



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council
DATE: July 6, 2011
SUBJECT: Briefing and Post-City Council Briefing Agenda for July 11, 2011
PREPARED BY: Stephen P. Smithers, Acting City Manager

Please Note: Study Sessions and Post City Council briefings are open to the public, and individuals are welcome to attend and observe. However, these briefings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to Monday night's Briefing and Post-City Council meeting briefing, the following schedule has been prepared:

Dinner	6:00 P.M.
Council Briefing (<i>The public is welcome to attend.</i>)	6:30 P.M.
CITY COUNCIL MEETING	7:00 P.M.
POST BRIEFING (<i>The public is welcome to attend.</i>)	

PRESENTATIONS

1. Rocky Flats Environmental Technology Site Update
2. Westminster Commons Purchase and Sales Agreement with VOA

CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

EXECUTIVE SESSION

None at this time

INFORMATION ONLY

None at this time

Items may come up between now and Monday night. City Council will be apprised of any changes to the post-briefing schedule.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager





Staff Report

Post City Council Meeting Staff Report
July 11, 2011



SUBJECT: Rocky Flats Environmental Technology Site Update

PREPARED BY: Mary Fabisiak, Water Quality Administrator
Mike Happe, Utilities Planning and Engineering Division Manager
Cathy Shugarts, Water Quality Specialist

Recommended City Council Action:

Listen to Staff's presentation and provide feedback as appropriate.

Summary Statement:

- The Rocky Flats Environmental Technology Site (RFETS) is owned and managed by the U.S. Department of Energy. The site produced critical parts for nuclear weapons for the Federal Government from 1952 to 1993. Production processes and management of site wastes resulted in releases of contaminants into the environment. In 1993, weapons production at the site ceased due to environmental concerns.
- A massive accelerated effort to clean up the site was completed in 2005 – 55 years ahead of the U.S. Department of Energy's estimated schedule with a cost savings of approximately \$30 billion dollars.
- Woman Creek Reservoir, constructed in 1996 using Federal funding, continues to ensure the City's raw water supply will not be impacted by water leaving RFETS.
- The U.S. Department of Energy (DOE) recently finalized several documents pertaining to monitoring and activities at the site.
- The DOE currently proposes amendments to the Corrective Action Decision/Record of Decision (CAD/ROD), which is the final plan for clean up and closure of RFETS.
- DOE has worked with the Colorado Department of Public Health and Environment (CDPHE) and the United States Environmental Protection Agency (EPA) to draft modified language for the CAD/ROD. The original CAD/ROD language was very clear about prohibiting soil disturbance below the three foot level. The new language will allow such soil disturbance if first approved by CDPHE (case-by-case review).

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue:

Should City Council direct Staff to prepare and submit formal comments on the CAD/ROD amendments proposed by DOE?

Alternatives:

- City Council could direct Staff to not prepare and submit formal comments on the CAD/ROD amendments proposed by DOE. Staff does not recommend this alternative since these amendments have potential long-term implications for impacts to the City of Westminster.
- City Council could direct Staff to rely on neighboring communities to submit comments opposing the amendments to the CAD/ROD. Staff does not recommend this alternative since the City of Westminster's issues with the amendments may differ from the neighboring communities.

Background Information:

The Rocky Flats Environmental Technology Site (RFETS) operated as a Department of Energy (DOE) weapons production facility for over 40 years in Jefferson County, west of the City. Environmental contamination from the production includes radioactive and chemical compounds. Surface water quality is monitored to ensure the water quality meets the established water quality standards; however, potential risks to public health remain. The City's drinking water source is protected because Woman Creek Reservoir constructed in 1996 intercepts waters leaving RFETS.

DOE completed the accelerated cleanup at the RFETS in 2005. Complete removal of all contamination on the site was not economically feasible. Identified contamination was removed to at least three feet below the surface. Based on the levels of contamination remaining onsite, the site was divided into two sections – the former industrial site and the surrounding buffer lands. The former industrial site sits at the center of the site, includes the lands with higher levels of remaining contamination and is now called the Central Operating Unit (COU). The buffer lands surround COU and contain lower levels of remaining contamination that do not pose a significant human health risk, as determined by DOE monitoring efforts and risk assessment studies. The surrounding buffer lands were designated as a National Wildlife Refuge in 2007, and the lands were transferred from DOE to the Department of Interior.

Following RFETS closure, Westminster and other downstream communities worked closely with regulators to negotiate the terms for a program for monitoring water quality at the site. Those terms were finalized in the Rocky Flats Legacy Management Agreement (RFLMA) in late 2007 as approved by DOE, the United States Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE).

DOE has worked with CDPHE and EPA to draft modified language for the CAD/ROD. Their stated goal in these modifications is to clarify the original intent of the Institutional Controls (ICs) to allow various soil disturbances with regulatory approval. The original CAD/ROD language was very clear about prohibiting soil disturbance below the three foot level. The new language will allow such soil disturbance if first approved by CDPHE (case-by-case review). City Staff is concerned that these proposed changes may have far-reaching consequences that allow DOE actions at the site with no

opportunity for public comment or input. As such, Staff is preparing written comments in opposition to the proposed changes.

City Staff has actively participated in Rocky Flats technical discussions and provides oversight of DOE's site activities as a member organization on the Rocky Flats Stewardship Council, direct participation, and through the Woman Creek Reservoir Authority. Westminster's oversight of Rocky Flats issues helps achieve the City Council's Strategic Plan goals of "Safe and Secure Community" by protecting public health.

Water Quality Staff will give a presentation at this study session and will be available to answer any questions.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Staff Report

Post City Council Meeting
July 11, 2011



SUBJECT: Westminster Commons Purchase and Sale Agreement with VOA

PREPARED BY: Tony Chacon, Senior Projects Coordinator

Recommended Board Action:

Direct the Executive Director to finalize and bring a purchase and sale agreement in regard to the sale of the Westminster Commons Senior Apartments at 3180 W. 76th Avenue for Westminster Housing Authority (WHA) Board consideration and approval at a future meeting. Provide direction to Staff on whether to include a subordinated loan as part of the transaction.

Summary Statement:

- Staff presented a proposed purchase and sale agreement with the Volunteers of America (VOA) to the Board relative to the sale and rehabilitation of the Westminster Commons senior apartments on June 24, 2011.
- The proposal as presented incorporated the following provisions:
 - VOA would acquire the property for \$7.0 million;
 - VOA would invest about \$6.2 million to improve the property;
 - The WHA would carry-back a subordinated loan of about \$2.2 million that would gradually be repaid over time with a possibility that the loan amount would not be fully repaid; and,
 - The WHA would receive about \$2.32 million in cash at closing or upon completion of improvements.
- For the purposes of comparison, the Board directed Staff to evaluate a sale that would eliminate the need for a subordinated loan by reducing the purchase price for the Westminster Commons.
- Staff worked with VOA and the City’s outside consultant and determined that eliminating the subordinated loan would result in an estimated direct reduction in the amount of cash the City would receive at closing of \$618,000 (lowering cash to the City at closing from \$2.32 million to \$1,702 million). In addition, the WHA would receive no proceeds from the payment of the note, which is conservatively estimated at \$225,000. Thus, the total projected revenue reduction would be about \$843,000 less than the original proposal.
- The City’s consultant on this project, Steve Clark, will be in attendance at Monday night’s post meeting to provide further background on why subordinated loans are typically used in these transactions.

Required Expenditure: \$0

Source of Funds: N/A



Policy Issue:

Should the WHA proceed with a sales and purchase agreement reducing the purchase price to VOA, thereby eliminating the need for the issuance of a subordinated loan by the WHA?

Alternative:

As an alternative, the Board could choose to proceed with the original proposal incorporating a subordinated loan issued by the WHA, which would result in a higher cash return for the WHA.

Background Information:

On June 24, 2011, Staff presented a proposed purchase and sale agreement from VOA relative to the sale of the Westminster Commons Senior Apartments at 3180 W. 76th Avenue. As outlined in the Staff Report dated and provided on June 24, 2011, the proposal included the following provisions:

- The VOA would purchase the property for \$7.0 million;
- The HUD assigned Housing Assistance Program (HAP) rental subsidy currently tied to the Westminster Commons would be transferred to VOA and increased to a viable rate;
- The City of Westminster would provide its 2010 and 2011 Private Activity Bond (PAB) allocations to the project to facilitate the sale of affordable housing tax credits;
- VOA would receive a financially viable rate for the sale of the tax credits;
- The WHA would be agreeable to providing VOA with a carry-back loan of approximately \$2.2 million that would be subordinated to all other loans; and,
- VOA and the WHA would come to a mutually agreeable level of improvements and rehabilitation of the Westminster Commons property.

Following is the financial pro-forma pertaining to the original proposal presented by VOA:

FINANCING

Debt Sources

1 st Mortgage – Tax exempt private placement	\$ 7,146,064
Federal Home Loan Bank Loan	\$ 300,000
WHA Subordinated Loan – Seller Carry-back Note	<u>\$ 2,231,377</u>
	\$ 9,677,441

Equity Sources

VOA Project Grant	\$ 500,000
State of Colorado Grant (possibly HOME funds)	\$ 500,000
LIHTC 4% Credits	\$ 4,067,994
Developer Fee Deferred	\$ 558,189
Operating Income during renovation	\$ 519,343
Replacement Reserves (existing)	<u>\$ 270,000</u>
	\$ 6,415,526

Total Funding

\$16,092,967

EXPENDITURES

Property Acquisition	\$ 7,000,000
Soft Costs	\$ 203,500
Rehabilitation and Hard Costs	\$ 6,164,945
Financing and Legal Costs	\$ 866,333
Developer Fee	\$ 1,558,189
Funded Reserves	\$ 300,000
Total Expenditures	\$16,092,967

As reflected in the pro-forma, this proposal would net the WHA about \$2.32 million in cash at closing based on the following calculation. To achieve this cash-out value, the WHA would need to provide a subordinated loan of about \$2.2 million back to the buyer. The note would be amortized over 40 years, but could be retired upon the expiration of the tax credit term which is about 15 years. This note would be paid back from net cash flows of the Westminster Commons over this 15 year period of time at a minimum. There is a likely probability that the note would not be fully repaid in the 15 year period of housing affordability. VOA has conservatively estimated the cash flow for the 15 year period at about \$225,000. Staff believes the actual amount of the note that would be repaid could be higher dependant on future rent increase allowances by HUD.

Given the proposal to provide a subordinated loan, and the prospect of such loan not being fully repaid, the Board requested Staff evaluate the financial impact of a proposal reducing the sales price and eliminating the need for a subordinated loan from the WHA. Accordingly, Staff requested VOA take this proposal into consideration and run the numbers. Their assessment showed that this option remains viable in providing a cash return to the WHA, but the amount of cash-out would be reduced by about \$618,000 immediately. Thus, this proposal would bring a cash return of about \$1.7 million as compared to \$2.32 million. Further, the WHA would not receive payments towards repayment of the loan note that could be \$225,000 or more over 15 years.

This discrepancy is a result of a reduction in the amount of tax credit equity that can be put into the project. The tax credit equity is essentially “grant” money to the project from federal sources. The affordable housing consultant to the WHA, Mr. Steve Clark, outlines the rationale for use of a subordinate loan in a memorandum provided as Attachment A. Mr. Clark will be present at the meeting to answer any questions relative to this issue.

Proceeds from the sale of the Westminster Commons would be advantageous to the City in supporting affordable housing development opportunities in the South Westminster Transit area. The cost to prepare the TOD area for development is extensive and a substantial investment by the WHA would assist the City in its endeavors to prepare the area for new development.

The proposed sale of the Westminster Commons meets the City of Westminster's goal of Safe and Secure Community with the objective of maintaining safe buildings and homes. The proposed sale and improvements will extend the life and enhance the livability of the Westminster Commons as affordable senior housing for many years into the future.

Respectfully Submitted,

Stephen P. Smithers
Acting Executive Director

Attachment

Attachment A – Memorandum from Steve Clark



Public Finance Consulting

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TO: Westminster Housing Authority

FROM: S.B. Clark Companies

DATE: July 7, 2010

RE: Subordinated "Carry-back" Loan in Westminster Commons Property Sale

In the Westminster Commons request for purchase proposals process for which our firm assisted Westminster Housing Authority in November 2010, all three pre-qualified buyers proposed a combination of cash and subordinated loan for the payment of the purchase price for the property. Both VOA and Adams County Housing Authority proposed using 4% low-income housing tax credit combined with 1st mortgage private activity bonds and a subordinated seller carry-back loan. The VOA proposal was recommended and selected by the Commissioners largely because the amount of cash payment proposed by VOA was so much larger and the proposed subordinated loan was so much smaller than the other two competing proposals.

Using a carry-back subordinated loan is a typical structure in low-income housing tax credit financing, particularly in senior housing acquisition/rehab projects. Colorado Housing and Finance Authority has approved multiple tax credit allocations using this structure. Specifically, our firm assisted the Housing Authority of the City of Boulder (Boulder Housing Partners) for their Broadway East Community renovation using the same tax credit and subordinated carry-back loan financing arrangement in 2007.

Now that the Westminster Commons rehabilitation cost pricing has been formerly completed and is more than \$6.1 million in lieu of the \$4 million used as the proxy number for the RFP process, VOA's cash payment would be approximately \$2.4 million, plus pay off in cash of the existing WHA debt on the property \$2.4 million. The subordinated note to be carried-back by WHA will be approximately \$2.3 million.

The purposes of using the subordinated carry-back loan in the Westminster Commons sale are several:

- The purchase price of the property (\$7 million) adds to the amount of low-income housing tax credits available to VOA.
 - ✓ To reduce the purchase price to remove the sub-loan reduces the amount of tax credit equity that is essentially “grant” money to the project from federal sources.
 - ✓ Such loss of tax credit benefit would be approximately \$618,000 and either reduce the cash received by WHA from the sale or reduce the planned rehabilitation expenditure.
- The carry-back loan has a 40-year term with a recorded second deed of trust on the property that gives WHA control of the use of the property over future decades.
 - ✓ VOA will need to pay off the sub-loan if they want to change the use of the property (e.g. sell as condos) or sell the property to another owner.
 - ✓ VOA will need to either pay off or obtain WHA approval of re-subordination for any refinancing of the senior mortgage.
 - ✓ The sub-loan will carry an interest rate equal to the Federal AFR rate used for tax purposes.
 - ✓ Unless renegotiated or formally forgiven by WHA, the sub-loan will need to be repaid in full at the end of its 40-year term.
- WHA as the sub-loan holder will receive a portion of the cash flow from the operation of the property after operating expenses and first mortgage debt service. This percentage participation in the net cash flow is currently being negotiated, but will not be less than 10%.
 - ✓ This amount will be not less \$15,000 to \$20,000 per year growing with rent increases given that the first mortgage loan debt service will be fixed for 15-years.
 - ✓ Such cash flow will pay accrued interest before paying back principal.

S.B. Clark Companies recommends approval of the purchase and sale agreement between WHA and VOA including the use of the subordinated carry-back loan as was proposed in VOA’s RFP response.