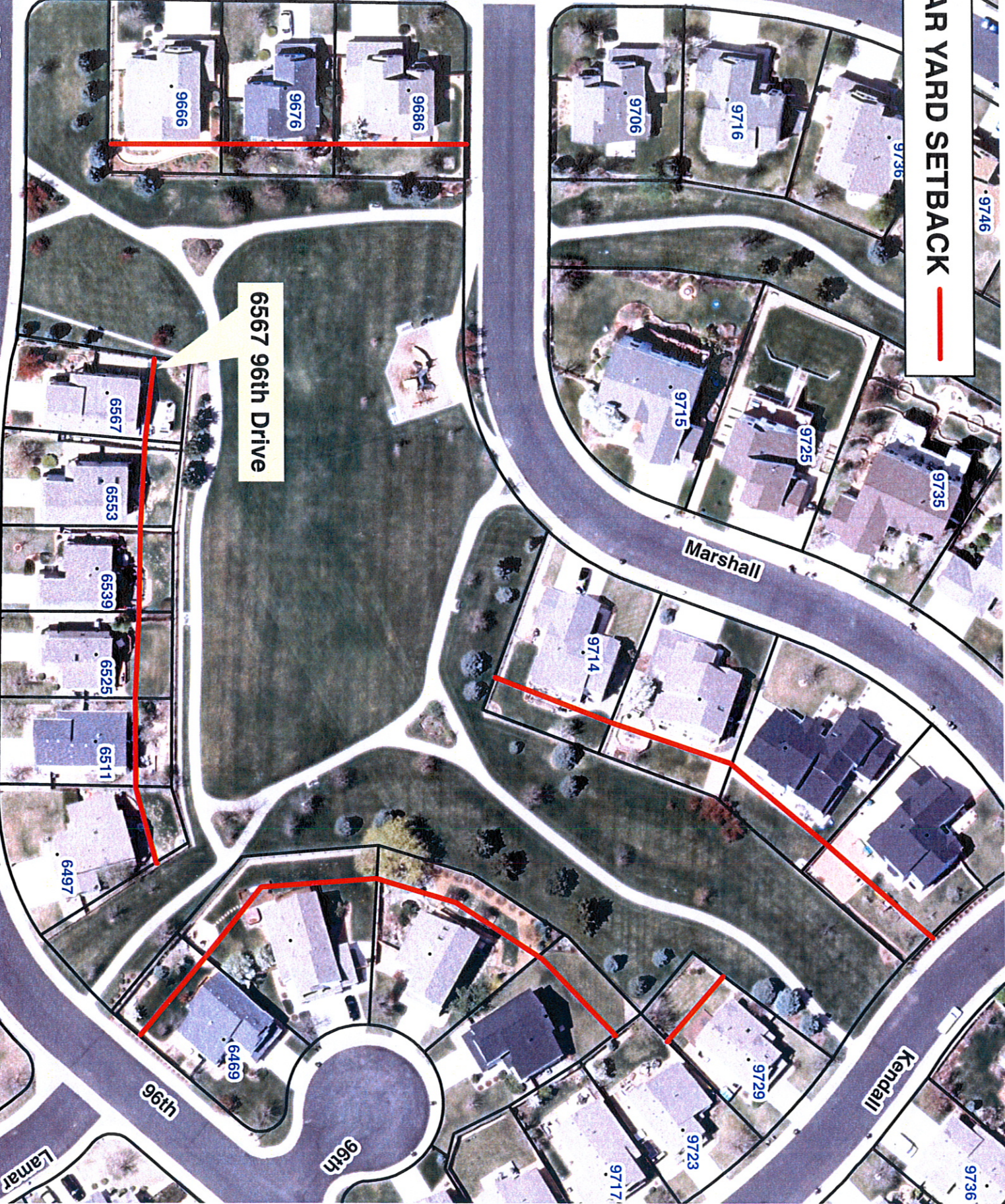
96th

Newland

6567 96th Drive

Marshall

Kendall



Lamar

96th

96th

9736



12/8/11

BLUE SKY SUNROOMS

c/o TOM WILES

REPRESENTING JACQUELINE CHURCHILL

REGARDING: NOTICE OF APPEAL

ATTENTION CITY MANAGERS OFFICE

A) PLANNING COMMISSION'S DENIAL OF PROPOSED
SUNROOM ADDITION

B) DATE OF HEARING & DENIAL 11/29/11

C) BLUE SKY SUNROOM (CONTRACTOR FOR JACQUELINE
CHURCHILL) PROJECT ADDRESS 6567 W. 96TH DR.

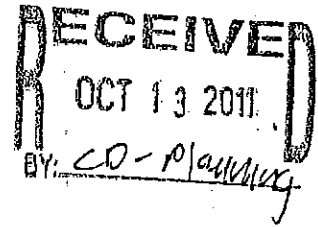
TOM WILES 720 4471152

BLUE SKY SUNROOMS 303 473-2766

JACQUELINE CHURCHILL 720 352-7262

d) THE HOMEOWNER & BLUE SKY SUNROOMS DID
NOT FEEL THE PLANNING COMMISSION DID NOT GIVE
ENOUGH CONSIDERATION TO THE PROPOSED
PROJECT & SPECIAL CIRCUMSTANCES WITH
REGARDS TO JACQUELINE HEALTH NEEDS. WE
ALSO FEEL THE CODE REQUIREMENT OF 20' TO
REAR PROPERTY LINE IN THIS CIRCUMSTANCE COULD
BE GIVEN SPECIAL ATTENTION SINCE REAR IS
OPEN SPACE OWNED BY HOMEOWNERS ASSOCIATION
& THEY'VE GIVEN US APPROVAL.

THANK YOU
TOM WILES



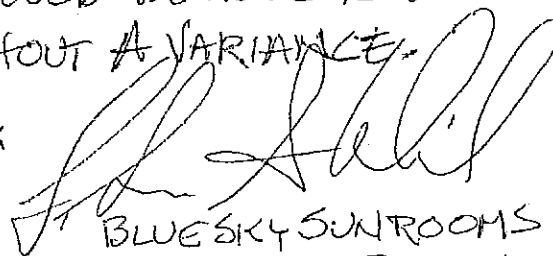
PURPOSE OF PROPOSED MODIFICATION:

MRS. CHURCHILL HAS HEALTH CONCERNS. HER DOCTOR HAS RECOMMENDED A SWIM SPA FOR THERAPY. THE SIZE OF THE SWIM SPA IS THE SMALLEST ONE AVAILABLE FOR HER & HER DOCTORS NEEDS. THE SWIM SPA COMPANY ALSO REQUIRES MINIMUM 2' AREA AROUND SWIM SPA FOR MAINTENANCE. MRS CHURCHILL ALSO NEEDS THIS AREA FOR ACCESS AROUND SWIM SPA.

THE BIGGEST IMPACT TO THE COMMUNITY IS TO THE REAR PROPERTY. THIS IS AN OPEN SPACE OWNED BY WESTLIFE H.O.A. THEY HAVE REVIEWED PLANS AND HAVE APPROVED IT.

THE HOUSE SITS BACK FROM FRONT SLIGHTLY BECAUSE OF CURVE IN STREET.

IT ALSO IS A RANCH PLAN THAT CAUSES IT TO GO FURTHER TOWARDS REAR PROPERTY LINE THAN OTHERS IN NEIGHBORHOOD. MANY NEIGHBORS WOULD BE ABLE TO BUILD A 14' SUNROOM WITHOUT A VARIANCE.


 BLUESKY SUNROOMS
 APPLICANTS REPRESENTATIVE

DEA #

INTERNAL MEDICINE ASSOCIATES
Robert D. Pane, MD

1000 W. South Boulder Rd. Suite 214
Lafayette, CO 80026
303-604-6669 • Fax 303-661-9496
www.bch.org

NAME

Jacqueline Churchill

ADDRESS

DATE *6/6/11*

R

Please Print

*Because of obesity
I have recommended
that Jacqueline exercise
by swimming in a steam
spa*

LABEL

REFILL NR 1 2 3 4 5

DISPENSE AS WRITTEN

[Signature]

THIS DOCUMENT CONTAINS VOID PANTOGRAPH, NON-WHITE BACKGROUND
REFILL INDICATOR

2/9

15'-6"

REDWOOD STEP
AT PATIO DOOR

REAR
ELEVATION

FRONT TO MATCH HOUSE

6
12

EXIST'G. CONCRETE
PATIO

30 1/2"

SIDING PAINTED
TO MATCH HOUSE

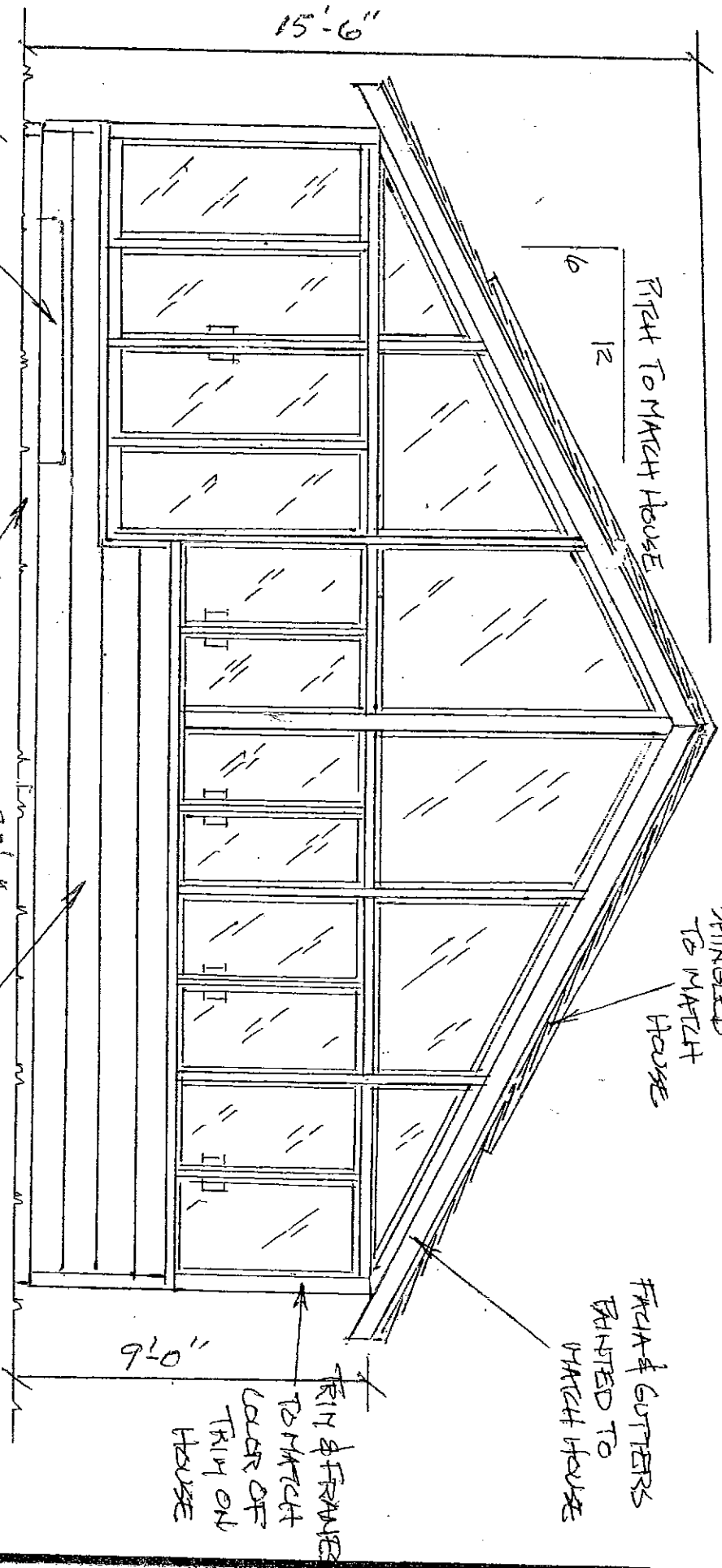
SHINGLED
TO MATCH
HOUSE

FRONT GUTTERS
PAINTED TO
MATCH HOUSE

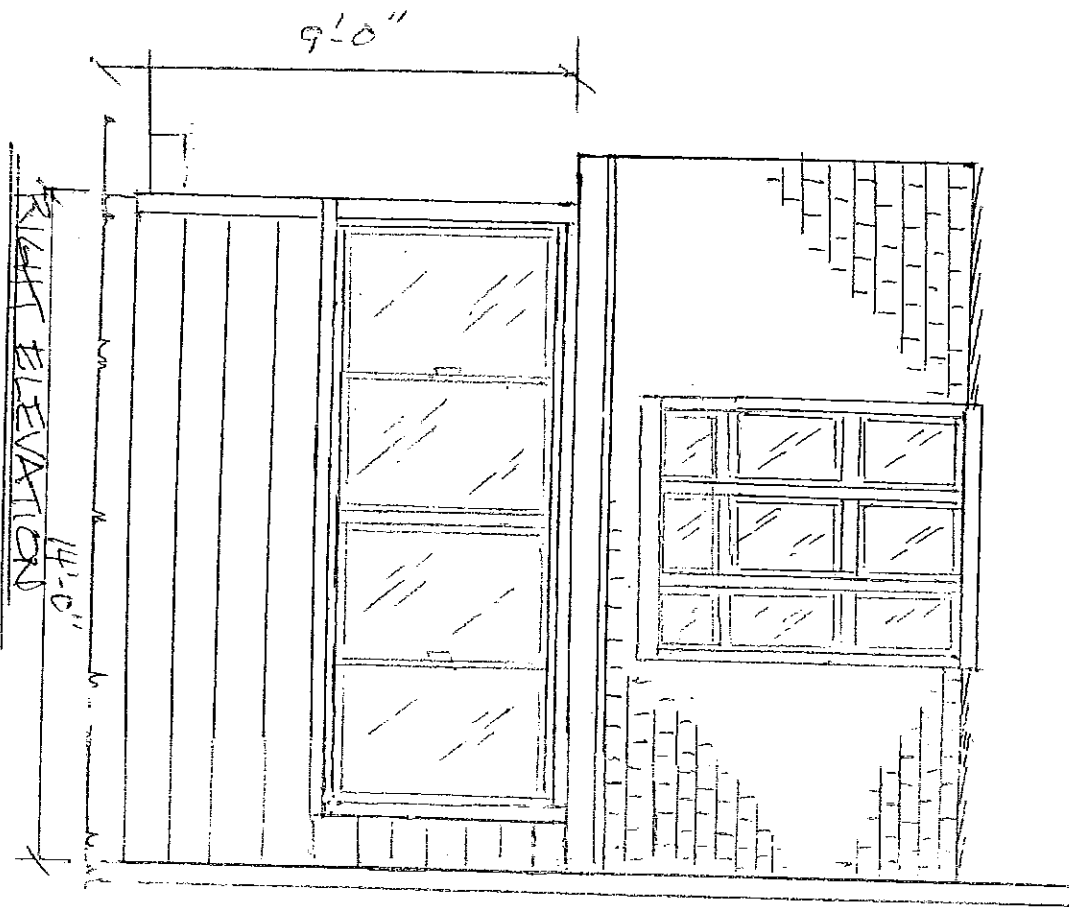
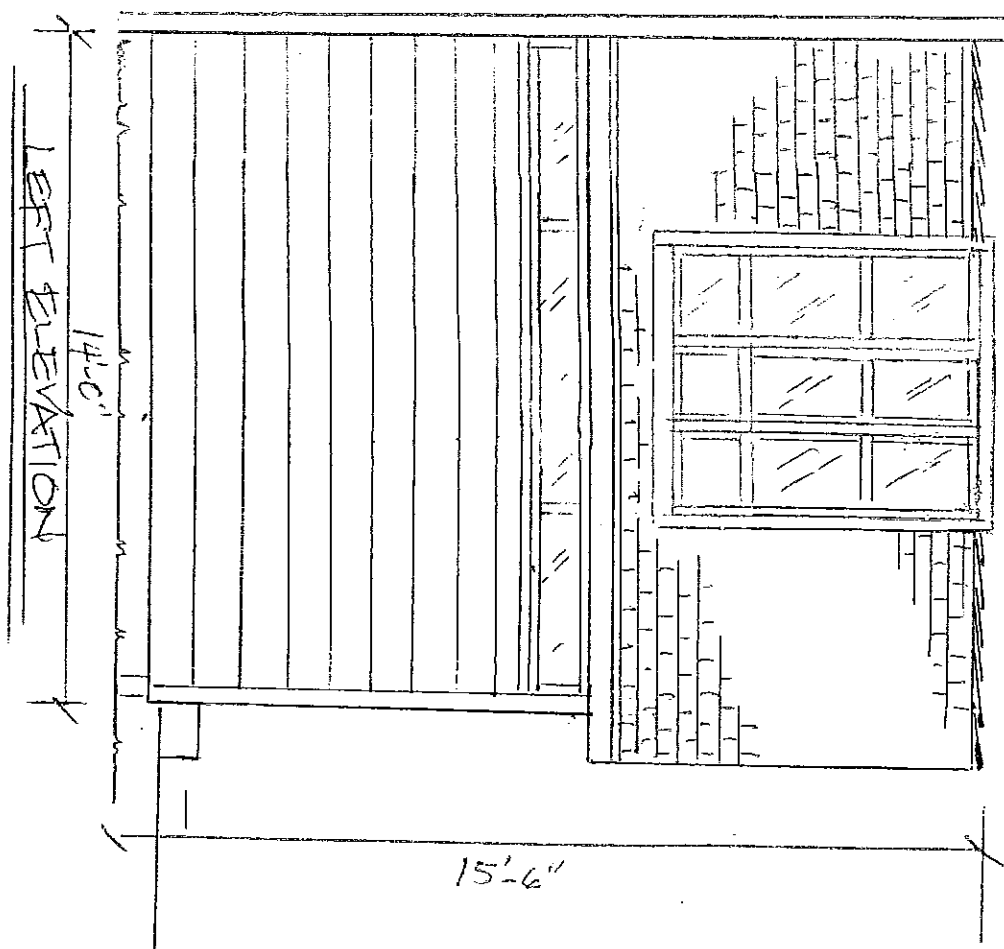
9'-0"

TRIM & FRAMES
TO MATCH
COLOR OF
TRIM ON
HOUSE

PROPOSED ADDITION



1/5



PROPOSED
ADDITION

Westcliff Subdivision

c/o MSI, LLC

390 Interlocken Crescent, Suite 500

Broomfield CO 80021-8041

(720) 974-4150 or (303) 420-4433

Fax (720) 974-4350

August 16, 2011

Jacqueline Churchill
6567 W. 96th Drive
Westminster, CO 80021

Re: Design Review Request Response

Dear Jacqueline,

Please see the enclosed signed approval from the AAC for your recent request to install a sunroom. The project is approved as submitted.

Please place the Orange sheet in your window so it is visible until completion of the work being performed.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

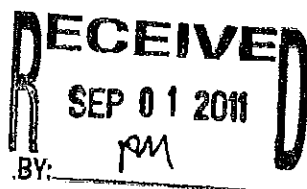


Kellee Connor, Community Manager

kconnor@msihoa.com

For the Board of Directors

4.B



Design Review Request

MSI, LLC
390 Interlocken Crescent, Suite 500
Broomfield, CO 80021-8041
(303) 420-4433 Broomfield • (303) 751-6564 Aurora
(303) 734-9013 Littleton • (970) 635-0498 Loveland • (719) 578-5610 Colorado Springs

FOR OFFICE USE ONLY

Date Received MS 8/15
Crucial Date 8/15
Date Sent To Committee 8/15
Date Rcvd From Committee 8/15
CM: Miller C.
Request# 84019

Name: Jacqueline Churchill
Address: 6567 W 96th Dr
City/State/Zip: Westminster CO 80021
Email: _____

Association: WESTCLIFF
Home Phone: _____
Work Phone: _____

My request involves the following type of improvement:

- Painting
- Deck/Patio Slab
- Roofing
- Drive/Walk Addition
- Landscaping
- Patio Cover
- Room Addition
- Basketball Backboard
- Fencing
- Other: _____

Describe improvements (attach additional documentation as needed):

SUNROOM ADDITION TO ENCLOSE SWIM SPA FOR THERAPY

Planned completion date: OCT. 31

I understand that I must receive approval of the Association in order to proceed. I understand that Association approval does not constitute approval of the local building department and that I may be required to obtain a building permit. I understand that my improvements must be completed per specifications or approval is withdrawn. I agree to complete improvements promptly after receiving approval.

Date: 8-15-11 Homeowner's Signature: J Churchill 8/15/11

Committee Action:

- Approved as submitted
- Approved subject to the following requirements:

Disapproved for the following reasons:

Completion required by: _____
Committee Member Signature: _____ Date: _____

HOA Board Member: Mary Cox 8/15/11
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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.



Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Councillor's Bill No. 1 re Right-of-Way Vacations within Semper Gardens Subdivision

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Pass Councillor's Bill No. 1 on first reading, vacating rights-of-way within Semper Gardens Subdivision.

Summary Statement

- City Council action is requested to pass on first reading the attached Councillor's Bill to vacate rights-of-way within Semper Gardens Subdivision as shown on the attached map. State statutes require that the vacation of all rights-of-way be approved by the City Council.
- The property owners, R. Dean Hawn Interests, Ltd., are requesting the right-of-way vacation since they own all of the property surrounding the subject rights-of-way and those rights-of-way do not currently serve a public purpose. In addition, some of the rights-of-way proposed to be vacated cross City-owned open space property, and this vacation will unify this property into one parcel that is not bisected by unnecessary public rights-of-way.
- Portions of the proposed vacated rights-of-way will need to be retained as utility easements to allow the continued use by private utility companies. Furthermore, portions of the existing rights-of-way needed for Westminster Boulevard will not be vacated.
- A legal description of the right-of-way to be vacated is included in Exhibit A.
- City Staff has determined that the subject right-of-way is no longer needed by the City except as noted above.
- Once the R. Dean Hawn Interests property is developed in the future, sufficient rights-of-way for public streets needed to serve the site will be required to be dedicated to the City.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council vacate the subject right-of-way, which by State statute must be vacated by an ordinance of the City Council?

Alternative

Do not vacate the right-of-way. This alternative is not recommended because the subject portion of the right-of-way is not needed by the City and does not serve the general public.

Background Information

R. Dean Hawn Interests, Ltd., the owners of land located within Semper Gardens Subdivision, have requested that certain unnecessary rights-of-way be vacated so that they could achieve a parcel not bisected and encumbered by these unnecessary rights-of-way. Similarly, this vacation is also a benefit to the City in that it will vacate right-of-way that currently bisects the City's open space parcel.

Staff has determined that the subject right-of-way can be vacated with the exception of two small parcels that will need to be retained as right-of-way for Westminster Boulevard as shown on the attached map. Easements will also need to be retained along the portions of the proposed vacated right-of-way that abut lots 37, 44, 45 and 52 to the south of Westminster Boulevard in order to accommodate existing private utilities within these areas. It is recommended that the City Council pass the attached Councillor's Bill in order to eliminate the bisection of the properties mentioned above by these unnecessary rights-of-way. This action is consistent with City Council's goal of providing a Beautiful and Environmentally Sensitive City through the preservation of unencumbered open spaces.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Councillor's Bill
- Exhibit "A" Legal Description
- Exhibit "B" Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE VACATING STREET RIGHTS-OF-WAY WITHIN SEMPER GARDENS
SUBDIVISION AND RESERVING WITHIN A PORTION THEREOF A PUBLIC EASEMENT
TO ACCOMMODATE EXISTING FRANCHISED OR PERMITTED UTILITIES**

WHEREAS, R. Dean Hawn Interests, Ltd., the owner of property located within portions of Semper Gardens Subdivision, has requested the City vacate rights-of-way which unnecessarily bisect their ownership; and

WHEREAS, the City of Westminster, the owner of property located within portions of Semper Gardens Subdivision, has requested the vacation of rights-of-way which unnecessarily bisect its ownership; and

WHEREAS, certain electric utility lines and an existing telecommunications line exist as of the date of this ordinance in a portion of the street rights-of-way that are being vacated herein and the City desires to reserve a City-owned easement for the continued use of those existing utilities, which by franchise, license or permit it has allowed in the right-of-way; and

WHEREAS, no municipal street exists or has ever been constructed in said rights-of-way; and

WHEREAS, the City Council finds that all requirements for roadway vacation contained in the Westminster Municipal Code and applicable state statutes have been met.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. City Council determines that no present or future public access need exists for the area proposed for vacation.

Section 2. The areas of right-of-way described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by this reference, are hereby vacated, except as described in Section 3. below.

Section 3. Those portions of right-of-way adjacent to lots 36, 37, 45 and 52 located within the right-of-way for the existing Westminster Boulevard are hereby reserved as right-of-way for Westminster Boulevard.

Section 4. The City reserves unto itself certain public utility easements for the existing utility lines that are currently permitted by the City, and generally described as follows:

- A. A twenty foot wide easement for electric utility lines in a location containing and centered on the existing electric utility poles running in a generally north-south direction abutting lots 36, 37, 44, and 45, south of Westminster Boulevard and north of the U.S. Highway 36 right-of-way, and
- B. A twenty foot wide utility easement for communication lines in a location centered upon the existing communication line running in a generally east-west direction from the western edge of the existing utility pedestal to the western edge of the Westminster Boulevard right-of-way, south of lot 45 and north of lot 52.

Section 5. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

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

INTRODUCED AND PASSED ON FIRST READING AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of January, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2012.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT "A"

**LEGAL DESCRIPTION OF STREET RIGHTS-OF-WAY TO BE
VACATED WITHIN SEMPER GARDENS SUBDIVISION**

THAT CERTAIN RIGHT-OF-WAY LOCATED IN SECTION 13, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

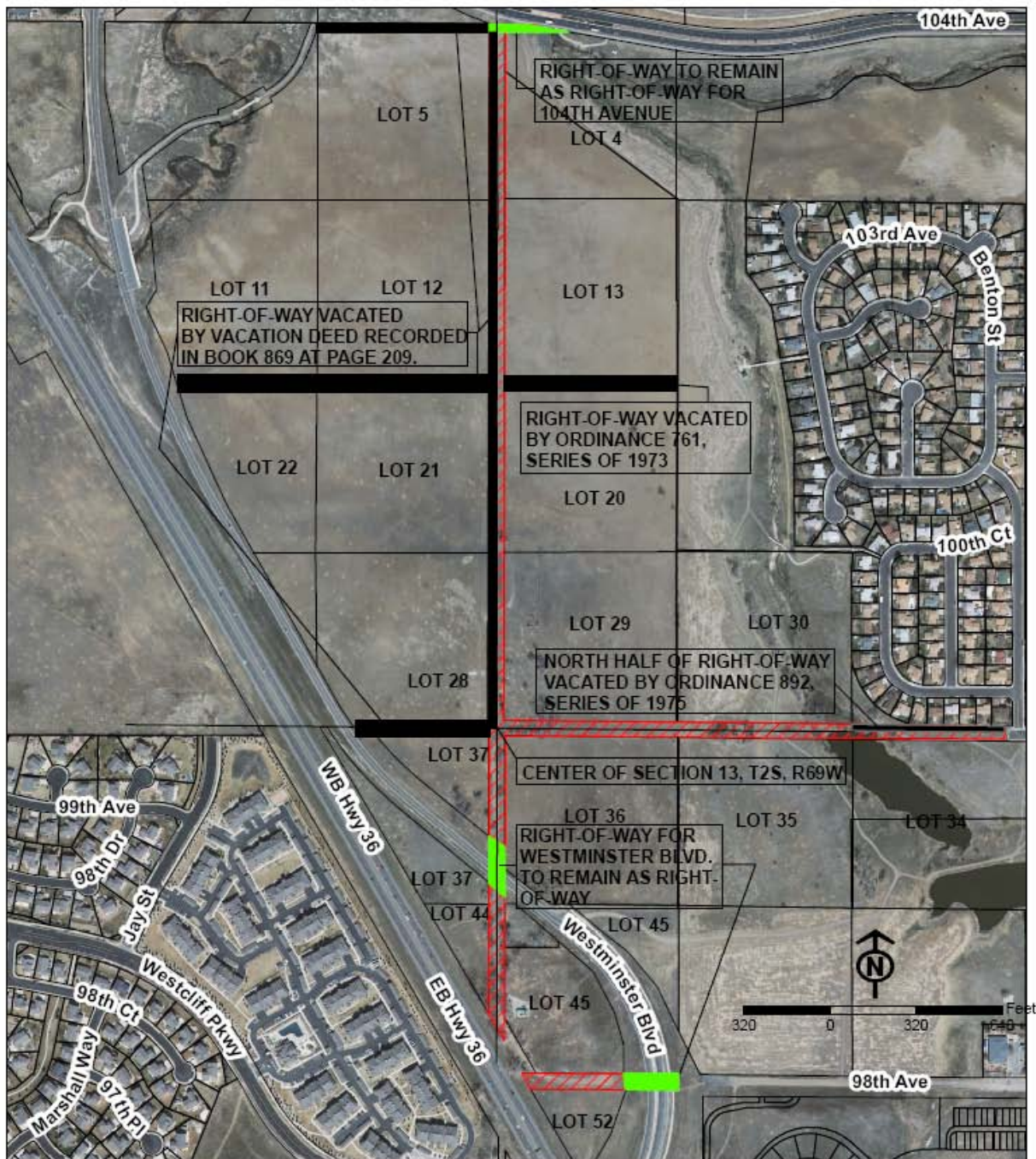
ALL OF THE RIGHTS-OF-WAY ADJACENT TO LOTS (OR TRACTS OR BLOCKS OR PARCELS) 4, 13, 20, 29, 30, 35, 36, 37, 44, 45, AND 52 AS DEDICATED BY THE PLAT FOR SEMPER GARDENS AND RECORDED IN BOOK 2 AT PAGE 32, UNDER RECEPTION NUMBER 36948 IN THE RECORDS OF THE CLERK AND RECORDER OF JEFFERSON COUNTY;

AND, THE RIGHT-OF-WAY ABUTTING THAT RIGHT-OF-WAY PREVIOUSLY VACATED BY ORDINANCE 892, SERIES OF 1975 BY THE CITY OF WESTMINSTER CITY COUNCIL AND ALONG A PORTION OF THE NORTH BOUNDARY OF LOT 34 OF SAID PLAT FOR SEMPER GARDENS;

EXCEPT THAT RIGHT-OF-WAY ALONG THE NORTH LINE OF LOT R AND THE NORTH 30' OF THE NORTH-SOUTH STREET RIGHT-OF-WAY ALONG THE CENTERLINE OF SAID SECTION 13, ALL AS SHOWN ON SAID PLAT FOR SEMPER GARDENS, SAID EXCEPTION RESERVED AS RIGHT-OF-WAY FOR W. 104TH AVENUE; AND,

EXCEPT THAT PORTION OF NORTH-SOUTH RIGHT-OF-WAY CONTAINED IN LOTS 36 AND 37 WITHIN THE EXISTING RIGHT-OF-WAY FOR WESTMINSTER BOULEVARD; AND,

EXCEPT THAT PORTION OF 98TH AVENUE RIGHT-OF-WAY LYING EAST OF THE EASTERNMOST LINE OF LOTS 36 AND 52 WITHIN THE EXISTING RIGHT-OF-WAY FOR WESTMINSTER BOULEVARD.



SEMPER GARDENS RIGHT-OF-WAY VACATION



**RIGHT-OF-WAY
TO BE VACATED**

NOTES:

1. THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED LEGAL DESCRIPTION.
2. LOTS 5 TO 21, 21 TO 28 AND 37 TO 44 ARE SHOWN FOR REFERENCE TO THE LEGAL DESCRIPTION ONLY. THESE LOTS OR TRACTS OR BLOCKS HAVE BEEN VACATED BY VACATION DEED RECORDED IN BOOK 869 AT PAGE 209 IN THE RECORDS OF THE CLERK AND RECORDER OF JEFFERSON COUNTY.



Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Resolution No. 1 re Use of Adams County Detention Facilities for Municipal Inmates

Prepared By: Ben Goldstein, Management Analyst

Recommended City Council Action

Adopt Resolution No. 1 urging the Adams County Board of County Commissioners to immediately suspend the establishment of a cap and charging cities a per day fee for municipal inmates exceeding the cap, and to work cooperatively with the cities to find a collaborative solution to this budget challenge.

Summary Statement

- The City of Westminster has collaborated with Adams County for decades to provide a safe and secure place for residents to live, work, and enjoy. The cooperative relationship has recently been challenged by difficult economic times brought on by the downturn in the economy and the budgetary decision of the Board of County Commissioners. These include the implementation of a cap on municipal inmates that can be housed at the Adams County detention facility, and subsequent fee of \$45.00 per a day for each inmate over the cap housed at the detention facility.
- This cap on municipal inmates is estimated to have a fiscal impact for the City of Westminster 2012 Budget of approximately \$20,000. This unfunded financial burden was placed on the City after the adoption of the Amended 2012 Budget, thus will require the reallocation of other already programmed dollars in 2012 should Adams County proceed with the implementation of their resolution adopted on October 31, 2011.
- Passage of this resolution will communicate to the Adams County Commissioners the City's desire for the immediate suspension of Adams County's Resolution as it relates to establishing a cap and charging cities a per day fee for municipal inmates exceeding the cap.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council approve a resolution urging the Adams County Board of County Commissioners to immediately suspend the establishment of a cap and charging cities a per day fee for municipal inmates exceeding the cap?

Alternative

Don't pass the attached City resolution opposing that cap on municipal inmates. This is not recommended as it formally states the City's opposition to the County's new policy, which will likely result in the payment of approximately \$20,000 for housing municipal inmates over the next year.

Background Information

The City of Westminster has worked closely to support Adams County and the Adams County Justice Center, as evidenced in our support of the 1992 sales tax. More recently, the City worked to maintain its municipal fast tracked domestic violence program at the urging of Adams County who would have seen an increase in caseloads if the Westminster program were eliminated. These decisions serve as strong examples of the City's commitment to public safety and the best interests of our collective residents. On October 31, 2011, the Adams County commissioners adopted a resolution placing a cap of 30 municipal inmates at the Adams County Jail, impacting all municipalities located within Adams County. The new cap went into effect January 1, 2012. For the City of Westminster the cap is five inmates per day. The Adams County Resolution is a step in the wrong direction and serves as a short sighted policy decision representing a shift of a financial burden from the County to cities, but does nothing to improve the security of the community.

Should the County proceed with the implementation of a cap on municipal inmates, the City will face a projected unexpected expense of approximately \$20,000 for housing municipal inmates. This dollar amount is a conservative estimate and is based on the City housing an estimated six inmates, one over the cap, at the Adams County detention facility per a day for the year. At times, the City has had significantly more inmates housed at the County, but on average the City has 6.08 inmates on any given day, based on data from inmate counts taken from 8/9/11 to 12/6/11. This number would be considerably higher if it were not for the change the City made last year that sends many criminal violations that were previously handled by Westminster's Court to the County Court.

This financial burden is unreasonable for the residents of Westminster to pay, as they are already paying for the detention facility through their property and sales taxes. In an effort to show the City's continued support of a collaborative approach, City Staff is willing to work with the County in finding alternative collaborative solutions to this long-term problem through the formation of a working group.

Staff will remain committed to looking for creative alternatives in sentencing, in an effort to further reduce the number of municipal inmates, but will not compromise the safety of Westminster residents and those of surrounding communities with short sighted decisions driven by cost savings.

Staff recommends adoption of the attached resolution. This resolution supports City Council goals for a "Financially Sustainable City Government Providing Exceptional Services" and a "Safe and Secure Community."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Resolution

RESOLUTION

RESOLUTION NO. **1**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION
REGARDING THE USE OF THE ADAMS COUNTY DETENTION FACILITY FOR
MUNICIPAL INMATES**

WHEREAS, Adams County (the "County") and the cities of Arvada, Aurora, Bennett, Brighton, Commerce City, Federal Heights, Northglenn, Thornton, and Westminster (the "Cities"), have had a longstanding relationship of cooperation; and

WHEREAS, that cooperation is evidenced in the many intergovernmental agreements among the County and the Cities pertaining to planning, revenue sharing for infrastructure, parks and open space and other amenities; and

WHEREAS, that cooperation was evidenced in 1992 when the Cities supported a proposed Adams County sales tax, the proceeds of which were earmarked to pay for the construction of a much-needed Adams County Justice Center, which ballot measure was subsequently approved by the voters in 1993; and

WHEREAS, that cooperation was evidenced again in 1996 when the Cities supported extension of the Adams County sales tax, the proceeds of which were earmarked to pay for expansion of the Adams County Detention Facility (hereinafter referred to as the "Jail"), which ballot measure was subsequently approved by the voters in 1997; and

WHEREAS, the ongoing operation and maintenance of the Jail is paid for from County General Fund revenues of which nearly seventy percent comes from property taxes imposed on all properties in the County; and

WHEREAS, the value of the properties located solely within Cities constitutes nearly eighty percent of the total value of all County properties, which means that the Cities contribute over one-half of the revenues in the County General Fund; and

WHEREAS, the County owns and operates the Jail through the Adams County Sheriff; and

WHEREAS, the Board of County Commissioners authorized the use of the Jail by Cities for the confinement or punishment of offenders at no charge for the cost of housing, clothing, food, medicines normally on hand and services of the official Jail physician by resolution in 1991; and

WHEREAS, the housing within the Jail of municipal-sentenced inmates and others lawfully detained by municipal police agencies is a matter of public concern to all citizens of the County; and

WHEREAS, the County and the Cities recognize that criminal activity knows no jurisdictional boundaries that therefore the protection of the public from such activity requires the fullest possible extent of cooperation among all levels of government; and

WHEREAS, the provision of Jail services is a basic public safety service that residents pay for through the property taxes that the County receives; and

WHEREAS, the County and the Cities have heretofore cooperated in the implementation, administration and enforcement of the State criminal justice system; and

WHEREAS, the Board of County Commissioners, faced with a budget shortfall in 2012, have decided that reducing the Jail population could significantly lower the overall costs of operating the Jail; and

WHEREAS, the Board of County Commissioners revised the 1991 Resolution on October 31, 2011 ("Resolution") to set forth the County's intent to impose a cap of 30 municipal inmates at the Jail and when the overall municipal inmate population exceeds 30 to charge \$45 per day for each municipal inmate that exceeds the cap established for each municipality; and

WHEREAS, historically, of the approximately 1,200 to 1,500 inmates in the Jail on a daily basis, the Cities had, on average, 130 municipal inmates, or approximately 10% of the total inmate population; and

WHEREAS, the Cities believe that the cap is arbitrary and does not adequately reflect the needs of the Cities to adequately protect the public; and

WHEREAS, the Cities also believe that charging municipalities a per day fee for each municipal inmate when the count exceeds the cap established for that municipality is contrary to previous agreements and is in essence, a double charge; and

WHEREAS, because imposing this charge on the Cities could result in the possibility of the Cities having to pay hundreds of thousands of dollars in new fees that were not anticipated, many cities have had to take steps to alter the method they use to file criminal cases by filing more of these cases directly into County Court because there are no inmate limits or additional fees for people sentenced to the Jail through County Court; and

WHEREAS, filing more cases directly into County Court will result in additional costs to the County for the District Attorney's Office, the County Courts, and the Jail since many of the same people will still be sentenced to the Jail only now they will be considered County inmates and not city (municipal) inmates; and

WHEREAS, State law authorizes the formation of Municipal Courts with concurrent jurisdiction in County as well as Municipal Courts in order to, in part, alleviate the financial burden of the County to prosecute similar state violations in County Court; and

WHEREAS, the Cities have established Municipal Courts to enforce state and local laws; and

WHEREAS, the Cities recognize the budgetary impact that the economic conditions have had on the County and its need to develop a financially prudent budget plan for 2012 and beyond, as they have all faced this same issue, but believe there are alternatives to the proposed cuts in public safety services at the Jail and the imposition of a fee; and

WHEREAS, at the end of 2010, the County had nearly \$91 million in undesignated fund balance cash reserves and \$2.4 million in cash reserves designated by the Board of County Commissioners to allow the County flexibility during a serious economic downturn, in the General Fund, which budget was approximately \$165 million in 2011; and

WHEREAS, a number of the Cities are utilizing a portion of their cash reserves to fund needed services as an interim strategy until the economy recovers; and

WHEREAS, the County has the ability to utilize a portion of its fund balance to fund needed services and restore funding for the Jail; and

WHEREAS, the Cities have suggested a number of alternatives that could result in budget savings sufficient enough to lower costs in the General Fund which would negate the need to implement a municipal inmate cap and fee; and

WHEREAS, in the Resolution the Board of County Commissioners also committed to establishing a working group with the municipalities to address alternative funding solutions at the Adams County Jail and to establish and provide the necessary funds for a Criminal Justice Coordinating Committee; and

WHEREAS, the Cities have worked diligently over the past six months to reduce the number of municipal inmates and are committed to working with the County and the Adams County Sheriff to continue with these efforts; and

WHEREAS, the Cities wish to express their disagreement with the restrictions and conditions contained in the Resolution, and to encourage the County to join with the Cities in a cooperative process to address the issue of housing municipal inmates in the Jail in a manner that is acceptable to both the County and the Cities.

NOW, THEREFORE, be it resolved by the City Council of The City of Westminster that the City urge the Adams County Board of County Commissioners:

(1) to immediately suspend the Resolution as it relates to establishing a cap and charging the Cities a per day fee for municipal inmates exceeding the cap;

(2) to pursue an evaluation of the alternatives suggested by the Cities as a means of reducing costs or raising revenues.

(3) to utilize a portion of the County General Fund undesignated fund balance cash reserves and/or economic downturn reserves to restore funding to operate the Jail and accommodate municipal inmates, as an interim strategy, until the economy recovers.

(4) to convene a working group with the Cities (the "Working Group") who shall be tasked with developing recommendations/strategies to manage the Jail population in a manner that meets both the County's and the Cities' public safety goals and the County's budget constraints.

(5) to establish the Criminal Justice Coordinating Committee (the "CJCC") whose first task shall be to conduct an in-depth analysis of the County criminal justice system and develop recommendations/strategies that can be undertaken to reduce the overall Jail population; and

(6) the Cities agree to commit to continue to work diligently with the County to maintain the number of municipal inmates below 40 while the Working Group and the CJCC are developing their recommendations/strategies.

PASSED AND ADOPTED this 9th day of January, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
City Attorney



Agenda Memorandum

City Council Meeting
January 9, 2012



SUBJECT: Resolution No. 2 re Triennial Renewal of the Rocky Flats Stewardship Council and Intergovernmental Agreement

Prepared By: Mary Fabisiak, Water Quality Administrator
Mike Happe, Utilities Planning & Engineering Manager

Recommended City Council Actions

Adopt Resolution No. 2 supporting the continuation of the Rocky Flats Stewardship Council for an additional three years and authorize the Mayor to execute the First Amendment to the Intergovernmental Agreement Establishing the Rocky Flats Stewardship Council.

Summary Statement

- The Intergovernmental Agreement (IGA) establishing the Rocky Flats Stewardship Council (RFSC) was entered into on February 13, 2006 and renewed on February 9, 2009.
- The Intergovernmental Agreement requires that every third calendar year from the commencing effective date of the IGA, the participating local governments unanimously agree whether to continue the Stewardship Council's existence.
- Lack of a unanimous triennial determination by the Parties will result in the dissolution of the Stewardship Council.
- The first Amendment to the IGA adds Thornton as a member, changes Northglenn and Golden's status to permanent members and modifies the voting requirements for actions of the board from nine to eleven members to reflect the changes.
- Council previously re-appointed City Councilor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council Board of Directors and appointed Water Quality Administrator Mary Fabisiak as the alternate representative.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

Should the City support the continuation of the Rocky Flats Stewardship Council for an additional three years?

Should the City approve the first amendment to the IGA establishing the RFSC?

Alternatives

The City of Westminster could determine that it is not in the best interest of the City to support the continuation of the Rocky Flats Stewardship Council (RFSC) for an additional three years. This alternative is not recommended as lack of a unanimous approval would result in the dissolution of the RFSC. The City would lose an opportunity to continue to work with the other local governments that are contiguous to Rocky Flats in order to “speak with one voice” to the Department of Energy (DOE), State and Federal Governments and elected delegations on issues related to the long-term stewardship of the Rocky Flats Environmental Technology Site.

The City of Westminster could determine that it is not in the best interest of the City to approve the amendment to the IGA. This alternative is not recommended, as the City would lose the opportunity to work with the other local governments on issues related to the long-term stewardship of the Rocky Flats Environmental Technology Site.

Background Information

The Rocky Flats Stewardship Council (RFSC) is made up of elected officials and staff representing ten local governments, three community organizations and one individual. The ten local governments include the cities of Westminster, Arvada, Boulder, Golden, Northglenn, Boulder County, Jefferson County, the City and County of Broomfield, and the Town of Superior. The City of Thornton requested membership and was approved by the RFSC Board on September 12, 2011. Previously, Golden and Northglenn shared a membership and each will now be permanent members; the amendment to the IGA reflects these changes. The League of Women Voters, Rocky Flats Cold War Museum, Rocky Flats Homesteaders and an individual complete the membership.

The RFSC was formed in February 2006 to meet the mandates of Congressional legislation that require that all former DOE facilities once closed must have a Local Stakeholders Organization. The Council provides environmental oversight, communication and advocacy between the DOE and nearby communities on any issues involving the retained DOE lands. It provides oversight of the ongoing ground and surface water monitoring programs, maintenance activities and serves as an advocate for the surrounding communities with state and federal agencies.

This action helps achieve the City Council’s Strategic Plan Goal of a Safe and Secure Community by overseeing the City’s interests and ensuring long-term stewardship of the Rocky Flats Environmental Technology Site. This action also supports City Council’s Strategic Plan Goal of a Beautiful and Environmentally Sensitive City by providing oversight of the post-closure management of the Rocky Flats National Wildlife Refuge.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- First Amendment to IGA establishing the Rocky Flats Stewardship Council

RESOLUTION

RESOLUTION NO. 2

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION
REGARDING TRIENNIAL DETERMINATION FOR THE CONTINUATION OF
THE ROCKY FLATS STEWARDSHIP COUNCIL**

WHEREAS, effective as of February 13, 2006, the City and County of BROOMFIELD, the Counties of BOULDER and JEFFERSON, the Cities of ARVADA, BOULDER, GOLDEN, NORTHGLENN and WESTMINSTER, and the Town of SUPERIOR (collectively, the "Parties"), entered into an intergovernmental agreement ("IGA") establishing the Rocky Flats Stewardship Council, a separate legal public entity created by such IGA as permitted by Colorado Constitution Article XIV and section 18(2), part 2 of article 1, title 29, C.R.S. ("Stewardship Council"); and

WHEREAS, the Stewardship Council was established to allow local governments to continue working together on issues related to the long-term protection of Rocky Flats, as described in the IGA; and

WHEREAS, pursuant to the terms of the IGA, the Stewardship Council shall terminate absent, *inter alia*, the unanimous triennial determination by all Parties that the Stewardship Council should continue for another three years; and

WHEREAS, effective February 13, 2009, the Parties approved the continuation of the Stewardship Council for three years; and

WHEREAS, the CITY COUNCIL of the CITY OF WESTMINSTER now desires to consider and make a determination concerning the continuation of the Stewardship Council for another three years;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

That the CITY COUNCIL of the CITY OF WESTMINSTER does hereby find and determine that,

1. It is not desirable for the Stewardship Council to terminate at this time; and
2. The Stewardship Council should continue for an additional three (3) years from the date of February 13, 2012, pursuant to paragraph 10 of the IGA.

PASSED AND ADOPTED this 9th day of January, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

FIRST AMENDMENT
TO
INTERGOVERNMENTAL AGREEMENT
ESTABLISHING THE
ROCKY FLATS STEWARDSHIP COUNCIL

This First Amendment to Intergovernmental Agreement establishing the Rocky Flats Stewardship Council (“First Amendment to IGA”) is made and entered into as of this ____ day of _____, 2012, pursuant to Colo. Const. Art. XIV, Section 18(2), part 2 of article 1, title 29, C.R.S., by and among the following parties who have executed this IGA: BOULDER COUNTY, a body politic and corporate and political subdivision of the State of Colorado, JEFFERSON COUNTY, a body politic and corporate and political subdivision of the State of Colorado, the CITY OF ARVADA, a home-rule municipal corporation and political subdivision of the State of Colorado, the CITY OF BOULDER, a home-rule municipal corporation and political subdivision of the State of Colorado, the CITY AND COUNTY OF BROOMFIELD, a Colorado municipality and county, the CITY OF WESTMINSTER, a home-rule municipal corporation and political subdivision of the State of Colorado, the TOWN OF SUPERIOR, a municipal corporation, the CITY OF GOLDEN, a home rule municipal corporation and political subdivision of the State of Colorado, and the CITY OF NORTHGLENN, a home-rule municipal corporation and political subdivision of the State of Colorado, and the CITY OF THORNTON, a home-rule municipal corporation and political subdivision of the State of Colorado (singularly and/or collectively, “Party/Parties”).

RECITALS

WHEREAS, the Rocky Flats Stewardship Council (“Stewardship Council”) was established by intergovernmental agreement (“IGA”) effective February 13, 2006, and was created to allow local governments to work together on issues related to the long-term protection of Rocky Flats; and

WHEREAS, the Stewardship Council is currently governed by a Board of Directors made up of public official representatives of nine Colorado local governments with borders which lie adjacent to or near the Rocky Flats site, including Boulder County, Jefferson County, the City of Arvada, the City of Boulder, the City and County of Broomfield, the City of Golden, the City of Northglenn, the City of Westminster, and the Town of Superior; and community stakeholder representatives including the League of Women Voters, the Rocky Flats Cold War Museum, the Rocky Flats Homesteaders and Arthur Widdowfield; and

WHEREAS, the City of Thornton also lies near the Rocky Flats site and has requested to become a party to the Stewardship Council; and

WHEREAS, the Stewardship Council, at a meeting held September 12, 2011, approved the request by Thornton to become a Party to the IGA and a member of the Stewardship Council, subject to the terms and conditions of the IGA; and

WHEREAS, the Stewardship Council has further determined to make the Cities of Northglenn and Golden “permanent” rather than “rotating” parties to the Stewardship Council; and

WHEREAS, the addition of any local government to the Stewardship Council or other modification to the IGA requires a written amendment, executed by all Parties to be valid and binding; and

WHEREAS, the Constitution and the laws of the State of Colorado permit and encourage local governmental entities to cooperate with each other to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, the execution of this First Amendment to IGA by the existing Parties to the IGA and by the City of Thornton implements Colo. Const. Art. XIV, Sec. 18(2), and part 2 of article 1, title 29, C.R.S., and is in the best interest of the Parties, the region and the people of the State of Colorado;

THEREFORE, the Parties to this First Amendment to IGA hereby covenant and agree as follows:

COVENANTS AND AGREEMENTS

1. Addition of the City of Thornton. The IGA is hereby amended to add the City of Thornton as a local government member and Party to the IGA, with all the rights, privileges and duties associated therewith, and the initial paragraph, the recitals, the body and the signature pages of the IGA shall be deemed amended to reflect this action.

2. Amendments to Remove Designation of “Permanent” and “Rotating” Parties. There shall no longer be a distinction between “Permanent Party” and “Rotating Party.” Accordingly, the IGA is hereby modified as follows:

a. Definitions: The following terms as provided under the heading “Definitions” in the IGA shall be amended as follows:

i. *“Party” shall mean “a unit of local government who is a signatory to this IGA, as amended, including the City and County of Broomfield, the Counties of Boulder and Jefferson, the Cities of Arvada, Boulder, Golden, Northglenn, Thornton and Westminster, and the Town of Superior.*

ii. “Permanent Party” and “Rotating Party” are hereby deleted from the IGA in their entirety.

b. Board of Directors. The first sentence of Paragraph 7 of the IGA regarding the Board of Directors shall be amended to read as follows:

The legislative and administrative power of the Stewardship Council shall be vested with a Board of Directors not to exceed fourteen (14) in number, one representing each of the ten Parties, and one representing each of the Members (not to exceed four); each with one equal vote.

c. References. All other references to “Permanent” and “Rotating” Parties in the IGA shall be read to be interpreted with the Parties’ intention to remove the distinction in designations, and refer only to “Parties.”

3. Amendment to Paragraph 7 regarding Actions of the Board: Paragraph 7.j. titled “Actions of Board” is hereby amended to change the minimum voting requirement for Board action from nine to eleven, as follows:

j. Actions of Board. Actions of the Board require an affirmative vote of at least eleven (11) Directors. In the event a decision is made with less than a unanimous vote, Director(s) in the minority may include a statement in the record reflecting its or their views.

4. Prior Provisions Effective. Except as specifically amended hereby, all the terms and provisions of the IGA shall remain in full force and effect.

5. Counterpart Execution. This First Amendment to IGA may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to IGA effective as of the date first written above.

COUNTY OF BOULDER

Date: _____

By: _____

ATTEST:

COUNTY OF JEFFERSON

Date: _____

By: _____

ATTEST:

CITY OF ARVADA

Date: _____

By: _____

ATTEST;

CITY OF BOULDER

Date: _____

By: _____

ATTEST:

CITY AND COUNTY OF BROOMFIELD

Date: _____

By: _____

ATTEST:

CITY OF WESTMINSTER

Date: _____

By: _____

ATTEST:

CITY OF THORNTON

Date: _____

By: _____

ATTEST:

CITY OF NORTHGLENN

Date: _____

By: _____

ATTEST:

CITY OF GOLDEN

Date: _____

By: _____

ATTEST:

TOWN OF SUPERIOR

Date: _____

By: _____

ATTEST:

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, January 9, 2012

AT 7:00 P.M.

1. Roll Call

2. Minutes of Previous Meeting (December 19, 2011)

3. Purpose of Special WEDA Meeting is to

A. Authorize a Westminster Center Urban Reinvestment Project Security Contract

4. Executive Sessions

Discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Urban Reinvestment Project pursuant to CRS 24-6-402 (4)(a) and (e), discussion of strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and provide instructions to the Authority's negotiators as authorized by CRS 24-6-402 (4)(a) and (e), and consultation with the Authority's legal counsel concerning the *Sears* litigation, pursuant to CRS 24-6-402(4)(b) and (e) and WMC 1-11-3 (C)(3) – *Verbal*

5. Adjournment

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, DECEMBER 19, 2011, AT 7:07 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Carla Koeltzow, Acting Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Major, to approve the minutes of the meeting of November 14, 2011, as written. The motion carried by a 5:1 vote with Board Member Atchison abstaining, stating he was not a member of the Authority at that time.

CUMULATIVE 2011 PURCHASES OVER \$50,000 FOR MALL SECURITY AND MANAGEMENT

Upon a motion by Board Member Major, seconded by Vice Chairperson Winter, the Authority voted unanimously, based on the report and recommendation of the Executive Director, to determine that the public interest will be best served by ratifying the purchase of services from Advantage Security and The Laramie Property Company and to pay any past invoices not previously authorized with Advantage Security up to a maximum of \$69,000 as well as pay any past invoices not previously authorized with The Laramie Property Company up to a maximum of \$80,000.

ICA WITH CITY AND OPPNGID RE RELEASE PROPERTY TAX COLLECTIONS TO DISTRICT

Upon a motion by Vice Chairperson Winter, seconded by Board Member Major, the Authority voted unanimously to authorize the Executive Director to execute the Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority, the City of Westminster and the City of Westminster Orchard Park Place North General Improvement District for the release of unpledged property tax increment collections to the District for payment to the City for assessments, recoveries, interest, maintenance and administrative costs associated with the Orchard View Property and the Centura Orchard View Property in substantially the same language as presented.

ADJOURNMENT

There being no further business to conduct, it was moved by Atchison, seconded by Kaiser, to adjourn. The motion carried and the meeting adjourned at 7:10 p.m.

Chairperson

ATTEST:

Acting Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 9, 2012



SUBJECT: Westminster Center Urban Reinvestment Project Security Contract

Prepared By: Susan Grafton, Economic Development Director

Recommended Board Action

Based on the recommendation of the Executive Director, find that the public interest would best be served by authorizing the Executive Director to enter into agreement with Advantage Security to obtain security services for the Westminster Mall property.

Summary Statement

- Though the majority of the former mall will be demolished by May 2012, security is still needed for the remaining tenants.
- Advantage Security provided security services for the former mall property during 2011; and staff was satisfied with the service provided.

Expenditure Required: Not to exceed \$68,000

Source of Funds: WEDA – Westminster Center Urban Reinvestment Project

Policy Issue

Should the Westminster Economic Development Authority (WEDA) hire security services for the businesses remaining on the former Westminster Mall site?

Alternatives

1. Adjust the number of hours that Advantage Security provides services. The service provided meets WEDA's obligation as property owner, therefore Staff does not recommend altering the hours.
2. Not hire a service and request additional police coverage on site. This alternative is not recommended because this would likely require the Police Department to utilize overtime to provide these services, which would be significantly more expensive than the cost proposed by Advantage Security.

Background Information

As owner of the former Westminster Mall property, WEDA took on certain responsibilities and obligations. The provision of security on the premises, particularly at opening and closing of operations as well as over night to prevent vandalism and theft, is one of WEDA's responsibilities. The previous ownership was utilizing Advantage Security when WEDA took ownership. Staff retained their services and has been pleased with their responsiveness. The attached agreement provides for Advantage Security to continue services seven (7) days a week from 5 PM to 1 AM. The total cost is estimated to run about \$59,952 with a maximum contract amount of \$68,000 to allow for any unanticipated security needs.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment - Agreement with Advantage Security

Responsible people... Responsive management

December 5th, 2011

Mr. Jerry Cinkosky
 City of Westminster
 6575 West 88th Avenue
 Westminster, CO 80031

Jerry:

The following information is being provided based on our discussions to reduce the level security at Westminster Mall. Below will be your rates for the year 2012.

Scope of Service: Provide one unarmed uniformed security officer seven days a week from 5pm-1am for a total of 56 weekly hours.

Pricing:

<u>Level</u>	<u>Wage*</u>	<u>Bill Rate</u>	<u>OT/Hol Rate</u>
Security Officer	\$12.00	\$17.25	+\$7.67

*Includes \$.30 per hour for Uniform Maintenance Allowance

Vehicle Cost: \$150/week
 Cell Phone Cost: \$11/week

Estimated yearly cost: \$59,952 (\$50,370 for 56 hours/week + \$430 holiday coverage + \$572 phone + \$8,580 patrol vehicle)

Please keep in mind that we can modify the above security program to meet your needs and budget. We remain flexible to your desires and look forward to continuing our partnership with Westminster. Please feel free to contact me at (303) 755-4407 if you have any questions or need additional information.

Thanks,

Jennifer Evans
 Account Manager

AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR
SECURITY AT THE FORMER WESTMINSTER MALL SITE

THIS AGREEMENT, made and entered into this 1st day of January, 2012, between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, hereinafter called the "WEDA," and ADVANTAGE SECURITY, INC., a corporation organized pursuant to the laws of the State of Colorado, hereinafter called the "Contractor," is as follows:

WHEREAS, WEDA wishes to obtain security services for maintenance of the former Westminster Mall site, which is generally located between 88th and 92nd Avenues and Sheridan Boulevard within the City of Westminster; and

WHEREAS, WEDA desires to engage the Contractor to render the professional security services described in this Agreement and the Contractor is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in City Charter and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, WEDA and the Contractor agree as follows:

I. THE PROJECT

The project consists of providing security services as more specifically described the Scope of Services, attached hereto and incorporated herein as Appendix A (hereinafter, the "Project").

II. CONTRACTOR'S SERVICES AND RESPONSIBILITIES

The Contractor agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

III. ADDITIONAL SERVICES

When authorized in writing by WEDA, the Contractor agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between WEDA and Contractor as to additional compensation for additional services.

IV. CONTRACTOR'S FEE

Hourly Basis Per Scheduled Rates. The compensation for the Project shall be according to the fee schedule attached hereto and incorporated herein as **Appendix A**, including reimbursable expenses as described therein. The maximum amount billable under this Agreement shall not exceed Sixty-Eight Thousand Dollars (\$68,000). The Contractor shall submit invoices to WEDA for services rendered during the preceding month, such invoices to be in the form and detail reasonably be required by WEDA. Reimbursable expenses shall be itemized. WEDA agrees to pay the Contractor within thirty (30) days of

receipt of properly documented invoices.

V. COMMENCEMENT & COMPLETION OF PROJECT

Contractor understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. In any event, the Project shall be completed within twelve (12) months after the Contractor receives notice to proceed, exclusive of time lost or due to delays beyond the control of the Contractor.

VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon WEDA's providing Contractor with seven (7) days advance written notice, or on December 31, 2012, whichever occurs first. In the event the Agreement is terminated by WEDA's issuance of said written notice of intent to terminate, WEDA shall pay Contractor for all services previously authorized and completed on the Project prior to the date of termination plus any services WEDA deems necessary during the notice period. Said compensation shall be paid upon the Contractor's delivering or otherwise making available to WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Contractor shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of \$500,000, but in any event sufficient to cover Contractor's liability under paragraph X.D.1. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. WEDA shall be named as an additional insured under the Contractor's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by WEDA, and these coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Contractor shall provide certificates of insurance to WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Contractor to notify WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

IX. PROHIBITED INTEREST

A. The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of WEDA shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Project, the Contractor shall act as an independent contractor and not as agent of WEDA except to the extent the Contractor is specifically authorized to act as agent of WEDA.

B. Books and Records. The Contractor's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for WEDA's inspection at all reasonable times at the places where the same may be kept. The Contractor shall not be required to retain such books and records for more than three (3) years after completion of the Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of WEDA and Contractor. Upon completion of the Project, or at such other time as WEDA may require, the Contractor shall deliver to WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to WEDA and such additional copies thereof as WEDA may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Contractor shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Contractor shall be liable to WEDA for any loss, damages or costs incurred by WEDA for the repair, replacement or correction of any part of the Project that is deficient or defective as a result of any failure of the Contractor to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Contractor shall indemnify, defend, and hold harmless WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless WEDA and its agents and employees from and against all professional liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project provided that any such claim, damage, loss or expense is attributable to bodily injury,

sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. WEDA may, if it so desires, withhold the payments due the Contractor so long as shall be reasonably necessary to indemnify WEDA on account of such injuries.

In any and all claims against WEDA or any of its agents or employees by any employee of the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of WEDA and the Contractor.

Project Representative for WEDA:

Name: Jerry Cinkosky, Facilities Manager
City of Westminster
(on behalf of WEDA)
Address: 6575 W. 88th Avenue
Westminster, CO 80031
Phone: 303-758-2160
email: jcinkosk@cityofwestminster.us

Project Representative for Contractor:

Name: Jeffrey Rauske,
Executive Vice President
Address: 13669 E. Iliff Avenue, Suite 234
Aurora, CO 80014
Phone: 303-755-4407
email: jrauske@advantagesecurityinc.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of WEDA and the Contractor or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

F. Assignment. The Contractor shall not assign this Agreement in whole or in part, including the Contractor's right to receive compensation hereunder, without the prior written consent of WEDA; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Contractor's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Contractor of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of WEDA of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as WEDA is located in both counties. At WEDA's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Contractor agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on WEDA's right to pursue

tort remedies in addition to other remedies it may have against Contractor. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Except subcontractors identified by name and accepted by WEDA as part of **Appendix A**, Contractor may not employ additional subcontractors to perform work on the Project without WEDA's express prior written approval. Contractor is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall notify the subcontractor and WEDA within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Contractor shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Contractor shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Contractor shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

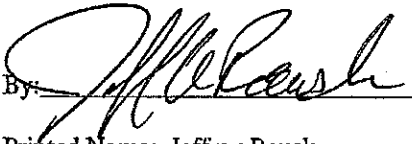
INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO
BUILDING OPERATIONS & MAINTENANCE DEPARTMENT, ATTENTION: JERRY
CINKOSKY.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

ADVANTAGE SECURITY, INC.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: 

By: _____

Printed Name: Jeffrey Rauske

Printed Name: J. Brent McFall

Title: Executive Vice President

Title: Executive Director

Address: _____

Address:

⁹³
136~~69~~ E. Iliff Avenue, Suite ²⁰⁰~~234~~
Aurora, CO 80014

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

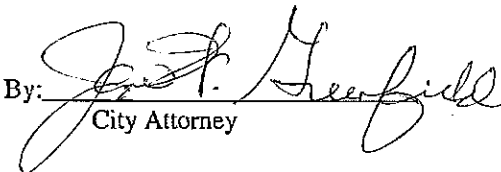
ATTEST:


Title: VP - Administration

City Clerk

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: 
City Attorney

Rev. 8/11