

## Staff Report

City Council Study Session Meeting  
October 17, 2022



**Strategic Priority: Shared Sense of Community**

Foster equitable opportunities that help residents feel at home and connected in their community and empowered to live their best lives.

**Subject:** Updates and Options for the City-Owned Property Located at West 73rd Avenue and Lowell Boulevard

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### Recommended City Council Action:

Receive an update and discuss options for the six City-owned parcels located at West 73rd Avenue and Lowell Boulevard.

### Summary Statement:

- Between 1998 and 2014, the City acquired six parcels, totaling 1.09 acres, on Lowell Boulevard, south of West 73rd Avenue (the "Project Site"). See Attachment A, "City of Westminster Owned Land at 73<sup>rd</sup> and Lowell" for map and legend of the Project Site.
- Five of the six parcels were acquired using federal funds, known as a Section 108 Loan, with the initial parcel purchased in 1998 being acquired using City General Fund money, though this parcel was used in the collateral deed for the Section 108 Loan.
- The total amount of the Section 108 loan used for acquisition was \$1,203,600. The Section 108 loan was fully repaid to HUD in December 2019 with multi-year payments from the City's Community Development Block Grant (CDBG) funds.
- There have been three primary redevelopment proposals at the Project Site which have not come to fruition for various reasons:
  1. In 2004, a developer proposal to support the development of proposed commercial space and townhomes was approved by City Council utilizing the two most northern parcels along 73<sup>rd</sup> Avenue.
  2. In 2012, a developer proposed a mixed-use project with 48 affordable housing units and first-floor, commercial space using all six parcels.
  3. In 2018, the Community Resource and Housing Development Corporation (CRHDC) proposed to develop 17 units of affordable senior housing on the three northern parcels.
- The City completed all demolition and environmental clean-up required by both state and federal agencies in the spring of 2022.
- The Project Site is currently programmed for affordable housing in the City's Community Development Block Grant (CDBG) Consolidated Plan and the three northern parcels were rezoned in 2020 to PUD.
- The community is eager to have this Project Site contribute to the neighborhood and benefit residents.
- Because of the CDBG funds used at the Project Site, the site is referred to as being "federalized", meaning that any use of the property by the City is required to address a U.S. Department of Housing and Urban Development (HUD) national objective that serves low- and moderate-income residents. Additionally, federalized sites must adhere to federal rules and regulations such as wages paid to anyone performing work at the site, environmental standards and contractors used for any work, which all can add cost and time to projects.
- During the recent process to adopt the CDBG Annual Action Plan (AAP) by City Council, Staff received a proposal from the Heart of Westminster (THOW) community group to create a community event center, titled the "73<sup>rd</sup> Avenue Community Event Space". on the northern three parcels of the Project Site.

- On July 25, 2022, City Council instructed Staff to explore the community's vision for the Project Site consistent with the THOW proposal and consider identified food security issues noted by the community during the AAP process and allocated \$50,000 in City funds towards the planning effort.
- In August 2022, Staff began a community review process consisting of four public meetings to gather local resident input on desired uses for the Project Site. All four meetings were held in the Harris Park Neighborhood in Historic Westminster.
- The conversations were productive and the community came to a majority consensus to move forward with an open-air community market concept, though it is important to note that many attendees would like to see affordable housing opportunities advanced at other locations throughout the City.
- City Council has options on how to proceed with the Project Site in terms of both use and federalization status:
  1. Defederalize the Project Site – This option would provide the City with the greatest amount of flexibility in future use, but requires that the City negotiate a pay back to HUD equal to the fair market value of the site plus additional federal funds invested in the site to-date. The City could also choose to defederalize only a portion of the Project Site, such as the northern parcels contemplated in the THOW proposal for a community event space.
  2. Proceed with a HUD Change of Use Process – This option would allow the City to move forward with a use other than affordable housing that is consistent with a HUD national objective that serves low- and moderate-income residents. This would keep the site federalized, require an amendment to the City's CDBG Consolidated Plan and need HUD concurrence.
- Staff is requesting City Council direction on preferred use and federalization status to determine next actions for the Project Site.

**Fiscal Impact:**

\$50,000 for planning efforts for the Project Site

**Source of Funds:**

Historic Westminster Revitalization Capital Improvement Program Funds

**Policy Issue(s):**

What is the desired use for the Project Site?

Would City Council prefer to pursue the desired use with or without maintaining the current federalized status of the Project Site?

**Alternative(s):**

Do not proceed with recommendation: City Council could choose to not receive the updated options and updates for the property. However, this alternative is not recommended as it is at the City Council's request that Staff provide this update.

Proceed with recommendation: Proceed with the presentation.

**Background Information:**

Property Acquisition

Between 1998 and 2014, the City acquired six parcels, totaling 1.09 acres, on Lowell Boulevard, south of West 73rd Avenue (the "Project Site"). See Attachment A, "City of Westminster Owned Land at 73rd and Lowell", for map and legend of the Project Site. The intent of the acquisitions was to contribute to the redevelopment of Harris Park and catalyze additional private investment in the area.

In 1998, the City acquired the first parcel using City General Fund money, though this parcel was later used in the collateral deed for the Section 108 Loan. In 2004, the two northern parcels were purchased by the Westminster Housing Authority (WHA) for \$550,000. Subsequently, in 2012, the City borrowed from the Department of Housing and Urban Development (HUD) through the Section 108 loan program to make further acquisitions. Using those funds, the City acquired 7277 Lowell Blvd. for \$305,000 in 2012, 7235 Lowell Blvd. for \$222,000, 7247 Lowell Blvd. for \$226,000. In 2014, the City purchased the two northern parcels from WHA for \$450,600 using the Section 108 loan proceeds. In total, the City used \$1,203,600 in Section 108 loan proceeds to acquire five of the six parcels that make up the Project Site.

HUD Federalization

The Section 108 loan used for property acquisition was fully repaid to HUD in December 2019 with multi-year payments from the City's Community Development Block Grant (CDBG) funds. As CDBG was used as a guarantee for the Section 108 loan and the City had not achieved an income-generating activity with the investment, the City determined to repay and close the loan. The site is referred to as

achieved an income-generating activity with the investment, the City determined to repay and close the loan. The site is referred to as being "federalized", meaning that any use of the property by the City is required to address a HUD national objective that serves low- and moderate-income residents. Additionally, federalized sites must adhere to all federal rules and regulations.

#### Property Development History

In 2004, a proposal to support the development of commercial space and townhomes was approved by City Council utilizing the two most northern parcels along 73rd Avenue. In 2012, a developer proposed a mixed-use project with 48 affordable housing units and first-floor, commercial space using all six parcels. However, both agreements were terminated when the proposed projects encountered financial and partnership obstacles and failed to proceed. The City was also put on notice by HUD in 2016 that it was out of compliance for failure to meet a HUD national objective with the site, which remains the case at this time.

The most recent development proposal began in 2018 with the neighboring, non-profit housing developer Community Resource and Housing Development Corporation (CRHDC). The proposed project was to construct 17 affordable apartments to house senior residents on the northern three parcels. However, the project was unable to move forward after a proposed development agreement was not approved by City Council in May 2021.

#### Current Status of Environmental Remediation

Redevelopment of the property has been challenged by multiple environmental impacts from both on-site and off-site sources. A leak from underground storage tanks associated with a former gas station located at the northwest corner of West 73rd Avenue and Lowell Boulevard produced a groundwater plume that flows from north-east to south-west beneath the three parcels on the north side of the property. The tanks were removed in 1992 and the Colorado Division of Oil and Public Safety (OPS) has been actively monitoring and remediating the contamination since 2000. Working in coordination with OPS, the City and former development partner CRHDC conducted Phase I and Phase II environmental assessments and prepared a Voluntary Cleanup Plan (VCUP) which was approved by the Colorado Department of Public Health and Environment (CDPHE) on April 29, 2020.

Since 2016, the City has worked diligently with HUD and the appropriate state agencies to address underlying environmental issues and site constraints. This included asbestos removal and demolition of two vacant and blighted structures on the northern parcels. The City was required to wait for the outcome of a HUD-administered environmental review before receiving clearance to remove the structures on the site. HUD held the City to a commitment that "no option-limiting actions" take place in advance of HUD's environmental review and issuance of authorization to proceed. This required that none of the existing features of the property be disturbed. After multiple delays during the early months of the Covid-19 pandemic, HUD finally issued the authorization to proceed on December 18, 2020. Between 2021 and 2022, Staff performed a request for qualifications (RFQ) and contracted with an asbestos remediation and demolition contractor to clear the site. This contract was paid using approximately \$215,000 of CDBG funds.

Demolition of the structures on the northern parcels was completed in February 2022. Soils testing performed after the demolition did not detect any measurable contaminants and the City was informed by CDPHE that the surface conditions are suitable for development. Upon the demolition and soils testing and in receipt of a Tier 4 Voluntary Closure and "No Further Action Required" report from the OPS groundwater remediation, CDPHE issued the finding that "if fully and properly implemented, the plan will attain a degree of cleanup and control of hazardous substances and petroleum products, such that the property does not present an unacceptable risk to human health or the environment based on the property's current land use designation, which is residential."

The work to address required environmental remediation as detailed in the state VCUP described above was conducted during the demolition work and additional soil testing was performed in April 2022. No significant contamination readings were detected in the soil testing performed after demolition. One additional environmental restriction covered in the VCUP remains on the site, which requires that a vapor barrier be installed with any structural foundation used in construction of buildings above the treated plume-area. When this final VCUP requirement has been met and verified to CDPHE by a licensed engineer the City will receive a "no further action required" (NOFA) determination from CDPHE and the VCUP will be closed.

#### The CDBG Entitlement Program

The CDBG program includes grants to states, cities and counties based on a formula that factors in population size and economic metrics with the goal of developing viable communities through the provision of housing, a decent living environment, and expanded economic opportunities for low- and moderate-income individuals. As an entitlement community that receives CDBG funds directly from HUD, the City is required to file a five-year Consolidated Plan that sets target goals for CDBG investments. Additionally, the City is responsible for developing an Annual Action Plan (AAP) that addresses the filed Consolidated Plan goals and priorities and provides meaningful opportunities for participation by community stakeholders. Input provided by the community is included in the plan updates and are used to inform project funding allocations. City Council approved the 2022 CDBG AAP on July 25, 2022.

#### 2020-2024 Consolidated Plan Framework

This Consolidated Plan serves as a master-planning document, application for federal funding through HUD and a strategic plan for carrying out CDBG programs. The 2020-2024 Consolidated Plan sets the agenda for the City's CDBG investments during a five-year planning period and is posted on the City's website at: [https://www.westminstereconomicdevelopment.org/wp-content/uploads/2021/04/Westminster-Report-Cover\\_2020-24-ConsolidatedPlan6326-combined.pdf](https://www.westminstereconomicdevelopment.org/wp-content/uploads/2021/04/Westminster-Report-Cover_2020-24-ConsolidatedPlan6326-combined.pdf)

The document follows a hierarchy that begins with broad goals to guide overall direction for the Consolidated Plan. Two goals were identified to guide proposed projects and investments for the 2020-2024 planning period:

1. Preserve and Expand Affordable Housing
2. Infrastructure and Street Improvements

The identified goals address HUD national objectives to benefit low- and moderate- income residents and provide an area benefit to low and moderate- income neighborhoods. Keeping the number of goals limited and aligned with HUD national objectives allows the City efficiently apply CDBG funding to qualified projects. Qualified projects are identified to support the goals during the five-year plan

period. Projects are targeted to address specific needs, such as homeowner repairs, preservation of existing affordable housing, and replacement of aging infrastructure. Lastly, Staff identifies discrete activities within the project categories that are used to articulate and measure the work-product of the AAP.

#### 2022 AAP Process Prompts Community Conversation on the Future of the Project Site

During the recent process to adopt the AAP by City Council, Staff received a proposal from THOW community group to create a community event center, titled the "73rd Avenue Community Event Space", on the northern three parcels of the Project Site. On July 25, 2022, City Council instructed Staff to explore the community's vision for the Project Site consistent with the HOW proposal and food security issues noted by the community during the AAP process, and allocated \$50,000 in City funds towards the planning effort. Staff hosted a series of publicly-noticed, community meetings to engage area residents in assessing the potential to reprogram the City-held property. Four meetings were held on August 4, August 16, August 30, and September 14 and real-time, Spanish translation was provided during the meetings. Notes and meeting materials can be found on the City's website: <https://www.westminstereconomicdevelopment.org/housing/cdbg/73rd-lowell-future-use/>

The meetings provided an opportunity to identify community interests and needs that may also be considered before performing a HUD change of use or defederalization of the property. Four categories of needs to activate the space were identified during the community meetings: retail, accessible and affordable housing, community event space, and restaurants and other services. The conversations were productive and the community came to a majority consensus to move forward with an open-air community market concept consistent with the THOW proposal. This consensus was made with the caveat that the City not discount the affordable housing needs identified and residents be engaged in planning for additional housing throughout the City.

#### Next Steps and Options

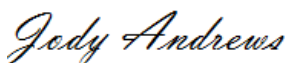
In order to fully understand how the Community Venue Concept could be successful and what resources might be required to operate it, the City needs to conduct further analysis. Staff has identified \$50,000 in existing capital improvement program funds to conduct this analysis, perform site design, and to produce an operating plan. A number of details regarding ownership, operation and management need to be evaluated further.

Staff requests City Council direction on preferred use and federalization status to determine next actions for the Project Site. Staff offers the following options for City Council to consider:

1. Defederalize the Project Site – This option would provide the City with the greatest amount of flexibility in future use, but requires that the City negotiate a pay back to HUD equal to the fair market value of the site plus additional federal funds invested in the site. The City has used approximately \$1.8 million in federal money at the site including a \$1.5 million Section 108 loan, \$200,000 in CDBG funds for site remediation and demolition, and \$100,000 in soils clean-up. Any payback amount would most likely be lower than the \$1.8 million amount spent at the site, and the repaid funds would likely be placed back into the City's CDBG allocation in a future year. The City could also choose to defederalize only a portion of the Project Site, such as the northern parcels contemplated in the THOW proposal for a community event space. Under this scenario, the City could proceed with the Community Venue Concept, as well as any other use, without the encumbrances of federal regulations and associated monitoring and reporting.
2. Proceed with a HUD Change of Use Process – This option would allow the City to move forward with a use other than affordable housing and small business incubator for which it is currently approved, as long as the use is consistent with a HUD national objective and serves low- and moderate-income residents. Among other considerations, this would keep the site federalized, require an amendment to the City's CDBG Consolidated Plan and need HUD concurrence. If directed to proceed with the proposed project under the CDBG program, Staff will begin the administrative filings to perform a formal HUD change of use on the site and complete a substantial amendment to the City's 2020-2024 Consolidated Plan while performing the recommended analysis of feasibility, operations and site design. An amendment is required as the City's filed Consolidated Plan with HUD does not have a designated goal that would support the Community Venue Concept. To accommodate a new use, the City will create a new goal and project that meets a national objective. Staff will perform a substantial amendment to the Consolidated Plan to codify the new goal. HUD allows a jurisdiction to perform the change of use and plan amendment simultaneously, allowing for co-incident public posting and review and a joint filing with HUD to perform both steps. This filing and amendment process can take 45 to 60 days to complete. Additionally, City Council must consider the proposed amendment and change of use during a regular business meeting. Staff believes that HUD will support the Community Venue Concept as long as it serves low- to moderate-income residents.

The City's Strategic Plan goal of a Shared Sense of Community is met by providing opportunity for the community to provide input on possible future uses for this site.

Respectfully submitted,



Jody L. Andrews  
Interim City Manager

**ATTACHMENTS:**

Description	Upload Date	Type
Presentation on Updates and Options for the City-Owned Property Located at West 73rd Avenue and Lowell Boulevard	10/12/2022	Attachment
Attachment A - City of Westminster Owned Land at 73rd and Lowell	9/25/2022	Attachment

**REVIEWERS:**

Department	Reviewer	Action	Date
ED - Administration	Moon-Murray, Julie	Approved	9/27/2022 - 5:52 PM
ED - Administration	Moon-Murray, Julie	Approved	9/27/2022 - 5:54 PM
ED - Administration	Stecklein, Mandy	Rejected	9/27/2022 - 6:05 PM
ED - Administration	Moon-Murray, Julie	Approved	9/27/2022 - 6:19 PM
ED - Administration	Fitch, Abby	Approved	9/30/2022 - 12:37 PM
ED - Administration	Andrews , Jody	Approved	10/4/2022 - 6:40 PM
ED - Administration	Andrews , Jody	Approved	10/4/2022 - 6:40 PM